Chairman, Railway Board

Vs

C.R.Rangadhamaiah

(J.S. Verma, M.M. Punchhi, S.C. Agarwal,

Dr. A.S. Anand, S.P. Bharucha JJ)

25.07.1997

JUDGMENT

S.C.AGRAWAL, J.

1. These appeals and special leave petitions filed by the Union of Indian and the Railway Administration involve the question regarding validity of the notifications Nos. G.S.R. 1143(E) and G.S.R. 1144(E) dated December 5, 1988 issued in exercise of the power conferred on the President of India under the Proviso to Article 309 of the Constitution whereby Rule 2544 of the Indian Railway Establishment Code, Volume II (Fifth reprint) has been amended with retrospective effect. By Notification No. G.S.R. 1143 (E) the said Rule was amended with effect from January 1, 1973 and by Notification No. G.S.R. 1144(E) the amendment was made with effect from April 1, 1979.

2. In Railways there are certain employees such as Drivers, Guards, Shunters, etc. who are connected with the movement of trains and are categorised as "running staff". In addition to the pay the running staff are entitled to payment of Running allowance. Under the relevant rules computation of pension after retirement is made on the basis of average emoluments and a part of the Running Allowance is included in average emoluments. Provision in this regard is contained in clause (g) of Rule 2544 of the Indian Railway Establishment Code. Prior to its amendment by the impugned notifications Rule 2544 provided as follows:-

> Note : Personal pay granted in lieu of loss of substantive pay in respect of a permanent post other than a tenure post shall be treated as personal allowance for the purpose of this article. Personal pay granted on any other personal considerations shall not be treated as personal allowance unless otherwise directed by the President.
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> (c) fees or commission if they are the authorised emoluments of an appointment, and are in addition to pay. In this case "Emoluments" means the average earnings for the last six months of service;
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> (d) acting allowance of an Officer without a substantive appointment if the acting service counts under Rule 2409 [c.s.r. 371], and allowance drawn by an Officer appointed provisionally substantively or appointed substantively pro tempore or in an officiating capacity to an office which is substantively vacant and on which no Officer has a lien or to an Office temporarily vacant in consequence of the absence of the permanent incumbent on leave without allowances or on transfer to foreign

service;

(e) deputation [duty] allowances;

(f) duty allowances [special pay]; and

(g) (i) For the purpose of calculation of average emoluments : Actual amount of running allowances drawn by the Railway servant during the month limited to a maximum of 75% of the other emoluments reckoned in terms of (a) to (f) above. (ii) for the purpose of gratuity and/or death-cum-retirement gratuity : The monthly average of running allowance drawn during the three hundred and sixty five days of running duty immediately preceding the late of quitting service limited to 75% of the monthly average of the other emoluments reckoned in terms of items: (a) to (f) above drawn during the same period.

Note : In the case of an Officer with a substantive appointment who officiates in another appointment or hold a temporary appointment, "Emoluments" means:

(a) the emoluments which would be taken into account under this Rule in respect of the appointment in which he officiates or of the temporary appointments, as the case may be, or

(b) the emoluments which would have been taken into account under this Rule had he remained in this substantive appointment whichever are more favourable to him."

3. On the basis of the recommendations of the Third Pay Commission the Pay Scales of the Staff in the Railways were revised by the Railway Services (Revised Pay) Rules, 1973 (hereinafter referred to as 'the 1973 Rules') notified vide notification dated December 7, 1973 which came into force on January 1, 1973. With regard to provisional payment of certain allowances in conjunction with pay fixed under the 1973 Rules, the Railway Board by their letter dated January 21, 1974 intimated that the question of revision of rules for regularisation of various allowances consequent upon the introduction of the revised pay-scales under the 1973 Rules was under the consideration of the Board and pending final decision thereon, the Board had decided as under:-

"(i) Treatment of Running Allowance for various purposes in case of Running Staff. The existing quantum of Running Allowance based on the prevailing percentages laid down for various purposes with reference to the pay of the Running Staff in Authorised Scales of Pay may be allowed to continue."

