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

+ W.P.(C) 11719/2015 and CM APPL. 31223/2015

NARESH KUMAR ARORA

.....Petitioner

Through: Ms. Jasvinder Kaur and Mr. Shivam
Yadav, Advocates along with Petitioner in person.

versus

NATIONAL INSURANCE COMPANY LIMITED & ORS.

.....Respondents

Through: Mr. Sanjay Rawat, Advocate.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

23.09.2024

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1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:

"1. May quash and set aside impugned order(s) dated 30.06.2010; 05.08.11 and 27.02.2014 (annexure P-1 P-2 and P-3 respectively);

2. May direct the Respondents to pay the arrears of increased quarterly DA for the period of suspension as per the CVC guidelines;

3. May direct the Respondents to pay full salary and allowances (less subsistence allowances already paid) for the period, beyond six months of the date of suspension i.e. 01.02.2000 till the date of actual superannuation i.e. 30.11.2015;

4. May further direct the Respondents to release all the terminal benefits payable to Petitioner upon superannuation, in view of relief sought at clause (1) of Prayer herein above."

2. At the outset, learned counsel for the Respondents draws the attention of the Court to order dated 18.12.2015 passed by this Court when the writ petition was listed for admission and submits that the Court had dismissed



the writ petition qua relief at serial No. (1) and consequential reliefs at (3) and (4) on the ground that charges against the Petitioner were serious in nature and notice was issued limited to relief at serial No. (2) and therefore, it is not open to the Petitioner to make any arguments with respect to the punishment of dismissal.

3. Learned counsel for the Petitioner fairly concedes that in view of order dated 18.12.2015, which was never assailed by the Petitioner, she would restrict her argument to entitlement of the Petitioner to revision in the Dearness Allowance during the suspension period and grant of compassionate allowance *albeit* the latter relief is neither pleaded nor sought. It is argued that during the period of suspension from 01.02.2000 to 30.06.2010, Petitioner was not paid revised Dearness Allowance on quarterly basis despite his entitlement to receive the same by virtue of Government of India O.M. dated 07.11.1958, which provides in paragraph 15.1 that a Government servant under suspension is entitled to draw Dearness Allowance and if the rate of subsistence allowance is increased or decreased after the expiry of 3 months of suspension, the rate of Dearness Allowance will be recalculated on the said basis. In other words, Dearness Allowance, if admissible to the Government servants under suspension, will be equal to the amounts admissible while on leave and drawing leave salary equivalent to subsistence allowance payable to the employee from time to time. It is also urged that the case of the Petitioner be considered for compassionate allowance and Petitioner be permitted to make a comprehensive representation on this behalf *de hors* the penalty of dismissal as he has no other means of livelihood.



4. *Per contra*, learned counsel for the Respondents argues that *albeit* concededly there is no specific rule which declines enhancement of Dearness Allowance during the suspension period but in answer to queries raised under the CDA Rules with respect to Dearness Allowance during suspension period, it was clarified that if the Dearness Allowance increases prior to the date of suspension, benefit of the same shall be given by revising the subsistence allowance but not when it increases during the suspension period and this stand has been categorically taken in the short affidavit.

5. Heard learned counsels for the parties and examined their submissions.

6. The only two issues that require consideration in the present writ petition are the entitlement of the Petitioner to enhanced Dearness Allowance for the suspension period and compassionate allowance as the writ petition was dismissed qua the remaining reliefs initially sought vide order dated 18.12.2015 and admittedly this order was never assailed by the Petitioner. Coming to the issue of enhanced Dearness Allowance, it is a settled law that in case of revision of Dearness Allowance with effect from a date prior to the date of suspension, the subsistence allowance shall be accordingly revised, however, in case of downward revision of Dearness Allowance, recovery of excess Dearness Allowance paid for the period of suspension shall be kept in abeyance till the disciplinary proceedings are over. As a corollary thereto, if the Dearness Allowance is enhanced during the suspension period, the suspended employee will not be allowed revision in the subsistence allowance. In a query raised with respect to revision of Dearness Allowance vis-à-vis subsistence allowance, under the CDA Rules, the query was answered and incorporated in the Administrative Instructions



to the CDA Rules that it is only in case of enhancement prior to the date of suspension that benefit of enhanced Dearness Allowance can be given for revising the quantum of the subsistence allowance. Petitioner is unable to show any rule, instruction or regulation to the contrary and hence, this claim of the Petitioner cannot succeed.

7. Insofar as the claim for compassionate allowance is concerned, Petitioner has placed on record additional documents which indicate that he was making representations regularly for seeking the compassionate allowance and learned counsel for the Petitioner asserts that the very purpose of compassionate allowance is to help an employee who has been dismissed to tide over his penury status and therefore, while considering the claim for such an allowance, the delinquency cannot be taken as a factor to deny the same.

8. *Per contra*, learned counsel for the Respondents submits that there is no relief in the writ petition seeking compassionate allowance and moreover, the Supreme Court in the case of ***Mahinder Dutt Sharma v. Union of India and Others, (2014) 11 SCC 684***, has held that if the delinquent employee's case falls under any of the 5 illustrative categories in paragraph 14 of the judgment which includes cases of moral turpitude etc., he cannot be granted compassionate allowance.

9. There is no dispute that Petitioner has not claimed compassionate allowance as a substantive relief in the writ petition *albeit* additional documents have been placed on record showing that he has made representations claiming the said allowance. In that light, it would be beyond the remit of this Court to adjudicate on the said issue and to this extent, it is left open to the Petitioner to make a comprehensive representation to the



Respondents seeking compassionate allowance. On receipt of the representation, the same shall be decided by the Respondents keeping in view the provision of compassionate allowance; the objective of the grant of the allowance and the judgment of the Supreme Court in ***Mahinder Dutt Sharma (supra)***, wherein the Supreme Court has observed that if the case of the delinquent employee falls under 5 categories delineated in paragraph 14, ordinarily, he will be disentitled to compassionate allowance and ‘ordinarily’ cannot mean mandatorily, as also the observation in paragraph 15 of the judgment. The decision shall be taken within six weeks from the date of receipt of the representation, if any, and a reasoned and speaking order shall be passed. In case the decision is in favour of the Petitioner, his case will be processed for grant of compassionate allowance. If for any reason the decision is otherwise, the same shall be communicated to the Petitioner and he shall be at liberty to take recourse to legal remedies, if so advised.

10. Writ petition is disposed of in the aforesaid terms.

11. Pending application also stands disposed of.

JYOTI SINGH, J

SEPTEMBER 23, 2024/kks/shivam