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MP-3539-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 21st OF JANUARY, 2026

MISC. PETITION No. 3539 of 2024

JITENDRA SHRIVASTAVA

Versus

UNION OF INDIA AND OTHERS

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Appearance:

Shri Akash Choudnary - Advocate for the petitioner.

Shri Shyam Yadav - Advocate for respondents no.1 to 3.
.....

"Heard on : 07.01.2026.

Pronounced on 21.01.2026."

ORDER

Per. Justice Deepak Khot

The present petition under Article 226 of the Constitution of India has been filed seeking following reliefs :-

"Summon the entire relevant record from the possession of Respondents for its kind perusal;

Upon holding the impugned order dated 03.04.2024 passed by the Hon'ble Central Administrative Tribunal in Original Application no.519/2020 as bad in law; further issue a writ of Certiorari for setting aside the impugned order dated 03.04.2024 as the same is bad in law;

Upon holding the impugned inaction of the respondents in not fixing his pay by adding 30% pay element as bad in law; Quash and set aside the same by issuing a writ in the nature of Certiorari;

Issue a writ in the nature of Mandamus for directing the respondents to forthwith rectify the mistake by granting the benefit of 30% running allowance to his basic pay



w.e.f. the month of September, 2006; If necessary quash the order by which the earlier granted benefit was withdrawn (Annexure P/3) by issuing a writ in the nature of Certiorari;

Issue a writ in the nature of Mandamus for directing the respondents to extend the benefit of the judgment passed in O.A. No. 130/2017 which got stamp of approval by the Hon'ble High Court of U.P. Judicature at Allahabad in W.P. No. 33309/2011, alongwith all consequential benefits;

Any other relief, which this Hon'ble Court may deem fit and proper in the facts & circumstances of the case, may also kindly be passed in favour of the Petitioner, in the interest of justice;

Cost of litigation may also be awarded."

2. It is the case of the petitioner that the petitioner while working on the post of Motorman i.e. running category in Western Railway in the pay scale of Rs. 5,500-9,000/-, has applied for appointment to the post of Section Engineer through RRB, Mumbai and after getting NOC, he appeared in the selection process conducted by RRB, Mumbai and selected and appointed on the post of Section Engineer and accordingly, he was relieved from the Western Railway from the post of Motorman (running category) to the post of Section Engineer (Stationery category) and joined on the said post on 09.03.2000, which carries the pay scale of Rs. 6,500-10,500. The respondent department has fixed his basic pay in the month of April, 2000 by adding 30% pay element of running allowance, However, subsequently, the respondent authorities in an arbitrary and discriminatory manner, has withdrawn the said benefit w.e.f. September, 2006 and an amount of Rs. 2,581/- was directed to be recovered monthly from the pay of the applicant in 72 instalments. Being aggrieved with the same, the petitioner had preferred O.A.No.519/2020 before the Central Administrative Tribunal. The Central Administrative Tribunal without appreciating the merits of the case had



dismissed the original application on the ground of limitation. Being aggrieved therewith the petitioner has filed the present petition.

3. It is submitted by learned counsel for the petitioner that the petitioner sought clarification and lastly it was replied that as per Railway Board's instructions, running category employees who are medically decategorised and joined in stationary post, are entitled to get 30% running allowance. However, as per Railway Board's Letter dated 15.09.2006, it prescribes that employees who are competing through GDCE and are appointed on a stationary post, they are not entitled for the benefit of 30% pay element added to his basic pay. It is further submitted that as Para 3 of the RB Circular dated 15.09.2006, specifically prescribes that the past cases should not be reopened and it does not have any retrospective effect. Thus, the petitioner who joined the stationary post in the year 2000 from running category after completing all procedure in accordance with law has rightly received the benefit of 30% adding pay element in the basic pay in the month of April, 2000 and there would be no application of that circular. Thus, the action of the respondents in withdrawing the same by harping upon the Railway Board Circular dated 15.09.2006 is bad in law.

4. Per contra, the respondents have submitted that petitioner was initially appointed in Railway Services on the post of Motorman (in running department) under Mumbai Central Division, Western Railway on 26.07.1996. Thereafter, the petitioner was recruited by RRB Mumbai and appointed in Railway Services on the Post of Apprentice Section Engineer in "Mechanical Department under Sr. D.M.E. (Diesel) Itarsi, Bhopal Division



on 09.03.2000 and his pay was fixed at Rs. 6500 under Rule 601 of the Indian Railway Establishment Manual, Volume-1 (Revised Edition 1989) (Annexure R/1). Under Rule 924(i)(d) of the Indian Railway Establishment Manual, Volume-I (Revised Edition-1989) of Running Allowance Rules, 1981 fixation of pay in “Stationary Posts” shall be reckoned as Pay, but the petitioner was appointed on the post of Apprentice Section Engineer in “Mechanical Department” in pay scale Rs. 6500-10500 (RSRP) under Sr. DME (Diesel) Itarsi, Bhopal Division on 09.03.2000, hence it is crystal clear that the petitioner is not entitled for reckoning of 30% of the Basic Pay in pay fixation on the post of Apprentice Section Engineer, pay scale Rs. 6500-10500 (RSRP) on 09/03/2000 in “Mechanical Department”. The respondents further submitted that the instant O.A. is also barred by limitation under section 21 of the Administrative Tribunal Act 1985, as the applicant is claiming the relief for grant of reckoning of 30% of the basic pay in pay fixation on the post of Apprentice Section Engineer, pay scale of Rs. 6500-10500 (RSRP) from 09.03.2000.

