

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(B)

O.A. NO. 980/2000

with

O.A. NO. 362/2001

O.A. NO. 909/2001

O.A. NO. 1807/2001

This the 23rd day of October, 2001.

HON'BLE SHRI JUSTICE B. DIKSHIT, VICE-CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

OA No. 980/2000

1. Sarju Prasad
K.M. 91 Near Kavi Nagar
Ghaziabad, U.P.
2. Sukh Dev Singh
S/o Shri Arjan Singh
R/o 33/7 Rajinder Nagar
New Delhi-110060
3. Tara Singh Flat No. 111(A)
Pocket-A Mayur Vihar Phase-II,
Delhi-110091.
4. Shri Manohar Lal (Driver)
S/o Chaman Lal R/o Shankar Puri,
New Vijay Nagar, Ghaziabad, U.P.
5. Shri Vishwa Nath (Driver)
S/o Lachhman Dass
C-41 Sector-23 Old Raj Nagar,
Ghaziabad, U.P.
6. Shri Ram Nath (Driver)
H.No. 558, Shankar Puri,
Ghaziabad, U.P.

-Applicants

Versus

1. The Chairman Railway Board,
Rail Bhawan, New Delhi.
2. The Deputy Director Finance
(Estt.) III, Railway Board,
Rail Bhawan, New Delhi.
3. The Divisional Accounts Officer,
Northern Railway, New Delhi.
4. The General Manager,
Northern Railway
Baroda House, New Delhi.

-Respondents

OA No. 362/2001

1. Balraj Kishan Chopra, Guard
40/15, Manohar Kunj,
Gautam Nagar, New Delhi.

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2. Haqiqat Rai, Guard
255 Housing Board Colony
Rohtak-124001 (Haryana)

3. Ram Chand, Driver
Rambir Colony,
House No. 241/2,
Railway Board, Jind
(Haryana)

4. Loku Ram, Driver
115 Old Arya Nagar
Near Tar Factory,
Ghaziabad, U.P.

5. Mohan Lal, Driver
Rakhi Mill By-Pass
Sain Vihar Gali No.1
Ghaziabad, U.P.

6. Bakhtawar Singh, Driver
House No.105, Vijay Park
Bitu Road, Dehradun, U.P.

7. Sher Singh, Driver
9, Guru Arjan Nagar,
Sofia School Road,
Saharanpur, U.P.

8. Ram Saroop, Driver
Mohan Lal Colony
Near Sofia English Med. Conent
School, Saharanpur, U.P.

9. Som Dutt, Driver
H.No.1/1996-4,
Sharda Nagar Near Railway Line,
Saharanpur, U.P.

10. Jagdish Chander, Driver
Near Gopal Mandir (KJGY)
Saharanpur, U.P.

11. Gian Singh (Dead), Driver
through his widow
Smt. Chanan Kaur
H.No. 1/1655 New Arjan Nagar,
Near Adarsh Gas Godown
Saharanpur, U.P.

12. Prem Singh, Driver
H.No. 1/1976
Pathan Puram Ram Nagar,
Saharanpur, U.P.

13. Karam Narain (dead) Guard
through his widow
Smt. Veena Devi Talwar
K.G.4, New Kavi Nagar
Ghaziabad, U.P.

14. Sita Ram, Driver
H.No. 194, Sector-19
Faridabad (Haryana).

15. Roshan Lal Dhawan, Guard
H.No. 3613/1, Raja Park
Shakurbasti, Delhi

16. Tarlok Singh, Guard
K.G. 60, New Kavi Nagar
Ghaziabad, U.P.

17. Kishan Lal, Driver
S/o Wazir Chand
R/o J-14, Andha Moghal,
Gali No.8
Delhi-110007.

18. Tulsi Dass (dead) Driver
through his widow
Smt. Ram Devi
237, Bhoor, Bharat Nagar,
Ram Puri, Ghaziabad, U.P.

19. Dev Saroop Sharma (dead) Guard
through his widow
Smt. Angoori Devi
R/o 30/F, Railway Colony,
Double Storey
Arya Nagar Ghaziabad, U.P.

