

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO.060/01149/2017 Date of order:- 5 .7.2018.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**

Ashwani Kumar s/o Sh. Abinashi Lal, working as Junior Assistant (under suspension) attached to O/o Executive Engineer, Construction Division No.6, Chandigarh, r/o H.No.3012, Sector 23, Chandigarh.

.....Applicant.

(By Advocate :- Mr.Barjesh Mittal)

Versus

1. Union Territory, Chandigarh Administration through its Advisor to the Administrator, U.T. Chandigarh, U.T. Civil Secretariat, Sector 9-D, Chandigarh.
2. Chief Engineer, Union Territory, Chandigarh, U.T. Civil Secretariat, Sector 9-D, Chandigarh.

...Respondents

(By Advocate : Shri Rajesh Punj).

ORDER

Sanjeev Kaushik, Member (J):

Applicant Ashwani Kumar has filed the present Original Application for quashing the impugned order dated 23.5.2016 with further prayer that respondents be directed to reconsider and enhance the subsistence allowance of the applicant from 50% to 75% from due date i.e. January, 2015 after expiry of six months of deemed date of suspension and release arrears forthwith.

2. Facts which led to filing of the present OA are that the applicant while working as SDC (Junior Assistant) in the office of Executive Engineer, Horticulture Division No.2, Chandigarh, an FIR dated 14.7.2014 was registered by the CBI against him for accepting illegal gratification of Rs.5000/-. He was immediately arrested. Vide order dated 31.7.2014, applicant was placed under suspension from the date when he was arrested by the CBI. He was allowed 50% subsistence allowance. On 1.4.2015, applicant submitted representation for increase in his subsistence allowance from 50% to 75% as his suspension has been continuing beyond six months and as per Rule 7.2(a)(1) of the Punjab Civil Service Volume I Part I, the respondents are under obligation to increase his subsistence allowance to 75%. By impugned order dated 23.5.2016, respondents have rejected his claim for enhancement of subsistence allowance.

3. Applicant has alleged discrimination that three persons namely present applicant, Navraj Singh Dhillon (Assistant Landscaping Officer and Damar Bahadur (Chowkidar) of the department were named in said FIR dated 14.7.2014, and the respondent no.2 vide order dated 29.1.2016 has increased the subsistence allowance from 50% to 75% in case of Damar Bahadur(Chowkidar), whereas in his case, the same has been denied to him. Applicant has relied two judgments of the jurisdictional High Court in the case of **Mahabir Singh** versus **State of Haryana & Ors.** (2011(2) S.L.R. Page 638) and **Mulkh Raj Chhabra** versus **Secretary to Government of Punjab, Health & Family Welfare Department** (1992(3) S.C.T. Page 251) wherein it was held that

delinquent is entitled to increase in subsistence allowance. Hence the present OA.

4. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement. They have stated that Rule 7.2(1)(a) of the Punjab Civil Service Rules, Volume I Part I, gives powers to the competent authority in deciding the matter of enhancing/reducing the amount of subsistence allowance after expiry of period of first six months, by taking into consideration the gravity of charge levelled against the accused employee. Respondents have further stated that a reference to Senior Superintendent of Police, CBI Chandigarh, was sent vide memo dated 7.4.2016, for intimating the latest status of the criminal case registered against the applicant and whether the charge-sheet has been filed before the competent court of law. CBI vide letter dated 23.1.2017 informed that charge-sheet has been filed on 31.12.2014 against the applicant and case is still pending trial in the Court of Special Judge, CBI, Chandigarh. Accordingly enhancement of subsistence allowance of the applicant was considered and in view of gravity of the charges levelled against him, the same was rejected. They have thus prayed for dismissal of the OA.

5. No replication has been filed by the applicant.

6. I have heard the learned counsel for the parties and have perused the material placed on record.

7. Shri Mittal, learned counsel appearing on behalf of applicant vehemently argued that the impugned order is non-

speaking and thus, the same is liable to be set aside. To elaborate his submission, he submitted that in terms of Rule 7.2(1)(a) of the Punjab Civil Service Rules, Volume I Part I, the competent authority is under obligation to enhance the subsistence allowance of the applicant from 50% to 75% and if they have to reject the claim of the applicant, then the respondents have to give reasons as to why they are not enhancing the subsistence allowance. Thus, he prayed that the impugned order be set aside.

