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V
Central Administrative Tribunal
Principal Bench, New Delhi.

OA-414/2003
MA-444/2003
MA-445/2003

New Delhi this the 16th day of August, 2004.

Hon'ble Shri Shanker Raju, Member(J)

1. S.L. Aggarwal,
Head Clerk,
P.F.No.000091716.
2. Vidy Shankar Tiwari,
Senior Clerk,
P.F.No.0009105.
3. Ravinder Kumar,
Senior Clerk,
P.F.No.0091005.
4. Vijay Bahadur Singh,
Senior Clerk.

(through Sh. T.N. Tripathi, Advocate)

Versus

1. The General Manager(P),
Northern Railway,
Baroda House, New Delhi.
2. The Secretary,
Railway Board,
Railway Bhawan,
New Delhi.
3. The Dy. Director(Estt-Welfare),
Ministry of Railway,
Railway Board, New Delhi. Respondents

(through Sh. R.L. Aggarwal, Advocate)

Order (Oral)

Hon'ble Shri Shanker Raju, Member(J)

Heard the learned counsel.

2. Applicant being a Group-C employee seeks extension of benefit of 1st Class privilege passes by policy decision dated

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9.7.1999. The following decision has been taken by the Railway Board:-

"At the instance of AIRF and NFIR the case regarding eligibility of I Class Pass to Railway employees who were recruited under employment Notice No.2/80-81 in Category No.25(NTPC) but were appointed on the Railways on or after 01.04.1987 has been under consideration of Board. After careful consideration, as a special case, it has been decided by Board to extend the benefit of entitlement of I Class Passes to the concerned employees of Central and Western Railways by taking their date of appointment to be prior to 01.04.1987 on notional basis w.e.f. the actual date of appointment of their juniors on the same RRB Panel.

2. This issues with the concurrence of the Finance Directorate of the Ministry of Railways (Railway Board).

3. Receipt of this letter may be acknowledged."

3. By another order dated 18.08.1999 addressed to the General Manager (P), Central Railway, the benefit had been extended to these two railways RRB/BB Panel of Category No. 1/82.

4. Railway Servants (Pass) Rules, 1986 which are statutory rules deals with special passes as well as privilege passes.

5. Learned counsel of the applicant states that applicant had been discriminated against in the matter of grant of passes as similarly circumstance candidate from the same recruitment notification, namely, Sh. A.N. Shukla had been granted the benefit whereas the same has been denied to the applicant, which is violative of principles of equality enshrined under Article 14 of the Constitution of India.

6. Learned counsel further states that the import of the Railway Board decision is that once it is extended to the Northern

Railway is not to deprive a person who had been appointed after 1.4.1987 of grant of privilege passes even after the actual appointment of their juniors on the same RRB Panel. It is accordingly stated that the grant of privilege passes on the ground that the juniors have been appointed earlier cannot be construed to deprive the others in panel the benefit of passes as juniors had already been accorded the same benefit.

7. By referring to a DC/JCM No. 50/2000, it is contended that in respect of 17 other persons from Employment Notice No.1/82-83 as well as Notice No.1/80-81 and 1/82, it has been agreed by closure of the case for the demand of grant of privilege passes.

8. However, approval has not been accorded by the department.

9. On the other hand, learned counsel of the respondents contend at the outset that any statutory instructions or administrative order passed by the respondents in conflict with the statutory rules are to be ignored and have no force of law. However, it is stated that in JCM, the matter though agreed to, is yet to be considered and given approval by the Board.

10. As regards case of Sh. Shukla, it is contended that Sh. Shukla who was appointed on 1.10.1987 reported for duty on 19.10.1987. However, due to administrative delay he was appointed on 23.8.1988 whereas the persons on the same panel had already been appointed and was granted privilege passes.

11. It is lastly contended that the applicant is still to raise his grievance through a representation and the O.A. is being filed.

12. I have carefully considered the rival contentions. It is trite law that equals cannot be treated unequally. If a category of

persons forms a class, that should be meted out same treatment which should be in consonance with the principle of equality enshrined under Article 14 of the Constitution of India. Right of equality can not be curtailed, if intelligible differentia has no reasonable nexus with the object sought to be achieved. No two equals can be treated unequally.

13. In the conspectus of the above, on examination of Railway Board letter dated 9.7.1999 it is restricted for grant of privilege passes to Class-I categories mentioned therein in Central as well as Western Railway. It was also extended to the RRB Panel of Category No.1/82. It is also stipulated that an action is to be taken to decide the eligibility of 1st Class passes to Group-C employees belonging to category No.2/82 panel. The object of grant of privilege passes is on the basis that those who were the members in the category in the employment notifications taking their date of appointment prior to 1.4.1987 on notional basis, they are to be accorded this privilege. However, this is a special consideration. In this view of the matter, the case of Sh. Shukla was taken up and he was accorded the benefit. Though he was appointed on 1.10.1987 due to administrative delay, his actual appointment has taken place on 23.8.1988 whereas the persons on the same panel were earlier appointed. We also find that not only the case of Sh. Shukla but other 17 persons who were borne in the same notification, in principle was allowed in JCM and Management meeting which is yet to take a final shape for want of the approval. To grant benefit of privilege pass to a senior on the basis that the juniors have been appointed earlier is not the criteria. Considering the deemed date of joining in respect of Sh. Shukla as the junior cannot be basis for grant of privilege passes as seniority is not

relevant criteria for grant of privilege passes. The case stands on a different footing i.e. if any of the members in group-C on the same RRB Panel in pursuance of the same category notification are accorded the benefit, this cannot be denied to the other persons when the seniority is not the criteria.

14. As regard explanation of the Northern Railway is concerned, having taken a decision to extend the benefit of privilege passes to the Northern Railway, the respondents are estopped from taking a contrary stand which would be an anti-^{and h}thesis to the principle of equality/will be contrary to the decision of Constitution Bench of Apex Court in D.S. Nakara Vs. U.O.I (1983 SCC(L&S) 145).

15. Another ground which has been taken is of not preferring a representation. In our considered view, being a model employer if the benefit has been extended to a class to which the applicant is also similarly circumstance, it should be extended *suo moto* to the listed RRB Panel. By not extending the same, applicant is discriminated.

16. As I find that cases of other 17 persons are also in consideration with the Board, this OA is disposed of with a direction to the respondents to consider the case of the applicants for grant of privilege passes in Class-I in conformity with their notifications and keeping in view the grant of benefit to Sh. A.N. Shukla. This decision shall be taken within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member(J)