IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(21)

1. OA NO.1543/91 DATE OF DECISION : 13.03.1992.

SHRI ANANTA KUMAR KAR & OTHERS ...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

2. OA NO.1544/91

SHRI SHANKAR PRASAD BHATTACHARYA & ORS. ...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

3. OA NO.262/91

CENTRAL RAILWAY AUDIT STAFF ASSOCIATION ...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

4. OA NO.1058/91

SHRI V.H. KULKARNI ...APPLICANT

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

5. OA NO.1059/91

SHRI S. RADHAKRISHNAN ...APPLICANT

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

6. OA NO.1096/91

SHRI J.K. BHUYAN & OTHERS ...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

7. OA NO.1099/91

NORTH EASTERN RAILWAY AUDIT STAFF ASSOCIATION GORAKHPUR ...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

8. OA NO.279/90

NORTHERN RAILWAY AUDIT ASSOCIATION ...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

contd...2/-

(22)

9. OA NO. 1098/91

SHRI K.S. MANI ...APPLICANT

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

10. OA NO.259/91

SHRI V. NAGESWARA RAO ...APPLICANT

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

11. OA NO.261/91

SOUTHERN RAILWAY AUDIT STAFF ASSOCIATION ...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

12. OA NO.260/91

SHRI K.K. SHARMA ...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

13. OA NO.1097/91

SHRI N.V. RAMAN PRASAD & OTHERS ...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

CORAM:-

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE-CHAIRMAN (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANTS — S/SHRI E.X. JOSEPH, S. NATRAJAN & R. KRISHNAMANI, COUNSEL.

FOR THE RESPONDENTS — SHRI N.S. MEHTRA, SENIOR STANDING COUNSEL WITH SHRI O.P. KSHTARIYA, COUNSEL.

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE MR. I.K. RASGOTRA, MEMBER (A))

The bunch of Original Applications listed below were ordered to be transferred from the various Benches to the Principal Bench by the Hon'ble Chairman on 22.3.1991 at the request of the Senior Standing Counsel for the respondents, Shri N.S. Mehta, after considering the prayers made in the

relevant MPs. They have been renumbered at the Principal Bench and the corresponding number allottted to each of the OA with particulars of the applicants is shown in juxta-position in the table below:-

1.OA No.1543/91 Ananta Kumar Kar & Ors. v. Union of India & Ors.

2.OA No.1544/91 Shankar Prasad Bhattacharya & Ors.

3.OA No.262/91 Central Railway Audit Staff Association v. UOI & Ors.

4.OA No.1058/91 Shri V.H. Kulkarni v. UOI & Ors.

5.OA NO.1059/91 S.Radhakrishnan v. UOI & Ors.

6.OA No.1096/91 J.K. Bhuyan & Ors. v. UOI & Ors.

7.OA NO.1099/91 North Eastern Railway Audit Staff Association Gorakhpur v. UOI & Ors.

8.OA No.279/90 Northern Railway Audit Association v. UOI & Ors.

9. OA No.1098/91 K.S. Maini v. UOI & Ors.

10. OA No.259/91 V. Nageswara Rao v. UOI & Ors.

11. OA No. 261/91 Southern Railway Audit Staff Association v. UOI & Ors.

12. OA 260/91 K.K. Sharma v. UOI & Ors.

13. OA No.1097/91 N.V. Raman Prasad & Ors. v. UOI & Ors.

For facility of disposal it was considered expedient and appropriate in consultation with the learned counsel appearing in the above OAs to take up **OA 1543/91 (T) Ananta Kumar Kar & Ors. Vs. Union of India & Ors. Principal Bench (385/90 of Calcutta)**, for detailed consideration as it raises all the issues of law and of fact and which are of consequence in the entire bunch of OAs.

