

**Judgment reserved on 01.3.2016**  
**Judgment delivered on 27.5.2016**

**Case :-** WRIT - A No. - 2773 of 2016

**Petitioner :-** Sanjay Kumar Singh

**Respondent :-** Union Of India And 4 Others

**Counsel for Petitioner :-** Bhagi Rathi Tiwari

**Counsel for Respondent :-** A.S.G.I.,Prabhakar Tripathi,Satish Chaturvedi

**Hon'ble V.K. Shukla, Acting Chief Justice**

**Hon'ble Mahesh Chandra Tripathi,J.**

**(Per: Hon'ble M.C. Tripathi, J)**

1. Sanjay Kumar Singh is before this Court, assailing the validity of the order dated 11.12.2015 passed by Central Administrative Tribunal, Allahabad Bench, Allahabad affirming the orders passed by the authority concerned reducing the subsistence allowance.

2. Brief background of the case, as is reflected from the record, is that the petitioner was initially appointed as Clerk on 11.6.1993 in the office of Accountant General (A & E)-II, U.P. Allahabad. Thereafter he was promoted on the posts of Accountant and Senior Accountant. During checking of attendance on 24.2.2012 at about 4.15 p.m., a mob of about 150 to 200 employees of office of A.G. (A&E)-I and II, UP Allahabad assembled in front of chamber of Shri Sachin Kapoor, Deputy Accountant General (Administration) and gheraoed his chamber and shouted disrespectful and pejorative slogan and abusive language to him. The said mob broke the glasses of ventilator and after pulling out curtains, set it on fire. They also threw broken glasses, broom stick, bottle of acid, seat of commode, mugs, stones, name plate and viper etc. in the chamber of Shri Sachin Kapoor. The mob also broke three bio-metric machines, furniture, fixtures, wall clock, computers, printers and personal car of Shri Sachin Kapoor. It is alleged that the petitioner was part of that mob. Thereafter, the petitioner was suspended on 25.2.2012 in contemplation of disciplinary proceedings by respondent no.4 and his entry was also banned in the office premises. Again the petitioner participated in

demonstration and unauthorized meetings on several occasions between 27.2.2012 and 23.3.2012 and also created traffic jam on 1.3.2012 in front of Gate No.1 of the office and also violated the provisions of Rule 3 (1) (iii) and Rule 7 of CCS Conduct Rules, 1964.

3. By order dated 26.3.2012 the petitioner was directed to be paid half average pay of leave salary as subsistence allowance. On 18.5.2012 the suspension order was further extended for 90 days with effect from 25.5.2012 and the payment of subsistence allowance was decreased by 50%. The respondents again issued an order dated 22.8.2012 for extending the suspension period for a further period of 90 days w.e.f. 23.8.2012 and the payment of subsistence allowance was kept unchanged. The petitioner submitted a representation on 20.5.2012 against the order dated 18.5.2012 decreasing the subsistence allowance by 50% after 90 days and irregularly paying the subsistence allowance only 25% of leave salary. The petitioner again submitted representation dated 30.8.2012 against the order dated 22.8.2012 for continuing the subsistence allowance at 25%. Thereafter, the petitioner sent reminder on 11.10.2012 against the orders dated 18.5.2012 and 22.8.2012. When nothing had happened, the petitioner had proceeded to approach Central Administrative Tribunal, Allahabad Bench, Allahabad (in short, the Tribunal) by means of Original Application No.1540 of 2012 (Sanjay Kumar Singh vs. Union of India and ors) for quashing the orders dated 18.5.2012 and 22.8.2012 and for issuing directions to pay 75% subsistence allowance to the leave salary after 90 days of suspension. By the impugned order dated 11.12.2015, the Tribunal has proceeded to dismiss the original application in question, giving rise to the writ petition.

4. It has been submitted on behalf of the petitioner that the petitioner was entitled for payment of proper subsistence allowance upto 24.6.2013 from the date of suspension i.e. 25.2.2012 (50% of leave salary) upto 90 days and thereafter from 25.5.2012 till 24.6.2013 (75% of leave salary) as per rule. It has been sought to be contended that as per provisions contained in FR 53, the reasons for

reducing the suspension allowance must be recorded in the order itself and while passing the aforementioned orders, the respondents have not recorded any convincing reasons for decreasing such subsistence allowance and as such, the Tribunal has not followed the decision of Hon'ble Supreme Court **Khem Chand vs. Union of India AIR 1963 SC 687** in which it was held that the employee has got constitutional right under Rule 21 for payment of proper subsistence allowance. Much emphasis has also been drawn in the matter of proper subsistence allowance as laid down in the case of **B.R. Patel vs. State of Maharashtra AIR 1968 SC 800** in which it was held that if full salary is admissible to suspended employee, there is no reason to reduce the subsistence allowance for no fault of employee.

