

OA 112/2009 Gokul Chand Gupta Vs U.O.I.

13.05.2009 ^{17.4.2009}

Mr. Surendra Singh, Proxy to Mr. M. S. Gupta,
Counsel for the applicant.
None for the respondents.

This case has been listed before the Deputy
Registrar, due to non availability of the Division
Bench. Be listed before the Division Bench on
13.05.2009.


(Gurmit Singh)
Deputy Registrar

Shashi/


13-5-2009

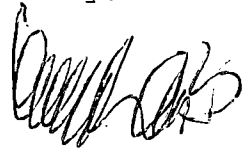
OA No. 112/2009

Mr. Surendra Singh, Counsel for applicant.

Heard learned counsel for the applicant.

For the reasons dictated separately, the
OA is disposed of.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 13th May, 2009

ORIGINAL APPLICATION NO. 112/2009

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Gokul Chand Gupta son of Shri Makan Lal Gupta, aged 68 years,
resident of 52, Gupta Sadan, Govind Nagar, West II, Amer Road,
Jaipur.

.....APPLICANT

(By Advocate: Mr. Surendra Singh)

VERSUS

1. Union of India through the Secretary to the Government of India, Ministry of Communication, Department of Telecommunication, New Delhi.
2. Chairman Cum Managing Director, Bharat Sanchar Nigam Limited, New Delhi.
3. Principal General Manager, Telecommunication, BSNL, M.I. Road, Jaipur.
4. Senior Administrative Officer, Indian Audit & Accounts Department, Regional Training Institute, A.G. colony, Bajaj Nagar, Jaipur.

.....RESPONDENTS

(By Advocate : -----)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- "a) That by appropriate order, directions, instructions the order dated 19.07.2000 (Annexure-1) be quashed and set aside.
- b) That by appropriate orders, directions, instructions respondents be directed to allow the applicant following amounts:-
 1. Payment of full pay & allowances of suspension period (-) subsistence allowance paid during suspension period.
 2. Benefit of annual grade increments falling in the year 1994 and 1995.
 3. Benefit of bonus amount for two years i.e. 1994-95 and 1995-96.

- c) That by appropriate orders, directions, instructions respondents be directed to pay interest @ 12% per annum w.e.f. it became due till the payment is made to him.
- d) Any other relief which the Hon'ble Tribunal thinks just and proper in the circumstances of the case in favour of the humble applicant may also be allowed.
- e) Cost of the OA be awarded to humble applicant."

2. As can be seen from the prayer clause, the main case of the applicant is regarding payment of Subsistence Allowance during the period when he was under suspension. Other reliefs are consequential reliefs. When the matter was listed on 03.04.2009, this Tribunal has passed the following order:-

"Heard learned counsel for the applicant.

The grievance of the applicant is that he was placed under deemed suspension on 15.07.1994 and the said suspension remained in force till 17.05.1996 when the suspension of the applicant was revoked. Thereafter the authorities did not decide as to how this period of the suspension was to be regulated. As such, the applicant filed OA before this Tribunal but the same was not entertained at that time as this Tribunal has got no jurisdiction/authority to decide the matter pertaining to BSNL employees. As such, the applicant had filed Writ Petition before the Hon'ble High Court. Now the jurisdiction has been conferred to this Tribunal to entertain the matter regarding BSNL employees, as such the applicant has filed this OA thereby praying that the directions may be given to the respondents to make payment of the entire salary for the aforesaid period.

As can be seen from the stand taken by the respondent in their reply affidavit, which was filed before the Hon'ble High court, the ground taken by them is that criminal proceedings are pending against the applicant. Admittedly, the said criminal case has not been concluded so far. The fact remains that the applicant was placed under deemed suspension on account of his custody in a criminal case. The attention of the learned counsel for the applicant was invited to FR 54 B (6) whereby power has been conferred the competent authority to review the matter after conclusion of the criminal proceedings. Thus according to us, in view of the aforesaid provisions, relief can be granted to the applicant at this stage.

Learned counsel for the applicant submits that he wants to study the matter further.

Let the matter be listed on 17.04.2009."

3. Learned counsel for the applicant submits that there is almost identical provision under Pension Rule where the gratuity is with-held on account of pendency of departmental proceeding/criminal proceedings. In such cases, Department has issued the instructions/clarification regarding payment of pensionsary benefits to the retiree government servant against whom personal court case

(other than Department) is pending in the competent court. For that purpose, Government of India, Ministry of Communication & Information Technology, Department of Telecommunication vide letter No. 36-9/2002-Pen (T) dated 24.03.2003 has clarified that in such cases where judicial proceedings is initiated against the Government servant by a private person/agency, in such eventuality the provision of Rule 69 of CCS (Pension Rules), 1972 should not be invoked and there is no objection in releasing DCRG and final pension in such cases.

4. Learned counsel for the applicant submits that in the instant case, criminal case was initiated at the behest of a private person, as such the applicant to entitled to the payment of full pay & allowances during the period when he was under suspension.

5. We have given due consideration to the submission made by the learned counsel for the applicant. We fail to understand ^{stand} as to how the clarification issued by the department vide letter dated 24.3.2003 regarding payment of gratuity in pending criminal case is applicable in the instant case, which is governed by different statutory provisions. There is a bar on payment of full Subsistence Allowance till the criminal/disciplinary proceedings is not terminated and after the termination of such proceedings, Competent authority has to pass orders whether a person shall be entitled to full salary during suspension period or he is not entitled to the full salary. As already noticed above, this stage has not come as yet. Besides, the applicant is not remedy less as noticed above. In case the applicant is fully exonerated by the Criminal Court, in that eventuality, competent authority is required to review the matter again in terms of FR 54 B (6). Thus according to us, no relief can be granted to the applicant.

6. With these observations, the OA is disposed of at admission stage with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)