

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on : 3rd August, 2010*
Judgment Pronounced on: 14th December, 2010

+ **W.P.(C) 916/2007**

VIJAY KUMAR AGGARWAL Petitioner
Through: Petitioner in person.

versus

UNION OF INDIA & ANR. Respondents
Through: Mr.Atul Nanda, Advocate for UOI
Mr.Vinay S.Masurkar, Mr.Amol N.
Suryawanshi, Advocates for R-2/
State of Maharashtra.

W.P.(C) 2563/2007

VIJAY KUMAR AGGARWAL Petitioner
Through: Petitioner in person.

versus

UNION OF INDIA & ANR. Respondents
Through: Mr.Atul Nanda, Advocate for UOI
Mr.Vinay S.Masurkar, Mr.Amol N.
Suryawanshi, Advocates for R-2/
State of Maharashtra.

W.P.(C) 2768/2007

VIJAY KUMAR AGGARWAL Petitioner
Through: Petitioner in person.

versus

UNION OF INDIA & ANR. Respondents
Through: Mr.Atul Nanda, Advocate for UOI
Mr.Vinay S.Masurkar, Mr.Amol N.
Suryawanshi, Advocates for R-2/
State of Maharashtra.

W.P.(C) 6669/2007

VIJAY KUMAR AGGARWAL Petitioner
Through: Petitioner in person.

versus

UNION OF INDIA & ANR. Respondents
Through: Mr.Atul Nanda, Advocate for UOI
Mr.Vinay S.Masurkar, Mr.Amol N.
Suryawanshi, Advocates for R-2/
State of Maharashtra.

W.P.(C) 1653/2008

VIJAY KUMAR AGGARWAL Petitioner
Through: Petitioner in person.

versus

UNION OF INDIA & ANR. Respondents
Through: Mr.Atul Nanda, Advocate for UOI
Mr.Vinay S.Masurkar, Mr.Amol N.
Suryawanshi, Advocates for R-2/
State of Maharashtra.

W.P.(C) 7321/2008

VIJAY KUMAR AGGARWAL Petitioner
Through: Petitioner in person.

versus

UNION OF INDIA & ANR. Respondents
Through: Mr.Atul Nanda, Advocate for UOI
Mr.Vinay S.Masurkar, Mr.Amol N.
Suryawanshi, Advocates for R-2/
State of Maharashtra.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. The six captioned writ petitions are being decided by a common judgment for the reason the factual matrix is intertwined and one event led to the other resulting in various orders being passed. Unfortunately for the petitioner the joy of being inducted as a member of the Indian Administrative Service was short-lived and before he came out of his infancy in the service he got embroiled in litigation after litigation. Except for a short stint of service spanning about five years he discharged no duties, being suspended, and ultimately got dismissed from service on 2.4.2007. Having successfully cleared the Central Civil Services Examination and being allocated Maharashtra Cadre, as a Member of the Indian Administrative Service, the petitioner joined service in the State of Maharashtra on 1.9.1982.

2. Claiming that he became eligible to be granted the senior time-scale on 1.1.1986 and alleging that the same was illegally denied to him, the petitioner filed WP(C) No.656/1986 before the High Court of Bombay which was transferred to the Central Administrative Tribunal upon constitution of the Tribunal where the said writ petition was dismissed by the Tribunal vide judgment and order dated 19.1.1987 against which the Supreme Court granted Leave to Appeal and as a result Civil Appeal No.3464/1987 came to be registered before the Supreme Court against the decision dated 19.1.1987 passed by the Central Administrative Tribunal.

3. When the Civil Appeal was pending before the Supreme Court, the petitioner was suspended vide order dated 26.5.1988 and a charge-sheet was served upon him for major penalty

proceedings on 6.7.1988. The petitioner challenged his being suspended as also the charge-sheet by and under WP(C) No.1037/1988 before the Supreme Court.

4. Vide judgment and order dated 30.8.1988, Civil Appeal No.3464/1987 was allowed by the Supreme Court and the decision dated 19.1.1987 of the Central Administrative Tribunal was set aside. As a result thereof, the petitioner became entitled to be placed in the senior time-scale with effect from the date persons junior to him were placed in the senior time-scale; all consequential benefits as per Service Rules were held to be enuring to the benefit of the petitioner.

5. An interim order dated 2.11.1988 was passed by the Supreme Court in WP(C) No.1037/1988 in which the charge-sheet issued and served upon the petitioner on 6.7.1988 was stayed. Though prayed for, order dated 26.5.1988 under which the petitioner was suspended was not stayed. Thus since 26.5.1988 the petitioner remained suspended.

6. In the meanwhile, vide order dated 1.10.1988 petitioner was granted senior time-scale with effect from 25.2.1986 in compliance with the decision dated 30.8.1988 passed by the Supreme Court in Civil Appeal No.3464/1987. Since petitioner was under suspension since 26.5.1988, the Collector Kolhapur sent a bill to be signed by the petitioner so that subsistence allowance could be paid. None could be paid as the bill was not signed. Thereafter, various communications were sent to the petitioner on 27.3.1989, 19.12.1990, 9.5.1991, 13.5.1991, 23.5.1991, and 17.7.1991 calling upon the petitioner to submit non-employment certificate and sign the bills sent to him from time to time so that subsistence allowance could be released. The petitioner ignored all of them.

7. The petitioner resorted to multiple litigation before the Central Administrative Tribunal as also directly before the Supreme Court on various issues and got no relief save and except a direction from the Tribunal at Delhi to be granted a 'No Objection Certificate' by the Competent Authority to enable him to obtain a passport. Petitioner filed Criminal Writ Petition before the Supreme Court as also a Criminal Appeal pertaining to some orders, details whereof need not be noted by us as they are not relevant, but are being noted to highlight that the petitioner resorted to all and sundry proceedings but did not sign the bill sent to him for payment of subsistence allowance nor furnished the non-employment certificate. Relevant would it be to note that in Criminal Appeal No.605/1991, vide order dated 31.10.1991 the Supreme Court was constrained to dispose of Criminal Appeal No.605/1991 and we note the contents of the order as they are of some relevance to the decision of WP(C) 916/2007 and WP(C) No.2768/2007. The order reads as under:-

"This appeal arises out of an order passed by the Central Administrative Tribunal dated 7.6.1991. Against this very judgment the appellant had earlier preferred Special Leave Petition (Crl.) No.2061/91, which we have dismissed by our order dated 14.8.1991.

