

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

**ORIGINAL APPLICATION NO.801 OF 2002
Cuttack this the 10th day of November/03**

Pratap Kishore Barik ... Applicant(s)

VERSUS

Union of India & Others ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

B
(BHARATI RAY)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.801 OF 2002
Cuttack this the 10th day of November/2003

CORAM:

THE HON'BLE MRS. BHARATI RAY, MEMBER(JUDICIAL)

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Pratap Kishore Barik, aged about 41 years,
S/o. Anathu, PO-Alasapur, Dist-Puri - at
present working as Welfare Inspector in the
Office of the D.P.O., S.E.Rly, Sambalpur,
At/PO/Dist-Sambalpur

Applicant

By the Advocates

M/s.D.R.Patnaik
N.S.Panda
S.R.Mohapatra

-VERSUS-

1. Union of India represented by its General Manager, S.E.Rly, Garden Reach, Kolkata
2. Divisional Personal Officer, S.E.Rly., Sambalpur, At/PO/Dist-Sambalpur

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Respondents

By the Advocates

Mr.R.C.Rath,
Standing Counsel
(Railways)

O R D E R

MRS.BHARATI RAY, MEMBER(JUDICIAL): Applicant, who is at present working as Welfare Inspector in South Central Railways, Sambalpur had applied for higher class pass (while working as Senior Clerk) vide his application dated 29.8.1996 as a physically handicapped employee. Since recommendation of the Divisional Medical Officer (in short D.M.O.) is required for the purpose, the applicant appeared before the D.M.O. on 30.8.1996 and the above officer after examining the applicant regarding his disability wrote a letter to the Divisional Personnel Officer, S.E.Railway, Sambalpur vide Annexure-4 dated 30.8.1996, certifying therein that the

right leg of the applicant is incapacitated due to post polio residual paralysis and that the applicant is not in a position to stand/walk without any support, as certified by Dr.K.M.Pathi, Professor of Head of the Department of Orthopaedic Survey, M.K.C.G. Medical College, Berhampur on 15.2.1990. It was therefore, recommended to issue higher class pass/inclusion of one escort in the same pass as provided in Establishment Serial No.3/94 and 91/96. In terms of the said letter dated 30.8.1996 of the D.M.O./SBP, the approval of the competent authority was accorded entitling the applicant, Shri P.K.Barik to higher class passes with one escort in the same class as physically handicapped railway employee under the provision of Pass Rule, as a result of which Office Order dated 21.9.1996 (Annexure-5) was issued by the Divisional Personnel Officer. It was however stipulated therein that the number of passes will be only one set to the non-gazetted staff even if the party is eligible to three sets of privilege passes per year. It is the case of the applicant that in terms of such approval of the competent authority, he was issued with passes. However, without affording him any opportunity to have his say in the matter, Respondent No.2 vide order dated 21.8.2002 (Annexure-6/1) directed recovery of an amount of Rs.26,562/- in 20 equal instalments from his salary on the ground of irregular availing of 1st class pass. Being aggrieved by the said order the applicant has approached this Tribunal seeking relief that the impugned order dated 21.8.2002 (Annexure-6/1) should be quashed.

2. On the date of admission of this Original Application upon hearing the matter, the Tribunal, in its order dated 16.9.2002 stayed the operation of Annexure-6/1 as an interim measure and this interim order is in force as on this day.

3. Respondents-Department have contested the application by filing a reply. It is the case of the Respondents that the Divisional Medical Officer, S.E.Railway in his letter dated 30.8.1996 (Annexure-4) intimated the Divisional Personnel Officer, Sambalpur that the applicant may be issued higher class passes/inclusion of one escort in the same pass as per the provision laid down vide Estt. Srl. No.3/94 and 91/96. However, the Senior Audit Officer, S.E.Railway, Garden Reach in Para-6 of the inspection report dated 2.5.2002 (Annexure-R/1) found that as per pass rule, Shri Barik, the applicant, who is actually entitled to 2nd class passes was not entitled to get 1st class passes as physically handicapped employee since he has family and they were included in his privilege passes issued earlier, and hence, difference in respect of 5 sets of passes amounting to Rs.26,652/- were directed to be recovered from the applicant and he was ordered to be issued with 2nd class privilege passes till he becomes entitled to 1st class pass as per extant provision of pass rules.

