

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

DATED THIS THE 3rd DAY OF MAY, TWO THOUSAND NINETEEN

PRESENT:

THE HON'BLE MR. T. JACOB, MEMBER (A)

OA/310/00267/2018

S. Pathinathan,
S/o T.E. Santhiago,
Mylapore Garden,
Sinhala Gundu Post,
via Begaubur,
Dindigul 624 002..

-versus-

...Applicant

1. Union of India rep., by
The Chairman, Railway Board,
Ministry of Railways,
Railway Board,
New Delhi.
2. The Divisional Personnel Officer,
Madurai Division,
Southern Railway,
Madurai 625 016.

....Respondents

By Advocates:

M/s Ratio Legis, for the applicants.

Ms.R. Sathyabama, for the respondents.



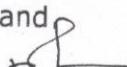
ORDER

(Pronounced by Hon'ble Mr. T. JACOB, Member (A))

The applicant while working as Shunting Master Gr.I with Pay Band 9300-34900 (GP.Rs.4200) retired on 28.02.2010. It is stated that the applicant is eligible for 1st Class privilege pass. The Railway Board vide letter dated 06.01.2011 intimated that those drawing pay in the Pay Band Rs.9300-34800 with Grade Pay Rs.4200 are eligible for 1st Class privilege pass. However, the respondents vide order dated 11.02.2016 have rejected the request of the applicant clarifying on the basis of the order dated 06.01.2011 that the privilege passes would only have prospective effect and those who have retired in between 01.01.2006 and 05.01.2011 are not eligible for the said travel facilities. Aggrieved by the above, the applicant has filed this OA seeking the following reliefs:-

"to call for the records related to impugned orders and direct the respondents to sanction first class privilege passes to the applicant and by quashing the impugned order No. U/P.500/MTPA-136/2016 dated 11.07.2016 and Railway Board's letter No.E(W)2013/PS 5-II/Misc dated 01.03.2013 and to pass such other order/orders as this Tribunal may deem fit and proper and thus to render justice."

2. The applicant has challenged the impugned order on the following among other grounds:--
 - a. The act of the respondents in not issuing 1st Class Privilege Passes from the date of implementation of VI Pay Commission w.e.f. 01.01.2006 is arbitrary which does not enjoy any sanction of law.
 - b. The pay structures recommended by the VI pay commission was accepted and implemented and the pay scales attached to the V CPC have become superfluous. Taking cognisance of the old pay scales for the personnel those who have retired between 01.01.2006 and 05.01.2011 for the purposes of issuing privilege passes is a myopic decision and



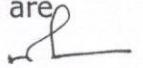
fundamentally unlawful since the act of the respondents create two classes of pensioners amongst the homogenous group with different eligibility conditions for availing privilege passes and thus unsustainable in law.

c. Privileges attached to the posts shall have to be from the date of implementation of VI CPC and any arbitrary decision on a later date of -06.01.2011 is without any rationale and is untenable in law.

d. The resolution by the Ministry of Finance dated 29.08.2008 was emphatic regarding the date of implementation of the recommendations from 01.01.2006 except certain anomalies which are categorised in Annexure III of the Resolution notified in the gazette of India: Extraordinary Part (Sec-1) and thus all the privileges attached to the pay structures are to be extended only from 01.01.2006 and not from 06.01.2011.

e. The applicant has opted for the new pay structure after implementation of the VI CPC and hence the impugned order issued by the respondents taking into consideration the V Pay scales for the purpose of privilege passes is in gross violation of the agreement and squarely attracts Promissory estoppel. Rejection of the claim of the applicant with a reasoning that the privilege passes attached to the new pay structures are only prospective, is impermissible in law.

3. Per contra, the respondents in their reply have stated that the applicant at the time of his retirement was entitled for the privilege pass in the 1st class as per item No.4 of the Note under Railway Board Circular No.E(W)12008/PS 5-1/38 dated 06.01.2011. The Railway Board had considered the matter of entitlement of passes and privilege ticket orders and communicated the eligibility of staff in E(W)2013/PS 5-II/Misc dated 01.03/04.2013. The Railway Board's decision to provide 1st class privilege pass to the employees who are

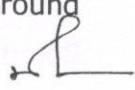


drawing Grade Pay of Rs.4200/- and above in terms of the letter dated 06.01.2011 are effective from the date of issue as communicated in para (iii) of the circular dated 01.03/04.2013. According to respondents any privilege for the enjoyment of a class of pass can only be implemented from the date on which the orders are issued by the Railway Board. Revision of pay can be given retrospective effect and the entitlement of pass can only be effected prospectively and cannot be given effect from a retrospective date. Hence the entitlement was fixed for the applicant for 1st class pass after retirement as per the eligibility at the time of retirement. The claim of the applicant was also considered by the respondents in the Mid Term Pension Adalat for the year 2016 but the same was rejected. Hence the respondents pray for dismissal of the OA.

4. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

5. The legal issue involved in this case is whether the Railway Board's Circular dated 06.02.2011 relating to 1st class privilege pass to Railway employees has only prospective effect or it could have retrospective effect meaning thereby it could be extended to retired personnel as well.

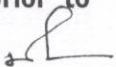
6. At the outset the respondents have raised a preliminary objection with regard to the delay of one year and eight months on the part of the applicants in approaching this Tribunal and sought for dismissal of the OA on the ground of limitation and laches.



7. Admittedly the applicant was drawing pay in the Pay Band Rs.9300-34900 with Grade Pay Rs.4200/- at the time of his retirement. It is the contention of the respondents that the privilege passes cannot be implemented from a retrospective date as no one can go back and enjoy the benefits in a past date. The Railway Board representing the Ministry of Railways is a policy making body and it is empowered to formulate the instructions for the administration of the Zonal Railways and other Production Units. The Ministry of Railways issued a clarification on 01.04.2013 according to which the eligibility criteria for the privilege pass is with effect from the date of issue of letter dated 06.01.2011. The 5th Pay Commission determined the eligibility for passes and privilege ticket orders in terms of the pay received by the employees and in the 6th Pay Commission scales, a new concept of Grade Pay was introduced. The issue was decided after several rounds of deliberations with recognised Trade Unions and a decision was arrived to implement as per the agreed terms with unions, according to which, the applicant carrying the Grade Pay of Rs.4200/- was granted 1st Class pass. The respondents are following the same criteria in respect of the serving employees as well as the retired employees w.e.f. 06.01.2011.

8. The Ministry of Railways vide letter dated 15.01.2009 also issued a clarification with regard to the regulation of entitlement of privilege passes pending issue of orders on the basis of the recommendations of the VI CPC, the relevant portion of which reads as follows:-

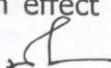
"It is hereby clarified that the pay in the pre-revised scale (Vth Pay Commission scale) should continue to be the basis for gradation and related entitlement. In respect of the persons continuing in posts held prior to



01.01.2006 whose pay may be fixed in the revised Pay Bands/Scales, 'Pay' for purpose of passes will be the 'Pay' in the Vth Central Pay Commission Scale that would have been drawn but for fixation of pay in the revised Pay Bands/Scales. In the case of persons who are either appointed to different posts on or after 01.01.2006 or initially recruited on or after that date the 'notional pay which they would have drawn in the pre-revised scales but for the introduction of the revised Pay Bands/Scales, should be taken into account."

9. Thus the cut off date for issue of privilege pass to the applicant has been correctly fixed from the date of issue of the Circular on 06.01.2011. The Government is empowered to fix a cut off date as a matter of policy. Further, the rules are framed by the President of India in exercise of power under Art.309 of the Constitution of India and such rules having force of law. The respondent Railway cannot travel beyond the rule framed for a specific purpose.

