

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 3 NOV 1988

REVIEW APPLICATION NOS. 97 to 106

IN APPLICATION NOS. 281 to 290/87(F)
W.P. No.

/ 88

Applicant(s)

The Chairman, Railway Board
To New Delhi & 2 Ors

Respondent(s)

v/s Shri C.R. Rangadhamaiash & 9 Ors

1. The Chairman
Railway Board
'Rail Bhawan'
New Delhi - 110 001

2. The General Manager
Southern Railway
Park Town
Madras - 600 003

3. The Divisional Railway Manager
Southern Railway
Mysore Division
Mysore

4. Shri A.N. Venugopal
Advocate
No. 12, 2nd Floor
SSB Mutt Building
Tank Bund Road
Bangalore - 560 009

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/~~ORDER IN ORDER~~
passed by this Tribunal in the above said application(s) on 28-10-88.
^{Review}

*4 issued
K. Nallur
3-11-88*

Encl : As above

dc *AP/By*
SECTION OFFICER
~~RECORDED~~
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 28TH DAY OF OCTOBER, 1988

Present Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman
and
Hon'ble Shri L.H.A. Rego, Member (A)

REVIEW APPLICATION NOS. 97 TO 106/1988

1. The Chairman,
Railway Board,
'Rail Bhavan',
New Delhi.
2. The General Manager,
Southern Railways,
Park Town, Madras.
3. The Divl. Railway Manager,
Southern Railway,
Mysore. Petitioners.

(Shri A.N. Venugopal, Advocate)

v.

1. Shri C.R. Rangadhamaiyah,
S/o Shri Rangaiah, Major,
Retd. Guard-A, Special,
Chikkabidre,
Chikkanayakanahalli Tq.
2. Shri K.V. Sreekantaiah,
S/o K.V. Subramanyaiah,
Major, Retd. Guard-A, Special,
Ch.70, 6th Main, Saraswathipuram,
Mysore.
3. Shri M.N. Narayana Setty,
S/o Shri K. Muniswamaiah, Major,
Retd. Guard-A, Special,
2003/2, Rajkamal Street,
Mysore.
4. Shri B.J. Nagarajaiah,
S/o Shri Jayapala Nayanar,
Major, Retd. Guard-A, Special,
158, Shankaranagar, JB. Kaval,
Bangalore.
Shri R.J. Mahadevan,
S/o R. Jayaraman, Major,
Retd. Guard-A, Special,
No.21, Dayanandanagar, 4th cross,
Srirampuram, Bangalore.



6. Shri K. Seshadri,
S/o Shri Krishna Bhatta,
Major, Retd. Guard-A, Special,
No.92, Lakshmipuram,
Arasikere, Hassan District.
7. Shri M. Channabasavaiah,
S/o Madappa, Major,
Retd. Guard-A, Special,
964, 9th Main Road,
6th Cross, Prakashnagar,
Bangalore.
8. Shri K.V. Srinivasachar,
S/o A. Venkataramanchar,
Major, Retd. Guard-A, Special,
No.69, III parallel Road,
Jayanagar Extn.
Shimogga.
9. Shri Shivaswamy,
S/o T. Durgachalam pillai,
Major, Retd. Driver-A, Special,
No.44, II Main, Medas Block,
New Bamboo Bazaar, Mysore.
10. Shri J.N. Pharoah,
S/o Shri W.P. Pharoah, Major,
Retd. Driver-A, Special,
2355, I Main, II cross,
K.G. Koppal, Chamarajapuram,
Mysore. Contemnors.

These applications having come up for hearing to-day,
Vice-Chairman made the following:

O R D E R

In these applications made under Section 22(3)(f) of the Administrative Tribunals Act, 1985 ('Act'), the applicants herein who were the respondents in application nos. 281 to 290/87 (F) decided on 31.8.1988 have sought for a review of our said order.

2. In our order, we have held that the amendment made to Rules 1302, 1309 and 1502 and 2544 of the Indian Railway Establishment Code, Vol. I & II by the President

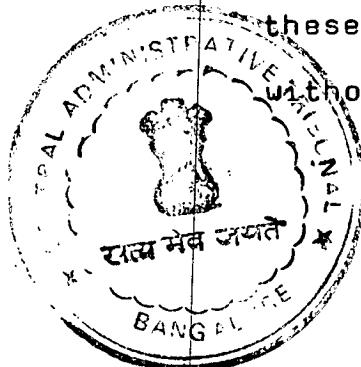
of India under the proviso to article 309 of the Constitution, had not been duly published and was unenforceable for the periods of claims made by the respondents herein who are the applicants in those cases. In reaching that conclusion, we have relied on the ruling of the Supreme Court in HARLA v. THE STATE OF RAJASTHAN AIR (38) 1951 S.C. 467. But notwithstanding this, the applicants have urged that the view expressed by us, runs counter to a Full Bench ruling of the High Court of Bombay in CHANDRAKANT v. STATE OF MAHARASHTRA AIR 1977 BOMBAY 193 and the same justifies a review under Section 22(f) of the Act read with o/47 R.1 CPC.

