

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2015

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P.No.21830 of 2015
M.P.No.1 of 2015

The Principal Secretary,
Government of Tamil Nadu,
Department of Home,
Secretariat, Chennai.

... Appellant

Vs.

1. Mr.K.Muthukaruppan, IPS.,
Additional Director General of Police,
Director of Civil Defence and
Additional Commandant General,
Home Guards, Chennai.

2. The Secretary,
Union of India,
Ministry of Home Affairs,
New Delhi.

3. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, to call for the records of the order, dated 31.12.2014, made in Original Application No.1343 of 2011, on the file of the Central Administrative Tribunal, Madras Bench and quash the same.

For Appellant : Mr.P.H.Aravind Pandian,
Addl. Advocate General
Assisted by Mr.I.Arokiasamy,
Government Advocate

For 1st Respondent : Mr.Vijayanarayanan,
Senior Counsel,
for M/s.Menon, Karthik & Mukundan

For 2nd Respondent : Mr.V.Vijaya Baskar, ACGSC

JUDGMENT

(Judgment of the Court was made by S. MANIKUMAR, J.)

Challenge in this Writ Petition, filed by the Principal Secretary to the Government of Tamil Nadu, Home Department, Chennai, is to the order made by the Central Administrative Tribunal, Madras Bench, in O.A.No.1343 of 2011, dated 31.12.2014, by which, the Tribunal has issued directions to the Union of India, represented by Secretary, Ministry of Home Affairs, New Delhi, and the Principal Secretary, Government of Tamil Nadu, Home Department, Chennai, to treat the period of suspension, between 27.06.2003 and 25.10.2007, as qualified service, for all purposes, with entitlement of full pay and allowances. The Central Administrative Tribunal, Madras Bench, has further directed that the applicant/respondent herein, is eligible for all the consequential benefits, arising therefrom.

2. Facts deduced from the material on record and the impugned order are that, the 1st respondent was placed under suspension under Rule 3 of the All India Services (Discipline & Appeal) Rules, 1969, hereinafter called "the Rules", between 27.06.2003 and 25.10.2007, for a period of four years and four months. Suspension has been ordered, vide G.O.Ms.No.579, Home (SC) Department, dated 27.06.2003, on the grounds that, a case against the respondent in respect of a criminal offence was under investigation and that a detailed inquiry on certain grave allegations also was conducted by the appropriate investigating agency.

3. Disciplinary proceedings have been initiated and two charges have been framed on 13.10.2006, under Rule 8 of the Rules vide No.SC/43-13-3-2005/HOME (SC), dated 13.10.2006. The Inquiry Officer has submitted a report, dated 23.10.2007, holding that the charges framed against the 1st respondent, were not proved. The State Government have accepted the finding, in respect of Charge No.1 and disagreed, with the finding in respect of Charge No.2 and issued a notice to the respondent, with the grounds of disagreement, and, after considering the further representation of the 1st respondent, passed final orders, in the disciplinary proceedings, in G.O.(2D)No.173, Home (SC) Department, dated 20.04.2009, imposing a punishment of "Censure". Thereafter, the respondent has preferred an appeal, dated 01.06.2009, to the Secretary to the Government of India, Ministry of Home Affairs, New Delhi, the appellate authority, through proper channel. Vide order, dated 06.11.2009, the appeal has been rejected by the Government of India. Both the orders, namely, the order of penalty in G.O.(2D)No.173, Home (SC) Department, dated 20.04.2009, imposing a punishment of

"Censure", and the appellate order, passed by the Government of India, dated 06.11.2009, have been challenged in the Original Application, before the Tribunal, with consequential reliefs.

4. Before the Central Administrative Tribunal, Madras Bench, the 1st respondent has contended that even after the completion of disciplinary proceedings, the competent authority, viz., the State Government have not passed any orders, regularising the period of suspension. It was also the contention of the 1st respondent that both the disciplinary authority, as well as appellate authority have not considered the grounds raised by the 1st respondent in proper perspective and hence, prayed for quashing of the orders issued in G.O.(2D) No.173, Home (SC) Department, dated 20.04.2009, by the Principal Secretary to the Government of Tamil Nadu, Home Department, Chennai, and that of the Union of India, represented by the Secretary, Ministry of Home Affairs, New Delhi, respondents 2 and 1 respectively. In addition to the prayer to quash the above orders, the 1st respondent has prayed for a direction, to confer all the consequential benefits, admissible to him.

5. On 20.04.2009, the Principal Secretary, Government of Tamil Nadu, Home Department, Chennai, respondent No.2 in the Original Application, has passed an order of Censure. The appellate authority, namely, Union of India, represented by the Secretary, Ministry of Home Affairs, New Delhi, respondent No.1 in the Original Application, has rejected the appeal, on 06.11.2009. However, before the conclusion of the disciplinary proceedings, the 1st respondent has been reinstated in service on 26.10.2007.

6. The writ petitioner/1st respondent in the Original Application has filed a reply statement, wherein, he has contended that the order of penalty of Censure, was based on the records and following the procedure, contemplated under the All India Services (Discipline and Appeal) Rules, 1969 and principles of natural justice. Union of India, represented by the Secretary, Ministry of Home Affairs, New Delhi, has filed a separate counter affidavit, stating that the appeal has been considered in proper perspective, with reference to the statutory provisions. Thus, both the authorities have defended their respective orders.

7. Reading of the order, impugned in the present writ petition, indicates that arguments have been advanced before the Tribunal, that after revocation of the order of suspension on 25.10.2007, no order, regulating the period of suspension between 27.06.2003 and 25.10.2007, has been passed by the State Government.

8. After considering the rival contentions, the Central Administrative Tribunal, Madras Bench, vide order, in O.A.No.1343 of 2011, dated 31.12.2014, has declined to interfere

with the findings, recorded by the disciplinary and appellate authorities and consequently, the penalty of censure has been confirmed. However, after going through Rule 5(B) and Sub-Rule (6) of the All India Services (Discipline and Appeal) Rules, 1969 and the decisions, relied on by the 1st respondent, the Central Administrative Tribunal, Madras Bench, has allowed the Original Application in part, directing the writ petitioner and the Union of India, to treat the period of suspension between 27.06.2003 and 25.10.2007, as qualified service, for all purposes, with entitlement for full pay and allowances. The Tribunal has further directed that the 1st respondent would be entitled to all the consequential benefits, arising therefrom.

9. Being aggrieved by the same, the present writ petition has been filed, to quash the order of the Central Administrative Tribunal in O.A.No.1343 of 2011, dated 31.12.2014.

10. Assailing the correctness of the order of the Central Administrative Tribunal, Madras Bench, in O.A.No.1343 of 2011, dated 31.12.2014 and taking this Court through the order of suspension in G.O.Ms.No.569, Home (SC) Department, dated 27.06.2003, passed by the State Government, under sub-Rule 3 of Rule 3 of the All India Service (Discipline and Appeal) Rules, 1969, Mr.P.H.Aravind Pandian, learned Additional Advocate General submitted that the 1st respondent was placed under suspension, in respect of a criminal offence, under investigation and for a detailed enquiry, on certain grave allegations conducted by the appropriate investigating agency. He further submitted that subsequently, based on the enquiry report of the Directorate of Vigilance & Anti-Corruption, dated 13.10.2006, two charges were framed against the 1st respondent, under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969.

11. Referring to the charges framed, learned Additional Advocate General further submitted that after going through the procedure and after providing a reasonable opportunity, on 20.04.2009, the Government, vide order in G.O.(2D)No.173, Home (SC) Department, dated 20.04.2009, have imposed a penalty of censure, on the 1st respondent. He further added that the appeal, dated 01.06.2009, filed by the 1st respondent, to the Secretary to the Government, Ministry of Home Affairs, New Delhi, the Appellate Authority under the All India Services (Discipline and Appeal) Rules, 1969, has been rejected on 06.11.2009.

12. Inviting the attention of this Court to the prayer made in the Original Application No.1343 of 2011, filed by the 1st respondent, learned Additional Advocate General submitted that the Original Application has been filed only for quashing the orders made in G.O.(2D)No.173, Home (SC) Department, dated

20.04.2009, imposing a punishment of Censure and that of the appellate authority in G.O.(2D)No.173, Home (SC) Department, dated 20.04.2009 in the Appeal Petition No.26011/18/2007-IPS-II, dated 06.11.2009, rejecting the appeal and when the Central Administrative Tribunal, Madras Bench, has rejected the case of the 1st respondent, to quash the abovesaid proceedings, the Tribunal ought not to have issued directions to the writ petitioner, to treat the period of suspension, as qualifying service.

