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

Decided on: 14.05.2025

+ W.P.(C) 14437/2006

SUDHIR DHAKA

.....Petitioner

Through: Mr. Anup Kumar Sharma,
Advocate.

versus

NTPC LTD & ORS

.....Respondents

Through: Mr. Puneet Taneja, Senior
Advocate with Mr. Rajesh
Mahendru, Mr. Amit Yadav, Mr.
Anil Kumar & Mr. Manmohan
Singh Narula, Advocates for
NTPC.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

1. By way of this petition under Article 226 of the Constitution, the petitioner assails the actions of his employer – National Thermal Power Corporation Limited [“NTPC”], the respondents herein, in failing to consider him for promotion, and denying him various allowances, for a period during which he was under suspension, the suspension having subsequently been revoked.

A. FACTS:

2. The petitioner was appointed as a Steno-Typist [Grade W-4] in NTPC on 25.03.1987 and promoted to the post of Stenographer [Grade



W-5] pursuant to a departmental examination, with effect from 23.12.1988. He was thereafter recommended for promotion to the post of Senior Stenographer [Grade W-6], pursuant to a Departmental Promotion Committee [“DPC”] held prior to his suspension. However, the recommendations of the DPC were kept in the sealed cover as he was suspended before the said order for promotion could be given effect.

3. By an order dated 20.02.1993, the petitioner was suspended, relying upon a report to the effect that, on 30.12.1992, he was caught red-handed by officials of the Central Bureau of Investigation [“CBI”] while demanding/accepting a bribe from a candidate for recruitment in the services of NTPC. It was stated in the letter of suspension, that the petitioner was required to mark his attendance in the Security Office at the main gate of NTPC’s plant every day at 08:30 AM, in the register kept for this purpose. He was to be paid subsistence allowance during the period of suspension.

4. Criminal proceedings were instituted against the petitioner by the CBI under Section 120-B of the Indian Penal Code, 1860, and Section 13(2) read with Section 13(1)(d) and Section 7 of the Prevention of Corruption Act, 1988. The criminal proceedings resulted in an order of acquittal of the petitioner and one co-accused, by the judgment of the Special Judge dated 20.11.2001. The operative portion of the judgment of the Criminal Court reads as follows:

“29. In view of the legal position as discussed above, I feel hesitant to agree with the Ld. Public Prosecutor that their case can still be held proved on the basis of testimonies of PW-12 Sh. B.N. Gupta and the T.L.O. Sh. S.K. Peshin. Cumulative effect of my above discussion is that prosecution has failed to produce cogent and clinching evidence either with regard to initial demand, subsequent demand, acceptance



*of bribe by accused-persons either for themselves or for any other including their co-accused Sh. J.S. Arora who had already been discharged by my Ld. Predecessor. The evidence regarding recovery as has come on the record through Sh. B.N. Gupta of Sh. S.K. Peshin alone is incapable of attracting the legal presumption available to the prosecution u/s 20 of the Act, as it could not be established in this case if any demand was made for illegal gratification from the Complainant, or either of the two accused accepted the tainted money. **Testimonies of PW-12 and PW-15 alone are not sufficient to prove the case of the prosecution beyond reasonable doubt. Hence giving benefit of doubt in this case, I acquit both the accused of the respective charges framed against them.** They are already on bail their bail bonds stands discharged. Can property be returned to the rightful owners after expiry of period of appeal or result thereof, if any, preferred, whichever may be letter. The bottles containing washes be destroyed in accordance with the Rules, applicable in the facts of the case.¹*

5. Pursuant to this judgment, the petitioner's suspension was revoked on 06.04.2002, pending further examination of the implications of the judgment. A further Office Order was issued on 12/14.05.2003, dealing with the treatment of the suspension period of the petitioner, and with his entitlement to consequential benefits. As the adjudication of the present case turns upon the said Office Order, it is reproduced in full hereinbelow:

*“Consequent to revocation of Suspension vide Office Order Ref. No. 08/NCPS/GM/2002 1335 dated 06/08.04.2002, **the following decisions have been taken with regard to treatment of Suspension period, fixation of pay & allowances, increments, Leave various allowances etc.,** in respect of Sh. Sudhir Dhaka, Emp. No. 80080, Stenographer, TA:*

*1. **The period of Suspension i.e. 20.02.1993 to 07.04.2002 shall count as period spent on duty and will be paid full Pay & allowances** and also be entitled to draw annual increments on due date (as it was prior to suspension) as per Pay Fixation Rules. While making payments of arrears of Pay & allowances, the Subsistence allowances already paid may be adjusted against the amount of arrears.*

¹ Emphasis supplied.



