

**Central Administrative Tribunal
Principal Bench**

**OA No.1539/2010
OA No.1546/2010**

Reserved on : 18.04.2017
Pronounced on : 18.09.2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mrs. P. Gopinath, Member (A)**

OA No.1539/2010.

1. Smt. Vijay Laxmi Gupta (wife)
2. Smt. Rachna Gupta (Elder Daughter)
3. Sh. Deepak Gupta (Elder son)
4. Smt. Reena Gupta (Younger Daughter)
5. Sh. Harsh Gupta (Younger Son).
R/o B-2/209, Paschim Vihar, Delhi 110 063. Applicants.

(By Advocate, Shri Malaya Chand)

Vs.

Delhi Development Authority
Through its Vice Chairman
Vikas Sadan,
New Delhi. ... Respondent.

(By Advocate, Shri Manjeet Singh Reen)

OA No.1546/2010.

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2. Smt. Rachna Gupta (Elder Daughter)
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: O R D E R :

Justice Permod Kohli :

Both these Applications have been filed by the same applicant. Even though the orders impugned in both the Applications are different, however, the factual matrix is common to both the Applications. The Applications were accordingly heard and are being disposed of by this common order.

2. The applicant joined Delhi Development Authority (DDA) on 12.02.1964 as Section Officer (Junior Engineer) and rose to the rank of Superintending Engineer in December, 1990. The following three inquiries were initiated against him:-

- (i) F.26 (43) 93, Vig, Initiated on 17.08.1994
- (ii) F.26 (20) 94, Vig, Initiated on 19.07.1996
- (iii) F.26 (37) 91/Vig, Initiated on 22.01.1998

All the three inquiries were concluded and Inquiry Reports were submitted by the concerned Inquiring Authority (s) on 06.02.1997, 09.08.1999 and 17.08.1999 respectively. The Disciplinary Authority did not initiate any further action on the aforesaid inquiry reports, and in the meantime, vide order dated 24.02.2003 (Annexure A-4), the applicant was compulsorily retired from service invoking Fundamental Rule 56 (j). The said order reads as under:-

“ORDER

WHEREAS the Review Committee constituted for the purpose of review of cases under FR-56 (J) after considering the overall service record and details of vigilance cases has concluded that Shri N. R. Gupta, Superintending Engineer shall be retired from service.

WHEREAS I, Subhash Sharma, Vice Chairman, DDA is of the opinion that it is in the public interest to do so.

NOW, THEREFORE, in exercise of the powers conferred to clause (j) of Rule 56 of the Fundamental Rules, I Subhash Sharma, Vice Chairman, DDA hereby retire Shri N. R. Gupta, Superintending Engineer with immediate effect, he having already attained the age of 50 years. Shri N. R. Gupta, Superintending Engineer shall be paid a sum equivalent to the amount of his pay plus allowances for the period of three months calculated at the same rate at which he was drawing them immediately before his retirement.”

From the perusal of the aforesaid order, it is evident that the compulsory retirement of the applicant was ordered on his attaining age of 50 years and on consideration of his overall service record including the details of vigilance cases.

3. It is admitted case of the parties that except the aforementioned three vigilance cases, there is no other vigilance matter initiated or pending against the applicant at the time of retirement. It is stated that in view of the premature retirement of the applicant under FR 56 (j), no decision was taken in the aforesaid vigilance cases. Reference is made to Annexure A-5 which is a Note dated 13.07.2006 by the Vigilance Department of the DDA. The Disciplinary Authority, however, passed the following orders imposing penalties:-

- (i) Order dated 30.10.2006 imposing penalty of cut in pension of 5% for three years upon the applicant in pursuance to the Memo issued to the applicant vide Memo No.F.26 (43)93/Vig./ dt. 17.08.94.
- (ii) Order dated 04.12.2006 imposing penalty of 10% cut in pension for five years in pursuance to the Memo issued to the applicant vide Memo No.F.26 (37) 91/Vig./Pt.III/Vol.II/38 dt.22.1.98.
- (iii) Order dated 10.01.2007 imposing penalty of 5% cut in pension for three years in pursuance to the Memo issued to the applicant vide Memo No.F.26 (20) 94/Vig. Dt.19.07.96.

