OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
ALLAHABAD

Allahabad this the 13th day of February, 1997.

Coram : Hon'ble Mr. S. Das Gupta, Member-A

O.A.No. 169 of 1995

Ram Sunder Tewari son of Chauharja Prasad Tewari,
Ex.Driver Gr.'B'Loco Shed, Pratapgarh, N.R.
C/o. Kunwar Sanjai Singh, The Adelphi,
12, Bund Road, Allahabad, U.P.

.....APPLICANT.

(By counsel Sri R. S.Ojha)

Versus

1. Union of India through G.M.Northern Railway, Headcuarters, Office, New Delhi.
2. The Divisional Railway Manager,
The Divisional Office, N.Railway, Lucknow.

.....Respondents.

(By counsel Sri A.K.Gaur,)

CONNECTED
WITH

O.A.No. 170 of 1995.

Ram Baran singh son of late Jokhu Singh,
Ex.Driver Grade 'A' Loco Shed, Pratapgarh,
Luckow Division, N.R.
C/o. Kunwar Sanjay Singh,
The Adelphi, 1,E, Bund Road,
Allahabad. ... ... applicant
(C/A Sri R.S.Ojha)

Versus

1. The Union of India through G.M.N.Rly,
Headquarters Officey, New Delhi.

OA 287/95

2. The Divisional Rly. Manager,
The Divisional Office,
N.Rly. Lucknow. .....Respondents.

(C/R Sri A.K.Gaur)

CONNECTED
WITH

O.A.No. 287 of 1995.

Abdul Sayeed son of late Hazi Abdul Majeed
Ex. Guard Grade 'A'
Headquarters Pratapgarh. N.R.
R/o. 142, Sewain Mandi,
Kotwali Sadar,
District Allahabad. ...applicant.

(Counsel Sri R.S.Ojha)

Versus

1. Union of India through the General Manager,
N.Rly. Headquarters Office, New Delhi.

2. The Divisional Manager, The Divisional Office,
N.Rly. Lucknow.

(Respondents' counsel Sri A.K.Gaur) ....Respondents.

CONNECTED WITH

O.A.No. 529 of 1995.

Fateh Bhadur Singh s/o. Late Maha Deo Singh,
C/o.Kunwar Sanjai Singh, The Adelphi,
1E Bund Road, Allahabad. U.P. ...Applicant.

(C/A Sri R. S. Ojha)

Versus

1. Union of India, through G.S.Northern Railway,
Headquarters Office,New Delhi.

2. The Divisional Railway Manager,
The Divisional Office, N.Railway,
Lucknow. ...Respondents.

(C/R Sri A.K.Gaur)

CONNECTED WITH

O.A.No. 752 of 1995

Satya Narayan Kurmi, s/o. late Mangroo Kurmi,
Ex. Driver Gr.'A' Loco Shed,
Pratapgarh, N.R. R/o. C/o. Ram Verma House No.
47/8A, Shiv Kutti, Allahabad.
....applicant.

(C/A Sri R.S.Ojha)

Versus

1. Union of India through G.M.Northern Railway,Headquarters Office, New Delhi.

2. The Divisional Railway Manager,
The Divisional Office, N.R.Lucknow.

...Respondents.

(C/R Sri A. Sthalekar)

CONNECTED
WITH

O.A.No. 891 of 1995.

J.S.Bhatnagar, son of late Hazari Lal Bhatnagar,
Ex. Guard, 'A' Special,N.Railway,
Headquarters, Pratapgarh,Lucknow Division.
C/o. Shri K.M.Srivastava court Inspector, C.I.D.
House No. 480/114/9,Shivkutti,PO Teliarganj,Allahabad.
:....Applicant.

(C/A Sri R.S.Ojha)

Versus

1. Union of India through G.M.N.Railway, Headquarters Office, New Delhi.

2. The Divisional Railway Manager, The Divisional Office, N.Railway, Lucknow.
(C/R Sri A. Sthalekar)
.....Respondents.

CONNECTED
WITH

O.A.NO. 416 of 1995.

Mohammad Murtaza,s/o. late Nazir Ahmed, Ex.Guard Grade 'A' Special, Headquarters, Pratapgarh,Lucknow Division.
R/o. Pure Mian Ji, PO Mau Aima,Allahabad.....Applicant.
(C/A Sri R.S.Ojha)

V e r su s

1. Union of India, through the G.M.N.Railway, Headquarters, Office, New Delhi.

2. The Divisional Railway Manager,
The Divisional Office, N.Railway, Lucknow.

(C/R Sri A.K.Gaur) ...Respondents.