When this appeal came up for hearing the appellant once again took us through the entire history of his service career from 1982 to 1988 which gave us the impression that certain events which had taken place had led to a cycle of litigation. In the course of the hearing he also invited our attention to a representation which he made to the Central Government for changing his allocation from Maharashtra to any other State and stated that the said representation had not yet been disposed of, at least he was not communicated the outcome thereof. We, therefore, requested the learned Attorney General

to look into his representation and having regard to the past events to find a solution, if possible. The appellant also stated before us that he would be willing to withdraw all the proceedings provided he is given a change of cadre allocation to another State and the charges against him are also dropped. He also stated that to show his bonafides he would not press his appeal. We must make it clear that his statement not to press the appeal will not affect any of his pending litigation unless a solution is found as stated earlier. We have, therefore, requested the learned Attorney General to personally look into the matter and see if a solution of the type suggested is possible in the facts and circumstances of this case and communicate the same in the pending appeal at an early date, preferable within three months.

With these observations, we dispose of this appeal as not pressed.

A copy of this order may be given to the learned Attorney General to enable him to move in the matter.

As regards his application dated 30.10.1991 requesting us not to hear this appeal, we can only state that the appellant himself later desired that we should return it to him but since it was taken on record we did not deem it appropriate to do so. We, however, do not propose to comment on the averments since the appellant participated in the hearing and we have heard him and passed the above order."

8. The order throws light on a fact i.e. the petitioner being involved in multifarious litigation and probably taking an obstinate and a rigid stand and being suspended having pent up frustration evidenced by moving an application before a Bench of the Supreme Court praying that the particular Bench should not hear his Appeal. The order brings out the anxiety of the Supreme Court to find a solution outside the four corners of law, for the probable reason, no solution was possible within the four

corners of law; the solution being to effect a change in the cadre by transferring the petitioner to outside Maharashtra.

9. The petitioner filed multifarious writ petitions, special leave petitions etc. against various orders before the Supreme Court as also contempt petitions and all of which got dismissed from time to time, but relevant would it be to note that with respect to the order dated 31.10.1991 aforementioned, the Supreme Court closed the issue as far as judicial intervention was concerned pertaining to petitioner's cadre being transferred under the State of Punjab and for which the Supreme Court had passed an order on 15.2.1993 directing that Government of India would look into the matter. By 16.12.1993 the Supreme Court was informed that there were some difficulties being encountered in the inter cadre transfer of the petitioner. Relevant would it be to note that on 15.2.1993, in Criminal Appeal No.605/1991 the Supreme Court had observed that the State of Punjab was willing to take the petitioner on deputation for one year and in pursuance of the willingness expressed by the State of Punjab on 1.3.1993 the petitioner submitted an application to the Central Government for his being transferred, on deputation, to the State of Punjab but on certain conditions. The same were not accepted by the State of Maharashtra. The State of Maharashtra, the Central Government and the State of Punjab remained in touch with each other pertaining to petitioner's inter cadre transfer to the State of Punjab and to facilitate the same, petitioner's suspension needed to be revoked and thus on 13.5.1996, exercising power under Rule 3(7)(c) of the All India Services (Discipline and Appeal) Rules 1969 the Competent Authority in the State of Maharashtra withdrew the order dated 26.5.1988 under which the petitioner was placed under suspension. The said order records the reason why the

suspension was being withdrawn; the reason being to facilitate petitioner's inter cadre transfer and preceding the same his proceeding on deputation to the State of Punjab. The order clearly records that the same was being passed in view of a letter dated 15.2.1996 received from the Government of India as per which petitioner's proceeding on deputation to the State of Punjab required the suspension to be withdrawn.

10. Since the order suspending the petitioner was withdrawn and it would have taken time for the Central Government to finalize the procedural formalities required to be completed for the State of Punjab before which petitioner could be sent on deputation to the State of Punjab, he was required to be assigned some work, and accordingly on 7.6.1996 he was directed to take charge as a Deputy Secretary, Social Welfare, Cultural Affairs and Sports Department Government of Maharashtra. The petitioner did not join, and unfortunately for him, the inter cadre transfer from the State of Maharashtra to the State of Punjab as also petitioner being sent on deputation to the State of Punjab could not materialize. The petitioner, notwithstanding his suspension being revoked on 13.5.1996 and he being directed to take charge as the Deputy Secretary of the Social Welfare, Cultural Affairs and Sports Department of the State of Maharashtra on 7.6.1996, did not join duty and thus on 4.5.1998 a second charge sheet was issued and served upon him on the ground that he remained unauthorizedly absent from duty as also had left the headquarters without the permission of the Competent Authority. The petitioner filed a contempt petition in Civil Appeal No.3464/1987 which had already been disposed of, in which he did not disclose to the Court of his having filed various interim applications pertaining to his inter cadre transfer to the State of Punjab and all of which had been

disposed of. The contempt petition was disposed of as dismissed vide order dated 12.11.1998 after the Supreme Court noted that the issue of inter cadre transfer have been closed by the Supreme Court vide its order dated 16.12.1993. The Supreme Court found no contempt committed by the State of Maharashtra. Relevant would it be to note that the pleadings in the contempt petition numbered 457/1998 was an attempt to stay the disciplinary proceedings initiated on 4.5.1998 as also a subsequent memorandum dated 5.10.1998 under which a third charge sheet was served upon him.

11. It is apparent that the petitioner was messing up his career. On 27.2.1997 the Government of India rejected petitioner being sent on deputation to the State of Punjab and the State Government intimated the same to the petitioner under cover of a letter dated 29.3.1997.