4. The aforesaid orders have been called in question in OA No.1539/2010 with the following reliefs:-

- “1. To pass an order to set aside and quash the Annexure-A/1, A/2 & A/3 as per details mentioned below in (i, ii & iii) passed by the respondents.
 - i) Order No.313/Vig./2008/7376 dated 18-07-08 passed by the respondent, in the vigilance case initiated vide Memo No.F.26 (43)94/Vig-V dated 17-08-94, imposing the punishment of 5% cut in pension for 3 years (Annexure A/1) Page No.17.
 - ii) Order No.314/Vig./2008/7381 dated 18-07-08 passed by the respondent, in the vigilance case initiated vide Memo No.F.26 (20)94/EE (Vig.) dated 19-07-96, imposing the punishment of 5% cut in pension for 3 years (Annexure A/2) Page No.18.
 - iii) Order No.315/Vig./2008/7386 dated 18-07-08 passed by the respondent, in the vigilance case initiated vide Memo No.F.26 (37)91/Vig./Pt.III/Vol.II/38 dated 22-01-98, imposing the punishment of 10% cut in pension for 5 years (Anexure A/3) page No.19.
- 2. To issue suitable directions to the concerned authority to release all the deducted amount deducted illegally including the payment of arrears of pension illegally cut by the respondents with appropriate interest thereupon.”

Since different orders were passed imposing different penalties arising out of three vigilance cases, the applicant made representations dated 18.12.2006 and 18.01.2007 (Annexure A-10 colly) requesting for implementation of only reduction of 10% cut in pension for five years. However, the respondents vide order dated 29.01.2007 ordered for 20% cut from the pension of the applicant and reduced his pension to Rs.13,235/- instead of Rs.14,889/-. After passing of the aforesaid order, the applicant made another representation dated 12.04.2017 which has not been responded to.

5. The applicant is also aggrieved of another order dated 20.06.2007 whereby period of his suspension w.e.f. 19.11.1993 to 08.09.1995 has not been treated as “period spent on duty” and he will not be entitled to any amount over and above the subsistence allowance already paid to him. This order has been passed in the background that while the vigilance cases were pending against him, he was placed under suspension w.e.f. 19.11.1993 and was reinstated on 08.09.1995 without any decision regarding the period of suspension till the date of his premature retirement on 24.02.2003. Before passing of order dated 20.06.2007, a show cause notice dated 12.03.2007 was issued to the applicant seeking his response on the issue of treating the period of suspension. It was communicated to him that the period of suspension cannot be treated as spent on duty,

but can be regularized as leave of any kind due and admissible to him if he so desires under F.R. 54-B. The applicant was required to make a representation within 15 days. He after seeking extension vide letter dated 27.03.2007, made a representation dated 10.04.2007 to the aforesaid show cause notice dated 12.03.2007. The respondents, however, passed order dated 20.06.2007 (Annexure A/1). The said order reads as under:-

“ORDER”

WHEREAS, Shri N. R. Gupta, EE (now S.E. Retd.) was placed under suspension vide order No.288/vig. Dated 19.11.1993.

AND WHEREAS Sh. N. R. Gupta, EE (now S.E. Retd.) was reinstated vide order No.324/vig. Dated 8.9.1995.

AND WHEREAS Sh. N. R. Gupta, EE (now S.E. Retd.) was proceeded against for major penalty proceedings under Regulation 16 of the DDA (Salaries, Allowances & Conditions of Service) Regulations, 1961 (now substituted by Regulation 25 of DDA Conduct, Disciplinary & Appeal Regulations, 1999) vide Memo. No.F.26 (37) 91/Vig. Dated 22.01.1998.

AND WHEREAS on conclusion of the departmental proceedings penalty of 10% cut in pension for 5 years was imposed on Sh. N. R. Gupta, EE (now S.E. Retd.) vide order No.577/vig. Dated 4.12.2006.

AND WHEREAS the undersigned on careful consideration of the case provisionally came to the conclusion that Sh. N. R. Gupta was involved in serious irregularities which resulted into loss to the Authority and therefore, he was placed under suspension. Keeping in view the gravity of the lapses committed by him, the suspension period w.e.f. 19.11.993 to 08.09.1995 cannot be treated as period spent on duty, but can be regularized as leave of kind due and admissible to him if he so desires, under FR-54 (b).

