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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. 2688/93

NEW DELHI THIS THE 4TH DAY OF AUGUST, 1994.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

P.S. Khare,
S/o Shri N.D. Khare
Law Assistant,
Divisional Railway Manager,
Northern Railway, New Delhi.

C/o J.P. Gola,
Quarter No.4034, ~~Second Floor~~
Gali No.2, Opp. Government
Higher Secondary School,
Ramchander Baghchi,
NEW DELHI-110055

...Applicant

By Advocate : Shri H.P. Chakravorty

VERSUS

1. UNION OF INDIA, THROUGH
The Secretary,
Ministry of Railways,
Railway Board, Rail Bhavan,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
NEW DELHI.
3. The Divisional Railway Manager,
Northern Railway,
NEW DELHI.

...Respondents

By Advocate : Shri R.L. Dhawan

JUDGEMENT (ORAL)

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

O.A. 2688/93, P.S. Khare Vs Union of India and Ors. The applicant was working as Chief Law Assistant and has been placed under suspension because of raid of C.B.I. having been put in under the prevention of Corruption Act. The criminal case said to be pending but the applicant has been suspended under Rule 5 of D.A.R. by the order dated 21 July, 1992.

2. The grievance of the applicant is that he is under suspension for all these years and in spite

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of the request for issue of entitled railway passes under Railway Servant (Pass) Rule 86. The applicant has not been granted passes/P.T.Os either for himself or his dependent family members. In view of this the applicant prayed for relief that direction be issued to the respondents for issue of 3 sets of passes and 6 sets of P.T.O's on privilege account due to the petitioner in the current year 1993 as requested by his representation dt 3.12.93 (Annexure A-5). He has also prayed for compensation for non grant of railway passes.

3. The respondents were issued notice, who contested the application and stated that the application is misconceived in terms of the Railway Servent (Pass) Rule 86, (R-1), herein after referred to Schedule VI, conditions of entitlement (xxii) - Railway servants under suspension - (i) "Granted to railway servants under suspension in exceptional circumstances and not as a matter of course when the railway servant is permitted to leave the station by an authority not lower than that which suspended him."

The applicant had therefore no case.

4. The learned counsel for the applicant has filed the rejoinder before the Bench which has been taken on record. The applicant's counsel relied on the Railway Board's Circular for issue of passes and conditions raised in the Original Application and also filed a copy of the judgement O.A.34/94 decided on 24th May, 94. That judgement, however, is not material to the case as that concerns another grievance of the applicant.

5. The learned counsel for the applicant has emphasised that even a suspended railway employee is entitled to the grant of privilege passes under Schedule VI of the aforesaid rules. A railway servant may be issued privilege passes or P.T.Os for himself or for family members dependent upon him under the aforesaid rules. The details regarding the class for which the passes can be issued is given in Schedule II appended to the to the said rule. In Schedule (2) or in Rule (6) there is no mention for the grant of railway passes to the suspended railway employee. However, Rule (10) is regarding special pass and the category of special pass has been defined one of them as school pass.

6. The learned counsel for the respondents has highlighted Schedule VI wherein there is bar for railway servant under suspension to claim as a matter of right the grant of railway passes. However, authority concerned has been empowered to consider the case of such a suspended employee and after permitting him to leave station, grant the railway pass. This Schedule in Para xxii also under the Column of entitlement for group C & D employees lays down that the dependent relatives/family members may be included for the pass issued during the suspension. The learned counsel for the applicant has hotly contested the application of Schedule VI in the case of the applicant and contended that this only covers the issue of special passes as defined under rule (10) of the rules. The counsel for the respondents, however, has given more latitude to this expression under Schedule (6) contending that it is the sole discretion of the authority whether to issue passes even to the dependent relatives of the suspended railway employee.

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7. I am aware as a single Bench the issue regarding the vires of Schedule (6) where suspended employees have been debarred from being treated equally in the same pattern as a matter of right is violative of Constitution article 14 & 16 and cannot be decided by the single Bench. In the mid of the argument, counsel for the applicant prayed for amending this O.A. The request, however, was not considered in favour of the applicant solely because after hearing him at length and though there is an interim order also in favour of the applicant granted on 24th December, 93, the request for amendment of the O.A. is disallowed, leaving the matter open to the applicant to assail the vires if so advised, under schedule VI as and when he wishes.

8. For the purpose of this case, the learned counsel has virtually conceded that atleast the case of the applicant be considered under the provisions of Schedule (6) of the Rules. The learned counsel for the respondents however, wanted to attach certain rider to the said consideration, but, I am afraid that no such rider is permissible in the circumstances of the case. Any opinion expressed shall not be taken into account while deciding the vires of the schedule (6) in any subsequent application filed by the applicant.

9. The application, therefore, is disposed of with a direction to the respondents that the applicant family as well as applicant may be considered for grant of pass under Schedule (VI) para-22 of the Rules and they should take decision within a period of 15 days from the date of submission of representation for issue of passes either to the applicant or to his dependent family members.

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10. If the above representation of the applicant is not disposed of within the stipulated period, the said pass shall be issued to the applicant by the competent authority within 15 days, thereafter. //

Let a copy of this order be sent to the parties concerned.

Signature.

(J.P. SHARMA)
MEMBER (J)

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