



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-329-2024

Date of Decision: 28.02.2025

Suresh Kumar Batra

.....Petitioner(s)

Versus

Union of India and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Rajiv Atma Ram Sr. Advocate,
with Mr. Brijesh Khosla, Advocate,
for the petitioners.

Mr. Satya Pal Jain, Addl. Solicitor General of India,
with Ms. Saigeeta Srivastava, Advocate,
for respondent No.1.

Ms. Neha Sharma, Sr. Panel Counsel,
for respondent No.3.

Ms. Meghna Malik, Sr. Panel Counsel,
for respondent No.4.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226 and 227 of the Constitution of India is seeking setting aside of letter dated 04.07.2023 (Annexure P-17) and advice of Department of Personnel and Training (DOPT) and Department of Legal Affairs (DOLA) dated 24.04.2023 (Annexure P-18) whereby his request for reckoning of service as Member Judicial for pension and other retiral benefits has been rejected. He is further seeking setting aside of order dated 12.10.2022 (Annexure P-13) whereby his pay has been provisionally fixed at Rs.1,76,550/- instead of Rs.2,25,000/- per month.



Bar Council of Punjab & Haryana. He in February' 2003 came to be selected as Assistant Public Prosecutor (APP), Central Bureau of Investigation (CBI) through UPSC. He, through proper channel, applied for the post of Public Prosecutor (Group 'A') in CBI. He came to be selected as Public Prosecutor. He joined as Public Prosecutor, CBI on 21.03.2006. In 2010, he applied through proper channel for the post of Assistant Legal Adviser (ALA), Directorate of Enforcement (ED). He joined as ALA on 20.07.2010. He came to be promoted to the post of Deputy Legal Adviser (DLA) vide order dated 28.03.2018.

3. He through proper channel applied for the post of Judicial Member in Central Administrative Tribunal (CAT). He came to be selected. ED relieved him w.e.f. 31.08.2022 to enable him to join as Judicial Member with CAT. He joined CAT at Jammu on 01.09.2022. In this way, he served for 19-1/2 years in CBI and ED. He, in terms of 2nd proviso to Section 10 of The Administrative Tribunal Act, 1985 (in short '1985 Act') requested the respondent to count his service as Judicial Member for the purpose of pension and other retiral benefits in his service with previous organizations. He, for the said purpose, filed option dated 18.10.2022. The respondent No.2 vide order dated 12.10.2022 provisionally fixed his pay in the pay scale of Rs.2,25,000/- per month. Assuming that he is getting pension of Rs.48,450/- per month from his previous organization, his salary was assessed as Rs.1,76,550/- (2,25,000-48,450). He submitted his option in terms of 2nd proviso to Section 10 of the 1985 Act, thus, he did not claim pension from his previous organization. He submitted reminder dated 03.04.2023 requesting the respondent to count his service as Judicial Member in the service rendered with CBI and ED for the purpose of pension and other retiral dues. The respondent vide order dated 24.04.2023 rejected his claim. The respondent is relying on the advice of DOPT and DOLA. The



DOPT is of the opinion that service rendered as DLA in ED is 'unorganized service', thus, cannot be reckoned for the purpose of pension and other benefits. The petitioner would be governed by New Pension Scheme (NPS).

4. Mr. Rajiv Atma Ram, Senior Counsel for the petitioner submits that as per impugned order as well as written statement, the service rendered as DLA with ED was 'unorganized service' and as per Rule 13 of Tribunal (Conditions of Service) Rules, 2021 (in short 'TR 2021'), 'organized service' may be counted for pension and other retiral benefits. The petitioner's service as DLA/ALA was unorganized service.