3. Shri A.N. Venugopal, learned Counsel for the applicants relying on the ruling of the Bombay High Court in Chandrakant's case urges that these are fit cases for a review.

4. When we heard these cases, the ruling of the Bombay High Court in Chandrakant's case was not brought to our notice by the applicants. On that only we did not notice that ruling and deal with its effect on the question that arose before us. We are of the view that this failure, if any, cannot constitute a ground for review. We are also of the view that even if the applicants had brought to our notice the ruling of the High Court of Bombay in Chandrakant's case, then also, the result of our decision would not have been any way different.



5. On any view, we see no justification to admit these review applications. We, therefore, dismiss these review applications at the admission stage without notices to the respondents.



Sd/-
VICE-CHAIRMAN 28/11/88

bsv/Mrv.

Sd/-
MEMBER (A) 128. ANALYSIS

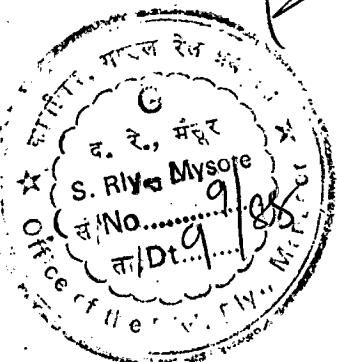
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R. Ch 13/11/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Settlement
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CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

* * * * *



REGISTERED

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 6 SEP 1988

APPLICATION NOS. 281 to 290/87(F)

Applicants

Shri C.R. Rangadhamaiyah & 9 Ors

V/s

The Chairman, Railway Board,
New Delhi & 2 Ors

To

1. Shri C.R. Rangadhamaiyah
S/o Shri Rangaiah
Chikkabidre - 572 228
Chikkanayakanahally Taluk
Tumkur District
2. Shri K.V. Sreekantaiah
CH-70, 6th Main, Saraswathipuram
Mysore - 9
3. Shri M.N. Narayana Setty
2003/2, Rajkamal Street
Mysore - 1
4. Shri B.J. Nagarajaiah
158, Shankaranagar
J.B. Keval
Bangalore - 560 022
5. Shri R.J. Mahadevan
21, 4th Cross, Dayanandanagar
Srirampuram
Bangalore - 560 022
6. Shri K. Seshadri
92, Lakshmipuram
Arasikere
Hassan District

Respondents

7. Shri M. Channabasavaiah
964, 9th Main Road, 6th Cross
Prakashnagar
Bangalore - 560 021
8. Shri K.V. Srinivasachar
69, III Parallel Road
Jayanagar Extension
Shimoga - 577 201
9. Shri Shivaswamy
44, II Main, Medas Block
New Bamboo Bazar
Mysore - 21
10. Shri J.N. Pharoah
2355, I Main, II Cross
K.G. Koppal
Chamarajapuram
Mysore
11. Shri S. Krishnaiah
Advocate
No. 2, Kalidasa Road
Gandhinagar
Bangalore - 560 009
12. The Chairman
Railway Board
Rail Bhavan
New Delhi - 110 001

13. The General Manager
Southern Railway
Park Town
Madras - 600 003

14. The Divisional Railway Manager
Southern Railway
Mysore Division
Mysore

15. Shri A.N. Venugopal
Advocate
No. 12, 2nd Floor
SSB Mutt Building
Tank Bund Road
Bangalore - 560 009

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER passed by this Tribunal in
the above said applications on 31-8-88.

Encl : As above

for Deependash
DEPUTY REGISTRAR
(JUDICIAL)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

Dated the 31st day of August, 1988.

Present

THE HON'BLE MR. JUSTICE K.S. PUTTASWAMY
THE HON'BLE MR. L.H.A. REGO

VICE CHAIRMAN
MEMBER(A).

APPLICATIONS NOS. 281 TO 290 OF 1987(F)

1. C.R. Rangadhamaiyah S/o Rangaiah, age 64 years, Retd. Guard-A Special, Chikkabidre, Chikkanayakanahalli Tq.
2. K.V. Sreekantaiah S/o K.V. Subramanyaiah 65 years, Retd. Guard-A Special, Ch-70, 6th Main, Saraswathipuram, Mysore-9.
3. M.N. Narayana Setty S/o K. Muniswamaiah 64 years, Retd. Guard-A Special, 2003/2, Rajkamal Street, Mysore-1.
4. B.J. Nagarajaiah S/o Jayapala Nayanar, Retd. Guard-A Special, 158, Shankaranagar, J.B. Kaval, Bangalore-22.
5. R.J. Mahadevan S/o R. Jayaraman, 65 years, Retd. Guard-A Special, 21, Dayanandanagar, 4th Cross, Srirampuram, Bangalore.
6. K. Seshadri S/o Krishna Bhatta, 65 years, Retd. Guard-A Special, 92, Lakshmpuram, Arsikere.
7. M. Channabasavaiah S/o Madappa, 65 years, Retd. Guard-A Special 964, 9th Main Road, 6th Cross, Prakashnagar, Bangalore-21.
8. K.V. Srinivasachar S/o A. Venkataramanachar, age 64 years, Retd. Guard-A Special, 69, III Parallel Road, Jayanagar Extn. SHIMOGA TOWN-577 201.