20. Madan Lal Kapoor, Guard
S/o Lal Chand
15-A/2, Upper G/F
East Patel Nagar,
New Delhi.

21. Raghu Nath (Dead) Driver
through his widow
Smt. Phool Mati
H.No. 240 Chhoti Bajaria
Gurdwara Gali,
Ghaziabad.

22. Nand Lal, Guard
S/o Mehanga Ram
AG-403, Shalimar Bagh
Delhi.

-Applicants

Versus

1. Union of India through its
Secretary, Ministry of Railway,
Rail Bhawan, New Delhi.

2. The Chairman Railway Board,
Rail Bhawan, New Delhi.

3. The Deputy Director Finance
(Estt.) III, Railway Board,
Rail Bhawan, New Delhi.

4. The Divisional Accounts Officer,
Northern Railway, New Delhi.
5. The Divisional Accounts Officer,
Northern Railway,
Ambala Cantt, Ambala.
6. The General Manager,
Northern Railway
Baroda House, New Delhi.

-Respondents

O.A. No. 909/2001

1. Brij Behari Lal Tandon
5/30 Friends Colony
New Shah Ganj,
Agra, U.P.
Presently residing at
KG-1/276, Vikaspuri,
New Delhi.
2. Tara Chand P. Sharma
H.No.161/15, Attri Villa
Gandhi Nagar,
Distt. Sonepat
Ganaur (Haryana)
Presently residing at
T-23/2, Railway Colony
Kishanganj, Delhi.
3. Kunj Behari Lal
5/1E/3-A Shanker Garh,
Alwatya Road,
Shahganj, Agra, U.P.
Presently residing at
T-23/2, Railway Colony
Kisanganj, Delhi.
4. Jagmohan Saxena
95-Dak Bungalow Road
Kota Jn. Kota,
Presently residing at
KG-1/276, Vikaspuri,
New Delhi.
5. Vinayak Rao
95-Dak Bungalow Road
Kota Jn. Kota,
Presently residing at
T-23/2, Railway Colony,
Kisanganj, Delhi.
6. J.P. Tiwari
95-Dak Bungalow Road
Kota Jn. Kota,
Presently residing at
T-23/2, Railway Colony,
Kisanganj, Delhi.

7. Om Prakash Vasudeva
3/91 Opp. Shastri Park,
Station Road,
Bhimganj Mandi, Kota Jn
(Rajasthan).
Presently working at
T-23/2, Railway Colony,
Kisanganj, Delhi.

8. K.M. Mahajan
D-4 Sadhna Sadan
Rishi Nagar
Ujjain (M.P.)
Presently residing at
KG-1/276, Vikaspuri,
New Delhi.

9. Ram Mohan Bhatia
H.No.1, Model Town
Near Idgah Bus Stand,
Agra, U.P.
Presently residing at
KG-1/276, VikasPuri,
New Delhi.

10. Balwant Singh Monga
H.No. 943, Sector 6-D
Avas Vikas Colony
Agra, U.P.
Presently residing at
T-23/2, Railway Colony,
Kisanganj, Delhi.

11. Smt. Hussan Ara Begum
W/o late A.H. Rizvi
H.No. E-3-580, near Ashok Park
Saheed Nagar, Agra, U.P.
Presently residing at
KG-1/276, Vikaspuri,
New Delhi.

12. Smt. Ram Pyari
W/o late Shri K.D. Kaushak
Rly. Qr. 156-A/B, South
Railway Colony Agra Cantt.
U.P.
Presently residing at
T-23/2, Railway Colony,
Kisanganj, Delhi.

13. Din Dayal
C/o Shri M.K. Saxena
51/10-5-B, Northern Arjun Nagar
Agra.
Presently residing at
KG-1/276, Vikas Puri,
New Delhi.

14. B.S. Mishra
H.No.87, Shivaji Nagar
Shahganj, Agra, U.P.
Presently residing at
T-23/2, Railway Colony,
Kisanganj, Delhi.

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15. Sita Ram Malhotra
H.No.C-5, Kidar Nagar
Shahganj, Agra, U.P.
Presently residing at
KG-1/276, Vikaspuri,
New Delhi.

16. Krishan Kumar Misra
C/o Y.K. Misra
Quarter No.133/A
Railway Colony,
Gandhidham (Kutch),
Presently residing at
T-23/2, Railway Colony,
Kisanganj, Delhi.