4. Through letter of the Railway Board dated March 22, 1976 it was intimated:-

"1. The question of revision of rules regarding treatment of Running Allowance as pay for certain purposes consequent upon the introduction of revised pay scales under Railway Services (Revised Pay) Rules, 1973 has been under consideration of this Ministry. It has now been decided that the existing rules in this respect may be modified as follows in the case of Running Staff drawing pay in revised pay scales:

(i) Pay for the purpose of passes and PTOs shall be pay plus 40% of pay.

(ii) Pay for the purpose of leave Salary, Medical attendance and treatment,

Educational Assistance and retirement benefits shall be pay plus actual amount or running allowance drawn subject to a maximum of 45% of pay.

(iii) Pay for the purpose of fixation of pay in stationery posts, Compensatory (City) Allowances, House Rent Allowance and rent for Railway quarters shall be pay plus 30% of pay.

2. These orders take effect from 1.4.1976.

3. The payments already allowed on provisional basis in terms of para 2 of Railway Ministry's letter No. PCIII/73/RA dated 21.1.1974 for the period from 1.1.1973 to 31.3.1976 shall be treated as final.

4.The above has the sanction of the President."

5. By letter of the Railway Board dated June 23, 1976 the direction contained in the letter dated March 22, 1976 was modified and it was intimated:-

"2. In partial modification of the orders contained therein, the Railway Ministry have decided, as a special case, that in the case of Running Staff retiring between 1.1.1973 to 31.3.1976, pay for the purposes of retirement benefits only shall be pay in revised scales plus actual amount of running allowance drawn subject to a maximum of 45% of pay in revised pay scales.

3.The above has to sanction of the President."

6. By letter of the Railway Board dated July 17, 1981 the decisions taken on the recommendations of the Committee on Running Allowances were communicated. In the said letter it was stated :-

"3.23. Reckoning of Running Allowance. - as Pay (i) For the specified purposes for which running allowance is reckoned as Pay at present, 30% of the basic pay of the running staff concerned will be reckoned except as below :

(a) for the purpose of retirement benefits, 55% of basic pay will be taken into account. This provision will be made applicable retrospectively from 1.4.1979 so that those running staff who have already retired with effect from that date or afterwards will also have their retirement benefits recalculated and re-settled."

(ii) x x x x

7. A Writ Petition (Writ Petition No. 915 of 1978) titled Dev Dutt Sharma & Ors. Vs. Union of India & Ors. was filed in the Delhi High Court by employees who had been working as railway guards. Some of them had retired from service while some had filed the Writ Petition in a representative capacity through the General Secretary of All India Guards Council. In the said Writ Petition the petitioners challenged the validity of the order of the Railway Board as contained in the letter dated March 22, 1976 whereby the quantum of percentage of the Running Allowance for the purpose of retirement and other benefits was reduced from 75% as prescribed in Rule 2544 to 45% with effect from January 1, 1973. After the constitution of the Central Administrative Tribunal under the Administrative Tribunals Act, 1985, the said Writ Petition was transferred to the Principal Bench of the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') and was

registered as No. T-310 of 1985. The said petition was allowed by the Tribunal by judgment dated August 6, 1986 and the order of the Railway Board dated March 22, 1976 was quashed on the ground that under the Indian Railway Establishment Code which contains the statutory rules framed by the President under Article 309 of the Constitution Running Allowance up to a maximum of 75% of the pay has to be taken into account for the purpose of calculating pecuniary benefits and other entitlements and that the said right under the statutory rules could not be taken away by order dated March 22, 1976 which was a mere executive instruction and the fact that it was issued with the sanction and approval of the President did not give it a character of a statutory rule. It was held that the said executive instruction cannot be accepted to be a statutory amendment of the existing rules governing the Running Allowance.

