

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

PRESENT

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman
and

The Hon'ble Shri R. Venkatesan, Administrative Member

Original Application No. 1572 of 1988

-do- No. 58 of 1988
-do- No. 551 of 1988
-do- No. 548 of 1988
-do- No. 944 of 1988
-do- No. 1574 of 1988
-do- No. 1818 of 1988
-do- No. 74 of 1988
-do- No. 310 of 1989

C.L. Malik .. Applicant in OA 1572 of 1988
Madan Lal Tiwari .. -do- OA 50 of 1988
Kalu Ram 'D' .. -do- OA 551 of 1988
Balu Lal Sharma .. -do- OA 548 of 1988
A. Michael .. -do- OA 944 of 1988
Gopal Singh .. -do- OA 1574 of 1988
B.R. Sharma .. -do- OA 1016 of 1988
Basant Lal .. -do- OA 74 of 1988
Tara Singh .. -do- OA 310 of 1989

-Vs.-

Ram Lal

1. Union of India, through
Chairman, Railway Board,
Rail Bhavan, New Delhi

2. The General Manager, ... Respondents
Northern Railway, Baroda
House, New Delhi

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G.D. Bhandari

Advocate for the
applicants

Sh. Romesh Gautam with ... Advocate for the
Sh. O.P. Kshatriya respondents

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Order pronounced by the
Hon'ble Shri R.Venkatesan, Administrative Member

The applicants in this batch of cases have a common cause of action and a common ~~prayer~~ for relief. Accordingly, they are dealt with by this common order.

2. The applicants belong to what are known as Running Staff in Railways and include categories such as Drivers, Shunters, Fireman, Guards and Brake's Man, who are directly connected with the charge of moving trains. They have been entitled all along to an allowance known as "Running Allowance" which has been defined under Rule 507 of the Indian Railway Establishment Code as "an allowance ordinarily granted to running staff for the performance of duties directly connected with the charge of moving trains and includes of 'mileage allowance or allowance in lieu of mileage', but excludes special compensatory allowances etc, This mileage allowance is paid on the mileage basis

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calculated at rates per 100 miles or

on the basis of per day of 8 hours of duty".

Although running allowance varies from

month to month depending on the mileage

or the number of days covered, the actual

running allowance ~~is~~ drawn subject to

^athe ceiling percentage related to the

basic pay of the employee, which was fixed

at 75% for a long time, ~~and this~~ was allowed

to count as pay for the purpose of leave

salary, medical attendance and treatment,

educational assistance and, most importantly,

retiral benefits. It was also counted

for certain other purposes, such as passes

and PTOs, House Rent Allowance and City

to
Compensatory Allowance, up/the same

percentage. The provisions relating to

the counting of the running allowance, up

to 75% of the basis pay for various purposes

were incorporated formally in various rules

of the Indian Railway Establishment Code.

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3. It has been averred by the

respondents that prior to the recommendations of the revised pay scales, effective

from 1.1.1973 after the Third Pay

Commission, in most cases the actual

average running allowance earned by the

running staff vastly exceeded 75% of the

basic pay in almost all cases and therefore

retirement benefits were paid on the basis

practically in all of basic pay plus 75% of the basic pay// the cases.

from 1st January

As the revised scales/1973 had raised the

pay scales of running staff, the Railways

considered that a ceiling revised percentage had

after to be fixed for this date./This entailed

a lot of detailed exercise. Pending this,

interim orders were issued on 21.1.1974 in

which it was stated that the question of

revision of rules for the regularisation

of various allowances consequent upon the

introduction of the revised pay scales

under Railway Services(Revised Pay)Rules, 1973

It was further stated that is under consideration of the Board./Pending

final decision thereon, the Board had decided

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was under:-

(i) Treatment of Running Allowance for various purposes in case of Running Staff

The existing quantum of Running Allowance based on the prevailing percentage laid down for various purposes with reference to the pay of the Running Staff in Authorised Scales of Pay may be allowed to continue (emphasis added).