2. The applicants herein have challenged the Railway Board's letter and wirless message dated 27.7.1989 and 11.9.1989 communicated to the applicants vide Audit Officer

24

(Admn.) South Eastern Railway letter No.Admn/3120/89/3603 dated 21.11.1989 and orders dated 21.12.1989 and 19.1.1990 (Annexure A-1 and A-2)

3. The necessary facts of the case are that the applicants are classified as Assistant Audit Officers Group 'B' by the Comptroller and Auditor General of India (C&AG). They are employed in the Railway Audit Department. Prior to the implementation of the recommendations of the Fourth Central Pay Commission they were working in the pay scale of Rs.650-1040 in Group 'C'. Notice No.DDA/Admn/Cadre/83/4398 dated 19.12.1983 issued by Director of Audit, South Eastern Railway briefly gives the background of the allotment of the scale of pay of Rs.650-1040 to the applicants. It will, therefore, be appropriate to give a brief summary thereof. On the recommendations of the C&AG, the following pay scales were sanctioned for the staff employed in the Audit Office:-

Auditor

20%	Rs.330-560
80%	Rs.425-800

Section Officers

20%	Rs.500-900
80%	Rs.650-1040

We are not concerned with the category of Auditors. Our concern in this O.A.is with the upgraded 80% posts of the Section Officers from the pay scale of Rs.500-900 to Rs.650-1040 who are employed on the Audit Offices in the Railways. The above upgradation was ordered in recognition of the special nature of work, skills and aptitude required for Audit function w.e.f. 1.3.1984 and the upgraded Section Officers in the grade of Rs.650-1040 were redesignated as Assistant Audit Officers distinguishing them from the Section Officer in the lower grade of Rs.500-900. The

(25)

scheme is given in much greater detail by the Hon'ble Supreme Court where the matter had come up for judicial review in respect of principle of 'equal pay for equal work' as the Fourth Central Pay Commission recommended restoration of parity of scale of pay between the Audit and Accounts staff, which was disturbed by the upgradation of Audit Staff alone (**JT 1992 (1) SC 586)**

The applicants contend that since they discharge the constitutional obligation of the C&AG, and that thereby occupy a constitutional position in the Indian Audit and Accounts Department (IA&AD) vis-a-vis Railway servants, as a quid pro quo the Indian Railway reciprocated the service rendered by the staff and officers of the IA&AD by conferring on them some privileges like Passes, PTOs etc.

4. The short issue raised for consideration in this Original Application is if the applicants are eligible for Privilege Passes at the same scale as the Railway servants in Group 'B' are by virtue of their being declared as Group 'B' officers and being employed on Railway Audit.

By way of relief the applicants have prayed that they be declared to enjoy a constitutional status being members of the Group 'B' gazetted service in the IA&AD under the C&AG and that the said status or rank is not dependent on the pay scale of the post of the Assistant Audit Officer. They further prayed that the facilities enjoyed by them should not be allowed to be curtailed in the manner indicated in the Railway Board's impugned circular dated 27.2.1979 and impugned wireless message of 11.9.1989 and that the same be held as arbitrary, unreasonable, ultra vires and accordingly quashed and set aside.

5. Succinctly, the case of the applicants is that consequent to their upgradation and placement in Group 'B', they are entitled to the facility of passes on the same scale as provided in the Railway Board's letter No.E(G)58P-S5-20/1 dated 14th April, 1960. The contents of the said

(26)

letter have also been incorporated in paragraph 15 of the Railway Audit Manual, issued by the Additional Deputy Comptroller and Auditor General of India (Railways). This position was further elucidated by the C&AG vide letter dated 2.3.1984, which is reproduced hereunder:-

> "Sub:- Restrucuring of cadres in Indian Audit and Accounts Department.
>
> A question has been raised whether the Assistant Audit Officers in scale of Rs.650-1040/-(Group B - Gazetted) could be issued six sets of privilege passes and metal passes while travelling on duty.
>
> In terms of para 15 of Railway Audit Manual (Fourth Edition), Officers of Railway Audit Department are entitled to privilege passes and privilege ticket orders **on the same scale as applicable to Railway staff from time to time.** The issue of privilege passes to Assistant Audit Officers may be regulated accordingly."

Regarding issue of metal passes it is understood that the practice differs from Railway to Railway as these are issued by General Managers. The practice followed by your Railway may be adopted for Assistant Audit Officers.

