



RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 617 of 1986 (T)

Union of India & Others Versus Durga Charan Tiwari & Others

Hon. S. Zaheer Hasan, V.C.  
Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, A.M.)

These three Civil Appeals :-

- Regn.No.617 of 1986 (T) (Civil Appeal No.24 of 1985 Union of India Versus Durga Charan Tiwari & Others)
- Regn.No. 627 of 1986(T) (Civil Appeal No. 165 of 1984 R.K.Sharma & Others Versus Union of India).
- Regn.No.629 of 1986(T) (Civil Appeal No.2 of 1985 Union of India Versus Krishna Dutt Sharma & Others).

have been received on transfer from the Court of District Judge, Jhansi under Section 29 of the ~~Delimitation~~ Administrative Tribunals Act 13 of 1985. The cause of action arose consequent to the judgement passed by a Division Bench of the Hon'ble High Court of Judicature at Allahabad (Lucknow Bench) on 12.3.79 in special appeal No. 9 of 1975 Union of India Versus Smt. Afzar Jahan and Others. These are being dealt with by a common judgement as identical questions are involved. The operative part of the judgement reads as follows :-

" The Railway Administration is directed to refix the pay of.....for the period during which they held officiating appointment to the stationary post according to the relevant rules, to refix the pay of.....in accordance with Rules 2017, 2018 and 2027 read with relevant circulars and President's decisions respectively applicable to them, as has been indicated by us earlier after taking into consideration that running allowance is part of pay, during the period they held officiating appointment in the stationary posts and to take prompt steps for determination of their pensionary benefits during the period they officiated in the stationary post and the period they



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worked on that post in a substantive capacity according to relevant rules...."

2. Civil Appeal No.24 of 1985 is against the judgement and decree dated 19.11.1984 passed in Suit No. 530 of 1981 Durga Charan Tiwari and Others Versus Union of India decreeing the suit for mandatory injunction and directing for refixation of pay and allowances and pay them arrears of pay & allowances from 12.10.53, 18.6.53, 19.8.57 and 18.10.50 in respect of the plaintiff respondents. The grounds of appeal are that none of the plaintiffs appeared in the witness box and evidence was not adduced, the suit was time barred, the cause of action was not continuous, and the judgement relied upon has been misread and wrong conclusions drawn, the plaintiff respondents have retired prior to the institution of the suit and fixation and refixation of salary has become infructuous and mandatory injunction has been granted by the lower court. The arrears of pay cannot be decreed prior to three years from the date of institution of suit and the plaintiffs had never objected regarding their posting on the stationary posts or regarding fixation and refixation of their salaries.

3. Civil Appeal No. 165 of 1984 is against the judgement and decree dated 3.9.84 in Suit No.342 of 1982 dismissing the suit. The grounds of appeal are that the lower court has erred in holding that the suit is barred by time. The issues framed have not been decided. The judgement of the Hon'ble High Court of Allahabad (Lucknow Bench) passed in similar cases has been ignored and the decree is both against facts and the law of the case.



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4. Civil Appeal No. 2 of 1985 is against the judgement and decree dated 19.11.84 in suit No. 504 of 1981 ~~de~~ <sup>3/4 that</sup> decreeing the suit ~~of~~ the plaintiffs' pay be fixed within three months in accordance with the decision of the Hon'ble High Court at Allahabad (Lucknow Bench) dated 12.3.1979. The grounds of appeal are that none of the plaintiffs appeared in the witness box and their pay was fixed in accordance with the rules but the learned court had erred to hold otherwise, the suit is barred by time and the findings are per-verse.

5. The plaintiffs' case in all these suits is that they were working as confirmed drivers <sup>/guards 3/4</sup>. They were posted on stationary posts at various times. At the time of such postings on stationary posts, their pay was not fixed in accordance with the rules and various directions issued by the Railway Board from time to time. No part of the running allowance which they were drawing as drivers was included in the pay which was fixed at the time of their posting on stationary jobs on the plea that running allowance is not part of the pay. This was in contravention to Railway Board's policy laid down in their letter of 19.5.1961 which became effective from 22.1.1958. On account of this wrong fixation they suffered economically, in status and rank because it tantamounted to reduction and their seniority position was also affected. In terms of the Decision of the Division Bench of Hon'ble Allahabad High Court (Lucknow Bench) dated 12.3.79 running allowance has been held to be treated as part of the pay and the pay, therefore, should be fixed in accordance with Rule 2027 read with Railway Board's directions of 1961 and 1963. This has been done in the case of Writ Petitioners but they



have been denied the same. They, therefore, prayed that their pay be refixed in terms of the above and they be paid the arrears etc. Some of the petitioners have even retired from service now.

