

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ALLAHABAD THIS THE 16th DAY OF May 2006

ORIGINAL APPLICATION NO. 479 OF 2002

HON'BLE MR. K. B. S. RAJAN, MEMBER-J

1. A. Amrol aged about 74 years,
Retired Loco Inspector, Jhansi
Son of Shri J. Venisent,
Resident of 12/56, Civil Lines,
(Retired on 1.2.87-Last Pay drawn- Rs.3050).
2. D. N. Bhatia aged about 75 years,
Retired Fuel Inspector Jhansi,
Resident of 402/10, Prem Ganj,
Sipri Bazar, Jhansi.
(Retired on 31.12.1986 - Last pay drawn -
Rs.2975/-).
3. Ram Prakash Sharma aged about 72 years,
Retired Loco Foreman @ Jhansi,
Resident of 1367 Khati Baba, Jhansi.
(Retired pm 30.4.1989- Last Pay was Rs.2525/-)
4. A. R. Dutta aged about 71 years Son of Shri Hem
Raj Dutta, Retired TL @ Jhansi Resident of
63/1, K.K. Puri Colony, Jhansi.
(Retired on 30.8.1990 - Pay was Rs. 3050/-).
5. R. C. Budhraj aged about 70 years son of Shri
K.P. Budhraj, Retired JFI Jhansi (Retired on
17.7.1991 last pay was Rs.2675/-).
6. O.P. Saini aged about 70 years, Retired F.I.
Jhansi, son of Shri Shyam Lal Saini resident of
543 Chaman Ganj, Jhansi. (Retired on 31.10.91-
Last Pay drawn-Rs.3300/-).
7. I.M. Prabhakar aged about 69 Years, Retired
Safety Counsellor, Jhansi Son of Shri P.L.
Prabhakar, Resident of 41, Roy Ganj, Jhansi.
(Retired On 30.9.1992- Last Pay drawn -
Rs.3300/-)
8. S. C. Upadhia aged about 70 years Retired L.I.
Jhansi son of Shri Devi Dayal resident of 30
K.K. Puri Colony, Sipri Bazar, Jhansi, (Retired
on 30.8.91- Last pay Rs.3125/-).
9. P.S. Pestonji aged about 72 years Retired L.F.
© Jhansi son of Shri B. Pestonji resident of

Sipri Bazar, Jhansi. (Retired on 22.4.89, Last Pay Rs. 2675/-).

10. C. L. Mudgil aged about 69 years Retired Sr. L.I. Jhansi son of Shri Parmanand Mudgil resident of A-88, Deen Dayal Nagar, Jhansi, (Retired on 31.10.92- Last Pay Rs. 3125/-).
11. Sukh Deo Singh aged about 79 years Retired A.M.E. (Adhoc) resident of B-172, Deen Dayal Nagar, Jhansi. (Retired on 30.4.82- Last Pay Rs. 1120/-).
12. Amar Singh aged about 83 years Retired Sr. F.I. Jhansi son of Shri Labh Singh resident of 1369, Issai Tola, Jhansi (Retired on 30.4.78, Last Pay Rs. 1040/-).

. Applicants

By Applicant: Shri R. G. Soni

Versus

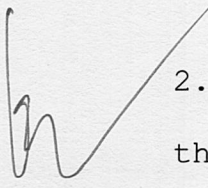
1. Union of India,
through General Manager,
Central Railway,
Mumbai CST.
2. Chief Mechanical Engineer, Central Railway,
Mumbai CST.
3. Divisional Railway Manager,
Central Railway, Jhansi.

. Respondents

By Advocate: Shri P. Mathur

ORDER

Certain important decisions of the Apex Court closely related to the subject matter involved in this case, give adequate opportunity to have an incisive study of the spinal issue of the case.

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2. Pithily put, the main meat of the matter in this case is whether the element of 'running

allowance' @ 55% of the pay should be added for the purpose of working out the pensionary benefits. ~~is the main meat of the matter embodied in this case.~~ *6*

3. As the subject matter has an origin tracing back from the nascent-independence period (1949, referred to in para 6 , an exordium is essential and notwithstanding the fact that brevity is the soul of art, and justicing, including judgment-writing, must practise the art of brevity, this order shall have to be essentially slightly long and care is taken to ensure that the same is not labyrinthine or prolix.

4. In Railways, Drivers, Guards, Shunters, etc., are connected with the movement of trains and hence are categorized as "running staff". These running staff are entitled, in addition to the pay, to payment of 'running allowance' and a part of the running allowances is included as a component of "average emoluments" for the purposes of computation of pension after retirement. Provision in this regard is contained in clause (g) of Rule 2544 of the Indian Railway Establishment Code which in its original state, provided for as under:-

W "2544. (C.S.R. 486) *Emoluments and Average Emoluments.*-The term 'Emoluments', used in these Rules, means the emoluments which the officer was receiving immediately before his retirement and includes-

(b) personal allowance, which is granted (i) in lieu of loss of substantive pay in respect of a permanent post other than a tenure post, or (ii) with the specific sanction of the Government of India, for any other personal considerations.

Note.—Personal pay granted in lieu of loss of substantive pay in respect of a permanent post other than a tenure post shall be treated as personal allowance for the purpose of this article. Personal pay granted on any other personal considerations shall not be treated as personal allowance unless otherwise directed by the President.

