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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P. (C) 2449/2014

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Judgment reserved on :23.09 .2015
Judgment pronounced on : 16.11.2015

UNION OF INDIA & ORS. ......Petitioners
Through : Mr. Ruchir Mishra, Advocate.

Versus

DEVI KRISHAN SHARMA .....Respondent
Through : Respondent in person.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. The present writ petition challenges the correctness of the order dated 11.09.2013 passed by the Central Administrative Tribunal in O.A. No. 3684/2012, whereby the learned Tribunal allowed the said O.A. filed by the petitioner.

2. The facts in a nutshell are as under:

> *"The Applicant was under suspension for the period, i.e. 21.04.2005 to 13.04.2006 and thereafter he was facing departmental enquiry proceedings. Ultimately, he was removed from service on 15.3.2011. Prior to his suspension, he drew his annual increment on 01.08.2004 and in the normal course; the next increment was due for him on 01.08.2005. Since the Applicant was under suspension during the aforesaid period, he was not granted the said increment. By the time, the Applicant*

was reinstated in service w.e.f. 13.4.2006, on the recommendations of the 6th Pay Commission, the system of uniformity in granting annual increments was introduced w.e.f. 1.1.2006. Therefore, he became entitled to get his next increment w.e.f. 1.7.2006 but the respondents did not give it. He was given the next increment only with effect from 01.07.2007. Further increments have also been granted to him w.e.f. 01.7.2008, 01.7.2009 and 01.07.2010. Thereafter, he remained under deemed suspension w.e.f. 12.08.2010 and as stated earlier, he was removed from service on 15.03.2011. As a result, the same amount of subsistence allowance was continued to be paid to him throughout the period of his suspension. He has, therefore, made a representation on 21.08.2006 followed by reminders dated 30.12.2011 and 23.01.2012. However, vide their letter dated 03.02.2012, the respondents informed him as under:-

You were awarded major penalty for criminal conduct. As per record of the office, you were paid subsistence allowance during suspension period as per provision contained in Rule 53(1) of FR which was extended by 50%. As such you shall not be paid any arrear of any pay and allowances for suspension period since suspension was resulted in major penalty.

3. Mr. Ruchir Mishra, learned counsel appearing on behalf of the petitioners submits that the order passed by the Central Administrative Tribunal is unjust, illegal, arbitrary and against the principles of natural justice.

4. Learned counsel for the petitioners contends that the respondent is not entitled to regular annual increment during the suspension period, more so, when suspension period has been treated as *dies*

non for all purposes and he is not entitled to increment which fell due on 01.08.2005 as he remained suspended between 21.04.2005 to 13.04.2006 which period was treated as *dies non.* Two office orders dated 12.06.2012 and 23.10.2012 were issued treating the suspension period as non duty. Mr. Mishra further added that subsistence allowance as a consequence of the increment could not be given to the respondent.

5. Learned counsel during arguments has drawn the attention of this Court to Rule 10 of the CCS (Revised Pay) Rules, 2008 as per which the respondent was required to work for six months in the revised pay before he became entitled to the increment and argued that on 01.08.2005, the respondent failed to fulfil this condition and was thus not entitled to the increment. He further submits that the learned Tribunal has failed to properly appreciate the Rule 10 of the CCS (Revised Pay) Rules, 2008 and erroneously directed the grant of increment due on 01.08.2005 and thereafter on 01.07.2006.

6. On the converse, Mr. Devi Krishan Sharma, respondent appearing in person has urged that there is no illegality in the order passed by learned Tribunal and also submitted that there appears to be no reason as to why the increment which became due to him during the period he remained under suspension should not be released during the period of suspension. He further argued that enhanced subsistence allowance can be allowed to a delinquent officer, if it is valid and reliance has been placed on ***Union of India Vs. P. C. Misra and Ors. : W.P. (C.) No.9042/2009.***

7. We have heard learned counsel for the petitioners and respondent in person and considered their rival submissions. We have also carefully examined the impugned order passed by the Tribunal.