2. He will not be entitled to draw allowances benefits like washing allowances, Generation/Construction Incentives, Ex-gratia, Earned Leave (EL)/Half Pay Leave (HPL).

3. He will be considered for Promotion w.e.f 01.01.1993 against DPC held on 22.12.1992 and thereafter he will be considered for next promotion in July 2003.²

6. The petitioner has filed this writ petition assailing the aforesaid Office Order, to the extent that it denies him the benefit of certain allowances, and also seeking promotion to the supervisory cadres S-1, S-2 and S-3 from 01.01.1998, 01.04.2001, and 01.04.2004 respectively, instead of promotion to higher grades in the workman cadre [Grades W-8 and W-9] from 01.07.2001 and 01.07.2006 respectively.

B. SCOPE OF LITIGATION AND RELEVANT RULES:

7. I have heard Mr. Anup Kumar Sharma, learned counsel for the petitioner, and Mr. Puneet Taneja, learned Senior Counsel for NTPC.

8. Learned counsel for the parties have canvassed arguments with regard to the petitioner's entitlement on the following counts, for the period of suspension:

- a) Consideration for promotion;
- b) Earned leave and half-pay leave;
- c) Generation incentive;
- d) Livery and washing allowance;
- e) Conveyance allowance;
- f) Ex-gratia payment.

9. The petitioner was admittedly in the workman cadre. The undisputed position is that his entitlements would be governed by NTPC's Standing Orders, which have been placed on record with the writ



petition. Although various acts of misconduct, procedural provisions and penalties for misconduct, are provided in Rules 26 to 28 of the Standing Orders, those provisions are not relevant here, as the petitioner's suspension was not on account of disciplinary proceedings, but due to pending criminal proceedings. This situation is contemplated in Rule 28 (g), which provides as follows:

“28(g) Subject to the provisions contained in clause (d) and (e) above, the company reserves the right to suspend a workman accused in a Court of Law for any criminal offence involving moral turpitude until the disposal of the trial.”

10. Rule 28(g), in turn, refers to clauses (d) and (e) of the same Rule. Clause (d) deals with payment of subsistence allowance, which is not the matter of controversy in this case. Rule 28(e), however, is of some significance as it deals with the consequence of the final order on the treatment of the employee's suspension period. The Rule provides as follows:

*“If, after enquiry, a workman is found guilty of the misconduct alleged against him or some other misconduct brought out in the course of the enquiry and punishment is awarded, the workman shall not be entitled to any remuneration for the period of suspension pending enquiry other than the subsistence allowance already paid to him. If a penalty other than dismissal or removal is imposed on him, the punishing authority shall by order decide as to how the period of suspension shall be treated. **If, however he is not found guilty of the alleged misconduct or any other misconduct he shall be reinstated in his post and shall be paid the difference between the subsistence allowance already paid and the emoluments consisting or pay and allowances which he would have received if he had not been suspended, the period of suspension being treated as duty.**”³*

² Emphasis supplied.

³ Emphasis supplied.



11. These provisions have been further explained in NTPC's Human Resources Policy Manual entitled "*Guidelines for Disciplinary Procedure*" ["Policy Manual"]. Clause 8.2 thereof provides for suspension in three circumstances – pending domestic enquiry, pending a court case, and as a punishment. It is undisputed that, in the present case, no disciplinary proceeding was ever commenced by NTPC against the petitioner. The petitioner's suspension was in exercise of powers under Clause 8.2 (b), which reads as follows:

"8.2 When to Suspend:

The suspension of an employee from duty often arises under the following three different types of situations:

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(b) Suspension Pending Court's Order :

The disciplinary authority has a right to keep an employee under suspension, if he is accused in a court of law of any criminal offence, until the disposal of the trial. (See Annexure 'F-2')."

12. Clause 8.3 of the Policy Manual deals with the "*Status of Suspended Employee*". The following clauses thereof are of relevance in the present case:

"Status of Suspended Employee:

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(d) No leave shall be granted to a suspended employee during the period of suspension.

