

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/658/2018

**Order reserved on 01.07.2019
Order pronounced on 26.07.2019**

Between:

A. Satyanarayana, S/o A. Bheemaiah
Aged about 61 years, Gr. `C`
Occ: Mail Express Guard
(Under the orders of Compulsory Retirement)
Kajipt Railway Station, Kajipet
R/o H.No.2-10-13/1/6/1, New Banjara Enclave
Bollaram, Secunderabad – 500 010. .. Applicants

AND

1. The General Manager
South Central Railway
Rail Nilayam, Secunderabad.

2. The Divisional Railway Manager
South Central Railway
Secunderabad Division, Secunderabad.

3. The Additional Divisional Railway Manager (O)
and Appellate Authority, Secunderabad Division
Sanchalan Bhavan, Secunderabad.

4. The Senior Divisional Operation Manager
and Disciplinary Authority
O/o Divisional Railway Manager, SCR,
Secunderabad Division, Secunderabad. .. Respondents

Counsel for the Applicant ...Dr. A. Raghu Kumar
Counsel for the Respondents ...Mr.D.Madhava Reddy, SC for Railways

CORAM:

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

ORDER

2. Non feasance on the part of the respondents in settling the pension and pensionary benefits of the applicant in a higher grade pay after the currency of the punishment is over is the grievance of the applicant in this OA.

3. Brief facts of the case are that the applicant while working as Mail Express Guard suffered a penalty of reduction to Goods Guard on 3.3.2016 , fixing the pay of the applicant at Rs.8000 for a period of 12 months with a further direction that the penalty will have effect on both the pay and the seniority. On appeal, duration of penalty was modified to 9 months vide appellate order dated 18.7.2016. However, penalty could not be implemented as the applicant did not join duty from 21.3.2016 to 13.2.2017 due to acute Liverocis. Meanwhile, respondents have issued one more charge memo on 28.6.2016 for unauthorised absence from 21.3.2016 to 21.6.2016 and imposed the penalty of compulsory retirement on 20.4.2017. In view of his poor health applicant did not prefer an appeal against the penalty of compulsory retirement. As the penalty of reduction to lower grade could not be implemented, applicant represented on 26.5.2017, 6.4.2018 & 21.5.2018 to fix his pension based on the pay he drew as Mail Guard. There has been stoic

silence and in addition neither Pension or Pensionary benefits were granted. Hence the OA.

4. The contentions of the applicant are that the respondents are delaying the disbursement of pension and Pensionary benefits and not disposing his representations which is bad in law.

5. Respondents state in the reply statement that though pension papers were given to the applicant he submitted them as late as 23.7.2018 and the pension as well as pensionary benefits were paid vide PPO dated 27.9.2018. Therefore delay in granting Pension and Pensionary benefits is attributable to the applicant. Applicant while drawing the pay of Rs.9300-34,800 + Rs.4200 as Mail & Express Guard was imposed with the penalty of reduction of pay to Rs.5200- 20,200 + Rs.2800 as Goods Guard for a period of 12 months, on 3.3.2016, with loss of seniority and pay. Later, on appeal, period of penalty was reduced to 9 months. Applicant did not join duty and hence the penalty of compulsory retirement was imposed on 20.4.2017. Applicant's claim for fixing pension in higher grade pay of Rs.4200 though he has been placed in the grade pay of Rs.2800 due to the penalty of reduction to the lower stage is untenable, the reason being, that the applicant did not join duty to be restored to the post of Mail Guard on completion of the penalty period. Hence, he continues to hold the post of Goods Guard in

grade pay of Rs.2800 when the penalty of compulsory retirement was imposed. Therefore pension has to be fixed in the grade pay of Goods Guard of Rs.2800.

6. Counsel for the applicant submitted that this is an unfortunate case. The applicant had been suffering from serious ailment of Liverosis. But for the same the applicant would have joined duties suffered the penalty and would have even avoided the penalty of compulsory retirement. His state of health was such that he could not even file appeal against the penalty of compulsory retirement. The Counsel further submitted that applicant's entitlement for restoration of higher grade pay of Rs.4200/- on completion of nine months' period from 03.03.2016 remains intact notwithstanding the fact that he was absent.

The factum of the applicant having been suffering from ailment has not been denied by the counsel for the respondent. He had, however, maintained the fact that when the penalty of compulsory retirement was passed, his Grade Pay as per the first penalty was Rs.2800/- and accordingly his pension and other terminal benefits had been fixed and paid.

7. I) Arguments were heard and documents perused. Two penalties in quick succession had been passed against the applicant. When the penalty involved reduction of pay, on the expiry of the period

of currency, the same automatically gets restored. It is clear from the records that the applicant was imposed the penalty of reduction from grade pay of Rs.4200 of Mail Guard to the grade pay of Rs.2800 of Goods guard for a period of 9 months, on 3.3.2016 with loss of seniority and pay. The penalty of reduction to lower grade would end on 3.12.2016. However, due to ill health he could not join duty and hence was further proceeded against, resulting in the penalty of compulsory retirement being imposed on 20.4.2017. The question is whether the initial penalty of reduction to a lower grade pay had been fully suffered and whether the applicant had automatically got the higher grade pay restored on completion of nine months reckoned from 03.03.2016.