17. Shanker R.
Bungalow No.355/12/C
Lila Shah Nagar
Gandhidham
Presently residing at
T-23/2, Railway Colony,
Kisanganj, Delhi.

18. Ratan Singh Tomar
S/o late Shri Kishan
H.No. 71, Shankerpuri
Alwatty Road, Shahganj
Agra.
Presently residing at
T-23/2, Railway Colony,
Kisanganj, Delhi.

19. Baldev Kishan
S/o late Raila Ram
1/110 Khoja Hawali
Nai-ki-mandi,
Agra U.P.
Presently residing at
KG-1/276, Vikaspuri,
New Delhi.

20. Gurdyal Singh
H.No. 550, Sector-8
Faridabad (Haryana)
Presently residing at
KG-1/276, Vikaspuri,
New Delhi.

21. Narinder Nath
119, Prem Nagar
Gausala Road, Ghaziabad.
Presently residing at
KG-1/276, Vikaspuri,
New Delhi.

22. Raghbir Saran
T-23/2, Railway Colony,
Kisanganj, Delhi.

23. Raj Kumar Kochhar
KG-1/276, Vikaspuri,
New Delhi-18.

-Applicant-

Versus

1. Union of India through its
Secretary, Ministry of Railway,
Rail Bhawan, New Delhi.
2. The Chairman, Railway Board
Rail Bhawan, New Delhi.
3. The Deputy Director Finance(Estt.)
III, Railway Board,
Rail Bhawan, New Delhi.
4. The General Manager,
Northern Railway Baroda House,
New Delhi.
5. The General Manager,
Western Railway, Churchgate
Bombay.
6. The General Manager,
Central Railway Churchgate,
Bombay.
7. The Senior Divisional Accounts
Officer, Western Railway
D.R.M's Office, Kota Jn.
8. The Senior Divisional Accounts
Officer, Western Railway
D.R.M's Office, Ajmer.
9. The Senior Divisional Accounts
Officer, Northern Railway
D.R.M's Office, State Entry
Road, New Delhi.
10. The Senior Divisional Accounts
Officer, Central Railway
D.R.M's Office, Jhansi.

-Respondents

O.A. No.1807/2001

Ved Prakash
S/o Telu Ram
Ex-Driver Special B 8/14 Sector 4
Rohini Delhi-110085.

-Applicant

Versus

1. Union of India through its
Secretary, Railways
Govt. of India Railway Bhawan
New Delhi.
2. The Chairman Railway Board,
Rail Bhawan, New Delhi.

3. The Deputy Director Finance (Estt.) III, Railway Board, Rail Bhawan, New Delhi.
4. The Divisional Accounts Officer, Northern Railway, New Delhi.
5. The*General Manager, Northern Railway Baroda House, New Delhi.
6. D.R.M. Northern Railway Estate Entry, New Delhi.

-Respondents

(By Advocate: Shri J.M. Khanna and Shri B.K. Punj for applicants
None Present for applicant in
OA No.1807/2001
Shri E.X. Joseph with Shri R.L. Dhawan,
for respondents)

O R D E R

Hon'ble Shri V.K. Majotra, Member (A) :

The facts and issues being common in these OA's, they are being heard and disposed of together by the present common order. For the sake of convenience the facts have been culled out mainly from OA No.980/2000.

MA No.1260/2000 in OA No.980/2000 for joining in a single application is allowed. MA No.1364/2000 seeking deletion of the names of applicants 1, 2, 4, 6, 8, 12 and 13 is also allowed. MA No.1363/2000 seeking ex parte stay of notification dated 29.12.1999 is rejected.

OA 1807/2001 : Though none has appeared on behalf of applicant, we have proceeded to consider this matter too in terms of rule 15 of the CAT (Procedure) Rule 1987, (for short, Procedure Rules) after considering the respective pleadings, material on record and hearing the learned counsel of respondents.

