

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00185/2009

DATED THIS THE 30TH DAY OF MAY, 2018

HON'BLE DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Shri H.S. Ramakrishna,
S/o Late H.B. Siddiah,
17/1-1st Main Road,
Palace Guttahalli,
Bangalore – 560 003
Represented by Legal Heirs
Smt. P. Susheela &
Shri Anoop

... Applicant

(By Advocate Shri.V.V. Balan)

Vs.

1. The Union of India,
Represented by the Secretary,
Ministry of Finance,
Government of India,
Department of Revenue,
Central Board of Excise & Customs,
New Delhi – 110 001.

2. The Commissioner of Central Excise,
C.R. Bldg, Queen's Road,
Bangalore – 560 001

... Respondents

(By Shri S. Prakash Shetty, Senior Panel Counsel)

ORDER

HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A):

The Original Applicant Shri H.S. Ramakrishna while working in the respondent department was placed under suspension on 24.06.1997. Thereafter a charge memo was issued under Rule 14 of CCS (CCA) Rules on

05.10.1998. The entire inquiry was completed on 22.03.2007 and finally a penalty was imposed on the applicant dismissing him from service on 10.10.2007. Right from the initial date of suspension, i.e., from 24.06.1997, the applicant remained on suspension till his dismissal from service on 10.10.2007. Following the 6th Pay Commission's recommendation, the Government of India revised the payscale of Central Government servants with effect from 01.01.2006. The applicant submits that he is entitled to subsistence allowance in the revised payscale from 01.01.2006 onwards and hence he represented to the authorities on 22.09.2008, 10.12.2008, 22.12.2008 and again on 20.01.2009. However the same was rejected by the respondents. Aggrieved by the same, the applicant filed this OA seeking quashing of the communication No. C.No. II/39/11/2008-09 Accts B-II/1280 dated 05.03.2009 by which he was informed that his request for payment of arrears and re-fixation of pay due to implementation of 6th Pay Commission cannot be considered in terms of FR 53 (2) 2(b). (Annexure A1)

2. The respondents in their reply statement submitted that the order for revised pay rules based on 6th Central Pay Commission recommendation was issued on 29.08.2008 and on that date the applicant stood dismissed from service and hence he did not have a lien in the post held. Therefore his representation was rejected under FR 53(2) 2(b) which reads as follows:

"A Government servant who does not retain a lien on a post the pay of which is changed, is not entitled to exercise the option under FR 23. If, however, he is reinstated in the post and the period of suspension is treated as duty, he may be allowed to exercise the option after such reinstatement. In such cases, if there is a time-limit prescribed for exercising the option and such period had already expired during the

period of suspension, a relaxation may be made in each individual case for extending the period during which the option may be exercised."

They also referred to Note 4 under Rule 7(1)(A) of CCS (Revised Pay) Rules which state that a government servant under suspension shall continue to draw subsistence allowance based on existing scale of pay and his pay in the revised pay structure would be subject to the final order on the pending disciplinary proceeding. They further referred to Rule 24 of CCS (Pension) Rules which says that dismissal or removal of a government servant from service or post entails forfeiture of his past service. Therefore the respondents contend that the question of pay fixation of the applicant does not arise.

3. While the case was pending the applicant passed away on 19.03.2011. Therefore MA No.102/2012 was filed jointly by Smt. Susheela claiming herself as wife of the applicant and Shri Anoop said to be her second son for bringing them on record by substitution of the applicant as legal heirs. On this MA the respondents had raised objection saying that the MA was filed beyond 90 days from the date of death. Moreover it is noted that from the appeal filed by Smt.Susheela in CESTAT, Bangalore that she was divorced from her husband and living separately. Therefore she could not claim any benefits.

4. We have heard the learned counsel for both sides who practically reiterated the points as already highlighted in the OA and the reply statement and mentioned in the earlier paras. We have also carefully considered the facts of the case and submissions made by either side. The only issue to be considered in this case is whether the original applicant is entitled to get the

subsistence allowance payable during the period suspension in terms of the revised pay rules between the period 01.01.2006, i.e., the date from which the revision of pay came into effect and 10.10.2007, i.e., the date on which he was dismissed from service.

5. Following the 6th Pay Commission's recommendation the Government of India brought out the revised pay rules relating to revision of pay and allowances for the Central Government servants. Rule 7 of the Revised Pay Rules pertains to fixation of initial pay in the revised pay structure. Note 4 under Rule 7 of the CCS (RP) Rules says as follows:

"NOTE-4. - A Government servant under suspension, shall continue to draw subsistence allowance based on existing scale of pay and his pay in the revised pay structure will be subject to the final order on the pending disciplinary proceedings."

