

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

Allahabad, this the 10th day of August, 2018

Present:

Hon'ble Mr. Rakesh Sagar Jain – Member (J)

Original Application No. 330/52/2013
(U/S 19, Administrative Tribunals Act, 1985)

Jai Prakash Sonkar aged about 50 years S/o Sri Munshi Lal Sonkar R/o
48 New Mumfordganj, Allahabad.

.....Applicant.

By Advocates – Shri Bhagirathi Tiwari

VERSUS

1. Union of India through Secretary, Department of Personnel and Training and Public Grievances, New Delhi.
2. The Comptroller & Auditor General of India, 10 Bahadur Shah Zafar Marg, New Delhi.
3. Accountant General (A&E)-II, U.P. Allahabad.
4. Dy. Accountant General/ Admn. O/o A. G. (A & E)-II U.P. Allahabad.

.....Respondents.

By Advocate : Shri Rajnish Kr. Rai.

ORDER

By Hon'ble Mr. Rakesh Sagar Jain , J.M. :

1. The applicant has filed this OA for quashing the impugned orders dated 18.5.2012, 22.8.2012 and 20.11.2012 by which the

periods of suspension of applicant were extended. He has also sought a direction for respondents to increase and pay him subsistence allowance from 50% to 75% after 90 days from the date of his suspension.

2. The brief facts of the case are that the applicant was appointed as Group D from casual labour and subsequently he was promoted as Clerk in the office of Accountant General (A&E-II) U.P, Allahabad. It is stated that the applicant was suspended vide order dated 25.2.2012 contemplating disciplinary proceedings against him. He was paid subsistence allowance equal to the leave salary on half average pay vide order dated 26.3.2012 (Annexure A-3). His suspension period was extended for a further period of 90 days vide order dated 18.5.2012 (Annexure A-1) and his subsistence allowance was reduced by 50%. It has been alleged that the charge-sheet was not issued within 90 days from the date of suspension, therefore, the order dated 18.5.2012 reducing the subsistence allowance by 50% w.e.f. 25.5.2012 is illegal and the applicant is entitled for payment of 75% subsistence allowance after 90 days by increasing 50% subsistence allowance paid during the first three months. The respondents further extended the period of suspension vide orders dated 22.8.2012 and 20.11.2012 but the rate of subsistence

allowance remained the same i.e. 25% of leave salary. It has been alleged that the orders in respect of extension of suspension period and payment of subsistence allowance have been passed illegally by the incompetent authorities as the delay in the disciplinary proceedings was not caused due to any fault of applicant. The applicant had preferred several representations and lastly on 11.10.2012 for payment of proper subsistence allowance as admissible under the Rules but the respondents have not paid any heed to it.

3. In the counter reply, the respondents have stated that the applicant was part of the mob which caused damage to Government property on 24.2.2012. Subsequently the applicant was placed under suspension vide order dated 25.2.2012. Even after his suspension, he participated in demonstration and unauthorized meetings. He was issued a charge-sheet under Rule 14 of C.C.S (C.C.A) Rules 1965 vide memorandum dated 2.7.2012. The suspension of applicant was reviewed by the Competent Authority before the expiry of 90 days and while recording reasons in the concerned file, his suspension allowance was decreased by 50% w.e.f. 25.5.2012 vide order dated 18.5.2012. It is further stated that the subsistence allowance of applicant remained unchanged vide orders dated 22.8.2012 and

20.11.2012. It is further stated that the disciplinary proceeding has been finalized vide order dated 20.3.2013 and suspension of applicant has already been revoked w.e.f. 20.3.2013. It is also stated that as the applicant had actively participated in the demonstration and unauthorized meetings in front of gate No.1 of the office even after his suspension, the respondents have rightly reduced the payment of subsistence allowance by 50% under F.R. 53.

4. In the rejoinder, the applicant has reiterated the averments made in the O.A. and further stated that the applicant had sent several representations for enhancing the rate of subsistence allowance but the respondents did not dispose of his representations.

5. In the supplementary counter affidavit, the respondents justified the reduction of rate of subsistence allowance and further stated that the orders were passed by the competent authority in accordance with law. It is further stated that the applicant has been imposed a penalty of reduction to lower post of Clerk vide order dated 20.3.2013 against which he has preferred an appeal dated 4.5.2013 which is under consideration.

6. Heard Shri Bhagirathi Tiwari counsel for the applicant and Shri R.K Rai counsel for the respondents and perused the record.

7. Learned counsel for the applicant would contend that the delay was not prolonged for the reasons attributable to the applicant and, therefore, applicant was entitled to get enhanced subsistence allowance in terms of FR 53 (i) (ii) (a). He relied upon following judgments –

- “(i) Umesh Chandra Mishra Vs. Union of India and Ors. Reported in (1993) ILLJ 187 SC.***
- (ii) Rajendra Chaubey Vs. UOI and Ors. decided by CAT, Allahabad Bench in OA No. 1524 of 2010 on 28.2.2011.***
- (iii) Rajendra Chaubey Vs. UOI and others decided by CAT, Allahabad Bench in O.A. No. 492 of 2011 on 25.4.2011”.***

8. Learned counsel for the respondents argued that the reviewing authority has recorded its reasons in the concerned file for decreasing the amount of subsistence allowance and, therefore, there is no illegality in the impugned orders.