2. The payments as above will be provisional subject to adjustment on the basis of final orders.

Subsequently, by orders dt. 22.3.1976,

as modified by another subsequent order

of 23.6.1976, the Railways have fixed the

Running allowance percentage of 4 counting for the

purpose of leave salary, medical attendance

and treatment, educational assistance and

retirement benefits as the pay plus actual amount of

running allowance drawn, subject to a maximum

of 45% of pay for those running staff who

are drawing pay in the revised pay scales.

These orders

were given effect to from 1.4.1976.

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4.

Certain running staff, some

retired and some working, moved the

Delhi High Court in a writ petition

seeking annulment of the above order

dt.22.3.1976 which reduced the quantum

of running allowance for retirement

and other benefits from the prescribed

maximum of 75% to 45% of pay and prayed

for the restoration of the percentage of 75%.

That writ petition was transferred to this

Tribunal and was heard and decided by the

Delhi Bench on 6.8.1986. The order of the Tribunal

quashed the impugned order of the Railways

the dt.22.3.1976 and directed Railways to

continue to make payment beyond 31.3.1976 of

certain allowances, including retirement and

other specified benefits by treating the

running allowance for various purposes in

accordance with the interim orders of the

Railway Ministry dt.21.1.1974 "till such

time as the relevant rules in this regard

are or have been amended in accordance with

law, if so advised". The ground on which

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this Tribunal gave the above order was

that it was not permissible to amend

the statutory rules by executive orders

or instructions, as had been done in the

present case.

5. The respondents thereafter have

amended the relevant rules of the Indian

Railway Establishment Code,

by orders dt. 17.12.1987. Under

these orders, the revised percentage of pay,

representing the pay element in the running

counting for pension etc.

allowance/as notified in the executive orders

of 22.3.1976, which had been quashed by the

order of this Tribunal, were formally given

statutory force, with effect from the same

date on which the executive instructions

viz. 1.4.1976.

were earlier given effect to. These were

subsequently notified in the Gazette of India

dt. 5.12.1988.

6.

The applicants in the present

batch of applications have come before this

Tribunal again challenging the letter dt. 22.3.1976

Lawyer

as well as the amendments to the rules

of the Indian Railway Establishment Code, and with a ^{prayer} /

the running allowance to count
to allow/for the purpose of retiral and

other benefits in terms of the letter

dt.21.1.1974, which has been referred to.

7. The learned counsel for the

applicants advanced the following main

arguments in support of the above prayer:-

(i) The letter dt.17.12.1987 issued

by the Ministry of Railways announcing corrections

~~amendments~~ to the various rules of the

Indian Railway Establishment Code ^{was} ~~was~~ stated

to have been issued by the President in

exercise of the powers conferred by proviso

to Art.309 of the Constitution of India. But

they were actually issued by a Director of

the Railway Board. According to counsel, the

orders had not been issued by competent

authority.

(ii) It had been stated in the above

said order that "it is certified that

retrospective effect given to these rules

will not adversely affect any employee to whom

these rules apply". It was contended that

retrospective effect would affect the

employees and therefore in view of the

effect
certificate, only prospective/ could be

given.

(iii) The counsel then contended that

dt.

the order/19.12.1987 was not a formal

notification and quoted case law on the

subject to the effect that publication is

a condition-precedent for operation of amended

rules.

8.

The learned counsel prayed that

in the light of the submissions made by him,

the application may be allowed.

9.

