

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

O.A. No. 1563/91 decided on 10.07.1998

Name of Applicant : All India Loco Running Staff
Association Dehradun

By Advocate : Sh. B S Mainee)

Versus

Name of respondent/s Union of India & Others.

By Advocate : Sh. C.P. Kastriya)

Corum:

Hon'ble Shri N Sahu, Member (A)

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No

(Name as written) N. SAHU (N SAHU)
MEMBER (A) 10/7/98

(43)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1563 of 1991

New Delhi, this the 10th day of July, 1998

Hon'ble Mr. N. Sahu, Member (Admnv)

All India Loco Running Staff
Association Dehradun

Through:-

1. Sh. Ainuddin Khan, Driver, Grade 'A' (Special), Dehradun (President of Association).
2. Sh. I S Nigam, Shunter, Railway Station, Hardwar, (Assistant Divl. Secy of Association).
3. Sh. O P Kundliya, Driver Grade A (Special), Railway Station, Dehradun.
4. Sh. Bakhar Abbas, Driver, Grade A (Special), Railway Station, Dehradun (Vice President of the Association).

--APPLICANTS.

(By Advocate Sh. B S Mainee)

Versus

Union of India, Through:-

1. The Secy. Ministry of Railway, New Delhi.
2. The General Manager, Northern Railway, Baroda House, New Delhi.
3. The Divil. Rly. Manager, Northern Railway, Moradabad.

--RESPONDENTS.

(By Advocate -Sh. O P Khashtriya)

O R D E R

By Mr. N. Sahu, Member (Admnv) -

This OA filed on 4.7.1991 seeks a direction to the respondents to pay to the applicants running allowance at enhanced rates as laid down by the Railway

Board in para 3.21 of their Circular dated 17.7.1981.

There is a prayer also for payment of arrears. Two preliminary objections raised against this OA are: relating to limitation and the competence of the applicant's association to file this OA. This Tribunal had upheld the maintainability of the application by an order dated 1.3.96 in respect of the locus standi of the Association to file the OA but kept the question of limitation open.

2. On the question of limitation it was urged by Sh. B S Mainee, counsel for applicant that this OA involves monetary claims because of the failure of the respondents to pay the running allowance in accordance with para 3.21 of Railway Board's Circular dated 17.7.81. It is provided *inter alia* that the running staff working on Ghat section has to be paid running allowance by inflating the actual distance travelled to 5 times where the gradient is 1:40 or steeper and 3 times where the gradient is 1:80 or steeper. The payment of this running allowance is a recurring monthly monetary claim and this will ultimately result also in adding to the pensionary benefits. Therefore, it is submitted that this OA is not hit by limitation.

3. The respondents on the other hand contended that no cause of action accrued to the respondents. The identification of Ghat Section is a policy decision. It is pointed out that decision regarding identification of Doiwala-Harrawala, Dehradun as Class II Ghat Section and payment of running allowance by inflating actual distance



by 3 times was on 31.10.81. The present application challenging this policy is barred by limitation under Section 21 of Administrative Tribunals' Act, 1985.

4. Before entering into the merits, it is necessary to dispose of these preliminary objections. According to the applicant, there is no delay and no application for condonation of delay has been filed. Before the grounds relating to limitation are examined, it is necessary to outline the background facts of the the dispute to appreciate the rival stand-point on the question of limitation. The running staff in the trains like Drivers/ Fireman/ Shunter/ Guards etc. are paid a running allowance which is a substitute of TA/DA. This is paid on the basis of distance covered by the said staff in working the trains. 30 per cent of the basic pay of the running staff is added in the pay to arrive at the fixation of pay when a running staff is deputed on stationary duty and 55% of the basic pay is taken into account for determining the retirement benefits of the running staff. There are certain sections on the tracks which have steep gradients known as Ghat Sections for which special rules have been prescribed by the Railway Board and higher running allowance is paid for the arduous nature of work and element of risk involved. This OA concerns Muradabad Division. There are Ghat Sections between Lakshar to Dehradun and Raiwala to Rishikesh. The running staff were paid running allowance at the rate of double the kilometerage for the first 60 kms and 3 times the distance beyond 60 kms. Respondent No. 1 appointed a committee called "Running Allowance Committee" which submitted its' report in April, 1980.