8. No steps were taken by the Railway Administration to the challenge the correctness of the said judgment of the Tribunal and it has become final. After the said decision of the Tribunal, the impugned notification were issued on December 5, 1988. Notification No. G.S.R. 1143(E) is as follows :-

> "G.S.R. 1143(E) :- In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the President is pleased to amend Rule 2544 of Indian Railway Establishment Code, Volume II (Fifth Reprint) as in the Annexure. This amendment will be effective from 01.01.1973.
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> ANNEXURE RULE 2544 Sub-rule g(i) and g(ii) may be substituted by the following:-
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> g(i) "For the purpose of calculation of average emoluments:- actual amount of running allowance drawn by the railway servant during the month limited to a maximum of 45% of pay, in the revised Scales of Pay". g(ii) "For the purpose of gratuity and/or death-cum- retirement gratuity:- the monthly average of running allowances drawn during the 365 days of running duty immediately preceding the date of quitting service limited to 45% of average pay drawn during the same period, in the revised scales of pay."

9. Notification No. G.S.R. 1144 (E) is as under:-

> "G.S.R. 1144(E) :- In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the President is pleased to amend Rule 2544 of the Indian Railway Establishment Code, Volume II (Fifth reprint) as in the Annexure. The amendment will be effective from 01.04.1979. ANNEXURE RULE 2544 Sub-rule g(i) and g(ii) may be substituted by the following:-
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> g(i) "For the purpose of calculation of average emoluments : 55% of basic average pay, in the revised scales of pay, drawn during the period;" g(ii) "For the purpose of gratuity and/or death-cum- retirement : 55% of basic average pay, in the revised scales of pay, drawn during the period."

10. At the time when these notifications were issued O.A. No. K-269 of 1988 filed by K.S.Srinivasan and others was pending before the Ernakulam Bench of the Tribunal. After the issuance of the said notifications the petitioners in that matter amended the petition to assail the validity of the said notifications in so far as they were given retrospective effect with effect from

January 1, 1973 and April 1, 1979 respectively. O.A. No. K-269 of 1988 was allowed by the Ernakulam Bench of the Tribunal by judgment dated April 2, 1990 and the impugned notifications were quashed to the extent the amendments in Rule 2544 were given retrospective effect on the view that the said amendments in the rule in so far as the same were given retrospective effect were unjust, unreasonable and were violative of Article 14 of the Constitution. A Review Application filed by the Union of Indian against the said judgment of the Ernakulam Bench of the Tribunal was dismissed by Order dated July 25, 1990. Special Leave Petition No. 10373 of 1990 has been filed by the Union of India against the said judgment of the Ernakulam Bench of the Tribunal.

11. It appears that the Principal Bench of the Tribunal by its judgment dated October 23, 1991 in O.A. No. 1572 of 1988 filed by C.L. Malik and others, took a contrary view on the question of validity of the impugned notifications and held that the vested rights of the employees were not affected by the amendment of the rules on the ground that total amount of pension and retirement benefits they would have received before the amendment were not reduced by the amendment rules. It seems that the earlier decision of the Ernakulam Bench of the Tribunal in O.A. No. K-269 of 1988 was not brought to the notice of the Bench which decided O.A. No. 1572 of 1988. The said decision of the Principal Bench of the Tribunal was followed by the Ahmedabad Bench of the Tribunal in judgment dated February 28, 1992 in O.A. Nos. 351 - 423 of 1988. The Ahmedabad Bench of the Tribunal also did not notice the earlier judgment of the Ernakulam Bench of the Tribunal. In view of the conflicting decisions of various Benches of the Tribunal the matter was referred to the Full Bench of the Tribunal. In its judgment dated December 16, 1993 in C.R.Rangadhamaiah & Ors. Vs. Chairman, Railway Board & Ors. and other connected matters, the Full Bench, agreeing with the view of the Ernakulam Bench of the Tribunal, has held :-