The learned counsel for the

respondents referred to the judgement of

dt.6.8.1986

this Tribunal/and pointed out that the Tribunal

had not held the amendment to be invalid on

merits, but had quashed the amending order

only on the ground that an executive instruction/

order cannot amend a statutory rule. The

learned counsel would say that this Tribunal

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merely
had/directed the respondents to

continue to make payment of retirement

and other benefits as also allowances,

treating the running allowance in

accordance with the earlier orders

only till

of 21.1.1974 ~~until~~/such time as the

relevant rules in this regard are or

have been amended in accordance with

law, if so advised. This clearly ~~shows~~ showed

that the Tribunal gave liberty to the

respondents to amend the rules formally

and give effect to the impugned order. The

respondents had proceeded to do that. The

learned counsel refuted the contention of

of the applicant that the amendment of the

rules had not been duly publicised. In

this behalf, the learned counsel for the

respondents produced a copy of the Gazette

Notification in the Gazette of India

dt.5.12.1988 in which the said amendment

which had been initially issued on 17.12.1987

had been formally notified and published.

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He therefore stated that the revised rules had become effective and valid.

[0. The counsel for the respondents also refuted the contention that consequent upon the issue of the amendment, ~~some~~ of the employees had been adversely affected.

In this behalf the learned counsel produced a comparative statement showing the emoluments calculated in terms of the Railway Board's order dt.21.1.1974 and in terms of the amending orders dt.22.3.1976 to show that there was a significant improvement in the quantum of running allowance

that would count ^{as pay} for various purposes, as well as in the pay itself and in the total emoluments, consequent on the introduction of the revised pay scales and the issue of

the order dt.22.3.1976. We reproduce the table showing the comparison of emoluments of pay and running allowance counting as pay as worked out by the respondents:

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Emoluments calculated
in terms of Board's
Order No.PC III/73/RA
dt.21.1.1974

(i.e. pay in revised
scale + 75% of pay in
authorised scale)

Emoluments calculated
in terms of Board's

Order No.PC III/75/RA/1
dt.22.3.1976(i.e.

Pay in revised scale +
45% of pay in revised
scale)

Cate- gory	Revi- sed	Autho- rised	Scale(Rs.)		Total	Pay in revised scale	45% of pay in revised scale	Total
			Pay Min./Max	75% of pay in A.S. Min./ Max.				
Guard Gr.'A'	425-600	205-280	425	153.75	578.75	425	191.25	616.25
			600	210	810			
Guard Gr.'B'	330-560	150-240	330	112.5	442.5	330	148.5	478.5
			560	180.0	740	560	252.0	812
Guard Gr.'C'	330-530	130-225	330	97.50	427.5	330	148.5	478.5
			530	168.75	698.75	530	238.5	768.5

11. The learned counsel for the respondents pointed out that in terms of the Railway Board's order dt.21.1.1974 (which we have extracted earlier), the running allowance that would count for the purpose of pay was limited to 75% of the pay in the Authorised Scale, as per the rules and not the pay in the revised pay scale which had

come into effect on 1.1.1973. The Authorised

Scales were the scales of pay introduced by the

Bank

Second Pay Commission and ^{were} much lower

than the revised pay scales introduced

after the Third Pay Commission, which

would now be taken into account under

the order dt.22.3.1976 and the amendment to the Rules

dt.17.12.1987 which formally gave effect to it.

The counsel contended that

12. ^{It} would be clear from the

comparative tabulation (reproduced above)

that the prayer of the applicants was

therefore totally misconceived and was

based on a misunderstanding of the effect

of the Railway Board's order dt.21.1.1974.

If the Board's order dt.21.1.1974 were to

be strictly implemented as prayed for by

the applicants, there might be cases where

they would suffer ^a reduction in emoluments.

13.

The learned counsel then

contended that the Govt. had the power to

amend the rules retrospectively, without

the consent of the Govt. servant, when it

did not entail any adverse civil consequence

on the employees. He referred to the decision

of the Supreme Court in Roshanlal Tandon-Vs.-

Union of India (1967(1)-SIR-832) wherein it was

held by the Supreme Court that although
 the origin of Govt. service is contractual
 and there is an offer and acceptance in
 every case, but once appointed to a post,
 the Govt. servant acquired a status and his
 rights and obligations were no longer determined
 by the consent of both parties, but by Statutes
 or the Statutory Rules, which may be framed
 and altered unilaterally by the Govt., without
 consent of the employee. The learned counsel
 contended ~~submitted~~ that the applications/ were therefore
 merit and had to be dismissed.

