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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 8780/2016, CM APPL. 35964/2016
V C SAXENA

..... Petitioner

Through: Mr. Ankur Chhibber, Adv.

Versus

UNION OF INDIA AND ORS

..... Respondent

Through: Nidhi Mohan Parashar, Adv., G.P.
for R-1.

Mr. Digvijay Rai, Adv. for respondent no. 2 to 4.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **20.10.2016**

It is the petitioner's case that he is entitled to 5 increments in his salary for the period of suspension. The petitioner was removed from service after he was found guilty under the Prevention of Corruption Act, 1947.

The learned counsel for the respondent submits that the said relief cannot be granted to the petitioner in view of the judgment of the Supreme Court in *State of Punjab v. Jaswant Singh Kanwar* (2014) 13 SCC 622 which has held inter alia that:

"14. "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 this 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.”

It further held that:

“12. To analyze the above proposition, the dictionary meaning of suspension is required to be set out. 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 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 and 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.”

In the present case, the petitioner's period of suspension was not considered as the period spent on duty. Hence, the learned counsel for the respondent submits that the said relief cannot be granted. He further submits that the relief sought by the petitioner is for the period between 2002 and 2005 when he was under suspension.

The Court would note that the writ petition has been preferred 11 years thereafter and there is no explanation for this long delay.

The learned counsel for the respondent relies upon the judgment of the Supreme Court in **UOI vs. Tarsem Singh** (2008) SCC 648 (para 7) to the effect that *where service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury.*

The Court would note that **Tarsem Singh** was in the context of a continuing wrong whereas in the present case, it is not so. No representation was either made or pursued regarding the claim, within the limitation period.

The learned counsel for the petitioner states that a request for payment was made in the year 2006. However, the same seems to have been abandoned for a decade thereafter till the petition was filed.

The petitioner's case is that he was intimated of the respondent's decision of not treating the period of suspension as the period spent on duty only in the year 2010. There is nothing on the record to show that the petitioner was prevented from challenging the respondents' 2010 decision

anytime earlier in the past six years. This delay is unexplained.

At this stage, Mr. Ankur Chhibber, after perusing the said judgment ***Jaswant Singh Kanwar***, (supra) fairly states that it covers the present case whereby the relief sought by the petitioner cannot be granted.

In view of the aforesaid judgment, the writ petition is not maintainable and it is accordingly dismissed.

NAJMI WAZIRI, J

OCTOBER 20, 2016/acm