6. The respondents' case is that the pay of the plaintiffs in these Suits had been correctly fixed in accordance with the rules in vogue. The judgement of the Hon'ble High Court of Allahabad (Lucknow Bench) was binding between the parties to the Writ Petition and the suits are barred by time. They had themselves given willingness for selection and promotion in the stationary posts and no representations were ever made by them. They also did not suffer in status and rank and their seniority was not adversely affected.

7. We have heard the learned counsel for both parties. For better appreciation we will like to reproduce the relevant extracts of Rules and directions referred to in the plaints and the judgement of the Hon'ble High Court at Allahabad (Lucknow Bench):-

- i) Rules 2003 and Rule 2544
- ii) Rule 2017
- iii) Rule 2018
- iv) Rule 2027
- v) Railway Board's letter of 1961
- vi) Railway Board's letter of 1963

Rule 2003(21)(a) reads

"pay means the amount drawn monthly by a Railway servant as :-

- i).....
- ii).....
- iii) any other emoluments which may be specially classed as pay by the President."



Rule 2544 of the Railway Establishment Code Vol. II

(RII for short) — This Rule appears in Chapter 25 of R. II which deals with Railway Pension Rules, conditions of grants etc. Emoluments and average emoluments have been defined in this Rule and the Rule reads as follows :-

" The term 'Emoluments', used in these Rules, means the emoluments which the officer was receiving immediately before his retirement and includes -

(a) pay other than that drawn in tenure post ;

(b) personal allowance, which is granted (i) in lieu of loss of substantive pay in respect of a permanent post other than a tenure post, or (ii) with the specific sanction of the Govt. of India, for any other personal considerations.

Note:- Personal pay granted in lieu of loss of substantive pay in respect of a permanent post other than a tenure post shall be treated as personal allowance for the purpose of this article. Personal pay granted on any other personal considerations shall not be treated as personal allowance unless otherwise directed by the President.

(c) fees or commission if they are the authorised emoluments of an appointment, and are in addition to pay. In this case 'Emoluments' means the average earnings for the last six months of service;

(d) acting\* allowances of an officer without a substantive appointment if the acting service counts under Rule 2409 (C.S.R.371), and allowances drawn by an officer appointed provisionally substantively or appointed substantively pro tempore or in an officiating capacity to an office which is substantively vacant and on which no officer has a lien or to an office temporarily vacant in consequence of the absence of the permanent incumbent on leave without allowances or on transfer to foreign service;

(e) deputation (duty) allowances ;

(f) duty allowances (special pay); and

(g) <sup>(i)</sup> For the purpose of calculation of average emoluments:- Actual amount of running allowances drawn by the railway servant during the month limited to a maximum of 75% of the other emoluments reckoned in terms of (a) to (f) above.

(ii) For the purpose of gratuity and/or death-cum-retirement gratuity:- The monthly average



of running allowances drawn during the three hundred and sixtyfive days of running duty immediately preceding the date of quitting service limited to 75% of the monthly average of the other emoluments reckoned in terms of items (a) to (f) above drawn during the same period.

Note:- In the case of an Officer with a substantive appointment who officiates in another appointment or holds a temporary appointment, 'Emoluments' means -

- (a) the emoluments which would be taken into account under this Rule in respect of the appointment in which he officiates or of the temporary appointment, as the case may be, or
- (b) the emoluments which would have been taken into account under this Rule had he remained in his substantive appointment whichever are more favourable to him.

