

Central Administrative Tribunal  
Principal Bench  
New Delhi

R.A.No.234/2015  
in  
O.A.No.1651/2013

Order Reserved on: 17.03.2016  
Order pronounced on 30.03.2016

Hon'ble Shri V. Ajay Kumar, Member (J)  
Hon'ble Shri Shekhar Agarwal, Member (A)

1. Union of India

Through Secretary  
Ministry of Labour  
Shramshakti Bhawan  
New Delhi.

2. Central P.F. Commissioner

Employee Provident Fund Organization  
Head Office  
14, Bhikaji Cama Palace, New Delhi.

3. Additional Provident Fund Commissioner

EPFO, Regional Office  
Delhi North, 28, Community Centre  
Wazirpur Industrial Area  
Delhi.

... Review Applicants

(By Advocate: Mr. Satpal Singh)

Versus

Shri Prem Singh Bist

S/o Late Shri Gyan Singh

R/o House No.4, Second Floor

Block No.9, Spring Field Kalani

Sector-31, Faridabad (Haryana). .. Review respondent

(By Advocate: Sh. O.P.Gahlaut)

## **ORDER**

**By V. Ajay Kumar, Member (J):**

Aggrieved by the departmental inquiry proceedings, initiated under Rule 10 of the Employees Provident Fund Staff (Classification, Control & Appeal), Rules, 1971, which culminated in imposing the penalty of dismissal from service, the sole respondent in the review, filed OA No.1651/2013.

2. This Tribunal, after hearing both sides, in addition to the other grounds raised by the applicant in the OA, also considering the fact that the respondents have not paid the subsistence allowance to the applicant regularly during the period of disciplinary proceedings, allowed the OA on 22.07.2015, as under:

"23. We, in the above facts and circumstances of the case, allow this OA and quash and set aside the Enquiry Report dated 19.04.2002, the Disciplinary Authority's order dated 22/29.12.2009 and the Appellate Authority's order dated 22.06.2012. As the disciplinary case was instituted way back on 26.06.2000 and the Applicant has been undergoing the proceedings for the last more than 15 years, it will be a travesty of justice if the case is again remanded to the Disciplinary Authority for a third time. Moreover, the very purpose of remitting the case of the Applicant to the Respondents vide this Tribunal's order dated 22.04.2008 was to proceed from the stage of examining Sh. Mukesh Chaturvedi in the enquiry in his presence by giving him opportunity to cross-examine the said witness and then to pass fresh orders, after complying with the procedure as laid down in the rules. But said purpose is defeated as Shri Mukesh Chaturvedi is not available for cross-examination. We, therefore, direct the Respondents to reinstate the Applicant in service from the date of his dismissal and to pay the upto-date subsistence allowance with periodical annual increments from 29.03.2004 till his date of reinstatement and other consequential benefits admissible under the rules. The Respondents shall also refund the amount, if any recovered from the Applicant in terms of the aforesaid order dated 25.09.2002. As regards the intervening period from 29.03.2004 till the date of reinstatement, the Competent Authority shall treat it appropriately, as per rules. The aforesaid directions shall be complied with, within a period of

2 months from the date of receipt of a copy of this order. No order as to costs."

3. The respondents in the OA filed the present RA mainly on the following two grounds:

- (a) The respondent department had already passed an order for the deemed suspension and also processed to pay the subsistence allowance to the applicant. Four Cheques for Rs.4,02,468, Rs.13,508, Rs.1,45,399 and Rs.9,234 dated 07.10.2009, 23.10.2009, 19.04.2010 and 19.04.2010 respectively, were duly received by Shri Prem Singh Bist. But the applicant had not stated the said fact in the entire OA that he has received Rs.5,70,609/- through the aforesaid cheques.
- (b) The applicant filed the present OA on 04.05.2013 and the main grievances of the applicant is that the inquiry held by the department in pursuance of the direction the Tribunal has been vitiated inasmuch as subsistence allowance has not been paid to the applicant. The applicant has very cleverly not only misled this Tribunal by not disclosing about the aforesaid Cheques but also played a fraud by suppressing this fact, therefore, as per the settled principle of law, it is a fraud upon the judicial institution, as the aggrieved person must approach the Court with clean hands. It has been only stated in the OA that the Respondent Department vide Order dated 25.09.2012 has issued the order for recovery of Rs.3,85,462/-. More so,

he has not disclosed any fact, as to why the department proceeded to recover this amount from him.

4. Heard both the learned counsel and perused the pleadings on record.

5. The learned counsel for the review applicants, in short, contends that though the respondents have paid the subsistence allowance dues on various dates to the applicant, even during the period of inquiry, but the applicant by suppressing the said fact and by misleading this Tribunal, got the OA allowed.

6. It is true to some extent that the applicant has not stated anywhere about the receipt of the aforesaid lump-sum amounts pertaining to the subsistence allowance dues. But it is not in dispute that the respondents have failed to pay the subsistence allowance to the applicant month after month, i.e., whenever the same fallen due.

7. It is trite that every employee is entitled for his monthly salary, which also includes subsistence allowance, month after month, as per rules. Any non-payment, without any cogent reason attributable to the employee, amounts to violation of his rights. That is why Courts have termed the non-payment of subsistence allowance during the period of disciplinary proceedings as violation of principles of natural justice and held that the same vitiates the disciplinary action.

8. Therefore, since it is not disputed by the respondents that the subsistence allowance was not paid to the applicant, month after month, for reasons not attributable to him, this Tribunal, besides other grounds, allowed the OA on this ground also. Suppression of the fact of receipt of subsistence allowance dues, pertaining to so many months at one time, may be during the period of inquiry, in no way have any affect or can change the finding of this Tribunal.

9. In the circumstances and for the aforesaid reasons, we do not find any merit in the RA and accordingly the same is dismissed. No order as to costs.

(Shekhar Agarwal)  
Member (A)

(V. Ajay Kumar)  
Member (J)

/nsnrvak/