

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

INDEX SHEET

CAUSE TITLE *o A 150* OF *88*NAME OF THE PARTIES *R.K. Dubey*

Applicant

Versus

Union of India

Respondent

Part A, B & C

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CERTIFICATE

Certified that no further action is required to taken and that the case is fit for consignment to the record room (decided)

Dated.. *28-12-2011*

Counter Signed.....

Section Officer / In charge

Signature of the
Dealing Assistant

CENTRAL ADMINISTRATIVE TRIBUNAL

ANNEXURE - A

CERTIFICATE
Date: _____
ANNEXURE - A
CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW
is required to
taken and that the case is for commitment to the record room
(Decided)

INDEX SHEET

CAUSE TITLE OA 150 of 1980

ANNEXURE - B
Name of the parties _____
Signature of the _____ Applicant.
CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

Versus. Union of India Respondents.
Section Officer / Court Officer / Application No. _____
of 19 _____
Transfer Application No. _____
of 19 _____

Part A.B.C. of Petition No. _____

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(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW.

O.A./T.A. No. 150 1988(L)

R. K. Dubey Applicant(s)

Versus

U. O. 2 Respondent(s)

Sr. No.	Date	Orders
	21/11/88	No. sitting. Adjourned to 19.12.88 for admission. <i>fish</i> 21/11
A	19/12/88	No sitting adjourned to 23-1-89 for admission. <i>Am</i> 19/12
B	23/1/89	Hon. D. S. Mishra, A.M. Hon. G. S. Sharma, J.M. On the request received on behalf of learned counsel for the applicant the case is adjourned to 24.1.1989. <i>JM</i> 23.1.89 <i>Am</i>
C	24.1.89	Hon. D. S. Mishra, Am Hon. G. S. Sharma, JM The brief-holder of the learned Counsel for the applicant is present. Some notice to the respondents to show cause as to why the petition be not admitted within a month. list it for admission on 24.2.1989 <i>JM</i> 24.1.89 <i>Am</i>

Order-sheet

OA No. 150/88 (4)

7.4.89

Hon. Justice Kanleshwar Nath, v.c.
Hon. D. S. Misra, A.M.

Sri Ajan Bhargava, Advocate makes appearance on behalf of the respondent awaiting power. He prays for and is allowed two weeks' time to file a counter affidavit. Rejoinder affidavit, if any, may be filed by the applicant within one week thereafter.

There has been some delay in the progress of this case, partly on account of the applicant and partly on account of the office. It is hoped that having regard to the directions of the Hon'ble Supreme Court regarding the period of time during which this case ought to have been disposed of, the parties will not seek any adjournment. Office should also be very watchful regarding progress of this case.

List this case for hearing on

1.5.89.

A.M.

v.c.

OR

In this case Hon'ble Supreme Court of India has been pleased to order that the case be disposed of within three months from the date of its filing in the Tribunal.

Hon'ble Tribunal in its order dated 7.4.89 has granted two weeks' time for filing reply with the observation that no adjournment will be sought for parties.

No reply filed by the
Submitted

CA. 150/88 (2)

8-89. Hon. K.J. Roman - AM

(13)

Due to sudden death of
Sd. Jagdish Swaroop, Ex-Solicitor
General of India, The Lawyers have
abstained from attending court.

The case is according by
Adjourned to 12-7-89 for orders.

OR
No present objection
has been filed for
submitting out for
order.

[Signature]

AM

Copy sent to
12/7/89 needs
[Signature]
to
12-7-89

ORDER SHEET

(4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

O.A.No. 150 of 1988 (L)

R.K. Dubey & others ... Petitioners

Vs.

The Union of India through ... Respondent.
Chairman Railway Board,
New Delhi.

Hon'ble D.K. Agrawal, Member (J).

The applicants in person. Sri Arjun Bhargwa for sole respondents. In this case counter reply has not been filed on the ground as mentioned in the order-sheet dated 8.5.89. It so happend that an application on behalf of the respondents was made on 5.5.89 to the effect that the applicants be required to submit particulars to enable the respondents to file the detailed counter. The Division Bench on 8.5.89 accordingly passed orders requiring the applicants to provide the particulars. The Division Bench also treated the application dated 5.5.89 as a short reply. I have gone into details of the record. The facts are that by a judgment dated 12.3.1979, a Division Bench of the High Court (Lucknow Bench) pronounced a judgment in the case of the applicant as well as others whereby a mandamus was issued to the Railway Board to re-fix the pay of the petitioners in accordance with the judgment. The said judgment became final in as much as the respondents i.e. Railway Board did not prefer ^{an} appeal. However, the Railway Board failed to comply with the direction of the High Court. Therefore, the applicants and some others made an application before the High Court for action under the Contempt of Courts Act which was decided on 27.2.87

D.K. Agrawal

AS

directing the applicants to approach the Administrative Tribunal. The applicants preferred Special Leave Petition before the Supreme Court which was dismissed with a direction to the applicants to move the Tribunal within a month. A direction was also issued to the Tribunal to dispose of the ^{matter} ~~Tribunal~~ within three months. The applicants accordingly filed an application before the Tribunal. Notice was thereafter issued to the respondents to file the counter affidavit. It is ^{at} ~~on~~ that stage that the respondents ~~to~~ file the above mentioned application dated 5.5.89. It is thus clear that the counter affidavit is not being filed for no good reason. In any case, I have been shown for perusal, the copy of the judgment of the High Court dated 17.2.87 and copy of the Special Leave Petition which are being placed on record. The copy of the judgment of the High Court dated 12.3.79 and the judgment of the Supreme Court dated 6.9.1988 are already on record. Thus complete information is available on record. The respondents can no more delay ~~for~~ filing of the counter affidavit on ^{any} ~~in~~ pretext what so ever. Let the respondents ~~be~~ file counter affidavit within 6 weeks hereoffailing which the case will be heard ex-parte. In case the respondents filed the counter affidavit within the above period, the applicant may file rejoinder within 2 weeks thereafter. Fixed 18.9.89 for final hearing/ex-parte hearing of the case.

2. One of the applicant namely R.K. Dubey is said to have died on 25.4.89. An application has been made for substitution of the name of his widow. The learned counsel for the respondents stated orally that

Okagul

Ab

some time may be given to ~~me~~^{him} for filing objection, if any.
 It is a very simple matter, the perusal of the service record would atonce disclosed ~~where~~^{whether} the applicant that is Smt. Phoolmati Dubey is or ~~his~~ not the widow of the deceased employee which can be ~~very~~^{verified} ~~fide~~ from the service record available at Lucknow. The objection, if any, supported ~~that~~^{by} documents may be filed within 10 days hereof. Put up this for orders of substitution on 8.9.89. Copy of this order be given to the respondent's counsel.

DK Agrawal
 12.7.89.

X
 Dt. 12.7.1989.

Member (J)

ha

C.R.
 No objection has been filed in spite of the order passed by this Tribunal on 12.7.89.

~~8.9.89~~

Hon. Justice K. Nalk, V.C.
 Hon. K. J. Ramen, A.M.

Sri M. R. Mishra, Member
 counsel for the applicant and Sri Arjun
 Bhargava holding the

7/9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

(A7)

ORDER SHEET

REGISTRATION No. 0A150/89(W) of 198

APPELLANT
APPLICANT

Smt P. M. Dubey

VERSUS

DEFENDANT
RESPONDENT

U.O.T. 2 nos.

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
21-9-89	<p><u>Hon' M. D.K. Agrawal, J.M.</u></p> <p>On the request of counsel for the parties, the case is adjourned to <u>12-10-89</u> for final hearing.</p> <p style="text-align: right;">J.M.</p>	<p>OK</p> <p>Case is submitted for hearing</p> <p style="text-align: right;">L 11/2</p>
12 x. 09	<p>(Sns)</p> <p>No Sitting. Adj. to 1-11-09 Both the parties are present.</p> <p style="text-align: right;">h</p>	<p>Submitted for hearing</p> <p style="text-align: right;">L 27/2</p>
1/11/89	<p><u>Hon' Mr. L.K. Agrawal, J.M.</u></p> <p>Shri P.K. Khare counsel for the applicant and Shri Arjun Bhargava counsel for the respondents are present. Hearing continued. Put up tomorrow.</p> <p style="text-align: right;">J.M.</p>	
2/11/89	<p><u>Hon' Mr. L.K. Agrawal, J.M.</u></p> <p>Shri P.K. Khare counsel for the applicant and Shri Arjun Bhargava counsel for the respondents are present. Hearing concluded. Reserved for judgment.</p>	

Submitted for hearing
11/11/89

21/11/90

(sns)

Recd. certified copy
Shri

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

O.A.NO. 150 1982. (L)
L.A.NO. 1

DATE OF DECISION 28/12/87

P. K. Dabhi & others PETITIONER

Sri P. K. Dabhi Advocate for the
Petitioner(s)

VERSUS

(U) & others RESPONDENT

Sri A. Bhargava & Sri A. K. Dabhi Advocate for the
Respondent(s)

CORAM :

The Hon'ble Mr. D. K. Agrawal J

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether to be circulated to other Benches ? ✓

Dinesh/

Handwritten signature/initials

AS

Reserved

Central Administrative Tribunal, Allahabad.
CIRCUIT BENCH-LUCKNOW

Registration O.A.No.150 (1) of 1988

1. R.K.Dubey
2. Jagdish Prasad and
3. L.P.Agnihotri ... Applicants

Vs.

Union of India through the
Chairman Railway Board, New Delhi .. Respondent.

CONNECTED WITH

Registration O.A.No. 158 of 1988 (1)

R.R.Viswakarma ... Applicant

Vs.

Union of India through
the Chairman
Railway Board, New Delhi ... Respondent

Hon.D.K.Agrawal, JM

Identical relief has been sought in both
the above petitions which is worded as follows:-

"... to command the Respondents to implement the orders passed by the Hon.High Court dated 12.3.1979 as contained in Annexure 1 to this petition and the petitioners be afforded arrears of salary/pension as per the rules and formula accepted by the Hon.High Court and also narrated above in para 6 of this petition. Such other orders may also be passed as this Hon.Court may deem fit and proper in the circumstances of the case."

2. The significance of the relief sought will be clear from the following discussion.

3. It is relevant to mention the brief history of litigation. Initially three writ petitions- No.1046 of 1970 (by R.K.Dubey Applicant No.1 of the present Application), ^{writ petition nos.} 443 of 1970 and 626 of 1971 by two others (not parties in this case) were filed in the Lucknow Bench of Allahabad High Court

DK Agrawal

.2.

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claiming that running allowance paid on the running post was part of pay when posted on a stationary post. A Single Bench by a common judgment and order dated 7.11.1974 upheld the contention of the Petitioners holding that the running allowance was part of the pay but that the arrears of salary except for the period of 3 years next before filing of each of the writ petitions would ordinarily be barred by law of limitation. Aggrieved by this decision, the Railway administration filed 3 Special Appeals before the Lucknow Bench of the Allahabad High Court. Two Special Appeals were filed by two of the Petitioners. At about the same time, seven other writ petitions came up involving identical issue. All the five Special Appeals and seven writ petitions were decided by a common judgment and order dated 12.3.1979 by a Division Bench. The order passed by the learned Single Judge was maintained. On delay being caused in the implementation of judgment dated 12.3.1979, the Applicants and some others filed Contempt Case No.460 of 1980. In the said Contempt Case M/S. Bhargava and Co., Lucknow (Chartered Accountants) were appointed as Commissioner of Accounts and a reference was made to them for determining the amount of arrears if any, payable to the Applicants as a result of fixation/refixation of pay in terms of judgement and order dated 12.3.1979. The aforesaid Commissioners submitted their report holding that the Applicant nos. 1 to 3 were entitled to several lakh of rupees. The Railway administration filed object-

[Handwritten signature]

APD

ions by means of affidavits annexed therewith, the pay fixation charts of the Applicants already done by it in pursuance of the judgment and order dated 12.3.1979. The Contempt Application was dismissed on 16.5.1986 with the following observations of Hon.Mr. Justice Kamleshwar Nath (as he then was) :-

"....The Court did not say that the pay fixed/refixed of the Applicants could exceed maximum of the scale of pay for the particular stationery post held by the Applicants. The Court indicated inter alia, that fixation and refixation was to be done in accordance with rules. It would be inherent that no fixation could be made beyond the Rules and perhaps there is no rule that fixation of pay can be made at an amount in excess of the maximum of the pay scale of the post held.

The Chartered Accountants have clearly gone wrong atleast in these two respects and if they entertained any doubt about the true position in this regard, they would have been better advised to seek the guidance of this Court rather than ignore the directions contained in the judgement for which they were appointed as Commissioner of Accounts."

Thereafter the Applicants filed Civil Misc. Application before the Division Bench of Lucknow Bench of the Allahabad High Court, which was dismissed by judgment and order dated 27.2.1987 holding that at best it was a case of improper or insufficient execution and not a case of no execution at all and that the High Court had no jurisdiction after the commencement of the Administrative Tribunals Act XIII of 1985. The Applicants then approached Hon.Supreme Court. The Hon.Supreme Court vide its

Dr. G. S. Singh

(111)

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order dated 6.9.1988 dismissed the SLP with a direction that if the Applicants file fresh petition before the Tribunal within a month for appropriate relief, the Tribunal shall dispose of the matter within 3 months from the date the petitions are filed.

4. The above petitions were filed by the Applicants on 6 and 7.10.1988. It is regretted that the Tribunal was not able to decide the petitions within the time limit granted by the Hon. Supreme Court for various reasons.

5. The most unfortunate part is that the Applicants have not come forward with the specific relief. The relief sought by them has been quoted above. It does not mention as to what is the actual grievance of the Applicants. Despite the direction of the Hon. Supreme Court to the Applicants to prefer petition before the Tribunal for appropriate relief, the Applicants have left to the Tribunal to find out what were directions in the judgement dated 12.3.1979 pronounced by the High Court. How far those directions have been complied with by the Railway administration. In what respect the directions have not been complied with by the Railway administration. The Railway administration has already taken into account the running allowance of the employees which they were drawing while posted in the running category of post at the time they were made to officiate in the stationery category of post. Therefore, it is a case where the Applicants seem to be aggrieved with the fixation already done by the railway administration. In the circumstances, it cannot be

Dr. G. S. Rao

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.5.

said that the order of the High Court has not been implemented at all or that the Railway administration has failed to carry out the directions. It appears that the Applicants want to allege that the pay has not been correctly fixed. If so, the burden lay on them to come forward with specific allegation and specific relief instead they have worded the relief as quoted above in a language which leaves it to the Tribunal to find out the principle on which fixation of pay was to be done, the fixation already done and the relief, if any, due to the Applicants.

6. In view of the above facts, it is to be found out as to what was the direction of the Division Bench of High Court in its judgment and order dated 12.3.1979. Concluding their observations, Hon.Mr. Justice U.C.Srivastava and K.N.Goyal of Lucknow Bench of the Allahabad High Court have observed as follows :-

"For the purpose of contribution to provident fund and for other benefits in one of the counter affidavits it has been admitted that different percentage of running allowance are treated as pay for various purposes viz., passes, privileges, Ticket orders, Leave Salary, Medical Attendance and treatment, Educational Assistance, retirement benefits, fixation of pay in the stationary post, compensatory City Allowance, House Rent Allowance, Rent for Railway quarters and for recovery of Income Tax etc.

A perusal of these rules which have been interpreted by the Railway Administration from time to time which has issued various circulars in this behalf makes it more than clear that running allowance is computed towards average a pay and in this view it cannot be denied that it is a part of the same.

A perusal of the Railway Board's decision shows that running staff is entitled to 50% of the running allowance towards the pay which is to be calculated in accordance with rules, in this connection it will

J.K. Goyal

(A13)

.6.

also be relevant to note that Railway Board vide its letter No.19/1961 published in the Gazette of 16.8.1961 quoted President's decision, the relevant position of the same read as follows:}

"The question has been considered and the present is pleased to decide that the pay of such running staff utilised in stationary appointments for period of over 21 days whose initial pay in the stationary appointed is fixed under the normal rules, in accordance with para (b) (ii) of Railway Board's letter No.(R) 49 RS/3 dated 1.7.1949 should also be refixed under clause (2) of Rule 2027 (FR 31) R-11, 50% of the enhanced substantive pay representing the running allowance being treated as pay for the purpose of such refixation."

Subsequently, the above judgement dated 12.3.1979 was considered by Jabalpur Bench of the M.P.High Court in Writ Petition No. 45 of 1982 S.K.Tewari and 32 others Vs. Union of India and others wherein it was laid down as follows in para 4 and 5 of the judgment:-

"4. A perusal of the judgment of the Allahabad High Court indicates that the said Court nowhere directed that the running allowance should be taken into consideration first for ascertaining the basic pay for the purpose of fixation and thereafter, for fixing the actual pay on the promoted post....

5.A plain reading of the para indicates that it does nowhere state the running allowance should be taken into consideration twice while fixing the pay....."

It again came for consideration before a Bench of this Tribunal at Allahabad in Union of India Vs. Durga Charan and others (T.A.Nos. 617, 627 and 629 of 1986 decided by common judgment and order dated 10.12.1986) wherein the following observations were made :-

Dr. Agrawal

ALU

.7.

" A plain reading of R.2027 makes it clear that after the substantive pay has been fixed by giving one increment in the lower grade, the pay in the higher officiating grade has to be refixed under sub rule 1. This rule only authorises to draw the presumptive pay of the post and as has already been clarified the presumptive pay of a post is the pay to which a person is entitled if he held a post substantively. Posting to a stationary post which is in higher grade is what is involved in this case. There is no doubt that the post in the running grade from where the petitioners were promoted or put to officiate on a stationary post were lower in scale of pay. It is also clear that stationary post does not carry any running allowance. The object behind the whole exercise of counting the portion of percentage of pay equivalent component of running allowance as a part of the pay before the pay is refixed in the higher grade is to do away with the financial disadvantage that an employee may have to suffer and also to give him some attract to opt and apply for promotion to stationary post. In conclusion fixation and refixation cannot result in payment of a salary of Rs.960 for holding a post which has a scale of Rs.260-350 per month only and by no stretch of imagination any employer can issue such absurd instructions as to result in a situation that will conclude to such a result."

8.
Then again, in Ram Sumer Vs. Union of India and another (T.A.No.567 of 1987) a Bench of the Tribunal at Allahabad by judgment and order dated ²⁵ 3.3.1988 observed as follows :-

"On going through the relevant judgments of the Allahabad High Court, we find that no specific direction has been given regarding the fixation of salary of the Applicant as claimed by him. It has been asserted by the Respondents that Annexure 1 of the compliance report (copy annexure R-8) filed by them before High Court on 23.11.1986 discloses that the amount claimed by the Applicant in the present application is neither admissible nor payable. learned counsel for the Respondents Sri Lalji Sinha contended that the pay of the Applicant was fixed/refixed on various dates in accordance with para 2017 of the Railway Establishment Manual as applicable at that time

D.K. Ag...

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until the confirmation of the Applicant on the stationary post of Relieving Transportation Asstt. w.e.f. 2.7.1955. It was also stated that the Applicant was confirmed as Guard Grade 'A' in the scale of B.150-225 w.e.f. 20.5.1954. We have considered the applicability of the relevant rules in the matter of fixation of pay of the Applicant w.e.f. the date of his promotion as Relieving Transport Assistant and confirmed on that post on 2.7.1955 and are of the opinion that R.2017 of the Railway Establishment Manual read with the instructions contained in the Railway Board's circular dated 17.3.1949 (Annexure R-9) was applicable in accordance with these instructions the applicant was entitled to fixation of his pay on promotion as Relieving Transportation Asstt. on 7.11.1951 as follows:-

1. Pay in the Running cadre Rs.125
2. 50% of pay in lieu of mileage Rs.62.50
3. Total Rs.187.50.

Pay to be fixed at Rs.200 minimum of the grade of Rs.200-300 in accordance with sub rule A(1) of R.2017 of the Railway Establishment Manual."

7. The observations extracted above leave no room for doubt that the element of certain percentage of running allowance forms part of the pay. That is what is laid down in the Railway Board's instructions of 1961 and 1963 and has also been observed by the Division Bench of the Lucknow Bench of Allahabad High Court in its judgment and order dated 12.3.79. The only question is what percentage of the running allowance is to be treated as part of the pay. According to the Railway Board's instructions, it varies to 50, 40 or 30 per cent from time to time. The basic pay was to be enhanced by 50 per cent by 1961 instructions. This was modified to 40 per cent under 1963 instructions. 1961 instructions were effective from 1.4.1958 and 1963 instructions from 1.2.1963. By 1976 instructions, this element has been modified to 30% of the basic pay w.e.f. 1.4.76. The question which falls for determination is as to whether the

Dr. Ag. S. S. S.

(A/E)

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pay of the Applicants on the stationary post was or was not fixed taking into account the per centage of running allowance. The Applicants have purposely chosen not to specify it. Therefore, the Service Books of the Applicants were perused to find out as to how the pay of the Applicants was fixed by the railway administration. Service book indicates that the railway administration has already taken into account 50% of pay in lieu of mileage. It would mean that nothing is due to the Applicants. However, the case of each Applicants may be discussed in brief to indicate as to how their pay was fixed on the stationary post and whether any arrear of salary was due to them for the period 3 years next before filing each of the Writ Petitions by them.

8. The Applicant R.K.Dubey while working as Guard in the grade of Rs.150-240, drawing basic pay of Rs.238 on 1.7.1959 was made to officiate on stationary post of RTA in the grade of Rs.250-380 on 11.7.1959. His pay on 11.7.1959 was fixed as follows :-

1. Pay in the running cadre	Rs.238
2. 50% in lieu of mileage	Rs.119
3. Total	Rs. 357

4. The pay was fixed at Rs.365 in the grade of Rs.250-380.

Sri R.K.Dubey retired on 30.4.1982 from stationary post.

9. Sri L.P.Agnihotri while working as Guard Grade 'C' in the grade of Rs.130-225 drawing basic pay of Rs.170 on 31.1.1962 was promoted as RTS in the grade of Rs.150-240. However, one mistake was committed in his case. His pay at Rs.240 should have been fixed w.e.f. 31.1.1962 but it was fixed w.e.f. 1.2.1963. Sri Agnihotri was again posted as Guard on 15.7.1969 and retired as Guard Special Gr.'A on 30.11.1981. The Writ Petition No.1817 of 1975 was filed by him. In view of the judgment rendered by the High Court, as mentioned above, the Petitioners were entitled to arrear of salary for the period of 3 years prior to the filing of

Dr. Agnihotri

A17

.10.

writ petition by each of them. In this view of the matter, the arrears of salary for the period 31.1.1962 to 1.2.1963 are not payable to Sri Agnihotri.

10. Sri Jagdish Prasad working as Driver grade 'B' in the grade of Rs.160-300 was made to officiate on stationary post w.e.f. 30.9.1957 and promoted as Junior Labour Inspector and confirmed as such w.e.f. 19.11.1964 in the grade of Rs. 370-475. His ^{pay} was fixed at the maximum of the pay scale, i.e. Rs.475 w.e.f. 19.11.1964. He filed a Writ Petition in the year 1975. As such, the arrears of salary, if any, within three years prior to the filing of the Writ Petition can be awarded to him. In view of the fact, that his salary was fixed at the maximum of the pay scale in the year 1964 itself, no relief is due to him.

11. Sri Vishwakama was drawing Rs.110 as basic pay on the date he was promoted to stationary post. Therefore, his pay was fixed at Rs.165 on the stationary post and was given increments from time to time till he retired on 31.3.1981 from the stationary post of Chief Yard Master.

12. In view of the above discussion of facts and law, both the Applications are liable to be dismissed. They are accordingly dismissed without any order as to costs.

Dr. Agastya
28.12.89
MEMBER (JUDICIAL)

Dated: 28.12.1989
kkb

Filed today
6/10/00

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH SITTING AT LUCKNOW

Claim Petition No. 150 of 1988 (L)

P.M. Dubey
R.K. Dubey and others

P etitioners

Versus

The Union of India through
the Chairman Railway Board
New Delhi.

R espondents

Noted to 21.11.88
A.R.G.M.
to P.K. Khan
Amr
6/11/88

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH SITTING AT LUCKNOW.

Claim Petition No. 150 of 1988 (L)

Filed on _____

P. M. Dubey
R. K. Dubey and others

Petitioners

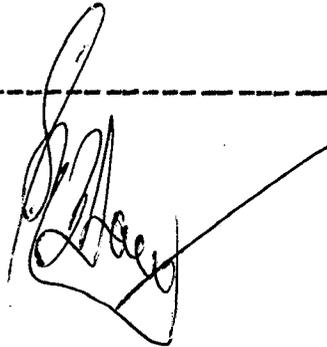
Versus

The Union of India through
Chairman Railway Board,
New Delhi.

Respondent

I N D E X

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1.	Memo of petition	1 to 10
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APPLICATION UNDER SECTION 19 OF THE
ADMINISTRATIVE TRIBUNAL ACT 1985

...

For use in Tribunal Office

Date of filing: :

Or

Date of receipt by
post :

Registration N; :

Rhodes

Singh
J. J. J.

(Registrar)

(A18)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW (ADDL. BENCH AT ALLD.)

O. A. 150 of 80(L)

BETWEEN

1. R.K. Dubey aged about 60 years
son of late Sri Prayag Narain Dubey
r/o Bobey wali Gali Lal Kunwan,
Lucknow.

2. Jagdish Prasad, aged about 68
years son of late Mahabir Pd.
r/o E-2/95, Aliganj Housing Scheme,
Aliganj, Lucknow.

3. L.P. Agnihotri, aged about 60
years son of ^{Late} Pandit R.P. Agnihotri
r/o 288/206, Arya Nagar, Lucknow.

And

Union of India through the
Chairman Railway Board, Rail
Bhavan, New Delhi.

Application Under Section 19 of
Central Administrative Tribunal
Act 1985

...

Details of the Application

1. Particulars of the applicants:

- i) Names of the applicants: a) R.K. Dubey
b) Jagdish Prasad
c) L.P. Agnihotri

J. Prasad

R. K. Dubey
L. P. Agnihotri

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ii) Name of father:

- a) Late Sri Prayag Narain Dubee
- b) late Mahabir Prasad
- c) ^{Late} Pandit K.P. Agnihotri

iii) Designation and Office in which employed.

- a) Asstt. Yard Master, Rly. Deptt., Union of India
 - b) Senior Loco Inspector Rly. Deptt. Union Of India
 - c) Guard, Rly. Deptt. Union of India
- All remained posted in U.P. and now retired.

iv) Office Address.

-(Rtd.)

v) Address for Service of all notices.

- a) Bambah wali gali, Lal Kunwan, Lucknow
- b) E-2/95, Aliganj, House Scheme, Aliganj, Lucknow.
- c) 288/206 Arya Nagar, Lucknow.

2. Particulars of Respondents:

i) Name and address of Respondent

The Union of India through the Chairman Railway Board Rail Bhavan, New Delhi.

ii) Office Address of the respondent Nox

-do-

B-Particulars of the order against which application is made

...

i) Against wrong fixation of the pay/pension

J. Prasad
R. S. Singh
P. Agnihotri

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of the petitioners and the implementation of the orders passed by the Hon'ble High Court on 12.3.1979.

ii) Date

iii) Chairman on behalf of the Union of India
Ministry of Railway.

iv) Subject in brief: Proper fixation of pay/pension and implementation of order passed by the Hon'ble High court

4. Jurisdiction of the Tribunal

The applicants declare that the subject of the order against which he want redressal is within the jurisdiction of the Tribunal.

5. Limitation

The applicants further declare that the application is within the limitation prescribed in Section 21(3) of the Administrative Tribunal Act 1985 for the following sufficient reasons:

6. Particulars of case:

1. That the applicants moved the Hon'ble High Court at Allahabad, Lucknow ench, Lucknow inter-alia for the refixation of their pay according to the rules including the allowances permissible to the cadre of the applicants. The applicants have also moved for the payment of arrears of salary according to rules after refixation.

2. That a number of the writ petitions were filed before the Hon'ble High Court and the applicants were also a party in the said writ petitions. The Hon'ble High Court however, after thoroughly

J. Prasad
R. K. Singh
S. Singh

(P2)

6. That the Hon'ble High Court dismissed the application for contempt of court against the respondent and others and made an observation that the applicants should make an application before the Division Bench for the implementation of the orders passed by the Hon'ble Court dated 12th March 1979 the copy of which is being annexed as ANNEXURE-1 to this petition.

7. That the Hon'ble High Court consisting of Bench dismissed the applications moved by the applicants and other similarly situate persons and observed that a fresh ~~case~~ ~~of~~ ~~contempt~~ case be filed by the applicants and other persons before this Hon'ble Tribunal. It needs mention that the Hon'ble High Court in its judgment dated 12th March 1979 had discussed the matter in detail and had taken into consideration the various Rules on the subject and after bestowing considerable thought over the various pleas of the parties, decided the various questions raised in the petition. However, the decision of the Hon'ble High Court was not obeyed by the respondent and subsequently the contempt petitions moved by a number of persons were dismissed.

8. That the applicants and other similarly situate persons aggrieved against the dismissal of the contempt petition approached the Hon'ble Supreme Court in different Special Leave Petitions. The Hon'ble Supreme Court however, pleased to pass the following orders on the said Special Leave petitions.

J. Hasan
R. B. Singh
S. S. Chakravarti

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going through the whole case and hearing the parties allowed the writ petitions and issued a mandamus against the respondent and to comply with the directions of the court within three months from this date. X

3. That the respondent filed a Special appeal before the High Court against the above judgment and order and the Hon'ble High Court was pleased to uphold the judgment and order passed by the Hon'ble High Court and dismissed the appeal of the Union of India and issued a mandamus in seven other writ petitions involving the same questions of law. The Union of India was directed by the High Court to comply with this Judgment and order within three months, which although extended from time to time but expired without any compliance of the mandamus issued by the Hon'ble High Court.

4. That when the applicants found that the compliance of the orders passed by the Hon'ble High Court is not being made then the applicants made a collective representation to the respondent to comply with the orders issued by the Hon'ble High Court but despite the making of the representation the orders were not complied with.

5. That the petitioners alongwith other persons filed Civil Misc. case for contempt before the Hon'ble High Court against the respondent ~~for~~ the to this petition and others for violation of the Orders passed by the Hon'ble High Court, ~~and order~~ dated 12th of March 1979 through which the petitions were allowed and mandamus was issued to the respondent and its officers to comply with the orders.

J. [Signature]
R. [Signature]
[Signature]

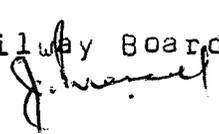
A23

ORDER

" These petitions are dismissed. If the petitioners file fresh petitions before the Tribunal for appropriate relief within a month, the Tribunal shall dispose off the matters within three months from the date on which the petitions are filed."

The copy of the order is annexed as ANNEXURE-2 to this petition. From the perusal of the above order it is apparent that the Hon'ble Supreme Court vide its order dated 6.9.88 the copy of which was issued on 7.9.88 observed that the applicants should file his case before this Hon'ble court and the same will be decided within three months by this Hon'ble Tribunal. This application therefore, is being moved before this Hon'ble court for the implementation of the judgment delivered by the Hon'ble High Court on 12th of March 1979.

9. That from the judgment of this Hon'ble Court dated 12.3.1979 it is evident that there are three stages in calculating; firstly the pay is the running post and thereafter fixing and re-fixing the same in conformity with the rules, circulars and president's decision as interpreted and reiterated in the judgment of ~~the Hon'ble High Court~~ the Hon'ble High Court. The first stage relating prior to 20.5.1953 is in respect of calculating the pay in the running post also referred to as former employment or substantive employments in conformity with rule 1302(5)(c) Proviso (II) of the Indian Railway Establishment Code Vol.I and the Railway Board's order incorporated



(A24)

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in this Rule. This pay in the running post is grade pay plus 75% thereof as running allowance.

10. The Second stage is that of fixation of officiating pay or presumptive pay or the enhanced substantive pay in accordance with the President's decision at page 227 of the Indian Railway Establishment Code Vol.II. Thus officiating pay is pay in the running post plus 50% thereof.

11. The third stage relates to re-fixation of the foresaid officiating pay in the stationary cadre by further adding 50% of this officiating pay in accordance with this rule 2027(2) of the Indian Railway Establishment Code Vol.II applicable from 22.1.1958.

12. That the Railway Department, the respondents even have accepted the principle claimed by the petitioners in several cases and even followed the Judgment delivered by the Hon'ble High Court on the same principles. In order to satisfy this Hon'ble Tribunal the petitioners quote the name of Sri Saran , Guard, who had been paid Rs. 27000/- as arrears etc. on the same principle claimed by the petitioners but in the case of the petitioners this principle has not been adopted and the petitioners are being deprived from the fruits provided to other similarly situated persons. The respondents thus committed an illegality offending the Article 14 and 16 of the Constitution.

