

CASE NO.:
Appeal (civil) 5456 of 2002

PETITIONER:
Andhra Bank

RESPONDENT:
W.T.Seshachalam

DATE OF JUDGMENT: 05/01/2004

BENCH:
Brijesh Kumar & Arun Kumar.

JUDGMENT:
JUDGMENT

BRIJESH KUMAR, J.

The point involved in this appeal is short and relates to the question as to what amount, the appellant is liable to pay as subsistence allowance to the respondent during the period he remained under suspension, in the light of the provisions as contained in the Sastry Award, Desai Award and the Bipartite Agreement on the subject as well as the rules of the bank. The learned single Judge held that the respondent was entitled to full salary as subsistence allowance right with effect from 1.6.1991 in accordance with para 17.14 of the Third Bipartite settlement. On appeal before the Division Bench it was held that the respondent would though be entitled to the amount of full salary as subsistence allowance but from 10.3.1994 to 14.7.2001, the date on which the respondent was dismissed from service.

The respondent was employed as a clerk in the appellant Andhra Bank and was working as cashier at Chennai. On 21.5.1990 a fire broke in the cash cabin in connection whereof it appears a police report was also lodged on 1.6.1990. The petitioner was placed under suspension during the "regular departmental action".

A charge-sheet was filed against the respondent in the criminal case under Section 409/436 of the Indian Penal Code in July, 1993. A charge memo was issued to the respondent by the appellant on 29.12.1993. The respondent was convicted by the Trial Court by order dated 25.1.1994. The appeal of the respondent was, however, allowed and his conviction and sentence was set aside by the appellate Court by order dated 10.3.1994. After the acquittal of the respondent an enquiry officer was appointed on 13.9.1994 to hold an enquiry into the departmental proceedings.

The respondent filed a writ petition no.9730 of 1995 with a prayer for payment of full salary as subsistence allowance in view of clause 5(a)(iii) of the Third Bipartite settlement. As indicated earlier, the learned single Judge allowed the writ petition holding that the respondent was entitled to full salary as subsistence allowance with effect from 01.06.1991. The appeal preferred against the said order by the bank remained unsuccessful and it was held that the respondent was entitled to full salary as subsistence allowance but with effect from 10.3.1994 to 14.07.01. The learned single Judge found that in view of clause 5 of Bipartite Agreement, para 17.14 alone would be applicable to the petitioner's case. It also did not accept the case of the appellant that the respondent was responsible for prolonging the enquiry. The Division Bench in appeal upheld the above findings.

We may now peruse the relevant provisions as it regards to payment of subsistence allowance. Para 557 of the Sastry Award provides as under :

"557. Having considered the matter in all its aspects, we think that suspension allowance should be granted on the following scale:-

(1) For the first three months one-third of the pay and allowances which the workman would have but for the suspension;

(2) Thereafter, where the enquiry is departmental by the bank, one-half of the pay and allowances for the succeeding months. Where the enquiry is by an outside agency, one-third of the pay and allowances for the next three months and thereafter one-half for the succeeding months until the enquiry is over."

Clause 17.14 of the Desai Award is to the following effect:-

"17.14. I make an award in connection with this item in terms similar to those contained in paragraph 557 of the Sastry Award quoted above."

Thereafter, it appears that Third Bipartite Agreement dated 9.9.1983 was entered into by which paragraph 557 of the Sastry Award and Clause 17.14 of the Desai Award were partially modified. Para 5 of the Bipartite agreement reads as under :

"5. Subsistence Allowance:

In partial modification of paragraph 557 of the Sastry Award and paragraph 17.14 of the Desai Award, the following provisions shall apply in regard to payment of subsistence allowance to workmen under suspension in respect of the banks listed in Schedule 1.

(a) Where the investigation is not entrusted to or taken up by an outside agency (i.e. Police/CBI), subsistence allowance will be payable at the following rates:

(i) For the first 3 months $\frac{1}{3}$ of the pay and allowances which the workman would have got but for the suspension.

