

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 28th day of oct 2009

Original Application No. 532 of 2004

Hon'ble Mr. S.N. Shukla, Member (A)

1. Akhilesh Kumar Katiyar, S/o Sri Om Prakash
2. Babu Ram, S/o Sri Ram Dayal
3. Ratan Singh Rana, S/o Sri Indra Prakash
4. Roop Lal, S/o Sri Ram Swaroop
5. Hirdya Nand Pandey, S/o Sri R.P Pandey
6. Ram Prasad, S/o Sri Ganga Ram
7. Krishna Babu, S/o Sri Ulfat Rai
8. Chet Ram, S/o Sri Dori Lal

All C/o Workshop, North Eastern Railway, Izatnagar, Bareilly.

9. Ishrar Hussain, S/o Sri Ali Hussain
10. Shan Khan, S/o Sri Subhan Khan
11. Pooran Lal, S/o Sri Chet Ram

**All C/o Mechanical Department/Engineering Department
North Eastern Railway, Izatnagar, Bareilly.**

. . . Applicants

By Adv: Shri Ashok Trivedi

V E R S U S

1. The Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. The Chief Workshop Manager (Karmik) North Eastern Railway, Izatnagar, Bareilly.
3. The Divisional Rail Manager (Karmik), North Eastern Railway, Izatnagar, Bareilly.
4. The Divisional Rail Manager, North Eastern Railway, Izatnagar, Bareilly.

. . . Respondents

By Adv: Shri K.P. Singh

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ORDER

This OA has been filed by 11 applicants who are allowed to file this OA jointly as the cause of action is identical.

2. The OA has been filed seeking the following reliefs:-

- i. To quash the impugned order dated 30.07.03/02.08.2003, passed by respondents;
- ii. To direct the respondents to pay 30% allowance calculated on the pay of the applicants;
- iii. To direct the respondents to allow Dearness allowance on the amount after calculating 30% of the pay which may be added to the pay of the applicants;
- iv. To direct the respondents to fix the amount of the salary after adding 30% and to pay the arrears since their absorption;
- v. Any other and further orders which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case; and
- vi. Allow the application with cost to the applicants."

3. The factual matrix of the case as stated in the pleadings are as follows:-

- i. All the applicants were working in Loco Shed as Fire Man II. After absorption of Loco Shed Izatnagar, Bareilly, the applicants were declared surplus in 1999. While they were working as Fireman they were entitled to 30% of their pay as running allowance.
- ii. After declaring the applicants and others as surplus, the respondents stopped the payment of 30% allowance vide letter dated 23.06.1999, against which, the applicants and other similarly situated persons filed petition/application before this

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204

Tribunal (OA No. 884, 885, 886, 887 and 888 of 1999). The particulars of the present applicants and also the registration number of aforesaid decided OAs are being showed as under:

Present applicants number	Present applicants in decided OA	Registration numbers of decided OAs of present applicants.
1, 2, 3	27, 19, 17	887/99
4, 10, 11	22, 18, 21	886/99
5, 6, 7, 8, 9	10, 28, 27, 8, 7	888/99

iii. All the aforesaid OAs were decided by a common judgment dated 23.4.2003 (Annexure I) and the impugned order dated 23.06.1999 was quashed and the respondents were directed to pay 30% of the pay in lieu of running allowance after calculating the same each of the applicants of OA. Most of the applicants were absorbed in the running category. Some of them were absorbed/adjusted in other departments like Traffic Work Shop, Engineering, Operating etc.

iv. All those were adjusted in other departments other than the Diesel Lobby were also absorbed/adjusted against their posts after giving them benefit of the 30% allowance. The applicants were also absorbed in non running category but while absorbing the applicants in non running category, the respondents did not fix their salary after adding the benefits of 30% of pay. The applicants made representations to the respondents for disobeying the order of this Tribunal.