Applicants
(contd...)

9. Shivaswamy S/o T.Durgachalam-Pillai, 65 years, Retd.Driver-A Special, 44, II Main, Medas Block, New Bamboo Bazar, Mysore-21.

10. J.N.Pharaoh S/o W.P.Pharaoh Retd. Driver-A Special, 2355, I Main, II Cross, K.G.Koppal, Chamarajapuram, Mysore.

.. Applicants.

(Shri Krishnaiah, Advocate for the applicants)

-vs.-

1. The Chairman,
Railway Board,
'Rail Bhavan'
New Delhi.

2. The General Manager,
Southern Railways,
Park Town, Madras,

3. The Divisional Railway
Manager, Southern Railways,
Mysore.

.. Respondents.

(Shri A.N.Venugopal, Railway Advocate for Respts.)

These applications coming on for hearing,
THE HON'BLE MR. L.H.A. REGO, MEMBER(A), made the
following:

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These are in all ten applications, filed under
Section 19 of the Administrative Tribunals Act,1985,
with a prayer,that the respondents be directed to grant
pensionary benefits to the applicants in accordance

with

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with the methodology indicated in Letters dated 9-12-1982 and 15-12-1982 of the Railway Board, New Delhi (Annexure-C), that Letters dated 5-6-1984 and 17-9-1986 (Annexure-D) from the Railway Board, New Delhi, and from the Divisional Railway Manager (Personnel), Southern Railway, Bangalore (in reply to their representation for revision of pension) respectively, be declared unsustainable in law and that the respondents be directed to treat 75% of their pay as Running Allowance ('RA' for short) instead of as 55% and to determine their Dearness Pay at 42% on the aggregate of their Basic Pay plus 75% thereof as Pay Element in their RA. As the facts and circumstances in all these applications are alike and the questions to be determined are the same, we propose to dispose them of, by a common order. It is ironical that a matter which relates to Running Allowance and therefore should have run fast to its destined course, has instead limped, rather crawled, for nearly a year and a half, for a decision, owing to a spate of adjournments sought for or occasioned by either side!



2. The following is a profile of the case, in so far as it is relevant to the questions that need to be resolved. The following tabular statement depicts at a glance, the essential service particulars of the applicants in serial order, with accent on the main

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retirement benefits granted to them and their analysis:

Applicant No.	Post held at retirement.	Date of retirement.	Emoluments per mensem (Rs.)				
			Average pay	Dearness pay	Pay Element of RA @55% of the Pay.	Total Pension.	
(1)	Railway Guard.	31.10.1980	608.00	164.16	334.40	1106.56	548
(2)	-do-	30.6.1980	640.00	172.80	352.00	1164.80	575
(3)	-do-	30.4.1981	640.00	172.80	352.00	1164.80	575
(4)	-do-	30.4.1980	640.00	172.80	352.00	1164.80	575
(5)	-do-	30.6.1981	640.00	172.80	352.00	1164.80	575
(6)	-do-	21.7.1981	640.00	172.80	352.00	1164.80	575
(7)	-do-	30.9.1980	624.00	168.48	343.20	1135.68	562
(8)	-do-	30.6.1980	504.50	136.21	277.47	918.18	460
(9)	Railway- Driver:	30.6.1980	700.00	189.00	385.00	1516.00	624
(10)	-do-	31.5.1981	750.00	202.00	412.50	1364.50	665

3. The applicants were all employees working in the erstwhile Mysore Division of the Southern Railway and retired on superannuation between 30-4-1980 to 21-7-1981. By virtue of their outdoor duty as Railway Guards and Drivers in charge of moving trains, they were categorised as Running Staff and were entitled to Running Allowance (RA) according to rules, unlike other allowances,

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the characteristic feature of RA, was that a part of it ^{as} was reckoned as a "pay element", for the purpose of determination of Dearness Allowance, Dearness Pay, House Rent Allowance, pensionary benefit etc.

4. The provisions relating to RA, are statutory in nature and are contained in the Indian Railway Establishment Code (IREC, for short), which is a compendium of all statutory rules, framed by the President, under Article 309 of the Constitution of India.

5. Prior to 1-7-1979, RA was computed at 75% of the basic pay, for the purpose of determining the pensionary benefits, in accordance with the Railway Board Order dated 7.3.1963. The Railway Board appointed a Running Allowance Committee (RAC, for short) to review critically, the matter relating to RA and submit its report. It accordingly submitted its report to the Railway Board, in April 1980, on which, the Union Ministry of Railways, took decisions on the various recommendations therein, in consultation with the recognised Labour Federations. By its Letter dated 17-7-1981, the Railway Board communicated these decisions to all the General Managers of the Indian Railways, indicating that these decisions would take effect from 1-8-1981, unless specifically stated otherwise. The said decisions in so far as they are relevant to the case before us, are extracted below, to facilitate



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reference

reference:

"3.2 Pay element in the Running Allowance:

30% of the basic pay of running staff will be treated to be in the nature of pay representing the pay element in the Running Allowance pending further review. This pay element will fall under clause (iii) of Rule 2003(21)(a)-R-II i.e., "emoluments which are specially classed as pay by the President".

