

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.549/2001.

Date of decision : 6-2-03

Central Railway Audit Association

Applicant.

Shri Sai Kumar.

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.R.Shetty for R-1 & R-2
Shri V.S.Masurkar for R-3 & R-4.

Advocate for
Respondents.

CORAM :

Hon'ble Shri D.C.Verma, Vice-Chairman,

(1) To be referred to the Reporter or not? *Yes*

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *No*

(3) Library. *No*

B.S.
(B.N. BAHADUR)
MEMBER (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.549/2001.

this the 6th day of February 2003.

Hon'ble Shri D.C.Verma, Vice-Chairman (J),
Hon'ble Shri B.N.Bahadur, Member (A).

1. Central Railway Audit Association (Category II),
O/o. Principal Director (Audit),
Central Railway, CST Mumbai,
through Mr. Bhaskaran K.M. Secretary,
representing Section Officers (Gr. 'B' -
Non-Gazetted) and Assistant Audit Officers,
(Gr. 'B' Gazetted) of IAAD (CAG) of Central
Railway.

2. D.C.Sharma,
3. K.Harihara Subramanian,
4. N.Mujahid,
5. Premkumaran K.T.P.,

Applicants 2 to 5 are
working as Assistant Audit Officer
in the O/o. Principal Director (Audit),
Central Railway, CST, Mumbai.

...Applicants.

(By Advocate Shri Sai Kumar)

v.

1. Union of India, through
the General Manager,
Central Railway,
CST,
2. The Dy. Director
Establishment (Welfare),
Ministry of Railways,
Railway Board,
Rail Bhavan,
New Delhi - 110 001.
3. The Principal Director (Audit),
Central Railway,
CST, Mumbai - 400 001.
4. The Principal Director (Railways),
O/o. Comptroller & Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi 110 002.

...Respondents.

(By Advocate Shri R.R.Shetty for R-1 and R-2
and Shri V.S. Masurkar for R-3 and R-4.)

: O R D E R :

B.N.Bahadur, Member (A).

This application is filed by an Association called
Central Railway Audit Association (Category - II) and 4
applicants working as Assistant Audit Officers in the office of

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the Principal Director (Audit), Central Railway, Mumbai (R-3). They are aggrieved by the order/communication dt. 24.5.2001 (Annexure - A-1) which rejects their request for grant of I 'A' Privilege Pass to Applicants/those similarly situated. The applicants, thus, seek the relief of quashing and setting aside of this impugned order/ communication and seek directions that after issue of letter dt.1.2.1999, the facilities to IAAD employees on the basis of their status as Gazetted/Non-Gazetted and on no other basis. Allied reliefs are also sought.

2. The facts of this case, in brief, are that applicants, who are all under the Comptroller & Auditor General of India (CAG) are working with Respondent No.3 in the Railways. The career class of applicants as described in the OA and the assertion made that applicants should be and are eligible to claim the grant of I 'A' pass and other travel facilities as granted to Gazetted Officers of the Railways. It is stated that in an earlier litigation the defence taken by the Railways was that the pay scales of these Officers were not the same as those of officers on posts in the Railways, the latter being higher and hence they could not be provided facilities available only to persons in higher pay scales. But now, it is argued that as per the letter dt. 1.2.1999 (Annexure - A-3 pg. 38), the entitlements are based on the criterion of the officials Gazetted or non-gazetted status. This, indeed is the short point of contention. Applicants state that they are Group 'B' Gazetted Officers and have been conferred this status by Government of India/President and hence all privileges as per the order of 1.2.1999 should be available to them as entitled to gazetted

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officers i.e. 1A Pass. Certain grounds are taken in the OA which were argued by their Learned Counsel, amongst others.

3. Respondents No.1 and 2 representing the Railways have filed their written statement, whereas a separate written statement has been filed by R-3 viz. Principal Director (Audit) of the Central Railway. The reply statement of R-1 and R-2 resist the claim of the applicants and they take the plea that the Group 'B' Gazetted status to Assistant Audit Officers, like applicants, have been given only in the grade of Rs.6500-10500 by the CAG and that it is purely an internal matter of Audit Department. This will not ipso facto allow them to claim powers and privileges of Gazetted Status in the Railways. The point is taken that the pay scales of Assistant Audit Officers of CAG is lower and that Railway Officials of comparable scale are not provided with the facilities of I 'A' pass. Certain exceptions are made as has been described in para 4 of the written statement which refers to Section Officers in Ministry of Railways, it is stated. This is the main contention of the Railways. The litigations filed by the Audit Officers in the past have been referred to and these were argued by respective counsels.

