

IN THE HIGH COURT OF DELHI AT NEW DELHI
CIVIL WRIT PETITION NO. 2202 OF 1997

IN THE MATTER OF

PUBLIC INTEREST LITIGATION
UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

AND

IN THE MATTER OF:

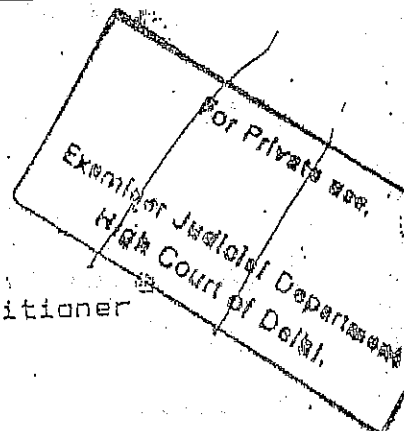
Ms. Rekha Bhasin,
W/o Sh. Ashok Bhasin,
D-884, New Friends Colony,
New Delhi - 110 065.

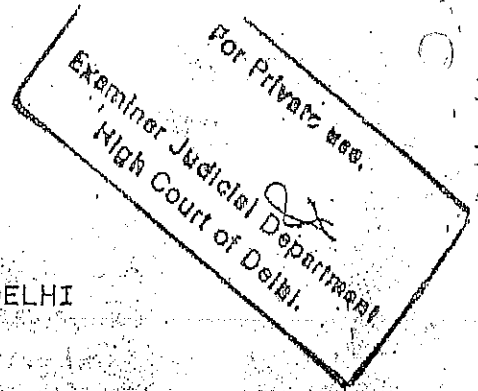
Petitioner

Versus

Union of India
through its Secretary
Ministry of Railways,
Govt. of India, Rail Bhawan,
New Delhi

Respondent





IN THE HIGH COURT OF DELHI

C.W.P.NO.2202/97

Date of decision: May 13, 1998.

MS. REKHA BHASIN Petitioner
Through: Mr. Ashok Bhasin with Mr. P.L.
Sebastian, Advocates.

VERSUS

UNION OF INDIA & ORS. Respondents
Through: Mr. R. Srinivasan, Advocate
Mr. Sandeep Aggarwal with
Ms. Pooja Parmar, Advocate

Coram:

The Hon'ble Mr. Justice Arun Kumar
The Hon'ble Mr. Justice Dalveer Bhandari

1. Whether reporters of local papers may be allowed to see the judgment? *yes*
2. To be referred to the reporters or not? *yes*

Dalveer Bhandari, J.

1. A public spirited citizen has moved this petition. On consideration of pleadings of the parties, the following main issues which arise in this petition are recapitulated in the successive paragraphs:

(a) In order to mitigate sufferings of the travelling public, the 'Railway Reservation System' be improved and necessary directions be issued

(b) To examine the Propriety of the respondents Railways in distributing

ATTESTED

Examiner Judicial Department
High Court of Delhi.

: 2 :

largesses in the form of life time bonanza of unlimited free travel by first class Air Conditioned coach for the serving and retired members of the Railway Board and with their family members.

(c) To examine the propriety of Railway Ministers admittedly issuing 7362 cheque passes in less than a year, i.e., (between 3.6.1996 to 1.6.1997) out of their discretionary quota.

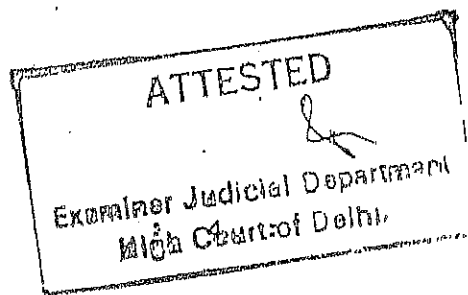
2. In reply to the Court's notice to the respondents, an affidavit of Mr. V.N. Mathur, Executive Director, Passenger Amenities, Rail Bhawan, Railway Board, New Delhi was filed on 6.6.1997 on behalf of the respondents. This affidavit did not deal with the allegations of propriety of issuing of free 7362 passes and cheque passes in less than a year.

