

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

MA NO.359/18 WITH MA 361/2018 in OA 149/2014

DATED THE 15th DAY OF July 2020

Date of Reserve :01.07.2020

Date of Pronouncement :15.07.2020

**CORAM:Hon'ble Shri Jayesh V Bhairavia, Member(J)
Hon'ble Dr A K Dubey, Member(A)**

Thiyagarajan Balaji ... Applicant

By Advocate Shri M S Rao

V/s

Union of India & Others ... Respondents

Respondent no.4.-

By Advocate Shri Joy Mathew-

(O R D E R)

Per Dr A.K.Dubey, Member(A)

1 The present MA 359/2018 has been filed by the applicant in OA 149/2014 seeking execution of this Tribunal's final order dated 05.07.2016. Main contention in the said MA (Execution Application) is that although vide order bearing No.IGTR/ADMN/2017/844 dated 07.02.2017 the applicant has been reinstated into the service and on this strength, the contempt proceeding against Respondents in CP No.09/2017 in OA 149/2014 was dropped, the applicant is not being given the consequential benefits viz., Incentive Bonus, Children Allowance, Earned Leave, Sick Leave, Leave Travel Concession, quarterly medical allowance, Group Insurance Scheme dues and refund of differential amount arising from his HRA entitlement and market rent recovered from him for occupying IGTR accommodation. The applicant had filed different representations for these benefits on 18.09.2017, but of no avail. Having left with no further option even after waiting for all these months, this Execution Petition was filed on 23.08.2018.

2 The counsel for the applicant further submits that there is a bona fide delay of six months and 17 days in the filing of the present MA and therefore he has filed MA 361/2018 seeking condonation of delay. He stated that the delay period has been calculated based on the ruling of Hon'ble Supreme Court rendered in the context of time limit within which an execution applicant has to be moved, the statutory provisions

contained in Section 27 of the Administrative Tribunals Act, 1985 as also the ruling of the Full Bench of this Tribunal dated 16th December 2008 in the case of L N Yadav v/s Union of India & Ors.. He contends that the present application ought to have been filed before Tribunal on or before 06.02.2018. But the applicant could not do so for the reason beyond his control as averred in the application.

3 The operative part of order dated 05.07.2016 passed by the Tribunal in OA 149/2014 reads as under:

“26 For the foregoing, OA is allowed. The inquiry report dated 26.04.2013 vide Annexure A/2, order of the Disciplinary Authority bearing No.IGTR/GMO/057/2013-14/F-29 dated 25.07.2013 vide Annexure A/3 and the order of the Appellate Authority bearing No.21/03/IGTR-Ahd/2013/ABC(Pt.)/636 dated 11.02.2014 vide Annexure A/4 in OA No.149/2014 and the inquiry report dated 26.04.2013 vide Annexure A/2, order of the Disciplinary Authority bearing No. IGTR/GMO/057/2013-14/F-29 dated 25.07.2013 vide Annexure A/3 and the order of the Appellate Authority bearing No. 21/03/IGTR-Ahd/2013/ABC(Pt.)/637 dated 11.02.2014 vide Annexure A/4 in OA No.200/2014 are quashed. The applicants are entitled to be reinstated into service and for all the consequential benefits except for arrears of salary. It is made clear that on their reinstatement they are not entitled for the arrears of salary from the date of removal from service till the date they join to duty, pursuant to this order. Applicants shall report for duty within a period of six weeks from today and take benefit of this order.

27 OAs are allowed subject to above observations and directions. There shall be no order as to costs. In view of disposal of OAs, MA No.102/2016 and 103./2016 do not survive for consideration and the same stand disposed of accordingly.”

4 The learned counsel for the applicant avers in the MA that so far as the order dated 05.07.2016 is concerned, the respondents are under obligation to pay all consequential benefits flowing from the applicant's reinstatement into service on 20.08.2016 by fixing the correct pay of the applicant, taking into account 4 annual increments fallen due between July 2013 to July 2016 and also regularising the leave account even for the period when applicant was out of service. Instead, he argued, the respondent no.4 had issued a letter bearing No.IGTR/GMO/056/2016-17/F-25, dated 20.08.2016 informing the applicant that (i) his services would be on contract basis for 5 years w.e.f. his date of reinstatement and that his contract can be terminated by either party giving 3 months' notice and (ii) applicant's basic pay is fixed at Rs. 16,880/- with Grade Pay of Rs.5400/- in the pay PB-3 pay scale of Rs.15600-39100+5400. The applicant after re-joining the services of IGTR, Ahmedabad on 20.08.2016 had been requesting the respondent no.4 to delete the terms and conditions no.2, 3 and 5 from the communication dated 20.08.2016 but no response was forthcoming. Then the applicant approached this Tribunal and filed Contempt Petition No.9 of 2017 praying for