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The Hon'ble Supreme Court of India by judgment dated 25.7.1997 in the case of Chairman, Railway Board v. C.R.Rangadhamaiyah, AIR 1997 SC 3828, held as follows :

"Once it is held that pension payable to such employees had to be computed in accordance with Rule 2544 as it stood on the date of their retirement, it is obvious that as a result of the amendments which have been introduced in Rule 2544 by the impugned notification dated December 5, 1988 the pension that would be payable would be less than the amount that would have been payable as per Rule 2544 as it stood on the date of retirement. The Full Bench of the tribunal has in our opinion, rightly taken the view that the amendments that were made in Rule 2544 by the impugned notifications dated December 5, 1988 to the extent the said amendments have been given retrospective effect so as to reduce the maximum limit from 75% to 45% in respect of the period from January 1, 1973 to March 31, 1979 and reduce into 55% in respect of the period from April 1, 1979, are unreasonable and arbitrary and are violative of rights guaranteed under Articles 14 and 16 of the Constitution.

For the reasons mentioned the appeals as well as Special Leave Petition filed by the Union of India and Railway Admn. are dismissed. But in the circumstances, there will be no order as to costs."

The Executive Director, Pay Commission, Railway Board, issued order dated 14.10.1997 to implement the aforesaid judgment to pay pension and retiral benefits to those retired between 1.1.1973 and 4.12.1988 and are classified as "running staff". by order dated 29.12.1999 at Annexure A-4. Respondent No.2, Deputy Director Finance (Estt.III), Railway Board, issued an order not to grant running allowance to the running staff which shall not form part of pay and thereafter letter has been issued to the respective banks to pay pension in

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accordance with revised formula as mentioned in Annexure A-4 reducing the pension payable to the applicants and effecting recoveries from the pension paid to them in April, 2000. The applicants have sought quashing and setting aside of the impugned order dated 29.12.1999 and direction to the respondents to pay to the applicants, who had retired prior to 4.12.1988 and are classified as running staff, pension to be computed by including 75% of running allowance being an element to be included in the pay for purposes of computing pension.

2. According to the applicants, they are guards and drivers who have retired before 5.12.1988. Drivers, guards, shunters etc. are connected in the railways with the movement of trains and categorised as running staff. As running staff, they are stated to be entitled to payment of running allowance. Under the relevant rules computation of pension after retirement is made on the basis of average emoluments and part of the running allowance is included in average emoluments. Clause (g) of rule 2544 of the Indian Railway Establishment Code (IREC), prior to its amendment by notifications, provided as follows :

"g) (i) For the purpose of calculation of average emoluments; Actual amount of running allowances drawn by the Railway servant during the month limited to a maximum of 75% of the other emoluments reckoned in terms of (a) to (f) above."

3. Two notifications were issued on December 5, 1988. Notification No. GSR 1143(E) effective from 1.1.1973 is as follows :

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"Rule 2544 Sub-rule g(i) and g(iii) may be substituted by the following :

g(i) "For the purpose of calculation of average emoluments :- actual amount of running allowance drawn by the Railway servant during the month limited to a maximum of 45% of pay, in the revised scales of pay".

Notification No. GSR 1144(E) effective from 1.4.1979 i.e as follows :

"g(i) "For the purpose of calculation of average emoluments : 55% of basic average pay, in the revised scales of pay, drawn during the period".

g(ii) "For the purpose of gratuity and/or death-cum-retirement gratuity : 55% of basic average pay, in the revised scales of pay, drawn during the period."

4. The validity of the said notifications was assailed insofar as they were given retrospective effect w.e.f. 1.1.1973 and 1.4.1979 in OA K-269/1988, K.S. Srinivasan & Ors. v. Union of India before the Ernakulam Bench of the Tribunal. The OA was allowed and the notifications were quashed to the extent that the amendments in Rule 2544 were given retrospective effect on the view that the said amendments in the rule insofar as the same were given retrospective effect were unjust, unreasonable and violative of Article 14 of the Constitution. However, the Principal Bench of the Tribunal by its judgment dated 23.10.1991 in OA No.1572/1988, C.L.Malik & Ors. took a contrary view holding that the vested rights of the employees were not affected by the amendment of the rule on the ground that total amount of pension and retirement benefits they would have received before the amendment were not reduced

by the amendment. It appears that the earlier decision of the Ernakulam Bench was not brought to the notice of the Principal Bench. The matter came up before a Full Bench of the Tribunal. In its judgment dated 16.12.1993 in C.R.Rangadhamaiyah v. Chairman Railway Board & Ors., and other connected matters, the Full Bench concurred with the Ernakulam Bench of the Tribunal and held as follows :

"(3) By the revision of the pay scales the pay scales of the members of the running staff were enhanced with effect from January 1, 1973. Under Rule 2544 the members of the running staff are entitled to computation of their pay and retirement benefits by taking into account the Running Allowance which they have been receiving subject to a maximum of 75% of the pay and other allowances.

