

Supreme Court of India

Central Railway Audit ... vs Director Of Audit, Central ... on 20 April, 1993

Equivalent citations: 1993 AIR 2467, 1993 SCR (3) 296

Author: V N.

Bench: Venkatachala N. (J)

PETITIONER:

CENTRAL RAILWAY AUDIT STAFFASSOCIATION AND OTHERS ETC. ETC.

Vs.

RESPONDENT:

DIRECTOR OF AUDIT, CENTRAL RAILWAY AND OTHERS ETC.ETC.

DATE OF JUDGMENT 20/04/1993

BENCH:

VENKATACHALA N. (J)

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VENKATACHALA N. (J)

SAWANT, P.B.

CITATION:

1993 AIR 2467 1993 SCR (3) 296

1993 SCC Supl. (3) 458 JT 1993 (3) 142

1993 SCALE (2) 577

ACT:

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Railway Servants (pass) Rules, 1986:

Facilities and benefits of passes/P.T.O, Quarters etc. allowed to Railway officers Group B category-Whether Assistant Audit Officers, Group B Gazetted, under Comptroller and Auditor General of India, working in Railway Audit Department also entitled-Whether exclusion of Assistant Audit Officers Group B gazetted, in pay scale Rs. 2000-3200, from Group B category of Railway Officers violative of Article 14 of Constitution- Whether allowing the benefits, only to Assistant Audit Officers given Group B Gazetted status, between March 1, 1984 and December 31, 1985, is discriminatory.

HEADNOTE:

Petitioners were in service, under Comptroller and Auditor General of India (C & AG for short), as Assistant Audit Officers- (A.A.O. for short) Group B Gazetted, in pay scale Rs. 2000-3200, and were working in Railway Audit Department, after December 31, 1985. In 1960, Railway Board spelled out its policy, stating that scale of passes/P.T.Os. and the rules governing their issue to staff of the Railway Audit

Department will be the same as applicable to Railway servants. However some distinctions were made as regards Indian Audit and Accounts Service Officers (IA & AS Officers) of Railway Audit Department, on recommendations of the C & AG., Central Government sanctioned higher scale of pay effective from March 1, 1984, for 80 per cent of Section officers in the Railway Audit Department to be designated as A.A.Os (Group B-Gazetted). Their pay scale was revised to Rs. 2000-3200 from January 1, 1986, on recommendation of Fourth Pay Commission. They continued to have the privileges and facilities of Group B Officers of Indian Railway. In 1987, consequent to the revision of pay scales of Railway posts, on recommendation by the Fourth pay Commission, the posts under Indian Railways were re-classified. Posts in scale of Rs. 2000-3200 were classified as Group 'C' instead of Group B. In 1989, the Railway Board, in view of restructuring of cadre of Indian Audit and Accounts Department, creation of posts of A.A.Os in scale of Rs. 2000-3200, classified as Group B- Gazetted status, issued instructions that Audit Officers in Scale of Rs. 2000-3200 may

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be given privileges and facilities viz Passes/P.T.Os. Quarters etc, as admissible to Railway employees in identical scale. Consequently they were not entitled to the privileges and facilities admissible to gazetted Railway Officers. classified in Group B in scale of Rs. 2000-3500. However, Assistant Audit Officers given Gazetted status between March 1, 1984, and December 31, 1985 were allowed to continue to enjoy the facilities of Passes/p.T.Os quarters etc. Petitioners filed application before the Central Administrative Tribunal, Principal Bench, claiming that Assistant Audit Officers, given Gazetted status Group B after December 31, 1985, were also entitled to the privileges and facilities admissible to Railway Officers, classified 'Group B'. The application was rejected by the Tribunal and the Petitions filed Special Leave petition seeking redressal.

This Court dismissed the special leave petition and,
HELD: That conferring special privileges and facilities, to Assistant Audit Officers, which are not provided to Railway servants in identical pay scale would lead to unjust results. It would result in conferring special privileges and facilities, by the Indian Railways to persons belonging to foreign department of Controller 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. The Railway Board's letter dated April 14, 1960 also shows that the staff of the Railway Audit Department is treated more generously than the officers (if the same Audit Department in matters of issuance of Passes/P.T.Os. The Assistant Audit Officers, who had been given status of gazetted Group B, by the comptroller and Audit General,

cannot be treated, by the Indian Railways on par, with Railway servants, classified group B. In matters relating to conferring privileges and giving of facilities. The Railway Servant (Pass) Rules, 1986, made in Consonance with 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 and privileges according to class to which Railway servants belong, they can not be treated as Rules violative of Article 14 of the Constitution. Nor can they be regarded as arbitrary. (303-C, 304-G)

