

Illegal deduction from  
, pension

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

(8)

O.A. No.  
~~XXXXXX~~

584 of 1988

DATE OF DECISION 24th June, 1992.

Shri Adam V. Shaikh \_\_\_\_\_ Petitioner

Shri M.D.Rana \_\_\_\_\_ Advocate for the Petitioner(s)

Versus

Union of India and Ors. \_\_\_\_\_ Respondent

Shri B.R.Kyada \_\_\_\_\_ Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. R.C.Bhatt : Judicial Member

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Shri Adam V. Shaikh,  
Retired Guard,  
Fulwadi Plot,  
Thangadh,  
Surendranagar Dist.

...Applicant.

( Advocate : Shri M.D.Rana )

Versus

1. Union of India  
General Manager,  
Western Railway,  
Churchgate,  
Bombay - 400 020.

2. Divisional Railway Manager,  
Western Railway,  
Division Office,  
Rajkot.

...Respondents.

( Advocate : Shri B.R.Kyada )

O R A L J U D G M E N T

O.A. NO. 584 OF 1988.

Dated : 24/06/1992.

Per : Hon'ble Mr.R.C.Bhatt : Judicial Member

This application is filed by a retired Government servant under Section-19 of the Administrative Tribunals Act, 1985, seeking the reliefs that the respondents be directed to implement the Judgment of the Central Administrative Tribunal, Principal Bench, New Delhi, to give 75% running allowance and to grant the compensatory allowance and the leave encashment to the applicant and also the allowance with respect to hours of employment and breach of rest allowance and also to direct the respondents to refix the applicant's pension, gratuity and commuted value of pension in view of the directions

given by the Hon'ble Tribunal and to quash and set aside the impugned order dated 23rd December, 1987.

2. This application is projected on the question of the running allowance for the purpose of retiral benefits, dearness allowance, medical allowance, house rent allowance, leave and etc. The applicant in his application in para -6 - 1, has averred that this application is preferred to implement the Judgment of the Central Admn. Tribunal, Principal Bench, New Delhi, which allowed the application and directed the respondents to treat 75 % of the running allowance as the part of the pay. The respondents by letter dated 23rd December, 1987, which is a impugned order intimated the applicant that all settlement dues of the applicant had been paid correctly. As regards the over payment of the leave salary and the applicant's request for grant of compensatory leave the same was not ~~the~~ permissible under the rules. The applicant has retired as Guard on 31st January, 1984, and his pension was also fixed with effect from 1st February, 1984, and the commuted value of pension was also ~~fix~~ fixed. The grievance of the applicant is that the respondents have by the railway board's letter dated 5th June, 1984, recalculated the retirement benefits granted to the running staff retired on or after 1st August, 1981 and as per para - 3 of

that letter DP for the purpose of calculation shall be calculated on pay plus 30 % . Hence the emoluments for the retirement benefits in the case of running staff retiring on or after 1st August, 1981, would consist of basic pay plus 55 % thereof as component of running allowance as a retirement benefits D.P. at the appropriate percentage, calculated on basic pay plus 30 % thereof. Para-5, of this circular shows that D.P. for the purpose of grant of HRA and CCA to running staff would also be calculated on basic pay plus 30 % thereof. The applicant made representation ~~7~~ <sup>against</sup> deduction to which the respondents gave reply,

Annexure-A/5. The applicant has also produced the other documents. So far the relief - 7 - B, is concerned, regarding the grant of the compensatory allowance and leave encashment and also the allowance with respect to hours of employment in breach of rest allowance, the same cannot be considered at all at this stage when the applicant had retired on 31st January, 1984. So far the relief in para - 7 - A, C, and D, are concerned the same ~~is~~ <sup>question</sup> concluded by the Division Bench of this Tribunal by decision dated 28th February, 1992, in O.A. 351 to 423 of 1988, in the case of Shri D.J.Jani and 72 ors, versus Union of India and ors. The applicants of those cases were Guards/Drivers, of trains and belonged to

running staff in the Railways and in their case also the respondents by order dated 22nd March, 1976, modified by another order dated 23rd June, 1976, the railways fixed the percentage of the 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 1st April, 1976. They also relied on the decision of the Central Administrative Tribunal, Principal Bench, dated 6th August, 1986, (Shri Dev Dutt Sharma & Ors. v/s. Union of India & Ors.) which quashed the impugned orders of the railways. The Railway Board thereafter amended the Railway rules of the Indian Railway Establishment Code, by order dated 17th December, 1987, under which the revised percentage of pay as notified in the earlier executive orders of 22nd March, 1976, which had been quashed by the Principal Bench order dated 6th August, 1986, were formally given statutory force with retrospective effect from the same date namely 1st April, 1976., which was also subsequently notified in the Gazette of India dated 5th December, 1988. Certain other members of the running staff of the railway again challenged these orders dated 17th December, 1987, before the Bangalore Bench of this Tribunal, in O.A. Nos. 281 to 290 of 1987,

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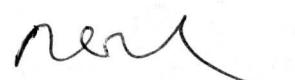
(13)

decided on 31st August, 1988, and the said Bench reached the said conclusion as the earlier Judgment of the Principal Bench. We have discussed the ratio of both the Judgments in O.A./351 to 423 of 1988, decided on 28th February, 1992. The second Judgment given by the Principal Bench of the Hon'ble Tribunal in the case of Shri C.L.Malik and ors. Vs. Union of India and Ors., decided on 23rd October, 1991, is referred to in para -10, of the Judgment in O.A. 351 to 423 of 1988. After considering all the Judgments by Ahmedabad - , Bench in those cases and in particular Judgment in C.L.Malik's case, by the Principal Bench, decided on 23rd October, 1991, we rejected the said applications. We therefore, reject this application on the same grounds mentioned in the Judgment O.A. 351 to 423 of 1988, and hold that the applicant is not entitled to any relief as prayed for. Hence the following order :

ORDER

The application is disposed of.

No order as to costs.

  
( R.C.Bhatt )  
Judicial Member