AND WHEREAS Sh. N. R. Gupta, EE (now SE Retd.) was given an opportunity to make representation against the above proposal within 15 days of the issue of this notice which was replied by him vide his letter dated 10.04.2007 and he did not opt for conversion of his suspension period into leave of kind due and admissible to him.

AND WHEREAS the undersigned has considered the facts on record and reply of Sh. N. R. Gupta and has come to the conclusion that since he has not agreed for regularization of the period as leave due, the suspension period may be treated as not on duty and he will not be entitled to any amount over and above the subsistence allowance already paid to him.

NOW THEREFORE, the undersigned in terms of powers conferred upon him under the said regulations hereby orders that the suspension period w.e.f. 19.11.1993 to 08.09.1995 in respect of Sh. N. R. Gupta, EE (now SE Retd.) cannot be treated as spent on duty for any purpose.

(Dinesh Rai)
Vice Chairman, DDA

6. Being aggrieved by the aforesaid order dated 20.06.2007 passed by the respondent, the applicant preferred an appeal dated 17.07.2007 before the Hon'ble Lt. Governor of Delhi who is the Chairman of DDA and Appellate Authority in respect of the applicant. It is stated that the said appeal of the applicant filed before the Lt. Governor was transferred to Vice Chairman, DDA in view of the concerned notification dated 29.10.2007 empowering the Vice Chairman with the powers of Disciplinary Authority. The Vice Chairman, DDA passed three separate orders dated 18.07.2008 viz. Order No.313/Vig/2008/7376 (Annexure A/9), No.314/Vig/2008/738 (Annexure A/10) and 315/Vig/2008/7386 (Annexure A/11), which are annexed with OA No.1539/2010. Vide these orders penalties of

cut in pension as referred to hereinabove were maintained. These orders were challenged in OA No.415/2008. The said OA was, however, withdrawn with liberty to file fresh OA vide order dated 02.12.2008 in view of the separate order having been passed treating the period of suspension as “not spent on duty”.

7. It is stated that the respondents have released the Gratuity (DCRG), part payment against Gratuity without interest on 04.03.2009, and also passed another order dated 04.06.2009 to the effect that the penalties would run concurrently. The challenge to the penalty orders dated 18.07.2008 issued vide Order No.313/Vig/2008/7376, 314/Vig/2008/7381 and 315/Vig/2008/7386 has been made on the following grounds:-

- (i) that it amounts to double jeopardy under Article 20 (2) (3) of Constitution of India.
- (ii) that the order passed under Rule 9 (2) of Central Civil Services (Pension) Rules, 1972 is without any authority of law as it is only the President of India who can pass any order under such action.
- (iii) that the orders reducing the pension have been passed without any notice to the applicant regarding the proposed punishment and are violative of law laid down by the Hon'ble Supreme Court in the matter of *State of*

Punjab vs. K. R. Erry [(1973 1 SCC 120] and *Deokinandan Prasad vs. State of Bihar* [1971 (2) SCC 330].

- (iv) That the orders of the Disciplinary Authority after a period of 13 years imposing punishment of cut in pension are bad in law and suffer from the delay and latches. Reliance is placed upon judgments of the Tribunal in TA No.69/2007 in the matter of *K. P. Singh Raghav vs. DDA* and *Quayamuddin Qureshi vs. DDA* in TA No.100/2007.

8. In the counter affidavit filed by the respondents, a reference is made to three vigilance cases which have been mentioned hereinabove. It is stated that inquiry in all these three cases was concluded and the Inquiry Officer submitted his report in all the three cases on 06.02.1997, 09.08.1999 and 17.08.1999 respectively, and thereafter the matter was referred to the CVC for 2nd stage advice. After receipt of CVC's advice, it was again put to the Disciplinary Authority for acceptance of CVC's advice. The Disciplinary Authority whereupon imposed following penalties:-

- “(a) 5% cut off pension for three years vide order dated 30/10/2006 in the vigilance case No.F26(43) 93.
- (b) 10% cut off in pension for five years vide order dated 4/12/2006 in vigilance case No.F26(37)91.
- (c) 5% cut off in pension for three years vide order dated 10/1/2007 in the vigilance case No.F26(20)94.”