In the matter of facility of retiring rooms also the local rules framed by the Railway will have to be followed." (Emphasis supplied)"

Despite the above position the Railway Board vide its letter dated 27.7.1989 have stipulated that:-

> "As a result of restructuring of the cadre of Indian Audit and Accounts Department, a number of posts of Assistant Audit officers have been created in the scale of Rs.2000-3200 (Rs.650-1040) and classified as Group 'B' posts carrying a gazetted status. The eligibility of these officers of various facilities as admissible to the Gazetted officers on Railways

in scale of Rs.2000-3500 has been considered but the same has not been agreed to. It has been decided that the Audit Officers in scale of Rs.2000-3200 may be given the privileges and facilities viz. passes/P.T.Os, allotment of Railway quarters and Rest houses/retiring rooms and taking family with them while on tour etc, as admissible to the Railway employees in identical scale of pay viz. Rs.2000-3200."

The above circular was modified vide Railway Board's wireless message of 4.10.1989 according to which the Assistant Audit Officers given the gazetted status between 1.3.1984 and 31.12.1985 shall continue to enjoy the facility of passes, PTOs, quarters etc. enjoyed by them as a result of conferring of the gazetted status on them during the period mentioned above as personal to them.

The above instructions were further reiterated vide Railway Board's letter dated 21.11.1989, which is reproduced below:-

"Sub: Grant of passes to Assistant Audit Officers, consequent on restructuring in IA&AD - Grant of passes etc.

In continuation of this office circular of even No.2362, 21.8.89, a copy of Board's wireless message received under General Manager's letter No.P16/8, dated 4.10.89 alongwith Railway Board's Order No.E(W)87-PS 5-1/3, dated 27.7.89 is sent herewith for information and necessary action.

In this connection it is stated that the clarification has since been received from the Comptroller and Auditor General of India and it has been decided that instructions mentioned in the Railway Board's Order No.E(10)87-PS 5-1/3 dated 27.7.1989, as modified by the wireless message received under GM'S

(28)

letter dated 4.10.89 are to be implemented strictly and no departures are to be allowed."

The next grievance of the applicants, is that the Assistant Audit Officers who were promoted and declared as Gazetted Officers Group 'B' between 1.3.1984 and 31.12.1985 and who are employed on Railway Audit, have been allowed to enjoy the facilities available to officers holding gazetted status as personal, while they have been denied similar treatment.

6. Shri E.X. Joseph, learned counsel for the applicants in this O.A., referred us to the Railway Servants (Pass) Rules, 1986 and submitted that these rules have been framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution and as such they have statutory force. The entitlement of the various classes of officers are detailed in Schedule II annexed to the Rules. The officers in Group 'A' and Group 'B' are entitled to six sets of Privilege Passes and six sets of Privilege Ticket Orders (PTOs) and that the entitlement of these privileges is not linked to the pay scale in which the officer is placed but to the status of the employee. Accordingly, all Group 'B' officers are entitled to the same facilities as listed in the said schedule and any discrimination on the basis of pay scale would be infraction of Article 14 and 16 of the Constitution. The learned counsel added that the distinction between the gazetted officers on the Railways who are in the pay scale of Rs.2000-3500 and the Assistant Audit officers in the pay scale of Rs.2000-3200 cannot be legally sustained as eligibility for privilege passes is according to the status of the officer. Instead of treating them as Group 'B' officers and according them the facilities which are granted to the Group 'B' officers on the Railways, the

Railway Board has accorded the Audit Officers in the scale of Rs.2000-3200, the same privileges and facilities in the matter of Passes, PTOs, Quarters etc., which are admissible to the Railway employees in identical scale of pay viz. Rs.2000-3200, with the exception of those Assistant Audit Officers to whom these privileges have been allowed as personal to them.

7. The respondents in their counter-affidavit, on the other hand assert that they are wholly free to curtail or stop the facility any time without any prior notice. According to them, the application is misconceived. They further submit that if the application is allowed this will have serious repercussions on the Railways, as a much larger number of Railways employees in the pay scale of Rs.2000-3200 who are placed in Group 'C' would demand same facility of Passes, PTOs to the detriment of public interest.

Shri N.S. Mehta, learned senior standing counsel for the respondents took us back to paragraph 1 of the Railway Board's letter No.E(G)58PS5-20/1 dated 14.4.1960, which according to him/and the applicants is the very foundation of the case of the applicants. We may reproduce the relevant portion for easy comprehension:-

> "Further to the orders governing the grant of passes/PTOs to the staff of Railway Audit Deptt. contained in Railway Board's letter No.4379-T dated 26.2.1935, it is clarified that the passes and PTOs may be issued to the Officers and staff of the Railway Audit Department including officers of IA&AS, serving in Railway Audit Branch irrespective of their date of joining the Railway Audit Deptt. **The scale of passes/PTOs and rules governing their issue will be the same as applicable to railway**

servants from time to time." (Emphasis supplied)

The learned senior standing counsel submitted that the scale of passes and PTOs and the Rules governing their issue will be the same as applicable to the Railway servants from time to time. He emphasized that the comparable Railway servants in identical pay scales of Rs.2000-3200 are not being given the passes and PTOs as available to Group 'B' officers of the Railways. Unless the staff of the Railway Audit Department measure to the same level as Group 'B' officers on the Railway in all respects they have no legal right to claim the facilities available to Group 'B' officers on the Railways. The learned counsel submitted that it is the case of the applicants themselves that they should be granted the facilities on the same scale in respect of passes and PTOs as are granted to the Railway servants from time to time. The respondents have not denied these facilities to them. The applicants, however, are agitating for getting the facilities for which they are not eligible, as they are not at par with the group 'B' officers on the Railways.

8. We have heard the learned counsel for both the parties and given our profound consideration to the submissions made by them and perused the record. In accordance with the Rules, the applicants can claim the same scale of passes and PTOs as are applicable to the Railway servants. The classification of the employees in the various departments may not necessarily follow a uniform pattern. The Third Central Pay Commission while dealing with the classification of services had observed:-

> "We are inclined to the view that some kind of classification based on an assumed equivalence of work content in the different levels of the various occupational groups and hence of the pay ranges is necessary for purposes of personal administration."

It was in the above context that the Commission recommended the system of adopting groups A, B, C& D in the following manner:-

Pay or maximum of the scale of post	"Group
Not less than Rs.950/-	A
Not less than Rs.575/- but less than Rs.950/-.	B
Over Rs.110/- but less than Rs.575/-	C
Rs.110/- or less	D"

The Fourth Central Pay Commission following the Third Central Pay Commission recommended the following pay ranges for the various groups:-

"A. A central civil post carrying a pay or a scale of pay with a maximum of not less than Rs.4000.

B. A central civil post carrying a pay or a scale of pay with a maximum of not less than Rs.2900 but less than 4000/-.

C. A central civil post carrying a pay or a scale of pay with a maximum over Rs.1150 but less than Rs.2900/-.

D. A central civil post carrying a pay or a scale of pay the maximum of which is Rs.1150 or less."

After noting that there are exceptions to the classification recommended by the Third Central Pay Commission, the Fourth Central Pay Commission observed:-

"Wherever there are deviations of the nature mentioned in paragrph 26.50 above the existing classification for those posts may continue. Govern-ment may, however, review the classification in such

(32)

cases as and when necessary."

It will be apparent from the above that due to the over-lapping scales of pay there can be variation within the parameters prescribed by the Pay Commission on account of special and peculiar nature of duties and responsibilities between various Departments/Services. While the scale of pay of Group 'B' officers on the Railways is Rs.2000-3500, (which is the normal Group 'B' scale) the applicants are in the scale of pay of Rs.2000-3200. Their equivalence on the Railways in respect of scale of pay is with Group 'C' Ralway servants who are placed in Rs.2000-3200. In fact some Railway servants even in higher scale of pay like Shop Supdt. etc. (Rs.2375-3500) are also placed in Group 'C'. While considering the case of Assistant Audit Officers who are now labelled as Group 'B' in the IA&AD, keeping in view peculiar situation that arose in that department, Railway cannot ignore the internal relativities. It may also be mentioned here that C&AG letter dated 2.3.1984 also entitles the Assistant Audit Officers to the privileges passes and PTOs on the same scale, as applicable to the Railway staff from time to time. This is exactly the phraselogy which is used in the Railway Board's letter of 14.4.1960 which states that "the scale of passes/PTOs and rules governing their issue will be the same as applicable to the Railway servants from time to time." Further from the letter dated 14.4.1960 of the Railway Board on which the case of the applicants is founded it will be observed that even otherwise the Audit Officers were not placed at par in all respects with the Railway servants as would be seen from paragraph 4, reproduce below, of the said letter of the Railway Board:-

> "4. The officers of IA&AS working in the Rly Audit Deptt will not be granted certificates to enable them to obtain travel concessions on Railways outside India."

