CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.3309/2001
WITH
OA NO.1220/2003, OA-1221/2003, OA 1223/2003,
OA 1933/2003 AND OA 376/GUW/2001

New Delhi, this the ....31st....day of March, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)
HON'BLE MR. BHARAT BHUSHAN, MEMBER (J)

O.A. NO. 3309/2001 :

Northern Railway Section Officers/
Assistant Audit Officers Association,
Baroda House
New Delhi

Through : President

1. Shri Arun Gupta,
Assistant Audit Officer,
Northern Railway, Baroda House,
New Delhi

2. Raghubir Singh

3. Shri Rajesh Kumar (I)

4. Shri Chiranji Lal

5. Shri Alok Sharma

6. Shri Ravinder Bhatia

(All working as Asstt. Audit Officers, Northern Railway Baroad House, New Delhi)

(By Advocate : Shri B.S. Mainee) .... Applicants

Versus

Union of India : Through

1. The Secretary,
Ministry of Railways, Rail Bhawan,
New Delhi

2. The Comptroller and Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi - 110 002

3. The Principal Director of Audit,
Northern Railway, Barpda House,
New Delhi

.... Respondents

(By Advocate : Sh. E.X. Joseph with Shri Rajender Khatter for respondents 1 & 3

Shri Harvir Singh, proxy for Shri Madhav Panikar for Respondent No.2)

O.A. NO. 1220/2003 :

1. S. A. J. Nasser son of Late Naseer Ahmad Rizvi
Assistant Audit Orricer,
Office of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

2. Vinod Prakash Pndey son of Shri Kapil Deo
Pandey, Assistant Audit Officer,
Office of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

3. Prem Kumar Singh son of Late Kamla Singh,
Assistant Audit Officer,
Office of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

4. Anil Kumar son of Shri Arvind Kumar Srivastava,
Assistant Audit Officer,
Office of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

5. Virendra Kumar Mishra son of Shri Ram Adhar
Mishra, Assistant Audit Officer,
Office of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

6. Ajit Kumar Chawla son of Shri Brij Mohan Chawla,
Assistant Audit Officer,
Office of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

7. Bhagirathi son of Late Shyam Lal,
Assistant Audit Officer,
Orrice of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

8. Mahavir Singh Arya son of Late Durga Ram Arya,
Assistamt Audit Orficer,
Office of the Principal Director of Audit
North Eastern Railway, Gorakhpur

9. Rajendra Pal son of Shri Krishan Lal
Assistant Audit Officer,
Orrice of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

10. Dwarika Ram son of Late Tufani,
Assistant Audit Officer,
Orrice of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

11. Nagendra Prasad son of Late Bhagirathi Prasad,
Assistant Audit Officer,
Office of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

12. Pramod Kumar Gaur son of Shri V. S. Gaur,
Assistant Audit Officer,
Office of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

13. Bramh Deo Lal son of Late Bharat Lal,
Assistant Audit Officer,
Office of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

14. Hari Ram son of Shri Badri
Assistant Audit Officer,
Office of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

15. V. K. Srivastava son of Late C. D. Lal,
Assistant Audit Officer,
Office of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

16. Uday Pratap Pal son of Shri B. M. Pal,
Assistant Audit Officer,
Office of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

17. Rajeet Srivastava son of Shri Devi Shankar,
Assistant Audit Officer,
Office of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

18. Triparari Mishra son of Shri R. L. Mishra,
Assistant Audit Officer,
Office of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

19. Jagdish son of Late Guru Prasad,
Assistant Audit Officer,
Office of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

20. Shri S. S. Srivastava son of Late T. P. Srivastava,
Assistant Audit Officer,
Office of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

21. G. P. Pandey son of Shri Munnu Pandey,
Assistant Audit Officer,
Office of the Principal Director of Audit
North Eastern Railway, Gorakhpur

22. A. N. Pandey son of Shri B. N. Pandey,
Assistant Audit Officer,
Office of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

23. Emmanuel Kujur son of Shri Augustus Kujur,
Assistant Audit Officer,
Office of the Divisional Audit Officer,
North Eastern Railway, Samastipur

24. Vitalius Kujur son of Shri Malhias Kujur,
Assistant Audit Officer,
Office of the Divisional Audit Officer,
North Eastern Railway, Samastipur

25. S. P. Singh son of Shri Mulli Singh,
Assistant Audit Officer,
Office of the Divisional Audit Officer,
North Eastern Railway, Samastipur

26. J.M. Sharma son of Shri Ram Bilas Sharma
Assistant Audit Officer,
Office of the Divisional Audit Officer,
North Eastern Railway, Samastipur

27. Mohammad Aftab Ahmad son of Shri Mohammad Haroon,
Assistant Audit Officer,
Officex of the Divisional Audit Officer,
North Eastern Railway, Sonpur

28. Ashok Kumar son of Shri Loknath Prasad,
Assistant Audit Officer,
Office of the Divisional Audit Officer,
North Eastern Railway, Sonpur

29. A.K. Srivastava son of Shri Jagat Narain,
Assistant Audit Officer,
Office of the Divisional Audit Officer,
North Eastern Railway, Varanasi

30. B.V. Prasad son of Shri Dakhini Din,
Assistant Audit Officer,
Office of the Divisional Audit Officer,
North Eastern Railway, Varanasi