14. We find that the present case has
 been filed by certain retired Running Staff
 who claim that they were not given the benefit
 of the judgement of this Tribunal dt.6.8.1986,
 which was allowed only to the applicants in
 that transferred application. They have
 essentially prayed for the same relief which was
 given to the applicants in that case. In this
 behalf, it will be useful to reproduce the
 relevant paragraphs of the judgement of this
 Tribunal in the earlier matter, ~~in~~ which

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"10. The next challenge of the petitioner is about the legality of the impugned order, i.e. as to whether the impugned order dt.22.3.1976 issued by the Railway Ministry is a statutory order passed by the President. This order has been annexed by the respondents as Annexure R-3 to their counter affidavit which is reproduced as under.

A bare reading of the aforesaid order makes it abundantly clear that the same is patently an executive order or instruction. The mere fact that it is issued with the sanction or approval of the President does not clothe it with the character of statutory rule. Statutory Rules are framed by the President in exercise of powers conferred upon him under proviso to Article 309 of the Constitution and they are legally required to be notified in the official Gazette. It is a settled law that a mere executive instruction cannot amend or derogate from a statutory rule. There are catena of cases to reiterate and support this view. In Prem Prakash - Vs.- Union of India and thers (1984)(2)-SLJ-376 (Supreme Court), it was held that administrative instructions cannot be

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allowed to prevail over statutory rules if the former are contrary to the latter. In the case of B.N.Nagarajan - Vs.- State of Karnataka, reported in 1979(3)-SLR-116 (Supreme Court) it was observed that what could not be done under the Rules could not be allowed to be done by an executive fiat and that such a course is ~~is~~ not permissible because an act done in exercise of executive power of the Govt. cannot override Rules framed under Art.309 of the Constitution. In yet another case - Sant Ram Sharma - Vs.- State of Rajasthan and others reported in AIR 1976-SC-1910, it was observed by the Supreme Court that if Rules are silent on any particular point, the Government can fill up the gap and supplement the Rules by issuing executive instructions. But Government cannot issue such instructions if the same go contrary to any provision of the Rules nor can the Govt. amend or supersede Statutory Rules by administrative instructions. The Delhi High Court has also confirmed the above observations of the Supreme Court in the case of D.K.Gupta - Vs.- M.C.D and others, reported as 1979(3)-SLR-416 (Delhi) when it reiterates that the statutory rules cannot be modified by executive instructions.

11. It is thus evident that where a sphere is covered by statutory rules, Govt. cannot exercise its inherent discretionary or executive powers in a manner contrary to Constitutional and Statutory provisions. There is no scope to exercise of any inherent or executive power if there be proper provisions covering the sphere in which such inherent powers are sought to be exercised and in any event no such exercise can be done in violation of such provisions. This principle is uniformly and universally settled and sanctified by the decisions of the Supreme Court and various High Courts, as noted above.

In the instant case, the respondents have merely produced a copy of the 1985 Edition of the Railway Establishment Code and have sought to place reliance on Para 909 of the Code which nowhere indicates as to when the said amendment relied upon was incorporated amending the earlier statutory rule, which provides for 75% of the running allowance to be counted as pay for purposes of retirement benefits, leave salary, medical attendance and educational assistance.

12. Viewed in the light of the above discussions and for the foregoing reasons, we hold that the impugned order dt.22.3.1976 is a mere executive order or instruction and as such the same cannot be accepted to be a statutory amendment of the existing Rules governing the running allowance.

13. In the result, the petition is allowed and the impugned order dt.22.3.1976 is quashed. The respondents are directed to continue to make payment beyond 31.3.1976 of certain allowances including retirement and other specified benefits by treating the running allowance for various purposes in accordance with the Railway Ministry's letter No.PC III/73/RA dt.21.1.1974 till such time as the relevant rules in this regard are or have been amended in accordance with law, if so advised. There will be no order as to costs.