There is no dichotomy between organized and unorganized service with Union of India. The petitioner had worked as Group-A Officer. The service of petitioner was governed by Ministry of Finance, Department of Revenue, Directorate of Enforcement, (Deputy Legal Adviser and Assistant Legal Adviser), Group 'A' posts, Recruitment Rules, 2011 (in short '2011 Rules'). The said Rules categorically declare that post of DLA is a Group 'A' post. In the Schedule to aforesaid Rules, the post has been classified as "General Central Service, Group 'A' Gazetted, Non-Ministerial". The services of Members of CAT are governed by 1985 Act. 2nd proviso to Section 10 of 1985 Act categorically provides that where a serving Government Officer is appointed as Member, he shall be deemed to have retired from the service to which he belonged on the date on which he assumed the charge as Member but his subsequent service as Member shall, at his option, be counted for pension and other retiral benefits in the service to which he belonged. In the said proviso, the expression used is "service" whereas in Rule 13 of TR 2021, expression "organized service" has been used. Rule 13 of TR 2021 cannot override Section 10 of the 1985 Act. It is settled proposition of law that any



Rule which is contrary to statutory provisions cannot sustain. From the conjoint reading of 2nd proviso to Section 10 of 1985 Act and Rule 13 of TR 2021, it is evident that as per 1985 Act, there is requirement of 'service' and it is only Rule 13 of TR 2021 which uses expression "organized service". The said expression "organized service" has not been defined either in 1985 Act or TR 2021. In the absence of specific definition of 'organized service', the petitioner cannot be denied benefit on the basis of office memorandum dated 19.11.2009 issued by DOPT. The office memorandum cannot squeeze scope of statutory provisions. The office memorandum may clarify doubt, however, it cannot change colour and contour of a statutory provision. The office memorandum dated 19.11.2009 uses expression "organized and unorganized service". It further provides that posts not belonging to any service are classified as 'General Central Service'. Organized Group "A" service cannot have posts/grades classified as General Central Service. There is no dispute that service of petitioner with CBI and ED falls within expression "Service" and it was Group 'A', however, as per respondent it does not fall within definition of "organized service" and as per Rule 13 of TR 2021, organized service can be counted for the purpose of pension and retiral benefits. The service of petitioner with ED was governed by specific Rules and his post was considered as Group 'A' gazetted post.

Hon'ble Supreme Court of India in ***State of Mizoram and another vs. Mizoram Engineering Service Association and another, (2004) 6 SCC 218*** has clearly held that there is no difference in organized and unorganized service so far as government service is concerned. In government service such a distinction does not appear to have any relevance. Civil service is not trade unionism.

5. *Per contra*, Mr. Satya Pal Jain, Addl. Solicitor General of India



submits that petitioner was appointed after implementation of TR 2021 and his appointment was made on the basis of his 10 years practice as an Advocate. Supreme Court in ***Deepak Aggarwal vs. Keshav Kaushik and others, (2013) 5 SCC 277*** has held that Public Prosecutor or Government Counsel, even though employed full time by Government, continues to be an Advocate if he is enrolled with the Bar Council and engaged in practice of law on behalf of the Government in Courts. The petitioner worked with CBI and ED as Public Prosecutor/DLA and his service with these organizations was counted as experience of an Advocate. Rule 13 of TR 2021 categorically provides that if Member of an organized service is appointed as Member of the Tribunal, the service in the Tribunal shall be counted for pension to be drawn in accordance with Rules of the service to which he belonged. The petitioner's service with CBI/ED was not organized service. It was General Central Service. As per Rule 3(5) of TR 2021, different categories of persons are eligible for the post of Judicial Member in CAT. The petitioner did not fall in Category (i) to (iii) and his case was considered under Category-(iv) i.e. 10 years experience as an Advocate in litigation in service matters in CAT, Armed Forces Tribunal, High Court or Supreme Court. The office memorandum dated 19.11.2009 categorically provides for 'organized', 'unorganized' and 'General Central Service'. The past service of petitioner falls under General Central Service, thus, it cannot be considered as “organized service”.

6. I have heard the arguments and perused the record.

7. From the pleadings and arguments of both sides, the following questions arise for the consideration of this Court:-

- (i) Whether second proviso to Section 10 of 1985 Act prevails over the Rules framed by Central Government in terms of TR Act, 2021?



