

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

+ **W.P. (C.) No.9042/2009**

% **Date of Decision: 15.02.2010**

Union of India
Through Mr.R.V.Sinha and Petitioner
Advocates. Mr.A.S.Singh,

Versus

P.C.Misra & Ors Respondents
Through Respondent No.1 in person.
Mr.Mohammed Sajid, Advocates for the
respondent Nos.2 to 4.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner, Union of India through Secretary, Ministry of Home Affairs had impugned the order dated 7th November, 2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A No.1056/2008 titled Sh.P.C.Misra, DANICS, Joint Director (Employment) v. Union of India and Ors directing the petitioner to release the increment to respondent No.1 as and when they were due and to re-calculate his subsistence allowance and to pay the same to him.

The UDC of the respondent no.1 was caught demanding and accepting Rs.4000/- outside his office room. Thereafter a criminal case under Section 7 and 14 (2) read with section 13 (1) (d) of the Prevention of Corruption Act, 1988 was registered. The respondent No.1 was granted bail on 2nd March, 1996. Charge Sheet was filed in the case on 20th May, 1998 and respondent No.1 was placed under suspension on 18th August, 1998. His suspension was reviewed from time to time and was last reviewed for a period of 180 days w.e.f.19.8.2006. The continuing suspension of the respondent no.1 was set aside by the Tribunal in OA no. 1608 of 2006 and consequently his suspension was revoked by Ministry of Home Affairs on 15th November, 2006.

Before and during the period the respondent No.1 was under suspension there were increments in the pay and allowances and so the respondent No.1 also sought increment in the suspension allowances. He contended that no order has been passed ordering withholding of increment in case of respondent no.1.

The respondent no.1 therefore made representation and claim to the Employment officer (Admn.) of Directorate of Employment after his regular posting as Joint Director. His case was referred to service IV department which observed that it is not clear whether any order has been passed by competent authority under 54-B, therefore, the

Administrative Department may like to settle the matter as per the provision of FR 26 read with FR 54-B.

The respondent no.1 contended that since there was no order under FR 54 B therefore, he claimed release of increment for recalculation of subsistence allowances. On failure of the petitioners to release the increments of subsistence allowance, the respondent approached the Central Administrative Tribunal and filed the OA no.1056 of 2008 titled P.C.Misra, DANICS Vs Union of India through Director (Employment) and ors which was allowed by order dated 7th November, 2008 directing the petitioners to release the increments to the respondent which is challenged by the petitioners in the present petition.

The respondent no.1 had relied on the decision of O.A No.349/1990 in case of U.Ganga Raju v. DRM SCR, Vijawada and Ors decided by the Tribunal by order dated 12th February, 1999. It was held that it would be fit and proper to sanction increments to a Government servant during the suspension period purely for the purpose of calculating subsistence allowance and payment of subsistence allowance, unless increment has been withheld by order of competent authority. Noticing the decision in U.Ganga Raju (supra) and noticing that after the revocation of suspension order of the respondent no.1 on

15th November, 2006 no reasons have been given for denying increment in the subsistence allowance during the period of suspension nor any order has been passed not to release the arrears of the subsistence allowance and, therefore, Tribunal allowed the petition.

The learned counsel for the petitioner during the pendency of the present petition on 17th December, 2009 had sought time to produce the copy of the order directing withholding of increment of the subsistence allowance of the respondent no.1. The copy of the alleged order was, however, not produced by the learned counsel for the petitioner, Mr.Sinha. On 13th January, 2010 the learned counsel, however, represented that no orders have been passed and contended that even in absence of any order to withhold the increment in the subsistence allowance, during the period of suspension after its revocation, the increments can be denied. The learned counsel for the petitioner rather relied on the copy of communication dated 17th April, 2008 forwarding respondent no.1's request to Service Department, Govt. of NCT Delhi which was filed by the respondent no.1 along with original application before the Tribunal.

The learned counsel for the petitioner rather contended that since the disciplinary proceedings has not been concluded and it has not been decided whether the period of suspension is to be treated as period

spent on duty, the respondent no.1 cannot be granted increment during the period of suspension. In the circumstances it was contended that the respondent no. 1 is not entitled for the relief which has been granted by the Tribunal to him.

