

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 62 of 2016
O.A.No.277 of 2019

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

O.A.No.62 of 2016

Shri Satish Kumar Gajbhiye, IPS, aged about 47 years, S/o.Ishwardash Gajbhiya, at present working as Superintendent of Police (HQ), Headquarters, At/PO-Cuttack, Dist-Cuttack

...Applicant.

VERSUS

1. Union of India represented through its Secretary, Ministry of Personnel, Public Grievance and Pension, Parliament Street, New Delhi-110 001.
2. Union of India, represented through its Secretary, ministry of Home, North Block, New Delhi-110 001.
3. State Government of Odisha represented through its Secretary, Department of Home, New Capital, Bhubaneswar, Khurda.
4. D.G. & I.G. of Police, Odisha, At/PO/Dist-Cuttack.

...Respondents.

For the applicant : Mr. D.Mishra, Counsel

For the respondents : Mr. S. Behera, Counsel (for respondent nos. 1& 2)
Mr. J.Pal, Counsel (for respondent nos. 3 & 4)

O.A.No.277 of 2019

Shri Satish Kumar Gajbhiye, IPS, aged about 47 years, S/o.Ishwardash Gajbhiya, at present working as Superintendent of Police (HQ), Headquarters, At/PO-Cuttack, Dist-Cuttack

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Mr. J.Pal, Counsel (for respondent nos. 3 & 4)

Heard & reserved on : 05.03.2020

Order on:26.05.2020

ORDER

Per Mr. Gokul Chandra Pati, Member (A)

The applicant is an IPS officer of Odisha cadre belonging to 2002 batch. He was transferred to State Police Headquarters on 7.8.2015 and was placed under suspension vide order dated 13.8.2015 (Annexure-A/1) under the rule 3(1) of the All India Services (Discipline and Appeal) Rules, 1969 (referred hereinafter as 'D&A Rules') since a disciplinary proceeding against the applicant was contemplated. The applicant submitted joining report to the respondent no. 4 on 28.9.2015 since there was no communication to the effect that the suspension order dated 13.8.2015 was approved by Government of India within 45 days as required under the D&A Rules. Thereafter, the respondent no. 3 issued the charge memo dated 13.10.2015 (Annexure-A/2) to the applicant, followed by order dated 20.10.2015 (Annexure-A/3) informing the applicant that his joining report dated 28.9.2015 was not accepted. Being aggrieved by such action of the respondents, the applicant has filed the OA No. 62/2016 challenging the suspension order and order dated 20.10.2015 (A/3) not accepting his joining report from on 28.9.2015, seeking the following reliefs as under:-

“To declare that non acceptance of the joining report of the Applicant, in absence of specific approval of the Government of India, as provided under Rule-3 of Rules, 1969, ibid and as held by this Hon’ble Tribunal in order dated 16.11.2015 in OA No.779 of 2015 (para-6) as arbitrary and illegal and accordingly be pleased to quash the order dated 13.8.2015 (Annexure-A/1, at page-18), 20.10.2015 (Annexure-A/3, at Page-22), 07.11.2015 (Annexure-A/4, at Page-24) and 15.10.2015 (Annexure-A/6, at Page-33);

And direct the Respondents to pay the applicant all his service and financial benefits retrospectively with interest.

And further be pleased to pass any other order and orders as deemed fit and proper”.

2. The applicant has also filed another OA No. 227/2019 after he was reinstated in service on 30.6.2017, claiming the salary for the period of suspension from 13.8.2015 to 30.6.2017, with the direction to give him the selection grade and revised pay scale as per the 7th Pay Commission w.e.f. 1.1.2016. The Tribunal passed an interim order dated 20.4.2016 in OA No. 62/2016 directing the respondents to continue in the post in which the applicant had submitted the joining report on 28.9.2015. This interim order dated 20.4.2016 was challenged by the respondents in a writ petition before Hon’ble High Court and vide order dated 5.5.2016 and 15.12.2017 of Hon’ble High Court, the operation of the order dated 20.4.2016 of the Tribunal was stayed. After reinstatement of the applicant in service, the said writ petition

was disposed of as being infructuous and the interim orders were vacated vide order dated 18.7.2018 (Annexure-A/7 of the OA No. 227/19) of Hon'ble High Court. Thereafter, the applicant submitted a representation dated 12.10.2018 (Annexure-A/8 of OA No. 227/19) which was rejected vide order dated 28.12.2018 (Annexure-A/9 of OA No. 227/19), which is challenged by the applicant in OA No. 227/2019.

