

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 16.02.2018****CWP No.23921 of 2015**

Ram Kumar

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Harkesh Manuja, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

1. This petition has been filed claiming directions to the respondents for increase of subsistence allowance from 50% to 75% for a period 16.09.2013 to 15.06.2014, that is, for the period of suspension exceeding six months. Interest is also claimed on the amount.

2. The petitioner was suspended by order dated 22.03.2013 w.e.f. 16.03.2013, as FIR No.9 dated 16.03.2013 was registered against him under Sections 7, 13 etc. of the Prevention of Corruption Act, 1988 (for short 'the Act') at Police Station State Vigilance Bureau, Hisar at Bhiwani for demanding bribe from the complainant to pass favourable orders. Power of suspension flows from Rule 4(2)(a) of the Haryana Civil Services (Punishment & Appeal) Rules, 1987. Other than the progress of criminal trial, the petitioner was issued a domestic charge-sheet under Rule 7 of the 1987 Rules on 05.08.2013. He filed a detailed reply, but no departmental proceedings were carried on, as the Department preferred to await the result of trial. The conviction under Sections 7 and 13(d)(iii) of the Act was

recorded on 14.01.2014 by the Court of learned Sessions Judge, Bhiwani. Following conviction, show cause notice was issued on 14.05.2014 and on receiving reply and considering the defence taken, the Punishing Authority thought it fit to dismiss the petitioner from service invoking Rule 7(2)(b) of the 1987 Rules read with proviso (a) to Article 311(2) of the Constitution of India. The order was passed on 16.06.2014. An administrative appeal was filed before the first respondent, which was rejected on 19.02.2015.

3. In the present petition right has been reserved to challenge the order of dismissal after the outcome of criminal appeal bearing CRA No.480-SB of 2014 pending in this Court against the judgment of conviction and order of sentence.

4. The case for payment of difference of subsistence allowance from 50% to 75% for the period claimed has been rejected on the ground that the period of suspension was prolonged due to pendency of criminal case, which was attributable to the petitioner, as such no increase in subsistence allowance could be granted. This line of reasoning has been assailed urging that no finding has been recorded by the Punishing Authority that there has been any delay on the part of the petitioner while pursuing the trial. By the very nature of things, a criminal trial takes its own course and it is not in the hands of the petitioner or anyone to have speeded up the trial. Not only is the petitioner not entitled to arrears of difference of subsistence allowance from 50% to 75%, but is also not entitled to increments due to him and he would be entitled to suitable interest.

5. The State Government has contested the claim and filed its written statement supporting the order declining the request for enhancement of subsistence allowance as the same is not a vested right which can be

claimed as a matter of course, but is a matter which rests on the discretion of the authority properly exercised.

6. The petitioner has been convicted for abuse of public office and for demanding bribe to settle a widow's pension claim. Neither does equity nor discretion come to the aid of the petitioner. It is always open to the competent authority to pass a separate order on the claim for subsistence allowance as per the dictates of reason circumscribed by rules. And Rules apart, the conscience of the Court would not allow such relief to flow in case of a conviction in a corruption case, be it that appeal is pending.

7. Mr. Manuja relies on a selection of judgments in Rattan Lal Vs. State of Punjab & others, 1995 (2) SCT 650; Pritam Singh Aulakh Vs. State of Punjab etc., 1995 (2) RSJ 489; Ram lal Vs. UHBVN Ltd. & others, 2006 (6) SLR 421; Rajinder Parshad Vs. P.O. Labour Court, UT Chandigarh & others, 2009 (3) SCT 42; Mahabir Singh Vs. State of Haryana & others, 2011 (2) SLR 638 and Didar Singh Vs. The State of Punjab through Secretary, Transport Department, Chandigarh & others, 2014 (4) PLR 730 to urge that the petitioner was not in any manner responsible for causing the delay in the conclusion of trial and, therefore, the difference of subsistence allowance on expiry of first six months should accrue in favour of the petitioner with interest.

8. I am not impressed with this argument. The judgments relied upon are of cases involving departmental inquiries initiated by the employer. In none of these cases is there involvement of charges under the Prevention of Corruption Act. Corruption cases stand on different footing and cannot be equated by the normal rule of increase of subsistence allowance after mere expiry of six months. After all, the petitioner has been convicted and

his appeal is pending. He can receive no rewards. His rights, if any, will remain subject to outcome of the criminal appeal. The employer had no complaint against the petitioner and it was the petitioner's act in private life while holding public office that he embroiled himself in a criminal trial for demanding bribe from a widow in negation of performance of official duties. Therefore, the employer should not be compelled by mandamus to pay a single penny other than the subsistence allowance already paid.

9. For the reasons recorded above, I find no merit in this petition and dismiss it.

16.02.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>