

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2017

CORAM:

**THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN**

W.P.No.33062 of 2016

D.Karunakaran

... Petitioner

Vs

1. Director General Border Roads,
Sema Sadak Bhavan,
Ring Road, Naraina,
Delhi Cantonment,
New Delhi-110 010.
2. The Chief Engineer,
Headquarters,
Project Vartak,
Pin Code 931 119,
C/o. 99 APO
3. The Commander,
HQ 44 Border Roads Task Force,
Pin Code 930 044,
C/O 99 APO
4. The Senior Accounts Officer,
PAO (GREF),
Dighi Camp-PO,
Pune 410 015.
5. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 104.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus, calling for the entire records which culminated in passing the order dated 13.07.2016 passed in O.A.No.1198 of 2014 on the file of the 5th respondent/Tribunal, to quash the same and consequently, direct the 4th respondent to give effect to the order dated 21.02.2009 of the 2nd respondent/disciplinary authority, as modified by the 1st respondent/appellate authority in the order dated 17.12.2010 and to restore the pay of the petitioner so as to enable him to receive enhanced pensionary benefits, including arrears.

For Petitioner :: Mr.P.Ganesan
 For Respondents :: Mr.B.Ramarathanam
 1 to 4

ORDER

(Order of the Court was made by **RMT.TEEKA RAMAN, J.**)

Challenging the correctness of the order passed in O.A.No.1198 of 2014 on the file of the 5th respondent/Tribunal dated 13.07.2016, the unsuccessful applicant therein has preferred the present Writ Petition.

2. The Original Application was filed seeking the following reliefs:

"To call for the records pertaining to the orders bearing No.PAO/GREF/LG-8/Grievance/158702 dated 20.12.2013 and consequential order dated 13.01.2014 in Code No.S/044/0519 of the 4th respondent, set aside the same and consequently,

direct the 4th respondent to give effect to the order dated 21.02.2009 of the 2nd respondent/disciplinary authority, as modified by the 1st respondent/appellate authority in the order dated 17.12.2010 and to restore the pay of the applicant so as to enable the applicant to receive enhanced pensionary benefits, including arrears and pass further suitable orders that may be deemed fit and proper in the circumstances of the case and thus render justice."

3. The brief facts of the case are as follows:

The applicant entered into the services of the respondent department as Lower Division Clerk on 11.10.1982 and subsequently, he was promoted to the post of Upper Division Clerk on 04.08.1992 and thereafter, as Assistant/Subedhar on 05.07.2006. While so, he was served with a Charge Memo dated 02.02.2007 alleging that acquittance roll was prepared by the applicant in the absence of any such application for advance given by one Shri Rishipal and therefore, he failed to maintain absolute integrity and violated the provision of Rule 3(I) of CCS (Conduct) Rules, 1964. The applicant submitted his explanation denying the charges levelled against him. Thereafter, an enquiry was conducted by appointing an Enquiry Officer, who submitted his Enquiry Report stating that the charges levelled against the applicant are proved. The applicant was also served with a second Show Cause

Notice along with the report of the Enquiry Officer on 18.09.2008 for which the applicant submitted his explanation on 11.10.2008 and prayed for dropping the charges pending against him. However, the Disciplinary Authority, the 2nd respondent passed an order dated 21.02.2009 imposing the punishment of reduction of pay by two stages, as against which the applicant preferred an appeal to the Appellate Authority, the 1st respondent therein, who by an order dated 17.12.2010, modified the punishment. While so, based on the order dated 17.12.2010 of the Appellate Authority, the 4th respondent passed an order dated 20.12.2013 interpreting as though the order of the appellate authority dated 17.12.2010 was to postpone the reduction of pay in future increments at two stages and it has cumulative effect. Thereafter, the 4th respondent passed a consequential order dated 13.01.2014 giving effect to the order dated 20.12.2013. The applicant made representation dated 15.07.2014 to the 2nd respondent. Since there was no response for the same, he filed the Original Application.

4. Before the Tribunal, the respondents have not filed any reply statement and after hearing the learned Counsel on either side, on merits, the Tribunal has dismissed the said Original Application as it could be seen from the impugned order. Challenging the same, the petitioner is before this Court with this Writ Petition.

