IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No.21/125/2017

Order reserved on 16.07.2019
Order pronounced on: 25.07.2019

Between:

Banarasi S/o Kasiram, aged about 64 years
Occ: IRSME (under order of Compulsory Retirement)
R/o H.No.1-6-314, Post Quarters
Near Shiva Temple, New Bowenpally, Secunderabad. …. Applicant

AND

1. The Union of India, represented by its Secretary
Ministry of Railways, Railway Manthralaya
Railway Board, New Delhi.

2. South Central Railway
Represented by its General Manager
Rail Nilayam, Secunderabad. … Resondents

Counsel for the Applicant … Mr.J. Sudheer.
Counsel for the Respondents …Mr. S.M.Patnaik, SC for Railways

CORAM:

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

O R D E R

2. The OA is filed by the applicant to grant him salary for the period between dismissal and modification of the punishment to that of compulsory retirement.

3. Brief facts of the case are that the applicant approached this Tribunal in OA No.1406/2003 when he was dismissed from service. This Tribunal quashed the punishment order of dismissal. The order of the Tribunal was challenged in the High Court in Writ Petition No.8027/2005 wherein the Hon'ble High Court remanded the matter back to the Disciplinary Authority for reconsideration only to the extent of quantum of punishment imposed upon the applicant. Respondents, on receiving the aforesaid order of the Hon'ble High Court have reconsidered the matter and stated that the

penalty of dismissal of service need not be interfered. Thereafter, the applicant once against filed OA No.224/2010 before this Tribunal, wherein the respondents were directed to impose the punishment of compulsory retirement instead of dismissal. Respondents, on failing to implement the orders of the Tribunal, applicant filed Contempt Petition No.92 of 2013, which was disposed of on 10.07.2014, directing the applicant to make personal appearance before the SPO/GAZ for submission of necessary pension papers and directed the respondents to comply with the order of the Tribunal in OA 224/2014 dated 09.11.2012. In compliance of the Tribunal's orders in CP, respondents have informed that the pensionary benefits of the applicant were arranged along with arrears and Provident Fund. Based on the said submission, the CP was closed. However, the respondents have not paid the pay and allowances due from the date of dismissal to the date of compulsory retirement and hence, this OA.

4. The contentions of the applicant are that the Contempt Petition was closed without fully examining the matter by believing the respondents' version. Applicant received only part of his pensionary benefits. The fact that the first dismissal was set aside by both the Hon'ble Tribunal and High Court directing the disciplinary authority to pass a fresh order and accordingly second dismissal on 12.10.2009 and when the applicant filed second OA No.224/2010, the punishment of compulsory retirement came into vogue and has to be treated w.e.f. 12.10.2009. In other words, the applicant has to be treated to have been compulsorily retired from service w.e.f. 12.10.2009 implying that upto 11.10.2009 applicant was in service. Consequently, he is eligible for salary upto 11.10.2009. Accordingly, pension has to be refixed.

5. Respondents, in their reply statement, intimated that the applicant was issued Pension Payment Order (in short, PPO) on 24.09.2014 based on the directions in CP No.92/2013 in OA 224/2010. As pension was paid, the case of the applicant has attained finality in all respects. The OA is barred by principles of res-judicata. Respondents have also informed that the applicant was proceeded on the grounds of unauthorized absence from 01.09.1999 to 05.10.2000 and imposed the penalty of dismissal from service on 11.12.2002. Contesting the penalty imposed, applicant approached this Tribunal and the Hon'ble High Court, based on which finally, the respondents have modified the punishment of dismissal to that of compulsory retirement on 05.07.2013. Further, Railway Board, vide its order dated 13.1.2014, decided that the applicant shall be granted 90% compassionate pension admissible to the applicant after ordering 10% cut in Pension. The Gratuity was granted in full.

6. Heard Mr. Prem Joy, proxy of Shri J. Sudheer, the learned counsel for the applicant and Mr. S. M. Patnaik, the Standing Counsel for the respondents Railways, and perused the pleadings on record.

7. (I) Learned counsel for the applicant argued that the respondents have not issued any regular order as is ordained in the disciplinary rules in modifying the punishment of the applicant from dismissal to that of a compulsory retirement. In fact, the learned counsel for the applicant has pointed out that modification was intimated vide letter dated 13.01.2014 from the Railway Board to the General Manager with a copy marked to the applicant. In response to the same, learned counsel for the respondents has argued that as per orders of this Tribunal, the order was modified, therefore, it has to be treated as compliance of the Court order. A

compliance to a court order need not be in the mode and manner as is required in the disciplinary rules. Besides, a copy of the order letter addressed to the General Manager, modifying the punishment was also marked to the applicant. The applicant has filed CP and obtained the pension and pensionary benefits. Thereupon, the CP was also closed. Hence, in regard to the pension and pensionary benefits granted to the applicant, the same has attained finality. Applicant through this OA agitating for similar relief already granted, is *res judicata*. The learned counsel for the applicant argued that at the time of dispensing the CP, full facts have not been considered.