4. The learned counsel for the Respondents drew my attention to the Railway Servants (Pass) Rules, 1986 enclosed with the reply as Annexure-R/2. Para-2 of Para-2 of the said pass rule, stipulates that non-gazetted physically handicapped Railway employees who become entitled for First Class Pass, under pay limit may be allowed an option either

to avail the privilege passes, as per their entitlement or avail two sets of Privilege Pass with an escort in the same class, in each of the two sets of passes by surrendering the remaining one set. Whether the entitlement of the employee is less than 3 sets of Privilege Passes the facility of escort may be allowed in one set of pass. This provision is subject to the recommendation of the D.M.O. provided that the employee has no family or eligible member for inclusion in the pass. It is the contention of the learned counsel for the Respondents that the case of the applicant is not covered under the above provision and therefore, he is not entitled to any relief as prayed for by him. The learned counsel for the applicant, however, drew my attention to the Pass Rules of 1983 (which is enclosed along with the application at Page-8). However, since the applicant has made application for such Privilege Pass in 1996, the Pass Rules of 1983 cannot be made applicable to him.

5. I have heard the learned counsel of both the sides and perused the materials available on record. I have gone through the above pass rules as produced by the learned counsel for the applicant as well as the learned counsel for the Respondents. On going through the Pass Rules of 1986, I find that in order to avail of higher class passes the recommendation of the D.M.O. is necessary. The Rule also provides that the facility is ~~allowed~~ where the employee has no family member for such inclusion in the pass. In the case in hand, I find it that the

D.M.O. in its letter No.DMO/SBP/PH/Pass/210/96 dated 30.8.1996 (Annexure-4) certified that Shri P.K.Barik is incapacitated due to post polio residual paralysis and it is not possible to stand or walk without any support as certified by Dr.K.M.Pathi, Professor and Head of the Department of Orthopaedic Survey, M.K.C.G.Medical College, Berhampur. He therefore, directed to issue higher class passes/inclusion of one escort in the same pass as per provision laid down vide Estt.S1.No.3/94 and 91/96. It is seen from Annexure-5 dated 21.9.1996 to the O.A. that in terms of letter dated 39.8.1996 (supra) and the approval of the competent authority, Divisional Personnel Officer, S.E.Railway, Sambalpur has issued order bearing No.DPO/SBP/Pass/P.H/Higher Class/01 /96 dated 21.9.1996 mentioning therein that the applicant is entitled to avail higher class passes with one escort in the same class as physically handicapped railway employee under the provision of Pass Rule. It is also mentioned therein that the number of passes will be only one set to the non-gazetted staff even if the party is eligible to three sets of privilege passes per year. It is not in dispute that the applicant has a family and the family of the applicant availed of higher class passes. Pursuant to the orders issued by the D.M.O. and the Chief Personnel Officer the applicant was allowed higher class passes along with one escort and has availed of the said passes. Therefore, it cannot be said that the applicant is at fault in availing of the higher class passes for himself and the escort. In so

far as the question of availing of higher class passes by his family is concerned, it is also not in dispute that no notice was given to the applicant to have his say and/or being heard in the matter of recovery before the impugned order of recovery under Annexure-6 could be issued. Therefore, I have no hesitation to hold that there has been gross violation of the principles of natural justice in the instant case.

6. Having regard to the facts and circumstances as discussed above, I hereby quash the impugned order of recovery as ordered under Annexure-6 dated 21.8.2002 and direct the Respondents-Railways to give an opportunity to the applicant of being heard in the matter and pass appropriate order as per rule in so far as the question of availing of the higher class passes by the family of the applicant is concerned.

7. However, it is clarified as observed earlier, since there has been no case of misrepresentation in availing of higher class passes by the applicant and his escort, no recovery should be made from the salary of the applicant in this respect.

8. With the observations and direction made above, this Original Application is accordingly disposed of. However, there shall be no order as to costs.

Bharati R.
(BHARATI RAY)
MEMBER (JUDICIAL)

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