

7/10/12

CENTRAL ADMINISTRATIVE TRIBUNAL

ORIGINAL APPLICATION NO. 278/2002

DATE OF DECISION : THIS THE 12 TH DAY OF DEC., 2002

CORAM :

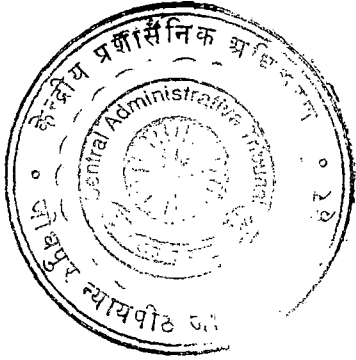
**HON'BLE MR. G.R. PATWARDHAN,
ADMINISTRATIVE MEMBER**

.....

Ajit Kumar s/o late Shri Surendra nath
Aged about 60 years, R/o 1/108 Dwarkadas Purohit
Madhuban Colony, Housing Board, Basni,
Jodhpur (Raj). Ex Driver (Passenger)
Retired from Office of Sr. Divisional Mechanical
Engineer (Power), Jodhpur.
(By Advocate Mr. S.K. Malik, for the applicant.)

.....Applicant.

versus



1. Union of India through the General Manager
North Western Railway, Jaipur (Raj)
2. Divisional Railway Manager,
North Western Railway, Jodhpur (Raj)
3. Divisional Personnel Officer,
North Western Railway, Jodhpur (Raj)
4. Divisional Mechanical Engineer (Power)
North Western Railway, Jodhpur (Raj).

(By Advocate Mr. S.S. Vyas, for the respondents.)

.....Respondents.

.....
ORDER

By the Court :

This is an application preferred by Shri Ajit Kumar, retired Driver of the Northern Railway, Jodhpur (Now North Western Railway). The Union of India through the General Manager North Western Railway, Jaipur along with the Divisional Railway

Manager, Divisional Personnel Officer and the Divisional Mechanical Engineer, North Western Railway, Jodhpur, are the respondents. The details of reliefs have been mentioned in Paragraph 8 of the application and essentially consist of the following three items :-

- (i) Orders dated 3.9.2002 (Annex.A/1) and letter dated 25.9.2002 (Annex.A/2) be declared illegal and be quashed,
- (ii) That the respondents be directed to make payment of difference of average kilometre allowance and leave mileage allowance w.e.f. 13.3.1991 to 15.12.2000 along with interest at the rate of 12% p.a. and
- (iii) Exemplary cost be imposed on the respondents for causing undue harassment to the applicant.

2. It appears, in the normal course of service the applicant was considered for promotion to the post of Goods Train Driver and empanelled for the same some time in the year 1991 but, could not be promoted. He, therefore, challenged this inaction through a O.A. in the Tribunal which was decided on 4.4.2000 whereby, the respondents Union of India, the D.R.M. and the D.P.O., Jodhpur, were directed to consider promotion of the applicant to the post of Goods Train Driver on the basis of the panel made in 1991 with all consequential benefits like pay, seniority, etc. within a period of three months from the date of receipt of the order.

3. It appears that this direction of the Tribunal was challenged before the Hon'ble High Court which by its order dated 6.11.2000 directed the respondents (petitioners in the High Court) to comply with the order of the Tribunal failing which the D.R.M. was to remain present in the Court on 27.11.2000.



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The applicant was thereafter promoted first as Goods Train Driver followed by fixation of his pay subject to final decision in the matter by the High Court. In due course, the case was taken up by the Hon'ble High Court on 7.12.2000 where it noted compliance of its earlier order and felt that it would not like to move into the legality and the validity of the order of the Tribunal. It also made clear that it had not approved or disapproved the order of the Tribunal and that the question could be gone into and decided in an appropriate case. It therefore dismissed the petition (Annex.A/7). The Union of India and others thereafter, it appears preferred belatedly a Special Leave Petition before Hon'ble the Supreme Court of India. In the meantime, the applicant reminded the respondents regarding payment of arrears but was informed about the pendency of the S.L.P. and their stand that necessary action could be taken only after a decision in O.A. 63/2002 filed by him in the Tribunal. The applicant through his letter dated 29.8.2002 (Annex.A/17) thereafter again requested the respondents to pay him average kilometre and leave mileage allowance on the basis of tabular statement he had prepared. A detailed statement has also been enclosed to this O.A. which is marked as Annexs. A/18 and A/19.

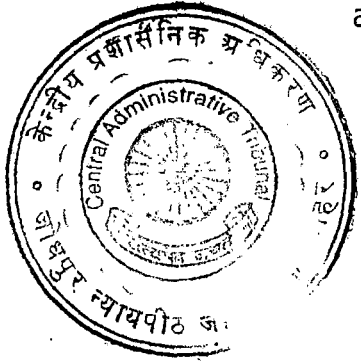


4. As mentioned earlier, specific challenge has been laid to the order and the letter dated 3.9.2002 and 25.9.2002 respectively at Annexs. A/1 and A/2. These are communications from the Divisional Mechanical Engineer (Power), Jodhpur to the applicant informing him that the S.L.P. filed by them is pending

for condonation of delay in the Hon'ble Supreme Court and that once this has been done the number could be furnished. The latter communication informs that as he has filed another case No. 63/2002 before the Tribunal, the claim of arrears would be settled only after its disposal. (This case, incidentally is still pending).

