

Union of India, vs All India Loco Running Staff Association,

Union of India, vs All India Loco Running Staff Association,

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Court : Kerala

Decided On : Aug-21-2020

Judge : Honourable Mr.Justice a.M.Shaffique,Honourable Mr. Justice Gopinath P.

Appeal No. : OP (CAT)/28/2015

Appellant : Union of India,

Respondent : All India Loco Running Staff Association,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE & THE HONOURABLE MR. JUSTICE GOPINATH P. FRIDAY, THE 21ST DAY OF AUGUST 2020 / 30TH SRAVANA, 1942 OP (CAT).No.28 OF 2015(Z) AGAINST THE ORDER IN OA 962/2013 DATED 21-10-2014 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH PETITIONERS: 1 UNION OF INDIA, REPRESENTED BY THE GENERAL MANAGER,SOUTHERN RAILWAY,HEAD QUARTERS OFFICE,PARK TOWN.P.O,CHENNAI- 600 003. 2 FINANCIAL ADVISER CHIEF ACCOUNTS OFFICER SOUTHERN RAILWAY,HEAD QUARTERS OFFICE,PARK TOWN.P.O,CHENNAI-600 003. 3 DIVISIONAL PERSONNEL OFFICER SOUTHERN RAILWAY,TRIVANDRUM DIVISION,TRIVANDRUM- 695014. 4 SENIOR DIVISIONAL FINANCE MANAGER SOUTHERN RAILWAY,TRIVANDRUM DIVISION,TRIVANDRUM- 695014. 5

SECRETARY TO THE GOVERNMENT OF INDIA MINISTRY OF RAILWAYS,RAILWAY BOARD,RAIL BHAVAN,NEW DELHI-110001. BY ADV. SRI.S.RADHAKRISHNAN,SENIOR PANEL,RAILWAYS RESPONDENTS:

1 ALL INDIA LOCO RUNNING STAFF ASSOCIATION, REG.NO.17903/SOUTHERN RAILWAY/TRIVANDRUM DIVISION, REPRESENTED BY ITS DIVISIONAL SECRETARY AJITH KUMAR.M.R, AGED 48 YEARS, SON OF SRI.RAGHAVAN NAIR, (WORKING AS LOCO PILOT (GOODS), SOUTHERN RAILWAY, TRIVANDRUM DIVISION,OFFICE OF THE CREW CONTROLLER/ERNAKULAM JUNCTION), RESIDING AT MUPATH HOUSE, ELANGARAM, VARAPETTY.P.O, KOTHAMANGALAM, ERNAKULAM DISTRICT, PIN-686691.

O.P.(CAT)No.28/2015 & Con.case 2 2 GOPALAKRISNNAN.C.R., S/O SRI.R.RAMAN,(RETD.LOCO PILOT(GOODS)/SOUTHERN RAILWAY/TRIVANDRUM DIVISION,OFFICE OF THE CREW CONTROLLER/ERNAKULAM JUNCTION),RESIDING AT CHETHANIKATIL HOUSE, ANAND NAGAR, KALLEKULANGARA, OLAVAKKODE,PALAKKAD,PIN-678009. 3 V.P.UDAYABANU, AGED 61 YEARS S/O.SRI.V.S.PARAMU, (RETD. LOCL PILOR (GOODS)/SOUTHERN RAILWAY/TRIVANDRUM DIVSION, OFFICE OF THE CREW CONTROLLER/ERNAKULAM JUNCTION), RESIDING AT BYRAVANPARAMBIL, PUTHUKKALAVATTOM, ERNAKULAM DISTRICT, KOCHI- 682026. R1-2 BY ADV. SRI.T.C.GOVINDA SWAMY R1 BY ADV. SRI.K.JAYAKUMAR RAVIPURAM R1 BY ADV. SMT.T.N.SREEKALA THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 17-08-2020, ALONG WITH OP (CAT).221/2016(Z), THE COURT ON 21-08-2020 DELIVERED THE FOLLOWING: O.P.(CAT)No.28/2015 & Con.case 3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE & THE HONOURABLE MR. JUSTICE GOPINATH P. FRIDAY, THE 21ST DAY OF

