

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
Original Application No. 244 of 2007

Wednesday, this the 29th day of April, 2009

CORAM:

Hon'ble Mr. George Paracken, Judicial Member

1. The All India Station Masters' Association, Palani Branch represented by the Vice President, T A Pillay, aged 66 years, Son of Arumugam Pillay, Retired Station Master, residing at Wattaiyar, Ottara, Kollengode P.O., Palakkadu Dist, Kerala-678 567.
2. C.R. Sathiapal, aged 49 years, Son of C Rajappan, Station Master, Southern Railway, Kollengode, residing at Janani, Amritha Nagar, Palakkadu, 678 001.

Applicants

(By Advocate – Mr. TCG Swamy)

V e r s u s

1. Union of India, represented by The Secretary to the Government of India, Ministry of Railways, Railway Board, Rail Bhavan, New Delhi.
2. The Divisional Personnel Officer, Southern Railway, Madurai.

Respondents

(By Advocate – Mr. Sunil Jose)

The application having been heard on 2.3.2009, the Tribunal on 29.4.2009 delivered the following:

O R D E R

This Original Application has been filed by the All India Station Masters Association represented by its Vice President Shri T.A. Pillay and another Station Master Shri C.R. Sathiapal. Their grievance is that the payment on account of National Holiday Allowance (for short NHA) has been reduced by the respondents from time to time on the basis of various instructions issued by the Railway Board.

2. The NHA is an allowance which is given to the Railway employees to compensate for the duties they performed on national holidays. Initially it

was introduced in 1960 on the recommendation of the 2nd Pay Commission for three national holidays falling on 15th August, 26th January and 2nd October. In paragraph 45 of Chapter XXXV of its report the following recommendations were made:

“That the staffs, who did not at present enjoy any public holidays, should be considered entitled to the three National Holidays: and since with some exception, they cannot be relieved of their duties on those days, they should be compensated by payment for those days at one and half the normal rate.”

3. The rate of compensation in respect of NHA was also fixed at 1½ times of daily rate of wages plus dearness allowances vide the Annexure A-1 Railway Board's letter No. PC-60/HL-2/1, dated 10.8.1961. The relevant portion of the said letter reads as follows:

“2. The Railway Board, with the sanction of the President, have decided to accept the above recommendation. Accordingly, attendance on the 3 National Holidays, viz., 26th January, 15th August and 2nd October, will be compensated by additional payment at the rates shown against the particular pay range indicated below-

<u>Pay range</u>	<u>Rate per day</u>
	Rs.
Not exceeding 80	3.75
From 81 to 90	4.25
From 91 to 105	4.90
From 106 to 120	5.65
From 121 to 135	6.40
From 136 to 170	7.65
From 171 to 195	9.15
From 196 to 220	10.40
From 221 to 270	12.30
From 271 to 320	14.80
From 321 to 350	16.75
From 351 to 400	18.80
From 401 to 500	22.55

The pay range will be determined with reference to basic pay as defined in Rule 2003(21)(a)(i&ii)-R II and full Dearness Allowance (inclusive of Dearness Pay). Where the pay plus dearness allowance falls in between the two slabs, the rate for the next higher slab shall apply.”

