

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

...  
**ORIGINAL APPLICATION NO.060/00178/2017**

**Chandigarh, this the 13<sup>th</sup> day of September, 2018  
(Reserved on 27.08.2018)**

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**CORAM:HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &  
HON'BLE MS. P. GOPINATH, MEMBER (A)**

...

Navraj Singh Dhillon, Age 58 years, S/o late Sh. Beant Singh Dhillon, Assistant Landscaping Officer (Retd. While under suspension), Horticulture Sub Division No. 2, Chandigarh, R/o # 4221, Sector 68, SAS Nagar, Mohali, Punjab (Group B)

**....Applicant**

**(Present: Mr. Barjesh Mittal, Advocate)**

**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.
3. Superintending Engineer, o/o Chief Engineer, Union Territory, Chandigarh, U.T. Civil Secretariat, Sector 9-D, Chandigarh.

**..... Respondents**

**(Present: Mr. Aseem Rai, Advocate)**

**ORDER  
SANJEEV KAUSHIK, MEMBER (J)**

1. Applicant has assailed the order dated 31.01.2017 (Annexure A-1), whereby his request for revocation of his suspension and enhancement of subsistence allowance from 50% to 75% from due date, after expiry of period of six months of the deemed date of suspension, has been declined. He has also sought quashing of orders dated 15.01.2016/08.02.2016 (Annexure A-2), and dated 07.08.2014 (Annexure A-3), though already quashed by this Court, vide order dated 11.01.2017 (Annexure A-7), but the respondents reiterated these orders while rejecting his claim, vide order dated 31.01.2017 (Annexure A-1).

2. The facts which led to the filing of the present case are not in dispute.

3. This is the second round of litigation of the applicant before this Tribunal. The facts, in brief, are that the applicant joined the respondent department on 30.11.1981 as Junior Engineer (Horticulture). He was given additional charge of Assistant Landscaping Officer in the year 2011 and thereafter was promoted to the same post on regular basis vide order dated 27.06.2013. The applicant was implicated in a criminal case i.e. FIR No. RCCHG2014A011 dated 14.07.2014 under Section 120-B of IPC and under Section 7 of Prevention of corruption Act, 1988 registered by the CBI, Chandigarh against two employees of office of Horticulture Sub Division No. 2 on the alleged charge of accepting illegal gratification of Rs.5000/-. The name of the applicant did not find a mention in the said FIR. However, the CBI arrested the applicant also on 14.07.2014. Thereafter, he was granted the regular bail by the Competent Court on 29.07.2014. He was placed under deemed suspension vide order dated 07.08.2014, on registration of criminal case against him from the date when he was arrested by the CBI. On 23.12.2014, he submitted a representation in the office of Respondent No. 2, praying for revocation of order of his suspension on the ground that since the charges have not been framed by the Court and it will take sufficiently long time to conclude the said criminal trial, therefore, suspension be revoked and the applicant be allowed to join the duty back. His request for revocation of suspension and enhancement of subsistence allowance, however, was rejected, vide

order dated 15.01.2016, communicated to him, vide order dated 08.02.2016.

4. Applicant challenged the order of rejection of his request by filing O.A. No. 060/00190/2016, which was allowed vide order dated 11.01.2017, by this Court. The impugned order therein, rejecting the request of the applicant for revocation of his suspension and enhancement of subsistence allowance, was quashed and the matter was remitted back to the respondents to re-consider his claim, in accordance with the rule formulation, within a period of three months from the date of receipt of that order. It is thereafter that the respondents rejected his claim, vide order dated 31.01.2017 (Annexure A-1). Hence this O.A.

5. The respondents have filed written statement wherein they have submitted that in pursuance of Rule 7.2 (1) (a)(i) &(ii) of Punjab Civil Services Rules (Punishment and Appeal) Rules, 1970 Volume-I, Part-I (hereinafter to be referred as PCS Rules, 1970), the Competent Authority has considered the claim of the applicant for revocation as well as enhancement of subsistence allowance, and declined it, in view of gravity of charges levelled and pendency of criminal case against him.

6. Applicant has also filed rejoinder wherein he submitted that while passing the impugned order, the respondents have travelled beyond the rule formulation to take a view adverse to the interest of the applicant. He has also alleged discrimination stating that the two other persons, who have been accused in the same case, have been granted the benefit of enhancement of subsistence allowance, in terms of PCS Rules, 1970, whereas he has been discriminated against by the respondents.

