

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

Original Application No. 69/2013

Date of CAV: 19.11.2018

Date of Pronouncement: 20.11.2018

Between:

D. Sadananda Rao, S/o. late D. Hanumanth Rao,
Aged about 60 years, Retired Sr. Clerk, C/o. K. Mahesh,
Door No. 53-41-46, KRM Colony,
Maddilepalam, Visakhapatnam -530 013.

... Applicant

And

1. The Union of India, Rep. by its General Manager,
East Coast Railway, Chandrasekharpur,
Bhubaneswar – 751017.
2. The Chief Commercial Manager,
E.Co. Railway, ECoR Sadan, Chandrasekharpur,
Bhubaneswar – 751017.
3. The Additional Divisional Railway Manager,
E.Co. Railway, Waltair Division, Dondaparthi,
Visakhapatnam-530 004.
4. The Senior Divisional Commercial Manager,
E.Co. Railway, Waltair Division, Dondaparthi,
Visakhapatnam-530 004.

... Respondents

Counsel for the Applicant	...	Dr. P. B. Vijaya Kumar
Counsel for the Respondents	...	Mr. S.M. Pattnaik, SC for Rlys

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)
Hon'ble Mr. Swarup Kumar Mishra, Member (Judl.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

The OA is filed for not paying the arrears of salary for the out of service period of the applicant along with consequential benefits till retirement of the applicant on 31.01.2012.

2. Brief facts of the case are that the applicant while working as Senior Clerk in the respondents organization, disciplinary proceedings were initiated against him under Rule 9 of Railway Servants (D&A) Rules, 1968 in regard to mis-utilization of card pass. The disciplinary proceedings culminated in the removal of the applicant from service vide proceedings No. WCP/DSR(1)/Major/(000659) dt. 25.09.2007 of the 4th respondent. His appeal to the 3rd respondent was rejected vide proceedings No. WCP/DSR(1)/Major/(000659)/Appeal dt. 10.12.2007/7.12.2007. The applicant preferred a revision to the 2nd respondent who by proceedings dt. 06.01.2009 modified the said punishment into reduction by two stages in time scale of pay for a period of three years which will not have the effect of postponing future increments. However, the 2nd respondent while modifying the punishment imposed by the disciplinary authority, did not indicate as to how the period during which the applicant was out of service should be treated. Consequently, the applicant was not paid pay and allowances for the said period and hence, this OA.

3. The contention of the applicant is that he made a representation to the 4th respondent to treat the out of service period as duty. But the 4th respondent vide letter dt. 25.03.2010 has issued orders to treat the out of service period from 25.09.2007 to 09.01.2009 as dies non. The applicant contends that since he is union leader, he has been unnecessarily victimized by initiating the disciplinary proceedings against him and while modifying the punishment order, he has been put to undue monetary loss. The applicant claims that he never travelled on the card pass as alleged and he was travelling on privilege pass which is in accordance with the rules. Yet, he was proceeded on disciplinary grounds and made to suffer. When the punishment order does not mention

anything about the out of service period, then it has to be interpreted as duty as per the claim of the applicant. Consequently, on treating the period as duty, he should have been paid the salary for the period for which he was out of service. The applicant claims that he had enough leave and the respondents could have at least instructed him to apply for the said leave so as to facilitate drawal of his pay and allowances. After having imposed the punishment of reduction by two stages, again treating the period as dies non is double jeopardy as per the applicant. The 3rd respondent cannot revise his own order by ordering the period of out of service as dies non. Moreover, before treating the period as dies non, the applicant has not been given opportunity to defend himself.

4. The respondents claim that the disciplinary action against the applicant was not for his lawful union activities, but for violation of the rules in using the card pass. The applicant was given adequate opportunity to defend his case and based on the enquiry the said punishment of removal was imposed by the disciplinary authority, which was confirmed by the appellate authority. However, the revising authority has modified the punishment on grounds of compassion from removal to the reduction by two stages in the time scale of pay of the applicant for a period of 3 years with non-cumulative effect. The respondents also stated that the applicant should have challenged the order of dies non immediately after receipt of the order and not after retirement.

5. Heard learned counsel and perused the documents on record.

6. The applicant was proceeded on disciplinary grounds for mis-utilizing the card pass. Initially he was imposed with the punishment of removal from service and the same was confirmed by the appellate authority and upon approaching the Revisionary authority, the punishment was modified to that of reduction by two

stages without cumulative effect. However, as to the treatment of the period for which the applicant was out of service on account of the punishment of removal from service till his reinstatement it was not mentioned in the order of the revisionary authority. On making a representation, it was informed by the respondents that the said period will be treated as dies non.