7. Relief Sought

That in view of the facts mentioned in para 6 ~~xxx~~ above the applicants pray for the following reliefs:

J. Prasad

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Wherefore, it is most respectfully prayed that the Hon'ble Tribunal may be pleased to command the respondents to implement the orders passed by the Hon'ble High Court dated 12th March 1979 as contained in Annexure-1 to this petition and the petitioners be afforded arrears of salary/pension as per the rule and formula accepted by the Hon'ble High Court and also narrated above in para 6 of the petition. Such other orders may also be passed as this Hon'ble court may deem fit and proper in the circumstances of the case.

G R O U N D O F R E L I E F

i) Because since the applicants were the employees of the respondent ~~and~~ thus their pay and allowances ought to have been fixed in accordance with the rules and the regulations applicable upon the petitioners at the relevant time and non application of those rule and not to give salary/pension in accordance ~~xxx~~ with those rules by the respondent to the applicants is illegal and unconstitutional.

ii) Because the petitioners filed a number of similarly situate persons, including the petitioners was allowed by the Hon'ble High Court which after going through it thoroughly and hearing the parties in the matter passed the judgment dated 12th of March 1978 in which the claim of the applicants was accepted and the respondent was commanded to make the payment as per the formula laid down in the judgment itself and in several cases the said formulae was also accepted and the amount on re-calculation was paid to similarly situate persons; but in the case of the petitioners the same is not being accepted violating the Articles 14 and 16 of the Constitution.

iii) Because the respondent has delayed the matter in case of petitioners and subsequently obtained an order in contempt petition that the matter be put up before this Hon'ble Tribunal for the implementation of the judgment of the Hon'ble High Court

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which resulted into the death of a number of persons who have retired from the services. The action therefore, on the part of the respondent does not seem to be justified towards its own employees as they are allowed to leave this world without having their due claim.

iv) Because the Hon'ble High Court did not reverse its judgment dated 12th of March 1969 and only directed to approach this Hon'ble Tribunal to get its own judgment implemented thus the claim of the applicant is subsisted and the same be get implemented by the respondent; by this Hon'ble Tribunal

v) Because the respondent is taking an extremely long time in implementing the mandate issued by the High Court vide its judgment and order dated March 12, 1979 even though admittedly the Railway Board took a decision on July 24, 1979 not to agitate the matter any further in the Hon'ble High Court and to implement the order dated March 12, 1979, passed by the Hon'ble High Court but still the same could not be implemented on the plea that the contempt petition has been dismissed which does not affect the applicability of the original judgment. Thus the non implementation of the judgment of the Hon'ble High Court dated 12th March 1969 is mala fide one and illegal besides arbitrary.

vi) Because the Hon'ble High Court in its imp order judgment has correctly observed that the

J. Khosla
R. B. Singh
S. S. Chakravarti

Special appeals filed by the Union of India were dismissed and the judgment and order dated 12th March 1979 has become final but still the order and the judgment of the Hon'ble High Court could not be implemented and the applicants are being deprived of their due share for which they are legally entitled. This inaction on the part of the Union of India, the respondent is illegal, malafide, arbitrary and unjustified.

vii) Because the non-implementation of the rules and regulation applicable on the applicants at the relevant time and non implementation of the decision of the Hon'ble High Court is an act of arbitrariness and thus the respondent is liable to be commanded to implement the order/judgment dated 12th March 1979 passed by the Hon'ble High Court.

viii) Because the action of the respondent is otherwise illegal, invalid and malafide one.

B-Interim Order if prayed for:

...

9. Details of remedies exhausted

The applicants declares that he has availed all the remedies available to them under the relevant rules

Handwritten signatures and initials:
J. Ahmed
R. S. ...
S. ...

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10. Matter not pending with any other court

11. Particulars of Bank Draft/Postal Order
in respect of the application fee:-

- i) No. of Indian Postal Order
- ii) Name of issuing post Office
- iii) Date of issue of postal order
- iv) Post Office at which payable.

12. Details of Index

An index containing the details of the documents to be relied upon is enclosed on front page.

13. List of Enclosures-2 As shown in Index.

Verification

We, the above named applicants do hereby verify that the contents of paras 1 to 13 of the above petition are true to the best of our personal knowledge and belief and that we have not suppressed any material fact.

1. 
2. 
(L. P. Agnihotri)
3. 

Dated: Lucknow the
6th day of Octr. 1988

Applicants

(A29)

ANNEXURE 'A'

30

IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD, LUCKNOW BENCH, LUCKNOW.
.....

SPECIAL APPEAL NO. 9 OF 1975

Union of India through the Chairman,
Railway Board, Rail Bhawan,
New Delhi and others.

... Appellants
(Opposite Parties).

V e r s u s

Smt. Afsar Jahan Begum and Ors.

... Respondents
Petitioners.

Nature of the case : Petition Under Article
226 of the Constitution of India.

Special Appeal against the Judgment and decree dated
7.11.1974 passed by Hon'ble Mr. Justice O.P. Trivedi
in Writ Petition No. 626 of 1971.

Lucknow Dated : 12.3.1979.

Hon'ble U.C. Srivastava J.

Hon'ble K.N. Goyal J.

(Delivered by Hon'ble U.C. Srivastava J.)

contd..../-

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- (1) Special Appeal No. 9 of 1975
Union of India & Others -Vs- Smt. Afsar Jahan Begum & Others.
- (2) Special Appeal No. D of 1975
Union of India -Vs- S- Bhagwati Prasad Pandey.
- (3) Special Appeal No. 11 of 1975
Union of India -Vs- Ramkumar Dubey.
- (4) Special Appeal No. 12 of 1975
Bhagwati Prasad Pandey -Vs- Union of India.
- (5) Special Appeal No. 13 of 1975
Ram Kumar Dubey -Vs- Union of India.
.....

- (1) Writ Petition No. 396 of 1975
Kalika Prasad Vs. Union of India
- (2) Writ Petition No. 1045 of 1975
Sankata Pd. Srivastava V. Union of India.
- (3) Writ Petition No. 1065 of 1975
Ram Chandra Ahuja V. Union of India
- (4) Writ Petition No. 1067 of 1976
Sukh Lal Srivastava V. Union of India.
- (5) Writ Petition No. 1087 of 1975
Smt. Vidyawati Vs. Union of India.
- (6) Writ Petition No. 1817 of 1975
Laxma Pd. Agnihotri Vs Union of India
- (7) Writ Petition No. 1820 of 1975
Jagdish Prasad -Vs- Union of India.

J. Prasad

contd..../-

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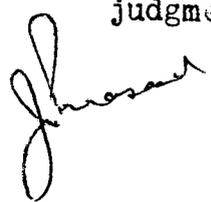
32

Hon'ble U.C. Srivastava, J.
Hon'ble K.N. Goyal, J.

(Delivered by Hon'ble U.C. Srivastava, J).
.....

These five Special Appeals arise out of the Judgment passed by a Learned Single Judge of this Court who disposed of three writ petitions by a common judgment as identical questions were involved in the three writ petitions which were allowed and a writ of Mandamus was issued directing the opposite parties to the writ petitions, that is Railway Administration, for fixing or re-fixing their pay and arrears according to the order passed by the Court. Three Special Appeals have been filed by the Railway Administration while the other two have been filled by the petitioners to the writ petitions who still felt aggrieved with the judgement passed by the learned Single Judge.

Alongwith these five Special Appeals, seven writ petitions Nos. 396 of 1976, 1045 of 1975, D65 of 1975, 1067 of 1975, 1087 of 1975, 1817 of 1975 and 1820 of 1975, in which reference to the above special appeals was also given, as similar question arises for decision, are being disposed of by this judgment.



contd..../-

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Out of these writ petitioners Bhagwati Prasad Pandey retired during the pendency of his writ petition. The other petitioner Sardar Husain, now represented by his legal representatives, is dead. The third petitioner Ram Kumar Dubey is the only person who is still inservice. Their contention is that ranning allowance also is included in the pay, but the same has been wrongly excluded and that they have beendeprived of their rightful salary and grade.

We have heard learned counsel for the parties in the special appeals and subsequently on the next day in the other seven writ petitions - are reference to which has been made earlier.

Sri Saghir Ahmad, learned Counsel for the Railway Administration, has assailed the judgment and order passed by the learned Single Judge of the Court on the following grounds:-

- 1- The Writ Petitions ought to have been dismissed on the grounds of delay and laches on the part of the Petitioners?
2. Rule 2027 of Railway Establishment Code was not applicable yet the same has been followed?



contd..../-

(A-22)

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3. Rule 2018 of the Railway Establishment Code was introduced only in the year 1961 and as such the same was not applicable to the case of the petitioners as their pay was fixed in the years 1955, 1956 and 1959, that is, before coming into force of the Amended Rule 2018.

4. The court had no jurisdiction to make out a new case for the petitioners who did not claim such a relief which was granted by the learned Single Judge of this court who applied some other Rule instead of that which was claimed by the petitioners to be applicable and running allowance was not part of the pay as has been held by the learned Single Judge of this Court?

The learned counsel submitted that he had no grivance so far as that part of the judgment of the learned single Judge of this court is concerned in which it has been held that paragraph 152, which deals with cases of the dis-abled employees, was not applicable and further that the petitioners were only entitled to arrears for three years from the date of presentation of writ petition.

J. Narayan

contd..../-

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Learned Single Judge of this court took into consideration the facts of the case and the various cases and came to the conclusion that the petitioners were not guilty of delay and laches. Learned counsel for the Railways contended that the writ petitions ought to have been dismissed as representations were made after a lapse of several years and the petitioners have been working against such posts and drawing their salary without any grievance and they could not be heard saying that their pay may be refixed. That too after several years. Petitioner to Writ Petition No. 443 of 1970 Sri Bhagwati Prasad Pandey has alleged in paragraph 11 of the writ petition that he protested and made representation in the matter of appointment and fixation of pay, but the same remains undecided for a number of years. This was reasserted by him in paragraphs 12 and 17 of the writ petition. In paragraph 27 of the writ petition was alleged that the question of fixation of petitioner's pay in Grade-A of Guards was pending decision since 15.6.1948 and the question of fixation of pay in the stationary post was pending since 25.3.1956. On 6.8.1968 he addressed a reminder to be authorities for early decision of these representations. Though at one place in the Counter Affidavit it

J. Prasad

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A35

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it was stated that his representation was considered and rejected, but the date of the same was not stated and no copy of such order was filed along with the Counter Affidavit. The petitioner asserted that no such order was ever communicated to him, These facts make it clear that so far as Bhagwati Prasad Pandey is concerned he was in service and had been agitating the matter since long and the Railway Administration did not either decide his representation and if they decided the same, the result of the same was not communicated to him, as such it could not be said that there were laches and delay on his part and the writ petition which was filed by him in the year 1970 be thrown out on this score.

So far as petitioner in writ petition No. 1046 of 1970, viz., Ram Kumar Dubey is concerned, it was alleged by him in the writ petition that he had made representations continuously for fixation of his pay according to the Rules and copies of such representations starting from 8.10.1967 were also filed. It was only after a lapse of 11 years that he received a copy of the order said to have been passed on his representation dated 2.3.1970. In the counter Affidavit it was stated that his representation was for the first time received

J. Prasad

contd..../-

A36

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on 25.6.65, but the same was rejected on 22.7.1965, though it was also admitted that he addressed a representation directly on 8.10.1967 to the Railway Board upon which a report was called for by the Railway Board. It was contended on behalf of the Railway Administration that even if it be accepted that the representation was made by him in the year 1965, he kept quiet for a number of years and thereafter he filed a writ petition in the year 1970 and thereafter he filed more representations. It will not be out of place to mention that representation filed by the said petitioner was entertained even by the Railway Board which called for a report on the same and it was only after entertainment of the same that it was rejected.

So far as Sardar Husain petitioner deceased in Writ Petition No. 625 of 1971, as concerned, it is an admitted fact that his representation was received in the year 1968, but in the Counter Affidavit there was no where asserted that his representation was even decided or its decision was communicated to him. So far as the representation of the year 1971 is concerned, the only thing which was said in the Counter Affidavit was that the same was

J. Husain

contd..../-

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not traceable in the office. It is thus clear that a representation was filed by Sardar Husain though in the year 1968, and the same was entertained but thereafter it was not decided as has also been held by learned Single Judge of this Court.

Sri Saghir Ahmad contended that law on this behalf is very clear and in service matters including seniority etc. Writ Petitions which are filed after 8 years or 11 years, after the representation is filed at a late stage to make out a case for filing a writ petition, are not to be entertained and throw out. In this connection learned counsel made reference to certain Supreme Court decisions which were not referred before the learned Single Judge of this Court.

The first case on which reliance was placed by the Learned Counsel for the Railway Administration was Rabindra Nath Bose and others. V. Union of India and others (A.I.R. 1970 Supreme Court 470) in support of his contention that in the service matter the Writ Petitions in respect of stale and belated cases be not admitted. The said case was a seniority between certain officials of the Income Tax Department in respect of which the petition under Article 32 of the

J. Innes

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ASD

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Constitution of India was filed after 15 years after the promulgation of seniority List and 24 years after giving effect to the Seniority List.

In that case the Supreme Court found that no reasonable explanation for inordinate delay was given by the petitioners and the explanation given by the petitioners was not accepted and the court disbelieved that the petitioners were not aware of what took place in the years from 1952 till 1982, 1961. It was in that connection that the Supreme Court observed:-

"Learned Counsel for the petitioner, however, says that there has been no undue delay. He says that the representations were being received by the Government all the time. But there is limit to the time which can be considered reasonable for making representations. If the Government has turned down one representation, the making of another representation on similar lines would not enable the petitioners to explain the delay. Learned counsel for the petitioners says that the petitioners were under the impression that the Departmental Promotion Committee had held a meeting in 1948 and not on April 29, 1949, and the real true facts came to be known in 1961 when the Government mentioned these facts in their letter, dated December, 28, 1961."

Johnston

contd..../-

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The other case relied upon by the learned counsel was M.K. Krishnaswamy and others V. The Union of India and others (A.I.R. 1973 Supreme Court 1158) which was also a case of seniority and it was held to be a stale case. The writ petition was filed after several years. Their Lordships observed that even for a suit the cause of action, if any, would have arisen in 1950 and the suit would have been hopelessly time barred in 1963 when the petitions were filed. They did not, therefore, think that this was fit case for interference by this court nearly 22 years after the alleged cause of action had arisen.

The other case relied upon by the learned counsel for Railway Administration in this behalf was a Division Bench case of this court L.P. Jain and others V. State of U.P. (1973 A.L.J. 129). It was also a case of seniority. In that case although the writ petition was dismissed, but the court made it clear that the Government was not precluded from deciding the representations which were filed by the petitioners to the writ petition and afford them such reliefs as they were found entitled to. The writ petition was filed in the year 1969 after a period of 16 years from the year 1953 and 14 years from the other relevant date. The representation which was

J. Harasent

contd..../-

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in the year 1956-57 was dismissed in the year 1968 and thereafter after six years they filed writ petition alleging that after rejection of their representation in the year 1968, that is after five years. Thereafter, they sent a reminder in the year 1969. It was in that connection that this Court observed:-

"The fact that in respect of certain matters representations are being received by the Government all the time is not sufficient to explain the delay and there is a time limit which should be considered reasonable for making representations. If the Government has turned down one representation the making of another representation on similar lines would not explain the delay."

IN Ram Chandra Shaker Deodear V. State of Maharashtra (A.I.R. 1974 S.C. 259), referred to by the learned Single Judge of this Court, the Supreme Court held that:-

"The rule which says that court may not inquire into belated or stale claims is not a rule of law but a rule of practice based on sound

J. Prasad

contd..../-

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and proper exercise of discretion and there is no inviolable rule that whenever delay the court must necessarily refuse to entertain the petition. The question is one of discretion to be followed on the facts of each case."

It was further observed that:-

"The principle on which the court proceeds in refusing relief to the petitioner on grounds of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there was reasonable explanation for the delay".

Thus in the year 1974 the Supreme Court made it clear that it was a matter of discretion and was to be followed on the facts of each case being a rule of practice, but the principle which is to be followed is that in those cases where relief, which may be granted, is likely to affect the rights which have been settled in third parties, should be refused.

J. Prasad

contd..../-

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In Sualal Yadav Vs. The State of Rajasthan
AND OTHERS (1976(4) Supreme Court Cases 853) in which
 case after dismissal from service the employee filed
 a review application before the Government which
 after entertaining the same dismissed it on merits.
 After the dismissal of the same the employee within
 2 or 3 months filed a writ petition which was dismi-
 ssed by the High Court on the grounds of delay and
 laches. The Supreme Court allowed the appeal and
 sent back the matter again to High Court for deciding
 it on merits observing that:-

"That is the main reason why the High Court
 accepted the preliminary objection and dis-
 missed the writ application. We are unable
 to hold that the High Court's approach in this
 matter was correct. Since the Governor had
 not dismissed the review application on the
 ground of delay and having entertained the
 same held it to be a case not fit for review,
 we take the view that the Governor dismissed
 the review application, on merits. That
 being the position, it was not open to the
 High Court to resufract the ground of delay
 in the review application at a remote stage
 and make it a ground for dismissing the
 writ application".

J. Khanna

contd..../-

AWB

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We are of the view that even in service matters so far as delay and laches are concerned, there is no absolute bar to entertainment of a writ petition and in those cases where there is reasonable explanation for delay, there is no reason why the writ petition be not entertained. In those cases where representations are made by a person and these representations remain pending or are not rejected on the ground of delay and laches but on merits, it cannot be said that the person concerned who approaches the court thereafter without any undue delay is guilty of delay and laches and the writ petition ought to be thrown out on that score. What applies in the case of seniority and promotion does not apply in the cases of fixation or re-fixation of the salary of an employee because the same does not affect their right as it is a case of recurring cause of action though not of continuing wrong; as such, these cases are not to be put at par with other cases and in each of these cases the rule of practice is not applicable with the same force.

So far as delay and laches are concerned, on behalf of the Railway Administration it was pressed in two cases but not in the third case, viz., Bhagwati Prasad Pandey in which it would not be denied that he had been continuously agitating the matter. We

J. Prasad

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-: 17 :-

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are thus of the view that there was no undue delay of laches on the part of petitioner to the writ petitions, now respondents to the special appeals, there being reasonable explanation for the delay. The writ petitions have rightly been entertained and disposed of on merits. This applies also to other petitioner which have been heard subsequently and are being disposed of with these special appeals.

The main point which arises for consideration in the special appeals and writ petitions is whether pay includes the running allowance in the case of running staff and to what extent they are entitled to the same in case they are transferred or promoted to a stationery post. In all these cases the grievance of the respondents to the special appeals or the petitioners to the writ petition as that their pay has not been correctly fixed with the result that their rank too has been adversely effected. The learned Single Judge after taking into consideration the various provisions of the Railway Establishment Code, Railway Establishment Manual, Circulars and Letters of the Railway Board, held that the running allowance is not one of the competents of pay of a railway

Jhena

contd.../-

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railway servant belonging to a running cadre and it is only an allowance dependent upon the performance of the running duty and the same fluctuates from man to man. In order to decide this controversy, it will be relevant to consider the various rules contained in Railway Establishment Code or Railway Establishment Manual.

Rule 2003 (21)(a) Volume II of Indian Railway Establishment Code reads as follows:-

"21(a) pay means the amount drawn monthly by a railway servant as:-

- (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him subsequently or in an officiating capacity, or to which he is entitled by reason of his position in a cadre, and
- (ii) Overseas pay, special pay and personal pay, and
- (iii) any other emoluments which may be specially classed as pay by the President".

J. J. J.

contd..../-

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-: 19 :-

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'Emoluments' and 'Average emoluments' are defined in Rule 2544 of Indian Railway Establishment Code, Volume II, Clause (g)(ii) which provides that for the purpose of gratuity and/or death-cum-retirement gratuity emoluments shall include the monthly average of running allowances drawn during the three hundred and sixty-five days of running duty immediately preceding the date of quitting service limited to 75 per cent of the monthly average of the other emoluments reckoned in terms of items (a) to (f) drawn during the same period. The note below rule 2544 reads as under:-

"Note:- In the case of an Officer with a substantive appointment who officiates in another appointment or holds a temporary appointment, 'Emoluments' means:-

- (a) The emoluments which would be taken into account under this rule in respect of the appointment in which he officiates or of the temporary appointment, as the case may be, or
- (b) the emoluments which would have been taken into account under this Rule had he remained in his substantive appointment, whichever are more



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favourable to him." On this question there is a President's decision vide Railway Bd's letter No. F(E) (P) 58/PW-1/17, dated 7.7.1960 contained in Appendix XXX of the said Railway Establishment Code which is as follows:-

"President's decision:-

The 'actual amount of running allowance drawn' occurring in Clause (g)(i) of this rule includes:-

- a).....
- b).....
- c) for period of officiating running duty, running allowances actually drawn; and
- (d) for period of officiating duty in a stationery post 50% of the substantive emoluments' for the same period."
For the purpose of contribution to Provident Fund and for other benefits in one of the counter affidavits it has been admitted that different percentages of running allowance

J. Meser

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-: 21 :-

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are treated as pay for various purposes viz., Passes Privilege Ticket Orders, Leave Salary, Medical Attendance and Treatment, Educational assistance, retirement benefits, fixation of pay in the Stattnarypost, Compensatory City Allowance, House Rent allowance, Rent for Railway quarters and for recovery of Income Tax etc.

A perusal of these Rules which have been interpreted by the Railway Administration from time to time which has issued various Circulars in this behalf makes it more than clear that running allowance is computed towards average pay and in this view it cannot be denied that it is a part of the same.

✓ The question whether running allowance of a railway employee is part of average pay or not came to be considered before the Supreme Court in Dilbagh Rai Jerry Vs. Union of India and others (A.I.R. 1974 S.C. 130) which was a case under the payment of Wages Act. The Supreme Court observed:-

"According to the second proviso to this clause (Rule 2003 Railway Establishment Code) in the case of staff entitled

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to running allowance, average pay for
the purpose of leave salary shall include
the average running allowance earned during
the 12 months immediately preceding the
month which a Railway servant proceeding on
leave subject to a maximum of 75 per cent
of average pay for the said period, the
average running allowance once determined
remaining in operation during the remaining
part of the financial year in cases of
leave not exceeding one month. The crucial
words, which have been underlined, show
that such Running Allowance is counted
towards 'average pay' in those cases only
where the leave does not exceed one month.
(Underlining line)."

As would appear from the rules and circulars
to be noticed presently, running allowance for the
purpose of calculating the pay of an employee of
a running cadre, who is either transferred to the
stationary cadre or promoted to the stationary cadre,
is not to be excluded from the Pay of railway staff
within the meaning of Rule 200³(21(a) of Indian
Railway Establishment Code Volume-II. The learned
Single Judge thus erred in holding that there was

J. Prasad

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no basic difference in the words 'Pay in the running Post 'and the' basis pay of the running post'. The pay of such employees of running cadre is thus to be calculated in accordance with the relevant rules, a referende to which will be made hereinafter, and is not mere allowance payable only while holding a running post, as has been held by the learned Single Judge.

The next question which was canvassed before us and has been dealt at length by the learned single Judge is for the fixation of pay of the railway staff in stationary cadre. Learned counsel for the Railway Administration has contended that the learned single Judge has rightly held applies to fixation of pay of disabled railway staff has not been applied in the case of respondents to the special appeals and the petitioner to the writ petitions. Learned counsel for the petitioners have also not disputed it, as such, we need not dilate upon it.

Learned Sounsel then contended that respondents came forward with a particular formula, but they having failed to establish the same the learned Single Judge wrongly evolved another formula for fixation of the salary of the respondents to the special appeals though on the basis of rules which

J. Hasan

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were not applicable at all in cases of some of them as some of the rules came into existence latter. The question before the learned Single Judge was as to what is the basis on which the pay of the running staff, when transferred to stationary cadre, should be fixed. The learned Single Judge should have taken into consideration the relevant provisions which in fact were applicable even though the provisions which were relied upon by both the parties were not correct. In these cases the question before us is as to what is the formula on the basis of which the pay of these employees can be fixed.

Learned Counsel contended that learned Single Judge has applied Rules 2027 and 2018 of the Railway Establishment Code though the same not applicable to the cases of the railway employees as these rules in present shape came into existence in the year 1961. The contention raised by the learned counsel in this behalf was correct that these rules were not in existence when question of fixation of pay of some of the respondents arose though they were in existence when question of fixation of pay of two of them arose. We are to consider the applicability of these rules in cases of not only the respondents to these special appeals but all the

J. Hasan

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the other petitioners as in majority of cases the question of fixation of pay arose only in the year 1961, that is, after the amendment of the said rules.

Rule 2017 of Indian Railway Establishment Code Volume II deals with the fixation of initial substantive pay: and it reads as below:-

2017 (FR-22) Fixation of Initial Substantive pay - The initial substantive pay of a railway servant who is appointed substantively to a post on a time scale of pay is regulated as follows:-

(a) If he holds lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended.

✓ (1) When appointment to the new post involves the assumption of duties or responsibilities of greater importance an interpreted for the purpose of Rule 2026 (FR-30) than those attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his substantive pay in respect of the old post

J. Prasad

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(ii) when appointment to the new post does not involve such assumption, he will draw as initial pay the stage of time-scale which is equal to his substantive pay in respect of the old post, or if there is no such stage, the stage next below that pay plus personal pay equal to the difference, and in either case will continue to draw that pay until such time as he would have received an increment in the time-scale of the old post or for the period after which an increment is earned in the time-scale of the new Post whichever is less. But if the minimum pay of the time-scale of the new post is higher than his substantive pay in respect of the old post, he will draw that minimum as initial pay;

(iii) when appointment to the new post is made on his own request under Rule 2011 (a) F.R. - 15(a) and the maximum pay in the time-scale of that post is less than his substantive pay in respect of the old post, he will draw that maximum as initial pay;

J. Ahmad

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(n) If the conditions prescribed in clause (a) are not fulfilled he will draw as initial pay the minimum of the time scale.

"Provided, both in cases covered by clause (a) and in cases, other than case of re-employment after resignation or removal or dismissal from the public service, covered by clause (b) that if he either-

(i) has previously held substantivel or officiated in -

(i) the same post or,

(ii) a permanent or temporary post on the same time scale or,

(iii) a permanent post other than a tenure post or, a temporary post (including post in a body) incorporated or not, which is wholly or substantially owned or controlled by the Govt.) on an identical time Scale; or

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(2) is appointed substantively to a tenure post on a time scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated, then the initial pay shall not, except in case of re-version to parent cadre, governed by proviso (1) (iii), be less than the pay, other than Special pay, personal pay or emoluments classed as pay by the President under Rule 2003 (21)(a)(iii) (FR-9) (21) (a) (iii) which he drew on the last occasion, and he shall count the period during which he drew that pay on such last and any previous occasions for increment in the stage of the time scale equivalent to that pay. If however the pay last drawn by the railway servant in a temporary post has been inflated by the grant of premature increments the pay which he would have drawn but

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for the grant of those increments shall, unless otherwise ordered by the authority competent to create the new post, be taken for the purposes of this proviso to be the pay which he last drew in the temporary post. The service rendered in a post referred in proviso (1) (III) shall on reversion to the parent cadre, count towards initial fixation of pay, to the extent and subject to the conditions indicated below:

- (a) the railway servant should have been approved for appointment to the particular grade/ post in which the previous service is to be counted,
- (b) all those seniors, except those regarded as unfit for such appointment, were serving in posts carrying the scale of pay in which benefit is to be allowed or in higher posts whether in the department itself or also where, and at least one junior was holding a post in the department carrying the scale of pay in which the benefit is to be allowed; and
- (c) the service will count from the date his junior is promoted and

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the benefit will be limited to the period the railway servant would have held the post in his parent cadre had he not been appointed to the excadre post.

Note:- In respect of a railway servant serving in an ex-cadre post on identical time scale of pay as the time scale of the parent cadre, service rendered in the excadre post upto the 17th Nov '66 shall count for purposes of fixation of pay and increment to the extent admissible under provision (i) (iii) as it existed immediately before the introduction of Correction Slip No. 323, R.II, if the same is more advantageous to him".

The other relevant provision will be Para 11 of Chapter IX of the Old Indian Railway Establishment Manual, which read as under:-

"11. Officiating allowance (i) Running staff officiating in higher grades or posts
(a) For periods of 21 days or less-
Cleaners workings Firemen, Firemen working as Shunters or drivers, shunters working as drivers, breakman working as guards

J. Masad

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drivers and guards will be permissible in excess of the sanctioned cadre, if required for dealing with the traffic, but grade promotions in a category will be permitted only if there are vacancies on the sanctioned cadre provided grade to grade promotion within the same category is otherwise admissible under the rules applicable to the railway servants concerned.

(ii) Running staff utilised in stationary appointments:

(a) for periods of 21 days or less-
The pay drawn will be the basic pay (whether substantive or officiating) of the running post plus the average running allowance' subject to the total emoluments not being less than the minimum or more than the maximum of the scale of pay of the stationary post provided in the case of officiating staff it is certified that they would have continued to officiate in those posts but for their appointment in stationary posts. For this purpose average running allowance will be based on

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the running allowance earned by the railway servant in the wage period or periods in question for the days he has actually been working in a running post.

Note: Where during the whole of one wage period, a railway servant has either been on leave or has been employed on stationary duty in continuation of leave, the average running allowance to be paid, while working in a stationary post should be the average for the period spent on running duty in the wage period immediately preceding the one in which he was employed in stationary duty.

✓ (b)

For periods of over 21 days:- The pay should be fixed under the normal rules, 50 percent of the pay in the running post also being treated as pay for the purpose of fixation of the pay in stationary appointments".

Para 2018-B (FR-22C)- Notwithstanding anything contained in these rules, where a railway servant holding a post in a substantive, temporary or officiating

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capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibility of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued.

Provided that the provisions of this rule shall not apply where a railway servant holding a Class I post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to a higher post which is also a Class I post, provided further that the provision of sub-rule.

(2) of rule 2027 (FR-31) shall not be applicable in any case where the initial pay is fixed under this rule; Provided also that where a railway servant immediately before his promotion or appointment to a higher post is drawing

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pay at the maximum of the time scale of the lower post, his initial pay in the time scale of higher post shall be fixed that stage in that time scale next above such maximum in the lower post.

Provided that if a railway servant either:-

- (1) has previously held substantively or officiated in (i) the same post, or (ii) a permanent or temporary post on the same time scale, or (iii) a permanent post other than a tenure post or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time scale, or
2. is appointed substantively to a tenure post on a time scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated, then proviso to Rule 2017 (F.R.22) R-II shall apply in the matter of initial fixation of pay and counting of previous service for increment.

J. Prasad

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Para 2027 (F.R.31) of the Indian Railway Establishment Code Volume II as applicable before 22.1.1958 reads as under:-

" 2027(F.R. 31) Subject to the provisions of Rules 2022 (c), 2026 and 2029 (F.R. 26, C 30 and 35), a Railway servant officiating in a post will draw the presumptive pay of that post, provided that, except in the case of a Railway servant whose appointment to the post in which he is officiating was made on his own request under Rule 2011 (a) (F.R. 15) a), if the presumptive pay of the permanent post on which he holds a lien or would hold a lien had his lien not been suspended, should at any time be greater than the presumptive pay of the post in which he officiates, he will draw the presumptive pay of the permanent post."

Para 2027 (F.R.31) of Indian Railway Establishment Code Volume II as it exists to day, reads as under:

2 2027 (F.R.31)- (1) subject to the provisions of Rules 2026 and 2029 (F.R. 30 and 35), a Railway servant who is appointed to officiate in a post will draw the presumptive pay of that post.

2. On an enhancement in the substantive pay as a result of increment or other wise, the pay

J. Prasad

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of such Railway servant shall be re-fixed under sub-Rule (1) from the date of such enhancement as if he was appointed to officiate in that post on that date where such re-fixation is to his advantage. Provided that the provisions of Rule 2018-B (FR-22-C) shall not be applicable in the matter of re-fixation of pay under sub rule (2) of this rule.

Note:- Where the increment of a railway servant in the post in which he is officiating has been withhold under Rule 2020 (FR-24) without any reference to the increments that will accrue to him in the post held by him substantively, the provisions contained in sub-rule (2) of this rule shall not apply before the date from which the orders withholding the increment finally cease to be operative. However, the railway servant may be allowed during the period of penalty of withholding of increment, his substantive pay from time to time if the same happens to be more than the officiating pay.

Railway Board's letter No. F.(E) 58/P1/1 dated 1.4.58 from joint Director, Finance (Estt) / Railway Board addressed to G.Ms all Indian Railways and others reads as under:-

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" The president is pleaded to direct that the Indian Railway Establishment Code Volume II, shall be amended as in the advance copies of the correction slip.

The above amendment will have effect from 22.1.58 and in cases where re-fixation of officiating pay under the amend rule is of immediate advantage to a Railway servant the pay may be refixed from the date of effect of the amended rule without waiting for a further enhancement in his substantive pay.

CORRECTION SLIP

No.....

Substitute the following for the existing Rule 2027 (F.R. 31) RII.

"2027(F.R.31). (1) Subject to the provisions of Rules 2026 and 2029/ F.R. 30 and 35/ a railway servant who is appointed to officiate in a post will draw the presumptive pay of that post.