13. Referring to Rule 3(1) of the abovesaid Rules and the duration of suspension of the 1st respondent, between 27.06.2003 and 25.10.2007, exceeding more than three years and having regard to the charges framed, on the report of the Directorate of Vigilance and Anti Corruption Department and Rule IB of the said Rules, wherein, reference is made to the Central Ministry's Review Committee's recommendations for continuation of suspension beyond one year and the further stipulation under sub-Rule 1(C) of Rule 3 of the abovesaid Rules, that the period of suspension of a member of service, on charges of corruption, shall not exceed two years, provided that the same can be continued beyond two years, only on the recommendations of the Central Ministry's Review Committee, learned Additional Advocate General prayed to issue notice to the Secretary to the Government, Ministry of Home Affairs, New Delhi, transposed as the 2nd respondent, in this writ petition, to answer, as to how, the period of suspension, between 27.06.2003 and 25.10.2007, has to be regulated. He also submitted that directions have been issued to the Union of India also, and therefore, their presence is also required.

14. According to Mr.P.H.Aravind Pandian, learned Additional Advocate General, when the disciplinary proceedings initiated against the 1st respondent, have culminated into a penalty of Censure and when the recommendations of the Union Public Service Commission have been accepted and that the penalty has also been sustained on appeal, by the Secretary to the Government, Ministry of Home Affairs, New Delhi, it cannot be contended that suspension imposed on the 1st respondent was wholly unjustified.

15. Learned Additional Advocate General further submitted that the Tribunal ought to have considered that the case of the 1st respondent, ought to have been decided only with reference to All India Services (Discipline and Appeal) Rules, 1969. It is also his submission that the Central Administrative Tribunal, Madras Bench, has granted the relief of treating the period as duty, with all the benefits, without arriving at the conclusion that suspension was wholly unjustified. For the above reasons, he prayed for interference.

16. Reiterating that when the punishment of censure was not interfered with, by the Tribunal, he submitted that the

natural consequence, which flows from the penalty is that the period of suspension undergone by the 1st respondent, is not wholly unjustified. It is also his submission that the Central Administrative Tribunal, Madras Bench, was not right in relying on the cases, rendered on a different provision of law, ie., Rule 54(1) of the Fundamental Rules. Lastly, he submitted that when the Original Application has been filed with a considerable delay, on the basis of the well settled principles of law that, delay defects equity, the Tribunal ought not to have exceeded in its jurisdiction, in granting the relief, which was not prayed for. For the abovesaid reasons, he prayed to set aside the order impugned, in this writ petition.

17. In response to the above arguments and inviting the attention of this Court to the reasons, cited in the order of suspension in G.O.Ms.No.579, Home (SC) Department, dated 27.06.2003, Mr.Vijayanarayanan, learned Senior Counsel appearing for the 1st respondent submitted that though the State Government have issued the abovesaid order, placing the 1st respondent, under suspension, by citing that a Criminal offence was under investigation and that a detailed enquiry, under certain grave allegation has also been conducted by appropriate Investigating Agency, no criminal case was registered against the 1st respondent and that therefore, the very order of suspension, is wholly unjustified.

18. Learned Senior Counsel further submitted that when no criminal case was registered against the 1st respondent, for which, suspension was invoked, charges were framed on 30.10.2006, under Rule 8 of the All India Services (Discipline & Appeal) Rules, 1969, and that though the Inquiry Authority submitted a detailed report, dated 23.10.2007, holding that the Counts of charges, framed against the 1st respondent, were without any basis, by disagreeing with the findings of the Inquiry Authority, in respect of Charge No.2, the Secretary to the Government, Home Department, Government of Tamil Nadu, issued a letter, dated 21.01.2008, to the 1st respondent, to offer his further representation on the dissenting views. In the meanwhile, the Government have issued G.O.Ms.No.1507, Home (SC) Department, dated 25.10.2007, revoking the suspension of the 1st respondent and ordered him to be reinstated in service with immediate effect, without prejudice to the departmental disciplinary proceedings, pending against him.

19. It is the submission of the learned Senior Counsel, appearing for the 1st respondent, that while revoking the order of suspension, the Secretary to the Government, Home Department, appellant, ought to have passed orders, regulating the period of suspension. He further submitted that after considering the 1st respondent's representation, on the dissenting note, G.O.(2D)

No.173, Home (SC) Department, dated 20.04.2009, was issued, imposing the penalty of censure. Being aggrieved by the same, the 1st respondent has preferred an appeal on 01.06.2009 to the Secretary to the Government, Home Department, New Delhi, the appellate authority and vide order, dated 06.11.2009, the punishment was confirmed.

20. Learned Senior Counsel for the 1st respondent further submitted that while challenging the orders of disciplinary, as well as the appellate authorities, in O.A.No.1343 of 2011, before the Central Administrative Tribunal, Madras Bench, the 1st respondent, has also sought for a consequential direction to the respondents therein, to confer all the benefits, as admissible to him and therefore, it cannot be contended that the Tribunal has exceeded in its jurisdiction, by issuing directions to the respondents therein, to treat the period as qualifying the service, with full pay and allowance.

21. On the contention of the learned Additional Advocate General that the Central Administrative Tribunal, Madras Bench, ought to have considered the case of the 1st respondent, with reference to sub-Rule (1)(B) of Rule 5 of the All India Service (Discipline and Appeal) Rules, 1969 and that it is for the Central Government, to state, as to how, the period of suspension, has to be regulated, when the period of suspension was more than a year, by inviting the attention of this Court to the Notification No.11018/3/2004-AIS-III, dated 30.09.2009 (GSR No.714(E), dated 30.09.2009, learned Senior Counsel appearing for the 1st respondent submitted that contentions of the State are wholly untenable, for the reason that when the orders of suspension in G.O.Ms.No.579, Home (SC) Department, dated 27.06.2003 and revocation in G.O.Ms.No.1507, Home (SC) Department, dated 25.10.2007 respectively, were issued by the State Government, Sub-Rule (1)(B) of Rule 5 of the All India Service (Discipline and Appeal) Rules, 1969, was not at all in the statute book.

22. Learned Senior Counsel appearing for the 1st respondent submitted that as per Rule 2(c)(i) of the All India Service (Discipline and Appeal) Rules, 1969, "Government" means, "members of service, serving in connection with the affairs of the State Government. Therefore, according to him, the State Government, which placed the 1st respondent, under suspension, is the competent authority and that the State Government alone, ought to have passed an order, regulating the period of suspension as spent on duty, when a minor penalty of Censure was imposed.

23. By referring to the dates of suspension and revocation and reiterating that amendments issued to the All India Service (Discipline and Appeal) Rules, 1969, vide notification, dated

30.09.2009, cannot be made applicable to the case on hand, learned Senior Counsel for the 1st respondent further submitted that there is no need for the Central Government to state or advise the State Government, as to how, the period of suspension, has to be regulated and therefore, their presence is not required, for adjudicating the issue, now raised in the present writ petition, by the State Government.

24. Placing reliance on the decisions in Y.P.Sehgal v. State of Punjab reported in 1992 (1) SLR 583 (P & H), S.P.Naik v. Board of Trustees reported in 1999 (3) MHLJ 351 (BOM.), Y.S.Sachan v. State of Madhya Pradesh reported in 2003 (4) MPLJ 219, Deena Nath Tiwari v. Dr.Hari Singh Gour reported in 2004 (1) MPLJ 48 and State of M.P., v. Shailendra reported in 2011 (3) MPLJ 412, considered on by the Central Administrative Tribunal, Madras Bench, and the decisions of this Court in A.Karthikeyan v. The Secretary to Government [Dated 01.11.2006], S.Chandrasekaran v. The Joint Director of Agriculture reported in 2014 SCC Online Mad. 11643 and S.Dakshinamoorthy v. Deputy Inspector General of Police [W.P.No.1740 of 2014, dated 24.02.2015], learned Senior Counsel further submitted that when the 1st respondent has been imposed with a minor penalty of censure, there is no need for him, to suffer denial of pay, for the period of suspension.

25. Learned Senior Counsel appearing for the 1st respondent further submitted that the 1st respondent was kept under suspension from 27.06.2003 to 25.10.2007, for nearly four years and four months. The State Government took, nearly three years to frame charges and another 3½ years, to impose the penalty of censure. The appropriate Government to review suspension, before the amendment to the Rules, is only the State Government, which suspended the 1st respondent and therefore, without reference to Rule 5(1)(B) or Rule 5(1)(C) of the abovesaid Rules, inserted later in the year 2009, the State Government ought to have regulated the period, as duty and that there is no need to obtain any opinion from the Central Government. At this juncture, attention of this Court was also invited to a decision in State of Tamil Nadu Vs. M/s Hind Stone reported in AIR 1981 SC 711. According to him, suspension for a period of four years and four months, is wholly unjustified.

