

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 07 day of APRIL 2005

Original Application No. 111 of 2000

Hon'ble Mr. S.P. Arya, Member A
Hon'ble Mr. K.B.S. Rajan, Member J

1. Ishrat Miyan, S/o Sri Maqbool Husain,
R/o 171, Jasauli, Bareilly
2. Harvinder Singh, S/o Sri P. Singh,
R/o Kashipur, Subhash Nagar, Distt, Udham Singh Nagar,
Fire-man II, posted at Kashipur, Noerth Eastern Railway,
Izatnagar Division, Bareilly.
3. Brij Mohan, S/o Sri Sewa Ram, R/o 278, Sikllapur,
Bareilly.
4. Hidayat Rasool, S/o Sri Ghulam Rasool,
R/o 61, Chaupla Railway Colony, Bareilly.
5. Narendra Kumar Yatav, S/o Sri K. Jatav,
R/o C/o K.D. Saxena, Subzi Mandi, New Civil Lines,
House No. 523/524
6. Onkar Singh, S/o Sri Natthu Singh,
R/o near Mani Nath Temple, Mani Nath Road, Bareilly,
Fireman II, Pilibhit, North Eastern Railway, Izzatnagar,
Bareilly.
7. Om Prakash, S/o Roshan Lal,
R/o 169, Subhash Nagar, Kashipur,
Distt., Udham Singh Nagar
Fireman II Kashipur, North Eastern Railway, Izzatnagar Division,
Bareilly.
8. Guru Pratap Saxena, S/o Sri D.L. Saxena,
R/o 39, Mani Nath Ropad, Chakkiwali Gali,
Distt. Bareilly, Fireman II Pilibhit, North Eastern Railway,
Izzatnagar Division, Bareilly.

....Applicants

By Adv : Sri T.S. Pandey

V E R S U S

1. Union of India through Ex-Officio Secretary
And Chairman, Railway Board, Baroda House,
Rail Bhawan, New Delhi.
2. General Manager, North Eastern Railway,
Gorakhpur.

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3. Chief Mechanical Engineer , NE Rly., Gorakhpur.
4. Divisional Machanical Engineer (Power), NE Rly., Izzatnagar Division, Bareilly.
5. Divisional Railway Manager, N.E. Rly., Izzatnagar, Bareilly.
6. Senior Divisional Personnel Officer, N.E. Rly, Izzatnagar, Bareilly.

....Respondents

By Adv: Sri A.K. Gaur

ORDER

By K.B.S. Rajan, JM


The core question involved in this case is as to in what grade, a Fireman Grade II (Pay Scale 2750-4400 with running allowance) should be fitted on his being rendered surplus. The claim of the applicants is that they should be posted as Diesel Assistant in the grade of Rs. 3050-4590 in view of the fact that he had been given due training in Diesel Assistant and further that many have been so granted, whereas the respondents contend that the applicants have been rightly posted as Khalasis as they had not opted to move to other Divisions where such Firemen Grade II were posted as Diesel Assistant.

2. The facts of the case with terse sufficiency are as under:-
3. The applicants at the relevant point of time were functioning as Firemen Grade II and the next promotional post is Fireman Grade I and Engine Driver Grade C. However, due to change of traction, some of the Fireman had to be rendered surplus and according to the Railway Board's circular dated 21-04-1989 followed by the order dated 09-02-1993 (Annexure 6) of the General Manager the post of Diesel Assistant was to be filled up from amongst Fireman Grade II. The applicants, on being rendered surplus in the post of Fireman Gr. II, were imparted training as Diesel Assistant and



they have also qualified in the test conducted by the Respondents through the Training Institute. They were thereafter given an opportunity to give their option for re-deployment but later on the applicants were ordered to move to various diesel division, without specifying the pay scale or the designation, vide impugned orders Nos. 2252 and 2253 dated 29-12-1999. It is these orders that have been assailed by the applicants in this OA with a prayer that the said orders be quashed and set aside. The applicants have further challenged the order dated 20-07-1999 (Annexure 3) whereby their entitlement to the running allowance had been cancelled and the applicants have prayed that the respondents be directed to accommodate the applicants in the post of Diesel Assistant.

4. The Respondents have contested the O.A. In their counter they have stated that due to closure of Steam Loco in Izzatnagar Division during 1993, a number of running staff became surplus and that the running staff so rendered surplus were absorbed in various other departments from the bottom to top and their pay was fixed by adding 30% of the running allowance. It has been stated in the counter that those Firemen Grade II and I who were given training were to be absorbed as Diesel Assistants, whereas, as there are no vacancies in the division, some of them were posted as Diesel Assistants at Varanasi Division. Of the remaining, of those who exercised their option after adjusting them at various departments, the junior most running staff were transferred to workshop at Izzatnagar and Diesel Shed Gonda due to non availability of vacancies in the Division of the Respondents. In so far as the applicants are concerned, they having been rendered surplus as Firemen Grade II have been retained in the supernumerary posts and on their having been given training as Diesel assistants, they were given the choice of option, which they have failed to exercise. As such, they were not absorbed as Diesel Assistant and they remained surplus Fireman Grade II and since they had no work to do at all, their Running Allowance was stopped. The respondents




justified the posting of the applicants in the scale of pay of 2,500 – 3200 as Khalasies.

