



2024:DHC:8945



\$~120

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

%

Date of Decision: 12th November, 2024

+ W.P.(C) 473/2017

KANHIYA LAL

.....Petitioner

Through: Mr. R.K. Saini, Advocate.

versus

THE LD. DISTRICT & SESSIONS JUDGE (HQ) TIS
HAZARI.

.....Respondent

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mr. N.K. Singh, Ms. Laavanya
Kaushik, Ms. Aliza Alam, Mr. Mohnish Sehrawat
and Mr. Amitoj Chadha, Advocates.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India laying a challenge to order dated 22.02.2011 to the extent it directs that Petitioner will not get benefits for the period of suspension other than the subsistence allowance already received by him during the period of suspension. Writ of mandamus is sought for a direction to the Respondent to treat the Petitioner on duty and pay him full salary and allowances for the period of suspension from 17.09.2005 to 22.02.2011 in terms of FR 54-B since the disciplinary proceedings initiated against the Petitioner culminated in imposition of a minor penalty.



2024:DHC:8945



2. Factual matrix to the extent necessary is that Petitioner was appointed as Lower Divisional Clerk in the office of District and Sessions Judge, Tis Hazari Courts, Delhi on 12.04.1993. He was placed under suspension on 17.09.2005 and disciplinary proceedings were initiated pursuant to a Charge Sheet dated 21.12.2005. The disciplinary proceedings culminated into a penalty of compulsory retirement on 04.08.2009. Aggrieved by the penalty, Petitioner preferred an appeal before the Appellate Authority, which was allowed vide order dated 15.02.2010 and the disciplinary authority's order was set aside with a direction to take a fresh decision.

3. It is averred in the writ petition that vide order dated 05.04.2010, Respondent treated the suspension of the Petitioner as deemed suspension from 04.08.2009 i.e. the date of penalty order and directed that suspension shall continue till further orders invoking Rule 10(3) of CCS (CCA) Rules, 1965 ('1965 Rules'). Thereafter, Inquiry Officer (IO) was appointed vide order dated 21.05.2010 who submitted the inquiry report dated 07.10.2010 holding the charges as 'not proved'. However, the Disciplinary Authority disagreed with the inquiry report with respect to Article of Charge-II and a show cause notice dated 30.11.2010 was issued to the Petitioner calling upon him to submit representation against the disagreement memo. Petitioner submitted his representation on 04.12.2010 and finally vide order dated 22.02.2011, the Disciplinary Authority imposed the penalty of withholding of one increment with cumulative effect with immediate effect. Order of suspension was revoked and it was directed that Petitioner will not get any benefits for the period of suspension other than the subsistence allowance already received by him during the period of suspension.



4. Petitioner preferred an appeal against the penalty order and also questioned the legality of the suspension order. The appeal was dismissed on 04.05.2012 and since according to the Petitioner, the appellate authority had not rendered any finding with respect to alleged invalidity of suspension beyond 90 days, Petitioner gave a representation to the Respondent seeking arrears of pay and allowances for the suspension period, which was rejected. Appeal was filed against the rejection order, which was withdrawn and Petitioner filed W.P. (C) 2391/2016 questioning the suspension order and claiming full pay and allowances for the suspension period. This writ petition was disposed of on 10.11.2016 on the ground that no cause of action was pleaded in the writ petition, whereafter Petitioner filed the present writ petition.

5. Mr. Saini, learned counsel for the Petitioner submits that the penalty of withholding of one increment with cumulative effect, imposed on the Petitioner, is a minor penalty and therefore as per DoPT O.M. dated 03.12.1985, suspension would be treated as unjustified and Petitioner is entitled to full pay and allowances for the suspension period in terms of FR 54-B.

6. Learned counsel for the Respondent, *per contra*, disputes that the penalty imposed on the Petitioner is a minor penalty and vehemently submits that withholding of one increment of pay with cumulative effect is a major penalty and to support this plea relies on the judgments of the Supreme Court in ***Kulwant Singh Gill v. State of Punjab, 1991 Supp (1) SCC 504*** and ***Punjab State Electricity Board v. Raj Kumar Goel, (2014) 15 SCC 748*** as well as judgment of the Madhya Pradesh High Court in ***R.D. Pachoriya v. State of M.P. and Others, 2022 SCC OnLine MP 5841***. It is



further argued that since the penalty imposed on the Petitioner is a major penalty, he cannot take advantage of the DoPT O.M. dated 03.12.1985 and Respondent has rightly directed vide impugned order dated 22.02.2011 that Petitioner will not get benefit of full pay and allowances for the suspension period.

