A P.L. SHAH

v.

UNION OF INDIA & ANR.

JANUARY 18, 1989

B [E.S. VENKATARAMIAH AND N.D. OJHA, JJ.]

Central Administrative Tribunals Act, 1985: Section 21(2)—Subsistence allowance—Reduction of—Application seeking restoration moved after five years—Maintainability of—Period of limitation—Computation of—Held, cause of action arises every month in which reduced subsistence allowance is paid.

C

Civil Services: Suspension order—Nature and purpose of—Subsistence allowance—Sufficiency of—Need to review from time to time.

D **Sub-section (2) of s. 21 of the Administrative Tribunals Act, 1985 empowers the Tribunal not to entertain an application the grievance in respect of which had arisen beyond three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal became exercisable under the Act.**

E **The appellant, an Upper Division Clerk, was suspended from service, in July 1975 pending on account of the institution of criminal proceedings against him. By an order dated August 4, 1975 he was sanctioned subsistence allowance at the rate of 50 per cent of his salary last drawn. By a further order dated May 6, 1982 the subsistence allowance was reduced to 25 per cent of the salary he was drawing on the**

F **date of suspension. He moved a petition before the Tribunal in the year 1988 for a direction to the Government to restore the original order of August 4, 1975. That petition was dismissed by the Tribunal solely on the ground that the order reducing the allowance having been passed on May 6, 1982, it could not entertain the application made more than five years thereafter, apparently on the ground of limitation set out in s.**

G **21(2) of the Act.**

In this appeal by special leave it was contended for the appellant that the Government had failed to review the order of May 6, 1982 even though a long period of five years had elapsed after the reduction of the subsistence allowance, that the delay in conclusion of the criminal pro-

H **ceedings, as a consequence of which he had been kept under suspension,**

was not due to him and in the circumstances it was not just and appropriate that he should be paid a subsistence allowance at a reduced rate for an unreasonably long period. A

Allowing the appeal,

HELD: 1. The Tribunal was not right in rejecting the application. [229F] B

2. The cause of action in respect of a prayer seeking enhancement of subsistence allowance arises every month in which the said allowance at the reduced rate is paid. Therefore, in the instant case, though no relief could be given to the appellant in respect of the period which was beyond three years from the date on which the Tribunal commenced to exercise its powers under the Act, it was quite open to the Tribunal to consider whether it was proper for the Government to continue to give effect to the order dated May 6, 1982 from any subsequent date, and if the Tribunal came to the conclusion that the said order was required to be revised it could pass an appropriate order notwithstanding the fact that a period of five years had elapsed from the date on which the order reducing the subsistence allowance was passed. While doing so it was open to the Tribunal to fix a date within the period of the said three years from which the appellant should be paid subsistence allowance at the revised rate having due regard to the date of the application. [229C-E] C D E

3.1. The very nomenclature of the allowance makes it clear that the amount paid to a Government servant under suspension should be sufficient for bare subsistence in this world in which the prices of the necessaries of life are increasing every day on account of the conditions of inflation obtaining in the country. More so, when a Government servant cannot engage himself in any other activity during the period of suspension. The amount of subsistence allowance payable to the Government servant concerned should, therefore, be reviewed from time to time where the proceedings drag on for a long time, even though there may be no express rule insisting on such review. [228F-G] F G

3.2. In doing so, the authority concerned no doubt has to take into account whether the Government servant is in any way responsible for the undue delay in the disposal of the proceedings initiated against him. If the Government servant is not responsible for such delay or even if he is responsible for such delay to some extent but is not primarily responsible for it, it is for the Government to consider whether the H

order of suspension should be continued or whether the subsistence allowance should be varied to his advantage or not. [228G-H; 229A]

4. The case is remanded to the Tribunal to dispose of the application made by the appellant on merits. [229G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 38 of 1989.

From the Judgment and order dated 15.3.1988 of the Central Administrative Tribunal, Ahmedabad in M.A. No. 49 of 1988.

P.H. Parekh and Shishir Sharma for the Appellant.

B. Dutta, Additional Solicitor General, Ms. Indu Malhotra and C.V. Subba Rao for the Respondents.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The appellant was working as an Upper Division Clerk in the year 1975. He was placed under suspension by an order dated 25.7.1975 as a result of the institution of a criminal prosecution against him and he continues to remain under suspension till today. By an order dated 4.9.1975 he was sanctioned subsistence allowance at the rate of 50 per cent of his salary last drawn. By a further order made on 6.6.1982 the subsistence allowance was reduced to 25 per cent of the salary he was drawing on the date of suspension. The increments he would have earned from time to time and the periodical revisions of pay-scales were not taken into consideration in determining the subsistence allowance.

The charge-sheet was filed in the criminal case against the appellant in 1976 and the case was committed to the sessions, but the committal proceedings were quashed by the High Court in 1978. Then the proceedings again began before the Metropolitan Magistrate in 1979. The case, however, has not yet come to an end.

Aggrieved by the denial of the salary and allowances due to him for a long time on account of the order of suspension and in particular the order fixing the subsistence allowance at 25 per cent of the salary which he was drawing at the time of suspension by the Order dated 6.5.1982, the appellant approached in the year 1988 the Central Administrative Tribunal (Ahmedabad Bench) for a direction to be

issued to the Government to restore the original Order dated 4.8.1975 by which the subsistence allowance was fixed at 50 per cent of his salary. That petition was dismissed by the Tribunal by its order dated 15.3.1988 on the ground that the appellant had approached the Tribunal more than five years after the date on which the Order dated 6.5.1982 had been passed apparently on the ground of limitation set out in sub-section (2) of section 21 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act'). Aggrieved by the order of the Tribunal, the appellant filed this appeal.

