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

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**Date of Decision: 21.08.2017**

% **W.P.(C.) No. 4587/2016**

UNION OF INDIA

..... Petitioner

Through: Mr. Arun Bhardwaj, CGSC with Mr.  
Nikhil Bhardwaj, Adv.

versus

PRATAP KUMAR BISI

..... Respondent

Through: Mr. Prateek Tushar Mohanty, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**HON'BLE MS. JUSTICE REKHA PALLI**

**VIPIN SANGHI, J. (ORAL)**

1. The petitioner/ Union of India has preferred the present writ petition to assail the order dated 18.03.2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No.4358/2013, whereby the respondent's/ applicant's O.A. has been allowed. The tribunal has held that the petitioner should not proceed further in pursuance of its notice dated 20.01.2014, whereby the respondent was asked to show cause as to why the period of suspension between 16.03.2010 and 08.12.2010 should not be treated as period not spent on duty, and why no pay and allowances – over and above the subsistence allowance already

paid, should be paid to him. The tribunal has also directed the petitioner to take steps to make payment of salary and allowances payable to the respondent during the period of suspension, minus the subsistence allowance already paid to him, within two months from the date of production of certified copy of the impugned order.

2. The relevant facts may be noted. The respondent was serving as Deputy Director General, National Sample Survey Office (Field Operations Division), Bhubaneswar since October 2007. At that stage, in contemplation of the disciplinary proceedings, an order of suspension was passed against the respondent – by resort to Rule 10(1)(a) of the CCS (CCA) Rules, 1965.

3. The suspension of the respondent was extended on the recommendation of the Suspension Review Committee for a period of 180 days beyond 13.06.2010 while enhancing the subsistence allowance to 75% of his pay vide order dated 11.06.2010. However, his suspension was thereafter revoked with effect from 08.12.2010 vide order dated 10.12.2010.

4. The respondent was thereafter issued a charge sheet on 03.05.2011 under Rule 14 of the CCS (CCA) Rules. Departmental proceedings were held against the respondent. In the meantime, he superannuated on 30.04.2012. The proceedings were continued under Rule 9 of the CCS (Pension) Rules, 1972. Eventually, an order of penalty was passed on 10.10.2013 withholding 10% of the respondent's pension for a period of five years. The said order imposing penalty upon the respondent has attained finality.

5. After passing of the order imposing penalty, the respondent initiated the aforesaid O.A. on or about 16.12.2013. He, effectively, sought a direction that the period of his suspension i.e. between 16.03.2010 to 07.12.2010 should be treated as spent on duty for all purposes. He also sought the release of his full salary and allowances for the said period along with interest. During the pendency of the O.A., the petitioner issued the aforesaid notice dated 20.01.2014 to the respondent.

6. The tribunal has allowed the O.A. by placing reliance on a decision of a learned Single Judge of this court in the case of ***Hira Lal v. Delhi Development Authority***, 1995 (34) DRJ 30. The tribunal has also relied on its earlier order passed in the case of ***Girdhari Lal v. Delhi Administration & Ors.*** in O.A. No. 1508/1991. The tribunal has held that the petitioner should have passed an order under Fundamental Rule (FR) 54B(1), simultaneously with the revocation of the suspension, of the respondent and not having done so, the said order could not be passed in pursuance of the notice dated 20.01.2014 issued subsequently.

7. The submission of Mr.Bhardwaj, learned counsel for the petitioner is that the interpretation adopted by the tribunal in respect of the obligation cast on the petitioner to pass an order under FR 54B(1) is erroneous. Mr.Bhardwaj submits that on a perusal of FR 54B, it does not appear that the same requires the government to pass an order under FR 54B(1) simultaneously with, or soon after the revocation of suspension of the government servant. Mr.Bhardwaj submits that the charge sheet in the present case was issued to the respondent, within about five months of the

revocation of his suspension. Since the disciplinary proceedings stood initiated against the respondent, the petitioner awaited the outcome of the said disciplinary proceedings, since the said outcome would have had a bearing on the decision of the government in relation to the manner in which the period of suspension should be treated. He submits that, this is also the scheme contemplated under FR 54B, which deals with different eventualities, and provides for different results in relation to the treatment of the period of suspension of the government servant depending on the outcome of the disciplinary/court proceedings, if any, initiated against the government servant.

