Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Execution Application No.158 of 2017 with M.A.No. 910 of 2018
In
Transferred Application No. 65 of 2016

Wednesday this the 5th day of September, 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Sanjay Singh ……**Petitioner**

Ld. Counsel for the Applicant : **Shri Vishwajeet Singh, Advocate**

Versus

Union of India & others …**Respondents**

Ld. Counsel for the Respondents : **Shri Amit Jaiswal**
Ld. Counsel for Central Govt.

ORDER (Oral)

Ex. Application No.158 of 2017 with M.A.No. 910 of 2018

1. The aforementioned Ex.Application has been moved for execution of the order dated 22.03.2017 passed in T.A.No.65 of 2016 and M.A.No. 910 of 2018 has been moved for initiating contempt proceedings for non compliance of the aforesaid order passed in the aforementioned T.A.

2. While deciding the aforementioned T.A., the Tribunal passed the following order :

> *"22. The petition deserves to be allowed. Accordingly, the petition is allowed. The impugned order of dismissal dated 26.6.1999, contained in Annexure No. 6 and order dated 23.03.2000, rejecting the statutory appeal of the petitioner, contained in Annexure No.13 are set aside with all consequential benefits, which will be payable to the petitioner in accordance with the rules. Petitioner shall be treated in service from the*

date of dismissal and shall be deemed to be in continuous service for all practical purposes. Let consequential benefits be paid to the petitioner expeditiously, say, within a period of four months from the date of service/communication of the order."

3. Before proceeding further, we would like to mention that on 25.07.2018, this Tribunal passed the following order :

"Ex-A No. 158 of 2018

This is an application for execution of the order dated 22.03.2017 passed by the Tribunal in T.A.No. 65 of 2016. The operative portion of the said order reads as under :

"22. The petition deserves to be allowed. Accordingly, the petition is allowed. The impugned order of dismissal dated 26.6.1999, contained in Annexure No.6 and order dated 23.03.2000, rejecting the statutory appeal of the petitioner, contained in Annexure No.13 are set aside with all consequential benefits, which will be payable to the petitioner in accordance with the rules. Petitioner shall be treated in service from the date of dismissal and shall be deemed to be in continuous service for all practical purposes. Let consequential benefits be paid to the petitioner expeditiously, say, within a period of four months from the date of service/communication of the order."

The submission of the learned counsel for the petitioner is that the petitioner was directed to be reinstated and he has been granted consequential benefits.

On behalf of the respondents, it is submitted that only direction was that the petitioner shall be treated in service and shall be deemed to be in continuous service, but there was no direction for reinstatement.

Learned counsel for the petitioner prays for and is granted four weeks' time to argued on this point.

It is also submitted by the learned counsel for the respondents that the petitioner be directed to provide all the necessary documents, so that necessary PPO may be issued. Learned counsel for the petitioner denied to furnish these documents till the issue of reinstatement is finalised.

List this case on 21.08.2018 for orders."

4. The said order was assailed to by the petitioner before the Hon'ble Apex Court by preferring Diary No. 28034 of 2018 and the Hon'ble Apex Court vide order dated 27th August 2018 has passed the following order :

"O R D E R

It is argued by the learned counsel for the appellant that vide order dated 22.03.2017 passed in T.A. No. 65/2016, the Armed Forces Tribunal (hereinafter referred to as "the Tribunal") had set aside the dismissal order dated 26.06.1999 and specifically directed that the

appellant herein shall be treated in service from the date of dismissal and shall be deemed to be in continuous service for all practical purposes. He submits that the respondent did not obey the said order and forced the appellant to file execution petition. He further submits that in the execution petition the respondents have adopted an ingenuous method to defeat the aforesaid direction by taking a frivolous plea that the only direction in the order dated 22.03.2017 was that the appellant shall be treated in service and there was no direction for reinstatement.

At the same time, we also find that the Tribunal has not taken a final view on the aforesaid plea which is raised by the respondents and, therefore, it may not be appropriate to interfere with the order of the Tribunal at this stage. However, we also find that on 25.07.2018, the appellant was directed to provide all the necessary documents, so that PPO may be issued. Such a plea of the respondents cannot be countenanced to this, particularly, when it is yet to be decided as to whether the appellant should be reinstated in service or not as per the order dated 22.03.2017. Therefore, till the time the aforesaid issue is decided, the appellant would not require to submit any such documents. We also expect the Tribunal to take the final decision on the next date which is fixed on 05.09.2018.