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"3.23 Reckoning of Running Allowance as Pay:

1) for the specified purposes for which running allowance is reckoned as Pay at present, 30% of the basic pay of the running staff concerned will be reckoned except as below:

a) For the purpose of retirement benefits, 55% of basic pay will be taken into account. This provision will be made applicable retrospectively from 1-4-79 so that these running staff who have already retired with effect from that date or afterwards, will also have their retirement benefits recalculated and re-settled.

b) When running staff are on leave, they shall be entitled to be paid their leave salary based on their basic pay plus 30% thereof representing the pay element of running allowance and the other allowances including Dearness Allowance/Addl.D.A. due on such basic pay plus 30% thereof.

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ii) In addition to the existing provision, 30% of the basic pay of running staff is also to be reckoned for the purpose of DA/ADA as provided for in sub-para 3.4 supra."

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"3.3 Revised Rate of Running Allowance:

On the basis of the methodology suggested by the RAC and also keeping in view the restructuring of the cadres of Drivers and Guards orders in regard to which are being

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issued

issued separately, the rates of Running Allowance will be as indicated in Annexure 'A' w.e.f. 1-8-1981 for the different categories and grades of Running Staff. With the coming into force of these new rates, the present dual rate system (III-A & III-B rates) will stand abolished.

3.4 Dearness Allowance on the Pay element of Running Allowance:

Instead of the Scheme of Additional Running Allowance recommended by the RAC, Running Staff will be paid with effect from 1-8-1981, Dearness Allowance, Additional D.A. at the appropriate rates as sanctioned by the Government from time to time on their basic pay plus the pay element of the Running Allowance viz., 30% of the basic pay."

6. The applicants state, that for the purpose of retiral benefits, 75% of the basic pay was earlier treated as RA and 75% of this RA was reckoned as the pay element which was later by an executive order, reduced to 45%. Thereafter, however, according to them, this was enhanced to 55% with retrospective effect from 1-4-1979. Consequently, such of the Running Staff which had retired with effect from 1.4.1979 or later, were entitled to redetermination of their retiral benefits accordingly.

7. They further state, that the All India Railway Guards Council, had represented to the concerned authorities, that 75% of their basic pay be treated as RA, as statutorily provided in the IREC and that its arbitrary reduction to 45% by an executive order or

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instruction



instruction was impermissible. Shri Dev Dutt Sharma and other employees who were aggrieved, had filed Writ Petition No.915 of 1978, urging the above contention, before the High Court of Judicature, New Delhi, which came to be transferred to the Principal Bench of the Central Administrative Tribunal, New Delhi (CAT, for short) and registered anew, as Application No.T-410/85. The applicants state, that the CAT decided the above application on 6-8-1986, in favour of the applicants therein, with a direction to the respondents, to treat 75% of the basic pay of the applicants as RA and to settle their retiral benefits accordingly.

8. The applicants refer to the decision taken by the Government of India in 1979, in respect of the employees who had retired on or after 30.9.1977, that the portion of their Dearness Allowance be treated as Dearness Pay and that in the case of the employees whose salary was within the range of Rs.300/- to Rs.2157/- per mensem, Dearness Pay was fixed at 27% of their pay. In the case of the Running Staff, however, as in the case of the applicants, who had retired between 1-4-1979 and 1-8-1981, 42% of their pay (instead of 27%) was treated as Dearness Pay, for the purpose of determining retiral benefits. According to them, this 42% was worked out on the aggregate of basic pay plus 55% thereof, as pay element in RA.

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9. The applicants allege, that in their case however, their Dearness Pay of 42% was determined on their basic pay only, exclusive of the additive pay element in RA, at 55% of the basic pay, which was irregular and discriminatory. They state that they represented to the respondents therein, through their organisation, pursuant to which, the Secretary, Railway Board, New Delhi, wrote to the Secretary, All India - Railwaymens' Federation, New Delhi on 9-12-1982 (Annexure-C) elucidating the matter inter alia, through an illustration, as to how pay of an employee from among the running staff should be determined for the purpose of retiral benefits. That illustration is reproduced below, filling in the gaps here and there, to help understand the methodology indicated:

ILLUSTRATION

Amount per
mensem (Rs.)

(i) Average basic pay of the last consecutive ten months immediately prior to retirement.	425.00
(ii) Pay element in RA at 55% of the average basic pay as at (i) <u>supra</u> .	233-75
	Total: 658-75
(iii) Dearness Pay at 42% of Rs.658-75 <u>supra</u> .	276-00
	Grand Total: 934-75



2. The amendment will be effective from 1-4-1979.
3. This issues with the concurrence of the Finance Directorate of the Ministry of Railways.
4. Hindi version is attached.

ANNEXURE 'A'

ADVANCE CORRECTION SLIP NO.437 R.I.