12. Once again, suppressing relevant facts, the petitioner filed a contempt petition in the disposed of Civil Appeal No.3464/1987 alleging that the State of Maharashtra was not complying with the judgment and order dated 30.8.1988 by which petitioner's Civil Appeal No.3464/1997 was allowed. Needless to state he raised a grievance that he was not paid salary in the senior time scale. It appears that the petitioner raised a further issue of persons junior to him being promoted and hence a claim by the petitioner to be paid salary in the promotional post. We may immediately add a caveat here, neither the petitioner nor the respondents were very sure whether the petitioner had a grievance of not being paid salary in the higher scale i.e. above the senior time scale, but halfheartedly stated that probably it was so.

13. The State of Maharashtra informed the Supreme Court of the facts aforementioned i.e. petitioner's suspension being revoked

on 13.5.1996 and he not joining for duty. As regards the issue of subsistence allowance effective from the date when the petitioner was suspended and till the suspension was revoked i.e. the period 26.5.1988 till 13.5.1996, it was informed that neither was the petitioner signing the bills sent to him for being paid the subsistence allowance nor was he submitting a certificate of not being gainfully employed. Vide order dated 19.9.2001, the Supreme Court directed that as an interim measure, on ad-hoc basis, the complete salary be paid to the petitioner with effect from 1.5.1988 to 13.5.1996. Tentatively quantifying the amount payable being ₹10,00,000/- (Rupees Ten Lakhs), it was directed that a draft would be brought to Court within 3 weeks and in the meanwhile the State was directed to calculate the exact salary payable to the petitioner on the basis of the petitioner being placed in the senior time scale as directed by the Supreme Court. The order dated 19.9.2001 reads as under:-

“Heard the applicant-petitioner appearing in person and the learned counsel for the respondents.

By order dated 30.8.1988 passed in Civil Appeal No.3464/1987 this Court has directed the State of Maharashtra to give the appellant senior time scale with effect from the date on which his juniors were given and also directed the State to give the consequential benefits as per the rules regulating his service.

It has been pointed out that in compliance with the said order petitioner was granted promotion in senior time scale from 25.2.1986 i.e. the date on which his junior K.P.Bakshi was promoted in the senior time scale.

It is the contention of the applicant-petitioner that neither the salary nor the suspension allowance is paid to the petitioner. Admittedly, prior to the passing of

the order dated 1.10.1988 applicant was placed under suspension by order dated 26.5.1988.

In this view of the matter, apart from taking any further action for committing breach of the order passed by this Court, respondent-State of Maharashtra is directed to pay salary to the applicant-petitioner from 1.5.1988 to 13.5.1996 for the time being on ad hoc basis. Respondent to pay Rs.10 lacs (Rupees Ten lacs only) within a period of three weeks from today by demand draft. Meantime respondents are directed to calculate the exact salary amount payable to the applicant-petitioner on the basis of senior time scale.

To be placed on Board on 11.10.2001.

Mr.Yashank Pravin Adhyaru, the learned senior counsel is appointed amicus-curiae to assist the court."

14. The State of Maharashtra calculated the full salary payable to the petitioner for the period 1.5.1988 to 13.5.1996 in sum of ₹6,82,290/- and immediately filed an application before the Supreme Court, with reference to the order dated 19.9.2001 and requested the Supreme Court that since the amount payable was far less than ₹10,00,000/- (Rupees Ten Lakhs), the State may be permitted to hand over a sum of ₹6,82,290/- to the petitioner towards full salary for the period 1.5.1988 till 13.5.1996. The application by the State was disposed of by the Supreme Court on 11.10.2001. The order reads as under:-

"Heard the learned counsel for the parties.

Considering the affidavit filed on behalf of the State of Maharashtra pointing out that if the suspension period is regularized as a duty period, petitioner would be entitled to have full salary for the period from 1.5.1988 to 13.5.1996 and that amount would be Rs.6,82,290/-. Hence, our order dated 19.9.2001 directing the respondent-State to pay Rs.10 lac to the petitioner is modified to the aforesaid extent and the State of Maharashtra is directed to pay a sum of

Rs.6,82,290/- towards full salary for the period in question. This amount is accepted as a correct figure given by the authorities and considered to be a correct figure subject to verification by the petitioner or further calculation by the concerned officers. The amount to be paid to the petitioner by demand draft within seven days from today. I.A.s 9 & 10 stands disposed of accordingly.

Stand over to 18.10.2001.”

15. On the next date of hearing when the contempt petition filed by the petitioner was listed i.e. 18.10.2001, a demand draft in sum of ₹6,82,290/- was tendered to the petitioner in Court. He refused to accept the same. Reason why he did not accept the amount was the grievance that the same represented salary calculated as per the senior time scale. He claimed that persons junior to him had earned promotions and thus salary had to be paid to him in the scale applicable to the promotional post. The Supreme Court taking note of the obstinate stand of the petitioner dismissed the contempt petition filed by the petitioner as also pending applications, which as per the order dated 18.10.2001 shows were about 7 in number. The Supreme Court noted that as regards the State Government, it had tendered a sum of ₹6,82,290/- to the petitioner which he had refused. As regards the stand of the petitioner that he was entitled to the wages at a higher pay scale the Supreme Court held that the said issue could not be decided in contempt and relevant for our purposes would be to note certain observations of the Supreme Court in its order dated 18.10.2001, the same read as under:-

“However, it cannot be said that State Government has violated any order passed by this Court. For the grievance of the petitioner that he was not given a suitable posting, it has been pointed out by the learned counsel for the respondents that despite the posting order given by the State Government,

petitioner is not prepared to join the said post on the ground that he is eligible for higher post. This question cannot be dealt with or decided in contempt proceedings. Secondly, an employee in government service cannot himself decide that he is entitled to a particular post and, therefore, if such posting is not given he will not join service. If he is aggrieved by the wrong posting he can challenge the same. Further, considering the contents of the letter written by the petitioner and various contempt petitions filed against the learned Judges of this Court also. It appears that these contempt proceedings are frivolous and no case for contempt is made out. Hence, these contempt proceedings are rejected.

Registry is directed not to entertain any petition for the same cause.”