3. Thereafter another senior officer Shri P.K. Goel, Executive Director, Passenger Amenities, Rail Bhawan, Railway Board, New Delhi filed an

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Commissioner Judicial Department
High Court of Delhi.

additional affidavit on behalf of the respondents. In both these affidavits an endeavour and an effort has been made to demonstrate the salient features of functioning of the Indian Railways. It has been asserted that the Indian Railways is the dominant transporter for the passengers as well as goods in this country. The volume of passenger traffic is increased during summer months and holiday periods. The demand increases by 25 to 30 per cent more than the normal. To clear an additional traffic, special arrangements are made, by introducing a number of special trains and increasing the load of existing trains. It is mentioned in the affidavit that although all efforts are being made by the Railway Administration to meet the demands of passengers travelling by trains, it is not possible to meet the same in full, specially during peak season on account of various capacity constraints like non-availability of locomotives, passenger coaches, line capacity, terminal capacity, etc. It is also mentioned that additional trains have been introduced to ensure adequate movement of freight traffic. In order to cater to the growing needs of



travelling public, Railways have now introduced computerized passenger reservation system. About 550 terminals have been provided at 146 different locations throughout the country. Of these, 61 are located at the northern location and the balance on other zonal railways at various locations in the country.

4. It is also mentioned that on an average 1.55 lakh reservations are made on the system everyday and during the summers, which is the peak season, the rush goes up to 2.3 lakh passengers everyday. It is admitted that in some important trains, all seats/berths are fully booked within the first day itself and in some cases even in the first few minutes of opening of the reservation for the train. This occurs because reservations for all trains is accessible to all the 550 terminals located throughout the country and the Railways is the principal mode of transportation in our country.

5. It is also mentioned in the counter-affidavit that the Railway has appointed 'Rail

ATTESTED

Examiner Judicial Department
High Court of Delhi.

: 5 :


Travellers' Service Agents' (RTSAs) who have been issued licences and are authorised to purchase tickets on behalf of the intending passengers by standing in the queue in their normal turn.

6. The Ministry of Railways appointed a Committee of senior officers to critically analyse the exact procedures and assess the adequacy of existing infrastructural arrangements for obtaining passenger reservation, specially during the summer season and suggest remedial measures to alleviate the difficulties faced by the passengers in the process of obtaining reserved accommodation. The following were the terms of reference of the Committee:-

i) To conduct a random study of reservations made for trains in Delhi Area for journeys during the month of May and June (upto 10th), 1997 to detect irregularities, if any, regarding cornering of berths and suggest corrective action.

(ii) To review arrangements for checking activities of unauthorised travel agents, viz. touts, in Delhi Area and suggest steps that need to be taken to make the drive against the touts etc. more effective.

ATTESTED


Joint Judicial Department
High Court of Delhi.

: 6 :

(iii) To examine passenger amenities provided in various reservation offices in Delhi Area and suggest improvement in amenities for persons waiting to purchase tickets.

(iv) To examine whether present arrangements of running special trains and attaching additional coaches to meet peak demand during summer vacations are satisfactory and suggest improvements, if any.

(v) To examine other measures that may be taken to alleviate difficulties faced by passengers during the rush period such as extension of reservation working hours, extension of advance reservation period, extent of waiting list that should be accepted, management of queue etc.

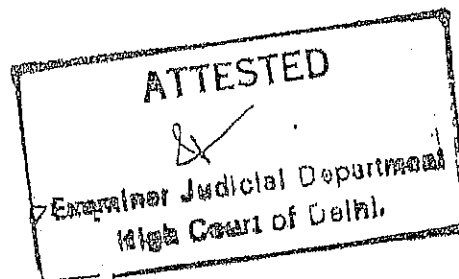
7. The recommendations of the Committee in nutshell are as under:-

(1) Advance reservation period should be increased from the present 30 days to 60 days.

(2) Number of passengers to be wait-listed should be reduced from 600 to 400.

(3) Cancellation charges should be made very stiff. It is suggested that 50% of the fare should be forgone in the case of cancellation within 24 hours of schedule departure of a train.

(4) Some kind of token system or stamping system should be introduced so that tout menaces in the reservation offices can be controlled.



(5) As many counters as possible should be opened to ensure minimum queue lengths and reasonable waiting time in the queues.

(6) Display of availability of accommodation through TV screen, publishing availability information on accommodation in newspapers, etc. should be monitored.

(7) Strengthening of telephonic enquiries monitoring of functioning of IVRS should be given top priority.