7. Heard learned counsels for the parties and examined their contentions.

8. The only question that begs an answer in the present writ petition is whether stoppage of one increment with cumulative effect is a minor penalty, as urged by the Petitioner. Broadly understood, contention of Mr. Saini is that Rule 11 of 1965 Rules enumerates the minor and major penalties and the penalty of 'withholding of increments of pay' is included in the list of minor penalties. In my considered view, this submission of Mr. Saini is not correct. Indisputably, withholding of increments of pay simplicitor is a minor penalty under Rule 11(iv) of 1965 Rules but what cannot be glossed over is that sub-Rule (v) of Rule 11 which provides for a penalty of reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the Government employee shall earn increments of pay during the period of such reduction and whether on expiry of such period, reduction will or will not have the effect of postponing the future increments of his pay, falls under the heading of 'Major Penalties'. In case of stoppage of increment without cumulative effect, after the currency of the penalty comes to an end, the increments withheld during the said period are restored, while in case of withholding of increment with cumulative effect, the increments withheld are not restored and the loss in pay continues till the end of the tenure of an employee and has the consequential impact on his pensionary benefits and which is why



the latter is a major penalty.

9. In fact, this issue is no longer *res integra* and stands decided by the Supreme Court and I may first allude to the judgment of the Supreme Court in ***Kulwant Singh Gill (supra)***, where the question before the Supreme Court was whether stoppage of two increments with cumulative effect was a major penalty *albeit* it was in the context as to whether the penalty could be imposed without an inquiry. The Supreme Court examined Rule 5 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, which is *pari materia* to Rule 11 of 1965 Rules and held that penalty of withholding of increments with cumulative effect is a major penalty as the insidious effect is that the employee is reduced in his time scale by two places and this is in perpetuity during the rest of the tenure of his service. Relevant paragraph is as follows:-

“4. Withholding of increments of pay simpliciter undoubtedly is a minor penalty within the meaning of Rule 5(iv). But sub-rule (v) postulates reduction to a lower stage in the time scale of pay for a specified period with further directions as to whether or not the government employee shall earn increments of pay during the period of such reductions and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay. It is an independent head of penalty and it could be imposed as punishment in an appropriate case. It is one of the major penalties. The impugned order of stoppage of two increments with cumulative effect whether would fall within the meaning of Rule 5(v)? If it so falls Rules 8 and 9 of the Rules require conducting of regular enquiry. The contention of Shri Nayar, learned counsel for the State is that withholding two increments with cumulative effect is only a minor penalty as it does not amount to reduction to a lower stage in the time scale of pay. We find it extremely difficult to countenance the contention. Withholding of increments of pay simpliciter without any hedge over it certainly comes within the meaning of Rule 5(iv) of the Rules. But when penalty was imposed withholding two increments i.e. for two years with cumulative effect, it would indisputably mean that the two increments earned by the employee was cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. In other words the clock is put back to a lower stage in the time scale of pay and on expiry



of two years the clock starts working from that stage afresh. The insidious effect of the impugned order, by necessary implication, is that the appellant employee is reduced in his time scale by two places and it is in perpetuity during the rest of the tenure of his service with a direction that two years' increments would not be counted in his time scale of pay as a measure of penalty. The words are the skin to the language which if peeled off its true colour or its resultant effects would become apparent. When we broach the problem from this perspective the effect is as envisaged under Rule 5(v) of the Rules. It is undoubted that the Division Bench in Sarwan Singh v. State of Punjab [ILR (1985) 2 P&H 193 : (1985) 1 SLJ 513 (P&H)] , P.C. Jain, A.C.J. speaking for the Division Bench, while considering similar question, in paragraph 8 held that the stoppage of increments with cumulative effect, by no stretch of imagination falls within clause (v) of Rule 5 or in Rule 4.12 of Punjab Civil Services Rules. It was further held that under clause (v) of Rule 5 there has to be a reduction to a lower stage in the time scale of pay by the competent authority as a measure of penalty and the period for which such a reduction is to be effective has to be stated and on restoration it has further to be specified whether the reduction shall operate to postpone the future increments of his pay. In such cases withholding of the increments without cumulative effect does not at all arise. In case where the increments are withheld with or without cumulative effect the government employee is never reduced to a lower stage of time scale of pay. Accordingly it was held that clause (iv) of Rule 5 is applicable to the facts of that case. With respect we are unable to agree with the High Court. If the literal interpretation is adopted the learned Judges may be right to arrive at that conclusion. But if the effect is kept at the back of the mind, it would always be so, the result will be the conclusion as we have arrived at. If the reasoning of the High Court is given acceptance, it would empower the disciplinary authority to impose, under the garb of stoppage of increments, (sic stoppage) of earning future increments in the time scale of pay even permanently without expressly stating so. This preposterous consequence cannot be permitted to be permeated. Rule 5(iv) does not empower the disciplinary authority to impose penalty of withholding increments of pay with cumulative effect except after holding inquiry and following the prescribed procedure. Then the order would be without jurisdiction or authority of law, and it would be per se void. Considering from this angle we have no hesitation to hold that the impugned order would come within the meaning of Rule 5(v) of the Rules; it is a major penalty and imposition of the impugned penalty without enquiry is per se illegal.”

