



2024:DHC:6553-DB



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

% **Decision delivered on: 28.08.2024**

+ **W.P.(C) 11870/2024, CM APPL. 49351/2024 & 49352/2024**

GOVT OF NCT OF DELHI THROUGH SECRETARY
LABOURPetitioner

Through: Mr. Yeeshu Jain, A.S.C with Mr.
Hitanshu Mishra, Ms. Sonu
Kumari and Mr. Akshun Thakur,
Advocates.

versus

GURPREET SINGHRespondent

Through: Respondent in person.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (O R A L)

1. By way of the present writ petition filed under Article 226 of the Constitution of India, the petitioner has sought the following relief:

“aa) set-aside the impugned judgment dated 26.02.2024 passed by the Ld. CAT in O.A No. 2135/2020 and whereby the Ld. CAT has quashed the orders dated 1.09.2020 and 26.10.2020 and directed the petitioner to suitably announce the subsistence allowance @ 75% of the salary of the

W.P.(C) 11870/2024

Page 1 of 10 pages



respondent with effect from the date, it was due for review.”

2. Though the present petition has been filed on various grounds, learned counsel for the petitioner has confined his submissions to the following grounds only:

“B. Because the Ld. CAT has failed to appreciate that it’s not necessary in all the cases to grant enhancement of the subsistence allowance as the Proviso to FR 53 provides for increase as well as decrease in subsistence allowance by a suitable amount not exceeding 50 percent of the subsistence allowance, admissible during the period of first three months.

C. Because the Ld. CAT has failed to observe Rule 10(e) of CCS Rules, 1965 which provides for respective revision by contending that Government do not consider it advisable that any orders revising the subsistence allowance should be given retrospective effect.

D. Because the Ld. CAT has entered into the domain of the competent authority while directing the petitioner to suitably announce the subsistence allowance to 75% of the salary of the respondent.

E. Because if the respondent was not aggrieved of the fact that no decision was taken by the competent authority on his applications dated 7.9.2018 and 1.11.2018, the respondent was precluded from raising his grievance regarding non-grant of enhancement of subsistence allowance.

F. Because the Ld. CAT has failed to appreciate that the respondent raised the concern of subsistence allowance vide representations dated 30.5.2019 and 12.2.2020 only after his services were terminated vide Order dated 28.5.2019.

G. Because the Ld. CAT has failed to observe that the duty also casts upon the respondent to agitate his grievance, if any, in case of him facing any hardship during the period of suspension.



H. Because if the Ld. CAT granted indulgence, it ought to have remanded the matter back before the Suspension Review Committee or the competent authority for fresh decision on subsistence allowance under FR 53.”

3. The respondent was placed under suspension on account of his conviction in criminal case and the said suspension period was extended from time to time.

4. The respondent made a representation on 12.09.2020 seeking enhancement of the subsistence allowance which had been paid to him, but the same had been rejected vide the impugned communication dated 26.10.2020. The communication dated 26.10.2020 is reproduced as under:

“Sub:- Request for reconsideration of the decision regarding payment of subsistence allowance @ 75% pay plus admissible allowances after completion of the initial period of 90 days of suspension.

Sir,

With reference to your letter dated 12/09 2020 addressed to Hon' ble LG and copy endorsed to this department on the subject cited above. I am directed to inform you that the matter as to enhancement of subsistence allowance has been rejected on the grounds that retrospective revision of subsistence allowance is not advisable.

You may also refer to our letter dated 01/09/2020 vide which it was informed to you that Disciplinary Authority has rejected the applications submitted by you.”

5. It is pertinent to note that the learned Central Administrative



Tribunal (“Tribunal”) in order dated 18.09.2023 observed as under:

“Applicant draws attention to an order, whereby he has been placed under suspension on 21.04.2018 in pursuance of his conviction by the competent Criminal Court, invoking provisions of CCS(CCA) Rule 10 (2) (b). He remained under suspension for the period from 21.04.2018 to 28.05.2019 till he was dismissed from service. He agitates his claim, stating that during the said period , his subsistence allowance was never reviewed by the respondents. He was in receipt of 50% of the subsistence allowance, which was to be reviewed by the competent authority on expiry of 90 days as mandated by the provision of FR 53.

Learned counsel for the respondents prays for a week’s time to seek instruction on the contentions raised by the applicant.

List on 19.10.2023.”

6. The case of the petitioner before the learned Tribunal was that the issue with respect to grant and payment of subsistence allowance was to be determined in accordance with FR-53 which reads as under:

“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) in the case of a Commissioned Officer of the Indian Medical Department or a Warrant Officer in Civil employ who is liable to revert to Military duty, the pay and allowances to which he would have been entitled had he been suspended while in military employment;

(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 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;

(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) Any other compensatory allowances admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension subject to the fulfilment of other conditions laid down for the drawal of such allowances.