8. The further submission of Mr. Bhardwaj is that the present case is covered by sub-rule (6) of FR 54B, which provides that where the suspension is revoked pending finalization of disciplinary or the Court proceedings, any order passed under sub-rule (1) before conclusion of the proceedings against the Government servant 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 under sub-rule (3) or sub-rule (5), as the case may be. The submission of Mr. Bhardwaj is that the expression "*pending finalization of the disciplinary or the Court proceedings*" used in sub-rule (6) of FR 54B would take within its scope, cases where the Government servant is suspended pending contemplation of a disciplinary proceeding. The submission is, that the disciplinary proceedings were "pending", since they were contemplated on the date of revocation of suspension of the respondent, i.e. 10.12.2010.

9. Mr. Bhardwaj submits that the reliance placed in the impugned order on ***Hira Lal*** (supra), and ***Girdhari Lal*** (supra) is also inappropriate inasmuch, as, ***Hira Lal*** (supra) does not lay down, in specific terms, that in all cases the order under FR 54B(1) should be passed simultaneously with, or soon after the order revoking the suspension of the government servant. The further submission of Mr. Bhardwaj is that, the Tribunal has stepped into the jurisdiction of the Competent Authority, by itself directing that the period of suspension be treated as spent on duty, rather than directing/allowing the petitioner to take a decision on the said aspect.

10. On the other hand, learned counsel for the respondent supports the impugned order. He submits that in the facts of the present case, the charge sheet was initiated nearly 14 months after the suspension of the respondent. The respondent was suspended on 16.03.2010, whereas the charge sheet was issued to him only on 03.05.2011. The suspension, therefore, was wholly unjustified and the tribunal has correctly held that the said period of suspension – which ended even before the initiation of the disciplinary proceedings, should be treated as period spent on duty for all purposes.

11. Learned counsel also sought to place reliance on the decision of the Supreme Court in ***Ajay Kumar Chaudhary v. Union of India, through its Secretary & Anr.***, in C.A. No.1912/2015 decided on 16.02.2015, wherein the Supreme Court has directed that “*the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/ charge sheet is not served on the delinquent officer/ employee; if the memorandum of charges/ charge sheet is served a*

*reasoned order must be passed for the extension of the suspension”.* Learned counsel submits that in the present case, the suspension of the respondent was continued for well over three months, and the charge sheet came to be issued after nearly 14 months to the initial suspension.

12. Having heard learned counsel for the parties, examined the impugned order, the decisions relied upon by the tribunal and by the respondent, and having examined the FR 54B of the Fundamental Rules, we are of the view that the view taken by the tribunal in relation to FR 54B is erroneous and cannot be sustained.

13. FR 54B reads as follows:

***“F.R. 54-B. (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) 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 Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and***

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

***(2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or the 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 already paid.*

***(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant 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 :***

*Provided that where such authority is of the 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 representation within sixty 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 be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.*

***(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.***

***(5) In cases other than those falling under sub-rules (2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, 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.***

***(6) Where suspension is revoked pending finalisation of the disciplinary or the court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, 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 according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.***

***(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 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 order that the period of suspension 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 for 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.*

***(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.***

***(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 53.”***  
***(emphasis supplied)***

14. Under sub-rule (1) of FR 54B, the Competent Authority is obliged to make a specific order, firstly, regarding the pay and allowances to be paid to

the Government servant for the period of his suspension ending with his reinstatement and, secondly, regarding whether, or not, the said period should be treated as period spent on duty. Thus, it is for the Competent Authority to take a decision on the aforesaid aspects in exercise of its discretion upon consideration of relevant and germane aspects.

15. Sub-rule (2) deals with a case where a Government servant under suspension dies, while so remaining under suspension, before the disciplinary or Court proceedings instituted against him are concluded. We are not concerned with the said sub-rule, in the facts of the present case.