4. Later on, in consultation with the recognized federations of employees, increased the number of holidays to 12.



5. Consequent upon the introduction of the revised pay scale on the recommendation of the 3rd Pay Commission, the Ministry of Railways, vide Annexure A-2 letter No. E(P&A) II-75/HL-1, dated 5.7.1976 redetermined the rates of monetary compensation in respect of NHA for different pay ranges under the revised scale of pay. Further, for the purpose of determining the rate of monetary compensation per day for NHA, only 'pay' as per the revised scale of pay under the Railway Services (Revised Pay) Rules 1973 was reckoned. Thereafter, vide Annexure A-3 letter No. E (P&A) II-79/HL-1/DC, dated 24.4.1982 of the Railway Board, the ceiling limit for the purpose of NHA has been raised to Rs. 750/- to 900/- and the staff drawing pay between Rs. 752/- to Rs. 900/- were allowed to draw NHA @ Rs. 30 per day with effect from 1.4.1982. When the pay scale was again revised by the 4th Pay Commission w.e.f. 1.1.1986, the rates of NHA was also revised vide Annexure A-4 letter No. E(P&A) II/86/HL/2, dated 21.7.1987 of Railway Board but only the pay fixed in the revised scales of pay under the Railway Services (Revised Pay) Rules, 1986 was reckoned for this purpose. Said rate was again been revised vide Annexure A-7 letter of the Railway Board No. E(P&A)II/91/HL/1, dated 26.6.1992. During the currency of the Revised Pay Rules of 1986 itself Railway Board has again enhanced the ceiling limit for the purpose of payment of NHA from Rs. 2600/- to Rs. 3200/- w.e.f. 1.4.1994 and the employees who were in the pay slab of Rs. 2600-3200/- were also paid the NHA @ Rs. 66.30 as applicable to the employees who were in the pay slab of Rs. 1378-2600/. The rates of NHA was again raised vide Railway Board letter No. E(P&A) II-78/HL-2, dated 28.4.1979. After the acceptance of the recommendation of the 5th Pay Commission report and the issuance of the Railway Services (Revised Pay) Rules, 1997 the rates of NHA was again revised vide Annexure A-8 letter of Railway Board No. E(P&A)I-97/HL/2, dated 18.2.1998. In this order also it has been stated that "pay" for the purpose of revised rates of NHA, would be pay fixed in the revised scales of pay under the Railway Services (Revised Pay) Rules, 1997. It was also stated that the employees drawing basic pay exceeding Rs. 6848/- but not exceeding Rs. 10500/- will also be entitled to NHA at rates applicable to the pay slab of Rs. 4205-6848/- i.e. @

Rs. 140/- per day. The aforesaid revision took place w.e.f. 1.1.1998. In short when the NHA was introduced on the basis of the recommendation of the 2nd Pay Commission vide Annexure A-1 letter dated 10.8.1961 of the Railway Board, the rates of NHA per day was determined on the basis of basic pay plus dearness allowances (inclusive of dearness pay) but from 5.7.1976 (A-2) onwards the Railway Board has changed the method for calculating the rate of monetary compensation for NHA to the disadvantage of the employees as the pay for the purpose of determining the rate of monetary compensation was based only on the basic pay and the dearness allowance (inclusive of dearness pay) was excluded. According to the applicants, the slab system introduced by the Railway Board for determining the rate of NHA was also disadvantageous to the employees as the same was misused by the Railway Board. Therefore, the applicants have submitted that the original principle as introduced through Annexure A-1 letter dated 10.8.1961 should be restored so that all the Group-C and D staff who are in non-supervisory duties are made eligible for NHA without any slab system or without any pay limit. They have also submitted that the NHA and the Night Duty Allowances (for short NDA) was introduced by the Railway Board at the same time after recommendations of the 2nd Pay Commission but in the case of NDA the maximum limit of pay was never fixed after the undertaking given by the Railway Board to the Railway Labour Tribunal which has been made part of the award which reads as follows:

“In so far as railway employees covered by the Hours of Employment Regulations are concerned the admissibility of NDA at prescribed rate is also to the pay limit of Rs. 470 will be enlarged to cover all continuous and intensive worker irrespective of pay limit and at rates at present prescribed for the top most slab.”

6. The contention of the applicants' is that Railway Bord has no power to change the principles given for the payment as recommended by the Pay Commission and accepted by the Government of India. They have therefore, submitted that the subsequent amendments made by the Railway Board governing the payment of monetary compensation of NHA is arbitrary, illegal and without jurisdiction and liable to be set aside. They have also



argued that even if the Railway Board have such power they should not have modified Annexure A-1 order dated 10.8.1961 by the subsequent orders. In other words, the rates mentioned in the said order only could undergo a change and not the principles stated therein for determining the rate of NHA; namely basic pay plus dearness allowances plus dearness pay. They have therefore, submitted that the subsequent orders from Annexure A-2 stating that the term "pay" means basic pay only, are untenable.