This rule was modified w.e.f. 1.9.62 as indicated in clause (d) of Rule 2544-A(R.II). Rule 2544-A(d)(2) is reproduced below:-

For the purpose of emoluments for (Ordinary) gratuity and/or death-cum-retirement gratuity:- The difference between the average emoluments in respect of items (a) to (d)(1) above calculated upon the last one year of service and the last substantive emoluments as per items (a) to (c) above.

Rule 2544-A(e)(1) & (2) is reproduced below:-

(1) For the purpose of calculation of average emoluments:- The actual amount of the running allowance drawn during the month limited to a maximum of 75% of other emoluments reckoned in terms of (a) to (c) and (d) (1) above.

(2) For the purpose of emoluments for (ordinary) gratuity/death-cum-retirement gratuity:- The monthly average of running allowance drawn during the 365 days of running duty immediately preceding the date of quitting service limited to 75% of the monthly average of other emoluments reckoned in terms of (a) to (c) and (d)(2) above drawn during the same period.

'The actual amount of running allowance drawn' occurring in clause (g)(i) above is 50% of the substantive emoluments for the same period as that of officiating duty in a stationary post. (Railway Board's letter No.F(E)(P)/PN-1/17 dated 7.7.60).



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Rule 2017 RII, 2018 RII & 2027 RII :-

These deal with the fixation of Initial Substantive Pay, fixation of pay on Reappointment and fixation of pay of officiating Railway servants. These lay down the principles of pay fixation and as guidelines for such fixation. These are followed in all cases of pay fixation. We do not consider it necessary to reproduce their extracts. These have to be followed in each case.

Railway Boards Instructions of 1961:

"Attention is invited to para 1(b)(ii) of Railway Board's letter No.E.9(R)49 RS/3 of 1.7.49 as amended vide their letter of even No. dated 29.8.1949 which provides that in the case of Running Staff utilized in stationary appointments for periods of over 21 days, the pay should be fixed under normal rules, 50% of pay in the running post also being treated as pay for the purpose of fixation of pay in the stationary appointment."

Railway Boards Instructions of 1963:

The Railway Board's orders appearing below Rule 152 R as introduced vide their letter No.E(S)52 C.P.C./66 dated 4.8.63 provide that the above rule is applicable only to permanent staff and if alternate employment is found for temporary staff it should be regarded as a purely ex gratia measure, again in case of running staff in whose case Running allowance also forms part of pay it was decided by the Board.....the term former emoluments in case of running staff should also include 50% of their pay as defined in Rule 2003(21)(a)(i) RII in lieu of Running Allowance.

8. Running Staff are paid running allowance in place of travelling allowance and Daily allowance. Certain percentage of this allowance is treated as pay for certain specific purposes e.g. stationary appointments, retirement benefits etc. With a view to have punctual running of trains there has been an attempt to make improvements in the service conditions of the running staff. With this end in view various Committees were appointed from time to time to look into the aspects of the running and other allowances which are paid to the running staff on various accounts



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like mileage allowance, <sup>2/</sup> while engaged on running duties, allowances in lieu of mileage for other than running duties, Breach of Rest Allowance, <sup>2/</sup> a special compensatory allowance to meet their out of pocket expenses incurred at outstations and allowances payable to them when they perform duties either in higher categories <sup>2/</sup> of running staff or on stationary appointment. <sup>2/</sup> ( Para 508 of Indian Railway Establishment Code Vol.I). <sup>2/</sup> It is this ~~special~~ <sup>running</sup> allowance which is granted to the running staff who undertake duties in higher grade of running staff or when appointed to do stationary duties <sup>that</sup> <sup>3/</sup> in question in this petition. The three Pay Commissions in the past had given their recommendations. There was a Joint Advisory Committee, then the Running Staff Pay & Allowances Committee, thereafter the Ashruff Committee, The Railway Labour Tribunals of 1969 and 1971 and lastly a Committee formed on Running Allowances in 1980. Various recommendations have been made by these Committees. In the recommendations of the Committee on running allowance, 1980 the element to be treated as pay in revised scales were determined. This Committee gave careful thought to the various questions and specially the question whether running allowance includes an element of pay and if so what is the nature of such element and to what extent the running allowance counts or should be reckoned as pay. The Committee concluded - <sup>2/</sup>

" It is clear that running allowance does include the element which is treated as pay of the running staff. The question then is whether this element can be treated as an integral part of the pay of the running staff or such element has only the character of pay but does not constitute a part of the basic pay of the running staff."

