CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/021/00745/2018

HYDERABAD, this the 11th day of November, 2020
(Reserved on 02.11.2020)

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

P.Sumitra W/o Late P.Bhaskar Rao (HTTE/NED),
Aged about 52 years, Occ : Ticket Examiner,
Office of the Chief Ticket Inspector/Kacheguda,
Kacheguda Railway Station, Hyderabad Division,
South Central Railway, Kacheguda, Hyderabad. ...Applicant

(By Advocate : Mr.K.Sudhakar Reddy)

Vs.

1.Union of India, Ministry of Railways,
Rep by its General Manager, S. C. Railway,
Rail Nilayam, III Floor, Secunderabad-500 071.

2. The Senior Divisional Personnel Officer,
Hyderabad Division, Ground Floor,
Hyderabad Bhavan, Secunderabad-500 071.

3. The Senior Divisional Commercial Manager,
Hyderabad Division, Hyderabad Bhavan,
Secunderabad-500 071. ....Respondents

(By Advocate : Mr. S.M.Patnaik, SC for Railways)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

2. The OA is filed challenging the decision of the respondents in treating the intervening period between date of dismissal and date of reinstatement as Dies – Non.

3. Applicant, while working as Ticket Collector in the respondents organization, was allotted a Govt. quarter and for alleged sub-letting of the quarter, she was proceeded on disciplinary grounds and the penalty of dismissal was imposed on 12.6.2009, which was confirmed by the appellate authority on 12.08.2009 and later modified to that of removal by the revisioning authority on 24.11.2009. The same was challenged before the Tribunal in OA 694/2010. The said OA was allowed vide order 20.12.2013 and the respondents carried the matter to the Hon'ble High Court of Judicature at Hyderabad in Writ Petition No.9681/2014, failing there too on 7.2.2018. Consequently, respondents reinstated the applicant on 19.4.2018 and while doing so, the period between the date of dismissal and date of reinstatement was treated as dies-non. Aggrieved, OA has been filed.

4. The contentions of the applicant are that she allowed a colleague, who was pregnant, to stay with her in the quarter and for the same, she was unfairly penalized. Minor penalties were imposed for similar misconduct in respect of other employees. Tribunal ordered reinstatement after quashing all the impugned orders. Respondents ought to be blamed for the delay of 5 years in reinstating the applicant. Applicant relied on the judgment of the Hon'ble High Court in WP No.11851/2001 to further her cause. Treating

the intervening period, as dies-non, would tantamount to punishing the applicant twice.

5. Respondents, in their reply statement, state that the applicant violated the Railway Services (Conduct) Rules, 1968 by subletting the railway quarter allotted inviting disciplinary action resulting in dismissal, which was confirmed by the appellate authority and modified to that of removal by the revision authority. Removal order, when challenged in OA 694/2010, it was allowed and when the matter was taken up in WP No.9681/2014 the same was dismissed, finding no illegality in the order of the Tribunal. The order of the Tribunal was to reinstate the applicant and impose a penalty similar to that imposed on similarly placed employees cited by the applicant. Applicant was, therefore, reinstated and the intervening period between dismissal and reinstatement was treated as dies-non. Disciplinary authority is empowered to treat the intervening period as dies-non. Respondents have a right to approach the Hon'ble High Court to seek justice and therefore, no delay could be attributed to the respondents in deciding the issue. Respondents cite the order of the Hon'ble High Court of Madhya Pradesh to defend their decision.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute in question to be resolved is as to whether respondents imposed a penalty after reinstatement of the applicant, in accordance with the directions of the Tribunal in OA 694/2010, which is extracted here under:

> *"8. In the final analysis, this Tribunal is of the view that the penalty of removal from service is arbitrary and cannot be lawfully imposed*

> *for the charges proceeded against the applicant. As the impugned orders are not in consonance with the Principles of Justice and reasonableness, we are inclined to provide relief to the applicant.*
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> *9. In the result, the impugned orders are quashed. The respondents are directed to reinstate the applicant within a period of two months from the date of receipt of a copy of this order. After reinstatement, the respondents are at liberty to award a penalty commensurate with the proven charges and taking into consideration the penalties awarded in similar cases cited by the applicant. "*

