

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

M.A. No. 4723/2017
O.A. No.2270/2016

Reserved On: 03.12.2018

Pronounced on: 07.12.2018

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MR. PRADEEP KUMAR, MEMBER (A)**

Shri Kanwar Lal
Working as Conductor,
Badge No.22672,
S/o Shri Toti Lal
Aged about 59 years
R/o House No.271, Village & Post Office,
Midan Garhi, New Delhi-110030. ..Applicant

(By Advocate: Shri Rajiv Dewan)

Versus

1. Delhi Transport Corporation,
Through its Chairman/General Manager,
I.P. Estate,
New Delhi.
2. Depot Manager,
Sarojini Nagar Depot,
Delhi Transport Corporation,
New Delhi. ...Respondents

(By Advocate: Shri Umesh Joshi)

ORDER

By Hon'ble Mr. V. Ajay Kumar, Member (J)

The applicant, a Conductor in the respondent-Delhi Transport Corporation (in short DTC), filed the OA seeking the following reliefs:-

“(a) To allow this application and set aside and quash show cause notice dated 30.03.2016, office order No.DM/SND/PFC (Cond)/16/1349 dated 04.05.2016 and Office order No. DM/SND/PBC (Cond)/2016/1796 dated 10.06.2016 passed by the respondents and fix and pay salary of applicant in terms of office order No. DM/SND/PFC (Cond)/2012/1099 dated 10.04.2012 and refund the amounts deducted from the monthly salary of applicant after passing of order dated 04.05.2016.

(b) Pass such other and further order(s) as this Hon’ble Court may deem fit and proper in the facts and circumstances of this case”.

2. The brief facts necessary for consideration of the issues in hand are that, when the applicant was removed from service, on 08.05.1996, in connection with certain charges levelled against him, he raised an industrial dispute before the concerned Labour Court, questioning the said removal. The Labour Court, by its Award dated 01.04.2010, in ID No.264/08/98, after hearing both sides, held as under:-

“The removal of the workman from service is held as unjustified. Consequently the management is directed to reinstate the workman with continuity of service in the same post. No back wages are awarded. The management shall pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the workman towards litigation expenses.

Reference is answered accordingly”.

3. Aggrieved by the Award to the extent of denying back wages, the applicant filed W.P. (C) No.1314/2012 before the Hon’ble High Court of Delhi. The respondent-DTC also filed W.P. (C) No.3288/2011 against the Award, however, the same was

dismissed on 02.06.2011 and the relevant paragraphs of the same read as under:-

“8. The counsel for the petitioner has next contended that the past record of the respondent workman is also bad. However, for this reason only, the Industrial Adjudicator has denied back wages of nearly 11 years to the respondent workman and thus the award on the said aspect is also reasoned and no error is found therein.

9. Moreover, I am of the view that if the present petition is entertained, the petitioner DTC would become liable for wages under Section 17B of the Industrial Disputes Act, 1947. It is found that the petitioner is paying huge amounts of public money towards 17B wages by filing writ petitions against all awards irrespective of the merits thereof. For this reason also, it is not deemed appropriate to entertain this petition.

The petition is therefore dismissed. No order as to costs”.

4. After the writ petition filed by the respondent-DTC was dismissed, in compliance of the Award of the Labour Court, the respondents, vide Annexure R-4 dated 10.04.2012, revised the basic pay of the applicant, by granting benefit of continuity of service, though the back wages were denied for the intervening period. Thereafter, the respondent-DTC issued Annexure R-5 Show Cause Notice dated 30.03.2016 stating that the order dated 10.04.2012 refixing the pay of the applicant by granting ACP/MACP benefits was a mistake and since the Labour Court denied back wages for the intervening period, he was not entitled for granting of ACP/MACP benefits on his reinstatement and accordingly called for the applicant's reply why the order dated 10.04.2012 shall be

withdrawn. In spite of the submission of the representation by the applicant to the said Show Cause Notice, the respondent-DTC vide the impugned Annexure P-1 Order dated 04.05.2016 withdrawn the ACP/MACP benefits granted to the applicant and accordingly refixed his pay and also directed that the recoverable amount may be adjusted to his regular salary in monthly instalments. Hence, the OA.

5. This Tribunal, on 15.07.2016, while issuing notices to the respondents, stayed the operation of the impugned Annexure P-1 order dated 04.05.2016.

6. Heard Shri Rajiv Dewan, the learned counsel for the applicant and Shri Umesh Joshi, the learned counsel for the respondents and perused the pleadings on record.