> (1) Under the Proviso to Article 309 of the Constitution, the President has power to promulgate rules with retrospective effect. This, however, is subject to the condition that the rules do not offend any of the fundamental rights conferred by Part III of the Constitution.
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> (2) Pension is a valuable right which a Government servant earns. It is neither charity nor bounty. Government servant acquires right to pension and other retirement benefits on the date he retires from service. Deprivation of such a valuable vested right after retirement is manifestly unreasonable, arbitrary and, therefore, violative of Article 14 of the Constitution.
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> (3) By the revision of the pay scales the pay scales of the members of the running staff were enhanced with the effect from January 1, 1973. Under Rule 2544 the members of the running staff are entitled to computation of their pay and retirement benefits by taking into account the Running Allowance which they have been receiving subject to a maximum of 75% of the pay and other allowances.
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> (4) By notifications dated December 5, 1988, Rule 2544 was amended prescribing the maximum at 45% from January 1, 1973 to April 1, 1979 and 55% from April 1, 1979 onwards. Those who retired from January 1, 1973 to December 4, 1988 were, in accordance with Rule 2544, as it then stood, entitled to take into account Running Allowance in the matter of computation of pension and retirement benefits upto the maximum of 75% of their pay and other allowances. As their pay was revised with effect from January 1, 1973 the limit of 75% had to be worked out with reference to the enhanced pay and other allowances that they became entitled to receive in

accordance with the 1973 Rules which came into effect from January 1, 1973.

(5) When the maximum was reduced from 75% to 45% upto April 1, 1979 or at the rate of 55% from April 1, 1979, the vested rights of all those who retired between January 1, 1973 and December 4, 1988 in the matter of receiving pension and retirement benefits were adversely affected.

(6) Persons who retired between January 1, 1973 and December 4, 1988 had earned a right to computation of pension in accordance with the statutory rules then in force. As by the time they retired, revision of pay had come into force, it is the revised pay and the Running Allowance subject to a maximum of 75% of the revised pay and allowances that was required to be taken into account.

(7) This right which accrued in their favour on their retirement between January 1, 1973 and December 4, 1988 was sought to be affected by amending the rules on December 5, 1988 with retrospective effect reducing the maximum limit of running allowance that qualifies for pension.

(8) The Ernakulam Bench had rightly declared that the amended provisions to the extent they have been given retrospective effect as void as offending Article 14 of the Constitution.

12. On the basis of the said decision of the Full Bench of the Tribunal, other Benches of the Tribunal at Bangalore, Hyderabad, Allahabad, Jabalpur, Jaipur, Madras and Ernakulam have passed orders giving relief on the same grounds. These appeals and special leave petitions have been filed against the decision of the Full Bench and those other Benches of the Tribunal. Some of these matters were placed before a bench of three learned Judges of the Court on March 28, 1995 on which date the following order was passed:-

"Two questions arise in the present case, viz., (i) what is the concept of vested or accrued rights so far as the Government servant is concerned; and (ii) whether vested or accrued rights can be taken away with retrospective effect by rules made under the proviso to Article 309 or by an Act made under that Article, and which of them and to what extent. We find that the Constitution Bench decisions in Roshan Lal Tandor Vs. Union of India [(1968) 1 SCR 185)], B.S.Vadera Vs. Union of India [(1968) 3 SCR 5741] and State of Gujarat & Anr. Vs. Raman Lal Keshav Lal Soni & Ors. [(1983) 2 SCR 287] have been sought to be explained by two, three Judges Bench decision in Ex-Capt. K.C.Arora & Anr. Vs. State of Haryana & Ors. [(1985) 3 SCR 6231] and K.Negaraj & Ors. Vs. State of Andhra Pradesh and Anr. Ors. [(1985) 1 SCC 5231] in addition to the two-Judges Bench decision in P.D. Aggarwal & Ors. Vs. State of U.P. & Ors. [(1987) 3 SCC 6221] and K. Narayan & Ors. etc. Vs. State of Karnataka & Ors. Etc. [(1993) Supp. 1 SCC 441]. Prima facie, these explanations go counter to the ratio of the said Constitution Bench decisions. It is not possible for us sitting as three-Judges Bench to resolve the said conflict. It has, therefore, become necessary to refer the matter to a larger Bench. We accordingly refer these appeals to a Bench of five learned Judges."