3. The reliefs sought for in the OA No. 227/2019 are as under:-

- i) To declare that the Applicant is entitled to get salary and other allowances as per Revised Scale for the period from 13.08.2015 to 30.06.2017 as per the merged order dated 20.04.2016 and quash/set aside the order dated 28.12.2018 communicated on 23.3.2019 under Annexure-A/9.
- ii) Directing the Respondents to pay selection grade scale of pay forthwith wef 01.01.2015.
- iii) Directing the respondents to pay revised scale of pay in terms of 7th Pay Commission crystallized vide O.M. dated 15.9.2017 w.e.f. 1.1.2016.
- iv) Directing the respondent to compute the increments as per the admissible scale of pay accordingly.
- v) Directing the respondents to release the arrear salary in terms of selection grade and 7th Pay Commission recommendation as due and admissible with computation of increment on the enhanced scale and other service benefits and allowances as due and admissible.
- vi) Directing the Respondents to pay interest @ 18% per annum till actual disbursement.
- vii) Any other relief/reliefs as deem fit, just and proper in the fact and circumstances of the case".

4. Since the disputes in both the OAs relate to the suspension of the applicant vide order dated 13.8.2015 and common question of law regarding the validity of the suspension of the applicant from 13.8.2015 in absence of the approval of Government of India as per the provisions of the D&A Rules, is involved in both the OAs, we heard both the OAs analogously and both the OAs are being disposed of by this common order.

5. In the OA No. 62/2016, the validity of the suspension order dated 13.8.2015 has been challenged mainly on the ground that the approval of Central Government to his suspension was not received within 45 days for which the Tribunal in the interim order dated 20.4.2016 in OA No. 62/2016 held that the order was not valid after 45 days. In this OA, the respondent nos. 3 and 4 have filed Objection to the OA, without disputing the basic facts and raising objection about maintainability of the OA since Government of India have confirmed/approved the suspension order dated 13.8.2015 of the applicant for further period of 45 days from 28.9.2015 to 11.11.2015. It is

averred that since approval of Government of India to applicant's suspension for further period of 45 days after 45 days of suspension was received and the charge memo dated 13.10.2015 was issued within the approved suspension period till 11.11.2015, the conditions stipulated in the proviso of the rule 3(1) of the D&A Rules have been fulfilled and the suspension order was valid. It is further stated that as per the recommendation of the Review Committee, the applicant was reinstated in service vide order dated 30.6.2017 pending finalization of the disciplinary proceedings against the applicant who joined on 1.7.2017 in pursuance to the reinstatement order.

6. The applicant filed his reply to the Objection to the OA No. 62/2016 filed by the respondent nos. 3 and 4, averring that the order dated 20.4.2016 of the Tribunal in OA No. 62/2016 was challenged before Hon'ble High Court and finally the said writ petition was disposed of as infructuous and Hon'ble High Court did not interfere in the order dated 20.4.2016. It is further stated that vide order dated 20.4.2016, this Tribunal held that the suspension order was invalid and hence, subsequent extension of the suspension on recommendation of the Review Committee was inappropriate and non-est in the eye of law. The applicant stated further that by 28.9.2015 i.e. after 45 days of suspension, there was no approval of Government of India. It is, therefore, submitted that the suspension of the applicant from 13.8.2015 till 30.6.2017 was illegal and contrary to the Rules and hence, the applicant is entitled for full salary for the aforesaid period.