4. Respondents No.3 and 4 has filed a written statement where the stand taken by them supports the cause of the applicants. It is stated that applicants, and other Members of the Association have been conferred Group 'B' Gazetted Status by the Government of India and they conduct audits of transactions of Central Railway. It is argued that the issue of passes to Group 'A' and Group 'B' should be based only on the point of their being Gazetted Officers or not, and not on the basis of pay scale and

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hence the applicants are entitled to facilities extended to Gazetted Officers of Railways, as per the currently applicable orders of Railways (dated 1-2-1999). Bomb

4. Arguments in the case were made on behalf of the applicants by their Learned Counsel Shri M.S.Ramamurthy, Shri R.R.Shetty along with Ms.Supriya Dawre appearing for Respondents No.1 and 2 and Shri V.S.Masurkar, for Respondents NO.3 and 4.

5. The basic arguments that were raised by applicants' learned counsel was that a new system has come in vide the communication dt. 1.2.1999, where the criteria insofar as grant of I 'A' pass is concerned, is changed from a salary scale based system to one of the Gazetted or Non-Gazetted status of employees. Earlier, the stand was that persons with a particular pay scale were entitled to I 'A' pass. Since the applicants are of Gazetted status, the question as to whether persons with similar scales in the Railways are entitled to I 'A' pass or not is not relevant. The argument was made that the Gazetted status of the applicants in the Group 'B' service was provided admittedly by the Government of India/President of India and questioning the position on the basis of pay scale would be questioning the decision of the Government of India, which was valid no matter by which Department it was made. It was in its wisdom that Government had decided that applicants should get the Gazetted status even though Railway employees in their pay scale did not have the Gazetted Status. Learned Counsel for the applicants argued that even in the Railways specially in the Railway Board such facilities had been provided by Railway authorities to some

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categories as enumerated, even though they are in the same scale as applicants.

5. Learned Counsel for the Railway Administration made the point that basically the order of 1.2.1999 made by the Railway Administration was for Railway Employees. It was earlier argued that the matter had been taken up in litigation right up to the Hon'ble Supreme Court, and as could be seen from its judgment, the case had gone against the applicants. Certain portions of the Supreme Court Judgment were brought to our notice to highlight the importance of the arguments taken that persons from Audit Department could not be entitled to facilities higher than the bulk of Railwaymen in that scale. (lower scale) did not possess. It was argued as explained in the written statement that a handful of persons in Railway Board etc. provided with this facilities were exceptions and could not be taken to justify the claims made.

6. Learned Counsel Shri Masurkar argued the case with reference to the written statement of R-3 and R-4 and highlighted took the contention that in Government Employment the status of the Government employee was not determined merely by his pay scale and that status is what is confirmed by the President of India. Once applicants' were conferred with Gazetted status, the orders of the Railway Administration dt. 1.2.1999 must be taken as entitlement to claim I 'A' pass since they are Gazetted Officers as can be seen from page 55 para 12.

7. Upon consideration of the pleadings taken by the rival parties and considering arguments made by Learned Counsels on their behalf and upon going through the papers in the case

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including the case laws cited, it is clear to us that the question before us basically is as to whether the orders of the Ministry of Railways dt. 1.2.1999 (page 38), where the entitlements of the pass to I 'A' has been provided to Group 'A' and Group 'B' Gazetted categories, would imply that the applicants become entitled to I 'A' pass being Gazetted Officers. To elucidate, whether the facts that entitlement to I 'A' pass has now been changed to be one on the criterion of Gazetted or Non-Gazetted status, from pay scale criterion would ipso facto imply that applicants who are admittedly Gazetted become entitled to these facilities, despite the disparities in pay scales as discussed above, and in the OA. It is clear that even earlier to the issue of 1.2.1999 orders, there were disparity between the Railway Assistant Audit Officers and the Audit Officers of CAG working in the Railway Administration in the matter of pay scales. The applicants had even then been agitating that they should be given the entitlements to higher categories of passes in view of their designation and other reasons inspite of a lower pay scale. Now at that time the matter had been settled finally by Hon'ble the Supreme Court. In fact, this fact was argued by Counsel for Railways to state that the Supreme Court Judgment would even now be binding even though the criterion had been changed. While the issue had then been settled earlier, the matter now becomes arguable, certainly, in view of the change in categorisation in the fresh orders of 1.2.1999. Since facts are now different and that too in view of a policy decision taken by the Railways vide their communication of 1.2.1999 we cannot say

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that applicants are estopped from bringing up this matter to the Tribunal.