The point whether the element of pay and running allowance falls under Rule 2003 (21)(a) Clause (i) or Clause (iii) has further been deliberated by the Committee and its



observations were as follows :-

" In this context, it is observed that prior to 1919 running allowance was not treated as pay at all for any purpose except on one of the erstwhile Company Railways. It was only in 1919 that the Government of India obtained the sanction of the then Secretary of State in Council to allow all Railways (in India) at their option to permit the members of the running staff to subscribe to the Provident Fund on pay plus a fixed percentage of pay not exceeding 75 percent to represent the equivalent of mileage allowance and to have their leave allowances and retirement gratuities calculated on this basis. However, by the decisions taken subsequently, this benefit was made applicable to certain other purposes too like fixation of pay in stationary posts, regulation of CCA and HRA, but the extent to which the allowance has been counted as pay for some of the specified purposes has not been the same as in the case of retirement benefits and leave salary. For example, even in the Prescribed scale of pay, running allowance was treated as pay only to the extent of 50% of basic pay for the purposes of fixation of pay of running staff on their appointment to stationary posts. Further, as the rates of running allowance are related only to the grades of staff and not to the basic pay of the each member of the running staff, the percentage of what may be identified as pay element to the basic pay would vary not only from one member of the running staff to another but also in respect of same member it may vary from year to year. It will thus be quantification of the pay element, a varying portion of running allowance has been treated as pay for specified purposes. In these circumstances, the Committee is of the opinion that while it may be accepted that running allowance does include an element towards pay such element is qualitatively different from and it does not have all the attributes of the basic pay of the running staff. It is the view of this Committee that the element in question would rightly fall under clause (iii) of Rule 2003(a)R.II i.e. "emoluments which are specially classed as pay by the President". The Committee considers that the element treated as pay is akin to Dearness Pay which was applicable to the prescribed scales and the authorised scales of pay and which was reckoned as pay only for certain specific purposes.

The Committee considers<sup>xx</sup> that basically<sup>xx</sup> there could be two methods for determining the element of pay:-

- (i) the first method would be to decide the scales of pay which would have been applicable to running staff had the Running Allowances Scheme not been in vogue at all (hereinafter called 'notional scale') and then proceed to determine the percentage of the pay element with reference thereto; and
- (ii) the second method would be to determine the pay element on the basis of existing average earnings of the running staff.



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"A perusal of the Railway Board's decision shows that running staff is entitled to 50% of the running allowance towards the pay which is to be calculated in accordance with rules, in this connection it will also be relevant to note that Railway Board vide its letter No. 19/1961 published in the Gazette of 16-3-1961 quoted President's decision, the relevant portions of the same read as follows:-



"The question has been considered and the President is pleased to decide that the pay of such running staff utilised in stationary appointments for period of over 21 years; days, whose initial ~~pay~~ in the stationary appointment is fixed under the normal rules in accordance with para(b) (ii) of Railway Board's letter No(R) 49RS/3, dated 1-7-1949, should also be refixed under Clause(2) of Rule 2027(FR-31) R-11, 50% of the enhanced substantive pay representing the running allowance being treated as pay for the purpose of such refixation."

3/ 10. In Dilbeagh Rai Jerry V. Union of India and other (A.I.R.1974 S.C.-130), the Supreme Court observed;

26/ " According to the second proviso to this clause, (Rule 2003 Railway Establishment Code) in the case of Staff entitled to running allowances, average pay of the purpose of leave salary shall include the average running allowance earned during the 12 months immediately preceeding the month in which a Railway servant proceeds on leave-subject to a maximum of 75 per cent of average pay for the said period, the average running allowances once determined remaining in operation during the remaining part of the financial year in cases of leave not exceeding one month. The crucial words, which have been underlined, show that such Running Allowance is counted towards average pay in those cases only where the leave does not exceed one month ~~(general decision made)~~."

