

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.01.2018

C O R A M:

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Writ Petition No.124 of 2014 and
M.P.No.1 of 2014

1. Union of India
Rep., by its Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. The Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance,
6th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi 110 003.
3. The Deputy Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance,
3rd Floor, 3rd Block, Shastri Bhawan,
Chennai 600 006. ... Petitioners

Vs

1. S.Mohana Rajan
2. The Registrar
Central Administrative Tribunal
Madras Bench, High Court Buildings,
Chennai 600 104. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, to call for the records, relating to the order of the Central Administrative Tribunal, Madras Bench, passed in O.A.No.502 of 2011, dated 21.08.2013 and quash the same.

For petitioner : Mr.G.Rajagopalan,
Addl. Solicitor General.

For 1st respondent : Mr.Akbar Rao

O R D E R

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this petition is to the order of the Central Administrative Tribunal, Madras, passed in O.A.No.502 of 2011, dated 21.08.2013, by which, the Tribunal has directed the petitioners to fix the pay of the 1st respondent, by treating his service as continuous, on par with his juniors.

2. Short facts leading to the filing of the writ petition are that the 1st respondent entered into service of the petitioners as Assistant Enforcement Officer, on 21.03.1986. Though earned leave was granted to him from 17.07.1989 to 03.08.1989, the 1st respondent absented himself from duty from 04.08.1989 to 14.12.1989 and further remained absent from his duties till 19.07.1990. The second petitioner, by order dated 31.07.1990, removed the 1st respondent from service. Aggrieved against the said order, the 1st respondent preferred an appeal on 15.04.1991. The Appellate Authority, by order dated 20.05.2010, set aside the order of removal from service, dated 31.07.1990, holding that such an order had been passed without giving any opportunity to the 1st respondent to put-forth his defence. The Appellate Authority also directed reinstatement of the 1st respondent with continuity of service. Operative portion of the order of the Appellate Authority reads as under:

"(i) The order No.C-3/10/89, dated 30/31.07.1990 removing the Appellant from service is quashed and the appellant shall be reinstated with immediate effect.

(ii) The period of the absence from the duty from 04.08.1989 which includes the period for which the appellant had applied for half-pay leave till 31.07.1990 i.e. the date on which he was 'Removed from service, be treated as extra ordinary leave. However. he shall not be entitled for any monetary benefits in the form of back wages during the said period.

(iii) For the period from 31.07.1990 i.e., the date on which he was removed from the service till the date of his joining duty in compliance of this order. he wi'll not be entitled for any back

wages on the principle of "no work, no pay".

(iv) The Appellant shall be entitled to only the service benefits of continuity of service other than arrears or back wages and other benefits like accumulation of leave of any kind during the period from 04.08.1989 till the date of his joining the Directorate in compliance of this order for the reasons stated hereinabove.

(v) The Appellant shall join duty in the Directorate within 15 (fifteen) days from the date of receipt of this order. Separate posting order shall be issued for posting the Appellant."

The 1st respondent joined duty on 31.05.2010 at New Delhi and thereafter transferred to Chennai and joined duty on 07.06.2010. On 28.06.2010, the 1st respondent made a representation to the department, requesting for fixation of pay in the revised scale consequent to reinstatement and grant of financial upgradations under ACP & MACP. But his salary was fixed in the scale of Rs.12,090/-, in P.B.2 with Grade Pay of Rs.4,600/-, which according to the 1st respondent, is not in accordance with law. Subsequently, the 1st respondent submitted a representation to fix his pay, in the revised scale and to grant financial upgradations, under ACP and MACP and in spite of repeated reminders, his continuity of service was not taken into account and, therefore, he filed O.A.No.502 of 2011 before the Central Administrative Tribunal, Madras Bench, Chennai, for setting aside the order, dated 28.9.2010 and to direct the petitioners to fix the pay, by considering continuity of service on par with juniors to the 1st respondent.

3. Before the Tribunal, the petitioners filed a reply, stating that an inquiry was conducted, under Rule 14 of the CCS (CCA) Rules 1965, for the undue absence from service and complete lack of devotion to duty and thereby, contravened Rule 3 of the CCS (Conduct) Rules, 1964 and therefore an order of termination was passed by the department. On appeal, the 1st respondent was reinstated into service with continuity of service. According to the petitioners, when the order, dated 20.05.2010, of the appellate authority clearly states that for the period from 31.07.1990, i.e. the date on which, the 1st respondent was removed from service till the date of his joining duty, in compliance of this order, he will not be entitled for any arrears or back wages on the principle of "no work, no pay" and therefore, the representation of the 1st respondent was rightly rejected for fixation of the pay for the revised scale and for grant of financial upgradations, under ACP and MACP.

