

time to time, the amount is stated to have been finally deposited in the Registry.

3] Since, the interim relief had already been declined on 23rd February 2015, the amount so deposited by the petitioner, could have been withdrawn by the respondent. In any case, the petitioner was duty bound to comply with the directions in the judgment and order dated 29th July 2013 made by the Central Administrative Tribunal (CAT), Mumbai. However, Union of India (UOI) refused to comply with the directions in the impugned judgment and order, thereby, forcing the respondent, a Mazdoor (labourer) to institute a contempt petition before the CAT. At this stage, the UOI has taken out Civil Application No. 2424 of 2015 to seek a stay on the contempt proceedings before the CAT.

4] To say the least, such application was quite misconceived. Such an application was nothing but a ruse to overreach the order made on 23rd February 2015 by which, the interim relief had already been refused in the matter. Nevertheless, at the instance of learned counsel for the petitioner, we agreed to take up the main petition itself

for final disposal, since, there was already an order for expedition. Learned counsel for the respondent also submits that the matter may be taken up for final disposal.

5] As noted earlier, the main challenge in this petition is to the impugned judgment and order dated 29th July 2013 made by the CAT in O.A.No.61 of 2011 instituted by the respondent seeking for a direction that the respondent be treated as voluntarily retired from the service with effect from 31st May 1998 and for payment of retiral benefits on the said basis.

6] The CAT, in the operative portion of the impugned judgment and order (paragraphs 11 to 13) has held/directed the following:

“11. Having regard to the entire facts and circumstances of the case, particularly, the manner in which the request made by the applicant for voluntary retirement was dealt with, we have no hesitation to hold that the contentions raised by the respondents are wholly illegal and untenable. Therefore, all those contentions are repelled and the respondents are directed to reckon the period of total service of the applicant ignoring the so called extraordinary leave. Consequently, the respondents shall treat the applicant as though he had retired from service voluntarily on May 31, 1998. This, in our view

would meet the ends of justice in the peculiar facts and circumstances of the case.

12. The retiral benefits payable to the applicant shall be worked out on the above basis in accordance with the relevant rules and the entire dues shall be released to him within three months from the date of receipt of a copy of this order. Applicant shall be entitled to get interest @ 12% on the entire arrears from January 1, 2008 viz. three years prior to the institution of this Original Application till the date of payment. Respondents shall also pay Rs.5000/- as cost to the applicant.

13. Original Application is allowed in the above terms. MP Nos.914/20122 & 67/201 also stand closed."

7] There is no dispute whatsoever that the respondent was appointed as Mazdoor at the Reserved Petroleum Depot at Bhusawal on 12th December 1973. Some time in the year 1994, the respondent, was transferred to Deolali. It is the case of the respondent that on 17th October 1997, the respondent, after having completed almost 24 years of service as the Mazdoor, applied for voluntary retirement. At a very belated stage, the respondent was informed that his requests for voluntary retirement cannot be accepted since, after deduction of leave availed by the respondent, from out of his total service of 24 years 5 months 19 days , qualifying service, is computed as only 17 years and 3 months, which falls short of the minimum qualifying service

of 20 years necessary to proceed on voluntary retirement. In addition, a belated defence was also taken that the respondent had in fact never submitted the application for voluntary retirement dated 17th October 1997 to the appropriate authority. The CAT, for reasons, which are quite cogent, disbelieved the belated defence of the petitioner and granted the respondent relief in the aforesaid term.

8] Mr. G.R. Sharma, learned counsel for the petitioner, submits that the respondent had never applied for voluntary retirement on 17th October 1997. He submits that no such application was found in the records/service file of the respondent. He submits that the members of the CAT, on inspection of the original file discovered application dated 17th October 1997 in the file. However, he points out that this was only a xerox copy which was furnished by the respondent at a much later date. Mr. Sharma submits that since, the respondent had never applied for voluntary retirement, there was no obligation on the part of the petitioner to process such an application or to consider the same. He therefore, submits that the impugned judgment and order made by the CAT proceeds on factually

erroneous premise and this is a very good ground to interfere with the impugned judgment and order.

9] Mr. Sharma, in the alternate, submits that even otherwise, if leave availed by the respondent from the date of his initial appointment in 1973 is deducted from his total service of 24 years 5 months 19 days, then, the qualifying service comes to only 17 years 3 months, which is much short of the prescribed qualifying service of 20 years necessary to proceed on voluntary retirement. Mr. Sharma submits that for this reason also the petitioner was justified in denying the respondent any relief in the matter.

