

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

Original Application No.213/2016

Date of C.A.V. : 03.07.2018

Date of Order : 24.08.2018

Between :

K.T.Vishnu Das Babu, S/o K.Janardhana Menon,
aged 62 years, Occ : Manager (Catering) (Retd.),
O/o The Group General Manager,
IRCTC SCZ Zonal Office,
H.No.9-1-129/1/302, Oxford Plaza, 3rd Floor,
SD Road, Secunderabad – 500 003.

... Applicant

And

- 1.** Union of India rep. by
The Chairman, Railway Board,
Ministry of Railways, Rail Bhavan,
New Delhi.
- 2.** The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad,
Telangana State.
- 3.** The Financial Adviser &
Chief Accounts Officer,
South Central Railway,
Rail Nilayam, Secunderabad,
Telangana State.
- 4.** The Divisional Railway Manager,
South Central Railway,
Vijayawada Division, Vijayawada, A.P.
- 5.** The Senior Divisional Personnel Officer,
South Central Railway,
Vijayawada Division, Vijayawada, A.P.
- 6.** The Senior Divisional Financial Manager,

South Central Railway,
Vijayawada Division, Vijayawada, A.P.

... Respondents

Counsel for the Applicant ... Mr.K.R.K.V.Prasad, Advocate
Counsel for the Respondents ... Mr.D.Madhava Reddy, S.C.for Rlys.

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... Member (Judl.)

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

The brief facts set out in the OA by the applicant in relation to the reliefs prayed for by him may be stated as follows :

The applicant initially joined in Railway service as Assistant Catering Manager in the catering department. In terms of the policy of the 1st respondent Ministry issued vide RBE No.53 of 2003 dated 31.03.2003, the applicant joined in IRCTC w.e.f. 17.02.2005 as en-masse transfer of the catering staff working in the Railways was ordered vide the said policy on terms of deemed deputation. In terms of the proceedings dated 07.06.2006 issued by IRCTC the applicant submitted option to continue in IRCTC to be governed under Industrial Dearness Allowance (IDA) scales and accordingly he was absorbed in IRCTC w.e.f. 01.01.2007. The 5th respondent issued service certificate in favour of the applicant on 26.07.2013 showing the period of service in Railways from 02.12.1980 to 31.12.2006 inter alia mentioning that the applicant was relieved from service on technical resignation and the pay of the applicant was Rs.16,060/- in PB-2 with Grade Pay Rs.4200/-. The working sheet of terminal benefits in

terms of Pension Pay Order dated 03.07.2013 was issued by the 6th respondent on the basis of the said pay shown by the 5th respondent. During the interregnum period, the applicant was absorbed in IRCTC and the settlement was done by the Railways, the applicant was asked to exercise option to the effect that the applicant would join back Railways as he has not been paid any pensionary/retirement benefits from the Railways. The applicant submitted his option to the above effect on 20.07.2011. Several other employees who have been absorbed in IRCTC have exercised such options and the 1st respondent Ministry issued proceedings dated 02.03.2015 in respect of such employees who are still in service to relieve them back to Railways treating their period of service in IRCTC as on deemed deputation.

2. Subsequently the Railways have changed their policy and have taken a decision to repatriate all the existing employees of IRCTC who came on option earlier to IRCTC and settled their terminal benefits taking the complete service into consideration by granting additional increments. In the case of the applicant also the respondents ought to have considered his entire service as Railway service by granting notional increments for the purpose of fixing the pension and settling the other terminal benefits based on the notional pay drawn at the time of retirement or ought to have considered the last pay drawn in IRCTC with IDA. Thus according to the applicant the method followed in his case is neither in consonance with the treatment given to the other employees nor in consonance with the option exercised by him to consider combined service, nor with reference

to last pay drawn in IRCTC, whereas different criteria was followed causing severe perpetual monetary loss to him.

