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

***Date of decision: 11.08.2025***

+ W.P.(C) 10948/2019 & CM APPL. 45230/2019

TUSHAR RANJAN MOHANTY

.....Petitioner

Through: In person

versus

UNION OF INDIA

.....Respondent

Through: Mr.R.V. Sinha, Mr.A.S. Singh,  
Advs.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE MADHU JAIN**

**NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed challenging the Order dated 03.10.2019 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal') in O.A. No. 2937/2019, titled ***Tushar Ranjan Mohanty v. Union of India***, dismissing the said O.A. filed by the petitioner herein with cost of Rs.5,000/- to be paid by the petitioner to the C.A.T. Bar Association, Library Fund.

2. To give a brief background of the facts in which the present petition arises, the petitioner, who was working with the Department of Empowerment of Persons with Disabilities, was suspended from duty *vide* Order dated 19.12.2017 with effect from 26.12.2017, for a



period of 90 days, pending initiation of disciplinary proceedings. The petitioner challenged the same by filing O.A. No.4603/2017, which came to be dismissed by the learned Tribunal *vide* Order dated 22.03.2018. The petitioner challenged the said order by way of a Writ Petition, being W.P.(C) 3257/2018. During the pendency of the Writ Petition, the petitioner filed O.A. No.1224/2018 before the learned Tribunal, challenging the extension of the suspension beyond the period of 90 days. The said O.A. was allowed by the learned Tribunal *vide* order dated 31.05.2018, with the following directions:

*“15. We are, therefore, of the considered opinion that the continued suspension of the applicant in the given circumstances is not sustainable in law. The OA is accordingly allowed with the following directions:*

*(1) Suspension of the applicant beyond initial 90 days is hereby set aside and quashed.*

*(2) As a consequence of quashment of the suspension, the applicant shall be reinstated within one month from the date of receipt of this order.*

*(3) The applicant shall be entitled to salary minus the subsistence allowance already received by him for the interregnum period, i.e., from the date when his initial suspension ended after 90 days and till the date he is reinstated in service.*

*(4) Initial period of suspension up to 90 days shall be decided in accordance with Fundamental Rule 54-B.*

*(5) This order will not, however, come in the way of the respondents in proceeding with the memorandum of charges in accordance with law.”*



3. In compliance with the said order, the Competent Authority of the respondent passed an Order dated 26.06.2018, thereby revoking the orders extending the suspension beyond the initial period of 90 days, that is, with effect from 26.03.2018, and directing that the petitioner shall be deemed to be on duty with effect from 26.03.2018. For the initial suspension period of 90 days, the Competent Authority did not pass any order in terms of F.R. 54-B, that is, as to how the said period of suspension is to be treated.

4. In the meantime, the Writ Petition, being W.P.(C) 3257/2018, which had been filed by the petitioner against the dismissal of the O.A. challenging the initial suspension order, came before this Court for hearing and *vide* Judgment dated 20.08.2019, while upholding the initial suspension order and the dismissal of the O.A., this Court further observed as under:

*“7. Mr. Mohanty has also argued that while allowing O.A. No. 1224/2018 - whereby his continued suspension - after the expiry of the first spell of suspension of 90 days, was quashed on 31.05.2018, the respondents have not passed an order in terms of Rule 54B of the Fundamental Rules to decide as to how the period of suspension should be treated. Mr. Mohanty submits that, thus, the said period of 90 days is liable to be treated as spent on duty and in this regard he has sought to place reliance on the decision of a Division Bench of this Court in **Vijay Kumar Aggarwal v. Union of India & Anr.**, W.P.(C.) No. 916/2007, decided on 14.12.2010, which has been affirmed by the Supreme Court in SLP No (Civil No.) 6393/2012, decided on 06.10.2015.*

*8. We are not inclined to examine the aspect as*



*to how the first spell of suspension period of 90 days should be treated in these proceedings, since this aspect was not raised before the Tribunal. We leave it to the petitioner to agitate his rights, if any, arising from the order passed by the Tribunal in O.A No. 1224/2018 in appropriate proceedings.”*

5. The petitioner then filed the above O.A., that is, O.A. No.2937/2019, seeking to treat the initial period of suspension between 26.12.2017 and 25.03.2018, as on duty for all purposes, and for directions to also release the pay and allowances for the said period.