8. However, the question raised above remains as to whether in the overall facts of the case the entitlement comes to the applicants merely because of their Gazetted status. It is also admitted that the pay scales of the applicants are lower than the pay scales of the Assistant Audit Officers of the Railways i.e. Rs.6,500-10500 of the former as against Rs.7500-12000 of the latter. It is not disputed that barring the exceptions pointed out the large number of Railway Employees in the scales of Rs.7450-11500 are not entitled to I 'A' passes. Can it, therefore, be taken as a stand that merely because the Audit Department Officers are Classed at Gazetted they can claim the benefit only because the criterion has changed to the point of a person being a gazetted or non-gazetted vis-a-vis entitlement to I 'A' passes. We are not convinced that this would be substantially a correct view and in our estimate it will be affording a facility more on technicalities, rather than on a substantial basis. Basically, the letter of 1.2.1999 was issued for the Railway Administration and ideally a separate circular for outsiders in the Railway Administration should have been made. However, even though the criterion has changed, we are indeed provided with useful guidance on the principle on which the dispute was settled by the Hon'ble Supreme Court in the Judgment dt. 20.4.1993, (a copy of which is available at page 22 of the paper book).

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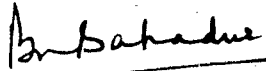
OA No. 549/2001

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9. We have carefully read the aforesaid Judgment of the Hon'ble Supreme Court and find that the last four paragraphs provide guidance in deciding this O.A. also. The ideal situation would be where the system of passes and the criterion for issue of passes to "outsiders" like the Applicants working in Railways is spelt out more clearly, but except for a very old circular of 14.4.1960 nothing recent in that direction has been brought to our notice. That Circular will not help us now. It will even now be open to the Railways to take specific policy decision in regard to such persons to be applied prospectively.

10. We have also gone through the decision made by the Jodhpur Bench of this Tribunal dt. 10.4.2002 in OA No.187/2001, a copy of which has been brought to our notice. Learned Counsel for the Respondents argued that this matter has been decided by the Jodhpur Bench in the aforesaid OA and the decision and reasoning maybe followed by this Bench. In any case, since we are not differing in our conclusion with this OA, the plea taken for reference to a Larger Bench also becomes unnecessary.

11. In view of the above position, we are unable to provide the relief sought by judicial determination. This OA, is therefore, dismissed with no orders as to costs.


(B.N. BAHADUR)
MEMBER(A)


(D.C. VERMA)
VICE-CHAIRMAN (J)

B.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

R.P.No.61/03 in OA.NO.549/01

Dated this the 18th day of November 2004.

CORAM : Hon'ble Shri A.K.Agarwal, Vice Chairman
Hon'ble Shri S.G.Deshmukh, Member (J)

Central Railway Audit
Association & Ors.

...Petitioners

By Advocate Ms. B.L.Mahant

vs.

Union of India & Ors.

...Respondents

By Advocate Shri R.R.Shetty
for Respondents No. 1 & 2
and Shri P.M.Pradhan for
Respondents No. 3 & 4.

O R D E R

{Per : Shri A.K.Agarwal, Vice Chairman}

The Petitioners in pursuance of a directive of the High Court of Judicature at Bombay have filed this Review Petition for the review of the order of the Tribunal dated 6.2.2003 given while disposing of OA.No.549/01.

2. The petitioners aggrieved by the Tribunal's order dated 6.2.2003 had filed a Writ Petition No.948/03 in the High Court which was disposed of vide order dated 1.4.2003 with following directions :-

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"In view of the submissions as aforesaid, in our view, this would be a fit case where the Petitioners ought to apply for a review of the order passed by the Tribunal placing particularly reliance upon the Demand for grants as well as the Railway's communication dated 28th February, 2003 which have been shown to us as also the judgment of the Rajasthan High Court."

