

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.2101/2015

**Reserved On:21.08.2017
Pronounced On:24.08.2017**

HON'BLE MS. NITA CHOWDHURY, MEMBER (A)

Arun Kumar Tomar
Aged about 41 years
S/o Shri Om Prakash
R/o 1/3030, Ram Nagar Mandoli Road,
Shahdara, Delhi-110032.Applicant

(By Advocate: Shri M.K. Bhardwaj)

Versus

1. The Commissioner of Delhi Police
Police Hq., I.P. Estate,
New Delhi.
2. The Deputy Commissioner of Police,
Police Control Room,
Model Town,
Delhi. ... Respondents

(By Advocate: Ms. Ritika Chawla)

ORDER

This Original Application (OA) has been filed by the applicant claiming the following reliefs:-

“(a) To quash and set aside the impugned order dated 19.05.2015 and direct the respondents to release annual increments to the applicant for the suspension period and accordingly fix the pay of applicant.

(b) Declare the action of the respondents in not releasing increment to the applicant for suspension period as illegal and issue appropriate directions for re-fixing the pay of applicant by taking into account increments for suspension period and paying arrears with 9% interest.

(c) Direct the respondents to grant increments to the applicant for the suspension period as done vide order dated 18.11.2014 in case of SI Sanjay and Others and release all increments.

(d) Award costs of the proceedings and

(e) Pass any other order/direction which this Hon'ble Tribunal deems fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case".

2. The facts in brief are that applicant joined Delhi Police as Constable on 09.10.1993 and after joining, he rendered outstanding services. Unfortunately, he was implicated in a criminal case on false allegations and as a result thereof, he was suspended vide order dated 07.01.2000 (Annexure A-2). However, during the aforesaid suspension period, respondents did not grant annual increments to the applicant as per his entitlement. Being aggrieved by the said arbitrary action of the respondents, applicant as well as other similarly placed persons made representation and also requested personally to release the increments. As nothing was done by the respondents, some of the similarly placed persons, namely, Sanjay Kumar Gupta and 3 other Sub Inspectors filed **OA No.3042/2013** which was allowed by this Tribunal vide order dated 07.05.2014. The operative part of the said order reads as under:-

"6. Once the view taken by this Tribunal has been finally upheld by the Hon'ble Supreme Court, it is not open to the respondents to take their own view in the matter. In terms of the provisions of Section 19 (4) of the Administrative Tribunals Act, 1985, with the filing of the OA before the Tribunal, the proceedings as regarding the redressal of the grievances of the applicant before departmental authorities under relevant service abate except as otherwise directed by the Tribunal.

7. Thus, OA is disposed of with directions to the respondents to examine whether the claim of the applicants is covered by the Order dated 7.11.2008 passed by the Tribunal in OA No.1056/2008 in P.C. Misra vs. Union of India and others (supra) which was finally upheld by the Hon'ble Supreme Court and if the same is found covered, extend the

benefit of the same to the applicants. While doing so, the respondents would also keep in view the Order dated 30.11.2011 passed in OA 434/2011.

8. The OA is disposed of in above terms. No costs”.

The aforesaid order dated 07.05.2014 was considered by the respondents and finally, vide order dated 19.11.2014, the respondents have granted annual increments to the applicants in **OA No.3042/2013** (supra) for the suspension period pursuant to aforesaid order dated 07.05.2014 passed by this Hon'ble Tribunal (Annexure A-1A). Immediately thereafter, applicant made a representation to the respondents to grant him increments also as was done in the case of applicants in **OA No.3042/2013** (supra). The respondents considered the case of the applicant as well as others, but finally informed some of the aggrieved persons that their cases for grant of annual increment for the suspension period have been sent to the Department of Personnel & Training (DOP&T) for clarification and response is still awaited.

3. According to the applicant, granting annual increments to similarly placed persons in **OA No.3042/2013** (supra) is neither justified nor in consonance with Articles 14 & 16 of the Constitution of India. He should not have been discriminated merely because he has not approached the Hon'ble Tribunal as done by the applicants in **OA No.3042/2013** (supra). To the contrary, the respondents have issued an order dated 19.05.2015, rejecting the case of the applicant. They have done so misconstruing the judgment of the Hon'ble Delhi High Court in **W.P. (C) No.9042/2009 – Union of India Vs. P.C. Mishra and Others**. In the said case, the increments of suspension period were

directed to be paid not because of the fact that no separate disciplinary proceedings were pending, but for the reason that during suspension period increments cannot be withheld. In support of his claim, applicant has relied on the following judgments of the Hon'ble Apex Court in the cases of **Inderpal Yadav Vs. UOI 1985 (2) SLR 248; Ketty Veerappa & Others Vs. State of Karnataka and Others (2006) 9 SCC 406; P.K. & Others Vs. V.K. Kapoor and Another JT 2007 (12) 439;** and **Gulam Rasul Lone Vs. State of J&K (2009) 15 SCC 321**. He has also relied upon the judgment of this Tribunal in **OA No.1272/29015** titled as **Daya Ram and Others Vs. The Commissioner of Police and Others** decided on 27.04.2015 wherein following directions were given:-