5. Learned counsel for the petitioner further submitted that as per provisions of FR 53, the reasons for reducing the subsistence allowance must be recorded in the order itself. In the impugned orders, there is no whisper of a word about the second review committee and the reasons recorded by respondent no.3 before issuing the order dated 22.8.2012. The suspension could have been revoked by issuing a charge sheet and as such, the orders decreasing the subsistence allowance are arbitrary, unreasonable, and unjustified in the eye of law. The Tribunal has not considered the importance and legal implication of interim order, under which the petitioner was getting 50% subsistence allowance till revocation of suspension but due to instant impugned order the petitioner will have to refund 50% of the subsistence allowance received from 25.5.2012 to 24.6.2013, causing serious financial burden on the petitioner. The Tribunal has also committed an error in not considering the ratio of decisions of coordinate Bench, High Courts and Hon'ble Supreme Court in the matter of payment of proper subsistence allowance as per rule and constitutional provisions. The Tribunal has not considered the fact that the enquiry was delayed by the respondents.

6. Learned counsel for the petitioner has also contended that while entertaining the aforesaid original application in question, an interim order was passed in favour of the petitioner and after dismissal of the

original application, there is every likelihood that the excess amount paid toward subsistence allowance would be recovered by the respondents.

7. Countering the claim set-up by the petitioner, Shri Satish Chaturvedi, learned counsel appearing for the respondents, on the other hand, has submitted that in exercise of powers conferred by Rule 19 (ii) of C.C.S. (C.C.A.) Rules, 1965 (hereinafter referred to as 1965 Rules) read with clause (b) of second proviso to Article 311 (2) of Constitution of India, the Disciplinary Authority vide orders dated 7.3.2012 dismissed two employees of the office of Account General (A&E)-II, U.P. Allahabad, who were also under suspension, from service. A charge sheet was issued to the petitioner on 3.7.2012 and the said charge sheet was acknowledged by the petitioner on 4.7.2012. The petitioner submitted his reply to the charge sheet, denying the charges through his written statement of defence dated 13.7.2012 and the enquiry officer and presiding officer were appointed on 28.7.2012. The enquiry in question was concluded on 22.4.2013. By the order dated 24.6.2013 the petitioner was imposed penalty of reduction to a lower post of Clerk in the Grade Pay of Rs.1900/- with minimum basic pay of Rs.5830/- in the Pay Band-I (Rs.5200-20,200) for a period of five years with immediate effect. On the expiry of the said period, the petitioner was directed to regain his original seniority in the grade of Sr. Accountant and the period of reduction to the post of Clerk shall postpone future increments of his pay. The petitioner filed an appeal against the punishment order and the penalty order dated 24.6.2013 was modified by the Appellate Authority vide order dated 2.3.2015 to the extent that the period of reduction to the post of Clerk shall not postpone future increments of pay. The petitioner has challenged the order of the appellate authority before the Tribunal in Original Application No.1018 of 2015 and the same is pending consideration before the Tribunal.

8. Shri Satish Chaturvedi has further submitted that during the suspension period, the petitioner committed yet another act of gross misconduct on 18<sup>th</sup> October, 2012. Another charge sheet was issued to

him vide Memorandum dated 31.10.2013 under Rule 14 of 1965 Rules. The Disciplinary Authority, in exercise of the powers conferred under Rule 15 (4) of 1965 Rules vide order dated 14.9.2015, had imposed upon the petitioner the penalty of compulsory retirement from service with immediate effect under Rule 11 (vii) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (in short, 1965 Rules). The petitioner has failed to make out any case for interference by this Court and the writ petition is devoid of merit and deserves to be dismissed.

9. Heard rival submissions and perused the record.

10. As per order dated 26.3.2012 the respondents had taken a decision to pay half average pay of leave salary towards the subsistence allowance to the petitioner. Thereafter, again on 18.5.2012 the suspension order was further extended for 90 days with effect from 25.5.2012 and the payment of subsistence allowance was decreased by 50%. Thereafter, the respondents again issued an order dated 22.8.2012 extending the suspension period for further period of 90 days w.e.f. 23.8.2012 and the payment of subsistence allowance was kept unchanged. In this background, the petitioner had proceeded to make a detailed representation on 20.5.2012 against the order dated 18.5.2012 decreasing the subsistence allowance by 50% after 90 days and he was paid only subsistence allowance to the tune of 25% of leave salary. The petitioner had proceeded to file the Original Application No.1540 of 2012 (Sanjay Kumar Singh vs. Union of India and ors) for quashing the orders dated 18.5.2012 and 22.8.2012 and further for direction commanding the respondents to ensure payment of 75% subsistence allowance to the leave salary after 90 days of suspension as per C.C.S. Conduct Rules, 1964. By the impugned order dated 11.12.2015, the Tribunal had rejected the original application in question.

