

1572/88  
(12)  
FINAL ORDER

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 89
Tara Singh	..	-do- OA 310 of 1989

-Vs.-

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RAILWAY BOARD, INDIA

-2-

ABOVE PAPER MADE BY M/s. PAPER & PENCIL CO. LTD.

1. Union of India, through  
Chairman, Railway Board,  
Rail Bhavan, New Delhi
2. The General Manager,  
Northern Railway, Baroda  
House, New Delhi

Mr. G.D.Bhandari  
Advocate for the  
applicants

Sh. Romesh Gautam with  
Sh. O.P. Kshatriya  
Advocate for the  
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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and 15 February 1980 and 17

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

the ceiling percentage related to the

basic pay of the employee, which was fixed

at 75% for a long time, and was allowed

to count as pay for the purpose of leave

salary, medical attendance and treatment,

educational assistance and most importantly,

retirement benefits. It was also counted

for certain other purposes, such as passes

and PTOs, House Rent Allowance and City

Compensatory Allowance, up to the same

percentage. The provisions relating to

the counting of the running allowance, up

to 75% of the basic pay for various purposes

were incorporated formally in various rules

of the Indian Railway Establishment Code.

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which had been issued under the Railways Act

-5-

(16)

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 in the cases.

from 1st January

As the revised scales of 1973 had raised the

pay scales of running staff, the Railways

considered that revised percentage had

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

*lambily*

17  
was under:-

11  
(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 1/ 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.

12. Leave Allowance

Leave

(18) (18)

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

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,

which were put to the 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. upon which date

6.

The applicants in the present

batch of applications have come before this

Tribunal against challenging the letter dt. 22.3.1976

*Law Library*

as well as the amendments to the rules

of the Indian Railway Establishment Code, and with a/ <sup>prayer</sup>

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/ <sup>was</sup> ~~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

retrospective effect

certificate, only prospective could be

given.

(iii) The counsel then contended that

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 allowances, medical benefits

and other benefits as also allowances,

and to make no payment but allowances  
treating the running allowance in

accordance with the earlier orders  
only till

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

order is interpreted and I apply to the  
relevant rules in this regard are or

have been amended in accordance with

law, if so advised. This clearly showed

that the Tribunal gave liberty to the

parties to amend the rules formally

and give effect to the impugned order. The

parties seem to have done so. The  
respondents had proceeded to do that. The

learned counsel refuted the contention of

the appellants 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

and the order of the Tribunal dated 05.12.1988 in which the said amendment

had been formally notified and published

which had been initially issued on 17.12.1987

had been formally notified and published.

*Handwritten Note: The following document*

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

10: The counsel for the respondents

also refuted the contention that consequent

upon the issue of the amendment, ~~some of~~ <sup>new</sup>

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

as pay  
that would count <sup>as pay</sup> 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:

Learned

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)

Category	Revised	Authorised	Pay in scale	75% of pay in A.S.	Total Pay in revised scale	45% of pay in revised scale	Total	Scale (Rs.)
								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 Scales, 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

*Law 116*

Second Pay Commission and / 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/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  
without

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, <sup>in</sup> which

*Quartermaster*

after dealing with various contentions and arguments advanced by the petitioners therein, the Tribunal finally allowed the petition only on the following grounds:

"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 ~~catina~~ of cases to reiterate and support this view. In Prem Prakash - Vs. - Union of India and others (1984) (2)-SLJ-376 (Supreme Court), it was held that administrative instructions cannot be

*lawfully*

Executive power 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

trample upon or 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.

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.

16. We find that the respondents have

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

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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(b)

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 learned 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 learned counsel for the applicant relied on a certificate given to us by Mr. V. Venkateswaran, advocate, dated 10-1-1967, that the order that retrospective effect given to the rules will not adversely affect any employee to whom the rules apply. The applicants have not been able to

(b)

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 in the Authorised scales of pay.

L. M. D.

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.

As per your order addressed to me of recent

and readdressed to me on 23.10.91

( R.VENKATESAN ) (RAM PAL SINGH) 23.10.91  
ADMINISTRATIVE MEMBER VICE CHAIRMAN

23-10-1991

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