

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 10398/2016

Date of decision: 4th November, 2016

RAVINDER KUMAR MIRG

..... Petitioner

In person.

versus

THE UNION OF INDIA & ANR

..... Respondent

Through Mr. Rajesh Gogna, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J. (ORAL)

We have heard the petitioner, who appears in person, in this writ petition which impugns order dated 17th May, 2016 passed by the Principal Bench of the Central Administrative Tribunal in OA No.2357/2014.

2. The impugned order dismisses the aforesaid OA and holds that the petitioner would not be entitled to enhanced subsistence allowance as per the revised pay scales under the Central Civil Services (Revised Pay) Rules, 2008 as he was under suspension as on 1st June, 2006. The Tribunal has relied on the decision of the Supreme Court in *Union of India Vs. Ravinder Kumar Chopra*, (2010) 2 SCC 763.

3. The petitioner, who was an Inspector in the Income Tax Department,

was arrested by the Central Bureau of Investigation on 7th September, 1994. He was suspended with effect from the same date i.e. 7th September, 1994. He was subsequently reinstated when the suspension was revoked on 7th February, 2003. Within a year of revocation of suspension, the petitioner was convicted in a criminal case on 22nd March, 2004 and was again placed under suspension on 23rd March, 2004. He was dismissed from service on 31st July, 2009. The petitioner challenged his dismissal in W.P. (C) No.5557/2012, which was partially allowed vide judgment dated 7th September, 2012. The High Court had directed that the petitioner would be treated as under deemed suspension with effect from the date of his dismissal i.e. 31st July, 2009 till a fresh order under Rule 19 of the Central Civil Services (CCA) Rules was passed. The effect of the said order was that the petitioner's suspension with effect from 23rd March, 2004 was to continue till the fresh order. The second dismissal order dated 28th September, 2012 was set aside by the appellate authority on 15th May, 2013 and another dismissal order dated 26th November, 2013 was passed. This order of dismissal has not been challenged by the petitioner and the same has become final.

4. Pursuant to the recommendations of the Sixth Pay Commission, the

Central Civil Services (Revised Pay) Rules, 2008 were enacted on 29th August, 2008. As per the said Rules, benefit of revised pay scales was applicable with effect from 1st January, 2006. As on 1st January, 2006, the petitioner was under suspension in terms of the order dated 23rd March, 2004 as he had been convicted in the criminal case. The said suspension had continued till the order of dismissal was passed on 31st July, 2009. Even after this order of dismissal was set aside by the High Court vide judgment dated 7th September, 2012, the petitioner had remained under deemed suspension. The situation did not undergo a change inspite of the second dismissal order dated 28th September, 2012 being set aside by the appellate authority on 15th May, 2013. The suspension continued to be in force till the third dismissal order was passed on 26th November, 2013. Thus, during the period between 23rd March, 2004 till the order of dismissal dated 26th November, 2013 was passed, the petitioner was under suspension.

5. The contention of the petitioner is that he should have been paid subsistence allowance as per the new and revised pay scales under the Central Civil Services (Revised Pay) Rules, 2008 and not in terms of the pay-scales applicable or payable at the time when he was suspended on 23rd March, 2004.

6. A similar issue had arisen before the Supreme Court in the case of ***Ravinder Kumar Chopra*** (supra). In the said case, the petitioner therein had sought and prayed for grant of subsistence allowance on the basis of the Central Civil Services (Revised Pay) Rules, 1997. The Supreme Court rejected the said contention referring to Note 3 to Rule 7 of the aforesaid Rules and Fundamental Rule 53(1)(ii)(a) in the following words:-

“**24.** Note 3 under Rule 7, therefore, indicates that when a government servant was on leave on 1-1-1996, he would become entitled to pay in the revised scale of pay from the date he joined the duty. However, in the case of a government servant under suspension, he would *continue to draw subsistence allowance based on the then existing scale of pay and his pay in the revised scale of pay would be subject to final order on the pending disciplinary proceedings.*

25. The Revised Pay Rules were framed by the President of India in exercise of the powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution. The proviso to Article 309 enables the President to make rules to regulate the recruitment and conditions of service of the persons mentioned therein. The Rules framed by the President of India in exercise of the powers conferred by the proviso to Article 309 have the force of law. Further, Note 3 to Rule 7 of the Revised Pay Rules, 1997 were not challenged.

26. On a combined reading of Note 3 to Rule 7 of the Revised Pay Rules and FR 53(1)(ii)(a) with the clarification with Office Memorandum dated 27-8-1958 it is clear that if the revision of pay takes effect

from a date prior to the date of suspension of a government servant then he would be entitled to benefit of increment in pay and in the subsistence allowance for the period of suspension, but if the revision scale of pay takes effect from a date falling within the period of suspension then the benefit of revision of pay and the subsistence allowances will accrue to him, only after reinstatement depending on the fact whether the period of suspension is treated as duty or not. In view of the clear distinction drawn by the rule-making authority between the cases in which the revised scale of pay takes effect from a date prior to the date of suspension and a date falling within the period of suspension, the plea of discrimination raised cannot be sustained especially when there is no challenge to the Rules. The benefit of pay revision and the consequent revision of subsistence allowance stand postponed till the conclusion of the departmental proceedings, if the pay revision has come into effect while the government servant is under suspension. So far as the present case is concerned, the Revised Pay Rules came into force on 1-1-1996 when the respondent was under suspension and later he was dismissed from service on 4-8-2005 and hence the benefit of pay revision or the revision of subsistence allowance did not accrue to him. The Tribunal as well as the High Court have committed an error in holding that the respondent is entitled to the benefit of the Revised Pay Rules. We, therefore, allow the appeal and set aside those orders.”

