

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**OA No. 121 of 2012
OA No. 146 of 2018
OA No. 81 of 2019**

**Present : Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Anadi Charan Das, aged about 47 years, S/o Late Jayakrushna Das, at present residing C/o Late Udaya Bhanu Das, at- Kadam Sahi, PO – Rajnilagiri, Dist- Balasore, Permanent resident of At/PO – Mangalpur, Via- Soro, Dist. – Balasore.

.....Applicant

VERSUS

OA No. 121 of 2012

1. Union of India, represented through its Chief Post Master General, Orissa Circle, AT-Bhubaneswar, PO-Bhubaneswar, GPO, Bhubaneswar-1, Pin – 751001.
2. Director, Postal Services (HQ), O/o Chief Post Master General, Odisha Circle, Bhubaneswar, Dist. – Khurda, Pin – 751001.
3. Superintendent of Post Offices, Balasore Division, At/PO-Balasore, Dist. – Balasore, Pin – 756001.
4. Inquiry Officer-cum-ASPOs (I/C), Cuttack East Sub Division, Cuttack – 753001, Dist. – Cuttack.

OA No. 146 of 2018

1. Union of India, represented through its Chief Post Master General, Orissa Circle, AT-Bhubaneswar, PO-Bhubaneswar, GPO, Bhubaneswar-1, Pin – 751001.
2. Superintendent of Post Offices, Balasore Division, At/PO-Balasore.
3. Asst. Superintendent of Posts (HQ)-cum-Inquiry Officer, O/o Superintendent of Posts, Mayurbhanj Division, Baripada, Dist.- Mayurbhanj.

OA No. 81 of 2019

1. Union of India, represented through its Chief Post Master General, Orissa Circle, AT-Bhubaneswar, PO-Bhubaneswar, GPO, Bhubaneswar-1, Pin – 751001.
2. Director, Postal Services (HQ), O/o Chief Post Master General, Odisha Circle, Bhubaneswar, Dist. – Khurda, Pin – 751001.
3. Superintendent of Post Offices, Balasore Division, At/PO-Balasore, Dist. – Balasore, Pin – 756001.
4. Asst. Superintendent of Posts (HQ)-cum-Inquiry Officer, O/o Superintendent of Posts, Mayurbhanj Division, Baripada, Dist.- Mayurbhanj, Pin – 751001.

.....Respondents.

For the applicants: Mr. T.Rath, counsel (OA 121/2012)
 Mr.D.Rath, counsel (OA 146/2018 & OA 81/2019)

For the respondents: Mr.S.Behera, Sr. Counsel (OA No.121/2017)
Mr.D.K.Mallick, counsel (OA No. 146/2018)
Mr.B.Swain, counsel (OA No. 81/2019)

Heard & reserved on : 29.1.2019 for OA No. 121/2012 and OA No. 81/2019
and on 31.1.2019 for OA No. 146/2018.

Order on : 7.2.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

All three OAs, filed by the applicant Sri Anadi Charan Das, are for the grievances on account of various action of the respondents and the applicant prays for the reliefs under Section 19 of the Administrative Tribunals Act, 1985 as mentioned below for each of the OAs separately. Since the nature of grievances in three OAs is similar arising out of the disciplinary proceeding initiated by the respondents against the applicant, these were taken up for hearing together with the consent of the counsels for both the parties on 29.1.2019 for OA No. 121/2012 and OA No. 81/2019 and on 31.1.2019 for OA No.146/2018. These OAs are disposed of by this common order.

OA 121 of 2012 (amended) :

- “(a) Quash the orders under Annexure A/5, A/11, A/16, A/17, A/21, A/25, A/32, A/35 and A/36,37, 38, 40 and 43.
- (b) Direct for payment of subsistence allowance at the enhanced rate w.e.f. 27.12.2010 as admissible under law.
- (c) Direct the respondents to sanction the leave payment of leave salary for the period from 13.7.2009 to 24.6.2010, duty pay for the period from 25.6.2010 till 28.9.2010 and 1.7.2009 to 13.7.2009, arrear pay commission benefits and P.L. Bonus for the year 2008-2009.
- (d) Direct the respondents to follow due procedure of law in determining the liability by deducting the dues already recovered/recoverable from the other employees as indicated above and thereafter to adjust the loss, if any, from the pending dues of the applicant.”