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- v. The Divisional Railway Manager (P) passed specific order directing the respondents Chief Work Shop Manager (P) and Senior Section Engineer (Loco) to fix the salary of the applicants nos. 1 to 8, after giving the benefit of 30% running allowance vide letter dated 14.10.2003 and 11.07.2003 (Annexure Nos. II and III). The applicants No. 9, 10 and 11 were absorbed in Traffic Category in Traffic Department, but their salary was also not fixed after giving 30% benefit of the basic pay.
- vi. The applicants were given to understand that the 30% of Running Allowance on basic pay will not be added in their salary and that amount will be paid as their personal pay.
- vii. The representations of the applicants have been decided by order dated 31.07.2003/02.08.2003 & 30.07.2003 (Annexure A and B respectively).
- viii. The contention of the applicants that the pay above the maximum scale will be treated as personal pay, on which, no Dearness Allowance is admissible is wrong and illegal. It is stated that Rs. 4590/- is the maximum in the scale which is the basic pay of the applicants. 30% allowance is on the basic pay. Therefore, the 30% allowance must be added in the highest scale of pay and there after Dearness Allowance be calculated on the amount.
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ix. 30% allowance is an element of pay which cannot be treated otherwise and it must be added to the highest scale of pay. As alleged the amount of personal pay being paid to the applicants is being reduced in the name of payment of Dearness Allowance every year, as is evident from the letter dated 25.02.2000, 15.04.2000, 19.04.2000, 17.04.2001, 01.05.2002, 30.05.2002, 22.07.2002, 23.08.2003 and 15.01.2004 respectively (Annexure Nos. VA, VB, VC, VC, VE, VF, VG, VH and VI)

x. Even after reaching the point of stagnation of the pay scale, the Dearness Allowance, even then has to be paid to the employees as the Dearness Allowance is an allowance to be paid on account of increasing Dearness with the passing of years.

xi. Under the circumstances, the Dearness Allowance is to be paid on the total amount of the Basic salary after including the 30% running allowance.

4. The respondents have filed their counter affidavit in which they have stated as under:-

i. At the time of absorption in non-running category, the pay of the applicants were fixed after adding the benefit of 30% of allowance as per Rules (Annexure -I). They have also submitted that a representation had been received, which had been

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replied vide letter No. Ya/Ka/Vividh/Artisan/Yantrik dated 07.11.2003, that the applicants have already been given the same at the time of absorption.

ii. Applicants No. 9, 10 and 11 i.e. Shri Israr Husain, Shan Khan & Pooran Lal were absorbed in non running category of Pointsman, their pay was fixed after adding the benefit of 30% of running allowance as per rules (Annexure 5A to 5J to the OA). The applicants have submitted representation and accordingly they were already informed that their pay fixed after adding 30% of running allowance at the time of absorption in Workshop vide letter No. Ya/Ka/Vividh/Artisan/Yantrik dated 30.07.2003 and L/E/210/1/Vividh/99/Vidut/Part.II dated 31.07.2003/02.08.2003 (Annexure-III).

iii. The applicants were absorbed in Workshop in the pay scale of Rs. 3050-4590 because they were working as Fireman in the same Grade before absorption.

iv. The applicants were declared surplus as Fireman-II due to closure of Steam Shed, at the time they were working in the pay scale of Rs. 3050-4590 and were re-deployed as an Artisan in different trades in the same pay scale. As per Rules they had been given the benefit of 30% running allowance at the time of re-deployment. However, it is further clarified that in calculation of their pay in the same scale, after

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including the benefit of 30% running allowance, it appears that their pay reached more than maximum of the scale i.e. 4590/-. As per rules in a scale of pay, the pay can be fixed more than maximum of grade. So their pay had been fixed on maximum of the Grade i.e. 4590/- and to protect their benefit of 30%, rest amount had been shown as personal pay for the purpose of payment. As per Railway Board's letter No. PC-V/97/I/7/14 dated 16.10.1997 (Annexure -IV) dearness allowance is not payable on any type of personal pay. The applicants are not being reduced in the payment of Dearness Allowance but it is reduced due to annual increment and fixation of pay due to promotion in Higher Grade.