(ii) Thereafter = of the pay and allowances.

(iii) After one year, full pay and allowances if the enquiry is not delayed for reasons attributable to the concerned workman or any of his representatives. Where the investigation is done by an outside agency and the said agency has come to the conclusion not to prosecute the employee, full pay and allowances will be payable after 6 months from the date of receipt of report of such agency, or one year after suspension, whichever is later and in the event the enquiry is not delayed for reasons attributable to the workman or any of his representative."

So far the position as regards payment of subsistence allowance in the Service Conditions of the Bank, is concerned it is provided as follows:-

"1. Subsistence allowance during the period of suspension should be granted on the following scale:

A. Where the enquiry is departmental by the bank:

(1) where the investigation is not entrusted to, or taken up by an outside agency (i.e., Police/CBI):

(a) for the first three months of suspension one-third of the pay and allowances which the workman would have got but for the suspension.

(b) for the period of suspension, if any, thereafter, one-half of the pay and allowances which the workman would have got but for the suspension provided that after one year of suspension full pay and allowances will be payable if the enquiry is not delayed for reasons attributable to the concerned workman or any of his representatives.

(2) Where the investigation is done by an outside agency (i.e., Police/C.B.I.), and such investigation is followed by a departmental enquiry by the bank and not by prosecution:

(a) for the first three months of the suspension one-third of the pay and allowances which the workman would have got but for the suspension;

(b) for the period of suspension, if any, thereafter, one-half of the pay and allowances which the workman would have got but for the suspension;

Provided that full pay and allowances will be payable after six months from the date of receipt of report of the investigating agency that it has come to the conclusion not to prosecute the employee or one year after the date of suspension, whichever is later;

And provided further that the enquiry is not delayed for reason attributable to the concerned workman or any of his representatives.

B. Where the enquiry is held by an outside agency including a trial in a criminal Court (irrespective of whether the enquiry/trial is preceded by an investigation by an outside agency (i.e. Police/C.B.I.) or not:

(a) for the first six months of the suspension one-third of the pay and allowances which

the workman would have got but for the suspension;

(b) for the period of suspension, if any, thereafter, one-half of the pay and allowances which the workman would have got but for the suspension, until the enquiry is over."

From a perusal of the provisions quoted above it is apparent that some special significance has been attached where the enquiry is made by an outside agency and the case where it is not by an outside agency. It then appears that the other factor which has been kept in consideration is the suspension during the departmental enquiry or the criminal prosecution. Since the Sastry Award and Desai Award have been modified by para 5 of the Third Bipartite agreement it would be appropriate to consider the same. Clause (a) of para 5 provides where investigation is not entrusted to or taken up by an outside agency i.e. police/CBI the subsistence allowance will be 1/3 of the pay for the first three months thereafter one-half of the pay and allowances. Sub-clause (iii) of clause (a) then provides for full pay and allowances as subsistence allowance after one year provided enquiry is not delayed for the reasons attributable to the workman. The claim of the respondent is based on this first part of sub-clause (iii) of clause (a) of para 5. It is submitted that clear finding has been recorded by the High Court that no delay was caused by the respondent. Then we find that the latter part of sub-clause (iii) of clause (a) of para 5 provides that where investigation is by an outside agency and the said agency has come to conclusion not to prosecute the employee, full pay and allowances will be payable after six months from the date of the report of such agency or one year after suspension whichever is later, provided the enquiry is not delayed by reasons attributable to the workman.