13. This is how these matters have come up before this Bench.

14. Shri K.N.Bhat, the learned Additional Solicitor General, has, in the first place, urged that the orders dated March 22, 1976 and June 23, 1976 were not in the nature of executive instructions, but were statutory rules made by the Railway Board in the exercise of its power under Rule 157 of the Indian Railway Establishment Code and had the effect of amending Rule 2544. This plea has been raised on behalf of the Union of India for the first time in this Court. It was not put forward before the Tribunal in No. T-310 of 1985 and the judgment of the Tribunal dated August 6, 1976 in the said case proceeds on the basis that the order dated March 22, 1976 is in the nature of executive instructions and on that basis the said order was struck down by the Tribunal for the reason that the executive instructions could not amend or dilute statutory rules. The said judgment of the Tribunal has become final. This plea was also not raised before the Full Bench of the Tribunal. The question whether the Railway Board, while issuing the orders dated March 22, 1976 and June 23, 1976, was exercising its power under Rle 157 of the Indian Railway Establishment Code, is not a pure question of law. It cannot be decided in the absence of relevant facts. Moreover, the impugned notifications dated December 5, 1988, whereby Rule 2544 has been amended, proceed on the basis that the orders dated March 22, 1976 and June 23, 1976 were in the nature of executive instructions. The following Explanation is appended below notification G.S.R. 1143 (E) wherein it has been clearly stated:-

> "Explanation:
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> The Rule 2544 of the Indian Railway Establishment Code, Volume II (Fifth reprint) has been modified through administrative instructions issued with the President's approval effective from 1.1.73. These instructions were necessitated by the introduction of the revised Scales of Pay Commission. The purpose of this amendment is to give statutory force to the administrative instructions with effect from the same date on which the instructions were issued."[emphasis supplied]

15. Similar Explanation is appended below notification G.S.R. 1144 (E). In view of the said statement in the Explanation appended below the impugned notifications to the effect that Rule 2544 had earlier been modified by administrative instructions and that the purpose of the amendments is to give statutory force to the administrative instructions the contention urged by the learned Additional Solicitor General that the orders dated March 22, 1976 and June 23, 1976 were statutory rules cannot be entertained.

16. The question which, therefore, needs to be examined is whether 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.

17. On the basis of the decision of the Constitution Bench in Roshan Lal Tandon Vs. Union of India, 1968 (1) SCR 185, the learned Additional Solicitor General has submitted that the relationship between the Government and its servants is not like an ordinary contract of service between a master and servant, but is something in the nature of status. It is urged that once appointed to a post or office, the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by Government and the Government servant has no vested right in regard to the terms of his service. The learned Additional Solicitor General has further submitted that the rules made in exercise of the power conferred on the President under the Proviso to Article 309 of the Constitution have the same effect as an act of the Legislature and that such rules can be made to

operate prospectively as well as retrospectively. In support of the said submission reliance has been placed on the decision of the Constitution Bench in B.S.Vadera Vs. Union of India & Ors., 1968 (3) SCR 575. The submission is that since a Government servant has no vested right in the terms and conditions of his service and the said terms can be altered with retrospective effect by the rules made under the Proviso to Article 309, the retrospective operation of a rule cannot be assailed on the ground that it takes away a vested right of the government servant.

18. It is no doubt true that once a person joins service under the Government the relationship between him and the Government is in the nature of status rather than contractual and the terms of his service while he is in employment are governed by statute or statutory rules, which may be unilaterally altered without the consent of the employees. It has been so held by this Court in Roshan Lal Tandon (supra) and State of Jammu & Kashmir Vs. Triloki Nath Khosa, 1974 (1) SCR at pp. 779, 780. It may, however, be mentioned that in Roshan Lal Tandon (supra) the petitioner was invoking his rights under the contract of service and the said contention was rejected by the Court with the observations:-

> "We are therefore of the opinion that the petitioner has no vested contractual right in regard to the terms of his service and that the counsel for the petitioner has been unable to make good his submission on this aspect of the case." [p.196] [emphasis supplied]

19. In B.S.Vadea (supra) it has been held that the rules under the Proviso to Article 309 have effect subject to the provisions of the Act made by the appropriate Legislature under the main part of Article 309, if the appropriate Legislature has passed an Act under Article 309 and in the absence of any Act of the appropriate Legislature on the matter the rules made under the Proviso to Article 309 are to have full effect both prospectively and retrospectively. Since the power of the appropriate Legislature to enact a law under Article 309 has to be exercised subject to the provisions of the Constitution, the power to make rules under the Proviso to Article 309 has to be exercised subject to the provisions of the Constitution. The Court has, therefore, said:-

