

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 346 OF 2023

Sri Tapan Debbarma Vrs. The State of Tripura & 3 Ors.

For the petitioner (s) : Mr. T. Datta Majumder, Sr. Advocate.
Ms. R. Debbarma, Advocate.

For the respondent (s) : Mr. D. Sarma, Addl. G.A.

HON'BLE MR. JUSTICE ARINDAM LODH

16.04.2024

Order

By means of filing the instant writ petition, the petitioner has prayed for following reliefs:

'i) Issue rule upon the respondents to show cause as to why a writ in the nature of mandamus or like nature shall not be issued directing the respondents and each one them to cancel/or revoke the No.F.35(55) GA(P&T)/98(Part). Government of Tripura, General Administration (Personal and Training) department, dated Agartala, the 22nd November 2017 (Annexure 2 of the petition supra) forthwith.

ii) Issue rule upon the respondents and each one them to show cause as to why to a writ of certiorari shall not be issued upon the respondents directing them to produce records, relevant to the subject matter of the proceedings, for rendering conscionable justice by quashing the suspension order No.F.35(55) GA(P&T)/98(Part). dated 22-11-2017 (Annexure 2 of the petition supra) and further prolongation of suspension order dated 10.02.2022 without providing the petitioner enhanced rate of subsistence allowance as per FR 53 and further declare that the petitioner is entitled to 100% pay and allowances, over and above the subsistence allowance paid, in view of 10(6) of the CCS(CC&A) Rules and FR 53 by preparing due drawn statement forthwith.

iii) Issue Rule upon the respondents to show cause as to why a writ of mandamus or like nature directing the respondent and each one of to pass order under FR 53 regarding enhance rate of subsistence allowances forthwith.

iv) Upon hearing the parties' rule may be made absolute in terms of prayer No.(i), (ii) and (iii) above;

v) Pass any other order or orders as Your Lordship may deem fit and proper.'

The short fact is that the petitioner was arrested and put to custody for allegedly committing offence under Section 302 of the Indian Penal Code read with Section 27 of the Arms Act. It is submitted that the petitioner was under suspension since 2017. The grievance of the petitioner is that he was not paid subsistence allowance at an enhanced rate as provided under Rule 53(1) of the Fundamental Rules.

Rule 53 of Fundamental Rules provides as under:

(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) *****

(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;

(ii) the amount of subsistence allowance may be reduced 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 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) *****

*(2) *****

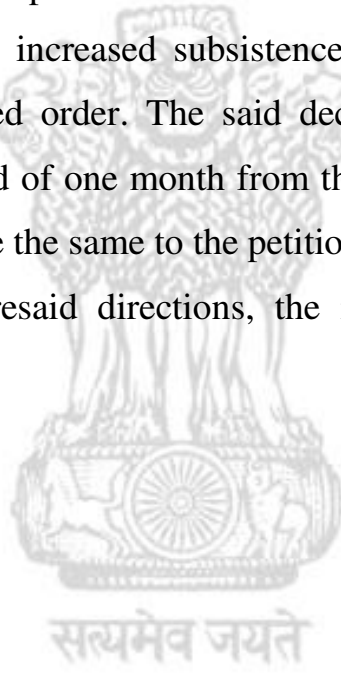
Mr. Datta Majumder, learned senior counsel appearing for the petitioner has tried to persuade this Court to direct the respondents to invoke FR 53(1) as quoted here-in-above.

Undisputedly, the suspension period has already been prolonged for more than three months.

Mr. Sarma, learned Addl. G.A. appearing for the State-respondents submits that the suspension period was prolonged due to the fault of the petitioner himself as he was taken into custody for allegedly committing offence under Section 302 IPC, read with Section 27 of the Arms Act. So, according to learned Addl. G.A., the prolonging of suspension period is directly attributable to the petitioner being a government servant.

However, without entering into the merits of the rival contentions, I direct the respondents to take a decision as to whether the petitioner is entitled to an increased subsistence allowance in terms of FR 53(1) and make a reasoned order. The said decision will be taken by the respondents within a period of one month from the date of receipt of copy of this order and communicate the same to the petitioner accordingly.

With the aforesaid directions, the instant writ petition stands disposed.



JUDGE

SAIKAT KAR

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