OA No. 81 of 2019 :

- “(i) Admit the original application.
- (ii) Issue notice to the respondents.
- (iii) And after hearing allow the original application by quashing the impugned order dated 18.1.2019 under Annexure A/6 and also the notice dated 7.1.2019.
- (iv) Any other relief(s) be passed as deem fit and proper in the interest of justice.”

OA No. 146/2018 :

- “(i) Admit the original application.
- (ii) Issue notice to the respondents.
- (iii) And after hearing allow the original application by quashing the order dated 1.1.2018 under Annexure-6 passed by the respondent No.2 Superintendent of Post Offices, Balasore Division.

- (iv) And further direct the respondents to enhance the quantum of subsistence allowance as per the entitlement of the applicant in view of the rules on month to month basis.
- (v) Any other relief(s) be passed as deem fit and proper in the interest of justice."

2. The facts, common to all the OAs are that the applicant joined as Sub Post Master (in short SPM), Rajnilagiri on 7.4.2008. He claims to have suffered from various ailments due to work pressure as the sanctioned post of PA for the post office was not filled up. Hence, he had to go to Balasore on 13.7.2009 for immediate treatment and before that he took the excess cash in the office to Balasore HO on 13.7.2009. It is stated in the OA that while going to the bus stand, he fell unconscious and some miscreant took away the cash bag containing about Rs. 5 lakh cash which he was taking to Balasore HO. It is further stated in the OA that he was hospitalized where he was diagnosed for schizophrenia. He submitted a leave application on 6.11.2009 and extended the leave. On 3.2.1010, the respondent no. 3 issued a letter to him to deposit Rs. 5,36,267/- and to appear before CDMO Balasore for medical check up (Annexure-A/4).

3. The applicant appeared before CDMO Balasore who certified that the applicant was suffering from schizophrenia and recommended for sanction of leave from 13.7.2009 till 8.3.2010 vide letter dated 8.3.2010 (Annexure-A/9). As stated in the OA, the applicant applied for leave for 15 days from 8.3.2010 as his wife also needed medical attention. Respondent no. 3 vide letter dated 19.3.2010 (Annexure-A/11) asked the applicant for deposit of Rs. 5,36,267/- with interest first for taking further action with regard to his joining. The applicant could not arrange the amount for deposit and again requested for sanction of leave on 24.3.2010 and 7.4.2010 on the ground of sickness of his wife, which was rejected by the respondent no. 3. The applicant filed the OA No. 490/2010 before the Tribunal. The applicant was allowed to join duty on 28.9.210 as SPM Rajnilagiri and on the same day, he was placed under suspension vide order dated 28.9.2010 (Annexure-A/22).

4. Thereafter, the charge-sheet was issued to the applicant vide order dated 19.5.2011 (Annexure-A/26) containing three article of charges. It is stated in the OA that the Respondents no. 3 extended the suspension period after review, by 180 days, but without increasing the subsistence allowance from 50% to 75%. The Inquiry Officer (in short IO) was appointed. The applicant submitted representation to the IO to postpone the inquiry as he was not paid his legitimate dues and subsistence allowance at the enhanced rate w.e.f. 28.12.2010 and leave salary as applied by him. But the IO continued with the inquiry showing the applicant absent in the inquiry.

5. The applicant appeared before the IO on 18.11.2011 and produced the medical report to request for adjournment till disposal of the appeals dated 14.10.2011 (A/31) and dated 17.11.2011 (A/33) to the respondent no. 2 for increasing subsistence allowance, which had been rejected by the respondent no. 3. The respondent no. 2, vide order dated 9.1.2012 (A/35) rejected the prayer of the applicant for increasing the subsistence allowance and for release of his duty pay and other dues.

