

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

PRESENT

23.10.91

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. 1813	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
Kalgo 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, Northern Railway, Baroda House, New Delhi

Respondents

G.D.Bhandari

Advocate for the
applicants

Sh. Romesh Gautam with

Advocate for the
respondents

Sh.O.P.Kshatriya

road and traffic, etc. of the State of Gujarat

switchover period with the help of the State Government

of transport to the State of Gujarat

to harmonizing the law of the State of Gujarat

to coexist with other State and Central Govt.

so as to provide a smooth transition to the

State Government of Gujarat to the State of Gujarat

and the State Government of Gujarat to the State of Gujarat

and the State Government of Gujarat to the State of Gujarat

humbly

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

1000 km or 1000 miles, whichever is less.

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

available, including

Although running allowance varies from

month to month depending on the mileage

traveled and the number of days

or the number of days covered, the actual

amount of running allowance to be drawn

running allowance is drawn subject to

the ceiling percentage related to the

basic pay of the employee, which was fixed

subject to the ceiling percentage

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

leave and pay allowed subject to 75% ceiling percentage

to count as pay for the purpose of leave

and other benefits including basic

salary, medical attendance and treatment,

allowances and other payments by the employer

educational assistance and, most importantly,

retirement benefits. It was also counted

allowances subject to ceiling percentage

for certain other purposes, such as passes

and entitlements before being subject to

and PTOs, House Rent Allowance and City

Compensatory Allowance, up to the same

percentage. The provisions relating to

allowances subject to ceiling percentage

the counting of the running allowance, up

to 75% of the basic pay for various purposes

subject to ceiling percentage

were incorporated formally in various rules

and regulations of the Indian Railway Establishment Code.

allowances subject to ceiling percentage

(17)

3. It has been averred by the

respondents that prior to the recommen-

dations 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 revised/percentage had

to be fixed after 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

is under consideration of the Board. Pending

final decision thereon, the Board had decided

temporarily



as under:-

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(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
left to adjustment provisional subject to adjustment
on the basis of final orders.

Subsequently, by orders dt.22.3.1976,
the said Subpoena was issued as the Subpoena
as modified by another subsequent order

of 23.6.1976, the Railways have fixed the
equivalent sum to ~~to the running staff~~ ^{the} running allowance
percentage of ~~51~~ ⁵⁰ counting for the
purpose of leave salary, medical attendance
to C.R.L. & L.C. employed persons on condition
and treatment, educational assistance and
for the award of gratuity, pensionable amount and
retirement benefits as the pay plus actual amount of
the payment of additional half pay to the
running allowance drawn, subject to a maximum
at a ~~percentage~~ ^{percentage} of 45% of pay for those running staff who
are drawing pay in the revised pay scales.

Project staff and senior managers did not know for these orders which subgroups of people, residual or not, were given effect to from 1.4.1976.

Following bungee cord. Possibilities are many.

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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

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,

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

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

Locally

of the revised and amended order of 17.12.1987.

as well as the amendments to the rules

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

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
and ~~amendments~~ to the various rules of the

Indian Railway Establishment Code ~~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 certificate, only prospective effect 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.

The learned counsel prayed that in the light of the submissions made by him, the application may be allowed.

The learned counsel for the respondents referred to the judgement of this Tribunal/and pointed out that the Tribunal accepted and rejected a contention of the respondents that 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

Family

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 ~~maxi~~/such time as the

relevant rules in this regard are or

have been amended in accordance with

law, if so advised. This clearly ~~show~~ 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.

10. 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

ten bus staff and the revised pay scales

pay and running allowance counting as pay as worked

out by the respondents:

Table 1

of the revised pay scales and the issue of

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	Revi- sed	Autho- rised	Pay Min./Max.	75% of pay in A.S.	Total	Pay in revised scale	45% of pay in revised scale	Total
						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	109.50	427.35	330	148.5	478.5
			530	168.75	698.75	530	238.5	768.5

... payable per month by month

... The learned counsel for the

respondents pointed out that in
the first place yes and no

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

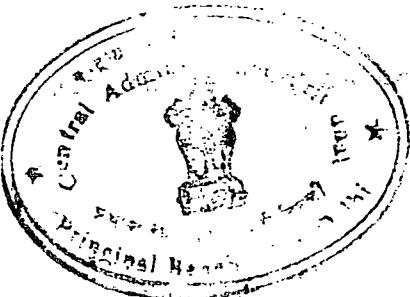
Authorised Scales, as per the rules and not

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

Learned



(26)

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/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 ⁱⁿ which



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after dealing with various contentions and "

arguments advanced by the petitioners therein, in Tribune

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.

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विश्वास विश्वास विश्वास विश्वास
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true & right & legal but 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 issued contrary to a statutory rule.

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 over ride 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 dated 22.3.1976 is a mere executive order or instruction and as such the said order cannot be accepted to be a statutory amendment of the existing Rules governing the payment of 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 said executive order was issued in contravention of 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

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 able 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 of the requirement for the operation of amended rules in Marla - Vs. - State of Rajasthan (AIR 1951-SC-467), which was relied on 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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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

averments of 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

But

rules apply. The applicants have not been able to show

handly.

even to establish that the order is not

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.

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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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