7. In OA No. 227/2019, the applicant relies on the order dated 16.11.2015 (Annexure-A/4 of the OA) passed by the Tribunal in OA No. 779/2015 which was filed by the applicant challenging his suspension. Later on he was permitted to withdraw the said OA with liberty to file better application and thereafter, the OA No. 62/2016 was filed. The ground urged in OA No. 227/2019 is also validity of the suspension of the applicant w.e.f. 13.8.2015 till he was reinstated vide order dated 30.6.2017, since neither approval of Central Government was obtained nor the charge memo against him was issued to him within 45 days from the date of suspension as required under the rule 3(1) of the D&A Rules. It is averred that the approval of Government of India communicated by the order dated 15.10.2015 approved the period of suspension from 28.9.2015 to 11.11.2015, without stating anything about the period from 13.8.2015 to 27.9.2015 and that the said order dated 15.10.2015 was not communicated to the applicant. It is further averred that the observations of the Tribunal in order dated 16.11.2015 in OA No. 779/2015 was reiterated in order dated 20.4.2016 by the Tribunal, which was not interfered by Hon'ble High Court although the respondents had challenged the said order in the writ petition.

8. It is further stated in OA No. 227/2019 that the applicant claimed the financial and service benefits for the suspension period from 13.8.2015 to 30.6.2017 vide his representation dated 12.10.2018 (Annexure-A/8) which was rejected vide order dated 28.12.2018 (Annexure-A/9). The applicant was not allowed the benefit of pay revision as per the 7th pay commission report as per the OM dated 15.9.2017 (Annexure-A/12) although the aforesaid benefit was allowed to all other IPS officers of Odisha cadre. It is also averred in para 4.20 of the OA No. 277/19 that he was not paid the subsistence allowance for the suspension period. He is also aggrieved since he was not promoted to the selection grade although his juniors have been promoted.

9. Objection to the OA No. 277/19 has been filed by the respondent nos. 3 and 4, opposing the OA on the following grounds:-

(i) For the period the applicant was under suspension i.e. from 13.8.2015 to 30.6.2017, the applicant is entitled for the subsistence allowance on the existing scale of pay as per the IPS (PAY) Rules, 2016 and his pay in the revised pay scale as per the 7th Pay Commission report would be subject to order of the disciplinary authority. The applicant's suspension period was extended from time to time in exercise of the power under the rule 3 of the D&A Rules.

(ii) The promotion to selection grade is being dealt by the GA Department and it is not known to the respondent no. 3 whether the DPC has considered his case while he was under suspension and when a disciplinary proceeding is pending against the applicant.

10. The applicant has filed a reply to the objection of the respondents broadly reiterating the contentions in the OA. It is averred that his pay revision as per the 7th pay commission cannot be subject to any disciplinary proceeding and withholding the same will amount to a penalty. It is also stated that Home Department is the nodal department for the IPS officers in the State for extending the service benefits.

11. We heard learned counsel for the applicant for both the OAs. A written note of submissions was also filed on behalf of the applicant, stating that the suspension order of the applicant has been held to be invalid by the court of law and that while reinstating the applicant on 30.6.2017, the competent authority did not pass any specific order regarding salary for the period he was continuing under suspension. Hence, the authority cannot exercise the power to deny the applicant full salary for the period of suspension. The provisions of the rule 5B of the D&A Rules have been relied on by the applicant's counsel. The order dated 16.11.2015 of the Tribunal passed in OA No. 779/2015 was

cited in the written note stating that the suspension order was declared invalid in that order. Similarly, the interim order dated 20.4.2016 passed by the Tribunal in OA No. 62/2016 has also been cited to argue that the order dated 13.8.2015 placing the applicant under suspension was not tenable in absence of the issue of charge memo or approval of the Central Government within 45 days. It is also stated that as per the rule 3(1B) of the D&A Rules, the suspension cannot continue beyond one year, which has not been adhered to in this case.

