

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.2425/2000
M.A. No.2879/2000

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This the 22nd day of January, 2002.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

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

1. S.R.Dhingra,
312L, Model Town,
Panipat, Haryana.
2. B.K.Joshi,
821 HUDA Colony, Pocket-I,
Sector 11-12, Panipat.
3. H.L.Kapoor,
H.No.61, Des Raj Colony,
Near Devi Mandir, Panipat.
4. Rishi Kesh,
8 Model Town, Panipat.
5. Gurbachan Singh,
MIG 45 SAS Nagar, Phase-I,
Mohali (Punjab).
6. V.N.Mago,
10 SPL-C Patel Nagar,
Meerut City.
7. Gopal Dass,
113 Gali Arya Samaj,
B.B.Nagar, Ghaziabad.
8. V.G.C.Joshi,
205 Pooja Apartment,
Shiv Vihar, Delhi-87.
9. Pooran Singh,
Near Radha Kishan Mandir,
C.Nagar, Saharanpur.
10. H.Sharpe,
H.No.27 S.B.Colony Mission Compound,
Saharanpur (UP).
11. Mam Chand,
5/739 Moti Manshian Kahran,
Saharanpur (UP).
12. Shri Ram Minocha,
3/11 Rly. Colony,
Kishan Ganj, Delhi.
13. Udai Ram,
Ex.Driver, Tarwali Masjid,
Ghaziabad.



14. H.L.Behl,
333 Sector 40, Chandigarh.
15. Bhagwan Dass Arora,
Nilam General Store,
Ghaziabad.
16. S.N.Kapilash,
333 Sector 40-B, Chandigarh.
17. Sardar Singh Kandra,
49A, MIG DDA Flats,
Rajouri Garden,
New Delhi.
18. Tara Chand,
312 L, Model Town,
Panipat.
19. Prem Prakash Mehta,
58 Navin Nagar,
Saharanpur (UP).
20. Iric Simon,
Mission Compound,
Saharanpur (UP).
21. Loti Ram,
21 Khalasi Lane, Saharanpur (UP).
22. Abul Majid,
57 Khan Alam Puram,
Saharanpur (UP).
23. Sohan Singh Dhir,
26 Janakpuri,
Saharanpur (UP).
24. Trika Ram,
57 Khan Alam Puram,
Saharanpur (UP).

... Applicants

(By Shri B.S.Mainee, Advocate)

-Versus-

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

... Respondents

(By Shri R.L.Dhawan, Advocate)



O R D E R (ORAL)

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

Applicants in this case are Guards and Drivers who had retired before December 5, 1988. In Railways there are certain employees such as Drivers, Guards, Shunters etc. who are connected with the movement of trains and are categorised as running staff. Such staff are entitled to payment of running allowance. Computation of pension after retirement in the Railways is made on the basis of average emoluments and a part of the running allowance is included in average emoluments in terms of clause (g) of Rule 2544 of the Indian Railway Establishment Code, Volume-II. The Hon'ble Supreme Court of India by judgment dated 25.7.1997 in **Chairman, Railway Board. v. C.R.Rangadhamaiah**, 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 notifications 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 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."

2. The Railway Board issued Annexure R-I letter dated 14.10.1997 in pursuance of the Hon'ble Supreme

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Court's decision in the matter of **Rangadhamaiah** (supra) deciding as follows :

"(i) The pension and other retiral benefits of the running staff who retired between 1.7.73 to 4.12.88 and were involved in above cited Civil Appeals/SLPs as well as other similarly situated employees may be recomputed in accordance with Rule 2544 R-II as was in force before it was amended by notification dated 5.12.88.

(ii) The arrears on account of recomputation of pension and other retiral benefits as abovesaid may be calculated and paid to these employees/their legal heirs."

3. By R.B.E. No.318/99 dated 29.12.1999 (Annexure R-8) respondent No.2 issued the order not to grant running allowance to the running staff which did not form part of pay, and thereafter letters were issued to the respective banks to pay pension in accordance with the revised formula stated in the order dated 29.12.1999. It is alleged that thereafter the applicants' pension has been reduced and recoveries are being effected from their pension w.e.f. April, 2000. The applicants have challenged this order of the respondents dated 29.12.1999.

