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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Dated: 15th February, 2017

+ W.P.(C) 5598/2002

UNION OF INDIA & ORS.

..... Petitioners

Through

Mr. J.K. Singh, Standing Counsel with
Mr. Praveen Kumar, Advocate

versus

G.D. SHARMA & ORS.

..... Respondents

Through

Ms. Meenu Mainee, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J (ORAL)

1. Challenge in this writ petition is to the order dated 02.04.2002 passed by the Central Administrative Tribunal (in short the 'Tribunal'), by which the O.A. filed by eight petitioners has been allowed. Rule D.B. was issued in this matter on 04.09.2002. The operation of the impugned order was, however not stayed.
2. The short question which arises for consideration is whether the respondents can be deprived of issuance of a first class pass on the ground that their past service rendered in the DGS&D cannot be counted for this benefit. The respondents had challenged an order no.89/P/Pass/Misc./2000 dated 14.08.2001 passed by the General Manager(P), Northern Railways, New Delhi. By this order, the benefit of first class passes which had been provided to the applicants and the applicants had been enjoying was withdrawn. All the applicants were working as Head Clerks/Senior Clerks with the Northern

Railways having been recruited between 1973 and 1982. All the applicants were originally appointed to the Directorate General of Supplies and Disposal(DGS&D) and transferred in March, 1992 to the Railways. Consequent to the transfer on certain purchase functions from DGS&D to the other Ministries, by an order dated 18.10.1994 passed by the Railway Board, all the applicants were absorbed and granted seniority on the date of their regular promotion/appointment in DGS&D in the relevant grade. Since the applicants were in category D, they were granted the benefit of first class pass. However, by an order dated 14.08.2001, this facility was withdrawn which led to the filing of the OA. The applicants before the Tribunal raised the following grounds:

- “4. (i) their transfer from DGS&D and absorption in the Railways was on administrative grounds, they should be entitled for all the benefits from the date of their initial appointment;
- (ii) As their date of initial appointment in DGS&D has been treated as their date of appointment for all purposes, a different yardsticks cannot be adopted only for the issuance of passes;
- (iii) the entitlement to passes is related to the status and the pay scale of the employees and the same cannot be denied to them alone, merely because they came on transfer from another organization, but were absorbed on administrative grounds;
- (iv) the implementation of the above orders would lead to the absurd situation, in which, they would be denied the benefit of first class passes, which would be available to UDCs in Railways, who are the juniors and
- (v) the impugned order is mis-conceived, arbitrary and illegal and is taking away the rights which they were enjoying for a number of years.”

3. The submissions of the applicants before the Tribunal were accepted and the OA was allowed.
4. Mr. J.K. Singh, the learned Standing Counsel for Railways submits that the order of the Tribunal dated 02.04.2002 is illegal, arbitrary and contrary to the law. It is contended that the Tribunal failed to appreciate

first class passes were issued due to mis-interpretation of the provisions of the Railways Service(Pass) Rules, 1986 and thus, was rightly withdrawn by the communication dated 14.08.2001. Learned counsel contends that the Tribunal did not consider that the eligibility of first class pass and PTO was strictly governed on the basis of entry into Railway Service and the prescribed pay limit, whereas in the present case, the applicants did not meet either of the two criteria. Counsel contends that the Tribunal failed to consider that the services rendered by the respondents in the DGS&D office was to be taken into consideration for the purpose of seniority and not for the benefit of first class pass. It is thus contended that the petitioners herein were well within its rights to rectify the mistake of issuance of pass to the applicants by a communication dated 14.08.2001.

5. Mr.Singh, learned counsel for the petitioner, further submits that merely because the past service with respect to the respondents was to be counted for the purposes of promotion that by itself cannot be a criterion to grant a first class pass to the respondents as granting of passes is governed by the Railway Servants Pass Rules, 1986 as per which the date of entry into service and pay scale are the criteria which in this case is not met by the respondents. Mr.Singh also submits that the Tribunal has erred in holding that there would be discrimination between identically placed employees in case the respondents are not granted first class passes.
6. Ms.Maine learned counsel for the respondents, submits that there is no infirmity in the order passed by the learned Tribunal which could require interference in proceedings under Article 226 of the Constitution of India. She further submits that the respondents had met both the eligibility criteria in as much that the respondents were appointed during

the period from 1st August, 1969 to 31st March, 1987. The past service rendered in the DGS&D was to be counted for all purposes including promotion and thus, they cannot be deprived of the grant of first class passes for no fault which can be attributed to them. She submits that the case of the respondents is not one of a lateral entry but case of absorption and the order of absorption was passed as the services of the respondents had become surplus while working with DGS&D. She submits that at the time of their absorptions specific orders were passed that their past service would be counted for all purposes and the grant of pass is closely connected as part of the services rendered by them. She further contends that even otherwise the petition has become infructuous for the reason that the impugned order which was assailed by the Tribunal was quashed and thereafter although rule DB was issued in the writ petition but the impugned order was not stayed. Resultantly all the respondents have already derived benefits of first class pass during their tenure of service and thus, the writ petition has become infructuous as the applicants have since retired. Post retirement due to their length of service at this stage they are entitled to first class pass in their own right.

7. We have heard the learned counsel for the parties. As per the Railway Servants Pass Rules, 1986, copy whereof has been filed along with the writ petition and the relevant portion has been extracted in the impugned order, the following criteria has been laid:

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| (i) Group 'A' and Group 'B' Gazetted | I Class 'A' |
| (ii) Non-gazetted Group 'B' and Group 'C' employees | I Class |
| (A) Appointed prior to 1-8-1969 | |
| (i) Drawing pay of Rs.5000/- or above | I Class |

provided the employees are in a scale the maximum of which is Rs.6000/- or above

(ii) Employees other than those covered under item (i) above II Sleeper class

(B) Appointed during the period from 1-8-1969 to 31-3-1987:

(i) Drawing pay of Rs.5375/- or above provided they are in a scale, the maximum of which is Rs.7,000/- or above I Class

(ii) Employees other than those covered in item (i) above II Class

(C) Appointed during period from 1-4-1987 to 1-2-1999

(i) Drawing pay of Rs.7250/- or above, provided those who are in a scale, the minimum of which is Rs.6500/-

(ii) Employees other than those covered in item (i) above II Sleeper class.

8. In case the past services of the respondents are counted, the respondents would fall in category 'B' and would be entitled to a first class pass. The learned counsel for the petitioner is unable to dispute the submission made by the learned counsel for the respondents that for the present the writ petition has become infructuous for the reasons that all the respondents have retired and since the impugned order of the Tribunal was not stayed they have already derived benefit of the first class passes. It is also not in dispute that for the present the respondents are entitled to first class passes on account of the salary and the post held by them

immediately before their retirement.

9. Taking into consideration the submissions made, we are of the view that the present petition has become infructuous and no further orders are required to be passed.
10. Writ petition stands disposed of.

G.S.SISTANI, J

VINOD GOEL, J

FEBRUARY 15, 2017

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