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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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~~XXXXXXXXXX~~ BOMBAY BENCH

O.A. No. 752/87 198
~~Ex. No. 100~~

DATE OF DECISION 4-2-82

N H KULKARNI & 8 OTHERS Petitioner

MR. E.R. NAIK Advocate for the Petitioner(s)

Versus

UNION OF INDIA Respondent

MR. R K SHETTY Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. JUSTICE U.C. SRIVASTAVA, VICE CHAIRMAN

The Hon'ble Mr. A B GORTHI, MEMBER (A)

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

u
V.C.

YK/-

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PRESCOT ROAD, BOMBAY-400001

O.A. No.752/87

1. Shri N H Kulkarni (now represented by his and legal representative)
 2. Shri V B Nair
 3. Shri V S Patil
 4. Shri Pyarelal Sharma
 5. Shri S N Singh
 6. Shri K V Deshpande
 7. Shri M G Bhosekar
 8. Shri P G Sahastrabudde
 9. Shri B G Vaidya
C/o. K R Jadhav
Advocate
4 Mayur, Opp. Tilak
Nagar Vidya Mandir
Dombivali (E)
Dist. Thane 421201
- ..Applicants

V/s.

Union of India
through General Manager
Central Railway
Bombay VT

..Respondents

Coram: Hon. Shri Justice U C Srivastava, V.C.
Hon. Shri A B Gorthi, Member (A)

APPEARANCE

Mr. E R Naik, Advocate
for the applicants

Mr. R K Shetty, Counsel
for the respondent

JUDGMENT:
(PER: U C Srivastava, Vice Chairman)

DATED: 4.2.92

The applicants 9 in number, who were employed with the Central Railway and have retired prior to July 1981 were working as Guards but for one applicant who was working as Motor-man, have approached this Tribunal complaining against the wrongful implementation of Railway Board's order No. E(P&A)II-80/RS-10 of 17.7.1981; E(P&A)II/80/RS-10 of 20.03.1982; E(P&A)II-82/RS-2 of 7.6.1982 and E(P&A)II/82/RS-7(PNM) of 9.12.82 and against order No. PA-III/75/RA/1 of 21.7.1980. According to the applicants there has been wrongful fixation of pay

and calculation of retirement benefits such as monthly pension, gratuity, amount of commuted pension etc. The applicants have prayed that in view of the Railway Board's instructions, the fixation of retirement benefits i.e., monthly pension, should be calculated according to the methodology in terms of Railway Board's letters nos. E(P&A)II-80/RS-10 dated 17.7.81; 20.3.82 7.6.82 and 9.12.82, which will result in enhancement of pension and other pensionary benefits. The Railway Board/Ministry has made demarcation in two categories of the retiring Running Staff viz., Running staff retired in the period from 1.4.79 to 31.7.81 and Running Staff retired after 31.7.81. The applicants fall under the first category. Respondents have denied the claim of the applicants and have stated that the pension and gratuity of the applicants has been correctly calculated in accordance with the Railway Board's circular and the applicants have by misinterpreting the same are claiming more amount.

The Railway Board vide its circular dated 21.7.1980 clarified that dearness pay and running allowance (subject to the limit of 45% of pay) should be added independently of each other to the basic for the purpose of retirement benefits. For example, if a member of the running staff has been drawing a basic pay of Rs.600/-, 27% thereof viz., Rs. 162/- should be added thereto as dearness pay and a maximum of 45% of pay viz., Rs.270/- should be added separately to represent running allowance, making the total pay for the purpose of retirement benefits as Rs.1032/-.

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Vide letter dated 1.10.1981 a clarification was given by the Chief Personnel Officer, Bombay mentioning therein that average basic pay for the last 10 months should be calculated and 55% of this average basic pay will be treated as the equivalent of running allowance for the purpose of retirement benefits. The amount of dearness pay for the purpose of retirement benefits is to be calculated separately as per instructions by the Ministry under its letter dated 11.6.1979 and the retirement benefits to the running staff should then be calculated on the total of the (i) average basic pay (ii) equivalent of running allowance and (iii) dearness pay. Vide letter dated 17.7.81 the Railway Board specified that for the purpose of retirement benefits, 55% of basic pay will be taken into account, and this provision will be made applicable retrospectively from 1.4.1979 so that those running staff who have already retired with effect from that date or afterwards will also have their retirement benefits recalculated and resettled. Thus by the said circular the Railway Board instead of 45% of the basic pay made it 55%. Vide Railway Board circular dated 20.3.82 relied upon by the applicants it was clarified that 55% of the basic pay of running staff should be reckoned as the pay element representing running allowance of the running staff for the purpose of recovery of subscription towards provident fund. Vide letter dated 7.6.82 on which the applicants have relied the Railway Board clarified that while the instruction dated 17.7.81 are issued in the context of accepted recommendations of the Running Allowance Committee, there have been deviations/modifications of the recommendations of running allowance committee while issuing the Board's order dated 17.7.81. There-

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fore, if there is any conflict between the recommendations of the running allowance Committee and the orders contained in Board's letter dated 17.7.81, the orders contained in Board's letter of 17.7.81 should be treated as final and if the position is still not clear, the Board may be approached for necessary clarifications. Vide Ministry of Railway's letter dated 5.6.1984, which has been placed on record by the respondents, it has been clarified that Board letters dated 9.12.82 and 15.12.82 should be treated as cancelled.

The applicants who filed representations in this behalf have contended that the methodology which has been adopted by the respondents in calculating their retirement benefits is wrong. According to the instructions issued by the Railway Board referred to above, the method of calculation of retirement benefit is well explained in the Railway Board's letter dated 9.12.1982 which was cancelled by the Ministry vide its letter dated 5.6.84 referred to above. As such the methodology for recalculating and resettling of the retirement benefits retrospectively in case of running staff retired from 1.4.79 to 31.7.81 should be in the basic pay add 55% mileage of basic pay i.e., pay element in running allowance and then add dearness pay at appropriate percentage (27%) of the total has to be added in the same. While the respondents have calculated ⁱⁿ the basic pay 27% Dearness Pay and thereafter 55% mileage to the said pay which has caused loss to the applicants. According to the applicants the methodology which should have been applied is based on railway letter dated 1.10.1981 i.e., a clarification which has been

given by the Chief Personnel Manager. According to the respondents the only change vide its circular dated 17.7.81 was that 45% of pay for retirement benefits was modified to 55% but the method of calculation was not changed. Accordingly the instructions contained in letter dated 21.7.1980 continued to apply in respect of calculating the pay for the purpose of retirement benefits to the running staff for 55%. According to the respondents the running staff are entitled for merger of 45% of Mileage subject to a maximum of 45% of pay. The orders for merger of 27% DP For all the staff including the running staff for the purpose of fixing the pay for retirement benefits were issued by the Ministry vide letter dated 11.6.79.

Thus the simple dispute is as to whether the methodology was changed or not by the subsequent circulars. In our view although 45% was raised to 55% there has not been any change in the methodology. The clarification on which the applicants relies given by the Chief Personnel Officer also would not lead to the same conclusion. We do not find any mistake in the methodology of calculation with the result the pension and the pensionary benefits which have been given to the applicants cannot be said to be against any Railway Board Circular. The application in these circumstances has got to be dismissed and is accordingly dismissed with no order as to costs.


(A B Gorthi)
Member (A)


(U C Srivastava)
Vice Chairman

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