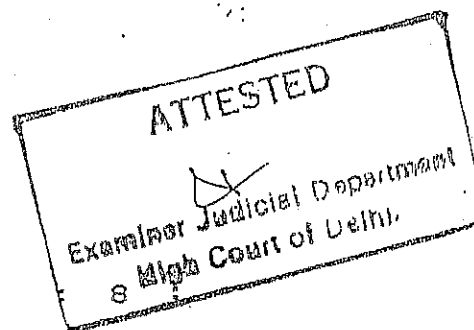
(8) Extension of reservation office working hours by one more hour in both the shifts to be considered in consultation with organised labour.

(9) Restricting of travel on concession other than Students' and Military warrants should be thought of.

(10) Passenger amenities like drinking water, toilets, sitting arrangements should be provided in all reservation offices.

(11) Close co-ordination between operating and commercial branches at divisional, zonal and railway board levels will bring about improvements in service to passengers during summer. Chief Passenger Traffic Manager and Chief Commercial Manager (Computer Reservation) to hold meeting everyday for effective clearance of summer rush.

(12) Number of passengers in waiting list by every train should be monitored by Commercial Officers for putting forth request for additional coach



allotment case by case to operating departments.

(13) Summer specials to be run with a quality of service on par with most popular express trains. Specials to have as far as possible catering arrangements also. There should be a summer time table.

(14) All vacancies in the cadre of enquiry-cum-reservation clerks to be filled up on war-footing. Continuous assessment of requirement of staff should be done to keep pace with increase in availability of accommodation consequent on introduction of additional trains. Summer specials should be planned well in advance and summer time table printed by railway administration, preferably along with regular time table.

(15) Co-operation of state police in curbing activities of touts and anti-social elements to be requested.

(16) A special task force to be constituted with specific responsibilities for nabbing touts and penalising them, raiding premises of unauthorised travel agents, etc., if need be making suitable amendments to Railway Act.

(17) Frequent checks should be conducted in reservation offices, current counters, premises of rail travel service agents etc. and imposing deterrent punishment of negligent and unscrupulous staff.

ATTESTED

Examiner Judicial Department
High Court of Delhi.

(18) Wait-listed passengers to be cleared by running additional trains to shadow paths wherever found necessary even outside the time table summer specials.

(19) Railway Act should be amended to make provisions for deterrent action against anti-social elements.

(20) Utilisation of quotas at road side station should be monitored periodically to make adjustment wherever necessary. Wherever quotas remain un-utilised, action should be taken to restore them to general pool of accommodation.

(21) Inspection of reservation offices should be frequent, meaningful and effective. Schedules of inspection should be laid down by Chief Commercial Manager for all officers of the commercial department. Railway Board should get a feed-back every month from the zonal railways on the effectiveness of inspection carried out.

8. The recommendations and suggestions given by the Committee are attractive and important and implementation of these recommendations would certainly improve the existing reservation system of the Railways to a great extent. Now, the urgent requirement is to immediately implement these recommendations.

ATTESTED

Examiner Judicial Department
High Court of Delhi.

: 10 :

9. The network of the Indian Railways is perhaps the largest in the world. Majority of our countrymen depend on Railways for their transportation. The urgency and need of implementing the recommendations of the high-level committee appointed by the Ministry of Railways at the instance of this court, can hardly be over-emphasized. The recommendations must be implemented as early as possible. It is also imperative to supervise and oversee the implementation of these recommendations. There should be a continuous process of improving the system looking to the larger public interest because Railways is the principal mode of transportation of passengers and goods in this country.

10. The other grievance of the petitioner is regarding the bonanza to the serving and retired members of the Board by introducing platinum passes. By the orders dated 30.4.1997 and 3.6.1997 passed by the Railway Board, it has been decided that serving members of Railway Board travelling alone or accompanied by eligible members of their families may

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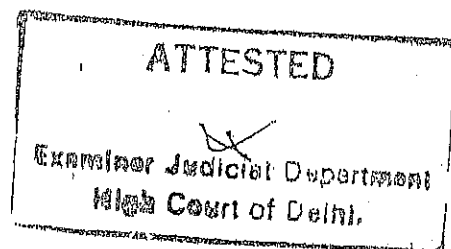
Executive Judicial Department
High Court of Delhi

: 11 :

travel any number of times on the authority of Platinum Pass in any class in all trains including Rajdhani/Shatabdi Express trains, subject to some conditions.