RULE 1302

The proviso(ii) under Sub-rule(5) may be substituted by the following:-

"The monthly emoluments of a non-gazetted railway servant entitled to running allowance shall also include 55% of basic pay in the revised scales of pay, as the pay element in Running Allowance"

AUTHORITY: Ministry of Railways' Letter No.E(P&A)II-80/RS-10, dated 17-7-1981.

EXPLANATION:

The Rule 1302 of Indian Railway Establishment Code, has been modified through administrative instructions issued with President's approval effective from 1-4-1979. These instructions were necessitated by the Government's decisions on the recommendations of 'Running Allowance Committee' (1980). The purpose of this amendment is to give statutory force to the Administrative instructions with effect from the same date on which the instructions were issued. It is certified that retrospective effect given to these rules will not adversely affect any employee to whom these rules apply.

ANNEXURE 'B'

ADVANCE CORRECTION SLIP NO.438 R.I.

RULE 1309

The second sentence in proviso(ii) under Sub-rule(i) may be substituted by the

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following:

9. The applicants allege, that in their case however, their Dearness Pay of 42% was determined on their basic pay only, exclusive of the additive pay element in RA, at 55% of the basic pay, which was irregular and discriminatory. They state that they represented to the respondents therein, through their organisation, pursuant to which, the Secretary, Railway Board, New Delhi, wrote to the Secretary, All India - Railwaymens' Federation, New Delhi on 9-12-1982 (Annexure-C) elucidating the matter inter alia, through an illustration, as to how pay of an employee from among the running staff should be determined for the purpose of retiral benefits. That illustration is reproduced below, filling in the gaps here and there, to help understand the methodology indicated:

ILLUSTRATION

Amount per
mensem (Rs.)

(i) Average basic pay of the last consecutive ten months immediately prior to retirement. 425.00

(ii) Pay element in RA at 55% of the average basic pay as at (i) supra. 233-75
Total: 658-75

iii) Dearness Pay at 42% of Rs. 658-75
supra. 276-00

Grand Total: 934-75



10. The applicants assert, that the above methodology should be adopted in their case too, for determining pay for the purpose of retiral benefits. According to them, the addition of Dearness Pay at 42% as above, relates to employees who retired between the period from 1-4-1979 to 1-8-1981 according to the extant rules. As the applicants retired from service during the said period, they contend, that their retiral benefits should have been worked out on the same methodology, but they complain, that this has not been done and they have been flagrantly discriminated against, to their detriment - vide para 9 supra. They further allege that instead of entitling them to RA at 75% of their basic pay for the purpose of determination of retiral benefits, according to the rules applicable, that percentage has been reduced to 55%.

11. They state, that they addressed several representations in this regard, to the concerned respondents, including a lawyer's notice on 5-6-1986, but to no avail. A-1 is said to have sent a representation to the Pension Adalat on 16-8-1986, to which he was given a reply on 17-9-1986 (Annexure-Q) by the Divisional Railway Manager (Personnel), Bangalore, informing him, that the said representation for calculation of pensionary benefits, as notified in the Southern Railway Gazette dated 1-3-1983, was further reviewed by the Railway Board and it was found that the pension and pensionary benefits

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worked

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worked out in the case of A-1, were in order, according to the extant rules. He was also informed, that on reexamination, the Railway Board, had by its Letter dated 5-6-1984, ^{had} cancelled the instructions issued by it, in the matter, earlier, in their Letters dated 9-12-1982 and 15-12-1982 (Annexure-C). The applicants aver, that till then, they were not aware of the instructions of the Railway Board in their aforesaid Letter dated 5-6-1984. Aggrieved, they have come before this Tribunal, through their present applications for redress.

12. The respondents filed their reply on 11-2-1988 resisting the applications. They filed a supplementary reply on 24-6-1988, affirming inter alia, that the relevant rules in the IREC, were duly amended, in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, by the President, with retrospective effect from 1-4-1979.

13. Though the respondents have raised the question of both limitation and jurisdiction in the penultimate para of their reply dated 11-2-1988, the same was however not urged by Shri A.N. Venugopal, Learned Counsel for the respondents, at the time of the hearing. The respondents have not rebutted the specific allegation of the applicants, in para-7 of their applications, ^{of the} several representations addressed by them to the respondents, in regard to redressal of

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their



their grievances in the matter, did not evoke any reply. As regards representation of A-1 on 16-8-1986, the reply given by the Divisional Railway Manager(Personnel), Bangalore, on 17-9-1986 (Annexure-D) reveals, that the same was further - reviewed (emphasis added) by the Railway Board, before the decision was conveyed to the applicants. The case of the other applicants was similar to that of A-1. In these circumstances, it would be realistic to infer, that the latest cause of action for the applicants arose as on 17-9-1986, while the applications have been filed on 20-4-1987. Evidently the applications are not hit by the bar of limitation or jurisdiction. We, therefore, overrule the above preliminary objection raised by the respondents.