16. Sub-rule (3) of FR 54 B deals with the aspect covered by clause (a) of sub-rule (1) in another eventuality, namely where the Competent Authority forms the opinion that the suspension of the Government servant was “*wholly unjustified*”. The formation of the said opinion may take place at different stages/points of time. This opinion may be formed even before the initiation of the disciplinary or court proceedings. For example, in a given case, the competent authority may realize that the suspension of the government servant was premised on a mistake, or a wholly false premise even before the disciplinary/Court proceedings are initiated. In such an eventuality, sub-rule (3) provides that full pay and allowances shall be paid to the Government servant for the suspension period. However, there are two riders to this mandate contained in sub-rule (3) of FR 54B. Firstly, the same is subject to the provisions of sub-rule (8), which provides that the payment of allowances “*shall be subject to all other conditions under which such allowances are admissible*”. Thus, if any of the conditions subject to

compliance of which subsistence allowance is required to be paid is not fulfilled, the Government servant would not be entitled to full pay and allowances under sub-rule (3) of FR 54B. At the same time, merely because the suspension of the government servant may be revoked before initiation of the disciplinary proceedings or court proceedings, it does not necessarily lead to the conclusion that the suspension was “*wholly unjustified*”. It is quite possible, that the competent authority may form the opinion that it is no longer necessary to keep the government servant under suspension while, at the same time, the conduct of the government servant may still be under scrutiny for the purpose of initiation of departmental or court proceedings. The suspension of a government servant pending completion of disciplinary or court proceedings is undertaken, so as to disable the government servant from obstructing the contemplated proceedings; tampering with documents and evidence; influencing witnesses, or; in any other way trying to cover up his steps. The competent authority may, after disabling the government servant concerned from doing any of the aforesaid things, and after sanitizing the environment at the work place of the government servant, recall the suspension of the government. Suspension of a government servant may create a crisis or difficulties in the working of the office, which may adversely impact efficiency in the working of the organization, as also public interest. After all, government servant who is kept suspended, is paid subsistence allowance even during his suspension. Thus, a government servant, whose conduct may be under scrutiny for initiation of departmental proceedings or court proceedings, should be required to work, if it is not likely to interfere with the proposed departmental proceedings/ court

proceedings. This aspect was emphasized by the Supreme Court in *Ajay Kumar Chaudhary Vs. UOI & Anr.*, (2015) 7 SCC 291. Thus, mere reinstatement of the suspended government servant prior to initiation of the departmental/court proceedings does not entitle the government servant to claim that his suspension was “*wholly unjustified*” and, on that basis, to claim the entire pay and allowances under sub-Rule (3) of F.R. 54B. It would be dependent as to, in what circumstances the suspension is revoked by the competent authority. If the department/court proceedings are no longer in contemplation, and are not initiated at all, the competent authority may form the view that the suspension of the government was “*wholly unjustified*”. In that eventuality the government servant shall be entitled to full pay and allowances to which he would have been entitled, had he not been suspended. However, where while revoking the suspension of the government servant, the competent authority does not form the opinion that the suspension was “*wholly unjustified*”, it is not obliged to, there and then direct payment of full pay and allowances, to the government servant unless and until he forms such an opinion. The Competent Authority would be justified in awaiting further development in the matter, till he can form his opinion, one way or another.

17. It is also possible that the opinion that the suspension was “*wholly unjustified*” may be formed after the finalization of the disciplinary or court proceedings. The said contingency is dealt with under the proviso to sub-Rule (3). The Competent Authority has to then form the opinion, after granting an opportunity to the Government servant to represent, whether the proceedings instituted against the Government servant had been delayed due

to reasons directly attributable to the Government servant. If that be found, for the period that the Government servant is found to be responsible for the delay, he shall be paid only such pay and allowances, as the Competent Authority may determine.

18. Sub-rule (4) of FR 54B provides that in a case falling in sub-rule (3), the period of suspension “*shall be treated as period spent on duty for all purposes*”. Thus, in all cases covered by Sub-Rule (3), the period of suspension has to be treated as spent on duty for all purposes. No discretion is vested in the Government, insofar as the issue of the treatment of the period of suspension is concerned. If a case falls under sub-rule (3) of FR 54B, by force of sub-rule (4), the suspension period is bound to be treated as “*period spent on duty for all purposes*”.

