

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6439 of 2020

1. The Union of India Through the Secretary-cum- Director General, Department of Posts, Government of India, Dak Bhawan, Sansad Marg, New Delhi.
2. The Chief Postmaster General Bihar Circle, Patna.
3. The Director Postal Services Central Region, Bihar Circle, Patna.
4. The Superintendent of Post Offices Division, Arrah.

... .. Petitioner/s

Versus

Laljhara Devi Wife of Late Ohm Shankar Resident of Village and Post-Nahauna (Via Dalmianagar), P.S.- Sasaram, District- Rohtas, Pin- 821305.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sujeet Kumar Sinha, Advocate
For the Respondent/s : Mr. Om Prakash Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 24-06-2022

Heard learned counsel for the parties through virtual court proceedings.

2. In the instant petition, petitioner – Department has assailed the order dated 30th August, 2019 in OA No. 050/00451 of 2016 passed by the Central Administrative Tribunal, Patna Bench, Patna (for short “Tribunal”).

3. Learned counsel for the petitioner – Department on instruction submitted that during pendency of the present petition respondent Ohm Shankar is stated to have died and he intends to



bring legal representative (LR) on record. Question of bringing LR on record is not warranted for the reasons that the Tribunal order for *de novo* departmental proceedings. Once the respondent employee died, the *de novo* inquiry proceedings stands abated.

4. The deceased employee was placed under suspension on certain allegations, thereafter, he was subjected to disciplinary proceedings under Rule 14 of the Central Civil Services (CCA Rules, 1965). The alleged allegations is relating to misappropriation of certain amount. The inquiry officer submitted his report on 16.03.2015 and it was concluded in imposition of penalty of dismissal from service on 09.06.2015. He had preferred appeal against the order dated 09.06.2015. In the appeal the deceased employee has taken specific contention that even though he was placed under suspension in the year 2013, it was not revoked during pendency of the disciplinary proceedings. In other words, subsistence allowance has not been paid to the deceased employee. In support of such contention he relied on Apex Court decisions namely *Jagdamba Prasad Shukla vs. State of U.P. and Others* (2000) reported in 7 Supreme Court Cases 90, *State of Punjab and Ors vs. K.K. Sharma* reported in (2002) 9 Supreme Court Cases 474 and *State of Bihar and Ors. vs. Arbind* reported in [Special Leave to Appeal (Civil) No. (s) 35698/2011]. The



Tribunal, after due examination of material placed before the Tribunal, proceeded to pass following order -

“Thereafter, the applicant preferred a statutory appeal against the punishment order dated 09.06.2015. In the appeal, the applicant stated that he was placed under suspension, vide memo dated 29th April, 2013 w.e.f. 07.01.2013. However, order of payment of subsistence allowance was not issued despite his verbal request. The Disciplinary Authority had issued one memo against the applicant on 20.05.2013. However, the applicant could not responded to it due to his bad financial condition. He remained in judicial custody from 07.01.2013 to 24.04.2013. He appeared before the Inquiry Officer on 10.10.2013 and prayed for grant of subsistence allowance bur in vain. It is also noticed that the Disciplinary Authority had not followed the instructions contained in Rule 64 of Postal Manual Vol. III with regard to grant of subsistence allowance to the applicant and deprived him for taking part in the enquiry. The applicant contended in his appeal that all the memos were being sent to his village whereas he was residing at other place, i.e., at Murar, as he was compelled to change his residence for want of money. The said fact was also brought to the knowledge of the Inquiry Officer and Disciplinary Authority. However, the Inquiry Officer and Disciplinary Authority determined to complete the enquiry ex parte and accordingly, the Inquiry Officer completed the enquiry ex parte. That apart, the applicant had also raised some other grounds to justify his innocence. The applicant had stated the reasons for delay in filing the appeal dated 27.05.2016 which was received by the office



on 30th June, 2016. The said appeal of the applicant was considered by the Appellate Authority and, vide order dated 26.12.2017, the appeal was rejected mainly on the ground of delay in filing same, since the punishment of dismissal from service awarded against the applicant is dated 09.06.2015 and the appeal preferred on 27.05.2016 after expiry of 45 days, not within the period as required under Rule 25 of CCS [CCA] Rules, 1965. The reason for condonation of delay was not found satisfactory by the appellate authority, hence the same was rejected, vide order dated 26.12.2017 [Annexure-A/15].

