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

% Date of decision: 04th November, 2024

+ **CONT.CAS(C) 50/2021**

DILIP WAGHESHWARI

.....Petitioner

Through: Mr. A K Behera, Sr. Adv. with
Mr. Vijay K Verma, Adv.

versus

AMIT KHARE & ORS.

.....Respondents

Through: Mr. S.M. Arif, Ms. Shabnam
Perween & Mr. S.M. Aatif,
Adv. for R-2 to R-5.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. Having heard the learned counsels for the parties and on perusal of the record, this petition under Sections 11, 12 and 13 of the Contempt of Court Act, 1971, comes for final disposal.

2. Shorn of unnecessary details, the petitioner who was then serving as Programme Executive (PEX) at Regional Academy of Broadcasting & Multimedia (Programme), Ahmedabad, preferred O.A. No. 2901/2015 before the Principal Bench, Central Administrative Tribunal, New Delhi¹, challenging the order dated 02.03.2007, whereby he was made disentitled to the grant of five annual increments, which fell during the pendency of his suspension period i.e. between 12.02.1999 to 02.04.2004, on the ground that there was a departmental enquiry pending against him and thus the increment would not be released to him. The said O.A. came to be

¹ CAT



decided *vide* judgment dated 01.12.2017 by the learned Judge, CAT, whereby the impugned order dated 02.03.2007 was quashed and the petitioner was made entitled to the abovesaid increments which were denied to him during the suspension period. The said order was challenged by the respondents in W.P.(C) No. 7886/2018 and the same was dismissed *vide* order dated 08.05.2019 by the Division Bench of this Court, assigning the following reasons:-

“7. As far as interfering with the order on merits with regard to withholding five increments on account of pendency of the departmental inquiry is concerned, it is a well settled principle of law that withholding of annual increment is a punishment which can be imposed only after a departmental proceeding is conducted and the misconduct proved. In the present case, the departmental inquiry was still pending; the charges leveled were not proved and in the absence of the misconduct being proved, withholding of increment was not legal. In this regard, the Tribunal has placed reliance on its earlier judgment in the case of *A.K. Tripathi vs. Union of India*, reported in **2005 SCC OnLine CAT 99** and the judgment of the Supreme Court in the case of *Balvantrai Ratilal Patel vs. State of Maharashtra & Ors.*, **AIR 1968 SC 800** to hold that increment cannot be withheld because of the pendency of departmental proceeding. In our considered view, the law in this regard is well settled and even the Allahabad High Court in the case of *Mritunjai Singh vs. State of UP & Ors.*, **AIR 1971 All 214** has dealt with the issue and it has been held in the said case that an employee is entitled to earn increment even during the period of suspension since the contract of service continues to be in force even when the employee is suspended.

8. Suspension only has the effect of temporarily suspending the relationship of master and servant, disentitling the employee from rendering service. However, for all other purposes including grant of benefits, the contract of service subsists during the period of suspension. In our considered view, suspension of an employee pending disciplinary action cannot be a ground for denying increment to a person. Withholding increment is a punishment under the Disciplinary and Appeal Rules and, a punishment of; withholding of increment can be imposed only if the employee concerned is found guilty of misconduct in a properly conducted departmental inquiry; and as a consequence of the misconduct



being established, he is imposed with penalty of withholding of increment.

9. In the present case, nothing is brought to our notice under the contract of service or the statutory rules applicable to the respondent employee, which permits withholding of increment merely because the employee is under suspension.

10. Accordingly, keeping in view the judgments referred to hereinabove and the discussion of the same by the Tribunal, we find no reason to make any indulgence in the matter. The petition is misconceived and is therefore dismissed.”

3. Learned counsel for the petitioner has urged that the aforesaid directions have not been complied with and he alluded to additional affidavit filed on behalf of the respondent No.1 by Mr. Kanwarjeet Singh, Deputy Director of Administration, Office of Director General, All India Radio, whereby reference was given to a letter dated 24.07.2019 to the effect that as per the Due Drawn Statement, the petitioner was entitled to total amount of Rs. 7,49,653/- which was addressed to the Director General by the Office of PEX and Head Office, Ahmedabad.