7. Shri Rajiv Dewan, learned counsel appearing for the applicant submits that once the Labour Court through its Award declared the removal of the applicant from service as unjustified and directed the respondent-DTC to reinstate the applicant with continuity of service, though back wages were denied, the applicant is entitled for all the benefits including granting of ACP/MACP benefits, increments etc., except the back wages for the break period. The action of the respondents, though initially granted the said benefits to the applicant, but withdrawing the same thereafter is illegal, arbitrary and against the settled principles of law. The learned

counsel placed reliance on the following decision in support of his submission:-

(i) Mahabir Prasad Vs. Delhi Transport Corporation in W.P. (C) 2216/2014 dated 23.07.2014 – 2014 (144) DRJ 422(DB) of the Hon'ble High Court of Delhi.

8. Per contra, Shri Umesh Joshi, learned counsel appearing for the respondents would submit that once the Labour Court, though directed for reinstatement of the applicant with continuity of service but not only denied back wages for the intervening period, but also not granted any consequential benefits and hence, the applicant is not entitled for the reliefs claimed in the OA. The learned counsel placed reliance on the following decisions in support of his submissions:-

(i) **A.P. SRTC and Another Vs. S. Narsagoud, (2003) 2 SCC 212**, of the Hon'ble Apex Court.

(ii) **A.P. State Road Transport Corporation and Others VS. Abdul Kareem (2005) 6 SCC 36**, of the Hon'ble Apex Court.

(iii) Suresh Kumar Vs. Delhi Transport Corporation in W.P. (C) No.945/2015 dated 17.03.2015 of the the Hon'ble High Court of Delhi - – 2015 LawSuit(Del) 1790.

9. In **S. Narsagoud** (supra), when the respondent-Conductor in the appellant Andhra Pradesh State Road Transport Corporation, was imposed with the punishment of removal from service, since

the charge of unauthorised absence from duty levelled against him was proved in the departmental enquiry proceedings. In a dispute raised by the respondent, the Labour Court held that no fault could be found with the disciplinary inquiry proceedings or with the findings arrived therein, however, concluded that though the respondent was guilty of the charges levelled against him but he had been without employment during the period of absence and has suffered thereby, so the penalty of not providing back wages would be the appropriate penalty in the facts and circumstances of the case, and accordingly ordered for reinstatement with continuity of service but without back wages. When the claim of granting of periodical increments for the intervening period was accepted by the High Court, the Corporation filed the Civil Appeal. The Hon'ble Supreme Court held as under:-

“5. The only submission made by the learned counsel for the appellant is that when an employee remains unauthorisedly absent from duty and though he has been directed to be reinstated with continuity of service by a judicial order, unless and until there is a direction for release of consequential benefits and specifically for the benefit of increments being given which the employee might have earned during the period of unauthorised absence from duty merely because the employee has been allowed the benefit of continuity of service the benefit of such increments cannot be released to him. The benefit of continuity of service only means that for the purpose of seniority and pensionary benefits the period of absence shall be taken into account as spent on duty, submitted the learned counsel for the appellant. In support of his submission he has also invited our attention to the provisions of the Andhra Pradesh State Road Transport Corporation Employees (Pay and Allowances) Regulations,

1964 and a circular issued thereunder by A.P. SRTC.

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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 shall 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 earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorised absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorised 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.

10. The Regulations referred to hereinabove clearly spell out that the period spent on the extraordinary leave or leave without pay or a period of overstayal after the expiry of leave or joining time cannot count towards increments unless the order of the competent authority sanctioning the extraordinary leave or leave without pay or the order commuting the period of overstayal into extraordinary leave or leave without pay is accompanied by a specific order to count the period for increments. A period of unauthorised absence from duty treated as a misconduct and held liable to be punished by way of penalty cannot be placed on a footing better than the period of extraordinary leave or leave without pay or a period of overstayal. Ordinarily, the increments are earned on account of the period actually spent on duty or during the period spent on leave, the entitlement to which has been earned on account of the period actually spent on duty. The direction of the High Court entitling the respondent to earn increments during the period of unauthorised absence from duty though held liable to be punished in departmental inquiry proceedings would amount to putting a premium on the misconduct of the employee”.