10] Mr. G.R. Sharma submits that the communications were addressed to the respondent to report for the duty and even police officials were involved to trace out the respondent. Mr. G.R. Sharma submits that even the charge-sheet was issued to the respondent and penalty of dismissal was imposed upon the respondent. He submits that the CAT has not considered all these aspects and therefore, the impugned judgment and order is liable to be set aside.

11] Mr. Nagrani, learned counsel for the respondent, submits that the CAT has returned findings of fact on the basis of the material on record. The CAT, itself examined the files and service record and as held that the respondent's application seeking voluntary retirement was very much a part of the record. The application also bears endorsement of receipt of which has never been explained by the petitioner. Mr. Nagrani points out that the application for voluntary retirement was rejected on the ground of alleged lack of qualifying service and not on the ground that such application was never made. He points out to the various inconsistencies in the responses filed by the petitioner before the CAT. In particular, he points out that the petitioner had themselves stated on affidavit that at no stage, the respondent was ever dismissed from the service and quite contrary to such pleadings, a bald contention is now made before this court that the respondent had in fact been dismissed from the service. Mr. Nagranai points out that there is absolutely no material on record to hold that the respondent had availed unauthorised leave of almost 7 years in his service tenure between 1973 and 1997. Mr. Nagrani submits that the

petitioner has only submitted a list in this court of various occasions on which the respondent is alleged to have proceeded on leave in the course of 24 years of service. He submits that there is absolutely no material on record to establish that all such leave was indeed availed or that the same was unauthorised so as to treat the same as extraordinary leave without pay and exclude the same for the purposes of determination of qualifying service. He submits that the respondent, who is petty Mazdoor, has been treated with grossest unfairness by the petitioner and therefore, this court, may not interfere with the limited relief granted to the respondent, who is, by now, an aged person. For all these reasons, Mr. Nagrani submits that this petition may be dismissed with costs.

12] The rival contentions now fall for our determination.

13] The main contention raised by the petitioner is that the respondent had never applied for voluntary retirement vide application dated 17th October 1997. Mr. G.R. Sharma has very strenuously submitted that such an application was in fact not found in the records or in the service file

pertaining to the services of the respondent. He submits that the finding of fact recorded by the CAT to the contrary is vitiated by perversity and therefore, the same deserves to be interfered with.

14] On the issue of respondent having allegedly never submitted an application for voluntary retirement dated 17th October 1997, Mr. Nagrani, learned counsel for the respondent, invited the attention of this court to paragraph 22 of the written statement filed by Capt. R.S. Kokane on behalf of the petitioner-UOI before the CAT on 6th April 2011, which reads as follows:

"22. With reference to para 4.5 the OA, The application dated 17th October, 1997 for voluntary retirement as mentioned under reference in his application dated November, 2001 was not found in the office records. The reply to this application was sent to Applicant vide our letter No.9628232/DBD/ST-12 (Civ) dated 8th January, 2001 (copy attached -R-2), wherein, firstly it was requested to send copy of the application dated 17th October, 1997 and secondly was informed about the CCS Rule 48 and 48(A) regarding voluntary retirement and that his total qualifying service is only 17 years, 03 months excluding EOL/absentee period and hence the application has not been accepted. From 17th October, 1997 to 31st May, 1998 the Applicant was absent for total of 48 days at different intervals without proper cause and during his service in this unit the Applicant was well informed that he was not eligible for voluntary retirement and cannot proceed on retirement without proper permission/acceptance (in written) and

knowledge of the appointing authorities. Thereafter applicant absented himself continuously w.e.f. 31st May, 1998 without any written acceptance of the appointing authorities and nobody was informed for the same which is illegal and not as per CCS Rules.”

15] Mr. Nagrani submits and perhaps rightly that it was the case of the petitioner-Union of India that the respondent was informed between the period 17th October 1997 to 31st May 1998 that the respondent was not eligible for voluntary retirement, since, he had qualifying service of only 17 years and 3 months to his credit. If the UOI, in its written statement, comes up with the case that the respondent was informed between the period 17th October 1997 and 31st May 1998 that the respondent was not eligible to proceed on voluntary retirement, in the same breath, it is not understood as to how a submission can be made before the CAT and reiterated before this court that the petitioner- UOI had never received the respondent's request to proceed on voluntary retirement on 17th October 1997 or at all. This is certainly not the conduct expected on behalf of the petitioner and we cannot fault the CAT for making observations regards such conduct.

