

ENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH, ERNAKULAM

ORIGINAL APPLICATION No.125/2013

MONDAY, this the 18th day of January, 2016

CORAM:

HON'BLE MR.U.SARATHCHANDRAN, JUDICIAL MEMBER

T.Mohandas, aged 54 years,
S/o Thomson Zacharias
Station Manager/ Chalakudi Railway Station/
Southern Railway/ Trivandrum Division/
Residing at: No. AMC XXI/328, Periyar Nagar
Thottekkattukara Post
Aluwa -683108, Ernakulam District

- Applicant

By Advocate Mr.T.C.Govindaswamy)

versus

- 1) Union of India represented by the General Manager, Southern Railway, Headquarters Office, Park Town P.O., Chennai -600 003.
- 2) The Railway Board, Rail Bhavan, New Delhi -110 001, through its Secretary.
- 3) The Divisional Railway Manager, Southern Railway, Trivandrum Divsion, Trivandrum -695 014.
- 4) The Additional Divisional Railway Manager, Southern Railway, Trivandrum Division, Trivandrum -695 014.
- 5) The Sr. Divisional Personnel Officer, Southern Railway Trivandrum Division, Trivandrum -695 014. - Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This Original Application having been heard and reserved on 04.01.2016, this Tribunal on 18-01-2016 delivered the following:



ORDER

Per HON'BLE MR.U.SARATHCHANDRAN, JUDICIAL MEMBER

Applicant is currently working as Station Manager (Supervisory) at Chalakudy Railway Station in the Trivandrum Division of Southern Railway. He belongs to the cadre of Station Masters in the Pay Band Rs.9300-34800 with Grade Pay of Rs. 4600/-.

2. The short question to be considered in this OA is whether the periods during which he had worked in the Trains as a Guard is to be considered for the extra benefits given to the running staff or not ? Though he had made a representation to the Railway Board in this connection in the light of the order of this Tribunal in his earlier litigation OA 1024/2011, the Railway Board had issued Annexure A/1 order rejecting his claim. Annexure A/1 is impugned in this OA.

3. In the earlier round of litigation Applicant had prayed for a declaration that he is entitled to be granted all the financial benefits including the 30% of pay being treated as pay, mileage allowance, additional allowance etc. for the duties performed by him on different dates as Passenger Train Guard and to direct the Respondents to grant consequential benefits. This Tribunal vide Annexure A/5 order dated 21.5.2012 held :

"..... Even though, according to the reply statement the applicant may at best entitled for TA/DA claim, even that is not paid to the applicant. Since this is a new phenomena and since Deputy Station Managers were asked to work as guard in the train whenever occasion arises, it is only appropriate that they be paid some special allowances especially when such duties are assigned to them on more than one occasion as a routine matter. Court cannot create new rights between the parties. Grievance of this nature in



the absence of any legal enforceable right, can be remedied only by the executive. The appropriate authority to take a decision in this behalf being the 5th respondent, Railway Board, it will be in the fitness of things that if a detailed representation is made to the 5th respondent, Railway Board by the applicant giving the details and occasions where he or similarly situated persons have been worked as Guard in train, though he does not belong to a running staff and claiming such allowances as is otherwise entitled for such running staff, the Railway Board bestow consideration on such requests and take suitable decision at least by paying them special allowances on occasion when they are asked to do the duties of the Guard though admittedly they are not belonging to the running staff. Such representation if and when received by the 5th respondent, Railway Board, it shall consider and dispose of by a speaking order within a period of three months from the date of receipt of the same. The O.A. is thus disposed of in the above lines. No costs."

4. The above mentioned representation has been rejected by the Railway Board vide Annexure A/1 communication. According to applicant, Annexure A/1 order is not based on relevant considerations, not based on relevant materials, without any application of mind and suffers from errors of law and of facts. According to him he had discharged the duties and responsibilities of Guard of Passenger Train Nos. 339 Ernakulam Junction - Alapuzha on 29.12.2009, 648 Ernakulam - Shoranur and 649 Shoranur - Ernakulam on 03-11-2010. According to him, since the category of guards come under "running staff" who are entitled to be paid 30% extra pay in addition to mileage allowance for the actual kilometer distance they work and an additional monthly allowance of Rs.500/-, he is also entitled to the same benefits or else the negation of which would be a clear violation of equal pay for equal work. He contends that non-granting of those benefits amounts to arbitrariness and discrimination. According to him, the benefits of running allowance are given even to those guards who do

not perform running duty as train guards and are utilized for non-running stationary duties and also to those who are holding supernumerary posts. Loco Inspectors who are not running staff are also given these benefits. Applicant laments that he having performed the duty of running staff is denied of running allowance on the plea that he is not a running staff without any basis and it is unconstitutional. He therefore prays for a declaration of entitlement of the financial benefits of running staff for the duties performed by him on different dates as Passenger Train Guard and also to quash Annexure A/1.