16. There were yet various writ petitions, contempt petitions and criminal appeals filed by the petitioner before the Supreme Court, all of which were dismissed in default on 7.10.2002. The order dated 7.10.2002 passed in WP(C) No.1037/1988 records: *“Despite the service of notice of hearing to the petitioner for remaining present, the petitioner has not remained present. In spite of that petitioner who appears in person has filed an application for transfer of the matter to another Bench. In our view, enough indulgence is shown to the petitioner and he has misused the same. The petition therefore does not require any further consideration. The writ petitions, contempt petitions, criminal appeal and the I.A. are dismissed for default. Interim order stands vacated.”* Thereafter, on an application filed, the writ petition was restored. Rather than argue the writ petition, the petitioner filed another writ petition No.75/2003 claiming multifarious reliefs pertaining to his service which was dismissed on 16.6.2003. Thereafter, vide order dated 9.12.2005 WP(C) No.1037/1988 was dismissed with a direction that the petitioner

may avail the alternative remedy of approaching the Central Administrative Tribunal.

17. The petitioner thereupon filed OA No.1714/2003 before the Central Administrative Tribunal praying that the order dated 13.5.1996 revoking his suspension be set aside, to the extent it was in contravention of Rule 5-B of the All India Services (Discipline & Appeal) 1969. He further prayed that the order dated 7.6.1996 posting him as Deputy Secretary, Social Welfare, Cultural Affairs and Sports Department as also the two charge-sheets dated 4.5.1998 and 5.10.1998 be quashed. He sought quashing of an order dated 18.9.2002 where under an inquiry officer was appointed as also the order dated 27.3.2003 intimating him that salary could not be paid to him as he was not reporting for duty. Petitioner prayed that the State of Maharashtra should reinstate him in compliance with Rule 5-B of the All India Services (Discipline & Appeal) 1969. He prayed that full salary be paid to him w.e.f. 1.5.1988 till date, and the period during which he remained under suspension i.e. 26.5.1998 till 13.5.1996 should be directed to be treated as spent on duty and it be directed that he was deemed to be promoted to all the ranks above the senior time-scale as and when persons junior to him earned promotion.

18. The petitioner filed various miscellaneous applications in OA No.1714/2003 and needless to state sought all and sundry relief, whether or not the same fell within the scope of the main relief sought for.

19. To put it in brief the challenge to the various orders and consequential relief sought for by the petitioner was premised on the plea that an order under Rule 3(7)(c) of the All India Services (Discipline & Appeal) Rules 1969 revoking the suspension had to be an order composite encompassing Rule 5

B of the said Rules for the reason sub-rule 1 of Rule 5 B enjoined upon the authority competent to order reinstatement to pass a specific order: (a) Regarding the pay and allowances to be paid to the member of the service for the period of suspension ending with reinstatement, and (b) Whether or not the said period shall be treated as period on duty. He thus prayed that the order revoking his suspension i.e. the order dated 13.5.1996 was a nullity inasmuch as the said order did not deal with (a) and (b) as noted herein before. He justified his not joining duty in terms of the order dated 7.6.1996 on the ground that the post of Deputy Secretary was below his entitlement and to justify his entitlement he claim to be treated at par with the person immediately junior to him as said person had earned a promotion. Relevant would it be to note that by the time petitioner filed the Original Application he had received ₹6,82,290/- i.e. the sum which was tendered to him before the Supreme Court and acceptance whereof was denied by him, but it appears that good sense prevailed over the petitioner and he subsequently received the pay order. He did not disclose to the Tribunal that in the super time-scale he had received full salary for the period 1.5.1988 till 13.5.1996.

20. Vide order dated 18.11.2003 the Tribunal disposed of OA No.1714/2003 and the Tribunal quashed the order dated 13.5.1996 and granted no further relief to the petitioner as regards the other prayers, due to multifarious causes being joined for which we note that the petitioner was free to take resort to necessary action and he did but only qua the second charge sheet dated 4.5.1998. The penalty imposed on him vide order dated 2.4.2007 has been challenged before the Tribunal and the matter is pending adjudication before the Tribunal.

21. The reasoning of the Tribunal is that while revoking the suspension exercising power under Rule 3(7)(c), a composite order contemplated by Rule 5 B had to be passed with respect to the manner in which the suspension period had to be reckoned and on the entitlement of payment of salary. Giving no reasons as to why salary post June 1996 was declined, the Tribunal held that if the petitioner joined service as a Deputy Secretary, the salary shall be paid. However, the Tribunal granted liberty to the State of Maharashtra to pass a fresh order on the issue of revocation of suspension and while so doing pass necessary orders contemplated by Rule 5 B. Petitioner sought review of the order passed by the Tribunal by questioning the liberty granted to the Department to pass a fresh order and urged in the Review Petition, being RA No.73/2004, that having quashed the order dated 13.5.1996, the Tribunal could not have granted permission to the State to pass a fresh order. Vide order dated 8.3.2004 the application seeking review was dismissed. Another attempt made for review of the order dated 18.11.2003 by and under RA No.374/2003 met with a dismissal vide order dated 7.1.2004.

22. Being aggrieved by the orders passed by the Tribunal in OA No.1714/2003 the petitioner has filed WP(C) No.916/2007 and as argued by the petitioner, he questions the order dated 18.11.2003, 7.1.2004 and 8.3.2004 passed by the Tribunal on the ground that having not passed a composite order envisaged by Rule 3(7)(c) and Rule 5 B of the All India Services (Discipline & Appeal) Rules 1969 the order dated 13.5.1996 had to be declared a nullity and the Tribunal could not have directed a fresh order to be passed. The petitioner seeks from this Court to have the order dated 7.6.1996, by which he was posted as a Deputy Secretary post revocation of his suspension on

13.5.1996, declared as void on the plea that the department could not post him to a post below one to which the person immediately junior to him had earned a promotion. The petitioner seeks quashing of the charge-sheet issued to him on 4.5.1998, alleging misdemeanour of not reporting for duty, on the plea that he was justified in not reporting for duty to a post to which he could not be made to join and consequently prays that the inevitable conclusion of his success would be the entitlement to be paid salary w.e.f. 13.5.1996 and as per the scale applicable to the posts held by the person immediately junior to him as said person had earned promotions, which petitioner claims were wrongly denied to him.