AUGUST 2020 / 30TH SRAVANA, 1942 OP (CAT).No.221 OF 2016 AGAINST THE ORDER IN OA 180/2015 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH PETITIONERS:

1 UNION OF INDIA REPRESENTED BY THE GENERAL MANAGER, SOUTHERN RAILWAY, HEAD QUARTERS OFFICE,CHENNAI-600003. 2 FINANCIAL ADVISOR CHIEF ACCOUNTS OFFICER SOUTHERN RAILWAY, HEAD QUARTERS OFFICE, CHENNAI- 600003. 3 SENIOR DIVISIONAL PERSONNEL OFFICER SOUTHERN RAILWAY, THIRUVANANTHAPURAM DIVISION, THIRUVANANTHAPURAM-695014. 4 SENIOR DIVISIONAL FINANCE MANAGER SOUTHERN RAILWAY, THIRUVANANTHAPURAM DIVISION,THIRUVANANTHAPURAM-695014.

5 THE SECRETARY TO THE GOVERNMENT OF INDIA MINISTRY OF RAILWAYS,RAILWAY BOARD,RAIL BHAVAN, NEW DELHI-110001. BY ADV. SRI.A.DINESH RAO, SC, RAILWAYS RESPONDENTS: 1 K.S.RAJAGOPALAN AGED 62 YEARS, S/O. P.VELU NAIR, RETIRED LOCO PILOT (SHUNTING), SOUTHERN RAILWAY, ERNAKULAM JUNCTION, RESIDING AT KULATHAPULLIL HOUSE, ATTOOR P.O., MANALADI, THRISSUR-680583. O.P.(CAT)No.28/2015 & Con.case 4 2 P.P.VARGHESE AGED 61 YEARS, S/O. T.S.PAILY, RETIRED LOCO PILOT (PASSENGER), SOTHERN RAILWAY, ERNAKULAM JUNCTION, RESIDING AT THEKKE PUTHENPURAYIL,RAIL NAGAR-II, PONNURUNNI, VYTTILA P.O., KOCHI-682019. R1-2 BY ADV. SRI.T.C.GOVINDASWAMY THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 17-08-2020, ALONG WITH OP (CAT).28/2015(Z), THE COURT ON 21-08-2020 DELIVERED THE FOLLOWING: O.P.(CAT)No.28/2015 & Con.case 5

JUDGMENT

[OP (CAT).28/2015, OP (CAT)221/2016] Dated this the 21st day of August 2020

Gopinath, J.

These original petitions have been filed challenging the orders of the Central Administrative Tribunal, Ernakulam Bench, in O.A 962 of 2013 and O.A 361/2015

holding that 'Running Staff' in the Railways are entitled to have Death-cum-Retirement Gratuity (DCRG) calculated by taking the element of Dearness Allowance (D.A) calculated with reference to Basic Pay + 55%. Running Staff in the Railways are entitled to additional allowances over and above their normal pay since they serve on moving trains over long distances. The Rules, therefore, provided for a manner of calculation of Pension & DCRG in respect of such Running Staff, obviously to factor their higher emoluments on account of the Running Allowance paid to them while in service. The Tribunal heard and allowed O.A 962 of 2013 and followed that order while deciding O.A 361/2015. O.P(CAT) No.28/2015 has been filed challenging the order in O.A 962 of 2013 while O.P(CAT) No.221/2016 has been filed challenging the order in O.A 361 of 2015. O.P.(CAT)No.28/2015 & Con.case 6

2. We have heard Sri. S. Radhakrishnan and Sri.A. Dinesh

Rao, the learned counsel appearing for the petitioners in these cases (Railway Administration) and Sri. T.C. Govindaswamy, the learned counsel appearing for the respondents (the applicants before the Tribunal). It is the case of the Railways that, going by the relevant Rules the amount of DA to be factored for calculating the DCRG for 'Running Staff' has to be the amount calculated with reference to Basic Pay + 30%. The respondents in both these cases, on the other hand, contend that when the basic pay (in the case of Running Staff), for calculating the amount of DCRG is admittedly Basic Pay + 55%, the Railway Administration cannot adopt another method since Rule 70 of the Railway Servants (Pension) Rules 1993 provides that DCRG shall be calculated by treating the DA admissible on the date of retirement as emoluments. We have considered the submissions of either side and perused the records.