19. In the facts of the present case neither sub-rule (2) nor sub-rule (3) are attracted.

20. Proceeding further, sub-rule (5) of FR 54B deals with “*cases other than those falling under sub-rules (2) and (3)*”. Before advertent to sub-rule (5) – which appears to be in the form of a residuary clause, it would be appropriate to examine the scope of sub-rule (6) of FR 54B.

21. Sub-rule (6) of FR 54B deals with a situation where the suspension “*is revoked pending finalization of disciplinary or Court proceeding*”. It provides that if the disciplinary proceedings or Court proceedings are pending on the date of revocation of the suspension, any order earlier passed under sub-rule (1) of FR 54B shall be reviewed by the Government upon

conclusion of the disciplinary proceedings or the Court case, as the case may be, and shall appropriately be dealt with in accordance with sub-rule (3) or sub-rule (5), as the case may be. Thus, if the Government servant is eventually exonerated, it would normally be a case where it would be observed that “*the suspension was wholly unjustified*” and the case would be dealt with according to sub-rule (3). However, in case the Government servant is punished in the disciplinary or the Court proceedings, the case would be dealt with in accordance with sub-rule (5).

22. We cannot agree with the submission of Mr. Bhardwaj that sub-rule (6) of FR 54B would cover cases where the suspension is revoked even before the initiation of the disciplinary, or the Court proceedings. Merely because the disciplinary or the Court proceedings may be in contemplation on the date of revocation of the suspension of the Government servant, it cannot be said that they were “*pending*” on the said date. The disciplinary or Court proceedings have to be in existence for them to be described as “*pending*” on the date of revocation of suspension and not merely “*in contemplation*”. The disciplinary/ Court proceedings which are in the realm of contemplation may, or may not, materialize. It cannot be said that they are “*pending*”, unless they have materialized. In ***Union of India v. K.V. Jankiraman & Ors.***, (1991) 4 SCC 109, the Supreme Court held that it is only when a charge-memo in disciplinary proceeding, or a charge sheet in a criminal prosecution is issued to the employee, that it can be said that the said proceedings stands initiated against the employee. Though this proposition was stated in relation to adoption of the sealed cover procedure for consideration of the government servants case for promotion, we see no

reason to not apply the same principle for interpretation of sub-rule (6) of FR 54B. Thus, we reject the submission of Mr. Bhardwaj that in the facts of the present case, sub-rule (6) of FR 54B was attracted.

23. This brings us back to sub-rule (5) of FR 54B. Sub-rule (5) of F.R. 54B appears to cover those cases which do not clearly fall under sub-Rules (2) or (3). Thus, it would take within its scope, inter alia, cases where the suspension of the government servant, at the time of his revocation, may not be found to be “*wholly unjustified*” even if the revocation of suspension is undertaken prior to the initiation of the departmental/court proceedings. The fact situation in the present case is neither covered by sub-rule (2), nor by sub-rule (3), nor by sub-rule (6). By force of the language used in sub-rule (5), it necessarily would have to fall within the framework of sub-rule (5). Sub-rule (5) deals with the aspect of payment of pay and allowances during the suspension period – referable to sub rule 1(a). On the other hand, sub rule (7) deals with the aspect of treatment of the suspension period in cases falling under sub rule (5).

24. Sub-rule (5) provides that the Government servant shall be paid such amount, not being the whole amount of the pay and allowances to which would have been entitled had he not been suspended, as the competent authority may determine, subject to provisions of sub-rules (8) and (9). This determination has to be made by the Competent Authority “*after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection*”.

25. Pertinently, in respect of cases falling under sub-rule (5) by virtue of

sub rule (7), “*the period of suspension shall not be treated as period spent on duty unless the Competent Authority specifically directs that it shall be so treated for any specified purpose*”. Thus, in respect of cases falling under sub-rule (5), the default position is that the period of suspension shall not be treated as period spent on duty. For it to be treated as period spent on duty, the Competent Authority has to specifically so direct.