That even if discrimination was brought about by the Railways in regard to officers of the same category, that is, Assist-Ant 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, this Court did not consider it appropriate to pronounce

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upon the correctness of the conferment of such privileges and facilities to the Assistant Audit Officers, given status of Gazetted Group B between March 1, 1984 and December 31, 1985, when they had not been impleaded as party respondents. (305-A-C)

JUDGMENT:

CIVIL APPELLATE-JURISDICTION: Special Leave Petition (Civil) No. 10784 of 1992 etc. etc. From the judgment and Order dated 13.3.1992 of the Central Administrative Tribunal, New Delhi in O.A. No. 262 of 1991. M. K. Ramamoorthy, H.S. Gururaja Rao, R. Venkataramani, S.M. Garg, T.L. Roy, T.V. Ratnam, E.X. Joseph, D.N. Paul and M.M. Kashyap for the Petitioners.

D.N. Dwivedi, Addl. Solicitor General, V.K. Verma and Ms. Ameeka Singh for the Respondents.

The Judgment of the Court was delivered by VENKATACHALA, J. In these Special Leave Petitions, we are concerned with the Grievance of the employees belonging to the office of the Comptroller and Auditor General of India, working in the Railway Audit Department. These employees who were Section Officers prior to 1st March, 1984, got promotion from that day as Assistant Audit Officers on a pay-scale of Rs. 650-30-740-35800-EB-40-1040 and were designated as Officers 'Group-B Gazetted'. On the recommendations of the Fourth Pay Commission; the said pay-scale of Assistant Audit Officers was revised to Rs. 2,000- 3,200 from 1st January, 1986. The grievance of the Assistant Audit Officers-Group B Gazetted, is that the Indian Railways should not have denied to them the benefits, such as, issue of Railway Travel Passes/P.T.Os., allotment of Railway Quarters, giving of accommodation in Rest Houses/Retiring Rooms, taking of family members while on tour, etc. admissible to Group-B Gazetted Officers of the Railways.

The Principal Bench of the Central Administrative Tribunal, to be referred to herein-after as "the Tribunal", which examined the said grievance, rejected it by order dated 13th March, 1992. The grievance, so rejected by the Tribunal, is again ventilated in these Special Leave Petitions, seeking redressal therefor.

Since the facts which have given rise to the grievance, furnish the background, for examining its merit, it would be advantageous to advert to them at the outset.

The Railway Board in its letter No. E(G) 58PS5-20/1 dated 14th April, 1960, addressed to the General Managers of the Indian Railways, spelled out its policy in the matter of issuance of Railway Passes/P.T.Os. to the staff of the Railway Audit Department including the Indian Audit & Accounts Service Officers (IA&AS Officers) of that Department, thus:-

- i. The scale of Passes/P.T.Os. and the rules governing their issue will be the same as applicable to Railway servants from time to time.
- ii. Passes/P.T.Os. to IA & AS Officers, if are to be issued when they are proceeding on leave exceeding four months, they should have completed one year's service in the Railway Audit Department and the Comptroller and Auditor General of India ought to assure by declaring that the Officers concerned will return to Railway Audit Department on the expiry of such Officers' leave.
- iii. IA & AS Officers working in the Railway Audit Department will not be entitled to grant of certificates which would entitle them to obtain travel concessions on Railways outside India.
- iv. Passes/P.T.Os. will be issued by the Chief Auditors irrespective of home or foreign line.

It was mentioned in the above letter that the same was issued with the sanction of the President of India. The policy contained in the above letter was followed by the Indian Railways for several years.

In the meantime, the Director of Audit, Central Railway, by his notice dated 19th December, 1983, made it known that the Central Government had, on the recommendations of the Comptroller and Auditor General of India, sanctioned higher scale of pay of Rs. 650-30-740-35-800-EB-40-1040 to 80 per cent of Section Officers on the staff of the Railway Audit Department and that scale of pay would become effective from 1st March, 1984. It was indicated in that notice that the Section Officers on the staff of the Railway Audit Department getting such higher scale of pay, will have their designation as Assistant Audit Officers (Group B Gazetted). Similar notice, it is said, was issued by the concerned Director of Audit of every other Zone of the Indian Railways. The said scale of the pay of the Assistant Audit Officers (Group-B Gazetted) came to be revised as Rs. 2,000-

3,200 from 1st January, 1986 as per the recommendations of the Fourth Pay Commission. Even then, the Assistant Audit Officers who were designated as 'Group-B Gazetted' continued to have the privileges and facilities of 'Group-B Officers of the Indian Railways.

