

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

**Original Application Nos.021/0225/2018,  
021/0371/2018 & 021/0566/2018**

**Reserved on: 20.03.2019**

**Pronounced on: 22.03.2019**

**OA No.021/0225/2018**

Between:

1. Taz Mohammed, S/o. Raj Mohammed, aged about 67 years,  
Occ: Retd. Passenger Guard, SC Rlys, Group C,  
H. No. 1-6-141, Bapuji Nagar, Kazipet, Telangana,
2. Abraham, S/o. Raj Mohammed, Aged about 67 years,  
Occ: Retd. Passenger Guard, SC Rlys, Group C,  
H. No. 4-44, Prodduturu -507208, Chintakani,  
Khammam (Dt.), Telangana.

...Applicants

AND

1. UOI, Rep. by General Manager,  
South Central Railway, Rail Nilayam,  
3<sup>rd</sup> Floor, Secunderabad – 500 025.
2. Divisional Personnel Officer,  
S. C. Railway, Secunderabad Division,  
Secunderabad – 500 025.

...Respondents

Counsel for the Applicants ... Mr. K.S.P. Reddy

Counsel for the Respondents ... Mrs. Vijaya Lakshmi, Advocate for  
Mr. T. Hanumantha Reddy, SC for Rlys.

**OA No.021/0371/2018**

Between:

B. Raja Bhadraiah, S/o. Ellaiah,  
Aged about 67 years, Occ: Retd. Loco Pilot,  
SCR/SC, Group C,  
H. No. 24-4-46, Dargah, Warangal – 506004.

...Applicant

AND

1. UOI, Rep. by General Manager,  
South Central Railway, Rail Nilayam,  
3<sup>rd</sup> Floor, Secunderabad – 500 025.
2. Divisional Personnel Officer,  
S. C. Railway, Secunderabad Division,  
Secunderabad – 500 025.

...Respondents

Counsel for the Applicant ... Mr. K.S.P. Reddy  
Counsel for the Respondents ... Mr. N. Srinivasa Rao, SC for Rlys.

**Original Application No.021/0566/2018**

Between:

1. Rajpal Ghalke, S/o. Sri S.B. Ghalke,  
Aged 63 years, Retired Guard, Secunderabad Division,  
S.C. Railway, H. No. 1-166, F-206, Pallavi Residency,  
Malkajgiri, Hyderabad – 500 047, TS.
2. Abdul Jabbar Khan, S/o. Sri A.K. Khan,  
Aged 65 years, Retired Loco Pilot, Hyderabad Division,  
S.C. Railway, H. No.15-89/1, Shaheen Nagar,  
Saroor Nagar, Balapur, Hyderabad – 500 005, TS.
3. Abdul Aziz, S/o. Sri Mahaboob Sab, Aged 67 years,  
Retired Loco Pilot, HYB Division, S.C. Railway,  
H. No. 43-358/1 a, Dr. Krishna Nagar,  
RTC Colony, Moula Ali,  
Malkajgiri, Hyderabad – 500 047, TS.
4. D. Laxmaiah, S/o. Sri Enkaiah, aged 67 years,  
Retired Loco Pilot, HYB Division, S.C. Railway,  
H. No. 7-2-108/9e, Seetarampet,  
K.V. Ranga Reddy, Tandur – 501 141, TS.
5. B. Narasinga Rao, S/o. Sri Sailoo, aged 63 years,  
Retired Shunter, HYB Division, S.C. Railway,  
H. No. 8-4-373/44/A, Sastry Nagar,  
Erragadda, Hyderabad – 500018, TS.
6. L. Narahari, S/o. Sri Narasimha, Aged 65 years,  
Retired Loco Shunter, HYB Division, S.C. Railway,  
H. No. LIG 113/5, III Phase,  
Near: K. Durga Temple, KPHB Colony,  
Kukatpalli, Hyderabad – 500072, TS.
7. Md. Subhan Khan, S/o. Md. Osman Khan, Aged 65 years,  
Retired Loco Pilot, HYB Division, S.C. Railway,  
H. No. 12-1-1143/80/b, Shashapahadi,  
North Lallaguda, Secunderabad-500017, TS.
8. M.A. Hakeem, S/o. Sri M.A. Jabbar, aged 63 years,  
Retired Loco Pilot, HYB Division, S.C. Railway,  
H. No. 17-2-1198/38/A/1, Yakuthpura,  
Rain Bazar, Charminagar, Hyderabad – 500025, TS.
9. Mir Jaffar Ali, S/o. Sri Mir Riyasat Ali, aged 71 years,  
Retired Diesel Assistant, HYB Division, S.C. Railway,  
H. No. 17-7-199/2/P/1, Naga Bowli Road,

Daberpura, Hyderabad – 500023, TS.