26. Refuting the contentions of the learned Additional Advocate General that the Central Administrative Tribunal, Madras Bench, has erred in applying Rule 54-B of the Fundamental Rules and instead, the case of the 1st respondent ought to have been decided only, as per Rule 5(B) of the All India Services (Discipline and Appeal) Rules, 1969, learned Senior Counsel appearing for the 1st respondent further submitted that even under Rule 5(B)(1) of the said Rules, the authority, competent to order reinstatement, viz., State Government, ought to have passed an order, treating the period of suspension, as duty,

keeping in mind, the principles of law, decided in the abovesaid cases.

27. Lastly, learned Senior Counsel appearing for the 1st respondent submitted that before the Central Administrative Tribunal, Madras Bench, arguments have been advanced that when the 1st respondent was reinstated in service, on 26.10.2007, no order was passed by the competent authority, regulating the period of suspension and counter submissions were also made, contending that the period of suspension cannot be regularised as duty. He therefore submitted that though the Central Administrative Tribunal, Madras Bench, had not specifically stated that the order of suspension was wholly unjustified, sequence of events and the time spent, from 2003 to 2009, for nearly six years, for imposing the penalty of censure, itself is indicative of unjustified suspension.

28. It is also the contention of the learned Senior Counsel that the 1st respondent has already retired from service and by treating the period of suspension, as qualifying service, for the purpose of entitlement of full pay and allowance, there is no chance of getting any higher promotion and at the most, the 1st respondent would only be monetarily benefited in getting pensionary benefits.

Heard the learned counsel appearing for the parties and perused the materials available on record.

29. Before adverting to the rival contentions, let us have a cursory look at certain provisions of the All India Service (Discipline & Appeal) Rules, 1969. As per Rule 2-(C) (i), 'Government', means, in the case of a member of the service, serving in connection with the affairs of the State or who is deputed for service in any company, association or body of individuals, whether incorporated or not, which is solely or substantially owned or controlled by the Government of a State, or in a local authority set up by an Act of legislature of the State, Government of that State. (ii) in any other case, Central Government. Thus, when the first respondent, as a Member of the All India Services, was serving in connection with the affairs of the State of Tamil Nadu, the Government of the said State, is the competent authority.

30. Rule 3(1) of the All India Service (Discipline & Appeal) Rules, 1969 deals with suspension, which reads as follows :

"3. Suspension.-

(1) If, having regard to the circumstances in any case and, where articles of charge have been drawn up, the nature of the charges, the Government of a State or the Central Government, as the case may be, is satisfied that it is necessary or desirable to place

under suspension a member of the Service, against whom disciplinary proceedings are contemplated or are pending, that Government may— (a) if the member of the Service is serving under that Government, pass an order placing him under suspension, or (b) if the member of the Service is serving under another Government request that Government to place him under suspension, pending the conclusion of the disciplinary proceedings and the passing of the final order in the case. Provided that, in cases, where there is a difference of opinion,— (i) between two State Governments, the matter shall be referred to the Central Government for its decision; (ii) between a State Government and the Central Government, the opinion of the Central Government shall prevail :

Provided further that the Chief Secretary, Director General of Police and the Principal Chief Conservator of Forests, who are the heads of the respective Services, shall not be placed under suspension without obtaining prior approval of the Central Government."

31. Vide Notification No.11018/3/2004-AIS/III, dated 30.09.2009 (GSR No.714 (E) , dated 30.09.2009, the second proviso to Rule 3 (1) and Sub-Rules (1B) (1C) and (1D) have been inserted. Similarly, Sub-Rule (1A) to Rule 3(1) has been substituted, vide Notification No.6/9/72-AIS-III, dated 05.07.1975 (GSR No.872, dated 19.07.1975). They are reproduced as hereunder :

Provided also that, where a State Government passes an order placing under suspension a member of the Service against whom disciplinary proceedings are contemplated, such an order shall not be valid unless, before the expiry of a period of forty-five days from the date from which the member is placed under suspension, or such further period not exceeding forty-five days as may be specified by the Central Government for reasons to be recorded in writing, either disciplinary proceedings are initiated against him or the order of suspension is confirmed by the Central Government.

(1A) If the Government of a State or the Central Government, as the case may be, is of the opinion that a member of the Service has engaged himself in activities prejudicial to the interests of the security of the State, that Government may— (a) if the member of the Service is serving under that Government, pass an order placing him under suspension, or (b) if the member of the Service is serving under another Government, request that Government to place him under suspension, till the

passing of the final order in the case: Provided that, in cases, where there is a difference of opinion— (i) between two State Governments, the matter shall be referred to the Central Government for its decision; (ii) between a State Government and the Central Government, the opinion of the Central Government shall prevail.

(1B) The period of suspension of a member of the Service on charges other than corruption shall not exceed one year and the inquiry shall be completed and appropriate order shall be issued within one year from the date of suspension failing which the suspension order shall automatically stand revoked: Provided that the suspension can be continued beyond one year only on the recommendations of the Central Ministry's Review Committee: Provided further that the period during which the disciplinary proceedings remain stayed due to orders of a Court of Law, shall be excluded from this limit of one year.

(1C) The period of suspension of a member of the Service on charges of corruption shall not exceed two years and the inquiry shall be completed and appropriate order shall be issued within two years from the date of suspension failing which the suspension order shall automatically stand revoked:

Provided that the suspension can be continued beyond two years only on the recommendations of the Central Ministry's Review Committee:

Provided further that the period during which the disciplinary proceedings remain stayed due to orders of a Court of Law, shall be excluded from this limit of two years.

(1D) The composition and functions of the Central Ministry's Review Committee and the procedure to be followed by them shall be as specified in Schedule 2 annexed to these rules."

32. Suspension of the 1st respondent has been made vide G.O.Ms.No.579, dated 27.06.2003, and revocation has been done vide G.O.Ms.No.1507, Home (SC) Department, dated 25.10.2007. Thus, when the orders of suspension and revocation have been passed, much before the introduction of second proviso to Rule (1), 1-B to 1-D, of Rule 3 of the Rules, as rightly contended by Mr.Vijaynarayan, learned Senior Counsel, the amended rules and the proviso to Rule 3 (1) have no application to the facts of this case and, therefore, there is no need for the State Government, to have any consultation or assistance from the Central Ministries' Review Committee or the Central Government to pass any order regulating the period of suspension.

33. Rule 4 of the Rules deals with Subsistence allowance during suspension. The said rule is extracted hereunder :

"4. Subsistence allowance during suspension

(1) A member of the Service under suspension or deemed to have been placed under suspension by the Government concerned shall be entitled to receive from that Government:—

(a) a subsistence allowance at an amount equal to the leave salary which a member of the Service would have drawn if he had been on leave on half-average pay or on half pay and in addition, dearness allowance, if admissible on the basis of such leave salary:

Provided that 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 as follows:

(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 suspensions has been prolonged for reasons, to be recorded in writing, not directly attributable to the member of the Service;

(ii) the amount of the 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 for reasons, to be recorded in writing directly attributable to a member of the Service;

(iii) the rate of the dearness allowance will be based on the increased or, as the case may be, the reduced amount of subsistence allowance admissible under sub-clause (i) or sub-clause (ii) above.

(b) any other compensatory allowance admissible from time to time on the basis of pay of which a member of the Service was in receipt on the date of suspension, subject to the fulfilment of other conditions laid down for the drawal of such allowance.

(2) No member of the Service shall be entitled to receive payment under sub-rule (1) unless he furnishes a certificate that he is not engaged in any other employment, business, profession or vocation."

34. The authority to grant subsistence allowance is the suspending authority. Reading of the rules makes it clear that if the period of suspension exceeds three months, there is

a variation in the amount of subsistence allowance. Unless such period of suspension has been prolonged for reasons, to be recorded in writing, not directly attributable to the member of the Service, he is entitled to subsistence allowance, not exceeding 50%.

35. Rule 5(B) of the Rules deals with admissibility of pay and allowances and treatment of Service on reinstatement after suspension. Rule 5-B(1) states that when a member of the Service under suspension is reinstated or would have been so reinstated but for his 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 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 or the date of his retirement on superannuating, as the case may be; and

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

Rule 5B(2) states that notwithstanding anything contained in rule 4, where a member of the Service under suspension dies before the disciplinary or 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 adjustment in respect of subsistence allowance and other allowances already paid.