AND

CONNECTED WITH

O.A.No. 417 of 1995.

Prem Shankar Khanna s/o. late Ganga Sahai Khanna,
Ex. Guard 'A' Special, Headquarters Lucknow,
Moradabad Division.
R/o. C-166, Indira Nagar Lucknow.

....Applicant.

(C/A Sri R.S.Ojha)

Versus

1. Union of India through General Manager,
Northern Railway, Headquarters Office, New Delhi.

2. The Divisional Railway Manager, Northern Railway,
Moradabad Div.
...Respondents.

(C/R Sri A.K.Gaur)

O = R = D = E = R

(BY HON'BLE MR. S. DAS GUPTA, MEMBER-A)

As the controversy involved in all the cases is similar, these were taken up for hearing together and is being disposed of by a common order.

2. The applicant in the connected O.As. were Drivers or Guards in the Railways and they retired on

various dates between 27.10.1984 and 31.7.1988 They are all aggrieved by the fact that for the purposes of computation of their pension and other retiral benefits only 55% of the running allowance was taken into the reckoning instead of 75% of such allowance as was admissible to them in terms of rule 2544 of Indian Railway Establishment Code (Volume-II) . It appears that earlier the percentage of running allowances to be taken into reckoning for the aforesaid purpose was 75% but, this was curtailed to 55% by Railway Board's order dated 5.12.1988.

3. Similar controversy had come up before various benches of the Tribunal and in view of the divergent decision given by various benches, a Full Bench of the Tribunal at Ernaculam had considered the matter in the case of C.R. Rangadhamaiah, 1994 (27) A.T.C. (FB) 129 and inter-alia, directed the Railways to re-compute the pension and other retiral benefits of the applicants in accordance with Rule 2544 of the Indian Railway Establishment Code (Volume-II) as was in force before it was amended by the notification dated 5.12.1988. The Full Bench also provided that the payment of pension and other retiral benefits as per aforesaid direction shall stand regulated /adjusted in accordance with the orders/directions as may be issued by the Hon'ble Supreme Court in Special Leave Petition No. 10373 of 1990 against the decision of the Ernaculam Bench of the Tribunal in Application No.K-269 of 1988.

4. The respondents in the counter-affidavit have stated that the applications are barred by limitation. They have also taken a plea that these applications are also barred on the principle of waiver and estoppel. So far as

the question of limitation is concerned, it is now settled law that in case the pensionary benefits have not been properly calculated, it would constitute as continuing cause of action. The plea of limitation, therefore, is absolutely not tenable. So far as the plea of waiver and estoprel is concerned, this is a bald plea and there is nothing on record to indicate that such principles will be applicable to these cases. I am , therefore, unable to accept this plea also .

5. The respondents have also brought out that the Special Leave Petition filed before the Hon'ble Supreme Court against the decision of the Ernaculam Bench of the Tribunal, is still pending before that Court. It has also been brought out that in a subsequent S.L.P. filed against the decision in the case of Bismillah & others Vs. Union of India & others, the Hon'ble Supreme Court had on 25.11.1994 stayed the operation of the decision of Allahabad Bench of the Tribunal rendered on 28.1.1994 in O.A.No.623 of 1990.

6. From the averments it is clear that while stay order has been granted by the Hon'ble Supreme Court in the case of Bismillah & others against the decision of Allahabad Bench of the Tribunal, no such stay order has been granted so far in the case of the S.L.P. filed against the decision of C.R. Rangadhamaiah by the Full Bench of the Tribunal. The decision of Full Bench is, therefore, still good law.

7. In view of the foregoing I dispose of this application with a direction to the respondents to re-compute the pension and other retiral benefits of the applicants in accordance with Rule 2544 of the Indian Railway Establishment Code (Vol.-II) as it existed before it was amended by the notification dated 5.12.1988 in line with the decision of Full Bench in C. R. Rangadhamaih's case. Let this direction shall be complied with within a period of four months from the date of communication of this order. Payment of pension and other retiral benefits in accordance with the aforesaid direction shall, however, stand regulated/adjusted in accordance with the order/direction as may be issued by the Hon'ble Supreme Court in S.L.P.No. 10373 of 1990 against the decision of the Ernaculam Bench of the Tribunal in Application No. K-269 of 1988 or in the S.L.P. which is stated to have been filed against the decision of the Full Bench in C.R. Rangadhamaih.

8. In view of the circumstances of the case I do not consider it appropriate to grant interest or cost.

Member-A

(pandey)