

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

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Registration T.A. No. 1975 of 1987

(W.P. No. 12969 of 1985)

L.S. John Petitioner.

Versus

Union of India and others Respondents.

Hon'ble Mr. K. Chayya, Member (A).

The above petition has been received on transfer from the High Court of Judicature at Allahabad under section 29 of the Administrative Tribunals Act, 1985. The applicant who is working in the Northern Rail-way has prayed for fixation of his pay in the proper grade and to give him service benefits like seniority, provident fund, special contribution to provident fund etc.

2. The facts of the case which are not in dispute are that the applicant joined service in Northern Railway as clerk in 1956 (Rs. 60-130). Subsequently in 1963 he was promoted as Guard 'C' (Rs. 130-225), he continued to be Guard 'C' till 15.8.1974, after which on selection he was promoted as Transportation Instructor (Rs. 425-640). Guard 'C' is a running post, while the post of Transportation Instructor is in the category of "Stationary post". The employees holding 'running Posts' are paid besides pay and dearness allowance etc. certain other allowances like running allowance, which the employees working in stationary post are not entitled to. The grievance of the applicant is that on his transfer to "Stationary Post" he was entitled to get 75% of running allowance drawn by him as Guard 'C' towards the basic pay in Transportation Instructor's Post, but his pay was fixed without adding any running allowance and this is in contravention of Railway Board circular dated 22.3.1976.

3. The stand taken by the respondents in their counter

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-affidavit is that while fixing pay of the applicant running allowances to the extent of 30% was added and his pay was fixed initially at Rs. 515/- w.e.f. 1.5.1975. However, this was further raised to Rs. 640/- in pursuance of Court's orders. According to them, the benefit of running allowance is given at different rates for different purposes, and for purposes of pay fixation 30% of running allowance is added to the basic pay on appointment/ absorption of running staff as stationery staff:

4. The counsel of the parties were heard. It would be necessary to go through relevant rules, as the matter rests solely on what the provisions contain. Reliance has been placed by the counsel for the applicant in rule 1302 of the Indian Railway Establishment Code, Vol.I Chapter-XIII, wherein it is laid down that monthly emoluments of the Non-gazetted Railway Servants entitled to running allowances shall include the actual amount of running allowances drawn by him during the months limited to 75% of pay. The counsel for the respondents on the other hand, relied on the Boards Circular dated 21.1.1974 and pointed out that running allowances is computed at a different rates for different purposes i.e. it is 40% for purposes of issue of passes and P.T.Os, 45% for the purposes of leave salary and medical attendance and - 30% for purposes of pay and that the applicant is entitled to only 30% and not 75% as claimed by him.

5. I have also carefully perused the photo-stat copies of relevant rules filed by the learned counsel for the applicant as contained in Indian Railway Establishment Code (I.R.E.C.) Vol.1 and II. In chapter 5 section(2) of I.R.E.C. Vol.I various allowances admissible to the running staff is mentioned. It is also mentioned that post of Guards comes under running staff, and also about the officiating

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allowances given when staff is posted to higher grades of stationary posts and also the proviso under rule 1302 ~~in~~ indicates that the monthly emoluments of Railway Servants entitled to running allowances shall also include actual amount of running allowa-nces drawn by them during the month limited to a maximum of 75% of his pay. The counsel for the respondents has also filed photostat copy of the relevant rules which according to him are on subject. The circular dated 30.3.1976 is to the effect that running allowances is counted at different percentage for different purposes and for purpose of pay 30% running allowances is to be added. There is another circular dated 20.2.1965 serial No. 2866 according to which running staff appointed to stationary post would be entitled to 40% of running allowances added to their pay. The learned counsel for the applicant also relied on the decision of the High Court of Allahabad, Lucknow Bench in Union of India and others Versus Smt. Afeer Jahan Begum and others decided on 12.3.79. Disposing of bunch cases the High Court held that running staff while posted to stationary posts should be paid running allowances in accordance with the rules read with the Railway Board Circulars issued in 1961 & 1963. The learned counsel also cited decision of the Tribunal in Shri Deo Dutt Sharma and others Versus Union of India (A.I.R.1987 By I C.A.T. 221).

6. I have carefully gone through the judgements cited above, only the operation of the differential percentage was struck down on ground that these are on the basis of Executive Instruction and not by amendment of rules. The learned counsel for the respondents pointed out that running allowances and others emoluments of the Railway staff are governed by the relevant rules and the Railway Board is vested with the powers to frame rules, amendment rules and also change service conditions and

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this right of the Railway Board has been upheld by Supreme Court in B.S. Vadera Vs. Union of India and others (A.I.R. 1969 S.C. page 118)

7. Considering the legal and others aspects of the case it would appear that from time to time Railway Board has been issuing orders and circulars on the subject of running allowance and portion thereof to be added to the basic pay in fixation of pay of running staff transferred/appointed to stationary posts. The percentage also appears to be different for different purposes. The order dated 30.3.1976 lays down 30% of running allowances to be treated as pay in stationary post. The fact that staff working in running post are entitled for running allowances limited to 75% of their pay is not in doubt but the question is what is the running allowances that should be permitted to be added to the pay of the running staff posted to stationary post. On this there are circulars issued from time to time but in no circular it is mentioned that 75% of running allowance should be treated as pay in a stationary post. I am also of the view that by virtue of rule making powers vested in the Railway Board, the Board is competent to frame rules in respect of non-gazetted employees and the rules can not be challenged on ground of competency. The circular contained in serial No. 2866 in 1965 lays down that in the case of employees posted to stationary posts from running post, they should be allowed 40% running allowances in fixation of their pay.

8. In the circumstances the applicant is entitled for 40% of running allowances to be added to his pay as Transportation Instructor. Accordingly, the respondents are directed to refix the pay of the applicant, adopting 40% running allowance as pay with

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effect from the date of his appointment as Transportation Instructor. The respondents are further directed to finalise the entitlement due to the applicant and pay the arrears due to him within a period of 5 months from the date of receipt of a copy of this order. The application is allowed as above. Parties to bear their costs.

R. K. A.
Member (A)

Allahabad 26th November, 1991

(RKA)