26. We may now examine the aspect of the obligation cast on the Government to pass an order under sub-rule (1) of FR 54B at the time of revocation of the suspension and reinstatement of the Government servant. Sub-rule (1) of FR 54B does not specify any time limit within which the specific order(s) under clauses (a) and (b) of sub-rule (1) are required to be passed by the Competent Authority. At only two places in FR 54B the aspect of time is prescribed. It is, firstly, provided in sub-rule (3) – where the Competent Authority forms the opinion that the suspension was wholly unjustified, but is also of the tentative opinion that the proceedings were delayed due to reasons attributable to the government servant. In that eventuality, the Competent Authority is obliged to issue notice and grant 60 days time to the Government servant to make his representation. Similarly, sub-rule (5) also grants a maximum of 60 days to the Government servant to make his representation against cut in pay and allowances for the suspension period. There is no clause in FR 54B which casts an obligation on the Government to act immediately, or within a limited time in respect of any of its obligations, much less in respect of the obligation cast on the Government under sub-rule (1).

27. No doubt, merely because no time limit is fixed for the discharge of its obligations by the Competent Authority in the rule, it does not follow that he can sit over the matter for years on-end, and not take a decision expeditiously. However, it would depend on the facts of each case, whether, or not, there has been any delay on the part of the Competent Authority in taking action or making an order. Pertinently FR 54B does not provide for any consequence, in the eventuality of the Competent Authority not making specific orders under sub-rule (1) of FR 54B within a specified time. It certainly does not provide that if specific orders under sub-rule (1) of FR 54B are not passed within a certain time, it shall be deemed that the Government servant would be entitled to be paid full pay and allowances for the suspension period, and would also be entitled to treat the entire suspension period as spent on duty. Thus, though, it may be mandatorily required of the competent authority to pass orders under sub-Rule (1) of FR 54B, the time within which the said orders may be passed not having been specifically provided for, it can be treated as only directory. In this regard, we may refer to the decision of the Supreme Court in ***Kailash Vs. Nanhku and Ors.*** AIR 2005 SC 2441. In this case, the Supreme Court was examining the issue whether the obligation cast on the defendant to file the written statement to the plaint under Rule (1) of Order 8 CPC within the specified time was directory or mandatory i.e. whether the Court could extend the time for filing of the written statement beyond the period specified in Rule 1 of Order 8. The Supreme Court held that the Court had the power to extend the time for filing of the written statement, since there was no consequence prescribed flowing from non-extension of time. In para

29 of this decision, the Supreme Court observed as follows:

*“29. It is also to be noted that though the power of the court under the proviso appended to Rule 1 Order 8 is circumscribed by the words “shall not be later than ninety days” **but the consequences flowing from non-extension of time are not specifically provided for though they may be read in by necessary implication.** Merely because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.” (emphasis supplied)*

28. In the aforesaid light, we may now proceed to examine the decision of the learned Single Judge in **Hira Lal** (supra) relied upon by the Tribunal in the impugned order. Hira Lal, while serving as UDC, was suspended on 01.09.1984 in contemplation of a disciplinary proceeding. Pertinently, his suspension continued for nearly five years till it was revoked on 25.07.1989. Only after passage of another about nine months, i.e. on 09.04.1990, he was served with a charge-sheet. Hira Lal represented that all pay and allowances for the suspension period be released to him, and the period of suspension be treated as spent on duty for all purposes. This representation was rejected on 26.02.1991. The competent authority was of the opinion that suspension having been revoked pending finalization of disciplinary proceedings against the petitioner, he shall not be paid anything over and above subsistence allowance already drawn by him during the period of suspension. However, the order also stated that the same was subject to review in terms of sub-rule (6) of FR 54B after conclusion of the

proceedings, and further orders would be made according to the provisions of sub-rules (3) or (5) of FR 54B, as the case may be.

