

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 769 of 1998

Allahabad this the 18th day of December 1998

Hon'ble Mr. S.K. Agrawal, Member (J)

R.S. Ojha, Ex.Guard 'A' Special, Headquarters,
Lucknow N.R., Resident of-C/o Kunwar Sanjay Singh
The Adelphi, 1-E, Bund Road, Allahabad.

Applicant

Inperson

Versus

1. Union of India through General Manager, Northern Railway Headquarters Office, Baroda House, New Delhi.
2. The Assistant Engineer, Shri J.P. Yadav, Pratapgarh, Northern Railway.

Respondents

By Advocate Sri Prashant Mathur.

ORDER

By Hon'ble Mr. S.K. Agrawal, Member (J)

By this original application, the applicant makes the prayers

(i) the respondents may be directed to issue two sets of complimentary passes as due to the applicant.

(ii) the respondent no.2 be directed to re-compensate the applicant for the payment

of Rs.22,911/- which the applicant has incurred in purchasing the railway tickets for the journey from Jammu Tawi to Puri and Howrah to Rameshwaram, both ways for which the respondent no.2 is legally individually and personally responsible.

2. In brief the facts of the case as stated by the applicant are that the applicant retired as Guard 'A' Special on 30.6.87 after superannuation and after retirement, he settled at Allahabad and joined legal profession as an Advocate. It is submitted by the applicant that respondent no.2 refused to issue passes orally for the journey from Jammu Tawi to Puri for the applicant and his family members and one attendant whereas the applicant was entitled to two sets of passes as admissible under the rules. He submitted an application dated 12.1.1998 but on inquiry, it was informed by the respondent no.2 that an audit report is pending against the applicant for alleged irregularity and till finalisation of the said report, the applicant is not entitled to any passes. The applicant tried to convince the respondent no.2 but the applicant was not given the passes which he was entitled as per rules and denial of passes for the year 1997-98 was against the provision of Railway Servant(Passes)Rules, 1986. It is submitted that that in the event of non-issuance of passes to the applicant, the applicant purchased the tickets for the journey. The respondent no.2 gave emphasis

that in view of the audit report, the applicant should forgo atleast one set of complimentary pass so that subsequent set of complimentary passes may be issued but the applicant did not agree to the said proposal as it was against the rules. It is stated that another application for complimentary passes was submitted by the applicant before the respondent no.2, who passed the order "there is already an audit report pending against the applicant, Clear the audit report and then issue passes". The applicant tried to convince the respondent no.2 that withholding of passes to the applicant is against the rules provided in Railway Establishment Manual but all in vain. Later on the respondent no.2 took another stand and wrote a letter dated 03.7.98 to Assistant Engineer rejecting the application of the applicant and directed to apply for fresh passes, if needed. It is submitted that respondent no.2 was not the competent authority to initiate disciplinary action and to impose the penalty upon the applicant and denial for issuance of passes to the applicant was whimsical, capricious and with ulterior motive and against the rules. It is further stated by the applicant that in his application that respondent no.2 has wilfully and mischievously by violating the statutory provisions for issuance of passes, rejected the prayer of the applicant, therefore, he had to purchased the tickets for the said journey. It is, therefore, requested that the O.A. be allowed and relief sought for be given to the applicant.

3 . By way of an interim relief, a prayer

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was also made directing the respondent no.2 to issue the applicant two sets of complimentary passes in his favour as applied by him vide his application dated 12.1.1998 and 18.6.98 and a direction was given to the respondent no.2 to issue two sets of complimentary passes on an application within the period of a week from the date of receipt of this order.

4 A counter was filed. In the counter-affidavit, it is stated that the applicant made a request for issuance of passes from Howrah to Rameshwaram with break journey at Allahabad and Bombay V.T. which comes to 4068 km. but the same journey by direct route is only 2283 km. In view of ^{Rule 38} ~~Rule 38~~ (vii) of Railway Servant (Pass) Rules, 1986 the distant route should not exceed the 15% of the distance by a direct route, therefore, passes required by the applicant was not admissible according to the rules and concerned authority has every right to make an endorsement for the clearance of audit report before issuance of necessary passes. However, in pursuance of the directions of this Tribunal, the applicant moved fresh application on 11.8.98 for issuance of passes and necessary pass no.087505, dated 11.8.98 was issued in favour of the applicant. Therefore, the claim of the applicant is not tenable and liable to be dismissed. It is stated that no application dated 12.1.1998 is available on record, therefore, the question does not arise for refusal of issuance of passes on application dated 12.1.1998. The applicant for

