

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

**Original Application No. 306/2012
Ahmedabad, the 25th of July, 2019**

CORAM :

Hon'ble Sh.Pradeep Kumar, Member (Administrative)

Hon'ble Sh. M.C.Verma, Member (Judicial)

Smt. Ushaben Jaiswal Wife of Janakkumar Jaiswal, aged about 55 years, Head Mistress,
Railway School, Residing in Quarter No... 102, Rajkot – 360 002. **... Applicant**
[By Advocate : Ms S S Chaturvedi]

- 1- Union of India notice to be served through the General Manager, W.Railway, Churchgate, Mumbai – 400 020.
- 2- The Divisional Railway Manager, W. Railway, Kothi Compound, Rajkot – 360 002.
- 3- The Chief Personnel Officer, W. Railway, Churchgate, Mumbai – 400 020.

... Respondents

[By Advocate : Shri M J Patel]

**O R D E R (Oral)
[Per M.C.Verma, Member(J)]**

1. Instant O.A. has been preferred, assailing legality of the impugned orders at Annexs. A/1 and A/2 and having prayer to quash said orders issued by the respondents as well to declare that the applicant was suspended without application of mind and without conduct of review from time to time and hence during the period of suspension the applicant be treated on duty and be directed to be paid all consequential benefits. **Annex. A/1** is order dated 11/10/2007 and reveals that case of applicant was examined in accordance with rules and the judgment of CAT in her OA No. 47/2008. Applicant vide Annexure A/1 was advised that her suspension period is treated as not spent on duty vide memo dated 17/12/2005 and will not be counted for qualifying service for pensionary benefits. **Annex. A/2** is memo dated 19/1/2010 whereby order dated 11/1/2010, passed by respondents treating OA No. 47/2008 of applicant as Revision, was sent to the applicant. Order dated 11/1/2010 reveals

that the Revisionary authority did find no reason to treat her suspension period as spent on duty and the same is treated as not spent on duty.

2. The back drop facts of the case are that applicant, while working as Head Mistress in Railway Primary School, Kothi, at Rajkot, was asked to explain vide order dated 10.10.2003 (annexure A/2) as to under what circumstances she did collect Rs 250/- for uniform & Rs 250/- for sweater from every student of School. That a Charge Memo for major penalty was issued and she was also placed under suspension on 11/10/2003 however, the suspension was revoked on 4/01/2005. That on conclusion of departmental inquiry punishment order of reverting the applicant to the pay scale of Rs. 4500-7000 permanently was issued by the respondents on 29.12.2004. Applicant moved an appeal which was rejected on 17.3.2005, however, her revision was partly allowed and vide order dated 8.9.2005 Revisionary Authority modified the punishment and awarded punishment of reduction to the minimum of the grade/scale of Rs. 5500-9000 for two years with cumulative effect and it was also directed to recover Rs. 13,900/-, which she had collected from the students and to return the amount to parents of students. Pleading reveals that impugning order dated 8.9.2005 applicant preferred OA No. 54/2006 and said OA was disposed of directing the respondent to consider representation of the applicant. Representation of the applicant was rejected by the Authority on 11/10/2007. Applicant impugned said order dated on 11/10/2007 in OA No. 47/2008. It is not known what was the content of her representation or of order dated 11/10/2007 of respondent as the copy of the same are not on record however, copy of order dated 21/8/2009 passed by this Tribunal in OA No. 47/2008 has been annexed as Annexure A/5 and it reveals there from that being aggrieved

by treating the period of suspension of period from 11/10/2003 to 3/1/2005 said OA was preferred. The operative portion of order passed in OA No. 47/2008 are in Para No. 9 which reads:- “ 9 ”. *We think that ends of justice would be met if we direct the Revisional Authority to treat this O.A. as a Revision against this order. He shall consider the same on merit and pass speaking order within two months. We make it clear that we have not examined the merits of the case except to the limited aspect in para-8.*”

3. In compliance of direction given in OA No. 47/2008 case of the applicant qua suspension period was considered on merit and it was hold that it be treated as not spent on duty. Being aggrieved instant O.A, with prayer quoted in para 1 ibid, has been preferred by the applicant pleading that the order has been passed in mechanical way and is contrary to the Disciplinary & Appeals Rules and the Instructions issued by the Government of India to invoke the power to place under suspension and it was not a case of suspension and applicant was suspended for a trifle issue.
4. Respondents have filed their reply stating that for the misconduct committed by applicant she was placed under suspension on 13.10.2003 and suspension was followed by a Charge-sheet dated 26.3.2003. Later, appeal filed by the applicant on 15.2.2005 was also rejected however, the revisionary authority partly modified the punishment order and applicant was placed in the minimum of pay scale Rs. 5300-9000 for two years vide order dated 8.9.2005. Applicant challenged the said order in OA. No. 54/2006 which was disposed of on 30.11.2006 directing the respondents to consider the representation of applicant and after consideration representation of applicant was rejected on 11.10.2007. Respondents categorically have pleaded that provisions of Paras 1342 to

1345 of the IREC clearly empowers the authorities not to regularise the period of suspension as spent on duty, the delinquent is not completely exonerated and thus the action of respondents cannot be said to be illegal or unwarranted. Respondents have therefore prayed that O.A. be dismissed. Rejoinder to this reply, reiterating the facts pleaded in the O.A has also been filed.