7. The petitioner, who appears in person, does not dispute the aforesaid decision and the ratio as elucidated. He has referred to Note 1 to Rule 6 of the Central Civil Services (Revised Pay) Rules, 2008 and submits that he was dismissed from service on or after 1st January, 2006, and accordingly

would be entitled to the benefits of the revised pay, while computing subsistence allowance.

8. Rule 6 of the aforesaid Rules along with Note 1-3 read as under:-

“6. Exercise of Option -

(1) The option under the provisos to Rule 5 shall be exercised in writing in the form appended to the Second Schedule so as to reach the authority mentioned in sub rule (2) within three months of the date of publication of these rules or where an existing scale has been revised by any order made subsequent to that date, within three months of the date of such order.

Provided that -

- (i) in the case of a Government servant who is, on the date of such publication or, as the case may be, date of such order, out of India on leave or deputation or foreign service or active service, the said option shall be exercised in writing so as to reach the said authority within three months of the date of his taking charge of his post in India; and
- (ii) where a Government servant is under suspension on the 1st day of January, 2006 , the option may be exercised within three months of the date of his return to his duty if that date is later than the date prescribed in this sub-rule.

(2) The option shall be intimated by the Government servant to the Head of his Office.

(3) If the intimation regarding option is not received within the time mentioned in sub-rule (1), the Government servant shall be deemed to have elected to be governed by the revised pay structure with effect on and from the 1st day of January, 2006.

(4) The option once exercised shall be final.

Note 1 Persons whose services were terminated on or after the 1st January, 2006 and who could not exercise the option within the prescribed time limit, on account of discharge on the expiry of the sanctioned posts, resignation, dismissal or discharge or disciplinary grounds, are entitled to the benefits of this rule.

Note 2 - Persons who have died on or after the 1st day of January, 2006 and could not exercise the option within the prescribed time limit are deemed to have opted for the revised pay structure on and from the 1st day of January, 2006 or such later date as is most beneficial to their dependents, if the revised pay structure is more favourable and in such cases, necessary action for payment of arrears should be taken by the Head of Office.

Note 3 Persons who were on earned leave or any other leave on 1.1.2006 Which entitled them to leave salary will be allowed the benefits of this rule.”

9. Note 1 to Rule 6, as we perceive, relates to those persons who were terminated on or after 1st January, 2006 and, therefore, were not in a position to exercise their option because the Central Civil Services (Revised Pay) Rules, 2008 were enacted on 29th August, 2008. This is clear when we refer to Rule 6 which mentions and requires the exercise of the option in terms of provisos to Rule 5. In fact, a reading of the clause (ii) of the proviso to Rule 6 makes the situation clear. It stipulates that where a Government servant is under suspension on the 1st day of January, 2006, he may exercise his option within three months of the date of his return to duty if that date is later than

the date prescribed in the sub-rule. The said proviso would only apply in case the Government servant, who was under suspension as on 1st January, 2006, is allowed and permitted to join duty. In the present case, the petitioner never joined duty after 1st January, 2006, and he was dismissed from service vide order dated 26th November, 2013.

10. An Identical controversy had arisen before this Court in *Union of India & Ors. Vs. Devi Krishan Sharma*, 2015 (225) DLT 67. This judgment refers to the decision in *State of Punjab Vs. Jaswant Singh Kanwar*, (2014) 13 SCC 622, which holds that a Government servant under suspension is not bound to render service and, therefore, is not entitled to increments during this period which is treated as period not spent on duty. Further, all privileges and benefits attached to the office would be temporarily suspended unless the period of suspension is considered as the period spent on duty. The Supreme Court in *Jaswant Singh Kanwar* (supra) held as under:-

“13. “Increment” has a definite concept in service law jurisprudence. It is an increase or addition on a fixed scale; it is a regular increase in salary on such a scale. As noted by this Court in *SBI v. Central Govt. Labour Court* [(1972) 3 SCC 595] , under the labour and industrial laws, an increment is when in a timescale of pay an employee advances from the lower point of scale to the higher by periodic additions. In other words, it is

addition in the same scale and not to a higher scale. An increment is an incidence of employment and an employee gets an increment by working the full year and drawing full salary. During the period of suspension, the contract of service remains suspended. The order of suspension by the departmental enquiry has the effect of temporarily suspending the relations between the master and servant with the consequence that the servant is not bound to render service and, therefore, the petitioner as an employee is not entitled to increments during this period which is taken as period not spent on duty.”

11. In *Devi Krishan Sharma* (supra) specific reference was made to Note 1 to Rule 6 of the Central Civil Services (Revised Pay) Rules, 2008 as the government servant had pleaded distinction between the legal position and ratio expounded in *Ravinder Kumar Chopra* (supra), and the 2008 Rules, relying on Note 1. However, the said contention was not accepted.

12. In view of the aforesaid discussion, we do not find any merit in the present writ petition and the same is dismissed.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

NOVEMBER 04, 2016

NA