8. It would be useful to reproduce paras 7 and 8 of the judgment of the Central Administrative Tribunal, which was decided in favour of the respondent and following directions have been issued to the petitioners:-

> *"7. Hence, there cannot be any valid dispute that a suspended employee is entitled to get the increments during the period of his suspension. Admittedly, the applicant remained under suspension during the period from 21.04.2005 to 13.04.2006 and the last increment he drew before his suspension period was w.e.f. from 01.08.2004. Had he not been suspended, in the normal course, the respondents would have granted him the next increments on 01.08.2005. But in view of the aforesaid settled position in the matter, just because he was under suspension on that date, the Respondents could not have denied him the increment. Now the question is with regard to his next increment in the year 2006. Admittedly, with the acceptance of the recommendations of the 6th Pay Commission, the system of granting annual increments to Government employees has got changed. According to the new system, the employees are granted increments either w.e.f. from 1st January or w.e.f. 1st July of every year depending on the dates on which he/she drew the last increment. For those who are entitled for the increment in any of the first six months of the year, the increments are given from the 1st January of*

> *that year itself. Similarly, in case of those who were entitled for increments in any months in second half of the year, increments are granted from 1st July, of that year. As a result, since that normal date of increment of the applicant falls in the 2nd half of the year (1st August), the applicant again became entitled for his next increment from 01.07.2006. Therefore, there was no question of completion of duty for 12 months for getting the increment w.e.f. from 01.07.2006. Again, there arise no question as to whether the suspension period has been counted for the purpose of duty or not for the payment of subsistence allowance which is governed by different set of rules.*
>
> *8. I, therefore, allow this O.A. and direct the respondents to grant him the increments during the suspension period w.e.f. 01.08.2005 and again w.e.f. 01.07.2006 after the suspension was revoked and to recalculate his subsistence allowance and his pay and allowances till he was removed from service on 15.03.2011 and to pay the difference within a period of two months from the date of receipt of a copy of this order"*

9. Thus, the first issue which arises for consideration is whether the respondent who was placed under suspension by the disciplinary authority is entitled for grant of increments w.e.f. 01.08.2005 during the period of suspension or not.

10. At the outset before delving into the merits of the case, it would be relevant to analyze the dictionary meaning of suspension. The term '**Suspend**' would mean 'to debar usually, for a time, from any privilege, the execution of an office or from the enjoyment of an

income'. It is a temporary deprivation of office or privilege. By reason of suspension, the powers, functions and privileges remain in abeyance but one continues to be subjected to the same discipline and penalties to the same authorities. The above definition makes it clear that during the period of suspension, all the privileges and benefits attached to the office is temporarily suspended unless the period of suspension is considered as the period spent on duty.

11. "Increment" has been defined by the Hon'ble Supreme Court in ***State of Punjab Vs. Jaswant Singh Kanwar 2013 (9) SCALE 671***, wherein it has been held as under :

> *"Increment" has a definite concept in service law Jurisprudence. It is an increase or addition on a fixed scale; it is a regular increase in salary on such a scale. As noted by Hon'ble Supreme Court in State Bank of India v. The Presiding Officer, Central Government Labour Court, Dhanbad and Anr. 1972 3 SCC 595, under the Labour and Industrial Laws, an increment is when in a time scale of pay an employee advances from the lower point of scale to the higher by periodic additions. In other words, it is addition in the same scale and not to a higher scale. Increment is an incidence of employment and an employee gets an increment by working the full year and drawing full salary. During the period of suspension, the contract of service remains suspended. The order of suspension by the departmental enquiry has the effect of temporarily suspending the relations between the master and servant with the consequence that the*

servant is not bound to render service and, therefore, the Petitioner as an employee is not entitled to increments during this period which is taken as period not spent on duty.

On perusal of the above judgment, it is clear that an employee is not entitled to increment during the period not spent on duty.

12. At this stage, it is necessary to refer to the Office Memorandum issued by Government of India i.e. G.M.O.M. No. F.No.01/01/2008-IC dated 30.08.2008 as per which the Government servants are required to exercise their option for drawal of their pay in the revised pay structure in the format prescribed in the second Schedule to the Rules.

13. The next issue which arises is with regard to the date from which the respondent is entitled to increment which fell due on 01.07.2006 after the revocation of suspension. In this regard, reference to Rule 10 of Revised Pay Rules, 2008 is required to be made in order to find out the date of next increment due to the respondent , which reads as under:

"10. Date of next increment in the revised pay structure –

There will be a uniform date of annual increment, viz. 1st July of every year. Employees completing 6 months and above in the revised pay structure as on 1st of July will be eligible to be granted the increment. The first increment after fixation of pay on 1.1.2006 in the revised pay structure will be granted on 1.7.2006 for those employees for whom the date of next increment was between 1st July, 2006 to 1st January, 2007.

Provided that in the case of persons who had been drawing maximum of the existing scale for more than a year as on the 1st day of January, 2006, the next increment in the revised pay structure shall be allowed on the 1st day of January, 2006. Thereafter, the provision of Rule 10 would apply.

