

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHENNAI BENCH**

**OA/310/00344/2019**

**Dated Wednesday the 20<sup>th</sup> day of March Two Thousand Nineteen**

**CORAM: HON'BLE MR. R. RAMANUJAM, Member (A)  
HON'BLE MR. P. MADHAVAN, Member (J)**

V.Venkatasamy,  
Junior Works Manager,  
Heavy Alloy Penetrator Project (HAPP),  
Trichy 620025.

....Applicant

By Advocate M/s. R. Pandian

Vs

Union of India rep by,  
1.The Secretary,  
Ministry of Defence,  
Department of Defence Production,  
South Block, New Delhi 110001.

2.The Chairman,  
Ordnance Factories Board,  
10, SK Bose Road,  
Kolkata 700001.

3.The General Manager,  
Ordnance Factory,  
Chanda, Maharashtra State.

4.The General Manager,  
Heavy Alloy Penetration Project (HAPP),  
Trichy 620025.

....Respondents

By Advocate Mr. Su. Srinivasan

**ORAL ORDER**

**(Pronounced by Hon'ble Mr. R. Ramanujam, Member(A))**

Heard. The applicant has filed this OA seeking the following reliefs :

"To call for the records relating to the impugned order No. 8(2)/2017-D(Estt./Gaz) dated 27.11.2017 and to quash the same, further to direct the respondents :-

- i. To grant yearly increments of pay for the period from 09.10.1997 and 24.05.2002 (ie., from the date of compulsory retirement to the date of reinstatement), which he has been receiving in the normal course in the month of March, consequently,
- ii. to refix the pay of the applicant and grant other consequential benefits as per his entitlement and
- iii. to pass such other order/orders as this Hon'ble Tribunal may deem fit and proper and thus to render justice."

2. It is submitted that the applicant was imposed with the penalty of compulsory retirement for continuous unauthorised absence from duty from 21.06.1996 without any intimation/prior sanction of leave from the competent authority. The period of unauthorised absence from duty from 21.06.1996 to 08.10.1997 was directed to be regularised by grant of EOL/PA. Subsequently, after the penalty was quashed by this Tribunal in OA 841/1998 and the writ petition thereagainst rejected by the Hon'ble Madras High Court with permission to the employer to hold an inquiry afresh after giving notice to the applicant, a fresh inquiry was held and the applicant was imposed with a penalty of reduction of pay by three stages in the time scale of pay by Rs. 5000-150-8000 (ie., from Rs. 6050 to Rs. 5600 per month) for a period of two years with cumulative effect which came into effect from 29.10.2004.

3. The applicant sought notional increment and seniority consequent on his reinstatement and filed a representation dt. 17.11.2013 to the competent authority. A direction was passed by this Tribunal in OA 1908/2016 dt. 13.06.2017 to the competent authority to consider and dispose of the applicant's representation dt. 17.11.2013 in accordance with the rules and pass a reasoned and speaking order. Annexure A11 impugned order dt. 27.11.2017 had been issued in compliance thereof, aggrieved by which the applicant is before this Tribunal in this next round of litigation.

4. The grievance of the applicant is that though the period of absence of the applicant from the date he was compulsorily retired to the date of his reinstatement i.e., from 09.10.1997 to 24.05.2002 was treated as duty without back wages as he had not physically worked in the post during that period, he was not granted the increment due to him on the post on reinstatement. Had the applicant been granted increment even if only on notional basis, the reduction in his pay by three stages would have been from a higher pay and not the pay as drawn by him at the time of his compulsory retirement. In as much as the respondents have treated the period of absence as duty and are now denying notional increments for the said period, the impugned order contradicted the decision of the competent authority, it is alleged. Accordingly, the applicant has filed this OA seeking the aforesaid relief.

5. Mr. Su. Srinivasan, SCGSC appears for the respondents and submits that the mere fact that the period of absence between the date of compulsory

retirement and the date of reinstatement has been treated as duty would not mean that the applicant could be granted increments for the period he had not actually been in service. As a matter of fact there would only be a contradiction if the respondents granted notional increments for a period during which the applicant was not entitled to back wages. He seeks to rely on the order of the Hon'ble Apex Court in CA 7797/2003 dt. 02.08.2005 in an allegedly identical case, the relevant portion of which is reproduced below:-

".....The Labour Court upheld the departmental enquiry and the findings arrived thereat, but the respondent was directed to be reinstated with continuity of service but without back-wages. The Learned Single Judge, on being approached by the respondent, directed the appellant to fix the wages payable to him on his reinstatement by taking into account the increments that he would have earned had he been in service during the period of absence from duty. This finding of the Learned Single Judge was affirmed in an appeal by the Division Bench. This Court allowed the appeal preferred by the A.P.S.R.T.C.

The principle of law on point are no more res integra. This Court in S. Narsagoud (supra) succinctly crystallized principle of law in Paragraph 9 of the judgment on Page SCC 215:

"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 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."

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.

....."

6. We have considered the matter. It is not in dispute that the applicant was compulsorily retired from service initially and later reinstated in service on the basis of the directions issued by the Court. There is no evidence of the Tribunal or the High Court having directed the respondents to reinstate the applicant with back wages along with consequential benefits or without back wages with notional consequential benefits. Further, when the applicant had not actually worked during the period from the date of compulsory retirement to the date of reinstatement as a consequence of which it was decided not to pay him the back wages, the question of granting increment does not arise as increments are earned by putting in actual service. It is by no means a routine benefit granted regardless of whether the applicant was actually on duty or not.

7. In as much as the applicant was not granted the benefit of notional increment specifically either by the order of the competent authority or by the Courts, the respondents could not be expected to now grant him the notional benefits several years after the event. Further, grant of such benefits would for all practical purposes neutralise the penalty imposed on the applicant which was to reduce his pay by three stages for a period of two years with cumulative effect. Grant of notional increments while at the same time passing an order for reduction would certainly have been incongruous and inconsistent with the

intent in imposing the penalty.

8. In the above circumstances, we are of the view that the ratio of the order of the Hon'ble Apex Court in the CA cited supra is squarely applicable to the case of the applicant and the respondents have committed no illegality in issuing the impugned order. OA is misconceived and is accordingly dismissed.

**(P. Madhavan)**  
**Member(J)**

**(R. Ramanujam)**  
**Member(A)**

**20.03.2019**

SKSI