

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD**

(This the 03rd Day of May 2019)

Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Application for Condonation of delay No. 768 of 2015

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Original Application No.330/01202/2014

(U/S 19, Administrative Tribunal Act, 1985)

Arvind Kumar Srivastava S/o Late Parma Nand Srivastava, R/o Village & P.O. Ramapur, District Sant Ravidas Nagar.

..... Applicant

By Advocate: Shri A. D Singh

Versus

1. Union of India through General Manager, North Central Railway, Subedarganj, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad.
3. Divisional Personnel Officer, North Central Railway, Allahabad.
4. Assistant Operating Manager, North Central Railway, Allahabad.
5. Divisional Operating Manager, North Central Railway, Allahabad.
6. Senior Divisional Operating Manager, North Central Railway, Allahabad.

..... Respondents

By Advocate: Shri Santosh Kumar Rai

ORDER

1. The present Original Application has been filed by the applicant Arvind Kumar Srivastava seeking following reliefs:-
(i) That this Hon'ble Tribunal be pleased to allow this O.A. and quash and set aside the impugned order dated 25.07.2014

and 24.7.2014 (Annexure A-1 and A-1A to this OA) in compilation No.1.

- (ii) That this Hon'ble Tribunal be pleased to direct the respondents to make the payment subsistence allowances of deemed suspension from due date to the date of reinstatement in service with 18% interest per annum.
- (iii) That this Hon'ble Tribunal be pleased to grant such other reliefs, as the applicant might be found entitled to, in the facts and circumstances of the case.
- (iv) That the cost of the proceedings may kindly be granted in favour of the applicant".

2. Case of applicant Arvind Kumar Srivastava is that while working in the Railways, he was removed from the services by respondent No. 4 vide order dated 08.05.2000 which removal was set aside by the President of India vide order dated 21.07.2008 and remitted the case back to the Disciplinary Authority from the stage of consideration of the reply dated 15.02.2000 of the applicant to the charge sheet. Respondent vide order dated 19.09.2008 (Annexure No. A9) placed the applicant under 'deemed suspension'. In terms of direction of the tribunal in OA filed by applicant directed the respondents to decide the representation of applicant seeking subsistence allowance which representation was rejected by the respondent No. 6 vide impugned order dated 25.07.2014 and 24.07.2014. Hence the OA for quashing the rejection order and direction to pay the subsistence allowance to the applicant.

3. In the counter affidavit, respondents have pleaded that applicant is not entitled to any subsistence allowance. It is stated that in compliance of direction of the Tribunal passed on 04.04.2014 in OA No. 330/00422/2014, respondent No. 6 has duly considered the application of applicant and passed reasoned and speaking

order dated 24.07.2014, which was duly communicated to the applicant. It is further submitted that in pursuance to the order dated 21.07.2008 passed by Director Establishment (D & A) Railway Board, the matter was again taken as fresh in accordance with provision of Railway Servants (Discipline and Appeal) Rules 1968, calling the applicant to participate in the enquiry, but he failed to cooperate the enquiry and as such the action has been taken as per Rules.

4. I have heard and considered the arguments of the learned counsels for the parties and gone through the material on record and gone through the written arguments filed by learned counsel for respondents.
5. In the written arguments, respondents have taken the plea that the O.A. is barred by period of limitation on the ground that the cause of action accrued to the applicant in the year 2009 but the O.A. was filed in the 2014. The plea of respondents is unacceptable for the reason that the representation of the applicant was considered as per orders of the Tribunal and disposed off vide impugned orders of the year 2014 and the O.A. has been filed in 2014 against the said orders of 2014. By no stretch of imagination, it can be said that the O.A. is barred by period of limitation.
6. Coming to the merits of the case, the relevant portion of orders refusing subsistence allowance to applicant read as under:

"Order dated 25.07.2014

**mijkDr fo'k; ds I anikZ ea vki dks I spr fd;k tkrk gS fd
ekuuh; dS@bykgkckn }jk i kfr vknk ds rgr vki dk ds
I {ke vf/kdkjh ds I e{k i Lr fd;k x;k ftI ij fopkj djus ds
lk'pkr I {ke vf/kdkjh us bl dk;ky; ds I el {;d ukV fnukd
24-07-2014 ds }jk dfYir fuyEcu (Deemed to be
under suspension) dh vof/k dk thou ;ki u HkRrs dh elak
u rksU; k; k spr gS vlg u gh fu; ekuj kj ns gS**

bl I EcWk ea I {ke vf/kdkjh }kjk ikfjr vknsk dh Nk; k ifrfyfi vki ds I pukFk i f'kr dh tk jgh gA

di ;k i= dh ikorh nA

Order dated 24.07.2014.