Provided that in cases where an employee reaches the maximum of his pay band, shall be placed in the next higher pay band after one year of reaching such a maximum. At the time of placement in the higher pay band, benefit of one increment will be provided. Thereafter, he will continue to move in the higher pay band till his pay in the pay band reaches the maximum of PB-4, after which no further increments will be granted.

Note 1 *- In cases where two existing scales, one being a promotional scale for the other, are merged, and the junior Government servant, now drawing his pay at equal or lower stage in the lower scale of pay, happens to draw more pay in the pay band in the revised pay structure than the pay of the senior Government servant in the existing higher scale, the pay in the pay band of the senior government servant shall be stepped up to that of his junior from the same date and he shall draw next increment in accordance with-Rule 10.*"

14. In the light of above Rule, settled law position and general principles of service law Jurisprudence, it is clear that if any employee completes six months in the revised pay structure then only he would be eligible to be granted annual increment. In the instant case, the respondent failed to satisfy the condition of working six months, therefore, he would not be entitled to any

increment during the period of suspension w.e.f. 01.08.2005 and also an increment w.e.f. 01.07.2006 on the recommendation of 6th Central Pay Commission.

15. The next issue which arises for consideration is whether the subsistence allowance should be paid to the respondent as per the pay scale which was in force on the date of suspension or on the basis of revised pay scale.

16. The claim for payment of subsistence allowance of a Government servant is dealt with in Chapter VIII of Fundamental Rules. FR 53 which is relevant for our purpose reads as under:

> *F.R.53.(1) A Government servant under suspension or deemed to have been placed under suspension by an order of the appointing authority shall be entitled to the following payments, namely:*
> *(i) xxx*
> *(ii) in the case of any other Government servant-*
>
> > *(a) a subsistence allowance at an amount equal to the leave salary which the Government servant 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 suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant;

(ii) the amount of 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 due to reasons, to be recorded in writing, directly attributable to the Government servant;

(iii) the rate of dearness allowance will be based on the increased or, as the case may be, the decreased amount of subsistence allowance admissible under Sub-clauses (i) and (ii) above.

(b) Any other compensatory allowances admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension subject to the fulfillment of other conditions laid down for the drawal of such allowances.

xxx xxx xxx

17. The above said Rule provides that the Government servant under suspension shall be entitled to subsistence allowance at an amount equal to the leave salary which the Government servant 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. The proviso to Rule 53 (1) (ii) (a) reads that where the period of suspension exceeds three months, the authority is competent to vary the amount subject to some restrictions.

18. On the issue of re-calculation of subsistence allowance of a suspended employee, counsel for the petitioners has placed reliance on the judgment of ***Union of India Vs. R.K. Chopra (2010) 2 SCC 763,*** wherein the Apex Court was dealing with a case where a suspended employee had demanded the revision of subsistence allowance based on the pay revision coming into effect during the suspension period. The Apex Court denied such plea by holding that if the revision of pay takes effect from a date prior to the date of suspension of a Government servant then he would be entitled to benefit of increment in pay but if the revision scale of pay takes effect from a date falling within the period of suspension then the benefit of revision of pay and the subsistence allowances will accrue to him only after reinstatement depending on the fact whether the period of suspension is treated as duty or not.

19. The Hon'ble Supreme Court in the case of ***Principal J.D. Patil Sangludkar v. Ganesh (2003) 9 SCC 164***, dealt with the payment of subsistence allowance during the suspension pending criminal proceedings. The Apex Court held that the provision to increase the rate of subsistence allowance pending suspension after a certain stipulated period is normally envisaged to ensure that the employer

or the management concerned does not indefinitely keep an employee under the pretext of suspension out of his office without completing the inquiry and take advantage of its own lapse or delay in completing the disciplinary proceedings.

20. With regard to the subsistence allowance, it is not disputed that during the period of suspension, the respondent was not drawing full salary despite which the Tribunal directed the petitioners to determine the subsistence allowance of the respondent by taking into account the regular annual increment in the revised pay scale till the time when the respondent was removed from service i.e. 15.03.2011. Furthermore, we are informed that the subsistence allowance of respondent has already been increased up to 50% and therefore, no recalculation of subsistence allowance is to be done, the increased subsistence has accordingly been paid to the respondent. The writ petition is partly allowed. We set aside the order of Tribunal impugned before us. No order as to costs.

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21. In view of the order passed in writ petition, present application stands disposed of.

SANGITA DHINGRA SEHGAL, J

G.S.SISTANI, J

NOVEMBER 16th, 2015 / gr