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(f) If it is decided after the conclusion of enquiry not to remove the suspended employee from service, he will be simply allotted the job treating the period of suspension as on duty or leave as decided by the disciplinary authority."⁴

13. Clause 8.4(e) further provides as follows:

⁴ Emphasis supplied.



“8.4 Subsistence Allowance:

Subsistence allowance is the payment made to an employee who is kept under suspension pending enquiry/ court’s order only, as under:

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(e) If the suspended employee is found not guilty of the misconduct, he shall be paid the difference between the subsistence allowance already paid and the emoluments consisting of pay and allowances which he would have received if he had not been suspended.⁵

14. It is in context of these provisions that the petitioner’s entitlement on the above counts must be considered.

C. CONSIDERATION FOR PROMOTION:

15. Prior to the petitioner’s suspension, he was working in the Workman cadre at Level W-5, i.e. at the post of Stenographer. It is the petitioner’s grievance that, during the period of his suspension, he would have been entitled to consideration for promotion to higher grades in the Workman cadre and, in fact, to speedier merit-based promotions to the Supervisory cadre. He contends that he would have been entitled to promotion to the Supervisory cadre at S-1 Level from 07.11.1998, S-2 Level from 01.04.2001, and S-3 Level from 01.04.2004. Instead, the petitioner was promoted to W-8 Level in the Workman cadre with effect from 01.07.2001, and W-9 Level with effect from 01.07.2006.

16. The contention of NTPC, however, is based upon its Policy for Promotion of Employees in the Workman Category, a copy whereof has been placed on record with its written submissions dated 26.03.2024. The contentions of the said Policy are undisputed and not under challenge.

17. The following Clauses of the Policy have been cited by Mr. Taneja:

“2.0 General Principles:

⁵ Emphasis supplied.



The following factors will be taken into account in promotion from one grade to the next higher grade:

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2.1 Promotions will be effected only against vacant sanctioned posts.

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***2.8.2 No employee under suspension or against whom disciplinary or vigilance proceedings have been initiated shall be promoted until he is unconditional reinstatement or exoneration,** he will be allowed promotion with retrospective effect, but the financial benefit accruing due to the promotion will be allowed with effect from the date his promotion order is issued and no arrears will be payable on this account unless specifically mentioned otherwise in the promotion order.⁶*

18. Factually, NTPC's case is that an employee in W-6 Grade, may be promoted to W-7 Grade or to S-1 Grade, the latter being available only upon qualification in a written test, trade test, and interview. The petitioner was not eligible for consideration for promotion during the period of suspension, applying Clause 2.8 (2) of the aforesaid Promotion Policy. After revocation of his suspension, he was considered for promotion in the year 2003 and was, in fact, promoted to W-7 Grade retrospectively from 01.01.1997, and subsequently to W-8 Grade with effect from 01.07.2001. He could not be considered for direct promotion to S-1 Grade after revocation of his suspension, as there was no vacancy available in the said Grade in the year 2003. He was, in fact, given a further promotion to W-9 Grade, with effect from 01.07.2006.

19. Having considered the aforesaid Policy, and the undisputed factual position narrated above, I do not find any infirmity in NTPC's decision on this aspect. The Policy – which, as sated above, remains unchallenged – is that the petitioner could not be considered for promotion during the

⁶ Emphasis supplied.



period of his suspension. After revocation of his suspension, he was, in fact, considered and granted seniority-based promotions retrospectively. The merit-based promotion could not immediately be offered due to lack of vacancies in the promoted post. In these circumstances, NTPC's action was in accordance with its Promotion Policy and does not call for interference by the writ Court.

D. EARNED LEAVE AND HALF PAY LEAVE:

20. The petitioner seeks encashment of earned leave and half pay leave for the period that he was not actually on duty.

21. Mr. Taneja, however, relies upon Clause 8.3 of the Policy Manual extracted above, which prescribes that a suspended employee would not be granted any leave. He submits that NTPC's Leave Rules also indicate that leave is earned only by a person who is in actual service. He relies, for this purpose, upon the following clauses of the said Leave Rules:

“10.1 EARNED LEAVE:

10.1 Earned leave means leave earned in respect of periods of services with the Corporation and granted on full pay or stipend in case of trainees/Apprentices other than Act Apprentices.

