

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

+ **W.P.(C) No.7343/2014**

% **14th May, 2015**

H. N. WADHWA Petitioner
Through: Mr. Ashok Bhalla, Advocate.

versus

PUNJAB NATIONAL BANK & ANR. Respondents
Through: Mr. Jagat Arora, Advocate with Mr.
Rajat Arora, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks the relief against the respondent no.1/Bank that once the Disciplinary Authority's order dated 10.6.1991 was set aside by the learned Single Judge of this Court treating it to be *non est* vide judgment dated 20.12.2006 in W.P.(C) No.3047/1993, petitioner during the pendency of the disciplinary proceedings/departmental proceedings which afresh was to then decide the punishment to be imposed upon the petitioner, petitioner should be treated to be on deemed suspension in this period after 10.6.1991

till the time fresh order was passed by the departmental authority till 31.10.2008 when the petitioner retired on attaining the age of superannuation. It may be noted that pursuant to the judgment of the learned Single Judge of this Court dated 20.12.2006 in W.P.(C) No.3047/1993, and which was upheld by the Division Bench of this Court and the Supreme Court, departmental authority of the respondent no.1/Bank passed a fresh order against the petitioner on 26.4.2013 re-imposing the same punishment on the petitioner of dismissal of petitioner, and which was originally imposed on 10.6.1991.

2. In sum and substance, the claim of the petitioner is for suspension/subsistence allowance from 10.6.1991 till the passing of the fresh order by the Disciplinary Authority or till the date of superannuation of the petitioner, whichever is earlier, and since the date of superannuation being the earlier date in this case, subsistence allowance is claimed till the date of superannuation of the petitioner on 31.10.2008.

3. The relevant Regulations 12(4) and 12(5) of the respondent no.1/Bank dealing with suspension during re-hearing by departmental authority, read as under:-

“12(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an officer employee under suspension is set aside or declared or rendered void in consequence of or by a decision of a court of law, and the disciplinary authority, on consideration of the circumstances of the case, decides to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the officer employee shall be deemed to have been placed under suspension by the competent authority from the date of the original date of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

12(5)(a) An order of suspension made or deemed to have been made under this regulation shall continue as remain in force until it is modified or revoked by the authority competent to do so.

(b) An order of suspension made or deemed to have been made under this regulation may at any time be modified or revoked by the authority which made or is deemed to have made the order.”

(underlining added)

4. The object of the aforesaid regulations is that if these regulations did not exist, then, it would have been open to an employee to state that once the order of the departmental authority is set aside the charged employee will be taken to be in service and he has to be paid all the consequential benefits of being in service, and to avoid this position the suspension is deemed to continue even during the second phase of the departmental proceedings after the earlier order of the disciplinary authority is set aside and proceedings are to continue against the charged official. However, the object of this provision is not to deprive even the suspension allowance to a charged officer inasmuch as the charged officer during the

period of departmental proceedings against him, may not be entitled to service benefits of salary etc, but, there is no provision of law or any service rule of the respondent no.1/Bank that a charged employee during the period of departmental proceedings should not even receive the suspension allowance.

5. Learned counsel for the petitioner rightly places reliance upon the judgment of the learned Single Judge of this Court reported as ***S.M. Gupta Vs. Oriental Bank of Commerce and Ors. 115 (2004) DLT 257*** and which holds that once the order of the disciplinary authority is set aside and a person is to be taken in service, then, in accordance with Regulation 12(4) as quoted above, the charged officer is deemed to be on suspension and suspension allowance would have to be paid to such a charged official. I may note that in the present case the learned Single Judge of this Court while allowing W.P.(C) No.3047/1993 filed by the petitioner vide judgment dated 20.12.2006 held that the petitioner will be entitled to his pay and allowance and other benefits treating the order of punishment to be *non est* except only to the extent that petitioner will be deprived of these benefits on account of the punishment order which was to be passed afresh by the departmental authority in terms of the said judgment.

No doubt, the departmental authority has re-visited the petitioner with the punishment of dismissal from service, however, petitioner cannot be denied even the suspension allowance and this is more so because of Regulation 12(4) of the respondent no.1/Bank. I may note that the petitioner has made a statement before this Court that petitioner is only claiming the relief of payment of subsistence allowance to him from 10.6.1991 to 31.10.2008 and is not claiming the other reliefs which are prayed in the writ petition, however, liberty as prayed for is granted to the petitioner to challenge the subsequent order of the departmental authority dated 26.4.2013, of course in accordance with law.

6. Accordingly, the writ petition is allowed. Respondent no.1/Bank is directed to pay the petitioner suspension allowance from 10.6.1991 to 31.10.2008 alongwith interest @ 6% per annum simple from the due dates of each month from which the subsistence allowance became due. Petitioner be paid the amounts due in terms of the present judgment within a period of two months from today. In case, the amounts due to the petitioner are not paid within two months from today, petitioner will be entitled to interest @ 9% per annum simple instead of 6% per annum simple.

7. Petition is allowed and disposed of in terms of the aforesaid observations.

MAY 14, 2015
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VALMIKI J. MEHTA, J.