31. A.C. Nigam son of Shri R.N. Nigam,
Assistant Audit Officer,
Office of the Divisional Audit Officer,
North Eastern Railway, Lucknow

32. Akhilesh Dwivedi son of Shri R.S. Dubey
Assistant Audit Officer,
Office of the Divisional Audit Officer,
North Eastern Railway, Lucknow

33. S.A. Ahmad son of Shri Mashqur Ahmad
Assistant Audit Officer,
Office of the Divisional Audit Officer,
North Eastern Railway, Lucknow

34. Ram Asrey son of Shri Ram Prasad,
Assistant Audit Officer,
Office of the Divisional Audit Officer,
North Eastern Railway, Izatnagar

35. Raj Karan Pandey son of Shri Kedar Nath Pandey,
Assistant Audit Officer,
Office of the Divisional Audit Officer,
North Eastern Railway, Izatnagar.

36. Babban Singh son of Shri Ram Singhasan Singh,
Assistant Audit Officer,
Office of the Divisional Audit Officer,
North Eastern Railway, Izatnagar

All C/o S.A.J. Nasser son of Late Naseer Ahmad Rizvi
R/o 371 Satdium Colony, Gorakhpur

..... Applicants

(By Advocate : None

Versus

1. Union of India through the Chairman,
Railway Board (Ministry of Railways),
Rail Bhawan, New Delhi

2. Principal Director (Railways)
Office of the Comptroller and Audit General of India,
10 Bahadur Shah Zafar Marg, New Delhi

3. Deputy Director Establishment (Welrare),
Railway Board (Ministry of Railways),
Rail Bhawan, New Delhi

4. Senior Audit Orricer (Administration),
Office of the Principal Director of Audit,
North Eastern Railway, Gorakhpur

..... Respondents

(By Advocate : Shri E.X. Josheph , Sr. Counsel with
Shri Rajender Khattar for official respondents
Shri Prashant Mathur for Res. 2, 3 and 4

O.A. NO.1221/2003 :

1. Kumar Haridas son of Sri A.B. Prasad,
Assistant Audit Officer,
Office of the Principal Director of Audit Trarric,
Northern Railway, Allahabad

2. H.S. Pandey son of late Shri D.D. Pandey,
Assistant Audit Officer, Office of the
Principal Director of Audit, Northern
Railway/R.D.S.O., Lucknow

3. S.K. Trivedi son of late Sri B.R. Trivedi,
Assistant Audit Officer,
Office of the Principal Director of Audit,
Northern Railway, Moradabad

4. Akhilesh Prasad Singh son of Late Shri Indu Bbushan Singh,
Assistant Audit Orricer,
Office of the Principal Director of Audit,
Northern Railway, Allahabad

5. Soti Avindra Chandra son of Sri Soti
Virendera Chandra, Assistant Audit Officer
Office of the Principal Director of Audit,
Northenn Railway, Allahabad

6. R.K. Srivastava son of late Sri A.K. Srivastava,
Assistant Audit Orricer,
Office of the Principal Director of Audit,
Northern Railway, Allahabad

7. Amit Kumar Sinha son of Shri U.P. Sinha,
Assistant Audit Orricer,
Office of the Principal Director of Audit,
Northern Railway, Lucknow Division, Lucknow

8. Shakil Ahmad son of Shri Jaliluddin,
Assistant Audit Orricer, Office of the
Principal Director of Audit,
Northenn Railway, Allahabad Division, Allahabad

9. Govind Ji Srivastava son of late Shri
Pashupati Lal Srivastava, Assistant Audit Officer,
Office of the Principal Director of Audit,
Northern Railway, Allahabad Div., Allahabad

10. Brajendra Swarup son of Shri Lala Ram,
Assistant Audit Orricer,
Office of the Principal Director of Audit,
Northenn Railway, Allahabad

11. Sukhlal Yadav son of late Shri R.A. Yadav,
Assistant Audit Officer,
Office of the Principal Director of Audit,
Railway Electrification, Allahabad

12. S.P. Singh son of Shri Lallan Singh,
Assistant Audit Officer,
Office of the Principal Director of Audit,
~~Work~~ Construction, Northern Railway, Allahabad

13. Pashupati Nath Singh son of late Shri M.D. Singh,
Assistant Audit Officer,
Office of the Principal Director of Audit,
W&S Office, Northern Railway, Charbagh, Lucknow

14. Girish Chandra Shukla son of late
Shri K.L. Shukla, Assistant Audit Officer,
Office of the Principal Director of Audit,
Northern Railway, Hazaratganj, Lucknow

15. Avadhesh Kumar Mishra son of Shri K.P. Mishra,
Assistant Audit Officer,
Office of the Principal Director of Audit,
Workshop & Store, Northern Railway,
Alamoagh, Lucknow

16. Sri Ram Kannaujia son of Late Bhagoo,
Assistant Audit Officer,
Office or the Principal Director of Audit, Workshop &
Store, Nothern Railway, Charbagh, Lucknow

17. Munni Lal son of Shri Late Ayodhya,
Divisional Audit Officer, Office of the
Principal Director of Audit, Northenn Railway,
Lucknow

18. Yogendra Bahadur Srivastava S/o Shri Deen Dayal,
Assistant Audit Officer,
Office of the Principal Director of Audit,
Railway Electrirication, Northern Railway, Lucknow