“6. As per the law as laid down by the Hon'ble Apex Court in numerous cases, including the case of SI Roop Lal and another Vs. Lt. Governor through Chief Secretary, Delhi & others (2000) 1 SCC 644, this Bench is bound to follow the ratio of orders passed by Coordinate Benches, unless, in a case of disagreement, the issues framed are referred to a larger Bench.

7. Therefore, this OA is allowed, at the stage of admission itself, with directions to the respondents to follow the directions as contained in the above cited orders passed by this Tribunal, read with the observations of the Hon'ble High Court in the above cited Writ Petition (Civil) No.9042/2009, and allow increments and enhancement of subsistence allowance to the applicants during the period of their suspension”.

4. Similarly this Tribunal in **OA No. 569/2015** titled as **Ramesh Kaushik and Others Vs. The Commissioner of Police and Others** decided on 10.02.2015 gave the following directions:-

“3. In view of the averments made in the OA and the submissions made by the learned counsel for the applicant, the OA is disposed of with the direction to the respondents to examine the claim of the applicant and if it is found that the applicants case is covered by the order

dated 07.05.2014 in OA No.3042/2011, they shall grant the same benefit to the applicant within a period of three months from the date of this copy of this order. Decision taken in the matter shall be duly communicated to the applicant assigning reasons for the same.

4. OA stands disposed of with the afore-noted directions”.

5. The applicant has next relied on the judgment of the Hon’ble High Court of Delhi in **P.C. Mishra and Others** (supra), wherein it was held as under:-

“The learned counsel for the petitioner during the pendency of the present petition on 17th December, 2009 had sought time to produce the copy of the order directing withholding of increment of the subsistence allowance of the respondent no.1. The copy of the alleged order was, however, not produced by the learned counsel for the petitioner, Mr.Sinha. On 13th January, 2010 the learned counsel, however, represented that no orders have been passed and contended that even in absence of any order to withhold the increment in the subsistence allowance, during the period of suspension after its revocation, the increments can be denied.

The learned counsel for the petitioner rather relied on the copy of communication dated 17th April, 2008 forwarding respondent no.1’s request to Service Department, Govt. of NCT Delhi which was filed by the respondent no.1 along with original application before the Tribunal. The learned counsel for the petitioner rather contended that since the disciplinary proceedings has not been concluded and it has not been decided whether the period of suspension is to be treated as period spent on duty, the respondent no.1 cannot be granted increment during the period of suspension. In the circumstances it was contended that the respondent no. 1 is not entitled for the relief which has been granted by the Tribunal to him.

The respondent no.1 who had appeared had relied on a decision of a Division Bench of this Court in W.P(C) No.1899/2007 dated 4th August, 2008 titled Union of India v. R.K.Chopra holding that since the full bench decision of the Tribunal in J.S.Karat v. Union of India had been accepted by Union of India, the delinquent officer would be entitled to enhanced subsistence allowance. The Division Bench had further relied on another decision of this Court in Commissioner of Police v. Randhir Singh, W.P(C) No.713/2008 decided on 29th January, 2008 holding that on an interpretation of Rule 7 Note 3 of CCS (Revised Pay) Rules, 1977 the delinquent officer would be entitled for enhanced subsistence allowance. **The issue involved in the writ petitions relied on was whether as a result of upward revision of pay scales by the 5th Central Pay Commission, the delinquent officers would be entitled to enhanced subsistence allowance.**

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In the circumstances and taking into consideration all the facts and circumstances, this court does not find any illegality or irregularity in the order of the Tribunal which is impugned before us by the petitioner. There are no grounds to interfere with the order of the Tribunal in the facts and circumstances in exercise of jurisdiction under article 226 of Constitution of India. The writ petition in the facts and circumstances is, therefore, without merit and it is dismissed. Parties are however, left to bear their own costs”.

6. Applicant has, therefore, prayed that the OA be allowed with all consequential benefits. He has also prayed that the enquiry which was started in 2000 is still continuing and no action has been taken to complete the same, therefore, respondents be directed to complete the same in a time bound manner.

