



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.11.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.33125/2019

V.Ramachandran .. Petitioner

Versus

1.The Registrar

The Central Administrative Tribunal
High Court Annex Buildings
Chennai 600 104.

2.Union of India rep.by

The Chairman,
Railway Board, Rail Bhavan,
Ministry of Railways,
New Delhi 110 001.

3.The Divisional Personal Officer

Madurai Division, Southern
Railway, Madurai 625 016.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records pertaining to the impugned order dated 02.05.2019 of the Central Administrative Tribunal in OA No.310/00270/2018 and quash the same and consequently direct the official respondents to sanction first class privilege pass to the petitioner.

For Petitioner	:	Mr.N.Sunmuha Thayumanavan
For Respondents	:	Mr.P.T.Ramkumar
		Standing Counsel

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

(1)By consent, the writ petition is taken up for final disposal. Mr.P.T.Ramkumar, learned Standing counsel accepts notice on behalf of the respondents.



(2) The Original Applicant in OA.No.270/2018 before the 1st respondent / Tribunal is the writ petitioner herein.

(3) The Original Applicant / writ petitioner was appointed in the Signal and Telecommunication Department of Southern Railway and while he was working as Technician Grade I, he retired from service on 30.04.2009. At the time of his retirement, he was entitled for privilege pass in II 'A' Class and in terms of Item No.4 of Note under Railway Board Circular No.E[W]12998/PA 5-1/38 dated 06.01.2011, he was entitled for second class privilege pass after his retirement. The Railway Board has also taken into consideration the entitlement of passes and privilege ticket orders after the implementation of the VI Central Pay Commission recommendations and communicated the eligibility of the staff, in their proceedings dated 01.03/04.2013. It was the Policy Decision of the Railways to provide II 'A' Class Pass to the employees who had retired on or after 06.01.2011 with a Grade Pay of Rs.2800. The petitioner wanted that facility though he had retired from service on attaining the age of superannuation on 30.04.2009 and he had submitted a representation dated 13.08.2012 in this regard and it was considered and rejected vide order dated 29.08.2012.

(4) The writ petitioner herein had challenged the order dated 29.08.2012 and the consequential proceedings dated 01.03.2013 by filing OA.No.270/2018 and the said Original Application was entertained and notices were ordered.

(5) The 2nd respondent in the Original Application / 2nd respondent herein, filed the Reply Statement contending that though the request made by the petitioner herein, came to be rejected as early as on 29.08.2012 and he has filed the Original Application challenging the said order only on 12.02.2018, i.e., after 5 years and 5 months, and as such, it is hit by limitation as well as delay and laches. The 2nd respondent also took a stand that insofar as privilege passes are concerned, it cannot be implemented from a retrospective date as no one can go back and enjoy the benefits in a past date and the decision of conferring the privilege passes to employees retiring on or after 06.01.2011, was discussed with the recognised Trade Unions and a decision was arrived to implement the order as per the agreed terms with the said Unions and accordingly, a decision was taken to confer II 'A' Class pass to employees who retired on or after 06.01.2011 with a Grade Pay of Rs.2800/-. It was further contended by the 2nd respondent that insofar as the recommendation made by the Central Pay Commission, it is a prerogative of the Railway Administration to accept or not to accept or to partially entertain the same and the retrospective effect of the pay revision will not automatically lead to the inference or conclusion that the retired employees are also entitled for second class privilege passes and hence, prayed for



dismissal of the Original Application.

