

PETITIONER:
JAGDAMBA PRASAD SHUKLA

Vs.

RESPONDENT:
STATE OF U.P. & ORS.

DATE OF JUDGMENT: 22/08/2000

BENCH:
S.P. Bharucha, J. & Y K Sabharwal, J.

JUDGMENT:

Y.K.SABHARWAL, J.

Delay condoned. Leave granted.

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The appellant while holding the post of a Sub Inspector was placed under suspension by an order dated 1st June, 1977 and was transferred to Gorakhpur by an order dated 4th August, 1977 in order to face disciplinary proceedings. The appellant did not participate in the disciplinary proceedings allegedly on account of illness and being confined for medical treatment at Kanpur and also on account of financial crunch for non-payment of subsistence allowance. The appellant was served with a show cause notice dated 29th December, 1978 proposing punishment of removal from service. In reply thereto, appellant raised several objections indicating irregularities in conduct of departmental proceedings. The Deputy Inspector General of Police by an order dated 11th February, 1979 directed removal of the appellant from service. After being unsuccessful in departmental appeal and even in a claim petition filed before U.P.Public Service Tribunal, the appellant challenged his order of removal in a writ petition filed in the High Court.

The only contention pressed on behalf of the appellant before the High Court was that on account of non-payment of subsistence allowance, right from the date of suspension till his removal, he could not participate in the departmental enquiry and, therefore, the proceedings of the said enquiry stood vitiated for denial of grant of reasonable opportunity to him to appear in departmental enquiry. It was rejected by the High Court. The two reasons given by the High Court for rejecting the contention are:-(i) to receive subsistence allowance, the appellant was required to furnish a certificate stating that he is not engaged in any other employment, business, profession or vocation, which was not furnished; and (ii) the appellant had not taken a ground either in the claim petition or in the writ petition that he could not participate in the enquiry because of financial crunch.

In this appeal also, the only contention urged on behalf of the appellant is the denial of reasonable opportunity in the departmental enquiry. It is contended that on account of financial crunch created by respondents

by non-payment of subsistence allowance from date of the suspension till removal, the appellant could not travel to Gorakhpur and participate in the proceedings of departmental enquiry.

Learned counsel for the respondents did not dispute the factual position that the subsistence allowance as urged on behalf of the appellant was not paid to him. The justification offered by the respondents for not paying the subsistence allowance is that the applicant had not furnished the address where the amount was to be sent and had also not given the requisite certificate indicating that he was not employed else during the period of suspension.

It is evident from the record that the High Court is not right in observing that ground sought to be urged was not taken in the claim petition or in the writ petition. In fact, the High Court in the latter part of the judgment observes that 'for the first time, the petitioner has taken the ground in this writ petition that he could not attend the departmental proceedings due to financial crunch as he was not paid his subsistence allowance.' A perusal of the record shows that the contention urged before the High Court and again before us, was also raised before the U.P. Public Service Tribunal and even earlier before the authorities. The U.P. Public Service Tribunal considered it and on the facts of the case, the Tribunal held that 'Therefore, those rulings where person was unable to attend the enquiry for non-payment of subsistence allowance, resulting in enquiry being vitiated will not be applicable.' Apart from it, in reply dated 22nd January, 1979 sent to show cause notice, the appellant specifically stated that he has not been paid his pay and suspension allowance which cannot be withheld and as such how could he be expected to reach Gorakhpur or elsewhere due to shortage of funds. He further stated that 'the applicant has requested a number of times for drawing his pay and suspension allowance, but the same could not be drawn and sent to applicant which was a serious handicap to appear anywhere even if he so preferred during illness and even against the recommendations of his medical attendant.' The request of the appellant for payment of subsistence allowance is also contained in his letter dated 31st March, 1978 sent to Superintendent of Police, Railways, Gorakhpur Section, Gorakhpur. The said letter also contains the address of the appellant. The address of the appellant is in fact contained on various communications sent by him to the respondents. It is curious that the respondents could serve all other communications including the show cause notice to the appellant but in so far as payment of subsistence allowance is concerned, the plea taken is that the appellant did not intimate his address and, therefore, the amount could not be sent. Thus, it is evident that despite repeated requests, the subsistence allowance was not paid to the appellant from the date of suspension till removal. It is also evident that the appellant had expressed difficulty to reach place of enquiry due to shortage of funds.

Reverting now to the other reason which prevailed with the High Court, namely, the appellant having not furnished a certificate stating that he is not engaged in any other employment, business, profession or vocation and having thus not complied with Rule 53(2) of the Financial Hand Book, it may be noticed that at no stage, the appellant was told that he had to furnish such a certificate, and that he could not

be paid subsistence allowance without it. It was not the case of the respondents that in response to the appellant's request for payment of subsistence allowance, he was asked to furnish such a certificate and since he did not furnish it, the amount of subsistence allowance was not paid to him. Therefore, the second reason for rejecting the appellant's contention for non-payment of subsistence allowance also does not deserve to be sustained.

The payment of subsistence allowance, in accordance with the Rules, to an employee under suspension is not a bounty. It is a right. An employee is entitled to be paid the subsistence allowance. No justifiable ground has been made out for non-payment of the subsistence allowance all through the period of suspension i.e. from suspension till removal. One of the reasons for not appearing in enquiry as intimated to the authorities was the financial crunch on account of non-payment of subsistence allowance and the other was the illness of the appellant. The appellant in reply to show cause notice stated that even if he was to appear in enquiry against medical advice, he was unable to appear for want of funds on account of non-payment of subsistence allowance. It is a clear case of breach of principles of natural justice on account of the denial of reasonable opportunity to the appellant to defend himself in the departmental enquiry. Thus, the departmental enquiry and the consequent order of removal from service are quashed.

In view of the aforesaid, the impugned judgment of the High Court is set aside and the appeal is allowed with@@

costs.@@

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