

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 605
T.A. No.

199 D.

DATE OF DECISION 4.12.1991.

All India Retired Railwaymen Petitioners
(P.F. Terms) Association & Ors. Advocate for the Petitioner(s)
Shri K.N.R.Pillay, Versus

U.O.T. Respondent

Shri V.R. Reddy, Additional Advocate for the Respondent(s)
Solicitor General with Smt. Anil
Katiyar, Sh.P.S.Narasimha and Shri O.P.Kshatriya

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Amitav Banerji
 (Amitav Banerji)
 Chairman
 4.12.1991.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No.605/1990

Date of decision: 4.12.1991.

All India Retired Railwaymen
(P.R. Terms) Association & Others Applicants.

Vs.

Union of India ... Respondent.

CORAM:

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

For the applicants ... Shri K.N.R. Pillay, counsel.

For the respondent ... Shri V.R. Reddy, Additional
Solicitor General with
Smt. Anil Katiyar, Shri
P.S. Narasimha and Shri
O.P. Kshatriya, counsel.

JUDGMENT

The short question which arises for determination
in this case pertains to the alleged arbitrary fixing
of the cut-off date viz. 12.3.1987 for denying railway
passes to those widows of railway employees who ceased
to be in service prior to 12.3.1987. The Association and
three applicants have termed the fixing of the cut-off
date 12.3.1987 as arbitrary and denies them the
privilege of complimentary passes which have otherwise
being given to all the widows of railway employees who
have ceased to be railway servants on or after 12.3.1987.
It is alleged that the arbitrary fixing of 12.3.1987 is
discriminatory and bad in law.

In the reliefs prayed for by the applicants in
this O.A., it is stated that the Tribunal may strike out

from the scheme for complimentary passes for widows of railway employees certain portions which are discriminatory viz., the date of effect and eligibility in para 1 and to omit the note in para 3.2.

The respondents in their reply have taken the stand that the scheme could not be extended to those who had already retired before 12.3.1987 as the condition precedent for eligibility viz. curtailment of two sets of PTOs could not be enforced in respect of their cases.

Reference was made to the background of the scheme. On retirement, Railway employees are given complimentary passes for travel. These passes are given to both, PF optee as well as Pension optee. The admissibility of the number of complimentary passes depends upon the number of years of service put in by a railway employee before retirement and his status at the time of retirement (whether gazetted or non-gazetted or group 'D'). Prior to 12.3.1987, post-retirement facility of free travel was admissible only so long as the retired employee was alive. After his/her death, no complimentary passes for free travel were given to the widow/widower. The Government felt that as a welfare measure some travel facility should be given to the family of the deceased railway employee as well. The Government thereafter introduced this scheme of providing free travel passes to widows or other dependent relatives of the deceased railway servant. In this context, the Railway Board

introduced the scheme of complimentary passes for widows fixing 12.3.1987 as the cut-off date. Under this scheme all those Railway employees who were still in service and were to retire, the facility of free travel on complimentary passes was made admissible to his family even after his death by simultaneously reducing his scale of entitlement of PTOs from six to four. The serving railway employees were also given the option either to accept or to opt out of the scheme by 30.9.1987. If the employee opted out, the scale of entitlement of PTOs continued as six and no reduction was made in his case. It was stated that the Government introduced this scheme under the Railway Servants (Pass) Rules- 1986 which are framed under Article 309 of the Constitution of India.

It was further contended on behalf of the Railway that the Tribunal has jurisdiction only to quash a particular statutory rule framed under Art.309 of the Constitution but it has no power to extend such rules to those persons to whom they do not apply and who cannot claim as a matter of right. It was further contended that the scheme had been challenged in the year 1990 whereas it has come in force in 1987 and, therefore, the O.A. is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985 and same deserves to be dismissed on this ground alone. It was further submitted that so far as Group 'C' & 'D' employees are concerned, they become eligible for three sets of passes only after they have completed five years of service. The impugned date is not arbitrary.

It was further submitted that the Government has the

power to fix the cut-off date for the purpose of grant of benefit in the larger public interest. In other words, only those widows of railway employees who retired or died between 12.3.1987 and 30.6.1987 were being denied the facility of passes on a reasonable basis. Lastly, it was urged that no cause of action had accrued to the applicants and they cannot compel the administration to extend the scheme to them. It was further stated in paragraph 8 that the applicants are not entitled to any of the reliefs, as claimed by them.

I have heard Shri K.N.R. Pillay for the applicants and Shri V.R. Reddy, Additional Solicitor General for the respondent.

Learned counsel for the applicants Shri K.N.R. Pillay argued that the principles laid down in the case of D.S. NAKARA AND OTHERS Vs. UNION OF INDIA (1983(2) SLR 246) are fully applicable to the facts of the case. Since retired employees constitute one single homogeneous class, dividing them in two classes is discriminatory. Consequently, the cut-off date has no nexus to the scheme which is violative of Art. 14 of the Constitution. Learned counsel urged that the respondent may urge that the court cannot legislate. If the offending clause which is arbitrary is amenable of being separated it can be separately quashed leaving valid part of the scheme intact. It was further urged that there were 1.5 lakh such widows was wholly wrong.

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Whatever the number in 1987, it is a diwindling one as the widows are also dying. If it is a welfare measure, it has to apply to all.