It is stated that aggrieved of the aforesaid punishment, the applicant submitted appeal to the Appellate Authority. The Appellate

Authority remanded the matter back to the Vice Chairman, DDA for deciding the case as Disciplinary Authority afresh in view of the notification dated 29.10.2007 empowering VC to act as Disciplinary Authority. The Disciplinary Authority vide order dated 18.06.2008 again awarded punishment to the applicant as in the earlier orders referred to above. It is further stated that the Disciplinary Authority keeping in view the gravity of lapses committed by the applicant proposed that the suspension period w.e.f. 19.11.1993 to 08.09.1995 cannot be treated as "period spent on duty" but can be regularized as leave of kind due as admissible, if he so desires under Fundamental Rule 54-B. The applicant was given an opportunity to make a representation against the said proposal. The applicant in its reply dated 10.04.2007 did not opt for conversion of the suspension period into leave of the kind due. The Disciplinary Authority vide its order dated 20.06.2007 held the period of suspension to be treated as "not spent on duty", and the applicant not entitled to any amount over and above the subsistence allowance paid. The applicant preferred an appeal against the order dated 20.06.2007 before the Appellate Authority. The said appeal has been dismissed vide order dated 18.07.2008 which is subject matter of challenge in OA No.1546/2010.

9. We have heard learned counsel for the parties.

10. The employees of the Delhi Development Authority are governed by Regulations framed under Section 57 of the Delhi Development Act, 1957 (Act, 1957). The authority constituted under Section 3 of the aforesaid Act is empowered to make regulations under Section 57 of the Act with previous approval of the Central Government. The powers include to define salaries, allowances and conditions of service of its officers. The relevant extract of Section 57 is reproduced hereunder:-

“ (1) The Authority, with the previous approval of the Central Government, may be, notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder, to carry out the purposes of this Act, and without prejudice to the generality of this power, such regulations may provide for-

(c) the salaries, allowances and conditions of service of the Secretary, Chief Accounts Officer and other officers and employees;

In exercise of the powers conferred under Section 57, the Central Government has framed Regulations, namely, DDA, Conduct, Discipline & Appeal Regulations, 1999. By virtue of Regulation 2, these regulations are applicable to every employee of the DDA except those as defined therein. Regulation 2 is reproduced hereunder:-

“2. These regulations shall apply to every employee of the DDA except-

- (i) Those in casual employment holding work-charged posts or paid from contingencies;
- (ii) These regulations have been framed based on the CCS (Conduct) Rules, 1964 and CCS (CCA) Rules, 1965. DDA is following the CCS (Conduct) Rules and Disciplinary Appeal Rules with necessary changes. However, for

facility of reference separate Conduct, Disciplinary and Appeal Regulations are being codified. Therefore, whenever change takes place in the Conduct/Disciplinary Appeal Rules on the Civil Side, the same will be followed by the DDA. Each time whenever an amendment/additional is carried out to CCS (Conduct) Rules, 1964 and CCS (CCA) Rules, 1965, it may not be necessary to carry out formal amendments in the DDA Conduct/Disciplinary and Appeal Regulations and the amendment carried out by the Civil side may be adopted *mutatis mutandis* by the DDA with the approval of Vice-Chairman, DDA."

Regulation 25 deals with the procedure for imposing major penalties whereas Regulation 26 deals with action in the Inquiry Report. Regulation 36 is a regulation which deals with Savings of certain actions prescribed therein. Even though disciplinary proceedings were initiated when the applicant was in service and even inquiry was completed but no action was taken upon the Inquiry Report and in the meantime, the applicant was compulsorily retired under FR 56 (j). The entire action imposing the penalty was after the compulsory retirement of the applicant.

