

Reserved

Central Administrative Tribunal, Allahabad ~~13~~

Registration T.A.No.577 of 1987 (Writ Petition
No.7956 of 1980)

S.C.Sharma and 10 others ... Petitioners

Vs.

Union of India and 18 others ... Respondents

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This transferred application is a writ petition under Art.226 of the Constitution of India and has been received from the High Court of Judicature at Allahabad u/s.29 of the Administrative Tribunals Act XIII of 1985.

2. The case of the petitioners is that they were initially appointed as Guards (running staff) in the Northern Railway. In Dec.1976, the petitioners appeared in the selection held for the post of Section Controllers and their names were included in the panel of the Section Controllers prepared on the basis of the said selection. It is alleged that while determining the seniority position in the panel the length of service in the same grade of pay is taken into consideration and as the running staff of the railway administration receive certain allowances known as running allowances, their grade of pay is kept lower than that of the stationary staff and under the normal practice when¹ a member of the running staff is posted on stationary duty or he proceeds on leave his pay is fixed by adding 30 per cent of his basic pay in lieu of running allowances and the same is treated as part of his pay to equate it with the grade of pay of the stationary staff.

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The grievance of the petitioners is that while preparing the panel of Section Controllers, the rule of adding 30 per cent of the basic pay of the petitioners was completely ignored and their seniority was determined solely on the basis of the grade of the ~~pay~~¹ of Guards as a result of which almost all the persons selected as Section Controllers from the running staff were placed lower in the list than the members of the stationary staff. The petitioners are said to have made a representation against their seniority reflected in the panel to the Chairman Railway Board-respondent no.2 with copy to the General Manager, Northern Railway. The General Manager is said to have recommended the case of the petitioners for adding 30 per cent of their pay to the minimum as well as maximum of the scale of pay for the purposes of drawing the combined seniority of the different categories eligible for the post of Section Controllers. The petitioners further alleged that the Railway Board after considering their representations and recommendations of the General Manager felt convinced about the injustice being done to the running staff and issued letter dated 15.6.1979 directing that the aforementioned obvious disadvantage to the running staff should be removed by adding to the pay scale of the running staff roughly 30 per cent of the same in lieu of running allowances for the purposes of comparison with the non-running categories for promotion/selection and also provided a comparative table of the pay scales of the running staff and in compliance of the said letter, the Divisional Railway Manager Northern Railway Allaha-

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bad- respondent no.3 got the seniority list of the Section Controllers corrected. The orders issued by the Railway Board in this connection were to take effect from 2.9.1977. Later on feeling that without giving retrospective effect to the said directions a large number of employees will be adversely affected the Railway Board reviewed its order dated 2.9.77 and issued another letter dated 14.6.1979 extending the said benefit to all the running staff absorbed in alternative arrangement on or after 1.1.1973.

3. The petitioners further alleged that for the reasons not known to them, the Railway Board issued another letter dated 22.3.1980 stating that the letter dated 14.6.79 will apply to medically decategorised staff whereas the order dated 15.6.79 will apply to future selections. On the strength of the letter dated 22.3.1980, the respondent no.3 again revised the seniority list placing the petitioners below the private respondent nos. 6 to 19. The petitioners thereafter filed this petition for a direction that the order dated 22.3.1980 of the Railway Board and the consequential orders passed by the respondent nos.3 and 4 revising the seniority be quashed and the respondent nos. 1 to 5 be directed to enforce the seniority list previously prepared under the order dated 15.6.1979 of the Railway Board.

4. The petition has been contested on behalf of the Govt. (Railway) respondent nos.1 to 5 and in the counter affidavit filed on their behalf by a Senior Clerk in the office of DRM Allahabad, it has been stated that the post of Section Controller is a selection post and the petitioners along with others were selected for the said post vide

result declared on 18.1.1977. The running allowance received by the running staff was not part of the pay and salary but by letter dated 15.6.1979 of the Railway Board concession was given to the running staff to the extent that 30 per cent of their running allowance was to be taken into consideration for the purposes of determining their grade for eligibility in the selection. It was, however, made clear that this ^{concession} ~~selection~~ would have no application to the selection already held by the railway administration. Before the issuance of the said letter, there was no practice to take into consideration 30 per cent of the running allowance for the purposes of eligibility and seniority. The petitioners can have, therefore, no grievance for not taking into consideration the running allowance received by them at the time of the preparation of the panel for Section Controllers and their seniority was rightly ~~xxxxxx~~ determined in the panel. The petitioners did not make any representation against their seniority list and their allegation to the contrary is not correct. The petitioners have now no right to challenge the seniority list and the order dated 22.3.1980 of the Railway Board.