14. Appearing for the applicants, Shri S. Krishnaiah, their learned Counsel, relied as his bulwark, on the ratio of the decision of the Principal Bench of the C.A.T., New Delhi, on 6-8-1986, in SHARMA's case (vide para-7 above) for his main thrust of attack. In that case, the applicant succeeded primarily on the ground, that the respondents had not shown to the Tribunal, that the pertinent statutory rule in the IREC, providing for RA to be counted as the pay element for the purpose of retiral and other benefits was duly amended statutory. The Principal Bench therefore held in that case, that the impugned order dated 22-3-1976, was of the nature of a mere executive order or instruction

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and as such, could not be accepted as a statutory amendment of the pertinent rules governing R.A.

15. Shri Krishnaiah further contended, that the respondents had accepted the recommendations of the IIIrd Central Pay Commission, on the continuance of RA as before and on the reckoning of 75% of RA, as the maximum for the purpose of treating it, as the "pay element" for retiral and other benefits. Pursuant to this, he argued, that the President had enacted the Railway - Service (Revised Pay) Rules 1973, which were duly notified, wherein he stressed, the maximum percentage of RA for retiral and other benefits was stipulated as 75%. He, therefore, urged, that in view of this statutory provision, the respondents had no authority to deviate from the percentage of RA and reduce it arbitrarily by an executive order or instruction, as they had done in the present case, for which he relied on SHARMA's case aforesaid, as his sheet anchor.

16. He also alleged, that only in the case of his clients, who were working in the erstwhile Mysore Division of the Southern Railway, the respondents had not determined their pay for the purpose of working out the retiral benefits, according to the methodology indicated in Annexure-C (vide para 9 supra), in that, the prescribed pay element in RA was not taken into account, apart from the fact, that RA was arbitrarily reduced from 75% to 55% by a mere executive order.



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17. The Dearness Pay too, he alleged, was determined on basic pay, at 42% thereof, without taking into account, the pay element in RA, at 55% of the basic pay.

18. Rebutting the above contentions, Shri Venugopal invited our attention to Rule 103(35) of the IREC, Vol. I Fifth Edition, 1985 relating to definition of the word "Pay", which reads as under:

"(35) 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;

(ii) overseas pay, special pay and personal pay; and

(iii) any other emoluments which may be specially classed as pay by the President."

19. In particular, he referred to Rule 35(iii) which in the context of the word "Pay", related to any other emoluments, which may be specially classed as Pay by the President. He then referred to the prayer of the applicants, in their applications. In SHARMA's case, decided by the Principal Bench of the CAT on 6-8-1986, he pointed out, that, that Bench, had overlooked the amendments statutorily effected earlier by the President of India retrospectively with effect from 1-4-1979, to Rules 1302(5), 1309 and 1502 of IREC, Vol. I Reprint 1971 corresponding respectively to Rules 902(5), 909, 1002(3)

of the revised IREC Vol.I, Fifth Edition, 1985, pursuant to the recommendations of the IIIrd Central Pay Commission, in exercise of the power conferred by the proviso to Article 309 of the Constitution of India. The President of India exercised this power, he said, with reference to the proposal sent by the Union Ministry of Railways under their Letter dated 17-7-1981.

20. Shri Venugopal stated, that this amendment was since duly notified on 1-7-1988, in Supplement No.13 of 1988 to the Fortnightly Gazette, Vol.XXXVIII of the Southern Railway(a copy of which was shown to us, as well as to Shri Krishnaiah, Counsel), the relevant portion of which is extracted below:

"AMENDMENT TO INDIAN RAILWAY ESTABLISHMENT
CODE VOL. I & II

P.B.CIRCULAR NO. 38/88.

A copy of Board's letter No.E(P&A)II-86/RS-15(V) of 17-12-1987 RBE No.304/87 on the above subject is sent herewith for information and guidance.

No.P(R) 436/P/Vol.VI of 5th February 1988

Copy of letter No.E(P&A)II-86/RS-15(V) dated 17-12-1987 from Director/Estt.(P&A), Railway Board, New Delhi, addressed to the General Managers, All Indian Railways etc. etc.

In exercise of the powers conferred by Proviso to Article 309 of the Constitution of India, the President is pleased to direct that Rules 1302, 1309, 1502 and 2544 of Indian Railway Establishment Code, Volume I & II(First reprint and Fifth reprint respectively) be amended as in the Advance Correction Slip No. 437, 438, 439 R.I. and 407 R.II enclosed as Annexure 'A', 'B', 'C' & 'D' respectively.



2. The amendment will be effective from 1-4-1979.
3. This issues with the concurrence of the Finance Directorate of the Ministry of Railways.
4. Hindi version is attached.

ANNEXURE 'A'

ADVANCE CORRECTION SLIP NO.437 R.I.

RULE 1302

The proviso(ii) under Sub-rule(5) may be substituted by the following:-

"The monthly emoluments of a non-gazetted railway servant entitled to running allowance shall also include 55% of basic pay in the revised scales of pay, as the pay element in Running Allowance"

AUTHORITY: Ministry of Railways' Letter No.E(P&A)II-80/RS-10, dated 17-7-1981.