5. Respondents took the same stand as they had taken in the earlier round of litigation. According to them applicant belongs to the cadre of Station Masters, a non-running cadre whereas running allowance is given only to the running staff. When the guard who was expected to perform duty on 29.12.2009 did not turn up and when there was an unexpected shortage of guards on 03.11.2010 the applicant who is trained to work as Passenger Train Guard was detailed by the Senior Divisional Operations Manager, Southern Railway, Trivandrum to work as Guard on the aforesaid trains. Respondents contend that this was a temporary arrangement made in an emergent situation to avoid inconvenience to passengers travelling by trains, which will not confer the status and benefits available to the running staff. According to Respondents, he can, at the most claim the benefits of the post he holds on regular basis during the spell he had worked in the other post and claim TA/DA attached to the post of Deputy Station Manager as if he performed duty travelling beyond 8 kilometers from his Headquarters. According to respondents, Annexure A/1 is a well-balanced decision based on relevant materials and is with full application of mind and it does not suffer any illegality, discrimination and unconstitutionality.

6. A rejoinder was filed by the Applicant stating that Applicant is not making any claim that he had become part of the running staff after having worked as Guard of three trains. His only claim is that he is entitled to benefits of the running staff while he had worked as a Guard. According to him, on the basis of information received from the appellate authority under Right to Information Act, there are three running staffs utilized for non-running duties and they are being paid allowances due to running staff. According to him, loco inspectors for whom running duty is not mandatory are also receiving running allowance.

7. Heard Mr.T.C.Govindaswamy, learned counsel for the applicant and the learned counsel for the respondents.

8. As observed by this Tribunal in Annexure A/5, Court cannot create any new right between the parties. This observation was made by this Tribunal in the context of the new developments whereby non- running staff like Deputy Station Managers are asked to work as Guards in the trains whenever some urgent need arises. This court further observed that it would be only appropriate that they be paid some special allowances for this purpose. The applicant was directed to submit a detailed representation to the Railway Board since it is a policy matter which has to be addressed by the Railway Board; it being a question concerned with the entire Railway Administration in the country.

9. In Annexure A/1 'speaking order' issued by the Railway Board in response to the representation submitted by the applicant, detailed reasons have been given for maintaining a category of staff known as 'running staff' in the Railway. Annexure A/1 states that the running staff consists of loco drivers

including motormen and rail motor drivers, shunters, fireman including instructing fireman, electrical and diesel assistants and drivers' assistants on diesel locos and also guards and assistant guards/ breakesmen. 'Running allowance' has been defined in "The Rules for the payment of Running and other Allowances to the Running Staff on Railways, 1981". Running allowance means an allowance ordinarily granted to running staff in terms of and at the rates specified in these Rules, and/ or modified by the Central Govt. in the Ministry of Railways (Railway Board), for the performance of duties directly connected with the charge of moving trains and includes a "kilometerage allowance" and "Allowance in lieu of kilometerage" but excludes special compensatory allowances". Annexure A/1 further states that the basic objective of these rules is for creating an orientation of better performance simultaneously ensuring that the running staff are not prevented from earning a reasonable amount of running allowance in a month due to factors not attributable to them. As per Annexure A/1 the scale of pay applicable to running staff is deemed to be 'depressed' meaning thereby that had there been no scheme of running allowance, the running staff would have been allowed normal scales of pay like any other railway employees, would have been eligible for TA/DA.

10. Annexure A/1 further explains that, the highest scale of pay admissible in the cadre of running staff in the Mail/ Express Drivers in the 3rd Central Pay Commission scales of pay was Rs. 550-750, the replacement scale of which in the 4th and 5th Pay Commision scales of pay was Rs. 1640-2900 and Rs. 6000-9800 respectively. In the 6th CPC the replacement pay band is Rs. 9300-34800 with Grade Pay of Rs. 4200/-.

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Annexure A/1 goes on :

2.3.1 As such, the running staff earn a part of their pay through the instrument of running allowance as running allowance includes a portion of the pay, traveling allowance and out- of- pocket expenses as their duties generally involve their absence from headquarters and as TA/DA is not admissible to them.

2.3.2 The deemed depressed portion of the pay is made good by the provisions of Rule 25 of the said Rules, which stipulate that 30% of the basic pay of running staff shall be reckoned as pay for the specified purposes as mentioned in "the said Rules.

