D. J. Jani & 72 Ors. .....Applicants.

Versus

Union of India & Ors. .....Respondents.

COMMON JUDGMENT

O.A.No. 351 TO 423 OF 1988

Date : 28-2-1992.

Per : Hon'ble Mr. M. Y. Priolkar, Member(A).

Heard learned counsel Mr. J. R. Nanavati, for the applicant and Mr. N. S. Shevde, learned counsel for the respondents.

2. The applicants in these 73 cases have a common cause of action and a common prayer for relief. Accordingly, all these applications were heard together and are dealt with by this common order. The applicants are Guards/Drivers of trains and belong to what is known as running staff in the railways, being directly connected with the charge of moving trains. They were entitled to a special allowance called running allowances, which, unlike other compensatory allowances, was included as part of pay subject to a maximum of 75% of the basic pay of the employee for the purpose of calculationg

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pensionary benefits, house rent allowance, leave salary and several other entitlements like passes. This provision relating to counting of the running allowance upto 75% of the basic pay for various purposes was incorporated formally in various relevant rules of the Indian Railway Establishment code.

3. With effect from 1.1.73, when the pay scales of the Central Government employees were revised on the basis of the Third Pay Commission's recommendations, the question arose regarding revision of the prescribed percentage for counting the running allowance as as pay for various entitlements. Admittedly, prior to 1.1.1973, the basic pay in the total salary of an employee was a much smaller component than in the revised pay scales after 1.1.1973, when a part of the dearness allowance was merged in the basic pay. The railways therefore considered that a revised ceiling percentage for reckoning as pay had to be fixed for the running allowance of the running staff after 1.1.1973. Since this entailed a lot of detailed exercise, interim orders were issued on 31.1.1974 in which it was stated that the question of revision of rules for the rationalisation of various allowances consequent upon the introduction of the revised pay scales under

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Railway Services (Revised Pay) Rules, 1973 is under consideration of the Board and pending final decision thereon, the Board had decided that "the existing quantum of running allowance based on the prevailing percentage laid down for various purposes with reference to the pay of the running staff in Authorised Scales of Pay may be allowed to continue". It was also added that "the payment made as above will be provisional subject to adjustment on the basis of final orders".

4. Subsequently by orders dated 22.3.76 as modified by another order of 23.6.76, the railways fixed the percentage of running allowance counting for the purpose of retirement benefits etc. as the actual amount of running allowance down subject to a maximum of 45% of pay for those running staff who are drawing pay in the revised pay scales. These orders were given effect from 1.4.1976.

5. Certain members of the running staff moved the Delhi High Court in a Writ Petition seeking annulment of these orders of 22.3.76 which reduced the quantum of running allowance for retirement and other benefits from the earlier prescribed maximum of 75% to 45% of pay

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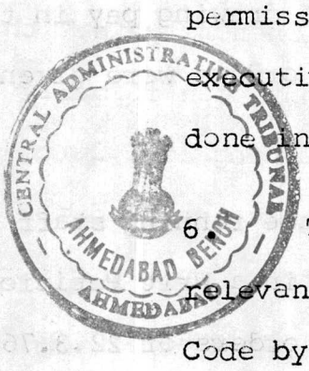
and prayed for the restoration of the percentage of 75%. That Writ Petition was transferred to the Principal Bench of this Tribunal. The Principal Bench in its judgment of 6.8.1986 (Shri Dev Dutt Sharma & Ors. V/s. Union of India & Ors. - Registration No.T-410/85), quashed the impugned order of the railways dated 22.3.76 and directed the railways to continue to make the payment beyond 31.3.76 of certain allowances, including retirement and other specified benefits, by treating the running allowance for various purposes in accordance with the Railway Ministry's interim orders dated 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". The ground on which this Tribunal gave the above order was that it was not permissible to amend the statutory rules by executive orders or instructions, as had been done in the present case.