(c) fees or commission if they are the authorised emoluments of an appointment, and are *in addition* to pay. In this case 'Emoluments' means the average earnings for the last six months of service;

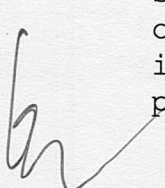
(d) acting allowances of an officer without a substantive appointment if the acting service counts under Rule 2409 (C.S.R. 371), and allowances drawn by an officer appointed provisionally substantively or appointed substantively *pro tempore* or in an officiating capacity to an office which is substantively vacant and on which no officer has a lien or to an office temporarily vacant in consequence of the absence of the permanent incumbent on leave without allowances or on transfer to foreign service;

(e) deputation (duty) allowances;

(f) duty allowances (special pay); and

(g) (i) *For the purpose of calculation of average emoluments.*—Actual amount of running allowances drawn by the railway servant during the month limited to a maximum of 75% of the other emoluments reckoned in terms of (a) to (f) above.

(ii) *For the purpose of gratuity and/or death-cum-retirement gratuity.*—The monthly average of running allowances drawn during the three hundred and sixty-five days of running duty immediately preceding the date of quitting service limited to 75% of the monthly average of the other emoluments reckoned in terms of items (a) to (f) above drawn during the same period.




5. In its letter dated 16-08-1961, the Railway Board had stated as under:

"a) Attention is invited to Para 1(b) (ii) of Rly. Bds. Letter No.E(R) 49/Rs/3 dt. 1.7.49 as amended vide their letter of even no. dt.29.8.49, which provides that in the case of running staff utilized in stationary appointments for period of over 21 days, the pay should be fixed under normal rules, 50% of pay in the running post also being treated as pay for the purpose of fixation of pay in the stationary appointment."

6. In addition, the above letter of 16-08-1961 also read as under:-

"The question has been considered and the president is pleased to decide that the pay of such running staff utilized in stationary appointments for period of over 21 days whose initial pay in the stationary appointment is fixed under the normal rules in accordance with Para 1(b) (ii) of Rly, Bd's letter no.E® 49 Rs / 3, dt. 1.7.49 should also be refixed under clause (2) of rule 2027 (FR-31) RII, 50% of the enhanced substantive pay representing the running allowance being treated as pay for the purpose of such Re-fixation."



7. Subsequently the position was still further clarified by the Rly. Bds. Letter No.E (S)63/Rs/14 dt. 17.12.1963, the relevant portion of this letter reads as under:-

"The Rly. Bd's orders appearing below rule 152 R, as introduced vide their letter No.E(S) 52 CPC/66 dt. 04.08.53, provides that the above rule is applicable only to permanent staff and if alternative appointment is found for temporary staff it should be regarded as a purely ex-gratia measure. Again, in the case of Running staff in whose case running allowance also form part of pay, it was decided by the Board, vide note below rule 152 R, as introduced vide their letter no.E(S) 1,55 Rs/22 dt. 2.9.58, that with effect from 17.08.53 the term former emolument's in the case of running staff should also include 50% of their pay as defined in rule 2003 (21) (a) (i) RII in lieu of running allowance."

8. On the basis of the recommendations of the Third Pay Commission the pay scales of the staff in the Railways were revised by the Railway Services (Revised Pay) Rules, 1973 (hereinafter referred to as "the 1973 Rules") notified vide notification dated 7-12-1973 which came into force on 1-1-1973. With regard to provisional payment of certain allowances in conjunction with pay fixed under the 1973 Rules, the Railway Board by their letter dated 21-1-1974 intimated that the question of revision of

rules for regularization of various allowances consequent upon the introduction of the revised pay scales under the 1973 Rules was under the consideration of the Board and pending final decision thereon, the Board had decided as under:

"(i) *Treatment of running allowance for various purposes in case of running staff.*—The existing quantum of running allowance based on the prevailing percentages laid down for various purposes with reference to the pay of the running staff in authorised scales of pay may be allowed to continue."

9. **Through letter of the Railway Board dated 22-3-1976** it was intimated:

"1. The question of revision of rules regarding treatment of running allowance as pay for certain purposes consequent upon the introduction of revised pay scales under Railway Services (Revised Pay) Rules, 1973 has been under consideration of this Ministry. It has now been decided that the existing rules in this respect may be modified as follows in the case of running staff drawing pay in revised pay scales:

(i) Pay for the purpose of passes and PTOs shall be pay plus 40% of pay.

(ii) Pay for the purpose of leave salary, medical attendance and treatment, educational assistance and retirement benefits shall be pay plus actual amount of running allowance drawn subject to a maximum of 45% of pay.

(iii) **Pay for the purpose of fixation of pay in stationary posts, Compensatory (City) Allowance, House Rent Allowance and rent for railway quarters shall be pay plus 30% of pay.**

2. These orders take effect from 1-4-1976.

3. The payments already allowed on provisional basis in terms of para 2 of Railway Ministry's Letter No. PCIII/73/RA dated 21-1-1974 for the period from 1-1-1973 to 31-3-1976 shall be treated as final.

4. The above has the sanction of the President."

10. By letter of the Railway Board dated 23-6-1976 the direction contained in the letter dated 22-3-1976 was modified and it was intimated:

"2. In partial modification of the orders contained therein, the Railway Ministry have decided, as a special case, that in the case of running staff retiring between 1-1-1973 to 31-3-1976, pay for the purposes of retirement benefits only shall be pay in revised scales plus actual amount of running allowance drawn subject to a maximum of 45% of pay in revised pay scales.