The respondent no.1 who had appeared had relied on a decision of a Division Bench of this Court in W.P(C) No.1899/2007 dated 4th August, 2008 titled Union of India v. R.K.Chopra holding that since the full bench decision of the Tribunal in J.S.Karat v. Union of India had been accepted by Union of India, the delinquent officer would be entitled to enhanced subsistence allowance. The Division Bench had further relied on another decision of this Court in Commissioner of Police v. Randhir Singh, W.P(C) No.713/2008 decided on 29th January, 2008 holding that on an interpretation of Rule 7 Note 3 of CCS (Revised Pay) Rules, 1977 the delinquent officer would be entitled for enhanced subsistence allowance. The issue involved in the writ petitions relied on was whether as a result of upward revision of pay scales by the 5th Central Pay Commission, the delinquent officers would be entitled to enhanced subsistence allowance.

The learned counsel for the petitioner in rebuttal very vociferously contended that the decision of Sh.R.K.Chopra relied on by respondent No.1 was challenged in the Supreme Court in Civil Appeal

No.1096/2010 titled Union of India v. R.K.Chopra which was decided on 1st February, 2010 and consequently the respondent No.1 is not entitled for increment in the subsistence allowance and payment of subsistence allowance is based on leave salary (not pay) admissible during half pay leave and leave salary linked to pay drawn immediately before proceeding on leave.

Perusal of the order of the Supreme Court dated 1st February, 2010 in case of Union of India v. R.K.Chopra reveals that the Apex Court has not held that a delinquent officer shall not be entitled for increment in subsistence allowance. Rather considering Note 3 Rule 7 of Revised Pay Rules and FR 53(1) (ii)(a) and the clarification dated 27th August, 1958 it was held that if the revision of pay takes effect from a date prior to the date of suspension of a Government servant then he would be entitled to benefit of increment in pay and subsistence allowance for the period of suspension, but if the revision of scales of pay takes effect from a date following within the period of suspension then the benefit of revision of pay and subsistence allowance will accrue to him only after reinstatement depending on the fact whether the period of suspension is to be treated as period spent on duty or not.

The salient facts of the R.K. Chopra would reveal that the said case and its ratio is distinguishable. The delinquent officer in this case

was placed under suspension from 6th June, 1989. While under suspension he claimed revision of subsistence allowance based on fifth pay commission which request was rejected by the Government. The said official was later on dismissed from service on 4th August, 2005. After dismissal from the service he sought declaration that he was entitled to get subsistence allowance on the revised pay scale with effect from 1st January, 1996. The Tribunal had taken the view that it would be unjust to deny subsistence allowance on the basis of revised pay to the employee who stood suspended prior to 1st January, 1996 especially when employees who were suspended after that date would be entitled to get subsistence allowance on the revised pay scale. The High Court had also upheld the decision of the tribunal which was challenged in the Supreme Court.

The Supreme Court had held that if a person is reinstated in the post and the period of suspension is treated as duty, he may be allowed to exercise the option after such a reinstatement. The Apex court held so noticing FR 23. Since the revised pay scales came into force on 1st January, 1996 when the official was already under suspension and later on he was dismissed, it was held that the official will not be entitled for increments in the subsistence allowance. In contradistinction to the said case, the respondent no.1 was placed under suspension after 1st January, 1996 the recommendation of fifth

pay commission were made on 18th August, 1998. The suspension of the respondent no. 1 was revoked pursuant to the order passed by the Tribunal in an earlier original application filed by the respondent no.1. No separate disciplinary proceedings are pending against the respondent no.1. Rather he has been appointed/reinstated to his regular post. No order has been passed withholding his increments of subsistence allowance. Consequently on the basis of the ratio of R.K.Chopra (supra) the petitioners cannot contend that the respondent no.1 is not entitled for increments due to him during the period of his suspension.

During the pendency of the present petition it was rather emphatically asserted on behalf of petitioners that pursuant to the orders passed against the respondent no.1, the increments in subsistence allowance had been withheld. Despite the opportunity granted to the petitioner on 13th January, 2010, no such orders were produced. On failure to produce the orders with holding the increments in subsistence allowance, it was then contended that without the orders, increment in subsistence allowance can be withheld. However, the learned counsel for the petitioner is unable to show that if the respondent no.1 has already been reinstated in his regular post after revocation of his suspension order pursuant to an order passed by the

Tribunal, then on what grounds or under what rules it can be done by the petitioner.

In the circumstances and taking into consideration all the facts and circumstances, this court does not find any illegality or irregularity in the order of the Tribunal which is impugned before us by the petitioner. There are no grounds to interfere with the order of the Tribunal in the facts and circumstances in exercise of jurisdiction under article 226 of Constitution of India. The writ petition in the facts and circumstances is, therefore, without merit and it is dismissed. Parties are however, left to bear their own costs.

ANIL KUMAR, J.

FEBRUARY 15, 2010

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MOOL CHAND GARG, J.