The Additional Solicitor General in reply urged that on 12.3.1987 it was decided to extend the benefit of the scheme as conditional/optional. The conditional offer was made to the employees of the railway. He urged that the scheme was not liable to be quashed in part and retained in respect of the rest. The decision in the case of D.S. NAKARA AND OTHERS (Supra) was not applicable at all. He cited a recent decision in the case of KRISHNA KUMAR VS. UNION OF INDIA AND OTHERS (AIR 1990 SC 1782). He further stated that this scheme was a comprehensive offer and there was a nexus with the object to be achieved.

The Applicant No. 2 was an officer of the Indian Railway Accounts Service who retired as Financial Commissioner Railways on 30.4.1984. The circular letter dated 30.6.1987 is in respect of a scheme of passes for widows of railway employees. The case of the Applicant No. 2 is that he having retired in 1984, i.e., prior to 12.3.1987, he is also entitled for post retirement passes. He made an application to the Member Staff & Ex-Officio Secretary to Govt. of India, Ministry of Railways (Railway Board) on 24.4.1989 (Annexure A-III). The prayer made in the above application was declined on the ground "that it has not been found feasible to agree to the request regarding grant of Widow Passes in your favour made by

you". His prayer for review of the above order addressed to the Chairman, Railway Board and Ex-Officio Principal Secretary to Government of India, Ministry of Railways (Railway Board) was replied to by the Chairman, Railway Board declining to interfere - vide letter dated 28.7.1989 (Annexure A-VI).

Applicant No. 2 is not covered by the above circular letter. He himself was a railway officer who retired earlier in 1984. He may take up his case with the Government.

The O.A. was filed on 2.4.1990 challenging the circular letter dated 30.6.1987 (Annexure A-I). Applicants 3 and 4 are widows of railway officers who died prior to 12.3.1987. Their cause of action arose after the issue of the circular letter dated 30.6.1987.

The principal question in this case is about the cut-off date, 12.3.1987. Objection is taken by the applicants that this cut-off date causes discrimination between the widows of employees who had retired prior to 12.3.1987 and the widows of those employees who had retired on 12.3.1987 and thereafter. In support of this contention, D.S. NAKARA's case (Supra) was cited where it was held that the entire body of retired persons forms one homogeneous class. On this basis it was argued that there can be no discrimination between persons who are entitled to the retiral benefits as widows of railway personnel. The matter has been considered at length in the recent Constitution Bench decision of the Supreme Court

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In view of the above, it cannot be said that B.S. NAKARA's case holds field in every case of a retired railway employee.

In the present case what was being asked on behalf of applicants 3 and 4 that their husbands who were railway employees had and who retired prior to 12.3.1987 and the applicants who were widows were not being extended the facility of passes in lieu of 2 P.T.Os which were given to all railway employees who were in service on 12.3.1987 or thereafter. The question is whether this amounts to discrimination as the respondents' Railway administration had a right to extend the benefit to railway employees from a certain date. They had also to consider the financial implications and the privilege that was being given. The facility of a railway pass was being given in lieu of surrender of 2 P.T.Os. The argument that the widows of railway employees who had ceased to be in service on 12.3.1987 could not be treated differently than those widows whose husbands were in railway service on 12.3.1987 and thereafter. This contention, in my opinion, has to be considered.

It has been rightly pointed out by the respondent that if the applicants 3 and 4 were challenging the circular letter dated 30.6.1987 and if that was struck down, they would also not get the benefit of the scheme introduced by the Railway Board. In fact, they could not ask for such a relief. They have asked that the same relief could be given to them.

discernible principle in denying the widows like the applicants from the benefit of the order. The only statement made was that there would be one and a half lacs claimants if the date was earlier than 12.3.1987. But this fact was challenged by the applicants. There is no material on the record to show as to how this figure was arrived at. After all aged people continue to die. The widows of Railway servants who have ceased to be in service on or before 12.3.1987 can be presumed to be dying and as such, theirs is a diminishing number. Thus, whose husbands the reason that there were large number of widows/ceased to be in service on or before 12.3.1987 would pose a problem in the matter of extending the facility smacks of arbitrariness. On the other hand, people like the applicants whose husbands have ceased to be in service on or before 12.3.1987 needed assistance in travelling. If the Railways showed some consideration for them, it would have been just and proper. These are the days of beneficial legislation for the poor and the needy. It is within the competence of the Railway Board to draw up a particular date and to give benefit to some and deny it to others, but then where the distinction is so or obvious and based on no reasonable/discriminable principle, it cannot be termed anything but arbitrary. The respondents had to satisfy as to why this particular date was chosen or not an earlier date or a later date. How were the widows whose husbands retired on or before 12.3.1987 better placed than the widows of those who continued after 12.3.1987. If the number

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of passes to be given in lieu of two sets of PTOs, the respondents should have thought over the matter and made an uniform application for all widows of Railway employees.

I have heard arguments of learned counsel for the parties at some length and I must say that I see no reasonable basis for differentiation between the widows of Railway employees who were in service before 12.3.1987 and those who were in service after the above date. In my opinion, applying the principle laid down in the case of THE DIRECTOR, LIFT IRRIGATION CORPORATION LTD. & ORS. (SUPRA), the policy decision of the Government appears to be arbitrary and bereft of any discernible principle.

In the result, therefore, the O.A. must succeed only to a limited extent that the Government policy should be available and made applicable in the case of Applicants Nos 1, 3 and 4 individually. As held above, the Applicant No. 2 is not entitled to any relief in this O.A. I order accordingly.

There will be no order as to costs.

AB

(AMITAV BANERJI)
CHAIRMAN
4.12.1991