

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

O.A.NO.379/96

Allahabad, this the 16<sup>th</sup> day of <sup>Feb.,</sup> 1999.

CORAM : Hon'ble Mr. S.L.Jain, Member (J).

1. Bhulai S/o. Late Sita Ram, Ex.Driver 'A' Loco Shed Gorakhpur, Retired on 31.1.87, R/o.Village & PO-Peepunganj, Distt. Gorakhpur.
2. Baldeo, S/oo. Ram Lagan Retired on 20.6.79 Ex Driver 'C' Loco Shed Gorakhpur, Village-Mugalha P.O. Jhungia Bazar, Distt. Gorakhpur.
3. Tezoo Ram S/o. Late Ram Sawar Ex.Driver 'B', Retired on 30.6.85, Village- Bharwal, P.O. Peeppe-ganj, Distt. Gorakhpur.
4. Jagarnath-II S/o. Late Sarjoo Ex.Driver 'C' Loco Shed Gorakhpur. Retired on 31.7.81, Village-Tigra, P.O. Peepeganj, Distt. Gorakhpur.
5. Late Baij Nath-I Ex.Drivers' Loco Shed Gorakhpur Retired on 31.3.84 S/o. Late Mahadeo through Widow Prabhawati Devi, Mohalla-Kharia Pokhra, P.O. Basarapatpur, Distt. Gorakhpur.
6. E.J.Obediah S/o. Late J.E.Obediah Ex.Driver 'A' Loco Shed Gorakhpur Retired on 30.6.79, Mohalla-Basarapatpur, Distt. Gorakhpur.
7. D.Manual, S/o. Manual, Ex.Driver 'A' Loco Shed Gorakhpur Retired on 30.9.86, Mohalla-Kharia Pokhra, P.O. Basarapatpur, Distt. Gorakhpur.
8. Peter Danial S/o. Late Prem Chand, Ex.Driver 'C' Retired on 8.10.79, Mohalla - Kharia Pokhra, P.O. Basarapatpur, Distt. Gorakhpur.
9. Chhote Lal, S/o. Sukhoo, Ex.Driver 'C', retired on 30.6.86, Village Bhagwanpur, P.O. Peeppeganj, Distt. Gorakhpur.
10. Ram Subhag, S/o. Ram Sewak, Retired on 30.6.77 Ex.Driver 'A' Loco Shed Gorakhpur, Village & PO-Bhiti Rawat, Distt. Gorakhpur.
11. Pearey, S/o.Chirkut, Ex.Driver 'A' Loco Shed, Gorakhpur, Retired on 31.10.83, Village - Bichhia Jungle Tulsi Ram, P.O. Bichhia, Distt.Gorakhpur.
12. Nathuni, S/o. Late Lal Mohamad, Retired on 30.11.87 Ex.Driver 'A' Loco Shed Gorakhpur, c/o. D.N.Sinha Advocate, house no.126/B, Beside Little Flower High school, Mohalla - Dharampur, P.O.Gita Vatika, Distt. Gorakhpur.

3401

13. Lakimi S/o. Mahadeo Ex.Driver 'B' Loco Shed Gorakhpur, Retired on 28.2.1985, Village Gangapar P.O. Peepeganj, Kanapar, Distt. Gorakhpur.
14. Zahir Husain, S/o. Hussaini Ex.Driver 'C', Retired on 27.9.85, C/o. D.N.Sinha, House No. 126/B, Beside Little Flower High School, Mohalla Dharampur, P.O. Gita Vatika, Distt. Gorakhpur.
15. Dularey, S/o. Hem Raj, Ex.Driver 'C' Loco Shed Gorakhpur, Retired on 31.7.84, Village Jogichak, P.O.Tigra, Distt. Gorakhpur.
16. Ram Bhajan, S/o. Ram Lagan, Ex.Driver 'C' Loco Shed, Gorakhpur, Retired on 31.10.84, Mohalla-Utri Jatepur, P.O.Miya Bazar, Distt.Gorakhpur.
17. Misree Lal S/o.Sarjoo, Ex F.Man 'A', Retired on 30.6.85.

.....Applicant

(By Shri S.K.Mishra, Advocate)

Vs.

1. Union of India through the General Manager, N.E.Railway, Gorakhpur.
2. The Divisional Rail Manager, N.E.Railway, Ashok Marg, Lucknow.
3. The Divisional Rail Manager, N.E.Railway, Ashok Marg, Lucknow.

.....Respondents

(By Shri Lalji Sinha, Advocate)

O R D E R (Reserved)

(By Hon'ble Mr. S.L.Jain, Member(J) )

This is an application under Section 19 of the Administrative Tribunal Act, 1985 for grant of arrears of retiral benefits including the regularisation of increased pension due to recalculation @ 75% on basic pay instead of 55% and less already calculated in the past of the basic pay alongwith interest @ 18% per annum or market rate interest on the arrears of the claim alongwith cost of the petition.

P.W. ' contd....3/p

2. There is no dispute between the parties in respect of the facts that applicants who were Driver retired before 5-12-1988.