5. Learned Counsel appearing for the petitioner submitted that the Disciplinary Authority has imposed a punishment of reduction of pay by two stages from Rs.14920/- (Pay Rs.10720 + GP 4200) to Rs.14050/- (Pay Rs.9850 + GP 4200) in the time scale of pay band of Rs.9300-34800 with Grade Pay of Rs.4200/- for a period of one year w.e.f. 21.02.2009 with a direction that such punishment will not entitle the petitioner to earn increments of pay during the period of reduction and that on the expiry of the period, the reduction will have the effect of postponing his future increments of pay. However, on appeal, the same has been modified by the Appellate Authority to the effect that the pay of the petitioner be reduced by two stages from Rs.15310/- (Pay Rs.11110 + GP 4200) to Rs.14420/- (Pay Rs.10220 + GP 4200) in the time scale of pay band of Rs.9300-34800 with Grade Pay of Rs.4200 for a period of one year w.e.f. 21.02.2009 and the petitioner will not earn increments of pay during the period of reduction and that on the expiry of the period, the reduction will have the effect of postponing his future increments of pay. Therefore, according to the learned Counsel for the petitioner, the Appellate Authority has misinterpreted the order of the Disciplinary Authority by imposing the punishment on the petitioner with cumulative effect. Hence, prayed for allowing the Writ Petition.

6. Per contra, laying emphasis on the last two lines of the order modified by the Appellate Authority in support of their stand that

the petitioner will not earn increments of pay during the period of reduction and that on the expiry of the period, the reduction will have the effect of postponing his future increments of pay, the learned Counsel appearing for the respondents 1 to 4 submitted that the specific phrase mentioned by the Disciplinary Authority, namely, "Cumulative Effect" remained unaltered by the Appellate Authority. Hence, prays for dismissal of the present Writ Petition.

7. After hearing the learned Counsel on either side, we are unable to subscribe to the views expressed by the learned Counsel appearing for the respondents. Though, no reply statement was filed before the Central Administrative Tribunal, a Counter Affidavit has been filed by the respondents reiterating their stand. Further, though, it is the contention of the learned Counsel appearing for the department that while modifying the order of the Disciplinary Authority, the words "Cumulative Effect" remained unaltered by the Appellate Authority that the petitioner will not earn increments of pay during the period of reduction and the reduction will have the effect of postponing his future increments of pay, it would only mean the period of one year for which the petitioner suffered reduction of pay by two stages and it cannot be lost thereafter. Therefore, the impugned order of the 4th respondent is liable to be set aside. Accordingly, the impugned order of the 4th respondent is set aside with a direction to the 4th respondent to reassess

the retirement benefits payable to the petitioner.

8. With the above observation and direction, the Writ Petition stands disposed of. No costs.

(H.G.R.J.)

(T.K.R.J.)

14.11.2017

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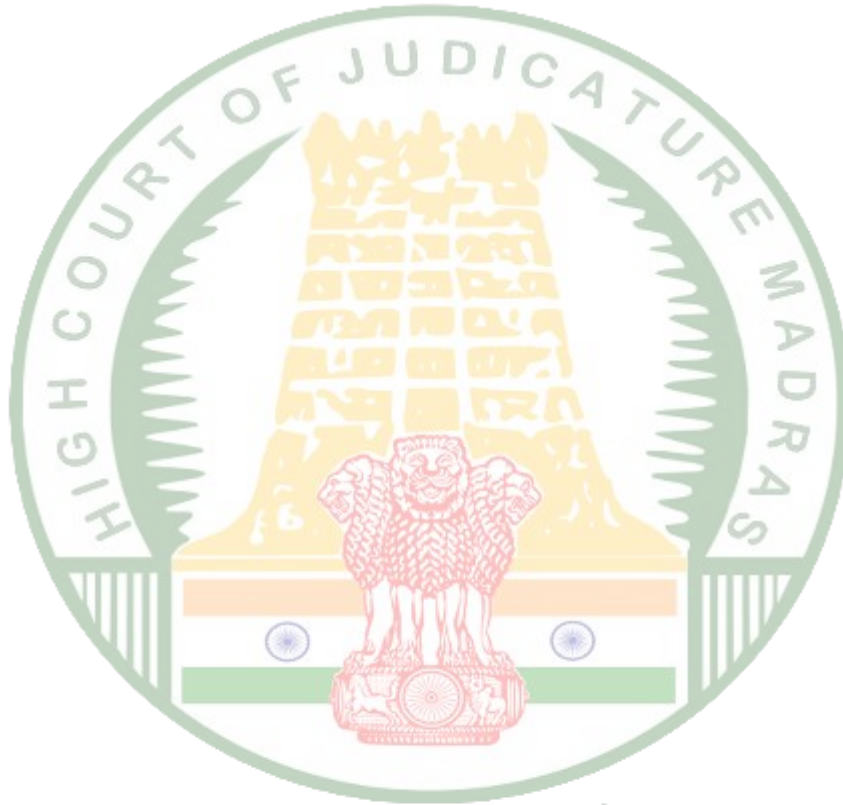
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