12. The following judgments have been cited in the applicant's written note:-

- i. ***K. Suresh Kumar v. State of Kerala, 2009 SCC Online Ker 5688***
- ii. ***Haobijam Imocha Singh v. State of Manipur & Anr. 2012(2)SLJ366(CAT)***
- iii. ***M.A. Sulatan I.P.S. v. State of West Bengal & others, 1987 (2) SLR 586***
- iv. ***The State of Manipur & others v. Haobijam Imocha Singh, WP(C) No. 372 of 2012 before Hon'ble Gauhati High Court***
- v. ***Sambhu Nath Sarkar v. The State of West Bengal & others, 1973 (1) SCC 856***
- vi. ***State of T.N. v. Promod Kumar, 2018 SCC Online SC 1079***
- vii. ***Anish Gupta v. Union of India & another, 2019 SCC Online Del 7383***
- viii. ***Ashok Kumar Aggarwal v. Sumit Bose and Another, (2014) 13 SCC 215***

13. We heard Mr. J. Pal, learned counsel for the respondent nos. 3 and 4 for both the OAs and he also filed a written note on behalf of the respondents, reiterating the stand in the Objections filed in both the OAs. It is stated in the written note of the respondents that the subsistence allowance was disbursed to the applicant for the period from 14.8.2015 to 31.8.2015 since he had submitted non-engagement certificate as required under the rule 4 of the D&A Rules. But he has not furnished any non-engagement certificate for subsequent months till his reinstatement in spite of several letters issued by Home Department. The rule 4 of the IPS (Pay) Rules, 2016 has been cited in support of the decision not to allow the revised pay scale w.e.f. 1.1.2016. It is also stated in the written note that the OA No. 62/2016 has virtually become infructuous since the applicant has been reinstated in service.

14. We have perused the materials furnished by the parties and considered the submissions. In these OAs, it is necessary to answer the following relevant questions:

(i) Whether the order dated 13.8.2015 (Annexure-A/1 of OA No. 62/16) is legally sustainable?

(ii) Is the applicant entitled for salary and the benefit of the revised scale of pay for the period from 13.8.2015 to 30.6.2017?

(iii) Is the applicant entitled for promotion to selection grade since his juniors have been promoted already?

Question No. (i)

15. Learned counsel for the respondents have argued that the OA No. 62/2016 has become infructuous since the applicant has been reinstated. We are unable to accept such argument since the legality of the suspension order dated 13.8.2015 is required to be decided in order to adjudicate other reliefs sought for by the applicant in these OAs, although the applicant's prayer in OA No. 62/2016 to quash the order dated 13.8.2015 has become infructuous.

16. The applicant's case is that since the Tribunal vide order dated 16.11.2015 in OA No. 779/2015 and dated 20.4.2016 in OA No. 62/2016 have held that the suspension of the applicant was not sustainable since it was neither approved by the Government of India (in short GOI) nor the charge memo was served on the applicant within 45 days from the date of suspension and the order dated 20.4.2016 was challenged in a writ petition filed by the respondents in which Hon'ble High Court did not interfere in the said order. We do not find such argument to be convincing because the Tribunal's orders dated 16.11.2015 and 20.4.2016 were interim orders, which are subject to modification till the OA is finally disposed of and which merge in the final order disposing of the OA. The fact is that after applicant's reinstatement in service by order dated 30.6.2017, the interim order dated 20.4.2016 was complied. But still the legality of the suspension order is required to be decided on merit taking into consideration the pleadings and submissions of both the parties.