16] The CAT, in the impugned judgment and order, has observed that upon careful perusal of the records, it was seen that the application for voluntary retirement was very much available in the file. Despite the same, the petitioner (respondent before the CAT) had the audacity to say that such application was never received. The CAT had stated it would refrain from making any observations on the issue except to only mention that the authority concerned should have shown at least some degree of responsibility whilst dealing with a issue of this nature.

17] Mr. G.R. Sharma submitted an oral explanation before this court that the application which the CAT found in the service file was only a copy, which was later on made available by the respondent. Again, except for such statement, there is no contemporaneous record in support of the same. Surely, the least that was expected was that the office makes a note or an endorsement on such application itself that it was received at a later point of time. Surely, the office, could have insisted upon the covering letter from the respondent, supplying such application at a belated point of time.

18] Taking into consideration the manner in which the contentions have been raised and the manner in which such contentions have to be found incorrect or not supported by contemporaneous record, belated explanation now offered by Mr. G.R. Sharma cannot be regarded as sufficient to disturb the findings recorded by the members of the CAT, who took trouble of perusing the service records and service files concerning the respondent.

19] The scope of interference with findings of fact recorded by the tribunal is quite limited. Therefore, unless perversity is demonstrated, there is really no good reason to interfere with the findings of fact in the present case. The petitioner-UOI, had very boldly stated before the CAT that the respondent's application seeking voluntary retirement was not available in the service file and therefore, a presumption should be drawn that such application was never made by the respondent. The petitioner, without any caveat or prior explanation, handed over the service files pertaining to the service of the respondent to the CAT for perusal by the members. Upon

perusal, the members of the CAT actually found the respondent's application dated 17th October 1997 in the file.

20] Besides, even the respondent had produced for the perusal of the members of the CAT, a copy of such application bearing endorsement of receipt. This was one of the reasons which prompted the CAT to reject the petitioner's contention that no such application was ever made by the respondent seeking for voluntary retirement.

21] Secondly, from the correspondence produced on record by the petitioner as also their defence to the original application filed by the respondent, it is seen that the application for the voluntary retirement was not processed/ rejected on the ground that the respondent had availed leave for 2634 days and if this is excluded from the respondent's total service of 24 years 5 months and 19 days, the total qualifying service of the respondent comes to only 17 years and 3 months, which is less than the prescribed minimum qualifying service of 20 years as provided under Rule 48(A) of the Central Civil Services

(Pension) Rules. This was, in fact, communicated to the respondent on 24th January 2002 and the respondent was directed to join duties and explain his absence. The rejection was not on the ground that such application was never submitted by the respondent but on the ground that the respondent, allegedly, did not fulfill the requirement of 20 year qualifying service.

22] Before the CAT, it appears that absolutely no material was placed by the petitioner in support of its extraordinary stand that the respondent, a Mazdoor, in his admitted tenure of total service of 24 years 5 months and 19 days had availed extraordinary leave for 2634 days. In this case, however, the petitioner, has produced on record a compilation of documents, which includes, a handwritten statement at pages 4 to 9. This handwritten statement lists the days on which the respondent – Mazdoor was purportedly absent from duties right from the date of his initial appointment in the year 1972. The typical entries referred absence of one or two days or even more. All this has been ultimately added to come to the figure of 2681 days or 7 years 4 months and 6 days.

23] This statement bears no signature of any officer or authority. In fact, this statement bears no signature at all. There is nothing indicated as to the basis on which such a statement was prepared. From the statement, it does appear that every form of leave, assuming that the same was indeed availed by the respondent – Mazdoor is treated as extraordinary leave or unauthorised leave. This is completely unacceptable. On basis of such material, which itself is of no legal value whatsoever, we are not persuaded to interfere with the view taken by the CAT.

24] We may note that in the compilation handed over to us, the petitioner have enclosed certain show cause notices issued to the respondent, *inter alia*, in the matter of leave. Most of these show cause notices pertain to the year 1998 or thereafter. However, no such notices have been produced in respect of leave for any prior periods. In any case, there is absolutely no material on record in support of the case of the petitioner that the respondent, from out of his admitted total service of 24 years 5 months and 19 days was on extraordinary and unauthorised leave of almost 7 years and therefore, his qualifying service could

have been taken at only 17 years 3 months. The CAT, in such circumstances, has quite rightly disbelieved this case put-up by the petitioner.