The instant appeal is dismissed."

5. Thus, the petitioner is claiming that by the order under execution, the intention of the Tribunal was to direct the reinstatement of the petitioner and to pay him all the consequential benefits, including promotion etc. It has been argued that the word "deemed to be in service" means that the petitioner has to be treated to be in service continuously without any break and accordingly, the order was to be executed by the respondents by his reinstatement and not by paying financial benefits only.

6. It has also been argued that vide letter dated 07th August 2018 addressed to the petitioner, the respondents have stated in Para 2 of the said letter as under :

*"2. In deference to the Hon'ble Armed forces Tribunal, Regional Bench, Lucknow order dated 22 Mar 2017 passed in the subject case, IHQ of MoD (Army) vide their letter quoted at Para 1(b) above have accorded **GOVERNMENT SANCTION** for your notional re-instatement into service with effect from 26 Jun 1999 (i.e. the date of dismissal) and then notional discharge from service on completion of 19 years service (i.e. wef 30 Jun 2017) and thereafter grant of service pension in the rank of Sepoy."*

7. On the strength of use of words 'notional reinstatement' in this letter, it has been argued that the word "reinstatement" has been used by the

respondents in the aforementioned letter, therefore, by the order under execution, the petitioner has to be reinstated in service and there cannot be any other interpretation of this order. Learned counsel for the respondents has placed reliance on some judgments of the Hon'ble Apex Court and one of the Hon'ble Rajasthan High Court, which we shall consider at the relevant part of this order.

8. Shri Amit Jaiswal, learned counsel for the respondents has argued that this Hon'ble Tribunal has nowhere directed that the petitioner shall be reinstated in service. The words used by the Tribunal "shall be treated in service" and "shall be deemed to be in continuous service" gives rise to the only inference that the petitioner was to be treated notionally in service for all financial benefits and it was never specifically directed that the petitioner be reinstated in service. Therefore, the argument of the learned counsel for the petitioner that the order under execution must be read as a direction for reinstatement, is incorrect and no such relief can be granted.

9. Learned counsel for the respondents has also submitted that the respondents are ready and willing to execute the order under execution and have calculated the amount which is due to the petitioner in pursuance of the order. It has been informed that the petitioner is entitled to receive more than Rs.33 lacs, which has to be paid to the petitioner only after completion of certain formalities and after filing certain documents. The petitioner has been asked to furnish certain documents, but the petitioner has not filed such documents, therefore, the execution of the order is being delayed.

10. Before proceedings further, we would like to deals with the scope of the executive court while executing the order. The Hon'ble Apex Court in the case of **Rameshwar Dass Gupta vs. State of U.P. & Another** (1996) 5 SCC 728, wherein Hon'ble Apex Court held in Para 4 as under:

> *"4. It is well-settled legal position that an executing Court cannot travel beyond the order or decree under execution, It gets jurisdiction only to execute the order in accordance with the procedure laid down*

under Order 21, CPC. In view of the fact that it is a money claim, what was to be computed is the arrears of the salary, gratuity and pension after computation of his promotional benefits in accordance with the service law. That having been done and the court having decided the entitlement of the decree-holder in a sum of Rs.1,97,000/- and odd, the question that arises is whether the executing Court could step out and grant a decree for interest which was not part of the decree for execution on the ground of delay in payment or for unreasonable stand taken in execution ? In our view, the executing Court has exceeded its jurisdiction and the order is one without jurisdiction and is thereby a void order. It true that the High Court normally exercises its revisional jurisdiction under Section 115, CPC but once it is held that the executing Court has exceeded its jurisdiction, it is but the duty of the High Court to correct the same. Therefore, we do not find any illegally in the order passed by the High Court in interfering with and setting aside the order directing payment of interest."

11. Hon'ble Apex Court in the case of **Kanwar Singh Saini vs. High Court of Delhi** (2012) 4 SCC 307) has held in Para 25, which reads as under :

"25. It is a settled proposition that the executing court does not have the power to go behind the decree. Thus, in absence of any challenge to the decree, no objection can be raised in execution.)Vide State of Punjab v Mohinder singh Randhawa)."