7. We have heard learned counsel for the parties.

8. Sh. Barjesh Mittal, learned counsel for the applicant, vehemently argued that the impugned order is illegal and arbitrary, and is therefore, liable to be set aside, on the ground that the same has been passed in contravention of PCS Rules of 1970. He argued that as per Rule 7.2 (1) (a)(i) (ii) of PCS Rules, 1970 Volume-I, Part-I, if the authority is of the opinion that subsistence allowance is not to be increased to 75%, after a period of six months, then it has to record a finding in writing that the prolonged suspension is directly attributable to the delinquent employee. However, since nothing about the role of applicant in prolonged suspension has been recorded by the competent authority, therefore, the action of the respondents in denying the claim of the applicant, without recording any finding as per the Rules, is arbitrary and is liable to be declared unsustainable. In support of his arguments, learned counsel has placed reliance upon judgments rendered by the Hon'ble Punjab and Haryana High Court in the cases of **Om Prabha vs. State of Haryana**, 2010 (8) SLR 319, **Mulkh Raj Chhabra Vs. The Secretary to Govt. of Punjab, health & Family Welfare Department**, 1992 (3) SCT 251 and **Mahabir Singh Vs. State of Haryana and Others** 2011 (2) SLR 638.

9. Per contra, Mr. Aseem Rai, learned counsel for the respondents reiterated what has been stated in the written statement.

10. We have given our thoughtful consideration to the matter and perused the pleadings, with the able assistance of learned counsel for the respective parties.

11. Rule 7.2 (1) (a)(i) & (ii) Volume-I, Part-I of Punjab Civil Services Rules (Punishment and Appeal) Rules, 1970, which govern the field is quoted hereunder:-

“7.2 (1)(a)(1) The amount of subsistence allowance may be increased by a suitable amount not exceeding 50 % of the subsistence allowance admissible during the period of the first six 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 employee.

7.2 (1) (a) (ii) The amount of subsistence allowance may be reduced by a suitable amount not exceeding 50% of the subsistence allowance admissible during the period of the first six 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 employee.”

12. Apparently, the above rule-position lays down the criteria to be followed by the Competent Authority while considering the cases for enhancement of subsistence allowance of the delinquent employees. It envisages that the amount of subsistence allowance may be increased by a suitable amount not exceeding 50 % of the first six months (i.e. 75% of total), if the prolonged suspension is not directly attributable to the delinquent. The competent authority, while declining approval for enhancement of subsistence allowance has, concededly, not recorded any such finding that the prolonged suspension is directly attributable to the applicant. It, however, recorded reasons of gravity of charges and pendency of criminal appeal against the applicant, which absolutely cannot be made the basis, for not enhancing the subsistence allowance, as per the relevant rules, and therefore, the impugned order cannot be sustained in the eyes of law.

13. It is not out of place to mention here that in the criminal case before the CBI Court Chandigarh, a charge-sheet was filed way back on 31.12.2014, prosecution sanction against the applicant has already been sent on 19.01.2015 by the disciplinary authority,

and the matter is pending for adjudication, but the respondents have never come up with any plea that the matter has been prolonged for the reason attributable to the applicant, thus the impugned order, denying increase in subsistence allowance, cannot sustain. Our view stands fortified by the judgments of the Hon'ble Jurisdictional High Court in the case of Mulkh Raj (supra) wherein the same very rule, which is the basis of this case, has been interpreted and a finding has been recorded that the respondents cannot deny increase in the subsistence allowance for the period subsequent to the period of suspension of six months, and it can be denied only if the suspension is prolonged for reasons which are attributable to the concerned employee. Even in the case of **O.P. Gupta Vs. Union of India**, 1987 (4) SCC 340, the Hon'ble Supreme Court has held that as per the Oxford English Dictionary, Vol II at page 2171 the expression 'subsistence allowance' means allowance "to remain alive as on food; to continue to exist, to support life, especially a minimum livelihood. The relevant part of the judgment is extracted hereunder:-

"An order of suspension of a government servant does not put an end to his service under the government. He continues to be a member of the service in spite of the order of suspension. The real effect of the order of suspension as explained by this Court in **Khem Chand V. Union of India** is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance – generally called subsistence allowance – which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression 'subsistence allowance' has an undeniable penal significance. The dictionary meaning of the word 'Subsist' as given in Shorter Oxford English Dictionary, Vol. II at page 2171 is "to remain alive as on food; to continue to exist". "Subsistence" means – means of supporting life, especially a minimum livelihood."

Therefore, the subsistence allowance, which is not only a statutory right of a government employee, but also an obligation of the

employer, and given to the suspended employee to support him to fulfill his basic requirements of livelihood, cannot be denied without any reason attributable to him for prolonging the suspension period, as held in the case of Om Prabha (supra).

14. In the light of the clear-cut rule-formulation and law laid down on the issue, we declare the impugned order dated 31.01.2017 (Annexure A-1), denying enhancement of subsistence allowance up to 75% to the applicant, as illegal, and the same is hereby quashed. The respondents are directed to increase subsistence allowance of the applicant forthwith, as per the rules, and make payments accordingly. No costs.

**(P. GOPINATH)**  
**MEMBER (A)**

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

**Dated: 13.09.2018**

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