

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1975/2003

New Delhi, this the 13th day of May, 2004

Hon'ble Shri S.K.Naik, Member (A)

K.K. Jha
C-47, NPL Colony
New Rajinder Naar, Delhi .. Applicant
(Shri Mukesh Anand, Advocate)

versus

Union of India, through

1. Director General
CSIR, Rafi Marg, New Delhi
2. V.K. Gupta
Director, Nis Care
Dr. K.S.Krishnan Marg
New Delhi .. Respondents

(Shri C. Hari Shankar, Advocate)

O R D E R (ORAL)

Applicant - Shri K.K. Jha - is employed as Helper-C in the office of respondent No.2. He was placed under suspension w.e.f. 8.4.2000 pursuant to an FIR (FIR No.115/2000) against him. He has been implicated in a case under Sections 3, 4 & 885 of LTP Act.

2. Ever since the applicant is being paid subsistence allowance @ 55% of his normal salary. He had submitted a representation before the Director General, CSIR to enhance the subsistence allowance to 75% which has been rejected by the order dated 14.1.2002. Aggrieved thereupon, this OA has been filed seeking direction to the respondents to enhance the subsistence allowance to 75% with retrospective effect and also grant him the arrears with interest.

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3. Counsel for applicant has drawn my attention to the provisions of FR 53, in particular, to the following provisions of FR 53 (1) (ii) (a):-

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

(i) xx xx xx

(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 the basis of such leave salary:

Provided that where the period of suspension exceeds 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 three 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 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 Government servant"

and has contended that since the applicant was in no way responsible for delaying the disposal of the criminal proceedings initiated against him, it was incumbent upon

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the respondents to have taken the same into consideration and given him the enhanced subsistence allowance. From the way the impugned order has been passed, the counsel contends that there has been absolutely no application of mind. Contending further that it was incumbent, under the rules, upon the respondents to have recorded the reasons for not enhancing the subsistence allowance which they have failed to do. The denial of enhancement, therefore, is not justified.

4. In support of his contention, counsel for applicant has referred to the judgment of the Hon'ble Supreme Court in P.L. Shah v. Union of India & another, AIR 1989 SC 985 and also the judgment of the Bangalore Bench of this Tribunal in H. S. Ramakrishna v. The Commissioner of Central Excise & another, AISLJ XII-2002 (3) 440. The Bangalore Bench in the aforementioned case had directed the respondents to give the benefit of enhancement of subsistence allowance to the applicant therein in a similar circumstance.

5. The respondents have contested the case. Counsel for respondents has submitted that the case of the applicant has been reviewed on 16.2.2004 and keeping in view the seriousness of the charge levelled against him in the criminal case which is pending, the competent authority has decided not to enhance the subsistence allowance. He further argues that there is no rule mandating the increase of subsistence allowance to 75% and it was the total prerogative of the competent authority to decide the matter. According to him, there

75%

is neither any right inherent in an employee to demand enhancement of increase of subsistence allowance granted to him, nor is there any statutory or other requirement that such enhancement should necessarily be given to the extent of 75%. He has, therefore, submitted that the OA has been filed on a mis-conceived notion and deserves to be dismissed.

6. I have heard both the counsel appearing for the parties and have also perused the records of the case. It is an admitted fact that because of the pending criminal case against him, the applicant is under suspension for the last more than four years. The respondents have allowed him the subsistence allowance @ 55% of his normal salary ever since. His representation for enhancement of the subsistence allowance upto 75% of his normal salary has been rejected by the respondents vide the impugned order, which is a very cryptic and non-speaking order. It is not the case of the respondents that the applicant is to be held responsible for the delay in the disposal of the criminal case that has been registered against him by the State. In such a situation, the provision of FR 53 (1) (ii) (a) clearly mandates the respondents to give the reasons for not enhancing the subsistence allowance to be recorded in writing. This they have failed to do. Further, I find that the applicant cannot be held responsible for the delay in the disposal of the criminal case pending in the criminal court and the nature and seriousness of the charge levelled against him cannot be made a ground for not enhancing the subsistence allowance. In the case of

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P.L.Shah (supra), the Hon'ble Supreme Court had held as follows:-

"6. An order of suspension is not an order imposing punishment on a person found to be guilty. It is an order made against him before he is found guilty to ensure smooth disposal of the proceedings initiated against him. Such proceedings should be completed expeditiously in the public interest and also in the interest of the Government servant concerned. The subsistence allowance is paid by the Government so that the Government servant against whom an order suspension is passed on account of the pendency of any disciplinary proceedings of a criminal case instituted against him could maintain himself and his dependants until the departmental proceeding or the criminal case as the case may be comes to an end and appropriate orders are passed against the Government servant by the Government regarding his right to continue in service etc. depending upon the final outcome of the proceedings instituted against him. The very nomenclature of the allowance makes it clear that the amount paid to such a Government servant should be sufficient for bare subsistence in this world in which the prices of the necessities of life are increasing every conditions of inflation obtaining in the country. It is further to be noted that a Government servant cannot engage himself in any other activity during the period of suspension. The amount of subsistence allowance payable to the Government Servant concerned should, therefore, be reviewed from time to time where the proceedings drag on for a long time, even though there may be no express rule insisting on such review. In doing so the authority concerned no doubt has to take into account whether the Government servant is in any way responsible for the undue delay in the disposal of the proceedings initiated against him. If the Government servant is not responsible for such delay or even if he is responsible for such delay to some extent but is not primary responsible for it is for the Government to reconsider whether the order of suspension should be continued or whether the subsistence allowance should be varied to his advantage or not."

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7. Similarly, in H.S. Ramakrishna's case (supra), wherein the applicant had sought exactly similar relief as in the present case, the Bangalore Bench of this Tribunal, after discussing a number of judgments and analysing the provisions of FR-53, stated "Our view is based on the proposition that if for some reason or other the period of suspension is prolonged and those reasons are not directly attributable to the applicant during the first 3 months of the suspension and at the same time no other reason is recorded for non-enhancement, considering that the Government servant under suspension has been used to a particular level of pay, the permissible enhancement of the subsistence allowance must be granted in his case in order to minimise the financial hardships which will inevitably ensue when full pay is no longer permitted to be drawn by him". The Tribunal in that case ordered the enhancement of the subsistence allowance by 50% of the initial subsistence allowance.

8. Having regard to the judgments referred to above and the reasons stated in the preceding paragraphs, I am of the considered view that the subsistence allowance of the applicant deserves to be enhanced. Accordingly, the application is allowed and the respondents are directed to give the benefit of enhancement upto 75% of the normal salary as the subsistence allowance w.e.f. 8.10.2000, i.e., after the expiry of six months from the date of placement of the applicant under suspension. No costs.

S.K. Naik
(S.K. Naik)
Member (A)

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