.... Applicants

(By Advocate : None

Versus

1. Union of India, through
Ministry of Railway, Railway Board, through
its Deputy Director, Establishment (Welfare),
New Delhi

2. The Senior Audit Officer/General,
Office of the Principal Director of Audit,
Northern Railway, Baroda House, New Delhi

3. The Principal Director of Audit, Northern Railway,
Baroda House, New Delhi

4. The Principal Director Railway,
Office or the Comptroller & Audit General of India,
New Delhi

.... Respondents

(By Advocate : Shri E.X. Joseph with Shri Rajender Khattar
for official respondents

OA 1223/2003:

1. O.P. Pareek S/o Shri R.D. Pareek, aged about 53 years, at present working as Assistant Audit Officer, O/o Principal Director of Audit, Western Railway, Jaipur

2. Maharaj Singh S/o Shri Jai Singh, aged about 42 years, at present working as Assistant Audit Officer, O/o Principal Director of Audit, Western Railway, Jaipur

3. A.S. Yadav S/o Shri R.S. Yadav, aged about 36 years, at present working as Assistant Audit Officer, O/o Principal Director of Audit, Western Railway, Jaipur

4. R. S. Chauhan S/o Shri H.S. Chauhan, aged about 52 years O/o Principal Director of Audit, Western Railway, Ajmer

5. Shri D.P. Bhatnagar S/o Shri B.S. Bhatnagar, aged about 59 years, at present working as Assistant Audit Officer, O/o Principal Director of Audit, Western Railway, Ajmer

6. A.K. Goyel S/o P.C. Goyel, aged about 44 years, at present working as Assistant Audit Officer in the Office of Principal Director of Audit, Western Railway, Ajmer

7. Manish Mishra S/o Shri D.K. Mishra, aged about 34 years, at present working as Assistant Audit Officer, O/o Principal Director of Audit, Western Railway, Ajmer

(By Advocate : None ..... Applicants

Versus

1. Union of India, through Secretary, The Ministry of Railway, Rail Bhawan, New Delhi

2. Chairman, Railway Board, Ministry of Railways Rail Bhawan, New Delhi

3. General Manager, Western Railway, Church Gate, Mumbai

4. Comptroller & Auditor General of India, (Railway), 10 Bahadur Shah Jafar Marg, New Delhi

5. Principal Director of Audit, Western Railway, Church Gate, Mumbai

(By Advocate : Sh. E.X. Joseph with ..... Respondents
Sh. Rajender Khattar for official respondents
Sh. Harveer Singh proxy for Shri Madhav Panikar for Respondent No.4

O.A. 1933/2003 :

1. R.P. Mathur S/o Shri G.L. Mathur, aged about 50 years, at present employed on the post of Asstt. Audit Officer in Construction Audit Office, Northern Railway, Jodhpur

2. A.R. Mehta S/o Shri A.R. Mehta, aged about 45 years, at present employed on the post of Asst. Audit Officer in Divisional Audit Office, Northern Railway Jodhpur

3. Pramod Vyas S/o Shri Ratan Vyas, aged about 44 years, at present employed on the post of Asst. Audit Officer in Divisional Audit Office, Northern Railway Jodhpur

4. V.D. Vyas S/o Budh Lal Vyas, aged about 59 years, at present employed on the post of Asstt. Audit Officer in Divisional Audit Office, Northern Railway Jodhpur

5. R.K. Verma S/o Shri Ladhu Ram Verma, aged about 44 years, at present employed on the post of Assistant Audit Officer in Divisional Audit Office, Northern Railway, Jodhpur

6. B.L. Meena S/o Ramji Lal Meena, aged about 39 years, at present employed on the post of Asstt. Audit Officer in Traffic Audit Office, Northern Railway Jodhpur

7. Shiv Dayal Jatav S/o Shri Pushia Ram, aged about 44 years, at present employed on the post of Asstt. Audit Officer in Traffic Audit Office, Northern Railway, Jodhpur

8. R.K. Gangwani S/o Shri Deep Chand, aged about 43 years, at present employed on the post of Asst. Audit Officer in Workshop Audit Office, Northern Railway, Jodhpur.

9. Khushi Ram S/o Chhotu Ram, aged about 42 years, at present employed on the post of Asst. Audit Officer in Divisional Audit Office, Northern Railway, Bikaner

10. D.K. Gupta S/o Shri Shiv Lal Gupta, aged about 36 years, at present employed on the post of Asst. Audit Officer in Divisional Audit Office, Northern Railway, Bikaner

11. H.S. Pareek S/o Shri Laxmi Narayan Pareek aged 52 years, at present employed on the post of Asstt. Audit Officer in Divisional Audit Office, Northern Railway, Bikaner

Address for correspondence :

C/o Shri Achal Raj Mehta
M-33-B, Railway Medical Colony,
UIT Circle, Jodhpur

(By Advocate : None ..... Applicants

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi

2. Chairman, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi

3. Comptroller and Audit General of India (Railway), 10, Bahadur Shah Jafar Marg, New Delhi

4. Principal Director of Audit, Northern Railway,
Baroda House, New Delhi

(By Advocate : Sh. E.X. Joseph with Sh. Rajender Khattar for official respondents .... Respondents

OA 376/GUW/2001 :

Assistant Audit Officers and Section
Officers Audit Association,
N.F. Railway, Represented by its President,
Sri Harendra Nath Medhi,
S/o Late Mathura Mohan Medhi,
Resident of Maligaon, N.F. Railway Colony,
P.O. Maligaon, Dist: Kamrup, Assam

(By Advocate : None) .... Applicant

Versus

1. The Chairman,
Railway Board, Government of India,
Rail Bhawan,
New Delhi

2. The Comptroller and Auditor General of India

3. The Principal Director of Audit,
N.F. Railway, Maligaon,
Guwahati - 11

(By Advocate : Sh. E.X. Joseph with Shri Rajender Khattar for official respondents. Sh. Harveer Singh, proxy for shri Madhav Panikar for R-3) .... Respondents

ORDER

BY SARWESHWAR JHA, MEMBER (A) :

Heard. As the cause of action and the relief sought in the above mentioned OAs are identical, these are being disposed of by this common order.