EXPLANATION:

The Rule 1302 of Indian Railway Establishment Code, has been modified through administrative instructions issued with President's approval effective from 1-4-1979. These instructions were necessitated by the Government's decisions on the recommendations of 'Running Allowance Committee (1980). The purpose of this amendment is to give statutory force to the Administrative instructions with effect from the same date on which the instructions were issued. It is certified that retrospective effect given to these rules will not adversely affect any employee to whom these rules apply.

ANNEXURE 'B'

ADVANCE CORRECTION SLIP NO.438 R.I.

RULE 1309

The second sentence in proviso(ii) under Sub-rule(i) may be substituted by the

following:

following:

"In the case of running staff 55% of basic pay in the revised scales of pay, representing the pay element in Running Allowances shall also be added to that."

AUTHORITY: (Ministry of Railways'
Letter No.E (P&A) II-80/RS-10
dated 17-7-1981.

EXPLANATION:

The Rule 1309 of Indian Railway Establishment Code, Volume I (First reprint) has been modified through administrative instructions issued with President's approval effective from 1-4-1979. These instructions were necessitated by the Government's decisions on the recommendations of Running Allowance Committee (1980). The purpose of this amendment is to give statutory force to the administrative instructions with effect from the same date on which the instructions were issued. It is certified that retrospective effect given to these rules will not adversely affect any employee to whom these rules apply.

ANNEXURE 'C'

ADVANCE CORRECTION SLIP NO.439 R.I.

RULE 1502

The proviso under sub-rule (3) may be substituted by the following:-

"Provided that in respect of a railway servant of either case, entitled to running allowance, Pay shall also include 55% of basic pay, in the revised scales of pay as the pay element in Running Allowances."

AUTHORITY: Ministry of Railways' Letter
No.E (P&A) II-80/RS-10, dated 17.7.1981.

Explanation



EXPLANATION:

The Rule 1502 of Indian Railways Establishment Code, Volume I (First Reprint) has been modified through administrative instructions issued with President's approval effective from 1-4-1979. These instructions were necessitated by the Government's decisions on the recommendations of Running Allowance Committee (1980). The purpose of this amendment is to give statutory force to the administrative instruction with effect from the same date on which the instructions were issued. It is certified that retrospective effect given to these rules will not adversely affect any employee to whom these rules apply.

ANNEXURE 'D'

ADVANCE CORRECTION SLIP NO.407 R.I.

RULE 2544

Sub-rule g(i) and g(ii) may be substituted by the following:-

"g(i) For the purpose of calculation of average emoluments:

"55% of basic average pay, in the revised scales of pay drawn during the period".

g(ii) For the purpose of gratuity and/or death-cum-retirement gratuity:-

55% of basic average pay, in the revised scales of pay drawn during the period."

AUTHORITY: (Ministry of Railways' letter No. E(P&A) II-80/RS-10 dated 17-7-1981).

EXPLANATION:

The Rule 2544 of Indian Railway Establishment Code, Volume II (Fifth reprint) has been modified through administrative instructions issued with President's

approval

approval effective from 1-4-1979. These instructions were necessitated by the Government's decision, On the recommendations of Running Allowance Committee (1980). The purpose of this amendment is to give statutory force to the administrative instructions with effect from the same date on which the instructions were issued. It is certified that retrospective effect given to these rules will not adversely affect any employee to whom these rules apply."

21. He stressed, that the Principal Bench of the CAT, had clearly erred in its decision in the aforementioned SHARMA's case, in stating that the impugned order dated 22-3-1976 in that case, reducing the quantum of RA from the maximum of 75% as statutorily prescribed, to 45%, for the purpose of retiral and other benefits, was illegal, on the premise, it was a mere executive order or instruction and could not be regarded as a statutory amendment to the pertinent statutory rules in the IREC, as that decision had glaringly overlooked the statutory amendment to these rules, which was already effected earlier by the President of India, in exercise of his power under the proviso to Article 309 of the Constitution. He, therefore, asserted in this background, that the decision in the aforesaid SHARMA's case was patently erroneous and would not apply to the case before us.



22. Shri Krishniah resourcefully argued in the above context, that it could not be said that the Railway Board had effectively notified the above amendment

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amendment, in the All India Official Gazette, for the benefit of all the Railways in the country, as the said amendment was of universal application to all the Zonal Railways in the country and was not confined to the Southern Railway alone. In this context, he sedulously argued, that the Southern Railway Gazette was only parochial and regional in its effect and therefore, could not have countrywide circulation. He further contended, that the Southern Railway fortnightly Gazette, shown to him by Shri Venugopal, in the course of the hearing of the case, was only of the nature of a Zonal railway miscellany or bulletin and did not have the lineament of an "Official Gazette", as defined in Section 3 N-39 of the General Clauses Act 1897. The said definition is extracted below:

"Sec. 3 N-39

"Official Gazette" or "Gazette" shall mean the Gazette of India or the Official Gazette of a State."

