IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Date of Decision: November 15, 2021***

\+ W.P.(C) 6318/2020 & CM Nos. 22425/2020, 22426/2020

T.C. SIVAKUMAR

..... Petitioner

Through: Mr.Tushar Ranjan Mohanty, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Vijay Joshi, Adv. with Mr. Himanshu Pathak, Advocates for respondents

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J (ORAL)

1. This petition has been filed by the petitioner with the following prayers: -

> *"In view of the facts and circumstances mentioned herein above and the submissions made, the Petitioner prays that the Hon'ble High Court may be graciously pleased to :*
>
> *(i) issue rule nisi to the Respondents;*
>
> *(ii) quash and set aside the Office Order dated 29.05.2020 [Annexure : P-1] and Office Order dated 01.06.2020 [Annexure : P-2] as being without jurisdiction, and also bad and non-est in law;*

(iii) consequently, direct Respondent No.4 to release all retiral dues to the Petitioner, including Gratuity, Leave Salary, Commutation of Pension and Pension, forthwith;

(iv) direct that the entire Period of Suspension of the Petitioner [20.11.2014 to 30.05.2016] is to be treated as on duty for all purposes and that the Petitioner would be entitled to full salary and all allowances for the said period;

(v) direct Respondent No.4 to release full salary and all allowances the Petitioner for the period of suspension of the Petitioner [20.11.2014 to 30.05.2016];

(vi) quash and set aside the Penalty Order dated ___.04.2019 [Annexure : P-4] as being without jurisdiction, and also bad and non-est in law;

(vii) direct refund of the monies recovered from the salary of the Petitioner due to imposition of the Penalty vide Penalty Order dated __.04.2019 [Annexure : P-4];

(viii) direct Respondent No.4 to grant Increment to the Petitioner on 01.07.2019;

(ix) consequently refix the Pension of the Petitioner;

(x) quash and set aside Disagreement Note dated __.11.2018 [Annexure : P-5] as being bad and non-est in law;

(xi) direct that the Major Penalty Charge Sheet dated 22.12.2015 [Annexure : P-6] has lapsed;

(xii) direct Respondent to pay compound interest @ 18% per annum, compounded monthly, on all monies that is payable to the Petitioner;

(xiii) allow exemplary costs of the present Writ

Petition to the Petitioner against the Respondents; and

(xiv) pass such other and further order/(s) as may be deemed just and appropriate in the facts, circumstances and premises of the present case."

2. The petitioner was appointed as a Lecturer in the respondent No.4 Institute namely the National Institute for the Empowerment of Persons with Intellectual Disabilities ('NIEPD', for short) on January 08, 1990. On November 20, 2014, he was suspended. On February 10, 2015, his suspension was extended. The suspension was again extended on August 06, 2015, November 09, 2015 respectively. While under suspension, a charge sheet was issued to the petitioner on December 22, 2015. The suspension was finally revoked on May 30, 2016.

3. Pursuant to the charge sheet, as referred to above, the inquiry report was submitted by the Inquiry Officer, wherein the petitioner was not found guilty. The Disciplinary Authority ('DA', for short) after considering the inquiry report, gave a disagreement note on the inquiry report to the petitioner in November 2018. The petitioner submitted his response to the disagreement note. In April 2019, a penalty order was passed by the Authority under the signatures of the Joint Secretary to the Government of India ('GOI', for short), whereby the pay of the petitioner was reduced from ₹1,51,400/- to ₹1,47,000/- for a period of one year with immediate effect, with a further direction that he will not earn increments of pay during the period of such reduction and on the expiry of such period the reduction will have the effect of postponing his future increments of pay.

