

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of reserve : 31.01.2008
Date of decision : 14.03.2008

+ WP(C) No.9093/2006

Const. Ravinder Rana Petitioner

Versus

1. Union of India
Through Secretary,
Ministry of Home Affairs,
North Block,
New Delhi
2. Director General
Central Industrial Security Force,
CGO Complex, Lodhi Road,
New Delhi
3. Commandant
2nd Reserve Bn.,
Mahipal Pur, New Delhi Respondents

Advocates who appeared in this case :

For the petitioner : Mr.Pradeep Dahiya

For the respondents : Ms.Sonia Mathur

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE J.M. MALIK

1. Whether the Reporters of local papers

may be allowed to see the judgment?	No
2.To be referred to Reporter or not?	Yes
3.Whether the judgment should be reported in the Digest?	Yes

J.M. MALIK, J.

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1. Ravinder Rana, petitioner herein, was enrolled as Constable in the Central Industrial Security Force (in short 'CISF'). The petitioner was posted on deputation at Indian Embassy at Kathmandu, Nepal with other CISF personnel. On the night falling between 17th / 18th January, 2005 the petitioner unauthorisedly used the service rifle of Constable Anoop Singh and opened fire at his colleagues at the security barrack at Indian Embassy, Kathmandu, Nepal at about 0530 hrs. Constables R. Kannan and T. Shankar, his colleagues succumbed to injuries instantaneously and other Constables, namely, Bidesh Dutta, Sunil Singha, Rajbir Singh received injuries. A criminal case commenced in the court of Special Judge, CBI, New Delhi.

2. The petitioner was placed under suspension with effect

from 18th January, 2005. The petitioner vide his application dated 19th September, 2005, Annexure P-3, admitted that he is getting 50% of the subsistence allowance. The petitioner completed 90 days under suspension on 17th April, 2005. Vide order dated 25th April, 2005 the competent authority refused to enhance the petitioner's subsistence allowance. The petitioner made a representation on 19th September, 2005. The said representation was rejected on 8th / 9th October, 2005.

3. The petitioner has called into question the above-said order on the following grounds. The review petition and the representation made by the petitioner were dismissed without application of mind and without assigning any reason. FR 53 (1)(ii) (a)(i) clearly stipulates,

“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 the 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.”

Again Govt. of India, Member of Finance, Office
Memorandum No.F.15 (16)-E.IV/58, dated the 16th February,
1959 reads :-

“It is obligatory under FR 53 that in sufficient time before the expiry of the first six (now three) months of suspension, the competent authority should review each case in which the period of suspension is likely to exceed six (now three) months, and even if it comes to the conclusion that the rate is not to be altered having regard to all the circumstances of the case, specific orders to that effect are to be passed placing on record the circumstances under which the decision had to be taken.”

Under these circumstances the present petition was filed with a prayer that the respondents be directed to pay subsistence allowance to the petitioner at the rate of 75% with effect from the date of first review of suspension, along with interest.

4. The respondents have contested the present case.
5. We have heard the counsel for the parties. It is apparent that no cogent or plausible reasons were given in the above-stated impugned orders as to why the enhancement of subsistence allowance was turned down by the concerned

authority. However, in the counter affidavit following averments were made. The chargesheet under Rule 26 was issued against the petitioner on 27th May, 2005. The petitioner received the same on 28th May, 2005. On the same date the enquiry officer and the presenting officer were appointed by the disciplinary authority and the enquiry officer held the enquiry at Tihar Jail on 7th July, 2005. However, the petitioner refused to produce the evidence stating that he would receive the papers and depose in the presence of his lawyer. The case was adjourned to 15th July, 2005. The petitioner did not cooperate with the enquiry officer. It is further stated that the petitioner has been causing delay in conducting the departmental enquiry. The above-said facts were considered and it was rightly observed that it is not a fit case for revocation of suspension and enhancement of subsistence allowance.

6. All these facts were not denied specifically in the rejoinder. However the same were conspicuously missing from the above-said two impugned orders dated 25th April,

2005 and 8th / 9th October, 2005. It appears that no opportunity was given to the petitioner to explain the same. It is a settled law that opportunity of being heard must be granted to the petitioner.

7. Counsel for the petitioner has cited an authority reported in *B.D.Shetty and Ors. Vs. M/s. Ceat Ltd. and Ors.* [AIR 2001 SC 2953]. The said case is under the Industrial Employment (Standing Orders) Act (20 of 1946). We are afraid that the said authority is not applicable to the instant case in view of Sections 19 or 20 of the Central Industrial Security Force Act, 1968.

8. We are of the considered view that the present case is covered under FR 53 of the Fundamental Rules and Supplementary Rules. The petitioner is also entitled to the right of review of the subsistence allowance after the expiry of 90 days after his suspension. Keeping in view the facts and circumstances of this case, we are of the considered view that the review application be decided again in accordance with law and as per the provisions of FR 53. It is also pertinent to

note that although we are going to remand the case, yet there lies no bar to second or subsequent reviews. Govt. of India, Member Finance Memorandum No.F.((1)-E.IV (A)/66, dated the 30th June, 1996 provides as under:-

*“(d) Second or subsequent review.-*Though the proviso to FR 54 (1) (ii) (a) does not specifically provide for a second or subsequent review, there is no objection to such review(s) being made by the competent authority. Such authority shall be competent to pass orders to increase or decrease the rate of subsistence allowance up to fifty per cent of the amount of subsistence allowance initially granted, according to the circumstances of each case. A second or subsequent review can be made at any time at the discretion of the competent authority.

It is permissible to reduce the amount of subsistence allowance once increased on the basis of the first review up to fifty per cent of the amount of the subsistence allowance initially granted, if the period of suspension has been prolonged for reasons directly attributable to the Government servant, i.e., by his adopting dilatory basis.

Similarly, in a case where the amount of subsistence allowance has been reduced after the first review, the same can be increased up to fifty per cent of the amount initially granted, if the period of suspension has been prolonged for reasons not directly attributable to the Government servant and the Government servant has given up dilatory tactics.”

9. It may also be mentioned here that the first order was passed by the competent authority on 25th April, 2005 whereas the above-said delay occurred afterwards. The competent authority is further directed to pass the speaking order giving all the details and fix the period from which date to which date the appellant should be or should not be given the enhanced subsistence allowance. Fathomable reasons must follow. The petitioner should also be heard in person and should be given an opportunity to explain all these facts. The order in this respect be passed within three months from the date of pronouncement of this order.

12. The writ petition stands disposed of. A copy of this judgment be given dasti to both counsel for the parties.

J.M. MALIK, J.

March 14, 2008
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A.K.SIKRI, J.