11. The bone contention of the petitioner is that the payment of subsistence allowance was decreased by 50% with effect from 25.5.2012 violating the provisions contained in FR 53 (1) (ii) (a) (i) and the Government of India orders dated 16.2.1959, 23.8.1979 and

17.6.1958. It is sought to be contended that the reasons for reducing the subsistence allowance must be recorded in the order itself. In the impugned orders dated 18.5.2012 and 22.8.2012 the second Review Committee has not stated or recorded any reason while passing the order dated 22.8.2012 and as such, it has been contended that without recording reasons, the order in question decreasing the subsistence allowance is arbitrary and unreasonable and cannot sustain in the eyes of law precisely on the ground that the said order caused serious financial burden to the petitioner.

12. As per record, this much is reflected that on 24.2.2012 at about 4.15 PM (as per timer of CCTV camera) of the office of Accountant General (A&E)-II, U.P., Allahabad, the petitioner alongwith a mob of 150 to 200 employees assembled in the corridor of the ground floor of multi-storied building in front of the chamber of Shri Sachin Kapoor, Deputy Accountant General (Administration), A.G. Office, Allahabad. The said mob shouted provocative slogans and used abusive language against Shri Kapoor and also tried to forcibly enter the chamber of Shri Sachin Kapoor, which was closed and bolted from inside by the Multi Tasking Staff (MTS) posted in his cell to protect him. At the same time, the mob broke glass of the ventilator and pulled out curtains through the broken ventilator and set it on fire. It has been contended that the mob threw broken glasses, broom sticks, bottle of acid, seat of commode, mugs, stones, name plates and wiper into the chamber through the broken ventilator with an intention to grievously hurt Shri Sachin Kapoor. Finally, the help of police was sought for disbursing the mob. Very serious charges have been levelled against the petitioner and other employees of the A.G. Office. The details have been averred in paragraphs 4 to 12 of the counter affidavit, which clearly reveal to us that massive vandalism had taken place. The petitioner was initially suspended by the disciplinary authority vide order dated 25.2.2012 and his entry was also banned in the office premises. Even thereafter 11 employees including the petitioner were regularly holding meetings and demonstrations unauthorizedly with effect from 27.2.2012 onwards in front of the gate of AG office. It is also alleged that on 1.3.2012 they have also created a traffic jam in

front of Gate No.1 of A.G. Office.

13. In this background, in exercise of powers conferred by Rule 19 (ii) of the C.C.S. (CCA) Rules, 1965 read with clause (b) of second proviso to Article 311 (2) of the Constitution of India, the regular Disciplinary Authority i.e. D.A.G. (Admn) vide order dated 7.3.2012 had dismissed two employees of A.G. Office, Allahabad from service. Thereafter, the disciplinary proceedings under Rule 14 of 1965 Rules were instituted against the petitioner vide Memorandum (Chargesheet) dated 3.7.2012 for violation of the provisions of Rule 3 (1) (ii), 7 (I) read with Government of India's Decision No.(4) below Rule 7, Rule 7 (i) and Rule 7 (ii) of Central Civil Services (Conduct) Rules, 1964. The said charge-sheet was served on the petitioner on 4.7.2012. However, the petitioner denied the charges through his written statement of defence dated 13.7.2012.

14. As per record, this much is also reflected that thereafter the said suspension was reviewed by the Committee after every 90 days and he was allowed subsistence allowance vide order dated 26.3.2012 as per provisions contained in FR 53 (1) (ii) (a). The said subsistence allowance was further reviewed by the Appointing Authority/Disciplinary Authority before expiry of the first 90 days of suspension. It has also been contended that the period of suspension was prolonged due to the reasons recorded by the Disciplinary Authority in the case file, which was directly attributable to the petitioner as he continued to participate in the alleged meeting outside the AG office and consequently the subsistence allowance was decreased by 50% with effect from 25.5.2012 vide order dated 18.5.2012. FR 53 (1) (ii) (a) reads as under:-

“(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.”

