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

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Date of decision: 06.11.2023

+ W.P.(C) 13011/2021

RANBIR SINGH

..... Petitioner

versus

UNION OF INDIA

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Padma Kumar, Sr. Advocate with Mr. Krishna Kumar Mishra, Advocate.

For the Respondents: Ms. Aakanksha Kaul, Mr. Aman Sahani, Ms. Versha Singh and Ms. Rhea, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 29.11.2019, 14.12.2019, 22.07.2020 and 19.01.2021 assessing the amount of suspension allowance as well as pay and allowances to be paid to the petitioner.

2. Petitioner joined the services of the respondent as a Driver on 15.04.1995. On 27.01.1998 after an inquiry was held, petitioner was dismissed from service. Petitioner challenged the order of dismissal before this Court in WP(C) 3700/1998, which was disposed of directing the petitioner to file a revision petition. Revision petition



filed by the petitioner was also rejected by the respondents leading to filing of another petition by the petitioner being WP(C) 10253/2009.

3. By order dated 12.01.2015, the WP(C) 10253/2009 was disposed of quashing the order of dismissal and directing the respondents to pass an appropriate order concerning the period from 1998 i.e. with a direction to the Disciplinary Authority to pen a note of disagreement and directed the respondents to pass an appropriate order concerning the period from 1998 to 2015 in terms of Fundamental Rule of 54, 54A and 54B.

4. Petitioner was reinstated on 06.08.2015 w.e.f 30.07.2015. On 18.06.2016 petitioner was once again dismissed from service however no order was passed under Fundamental Rules 54, 54A and 54B but the period from 28.01.1998 was treated as the suspension period and it was directed that petitioner shall have no claim except that of subsistence allowance which had already been paid.

5. Petitioner once again approached this Court in WP(C) 535/2017 and WP(C) 535/2017 was allowed and the order of dismissal was substituted with an order of compulsory retirement. This Court also directed the respondents to pass an order under Fundamental Rule 54B. Pursuant to the said direction the impugned orders have been passed.

6. Learned counsel for petitioner contends that the Fundamental Rule 54B mandates issuance of a proposed order of pay along with an opportunity to file a representation to an officer and thereafter, passing



of an order thereunder assessing the amount of pay and allowances or suspension amount to be paid to an individual.

7. He submits that said rule was not complied with as no proposed order was given to the petitioner calling for any representation from petitioner. He however, submits that a representation was given by petitioner on his own which has been rejected by respondents.

8. Fundamental Rule 54B (5) reads as under:

"(5) In cases other than those falling under sub-rules(2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the while) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice."

9. Admittedly, the case of petitioner is not covered under sub rules (2) and (3) and as such in terms of sub rule (5), a notice was required to be given to petitioner on the quantum proposed and requiring the petitioner to file a representation. It is only after such notice of proposed quantum is given and a representation is called for that the respondents could have passed an order in terms of sub rule (5) of Fundamental Rule 54B.

10. Since the same has not been done, we set aside the impugned orders referred to hereinabove and direct the respondents to give a notice of proposed quantum to the petitioner and calling for a



representation, in case he is aggrieved by said proposed quantum. If a representation is received, within the time stipulated respondents shall pass a speaking order dealing with the representation and if no representation is received within the stipulated time, pass appropriate orders.

11. A calculation sheet has also been shown to us dated 14.12.2019, wherein the basic pay of the petitioner as of 01.02.1996 has been taken as Rs. 3350/- and as of 01.01.2006 has been taken as Rs. 3455/-. Thereafter from 01.07.2006, the pay has been taken as Rs. 6430/- and the same has continued up till 29.07.2015.

12. Learned counsel for petitioner submits that the respondents have failed to take into account notional increments that the petitioner would have earned had he continued in service from 1996 to 2006. He submits that this is contrary to the decision of the Co-ordinate Bench of this Court dated 23.07.2014 in WP(C) 2216/2014 titled *Mahabir Prasad versus Delhi Transport Corporation* wherein the Co-ordinate Bench has held that a direction to grant continuity in service means that the individual has to be given notional increments for the duration he was out of employment. Notional pay fixation would also mean that he would be entitled to reckon the period between his removal and reinstatement as having been in employment for the purposes of grant of pension, gratuity and contributions to the provident fund etc.

13. Since the matter is being remitted to respondents to issue a notice of proposed quantum and after considering the representation of



petitioner if any, to take a fresh decision, we direct the respondents to also consider as to whether the judgment in the case of *Mahabir Prasad* (Supra) is applicable to the case of petitioner or not and in case the same is applicable, benefit of the same be also granted to petitioner while calculating the quantum to be paid to the petitioner for the period between 28.01.1998 (the date of his dismissal) till 29.07.2015 (the date of his re-instatement).

14. Consequential benefits be also granted to the petitioner if applicable for computing his retirement and another benefits.

15. Respondents shall take a decision within a period of 8 weeks from today.

16. Petition is disposed of in the above terms.

17. Order dasti under the signatures of the Court Master.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

NOVEMBER 06, 2023/sw