17. Regarding the impugned suspension order dated 13.8.2015, the respondents' plea is that since the GOI has approved the period of suspension beyond 45 days and condoned the delay in issuing the charge memo to the applicant, the suspension order of the applicant is valid. The applicant's case is that if the charge memo was not issued to him within 45 days, then the GOI should have confirmed the suspension order and without such confirmation of the GOI, the suspension order becomes illegal. The applicant has cited the judgment in the case of K. Suresh Kumar (supra), in which the officer was suspended in the year 2008 when the proviso of the rule 3(1) of the D&A Rules was different. In the cited judgment the rule 3(1) was interpreted and since the said rule was amended by the time the applicant was suspended, the judgment in K. Suresh Kumar (supra) will be inapplicable to the instant OA. When the applicant was suspended, the rule 3(1) of the D&A Rules read as under (quoted in para 4.2 of the OA No. 62/2016) :-

“3. Suspension.—

(1) If, having regard to the circumstances in any case and, where articles of charge have been drawn up, the nature of the charges, the Government of a State or the Central Government, as the case may be, is satisfied that it is necessary or desirable to place under suspension a member of the Service, against whom disciplinary proceedings are contemplated or are pending, that Government may—

(a) if the member of the Service is serving under that Government, pass an order placing him under suspension, or

(b) if the member of the Service is serving under another Government request that Government to place him under suspension, pending the conclusion of the disciplinary proceedings and the passing of the final order in the case.

(c) IAS officers working under Central Government shall only be suspended on the recommendations of the Central Review Committee as amended with the approval of Minister-in-charge, Department of Personnel & Training.

Provided that, in cases, where there is a difference of opinion,—

(i) between two State Governments, the matter shall be referred to the Central Government for its decision ;

(ii) between a State Government and the Central Government, the opinion of the Central Government shall prevail:

Provided further that the Chief Secretary, Director General of Police and the Principal Chief Conservator of Forests, who are the heads of the respective Services, shall not be placed under suspension without obtaining prior approval of the Central Government:.

Provided also that, where a State Government passes an order placing under suspension a member of the Service against whom disciplinary proceedings are contemplated, such an order shall not be valid unless, before the expiry of a period of forty-five days from the date from which the member is placed under suspension, or such further period not exceeding forty-five days as may be specified by the Central Government for reasons to be recorded in writing, either disciplinary proceedings are initiated against him or the order of suspension is confirmed by the Central Government.”

18. It is seen that the last proviso of the rule 3(1) as applicable to the present applicant is same as in the Tribunal’s order in the case of Haobijam Imocha Singh (supra). In that case, it was held by the Tribunal (Guwahati Bench) that the provisions of the rules were not complied since the disciplinary proceedings were initiated beyond forty five days or confirmation of the suspension order by the GOI was not available and hence, the suspension order was held to be bad in law. This order of the Tribunal was challenged in writ petition in WP(C) No. 372 of 2012, in which Hon’ble Gauhati High Court has upheld the findings of the Tribunal (Guwahati Bench) that the suspension order in question violated the rule 3(1) of the D&A rules.

19. Similarly, in the case of M.A. Sultan (supra), the Tribunal (Calcutta Bench) held that within 45 days from the date of suspension of an All India Service Officer, the disciplinary proceedings should be initiated against the Officer or

the suspension order passed by the State Government should be confirmed by the Central Government. In the case of Promod Kumar (supra), the officer concerned was placed under suspension under the rule 3(2) and not under rule 3(1) of the D&A Rules. In the written note submitted on behalf of the applicant, it is mentioned that the charges against him was not placed before the disciplinary authority as in the case of Promod Kumar (supra). But in the present OAs, the charge memo was not under challenge. Hence, the judgment in the case of Promod Kumar (supra) is inapplicable to the present case.

20. It is undisputed that GOI's confirmation of the suspension order dated 13.8.2015 was not available before expiry of 45 days from the date of suspension and no disciplinary proceeding was initiated against the applicant before expiry of 45 days for the date of suspension since the charge memo was issued on 13.10.2015 (Annexure-A/2 of the OA No. 277/19) i.e. after 45 days from the said date. It is clear that continuation of the applicant's suspension beyond 45 days from 13.8.2015 was a violation of the rule 3(1) of the D&A Rules. The respondents have relied on the order dated 15.10.2015 (A/5 in OA No. 227/19) of GOI condoning delay in issuing the chargesheet and confirming the suspension of the applicant for 45 days from 28.9.2015. But the said order did not confirm the suspension from 13.8.2015 to 27.9.2015 as observed in the interim order dated 20.4.2016 of the Tribunal. The order dated 15.10.2015 has condoned the delay in issuing chargesheet to the applicant beyond 45 days. But no reason has been mentioned for such decision as required under the rule 28 of the D&A Rules, which is extracted below:-