5. We have heard the learned counsel for the parties and perused the record of the case. Punishment awarded has attained finality, applicant has not challenged her punishment in the instant OA and she has challenged action of respondent placing her under suspension and to treat the suspension period as not spent on duty. In OA no.47/2008, preferred by applicant this issue of legality of her suspension was also there and this Bench of the Tribunal hold that this issue can't be raised. The observation to this aspect in Para 8 of the judgment passed in OA No.47/2008, which reads: *"8. We also note that the applicant was placed under suspension in October, 2003 and the same has been revoked in January, 2005 after conclusion of the proceedings. The orders placing the employee under suspension is appealable order and nothing is brought on record to indicate that a proper appeal had been submitted. In any case, nothing has also been brought on record that the said order has been challenged by filing OA before Tribunal. The applicant in this OA is trying to assail the order of suspension in the guise of challenging the impugned order. This issue is raised after imposition of penalty, which was upheld. This issue cannot be raised now"*.
6. Referring of the judgment passed in OA no.47/2008, a query was put to learned counsel Ms. Sunita Chaturvedi, who is appearing on behalf of applicant as to

how the legality of placing the applicant under suspension can be questioned at this stage in this OA and admitting the factual position submitted that she is not disputing the legality of suspension but in the facts and circumstances period of suspension ought not have been treated as period not spent on duty, that the period if would be treated as not spent on duty, it would cause break in service. She also added that for treating break in service notice is required under Service Rules but no such notice was ever given to the applicant. She contended that the impugned order is harsh one and is in violation of spirit of rule 1345-IREC . She urged that the period of suspension, as stated above, be treated as period spent on duty for all purposes and thus concluded her submission.

7. Learned counsel Shri M.J.Patel, appearing on behalf of applicant and disputing the submission of counsel of applicant urged that conduct of the applicant being headmistress of school ought to be above board and different, that she has been awarded major penalty and said penalty has attained finality. He also referred the conduct of the applicant after this penalty, stating that said conduct is the subject matter of other OAs preferred by the applicant which also is also on today's Board. He submitted that the impugned order is just and is suffering from no infirmity. Learned counsel has relied upon the Railway Servants (Discipline & Appeal) Rules, 1968 (DAR-Schedule-II) regarding schedules of Disciplinary Authority power and Power of Suspension of different cadres of Railway Officer.
8. During the inquiry proceedings, applicant has remained suspended from 13.10.2003 to 3.1.2005. We have considered the rival submissions and have perused the Para 1345 of the IREC, emphasized as relevant provisions/rules on

the subject by both the parties to fortify their respective stand. Entire Para 1345 of the IREC is reproduced below : -

“1345-IREC.(1) When a railway servant who has been suspended is reinstated (or would have been so reinstated but for his retirement (including premature retirement) while under suspension,) the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the railway servant for the period of suspension ending with reinstatement or [the date of his retirement (including premature retirement),]as the case may be; and

(b) Whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 1343 where a railway servant under suspension dies before the disciplinary or the court proceeding instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the railway servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the railway servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the railway servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3) the railway servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the railway

savant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or the court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the railway servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the railway servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

NOTE: - The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of –

(a) extraordinary leave in excess of three months in the case of temporary railway servant; and

(b) leave of any kind in excess of five years in the case of permanent or quasi-permanent railway servant.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 1342.”

9. Impugned order Annexure A/1 reflects that contention of applicant has been dealt with in detail. Applicant was awarded major penalty. Learned counsel for applicant could not point out any fault on procedural lapses or legal infirmity in the order nor could she assign any valid reason why the period of suspension shall not be treated as a period not spent on duty in given set of facts. Her submission merely confined to the effect that if period of applicant's

suspension has to be treated as period not spent on duty, it shall be a hard punishment.

10. Having taken into consideration the gravity of the allegations, which were found true during inquiry and the fact that the imputation of charges against the applicant was for major penalty and on culmination of departmental proceedings major penalty has been awarded, we find no fault with the act of the respondent-authorities. The provisions on the issue are specific and respondents, in our view, had committed no mistake in not treating the period of suspension from 13.10.2003 to 3.1.2005 as on duty. Accordingly the O.A. filed by the applicant is devoid of merits and the same is, therefore, dismissed with no order as to cost. Pending M.A., if any, also stands disposed of.

(M.C.Verma)
Member (J)

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(Pradeep Kumar)
Member (A)