7. The revision authority is competent as per rules to issue a corrigendum or revise the punishment in case it is not implementable or when it is not clear. Learned counsel for the respondents submitted a judgment of the Hon'ble Madhya Pradesh High Court delivered on 21.02.2005 in ***Battilal Vs. Union of India & Ors*** reported in **2005 (3) MPHT 32** wherein it was held that :

“The petitioner next contended that if the period between 2.7.1994 and 20.02.2003 was treated as dies non, it would mean that he will not get any salary for the said period and the said period will also not be treated as qualifying service for purpose of pension, and that would cause hardship to him. The petitioner was earlier compulsorily retired. He should count himself lucky that in spite of the charge of production of fake documents for claiming benefit of LTC being proved, the Tribunal was kind enough to direct lesser punishment than compulsory retirement resulting in reinstatement. The petitioner should not expect more.”

As per the submission of the learned counsel for the respondents, dies non means break in service. Once there is a break in service, then the applicant will not be eligible for the salary for the period for which he has not rendered any service to the organization. In the present case, the applicant was out of service from 25.09.2007 to 09.01.2009 and therefore, not eligible for pay and allowances. Learned counsel for the applicant submitted a judgment of the Hon'ble Madras High Court in W.A. No. 6736/2008 between Arokiadoss Vs. the Commissioner of Police, vide its judgment dt. 30.04.2009 observed as under:

“In the present case, the claim of the appellant, as submitted by the learned Senior Counsel, is that he should be given promotion notionally as

Grade I Police Constable from the year 1992 instead of giving it from the year 1993. This vital aspect, that the modified punishment will be given effect to from the original date of punishment, has not been considered by the learned Single Judge. The learned Single Judge has proceeded on the pretext that from the date of dismissal on 09.02.1988 till the appellant was reinstated on 25.7.1994, he was out of employment and therefore, the reduction of time scale of pay by two stages for a period of two years cannot be notionally fixed, which, in our view, is not the correct legal position. The law is well settled that when once in the disciplinary proceedings the ultimate authority passes an order modifying the original punishment, certainly the modified punishment goes back to the original date of punishment."

As the above judgment was delivered in 2009, the same holds good for the present case. The respondents while rejecting the representation of the applicant vide order dt. 12.10.2011 have quoted item (ii) of Clarificatory point laid down in Estt. Sl. No.138/96 which reads as under:

"In case where the penalty of dismissal/ removal/ compulsory retirement is set aside in appeal of or review and the employee is reinstated in service with a reduced penalty the reduced penalty takes effect from the date of reinstatement, in all other cases, the reduced penalty takes effect from the date of imposition of the original penalty. This is because regularization of the intervening period from the date of dismissal/ removal/ compulsory retirement to the date of reinstatement including the period of suspension, if any, is governed by provisions contained in Rule 1343 R-II which may be contravened if the reduced penalty takes effect from the date of original penalty."

Therefore, the respondents contend that the punishment imposed has to be given effect from the date of reinstatement and that the out of service period of the applicant has been treated as dies non and he is not eligible for any pay and allowances for the said period. The case has been fully covered by the Hon'ble Madras High Court cited supra. The disciplinary authority has imposed the punishment of removal from service on 25.09.2007 and it was modified by the revision authority on 06.01.2009. This revision of punishment will take effect from 25.09.2007 as per the legal principle enunciated by the Hon'ble Madras High Court supra. Therefore, this Tribunal has to abide by the judgment of the

superior judicial forum as observed by the Hon'ble Supreme Court in Rooplal vs Lt. Governor, (2000) 1 SCC 644.

8. Hence, by following the above judgment of the Hon'ble Madras High Court, this Tribunal holds that the modified punishment issued by the 2nd respondent shall take effect from the date of penalty of removal from service imposed on the applicant vide the order of the disciplinary authority dt. 25.09.2007.

9. Consequently, the respondents are directed to consider:

i) Pay and allowances of the applicant have to be drawn for the out of service period from the date of removal till the date of reinstatement as per the modified punishment order of the Revision authority.

ii) As the applicant has retired, his pension has to be worked out consequent to the direction at Sl. No. 1 above.

ii) Time allowed to implement the order is three months from the date of receipt of the order.

10. OA is allowed above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

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

Dated, the 20th day of November, 2018

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