11. The disciplinary proceedings against the applicant were initiated under Regulation 25 of the D.D.A. Conduct, Disciplinary and Appeal Regulations, 1999 whereas the penalty has been imposed after his retirement invoking Rule 9 of CCS (Pension) Rules, 1972. Though the impugned orders do not refer to Rule 9 of CCS (Pension) Rules, 1972, however, in counter affidavit the action of imposing penalties is said to be under the provisions contained in Rule 9 of

CCS (Pension) Rules 1972. In reply to para 4.6 - 4.7 of the OA, in the counter affidavit, following statement is made:-

“4.6 - 4.7 That the contents of paras 4.6-4.7 of the original application as stated are wrong and denied. It is respectfully submitted that the applicant was retired by the Competent Authority under the provision of F.R.56 (J). The retirement under fR-56 (J) is not a penalty and the said Rule did not specify the provision to deal with the penalty cases against the official who has been prematurely retired. However, as per provisions contained in Rule 9 (2) of CCS (Pension) Rules, 1972 the departmental proceedings if instituted while the govt. servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the govt. servant be deemed to be proceedings under this rule and shall be continued & concluded by the authority by which they were commenced in the same manner as if the govt. servant had continued in service. Reference may be given to what all stated herein above.”

As is evident from Regulation 2 (ii), as quoted above, prior to framing of 1999 Regulations, the disciplinary action against the employees of DDA was being taken under the CCS (CCA) Rules, 1965. On Regulations being framed, all proceedings regarding the misconduct and misdemeanor are initiated under the above Regulations. As noticed hereinabove, Regulation 25 provides the procedure for imposing of major penalties whereas Regulation 26 deals with the action on the Inquiry Report. The above Regulations do not contain any Rule analogous to Rule 9 of CCS (Pension) Rules, 1972. There is otherwise also no rule which empowers the disciplinary authority to continue with the disciplinary proceedings after the retirement of the

DDA employee or institute such proceedings after his retirement. The respondents, however, continued the disciplinary proceedings invoking Rule 9 of CCS (Pension) Rules, 1972. On framing of Regulation, Rule 9 of Pension Rules ceased to exist.

12. The Pension Rules, namely, CCS (Pension) Rules, 1972 that came into force on 01.01.1972 are applicable only to government servants. The application of these rules is prescribed under Rule 2 which reads as under:-

“2. Application

Save as otherwise provided in these rules, [these rules shall apply to Government servants appointed on or before the 31st day of December, 2003] including civilian Government servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to-

- (a) railway servants’;
- (b) persons in casual and daily-rated employment;
- (c) persons paid from contingencies;
- (d) persons entitled to the benefit of a Contributory Provident Fund;
- (e) members of the All India Services;
- (f) persons locally recruited for service in diplomatic, consular or other Indian establishments in foreign countries;
- (g) persons employed on contract except when the contract provides otherwise; and
- (h) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.”

From the perusal of the above, we find that the CCS (Pension) Rules, 1972 have no application to the services of railway, corporations or statutory corporations.

13. It is settled law that disciplinary proceedings against the government servant are *co-terminus* with the retirement which *inter alia* include compulsory retirement unless any statutory rule so permit. In *Bhagirathi Jena vs. Board of Directors, O.S.F. C. and Others* [1999 (3) SCC 666], the disciplinary proceedings were initiated against the employee on 22.07.1992 alleging misconduct under the Regulations, namely, Orissa Financial State Corporation Staff Regulations 1975. The disciplinary enquiry was not concluded before the date of superannuation and the charged officer retired on 30.06.1995. The charged officer filed a writ petition before the Hon'ble High Court of Orissa challenging the continuation of disciplinary proceedings after his retirement. The writ petition filed by him was dismissed. In Civil Appeal arising out of SLP (Civil) No.6326 of 1998 before the Hon'ble Supreme Court, the judgment of the High Court was set aside. The Hon'ble Supreme Court has held as under:-

"5. It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of departmental enquiry after superannuation.

6. In view of the absence of such provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30-6-95, there was no authority vested in the Corporation for continuing the

departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.”

14. A similar view has been taken by the Hon’ble Supreme Court in the case of *Dev Prakash Tewari vs. U. P. Cooperative Institutional Service Board, Lucknow & Ors.* [2014 (7) SCC 260]. Their Lordships have held as under:-

“8. Once the appellant had retired from service on 31.3.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits.”