10. Whenever Pay Commission submits its recommendation the same are not accepted as it is but they are to be ruminated and a conscious decision is taken as to accept or not and when decided to accept, the Government also decides as to the date from which it has to be accepted. Thus, the date of effect of acceptance of recommendations is left to the prerogative of the Government (here the Railways). Decennial exercise of Pay Commission and its implementation is a normal feature and for the recommendations different dates are provided in respect of various aspects, though the recommendation is one and the same. For example the ACP Scheme suggested by the 5th Pay Commission came into existence not from 01.01.1996 but from 09.08.1999. So is the case about the date of implementation of modified ACP with effect from 01.09.2008.



11. The Apex Court in the case of State of Punjab Vs Bajan Kaur (2008) 12 SCC 112) has held as under:

"If a new act confers a right it does so with prospective effect when it comes into force unless expressly stated otherwise."

12. The Apex Court has also held in another case of State Government Pensioners Association Vs State of Andhra Pradesh (1986) 3 SCC 501 held as under:

"130. There is no illegality or unconstitutionality (from the platform of Article 14 of the Constitution of India) involved in providing for prospective operation from the specified date. Even if that part of the Notification which provides for enforcement with effect from the specified date is struck down the provision can but have prospective operation-not retrospective operation. In that event (if the specified date line is effaced), it will operate only prospectively with effect from the date of issuance of the notification since it does not retrospectively apply to all those who have already retired before the said date. In order to make it retrospective so that it applies to all those who retired after the commencement of the Constitution on 26 January, 1950 and before the date of issuance of the notification on 26 March, 1980, the Court will have to re-write the notification and introduce a provision to this effect saying in express terms that it shall operate retrospectively. Merely striking down (or effacing) the alleged offending portion whereby it is made effective from the specified date will not do. And this, the Court cannot do. Besides, giving prospective operation to such payments cannot by any stretch of imagination be condemned as offending Art 14. An illustration will make it clear. Improvements in pay scales by the very nature of things can be made prospectively so as to apply to only those who are in the employment on the date of the upward revision. Those who were in employment say in 1950, 1960 or 1970, lived, spent, and saved, on the basis of the then prevailing cost of living structure and pay-scale structure, cannot invoke Art. 14 in order to claim the higher pay-scale brought into force say, in 1980. If upward pay revision cannot be made prospectively on account of Article 14, perhaps no such revision would ever be made. Similar is the case with regard to gratuity which has already been paid to the petitioners on the then prevailing basis as it obtained at the time of their respective dates of retirement. The amount got crystallized on the date of retirement on the basis of the salary drawn by him on the date of retirement. And it was already paid to them on that footing. The transaction is completed and closed. There is no scope for upward or downward revision in the context of upward or downward revision of the formula evolved later on in future unless the provision in this behalf expressly so provides retrospectively (downward revision may not be legally permissible even). It would be futile to contend that no upward revision of gratuity amount can be made in harmony with Article 14 unless it also provides for payment on the revised basis to all those who have already retired between the date of commencement of the Constitution in 1950, and the date of upward



revision. There is therefore no escape from the conclusion that the High Court was perfectly right in repelling the petitioners' plea in this behalf.

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13. In the case of DDA vs. Joint Action Committee, Allottee of SFS Flats, (2008) 2 SCC 672; AIR 2008 SC 1343, the Supreme Court held as follows:-

"65. Broadly, a policy decision is subject to judicial review on the following grounds:-

- (a) if it is unconstitutional;
- (b) if the delegatee has acted beyond its power of delegation;
- (c) if the executive policy is contrary to the statutory or a larger policy."

14. In the instant case, none of the above grounds are present. The impugned order is based on the policy decision of the Government, Ministry of Railways. Hence this Tribunal does not find any sufficient ground to interfere with the same.

15. In the conspectus of the above facts and circumstances of the case, instructions of the Railway Board and the Judgements of the Hon'ble Supreme Court, I do not find any illegality or infirmity in the impugned orders dated 11.07.2016 and 01.03/04.2013 of the respondents on the basis of which the claim of the applicant for grant of 1st class privilege pass was rejected. In the result the OA is liable to be dismissed and is accordingly dismissed as devoid of merits. No order as to costs.