4. Upon perusal of the entire materials available on record, the Central Administrative Tribunal framed a question, as to whether the third petitioner is correct in fixing the pay of the 1st respondent, while implementing the order, dated 20.05.2010 of the Appellate Authority, wherein the order of removal was set aside and a direction was issued to reinstate the 1st respondent, with continuity of service. After considering the facts and circumstances of the case, the Tribunal held as follows:

"The very fact that the Appellate Authority has issued a specific direction that the applicant is entitled for service benefits of continuity of service other than the arrears or backwages and other benefits like accumulation of leave of any kind would mean that while fixing the pay of the applicant, the same has to be fixed by treating that the applicant (1st respondent herein) was in continuous employment and as such, he is entitled for the revision of scale and financial upgradations under ACP & MACP which would be granted to him had he been in continuous employment.

6. However, on the representation made by the applicant, the third respondent (third petitioner herein) by order dt.28.09.2010 has given an interpretation that for an employee to earn annual increment, it is mandatory for him to render 12 months of qualifying service in that grade which is not a correct interpretation. Even though, the order of the Appellate Authority treated the period 04.08.1989 till 31.07.1990 as EOL and it did not specify the nature of leave for the subsequent period, an interpretation is given by the third respondent to the effect that the period subsequent to 31.07.1990 also shall be treated as 'EOL'. In the absence of any specific order passed by the Appellate Authority for the subsequent period viz., from the date of removal till the date of reinstatement, denial of increments to him by giving a mis-interpretation, is not permissible in law.

7. According to the applicant (1st respondent herein), his pay is fixed in a minimum pay of scale which is not equivalent to that of an Asst Enforcement Officer, which averment is not controverted by the respondent. When the order of removal was set aside, and the applicant (1st respondent herein) was restrained from claiming any backwages or arrears of salary by following the principle of 'no work-no pay', by fixing the pay at a lower scale would deprive the applicant all other benefits viz., reduction in pay, reduced pension and terminal benefits, which would amount to double jeopardy. While fixing the pay of the

applicant (1st respondent herein), the authorities shall fix the pay scale relevant for the post of Asst. Enforcement Officer, by granting notional increments by treating him as if he was continuously in employment, which was not done in the instant case. If the appellate authority is of the opinion that the applicant (1st respondent herein) is not entitled for the notional increments, in the order itself it would have been clearly spelt out in as much as there is a clear indication in the said order that the appellant is not entitled for the other benefits such as accumulation of leave of any kind. Hence, the denial of increments to the applicant (1st respondent herein) is not in accordance with law.

8. It is a settled law in service jurisprudence that a person cannot be pushed to a lower post albeit by fixation of pay scale. By order, dt.28.09.2010, the third respondent (third petitioner herein) negates the order of the Appellate Authority dt.20.05.2010. That is to say by fixing the pay scale of the applicant on his reinstatement, it had travelled beyond the scope of the order of the Appellate Authority wherein his pay is reduced which is nothing but a double jeopardy in the eye of the law.

9. For the reasons stated above, the application is allowed and the impugned order dt.28.09.2010 of the second respondent (second petitioner herein) is set aside. There will be a consequential direction to the respondents to fix the pay of the applicant by treating his service as continuous one on par with his juniors. The above exercise shall be completed within a period of four weeks. However, there will be no order as to costs."

5. Being aggrieved by the above said order made in O.A.No.502 of 2011, dated 21.08.2013, the present writ petition has been filed, raising the following grounds,

"(i) The Tribunal has failed to consider that the order dated 28.09.2010 of the third petitioner, was consequent to the order, dated 20.05.2010 of the Director of Enforcement, Ministry of Finance, New Delhi, Appellate Authority, second petitioner herein.

(ii) The Tribunal has also failed to consider that the order of the Appellate Authority, dated 20.05.2010 is absolutely clear to the effect that the first respondent herein, shall be entitled only to the service benefits of continuity of service other than arrears or back wages and other benefits like accumulation of

leave of any kind during the period from 04.08.1989 (i.e. the date of his absence from duty) till the date of his joining the Directorate in compliance with the said order on the principle of 'no work no pay' of the Appellate Authority and for reasons mentioned therein.

