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

+ W.P.(C) 3387/2017

RAGHU NANDAN VASHISHT Petitioner
Through Mr. Sourabh Ahuja, Advocate.

versus

SOUTH DELHI MUNICIPAL CORPORATION AND ORS

..... Respondent
Through Mr. Nikhil Goel with Mr.
Ashutosh Ghade, Advocates for
SDMC.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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05.12.2017

1. The present writ petition assails the order dated 14.07.2015 in O.A 907/2013, whereby while allowing the O.A. of the petitioner, the Central Administrative Tribunal, Principal Bench, New Delhi has restricted the consequential relief of payment of arrears to him for a period of one year prior to the date of filing of the O.A.
2. Briefly stated, the facts as emerge from the records are that the petitioner was appointed as an Assistant Malaria Inspector (hereinafter referred to as AMI) in the erstwhile Municipal Corporation of Delhi on 08.03.1978. Upon introduction of the ACP Scheme w.e.f. 09.08.1999, the petitioner became entitled for grant of the first

financial upgradation w.e.f. 09.08.1999 itself as he had completed more than the requisite 12 years of service by 09.08.1999. The petitioner also became eligible for grant of the second financial upgradation under the ACP Scheme w.e.f 07.03.2002 i.e when he had completed 24 years of service.

3. Vide Office Order dated 12.09.2005, the respondents granted the first financial upgradation to the petitioner only w.e.f. 16.03.2005 and not w.e.f. 09.08.1999, as claimed by him and also denied him the second financial upgradation on the ground that he was ineligible for the same.

4. Upon the petitioner making representations, he was informed by the respondents vide order dated 25.06.2007, that the grant of first financial upgradation to him had been delayed from 09.08.1999 to 12.09.2005, due to imposition of a penalty of 'Censure' on him vide order dated 29.03.2004. The petitioner was further informed that the second financial upgradation is granted only upon completion of 12 years of regular service from the date of grant of the first financial upgradation, which in his case, fell on 12.09.2005 and therefore he would have completed further 12 years, as required for the second financial upgradation only on 12.09.2017, before which date he would superannuate and thus he was rightly not granted the second financial upgradation.

5. In these circumstances, the petitioner approached the Tribunal by way of the aforesaid O.A. wherein he pointed out that though he had been suspended only w.e.f. 24.09.2001 which was much after the date when he had become entitled to receive the first financial

upgradation under the ACP and therefore, his subsequent suspension on 24.09.2001 could not effect his first financial upgradation that he became entitled to receive w.e.f 09.08.1999. The petitioner also stated that his suspension was subsequently revoked vide order dated 21.12.2001 and a charge-sheet had been issued to him on 27.11.2003, pursuant whereeto, penalty of 'Censure' had been awarded to him vide order dated 29.03.2004. While awarding 'Censure', it was also directed that the entire period of the petitioner's suspension would be treated as 'spent on duty' and therefore, he could not be denied the benefit of grant of even the second financial upgradation from the due date of 07.03.2002 i.e. after 24 years of service.

6. Before the Tribunal, the respondents had opposed the claim of the petitioner primarily on the ground of limitation. After considering the respective contentions of the parties, the Tribunal came to a categorical conclusion that on the respective dates on which the petitioner had become entitled to receive the first and second financial upgradations under the ACP Scheme, no disciplinary proceedings could have been said to be pending against him and therefore he was held entitled for grant of the same w.e.f. the respective due dates.

7. The Tribunal also rejected the objection raised by the respondents regarding the O.A being barred by limitation, by relying on the judgment of the Supreme Court in the case of ***State of Madhya Pradesh & Ors. v. Yogender Srivastava***, reported as (2010) 12 SCC 538, wherein it was held in para 18 as under:-

"18 We cannot agree. Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial

of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application. [See: [M.R. Gupta vs. Union of India](#) - 1995 (5) SCC 628, and [Union of India vs. Tarsem Singh](#) 2008 (8) SCC 648] Conclusion”

8. We may note that in the aforesaid decision, the Supreme Court had restricted the consequential relief of payment of arrears to a period of 3 years prior to the date of filing of the O.A. However, the Tribunal vide its impugned order while placing reliance on the decision of the Supreme Court in the case of [Yogendra Srivastave](#) (*supra*) has directed the respondents to grant the first and second financial upgradation under the ACP Scheme to the petitioner w.e.f their due dates, but has restricted the payment of arrears to him only for a period of one year before the date of the filing of the O.A. Aggrieved by the order of the Tribunal whereby the arrears payable to him have been restricted for only one year, the petitioner has filed the present petition.

9. Vide order dated 26.04.2017, while issuing notice in the present petition, the learned counsel for the respondents was directed to take instructions on the above aspect with reference to the decision of the

Supreme Court in the case of Yogendra Srivastave (supra). Today, when the matter has been taken up for arguments, learned counsel for the respondents is unable to give any justifiable reason as to why the petitioner should be deprived of the same relief as had been granted by the Supreme Court in the captioned case.

10. Having considered the rival contentions of the parties and on perusing the impugned judgment, we are of the opinion that in view of the aforesaid decision of the Supreme Court, the present petition is liable to be allowed and the direction of the Tribunal restricting the right of the petitioner to receive arrears only for a period of one year prior to the date of filing of the O.A, is liable to be modified. We find no reasons as to why the petitioner should not be granted arrears for a period of 3 years prior to the date of filing of the O.A., as had been granted by the Supreme Court in the aforesaid case.

11. Accordingly, the impugned order of the Tribunal is modified only to this limited aspect and it is directed that the petitioner would be entitled to receive the arrears in accordance with the directions of the Tribunal, for a period of 3 years prior to the date of filing of the O.A.

12. The writ petition is disposed of on the aforesaid terms with no orders as to cost.

REKHA PALLI, J

HIMA KOHLI, J

DECEMBER 05, 2017/sr