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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00043/2017

Thursday, this the 8th day of March, 2018

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

K.K.Krishnan,
S/o.late Kunjukuttan,
Retd. Station Manager/
Southern Railway/Kasaragode.
Residing at Krishna Kripa, GCDA Plot No.39,
Judges Avenue Road, Kaloor, Kochi – 682 017,
Ernakulam District. ...Applicant

(By Advocate M/s.T.C.Govindaswamy & Ms.Kala.T.G.)

V e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Head Quarters Office,
Park Town P.O., Chennai – 600 003.
2. The Senior Divisional Personnel Officer,
Southern Railway, Palakkad Division,
Palakkad – 678 002.
3. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 695 014. ...Respondents

(By Advocate Mr.V.A.Shaji)

This application having been heard on 21st February 2018 the Tribunal on 8th March 2018 delivered the following :

OR D E R

O.A. No. 43/2017 is filed by K. K. Krishnan, a Retired Station Manager of Southern Railway aggrieved by the letter No.V/P.626/Sett/KKK/2011 dated 16.8.2016 of the 3rd respondent rejecting his request for payment of

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settlement dues since CBI advised the Railway to file a Criminal Appeal against the order of acquittal passed by the Court of Special Judge for CBI cases.

2. The reliefs sought in the O.A are as under :

- (i) Call for the records leading to the issue of A1 and quash the same.
- (ii) Direct the respondents to grant all the benefits due to the applicant as if no judicial proceedings were pending against the applicant, including (a) Retirement Gratuity; (b) Regular Pension (c) Committed value of pension; (d) Benefit of 3rd financial up-gradation with effect from 1.9.2008 in PB-02 Plus GP Rs. 4800- (e) regularization of the period of suspension from 27.5.2009 to 17.12.2009 as duty and payment of difference on pay and allowances; (f) Drawal of annual increment due on 1.7.2009 and other benefits consequent upon the revision of pay as above including the difference in leave encashment (g) Composit Transfer Grant etc.
- (iii) Direct the respondents to grant the applicant the arrears of pay and allowances, pension, leave encashment etc. consequent upon the directions in para 8(ii) above forthwith with interest calculated @ 9% per annum from the date from which the arrears fell due or at least with effect from 1.5.2011, to be compounded annually till the date of full and final settlement of the same;
- (iv) Award costs of and incidental to this application.
- (v) Pass such other orders or direction as deemed just, fit and necessary in the facts and circumstances of the case.

3. The brief facts of the case are as under :

The applicant, while working as Station Manager under the Southern Railway, was placed under suspension from 27.5.2009 to 17.12.2009 for the offences punishable under the Prevention of Corruption Act. A criminal case bearing No.CC 7/2009 was also lodged before the Court of Special Judge (SPE/CBI-II) Ernakulam. Since the proceedings in the departmental proceedings and judicial proceedings were pending, when the applicant

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retired from service, all the retirement benefits including leave encashment were withheld by the respondents.

4. The applicant filed O.A.No.1186/2013 before this Tribunal which was disposed of directing the respondents to make payment of the leave encashment, composite transfer grant and Accident Fire Service Award to the applicant within one month with 9% interest thereon from May 1, 2011 till the date of payment (Annexure A2). The O.P.(CAT) No.100/2014 filed against this order was dismissed by the Hon'ble High Court vide judgment dated 28.5.2014 (Annexure A3). The Contempt Petition No.25/2014 filed by the applicant was closed by order dated 30.6.2014 (Annexure A4) keeping in view the subsequent developments in the case. And finally C.C.No.7/2009 pending before the Special Judge (SPE/CBI)-II Ernakulam was decided on 31.12.2015 acquitting the applicant from all the charges (Annexure A5).