5. Heard learned counsel for the parties and perused the record.

6. While working as Motorman (in the running department) in the Grade of Rs.5500-9000/- the petitioner appeared in the selection process conducted by RRB, Mumbai and selected and appointed on the post of Section Engineer (stationary post) in the grade of Rs.6500-10500/-. He joined the post on 6.3.2000 and after joining, the basic pay of the petitioner was fixed by the respondent Department in the year 2000 by adding the 30% running allowance to his basic pay. However, by the order dated 8.5.2007



the earlier benefit of adding 30% running allowance in the basic pay has been withdrawn and an amount of Rs.2,581/- was directed to be recovered monthly from the pay of the petitioner in 72 instalments.

7. Now, coming to the legal point, whether the rules provide for inclusion of 30% running allowance to the applicant, the same has to be read in terms of the relevant rules. The rules relating to the same are as under :-

(a) Para 903 of the Indian Railways Establishment Manual provides pay element in running allowance which states that 30% of the basic pay of the running staff will be created 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".

924. Reckoning of Running Allowance as pay :-

i) 30% of basic pay of running staff shall be reckoned as pay for following purposes :

- a. xxxx
- b. xxxx
- c. xxxx
- d. Fixation of pay in stationary posts.
- e. xxxx
- f. xxxx
- g. xxxx
- g. xxxx
- i. xxxx
- j. xxxx
- k. xxxx

That a part of running allowance is available to a railway employee to be treated as a part of his pay on his transfer or promotion to a stationary post is a settled position vide the direction of the Apex court in the case of **G.C.Ghosh V. Union of India, 1991 Supp. (2) SCC 497** which reads as under :-



It is, therefore, directed that the petitioners should be accorded the same treatment as their counterparts are being accorded in the Northern Railway in regard to treating the running allowance granted to the running staff as part of the pay when they are transferred or promoted to a stationary post during the period they hold the officiating in the stationary post to the same extent and in the same manner as enjoined by the Allahabad High Court pursuant to the aforesaid judgment.

(Emphasis supplied)

Pay Fixation in respect of such of the railway employees who qualify in some competitive examination for appointment to any other category is governed by Rule 1315 r/w rule 1313 of the Indian Railway Establishment Code. The said rules are as under:

1313. (FR-22) (I) The initial pay of a railway servant who is appointed to a post on a time scale of pay is regulated as follows:--

(a) (1) Where a railway servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty five only, whichever is more.

8. Similar question arose before the C.A.T. Allahabad in the case of



Rajeev Mishra Vs. Union of India in O.A.No.408/2004 decided on 10.3.2005 wherein the learned Tribunal held that the applicant therein is entitled to the reckoning of 30% of running allowance for the purposes of fixation of pay for the post of enquiry cum reservation clerk.

9. The running allowance under Para 924 of Indian Railway Establishment Manual provides 30% basic pay to running staff, to the reckoned as pay. The running allowance paid to the staff is specifically included in the pay as pay element. In the circumstances, even if the petitioner appeared and selected through RRB Mumbai, though he was initially holding a post of running category, his pay had to be protected. The running allowance included with his pay as his pay element could not be separated for the purposes of stepping up the pay on his appointment on higher post.

10. So far as reliance placed on circular dated 15.9.2006 is concerned, apparently for the reason that para 3 of the circular clearly provides that the past cases decided otherwise, need not be reopened. In the present case, as observed above, the petitioner was appointed on 9.3.2000 and his pay was fixed including running allowance. The circular specifically provides that it will not have retrospective effect. Thus, it would not be applicable to the case of the petitioner for deducting running allowance as element of pay for fixing the pay and to direct recovery of the excess payment.

11. While dealing with similar issue, the High Court of Allahabad vide order dated 1.2.2012 passed in **Civil Misc. Writ Petition No.33309/2011 (Union of India & Ors. Vs. Shubhasis Halder & Anr.)** has dismissed the writ



petition preferred by the Union of India through General Manager, North Central Railway, by upholding the order of the Tribunal whereby the Tribunal has quashed the order of withdrawal of 30% of pay element and recovery of the applicant, who while working as Electrical Assistant Driver was selected as ECRC and pay fixed with 30% of pay element.

12. So far as limitation is concerned, the question of limitation does not arise in the matters pertaining to fixation of pay as it is a recurring cause of action. In this regard Hon. the Apex court in the case of **M.R.Gupta Vs. Union of India, (1995) 5 SCC 628** has held as under :-

"6.The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind."

13. Thus, the finding of the Tribunal with regard to limitation is hereby set aside.

14. In view of the foregoing discussion and the enunciation of law, the impugned order dated 3.4.2024 passed by the Tribunal is hereby **set aside** and the Original Application filed by the applicant is hereby **allowed**. Accordingly, the respondents are directed to restore the pay of the applicant



as initially granted and refund the money recovered in pursuance of the impugned order dated 8.5.2007 from him with interest @ 9% per annum from the date of recovery of entire amount till the date of payment. This order shall be complied with within a period of three months from the date of communication of this order.

15. Accordingly, the writ petition stands **allowed and disposed of**.

(VIVEK RUSIA)
JUDGE

(DEEPAK KHOT)
JUDGE

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