3/ 11. The observations extracted above, leave no room for any ambiguity in the matter of the element of the running allowance that forms part of the pay. The substantive pay has to be enhanced by 50% to give a figure that will represent the pay to be taken into account for fixation of pay in the Stationary post. This is what is laid down in the Railway Board's Instructions of 1961 <sup>3/</sup> 1963 and



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has also been observed by the Hon'ble Division Bench of the High Court of Judicature at Allahabad (Lucknow Bench) and we reiterate in clear terms that while fixing the pay of the petitioners in the Stationary post running allowance has to be treated as part of the pay but to the extent of 50%, 40% or 30%, as the case may be, of the basic pay in the substantive grade and then the salary has to be fixed in terms of rules 2017, 2018 and 2027. There are of course two separate situations :-

- (1) When period of officiating in Stationary appointment is 21 days or less. In this case more liberal provisions have been made because of the short period involved. Here the average running allowance subject to the total not being less than minimum or more than maximum of the pay of the stationary post is to be added to the basic pay.
- (2) For longer period of officiating i.e. when the running staff get promoted as Power Controllers or Loco Fuel Inspectors which tantamounts to more or less a permanent arrangement, 50% of the basic pay representing the Running Allowance Component in the substantive post is <sup>21 only to be</sup> added to the basic pay for fixation of pay in terms of the Railway Board's 1961 instructions.

12. Railway Board's letter No. PC-60/RA-2/1 of 7.3.1963 reads :

" Under the existing orders contained in Board's letter of even number dated 22.5.1961, as modified in their letter of even number dated 11.12.1961, the treatment of running allowance as pay for certain purposes, in the



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case of running staff drawing pay in the authorised scales of pay is as follows;

(i): Pay for purpose of passes and PTO's is pay plus 60% of pay.

(ii): Pay for purpose of leave salary, medical attendance and treatment, educational assistance, retirement benefits etc. is pay plus actual amount of running allowance drawn subject to a maximum of 75% of pay.

(iii): Pay for purpose of fixation of pay in stationary posts, compensatory (City) allowance, house rent allowance, rent for railway quarters, income tax etc. is pay plus 25% of pay.

On a further representation to the Board that the percentage of running allowance to be treated as pay in case of item (iii) above has adversely affected the interest of the running staff, the Board have treated that the orders referred to against item (iii) above should be treated as modified as indicated below:-

" Pay for purpose of fixation of pay in stationary posts, compensatory 'City' allowance, house rent allowance rent for railway quarters, income tax etc. shall be pay plus 40% of pay."

These orders take effect from 1.2.63 and have the sanction of the president.

The pay of staff whose pay as fixed taking into account 25% of pay should now be refixed from 1.2.63 taking into account 40% of pay."

13. Thus the basic pay was to be enhanced by 50% under the 1961 instruction. This stood modified to enhancement by 40% under the 1963 instructions while fixing the pay in the Stationary appointment. The 1961 instructions were effective from 1.4.1958 and the 1963 instructions from 1.2.63. By the 1976

~~order~~ <sup>instruction</sup> this element has been further modified to 30%



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of the basic pay. These became effective from 1.4.76.

14. A similar question was raised in the Miscellaneous Petition no. 45 of 1982 S.K.Tiwari & others Vs. U.O.I. in the Madhya Pradesh High Court. The observations made were:-

"....The Petitioners are, however, not satisfied with the pay fixation and submit that the running allowance should have been taken into consideration twice while fixing their pay. According to them, the basic pay drawn by them should have been increased by adding 30% of the running allowance as per Rule 201B of the said code and the running total of this amount should be taken as the basis of re-fixation of pay on the stationary posts as per Rule 2027. After so re-fixing the initial pay an amount of 30% of the running allowance should have been again added!..."

"....A perusal of the judgment of the Allahabad High Court indicates that the said court nowhere directed that the running allowance should be taken into consideration first for ascertaining the basic pay for purposes of fixation and, <sup>again</sup> ~~again~~, for fixing the actual pay on the promoted post. In fact, this point was not raised for consideration of the said court and was not decided. In the said case, it appears that the running allowance was not at all taken into consideration while fixing the pay of the petitioners in the promoted cadre, ~~was~~ according to the Railway Administration, running allowance could not be treated to be pay within the meaning of the Rule....."

