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

**Original Application No.21/284/2015**

**Date of Order: 19.07.2019**

Between:

Sri. P. Reddy Sekhar,
S/o P. Chinna Gangulappa
Aged 62 years, Retired ACM/Claims/Hq
South Central Railway, R/o Plot No.201
Saikiran Residency, Kartikeyanagar
Nacharam, Hyderabad – 500 076. …. Applicant

AND

1. Union of India, Rep. by the Secretary
   Ministry of Railways, Government of India
   Railway Board, Sansadmarg, New Delhi.
2. The Joint Secretary
   (Establishment), Railway Board
   Sansadmarg, New Delhi.
3. The General Manager
   South Central Railway
   Railnilayam, Secunderabad.
4. The Chief Personnel Officer
   South Central Railway
   Railnilayam, Secunderabad.
5. The Financial Advisor & Chief Accounts Officer
   South Central Railway
   Railnilayam, Secunderabad. … Respondents

Counsel for the Applicant … Mr. K. Sudhaker Reddy
Counsel for the Respondents …Mr. N. Srinatha Rao, SC for Rlys.

**CORAM:**

**Hon'ble Mr. A.K.Patnaik, Member (Judl.)**
**Hon'ble Mr. B.V. Sudhakar, Member (Admn.)**

## ORAL ORDER

**[By Mr. B.V. Sudhakar, Member (Admn.)]**

2. OA is filed in regard to refusal to disburse full pay for the period 5.6.2008 to 11.3.2013 by treating it as on duty.

3. Brief facts to be adumbrated are that the applicant, while working as Assistant Commercial Manger, was subjected to vigilance check and was issued a charge memo on 15.4.2005 for grave misconduct of accepting a bribe of Rs.10,000/- from a decoy contractor. Respondents after due inquiry imposed the penalty of compulsory retirement on 27.5.2008. Pension was paid from 5.6.2008 and other retirement benefits were released. On appeal, penalty was modified to reduction in time scale by two stages with cumulative effect on 8.2.2013. Applicant joined duty on 18.3.2013 and retired on 30.6.2013. Respondents, in view of the modification of the penalty, advised the applicant vide letter dated 2.3.2013 to remit the settlement dues/pension paid on 5.6.2008, against which applicant represented on 16.4.2013 to deduct the amount from the sum due to be paid to the applicant. In the meanwhile, respondents have decided vide letter No.E(O)I-2008/AE-3/SCR/33 of December, 2013 that the applicant would be paid 50% of pay for the period 5.6.2008 to 11.3.2013. Against the said order, applicant pleaded on 14.12.2013 to pay full salary along with drawal of increments due, treating the period as being on duty. As it was not conceded to, OA is filed.

4. The contentions of the applicant are that as per clause 1343 (FIR - 54) of IREM Vol –II time allowed to dispose the representation made on 14.12.2013 is 60 days whereas respondents have disposed the same on 16.5.2014. The imposition of the penalty of compulsory retirement has kept him away from work till he was reinstated and, therefore, he is not responsible for not being able to discharge duties during the period in question. As per Rule 39 (2) of Railway Pension Rules and Rule 1343 (2), (4) and (6) of Indian Establishment Code Vol-II, applicant is eligible for the relief sought. Respondents have paid salary from 18.3.2013 based on the last pay drawn on 5.6.2008 which is incorrect. The period in question has not been treated as dies non. Junior to the Applicant, Sri Victor Babu was promoted as Senior Divisional Manager and that the applicant was due to be promoted in March 2004 to Class-I grade, thereafter to senior scale in 2006, and lastly as Junior Administrative Officer in 2012. With the modification of the penalty, applicant claims that the promotions need to be granted on a notional basis and consequential benefits have to be granted to him. FA&CAO granting only 50% of pay without adding DA, increments, etc. is arbitrary. The impugned order dated 16.5.2014 and Order dated -12.2013 are arbitrary and illegal.

5. Respondents confirm that the applicant was imposed the penalty of compulsory retirement on 27.5.2008 for grave misconduct. On appeal, it was reduced to reduction of pay by 2 stages for the left out period of service, which will have the effect of postponing future increments of pay vide order dated 8.2.2013. The tentative decision to treat the intervening period from 5.6.2008 to 11.3.2013 as not being on duty and for paying 50% of pay was communicated on 12.12.2013 giving an opportunity to the applicant to represent, if he has a grievance against the same. Applicant did represent on 23.12.2013 but the tentative decision was confirmed on 16.5.2014. Rule 39 of Railway Services (Pension) Rules, 1993 is not applicable to the case of the applicant. Action taken against the applicant in regard to treating the period in question is as per Rule 1343 of IRE Code Vol II.

6. Heard both the counsel and perused the pleadings on record.

7. I) Primary contention of the applicant that since he was retired compulsorily he could not attend to duty for the period in question, is untenable for the simple reason that it was his conduct which invited the penalty of compulsory retirement. Applicant also pointed out that appeal has to be disposed within 60 days as per Clause 1343 (FIR -54) of IREM. It is a procedural requirement. By not doing so within the stipulated period, does in no way dissolve the charge of grave

misconduct laid against the applicant. This fact was emphasised by the Hon'ble Apex Court in **Bihar State Electricity Board & Others** vs. **Bhowra Kankanee Collieries Ltd. & Anr.,** 1984 Supp SCC 597, 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 its 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?