3. The applicant was inflicted with a penalty of withholding of annual increment from Rs.6725/- to Rs.6900/- in the pay scale of Rs.5500-9000 (5th CPC) which commences from 01.03.2004 for a period of 36 months while he was working in Railways. The version of the applicant is that the above said penalty which was non-recurring in the earlier should not result in postponement of future increment and should not effect the pensionary settlement as no disciplinary enquiry was conducted for imposition of penalty affecting pensionary benefits. Out of 36 months of total penalty the applicant undergone the penalty of 34 months in Railways i.e. from March 2004 to December 2006 by the time the applicant was absorbed in IRCTC. Though the increment was due as on March 2007 in view of the said penalty, the increment was denied and the pay was accordingly considered without allowing such increment for settling the terminal benefits resulting in huge loss in the terminal benefits as well as monthly pension being drawn from time to time. Thus instead of considering the pay of the applicant as on 01.03.2006 as Rs.7250/- which shall be the pay as on the date of absorption in IRCTC i.e. 01.01.2007 the pay of the applicant was considered less as Rs.6725/- corresponding pay being Rs.16,060/- in 6th CPC. An amount of Rs.63,558/- was recovered from the settlement dues of the applicant on the ground of excess payment. It is further submitted that in spite of making several representations, another penalty was imposed on the applicant for withholding of

increment for 12 months (NR) from 01.03.2002 to 01.03.2003 by the Railways was modified as that of 'Censure' vide letter dated 13.09.2002, but still the same penalty was not reversed by restoring the increment that was withheld resulting in monetary loss to him. The proceedings vide memo dated 27.05.2012 restoring the pay of the applicant to Rs.17,560/- w.e.f. 01.03.2007 was not given effect to. According to the applicant he is entitled to get his full pension of his combined service in Railways as well as IRCTC, the pensionary benefits shall be settled either on the last pay drawn in IRCTC or on notional basis by considering the subsequent policy treating the applicant as deemed deputationist in IRCTC as if lien continued in Railways till he attained superannuation. Basing on the aforementioned submissions, the applicant prayed for the following reliefs :

"To call for the records pertaining to PPO No.59040121542, dated 03.07.2013 along with the working sheet - (i) declare the action of the respondents in reckoning the last pay drawn by the applicant by effecting recovery of Rs.63,558/- from the pensionary benefits resulting in the applicant's pension being fixed at less rate and getting less pensionary benefits as illegal, unjust, arbitrary, discriminatory and is in violation of the law and ;

(ii) direct the respondents to revise the working sheet of terminal benefits dated 03.07.2013 and the PPO by reckoning the pay of the applicant as was drawn by the applicant as on the date of retirement from IRCTC and accordingly fix the pension and release the difference in terminal benefits and pay back the recovered amount of Rs.63,558/- duly drawing the arrears of pension and difference in terminal benefits by paying interest @ 10% p.a. on such amounts to be paid and grant all consequential benefits.

or in the alternative direct the respondents to consider the total length of combined service of the applicant rendered in both Railways as well as IRCTC as Railway service on notional basis by granting notional increments and promotions from time to time for the purpose of reckoning the last pay drawn and fixing the pension on notional basis as on 28.02.2013 and pay the pension and other settlement benefits, duly releasing the arrears of pension and terminal benefits by calculating the difference in amounts and pay back the recovered amount of Rs.63,558/- with interest @10% p.a. on all such payments till the arrears and recovered amount is released."

4. The respondents filed their reply statement contending inter alia as follows :

The applicant exercised option vide letter dated 20.11.2012 for prorata settlement as on 31.12.2006 and to pay settlement dues along with pension arrears from 01.01.2007. Accordingly the Railways issued memo vide letter dated 10.12.2012 and paid the settlement dues upto the date of working in Railways. The applicant has been undergoing penalty and drawing pay of Rs.16060/- at the time of leaving Railways and as the punishment did not complete, the pensionary benefits have been paid on the same pay of Rs.16060/-. As such the Railways have paid all the amounts due to the applicant for the service rendered by him in Railways. The employees who were absorbed in PSUs/Autonomous Bodies on conversion of Government / Railway department in to a Central Autonomous Body on a Public Sector Undertaking and opt for pensionary benefits on the basis of combined service rendered by them in the Government / Railways and in PSUs/Autonomous Body can only claim the settlement of pensionary benefits on the basis of combined service but the same cannot be extended in other cases of permanent absorption. In the instant case the applicant vide his letter dated 20.11.2012 had opted for receiving pensionary benefits on prorata benefits and Railways issued memo dated 10.12.2012 and settled the case of the applicant. It is evident from the memo dated 10.12.2012 that the applicant along with others opted for prorata benefits in terms of Railway Board letter dated 08.07.2009 and the Railways have settled his case accordingly.