29. Since the petitioner did not receive any positive response to his representations, he preferred a writ petition before the High Court on 27.01.1993. In the writ proceedings, the respondent-DDA took the stand that the question relating to grant of pay and allowances to the petitioner for the period during which he remained under suspension, and the treatment of the period of suspension under FR 54B are premature, as these matters could be finally determined on conclusion of the departmental proceedings pending against the petitioner. The learned Single Judge held that the duty cast on the Competent Authority under sub-rule (1) of FR 54B is couched in mandatory terms. The learned Single Judge held that since sub-rule (1) of FR 54B uses the expression “shall”, which normally conveys a mandatory condition/ obligation, the obligation cast on the competent authority under sub-Rule (1) is mandatory. Thus, the Competent Authority is obliged to pass an order(s) under sub-rule (1) of FR 54B.

30. To this extent, we are in agreement with the observation made by the learned Single Judge. A Government servant is entitled to know as to how the suspension period would be treated, and the Competent Authority is, therefore, bound to pass an appropriate order in that respect. He cannot leave the said issues pending and open ended, and must bring them to a closure. However, when would the occasion to pass an order under sub-rule (1) of FR 54B arise in a given case, would have be examined case wise.

31. The learned Single Judge thereafter proceeded to acknowledge that

there is no express time limit mentioned in sub-rule (1) of FR 54B within which the Competent Authority should pass a specific order. The learned Single Judge in paragraph 4 of the said decision, inter alia, observed as follows:

*“4. ... .. Though the sub rule makes no express mention of the time imperative within which an order is to be made, the requirement for making such an order, however, is clearly indicated from its tenor, which shows that it should be made on reinstatement of a government servant. The decision regarding reinstatement of a government servant and the decision to pay or not to pay his full pay and allowances for the period he remained under suspension are parts of the same integrated process. In any event the gap between the two decisions should not be unreasonably long.” (emphasis supplied)*

32. The learned Single Judge then proceeds to consider the specific facts of the case before him. He observed that:

*“5. ... .. It should be clearly understood that sub-rule (1) of FR 54B does not permit such a long and inordinate delay in passing the order relating to payment of pay and allowances to the Government servant, who is reinstated on revocation of his suspension. If such an obligation is not imposed, the question of payment of pay and allowances for the period during which the Government servant was kept under suspension will remain in limbo and orders in this respect may not be passed for a considerable long period of time. Such a situation must be avoided. It has already been noticed that the petitioner was suspended on September 1, 1984 in anticipation of disciplinary enquiry against him, and when his suspension was revoked after five years in 1989 till then even a charge sheet had not been served on him, which ultimately came to be served only on April 9, 1990.” (emphasis supplied)*

33. The learned Single Judge also takes note of the fact that the disciplinary proceedings were initiated nearly six years after the petitioner was placed under suspension. The learned Single Judge observed that there was no explanation in the counter-affidavit of the DDA to explain as to why it took six years to commence the disciplinary proceedings. He also refers to **K.V. Jankiraman**, (supra), wherein the Supreme Court observed that disciplinary proceedings commence when a delinquent employee is charge-sheeted. In paragraph 7 of this decision, the learned Single Judge observed:

*“7. In this background, there is need to examine other provisions of the FR 54B. According to sub-rule (3) thereof if the competent authority comes to the conclusion that the suspension of the employee was legally unjustified, in that event he has to be paid full pay and allowances for the period he remained under suspension, to which he would have been entitled, had he not been suspended. In other words, normally when the suspension is without justification, the employee cannot be denied any portion of his pay and allowances for the period of his suspension and under sub-rule (4) the period of suspension has to be treated as one spent on duty but this is subject to sub rule (8) and to the exception appended as a proviso to the sub-rule (3), which empowers the competent authority to determine an amount less than the whole amount of pay and allowances payable to the employee on his reinstatement after revocation of his suspension, even in a case of unjustified suspension if it comes to the conclusion that the termination of disciplinary proceedings was delayed by him.”*

34. In paragraph 8 of the said decision, the learned Single Judge, inter alia, observed that sub-rules (3) and (5) apply to a case of an employee, whose suspension is revoked after finalisation of disciplinary proceedings.

