

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25410 of 2013

Date of Decision:-05.05.2017.

Krishan Lal

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Ms. Bhupinder Kaur, Advocate for
Dr. Surya Parkash, Advocate for the petitioner.

Mr. Sushil Gautam, DAG, Haryana.

P.B. BAJANTHRI, J. (Oral)

The petitioner has questioned the validity of the suspension order dated 15.1.2010 (Annexure P-15) by which he has been deemed to have been placed under suspension w.e.f. 15.7.2008. Further he has sought for quashing order dated 23.7.2013 (Annexure P-35) by which his claim for enhanced subsistence allowance has been rejected while quoting Rule 7.2 of the Punjab Civil Services Rules. The petitioner has not made out a case for interference with the order of suspension for the reasons that he has been convicted and revision is pending. Merely order of conviction and sentence is stayed, the petitioner is not entitled to recall the suspension period or the suspension order is required to be set aside. Insofar as second relief is concerned, whether the petitioner is entitled for enhanced subsistence

allowance as and when suspension period is more than six months, the order of suspension dated 15.1.2010 itself gives effect from 15.7.2008. Therefore, as on 15.1.2010, the petitioner had completed six months of suspension. Therefore, the official respondents could have taken a decision under Rule 7.2 of the Punjab Civil Services Rules. Rule reads as under:-

“7.2 (1) A Government employee under suspension shall be entitled to the following payments, namely:—

(i) in the case of a Warrant Officer in Civil employ who is liable to revert to military duty, the pay and allowances to which he would have been entitled had he been suspended, while in military employment.

(ii) in the case of any other Government employee—

(a) a subsistence allowance at an amount equal to the leave salary which the Government employee would have drawn if he had been on leave 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 six 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 six 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 six 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 employee.

(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 six 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 employee.

(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 clauses (i) and (ii) above;

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

(2) No payment under sub-rule (1) shall be made unless the Government employee furnishes a certificate that he is not engaged in any other employment, business, profession or vocation:

Provided that in the case of a Government employee dismissed, removed or compulsorily retired from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal or compulsory retirement and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such

period or periods as the case may be, fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him, where the subsistence and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him.”

Rule 7.2 (1) (a) (i) stipulate the competent authority to record in writing not directly attributable to the Government employee. On this issue the official respondents have not taken a decision on 15.1.2010 itself. On the other hand, a decision was taken on 4.9.2013 stating that the petitioner is not entitled for enhanced subsistence allowance. Therefore, the order dated 23.7.2013 (Annexure P-35) is hereby set aside to the extent that the petitioner is entitled for enhanced subsistence allowance as and when he completes six months till 4.9.2013, the date on which the official respondents have taken a decision that the petitioner is not entitled for enhanced subsistence allowance under Rule 7.2 of the Punjab Civil Services Rules. The respondents are directed to calculate the enhanced subsistence allowance and difference of subsistence allowance from the date when the order of suspension completed six months till 4.9.2013 and the same be disbursed within a period of 3 months from today.

Petition stands partly allowed.

(P.B. BAJANTHRI)
JUDGE

May 05, 2017.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.