After considering the recommendations of the committee, respondent No. 1 in consultation with the recognised unions issued instructions on 17.7.81. Para 3.21 refers to computation of kilometerage for Ghat Sections and 3.14 deals with slow moving trains. As the gradient in Moradabad Ghat Section is between 1:80 and 1:40, it is classified as Class II Section and the staff working in these trains are entitled to the rates of inflated kilometerage of 3 times. After the receipt of this Circular dated 17.7.81, DRM, Moradabad did not allegedly pay the running allowance as per the recommendations. The claim of the applicant's association is that running staff are entitled to 3 times to kilometerage because they are fulfilling all the conditions mentioned in para 3.21 of the Railway Board's Circular dated 17.7.81. There is also a grievance relating to the failure of the respondents to calculate running allowance in accordance with para 3.14 of the Railway Board's Circular. Where rulling gradient is between 1:80 and 1:200, they are entitled to 2 times the actual kilometerage upto the first 60 kms. and 3 times the actual kilometerage over and above the first 60 kms.

5. Several representations have been filed in 1981, 1987 and 1991. One very detailed representation was filed on 11.4.87 to the DRM, Northern Railway but these met with no response, according to the applicants.

6. The respondents state that based on the recommendations of the committee in 1981 and after consulting two recognised Labour Federations of the Railway, namely, AIRF and NFIR, the criteria for

(47)

classification of Ghat Section was changed from the year 1981 onwards. The Sections having a gradient 1:40 and above were classified as Class I Ghat Section and running allowance was paid at 5 times the actual kilometerage covered. For the gradients between 1:40 and 1:80, the sections were classified as Class II Ghats and the kilometerage was reckoned at 3 times the actual for the running staff. One condition is that 1/3rd of the Section in a block should conform to the stipulated gradient in order to come under a classification. The applicants wanted all the 6 Sections from Hardwar to Motichur and Doiwala to Harrawal to be classified as Class II Ghats. Similarly, with regard to 3.14, the running staff of only slow moving trains which are identified are paid. They have separated the running allowance of Ghat Section from slow moving section. Thus, according to the respondents the classification of Ghat Section is not only dependent on ruling gradient but also on other conditions as to whether 1/3rd of the length of the section conforms to the stipulated gradient or not. The running allowance is paid not only by the Railway Board's Circular dated 17.7.81 (Annexure R-1) but also by subsequent standing orders dated 11.6.82 and May 1983. A Committee of experts from various disciplines went into the question of identification of Ghat Section and it is on their report that the running allowance has been finally fixed. This high level committee through its Engineering Directorate has foot-by-foot completed the survey. Sh. S C Chowdhary, Divisional Mechanical Engg. DRM Office, Moradabad who was present to explain the case of the respondents stated that an authentic documentation is available about the survey and about the

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identification of the gradient. These are printed in the working time-tables which are supplied to the Members of the Association. Sh. Chowdhary explained that the Members of the Association have not challenged any portion of the technical data. Infact, the applicant's association was in existence since 50 years but they challenged the scheme 10 years after it was in force. Some of the members of this association are the office bearers of the recognised unions and the impugned standing orders of 1981 were widely circulated and discussed and the consent of the unions was obtained before they were issued. The recognised unions gave their consent after deleberation. It is pointed out by Sh. Khastriya, learned counsel for respondents and Sh. Chowdhary on behalf of respondents that running allowance cannot be a static and fixed allowance. In fact, after dieselization the distance in the route from Lakshar to Dehradun now takes less than 2 hours whereas it had taken more than 3 hours before. Dieselization and improved mechanization of the trains with improved techniques in running the trains have been introduced and, therefore, running allowance cannot be something that would be eternally static and valid. What is more, the Mahadevan Committee in 1980 and subsequent committee thereafter in 1981 have decided after identifying the gradients. These are expert findings; they cannot be interfered with by the Tribunal.

7. That apart, as a result of several representations the Board did not agree to revise the classification and held that orders pursuant to para 3.21 of the running allowance rules do not call for any change

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on the ground that the new running allowance rules were introduced as a measure of stability and uniformity in regard to definition of Ghat Section. Disclassification of certain earstwhile Ghat sections under the earlier rules was done scientifically on the basis of expert engineering advice. Even so, by a Circular dated 19.12.89 as a measure of concession allowed running allowance at double the kilometerage shown in relexation of para 3.21 of Railway Board's letter dated 17.7.81. I am informed that there were other concessions by a notification of 1995 and it is agreed that after 1995 no claim is due.

8. In my view the cause of action had arisen in the year 1981 and thereafter in the year 1982 when the standing orders were passed consequent on the expert committee report. This is not a case of recurring claim like salary, pension or Dearness Allowance. In the case of salary or pension the right to a particular amount is established and that right is not in dispute. With regard to pension, for instance, the delay is condoned because right to pension recurs every month and, therefore, a fresh cause of action arises. There is no dispute about the liability to pay pension because the accrual of pension or salary on the basis of service rendered is a statutory consequence. The payment is governed by statutory rules and the amounts are due at the end of a month. The applicant's claim was examined and the recommendations of the Mahadevan Committee of 1980 was given effect to in 1981 after another committee of experts examined the same. They identified the actual Ghat section in accordance with the Committee's recommendations by an actual survey. The applicant did

not challenge these findings in any Court of law. Repeated representations have been filed but still at no stage has the applicant come forward to agitate the matter.

