

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 836/92.

Transfar Application No:

DATE OF DECISION: JUNE 30, 1994.

Shri Vithal R. Shinde & Anr. Petitioner

Shri D. B. Dave, Advocate for the Petitioners

Versus

General Manager, Western Railway, Respondent

Shri P.M.A. Nair, Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M. R. Kolhatkar, Member (A).

The Hon'ble Shri

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.Kolhatkar

(M. R. KOLHATKAR)

MEMBER (A).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO. : 836/92.

Shri Vithal R. Shinde & Anr. ... Applicants.

Versus

General Manager, Western Railway ... Respondents.

CORAM : Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCES :

1. Shri D. B. Dave,
Counsel for the Applicants.
2. Shri P. M. A. Nair,
Counsel for the Respondents.

ORAL JUDGEMENT

DATED : JUNE 30, 1994.

X Per Hon'ble Shri M. R. Kolhatkar, Member (A) X.

1. This is a joint application in which Shri V. R. Shinde, Applicant No. 1, who retired on 31.12.1989 and Shri G. H. Dabhi, Application No. 2, who retired on 28.02.1989, the former as adhoc Power Controller/Fuel Inspector and the latter as adhoc Power Controller, have claimed the relief of re-computation of pension by adding 55% of the average emoluments as running allowances for pension and pensionary benefits. The second relief claimed by the Applicant is to pay 30% allowances as were paid to Messrs R. K. Bhutani, Ramabhai Raval and V. B. Sawant, who were utilised to work as PCR/JFI on temporary measure but were continued in the running category with 30% allowance. The Applicant No. 1 was undisputedly qualified and deployed as driver on 25.07.1989 and was given paper promotion to the post of Passenger Driver but continued to work as Power Controller on adhoc basis. He had submitted an application on 18.09.1989 to be re-posted as a Passenger Driver. The main contention of the application is that he was retained in a stationary job against his will and had he been

Repatriated as a running staff, he would have got 55% of running allowance added to his pension when he duly retired on 31.12.1989. So far as Applicant No. 2 is concerned, he was given paper promotion as Driver Grade 'A' w.e.f. 01.06.1981 and was promoted as Driver Grade 'A' special scale Rs. 550-750 (R) w.e.f. 01.01.1984 against the upgraded post due to restructuring on the basis of seniority of Driver Grade 'B' and 'C' but continued to work as PCR on adhoc basis.

2. *have* Applicant No. 2 could not/been given the benefit of 55% pay element at the time of retirement because he never worked as running staff not having given his willingness. So far as Applicant No. 1 is concerned, it is the contention of the respondent that he volunteered to work as a Driver only three months prior to his retirement but it was not practically feasible to post him as Driver because before posting a person as a Driver, he was required to be sent for Vision Test and on being declared fit, he was required to be sent for Refresher Training at BRG/UD. On completion of the same, he was to be sent for Safety Camp and PPC test. Thereafter, he was to be sent for LRD for 15 days and Practical Handling of WAM-4, WAG-1 and WCAM-1 Locos. On completion of such practical handling and LT test, he was finally to be examined by DSE/TRS for endorsing his competency certificate. Thereafter, as per laid down procedure, all such staff members are posted for Goods Train for atleast 3 trips under the supervision of LT and thereafter they are booked for Passenger Trains. Before allowing him independently on line, he was to be placed before a Safety Counsellor (Loco) for examining

his proficiency and obtain a certificate regarding acquired knowledge in the matter of Automatic Block Territory. On my query, the counsel for the respondent stated that the duration of this training would not be less than three months and most probably would exceed three months. Under these circumstances, Shri V. R. Shinde could not be actually posted as Driver and therefore could not be given the benefit of 55% for the purpose of calculating pension.