12. Hon'ble Supreme Court in the case of **Vasudev Dhanjibhai Modi vs Rajabhai Abdul Rehman & Others** (1970(1) SCC 670) has held in para 6 as under :

"6. A Court executing a decree cannot go behind the decree : between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties."

13. First of all, we would like to take the letter dated 07th August 2018 issued by the Senior Record Officer of Rajput Regiment Abhilekh Karyalaya Records, wherein the word "notional reinstatement" has been used. We would like to make it clear that we are not sitting in execution of the letter dated 07th August 2018. We are not supposed to interpret the words used in the aforementioned letter. Since this is an Executing Court, therefore, what words the Tribunal has used in the order have to be interpreted. That apart learned counsel for the respondents has argued that they have calculated the

financial benefit on the basis of notional reinstatement as the order nowhere directs the reinstatement of the petitioner.

14. Learned counsel for the petitioner has placed reliance on the pronouncement of Hon'ble Apex Court in the case of **Deepali Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya & Ors** (2013) 10 SCC 324 and has drawn our attention towards Paras 21 and 22 of the said judgment, which reads as under :

> *"21. The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol.II, 3rd Edition, the word "reinstate" means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word "reinstatement" means the action of reinstating; re-establishment. As per Law Lexicon, 2nd Edition, the word "reinstate" means to reinstall; to re-establish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word "reinstatement" means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per Merriam Webster Dictionary, the word "reinstate" means to place again (as in possession or in a former position), to restore to a previous effective state. As per Black's Law Dictionary, 6th Edition, "reinstatement" means*
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> > *'to reinstall, to re-establish, to place again in a former state, condition, or office? To restore to a state or position from which the object or person had been removed.'*
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> *22. 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. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities."*

15. Thus, in the aforementioned case, the meaning of the word "reinstatement" has been defined. Since in the instant case by the order under execution, the word "reinstatement" has not been used, therefore, we are of the view that this case law is not of any help to the petitioner. We are confined to interpret the words "treated in service" and "deemed to be in service". Learned counsel for the petitioner has also placed reliance on the pronouncement of Hon'ble Apex Court in the case of **Rafique Bibi vs. Syed**

Waliuddin (2004) 1 SCC 287 and has drawn our attention towards Para 8 of the said case law, which reads as under:

> *"8. A distinction exists between a decree passed by a Court having no jurisdiction and consequently being a nullity and not executable and a decree of the Court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing Court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior Court failing which he must obey the command of the decree. A decree passed by a Court of competent jurisdiction cannot be denuded of its efficacy by any callateral attack or in incidental proceedings."*

16. Aforementioned case law deals with the scope of court exercising execution jurisdiction, which we have already discussed in the earlier part of this order.

17. Reliance has also been placed on the pronouncement of Hon'ble Rajasthan High Court in the case of **Rishi Deo & Ors vs. State of Raj & Ors** (RLW 2004 (4) Raj 2652). Paras 8 and 9 are relevant which reads as under:

> *"8. In my considered opinion, the interpretation of judgment of this Court as made by the respondents is absolutely incorrect. This Court gave categoric direction for reappointment of the petitioners with all notional benefits, accruable to the petitioners on account of withdrawal of termination order. Once the respondents have withdrawn the order of termination of services of the petitioners, the petitioners are entitled to reinstatement from the date of the termination and their services will be continued from the date of initial appointment, as if the services of the petitioners were never terminated. The intent of this Curt was also the same as this Court has positively observed that on the reappointment the petitioners would get notional consequential benefits, meaning thereby the petitioners will be given the benefit of seniority and fixation of their pay from the date of their Initial appointment. However, the actual payment will be made on the date the petitioners were reappointed/reinstated. Therefore, for all purposes except the payment of arrears of salary, the petitioners were required to be treated as continued in service.*
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> *9. The interpretation of the word 'reappointment' made by the respondents is absolutely misconceived. The word 'reappointment' would be read in light of over-all directions given by this Court and this Court in positive terms directed to reappoint the petitioner with notional consequential benefits, meaning thereby this Court has also in mind the past services rendered by the petitioner and the services of the petitioners were required to be counted from the date of initial*

appointment for the purpose of seniority and pay fixation except the payment of actual salary."