23. We have bestowed the utmost thought on the rival contentions and examined carefully the material placed before us. Shri Venugopal could not clarify as to why in SHARMA's case, alluded to in the foregoing, the statutory amendment to the pertinent rules in the IREC, governing RA, effected under the proviso to Article 309 of the Constitution, could not be placed before the Principal Bench of the CAT, at least at the time

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time of the hearing of the case, specially when that was the lynch-pin of attack of the applicants in that case.

24. We have seen the Notification in regard to amendment to the pertinent Rules in the IREC, governing RA, in the Supplement to the fortnightly Gazette dated 1-7-1988, of the Southern Railway, shown to us by Shri Venugopal, as well as to Shri Krishnaiah, Counsel for the applicants, in the course of the hearing of this case - vide para 20 supra. We are however puzzled, as to why it took the Southern Railway as long as nearly 7 years, to notify in its Gazette, this amendment, emanating from the proposal of the Union Ministry of Railways, as far back as on 17-7-1981. We are also at a loss to know, as to why the Railway Board itself could not notify this statutory amendment in the Official Gazette promptly, since it pertained not merely to one Zone of the Railways viz., the Southern Railwy, but to all other Zonal Railways in the country. Shri Venugopal who actually had sought adjournment in this case twice, to ascertain this fact, could not however enlighten us as on this matter.

25. It is pertinent to recall here, the dicta of the Supreme Court in the oft-quoted case namely, AIR(38)1951 S.C.467 (HARLA v. THE STATE OF RAJASTHAN) ^{where} BOSE, J., sitting on a Division Bench, inter alia, made



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this poignant observation:

".....Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is; or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence."

26. We find that in the light of the principles enunciated above, in HARLA's case, there is no little merit in the contention of Shri Krishnaiah, that even if the pertinent rules were statutorily amended by the President, in exercise of the power vested in him they were not effectively notified. Shri Venugopal has not been able to show us, as to whether this statutory amendment to the pertinent rules, was duly notified or published by the Railway Board or the Union Ministry of Railways, in the Gazette of India, as this amendment applied to all the Zonal Railways in the country, and not to the Southern Railway alone. Even the Southern Railway Fortnightly Gazette, shown to us by Shri Venugopal (vide para 24 above), wherein the said amendment is said to have been notified, is dated 1-7-1988 and therefore is of very recent origin. As remarked by us earlier, we are indeed astonished at the inordinate delay. Besides being a zonal or regional Gazette, it does not fulfil the pre-requisite

laid down in ^{HARLA's} ~~SHARMA's~~ case, that the statutory amendment should have been duly promulgated or publicised, necessarily on All India coverage, since the matter concerned all the Zonal railways in the country.

27. Shri Venugopal sought to convince us, that this amendment had already appeared in the Revised Fifth Edition of the IREC, 1985. We have examined the pertinent rules, both in the 1971 and 1985 Editions of the IREC. A test-check by us reveals, that Rule 1002(3) in the Revised IREC 1985, corresponding to Rule 1502(3) of IREC 1971, Vol.I and relating to the definition of the term "Pay" under the State Railway Gratuity Rules, does not reflect the statutory amendment effected by the President - vide Advance Correction Slip No.439 R.I. in para 20 above. Besides, the IREC does not indicate the authority for the amendments wherever effected. In view of the above lacunae and deficiencies and in the light of the principles enunciated in HARLA's case, we cannot but hold, that the statutory amendment to the pertinent rules in the IREC, were not duly promulgated or publicised and therefore could not become operative. On this conclusion of ours, it necessarily follows, that the applicants become entitled to 75% of their RA, to be reckoned for determining their pay, for calculation of their retiral benefits. The Principal Bench of the CAT in SHARMA's case, also reached this conclusion though on a different ratiocination.



28. Shri Krishnaiah argued that though the percentage quantum of Dearness Pay to be determined with reference to the aggregate of 10 months' basic pay plus 56 percent of RA as additive "pay element", had been reduced from 42% to 30% for the purpose of calculation of retiral benefits in respect of the Running Staff who retired on and after 1-8-1981 according to the Letter dated 17-9-1986 of the Divisional Railway Manager, Bangalore (Annexure 'D'), the methodology in regard to determining pay, for the purpose of working out the retiral benefits as shown in Annexure-C, would not change.

29. The above argument of Shri Krishnaiah, according to us, would have no relevance when once we held that the applicants are not governed by the statutory amendments to the pertinent rules in the IREC, which had not become truly operative, since they were not duly promulgated or publicised.

30. In the light of our above discussion, we make the following orders and directions:

(i) We declare that the applicants are entitled to 75% of their RA to be reckoned for determining their pay for calculation of their retiral benefits, so long as the said basis continues in the IREC.

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(ii)

(ii) We direct the respondents to determine their Dearness Pay according to the rules and orders in force, without ignoring the "pay element".

(iii) We further direct, that this order be complied with expeditiously, but not later than a period of three months, from the date of its receipt.

31. Applications are disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.



Sd/-

(K.S.PUTTASWAMY)
VICE CHAIRMAN.

Sd/-

(L.H.A.REGO) 21.2.88
MEMBER(A)

TRUE COPY

By [Signature]
DEPUTY REGISTRAR (JDL) 6/95
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE