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

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Date of Decision: 21.02.2019

+ W.P.(C) 4134/2016

ANISH GUPTA

..... Petitioner

Through: Mr. Prateek Tushar Mohanty,
Ms. Payal Mohanty and Mr. Tushar
Ranjan Mohanty, Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Bharathi Raju, CGSC.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

VIPIN SANGHI, J. (ORAL)

1. The short issue that arises for consideration in the present petition assailing the order dated 22.04.2016 passed in O.A. No. 1395/2016 is whether the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal'), was justified in requiring the petitioner to await the outcome of the enquiry proceedings for the purpose of determining as to how the period of his suspension should be treated for the purposes of his pay and allowances, and, whether the said period of suspension should be treated as spent on duty, or not.

2. The petitioner was placed under suspension on 21.08.2013. His suspension was revoked w.e.f. 12.02.2015 vide order dated 17.02.2015. He was, thereafter, issued a major penalty charge-sheet on 16.07.2015. The

proceedings are still under-way.

3. The grievance of the petitioner is that the Government had failed to pass an order in terms of Rule 54-B of the Fundamental Rules (FR) when he approached the Tribunal with this grievance, as aforesaid, the Tribunal asked the petitioner to await the outcome of the disciplinary proceedings.

4. Learned counsel for the petitioner has placed reliance on the decision of a Division Bench of this Court in **Vijay Kumar Aggarwal Vs. Union of India & Anr.**, WP(C) 916/20107 decided on 14.12.2010 along with several other petitions. The Division Bench noted the earlier decisions rendered in **Girdhari Lal Vs. Delhi Administration & Ors.**; 1993 (25) ATC 321, **Basant Ram Jaiswal Vs. Area Manager (North) MTNL Bombay**, 1993 (24) ATC 641; **Hira Lal Vs. DDA & Ors.**, 1996 (3) (Supp.) LLJ 855; and, **O.P. Gupta Vs. UOI & Ors**, AIR 1987 SC 2257 and held that, if, while revoking the suspension, or within a reasonable time thereof, no order is passed pertaining to pay and allowances for the period of suspension, the authority is denuded of its authority to pass such an order later, and, the inevitable result would be that the Government servant would be entitled to full pay for the period he remained under suspension. Learned counsel points out that the said decision of the Division Bench has been affirmed by the Supreme Court in **Vijay Kumar Agarwal Vs. Union of India & Anr.**, SLP (C) 6393/2012 decided on 06.10.2015. In the said decision, the Supreme Court has observed as follows:

“.....
20) With this background, we revert back to writ petition Nos.916/2007 and 2768/2007. As far as writ petition No.916/2007 is concerned, let it be recapitulated that it arises out of OA No.1714/2003 wherein the petitioner had challenged

the order dated May 13, 1996 by which his suspension was revoked. This OA was allowed by the Tribunal on the ground that it was necessary for the Government to pass composite order which was the requirement of Rule 5B of the Rules and since the Government had not indicated in the order as to how the suspension period would be reckoned and the decision for payment of salary during the suspension period was also not taken, the order was bad in law. The liberty, however, was granted to the State Government to pass fresh order regarding salary of suspension period. This part of the order granting liberty to the State Government was sought to be reviewed by the petitioner by filing review petition which was dismissed and this dismissal was challenged by the petitioner in the said writ petition No.916/2007.

21) The High Court while dealing with this writ petition took the view that in case order revoking the suspension did not deal with the suspension period or payment of the salary for suspension period, order revoking suspension cannot be treated as void or non est. The only effect thereof would be that the competent authority is precluded from exercising its power under FR 54B and the legal position was that if while revoking the suspension or within a reasonable time thereof no order is passed pertaining to pay and allowances for the period of suspension, the authority is denuded from passing such an order. The necessary consequences thereof would be that the Government servant, in such a situation, is entitled to full salary for the period he remained under suspension. Therefore, High Court held that the petitioner was entitled to full pay and allowances for the period he remained under suspension and in the present case, the Supreme Court had already passed the order for grant of full salary for the period May 01, 1988 to May 13, 1996 and this amount had also been received by the petitioner though initially he had refused to accept the same when it was tendered to him in the Court. Moreover, the State of Maharashtra had not revoked the suspension on its own but to facilitate petitioner's inter-cadre transfer from Maharashtra cadre to Punjab cadre and, therefore, the order of revocation of suspension was not in

exercise of power to revoke the suspension on the ground that the petitioner was no longer required to kept under suspension and these peculiar circumstances were not kept in mind by the Tribunal.

22) According to us, the aforesaid approach of the High Court, under the given circumstances, is without blemish. The High Court has relied upon certain judgments of this Court including the decision in the case of *Basant Ram Jaiswal v. Area Manager (North) MTNL Bombay* which held that in such a situation, the competent authority cannot exercise the power under FR 54B.

23) When the order of suspension is revoked and the suspended employee is asked to join the duty, he is required to do so. How the period of suspension is to be treated is another aspect. At the most, such an employee would be entitled to full salary during the suspension period if no order is passed as to how the suspension period would be governed. That would not mean that order revoking suspension itself becomes bad in law. It is pertinent to mention that even the Tribunal did not say that order revoking suspension was bad in law (In fact that part of the order was favourable to the petitioner). What it held was that in terms of Rule 5(b), the Government should have also decided how the period of suspension is to be treated and, therefore, directed the Government to pass necessary order to that effect.”
(emphasis supplied)

5. Thus, the submission of learned counsel for the petitioner is that since no orders were passed under F.R. 54-B at the time of revocation of the suspension of the petitioner on 17.02.2015, or even within a reasonable period of time, thereafter, the petitioner was entitled to payment of full pay and allowances for the period of suspension, and he was also entitled for treatment of the suspension period, as spent on duty.

6. Learned counsel for the respondent submits that Sub-rule (6) of F.R. 54-B shows that an order passed under Sub-rule (1) is provisional, and it

shall be open to review, on conclusion of the disciplinary proceedings by the competent authority. Sub-rule (6) of F.R. 54-B reads, as follows :

“Where suspension is revoked pending finalization of the disciplinary or the Court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.”

7. We find merit in the submissions of both learned counsels.
8. Accordingly, we allow this petition and direct the respondents to pay to the petitioner the full pay and allowances for the suspension period, after adjusting the suspension allowances that may have been paid to him. At the same time, we make it clear that it shall be open to the competent authority to review the said payment treatment of the period of suspension, in case, on conclusion of the departmental proceedings, the petitioner is found guilty of misconduct alleged against him. Since the period of suspension would, at this stage, be liable to be treated as spent on duty, the petitioner would also be entitled to consequential benefits.
9. The petition stands disposed of in the above terms.
10. *Dasti.*

VIPIN SANGHI, J

A. K. CHAWLA, J

FEBRUARY 21, 2019/rc