11. It is noticed that the main grievance of the applicant for not granting the subsistence allowance during the period of suspension, has deprived the applicant to take part in the departmental inquiry. It is settled law that an employee is entitled to subsistence allowance during an inquiry pending against him or her but if that employee is starved of finances by zero payment, it would be unreasonable to expect the employee to meaningfully participate in a departmental inquiry. Access to justice is a valuable right available to every person, even to a criminal, and indeed free legal representation is provided even to a criminal. In the case of a departmental enquiry, the delinquent is at best guilty of a misconduct but that is no ground to deny access to pension [wherever applicable] or subsistence allowance [whichever applicable] [Uco Bank & Ors. vs. Rajendra Shankar Shukla, [2018] 14 SCC 92 = [2018] 2 SCC [L&S] 625 relied], as also in the light of judgement passed in the case of State of Punjab and Ors. vs. K.K. Sharma, [2002] 9 Supreme Court Cases 474 [supra] wherein the Hon'ble Apex Court held that non-payment



of subsistence allowance would tantamount to denial of a reasonable opportunity to the delinquent. Accordingly, the decision making process of the respondents in the present case cannot be said to be fair and just and also not in consonance with rules for grant of subsistence allowance to the delinquent. The impugned order is contrary to the law laid down by the Hon'ble Apex Court.

12. Under the circumstances, we quash and set aside the impugned orders dated 09.06.2015 [Annexure-A/9] and order dated 26.12.2017 [Annexure-A/15] and remit the matter back to the disciplinary authority to initiate de novo departmental proceeding against the applicant and conclude the same as early as possible not preferably within a period of four months from the date of receipt of a copy of this order. The disciplinary authority is also directed to provide due opportunity to the applicant during the course of de novo enquiry.

13. Accordingly, the OA stands disposed of. No costs."

5. Learned counsel for the petitioners submitted that there was no demand by the respondent in respect of subsistence allowance. On the other hand, deceased employee has taken a contention that he was orally requesting the subsistence allowance. Irrespective of the aforesaid contention of the respective parties, it is bounden duty of the disciplinary authority or appointing authority or suspending authority to disburse subsistence allowance during the suspension period on his own and in accordance with law. Officer cannot sleep over the matter and



blame suspended employee should demand in writing. The object of providing subsistence allowance to a suspended employee is to meet the expenses for his survival and family. The said issue has been examined by the Apex Court in the cited decisions *supra*, therefore, the contention of the petitioners that there was no demand by the employee in respect of subsistence allowance, such a contention cannot be taken in appeal is not appreciable for the reasons that the appellant has every right to urge ground before the appellate authority. It is to be noted that the appellate authority was required to examine each and every contention stated in the memorandum of appeal filed by the deceased employee.

6. Ohm Shankar - respondent has died during the pendency of the present petition, therefore, the disciplinary proceedings which was to be commenced *de novo* stands abated. Accordingly, the petitioners have not made out a case. Hence, writ petition stands dismissed.

7. The petitioner – Department is hereby directed to calculate and disburse monetary and retiral benefits of the deceased employee to the legal heirs of the deceased employee within a period of six months from the date of receipt of this order, failing which legal heirs of the deceased employee are entitle to interest on all arrears amount @ 8 % *per annum*. The aforesaid



direction has been given to the petitioners in the interest of giving
quietus to the litigation among the petitioner – Department and
legal heirs of the deceased employee while invoking Article 226 of
the Constitution.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	04.07.2022
Transmission Date	