15. It is relevant to indicate that the petitioner had proceeded to challenge the orders dated 18.5.2012 and 22.8.2012 before the Tribunal by filing Original Application No.1540 of 2012 and the Tribunal passed an interim order dated 7.12.2012 staying the orders dated 18.5.2012 and 22.8.2012. Consequently, the department has started paying subsistence allowance to the petitioner with effect from 1.12.2012 as per order of the Tribunal. Finally, the disciplinary proceedings were concluded and as per provisions contained in Rule 11 (vi) of 1965 Rules, the adhoc Disciplinary Authority vide order dated 24.6.2013 imposed upon the petitioner the penalty of reduction to a lower post of Clerk in the Grade Pay of Rs.1900/- with minimum basic pay of Rs.5830/- in the Pay Band-I (Rs.5200-20,200) for a period of five years with immediate effect. On the expiry of said period, the Charged Official shall regain his original seniority in the grade of Senior Accountant and the period of reduction to the post of Clerk shall postpone future increments of his pay. Consequently, the suspension of the petitioner was revoked by separate order dated 24.6.2013. Thereafter, the penalty order dated 24.6.2013 was modified by the Appellate Authority by reasoned and speaking order dated 2.3.2015 to the extent that the period of reduction to the post of Clerk shall not postpone future increments of pay. The said order is also under challenge before the Tribunal in Original Application No.1018 of 2015, which is stated to be pending consideration.

16. We have occasion to peruse the records in question and find that as per provisions of F.R. 53 (1) (ii) (a), 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. In this regard, the law is clear that if in the opinion of the competent authority, the period of suspension has been prolonged due to reasons to be recorded in writing, directly attributable to the Government servant, even after the said incident in question, the petitioner had continued to actively participate in the



demonstrations and unauthorized meetings in front of Gate No.1 of the office premises from 27.2.2012 onward after his suspension. This was the sole reason that even after the suspension, the charge sheet could not be served on him within time. Thereafter, the subsistence allowance, which was initially allowed in favour of the petitioner, was reviewed by the Appointing Authority/Disciplinary Authority as per the provisions of F.R. 53 (1) (ii) (a) before expiry of the first 90 days of suspension and as such, the period of suspension was prolonged due to the reasons directly attributable to the petitioner. Consequently, the subsistence allowance, which was initially sanctioned to the petitioner, was decreased by 50% with effect from 25.5.2012 vide order dated 18.5.2012.

17. As per record, this much is reflected that the Appointing Authority/Disciplinary Authority, while reducing the amount of subsistence allowance, recorded following reasons in the disciplinary case file of the petitioner for the said variation:-

“Since Shri Sanjay Kumar Singh actively participated in the demonstration and unauthorized meeting in front of Gate No.1 of the office premises from 27.2.2012 onwards during his suspension period and due to which investigation etc. could not be initiated in time, so payment of his subsistence allowance is to be decreased by 50%.”

18. The Tribunal, while proceeding into the matter to consider whether it was mandatory to incorporate the reasons for reducing the subsistence allowance in the order itself or whether it is sufficient to record the reasons in the concern file, has proceeded to dismiss the original application in question on the ground that as per law laid down by Hon'ble Apex Court in **Reena Rani vs. State of Haryana** reported in LAWS (SC) 2012-3-53, in which Hon'ble Supreme Court did not accept the contention that if reasons are not recorded in the final order, they must be communicated to the Government servant concerned to enable him to challenge the validity of the reasons in a departmental appeal or before a court of law, and in **Union of India and ors vs. E.G. Nambudiri** reported in **1991 AIR 1216**, in which it was held by Hon'ble Supreme Court that in Governmental functioning before any order is issued, the matter is generally considered at

various levels and the reasons and opinions are contained in the notes on the file, it was not mandatory to incorporate the reasons for reducing the subsistence allowance in the order itself and it was sufficient to record the reasons in writing in the concerned file, which was done in the case of the petitioner. In **Reena Rani's** case (supra) Hon'ble Apex Court, while referring to the second proviso to Article 311 (2) of the Constitution of India, has held as under:-

“It is obvious that the recording in writing of the reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated.”

19. In **Reena Rani's** case (supra) Hon'ble Supreme Court did not accept the contention that if reasons are not recorded in the final order, they must be communicated to the Government servant concerned to enable him to challenge the validity of the reasons in a departmental appeal or before a court of law. It has been further held as under:-

“The constitutional requirement in clause (b) is that the reason for dispensing with the inquiry should be recorded in writing. There is no obligation to communicate the reason to the Government servant. As Clause (3) of Article 311 makes the decision of the disciplinary authority on this point final, the question cannot be agitated in a departmental appeal, revision or review. The obligation to record the reason in writing is provided in clause (b) so that the superiors of the disciplinary authority may be able to judge whether such authority had exercised its power under clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes of promotion, etc.”

20. In the case of **E.G. Nambudiri** (supra) it has been held by Hon'ble Supreme Court that in Governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons the order cannot be held to be bad in law. If such an order is

challenged in a court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action.

21. We do not find that the Tribunal has committed any error in law in dismissing the original application in question.

22. Consequently, the writ petition sans merit and is, accordingly, dismissed. However, in the interest of justice, it is provided that whatever subsistence allowance has been paid to the petitioner, the same will not be recovered.

**Order Date :-27.5.2016**

**RKP**