3. The above has the sanction of the President."

11. By letter of the Railway Board dated 17-7-1981 the decisions taken on the recommendations of the Committee on running allowances were communicated. In the said letter **it was stated:**

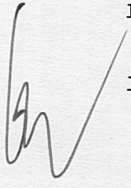
"3.23. *Reckoning of running allowance as pay.-*
(i) For the specified purposes for which running allowance is reckoned as pay at present, 30% of the basic pay of the running staff concerned will be reckoned except as below:

(a) **for the purpose of retirement benefits, 55% of basic pay will be taken into account. This provision will be made applicable retrospectively from 1-4-1979 so that those running staff who have already retired with effect from that date or afterwards will also have their retirement benefits recalculated and resettled.**

(ii)

12. A writ petition titled *Dev Dutt Sharma v. Union of India*¹ was filed in the Delhi High Court by employees who had been working as railway guards. Some of them had retired from service while some had filed the writ petition in a representative capacity through the General Secretary of All India Guards'

Council. In the said writ petition the petitioners challenged the validity of the order of the Railway Board as contained in the letter dated 22-3-1976 whereby the quantum of percentage of the running allowance for the purpose of retirement and other benefits was reduced from 75% as prescribed in Rule 2544 to 45% with effect from 1-1-1973. After the constitution of the Central Administrative Tribunal under the Administrative Tribunals Act, 1985, the said writ petition was transferred to the Principal Bench of the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") and was registered as No. T-310 of 1985. The said petition was allowed by the Tribunal by judgment dated 6-8-1986 and the order of the Railway Board dated 22-3-1976 was quashed on the ground that under the Indian Railway Establishment Code which contains the statutory rules framed by the President under Article 309 of the Constitution running allowance up to a maximum of 75% of the pay has to be taken into account for the purpose of calculating pecuniary benefits and other entitlements and that the said right under the statutory rules could not be taken away by order dated 22-3-1976 which was a mere executive instruction and the fact that it was issued with the sanction and approval of the President did not give it a character of a statutory rule. It was held that the said executive instruction cannot be accepted to be a statutory



amendment of the existing rules governing the running allowance.

13. No steps were taken by the Railway Administration to challenge the correctness of the said judgment of the Tribunal and it has become final.

14. After the said decision of the Tribunal, notifications were issued on 5-12-1988. Notification No. GSR 1143 (E) is as follows:

"GSR 1143 (E): In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the President is pleased to amend Rule 2544 of the Indian Railway Establishment Code, Volume II (Fifth Reprint) as in the Annexure.

This amendment will be effective from 1-1-1973.

ANNEXURE

Rule 2544

Sub-rules g(i) and g(ii) may be substituted by the following:

g(i) 'For the purpose of calculation of average emoluments: actual amount of running allowance drawn by the railway servant during the month limited to a maximum of 45% of pay, in the revised scales of pay.'

g(ii) 'For the purpose of gratuity and/or death-cum-retirement gratuity: the monthly average of running allowances drawn during the 365 days of running duty immediately preceding the date of quitting service limited to 45% of average pay drawn during the same period, in the revised scales of pay.' "

15. Notification No. GSR 1144 (E) is as under:

"GSR 1144 (E): In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the President is pleased to amend Rule 2544 of the Indian Railway Establishment Code, Volume II (Fifth Reprint) as in the Annexure.

The amendment will be effective from 1-4-1979.

ANNEXURE

Rule 2544

Sub-rules *g(i)* and *g(ii)* may be substituted by the following:

g(i) 'For the purpose of calculation of average emoluments: 55% of basic average pay, in the revised scales of pay, drawn during the period;'

g(ii) 'For the purpose of gratuity and/or death-cum-retirement gratuity: 55% of basic average pay, in the revised scales of pay, drawn during the period.'

16. The retrospective effect of the above notification was challenged before Ernakulam Bench, in OA No. K-269 of 1988 filed by K.S. Srinivasan and others and this OA was allowed by judgment dated 2-4-1990 and the notifications were quashed to the extent the amendments in Rule 2544 were given retrospective effect on the view that the said amendments in the rule insofar as the same were given retrospective effect were unjust, unreasonable and were violative of Article 14 of the Constitution. A review application filed by the Union of India against the said judgment of the Ernakulam Bench of the Tribunal was dismissed by order dated 25-7-1990. Special Leave Petition No. 10373 of 1990 has been filed by the Union of India

against the said judgment of the Ernakulam Bench of the Tribunal.

17. It appears that the Principal Bench of the Tribunal by its judgment dated 23-10-1991 in OA No. 1572 of 1988 filed by C.L. Malik and others, took a contrary view on the question of validity of the impugned notifications and held that the vested rights of the employees were not affected by the amendment of the rules on the ground that the total amount of pension and retirement benefits they would have received before the amendment were not reduced by the amended rules. The said decision of the Principal Bench of the Tribunal was followed by the Ahmedabad Bench of the Tribunal in judgment dated 28-2-1992 in OAs Nos. 351-423 of 1988. In view of the conflicting decisions of various benches of the Tribunal the matter was referred to the Full Bench of the Tribunal. In its judgment in *C.R. Rangadhamaiah v. Chairman, Railway Board*² and other connected matters, the Full Bench, agreeing with the view of the Ernakulam Bench of the Tribunal, has held:

(1) Under the proviso to Article 309 of the Constitution, the President has power to promulgate rules with retrospective effect. This, however, is subject to the condition that the rules do not offend any of the fundamental rights conferred by Part III of the Constitution.