6. It is further stated in the OA that vide order dated 20.3.2012 (Annexure-A/37), the respondent no.2 passed a similar order not to change the subsistence allowance of the applicant on the ground that he failed to attend the sitting of the inquiry against him on different dates. Thereafter, the inquiry was ordered to be continued vide order dated 4.4.2012 (Annexure-A/38). The applicant moved the Tribunal for staying the inquiry, but it was declined. Then the applicant approached Hon'ble High Court and vide order dated 26.4.2012 (A/39) of Hon'ble High Court, the proceeding was kept in abeyance. During pendency of the Writ petition as well as this OA, the respondent no. 2 passed the order dated 13.1.2015 (Annexure-A/40) reducing the subsistence allowance to 50% of the allowance being paid to the applicant. The Writ petition was disposed of on 29.3.2017 (Annexure-A/41) directing early disposal of the OA and that approaching the Court of Law cannot be said to be the delay attributable to the applicant.

7. After disposal of the Writ petition filed by the applicant before Hon'ble High Court, the applicant amended the OA, challenging the order dated 13.1.2015 reducing the subsistence allowance. Main grounds projected in the amended OA by the applicant are as under:-

(i) The applicant is being harassed by the respondents in spite of his willingness to make good the loss to the department and ignoring the fact that the applicant was managing the office in spite of the vacancy of P.A. in Rajnilagiri post office.

(ii) No action was taken to sanction leave even after getting the opinion of the C.D.M.O. Balasore about health condition of the applicant.

(iii) Not allowing the applicant to join his duty amounts to deprivation of livelihoods without following the process of law is violative of Article 21. There is no rule to demand deposit of loss amount first before his joining.

(iv) Although an amount of Rs 1 lakh has been recovered from other employees for negligence, the applicant has been asked to deposit the entire amount of loss i.e. Rs. 5,36,267/-.

(v) Non-payment of subsistence allowance at enhanced rate w.e.f. 27.12.2010 is arbitrary since the reasons mentioned are not sustainable. Hence, the ex-parte hearing of the inquiry should be set aside.

(vi) The order dated 9.1.2012 passed by the respondent no.2 is cryptic and without application of mind.

(vii) The order dated 13.1.2015 (A/40) passed by the respondent no. 3 is not sustainable in law. Non-payment of the allowance at the admissible rate amounts to violation of right to life and right to live with dignity guaranteed under Article 21 of the Constitution of India. Passing of the order dated 4.9.2017 to continue the inquiry is uncalled for and shows highhandedness of the respondents.

8. In the meantime, the respondent no. 3 passed order dated 1.1.2018 (Annexure-6 to the OA No. 146/2018 filed by the applicant) keeping the subsistence allowance unchanged due to non-attendance of the inquiry sittings on 15.9.2017. The order dated 1.1.2018 has been challenged in the OA No. 146/2018.

9. The respondents have filed counter for the amended OA No. 121/2012, stating that due to absence of the applicant from the office from 13.7.2009 without informing the authorities, the office was broken open in presence of the Executive Magistrate and police and the inventory of office cash and stamp balance and other valuables of the office was prepared and it was seen that there was a shortage of Rs. 5,36,267/- which has been misappropriated by the applicant, who was instructed on 30.7.2009 and 18.8.2009 to resume duty immediately. The letters were returned undelivered. FIR was also filed against the applicant at Nilagiri police station. The applicant was asked to credit the entire amount of loss. After 120 days, the applicant sent his leave application with medical fitness from 12.8.2009 to 17.12.2009 vide the application dated 6.11.2009 (Annexure-R/2). The applicant was asked to appear before CDMO Balasore, who informed vide letter dated 8.3.2010 (R/4) that the applicant was declared fit to join duty w.e.f. 8.3.2010. But instead of joining, the applicant continued on leave. The letter dated 8.3.2010 of the CDMO was received through private speed post, for which the respondents tried to verify the genuineness of the letter by writing a letter dated 29.7.2010 (Annexure-R/8), but no reply was received, for which, the unauthorized leave availed by the applicant could not be regularized. It is stated that the applicant was placed under suspension on 28.9.2010 when he resumed duty and he has been charge-sheeted vide order dated 19.5.2011 (R/9) and the suspension has been reviewed with the increase/decrease of the subsistence allowance. The appeal

