

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

Tr.No. 221/86 & Tr.No. 479/87

Shri C.S.Parpillwar & others. .
C/o B.N.Singhvi, Advocate
37, Yusuf Bldg.,
Flora Fountain,
Bombay.

... Applicants

V/S.

Union of India
Central Railway Board,
New Delhi.

... Respondents

Tr.No. 479/87

Shri Ganesh Shrinivas Thanedar & others. ... Applicants
C/o. B.N.Singhvi, Advocate,
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Union of India
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... Respondents

CORAM: Hon'ble Member (A) Shri P.S.Chaudhuri

Appearances :

Shri B.N.Singhvi
Advocate
for the Applicants

Shri V.G.Rege
Advocate
for the Respondents

JUDGEMENT

Dated: 20.2.1989

(PER: P.S.Chaudhuri, Member (A))

These two applications, which were originally filed as Writ Petitions in the Bombay High Court, have been transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985. Writ Petition No. 2431/84 was filed by 38 applicants on 28.11.1984 and was transferred to this Tribunal on 25.3.1986 and taken on its file as Tr. 221/86. Writ Petition No. 3330/83 was filed by 13 applicants on 26.9.1983 and was transferred to this Tribunal on 17.9.1987 and taken on its file as Tr. 479/87. The prayer in both

these applications is the same, namely, that the respondents be directed "to apply the principles relating to fixation of pay by including the running allowance and subsequently to pay to the petitioners the arrears of the difference of the running allowance from the date of their joining their stationary posts". As identical questions are involved in both these Writ Petitions/applications, these may conveniently be dealt with by a common judgment.

2. All the applicants are employees of the Central Railway. To understand their case, certain definitions given in Rule 902 of the Indian Railway Establishment Manual can be conveniently mentioned. All the applicants come under the category of "Loco Running Staff" which covers Drivers (including Motormen), Shunters and Fireman (including Assistant Drivers and Driver's Assistants). Loco Running Staff are also entitled to be posted against specified "stationary appointments" which refer to posts not involving running duties. ("Running duties" means duties performed by Loco Running staff while incharge of moving trains or engines including shunting engines). The applicants in both the applications were working as Loco Running staff and are now working in various stationary posts such as Loco Foreman, Assistant Loco Foreman, Power Controller, Driver Instructor, Senior Loco Inspector, Junior Inspector and Junior Fuel Inspector. Some of the applicants in both the applications have, however, since retired from service.

3. There are certain unusual features in the structure of the pay and allowances that are payable to Loco Running staff on the different zonal units, such as Central Railway,

of the Indian Railways. Hence, in order to understand fully the rival contentions involved in this case, it would be useful to give brief particulars of the structure of the pay and allowances payable to Loco Running Staff.

4. These running allowances are payable to Loco Running staff in addition to their pay. "Pay" has been defined in the Indian Railway Establishment Code, Vol.II (for short, R-II), Rule 2003 of which reads as under :

" 2003. (F.R. 9) Definitions. ____ Unless there be something repugnant in the subject or context, the terms defined below are used in the rules in this Chapter and the next in the sense here explained ____

.....
.....

(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 substantively 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.

(b) Does not concern ~~us~~.

(c) Does not concern ~~us~~.

.....
..... "

5. Certain allowances, referred to as "Running Allowances" are payable to Loco Running staff under certain circumstances. These running allowances are payable to Loco Running staff in addition to their pay. These 'Running Allowances' had been

defined in Rule 507 of the 1971 Edition of the Indian Railway Establishment Code, Vol. I (for short, R-I) as under :-

" 507. "Running allowance is an allowance ordinarily granted to running staff for the performance of duty directly connected with the charge of moving trains and includes "mileage allowance" or "allowance in lieu of mileage" but excludes special compensatory allowances. This allowance is paid on the mileage basis calculated at the rates per hundred miles or on the basis of per day of 8 hours of duty.

. "

The various types of allowances that come under running allowances have been detailed in Rule 508, R-I. These include "mileage allowance" while employed on running duties (which has special provisions for "specially arduous running duties", "short trips", "less arduous duties", etc.) "an allowance in lieu of mileage" for other than running duties, "breach of rest allowance", "special compensatory allowance" and "officiating allowances" when undertaking duties in higher grades of running staff or stationary appointments.

6. The issue in this case is the fixation of pay of the applicants at the time that they were appointed to stationary posts. It is against the above mentioned background that we have to examine the instructions regarding the fixation of the officiating pay of running staff when appointed to stationary posts. On 1.7.1949 the Railway Board issued the following instructions in regard to running staff utilised in stationary appointments :-

"Railway Board's letter No. E(R) 49RS-3 dated 1st July, 1949

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 or posts :- Does not concern us.