(2) Pension is a valuable right which a government servant earns. It is neither charity nor bounty. Government servant acquires right to

pension and other retirement benefits on the date he retires from service. Deprivation of such a valuable vested right after retirement is manifestly unreasonable, arbitrary and, therefore, violative of Article 14 of the Constitution.

(3) By the revision of the pay scales the pay scales of the members of the running staff were enhanced with effect from 1-1-1973. Under Rule 2544 the members of the running staff are entitled to computation of their pay and retirement benefits by taking into account the running allowance which they have been receiving subject to a maximum of 75% of the pay and other allowances.

(4) By notifications dated 5-12-1988, Rule 2544 was amended prescribing the maximum at 45% from 1-1-1973 to 1-4-1979 and 55% from 1-4-1979 onwards. Those who retired from 1-1-1973 to 4-12-1988 were, in accordance with Rule 2544, as it then stood, entitled to take into account running allowance in the matter of computation of pension and retirement benefits up to the maximum of 75% of their pay and other allowances. As their pay was revised with effect from 1-1-1973 the limit of 75% had to be worked out with reference to the enhanced pay and other allowances that they became entitled to receive in accordance with the 1973 Rules which came into effect from 1-1-1973.

(5) When the maximum was reduced from 75% to 45% up to 1-4-1979 or at the rate of 55% from 1-4-1979, the vested rights of all those who retired between 1-1-1973 and 4-12-1988 in the matter of receiving pension and retirement benefits were adversely affected.

(6) Persons who retired between 1-1-1973 and 4-12-1988 had earned a right to computation of pension in accordance with the statutory rules then in force. As by the time they retired, revision of pay had come into force, it is the revised pay and the running allowance subject to a maximum of 75% of the revised pay and allowances that was required to be taken into account.

(7) This right which accrued in their favour on their retirement between 1-1-1973 and 4-12-1988 was sought to be affected by amending the rules on 5-12-1988 with retrospective effect reducing the maximum limit of running allowance that qualifies for pension.

(8) The Ernakulam Bench had rightly declared that the amended provisions to the extent they have been given retrospective effect are void as offending Article 14 of the Constitution.

18. The above FB Judgment with certain other decisions were challenged before the Apex Court and the Constitution Bench in *Chairman, Rly. Board v. C.R. Rangadhamaiah*, (1997) 6 SCC 623 held as under:-

"These appeals and special leave petitions filed by the Union of India and the Railway Administration involve the question regarding validity of Notifications Nos. GSR 1143 (E) and GSR 1144 (E) dated 5-12-1988 issued in exercise of the power conferred on the President of India under the proviso to Article 309 of the Constitution whereby Rule 2544 of the Indian Railway Establishment Code, Volume II (Fifth Reprint) has been amended with retrospective effect. By Notification No. GSR 1143 (E) the said rule was amended with effect from 1-1-1973 and by Notification No. GSR 1144 (E) the amendment was made with effect from 1-4-1979.

.....

... we are concerned with the pension payable to the employees after their retirement. The respondents were no longer in service on the date of issuance of the impugned notifications. The amendments in the rules are not restricted in their application in futuro. The amendments apply to employees who had already retired and were no longer in service on the date the impugned notifications were issued.

26. In *Deokinandan Prasad v. State of Bihar*¹⁵ decided by a Constitution Bench it has been laid down: (SCC p. 343, para 31)

"31. ... pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government servant." [p. 152]

(emphasis supplied)

In that case the right to receive pension was treated as property under Articles 31(1) and 19(1) (f) of the Constitution.

27. In *D.S. Nakara v. Union of India*¹⁶ this Court, after taking note of the decision in *Deokinandan Prasad*¹⁵, has said: (SCC p. 323, paras 28 and 29)

"28. Pension to civil employees of the Government and the defence personnel as administered in India appears to be a compensation for service rendered in the past. However, as held in *Dodge v. Board of Education*¹⁷ a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living.

* * *

29. ... Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered."

28. It has also been laid down by this Court that the reckonable emoluments which are the basis for computation of pension are to be taken on the basis of emoluments payable at the time of retirement. (See: *Indian Ex-Services League v. Union of India*¹⁸, SCR at p. 173.)

29. Rule 2301 of the Indian Railway Establishment Code incorporates this principle. It lays down:

"A pensionable railway servant's claim to pension is regulated by the rules in force at the time when he resigns or is discharged from the service of Government."

30. The respondents in these cases are employees who had retired after 1-1-1973 and before 5-12-1988. As per Rule 2301 of the Indian Railway Establishment Code they are entitled to have their pension computed in accordance with Rule 2544 as it stood at the time of their retirement. At that time the said rule prescribed that running allowance limited to a maximum of 75% of the other emoluments should be taken into account for the purpose of calculation of average emoluments for computation of pension and other retiral benefits. The said right of the respondent-employees to have their pension computed on the basis of their average emoluments being thus calculated is being taken away by the amendments introduced in Rule 2544 by the impugned notifications dated 5-12-1988 inasmuch as the maximum limit has been reduced from 75% to 45% for the period from 1-1-1973 to 31-3-

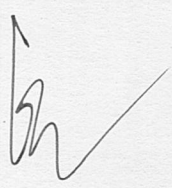
1979 and to 55% from 1-4-1979 onwards. As a result the amount of pension payable to the respondents in accordance with the rules which were in force at the time of their retirement has been reduced.