2. The applicants have impugned the order of the Railway Board as passed by them on 24.5.2001, which was forwarded to the Principal Director of Audit, Northern Railway vide their dated 3.7.2001 whereby the facility of 1st class 'A' pass availed by them as Gazetted Officers in the pay scale of Rs.6500-10500/- has been withdrawn on the ground that, according to the respondents, the said grade is a non-Gazetted grade in the Railways and further that they have taken the said action on the basis of the judgement of the Hon'ble Supreme Court as given on 20.4.1993.

3. The facts of the matter, briefly, are that the applicants (applicant No.1 being the Association of Section Officers/Assistant Audit Officers of Northern Railway Audit Department and being a representative body of these Officers and the other applicants being individual officers holding the grade of Section Officers/Assistant Audit Officers in the pay scale of Rs.6500-10500, and now Rs.7400-11500), have been attached with the Railways and claim that they are entitled to the privileges like free journey passes, duty passes, use of rest house, allotment of railway accommodation etc. in terms of the Railway Board letter No.E(G)58PS5-20/1 dated 14.4.1960 (Annexure A-5). The applicants have claimed that they have been availing themselves of the said facilities, particularly, in this case, free railway passes for their private journeys as well as duty passes for their official work with the same scale of passes as available to the Railway servants.

4. Giving a little history of the matter, the applicants have submitted that prior to the 5th Central Pay Commission report, the Assistant Audit Officers, although classified as gazetted officers (Group B), were placed in the scale of Rs.2000-3200 while in the Railways Gazetted Officers (Group B) were in the pay scale of Rs.2000-3500/-. As the applicants were also Gazetted Officers (Group 'B'), they had claimed first class 'A' passes as given to the Gazetted Officers (Group B) in the Railways and that also in the same number as is being given to the Gazetted Officers (Group B) in the Railways. As the respondent No.1, i.e., the Ministry of Railways did not agree to the claims of the applicants, the matter was pursued in the Court which finally reached the Hon'ble Supreme Court through the Principal Bench of this Tribunal and which was finally decided by the Hon'ble apex Court on 20.4.1993, rejecting the claim of the applicants on the ground that the scale of pay of the Assistant Audit Officers was lower than the minimum scale of

pay of Group B Gazetted Officers in the Railways who were in the scale of pay of Rs.2000-3500/-. Now the applicants have claimed that after the 5th Central Pay Commission's report, their pay which is in the scale of Rs.6500-10500/- is similar to the pay scale of the Section Officers working in the Railway Board who are also Gazetted Officers (Group B) and who were earlier in the scale of pay of Rs.2000-3500/-- and who have now been placed in the pay scale of Rs.6500-10500/-. Now the contention is that, there being no disparity between their scale of pay and that of the Section Officers in the Railway Board and both being Gazetted Group B Officers, the applicants are eligible for all the facilities in regard to railway passes as are being made available to the Section Officers in the Railway Board in terms of the letter of the Railway Board placed at Annexure A-5, and which have been, according to the applicants, reiterated in the letter of the Ministry of Railways (Railway Board) dated 1.2.1999 (Annexure A-7). In the light of the scales of pay of the applicants as well as of the Section Officers in the Railway Board being the same and the instructions of the Railway Board in regard to availability of the railway passes in 1st class 'A' category being available to the Gazetted Officers (Group B) in the Railway Board, the applicants have submitted that the impugned order dated 19.1.2001, directing the Railways to withdraw the said privilege and various facilties as admissible to the Gazetted Officers in the Railways from the Assistant Audit Officers on account of the fact that the scale of pay of Rs.6500-10500/- is not the scale of pay of the Gazetted Officers (Group B) in the Railways and also on the basis of the fact that the matter has already been decided by the Hon'ble Supreme Court vide their judgement dated 20.4.1993, has caused grievance to the applicants. Accordingly, they ~~have~~ submitted their representation to respondent No.2 on 5.9.2001 through respondent No.3, giving detailed justification for

restoration of the said facilities which had earlier been given to them on the basis of parity brought out in their pay scale after the 5th CPC report. A reference has been made to the fact that colleagues of the applicants working in Lucknow, Allahabad, Moradabad, Jodhpur and Bikaner Divisions of Northern Railway and other Zonal Railways have also challenged the impugned orders of the Railway Board by filing petitions in Allahabad Bench, Jodhpur Bench, Mumbai Bench and Gauhati Bench of this Tribunal and in which cases interim orders have been issued for maintaining status quo.