- (ii) Whether service of petitioner rendered with Directorate of Enforcement falls within expression “organized service” as contemplated by Rule 13 of TR 2021?

8. The respondent has denied claim of petitioner on the ground of office memorandum dated 19.11.2009 which is reproduced as below:-

*No. 1-11019/12/2008-CRD
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training*

*Room No. 341, Lok Nayak Bhawan,
New Delhi-110003.*

November 19, 2009

Office Memorandum

*Subject: Attributes of Organised Group 'A' Central Services
Clarification regarding.*

The Department of Personnel and Training has been receiving a number of references seeking clarifications about the attributes and definition of the Organised Group 'A' Central Services. Many service associations have also filed applications in various courts claiming the status of an Organised Group "A" Service and the consequential benefits. It appears that the difference between an Organised Group 'A' Service and other Services/Cadres has not been appreciated in its true sense. The attributes of an Organised Group A Service are clearly laid down in the existing Monograph on Cadre Management published by this Department. In order, however, to remove any doubt, the same are reiterated below:

- (i) *The highest cadre post in such services is not below the level of Rs.37400-67000 plus Grade pay of Rs. 10000 (SAG);*
- (ii) *Such services have all the standard grades namely, Rs. 15600-39100 plus Grade pay Rs.5400 (JTS), Rs.15600-39100 plus Grade pay Rs.6600 (STS), Rs.15600-39100 plus Grade pay Rs.7600/Rs.37400-67000 plus Grade pay of Rs.8700 (JAG/NFSG) and Rs.37400-67000 plus Grade pay of Rs. 10000 (SAG);*



- (iii) *At least 50% of the vacancies in Junior Time Scale (JIS) in such services are required to be filled by direct recruitment;*
- (iv) *All the vacancies above JTS and upto SAG level in such services are filled up by promotion from the next lower grade;*
- (v) *While a service may comprise one or more distinct cadre (s), all such cadres should be governed by composite Service Rules facilitating horizontal and vertical movement of officers of a particular cadre at least upto SAG level. The cadre posts of an Organised Service expressly belong to that service. The posts not belonging to any service are classified as General Central Service and, therefore, an Organised Group Service cannot have posts/grades classified as General Central Service; and*
- (vi) *Such a service consists of two distinct components, namely Regular Duty Posts and Reserves. The Reserves are generally of four types, viz (1) Probationary Reserves, (ii) Leave Reserve, (iii) Training Reserve and (iv) Deputation Reserve. The various types of reserves are usually created and accounted for in the Junior Time Scale.*

Note:- *The existing Organised Group 'A' Services have evolved over a period of time and may have minor deviations owing to their respective functional requirements. The services already declared as such need not, however, be reviewed.*

2. *The above are certain basic attributes of an Organised Group 'A' Service. There is, however, nothing to suggest that the services/cadres fulfilling these criteria would be automatically conferred the status of an Organised Group 'A' Service. An Organised Group 'A' Service is one which is constituted consciously as such by the Cadre Controlling Authorities and such a service can be constituted only through the established procedures.*

(Pratima Tyagi)

Under Secretary to the Government of India”

9. Section 10 of 1985 Act provides that members of CAT shall be paid salaries and allowances as prescribed by the Central Government. Relevant

extracts of Section 10 read as:-



“10. Salaries and allowances and other terms and conditions of service of Chairman, and other Members.—

The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairman, and other Members shall be such as may be prescribed by the Central Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairman, or other Member shall be varied to his disadvantage after his appointment.

Provided further that where a serving Government officer is appointed as a Member, he shall be deemed to have retired from the service to which he belonged on the date on which he assumed the charge of the Member but his subsequent service as Member shall, at his option, be reckoned as a post-retirement re-employment counting for pension and other retirement benefits in the service to which he belonged.”