However, by its letter No. E(W) 87PS51/3 dated 27th July, 1989 addressed to all General Managers, Indian Railways, the Railway Board referring to the creation of posts of Assistant Audit Officers in the Railway Audit Department and the incumbents in those posts having been given Group-B Gazetted status, stated thus:-

"As a result of restructuring of the cadre of Indian Audit and Accounts Department, a number of posts of Assistant Audit Officers have been created in the scale of Rs. 2000- 3200 and classified as Group'B'posts carrying a gazetted status. The eligibility of these officers to various facilities as admissible to the Gazetted Officers on Railways in scale of Rs. 2000-3500 has been considered but the same has not been agreed to. It has been decided that the Audit Officers in scale of Rs. 2000-3200 may be given the privileges and facilities viz.

Passes/PTOs. allotment of Railway Quarters and Rest Houses/retiring Rooms and taking family with them while on tour etc. as admissible to the Railway Employees in identical scale of pay viz. Rs. 2000-3200."

The said letter shows that it had been issued with the concurrence of the Finance Directorate of the Ministry of Railways. But, the contents of the said letter were modified by a telegram, which read thus:-

"No. E(W)87PS51/3. In partial notification of Ministry of Railway's letter of even number dated 27.7.89 Ministry of Railway have decided that the Assistant Audit Officers given the Gazetted status between 1st March, 1984 and 31.12.1985 shall continue to enjoy the facility of passes, PTOS. Quarters etc. enjoyed by them as a result of conferring of the gazetted status on them during the period mentioned above (As personal to them.)"

The said telegram makes it obvious that those Assistant Audit Officers in the Railway Audit Department who got Gazetted status between 1st March, 1984 and 31st December, 1985, shall alone be entitled to the facilities of Passes/P.T.os., Quarters etc, and not those who got such Gazetted status after 31st December, Then, there is the letter No. PCIV/86/ Imp./46 dated 30th October, 1987 issued by the Railway Board to the General Managers of the Indian Railways, which shows that the president of India had, consequent upon the revision of pay- scales of the Central Government employees recommended by the Fourth Pay Commission, reclassified all the posts under the Indian Railways, thus:-

"Classification of posts	Description of Posts
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-----	Group A All posts in scale Rs. 2200-4000 and above.
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Group B Posts in scale Rs. 2375-3500 applicable to accounts Officers only and other posts of Officers in scale Rs. 2000-

3500(all Deptts.) Group C. All posts in scales Rs. 825-1200 and above including posts of Post-graduate Teachers (Selection Grade)/Head-

masters-

Middle School (Selection Grade)in scale Rs. 2000-3500, Supervisors in scale Rs. 2375-3500 and excluding those mentioned for Groups 'A' and 'B'.

Group D All posts in scales Rs. 750-940, Rs.

7751025 and Rs. 800-1150."

----- The said classification of posts in the Indian Railways is done, as becomes clear from the said letter, consequent upon the introduction of Railway Services (Revised Pay) Rules, 1986. In this context, it would be necessary to advert to the Railway Servants (Pass) Rules, 1986 made by the President of India under the proviso to Article 309 of the Constitution regulating the issuance of passes and Privileged Ticket Orders to Railway servants. Meaning of 'railway servant for the purposes of the said Rules is given in clause (h) of Rule 2 thereof,. thus:-

"railway servant' means a person who is a member of a service or who holds a post under the administrative control of Railway Board and includes a person who holds 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 framed."

Schedule II of the said Rules contains the classification (categorisation) of Railway servants into Group-A, Group-B, Group-C and Group-D and refers to certain privileges admissible to them. That Schedule, which provides for issue of passes on privilege account to Railway servants puts Group-A Group-B Railway servants in one category. Group-C Railway servants are put in altogether a different category for the purpose of issue of passes to them.

From the said facts, it becomes clear that the Assistant Audit Officers in the Railway Audit Department, who hold the posts on the pay-scale of Rs. 2,000-3,200, although designated as Group-B Officers, are not treated on par with Railway servants of the Indian Railways in the category of Group-B Officers, to wit, the Railway servants holding the posts of Assistant Accounts Officers and other Officers on the higher pay Scale of Rs 2,000-3,500. Therefore, the obvious reason for denial of the privileges conferred upon Group-B Railway Officers under the Railway Servants (Pass) Rules, 1986, to Assistant Audit Officers of the Railway Audit Department, was the latter holding posts of lower pay- scale of Rs. 2,000- 3,200.

It was contended by the learned counsel for the petitioners that the Assistant Audit Officers working in the Railway Audit Department could not have been treated differently from Group-B Officers of

the Indian Railways in the matter of issue of privilege Passes/P.T.os. to them when the latter No. E. (G) 58PS5-20/1 dated 14th April, 1960 issued by the Railway Board with the sanction of the President, clearly laid down the policy that scale of Passes/P.T.os. and the Rules governing their issue will be the same as applicable to Railway servants from time to time. It was also contended by them that the Railway Servants (Pass) Rules, 1986 issued by the President of India, since exclude the Assistant Audit Officers from 'B' category Officers, they would be violative of Article 14 of the Constitution. Lastly, it was contended by them that the decision of the Indian Railways that the Assistant Audit Officers of the Railway Audit Department, who were given the Gazetted status between 1st March, 1984 and 31st December, 1985, alone shall continue to enjoy the facilities of Passes/P.T.os., Quarters etc. has since resulted in denial of such facilities to the Assistant Audit Officers who were given the Gazetted status after 31st December, 1985, the same (decision) is violative of Article 14 of the Constitution. We are unable to find merit in any of the said contentions urged on behalf of the Assistant Audit Officers in support of their grievance, for the reasons which we shall presently state.

The Assistant Audit Officers although working in the Railway Audit Department, are the Officers who are appointed by the Comptroller and Auditor General of India and work under his. control and supervision. No doubt, the Railway Board, as seen from its letter dated 14th April, 1960 adverted to earlier, had decided to give to the staff and Officers working in the Railway Audit Department the facilities admissible to Railway servants of comparable status. It is not for us to go into the question whether it was obligatory for the Railways to confer such facilities on the staff and Officers of the Railway Audit Department, who in reality belong to the Department of Comptroller and Auditor General of India, inasmuch as that question is not required to be decided by us. When the said letter dated 14th April, 1960, containing the Railway Board's policy of issuance of Passes/P.T.os. is seen, it shows that the staff of the Railway Audit Department is treated more generously than the Officers of the same Audit Department in the matter of issuance of Passes/P.T.os. to them (Officers), in that, the issuance of passes to the latter category is made subject to certain restrictions. No doubt, when certain Section Officers were promoted as Assistant Audit Officers and conferred the status of 'Group-B Gazetted' by the Comptroller and Auditor General of India, such Officers were treated notwithstanding their lower pay-scale, on par with 'B' Group Officers in the Indian Railways as regards privileges/facilities obtainable by them from the Railways. But, when the scale of pay of the Assistant Audit Officers of the Railway Audit Department was revised on the recommendations of the Fourth pay Commission, the scale of pay of the Assistant Audit Officers, who had been designated as Group 'B' Officers, by the Comptroller and Auditor General of India, fell short of the scale of pay of the Railway servants of the Railway Department classified as Group 'B' Officers by the President of India. It cannot be overlooked that it is the President of India, who made the Railway Services (Revised Pay) Rules, 1986, on the basis of the pay-revision of the Central Government Servants, as recommended by the Fourth Pay Commission and it is again the order of the President of India, which classified the Railway servants into Group-A, Group-B, Group-C, and Group-D according to the minimum and maximum scale of pay of the posts held by them. Indeed, it was not disputed on behalf of the petitioners that the Assistant Audit Officers of the Railway Audit Department who are on the pay-scale of Rs. 2,000-3,200 are treated on par with the Railway servants (Officers) who are on the pay-scale of Rs. 2,000-3,200 in matters of giving the facilities or conferring of privileges. What has happened is that the Railway Servants (Pass) Rules, 1986, when

are made, certain extra privileges relating to issuance of Passes/P.T.Os. are conferred on Railway servants, that is, Officers in Group 'A' and Group 'B' However, Group 'B' Railway servants, according to classification made by the president of India, on revision of their pay-scales are those whose pay-scales are Rs.2,000- 3,500. What is contended for on behalf of the Assistant Audit Officers, is that the fact that their scale of pay is lower than Rs. 2,000-3,500 as applicable to 'B' Group Gazetted Officers of the Railways should be ignored and the status that is conferred upon them by the Comptroller and Auditor General of India as Group B Gazetted' alone should form the basis to give them facilities or confer privileges on par with 'B' Group Gazetted Railway servants.

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. 2,000-3,200, 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. 2,000-3,500. If the Railways give the facilities and privileges to the Assistant Audit officers, who are not Railway servants, treating them on par with Railway servants of Group 'B' they could find no valid reason to deny such facilities and privileges to the Railway servants holding posts on the pay-scale of Rs. 2,000-3,200. 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. 2,000-3,200. 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 of 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.

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 1st March, 1984 and 31st December, 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. We, therefore, find no good reason to disagree with the order of the Tribunal impugned in these Special Leave Petitions.

In the result, we dismiss these Special Leave Petitions. However, in the facts and circumstances of the cases we make no order as to costs.

ISG.

SLPs dismissed.