As indicated earlier, Rule 2301 of the Indian Railway Establishment Code prescribes in express terms that a pensionable railway servant's claim to pension is regulated by the rules in force at the time when he resigns or is discharged from the service of the Government. The respondents who retired after 1-1-1973 but before 5-12-1988 were, therefore, entitled to have their pension computed on the basis of Rule 2544 as it stood on the date of their retirement. Under Rule 2544, as it stood prior to amendment by the impugned notifications, pension was required to be computed by taking into account the revised pay scales as per the 1973 Rules and the average emoluments were required to be calculated on the basis of the maximum limit of running allowance at 75% of the other emoluments, including the pay as per the revised pay scales under the 1973 Rules. Merely because the respondents were not paid their pension on that basis in view of the orders of the Railway Board dated 21-1-1974, 22-3-1976 and 23-6-1976, would not mean that the pension payable to them was not required to be computed in accordance with Rule 2544 as it stood on the date of their retirement. Once it is held that pension payable to such employees had to be computed in accordance with Rule 2544 as it stood on the date of their retirement, it is obvious that as a result of the amendments which have been introduced in Rule 2544 by the impugned notifications dated 5-12-1988 the pension that would be payable would be less than the amount that would have been payable as per Rule 2544 as it stood on the date of retirement. The Full Bench of the Tribunal has, in our opinion, rightly taken the view that the amendments that were made in Rule 2544 by the impugned notifications dated 5-12-1988, to the extent the said amendments have been given retrospective effect so as to reduce the maximum limit from 75% to 45% in respect of the period from 1-1-1973 to 31-3-1979 and reduce it to 55% in respect of the period from 1-4-1979, are unreasonable and arbitrary and are violative of the rights guaranteed under Articles 14 and 16 of the Constitution.

35. For the reasons aforementioned, the appeals as well as special leave petitions filed by the Union of India and Railway Administration are dismissed. But in the circumstances, there will be no order as to costs."

- 1 (1986) 1 ATC 646
- 2 (1994) 27 ATC 129 (Bang) (FB)
- 3 AIR 1967 SC 1889 : (1968) 1 SCR 185 : (1968) 1 LLJ 576
- 4 AIR 1969 SC 118 : (1968) 3 SCR 575 : (1970) 1 LLJ 499
- 5 (1983) 2 SCC 33 : 1983 SCC (L&S) 231 : (1983) 2 SCR 287
- 6 (1984) 3 SCC 281 : 1984 SCC (L&S) 520 : (1984) 3 SCR 623
- 7 (1985) 1 SCC 523 : 1985 SCC (L&S) 280
- 8 (1987) 3 SCC 622 : 1987 SCC (L&S) 310 : (1987) 4 ATC 72 : (1987) 3 SCR 427
- 9 1994 Supp (1) SCC 44 : 1994 SCC (L&S) 392 : (1994) 26 ATC 724
- 10 (1974) 1 SCC 19 : 1974 SCC (L&S) 49 : (1974) 1 SCR 771
- 11 1980 Supp SCC 524 : 1981 SCC (L&S) 343 : (1981) 1 SCR 1024
- 12 1986 Supp SCC 584 : (1987) 2 ATC 595 : (1987) 1 SCR 584
- 13 (1994) 5 SCC 450 : 1994 SCC (L&S) 1118 : (1994) 27 ATC 892
- 14 1995 Supp (2) SCC 246 : 1995 SCC (L&S) 792 : (1995) 30 ATC 69
- 15 (1971) 2 SCC 330 : 1971 Supp SCR 634
- 16 (1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165
- 17 302 US 74 : 82 L Ed 57 (1937)
- 18 (1991) 2 SCC 104 : 1991 SCC (L&S) 536 : (1991) 16 ATC 488 : (1991) 1 SCR 158
- 19 1984 Supp SCC 399

19. Sometimes^y in late seventies, as the Railways refused to effect the additional amount for the Stationary Staff on the ground that the same is admissible only for running staff, though such persons were from running staff only, a case was



filed in the Hon'ble Allahabad High Court and in the Special Appeal dated No. 9/75 (Afsar Jahan Begum & Ors, decided on 12-03-1979, the Hon'ble High Court had held as under:-

a) As we have held that running allowance is to be treated as part of the pay, the salary of these respondents is to be refixed in accordance with rule no.2027 along with Rly. Bd's decision of 1961 and 9163 which have been referred to above. We agree with the learned single judge in this behalf that the pay has not been rightly calculated and some of the respondents were there by reduced in rank and their emoluments were wrongly reduced though we do not agree with some of the conclusions which have been arrived at by the learned single judge as indicated by us above. The running allowance being part of the pay, the pay of the respondents as well as other petitioners to the writ petitions, is to be refixed.

b) All the above five special appeals are thus partly allowed. The Railway Administrations is directed to refix the pay of Sardar Husain, deceased Bhagwati Prasad Pandey and Ramkumar dubey for the period during which they hold their officiating appointment in the stationary

posts according to the relevant rules, to refix, the pay of Sardar Husain, Bhagwati Prasad Pandey and Ram Kumar Dubey in accordance with Rules 2017, 2018 and 2027 read with the relevant circulars and president's decisions respectively applicable to them as has been indicated by us earlier after taking into consideration that running allowance is part of pay, during the period they hold officiating appointment in the stationary posts and to take prompt steps for determination of their pensionary benefits during the period they officiated in the stationary posts and the period they worked on that post in a substantive capacity according to the relevant rules. The orders passed by the learned single judge in other respect is being maintained. The refixation shall be made within three months from today. No order as to costs.