5. Applicant submits that there were no departmental proceedings initiated or pending against him as on 31.1.2011, the date of his superannuation. On account of the pendency of the judicial proceedings, the amounts due to the applicant on account of benefits such as 3rd financial graduation, regularisation of the period of suspension, drawal of annual increment, retirement gratuity, regular pension, commuted value of pension and Accident Free Service Award continued to be withheld by the respondents. Applicant sent a lawyers notice to the 1st respondent (Annexure A6) for release of the aforesaid benefits. As these benefits were denied even after the culmination

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of the judicial proceedings, applicant sent representations to the 3rd respondent (Annexure A7) and the Pension Adalat (Annexure A8). Annexure A8 was replied through Annexure A1 which is the impugned order in this OA. Annexure A9 representation submitted by the applicant is not responded to. Hence he has again approached this Tribunal by filing this OA for the aforesaid reliefs.

6. As grounds the applicant submits that Annexure A1 is illegal, without application of mind, ultra vires to the statutory rules and violates Articles 14, 16, 21 and 300 A of the Constitution of India. As per Rule 10(c) of the Railway Services (Pension) Rules, 1995, retirement gratuity can be withheld only if judicial proceedings are initiated at the time of superannuation. No such judicial proceedings are pending against the applicant after 31.12.2015 and hence no justification exists for withholding the retirement gratuity any longer. In respect to his claim for the 3rd MACP benefit the respondents are bound to open the sealed cover and grant the benefit to him w.e.f 1.9.2008 which they have not done. Denial of the same for the reasons stated in Annexure A1 is without justification and hence unsustainable. Since the judicial proceedings have ended with the acquittal of applicant, he is eligible to get regular pension and other retiral benefits and the respondents are bound to regularize the period of suspension as duty and release consequential arrears of pay and allowances. Failure to do is illegal and unsustainable. He also seeks payment of interest on the delayed payment.

7. Per contra, respondents have filed a reply statement denying the allegations in the OA. Since CC No.7/2009 filed before the Special Judge (S&E/CBI) II, Ernakulam was pending against the applicant, he was granted provisional pension along with other eligible benefits. CC No.7/2009 has resulted in acquittal of the applicant giving him the benefit of doubt as per judgment dated 31.12.2015. It is learnt that a Crl.Appeal has been filed against the judgment in CC No.7/2009 before the Hon'ble High Court of Kerala which is pending consideration. Hence the respondents cannot release the retirement benefits of the applicant. They further submit that in case the Criminal Appeal filed by CBI is in favour of applicant, the retirement benefits like gratuity, full pension etc. will be released to him. As regards 3rd MACP benefits, the respondents produced Annexure R2 which states that the applicant was granted the MACP benefit w.e.f. 1.9.2008 subject to the outcome of this OA. The regularization of his suspension period from 27.5.2009 to 17.12.2009 is to be made by the Disciplinary Authority/Branch Officer, who is not impleaded as one of the respondents here. As such OA suffers on account of non-joinder of necessary parties. The respondents herein are not the proper authorities to regularize applicant's suspension period and to grant increment etc. The respondents have cited a recent decision of the Hon'ble Supreme Court in ***CR Radhakrishnan Vs. State of Kerala*** and others in which the Hon'ble Supreme Court rejected the prayer of the applicant therein to get full service benefits for the period he was kept out of service on account of conviction in a criminal case after being acquitted on the ground of benefit of doubt.

8. Rule 1343 (FR 54) Sub Rule 5 of the IREC Vol.II specifies :

“(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding the dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specific purpose; provided that if the railway servant so desires, such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the railway servant.”

9. Once the period of suspension is regularized, the increment due to the applicant will be released. For this applicant has to represent before the controlling authority for regularization of his suspension period.