"....During the course of arguments, this court directed both the parties to file chart showing how the pay has been actually fixed and how it should have been really fixed. According to the Railway Administration they have taken the substantive pay of the running post held by the petitioners as the ~~basic pay of the running~~ ~~pay of the running~~ for computing the pay for purposes of fixation in the higher grade and have added one increment, in the lower grade and 30% of the pay in lieu of running allowance to make the pay for purposes of fixation in the new grade. The pay so reached, has to be taken to be the basis for re-fixing the new pay on the higher cadre. They have cited the example of the petitioner S.K.Tiwari, who was working as a Driver in the pay-scale of Rs.330-560 and was



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drawing Rs. 515/- as pay when he was promoted to the stationary post. His substantive pay of Rs. 515/- was increased adding Rs.15/- in the lower grade and, thereafter, a further sum of Rs. 155/- being the 30% of pay in lieu of running allowance was also added so as to make a total of Rs. 685/- for purposes of re-fixation in the higher grade of Rs. 550-700/- Since the nearest point was Rs. 700/-, the said Shri Tiwari was fixed at Rs.700/- in the higher grade. According to the learned counsel for the petitioners, though the fixation of Rs. 685/- as the pay for purposes of re-fixation of Rs.700/- in the higher grade was correct, further sum of Rs.155/- should have been added to the re-fixed pay as provided under Rule-2027 read with Circular dated 19.5.1961. The controversy, therefore, is limited to examining whether Rule-2027 read with the Circular dated 19.5.1961, required the respondents to add the percentage of running allowance after the pay had been fixed on the promoted post...."

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.... "According to the learned counsel, sub-rule(2) of this Rule." deals with enhancement of substantive pay as a result of increment or otherwise. According to him, the word "otherwise" would include the decision of the Railway Board which required enhancing the substantive pay of the petitioners by adding 30% of the running allowance. Even if this interpretation of the petitioners is to be accepted, there would be no justification for increasing the pay in the higher grade after its re-fixation by adding the running allowance. A plain reading of this Rule indicates that after the substantive pay of the petitioners had been fixed by increasing it, their pay in the higher cadre shall be re-fixed under sub-rule(1). Sub-rule(1) only authorises the petitioners to draw the presumptive pay of the post. Presumptive pay of a post itself is defined in Rule-2003 (2a) and excludes special pay. In fact, the presumptive remains the pay of posts to which they would be entitled if they held the post substantively. Admittedly, the stationary posts do not carry with them running allowance and, hence, the pay on the stationary post would not include the running allowance either within the definition of "pay" or "presumptive pay". Clearly therefore, the arguments of the learned counsel for the petitioners based on Rule 2027 cannot be accepted...."

15. We are fully in agreement with the observations made by Hon'ble G.Gupta-J on 24.11.85 in the Madhya Pradesh High Court case cited above. It will be perfectly alright for the petitioners to claim fixation on the basis of 1961 and 1963, 1976 instructions of the Board but under



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no imaginable circumstance have another 50, 40 or 30% of the pay added to the refixed pay in the stationary post. Such a claim will be preposterous and ~~imx~~ unimaginable and cannot be accepted. The percentage of basic pay which is to be added to it has only to be once and in terms of the instructions and rules, it has to be added to the basic pay after adding one increment in the substantive scale and the total so arrived at gives the pay <sup>for</sup> fixation at the corresponding stage in the new scale of the stationary post for all such arrangements made for over 21 days i.e. long term arrangement.

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16. Rule 2027 also lays down that on an enhancement in the substantive pay as a result of increment or otherwise, such Railway ~~employee~~ <sup>Servant</sup> shall draw the presumptive pay of that post. The enhancement is naturally by giving him one increment and then adding the relevant percentage (50, 40 or 30) to the basic pay to arrive at the relevant stage in the scale of pay in new post. Running allowance is a part of the pay of the pay in the Running Category. It is not a part of the pay in the stationary post nor is it to be added to the newly fixed pay in the stationary post because in terms of the rules and orders it has to be added to the pay in the Running post e.g. Driver and Guard etc. only to ensure that the new pay in the stationary post does not put the employee, who was earning running allowance, to an ~~inherent~~ <sup>inherent</sup> disadvantage. In our opinion once an employee opts to change to a stationary post he cannot have a claim of protection in respect of the Running allowance which he used to get when