5. In the rejoinder filed by the petitioners it was stated that the rule of adding 30 per cent of the running allowance to the pay of the running staff has been provided even in paras 911 and 913 of the Indian Railway Establishment Manual (hereinafter referred to as the Manual) and as the same was being ignored for the purposes of fixing seniority, the Railway Board had issued the letter dated 15.6.1979 which was to be given

retrospective effect as it was merely explanatory to the existing rules and in view of the letters dated 2.9.77 and 14.6.79, the petitioners were entitled to this benefit and their seniority is liable to be revised after taking into consideration their running allowance to the permissible extent.

6. Most of the petitioners appear to have retired from service in the meantime and only the petitioner no.9 who had appeared in person before us had argued the case on behalf of the petitioners. On behalf of the respondent nos. 1 to 5, the railway counsel Sri N.K. Varma had appeared. Both the parties had advanced their arguments in the light of their pleadings stated above.

7. It is not in dispute in this case that the petitioners before their selection as Section Controllers vide letter dated 18.1.1977, copy annexure 1, were posted as Guards and were entitled to running allowance. It is also not in dispute in this case that the members of the stationary as well as running staff were selected for the posts of Section Controllers and for preparing the panel, the seniority of the selected candidates is determined with reference to grade of pay and length of service in the same grade. The contention of the petitioners is that, as the members of the running staff get running allowance their regular pay scale is less than the stationary staff and on account of this fact, their position in the panel of the Section Controllers was much lower. The contention of the petitioners is that where a member of running staff is posted on stationary duty or proceeds on leave, his pay is fixed by adding 30% of the basic pay in lieu of the running allowance and the same is treated as part of his pay to equate it with the pay of the stationary

staff. Their stand is that the same formula should be taken into consideration for determining their seniority at the time of the preparation of the panel of Section Controllers and as this was not done, they had made a representation to the Railway Board, copy annexure 2, on 6.1.1979. These facts do not appear to be in dispute in this case. The petitioners have placed their reliance on the Railway Board's letter dated 2.9.1977 circulated by the General Manager(P) with his letter dated 15.9.1977, copy annexure 6. It appears from this letter that the Railway Board had revised its earlier policy of not absorbing medically incapacitated staff in higher scales and in case of running staff to make the comparison in respect of pay only excluding the running allowance, ^{and} it was decided that 30% should be added to the minimum as well as to the maximum of the side of pay of the running staff for the purpose of identifying equivalent post. These new orders were to take effect from the date of issue and the past cases decided otherwise were not to be reopened. On 14.6.1979, the Railway Board made further relaxation in this respect and vide their letter dated 14.6.79, copy annexure 7, it was decided that all cases where running staff had been absorbed in alternative arrangement on or after 1.1.1973 be reviewed and the benefits arising from the order of 2.9.1979 be afforded to the running staff.

8. On 15.6.1979, the Railway Board issued another letter, copy annexure 4, providing that the pay scales of the running staff, roughly 30% of the same (in lieu of running allowance) should be added for the purpose of comparison with non-running staff for promotion/selection. This letter further laid down the new scale of the running staff for the purpose of comparison after making

addition to this permitted extent. The contention of the petitioners is that this was ^{done &} ~~so~~ keeping in view the various representations made by the running staff including the petitioners to remove the hardships suffered by the running staff in the matter of their seniority at the time of determination of their inter se seniority, vis-a-vis, the stationary staff. Their stand, therefore, is that in view of this letter dated 15.6.79 read with earlier letter dated 14.6.79 (copy annexure 7) aforesaid, the petitioners became entitled to the enhancement in their pay to the extent of 30% for determining their inter se seniority from the date they were empanelled as Section Controllers. The railway administration giving the advantage of these circular letters also revised the seniority list of the petitioners and others on 31.10.79, copy annexure 5.