35. With utmost respect to the learned Single Judge, we cannot agree with

the said conclusion drawn by him. Neither sub-rule (3), nor sub-rule (5) indicate that the revocation of suspension should take place after finalization of the disciplinary/ Court proceedings for the said sub rules to apply. Sub-rule (3) merely provides that the Competent Authority to reinstate should form the opinion “*that the suspension was wholly unjustified*”. This opinion may be formed by the Competent Authority much after the suspension has already been revoked, since it is possible that the suspension may have been revoked even before issuance of the charge-sheet; during the pendency of the charge-sheet, or; after the conclusion of the departmental inquiry, but before passing of the final order by the Disciplinary Authority/ Appellate Authority/ Revisional Authority. Sub-rules (3) and (5) of FR 54B merely prescribe the manner in which the period of suspension would be treated for the purposes of pay and allowances, in the nature of cases dealt with by these sub rules. The said sub-rules would be attracted if the terms and conditions set out therein are satisfied, irrespective of the stage at which the suspension may have been revoked.

36. We also do not agree with the conclusion drawn by the learned Single Judge in *Hira Lal* (supra) that the Competent Authority should take its decisions under sub-rule (1) of FR 54B simultaneously with the revocation of suspension. We do not agree with the finding that the decision regarding reinstatement of a government servant under suspension, and the decision to pay, or not to pay, his full pay and allowances for the period that he remained under suspension are parts of the same integrated process. In our view, this conclusion drawn by the learned Single Judge is contrary to the scheme of FR 54B. It may not be possible, in all situations, to pass orders

under sub-rule (1) of FR 54B simultaneously with the revocation of suspension, and it would depend on factors such as, whether the Government/ Competent Authority has formed the opinion that the suspension was “wholly unjustified” and consequently, taken a decision to not initiate departmental/ Court proceedings against the government servant either at the time of revocation of the suspension or sometime thereafter; whether the suspension was revoked after the conclusion of the departmental/Court proceedings, and; whether the suspension was revoked before initiation of the departmental/ Court proceedings (like in the present case), or after the initiation of such proceedings. Only in situations where a final decision with regard to the initiation/outcome of the departmental/ Court proceedings has been reached, would the Government be in a position to take a final decision in respect of aspects covered by sub-rule (1) of FR 54B. Otherwise, the Government may be acting prematurely in the facts of a given case, without having the relevant inputs and materials, on the basis of which the decisions under sub rule should, appropriately, be taken.

37. For instance, if the Competent Authority were to take a decision against the government servant to deny him pay and allowances and also to hold that the suspension period would not count as period spent on duty while revoking the suspension (which may happen before initiation of the departmental/court proceedings or during its pendency), and subsequently, the government servant were to be exonerated in the departmental/ Court proceedings, such a decision would obviously be unjust and unfair and would need to be reviewed (even though it may not be a case squarely falling under sub rule (6) of FR 54B where the revocation of suspension has

taken place prior to initiation of the departmental/ Court proceedings). In fact, sub-Rule (6) of FR 54B shows that a provisional order may be passed under sub-rule (1) where the suspension is revoked after initiation of disciplinary or court proceedings, which would be liable to be reviewed after the conclusion of such proceedings. There is nothing to show that the competent authority is obliged to pass an order under sub-rule (1) where the suspension is revoked during the pendency of the disciplinary or court proceedings, much less to show that such an order under sub-rule (1) should be passed where the suspension is revoked while the disciplinary/court proceedings are still under contemplation/scrutiny. Similarly, a decision taken by the Competent Authority in favour of the government servant under sub-rule (1) of FR 54B may not pass the test of reasonableness, if the government servant is eventually found guilty of misconduct or in criminal proceedings. Thus, while re-emphasizing the need for the Competent Authority to pass order under sub-rule (1) of FR 54B without undue delay and soon after the occasion for passing the same arises, we express our disagreement with the observations made by the learned Single Judge in **Hira Lal** (supra) in para 4 and 5 as quoted herein above.