7. The respondents have filed their reply and submitted that applicant was placed under suspension vide order dated 07.01.2000 on having been arrested in FIR No.01/2000 dated 04.01.2000 u/s 7/13 of POC Act PS Anti Corruption Branch, Government of Delhi. His name was also brought on secret list of doubtful integrity with effect from 04.01.2000, i.e., from the date of his arrest. He had submitted an application vide Dy. No. 805 dated 12.01.2015 claiming for grant of increment while he was under suspension, as granted to the applicants in **OA No.3042/2013** (supra). In response to his application, he was informed that DOP&T has examined/opined the issue in consultation with Department of Legal Affairs and clarification dated 19.03.2015 read with PHQ's dated 01.04.2014. The self contained note issued by DOP&T on 29.01.2015 reads as under:-

“Reference: Self contained note of Ministry of Home Affairs in file no. 14014/196/2014-UTP on pre pages at 5-6/N.

The matter has been examined. It is noted that the cases cited in CAT's order dated 07.05.2014 have not been examined

properly. In the case of Shri P.C. Misra, it may please be seen from page 8 of the judgment that the Hon'ble High Court, while upholding the CAT's order dated 07.11.2008, observed that no separate disciplinary proceedings were pending against Shri Misra. This does not seem to be the case with the petitioners in the OA No. 3042/2013 which is under examination. Therefore, the circumstances of this case cannot be equated with the P.C. Misra case. The same conclusion can be drawn in respect of the Order dated 30.11.2011 in OA 434/2011, in which Hon'ble CAT have relied on the order in the P.C. Misra case.

2. It is, therefore, advised that, based on the above facts, a reasoned order may be issued in compliance of the Hon'ble CAT's direction. Department of Legal Affairs may also please be consulted.

3. The following are also mentioned for information:

(a) The Fundamental Rule 26 (2) states that all duty in a time-scale counts for increments. Suspension means temporary deprivation of the employee's right to discharge his duty. He ceases to discharge the duties of the post and is debarred from functioning in office, or holding a position. As such he is not entitled to earn increment. Withholding of increment, issued as a penalty imposed after disciplinary proceedings, is distinct from this.

(b) As per Fundamental Rule 53, a Government servant under suspension or deemed suspension shall be entitled to subsistence allowance. As per FR-53 (1) (ii) (a), subsistence allowance means an amount equal to the leave salary which the Government servant would have drawn, if he had been on leave on half average pay or on half-pay and in addition, dearness allowance, if admissible on the basis of such leave salary.

4. This issues with the approval of Joint Secretary (Establishment)".

Thereafter, another order was passed on 29.04.2015, which reads as under (page 60):-

"In pursuance of clarification/opinion of DOP&T as well as Ministry of Law and Justice, Department of Legal Affairs received vide No. 14014/196/2014-UTP dated 19.03.15 read with PHQ,s memo NO. 5134-36/CR-IV/PHQ dated 1.4.2015, order No. 13882-85/CR-X-1st Bn. Dated 11.11.2014 regarding grant of annual

increments to SI (Exe.) Sanjay Kumar Gupta, No. D-1103, (PIS No. 16950234) and SI (Exe.) Rajesh Kumar, No. D-964 (PIS no. 16950040) during their suspension period w.e.f. 01.05.2008 onwards is hereby cancelled because suspension means temporary deprivation of the employee's right to discharge his duty. He ceases to discharge the duties of the post and is debarred from functioning in office or holding a position. As such he is not entitled to earn increment. Withholding of increment issued as a penalty imposed after disciplinary proceedings is distinct from this. As per F.R. 53, a Govt. servant under suspension shall be entitled to subsistence allowance.

The DOPT as well as the Ministry of Law and Justice department of Legal Affair vide letter under reference clearly opined that *"In the case of Sh. P.C. Mishra, it is clear from the judgment that the Hon'ble High Court while upholding the CAT's order dated 7.11.2008, observed that no separate disciplinary proceeding were pending against Sh. P.C. Mishra which does not seem to be the case with the petitioner in OA No. 3042/2013. Therefore, the circumstances of the case cannot be equated with the case of Sh. P.C. Mishra. The case conclusion can be drawn in respect of the order dated 30.11.2011 in O.A. NO. 434/2011, in which Hon'ble CAT has relied on the order in the case of P.C. Mishra"*. Further Ministry of Law and Justice, Department of Legal Affair has also opined that "the Hon'ble Tribunal, vide its order dated 07.05.2014, has relied on the case of P.C. Misra vs. Union of India and Others in OA No. 1065/2008 as upheld by the Supreme Court allowed the OA. However, it is observed that in aforesaid P.C. Misra's case, the suspension of PC Mishra was revoked by Ministry of Home Affairs and the High Court while examining the Tribunal's impugned order, has observed that **"no separate disciplinary proceedings were pending against the respondent No.1, rather he has appointed/re-instated on his regular post"** and on that basis relief was granted to the applicant. In the matter of Kartar Singh Vs. GNCT in OA No. 434/2011, representation was made by the applicant only after re-instatement in service. However, in the present case, the contention of the Department is that applicant SI Sanjay Kumar continues to be suspended and is facing joint Departmental Enquiry.