18. In the facts of that case, it is clear from perusal of Para 8 that there was a categorical direction for re-appointment of the petitioner, while there is no such categorical direction for reinstatement/re-appointment of the petitioner by the order under execution.

19. Now we will have to consider the words "treated in service" and "deemed to be in service", what these words actually means. Whether the use of these words would mean a specific direction for reinstatement in service or it would only mean that the intention of the Tribunal was to direct notional reinstatement of the petitioner in service for financial benefits only.

20. Before proceeding further, we would also like to deal with the submission of the learned counsel for the petitioner that the petitioner is not only entitled to reinstatement, but also to the promotion as he has been given all consequential benefits.

21. Now the question arises whether the words "consequential benefits" would include promotion also. This point has been considered by the Hon'ble Apex Court in the case of **Union of India & Others vs. Col Ran Singh Dudee** (Civil Appeal Nos.11009 of 2017 and Civil Appeal No.5973 of 2018) decided on 03rd July 2018, whereby the Hon'ble Apex Court in Para 6 has defined the words "consequential benefits". The said paragraph reads as under :

"6. The first question that arises is regarding the significance of the expression "consequential benefits" as used in the order dated 20.11.2013. The matter which was directly in issue and under consideration was the correctness and validity of General Court Martial proceedings. While annulling the findings and effect of such General Court Martial proceedings, the idea was to confer those benefits which the officer stood denied directly as a result of pendency of such proceedings. Such benefits would therefore be those which are easily quantifiable namely those in the nature of loss of salary, emoluments and other benefits. But the expression cannot be construed to mean that even

promotions which are strictly on the basis of comparative merit and selection must also stand conferred upon the officer.

It is true that as a result of pendency of the General Court Martial proceedings the respondent was kept out of service for nearly nine years and as such his profile would show inadequacy to a certain extent. On the other hand the Department was also denied of proper assessment of the profile of the respondent for those years. The correct approach in the matter is the one which was considered by this Court ***in Lt. Col. K. D. Gupta v. Union of India and Others*** *(1989 Suppl (1) SCC 416) as under:-*

> *"8. The respondents have maintained that the petitioner has not served in the appropriate grades for the requisite period and has not possessed the necessary experience and training and consequential assessment of ability which are a precondition for promotion. The defence services have their own peculiarities and special requirements. The considerations which apply to other government servants in the matter of promotion cannot as a matter of course be applied to defence personnel of the petitioner's category and rank.*
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> *Requisite experience, consequent exposure and appropriate review are indispensable for according promotion and the petitioner, therefore, cannot be given promotions as claimed by him on the basis that his batchmates have earned such promotions. Individual capacity and special qualities on the basis of assessment have to be found but in the case of the petitioner these are not available. We find force in the stand of the respondents and do not accept the petitioner's contention that he can be granted promotion to the higher ranks as claimed by him by adopting the promotions obtained by his batchmates as the measure."*

22. Now we first deal with the meaning of the words "deemed to be". The phrase "deemed to be" has been defined in Advanced Law Lexicon of P Ramanatha Aiyar's, 4th Edition as under :

> **Deemed to be.** When a person is 'deemed to be' something, the only possible meaning is that whereas he is not in reality that something, the Act requires him to be treated as if he were Commr of Income-tax, Bombay Presidency v. Bombay Trust Corporation Ltd., AIR 1930 PC 54.
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> The phrase 'deemed to be' means 'not in reality'. [State of Mharashtra v. Lalit Rajshi Shah, (2000) 2 SCC 699, para 6: AIR 2000 SC 937]
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> When a thing is 'deemed to be' something, the only meaning possible is that whereas it is not in reality that something, the Act directs that it should be treated as if it were that thing. Dazrbar Lal v. Dharam Wati, AIR 1957 All 541, 545 (FB).
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> When a person is 'deemed to be' something, it would mean that where he is not in reality that something, but the statute requires him to be treated that something as if he is. (Raja Bahadur Kamakshya Narain Singh vs. CIT (1946) 14 ITR 683 (Pat).