15. It would be clear from the above order that this Tribunal quashed the order dt.22.3.1976 only on the ground that the statutory rules cannot be amended by an executive instruction and not on any of the various other grounds of the petitioners therein. The final

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paragraph of the order which we have

quoted above, makes it abundantly clear

that the relief granted was only till such

time as the relevant rules are amended in

accordance with law.

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We find that the respondents have

^{able} been to show that they have acted in accordance

with the order of this Tribunal and have amended

the rules formally. The publication in the

Gazette of India meets the legal requirement

of promulgation/publication practised in a

recognisable way, which was held to be a sine qua non

for the operation of amended rules in Harla - Vs.-

State of Rajasthan (AIR 1951-SC-467), which was

cited by the counsel for the respondents. We

^{cite} may also state that the judgement of the Supreme

Court in State of Maharashtra -Vs.- Mayer Hans

George (AIR 1955-SC-722) in support of this.

17.

The contention of the counsel for

the applicants that the order has not been issued by

the competent authority cannot also be sustained.

It is well settled that where an order is passed

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in the name of the President, it is not

necessary that it should have been personally

approved by him. It is enough if the order

has been passed by the competent functionary

authorised in this behalf by the Rules of Business.

If the order is expressed to be in the name of

the President and authenticated by an official

authorised in that behalf, the Court has to

presume that it was passed by the Competent

authority. We accept the averments of the

counsel for the respondents that the order has

been Gazetted and that it has been subsequently

issued by the official authorised in that behalf.

18. We shall take up the argument of the

learned counsel for the applicant that the rules

cannot be amended retrospectively and that the

interest of the persons covered by the rules are

affected adversely. It maybe noted that the

counsel refuted the certificate in the amending

order that retrospective effect given to the rules

will not adversely affect any employee to whom the

rules apply. But the applicants have not been able to show

that they have been in any way adversely

affected in terms of their total emoluments

or even in regard to the quantum of the running

allowance counting as pay, consequent upon issue

of the impugned amendment of the rules. They

have not disproved or disputed the computation

made by the respondents which we have reproduced

above, in support of their contention that the

applicants have been affected by the impugned

order/amended rules. It will not be in accordance

with the Statutory Rules to hold that the

percentage of 75% should be applied to the revised

pay after the Third Pay Commission recommendations.

We do not therefore find that the amended rules

involve the applicants in any adverse civil

consequences such as reduction in emoluments or

recovery of over-payments. The amendment is

legally valid and has been properly notified.

19. We notice that in terms of the interim

order dt.21.1.1974, the running allowance counting

as pay for various purposes should be limited to

the existing quantum on the prevailing percentage.

of pay ~~to be~~ in the Authorised scales of pay.

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The expression "Authorised Scales of Pay"

in which the word "Authorised" is used with capital letters at the beginning, can only be

taken to mean the specific scales of pay, as

contained in the Railway Establishment Code

or in the Railway Establishment Manual. The

provisions contained in the Indian Railway

Establishment Manual - Second Edition, relevant

for the period in question, indicate the

Authorised Scales of Pay for various categories,

which were nothing but the old scales prior to

1.1.1973 and these have been adopted by the

respondents in their working sheet, cited supra.

Therefore, the new pay scales introduced after

1.1.1973 could not be taken as the Authorised

Pay Scales for the purpose of the order dt.21.1.1974,

in the absence of formal amendment to the relevant

provisions. We therefore hold that the argument

of the applicants is based on a misinterpretation

of the order dt.21.1.1974, as pointed out by the

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respondents.

20. In the result, the applications fail

and it is dismissed with no order as to costs.

(R.VENKATESAN)
ADMINISTRATIVE MEMBER

(RAM PAL SINGH)
VICE CHAIRMAN

23.10.91

23-10-1991

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