(2) No payment under sub-rule (1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation:

Provided that in the case of a Government servant dismissed, removed or compulsorily retired from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal or compulsory retirement, under sub- rule (3) or sub-rule (4) of Rule 12 of the Central



Civil Services (Classification, Control and Appeal) Rules, 1957, and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods, as the case may be, fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him; where the subsistence allowance and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him.”

7. Accordingly, the case of the petitioner was that the enhancement or otherwise of the subsistence allowance could not be claimed as a matter of right. However, it is the discretion of the competent authority to vary the amount of subsistence allowance keeping in view the specific facts and circumstances which have led to the suspension as also the continued suspension. The Rule has specifically used the word “may and not “shall” when making provision for making enhancement of subsistence allowance. The suspended employee should represent for enhancement of subsistence allowance, if the suspension is getting extended on account of delay in conclusion of the proceedings which is not attributable to the employee.

8. The case of petitioner before the learned Tribunal was that the respondent employee was subject to serious charge leading to conviction and hence, it was a well considered decision that his case did not deserve enhancement of subsistence allowance.

9. Further, the case of the petitioner is that the spirit and objective



behind subsistence allowance is to ensure that during the period of suspension, the employee is not put to financial distress to meet his basic needs, therefore, retrospective sanction of subsistence allowance would be meaningless.

10. Before the learned Tribunal, the respondent had drawn attention to the specific averments made in paragraphs no. 5 to 7 in the section of preliminary submission of the counter-affidavit, which are reproduced as under:

“5. That case of Sh. G.S. Walia (under suspension) was placed before the Suspension Review Committee on 18.07.2018 its consideration. After considering the seriousness of the case, the Review Committee recommended continuation of suspension of Sh. G.S. Walia, the then Dy. Electrical Inspector for a further period of 180 days from the expiry of up to 15.01.2019 .

6. That the Suspension Review Committee further extended suspension up to 16.03. 2019 vide order dated 11.01 .2019 and again the up to 14.06. 2019 vide order dated 18.03. 2019.

7 . That Sh. Gurpreet Singh Walia, the then Deputy Electrical Inspector was dismissed from services under Rule i 9(i) of CCA (CCA) Rules, 1965 by the Disciplinary Authority vide order dated 28.05.2019.”

11. It is not in dispute that suspension of an employee has to be reviewed periodically and the same has to take place through an appropriate Suspension Review Committee. While reviewing the suspension, a specific recommendation has to be made to the competent authority for such revocation or its further continuance for a period as specified in the Rules. At the time of taking a decision upon extension of



the suspension, the competent authority has to pass an appropriate order upon the admissibility and sanction of subsistence allowance. A specific order has to be passed whether the subsistence allowance has to be enhanced or reduced by taking into consideration the facts prevalent at that time. The guiding principle is that in case the proceedings against the employee are getting delayed, the subsistence allowance should be enhanced up to 75% of the salary drawn, if the employee cannot be held responsible for such a delay.

12. After going through the record, the learned Tribunal considered the issue as to whether a decision with respect to enhancement or otherwise of the subsistence allowance was taken. Further, the record also did not indicate, as to why, such a decision was not taken, if it was not taken at all.

13. Learned counsel for the petitioner appearing before the learned Tribunal and even before this court pointed out that enhancement of subsistence allowance could not be claimed as a matter of right, however, the employee was entitled for consideration of the same in accordance with the Rules governing the subject.

14. The learned Tribunal recorded that the impugned communication stated that enhancement of subsistence allowance had been rejected on the ground that retrospective revision of subsistence allowance was “not advisable”. No rule or instructions had been shown to the learned Tribunal which would justify the said reasons. Accordingly, the learned



Tribunal observed that why is it “not advisable” had not been explained and why could this enhancement not be retrospective was also inexplicable. There may have been reasons before the competent authority for arriving at this conclusion, however, they were not reflected in the impugned order.

15. Moreover, the respondent had correctly pointed out that in terms of the provisions set forth in the FR-53, the competent authority was obliged to review the suspension as also the issue of subsistence allowance prior to the expiry of the suspension period and in the instant matter, the said provision had not been adhered to.

16. The learned Tribunal further observed that in the normal course, it would have been directed for fresh consideration of the matter by the competent authority after placing it before an appropriate Review Committee, however, the learned Tribunal refrained from doing so since the reasons adduced in the impugned communication was only that of retrospective revision was “not advisable”. The reason was not that it would be contrary to any rule or instruction.

17. Further, the learned Tribunal observed that direction was given to the competent authority that subsistence allowance to the respondent be suitably announced to 75% of the salary with effect from the date it was due for such a review. However, it was made clear that respondent shall not be entitled for payment of interest.

18. In view the above discussion, we find no illegality and perversity



2024:DHC:6553-DB



in the order of the learned Tribunal.

19. Finding no merit in the present petition, the same is dismissed. Consequently, the pending applications also stand disposed of.

20. Accordingly, the petitioner is directed to comply with the directions passed by the learned Tribunal within four weeks.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 28, 2024/ry