25] Mr. Nagrani, learned counsel for the respondent, is also right in his submission that the contention of Mr. G.R. Sharma that the respondent had in fact been dismissed from the service, is patently incorrect and contrary to the case of the petitioner expressly pleaded before the CAT. Upon our query to Mr. G.R. Sharma as to whether the respondent's alleged dismissal was pleaded in the written statement/affidavit in reply before the CAT or otherwise brought to the notice of the CAT, Mr. Sharma responded by stating that since this fact was irrelevant, it may not have been stated before the CAT.

26] At this point of time, Mr. Nagrani, learned counsel for the respondent, *inter alia*, pointed out that paragraph 37 of the written statement filed by Capt. R.S. Kokane on behalf of the petitioner before the CAT on 6th April 2011, which reads as follows:

"37. With reference to para para-4.23 the OA, the applicant then made his representation vide an

*application dated 20th September, 2010 and 27th September, 2010 under RTI Act 2005. **The appropriate reply was sent to the applicant vide our letter No.9628232/DB/ST-12(Civ) dated 3rd November, 2010 (Copy attached-21) stating that the applicant has not been dismissed from service so far. The court of inquiry has given their opinion for applicant's dismissal and has given applicant an opportunity to produce his representation at the earliest. He was also given all the necessary information as required by him."***
(emphasis supplied)

27] Upon attention of Mr. G.R. Sharma being drawn to the averments in paragraph 37 of the written statement filed on behalf of the petitioner-UOI itself to the effect that the respondent had not been dismissed from service, Mr. G.R. Sharma tendered apology and withdrew the contention earlier made. From this, it is apparent that at no stage were the services of the respondent ever terminated.

28] It must be remembered that the respondent was only a Mazdoor and was pitted against the might of UOI. The respondent, who, as per the records of the petitioner has put in total service of 24 years 5 months and 19 days was only seeking to proceed on voluntary retirement. The CAT in the impugned judgment and order has taken note of several contradictions and inconsistencies in the case set

up by the petitioner. The CAT has noted that the respondent has been treated unfairly in the matter.

29] At this point of time, there is no dispute that the respondent, who was the Mazdoor, is well past the age of superannuation. The limited relief applied for by the respondent was that he be granted benefits of the voluntary retirement on the basis of the application made by him and taking into consideration the fact that he had put in more than 24 years of service as on the date such application was made. The CAT, by the impugned judgment and order, has only granted the respondent such relief. As noted earlier, despite refusal of interim relief, such benefit has not been made available to the respondent- Mazdoor till this date.

30] In ***Roshan Deen vs. Preeti Lal - (2002) 1 SCC 100***, the Hon'ble Supreme Court has held that the purpose of powers conferred on High Court under Articles 226 and 227 of the Constitution of India is to advance justice and not to thwart it. Even where the justice is the by-product of an erroneous interpretation of law, High Court ought not to

wipe out such justice in the name of correcting the error of law.

31] In ***Municipal Board, Pratabgarh & Anr. vs. Mahendra Singh Chawla & Ors.- (1982) 3 SCC 331***, the Hon'ble Supreme Court held that legal formulations cannot be enforced *de hors* from the realities of the fact situation of the case and the effect of the laws on the human beings for whom the laws are meant. In the context of exercise of discretionary jurisdiction under Article 136, the Hon'ble Supreme Court has held that the law is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the Supreme Court would be failing in its duty if it does not notice equitable considerations and mould the final order. In exercise of the extra ordinary jurisdiction under Article 136 the discretion should be so exercised by the court that justice may be rendered to both the parties. Similar considerations apply in the matter of exercise of extra ordinary and discretionary jurisdiction under Articles 226 and 227 of the Constitution of India.

32] Upon cumulative consideration of the aforesaid facts and circumstances, we are satisfied that this is not a fit case to interfere with the impugned judgment and order made by the CAT. The impugned order promotes substantial justice and even assuming that the proper order in the circumstances would have been a direction to the petitioner to consider and dispose of, in accordance with law the respondent's application for voluntary retirement, taking into consideration the time lag and unfair manner in which the respondent, who was the only Mazdoor has been treated, we are of the opinion that any such direction at this stage will only prolong the respondent's agony.

33] For all the aforesaid reasons, this petition is dismissed. There shall, however, be no order as to costs.

34] Civil Application No.2424 of 2015 does not survive and the same is also dismissed.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

35] At this stage, learned counsel for the petitioner seeks for a stay on the implementation of the directions in the impugned judgment and order dated 29th July 2013 made by the CAT. As noticed earlier, such prayer for interim relief had been rejected by this court on 8th October 2014. Accordingly, it is not possible to accede to the request for interim relief at this stage. The request is accordingly rejected.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)