4. The learned counsel of the applicants Shri Mainee stated that the applicants retired prior to 1.1.1986. Their pension was calculated on the basis of running allowance at the rate of 55%. Later on, in pursuance of the Supreme Court's decision in **Rangadhamaiah** (supra), the respondents took into account running allowance at the rate of 75% which benefit was



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later on withdrawn. Drawing attention to O.M. No.45/86/97-P&W(A) dated 19.12.2000 (Annexure RR-1 to the rejoinder) issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Pension & Pensioners' Welfare, relating to implementation of Government decision on the recommendations of the Fifth Central Pay Commission regarding the retirement benefits and revision of pension of pre-1986 pensioners/family pensioners, it was stated that earlier instructions on the subject were clarified as follows :

"In so far as employees who retired prior to 1.1.86, their pension is required to be updated by fixing their pay as on 1.1.86 by adopting the same formula as for serving employees and as per CCS (RP) Rules..... This in effect will mean that pre-86 retirees will be treated as if they were in service on 1.1.86 for the purpose of notional fixation of pay so as to ensure complete parity."

On this basis, the learned counsel contended that as respects the pre-1986 pensioners, they have to be accorded pension on the basis of updation of their pay as on 1.1.1986 on a notional basis so as to ensure parity between the pre-1986 and post-1986 retirees.

5. The learned counsel relied on order dated 31.8.2001 in OA No.1144/2000 and 18 other connected OAs (Jayanthi Sriraman Dr. & Ors. v. Union of India & Ors.) of the Madras Bench of the Tribunal. The applicants in those cases had also retired on superannuation prior to 1.1.1986. The issue for adjudication was the treatment to be given to non-practising allowance (NPA) for purposes of computing

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notional pay on the basis of the recommendations of the Fifth CPC and the consequential retiral benefits. It was held that as per O.M. dated 10.2.1998, the respondents were bound to take into consideration the NPA also for the purpose of calculating pension and the earlier order fixing the pension which was cancelled by the respondents was held to be correct. The revision of pension clarified through order dated 29.10.1999 was held to be illegal. The respondents were directed to restore the earlier pension order and also to pay the resultant dues within a period of two months.

6. The learned counsel of the respondents, Shri Dhawan, stated that prior to 1973, actual running allowance drawn by the running staff not exceeding 75% of other emoluments, was added to the average pay for working out pension and other retirement benefits. With effect from 1.1.1973, the upper limit of 75% was reduced to 45% and w.e.f. 1.4.1979 the limit was raised to 55% with the modification that pay element of running allowance at the uniform rate of 55% would be taken into account for calculation of pensionary benefits with reference to actual running allowance drawn. However, simultaneous to these changes, amendments to Rule 2544 could not be carried out. The notification amending the Code was issued on 5.12.1988 giving retrospective effect to the provisions from 1.1.1973 and 1.4.1979. The Ernakulam Bench of the Tribunal by their order dated 2.4.1990 in OA No.K-269/1988, K.S. Srinivasan & Ors. v. Union of India, quashed the amendment in Rule 2544 to the extent the same was given retrospective effect. The

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order of the Ernakulam Bench was upheld by the Hon'ble Supreme Court in **Rangadhamaiah** (supra) holding that amendment notified on 5.12.1988 could not be given retrospective effect. The Railway Board issued instructions dated 14.10.1997 and 8.7.1999 (Annexures R-1 and R-2) towards implementation of the decision of the Hon'ble Supreme Court for recomputation of pension of the running staff retired prior to 4.12.1988 taking into account 75% of the emoluments as pay element in lieu of running allowance. The learned counsel stated that on retirement, the applicants had been sanctioned pension on the basis of average emoluments drawn by them at the time of their retirement at which time average pay, DA, DP and running allowance of 75% were taken into account. The pension of the applicants was consolidated w.e.f. 1.1.1986 as per circular dated 16.4.1987 (Annexure R-6). The consolidated pension was thus calculated on the basis of the pension fixed at the time of retirement which was inclusive of the element of running allowance at the rate of 75%. He further stated that revised pension as on 1.1.1996 was consolidated as per the recommendations of the Fifth CPC on the basis of pension as on 1.1.1986 which already included 75% of running allowance, as per circular dated 27.10.1997 (Annexure R-5). The learned counsel maintained that notional pay as on 1.1.1986 was fixed by adding 30% element of pay in lieu of running allowance to which were added DA, DP, IR and 20% weightage of basic pay and the pay was fixed at the next stage in the relevant pay scale. Pension was fixed at the rate of 50% of pay fixed as described above. The learned counsel stated that since the pension as on

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1.1.1986 (revised/consolidated) in respect of the applicants was more than the notionally revised pension, the higher amount of pension was treated to be the basic pension w.e.f. 1.1.1986. As such, the retirees were entitled for revised pension as fixed above w.e.f. 1.1.1996.

7. Shri Dhawan relied on the following judgments :

1. Order dated 16.7.2001 in OA No.92/2001, **G.C.Mitra v. Union of India**, decided by Lucknow Bench of the Tribunal.
2. Order dated 23.10.2001 in OA No.980/2000 with other connected matters, **Sarju Prasad & Ors. v. Chairman, Railway Board & Ors.**, decided by Principal Bench.
3. Order dated 5.12.2000 in OA No.621/2000 and other connected matters, **Dr. Sukumar Chatterjee & Ors. v. Union of India**, decided by Principal Bench.