submitted to the respondent no. 2 was also rejected vide order dated 9.1.2012 (R/16). Vide order dated 21.10.2011 (R/2), it was decided not to increase the subsistence allowance of the applicant as the prolonged period of suspension was due attributable directly to the applicant. It was denied that the excess cash was kept in the office with the knowledge of the higher authorities who had pointed out the irregularity. Regarding the claim of ill health due to pressure of work, the same was never intimated by the applicant to the authorities. A suitable PA was directed to work in Rajnilagiri SO from time to time. It is stated that the road to the bus stand was crowded place and that the reason as to why the applicant was carrying the cash without any escort is not clear. It is further stated that why he did not consult any doctor in Nilagiri hospital and went to district hospital is not clear. There is difference in amount of cash, nature of disease and intention of proceeding to Balasore and non-reporting of the snatching to Police show that the plea taken by the applicant is not believable. It is stated that allegation of misappropriation of Rs. 5,36,267/- has been admitted by the applicant indirectly, narrating an imaginary story. The averments regarding the current SPM not handing over charge to the applicant are incorrect.

10. It is also stated in the counter (para 40) that "the reason for reducing the subsistence allowance of the applicant is for showing non co-operation in conducting the Rule-14 inquiry by not attending even single sitting on different absurd pleas even if the seventh sittings of the inquiry was held in a span of 6(six) years (starting from 26.07.11 to 15.09.17) and not for merely approaching the Hon'ble High Court/CAT by the applicant. It is stated that nowhere in the order of Hon'ble High Court to enhance the subsistence allowance. The reduction in allowance as per the order at Annexure-A/40 is due to non-cooperation of the applicant to complete the inquiry in time fixed by the CVO's guidelines at Annexure-R/7. The averments in the OA have been denied vehemently the counter.

11. We have heard learned counsels for both the parties and also perused the pleadings on record. Mr. T. Rath, learned counsel for the applicant also cited the following judgments in support of his case:-

- i) AIR 2010 SC 336 Union of India v. Dipak Mali
- ii) (1999) 3 SCC 679 Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and anr.

12. In the case of Dipak Mali (supra), the issue was non-extension of the suspension after review as per the amended rule 10 of the CCS (CCA) Rules, 1965. In this OA, it is not the case of the applicant that his suspension has not been reviewed. His grievance relates to the quantum of subsistence allowance

being paid by the respondents. Hence, the cited judgment is inapplicable to the present OA, which is factually distinguishable.

13. In the case of Capt. M. Paul Anthony (*supra*), it is held that non-payment of subsistence allowance to a suspended employee, for which he could not participate in the inquiry, violates the principles of natural justice. In that case, it was held as under:-

“On joining Govt. service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Govt. The Govt., only because it has the power to appoint does not become the master of the body and soul of the employee. The Govt. by providing job opportunities to its citizens only fulfils its obligations under the Constitution, including the Directive Principles of the State Policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the Government or any other employer, like Instrumentalities of the Govt. or Statutory or Autonomous Corporations etc., is regulated by the terms of contract of service or Service Rules made by the Central or the State Govt. under the Proviso to [Article 309](#) of the Constitution or other Statutory Rules including Certified Standing Orders. The fundamental rights, including the Right to Life under [Article 21](#) of the Constitution or the basic human rights are not surrendered by the employee. The provision for payment of Subsistence Allowance made in the Service Rules only ensures non-violation of the right to life of the employee. That was the reason why this Court in *State of Maharashtra vs. Chanderbhan* 1983(3) SCR 337 = 1983 (3) SCC 387 = AIR 1983 SC 803 struck down a Service Rule which provided for payment of a nominal amount of Rupee one as Subsistence Allowance to an employee placed under suspension. This decision was followed in *Fakirbhai_Fulabhai Solanki vs. Presiding Officer & Anr.* (1986) 3 SCC 131 = 1986(2) SCR 1059 = AIR 1986 SC 1168 and it was held in that case that if an employee could not attend the departmental proceedings on account of financial stringencies caused by non-payment of Subsistence Allowance, and thereby could not undertake a journey away from his home to attend the departmental proceedings, the order of punishment, including the whole proceedings would stand vitiated. For this purpose, reliance was also placed on an earlier decision in *Ghanshyam Dass Shrivastva vs. State of Madhya Pradesh* (1973) 1 SCC 656 = AIR 1973 SC 1183.