23. It is apparent that as regards WP(C) No.916/2007, two questions have to be answered by us. Firstly, whether as a result of not passing an order contemplated by Rule 5 B of the All India Services (Discipline & Appeal) Rules 1969 when exercising power under Rule 3(7)(c), the suspension was revoked, in that, the order dated 13.5.1996 not dealing with the manner in which the period of suspension had to be treated, renders the order void and as urged by the petitioner the effect would be that he is required to be treated as under suspension and for said reason it could not be alleged against him that he did not report for duty when called upon to do so vide order dated 7.6.1996. The second question to be answered is whether the petitioner could insist that on being asked to join back he had to be posted on a post to which the person immediately junior to him was posted on having earned promotions?

24. Rule 5 B(1) and (7) of the All India Services (Discipline & Appeal) Rules 1969 read as under:-

“5 B. Admissibility of pay and allowances and treatment of service on re-instatement after

suspension. – (1) When a member of the Service under suspension is reinstated or would have been so reinstated but for the retirement under the All India Services (Death-*cum*-Retirement Benefits) Rules, 1958 while under suspension, the authority competent to order reinstatement shall consider and make specific order –

- (a) regarding the pay and allowances to be paid to the member of the Service for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be; and
- (b) whether or not the said period shall be treated as a period on duty.

(2) xxxx

(3) xxxx

(4) xxxx

(5) xxxx

(6) xxxx

(7) In a case falling under Sub-rule (5) the period of suspension shall not be treated as a period spent on duty, unless the authority competent to order reinstatement specifically directs that it shall be so treated for any specified purposes;

Provided that if the member of the Service so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the member of the Service."

25. We note that Rule 5 B of the All India Services (Discipline & Appeal) Rules 1969 is *pari materia* with FR 54 B and in the decisions reported as 1993(25) ATC 321 Girdhari Lal vs. Delhi Administration & Ors, 1993 (24) ATC 641 Basant Ram Jaiswal vs. Area Manager (North) MTNL Bombay, 1996 (3) (Supp.) LLJ 855 Hira Lal vs. DDA & Ors. and AIR 1987 SC 2257 O.P.Gupta vs. UOI

& Ors. it has been held that while revoking the suspension it is the duty of the competent authority to pass an order regarding pay and allowances for the period a government servant remained under suspension and that the composite order has to be a part of the same transaction having two parts and that the power to revoke the suspension cannot be exercised in isolation of the power to pass an order regarding pay and allowances. But, the said decisions do not hold that if no order pertaining to pay and allowances is passed, an order revoking suspension is void and non-est. As clarified by the Tribunal in Basant Ram Jaiswal's case (supra), in such situation the competent authority cannot exercise the power under FR 54 B. Thus, the law is that if while revoking the suspension or within a reasonable time thereof, no order is passed pertaining to pay and allowances for the period of suspension, the authority is denuded from passing such order and the inevitable result would be the Government servant being entitled to the fully salary for the period he remained under suspension.

26. Thus, while disposing of the Original Application filed by the Tribunal, vide order dated 18.11.2003, the Tribunal could not have permitted the Government to pass a fresh order and at the same time we hold that the Tribunal could not have quashed the order dated 13.5.1996 revoking the suspension.

27. We hold that the only relief to which the petitioner would be entitled to, at the most, would be to full pay and allowances for the period he remained under suspension and which we note had already been paid to him when he went to the Tribunal. It is unfortunate that the Tribunal did not even bother to note that pursuant to orders passed by the Supreme Court, the State had tendered ₹6,82,290/- to the petitioner towards full salary for the period 1.5.1988 till 13.5.1996, which amount he had refused to

take, but had later on received the same when he approached the Tribunal. We may additionally note that the State of Maharashtra had not revoked the suspension on its own, but as noted herein above, had done so to facilitate petitioner's inter-cadre transfer from Maharashtra cadre to Punjab cadre and thus the order of revocation of suspension was really speaking not in exercise of the power to revoke the suspension on the ground that the petitioner was no longer required to be kept under suspension and this peculiar circumstance has unfortunately not been kept in mind by the Tribunal.

28. But, we need not unnecessarily trouble ourselves with the issue for the reason we hold that the result of not passing a composite order and the limb contemplated by Rule 5 B of the All India Services (Discipline & Appeal) Rules 1969 not being an integral part of the order dated 13.5.1996, and treating the said order to be passed in exercise of power under Rule 3(7)(c) of the All India Services (Discipline & Appeal) Rules 1969, the petitioner would be entitled to a declaration that the State of Maharashtra would be prohibited to pass any order in exercise of its power under Rule 5 B of the All India Services (Discipline & Appeal) Rules 1969 and as a corollary thereof the petitioner would be entitled to full salary for the period he remained under suspension i.e. with effect from 26.5.1988 till 12.5.1996 and we further note that the petitioner has been paid full salary for the said period.

29. Now, the petitioner's contention that the order dated 13.5.1996 revoking his suspension has to be treated as void having failed, we need to discuss whether the petitioner was justified in not reporting for duty after suspension was revoked and was posted as a Deputy Secretary, Social Welfare, Cultural Affairs and Sports Department, Government of Maharashtra. As

noted above, two reasons were advanced by the petitioner for not so joining. The first was that notwithstanding his suspension being revoked, the order dated 13.5.1996 being void, he continues to be under suspension and thus could not be asked to report for duty and secondly he could not be made to join at a post junior to the one held by the person immediately junior to him.