10. In **Abdul Kareem** (supra), the question that was considered is whether Labour Court's Award of reinstatement without back wages would imply continuity of service and whether notional increments are to be given to the employee for the period for which he was not

in service, in absence of specific direction in that regard? The Hon'ble Apex Court, after considering **S. Narsagoud** (supra), held as under:-

“11. Reverting to the facts of the case at hand, as already noticed, the Labour Court specifically directed that the reinstatement would be without back wages. There is no specific direction that the employee would be entitled to all the consequential benefits. Therefore, in the absence of specific direction in that regard, merely because an employee has been directed to be reinstated without back wages, he could claim a benefit of increments notionally earned during the period when he was not on duty or during the period when he was out of service. It would be incongruous to suggest that an employee, having been held guilty and remained absent from duty for a long time, continues to earn increments though there is no payment of wages for the period of absence”.

11. In Suresh Kumar (supra), the petitioner was appointed as Work Charge Apprentice Conductor in DTC vide letter dated 13.04.1976 and on the post of Conductor w.e.f. 23.05.1977 vide memo dated 09.06.1977. There is a chequered history of petitioner having faced various disciplinary proceedings and the petitioner challenging the same resulting into certain directions being given by the learned Tribunal from time to time. One of the order of termination dated 17.07.1987 was a subject matter of challenge before the Hon'ble Supreme Court in Civil Appeal No. 16543/1996 preferred by the petitioner and vide order dated 20.12.1996, the Supreme Court gave a direction for reinstatement of the petitioner with continuity of service, but without the relief of back wages. In compliance with the direction given by the Hon'ble Supreme Court,

the petitioner was reinstated in service as Retainer Crew Conductor on 05.02.1997 and he was kept on probation. His period of probation was also extended vide order dated 31.05.1999 upto 01.06.2000. During this extended period of probation, he again indulged in misconduct of non- deposit of DTC articles and again his services were terminated w.e.f. 01.06.2000 under clause 9 (a) (i) of the DRTA (Conditions of Appointment and Service) Regulation 1952. This order was challenged by the petitioner in Appeal and by the order passed by the Appellate Authority he was again inducted into service with the condition that his performance will be watched before his regularisation. The petitioner did not join the service and raised an Industrial Dispute being ID No. 123/2001 and the learned Industrial Tribunal vide order dated 03.07.2003 directed the respondents to reinstate the petitioner with continuity of service w.e.f. 01.06.2000 alongwith back wages for the period from 01.06.2000 to 10.10.2010. In para 5 of the impugned order the learned Tribunal observed that as far as the period from 01.06.2000 to 10.10.2010 is concerned, the petitioner has already been granted full back wages and continuity of service. The learned Tribunal further observed that it is also not in dispute that the respondents have granted continuity of service to the petitioner w.e.f. 01.06.1998 for all purposes. It further observed that in the period from 14.08.1986 to 18.07.1987, there is no question of continuity of

any kind of service, as the petitioner had never questioned the order of termination dated 17.12.1983 as well as his order of fresh appointment as Retainer Crew Conductor w.e.f. 14.01.1986. The period w.e.f. 18.07.1987 to 05.12.1997 would be treated as the period spent by him as Retainer Crew Conductor and not as an employee on monthly rate basis. The Hon'ble High Court after considering **S. Narsagoud** (supra) and **Abdul Kareem** (supra), dismissed the W.P. filed by the petitioner therein.

12. In Mahabir Prasad (supra), an employee of the respondent-DTC was removed from service on the allegations of misconduct. On questioning the same, the Labour Court by its Award, set aside the enquiry proceedings as well as the removal order and directed the DTC to reinstate the petitioner with continuity of service, but without back wages. The Hon'ble High Court after considering the decisions of the Hon'ble Apex Court in **S. Narsagoud** (supra) and **Abdul Kareem** (supra) also considered various other decisions including **J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another (2007) 2 SCC 433** and **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and Others, (2013) 10 SCC 324**. The relevant paragraphs of the judgment of the Hon'ble High Court are as under:-

“10. The petitioner's argument is that the denial of benefit of service for pension and terminal benefits, as well as continuity

of service for purposes of notional pay fixation would mean that he is denied all consequential benefits and not merely back wages. Having held that the charge of misconduct was not proved- a finding that became final - the petitioner could not be visited with a drastic consequence of denying him the benefits of his employment. Whilst the Labour Court was within its rights to hold that he could not claim back wages for not having worked, the denial of continuity for other purposes such as notional pay fixation for the interregnum period and for calculation of W.P.(C) 2216/2014 Page 6 pension and other terminal benefits was an infliction of a greater penalty which had no sanction; the Labour Courts award did not authorize it.