The question whether the appellant was unable to go to Kolar Gold Fields to participate in the inquiry proceedings on account of non-payment of Subsistence Allowance may not have been raised before the Inquiry Officer, but it was positively raised before the High Court and has also been raised before us. Since it is not disputed that the Subsistence Allowance was not paid to the appellant during the pendency of the departmental proceedings, we have to take strong notice of it, particularly as it is not suggested by the respondents that the appellant had any other source of income.

Since in the instant case the appellant was not provided any Subsistence Allowance during the period of suspension and the adjournment prayed for by him on account of his illness, duly supported by medical certificates, was refused resulting in ex-parte proceedings against him, we are of the opinion that the appellant has been punished in total violation of the principles of natural justice and he was literally not afforded any opportunity of hearing. Moreover, as pleaded by the appellant before the High Court as also before us that on account of his penury occasioned by non-payment of Subsistence Allowance, he could not undertake a journey to attend the disciplinary proceedings, the findings recorded by the Inquiry Officer at such proceedings, which were held ex-parte, stand vitiated.”

14. In the instant OA before us, the applicant was all along being paid subsistence allowance and his grievance pertained to non-enhancement of the

subsistence allowance as per the rules. Regarding payment of subsistence allowance to the employee under suspension, the Fundamental rule F.R. 53 states as under:-

"F.R. 53. (1) A Government servant under suspension 2[or deemed to have been placed under suspension by an order of the appointing authority] shall be entitled to the following payments, namely:-

(i) in the case of a Commissioned Officer of the Indian Medical Department or a Warrant Officer in Civil employ who is liable to revert to military duty, the pay and allowance to which he would have been entitled had he been suspended while in military employment;

(ii) in the case of any other Government servant:-

(a) a subsistence allowance at 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:

Provided that where the period of suspension exceeds 3[three] 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 4[three] months as follows:-

(i) 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 5[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 Government servant;

(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 6[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 Government servant;

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

(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 fulfillment of other conditions laid down for the drawal of such allowances:

Provided that the Government servant shall not be entitled to the compensatory allowances unless the said authority is satisfied that the Government servant continues to meet the expenditure for which they are granted.

(2) No payment under sub-rule (1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation."

15. In this OA, the reasons furnished in the OA to show that the inquiry has been prolonged due to the respondents till disposal of the Writ petition before Hon'ble High Court, are not at all convincing. The incident of 13.7.2009 when the applicant remained absent from duty and consequent detection of shortage of cash and valuables amounting to Rs. 5,36,267/-, remains undisputed. The

applicant disputes the circumstances leading to this shortage and avers that he was the victim of the circumstances due to work pressure and his ill health. There is nothing on record to show that he was not allowed the opportunity to produce evidence in support of his contentions during the disciplinary proceedings. If the authorities do not deal with the proceedings fairly and do not extend opportunity to the applicant, then the applicant can challenge the same as per the provisions of the law. Hence, non-payment of the subsistence allowance at the enhanced rate is not a convincing reason not to participate in the inquiry. It is noted that the subsistence allowance at the enhanced rate is subject to the condition that the proceeding is prolonged due to the reason attributable to the respondents. The decision in the case of Capt. M. Paul Anthony (*supra*) will not apply to the present OA, since there is no allegation that the applicant was not being paid any subsistence allowance.