11. The petitioner has expressed her serious apprehension that when there is severe dearth of reserved train tickets in almost all the trains, then this kind of lifetime bonanza by the Railway Board for its members for endless travel by first class air conditioned coaches would make a situation even more difficult and the already scarce Railway reserved tickets will henceforth become a truly rare commodity which only the influential and otherwise powerful people will be able to lay their hands upon.

12. It may be pertinent to mention that Indian Railways, is more than a century old organisation and is governed by well structured acts and rules. The facility of free passes is governed by Railway Servants' Pass Rules, 1986. According to Rule 4, the Railway servant or the entitled members of



: 12 :

his/her family and dependent relative, as defined in these rules may be issued following kinds of passes :

- (I) Duty Pass
- (II) Privilege Pass (including passes while on deputation)
- (III) School Pass
- (IV) Post-retirement complimentary Pass,
- (V) Widow Pass
- (VI) Residential Card Pass
- (VII) Special Pass

13. Duty Passes have been further categorised in three categories: (a) Gold Pass; (b) Silver Pass and (c) Bronze Pass.

14. All those officials who have been conferred this facility through platinum passes were earlier covered by Gold Passes to some extent. But this privilege was confined to the officials while they are on duty. By a Memo dated 30.4.1997, a special category of Platinum Pass has been introduced by which

ATTESTED

Examiner Judicial Department
High Court of Delhi.

: 13 :

this privilege has been extended to these officials when they are not on duty and even after their retirement. The said order reads as under:

"GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. EW97 PS 5-1/23 New Delhi dt. 30.4.97.

The General Managers
(Commercial & Personnel)
All Indian Railways,
(As per standard list I and II)

Sub: Introduction of Platinum Pass

.....
As the Railways are aware, the travel facilities admissible to Board Members on privilege and post-retirement passes are significantly different from those available to other Railway Officers entitled to Gold Pass. It has, therefore, been under consideration of the Ministry to issue a different type of travel authority to serving/retired Board Members so that the facilities available to them are clearly reflected in the travel authority.

2. Ministry of Railways have accordingly decided to introduce a new category of pass called Platinum Pass. The Platinum Pass will be issued to all the serving/retired Members of Railway Board (which term includes Chairman and Financial Commissioner for Railways). The Platinum Pass will permit the holder to travel on duty and privilege account as well as after superannuation. The Platinum Pass will be in lieu of privilege pass, Gold Pass and post-retirement Complimentary Pass at

: 14 :

present admissible to serving/retired Board Members.

3. On demise of a Board Member, his family will return the Platinum Pass to the Railway Board's office, failing which the Railway Board's office shall arrange to recover the Platinum Pass from the family. The wife of the deceased Board Member will get the travel facilities in terms of the 'widow pass scheme' if she is otherwise covered under the scheme.

4. In all other respects not specifically covered under this letter, the Board Members are governed by the Railway Servants (Pass) Rules 1986 as amended from time to time.

5. The Railway Servants (Pass) Rules, 1986 may accordingly be amended as per the Correction Slip No. 1 dated 30.4.1997 enclosed herewith.

6. These instructions should be brought to the notice of all concerned.

7. This issues with the concurrence of the Finance Directorate of the Ministry of Railways.

8. Hindi version will follow.

sd/-

(K.V. RAMANA)

Joint Director Estt. (W)

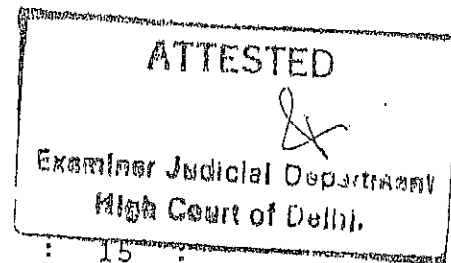
Railway Board.

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In consequent, the Railway Servant Pass Rules, 1986 has been amended. According to Schedule VIII which reads as under:

SCHEDULE VII
PLATINUM PASS FOR SERVING & RETIRED BOARD MEMBERS.