36. As per Rule 5B (3), where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the member of the Service 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, subject to the adjustment in respect of subsistence allowance and other allowances already paid. Proviso to the said Rule states that where authority is of the opinion that the termination of the proceedings instituted against the member of the Service had been delayed due to reasons directly attributable to the member of the Service, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, for reasons to be recorded in writing, that the member of the Service shall be paid for the period of such delay only such proportion of such pay and allowances as it may determine. As per Rule 5B(4), in cases falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

37. Rule 5B(3) states that if the termination of the proceedings instituted against the member of the Service had been delayed due to reasons attributable to the member of the Service, then, after giving him an opportunity to make his representation and for reasons to be recorded in writing, after considering the representation, if any, submitted, the member of the Service shall be paid for the period of such delay only such proportion of such pay and allowances as it may determine. Admittedly, it is not the case of the writ petitioner that delay in completing the enquiry was directly attributable to the first respondent, and, therefore, there cannot be any deduction of subsistence allowance for the period of delay. On the contrary, the 1st respondent was suspended on 27.06.2003 vide G.O.Ms.No.579. After more than three years, vide proceedings, dated 13.10.2006, Charge Memo has been issued against the 1st respondent. Vide G.O.Ms.No.1507, Home (SC) Department, dated 25.10.2007, the 1st respondent has been reinstated, after four years and four months. After nearly three years from the date of formulation of the charges and nearly six years from the date of suspension, the Principal Secretary to the Government, vide G.O.2(D).No.173, dated 20.04.2009, has imposed the penalty of Censure.

38. As per Rule 5B (5), in case other than those falling under sub-rules (2) and (3), the member of the Service shall subject to the provisos of sub-rules (8) and (9) be paid such proportion of the full pay and allowances to which he would have been entitled had he not been suspended, as the authority competent to order reinstatement may determine, after giving notice to the member of the Service of the quantum proposed and after considering the representation, if any, submitted by him in that connection within sixty days from the date on which the notice aforesaid is served on the member of the Service. Sub-Rule 8 of Rule 5B speaks about all other conditions under which such allowances are admissible and as per Rule 9 of Rule 5B, the proportion of the full pay and allowances determined under the proviso to sub-rule (3) or sub-rule (5) shall neither be equal to full pay and allowances nor shall it be less than the subsistence allowance and other allowances admissible under rule 4.

39. Reading of the entire Rule 5B makes it clear that only in cases falling under proviso to sub-rule (3) or sub-rule (5), subsistence allowance shall not be equal to full pay and allowance, and it shall be subject to such proportion of such pay and allowances as may be determined for the period of such delay attributable to the member of the Service or for cases other than falling under rules (2) and (3), subject to all other conditions, under which such allowances are admissible.

40. As stated supra, suspension has been revoked, pending finalisation of the disciplinary proceedings and no delay was

attributed to the member of the Service in the termination of disciplinary proceedings. On the contra, material on record, indicates the delay is on the part of the writ petitioner. In the above circumstances, on the termination of the disciplinary proceedings and when a minor penalty is imposed, then the period ought to have been regulated, in the light of sub-Rule (4) of Rule 5B of the Rules.

41. The instant case does not fall under sub-rule 5 of Rule 5B. It does not under the proviso to sub-rule 3. It squarely falls under sub-rule 4 of rule 5B, which states that in case falling under sub-rule 3, the period of suspension shall be treated as period spent on duty for all purposes.

42. At this juncture, it is pertinent to mention that whenever a member of the Service is suspended, pending investigation or inquiry into any allegations, he would be required not to leave the headquarters, without the prior permission of the authority, who had placed him under suspension and that he would be required for inquiry or investigation, as the case may be. There may be such other reasonable conditions that may be imposed in the order of suspension to facilitate prompt inquiry or investigation, as the case may be. It is also to be noted that but for the suspension, as there is a continuation of service, the member of the Service, who is suspended is not supposed to take up any employment during the period between suspension and reinstatement or any penalty imposed, on the conclusion of the disciplinary proceedings. At this juncture, it is pertinent to point out that as per Rule 4 (2) of the Rules, no member of the service shall be entitled to receive payment under sub-rule (1) unless he furnishes a certificate that he is not engaged in any other employment, business, profession or vocation.

43. Disciplinary proceedings initiated against the 1st respondent has resulted in censure. It is one of the minor penalties in Rule 6 of the Rules. Let us assume a case of misconduct involving pecuniary loss caused to the Government, if on the conclusion of the disciplinary proceedings, if the competent authority proposes to pass orders for recovery from pay for the pecuniary loss caused to the Government by a member of the Service and if such member of the Service is also to be denied subsistence allowance, when he was not directly attributable to the delay in the disposal of the disciplinary proceedings, then, he may have to lose a portion or full of the subsistence allowance and also suffer recovery from the pay of the whole or part of the revenue loss, caused to the Government. It is to be noted that payment of subsistence allowance is regulated as per Rule 4 of the All India Services (Discipline and Appeal) Rules, 1969, during suspension and the period of suspension is regulated, as per Rule 5B of the Rules.

44. Thus, reading of Rule 5B(1) in entirety, makes it clear that the authority competent to order suspension shall make a specific order 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 whether or not the said period shall be treated as a period spent on duty. In the case, where termination of proceedings instituted against the member of the Service was delayed due to the reasons directly attributable to him, or in cases other than those falling under sub-rules 2 and 3, and in cases, where there is a non-fulfilment of other conditions, by the member of service, under which the allowances were paid, then the competent authority can deny the pay and allowances during the period of suspension, ending with reinstatement. Thus, if there is a case, falling under any of the abovesaid circumstances, the competent authority, after giving notice to the member of the service of the quantum proposed and after considering the representation, if any, submitted by him in that connection within sixty days from the date on which the notice aforesaid is served on the member of the Service, and for the reasons to be recorded in writing, shall determine the extent of pay and allowances to be made, and for cases, falling under the domain of sub-rule 5B (3), excluding the proviso, the period of suspension shall be treated as period spent on duty, for all purposes and an order ought to have been issued by the competent authority, and in the case on hand, the State Government, in terms of Rule 5B(1) read with Rule 5(4) of the said Rules. Rule 5B makes a distinction as to when the entire period shall be treated as spent on duty for all purposes and when the said period shall not be treated as a period spent on duty.

45. One of the contentions raised by the learned Additional Advocate General is that the Central Administrative Tribunal, Madras Bench, ought to have decided the subject matter only with reference to rule 5B of the Rules and not with reference to the cases decided under Rule 54B of the Fundamental Rules, applicable to the civil servants, governed by the Central Civil Services Rules, 1965.

46. At this juncture, this Court deems it fit to extract a Government of India Circular, Department of Personnel & Training, Office Memo No.11012-15-85-ESTT (A), dated 3rd December, 1985, which reads as under :

"No.11012/15/85-Estt (a)

Government of India/Bharat Sarkar
Ministry of Personnel & Training, Admn.Reforms
and Public Grievances & Pension
Department of Personnel & Training

.....
New Delhi, the 3rd December, 1985.

OFFICE MEMORANDUM

Subject :- Period of suspension to be treated as duty if only a minor penalty is imposed after conclusion of the disciplinary proceedings - Recommendations of the Committee of the National Council (JCM) -

.....

The undersigned is directed to invite attention to this Department O.M.No.43/56/64-AVD dated 22.10.64 containing the guidelines for placing Government servants under suspension and to say that these instructions lay down, inter-alia, that Government servant could be placed under suspension if a prima-facie case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. These instructions thus make it clear that suspension should be restored to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. The Staff Side of the Committee of the National Council set up to review the CCS (CC&A) Rules, 1965 had suggested that in cases where a government servant, against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension period. Government have accepted this suggestion of the staff side. Accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally ended with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR (54-B) and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B.

2. Ministry of Agriculture etc. are requested to bring the contents of para 1 above to the notice of all authorities concerned under their control.

3. These orders will become effective from the date of issue. Past cases already decided need not be reopened.

4. Hindi version will follow.

(A.JAYARAMAN)
DIRECTOR"

47. The members of All India Services are governed by All India Services Act, 1951, and the rules framed thereunder, under

Section 3 of the Act. However, it is to be noted that generally the instructions issued by the Ministry of Personnel & Training, Administrative Reforms and Public Grievances & Pension, Department of Personnel & Training, is applied to all the services of Union of India. As per the Government of India's notification, dated 03.12.1985, the Staff Side of the Committee of the National Council set up to review the CCS (CC&A) Rules, 1965 had suggested that in cases where a government servant, against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension period. Government have accepted this suggestion of the staff side. Accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally ended with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR (54-B) and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B.