(b) For Running Staff utilised in stationary appointments — (i) 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 to the stationary posts. For this purpose "average running allowance" will be based on the running allowance earned by the employee 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 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.

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

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

7. This letter was amended/clarified by the Railway Board's letter dated 29.8.1949 which reads as under :-

" Officiating Pay to Running Staff.

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- 1) The expression "normal rules" referred to in para 1(a)(ii) of Board's letter of even number dated 1/7/49 denotes the State Railway or ex-company acting allowance rules applicable to the person concerned if he were not a member of Running Staff
 - 2) The words "Rule 2017 R II" occurring in para 1(b) (ii) of the above quoted letter should be altered to "normal rules" which term will carry the same meaning as in Para 1 above.
 - 3) This has the approval of the Governor General. "

8. Thereafter, on 19.5.1961 the Railway Board issued instructions regarding re-fixation of officiating pay under Rule 2027 (F.R.31)-R.II. These instructions of the Railway Board read as under :-

" Attention is invited to para 1(b)(ii) of Railway Board's letter No. E(R) 59RS dated 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 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 re-fixed under clause (2) of Rule 2027 (FR 31) R.II, as substituted by C.S.No.6 R.II, treating 50% of the enhance substantive pay also as pay in the stationary appointment.

2. The question has been considered and the President is pleased to decide 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 1-7-49 should also be refixed under clause (2) of Rule 2027 (FR 31) R.II, 50% of the enhance substantive pay representing the running allowance being treated as pay for the purpose of such refixation."

9. For convenience Rule 2027 (F.R. 31)/R.II, as amended, is reproduced below :-

"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 grade pay of the lower post as a result of increment or otherwise, the pay of such Railway servants shall be refixed 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 refixation is to his advantage.

Provided that such lower officiating post was held for not less than 3 years or would have been so held but for the officiation in the other higher cadre posts.

Provided further that the provisions of Rule 2018-B (FR-22-C) R-II shall not be applicable in the matter of refixation 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 withheld 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 Government servant may be allowed during the period of penalty of withholding of increment the substantive pay from time to time if the same happens to be more than the officiating pay."

10. When the Revised Scales of pay were introduced in 1973, the rules regarding treatment of running allowance as pay were also revised by a letter dated 22.3.76 issued by the Railway Board. The relevant portion of this letter reads as under :-

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

.....

Reference Railway Ministry's letter No.PC.III.73. RA, dated 21st January 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 pay scales under Railway Services (Revised Pay) 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) & (ii) :- Do not concern us.

(iii) Pay for the purpose of fixation of pay in stationary post, compensatory (City) allowance, House Rent Allowance and rent for Railway Quarter shall be pay plus 30% of pay."

11. It is the case of the applicants that their pay in the stationary posts has been incorrectly fixed. It is their submission that, based on Rules 2544 and 2544-A/R.II 'emoluments' includes running allowances upto a maximum of 75% of the monthly average of other emoluments. It is their further submission that such a provision also exists in Rule 1302/R.I. It is their contention that, based on this position, the fixation of pay of running staff in stationary appointments is required to be a three stage process as under :-

- (i) First, in terms of Rule 1302(5)/R.I and 2544 and 2544-A/R.II, substantive emoluments should be arrived at by adding 75% of the pay in the running posts.
- (ii) Secondly, in terms of the Railway Board's instructions dated 1.7.1949, 50% of this pay should be treated as pay for the purpose of fixation of pay in stationary appointments.
- (iii) Thirdly, in terms of the Railway Board's 1961 instructions, 50% of this enhanced pay should be added for determining the pay ~~in~~ in the stationary posts.

12. The respondents have opposed the application by filing their written statement. I also heard Mr.B.N. Singhvi, learned advocate for the applicants and Mr.V.G. Rege, learned advocate for the respondents.

13. It was Mr. Rege's contention that the stand of the applicants was totally mis-conceived. It was his submission that Rule 1302/R.I was applicable only in the context of State Railway Provident Fund Rules and that, similarly, Rules 2544 and 2544-A/R.II were applicable only in the context of the Railway Pension Rules. These rules, therefore,

had nothing to do with fixation of pay in stationary posts. Mr. Singhvi attempted to counter this by saying that even if 75% was not to be added, 30% should be taken into account in terms of the Railway Board's letter dated 22.3.1976. It was Mr. Singhvi's contention that the remaining two stages in the fixation process were the same as contended by the applicants. I see considerable merit in Mr. Rege's submissions.