The Audit officers cannot claim higher scale of privileges while working on the Railways than what is the eligibility of their equivalence on the Railways. Group 'B' label alone does not establish equivalence. The pay scale is one of the important ingredients for establishing the equivalence. On a query from us if the C&AG had taken up the case of the applicants with the Railway Board, we did not receive any satisfactory reply from the learned counsel for the applicants. There is no doubt that the Railway Servants (Pass) Rules, 1986 have statutory force but the rules are applicable in accordance with Rule 3 to the Railway servants. In other cases the privileges which are available to the Railway servants is only an extension granted by the Railways. Such extended benefits at the discretion of the respondents, keeping in view their day-to-day relationship in our view are not open to judicial review. By working in the Railway Audit the applicants do not get the attributes of Railway servants and, therefore, they do not fall within the purview of Railway Servants (Pass) Rules, 1986. The classification also is not on omnibus formula for establishing equality in all benefits. To elucidate this position it would be observed that all Group 'B' officers are not entitled to the same rate. the [illegible] daily allowances at Grouping for the purpose of daily allowance, as implemented on the recommendations of the Fourth Central Pay Commission are given below:-

"Rs.5100 and above.

(ii) Rs.2800 and above but less than Rs.5100.

(iii) Rs.1900 and above but less than Rs.2800.

(iv) Rs.1400 and above but less than Rs.1900.

(v) Rs.1100 and above but less than Rs.1400.

(vi) Below Rs.1100."

If the entitlement of the daily allowance when the officers go on tour/transfer can be different for different pay

(34)

ranges even though the officers are in the same group, there can be no reason why the benefits regarding travelling facility and the extent thereof cannot be different within the same Group.

Regarding the special treatment meted out to the Assistant Audit Officers who were promoted to that grade during the period 1.3.1984 to 31.12.1985, the respondents have filed a copy of the noting from the files of the Railway Board. While we have reservations about continuingthe privilege afforded to this category of officers as personal to them, we do not wish to interfere with the decision taken by the respondents in this regard.

Before parting with the case, it may be appropriate to refer to the observations made by the Third Central Pay Commission in the matter of the entitlement of Passes and PTOs, which are reproduced below:-

> "5. Having regard to the special requirement of the Railways, we readily concede that in the matter of travel concessions the railway employees need not be treated at par with other Government employees. On the other hand, we have to examine the reasonableness of the existing scale of these concessions bearing in mind that the Railways are run on commercial lines, and as an essential public utility, their primary concern should be the convenience of the travelling public. We are convinced that the present rail travel privileges of railway employees are not in keeping with contemporary standards and that as a first step, these should be reduced to the level recommended by the Estimates Committee (Fourth Lok Sabha) in their 29th Report (1967-68) and reiterated in their 67th Report (February, 1969)."

It will be observed that the Third Central Pay Commission, keeping in view the needs of the travelling public had made specific recommendations to reduce the level of privilege passes and PTOs even to the Railway servants. We have no doubt that the respondents would have considered these recommendations and taken steps to curtail these facilities. Any judicial interference in a matter like this, resulting in liberalisation of issue of privilege passes and PTOs would aggravate inconvenience and hardship to the travelling public who pay for their journeys. It is not the case of the applicants that no facility is available to them for travelling, as is applicable to the Railway servants in the equivalent scale of pay. What they are seeking is enlargement of number of privilege passes and PTOs, enabling them not only to travel free but also by a higher class to which even the Railway servants in equivalent grade are not entitled.

In the above conspectus of the case, we are not persuaded to accept that the applicants have any established legal right for grant of privileges to them which are available to Group 'B' officers on the Railways, who are admittedly in the higher scale of pay, as compared to the applicants. Accordingly, the O.A. is dismissed.

The above reasoning is applicable mutatis mutandis in all the 12 OAs, i.e., 1544/91, 262/91, 1058/91, 1059/91, 1096/91, 1099/91, 279/90, 1098/91, 259/91, 261/91, 260/91 & 1097/91. Accordingly, they too are dismissed. No costs.

(I.K. RASGOTRA)
MEMBER(A)

(RAM PAL SINGH)
VICE-CHAIRMAN(J)

March 13, 1992.

SKK