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10.3 In respect of an employee who joins the service of the Company at any time between the uniform dates i.e. 1st April and 1st October, earned leave account will be credited on pro-rata basis for every completed month of service till the close of the half year in which he is appointed. The period of earned leave so calculated will be rounded off to the next higher figure. From the next half year onwards, the employee will be governed by the Rules as above.

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12.0 HALF-PAY LEAVE:

12.1 Half-pay leave, means leave on half-pay earned in respect of service with the Company and can be granted to an employee for any reasons including on medical grounds. The half-pay for this purpose shall be treated as half of the basic pay plus DA admissible on such



half basic pay. All other allowances would be paid in full. Half pay leave is not admissible to Trainees/Apprentices and employees on contract.⁷

22. The decisions of the Supreme Court have been cited, which deal with the question of grant of pay and allowances to an employee whose suspension was on account of pending criminal proceedings, and is revoked upon acquittal. In *Union of India v. K.V. Jankiraman*⁸, which was referred to by Mr. Sharma, the Court was concerned with an employee's entitlement to salary in a promotional post, which he would have attained during the period of suspension. The Court held that the employer is vested with the power to address this question, based on all the facts and circumstances of the case, including the nature of the employee's ultimate exoneration.

23. This judgment was followed in *Greater Hyderabad Municipal Corporation v. N. Prabhakar Rao*,⁹ cited by Mr. Taneja. The Court interpreted Rule 54-B of the Fundamental Rules of Andhra Pradesh Government, which provided for the circumstances in which the authority reinstating the employee would direct payment of full pay and allowances, and those in which it would have the discretion to pay only part of the pay and allowances. It was observed as follows:

"9. The rationale, on which sub-rule (3) of F.R. 54-B is based, is that during the period of suspension an employee does not work and, therefore, he is not entitled to any pay unless after the termination of the disciplinary proceedings or the criminal proceedings the competent authority is of the opinion that the suspension of the employee was wholly unjustified. This rationale has been explained in clear and lucid language by a three-Judge Bench of this Court in

⁷ Emphasis supplied.

⁸ (1991) 4 SCC 109; [hereinafter "*K.V. Jankiraman*"]

⁹ (2011) 8 SCC 155; [hereinafter "*N. Prabhakar Rao*"]



Union of India & Ors. v. K.V. Jankiraman & Ors. [(1991) 4 SCC 109].¹⁰

The Court upheld the view of the employer, that the suspension of the employee could not be regarded as wholly unjustified, and that he was, therefore, not entitled to grant of salary and allowances for the period of suspension. It was emphasised that:

“Hence even where the employee is acquitted of the charges in the criminal trial for lack of evidence or otherwise, it is for the competent authority to form its opinion whether the suspension of the employee was wholly unjustified and so long as such opinion of the competent authority was a possible view in the facts and circumstances of the case and on the materials before him, such opinion of the competent authority would not be interfered by the Tribunal or the Court.”¹¹

24. Mr. Taneja also placed two judgments, which distinguish between allowances which are included in wages, as opposed to those which are not:

- (a) The judgment of the Supreme Court in *Dilbagh Rai Jarry v. Union of India*¹², held that Running Allowance payable to a Railway employee, cannot be considered part of the employee’s wages or pay for the entire period of inactive service. The Court concluded that Running Allowance is payable only when the officer has actually travelled or was on “*running duty*”, and not otherwise. Therefore, the appellant therein was not entitled to Running Allowance during periods of inactivity.
- (b) In *Bharat Electronics Ltd. v. Industrial Tribunal*¹³, the Supreme Court relied *inter alia* upon the judgment in *Dilbagh Rai Jarry* to conclude that any allowance which flows from the terms of

¹⁰ Paragraph 9; Emphasis supplied.

¹¹ Paragraph 15.

¹² (1974) 3 SCC 554; [hereinafter as “*Dilbagh Rai Jarry*”] [paragraph 23]



employment, and is not contingent upon actual working, is part of a “employees’ wages”, under Section 33(2)(b) of the Industrial Disputes Act, 1947, but an allowance which is earnable only by active service is not part of “wages” for this purpose.

These judgments clarify that certain allowances payable to an employee may be part of the terms of employment, whereas other allowances may be contingent upon actual service.