9. After the aforesaid exercise, the Railway Board issued another circular letter on 22.3.1980. The whole letter has not been brought on record and its relevant extract as available as annexure 8 to the writ petition is reproduced below :-

" The instructions contained in Board's letter of 14.6.79 apply to medically decategorised staff whereas the order of 15.6.79 apply to future selection. For this purpose, it is regretted that retrospective effect to the instructions cannot be given as it will create huge complications."

10. This letter turned the table and as the letter dated 15.6.79 was issued after the empanelment of the petitioners their seniority was again revised ignoring the said letter. The petitioners have, therefore, prayed that the letter dated 22.3.1980 of the Railway Board be quashed and their seniority as revised under letters dated 14.6.79 and 15.6.79 be restored. Their grievance is that they were not given any opportunity of hearing before

re-revising their seniority after 22.3.1980 and the benefit given to the petitioners by letters dated 14.6.79 and 15.6.79 could not be abruptly taken away by the letter dated 22.3.80 of the Railway Board.

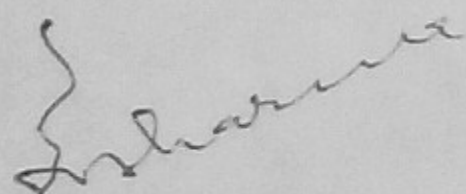
11. After careful consideration of the contentions raised before us, we are of the view that there is not much force in the contention of the petitioners. It is apparent from the letter dated 2.9.77 (annexure 6) that it applied only to medically incapacitated staff and not to the whole running staff. The letter dated 14.6.79 (annexure 7) simply gave the benefit of the letter dated 2.9.77 w.e.f. 1.1.1973. It is, thus, apparent that the letter dated 14.6.79 should apply only to the medically incapacitated staff and not to ^{general} ~~every~~ running staff. It is not the case of the petitioners that any of them was medically incapacitated and as such, in our opinion, they are not entitled to ~~the~~ benefits of the letters dated 2.9.77 and 14.6.79 (annexures 6 and 7) of the Railway Board.

11. For the general running staff (other than medically incapacitated) for the first time vide its letter dated 15.6.79 of the Railway Board they decided to add to their basic scales roughly 30% of their pay in lieu of running allowance for the purpose of comparison with the non-running categories to remove the disadvantage suffered by them. Under the common law all laws, rules, regulations and circular orders have to take effect from the date of their promulgation or issue unless their operation is made retrospective. We are, therefore, of the view that the advantage given by the Railway Board to the running staff under this letter cannot be had by the petitioners as they were promoted or empanelled much earlier. The impugned letter dated 20.3.1980 simply makes a clarification that the instruc-

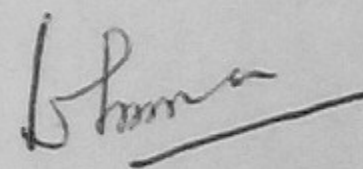
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tions contained in letter dated 14.6.79 apply to medical-ly decategorised staff only while the order dated 15.6.79 will apply to future selections only making it clear that retrosepctive effect could not be given to the instructions contained in the letter dated 15.6.79 to avoid complications. There appears to be nothing illegal in this clarification. No vested right of the petitioners was taken away by this letter and as the seniority list relied upon by them was prepared under a mistake wrongly applying the ^{of-mentioned} circular letters to the case of the petitioners, their seniority was re-revised after this clarification. As stated above, the circular letter dated 14.6.79 was never intended for the running staff of the general category and its benefits were limited only to the medically decate-gorised staff while the letter dated 15.6.79 did not contain any stipulation to apply it with retrospective effect and , as such, the grievance of the petitioners is not genuine and they are not entitled to ^{the} reliefs claimed.

12. The writ petition is accordingly dismissed without any order as to costs.



MEMBER(J)



MEMBER(A)

Dated:2nd Dec.1988
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