(II) As can be understood from the submission of the learned counsel for the applicant, he is harping on the procedural requirement in communicating the modification of the punishment. It is ultimately the decision which counts. The decision was in compliance to judicial orders issued. Applicant is trying to be hyper technical by claiming that the order has not been communicated in the mode and manner it has to be.

(III) In the present case, the applicant grievance was about dismissal. The same was modified to that of compulsory retirement. Whenever the competent authority modifies the punishment, the modified punishment takes effect from the date of the original punishment order. In the present case, the original punishment was issued on 11.12.2002 which was modified by the President (Through Railway Board) on 05.07.2013, therefore, penalty of compulsory retirement will take effect on 11.12.2002 as per the provisions of Railway Servants (Disciplinary & Appeal) Rules, 1968. Hence, the claim that the applicant shall have to be treated in service from 11.12.2002 to 5.07.2013 lacks logic.

(IV) Besides, in regard to the incessant claim of the learned counsel for the applicant that the procedure in issuing a formal order of modification when not followed, then the order looses sanctity, this Tribunal is of the view that it is an empty formality. Even if the penalty were communicated in a form as demanded, it would not have made any difference in regard to the penalty of compulsory retirement.

(V) In this connection, it is useful to refer to the decision of the Hon'ble Supreme Court, in **Haryana Financial Corporation** v. **Kailash Chandra Ahuja**, (2008) 9 SCC 31, wherein it was observed that an empty formality need not be followed. The relevant portion of the Judgement is extracted herein:

> "40. In Aligarh Muslim University v. Mansoor Ali Khan (2000) 7 SCC 529 the relevant rule provided automatic termination of service of an employee on unauthorized absence for certain period. M remained absent for more than five years and, hence, the post was deemed to have been vacated by him. M challenged the order being violative of natural justice as no opportunity of hearing was afforded before taking the action. Though the Court held that the rules of natural justice were violated, it refused to set aside the order on the ground that no prejudice was caused to M. Referring to several cases, considering the theory of "useless" or "empty" formality and noting "admitted or undisputed" facts, the Court held that the only conclusion which could be drawn was that had M been given a notice, it "would not have made any difference" and, hence, no prejudice had been caused to M."

(VI) Besides, Hon'ble Supreme Court in **Bihar State Electricity Board** vs. **Bhowra Kankanee Collieries Ltd.**, 1984 Supp SCC 597, has also further opined that the procedural formalities should not ride over the essence of any decision, which reads as under:

> "6. Undoubtedly, there is some negligence but when a substantive matter is dismissed on the ground of failure to comply with procedural directions, there is always some element of negligence involved in it because a vigilant litigant would not miss complying with procedural direction..... The question is whether the degree of

> negligence is so high as to bang the door of court to a suitor seeking justice. In other words, should an investigation of facts for rendering justice be peremptorily thwarted by some procedural lacuna?"
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> 9. The failure to bring the authorisation on record, as observed, was more a matter of procedure, which is but a handmaid of justice. Substantive justice must always prevail over procedural or technical justice. To hold that failure to explain delay in a procedural matter would operate as res judicata will be a travesty of justice considering that the present is a matter relating to corruption in public life by holder of a public post. The rights of an accused are undoubtedly important, but so is the rule of law and societal interest in ensuring that an alleged offender be subjected to the laws of the land in the larger public interest. To put the rights of an accused at a higher pedestal and to make the rule of law and societal interest in prevention of crime, subservient to the same cannot be considered as dispensation of justice. A balance therefore has to be struck. A procedural lapse cannot be placed at par with what is or may be substantive violation of the law."

The issue was more of modification of the penalty and not about the mode of communication. The communication served the purpose, as it should.

(VII) It is also to be observed that the respondents have acted in pursuance of the orders of this Tribunal by communicating to the General Manager and marking a copy to the applicant. In case the applicant was kept in the dark by not informing through any mode of communication, then there is a cause to agitate. However, the facts have been otherwise. Therefore, applicant's submission that a proper and regular order of modification of penalty has not been issued, does not hold good.

(VIII) It is also not out of place to state that it was not the respondents who did not allow the applicant to work for the respondents organizations. In fact, it is the conduct of the applicant which has forced the respondents to dismiss him from service. Thereafter, this Tribunal intervened and the punishment was modified as compulsory retirement. Therefore, applicant making a submission that he has to be paid salary for the period he has not

worked, is difficult to appreciate. Thus, from the above, the Tribunal does not find merit in the OA and hence merits dismissal. Accordingly, dismissed with no order as to costs.

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

Dated, the 25th day of July, 2019

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