5. As per the memo dated 10.12.2012 the applicant is deemed to have been retired from Railway services on the date prior to the date of his absorption in IRCTC i.e. 31.12.2006 and he opted to receive prorata pensionary benefits in terms of Railway Board's letter dated 08.07.2009. Accordingly the pensionary benefits have been arranged to him on prorata basis to the extent of service rendered in Railways.

6. It is further submitted that the last pay of the applicant is Rs.16060/- by the time of his retirement in Railways i.e. on 31.12.2006, as he was under punishment for 36 months (Non-Recurring) after the punishment the ex-employee's pay would be Rs.17560/- which would be come into effect from 01.03.2007. The pay on restoration could not be effected by 31.12.2006 since he had already retired from service prior to restoration of his pay by 01.03.2007. As per the Railway Board letter dated 03.03.2008 payment of pension, commutation of gratuity, etc., in respect of the applicant can be made on prorata basis to the extent of service rendered in Railways.

7. Nextly it is contended that the Railway administration never intended to pay the pensionary benefits on prorata basis on the IDA pay as drawn by him on IRCTC but allowed on Rs.16060/- which was draw by him in Railways as on 31.12.2006. Thus the Railway administration has paid the benefits on account of

technical resignation basing on the pay drawn by him in Railways, since he opted to receive prorata pension benefits in terms of Railway Board's letter dated 08.07.2009.

8. The following submissions are made by the applicant in his rejoinder :

The punishment of withholding of 36 months imposed on the applicant was either by February 2007 as the punishment was imposed in March 2004. Out of 36 months of punishment, 34 months of punishment was faced by him while he was working in Railways and the balance was continued after he joined in IRCTC. He would have relieved from Railways either on the deemed notion that the penalty was over by the time he was relieved to join in IRCTC as otherwise it is affecting his pension relating to Railway service without there being any disciplinary enquiry or at least he would have relieved only after March 2007 on completion of the penalty. According to the applicant while undergoing penalty no employee will be allowed to join any organization and the new employer cannot impose penalty. Since the penalty relates to withholding the increment, the employers both previous and subsequent to implement it to full extent. Therefore, the Railways ought to have treated as he was not undergoing any penalty on the date of his relief to IRCTC. His grievance is that instead of nullifying the penalty and relieving him, the penalty was allowed to continue illegally even after his joining in IRCTC.

9. Nextly it is submitted that in terms of Railway Board's letter issued in 2011 he exercised option to join back Railway from IRCTC, but before a decision is taken by the authorities, he retired from service on 28.02.2013 on attaining the age of superannuation. He therefore claims that his case has to be decided on par with the other employees who are working in IRCTC and who exercised option and forced to join back Railways treating them as deemed deputationists in IRCTC. As regards the contention of the respondents that the Chairman, Railway Board is not a necessary party, it is submitted by the applicant that the Chairman, Railway Board is necessary party as the General Manager has no jurisdiction to frame any policy on the issues covering both the organizations, i.e. Railway department and IRCTC. He further submitted that his lien was continued till 20.07.2011, based on which both Railways and IRCTC have accepted his option to go back to the Railways. Therefore, he asserts that working out the terminal benefits basing on the pay in Railways as on 31.12.2006 is not correct. Thus according to the applicant continuing the penalty even after his joining in IRCTC is illegal, his pay would have been restored back by considering his pensionary benefits. The hyper technical approach of the respondents in settling the pensionary benefits in prorata benefits to the extent of service rendered in Railways without considering the other facts and circumstances is in violation of rules.

10. Heard Mr.K.R.K.V.Prasad, learned counsel for the applicant and Mr.D.Madhava Reddy, learned standing counsel for the respondents.

