

COURT CASE

**GOVERNMENT OF INDIA (भारत सरकार)
MINISTRY OF RAILWAYS (रेल मंत्रालय)
RAILWAY BOARD (रेलवे बोर्ड)**

No.E(P&A)II/2024/Misc/1

New Delhi, dt. 02.04.2024

**The General Managers (P)
All Zonal Railways**

Sub: Sharing of information regarding favourable judgement passed by the Hon'ble High Court of Madras vide order dt.02.02.2024 in the matter of payment of 55% add-on pay element to CLIs for computing retirement benefits.

Ref: This office letter of even number dt. 07.03.2024.

Vide above referred letter, a Brief for contesting court cases in the subject matter was circulated. Further to the above letter, please find enclosed a copy of judgement dt. 02.02.2024 of the Hon'ble High Court of Madras in WP (C) No.1404 of 2015 and MP No. 1 of 2015 in the matter of UOI & Ors Vs. The Registrar CAT/Madras Bench Chennai & Ors. which has been disposed of in favour of Railway Administration.

It is advised that the aforementioned order dt. 02.02.2024 of the Hon'ble High Court may please be brought out to the notice of all the concerned including the officials of Divisions with instructions to ensure its effective utilization while contesting the cases involving identical issue.

It is also pertinent to mention that in the above order, the Hon'ble High Court has dwelt at length on the issue of approaching the courts after a long delay. The Hon'ble Court in its order has referred judgements of the Hon'ble Supreme Court and Division Bench of the Hon'ble High Court/Delhi on this issue. This aspect needs to be especially kept in view while preparing counter reply in future cases.

Zonal Railways are also once again advised that any new case(s) filed in the matter may be immediately brought to the notice of this office and the counter reply prepared in the matter in light of this letter and the Brief circulated vide Board's letter of even number dt. 07.03.2024 may be got vetted from this office before the same is filed before Hon'ble Tribunal/Court.

DA: As above.



(Gaurav Puri)

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W.P.No.1404 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.11.2023

DELIVERED ON: 02.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.1404 of 2015 and

M.P.No.1 of 2015

1. Union of India, rep. by
The General Manager, Southern Railway,
Park Town, Chennai 600 003.
2. The Senior Divisional Personnel Officer,
Southern Railway, Madurai Division,
Madurai.
3. The Senior Divisional Financial Manager,
Southern Railway, Madurai Division,
Madurai.

... Petitioners

Vs.

1. The Registrar,
Central Administrative Tribunal,
Madras Bench Chennai 600 104.
2. V.Jayaramakrishanan

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari to call for the records of the first



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respondent in O.A.No.990/2011, dated 18.02.2013 and quash the same.

For petitioners : Ms.T.P.Savitha, standing counsel
For Respondents : No appearance for second respondent
RI- Tribunal

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

Challenging the order passed by the Tribunal in O.A.No.990/2011, dated 18.02.2013, *in and by which, the petitioners were directed to grant 55% of add on element of basic pay for the purpose of pension to the second petitioner, subject to the final outcome of SLP (c) no.11805 to 11808 of 2009, pending before the Hon'ble Supreme Court, this writ petition has been filed.*

2. The brief facts leading to the filing of the writ petition is as follows.

The second respondent was initially appointed as Fireman 'A' and subsequently, he was worked as Goods Driver. Subsequently, he was promoted as Diesel Driver Instructor. According to the second respondent,



the duties of Diesel Driver Instructors, as persons selected from experienced drivers from the post of Loco drivers, consists of i). Imparting intensive training to drivers, ii) Foot plate training to new running side promotee drivers i.e. “ foot-plate duties” of standing behind the engine drivers in running trains and noting the faults/errors they commit in driving and to supervise their working of driving and to advise them to rectify errors and guide them on reaching the stations. Therefore, the post of Loco Inspectors (Running supervisors)/ Assistant Mechanical Engineers is not only a higher post/promoted post from loco drivers, but they doing running jobs in Trains as drivers and they cannot be placed at a stage less than drivers in respect of retiral benefits and have to be placed at least on par with them by granting 55% of add on element on basic, though not higher benefits, by virtue of the higher post they occupy than that of drivers.