2. On an enhancement in the substantive pay, as a result of increment or otherwise

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67 (A66)

the pay of such railway servant shall be re-fixed under sub-rule (i) from the date of such enhancement as if he was appointed to officiate in that post on that date where such re-fixation is to his advantage".

From time to time Railway Board has considered the question of fixation of pay including officiating pay of running staff transferred to stationary post and the decisions of the Railway Board are laid down in various letters which were referred by the learned counsel for either side. It is true that amended rule 201⁷ and amended rule 2018 will not apply to the cases of all the employees but so far as rule 2027 is concerned, the same is applicable to all the employees. It is also clear that after coming into force of the New Rules there has been no re-fixation of pay of respondents or petitioners to the writ petitions who had been agitating the matter. So far as officiating pay is concerned Rule 11 contained in Chapter IX of Railway Establishment Manual, which has been quoted above in the case of respondents may be utilized in stationary and running

J. Prasad

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posts and for period over 21 days the pay is to be fixed in the normal course.

The Railway Board vide its letter dt. 16.8.61, a copy of which is on record in some cases, reads as under:-

" Attention is invited to para 1 (b) (ii) of Railway Board's letter No. E(R) 49RS/ 3, dt. 1.7.1949 as amended vide their letter of even number dated 29.8.49 which provides that in the case of Running staff utilized in stationary appointments for periods of 21 days, the pay should be fixed under normal rules, 50% of pay in the running post also being treated as pay for the purposes of fixation of pay in the stationary appointment".

Subsequently the position was still further clarified by the Railway Board's letter No. E (S) 63RS/ 14 dt. 17.12.1963,

The relevant portion of this letter read as under:

"The Railway Board's orders appearing below Rule 152 R.I. as introduced vide their letter No. E(S) 52CPC/66 dated 4.8.53 provide that the above rule is applicable

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69 (APD)

Only to permanent staff and if alternative appointment is found for temporary staff it should be regarded as a purely ex_gratia measure. Again in the case of Running staff in whose case Running allowance also forms part of pay, it was decided by the Board, vide note below rule 152 R.I. as introduced vide their letter No. E(B) 1,55RS/22.

dated 2.9.58, that with effect from 17.8.53 the term 'former emoluments' in the case of Running staff should also include 50% of their pay as defined in rule 2003 (21)

(a) (i) R.II in lieu of running allowance."

A perusal of the Railway Board's decision shows that running staff is entitled to 50% of the running allowance towards the pay which is to be calculated in accordance with rules. In this connection it will also be relevant to note that Railway Board vide its letter No. 19/1961 published in the Gazette of 16.8.1961 President's decision, the relevant portion of the same reads as follows:-

" The question has been considered and the President is pleased to decide that the pay of such running staff utilised in

J. Prasad

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stationary appointments for period of over 21 days, whose initial pay in the stationary appointment is fixed under the normal rules in accordance with para 1 (b) (ii) of Railway Board's letter No. E (4) 49 RB/9 dated 1.7.1949, should also be refixed under clause (2) of rule 2027 (PR-31) R.II, 50% of the enhanced substantive pay representing the running allowance being treated as pay for the purpose of such refixation". It seems that this presidents decision has also not been taken into consideration by thr Railway Department, as has been held by the learned Single Judge, whilr fixing the pay of some of the respondents to the special appeals who are now represented by their heirs. As we have held the running allowance is t be treated as part of the pay, the salary of these respondents is tobe refixed in accordance with rule 2027 along with Railway Boards decisions of 1961 and 1963 which have been referred to above. We agree with the learned single judge in this behalf that the pay has not been rightly calculated and some of the respondents were thereby reduced

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in rank and their emoluments were wrongly reduced though we do not agree with some of the conclusions which have been arrived at by the learned Single Judge as indicated by us above. The running allowance being part of the pay the pay of the respondents as well as other petitioners to the writ petitions, is to be refixed.

All the above five special appeals are thus partly allowed. The Railway Administration is directed to refix the pay of Sardar Husain deceased, Bhagwati Prasad Pandey and Ram Kumar Dubry for the period during which they held their officiating appointment in the stationary posts according to the relevant rules; to refix the pay of Sardar Husain, Bhagwati Prasad Pandey and Ram Kumar Dubey in accordance with Rule 2017, 2018 and 2027 read with the relevant circulars and Presidents' decisions respectively applicable to them, as has been indicated by us earlier after taking into consideration that running allowance is part of pay, during the period they held officiating appointment in the stationary posts and to take prompt steps for determination of their pensionary benefits during the period they officiated in the stationary

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post and the period they worked on that
post in a substantive capacity according
to the relevant rules. The order passed
by learned Single judge in other respective
is being maintained. The re-fixation
shall be made within three months from
today. No order as to costs.

So far as other writ petitions are concerne
they are hereby allowed. Let a Mandamus
to the opposite parties to refix the
pay of petitioners, in accordance with
our observations above, be issued.
No order as to costs.

Shravan

Sd/- U.C. Srivastava

Sd/- K.N. Goyal

Dt. 12.3.1979

//True Copy//
Attested
K.N. Goyal
6/10/00

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Item No. 1

Court No. 2

Section XI

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

143462

Petition(s) for Special Leave To Appeal (Civil/Foreign) No. (s) ~~1394-1407~~ of 1988
2570-72/1988

(From the judgment and order dated 27.2.1987 of the High Court of Allahabad
in S.A.No. 13/75, W.P.Nos. 1726, 3134/T9 & 548 Lucknow Bench
R.K. Dubey & Ors. of 1988

Rajaram Vishwakarma & Ors.
VERSUS

PETITIONER (S)

Union of India & Ors.

RESPONDENT (S)

(With appln. for condn. of delay & exemption)

Date : 6.9.86 : This/These petition (s) was/were called on for hearing today

CORAM :

Hon'ble Mr. Justice E.S. VENKATARAMIAH
Hon'ble Mr. Justice N.D. JHA
Hon'ble Mr. Justice

For the Petitioners :

Mr. G.L. Sanghi, Sr. Adv.
Mr. Vineet Kumar, Adv.

For the Respondents :

Certified to be a true copy
of the
Judgment of the
Hon'ble Mr. Justice N.D. JHA
of the
Supreme Court of India.

UPON hearing counsel the Court made the following
ORDER

These petitions are dismissed. If the petitioners
file fresh petitions before the Tribunal for appropriate
relief within a month, the Tribunal shall dispose of the
matters within three months from the date on which the
petitions are filed.

[Handwritten signature]

[Signature]
(C. JHA)
COURT MASTER

[Handwritten signature]
6/10/86

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In the Central Administrative Tribunal, Allahabad
CIRCUIT BENCH LUCKNOW.

O.A.No. 150 of 1988 (L)

R.K.Dubey and others

Petitioners

Versus

Union of India

Respondent

In the above noted case, it is submitted as under:-

1. That the present petition purports to be filed for directing the respondent to implement the orders passed by the Hon'ble High Court dated 12th. March 1989 as contained in Annexure No.1 to the petition .

2. That it also appears from para 3 of the petition, the order against which petition is made, purports to be against wrong fixation of pay /pension of the petitioners and implementation of the orders passed by Hon'ble High Court dated 12.3.'79.

3. That it is true that various writ petitions were filed by various persons either in individual capacity or collectively and the writ petitions including special appeals filed against orders dated 7.11.'74, were disposed of by a common judgement dated 12.3.1979 by the Hon'ble High Court of Allahabad, Lucknow Bench Lucknow.

4. That even though the bunch of writ petitions were decided by a common judgement, but in law, an

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action by the petitioner or petitioners of each writ petition has to be initiated separately and not collectively by all the petitioners of different writ petitions .

5. That from the orders passed by the Hon'ble Supreme Court, as contained in Annexure No . 2 to the petition, purports to be in Special Appeal No . 1394-1407 of 1988 , 2570-2572 of 1988 arising out of S.A. 13 of 1975, W.P.No . 1726, 3134/79 and 548 of 1980.

6. That the informations collected reveals that S.O.No. 13 of 1975 arose out of Writ Petition No . 626 of 1971 filed by R.K.Dubey individually before the Hon'ble High Court Lucknow Bench Lucknow .It also appeared that Writ Petition No. 1726 of 1979 was filed by Sri R.K.Sen and R.R.Vishwa Karma jointly, while Writ Petition No . 3174 of 1979 and Writ Petition No . 548 of 1980 were filed ~~respectively~~ by Sri R.K.Triapthi and K.G,Saxena respectively and individually.

7. That the petitioners have also failed to specify the particulars of writ petition filed jointly by them, so as to enable the respondent to connect the present petition to the said Writ Petition, prepare the reply and file the same.

8. That so far as the information collected and revealed from search of the particulars of the writ petitions, no joint petition was filed by the petitioners in the Hon'ble High Court,. In the circumstances

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PROVIDENT FUND RULES

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EE VOL I

Provided that—

(i) the monthly emoluments of a railway servant employed in a shed or workshop and/or formerly paid at daily rates shall be the monthly rate of pay including dearness pay of the railway servant concerned;

(ii) the monthly emoluments of a non-gazetted railway servant entitled to running allowances shall include the actual amount of running allowance drawn by him during the month, limited to a maximum of seventy-five per cent of his pay; and

(iii) the emoluments of a railway servant who is on deputation out of India shall be deemed to be the emoluments he would have drawn had he remained on duty in India.

Railway Board's orders.—The term "actual amount of running allowances drawn" used in proviso (ii) above includes allowances representing running allowance, subject to the usual limit of seventy-five per cent of pay, of running staff employed in relief of permanent station staff and running staff attached to the Indian Territorial Army (Railways).

(6) "Family" means—

(a) in the case of a male subscriber the wife or wives and children of the subscriber, and the widow or widows and children of a deceased son of the subscriber:

Provided that if a subscriber proves that his wife has been judicially separated from him or has ceased, under the customary law of the community to which she belongs, to be entitled to maintenance, she shall thenceforth be deemed to be no longer a member of the subscriber's family in matters to which these rules relate, unless the subscriber subsequently indicates, by express notification in writing, to the Accounts Officer that she shall continue to be so regarded:

(b) in the case of a female subscriber, the husband and children of the subscriber, and the widow or widows and children of a deceased son of the subscriber:

Provided that if a subscriber, by notification in writing to the Accounts Officer, expresses her desire to exclude her husband from the family, the husband shall henceforth be deemed to be no longer a member of the subscriber's family in matters to which these rules relate, unless the subscriber subsequently cancels formally in writing her notification excluding him;

Provided further that in either case if the child of a subscriber has been adopted by another person and if, under the personal law of the adopter, adoption is legally recognized

45% R/ Allowance

ABS

which he is entitled to travel. In cases, however, in which the controlling officer is satisfied that there were sufficient reasons for the railway servant to have travelled by the lower class, he may allow the full mileage allowance admissible for the higher class.

208. The point in any station at which a journey is held to commence or end is the railway station provided that a journey on transfer shall be held to begin and end at the actual residence of the railway servant concerned.

Government of India's decisions—1. A railway servant, who resides away from his headquarters, will, on transfer, be eligible for road mileage, transportation charges for personal effects and passes from the actual residence at the old station to the actual residence at the new station.

2. In admitting travelling allowance claims, the mileage between the two stations as indicated in the 'Fare and Time Tables' should be adopted.

[Railway Board's letter No. F(E)54/AL-28/12, dated the 10th December, 1954]

209. Unless the Railway Board by general or special order otherwise direct, railway servants shall be divided into the following grades for the purpose of mileage allowance—

(1) *First Grade*—includes all railway servants in receipt of actual pay exceeding Rs. 750/-, Probationers appointed to Superior Revenue Establishment of Indian Railways prior to 1st October, 1954, and also railway servants who, prior to 1st October, 1954, held in a substantive capacity permanent posts in Railway Services, Class I.

(2) *Second Grade*—includes all railway servants in receipt of actual pay exceeding Rs. 200/-, but not exceeding Rs. 750/- per mensem.

(3) *Third Grade*—includes all other railway servants, except Class IV servants.

(4) *Fourth Grade*—includes all Class IV railway servants.

Government of India's decision—For the purpose of determining the grades of railway servants under this rule, "pay" shall include "dearness pay".

[Railway Board's letter No. E(S) 53DA-1(7), dated the 20th May, 1953]

210. Where a railway servant is promoted or reverted or is granted an increased rate of pay with retrospective effect, no revision of claims for travelling allowance is permissible, in respect of the period intervening between the date of promotion or reversion or grant of increased rate of pay, and that on which it is notified, unless it is clear that there has been an actual change of duties.

ABP

Annexure G

App. XXX] COMPENDIUM OF RULINGS—C. S. R. 738 to 934

the purpose of item (b) of the Note below Article 486 C. S. R. (2544), a declaration from the competent authority in such cases specifying the substantive appointment in which an officer would have remained if had not been appointed to officiate elsewhere will be accepted in Audit.

Railway Board's Case No. :43-Ac./II/41).

President's decision.—The 'actual amount of running allowances drawn' occurring in Clause (g) (i) of this rule includes :

- (a) for periods of leave with allowances [including leave preparatory to retirement and refused leave granted under 2127-RII (F. R. 86], or foreign service or suspension which does not result in forfeiture of service, the average running allowances actually drawn under the relevant rules,
- (b) for periods in which 'mileage in lieu of running allowance is drawn', 'mileage in lieu' actually drawn ;
- (c) for periods of officiating running duty, running allowances actually drawn ; and
- (d) for periods of officiating duty in a stationary post 50% of the substantive emoluments for the same period.

(Railway Board's letter No. F(E)P)58/PN-1/17, dated 7th July, 1960).

C. S. R. 487 (2545)

Audit Instructions—(1) Calculation of average emoluments ; rate for conversion of sterling overseas pay for the purpose.—Average emoluments for pension should be worked out wholly in rupees by converting sterling overseas pay into rupees at the rate of 1s. 6d. to the rupee and the entire pension should be fixed in rupees.

(2) Increase in pay not actually drawn.—For purposes of calculation of "average emoluments", an increase of pay which took effect during the currency of privilege leave combined with furlough during the last three years of service and was actually drawn by a Government servant as part of his privilege leave allowances under Article 60, C. S. R. is not an "increase in pay not actually drawn" within the meaning of proviso (a) to Rule I under Article 487 (2545). The rate of pay during the furlough portion to be taken into account for the calculation of "average emoluments" would be what the Government servant would have drawn had he been on duty, i. e., the increased rate of pay drawn during the privilege leave portion of the combined leave.

(3) The principle underlying the instruction (2) above applies in the case of a Government servant who takes leave under the Fundamental Rules during the last three years of his service and who during the currency of the leave on average pay not exceeding four months or the first four months of any period of leave on average pay exceeding four months is promoted in a substantive or provisionally substantive capacity to a post carrying a higher rate of pay or earns an increment which is not withheld. In such a case the Government servant is entitled in respect of the period of his leave to count the pay which he would have drawn had he remained on duty as emoluments for the purpose of Article 487 (2545) even though the increase in pay due to promotion or increment is not actually drawn during leave under the Fundamental Rules corresponding to privilege leave.

(File No. 100-A of 1938).

NGS—C. S. R. 486.

[App: XXX]

ment servant is is entitled in respect he would have drawn had he remained Article 487 C. S. R. even though ment is not actually drawn during leave g to the privilege leave.

ted 6th February, 19 (Railway Board

nts counting for pension.—This Article awn by an officer..... appointi ce which is substantively vacant and temporarily vacant in consequence of ve without allowances or on transfer pension. Under the "new acting" alle r 1920, and the rules relating to offic ates, officiating appointments are no tempore appointments were admissi provision mentioned above should of a Government servant who, with t establishment, is appointed to offic vacant or which is temporarily vaca tive incumbent on extraordinary for lowed to draw enhanced pay or salt ciating in the latter post, the differen g pay or salary counts as emolumen

at the 22nd January, 1926, File No.

tion of special pay granted for and for pension.—Special pay granted in which the duty is performed shou sion of officers retiring on or after India Office letter conveying the decis e subject of the classification of the Government of India, Finance Dep all the 8th May, 1924.

of Bombay, No.D. 2989-R11/31, of 11 of 1930).

are posts (some of which carry sp should be considered as the substan ined if he had not been appointe e decided by the competent appo tpective of the substantive post ac intment and irrespective of wheth ular post or a post in the cadre)

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Annexure H

Phone: 47651

(2) The revised rates of running allowance shall be applicable only to Running staff who have come on to the authorised scales of pay, those who have elected to continue to draw pay in their 'existing' scales of pay under rule 8 (b) of the Railway Services (Authorised Pay) Rules, 1960, shall continue to draw running allowances at the existing rates.

(Authority:—Railway Board letters No. PC-60/RA-2/1, dated 22-5-1961 and 27-5-1961)

Serial No. 1214.—Circular No. 830E/O-VI(Eiv), dated 10-7-1961.

Sub.—Refixation of officiating pay under rule 2027 (FR31) R-II.

A copy of Railway Board letter No. F(E)58PA/1, dated 19-5-1961, is forwarded for information and guidance.

Copy of Railway Board letter No. F(E)58PA/1, dated 19-5-1961, to the General Managers, All Indian Railways etc.

Sub.—Refixation of Officiating pay under rule 2027, (FR31)R-II.

Attention is invited to para. 1 (b) (ii) of Railway Board's letter No. E(R)59RS/3, dated 1-7-49 as amended vide their letter of even number dated 29-8-1949, which provides that in the case of Running Staff utilized in stationary appointments for periods of over 21 days, the pay should be fixed under normal rules, 50% of pay in the running post also being treated as pay for the purposes of fixation of pay in the stationary appointment. A question has been raised as to whether after initial fixation of pay in the stationary appointment, the pay of such staff should be refixed under clause (2) of Rule 2027(FR 31) R. II, as substituted by C.S. No. 6 R. II, treating 50% of the enhanced substantive pay also as pay in the stationary appointment.

1st Para

2. The question has been considered and the President is pleased to decide that the pay of such running staff utilized in stationary appointments for periods of over 21 days, whose initial pay in the stationary appointment is fixed under the normal rules in accordance with para. 1 (b) (ii) of Railway Board's letter No. E(R)49RS/3 dated 1-7-1949, should also be refixed under clause (2) of Rule 2027(FR 31) R. II, 50% of the enhanced substantive pay representing the running allowance being treated as pay for the purpose of such refixation.

2nd Para

Serial No. 1215.—Circular No. 362E/142 (Eiv), dated 7-7-1961.

Sub.—Incentive to Railway employees/Apprentices for acquiring higher or additional professional qualifications.

The Railway Board in their letter No. E(NG) 58RC1/143, dated 28-12-1959 circulated under this office endorsement No. 362E/42 (Eiv), dated 15-2-1960 had that railway employees/Apprentices who acquire additional professional qualifications be granted cash awards/additional increments as indicated therein.

A question was raised as to the authority competent to sanction the cash awards/additional increments in cases where the railway employees/Apprentices



2544A

AMOUNT OF ORDINARY PENSIONS

(ii) For the purpose of gratuity and/or death-cum-retirement gratuity.—The monthly average of running allowances drawn during the three hundred and sixty-five days of running duty immediately preceding the date of quitting service limited to 75% of the monthly average of the other emoluments reckoned in terms of items (a) to (f) above drawn during the same period.

Note.—In the case of an Officer with a substantive appointment who officiates in another appointment or holds a temporary appointment, "Emoluments" means—

(a) the emoluments which would be taken into account under this Rule in respect of the appointment in which he officiates or of the temporary appointment, as the case may be, or

(b) the emoluments which would have been taken into account under this Rule had he remained in his substantive appointment, whichever are more favourable to him.

2544-A. (C. S. R. 486-A)—Same as otherwise provided in Rule 2544-B (C. S. R. 486-B).—In respect of officers retiring from service on or after the 1st November, 1959, the term "emoluments" means the emoluments which the officer was receiving immediately before his retirement and includes—

(a) substantive pay in respect of a permanent post, other than a tenure post, held in a substantive capacity ;

(b) personal allowance which is granted in lieu of loss of substantive pay in respect of a permanent post, other than a tenure post ;

(c) special pay attached to a other than a tenure post, when the special pay has been sanctioned permanently and the post is held in a substantive capacity ;

(d) (1) For the purpose of calculation of average emoluments—With effect from 1st September, 1962, save as otherwise provided in Rule 2544-B (C. S. R. 486-B) one-half of—

(i) the difference between the total emoluments referred to in items (a) (b) and (c) above and the pay actually drawn in higher officiating or temporary appointments ;

(ii) special pay other than that referred to in clause (c) above ;

(iii) pay drawn in temporary or officiating appointments ;

(iv) personal allowance other than that referred to in clause (i) above ;

(v) the difference between the substantive pay and the pay actually drawn in higher tenure appointment (s), whether held in substantive or officiating capacity, provided that service in the tenure appointment (s), does not qualify for the grant of a special additional pension.

(2) For the purpose of emoluments for (ordinary) gratuity and/or death-cum-retirement gratuity.—The difference between the average emoluments in respect of items (a) to (d) (1) above calculated upon the last one year of service and the last substantive emoluments as per items (a) to (c) above.

AMOUNT OF

(e) (1) For the purpose of calculation of the amount of the running allowance of 75% of other emoluments reckoned

(2) For the purpose of emoluments for gratuity.—The monthly average of running duty immediately preceding the date of quitting service limited to 75% of the monthly average of other emoluments (a) to (f) above drawn during the same period.

Note.—(1) If immediately before retiring from duty on leave with allowance for calculating ordinary gratuity and death-cum-retirement gratuity taken at what they would have been

Provided that the amount of pay not actually drawn and the amount given only if it is certified that it was drawn during officiating or temporary appointment

Note.—(2) In case where a tenure post for three year's service is appointed during the last three years of his service and the completion of three years' service during the tenure post shall be treated as if drawn in

2544-B. (C. S. R. 486-B).—In respect of officers retiring from service on or after the 1st November, 1959, the term "emoluments" means the emoluments which the officer was receiving immediately before his retirement and includes—

(a) officiates in a higher appointment or holds a higher tenure post on a cadre which is higher in scale as the temporary appointment, and retires in a higher post ; or

(b) is confirmed in such a higher post during the last three years of his service in the higher post continuously

and the emoluments for pension in respect of three years continuous service (C. S. R. 486-A) as if he held a higher post identical with that of the higher post

(2) For computing the amount of pay under clause (1), all kind of pay drawn in a permanent post or held in a permanent post and the time spent on deputation or going on deputation or on leave with allowance would have officiated in

(This will take effect from 1/1/62)

Annexure I

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27th May 1964
M. D. C. A.

transfer to the Public Sector, Undertaking or Government or Semi-Govt., Corporation is in the public interest.

5. In all cases where a Railway servant is to be absorbed permanently by the foreign employer under his Organisation, it would be incumbent on him to consult the parent employer before issuing orders, absorbing the Railway servant permanently in his service. The orders of permanent absorption should be issued only after the resignation of the Railway servant has been accepted by the Government and with effect from the date of such acceptance.

6. This has the sanction of the President.

L. no. - 1005 of 1964

Serial No. 2389.—Circular No. 831-E/78-III (Eiv), dated 23-1-1964.

Sub.—Fixation of pay of temporary medically unfitted employees on subsequent absorption in other posts.

A copy of Railway Board's letter No. E(S)63 RS/14, dated 17-12-1963 is forwarded for information and guidance. Railway Board letter, dated 2-9-1958 was circulated vide this office endorsement No. 831-E/8-IV, dated 8-12-1958.

Copy of Railway Board's letter No. E(S)63RS/14, dated 17-12-1963 to General Managers all Indian Railways CLW, DLW & ICF, Chief Engineer, Rly. Electrification Calcutta, and G.M., D.B.K. Railway Projects, and copy forwarded to ADAR Railways), and P. Ss, to CRB, FC, AMS and Pass to DE DF, (E.N.G.),

Sub.—Fixation of pay of Temporary medically unfitted employees on subsequent absorption in other posts.

Rule 152RI lays down *inter alia* that a Railway servant who fails in vision test or otherwise becomes physically in-capable of performing the duties of the post which he occupies, but not incapable of performing other duties, should not be discharged forthwith but should be granted leave in accordance with rule 2237-A-RII as substituted vide Advance C.S. No. 112 and that during the period of leave so granted, such a Railway servant must be offered some alternative employment on reasonable emoluments having regard to his former emoluments.

The Railway Board's orders appearing below Rule 152 RI as introduced vide their letter No. E (S)52CPC/66, dated 4-8-1953, provide that the above rule is applicable only to permanent staff and if alternative appointment is found for temporary staff it should be regarded as a purely ex-gratia measure. Again, in the case of Running Staff in whose case Running Allowance also forms part of pay, it was decided by the Board, vide note below rule 152RI, as introduced vide their letter No. E(S) I. 55RS/22, dated 2-9-1958, that with effect from 17-8-1953 the term "former emoluments" in the case of Running Staff should also include 50% of their pay as defined in rule 2003 (21) (a) (i) RII in lieu of running allowance.

A question has been raised whether the term "former emoluments" should include the necessary percentage of running allowance when the temporary staff who, having failed in vision test or otherwise become physically incapacitated of performing the duties of their post, are absorbed in alternative posts.

The Board have considered the matter and have decided that whereas, the offer of alternative job may be regarded as a purely ex gratia measure for temporary staff, once the alternative job has been offered and accepted, in the case of running

(2134)

staff 50% of their pay, in case they have retained prescribed scales, and 40% of their pay if they have opted for the Authorised Scales, should be included in their former emoluments for purposes of fixation of pay in the alternative appointment.

The above decision has the sanction of the President.

Past cases already decided otherwise need not be reopened.

To: GM C.Rly (This disposes of your letter No. E-118/Case/Clerk dated 6-2-1963. The fixation shown in para 2 there of is confirmed. Attention however, is invited to Board's letter No. PC-60/RA-2/1, dated 7-3-1963 according to which pay in this case should be re-fixed with effect from 1-2-1963 taking into account 40% of pay to represent running allowance.)

Serial No. 2390. Circular No. 3-E/82-IV (Adj), dated 20-1-1964.

Sub.—Employment of Casual Labour not governed by the Minimum Wages Act.

A copy of Board's letter No. E (Trg.)63/Adg/29, dated 17-12-1963 is forwarded for information and necessary action.

Copy of letter No. E(Trg)63/Adj/29, dated 17-12-1963 from Deputy Director, Establishment, Railway Board, New Delhi to the General Manager's all Indian Railways Chittaranjan Locomotive Works, Diesel Locomotive Works, Integral Coach Factory, the General Manager and C.E. Railway Electrification and Chief Administrative Officer, D. B. K. Railway Project.

Sub.—Employment of Casual Labour not governed by the Minimum Wages Act.

Casual labour working on Railways are either governed by the Hours of Employment Regulations or the Minimum Wages Act. While Casual Labour governed by the Minimum Wages Act are entitled to the rest day only after they have worked in the scheduled employment under the same employer for a continuous period of not less than six days, there is no similar stipulation for the casual labour governed by the Hours of Employment Regulations. A point has, therefore, been raised whether in the absence of a specific provision in the Hours of Employment Regulations, the restriction laid down in the Minimum Wages Act regarding the continuous period of employment for not less than six days before being entitled to rest day should also apply to casual labour governed by the Hours of Employment Regulations. It is pointed out that the regular Railway servants governed by the Hours of Employment Regulations get periodic rest according to their classification and rosters irrespective of the number of days they have worked before getting the rest. If a restriction similar to that in the Minimum Wages Act is prescribed for casual labour governed by the Hours of Employment Regulations, such labour will be at a disadvantageous position compared to Regular staff Governed by the same Rules, which is against the spirit of the Regulations. The Board, therefore, consider that the restriction laid down in proviso to Rule 23 (1) of the Minimum Wages (Central) Rules, 1950, need not apply to casual labour governed by the Hours of Employment Regulations.

(This disposes of the General Manager Central Railway's letter No. SIFL 41/IV/142, dated 28-10-63).

Annexure 'L'

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CAT, N.D.

DEV DUTT SARMA V. UNION OF INDIA

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JUDGMENT

1. The petitioners, some working as Railway Guards, some retired and some in a representative capacity through the General Secretary of All-India Guards Council representing the interests of all of the Railway Guards, moved the Hon'ble High Court of Delhi through this writ petition under Article 226 of the Constitution of India seeking annulment of the respondents' impugned order dated 22-3-1976 whereby they had reduced the quantum of the percentage of the running allowance for the purposes of retirement and other benefits from the prescribed maximum of 75% to 45%. They have further prayed that the respondents be directed to restore the said percentage of 75% together with pensionary and other ancillary benefits, in terms of the original percentage and also to pay them arrears as reckoned on that basis. The petition stood transferred to this Tribunal under Section 29 of the Administrative Tribunals Act.

*Pension & other
benefits*

2. The factual matrix of the case relevant for the purposes of this case may be succinctly stated. The petitioners as Railway Guards performing essentially and wholly outdoor duties irrespective of season, weather or time, are covered by the expression "Running Staff" directly connected with the charge of moving trains. They are and have always been entitled to certain allowances including the allowance called "running allowance" calculated on mileage basis or on the basis of per day of 8 hours of duty. This allowance is different from the compensatory allowance inasmuch as it is included as part of pay for purposes of calculating pensionary benefits, D. A., leave salary and several other entitlements of the petitioners. However, a maximum limit of 75% of the actual amount of running allowance drawn during the month is treated as monthly emoluments of such running staff.

3. The provisions dealing with the running allowance are statutory provisions contained in the Railway Establishment Code which is a compendium of statutory Rules framed by the President under Article 309 of the Constitution of India. Reference in this regard was made specifically to Rule 507, Rule 1302(5) proviso (ii), Rule 1309 proviso (ii) and Rule 2003(2) of the Indian Railway Establishment Code, Vol. I and Vol. II indicating that the reckoning of running allowance up to a maximum of 75% of pay for the purposes of calculating retirement benefits and certain other entitlements of the petitioners has been given statutory protection. Similarly, beginning from the Running Staff Pay & Allowance Committee set up by the Railway Board in 1949, the Second Pay Commission 1959 and the Third Pay Commission 1973 have all recognised the reckoning of running allowance up to a maximum of 75% of pay as average pay for purposes of calculating retirement benefits etc. It is also averred that in fixing the basic pay of the running staff the relativity between their pay scales and those of all other comparable categories as well as the fact that a substantial portion of their remuneration is in the form of running allowance to which entri-

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prevent petition for protection of legal rights and redressal of their legitimate grievances.

4. The respondents while admitting the observations and recommendations of the Third Pay Commission on the treatment of running allowance have joined issue on the score that though the Third Pay Commission recommended continuance of rates of running allowance as existing prior to 1-1-1973, they did not make any specific recommendations as regards the treatment of running allowance as pay for various purposes. Secondly, it was asserted that it was within the competence of the President to amend the rules from time to time under proviso to Article 309 of the Constitution from a prospective date regarding the treatment of the quantum of the running allowance as pay for various purposes in the case of the running staff including Guards. It was also averred that the benefit admissible for purposes of leave salary and retirement benefits at the rate of 75% in the pay scales prior to 1-1-1973 has been fully protected by the impugned order revising the rate to 45% of pay in the pay scales in force from 1-1-1973 in that there has been actually an increase in the emoluments in absolute terms of the category of Guards varying between 44% and 56% as shown in Annexure R-4 to the counter-affidavit. In this connection, it was also stressed that there has been a substantial improvement in the pay scales of Guards of the various categories inasmuch as their pay scales have been uniformly modified as Rs 425-640 for all categories. It was further contended that the reference in the report of the Third Pay Commission relating to the Running Staff and Pay and Allowance Committee regarding treatment of running allowance as pay to the extent of 75% of pay for retirement and other benefits are relevant to the scales of pay which existed prior to 1-1-1973 and since the portion of running allowance treated as pay has undergone revision from time to time consequent on revision of pay scales the same necessitated the adjustment as was made by the impugned order. In the final analysis, the respondents have taken the stand that there have been revisions in the rates, i. e., percentage of pay for the treatment of running allowance as pay for various purposes including retirement benefits in case of running staff including Guards, from time to time as would be evident from Annexure R-5 and that there is no statutory provision in the Rules for keeping the percentage fixed at one time as constant for all times as averred by the petitioners. In this connection, it was further clarified that the question of revision of rules for the regularisation of the various allowances consequent upon the introduction of the Revised Pay Scales [under Railway Service (RP) Rules, 1973] was under consideration and pending decision thereon the existing quantum of running allowance based on the prevailing percentage laid down for various purposes with reference to the pay of the running staff in various scales of pay be allowed to continue. Thus, according to the respondents, they were fully competent to revise the percentage for various purposes with reference to pay of the petitioners and to bring it down by them through the impugned order of the Railway

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Board, No. PC-111/75/RA/II dated 22-3-1976 (Annexure R-3 to the counter) made applicable w. e. f. 1-4-1976. On the basis of the impugned letter the running staff of the Railways has been allowed another opportunity up to 31-12-1975 to revise the option already exercised and to retain old pay scales. Thus, the respondents denied that the reckoning percentage of the running allowance for the retirement and other benefits has always been a part of the statutory Rules or that the revision of the percentage as made under the impugned order has resulted into any prejudicial reduction of any kind and reiterated that it was not possible to maintain status quo regarding reckoning of the running allowance as pay for various purposes on the percentage maintained previously.

