

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road, Patna – 15

File No **BHRC/COMP.** 2667/10

Case of **AKHILESH Kr. SHARMA**

Applicant Akhilesh Kr. Sharma, an engineer in the Building Construction Department (under suspension), has approached this Commission with a complaint that he has been denied the benefit of increase in the subsistence allowance from 50% in terms of rule 10(1) of the Bihar Government Servants (Classification, Control & Appeal) Rules 2005 for 2 ½ years. He was placed under suspension on 17.3.2007 and allowed 50% of his pay as a subsistence allowance. The rule provides for increase in the amount after a period of one year. He, accordingly, filed application to increase the subsistence allowance on 17.4.2008 but no action was taken. He reiterated the request on 26.8.2008 and in October 2009 but without any result. He, then, on 7.9.2010 sought intervention of the Commission in the matter.

The Commission took cognizance of the complaint and called for report from the Secretary, Building Construction Department on 8.10.2010. The Department sent report vide its letter no.9341 dated 13.12.2010 to the effect that on receipt of the application for increase in the subsistence allowance report was called from the Road Construction Department which had not been submitted so far. The report further stated that as the allegations levelled against the applicant are of grave nature for which major punishment was awardable, it was considered proper to take decision in the matter only after receipt of the opinion/report from the Road Construction Department. Reminder, however, was being sent for the same.

The matter was fixed for oral hearing on 21.2.2011. At the hearing, Shri Ghulam Rabbani, Deputy Secretary, appeared on behalf of the Building Construction Department. He stated that the proposal regarding 50% increase in the subsistence allowance to the applicant was under active consideration and orders were likely to be issued in a day or two. In view of the said statement, hearing was postponed to 23.2.2011. When the matter was taken up on 23.2.2011, Shri Rabbani produced copy of notification dated 22.2.2011 increasing subsistence allowance by 50% with effect from 18.3.2008 i.e. the due date, on completion of period of one year from the date of suspension. The Commission observed that subsistence allowance should be increased in the ordinary course as and when due to the delinquent employee, and where this is not done, it is bound to cause mental agony and harassment to him and his family members

apart from hardships. Observing thus, the Commission asked the Department to submit explanation for the delay. The Commission clarified that in absence of some cogent explanation, it may consider granting compensation to the applicant for the belated increase in the subsistence allowance. The Department submitted its response, vide letter no.2737 dated 5.4.2011. On consideration of the same the matter was again fixed for hearing on 20.06.2011 and heard in the presence of the applicant and Shri Ghulam Rabbani.

The thrust of the Department's stand is that increase in subsistence allowance after one year from the date of suspension is not mandatory. In the instant case, in view of the nature of allegations which could warrant major penalty, it was necessary to see as to whether the applicant was cooperating in the departmental proceeding. Report in this regard was received from the Road Construction Department on 23.12.2010 and soon after, notification was issued on 22.2.2011. It is said that there was no other reason than the compliance of the procedure which caused the delay.

In course of hearing Shri Ghulam Rabbani referred to rule 10 of the Classification, Control and Appeal Rules. On perusal of the rule it does appear that increase in the subsistence allowance after completion of period of one year is not automatic. But the only ground on which the increase can be withheld is the conduct of the delinquent employee vis-à-vis the departmental proceeding. In other words, the increase can be withheld (or denied) only on the ground of his non-cooperation in the conduct/conclusion of the proceeding. The nature of the charges has no bearing on the issue.

There is no dispute that the applicant filed application for increase in the subsistence allowance on 17.3.2008. There is also no dispute that there is no allegation against him of not cooperating with the Enquiry Officer in conducting the departmental proceeding. The report dated 23.12.2010 gives a clean chit to him in this regard. And no attempt was made by the Departmental Representative to find fault with the applicant's conduct vis-à-vis the departmental proceeding. There is also no dispute that the applicant filed application for subsistence allowance dated 17.4.2008 and reiterated his request at regular intervals. The Commission would agree that on receipt of the application the Building Construction Department could legitimately call for report from the Road Construction Department. But apparently the reference was not followed up. It may be recalled that notice was issued by the Commission on 8.10.2010 and the Road Construction Department sent its report on 23.12.2010, that is, after the Commission issued notice. In any case, there is no explanation

at all as to why the Road Construction Department took about three years to submit the report.

May be that the applicant has been allowed the increase in the subsistence allowance with effect from the due date i.e. 18.3.2008 itself. That, however, does not conclude the matter. The amount of subsistence allowance – like pay/salary – has a direct bearing on the livelihood of the person concerned. Just as the denial of full pay – to which he is entitled – would adversely affect him, in the same manner, withholding or denial of the increase in the subsistence allowance – to which he is entitled – visits him with adverse consequences – affecting his livelihood and therefore the quality of life. It is not difficult to visualise the hardships which non-payment or less payment of pay or allowances including subsistence allowance would cause to the person concerned. Where payment is made after inordinate delay, the Commission is of the view, the government cannot shirk its responsibility and get away by taking the plea that it has been done from the due date, without giving satisfactory explanation of the delay. The Commission is therefore of the view that for the violation of his human rights on account of less payment of the increased subsistence allowance to which he was entitled, the applicant is entitled to be monetarily compensated.

The question of course would have been different had the conduct of the applicant been amiss. In other words, had it been the case that the applicant was not cooperating with the Enquiry Officer in concluding the departmental proceeding, the government would have been justified in withholding the increase of subsistence allowance, in view of the rule 10 of 2005 Rules. But even the departmental representative fairly agreed that in the instant case, the applicant was not at fault. If that is so, it was clearly the fault or default of the Department which resulted in less payment of subsistence allowance for about three years.

The Commission is conscious of the fact that it was the Road Construction Department, and not the Building Construction Department, which was at fault because the departmental proceeding is being conducted in the Road Construction Department being the cadre controlling department; but that is a matter which relates to allocation of business between two departments. So far as the applicant is concerned the department-wise allocation of business is of no concern to him. Departments are creations of the Government under Rules of Executive Business under Article 166 of the Constitution of India, but it is really the 'Government' – which transacts its business through different departments – and is therefore liable in cases of default.

Now coming to the point of compensation, as observed above, the Commission is satisfied that the applicant is entitled to monetary compensation

which would be of some solace and recompense for the loss and hardship and inconvenience faced by him and his family members during the relevant period. In the facts and circumstances, the Commission would quantify the compensation as Rs twenty-five thousand. The amount shall be paid by the Government but with liberty to recover from the salary of the official(s) who were responsible for the delay, after enquiry and notice.

In the result, the Commission would direct the Principal Secretary, Building Construction Department to pay sum of Rs. twenty-five thousand to the applicant as compensation within six weeks and submit compliance.

Copy of this order may be sent to the Principal Secretary, Building Construction Department as well as the applicant.

Justice S.N. Jha
Chairperson