6. The said O.A., as noted hereinabove, has been dismissed by the learned Tribunal, by primarily stating that the said claim of the petitioner would be barred by the principle of *res judicata* inasmuch as this Court in its Judgment dated 20.08.2019, while upholding the initial order of suspension, did not make any comment on the above claim of the petitioner. The learned Tribunal has further held that in terms of sub-rule (3) read with its proviso and sub-rules (5) and (6) of F.R. 54-B, it is only at the conclusion of the disciplinary proceedings that an appropriate order in terms of F.R. 54-B sub-rule (1) is to be passed, which stage was yet to come and, therefore, the Disciplinary Authority shall determine in what manner the suspension period has to be dealt with, only on the conclusion of the Disciplinary proceedings against the petitioner.

7. The petitioner, who appears in person, submits that as far as the finding of *res judicata* is concerned, the same is clearly contrary to the Judgment dated 20.08.2019 of this Court, wherein this issue had been



left open to be agitated by the petitioner in an appropriate proceedings. It is also contrary to the Order dated 31.05.2018 passed by the learned Tribunal, which had left this question open and an appropriate order in this regard was to be passed by the Competent Authority.

8. On the effect of the Order dated 26.06.2018 passed by the Competent Authority of the respondents, not giving any direction therein with respect to how the initial period of suspension has to be dealt with, he places reliance on the Judgment of this Court in ***Vijay Kumar Aggarwal v. Union of India***, 2010:DHC:6044-DB, to submit that while withdrawing the suspension order, if no direction is passed with respect to how the period of suspension is to be treated for the purpose of pay and allowances, the authorities get denuded of the power to pass such an order and the consequence thereof is that the employee/officer is entitled to get full pay and allowances for the said period.

9. On the other hand, the learned counsel for the respondent submits that the learned Tribunal has rightly held that the period of suspension has to be considered in accordance with the order passed by the Disciplinary Authority.

10. He further submits that disciplinary proceedings had been initiated against the petitioner on 30.04.2018 and, therefore, the occasion of passing an order under F.R. 54-B sub-rule (1) did not arise at the time of revocation of the suspension.

11. He submits that by a subsequent Order dated 15.01.2020 passed by the Competent Authority, the petitioner, having been found guilty in the disciplinary proceedings, has been visited with the penalty of



withholding of 10% of the monthly pension for the period of six months.

12. He submits that pursuant thereto, by an Order dated 18.06.2020, the Disciplinary Authority, in further exercise of its power under F.R. 54-B, has directed that the initial suspension period of 90 days is not to be treated as the period spent on duty, and directed payment of pay and allowances at the rate of 50% of the admissible pay and allowances for the said period to the petitioner. He submits that, therefore, the Impugned Order passed by the learned Tribunal deserves no interference from this Court.

13. We have considered the submissions made by the learned counsels for the parties.

14. As far as the finding of the learned Tribunal that the claim of the petitioner was barred by the principle of *res judicata* is concerned, we are unable to sustain the same.

15. The Order dated 31.05.2018 passed by the learned Tribunal in O.A. No.1224/2018 had itself directed that the manner of treatment of the initial period of suspension of 90 days shall be decided by the Competent Authority in accordance with F.R. 54-B. Pursuant to the said direction, though the Competent Authority passed the Order dated 26.06.2018 reinstating the petitioner in service by revoking his suspension beyond 90 days, no specific order with respect to the initial period of suspension under F.R. 54-B sub-rule (1) was passed by the Competent Authority.

16. This Court, in its judgment dated 20.08.2019 passed in W.P.(C) 3257/2018, had also left this challenge open for the petitioner to make



in an appropriate proceeding.

17. The earlier orders of the learned Tribunal or of this Court, therefore, could not have been treated as having decided this issue or to act as *res judicata* against the petitioner.