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performing Running Duties except in terms of these percentages as explained above. This allowance at that moment was more in the nature of Daily Allowance and Travelling allowance and other out of pocket expenses and as an incentive for obtaining better punctuality and efficiency in the running of trains. Once the employee gets on to the stationary post, he has to equate himself to others in the same category. The benefit of pay element of running allowance had been given to him to give him this equation of the Running post viz a viz persons in other than running post. It was thought and introduced on the principle of similar pay for equivalent work and the analogy of equal pay for equal work gets extended to the situation when he gets on to the stationary post. This seems to be the principle behind such a provision.

17. The petitioners have taken a plea that no part of the running allowance, which the plaintiff were drawing while working on Running posts, was included in the pay which was fixed at the time of their posting on stationary jobs on the ground that running allowance was not part of the pay. According to them there was violation of the Railway Board's letter of 19.5.1961 which was enforced from 22.1.1958. We have already discussed the purport of this letter in paras above. According to this letter 50% of the basic pay in the substantive post was to be treated as equivalent of the Running Allowance element of pay and was to be added to this pay to fix the stage in the substantive grade before re-fixing the pay in the higher officiating appointment on stationary post. <sup>2/11</sup> Paper 26-B in Civil-



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A-ppeal no.165/84 shows the calculation for fixation of pay of Sri R.K.Sharma and others who were Drivers 'C' in grade Rs.80-185 (PS) <sup>31/ on their promotion to</sup> as the grade Rs.260-350 (PS) as PCOR which was a stationary post. He was drawing Rs.162/- in the lower grade. On this promotion as PCOR, they were fixed at Rs. 260/- in the stationary post. This was done by enhancing substantive pay by 50%. Thus, the contention of the petitioners, (this is the way it has been done for others also) is not correct. The pay equivalent of the Running Allowance has been taken into account in pay fixation in terms of Railway Boards letter of 1961. The plea taken by the petitioners is not found on sound basis and is liable to be rejected.

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18. Similarly in paper no.27-C/2, in Civil-Appeal no.2 of 1985, the calculations made of the Driver 'C' who were in the scale of Rs.80/-185/- (PS) when they were promoted in the scale of Rs.260-350 (PS) or 335-425 (AS) has also been done after enhancing the substantive pay by 50% in view of the fact that this was element of the running allowance to be taken into account. What is important to note is that by such fixation, the petitioners' pay in the officiating higher grade of Stationary post, had to lie within the minimum and maximum of the <sup>31/ new</sup> grade. The <sup>31/</sup>hollowness of the proposal and preposterousness of the claim shall be evident from the fact that in their own calculations, which the petitioners have submitted



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as paper No.8C/5 in Civil Appeal No.2 of 1985 when their pay were fixed as Rs.260/- in the grade Rs.260 - 350(P.S) they have shown their entitlement as Rs.690/- which has no relationship with the maximum or minimum of the grade of Rs. 260 - 350(P.S) and is thus out of all proportions and can therefore, not be in accordance with the rules of fixation of pay or in accordance with the principles and interpretation of the rules of fixation of pay, which have been laid down in the judgement given by Lucknow Bench of the <sup>Honble 28</sup> High Court of Judicature at Allahabad on 12.3.79. Formulation must form a rational criteria and therefore the rules have to be interpreted in their proper sense to evolve such formulation. The judgement of 12.3.79 has already been reproduced in first paragraph of our judgement. According to this judgement the Railway Administration has been directed to refix, the pay for the period during which the petitioners had held officiating appointment to the stationary post according to the relevant rules which are rules 2017, 2018 and 2027 read with relevant circular and President's decision respectively applicable to the petitioners. We have already indicated in paragraph supra, how the element of running allowance which forms part of pay has to be taken into account in pay fixation. We think that this should leave no room for any ambiguity. We do not find that in the pay fixation as has been done by the respondents, this element of running allowance has been ignored. It has been rightly taken into account and the claim of the petitioners for refixation according to their own calculations, does not hold ground and is not in accordance with the rules.



