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

+ **W.P.(C) 3657/2017**

LAXMI CHAND

..... Petitioner

Through: Mr.M.K.Bhardwaj, Advocate

versus

DDA AND ANR.

..... Respondents

Through: Mr.Arun Birbal and Mr.Sanjay Singh,
Advocates for DDA.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **28.04.2017**

1. Issue notice. Mr.Arun Birbal, counsel for the respondents accepts notice.
2. We have heard learned counsel for the parties.
3. The petitioner has preferred the present writ petition to assail the order dated 02.06.2016 passed in O.A.3031/2013, and the order dated 20.07.2016 in R.A.127/2016 in the aforesaid O.A. The Central Administrative Tribunal, Principal Bench, New Delhi (CAT) has dismissed both the Original Application and the Review Application preferred by the petitioner.
4. The petitioner was departmentally proceeded and punished by the Disciplinary Authority. The punishment was affirmed by the Appellate Authority and also by the Revisional Authority. The petitioner then assailed the said orders by filing W.P.(C) 18982/2006 before this court. The same was transferred to the CAT and registered as T.A.No.211/2007. The said transfer application was

partially allowed by the CAT vide order dated 09.02.2011. The operative part of the order reads as follows:

“12.2 Allowing the OA to the extent that the impugned orders are set aside and the respondents directed to reinstate the applicant in service. However, applying the principle of 'no work no pay', the applicant would not be entitled to claim the back wages for the interregnum period from the date of removal to that of reinstatement. However, this would not be an impediment for other admissible consequential benefits as per law. The above directions are to be complied within a period of six weeks from the date of receipt of a copy of this order. There shall be no order as to costs.”

(emphasis supplied)

5. The respondent then passed the order dated 13.05.2011; issued notice dated 16.11.2011, and; eventually, passed an order dated 20.02.2013.

6. In the meantime, the petitioner assailed the order of the CAT dated 09.02.2011 before this court vide W.P.(C) No.5809/2012. The said writ petition was disposed of by this court on 10.05.2013, reserving the right of the petitioner to challenge the order dated 20.02.2013. Consequently, the petitioner preferred the aforesaid Original Application. It appears that before the CAT the petitioner once again sought to assail the denial of pay and other allowances to him for the period he was removed from service, by placing reliance on FR 54 A (3), which provides that if the dismissal, removal or compulsory retirement of a Government Servant is set aside by the court on merits of the case, the period intervening between the date of suspension and the date of reinstatement shall be treated as duty for

all purposes and the Government servant shall be paid the full pay and allowances for the period according to his entitlement. The CAT, after examining its earlier order dated 09.02.2011 in T.A. No.211/2007, concluded that the penalty against the petitioner was set aside not on merits, but on technicalities.

7. Consequently, the Original Application of the petitioner was dismissed. His Review Application was also dismissed.

8. We are of the view that in the light of the direction issued by the CAT in the said T.A.-squarely holding that by applying the principle of “no work, no pay”, the petitioner would not be entitled to back wages for the interregnum period i.e. between the date of his removal, till the date of his reinstatement, which direction was not interfered by this court in the petitioner’s earlier writ petition i.e. W.P.(C) No.5809/2012, the petitioner was not entitled to reagitate the said issue before the CAT. Even otherwise, the decision of the CAT that the penalty of removal was set aside not on merits, but on technical grounds cannot be said to be implausible, and it does not call for interference.

9. The next submission of Mr.Bhardwaj is that, even though the CAT had denied wages to the petitioner for the period of his removal from service, the CAT had observed that the same would not be an impediment for grant of other admissible consequential benefits as per the law to the petitioner. In spite of the same, the respondent sought to treat the said period of removal as *dies non* for all purposes. In this regard, he has referred to the notice dated 16.11.2011.

10. The order dated 20.02.2013 which has been passed in

pursuance of the said notice dated 16.11.2011, however does not state that the said period would be treated as *dies non*. The said order states that the interregnum period between the date of removal from service and date of reinstatement is to be regularised, subject to direction of CAT dated 09.02.2011, and as per provisions contained in FR-54A. The period of deemed suspension from 14.06.2001 to 09.02.2005 shall be treated as leave due to the petitioner and, in case he does not have leave to his credit, then the remaining period shall be treated as extraordinary leave without pay.

11. Mr.Birbal, who appears on advance notice for the respondents, has referred to the counter affidavit filed by the DDA before the CAT. In para 4.4, the respondent has stated that no orders, treating the period of deemed suspension (with effect from 14.06.2001 to 09.02.2005), as *dies non*, has been passed.

12. We may observe that the said averment of the respondent pertains to the period when the petitioner was under suspension, prior to his removal from service. However, the petitioner's grievance is in relation to the period between the date of his removal and the date of his reinstatement.

13. Since the Tribunal while disposing the said T.A. had clearly denied only wages during the aforesaid period, while not denying the petitioner the other benefits for the said period, in our view, the grievance of the petitioner appears to be partially justified. The period between the date of removal and date of reinstatement shall, therefore, be treated as continuous service for all intents and purposes, except that he shall not be entitled to any wages i.e. any pay or

allowances for the said period.

14. In view of the above directions, the respondents shall now consider the petitioner's claims which may arise on account of continuity of his service, without a break, within eight weeks.

15. The petition stands disposed of in the above terms.

VIPIN SANGHI, J

DEEPA SHARMA, J

APRIL 28, 2017

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