16. At this stage, a relevant question to be answered is whether the decision of the disciplinary authority to reduce the subsistence allowance by 50% of the subsistence allowance being paid to the applicant, vide order dated 13.1.2015 (Annexure-A/40) was justified. The date when this impugned order was passed by the respondents, there was an order of Hon'ble High Court to keep the disciplinary proceeding in abeyance. There was nothing on record to show that the delay, if any, in completion in the proceeding, was attributable to the applicant. Although it is not mentioned so clearly, it appears that the respondent no. 3 has taken the continuance of the interim order passed by Hon'ble High Court to be the delay attributable to the applicant. As observed by Hon'ble High Court in the order dated 29.3.2017 (A/41), this cannot be attributed to the applicant. No other reason has been mentioned in the order dated 13.1.2015 (A/40). The respondents have averred the ground that the applicant failed to appear before the Inquiry Officer on some plea or other. This reason is not at all acceptable, since as per the rules, it was upto the Inquiry Officer to allow the request for adjournment or not. If the request for adjournment of the inquiry has been accepted by the Inquiry Officer, then that cannot be held against the applicant. It is to be noted that as per the rules, if the inquiry authority is of the view that the applicant is requesting for postponing the inquiry on grounds which are unacceptable, then the inquiry could have been taken up ex-parte as per the provisions of the rules and the request of the applicant could have been rejected. Although ex-parte inquiry was conducted in some sittings, the reason for not completing the inquiry ex-parte if the applicant was not participating, particularly after 29.3.2017, has not been explained by the respondents in their pleadings.

17. In addition to the discussion in para 16 above, it is noticed that no opportunity of hearing was given to the applicant before passing the order to reduce the subsistence allowance being paid to him. There is no report of the Inquiry Officer to the effect that the inquiry has been delayed due to the applicant. The respondent no. 3 who is the disciplinary authority in this case, appears to have acted suo motu without any report of the Inquiry Officer and without giving any opportunity of hearing to the applicant.

18. In view of above, we are of the opinion that the order dated 13.1.2015 (A/40) violated the principles of natural justice. Accordingly, we have no hesitation to set aside and quash the order dated 13.1.2015 (Annexure-A/40) and hold that the applicant is entitled for the subsistence allowance at the rate that is applicable after ignoring the said order dated 13.1.2015 and the respondents are directed to disburse the differential subsistence allowance to the applicant without adjusting the amount against the dues recoverable from the applicant.

19. Regarding the relief prayed for in para 8(3) of the OA No. 121/2012, it is not explained by the respondents as to why the legitimate dues of the applicant have not been settled. No provision of the rule or instruction of the government has been furnished by the respondents for not releasing these dues. One of the reason for not sanctioning leave as per the CDMO's report dated 8.3.2010, is that the said report could not be verified with the CDMO as the letters written to the CDMO were not replied by the CDMO. This ground mentioned by the respondents for not sanctioning the leave is not acceptable, since the applicant is not at fault if the CDMO did not reply to the letter of the respondents and it was the responsibility of the respondents to prove that the report dated 8.3.2010 (A/9) was not genuine. No effort appears to have been made by the authorities to meet the CDMO in person.

20. We, therefore, direct the Respondent no. 1 to decide the amount payable to the applicant, if any, against the claims in para 8(3) of the OA No. 121/2012 as per the rules and release the balance amount, if any, after adjusting against the amount to be recovered from the applicant for the shortage amount, which has been agreed by the applicant in his letters/representations to the respondents. It is made clear that the applicant will not be liable to pay any interest in respect of the dues payable to him, while calculating the interest on the shortage amount. The Respondent no. 1 is also directed to fix up the responsibility for delay in release of the dues legally payable to the applicant on the officials, who would be found responsible for the same and to take action against these officials as per law. The respondent No.1 is to pass a speaking order in compliance with these directions under intimation to the applicant.

21. In the OA No. 146/2018, the respondents, in their counter have not stated anything new and the averments in the counter filed in OA No. 121/2012 have been reiterated. There is nothing in the counter to show the reason as to why the disciplinary proceedings against the applicant could not be completed within a reasonable time after disposal of the Writ petition by Hon'ble High Court vide order dated 29.3.2017 (A/41), since there was no stay order after 29.3.2017. Vide the order dated 1.1.2018 (Annexure-A/6 to the OA No. 146/2018) of the disciplinary authority, it is mentioned that the applicant was responsible for the delay, since on 15.9.2017, he failed to appear before the Inquiry Officer. But nothing is mentioned in order dated 1.1.2018 or in the counter filed by the respondents as to why the inquiry was not taken up immediately after 29.3.2017 and why inquiry was not taken up ex-parte as per law, if the applicant failed to appear before the Inquiry Officer. Hence, we are not inclined to accept the averment of the respondents that for delay in completion of inquiry after 29.3.2017 is attributable to the applicant.