2.1. As per Rule 1507 to 1509 of Indian Railway Establishment Code, Volume II, Chapter 15, running duties means, duties directly connected with the movement of trains performed by running staff, whose performance of duties are directly connected with the moving of trains. *Loco Running*



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Supervisors/Diesel Driver Instructors promoted from running category to stationary posts are to be treated as loco running staff and as such they are entitled to retiral benefits on par with loco drivers with 75% or 55% of add on element of basic pay for calculation of retiral benefits.

2.2. The second respondent had submitted a representation dated 10.03.2010, requesting the petitioners to re-calculate the pension and pensionary benefits, duly taking into account 75% of basic pay as add on element of running allowance. However, the petitioners herein had not considered his representation and hence, he filed the above original application before the Tribunal. The Tribunal, by taking into account the orders passed by the Tribunal in similar matters in O.A.Nos.676, 1188 and 1189/2010, O.A.No.294 of 2001, dated 23.9.2001; OA No.996/2011 dated 19/3/2012; O.A.No.978/2011 dated 28/3/2012, had granted the above benefits to the second respondent, subject to the outcome of SLP(C) No.11805 to 11808/2009, pending before the Hon'ble Supreme Court. Challenging the above order, the Department had filed the present writ petition.



3. None appeared for the second respondent.

4. This writ petition is of the year 2015. After filing the writ petition, the second respondent was entered appearance through his counsel in the year 2019. However, for the contentions raised in the writ petition, there was no denial from the second respondent either by filing reply affidavit or by advancing arguments by his counsel. Despite sufficient opportunities were granted to him, there was no representation on behalf of the second respondent till date.

5. We have heard the learned counsel for the petitioners and perused the materials on record.

6. The learned standing counsel appearing for the petitioners submitted that, the second respondent was appointed as Apprentice Fireman on 18.07.1958 and thereafter, absorbed as Fireman 'A' w.e.f. 23.10.1960 and then he was promoted as Shunter 'A' and further promoted as Driver 'C'.



Thereafter, he was promoted as Driver Instructor (Diesel), vide order dated 05.01.1971 and subsequently, he voluntarily retired from service on 15.09.1982.

7. The second respondent claimed in his affidavit filed before the Tribunal that, he is a running a staff and hence, he is entitled to get add on element of 75% of basic pay. However, It is the specific case of the petitioners that, the above said post of Driver Instructor (diesel) is only a stationary post and it will not come under the zone of Running staff, as stipulated in Rule 3(iv) of " the Rules for Payment of Running and other allowances to running staff on Railways, 1981" . The above said Rule 3(iv) is extracted as follows.

<i>Loco</i>	<i>Traffic</i>
a) Drivers including motormen and rail motor Drivers, but excluding shunters	a) guards
b) shunters	b) Assistant Guards/Brakesmen
c) Firemen (including instructing firemen, Assistant Electric Drivers on electric Locos and Diesel Assistant/Drivers Assistant on Diesel Locos.	

In the above said tabular column, the post of Driver Instructor (diesel) does



not find place to hold that the said post is also come under the running category. Further, the respondent has not placed any material or relevant rules to prove that he is also running staff at the time of his retirement.

8. Further, the second respondent in his affidavit filed before the Tribunal contended that, he retired from service as Diesel Driver Instructor and in terms of Rule 1514 and 1515 of Indian Railway Establishment Code Volume-I (Annexure A2) Loco Inspectors/Diesel Driver instructors are entitled for running allowance. According to the second respondent, since he was appointed as a running staff and subsequently posted to work in a stationary post at the time of retirement, he is also entitled to running allowance ad emoluments by adding 75% of basic pay. From the records, it reveals that, the second respondent was promoted as Driver Instructor (diesel) on 05.01.1971 itself and he was continuing in that post, till his retirement on 15.09.1982.