8. To buttress his plea, he placed reliance on an order dated 11.1.2017 passed in the case of Navraj Singh Dhillon versus Union Territory, Chandigarh & Another (O.A.No.060/00190/2016).

9. Per contra, Shri Arvind Moudgil, learned counsel appearing on behalf of the respondents is not in a position to rebut the submissions made by the learned counsel for the applicant that the order is non-speaking. However, he reiterated what has been stated in the written statement.

10. I have given my thoughtful consideration to the entire matter.

11. Before adjudicating the controversy raised in the present Original Application, I would like to state here that the suspension is defined as a state of being debarred. An employee, when he is suspended, is thus debarred from any privilege, particularly from the execution of an office. It is temporary deprivation of office. However, the suspended employee does not lose his office nor does he suffers

any degradation. He only ceases to exercise powers and discharge duties for the time being. Order of suspension does not pertain to his service under his employer and he continues to be an employee/member of service inspite of order of suspension. In **Khem Chand Vs. Union of India**, AIR 1963 SC 687, the Hon'ble Supreme Court explained the real effect of order of suspension and clarified that government servant, when suspended, continues to be a government employee but he is not permitted to work and further during the period of suspension he is paid only some allowances - generally called subsistence allowance - which is normally less than salary instead of pay and allowances he would have been entitled to if he had not been suspended. What subsistence allowance is to be paid depends on the service rules on the subject. Further in the case of **P.L. Shah v. Union of India**, 1989 AIR S.C. 985, the Lordships of the Hon'ble Supreme Court has observed that the order of suspension is not an order imposing punishment on a person. It is an order made against him before he is found guilty to ensure smooth disposal of proceedings initiated against him. Such proceedings should be completed expeditiously in public interest and also in the interest of government service concerned. There is no doubt that order of suspension, unless the departmental enquiry is concluded within a reasonable time, may act against a government servant. The subsistence allowance is paid by the Government so that the Government servant against whom an order of suspension is passed on account of the pendency of any disciplinary proceeding or a criminal case instituted against him could maintain himself and his dependants until the departmental proceeding or the criminal case as the case may be comes to an end and appropriate orders are passed

against the Government servant by the Government regarding his right to continue in service etc. depending upon the final outcome of the proceedings instituted against him.

12. Perusal of Rule 7.2(1)(a) of the Punjab Civil Service Rules, makes it clear that if in the opinion of the authority, the period of suspension has been prolonged for reasons to be recorded in writing, directly attributable to the government employee, then they are free not to enhance the subsistence allowance. But if the suspension is prolonged without any fault of the government employee, then he becomes entitled for enhancement of subsistence allowance from 50% to 75%. Rule 7.2 (a)(i) of the Punjab Civil Service Rules, Volume I Part I, reads as under :-

" A subsistence allowance at an amount equal to the leave salary which the Govt. employee would have drawn if he had been on leave of half pay and in addition darkness allowance, if admissible on the basis of such leave salary."

Provided that where the period of suspension exceeds six months, the authority, which made or is deemed to have been made the order of suspension, shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of first six months as follows."

Under sub Rule 7.2(a) (i) of the above said rules it is provided that:-

"the amount of subsistence allowance may be increased by a suitable amount not exceeding 50% of the first six months, if in the opinion of the said authority, the period of suspension has been prolonged for reason to be recorded in writing, not directly attributable to the Government employee"

In the light of above, I am of the considered view that the impugned order rejecting the claim of the applicant for enhancement of subsistence allowance from 50% to 75% cannot be allowed to sustain being non-speaking order because the same does not contain any

reason as to what weigh in the mind of the authority while rejecting his claim. Rule is very clear that subsistence allowance has to be increased from 50% to 75%, if there is no fault on the part of the employee. But if the suspension is prolonged for any fault of employee, then the respondent department has to record reasons that suspension is prolonged due to fault attributable to employee and in that eventuality, the increase in subsistence allowance can validly be denied, which is totally missing in the case in hand.

13. Accordingly, the impugned order is quashed and set aside. The matter is remitted back to the respondents to re-consider the claim of the applicant in the light of the observations made herein above and to pass reasoned and speaking order. If there is no fault on the part of the employee in delaying the suspension period, then the subsistence allowance be enhanced to 75%, otherwise reasoned and speaking order be passed and the same be communicated to the applicant, within a period of two months from the date of receipt of certified copy of this order.

14. The OA stands allowed in the above terms. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:- July 5, 2018.

Kks