(iii) The Tribunal has failed to appreciate that the period of absence of the first respondent herein from duty is to be treated as Extra Ordinary Leave (EOL) for the purposes of continuity of service and it can never be treated as duty. Since, the first respondent herein has not worked in the department during the said period, he shall not be given any benefits including increments, etc. In this connection, the GOI instructions under FR 26 which clearly provides that an increment accruing during leave cannot be drawn and that increment in such cases can be drawn from the date of resumption of duty on return from leave. It is thus clear that the first respondent herein could not have been granted any increment during the the period of his absence from duty. It would not be out of place to humbly furnish herein that an employee during leave draws leave salary and not duty pay. An increment accruing during leave cannot, therefore, be drawn during leave. The increment in such cases will be drawn from the date of resumption of duty on return from leave. The postponement of normal increment will be worked out as per extant Government Rules and Orders. If the postponed increment falls on any date of a month, it will be granted from the first of that month. In the case of initial appointment, promotions accruing after 01.11.1973, it is inherent in the orders that the first increment will be drawn earlier before completing the normal incremental period of 12 months. Increment will be payable from the first of the month in which the next increment falls due after counting the broken periods equal to 1 year, provided the Government servant has also been holding the post from the first of that month to the date it falls due. In case the Govt. servant is not holding the post on the first of the month, the increment will be granted from the date it falls due.

(iv) In the case of A.P.S.R.T.C. and another v. S.Narsaguod, reported in (2002) 2 SCC 212, in paragraph-9, the Hon'ble Apex Court has held as

follows:

"9 . We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee should be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earning during the period of absence. In our opinion, the employee after having been held guilty of unauthorized absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorized absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service."

(v) In the case of Rajasthan State Road Transport Corporation vs. Shyam Bihari Lal Gupta in Appeal (Civil) No.1829 of 2004, the Hon'ble Apex Court has strengthened the abovesaid Judicial Pronouncement on 31.08.2005 and further held that the above noted case related to the question of granting increments notionally. In an almost identical case, the Hon'ble Apex Court in Rajasthan State Road Transport Corporation and another v. Ladulal Mali reported in (1996) 8 SCC 37, held that the decree does not contained payment of back wages, only declaratory relief of the nature granted in the present case was granted."

6. Before this Court, the 1st respondent-employee has filed a detailed counter affidavit, contending inter alia that he entered the service as Assistant Enforcement Officer, on 21.03.1986. He was terminated from service on 31.07.1990 on the allegation of unauthorized absence without giving him any opportunity. The Enquiry Officer did not furnish him, the relied on documents. The Enquiry was held ex-parte and he was imposed a penalty of removal from service. As per Rule 15(2) of the CCS (CCA) Rules, 1964, in case the Disciplinary Authority intend to impose major penalties like removal from service, then the delinquent official has to be put to notice along with the Enquiry Report to make a representation in case there is any finding against him, before the Disciplinary Authority imposes a major penalty, but the said procedure was not followed in the case of the 1st respondent. Thus, without following the defined procedure, he was imposed with the penalty of removal from

service. Against which, he filed a departmental appeal on 15.04.1991. Since the same was not disposed off, he filed an Original Application before the Central Administrative Tribunal, Erankulam Bench and Writ Petition, in the year 2002 and later, after the disposal of the SLP, the departmental appeal was taken up and personal hearing was granted and the appeal was disposed off by the Appellant Authority, vide order dated 20.05.2010. The Appellate Authority held that the first respondent was not given any opportunity in the inquiry and relied on documents were not furnished to him and thus there was violation of principles of natural justice and also held that procedural lapses have occurred in passing the impugned termination order and thus, set aside the termination order and ordered for reinstatement of first respondent with continuity of service. Based on the same, the first respondent was reinstated in service, vide order vide No.C-3/10/1989, dated 20.05.2010 and he also reported for duty and joined duty on 31.05.2010 at Delhi and thereafter, he was transferred to Chennai, vide order 72/2010 in File No.A-14/2010, dated 01.06.2010, where he joined duty on 07.06.2010. Since salary was not paid to him, he made several representations to authorities, which were not considered. To his surprise, by an order dated 28.09.2010, the second petitioner has passed an order, by fixing the salary of the 1st respondent, in the scale of Rs.12,090/- in PB-2, with grade pay Rs.4,600/- with effect from 31.05.2010. While fixing the said pay, the continuity of service, as ordered by the Appellant Authority on 20.05.2010, was not taken into account and also mis-interpreted by the third petitioner. Hence, the first respondent was constrained to file O.A.No.502 of 2011, before the CAT, Madras Bench, seeking to set aside the impugned order of the third petitioner and to fix his pay, by counting the period of non-employment as continuity of service, as ordered by the Appellant Authority. Thereafter, he filed M.A.No.55/2013, for raising additional grounds before the Tribunal, which was allowed on 31.01.2013. The Tribunal, after hearing the main OA, was pleased to allow the same, directing the petitioners to fix the pay by treating the period as one of continuous service and fix his pay at par with junior with directions to comply the order in four weeks.

