

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.145/2002

Tuesday this the 15th day of May, 2003.

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

1. P.Madhavan Nair
(Retired 'A' Special Driver)
Vadakkedath House, Puthurssery,
Cheruthuruthy P.O.
Thrissur District.
2. R.Ranganathan
(Retired 'A' Special Driver)
79, Railway Station Feeder Road
Perianaickan Palayam
P.O.Ramakrishnan Vidyalaya Post
Coimbatore.
3. K.Padmanabhan Nair
(Retired 'A' Special Guard)
Usha Nivas
Nedungottur, Shornur.
4. C.Kumaran
(Retired Guard 'A')
Jayashree Sadan, Manjakkadu
Shornur.

Applicants

(By advocate Mr.K.Padmanabhan)

Versus

1. The Chairman
Railway Board
Rail Bhavan
New Delhi.
2. Union of India represented by
General Manager
Southern Railway
Chennai.
3. Divisional Railway Manager
Palakkad Division
Palakkad.

Respondents

(By advocate Mr.Thomas Mathew Nellimootttil)

The application having been heard on 15th May, 2003, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

Applicants 1 & 2 are retired 'A' Special Drivers. Third applicant is a retired 'A' Special Guard and the fourth applicant is a retired Guard 'A'. Applicants 1 to 3 retired on 31.7.85 and the 4th applicant retired on 30.6.86. While implementing the report of the 3rd Central Pay Commission, the Railway Board fixed the percentage of running allowance for the running staff to be reckoned for the purpose of fixation of pension at 45% of their basic pay instead of 75% as had been prescribed in Rule 2544 of Railway Establishment Code with effect from 1.1.73 till 31.3.79 and thereafter from 1.4.79 at 55%. Challenging the reduction of percentage of running allowance to be reckoned for retiral benefits, some of the retired running staff filed applications before various Benches of the Central Administrative Tribunal. The matter was finally heard by a larger Bench sitting at Bangalore and by order dated 16.12.93 the following directions were given:

- i) "The respondents shall recompute the pension and other retiral benefits of the applicants or their LRS in accordance with Rule 2544 as was in force before it was amended by notification dated 5.12.1988;
- ii) The arrears due to the applicants/LRS on the basis of the recomputation as aforesaid shall be calculated and paid;
- iii) These directions shall be carried out within a period of three months from the date of receipt of the copy of this order;
- iv) If the amounts due to the applicants/LRS are not paid within the prescribed time the amount due shall be paid with interest at 12% per annum from the date of this order till the date of payment.
- v) The applicants shall be entitled to costs at the rate of Rs.500/- in respect of each application.
- vi) The payment of pension and retirement benefits as per the aforesaid direction shall stand regulated/adjusted in accordance with the order/directions as may be issued by the Supreme Court in SLP No.10373/90 against the decision of the Ernakulam Bench of the Tribunal in application No.K 269/88."

The respondents carried the matter before the Apex Court in Civil Appeal No.6174-82 of 1995. However, the Civil Appeal was dismissed by a larger Bench of the Apex Court comprising of five honourable judges by order dated 25.7.97. Pursuant to the dismissal of the Civil Appeal by the Apex Court, the Railway Board refixed the pension of all the retired running staff for the period from 1.1.73 to 5.12.1988. The benefit of the revision of pension and the consequent arrears were given to the applicants too. The first applicant received Rs.25,812/- on 19.3.99. The second applicant received Rs.25,485/- on 3.2.99. The third applicant received Rs.12,904/- on 4.3.99 and Rs.10,728/- on 17.11.99 and the fourth applicant received Rs.26,315/- on 4.3.99 and Rs.17,892/- on 21.6.99. However, the amount paid to the applicants did not include interest. Therefore, the first applicant on 1.4.2000 submitted A-5 representation to the second respondent claiming interest. The claim of the applicants for interest was turned down by the impugned orders A-7 dated 7.11.2000, A-8 & A-9 dated 19.10.2000 on similar ground that they being not parties before the Tribunal in various cases, they were not entitled to get interest. Aggrieved, the applicants have filed this application seeking to set aside A-7 to A-9, for a direction to the respondents to pay interest at the rate of 12% per annum from the date of the Tribunal's order dated 16.12.93 till the date of actual payment of arrears. It is alleged in the application that paying interest to those who had approached the Tribunal and denying the same to similarly situated applicants is arbitrary and discriminatory.

