

Unreportable
IN THE HIGH COURT OF DELHI AT NEW DELHI

WP (C) No. 1083 of 2002

and

WP (C) No. 2514 of 2002

Pronounced on : January 11, 2008

Retired Railway Drivers Association
North Railway, Ghaziabad, U.P. & Ors.

.....Petitioners

!

through :

Mr. J.M. Khanna, Advocate

VERSUS

\$ Union of India thru Chairman, Railway Board
& Anr.

.....Respondents

!

through :

Ms. Geetanjali Mohan, Advocate

CORAM :-

*** THE HON'BLE MR.JUSTICE A.K.SIKRI**

THE HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

1. Petitioner No.1 is an Association of Retired Railway Drivers. Petitioner No.2 is the Secretary of this Association and petitioner Nos. 3 to 130 are its Members as they are the retired employees and they are receiving the pension. The drivers in the Railway are getting Running Allowance. Third Central Pay Commission, which gave its report in the year 1973, had recommended the continuation of Running Allowance and its computation to the extent of 75% for working out the quantum of pension. Thus, while fixing the pension of these drivers on their retirement, their pension was fixed after taking into consideration 75% of the Running Allowance. Letter dated 21.1.1974, was also issued by the Railway Board in this behalf. However, vide another letter dated 23.2.1976, percentage of the Running Allowance for computing the pension was

reduced from 75% to 45% with effect from 1.1.1973. Thereafter, vide another letter dated 17.7.1981 it was raised to 55% with effect from 1.4.1979. Against these reductions a writ petition came to be filed in this Court. On the creation of Central Administrative Tribunal (CAT) under the Administrative Tribunal Act, that petition was transferred CAT, Principal Bench, New Delhi. This petition was allowed vide judgment dated 6.8.1986. This case, i.e. Deo Dutt Sharma v. Union of India & Ors. is reported as 1986 (1) ATC 4646. The Union of India/Railway Administration did not question this order of the Tribunal. Instead, Notification dated 5.12.1988 was issued amending Rule 2544 of the Indian Railway Establishment Code (hereinafter, 'the Code') making the said amendment operative from 1.1.1973 and 1.4.1979 respectively providing therein that percentage of the Running Allowance for computation of pension would be reduced from 75% to 45% and 55% with effect from 1.1.1973 and 1.4.1979 respectively. We may note that the Tribunal in its judgment dated 6.8.1986 had quashed the earlier orders on the ground that under the Code, which is of statutory nature, framed under Article 309 of the Constitution of India, Running Allowance of 75% for the purpose of computation of pension was provided, which statutory right could not be taken away by mere executive instructions. Obviously, to overcome this difficulty, vide Notification dated 5.12.1988, the said Rule 2544 was amended. However, this notification was challenged by filing an O.A. before the Ernakulam Bench of CAT. The said Bench vide judgment dated 2.4.1990 quashed the notification so far it gave retrospective effect. Same challenge was made by filing O.A. in the Principal Bench at New Delhi as well. However, the New Delhi Bench dismissed the challenge to the validity of the notification. As conflict arose between the two views, one taken by the Ernakulam Bench and the other by the New Delhi Bench, matter came to be referred to the Full Bench, which agreed with the view taken by the Ernakulam Bench. The Government challenged this decision before the Supreme Court which was repelled as the appeal was dismissed vide judgment dated 25.7.1997 in the case of Chairman, Railway Board & Ors. v. C.R.

However, the petitioners in this petition, who retired after 5.12.1988, made a representation dated 25.8.1998 basing their case on the aforesaid judgment of the Supreme Court and seeking extension of benefit thereof. It was followed by various reminders and ultimately O.A. under Section 19 of the Administrative Tribunal Act was filed before the Principal Bench of CAT at New Delhi on 14.12.1999. This O.A. has finally been rejected vide judgment dated 10.12.2001 holding that the Supreme Court has upheld Rule 2544 prospectively and, therefore, the petitioners cannot draw benefit therefrom.

2. It is not in dispute that these petitioners have retired from service after the amendment of Rule 2544 of the Code whereby the Running Allowance, for the computation of pension, stands reduced from 75% to 45%. In Rangadhamaiah (*supra*), the Supreme Court has held that the amendment cannot be given retrospective effect. Therefore, to that extent the said judgment is of no help to the petitioners herein. The petitioners can succeed only if they are able to prove that the amendment to the Rule is illegal even if it is prospective in nature.
3. In para 14 of the judgment in Rangadhamaiah (*supra*), the Supreme Court has formulated the question that had arisen for consideration in the following words :-

"14. The question which, therefore, needs to be examined is whether the amendments made in Rule 2544 by the impugned notifications, to the extent they have been given effect from January 1, 1973 and April 1, 1979, can be treated as a valid exercise of the power to make rules under the proviso to Article 309 of the Constitution."

4. It is clear from the above that the Supreme Court was concerned with a totally different issue, namely, retrospectivity of the impugned Notification dated 5.12.1988 and referring to various judgments held that it was not competent for the Government to amend the said Rule retrospectively taking away the existing/accrued rights of the said persons. Para 31 of the judgment further discloses that the concerned retired employees were those who had retired after 1.1.1973 and

before 5.12.1988 and, therefore, the Court held that as per Rule 2301 of the Code, they were entitled to have their pension computed in accordance with Rule 2544 as it stood at the time of their retirement. In that view, the said judgment would not help either the petitioners or the respondents.

5. However, learned counsel for the petitioners referred to observations of the Supreme Court in paras 26 to 28 and contended that since pension was not a bounty payable on the sweet will and pleasure of the Government, the valuable right of the petitioners to receive pension could not be taken away. In the aforesaid paras the Supreme Court has observed as under :-

"26. In *Deekinandan Prasad v. State of Bihar*, 1971 (Supp) 3 SCR 634 : (AIR 1971 SC 1409), decided by a Constitution Bench it has been said down :-

"Pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a Government servant."

(p. 152) (Emphasis supplied)

27. In that case the right to receive pension was treated as property under Articles 31(1) and 19(1)(f) of the Constitution.

28. In *D. S. Nakara v. Union of India*, (1983) 2 SCR 165 : (AIR 1983 SC 130), this Court, after taking note of the decision in *Deekinandan Prasad* (AIR 1971 SC 1409) (*supra*), has said :-

"Pension to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in *Deuge v. Board of Education* a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living."

6. However, these observations would be of no help to the petitioners. The pension of the petitioner is not taken away. No doubt, there is an amendment in the Rule by which the Running Allowance for the purpose of calculating the pension is reduced from 75% to 45%. The question is as to whether by doing so any right of the petitioners is infringed. For this purpose, we shall have to look into the reason because of which the Running Allowance to be taken into consideration, for the purposes of computation of pension, was reduced.

7. *The respondents in their counter affidavit have explained the background in which such an amendment came to be passed. It is stated that for proper appreciation of the matter in dispute, in the Railways there is a category of staff known as 'Running Staff' whose performance of duty is directly connected with the charge of moving trains, i.e. Drivers, Guards, Shunters, Firemen, etc. For the performance of such duties, 'Running Staff' are granted 'Running Allowance' which contains a pay element. Therefore, for certain specified benefits/purposes, the pay of 'Running Staff' is considered as basic pay (+) a specified component of basic pay representing the pay element in the 'Running Allowance'. It is submitted that the special feature of the 'Running Staff' of the Railways is that portion of their emoluments is dependent upon the nature of duties and quantum of work put in by them during a month. For this purpose, the Railway Board have framed Rules and the present rules are entitled "Rules for Payment of Running and Other Allowances to the Running Staff on the Railways, 1981". The quantum of Running Allowance earned by the Running Staff is determined mainly by the actual distance worked by them. The basic objective of this rule is an orientation towards better performance. The Running Allowance is meant to include a portion of the pay and out of pocket expenses of the Running Staff for meeting out of pocket expenses as their duty generally involves their absence from Head Quarters. It is stated further that it has been the practice for over a few decades in the past to reckon the retirement benefits of Running Staff on pay plus a fixed percentage of pay/emoluments, Running Allowance actually drawn. This benefit of reckoning an additional component towards calculation of retirement benefits of Running Staff is on the consideration that the arduousness and uncertain hours of work entailed in performance of running duties over long periods of time should be appropriately reflected in the quantum of pension admissible when the staff retires from posts involving such duties. For this purpose, Rule 2544 of Code, Volume-III, provided that for calculation of average emoluments, actual amount of Running Allowance drawn during the month limited to a maximum of 75% of the other emoluments was to be reckoned in addition to pay in the*

authorised scales of pay. However, the pay scales were revised on the recommendation of the Third Central Pay Commission with effect from 1.1.1973. Result of revisions of scales of pay of the Running Staff on the implementation of the recommendations of the pay commission had become a revision in the pay percentage fixed for computation of retirement benefits of the Running Staff. The matter was considered by the Railway Board and vide letter dated 22.3.1976 instructions were issued in this behalf which was a faulty action as amendment in the rule was required and, therefore, when those instructions were quashed as contrary to the rules, amendment in the rule itself was made.

8. It is also explained that the entire gamut of the scheme of Running Allowance etc. admissible to the Running Staff was subsequently examined by an expert committee known as The Running Allowance Committee, 1980. The Committee recommended that for the purpose of retirement benefits (including contribution to DRPF), 60% of the basic pay of the Running Staff should be taken into account uniformly instead of reckoning the Running Allowance actually drawn subject to a maximum of 45% of pay. It is stated that various recommendations made by this Committee were examined by the Railway Board in consultation with the recognised federations and an agreement was entered into with them, constituting a packaging, covering various rules/ orders regulating grant of running and allowed allowances to the Running Staff. Regarding the pay element for the purpose of computation of retirement benefits of Running Staff, it was decided that an additional component of 55% of pay will be taken into account with effect from 1.4.1979. Instructions to this effect were issued by the Railway Board in the year 1981.

9. The pension is calculated on the basis of 'pay'. Normally, Running Allowance would not be treated as 'pay'. It is only because of Rule 2544 of the Code that a part of Running Allowance is treated as 'pay' for the purpose of pension. When the basic pay itself is revised after the implementation of the Third Central Pay Commission, the concerned employees started getting

much higher basic pay and keeping in view that consideration if the Government decided, as a policy matter, to reduce the component of Running Allowance for the purpose of computation of pension, such an action of the Government is not open to question. Fact remains that the overall pension of the petitioners is not less than what it could have been prior to the revision in the pay scales. When the Notification dated 5.12.1988 was issued amending the Rule, these petitioners were still in service. They had not retired and were getting any pension which is sought to be reduced. Their pension has been fixed much subsequently on the basis of Rule in vogue as on their respective dates of retirement. Therefore, it cannot be said that the amendment in the Rule is illegal or violative of Articles 14 & 16 of the Constitution.

10. *No doubt, the persons who retired after 1.1.1973 and before 5.12.1988 have got the advantage as in their cases the pension is fixed by taking 75% of the Running Allowance. For this reason, they may even be getting higher pension. However, that had occasioned due to bona fide lapse on the part of the respondents in not amending the Rules at appropriate time, but issuing administrative instructions which were held to be invalid on the ground that executive instructions could not be issued contrary to the Rules and there was a need to amend the Rules. The Government, in these circumstances, while amending the Rules, even wanted to cover the cases of all employees who retired after 1.1.1973 by giving retrospective operation. However, it could not succeed as retrospectivity to the said rule was held to be inadmissible by the Apex Court. It was, thus, a fortuitous position for those who retired between 1.1.1973 and 5.12.1988 who benefitted under the aforesaid unusual circumstances. That would not mean that the Government has no right to rectify the situation by amending the Rules giving prospective operation. Thus, the persons retiring after 1.1.1973 and before 5.12.1988 form a different class because of the aforesaid fortuitous circumstance and the petitioners cannot equate their cases with those persons and are not permitted to raise the plea of discrimination on this basis.*

11. *We, therefore, are of the opinion that the judgment of the Tribunal is perfectly legal and the present petition assailing that judgment is bereft of any merits. Accordingly, this petition is dismissed with no orders as to costs.*

(A.K. SIKRI)
JUDGE

(VIPIN SANGHI)
JUDGE

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For orders see WP (C) No. 1083/2002

(A.K. SIKRI)
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