“Save as otherwise expressly provided in these rules, the Central Government or the State Government, as the case may be, may, for good and sufficient reasons or if sufficient cause is shown extend the time specified in these rules for anything required to be done under these rules or condone any delay.”

No document has been furnished by the respondents if any request was made for condoning the delay and the reason for delay in issue of the chargesheet. The provision of a time limit for initiating disciplinary proceeding against an All India Service Officer is to ensure that an officer is not kept under suspension without serving a chargesheet. If there is any reasonable ground, the delay can be condoned, but no such justification has been furnished by the respondent nos. 3 and 4 in these OAs. We are, therefore, of the considered view that the order dated 15.10.2015 of the GOI does not nullify the violation of the rule 3(1) of the D&A Rules in this case. Applying the ratio of the judgments of the Tribunal as well as of Hon'ble Gauhati High Court in the case of Haobijam Imocha Singh (supra), we also hold that the suspension order dated 13.8.2015 (A/1 in OA No. 62/16) of the applicant was bad in law. **Accordingly, the**

question at (i) of paragraph 14 above is answered in negative and in favour of the applicant.

Question No. (ii) of paragraph 14

21. The applicant claims full salary for the suspension period from 13.8.2015 to 30.6.2017 including the revised scale of pay w.e.f. 1.1.2016 as per the 7th Pay Commission recommendations and states that he was not disbursed the subsistence allowances during the period in question. The respondents have stated in their written submission that the applicant did not submit the non-engagement certificate as required under the rule 4 of the D&A Rules. It is also averred by the respondents that the salary including the revised pay scale w.e.f. 1.1.2016 was subject to final order of the disciplinary authority in the disciplinary proceeding which is pending.

22. The applicant's counsel has referred to the judgment of Hon'ble Delhi High Court in the case of Anish Gupta (supra) in which the issue decided was whether the authority is required to pass an order under the FR 54-B regarding admissibility of pay and allowances of the employee's suspension period while revoking the suspension order. It is observed in the cited judgment that as per sub rule (6) of the FR 54-B, order regarding pay and allowances passed at the time of revoking the suspension order shall be reviewed by the competent authority on its own motion after conclusion of the disciplinary proceeding to pass a fresh revised order. Accordingly, the writ petition was disposed of with direction to pay the petitioner the full pay and allowances for the suspension period with liberty to the competent authority to review the treatment of the period of suspension after conclusion of the pending disciplinary proceedings.

23. The issue of admissibility of pay and allowances for suspension period under the FR 54-B was considered by Hon'ble Apex Court in the contempt petition in the case of Ashok Kumar Aggarwal (supra), in which the authorities did not disburse full salary for the suspension period citing a circular of the Ministry of Finance, although the aforesaid suspension order of the petitioner was quashed by the Tribunal and upheld in higher forum. It was held by Hon'ble Apex Court in that case as under:-

“8. We are not able to agree with the submission made by learned ASG as that the rule has no application to those cases where the suspension order is quashed by judicial or quasi-judicial body. Therefore, we are of the opinion that the petitioner is entitled for his pay and other allowances w.e.f. 12th January, 2012. However, in view of the fact that the petitioner did not report to service pursuant to the order dated 10th January, 2014 and obtained interim orders from the Administrative Tribunal, we are of the opinion that the entitlement for the receipt of the salary w.e.f. 10.1.2014 would depend upon the outcome of the O.A. We make it clear

that as of now, he is entitled to salary and other allowances with effect from 12.1.2012 to 10.1.2014.”