14. Mr. Rege's second contention was that the method of fixation proposed by the applicants was totally mis-conceived. He submitted that the method of fixation was a simple process consisting of one stage. It was his contention that all that was required to be done was that the pay of running staff should be deemed to consist of two parts, namely, first, their basic pay as per the pay of scale applicable to the posts of Loco Running Staff that they were holding prior to their appointment to a stationary post and, second, 30% of this pay which came into the category of "other emoluments classed as pay by the President". It was his submission that the total of these two parts constituted the pay which was taken into account when fixing the pay of running staff in a stationary appointment. It was his submission that the figure of 50% mentioned in the Railway Board's instructions of 1949 had been revised by their instructions of 1976 which were issued upon the introduction of the revised pay scales in 1973. By this revision of 1976, the figure was reduced from 50% to 30%. It is thus clear that it is not disputed that some part of the running allowances does form a part of the pay of Loco Running staff for the purpose of fixation of pay in stationary appointments.

15. Mr. Singhvi then submitted that the term 'enhanced substantive pay' mentioned in the Railway Board's instructions of 1961 meant that the substantive pay had to be first enhanced by 75% to arrive at the 'enhanced substantive pay' and to this 50% of this 'enhanced substantive pay' had to be added to arrive at the pay to be used for refixation. It was Mr. Rege's submission that the Railway Board's instructions of 1961 were totally inapplicable in this case because a plain reading of Rule 2027/R-II, which has been mentioned in the 1961 instructions and which has been quoted earlier, makes it very clear that it ^{is} meant to safeguard ~~the~~ ^{the} interest of an employee who is officiating in a post when there is an enhancement in his substantive pay as result of increment or otherwise. It is not meant to give him a double fixation of pay at the very time of initial fixation of pay when he is first promoted to a new post in an officiating capacity. Against this background, I see considerable merit in Mr. Rege's submissions.

16. Mr. Rege's final submission was that the operative part of the Allahabad High Court judgment, Lucknow Bench read as under :

"The Railway Administration is directed to refix the pay of for the period during which they held officiating appointment to the stationary post according to the relevant rules, to refix the pay of in accordance with Rules 2017, 2018 and 2027 read with 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 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 they worked on that post in a substantive capacity according to relevant rules"

It was his submission that the method of pay fixation that had been adopted by the respondents was in complete conformity with this decision.

17. In conclusion, Mr. Rege cited the judgement of the Allahabad Bench of this Tribunal in Registration Nos. 617, 627 and 629 of 1986 (T). Paras 14 and 15 of that judgement are reproduced below :-

"14. A similar question was raised in the Miscellaneous Petition No. 45 of 1982 S.K.Tiwari & others Vs. U.O.I. in the Madhya Pradesh High Court. The observations made were :-

"...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."

"...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 purposes of fixation and, again 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.."

"...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 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 Stationary post. His substantive pay of Rs.515/- was increased 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 purpose 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. The controversy therefore, is limited to examining whether 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...."

"...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 word "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 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 the post itself is defined in Rule-2003 (2) and excludes special pay. In fact, the presumptive remains the pay of posts to which they would be entitled if they held the post substantively. Admittedly, the stationary posts do not carry with them running allowance and, hence, the pay on the stationary post would not include the running allowance either within the definition of "Pay or "presumptive". Clearly, therefore, the arguments of the learned counsel for the petitioners based on Rule 2027 cannot be accepted...."

15. We are fully in agreement with the observations made by Hon'ble G.Gupta -J on 24.11.85 in the Madhya Pradesh High Court case cited above. It will be perfectly alright for the petitioners to claim fixation on the basis of 1961 and 1963, 1976 instructions of the Board but under no imaginable circumstance have another 50, 40 or 30% of the pay added to the re-fixed pay in the stationary post. Such a claim will be preposterous

and unimaginable and cannot be accepted. The percentage of basic pay which is to be added to it has only to be once and in terms of the instructions and rules, it has to be added to the basic pay after adding one increment in the substantive scale and the total so arrived at gives the pay for the fixation at the corresponding stage in the new scale of the stationary post for all such arrangements made for over 21 days i.e. long term arrangement."

I am in respectful agreement with these views.

18. Based on this discussion, I do not see any merit in the applications and am of the view that both should be dismissed.

19. I, accordingly, dismiss both the applications. In the circumstances of the cases, there will be no order as to costs.