> "No doubt the phrase 'deemed to be' is commonly used in statutes to extend the application of a provision of law to be class not otherwise amenable to it. But one cannot apply to a moffusil document rules of construction that would be appropriate in the case of a statute'. 32 MLW 704 : 1930 MWN 1165: 59 MLJ 782.
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> In *Leonard v. Grant,* 5 Feb, 11, 16, it is said: Whatever an Act requires to be 'deemed' or 'taken' as true of any person or thing, must in law, be considered as having been duly adjudged or established concerning such person or thing and have force and effect accordingly.
> When, by statute, certain acts are 'deemed' to be a crime of a particular nature, they are such crime, and not a semblance of it, nor a mere fanciful approximation to or designation of the offence.
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> When a thing is to be 'deemed' something else, it is to be treated as that something else with the attendant consequences, but it is not that something else. (per COVE J.R. v. Norfolk Co. 60 LJQB 380).
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> 'When a statute enacts that something should be 'deemed' to have been done which in fact and truth, was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be restored to.' (per JAMES L.J. Ex.p. Walton 50 LJ Ch 662).

23. In the case **Indermani Jatia vs CIT** (1959 Supp (1) SCR 45, the Hon'ble Apex Court has observed that the expression "deemed to be received" means, deemed by the relevant provisions of the Act to be received. Though income may not have been received by the assessee in reality, it can be deemed to be received under the relevant provisions of the Act; and this constructive receipt can be conveniently described as statutory receipt under the Act. Thus, the meaning of the words "deemed to be in service" is that not in reality but only to treat as such.

24. Now we come to the words "treated in service". The literal meaning of the words "treated in service" itself reflects that though a person was not having a particular position and status, but he shall be treated to be having the said status and this interpretation also leads to the only conclusion that the intention of the Tribunal was only the notional reinstatement of the petitioner and not the actual reinstatement of the petitioner. Meaning of the words "treated to be in service" in the context of the issue involved has similar meaning as the words "deemed to be in service" means.

25. Learned counsel for the petitioner has also argued that had there been the intention of the Tribunal that the petitioner shall be treated to be in service notionally, then the Tribunal must have used the word “notionally”. Avoiding the use the word “notionally”, would mean that the intention of the Tribunal was to direct the actual reinstatement of the petitioner.

**26. We have given our anxious thoughts to this submission. The reasoning given by the learned counsel for the petitioner virtually goes against the petitioner. By not using the word “reinstatement” and using the words “treated to be” and “deemed to be” in the order would make the intention of the Tribunal clear that the direction was only for the notional reinstatement of the petitioner, that’s why Tribunal avoided to use the word “reinstatement” deliberately.

27. Learned counsel for the respondents has also argued that a Sepoy can be treated to be in service for a period of 19 years. Since said period of 19 years, has expired, therefore, keeping in view the length of service of a Sepoy, his dues have been calculated and the petitioner has been informed to furnish certain documents to make the payment, which has been calculated as Rs.33 lacs (appox). Since the petitioner has not furnished the said documents, therefore, the order could not be complied with.

28. There is yet another ground to infer that the intention of the Tribunal was only to direct the notional reinstatement of the petitioner only for the financial benefits. The petitioner has been out of service of the Army for a long period of 19 years. A person, who has not undergone the regular annual training/exercise and the exposer required with increasing seniority in the Army, would not be of any meaningful use keeping in view the hard duties of the Army as a fighting force. Therefore, the Tribunal has deliberately avoided to direct reinstatement of the petitioner and has only given the order for the consequential financial benefits.

29. In view of the discussions made above, we are of the considered view that by the order under execution, there was no direction for reinstatement of the petitioner, the petitioner cannot take the benefit of use of the words "notional reinstatement" in the letter dated 07.08.2018 (quoted above), so the petitioner is entitled to all the financial benefits, as directed by the Tribunal in the order under execution taking the petitioner to be notionally in service.

30. Therefore, the claim of the petitioner that he is entitled for reinstatement, is hereby rejected.

31. We direct the petitioner to furnish the documents, as required by the respondents, within a period of 15 days from today and thereafter the respondents shall ensure payment of his entire dues in pursuance of the order under execution within a period of four weeks thereafter to ensure

List this case on **15.11.2018** for orders.

(Air Marshal BBP Sinha) **(Justice S.V.S. Rathore)**
Member (A) Member (J)

PKG