

9

Central Administrative Tribunal
Principal Bench

OA-395/2003

New Delhi this the 16th day of September, 2003

Hon'ble Smt. Lakshmi Swaminathan. Vice-Chairman (J)
Hon'ble Shri V.K. Maiotra. Member (A)

Shri Madan Singh Rana.
Son of Shri Kalam Singh.
R/o A-50/3. Ganesh Nagar.
Tilak Nagar. New Delhi.

-Applicant

(None Present)

Versus

1. Union of India. through
The Secretary.
Ministry of Labour.
Sharam Shakti Bhawan
Rafi Marg. New Delhi.
2. The Director General of
Employment and Training
Sharam Shakti Bhawan
Rafi Marg. New Delhi.
3. The Director. Central Institute
for Research & Training in
Employment Services.
Pusa Road. New Delhi-110 012.

-Respondents

(By Advocate: Shri Gyanender. proxy for
Shri Arun Bhardwai)

ORDER (Oral)

Hon'ble Shri V.K. Maiotra. Member (A)

None has been appearing on behalf of the applicant during the last three hearings. None has appeared even today when the case has been taken up for regular hearing. We have proceeded to dispose of this matter in terms of Rule-15 of Central Administrative Tribunal (Procedure) Rules, 1987 by taking into consideration the respective pleadings. h
hearing the learned counsel for respondents and considering
material on record. h

2.. Applicant has assailed order dated 3.9.2002 (Annexure-I) whereby his representation dated 23.8.2002 has been rejected and he has been informed that it is not possible to revise his pay scale till revocation of his suspension. Applicant who had been working as Senior Research Officer was placed under suspension w.e.f. 2.7.1982(Annexure R-1). His suspension was revoked vide Annexure R-II dated 27.2.1987. However, he was again placed under suspension vide Annexure R-III dated 15.12.1989. That suspension of the applicant has been continuing ever since. Applicant is aggrieved that despite revision of pay scales on the basis of recommendations of Vth Central Pay Commission w.e.f. 1.1.1996, his pay and subsistence allowance have not been revised. Applicant has relied on several decisions of various courts to establish his title to revision of pay and subsistence allowance on the basis of revised pay w.e.f. 1.1.1996. It may be appropriate to state here that applicant had earlier filed an OA-255/2001 against his suspension, which was dismissed stating that there was nothing wrong with the order of suspension passed either in December, 1989 or with the order issued on 5.6.2000.

3. Learned counsel for respondents stated that the ratio of the judgements cited by the applicant is not applicable to the applicant's case. Learned counsel has in-turn relied on Annexure R-VI, i.e., G.I.M.F.. O.M. dated 27.8.1958, which is as follows:-

"2. Cases in which the revised scale of pay takes effect from a date falling within the period of suspension:

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(a) Under suspension a Government servant retains a lien on his substantive post. As the expression "holder of a post" occurring in FR 23 includes also a person who holds a lien or a suspended lien on the post even though he may not be actually holding the post, such a Government servant should be allowed the option under FR 23 even while under suspension. The benefit of option will, however, practically accrue to him in respect of the period of suspension, only after his reinstatement depending on the fact whether the period of suspension is treated as duty or not".

4. We find that ratio of the following two cases is relevant for adjudication in the present matter:

- 1) Order dated 17.9.1992 in OA-695/92 (Hyderabad Bench) I.Sambhasia Rao Vs. Union of India & Others 1992 (2) ATJ 537.
- 2) S.C. Khajuria Vs. State of Others 1991 (3) AISLJ 169.

It has been held in these two cases that subsistence allowance is linked with revision of pay scale and that the revision of pay scale has to be taken into account while computing the subsistence allowance during the entire period of suspension.

5. The ratio in these cases is squarely applicable to the facts and circumstances of the present case and as such OA succeeds and is allowed, setting aside the impugned order (Annexure-1) and directing the respondents to revise the subsistence allowance of the applicant linking *it with* the revised pay scale for the applicant as on 1.1.1996. Arrears, however, be paid from 19.2.2002 (i.e., one year prior to filing of the OA) onwards. Respondents

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12

are further directed to take necessary action in accordance with the above directions within a period of two months from the date of communication of these orders. No order as to costs.

V.K. Majotra

(V.K. Majotra)
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

cc.