(4) By notifications dated December 5, 1988, Rule 2544 was amended prescribing the maximum at 45% from January 1, 1973 to April 1, 1979 and 55% from January 1, 1973 to December 4, 1988 were in accordance with Rule 2544, as it then stood, entitled to take into account Running Allowance in the matter of computation of pension and retirement benefits up to the maximum of 75% of their pay and other allowances. As their pay was revised with effect from January 1, 1973 the limit of 75% had to be worked out with reference to the enhanced pay and other allowances that they became entitled to receive in accordance with the 1973 Rules which came into effect from January 1, 1973.

(5) When the maximum was reduced from 75% to 45% up to April 1, 1979 or at the rate of 55% from April 1, 1979, the vested rights of all those who retired between January 1, 1973 and December 4, 1988 in the matter of receiving pension and retirement benefits were adversely affected.

(6) Persons who retired between January 1, 1973 and December 4, 1988 had earned a right to computation of pension in accordance with the statutory rules then in force. As by the time they retired, revision of pay had come into force, it is the revised pay and the Running Allowance subject to a maximum of 75% of the revised pay and allowances that was required to be taken into account.

(7) This right which accrued in their favour on their retirement between January 1, 1973 and December 4, 1988 was sought to be affected by amending the rules on December 5, 1988 with retrospective effect reducing the maximum limit of running allowance that qualifies for pension.

(8) The Ernakulam Bench had rightly declared that the amended provisions to the extent they have been given retrospective effect as void as offending Article 14 of the Constitution."

5. The Hon'ble Supreme Court in the case of Rangadhamaiah (supra) held that rule 2301 of the IREC prescribes in express terms that a pensionable railway servant's claim to pension is regulated by the rules in force at the time when he resigns or is discharged from the service of government. The respondents who retired after January 1, 1973 but before December 5, 1988 were, therefore, entitled to have their pension computed on the basis of rule 2544 as it stood on the date of their retirement. Under rule 2544, prior to amendment by the impugned notifications, pension was required to be computed by taking into account the revised pay scales as per the 1973 rules and the average emoluments were required to be calculated on the basis of the maximum limit of Running Allowance at 75% of the other emoluments including the pay as per the revised pay scales under the 1973 rules. The Apex court further held that the Full Bench of the Tribunal had taken the right view that the amendments that were made in rule 2544 by the impugned notifications dated December 5, 1988, to the extent the said amendments have been given retrospective effect so as to reduce the maximum limit from 75% to 45% in respect of the period from January 1, 1973 to March 31, 1979 and

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reduce it to 55% in respect of the period from April 1, 1979, are unreasonable and arbitrary and are violative of the rights guaranteed under Articles 14 and 16 of the Constitution.

6. The applicants have claimed that under the unamended rule 2544 of IREC, 75% of the running allowance should be taken into account along with basic emoluments for the computation of pension.

7. At the outset the learned counsel of the respondents raised an objection that this Bench has no territorial jurisdiction to entertain these OAs as the applicants are residing in different places in Haryana, Delhi and Uttar Pradesh which places do not fall within the territorial jurisdiction of this Bench. The learned counsel of the applicants contended that the impugned order dated 29.12.1999 emanates from Railway Board at New Delhi. thus, the cause of action has arisen in Delhi in terms of rule 6(2) of the Procedure Rules. We are in agreement with the learned counsel of the applicants. Considering the source of the impugned order, we find that the cause of action has arisen in Delhi in terms of rule 6(2) ibid, and in this view of the matter, the objection as to the territorial jurisdiction of this Bench is rejected.