7. The 1st respondent has further submitted that the Tribunal had carefully analysed the issue in detail and stated that the Appellate Authority clearly stated that the first respondent is not entitled to backwages on reinstatement, but nowhere, he has stated that the absence from 31.07.1990, till the date of joining on reinstatement would be treated as EOL, which is the misinterpretation given by the 3rd petitioner. In the absence of any such findings in the Appellate Authority's order, the 3rd petitioner cannot suo-motu interpret the order to his whim and pass orders which would be contrary to the Appellate Authority's order.

8. The 1st respondent has further submitted that the Tribunal has rightly held that once the Appellate Authority has passed an order, it has to be followed in toto and cannot be subjected to mis-interpretation. If the Appellate Authority's order had denied increments for the said period, then the first respondent is not entitled for grant of notional increment, but in the absence of any such denial in the Appellate Authority's order, the 3rd petitioner cannot usurp the role of appellate authority to interpret it to his whims and fancies. Once an order is passed by the Appellate Authority, any lower authority does not have powers to dilute its pith and substance but in patent transgression to the established norms, the 3rd Petitioner has given a new interpretation to the order to deny justice to the First Respondent. For a fair idea the operative portion of the order of the Appellate Authority needs extraction and it is extracted below:

"13. I have carefully considered the submissions contained in the appeal dated 15.4.1991 and the submissions made later on by the appellant both by representations as well as at the time of personal hearing before me on 19.02.2010. The Appellant explained the long absence from official duty as due to personal and family problems and not willful. I have evaluated the evidence discussed in the inquiry report based upon which the said authority has come to the conclusion that the appellant was guilty. I have also considered the order dated 30/31.07.1990 inflicting the penalty of 'removal from service' on the appellant.

14 Having regard to the entire material on record of the case, I find that there is substance in the charge. The unauthorized absence from 03.08.1989 till 04.12.1989 i.e., the date on which the memorandum of the charge sheet was issued in the appellant stood proved. Further, the inquiry authority's observation that the appellant was unauthorizedly absent till 19.07.1990, the date of the inquiry report, is found to be true. However, the memorandum of charge sheet is factually wrong to the extent that the appellant did not submit any leave applications. Even by the admission of the inquiry authority himself, it is an admitted fact that the appellant has admitted the leave applications. The records also show that once on 30.01.1990, Assistant Director, Calicut had written a letter to the appellant rejecting his leave applications. Again the appellant was shown erroneously as 'under suspension' in the charge sheet even-though the said error was rectified by issuance of a 'corrigendum' on 06.03.1990.

15. I also observed some important procedural lapses in the passing of the order against the appellant. As per Rule 5(2) of the CCS(CCA) Rules, 1964, in the case of disciplinary authority is invoke major penalties like removal from service, then it is essential that the intension to inflict the major penalty is conveyed to the charged officer along with reasoning thereof and a copy of the inquiry report for perusal, if any, which the delinquent officer may want to adduce on the findings of the inquiry officer. Further, as per Rule 15(2-A), the disciplinary Authority shall consider such representation, if any, submitted by the government servant and record his finding before proceeding further in the matter. These procedures were not followed in the case of the appellant. It is also noticed that during the inquiry proceedings, the copies of the relied documents were not furnished to the appellant despite of his persistent request for the same which is against the principles of natural justice explained in the Constitution. Time and again the Supreme Court of India and various High Courts have held that a person accused of an offence has to be necessarily provided with copies of those documents based upon the charges are alleged against such a person.