11. This Tribunal is of the view that the reason why the running staff have been given a special allowance by way of running allowance has been convincingly and explicitly stated by the Railway Board in Annexure A/1. The concept of 'depressed' pay and the facility given to the running staff to earn a part of their pay through the instrument of running allowance which includes a portion of the pay, travelling allowance and out- of- pocket expenses without being given TA/DA for remaining outside the Headquarters are all well explained in Annexure A/1 as justification for payment of 'running allowance' to the cadre of 'running staff'. Thus it can be seen that running allowance is to compensate the running staff the out of pocket expenses and travelling allowance when they remain out of their Headquarters and the same is being included as a portion of the pay which is deemed to be 'depressed'. It is, nevertheless, made clear in Annexure A/1 that the highest Grade Pay the running staff are eligible for is Rs. 4200/- and therefore the pay of running staff in the 6th CPC context seems to be 'depressed' vis-a-vis the pay of the non-running staff. The special pay and running allowance system for running staff is on account of the special nature of their duty directly connected with the running of trains. Obviously, the other railway employees who do not belong to running category are not entitled to receive the same. The Railway Pension Rules indicate that running staff are



entitled to certain additional benefits too. Obviously running staff are the key functionaries of Railway for running trains and are vital to the traffic and movement of passenger and goods Trains. In short, they are the frontline workers of the Railways. Therefore, no wonder the authorities decided to give them a special allowance.

12. Merely because of the fact that a Station Master trained to work as a Guard is asked to do some emergency work as a Guard in a Passenger Train, i.e. an extra duty he is called upon to perform as employee of the Railway administration. Obviously, for such extra work he should be given some compensation in the form of TA/DA for remaining outside the Headquarters and for incidental expenses. Nevertheless, such a railway employee who do not belong to the cadre of running staff cannot be given a regular entitlement payable to running staff for the simple reason that he has been asked to perform duties not on regular basis but on emergency basis due to shortage of regular cadre of Guards. True, the applicant is a trained employee to work as Guard. The training so given to the applicant has been made use of the Railways to meet exigencies of running of trains. Simply because of the fact that he had performed duties of a running staff, he cannot claim the benefit of the running allowance and other financial benefits given to the running staff. As explained by Railway Board in Annexure A/1, running allowance given to running staff includes a portion of the pay, travelling allowance and out-of-pocket expenses while their scale of pay remains a depressed one. As stated earlier, the highest scale of pay admissible in the cadre of running staff is Rs. 9300-34800 with Grade Pay Rs. 4200/- . Respondents point out that applicant who belongs to the cadre of Station Master is in the Grade Pay of Rs. 4600/- in PB-2 and therefore he is not entitled to the financial benefit payable to the running staff who are enjoying

depressed pay. This Tribunal is of the view that the aforesaid justification of payment of running allowance only to running staff is only reasonable and justifiable in the special nature of duties performed by the employees belonging to the cadre of running staff.

13. Applicant points out that some running staff who are doing stationery work and non-running duties are paid running allowance. He refers to Annexure A/7 & A/8 details obtained by invoking the provisions of RTI to establish that there are members of running staff posted for non-running duties and are enjoying running allowance. This Tribunal is of the view that the applicant cannot make a comparative position of his claim and those running staff who do non-running duties and still claiming running allowance. There may be various reasons for the railway to post running staff in non-running posts. For eg. a medically decategorised running staff who acquired disabilities while in service is entitled to protection in employment without deprivation of any of the benefits he had been enjoying prior to the acquiring of disability [see, S.47, Persons with Disabilities(Equal protection...) Act 1995] As explained in A/1, since the running staff gets a depressed pay scale, they are paid running allowance to compensate the same for equating the pay of the Railway with other employees. But the railway employees like the applicant who are asked to perform the duties of running staff in urgent situations are not justified in claiming the benefit of a higher pay scale and the running allowance together. Suffice it to say that running allowance is a special type of allowance to take into account of their pay and other matters which are germane to the running staff who are *sui generis* - a category by themselves. For the above reasons, the applicant being a member of Station Master cadre, is certainly not entitled to receive running allowance. The Railway Board in Annexure A/1 has justified the denial of the claims made by the



applicant in an adequate and convincing manner. The mere fact that the running allowance is being paid to the running staff who are not performing duties will not improve the case of the applicant in any manner. This Tribunal is of the view that applicant has approached the Tribunal in an experimental manner. In the result, the O.A. is dismissed. No order as to costs.



(U.SARATHCHANDRAN)
JUDICIAL MEMBER

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