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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1994/2003

New Delhi this the 16th day of February, 2004..

Hon'ble Shri Bharat Bhushan, Member(J).

S.K. Bagga
S/o Sh. Sakhir Chand,
R/o A-7 Chander Nagar,
Janakpuri,
New Delhi..

..... Applicant.

(By Advocate: Shri D.R. Gupta)

Versus

Union of India through

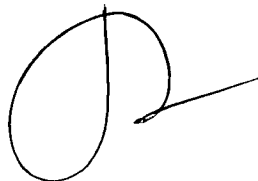
- 1.. Commissioner of Income Tax-VII
1st floor, "D" Block, Vikas Bhawan
New Delhi-110002.
2. Zonal Accounts Officer, C.B.D.T.
"N" Block, Vikas Bhawan, I.P.Estate,
New Delhi-110002. Respondents..

(By Advocate: Shri V.P.Uppal)

Order(Oral)

Heard.

2. Applicant was employed as Inspector of Income Tax (Group 'C') with the respondents. He was placed under deemed suspension on the ground of having remained in judicial custody for more than 48 hours in a criminal case relating to submission of certain forged documents by one Mohd. Yunus in which the applicant was implicated as co-accused. The charge sheet was filed in the court of Metropolitan Magistrate, Patiala House, New Delhi on 31.5.1994 and the trial is still going on. Vide orders dated 10.1.2003 passed by the Hon'ble High of Delhi, the



applicant has since been reinstated. The reliefs sought by the applicant by filing the present OA are as under:

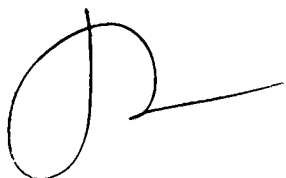
(i) To declare that the applicant is entitled to pay & allowances on the basis of revised pay scale as held by Full Bench of Hon'ble Tribunal and High Court of Delhi;

(ii) To direct respondents to give effect to their own order dated 22.5.2003 by paying the difference in subsistence allowance on the basis of the revised pay scales after deducting subsistence allowance already paid to him for the period 1.1.1996 to 28.2.2003;

(iii) To direct the respondent No.1 to make an order under FR 54-B(1) regarding pay and allowances to be paid to the applicant for the period of suspension and whether the period of suspension will be treated as duty or not;

(iv) Any other order, which this Hon'ble Tribunal may deem fit, just and proper in the facts and circumstances of the case, to meet the ends of justice."

3. The contention of learned counsel of applicant is that whereas the respondents have passed orders dated 22.5.2003 (Annexure A-I) but, so far, they have not taken any action of passing an order under FR 54-B (1) regarding pay and allowances to be paid to the applicant for the period of suspension and whether suspension period is to be treated as duty or not. The Mumbai Full Bench case in (OA-560/1996 J.S. Kharat Vs. UOI & Anr.) after making reference to various Apex Court judgments has held that "any departmental enquiry made without payment of subsistence allowance contrary to the provision for its payment, is violative of Art.311(2) of the Constitution of India". And regarding the revision of pay on account of revised pay scales effected pursuant




to the recommendations of the Pay Commission while the Tribunal in the aforesaid case and, made a reference to the judgment of the Hon'ble Supreme Court of India in P.L.Shah Vs. Union of India and Anr. (1989 - I.L.L.N.546) wherein it has been held as under:-

"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 day on account of condition of inflation obtaining in the country."

The Court went on to observe further "that it is to fulfil this obligation that Government substitutes Pay Commissions whenever it feels necessary and thus in view of above a Government servant during his suspension is entitled for subsistence allowance on the basis of revised pay scale, where a revised pay scale comes into effect during his suspension."

4.. In my view, the present case is covered with the ruling referred to above. This being so, the OA is allowed and the respondents are directed to pass a detailed, speaking and reasoned order under FR-54 (B) (1) regarding pay and allowance to be paid to the applicant for the period of his suspension and whether the period of suspension will be treated as duty or not. This order will be passed within a period of four weeks from the date of receipt of the copy of this order.

With this, OA stands disposed of. No costs.


(Bharat Bhushan)
Member (J)

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