The respondents have also referred to FR 53(2) 2(b) saying that the notification of the 6th Pay Commission was issued on 29.08.2008 and on that date the applicant stood dismissed from service and hence did not have a lien on the post held. There is slight ambiguity in this submission because even though the notification was issued on 29.08.2008 the effect to the revised pay was given from 01.01.2006. However the provision in the revised pay rules clearly stipulated that if a person is reinstated in the post and the period of suspension is treated as on duty, a person is allowed to exercise option after such reinstatement. Further the provisions of Note 4 as mentioned above clearly imply that during the period of suspension the payment of subsistence allowance shall have to be in the old payscale. Only if the person is reinstated, the applicability of revised pay will become relevant.

6. Both the provision mentioned in the preceding paras clearly point to the fact that the applicant is entitled to subsistence allowance in the earlier payscale only inspite of the fact of revision of pay coming into effect from 1.1.2006 since he was finally dismissed from service while being under suspension.

7. The Hon'ble Apex Court in Civil Appeal in 1096 of 2010 Union of India vs. R.K.Chopra reported in (2010)2 SCC 763 dealt with the same issue of subsistence allowances during suspension period when revision of pay came into effect during the suspension period. The Hon'ble Apex Court in its order dated 1.2.2010 in the said case held vide para 28 to 30 as follows:

28. On a combined reading of Note 3 to 7 of the Revised Pay Rules and FR 53(1)(ii)(a) with the clarification with Office Memorandum dated 27-8-1958 it is clear that if the revision of pay takes effect from a date prior to the date of suspension of a government servant then he would be entitled to benefit of increment in pay and in the subsistence allowances for the period of suspension, but if the revision scale of pay takes effect from a date falling within the period of suspension then the benefit of revision of pay and the subsistence allowances will accrue to him, only after reinstatement depending on the fact whether the period of suspension is treated as duty or not.

29. In view of the clear distinction drawn by the rule-making authority between the cases in which the revised scale of pay takes effect from a date prior to the date of suspension and a date falling within the period of suspension, the plea of discrimination raised cannot be sustained especially when there is no challenge to the Rules. The benefit of pay revision and the consequent revision of subsistence allowance stand postponed till the conclusion of the departmental proceedings, if the pay revision has come into effect while the government servant is under suspension.

30. So far as the present case is concerned, the Revised Pay Rules came into force on 1-1-1996 when the respondent was under suspension and later he was dismissed from service on 4-

8-2005 and hence the benefit of pay revision or the revision of subsistence allowance did not accrue to him. The Tribunal as well as the High Court have committed an error in holding that the respondent is entitled to the benefit of the Revised Pay Rules. We, therefore, allow the appeal and set aside those orders.

8. The principle held by the Hon'ble Apex Court in this case squarely applies to the present case also. On detailed consideration of facts and circumstances of the case we are of the view that the applicant is not entitled to any revision of subsistence allowance based on the revision of the pay scales following the 6th Pay Commission's recommendation. Therefore the stand taken by the respondents in rejecting the prayer of the applicant regarding payment of arrears and re-fixation of pay does not appear to us as unjustified. As regards the substitution of the legal heirs is concerned, we are not inclined to agree with the contention of the respondents. However the same does not have any significance in this case since the main prayer for revision of the subsistence allowance stands rejected.

9. Therefore in the light of the discussion in the preceding paras we hold that the OA is clearly devoid of any merit and hence the OA stands dismissed. No order as to costs.

(PRASANNA KUMAR PRADHAN)
SURESH
MEMBER (A)

(DR. K.B.
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00185/2009

Annexure A1 Copy of letter No. C.No.II/39/11/2008-09 Accts B-II/1280 dated 05.03.2009

Annexure A2 Copy of representation of the applicant dated 22.09.2008

Annexure A3 Copy of representation of the applicant dated 10.12.2008

Annexure A4 Copy of representation of the applicant dated 22.12.2008

Annexure A5 Copy of representation of the applicant dated 20.01.2009

Annexures referred in Reply Statement

Annexure-R1: Copy of extract of Rule FR 53

Annexure-R2: Copy of extract of Part I Central Civil Services, Group 'A'

Annexure-R3: Copy of extract of Rule 24 of CCS (Pension) Rules

Annexures referred in statement of objections by the respondents

Document No.1: Copy of order of CESTAT, Bangalore in C/Appeal dated 22.06.2005
