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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.11.2019

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.33129/2019

N.Pathinathan .. 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 03.05.2019 of the Central Administrative Tribunal in OA No.310/00267/2018 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.,]

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- (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.267/2018 before the 1st respondent / Tribunal is the writ petitioner herein.
- (3) The Original Applicant / writ petitioner was appointed in the Traffic Department of Madurai Division of the Southern Railway and while he was working as Shunting Master Grade I, he retired from service on 28.02.2010. 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 also took a decision to provide I Class Passes to the employees who are drawing pay in the Pay Band Rs.9300-34800 with Grade Pay of Rs.4200 and above in terms of the letter dated 06.01.2011. It was made effective from the date of issue as communicated in paragraph [iii] of the Circular dated 01.03/04.2013. The writ petitioner / Original Applicant made a claim for I Class pass and vide reply dated 11.07.2016, his claim came to be rejected and challenging the legality of the same, the Original Application was filed on 12.02.2018, i.e., nearly after 1 year and 8 months.
- (4) The petitioner made a challenge to the order dated 11.07.2016 and the consequential order dated 01.03.2013 by filing the above Original Application in OA.No.267/2018 and it 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 11.07.2016 and he has filed the Original Application challenging the said order only on 12.02.2018, i.e., after 1 year and 8 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



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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. It is further averred in the reply statement that the Pay Commission Recommendations relate only to pay structure and allowances only and the eligibility conditions for benefits and privilege passes etc., are in accordance with the policy decision of the Ministry of Railways and as such, it cannot be interfered with 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 Railway Board represents the Ministry of Railways and it is a Policy making Board and it is empowered to formulate the instructions for the administration of the Zonal Railways and other Production Units and further found that in terms of V Pay Commission Recommendations, a new concept of Grade Pay was introduced and issue relating to the eligibility for passes and privilege ticket orders, was decided after several rounds of deliberations with the Trade Unions and a decision was arrived to implement the same as per the agreed terms with the Trade Unions, according to which, the employees carrying the Grade Pay of Rs.4200/- was granted I A class pass. The 1st respondent / Tribunal further found that as regards the cut off date, the Government is empowered to fix the cut off date as a matter of policy decision and the rules framed by the Hon'ble President of India in exercise of power under Article 309 of the Constitution of India and such rules are having force of law and therefore, the Railway Administration cannot travel beyond rules framed for a specific purpose. Insofar as the acceptance of the Pay Commission Recommendations are concerned, the 1st respondent / Tribunal observed that the date of effect of acceptance of the recommendations is left to the prerogative of the Government [Railways] and having taken note of the two decisions 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] as well as yet another decision reported in 1986 [3] SCC 501 [State Government Pensioners Association V. State of Andhra Pradesh], has dismissed the said Original Application vide impugned order dated 03.05.2019 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.
- (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.



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(12)The 1st respondent / Tribunal had taken note of two decisions of the Hon'ble Supreme Court of India [cited supral] 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.

+lcc to Mr.Hari Radhakrishnan , Advocate SR.No. 99767

+lcc to Mr.P.T.Ramkumar , Advocate SR.No. 99839

WP.No.33129/2019

A.SK(07/01/2020)