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UNION OF INDIA

v.

R.K. CHOPRA

(CIVIL APPEAL NO. 1096 OF 2010)

FEBRUARY 01, 2010

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[R.V. RAVEENDRAN AND K.S. RADHAKRISHNAN, JJ.]

Service law: Central Civil Services (Revision pay) Rules, 1997 – Rule 7, Note 3 – Subsistence allowance, revision of C *– Entitlement of suspended government servant*

When revision of pay scale taking effect from a date prior to suspension – Held: Govt. servant is permitted to exercise option under FR23 even if the period during which he is to D *exercise the option falls within the period of suspension and then he would be entitled to the benefit of increase in pay and also in subsistence allowance for the period of suspension.*

When revision of pay scale taking effect from a date falling within the period of suspension – Held: Not entitled – E *Benefit of option for revised pay scale would accrue to him in respect of period of suspension only after his reinstatement depending on the fact whether the period of suspension was treated as on duty or not – Fundamental Rules – Rules 23, 53 – Memorandum no.F.2(36)-Ests./III/58 dated 27.8.1958 –* F *Constitution of India, 1950 – Article 309, proviso.*

The question which arose for consideration in the present appeal is whether a government servant is entitled to revision of subsistence allowance based on the G **pay revision effected by the Central Civil Services (Revision pay) Rules, 1997 which came into force on 1st January, 1996 while he was under suspension from service.**

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Allowing the appeal, the Court A

HELD: 1.1. The claim for payment of subsistence allowance of a Government servant is dealt within Chapter VIII of Fundamental Rules. Rule 53 provides that the Government servant under suspension shall be B **entitled to subsistence allowance at an amount equal to the leave salary which he 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. The proviso to Rule 53 (1)(ii)(a) says** C **that where the period of suspension exceeds three months, the authority is competent to vary the amount subject to some restrictions. [Paras 14 and 15] [230-A; 231-E-F]**

1.2. Government of India order G.M.O.M. No. F-2(36)- D **Ests/-III/58 dated 27th August, 1958 given in the Swamy's compilation of Fundamental and supplementary Rules, deals with the revision of scale of pay while a Government Servant is under suspension. The two categories of cases are dealt with in that Office** E **Memorandum. One refers to cases in which the revised scale of pay takes effect from a date prior to the date of suspension and other cases in which the revised scales of pay takes effect from a date falling within the period of suspension. The Fundamental Rules as well as the** F **Memorandum dated 27th August, 1958 makes it clear that if there is a revision of pay scale in respect of a post held by a Government Servant, prior to the suspension period, he is permitted to exercise option under FR 23, even if the period during which he is to exercise the option falls** G **within the period of suspension and then, he will be entitled to the benefit of increase in pay and also in subsistence allowance for the period of suspension, as a result of such option. But if the revised pay scale takes effect from a date falling within the period of suspension** H

A then, the benefit of option, for revised pay scale 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. In the present case, the Revised Pay Rules, came into force on B 1st day of January, 1996 when the respondent was under suspension. Therefore, even if he had exercised his option under FR 23 for the benefit of the pay revision, the same would have accrued to him only after his reinstatement depending on the fact whether the period C of suspension is treated as 'on duty' or not. Respondent was dismissed from service on 4.8.2005, therefore the question of the benefit of the revised pay and the subsistence allowance thereon on the basis of Revised Pay Rules did not accrue to him. [Paras 16 and 17] [231-D G-H; 232-A; 233-D-H; 234-A]

1.3. The Revised pay Rules, which came into force on 01.01.1996 are in conformity with the FR 53 and the Office Memorandum issued by the Government of India. On a combined reading of Rules 5 and 6, it is clear that a E Government servant under suspension on the 1st day of January, 1996 is entitled to exercise his option within three months of the date of his return to duty if that date is later than the date prescribed in the sub rule and if the intimation is not received he is deemed to have elected F to be governed by the revised scale of pay with effect on and from the 1st day of January, 1996 on his return to duty. Respondent did not return to duty since he was dismissed from service and hence there was no question either exercising the option or the application of the G deeming provision. [Paras 18 and 20] [234-B; 235-C-E]