25. As far as earned leave and half pay leave are concerned, a judgment of the Full Bench of the Andhra Pradesh High Court in *Andhra Bank and Anr v. P. Balakrishnan*¹⁴, also deals with this very question. In that case, the employee was dismissed from service, but reinstated by the Industrial Tribunal. In the context of settlement between banks and employee’s unions/association, dealing with workmen’s conditions of service, the Full Bench came to the conclusion that earned leave or privilege leave was intended to be allowed for the employees’ rest and recuperation, and therefore, only attributable to actual service.

26. This view has been followed by the Karnataka High Court in *K.R. Tyagi v. National Textile Corporation and Anr*¹⁵ and *General Manager, and Vijaya Bank v. H.C. Jayaprakash*¹⁶. In *K.R Tyagi*, the Karnataka High Court had declined reinstatement of the dismissed employee upon quashing the order of termination, but directed that consequential benefits would be paid. The employee claimed leave encashment for the period of suspension. However, the Court held that the employee “cannot be

¹³ (1990) 2 SCC 314; [paragraph 14]

¹⁴ 2005 SCC OnLine AP 336; [hereinafter “*Andhra Bank*”]

¹⁵ 1996 SCC OnLine Kar 525; [hereinafter “*K.R. Tyagi*”]

¹⁶ 2020 SCC OnLine Kar 642; [hereinafter “*H.C. Jayaprakash*”]



*deemed to be in service either by creating a legal fiction or by a notional presumption*¹⁷” It, therefore, held that leave encashment would not be reckoned as a salary component, and the employee could not claim leave encashment for the period he was not in active service. The decision in *H.C. Jayaprakash* follows the view taken in *Andhra Bank*.

27. In the present case, however, the situation is different on a significant point, which flows from the NTPC’s Standing Orders applicable to the case. Rules 28(g) and 28(e) of the Standing Orders, do not vest the management with discretion regarding the amounts to be paid to the employee upon reinstatement, if no penalty/punishment is imposed upon him. Rule 28(e) contemplates three eventualities: (a) if the workman is found guilty of the misconduct alleged and the punishment is awarded, he is entitled only to the subsistence allowance for the period of suspension; (b) if a penalty other than dismissal or removal is imposed, the authority can decide how the period of suspension should be treated; and (c) if he is not found guilty of any misconduct, it mandates that he must be reinstated and paid his emoluments after deduction of the subsistence allowance already paid. It is further clarified that the emoluments would consist of “*pay and allowances which would he have received if he had not been suspended, the period of suspension being treated as duty*”.

28. Applying this provision in the context of Rule 28(g), once the petitioner was acquitted, he became entitled to reinstatement and payment of all his emoluments computed in these terms. The Office Order dated 12/14.05.2003, in fact, applies this very principle, when it provides that

¹⁷ Paragraph 15.



the suspension period would count as period spent on duty and that the petitioner would be paid “*full pay and allowances*”. This is not, therefore, a case where the Court is required to determine whether earned leave, or half pay leave, is a part of the petitioner’s wages or payable only for actual service. The applicable rules make no distinction between payment of his wages and other allowances which he would have earned if he had not been suspended. As far as earned leave and half pay leave are concerned, if the petitioner had not been suspended – which is the yardstick Rule 28(e) imposes – the petitioner would have earned such leave and been entitled to encash it. The Rules mandate payment of such allowances to an employee who is reinstated, without penalty or punishment. No grounds for a departure from the Rules have been made out. To the extent that the Office Order deprives him of the benefit of earned leave and half pay leave, I am of the view that it is *ultra vires* the power of NTPC under the Standing Orders themselves.

E. GENERATION INCENTIVE:

29. The petitioner also claims generation incentive under a circular dated 13.02.1999 entitled “*Revised Generation Incentive Scheme*”. The Scheme provides for payment of incentive on the basis of a formula applicable to workmen working in a particular plant.

30. The objectives of the Scheme are stated as follows:

“3.0 OBJECTIVES

With the above as background and apart from the general purpose of promoting motivation, morale and the team spirit among the employees, the followings are the principal objective of the Incentive Scheme:

- a) **To keep the Generating station in readiness** to deliver ex- bus maximum output expressed as % of rated installed capacity.