8. The learned counsel of the applicants contended that vide Annexure A-2 dated 14.10.1997 the Ministry of Railways in implementation of the directions of the Hon'ble Supreme Court in the matter of Rangadhamaiah

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(supra) decided that the pension and other retiral benefits of the running staff, retired between 1.1.1973 and 4.12.1988 and were involved in above cited Civil Appeals/SLPs as well as the other similarly situated employees may be re-computed in accordance with rule 2544 as was in force before it was amended by notification dated 5.12.1988 and that the arrears on account of re-computation of pension and other retiral benefits may be calculated and paid to the employees/their legal heirs. The matter relating to non-availability of relevant records relating to running allowance in many cases was examined by the Board and instructions contained in Annexure A-2 were modified vide Annexure A-3 dated 8.7.1999 to the effect that for the purpose of re-computation of pension and other retiral benefits of the running staff who retired during the period from 1.1.1973 to 4.12.1988 and were involved in the above Civil Appeals/SLPs as well as other similarly placed employees 75% of other emoluments as prescribed in rule 2544 as was in force before it was amended by notification dated 5.12.1988 may be reckoned without reference to the actual amount of running allowance drawn by them. The learned counsel stated that by instructions contained in Annexure A-4 dated 29.12.1999 the benefits allowed vide Annexures A-2 and A-3 were withdrawn by the Railway Board in relation to the running allowance by clarifying as follows :

"(i) Running Allowance is NOT to be taken into consideration after refixation of pay on notional basis on 1.1.1986 in terms of DOP&PW's O.M. No.45/86/97 P&PW(A) Pt.III dated 10.2.1998 circulated vide Board's letter No.F(E)/III/98/PNI/2 dated 10.3.1998.

(ii) Running allowance is also NOT to be added to the minimum of the revised scale of pay as on 1.1.1996 in cases where consolidated pension/family pension is to be stepped up to 50%/30% in terms of Board's letter No.F(E)III/98/PNI/29 dated 15.1.1999."

9. The learned counsel of the respondents contended that in terms of Department of Personnel & Pensioners' Welfare's OM dated 10.2.1998 circulated vide Board's letter dated 10.3.1998 (Annexure-III) the pension of pre-1986 retirees is to be revised by refixing their pay on notional basis as on 1.1.1986 and the revised pension is then to be consolidated as on 1.1.1996 in accordance with the DOP&PW's OM dated 27.10.1997 circulated vide Board's letter dated 17.11.1997 (Annexure-IV) and the revised pension is admissible from 1.1.1996. According to DOP&PW's OM dated 10.2.1998 the pay revised notionally as on 1.1.1986 is to be treated as average emoluments for calculation of pension and no arrears on account of revision are admissible for the period prior to 1.1.1996. As per Railway Board's instructions of 14.10.1997 the benefit of revision of pension taking into account 75% of the pay element in lieu of running allowance is admissible for the entire period, i.e., from the date following the date of retirement onwards duly revised periodically as per the extant orders. He stated that while the pension of the applicants was correctly re-computed in terms of these instructions for the period upto 31.12.1985, further revision from 1.1.1986 to 31.12.1995 was made erroneously in terms of DOP&PW's OM dated 10.2.1998 (Annexure-III) taking into account 75% of the pay element in lieu of

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running allowance once again with the notionally revised pay on 1.1.1986 onwards. As per the correct procedure the pension re-computed on the basis of Board's letter of 14.10.1997 and payable as on 31.12.1985 should be consolidated in terms of DOP&PW's OM dated 16.4.1987 circulated vide Board's letter of 20.4.1987 (Annexure-V) and the arrears becoming due are payable for the period 1.1.1986 to 31.12.1995. Thereafter, further revision is to be done as per decision of government on the recommendations of the Fifth Pay Commission circulated vide Annexure-IV dated 27.10.1997. According to the learned counsel of the respondents in the case of applicants since the re-computed and consolidated pension admissible as on 1.1.1986 was more than the notionally revised pension, the higher amount of pension was further consolidated w.e.f. 1.1.1996 as per OM dated 27.10.1997 which has resulted in recovery of excess payment made to the applicants. He contended that pension re-computed on the basis of the judgment of the Hon'ble Supreme Court in the matter of Rangadhamaiyah (supra) has been fully protected and they will continue to draw that benefit in future also.

10. The learned counsel of the applicants admitted that the component of running allowance has to be taken into consideration for computing pension only once. If it has been taken into consideration while fixing the pension of the applicants before 1.1.1986 at the time of their retirement, it will not be taken into consideration again any time after 1.1.1986. The learned counsel stated that earlier on prior to 1.1.1986 running

allowance up to 75% had not been taken into consideration for calculating pension, therefore, the applicants are demanding that running allowance up to 75% should be taken into consideration after 1.1.1996 and thereafter.