16. With regard to the application of the appellant for half pay leave from 04.08.1989 to 22.09.1989, it is observed from the records that availability of 50 days half pay leave was certified and recommended by the competent authority. Even though it is not clear from the records what were the reasons for not sanctioning the leave, the fact remains that the half pay leave application of the appellant was not sanctioned and as such, he cannot claim the said period as leave since leave cannot be availed of or claimed as a matter of right.

17. As already discussed herein above, there is proven unauthorized absenteeism on the part of the appellant. Then, the pertinent question arises as to whether the quantum of the penalty of 'removal from service' is commensurate with the gravity of the offence, I find from the records as well as the circumstantial evidence that the punishment of 'removal from service' has been disproportionate to the gravity of the offence. The order of removal from service was passed in such a hurry that important procedures to be followed in disciplinary proceedings like issuance of show-cause notice by the disciplinary authority intimating his tentative findings and

intention to levy major penalty, furnishing a copy of the inquiry report, providing opportunity to the appellant to offer his version on the findings of the inquiry officer in his report etc., were ignored. The appellant was not given opportunity to correct himself while inflicting such service punishment on him.

18. Having regard to the above findings that the punishment of 'removal from service' was disproportionate when compared to the gravity of the offense which has been proved in this case and taken into consideration the procedural lapse while inflicting the penalty, I tend to take a lenient view in this matter and decided the appeal by order of reinstatement of the appellant. However, while ordering so it became essential that appropriate decision on back wages of the appellant from the period of his absence from duty is also taken. In this regard, I am of the considered opinion that the appellant would not be entitled for any monetary benefits in the form of back wages during the period from 04.08.1989 till the date of his joining duties in the Directorate in compliance of this order. In taking such a decision, I rely on the decision of the Hon'ble Supreme Court of India and various High Courts. In the case of Bank of India Vs. T.S. Kelawala and others [(1990) 4 SCC 744], the Hon'ble Supreme Court of India observed

"... This court, applying the principle 'no-work no-pay' held that deliberate abstention from work, whether by resort to strike or go-slow or any other method, legitimate or illegitimate, resulting no work for the whole day or days or part of a day or days, will entitle the management to deduct, pro-rata or otherwise, wages of the participating workman..."

I further find that in yet another case of A.P.S.R.T.C. & Another v. B.S. David Paul in Civil Appeal No. 2956 of 2000, the Hon'ble Supreme Court observed,

"To state that merely upon reinstatement, a workman would be entitled under the terms of award to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated above, to find out whether the workman is entitled to back wages at all or to what extent .. "

In the case of Gurmail Singh, Appellant v. Principal, Government College of Education & Others, which is more or less identical to the Appellant's case, the Hon'ble Supreme Court by relying on an earlier decision in Ajab Singh v. Srichand Coop.

Marketing-cum-Processing Service Society Ltd. Held

"..If the order of dismissal is challenged belatedly, the dispute still continue for adjudication, the only question would be to deprive back wages for the period of delay in raising such a dispute if no merits it is to succeed ... The termination of the Appellant on 30.09.1981 is held to be bad and set aside. The appellant is ordered to be reinstated in service a Junior Lecturer Assistant with continuity of service. But as far as backwages are concerned. he will not be entitled to any backwages ... "

The import of the judgements referred and discussed above is that no employee (unless in exceptional cases wherein the charges are not proved and he is consequently reinstated) on his reinstatement is entitled for backwages for the period when he had not discharged his official duties. The case of the Appellant and pass orders as below:-

ORDER:

(i) The Order No.C-3/10/89, dated 30/31/07.1990 removing the Appellant from service is quashed and the appellant shall vitn immediate effect

(ii) The period of the absence from 04.08.1989 which includes the period for which the appellant had applied for alt-pay leave till 31.07.1990 i.e. the date on which he was 'Removed from service/ be treated as extra ordinary leave. However, he shall not be entitled for any monetary benefits in the form of back wages during the said period.

(iii) For the period from 31.07.1990, ie., the date on which he was removed from service till the date of his joining duty in compliance of this order. he will not be entitled for any back wages on the principle of 'no work, no pay".

(iv) The Appellant shall be entitled to only the service benefits of continuity of service other than arrears or back wages and other benefits like accumulation of leave of any kind during the period from 04.08.1989 till the date of his joining the Directorate in compliance of this order of the reasons stated hereinabove.

(v) The Appellant shall join duty in the Directorate within 15(fifteen) days from the date of receipt of this order. Separate posltinq order shall be issued for posting the Appellant."