10. Narsa Reddy N, S/o. Sri Siddi Ramulu, aged 66 years, Retired Sr. DSL/ASST, HYB Division, S.C. Railway, H. No. 6-100/10, Ramalingeswara Col, Keesara, Nagaram, Hyderabad – 500083, TS.
11. P. Rajaiah, S/o. Sri P. Ballaiah, aged 66 years, Retired Loco Pilot, HYB Division, S.C. Railway, H. No. 1-11-95/15, Shamlal Building, Begumpet, Hyderabad – 500016, TS.
12. Riyaz Mohd Khan, S/o. Sri Faiz Mohd Khan, Aged 68 years, Retired Loco Pilot, HYB Division, S.C. Railway, H. No. 3-4-883/A, Barkatpura, Hyderabad – 500027, TS.
13. Syed Abdul Majeed, S/o. Sri Syed Abdul Jabbar, aged 68 years, Retired Sr. Asst. Driver, HYB Division, S.C. Railway, H. No. 17-1-182/88, Bhanu Nagar, Santosh Nagar, Saidabad, Hyderabad – 500059, TS.

...Applicants

AND

1. Union of India, Rep. by its General Manager, South Central Railway, Rail Nilayam, Secunderabad.
2. The Senior Divisional Personnel Officer, S. C. Railway, Secunderabad Division, Sanchalan Bhavan, Secunderabad, TS.
3. The Senior Divisional Personnel Officer, S. C. Railway, Hyderabad Division, Hyderabad Bhavan, Secunderabad, TS.

...Respondents

Counsel for the Applicants ... Mr. S. Srinivasa Rao

Counsel for the Respondents ... Mr. N. Srinivasa Rao, SC for Rlsy

***CORAM:***

***Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

***ORDER***

***{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }***

2. The OAs have been filed by the applicants for not granting Gratuity and leave salary on retirement based on 55% of pay element. The

respondents and the relief sought being one and the same a common order is passed.

3. Brief facts of the case are that the applicants are retired group C employees of the respondents organisation. They have been categorised as running staff. Running staff are eligible for a special allowance called as pay element. The pay element is 30% of basic pay in regard to serving employees and for retired employees it is 55% of basic pay. Thus 55% of the basic pay known as pay element should be added to the last basic pay to arrive at the basic wage. This aspect of working out the pay element @ 55% of basic pay was not considered while working out the gratuity and leave encashment of the applicants at the time of their retirement , despite several representations made and hence the OA.

4. The contention of the applicants is that the provisions of the IREM manual and the 6<sup>th</sup> CPC recommendations are in favour of the cause of the applicants. Hence non grant of the same is against rules and illegal.

5. Respondents per contra state that the Impugned order issued against one Sri Taj Mohammed cannot be the basis for the applicants to file the OA 566/2018. The gratuity & leave encashment have been worked out as per rules and paid at the time of retirement which were accepted without any grievance. After accepting the same and filing the OAs after considerable lapse of time is incorrect. Hence the OA s are barred by limitation. The representations stated to have been filed have not been received by the respondents. The respondents confirm that 55% of pay element was taken while computing pension and gratuity. Besides, 30% of pay element was taken as pay for computing dearness allowance and leave salary. Relevant provisions namely rule 903/904/924 of IREM vol-I, rule 1303 –FR-9(21) have been followed in releasing the gratuity

and leave salary due to the applicants. The Railway Board order RBE 202/2008 speaks about 55% of basic pay to be reckoned in calculating retirement benefits. As per rule 3 (24) of the RS (Pension) Rules leave salary is not a part of retirement benefits. The Railway Board orders RBE 161 of 2008 and RBE 10 of 2015 have laid down the procedure for calculating leave salary. There is only one form of leave salary and not two as claimed by the applicants.