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2. Respondents resist the claim of the applicants. They contend that the benefit of revision of pension reckoning 75% of the running allowance which is a substantial benefit that flew from the judgement to the running staff having been extended to the applicants and the applicants not being parties to the OAs on the basis of which the benefits were given are not entitled to claim interest in view of the Railway Board's letter dated 17.4.98.

3. I have very carefully gone through the pleadings in this case and the material placed on record and have also heard the learned counsel of the applicants at considerable length. Sh.K.Pamanabhan, the learned counsel of the applicants drew my attention to Central Administrative Tribunal's ruling in A.K.Khanna & others Vs. Union of India & others ATR 1988 (2) CAT 518 wherein it has been stated that denying benefits to similarly situated persons on the ground that they did not approach legal forums is unsustainable. The principle enunciated in the above ruling is a well established and laudable principle. Any administration is bound to treat similarly situated employees similarly and discrimination offends Article 16 of the Constitution. It was held by the larger Bench of this Tribunal that reduction of the percentage of running allowance to be reckoned for fixation of pension from 75 to 55 without a backing of rule was unsustainable and that the applicants before the Tribunal were entitled to have their pension recomputed reckoning 75% of the running allowance. The Tribunal directed that their pension should be recomputed and the resultant arrears paid to the applicants before the Tribunal within a period of three months. The Tribunal also held that if the recomputation and

payment were not made to the applicants in those cases, 12% interest should be paid to them. Though the applicants in this case were not parties to those OAs, on the basis of the Railway Board letter dated 17.4.98, in view of the dismissal of the Civil Appeal by the Apex Court, the Railway Administration extended the benefit of recomputation of pension reckoning 75% of the basic pay as running allowance to all the running staff and did not limit it to those who had approached the Tribunal. The substantial benefit which flew from the Full Bench judgement of the Tribunal namely entitlement to have terminal benefits computed reckoning 75% of the basic pay as running allowance has been extended to the applicants also. The direction to pay interest to the applicants/LRs in the case before the Tribunal was in the event of respondents not making payment within the period of three months from the date of the judgement in their favour. In the case of the applicants here, as there had not been any judgement in their favour which had to be implemented within three months by recomputing the terminal benefits, I am of the considered view that the applicants who did not even after dismissal of the SLP by the Apex Court in 1997 make any claim for arrears of pension are not entitled to claim interest. Learned counsel of the applicants brought to my notice a ruling of the Division Bench of the Madras Bench of CAT in OA Nos. 377/2002, 2988/2002 & 743/2002 by which the claim for payment of interest in the case of similarly situated persons had been allowed. I find that the above ruling of the Madras Bench of the Tribunal does not lay down any principle of law to be followed as a precedent. It appears that the judgement had been made under a misconception that the respondents had not extended the benefit of the judgement of the full Bench to similarly situated persons.

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Substantial benefit flowing from the judgement of the Full Bench of the Tribunal which was upheld by the Apex Court, namely revision of pension reckoning 75% of the basic pay as running allowance had already been made in the case of the applicants and the resultant benefits given to them. The direction for payment of interest in the case of the applicants before the Tribunal was only in the event of the respondents' failure to recompute and pay the revised pension within the time stipulated in the judgement. The stipulation for payment of interest on failure to pay arrears to the applicants in those cases within three months was not a judgement in rem but a judgement in personam to the applicants before the Tribunal. The declaration of entitlement of reckoning 75% of basic pay as running allowance in ^{composing} refusing retiral benefits alone can be held as a judgement in rem in the case of running staff. It appears that this distinction has been lost sight of in the order of the Madras Bench.

4. In the light of what is stated above, I find that the application lacks merit and, therefore, I dismiss this application with no order as to costs.

Dated 15th May 2003.



A.V.HARIDASAN
VICE CHAIRMAN

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