20. The above decision was not extended to the employees of Eastern Railway who had filed a writ petition before the Apex Court and the Apex Court in that case i.e. G.C. Ghosh v. Union of India, 1991 Supp (2) SCC 497 held as under:-



2. Reliance has been placed by the petitioners on the decision of the Allahabad High Court in *Union of India v. Smt Afsar Jahan Begum* rendered in Special Appeal No. 9 of 1975 on March 12, 1979. The aforesaid decision has been accepted by the Railway Administration in the sense that no special leave petition was preferred in this Court and the matter finally rested there. The petitioners who are employees of Eastern Railway have contended that they are entitled to the same treatment as is being accorded to their counterparts in the Northern Railway in pursuance to the aforesaid decision rendered by the Allahabad High Court which has become final as between the Railway Administration on the one hand and the employees of the Northern Railway on the other. In the light of the command of Articles 14 and 16 of the Constitution of India the same treatment is required to be accorded to the petitioners regardless of the fact that they are serving in Eastern Railway unless it is shown that there is some distinguishing feature, for according a different treatment. Learned Additional Solicitor General appearing for the Railway Administration is not in a position to contend that there is any such special distinguishing feature to justify denying of uniformity in treatment. The prayer of the writ petitioners must accordingly be granted to the aforesaid extent. It is therefore directed that the petitioners should be accorded the same treatment as their counterparts are being accorded in the Northern Railway in regard to treating the running allowance granted to the running staff as part of the pay when they are transferred or promoted to a stationary post during the period they hold the officiating in the stationary post to the same extent and in the same manner as enjoined by the Allahabad High Court pursuant to the aforesaid judgment. Writ petitions are disposed of accordingly. There will be no order as to costs.

21. In so far as the law relating to extending the pensionary benefit pronounced at a later date, to the existing pensioners, the same has been crystallized in the case of *V. Kasturi v. Managing Director, State Bank of India*, (1998) 8 SCC 30 in the following words:-

21. It is now time for us to take stock of the situation. From the aforesaid resume of relevant decisions of this Court spread over the years to which our attention was invited by learned counsel for the respective parties, the following legal position clearly gets projected.

Category I

22. If the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation, the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of Nakara case¹ would cover this category of cases.

22. Again, in the case of *Subrata Sen v. Union of India*, (2001) 8 SCC 71 the Apex Court has held as under:-

Further, in *All India Reserve Bank Retired Officers Assn. v. Union of India*⁴ Ahmadi, J. (as he then was), speaking for the Court in the aforesaid decision highlighted the observations in Nakara case¹ found at SCC p. 333 para 46 to the following effect: (SCC p. 674, para 7)

"... the pension will have to be recomputed in the light of the formula enacted in the liberalised pension scheme and effective from the date the revised scheme comes into force. And beware that it is not a new scheme, it is only a revision of existing scheme. It is not a new retiral benefit. It is an upward revision of an existing benefit. If it was a wholly new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it."

23. Carving out the subtle difference between a new scheme and revision of an existing scheme and applicability of the latter to the existing pensioners, the Apex Court has, in the above case also held as under:-

..... in case of an employee governed under the Pension Scheme, relations with the employer merely undergo a change, but are not snapped altogether. There is no new scheme of payment of pension, but it is only a revision of the existing Pension Scheme.

24. In the case of Kerala SRTC v. K.O. Varghese, (2003) 12 SCC 293, the Apex Court has, after describing the scheme of pension and trifurcating the same, one of which is "old age retirement or disability benefits of civilian employees" summed up the concept of pension in the following words:-

18. Summing up, it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the foil of life when physical and mental powers start ebbing corresponding to the aging progress and therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the heyday of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to an employee is earned by rendering long and sufficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical *raison d'être* for

pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

25. Keeping in view the aforesaid and certain other decisions of the Apex Court, if law relating to pension is discerned, the same would be as under:-

- (a) pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant. (Constitution Bench Judgment in *Deokinandan Prasad v. State of Bihar*, (1971) 2 SCC 330)
- (b) the basis of calculation has to be the average of the last ten months' emoluments. This principle of adopting last ten months' emoluments as the basis for calculation of pension must be uniformly applied to all persons drawing pension from the Central Government. (*K.L. Rathee v. Union of India* (1997) 6 SCC 7. Also see *State of W.B. v. W.B. Govt. Pensioners' Assns.*, (2002) 2 SCC 179)
- (c) The emoluments have to be calculated according to the government rules in force at the time of retirement of the employees. (ibid)
- (d) In the case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the pension amount *All India Reserve Bank Retired Officers Assn. v. Union of India*, 1992 Supp (1) SCC 664
- (e) person eligible for pension, if survives till the time of subsequent amendment of the relevant pension scheme, would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them.

In such a situation, the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. (**V. Kasturi v. Managing Director, State Bank of India, (1998) 8 SCC 30**)

26. With the above back drop, the case of the applicants has to be viewed and while so doing, the authorities relied upon by the rival parties should also be kept in mind.