Tribunal order was to impose a penalty after taking into consideration the penalties awarded in similar cases cited by the applicant. The penalties imposed in respect of employees cited by the applicant namely, Sri G. Subbanna, is stoppage of increment for 24 months without cumulative effect and in respect of Sri U. Prasad Rao, it was withholding of an increment for an year with no cumulative effect. Whereas, in the case of the applicant, intervening period between dismissal / removal (i.e.12.06.2009) till reinstatement vide order 22.05.2018 was treated as dies-non. In service law, "dies-non" means a day or a period, which cannot be treated as spent on duty for any purpose. Though it does not constitute break in service but such a day or a period treated as "dies-non" would not qualify as part of the employee's service for pensionary benefits or increments. Therefore, treating nearly 9 years of intervening period as dies-non would mean 9 increments would be lost, no leave would be earned for this period and there would be a marked reduction in the last pay drawn, which in turn would have drastic adverse impact in working out the pension of the applicant. The net effect would be as good as imposing a major penalty. The employees cited by the applicant, in contrast, were let off with a minor penalty of stoppage of one increment for a period of 1 and 2 years respectively and that too, without cumulative effect. Therefore, it cannot be

gainsaid that the order of the Tribunal was not implemented, in letter and spirit. We find violation in implementation of the order of the Tribunal to this extent.

II. The respondents have relied on the judgment of the Hon'ble High Court of the Madhya Pradesh, stating in the reply statement that when the disciplinary authority is directed to impose a lesser punishment, then it is left to the disciplinary authority to impose any punishment subject to the condition that it should be a lesser punishment than the punishment imposed earlier. Respondents have done exactly the opposite in treating the intervening period as dies-non, which, indeed is a higher punishment in terms of its far reaching consequences with respect to pay, pension and other retiral benefits. In fact, the judgment cited by the respondents is in support of the applicant. It appears that the respondents have imposed the penalty without assessing the overall impact of treating the intervening period as dies-non. Lack of application of mind is evident in taking the decision of declaring the period as dies-non in spite of the specific orders of the Tribunal to impose a penalty by taking into consideration the penalties imposed in similar cases cited by the applicant. Non application of mind leads to arbitrariness. The order of a public authority must reveal proper application of mind by demonstrating it in the form of recording reasons which led to issue of the order. The impugned orders dated 19.4.2018 and 22.05.2018 do not state the reasons as to how dies-non is commensurate with the penalties imposed on those pointed out by the applicant. In the absence of reasons, the order is arbitrary and hence is legally invalid. While making the above observations, we take support of the Hon'ble

Supreme Court judgment in ***East Coast Railway & Anr. v. Mahadev Appa Rao & Ors*** in Civil Appeal No. 4964 of 2010 with Civil Appeal Nos. 4965-4966 of 2010, decided on July 7, 2010, relevant portion of which reads as under:

> *"20. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable."*

III. Further, Hon'ble High Court has found no illegality in the Tribunal order when it was challenged in WP No.9681/2014 by observing as under in its order dt. 7.2.2018:

> *"It is not dispute that similarly placed persons were let off with by imposing minor penalty, whereas major punishment of removal from service was imposed on respondent No.1.*
>
> *In view of the above facts and circumstances of the present case, the case cited by the Learned Counsel for the petitioner is not relevant. Apart from that, the learned Tribunal has come to the conclusion that on a similar charge, the other officers were let off by imposing minor penalty, whereas major penalty of removal from service is imposed on respondent No.1.*
>
> *Therefore, we find no illegality or perversity in the impugned order passed by the Tribunal. Finding no merit in the present writ petition, the same is, accordingly, dismissed with no order as to costs."*

It was all the more necessary for the respondents to have carefully gone through the orders of the Tribunal and Hon'ble High Court before embarking on the mission, which we found is not in congruence with the

directions issued. The Hon'ble High Court has taken note of the fact that similarly placed employees were let off with minor penalty. It is this aspect of imposing a comparable minor penalty, which was not abided by the respondents. Though ordering dies-non would look innocuous but its impact in financial terms would be phenomenal with long lasting effect even on the pension of the applicant as explained. While exercising administrative power in taking decisions which have far reaching adverse civil consequences, it should be ensured that the said power is exercised within the confines of fairness, reasonableness and justness. Hon'ble Apex court opined so, in ***Anoop Kumar vs State of Haryana*** on 15 January, 2020 in Civil Appeal No.315 of 2020 (Arising out of SLP(C) No.18321 of 2011, as under:

> *"It cannot be disputed that the administrative power exercised by the DGP is subject to the requirement of fairness, reasonableness and justness."*

The impugned orders dated 19.4.2018 and 22.05.2018 are devoid of the 3 crucial elements of fairness, reasonableness and justness. Fairness is absent since the applicant was not imposed a penalty as was expected to be imposed in comparison with those cited by the applicant. Reasonableness is absent because the Impugned order does not contain any reason as to why dies-non was ordered except to state that it is being imposed in compliance with the judicial orders. What was the judicial order and how it has been complied does not find a place in the impugned order. Justness is the state of being equitable or right. Respondents were wrong rather than being right in complying with the orders of the Tribunal/Hon'ble High Court. Any

decision which lacks the three rudimentary aspects of decision making, then such a decision would qualify to be termed as arbitrary unquestionably.