5. Learned advocates for both the parties have been heard in detail on 21.11.2003.

6. Shri S.K. Malik, learned advocate for the applicant after discussing various stages in the career of his client specially his promotion obtained after a court case, has heavily relied on certain provisions of the Indian Railway Establishment Manual (hereinafter referred to as 'the Manual'). The gist of his arguments is as follows :-



- (1) Calculation of mileage allowance as shown by respondents, is devoid of any basis.
- (2) They have made payment of some amount by a crossed cheque on one hand and also issued an order for recovery, separately.
- (3) Mileage allowance has to be paid as per Railway Establishment Manual where the minimum rate has been prescribed.
- (4) Even when running staff remain idle, they are to be given mileage allowance as per RBO 2002.

Even if, an employee is suspended and later reinstated he is entitled to mileage allowance for the period of suspension vide R.B.E. 49/2002.

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(5) The SLP preferred by the respondents has been rejected by Hon'ble Supreme Court and as the High Court has given verdict in his favour, the claim should be speedily settled.

(6) Additional affidavit may be seen to note instances of falsehood by respondents.

(7) Rule 9.17 of Manual squarely applies even in cases of promotion on notional basis – had the petitioner been promoted at the right time – he would have got normal 8 hours duty and so he should be given allowances accordingly.

7. Shri S.K. Vyas, advocate for the respondent Railways, has practically opposed every argument of Shri Malik. The main points in his reply are as follows :



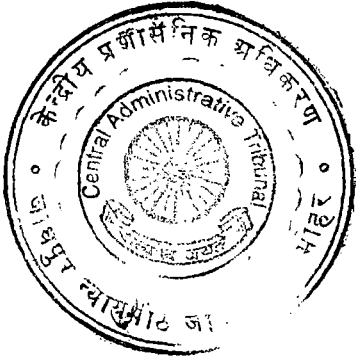
(1) Earlier prayer in OA 63/2002 of the petitioner is nearly the same as now i.e. difference of K.M. allowance etc. It is not clear why the petitioner is filing so many cases.

(2) The petitioner has clubbed one more cause of action i.e. recovery of overpayment and this cannot be permitted in the instant O.A. This can be challenged by him only by filing a separate O.A.

(3) Circular No. 49 of 2002 of the Railway Board, which has been relied upon by the petitioner, has applicability only in cases of suspended employees – it cannot be held applicable here – which the petitioner wants.

Moreover this Circular was issued in 2002 whereas the petitioner has retired in 2001.

See



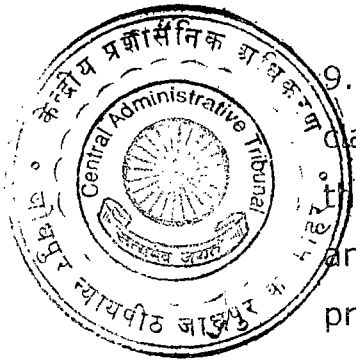
(4) In case of back dated promotion all that is admissible is proforma promotion and allowances like kilometre allowance etc. cannot be paid. Though, in a Full Bench decision of CAT it was held that it should be paid, - the Railways went in a S.L.P. to the High Court, which set aside the Full Bench order of C.A.T. in Union of India Vs. C.A.T. and others, C.W.P. Nos. 4227, 4176, 4177, 4707, 4708, 4709, 4710, 4711 of 2002.

(5) Lastly, what has not been claimed in OA - cannot be claimed by arguments as per the law of pleadings. The petitioner has to restrict the relief to what has been described in the O.A.

8. The running allowance rules for staff performing running duties are discussed in Chapter IX of the Indian Railway Establishment Manual, Vol. I. The running staff has been described as Drivers, Shunters on Loco side and Guards and Assistant Guards on the Traffic side. Rule 902 prescribes the definition of word 'Shunting', 'Through Goods Train', Departmental trade etc. Rule 903 provides that 30% of the basic pay of the running staff is to be treated in the nature of pay representing pay element in the running allowances. Rule 904 indicates that the running staff shall be paid D.A. at the appropriate rates on the basic pay + 30% of the basic pay as pay element. Rule 905 provides that running staff shall be entitled to kilometreage allowance; allowance in lieu of kilometreage (ALK) for the purpose of stationary duties such as journeys on transfer, joining time, for attending inquiries or Law course on Railway business, attending departmental inquiries as witness etc., special compensatory allowance in lieu of running room facilities, breach of rest allowance, detention allowance and accident allowance. The system of calculating kilometreage allowance is given in Rule 906 and Rule 907 prescribes the mode

— SGP

of calculating allowances in lieu of kilometreage. Further Rule 908, 909, 910, 911 and 912 provide the modalities for allowances in lieu of running room facilities, breach of rest allowance, out station-detention allowance, relieving allowance and accident allowance.