The question for consideration in this appeal by special leave is whether in a case of this nature, the Tribunal was right in holding that the application before it, was barred by time. Sub-section (1) of section 21 of the Act, no doubt, says that a Tribunal shall not admit an application in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made, and in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months. Sub-section (2) of section 21, however, provides that notwithstanding anything contained in sub-section (1) of section 21 where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal become exercisable under the Act in respect of the matter to which such order related, and no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b) of sub-section (1) or within a period of six months from the said date, whichever period expires later. Sub-section (3) of section 21 further confers power on the Tribunal to condone the delay in certain circumstances if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

In the present case the main grievance of the appellant was not that the Order dated 6.5.1982 by which the subsistence allowance payable to him was reduced to 25 per cent was bad at the commencement although there were some allegations to that effect but it was one relating to the failure of the authority or the Government to review the Order dated 6.5.1982 even though a long period of 5 years had elapsed

A after the reduction of the subsistence allowance. His contention was that the delay in the conclusion of the criminal proceedings as a consequence of which he had been kept under suspension was not due to him and in the circumstances it was not just and proper that he should be paid a subsistence allowance at a reduced rate for an unreasonably long period. In support of his case the appellant relied upon a decision B dated 23.6.1987 of the very bench of the Tribunal in *Shri Bhupendra Mahashuklal Mehtap* v. *The Union of India & Ors.*, in T.A. No. 223 of 1986 (S.C.A. No. 3509 of 1922) in which Fundamental Rule 53 which authorised the Government to review an order regarding subsistence allowance arose for consideration. In the said case the Ahmedabad Bench of the Tribunal quashed the Order dated 6.5.1982 passed C against the applicant in that case by which the subsistence allowance payable to the said applicant had been reduced.

An order of suspension is not an order imposing punishment on a person found to be guilty. It is an order made against him before he is found guilty to ensure smooth disposal of the proceedings initiated D against him. Such proceedings should be completed expeditiously in the public interest and also in the interest of the Government servant concerned. The subsistence allowance is paid by the Government so that the Government servant against whom an order of suspension is passed on account of the pendency of any disciplinary proceeding or a criminal case instituted against him could maintain himself and his E dependants until the departmental proceeding or the criminal case as the case may be comes to an end and appropriate orders are passed against the Government servant by the Government regarding his right to continue in service etc. depending upon the final outcome of the proceedings instituted against him. The very nomenclature of the allowance makes it clear that the amount paid to such a Government F servant should be sufficient for bare subsistence in this world in which the prices of the necessaries of life are increasing every day on account of the conditions of inflation obtaining in the country. It is futher to be noted that a Government servant cannot engage himself in any other activity during the period of suspension. The amount of subsistence allowance payable to the Government servant concerned G should, therefore, be reviewed from time to time where the proceedings drag on for a long time, even though there may be no express rule insisting on such review. In doing so the authority concerned no doubt has to take into account whether the Government servant is in any way responsible for the undue delay in the disposal of the proceedings initiated against him. If the Government servant is not responsible for such delay or even if he is responsible for such delay to some extent but H is not primarily responsible for it, it is for the Government to recon-

sider whether the order of suspension should be continued or whether the subsistence allowance should be varied to his advantage or not. The decision on the said question no doubt depends upon several factors relevant to the case. In the instant case the appellant was suspended in the year 1975. Now nearly 13 years have elapsed from the date of suspension. He was paid subsistence allowance at the rate of 50 per cent of the salary last drawn by him from 1975 and 1982 and from 1982 he is being paid 25 per cent of the salary last drawn by him. It is not clear from the record before us, since the application made by the applicant was dismissed by the Tribunal at the preliminary stage, whether the appellant was responsible for the inordinate delay in the disposal of the case instituted against him. In the circumstances of the case we are of the view that even though no relief could be given to the appellant in respect of the period which was beyond three years from the date on which the Tribunal commenced to exercise its powers under the Act, it was quite open to the Tribunal to consider whether it was proper for the Government to continue to give effect to the Order dated 6.5.1982 from any subsequent date and if the Tribunal came to the conclusion that the Order dated 6.5.1982 was required to be revised it could pass an appropriate order notwithstanding the fact that a period of five years had elapsed from the date on which the order reducing the subsistence allowance was passed. While doing so it was open to the Tribunal to fix a date within the period of the said three years from which the appellant should be paid the subsistence allowance at the revised rate of course, having due regard to the date of the application also. In the alternative, the Tribunal could have asked the authority concerned to review the order.

In the circumstances, the Tribunal was not right in rejecting the application solely on the ground that the order reducing the subsistence allowance having been passed on 6.5.1982 the Tribunal could not entertain an application for directing the Government to revise the Order dated 6.5.1982 even in respect of any period within three years from the date on which the Tribunal commenced to exercise its powers having due regard to the date of the application also since we feel that the cause of action in respect of such prayer arises every month in which the subsistence allowance at the reduced rate is paid. We therefore set aside the order of the Tribunal and remand the case to it to dispose of the application made by the appellant on merits. We make an order accordingly.

There is no order as to costs.

P.S.S. Appeal allowed.