

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

Date of Order: March 14, 2018

+ **RAJESH KUMAR** Petitioner
Through: Mr.Subart, Advocate and Mr.Towseef
Ahmad, Advocate

W.P.(C) 1929/2018

versus

INDIAN INSTITUTE OF TECHNOLOGY
DELHI Respondent
Through: Mr.Arjun Mitra, Advocate and
Ms.Jaskaran Kaur, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. Vide order of 14th July, 2017 (*Annexure P-1*), petitioner was placed under suspension with immediate effect. The said suspension order was reviewed on 24th November, 2017 vide office order (*Annexure P-2*) and it was decided to continue the suspension order and to enhance the subsistence allowance from 50% to 70%. Impugned order of 24th November, 2017 (*Annexure P-2*) is assailed in this petition on the ground that the review of suspension has been made beyond the statutory period of 90 days. Reliance is placed by petitioner's counsel upon Supreme Court's decision in *Union of India (UOI) & Ors. Vs. Dipak Mali* (2010) 2

SCC 22 to submit that subsequent review and extension of suspension beyond the period of 90 days cannot revive the suspension order as it becomes invalid after period of 90 days. Learned counsel for respondent submits that the process of reviewing petitioner's suspension was initiated on 9th November, 2017 and the Review Committee vide order (*Annexure P-2*) has continued petitioner's suspension and enhanced the subsistence allowance on petitioner's application on 24th November, 2017 and since there was no deliberate delay on part of respondent, so the impugned order deserves to be sustained.

2. The decision in *Dipak Mali* (supra) is sought to be distinguished by respondent's counsel while pointing out that the suspension in the said case was not extended as the Review Committee was never constituted, whereas in the instant case, petitioner's suspension has been extended by the Review Committee and in the process some delay has occurred. It is pointed out by respondent's counsel that petitioner is not participating in the inquiry proceedings which have commenced in February, 2018 and the next date in the inquiry is 20th March, 2018. Learned counsel for petitioner submits that petitioner has not received any notice from Inquiry Officer to appear. Petitioner's counsel has been apprised of the next date of hearing in the inquiry. It is up to petitioner to take effective steps if required or to face the consequences of non-appearance in the inquiry proceedings.

3. Upon hearing and on perusal of impugned order, material on record and the decision cited, I find that petitioner vide letter of 9th November,

2017 had sought revocation of his suspension as by then statutory period of 90 days had lapsed. Impugned order does refer to petitioner's letter of 9th November, 2017 but misconstrues it as one seeking enhancement of subsistence allowance. In fact, vide letter of 9th November, 2017, petitioner had sought revocation of his suspension. Supreme Court in *Deepak Mali* (supra) had found that the delay in reviewing the suspension was not convincing. In the instant case, the explanation for the delay occasioned is not forthcoming. In such a situation, impugned order of 24th November, 2017 (*Annexure P-2*) needs to be reconsidered by the respondent while considering petitioner's letter of 9th November, 2017 as the one seeking revocation of the suspension. Respondent is also required to indicate the reason for the delay in carrying out the review of petitioner's suspension.

4. Let a speaking order be passed on petitioner's application of 9th November, 2017 by respondent within a period of six weeks and the fate of the said application be made known to petitioner within a week thereafter, so that petitioner may avail of the remedy as available in law, if need be.

5. With aforesaid directions, this petition is disposed of.

(SUNIL GAUR)
JUDGE

MARCH 14, 2018
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