9. Shri S.S. Vyas, has, through a comparison of the detailed claims of different allowances submitted by the petitioner and the claims admitted and paid by the respondent- Railways annexed vide R/1, has brought out how, on the basis of the promotion granted to the applicant to the post of Goods Driver in pursuance of earlier orders of this Tribunal, nothing more remains to be paid in so far as the kilometreage allowance is concerned. Similarly, the comparative statement at Annex.R/1 according to Shri Vyas also, explains how leave mileage allowance has been paid.

10. Shri S.S.Vyas has also drawn attention to Rule 228 of Chapter II of Indian Railway Establishment Manual, Vol.I which specifically prohibits payment of arrears in cases where staff are overlooked for promotion to higher grades on the ground that where higher responsibilities and duties have not been shouldered, no arrears on account of pay should be paid. It is his contention, as a corollary that even the incidental allowances – in the present instance, the running allowances, prescribed for higher grades of Goods Drivers and Passenger Drivers, cannot be paid since the petitioner has not discharged these duties.

11. Shri Malik, learned advocate for the petitioner has ultimately placed reliance for his claims on two things (1) if, some difference in the calculation of two allowances has been paid by the respondents then they should go ahead and also pay the difference which the petitioner would have earned had he been promoted in right time. His contention is that the date of promotion should be taken to where it should be i.e.

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retrospectively and the petitioner should be presumed to have discharged the higher duties and responsibilities from that date.

(2) A Circular No. 49 of 2002 where in paragraph 2 the following portion appears ~~and~~ is considered relevant by him in favour of his client.

"2. The issue has been examined by the Board. It has come to the notice of the Board that different practices are being followed by different Zonal Railways in the matter, which is not correct. Attention in the matter is invited to Para 8.5 of Board's letter No. E(P&A) II-80/RS-10, dated 17.7.1981 and as modified vide letter dated 24.6.1985 which provides that when Running staff are engaged in or employed on duties other than running duties for which they are at present paid allowance in lieu of mileage, they will be paid allowance in lieu of kilometreage as below for every calendar day for such duties as are required to be performed by them :-

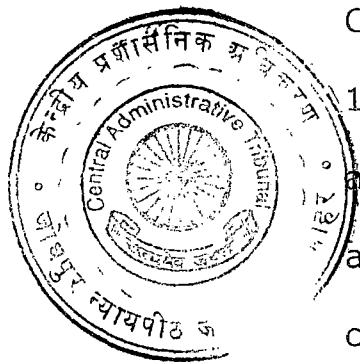


- (i) When such non-running duties are performed at the Headquarters, they will be paid the pay element of the running allowance viz. 80% of the basic pay applicable for the day.
- (ii) When such non running duties are performed at outstation, they will be paid at the rates indicated in Annexure 'B' to this letter for each category and grade of running staff.

Provided that, if during the same calendar day, a member of the running staff is engaged in running as well as non-running duties and if the non-running duties are of four hours' duration or more, he will draw both the Kilometreage Allowance for the trip performed as well as the Allowance in lieu of kilometreage, in full, for the non-running duty performed."

12. Shri Vyas has refuted these arguments advanced by the petitioner by citing an order of the Hon'ble Rajasthan High Court dated 10th September, 2003 and quoted above where, their Lordships in paragraph 9 of their order have observed that a

person will not be entitled to any pay or allowance during the period for which he did not perform the duty on higher post, although after due consideration, he was given promotion and placed in the gradation list having been taken to be promoted to the higher post with effect from the date his junior was promoted. They have also held that no employee can be held to be entitled to claim any financial benefit retrospectively and at the most he may be entitled to refixation of the salary on the basis of notional seniority granted to him in different grades and he may also be entitled to the pensionary benefits. Their Lordships, ultimately, allowed the Writ Petitions of the Union of India (Indian Railways) against a Full Bench decision of the C.A.T.



13. On consideration of arguments by both the parties, the action taken by the respondents in calculating different allowances, and thereafter, making payment of what was considered by them as appropriate difference and the order of the Hon'ble Rajasthan High Court of September 2003, it is difficult to accept the contention of the petitioner that he is entitled for anything more by way of running allowances.

14. It is observed that Annexures A/1 and A/2 which the petitioner has requested for quashing, are merely communications of a status- the first indicating about pendency of some S.L.P. and the second, indicting that a case No. 63/2002 filed by the petitioner is pending and that only after its decision arrears could be paid. It is apparent that these particular

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communications cannot be quashed as they only indicate a status. It is a fact that O.A. No. 63/2002 is pending before a Division Bench of this Tribunal.

15. The other relief claimed by the petitioner pertains to payment of difference of average kilometre and leave mileage allowance with interest. As discussed above, these arrears cannot be claimed by the petitioner. In the result, the O.A. is dismissed. No order as to costs.



[Signature]

[G.R.Patwardhan]
Administrative Member

jrm

R1C
21/5/12/13
for (DAYARAM)
H/O

K. K. V. S.

Part II and III destroyed
in my presence on 17.10.13
under the supervision of
section officer (J) as per
order dated 03.10.13

D.K. Shrivastava
Section officer (Record) 17.10.2013