the first time moved an application on 11.8.98 and pass no.087505 dated 11.8.98 was issued in favour of the applicant to undertake such journey. It is further stated that the applicant cannot claim cost of tickets, if any, expend by him. Moreover, the applicant did not furnish the details of tickets purchased by him. The competent authority issuing passes has every right to satisfy that the passes to be issued are issued in accordance with the rules. Applicant was always issued complimentary passes right from 1988 to 1997 but when the audit department made an objection regarding the route as per rules, action of the answering respondents cannot be termed as flagrant violation of rules. The applicant files an application on 18.6.98 for issuance of pass from Hameshwaram to Howrah and back, and break journey at Allahabad and Bombay V.T. but this journey was not in accordance with the rules as such, necessary endorsement was made on the application and the applicant was advised for making fresh application for issuance of passes in accordance with the rules. It is also stated that valuation of complimentary passes cannot be computed in terms of cash. He is not entitled to any payment of the amount which he is alleged to have been spend, therefore, claim of the applicant is devoid of any merit and liable to be dismissed with cost.



5. The respondent no.2^{has} also filed counter-affidavit, denying all the allegations made against him by the applicant. It is stated that the application of the applicant dated 11.8.98 was sent for

issuance of pass Ex.Jammu Tawi to Puri with break journey at New Delhi, Lucknow, Pratapgarh, Varanasi and Gaya and the same was permissible hence pass was issued. On application dated 18.6.98, an endorsement was made which was necessary as the competent authority has full right to scrutiny before issuance of passes, therefore, there is no occasion for any wilful defiance of the statutory rules for issuance of passes. The applicant had not applied for complimentary pass in accordance with the rules for which railway administration cannot be blamed and applicant is not entitled to any relief sought for. Therefore, respondent no.2 by his counter requested to dismiss the claim of the applicant with cost.

6. The rejoinder-affidavit has also been filed by the applicant.

7. Heard, the applicant in person and learned lawyer for the respondents and perused the whole record.

8. The respondents made it clear in the counter-affidavit that there is no application available dated 12.1.1998 on record. In pursuance of this Tribunal's order dated 05/8/98 pass no.087505 dated 11.8-98 was issued in favour of the applicant and his family members from Jammu Tawi to Puri but break journey point enroute at Haridwar was deleted. The applicant refused to accept the same and submitted in the amended prayer to recompensate the applicant, claiming Rs.22,921/- cost of the ticket purchased by him. No details of tickets purchased by the applicant has been

submitted by the applicant. No provision has been shown by the applicant to the ^{effect} ~~fact~~ that an amount equal to the value of the tickets can be reimbursed to the applicant as per railway rules.

9. Learned lawyer for the respondents submitted while opposing these arguments of the applicant, stated that the applicant did not submit any application on 12.1.1998. With reference to his another application dated 18.6.98, learned lawyer for the respondents submitted that the applicant was asked to submit fresh application according to rules but he did not submit and filed O.A. before this Tribunal. He has further submitted that in pursuance of the order of this Tribunal, the applicant submitted an application on 11.8.98 and on the same date pass no.087505 was issued to the applicant which the applicant did not receive. He has argued that there is no provision for monetisation of the amount spent by the applicant. Moreover, applicant did not submit any details for purchase of the tickets therefore, the applicant is not entitled to the relief sought for. In support of his contention, learned lawyer for the respondents has referred to the case 'M.S. Banerji Vs. Union of India and Others 1996(1) A.T.J. 307', wherein it was held that rules do not provide for monetisation of the facilities of complimentary passes in lieu of pass forgone.

10. He has also referred a judgment delivered on 25.9.98 by this Tribunal in O.A. No.131 of 1996.

11. I gave thoughtful consideration to the rival contention of both the parties and perused the whole record.

12. As per provisions given in Railway Servant(Pass) Rules, 1986, the applicant is entitled to post-retirement complimentary passes as provided in Schedule IV of the above rules. It is an admitted fact that the applicant was allowed this facility right from 1988 till 1997. In the year 1998 also on the application dated 18.6.98, the applicant was required to submit fresh application as per rules as the application dated 18.6.98 was found not in accordance with the provisions given in Railway Servant(Pass) Rules, 1986 but the applicant did not like to file fresh application and immediately filed this O.A.