27. The Case of the Applicant is as under:-

All the petitioners had been working as Drivers and drawn from running cadre and then on stationary post as Loco Foreman, Sr. Loco Foreman, Sr. Loco/Electrical Traction Power Controller. They are all now retired. The Railway Drivers while in service are paid running allowance for performing duties directly connected with the charge of moving trains. This allowance is paid on Kms. basis calculated at the rate per 100 Kms on the basis of per day 8 hours duty. On retirement, the running allowance is paid to the running staff which reflects the whole retrial benefit like DCRG, pension etc. In respect of petitioners who were originally from the cadre of Railway Drivers (Running Staff), this running allowance is not given to them on their promotion and on retirement as

supervisors. As a result of this, the Drivers being in lower grade than the running Supervisors are getting more emoluments including the running allowance than their supervisors who are in higher grades and similarly at the time of retirement, they get more money and also more pension. Hence, this O.A.

28. The Case of the Respondent is as under:-

It is true that the applicants were Drivers and while performing their duties were directly connected with the charge of moving trains and as such they were paid their running allowance. The applicants were subsequently promoted after due qualifying in the selection for the post of Loco Supervisor which, in fact, is a stationary post and it does not concern with the movement of the trains, in other words, they are not concerned with the running duties and as such are not at all entitled for the running allowances as per the prescribed rules and rates of calculation of the running allowance. However, as per the provisions, the pay of the Loco Supervisors is fixed by adding the benefit of running allowance @ 30% in the higher grade on promotion as Loco Supervisor. A Scheme for additional pensionary benefits of 30% add on for Loco Supervisors drawn from Running cadre on their retirement introduced vide para 5.5 of Railway

Board's letter dated 25.11.1992 applicable to persons retired on or after 1.1.1993. The Full Bench of Jabalpur Bench of the Tribunal in the judgment dated 7.1.2003 in O.A. nos.659/93 and 806/93 has held that the cut off date incorporated in the circular of Railway Board dated 25.11.1992 stated above is not arbitrary. In the light of Full Bench judgment of Jabalpur Bench of the Tribunal which is squarely applicable in the instant case, the claim of the applicants is liable to be dismissed on the basis of judgment pronounced by the Full Bench on 7.1.2003.

29. Arguments were heard and the documents perused. It is advisable, though perhaps at the cost of repetition, to give a bulletin of the decisions relied upon by the parties.

(a) **Union of India v Afsar Jahan Begum** (Spl Appeal No. 9 of 1975 of the Allahabad High Court) held "*The running allowance being part of the pay, the pay of the writ petitioners should be re-fixed.*"

(b) As per **G.C. Ghosh v. Union of India, 1991 Supp (2) SCC 497** the pension scheme or any benefit added to the pension in one Railway, has universal application, and as such, employees of other Railways cannot be denied the same.

(c) **V. Kasturi v. Managing Director, State Bank of India, (1998) 8 SCC 30** holds that change

in pension scheme at a later date shall have corresponding impact upon the pension payable to earlier retirees as well.

- (d) **Janakanjan Basu vs Union of India and others (OA 1007/93 of the Calcutta Bench)** held that since at the time of fixation of pay on promotion to stationary posts, the element of running allowance was not included, whereas as per Afsar Jahan Begum case and C.R. Rangadhamiah's case, such allowance forms part of "emoluments", the same should be added @ 55% of pay and corresponding pension should be paid to the retired employees.
- (e) **Krishan Lal vs Union of India and others, (OA 229 of 2000, decided on 16-10-2001)** held that the applicant whose pay was fixed at the time of his switching over from running category to stationary category, by "including 30% increase in lieu of running allowance" is entitled to "fixation of pension with addition of 55% of basic pay". This order has, initially stayed by the Hon'ble High Court, vide order dated 08-02-2002 in CWP No. 960/2002. However, the Civil Writ Petition was dismissed vide order dated 23-09-2003 and SLP filed against the same too was dismissed. Thus, the order of the CAT attained finality.
- (f) The **Full Bench decision of the Jabalpur Bench** held that the scheme of additional pensionary benefits of 30% add on for Loco Supervisors drawn from Running Cadre on their retirement introduced vide para 5.5 of Railway Board's circular dated 25-11-1992 is applicable to persons retired on or after 01-01-1993 only.

30. In so far as the decision of Full Bench (Jabalpur) which is heavily relied upon by the respondents, the same is not applicable to the facts of this case as the applicants do not claim the 30% add on, on the basis of the Railway Board circular dated 25-11-1992. As such, the same is not to be considered. With due respect to the Full Bench Judgment, the said judgment does not seem to have taken into account the decision of the Apex Court in the case of **R.L. Marwaha v. Union of India, (1987) 4 SCC 31**, in which point for consideration was whether a scheme introduced in a pension scheme subsequent to the retirement of a person, could be applied to such retirees as well and in that case whether the extension of the scheme to such already retired persons would amount to giving retrospective effect to the new scheme introduced. In that case the facts in brief are that the petitioner served the Central Government from October 4, 1950 to November 23, 1953 and on the same day i.e. November 23, 1953, he joined the services of ICAR, an autonomous body. The posts held by him under the Central Government and thereafter under the ICAR were pensionable. He retired from the service of the ICAR on September 30, 1980. On retirement he demanded that his pensionary benefits be computed by counting the period of service put in by him in the Central Government department as part of his qualifying service in view of para 3(A)(i) of OM

No. 28/10/84-Pension Unit dated August 20, 1984. This was denied and he was accorded pensionary benefits by reckoning his qualifying service from November 23, 1953 to September 30, 1953 only on the ground that as he retired before the issue of the OM he was not entitled to the benefit of para 3(A) (i) in view of the prospective effect given to the OM by para 7 thereof. The petitioner contended that it was not open to the government to deny the benefit of the order to those employees who had retired prior to the date of the order as it would bring into existence two classes of pensioners. Allowing the writ petition, the Apex Court has held as under:-

