

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA No.4343/2014

RESERVED ON: 1.06.2016
PRONOUNCED ON: 3.06.2016

HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE MR. RAJ VIR SHARMA, MEMBER (J)

Mr. Chandra Shekhar
Deputy Director General (Cyber Security)
TEC, Department of Telecom
S/o Shri K.L. Goel,
R/o C-4, Tower-4,
New Moti Bagh,
New Delhi-110023

...Applicant

(By Advocate: Shri Prithu Garg)

VERSUS

1. Union of India
Through Secretary to Government of India
Ministry of Communication & Information Technology,
Department of Telecommunications
1112, Sanchar Bhawan,
20, Ashoka Road,
New Delhi-110001
 2. Bharat Sanchar Nigam Limited,
Through the Chairman-cum-Managing Director,
Bharat Sanchar Bhavan
Harish Chandra Mathur Lane,
Janpath, New Delhi-110001
 3. Union of India,
Through Secretary to Government of India
Ministry of Personnel, Public Grievances & Pension
Department of Personnel and Training,
North Block, New Delhi-110001
- ...Respondents

(By Advocate: Shri R.K. Jain, for respondent 1
Ms.Sunita Ojha, for respondent 2
Dr. Ch.Shamsuddin Khan, for respondent 3)

ORDER

Mr. P.K. Basu, Member (A)

The applicant remained under suspension between 4.06.2004 and 30.04.2008. He was suspended pursuant to a criminal case registered against him by the CBI under the provisions of Prevention of Corruption Act 1988. His suspension was revoked on 31.04.2008. The prayers made in this OA are as follows:

- “(i) direct the respondents to release the four annual increments which accrued to the applicant during 2005-2008 alongwith all necessary and consequential benefits of pay, allowances, entitlements, etc.;
- (ii) direct the respondents to release the revised pay (subsistence allowance) of the applicant for the period from 1.01.2006 till 1.05.2008 after extending the benefit of implementation of the 6th Pay Commission’s guidelines;
- (iii) grant interest at 18% per annum w.e.f. the date of accrual till the date of actual payment of the above amount(s) to the applicant;
- (iv) grant litigation expenses as well as costs/damages to the applicant on account of harassment and mental agony.”

2. The learned counsel for the applicant argued that by withholding his increments, the respondents have actually imposed minor penalty on him of withholding of increments of pay without following the procedure laid down under Rule 16 of the Central Civil Services (Classification Control and Appeal) Rules [CCS (CCA) Rules] 1965. Second, it is argued that he is entitled to get subsistence allowance at revised rates by revising

his pay from 1.01.2006. Thirdly, it is argued that since these benefits have been withheld from him without any justifiable reasons, the applicant is entitled to interest upon delayed payments at 18% per annum, to be calculated from the date of accrual of the said increments/ arrears till the date of their actual payment.

3. In support of applicant's claim, the learned counsel relied on:

- (i) **S.K. Dua Vs. State of Haryana**, (2008) 3 SCC 44;
- (ii) **Som Prakash Rekhi Vs. Union of India**, (1981) 1 SCC 449;
- (iii) **Gurmail Singh Vs. State of Punjab**, (1991) 1 SCC 189;
- (iv) **Balram Gupta Vs. Union of India**, 1987 Supp SCC 228;
- (v) **State of Haryana Vs. Piara Singh**, (1992) 4 SCC 118; and
- (vi) **Bhupendra Nath Hazarika Vs. State of Assam**, (2013) 2 SCC 516

to state that as a model employer, the State is expected to show fairness in action.

4. The respondents in their reply have stated that the period for which the claim is being made is between 2005-2008 whereas the present OA has been filed on 24.11.2014 i.e. after

about more than six years and not even an application for condonation of delay has been filed. Similarly, the prayer to pay revised subsistence allowance in terms of 6th CPC guidelines is again hit by delay of about 6 & ½ years, without an application for condonation of delay. Thirdly, prayer 8 (i) and 8 (ii) are distinct and separate cause of action and, therefore, they cannot be correlated. Being barred by the provisions of Rule 10 of the CAT (Procedure) Rules, 1987, this OA is not maintainable and is liable to be rejected.

5. On the merits of the case, the respondents stated that there are two cases pending in the Court of Special Judge, CBI, Panchkula, Haryana against the applicant. The suspension period of the applicant will be decided only after finalization of the above two cases and decision shall be taken thereafter as to how the suspension period will be treated.

6. It is further argued on behalf of respondents that it is only after decision in CBI cases that they can take a view as to whether the suspension period of the applicant could be treated as on duty or not and only then decision taken whether increments are to be released or not.

7. We have heard the learned counsel for the parties and gone through the pleadings available on record.

8. The provision with regard to subsistence allowance under FR 53 (1) reads as follows:

"F.R.53(1)(ii) in the case of any other Government servant –

- (a) A subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn, if he had been on leave on half average pay or on half-pay and in addition, dearness allowance, if admissible on the basis of such leave salary".

Regarding revision of pay scale under suspension, Government of India orders are as follows:

"(2) Revision of scale of pay while under suspension- A question having arisen as to whether a Government servant under suspension might be given an option to elect any revised scales of pay which might be introduced in respect of the post held by him immediately prior to suspension is revised, the Government of India have decided as follows:-

xxxx xxxx xxxx xxxx

2. Cases in which the revised scale of pay takes effect from a date falling within the period of suspension

- (a) Under suspension a Government servant retains a lien on his substantive post. As the expression `holder of a post` occurring in FR 23 includes also a person who holds a lien or a suspended lien on the post even though he may not be actually holding the post, such a Government servant should be allowed the option under FR 23 even while under suspension. The benefit of option will, however, practically accrue to him in respect of the period of suspension, only after his reinstatement depending on the fact whether the period of suspension is treated as duty or not."

F.R. 54-B (1) deals with cases of reinstatement after suspension.

This Rule, inter alia, provides as follows:

- “F.R.54-B. (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order-
- (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and
 - (b) whether or not the said period shall be treated as a period spent on duty.
- (2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or the Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.
- (3) Whether the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

- (4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.
- (5) In cases other than those falling under sub-rules (2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.
- (6) Where suspension is revoked pending finalization of the disciplinary or the Court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be."

9. Thus, the respondents are required to decide as to how they shall treat the suspension period of the applicant after decision in CBI cases and whether or not the suspension period will be treated as on duty. The applicant, at this stage, is only entitled to subsistence allowance, which has been granted to him. The argument of the applicant that withholding of increments and depriving him of higher pay scale tantamounts to minor punishment, is completely misplaced. The payment of subsistence allowance is governed by FR 53, while imposition of minor penalty is governed by Rule 16 of CCS (CCA) Rules, 1965. The two cannot be mixed up. As regards revision of pay the GOI instructions are clear. This has to be decided after the final order in the CBI cases.

10. In view of above, we are of the opinion that the OA lacks merit and has been filed on a comprehensive misunderstanding of Rules/ instructions and deserves to be dismissed. It is, therefore, dismissed. No costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

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