22. Regarding the prayer for enhancing the subsistence allowance, it is seen that after disposal of the Writ Petition filed by the applicant before Hon'ble High Court on 29.3.2017, there was no justification on the part of the respondents for not completing the inquiry against the applicant within three to four months from 29.3.2017. It is seen that after 29.3.2017, the Inquiry Officer has taken up the inquiry on 15.9.2017 after more than five months from 29.3.2017. From above, it is obvious that delay in the inquiry beyond four months from 29.3.2017 (i.e. from 1.8.2017) is squarely attributable to the respondents.

23. Accordingly, the impugned order dated 1.1.2018 (Annexure-A/6 to the OA No. 146/2018), rejecting the request for enhanced subsistence allowance for non-attendance of the applicant in the inquiry, is not sustainable under law and is, therefore, quashed. In accordance with the rule F.R. 53(1)(a)(i), the applicant will be entitled for the enhanced subsistence allowance at the rate of 75%, which is 50% higher than the subsistence allowance being paid to the applicant prior to 13.1.2015. The enhanced subsistence allowance at the rate of 75% is payable to the applicant from 1.8.2017 till the suspension order will remain in force against the applicant. The applicant will also be entitled for the arrear of subsistence allowance from 1.8.2017 and 50% of such arrears may be adjusted towards the dues recoverable from the applicant against the shortage amount in his name, if any.

24. The OA No. 81/2019 has been filed by the applicant challenging the order dated 18.1.2019 (Annexure-A/6 of the OA No. 81/2019) passed by the respondents, rejecting the representation of the applicant with allegations of

bias against the Inquiry Officer (in short IO). Earlier, the applicant, in OA No. 595/2018, had challenged the order dated 27.11.2018 (Annexure-A/4 to the OA No. 81/2019) passed by the respondents rejecting the allegations of bias against the IO. The OA No. 595/2018 was disposed of by this Tribunal in order dated 7.1.2019 (Annexure-A/4 to the OA No. 81/2019), with the following directions:-

"In view of the facts as discussed above we are not inclined to interfere in the matter at this stage. The applicant is free to submit a representation to the higher authority i.e. Respondent No. 2, if he is aggrieved by the order dated 27.11.2018 of the disciplinary authority. Respondents are required to take action for completing the disciplinary proceeding against the applicant as per law, preferably within a period of four months."

The appeal filed by the applicant against the order dated 27.11.2018 was rejected vide order dated 18.1.2019, on the ground that there is no provision for such appeal and the said order dated 18.1.2019 has been challenged in OA No. 81/2019. It is seen that the respondents have fairly considered the complaint of bias submitted by the applicant and rejected the same by passing a detailed order dated 27.11.2018, which was not interfered by the Tribunal in OA No. 595/2018.

25. In the circumstances, we are not inclined to adjudicate the matter at this stage as the applicant's plea in this regard has been duly considered by the respondents. However, taking into account the fact that the disciplinary proceeding against the applicant is continuing since 2010, we direct the respondents to complete the said disciplinary proceeding against the applicant within three months from the date of receipt of a copy of this order. It is clarified that we have not expressed any opinion about the allegation of the applicant about bias of the IO and the applicant is free to raise this issue as per law, after conclusion of the disciplinary proceedings, if the applicant is aggrieved.

26. In view of the discussions above, the OA No. 81/2019 is disposed of with directions as in paragraph 25 of this order. The OA No. 121/2012 and OA No. 146/2018 are allowed in part in terms of the directions in paragraphs 18, 20 and 23 of this order and the respondents shall comply with these directions within two months from the date of receipt of a copy of this order. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath

