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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 262 OF 2000.
Cuttack, this the 26th day of September, 2001.

N. N. MURTY.

....

APPLICANT.

versus

UNION OF INDIA & ORS.

RESPONDENTS.



FOR INSTRUCTIONS

1. whether it be referred to the reporters or not? Yes
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No

Somnath S. S.
SOMNATH S. S.
VICE- CHAIRMAN
26.9.2001

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 262 OF 2000.
Cuttack, this the 26th day of Sept., 2001.

CORAM:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN.

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SHRI N. N. MURTY,
Aged about 60 years,
S/o. Nagaih Retd. Loco Inspector,
South Eastern Railway,
Khurda Road,
Dist: Khurda.

.... **Applicant.**

By legal practitioner : Mr. S. C. Samantray, Advocate.

- Versus -

Union of India represented through its
General Manager, South Eastern Railway,
Garden Reach, Calcutta-700043.

2. The Divisional Railway Manager,
South Eastern Railway, Khurda Road,
Dist: Khurda.
3. The Senior Divisional Mechanical Engineer,
South Eastern Railway, Khurda Road,
Dist: Khurda.
4. Senior Divisional Accounts Officer,
South Eastern Railway, Khurda Road,
Dist: Khurda.
5. The Senior Divisional Personnel Officer,
South Eastern Railway, Khurda Road,
Dist: Khurda.

... **Respondents.**

By legal practitioner : M/s. S. Ray, A. A. Khan, ASC.

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, the Applicant has prayed for a direction to the Respondents to provide the benefit of add-on demand of 30% mileage allowance on superannuation as per the orders of the Railway Board and for a direction to re-fix his pension and other retirement benefits taking into account the benefit of 30% mileage allowance.

2. The Respondents have filed counter opposing the prayers of the Applicant. Applicant has filed rejoinder and Respondents have filed reply to the rejoinder. Applicant has filed alongwith a Memo the extract of the gradation list with copy to the other side. I have perused the pleadings of the parties.



3. For the purpose of considering this petition, it is not necessary to go into too many facts of this case. The admitted facts can be stated first.

4. The applicant was initially recruited as Engine Cleaner in the year 1968 and in due course, was promoted to the post of Shed Foreman in the scale of Rs. 2000-3200/- . The Post of Shed Foreman was re-designated as Crew Controller. In the order dated 25.11.1992, at

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Annexure-A/1, the Railway Board had issued certain directions for deployment of Crew Controllers. As the entire dispute relates to alleged non-working out of this circular in the case of the Applicant, the relevant portions of the Circular are quoted below:

*3.5. xx xx. No person shall however be posted as power Controller/Crew Controller during the last two years of his service and during this period, he would be compulsory posted as Loco Inspector even by posting Loco Inspector's as power Controllers/Crew controllers. In case this is not arranged, the employee will have the right to report to the DRM/Head of Department for posting in Loco Inspectors category when just one and a half years of service is left and it would be obligatory on the competent authority to do so.

XX XX XX XX

5. Allowances and retirement benefits for Loco Inspectors:

5.1. The loco Inspectors irrespective of their grade shall be credited with actual foot plate duties as indicated in the Rule 1514 of Indian Railway establishment code, as amended by advance correction slip No.21 and paid running allowance accordingly at the rate to be notified from time to time and as applicable to Mail/Express drivers. At present this rate is 36.10 per hundred kilometres.

5.2. The loco Inspectors shall be given an allowance in lieu of Kilometrage at the rate of 160 Kilometras per day for other than foot duties performed by them outside their head quarters beyond a radius of 3 Kilometres.

5.3. Where the Loco Inspectors are deployed for other than foot plate duties at out stations for part of the day and also on foot plate duties for another of the same day payment of Kilometrage allowance shall be made either in terms of para 5.1 or Para 5.2 above, whenever is higher.

5.4. NO TA/DA shall be admissible to Loco
inspectors:

5.5. For the purpose of pensionary benefits, the basic pay shall also include, with effect from 1.1.1993 an add-on element of 30% of basic pay in the case of Loco Inspectors. If a loco inspector retires before completing a period of 10 months under this scheme, he shall be permitted the benefit of add-on element to basic pay on a pro-rata basis depending on the actual period of service under the scheme. The benefit of Add-on element to basic pay shall not be admissible for any purpose other than computation of pensionary benefits.*

5. Para-903 of running allowance Rules of the Railways printed in Indian Railway Establishment Manual, Vol.I (89 edition) is also quoted below:


*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 21(a) i.e. *emoluments which are specially classed as pay by the President.*

6. The date of birth of applicant is 11-9-1939 and he superannuated on 30-9-1997. It is the admitted position that while the applicant was working as Crew Controller in the scale of Rs.2000-3200/- he was posted as Loco Inspector in the identical scale in order dated 31.5.1994. Applicant joined as Loco Inspector and after working for sometime, filed a representation dated 19.12.1994 stating that because of his domestic problem, he is not able to shoulder the responsibility of Loco Inspector and he may be utilised as Crew Controller. Accordingly, the applicant was posted as Crew Controller in order dated 23.12.1994. It is also the admitted position that the applicant filed

a representation dated 23.4.1996 enclosed by the applicant at Annexure-A/2 and the Respondents as Annexure-R/5 praying that in view of his nearing retirement, he should be utilised as Loco Inspector as per the instructions of the Railway Board but he was not immediately posted as Loco Inspector. He was ultimately posted as Loco Inspector in order dated 18.8.1997 and having worked as Loco Inspector from 18.8.1997 he retired on 30.9.1997. It is the admitted position that for this purpose from 18.8.1997 to 30.9.97 the Add-on element of 30% of basic pay was calculated while fixing his pension but as he did not work as Loco Inspector, this Add-on element was not taken into account for the remaining period of last ten months emoluments on the basis of which average emoluments are calculated and pension is fixed. As the applicant suffered in pensionary benefits, as a result, he has approached this Tribunal with the prayers referred to earlier.



7. I have heard Mr. S. C. Samantray, learned Counsel for the Applicant and Shri S. Ray, learned Additional Standing Counsel for the Respondents. From the above recital of admitted position it is clear that the sole point for consideration is whether the applicant is entitled to get the benefit of Add-on element of 30% of his basic pay for the rest of the periods of ten months when admittedly, he did not work as Loco Inspector. From the extract of the Railway Board's instruction dated 25.11.1992 quoted by me above, it is clear that it is obligatory on the part of the competent authority to post him as a Loco Inspector during

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the last ten months of his service. The circular specifically provides that if a person is not so posted, he will have a right to represent ^{to} the DRM/Head of the Department for posting as Loco Inspector. Admittedly, the applicant made such a representation on 23.4.1996 when he had more than ten months of service left. Respondents have not indicated in their counter why ~~inspite~~ of his representation dated 23.4.1996 he was posted as Loco Inspector only on 18.8.97 when he had only less than two months left for his superannuation. Applicant has stated in his rejoinder that in the gradation list his date of birth was wrongly mentioned as 1944 and therefore, the Authorities felt that he had many more years of service. Applicant has enclosed a copy of the gradation list from which with some difficulty it is seen that his date of birth has been recorded as 1.1.1944. Be that as it may, admittedly, the applicant's date of birth is 11.9.1939 and he has been rightly superannuated on 30.9.1997. As according to the Railway Board's circular it was obligatory on the part of the Departmental Authorities to post him as Loco Inspector during the last ten months of service and as ~~inspite~~ of applicant's representation well intime he has not been so posted except for the last one and half months of his service career because of the fault of the Respondents, applicant can not be made to suffer more so when the consequent deprival of higher level of pension will affect him during the rest of his retired life. Respondents have



made no averments in the counter/reply to the rejoinder as to why inspite of representation of the applicant, admittedly received by them, he was not posted as Loco Inspector during the last ten months of his service. In view of this, I direct that the applicant must be deemed to have worked as Loco Inspector for the last ten months of his service career and he should be entitled to have the benefit of Add-on element of 30% of his basic pay for the purpose of his pensionary benefits. It is to be noted however, that while Loco Inspectors are entitled to the above advantage only for the purpose of computation of pension and for no other purpose, the Crew Controllers are entitled to Rs. 300/- Special Pay, per month. Applicant during the period of last ten months when he had acted as Crew Controller has received the Special pay of Rs. 300/- per month. Now that I have ordered that the applicant will be entitled to Add-on element of 30% of his basic pay by ten months of his service career including the period from 18.8.1997 when he actually worked as Loco Inspector, I also order that he will not be entitled to Special pay for this period. In view of this, I direct the Respondents to allow element of 30% of basic pay to the applicant while computing his emoluments for the last ten months of service and re-fix his pension and other retirement benefits accordingly. This exercise should be completed within a period of 120 days from the date of receipt of a copy of this order. While refixing the enhanced arrear pension and enhanced retirement benefits, the amount of Rs. 300/- received by him



per month during the above noted period should be recovered from the applicant by way of adjustment.

3. Learned Counsel for the applicant has made out a new case in his rejoinder stating that as he had worked earlier as Loco Inspector in 1994 for some months that period should be counted for the purpose of calculating his pension. In view of my above order, it is not necessary to take a view on this. In any case under the pension rules, pension is to be fixed on the basis of the average emoluments computed on the basis of emoluments received during the last ten months of service and not for any period before this.

9. In the result, therefore, the Original Application is allowed in terms of observations and directions made above. NO costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
28.9.2007

KNM/CM.