Learned counsel for the appellant has laid much emphasis on the fact that where enquiry is entrusted to an outside agency and it is decided to prosecute an employee he would not be entitled to full salary and allowances as suspension allowance. In the present case, it is submitted that enquiry was conducted by an outside agency and a conclusion was also arrived at to prosecute the respondent. As a matter of fact, he was prosecuted and also convicted by the Trial Court though acquitted in appeal. Therefore, throughout the period of suspension even after conclusion of the trial and acquittal he would be disentitled for full pay and allowances as subsistence allowance during the period covered by departmental proceedings alone, merely by reason of the fact that after investigation by an outside agency it had decided to prosecute the employee. We, however, feel unable to accede to the said contention. From a reading of para 5 as a whole, three types of cases are culled out. One where an outside agency may not be involved in the investigation. In that event for the first three months 1/3 of the pay and allowances would be payable as suspension allowance whereafter it would be increased to one-half of the pay and allowances and after one year full pay and allowances provided enquiry is not delayed for the reasons attributable to the workman concerned. The next category of cases would be where investigation is done by an outside agency and the said agency comes to a conclusion not to prosecute the employee. In such a situation the workman would be entitled to full pay and allowances after six months from the date of receipt of the report of the agency. The latter part as contained in sub-clause (iii) of clause (a) of para 5 would cover cases of criminal nature. We find this distinction in view of the fact, that investigation is not entrusted to outside agency namely,

police and CBI for the departmental proceedings. Such cases, in our view, would be covered by clause (a) (i), (ii) and the first part of sub-clause (iii). It is for prosecution in a criminal case that investigation is entrusted to the outside agency, namely the police or CBI. Therefore, we are of the opinion that the later part of sub-clause (iii) relates to investigation for the purpose of criminal prosecution. Even in such cases full pay and allowances are payable as subsistence allowance where the outside agency comes to a conclusion to not to prosecute the employee. That is to say, in such an event they are at par in the matter of payment of subsistence allowance, as the employees in the departmental proceeding.

We do not find anything further provided in sub-clause (iii) of para 5. That is to say where the outside investigating agency comes to a conclusion to prosecute and launches such prosecution. In any case, in our view, a person who is prosecuted criminally but ultimately acquitted of the criminal charges cannot be placed in a worse position in the matter of subsistence allowance as compared to those, where the outside agency itself had concluded not to prosecute. After acquittal, clout of criminal prosecution comes to an end and in case only departmental proceedings continue or remain pending or initiated thereafter, they would be guided only by the provisions applicable, for departmental proceedings in the matters relating to payment of subsistence allowance. The conclusion of the investigating agency to prosecute, would lose its effect or relevance on acquittal in the criminal case. In the present case as about the factual position, we find that the order dated 1.6.1990 provides for suspension of the respondent pending regular departmental action. Criminal trial cannot be termed as departmental action. The charge-sheet was submitted in the criminal case in July, 1993 and in the departmental proceedings, a charge sheet was issued on 29.12.1993. The criminal case ended in acquittal ultimately by order dated 10.3.1994 passed in appeal. It was six months thereafter that an enquiry officer was appointed to conduct the departmental proceedings. The departmental action was contemplated/initiated against the respondent as a result of which suspension order was passed on 1.6.1990. Charge-sheet having been issued on 29.12.1993 the departmental action continued till it ended in 14.7.2001 when the departmental proceedings concluded in dismissal of the respondent. During this period from 1.6.1990 to 14.7.2001 there has been overlapping period of criminal proceedings which came to an end on 10.3.1994. Learned counsel for the appellant submits that order of suspension and the period following thereafter is one single indivisible period of suspension as envisaged under the relevant provisions. It cannot be compartmentalized as period of suspension during criminal case or the departmental action. It is submitted that once an outside agency is involved in investigating into the matter which takes a decision to prosecute, the same position would continue irrespective of the fact that the subsequent period may not be covered by any criminal prosecution or it may be only covered by departmental action. But, as indicated earlier, it is difficult to accept this argument because the payment of subsistence allowance has been made subject to different conditions in which the factors which are relevant are where the investigation is by an outside agency i.e. the police or CBI which obviously, be for criminal prosecution and the other category of cases are those where outside agency is not involved. Such cases would of course be for the purpose of departmental action. The suspension order, in the case in hand was passed during pendency of "regular departmental action", in the meantime prosecution was launched after investigation by outside agency which failed, but the departmental action