3. The provisions of the Railway Services (Pension) Rules

1993 (hereinafter referred to as the Pension Rules) provide that the Death-cum-Retirement Gratuity has to be calculated after taking into account the emoluments which are to be calculated based on the provisions contained in Rule 49 of those Rules. In terms of Rule 49 of the said Rules, the pay of 'Running Staff' for calculation of DCRG shall be deemed to include 55% of the basic pay over and

above the basic O.P.(CAT)No.28/2015 & Con.case 7 pay. As already noticed this addition is to ensure that the DCRG of running staff is fixed factoring the additional allowances they receive on account of being running staff. However, does this mean that the DA also is to be calculated with reference to basic pay+55% for calculating eligible DCRG? Paragraph 924 of the Indian Railway Establishment Manual, Volume-1 (1989 Edition), (hereinafter also referred to as the IREM) to which reference has been made in the

order of the Tribunal in O.A 962 of 2013 shows that for the calculation

of the Dearness Allowance at the applicable rate, insofar as 'Running Staff' are concerned, 30% of the basic pay will be added for calculation purposes. Notes (b) and (c) below Paragraph 924 of the IREM reads as follows:_ NOTE-(a) xxx xxx xxx

(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.

Note (b) below Paragraph 924 of the IREM indicates that in the calculation of pensionary benefits (including Pension & DCRG) of 'Running Staff', basic pay + 55% will be taken into account (as emoluments for the purpose of Rule 70 of the Pension Rules). This is O.P.(CAT)No.28/2015 & Con.case 8 the position under Rule 49 of the Pension Rules also vide the proviso to Rule 49(b). Then Note (c) below Paragraph 924 of the IREM provides that Dearness Allowance calculated on the basis of basic pay + 30% will be taken as emoluments in respect of Running Staff retired/retiring on or after 1-8-1981. Rule 70 of the Pension Rules only provided that the dearness allowance admissible on the date of retirement shall be added to the total emoluments to calculate DCRG. Thus in the absence of

Note (c) below Paragraph 924 of the IREM the amount of DA to be added to emoluments for DCRG would only be the DA at the applicable rates on the basic pay, on the date of retirement/death as the case may be. Note (c) below Paragraph 924 of the IREM gave an additional benefit to Running Staff by permitting the addition of 30% to the basic pay for calculating the amount of DA to be added to emoluments for calculation of eligible DCRG. In the absence of Note (c) even the addition of the 30% would have been impermissible since Rule 70 of the Pension Rules specifically refers to Rule 49 of those Rules for calculating emoluments for the purpose of DCRG and Rule 49 makes no provision for any addition to DA. The Tribunal was right in finding thatdearness allowance so payable will have to be calculated on the basic pay which the Railway Servant was receiving immediately before his retirement/on the date of his death. However, the Tribunal went O.P.(CAT)No.28/2015 & Con.case 9 wrong in holding that since 55% would be added to the basic pay of Running Staff for calculating emoluments under Rule 49 of the Pension Rules, DA will also have to be calculated with reference to that figure. Therefore, the finding of the Tribunal cannot be sustained in law. We, therefore, allow O.P.(CAT)Nos.28/2015 and 221/2016 and set aside the orders dated 21.10.2014 in O.A.No.962/2013 and 31.12.2015 in O.A.No.361/2015. In the facts and circumstances, we make no order as to costs. Sd/- A.M.SHAFIQUE JUDGE Sd/- GOPINATH P. JUDGE acd O.P.(CAT)No.28/2015 & Con.case 10 APPENDIX OF OP (CAT) 28/2015 PETITIONER'S/S EXHIBITS: ANNEXURE A1 TRUE COPY OF THE CHART SHOWING THE NAMES AND DETAILS OF THE RETIRED LOCO RUNNING STAFF FROM THE TRIVANDRUM DIVISION. ANNEXURE A2 TRUE COPY OF RULE 49 OF THE RAILWAY SERVICES (PENSION) RULES, 1993.

ANNEXURE A3 TRUE COPY OF RAILWAY BOARD ORDER

BEARING RBE NO.142/97 DATED 05.11.1997. ANNEXURE A4 TRUE COPY OF RULE 924 OF CHAPTER IX OF THE INDIAN RAILWAY ESTABLISHMENT MANUAL VOL.I.

ANNEXURE A5 TRUE COPY OF RAILWAY BOARD ORDER

BEARING RBE NO.112/2008 DATED 15.09.2008.

ANNEXURE A6 TRUE COPY OF RAILWAY BOARD ORDER

BEARING RBE NO.202/2008 DATED 26.12.2008. ANNEXURE A7 TRUE COPY OF REPRESENTATION DATED 03.03.2012 SUBMITTED BY THE 2ND APPLICANT ADDRESSED TO THE THIRD RESPONDENT. EXHIBIT P1 TRUE COPY OF THE OA.962/2013 FILED BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH. EXHIBIT P2 TRUE COPY OF THE REPLY STATEMENT IN O.A.962/2013 FILED BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH EXHIBIT P3 TRUE COPY OF THE ORDER OF THE CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH 21ST OCTOBER 2014 IN O.A.962/2013 O.P.(CAT)No.28/2015 & Con.case 11 EXHIBIT P4 TRUE COPY OF THE RULES 3(III),(V) &

*(XVI) OF "THE RULES FOR THE PAYMENT OF RUNNING AND OTHER ALLOWANCES TO THE RUNNING STAFF ON RAILWAYS,1981.

EXHIBIT P5 TRUE COPY OF PARA 1507 AND 1509 OF THE INDIAN RAILWAY ESTABLISHMENT CODE,VOL.II EXHIBIT P6 TRUE COPY OF THE RULE 49 OF THE RAILWAY SERVICES(PENSION) RULES,1993 EXHIBIT P7 TRUE COPY OF ILLUSTRATION. EXHIBIT P8 TRUE COPY OF RAILWAY BOARD'S LETTER NO.PC-V/2004/A/DA/1 DATED 11/03/2004 (RBE 57/2004). EXHIBIT P9 TRUE COPIES OF THE ORDER OF THE

SUPREME COURT IN CA.5444 OF 2014 ARISING FROM SLP(C)16207/2010,JUDGMENT OF THE HIGH COURT OF CHATTISGARH IN WP(C)3068 OF 2009 AND ORDER OF THE TRIBUNAL,JABALPUR BENCH IN O.A.619/06. O.P.(CAT)No.28/2015 & Con.case 12 APPENDIX OF OP (CAT) 221/2016 PETITIONER'S/S EXHIBITS: ANNEXURE A1 A TRUE COPY OF RULE 49 OF RAILWAY SERVICES (PENSION) RULES 1993.

ANNEXURE A2 A TRUE COPY OF THE RAILWAY BOARD ORDER

BEARING RBE NO.142/1997 DATED 5.11.1997. ANNEXURE A3 A TRUE COPY OF RULE 924 OF CHAPTER X OF THE INDIAN RAILWAY ESTABLISHMENT MANUAL VOL.1 ANNEXURE A4 A TRUE COPY OF RAILWAY BOARD ORDER BEARING RBE NO.112/2008 DATED 15.9.2008. ANNEXURE A5 A TRUE COPY OF RAILWAY BOARD ORDER BEARING RBE NO.202/2008 DATED 26.12.2008. ANNEXURE A6 A TRUE COPY OF THE ORDER IN O.A.962/2013 DATED 21.10.2013 RENDERED BY THE CAT (ERNAKULAM) BENCH. ANNEXURE A7 A TRUE COPY OF THE JOINT REPRESENTATION SUBMITTED BY THE APPLICANTS DATED 16.4.2015 ADDRESSED TO THE 3RD RESPONDENT. ANNEXURE R1 TRUE COPY OF THE RAILWAY BOARD'S LETTER NO.F(E)III/2008/PN1/13 DATED 15.9.2008 [RBE NO.112/2008]. EXHIBIT P1 TRUE COPY OF OA 180/00361/2015 ON THE FILES OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH. EXHIBIT P2 TRUE COPY OF THE REPLY STATEMENT IN OA ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH. EXHIBIT P3 A TRUE COPY OF THE ORDER IN OA THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

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