1.4. Note 3 under Rule 7 of the Central Civil Services (Revision Pay) Rules, 1997 states that when a Government servant was on leave on 1.1.1996, he would become entitled to pay in the revised pay scale from the H

date he joined duty. However, in the case of a Government servant under suspension, he would continue to draw subsistence allowance based on the then existing scale of pay and his pay in the revised pay scale would be subject to final order on the pending disciplinary proceedings. The Revised Pay Rules were framed by the President of India in exercise of the powers conferred by the proviso to Article 309 and clause 5 of Article 148 of the Constitution. The proviso to Article 309 enables the President to make Rules to regulate the recruitment and conditions of service of the persons mentioned therein. The Rules framed by the President of India in exercise of the powers conferred by the proviso to Article 309 have the force of law. Further, Note 3 to Rule 7 of Revised Pay Rules, 1997 were not challenged. On a combined reading of Note 3 to Rule 7 of the Revised Pay Rules and FR 53(1)(ii)(a) with the clarification with Office Memorandum dated 27th August, 1958, it is clear that if the revision of pay takes effect from a date prior to the date of suspension of a Government servant then he would be entitled to benefit of increment in pay and in the subsistence allowance for the period of suspension, but if the revision pay scale takes effect from a date falling within the period of suspension then the benefit of revision of pay and the subsistence allowances will accrue to him, only after reinstatement depending on the fact whether the period of suspension is treated as duty or not. In view of the clear distinction drawn by the Rule making authority between the cases in which the revised pay scale takes effect from a date prior to the date of suspension and a date falling within the period of suspension, the plea of discrimination raised cannot be sustained especially when there is no challenge to the Rules. The benefit of pay revision and the consequent revision of subsistence allowance stand postponed till the conclusion of the departmental proceedings, if the pay revision has come into effect while the Government

A B C D E F G H

A **servant is under suspension. The Tribunal as well as the High Court committed an error in holding that the respondent is entitled to the benefit of Revised Pay Rules. [Paras 24 to 26] [236-G-H; 237-A; 237-D-H; 238-A-B]**

B *J.S. Kharat v. Union of India* **2002-2003 (CAT) F***ull Bench Judgments 169; State of Maharashtra v. Chandrabhan Tale* **(1983) 3 SCC 387;** *Khem Chand v. Union of India* **1963 Supp. 1 SCR 229;** *Jagdamba Prasad Shukla v. State of U.P and others* **(2000) 7 SCC 90;** *P.L. Shah v. Union of India and* C *Anr.* **(1989) 1 SCC 546;** *R.P. Kapur v. Union of India & Ors.* **(1999) 8 SCC 110;** *Umesh Chandra Misra v. Union of India* **1993 Supp. (2) SCC 210, referred to.**

Case Law Reference:

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2002-2003 (CAT) Full Bench Judgments 169	**referred to**	**Paras 4, 5, 6**
(1983) 3 SCC 387	**referred to**	**Paras 7, 8**
1963 Supp. 1 SCR 229	**referred to**	**Paras 7, 9**
(2000) 7 SCC 90	**referred to**	**Paras 7, 10**
(1989) 1 SCC 546	**referred to**	**Paras 7, 11**
(1999) 8 SCC 110	**referred to**	**Paras 7, 12**
1993 Supp. (2) SCC 210	**referred to**	**Paras 7, 13**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1096 of 2010.

G From the Judgment & Order dated 4.8.2008 of the High Court of Delhi at New Delhi in Writ Petition (C) No. 1899 of 2007.

Mohan Parasaran, ASG, Rashmi Malhotra, D.S. Mahra for the Appellant.

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R.K. Chopra (Respondent-in-person) A

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

2. We are, in this case, concerned with a claim of a Government servant for revision of subsistence allowance based on the pay revision effected by the Central Civil Services (Revision Pay) Rules, 1997, which came into force on the 1st day of January, 1996, while he was under suspension from service. B C

3. The Respondent herein was working as a Desk Officer in the Department of Industrial Policy and Promotion under the Ministry of Commerce and Industries. While so, a case was registered against him by Central Bureau of Investigation under the Prevention of Corruption Act and he was placed under suspension by the Department w.e.f. 06.06.1989 under rule 10 (2) of the CCS (CCA) Rules 1965. Subsistence allowance due to him under Fundamental Rules 53 (1) (ii) (a) was paid to him which was later enhanced to 50% vide order No. 5/7/99, dated 30.05.1991. At the time of suspension he was in the scale of pay of Rs. 2000-3500 and was drawing a basic pay of Rs. 2,825/-. While undergoing suspension he made a representation on 22.7.2002 for revision of subsistence allowance based on the 5th Pay Commission Report. Request was rejected by the Government of India, Ministry of Commerce and Industries vide Memorandum dated 29.10.2002 stating that a person under suspension is not entitled to draw either the increment during the period of suspension or get his pay fixed in the revised scale. Later he filed another representation on 05.07.2005 reiterating the same request which was replied by Memorandum dated 18.08.2005 stating that his earlier representation was already rejected. Respondent was later dismissed from service on 04.08.2005 since he was convicted by the Criminal Court vide its judgment dated 30.03.2002. D E F G H

