

(2013) 09 SC CK 0079

In the Supreme Court Of India

Case No : Civil Appeal No. 7298 of 2013 (Arising Out of SLP (C) No. 3446 of 2012)

Union of India (UOI) and Others

APPELLANT

Vs

B. Banerjee

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47
Running Allowance Rules, 1981 — Rule 3(2), 902, 902(2), 903, 905

Citation : (2013) 10 AD 30 : (2013) 4 LLN 28 : (2014) 2 MhLj 475 : (2014) 2 MPLJ 247 : (2013) 11 SCALE 144 : (2013) 10 SCC 265 : (2014) 1 SCC(L&S) 805 : (2014) 1 SCJ 148 : (2013) 4 SCT 455 : (2014) 1 SLJ 15 : (2014) 2 WBLR 470

Hon'ble Judges : Sudhansu Jyoti Mukhopadhyaya, J;Ranjan Gogoi, J

Bench : Division Bench

Advocate : Mohan Jain, ASG, S.K. Bajwa, Mohit Garg and Shreekant N. Terdal, for the Appellant; Avijit Bhattacharjee, Samina Sheikh, Rohit Dutta, Kamal Kumar Banerjee and Tayenjam Momo Singh, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—The precise question that arises for determination in the present appeal is whether the Respondent, a medically decategorised Driver of the Indian Railways, working as a Crew Controller with stationary duties, is entitled to allowance in lieu of kilometerage (ALK). The Central Administrative Tribunal by its order dated 10.02.2011 answered the question against the Respondent which led to a round of litigation before the Calcutta High Court. The High Court held that the Respondent was entitled to the allowance in question. Aggrieved, the Union has filed this appeal.

2. The basic facts that would require notice are not in dispute. The Respondent while serving as a Diesel Driver (Goods) Grade-II was found unfit to work as a Driver in a special medical examination that was held on 5.1.2005. He was,

however, allowed to work as a Crew Controller. The said post, though involved performance of stationary duties was included in the cadre of Driver in terms of Railway Board Circular No. 9/98 dated 09.01.1998. Regular Drivers, in addition to medically decategorised Drivers like the Respondent, were also drafted to perform the duties of Crew Controller. Both categories of employees i.e. regular Drivers and medically decategorised Drivers in the post of Crew Controller were being paid ALK. A subsequent Circular No. 12/2004 dated 14.01.2004 was issued to make it clear that medically decategorised Drivers allowed to perform duties of Crew Controller were ineligible to the grant of any benefit specifically admissible to the running staff on the premise that such decategorised Drivers ceased to be running staff. Accordingly, it was clarified that the benefit of allowance in lieu of kilometrage (ALK) is not admissible to medically decategorised Drivers working as Crew Controllers. Following the aforesaid clarificatory Circular No. 12/2004 dated 14.01.2004, the Respondent who was drawing ALK was denied further benefit of the same which led to the institution of the proceeding before the Tribunal. The Tribunal, as it appears from its order dated 10.02.2011, took the view that following his medical decategorisation the Respondent ceased to be a running staff and as he had been performing stationary duties he is not entitled to any Running Allowance. The High Court, on being approached by the Respondent, however, took the view that even after his medical decategorisation the Respondent continued to remain in the cadre of Driver (the said cadre included the post of Crew Controller). Hence, he was entitled to ALK. Accordingly, the impugned directions have been issued which have led to the institution of the present appeal by the Union.

3. We have heard the learned Counsels for the parties.

4. To appreciate the issues arising in the present appeal, it will be necessary to notice the relevant provisions of the Running Allowance Rules (1981) as embodied in the Indian Railway Establishment Manual - Volume-I (Revised Edition 1989).

5. Rule 902 (2)(iii) defines "running duties" to mean "duties directly connected with the movement of trains and performed by running staff while employed on moving trains or engines including shunting engines".

Sub-Rule (iv) of Rule 902 is in the following terms:

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

"Running Allowance" as defined in Sub-Rule (v) of Rule 902 is extracted below:

(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 "Kilometerage Allowance" and "Allowance in lieu of kilometrage" but

excludes special compensatory allowances."

6. Rule 903 which is quoted below makes it clear that 30% of the basic pay of the running staff is required to be treated as representing the pay element in the Running Allowance:

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.

7. Rule 905 deals with the types of allowances admissible to running staff and is in the following terms:

905. Types of Allowances admissible to Running Staff: Running staff shall be entitled to the following allowances subject to the conditions specified by or under these rules:

(i) Kilometrage Allowance for the performance of running duties, in terms of and at the rates specified in these rules.

(ii) An allowance in lieu of kilometrage (ALK) for the performance of stationary duties such as journeys on transfer, joining time, for attending enquiries or law courts on Railway business, attending departmental inquiries as Defense Counsel or witness, Ambulance classes, volunteer duty in connection with Territorial or other similar Fund and Staff Loans Fund Committees, meeting of Railway Institutes, Welfare and Debt Committees, Staff Benefit Fund and Staff Loan Fund Committees, Staff and Welfare Committees, for attending the meetings of Railway Co-operative Societies in cases where special casual leave is granted for doing so, medical and departmental examinations, participating in recognized athletic contests and tournaments, scouting activities and Lok Sahayak Sena Camp, representing recognized labor organizations, attending periodical meetings with District offices, Heads of Departments and General Managers, attending First-aid classes, undergoing training in carriage sheds and as worker teacher under the Workers' Education Scheme attending training schools for refresher and promotion courses, undergoing sterilization operation under Family Planning Scheme appearing in Hindi Examination Guards booked on escort duty of treasure and other insured parcels on trains, Drivers and Firemen when kept spare for a day or two to enable them to examine and clean the engines thoroughly before being deputed to work special trains for VIPs, or any other duties which may be declared in emergencies as qualifying for an allowance in lieu of kilometrage.

(iii) Special Compensatory Allowances

The running staff are eligible for the following compensatory allowances under the circumstances and at the rates specified in these rules:

(a) Allowance in lieu of Running Room facilities.

(b) Breach of rest allowance.

(c) Outstation (Detention) Allowance.

(d) Outstation (Relieving) Allowance.

(e) Accident Allowance.

(iv) An official Allowance when undertaking duties in higher grades of posts open to running staff or in stationary appointments.

8. Rule 907 which deals with allowance in lieu of kilometerage (ALK) is in the following terms:

907. Allowance in lieu of Kilometerage (ALK)

When running staff are engaged in or employed on non-running duties as specified in Rule 3 (ii) above, they shall be entitled to the payment of an allowance in lieu of Kilometerage as indicated below for every calendar day for such non-running duties as may be required to be performed by them:

(a) When such non-running duties are performed by the running staff at their headquarters, they shall be paid the pay element of the Running Allowance, namely, 30% of the basic pay applicable for the day.

(b) When such non-running duties are performed by the running staff at outstations, they shall be paid ALK at the following rates:

9. From the provisions of the Running Allowance Rules, extracted above, it is abundantly clear that only a specific category of employees in the Railways like Drivers, Motormen, Firemen, Guards, Assistant Guards etc. who constitute the running staff and such staff who are directly connected with the movement of trains perform running duties. Running Allowance under the Rules is required to be paid only to the running staff who are engaged in the performance of duties directly connected with the movement of trains and such allowance includes kilometerage allowance or allowance in lieu of kilometerage (ALK). While kilometerage allowance is to be paid for performance of actual running duties, the allowance in lieu of kilometerage (ALK) is to be paid to such members of the running staff who are temporarily required to perform stationary duties. The rules also make it clear that 30% of the basic pay of the running staff is required to be treated as representing the pay element in the Running Allowance. Those members of the running staff who are employed on non-running duties are paid the aforesaid 30% of the basic pay if such non-running duties are performed at the headquarters whereas in case such non-running duties are performed by the running staff at outstations they are required to be paid ALK at the rates prescribed by Rule 907(b). It is thus clear that no Running Allowance i.e. either kilometerage allowance or allowance in lieu of kilometerage is contemplated for any staff, including erstwhile members of the running staff, permanently engaged in performance of stationary duties. Running Allowance of either description is required to be paid only to members of the running staff who are directly

engaged in actual movement of trains or such staff who are temporarily assigned stationary duties but who are likely to go back and perform running duties. The Respondent does not fall in either of the above two categories.

10. The retention of decategorised Drivers working as Crew Controllers in the original cadre of Drivers by the Railway Board's Circular No. 9/98 dated 09.01.1998 and their entitlement to Running Allowance (ALK) has to be understood in the above context. The aforesaid inclusion, which is wholly fictional, cannot confer any benefit contrary to the express provision of the Running Allowance Rules inasmuch as a decategorised Driver working as a Crew Controller is not a member of the running staff or engaged in performance of running duties as defined by the provisions of Running Allowance Rules. The above position has been made abundantly clear by the Railway Board Circular No. 12/2004 dated 14.01.2004, details of which have already been noticed.

11. There is yet another aspect of the matter which would require a mention. Under Rule 903 of the Running Allowance Rules, as noticed above, 30% of the basic pay of the running staff represents the pay element in the Running Allowance. Therefore, in case of medically decategorised Driver, like the Respondent, the said component being a part of the pay drawn by him as a running staff has to be protected. The same apparently has been done as is evident from the rejoinder affidavit of the Union. The above act of the Appellants also ensures compliance with the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which entitles the Respondent to receive the pay and service benefits earlier drawn by him. The Running Allowance to which the Respondent was entitled while he was a member of the running staff has been protected as a part of his pay in the post of Crew Controller. In such circumstances, any further grant of ALK will not be justified.

12. We, therefore, hold that the High Court was not justified in issuing the impugned directions for grant of ALK to the Respondent. The order of the High Court dated 20.06.2011 is therefore set aside and the appeal is allowed.