30. The first limb of the contention has obviously to be rejected for our preceding reasons where we have upheld the order dated 13.5.1996. On the second limb, suffice would it be to state that in spite of the Supreme Court clarifying on this issue in its order dated 18.10.2001, contents whereof have been noted by us in para 15 above, the petitioner continued to act like an ostrich. Needless to state, promotion was not a matter of right. It had to be earned. The petitioner was charge-sheeted on 6.7.1988 and pending a charge-sheet for a major penalty proceedings he could not be promoted till the disciplinary proceedings were over. The disciplinary proceedings could not proceed as the petitioner had obtained a stay from the Supreme Court on 2.11.1988 in WP(C) 1037/1998. At best, recommendations pertaining to the petitioner for promotion had to be kept in a sealed cover. Thus, the petitioner could not insist that till not made to join on a post equivalent to the one earned by way of promotion by the person immediately junior to him, he would not report for duty. Even otherwise, as clarified by the Supreme Court in its order dated 18.10.2001, contents whereof have been noted by us in para 15 above, the law is that the petitioner could not have himself decided as to what post he was entitled to and if he had a grievance pertaining to a wrong posting, he was duty bound to join service and question the posting order. The petitioner never challenged the order dated

7.6.1996 posting him as a Deputy Secretary till he filed OA No.1714/2003. We may note that the petitioner has filed over a fifty miscellaneous applications in various proceedings before the Supreme Court and it may be that in a few he may have questioned the order dated 7.6.1996, but he has got no relief. Indeed, none was shown to us. The position would be that a substantive challenge was raised to the order dated 7.6.1996 in the year 2003 when OA No.1714/2003 was filed.

31. Having held as aforesaid pertaining to the order dated 13.5.1996 and the Tribunal's order dated 18.11.2003, it hardly matters whether the Tribunal was justified in dismissing RA No.374/2003 and RA No.73/2004 vide orders dated 7.1.2004 and 8.3.2004. As a consequence the charge-sheet dated 4.5.1998 served upon the petitioner cannot be faulted. To conclude, no relief can be granted to the petitioner in WP(C) No.916/2007 which merits dismissal.

32. We note that in the said writ petition four applications being CM No.10455/09 as also CM No.11155/09, CM No.11156/09 and CM No.7142/2010 are pending. The first is for a correction of the order dated 21.7.2008, the second and the third are for interim relief and the last one is for payment of subsistence allowance.

33. Since the writ petition is dismissed we hold that the first three applications have been rendered infructuous, and as regards the last, suffice would it be to state, that having not worked after suspension was revoked, the petitioner would be entitled to no suspension allowance as he was not under suspension and thus direction sought vide CM No.7142/2010 that suspension allowance be paid is dismissed. We reiterate that for the period petitioner remained under suspension he has been paid full salary calculated in terms of the decision of the

Supreme Court in Civil Appeal No.3464/1987 as per the judgment and order dated 30.8.1998.

34. Before dealing with the other writ petitions, we need to note that so great is the confusion created by the petitioner that notwithstanding he being paid full salary for the period he remained under suspension, after the Tribunal decided OA No.1714/2003 and permitted the Department to pass an order pertaining to the period the petitioner remained under suspension, an order was passed on 29.7.2004 declining to pay full pay and allowance to the petitioner for the period 26.5.1988 to 12.5.1996 i.e. the period during which he remained under suspension. The said order was challenged by the petitioner vide OA No.2507/2005 in which he filed as many as six miscellaneous applications seeking all and sundry reliefs the Tribunal disposed of all the applications as also Civil Appeal No.2507/2005 holding that the order dated 29.7.2004 was repugnant to the directions issued by the Supreme Court to pay full salary to the petitioner for the period 1.5.1988 to 13.5.1996 but the Tribunal further noted that the petitioner had received the salary for the said period in sum of ₹6,82,290.

35. Linked to the issues raised in WP(C) No.916/2007 are the issues raised by the petitioner in WP(C) No.2768/2007 in which the petitioner seeks quashing of the orders dated 18.5.2004, 28.9.2005, 6.1.2006 and 17.1.2007 by the Central Administrative Tribunal with a prayer that all relief sought by him vide OA No.3141/2003 be allowed.

36. Vide order dated 18.5.2004, three Original Applications being OA No.2947/2003, OA No.3092/2003 and OA No.3141/2003 have been disposed of by the Tribunal.

37. Vide OA No.2947/2003 the petitioner sought quashing of the inquiry report dated 1.11.2003 pertaining to the second

charge-sheet in which misdemeanour alleged against him was of unauthorizedly remaining absent from duty i.e. pertaining to the charge-sheet dated 4.5.1998.

38. Vide OA No.3092/2003 the petitioner challenged the third charge-sheet issued to him on 5.10.1998 alleging this misdemeanor of not filing annual returns. He also sought quashing of the letter dated 20.9.2003 reminding him that he had not submitted a response to the charge-sheet dated 5.10.1998. Vide OA No.3141/2003 the petitioner sought quashing of the order dated 7.6.1996, which as noted above is the order directing the petitioner the report for duty as the Deputy Secretary in the Social Welfare Department.

39. All the Original Applications were dismissed. We note that in the writ petition, the petitioner has challenged the order in so far it relates to OA No.3141/2003 and not the other two OAs.

40. Suffice would it be state that we have already upheld the order dated 7.6.1996 while deciding WP(C) No.916/2007 and thus the corollary thereof would be that the petitioner could not question the initiation of disciplinary proceedings against him for not reporting for duty inasmuch as on 13.5.1996 his suspension was revoked and the stand taken by the petitioner qua the language of the order dated 13.5.1996 and its effect is not what was sought to be urged by the petitioner.

41. We uphold the order dated 18.5.2004 passed by the Tribunal and as regards the order dated 28.9.2005, 6.1.2006 and 17.1.2007 we find that the repeated attempt by the Tribunal was to keep on re-agitating that since order revoking his suspension was void and he was still under suspension he could not be directed to report to work as a Deputy Secretary and alternatively that the post was below the rank of a post held by the person immediately junior to him and for said reason also

the order dated 7.6.1996 was void. As the same issue which we have already decided herein above is being re-argued by the petitioner at each stage we hold that the subsequent orders passed by the Tribunal are correct and as a consequence we dismiss WP(C) No.2768/2007.

42. We note that in this writ petition CM No.11150/2009 is pending adjudication which seeks interim relief and since the writ petition has been dismissed, the said application stands disposed of as infructuous.

43. The third writ petition which we need to decide in order of chronology, so that continuity of thought and reasoning can be maintained, is WP(C) 7321/2008. In the said writ petition the petitioner is aggrieved by the decision dated 3.12.2007 passed by the Tribunal declining interest claimed by the petitioner for the full salary which he had received for the period 1.5.1988 till 12.5.1996 i.e. ₹6,82,290/- as also a subsequent order dated 11.9.2008. Vide OA No.157/2006, stating that the sum was paid to him on 14.5.2004, petitioner sought interest on delayed payment and met with a failure when the Tribunal noted that the application was highly belated and additionally for the reason, evidenced by the orders passed by the Supreme Court, the petitioner was being offered the money and he was refusing to accept the same. The petitioner also challenges an order dated 11.9.2008 as per which the Tribunal noted that the claim of the petitioner that its earlier order required correction was without substance.