A 4. The Respondent after dismissal from service approached the Central Administrative Tribunal (Principal Bench), New Delhi and filed O.A. No.29/2006 challenging the above-mentioned orders dated 29.10.2002 and 18.08.2005 and sought a declaration that he was entitled to get subsistence B allowance on the revised pay-scale with effect from 1.1.1996. Reliance was placed on a Full Bench order of the Tribunal in *J.S. Kharat* vs. *Union of India* [2002-2003 (CAT) Full Bench Judgments 169]. The Department took up the stand that in view of Note 3 to Rule 7 of Central Civil Services (Revised Pay) C Rules, 1997, (for short 'Revised Pay Rules') the Respondent would not be entitled to get subsistence allowance on the revised pay-scale with effect from 1.1.1996. Further, it was also contended that the Full Bench of the Tribunal in the case of *J.S. Kharat* was not concerned with the applicability of the above-D mentioned Rules. Rejecting the contention the Tribunal took the view that it would be unjust to deny the subsistence allowance on the basis of revised pay to the persons who stood suspended prior to 01.01.1996, especially when persons who were suspended after that date would be entitled to get E subsistence allowance on the revised pay scale. This, according to the Tribunal, would lead to an anomalous situation. The Tribunal, however, held that since the respondent did not challenge the earlier communication dated 29.10.2002, rejecting his claim, he would not be entitled to any arrears on account of revised subsistence allowance till the said date. F Further, it was ordered that he would be entitled to arrears of revision of subsistence allowance from 01.01.2002 till 04.08.2005 when he was dismissed from service.

5. Aggrieved by the order passed by the Tribunal, the G Union of India took up the matter before the Delhi High Court *vide* Writ Petition (Civil) No.1899/2007. The High Court following its earlier judgment in *Commissioner of Police* v. *Randhir Singh* [Writ Petition (Civil) No.713/2008 decided on 29.01.2008] dismissed the appeal holding that it did not find

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any infirmity in the order of the Full Bench of the Tribunal in *J.S. Kharat's case* (supra). Aggrieved by the said order dated 04.08.2008, this appeal has been preferred by the Union of India. A

6. Shri Mohan Parasaran, Additional Solicitor General of India submitted that the Tribunal as well as the Delhi High Court have not properly appreciated the scope of Note 3 to Rule 7 of the Revised Pay Rules. Learned counsel submitted that the Full Bench of the Tribunal in *J.S. Kharat's case* (supra) was primarily concerned with the interpretation of Rule 6(1) the Railway Servants (Revised Pay) Rules 1986 and the validity of Note 3 to Rule 7 of the Revised Pay Rules, was not an issue before the Tribunal. Learned counsel also submitted that the High Court and Tribunal have failed to appreciate that the payment of subsistence allowance is based on leave salary (not pay) admissible during half pay leave and leave salary linked to pay drawn immediately before proceeding on leave. Learned counsel submitted that the respondent is, therefore, not entitled to the benefit of subsistence allowance linked to pay or revised pay which he would have drawn but for being placed under suspension. Learned counsel also submitted that the Government of India's decisions 3 (e) below FR 53 shows that the subsistence allowance cannot be revised with retrospective effect and in the instant case the respondent was dismissed from service and the question of revision of subsistence allowance did not arise. Learned counsel also pointed out that there was no challenge to the validity of Note - 3 to Rule 7 of Revised Pay Rules and the Tribunal committed an error in failing to apply to the said note to rule 7 to the instant case. The respondent appeared in person and submitted that there is no illegality in the order passed by the Tribunal which was confirmed by the High Court. B C D E F G

7. We notice both the High Court as well as the Tribunal has placed heavy reliance on the order of Full Bench of the tribunal in *J.S. Kharat's case* (supra) and took the view that the H