48. Some of the decisions relied on by the learned Senior Counsel for the 1st respondent, and considered by the Central Administrative Tribunal, Madras Bench, are extracted hereunder:

(i) In *Y.P. Sehgal v. State of Punjab and another*, reported in (1991) 1 SLR 583 (P&H) (DB), the petitioner therein was inflicted with a penalty of censure. He was denied arrears of salary and allowances, other than subsistence allowance granted to him, during the period of suspension. When the order denying the same was challenged by way of writ petition, by observing that the case is squarely covered by the judgment of the Hon'ble Supreme Court, reported in *M. Gopal Krishna Naidu v. State of Madhya Pradesh*, AIR 1968 SC 240, a Hon'ble Division Bench of the Punjab & Haryana High Court set aside the order and consequently held that the petitioner therein was entitled to the arrears and allowances along with other retiring and pensionary benefits.

(ii) In *S.P. Naik v. Board of Trustees, Mormugao Port Trust, Goa*, reported in (1999) 3 MHLJ 351, a Hon'ble Division Bench of the Bombay High Court, while considering a challenge to the penalty of withholding of two annual increments for two years without cumulative effect and to the finding of the disciplinary authority, relating to the period of suspension, treating the same as non-duty, at para 9 of the said judgment held as follows :

"9. Nevertheless, in so far as the finding of the Disciplinary Authority relating to the period of suspension as 'non-duty' is concerned, there is considerable merit in the submission of the

petitioner. Though we do not find any merit regarding the challenge to the penalty of withholding of two annual increments for two years with cumulative effect, which penalty cannot be said to be disproportionate, so as to interfere with in the exercise of writ jurisdiction. This penalty is found to be commensurate with the articles of charge, which have been found to be proved against the petitioner. However, there is considerable force in the contention of the petitioner that in view of imposition of minor penalty, the period of suspension should have been treated as 'on duty'. The Mormugao Port Employees (Classification, Control and Appeal) Regulations, 1964 provide for major and minor penalties. With-holding of increments falls under the category of minor penalty. Regulation 9 deals with nature of penalties. Regulation 11 deals with imposition of major penalties and Regulation 12 deals with the procedure of imposing minor penalties. The penalty of with-holding of increments or promotion falling under Regulation 9(ii) is treated as minor penalty under Regulation 12. When minor penalty is imposed, period of suspension is not to be treated as not on duty. In fact, as per Schedule under the said Regulations, 1964, in case of Officers holding Class I post and above, the Appellate Authority for the imposition of penalty is Central Government. The Government of India, in decision dated 3-12-1985, reported under F.R. 54-B of the Fundamental Rules under heading 'Administrative Instructions', at item No. 3 at page 260 of Swamy's Fundamental Rules, Part-I, Twelfth Edition, has dealt with this issue. In this decision, the Government of India took into consideration the guidelines and instructions on the subject that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty."

The Hon'ble Division Bench of Bombay High Court has considered the Government of India's Office Memo No.11012-15-85-ESTT (A), dated 3rd December, 1985, extracted supra. It is worthwhile to extract the same, as follows,

"The Government of India has ruled that when an inquiry has been held for imposition of a major penalty and finally minor penalty is awarded, the suspension should be considered unjustified and in terms of F.R. 54-B the employee should be paid full pay and allowances for the period of suspension by passing a suitable order under F.R. 54-B. The same principle has to be applied in the case under consideration. Thus, in our opinion, the petitioner is entitled to full pay and

allowances for the period of suspension and the order of the Disciplinary Authority, treating the said period as not on duty is required to be set aside. "

(iii) In Y.S.Sachan v. State of Madhya Pradesh reported in (2003) 4 MPLJ 219, a learned single Judge of the Madhya Pradesh High Court, considered the validity of challenge to a minor penalty of withholding of one increment, and, while sustaining the penalty at para No.8, held as follows :

"8. So far as the salary for the period of suspension is concerned, the petitioner should be paid full salary. A minor penalty has been imposed upon the petitioner. The punishment is so light and therefore the petitioner could not be saddled with the heavier penalty of depriving him the salary for the suspension period. This part of the impugned order is not a speaking order. No reasons have been assigned for depriving the petitioner of his salary for the suspension period. The Government of India has issued a circular dated 3-12-1985 stating there in that where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of F.R. 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under F.R. 54-B. The guideline issued by the Central Government for its employees is just and reasonable and it should be followed by the State Government and its instrumentality. The Jabalpur Development Authority is also such instrumentality and it will also be governed by such interpretation of Rule 54-B of the Fundamental Rules."

(iv) In State of M.P.and Another v. Shailendra reported in (2011) 3 MPLJ 412 (DB), a Hon'ble Division Bench of the Madhya Pradesh High Court, at Paragraph No.5, held as follows :

"5. It is not in dispute that/the departmental proceedings instituted against the respondent, who remained suspended during the period, for the imposition of a major penalty, finally ended with imposition of minor penalty of withholding of two increments without cumulative effect. In the circumstances in view of the Circular 13-1-2015 which was filed with the writ petition as Annexure P-8, as also in view of the law laid down in the case of Y.S.Sachan vs.State of M.P. And others (supra) the respondent was very much entitled for full salary of the period of his suspension..."

Some of the cases decided by this Court, on the same issue, are extracted,

(v) In S.Chandrasekaran v. The Joint Director of Agriculture, Tiruchirapalli, and Another, reported in 2014 SCC Online Mad 11643, [W.P.No.6836 of 2007, dated 03.12.2014], a learned single Judge has directed the respondents therein to pay the wages for the period of suspension, after deducting the subsistence allowance, if any, paid during the period of suspension. While doing so, he has relied on the decisions in K.Karthikeyan v. The Secretary to Government, W.P.No.14133 of 2006, dated 01.11.2006 and A.V.Vinod Kumar v. The Executive Committee, 2007 (5) ALD 445, which are extracted hereunder :

"8. Though as per Fundamental Rule, if the concerned delinquent is not fully exonerated the period of suspension has to be treated at the discretion of the concerned authority, i.e., it can either be treated as duty period or as eligible leave, but if the punishment awarded is a major punishment, passing an order invoking the above said Fundamental Rule is justifiable. But as far as the case on hand is concerned, as pointed out earlier, a very very minor punishment has been imposed. As such invoking Fundamental Rule, the suspension period cannot be treated as eligible leave. "

In A.V.Vinod Kumar's case (cited supra), the Andhra Pradesh High Court, at paragraph No.18, held as follows :

"18. However, I am in full agreement with the submissions made by Sri G.Ramachander Rao, learned counsel for the respondents that the disciplinary authority has all the power to impose any punishment in the facts and circumstances of the case. The power of the disciplinary authority is not in dispute, but the question that arises for consideration is that whether, while imposing minor penalty of censure, the disciplinary authority could have treated the period of suspension as 'not on duty' and further, held that the petitioner is not entitled for any amount over and above what was paid towards subsistence allowance. Censure is a minor punishment something like a warning to be careful in future. In fact, in the Order dated 24.12.1991, it was stated that a lenient view in the matter was taken to afford an opportunity to the petitioner to improve his behaviour and to be careful in his work in future. While holding so, treating the period of suspension as 'not on duty' cannot be said

to have been done in good faith and good conscience. The censure itself is a punishment of a minor nature. To treat the period of suspension as not on duty is a severe punishment, by which the petitioner is denied continuity of service for the purpose of seniority, promotion etc. Therefore, though the disciplinary authority has got power, such power, in this case, was not exercised reasonably and no reasonable person could have treated the period of suspension as not on duty while imposing the minor punishment of Censure."