5. We have heard the arguments of the learned counsel for the parties at length and have carefully gone through the documents on record filed by the parties.

6. The main thrust of the submission made by the learned counsel for the petitioners is that the running allowance which is paid to the running staff of the Railways including the Guards has been treated as part of pay for retirement benefits and for certain other purposes at a prescribed percentage of a maximum of 75% of the running allowance and this quantum of percentage has never changed over all these years and has been accorded statutory recognition in the Indian Railway Establishment Code containing statutory Rules framed by the President under proviso to Article 309 of the Constitution of India for the governance of service matters of the railway staff. On this score, it was further contended that a reduction in the percentage from 75 to 45 as was sought to be effected through impugned order dated 22-3-1976 is patently illegal and unconstitutional.

7. Insofar as the treatment of the running allowance as pay for retirement and other benefits having been given statutory recognition, the same admits of no difficulty. We were taken through the various provisions of the Railway Establishment Code which deal with running allowance. Some of these provisions have been quoted in the petition which unmistakably go to establish that there are statutory provisions in the Rules that the monthly emoluments of the petitioners shall include an actual amount of running allowance drawn by them during the month limited to a prescribed maximum of 75% for the purposes of calculating pensionary benefits and several other entitlements.

To lower

8. In the instant case, the stand of the petitioners has been that the respondents had accepted the recommendations of the Third Pay Commission about maintaining 'status quo' in regard to running allowance and its treatment as part of pay up to a maximum of 75%. In fact, it was contended that following the recommendations of the Third Pay Commission and their acceptance by the Government, the President had made Revised Pay Rules in 1973 and that in these Rules too, the same percentage of 75 was made.

(A95)

Going further than this, it was said that an option was also given to the existing staff to opt for the pay formula of 75% and that the petitioners had exercised their options in favour of 75% pay formula. In view of these facts, it was contended that the Government is estopped from making any adverse change in the matter of running allowance to be treated as part of pay and therefore, it was not competent to reduce this element from 75% to 45%. We are unable to appreciate this point as the same does not reflect the correct factual position. Following the recommendations of the Third Pay Commission, the respondents notified the Railway Service (Revised Pay) Rules, 1973 vide G. S. R. 516(E) dated 7-12-1973 and in that the revised pay scales of the Guards were notified vide Schedule No. 1 on 12-12-1973. It was made clear through Railway Board's letter No. PC/111/73/KA-I dated 21-1-1974, a copy whereof is Annexure R-6, that the question of revision of rules for the regulation of various allowances consequent upon the introduction of Revised Pay Scales under Railway Service (RP) Rules, 1973 was under consideration of the Board and pending final decision, the Board has decided that "the existing quantum of running allowance based on the prevailing percentage laid down for various purposes with reference to the pay of the running staff in various scales of pay may be allowed to continue". It is thus evident that the Railway Service (RP) Rules, 1973 framed by the President were in respect of revised pay scales as recommended by the Third Pay Commission which has made slight improvement in the existing pay scales of Guards 'A', 'B' and 'C', viz., the scales of Rs 425-600 [425-640 (Spl)], Rs 330-560 and Rs 290-480 (Rs 330-530 modified).

9. The intention is thus clear from the aforesaid letter of the Board that the payment of certain allowances at the existing percentage in conjunction with pay fixed under the Railway Service (RP) Rules, 1973 was expressly made provisional and subject to adjustment on the basis of final order. It follows therefore, that in case the petitioners had exercised their options it must have been only for purposes of opting for the new pay scales and that payment of the existing quantum of running allowance at the prevailing rates for various purposes was provisional and not final. It would not be, therefore, factually correct to say that the Revised Pay Rules, 1973 incorporated 75% of the running allowance for certain purposes.

10. The next challenge of the petitioner is about the legality of the impugned order i. e., as to whether the impugned order dated 22-3-1976 issued by the Railway Ministry is a statutory order passed by the President under proviso to Article 309 of the Constitution or that the same is an executive order passed by the President. This order has been issued by the respondents as Annexure R-3 to their counter-affidavit which is reproduced as under:

Copy of Railway Ministry's letter No. PC-111/73/RA-1 dated 22-3-1976 addressed to General Managers, All Indian Railways and others.

Shri Arundh

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gap and supplement the rules by issuing executive instructions. But, Government cannot issue such instructions if the same go contrary to any provisions of the rules, nor can the Government amend or supersede statutory rules by administrative instructions. The Delhi High Court has also confirmed the above observations of the Supreme Court in the case of *D. K. Gupta v. M. C. D.*⁴ when it reiterates that the statutory rules cannot be modified by executive instructions.

12. It is thus evident that where a sphere is covered by statutory rules, Government cannot exercise its inherent discretionary or executive powers in a manner contrary to constitutional and statutory provisions. There is no scope for exercise of any inherent or executive power if there be proper provisions covering the sphere in which such inherent powers are sought to be exercised, and, in any event, no such exercise can be done in violation of such provisions. This principle is uniformly and unerringly settled and sanctioned by the decisions of the Supreme Court and various High Courts as noted above. In the instant case, the Respondent No. 1 merely produced a copy of the 1965 Edition of the *Handbook of Government of India* and sought to place reliance on para 909 of said *Handbook* which states that as to when the said amendment of the *Handbook* is to be treated as the earlier statutory rule which is to be treated as a statutory rule to be counted as pay for purposes of the *Handbook* of Government of India, attendance and educational allowances.

13. Viewed in the light of the above observations, for the reasons stated above, we hold that the impugned order of the Respondent No. 1 is an order or instruction and as such is not a statutory amendment of the existing *Handbook* of Government of India.

14. In the result, the petition is allowed. The Respondent No. 1 is directed to pay the Respondent No. 2 the amount of Rs. 1,00,000/- (one lakh) as arrears of pay and other specified benefits by treating the Respondent No. 2 as a regular employee in accordance with the *Handbook* of Government of India from 24-1-1974 till such time as he is promoted to a higher post, the costs of the Respondent No. 2 are awarded in accordance with the *Handbook* of Government of India.

By order of the Court
RAGHUNATH ROUTRAJ
Counsel for Respondent No. 1
(Advocate, Delhi High Court)

RAGHUNATH ROUTRAJ
UNION OF INDIA
e. (1974) 8 C.M.A. 653

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Sub.: Revision of rules regarding treatment of running allowance as pay for certain purposes consequent upon the introduction of revised pay scales under (R?) Rules, 1973.

Reference Railway Ministry's letter No. PC-111/73/RA dated 21-1-1974 on the above subject.

The question of revision of rules regarding treatment of running allowance as pay for certain purposes consequent upon the introduction of revised scales under Railway Services (Revised pay) Rules, 1973 has been under consideration of this Ministry. It has now been decided that the existing rules in this respect may be modified as follows in the case of running staff drawing pay in revised pay scales:

- (i) Pay for the purpose of Passes and PTOs shall be pay Plus 40% of pay.
- (ii) Pay for the purpose of leave salary, medical attendance and treatment, educational assistance and retirement benefits shall be pay plus actual amount of running allowance drawn subject to a maximum of 45% of pay.
- (iii) Pay for the purpose of fixation of pay in stationary posts, compensatory (city) allowance, house rent allowance and rent for railway quarters shall be pay plus 30% of pay.

2. These orders take effect from 1-4-1976.

3. The payment already allowed on provisional basis in terms of part 2 of Railway Ministry's letter No. PC-111/73/RA dated 21-1-1974, for the period from 1-1-1973 to 31-3-1976 shall be treated as final.

4. The above has the sanction of the President.

5. Hindi version of this letter will follow.

11. A bare reading of the aforesaid order, makes it abundantly clear that the same is patently an executive order or instruction. The mere fact that it is issued with the sanction or approval of the President does not clothe it with the character of a statutory rule. Statutory rules are framed by the President in exercise of powers conferred upon him under proviso to Article 309 of the Constitution and they are legally required to be notified in the official gazette. It is a settled law that a mere executive instruction cannot amend or derogate from a statutory rule. There are countless cases to reiterate and support this view. In *Pran Prakash v. Union of India* it was held that administrative instructions cannot be allowed to prevail over statutory rules if the former are contrary to the latter. In the case of *B. N. Nagarajan v. State of Karnataka* it was observed that what could not be done under the rules could not be allowed to be done by an executive act and that such a course is not permissible because an act done in exercise of executive power of the Government cannot override rules framed under Article 309 of the Constitution. In yet another case *Sent Ram Sharma v. State of Rajasthan* it was observed by the Supreme Court that if rules are silent on any particular point, the Government can fill up the

very imp

more for this is the concrete in the job

1. (1964) 2 GLJ 375 (SC); 1204 Supp 5CC 657; 1283 SCC (L & S) 365
 2. (1975) 3 ALR 116 (SC); (1975) 4 SCC 307; 1120 SCC (L & S) 4
 3. AIR 1957 GO 1010, 1016

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staff are not entitled, are material considerations. The Revised Pay Rules of 1973, did accordingly, take care to ensure that the said relativity was not disturbed and accordingly, recommended only 'slight improvements' in the pay scales and the reckonable percentage of running allowance was also not reduced, in any way, because the existing percentage of basic pay was indeed the basis of fixation of the new pay scales. Even the Labour Tribunal 1969 too did not recommend higher scales of pay for running staff as the element of pay in the running allowance of the said staff was a material fact to be taken into account. In this way, the pay scales recommended for running staff as compared to those recommended for stationary staff have been less advantageous, a fact noted by all the Pay Commissions and the Running Allowance Committee of the Railway Board. It was thus asserted by the petitioners that at least for over 30 years running allowance is paid to the running staff has been treated as part of pay for retirement benefits and certain other purposes at a prescribed percentage of a maximum of 75% and that this quantum of percentage has never changed over all these years and has been accorded statutory recognition in both volumes of the Indian Railway Establishment Codes containing statutory Rules framed by the President under Article 309 of the Constitution of India for the governance of the service matters of the railway staff. This position continued even after the recommendations of the Pay Commissions which were implemented by the Central Government. According to the petitioners, in implementing the Third Pay Commission's recommendations, the Central Government issued Railway Service (Revised Scale) Rules, 1973 containing revised scales of pay and introduced no reduction in reckonable percentage of 75%. There was no provision in these Rules which suggested even remotely any reduction in the said percentage and on the basis of the said revised Rules, the petitioners were asked to exercise options of the revised pay scales which option the petitioners exercised on the basis of the said percentage keeping in view its past history and statutory character and having assured themselves that the said percentage was not being reduced in the said 1973 Rules on which they were asked to exercise their options in the form as shown in Annexure A to the petition. The said Rules of revised scales had come into force in 1973 and the options were exercised by the petitioners in 1974. Even after the options had been exercised there was no reduction in the aforesaid percentage of 75%. This state of affairs continued when suddenly the respondents through the impugned order issued in March 1976 decided to reduce this percentage to 45% for the purposes of retirement benefits and leave salary and other matters and to 40% for passes and P.L.s. It was also further alleged that this percentage has been further reduced to 30% for purposes of compensatory allowances, house rent allowance etc. as per Railway Board's letter No. PC-111/75/RA/11 dated 22-3-1976, a copy whereof is annexed as Annexure 'B' to the petition. The petitioners had also approached the Hon'ble Minister for Railways through their Council, paragraph 16, but nothing was done and ultimately the petitioners filed the

Annexure C

the remaining allowance as part of Pay at the time of his posting

121

Paid to Remarks.

Pay in remaining a/c.

~~13.00~~ X
1.00
~~119.00~~
157.00
7.00 M
50-50(AS)

and not Rs. 630/- as he can not be paid more than the maximum of the grade.

Maximum of grade

and not Rs. 710/- as he can not be paid more than the maximum of the grade.

Maximum of grade

and not Rs. 740/- as he can not be paid more than the maximum of the grade.

Maximum of grade

and not Rs. 770/- as he can not be paid more than the maximum of the grade.

Maximum of grade

and not Rs. 800/- as he can not be paid more than the maximum of the grade.

Maximum of grade

and not Rs. 850/- as he can not be paid more than the maximum of the grade.

Maximum of grade

and not Rs. 865/- as he can not be paid more than the maximum of the grade.

Maximum of grade

and not Rs. 900/- as he can not be paid more than the maximum of the grade.

Maximum of grade

and not Rs. 900/- as he can not be paid more than the maximum of the grade.

Maximum of grade

and not Rs. 900/- as he can not be paid more than the maximum of the grade.

Maximum of grade

and not Rs. 900/- as he can not be paid more than the maximum of the grade.

Maximum of grade

and not Rs. 900/- as he can not be paid more than the maximum of the grade.

No payment is involved.

Defination of Pay of Shri R.K. Baboy, Chief Yard Master/LMO treating on stationary post as per decision of the High Court Lucknow. Subject to verification from Accounts.

No.	Description	Stationary post/ Grdo date.	Pay already fixed on	Pay as
1.	As was working on Guard Grdo 'D' on D. 170/- in scale D. 150-240 on 11.7.59.	<u>DM/30-50</u> 11.7.59	25/-	(1) 170.00 (11) 40/- of (111) 170.00 (17) 50/- of (111)+(17)=128 1.0.0.5 in scale
2.	Annual increment granted.	<u>DM/30-50</u> 11.7.60	25/-	35/- on D. 250-
3.	<0-	<u>DM/30-50</u> 31.7.61	27/-	50/- on D. 300-
4.	<0-	<u>DM/30-50</u> 31.10.62	20/-	50/- on D. 300-5
5.	<0-	<u>DM/30-50</u> 6.2.63	25/-	50/- on D. 300-
6.	<0-	<u>DM/30-50</u> 6.6.64	35/-	50/- on D. 300-
7.	<0-	<u>DM/30-50</u> 6.10.63	32/-	50/- on D. 300-
8.	<0-	<u>DM/30-50</u> 6.3.65	35/-	50/- on D. 300-
9.	<0-	<u>DM/30-50</u> 6.8.67	50/-	50/- on D. 300-
10.	<0-	<u>DM/30-50</u> 6.2.68	35/-	50/- on D. 300-
11.	<0-	<u>DM/30-50</u> 6.10.68	50/-	50/- on D. 300-
12.	<0-	<u>DM/30-50</u> 6.3.71	50/-+1577	50/- on D. 300-
13.	<0-	DM/		

Sl. No.	Description	Stationary Post Grade/Date.	Pay already fixed in	Pay to be fixed in	RO D R O
14	Pay revised in Revised scale of pay D. 455-700 (PR) on 1.1.75 @ 600/-	PSA/DT/455-700 1-1-75	600/-	600/-	and not B. 1200/- Do payment to involved.
15	Increments due in	PSA/DT/455-700 2.1.75	620/-	620/-	and not B. 1200/- No payments to involved.

No person to involved in future stages.

Notes- Difference of Dearness Allowance, House Allowance, City Allowance, will be payable as per rules from time to time.

Divisional Personnel Officer
D. H. J. J. J.

Annex 'N'

Distinction of pay of Shri L.P. Agnihotri, Guard/LKO treating the running allowance as part of the pay at the time of his posting as Stationary post on per decision of the High Court Lucknow. Subject to verification from the accounts.

S.No. Description.

Stationary post/
Grade date.

Pay already fixed on

Pay to be fixed

Remarks

1. As was working as Guard
Grade 'C' on D. 170/- in
Grade D. 150-240 on 31.1.
1962.

DEY/Grade D.150-240
dated 31.1.62.

D. 240/- dated

^{from}

(i) D. 170/-
(ii) 465 of 170- B. 69/-
(iii) D. 170/- W. 68/- 258/-
(iv) 505 of B. 258/- 119/-
(v) D. 258/- 21.11.9/- B. 537/-
Not fixed on D. 240/-
Noting the date of the
Grade D. 150-240.

and not D. 69/- as no em was paid
here then the date of the Grade prescribed
for the post. The payment to be avoided.

2. As recruited as stationary post in Grade D. 150-240 upto 29.5.62 and was paid D. 0 D. 240/- per month.

Mr. Personal Officer
Lucknow.

Annexure 'D'

Description of pay of each English N. Officer for the period from 1st July 1956 to 31st March 1957. The amount of pay is shown in the column headed 'Pay' and the amount of gratuity is shown in the column headed 'Gratuity'. The amount of pay is shown in the column headed 'Pay' and the amount of gratuity is shown in the column headed 'Gratuity'.

No. of Officers 1000000
 Pay Band Pay Band
 Pay Pay
 Gratuity Gratuity

No. of Officers	Pay Band	Pay	Gratuity	Total	Pay Band	Pay	Gratuity	Total
1	1000000	1000000	1000000	1000000	1000000	1000000	1000000	1000000
2	1000000	1000000	1000000	1000000	1000000	1000000	1000000	1000000
3	1000000	1000000	1000000	1000000	1000000	1000000	1000000	1000000
4	1000000	1000000	1000000	1000000	1000000	1000000	1000000	1000000
5	1000000	1000000	1000000	1000000	1000000	1000000	1000000	1000000
6	1000000	1000000	1000000	1000000	1000000	1000000	1000000	1000000
7	1000000	1000000	1000000	1000000	1000000	1000000	1000000	1000000
8	1000000	1000000	1000000	1000000	1000000	1000000	1000000	1000000
9	1000000	1000000	1000000	1000000	1000000	1000000	1000000	1000000
10	1000000	1000000	1000000	1000000	1000000	1000000	1000000	1000000

Annexure 'D'

#6

No. _____
 Date _____
 To _____
 From _____
 Subject _____

Sl. No.	Description	Particulars	Debit	Credit	Total
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
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80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

Total

For Mr. ...

To be paid ...

NEETI KUMAR
ADVOCATE SUPREME COURT

Office :
.102, LAWYERS CHAMBERS
SUPREME COURT
NEW DELHI-110001
Phone : 382322

Residence :
33, NEETI BAGH
NEW DELHI-110049
Phone : 660282-668920
Dt. 15.9.88.

Shri R.K. Dubey,
R/o Bombay Wali Gali,
Lal Kuwan,
Lucknow.

Sub:- F.No. 1453- R.K. Dubey Vs.
Union of India & Ors.

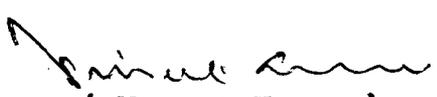
Dear Sir,

I am herewith enclosing a certified copy
of the order in the above matter, passed by
the Supreme Court.

Please acknowledge the same.

Thanking you,

Yours sincerely,


(Vineet Kumar)

Encl: Copy of the order.

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(A105)

1/22/88

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 1453 OF 1987

13-29

(Against the Judgment and order dated February 27, 1987 passed by the Allahabad High Court, Lucknow Bench in C.M.A. No. 680 of 1986 in Re S.A. No. 13/75 - Appealed from).

R. K. Dubey & Ors. Petitioners

Versus

Union of India and Ors. Respondents

One set Court fee paid

WITH:

C.M.P. No. 1683/1987 - Application for accepting one set of court fee.

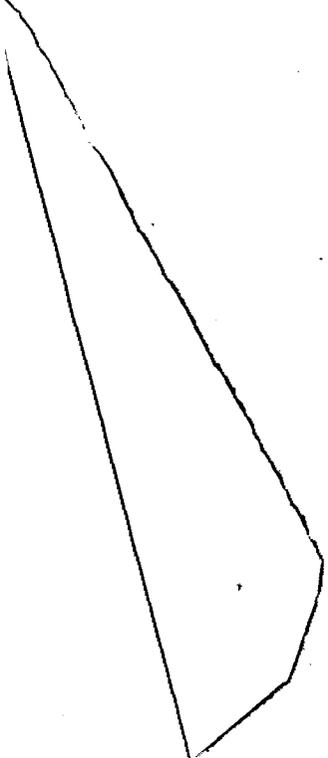
Pp. 30-31

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

*Filed today
147*

Advocate for the Petitioners: MR. VINEET KUMAR :



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I N D E X

SNo.	Documents	Pages
1.	Office report on limitations	A
2.	List of dates	B - D
3.	Judgment and order dated 27th February, 1987 passed by the Allahabad High Court in C.M.A. No. 610 of 1986 in Re S.A. no. 13/75 - Appealed from.	1 - 12
4.	Special leave petition with Affidavit.	13 - 29
5.	C.M.P. No. <u>16683</u> /1987 - application for accepting one set of court fee.	30 - 31

4
n
h
LIST OF DATES & EVENTS

MP
B

August 25, 1970 The Petitioner, R. K. Dubey filed Writ Petition No. 1046 of 1970 against the respondents, inter alia for the re-fixation of his pay according to correct rules, calculation of pensionary benefits according to the rules and for payment of arrears of salary accruing due as a result of re-fixation before the High Court.

November 7, 1974 The High Court allowed the writ petition and issued a mandamus against the respondents, and to comply with the directions of the Court within three months from this date.

December 2, 1975 The Petitioner No. 1, and the Union of India filed special appeals before the High Court, against the above judgment and order.

March 12, 1979 The High Court upheld the judgment and order dated November 7, 1974 and dismissed the special appeals

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of the Union of India, and issued a mandamus in seven other writ petitions, involving the same questions of law. The Union of India was directed by the High Court to comply with this judgment and order within three months, which, although extended, expired, without any compliance of the mandamus issued by the High Court, by the respondents.

February 16, 1980 The petitioners made individual and collective representations, to the respondents, to comply with the mandamus as ordered by the High Court but to no avail.

March 11, 1980 The petitioners filed Civil Misc. Case No. 460 of 1980, an application for contempt of Court, before the High Court, against the respondents, for the violation of the High Court's Judgment and order dated March 12, 1979.

June 16, 1986 The High Court dismissed the

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IN THE SUPREME COURT OF INDIA
 CIVIL APPELLATE JURISDICTION
 SPECIAL LEAVE PETITION (CIVIL) NO. 1453 OF 1987
IN THE MATTER OF :

1. Shri R. K. Dubey, aged 64 years
 occupation : retired Government
 employee, s/o late Shri Prayag
 Narain Dubey, r/o Bombay Wali Gali,
 Lal Kuwan, Lucknow.

2. Shri Lakshman Prasad Agnihotri,
 aged 64 years, Occupation: Retired
 Government employee, son of late
 Shri Kalka Prasad Agnihotri,
 R/o 288/206A, 'Lakshman Sadan',
 Arya Nagar, Lucknow - 226 004.

3. Shri Jagdish Prasad, aged 68 years,
 Occupation: Retired Government employee,
 Son of late Shri Mahabir Prasad,
 Resident of II/95 Aliganj Housing
 Scheme, Aliganj, Lucknow.

4. Shri Kalika Pandey, aged 66 years,
 Occupation: Retired Government
 employee son of late Shri Kulbhushan
 Pandey R/o C/o Shri R. K. Dubey,
 Bombay Wali Gali, Lal Kuwan,
 Lucknow.

..... Petitioners

.../-

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(2)

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Versus

1. Union of India through the
General Manager, Northern Railway,
Baroda House, New Delhi.

2. General Manager, Northern Railway,
Baroda House, New Delhi.

3. The Divisional Railway Manager,
Northern Railway,
Hazratganj,
Lucknow.

4. The Divisional Personnel Officer,
Northern Railway,
Hazratganj,
Lucknow.

..... Respondents

AND IN THE MATTER OF :

A Petition under Article 136 of the Constitution of India for Special Leave to Appeal against the Judgment and order dated 27th February, 1987 passed by the High Court of Judicature at Allahabad Bench at Lucknow, in C.M.A. No. 610 of 1986 in Re S.A. No. 13/75.

(3)

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To

The Hon'ble the Chief Justice of India
and His Companion Justices of the Hon'ble Supreme
Court of India.

The humble petition of the
above-named petitioners -

MOST RESPECTFULLY SHEWETH :

1. That this is a petition for Special leave to appeal under Article 136 of the Constitution of India, against the judgment and order dated 27th February, 1987 passed by the High Court of Judicature at Allahabad, Bench at Lucknow (hereinafter referred to as the High Court), in Writ Petition No. 1817 of 1975, Special Appeal No. 9 of 1975, Special Appeal Nos. 11 to 13 of 1975, Writ Petition Nos. 1067 of 1975, 1724 of 1979, 1726 of 1979, 2111 of 1979, 3134 of 1979, 1820 of 1975, 548 of 1980, 2514 of 1980 and 5447 of 1981.
2. That the following substantial questions of law of general public importance, to be decided by this Hon'ble Court, arise in this petition:-
 - (i) If once a matter has been finally adjudicated upon and a mandamus issued

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by a High Court, can the party seeking enforcement of the uncomplied mandamus from the same High Court by way of a writ petition or proceedings under the contempt of Courts Act, be asked by the High Court to seek relief by instituting proceedings for the compliance of the mandamus before a Tribunal which has ab-initio no jurisdiction to issue a writ of mandamus?

(ii) Is the enforcement of an order of mandamus by way of proceedings under the contempt of Courts Act or a Writ Petition, a fresh cause of action?

(iii) Can a High Court direct a petitioner to seek clarification of an order of mandamus passed by it, by instituting proceedings before the Administrative Tribunal, thus asking the Tribunal to review an order of mandamus passed by a High Court, especially in view of the fact that the Administrative Tribunal lacks the Constitutional jurisdiction of issuing writs?

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3. That the facts of the case are briefly set out herein below :

- (i) Originally, one of the petitioners R. K. Dubey, filed a writ petition being W. P. No. 1046 of 1970 under Article 226 of the Constitution, before the High Court, for the relief of re-fixation of his pay according to the correct rules, calculation of pensionary benefits according to the correct rules, and for payment of arrears of salary accruing due as a result of re-fixation. These prayers were allowed by a judgment and order dated November 7, 1974. The respondents were directed to re-fix the pay of the petitioner in these three writ petitions, for the period during which he held his officiating appointment in the stationary post according to the relevant rules, to re-fix his pay in accordance with Rule 2027(2) of the Railway Establishment Code Volume II, and the President's decision, during the period that he held officiating appointment in the stationary post, to take prompt steps for determination of his pensionary benefits during the

(6)

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period they officiated in the stationary post and the period he worked on that post in a substantive capacity according to the relevant rules. The respondents were directed to initiate prompt steps for the payment of such arrears of salary to the petitioner R. K. Dubey, as may be found due to him consequential to the fixation or re-fixation of his pay and according to the High Court's order, within a period of three months from the date of that order, and a mandamus was accordingly issued against the respondents together with costs.

- (ii) Against the above judgment and order of the High Court, the Union of India and H. K. Dubey filed special appeals and these were heard and decided by the High Court alongwith seven similar writ petitions involving the same questions of law, by a judgment and order dated March 12, 1979. All the seven writ petitions were allowed, and the five special appeals were partly allowed. The order dated November 7, 1974, passed by the learned Single Judge of the High Court was maintained, and the respondents were directed to re-fix the pay and other allowances

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of the petitioners within three months from March 12, 1979, and a further mandamus was issued against the respondents in the seven writ petitions, to refix the pay of the petitioners in accordance with the observations of the High Court.

- (iii) Since the respondents did not comply with the mandamus ordered by the High Court within the prescribed time, the petitioners made individual and collective, representations dated February 16, 1980, but this exercise proved fruitless. On March 11, 1980, the petitioners filed an application for contempt of Court against the respondents, in the High Court, being Criminal Miscellaneous case No. 460 of 1980, in which it was stated that the respondents had deliberately and intentionally flouted the judgment and order dated March 12, 1979, passed by the High Court, and had disobeyed the mandamus. The petitioners prayed that the respondents be punished for contempt of court. The High Court directed the respondents and the petitioners to submit their respective charges, showing the mode and account of arrears to be paid to the

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(8)

petitioners, by the respondents. The charts submitted by the parties revealed an erroneous difference so the High Court by an order dated May 6, 1985, and with the consent of both parties, appointed a firm of chartered Accountants, to submit a report to the High Courts, detailing the accounts to be paid to the petitioners, after considering all the information supplied by both parties.

- (iv) The Chartered Accountants submitted their report to the High Court in October, 1985 and the High Court dismissed the Petitioners' application for contempt against the respondents, by its judgment and order dated June, 16, 1986 holding, inter alia, that within the limited scope of proceedings for contempt of Court, no further action is called for, and that it was not just to impose a punishment merely for the delays with which the respondents proceeded to determine amounts payable to the petitioners. The High Court, however, was pleased to observe that the respondents' action is not implementing the mandate of the High Court,

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certainly constituted a breach of the High Court's order, but that the breach was technical. The High Court further observed that it was rather unfortunate that despite the passage of several years, it had not yet been possible to determine the exact amount of pay and consequential benefits due to the petitioners.

- (v) On August 8, 1986, the petitioners filed applications before the High Court for the implementation of the mandate of the High Court, as per its judgment and order dated March 12, 1979 against the respondents. The High Court dismissed these applications by a common judgment and order dated February 27, 1987, holding that the implementation of the mandate issued by the High Court on March 12, 1979, was a fresh cause of action, and that this required clarification, and since the Administrative Tribunal Act came into force, the Administrative Tribunal was the competent forum and observed that the petitioners could file the applications before the Administrative Tribunal.

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That the Petitioners have not filed any other petition before the Hon'ble Court, against the judgment and order dated February 27, 1987 passed by the High Court in S.A. No. 13 of 1975 and other connected writ petitions decided by the same judgment and order.

5. That the petitioners, aggrieved by the judgment and order dated February 27, 1987, passed by the High Court, are filing this petition for special leave to appeal against the said judgment and order on the following amongst other -

G R O U N D S

I. The High Court, after observing that the matter was one for the execution of an order passed by it, and did not call for any interpretation and application of any rule, and that the High Court is competent to execute an order passed by it in proceedings under Article 226 of the Constitution of India, ought to have directed the respondents to comply with the mandate of the High Court instead of dismissing the petitioner's application.

- II. The High Court erred in applying the decisions in S. P. Sampath Kumar Vs. Union of India, A.I.R. 1987 S.C. 386, and in J. B. Chopra Vs. Union of India, A.I.R. 1987 S.C. 357, because in the present case, it did not involve any question of the jurisdiction of the High Court, but to direct the respondents to comply with a mandate of the High Court.
- III. The High Court erred in not directing the respondents to follow the mandamus issued by the High Court in this case, instead of observing that this was a case of improper or insufficient execution and not a case of no execution at all.
- IV. The High Court erred in holding that although the matter was an off shoot of an earlier proceeding, it was a fresh cause of action arising because of mis-interpretation and misapplication of rule and thereby

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executing the mandamus issued by
the High Court.

V.

The High Court erred in holding that the applications for the implementation of the High Court's judgment and order dated March, 12, 1979, was a fresh cause of action, arising out of service matters, and further erred in observing that this matter was cognisable by the Administrative Tribunal, and that the High Court was not competent to grant the relief prayed for by the petitioners.

VI.

The High Court erred in holding that these proceedings began in 1986, after the Administrative Tribunal Act came into force, as the High Court did not appreciate that the mandamus sought to be enforced was passed by a judgment and order dated March 12, 1979.

VII.

The High Court erred in dismissing the petitioners' applications for

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the implementation of the High Court's judgment and order dated March 12, 1979.

VIII.

The High Court erred in its observation that the petitioners ought to file the applications to enforce the judgment and order dated March 12, 1979, by the High Court, before the Administrative Tribunal.

IX.

The Administrative Tribunal has no jurisdiction to clarify or review an order passed by a High Court in proceedings under Article 226 of the Constitution.

X.

The Administrative Tribunal would have no jurisdiction in this case as the petitioners cannot be deemed to be employees of the Union of India for the purposes of the Administrative Tribunal Act.

XI.

The Administrative Tribunals Act

(14)

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does not give any jurisdiction to the High Court to seek a clarification of own judgment by the Tribunal set up under this Act.

XII.

The Administrative Tribunal Act or the Constitution does not give the Tribunals established by virtue of the Act, a higher jurisdiction than High Courts.

XIII.

The implementation of the judgment and order dated March 12, 1979, passed by the High Court, was not similar to a fresh cause of action, and hence the High Court ought to have directed the respondents to expeditiously determine and pay the amounts due to the petitioners.

XIV.

The respondents are taking an extremely long time in implementing the mandate issued by the High Court vide its judgment and order

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dated March 12, 1979. even though admittedly, the Railway Board took a decision on July 24, 1979, not to agitate the matter any further in the Hon'ble Court, and to implement the order dated March 12, 1979, passed by the High Court.

XV.

The High Court, in its impugned order, has correctly observed that the special appeals filed by the Union of India were dismissed by an order of the High Court dated March 12, 1979, and that this judgment and order has become final, and even the time granted to the Railway Administration to comply with the same has expired, but the petitioners have not received the amounts due to them from the respondents, even after the filing of an application for contempt of Court against the respondents, and a report by the Commissioner of Accounts, which was wrongly dismissed by the High Court, though with certain observations and findings in favour of the petitioners.

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XVI.

The Judgment and order dated February 27, 1987, passed by the High Court in this case, is not in accordance with law or the facts on record in this case.