9. At this juncture, it is relevant to note that, while deciding the issue of addition of 55% of the basis pay of running staff to be added and



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calculated as pensionary benefits, the Hon'ble Supreme Court in the case of *Union of India and others Vs. B.Baneerjee in Civil Appeal No.7298/2013, dated 18.03.2016*, held as follows.

9. 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.

In the light of the above decision of the Hon'ble Supreme Court, it is clear that the second respondent was not temporarily assigned to perform the stationary duties, but he was promoted to the said post from the year 05.01.1971 and he continued till his retirement 15.09.1982. Therefore, the contention of the second respondent that he was also running staff, at the time of retirement, cannot be accepted.

10. According to the petitioners/Department, while the second respondent was promoted as Driver Instructor (Diesel) his pay scale was



fixed than the Drivers, by adding 30% of his basic pay and thereafter, he retired from service on 15.09.1982. It is to be noted that, in the counter affidavit filed by the petitioners/Department before the Tribunal, a Tabular Column was given with regard to the benefits available to the running staff and such of those running staff, who have joined stationary post, for various periods. As per the above tabular column, actual running allowance, subject to a maximum of 75% of pay was given as pay element, for retirement benefits and this was granted only to the running staffs before 1988 and there is no provision in the rules to grant the above element for pensionary benefits to the stationary staffs. From the above, it clear that only the employees, who retired as running staff between 01.01.1973 to 04.12.1988 were entitled for the benefit of add on element of 75% and even though the second respondent retired from service as early as on 15.09.1982, he is not entitled to get the above benefit, as he had retired as stationary staff.

11. It is the further contention of the petitioners/Department that, for the first time in Indian Railways, a new scheme was introduced w.e.f. 01.01.1993, vide order dated 25.11.1992 passed by the Railway Board in



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RBE No.197/1992 in No.E(P & A) II/83/RS/10(iii), granting add on element of 30 % of basic pay, in the case of Loco Inspectors. The second respondent, who retired on 15.09.1982 as Driver Instructor (diesel), is not entitled for the above said scheme, which was introduced only from 01.01.1993. It is to be mentioned that, the above add on element of 30% was enhanced to 55%, as per the orders passed by the Tribunal in similar matters as stated supra and after the matter went up to the Supreme Court, the order passed by the Tribunal in similar matters had reached finality.

12. As far as the instant case is concerned, before Tribunal, the second respondent had relied upon the orders passed by the Tribunal in O.A.Nos.676,118 and 1189/2010, dated 21.06.2011, O.A.No.294/2011, dated 23.09.2011, O.A.No.996/2011, dated 19.03.2012, O.A.No.978/2011, dated 28.03.2012, which were allowed by granting 55% of add on element of basic pay. Therefore, on the same line, the Tribunal has passed the impugned order, subject to the outcome of SLP (c) Nos.11805 to 11808/2009, pending before the Hon'ble Supreme Court. Subsequently, the Hon'ble Supreme Court had disposed of the above said Special leave



petitions by granting permission to approach the Delhi High Court. Accordingly, the Department had filed review petitions and the same were dismissed by the Delhi High Court. Further, as against the dismissal order passed in the review petitions, Civil Appeals (as stated supra) had also been filed and the same were also dismissed by the Hon'ble Supreme Court, vide order dated 22.02.2023. Therefore, the orders passed by the Tribunal has reached finality.

13. At this juncture, it is to be noted that, the second respondent retired from service as early as on 15.09.1982. However, before the Tribunal, he had relied upon the covered judgments as stated supra, as if he had also retired from service after 01.01.1993, as running staff. Further more, even though the second respondent retired from service as early as on 15.09.1982, as stationary staff, he had given the representation to the Department on 10.03.2010 and approached the Tribunal only in the year 2011, that too after a lapse of 29 years.

14. In such scenario, it is useful to refer to the judgments of the



Hon'ble Apex Court and the Hon'ble Division Bench of this Court. The Hon'ble Apex Court, in a case, reported in *1994 SCC, Supl.(2) 195 [Ex-Capt. Harish Uppal vs. Union of India]*, has held as follows;

'8. The petitioner sought to contend that because of laches on his part, no third party rights have intervened and that by granting relief to the petitioner no other person's rights are going to be affected. He also cited certain decisions to that effect. This plea ignores the fact that the said consideration is only one of the considerations which the court will take into account while determining whether a writ petition suffers from laches. It is not the only consideration.