9. I have gone through the judgments referred on behalf of applicant. In the case of Umesh Chandra Mishra (supra), the applicant was dismissed from service without enquiry on account of his arrest in connection with Railway strike. On his acquittal, he was reinstated in service and in lieu of dismissal from service

some other punishment was awarded to him including some period was treated as suspension. It was contended that subsistence allowance could be increased by the competent authority if it came to the conclusion that the period of suspension had been prolonged for the reasons not directly attributable to the delinquent employee, which reasons ought to be recorded by the competent authority in writing. In the said case, it was not found that the delay was attributable to the delinquent employee and subsistence allowance was ordered to be made at enhanced rate of 75%.

10. In the case of Rajendra Chaubey (*supra*), the applicant had claimed subsistence allowance @ 75% after 90 days of suspension as no charge-sheet was issued to him and his suspension was being unnecessarily prolonged due to reasons not in any way attributable to the applicant. In the said case it was found that no charge-sheet was issued within 90 days of his suspension and no reasons were shown by the respondents why his suspension is prolonged. It was nowhere mentioned in the minutes of reviewing committee that increase or decrease in the subsistence allowance was considered by the competent authority. Considering the facts and circumstances, the applicant was found to be entitled for increase in the subsistence allowance

after 90 days of his suspension and the respondents were directed to consider the case of applicant and pass a well reasoned order.

11. Subsequently, the order of rejection was passed in the above noted case which was again challenged in OA No. 492 of 2011 (supra) and it was held that the competent authority had not applied its mind to the provision of FR 53 (1) (ii) (a) and by quashing the said order, the respondents were directed to decide the claim by recording specific finding regarding attributability for prolonged suspension i.e. whether the applicant or administration is responsible for such delay. It was also clarified that if the delay is not attributable to the applicant, he is entitled to enhance subsistence allowance as per rules.

12. F.R. 53 (1) (ii) (a) reads as under –

“(i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three months, if , in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant;

- (ii) the amount of subsistence allowance, may be reduced by a suitable amount, not exceeding 50 percent of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant”

Vide OM dated 16.2.1959, the Government of India has also clarified the preposition with regard to increase in subsistence allowance which states as under –

“G.I. M.F. OM No. F.15 (16)-E IV/58,dated the 16th February 1959]

The suspended officer would continue to draw subsistence allowance at the rate of his leave salary on half pay or half average pay until the competent authority passed an order under FR 53 (1) (ii) (a).

In view of the fact that any failure on the part of the competent authority to pass an order as soon as the suspended officer has been under suspension for six (now three) months can either involve serious hardship to the officer concerned or involve unnecessary expenditure to Government, Ministries are requested to issue instructions to all authorities under them having powers to suspend Government servants under them with a view to ensure that action is initiated in all such cases in sufficient time so that the requisite order can take effect as soon as the

suspended officer had completed six (now three) months under suspension”.

13. Though no reasons have been given in the impugned order of extension of suspension period, but it has been contended on behalf of respondents that the reviewing authority had recorded following reasons for extending the suspension period and reducing the amount of subsistence allowance in the concerned file –

“Since Jai Prakash Sonkar already participated meetings in front of Gate No.1 of office premises from 27.02.2012 onwards during his suspension period and due to which investigations etc. could not be initiated in time, hence payment of his subsistence allowance is to be decreased by 50%”.

14. From the perusal of above reasons for extending the suspension period and reducing the amount of subsistence allowance, it appears that subsistence allowance was reduced mainly on the ground that the applicant had participated in demonstration and held unauthorized meetings in front of Gate No.1 of the office premises and due to which investigations could not be initiated on time.

15. The applicant has already been held guilty and punished for the alleged misconduct and the appeal is pending against the

punishment order. The respondents have failed to substantiate that at the time of expiry of first suspension period of 90 days, the applicant was holding meetings in front of Gate No.1 of office premises. The respondents could not explain that they had tried to serve the charge-sheet upon the applicant for the alleged misconduct and it was prevented by the applicant. Even if it is presumed that the applicant was holding meetings in front of office Gate at the time of expiry of 90 days of suspension period, it could not be a ground for reducing the subsistence allowance as the applicant had not restrained the respondents to issue charge-sheet against the applicant. Such circumstances cannot be treated as sufficient for prolonging the suspension period and the delay cannot be attributable to the applicant.

16. Considering the facts and circumstances that no charge-sheet was issued by the respondents within 90 days from the date of his suspension, no specific dates have been given by the respondents for staging demonstration by the applicant at the time of reviewing the suspension order and no effort was made to serve the charge-sheet upon the applicant, the subsistence allowance could not be reduced as the delay was not directly attributable to the applicant.

17. Accordingly, O.A. is allowed and the impugned orders dated 18.05.2012, 22.8.2012 and 20.11.2012 (Annexure A-1) are quashed and set aside to the extent the subsistence allowance was reduced from 50% to 25%. The respondents are directed to reconsider the claim of applicant in the light of observations made herein above and pass necessary orders within a period of two months from the date of receipt of the order. No order as to costs.

(Rakesh Sagar Jain)
Member (J)

/Shashi/

APPENDIX

Applicant's Annexures in O.A

Sl. No.	Particulars	Dates	Annex.
1.	A photo copy of impugned orders	18.05.2012 22.08.2012 20.11.2012	A-1
2.	Copy of suspension order	25.02.2012.	A-2
3.	Copy of the order for subsistence allowance.	26.03.2012	A-3
4.	Copy of FR 53.		A-4
5.	Copy of GI orders in the matter for increasing subsistence allowance 75% of leave salary after 90 days.		A-5
6.	Copy of order appointing I.O. and order for start of Inquiry	28.08.2012 19.09.2012	A-6
7.	Copy of last representation	11.10.2012	A-7