3. The facts of the case have been discussed in fair detail in the order of the Tribunal dated 6.2.2003 as well as in the order of the High Court dated 1.4.2003. The petitioners have sought a direction to the respondents, Ministry of Railways for restoring them the privilege of First Class 'A' Pass as granted to Group 'B' Gazetted Officers of Railways. The petitioners have filed a copy of the judgement of Rajasthan High Court dated 19.2.2003 given while disposing of Civil Writ Petition No.1464/02 and also a copy of O.M. dated 28.2.2003 of Govt. of India, Ministry of Finance, Department of Expenditure. A copy of Demand for grants for the year 2002-03 relating to Demand No.01 which indicates pay of Group A & B establishment has also been filed.

4. The learned counsel for the petitioner mentioned that the Audit Officers working in Railways were granted Privilege Pass facility at par with their equivalent level Railway officers. The Audit Officers in the pay scale of Rs.2000-3200 (IVth Pay Commission) were given First Class privilege passes while the Railway Officers in the pay scale of Rs.2000-3500 were given First Class 'A' privilege passes. It is stated that the beneficiaries of First Class 'A' pass not only get more number of passes in a year but even the facilities available to them are of a higher order. When this matter was agitated earlier, it had gone right upto the Supreme Court of India. The Apex Court in

its judgement dated 20.4.1993 Central Railway Audit Staff Assn. & Ors. vs. Director of Audit, Central Railway, 1993 Supp.(3) SCC 458 rejected the demand on the ground that the Accounts staff in the scale of Rs.2000-3200 cannot be put at par with their counter parts in CAG or CGDA in Group 'B' posts merely on the basis of parity of pay scales.

5. The learned counsel for the petitioners has contended that Asstt. Audit Officers have been granted Group 'B' Gazetted status by the CAG and when the Gazetted Railway employees in the pay scale of Rs.6500-10500 are having the facility of Ist Class 'A' pass, there is no justification for denying the same to the petitioners. Further, the pay scale of petitioners have been improved vide order dated 28.2.2003 to Rs.7450-11,500/-. A number of organisations under the Ministry of Railways like Railway Board, RDSO etc. are extending Ist class 'A' pass facility to all Group 'B' Gazetted officers irrespective of their pay scale. The audit officers who have been granted Gazetted status should not be treated at par with non-gazetted officers of Railways working as Field Officers in the Zonal Railways.

6. The learned counsel for the petitioners mentioned that Rajasthan High Court in its judgement has held that after recommendations of the V Pay Commission, there is a comparability of pay scales between Group 'B' Gazetted Officers of the CAG and Railway Auditors vis-a-vis Group 'B' Gazetted Officers of the Railways. It was contended held that the judgement of the Supreme Court relied upon by the respondents was made in the circumstances when there was no pay parity. Therefore, after granting of pay parity, the difference in the matter of issue of Passes cannot and may not be maintained.

7. The learned counsel for petitioner mentioned that the Supreme Court judgement relied upon by the respondents in the case of Central Railway Audit Staff Association & Ors. vs. Director of Audit, Central Railway & Ors.(supra) that the Audit Officers are not entitled for parity with Group 'B' staff of Railways has been discussed in fair detail in the judgement of Rajasthan High Court. It has been rightly observed by the High Court that at the time of aforesaid judgement, there was a disparity in the pay scales of Audit Officers and Group 'B' Gazetted Officers of Railways, the former was in the pay scale of Rs.2000-3200 and the latter was in Rs.2000-3500. However, after the implementation of Vth Pay Commission recommendations w.e.f. 1.1.1996, Assistant Audit Officers placed in the pay scale of Rs.6500-10,500 have been given the pay scale of Rs.7500-11,500 vide O.M. dated 28.2.2003 of Govt. of India, Ministry of Finance, Department of Expenditure. Such higher pay scales have been given notionally w.e.f. 1.1.1996 with actual payments w.e.f. 19.2.2003. Therefore, the contention of the respondents made before the Apex Court that there is a difference in the pay scale is no longer valid. The learned counsel also drew our attention towards another judgement of the Apex Court on this subject pronounced on 21.1.1998 in the case of Indian Railway SAS Staff Association & Ors. vs. Union of India & Ors. in Civil Appeal No.4647 of 1992. In this judgement also as per the facts given by the parties, the pay scale of Audit staff has been mentioned as Rs.2000-3200 while that of Group 'B' staff of Railways as Rs.2000-3500.