A delinquent officer would be entitled to enhanced subsistence allowance on the basis of the upward revision of pay based on the 5th Central Pay Commission Report, implemented by the Revised Pay Rules. Reference was also made to the decisions of this Court in *State of Maharashtra* vs. *Chandrabhan Tale* B [(1983) 3 SCC 387]; *Khem Chand* vs. *Union of India* [1963 Supp. 1 SCR 229]; *Jagdamba Prasad Shukla* vs. *State of U.P and others* [(2000) 7 SCC 90]; *P.L. Shah* vs. *Union of India and Anr.* [(1989) 1 SCC 546]; *R.P. Kapur* vs. *Union of India & Ors.* [(1999) 8 SCC 110]; and *Umesh Chandra Misra* vs. C *Union of India* [1993 Supp. (2) SCC 210]

8. We notice that in none of the aforesaid judgments the validity of Note 3 to rule 7 of the Revised Pay Rules came up for consideration. In *Chandrabhan's case* (supra), this Court was examining the validity of the second proviso to Rule 151 D (1) (ii) (b) of the Bombay Civil Service Rules, 1959 which prescribed payment of subsistence allowance at the rate of Rs. 1 per month. Court struck down the proviso as void and unreasonable and ordered that the Civil Servant is entitled to the normal subsistence allowance. The above ruling is of no E assistance to the respondent.

9. In *Khem Chand*'s case this Court was examining the validity of Rule 12(4) of the CCS (CC&A) Rules 1957 which has nothing do with the question involved in the present case. F This Court was generally explaining the scope and effect of a suspension order stating that the real effect of a suspension order is that though a Government servant continues to be a member of the Service he is not permitted to work during the period of suspension and he is entitled to subsistence allowance which is normally less than the salary. G

10. In *Jagdamba Prasad Shukla's* case (supra) subsistence allowance was denied to the Government Servant since he had omitted to furnish the certificate as required under the U.P. Fundamental Rules 53(2) indicating that he was not H

employed elsewhere during the period of suspension. Non payment of subsistence allowance, this Court held, has vitiated the departmental enquiry and the consequent removal order.

11. In *P.L. Shah's* case (supra) this Court was dealing with a case of reduction of subsistence allowance from 50% to 25% of salary. Order was challenged before the Tribunal which dismissed the petition on the ground of delay. This Court set aside the orders of the Tribunal and the matter was remanded for fresh consideration, holding that the subsistence allowance should be sufficient for the bare sustenance in this world in which prices of the necessaries of life are increasing every day on account of conditions of inflation obtaining in the country. It was held that since Government Servant cannot engage himself in any other activity during the period of suspension and the amount of subsistence allowance payable to the Government Servant be reviewed from time to time when proceedings drag on long time even though there may be no express rule insisting of such review.

12. In *R.P. Kapur's* case (supra), this Court was dealing with the scope of Railway Services (Pension) Rules, 1993 and the effect of Note 1 and proviso to Rule 50 and the Court took the view that the above-mentioned proviso is not applicable to a case of compulsory retirement. The scope of Note 3 to Rule 7 was not in issue in *R.P. Kapur's case.*

13. In *Umesh Chandra Misra's* case (supra), this Court was dealing with the case of a railway employee who was denied subsistence allowance at the rate of 75% of the salary for the period from May 20, 1976 to February 17, 1977 and this Court directed the respondents to pay him the subsistence allowance from November 20, 1975 to May 19, 1976 at the rate of 50 per cent of the salary and from May 20, 1976 to February 17, 1977 at the rate of 75 per cent of the salary with interest on both the amounts with a further direction that the subsistence allowance be paid on the basis of the revised scale of pay. The legality of Note 3 to Rule 7 was never an issue in that case.

A 14. The claim for payment of subsistence allowance of a Government servant is dealt with in Chapter VIII of Fundamental Rules. FR 53 which relevant for our purpose reads follows:-

"F.R.53.(1) A Government servant under suspension or
B deemed to have been placed under suspension by an order of the appointing authority shall be entitled to the following payments, namely:-

(i) xxxx xxxx xxxx xxxx

C (ii) in the case of any other Government servant—

(a) a subsistence allowance at 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
D allowance, if admissible on the basis of such leave salary;

Provided that where the period of suspension exceeds three months, the authority which made or
E is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first three months as follows:-

F (i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be
G recorded in writing, not directly attributable to the Government servant;

(ii) the amount of subsistence allowance, may be reduced by a suitable amount, not exceeding 50
H per cent of the subsistence allowance admissible

during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant;

(iii) the rate of dearness allowance will be based on the increased or, as the case may be, the decreased amount of subsistence allowance admissible under sub-clauses (i) and (ii) above.

(b) Any other compensatory allowances admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension subject to the fulfillment of other conditions laid down for the drawal of such allowances.

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15. The said Rule provides that the Government servant under suspension shall be entitled to subsistence allowance at 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. The proviso to Rule 53 (1)(ii) (a) says that where the period of suspension exceeds three months, the authority is competent to vary the amount subject to some restrictions.

16. We may in this connection refer to a Government of India order G.M.O.M. No. F-2(36)-Ests/-III/58 dated 27th August, 1958 given in the Swamy's compilation of Fundamental and supplementary Rules, which deals with the revision of scale of pay while a Government Servant is under suspension. The two categories of cases have been dealt with in that Office Memorandum. One refers to cases in which the revised scale of pay takes effect from a date prior to the date of suspension

A and other cases in which the revised scales of pay takes effect from a date falling within the period of suspension.

Office Memorandum reads as follows:-

B "(2) *Revision of scale of pay while under suspension*—A question having arisen as to whether a Government servant under suspension might be given an option to elect any revised scales of pay which might be introduced in respect of the post held by him immediately prior to suspension is revised, the Government of India have decided as follows:-

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1. Cases in which the revised scale of pay takes effect from a date prior to the date of suspension.

In such cases the Government servant should be allowed to exercise the option under FR 23 even if the D period during which he is exercise the option falls within the period of suspension. *He will be entitled to the benefit of increase in pay, if any, in respect of the duty period before suspension, and also in the subsistence allowance, for the period of suspension, as a result of* E *such option.*

2. Cases in which the revised scale of pay takes effect from a date falling within the period of suspension.

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(a) Under suspension a Government servant retains a lien on his substantive post. As the expression 'holder of a post' occurring in FR 23 includes also a person who holds a lien or a suspended lien on the post even though he may G not be actually holding the post, *such a Government servant should be allowed the option under FR 23 even while under suspension. The benefit of option will, however, practically accrue to him in respect of the period of suspension, only after his reinstatement depending on*

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the fact whether the period of suspension is treated as duty or not.

(b) A Government servant who does not retain a lien on a post the pay of which is changed, is not entitled to exercise the option under FR 23. If, however, he is reinstated in the post and the period of suspension is treated as duty, he may be allowed to exercise the option after such reinstatement. In such cases, if there is a time-limit prescribed for exercising the option and such period had already expired during the period of suspension, a relaxation may be made in each individual case for extending the period during which the option may be exercised.

17. The above mentioned Rules as well as the Memorandum makes it clear that if there is a revision of scale of pay in respect of a post held by a Government Servant, prior to the suspension period, he is permitted to exercise option under FR 23, even if the period during which he is to exercise the option falls within the period of suspension and then, he will be entitled to the benefit of increase in pay and also in subsistence allowance for the period of suspension, as a result of such option. But 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. In the present case, the Revised Pay Rules, came into force on 1st day of January, 1996 when the respondent was under suspension. Therefore, even if he had exercised his option under FR 23 for the benefit of the above pay revision, the same would have accrued to him only after his reinstatement depending on the fact whether the period of suspension is treated as 'on duty' or not. So far as the respondent is concerned, he was dismissed from service on 4.8.2005, therefore the question of the benefit of the revised

A pay and the subsistence allowance thereon on the basis of Revised Pay Rules did not accrue to him.

18. The Revised pay Rules, which came into force on 01.01.1996 in our view are in conformity with the FR 53 and
B the above-mentioned Office Memorandum issued by the Government of India.

19. Rule 5 of Revised Pay Rules deals with drawal of pay in the revised scales which reads as follows:-

C "5. *Drawal of pay in the revised scales.*—Save as otherwise provided in these rules, a Government servant shall draw pay in the revised scale applicable to the post to which he is appointed:

D Provided that a Government servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any

subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale.

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Rule 6 which deals exercise of option reads as follows:-

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

Provided that.—

(i) in the case of a Government servant who is, on the date of such publication or, as the case may be,
H date of such order, out of India on leave or

deputation or foreign service or active service, the said option shall be exercised in writing so as to reach the said authority within three months of the date of his taking charge of his post in India; and

(ii) *where a Government servant is under suspension on the 1st day of January, 1996, the option may be exercised within three months of the date of his return to his duty if that date is later than the date prescribed in this sub-rule.*

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20. On a combined reading of Rules 5 and 6, it is clear that a Government servant under suspension on the 1st day of January, 1996 is entitled to exercise his option within three months of the date of his return to duty if that date is later than the date prescribed in the sub rule and if the intimation is not received he is deemed to have elected to be governed by the revised scale of pay with effect on and from the 1st day of January, 1996 on his return to duty. Respondent herein did not return to duty since he was dismissed from service and hence there was no question either exercising the option or the application of the deeming provision.

21. Rule 7 deals with the fixation of initial pay in the revised scale , which reads as follows:-

"7. Fixation of initial pay in the revised scale. – (1) The initial pay of a Government servant who elects, or is deemed to have elected under sub-rule (3) of the Rule 6 to be governed by the revised scale on and from the 1st day of January, 1996, shall, unless in any case the President by special order otherwise directs, be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien or would have held a lien *if it had not been suspended,* and in respect of his pay in the officiating post held by him, in the following

A manner, namely:-

xxx xxx xxx

xxx xxx xxx

B Note 3. Where a Government servant is on leave on the 1st day of January, 1996, he shall become entitled to pay in the revised scale of pay from the date he joins duty. *In case of Government servant under suspension, he shall continue to draw subsistence allowance based on existing* C *scale of pay and his pay in the revised scale of pay will be subject to final order on the pending disciplinary proceedings."*

22. The word "Existing scale" has been defined under Rule 3 (2) which reads as under:

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"existing scale" in relation to a Government servant means the present scale applicable to the post held by the Government servant (or as the case may be, personal scale applicable to him) as on the 1st day of January, 1996 E whether in a substantive or officiating capacity."

23. The word 'Revised scale' has been defined under Rule 3(5), which reads as under:

"revised scale" in relation to any post specified in column F 2 of the First Schedule means the scale of pay specified against that post in column 4, thereof unless a different revised scale is notified separately for that post;".

24. Note 3 under Rule 7, therefore, indicates when a G Government servant was on leave on 1.1.1996, he would become entitled to pay in the revised scale of pay from the date he joined the duty. However, in the case of a Government servant under suspension, he would *continue to draw subsistence allowance based on the then existing scale of*

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pay and his pay in the revised scale of pay would be subject to final order on the pending disciplinary proceedings.

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

26. On a combined reading of Note 3 to Rule 7 of the Revised Pay Rules and FR 53(1)(ii)(a) with the clarification with Office Memorandum dated 27th August, 1958 it is clear that if the revision of pay takes effect from a date prior to the date of suspension of a Government servant then he would be entitled to benefit of increment in pay and in the subsistence allowance for the period of suspension, but if the revision scale of pay takes effect from a date falling within the period of suspension then the benefit of revision of pay and the subsistence allowances will accrue to him, only after reinstatement depending on the fact whether the period of suspension is treated as duty or not. In view of the clear distinction drawn by the Rule making authority between the cases in which the Revised scale of pay takes effect from a date prior to the date of suspension and a date falling within the period of suspension, the plea of discrimination raised cannot be sustained especially when there is no challenge to the Rules. The benefit of pay revision and the consequent revision of subsistence allowance stand postponed till the conclusion of the departmental proceedings, if the pay revision has come into effect while the Government servant is under suspension. So far as the present case is concerned, the Revised Pay Rules came into force on 1st January, 1996 when the respondent was under suspension and later he was dismissed from service on 04.08.2005 and

A hence the benefit of pay revision or the revision of subsistence allowance did not accrue to him. The Tribunal as well as the High Court have committed an error in holding that the respondent is entitled to the benefit of Revised Pay Rules. We, therefore, allow the appeal and set aside those orders.

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27. We are informed that the respondent herein has filed an appeal against the order of conviction passed by the Criminal Court and the same is pending consideration and if he is acquitted in appeal, the disciplinary authority would take appropriate decision on the respondent's claim for revised pay C scale and the subsistence allowance in accordance with law.

D.G. Appeal allowed.