11. On being specifically asked to refer to documents to prove whether or not running allowance up to 75% had been taken into account prior to 1.1.1986, the sorry figure has been cut on behalf of the applicants. They have not been able to show the PPOs or any other documents indicating calculations on the basis of which pension was fixed for the applicants prior to 1.1.1986. The learned counsel of the applicants stated that most probably the component of running allowance taken into account for fixation of pension of the applicants at the time of retirement was less than 75% and not 75%. He conceded that component of running allowance to be reckoned with for purposes of computing pension has to be a one-time measure; if that had been taken into consideration initially while computing pension immediately after retirement; then it cannot be taken into account over again.

12. The learned counsel of the respondents relied on the following orders :

1. Order dated 5.12.2000 in OA No.621/2000 and connected cases : Dr. Sukumar Chatterjee & Ors. v. Union of India & Ors.
2. Order dated 16.7.2001 in OA No.92/2001 passed by the Lucknow Bench of the Tribunal in G.C.Mitra v. Union of India.

The former case relates to inclusion or otherwise of non-practising allowance (NPA) in the case of medical officers for computation of pensionary benefits. It was held therein that "the contention of the applicants that they should be given the benefit of NPA twice, i.e., at the time of their actual retirement as well as w.e.f. 1.1.1996, was illogical and unacceptable". It was further observed that "in the case of the applicants the amount worked out including the NPA had been consolidated and stepped up". The decision in the matter of Rangadhamaiyah (supra) also could not help the applicants as "this was not a case of reducing the amount of pension that had become payable to the employees by any subsequent notification, but was only one of correcting a mistake which arose in the interpretation of government instructions". The applications were dismissed. The latter case is identical to the present case as it relates to a railway guard who retired on 31.10.1985 and whose sanctioned pension was revised w.e.f. 1.1.1996 as per the recommendations of the Fifth Central Pay Commission (CPC). The applicant had alleged that his pension had been reduced. He too had relied on the Hon'ble Supreme Court's judgment in the case of Rangadhamaiyah (supra). The retiral benefits of the applicant as running staff were re-computed in the light of the judgment of the Hon'ble Supreme Court. The respondents re-fixed the pension in accordance with Railway Board's letters of 29.12.1999 and 21.11.2000 in the light of the recommendations of the Fifth CPC and to

(27) (81)

give effect to the Hon'ble Supreme Court's decision, benefit of 75% of the running allowance had been accorded while fixing the pension on 31.10.1985, i.e., on the date of applicant's retirement and again on 1.1.1986 while implementing the recommendations of the Fourth CPC. The second fixation was treated as a clerical mistake. The benefit of 75% of running allowance in computing pension having already been accorded while fixing pension at 31.10.1985. It was held that the clerical error had resulted in double benefit to the applicant who continued to draw higher pension from 1.1.1996 till May, 2000. It was held that reduction in applicant's pension w.e.f. June, 2000 was justified because the same became necessary on account of a clerical mistake. However, it was directed that no recovery from pension already drawn by the applicant up to May, 2000 may be made.

13. We find that in the case of Dr. Sukumar Chatterjee (supra) after taking into account the ratio in the matter of Rangadhamaiah (supra) it was held that the benefit of NPA having been originally given to the pensioner at the time of retirement, the NPA could not be taken into consideration once again for computing pension at a later stage. In the identical case of G.C.Mitra (supra), again, the Tribunal did not approve of reckoning benefit of 75% running allowance twice over. The ratios of above two cases which have taken into consideration the Hon'ble Supreme Court's decision in Rangadhamaiah (supra) are squarely applicable to the facts of the present case. The applicants have failed to establish that the running allowance had not been taken into

account initially for fixing their pension at the time of retirement prior to 1.1.1986. The present OAs seem to be an attempt to obtain benefit of reckoning the running allowance over again for fixation of pension, which is totally illogical and unacceptable.

14. In the facts and circumstances of the case and in the light of the above discussion, we do not find any merit in these OAs which are dismissed accordingly. No costs.

V.K.Majotra
(V.K.Majotra) 23.10.2001
Member (A)

B.Dikshit
(B.Dikshit)
Vice-Chairman

/as/

Attested

Brijendra
23/10/2001

C.O.
C.IV