(vi) In S.Dakshinamoorthy v. Deputy Inspector General of Police, [W.P.No.1740 of 2014, dated 24.02.2015], the order was made, treating the suspension period as eligible leave. Submission was to the effect that though the proceedings under Rule 3 (b) of Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, for imposing a major penalty was taken, however, after inquiry, the petitioner therein was imposed with a minor penalty of stoppage of increment for one year without cumulative effect and that, therefore, the authority was bound to treat the period as duty period. Accepting the same, at para 8, a learned single Judge has held as follows :

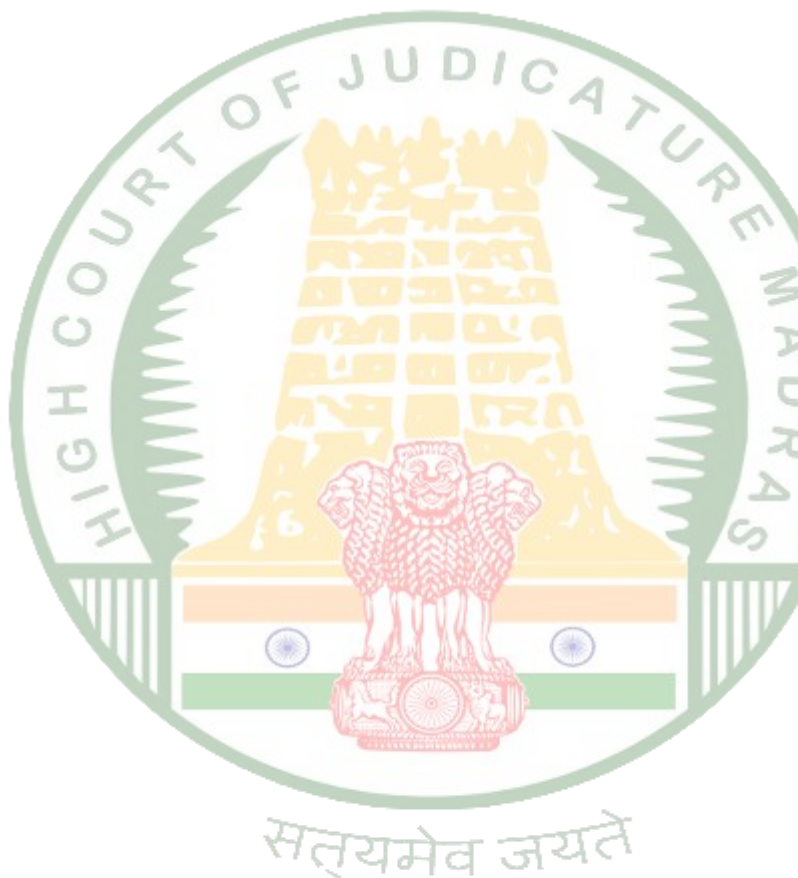
"8. F.R.54(B) gives a discretion to the authority to regularise the period of suspension. When a discretion is given to the authority to consider the matter, necessarily all background facts should be taken into account. In the subject case, the second respondent failed to consider the fact that only minor punishment was imposed on the petitioner, notwithstanding the initiation of proceedings under Rule 3(b) of TNPSS (D & A) Rules. The impugned order refusing to treat the suspension period as spent on duty would involve civil consequences to the petitioner. It would also amount to double jeopardy inasmuch as the petitioner has already been punished for the misconduct in question. I am therefore of the view that the petitioner is entitled to succeed."

49. Though all the cases relied on by the learned Senior Counsel for the 1st respondent relate to a member of either State or Central Service, as the case may be, the consistent decision of the Courts is to the effect that when the proceedings were initiated for imposing a major penalty and if it results in imposition of a minor penalty, the period of suspension has to be treated as duty. Inasmuch as the learned Additional Advocate General has contended that cases decided under FR 54-B ought not to have been applied to the case of the 1st respondent, who falls under Rule 5B of the All India Services, let us have a comparative study of the Rules.

FUNDAMENTAL RULE 54B	RULE 5B OF THE ALL INDIA SERVICES (DISCIPLINE AND APPEAL) RULES
(1) When a Government servant who has been dismissed, removed or compulsorily retired is re-instated as a result of appeal review or would have been so re-instated but for his retirement on superannuation, while under suspension or not, the authority competent to order re-instatement shall consider and make a specific order:- (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, and (b) whether or not the said period shall be treated as a period spent on duty.	5B(1) When a member of the Service under suspension is reinstated or would have been so reinstated but for his 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 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 or the date of his retirement on superannuating, as the case may be; and (b) whether or not the said period shall be treated as a period spent on duty.

FUNDAMENTAL RULE 54B	RULE 5B OF THE ALL INDIA SERVICES (DISCIPLINE AND APPEAL) RULES
(2) Where the authority competent to order re-instatement is of the opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be: Provided that where such authority is of 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 representations within 60 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, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount not being the whole of such pay and allowances as it may determine.	5B(2) Notwithstanding anything contained in rule 4, where a member of the Service under suspension dies before the disciplinary or 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 adjustment in respect of subsistence allowance and other allowances already paid.

FUNDAMENTAL RULE 54B	RULE 5B OF THE ALL INDIA SERVICES (DISCIPLINE AND APPEAL) RULES
(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be shall be treated as a period spent on duty for all purposes.	5B(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the member of the Service 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, subject to adjustment in respect of subsistence allowance and other allowances already paid: Provided that where authority is of the opinion that the termination of the proceedings instituted against the member of the Service had been delayed due to reasons directly attributable to the member of the Service, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the member of the Service shall be paid for the period of such delay only such proportion of such pay and allowances as it may determine.



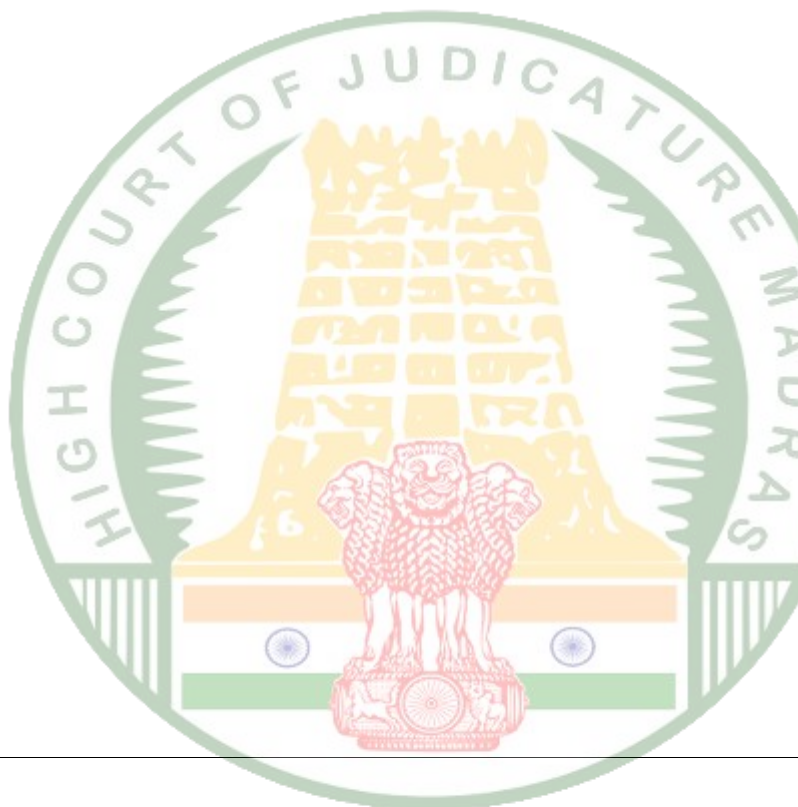
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FUNDAMENTAL RULE 54B	RULE 5B OF THE ALL INDIA SERVICES (DISCIPLINE AND APPEAL) RULES
(4) In the cases other than those covered by sub-rule 5B(4) including the cases where the order of dismissal, removal or compulsory retirement from service is set aside by the sub-Appellate or Reviewing Authority solely on the ground of non-compliance with the requirements of Clause (2) of Article 308 of the Constitution and no further enquiry is proposed to be held, the Government servant shall subject to the provisions of sub-rules (6) and (7), be paid such amount (not being more than the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served as may be specified in the notice: Provided that any payment under this sub-rule to a Government servant {other than a Government servant who is governed by the provisions of the Payment of Wages Act 1936 (4) of 1936} shall be restricted to a period of three years immediately preceding the date on which orders for re-instatement of such Government servant are passed by the Appellate Authority or Reviewing Authority, of immediately preceding the date of retirement on superannuation of such Government servant, as the case may be.	5B(4) In cases falling under sub-rule (3) the provisions shall be treated as a penalty for all purposes.