- b) **Maximization of generation of Electrical energy** through optimum utilization of installed plant capacity and other allied resources.
- c) **Reduction of cost** per unit of energy generated.
- d) **Reduction in absenteeism.**¹⁸

The following general conditions of the Scheme are also of relevance:

*“12.1 The employees will be entitled to incentive payments **on pro-rata basis for actual period of attendance.** The period of training in India for a duration of not more than 15 days and casual leave will be treated as attendance for the purpose of incentive payment.*

*12.2 **The amount of Incentive earnings will neither be termed as pay nor allowance, nor wages.** Accordingly, this amount would not count for any service benefits i.e. computation of House Rent Allowance, Compensatory Allowance, cash compensation, encashment of leave, pay fixation, Provident Fund, Pension or Gratuity etc.”¹⁹*

31. Having regard to the aforesaid objectives and conditions of generation incentive, I am of the view that the petitioner cannot claim entitlement to such an incentive. The abovementioned Scheme is evidently intended to optimise performance, and cannot accrue to a workman who was not in a position to perform. Having regard to these terms, I am of the view that the petitioner’s claim on this account cannot be sustained.

F. LIVERY AND WASHING ALLOWANCES:

32. NTPC’s Corporate Personnel Circular No.69/81 dated 14.05.1981, regarding the NTPC Liveries and Washing Allowance Rules, reads as follows:

*“With a view to ensuring that a uniform approach is followed by all the units and offices of the Company in the matter of providing uniforms/liveries to concerned employees **based on functional requirement,** the NTPC Liveries & Washing Allowance Rules have*

¹⁸ Emphasis supplied.

¹⁹ Emphasis supplied.



been framed. A copy of the same is annexed, herewith for necessary action.

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10.0 Washing Allowance:

10.1 Washing allowance at the rate of Rs.5/- per month to the employees belonging to the non-executive category, who are provided with livery by the Company, will be admissible.

10.1.1 The admissibility of washing allowance will be governed by the following conditions:

a) Such employees as are supplied with livery shall maintain them in neat and clean condition and should turn out in neat and clean outfit. Failure to do so will not only be treated as an act of indiscipline but would also lead to stoppage of the allowance to them at the discretion of HOD. The authorised officers(s) will carry periodical surprise checks to ensure the above compliance. The cases of breach of discipline will be reported to competent authority for appropriate action.

*b) Washing Allowance shall not be admissible to an employee in a particular month if he remains absent and/or on leave for a continuous period of more than 15 days in a month, including Sundays/holidays prefixing, suffixing and intervening.*²⁰

33. The provision of livery and washing allowance is clearly relatable to the employee's presence in the place of work. They are intended to ensure that the employee is dressed in a clean and neat outfit, which is well maintained. During the period of suspension, the petitioner was not called upon to attend the workplace and is, therefore, not entitled to this allowance.

G. CONVEYANCE ALLOWANCE:

34. NTPC's Corporate Personnel Circular No. 127/84 dated 15.02.1984, regarding the Scheme of Monthly Reimbursement of Conveyance Expenditure (for workmen and supervisors), reads as follows:

²⁰ Emphasis supplied.



“While introducing the Scheme of Reimbursement of Conveyance Expenditure for employees in workman and supervisory categories, it was mentioned in the pay revision circulars issued in September, 1983 that the reimbursement will be regulated in terms of provisions of the Scheme of Reimbursement of Conveyance Expenditure for executives pending formulation of the detailed scheme. Accordingly, the scheme has been in force since October/November, 1983.

2. The detailed Scheme of Reimbursement of Conveyance Expenditure in respect of workmen and supervisors has since been formulated and is enclosed herewith. This Scheme comes into force with immediate effect.

3. As regards reimbursement for the period between 1.1.198 upto October/ November, 1983, **each request would be reviewed on the merit of the case and reimbursement allowed if it is clearly established that (a) vehicle was owned and registered in the name of the employee concerned, (b) he had a valid driving licence at the material time and (c) the vehicle was used for official purposes, the effective date of reimbursement being as provided under the rules.**

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1.0 Scope

1.1 The Scheme of Reimbursement of Conveyance Expenditure is introduced for those employees in workmen and supervisory categories who are in the pay scales of Rs.620-920 & above and **are required to maintain their own Scooter/Motorcycle/Moped for discharge of their official duties.**

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3.0 Eligibility for Grant of Reimbursement:

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3.3.1 **Ownership and maintenance of conveyance by the employee is required on functional basis in the interest of the Company.**

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5.0 Terms and Conditions of Reimbursement

5.1 An employee who is entitled to reimbursement of conveyance expenditure **shall use his own conveyance for official journeys within the municipal limits of the Headquarters or within a radius of 30 kms from the Headquarters where he is posted, whichever is more, for which he will not be entitled to claim any local travelling expenditure.**

Provided however, that when the local distance covered in such, official journeys is in excess of 200 kms. In any single month, claim for local travelling expenditure will be admissible at rates prescribed under, the rules. For this purpose an employee will be required to furnish the details of official journeys performed during the month by him indicating date, place, mileage and purpose of visits.