4. The submission of Mr. Tushar Ranjan Mohanty is that the order of revocation of suspension dated May 30, 2016, does not specify as to how the period of suspension i.e., November 20, 2014, to May 30, 2016, has to be treated. According to him, the law is well settled that the order regarding the treatment of period of suspension has to be passed simultaneously with the order of revocation of suspension, and in any case, there should not be a gap of more than six months between the two incidents. In case, the order of treatment of period of suspension is not passed within six months from passing of the order of revocation of suspension then the Competent Authority is denuded from passing any other order and the entire period of suspension of the government servant has to be treated, 'as on duty', even if the government servant has been imposed penalty in the disciplinary proceedings.

5. That apart, the submission of Mr. Mohanty on the penalty order is that the same has not been passed by a Competent Authority, inasmuch as the charge sheet dated December 22, 2015, has been issued to the petitioner by the Secretary, GOI, and therefore, no penalty could have been imposed on the petitioner by the lower authority i.e., Joint Secretary, GOI.

6. That apart, his submission is that the disagreement note of November 2018 is bad on the ground that it is not a tentative disagreement but a final disagreement and secondly, it has been issued by a lower authority namely the Under Secretary, therefore the disagreement note is unsustainable. He finally challenges the major penalty charge sheet dated December 22, 2015, on the

ground that it is deemed to have lapsed in view of the extant law, as the disciplinary proceedings were not concluded within one year. Finally, he stated that in terms of the impugned orders dated May 20, 2020, and June 01, 2020, the petitioner on attaining the age of superannuation has been granted provisional pension and not the complete retiral benefits as he is entitled to get, as there is no charge sheet nor any judicial proceedings pending against the petitioner on the date of retirement i.e., May 31, 2020. Mr. Mohanty has relied on some of the following judgments in support of his submissions: -

i. ***Shri Girdhari Lal vs. Delhi Administration, Delhi And Ors., O.A. No. 1508/1991;***
ii. ***Basant Ram Jaiswal vs. Area Manager (North) Mahanagar Telephone Nigam Ltd., Bombay Telephones and Anr., O.A. No. 704/1987;***
iii. ***Hira Lal vs. D.D.A. and Ors., (1995) 34 DRJ 30;***
iv. ***Vijay Kumar Aggarwal vs. Union of India and Anr., W.P. (C) 916/2007;***
v. ***Vijay Kumar Agarwal vs. Union of India and Anr., SLP No. 6393/2012;***
vi. ***Union of India vs. M.R. Diwan and Ors., W.P. (C) 5653/2018;***
vii. ***The Municipality of Bhiwandi and Nizampur vs. Kailash Sizing Works, AIR 1975 SC 529;***
viii. ***Ajay Kumar Choudhary vs. Union of India Through its Secretary and Anr., (2015) 7 SCC 291***
ix. ***Prem Nath Bali vs. Registrar, High Court of Delhi and***

Anr., (2015) 16 SCC 415

x. ***In Re: Cognizance for Extension of Limitation, W.P. (C) No.3 of 2020***

7. On the other hand, Mr. Vijay Joshi, learned counsel for the respondents would submit that the present petition is not maintainable on the ground of delay and laches, inasmuch as the penalty order was passed in April 2019 whereas the petition has been filed after a period of 17 months under the garb of orders dated May 29, 2020, and June 01, 2020, depicting grant of provisional pension. He justifies the impugned orders dated May 29, 2020, and June 01, 2020, on the ground that the Ministry's letter dated May 28, 2020, clarified that the petitioner is not cleared from the Vigilance angle as a Vigilance case is pending against him and is allowed provisional pension as per Rules 9 and 69 of the CCS (Pension) Rules, 1972. That apart, he stated that the petition is liable to be rejected on the ground that the department proceedings under Rule 14 of CCS (CCA) Rules, 1965 were contemplated against the petitioner for alleged irregularities in implementation of Assistance to Disabled Persons for purchasing / fitting of Aids / Appliances Scheme and the 1st stage advice of Central Vigilance Commission ('CVC', for short) was obtained and after that charges were framed under Rule 14 of CCS (CCA) Rules, 1965. Since the major penalty charges are contemplated against him, the petitioner was not cleared from the vigilance angle and the provisional pension was released to him.