Further, Hon'ble Apex Court in Cr. Appeal No.853/2019 [**State represented by Inspector of Police Central Bureau of Investigation** v. **M. Subrahmanyam**, decided on 07.05.2019, wherein, after considering the decision in Bhowra Kankanee Collieries Ltd. (surpa), observed as under:

> "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."

It is not under dispute that applicant was involved in a case of corruption which is a grave misconduct. Organisational and societal interest are to be given equal weightage as are the rights of the applicant in public interest and more importantly to uphold the rule of law.

II) Further Rule 39 of Railway Services (Pension) Rules was banked upon by the applicant to further his case, which reads as under:

> "39. Counting of past service on reinstatement-
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> (1) A railway servant, who is dismissed, removed or compulsorily retired from service, but is reinstated on appeal review, is entitled to count his past service as qualifying service.
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> (2) The period of interruption in service between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement, and the period of suspension, if any, shall not count as qualifying service unless regularised as 'duty' or 'leave' by a specific order of the authority which passed the order or reinstatement."

As can be seen from the above, Rule 39 ibid only speaks of counting the past service and in case of interruption in service the competent authority has to issue a specific order. In the case of the applicant such an order to regularise the intervening period has not been issued. Hence, the stated rule is not applicable to the applicant.

III) Further applicant relied on sub-clauses 2, 4 & 6 of Clause 1343 (FR 54) of IREC (Indian Railway Establishment Code) Vol-II, which

are extracted hereunder for reference and to assess their applicability to the cause of the applicant:

> "1343 (F.R.54).--(1) When a railway servant who has been dismissed, removed or compulsorily retired is re-instated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension preceding the dismissal, removal or compulsory retirement, the authority competent to order reinstatement shall consider and make a specific order-
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> (a) regarding the pay and allowances to be paid to the railway servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and
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> (b) Whether or not the said period shall be treated as a period spent on duty.
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> (2) Where the authority competent to order re-instatement is of opinion that the railway servant who had been dismissed, removed or compulsorily retired has been fully exonerated the railway servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:
>
> (3) xxxxxxxxxxxx
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> (4) In cases other than those covered by sub-rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held) the railway servant shall, subject to the provisions of sub-rules (6) and (7), be paid such amount to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the railway servant 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 60 days from the date on which the notice has been served as may be specified in the notice.
>
> (5) xxxxxxxxx
>
> (6) The payment of allowances under Sub-rule(2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

The competent authority while reinstating the applicant has ordered vide order dated 16.5.2014 in unequivocal terms that the applicant shall be paid 50% of pay and that the period of absence shall not be treated as period spent on duty. Therefore, the clauses cited supra by the applicant do not come to the rescue of the applicant.

IV) However, if one were to analyse the issue from the perspective of law, the situational matrix will swing in favour of the applicant. It is well settled in law that once a penalty is modified by an appellate/revision authority, the effect of such modification will take effect from the date of the original order imposing the penalty. Observation of the Hon'ble High Court of Madras in W.A.No.6736/2008, while adjudicating a dispute of similar nature between **Arokiadoss** v. **The Commissioner of Police,** are relied upon to make the above assertion. The verdict delivered on 30.4.2009, reads 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."

Therefore, as per law, the applicant is eligible for pay and allowances for which he is entitled as per the modified order dated -12-2013 (Annexure-8). Besides, this Tribunal has settled a more or less similar issue in OA No.69/2013. The said reference covers the present case too.

V) Regarding promotions, as claimed by the applicant, it must be adduced that promotion is based on multiple factors. Applicant claiming that his junior was promoted does not impress this Tribunal because he has a chequered career and as stated above many factors like seniority, track record, work performance, APARs, etc. are reckoned while granting promotions. Respondents are well within their right to promote those deserving after weighing a host of relevant factors. Just because a junior was promoted, does not endow the applicant with the right to be promoted. Hence, the submission of the applicant that he should be promoted along with his junior is not maintainable.

VI) Nevertheless, reverting to the issue of disbursing full pay and allowances for the period 5.6.2008 to 11.3.2013, with deductions due to modification of the penalty and thereafter re-fixing the pension appropriately, a case has been made out which calls for a relook into the issue. Therefore, respondents are directed to re-examine the issue based on facts expounded in above paras in the context of the legal principle laid down by the Hon'ble High Court of Madras cited supra along with the observations made by this Tribunal in OA 69 of 2013 [**D. Sadananda Rao** v. **UOI & Others,** decided on 20.11.2018] and issue a speaking as well as a reasoned order within a period of 3 months from the date of receipt of a certified copy of this order.

VII) With the above directions, the OA is disposed of with no order as to costs.

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

**(A. K. PATNAIK)**
**MEMBER(J)**

Dated, the 19th day of July, 2019

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