5. Heard counsel for the parties and perused the pleadings on records as well as written submissions. On perusal of the same this Tribunal is constrained to observe that both the parties while submitting as well as written submissions have made general statements regarding the rules applicable in this regard without specifying the rule number and the source of the same. One only hopes and prays that due care will be taken by the authorities' counsel. In quoting the exact reference of the rule wherever a statement of some alleged rule having been followed is made in the counter affidavit by not quoting separate rules in the pleadings results in unnecessarily delays because this tribunal has to spend

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201

time in finding the exact number and source of the rule. This practice of being nonspecific is highly avoidable.

6. Having said that this Tribunal now proceeds to deal with the controversies involved.

7. As is evident from the reproduction of the rival pleadings in compliance of a judgment and order dated 23.04.2003 in several OAs quoted at para ii at page 2 and 3 of this order respondents were directed to pay 30% of the pay in lieu of running allowance as per the entitlement of each of the applicants in this OA. In so far as the addition of 30% is concerned the authorities carried out the directions of this Tribunal. The respondents were, however not satisfied with the implementation of this Tribunal's order in as much as while their monetary interest to the extent of 30% of the pay was protected. However, it was stipulated that wherever the pay exceeded the maximum of the scale of Rs. 3050-4590 the amount in excess of Rs. 4590/- is to be treated as personal pay on which no DA is admissible.

8. Before proceeding further this Tribunal has also observed that the expression 'pay', 'Basic Pay' etc. have been used loosely and some times out of context in the pleadings. Keeping that in view the rules relevant for the purpose of this OA are required to be referred to.

100

9. Apparently, the authorities while passing the impugned orders dated 30.07.2003 and 31.07.2003 had rule FR 19, in mind reproduced below:-

"F.R. 19. Except in the case of personal pay granted in the circumstances defined in Rule 9 (23) (a), the pay of a Government servant shall not be so increased as to exceed the pay sanctioned for his post without the sanction of an authority competent to create a post in the same cadre on a rate of pay equal to his pay when increased."

10. Similarly, while restricting the DA only on the pay element not exceeding the maximum of scale the authorities apparently followed general orders on payment of Dearness Allowance reproduced as under as reported in FRSR Part 4 in Swamys compilation (incorporating orders received upto January, 2006): -

"G.I., M.F., OM No. 12011/1-E.II(B)/76,
dated the 21st November, 1977, read with
OM No. 1(13)/97-E.II(B), dated the 3rd October, 1977

Subject:- Dearness Allowance to the Central Government employees.

The undersigned is directed to say that a need has been felt for some time past of consolidating at one place the instructions/orders issued by this Ministry from time to time regulating the payment of Dearness Allowance to the Central Government employees. Accordingly, in supersession of all the previous orders on the subject, except those relating to the rates of Dearness Allowance payable to the employees from time to time, grant of Dearness Allowance to the Central Government employees shall be regulated as follows:-

(i) **Pay for the purpose of grant of Dearness Allowance**

Except in the case of re-employed pensioners and persons in receipt of emoluments from a foreign country in whose cases the Dearness Allowance is payable in the manner indicated in Items (xii) and (xiii) respectively, the term 'pay' for the purpose of grant of the allowance includes only the basis pay as defined in FR 9(21) (a) (i) in respect of employees drawing pay in the revised scale of pay as per CCS (Revised Pay) Rules, 1997. The monthly pay of daily-rated worker shall be reckoned at 26 times his basic daily wages."