38. The tribunal has also relied upon its earlier order in **Girdhari Lal** (supra). The relevant facts of that case are that Girdhari Lal was suspended during pendency of the disciplinary proceedings, and before termination of the proceedings, his suspension was revoked on 03.05.1990. He was thereafter punished vide order dated 14.11.1990. From the impugned order, it appears that the tribunal in **Girdhari Lal** (supra) held that the transaction of reinstatement and the passing of a specific order in respect of pay and

allowances during the period of suspension are one and inseparable

39. In our view, this interpretation of FR 54B is not supported by the very language of FR 54B, particularly, sub-rules (1) and (6) thereof. As noticed herein above, sub-rule (1) of FR 54B does not obligate the Competent Authority to pass an order thereunder immediately upon revocation of suspension. Sub rule (6) provides that even if any order had been passed under sub rule (1) before the conclusion of proceedings against the government servant, the same shall be reviewed by the Competent Authority on its own motion after the conclusion of the proceedings depending on the outcome of the disciplinary/ Court proceedings, as the case may be. Thus, we do not approve of the view taken by the tribunal in *Girdhari Lal* (supra).

40. Reliance placed on *Ajay Kumar Chaudhary* (supra), in our view, is of no avail in the facts of the present case. As noticed herein above, the suspension of the respondent was extended by the Suspension Review Committee beyond 13.06.2010 for a period of 180 days while enhancing the subsistence allowance payable to the respondent to 75% of his pay vide order dated 11.06.2010. Thus, there was sufficient compliance of the decision in *Ajay Kumar Chaudhary* (supra), in the facts of the present case.

41. In the aforesaid light, turning to the facts of the present case, we are of the view that it cannot be said that the petitioner was guilty of inordinate delay in taking a decision under sub-rule (1) of FR 54B. The respondent was suspended on 16.03.2010. Though his suspension was extended for a period of 180 days beyond 13.06.2010, his suspension was revoked earlier with effect from 08.12.2010 vide order dated 10.12.2010. Within five

months thereof, he was charge sheeted on 03.05.2011. Though the petitioner could have passed provisional orders under sub rule (1) before the initiation of the charge sheet on 03.05.2011, it was not obliged to do so, considering the fact that within five months of the revocation of suspension, the charge sheet was issued. Obviously, the Competent Authority while revoking the suspension had not formed the view that the suspension was “wholly unjustified”. If that had been the case, there would have been no occasion for the respondent being issued a memorandum on 03.05.2011. Pertinently, notice was issued to the respondent on 20.01.2014 to determine the aspects covered by sub-rule (1) of FR 54B i.e. within about three months of the imposition of penalty on the respondent vide order dated 10.10.2013. Thus, there was no inordinate delay on the part of the petitioner in initiating steps to pass orders under sub-rule (1) of FR 54B. In our view, the tribunal erred in holding against the petitioner that there was a lapse of considerable period in passing order under sub-rule (1) of FR 54B.

42. We also find that the tribunal has justified its decision on the premise that while revoking the respondents suspension, the petitioner had not reserved their right to pass an order under sub-rule (1) of FR 54B. A reading of FR 54B shows that there is no such condition imposed therein. The Competent Authority is not obliged to make any such reservation while revoking the suspension of the government servant. There is no statutory provision, and no precedent has been cited before us to state that unless the petitioner had reserved its right to pass orders under sub-rule (1) of FR 54B while revoking the suspension of the government servant, it cannot pass orders thereunder against the government servant. Unless orders are passed

by the Competent Authority under sub-rule (1) of FR 54B, the issues covered thereby would not attain finality.

43. We also find merit in the submission of the petitioner that even if the tribunal found that the petitioner had not taken decisions referable to sub-rule (1) of FR 54B, the tribunal could not have stepped into the shoes of the Competent Authority, and decided for itself as to how the suspension period should be treated for purposes of pay and allowances and for purposes of counting the period as spent on duty. The power and jurisdiction to pass such an order vests in the Competent Authority upon taking into consideration all the relevant aspects. The same is an executive decision. The tribunal could not have taken upon itself to decide the said aspect.

44. In these circumstances, we set aside the impugned order passed by the tribunal. We direct the petitioner to proceed to pass orders in pursuance of the notice issued by it to the respondent dated 20.01.2014 after granting adequate opportunity to the respondent to make a representation in response thereto. The parties are left to bear their respective costs.

**VIPIN SANGHI, J**

**REKHA PALLI, J**

**AUGUST 21, 2017**

*Sr/ B.S. Rohella*