5. The applicants have submitted that the impugned orders of the respondents are illegal and discriminatory on the ground that the orders of the Railway Board themselves have provided that all Group 'A' and Group 'B' Officers are entitled to 1st class 'A' Passes and the applicants being Group 'B' Gazetted Officers cannot be denied the facility as is already available to similar officers in the Railway Board. The applicants have also taken the position that the Hon'ble Supreme Court had rejected their cases on the ground that though they were Group 'B' Gazetted Officers, their pay scale was lower than the Group 'B' Gazetted Officers working in the Railways. Accordingly, they have further argued that now that their scale of pay is similar to the scale of pay of the Section Officers in the Railway Board, they should be given the same facility as is available to the Gazetted Officers Group 'B' in the Railway Board.

6. In support of their contention, the applicants have referred to the decision of the Hon'ble Supreme Court in P. Sadagopan v. Food Corpn. of India (1997 SCC (L&S) 895) in Civil Appeal No.10651 of 1983 decided on March 20, 19

in which, among other things, it was up-held that relaxation of eligibility conditions by executive instructions is non-permissible and ultra vires. The applicants have also referred to the duties of the Deputy Comptroller and Auditor General of India, who is assisted by a Principal Director (Railways) at Headquarters and further assisted by Zonal Principal Directors of Audit under the Deputy Comptroller and Auditor General of India having their Offices at the Headquarters of the Railways to which they are attached, to show that they are part of the Railway set-up and they also look after the Railway Board (Establishment & Operation) and as such they are comparable with the Section Officers of the Railway Board in matters of status and facilities.

A reference has also been made to the decision of the Hon'ble High Court of Judicature for Rajasthan at Jodhpur in R.P. Mathur & Ors. v. The Union of India and Others D.B. Civil Writ Petition No. 1464/2002 decided on 19th February, 2003 in which while setting aside the judgement of the Tribunal, a direction was given to the Tribunal that the application of the petitioners be decided afresh in accordance with law in the light of the observations of the High Court as given in the said order. The Hon'ble High Court allowing the said OA, and setting aside the judgement of the Tribunal in OA No. 187/2001, directed the Tribunal to decide the OA of the petitioners afresh in accordance with ~~the~~ law in the light of the observations made in the said orders of the Hon'ble High Court. The relevant portions of the order/ observations of the Hon'ble High Court read as under:

> "Apparently after the recommendations of 5th Pay Commission were accepted and the new pay scales came to be implemented according to learned counsel for the petitioners no such disparity remained, which could exclude the Assistant Audit Officer (Group B Gazetted) from parity in the matter of issue of passes and P.T.Os. with officers of Railway falling in the same group.

This question has not at all been examined by the Tribunal, that whether there exist disparity of pay scale after implementation of recommendations of 5th Pay Commission or there is a comparability of pay scale between Group B Gazetted Officers of the Comptroller and Audit Department or for that matter members of I.A. & A.S. and Group B Gazetted Officers of Railways.

In our opinion, to apply principle of decision in Central Railway Audit Staff Association, (Supra) an enquiry into the facts by the Tribunal was essential. Firstly, to which category of Officers class pass 'A' category of passes were made available under the Railway at 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 viz-a-viz Gr. 'B' Gazetted Officers 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 Commissi 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 two departments viz-a-viz the facilities of passes and PTOs made available to such officers on the basis of their pay scales. Therefore, the judgement of the Tribunal suffers from error apparent on the face of record and cannot be sustained."

and the Mumbai Bench of the Tribunal appears to have taken the following views:-

"9. We have carefully read the aforesaid judgement 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 ~~and~~ 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."

7. The respondents (respondent No.1) have, however, held that the Assistant Audit Officers (applicants) are not Railway servants. In their opinion, though they are working in the Railway Department, they are the officers appointed by the Comptroller and Auditor General of India and work under his control and supervision. They have defined the Railway servants, as defined in Rules in Column (h) of Rule 2 of the Railway Servants (Pass) Rules, 1986 as follows:-

"Railway servants means a person who is a member of a service or who holds a post under the administative control of Railway Board and includes a person who hold a post in the Railway Board. Persons lent from a service or post which is not under the administrative control of the Railway Board to a service or post which is under such administrative control do not come within the scope of this definition. This term excludes casual labour for whom special orders have been issued."

8. In the opinion of the respondents, granting of Group B Gazetted status to Assistant Audit Officers in the grade of Rs.6500-10500/- is an internal matter of the Audit Department. Conferment of benefits and privileges as are applicable to the Railway servants on non-Railway staff of the Audit Department, in their opinion, is not proper, as they are not equivalent to Gazetted staff on the Railways. Stressing the history of the Gazetted status of the Assistant Audit Officers, they have submitted that they were designated as Group B Gazetted from time to time till the 5th Central Pay Commission, but the same was not done for the grant of higher class travel facilities as available to the Railway officers. To support their contention, they have referred to the decision of the Hon'ble Apex Court, who have held that the Assistant Audit Officers are not be be equated with Group 'B' Officers of the Indian Railways as their scale of pay is lower. They have submitted that even in the revised scale of pay, as recommended by the 5th CPC, the Assistant Audit Officers, who are in the revised scale of pay of Rs.6500-10500, are in lower scale than the apex Group 'C' scale of Indian Railways, in which the grade of Rs.6500-10500 and even higher grade of Rs.7450-11500 are non-Gazetted and Group 'C' posts. They have further submitted that the grade of Rs.6500-10500 has been given to Group 'B' Gazetted only in the Ministry of Railways. In their opinion, the special status given to Group 'B' GAzetted in the Ministry of Railways cannot be extended to non-Railway staff for purposes of higher travel facility, as the same is not available to similarly placed Railway employees in the field. In this connection, they have referred to the decisions of the Principal Bench of this Tribunal in the various OAs, as referred to in the Counter Affidavit filed by Respondent No.1. The relevant portion of the orders of the Principal Bench of this Tribunal dated 13.3.1992, as referred to by the said respondent, reads as under :