9. The 1st respondent has further submitted that reading of the Appellate Authority's order does not deduce that the period of absence of First Respondent, i.e. from 31.07.1990 to

31.05.2010 (till the date of joining) would be treated as EOL, but the 3rd Petitioner had acted beyond his jurisdiction to scuttle the effect of the Appellate Authority's order.

10. The 1st respondent has further submitted that the Appellant Authority has taken into account some of the decisions rendered by the Hon'ble Apex Court while passing orders of reinstatement in favour of First Respondent. In fact, that Appellate Authority has explicitly stated that there has been violation of principles of natural justice by not furnishing the relied on documents to the First Respondent and there has been procedural lapses in the disciplinary proceedings and the termination has been passed in a hurry (paras 15 and 17 of the order) and taking into account all the above facts had passed the order of reinstatement with "continuity of service".

11. The first respondent has further submitted that in an order, dated 12.08.2013, in Civil Appeal No.6767 of 2013, arising out of SLP(c) No.6778 of 2012, the Hon'ble Supreme Court held that, "reinstatement" would mean restoring the employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. In case of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule. Further, the Hon'ble Supreme Court relied on the decision of the three Judge Bench in Surendra Kumar Verma vs Central Government Industrial Tribunal cum Labour Court, New Delhi (1980) SCC 443) (Page 447 para 6), where it has been held that reinstatement would be with back wages and its denial would be only in exceptional circumstances. The Hon'ble Supreme Court, vide its order, dated 25.04.2014 in Bhuvnesh Kumar Dwivedi vs M/s Hindalco Industries Ltd., held illegal termination results in reinstatement with back wages and consequential benefits. The case of first respondent is one of wrongful termination sans following procedure, reasonable opportunity and principles of natural justice and the Appellate Authority has pointed out the lapses occasioned in the termination of the First Respondent and ordered for reinstatement with continuity of service albeit without back wages but the Petitioners have in abject consideration to the orders of the Appellate Authority denied continuity of service to the First Respondent thereby undermining the directions of the Appellate Authority which is ex facie illegal in law.

12. The first respondent has further submitted that fixation of first respondent's pay and allowances has to be regulated under FR 54. Appellate Authority's order, dated 20.05.2010, nowhere expounds that the First Respondent/Applicant's pay shall stand circumscribed to such

extent so as not to entail notional increment. The proviso to FR 54 being absolute, the impugned order passed by the authority denying him notional increment is fundamentally flawed and would not stand the scrutiny of law. It is settled law of service jurisprudence that a person cannot be pushed to a lower post albeit by a pay scale. The impugned order dated 28.09.2010 passed by the petitioners stultifies the Appellate Authority's Order, dated 20.05.2010, thereby convoluting its very content and tenor to visit a different interpretation whereby the First Respondent/Applicant's minimum basic payscale has been fixed, which is a travesty of justice.

13. The first respondent has further submitted that the Appellate Authority clearly distinguishes the period of absence from 04.08.1989 (which includes the period which the Applicant had applied for half pay leave) till 31.07.1990 i.e., the date on which he was removed from service to be treated as extraordinary leave sans any backwages and further the period from 31.07.1990, till the date of joining of service based on Appellate Authority's order would not entitle for backwages. At para (iii) of the order the Appellate Authority states that the "Appellant shall be entitled only service benefits of continuity" other than arrears or back wages like accumulation of leave of any kind during the period from 04.08.1989 till the date of his joining the Directorate (i.e. 30.05.2010).

14. According to the first respondent, the Appellate Authority's order does not speak let alone whisper anywhere about treating the period from 31.07.1990 to the date of reinstatement as one that of extra ordinary leave. The very words "shall be entitled to only service benefits of continuity" have to be reasonably inferred as duty for all purposes (i.e. seniority, pay etc., except those restricted by the order) and the said period of absence should be treated as duty in terms of FR 54 and the First Respondent/Applicant entitled for notional or paper increment from the date of dismissal i.e. 04.08.1989 to the date of reinstatement (i.e. 31.05.2010). The impugned order passed by the authority denying notional increment from the date of dismissal to the date of reinstatement squarely impinges on the Appellate Authority's order of "entitlement of service benefits of continuity" and therefore, it is arbitrary, illegal and bad in law.