10. To the same effect is the decision of the Supreme Court in **Raj Kumar Goel (supra)** where the Supreme Court reiterated that there can be no cavil



over the proposition that when a punishment of stoppage of increment with cumulative effect is imposed, it is a major punishment. Relevant paragraph is as follows:-

“9. At the very outset, we may clearly state that there is no discord or dispute over the exposition of facts. The controversy has arisen with regard to implementation of the order of punishment imposed by the authority on the delinquent employee. The courts below have opined that though it is mentioned in the order of punishment that there is stoppage of five increments without cumulative effect which is a minor punishment yet the manner of implementation converts it to a major punishment. There can be no cavil over the proposition that when a punishment of stoppage of an increment with cumulative effect is imposed, it is a major punishment. In this regard, we may refer with profit to the decision in Kulwant Singh Gill v. State of Punjab [Kulwant Singh Gill v. State of Punjab, 1991 Supp (1) SCC 504 : 1991 SCC (L&S) 998 : (1991) 16 ATC 940] wherein it has been held that withholding of increments of pay simpliciter without any hedge over it certainly would be a minor punishment but withholding of increments with cumulative effect, the consequences being quite hazardous to the employee, it would come in the compartment of major punishment. Proceeding further the two-Judge Bench stated thus: (SCC pp. 507-08, para 4)

“4. ... But when penalty was imposed withholding two increments i.e. for two years with cumulative effect, it would indisputably mean that the two increments earned by the employee was cut off as a measure of penalty forever in his upward march of earning higher scale of pay. In other words the clock is put back to a lower stage in the time scale of pay and on expiry of two years the clock starts working from that stage afresh. The insidious effect of the impugned order, by necessary implication, is that the appellant employee is reduced in his time scale by two places and it is in perpetuity during the rest of the tenure of his service with a direction that two years' increments would not be counted in his time scale of pay as a measure of penalty. The words are the skin to the language which if peeled off its true colour or its resultant effects would become apparent.”

After so observing, the Court treated the said punishment to be a major penalty. In said case while interpreting clause (v) of Rule 5 of the same Regulations, the Court did not accept the reasoning of the judgment rendered by the Division Bench of the Punjab and Haryana High Court in Sarwan Singh v. State of Punjab [Sarwan Singh v. State of Punjab, ILR (1985) 2 P&H 193].”



11. Following the two judgments of the Supreme Court, the High Court of Madhya Pradesh in ***R.D. Pachoriya (supra)*** also observed that it is clear that stoppage of increment with cumulative effect is a major penalty and relevant paragraph is as follows:-

“16. Thus, it is clear that stoppage of increment with cumulative effect is a major penalty. It is really shocking that if some mistake has been committed by an authority, then the office of Advocate General instead of suggesting him to adopt the correct mode, was unnecessarily seeking adjournment to justify the stand taken by the State Government that the stoppage/withholding of increment with cumulative effect is a minor penalty.”

12. In view of the aforesaid conspectus of the judgments, it can hardly be argued by Mr. Saini that the penalty imposed on the Petitioner of stoppage of one increment with cumulative effect is a minor penalty. Since the penalty imposed on the Petitioner is a major penalty, reliance on DoPT O.M. dated 03.12.1985 is misplaced. Under FR 54-B, it is open to the Competent Authority to pass an order regarding the pay and allowances to be paid to the employee for the period of suspension ending with reinstatement and whether or not to treat the period as period spent on duty. In the present case taking into account the gravity of the allegations and the factum of imposition of a major penalty, the Competent Authority has passed an order, which is impugned herein holding that Petitioner will not be entitled to full pay and allowances for the suspension period. The grounds urged by the Petitioner do not warrant any interference with this order.

13. Writ petition is accordingly dismissed being bereft of merit.

JYOTI SINGH, J

NOVEMBER 12, 2024/shivam