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19. There is some <sup>in</sup>coherence in Railway Board's instruction of 19.5.1961. These lay down in para 2 that the pay of running staff utilized in stationary appointment which is fixed under the normal rules in accordance with para 1 (b)(ii) of Railway Board's letter of 1.7.1949 should also be refixed under Clause (2) of Rule 2027 R.II, 50% of the enhanced substantive pay representing the running allowance being treated as pay for the purpose of such refixation. For periods of over 21 days Railway Board's letter No.E(R)/49.RS/3 dated 1.7.1949 reads as follows :-

" The pay should be fixed under Rule 2017 R.II, 50% of pay in the running post also to be treated as pay for the purpose of fixation of pay in the stationary appointment. "

This position has been clarified in Railway Board's letter of 16.8.1961 which reads as under :-

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" Attention is invited to para 1(b)(ii) of Railway Board's letter No.E(R)/49-RS/3 dated 1.7.1949 as amended vide their letter of even No.dated 29.8.1949 which provides that in the case of running staff utilized in stationary appointment for periods of over 21 days the pay should be fixed under normal rules, 50% of pay in the running post also being treated as pay for the purposes of fixation of pay in the stationary appointment. "

20. A plain reading of Rule 2027 makes it very clear that after the substantive pay has been fixed by giving one increment in the lower grade, the pay in the higher officiating grade has to be refixed under Sub Rule 1. This rule only authorises to draw the presumptive pay of the post and as has already been clarified the presumptive pay of a post is the pay to which a person is entitled if he



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held a post substantively. Posting to a stationary post which is in a higher grade is what is involved in this case. There is no doubt that the stationary post is in a higher grade. There is also no doubt that the post in the running grade from where the petitioners were promoted or put to officiate on a stationary post were in a lower scale of pay. It is also clear that stationary post does not carry any running allowance. The object behind the whole exercise of counting the portion or percentage of pay as equivalent component of the running allowance as a part of the pay before the pay is refixed in the higher grade is to do away with the financial disadvantage that an employee may have to suffer and also to give him some attraction to opt and apply for promotion to the stationary post. In conclusion fixation and re-fixation cannot result in payment of a salary of Rs.960/- for holding a post which has a scale of Rs. 260 - 350 per month only and by no stretch of imagination any employer can issue such absurd instructions as to result in a situation that will conclude to such a result.

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21. In the result, Civil Appeal No.24 of 1985 is allowed and judgement and decree of the learned Munsif in Suit No. 530 of 1981 is set aside. The suit is dismissed with the directions that if the fixation of pay had not been done in all cases in accordance with the observations made by us, irrespective of the fact that the plaintiffs have retired or not, the same may be done and arrears if any be paid within three months keeping the limitation of three years in view. No other points were pressed during the arguments.

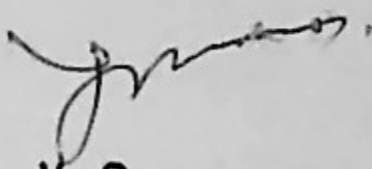


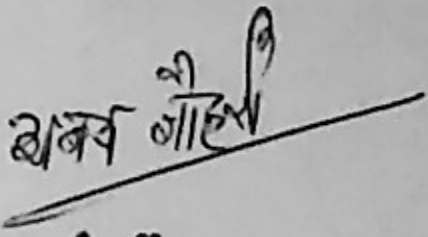
22. In Civil Appeal No. 165 of 1984, the appeal is dismissed <sup>31</sup> and the judgement and decree of the learned <sup>31</sup> Munsif <sup>31</sup> passed in Suit No. 342 of 1982 is modified also in terms of the directions given in para 21 above.

23. In Civil Appeal No.2 of 1985, which is against the judgement and decree of the learned Munsif in Suit No. 504 of 1981, the appeal is allowed and the judgement and decree is set aside and the suit is dismissed. The same directions as in para 21 above, will also apply in this case.

24. In all the above cases, the parties will bear their own costs throughout.

25. This judgement will govern all these three appeals. Let a copy of this judgement be placed on each of the above files.

  
V.C.

  
A.M.

Dated the 10<sup>th</sup> Dec., 1986.

RKM