The learned counsel stated that in the case of **Dr. Sukumar Chatterjee** (supra) it was held that benefit of NPA having been originally given to the pensioner at the time of retirement, the NPA could not be taken into consideration over again for computing pension at a later stage. In the case of **G.C.Mitra** (supra) reduction in the applicant's pension was held to be justified in view of a clerical error in fixing pension. In the case of **Sarju Prasad** (supra) too reduction in the amount of pension was held to be justified keeping in view the action of the respondents being one of correcting the mistake which arose in the interpretation of the Government instructions. The learned counsel stated that the computation made by the respondents in the case of the

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applicants who are pre-1986 retirees is absolutely correct and they were justified in making corrections in the pension earlier fixed. The learned counsel relied on the ratio of **K.Ajit Babu & Ors. v. Union of India & Ors.**, JT 1997 (7) SC 24, contending that if this Bench does not agree with the earlier decisions of other Benches of the Tribunal, the matter be referred to a Larger Bench, which only can overrule the view taken earlier.

8. Taking into account Government of India orders and clarifications, including OM dated 19.12.2000 (Annexure RR-I), the intent of the Government is pretty clear that in respect of the employees who retired prior to 1.1.1986, pension is required to be updated by fixing their pay as on 1.1.1986. It means that pre-1986 retirees have to be treated as if they were in service on 1.1.1986 for the purpose of notional fixation of their pay with a view to bring about complete parity between the pre-1986 and the post-1986 retirees. The perusal of the judgments cited by the learned counsel of the respondents indicates that the requirement of updation of the pay of pre-1986 retirees as on 1.1.1986 has not been taken into account in those cases. The respondents in the present matter had taken into account the running allowance of 75% for calculating the average emoluments for pension of the applicants at the time of their retirement before 1.1.1986. Thereafter, they have only been consolidating the pension as per certain circulars and as the earlier average emoluments of pension calculated at the time of their retirement had reckoned



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running allowance, the respondents have not taken the running allowance into consideration for updating their notional pay as on 1.1.1986 at all. As the issue raised by the applicants regarding re-fixation of their pay as on 1.1.1986 on notional basis had not been discussed and adjudicated upon in the cases cited by the learned counsel of the respondents, in our considered view, the observations made in **K.Ajit Babu** (supra) are not applicable here. We do not find it necessary to refer the matter to a Larger Bench as this issue can be easily adjudicated upon here on the basis of the respective pleadings of the parties and without offending anyone of the judgments brought to our notice.

9. From the narration given in the counter reply regarding the details of calculations, it is clear that the running allowance of 75% was taken into consideration for computing average emoluments of pension only in the first instance at the time of fixing their pension on their retirement before 1986. Thereafter the element of running allowance has not been taken into consideration by the respondents for purposes of calculation of pay of the applicants on a notional basis as on 1.1.1986. Certainly, their pension on 1.1.1986 and thereafter has also been computed on wrong hypothesis.

10. Having regard to the discussion made above, we find that it is obligatory on the part of the respondents to update the pay of the applicants as if they were in service on 1.1.1986 on a notional basis and then calculate their pension as on 1.1.1986. For this

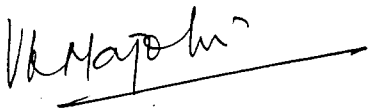
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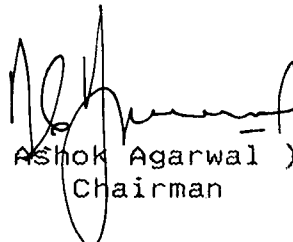
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purpose, as per the relevant instructions, they will take into consideration the average emoluments on the basis of their average pay, DA, DP and IR which the applicants were drawing at the time of their retirement and 20% of the basic pay without reckoning the running allowance of 75%. After fixing the notional pay in this manner as on 1.1.1986, they will add the element of 75% of running allowance. The sum so arrived at shall form the basis for fixing pension as on 1.1.1986, as per relevant rules and instructions. Accordingly, we quash and set aside the impugned R.B.E. No.318/99 dated 29.12.1999 (Annexure R-8) and direct the respondents in terms of the observations made above. The respondents shall also refund the recoveries made, if any and if due, from the pension of the applicants on reduction in their pension. The respondents shall implement these orders within a period of three months from the date of communication.

11. The OA is disposed of in the aforestated terms. No costs.

12. MA No.2879/2000 for joining in a single application is granted.


(V.K.Majotra)
Member (A)


(Ashok Agarwal)
Chairman

/as/