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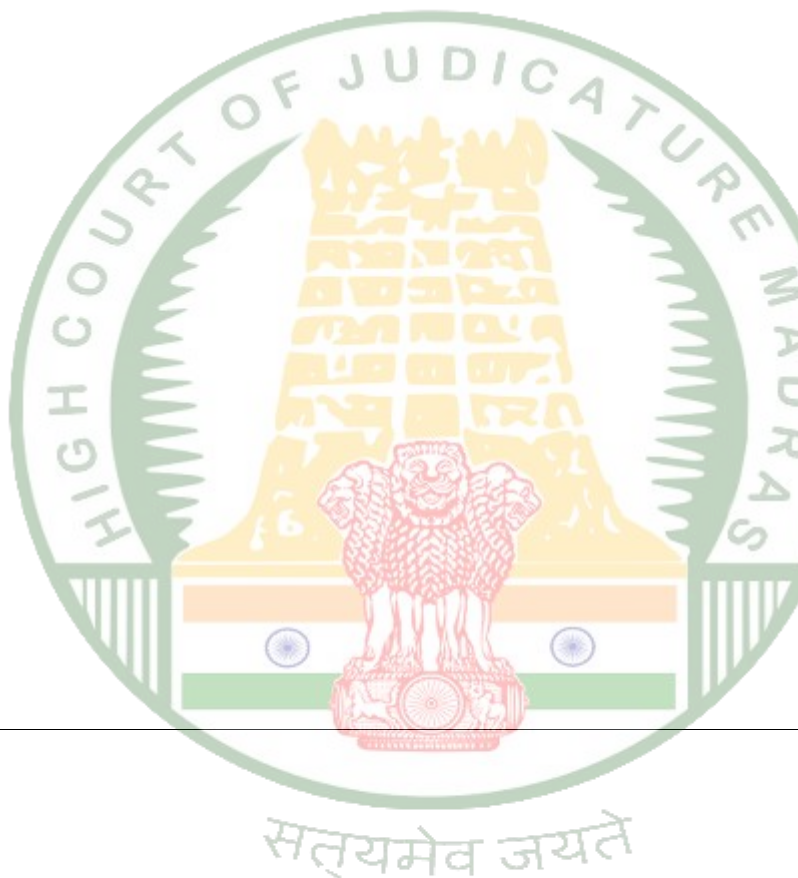
FUNDAMENTAL RULE 54B	RULE 5B OF THE ALL INDIA SERVICES (DISCIPLINE AND APPEAL) RULES
(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose: Provided that if the Government servant so desires, such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant. Note.- The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary to the grant of- (a) extraordinary leave in excess of three months in the case of temporary Government servant, and (b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.	5B(5) In case other than those falling under sub-rules (2) and (3), the member of the Service shall be subject to the provisions of sub-rules (8) and (9) be paid such proportion of the full pay and allowances to which he would have been entitled had he not been suspected, as the authority competent to order reinstatement may determine, after giving notice to the member of the Service of the quantum proposed and after considering the representation, if any, submitted by him in that connection within Sixty days from the date on which the notice aforesaid is served on the member of the Service.

FUNDAMENTAL RULE 54B	RULE 5B OF THE ALL INDIA SERVICES (DISCIPLINE AND APPEAL) RULES
(6) The payment of allowances under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.	5B(6) Where suspension is revoked pending finalization of the disciplinary proceeding or proceedings in a court any order passed under sub-rule (1) before the conclusion of the proceedings against the member of the Service, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order in accordance with the provisions contained in sub-rule (3) or sub-rule (5), as the case may be.



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FUNDAMENTAL RULE 54B	RULE 5B OF THE ALL INDIA SERVICES (DISCIPLINE AND APPEAL) RULES
(7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under rule 53.	5B(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 purpose: 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.



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FUNDAMENTAL RULE 54B	RULE 5B OF THE ALL INDIA SERVICES (DISCIPLINE AND APPEAL) RULES
(8) Any payment made under this rule to a Government servant on his re-instatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of re-instatement. Where the emoluments admissible under the rule are equal to or less than the emoluments earned during the employment elsewhere, nothing shall be paid to the Government servant.	5B(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.
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50. Principles of law, decided by Courts, in the matter of regulating the period of suspension, cannot be varied just because the 1st respondent belongs to All India Services and governed by different Rules. There cannot be a different yardstick, in the matter of regulating the period of suspension between a member of the All India Services or Central or State Services.

51. A decision under FR 54B or 5B of the All India Services (Discipline and Appeal) Rules, as the case may be, has two separate and independent matters, viz., (1) Pay and Allowances for the period of absence, and (2) Whether or not the period of absence should be treated as duty. If an order adverse to the member of the service has to be passed under rule 5B(1), read with Rules 5B(3) and 5B(5) of the rules, either denying the whole or portion of pay and allowances or with reference to the period of duty, then the member of the service, is required to be given a reasonable opportunity. In the case on hand, even without giving any opportunity to the 1st respondent, it is the stand of the writ petitioner that suspension is not wholly unjustified and that the 1st respondent is not entitled to pay and allowances, for the period of suspension. Apparently, there is a violation of the principles of natural justice.

52. Fundamental Rule 54B applicable to Central Government Servants, is literally reproduced as Rule 5B of the All India Services (Discipline and Appeal) Rules. In the All India Services (Discipline and Appeal) Rules, 1969, applicable to a member of All India Service Rules, the words, "Government servant" is replaced by "the member of service". In the All India Services (Discipline and Appeal) Rules, 1969, there is a reference to the case of a person, prematurely retired. On a close scrutiny and comparative study of both the rules, we are of the considered view that there is no glaring difference between FR 54B and Rule 5B of the All India Services (Discipline and Appeal) Rules.

53. All the expressions employed in FR 54B applicable to the Central Government servants and Rule 5B of the All India Services (Discipline and Appeal) Rules, are almost similar, except for minor variations, which do not make this Court to arrive at a conclusion that provisions of FR 54B and Rule 5B of the All India Services (Discipline and Appeal) Rules, are totally different.

54. Comparative study of both the rules, does not indicate any gross or glaring difference in the text or concept, in which, the expressions are used in both the rules. Going through Rule 5B of the All India Services (Discipline and Appeal) Rules, 1969, it could be deduced that the Government of India, while framing the rules, for the All India Services, in exercise of the powers, conferred under sub-section (I) of Section 3 of the All India Services Act, 1951 (61 of 1951), have framed Rule 5B of the All India Services (Discipline and Appeal) Rules, in consonance with the Fundamental Rules, applicable to the services of the Union.

55. The All India Services (Discipline and Appeal) Rules, 1969 and the Fundamental Rules, 1922 are almost similar, except for minor variations. In all other respects, the rules are *pari materia*. The intention of the Central Government, while framing the rules, regulating the period of suspension, whether it is a case of a Government servant, governed under Fundamental Rules or for that matter, a member of All India Services, governed under the All India Services (Discipline and Appeal) Rules, 1969, appears to be the same.

56. It cannot be disputed that the Fundamental Rules framed by the Government of India, in the year 1922, before framing of the Constitution of India, in the year 1950, have been adopted and validated under Article 313 of the Constitution of India, and from the comparative study, it could be deduced that the same have been considered, with minor variations, when the Central Government have framed Rule 5B of the All India Services (Discipline and Appeal) Rules.

57. Though the learned Additional Advocate General, appearing for the Government of Tamil Nadu, has contended that cases rendered under Fundamental Rules 54B ought not to have been considered by the Central Administrative Tribunal, Madras Bench, it is not his contention that the provisions of Fundamental Rules 54B and 5B of the All India Services (Discipline and Appeal) Rules, are not *pari-materia*. There is no specific plea in the memorandum of grounds also, nor any submissions have been advanced.

58. Rule 5B of the All India Services (Discipline and Appeal) Rules, 1969, being similar or *pari-materia*, uncontrolled by any other provision in the All India Services (Discipline and Appeal) Rules, 1969, without any gross variation, in the text, context or intention of the Central Government, which framed both the rules, we are unable to subscribe to the contentions of the learned Additional Advocate General, Government of Tamil Nadu, that the Central Administrative Tribunal, Madras Bench, has committed any illegality, in applying the decisions rendered under Fundamental Rules 54B to the facts of the case.

59. The next question to be considered, is whether the Central Administrative Tribunal, Madras Bench, has exceeded in its jurisdiction, in granting the relief of treating the period of suspension as duty, when there is no prayer in the Original Application. On this aspect, let us consider the prayer sought,

"(a) for quashing the orders G.O.2(D)No.173 & No.26011/18/2007-IPS-II, of the 2nd and 1st respondent as illegal and void;

(b) for a direction to the respondents to confer all consequential benefits to the applicant as admissible; and

(c) for such further or other relief or reliefs....."

60. Indisputably, the 1st respondent has sought for a consequential prayer for a direction to the respondents therein to confer all the consequential benefits to the applicant/1st respondent, as admissible as per the rules. It cannot be disputed that arguments have not been advanced by the 1st respondent that the State Government has failed to pass any orders, regulating the period of suspension as duty. Order impugned in this writ petition refers to the arguments of either counsel on this aspect.

61. In view of Rules 3(1A) and 5B of the All India Services (Discipline and Appeal) Rules, the State Government, being the competent authority to regulate the period of suspension, cannot contend that they are not statutorily mandated to pass an order under Rule 5B(1) of the All India Services (Discipline and Appeal) Rules. Presence of the Central Government for adjudicating the lis, is not required.

