

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No.21/14/2018

Hyderabad, this the 20th day of March, 2020

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)



Nirmal Kanth Tikadar,
S/o. late Khirod Chandra Tikadar,
Aged 45 years, Occ: Station Superintendent,
South Central Railway,
Secunderabad Division, Wirur R.S.,
Maharashtra – 442 905.

... Applicant

(By Advocate: Mr. KRKV Prasad)

Vs.

1. Union of India, Rep. by the General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.
2. The Senior Divisional Personnel Officer,
South Central Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.
3. The Senior Divisional Finance Manager,
South Central Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.

... Respondents

(By Advocate: Mr. N. Srinivasa Rao, SC for Railways)

ORDER
{As per B.V. Sudhakar, Member (Admn.)}

2. OA is filed in regard to correct fixation of pay subsequent to completion of penalty imposed in regard to pay.



3. Brief facts are that the applicant while working as Asst. Station Master in the respondents organisation was imposed with a penalty of lowering his pay by one stage from Rs.15,850 to Rs.15,380 in the Pay Band of Rs.9300 – 34,800 with the G.P. of Rs.4200, for a period of 3 years (R) recurring vide order dated 21.10.2009 which was confirmed by the appellate and revising authority. On completion of the penalty the pay was correctly fixed as Rs.17,330/- with GP of Rs.4200 and later 2 increments for the years 2013 & 2014 were drawn. Thereafter when the applicant was promoted to the post with GP of Rs.4600, his pay was fixed as Rs.20,450/- as was fixed for one Shri Ramesh Chand Meena who was appointed along with the applicant. With the advent of 7th CPC the applicant pay was fixed as Rs.49,000/- whereas that of Shri Ramesh Chand Meena as Rs.55,200. Applicant did ventilate his grievance but of no avail and hence the OA.

4. The contentions of the applicant are that the reduction in pay without notice and that too after correctly fixing it consequent to the completion of the penalty, is arbitrary and irregular. His pay has to be on par with Mr Ramesh Chand Meena, except during the currency of the penalty suffered by the applicant, since both of them were appointed at the same time to the same post. The penalty is imposed only for a period of 3 years and not

permanently. The increments cannot be drawn only during the currency of the penalty and not permanently. Besides, the penalty does not mean reducing the pay of the applicant by 3 stages. The due and drawn statement showing the earlier fixation and the revised fixation was not issued. The action of the respondents has caused perpetual loss to the applicant.



5. Respondents oppose the contentions of the applicant by stating that the applicant was imposed 2 penalties namely (i) with reduction of pay by one stage for 3 years with cumulative effect w.e.f. 21.10.2009 (R-1) and the other imposing reduction of pay by two stages w.e.f. 17.11.2017 (R-II). The first penalty is with recurring effect and hence increments to be drawn during the period of punishment are lost forever. Hence the pay of the applicant was to be fixed at Rs.15,850/- w.e.f. 21.10.2012 after the currency of the punishment, instead, it was wrongly fixed as Rs.17,330 w.e.f 1.1.2013. Therefore, excess amount has to be recovered. The difference in pay when compared with that of Mr Ramesh Chand Meena is because of the fact that the applicant has suffered penalties.

6. Heard both the counsel and perused the pleadings.

7. I) The applicant was imposed two penalties one on 21.10.2009 and the other on 17.11.2017 respectively, as under:

“Accordingly, in exercise of the powers conferred on me under the Railway Servants (Discipline and Appeal) Rules, 1968. I impose upon Sri Nirmal Kanth Tikdar/ASM/MCW. The penalty of lowering his pay by one stage from Rs.15850/- in Grade Rs.9300-34800 GP 4200 to Rs.15380/- for a period of 3 years (R).”

Accordingly, in exercise of the powers conferred on me under the Railway Servants (Discipline & Appeal) Rules, 1968, I impose upon Sri Nirmalakanth Tikadar, Dy. SS/MAGH (Now working at WIRR) the penalty of lowering his pay by two stages i.e. from Rs.50,000/- to 47,600/- as per (7th PC) in Level – 7 in pay Matrix RS(RP) Rules 2016 for a period of two stages for a period of 6 months (NC).”



The first penalty is in regard to reduction by one stage for a period of 3 years (R). The said order does not indicate as to what should be done in regard to the increments due to be drawn during the currency of the penalty for 3 years. Besides, it is also not clear as to whether the reduction by one stage is recurring. It does not give details as to pay after completion of penalty, increments drawal, seniority, effect on pension etc. The penalty is not properly worded and it is not in accordance with the instructions contained in rule 6 of the Railway Servants (D&A) Rules. Usually abbreviations are not used in penalties like using the letter (R) to denote recurring in the present case. One did not understand as to what R stood for until the 1st counsel explained that it stood for recurring. Rarely, we come across such penalty orders which are poorly framed causing confusion in implementing the order. The natural consequence was that the respondents interpreted it in their own way of not drawing the increments for 3 years on a recurring basis though the penalty order apparently did not intend so. Appellate and the Revising authority have glossed over the folly discussed while confirming the penalty. Besides, after restoring the pay of the applicant to Rs.17,330 and thereafter drawing the subsequent increments for 2 years, the respondents on detecting a mistake in fixing the pay as claimed by them, the proper course open to them was to put the applicant on notice and thereafter decide the issue. This was not done and hence violative of Principles of Natural Justice.

II) Respondents did explain in a tabular form as to why there is a difference between the pay of the applicant and that of Sri Ramesh Chand Meena. Though the details are elaborate and clear but the fundamental flaw is with the penalty order of 2009 as explained supra. Therefore, the respondents interpreting the way they understood is not what is expected in implementing penalties imposed. The concerned authority from the finance/accounts wing should have sought a clarification from the disciplinary authority in regard to penalty before re-fixing the pay. Without understanding a penalty and straight away fixing a lower pay is arbitrary and highly objectionable. It should not be forgotten that respondents decisions in regard to penalties will have a far reaching impact on the career of the employees. Therefore utmost care has to be taken in framing, wording and implementing the penalties so that the said exercise does not give room for different interpretations as in the present case. Particularly in matters of the nature in question, affected party should be heard before a decision is taken so that a balanced view is taken. A bit of callousness is conspicuously evident in dealing with grievance of the applicant.

III) Therefore in view of the aforesaid circumstances, respondents are directed to consider as under:

a) Remand the matter to the disciplinary authority for issuing a corrigendum in respect of the penalty order imposed vide memo dated 21.10.2009 in accordance with the provisions laid down in rule 6 of the RS (D&A) Rules 1968, taking care that the penalty imposed is equal to or less than the one ordered in the cited memo but not more.



b) Thereafter, depending on the decision taken as at (a) above, the applicant be put on notice with 15 days time to respond, in regard to lowering of pay, if decided to do so, and thereafter on receiving the reply appropriate action in regard to proper fixation of the pay be taken.



c) There upon, the applicant has the liberty to seek remedy from the appellate and the revision authority within the permitted period as per disciplinary norms of the respondents organisation.

d) The time allowed to complete the entire exercise is 6 months from the date of receipt of this order. Both the parties to take note of the time allowed and take action in such a manner that either parties will have reasonable time to decide on the developments emerging at each stage of the remedial action provided for, so that the outer limit of 6 months is not exceeded to.

e) Till the time the issue attains finality as per process outlined above, the interim order of staying the recovery ordered vide this Tribunal docket order dated 4.1.2018 will hold good.

IV) With the above direction the OA is disposed of with no order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

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