vkjki h depkjh fnukd 08-05-2000 dks jy I ok I s fu"dkf'kr FkA jyos ckMz ds vknskkuj kj fnukd 19-9-2008 dks vuqkl fud vf/kdkjh us ek= Mh , .M , vkj tkp ifd; k tkjh j[kus ,oa ml ea I g; kx gsrq depkjh ds i{k ea Deemed to be under suspension dk vknsk ikfjr fd; k FkA Kkr0; gSfd mDr vknsk ds ikfjr gkds ds I e; depkjh jy I ok ea ugh FkA jy I ok I s fu"dkl u dh vof/k ea depkjh ds fo: } ikfjr dfYir fuyEcu ds vknsk dk vkspr; ,d ek= Mh , .M- , - vkj tkp ifd; k dks fuck} : lk I s I Ei lu djkus dh Fk] ijUrq vuqkl fud vf/kdkjh }jk ifd; k ckf/kr gpo vkj tkp vf/kdkjh us tkp ifd; k ea dkbz I g; kx ugh fd; k ft I I s tkp ifd; k ckf/kr gpo vkj tkp vf/kdkjh dks ck/; gkdj ,di{h; tkp fji kVZ I ksuuk iMKA , d h fLFkr ea ml ds }jk Deemed to be under suspension vof/k ds thou ; kiu Hkrs dh ekak u rksU; k; kspr gSvkj u gh fu; ekuj kj ns gA".

7. The meaning of Deemed suspension and whether a Railway servant is entitled to subsistence allowance is gatherable from Master Circular No. 64 on Suspension issued by Joint Director Establishment (D&A) Railway Board vide letter No. E(D&A)95 RG6-49 dated 1.12.1995. The relevant portion of the Master Circular reads as under:

"Deemed Suspension -

In terms of Rule 5 (2) of Railway Servants (Discipline & Appeal) Rules, a Railway servant shall be deemed to have been placed under suspension by an order of the Competent authority in the following cases: -

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(3) A Railway servant will be deemed to have been placed under suspension in the following circumstances also :

i. Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a railway servant under suspension, is set aside in appeal or on revision under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(Rule 5 (3) of RS (D&A) Rules).

ii. Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a railway servant, is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority on consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement, was originally imposed, the railway servant shall be deemed to have been placed under suspension by the competent authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case.

SUBSISTENCE ALLOWANCE

A. The pay and allowance payable during the suspension is regulated under Rule 1342 – RII (FR 53). Under this rule, a railway servant under suspension or deemed to have been placed under suspension by an order of the competent authority shall be entitled to the following payments, namely -

a. A subsistence allowance at an amount equal to the leave salary which the Railway 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.

Provided that where the period of suspension exceeds 3 months the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of

subsistence allowance for any period subsequent to the period of the first 3 months as follows: -

i. The amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three 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 railway servant.

ii. The amount of subsistence allowance may be reduced by a suitable amount not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three months, if in the opinion of the said authority, the period of suspension has been prolonged, due to reasons, to be recorded in writing, directly attributable to the railway servant;

iii. The rate of dearness allowance will be based on the increased or as the case may be, decreased amount of subsistence allowance admissible under sub-clauses (i) and (ii) above".

8. In view of the aforementioned rules, an official under deemed suspension is entitled to subsistence allowance. In this regard, *Amar Bahadur Mishra v/s Union of India, 2002 (3) CAT 322* may be read with advantage.
9. In view of the facts and circumstances of the case, the orders dated 25.07.2014 and 24.07.2014 are quashed. Keeping in view the rules and case law, respondents are directed to reconsider the prayer of applicant for giving him the subsistence allowance for the period of suspension in accordance with Rules. Respondents shall carry out the exercise within a period of one month and pass reasoned and speaking order accordingly from the date of receipt of certified copy of this order with information to the applicant. OA is accordingly disposed of. No order as to costs.

(RAKESH SAGAR JAIN)
Member (J)

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