> "Apart from the limitations, pointed out above, there is none other, imposed by the proviso to Article 309, regarding the ambit of the operation of such rules. In other words, the rules, unless they can be impeached on grounds such as breach of Part III, or any other Constitutional provision, must be enforced, if made by the appropriate authority." [p.585]

20. This means that even though the President, in exercise of his power under the Proviso to Article 309, can make rules which may have prospective or retrospective operation, the said rules may be open to challenge on the ground of violation of the provisions of the Constitution, including the Fundamental Rights contained in Part III of the Constitution.

21. In Triloki Nath Khosa & Ors.(supra) rules had been framed altering the criterion of eligibility for promotion from the post of Assistant Engineer to the post of Executive Engineer and the same were challenged on the ground of retrospectivity by the Assistant Engineers who were in service on the date of making of these rules. Rejecting the said contention, this Court said:-

> "It is wrong to characterise the operation of a service rule as retrospective for the reason that it appeals to existing employees for promotional purposes, undoubtedly operates on those who entered service before the framing of the rule but it operates in

> future, in the sense that it governs the future right of promotion of those who are already in service. The judgment rules do not recall a promotion already made or reduce a pay scale already granted. They provide for a classification by prescribing a qualitative standard the measure of that standard being educational attainment. Whether a classification founded on such a consideration suffers from a discriminatory vice is another matter which we will presently consider but surely, the rule cannot first be assumed to be retrospective and then be struck down for the reason that it violates the guarantee of equal opportunity by extending its arms over the past. If Rules governing conditions of service cannot ever operate to the prejudice of those who are already in service, the age of superannuation should have remained immutable and schemes of compulsory retirement in public interest ought to have foundered on the rock of retrospectivity. But such is not the implication of service rules nor is it their true description to say that because they affect existing employees they are retrospective." [p.779]

22. It can, therefore, be said that a rule which operates in future so as to govern future rights of those already in service cannot be assailed on the ground of retrospectivity as being violative of Articles 14 and 16 of the Constitutions, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.

23. In B.S.Yadav & Ors. etc. Vs. State of Haryana & Ors. etc. 1981 (1) SCR 1024, a Constitution Bench of this Court, while holding that the power exercised by the Governor under the Proviso to Article 309 partakes the characteristics of the legislative, not executive, power and it is open to him to give retrospective operation to the rules made under that provision, has said that when the retrospective effect extends over a long period, the date from which the rules are made to operate must be shown to bear, either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules [p. 1068].

24. In State of Gujarat & Anr. Vs. Raman Lal Keshav Lal Soni & Ors., 1983 (2) SCR 287, decided by a Constitution Bench of the Court, the question was whether the status of ex-ministerialemployees who had been allocated to the Panchayat service as Secretaries, Officers and Servants of Gram and Nagar Panchayats under the Gujarat Panchayat Act, 1961 as government servants could be extinguished by making retrospective amendment of the said Act in 1978. Striking down the said amendment on the ground that it offended Articles 311 and 14 of the Constitution, this Court said:-

> "The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do's and don'ts of the Constitution neither prospective nor retrospective laws can be made so as to contravene Fundamental Rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, twenty years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years. We are concerned with today's rights and not yesterday's. The legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of event and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable and a negation of history."

[pp. 319-320]

25. The said decision in Raman Lal Keshav Lal Soni & Ors. (supra) of the Constitution Bench of this Court has been followed by various Division Benches of this Court. [See: Ex.Capt. K.C. Arora & Anr. Vs. State of Haryana & Ors., 1984 (3) SCR 623; T.R. Kapur & Ors. Vs. State of Haryana & Ors., 1987 (1) SCR 584; P.D.Aggarwal & Ors. Vs. State of U.P. & Ors., 1987 (3) SCR 427; K.R. Narayanan & Ors. Vs. State of Karnataka & Ors., 1994 Supp (1) SCC 44; Union of India & Ors. Vs. Tushar Ranjan Mohanty & Ors., 1994 (5) SCC 450; and K. Ravindranath Pai & Anr. Vs. State of Karnataka & Anr. 1 1995 Supp. (2) SCC 246].