Section 10B of 1985 Act provides that members of CAT shall be paid salaries and allowances as per Chapter II of Tribunal Reforms Act, 2021 (in short 'TR Act, 2021'). Section 10B reads as:-

10B. Qualifications, terms and conditions of service of Chairman and Member.—*Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairman and other Members of the Tribunal appointed after the commencement of the Tribunals Reforms Act, 2021, shall be governed by the provisions of Chapter II of the said Act:*

Provided that the Chairman and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the



provisions of section 184 of the Finance Act, 2017 had not come into force.”

Section 33 of 1985 Act provides that provisions of this Act shall have overriding effect. Section 33 reads as:-

33. Act to have overriding effect.—*The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*

10. The Central Government in exercise of power conferred by Section 35 of 1985 Act framed Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules, 1985 (in short '1985 Rules'). These rules have provided for salaries, allowances, pension, status of past service for pension & gratuity, leave, pension, provident fund, travelling allowance, LTC, medical treatment etc. Rule 5 provides for retirement from parent service on appointment as Member. Rule 5 reads as:

“5. Retirement from parent service on appointment as Members:-

(1) The Chairman, Vice-Chairman or a Member who, on the date of his appointment to the Tribunal, was in service under the Central Government or a State Government, shall seek retirement from such service before his appointment to the Tribunal and in the case of a sitting Judge of a High Court who is appointed as Chairman, a Vice-Chairman, his service in the Tribunal shall be treated as actual service within the meaning of para.11(b)(1) of Part"D" of the Second Schedule to the Constitution, (2) On such retirement as is provided for in sub-rule](1), the Chairman, Vice- Chairman and Member: (i) shall be entitled to receive pension and gratuity in accordance with the retirement rules applicable to him;



(ii) shall not be allowed to carry forward his earned leave but shall be entitled to receive cash equivalent to leave salary, if any, in accordance with the rules applicable to him prior to his retirement.”

From the reading of above rule, it is evident that it encompasses service with State as well as Central Government. Second proviso to Section 10 uses expression ‘serving Government officer’. It means 2nd proviso to Section 10 as well as Rule 5 of 1985 Rules counts service as Member in the total service rendered with State or Central Government.

11. The Parliament has introduced TR Act, 2021 which governs service conditions of Members of different Tribunals. Sections 3 and 7 of TR Act, 2021 are relevant for the adjudication of present case. The relevant extracts of Section 3 and 7 of TR Act, 2021 are reproduced as below:-

“3. (1) Notwithstanding anything contained in any judgment, order or decree of any court, or in any law for the time being in force, the Central Government may, by notification in the Official Gazette, make rules to provide for the qualifications, appointment, salaries and allowances, resignation, removal and other conditions of service of the Chairperson and Member of a Tribunal after taking into consideration the experience, specialisation in the relevant field and the provisions of this Act:

Provided that a person who has not completed the age of fifty years shall not be eligible for appointment as a Chairperson or Member.

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7.(1) Notwithstanding anything contained in any judgment, order or decree of any court, or in any law for the time being in force, and without prejudice to the generality of the foregoing power, the Central



Government may make rules to provide for the salary of the Chairperson and Member of a Tribunal and they shall be paid allowances and benefits to the extent as are admissible to a Central Government officer holding the post carrying the same pay:

Provided that, if the Chairperson or Member takes a house on rent, he may be reimbursed a house rent higher than the house rent allowance as are admissible to a Central Government officer holding the post carrying the same pay, subject to such limitations and conditions as may be provided by rules.

(2) Neither the salary and allowances nor the other terms and conditions of service of the Chairperson or Member of the Tribunal may be varied to his disadvantage after his appointment.”

12. The Central Government has notified TR 2021 and as per Rule 13, service rendered with previous department should be “organized service” for the purpose of counting service rendered as Member Tribunal. The expression “organized service” has not been defined either under 1985 Act or TR Act, 2021 or Rules made thereunder. Rule 13 reads as:-

“13. Pension, Provident Fund and Gratuity.— (1) *In case of a serving Judge of the Supreme Court or a High Court or a Member of an Organized Service appointed as the Chairperson or Member, the service in the Tribunal shall count for pension to be drawn in accordance with the rules of the service to which he belongs and he shall be governed by the provisions of the General Provident Fund (Central Services) Rules, 1960 or the Contribution Pension System, as the case may be, and the rules for pension applicable to him.*

(2) In all other cases, the Member shall be governed by the provisions of the Contributory Provident Fund (India) Rules, 1962 or the Contribution Pension System, as the case may be.



(3) Additional pension and gratuity shall not be admissible for service rendered in the Tribunal.”

13. The petitioner is vehemently pleading that second proviso of Section 10 of 1985 Act is intact and unfettered despite Section 10B of 1985 Act, TR Act 2021 and Rules made thereunder. It is Rule 13 of TR 2021 which is using expression ‘organised service’. This expression is not used in 2nd proviso to Section 10 of 1985 Act, thus, expression ‘organised’ used in Rule 13 ought to be ignored. A Rule made by Government cannot operate contrary to provisions made by Parliament.

14. *Non obstante* clause is usually incorporated in the beginning with intent to give the enacting part of the section, in case of a conflict, an overriding effect over the provision or the Act mentioned in the non obstante clause. The provisions embraced in the non obstante clause are not an impediment for the operation of the enactment. Thus, a non obstante clause is a legislative device used by legislature to give an overriding effect to what has been specified in the enacting part of a section in case of a conflict with what is contained in the non obstante clause as stated above. A non obstante clause may begin with “notwithstanding anything contained in any other law for the time being in force” or “notwithstanding anything contained in this Act”. The expression “notwithstanding anything contained in this Act” has to be construed to take away the effect of any provision of that particular Act in which the section occurs but it cannot take away the effect of any other law.

15. A seven-Judge Bench of Supreme Court in **Interplay Between Arbitration Agreements under Arbitration & Conciliation Act, 1996 & Stamp Act, 1899 (2024) 6 SCC 1**, considered the implication of a non obstante clause in a provision. The Court noticed its two judge bench judgement in



wherein it was observed:

“67. A clause beginning with the expression “notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract” is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstinate clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstinate clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstinate clause would not be an impediment for an operation of the enactment.”

16. In **ICICI Bank Ltd. v. Sidco Leathers Ltd. (2006) 10 SCC 452**, it was observed that even if a non obstante clause has wide amplitude, the extent of its impact has to be measured in view of the legislative intention and legislative policy.

17. The utility of non obstante clause is where there is a conflict between what is stated in a provision and any other law for the time being in force or anything else contained in the said enactment. The object is to give the enacting or operative portion of the section an overriding effect, in the case of conflict. In other words, only in case of conflict, a provision in an enactment containing a non obstante clause would be given its full operation and what is stated in the non obstante clause will not be an impediment for the operation of the particular provision in the enactment. This would mean that what is stated in the non obstante clause would not take away the effect of any provision of the Act which is consistent.



Supreme Court observed that only when there is any inconsistency between what is contained in a provision of an enactment and a non obstante clause. It is only when the enacting part of the statute cannot be read harmoniously with what is stated in the non obstante clause, would the non obstante clause result in yielding to what is stated in the enacting part.

19. It is trite law that if any rule made by Government is contrary to statutory provisions, it is invalid. No rule can be contrary to statutory provisions. Section 10 of 1985 Act provides that salaries, allowances and the other terms and conditions of the Members shall be such as may be prescribed by the Central Government. First proviso to said Section provides that salary, allowances and other terms & conditions shall not be varied after appointment. Second proviso which was inserted w.e.f. 19.02.2007 provides for inclusion of service as Member in the past service for the purpose of pension and other retiral benefits.

From the conjoint reading of main part of Section 10 and both provisos, it is evident that main part is a general provision with respect to salary, allowances and other terms & conditions of the service whereas both provisos are categorically dealing with two aspects of the service. Both provisos are in the form of special provision. Main part is not specifying salary, allowances and other terms & conditions of the service whereas it provides that Central Government shall specify which in turn has framed Rules. It is settled law that proviso neither can operate contrary to or enlarge scope of the main Section.

20. Section 10B provides that qualification, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of Chairman, Vice-Chairmen and Members shall be governed by provisions of Chapter II of TR Act, 2021. Section 10B commences



with non obstante clause. It uses expression 'notwithstanding anything contained in this Act'. Section 33 of 1985 Act is also a non obstante provision. It provides "notwithstanding anything inconsistent therewith contained in any other law". The dichotomy between two non obstante provisions need to be appreciated. As per Section 33, provisions of 1985 Act would prevail if there is inconsistency between provisions of 1985 Act and any other law in force whereas as per Section 10B, provisions of 1985 Act with respect to salaries, allowances and other terms & conditions of service of Members shall become inoperative after the commencement of TR Act, 2021. Section 10B is not providing that provisions of 1985 Act would remain in force which are not inconsistent with TR Act, 2021 whereas it has made provisions of 1985 Act inoperative with respect to salary, allowances and other terms and conditions of service of the Members. If contention of petitioner is upheld, second proviso to Section 10 would become an independent provision.

In the wake of above discussion and findings, this Court is of the considered opinion that second proviso to Section 10 of 1985 Act does not override Tribunal (Conditions of Service) Rules, 2021.

21. The respondent is relying upon Office Memorandum dated 19.11.2009 wherein attributes of Organized (Group -A) Central Services are enumerated. As per respondent, the petitioner was part of General Central Service while posted with ED. General Central Service though is a Group-A service still is not organized service. As per aforesaid Office Memorandum, the attributes of Organized Group-A Service are as below:-

(i) The highest cadre post in such services is not below the rank of Rs.37,400-67,000 + grade pay of Rs.10,000/-.

(ii) Such services have all standard grades namely 15,600-39,100 +



grade pay of Rs.5,400, Rs.15600-39100 + grade pay Rs.6600, Rs.15600-39100 + grade pay Rs.7600/Rs.37400-67000 + grade pay of Rs.8700 and Rs.37400-67000 plus Grade pay of Rs.10000.

(iii) At least 50% of the vacancies in Junior Time Scale in such services are required to be filled by direct recruitment.

(iv) All the vacancies above JTS and upto SAG level in such services are filled up by promotion from the next lower grade.

(v) The service may comprise of one or more distinct cadres, however, all such cadres should be governed by composite Service Rules facilitating horizontal and vertical movement of Officers of a particular cadre at least upto SAG level. An Organized Group 'A' Service cannot have posts/grades classified as General Central Service.

(vi) Such a service consists of two distinct components, namely Regular Duty Posts and Reserves.

22. The service of petitioner with ED was governed by 2011 Rules. The post of DLA/ALA is Group 'A'. A DLA is entitled to pay scale of Rs.15,600-39,100 (Grade Pay of Rs.7,600/-). There are 7 posts of DLA and source of recruitment is by promotion, failing which, by deputation and failing both, by direct recruitment. The feeder cadre of DLA is ALA who is also entitled to pay scale of Rs.15,600-39,100 and Grade Pay of Rs.6,600/-. As per Office Memorandum dated 20.11.2009, grade pay Rs.6,600 is Senior Time Scale (STS). ALA is feeder cadre of DLA. 50% posts of ALA are filled by direct recruitment. The posts of DLA are filled up by promotion from the lower grade. The Office Memorandum dated 20.11.2009 notifies attributes of Organized Group 'A' Central Services. Rule 13 of TR, 2021 uses expression 'organized service'. It does not talk of Central Services. The services rendered



by a candidate may be with State Government. If the expression 'organized service' used in Rule 13 is tested in the light of Office Memorandum, it can be concluded that if a service is Group 'A' service and has attributes as noticed in said Memorandum, it would be 'organized service'. From the scrutiny of attributes of service of DLA, it is evident that it has prime attributes of 'organized service'. The only difference is that it is General Central Service. In the Rules governing service of DLA, it is specifically incorporated that the service would be General Central Service.

23. The dispute remains whether a General Central Service having attributes of organized service would be organized service as per Rule 13 of TR 2021 or it would be excluded from the said Rule.

It is settled proposition of law that circulars/instructions issued by Government cannot over-ride statutory provisions. The Office Memorandum was issued on 20.11.2009 whereas the TR, 2021 were framed in 2021. In the Rules, neither expression 'organized service' has been defined nor Government has been empowered to issue Office Memorandum to clarify any expression used in the Rules. In the absence of power conferred on Central Government or any other authority, any instructions/circular issued by any authority cannot be binding.

In any case, it is trite law that circulars/instructions issued by department are binding on department but Courts are not bound by those instructions/circulars. In the absence of specific definition in the Rules, it would be appropriate to rely upon judicial precedents. In **Mizoram Engineering Service Association (supra)**, Supreme Court has clearly held that in Government services, distinction of 'organized' and 'unorganized' services does not appear to have relevance. Civil Service is not trade unionism. Relevant



extracts of the judgment in **Mizoram Engineering Service Association (supra)** are reproduced as below:-

“6. Great stress was laid on the fact that Engineering Service in the State was not an organised service and therefore, it did not have categorisation by way of entrance level and senior level posts and for that reason the higher scale of Rs. 5900-6700 which was admissible for senior level posts could not be given in the Engineering Service. The main reason for dubbing Engineer Service as an unorganized service in the State is absence of recruitment rules for the service. Who is responsible for not framing the recruitment rules ? Are the members of the Engineering Service responsible for it? The answer is clearly 'No'. For failure of the State Government to frame recruitment rules and bring Engineering Service within the framework of organised service, the engineers cannot be made to suffer. Apart from the reason of absence of recruitment rules for the Engineering Service, we see hardly difference in organised and unorganized service so far as Government service is concerned. In Government service such as distinction does not appear to have any relevance. Civil Service is not trade unionism. We fail to appreciate what is sought to be conveyed by use of the words 'organized service' and 'unorganized service'. Nothing has been pointed out in this behalf. The argument is wholly misconceived.”

In view of above-cited judgment, the service of petitioner with CBI/ED falls within expression ‘organised service’ used in Rule 13 of TR, 2021.

24. The service of petitioner with CBI/ED was governed by Rules. It was Group-A gazetted service. A person who has held post of Additional Secretary or any equivalent or higher post in the Department of Legal Affairs or



the Legislative Department is eligible for the post of Judicial Member. Any person who has held post of Additional Secretary or any other post carrying the pay scale which is not less than that of an Additional Secretary to Government of India is eligible for the post of Administrative Member. In this manner, Additional Secretary as per his experience is eligible for the post of Judicial or Administrative Member. Post of Additional Secretary is a Group 'A' gazetted post. Said officer after his appointment as Member of Tribunal is entitled to pension and other retiral benefits as per Rule 13 of TR, 2021. As soon as an Additional Secretary is appointed as Judicial or Administrative Member, he becomes at par with other members. If petitioner's service as Member CAT is not counted in service with previous organization for pension and retiral dues, it would be discriminatory and violative of Article 14 of the Constitution of India. Rule 13 of TR, 2021 to the extent it makes discrimination between two similarly placed members would be invalid. Said Rule needs to be read down instead of declaring invalid. Accordingly, it is hereby held that 'organised service' includes Group 'A' gazetted service either it is classified as Central Civil Service or Central Civil Post or General Central Service.

25. The respondent has further attempted to link 'organised' service with eligibility for appointment as Member CAT. Eligibility/Source of appointment cannot be linked with pension and other retiral benefits. Under 1985 Act, there was no dispute with respect to nature of service as raised by respondent post 2021 Rules. Eligibility Criteria or qualification makes a person eligible to participate and being selected. It cannot be linked with his entitlement to pension and other benefits which are linked with past service. Question of inclusion of past or current service for pension and other retiral dues is an independent question which ought to be determined on the basis of applicable



Rules.

As per the Central Civil Services (Classification Control and Appeal) Rules, 1965 (for short, 'CCA Rules'), there are four classes of service i.e. Group 'A' 'B' 'C' and 'D'. The expression 'Service' has been defined under Rule 2(m) of CCA Rules. As per said Rule, 'Service' means a Civil Service of the Union. As per Rules 4, 6 and 7, there are three types of services i.e. Central Civil Services, Central Civil Posts and General Central Services. Appointment to Group 'A' Services and Posts is made by President of India. Rule 2(m), 4, 6, 7 and 8 of CCA Rules are reproduced as below:-

“2. Interpretation

In these rules, unless the context otherwise requires, -

(m) "Service" means a civil service of the Union.

4. Classification of Services

(1) the Civil Services of the Union shall be Classified as follows

:-

(i) Central Civil Services, Group 'A';

(ii) Central Civil Services, Group 'B';

(iii) Central Civil Services, Group 'C';

(iv) Central Civil Services, Group 'D';

(2) If a Service consists of more than one grade, different grades of such Service may be included in different groups.

6. Classification of Posts

Civil Posts under the Union other than those ordinarily held by persons to whom these rules do not apply, shall, by a general or special order of the President, be Classified as follows :-

(i) Central Civil Posts, Group 'A';

(ii) Central Civil Posts, Group 'B';

(iii) Central Civil Posts, Group 'C';

(iv) Central Civil Posts, Group 'D';



7. General Central Service

Central Civil posts of any Group not included in any other Central Civil Service shall be deemed to be included in the General Central Service of the corresponding Group and a Government servant appointed to any such post shall be deemed to be a member of that Service unless he is already a member of any other Central Civil Service of the same Group.

8. Appointments to Group 'A' Services and Posts

All appointments to Central Civil Services, Group 'A' and Central Civil Posts, Group 'A', shall be made by the President :

Provided that the President may, by a general or a special order and subject to such conditions as he may specify in such order, delegate to any other authority the power to make such appointments."

From the perusal of above quoted Rules, it is evident that there are three sets of services i.e. Central Civil Services, Central Civil Posts and General Central Services. All the services are further classified into four Groups i.e. Group 'A' 'B' 'C' and 'D'. The appointment to Group 'A' service is made by President of India. There is no classification as 'organised' and 'unorganised' service. In the case in hand, the appointment of petitioner as ALA/ DLA was made by President of India. Post of ALA/DLA is a Group 'A' General Central Service. The said service cannot be called as 'unorganised' service.

26. In the wake of above discussion and findings as well as Supreme Court judgment in **Mizoram Engineering Service Association (supra)**, this Court is of the considered opinion that the service of petitioner rendered with Directorate of Enforcement falls within expression 'organized service'. Accordingly, the service rendered by petitioner as Member CAT needs to be counted in the service rendered with Enforcement Directorate for the purpose of pension, provident fund and gratuity.



27. The petitioner is not receiving pension from his parent department i.e. Enforcement Directorate, thus, respondent has no authority to retain part of his salary on the ground that he is getting pension from his parent department. The respondents are hereby directed to release full salary of the petitioner. The salary already retained shall be released within 2 months alongwith interest @ 6% per annum.

28. In the backdrop, it is hereby held:-

(i) Second proviso to Section 10 of Administrative Tribunal Act, 1985 does not override provisions of Tribunal Reforms Act, 2021 and Rules made thereunder:

(ii) Expression 'Organized Service' used in Rule 13 of TR, 2021 includes service rendered by petitioner with CBI & ED.

(iii) Petitioner is not getting pension from ED, thus, respondent is bound to release salary without deduction.

29. Allowed in above terms.

28.02.2025
shivani

(JAGMOHAN BANSAL)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	Yes