Thus, it was held that the petitioner was entitled for full pay and allowances for the period under suspension as per the provisions of the FR 54-B.

24. The employees concerned in two cases referred to in the preceding paragraphs were not members of All India Service for whom there is similar provision identical to FR 54-B in the rule 5B of the D&A Rules. The sub rule (1) of the rule 5B states as under:-

“5B(1) When a member of the Service under suspension is reinstated or would have been so reinstated but for his retirement under the All India Services (Death-cum-Retirement Benefits) Rules, 1958 while under suspension, the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the member of the Service for the period of suspension ending with reinstatement or the date of his retirement on superannuating, as the case may be; and

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

The sub rule (6) of the rule 5B of the D&A rules states as under:-

“5B(6) Where suspension is revoked pending finalization of the disciplinary proceeding or proceedings in a court any order passed under sub-rule (1) before the conclusion of the proceedings against the member of the Service, 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 in accordance with the provisions contained in sub-rule (3) or sub-rule (5), as the case may be.”

25. We take note of the judgment of Hon’ble Delhi High Court in the case of Vijay Kumar Aggarwal vs. Union of India & Anr. in W.P. (C) 916/2007 and other 5 writ petitions (<https://indiankanoon.org/doc/3566984/>), in which the petitioner was a member of All India Services and on the issue of his entitlement of pay and allowances for the suspension period under the D&A Rules, it was held by Hon’ble Delhi High Court 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 Lal vs. Delhi Administration & Ors, 1993 (24) ATC 641 Basant Ram Jaiswal vs. Area Manager (North) MTNL Bombay, 1996 (3) (Supp.) LLJ 855 Hira Lal vs. DDA & 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 fully salary for the period he remained under suspension.”

26. In the present case, the applicant was reinstated by the respondent no. 3 vide order dated 30.6.2017 (Annexure-A/10 of OA No. 277/19) and perusal of the said order it is seen that no order as required under the rule 5B(1) of the D&A Rules was passed by the competent authority regarding the pay and allowances of the applicant for the period he was under suspension while passing the order dated 30.6.2017. There is nothing on record to show that the competent authority has passed any other order on this issue. The respondents’ averment in their pleadings in these OAs is that the question of full pay and allowances for the suspension period will be decided by the disciplinary authority while finalizing the pending disciplinary proceeding is not in accordance with the provisions of the rule 5B of the D&A Rules. Under such circumstances, applying the ratio of the judgments of the cases referred in the paragraphs 22, 23 and 25 above, we are of the considered view that the applicant will be entitled to full pay and allowances for the period of his suspension from 13.8.2015 to 30.6.2017 as applicable.

27. Regarding the applicant’s claim for the revised scale of pay as per the 7th Pay Commission recommendations which was available to the IPS officers of Odisha cadre from 1.1.2016 in terms of the IPS (PAY) Rules, 2016 vide the OM dated 15.9.2017 (Annexure-A/12 of the OA No. 277/19), the respondents’ objection to this is in view of the provisions of the Note-1 rule 4 of the IPS (Pay) Rules, 2016 as stated in para 6 of the Counter. However, the said objection of the respondents is not tenable, since the aforesaid provisions in Note-1 will apply to the officers who are continuing under suspension and it will not apply once the applicant is reinstated during pendency of the disciplinary proceedings. The applicant’s entitlement for pay and allowances will be as per the rule 5B of the D&A Rules and as discussed earlier, he will also be entitled for such revised pay scale as per the OM dated 15.9.2017 (A/12) for the period of suspension. But the competent authority will have liberty to review the applicant’s entitlement for pay and allowances for the suspension period under the rule 5B(6) of the D&A Rules after conclusion of the disciplinary proceedings pending against the applicant. **The question at (ii) of paragraph 14 of this order is answered accordingly.**

Question No. (iii) of paragraph 14

28. This question is related to the applicant's claim for promotion to the selection grade. The applicant's case is that since his suspension order is illegal, he is entitled to all service benefits including promotion to selection grade at par with his juniors. It is an admitted fact that the disciplinary proceeding as per the charge memo dated 13.10.2015 (Annexure-A/2 of the OA No. 277/19) is pending finalization. No rule or authority has been furnished by the applicant by which, he will be entitled for promotion during the pendency of the disciplinary proceeding against him. Hence, we don't consider the grounds furnished by the applicant in support of his claim for promotion to selection grade are adequate to call for any interference in this regard.