13. Railway Servants(Pass) Rules, 1986
Schedule II Rule 3(vii) provides;

"Privilege pass shall be issued for journey from the starting station to the destination station as desired by the railway servant, via shortest route, provided that a longer route may be permitted on the privilege pass in the following circumstances:-

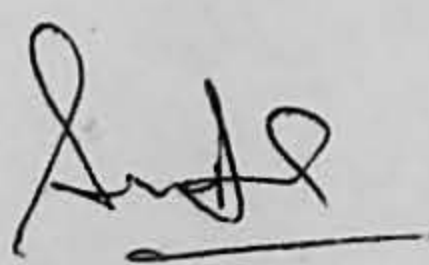
(a) two alternative routes are available for a destination, for example-Bombay to Calcutta via Nagpur or via Allahabad and Bombay to Delhi by the Central Railway or by the Western Railway- such passes may be permitted by either route irrespective of the distance involved; or

(b) If the distance to destination via a longer route preferred by the Railway servant does not exceed by fifteen percent of the distance via

the direct route such passes may be issued even if a double journey over a small portion is involved (for example-ex-Chittaranjan to Kanchanapara via Howrah or ex-Lucknow to a station on the Southern/South Central Railway via Bombay V.T.), provided the distance does not exceed the distance via the shortest route by more than 15% to take advantage of terminal facilities as in Bombay V.T. Kalyan or Madras-Arkonam sections: or

(c) If the longer route to destination is quicker than the direct route irrespective of distance involved."

14. According to these rules pass no.087505 dated 11.8.98 was issued to the applicant but the applicant did not like to receive and avail the facility provided to the applicant. No details of tickets purchased by the applicant have been furnished by the applicant. Therefore, as per the decision given in M.S. Banerji(supra), the applicant is not entitled to the expenses incurred for purchasing the tickets as no rule provides for monetisation of the facility of complimentary passes in lieu of the passes forgone. The applicant also failed to furnish any rule and also failed to furnish the details or the evidence to show that he actually purchased the tickets and travelled on the basis of those purchased tickets. It is also important to note that after the amendment of this O.A., the applicant claimed the expenses incurred on the journey and during the pendency of this O.A., interim order was issued and in pursuance of this interim order, complimentary passes were issued to the applicant

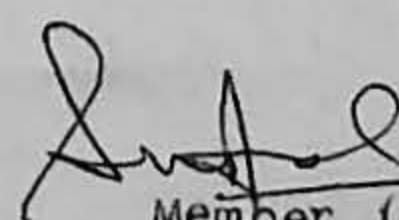
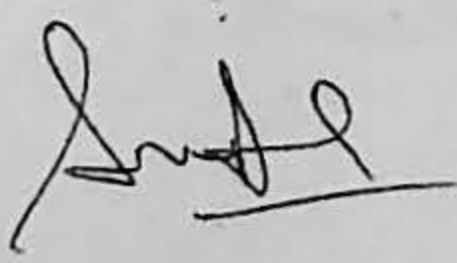


but the applicant did not like to avail the same.

15. No doubt, railway employee after superannuation is entitled to complimentary passes as per rules given in Railway Servant(Pass) Rules, 1986 but at the same time, it is the duty of the concerning authority and the person who wants to avail the facility, ~~must~~^{to} follow the rules meant for this purpose. If some audit objections have been made by the audit party for the past journey made on the basis of the complimentary passes care should be taken that ~~the~~ it should not be repeated again but on the basis of the audit report, facility of complimentary passes cannot be withheld. No provision has been shown to me to withhold the passes.

16. In view of the foregoing discussions, the applicant failed to make out a case in his favour. However, he is entitled to complimentary pass-facility available to a railway servant for the year 1998 according to rules.

17. I, therefore, allow this O.A. in part. The prayer for claiming Rs.22,911/- as cost of the tickets purchased by the applicant, is disallowed. The respondents are directed to issue the complimentary pass to the applicant and his family^{as} per rules immediately on filing application by the applicant so that this pass facility should not be lapsed in any way. No order as to costs.


Member (J) 18/1-1998