11. After submitting option to join IRCTC the applicant was relieved on submitting his technical resignation by which time the pay of the applicant was considered as Rs.16,060/- in PB-2 with Grade Pay Rs.4,200/-. Admittedly after the applicant joined the IRCTC the applicant and several other employees were asked to exercise option to join back Railways. Several employees exercised their option. The applicant also submitted his option expressing his willingness to join back in Railways. There is no denial to the effect that pursuant to the option exercised by the number of erstwhile staff of the Railways who have been absorbed in IRCTC, the 1st respondent Ministry issued proceedings dated 02.03.2015 to relieve the said staff from IRCTC and permitting them to come back to Railways. Accordingly all the said employees rejoined Railways and the department considered the period of their service in IRCTC as on deemed deputation. In respect of such employees who have been repatriated from IRCTC to the Railways their service was taken into consideration for settling their terminal benefits by granting additional increments though notional increments were granted for purpose of fixing the pension for those employees who have been repatriated in case of the applicant his service which he rendered only in the Railways was taken into consideration for computing the pensionary benefits. This is on account of the fact that the applicant retired from service on 28.02.2013 even before the department took a policy decision to repatriate the employees who were sent on deputation to IRCTC. Therefore, despite the fact the applicant exercised his option to rejoin Railways it was not possible for him because his retirement was prior to

the policy decision taken by the respondents.

12. As rightly contended by the learned counsel appearing for the applicant the respondents ought to have deputed the applicant to IRCTC only after completion of his punishment period. He had undergone the punishment for 34 months and he was deputed to IRCTC at the time when he had to undergo the punishment of two months. In any event after joining IRCTC the applicant had undergone the penalty of 36 months. Though an increment was due to him in March 2017 his pay was considered without granting the increment for the purpose of settling the terminal benefits.

13. There is no force in the contention put forth by the respondents that the applicant opted for permanent absorption in IRCTC exercising an option to seek prorata pension only in respect of his service in Railways he is now precluded from contending that his service in Railways as well as in IRCTC has to be counted for the purpose of computing for pension cannot be accepted. Since the applicant was asked to exercise option to rejoin in Railways, the contention of the Railways that as soon as he entered in IRCTC on deputation he is deemed to have been retired from Railway Service on the date prior to his entering in IRCTC and that his pensionary benefits have to be calculated only basing on the service rendered by him in Railways also cannot be justified. The reason being the other employees who were repatriated from IRCTC to Railways were granted pensionary benefits

on the basis of the combined length of service rendered by them in both the organizations. The applicant cannot be penalized on account of his retirement prior to the policy decision taken by the respondents. There is no amount of force in the contention put forth by the respondents that he would have been relieved only after March 2007 i.e. on completion of undergoing the penalty. Further since the penalty only relates to withholding of increment, the respondents ought to have considered that after he entered the IRCTC he had completely undergone the penalty and ought to have been granted him the increment which becomes due on completion of his undergoing punishment.

14. Admittedly the applicant had exercised his option in terms of Railway Boar's letter issued in 2011 to join back Railways from IRCTC, however before the authorities took a decision regarding the repatriation of the deputed employees, the applicant retired from service on 28.02.2013 on attaining the age of superannuation. Therefore, as rightly claimed by the applicant his case for the purpose of settling the pensionary benefits has to be considered with the employees who were working with IRCTC, exercising the similar option and were repatriated to Railways by treating their service in IRCTC as deemed deputation.

15. Merely on the ground that the applicant retired before the policy decision taken by the respondents to repatriate the employees from IRCTC to

Railways, the pensionary benefits of the applicant cannot be computed in a different way to that of other employees who have been repatriated and retired from service in Railways. Withholding of an amount of Rs.63,558/- from the retiral benefits of the applicant is also illegal in view of the above reasons. Therefore, the respondents are under duty to refund the same to the applicant.

16. The OA is therefore deserves to be allowed. The respondents are directed to consider the total length of combined service of the applicant rendered in Railways as well as IRCTC as Railway Service on notional basis by granting notional increments and promotions from time to time for the purpose of reckoning the last pay drawn and fix the pension on notional basis as on 28.02.2013 and pay the pension and other settlement benefits, duly releasing the arrears of pension and terminal benefits by calculating the difference in amounts and pay back the recovered amount of Rs.63,558/-. The respondents are directed to pay interest @ 9% per annum on the entire amount of arrears from the date on which they became due till the date of payment.

17. The OA is allowed accordingly. There shall be no order as to costs.

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

sd