"In the above conspectus of the case, we are not persuaded to accept that the applications have any established legal right for grant of privileges to them which are available to Group 'B' officers on the Railways, who are admittedly in the higher scale of pay, as compared to the applications. Accordingly, the O.A. is dismissed. The above reasoning is applicable mutatis mutandis in all the 12 OAs i.e. 1544/91, 262/91, 1058/91, 1096/91, 1099/91, 279/90, 1098/91, 259/91, 261/91 & 1096/91. Accordingly, they too are dismissed. No costs."

The said judgement of the Principal Bench of the Tribunal is reported to have been up-held by the Hon'ble Supreme Court vide their judgement dated 20.4.1993, relevant portion of which reads as under:

"Therefore, there is substance in the submissions made on behalf of the Indian Railways that the grievance sought to be made out on behalf of the Assistant Audit Officers lack merit and cause to be rejected. We accordingly reject the contention advanced on behalf of the Assistant Audit Officers they they should be treated by the Indian Railways on par with Railway servants classified in Group 'B' in matters relating to the conferring of privileges and giving of facilities."

8. The respondents have pleaded that no injustice has been done by the Railways in issuing passes and PTOs to Assistant Audit Officers. In their opinion, the applicants cannot take recourse to Ministry of Railway's letter dated 14.4.1960 and demand parity with Group 'B' Gazetted Officers of the Railways for the purposes of issue of Passes and PTOs. During the course of argument, the learned counsel for the respondents has informed that the scale of pay of Group 'B' Gazetted Officers in the Railways is Rs.7500-12000 which is higher than the scale of pay of the Assistant Audit Officers. They have taken objection to the Principal Director (Railways), Office of the Comptroller and Auditor

General of India having taken a position vide his letter dated 21.9.1999 addressed to the Principal Director of Audit, Southern Railways that Assistant Audit Officers in the scale of pay of Rs.6500-10500 (Gazetted Group 'B') are entitled for issue of 1st class 'A' privilege passes and PTOs, which was reiterated by the Audit Officer (Admn) vide his letter dated 26.10.1999 as being contrary to the instructions issued by the Ministry of Railways and also as being outside their jurisdiction. In their opinion, the policy of issuing of passes to non-Railway staff is decided by the Ministry of Railways from time to time and, therefore, the applicants cannot take recourse to instructions issued by the Office of C&AG and claim higher travel facilities on the Railways. According to them, the orders of the Principal Director and Audit Officer (Admn.) as referred to hereinabove are not proper. Finally, they have submitted that the cases of the applicants have been thoroughly examined in the Ministry of Railways and who have held that they cannot be equated with Group 'B' officers of the Indian Railways, as their scale of pay is lower.

9. Respondents No.2 and 3 (C&AG and The Principal Director of Audit, Northern Railways) have maintained the position that according to the letter of Ministry of Railways dated 14.4.1960 (Annexure R-2/1), the facility of passes and PTOs as available to the Railway servants shall be extended to the Railway Audit officials also. The Section Officers of the Audit Offices have since been upgraded to the post of Assistar Audit Officers having the status of Group 'B' gazetted w.e.f. 1.3.1984. The Railway Board vide its letter dated 27.7.1989 withdrew the facility of 1st 'A' passes and PTOs from the Assistant Audit Officers on the ground that their scale of Rs. 2000-3200 is not equivalent to Group 'B' gasetted officer of the Railways which was Rs.2000-3500/-. They have also tak note of the fact that being aggrieved by the orders of the Tribunal in various OAs, the matter was finally setteled by the Hon'ble Apex Court while deciding SLP (Civil) No.15586 of 1992 in which the contention of the Railways that the

pay scale of Assistant Audit Officer was lower than the pay scales of Group 'B' Gazetted Officers of the Railways and accordingly the facility was not allowed to the Assistant Audit Officers as was available to Group 'B' Gazetted Officers of the Railways. However, with the 5th CPC having merged the pay scale of Rs.2000-3200 and Rs.2000-3500 into one scale of Rs.6500-10500, the Assistant Audit Officers of the Railway Audit Department and the Section Officers of the Railway Board have been placed in the same scale of pay and accordingly it was confirmed subsequently that the Assistant Audit Officers in the scale of Rs.6500-10500 are entitled to 1st Class 'A' Privilege Passes and PTOs as clarified vide Annexure R-2/3. However, this fact of the matter was set aside by the Railway Board vide their letter dated 19.1.2001 (Annex. R-2/5) reiterating the orders of the Hon'ble Supreme Court dated 20.4.1993 and accordingly they withdrew the facilities from the Assistant Audit Officers. The rest of the submissions made by the said respondents are matters of record. They do not seem to have pleaded specifically restoration of the facility to Assistant Audit Officers.