6. Heard the learned counsel for the applicants as well as the Ld counsel for the respondents. Documents, material papers, written arguments, rejoinder submitted have been gone through in detail.

7. I) The dispute is in regard to working out gratuity and leave salary by reckoning 55 % pay element for retired employee. Respondents claim that after accepting the retirement benefits, filing the OA after considerable delay, is barred by limitation. Objection raised is unsustainable since retirement benefits form a continuous cause of action. Besides, once a rule is breached by the respondents effecting an employee, its application to others is but natural. Hence, citing such a breach, approaching the Tribunal is not irregular. Therefore, applicants citing orders of rejection issued to Mr. Taj Mohammed and filing the OA is understandable. Reverting to the core aspect of the dispute, before going into the knitty gritty of the issue, it would be appropriate to have a quick look at the rules and the legal principle governing the issue in question.

### **901. Running Allowance for staff performing running Duties**

1. Running Allowance Rules are called "The Rules for the payment of Running and other Allowances to the running staff on the Railways" coming to force with effect from 1-8-1981.

(iv) "Running staff" performing "running duties" shall refer to Railway servants of the categories mentioned below :

Loco	Traffic
(a) Drivers, including Motormen & Rail Motor Drivers but excluding Shunters.	(a) Guards
(b) Shunters	(b) Assistant Guards
(c) Firemen, including Instructing Firemen, Electric Assistant on Electric Locos and Diesel Assistant/Drivers. Assistants on Diesel Locos.	

(v) "Running Allowance" means an allowance ordinarily granted to running staff in terms of and at the rates specified in these rules, and/or modified by the Central Government in the Ministry of Railways (Railway Board), for the performance of duties directly connected with charge of moving trains and includes a "Kilometrage Allowance" and "Allowance in lieu of kilometrage" but excludes special compensatory allowances.

**903. Pay element in running allowance:-** 30% of the basic pay of the running staff will be treated to be in the nature of pay representing the pay element in the Running Allowance. This pay element would fall under clause (iii) of Rule 1303-FR-9 21 (a) i.e. "emoluments which are specially classed as pay by the President".

**904. Dearness Allowance on the pay element of Running Allowance:-** The running staff shall be paid Dearness Allowance, at the appropriate rates sanctioned by the Government from time to time, on their basic pay plus the pay element of Running Allowance i.e. 30% of the basic pay.

**924. Reckoning of Running Allowance as pay :**

- (i) 30% of the basic pay of running staff shall be reckoned as pay for the following purposes :
  - (a) Entitlement to Passes and P.T.Os.
  - (b) Medical attendance and treatment.
  - (c) Educational assistance.
  - (d) Fixation of pay in stationary posts.
  - (e) Compensatory (City) Allowance,
  - (f) House Rent Allowance.
  - (g) Entitlement to quarter.

- (h) Recovery of rent for quarters.
- (i) Dearness Allowance/Addl. Dearness Allowance.
- (j) Overtime Allowance,
- (k) Leave Salary.

(iii) For the purpose of retirement benefits, 55% of basic pay shall be taken into account in the case of running staff retired/retiring on or after 1-4-1979. 55% of basic pay shall also be reckoned as pay for the purposes of recovery of subscription towards Provident Fund.

**Note**

- (b) For the purpose of retirement benefits, 55% of basic pay shall count as pay for calculating pension and DCRG as well as for special contribution to PF Rules.
- (c) While determining the emoluments for the purpose of calculation of retirement benefits, Dearness Pay as admissible from time to time, shall be calculated on basis of pay plus 30% thereof in the case of running staff retired/retiring on or after 1-8-1981.

As per the above rules, applicants are running staff involved in the movement of trains. Hence they are eligible for running allowance and pay element. The pay element in regard to retired running staff is 55 % of the basic pay. The applicants are eligible for dearness allowance on basic pay plus pay element at appropriate rates fixed by the Govt. from time to time. Running allowance will be reckoned for leave salary @ 30% of basic pay.