3. The applicant in his written statement has referred to certain JCM decisions taken in 1992 but this is not of any help to him, as both the applicants retired well before 1992. The applicant depends on the Supreme Court Judgement in G.C. Ghosh & Others versus Union Of India and Others vide (1992) 19 ATC 94. In this case, the Allahabad High Court had granted benefit of running allowance to the employees of the Northern Railways and the Supreme Court in the light of the command of Articles 14 and 16 of the Constitution Of India held that the same treatment is required to be accorded to the petitioners regardless of the fact that they are serving in the Eastern Railway. This judgement does not appear to help the applicant. The basic question is, whether as required by the applicable pension rules, the applicant at the time of retirement was working as a running staff. The applicant next raised the question relating to 30% allowance, which has been allowed to certain staffs while continuing to work on stationary duty. As ascertained from the written statement of the respondent this was a situation when three employees who were already running staff, were required to be deployed on stationary

H duty and therefore, instead of being paid 55% allowances, were paid 30% allowances over and above the normal pay. So far the present applicants are concerned, they had never worked as running staff and the question of benefit granted to running staff required to work on stationary duty, viz. grant of 30% allowance does not arise in their case.

4. In the circumstances, the O.A. is dismissed as devoid of merit. No order as to cost.

M.R.Kolhatkar

(M. R. KOLHATKAR)

MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

R.P.No. 121/94 in
Original Application No: 836/92

Transfer Application No:

DATE OF DECISION: 17-11-94

Vithal R. Shinde &
Govindbhai H. Dabhi Petitioners

Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M.R. Kolhatkar, Member (A)

The Hon'ble Shri

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

J*

(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

R.P.No. 121/94 in O.A. 836/92

Vithal R. Shinde &
Govindbhai H. Dabhi

.. Applicants

Vs.

Union of India & Ors.

.. Respondents

CORAM : Hon'ble Shri. M.R.Kolhatkar, Member (A)

TRIBUNAL'S ORDER BY CIRCULATION

DT : 17-11-94

(Per. Shri.M.R.Kolhatkar, M(A))

This Review Petition is against our judgment dated 30/6/1994. The first ground for review urged is that the Supreme Court in its judgment in G.C.Ghosh V/s. Union of India, held that the benefit of running allowance allowed to the drivers of Northern Railway should be allowed to the running staff of Eastern Railway also. This ground does not appeal to us as this aspect has been dealt with in para 3 of the judgment.

2. The next point ^{urged} is that although the Tribunal did not give weight to the Railway Board instruction dated 25.11.92, the matter was actually on the agenda ^{though} earlier decision was taken after retirement of the applicant. Reading of the order shows that the Railway union had raised the issue in the G.C.M in December 1989 i.e. immediately after retirement of both these applicants. This ground is not valid

because whatever the steps through which the decision is arrived at, the decision became effective only from the date of issue of this instruction viz. on 25.11.1992.

3. The third ground is that the Tribunal had, erroneously come to the conclusion that they were paid 30% allowance over and above their pay, whereas the rule on this point was cancelled on 26.6.74 vide page 28 of the application. Here again the question was raised by the applicant and it was dealt with by the Respondents to which the Tribunal had made ^a reference. If 30% allowance has been discontinued with effect from 26.6.74, the reference made thereto by the applicant himself was wrong. In any case, nothing turns on this question.

4. Lastly, the applicant has annexed a copy of Railway Board Circular No. F(E)(P)58/PN-1/17 dated 7.7.1960 which states that average running allowance actually drawn under the relevant rules would be 50% of the substantive emoluments for the same periods of officiating duty in a stationary post. Here again the circular referred to is that of July 1960 whereas the application was filed on 5.8.92 and the matter was heard and decided on 30/6/1994. It is not clear why the applicant was not able to produce the circular at the time of hearing and /or at the stage of filing of the application. In any case that circular is not an authority for payment of running allowance to the staff who had never worked as running staff, not having given willingness to work.

5. The parameters of review are strictly limited and we do not find that the grounds for review adduced by the applicant fall within those parameters and we do not consider this a fit case for review. The R.P is rejected.

M.R.Kolhatkar
(M.R.Kolhatkar)
Member (A)

J*