8. Insofar as the submission of Mr. Mohanty that the suspension period should be treated 'as on duty' and the petitioner is entitled to full salary for that period is concerned, Mr. Joshi stated that as the disciplinary proceedings ended with a major penalty, the treatment of the period of suspension 'as on duty' does not arise unless otherwise specified by the DA.

9. On the plea that the penalty order was not issued by a Competent Authority is concerned, the same was issued by the Joint Secretary with the approval of the DA, and on behalf of the DA and as such, there is no infirmity in the order of penalty.

10. Insofar as the plea that the disagreement note was final and not tentative and the subsequent orders are bad is concerned, he disputed the same by drawing my attention to the disagreement note to say that it was clearly stated that the same is tentative. He seeks the dismissal of the writ petition.

11. Having heard the learned counsel for the parties, the issue which falls for consideration is whether the respondents are justified in issuing office orders dated May 29, 2020, and June 01, 2020, granting provisional pension to the petitioner. That apart, the issue which also arises for consideration is whether the disagreement note and the penalty order issued are just and proper and the period of suspension of the petitioner between the period November 20, 2014, to May 30, 2016, need to be considered as a 'period on duty' and the petitioner is entitled to full salary during that period.

12. Insofar as the first issue is concerned, it is the case of the respondents that the petitioner is not clear from vigilance angle,

and as such, the provisional pension has been sanctioned under Rules 9 and 69 of the CCS Pension Rules, 1972. In this regard, I reproduce the contents of the office order dated May 29, 2020, as under: -

"May 29, 2020

OFFICE ORDER

Sub: Grant of provisional pension to Shri T.C. Sivakumar, Ex.Director, NIEPID (presently posted in the Ministry) on his retirement on attaining the age of superannuation reg.

In accordance with the provisions contained in Rule 9 and Rule 69 of CCS (Pension) Rules, 1972 provisional pension is being allowed to Shri T.C. Sivakumar, Ex.Director, NIEPID (presently posted in the Ministry) on his retirement on 31.05.2020 on attaining the age of superannuation due to pending vigilance clearance from the Ministry."

13. From the perusal of the order, it is noted that the respondents have sanctioned the provisional pension to the petitioner in terms of Rule 9 and 69 of the CCS (Pension) Rules, 1972, which I reproduce as under: -

> ***"9. Right of President to withhold or withdraw pension***
>
> *1[(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :*

Footnote : 1. Substituted by G.I., Dept. of P. & P.W., Notification No. 7/14/90-P. & P.W. (F), dated the 23rd August, 1991, published as S.O. No. 2287 in the Gazette of India, dated the 7th September, 1991.

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.]

2(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such

place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3)[1] omitted

Footnote : 1. Deleted by G.I., Dept. of P. & P.W., Notification No. 38/189/88-P. & P.W. (F), dated the 4th February, 1992, published as G.S.R. 55 in the Gazette of India, dated the 15th February, 1992.

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in 2[Rule 69] shall be sanctioned.

Footnote : 2. Substituted by G.I., Dept. of Per. & A.R., Notification No. 6(1), Pen. (A)/79, dated the 19th May, 1980.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date ; and

(b) judicial proceedings shall be deemed to be instituted –

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the court.

xxxx xxxx xxxx

*69. **Provisional pension where departmental or judicial proceedings may be pending***

(1) (a) In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon :

[1]Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

Footnote : 1. Inserted by G.I., Dept. of Per. & A.R., Notification No. 30/2/80-Pension Unit, dated the 13th February, 1981."

14. A perusal of sub-rule (4) of Rule 9 of the CCS (Pension) Rule, 1972, it is clear that the provisional pension shall be sanctioned if a government servant has retired or attained the age of superannuation and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2). It is not the case of the respondents that departmental or judicial proceedings were pending / instituted, before or on the date of superannuation, against the petitioner. Even it is not the case of the respondents that the petitioner was under suspension from an earlier date [reference Rule 9(6)(a)]. In that sense, the requirement under Rule 9(4) has not been satisfied for sanctioning provisional pension to the petitioner.

15. On similar lines, is also Rule 69 of the CCS (Pension) Rules, 1972, which also contemplates that the authority shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the

date immediately preceding the date on which he was placed under suspension. Since the requirement of the substantive provision of Rule 9(4) is not satisfied, the impugned orders sanctioning provisional pension shall be unsustainable. Merely, because the petitioner was not cleared from vigilance angle would not suffice the requirement of the rule. To that extent, the impugned orders dated May 29, 2020, and June 01, 2020, are bad / unsustainable.

16. Insofar as the plea of the petitioner that the disagreement note is not tentative but final is unmerited. A perusal of the said order, more specifically the last paragraph, which reads as under, it is clear that the views of the DA were tentative and on that ground, the order cannot be interfered with.

> *"xxxx xxxx xxxx*
>
> *NOW therefore a copy of Inquiry Report, copy of 2nd stage advice letter dated 24.09.2018 of CVC and the tentative views / disagreement of the Disciplinary Authority as mentioned in the above paras is being sent to Shri T.C. Siva Kumar with the directions to send his representation on the report of the Inquiring Authority within 15 days of the receipt of this notice, failing which it will be presumed that he has no representation to make and the case will be processed further as per the provisions of CCS(CCA) Rules, 1965."*

17. Mr. Mohanty is not correct in picking up a certain part of the order to state, that the view of the DA in the disagreement note is final. The following observation of the DA, on which reliance was placed by Mr. Mohanty to state, that the view of the DA was a final view, is unmerited as the view of the DA has to be read in conjunction with the paragraph already reproduced

above.

> *"xxxx xxxx xxxx*
>
> *WHEREAS the Disciplinary Authority does not agree with the findings of the Inquiring Authority and holds that the Articles of charge no. I, V, VI & VII as proved and is of the view of imposing major penalty upon Shri T.C. Siva Kumar."*

On such reading, it is clear that the DA has expressed his tentative views while disagreeing with the conclusion of the Inquiry Officer in the report. In fact, I find no such objection has been taken by the petitioner in his reply to the disagreement note. The plea is clearly an afterthought and the reliance placed by Mr. Mohanty on the judgment of ***Yoginath D. Bagde vs. State of Maharashtra and Anr., AIR 1999 SC 3734***, is concerned, the same has been complied with in the case in hand.

18. The plea that the penalty order has not been issued by a Competent Authority is concerned, I am not in agreement with the plea of Mr. Mohanty for the simple reason, the order more specifically paragraph 12, which I reproduce as under, is clear that the decision is of the DA but conveyed to the petitioner by the Joint Secretary, GOI. So, in effect, the impugned decision is of the DA.

> *"NOW therefore the disciplinary authority has ordered that the pay of Shri T.C. Siva Kumar be reduced by one stage from ₹1,51,400/- to ₹1,47,000/- for a period of one year with immediate effect with the further directions that he will not earn increments of pay during the period of reduction and that on the expiry of this period the reduction will have the effect of postponing his future increments of pay."*

I do not see any infirmity in the same, hence this plea of Mr. Mohanty is rejected.

19. Insofar as the plea of Mr. Mohanty that the period of suspension needs to be treated as on duty and the petitioner is entitled to the full salary for the period November 20, 2014, till May 30, 2016, is concerned, Mr. Mohanty is justified in advancing the plea that the Authority, while revoking the suspension order, did not decide, in what manner the suspension period shall be treated. Even assuming that on the date when the suspension was revoked, the disciplinary proceedings were not complete, even then I find that the DA while passing the final order, has also not decided, in what manner the suspension period shall be treated. In fact, till date, there is no order in that regard. The Division Bench of this Court in the case of ***Vijay Kumar Aggarwal (supra)*** has by referring to FR 54-B has held that the law is 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 order and the inevitable result would be, a government servant would be entitled to full salary for the period he remained under suspension. The relevant paragraph is reproduced as under: -

> *"25. We note that Rule 5 B of the All India Services (Discipline & Appeal) Rules 1969 is pari materia with FR 54 B and in the decisions reported as 1993(25) ATC 321 Girdhari Lal vs. Delhi Administration & Ors, 1993 (24) ATC 641 Basant Ram Jaiswal vs. Area Manager (North) MTNL Bombay, 1996 (3) (Supp.) LLJ 855 Hira Lal vs. DDA*

& Ors. and AIR 1987 SC 2257 O.P.Gupta vs. UOI & Ors. it has been held that while revoking the suspension it is the duty of the competent authority to pass an order regarding pay and allowances for the period a government servant remained under suspension and that the composite order has to be a part of the same transaction having two parts and that the power to revoke the suspension cannot be exercised in isolation of the power to pass an order regarding pay and allowances. But, the said decisions do not hold that if no order pertaining to pay and allowances is passed, an order revoking suspension is void and non-est. As clarified by the Tribunal in Basant Ram Jaiswal's case (supra), in such situation the competent authority cannot exercise the power under FR 54 B. Thus, the law is 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 order and the inevitable result would be the Government servant being entitled to the fully salary for the period he remained under suspension."

20. The aforesaid conclusion of the Division Bench of this Court has been upheld by the Supreme Court in ***SLP No. 6393/2012*** titled ***Vijay Kumar Agarwal (supra)*** by stating in paragraph 22 as under:-

> *"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, 1996 (3) Supp. LLJ 855,*** *which held that in such a situation, the competent authority cannot exercise the power under FR 54B."*

21. In view of the above, the plea of Mr. Joshi that as the disciplinary proceedings have ended with a major penalty, the treatment of period of suspension as on duty does not arise unless

otherwise specified by the DA, is unmerited being contrary to law as noted above.

22. Insofar as the plea of Mr. Mohanty that the charge sheet dated December 22, 2015, need to be set aside on the ground that the inquiry has not been completed within one year by relying upon the judgment of the Supreme Court in the case of ***Prem Nath Bali (supra)*** is concerned, the same is not appealing. This I say so for the reason that the petitioner has challenged the charge sheet much after the penalty was imposed and acted upon by the respondent, inasmuch as the order of penalty is of the month of April 2019 and according to Mr. Mohanty, the effect thereof has come to an end on April 30, 2020, whereas the present petition has been filed by the petitioner on July 10, 2020, much after the said order has been given effect to. In other words, the date on which the petitioner has filed the writ petition, the penalty order has been implemented, without there being any challenge and it is also a fact that the petitioner had also participated in the proceedings before the Inquiry Officer without demur. If that be so, the petitioner having participated in the proceedings and not contested the penalty order passed thereof, cannot now, at a much later point of time, challenge the charge sheet which resulted in the penalty.

23. In view of my above conclusion, the reliance placed by Mr. Mohanty on the judgments of the Supreme Court in ***Prem Nath Bali (supra)*** and of this Court in ***M.R. Diwan (supra)*** is misplaced and they shall not have applicability in the facts of this case.

24. The writ petition is required to be allowed partially. The orders dated May 29, 2020, and June 01, 2020, are quashed. The petitioner shall be entitled to the retiral benefits including pension etc. The petitioner shall also be entitled to full salary for the period of suspension between the periods November 20, 2014, to May 13, 2016. The other prayers of the petitioner are rejected. The benefits in terms of this order shall be released to the petitioner within a period of three months from today with interest computed @ 6% per annum.

25. It must be stated, this Court has only considered the issues which fell for consideration in this petition. That apart Mr. Mohanty has referred and relied upon some other judgments in his pleadings suffice to state that the same have not been referred to in view of limited submissions made by him as noted above. No costs.

CM Nos. 22425/2020 & 22426/2020

As I have already heard and decided the present writ petition, the applications have become infructuous and are dismissed as such.

V. KAMESWAR RAO, J

NOVEMBER 15, 2021/*ak*