

**Central Administrative Tribunal
Principal Bench**

OA No.2879/2018

Order reserved on: 31.08.2018

Pronounced on: 28.09.2018

**Hon'ble Mr. K.N. Shrivastava, Member (A)j
Hon'ble Mr. Ashish Kalia, Member (J)**

Amarjeet Singh,
PIS No.16090229,
SI (Ex.) in Delhi Police,
Aged about 32 years,
S/o Sh. Sunehra Singh,
R/o 26-P/45E, Gali No.8,
Indira Park Extension-II,
Palam Colony, New Delhi-45.

- Applicant

(By Advocate Shri Anil Singal)

-Versus-

1. Govt. of NCT of Delhi
Through Commissioner of Police,
PHQ, IP Estate, New Delhi.
2. DCP (West Distt.),
PS Rajouri Garden,
New Delhi.
3. DCP (1st Bn. DAP),
NPL, Kingsway Camp,
Delhi.

-Respondent

(By Mrs. Harvinder Oberoi, Additional Standing Counsel)

O R D E R**Mr. K.N. Shrivastava, Member (A):**

Through the medium of this Original Application (OA), filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

- “1. To quash and set aside the impugned Reduction of Basic Pay, Non-Payment of HRA and Ration Money and Recovery of Rs.6000/- per month with all consequential benefits.
- 2. To direct the respondents to restore to the applicant subsistence allowance of 75% of Basic Pay w.e.f Jan, 2018 and make payment of 75% of Basic Pay w.e.f. Jan, 2018 with all consequential benefits.
- 3. To direct the respondents to pay to the applicant HRA and Ration Money w.e.f. Mar, 2018 with all consequential benefits.
- 4. To direct the respondents to pay back the recovery of Rs.6000/- per month made from the pay and allowances of the applicant w.e.f. Mar, 2018 with all consequential benefits.”

2. The factual matrix of the case is as under:

2.1 The applicant is working as Sub Inspector (Ex.) in Delhi Police since 2009. Following his arrest in FIR No.211/2011 dated 21.07.2011 under Section 302 of IPC, Nihal Vihar Police Station, he was placed under suspension by the Disciplinary Authority (DA) vide Annexure A-1 order dated 22.07.2011. He was sanctioned subsistence allowance which has been enhanced to 75% vide Annexure A-2 order dated 30.11.2014. He is presently under the judicial custody. His salary emoluments comprise of basic salary, Grade Pay (GP), Dearness Allowance (DA), Ration Money, House Rent Allowance (HRA), Transport Allowance (TA) and Metro Allowance. By virtue of Annexure A-2 order he is getting 75% of the

total salary emoluments comprising of these components. A copy of his salary slip for the month of April, 2015 is at Annexure A-3.

2.2 The grievance of the applicant is that the respondents have stopped including the components of HRA, TA, Ration Money and Metro Allowance in his salary emoluments and have started paying subsistence allowance on that basis. The view taken by the respondents is that while under judicial custody, he is not entitled for HRA, TA, Ration Money and Metro Allowance. His grievance is that the respondents have started recovering the amount paid earlier towards HRA, TA, Ration Money and Metro Allowance from his subsistence allowance @ Rs.6000/- per month which has caused him great financial hardship to him. A copy of the pay slip for the month of May, 2018 has been placed on record (p.18) by the applicant in this connection. The applicant's contention is that his salary emoluments should be computed, taking into account, all these allowances and the subsistence allowance should be worked out on that basis. Accordingly, he has approached the Tribunal in the instant OA praying for the reliefs, as indicated in para-1 supra.

2.3 The applicant has also relied on the judgment of the Hon'ble Supreme Court in the case of **State of Punjab & Others v. Rafiq Masih & Ors.**, [(2015) 4 SCC 334] against the recovery.

3. Pursuant to the notices issued, the respondents have entered appearance and filed their reply in which they have broadly stated as under:

3.1 The applicant was arrested in FIR No.211/2011 under Section 302 of IPC. As a consequence thereof, he has been placed under suspension vide Annexure A-1 order dated 22.07.2011 and is currently under the judicial custody. Since he is under judicial custody and lodged in jail, he is not entitled for HRA, Ration Money and TA.

3.2 As regards HRA, the applicant has not submitted any information/certificate of occupancy of residential accommodation by him or his family and hence HRA cannot be drawn by him at this stage.

3.3 The respondents have not placed any order of Delhi Police in regard to non-payment of HRA, Ration Money, TA etc. during the period of suspension. They have, however, placed on record an order dated 14.06.2018 of Ministry of Railways (Annexure R-II) which deals with admissibility of allowances payable to a Railway Servant during the period of his suspension.

4. Arguments of Shri Anil Singal, learned counsel for the applicant and that of Mrs. Harvinder Oberoi, learned Additional Standing Counsel for the respondents were heard on 31.08.2018.

5. We have perused the pleadings and have also considered the arguments of the learned counsel for the parties. The objective of payment of subsistence allowance is that a Government servant during the period of suspension should be paid some amount to sustain himself and his family. The entitlement of subsistence allowance to a Government servant has been dealt with under Fundamental Rule (FR) 53. The relevant portion is extracted below:

“F.R. 53. (1) A Government servant under suspension or deemed to have been placed under suspension by an order of the appointing authority shall be entitled to the following payments, namely:-

(i) xxx xxx xxx xxx

(a) a subsistence allowance 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 such leave salary:

(Emphasis supplied)

xxx xxx xxx xxx

(b) Any other compensatory allowances admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension subject to the fulfilment of other conditions laid down for the drawal of such allowances.”

6. A constructive reading of FR-53 would make it clear that the subsistence allowance has to be computed as a percentage of the total salary comprising of all the components applicable to the applicant. We are, therefore, of the view that the respondents were not justified in excluding the components of HRA, Ration Money, TA and Metro Allowance from the salary of the applicant and in computing the subsistence allowance on that basis.

7. In the conspectus of the discussions in the foregoing paras, we allow this OA and direct the respondents to include the components of HRA, TA, Ration Money and Metro allowance in computing his salary during the period of suspension and pay him subsistence allowance in accordance with FR-53 and Annexure A-2 order dated 30.11.2014. We further direct the respondents to refund the amount already recovered from the subsistence allowance of the applicant. This shall be done within a period of two months from the date of receipt of a copy of this order.

8. There shall be no order as to costs.

(Ashish Kalia)
Member (J)

(K.N. Shrivastava)
Member (A)

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