For the purpose of this rule, journeys from and to residence shall not be treated as official unless undertaken on holidays.

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10.0 General

10.1 **Monthly reimbursement of conveyance expenditure under this scheme being on a purely functional basis and not expected to be a source of profit** and thus taxable under the Income Tax Act, 1961, it shall be expected of each employee, whose income is taxable, in receipt of the same to maintain full records of his official journeys in his own vehicle for production before the Income Tax Department if and when required to establish that what is paid under the scheme is by way of reimbursement of actual expenses on travel in the performance of official duties in connection with Company's business. Such records will also form the basis for payment of conveyance charges as envisaged in Clause 5.1 above."²¹

35. The provision of conveyance allowance under the above Scheme is, thus, intended to compensate employees for the use of their personal vehicles for local travel on official business. It expressly excludes journeys to and from the employee's residence. During the period of suspension, the petitioner did not undertake any official travel. Travel between his residence and the plant, and vice versa, for the purpose of marking his attendance at the plant gate, would in any event not qualify for conveyance allowance. The petitioner is, therefore, not entitled to this claim.

H. EX-GRATIA:

36. The petitioner's claim for ex-gratia arises from a circular dated 21.09.1992. Ex-gratia payment was made under this Circular *in lieu* of bonus to a class of eligible employees. The relevant provisions thereof read thus:

²¹ Emphasis supplied.



*“1.0 In line with the directives of Govt. of India communication vide DPE Office Memorandum No.2(16)/92-OPE(WC) dated 29th August 1992, the management is pleased to announce payment of **Ex-gratia in lieu of Bonus for the year 1991-92** to the employees of NTPC drawing a salary/wage not exceeding Rs.2500/- per month including Deputationists but excluding Trainees for the year 1991-92 @ 8.33% of the salary/wage subject to the condition that the total Ex-Gratia payment in lieu of Bonus, together with incentive under the existing incentive Scheme (Generation and Construction incentive Scheme) shall not exceed the ceiling of 35% of the salary/wages.*

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1.4 The amount of Ex-Gratia in lieu of Bonus will be proportionate to the period of service rendered during the financial year 1991-92, as per section 13 of the Payment of Bonus Act.

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*2.0 It may be mentioned that the provisions of Payment of Bonus Act do not apply to establishments in the public sector which do not fulfil the condition of being engaged in Industrial activity in competition with the private sector and earning from such competitive activity, an income of not less than 20% of the gross income of the establishment (Section 20 of the Act). **Accordingly, the provisions of Payment of Bonus Act, 1965 are not applicable to NTPC. However, such establishments are being allowed to pay Ex-Gratia in lieu of Bonus on year to year basis in terms of the decision communicated by DPE, Government of India.**”²²*

37. The Circular provides for payment of ex-gratia based on the salary/wages, inclusive of basic pay and dearness allowance. There does not appear to be any suggestion in the Circular that this amount would not have been due to the petitioner, if he was not under suspension. The impugned Office Order dated 12/14.05.2003 expressly treats him as being “on duty” at the relevant time. No basis for denial of this claim has been pointed out. He is, therefore, entitled to ex-gratia payment for the period of suspension.

²² Emphasis supplied.



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I. CONCLUSION:

38. For the aforesaid reasons, the writ petition is partly allowed, to the extent that the petitioner is entitled to encashment of earned leave and half pay leave, and ex-gratia payment which would have accrued to him during the period of suspension. The impugned Office Order dated 12/14.05.2003 is set aside, to the extent that the petitioner has been denied these three entitlements. The petitioner's other claims, including those on account of promotion, washing allowance, generation incentive and conveyance allowance, however, are rejected.

39. The writ petition is disposed of in these terms, but without any order as to costs.

PRATEEK JALAN, J

MAY 14, 2025

Bhupi/pv/shreeya/