10. Applicant filed a rejoinder reiterating most of his contentions in the OA. He further states that an appeal against a judicial proceedings will not stand in the way of grant of retirement gratuity, regularization of the period of suspension, regular pension etc. He has cited the decision of the Hon'ble Himachal Pradesh High Court in Shri Surinder Kumar Vs. State of Himachal Pradesh and another – 1985(3) SLR 254, Hon'ble Madhya Pradesh High Court's decision in Shri Balak Singh Takur Vs. State of Madhya Pradesh in WP No.7592/2013 and the Hon'ble Madras High Court's decision in Shri S.Rajagopal Vs. Registrar CAT in WP No.18949/2014. He has produced Annexure A10 Office Memorandum dated 19.1.2017 wherein it is stated that on acquittal, even if there is a criminal appeal pending, if there is no stay, the sealed cover should be opened and promotion given subject to the final outcome of the Criminal Appeal. Regarding non-joinder of parties, applicant submits that since the General Manager is impleaded as 1st

respondent, and he has control over all the authorities in Southern Railway, the submission of the respondents that the OA is bad for non-joinder of parties is incorrect.

11. Heard Mrs. Kala representing Shri T.C.Govindaswamy, learned counsel for the applicant and Shri V.A. Shaji, learned counsel for the respondents and the documents/records produced have been gone through. The issue being considered in this O.A is entitlement of the applicant for various terminal benefits due to him on superannuation in the context of the criminal proceedings initiated against him before the CBI Special Judge and subsequent acquittal in the said proceedings. The applicant had been charged under relevant clauses of Prevention of Corruption Act and remained under suspension for the period between 27.5.2009 to 17.12.2009. The criminal case bearing CC No.7/2009 was in progress when the applicant superannuated from service on 31.1.2011. The criminal proceedings came to a conclusion with the judgment dated 31.12.2015 wherein the applicant was acquitted of all charges, being given the benefit of doubt. As the criminal case was pending against him, he had been granted only provisional pension and he now seeks disbursement of various retirement benefits such as dues under the 3rd MACP, dues on account of the regularization of his suspension period etc. The respondents point out that the criminal appeal filed against the judgment in CC No.7/2009 before the Hon'ble High Court of Kerala is pending consideration. On account of the pendency of appeal, the respondents state that they are not bound to release the retirement benefits due to the applicant.

12. The core issue for consideration is whether pendency of a criminal appeal against order of acquittal would be justifiable reason to continue withholding of terminal benefits due to a superannuated employee. The applicant has cited the decisions of the Hon'ble High Court of Himachal Pradesh in Shri.Surinder Kumar v. State of Himachal Pradesh and another (1985) 3 SLR 254, Hon'ble High Court of Madhya Pradesh in Balak Singh Thakur v. The State of Madhya Pradesh in W.P.No.7592/2013 and the Hon'ble High Court of Madras in S.Rajagopal v. The Registrar, Central Administrative Tribunal, Chennai Bench and others in W.P.No.18949/2014.

In the second reference made above the following observations were made :

The preferment of a criminal revision or an appeal against an acquittal cannot be regarded as a continuance of the trial and cannot be treated to be pendency of judicial proceeding as the initial presumption of innocence gets re-enforced by the orders of acquittal. The contention, therefore, put forth by the respondents that the filing of revision against the judgment dated 12.12.2000 would tantamount to the pendency of judicial proceeding does not reason with the provisions as they stand under law. In the considered opinion of this Court, after acquittal, which lead to an affirmation of the innocence of the accused, an appeal or revision, as the case may be, being not a continuation of trial, will not amount to a pendency of judicial proceedings.

In this context regard can be had of judgment of Division Bench of High Court of Himachal Pradesh in Shri.Surinder Kumar v. State of Himachal Pradesh and another (1985) (3) SLR 254.

13. However, there is also another issue which merits examination in this context. This relates to the question whether the acquittal earned by the applicant in this case amounts to a honourable acquittal. As is seen from Annexure A-5 order of the CBI that the Special Judge has conclusively answered this question stating that he has been acquitted giving him the benefit of doubt. His acquittal does not amount to a honourable acquittal.