44. We cannot refrain from noting that the petitioner has literally managed to create so much confusion and trouble evidenced by his repeatedly filing substantive and miscellaneous petitions before the Supreme Court and so troubled was the State Government that in sheer disgust,

notwithstanding the petitioner being under suspension, the State Government agreed to pay full salary for the entire period the petitioner remained under suspension. The petitioner did no work after he was suspended and has got more than his due, which we feel is the result of his deluging the State with a barrage of miscellaneous applications. That apart, we agree with the Tribunal that it was too late in the day to claim interest on the payment which was tendered to him before the Supreme Court in the year 2001 and which petitioner declined and finally received the same in the year 2004. The claim for interest in the year 2006 was clearly barred by limitation.

45. The contention of the petitioner that there is a non-application of mind by the Tribunal is absolutely incorrect. The claim for interest is clearly barred by limitation and has been correctly held barred by limitation by the Tribunal.

46. We feel that the next writ petition which needs to be dealt with is WP(C) 6669/2007 in which the petitioner challenges the order dated 17.1.2007 and order dated 14.5.2007 passed by the Tribunal; the first order dismissing OA No.1112/2006 and the second dismissing RA No.52/2007.

47. Facts to be noted are that after the Supreme Court decided on 30.8.1988 in Civil Appeal No.3464/1987 that the petitioner was entitled to be placed in the senior time scale with effect from the date his juniors were placed in the scale, on 1.10.1988 the State of Maharashtra issued an order granting placement to the petitioner in the senior time scale with effect from 25.2.1986 i.e. the date on which the person immediately junior to the petitioner i.e. Sh.K.P.Bakshi was granted benefit of the senior time scale. On 22.1.1999 another order was issued notifying that the name of the person immediately junior to the petitioner

was Sh.Sumit Malik and not Sh.K.P.Bakshi and maintaining the date 25.2.1986 a correction was made.

48. The petitioner's grievance raised in OA No.1112/2006 was that Sh.K.P.Bakshi was his immediate junior and that he was granted senior time scale on 3.1.1986. Petitioner further claimed to be placed in the Junior Administrative Grade with effect from 1.7.1991 and Selection Grade with effect from 1.7.1995 and for which he relied upon Rule 6(A) of the IAS (Recruitment) Rules 1954.

49. That the claim was barred by limitation and that there was no evidence that Sh.K.P.Bakshi was the immediate junior of the petitioner. Thus, the correction incorporated vide memorandum dated 22.1.1999 to the memorandum dated 1.10.1988 was upheld. As regards the claim to be promoted to the Junior Administrative Grade as also Selection Grade and probably for the reason while arguing the Original Application the petitioner sought further promotion to the super time scale, the Tribunal held that merely because a junior had earned promotions, the petitioner could not claim any parity.

50. Suffice would it be to state that Rule 6(A) of the IAS (Recruitment) Rules 1954 reads as under:-

“6A. Appointments of direct recruits and officers recruited by selection from among released Emergency Commissioned Officers and short Service Commissioned Officers to posts in the Senior time-scale of pay.” – (1) Appointments of officers recruited to the Service under clause (a) or clause (aa) of sub-rule (1) of rule 4 to posts in the senior time-scale of pay shall be made by the State Government concerned.

(2) An Officer, referred to in sub-rule (1), shall be appointed to a post in the senior time-scale of pay, if having regard to his length of service and experience, the State Government is satisfied that he is suitable

for appointment to a post in the senior time-scale of pay.

****Provided that, if he is under suspension or disciplinary proceedings are instituted against him, he shall not be appointed to a post in the senior time-scale of pay, until he is reinstated in the Service, or the disciplinary proceedings are concluded and final orders are passed thereon, as the case may be;**

Provided further that on the conclusion of the disciplinary proceedings

- (a) if he is exonerated fully and the period of suspension, if any, is treated as duty for all purposes, he shall be appointed to the senior time-scale of pay from the date on which he would have been so appointed, had the disciplinary proceedings not been instituted against him, and paid accordingly; and
 - (b) if he is not exonerated fully and if the State Government, after considering his case on merits, proposes not to appoint him to the senior time-scale of pay from the date on which he would have been so appointed had the disciplinary proceedings not been instituted against him, he shall be given an opportunity to show cause against such action.
- (3) Notwithstanding anything contained in sub-rule (2), the State Government may –
- (a) withhold the appointment of an officer, referred to in sub-rule (1), to a post in the senior time-scale of pay,-
 - (i) till he is confirmed in the Service, or
 - (ii) till he passes the prescribed departmental examination or examinations and appoint to such a post, an officer junior to him and who has passed the prescribed departmental examination or examinations.
 - (b) appoint an officer, preferred to in sub-rule (1), at any time to a post in the senior time-scale of pay as a purely temporary or local arrangement.”

51. We need not dilate on the issue for the simple reason the petitioner could earn no promotion till he was exonerated in the disciplinary proceedings and we note that the petitioner is facing three inquiries and is himself responsible for the delay and we note that in one of them i.e. the 2nd charge-sheet an order dismissing him from service has already been passed which is under challenge before the Tribunal.

52. Assuming Sh.K.P.Bakshi was the immediate junior to the petitioner, the best which the petitioner could get would be to be placed in the senior time scale with effect from 31.1.1986 and not 25.2.1986 having a trivial consequence to be paid a petty sum of ₹6456/-, which we recommend to be paid as a gratis payment to the petitioner for the reason we are confident that he will litigate ad-nauseam.

53. Suffice would it be to state that till the petitioner clears himself of the charge-sheets issued to him and as long as he remains under a cloud no direction can be issued to promote the petitioner to the higher post, which promotions have to be earned by dint of hard work and upon being found fit at a duly constituted Departmental Promotion Committee.