11. The definition of pay is given in FR 9-(21) (a) which reads as under:-

"Page 15 of Fundamental Rules
Supplementary Rules
(21) (a) Pay means the amount drawn monthly
by a Government servant as-

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- (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and
- (ii) overseas pay, special pay and personal pay; and
- (iii) any other emoluments which may be specially classed as pay by the President"

12. This is the same as has been referred in the Judgment and Order dated 23rd April, 2003, in the O.A. Nos. 888, 884 etc. In para 5 of the order, while reproducing the provisions of Rule 903 of Indian Railways Establishment Manual, Vol-I which reads as under:-

"903 Pay elements in running allowance- 30% of the basic pay of the running staff will be treated to be in the nature of pay representing the pay element in the Running allowance. This pay element would fall under clause (iii) of Rule 1303-FR-9 21 (a) i.e. "emoluments which are specially classed as pay by the President."

13. On a careful consideration of the Rules positioned as above, particularly with reference to the applicants in this case who have been, adjusted in non running category jobs, the DA is to be calculated in terms of Finance Ministry's OM dated 3rd Oct, 1977 (Supra). While following these Rules in the case of the applicants, the respondents have neither done any violation of this Tribunal earlier orders in this regard nor any violation of any specific Rules in this regard. The applicants' prayers for quashing the impugned orders dated 30.07.2003 and 31.07.2003/02.08.2003 (Annexure A & B to the O.A.) are unfounded and not supported by any exception to the

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Rules, if at all, applicable in the case of employees of the category before us.

14. In para 4.22 of the O.A. has been stated as under:-

"That, as alleged the amount of personal pay being paid to the applicants, is being reduced in the name of payment of dearness Allowance every year, as is evident from the letter dated 25.2.2000, 15.4.2000, 23.8.2003, and 15.1.2004, respectively."

15. In this connection, the relevant Rules regulating the position in FR 37 (reproduced below) Vol-I 158.

"F.R. 37. Personal Pay - Expect when the authority sanctioning it orders otherwise, personal pay shall be reduced by any amounts by which the recipient's pay may be increased, and shall cease as soon as his pay is increased by an amount equal to his personal pay"

16. This tribunal has considered the rival positions once again no violation of rules has been found.

16. In the written submission filed on behalf of the applicant, it was stated as under:-

"That further the order dt. 12.01.2000 (Annexure R.A.-I of Rejoinder Affidavit) passed by DRM (Mechanical). Sonpur, having jurisdiction over the concerned Respondents have clearly directed that in the case of such employees in question the 30% of running amount will be treated as part of the basic salary according to Para No. 903 of part I of IREM and therefore the D.A. etc. will be calculated after adding and treating the 30% running allowances i.e. P.P. or spiral pay as part of the basic salary."

18. The learned counsel for the applicant would further contend that the applicants are apparently misinterpreting the order dated 12.01.2000 at Annexure-1

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of the R.A., which only refers to fixation of pay in terms of para 903 of Indian Railways Establishments Manual, Vol-I, inasmuch as, there will be an option of 30% Running Allowance to the basic pay. There is no mention that the entire amount will be considered as basic pay for the calculation of DA. If any, even there is no mention of treating any amount in excess of the maximum of the scale for the purposes of DA as stipulated in FR 19.

19. Some names have been mentioned, such as, one Shri Babu Ram, Shri Naresh Chandra and Shri Hari Babu, in whose case it is alleged that the DA has been paid to them on the full amount of maximum of basic pay, on the ground of presently pay office were exists the maximum of the scale.

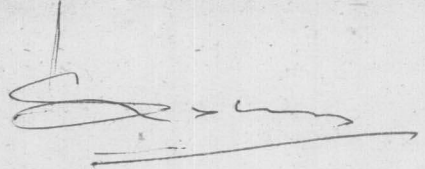
20. Learned counsel for the respondents, has categorically stated that this is a wrong interpretation of the pay slips of the above named persons and any question of violation of Rules in any individual cases does not arise.

21. This Tribunal has already given its considered findings that there has been no violation of the relevant Rules discussed in the foregoing paragraphs of this order in so far it relates to the applicants. However, if it were to be found that there are some aberrations in any

152

individuals matters, it is for the respondents to take
corrective measures,

22. With these Observations the O.A. is dismissed. No
Cost.

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Member (A)

/Pc/