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

+ **W.P.(C) 10065/2016**

Date of decision: 8th February, 2017

CHANDRA SHEKHAR Petitioner
Through Mr. Prithu Garg, Advocate.

versus

UNION OF INDIA & ORS Respondent
Through Mr. Rajesh Gogna, CGSC.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

Counsel for the petitioner relying on the judgment dated 15th February, 2010 passed in W.P. (C) 9042/2009, *Union of India Vs. P.C. Misra*, submits that the impugned order of the Tribunal dated 3rd June, 2016 dismissing OA No.4343/2014 requires consideration. Reference is also made to Fundamental Rule 24. He also submits that the petitioner is not claiming increments for the period of suspension, but on the suspension being revoked, the increments payable to him should be notionally taken into account while fixing his pay.

2. The petitioner-Chandra Shekhar had remained under suspension from 4th June, 2004 to 30th April, 2008 upon arrest in the criminal case by

the Central Bureau of Investigation. Charge sheet under the Prevention of Corruption Act, 1988 has been filed, the petitioner has been summoned and and prosecution proceedings are still pending.

3. The short issue and question, which arises for consideration, is whether the petitioner would be entitled to increments which he would have earned if he had worked and was on duty between 4th June, 2004 and 30th April, 2008, i.e. the period when he was under suspension.

4. The issue, according to us, is not *res-integra* and has to be decided against the petitioner in view of the judgment dated 4th November, 2016, passed by a Division Bench of this Court of which one of us (Sanjiv Khanna, J.) was a member, in W.P. (C) No.10398/2016, ***Ravinder Kumar Mirg Vs. The Union of India & Anr.*** This decision relies upon the decision of the Supreme Court in ***Union of India Vs. Ravinder Kumar Chopra***, (2010) 2 SCC 763 and a Division Bench's judgment of this Court in ***Union of India & Ors. Vs. Devi Krishan Sharma***, 2015 (225) DLT 67. The latter decision quotes and refers to the decision of the Supreme Court in ***State of Punjab Vs. Jaswant Singh Kanwar***, (2014) 13 SCC 622, wherein it has been observed as under:-

“11. To analyse 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 are temporarily suspended unless the period of suspension is considered as the period spent on duty.

12. In the instant case, the High Court has concurred with the finding of the disciplinary authority and has come to the conclusion that the period of suspension is not the period spent on duty.

“13. “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 *SBI v. Central Govt. Labour Court* [(1972) 3 SCC 595] , under the labour and industrial laws, an increment is when in a timescale 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. An 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.”

5. The decision in the case of *P.C. Misra* proceeds on a different aspect

as it notes that the authorities in spite of opportunity could not produce any order for withholding of increments. The decision in the case of ***Ravinder Kumar Chopra*** (supra) was distinguished on facts.

6. In the factual matrix of the present case, we are inclined to apply the ratio of the Division Bench's decision in the case of ***Ravinder Kumar Mirg*** (supra), which follows the decision of another Division Bench in ***Devi Krishan Sharma***.

7. The contention with regard to notional fixation has to be rejected. The period during which the petitioner was under suspension is yet to be treated as period spent on duty. Increments are given when a person is working and has been on duty. This being the position, we do not think that the petitioner's contention that he should be paid future increments, by notionally granting increments for the suspension period can be accepted, unless this period is treated as period spent on duty.

8. In view of the aforesaid discussion, we do not find any merit in the present writ petition and the same is dismissed.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

FEBRUARY 08, 2017/NA