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8. The learned counsel for the petitioner drew our attention to the written statement filed by the respondents in OA.No.549/01 and said that in para 6 the respondents have clearly stated that the issue of passes to Railway Audit Department are governed by the administrative instructions issued by the Railway administration from time to time. The basic order issued in April, 1960 ip-so-facto still holds good. The scales of passes/PTOs and rules governing this issue will be same as applicable to Railway servants from time to time. The learned counsel stated that even prior to 1960 the Audit staff was granted and issued privilege passes and privilege ticket orders as stated in Central Railway Pass Rules, 1955. In short, facility of passes to staff of Railway Audit is not a new facility. The only contention of the petitioner is that after Vth Pay Commission when there is a parity in the pay scale and they have also been declared as Group 'B' Gazetted by the Comptroller and Auditor General of India, even then the Railway authorities are not extending to them the facility of First Class 'A' pass as given to Group 'B' Railway officers. The learned counsel for petitioner submitted that since the entire expenditure of audit is reimbursed to Railways by Government, upgradation of pass facility will not cause any additional burden. Moreover, the claim of the petitioners is not based only on the pay scales but also on the gazetted status granted to them by the CAG.

9. The learned counsel for the respondents during his initial submissions mentioned that the cost of Railway Audit is borne by the Railway revenue. The expenditure of Railway Audit is furnished by the CAG and later on it is printed in the Railway budget. However, this does not include cost of passes since the passes are given free, their cost is not computed. He submitted a copy of Railway Board letter dated 16/18.8.2004 addressed to G.M. Central Railway, Mumbai in this regard.

10. The learned counsel for the respondents stated that Audit staff has been getting facility of free Railway passes on the basis of an order issued in 1960. The reference made to a letter dated 1.2.1999 regarding the facility of passes applies only to Railway servants. The instructions relating to passes and PTOs to the audit staff were recently issued vide O.M. dated 23.6.2003 indicating their eligibility as applicable to railway servants working in the Zonal Railways with equivalent scale of pay. The petitioners have not challenged this order. However, these instructions have been kept in abeyance till the disposal of this review petition.

11. The learned counsel for the respondents mentioned that this issue relating to grant of facility of First Class 'A' pass to Audit staff has been recently decided by a Division Bench of Principal Bench in order dated 31.3.2004 while disposing of six OAs. including OA.No.3309/01. He said that this issue is therefore no longer res-integra.

12. Regarding the judgement of the High Court of Rajasthan, he said that it has not given any final verdict as such but has only remitted the case to the Tribunal for deciding the OA. afresh in the light of the observations made by the High Court. The High Court in its judgement had made following observations:-

"In our opinion, to apply principle of decision in Central Railway Audit Staff Association (Supra) and enquiry into the facts by the Tribunal was essential. Firstly to which category of officers class pass 'A' category passes were made available under the Railways at


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the commencement of revised pay scale as per recommendations of 5th Pay Commission and secondly what is the comparative parity in the pay scale of Gr.'B' Gazetted Officers of Railway vis-a-vis Gr.'B' Gazetted Officer of IA & AS working under the Railways. It was not declared in the aforesaid judgement of the Supreme Court that in all circumstances, even if there is a pay parity or there is alteration in the notification extending the benefit of passes/PTOs to the pay scales introduced as per the recommendations of 5th Pay Commission, parity in the matter of issue of passes and PTOs cannot and shall not be maintained. It all depends on finding out the parity in the pay amongst Gazetted B Officers coming from department vis-a-vis the facilities of passes and PTOs made available to such officers on the basis of their pay scales."

13. The learned counsel further mentioned that Apex Court verdict relied upon by the High Court of Rajasthan is of a case decided in 1993. Thereafter, the Apex Court in another judgement pronounced on 21.1.1998 on this very subject has made following observations :-

"Thus, the simplistic solution to Classification merely based on the scales of pay might lead into various complications and might lead to administrative hierarchial imbalances in any particular organisation. Selection procedure for appointment to a particular group post and requirements of a department for classification of posts are valid considerations and any disturbance thereof would certainly lead to compounding of problems. We, therefore, cannot subscribe to the view that the scale of pay alone can be the criteria for classification of posts. Respondents have given valid and justifiable reasons as to why the Accounts staff in the scale of Rs.200-3200/- cannot be put at par with their counterparts in CAG or CCDA in respect of putting the Accounts Staff in Group 'B' posts merely in the basis of parity of pay scales."