continued for years thereafter. The enquiry officer was appointed for the departmental proceedings after acquittal of the respondent. To make the "conclusion of the outside agency to prosecute" as the basis for not paying full amount as suspension allowance indefinitely during all the period of departmental proceedings even after the criminal prosecution ended in acquittal much earlier, will amount to subjecting an acquitted person of the rigors of provisions which are applicable in the matters relating to criminal cases. Learned counsel for the appellant submits that the result of the prosecution is immaterial. To this extent the argument cannot be faulted with. It cannot be said nor it is anybody's case that due to subsequent acquittal the workman would be entitled for full pay and allowances as subsistence allowance during pendency of criminal case but for the period beyond the date when acquittal was recorded and suspension continued because of the regular departmental action it cannot be said that the same provision will continue to be applicable which was applicable during the period of criminal prosecution. Learned counsel for the appellant submits that his contention is also fortified by the service rules applicable in such matters and has placed reliance upon para B of rule 1 which reads as under :

"B. Where the enquiry is held by an outside agency including a trial in a criminal Court (irrespective of whether the enquiry/trial is preceded by an investigation by an outside agency (i.e. Police/C.B.I.) or not:

(a) for the first six months of the suspension one-third of the pay and allowances which the workman would have got but for the suspension;

(b) for the period of suspension, if any, thereafter, one-half of the pay and allowances which the workman would have got but for the suspension, until the enquiry is over."

The above provision takes care of only criminal prosecution. The learned counsel for the respondent has drawn our attention to Para A of rule 1 which is quoted below :

"A. Where the enquiry is departmental by the bank:

(1) where the investigation is not entrusted to, or taken up by an outside agency (i.e., Police/CBI):

(a) for the first three months of suspension one-third of the pay and allowances which the workman would have got but for the suspension.

(b) for the period of suspension, if any, thereafter, one-half of the pay and allowances which the workman would have got but for the suspension provided that after one year of suspension full pay and allowances will be payable if the enquiry is not delayed for reasons attributable to the concerned workman or any of his representatives.

(2) Where the investigation is done by an

outside agency (i.e., Police/C.B.I.), and such investigation is followed by a departmental enquiry by the bank and not by prosecution:

(a) for the first three months of the suspension one-third of the pay and allowances which the workman would have got but for the suspension;

(b) for the period of suspension, if any, thereafter, one-half of the pay and allowances which the workman would have got but for the suspension;

Provided that full pay and allowances will be payable after six months from the date of receipt of report of the investigating agency that it has come to the conclusion not to prosecute the employee or one year after the date of suspension, whichever is later;

And provided further that the enquiry is not delayed for reason attributable to the concerned workman or any of his representatives."

It is rightly pointed out by the learned counsel for the respondent that para A of rule 1 includes the provision of para 5 of the bipartite agreement. Clause (1) of part (A) of rule 1 apparently relates to the departmental action and clause (2) where the investigation is by an outside agency, namely the police or the CBI. In our view, the position relating to departmental proceedings and the proceedings taken after investigating agency

coming to a conclusion not to prosecute which entitles the workman to full pay and allowances as subsistence allowance after one year, will also be applicable where in the intervening period criminal prosecution was launched after investigation by an outside agency ending in acquittal but departmental proceedings continued /started or thereafter. In such cases the workman would be entitled for full pay and allowances as suspension allowance. The interpretation as suggested on behalf of the appellant to subject the employee to the rigours of rules pertaining to payment of subsistence allowance which apply where the criminal prosecution is decided to be launched, even for the period after the acquittal during departmental action, would be self-contradictory and against the obvious meaning emerging out of the provisions discussed above.

We, therefore, find no merit in the appeal and it is accordingly dismissed.
Costs easy.