6. The Railway Board thereafter amended the relevant rules of the Indian Railway Establishment Code by orders dated 17.12.1987. Under these orders, the revised percentage of pay as notified in the earlier executive orders of 22.3.76 which had been quashed by this Tribunal's order dated

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6.8.86, were formally given statutory force with retrospective effect from the same date namely 1.4.1976. These orders were also subsequently notified in the Gazette of India dated 5.12.1988.

7. Certain other members of the running staff of the railways again challenged these orders dated 17.12.87 before the Bangalore Bench of this Tribunal (O.A.Nos. 281 to 290 of 1987(F)) decided on 31st August, 1988 (C.R. Rangadhamaiah S/o. Rangaiah & Ors. V/s. Chairman, Railway Board, New Delhi & Ors.). The Bangalore Bench held that this statutory amendment to the petinent rules in Indian Railway Establishment Code had not been duly promulgated or published and therefore could not become operative. The Bangalore Bench thus reached the same conclusion as the earlier judgment of the Principal Bench though according to them on a different rationalisation namely that the statutory amendment had not been formally notified. The operative part of the Bangalore Bench judgment was that the "applicants are entitled to 75% of their running allowance to be reckoned for determining their pay for calculation of their retiral benefits, so long as the said basis continues in the Indian Railway Establishment Code". They also directed the respondents to determine

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the dearness pay according to the rules and orders in force, without ignoring the "pay element".

8. When the present applications before this Bench were filed in May, 1988, the prayer of the applicants was that the judgment of the Principal Bench dated 6.8.86 was binding on the respondents and should be implemented in respect of the present applicants also. Subsequently, they amended the applications challenging the amendments made to the rules on the ground that such amendment would not affect the vested rights of the applicants in respect of running allowance of 75% on the basis of the prevailing pay. The applicants also pointed out that the respondents had no power or authority to give retrospective effect to the said amendment so as to take away the existing rights of the applicants in respect of the running allowance.

9. The question for determination before us now is, therefore, whether the amendments carried out under the Railway Board's orders dated 17.12.87 with retrospective effect from 1.4.76 can be said to affect the vested rights of the applicants in respect of running allowance and whether such retrospective amendments are to be considered as illegal or in excess of the powers conferred on the Government.

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10. As we have noted earlier, while the earlier executive orders of 1976 of the Railway Board reducing the percentage of running allowance from 75% to 45% had been quashed on technical grounds by the Principal Bench, namely, on the ground that statutory orders could not be altered by executive instructions and by the Bangalore Bench on the ground that the amendments had not been formally or duly notified, the judgment of the Principal Bench dated 6.8.86 specifically directed the respondents to treat the running allowance beyond 31.3.76 for various purposes in accordance with the Railway Ministry's letter dated 21.1.74 till such time as the relevant rules in this regard are or have been amended in accordance with law. The Bangalore Bench had also endorsed this decision of the Principal Bench though, according to them, on a different rationalisation. The order dated 21.1.74 was to the effect that "The existing quantum of running allowance based on the prevailing percentage laid down for various purposes with reference to the pay of the running staff in Authorised Scales of pay may be allowed to continue" and further that "the payments as above will be provisional subject to adjustment on the basis of final orders". A second judgment on the same subject by the

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Principal Bench of the Tribunal in the case of C. L. Malik & Ors. V/s. Union of India & Ors. (O.A.Nos. 1572 of 1988 & Ors.) decided on 23rd October, 1991 has also been brought to our notice in which the precise import of the term 'Authorised Scales of Pay' in the context of 1974 orders of the Railway Board has been explained. In para 15 of this judgment, it has been observed that in their earlier judgment the Principal Bench quashed the order dated 23.2.76 only on the ground that the statutory rules could not be amended by executive instructions and that the relief granted was only till such time at the relevant rules are amended in accordance with law. The judgment notes that the respondents have acted in accordance with the earlier judgment of the Tribunal and have formally amended the rules. The judgment observes that "the publication in the Gazette of India meets the legal requirement of promulgation/ publication practised in a recognisable way, which was held to be a sine qua non for the operation of amended rules in Harla V/s. State of Rajasthan (AIR 1951 SC 467), which was cited by the counsel for the respondents. We may also cite the judgment of the Supreme Court in State of Maharashtra Vs. Mayer Hans George(AIR 1955 SC 722)

