ORDER

In compliance of Order No. 14037/28/2009-Delhi-II dated 14th November, 2012, passed by the Government of India, Ministry of Home Affairs, North Block, New Delhi, vide which the case of Smt. Manju Lata Gupta, the then PGT (Hindi), now retired, was remitted back to the appellate authority on a limited point, i.e., to consider charged officers’ appeal on her suspension and pass appropriate orders. The relevant/operative portion of the above said order is reproduced below:-

"Now, therefore, the President after considering the facts and circumstances of the case and evidence on record, has decided to reject the review petition dated 15-02-2010 of Smt. Manjulata Gupta, PGT (Retd.) as devoid of merit so far as disciplinary proceedings/penalty imposed is concerned and to remit the case to Appellate Authority with a direction to consider CO’s appeal on her suspension and pass appropriate order and orders accordingly”

2. Before an order is passed on the appeal of charged officer on her suspension, the brief facts of the case are reproduced, which inter-alia, include as under:-

(i) The order of suspension vide No.F.8(05)/Vig./DNWB/07/245-253 dated 07.02.2007 was issued against Smt. Manju Lata Gupta, PGT(Hindi).
(ii) The order of disciplinary authority vide order no. DE.7/[NW-B]/[36]/PGT/NGV/2007/3090 dated 14-08-2008, under rule 12 of CCS (CCA) Rules, 1965, was issued imposing the penalty of reduction to a lower stage in the time scale of pay for a period of one year upon Smt. Manju Lata Gupta, the then PGT (Hindi) with further directions that she will not earn increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing the future increments of her pay and the period of suspension shall be treated as "Not Spent on Duty".

i) Feeling aggrieved, the said Smt. Manju Lata Gupta, the then PGT (Hindi), filed an appeal before the then appellate authority and the then appellate authority vide order no. DE.7/[NW-B]/[36]/PGT/NGV/2007/335-A dated 22-05-2009 upheld the order of the disciplinary authority passed on 14-08-2008.

ii) Smt. Manju Lata Gupta, the then PGT (Hindi), filed a review petition dated 15-02-2010 before the President of India, through Hon'ble Minister for Home Affairs, Government of India, requesting to set aside the orders dated 14-08-2008, passed by the disciplinary authority imposing a major penalty on her and suspension order no. 16 dated 07-02-2007, issued under endorsement no. F.8(05)/Vig/DNW/B/07/245 under rule 10(1) of the CCS (CC&A) Rules, 1965, placing her under suspension retrospectively w.e.f. 12-01-2007, respectively.

iii) The Ministry of Home Affairs, Government of India, North Block, New Delhi, vide its order no. 14037/28/2009-Delhi-II dated 14-11-2012, conveyed the decision taken by the President to reject the review petition dated 15-02-2010 of Smt. Manju Lata Gupta, PGT (Retd.) as devoid of merit so far as disciplinary proceeding/penalty imposed is concerned and remitted the case to Appellate Authority with a direction to consider CO's appeal on her suspension and pass appropriate order and ordered accordingly.
3. Hence, this order.

4. Before the appeal of the charged officer is decided on merits with regard to her suspension, the following provisions of Vigilance Manual need to be kept in mind:

Para 6.11.6 of Chapter VI (Regarding duration of order of suspension)

"No order of suspension should be made with retrospective effect except in the case of deemed suspension. A retrospective order will be both meaningless and improper".

Para 6.4.1 of Chapter VI (Regarding Deemed suspension)

"Under Rule 10(2), (3) and (4) of the Central Civil Services (CC&A) Rules, 1965, a Government servant is deemed to have been placed under suspension in the following circumstances:

(i) If a Government servant is detained in custody, whether on a criminal charge or otherwise, for a period exceeding 48 hours, he will be deemed to have been placed under suspension by an order of the appointing authority with effect from the date of detention. A Government servant who is detained in custody under any law providing for preventive detention or as a result of proceedings for his arrest for debt will fall in this category.

(ii) If a Government servant is convicted of an offence and if he is sentenced to a term of imprisonment exceeding 48 hours and is not forthwith dismissed, removed or compulsorily retired consequent upon such conviction, he shall be deemed to have been placed under suspension by an order of the appointing authority with effect from the date of his conviction. For this
purpose the period of 48 hours will be computed from the commencement of imprisonment after the conviction and intermittent periods of imprisonment, if any, will be taken into account.

(iii) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review and the case is remitted by the appellate or reviewing authority for further enquiry or action or with any other direction, the order of suspension shall be deemed to have continued in force on and from the date of original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(iv) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continued to remain under suspension until further orders. The further enquiry referred to above should not be ordered except in a case where the penalty of dismissal, removal or compulsory retirement, has been set aside by a court of law on technical grounds without going into the merits of the case or when fresh material has come to light which was not before the court. A further enquiry into the charges which have
not been examined by the court can, however, be ordered depending on the facts and circumstances of each case”.

Para 6.13.6 of Chapter VI (Regarding speedy investigation into cases in which an officer is under suspension)

“In cases in which the order of suspension is revoked and the Government servant is allowed to resume duty before the conclusion of criminal or departmental proceedings, an order under the relevant rule[s] of the Fundamental Rules, regarding the pay and allowances to be paid to him for the period of suspension from duty and whether or not the said order shall be treated as a period spent on duty can be made only after the conclusion of the proceedings against him.”

5. I have gone through the appeal of the appellant, Smt. Manju Lata Gupta, PGT (Retd.), order dated 14-11-2012 of the reviewing authority and the provisions laid down in the Vigilance Manual. In the instant case, the charged officer was placed under suspension w.e.f. 12-01-2007 and her suspension was subsequently revoked on 24-10-2007. From the records, it is evident that the disciplinary authority while deciding the case, passed order dated 14-08-2008, holding the period of suspension of the charged officer to be treated as “Not spent on duty”. However, the appellate authority did not pass any order or make any mention regarding her suspension period in her order dated 22-05-2009 while deciding the appeal of the charged officer as required under Para 6.13.6 of Chapter VI of Vigilance Manual.

6. From the perusal of the above quoted provisions, as laid down in Vigilance Manual, it is clear that suspension with retrospective effect should only be made in the case of deemed suspension, as quoted above. Since, the case of the charged officer, Smt. Manju Lata Gupta, PGT (Retd.) does not fall in any of the provisions of deemed suspension, as explained above,
treating the suspension period of the charged officer with retrospective
effect is not fair. I therefore allow the appeal of the appellant, Smt. Manju
Lata Gupta, PGT (Retd.) to the extent that her suspension period may be
treated as "**Period Spent on Duty**".

I order accordingly.

(Signed)

(ANINDO MAJUMDAR)
PR. SECRETARY (EDUCATION)/
APPELLATE AUTHORITY

Smt. Manju Lata Gupta, PGT (Retd.),
109, Vasundhra Apartment,
Sector-9, Rohini,
Delhi-110 085.
Through DDE (South West-A)

DE.7/(NW-B)/(36)/PGT/NGV/2007/6865

Dated: 16/12/13

Copy for information and necessary action to:-

1. The Director, Directorate of Education, Old Secretariat, Delhi.
2. The DDE (South West-A), Directorate of Education, Delhi.
3. The Asstt. Director of Education (E-II), Directorate of Education, Old
   Sectt., Delhi.
4. OS (IT), Directorate of Education, Old Sectt., Delhi.
5. Guard File.

(Handwritten)

Assistant Director of Education (Vig.)