Platinum Pass will be issued to serving and retired Members of Railway Board



(which term includes the Chairman and the Financial Commissioner for Railways). The platinum pass will permit the holder to travel on duty and privilege account as well as after superannuation as per the following entitlements:

1. ON DUTY

Members of Railway Board may travel with eligible members of their family in any class over Indian Railways, subject to the condition that the Member will not avail (a) more than 2 berths in I-AC class and 2 berths in AC Sleeper/I Class or (b) not more than 4 berths in AC Sleeper/I Class or (c) I/AC Coupe or 4 berths in AC Sleeper by Rajdhani Express or (d) 4 seats in Executive Class/Chair Car by Shatabdi Express. A member of Railway Board will be entitled to coupe accommodation even when travelling alone and can also take his eligible family members in the coupe. He is permitted to carry a dog in case I-AC/I Class Coupe is allotted to him exclusively.

2. ON PRIVILEGE ACCOUNT

Serving Members of Railway Board and eligible members of their families may travel any number of times on the authority of Platinum Pass in any class in all strains including Rajdhani/Shatabdi Express trains, subject to the condition that they will not avail more than 2 berths in I-AC or 2 seats in Executive Class. In case of Rajdhani Express trains they can avail either 2 berths in I-AC/AC Sleeper or 4 berths in I-AC. These restrictions will not apply to travel in other classes and by other trains.

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Examiner Judicial Department
High Court of Delhi.

: 16 :

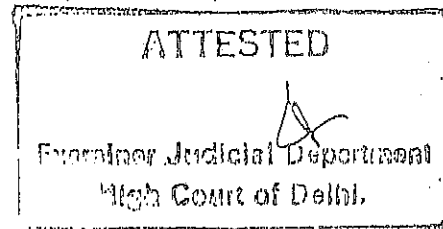
3. POST RETIREMENT COMPLIMENTARY FACILITY

Retired Members of Railway Board and the eligible members of their family will be entitled to travel on the authority of Platinum Pass in any class in all trains including Rajdhani/Shatabdi Express trains, subject to the condition that they will not avail more than 2 berths in I-AC or 2 seats in Executive Class. In case of Rajdhani Express trains they can avail either 2 berths in I-AC/AC Sleeper or 4 berths in 3/AC. These restrictions will not apply to travel in other classes and by other trains. A retired Member of Railway Board may take a companion with him in the same class.

4. In addition to Platinum Pass, serving and retired Board Members will also be issued to Complimentary Card Pass (with photos of the Board Member and the eligible members of his family) to enable the family to travel alone, if the Board Member is not accompanying them.

5. Save as specifically brought out in paras 1 to 4 above, the Members of Railway Board will be governed by the provisions of Railway servants (Pass) Rules, 1986 in so far as they are not inconsistent with the provisions in this schedule.

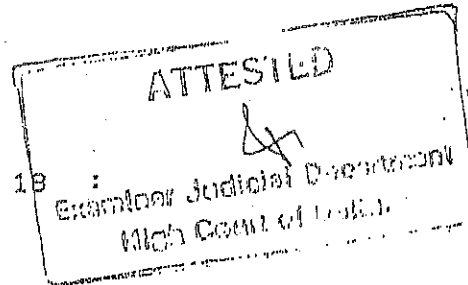
15. Again on 3.6.1997 another letter of the Railway Board was issued in which it was stated that the facility of a companion on post retirement account will be available only when the retired Board Members



travel alone unaccompanied by eligible members of family.

16. During the pendency of this writ petition, and perhaps because of great public criticism by the letter dated 22.12.1997, the privilege given to a retired Member of Railway Board, to take a companion with him in the same class (1st A.C.C.) was withdrawn.

17. It may be pertinent to mention that alongwith the letter dated 22.12.1997, Schedule VIII has been mentioned. It was mentioned that in the category of Post Retirement Complimentary facility, retired members of the Railway Board and the eligible members of their family will be entitled to travel any number of times on the authority of card passes having all the attributes of Platinum Pass in any class in all trains including Rajdhani Express and Shatabadi Express Trains subject to the condition that they would not have more than two berths in I-AC or 2 seats in Executive Class. In case of Rajdhani Express train, they can avail either two berths in I-AC/AC Sleeper or

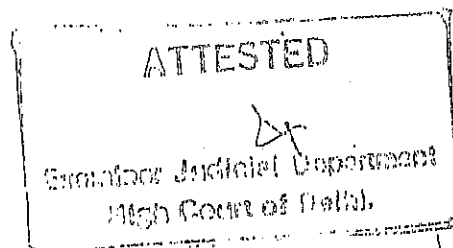


four berths in 3/AC. These restrictions will not apply to other classes.

