

**O.A. NO. 134 OF 2008**

**CORAM:**

V.Ramachandran Nair  
Retired Senior Loco Inspector  
Southern Railway,  
Nagercoil Junction  
Residing at "Ramraj"  
House No.217, SCT Nagar  
Patton PO, Trivandrum - 4

**Applicant**

**versus**

1. Union of India represented by the Secretary  
to the Government of India  
Ministry of Railways  
Rail Bhavan, New Delhi
  2. The Senior Divisional Personnel Officer  
Southern Railway, Trivandrum Division  
Trivandrum - 14
  3. The Divisional Railway Manager  
Southern Railway, Trivandrum Division  
Trivandrum - 14
- ... Respondents

## ORDER

The applicant while working as a Senior Loco Inspector in Southern Railway retired voluntarily with effect from 30.11.2004. As a running staff, he was granted 30 % of his basic pay for the purpose of

calculation of pension as well as Gratuity in terms of Annexure A-1 Order No.195/92 dated 25.11.1992 and Order No.197/92 dated 25.11.1992 of the Railway Board.

2. By Annexure A-1 order, Rule 1514 of the Indian Railway Establishment Code Volume II has been amended and the following correction has been added :-

"Running allowance shall be admissible to the Loco Inspectors drawn from the Running Staff for the performance of duties directly connected with the training and monotoning of Loco Running Staff on foot plate of the locomotive cab of the moving train. "

[**Authority** : Ministry of Railways' letter No.;E(P&A)/II/83/RS/10(i) dated 25.11.1999]

By Annexure A-3 order, Rule 2544 of the Indian Railway Establishment Code Volume II has been amended and the following correction has been added :-

"g (iii) For the purpose of calculation of average emoluments in case of Loco Inspectors:- An additional amount equal to 30% of basic pay drawn in the revised scales of pay will be reckoned as emoluments for the periods for which a person works as Loco Inspector during the relevant period after 01.01.1993.

g (iv) For the purpose of Gratuity and / or Death-cum-Retirement Gratuity in case of Loco Inspectors :- An additional amount equal to 30% of basic pay, in the revised scales of pay, drawn during the relevant period after 01.01.1993, will be reckoned as emoluments."

3. The contention of the applicant is that for the purpose of calculating the leave encashment also, in terms of Annexure A-1 and A-3 orders of the Railway Board referred to above, 30% of the basic pay should have been taken into consideration. He has also stated that Shri K.Ravindran who retired as a Senior Loco Inspector, Trivandrum on

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31.10.2004, Shri Mohan Kuruvila who retired as a Senior Loco Inspector, Trivandrum on 31.05.2004 and Shri P.Gopinathan who retired as a Senior Loco Inspector, Bangalore on 31.03.2005 have been given the benefit of adding 30% of basic pay for the purpose of determining his leave encashment but he alone has been discriminated by the Respondents in the matter.

4. In the reply statement, the respondents have submitted that amount equal to 30% of basic pay cannot be treated as pay for the purpose of determining the amount on account of leave encashment as there are no provisions to do so under any rules particularly in terms of the provisions contained in Annexure A-1 to A-3 instructions of the Railway Board. The Learned Counsel for Respondents argued that pay for different purposes can be determined by the Government differently. The pension and gratuity are determined by adding 30% of the basic pay in view of the above specific order but there are no instructions to include 30% of basic pay for determining leave encashment. As regards the three persons mentioned by the applicant who have been given similar facilities, the respondents have stated that their cases have been examined and found that the benefit was granted to them erroneously and the excess amounts so paid to them were being recovered.


5. However, the Counsel for applicant in his rejoinder has stated that respondents have not taken any steps so far to recover the excess amount paid to those persons.



6. We have heard the counsel for the parties. The contention of the applicant that the 30% of the basic pay should have been reckoned for the purpose of determining leave encashment is not supported by any rules or instructions. The Annexure A-1 and the Annexure A-3 instructions of the Railway Board. are specifically for payment of pension and Gratuity. The respondents are at liberty to reckon the "pay" for different purposes differently. If the respondents had the intention to extend 30% of running allowance for the purpose of determining the leave encashment also, they would have issued specific orders to that effect as in the case of Annexures A-1 and A-3. The respondents have also submitted that the three persons mentioned by the Applicant have been erroneously paid. In the absence of any rule or instructions to count 30% of the basic pay as pay for the purpose of determining the leave encashment payable to the employee, this Tribunal cannot direct the Respondents to count the same.

5. In view of the above facts and circumstances, we consider that this OA is devoid of any merit and, therefore, it is dismissed. There shall be no order as to costs.

Dated, the 23rd March, 2009.

  
K.NOORJEHAN  
ADMINISTRATIVE MEMBER

  
GEORGE PARACKEN  
JUDICIAL MEMBER

VS