26. In many of these decisions the expressions "vested rights" of "accrued rights" have been used while striking down the impugned which had been given retrospective operation so as to have an adverse affect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violate of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon (supra) B.S.Yadav (supra) and Raman Lal Keshav Lal Soni & Ors. (supra).

27. In these cases we are concerned with the pension payable to the employees after their retirement. The respondents were no longer in service on the date of issuance of the impugned notifications. The amendments in the rules are not restricted in their application in future. The amendments apply to employees who had already retired and were no longer in service on the date the impugned notifications were issued.

28. In Deokinandan Prasad Vs. State of Bihar & Ors., 1971 (Supp.) SCR 634, decided by a Constitution Bench it has been laid 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]

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

30. In D.S.Nakara & Ors. Vs. Union of India, 1983 (2) SCR 165, this Court, after taking note of the decision in Deokinandan Prasad (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 Douge Vs. 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."
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> "Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of

thecompensation or for service rendered." [p. 185]

31. It has also been laid down by this Court that the reckonable emoluments which are the basis for computation of pension are to be taken on the basis of emoluments payable at the time of retirement. [See : Indian Ex-services League & Ors. etc., Vs. Union of India & Ors. etc. 1991 (1) SCR 158 at p. 173].

32. Rule 2301 of the Indian Railway Establishment Code incorporates this principle. It lays down:-

> "A pensionable Railway servant's claim to pension is regulated by the rules in force at the time when he resigns or is discharged from the service of Government."

33. The respondents in these cases are employees who had retired after January 1, 1973 and before December 5, 1988. As per Rule 2301 of the Indian Railway Establishment code they are entitled to have their pension computed in accordance with Rule 2544 as it stood at the time of their retirement. At that time the said rule prescribed that Running Allowance limited to a maximum of 75% of the other emoluments should be taken into account for the purpose of calculation of average emoluments for computation of pension and other retrial benefits. The said right of the respondents employees to have their pension computed on the basis of their average emoluments being thus calculated is being taken away by the amendments introduced in Rule 2544 by the impugned notifications dated December 5, 1988 inasmuch as the maximum limit has been reduced from 75% to 45% for the period from January 1, 1973 to March 31, 1979 and to 55% from April 1, 1979 onwards. As a result the amount of pension payable to the respondents in accordance with the rules which were in force at the time of their retirement has been reduced.

34. In Salabuddin Mohamed Yunus Vs. State of Andhra Pradesh, 1985 (1) SCR 930, the appellant was employed in the service of the former Indian State of Hyderabad prior to coming into force of the Constitution of India. On coming into force of the Constitution the appellant continued in the service of that State till he retired from service on January 21, 1956. The appellant claimed that he was entitled to be paid the salary of a High Court Judge from October 1, 1947 and also claimed that he was entitled to receive pension of Rs. 1000/- a month in the Government of India currency, being the maximum pension admissible under the rules. The said claim of the appellant was negatived by the Government. He filed a Writ Petition in the High Court of Andhra Pradesh. During the pendency of the said Writ Petition relevant rule was amended by notification dated February 3, 1971 with retrospective effect from October 1, 1954 and the expression "Rs. 1000 a month" in clause (b) of sub-rule (1) of Rule 299 was substituted by the expression "Rs. 857.15 a month". This amendment was made in exercise of the power conferred by the Proviso to Article 309 read with Article 313 of the Constitution. The said amendment was struck down by this Court as invalid and inoperative on the ground that it was violative of Articles 31(1) and 19(1)(f) of the Constitution. Relying upon the decision in Deokinandan Prasad (supra), it was held:- "The fundamental right to receive pension according to the rules in force on the date of his retirement accrued to the appellant when he retired from service. By making a retrospective amendment to the said Rule 299(1)(b) more than fifteen years after that right had accrued to him, what was done was to take away the appellant's right to receive pension according to the rules in force at the date of his retirement or in any even to curtail and abridge that right. To that extent, the said amendment was void." [pp. 938-939].