29. The respondent nos. 3 and 4 in their Object ion to the OA No. 277/19 have not stated in para 7 that the promotion of IPS officers is being handled by the General Administration Department (in short GAD) as per the Rules of Business and the respondent no. 3 does not know whether the applicant was cleared by the DPC for promotion to selection grade during his suspension period or during pendency of the disciplinary proceeding against him. It is not explained why the information could not be obtained from the GAD by the respondent no. 3 for incorporating the same in their reply/objection. However, we take note of the following guidelines of the Ministry of Home Affairs in their circular No. 45020/11/97-IPS-II dated 15.07.1999 (ips.gov.in/pdfs/ProGuidPAR160410.pdf) which are extracted as under :-

“(D) Period of validity of the panel

(i).....

(ii) If a vigilance or departmental inquiry has been started against an officer on the panel after a preliminary inquiry establishing charges prima facie, the said officer shall not be promoted, pending the result of inquiry.”

It was the responsibility of the respondent no. 3 to apprise this Tribunal about this claim of the applicant with reference to the status of the applicant's promotion to selection grade after obtaining the same from the GAD and the present rules/guidelines applicable.

30. Taking into account the facts as discussed above and in absence of any rule or guidelines of the Government of India on this issue, we are unable to consider the claim of the applicant for promotion to selection grade, particularly when the disciplinary proceeding against him is pending and **the question at (iii) of paragraph 14 of this order is answered accordingly.**

31. In the facts and circumstances and taking into consideration the answers to the questions framed in paragraph 14 of this order as discussed above, we allow both the OAs in terms of the following directions:-

- A. The impugned order dated 28.12.2018 communicated to the applicant on 18.3.2019 (Annexure-A/9 of the OA No. 277/19), rejecting the applicant's claim of the pay and allowances for the suspension period is quashed.
- B. The applicant is entitled to full pay and allowances including the benefit of the revised pay scale as per the IPS (Pay) Rules, 2016 during the suspension period from 13.8.2015 to 30.6.2017 after deducting the subsistence allowances payable to the applicant under the rule 4 of the AIS (Discipline and Appeal) Rules, 1969 and an appropriate speaking order will be passed by the respondent no. 3 to this effect. The respondent no. 3 will also be at liberty to call for the non-engagement certificate from the applicant for the period as required under the rule 4 of the AIS (Discipline and Appeal) Rules, 1969, if the same has not been furnished already.
- C. The competent authority will be at liberty to review the order to be passed by the respondent no.3 in sub para 'B' above in accordance with the provisions of the rule 5B(6) of the AIS (Discipline and Appeal) Rules, 1969 after conclusion of the pending disciplinary proceedings against the applicant.
- D. The applicant will be at liberty to file a representation regarding his claim for promotion to selection grade before the respondent no. 3 enclosing the rules/guidelines in support of such claim within two weeks and the respondent no.3, on receipt of the said representation, will consider the same in consultation with the concerned authorities and dispose of the said representation by communicating the decision to the applicant through a speaking order.
- E. Above directions will be complied by the respondent no. 3 and 4 within three months from the date of receipt of a copy of this order. Further, the respondents are directed to take action to expeditiously conclude the disciplinary proceeding vide the charge memo dated 13.10.2015 (Annexure-A/2) against the applicant, if the same is pending.

32. The OAs are disposed off as per direction given above. In the circumstances as discussed in paragraph 29 above, the respondent no. 3 is to pay a cost of Rs. 3000/- (Three thousand only) to the CAT Bar Association, Cuttack within one month.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