II) Hypothetically, had the applicant not gone on leave from March, 2016, his grade pay would have been reduced from Rs.4200 to Rs.2800 and the same continued till 02.12.2016 where after, his grade pay would have been automatically restored by 03.12.2016. If on the other hand, the applicant was on leave with half the average pay, then again, he would have suffered the penalty of reduction of Grade Pay, his entitled pay at half the average pay would have been worked out only by taking into account the Grade Pay at Rs.2800/-. In the extreme case of leave without any pay and allowances, if the applicant remained on leave without any leave at credit and he is not granted advance leave

under “leave not due” while the leave stood sanctioned, then he would not get any pay and allowances, but here again the pay shall be worked out with the Grade Pay of Rs.2800/- but while arriving at the net amount, the same due to leave on loss of pay would be nil. But the fact of his suffering the penalty during that month also cannot be denied.

III) The applicant belongs to the last category but with a slight difference that he was on unauthorised leave. It is this situation that has to be addressed.

It is not out of place to state that the applicant could not join duty due to acute Liverocis. Applicant was in a helpless state and hence he did not appeal against the penalty of compulsory retirement. These are factors which have to be factored in implementing and imposing penalties. Even as per rules, when a second penalty is being imposed disciplinary authority has to indicate as to how the earlier penalty will be treated while imposing a further penalty. Respondents were aware of the earlier penalty and hence the disciplinary authority need to have taken care in stating the process to be followed in implementing the two penalties. In fact, Railway Board order E(D&A) 62 RG 6-46 dated 26.10.1964 (Page 6 of Reply statement) clearly stipulates that after the expiry of the period of penalty of reduction, the concerned employee has

to be automatically re-promoted to the original grade from which he was reverted.

IV) In the instant case, the absence of the applicant during the currency of the first penalty is beyond his control because of his ill health. The penalty of compulsory retirement had been on the basis of a charge sheet for his unauthorized absence from 21.03.2016 to 21.06.2016. His absence thereafter was not kept in view in respect of this charge sheet. The Competent authority could well, keeping in mind, the automatic restoration of the higher pay after currency of penalty, treat the absence from 22.06.2016 till the date of passing of the second penalty of compulsory retirement on 20.04.2017 as one of sanctioned leave but on loss of pay. In that event, as on 03.12.2016 the higher grade pay would get restored. This requires regularization of absence of the applicant due to his sickness, for the period from June, 2016 till the date of compulsory retirement. The General Manager has all the powers under the provisions of the IREC and IREM in respect of Group C and D personnel. As such, justice demands that the General Manager considers the case of the applicant sympathetically to treat the absence of the applicant as under:-

(a) 21-03-2016 to 21-06-2016: Unauthorized.

(b) 22-03-2016 to 20-04-2017: Regularised as Leave w/o pay.

V) By regularizing the absence as above, the applicant's grade pay as on 03.12.2016 would automatically get restored to Rs.4200/- so that the applicant's pension and other terminal benefits would correspondingly increase. This suggestion is made by this Tribunal on account of the fact that the absence of the applicant was due to serious illness and it was beyond his control forcing him to be away from official duties. Otherwise, the applicant and his family would be losing a substantial amount of pension.

VI) It is pertinent to mention that in so far as pension is concerned, the same being one of a welfare measure, interpretation relating to pension should be liberal as held by the Hon'ble Supreme Court in the case of **Subrata Sen vs Union of India** (2001) 8 SCC 71 wherein, it was held as under:-

"As observed in Nakara pension is neither a bounty, nor a matter of grace depending upon the sweet will of the employer, nor an ex gratia payment. It is a payment for the past services rendered. It is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in the lurch."

VII) And, such a liberal interpretation has been warranted in view of the precise purpose of pension scheme as held by the Hon'ble Apex Court in the case of **Kerala SRTC vs K.O. Varghese** (2003) 12 SCC 293:-

“A pension scheme consistent with available resources must provide that the pensioner would be able to live: (i) free from want with decency, independence and self-respect, and (ii) at a standard equivalent at the preretirement level.”

Viewed from the above, there is full justification for relaxation being given to the case of the applicant.

VIII) In view of the above, this OA is disposed of with a direction to the General Manager of the respondents organisation that he would personally look into the case, ascertain the entire fact, including the illness of the applicant and if fully satisfied that the applicant's absence was not accentuated by any deliberate act of the applicant but he had been a victim of his serious ailment, necessary orders may be passed regularizing the period of absence from 22.06.2016 till the date of compulsory retirement as leave without pay and consequently, the Grade Pay be restored to Rs.4200 and the pension and terminal benefits worked out accordingly. The applicant may be informed of the final decision. This drill may be completed within a period of four months from the date of communication of this order.

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

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

Dated, the 26th day of July, 2019

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