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

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DECIDED ON: 01.08.2014

+ **W.P.(C) 206/2014**

RAJENDER PRASAD

..... Petitioner

versus

THE CHAIRMAN-CUM-MD DELHI TRANSPORT
CORPORATION & ORS. Respondents

Appearance: Mr Manjeet Singh Reen, Adv. for the petitioner

Ms Avnish Ahlawat and Ms Latika Chaudhary, Advs., for
Respondent- DTC

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

1. The petitioner is aggrieved by order of the Central Administrative Tribunal (CAT) dated 27.11.2013 in OA No.663/2013 rejecting his application. The petitioner had claimed full salary and emoluments for the period he was placed under suspension with effect from 13.05.2003 till 29.05.2009.

2. The brief facts of the case are that the petitioner is an employee of the respondent-Corporation (DTC). On the basis of a complaint alleging that he demanded a bribe for helping withdrawal of a memorandum against a co-employee, he was placed under suspension

on 13.05.2003. Earlier, he was detained by the police, in connection with the alleged commission of the offence and he had suffered that condition for about three months. During the period of his suspension, charges were framed against him for committing offences, including those under Sections 8 and 9 of the Prevention of Corruption Act, 1988. In the final judgment of the Criminal Court, the CBI Judge acquitted the petitioner. By that time, the respondent-DTC passed an order recalling its suspension against the petitioner, and reinstating him to the services with effect from 01st June, 2009. The DTC did not, however, pass any consequential order how the petitioner's service for the period of about six years was to be treated—both for the purposes of pay and other service conditions. He, therefore, approached the CAT, which, by its earlier order dated 17th March, 2012 directed the respondent-DTC to pass a speaking order after considering all the circumstances. In these circumstances, the order of the Disciplinary Authority, which was impugned before the CAT in this case, was made on 13th June, 2012. This was preceded by a show-cause notice dated 31st May, 2012. The petitioner felt aggrieved and approached the Appellate Authority, which rejected his contentions with respect to entitlement for full salary, emoluments and all other benefits for the period of suspension by order dated 30th July, 2012. He, therefore, unsuccessfully approached the CAT.

3. Learned counsel for the petitioner urges that in terms of Instruction (d) to Fundamental Rule (FR) 54 B (3), the Competent Authority in this case was bound to treat the entire period of

suspension as duty for all purposes, and allow all the consequential benefits, including full salary and emoluments. Learned counsel also urges that the Competent Authority as well as the Appellate Authority completely ignored the circumstances in the case. It was underlined during the hearing that the CAT itself was of the opinion that the CBI judgment, amounted to a clean acquittal of the petitioner. In these circumstances, denial of full salary and emoluments was arbitrary and unjustified.

4. FR 54-B to the extent it is relevant reads as under:-

“F.R. 54-B. (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.”

2. Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or the Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended,

subject to the adjustment in respect of subsistence allowance already paid.

3. *Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant, shall subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:*

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.”

5. The period of suspension in this case was between 22.05.2003 and 01.06.2009. The petitioner had been detained and was in prison; prior to that charges were framed against him and a full trial was held. An examination of the Criminal Court's judgment would reveal that even though the complainant-victim appeared and deposed against the petitioner as a material prosecution witness (PW-3), a crucial independent witness, who would have deposed as to the veracity of the tape-recording which contained the alleged conversation demanding the bribe, as well as questioned as to his witnessing of the taking of the bribe itself one Shri Faizulhaq failed to appear. Having regard to these circumstances and the entire conspectus of facts, the Competent

Authority in this case appears to have denied the benefit of full pay for the intervening suspension period.

6. The Competent Authority's order dated 13.06.2012 in this regard reads as follow:-

“Whereas in compliance of the order of ld CAT dated 12.03.2012 passed in OA No. 4152/2011, the undersigned after having examined the case thoroughly had issued Show-Cause Notice No. YYD/AI(T)/Show Cause / 2012/1915 dated 31.5.2012 to sh. Rajender Prasad Driver R, No. 12390 that he should not be granted full salary and allowance for the period of his pension from 13.05.2003 to 01.06.2009 and that the subsistence allowance already paid to him during the said period be treated as adequate the grounds as below:-

- 1. That the suspension of Sh. Rajender Pd. Was on account of his being sent to judicial custody by the CBI anti corruption case instituted by the CBI on the serious charges of taking bribe.*
- 2. That his service could not be availed by the DTC on account of his involvement in the criminal case and he did not perform any duty for the corporation during the entire suspension period. Yet he was paid substantial amount of Rs. 6,6320/- towards subsistence allowance.*
- 3. That following the principal of no-work-no-pay, Sh. Rajender Pd. Should not be paid full salary and allowance for the period in question.*

Whereas in response to the aforesaid show cause notice Sh. Rajender Prasad has submitted representation dated 11.06.2012 requesting to the drop the charge sheet and to pay dues and increment/ACP.

Whereas after having gone through the contents of the aforesaid representation submitted by SH. Rajender Prasad as well as taking his account the particulars and circumstances of the case, the undersigned is not pursued for review of his earlier representation mentioned in the SCN. Therefore it is decided and order accordingly Rajender Prasad shall not be granted full salary and allowances of Rs. 6,63,320/- amount paid to him during this period he treated as adequate. Further this said suspension period shall not be treated as period spent on duty for the purpose of earning increment and ACP. However, it will not be treated as break in service.”

7. This Court is of the opinion that the petitioner’s contention that the Competent Authority was bound, in terms of FR 54-B (3), to direct payment of full arrears of salary and allowances is insubstantial and without merit. The tenor of FR 54 (B) (3) is that the Competent Authority (empowered to order reinstatement) should be “*of the opinion that the suspension was wholly unjustified*” in which circumstance alone, the Government Servant/Public Servant is entitled to full pay and allowances for the period in question. In this case, the petitioner was, in fact, in prison for three months after being charged for committing the offence and subsequently faced the full trial, it cannot be said that the suspension was unjustified. The Competent Authority—in our opinion—quite correctly decided that the subsistence allowance paid for the suspension period, which itself was to the tune of Rs 6.63 lakhs, was sufficient in the circumstances of the case. This is an instance of judicious exercise of discretion, which the Court would be circumspect in interfering with, in exercise of its

power of judicial review. We, therefore, find no reason to interfere with the CAT's order.

The Writ Petition is accordingly dismissed as meritless.

**S. RAVINDRA BHAT
(JUDGE)**

**VIPIN SANGHI
(JUDGE)**

**AUGUST 01, 2014
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