10. Rejoinder to the counter reply filed by respondent No.1 has been filed by the applicants reiterating the fact that they are entitled to issue of 1st class 'A' Passes/ PTOs, giving the same history of the case as given in the OA and also the fact that the said facility is available to them by virtue of the Railway Board's order of 1993 and further that the said facility has to be given to them in accordance with the statutory rules of 1993. In the rejoinder filed on behalf of the applicants to the counter reply filed on behalf of respondents Nos. 2 and 3, the applicants have submitted that the said respondents had supported their case in their counter affidavit filed with the Mumbai Bench of this Tribunal in OA 549/2001 and in

which they have taken the position that the Railways cannot treat the applicants in any other manner than Gazetted Officers and they are legally entitled for all privileges and facilities equal to their status. The applicants have also sought to contest the points raised in the additional affidavit as filed by the respondents, briefly, submitted the presumption made by the Principal Director (Railways) in the Office of C&AG as contained in his letter addressed to the Principal Director of Audit, Southern Railways, and as referred to hereinabove, that the Assistant Audit Officers (Gazetted Group 'B') are entitled to 1st class 'A' passes and PTOs has been sought to be confirmed and further that Comptroller & Auditor General of India, who is the constitutional authority, is the competent authority to issue Passes to the applicants under the Railway Servants (Pass) Rules, 1986.

11. The learned counsel for the applicants has, referring to the decisions as reported in ATC 1995 Vol. 28 Page 258, contended that the applicants should have been given a notice before withdrawing the facility from them. They have also contended that statutory rules can be modified only by statutory provisions and not by executive orders as has been done by the respondent No.1 in the present case.

12. The learned counsel for the respondents taking the position that policy matters cannot be interfered with by the Tribunal, have referred to the decisions of the Hon'ble Supreme Court in Karnail Singh & Another vs. Darshan Singh & Others as reported in 1995 SUPP (1) SCC 760 and in the following other cases -

1. JT 1994 (1) SC 376; Premium Granites and Another Vs. State of Tamil Nadu and Others,

2. 1991 (2) SCC 295; Director, Lift Irrigation Corporation Limited and Others vs. Pravat Kiran Mohanty and Others,

3. JT 1993 (3) SC 474; Indian Railway Service of Mechanical Engineers Association and Others Vs. Indian Railway Traffic Service Association and Another;

4. (1995) 3 Supreme Court Cases 295; Real Food Products Ltd. and Others Vs. A.P. State Electricity Board and Others; and

5. AIR 1981 SC 2001; Madhya Pradesh Ration Vikreta Sangh Society and Others etc. vs. State of Madhya Pradesh and Others.

13. The respondents have also referred to the principles as laid down by the Hon'ble Supreme Court in Transferred Case (Civil) No.8 of 2001 with T.C. (C) Nos. 9 and 10 of 2001 and W.P. (C) No. 194 of 2001 in BALCO Employees' Union (Regd.) v. Union of India & Ors. to support their point that judicial intervention in matters relating to policy/policies is to be examined by the Boards and that the Courts should refrain from interfering with economic decisions of the Government. A number of other cases have also been referred to in the said judgement of the Hon'ble Apex Court on different aspects of the matter involved in the said case.

14. The respondents have finally taken the view that the matter has already been decided by the Hon'ble Apex Court in which all aspects of the case including the gazetted status enjoyed by the Assistant Audit Officers and claim of parity with the Railway Officers in regard to passes/PFOs have been discussed and the claims of the applicants made in this regard have been rejected, as the same lacked in merit. The relevant portions of the orders of the Hon'ble Supreme Court as contained in paragraphs 14, 15 and 16 of their orders read as under:

> "14. The submission made on behalf of the railways, was to the contrary. According to the submission, the fact that the Assistant Audit Officers in the Railway Audit Department, on the pay scale of Rs.2000-3290 are designated by the Comptroller and Auditor General of India as "Group 'B' Gazetted" is not sufficient to equate them with Group 'B' Officers

of the Indian Railways who hold higher posts with scale of pay of Rs.2000-3500. If the railways give the facilities and privileges to the Assistant Audit Officers who are not railway servants, treating them on a par with railway servants of Group 'B', they could find no valid reason to deny such facilites and privileges to the railway servants holding posts on the pay scale of Rs.2000-3200. If that has to be done, the Indian Railways would be required to extend similar facilities and privileges to all railway servants who hold posts in the Indian Railways on the scale of pay of Rs.2000-3200. It means extending the benefits to thousands of railway servants involving heavy financial burden on the Indian Railways. We find that the contentions raised on behalf of the Assistant Audit Officers, are unacceptable in that, if accepted, they would lead to unjust results of the Indian Railways conferring special privileges and facilities upon persons belonging to foreign department of Comptroller and Auditor General of India, while their own servants who hold equivalent posts on the same scale of pay will be denied such privileges and facilities. Therefore, there is substance in the submissions made on behalf of the Indian Railways that the grievance sought to be made out on behalf of the Assistant Audit Officers lacks merit and calls to be rejected. We, accordingly, reject the contention advanced on behalf of the Assistant Audit Officers that they should be treated by the Indian Railways on par with railway servants classified in Group 'B' in matters relating to the conferring of privileges and giving facilities. Again, when the Railway Servants (Pass) Rules, 1986, made in consonance with the classification of railway servants, rightly made by the President of India consequent upon the Railway Services (Revised Pay) Rules, 1986 issued under the proviso to Article 309 of the Constitution, confer facilities or privileges according to the class to which railway servants belong, they cannot be treated as rules which are violative of Article 14 of the Constitution. Nor can they be regarded as arbitrary. Hence; the contentions raised on behalf of the Assistant Audit Officers on the unsustainability of the Railway Servants (Pass) Rules, 1986 based on Article 14 of the Constitution, warrant rejection as those lack in merit.