54. It would now be convenient to deal with WP(C) 2563/2007 in which the petitioner challenges the order dated 17.1.2007 passed by the Central Administrative Tribunal dismissing OA No.1386/2006 as also the subsequent order dated 6.3.2007 whereby the Tribunal dismissed RA No.28/2007 under which the petitioner sought a review of the order dated 17.1.2007.

55. By and under OA No.1386/2006 the petitioner sought quashing of the charge-sheet dated 6.7.1988 and also an order dated 20.12.2002 under which an inquiry officer was appointed to conduct an inquiry pertaining to the charge sheet in question. It may be highlighted that the inquiry officer was appointed on

20.12.2002, for the reason, as noted above in para 5 the petitioner had obtained a stay on 2.11.1988 pertaining to the charge sheet dated 6.7.1988 and as noted in para 16 above the writ petition in which he had obtained a stay from the Supreme Court came to be dismissed on 7.10.2002 and when said fact was intimated to the department the inquiry officer was appointed vide order dated 20.12.2002. In this OA No.1386/2006, the petitioner filed various miscellaneous applications all of which were dismissed as frivolous.

56. The Original Application has been dismissed by the Tribunal holding that no mala-fide against any officer and much against the one who has issued the charge-sheet has been established. It has been held that the charges are not vague. It has been held that it is impermissible to consider the evidence relied upon by the petitioner to determine whether the charges are maintainable. It has been held that it cannot be said that the charges do not attract a disciplinary action.

57. We may note that during arguments before us, the petitioner was not understanding the difference between the maintainability of an action vis-à-vis its sustainability. It appears that before the Tribunal the petitioner was arguing with reference to the material on which he wanted to rely and thereupon show that the charges could not be sustained; needless to state the issue, when a charge-sheet is challenged, is not whether the charge can ultimately be sustained. The issue is whether there is prima facie material to maintain the charge and whether on the allegations made in the statement of imputation a charge is attracted.

58. We may note that before the Tribunal and also before us the petitioner relied upon the following 10 authorities:-

- (i) State of Punjab vs. V.K.Khanna AIR 2001 SC 343;

- (ii) Zunjarrao B.Nagarkar vs. Union of India AIR 1999 (SC) 2881;
- (iii) Partap Singh vs. State of Punjab AIR 1964 (SC) 72;
- (iv) State of Haryana vs. Bhajan Lal AIR 1992 (SC) 604;
- (v) D.J.S.A. vs. State of Gujarat AIR 1991 (SC) 2176;
- (vi) Arun Vyas vs. Anita Vyas AIR 1999 (SC) 2071;
- (vii) Dr.U.N.Biswas vs. Union of India 1998 (8) SLR 8;
- (viii) A.K.Dutta vs. Union of India 82 CWN 539;
- (ix) A.V.S.Reddy vs. State of Andhra Pradesh 1988 (7) ATC 119; and
- (x) Virendra Prasad vs. Union of India 1988 (8) ATC 190.

59. We may note that some of the decisions cited are totally out of context, for example the decision at Sl.No.(iv) and (vi) which relate to framing of a charge and discharging an accused respectively in criminal proceedings. A few other decisions such as the one in A.K.Dutt's case at Sl.No.(viii) which pertains to a departmental inquiry without furnishing statements of witnesses and denying inspection of relevant documents, are again irrelevant. Thus, we are not noting the ratio of law which can be culled out in the aforesaid 10 decisions, but would state that the principles on which a charge memo can be quashed are well known, being, if on the facts stated no misdemeanour is made out, or the Court is satisfied that the charge memo is for an oblique purpose or where the charge memo is vague or there is malice in law or fact. It is settled law that no Court can evaluate the material which has yet to take the shape of evidence during inquiry and go into the merits thereof to determine whether the charge can be sustained, for that would be within the domain of the inquiry officer and/or the disciplinary authority. Further, any grievance pertaining to a charge sheet needs to be first brought to the notice of the disciplinary

authority requiring the disciplinary authority to decide and thereafter the court to be approached. The petitioner has not alleged any malafide against any officer and none has been impleaded as a respondent. During arguments the petitioner wanted us to look into the material which has yet to take the shape of evidence and thus we refrain from commenting upon the issue for the reason it would be pre-mature for us to express any view on the material on basis whereof the charge sheet has been issued. Thus, we find no merit in WP(C)No.2563/2007 and concur with the reasoning of the Tribunal that it would be pre-mature to express any opinion and as clarified by the Tribunal in para 83 of the impugned decision, in case any final order is passed against the petitioner, he may raise all legally permissible pleas.

60. This takes us to the last writ petition being WP(C)1653/2008 where the grievance pertains to 2 orders dated 30.9.1987 and 31.8.1987 which were challenged vide OA No.121/2006.

61. The grievance pertains to leave sanctioned for the period 19.11.1986 to 18.3.1987 and further extended up to 18.10.1987; the extended period being treated as extra-ordinary leave. The Tribunal has noted the grievance of the petitioner in para 2 and para 3 of the impugned order. The Tribunal has held that no satisfactory reasons have been given by the petitioner in support of his claim and for said reason has held that the Tribunal was not inclined to condone the delay in approaching the Tribunal pertaining to the grievances relating to the orders dated 30.9.1987 and 31.8.1987.

62. As we understand, the Tribunal has attempted to see whether a fundamental wrong which nobody could accept as legal, was committed against the petitioner; for the reason the

law relating to condonation of delay in approaching a court, as it has evolved in India, is that procedural laws are treated as hand maid of justice and not the mistress of justice and as long as the language of a statute or the facts permit to so interpret, the interpretation/inference which further the cause of substantive justice has to be accepted. This approach is to be found in various judgments where the courts have held that meritorious claims should not be sacrificed at the altar of limitation.

63. We find no illegality committed by the Tribunal for the reason it was too late in the day for the petitioner to have filed OA No.1214/2006 to question orders served upon him way back on 30.9.1987 and 31.8.1987.

64. The said writ petition merits dismissal.

65. To end, we dismiss all the writ petitions as also hold that all pending applications would be disposed of as infructuous.

66. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

December 14, 2010
dk/mm