9. In my view, the cause of action had arisen in 1981 itself. Clause (a) of Sub-Section (2) of Section 21 refers to grievances arising by reason of any order of the authorities made at any time during the period of three years immediately preceding the date on which the Tribunal has started functioning. In all such cases where in respect of orders made more than three years before the said date, the power of the Tribunal to condone the delay will not be available. Applications challenging such orders in which a cause of action accrued prior to 1.11.82 is time barred and the infirmity is incurable. A plethora of decisions are available on this point but I will cite only two:-

- i) **Sukumar Dey Vs. Union of India**
(1987) 3 ATC 427.
- ii) **R L Bakshi Vs. Ministry of Defence**, (1987) 5 ATC 521..

10. Thus, there is an absolute prohibition under the act to entertain this application. In **S S Rathore Vs. State of Madhya Pradesh** 1990 SCC (L & S) 50, a Seven Judge Bench of the Hon'ble Supreme Court held that repeated non-statutory representations will not extend the period of limitation. In the case of **High Court of Madhya Pradesh Vs. Mahesh Prakesh & Others** (1995) SCC (L & S) 278, the Hon'ble Supreme Court held that merely

because subsequent representation is considered by the authority and rejected limitation does not get extended if the claim is already barred by limitation.

11. In the case of **State of Punjab Vs. Gurudev Singh** AIR 1991 SC 2219, the Hon'ble Supreme Court held that the limitation period of three years starts running from the date of passing the dismissal order. If a suit is filed after the lapse of three years it would be barred by limitation. The order of dismissal against which the applicant filed the Writ is no doubt illegal but still infringement of the right started from a particular date of the order of dismissal and the Suit should have been filed within three years thereafter. This Hon'ble Supreme Court decision applies to this case also. If there is any grievance, it arose in 1981 and thereafter in early 1982 and as no legal action was taken. The applicant could have gone to the High Court under Writ Jurisdiction or to a Civil Court by filing the Suit.

12. In **Ratan Chandra Samantha and Others Vs. Union of India & Others** [1994 SCC (L & S) 182], the Supreme Court was dealing with a similar request made by the writ petitioner before it. The writ petitioners claimed after a lapse of 15 years to be entitled to the benefit of a regularization scheme prepared following the judgement of the Supreme Court in **Inder Pal Yadav Vs. Union of India** [1985 (2) LLJ 406]. They claimed to have been engaged on different dates between 1964 to 1969 and retrenched on different dates between 1975 to 1978. The Supreme Court

rejected their claims on the ground of delay and also on the ground that no material had been placed by them in proof of engagement.

13. Again in **Hamsa Veni and Others Vs. State of Tamil Nadu and Another** [1994 SCC (L & S) 1277], those who claimed to have been working as Helpers in the Electricity Board, Tamil Nadu, long after the Khalid Commission's Report had been submitted and implemented approached the Supreme Court praying for regularization and absorption on the basis of criteria laid down in Khalid Commission. The Supreme Court rejected the request. The Court observed:

"Such speculative and stale litigation is harmful to the society and should be put to an end with a strong hand".

14. The applicant now cannot be allowed to agitate over this matter in the light of the Hon'ble Supreme Court's judgement in the case of **Bhoop Singh Vs. Union of India** [1992 (21) ATC 675].

15. While repelling the unexplained delay, the Hon'ble Supreme Court held:-

"If the petitioner's contention is upheld that laches of any length of time is of no consequence in the present case, it would mean that such Police Constable can choose to wait even till he attains the age of superannuation and then assail the termination of his service and claim monetary benefits for

the entire period on the same ground and that would be a startling proposition. In our opinion, this cannot be true ~~the~~ import of Article 14 or the requirement of the principle of non-discrimination embodied therein which is the foundation of petitioner's case."

16. In the case of **Ratan Chandra Sammanta Vs. Union of India** [1994 (26) ATC 228], the Hon'ble Supreme Court had found no explanation has been given as to why the petitioners did not approach till 1990 and held that "Delay in itself deprives a person of his remedy available in law. In the absence of any fresh cause of action or any legislation, a person who has lost his remedy by lapse of time, he loses his right as well."

17. In view of the above discussion, as no application for condonation of delay has been filed, as the cause of action has arisen three years prior to the commencement of the CAT Act and as payment of running allowance is a policy decision based on expert advice, this application is barred by limitation and is otherwise not maintainable. Accordingly this OA is dismissed. No costs.

Nansahib
(N SAHU) 10/7/98
MEMBER (A)

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