Further in the case of Union of India Vs. R.K. Chopra, AIR 2010 SC 648, the Apex Court has observed that ***if the revised scale of pay takes effect from a date falling within the period of suspension then, the benefit of option, for revised scale of***

pay will accrue to him in respect of the period of suspension only after his reinstatement depending on the fact whether the period of suspension is treated as duty or not. It was also recorded therein that as the respondent is concerned, he was dismissed from service on 04.08.2005, therefore, the question of the benefit of the revised pay and the subsistence allowance thereon the basis of Revised Pay Rules did not accrue to him.

8. Thus, it is clear from the judgment of the Hon'ble Delhi High Court in **P.C. Mishra's case** (supra) that while upholding the CAT's order dated 07.11.2008, no separate disciplinary proceedings were pending against Shri P.C. Mishra. This is not the case with applicant. Hence, applicant's case cannot be equated with **P.C. Mishra's case** (supra) and he is not entitled to earn increments as a penalty was imposed on the basis of disciplinary proceeding. Moreover, as per FR 53, a Government servant under suspension shall be entitled to subsistence allowance.

9. As per FR 26 (2), it is stated that all duty in a time scale counts for increments. Suspension means temporary deprivation of the employee's right to discharge his duty. He ceases to discharge the duties of the post and is debarred from functioning in office, or holding a position. As such, he is not entitled to earn increments. As per FR 53, a Govt. servant under suspension, or deemed to have been placed under suspension by an order of the appointing authority shall be entitled to a subsistence allowance. Further, as per FR 53(1)(ii)(a) subsistence allowance means an amount equal to the leave salary which the Govt., servant would have drawn if he had been on leave on half average pay or on half pay and in addition, dearness allowance, if admissible on the basis of such leave salary. They have

thus submitted that keeping in view opinion of DOP&T and rule position explained above, the instant case is not similar with **OA No.1056/2008 – P.C. Mishra and Others Vs. U.O.I. and Others** as the Tribunal observed in that case that no separate disciplinary proceedings were pending against Shri P.C. Mishra whereas applicant is facing departmental/criminal case proceedings. Moreover, grant of increments/benefits during suspension period to the applicants in **OA No.3042/2013** (supra) have already been cancelled by the concerned unit. As such, respondents have submitted that the applicant is not entitled to any relief and the OA be dismissed.

10. I have heard the learned counsel for the parties and gone through the records and judgments.

11. Today, i.e. 23.08.2017, respondents have given a copy of the order passed by them in the case of the applicant, which is as under:-

“ORDER

In pursuance of Govt. of India, Ministry of Finance, Department of Expenditure's Resolution No.1-2/2016-IC dated 25.07.2016, Promulgation of Central Civil Services (Revised Pay) Rules, 2016, notified vide GSR NO.721 (E) dated 25.07.2016 read with PHQ's memo No.11428-475/CT-II (PHQ) dated 1.8.2016 regarding fixation of pay in the revised pay structure effective from 1.1.2016, the pay in respect of the following placed under suspension Consts. (Exe.) w.e.f. mentioned against their names are hereby fixed as under:-

Sl.No.	Name, Rank and Belt No.	Suspension order with effect from	Basic Pay + Grade Pay as on 31.12.2015	Total Pay (Basic Pay + Grade Pay) X 2.57	Pay fixed as on 1.1.2016
1.	Ct. (Exe.) Arun Kumar,	w.e.f. 04.01.2000	Rs.6370/- + 2000/- Total	Rs.8370/- X 2.57 Rounded	Rs.21700

	No.3502/PCR (PIS No.28932171)	V/o No.225- 44/HAP/NE Dt.07.01.2000	(Rs.8370/-)	Off=Rs.21510.90	
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12. From the above, it becomes clear that the respondents have given the applicant the benefit of revised pay scale. Hence, nothing remains in this OA, which is accordingly disposed of. No costs.

(NITA CHOWDHURY)
MEMBER (A)

Rakesh