The respondents apparently are putting up this factor in defence. In State of West Bengal and others v. Sankar Ghosh (AIR) 2014 SC 405 the contours of honourable acquittal have been examined and the conclusion arrived is that the acquittal in a criminal case would not amount to a bar on awarding departmental punishment. Other judicial orders in this context which follow on the same lines is Deputy Inspector General of Police and another v. S. Samuthiram (2013) 1 SCC 598, Commissioner of Police, New Delhi and another v. Meher Singh (2013) 7 SCC 685. The applicant also produced a copy of an O.M issued on 19th January 2017 as Annexure A-10 which contemplates opening of sealed cover for promotion in the case of a Government servant who has been acquitted but against whose acquittal an appeal is pending. As can be seen, all these cases relate to departmental proceedings/promotion of individuals after acquittal in criminal proceedings and are not helpful in adjudicating this case.

14. I have considered the contentions of both sides to this dispute and the central issue involved which has been narrated above. A few citations have been brought before me from both sides. But I see that the citation which is directly relevant is *Balak Singh Thakur* (supra). This order clearly set out that pendency of an appeal or a criminal revision against acquittal cannot be regarded as a continuance of trial and cannot be treated as pendency of judicial proceedings. Countering this, is the argument that the applicant has not been the beneficiary of honourable acquittal and has merely been given the benefit of doubt. There is no departmental proceeding which has been

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initiated or pending against the applicant and while a criminal appeal is pending before the Hon'ble High Court, the covered decisions cited above clearly lay down that this cannot be construed as an extension of the judicial proceedings. A very similar view has been taken by this Tribunal in O.A.No.180/246/2017 at Annexure A-11.

15. So on an appreciation of facts before me I conclude that the O.A has merit on its side and it succeeds. The benefit as prayed for are to be disbursed to the applicant within a period of two months from the date of receipt of a copy of this order. The O.A is allowed accordingly. No costs.

(Dated this the 8th day of March 2018)

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

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List of Annexures in O.A.No.180/00043/2017

1. **Annexure A1** - True copy of letter bearing No. V/P.626/Sett/KKK/2011 dated 16.8.2016 issued by the 3rd respondent.

2. **Annexure A2** - True copy of order dated 8.1.2014 in OA No. 1186/2013 rendered by this Tribunal.

3. **Annexure A3** - True copy of judgment dated 28.5.2014 in OP (CAT) No. 100/2014 rendered by the Hon'ble High Court of Kerala.

4. **Annexure A4** - True copy of order dated 30.6.2014 in CP(C) No. 180/25/2014 in OA No. 1186/2013 rendered by this Hon'ble Tribunal.

5. **Annexure A5** - True copy of judgment dated 31.12.2015 in CC No. 7/2009 in the files of the Court of the Special Judge (SPE/CBI)-II, Ernakulam.

6. **Annexure A6** - True copy of lawyer notice dated 26.12.2016, addressed to the 1st respondent.

7. **Annexure A7** - True copy of representation dated 6.5.2016 addressed to the 3rd respondent.

8. **Annexure A8** - True copy of the representation dated 16.6.2016 submitted before the Pension Adalat.

9. **Annexure A9** - True copy of the representation dated 24.10.2016 addressed to the 3rd respondent.

10. **Annexure A10** - True copy of the Government of India, Ministry of Personnel, Public Grievances and Pensioners' Welfare, Department of Personnel & Training, Office Memorandum bearing F. No. 11012/6/2016-Estt.A-III dated 19th January, 2017.

11. **Annexure A11** - True copy of the the order dated 18.11.2017 in OA No. 246/2017 of this Hon'ble Tribunal.

12. **Annexure R1** - True copy of the letter No. 3/7/(A/2009/CBI/KER/545 dated 2.3.2017 of CBI.

13. **Annexure R2** - True copy of the OO No. 06/2017/SMS dated 9.3.2017 of the 3rd respondent.