P R A Y E R

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to -

- a) grant special leave to appeal against the judgment and order dated February 27, 1987 passed by the High Court in C.M.A. No. 610 of 1986, in Re: S.A. No. 13 of 1975, W. P. No. 1817 of 1975, C. M. A. No. 10157(W) of 1986 in W. P. No. 1820 of 1975 and W. P. No. 396 of 1975;
- b) and pass such other or further orders as this Hon'ble Court may deem fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY:

(VINEET KUMAR)
ADVOCATE FOR THE PETITIONERS

13.7.1987

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 1987

R. K. Dubey and Ors. Petitioners

Versus

Union of India and Ors. Respondents

A F F I D A V I T

I, R. K. Dubey aged 64 years son of late Shri Prayag Narain Dubey resident of Bombay Wali Gali, Lal Kuwan, Lucknow, at present in Delhi, do hereby solemnly affirm and state as under:

- 1. I say that I am petitioner No. 1 in the above matter and as such I am well conversant with the facts and circumstances of the case and I am authorised to swear this affidavit.
- 2. I say that I have read and understood the accompanying petition for special leave to appeal and application for one set of court fee and that the facts stated therein are true to my knowledge.
- 3. I say that the annexures annexed alongwith are the true copies of the respective originals.
- 4. I say that the petitioners have not filed any other petition against the impugned judgment earlier.
- 5. That the averments of facts stated hereinabove are true to my knowledge.

13-7-1987

DEPONENT

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
C.M.P. NO. 16683 OF 1987

IN

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 1987

IN THE MATTER OF :

R. K. Dubey & Ors. Petitioners

Versus

Union of India and Ors. Respondents

AND IN THE MATTER OF :

An application for accepting
one set of Court Fees and
To exempting the Petitioners from
from payment of different sets
The Hon'ble the Chief Justice of India^{Court fees}
and His Companion Justices of the Hon'ble Supreme
Court of India.

The humble petition of the
above-named petitioners -

MOST RESPECTFULLY SHEWETH :

1. That the petitioners herein are all retired persons and have been agitating their case since the year 1970. The petitioners are filing the present petition against one common Judgment of the High Court and it will be worthwhile to mention here that they have got no benefit from the Respondents even though the writ of mandamus was issued in the year 1974.

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(2)

The petitioners being retired persons they seek indulgence of this Hon'ble Court to accept one set of court fee instead of a separate court fee.

2. That it would be in the interest of justice, equity and good conscience that the prayer for accepting one set of Court fee is granted.

P R A Y E R

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to -

- a) exempt the Petitioners from filing different Court fees and accept one set of court fee;
- b) and pass such other or further orders as this Hon'ble Court may deem fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY:

(VINEET KUMAR)

13-7-1987

ADVOCATE FOR THE PETITIONERS

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(8129)

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH, LUCKNOW

RESERVED JUDGMENT

1. Writ Petition No. 536 of 1980
A.N. Srivastava vs. Union of India and others.
2. Special Appeal No. 9 of 1975.
3. Special Appeal No. 11 of 1975.
4. Special Appeal No. 12 of 1975.
5. Special Appeal No. 13 of 1975.
6. Writ Petition No. 1067 of 1975.
7. Writ Petition No. 1817 of 1975.
8. Writ Petition No. 1820 of 1975.
9. Writ Petition No. 1724 of 1979.
10. Writ Petition No. 1726 of 1979.
11. Writ Petition No. 2111 of 1979.
12. Writ Petition No. 3134 of 1979.
13. Writ Petition No. 548 of 1980.
14. Writ Petition No. 2514 of 1980.

A n d

15. Writ Petition No. 5447 of 1981.

Lucknow Dated: 27.2.87.

Hon'ble U.C. Srivastava, J.

Hon'ble S.C. Mathur, J.

(Delivered by Hon'ble U.C. Srivastava, J).

The above mentioned decided writ petitions and special appeals have been bunched together as in all these cases applications for giving effect to the

contd..../-

mandamus issued by this court have been prayed for. The special appeals were decided on 12.3.1979 and a mandamus was issued relying on the said decision by another Division Bench of this Court on 22.8.1984 in which one of us was a member (S.C. Mathur, J). The complaint of petitioners to all these cases is that the mandamus issued in these cases has not been complied with and the fixation or re-fixation of salary and the amount calculated is not in accordance with the directions issued by this court interpreting certain relevant rules. In these applications giving rise to these cases certain prayer for issuance of specific mandamus for payment of a particular amount for which direction against Union of India and others has been sought. In the counter affidavit filed by the railway administration details have been given indicating the amount to which the petitioners are entitled to according to which some of them are not entitled to any further amount than what has already been paid to them. The amount calculated by railway administration is much less than the amount claimed by these petitioners. The proceedings were initiated by three persons who were employees of the railway administration initially belonging to the running cadre of the Northern Railway but later on they were shifted to the stationary cadre. They filed writ petition in the matter regarding fixation and payment of emoluments including

allowances to which they were rightly entitled to. These writ petitions came up for hearing with certain other similar writ petitions filed later on. The writ petitions were partly allowed and the opposite parties were directed to re-fix pay of these persons according to relevant rules and also to fix pay under Clause (2) of Rule 2027 and certain other directions were given. The Union of India feeling dis-satisfied filed special appeal against that judgment. These special appeals came up for hearing along with seven other writ petitions in which similar questions were raised. The special appeals were partly allowed by a Division Bench of this court of which one of us (U.C. Srivastava J.) was a member. The writ petitions heard with the special appeals too were allowed and the railway administration was directed to re-fix the pay of Sardar Husain and Ram Kumar Dubey for the period they held their officiating appointment in the stationary post according to the relevant rules. They were further directed to re-fix the salary in accordance with para 1 (b) (ii) of Railway Board's letter dated 1.7.1949 after taking into consideration that running allowance was part of pay during that period. In the said judgment following directions were given:-

contd..../-

- (a) Basic pay has to be construed in accordance with Rule 21-A of the Railway Establishment Act.....
- (b) fixation of pay in stationary cadre will be made according to the Old Indian Railway Establishment Manual which provides that where a person in the running post was officiating for a period exceeding 21 days then he should be fixed in the running post for the purposes of fixation of pay;
- (c) Rules of fixation of pay are contained in paragraph 2017 of the Indian Railway Establishment Code.

The special leave petition filed by the Union of India was dismissed and the said judgment became final. Three months time was granted to the railway administration to comply with the same but they prayed for further time which was granted. As the petitioner were not given any relief, a contempt application was moved and a Chartered Accountant was appointed to calculate the salary of the concerned persons and to submit his report before the court. The Chartered Accountant submitted his report. The petitioners to the writ petition thereafter moved applications before this court in these cases in the month of September 1986 for reliefs mentioned above.

contd..../-

The special leave petitions filed by the Union of India against the judgment passed in the Special appeals referred to above were dismissed, with the result that the said judgement became final.

When these applications came up for hearing, a preliminary objection was raised on behalf of the railway administration that under the Administrative Tribunals Act, 1985 which was subsequently amended in the year 1986, the petitioners' remedy, if any, lies only before the Administrative Tribunal as it is fresh cause of action and this court is not competent to grant the prayer which has been prayed for by the petitioners in these cases. The special appeals were decided in the year 1979 and the applications for issuance of mandamus by these petitioners have been filed in the month of September 1986. According to the petitioners their writ petition filed in 1980 or one filed in 1986 - in substance is for executing the orders passed by this court in special appeals referred to above. The applications moved subsequently in the decided special appeals or writ petition are also of the same nature and the same also gets support from the counter affidavit filed by

the Railway Administration along with accounts. According to the petitioners it indicates that the order passed by this court has not been executed correctly and finally and re-fixation of emoluments and other benefits has not been done in accordance with the directions issued by this court. The case of the Railway Administration is that the plea of improper compliance and wrong calculation, misinterpretation of said rules is involved, as such it will be a new cause of action and the matter is covered by Administrative Tribunals Act and writ petition in the matter cannot be heard and grant of any relief in decided petition by this court will be without jurisdiction. The Administrative Tribunal Act, 1985 came into force with effect from 1.11.1985 vide Notification No. G.S.R. 764(E) dated 28.9.85. It is not in dispute that the railway employees are also covered by the Administrative Tribunals Act. Section 14 of the Administrative Tribunals Act deals with the powers and jurisdiction of the Central Administrative Tribunals which reads as under:-

"14(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and

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authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to:-

- (a)
- (b)

(c) All service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation (or society) or other body, at the disposal of the Central Government for such appointment."

Section 14 thus embraces within its ambit all service matters pertaining to services referred therein. This clause is wide enough to embrace within its ambit matters connected with the benefits pertaining to the emoluments while in service or the pensionary benefits after retirement from service of the arrears of salary. The retirement benefits or the arrears of salary which are paid or payable whether the person is in service or has retired. Consequently, the benefits regarding salary or wrong calculation

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of salary even after retirement is governed by this Section. Section 28 of the Administrative Tribunals Act provides as under:-

"28. Exclusion of jurisdiction of courts except the Supreme Court:- On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post (no court except -

- (a) the Supreme Court; or
- (b) any Industrial Tribunal; Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have), or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

contd..../-

Section 29 of the Administrative Tribunals Act provides as under:-

"(1)....."

(2) Every suit or other proceeding pending before a court or other authority immediately before the date with effect from which jurisdiction is conferred on a Tribunal in relation to any local or other authority or corporation (or society) being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the said date, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal....."

Thus after coming into force of the Administrative Tribunals Act not only the new case are to be instituted before it but the pending cases or proceedings pending before any court other than Supreme Court of India are to be transferred to the Tribunal in case cause of action for the same is such that it can be entertained by the Administrative Tribunal. If it is a simple matter of execution of the order passed by the High Court which does not call for any interpretation and application of relevant rule, in that event the same could be treated to be

contd..../-

an execution application. Inexecution application No.1 of 1986 arising out of Writ Petition No. 2729 of 1987 against which Judgment special leave Petition too was dismissed, this bench has taken a view that the High Court is competent to execute an order passed in proceedings under Article 226 of the Constitution of India. The validity of the Administrative Tribunals Act and more particularly the powers of High Court under Article 226 and 227 of the Constitution of India after coming into force of the Administrative Tribunals Act were challenged before Hon'ble Supreme Court of India. In the leading case on the point viz. S.P. Sampath Kumar Vs. Union of India (A.I.R. 1987 S.C. 386) the Constitution Bench held:-

" As the judicial review of the decisions of the Tribunal by the Supreme Court is left wholly unaffected and thus there is a forum where matters of importance and grave injustice can be brought for determination or rectification, exclusion of the jurisdiction of the High Court does not totally bar judicial review. It is possible to set up an alternative institution in place of the High Court for providing judicial review. In this view, barring of the jurisdiction of the High Court by the Act cannot be a valid ground of attack."

//

With reference to the said decision the Hon'ble Supreme Court again the case of J.B. Chopra Vs. Union of India, (A.I.R. 1987 S.C. 357) observed that the Administrative Tribunals being substitute of High Court, it had necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the power to deal with all questions pertaining to the constitutional validity or otherwise of such laws as offending Arts. 14 and 16(1) of the Constitution of India. In these cases mandamus was issued by this court and the plea of the opposite parties is that they have fully complied with it. Whether compliance has been done faithfully or not as has been pleaded and contended on behalf of opposite parties and the rules have been rightly or wrongly applied and fixation done at various stages and in view of facts of every case, the extent of applicability of Rule 2027 of Railway Establishment Code, the stages at which running allowance is to be computed and its extent, the extent of dearness allowance not mentioned as such in the judgment of Special Appeal, though at best could be a case of improper or insufficient execution and not a case of no execution at all. The matter may be offshoot of earlier proceedings but it will be a case of fresh cause of action arising because of misinterpretation

contd.../-

and misapplication of rules and thereby incorrectly executing the mandamus issued by this Court. This fresh cause of action arising out of service matters is cognizable by the Administrative Tribunal and this Court is not competent to grant the relief which has been prayed for by the petitioners. No question of transfer of these proceedings to the Administrative Tribunal arises as the present proceedings have started in the year 1986 that is after 18 November 1985, as such the applications have got to be dismissed. All the applications are dismissed with the observations that it will be open for the petitioners to take back all certified copies and file the same before the Administrative Tribunal. There will be no order as to costs.

Sd/- V.C. SRIVASTAVA, J

Sd/- S.C. MATHUR, J
27.2.87.

-/ True Copy /-

Sd/-

Section Officer
2.6.87
Copying Department,
High Court, Lucknow Bench,
L U C K N O W.

4. P
(Am)

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

Writ Petition No. 2111 of 1979

N.S. Bodi & others Petitioners

Versus

Union Of India & others Opposite parties

Annexure No.1

Northern Railway

No.10 to 12-14-LKO/Spl/Appeal
75-Legal Cell (P).

Headquarters Office
Baroda House, New Delhi.

11 to 16, 18-23-24-LKO/CA/75/Legal Cell/P.

Dated 20th August, 79.

Divisional Railway Manager, Lucknow.

1. Fixation of pay of running staff on their transfer from running cadre to stationary cadre-Spl. Appeal and writ petitions in the Lucknow Bench of Allahabad High Court Decision for SLP in the Supreme Court of India.
2. Spl. appeal No.9 to 13 of 1975 in the High Court Int. UOI and others V/S Smt. Yash Dahan Bagan and others etc.
3. Nos. 396, 1045, 1055, 1067, 1080, 1817 and 1820 of 1975 in the High Court at Lucknow. Smt. Kalka Prasad etc. Vrs. Union of India.

The matter was referred to the railway board for decision as to whether it is to be agitated further by way of filing an appeal in the Supreme Court. The railway board vide their letter No. R(LRA)11-79/13/PST/I dated 24.7.79 (copy enclosed) have decided that the matter is not to be further agitated in Supreme Court of India in SLP and have directed this office to implement the decision of the Allahabad High Court, Lucknow, as

contained in its judgment dated 12.3.79 in respect of the petitioners. A copy of judgment in the above noted cases is sent herewith for implementation immediately to avoid the contempt of the Court. This office may also please be furnished the full details of the above cases and the relaxation allowed in terms of the judgment together with the interpretation of rules and reaching repercussions involved therein, for onward submission to the Railway Board.

This is most urgent.

Sd/-

Encls. As above. For General Manager(P) L.Coll.

Copy of Railway Board's letter No. as referred to above.

Sub. As above.

reference your letter No. 10 to 12 and 14/KO/Spl. Appeal/74 Legal Cell(P)/13 to 16, 18, 23 and 26/KO/CW/75/Legal Cell (P)/13 dated 4.7.79 on the above subject. The Railway Ministry have examined the cases referred to in your letter quoted in the light of the judgment in the Lucknow Bench of Allahabad High Court and have decided against filing Special Leave Petitions in the Supreme Court of India. Accordingly, the decision of the Hon'ble High Court as contained in the judgment dated 12.3.79 of the Lucknow Bench may be implemented in respect of the petitioners. The Board would, however, like to be furnished with the full detail of the above cases and the relaxation allowed in terms of judgment together with the interpretation of rules and for reaching repercussions of rules involved as mentioned in para 5 of your letter under reference.

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IN THE SUPREME COURT OF INDIA
(ORIGINAL JURISDICTION)

Writ Petition (Civil) No. 957 to 959 of 1979.

G.C. Ghosh & others

versus

Union of India & Others

Certified to be a true copy
Assistant Registrar (18/11)
20.7.1988
Supreme Court of India.

000 Petitioners

000 Respondents

ORDER

Rule 41A. Board both the sides.

Reliance has been placed by the petitioners on the decision of the Allahabad High Court in Union of India vs. Shri. Akbar Jahan Doga & Ors. rendered in Special Appeal No. 9 of 1979 on March 12, 1979. The aforesaid decision has been accepted by the Railway Administration in the sense that no special leave petition was preferred in this Court and the matter finally rested there. The petitioners who are employees of Eastern Railway have contended that they are entitled to the same treatment as is being accorded to their counterparts in the Northern Railway in pursuance to the aforesaid decision rendered by the Allahabad High Court which has become final as between the Railway Administration on the one hand and the employees of the Northern Railway on the other. In the light of the command of Articles 14 and 16 of the Constitution of India the same treatment is required to be accorded to the petitioners regardless of the fact that they are serving

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In Eastern Railway unless it is shown that there is some distinguishing feature, for according a different treatment. Learned Additional Solicitor General appearing for the Railway Administration is not in a position to contend that there is any such special distinguishing feature to justify denying of uniformity in treatment. The prayer of the writ petitioners must accordingly be granted to the aforesaid extent. It is therefore directed that the petitioners should be accorded the same treatment as their counterparts are being accorded in the Northern Railway in regard to treating the running allowance granted to the running staff as part of the pay when they are transferred or promoted to a stationary post during the period they hold the officiating in the stationary post to the same extent and in the same manner as enjoined by the Allahabad High Court pursuant to the aforesaid judgment. Writ Petitions are disposed of accordingly. There will be no order as to costs.

.....J.
 (H.P. SHAKKAR)

New Delhi,
 July 20, 1952.

.....J.
 (D.G. RAY)

JK

B

Copy of the Railway Board's letter No. E(R)/49RS.
1st July 1949 to all Indian Government Railways.

OFFICIATING PAY TO RUNNING STAFF.

Reference : Railway Board's telegram No. E(R)48CPC/197, dated 30th December 1948 and your replies thereto. The Railway Board have considered the question of the grant of officiating pay to Running Staff and have decided as follows :-

(a) For running staff officiating in higher grades of posts - for periods of 21 days or less :-
Cleaners working as fireman, firemen working as shunters or shunters or Drivers, shunters working as Drivers, Brakemen working as Guards and class IV staff allowances appropriate to the category in which employed. Such periods of "officiating" service will not count for increments. No grade promotion nor higher rates of Running Allowance within a category will, however be permitted for period of 21 days or less - i.e. fireman grade C to grade B, a driver grade C to grade B or grade 'A' a guard C to grade B.

For periods exceeding 21 days :-

The normal rules will apply with the relaxation that promotion to the lowest grades of fireman shunters and drivers will be permissible in excess of the sanctioned cadre; if required for dealing with the traffic but grade promotion in a category will be permitted only if there are vacancies on the sanctioned cadre; provided grade to grade promotion within the same category is otherwise admissible under the rules applicable to the staff concerned.

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(b) For Running Staff utilised in stationary appointments -
 For periods of 21 days or less - (i) The pay drawn will be the
 basic pay (whether substantive or officiating) of the running
 post plus the "average running allowance", subject to the total
 emoluments not being less than the minimum or more than the max-
imum of the scale of pay of the stationary post, provided in the
 case of officiating staff, it is certified that they would have
 continued to officiate in those posts but for their appointment
 to the stationary post. For this purpose "average running allow-
 ance" will be based on the running allowance earned by the employ-
 ee in the wage period or periods in question for the days he has
 actually been, or will be, working in a "running" post.

Where, during the whole of one wage period, an employee has ei-
 ther been on leave or has been employed on stationary duty in
 continuation of leave, the average running allowance to be paid,
 while working in stationary post, should be average for the pe-
 riod spent on running duty in the wage period immediately prece-
 ding the one in which he was employed in stationary duty.

(ii) For periods of over 21 days.- (ii) The pay should be fixed
 under Rule 2017-R-II, 50 % of pay in the running post also to be
treated as pay for the purpose of fixation of pay in the station-
ary appointment.

2. The above decisions have the sanction of the Governor-General.

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Serial No. 1214 - Circular No. 830-E/C-VI(Eiv) dated 10.7.1951.

Sub :- Refixation of officiating pay under rule 2027 (FR31)E-II.

A copy of Railway Board letter No. F(E)58/PA/1 dated 19.5.1951, to the General Managers, All Indian Railways etc.

Sub :- Refixation of officiating pay under Rule 2027(FR31)R-II.

Attention is invited to para 1(b)(ii) of Railway Board's letter No. E(R)49-RS/3, dated 1.7.49 as amended vide their letter of even number dated 29.8.1949, which provides that in the case of Running Staff utilised in stationary appointments for periods of over 21 days the pay should be fixed under normal rules, 50 % of pay in the running post also being treated as pay for the purposes of fixation of pay in the stationary appointment. A question has been raised as to whether after initial fixation of pay in the stationary appointment, the pay of such staff should be refixed under clause (2) of Rule 2027 (FR31)R-II as substituted by C.S. No. 6-R-II, treating 50 % of the enhanced substantive pay also as pay in the stationary appointment.

2. The question has been considered and the president is pleased to decide that the pay of such running staff utilised in stationary appointment is fixed under the normal rules in accordance with para 1(b) (ii), of Railway Board's letter No. E(R)49RS/3 dated 1.7.1949, should also be refixed under clause (2) of Rule 2027 (FR31)R-II, 50 % of the enhanced substantive pay representing the running allowance being treated as pay for the purpose of such refixation.

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(AUS)

COPY OF RAILWAY BOARD'S LETTER NO. PC-63/ROP-1/46 DATED 23.1.1964
ADDRESSED TO GM/WESTERN RAILWAY/BOMBAY, CIRCULATED TO ALL CONCERN-
ED VIDE GM(P)/NDLS SERIAL NO. 2414 - LETTER NO. 831-E/123-III(Eiv)
DATED 10.2.1964.

Sub :- Non-gazetted staff- Fixation of pay of running staff
in stationary appointments.

19 // Reference your letter No. E-773/16 dated 4.12.1963. It is
clarified that pay should be fixed under method II indicated in
para 4 of your above letter.

COPY OF WESTERN RAILWAYS LETTER NO. E-773/16 DATED 4.12.1963
ADDRESSED TO THE SECRETARY (E) RAILWAY BOARD, NEW DELHI.

Sub :- Non-gazetted staff - Fixation of pay of running staff
in stationary staff.

According to Railway Board's order contained in their letter
No. PC-60/PP/1 of 28.3.1961 (now Rule 2018-B-R-II) in the case of
promotions occurring on or after 1.4.1961. The pay of employees con-
cerned should first be increased by one increment in the lower scale
and then fixed in the higher scale at the stage next above.

In the case of running staff posted to stationary appointments,
the Board vide their letter No. PC-60/RA-2/1 of 7.3.1963 have deci-
ded that pay in stationary posts should be fixed under normal rules,
40 % of pay in the running post being treated as pay for the purpose
of fixation of pay in the stationary posts, to compensate for the
loss of running allowance.

Since the Board's orders of 28.3.1961 are applicable in respect
of promotion to a higher post upto and inclusive of those from class
II to class I, the benefits of these orders are also admissible to
running staff when promoted to stationary posts. However a doubt
has arisen whether, in the case of running staff promoted to a sta-
tionary post, the pay will first be increased in the lower scale of
a running post by one increment, will be the basic pay of the
running post or the basic pay plus 40 % of pay of running post,

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which is taken into account for the purpose of fixation of pay in the stationary appointments.

To cite a case of motorman drawing a basic pay of Rs. 290/- p.m. in the grade of Rs. 210-380/AS when promoted as an Asstt. Electrical foreman in the grade of Rs. 335-425/AS, two methods of fixation of pay would be possible in his case as indicated below :-

METHOD - I

Pay in grade Rs. 210-380/AS	Rs. 290/- p.m.
40 % of pay in lieu of running allowance	Rs. 116/- p.m.
	<hr/>
Total.	Rs. 406/- p.m.

If Rs. 406/- is to be taken as pay, one increment envisaged in Board's letter of 28.3.61 cannot be given as the pay as worked out above exceeds the maximum of the lower grade of Rs. 210-380/AS. Hence his pay will have to be fixed at the stage next above of Rs. 406/- p.m. in the higher grade of Rs. 335-425/AS i.e. Rs. 410/- p.m.

METHOD - II ✓

Pay in grade Rs. 210-380/AS	Rs. 290/-
Basic pay in the lower grade is increased by one increment in terms of Board's letter of 28.3.1961.	Rs. 15/-
	<hr/>
Total	Rs. 305/-

The above 40 % of pay of the running post to compensate the loss of mileage allowance is added i.e. Rs. 305/- plus Rs. 116/- (40 % of Rs. 290/- the basic pay in the running post) - Rs. 421/- Pay admissible in grade Rs. 335-425/AS is Rs. 425/- p.m. being the next stage above Rs. 421/-.

40% of 290

From the above it will be seen that by first method, the employee does not get the benefit of Board's letter of 28.3.1961 after a particular stage in the scale in running post. The second method indicated above would be in keeping with the spirit and object of the Board's orders of 28.3.1961 as in this method, the

PS No 1146

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ALSO

staff will get the intended benefit of an increment in the lower scale on promotion, till they reach maximum of the scale in the running post. The Board's early decision in the matter may please be obtained and communicated to this office.

This issues with the concurrence of the Financial Advisor and Chief Accounts Officer of this Railway.

(A/S)

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. PC-III/75/RA/1

Dated New Delhi 22.3.1976.

The General Managers,
All Indian Railways, CLW, DLW, ICP etc.

Sub :- Revision of Rules regarding treatment of Running Allowance as pay for certain purposes consequent upon the introduction of revised pay scale under RS(RP) Rules 1973.

Ref :- Rly. Ministry's letter No. PCIII/73/RA dt. 21.1.1976 on the subject.

The question of revision of rules regarding treatment of Running Allowance as pay for certain purposes consequent upon the introduction of revised Pay scales under Railway Services (Revised pay) Rules 1973, has been under consideration of this Ministry. It has now been decided that the existing rules in this respect may be modified as follows in the case of Running staff drawing pay in revised pay scales :

- i) Pay for the purpose of passes and PTO's shall be pay plus 40 % of pay.
- ii) Pay for the purpose of leave salary, medical attendance and treatment, educational assistance and retirement benefits shall be pay plus actual amount of running allowance drawn subject to a maximum of 45 % of pay.

Contd....2..

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iii) Pay for the purpose of fixation of pay in stationary posts, compensatory (City) Allowance, HRA and rent for Railway Quarters shall be pay plus 30 % of pay.

2. These orders take effect from 1.4.1976.

3. The payments already allowed on provisional basis in terms of para 2 of Railway Ministry's letter No. PC-III/73/RA dated 21.1.1974 for the period from 1.1.73 to 31.3.76 shall be treated as final.

4. The above has the sanction of the President.

Sd/- G.B. Sud
Dy. Director, Pay Commission,
Railway Board.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

SITTING AT LUCKNOW

O.A. NO. 150 OF 1988 (L)

R.K.Dubey and others. ... Applicants

versus

Union of India ... Respondents

I N D E X

S.No.	Particulars	Page No.
1.	Counter reply	1 to 36
2.	<u>ANNEXURE - R-1</u> Photo stat copy of Judgment dated 24.11.85 of the Hon'ble High Court of Madhya Pradesh (Jabalpur Bench) in Misc.Petition No. 45 of 1982 (S.K.Tewari & others v/s Union of India and others).	37 to 43
3.	<u>ANNEXURE - R-2</u> Photo stat copy of Railway Board's letter dated 30.11.1982.	44
4.	<u>ANNEXURE - R-3</u> Photo stat copy of Judgment dated 16.5.1986 of Hon'ble High Court (Lucknow Bench) Lucknow in Contempt case No.460 of 1980 (Wasi Haider & Others v/s Sri M.Menzes & others.	45 to 68

Signature *Elbrasad*
ASSISTANT SECRETARY
N. R. Chakravarti

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In the Central Administrative Tribunal, Allahabad
Sitting at Lucknow

Registration No. 150 of 1988 (L)

R.K.Dubey & others ... Applicants

Versus

Union of India ... Respondent.

Counter reply on behalf of the
respondent.

Counter reply, on behalf of the respondent,
is filed in three parts as detailed below :-

- I. PART 'A' This part contains the brief history of litigation relevant to the adjudication of the application .
- II. PART 'B' This part deals with the preliminary objections on the maintainability of application filed by the applicants.
- III. PART 'C' This part deals with parawise counter reply to the application.

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I. PART 'A'

BRIEF HISTORY OF LITIGATION

1. That the brief history of litigation regarding fixation/refixation of pay of staff transferred from running to stationary posts relevant for the adjudication of the present case is given as under :-

i) Initially, three Writ petitions bearing Nos.443 of 1970, 1046 of 1970 and 626 of 1971 were filed respectively by Sri Bhagwati Prasad Pandey, Sri R.K. Dubey (Applicant no.1 of the present application) and Sri Sardar Husain (subsequently on his death, substituted by Smt.Afsar Jehan Begum and others as his heirs and legal representatives) in the Hon'ble High Court of Judicature, Allahabad (Lucknow Bench) Lucknow regarding fixation of their pay at the time of their transfer from running to stationery posts.

ii) The Hon'ble Single Judge (Hon'ble - Mr.Justice O.P.Trivedi) of the Hon'ble High Court of Judicature, Allahabad, Lucknow Bench, by a common judgment and

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orders dated 7.11.1974, decided the aforesaid three writ petitions with the following observations :-

"This claim of the petitioners must be upheld in view of my finding that the officiating pay of Sardar Husain, Bhagwati Prasad Pandey and Ram Kumar Dubey in the officiating appointment to the stationery post was not fixed ^{the correct rules but was wrongly fixed} according to it on the basis of a rule which did not apply and also on the finding that their officiating pay in the stationery post was not refixed in accordance with rule 2027(2)RII and the President's decision. Consequent to the refixation of their pay for the period of officiating appointment in the stationery post and for the period during which Sardar Husain, Bhagwati Prasad Pandey and Ram Kumar Dubey were holding the stationery posts substantively on confirmation, the heirs of Sardar Husain deceased, who have been substituted in his place, Bhagwati Prasad Pandey and Ram Kumar Dubey are entitled further to such arrears of pay, if any, as may be found due to them on the refixation of the officiating pay of Sardar Husain, Bhagwati Prasad Pandey and Ram Kumar Dubey according to the relevant rules for the period they were officiating in the stationery post. The pension and gratuity of Sardar Husain and Bhagwati Prasad Pandey must also be calculated for the officiating period and for the period subsequent to their confirmation in the stationery post according to the relevant rules and the President's decision. It is well settled that a claim for arrears of salary of a public servant is governed by Article 102 of the Indian Limitation Act (see Jai Chand Sawhney V. Union of India - 1970 Supreme Court Journal 288 and Sri Madhav Laxman Vaikunthe V. State of Mysore - AIR 1962 Supreme Court 8).

The limitation for such claims provided under Article 102 is three years. The claim for arrears of salary

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accruing due to these petitioners on a recalculation of the same in the light of observations of this court would ordinarily be barred by the law of limitation except for the period of three years next before filing of each of these writ petitions"

(underlining for emphasis)

The applicant No.1 has deliberately avoided to mention about this fact to mislead the Hon'ble Tribunal.

iii) Aggrieved by this aforesaid decision, the Railway Administration filed three special appeals before the Hon'ble High Court of Judicature, Allahabad (Lucknow Bench) Lucknow viz: (1) Special Appeal No.9 of 1975 - Union of India V/s Smt.Afsar Jehan Begum & others, (2) Special Appeal No.10 of 1975 - Union of India v/s B.P.Pandey and (3) Special Appeal No.11 of 1975 - Union of India v/s R.K.Dubey - the applicant No. 1 of the present application, S/Shri B.P. Pandey and R.K.Dubey (applicant no.1 of the present application), on being aggrieved by some of the observations of the Hon'ble Single Judge, also filed Special Appeals, indicated below, before the Hon'ble High Court of Judicature at Allahabad

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(Lucknow Bench) Lucknow :-

- 1, Special Appeal - B.P. Pandey v/s
No. 12 of 1975 Union of India.
- 2, Special Appeal - R.K. Dubey
No. 13 of 1975 (applicant No. 1
of the present
application) v/s
Union of India.

However, the observations made by the Hon'ble Single Judge in his judgment dated 7.11.1974 on the applicability of Law of Limitation for payment of arrears to the petitioners were not challenged by them in their aforesaid Special Appeals.

iv) Thereafter applicant Nos. 2 & 3 filed Writ Petition Nos. 1820 of 1975 and 1817 of 1975 respectively in the Hon'ble High Court of Judicature, Allahabad, (Lucknow Bench), Lucknow on the same matter.

v) A Division Bench of the Hon'ble High Court consisting of Hon'ble Mr. Justice U.C. Srivastava and Hon'ble Mr. Justice K.N. Goel, by a common judgment and order dated 12.3.79 (ANNEXURE No. I to the application), decided the aforementioned five special appeals along with

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7 other writ petitions (including the writ petitions filed by applicants No.2 and 3) then pending in the Hon'ble High Court of Judicature on the same matter. The orders passed by the Division Bench on the said special appeals and writ petitions are reproduced below :-

" All the above five special appeals are thus partly allowed. The Railway Administration is directed to refix the pay of Sardar Husain deceased, Bhagwati Prasad Pandey and Ram Kumar Dubey for the period during which they held their officiating appointment in the stationery posts according to the relevant rules, to refix the pay of Sardar, Bhagwati Prasad Pandey and Ram Kumar Dubey in accordance with rule 2017, 2018 and 2027 read with the relevant circulars and President's decisions respectively applicable to them, as has been indicated by us earlier after taking into consideration that running allowance is part of pay, during the period they held officiating appointment in the stationery posts and to take prompt steps for determination of their pensionary benefits during the period they officiated in the stationery post and the period they worked on that post in a substantive capacity according to the relevant rules. The order passed by the learned single judge in other respects is being maintained. The refixation shall be made within three months from today. No order as to costs. "

So far as other writ petitions are concerned, they are hereby allowed. Let a mandamus to the opposite parties to refix the pay of petitioners, in accordance with our observations above, be issued. No order as to costs. "

Note: Underlining has been done to give emphasis.