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14. The learned counsel mentioned that extending the facility of First Class 'A' pass will definitely cause additional burden on the exchequer and the Apex Court in the case of A.K.Bindal & Anr. vs. Union of India & Ors. 2003 (3) Supreme 669 has held that no one has legal right to claim that Government should pay their salary or that the additional expenditure incurred on account of revision of their pay scale should be met by the Government. He said on the same analogy the Government could not be forced to incur additional expenditure by way of granting additional facilities of free passes to the Audit staff. The learned counsel has also relied upon the Apex Court ratio laid down in P.U.Joshi & Ors. vs. The Accountant General, Ahmedabad & Ors. 2003 (1) A.I. SLJ 239, wherein it was held that mere equality in pay scale does not mean equality of posts.

15. We have heard both the counsel and have perused the material placed on record. We find that the matter regarding First Class 'A' pass facility to Audit staff has been a matter of protracted litigation since quite some time. One verdict of the Apex Court relied upon in the judgement of the Rajasthan High Court in AIR 1993 SC 2467 was given on 20.4.1993 while another judgement submitted along with the petition was delivered on 21.1.1998. We find that the parties contesting before the Rajasthan High Court had cited only the earlier judgement i.e. of 1993 and complete para 11 and extracts from para 14 of this judgement have been quoted in the judgement of Rajasthan High Court. Although at the time of later judgement also the Vth Pay Commission scales and parity granted to them was not brought to the notice of the Apex Court, but in the judgement given on 21.1.1998 in addition to the disparity in pay scale the Apex Court has also observed that "We, therefore, cannot subscribe to the view that the scale of pay alone can be the criteria for classification of posts".

16. The order of the Principal Bench dated 30.1.2004 relied upon by the learned counsel for the respondents has quoted the observations made by the Hon'ble High Court of Rajasthan. The Hon'ble High Court of Rajasthan vide its order dated 20.2.2003 remitted the case to the Tribunal with a direction to make an enquiry into certain facts and thereafter disposed of the OA. Firstly, the category of officers of Railways to whom the First Class 'A' category passes were made available while giving the revised pay scale recommended by the Vth Pay Commission. Secondly also to examine the comparative parity of Group 'B' Gazetted Officers of Central Railway and Group 'B' Gazetted Officers working under the Audit department.

17. The judgement of the Supreme Court delivered on 20.4.1993 in the case of Central Railway Audit Staff Association vs. Director of Audit, Central Railway & Ors. (AIR 1993 SC 2467) was given while disposing of Special Leave Petitions filed against the order dated 13.3.1992 of Central Administrative Tribunal, Delhi. In another matter, Indian Railway SAS Staff Association & Ors. vs. Union of India & Ors., the petitioners filed SLPs aggrieved by a part of the order dated 26.4.1991 of Central Administrative Tribunal. Relevant extracts from the first judgement of the Apex Court have been quoted in the judgement of Division Bench of Rajasthan High Court. Since the two SLPs were filed in the year 1991 and 1992 respectively, the pay scales mentioned are that of 4th Pay Commission. Perhaps this is the reason that even in the latter judgement of the Apex Court delivered in 1998, the pay scales discussed are that of 4th Pay Commission. However, in both the judgements the Apex Court has rejected the demand of the Audit staff for privileges and facilities as given to Group 'B' personnel staff of Railways. The Apex Court in the case of Indian Railway SAS Staff Association & Ors. vs. Union of India & Ors. (supra) observed as follows :-


"This Court found that the contentions raised on behalf of the Assistant Audit Officers were unacceptable in that, if accepted, they would lead to unjust results of the Indian Railways persons belonging to foreign department of Comptroller and Auditor General of India while their own servants would be denied such privileges and facilities.

Thus, the simplistic solution to classification merely based on the scales of pay might lead into various complications and might lead to administrative hierarchial imbalances in any particular organisation."

18. We observe that in the written statement filed on behalf of Respondents No.1 & 2, it has been mentioned that after revision of the pay scales as per recommendations of the Vth Pay Commission, group 'B' Gazetted Officers in the grade of Rs.7,500-12,000/- and above are only eligible for First Class 'A' pass. It has further been mentioned that the staff of Zonal Railways in the pay scale of Rs.6,500-10,500 and Rs.7,500-11,500 are in Group 'C' and are not entitled for First Class 'A' pass.