5. Arguments were advanced by both the sides. The learned counsel for the applicant took us through the provisions of Rule 903 of IREM/Vol relating to I Running Allowance and also of Rule 906 wherein it has been provided that the running allowance constitutes an Element of Pay and as such any truncation would without due process of law would attract provisions of Art. 311(2) of the Constitution and relied upon the landmark judgment of the Apex Court in the case of Union of India vs Tulsiram Pate (1985) 3 SCC 398.. The learned counsel had also referred to certain promotions granted as Firemen I in some cases and contended that when the respondents could well promote such surplus Fireman Grade II, there is no reason as to why the applicants, who have qualified in the written test should not be posted as Diesel Assistant, protecting the running allowance already available to them in the previous post of Firemen Grade II. The learned counsel for the applicant has also contended that the Railway Board Circular dated 21-04-1989 cannot overrule the statutory provisions and contended that there is no question of running allowance being not taken into account on redeployment.

6. On the other hand the learned counsel for the respondent has contended that despite repeated opportunities having been given to the applicants they had chosen not to exercise their option and the respondents cannot continue to retain the applicants in the supernumerary post of Fire man Grade II. Further, stoppage of running allowance is due to the fact that having been rendered surplus, they had no work and as such no running allowance was paid to them.

7. We have heard the arguments, gone through the pleadings and have given our anxious consideration.

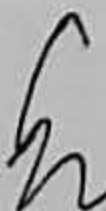


8. Admittedly, on being rendered surplus, the applicants were sent for training as for Diesel Assistant and they were successful in the test conducted by the Training Institute.

The claim of the applicants is that they should be posted as Diesel Assistant. Posting as Diesel Assistant would, according to them, would not deplete the extent of running allowance to which they are entitled to. Rule 903 and 906 of IREM Vol. I referred to and heavily relied upon by the counsel for the applicants read as under:-

*"903. Pay element in running allowance
30% of the basic pay of the running staff will be treated to be in the nature of pay representing the pay element in the Running Allowance. This pay element would fall under clause (iii) of Rule 1303-FR-9 (a) i.e. "emoluments which are specially classed as pay by the President."*

9. In fact, that the element of running allowance has to be taken into account while considering the cases of re-deployment, be it on account of such running staff having been rendered surplus or on account of medical de-categorization is evident from the fact that Rule 1306 of IREM relating to medical de-categorization also provides that upto 30% of pay as running allowance has to be incremented to the minimum and maximum of pay scale while identifying the posts for such cases. Thus, the respondents are to ensure that while redeploying the running staff rendered surplus, in case they are posted as any other running staff, the scale of pay should be such that the same is not less than the one which the surplus staff was earlier enjoying and further running allowance should also be granted and in case they are posted elsewhere, where running allowance is not admissible, the element of running allowance should be taken into account in arriving at the pay scale. This situation would not perhaps have arisen had the applicants exercised their option to move to other divisions as some others had done, in which event, the applicants would have been posted as Diesel Assistant at Varanasi. The admitted position is that when equal opportunities as for others were given to exercise their option, the applicants chose not to give their option. Thus,



partly the applicants too are to be blamed. However, for this reason, their claim cannot be altogether ignored. Since they have already undergone the training as Diesel Assistant and also qualified in the test conducted by the Training Institute, and since others similarly situated have already been accommodated as Diesel Assistants at Varanasi, the claim of the applicant for posting as Diesel Assistant is fully justified. As such, they have to be accommodated in the grade of 3050 – 4590 with the corresponding running allowance. However, their pay in the above grade shall be fixed only notionally and that too from January, 2000 i.e. the date when this OA has been filed. The respondents should accommodate the applicants as Diesel Assistants either in their own division or elsewhere (as done earlier, by transferring some to Varanasi Division).

10. As regards stoppage of running allowance, vide Annexure 3, as rightly pointed out by the respondents in their counter that since they had no work as Firemen Grade II and thus they were not paid the Running Allowance. It has been held by the Hon'ble Supreme Court in the case of *Dilbagh Rai Jarry v. Union of India*, (1974) 3 SCC 554, at page 560 : Travelling Allowance or Running Allowance is eligible if the officer has travelled or run, not otherwise.". However, this does not preclude the applicants from claiming running allowance for the period during which they were performing the duties of a running staff, albeit in a lower scale. For such period, the running allowance shall not be less than that drawn by them before they were rendered surplus.

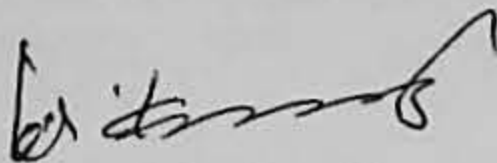
11. In view of the above the OA succeeds. The respondents are directed to accommodate the applicants as Diesel Assistants either in their own Division or elsewhere. Their pay would be fixed notionally w.e.f. January, 2000 in the scale of pay of Rs3050 – 4590 and actually from the date they assume duties as Diesel Assistant. Seniority in respect of the applicants in the grade of Diesel Assistant should be as worked out in the case of those who were transferred to Varanasi Division.

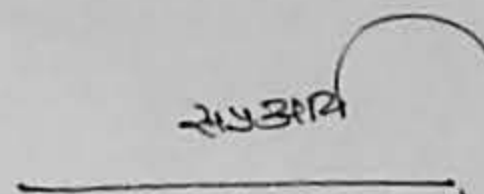


12. As regards payment of Running Allowance, the same would be applicable for those periods when they had actually run as held in the case of Dilbagh Singh (Supra) and the extent of running allowance would be as applicable for Diesel Assistant albeit the applicant would have only worked as Khalassis. This would also be available to the applicants from January, 2000 onwards. Needless to mention that in case the applicants had not performed duties of running staff from January, 2000 they would not be eligible for the running allowance.

13. The exercise involved in complying with this order shall be completed by the respondents within a period of **six months** from the date of receipt of copy of this order.

15. Under these circumstances, no order as to cost.


Member (J)


Member (A)

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