9. We do not also find much substance in the plea that this concession being a new one it can only be prospective in operation and cannot be extended to employees who have already retired. It is true that it is prospective in operation in the sense that the extra benefit can be claimed only after August 29, 1984 that is the date of issue of the Government Order. But it certainly looks backward and takes into consideration the past event that is the period of service under the Central Government for purposes of computing qualifying service because such additional service can only be the service rendered prior to the date of issue of the Government Order. By doing so the Government Order will not become an order having retrospective effect. It still continues to be prospective in operation. Whoever has rendered service during any past period would be entitled to claim the additional financial benefit of that service if he is alive on August 29, 1984 under the Government Order but with effect from August 29, 1984.

31. If the above is read with the decision in the case of All India Reserve Bank Retired Officers' Association (supra), it would reveal that the above order was only deemed to have been an extension of an already existing scheme. In that case the Apex court has held, "It is not a new retiral benefit. It is an upward revision of an existing benefit." In any event, the applicants in the instant case do not claim the benefit of the circular of 25-11-1992. Thus, Full Bench judgment is not applicable to the facts of this case.

32. So far as Krishan Lal case is concerned, the same is fully applicable as in that case also the applicants were initially ~~were~~ in "running posts" and later on brought to "stationary post"; At the time of such shifting, the element of 30% of pay in lieu of their running allowance was included in their pay and as they were denied the increase by 55% they moved the matter before the Tribunal, which had allowed the OA against which civil writ petition (960/02) filed was dismissed vide order dated 23-09-2003 and later on even SLP filed against the dismissal of writ petition was also dismissed vide order dated 06-0-7-2004 in CC 4533/2004. Thus the order of the Tribunal has attained finality and the case of the applicants is fully covered inasmuch as the applicants were all initially in the "running post" and later on came to Stationary post and at

that time their pay was incremented with an addition of 30% in lieu of running allowance and these were also denied the 55% of pay for the purpose of working out the pensionary benefits.

33. Thus, while the full Bench decision of the Jabalpur Bench is not applicable what is to be seen is whether the applicant's case is covered by the decision of Calcutta Bench of the Tribunal. The contention of the applicants is that the same is fully applicable, while the respondents contend as not applicable. The respondents' contention is on the basis of the fact that in the Calcutta Bench case, the applicants did not derive the benefit of 30% of the pay in lieu of running allowance at the time they switched over to stationary posts. And it was on account of the same the Tribunal directed that they be afforded the benefit of 55% of the pay in lieu of running allowance, while in the case of the applicants; they had derived the benefit of 30% of pay in lieu of running allowance at the time they were promoted to stationary posts. The question is, whether this distinction would be adequate to deny the benefit of 55% of the pay in lieu of running allowance to the applicants (for the purpose of working out the pensionary benefits). The answer has to be an emphatic "NO". For, what the applicants were paid at the time of their posting at the Stationary Posts is in terms of para 1(3) of

order dated 22-03-1976 while the benefit of 55% of the pay for pensionary purposes is in accordance with the provisions of order dated 17-08-1981 which inter alia reads as under:-

"3.23. Reckoning of running allowance as pay.-(i) For the specified purposes for which running allowance is reckoned as pay at present, 30% of the basic pay of the running staff concerned will be reckoned except as below:

(a) for the purpose of retirement benefits, 55% of basic pay will be taken into account. This provision will be made applicable retrospectively from 1-4-1979 so that those running staff who have already retired with effect from that date or afterwards will also have their retirement benefits recalculated and resettled.

34. The above benefit is available to all irrespective of whether the individuals were earlier paid 30% of pay in lieu of running allowance at the stationary posts or not. Those who were not the beneficiaries of 30% would be getting a full benefit of 55% of pay to be taken into account while those who were the beneficiaries would be getting the difference between 55% and 30%. Since this rule that 55% of the pay should be added for pensionary purposes is available right from 22-03-1976 and even earlier as per the order which takes retrospective effect, the applicant having retired posterior to the coming into existence of the above rule, the said rule and the benefit flowing therefrom is fully available to the applicants. Nothing less; nothing else. It is not the case of the

applicants that the claim for 55% of pay would be in addition to the earlier benefit of 30% of pay already made available to them.

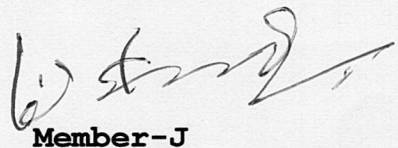
35. In view of the above, the OA succeeds. It is declared that the applicants are entitled to the benefit of order dated 17-08-1981 and the respondents are directed to work out 55% of the pay and add the same to the pay of the applicants for working out the ten months average pay for the purpose of pension. Since their last pay as earlier calculated included 30% of the pay, the increment shall be worked out as under:-

Last average 10 months' pay X 155/130.

It is on the above pay that pension and other terminal benefits should be calculated.

Once the revised terminal benefits are worked out the difference between the amount payable and paid shall be worked out and the same should be paid to the applicants. There shall, however, be no change in the commuted value of pension already paid to the applicants. The difference in the pension should be paid within a period of six months from the date of communication of this order.

36. Under the circumstances, there shall be no orders as to cost.



Member-J

/ns/