15. The first respondent/applicant has further submitted that the petitioners whimsical action in arriving at a pay scale de hors the Appellate Authority's order is extra-legal in character and will not stand the scrutiny of law. The impugned action of the petitioners to fix a pay-scale for the first respondent on his reinstatement (i.e. 31.05.2010) depicts that it had travelled beyond the scope of the reinstatement order

passed by Appellate Authority by surreptitiously imposing another penalty on the first respondent (i.e denying continuity of service) which is nothing but double jeopardy in the eyes of law. Tabular Chart given therein would give a fair idea how the Appellate Authority's order has to be interpreted by the petitioners in granting the notional increment and to fix pay for the post of Asst. Enforcement Office.

16. The 1st respondent has further submitted that the impugned order passed by the Petitioners to arrive at a pay scale of the 1st respondent on his reinstatement, in abject consideration to the Appellate Authority's order projects a typical case of non-application of mind in the realm of law. Impugned order, dated 28.09.2010 passed by the 3rd Petitioner in fixing a pay scale on a wrongful construction of the Appellate Authority's order dated 20.05.2010 is highly vitiated by an error in law and it tantamounts to nothing short of reduction in pay scale to the 1st respondent. The Petitioners do not have the license to act as per their whims and fancies and thus are barred from reneging the consequential benefits flowing from the Appellate Authority's order setting aside the dismissal order and ordering reinstatement. The impugned order dated 28.09.2010 passed by 3rd Petitioner is directly hit by the doctrine of estoppel. The impugned action of Petitioners in interpreting Appellate Authority's order, thereby denying the First Respondent his due entitlement of notional increment on the ground of "continuity of service", is blatantly violative of equality clause enshrined under Articles 14 and 16 of the Constitution. The impugned action of the Petitioners would not only affect the first respondent in form of reduced pay etc. during his entire service but also deny his retirement benefits and pension after superannuation.

17. We have heard the learned counsel for the petitioners/department and the learned counsel for the 1st respondent/employee. We have also perused the materials available on record.

18. The only dispute involved in this writ petition is fixation of pay of the 1st respondent, pursuant to the order of the appellate authority in setting aside the order of removal from service passed by the disciplinary authority and ordering reinstatement of the 1st respondent in service. For better appreciation of the dispute, at the risk of repetition, we extract the operative portion of the order of the appellate authority which reads as under.

"(i) The order No.C-3/10/89, dated 30/31.07.1990 removing the Appellant from service is quashed and the appellant shall be reinstated with

immediate effect.

(ii) The period of the absence from the duty from 04.08.1989 which includes the period for which the appellant had applied for half-pay leave till 31.07.1990 i.e. the date on which he was 'Removed from service, be treated as extra ordinary leave. However. he shall not be entitled for any monetary benefits in the form of back wages during the said period.

(iii) For the period from 31.07.1990 i.e., the date on which he was removed from the service till the date of his joining duty in compliance of this order, he will not be entitled for any back wages on the principle of 'no work, no pay'.

(iv) The Appellant shall be entitled to only the service benefits of continuity of service other than arrears or back wages and other benefits like accumulation of leave of any kind during the period from 04.08.1989 till the date of his joining the Directorate in compliance of this order for the reasons stated hereinabove.

(v) The Appellant shall join duty in the Directorate within 15 (fifteen) days from the date of receipt of this order. Separate posting order shall be issued for posting the Appellant."

19. A close scrutiny of the operative portion of the order of the appellate authority shows that the period from the date of absence from duty i.e., 04.08.1989, which includes the period for which the 1st respondent had applied for half-pay leave till 31.07.1990 i.e. the date on which he was Removed from service, alone be ordered to be treated as extra ordinary leave and for the said period he was not eligible/entitled for any monetary benefits in the form of back wages. Thus, as rightly contended by the learned counsel for the 1st respondent, the appellate authority has not stated in his order that the period of removal from service till the date of joining duty should be treated as EOL. Therefore, the 3rd petitioner was not correct in treating the entire period between the date of absence from duty and the date of joining as EOL. On this aspect, the Tribunal has also rightly observed as under:

"6..... Even though the order of the Appellate Authority treated the period 04.08.1989 till 31.07.1990 as EOL and it did not specify the nature of leave for the subsequent period, an interpretation is given by the third respondent to the effect that the period subsequent to 31.07.1990 also shall be treated as 'EOL'. In the absence of any specific order passed by the

Appellate Authority for the subsequent period viz., from the date of removal till the date of reinstatement, denial of increments to him by giving a mis-interpretation, is not permissible in law."