19. A copy of the demand for grants submitted by the petitioner relating to the expenditure on the pay of Group 'A' and 'B' establishment does not have any minor sub-head for reflecting expenditure incurred on account of the facilities of free passes to Railway employees. In fact, it was submitted by the learned counsel for the respondents that this is a free facility and its expenditure is not being computed. In view of this, the contention of the petitioners that the expenditure on the free passes given to audit staff is being borne by the CAG and not by the Ministry of Railways has no force.

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20. As far as O.M. dated 28.2.2003 of the Department of Expenditure is concerned, it is noticed that Assistant Officer/ Assistant Accounts Officer who were in the pay scale of Rs.2000-3200 prior to 1.1.1996 were given the replacement scale of Rs.6500-10500 and their scales were subsequently revised upwards to Rs.7,500-11,500 notionally w.e.f. 1.1.1996 and actual payments made from 19.2.2003. Thus, even after upward revision of the pay scale, the petitioners remain in a lower pay scale as compared to Group 'B' staff of Railways eligible for First Class 'A' pass which according to the respondents are in the pay scale of Rs.7500-12,000/-.


21. We have examined all the three aspects of this case directed by the Hon'ble High Court of Judicature at Bombay. As far as reimbursement of costs of audit staff by the Govt. to Railways is concerned, the respondents have submitted that the cost of free Railway passes is not computed. The second issue is regarding the upgradation of pay scales of the Audit Staff vide O.M. dated 28.2.2003 from Rs.6500-10,500 to Rs.7450-11,500. We find that even the upgraded pay scale is lower than the pay scale of Group 'B' Gazetted officers of Railways eligible for First Class 'A' pass. In the written statement filed by the respondents, it is clearly mentioned in para 4.15 that Group 'B' Gazetted officers in the grade Rs.7,500-12,000 and above are only eligible for First Class 'A' passes. In the rejoinder filed by the petitioners, the reply given to this para is silent about the

pay scales, although it does refute another point relating to this para that the passes are given to Audit staff as a gesture of goodwill. These facts only lead to the conclusion that the petitioners have nothing to say on the issue of pay scales. Thus, the claim of parity in pay scales made before the Rajasthan High Court is not found to be correct. When there is a difference in the pay scales, we will be bound by the ratio laid down by the Apex Court in the two cases decided in the year 1993 and 1998 respectively.

22. It is clear from the facts of the case that even after the revision of pay scale of Assistant Audit Officers from Rs.2000-3200 (IV Pay Commission) to Rs.7450-11500 actually given from 19.2.2003 and notionally from 1.1.1996, they are still in a lower pay scale vis-a-vis group 'B' staff of Railways which is eligible for Ist Class 'A' passes. The Apex Court judgement in the case of Railways SAS Staff Association vs. Union of India & Anr.(supra) is therefore relevant which was concluded in following words :-

"We, therefore, cannot subscribe to the view that the scale of pay alone can be the criteria for classification of posts. Respondents have given valid and justifiable reasons as to why the Account staff in the scale of Rs.2000-3200/- cannot be put at par with their counterparts in CAG or CCDA in respect of putting the Account staff in Group 'B' posts merely on the basis of parity of pay scales."

..13/-



23. We have considered the matter as per the direction given by the Hon'ble High Court of Judicature at Bombay and have arrived at a conclusion that the discrimination made in extending the facility of Ist Class 'A' passes between the Railway employees and audit staff cannot be regarded as an irrational discrimination. The Accounts staff in the pay scale of Rs.7450-11,500/cannot be put at par with Group 'B' officers of Railways in the pay scale of Rs.7500-12000. We, therefore, hold that the petitioners are not entitled for the Ist Class 'A' passes. The Review Petition is accordingly dismissed.

No.CAT/MUM/JUDL/OA/549/O1/

Date :

Copy to:

1. Ms. B.L.Mahant, counsel for the applicant.
2. Shri R.R.Shetty, counsel for the respondents No.1 & 2.
3. Shri P...Pradhan, counsel for the respondents No.3 & 4.

Section Officer.

and on Issued
on 2/12/04

K. h