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vi) On delay in the implementation of judgment dated 12.3.1979 (directly attributable on the part of the petitioners because of no better particulars required for fixation and refixation of their pay being available in their writ petitions and also due to certain administrative reasons), the applicants and some others filed Contempt Case No.460 of 1980 in the Hon'ble High Court of Judicature, Allahabad (Lucknow Bench) Lucknow against some of the officers of the Railway Administration. In the said Contempt case, M/s Bhargava & Company, Lucknow (Chartered Accountants) were appointed as Commissioners of Accounts by the Hon'ble High Court, Allahabad and the cases of the applicants and some others were referred to them for determining the amount of arrear, if any, payable to them after fixation/refixation of their pay in terms of the judgment and orders dated 12.3.79 (Annexure No.1) read with the judgment and orders dated 7.11.1974 of the Hon'ble Single Judge mentioned in sub para (ii) above.

vii) That the aforesaid Commissioners of Accounts, in an arbitrary manner and

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against the sprit of the Hon'ble Courts judgments and orders, submitted their reports before the Hon'ble High Court entitling the applicants to get the arrears of pay allegedly due to them to the tune of rupees as indicated against each applicants below :-

- a) Applicant No.1 .. Rs.4,12,669/-
- b) Applicant No.2 .. Rs.3,75,112/-
- c) Applicant No.3 ... Rs. 80,192/-

viii)

Against the reports of and fixations done by the Commissioners of Accounts, the Railway Administration filed objections in the shape of affidavits annexing therewith the fixation/refixations charts of the applicants already done by it in pursuance of the judgments and orders dated 12.3.1979 (Annexure No.1 to the application) read with the judgment and orders dated 7.11.74 of the Hon'ble Single Judge of the Hon'ble High Court.

In support of the correctness of the fixations done, the Railway Administration also filed a copy of judgment dated 24.11.1985 of the Hon'ble High Court Madhya Pradesh and Railway Board's letter dated 30.11.1982. True copies of fixation

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charts in respect of Applicants No. 1, 2 and 3 are not being filed as the relevant official file has been stolen. However, the respondent has approached the Hon'ble High Court for obtaining the copies of the same and they will be produced before the Hon'ble Tribunal on receipt. The judgment dated 24.11.1985 of the Hon'ble High Court of Madhya Pradesh and Railway Board's letter dated 30.11.1982 are being filed herewith as Annexure Nos. R-1 & R-2 respectively to this counter reply.

Annexures R-1 & R-2

ix) Criticising the aforesaid charts of fixation/refixation done by the Railway Administration, the applicants filed rejoinders affidavits to the counter affidavits/objection filed against the reports of the Commissioner of Accounts. Thus by the conduct of the applicants themselves, it is indicative of the fact that the concerned officers had already complied with and implemented the judgment dated 12.3.1979 now sought to be implemented/executed as a fresh by the applicants through this Hon'ble Tribunal by concealment of true facts.

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x) On 16.5.1986, the Hon'ble Contempt Judge of the Hon'ble High Court dismissed the contempt case in favour of the respondent and others mentioned in sub para (vi) above and also discarded the reports submitted and fixations done by the Commissioners of Accounts with the following observations :-

".....THE COURT DID NOT SAY THAT THE PAY FIXED/REFIXED OF THE APPLICANTS COULD EXCEED THE MAXIMUM OF THE SCALE OF PAY FOR THE PARTICULAR STATIONERY POST HELD BY THE APPLICANTS. THE COURT INDICATED? INTER ALIA, THAT FIXATION AND REFIXATION WAS TO BE DONE IN ACCORDANCE WITH RULES. IT WOULD BE INHERENT THAT NO FIXATION COULD BE MADE BEYOND THE RULES AND PERHAPS THERE IS NO RULE THAT FIXATION OF PAY CAN BE MADE AT AN AMOUNT IN EXCESS OF THE MAXIMUM OF THE PAY SCALE OF THE POST HELD.

THE CHARTERED ACCOUNTANTS HAVE CLEARLY GONE WRONG ATLEAST IN THESE TWO RESPECTS, AND IF THEY ENTERTAINED ANY DOUBT ABOUT THE TRUE POSITION IN THIS REGARD, THEY WOULD HAVE BEEN BETTER ADVISED TO SEEK THE GUIDENCE OF THIS COURT RATHER THAN IGNORE THE DIRECTIONS CONTAINED IN THE JUDGMENT FOR WHICH THEY WERE APPOINTED AS COMMISSIONER OF ACCOUNTS.."

A true copy of the judgment dated 16.5.1986 of the Hon'ble Contempt Judge is being filed herewith as ANNEXURE No. R-3 to this counter reply.

Annexure R-3

xi) It is relevant to mention here that the Hon'ble Contempt Judge, at page 6 of

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his judgment dated 16.5.1986 (Annexure No. R-³) summarised the judgment dated 12.3.1979 (Annexure No. 1 to the present application) read with judgment dated 7.11.1984 as follows :-

" The following position appears to have emerged in view of the above decision :-

1. 50% of the running allowance was to be treated towards pay for the purpose of fixing the pay of the applicant in stationary posts.
2. The pay was to be fixed in accordance with Rules 2017, 2018 B and 2027 read with the circulars of 1961 and 1963 and with the President's decision published in Gazette dated 16.8.1961.
3. In consequence of such fixation of pay the pensionary benefits to the petitioners were to be determined.
4. The order passed by the learned single judge in other respects was maintained which includes the decision that the petitioners were entitled to the arrears only for the period of 3 years before the institution of the respective writ petitions.

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5. The refixation was to be made within 3 months from 12.3.1979. "

xii) Thereafter, the applicants filed Civil Misc. Applications supported by affidavits before the Division Bench of the Hon'ble High Court at Judicature at Allahabad (Lucknow Bench) Lucknow.

xiii) That in the aforesaid Civil Misc. applications, the respondents/railway administration filed counter affidavits refuting the claims of the applicants and at this stage too, the fixation/refixation charts correctly fixing and refixing the pay of the applicants strictly in accordance with the rules and directions contained in the Judgments of the Hon'ble High Court were filed.

xiv) Thereafter, the Division Bench of the Hon'ble High Court consisting of Hon'ble Mr. Justice S.C. Mathur and Hon'ble Mr. Justice U.C. Srivastava, by their judgement and orders dated 27.2.87, dismissed the aforesaid Civil Misc. Applications of the applicants. The relevant portions of the judgment and orders are re-produced below :-

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"..... In these cases mandamus was issued by this court and the plea of the opposite parties is that they have fully complied with it. Whether compliance has been done faithfully or not as has been pleaded and contended on behalf of opposite parties and the rules have been rightly or wrongly applied and fixation done at various stages and in view of facts of every case, the extent of applicability of Rule 2027 of Railway Establishment Code, the stages at which running allowance is to be computed and its extent, the extent of dearness allowance not mentioned as such in the judgment of Special appeal, though at best could be a case of improper insufficient execution and not a case of no execution at all. "

(underlining for emphasis)

".....The matter may be offshoot of earlier proceedings but it will be a case of fresh cause of action arising because of misinterpretation and misapplication of rules and thereby incorrectly executing the mandamus issued by this court. This fresh cause of action arising out of service matter is cognizable by the Administrative Tribunal and this court is not competent to grant the relief which has been prayed for by the petitioners. No question of transfer of these proceedings to the Administrative Tribunal arises as the present proceedings have started in the year 1986 that is after 18 November, 1985, as such the applications have got to be dismissed. All the applications are dismissed with the observations that it will be open for the petitioners to take back all the certified copies and file the same before the Administrative Tribunal. There will be no order as to costs. "

It may be mentioned that the observations made by the Division Bench in their judgment referred to above have neither been taken into consideration by the applicants at that stage nor are still being followed.

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xv)

The judgment dated 12.3.1979 of the Hon'ble High Court (Lucknow Bench) Lucknow along with the judgment dated 7.11.1974 of the Hon'ble Single Judge of the said Hon'ble High Court came up for interpretation before Hon'ble Mr. Justice Gulab Gupta of Hon'ble High Court of Madhya Pradesh (Jabalpur Bench), who while dismissing the writ petition no.45 of 1982 (S.K. Tewari and 36 others v/s Union of India & others) filed on the same subject observed as under in paras 4 and 5 of his judgment :-

" 4) A perusal of the judgment of the Allahabad High Court indicates that the said court nowhere directed that the running allowance should be taken into consideration first for ascertaining the basic pay for the purpose of fixation, and thereafter, for fixing the actual pay on the promoted post....."

" 5)A plain reading of the para indicates that it does nowhere state the running allowance should be taken into consideration twice while fixing the pay....."

(underlining for emphasis)

A true copy of the judgment dated 24.11.85 of the Hon'ble High Court, Madhya Pradesh (Jabalpur Bench) is Annexure No. R-4 to this counter reply.

ANNEXURE R-4

xvi)

(a) This Hon'ble Tribunal, while disposing of three Civil Appeals Nos.

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24 of 1985 (Union of India v/s Durga Charan and others), 165 of 1984 (R.K.Sharma and others v/s Union of India) and 2 of 1985 (Union of India v/s Krishan Dutt Sharma & others) under registration Nos.617 of 1986 (T), 627 of 1986 (T) and 629 of 1986 (T) respectively involving similar question of facts and law, by their judgment and order dated 10.12.1986, allowed the appeals filed by the Union of India and dismissed the ^{filed} appeal/by the employees (Sri R.K.Sharma & others) with the following observations:-

✓
" A plain reading of Rule 2027 makes it clear that after the substantive pay has been fixed by giving one increment in the lower grade, the pay in the higher officiating grade has to be refixed under sub rule 1. This rule only authorises to draw the presumptive pay of the post and as has already been clarified the presumptive pay of a post is the pay to which a person is entitled if he held a post substantively. Posting to a stationery post which is in higher grade is what is involved in this case. There is no doubt that the post in the running grade from where the petitioners were promoted or put to officiate on a stationery post were lower in scale of pay. It is also clear that stationery post does not carry any running allowance. The object behind the whole exercise of counting the portion of percentage of pay equivalent component of running allowance as a part of the pay before the pay is refixed in the higher grade is to do away with the financial disadvantage that an employee may have to suffer and also to give him some attract to opt and apply for promotion to stationery post. In conclusion fixation and refixation cannot result in payment of a salary of Rs.9607- for holding a post which has a scale of Rs.260-350 per month only and by no stretch of imagination any employer can issue such absurd instructions as to result in a situation that will conclude to such a result.

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In the result, Civil Appeal no.24 of 1985 is allowed and judgment and decree of the learned Munsif in Suit No.530 of 1981 is set aside. The suit is dismissed with the directions that if the fixation of pay had not been done in all cases in accordance with the observations made by us, irrespective of the fact that the plaintiffs have retired or not, the same may be done and arrears if any paid within three months keeping the limitation of three years in view. No other points were pressed during the arguments.

In Civil Appeal No.165 of 1984, the appeal is dismissed in terms of directions given in para 21 above.

In Civil Appeal No.2 of 1985, which is against the judgment and decree of the learned Munsif in Suit No.504 of 1981, the appeal is allowed and the judgment and decree is set aside and the suit is dismissed. The same directions as in para 21 above, will also apply in this case. "

(Underlining for emphasis).

b) This Hon'ble Tribunal sitting at Allahabad have taken a similar view while deciding T.A.No.569 of 1987 (567 of 1987 as mentioned in the judgment dated 3.3.1988) filed by Sri A.N.Srivastava against Union of India and others. The relevant portions of observations made is reproduced below :-

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" 9. On going through the relevant judgments of the Allahabad High Court, we find that no specific direction has been given regarding the fixation of salary of the applicant as claimed by him. It has been asserted by the respondents that Annexure 1 of the compliance report (Copy Annexure R-8) filed by them before High Court on 23.11.1986 discloses that the amount claimed by the applicant in the present application is neither admissible nor payable. Learned counsel for the respondents Sri Lalji Sinha contended that

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to the Govt of India
Ministry of Railways
New Delhi

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that the pay of the applicant was fixed/ re-fixed on various dates in accordance with para 2017 of the Railway Establishment Manual as applicable at that time until the confirmation of the applicant on the stationery post of Relieving Transportation Assistant w.e.f. 2.7.1955. It was also stated that the applicant was confirmed as Guard Grade 'A' in the scale of Rs.150 - 225 w.e.f. 20.5.1954. We have considered the applicability of the relevant rules in the matter of fixation of pay of the applicant w.e.f. from the date of his promotion as Relieving Transport Assistant and confirmed on that post on 2.7.1955 and are of the opinion that Rule 2017 of the Railway Establishment Manual read with the instructions contained in the Railway Board's circular dated 17.3.1949 (Annexure R-9) was applicable in accordance with these instructions the applicant was entitled to fixation of his pay on promotion as Relieving Transportation Assistant on 7.11.1951 as follows :-

- 1. Pay in the Running cadre Rs.125/-
- 2. 50% of pay in lieu of mileage Rs.62.50
- 3. Total Rs.187-50.

Pay to be fixed at Rs.200/- minimum of the grade of Rs.200-300 in accordance with sub rule A(1) of Rule 2017 of the Railway Establishment Manual. " ✓

2017 : The initial substantive pay of a railway servant who is appointed substantively to a post on a time scale of pay is regulated as follows:

(a) If he holds a lien on a permanent post other than a tenure post, or would hold a lien on such a post had his lien not been suspended -
 (i) when appointment to the new post involves the assumption of duties or responsibilities of greater importance, (as interpreted for the purposes of rule 2026 (F.R.30) than those attaching to such permanent post, he will draw as initial pay the stage of the time scale next above his substantive pay in respect of the old posts. "

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The contention of the applicant that he was ENTITLED to any additional 50 percent of the resultant pay of Rs.187-50 is not permissible UNDER any rule applicable to the case of the applicant....."

(underlining for emphasis)

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II. PART "B"

PRELIMINARY OBJECTIONS

2. That the relief prayed for implementation of Hon'ble High Court's Orders dated 12.3.1979 read with the judgment dated 7.11.1974 being in the form of execution is beyond the scope of the Administrative Tribunals Act, 1985; as such the application is not maintainable as already observed and held by this Hon'ble Tribunal in O.A. No.193 of 1988(L) Chandra Bhan v/s Union of India and another) and O.A. No.194 of 1988(L) - Kesho Prasad v/s Union of India and another decided on 24.1.1989. Relevant portions of the judgment are extracted as under :-

Extracts from judgment dated 24.1.1989 delivered by this Hon'ble Tribunal in Chandra Bhan v/s Union of India and others

" The only relief claimed by the applicant in this petition u/s 19 of the Administrative Tribunals Act (XIII of 1989) (hereinafter referred to as the Act) is that the respondents be directed to implement and comply with the judgment dated 19.10.1985 passed by the IVth Additional Civil Judge, Lucknow in Civil Suit no.18 of 1985 within the time allowed by this Tribunal with all consequential benefits of seniority, promotion and arrears of pay. The question arising for consideration before us is whether such a petition is contemplated u/s 19 of the Act or is maintainable.

".....the simple question before us is that the present petition is in the nature of an application for execution and it has to be seen whether such an application is maintainable under any provision of the Law. The relevant provision is contained in S.27 of the Act, which runs as follows :-

" 27. Execution of orders of a Tribunal - Subject to the other provisions

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Assit. Personnel Officer
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3. That the papers filed before this Hon'ble Tribunal reveal that there is no order of the Hon'ble Supreme Court of India for the applicants to file a joint application on a single court fee before this Hon'ble Tribunal, as such the application jointly filed by the applicants is not maintainable and liable to be dismissed.

4. That in pursuance of Hon'ble Supreme Court's orders dated 6.9.1988 (Annexure No. 2 to the present application) dismissing the petitions of the applicants and directing them to file fresh petitions before the Tribunal for appropriate relief within one month, the application should have been filed for such appropriate relief adjudicable by the Hon'ble Tribunal under the Administrative Tribunal Act , 1985. Since the relief prayed for is for implementation of orders dated 12.3.1979 Passed by the Hon'ble High Court of Judicature, Allahabad (Lucknow Bench) Lucknow which the respondents have faithfully complied with but alleged to have not been complied with and implemented, the application being in the form of execution is not maintainable under any provision of the Administrative Tribunal Act, 1985, the application under section 19 of the said Act filed by the applicants, therefore , is contrary to the orders passed by the Hon'ble Supreme Court of India contained in Annexure No. 2 to the application, hence liable to be dismissed in limine.

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Assistant Personal Officer
Lucknow

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of this Act and the rules, the order of a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any court (including a High Court) and such order shall be executed in the same manner in which any final order of the nature referred to in clause (a) of sub section (2) of section 20 (whether or not such final order had actually been made) in respect of the grievance to which the application relates would have been executed. "

" Section 27 provides that the orders passed by the Tribunal are not to be executed in the same manner in which any final order passed by the concerned competent authority would have been executed. Thus, there is no doubt about the fact that the Tribunal is not required under any provisions of law to execute even its own orders and we are of the view that on this ground alone, the Tribunal cannot be asked to execute the orders or decrees passed by the civil courts. This Bench while sitting at Allahabad has repeatedly taken view that execution applications contemplated by O XXI of the Code of Civil Procedure could neither be transferred by the Civil Courts to the Tribunal u/s 29 of the Act nor can such applications be filed a fresh before the Tribunal.....
.....

" The petition is accordingly dismissed in limine.

Extracts from judgment dated 24.1.1989 delivered by this Hon'ble Tribunal in Kesho Ram v/s Union of India & others.

" So far as the present application is concerned, it is in the nature of an execution application and this Bench has repeatedly held that such applications are not maintainable under the Act and if at all the execution proceedings are to be taken by the Courts passing the decrees before the establishment of the Tribunal.
.....

" The petition is accordingly dismissed in limine. "

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Asst. Personnel Officer
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3. That the papers filed before this Hon'ble Tribunal reveal that there is no order of the Hon'ble Supreme Court of India for the applicants to file a joint application on a single court fee before this Hon'ble Tribunal, as such the application jointly filed by the applicants is not maintainable and liable to be dismissed.

4. That in pursuance of Hon'ble Supreme Court's orders dated 6.9.1988 (Annexure No. 2 to the present application) dismissing the petitions of the applicants and directing them to file fresh petitions before the Tribunal for appropriate relief within one month, the application should have been filed for such appropriate relief adjudicable by the Hon'ble Tribunal under the Administrative Tribunal Act, 1985. Since the relief prayed for is for implementation of orders dated 12.3.1979 Passed by the Hon'ble High Court of Judicature, Allahabad (Lucknow Bench) Lucknow which the respondents have faithfully complied with but alleged to have not been complied with and implemented, the application being in the form of execution is not maintainable under any provision of the Administrative Tribunal Act, 1985, the application under section 19 of the said Act filed by the applicants, therefore, is contrary to the orders passed by the Hon'ble Supreme Court of India contained in Annexure No. 2 to the application, hence liable to be dismissed in limine.

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Administrative Tribunal Office
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5. That the judgment of the Hon'ble High Court of Judicature at Allahabad (Lucknow Bench) Lucknow date-d 12.3.1979 already having been implemented by the Railway Administration as mentioned in sub paras 1(viii), (ix), (xiii) and (xiv) of this counter reply, the relief prayed for for the implementation of the very same judgment is not maintainable; as such the application is liable to be dismissed.

6. That the present application has been filed by the applicants in the manner as if the mandamus issued by the Hon'ble High Court of Judicature at Allahabad (Lucknow Bench) Lucknow in the applicants' cases vide judgment dated 12.3.79 (Annexure no. 1 to the application) read with judgment dated 7.11.1974 has never been complied with , which is not only against the facts on records but also against the observations made by the Division Bench of the Hon'ble High Court of Judicature at Allahabad (Lucknow Bench) Lucknow on the Civil Misc. Applications filed by the applicants as mentioned under sub para (xiv) of para 1 of this Counter Reply.

Therefore, it is not being a case of non -

Allahabad
 Assistant Commissioner, Lucknow
 12/3/79

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compliance of High Court's orders as alleged by the applicants, the application is not maintainable and liable to be dismissed.

7. That once the judgment dated 12.3.1979 read with Judgment dated 7.11.1974 of the Hon'ble High Court has been complied with and fixations done in pursuance of the said orders as also admitted by the applicants in para 2 of their application and as held by Hon'ble High Court, Allahabad in judgment dated 27.2.1987 as referred to in sub para (xiv) of ~~paragraph~~ para 1^{of} Part 'A' of the counter reply, there remains no case of non-implementation of judgment. Thus the application filed for implementation of High Court's orders is misleading, misconceived and not maintainable on this ground also.

8. That the application having been filed against no impugned order and the fixations already done in pursuance of the judgment dated 12.3.1979 read with judgment dated 7.11.1974 to the knowledge of the applicants having not been challenged, the application, as it stands, is not maintainable and liable to be rejected.

9. ~~That the applicants have demonstrated~~
~~irreversible and not liable to be rescinded~~

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Asst. Personnel Officer
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9. That in pursuance of the Hon'ble High Court's Order dated 27.2.1987 merged with the order dated 6.9.1988 of the Hon'ble Supreme Court of India contained in Annexure no. 2 to the application, the present application should have been filed by the applicants before this Hon'ble Tribunal challenging the fixation/refixation of pay of the applicants already done by the Railway Administration in pursuance of the said judgments if the same, according to them, was not according to rules and orders of the Hon'ble High Court. Thus it having not been done so, the application is not maintainable and liable to be dismissed.

10. That the fixation/refixation of the applicants' pay already done by the Railway Administration in pursuance of the aforesaid judgments of the Hon'ble High Court having not been challenged by the applicants in the present application, the same, therefore, stands confirmed and as such the application is not maintainable.

11. That from the copy of petition filed by the applicants in the Hon'ble Supreme Court of India wherein the orders contained in Annexure no. 2 to the application have been passed, it is evident that the applicants had filed the petition against

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the 1) Union of India through the General Manager, Northern Railway, Baroda House, New Delhi, 2) General Manager, Northern Railway, New Delhi, 3) Divisional Railway Manager, Northern Railway, Lucknow and 4) Divisional Personnel Officer, Northern Railway, Lucknow, who are the necessary parties, but in the present application filed before this Hon'ble Tribunal, only the Union of India has been impleaded and that too through the Chairman, Railway Board, New Delhi, who was not originally arrayed in the petition filed before the Hon'ble Supreme Court. Thus the application is not maintainable and liable to be dismissed on the plea of non-joinder of the necessary parties and also because of mis-joinder.



Assistant Personnel Officer
Northern Railway
LUCKNOW

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Part 'C'. Parawise comments against the allegations in the present application.

12. That the contents of para 1 of the application are admitted but it is submitted that the name of father of applicant no. 1 has not been mentioned against para 1(ii) of the application which ought to have been mentioned to verify the genuineness of the applicant from the official records. It is further submitted that the applicants have deliberately not indicated either the station of postings during their employment or at the time of retirement of the subordinate office to which they were attached at any time during their service tenure, with an intention to harass the respondent.

12(a). That the contents of para 2 of the application are incorrect as stated and in view of the facts mentioned in para 11 of the counter reply, hence denied.

13. That the contents of para 3 of the application are denied. The applicants should have mentioned the particulars of the orders by which they have to seek redressal. Thus the application, as it stands, being bad in law, is not tenable.

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EX-101/2010/11-12
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14. That the contents of para 4 of the application are denied. The application, being in the form of execution of the Hon'ble High Court's orders, is not maintainable as already mentioned under paras 2 & 3 of this counter reply.

15. That the contents of para 5 of the application are denied. The application is highly time barred and the delay is directly attributable to the applicants. It is not at all covered under section 21(3) of the Administrative Tribunals Act, 1985 as claimed by the applicants.

16. That the contents of para 6(1) of the application are denied as stated. The prayer of the applicants stand merged in the judgment of the Hon'ble High Court. The present ^{in the manner & way as has been done now,} respondent was not impleaded, in the array of opposite parties in the writ petitions. It is, however, submitted that whatever orders were passed by the Hon'ble High Court (Lucknow Bench) Lucknow in the writ petitions had already been complied with by the Railway Administration as evident from the averments made under para 1(viii) and (xiv) of this counter reply. Any assertion otherwise is misleading.

17. That in reply to contents of para 6(2)

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of the application, it is submitted that the judgment is a matter of court record as such the contents are not admitted as stated. The present respondent was not impleaded in the array of opposite parties in the writ petitions as stated in para 16 above

18. That the contents of para 6(3) of the application are denied as stated. The true facts have been mentioned under para 1(iii) to (ix) of this counter reply.

19. That the contents of para 6(4) of the application are absolutely incorrect, misleading and misconceived. Neither the date of representation has been given nor a copy thereof annexed. The applicants are required to a strict proof of the same.

20. That the contents of para 6(5) of the application are denied as stated. The true facts have been mentioned under para 1(vi) to (x) of this counter reply.

21. That in reply to contents of para 6(6) of the application, in so far as they are matter of records, are not denied. It is, however, clarified that the orders contained in Annexure no.1 to the application had already been complied with and implemented by the respondent as already specified under para 6(viii), (ix) and (xiv) of this counter reply. The contempt petition was dismissed

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in favour of the respondent.

22. That the contents of para 6(7) of the application are denied as stated. The true facts have already been mentioned under para 1(xiii) & (xiv) of the counter reply. The orders of the Hon'ble Court on the Misc. application is a matter of record. The allegation of non-implementation of the judgments is wrong, hence denied. The orders of the Hon'ble High Court have been complied with in true spirit of the observations made and rules discussed as available on the subject. The assertion of the Railway Administration that the judgment had been implemented weighed heavily in favour of the Administration, so the contempt petition was dismissed. It may also be mentioned that the applicants themselves did not follow the directions of the Hon'ble High Court as mentioned in the para under reply.

23. That the contents of para 6(8) of the present application is an attempt to mislead the Hon'ble Tribunal. The applicants and other similarly situated persons aggrieved against the dismissal of the contempt petition never approached the Hon'ble Supreme Court of India in Special Leave Petitions as stated in the para under reply. The judgment, observations and orders in the contempt petition have become final and binding

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Asstt. Personnel Officer
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between the parties. Since no Special Leave Petitions were filed before the Hon'ble Supreme Court of India against the judgment in the contempt petitions, there was no question of passing any orders on them by the Hon'ble Supreme Court of India. The applicants, as at any other places, have tried to mislead the Hon'ble Tribunal. Annexure 2 to the present application is a photostat copy of the orders dated 6.9.1988 of the Hon'ble Supreme Court of India on the special leave petitions No.1394-1407 of 1988 and 2570-72 of 1988 filed against orders dated 27.2.1987 of the Hon'ble High Court of Judicature, Allahabad (Lucknow Bench in -

- 1) S.A. No. 13 of 1975
R.K.Oubey V/s U.O.I.
- 2) W.P.Nos. 1726/79
R.K.Sen and R.R.Vishwakarma v/s UOI
- 3) W.P.No.3134/79 - R.K.Tripathi v/s U.O.I.
- 4) W.P.No.548 of 1980
K.G.Saxena v/s U.O.I.

Rest of the contents of para under reply except Annexure 2 to the application are denied. The orders of the Hon'ble Supreme Court of India is a matter of court record. It is, however, again emphatically denied that the applicants have filed the applications in strict compliance of the Hon'ble Supreme Court of India and as done in Hon'ble Supreme Court of India. It was never the

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Secretary, Northern Railway
Lucknow

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intention of the Hon'ble Supreme Court to ^{permit to} file such an application which is not maintainable under the Administrative Tribunals Act, 1985.

24. That the contents of sub paras 9 to 11 of para 6 of the present application being misleading, misconceived and mis-interpreted are denied. The judgment dated 12.3.1979 read with judgment dated 7.11.1974 of the Hon'ble High Court of Judicature, Allahabad (Lucknow Bench) Lucknow came for interpretation before the Hon'ble High Court of Judicature, Allahabad (Lucknow Bench) Lucknow itself and various other legal forums. The observations are reproduced below :-

" (a) That while interpreting the judgment of 12.3.1979 read with judgment of 7.11.1974, Hon'ble Mr. Justice Gulab Gupta of Hon'ble High Court of Judicature of Madhya Pradesh (Jabalpur Bench) in W.P. No. 45 of 1982 as referred to at para 1(xv). dismissed the Writ petition and observed:-

" 4) A perusal of the judgment of the Allahabad High Court indicates that the said court no where directed that the running allowance should be taken into consideration first for ascertaining the basic pay for the purpose of fixation and thereafter for fixing the actual pay on the promoted post....."

" 5) A plain reading of the para indicates that it does no where state the running allowance should be taken into consideration twice while fixing the pay * * * * *"

(underlining for emphasis)

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Asstt. Personnel Officer
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 (8) That the judgment dated 12.3.1979 read with judgment dated 7.11.1974 again came up for interpretation before the Hon'ble High Court of Judicature, Allahabad Lucknow Bench itself and the Hon'ble Contempt Judge in his judgment dated 16.5.86 (Annexure No. R-~~8~~³) summarised the two judgments as under :-

" The following position appears to have emerged in view of the above decision :-

" 1. 50% of the running allowance was to be treated towards pay for the purpose of fixing the pay of the applicant in stationery posts.

" 2. The pay was to be fixed in accordance with Rules 2017, 2018B and 2027 read with circulars of 1961 and 1963 and with the Presidents decision published in Gazette dated 16.8.1961.

" 3. In consequence of such fixation of pay the pensionary benefits to the petitioners were to be determined.

" 4. The order passed by the learned Single Judge in other respects was maintained which includes the decision that the petitioners were entitled to the arrears only for the period of 3 years before the institution of the respective writ petitions.

" 5. The refixation was to be made within 3 months from 12.3.1979. "

(c) That this Hon'ble Tribunal in judgment dated 10.12.1986 (referred to in para 1(xvi) of the counter reply) observed :

" In conclusion fixation and refixation cannot result in payment of a salary of Rs.960/- for holding a post which has a scale of Rs.260-350 per month only and by no stretch of imagination any employer can issue such absurd instructions as to result in a situation that will conclude to such a result. "

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(d) That this Hon'ble Tribunal in its judgment dated 3.3.1988 (referred to in para 1(xvi) (b) observed :-

" The applicant was entitled to fixation of his pay on promotion as Relieving Transportation Assistant on 7.11.1951 as follows :-

- 1. Pay in the running cadre Rs.125/-
- 2. 50% pay in lieu of mileage Rs. 62/50
- 3. Total Rs.187.50

Pay to be fixed at Rs.200/- minimum of grade Rs.200-300 in accordance with sub rule A(1) of Rule 2017 of the Railway Establishment Manual.

" The contention of the applicant that he was entitled to any additional 50% of THE resultant pay of Rs.187-50 is not permissible under any rule applicable to the case of the applicant. "

(underlining for emphasis)

Varying components of Running

allowance have been reckoned as pay for the specified purposes. In the prescribed scales different of pay, while 50% of basic pay in the running post was to be treated as the pay element in running allowance for the purpose of fixation of pay in stationary posts, the average running allowance subject to a maximum of 75% of pay was reckoned as pay for retirement purposes and leave salary. The pay component of running allowance has, therefore, to be reckoned only once. The petitioners demand for reckoning 50% of (basic pay plus 75% of basic pay) as pay for fixation in stationary posts is baseless and totally unjustified.

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Assistant Personnel Officer
Mumbai Railway

Rule 1302(5)R-I are applicable in cases of ~~of~~ subscription to P.F. while holding the running post only.

25. That the contents of para 6(12) of the application are denied as the applicants have neither annexed the relevant records nor given the full details in support of their contentions. It is submitted that the respondent accepts the principle of fixation as laid down in the rules of the department as explained in several cases and indicated in the charts already annexed therewith and in the reply filed to the execution application filed by the applicants before Hon'ble High Court of Judicature, Allahabad (Lucknow Bench) Lucknow^{and in the present counter reply}. The contents of para under reply contrary to this are misleading and are denied. It is emphatically asserted that the Judgment of the Hon'ble High Court of Judicature, Allahabad, Lucknow Bench has directed to follow the rules. It is further submitted that the applicants have neither given the full name of Mr. Saran and other full particulars of his office etc. to verify the facts stated in the para and the circumstances under which the alleged payment was made him. However, there is no such Guard by the name of Mr. Paran. It is further submitted that after reconstruction of stolen file, actions ~~has~~ already been taken to recover the excess amount inadvertently paid to a few staff and the recoveries are in process.

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Assistant Personnel Officer
Northern Railway
LUCKNOW

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~~fact, would be taken.~~

However, the amount, if any mistakenly paid to any of the staff, which is subject to recovery under the extent rules cannot make a precedent or rule to be claimed by others as a matter of ~~right~~ ^{right} ~~fact~~.

26. In reply to the contents of para 7 of the application, it is submitted that as explained in the foregoing paras the judgment dated 12.3.1979 read with judgment dated 7.11.1974 of the Hon'ble High Court of Judicature has~~o~~ been complied with fully in respect of the applicants ~~also~~.