18. As far as the finding of the learned Tribunal that the stage of passing the order under F.R. 54-B had not arisen and the same would have to await the conclusion of the disciplinary proceeding is concerned, again, the same cannot be sustained. F.R. 54-B reads as under:

*“F.R. 54-B. (1) When a Government servant who has been suspended is re-instated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order re-instatement shall consider and make specific order-*

*(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with re-instatement or the date of his retirement on superannuation, as the case may be, and*

*(b) whether or not the said period shall be treated as a period spent on duty.*

*(2) Notwithstanding anything contained in rule 53, where a Government servant under suspension dies before the disciplinary or the Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.*



*(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled had he not been suspended:*

*Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.*

*(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.*

*(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 whole) of the full 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.*

*(6) Where suspension is revoked pending*



*finalization of the disciplinary or Court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings, against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5) as the case may be.*

*(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose:*

*Provided that if the Government servant so desires, such authority; may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.*

*Note.- The order of the competent authority under the preceding proviso shall be absolute: and no higher sanction shall be necessary for the grant of-*

- (a) extraordinary leave in excess of three months in the case of temporary Government servants; and*
- (b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.*

*(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.*

*(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 53."*

19. A reading of the above would show that in accordance with



F.R. 54-B(1), the order regarding the treatment of the suspension period has to be passed by the Competent Authority at the time of reinstatement by way of a specific order. Though in accordance with the procedure prescribed in sub-rules (3) to (6), the Competent Authority is empowered to direct the payment of full or part pay and allowance, even if the suspension is revoked pending the finalization of the disciplinary or Court proceedings, an order is still required to be passed under sub-rule (1), which may on the conclusion of such proceedings be reviewed by the Competent Authority on its own motion, and a fresh order can be passed on such review in accordance with the provisions of sub-rule (3) or sub-rule (5) of F.R. 54-B.

20. In the present case, from a bare perusal of the Order dated 26.06.2018 passed by the Competent Authority revoking the suspension of the petitioner, it is evident that no specific order under F.R. 54-B sub-rule (1) was passed; the question of review thereof on conclusion of the disciplinary proceedings, therefore, does not arise.

21. The effect of not passing a specific order under F.R. 54-B sub-rule (1) was considered by this Court in its Judgment in ***Vijay Kumar Aggarwal*** (supra), by holding as under:

*“25. We note that Rule 5 B of the All India Services (Discipline & Appeal) Rules 1969 is pari materia with FR 54 B and in the decisions reported as 1993(25) ATC 321 Girdhari Lai vs. Delhi Administration & Ors. 1993 (24) ATC 641 Basant Ram Jaiswal vs. Area Manager (North) MTNL Bombay. 1996 (3) (Supp.) LLJ 855 Hira Lai vs. PDA & Ors. and AIR 1987 SC 2257 O.P.Gupta vs. UOI & Ors. it has been held that while revoking the suspension it is the duty of the competent authority to pass an order regarding pay and*



*allowances for the period a government servant remained under suspension and that the composite order has to be a part of the same transaction having two parts and that the power to revoke the suspension cannot be exercised in isolation of the power to pass an order regarding pay and allowances. But, the said decisions do not hold that if no order pertaining to pay and allowances is passed, an order revoking suspension is void and non-est. As clarified by the Tribunal in **Basant Ram Jaiswal's** case (supra), in such situation the competent authority cannot exercise the power under FR 54 B. Thus, the law is that if while revoking the suspension or within a reasonable time thereof, no order is passed pertaining to pay and allowances for the period of suspension, the authority is denuded from passing such order and the inevitable result would be the Government servant being entitled to the full salary for the period he remained under suspension.”*

22. This judgment was upheld by the Supreme Court *vide* its judgment dated 06.10.2015 passed in SLP(C) 6393/2012, titled in ***Vijay Kumar Aggarwal v. Union of India & Anr.***

23. From the above, it is evident that not passing an order under F.R. 54-B(1) immediately or within a reasonable time of passing of an order revoking the suspension, denudes the Competent Authority of the power to pass such an order thereafter. The effect thereof is that the employee/officer is treated as on duty during the period of his initial suspension as well and, therefore, is entitled to full pay and allowances.

24. As noted hereinabove, on conclusion of the disciplinary proceedings, it is only an order which is initially passed under F.R.



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54-B (1), which can be reviewed; if there is no such order, there can be no order to review. The subsequent Order dated 18.06.2020 passed by the Disciplinary Authority was therefore without any authority.

25. Accordingly, the Impugned Order passed by the learned Tribunal is set aside. The petitioner is held entitled to be treated as being on service during the initial period of his suspension, that is, between 26.12.2017 to 25.03.2018. The pay and allowances for the said period of the petitioner shall be released by the respondent to the petitioner along with interest at the rate of 6% p.a. within a period of eight weeks from today.

26. The petition is allowed in the above terms. The pending application is also disposed of.

**NAVIN CHAWLA, J**

**MADHU JAIN, J**

**AUGUST 11, 2025/Arya**