4. Learned counsel for the petitioner has urged that despite the aforesaid letter, subsequently, letters dated 30.11.2021/02.12.2021 were received along with an attached statement to the effect that as per the copy of the payment invoice issued to the bank, TDS was deducted and a fresh Due Drawn Statement was prepared whereby a sum of Rs. 03,09,532/- was remitted to the bank account of the petitioner.

5. Learned counsel for the respondent urged that there has been due compliance of the directions of this Court and if the petitioner has any grievance, he should file a fresh O.A. Anyhow, he alluded to the



additional affidavit dated 18.07.2022 wherein *vide* paragraphs (04) and (05) it was explained as under:-

4. That in this connection, it is submitted that earlier due and drawn statement was prepared to know the actual financial implications of 5 increments in the year 2019, wherein the EOL, HPL and actual drawn salary was not considered. Therefore, the figure calculated was Rs. 7,49,653/-.

But, while at the time of payment of the arrears to the Petitioner paid in the year 2021, the due and drawn statement includes the HPL/EOL/actual salary drawn and actual payment which subsequently decreased to Rs. 3,09,532/-.

5. That it is relevant to note here that Office of All India Radio, Ahmedabad, through letter dated 17.11.2021 intimated to Pay & Accounts Office, Mumbai stating therein that:

“the five increments which had been withheld in r/o the Petitioner, Sh. Dilip Waghewari, Retd. PEX are to be released in response to the Implementation of Order dated 08.05.2019 of the Hon’ble High Court of Delhi in W.P.(C) No. 7886/2018. The pay fixation Order which had been sent to your office for pre-audit has been approved. IT is kindly requested to do the needful and issue an order for revisions of Provisional Pension accordingly. His last pay drawn according to the revised pay fixation is Rs. 88,700/-.”

The Copy of letter sent to PAO, AIR, Mumbai dated 17.11.2021 to implement the Order dated 08.05.2019 of the Hon’ble High Court of Delhi in W.P.7886/2019 and due and drawn statement for payment of arrears of Rs. 3,09,532/- (Gross amount Rs.3,45,460/- less TDS Rs. 35,928/- : Net Rs.3,09,532/-) on release of five increment which were earlier withheld during the period of from 15.02.1999 to June 2017 (i.e. upto date of retirement) is annexed as Annexure AA-I (Colly).

6. It was therefore urged that the payment of arrears has been made according to pay fixation verified by the PAO, Mumbai, for which reference was invited to letter dated 30.11.2021 to the effect that as per Rule 69 of the CCS Pension Rules, the petitioner is entitled to 50% of Rs. 88,700 i.e. Rs. 44,350/- plus D.A. per month, until the outcome of the disciplinary proceedings. At this juncture, it may be noted that the proceedings are already over and the petitioner already



stands exonerated of all the disciplinary charges.

7. Be that as it may, after having heard the learned counsels for the parties, this Court certainly would not go into the disputed questions as to whether or not the arrears have been correctly worked out.

8. However, in view of the fact that the petitioner has already retired on reaching the age of superannuation and he was a victim in the sense that he had been deprived of the legitimate financial benefits accrued to him at the relevant time, the present contempt petition is disposed of with the directions that the affidavit of the petitioner in reply to the compliance affidavit of the respondents dated 06.04.2022, be treated as a fresh representation by him and the same be considered by the respondent afresh after affording hearing to the petitioner through Video Conferencing or otherwise in person, and thereafter, a reasoned order be passed afresh within a period of six weeks in accordance with law.

9. In case, the petitioner is aggrieved, he shall be at liberty to institute a fresh legal proceeding against the respondents in accordance with law. This order is passed without prejudice.

DHARMESH SHARMA, J.

NOVEMBER 04, 2024/*sp*