

**THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.1827 of 2016

Date of Decision:27.02.2017

Union of India

.....Petitioner

Vs.

Dawarika Parsad and another

.....Respondents

**CORAM:- HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present:- Mr. G.S. Bajwa, Advocate for the petitioner.

Mr. G.P. Vashisht, Advocate for respondent No.1.

SURYA KANT, J.(Oral)

(1) Union of India through Northern Railway has laid challenge to the order dated 16.9.2015 passed by the Central Administrative Tribunal, Chandigarh Bench, whereby the orders of fixation of pension and imposing permanent cut on the pension of respondent No.1 have been set aside.

(2) The facts may be briefly noticed:-

(3) Respondent No.1 was working as a Passenger Guard in the Railways. He was served with a charge-sheet and after holding departmental inquiry, the punishment of reduction in rank was imposed upon him. Respondent No.1 filed departmental appeal which was partly allowed and the Appellate Authority vide order dated 8.3.1996 modified the punishment and instead of reversion, two increments without cumulative effect were ordered to be stopped.

(4) Respondent No.1 retired from service on attaining the age of

superannuation w.e.f. 28.2.1997, namely, during the currency of punishment period of stoppage of two increments without cumulative effect which commenced on 13.11.1995 and was to expire on 13.11.1997.

(5) The issue which falls for consideration in this case is as to how to give effect to the order of punishment and then release the pension of respondent No.1 on retirement?

(6) The Railway authorities decided to fix the pension on the basis of average of the pay last drawn by respondent No.1 for ten months immediate before his retirement. That was the period during which respondent No.1 was getting reduced pay due to the punishment of stoppage of his two increments. The effect of this order was that the pension of respondent No.1 was fixed at a lower rate for all times to come. Resultantly, the order of punishment carried its effect perpetually and despite the imposition of 'minor punishment' on him, it caused a permanent adverse effect on the pension of respondent No.1.

(7) The aggrieved respondent No.1 approached the Tribunal, who has set aside the order passed by the Railways with a direction to refix his pension on the basis of 'average of ten months' pay drawn before the award of punishment on 13.11.1995'. As a necessary corollary of the order of the Tribunal, the period of punishment order of stoppage of two increments stands reduced to just one year, which would in a way amount to further reduction of punishment to stoppage of 'one' increment instead of actual penalty of stoppage of two increments imposed on the Ist respondent.

(8) We have heard learned counsel for the parties and considered the resultant consequences of the orders passed by Railway authorities or

the Tribunal.

(9) There can be no quarrel that had he not retired from service on superannuation, the order of stoppage of two increments would have affected the pay of Ist respondent till 13.11.1997. He would have been entitled to full pay only w.e.f. 14.11.1997 after the expiry of punishment period. However, the Tribunal has reduced such period upto 28.2.1997 as the Ist respondent has been held entitled to full pension w.e.f. 1.3.1997. It thus appears to us that with a view to give full effect to the order of punishment of stopping two increments in such a manner that its after-effects do not leave any adverse consequences beyond a period of two years, respondent No.1 was liable to be paid less pension till 13.11.1997 as per the reduced pay drawn by him during last ten months immediate before retirement. Thereafter, he is entitled to full pension w.e.f. 14.11.1997 on the assumption as if no punishment was awarded to him. In this peculiar fact, the petitioner- authorities are duty bound, firstly to fix the pension of the first respondent w.e.f. 1.3.1997 till 13.11.1997 on the basis of the average of the reduced pay and thereafter to refix it w.e.f. 14.11.1997 and grant full pension which he would have drawn had his two increments been not stopped.

(10) Neither the period causing adverse financial effect can be allowed to exceed beyond 13.11.1997 nor the consequences of the order of punishment which has attained finality can be reduced pre-maturely. The balance can be struck only by reducing the pension till 13.11.1997 and thereafter, by restoring it on the premise that no punishment was as if never awarded.

(11) Ordered accordingly.

(12) The other plea taken by the petitioner that the first respondent approached the Tribunal belatedly has to be noticed and rejected only in view of the fact that it is a case of recurring cause of action where respondent No.1 has been suffering financial loss every month.

(13) For the reasons aforesaid, the writ petition is allowed in part and the Tribunal's order is modified. The petitioners are directed to work out the pension and consequential arrears to be payable to respondent No.1 accordingly. The needful shall be done within a period of two months from the date of receipt of copy of certified order.

**(SURYA KANT)
JUDGE**

**(SUDIP AHLUWALIA)
JUDGE**

27.02.2017

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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No