IV. Besides, the action of the respondents in declaring the intervening period as dies-non being arbitrary, it negates equality and anything that negates equality is violation of Article 14 of the Constitution. We take support of the observations of the Hon'ble Apex Court in ***Ajay Hasia v. Khalid Mujib Sehravardi (1981) 1 SCC 722*** (SCC p.741, para 16) as under, in stating what we did.

> *"16. ... It must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary, must necessarily involve negation of equality."*

True to speak, the impugned order was not issued by a fair minded authority. Obviously when the order is not fair minded, then it is open to challenge as is seen in the present case. The concept of equality operates while showering benefits as well in imposing liabilities. Only when equals are treated equally even while imposing liabilities then it can be said that the decisions of those who matter can be termed to be fair, otherwise not. This is the accepted methodology often found in Government organizations. Unfortunately, we did not find the respondents adopting this approach in the case on hand, *albeit* the respondents organization is an organ of the state. While making the remarks as at above, we rely on the observations of the Hon'ble Supreme Court in ***Man Singh v. State of Haryana***,*(2008) 12 SCC 331*, at page 337:

> ***20.*** *We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as*

> *enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness."*

Employees cited by the applicant were let off with a minor penalty and in contrast, the period of nearly 9 years has been treated as dies-non in respect of the applicant, which has ramifications of a major penalty as expounded in paras supra. The misconduct is similar and the penalties imposed are dissimilar. Hence such a decision goes against the very grain of the judgment cited supra.

V. The Ld. respondents Counsel cited the verdict of this Tribunal in OA 837/2017 to drive home the point that the disciplinary authority has every right to impose the penalty of dies- non. However, the difference is that there is a judicial order from the Tribunal in OA 694/2010, which defined as to how the penalty should be in respect of the applicant. It is in this respect that we found that the order of the respondents was in variance with the direction of the Tribunal/Hon'ble High Court, as stated in as many words as at above. Therefore, the verdict cited by the Ld. respondent counsel would not be of any assistance to further the cause of the respondents.

VI. In addition, as has been brought out in the aforesaid discussions, the decision to treat the intervening period as dies non reveals non application of mind, arbitrariness, discrimination and violation of Article 14 of the Constitution. The impugned decision does not resonate

with the legal principles of the Hon'ble Apex court cited supra. Therefore, the other averments made by the Ld. Counsel for the respondents are not sustainable and hence, require no reference.

VII. The applicant has sought back wages and consequential benefits thereon. We are not inclined to consider the same as the applicant did not work for the period in reference and hence, not eligible for back wages as opined by the Hon'ble Apex Court ***in Gopal Dutt Shukla Vs. Bihar State Road Transport Corporation and Ors*** in [Civil Appeal No(S). 9868 of 2018 @ Special Leave Petition (C) No. 13032 of 2017] on [September 24, 2018]

> *"3. We have heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the Corporation. The original order of compulsory retirement imposed on the appellant on 08.10.2004 having been set aside on 28.11.2007, the appellant would normally have been entitled to all the consequential benefits. But the fact remains that he has not actually worked from the date of punishment imposed on him i.e. from 08.10.2004 till reinstatement pursuant to the order dated 28.11.2007.*
>
> *4. Therefore, the respondents are directed to treat the service of the appellant between the date of compulsory retirement and the date of reinstatement pursuant to the order dated 28.11.2007 as continuous for all purposes, except for the actual wages."*

Therefore, based on the above judgment, the intervening period has to be treated as continuous for all purposes except actual wages. Moreover, the incident of subletting is the making of the applicant and the respondents cannot be blamed for the same. Law applies equally to the applicant and to the respondents. It has to be fair, just, reasonable and non discriminative, which would, in effect, be rendered by implementing the order of the Tribunal in OA 694/2010 and not by letting off the applicant scot free. Issuing a direction as prayed by the applicant would be traversing beyond

the order of the Tribunal cited and such a direction would not stand up to legal scrutiny. Hence, we desist to do so. We wish to strike a balance and that balance is struck by ordering as under.

VIII. By taking into consideration the facts of the case and the above deliberations, we declare the impugned orders dated 19.4.2018 and 22.05.2018 of the respondents as illegal and hence, quash them to the extent of declaring the intervening period as dies-non. Consequently, we remit the matter to the respondents directing them to comply with the order of the Tribunal in OA 694/2010, by first notionally fixing the pay of the applicant on her reinstatement by considering that she has been in continuous service, in the intervening period between dismissal/removal and reinstatement for all purposes except wages, keeping in view the Hon'ble Apex Court judgment cited at para VII and thereafter, impose a penalty after reckoning the penalties imposed on similarly placed employees pointed out by the applicant. The time period allowed to implement the direction is 3 months from the date of receipt of the order.

IX. With the above direction, the OA is allowed to the extent indicated. No Costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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