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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **W.P.(C) 11651/2016**

**S K SHAKYA** ..... Petitioner  
Through Mr. Ankur Chhibber, Advocate.

versus

**UNION OF INDIA & ORS** ..... Respondents  
Through Mr. Santosh Kohli, CGSC for  
respondent Nos. 1 to 4.

**CORAM:**

**HON'BLE MS. JUSTICE INDIRA BANERJEE**

**HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA**

**ORDER**

% **23.03.2017**

In this writ petition, the petitioner has sought orders directing the respondents to revoke the suspension order passed against the petitioner and for other consequential reliefs.

The petitioner, a Senior Medical Officer of the BSF, was posted at the Force Hospital-II at Tigri Camp in New Delhi. On 30.07.2009, the petitioner was detailed as a Member of the Medical Board to check the medical fitness of the candidates who had applied for the post of Head Constable (Ministerial) in the BSF.

On the basis of a complaint filed by one Durga Singh, alleging that one Shri Narender Kumar Mehta, Head Constable of the BSF had been demanding money from him on behalf of the petitioner, to declare his brother as medically fit, the CBI conducted a raid on 30.07.09. Even though nothing incriminating was recovered, the petitioner and the Head Constable

Narender Kumar Mehta were arrested by CBI on the basis of the said complaint and kept in judicial custody.

After the arrest of the petitioner, an order dated 04.11.2009 was passed, whereby, the petitioner was placed under suspension w.e.f. 30.07.2009 since he had been arrested by the CBI and had been in custody for a period exceeding 48 hours. Thereafter the suspension order of the petitioner was extended from time to time. By an order dated 04.04.2016, the suspension of the petitioner was extended for a period of 180 days from 22.03.2016 to 17.09.2016.

Based on the said complaint of Durga Singh, the CBI registered an FIR against the Head Constable Narender Kumar Mehta and the petitioner under Section 120B IPC and Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

The petitioner and the said Narender Kumar Mehta underwent trial, after which the learned Special Judge, CBI Court, Central District passed a judgment and order dated 29.03.2016 acquitting the petitioner and Narender Kumar Mehta.

Even after the judgment and order dated 29.03.2016 was passed by the Trial Court acquitting the petitioner, the suspension order was not revoked. Be that as it may, the suspension order came to an end by efflux of time on 17.09.2016. Admittedly, the suspension has not been extended beyond 17.09.2016. According to the petitioner, the petitioner went to rejoin after 17.09.2016.

The petitioner was neither permitted to resume his duties after 17.09.2016 nor paid his salary or allowances or subsistence allowance after

17.09.2016 though he had been acquitted in the trial. Representations made by the petitioner allegedly went unheeded.

On this writ petition being moved, on 09.12.2016, notice was issued and counter affidavit directed to be filed. Counter affidavit has duly been filed. It is not in dispute that no further suspension order has been passed after 17.09.2016.

As observed above, the order of suspension came to an end on 17.09.2016. The prayer in the writ petition for revocation of the suspension order was unnecessary. Be that as it may, on 12.01.2017, the Deputy Commandant (Law Officer) of the Border Security Force Mr. Arvind Sharma who was present in the Court submitted that the matter was going to be placed before the Ministry of Home Affairs for formal revocation of the suspension shortly. In view of the aforesaid submission, the writ petition was adjourned for two weeks. However, the respondents were directed to release the entire outstanding subsistence allowance due to the petitioner.

It is submitted by the learned counsel appearing on behalf of the respondents that the matter of revocation has been placed before the Ministry of Home Affairs. It is reiterated at the cost of repetition that the suspension order was till 17.09.2016. The suspension order came to an end on 17.09.2016.

The petitioner cannot be prevented from rejoining and resuming his duties just because the Ministry of Home Affairs has not taken any decision, which, on the other hand, means there is no order of suspension in force. There was no decision to re-impose the order of suspension. Significantly

Shri Narendra Kumar Mehta, who had allegedly demanded the money has been permitted to resume his duties.

On 12.01.2017, this Court adjourned the writ petition for two weeks in view of the submission that a formal order would shortly be passed. However, even after 12.01.2017, two months have passed, but the petitioner has not been permitted to resume his duties.

As observed above, the order of suspension was never extended beyond 17.09.2016. There is no order of suspension. We direct that the petitioner shall immediately be allowed to rejoin and resume his duties. The petitioner shall also be paid arrears of pay and allowances from 17.09.2016 less the subsistence allowance already paid to him. The salary and allowances due and payable to the petitioner from 17.09.2016 onwards shall carry interest @ 9% p.a from 07.10.2016. Needless to mention that interest shall be computed as per reducing balance. The respondents will be entitled to adjust subsistence allowance that has been paid pursuant to the order of this Court against the dues of the petitioner on account of salary and allowances. Records reveal that a decision was taken by CBI not to appeal against the order of acquittal, way back on 17.06.2016. The petitioner having been acquitted, necessary orders shall also be passed for payment of salary due to the petitioner during the suspension period from 30.07.2009 till 17.09.2016. However, the arrears of salary upto 17.09.2016, shall not carry any interest. The petitioner having unnecessarily been dragged to this Court shall be entitled to costs of these proceedings assessed at Rs.20,000/-.

With the aforesaid directions, the writ petition is disposed of.

*Dasti.*

**INDIRA BANERJEE, J**

**ANIL KUMAR CHAWLA, J**

**MARCH 23, 2017**

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