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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Original Application No.1182 of 1988.

T.D. Malhotra & others Applicants.

Versus.

Union Of India & others Respondants.

Hon'ble Mr. A.K. Sinha, Judicial Member.

1. The four applicants, who retired as guard in the Railway Administration, have filed this application under Section 19 of the Administrative Tribunal Act, 1985, jointly praying that the respondents be directed to re-fix their pay and pension in accordance with the provisions of the Indian Railway Establishment Rules as also Railway Board's letter dt.21.1.1974 treating the 'running allowance' paid to them as part of their pay upto maximum of 75% of the pay while calculating the retirement and other benefits: they have also prayed that they should also be given the benefit of the decision of the Tribunal of the Principal Bench given in Case No.410(T) dt.6.8.86 (Shri Dev Dutt Sharma & others Vs. Union of India & others).

2. At the time when the case was called on for hearing nobody appeared for the applicants. Mr. A.K. Gour, learned counsel for the respondents was heard at length and I have also gone through the pleadings of the parties including the rejoinder filed by the applicants.

3. However, in order to appreciate the points involved as to whether the applicants are entitled to the reliefs claimed, it is necessary to give a short resume' of the facts which are as follows:

Applicant No.1 Mr. T.D. Malhotra retired from

the post of Guard 'A' special on 30.11.77; applicant no.2 Mr. L.D. Mishra retired from the same post of Guard 'A' special on 1.12.83; applicant no.3 Mr. B.R. Singh also retired similarly on 4.7.80 and applicant no.4 Mr. R.G. Joshi retired on 14.11.81 from the post of Driver 'C'. All these applicants retired while working at Jhansi in Central Railways under the respondents. Admittedly, the posts of Guards and Drivers are 'running cadre post' and they are entitled to 'running allowances' commensurate to the mileage covered during duty period. Running allowance, it was averred, is treated as part of 'pay' for all purposes.

4. It is also an uncontroverted fact that on retirement, part of 'running allowance' is considered as pay for fixing the post retirement benefits including pension etc. The Railway Administration have framed rules making provisions for reckoning 'running allowance' 75% of pay for the purposes of calculating the retirement benefits in the case of running staff. On the recommendation of third pay commission in the year 1973, the Railway Administration issued revised pay scale for the Railway Services giving various scale of pay to the different categories of the employees without, however, making any change in the reckonable percentage of 75% in the case of 'running staff' which was allowed to continue as before. The Applicants were asked to exercise their option for the revised scale of pay and, as a matter of fact, they did so keeping in view the reckonable percentage of 75% remaining as before.

5. The case of the applicants is that the Railway Board by their letter dt.22.3.76 reduced the reckonable percentage of 75% of running allowance to 45% to the disadvantage of the 'running staffs' which was challenged before this Tribunal in Shri Dev Dutt Sharm's Case No.410(T) of 1985 and the Tribunal by its decision dt.6.8.86 held the impugned order dt.22.3.76 of the Railway Board as illeg-

illegal and quashed the same with a direction to the respondents to continue to make payment beyond 31.3.76 certain allowances including retirement and other specified benefits by treating the running allowances for various purposes in accordance with the Railway Ministry's letter no.PC/III/73/RA dt. 21.1.74 till such time as the relevant rules in this regard are or have been amended in accordance with law, if so advised".

6. The case of the applicants is that they have retired after 22.3.76 and the reckonable percentage of 75% of the running allowance for retirement and other benefits has been reduced at the rate of 45% as contained in the Railway Board's letter dt.22.3.76 which has since been quashed and so the applicants are also entitled to get their retirement benefits etc calculated in accordance with the Railway Board's letter dt.21.1.74 which has since been denied to them inspite of repeated representations made in this regard. It is further averred that the Railway Board have issue letter no.PCIII/86/MS/23 dt.9.3.87 giving directions that the decision of the Tribunal dt.6.8.86 will be followed in the case of the petitioners of that case and not in the cases of all those who are similarly placed. The case of the applicants is that they are similarly placed so far as regards the facts and circumstances of the case of Mr. Shri Dev Dutt Sharma's case and, therefore, entitled to the same benefits.

7. The respondents, on notice, appeared and filed their counter affidavit repudiating the claim of the applicants alleging inter alia that prior to the introduction of the revised scale of pay effective from 1.1.73, the 'running staffs' used to get retirement benefit on the basis of basic pay plus actual monthly average running allowances earned during preceeding 356 days subject, however, to the maximum of 75% of the basic pay and consequently

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consequently actual running average allowances earned by the running staffs vastly exceeded 75% of the basic pay, in almost all cases, retirement benefits were paid on the basis of basic pay plus 75% basic pay as running allowances. Due to the change in the structure of pay on account of revision of pay scales in the year 1973, revised percentage in this regard for the running staffs had to be accordingly fixed and so interim order dt.21.1.74 had to be issued by the Railway Administration. But subsequently, however, in order to avoid the hardship, the Railway Board issued letter dt.17.8.79 whereby it allowed the retirement benefits of the running staffs to be calculated in terms of earlier letter dt.21.1.74 if it happened to be beneficial to them. The learned counsel for the respondent submitted that now the position is that in view of the Tribunal's decision given in Shri Dev Dutt Sharma's Case (Case No.410(t) of 1985, a more liberalised order by the Railway Board dt.9.3.87 has been issued and gave benefits to all other persons of the running staffs.

8. I have carefully gone through the averments made in the pleadings of the parties and their respective documents and also carefully gone through the judgement of the Tribunal referred to above and it appears to me that in view of the facts and circumstances, the ratio decidendi of Shri Dev Dutt Sharma's case referred to above is applicable in all fours to the facts of the instant case where the applicants are also aggrieved by the impugned letter dt 22.3.76 and they want that their post retirement benefits should be re-fixed in terms of the decision of this Tribunal referred to above which has since quashed the impugned order and directed the respondents to continue to make payments beyond 31.3.76 of certain allowances including retirement and other specific benefits by treating the running allowance for various purposes in accordance with Railway Ministry's letter No.PCIII/73/RA dt.21.1.74. The applicants in this case who have all

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retired after 22.3.76, have been demanding refixation of their retirement and other benefits in accordance with the Railway Board's Rule in this regard treating 'running allowance' as part of their pay upto the maximum of 75% and in the light of the Tribunal's decision referred to above, which in my considered view should, be allowed because their case is covered by the Tribunal's decision in Case No.410(T) of 1985 in Sheo Dutt Sharma's Case. The Respondants are directed to refix the retirement benefits etc of the applicants as stated above within a period of four months from the receipt of this order.

9. In the circumstances there will no order as to costs.

Ashok Kumar Singh.
Member (Judicial),
29/3/93.

Allahabad,
Dated 27th March, 1993.