35. It is no doubt true that on December 5, 1988 when the impugned notifications were issued, the rights guaranteed under Articles 31(1) and 19(1)(f) were not available since the said provisions in

the Constitution stood omitted with effect from June 20, 1979 by virtue of the Constitution (Forty-fourth Amendment) Act, 1978. But the notifications G.S.R. 1143 (E) and G.S.R. 1144 (E) have been made operative with effect from January 1, 1973 and April 1, 1979 respectively on which dates the rights guaranteed under Articles 31(1) and 19(1)(f) were available. Both the notifications in so far as they have been given retrospective operation are, therefore, violative of the rights then guaranteed under Articles 19(1) and 31(1) of the Constitution.

36. A part from being violative of the rights then available under Articles 31(1) and 19(1)(f), the impugned amendments, in so far as they have been given retrospective operation, are also violative of the rights guaranteed under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement.

37. The Learned Additional Solicitor General has, however, submitted that the impugned amendments cannot be regarded as arbitrary for the reason that by the reduction of the maximum limit in respect of Running Allowance from 75% to 45% for the period January 1, 1973 to March 31, 1974 and to 55% from April 1, 1979 onwards, the total amount of pension payable to the employees has not been reduced. The submission of the learned Additional Solicitor General is that since the pay scales had been revised under the 1973 Rules with effect from January 1, 1973, the maximum limit of 45% or 55% of the Running Allowance will have to be calculated on the basis of the revised pay scales while earlier the maximum limit of 75% of Running Allowance was being calculated on the basis of unrevised pay scales and, therefore, it cannot be said that there has been any reduction in the amount of pension payable to the respondents as a result of the impugned amendments in Rule 2544 and it cannot be said that their rights have been prejudicially affected in any manner. We are unable to agree. As indicated earlier, Rule 2301 of the Indian Railway Establishment Code prescribes in express terms that a pensionable railway servant's claim to pension is regulated by the rules in force at the time when he resigns or is discharged from the service of Government. The respondents who retired after January 1, 1973 but before December 5, 1988 were, therefore, entitled to have their pension computed on the basis of Rule 2544 as it stood on the date of their retirement. Under Rule 2544, as it stood prior to amendment by the impugned notifications pension was required to be computed by taking into account the revised pay scales as per the 1973 Rules and the average emoluments were required to be calculated on the basis of the maximum limit of Running Allowance at 75% of the other emoluments, including the pay as per the revised pay scales under the 1973 Rules. Merely because the respondents were not paid their pension on that basis in view of the orders of the Railway Board dated January 21, 1974, March 22, 1976 and June 23, 1976, would not mean that the pension payable to them was not required to be computed in accordance with Rule 2544 as it stood on the date of their retirement. Once it is held that pension payable to such employees had to be computed in accordance with Rule 2544 as it stood on the date of their retirement, it is obvious that as a result of the amendments which have been introduced in Rule 2544 by the impugned notifications dated December 5, 1988 the pension that would be payable would be less than the amount that would have been payable as per Rule 2544 as it stood on the date of retirement. The Full Bench of the Tribunal has, in our opinion, rightly taken the view that the amendments that were made in Rule 2544 by the impugned notifications dated December 5, 1988, to the extent the said amendments have been given retrospective effect so as to reduce the maximum limit from 75% to 45% in respect of the period from January 1, 1973 to March 31, 1979 and reduce it to 55% in respect of the period from April 1, 1979, are unreasonable and arbitrary and are violative of the rights guaranteed under Articles 14 and 16 of the Constitution.

38. For the reasons aforementioned, the appeals as well as special leave petitions filed by the Union of India and Railway Administration are dismissed. But in the circumstances, there will be no order as to costs.

39. Special Leave Petitions Nos. 18721/1995, 4290-4307/1995, 18280/1995, 20547/1995 and 3282-83/1997 are delinked and they may be listed before the appropriate Bench.