As noticed by us after carefully examining the DDA, Conduct, Disciplinary and Appeal Regulations, 1999, we find there is absolutely no Regulation which empowers the Disciplinary Authority either to initiate fresh disciplinary proceedings or to continue with the disciplinary proceedings after the retirement of the DDA employee. The respondents have, however, invoked Rule 9 of CCS (Pension Rules) 1972 to award penalty of cut in pension on the applicant vide orders impugned in the petition. Rule 9 of the CCS (Pension) Rules, 1972 has absolutely no application to the employees of DDA. Regulation 2 specifically applied the regulations framed by the DDA to every employee of the Corporation. The Regulations/Rules that were applicable before 1999 Regulations

came into operation stands repealed and have not been saved under the Regulation 36 which deals with 'Savings'. Under Rule 2 (ii) any amendment made to the CCS (CCA) Rules, 1965 may be applicable without amendment of the Regulations. It is pertinent to note that there is no rule even under CCS (CCA) Rules, 1965 which *inter alia* permit continuation of the disciplinary proceedings after retirement. It is only by virtue of Rule 9 of Pension Rules whereunder the proceedings initiated against the delinquent while he was in service that can be continued under the conditions enumerated therein.

15. The Delhi Development Authority being a statutory corporation, Pension Rules have no application and thus application of Rule 9 of Pension Rules to the employees of the DDA is impermissible in law. The entire action of continuation of the disciplinary proceedings after the retirement of the applicant is thus illegal and unwarranted. The disciplinary proceedings against the applicant came to be terminated on his compulsory retirement on 24.02.2003. Thus, the impugned penalty orders in this petition are *non est* in the eyes of law and are liable to be quashed. In view of the quashment, we need not to go into other issues raised by the applicant challenging the disciplinary proceedings.

16. In OA No.1546/2010, on the basis of same premises as noticed hereinabove, order dated 18.07.2008 was passed treating the period of

suspension w.e.f. 19.11.1993 to 08.09.1995 as “not spent on duty”.

The applicant has claimed for the following reliefs:-

“In view of the facts and grounds stated above the applicant pray for the following reliefs.

1. To pass an order to set aside and quash the order dated 18-07-08 Annexure A/2 in the above noted premises directing the respondents to treat the above noted period as spent on duty for all purposes.
2. To issue suitable directions to the concerned authority to release all benefits as is applicable under law.
3. Any other relief which the Hon’ble Court deem fit and proper may also be granted to the petitioners.”

17. The aforesaid order dated 18.07.2008 has been passed in terms of F.R. 54-B. The relevant extract of F.R. 54-B is quoted hereunder:-

“(1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) 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 Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), 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, substituted 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-rule (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 pay and allowances to which he would have been entitled and 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."

18. In terms of sub-rule (1) of FR 54-B where a government servant is reinstated, the competent authority to order reinstatement is under an obligation to make specific order regarding the pay and

allowances to be paid to the government servant for the period of suspension, and also to order whether or not the said period is to be treated as a period spent on duty. Under sub rule (2), where a government servant under suspension dies before the disciplinary or court proceedings against him are concluded, the period between the date of suspension and the date of death has to be treated as duty for all purposes with full pay and allowances. Further under sub-rule (3), if the competent authority is of the opinion that the suspension was wholly unjustified he may be entitled to full pay and allowances.

19. In the present case, admittedly, three disciplinary proceedings were pending against the applicant. All these three inquiries were concluded and Inquiry Reports were submitted by the concerned Inquiring Authority, wherein two charges were partly proved and one was not proved. The fact remains that there were three disciplinary cases. The inquiries were initiated in the year 1996 and concluded with the Inquiry Reports in 1997-1998. Under such circumstances, the suspension of applicant cannot be said to be wholly unjustified. Therefore, the competent authority in its wisdom after issuing notice to the charged officer decided to treat the period of suspension as "not spent on duty". We do not find any infirmity in passing such order. Challenge to this order thus fails.

20. In the overall spectrum of the factual and legal analysis, the following directions are issued:-

(i) OA No.1539/2010 is allowed. Impugned penalty Orders No.313/Vig/2008/7376 (Annexure A/9), No.314/Vig/2008/738(Annexure A/10) and 315/Vig/2008/7386 (Annexure A/11) are hereby quashed.

(ii) OA No.1546/2016 is dismissed.

No order as to costs. Original Record be returned to learned counsel for the respondents.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/