15. Coming to the last contention, viz. that the privileges given to and facilities conferred on the Assistant Audit Officers, who had been given the status of "Group 'B' Gazetted" by the Comptroller and Auditor General of India, between March 1, 1984 and December 31, 1985, are discriminatory, all that we would wish to say is that even if such discrimination is brought about by the railways in regard to the Officers of the same category, that is, Assistant Audit Officers, such discriminatory treatment accorded to a small number cannot be availed of by the petitioners to obtain the benefit of such wrongly conferred privileges and facilities. However, we do not consider it appropriate to pronounce upon the correctness of the conferment of such privileges and facilities on a small number of Assistant Audit Officers in these petitions, when they are not impleaded by the petitioners as party-respondents, in these petitions. Hence, we reject the last contention, as well.

16. We, therefore, find no good reason to disagree with the order of the Tribunal impugned in these special leave petitions."

15. From the above, it is observed that even though the scales of pay of the Assistant Audit Officers and also of the Railway officers have since been revised by the 5th Central Pay Commission and in the process the scale of pay of the post of Assistant Audit Officers and Section Officers in the Railway Board have been brought at par, the Hon'ble Apex Court has compared the Assistant Audit Officers of the Office of C&AG with the Group 'B' officers of the Indian Railways and not with the Officers of the Railway Board (Ministry of Railways). It has been submitted by the respondents (Respondent No.1) and also taken note of by the Tribunal at its various Benches while hearing the OAs on the subject and also by the Hon'ble Apex Court that the comparison has to be made with the Railway Officers and not with the Officers of the Board (Ministry of Railways). The comparison with the

Section Officers of the Railway Board for the purpose of claiming facilities available to Group 'B' Gazetted Officers of the Railways is not accordingly relevant nor appropriate. The respondents (respondent No.1) have logically pleaded that the status enjoyed by the Section Officers of the Railway Board (Ministry of Railways) is by way of special dispensation and the same cannot be claimed by the Assistant Audit Officers who serve in the Railways and who substantively belong to the Office of the C&AG. Their contention that the policy in regard to Passes/PTOs as available to the Railway servants is decided by the Ministry of Railways from time to time and that orders passed in 1960 by the Railway Board cannot be the final orders in this regard can hardly be questioned. It also appears to be quite valid a argument as advanced by the respondents (respondent No.1) that it is the prerogative of the Railways to decide the policy as well as the scales of these Passes being extended to the various categories of Railway servants including others (Assistant Audit Officers) and the same cannot be decided by the Organisation/Department who lend their services to the Railways. It is also significant that the respondents No. 2 and 3 have not supported the case of the applicants vide their counter affidavit. They have only submitted the facts of the matter as done by them at different stages on the basis of the orders of the Ministry of Railways (Railway Board). They obviously have not applied their mind to the merit of the case of the applicants. On careful consideration of the total facts as submitted by both the sides, it is further observed that even though the applicants have tried to establish the linkage of their Department with the Railway Board (Ministry of Railways) as being part of them, it appears quite rational and logical

that they are essentially serving the Railways and not the Railway Board. It is also noted that the applicants are serving in the Railways and not in the Railway Board and, therefore, to claim parity with the Section Officers of the Railway Board does not appear to be quite sustainable. We also find that much of the matter as raised by the two sides in this regard relates to the policy in regard to the Passes/PTOs as decided by the Railway Board (Ministry of Railways) and we do not see any reason why we allow ourselves to be involved in discussions on different aspects of the said policy. As issuing of Passes/PTOs is within the prerogative of the Ministry of Railways (Railway Board), it will be for them to review the matter and issue instructions in this regard from time to time on the basis of such review. It is also a fact that the officials of the Comptroller and Auditor General of India are not the substantive part of the Railways. They are essentially on attachment to the Railways and they do not sever their links with their parent Organisation, i.e., Office of the Comptroller and Auditor General of India. The gazetted status as enjoyed by them is, therefore, more relevant to the needs of their parent Organisation and who have to ensure that the same is given due benefit for. As regards the facility to be enjoyed by them while serving the Railways, they will have to go by the policy/guide-lines as laid down by the Railways in this regard. Disputes, if any, in this regard have already been settled by the Tribunal in various OAs and finally decided by the Hon'ble Apex Court as referred to hereinabove. As the matter, as raised in this OA, has already been discussed in the earlier

OAs and has also been adjudicated by the Hon'ble Supreme Court, we do not find any justification or merit in the present OAs as to apply a fresh mind to the same issues which have already been deliberated upon and settled as mentioned above. In fact, for these reasons we have no option but to accept the contention of the respondents that this case is hit by the principle of res judicata and should be dealt with accordingly.

16. Having regard to the facts and circumstances of the case and also after having heard the learned counsel for the parties and keeping in view the decisions as cited by them, we do not find any merit in the OAs under discussion/adjudication and accordingly the same are dismissed. There shall be no order as to costs.

(BHARAT BHUSHAN)
MEMBER (J)

(SARWESHWAR JHA)
MEMBER (A)

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