

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A.NO. 452/92

T.A.NO.

DATE OF DECISION 16.09.1998

Shri Harilal M.

Petitioner

Mr. P.K. Handa

Advocate for the Petitioner [s]

Versus

Union of India and Others

Respondent

Mr. N.S. Shevde

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. Laxman Jha, Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? *NA*
- 2, To be referred to the Reporter or not ? *NA*
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ? *NA*

Harilal Mahijibhai,
Rtd. Driver 'A',
Khokhra Mehmabad,
Sion Nagar,
Maninagar (E),
Ahmedabad.

... Applicant

(Advocate: Mr. P.K. Handa)

VERSUS

1. Union of India,
Secretary, Ministry of Railways,
Owning & Represented by General
Manager, Western Railway,
Churchgate, Bombay - 400 020.
2. Divisional Railway Manager,
Western Railway, Vadodara Div.
Pratapnagar, Baroda.
3. Sr. Divisional Accounts Officer,
DRM-office, Pratap Nagar,
Vadodara - 390 004.

... Respondents

(Advocate: Mr. N.S. Shevde)

ORAL ORDER

O.A./452/92

Dated: 16.09.1998

Per: Hon'ble Mr. V. Ramakrishnan, Vice Chairman

We have heard Mr. Handa for the applicant and Mr. Shevde for the respondents.

2. The applicant retired from railway service in October, 80. He was an engine driver and as such part of the running staff who were entitled to running allowance. For calculating the pension, Railways had issued instructions for taking part of the running allowance as pay. As per the relevant statutory rules, this was earlier fixed at an amount not exceeding 75% of pay. On the enhancement of the pay ^{w.e.f. 1-1-1973} consequent to the recommendations of the Third Pay Commission, the Railways had issued an administrative

Contd..3/-

order bringing down the entitlement to 45%. This was however increased to 55% again by another administrative order with effect from 1.4.79. The present applicant has sought for a direction that for the purpose of pension the running allowance in his case should have been computed at the rate of 55% and not at 45% as he had retired subsequent to 1.4.79.


3. Mr. Handa for the applicant brings out that in view of the conflicting decisions with regard to the vires of the rules for calculating the pension by different Benches of the Tribunal the matter was taken to the Full Bench and the Full Bench sitting in Bangalore had gone into this matter in the case of C.R. Rangadhamiah (Full Bench Judgment of CAT 1991-1994 Volume 3 Page 265). The Full Bench had then held that the action of the Railway Board in trying to reduce the percentage of running allowance for reckoning for pension by an administrative instruction from 75% to 45% or 55% cannot be sustained and that the subsequent amendment to the statutory rule which was effected in 1988 cannot also have retrospective effect. In other words, those railway employees who retired subsequent to 1.1.73 but prior to the amendment of the statutory rule in 1988 would be entitled to the retirement benefits where the running allowance would be taken as pay and allowances for calculating pension in accordance with the statutory rules which existed prior to the amendment in 1988. This was taken up by the Railway Administration to the Supreme Court by an SLP and the Supreme Court by a detailed order upheld the stand of the Full Bench. Mr. Handa also draws attention to a recent decision of the Supreme Court in the case of K.C. Sharma vs. UOI 1997(6) SCC 721, where the Supreme Court had noticed that the judgment of the Full Bench was a judgment in rem and having regard to the facts and

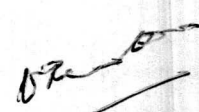
circumstances of the case held that it was a fit case for the Tribunal to have condoned the delay in filing the application and the railway servant should have been given relief in the same terms as has been granted by the Full Bench of the Tribunal.

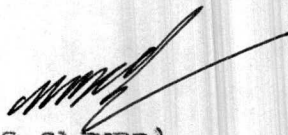
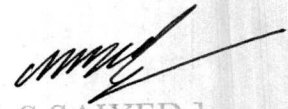
4. Mr. Shevde says that subsequent to the decision of the Supreme Court confirming the Full Bench decision in Rangadhamaiah' case (1997 (6) SCC 623), the Railway Board had issued orders to implement the court directions and that the case of the present applicant would also be regulated in terms of the general instructions of the Railway Board.



5. In the light of the submissions of both counsel and keeping in view the subsequent developments particularly the decision of the Full Bench as confirmed by the Supreme Court, we direct the Railway Board to regulate the entitlement of the present applicant in terms of the circular issued by the Railway Board to give effect to the directions of the Supreme Court. While doing so, the Railways (particularly Respondent no.2, Railway Board) shall not be influenced by the fact that the present applicant had only sought for 55% of the running allowance for the purpose of computing pension and he shall be given the benefit of the enhanced percentage of running allowance for being computed as pay for pension purposes as laid down by the statutory rule as existed prior to its amendment in 1988 while regulating his entitlement. This process should be completed by the respondents particularly, respondents 2 and 3, within three months from the date of receipt of a copy of this order.

6. With the above directions, the OA is finally disposed of.
No costs,


(Lexman Jha)
Member (J)


(V. Ramakrishnan)
Vice Chairman

DATE	OFFICE REPORT	O R D E R
1-3-99		<p>The learned advocate Mr.Shevde is not present. He has not removed the objections till today. Still, however, in the interest of justice, the matter is adjourned to 22-3-99.</p> <p> (A.S.SAIYED) Registrar</p> <p>SSN</p>
22/3/99		<p>SSN</p> <p>The case was taken on Board. The learned advocates Mr.Shevde and Mr.Handa are present. As per the endorsement made by the learned advocate Mr.Handa, he has received copy of the application, hence the objection at Sr.No.2 having been complied with and the present application being for extension of time for execution of the order passed in O.A. 452/92 and the said order being already on record, filing of the copy of the order is dispensed with and the application is ordered to be registered and placed before the Hon'ble Bench for admission/ necessary orders on 5.4.99.</p> <p> [A.S.SAIYED] Registrar</p> <p>SSN</p>

DATE	OFFICE REPORT	ORDER
5.4.99		<p data-bbox="695 410 1554 902">Seen M.A.181/99. This M.A. seeks extension of time to implement the direction of the Tribunal dated 16.9.98 in O.A.452/92. The M.A. does not spell out the exact date upto which time is sought for but in any case it is clear that time sought for is ^{was} beyond March 1999 which is already over. M.A. disposed of as infructuous.</p> <div data-bbox="695 994 957 1131"> (A.S.Sanghavi) Member(J)</div> <div data-bbox="1230 950 1527 1131"> (V.Ramakrishnan) Vice Chairman</div> <p data-bbox="695 1192 767 1223">etc.</p>

M.A.181//99 in O.A.452/92

DATE	OFFICE REPORT	ORDER
5.4.99		<p data-bbox="692 428 1557 920">Seen M.A.181/99. This M.A. seeks extension of time to implement the direction of the Tribunal dated 16.9.98 in O.A.452/92. The M.A. does not spell out the exact date upto which time is sought for but in any case it is clear that time sought for is ^{not} beyond March 1999 which is already over. M.A. disposed of as infructuous.</p> <div data-bbox="692 1074 951 1146" data-cs="2" data-kind="parent"> <div data-bbox="692 1074 951 1146">(A.S.Sanghavi) Member(J)</div> <div data-bbox="1225 1087 1522 1159">(V.Ramakrishnan) Vice Chairman</div> </div> <p data-bbox="686 1207 762 1234">vtc.</p>