

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO.2015/2004

New Delhi, this the 3rd day of February, 2005

**HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)**

1. Om Prakash S/o Shri Rajeshwar Singh,
Working as Enquiry & Reservation Clerk,
At Central Telephone Enquiry, DRM Office,
Northern Railway, New Delhi
2. Mohd. Irfan S/o Sh. Mohd. Asraf,
Working as Enquiry & Reservation Clerk,
At Central Telephone Enquiry, DRM Office,
Northern Railway, New Delhi
3. Ajay Krishna S/o Sh. Moti Lal Tiwari,
Working as Enquiry & Reservation Clerk,
At Central Telephone Enquiry, DRM Office,
Northern Railway, New Delhi
4. B.P.S. Chauhan S/o Sh. Ram Bahadur Singh Chauhan,
Working as Enquiry & Reservation Clerk,
At Central Telephone Enquiry, DRM Office,
Northern Railway, New Delhi
5. A.K. Joshi, S/o Sh. Jagdish Joshi,
Working as Enquiry & Reservation Clerk,
At Central Telephone Enquiry, DRM Office,
Northern Railway, New Delhi
6. R.S. Bist S/o Sh. Chander Singh Bist,
Working as Enquiry & Reservation Clerk,
At Northern Railway Station, Old Delhi Jn.
7. Vijay Shakarwal S/o Sh. Inderjit,
Working as Enquiry & Reservation Clerk,
At Northern Railway Station, Nijjamuddin
8. Balraj Singh S/o Sh. Rati Ram
Working as Enquiry & Reservation Clerk,
At Northern Railway Station, Meerut Cantt (UP)

.... Applicants

(By Advocate : Shri Yogesh Sharma)

Versus

- 2 -

1. Union of India through The General Manager,
Northern Railway, Baroda House, New Delhi
2. The Division Railway Manager,
Northern Railway, DRM Office,
Near New Delhi Railway Station,
New Delhi ...

Respondents

(By Advocate: **Shri Rajeev Bansal**)

ORDER

By Hon'ble Mr. S.K. Malhotra :

This OA has been filed by 8 applicants with the prayer that the impugned order dated 7.11.2002 passed by the respondents rejecting their request for refixation of their pay in the post of E&RC, after taking into consideration the running allowance of 30% drawn in the previous post of Assistant Driver held by them.

2. The facts of the case, in brief, are that the applicants were working as Asstt. Driver (Electrical) in Allahabad Division of Northern Railway and were getting 30% of the basic pay as running allowance as per para 924 of the IREM, Vol.1, 1989. In the year 1999, Northern Railway conducted a selection for the post of Enquiry & Reservation Clerk (E&RC) against GDCE quota in the pay scale of Rs.4,500-7,000/-. It is stated that according to the provision contained in the above para, the running allowance shall be reckoned as pay for all purposes, including fixation of their pay on other posts and this benefit has been allowed to similarly placed employees, who were selected along with applicants as ER&C and posted in other divisions. However, this benefit has been denied to them. Their representation has been rejected on the ground that their selection as ER&C has been outside their normal channel of promotion. According to the applicants, since this benefit has been allowed to other similarly situated employees, not extending the same to them, is an act of discrimination.

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3. The respondents have filed their reply in which they have taken the stand that the benefit of adding 30% as allowance pay in officiating grade is given only in such cases where promotion is according to the avenue of channel of promotion. Since the promotion of the applicants was outside the normal channel of promotion, they are not entitled for this benefit. They have conceded that this benefit was given wrongly to some of the employees mentioned by the applicants but when the mistake came to the notice, action has been initiated to withdraw the same. It has been further stated that a wrong benefit of running allowance given to others cannot be quoted as a binding precedent to be followed in case of others.

4. We have heard both the learned counsel and have also gone through the material on record.

5. The learned counsel for the applicants during the course of the arguments stated that according to para 924, even when the running staff is promoted in a channel other than the one normally open to the running staff, the element of running allowance will be taken into consideration for the purpose of fixation of pay in his own post. This stand was vehemently opposed by the learned counsel for the respondents. He drew our attention to the instructions issued by the Railway Board vide order dated 7.2.1961 which deal with the fixation of pay in respect of staff appointed to another category through Railway Service Commission which reads as under:

“(30) Fixation of pay in respect of permanent staff appointed to another category through Railway Service Commission: - (a) Whenever a Railway employee whether permanent or temporary is allowed to apply to the Railway Service Commission for appointment to a new post either on the same Railway or any other Railway and he is selected, his pay will be fixed under normal rules. He will have a continuity of service for all purposes except seniority.”

6. We have heard the rival contentions of both the sides. The applicants in this OA were promoted to the post of ER&C by selection through the Railway Recruitment Board, against direct recruitment quota, as mentioned by the respondents in their counter reply. The instructions in para 30, reproduced above are very clear. Whenever an employee is allowed to

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27

- 4 -


apply to the RSC for appointment to a new post and he is selected, his pay is required to be fixed under normal rules. Normal rules do not allow the consideration of running allowance. While the running allowance is permissible to be taken into consideration for fixation of pay, even when the employee is promoted to a stationary post but if he is selected through RRB, against direct recruitment quota, his pay is required to be fixed according to the normal rules, which do not permit consideration of running allowance for fixation of pay. In fact, when an employee is considered against a direct recruitment quota and the selection is made through RRB, he is as good as an outsider, except that he is a departmental candidate. His pay in the promoted post will have to be fixed in the pay scale of the promoted post, according to the normal rules. If running allowance is taken into consideration in such a case, the other candidates selected with him will stand to lose. This cannot be allowed. The running allowance allowed to railway employees is a special allowance drawn by them by virtue of their holding a particular post, say that of a driver when he is to move from one station to another. It will be illogical to give him the benefit of this allowance in the fixation of pay when he is promoted to a post of a Reservation Clerk which is a stationary post and he has been selected against direct recruitment quota, along with other outside candidates, not belonging to Railways. That is why a specific provision has been made in para 30 that in such a case, the fixation of pay will be under normal rules.

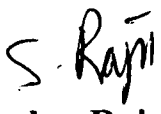
7. The applicants cannot also claim this benefit on the plea that such benefit has been given to other similarly situated persons. In this connection, we will like to rely on the judgement of the Hon'ble Supreme Court in the case of **State of Bihar & Ors vs. Kamleshwar Prashad Singh and Another**, 2000 (2) SCT page 889 and that of Hon'ble Delhi High Court in the case of **Satya Prakash vs. Union of India & Others**, 2003 (1) SCT page 694 in which a view was taken that concept of equity as envisaged in Article 14 cannot be enforced in a negative manner and the benefit of a wrong order cannot be extended to others.

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8. In view of the above, we do not find any merit in the OA and the same is dismissed, without any order as to costs.


(S.K. Malhotra)
Member (A)


(Shanker Raju)
Member (J)

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