- (6) The 1st respondent / Tribunal after considering the rival submissions and appreciation of the relevant records, found that the cut off date for issue of privilege passes to the employees has been correctly fixed from the date of issue of the Circular dated 06.01.2011 and the Government is empowered to fix the cut off date as a matter of policy and insofar as the recommendations of the Central Pay Commission is concerned, the 1st respondent / Tribunal has observed that the date of effect of acceptance of the recommendations is left to the prerogative of the Government [Railways] and after placing reliance upon the Judgments of the Hon'ble Supreme Court of India reported in 2008 [12] SCC 112 [State of Punjab V. Bajan Karu] and 2008 [2] SCC 672 : AIR 2008 SC 1343 [Delhi Development Authority Vs. Joint Action Committee, Allottee of SFS Flats], has dismissed the said Original Application vide impugned order dated 02.05.2019 and challenging the legality of the same, the present writ petition is filed.
- (7) The learned counsel for the petitioner has invited the attention of this Court to the typed set of documents and would submit that for the purpose of availing the post retirement complimentary, passes of retired employees in the Scale of Pay of Rs.5200-20,200 + Grade Pay of Rs.2800/- are homogeneous class and they could not be bifurcated and the arbitrary fixation of eligibility criteria in respect of persons who retired before 06.01.2011 and after 06.01.2011, was without any basis and by conferring the retired employees who retired before the said date, will not involve any financial burden on the part of the Railways and hence, prays for interference.
- (8) Per contra, Mr.P.T.Ramkumar, learned Standing counsel appearing for the respondents has drawn the attention of this Court to the Railway Proceedings dated 01.03/04.2013 in No.E[W] 2013/PS 5-II/Misc [cited supra] and would submit that the decision taken fixing the cut off date and conferment of the privilege passes are benevolence of the Railways and it cannot be faulted with for the reason that the retrospective effect given, will not automatically lead to the inference that the retired employees are automatically entitled to the privileges in the form of II A Class passes and the 1st respondent / Tribunal, on a thorough consideration and appreciation of the relevant materials, has rightly reached the conclusion to reject the claim of the petitioner and hence prays for dismissal of this writ petition.
- (9) This Court has considered the rival submissions and also perused the materials placed before it.
- (10) It is a well settled position of law that fixation of the cut off date is prerogative of the Employer unless the writ petitioner herein is able to challenge the fixation of the cut off date on account of arbitrariness.



WEB COPY

- (11) This Court is also of the view that conferment of privilege pass is in the nature of benevolence and therefore, it is also open to the Railway Administration to fix the cut off date. The counter affidavit / reply statement of the 2nd respondent before the 1st respondent / Tribunal would also disclose that before fixation of the cut off date, after recommendation of the V Central Pay Commission with regard to the conferment of privilege passes, very many rounds of negotiations took place between the administration and the recognised Trade Unions and as per the agreed terms with the Trade Unions it was decided to fix the Grade Pay of Rs.2800/- as the eligibility criteria for issuance of II A class pass. It is also a well settled position of law that any administrative instructions / orders, cannot be given a retrospective effect.
- (12) The 1st respondent / Tribunal had taken note of two decisions of the Hon'ble Supreme Court of India [cited supra] as to the interference with the policy decision and had rightly reached the conclusion to reject the claim of the writ petitioner / Original Applicant by dismissing the Original Application.
- (13) In the considered opinion of the Court, in the absence of error apparent on the face of the record or infirmity or illegality, this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, would not normally interfere with the decision of the 1st respondent / Tribunal.
- (14) The petitioner is also guilty of delay and laches for the reason that he had approached the 1st respondent / Tribunal nearly after 5 years and 5 months from the date of rejection of his representation. The present writ petition lacks merit and substance and deserves dismissal.
- (15) In the result, the writ petition stands dismissed at the admission stage itself. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

AP

To

1.The Registrar

The Central Administrative Tribunal
High Court Annex Buildings
Chennai 600 104.



2.Union of India rep.by
The Chairman,
Railway Board, Rail Bhavan,
Ministry of Railways,
New Delhi 110 001.

3.The Divisional Personal Officer
Madurai Division, Southern
Railway, Madurai 625 016.

+1cc to Mr.T.Ram kumar , Advocate SR.No. 99768

+1cc to Mr.Hari Radhakrishnan , Advocate SR.No. 99840

WP.No.33125/2019

A.SK(07/01/2020)