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in support of this". The judgment also holds that once an order is passed in the name of the President, it is not necessary that it should have been personally approved by him and it is enough that the order has been passed by the competent functionary authorised in this behalf by the rules of business. The Tribunal has therefore accepted that the order has been gazetted and it has been issued by the official authorised in that behalf. Regarding the argument that the rules cannot be amended retrospectively, the Tribunal has held that the applicants have not been able to show that they have been in any way adversely affected in terms of their total amoluments or even in regard to the quantum of the running allowance counting as pay, consequent upon issue of the amended rules. It is also observed that it will not be in accordance with statutory rules to hold that the percentage of 75% should be applied to the revised pay after the Third Pay Commission's recommendation. The Tribunal found that the amended rules did not involve the applicants in any adverse civil consequences such as reduction in emoluments or recovery of over-payments, and that the amendments are legally valid and have been properly notified. We are in respectful agreement with the reasoning given and the

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conclusions reached in this second judgment dated 23.10.1991 of the Principal Bench on this subject.

11. In the present application also, the respondents have annexed to their written reply, copies of correction slips to the relevant rules in the Indian Railway Establishment Code (Ann.A to B to the written reply) in which a specific explanation and certificate has been given in each amendment to the effect that the restropective effect given to these rules will not adversely affect any employee to whom these rules applied. The respondents in the written reply have also catagorically stated that the Government has ensured that the retrospective amendment will not deprive the concerned employees of the benefits which they were hitherto drawing, in as much as they will not be placed in any disadvantageous position. Infact, according to the respondents, 75% of a lower basic pay in the pre-revised scale works out to a lower figure in absolute terms than 45% of a higher basic pay in the revised pay scale after 1.1.1973 and even on the reduced percentage, the employees will be entitled to a higher quantum of running allowance to be counted as pay, after the amended rules. It appears that this percentage of 45% has been subsequently revised retrospectively from 1979

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to 55%.

12. The learned counsel for the applicants argued that there was a conflict between this latest judgment of the Principal Bench dated 23rd October 1991 and the judgment of the Bangalore Bench dated 31st August 1988 and, therefore, this would be a fit case for reference to a larger bench. The learned counsel, however, was unable to convince us where exactly the conflict between the two judgments arises. No doubt, the Bangalore Bench while quashing the 1976 orders of the Railway Board on the ground that the amendments to the rules were not formally or duly notified, has finally held that the applicants are entitled to 75% of the running allowance to be reckoned for determining the retirement benefits etc. so long at the said basis continues in IREC. That judgment endorses the earlier judgment of the Principal Bench, New Delhi, dated 6.8.86 stating that the same conclusion is reached in both the judgments though through different routes. As we have noted earlier, the direction in the first judgment of the Principal Bench dated 6.8.86 is that pending finalisation of the revised percentage, interim orders issued on 21.1.74 be followed for treatment of running allowance for other purposes till such time as the relevant

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rules are or have been amended in accordance with law. Under the 1974 orders, the percentage of 75% is with reference to the pay of the running staff in "Authorised Scales of Pay" which in this second judgment of the Principal Bench dated 23.10.1991 have been held to be the pre-revised scales of pay which were prevailing prior to 1.1.1973. In these circumstances, we do not see any conflict between the Bangalore Bench judgment and the second judgment of the Principal Bench as alleged by the learned counsel for the applicant. In this view of the matter, the question of any reference to a larger bench as prayed on behalf of the applicants does not arise.

13. In the result, the applications fail and are dismissed, with no order as to costs.

Sd/-
(R. C. BHATT)
MEMBER(J)

Sd/-
(M. Y. PRIOLKAR)
MEMBER(A)

Prepared by : 17/6/92
Compared by :
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Section Officer (J)
Central Administrative Tribunal
Ahmedabad Bench