It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of Constitution of India and that is what precisely the Delhi-High Court has done. We cannot say that the High Court was not entitled to say so in its discretion."

15. The Hon'ble Division Bench of this Court, in the case of *S.Vaidhyanathan Vs.Government of Tamil Nadu reported in 2018 SCC OnLine*, in para 14, it is held as under ;

"14. There is an inordinate delay and laches on the part of the appellants. What is laches is as follows:



“Laches or reasonable time are not defined under any statute or Rules. “Latches” or “Lashes” is an old french word for slackness or negligence or not doing. In general sense, it means neglect to do what in the law should have been done for an unreasonable or unexplained length of time. What could be the latches in one case might not constitute in another. The latches to non-suit, an aggrieved person from challenging the acquisition proceedings should be inferred from the conduct of the land owner or an interested person and that there should be a passive inaction for a reasonable length of time. What is reasonable time has not been explained in any of the enactment. Reasonable time depends upon the facts and circumstances of each case.”

In para 16 of the judgment cited supra, it is held as under;

16. Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting into depriving of the remedy, is a principle based on public policy and utility and not equity alone.....”

16. In *Karnataka Power Corpn. Ltd. v. K.Thangappan reported in (2006) 4 SCC 322*, the Hon'ble Supreme Court, at Paragraph 6, held as follows:

“6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such



negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party'.....

16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time Delay and laches are relevant factors for exercise of equitable jurisdiction.

17. In *Chennai Metropolitan Water Supply and Sewerage Board v. T.T.Murali Babu reported in (2014) 4 SCC 108*, at Paragraphs 16 and 17, the Hon'ble Supreme Court held as follows:

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously



it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant - a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."

18. Accordingly, in the case on hand, after considering the following aspects,

i) The second respondent had retired from service as early as on 15.09.1982, as stationary staff, as agreed by him in his affidavit filed before the Tribunal, and on that period, there was no provision in the Railway Rules, to grant add on element to the stationary staffs.

ii) The second respondent was promoted to the post of Driver Instructor (Diesel) on 05.01.1971, which is a stationary post, and he was not temporarily assigned to perform the above



said stationary duties and he had continued the same till his retirement on 15.09.1982.

iii) The Tribunal has not considered the application filed by the second respondent as to whether he had retired after 01.01.1993, as running staff and he is entitled to avail the scheme introduced for the first time w.e.f. 01. 01.1993 to the Loco Inspectors.

iv) The second respondent, who retired from service on 15.09.1982 itself, has approached the Tribunal in the year 2011, that too after a lapse of 29 years, by claiming running allowance.

and also keeping in mind the ratio laid down in the above cited decisions, we are of the view that considering in any angle, the second respondent is not entitled to get the benefit of add on element of 55% of basis pay, as granted by the Tribunal. The Tribunal has not considered the application in proper perspective and allowed the application without any substantiative materials and therefore this Court has no hesitation to set aside the order of the tribunal.



19. In view of the aforesaid discussions, the Writ Petition stands allowed and the order of the Central Administrative Tribunal, Madras Bench dated 18.02.2013 in O.A.No.990 of 2011 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.) (N.S.J.)

02.02.2024

Internet: Yes/No
Index : Yes/No
mst /Jvm

To

1. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai 600 104.
2. The Union of India, rep. by the General Manager,
Southern Railway, Park Town, Chennai 600 003.
3. The Senior Divisional Personnel Officer,
Southern Railway, Madurai Division, Madurai.
4. The Senior Divisional Financial Manager,
Southern Railway, Madurai Division,
Madurai.



W.P.No.1404 of 2015

D.KRISHNAKUMAR, J.

and

N.SENTHILKUMAR, J.

mst

Order in

W.P.No.1404 of 2015

02.02.2024