7. The applicant has therefore, sought declaration that Annexure A-2 order dated 5.7.1976, Annexure A-3 order dated 24.4.1982, Annexure A-4 order dated 21.7.1987, Annexure A-5 order dated 21.3.1994, Annexure A-6 order dated 28.4.1979, Annexure A-7 order dated 26.7.1992 and Annexure A-8 order dated 18.2.1998 are illegal, arbitrary, ultra-virus and unsustainable. They have also sought declaration that determination of the rate of monetary compensation for working on holidays both Basic Pay and DA should be added to the term "Pay". Further, they have sought a declaration that in order to determine the rate of monetary compensation for NHA basic pay and DA of individual employee should be taken instead of slab system or otherwise the slab system should be just and proper like that of slabs mentioned in Annexure A-1 order dated 10.8.1961. They have also prayed that all Group-C and D employees who work/worked on holidays should be paid monetary compensation without any restriction of pay and grade and it should be computed as equal to 1½ days rate of pay.

8. On the basis of aforesaid claim the applicants have worked out the amounts due to the 15 members of the Association as mentioned in Annexures A-12 and A-13 statement.

9. The respondents in their reply statement have submitted that granting of NHA is a policy decision which has been taken consciously by the Railway Board and it cannot be interfered with, as the same is not arbitrary or malafide. Secondly, the fixation of pay for the purpose of NHA has been made from time to time on the basis of the recommendations of the



successive Pay Commissions which are expert bodies. They have further submitted that the payment of NHA is subject to the following criteria:

- (a) The cash compensation is payable even when an employee is on rest. It is not necessary that his rest should be abrogated to be eligible for the cash compensation.
- (b) The shift duty staff who work round the clock and might have performed part duty on the holiday in question can be paid the NHA at the full prescribed rates.
- (c) The cash compensation is meant only for those who do not enjoy public holidy and are also required to work on the National Holidays.
- (d) The monetary compensation will also be payable in the following circumstances
 - (i) When the day of rest and the National Holiday fall on the same day, and
 - (ii) When the running staff are on 'waiting duty' on a National Holiday,
 - (iii) The monetary compensation will also be applicable when the running staff are on 'Light Duties' on a National Holiday,
 - (iv) The running staff who have completed their rest including periodic rest on a National Holiday and who are waiting to be booked for duty on that day will also be entitled to the National Holiday Allowance.
- (e) The monetary compensation will also be applicable when the relieving staff travel as passengers on the National Holidays to their Headquarters after performing duties at outstations. The compensation will also be applicable when the relieving staff travel as passengers from their headquarters to take up duty at another station.
- (f) As the members of the Railway Protection Force work round the clock and are not entitled to public holidays, they will be eligible for compensation for working on National Holidays.
- (g) Office staff who are eligible for public holiday would not be entitled to additional payment merely because of their attendance on a National Holiday.
- (h) The monetary compensation in lieu of National Holiday

may be paid to such of those Railway Territorial Army Personnel, who have opted for Railway pay and allowances even during embodiment on TA on duty as provided for in Railway Board's letter No. PC-60/HL-2/1 dated 10.8.1961 read with letter No. PC-66/HL-2/2 dated 3.9.1968.

10. They have relied upon the judgment of the Apex Court in Union of India & Anr. Vs. Manu Dev Arya (2004 SCC (L&S) 769, according to which a policy decision of the State cannot be questioned unless it affects some body's legal right. It also says that the question as to whether certain allowances would be paid to a section of employees or not and, that too, at what rate is basically a question of policy. They have also relied upon the following observations of the Apex Court in Jt. Action Council of Service Doctors Organisations Vs. Union of India (1996) 7 SCC 256 : (1996) SCC (L&S) 568 : (1996) 33 ATC 259:

"According to us, the present is basically a question of policy and the claim in this regard is not founded on any right as such. In so far as the policy is concerned, there may be some justification for excluding the non-practising allowance for the purpose at hand because this allowance is seemingly not paid to all the Service Doctors. So, if this allowance is included for the purpose at hand, the same may be disadvantageous even to some Service Doctors. We do not say more than this as this matter is presently under examination of the Fifth Pay Commission."

11. I have heard Mr. T.C.G. Swamy for the Applicant and Mr. Sunil Jose for the Respondents. I fully agree with the submission of the learned counsel for the Respondents that the payment of NHA is a policy decision and this Tribunal has no reason to interfere with the same. The rate of payment of the NHA fixed from time to time is also based on well recognized principles which are neither illegal or malafide. It is also not in violation of any statutory rules or even any guidelines. I, therefore, dismiss the OA. There shall be no order as to costs.


(GEORGE PARACKEN)
JUDICIAL MEMBER

"SA"