Therefore, the action of the petitioners, especially the 3rd petitioner in treating the entire period from the date of absence till the date of reinstatement as EOL and thereby denying eligible increments to the 1st respondent cannot be approved and the Tribunal has rightly done so.

20. As regards the order of the appellate authority that for the period from 31.07.1990 i.e., the date on which the first respondent was removed from the service till the date of his joining duty in compliance of the appellate authority's order, the 1st respondent will not be entitled for any back wages on the principle of "no work, no pay", there is no quarrel and the 1st respondent is not eligible for any backwages during the said period.

21. Now coming to the next portion of the order of the appellate authority that the 1st respondent shall be entitled to only the service benefits of continuity of service other than arrears or back wages and other benefits like accumulation of leave of any kind during the period from 04.08.1989 till the date of his joining in the Directorate in compliance of his order, it is the contention of the petitioners/department that the period of absence of the 1st respondent from duty has to be treated as Extra Ordinary Leave (EOL) for the purposes of continuity of service and it could never be treated as duty and therefore the 1st respondent was not to be given any benefits, including increments, etc. In support of their contention, the petitioners placed reliance on the judgment of the Hon'ble Apex Court in APSRTC and another v. S.Narasimha, reported in (2002) 2 SCC 212, wherein in paragraph, the Hon'ble Apex Court has held as follows:

"9.We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee should be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earning during the period of absence."

22. Keeping in mind the dictum of the Hon'ble Apex Court, extracted supra, if the order of the Appellate Authority in this

case, as extracted supra, is perused, one could find the difference pointed out by the Hon'ble Apex Court. The order of the Appellate Authority is not a mere direction for reinstatement of the 1st respondent with continuity of service. The Appellate Authority has clearly stated about the consequential benefits which would flow pursuant to reinstatement. In fact, the Appellate Authority has, in clear terms, has stated what are the benefits to which the 1st respondent is not entitled to pursuant to reinstatement, which means the 1st respondent is entitled to all other benefits, except those which have been specifically denied by the appellate authority. Therefore, the order of the appellate authority is not an order of reinstatement simpliciter. It specifically states that the benefits to which the 1st respondent is not entitled to pursuant to reinstatement. Further, there is no direction by the appellate authority that the entire period of absence, i.e. from the date of absence till date of reinstatement has to be treated as Extra Ordinary Leave. The absence period between the date of absence and the date of removal from service alone has been ordered to be treated as EOL. Therefore, the judgment relied upon by the petitioners is not applicable to the facts of this case.

23. It is seen from the material on record that pursuant to the order of the appellate authority, dated 20.05.2010, directing reinstatement of the 1st respondent in service, the 1st respondent has joined in service on 31.05.2010 and thereafter, vide his representation dated 28.06.2010, has requested for fixation of pay in the revised scale consequent to reinstatement and grant of financial upgradations under ACP & MACP. According to the 1st respondent, his pay has not been fixed in tune with the direction issued by the appellate authority. It is the contention of the petitioners/department that since the entire period of absence, i.e. from the date of absence till the date of reinstatement (04.1.1989 to 30.05.2010) had been treated as EOL, no increments were given to the 1st respondent during the said period. This contention has also been negated by us, already. Therefore, excepting the period from 04.08.1989 to 31.07.1990, which has been ordered to be treated as EOL by the appellate authority, the period between 01.08.1990 and 30.05.2010, the 1st respondent is entitled for increments and for grant of financial upgradations under ACP & MACP, notionally. The Tribunal has considered this aspect in detail and rightly held that the 1st respondent is entitled for the revision of scale and financial upgradations under ACP and MACP which would be granted to him had he been in continuous employment.

In the result, the writ petition stands dismissed, confirming the order of the Central Administrative Tribunal, Madras Bench, made in O.A.No.502 of 2011, dated 21.08.2013. However, it is clarified that all benefits accrued between 01.08.1990 and 30.05.2010 will have only notional effect. There will be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Registrar
Central Administrative Tribunal
Madras Bench (Chennai).
2. The Secretary, Union of India
Ministry of Finance,
Department of Revenue,
New Delhi.
3. The Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance,
6th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi 110 003.
4. The Deputy Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance,
3rd Floor, 3rd Block, Shastri Bhawan,
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+2cc to M/s.Akbar Rao, Advocate sr.no.3485
+1cc to M/s.B.Rabu Manohar, Advocate sr.no.3232

Writ Petition No.124 of 2014

cp(co)
nr 09/04/2019