3. The applicants case in brief is that they are being paid their retiral benefits like pension, DCRG, Leave Encashment etc. at reduced rate of 55% of Running Allowance in view of the Railway Board's letter dated 22-3-1976 and 17-7-1981 eversince they retired.

4. The applicants by virtue of their outdoor duties as Driver and Fireman 'A', incharge of moving trains for arduous duties were categorised as Running Staff were entitled to Running Allowance according to the rules as provided in the Indian Railway Establishment Rules Volume-I & II, which have been framed from very beginning from the time introduction of Railway system in India. As per the provision of the Rules 2544 (G)(I), 2544(G)(II) 507, 1302 (5) Provision II 1309 Provision II and rule 2003 (2) of the Indian Railway Establishment Code Volume-I & II which are statutory in nature as the Running Allowance is reckoned to a minimum of 75% of basic pay for the purpose of calculating presumptive pay for retiral benefits as Pension, Gratuity, commutatin of pension etc. The applicants have submitted the representations to the authority just within 2, 3 months after their retirement regarding less payment of their due amounts and fixing of pension. Railway Board as per roder dated 22-3-76 reduced R.A. from 75% to 45% of basic pay and as per next order dated 1-4-1979 it increased 45% by 55% of basic pay. The Railway Board appointed a Running Allowance Committee with a view to examine the matter relating to Running Allowance and submit the report of the same. Report was submitted in April, 1980 on which the Union Ministry of Railway took decision on various recommendations therein in consultation with various recognised Labour Federations and ultimately Railway Board vide its letter dated 17-7-1981 communicated this decision to

JAD, contd.....4/p

all the General Managers of Indian Railways to continue payments at 55% of basic pay for retiral benefits. Thus the applicants are affected adversely.

5. Various applications were filed before Central Administrative Tribunal, Bangalore which were decided in favour of the applicants. It is the duty of the respondents to give effect to the law as declared or settled, but respondents are not paying any heed to the situation. Hence this O.A. for the above said relief.

6. The respondents denied the claim and stated that in view of the recommendations of the Running Allowance Committee when recoveries were to be affected from the staff Railway Board took decision in favour of the staff by not affecting recoveries due to lacuna of not amending Indian Railway Establishment Code at the relevant time. The mistake was rectified by the Railway Board by duly publishing a notification in the Gazette dated 5-12-1998 covering all the required amendments with retrospective effect impugned with the various administrative instructions issued with President's sanction from time to time.

7. Against the decisions of Central Administrative Tribunal, Ernakulam Bench special leave petition is pending before the Apex Court of land, Central Administrative Tribunal, Delhi and Ahmedabad upheld the action of the Ministry of Railways in giving retrospective effect to the amendment, full Bench of Bangalore Central Administrative Tribunal allowed the application of various employees against which special leave petition before the Apex Court of land is pending. Applicants are not entitle to any relief claimed by them.

S.D.M.

contd.....5/p

8. The learned counsel for the applicant relied on JT 1997 (7) S.C. 180 Chairman, Railway Board and Others Vs. C.R.Rangadhamaiyah & Ors. etc. and submitted that notification dated 5-12-88 which is operative since 1.1.1973 and 1.4.1979 contemplates articles 31(1) and 19(1) (f) as they stood on 1.4.79 and therefore the said notification which gives retrospective effect is violating of rights guaranteed under articles 19(1) and 31(1) of the Constitution of India. He further argued that such notification reducing the amount of pension that had become payable to the employees who had already retired on the date of issue of notification is violating of article 14 and 16 of the Constitution. Retrospective effect given reducing pension who retired after 1.1.1973 are entitled to get the pension computed on the basis of Rule 2522 (G) as it existed on the date of their retirement and the said notification of 1988 results in reducing the pensions payable due to modification made in 1988 notification dated 5-12-1988 violated the rights guaranteed to employees under article 19(1) and 31(1) of the Constitution and so under article 14 and 16 and are unreasonable and are arbitrary.

9. The Apex Court of land has specifically mentioned in para 35 of the Judgement in so far as they have been given retrospective operation, are also violating all the rights guaranteed under article 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in rule 2544 have the effect of reducing the amount of pension that had become payable to the employees who had already retired from service on the date of issuance of the impugned notification as per the provisions contained in rule 2544 that were in force at the time of their retirement.

10. As stated above all the applicants have retired before issue of the said notification.

3/20 - contd.....6/p

Hence the respondents were not right in calculating their retiral benefits as per the notification.

ll. In the result O.A. deserves to be allowed and is allowed. The respondents are -

(i) ordered to recalculate the retiral benefits of all the applicants including the Running Allowance @ 75% of pay.

(ii) after calculating the same whatsoever is being paid to each employee the same may be deducted, the difference of the amount payable and the amount paid shall be paid to each one of the employee alongwith cumulative interest @ 12% per annum from the date when it was payable till the date when it is paid, and

(iii) cost of the petition amounting to Rs.650/- (legal practitioners fee Rs.500/- plus other expenses Rs.150/-).

within a period of three months. No further extension of time in this respect shall be allowed.

S. D. -

MEMBER (J)

GVS/11299