62. When the larger relief sought for, is declined, on the facts and circumstances of the case and when admittedly, arguments have been advanced by either parties, with reference to statutory rules, to meet the ends of Justice, the Court/Tribunal can mould the relief, in exercise of its inherent power to do substantial justice and equity. In the case on hand, exercise of such power by the Tribunal cannot be assailed on the ground that it is in excess of jurisdiction. When the Court/Tribunal grants a relief by moulding the prayer, it is the judicial conscience of the Court/Tribunal, which is reflected in the order.

63. When the 1st respondent has sought for a consequential prayer for a direction to the writ petitioner therein, to confer all the benefits, admissible to him, the Tribunal, advertent to the statutory rules, has granted the relief, by giving directions to the writ petitioner and the Union of India to treat the period of suspension between 27.06.2003 and 25.10.2007, as qualified service, for all purposes, with entitlement for full pay and allowances. The Tribunal has further directed that the 1st respondent would be entitled to all the consequential benefits, arising therefrom. At this juncture, it is useful to consider few decisions, on the aspect of moulding the reliefs,

(i) In *Pasupuleti Venkateswarlu v. The Motor & General Traders* reported in 1975 (1) SCC 770, at Paragraph 4, the Hon'ble Apex Court held as follows:

"We feel the submissions devoid of substance.

First about the jurisdiction and propriety vis a vis

circumstances which come into being Subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief for the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice--subject, of course, to the absence of other disentitling (actors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myraid. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

(ii) In *Priyanka Overseas Pvt. Ltd., v. Union of India* reported in 1991 Supp. (1) SCC 102, the Hon'ble Supreme Court, while observing that a party cannot be permitted to take advantage of his own wrong and on the facts and circumstances of the case, moulded the relief accordingly.

(iii) In *Hindalco Industries Ltd., v. Union of India* reported in 1994 (2) SCC 594, the Supreme Court, at paragraph 7, held as follows:

"7. It is settled law that it is no longer necessary to specifically ask for general or other relief apart from the specific relief asked for. Such a relief may always be given to the same extent as if it has been asked for provided that it is not inconsistent with that specific claim which the case raised by the pleadings. The court must have regard for all the relief and look at the substance of the matter and not its forms. It is equally settled law that grant of declaring relief is always one of

discretion and the court is not bound to grant the relief merely because it is lawful to do so. Based on the facts and circumstances the court may on sound and reasonable judicial principles grant such declaration as the facts and circumstances may so warrant. Exercise of discretion is not arbitrary. If the relief asked for is as of right, something is included in his cause of action and if he establishes his cause of action, the court perhaps has been left with no discretion to refuse the same, But when it is not as of right, then it is one of the exercise of discretion by the court. In that event the court may in given circumstances grant which includes 'may refuse' the relief. It is one of exercising judicious discretion by the court. Same consideration would apply to the causes under the Act and the Tribunal has such discretion. The Tribunal, while keeping justice, equity and good conscience at the back of its mind, may when compelling equities of the case oblige them, shape the relief consistent with the facts and circumstances established in the given cause of action. Any uniform rigid rule, if be laid, it itself turns out to be arbitrary. If the Tribunal thinks just, relevant and germane, after taking all the facts and circumstances into consideration, would mould the relief, in exercising its discretionary power and equally would avoid injustice. Likewise when the right to remedy under the Act itself arises on the presence or absence of certain basic facts, at the time of granting relief, may either grant the relief or refuse to grant the same. It would be one of just and equitable exercise of the discretion in moulding the ancillary relief. It is not as of right. In Associated Provincial Picture Houses Ltd. case' under Sunday Entertainments Act, 1932, the licensing authority while granting permission to exhibit cinematographs, imposed certain conditions, prohibiting the children under age of 15 years to be admitted in the theatre. It was challenged as being arbitrary. Dealing with the discretionary power of the licensing authority, the Court of Appeal held that the law recognised certain principles on which discretion must be exercised but within the four corners of those principles. The discretion is not absolute one. The exercise of such a discretion must be a real exercise of the discretion. If in any statute conferring the jurisdiction, there are to be found, expressly or by implication, matters to which the authorities exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. Conversely, if the nature of the subject- matter and

the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, they must disregard those matters. Expressions have been used in cases where the powers of local authorities came to be considered relating to the sort of thing that may give rise to interference by the court. Bad faith, dishonesty - those, of course, stand by themselves, unreasonableness, attention given to extraneous circumstances, disregard of public policy, and things like that have all been referred to as being matters which are relevant for consideration. The discretion must be exercised reasonably. A person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said to be acting unreasonably."

64. Therefore, when arguments have been advanced by the 1st respondent, on the issue that the State Government have failed to discharge its statutory duty, under Rule 5B(1) of the All India Services (Discipline and Appeal) Rules, the powers of the Tribunal or for that matter, the Court is not fettered from addressing the issue, to do substantial justice. When a statutory right to claim pay and allowances, is infringed and when the statutory authority has failed to exercise its duties and functions, mandated under a statutory rule and if pointed out, for redressal, the Court or the Tribunal, cannot be expected to be a mute spectator and defeat the case of the litigant on the ground that no specific prayer is made and drive him to institute another proceeding, for the said relief, on the same cause of action.

65. Exercise of the powers by the Tribunal, though not akin to Article 226 of the Constitution of India, to do substantial justice, to the grievance made and redressed, cannot be said to be an illegal act or exceeding in its jurisdiction. On the contra, we are of the view that the Central Administrative Tribunal, Madras Bench, has rightly exercised its jurisdiction, with reference to the definition, service matter, as defined in Section 3(q) of the Administrative Tribunals Act, 1995. When the 1st respondent has ventilated infringement of a statutory right, and requested the Central Administrative Tribunal, Madras Bench, to consider the same, by granting suitable directions, has vindicated the same, which cannot be said to be granting a relief, which is beyond the scope of the pleadings, arguments and statutory provisions.

66. Though Mr.P.H.Aravind Pandian, learned Additional Advocate General, appearing for the petitioner, submitted that the Central Administrative Tribunal, Madras Bench, while confirming the penalty, has exceeded in its jurisdiction, by issuing directions to the writ petitioner and the Union of India, represented by the Secretary to the Government, Ministry of Home, to treat the period of suspension, between 27.06.2003 and 25.10.2007, as spent on duty and further directed them, to pay the consequential benefits of pay and allowances, in the light of our discussion, with reference to the statutory rules, we are of the view that when there is a failure to discharge the statutory duties, Courts/Tribunals are empowered to issue directions, in the nature of Mandamus, even if there is no specific prayer. Infringement of a right and failure to exercise duty, cast upon the statutory authorities, are the two elements to be satisfied. The 1st respondent has been suspended on 27.06.2003 and without prejudice to the disciplinary proceedings, initiated on 13.10.2006, he has been reinstated on 26.10.2007, after four years and four months. Six years, after suspension, the disciplinary proceedings have ended in imposing a penalty of censure.

67. In the light of the discussion and decisions of the Courts, dealing with similar matters, as to how to regulate the period of suspension, we are of the considered view that the suspension between 27.06.2003 and 25.10.2007, is wholly unjustified. The contention of the learned Additional Advocate General that there is a delay in approaching the Tribunal and hence, the application ought to have been rejected, cannot be countenanced, in the light of the decision of the Hon'ble Apex Court in Union of India v. Tarsem Singh reported in (2008) 8 SCC 648. We hold that the State Government, the competent authority, under Rule 2(1)(i) of the All India Services (Disciplinary and Appeal) Rules, 1969, have failed to exercise their statutory duties, in terms of Rule 5B(1) of 1969 Rules. When the State Government is the competent authority to regulate the period of suspension, the contention of the learned Additional Advocate General appearing for the Government that the presence of the Central Government is necessary, is rejected. The contention of the learned Additional Advocate General that the Central Administrative Tribunal has erred in granting benefits to the 1st respondent, by relying on decisions, where FR-54B has been applied, cannot be countenanced. His further contention that the disciplinary proceedings initiated against the 1st respondent has resulted in the penalty of censure and, therefore, the suspension is not wholly unjustified, also cannot be accepted. Going through the materials on record and in the light of the decisions stated supra, we do not find any valid ground to interfere with the impugned order.

68. For the foregoing reasons, Writ Petition is dismissed.
No costs. Consequently, the connected M.P.No.1 of 2015 is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

dixit/skm
To

1. The Secretary,
Union of India,
Ministry of Home Affairs,
New Delhi.
2. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

+1 cc to Mr.Menon Karthick Mukundan & Neelakandan
Advocate sr.65442

W.P.No.21830 OF 2015

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