II) Besides the Railway Board order RBE 202 of 2008 while communicating the 6<sup>th</sup> CPC decision on pay element in running has stated as under:

“2. The President is pleased to decide that the pay element in Running allowance for running staff would be 30% of the basic pay under the RS (Revised Pay) rules, 2008 for computation of the specified benefits excluding retirement benefits. For the purpose of computation of retirement benefits of running staff, an additional quantum of 55 % of basic pay under the RS (revised pay) Rules, 2008 would be reckoned.”

III) Respondents confirm that 55% of pay element was taken while computing pension and gratuity. In regard to dearness allowance to be allowed, while computing gratuity the Hon'ble Ernakulam bench of this Tribunal has dealt with the matter extensively in OA 962 of 2013 wherein it was stated as under:

“11. The afore quoted provisions relating to running allowance rules clearly show that for the purpose of retirement benefits 55% of basic pay is reckoned as running allowances shall be counted as pay for calculation of pension and DCRG.

12. It appears that the contention of respondents that the dearness allowance to be treated as emoluments for the purpose of gratuity (see the italicised portion of Rule 70 extracted above in paragraph 6 of this order) shall be calculated on the basis of pay plus 30% thereof, in the light of note (c) to Rule 924 of the running allowance rules quoted above. This Tribunal is of the view that the respondents are taking such a view on an erroneous premise that the Dearness Pay mentioned in note (c) to Rule 924 of the Running Allowance rules is the same as Dearness allowance applicable to the pay inclusive of running allowance. The Railway Board letter No. 2011/F (E) III/1(1)9, dated 23.09.2013 (quoted above in rule 70 of the Pension rules at paragraph 6 of this order) refers to the Dearness Allowance admissible on the date of retirement/ death of the running staff. The emoluments as defined under Rule 49 of the Pension Rules in the case of running staff includes 55% of the basic pay.

13. Since the ‘emoluments’ of the Railway servant before his retirement/ on the date of his death is the amount to be reckoned for the purpose of pensionary benefits, and as the said emoluments takes in 55 percentum of the basic pay also, this Tribunal is of the view that the dearness allowance admissible to him as per the aforesaid Railway Board letter dated 23.9.2013 shall have to be paid on the emoluments calculated as per the provisions of Rule 49 of the Pension Rules. In the case of running staff, the inclusion of 55% of basic pay in their pay as emoluments under Rule 49 being a fictional inclusion. Since 55% of basic pay for the retiring running staff is treated as a running allowance payable to them as part of their emoluments on the day prior to retirement, as per the note (b) to Rule 924 of Running Allowance Rules (see para 10 above), this Tribunal does not see any reason to hold that they are not entitled to dearness allowance on the pay plus 55% of the basic pay while calculating their emoluments for the purpose of DCRG.

14. In the result it is hereby declared that the action on the part of the respondents in arriving at the emoluments for calculating the retirement gratuity adopting the formula of basic pay plus 55% of the basic pay plus dearness relief admissible on basis pay plus 30% of the basic pay is arbitrary, discriminatory and against the law. It is further declared that the applicants are entitled to have their retirement gratuity re-calculated by

arriving at the emoluments by adding basic pay plus 55% of basic pay and dearness allowance admissible on the sum so arrived at.”

IV) Thus it needs no further elaboration that the retirement gratuity has to be arrived at by working out the emoluments by adding basic pay plus 55 % of basic pay and dearness allowance admissible on the sum so arrived. The judgment of the Hon’ble Ernakulam Bench being a binding precedent, it need to be followed as per legal principle laid down by the Hon’ble Supreme Court in Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644. The learned counsel for the respondents has stated that the verdict of the Hon’ble Ernakulam bench of this Tribunal was in respect of a Medically de-categorised employee. The principle in working out the gratuity has been laid down based on the rules of the respondents organisation and hence the same has to be followed. Besides, Hon’ble Supreme Court has observed in Chairman, Railway Board and Ors v C.R.Rangadhamaiyah and ors etc where in attention was drawn to the Railway Board lr dt 17.7.1981 in regard to running allowance as under:

“ For the purpose of retirement benefits, 55% of basic pay will be taken into account. This provision will be made applicable retrospectively from 1.4.1979 so that those running staff who have already retired with effect from that date or afterwards will also have their retirement benefits recalculated and re-settled.”