That without prejudice to other pleas as already submitted in para 2 of the reply the relief claimed being in the nature of execution is outside the scope of the Administrative Tribunal Act, 1985, and the Hon'ble Tribunal derives its powers from that Act.

That the grounds being illusory, imaginary, misconceived and mis-interpretation of rules are untenable.

27. That the contents of paras 8 to 10 are irrelevant for the decision of the Hon'ble Tribunal.

28. That there is no provision of a joint

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D. R. Lko.

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application in the Administrative Tribunal Act, 1985. Hence the application is liable to be dismissed.

That the particulars of the application fee are not filled in. The Hon'ble Tribunal is requested to peruse the report of the office in regard to the fees.

In view of what has been submitted above, it is respectfully prayed that this Hon'ble Tribunal be pleased to dismiss the application with cost and special cost to the respondent.

Lucknow
Dated 31-8-1989

Edwara
Asst. Personnel Officer
UNION OF INDIA
Lko.

VERIFICATION

I, Shri Pujan P, the Assistant Personnel Officer, Northern Railway, Lucknow, do hereby verify that the contents of paragraphs 1 to 28 are true to information derived from official records whatsoever available and on legal advice which are believed by me to be true.

Lucknow
Dated 31-8-1989

Edwara
Assistant Personnel Officer
N.R. Lucknow
Lko.

ANNEXURE NO. R-1

37

In the Central Administrative Tribunal, Allahabad, sitting at Lucknow

O.A. No. 150 of 1982 (L)

R.K. Dubey & others

vs

Union of India

MISCELLANEOUS PETITION NO. 45 OF 1982

S.K. TIWARI AND OTHERS.

Vs

Union of India and others.

ORDER

This order shall also govern the disposal of Miscellaneous Petition No. 702 of 1982 (S.J. Ahmed and others versus Union of India and others) which, though filed by different Petitioners, involves an identical question of Law.

2. The petitioners in both the writ petitions are employees of the respondents, who were earlier working on running posts and getting running allowance, but were subsequently promoted to stationary posts which do not provide for any running allowance. Their grievance is that while fixing their pay in the stationary post, the running allowance drawn by them has not been taken into consideration. They, therefore, claim a writ of mandamus or ~~or~~ SOME OTHER SUITABLE direction against the respondents.

3. The entire case of the petitioners is based on a Division Bench judgement of Allahabad High Court (Lucknow Bench) in Special Appeal No. 9 of 1975, which was an appeal against the judgement and decree date 7.11.1974 passed by the Single Judge of that High Court in Writ Petition No. 626 of 1971. The said Division Bench was of the view that running allowance drawn by the petitioners is to be traced as part of the pay and the salary of the employees has to be re-fixed in accordance with Rule 2017 of the Railway Establishment Code (Vol. II) read with the decision of the Railway Board. On this finding, a specific

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direction was given to the Railway Administration to re-fix the pay of the petitioners for the period during which they had their officiating appointment in the stationary posts. It appears that the petitioners in these two writ petitions were also working on running post and were subsequently promoted to stationary posts. Their pay was fixed after taking into consideration the running allowance as per the order of the Railway Board in this behalf. It was the decision of the Railway Board that the running allowance should be taken into consideration for purposes of fixation of pay in the stationary appointment. The petitioners are, however, not satisfied with the pay fixation and submit that the running allowance should have been taken into consideration twice while fixing their pay. According to them, the basic pay drawn by them should have been increased by adding 30% of the running allowance as per Rule 2018 of the said code and the total of this amount should be taken as the basis of re-fixation of pay on the stationary posts as per Rule 2027. After so re-fixing the initial pay on amount of 30% of the running allowance should have been again added. The respondents however, do not agree to the aforesaid interpretation and submit that the requisite percentage of the running allowance even under the rules mentioned by the petitioners. is required to be taken

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into consideration only once and not twice and the pay fixation done by them is correct. It is also the case of the respondents that in case, the petitioners are required to be fixed in the manner as they claim, their basic pay would exceed the maximum of the grade which is not permissible. The petitioners base their claim on the above mentioned judgement of Allahabad High Court and a Circular of the Railway Board dated 19.5.1961 (Document No.16).

4. A perusal of the judgement of the Allahabad High Court indicates that the said Court nowhere directed that the running allowance should be taken into consideration first for ascertaining the basic pay for purposes of fixation and, therefore after, for fixing the actual pay on the promoted post. In fact, this point was not raised for consideration of the said Court and was not decided. In the said case, it appears that the running allowance was not at all taken into consideration while fixing the pay of the petitioners in the promoted cadre, as according to the Railway Administration, running allowance could not be treated to be pay within the meaning of the Rule. Though the learned Single Judge who heard the writ petition, agreed with the Railway Administration on this point, the Division Bench was of the view that running allowance has to be treated as pay for purposes of fixation on the higher cadre. The question whether the running allowance should be added first in the pay drawn by the petitioners in the lower cadre and thereafter, in the pay fixed in the higher cadre, did not require consideration of the said Court. Under the circumstances,

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no help can be derived from the aforesaid judgement.

4. During the course of arguments, this court directed both the parties to file chart showing how the pay has been actually fixed and how it should have been ~~re~~ really fixed. According to the Railway Administration they have taken the substantive pay of the running post held by the petitioners as the basis for computing the pay for purposes of fixation in the higher grade and have added one increment., in the lower grade and 30% of the pay in lieu of running allowance to make the pay for purposes of fixation in the new grade. The pay so reached, has to be taken to be the basis for re-fixing the new pay on the higher cadre. They have cited the example of the petitioner S.K.Tiwari, who was working as a Driver in the pay-scale of Rs.330-560 and was drawing Rs.515/- as pay when he was promoted to the stationery post. His substantive pay of Rs.515/- was increased by adding Rs.15/- in the lower grade and, thereafter, a further sum of Rs.155/- being the 30% of pay in lieu of running allowance was also added so as to make a total of Rs.685/- for purposes of re-fixation in the higher grade of Rs.550/- 700/- Since the nearest point was Rs.700/-, the said Shri.Tiwari was fixed at Rs.700/- in the higher grade. According to the learned counsel for the petitioners, though the fixation of Rs.685/- as the pay for purposes of re-fixation of Rs.700/- in the higher grade was correct, further sum of Rs.155/- should have been added to the re-fixed pay as provided under Rule, 2027 read with Circular dated 19.5.1961 (Document No.16). The controversy, therefore, is limited to examining whether

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Rule 2027 read with the Circular dated 19.5.1961, required the respondents to add the percentage of running allowance after the pay had been fixed on the promoted post ?

5. Rule 2027 of the Railway Establishment Code, on which reliance has been placed, read as under :-

"2027 (F.R.31) (1) subject to the provisions of Rules 2026 and 2029 (F.R. 30 and 35) a Railway servant who is appointed to officiate in a post will draw the presumptive pay of that post.

3. On an enhancement in the substantive pay as a result of increment or otherwise, the pay of such Railway servant shall be re-fixed under Sub-Rule (i) from the date of such enhancement as if he was appointed to officiate in that post on that date where such re-fixation is to his advantage.

Provided that the provisions of Rule 2018-B (F.R- 22) shall not be applicable in the matter of re-fixation of pay under sub-rule (2) of this rule."

According to the learned counsel, sub-rule (2) of this Rule deals with enhancement of substantive pay as a result of increment or otherwise. According to him, the work "otherwise" would include the decision of the Railway Board which required enhancing the substantive pay of the petitioners by adding 30% of the running allowance. Even if this interpretation of the petitioners is to be accepted, there would be no justification for increasing the pay in the higher grade after its re-fixation by adding the

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Asstt. Personnel Officer
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running allowance. A plain reading of this Rule indicates that after the substantive pay of the petitioners had been fixed by increasing it, their pay in the higher cadre shall be re-fixed under sub-rule (1). Sub-rule(1) only authorises the petitioners to draw the presumptive pay of the post. Presumptive pay of a post itself is defined in Rule 2003 (2@) and excludes special pay. In fact, the presumptive pay remains the pay of posts to which they would be entitled if they held the post substantively. Admittedly, the stationery posts do not carry with them running allowance and, hence, the pay on the stationery post would not include the running allowance either within the definition of "Pay or "presumptive pay". Clearly, therefore, the argument of the learned counsel for the petitioners based on Rule 2027 cannot be accepted.

6. The learned counsel for the petitioners, however, relied upon the Railway Board's Circular dated 19/5/1961 (Document No.16) to clarify the manner of pay fixation under Rule 2027. Para 2 of the said Circular on which reliance has been placed by the petitioners, reads as under :-

2. The question has been considered and the President is pleased to decide that the pay of such running staff utilised in stationery appointments is fixed under the normal rules in accordance with para 1 (b) (ii) of Railway Board's letter no. (R)49/RS/3 dated 1.7.1949,

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 Asstt. Personnel Officer
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should also be re-fixed under Clause (2) of rule 2027 (F.I.R.31) II 50% of the enhanced substantive pay representing the running allowance being treated as pay for the purpose of such re-fixation."

A plain reading of this para indicates that it does not state that running allowance should be taken into consideration twice while fixing the pay. Indeed, the last part of this para i.e., 50% of the enhanced substantive pay representing the running allowance being treated as pay for the purposes of such re-fixation". indicates that the running allowance is taken into consideration for purposes of re-fixation and not after re-fixation. Apparently, the respondents have complied with this part of the Circular by treating the running allowance as pay for purposes of re-fixation. Clearly, therefore, the grievance of the petitioners is without and legal justification and hence does not deserve to be accepted.

7. The petition, consequently, fails and is dismissed. No order as to costs. The outstanding amount of security deposit, if any shall be refunded to the petitioners.

Sd/-
GULAB GUPTA
JUDGE
24.11.1985.

[Signature]
Asst. Personnel Officer
D. B. Iko.

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आदेश संख्या: इस संज्ञातय (रेलवे बोर्ड) के पत्र संख्या-ई(पी एण्ड ए)II/79

आदेश संख्या-सभी दिल्ली-खिाफ. 20.11.82 की परिशिष्टि :-

.....

विषय- रेलिंग कर्मचारियों के रेलिंग संवर्ध से स्थिर संवर्ध में स्वाभाविकता होने पर इस संवर्ध में निर्धारण इतकाल तक उच्च न्यायालय की लखनऊ पीठ में स्थित रेलिंग और रेट याचिका भारत के उच्चतम न्यायालय में याचिका के लिए विशेष सुनने के पत्रों निर्णय ।

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कृपया उपरोक्त विषय पर आका 3.7.82 का पत्र संख्या 14एत के ओ/एस पी एल/अपील/संख्या 4 सीमित रेल(पी)/उपरोक्त यह उल्लेख किया गया है कि जब रेलिंग कर्मचारियों को किसी स्थिर संवर्ध में लेना त किया जाता है तब रेलिंग पदों पर रेलिंग कर्मचारियों का वेतन तथा भीत हुरी - वेतन जो कि अधिकतम वेतन का 75% और इसके बाद इस प्रकार में प्राधिकृत वेतन के 50% होगा लिया जाता है ।

2. इस प्रयोजन के लिए स्थिति यह है कि उस समय वर्तमान नियमों के अनुसार निर्धारित वेतनमान में वेतन को मूल वेतन तथा उतका 50 प्रतिशत भाग जमा करके मूल वेतनमान/जाता है जबकि रेलिंग कर्मचारियों के मूल वेतन के 75 प्रतिशत की मज्जा ऊच प्रयोजनों के लिए की जाती थी । इसे देखते हुए कृपया स्थिति को ठीक करें तथा संबंधित कर्मचारियों का वेतन रेलिंग पदों पर आवेदकों की नियुक्ति के समय तात्कालिक / आदेशों को देखते हुए पुनर्निर्धारित करें । इस प्रकार वे निर्धारित वेतन को वि. संवर्ध मुलेखा अधिकारी से सत्यापित कराते तथा उनकी प्रवर्धन: टिप्पणी इस संज्ञातय को भेजें ।

3. यदि किसी प्रकार की संज्ञा हो तो संबंधित मंडल कार्मिक अधिकारी को संमत ठागनात के समय सातवीत के लिए भेजें । इस सम्बन्ध में उत्तर कृपया प्रतिश्रि भेजें ।

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E. B. Lko
ASST. PERSONEL OFF.
E. B. Lko

In the Central Administrative Tribunal, Allahabad 45

Sitting at Lucknow
O.A. No. 150 of 1980

R. K. Dubey & others

vs

Union of India

ANNEXURE NO. R-3

A.F.R. No. 57-86

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW BENCH, LUCKNOW.

(Civil) Application No. 460 of 1980

Wasi Haider & 9 others..... Applicants

Versus

Sri M. Mansed, and others..... Opp. Parties

Counsel for Petitioner :- Sri L.P. Shukla

Counsel for Opp-Party :- Sri Robin Mitre

APPLICATION UNDER CONTEMPT OF COURT ACT

Lucknow dated :- 16.5.1985

Hon'ble K. Path, J.

This is an application under the Contempt of Courts Act. The prayer is to punish the opposite parties, who are officers of the Northern Railway, on the ground that they have disobeyed the judgment dated 12.3.79 of a Division Bench of this Court.

The circumstances in which the application has been filed may be stated briefly. Writ Petitions No. 626 of 1971 & 443 of 1970 and 1046 of 1970 were filed by Sardar Husain (since dead and now represented by his heirs), Bhagwati Prasad Pandey and Ram Kumar Dubey respectively. They were decided by a common judgment on 7.11.74 by an Hon'ble Single Judge, Hon'ble Mr. Justice O.P. Trivedi.

Sardar Husain, Bhagwati Prasad Pandey and Ram Kumar Dubey were employees of the Railway in the Running Cadre

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and were transferred to the Stationary Cadre respectively on 17.3.56, 25.3.55 and 11.7.59. Their grievance concerned the fixation of their salary in the Stationary Cadre and consequently benefits thereof. At pages 5 and 6 of the judgment of the Hon'ble Single Judge the substance of the dispute was described as follows:-

"On these facts and allegations, the 3 petitioners prayed for a mandamus to direct the railway authorities to re-fix their officiating pay in Stationary Cadre according to Rules applicable to them and to pay such arrears of salary as may upon such re-fixation be found due.

They further prayed that the opposite parties may be directed to grant benefit consequential to the re-fixation of their salary according to the Rules in the matter of provident fund, gratuity, leave and average pay and pension etc."

The substance of the decision of the Hon'ble Single Judge appearing at pages 62, 63 and 65 of the judgment is that officiating pay of the petitioner in officiating appointments to Stationary posts was not fixed according to correct Rule, that consequent to the re-fixation of their pay for the period of their officiating appointments in Stationary posts and substantive appointment on confirmation, they were entitled to arrears of pay, if found due, and that their pension and gratuity ought to be

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calculated in that light. One of the findings as recorded was that running allowance which the petitioners used to draw on their running posts was not part of pay for the fixation of their salary in the stationary post. It was held (at page 63) that the claims of arrears of salary would ordinarily be barred by law of limitation except for the period of 3 years next before filing of those writ petitions. A hope in the matter of time barred arrears was, however, expressed at page 65 in the following words:-

"In these circumstances the weight of equities appears to tilt the balance heavily in favour of these petitioners and I can only express the hope that Union of India on the balance of equities of these cases shall be able to see its way to payment of arrears of salary to the petitioners for such period as it may consider to be just in spite of the bar of the law of the limitation."

The matter figured before a Division Bench of this Court consisting of Hon^{ble} U.C. Srivastava and Hon^{ble} K.N. Goyal, JJ. in the form of 3 special appeals filed by the Union of India in the 3 petitioners and 2 special appeals filed by Bhagwati Prasad Pandey and Ram Kumar Dubey. In addition thereto, the writ petitions filed in the year 1975 by the applicants, other than the 3 petitioners referred to above, also came up for hearing before that Division Bench. Judgment of the Division Bench was rendered on 12.3.1979. The matter in all the appeals and writ petitions under

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consideration of the Division Bench was stated at page 9 of the copy of judgment as follows:-

" The main point which arises for consideration in the special appeals and writ petitions is whether pay includes the running allowance in the case of running staff and to what extent they are entitled to the same in case they are transferred or promoted to a stationary post."

At page 11, the Division Bench held that running allowance is computed towards average pay and that it could not be denied that it is a part of the same. At page 12 the following view was expressed:-

" The pay of such employees of running cadre is thus to be calculated in accordance with the relevant rules, a reference to which will be made hereinafter, and is not mere allowance payable only while holding a running post, as has been held by the learned Single Judge."

Dealing with the question of the extent to which running allowance may be treated as pay for fixation of pay in the stationary posts, the Court referred to Rules 2017, 2018B and 2027(2) of the Indian Railway Establishment Code Volume-II para 11 page 9 of Indian Railway Establishment Manual, letters dated 1.7.1949, 1.4.1958, 16.8.61 and 17.12.63 of the Railway Board and a decision of the President of India published in Gazette dated 16.8.61 and held at page 21 that the "running ^{staff} is entitled to 50 per cent of the pay which is to be calculated in accordance with the Rules."

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At pages 21 and 22, the Division Bench observed that the President's decision published in Gazette dated 16.8.61 also had not been taken into consideration by the railway administration and it was observed that running allowance was to be treated as part of pay and the salary of the petitioner was to be re-fixed in accordance with Rule 2027 alongwith Railway Board's letters of 1961 and 1963 referred to above. The penultimate directions of the 1963 referred to above. The penultimate directions of the Division Bench at page 22 of the judgment are as follows:-

"All the above five special appeals are thus partly allowed. The Railway Administration is directed to re-fix the pay of Sardar Husain deceased, Bhagwati Prasad Pandey and Ram Kumar Dubey for the period during which they held their officiating appointment in the stationary posts according to the relevant rules; to re-fix the pay of Sardar Husain, Bhagwati Prasad Pandey and Ram Kumar Dubey in accordance with Rule 2017, 2018 and 2027 read with the relevant circulars and Presidents' decisions respectively applicable to them, as has been indicated by us earlier after taking into consideration that running allowance is part of pay, during the period they held officiating appointment in the stationary posts and to take prompt steps for determination of their pensionary benefits during the period they officiated in the stationary post and the period

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they worked on that post in a substantive capacity according to the relevant rules. The order passed by the learned Single Judge in other respects is being maintained. The re-fixation shall be made within three months from today. No order as to costs.

So far as other writ petitions are concerned they are hereby allowed. Let a Mandamus to the opposite parties to re-fix the pay of petitioners in accordance with our observations above, be issued. No order as to costs."

The following position appears to have emerged

in view of the above decisions:-

1. 50 per cent of the running allowance was to be created towards pay for the purposes of fixing the pay of the applicants in stationary posts.
2. The pay was to be fixed in accordance with Rules 2017, 2018B and 2027 read with circulars of 1961 and 1963 and the President's decision published in Gazette dated 16.8.61.
3. In consequence of such re-fixation of pay the pensionary benefits of the petitioners were to be determined.
4. The order passed by the learned Single Judge in other respects was maintained which included the decision that the petitioners were entitled to the arrears only for the period of 3 years before the institution of the respective writ petitions.

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5. The re-fixation was to be made within 3 months from 12-3-79.

Since the opposite parties did not comply with the decision of the Court within the stipulated 3 months' period, the applicants individually as well as collectively made representations to the opposite parties to do the needful; the last representation being dated 16.2.80, Annexure-1 to this application. This application was filed on 11.3.80 and it was said in para 7 of the application that the opposite parties had deliberately and intentionally flouted the judgment and order passed by this Court dated 12.3.1979 and had disobeyed the mandamus. It was prayed that the opposite parties be punished for contempt of court.

In reply to the show cause notice, opposite party No. 5 Sri K.K. Gupta, the Senior Divisional Personnel Officer, Northern Railway, Lucknow filed an affidavit on 10.11.80. It was said that after obtaining the certified copies of the judgment, the Railway Board took a decision on 24.7.79 not to agitate the matter any further in the Supreme Court and to implement this Court's order dated 12.3.79. Thereafter action for implementation of the judgment was initiated by the office of the Divisional Railway Manager, Northern Railway Lucknow. It was said that since re-fixation was to be done with retrospective effect, old record had to be searched out and circulators of the Railway Board were to be gathered. It was further added that the implementa-

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tion of the judgment required correct interpretation of the relevant paragraphs of the Railway Establishment Code, Volume-II, circulars issued by the Railway Board from time to time and the President's order already referred to in the judgment and for this purpose the matter was referred to the Quartermaster's office in January 1980. Before the matter could be finalised, this application was filed. However, subsequently payments of certain amounts were offered to the applicants by Cheques prepared in July and August 1980 whose details are given in para 22 of the affidavit of opposite party No. 5. It was said in para 24 that in-fixation statements had been prepared by the office of the D.R.M. Lucknow in accordance with the judgment, dated 12.3.79 of this Court. It was then said that the officers and the staff concerned had no intention at any time to flout the judgment of the Court and that the dependent expressed apology for the delay in making the payment of the petitioners/appellants which was caused on account of indicated reasons and administrative difficulties.

A rejoinder affidavit was filed by applicant No. 2 Bhagwati Prasad Pandey and it was said that despite the decision of the Railway Board on 24.7.79 not to agitate the matter any further in the Supreme Court, yet the matter was kept pending without any attempt to implement the judgment. It was said that implementation was deliberately avoided on account of callous and indifferent attitude of opposite parties and even after expiry of the stipulated

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period of 3 months no further time was sought from the Court. The Cheques for payment to the applicants were stated to have been hurriedly prepared in disregard of the judgment of this Court in order to sidetrack the issue and avoid contempt, and not in accordance with the judgment.

This Court directed the applicants to submit a chart showing the mode of calculations of the arrears of the salary which accrued to them. Thereafter Bhagwati Prasad Pandey, Lakshman Prasad Agnihotri, Jagdish Prasad, S.L. Srivastava, Ram Chandra Khuja, Kalika Prasad, S.P. Srivastava filed charts of calculation of their salary etc. individually with their separate affidavits on different dates upto 20.1.81. Denying those calculations, Charts of calculation prepared by the opposite parties were filed alongwith the affidavit of Ejaz Ahmad, the Chief Law Assistant in the office of D.P.M., Northern Railway, Lucknow on 26th November, 1982. The accuracy of these charts was challenged on behalf of the applicants by affidavit of Bhagwati Prasad Pandey filed on 16.12.82.

The magnitude of controversy between the parties will appear from their respective charts.

According to para 22 of the counter affidavit dated 15.9.82 of opposite party No. 5, the amounts payable and tendered by cheques to the various applicants are as follows:-

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1. B.P. Pandey - Rs. 5499=11
2. Ram Chandra Anuja □ 7555=87
3. S.P. Srivastava □ 4931=05
4. K. Pandey □ 7404=30
5. R.K. Dubey □ 7048=62
6. Wasil Haider □ 1128=40
7. Smt. Vidyawati □ 504=00
8. Jagdish Prasad □ 5229=55

The charts submitted by the applicants do not state the aggregate of the amounts payable to any of them. Only monthly difference between the amount allegedly payable and actually paid has been set out. Two important features are that the monthly difference so worked out includes several periods prior to 3 year-period preceding the date of presentation of the respective writ petitions, and the amount which could be calculated from the monthly difference is several times more than the amounts of cheques tendered by the opposite parties and referred to above. Three of the writ petitions were filed in 1970; the rest of them were filed in 1975. The monthly differences relate back differently in the individual Charts of the petitioners to the years 1951, 1955, 1958, 1959 so on and so forth.

The charts submitted by the opposite parties on 26.11.82 also do not contain the aggregate of the amounts either initially due or ultimately payable in view of the admissible period as held by the Court. The charts only contain determination of monthly rate of pay and that too is

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described as "subject to verification from accounts."

A note appended at the bottom of most of the charts says that the difference of dearness allowance, city allowance, House allowance, if any, would be payable as per scales from time to time. An important point set out in each chart is that the monthly rate of pay on fixation/refixation cannot exceed the maximum of the grade in which the pay is fixed.

In the face of this gross disparity between claims and denials and involvement of extensive calculations, the learned counsel for both the parties agreed to the appointment of M/S Bhargava and Co, Chartered Accountants, to function as Accounts Commissioner in the proceedings dated 6.5.85 whereupon the necessary order was passed whose relevant extract is as follows:-

"...Preparation of these accounts is a technical matter which should in the first instance be better handled by an appropriate Chartered Accountant. As agreed by the learned counsel for the parties, M/S Bhargava & Co. Chartered Accountants of Lucknow, are appointed as Commissioner of Accounts by this Court for the purpose indicated above. They will go through the relevant orders of this Court, examine the two sets of accounts submitted by the contending parties and work out the amount which may be payable to the three applicants named above. The parties shall make available the necessary records and material to the said Chartered Accountants as required by them. The Chartered Accountants will submit report to this

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Court within two months. The amount that may be ordered to be paid to the Chartered Accountants as their fees, shall be paid by the opposite parties.

The amounts worked out by the Chartered Accountants are as follows:-

		Period
1. Wasil Haider	- Rs. 2,15,354=00	From 17.3.56 to 4.6.74
2. Bhagwati Prasad Pandey	- " 3,50,088=00	From 25.3.55 to 30.6.74
3. R.K. Dubey	- " 4,12,669=00	From 11.7.59 to 30.4.82
4. Kalika Prasad	- " 2,61,398=00	From 12.4.59 to 31.12.77
5. Sankatha Prasad Srivastava	- " 3,48,297=00	From 18.7.69 to 31.7.81
6. Ram Chandra Anuja	- " 3,89,662=00	From 4.6.55 to 16.10.85
7. S.L. Srivastava	- " 1,78,728=00	From 10.2.58 to 23.8.78
8. Smt. Vidyawati	- " 2,60,530=00	From 9.2.56 to 15.10.75
9. Lakshman Prasad Agnihotri	- " 80,192=00	From 31.1.62 to 29.5.69
10. Jagdish Prasad	- " 3,75,112=00	From 30.9.57 to 30.11.77

These amounts were worked out by the Chartered Accountants after both parties had appeared before them and had placed material of their choice. The applicants rely upon the report while the opposite parties have filed objections with affidavit.

Sri Lalji Singh Advocate for the opposite party

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and Sri F.K. Khare Advocate for the applicants have pressed for their respective points. Sri Lalji Srivastava raised the following points:-

(1) The amounts worked out by Chartered Accountants include a substantial period beyond that fixed by the Court in its judgment.

(2) The fixation of pay in various posts is at amounts in excess of the maximum of the scale of pay of the post held. Pay could not be fixed at an amount which is more than that maximum of the scale.

(3) The amounts actually paid by the opposite parties to the applicants from time to time has not been set off in the calculation.

(4) These proceedings are for contempt of court and all that has to be seen is whether the alleged non-implementation of the Court's order is wilful and deliberate or bonafide. There is a bonafide controversy over the interpretation of this Court's judgment and over that of various Rules and letters of the Railway Board and the decision of the President on the basis of which the fixation of pay was directed to be made. The opposite parties have made bonafide efforts to carry out the mandate of the Court by fixing the pay and determining the amount. Reliance is placed upon a judgment dated 24.11.85 of the Madhya Pradesh High Court in

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Miscellaneous Petition No. 45 of 1982, S.K.

Tewari and others Versus Union of India and

others, copy Annexure I to the Opposite party's objection to the report of the Chartered Accountant. There the judgment of this Court under implementation came up for consideration and interpretation was placed on various Rules, which according to the opposite parties is the correct interpretation.

- (5) This Court while dealing the matter of contempt of Court would be reluctant to make an interpretation of the material mentioned in (4), because that would be the function of a Division Bench of this Court as the judgment under implementation was rendered by a Division Bench. If the amount fixed by the opposite parties is incorrect, the remedy of the applicants is to file another writ petition.

The contention of the learned counsel for the applicants in reply pointwise is:-

- (1) There is no question of running of any period of limitation so long as correct fixation of pay is not made. The claim for correct pay would accrue only when it is actually fixed which is yet to be done. Reliance is placed on the case of Maimona Khatoun Versus State of U.P. (1980 S.C. 1773):

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(2) The judgment of this Court does not say that pay must not be fixed in excess of the maximum of the scale of the concerned post. The pay, in accordance with the judgment, must be fixed at an amount which may be arrived at by complying with the direction of the Court, and if necessary the opposite parties must create posts for the purpose.

(3) It was the duty of the opposite parties to indicate to the Chartered Accountants the amounts already paid by them to the applicants from time to time.

(4) The proceedings for contempt of court are for enforcement of the Court's judgment, and since the opposite parties agreed to the appointment of Chartered Accountants vide orders dated 6.5.85 and further participated in the deliberation before the Chartered Accountants, it is not open to them to say that the amounts payable cannot be determined in these proceedings. The opposite parties did not implement the mandate of this Court within the time fixed, nor sought extension of time. Instead they want to re-open the whole case which cannot be done now. There is deliberate non-compliance of the Court's order.

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(5) This Court is competent to interpret the judgment and the material referred to therein to do justice to the applicants who have already suffered over a very long period of time.

Learned counsel for the opposite parties emphasises that in the face of specific decision of this Court inter partes that arrears would be recoverable only for the period of 3 years immediately preceding the date of presentation of the writ petition, there is no question of accrual of any right, on re-fixation of pay in respect of the period beyond the said time, that there is no question of creating posts and that the mere agreement to appoint the Chartered Accountants as Accounts Commissioner does not oblige the opposite parties to accept the report. It is urged that there is bonafide dispute over interpretation of this Court's judgment and the various Rules and letters, hence no case of contempt of Court is made out. He has relied upon the cases of Manohar Lal Versus Anan Shamber Tandon, 1960 Allahabad 231 (D.B.) and V.K. Kar Versus Chief Justice of Orissa, 1961 S.C. 1367.

On a consideration of all the matters it must be held that there has been a delay on the part of the opposite parties in implementation of this Court's judgment because the only explanation given for non-implementation within 3 months is that the opposite parties were examining whether an appeal should be filed before the Supreme Court. It was ultimately decided by the Railway Board on 24.7.79 that appeal need not be filed and the judgment be implemented. This

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certainly constitutes a breach of this Court's mandate, but the breach seems to be technical rather than real. It is noticeable that the applicants themselves did not work out the amount ultimately payable to them although they set out the monthly difference. There is a bonafide controversy over the interpretation of the various Rules and letters of the Railway Board and President, as also the applicability of some of them to the case of individual applicants. The Division Bench having said that running allowance is to be taken into consideration for the purposes of fixing pay in stationary post, only indicated the material on which fixation/refixation of pay and determination of arrears of salary has to be done; the Court did not set out an interpretation of all the applicable material. It cannot be said that the material must be interpreted only in the manner urged by the applicants and not in the manner contended for by the opposite parties; the interpretation is open, since the Division Bench did not find it necessary to interpret them at that stage.

But it would be too much to contend that in order to obtain the true interpretation of the material, the applicants must file fresh writ petition. The cycle may go on indefinitely, if that was to be done. The decisions arise out of the provisions of Article 226 of the Constitution, and although the provisions of the Code of Civil Procedure may not apply in view of Section 141 C.P.C., the powers of this Court to pass any order for any purpose under

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Article 226 is unlimited. Principles of fairness and justice which inform the provisions of the C.P.C. may be adopted except in so far as they may be contrary to the provisions of the Constitution or Rules of Court. One of the principles is that a Decree or Order may be executed by the Court which passed it or by the Court to which it is transferred for the purpose. Since the judgment sought to be implemented was passed by a Division Bench of this Court, motion for its implementation must be made to a Division Bench.

Certain legal angles, as they appear to me, may be indicated. Under Rule 2(v)(c) of Chapter V of the Rules of Court, a judge sitting singly may not decide an application (other than one for interim relief) to which Chapter XXII applied, viz., an application for a direction or an order under Article 226 (other than of an writ in the nature of Habeas Corpus). In the matter of an order of costs, the Court may transmit the order to the District Court for execution under Rule 11 of Chapter XXII, but there is no corresponding provision for transfer of cases for enforcement of other relief awarded by this Court. Hence, a motion for enforcement of an order, passed in a writ petition under Article 226, may be made to the Court itself in view of the wide scope of Article 226.

According to Rule 13 of Chapter V of the Rules of Court, an application to the same effect or with the same object as a previous application on which

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a Bench had passed any order, shall ordinarily be heard by the same Bench. Coupled with this, the general principle that a Court which had passed a decree, may execute the same, would show that so far as enforcement of a judgment of this Court, passed by a Division Bench, is concerned, the motion must be made to the Division Bench.

The English Law on the method of enforcement of an uncomplied Mandamus is stated in Halsbury's Laws of England, Second Edition, Volume 9, Para 1359 (at Page 798) as follows:-

"If a mandamus be not complied with, the Court or a judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the mandamus has been obtained, or some other person appointed by the Court or judge, at the cost of the disobedient party, and, upon the act being done, the expense incurred may be ascertained in such manner as the Court or a judge may direct, and execution may issue for the amount so ascertained and costs."

In the Fourth Edition of Halsbury's Laws of England, Volume 11 the law is stated in para 1568 (at Page 822) as follows:-

"Disobedience to an order of certiorari, mandamus or prohibition is a contempt of court and

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is punishable by committal for contempt.

In case of disobedience to an order of mandamus, a court may also direct that the act required to be done may be done, so far as practicable, by the party by whom the order was obtained or some other persons appointed by the court, and the costs recovered from the disobedient party.

It is clear, therefore, that the Court can direct an Accounts Commissioner to perform the function of fixation/refixation of the Pay of the petitioner and determine the arrears payable to them on the basis of the mandamus granted by this Court. Further, the expense incurred in this regard may also be required to be paid by the disobedient party. I consider this to be a reasonable and fair course to be adopted in cases like this.

The proceeding to punish for contempt of Court, under the Contempt of Court Act or under Article 215 of the Constitution, strictly speaking, is not a proceeding in execution of judgment, decree or order; it is only a proceeding to impose punishment within specified limits, in the hope that under sanction of punishment the delinquent party would carry out the mandate. So far as the actual performance of the mandate is concerned, the provisions of the Contempt of Court Act or Article 215 of the Constitution are of no assistance. The High Court's powers in this regard must ultimately be exercised under Article

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226 in a proper forum; and in exercise of these powers, this Court may pass such orders as it may find necessary, fair, just, and effective; the hands of the Court are not tied down by the provisions of Code of Civil Procedure.

The position which emerged from the judgment, under implementation, has been set out in earlier part of this judgment. It is clear enough that the applicants were held to be entitled to arrears of salary etc. only for a period of three years prior to the date of presentation of the writ petition. It is also clear that although the Court directed that the pay was to be fixed in accordance with Rules 2017, 2018B, and 2027, read with Circulars of 1961 and 1963, and the President's decisions published in Gazette dated 16.8.'61, the Court did not set out its interpretation of those provisions, to provide the guidelines or fixation/refixation of pay and computation of arrears. The Court did not say that the pay fixed/refixed of the applicants could exceed the maximum of the scale of pay for the particular stationary post held by the applicants. The Court indicated, inter alia, that fixation and re-fixation was to be done in accordance with Rules. It would be inherent that no fixation could be made beyond the Rules and perhaps there is no Rule that Fixation of pay can be made at an amount in excess of the maximum of the pay scale of the post held.

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The Chartered Accountants have clearly gone wrong at least in these two respects; and if they entertained any doubt about the true position in this regard, they would have been better advised to seek the guidance of this Court rather than ignore the directions contained in the judgment for which they were appointed as Commissioner of Accounts. I would not like to say anything more on the merits of the amount payable to each of the applicant, because, for reasons already recorded, that has got to be done by a Division Bench of the Court before which applicants may file applications in the nature of execution petitions for enforcement and implementation of this Court's order. As and when such application is filed, the interpretation of the Rules, the letters and the President's orders, as also the calculations made by the applicants, by the opposite parties, and by the Chartered Accountants, would come up for scrutiny. Within the limited scope of proceedings for Contempt of Court in the present application, no further action is called for, and it does not appear just to impose a punishment merely for the delay with which the opposite parties proceeded to work out the amount payable to the applicants. It is rather unfortunate that despite passage of several years, it has not yet been possible to fix the exact amount and the consequential pensionary benefits admissible to the applicants. The calculations made by the applicants, by the opposite parties, and by the Chartered Accountants, would come up for scrutiny. Within the limited scope of proceedings for Contempt of Court in the present application, no further action is called for, and it does not appear just to impose a punishment merely for the delay with which the opposite parties proceeded to work out the amount payable to the applicants. It is rather unfortunate that despite passage of several years, it has not yet been possible to fix the exact amount and the consequential pensionary benefits admissible to the applicants.

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I considered the question whether I myself may refer the matter to a Larger Bench, but I notice that that would not serve any useful purpose because so far as the present application is concerned, even a Bench can only consider the question of the opposite parties' committing a contempt of Court and no more. The motion for ~~the~~ realisation of the amount in the nature of execution of this Court's order is of a different class and would have to be raised before and considered by a different forum in the light of altogether different principles of law. I may still hope that if a proper petition in the nature of an application for execution for implementation of the Court's order is made before a Bench, it may be possible to settle the entire controversy at a very early date.

Before I part with this case, the bills of Chartered Accountants must be settled. They have claimed the following fees:-

In the case of Wasi Haider	-	Rs. 5,778/-
" " " E.P. Pandey	-	Rs. 8,752/-
" " " R.K. Dubey	-	Rs. 10,317/-
In the case of S.L. Srivastava	-	Rs. 4,468/-
" " " Smt. Vidyawati	-	Rs. 6,513/-
" " " L.P. Agnihotri	-	Rs. 2,005/-
" " " K.P. Pandey	-	Rs. 6,534/-
" " " Jaggish Prasad	-	Rs. 9,377/-
" " " R.C. Rjuja	-	Rs. 9,741/-
" " " S.P. Srivastava	-	Rs. 8,706/-

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These claims are made on the basis of 2% percent of the amount determined by them. As already stated, the amounts calculated by the Chartered Accountants have been challenged by the opposite parties to be greatly exaggerated and excessive. The contention of learned counsel for the opposite parties is that the amount really admissible as payable would be much less and consequently the fees claimed are too high and deserve to be reduced. The contention of learned counsel for opposite parties in this regard cannot be said to be without substance for reasons already recorded. Having regard to the nature of the work. I direct the Union of India, through opposite parties nos. 1 & 2, to pay the sums of Rs. 1,000/-, 1,500/-, 2,000/-, 750/-, 1,000/-, 500/-, 1,000/-, 2,000/-, 2,000/- and 1,500/- respectively in the cases of Sarvri Wasi Haider, B.P. Pandey, R.K. Dubey, S.L. Srivastava, Smt. Vidyawati, L.P. Agnihotri, K.P. Pandey, Jagdish Prasad, R.C. Nijja and S.P. Srivastava.

With the above observations, this petition is dismissed. Parties shall bear their costs. The Union of India, through the opposite parties nos. 1 and 2, shall pay the fees of the Chartered Accountants as held above within two months from today.

Sd/- K. Nath.

16-5-1986.

A.F.R No. 57-86

Typed By:- Rajiv Anand/-

Examined BY:-

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In Central Administrative Tribunal, Lucknow

Writ Petition No. .

CAT-0A-150/88(LL)

R.K. Dube	...	Petitioner
	Vs	
Union of India & Others	...	Opp. Parties

AS regards the case of R.K. Dube petitioner No. 1.

1. That he was working as Guard Grade B on 10.7.59 in scale 150-5-240 and was drawing Rs. 170/- as substantive pay.
2. That petitioner was promoted to officiate as R.T.A in grade 250-10-380 from 11.7.59 on Rs. 255/- as R.T.A.
3. That rule for Medically Unfit was applied in calculating the pay on the stationery post by adding Rs. 85/- i.e. 50 of the grade pay of guard.
4. That his pay on the running post was not correctly calculated. 75% as element of pay should have been added in guard grade pay.
5. That while fixing his pay in the stationary post 50% pay of the running post pay was not added as per rule and judgement at page 19.

....2/-

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6. That 50% of the enhanced emolument of the stationary post pay was not calculated and added from 22.1.58.

7. That chart ^{of} arrears and amount drawn during the period was submitted at the time of filing writ.

8. Formula for fixation of salary on the running post and then on stationary post is the same as other petitioners.

Lucknow


(P. K. Khare)

Dated: 18.9.89

Counsel for the petitioner

Formula for fixation and refixation of pay and allowances is the same as in other petitions No. 2 and 3.

12254

Sl. No.	PERIOD	P A Y	Pay+Innote-ment	Monthly Pay	M.D.	Total Amount	D.A. & Relief		Total Amount	Rate	M.D.	Total Amount	Rate	M.D.	Total Amount	C. A. Total Amount	Remarks
							From	To									
(1)	1.1.73-1.1.73	1300/-	1300/-	1300/-	12	15600/-	1.8.73	30.9.73	2.00	54/-	108/-	15%	12	2340/-	50/-	600/-	HRA 15% CCA 4.5% max.50/-
	1.1.74-31.12.74	1300/-+50/-	1350/-	1350/-	12	16200/-	1.10.73	31.12.73	3.00	81/-	243/-	15%	12	2430/-	50/-	600/-	
							1.1.74	31.1.74	1.00	81/-	81/-	15%					
							1.2.74	31.3.74	2.00	135/-	270/-						
							1.4.74	30.6.74	3.00	162/-	486/-						
							1.7.74	31.8.74	2.00	216/-	432/-						
							1.9.74	31.12.74	4.00	243/-	972/-						
							1.11.74	30.11.74	1.00	40/-	40/-						
							1.12.74	31.12.74	1.00	60/-	60/-						
							ADA										
17.	1.1.75-31.12.75	1350/-+50/-	1400/-	1400/-	12	16800/-	1.1.75	31.12.75	12.00	243/-	2916/-	15%	12	2520/-	50/-	600/-	
							ADA										
							1.1.75	28.2.75	2.00	60/-	120/-						
							1.3.75	31.12.75	10.00	100/-	1000/-						
18.	1.1.76-31.12.76	1400/-+50/-	1450/-	1450/-	12	17400/-	1.1.76	31.12.76	12.00	243/-	2916/-	15%	12	2610/-	50/-	600/-	
							ADA										
							1.1.76	30.6.76	6.00	100/-	600/-						
							1.7.76	31.12.76	6.00	60/-	360/-						
19.	1.1.77-31.12.77	1450/-+50/-	1500/-	1500/-	12	18000/-	1.1.77	31.12.77	12.00	243/-	2916/-	15%	12	2700/-	50/-	600/-	
							ADA										
							1.1.77	31.8.77	8.00	60/-	480/-						
							1.9.77	31.12.77	4.00	100/-	400/-						
20.	1.1.78-31.12.78	1500/-+50/-	1550/-	1550/-	12	18600/-	1.1.78	31.12.78	12.00	243/-	2916/-	15%	12	2790/-	50/-	600/-	
							ADA										
							1.1.78	30.11.78	11.00	120/-	1320/-						
							1.12.78	31.12.78	1.00	127/-	127/-						
21.	1.1.79-31.12.79	1550/-+50/-	1600/-	1600/-	12	19200/-	1.1.79	31.12.79	12.00	243/-	2916/-	15%	12	2880/-	50/-	600/-	
							ADA										
							1.1.79	31.7.79	7.00	127/-	899/-						
							1.8.79	31.10.79	3.00	187/-	561/-						
							1.11.79	31.12.79	2.00	217/-	434/-						
							ADA										
							265069/-										
							35394/-										
							32600/-										
							5350/-										

99

5

Summary of Payment received by R.K. Dubey from Northern Railway,
Hazratganj, Lucknow

Year	Pay	GRADA I/Relief	House Rent Allowance	Compensatory City allowance	Other allow- ance as light duty holiday etc.	Total	Income Tax	Profession Tax	Other Deduction
1	2	3	4	5	6	7	8	9	10
1959 (11.7.59)	1146.64	373.88	86.62	57.75	-	1664.89	-	-	120.12 (Loan) six months only
1960	2378.34	808.38	180.00	120.00	-	3486.72	-	-	117.62 (Loan)
1961	3180.27	340.00	180.00	120.00	24.60	3844.87	-	-	Excess payment Rs 6.45
1962	3240.00	320.00	180.00	120.00	52.40	3912.40	4.37	-	400/- Provident Fund Loan.
1963	3359.99	359.03	180.00	121.62	44.40	4065.04	29.39	-	400/-
1964	3553.55	515.48	180.00	120.00	72.10	4441.13	54.17	-	-
1965	3733.55	912.00	281.35	120.00	63.90	5110.80	41.11	-	-
1966	3840.00	1138.00	384.00	120.00	67.65	5549.65	28.10	-	-
1967	4167.10	1393.16	401.84	120.00	160.15	5242.25	130.00	60.00	-
1968	4273.53	1680.58	425.85	120.00	157.10	6657.06	155.00	60.00	-
						<u>50632.00</u>			

contd.. 2

12006

	1	2	3	4	5	6	7	8	9	10
1969	4440.00	1774.55	566.00	120.00	65.10	6965.65	148.00	84.00		
1970	4471.33	1807.93	576.57	117.67	189.65	7368.09	374.20	96.00		
1971	4560.00	2112.00	784.00	275.20	326.25	8057.45	265.30	54.00		
1972	4695.00	2472.65	896.00	359.10	344.10	8566.85	213.00	-		TA 116.25
1973	4406.13	2442.00	857.78	343.57	237.15	8286.63	252.00	-		-
1974	7817.10	1686.36	1192.80	347.10	143.80	11187.06	117.00	-		150/- Advance ADA deposited deducted 40/-
1975	8321.29	2884.00	1248.19	372.00	102.60	12928.08	320.00	-		50 Wrong deduction 714/-
1976	8400.00	3764.00	1260.00	385.20	96.90	13906.10	142.20	-		995/-
1977	9081.94	3791.14	1332.29	385.20	67.65	14658.33	303.49	35.00		TA-44.25
1978	8750.00	4072.80	1312.50	135.10	170.50	14440.90	243.00	60.00		TA-252.18
1979	9000.00	4547.15	1350.00	211.80	632.40	15747.35	573.00	60.00		383.55 Excess payment deducted TA 199.12
1980	9567.12	5647.20	1350.00	405.00	1092.25	18061.57	822.00	60.00		100/- -10-

146174.00

	1	2	3	4	5	6	7	8	9	10
1981-	8625.62	5779.30	1204.95	361.48	350.00	16521.35	250.80	60.00	-	
1982	2950.00	2407.90	442.50	132.75	30.00	5963.15	80.00		four months	
30-4-82						<u>28447.10</u>				

Refund of insurance premium for 55 months 275.00

Arrears of pay not drawn in Nov. & Dec. 1981 946.94

Encashment of leave for 12 days 562.90

Bonus for 1981 764.20

=====

Provident fund .. Rs 16,289.00 Permanent Withdrawal from P.F. 8/7/70 Rs 3000/- TA 611.80

Gratuity .. Rs 15,716.25 Grand Total: Rs 2,10,176.40

award Rs 200 + 75/- = 250/- 525/-

Rs 7500/-
Rs 10500/-

Summary = Page 4, 50632.00

" 2,140 174.00

" 3, 28447.00

Total Rs 2,19,253.00

1415 - (1) Arrears due to be paid with Bonus Indent

(2) Cost of award - was whatever be paid

A-229

Submitted for kind perusal and necessary action
In the Court of the Hon'ble Central Administrative Tribunal
L U C K N O W

CAT. OA-150/88L Shri R.K. Dube Vs Union of India

As regards the case of Petitioner No.3 (L.P.Agnihotri)
it is pointed out :-

That the petitioner was working as Guard Grade 'C' from 31.1.62, utilized on Stationary post as RTI/RTS, Lucknow, in Grade Rs. 100-185 (PS) as there was no mention of the Grade or Scale in the authorised scale of Pay. The authorised scale of pay for this post came in the year 1963.

2) That as per rule 75% of pay was treated as Running Allowance for the Running staff drawing pay in Prescribed Scale and thus the petitioner No.3 ought to have been given 75% and not 40% as is evident from the chart submitted by the Railway.

3) That the petitioner's pay firstly be fixed in the Running post i.e. Pay plus one increment plus 75% then to bring him on stationary post, the pay in the Running post be added with 50% in lieu of mileage as per normal rules and judgement i.e. for one increment as per judgement dated 12.3.1979 at page 13 para 1 .75% as per judgement dated 12.3.1979, at page 11 para

Contd.....2/-

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- : 2 : -

2x para 2.

50% for the purpose of fixation of pay on stationary Post as per judgement dated 12.3.1979, page 17 para (b) and Single Judge Judgement dated 7.11.1974 page 6 to (11).

4. That keeping in view the Permanent loss of D.A & D.P. and benefits thereof, The Hon'ble President of India was kind enough in according his necessary sanction on 22.1.58 in order to protect the emoluments of the Running staff utilized on stationary post, by adding 50% of the Pay so arrived at.

5. That the petitioner No.3 refused to work as RTI/RTS 3 on the less pay and emoluments in the Selection Board but was forced to work. Further, the petitioner kept on continuous efforts in person and in writing vide his representations dated 5.12.1961, 5.3.1962, 6.7.62, 7.8.62 and so on Annexures 8,9,13,14,15 16,17,18 etc. alongwith Writ Petition No. 1817 of 1975, hence was reverted back as Guard Grade 'C'.

N.B. Due to continuous efforts by the petitioner in person as well as through representations the Law of Limitation does not apply in his case.

6. That if the so fixed pay of the Running Staff on the Stationary Post goes ~~max~~ above the ^{maximum} Pay of the Grade on Stationary post, would have been created a post etc. or not utilized or the difference of pay would have been

....3/-

- : 4 : -

A232

Fixation in Stationary Post:

(d) Pay of Running Post	- Rs. 396/-	
(e) Add: 50% in lieu of Running allowance	- Rs. 153/-	-As per Judgement of 12.3.1979 page 17 para (1) and single Judge Judgement of 7.11.74 Page 6 to (II) Pay of Running staff on Stationary Post.
	<u>Rs. 459/-</u>	
(f) Pay on Stationary Post	- Rs. 459.00	
(g) Add 50% of the Stationary post enhanced emoluments from 22.1.1958 as per President Award/decision	Rs. 230.00	As per Judgement at page 19 Rule 2.
	<u>Rs. 689.00</u>	Pay in the Stationary Post from 22.1.58.

10. That the petitioner was paid only Rs. 240/- as the maximum of the Grade, whereas he ought to have been paid Rs. 689.00 with emoluments would have been regularized by creating a post corresponding this pay.

11. That the petitioner has already submitted the charts as regards the Pay, D.A., C.A., H.A. drawn by him while working as R.T.I/R.T.S.

.....4/-

A233

- : 5 : -

12. That R.T.I/R.T.S stands are the same as at several places Railway has written Road Transport Inspector and Road Transport Inspector and Road Transport Supervisors. There is no objection from the petitioner's side to this issue.

13. That the petitioner prays that the arrears be paid with Bank Interest and cost of the case in view of the facts stated above.

14. That the charts as directed by the Court on 21.9.89 are enclosed herewith.



(P. K. Kharey)

Enclosures:

Counsel for the Petitioner
No.3 Shri L.P. Agnihotri

...

Account of the Honble Central Administrative Tribunal - Lucknow. Petitioner No. 3, Jan. 14, P. A. [unclear]

Statement Showing details of Payments drawn while working as R.I.P.I.S - Lucknow in the Scale Rs.150-240 (A5) and payable to him

needed in Presumptive Scale Rs.360-25-500-30-830-35-900 (A5) after Exclusion - Retention during the Period from 31-1-62 to 29-5-69.

(R 234)

Period	BASIC PAY @ PM	MONTHLY	AMOUNT	HOUSE RENT ALLOWANCE	DEARNESS ALLOWANCE
From To	Revised	Days	Rs P	Rate	Rs P
31-1-62	240.00	1	7.74	15%	615.00
1-2-62	31-1-63	12	2880.00		17
1-2-63	31-1-64	12	2880.00		7
1-2-64	31-1-65	12	2880.00		8
1-2-65	31-1-66	12	2880.00		5
1-2-66	31-1-67	12	2880.00		9
1-2-67	31-1-68	12	2880.00		8
1-2-68	31-1-69	12	2880.00		6
1-2-69	29-5-69	3	944.52		4
TOTAL			20,212.26		7475.58
TOTAL ROUNDED OFF			Rs. 20,212.00		Rs. 7476.00

NOTE: DA, HRA & CA are to be adjusted as per rules in case of any difference or otherwise.

CHART B in Presumptive scale Rs.360-25-500-30-830-35-900 (A5) showing Emoluments payable to him drawn:

During the Period	From	To	Scale	Days	Amount	Rate	Amount	Days	Amount
31-1-62	31-1-62	1-2-65	Rs. 22.00	13	780.00	7 1/2%	980.00	13	980.00
1-2-62	31-1-63	1-2-66	Rs. 8520.00	12	8520.00		87M 29D	12	9000 720.00
1-2-63	31-1-64	1-2-66	Rs. 740.00	12	8880.00		87M 29D	12	9000 720.00
1-2-64	31-1-65	1-2-66	Rs. 770.00	12	9240.00		87M 29D	12	9000 720.00
1-2-65	31-1-66	1-2-66	Rs. 800.00	12	9600.00		87M 29D	12	9000 720.00
1-2-66	31-1-67	1-2-66	Rs. 835.00	12	10020.00		87M 29D	12	9000 720.00
1-2-67	31-1-68	1-2-66	Rs. 870.00	12	10440.00		87M 29D	12	9000 720.00
1-2-68	31-1-69	1-2-66	Rs. 900.00	12	10800.00		87M 29D	12	9000 720.00
1-2-69	29-5-69	1-2-66	Rs. 900.00	29	870.00		87M 29D	29	9000 720.00
TOTAL			Rs. 68392.00		Rs. 3993.00		Rs. 8800.00		Rs. 5760.00

NOTE: (i) DA, DA, HRA & CA are to be adjusted as per rules in case of any difference or otherwise.

(ii) Disputed items are negligible.

EXHIBIT 'C'

In the court of the Hon. Central Administrative Tribunal - Lucknow. Petitioner No: 3 Shri L.P. Aggarwal's
 Compendious chart showing the ^{Total} emoluments sought to have drawn and the emoluments drawn.

Period	BASIC PAY @ PM	M D	Amount	HOUSE RENT M D	ALLOWANCE Rate	C.A.	DEARNESS ALLOWANCE	M D	RA TE	Amount
From 31-1-82 to 29-5-89			68,392.00		3993.00	880.00	5760.00			7476.00
Emoluments sought to have drawn			20,212.00		1807.00	880.00	7476.00			28,775.00
Difference due to be paid to Petitioner No: 3 Shri L.P. Aggarwal			48,180.00		2186.00	nile	nile			1716.00
Total Rs 79,025.00 = Total Rs 30,375.00 Rs 48,650.00										

RELIEF SOUGHT:-

1. Difference of Amount (Chart Band A) to be paid to Petitioner No: 3 Shri L.P. Aggarwal;
2. Bank Rate Interest on Rs 48,650.00 to be paid to Petitioner No: 3 Shri L.P. Aggarwal;
3. Cost of court- case whatever be paid to Petitioner No: 3 Shri L.P. Aggarwal;
4. Remaining Allowances @ 75% to be added to the Pay of Petitioner No: 3 Shri L.P. Aggarwal; for Pensionary benefits whereas paid 50%, who Retired as Band Grade 'H' Special on 30-11-1981 on Basic Pay Rs 620.00 PM. (Pls attach copy of PO)

APSC

4

Fixation of pay of Shri L.P. Agnihotri, Guard/LKO treating the running allowance stationary post as per decision of the High Court Lucknow.
Subject to verification from the accounts.

S.No.	Description.	Stationary post/ Grade date.	Pay already fixed on	Pay as should
1.	He was working as Guard grade 'C' on Rs. 170/- in scale Rs. 170-325 on 31.1.1962.	RM/Grade Rs. 150-240 dated 31.1.62.	Rs. 240/- ^{from} dated 31.1.62.	(i) Rs. 170/- (ii) 40% of 17 (iii) Rs. 170/- (iv) 50% of Rs. (v) Rs. 238/- but fixed being the grade Rs. 1!
2.	He remained on stationary posts in grade Rs. 150-240 upto 29.5.69 and was paid Rs. 0 Rs. 240/- per			

Civil. Personnel
Lucknow

AR-37
11/57
1/2/83

AMENDMENT LETTER NO: PC/1/79/22575-Dt. 11/57

- 1. ~~Accountant General~~
- 2. ~~Treasury Officer~~
- 3. ~~Director Postal (A/c.s.), P.K. Mission Building, Aminabad, Lucknow.~~
- 4. ~~FA&CAO (Pension) N. Rly., Baroda House, New Delhi.~~

AMENDMENT OF PENSION & RELIEF AS SANCTIONED VIDE THIS OFFICE PPA/PPO NO: B/c 7820572 A dt. 11/57 IN TERMS OF RLY. Bd.'s LETTER NO: PC-III/79/DP/1 dt. 31.6.79 READ WITH B.D's LETTER NO. 79-AC-II 21/7Pt. dt. 3.12.79 & Rly. Bd.'s LETTER NO: HE(PCA) 13-10 dt. 7.7.81 (PS-7867).

Pay to Smt. Lakshmi Devi Ex. 11/57 amended pension Rs. 558/- + Relief @ 2 1/2% Rs. 222/- total Rs. 780/- p.m. w.e.f. 1.11.57 to 19.11.57 & Relief as detailed in file number at Bank/Post Office/Treasury Central Bank of India, Baroda House, New Delhi

Family Pension to Smt. Usharani Devi W/o Smt. Lakshmi Devi Rs. 780/- + Relief @ 2 1/2% Rs. 222/- total Rs. 1002/- p.m. w.e.f. 19.11.57 & then after 11/57 + Relief @ 2 1/2% Total 1002/- p.m. till her death or remarriage which ever is earlier.

The employee has commuted Rs. 1151/- of his original pension Rs. 558/-. His pension authorised now may please be reduced to Rs. 780/- + Relief admissible from time to time on pension Rs. 558/- w.e.f. 1.11.57 of payment of commutation value at yours or 3 months after the date of issue of this office PPO of even No. dated 11/57.

All payment of Pension & Relief paid at yours on the authority of this office PPA/PPO of even No. dt. 11/57 would will be recoverable in full at the time of making 1st payment of amended pension authorised now. Necessary amendment may please be made at yours on both the halves of PPO's & other documents as per instructions of the Rly. Board.

Difference of DORG Rs. 100 (Rupees 100) may be paid at yours after adjusting any excess payment of pension and relief made at yours due to amended pension & relief.

INCREASE IN RELIEF ENJOICED FROM TIME TO TIME ON PENSION IS NOT ADMISSIBLE.

Sr. Divl. A/c.s. Officer,
Northern Railway, L.A.O.

Relief @	Rs.	pm	from	to
"	"	"	1.11.79	30.4.80
"	"	"	1.5.80	31.8.80
"	"	"	1.9.80	30.11.80
"	"	"	1.2.81	31.1.81
"	"	"	1.2.81	31.3.81
"	"	"	1.4.81	31.5.81
"	"	"	1.6.81	31.7.81
"	"	"	1.8.81	30.9.81
"	"	"	1.10.81	31.10.81
"	"	"	1.12.81	31.12.81
"	"	"	1.1.82	31.12.82
"	"	"	1.1.82	31.12.82
"	"	"	1.1.82	31.12.82

Sd.

Copy to :- Smt. Lakshmi Devi Sr. Divisional Accounts Officer, Northern Railway, Lucknow.

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11/57

11/57
11/57

A258

Before the Central Administrative Tribunal, Lucknow.

(Writ Petition No. 1820 of 1975)

CAT-DA/150/80(L)

Jagdish Prasad ... Petitioner

Vs

Union of India & Others ... Opp. Parties

As regards the case of Jagdish Prasad petitioner No. 2 in this case and original writ No. 1820 of 1975, the following points are for consideration :-

1. That he was a confirmed Grade B Driver upto 29.5.57 drawing Rs. 200/- as basic Pay in grade Rs. 160-300 (P.C.)
2. That he was promoted to officiate as ALF (Assistant Loco Foreman) in stationary post with effect from 30.9.57 in grade 260-350/(CPC) on Rs. 260/- minimum of the grade and no Running Allowance pay was added in his pay while fixing his pay on the stationary post i.e. (ALF) on reduced pay.
3. That the petitioner was agitating from 7.1.58 to 1975 for correct fixation of pay & scale on stationary post but no action was taken by the administration. At last a writ No. 1820 was filed in the High Court.
4. That the petitioner proper pay in running post should have been calculated keeping in view the fundamental rights and fixed as, 75% of pay in running post should have been calculated for fixing the pay of running staff on

A239

running post due to which officiating pay on the stationary post was also not calculated and Rs. 260/- was paid minimum of the scale.

5. That first petitioner pay should be fixed on Running post pay and then the second step would be to fix the pay on stationary post by adding 50% of the pay of running post pay with stationary post.

6. That 50% of the enhanced emoluments of the stationary post as per Presidents decision was not calculated and add from 22.1.58.

7. That the chart of arrear and the amount drawn during the period working on stationary post has already been submitted long before to DRM/Lucknow but no action has been taken till date and kept us reduced in rank and emoluments.

8. That Honourable Court may kindly order the Railway Administration first to calculate the pay of the petitioner in the running post according to normal rule. Thereafter it be fixed on the stationary post by adding 50% amount of the pay of running post on which fundamental rights existed from the date of officiating on stationary post and be fixed in proper grade to maintain the fundamental rights and avoid stagnation.

9. That the Railway Administration has ignored the Presidents decision by not calculating and adding 50% of the enhanced stationary post pay from 22.1.68 in the pay of the petitioner for period of offtg. over 21 days.

10. That the formula for fixation of pay of the

A240

petitioner should be as under :-

PAY OF RUNNING STAFF IN RUNNING POST

IST STAGE

Grade Pay	200.00	
+		
One increment	10.00	(As per judgement 12.3.1979 page 17 para(3))
+		
Dearness pay	35.00	
	<u>245.00</u>	As per CRT Judgement in case of Dev Dutt Sharma CPW 915/78 copy attached.
75% of pay as portion of running allowance forming element of pay	184.00	Per judgement 12.3.79 page 11 para 2&4 (substantive pay)
	<u>429.00</u>	Pay of petitioner in the running post as per judgement page 11 para 2. xix
	(Substantive increment)	

IIIND STAGE:

Fixation of pay of the running staff (Petitioner) on the stationary post w.e.f. 30.9.57 & offtg. over 21 days.

<u>Substantive emoluments</u>		
Pay, running post as fixed pay	429.00	according to normal rules.
50% of the running post be added to	214.00	As per judgement page 17(b) para 2
	<u>643.00</u>	Officiating pay on stationary post from 30.9.57 will continue till 21.1.58.

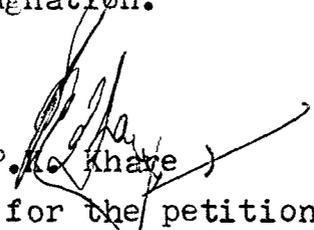
3RD STAGE:

Re-fixation of offtg. pay from 22.1.58.

Officiating pay	643.00	
Add 50% of officiating pay on the stationary post be added as per President decision from 22.1.58.	322.00	As per judgement 12.3.79 page 19 para 2.
	<u>965.00</u>	Proper stage in the proper scale to be fixed for protection to former emoluments and stagnation.

Lucknow.

Dated: 18.9.1989


 (P. K. Khare)
 Counsel for the petitioner

April

SUMMARY

This Statement shows the total amount Drawn and the ^{total} amount due to the Petitioner No 2. JAGDISH PRASAD.

Total Emolument as shown on chart 'A'

Total Emoluments as pay	-	1,52,555
Total Emoluments as Drawn	-	60,319
Difference		<u>92,236</u>

House Rent Due		2,796
Drawn		1,534
Difference		<u>1,262</u>

CA Due		1,014
Drawn		393
Difference		<u>621</u>

Total Difference Due	PAY -	92,236
	H.R -	1,262
	CA -	621
	Total	<u>94,119</u>

NB: (1) Arrears due to be paid with Bank Interest.
 (2) Cost of court case whatsoever be paid

From	To	M	D	Pay	Yearly	From	To	Total	Pay	DP	DR	Yearly	Total	From	To	Total	Pay	Total	% of	Place	Amount		
From	To	M	D	Rs.	Amount	From	To	Month	Rs.			Amount	Rs.	From	To	Month	Rs.	Amount	% of	Place	Amount		
30-9-57	21-1-58	3	22	643	2391	30-9-57	21-1-58	3	22	643	42-50	49-50	330	2721	28-5-66	30-9-66	4-3	1250	5123	15	D11	768	
22-1-58	30-9-58	8	9	964	8000								8000	1-10-66	27-7-67	9-2	1300	11786	15	D11	1768		
1-10-58	30-6-59	9	-	964	8676								8676	3-7-67	29-67	2-	1300	2600	10	A1D	260		
1-7-59	30-9-59	3	-	1064	3192								8192					19,509			2796		
1-10-59	30-9-60	12	-	1100	13200								13200										
1-10-60	30-9-61	12	-	1150	13800								13800										
1-10-61	30-9-62	12	-	1150	13800								13800										
1-10-62	30-9-63	12	-	1200	14400								14400	28-5-66	30-9-66	4-3	1250	5123	6	D11	307		
1-10-63	30-9-64	12	-	1200	14400								14400	1-10-66	27-7-67	9-2	1300	11786	6	D11	707		
1-10-64	30-9-65	12	-	1250	15000								15000										
1-10-65	30-9-66	12	-	1250	15000								16000										
1-10-66	30-9-67	12	-	1300	15600								16763										
1-10-67	21-7-68	9	21	1300	12603								12603										
SUMMARY																							
PAY + DDA DP -					152,555																		
H/RENT -					2796																		
CGA -					1,014																		
Total -					1,56,365																		

Emoluments ought to have been

Deum During the period from

30-9-57 to 21-7-68 on Stationary -

Post. after fixation and registration

of national pay. The national

Pay as shown in this chart is

Based on the formula attached.