initiation of appropriate contempt proceedings. However on that very date, the respondent no.4 issued an order bearing No.IGTR/ADMN//2017/844 dated 07.02.2017 whereby the applicant came to be reinstated in service on regular basis w.e.f. 25.07.2013 with entitlement to all consequential benefits except arrears of salary. Hence taking note of the fact that, direction of this Tribunal was complied with through the order dated 07.02.2017 of the Respondent no.4, this Tribunal was pleased to drop the contempt petition vide its order dated 16.02.2017.

5 The learned counsel for the applicant states that inspite of Order dated 07.02.2017 passed by respondent no.4 declaring the applicant being entitled to all the consequential benefits flowing from his reinstatement into the service excepting the arrears of salary, the applicant is not being given any of the consequential benefits excepting grant of annual increment for the period from date of removal from service i.e. 25.07.2013 to date of reinstatement i.e. 20.08.2016. Even after the employer's order dated 07.02.2017 the applicant waited for more than seven months but without any result. Then as submitted earlier, the applicant approached respondent no.4 with 7 separate representations all dated 18.09.2017 requesting therein to release the due amount i.e. (i) Incentive Bonus, (ii) Children Education Allowance, (iii) to credit his Earned Leave Account as also Sick Leave Account, (iv) grant leave travel concession, (v) grant Quarterly Medical Allowance and (vi) the dues of Group Insurance Scheme and refund of the differential amount in respect of the HRA. The respondents had not taken any decision on said representation. Since no further action was taken the applicant was compelled to approach this Tribunal with present Execution Application (MA 359/2018).

6 Learned counsel for Respondent No.4 submitted that the direction of this Tribunal dated 05.07.2016 has been complied with, vide employer's order dated 07.02.2017. Admissible allowances as per terms and conditions were paid to the applicant. However, there was no question of payment of incentive bonus, medical allowance, group insurance scheme dues etc for the period when the applicant was out of employment. Similarly LTC was for a particular block year and cannot be carried forward from previous years. Moreover, LTC is in the nature of reimbursement. The counsel for Respondents submits that since he was not in the service, there is no

question of salary and if salary wasn't there, anything else which flows from salary too cannot be there. The Counsel for Respondent No.4 reiterated that this Tribunal's directions had been fully complied with by taking the applicant back in regular employment and fixing his pay by allowing notional increments between July 2013 to July 2016.

7 Learned counsel for the applicant reiterated his argument that since the order of this Tribunal categorically said that applicant was entitled to be reinstated in service with all consequential benefits except the arrears of salary, the applicant was entitled to the allowances that he claimed in the MA 359/2018 in OA 149/2014. The counsel for applicant further argued that barring salary for these three years when he was out of service, the applicant was entitled to allowances such as Incentive Bonus, Children Education Allowance, Medical Allowance, Group Insurance dues etc. and similarly, Earned Leave, Sick Leave and Leave Travel Concession for those three years should also have been credited. He also submitted that during the period when the applicant was out of service, he continued to occupy the accommodation given by the employer for which he was charged market rent. The counsel argued that it was wrong and for that period he should not have been charged market rent since the matter was anyway under consideration before this Tribunal and that eventually by the order of this Hon'ble Tribunal, the applicant came back to be reinstated in service. He also argued that the Execution Application was filed on 23.08.2018 and in his understanding, there was a delay of six months and 17 days only. After the initial order passed by this Tribunal on 05.07.2016, the matter again came before it, which was disposed of on 16.02.2017 in view of the order of the respondents in the letter bearing no. IGTR/ADMIN/2017/844 dated 07.02.2017, vide which, the deficiencies in the compliance of this Tribunal's order dated 05.07.2016 were removed and on the basis of this order the Tribunal disposed of the Contempt Petition 09/2017 in OA 149/2014. Learned counsel for applicant counted one year from this date and hence made a request to condone the delay of six months and 17 days.

8 Learned Counsel for Respondent no.4 argued that by the order of the respondent dated 07.02.2017 (supra), the note of which was taken by this Tribunal in its order dated 16.02.2017, the entire matter has been settled to the complete satisfaction of this

Hon'ble Tribunal and nothing else remains to be done. He stated that since the applicant was not in service from July 2013 till he was reinstated, there was no question of admitting to him any allowances flowing from salary. For example, the Incentive Bonus is given for the work on the basis of salary and during this period, the applicant was out of service and so there is no question of any salary in this period, for the same reason Earned Leave or Sick Leave would not accrue to the applicant. Similarly the LTC is also attached to the service and anyone who is not in service on that date cannot avail the same. Moreover, LTC is in the nature of reimbursement and lapses when time is over.

9 Learned counsel for Respondent no.4 however argued that the request for condonation of delay was a flawed one because it should have been filed within a year of the order. So the delay in this matter is from 05.07.2016 till 22.08.2018 and not of six months and 17 days. The applicant hasn't asked for condonation of delay of one year and 40 days. Here the defect is that when the applicant has sought condonation of delay for lesser period, how can the Court condone the delay of a longer period without having the applicant asked for it. On this ground the request for condonation of delay does not deserve any consideration.

10 Learned Counsel for applicant submitted that from the date of the order complying with Hon'ble Tribunal's order which is 07.02.2017 and which was mentioned in this Tribunal's last order i.e. 16.02.2017, the one year period was over on 15.02.2018 and the Execution Application was filed on 23.08.2018 and therefore the calculation indicated in the application for condonation of delay was correct and in his opinion it needs to be considered. The counsel placed reliance on the judgment in *Mulabhai N Chavda v/s Union of India & Ors*, (SCA No.4076 of 2004 dated 28.04.2005) wherein the Hon'ble High Court stated that it is better that delay is condoned and substantial justice is done rather than refusing to condone delay and perpetuating injustice. Similarly in case of *M K Prasad v/s P Arumugam* 2001 (6) SCC 176, the Hon'ble Apex Court has observed that Courts ought to keep in mind the judgment impugned, the stakes of parties, and discretion should be exercised to advance substantial justice, the counsel for applicant submitted. He therefore, argued that going by the order dated 16.02.2017 his request for condonation of delay was in order.

11 Heard both the counsel on the issue of condonation of delay. It must be decided first before we proceed further to adjudicate other issues. The request for condonation of delay is accordingly considered, keeping in view the decision of Hon'ble Apex Court (supra) and the decision of Hon'ble High Court in the case of M.N.Chavda (supra) and accordingly MA-361/2018 for condonation of delay is allowed.

12 Heard the learned counsel for applicant Shri M S Rao and learned counsel for respondent no.4 Shri Joy Mathew. On the basis of submissions and material on record, it is clear that in compliance of order of Tribunal dated 05.07.2016 and 16.02.2017, the applicant has been reinstated in service and upon such reinstatement, his pay has been fixed after taking into account the increment for the period during which he was out of service. Since this Tribunal itself had not allowed any arrears of salary, no arrears were given. As per the rules viz. Personnel Policy (Manual) of IGTR, for example, HRA, Incentive Bonus and other allowances are admissible when the person is in service of the respondent. These Personnel Policy rules very clearly defines "service" in its para (1.2(i)) as "service in connection with any affair of IGTR." Similarly it defines "employee" vide its rule (1.2(d)) as "a person appointed to any sanctioned post in the IGTR and will include a person on probation". A plain reading of the rule indicates that allowances and the leave, LTC, medical facility, children education allowance, group insurance etc are all available only to employees, as defined in it. Therefore, it is logical to conclude that these are not available to a person who is not an employee and not in the service even if he was earlier an employee and later again became an employee. Since the applicant is back in service, without having the period of gap in service been held against him, notional increment has been permitted. However, the applicant was charged market rent for the accommodation allotted to him by Respondent for the period during which he was out of service. Since he was out of service, there is no question of any HRA for this period; market rent was charged treating him as a non employee and treating such occupation as unauthorised occupation. However, now that the period in question has since been accounted for and he is back in service, and this period has been taken into account for fixation of notional increment, it is open to the applicant to request the respondents to re-consider the market rent issued on this

ground. If he chooses to do so and makes any such representation, the respondents shall consider the same and take appropriate decision within four weeks.

14 Taking note of the fact that the applicant is back in service, we see that the order of this Tribunal has been complied with. Regarding applicant's claims of allowances for the period when the applicant was out of employment with Respondents, we find that the service rules permit admissibility of such claims only for the employees which clearly means inadmissibility to these allowances for the period when the applicant was not in the service of the employer. Accordingly, the MA 359/2018 is disposed of as above with direction regarding representation. The Contempt Petition 01/2020 is dropped as contempt does not survive. No order as to cost.

(A K DUBEY)
MEMBER(A)

(J V BHAIKAVIA)
MEMBER(J)

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