Further Hon’ble High Court of A.P has also held in WP No.27894 of 2017 involving the respondents on the same issue has observed as follows:

“Thus having regard to the context in which the clarificatory circular was issued, we are of the opinion that here is absolutely no justification for denying 55% pay element to the respondents, who spent all their service as Drivers/Loco Pilots. Moreover, as found by the Tribunal, from the language of paragraph 2 referred to above the Circular cannot be construed as prospective in nature, as it covers even the employees in respect of whom the pay was already fixed by taking 30 % pay element.”

In view of the rules on the subject and the legal principles laid by the superior judicial forums and the coordinate bench of this Tribunal, the retirement gratuity has to be arrived at by working out the emoluments by adding basic pay plus 55 % of basic pay and dearness allowance admissible on the sum so arrived.

V) Now coming to the aspect of leave encashment RS (Pension) Rules, 1993, Rule (24) defines Retirement benefits as those which include pension or service gratuity and retirement gratuity where admissible. Applicants claim that since the definition uses the word 'includes' it means other benefits as well. Hence Leave salary has to be the additional one which could be treated as retirement benefit. Besides, applicants further assert that as per IREM paras 903, 904 and 924 leave salary is extended to in service personnel and to the pensioner. In case of in service personnel it is termed as leave salary and for the pensioner the nomenclature changes to leave encashment and therefore it has to be a retirement benefit. One another argument placed by the applicants is that in Finance Act, 1982 leave encashment was treated as a retirement benefit and exempted from payment of income tax. The applicants have stated that the Hon'ble Supreme Court has referred to the Railway Board letter dated 22.3.1976 which clarifies pay for the purpose of leave salary, Medical attendance/ treatment, educational Assistance and retirement benefits and declared that pay shall be pay plus actual amount of running allowance drawn subject to a maximum of 45% of pay, in Chairman Railway Board and Ors v C.R.Rangadhamaiah and ors.

An analysis of the submissions of the applicant would reveal that the applicants are trying to stretch the definition of retirement to suit their convenience. Rule 24 of RS (Pension) Rules did use the word 'includes' to specify as to what has to be included. Accordingly it has specified pension, service gratuity and retirement

gratuity. It did not indicate leave encashment as a retirement benefit. As rightly pointed by the applicants leave salary is extended to the pensioners as well but the percentage will be 30 percent because even in the model calculation it was shown as 30 percent and not 55% percent of the pay element. The finance act-1982 quoted has considered the leave salary as a retirement benefit only to the limited purpose of exempting the same from income tax. The reference to Railway Board letter by the Hon'ble Supreme Court in the cited case only speaks of pay and it does not say that leave salary is a retirement benefit. Moreover the pay for Leave Salary as per Railway Board order is pay plus running allowance subject to a maximum of 45 % of pay. The aspect of what percentage of pay element is to be reckoned is given in IREM 924 Vol.1 as 30% of pay element in respect of leave salary. Recently Hon'ble Supreme Court has observed that provisions of IREM are also statutory in nature in CA No. 9176 of 2018 in Prabhat Ranjan Singh vs R.K Kushwaha. Therefore IREM 924 vol I has to be necessarily followed. Hence we do not find merit in the arguments of the applicants to consider 55 % of pay element for working out leave salary. Therefore based on the aforesaid plea of the applicants in regard to gratuity is conceded to. Moreover, the finding of the Hon'ble Ernakulam bench of this Tribunal in regard to gratuity is respectfully agreed to by this Tribunal since the respondents have not submitted any order of stay or any suspension of the said order by the higher judicial forum as on date. Respondents did not submit any submissions contravening the judgment of the Hon'ble Ernakulam Bench of this Tribunal. Hence the OA partly succeeds. Respondents are therefore directed to consider as under:

- i) Retirement gratuity has to be arrived at by working out the emoluments by adding basic pay plus 55% of basic pay and dearness allowance admissible on the sum so arrived.
- ii) Time allowed is 3months from the date of receipt of this order.
- iii) With the above directions the OA is partly allowed.
- iv) No order as to costs.

**B.V. SUDHAKAR)**  
**MEMBER (ADMN.)**

Dated, the 22<sup>nd</sup> day of March, 2019

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