11. DTC argues in reply that there is no right to continuity of services and unless the order of reinstatement is categorical as to the precise nature of benefits that an employee is entitled to, he cannot seek or articulate a vested right to such consequence. The discretion of granting whole or part of back wages, deeming an employee in service for the whole of period of the operation of the termination order, and the nature and extent of consequential benefits to be granted was that of the Labour Court alone. Reliance was placed on the judgment reported as **J.K. Synthetics Ltd. v. K.P. Agrawal and Anr (2007) 2 SCC 433** to say that each term such as consequential benefit, continuity of services, etc have distinct meanings.

12. The award, in this case, held that the petitioner was to be reinstated with 'continuity of service' without payment of back wages. DTC has reinstated the petitioner by its order dated 12.05.2011. The question is whether the petitioner is entitled for benefits of Notional Pay, Promotion, ACP, etc. and if his services are to be counted for the purpose of pension benefits for the intervening period.

13. In cases of wrongful termination of service, reinstatement with continuity and back wages is the normal rule. This was the observation of the Hon'ble Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324**. The concept of reinstatement was also discussed therein:

"17. The very idea of restoring an 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."

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20. The above discussion reveals that there appeared to be no standard pattern of directing how a reinstated employee is to be given the benefit after reinstatement. In **Deepali Gundu Surwase**(supra), for the first time, the restitutionary principle underlying reinstatement and other benefits was spelt out and a semblance of uniformity was attempted. If that is to be kept in mind, what is apparent in this case is that the petitioner had to battle for over a decade and a half to secure justice. The Labour Court held the enquiry against him illegal; went into the material and found that the charge of misconduct was baseless. It consequently directed reinstatement without back wages. Whilst the denial of back wages is not in question, the Award directed continuity of service. If DTC's contention were to be accepted, the petitioner would stand doubly penalized for the delay in securing justice, plainly for no fault of his. The denial of 15 years' salary would result in his denial of pension, or at least a vastly diminished pension, gratuity and other terminal benefits. If these benefits are denied, the direction to grant continuity of service would be a hollow relief. Furthermore, to restore him in the pay scale at the stage of his termination would be to freeze him in a pay scale that is no longer existent, or at least unrecognizable. It is pertinent that a withholding of 2 increments for two years, with cumulative effect has been held to be a major penalty (imposable only after an enquiry) since the increments "would not be counted in his time-scale of pay" in perpetuity. In other words, the clock would be set back in terms of his earning a higher scale of pay, by two scales. **See Kulwant Singh v. State of Punjab, 1991 Supp (1) SCC 504**. Keeping this in mind, if the petitioner were to be restored in the pay scale at the stage of his termination, it would amount to withholding several increments, and thus be equivalent to imposing a compounded major penalty.

21. Consequently, it is held that the direction to grant continuity meant that the petitioner had to be given notional increments for the duration he was out of employment, in the grade and the equivalent grade which replaced it later, till he reached the end of the pay scale. Since there is no direction to give consequential benefits, the petitioner cannot claim promotion as a matter of right; it would have to be in accordance with the rules. ACP benefits however, should be given. The notional pay fixation would also mean that he would be entitled to reckon the period between his removal and reinstatement as having been in employment for pension, gratuity, and contributions to provident fund etc. This Court directs the DTC to issue an order extending these benefits to the petitioner for the 15 year period between his dismissal in 1995 and his eventual reinstatement in 2011, within eight weeks from today. The writ petition is allowed in these terms; there shall be no order as to costs”.

13. In **S. Narsagoud** (supra) and **Abdul Kareem** (supra), the

workmen therein though were directed to be reinstated into service but the findings of the Disciplinary Authorities that the said workmen committed misconduct and the charges levelled against them were held proved, were not disturbed. The removal/dismissal was not held to be illegal or unjustified by the concerned Labour Courts, whereas in Mahabir Prasad (supra), the Labour Court held that the charges levelled against him were not proved, which is also the case in the instant OA. Further, the Hon'ble High Court in Mahabir Prasad (supra), after considering the decision in **Deepali Gundu Surwase** (supra), categorically held that denying back wages and also the other benefits, though continuity of service was granted, amounts to double punishment, where the removal/dismissal was held to be bad. The decision of Hon'ble Apex Court in **Deepali Gundu Surwase** (supra), as explained by the Hon'ble High Court of Delhi in Mahabir Prasad is squarely applicable to the present case. Whereas, the other decisions can be distinguishable, on facts.

14. In the circumstances and for the aforesaid reasons, the OA is allowed and the impugned orders are quashed and the Annexure P-

4 Order dated 10.04.2012 is restored with all consequential benefits. All pending MAs also stand disposed of. No costs.

(PRADEEP KUMAR)
Member (A)

(V. AJAY KUMAR)
Member (J)

RKS