18. If the card passes are to have all the attributes of Platinum Passes, then we fail to understand why have the Platinum Passes not been issued to the retired Members of the Railway Board?

19. We also fail to understand that when the travelling public face insurmountable difficulties in getting reservation then why the Members of the Railway Board are permitted to carry a dog in a 1st Class Air Conditioned Coach? There are separate set of Railway Rules by which dogs/pets can be transported. This change or consequent amendment in the rules was hardly warranted.

20. According to the petitioner while distributing largesses, the State cannot act arbitrarily at its sweet will and distribute this kind of bonanza to a specially carved out class of senior officials of an organization (Railways). In granting



: 19 :

largesses the State cannot give a total go-by to the principle of rationality and equality. When the State departs from the well-established norms and principles, (as laid down by the Supreme Court in a catena of cases), the action of the State becomes liable to be struck down.

21. The petitioner submitted that even according to the existing rules in the Indian Railways, both the serving and retired Railway employees and their families are entitled to three set of passes. (free train journeys anywhere in the country three times a year) The retired Railway employees are also entitled to three sets of passes per year which entitle them and their family members to travel in any part of the country. This is a unique privilege to the Railway employees and enjoyed by no other set of employees in the government. Any way the petitioner has no grievance with the existing facilities and perquisites enjoyed by all Railway employees and their families. All the existing perquisites and facilities given to the serving and retired employees of the Railways may

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[Signature]
SECRETARY TO THE GOVERNMENT
OF INDIA

: 20 :

continue but the petitioner's only grievance is with regard to the special bonanza given only to the serving and retired members of the Railway Board. This bonanza which is meant only for the serving as well as the retired Chairmen and Members of the Railway Board has created grave discrimination among the Railway employees. The other Railway employees have not been given similar (lifetime endless travel) facility even by the ordinary first class, IInd A/C, or even by the ordinary second class. In case the Railways (Union of India) wanted to confer this benefit, they ought to have conferred it on all the Railway employees according to the classes of their entitlement. In the counter-affidavit the respondents tried to justify their action by stating that this bonanza was given in recognition of their long services to the Railways. This explanation or justification cannot withstand the test of rationality or equality. All Railway employees in their respective positions are expected to serve the Indian Railways from the date of their appointment till superannuation to the best of their ability. The length or period of service to the organisation would

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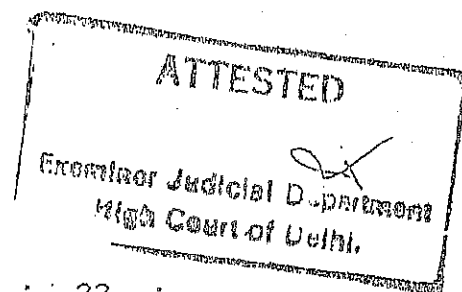
Secretary, High Court of India

: 21 :

be more or less the same in case of all the Railway employees. The real question which falls for consideration is whether the Railways is justified in giving this special benefit only to a small section of senior Railway officials?

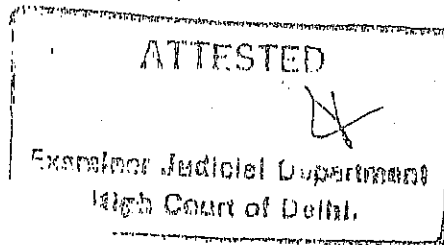
22. The third issue is regarding propriety of issuing thousands of free cheque passes issued by the Minister of Railways and the Minister of State for Railways without following any guidelines, norms, basis or criteria. In the additional affidavit of Dr. P.K. Goel, Executive Director, Passenger Amenities, Rail Bhawan filed on behalf of the respondents indicates that the Minister of Railways has issued 4842 cheque passes in less than one year i.e. from 3.6.96 to 1.6.97 in addition to 2520 cheque passes which were issued by the Minister of State for Railways during the same period.

23. The total number of 7362 cheque passes were issued in less than a year. In the affidavit, it is mentioned that the practice of affixing photographs



: 22 :

and recording particulars like address, the period of validity and category criteria is in vogue in respect of card passes which are put to multiple and repeated use. Similar details are not maintained in respect of cheque passes. Usually, this single journey passes are valid for 15 days and in case the return journey is also included, they are valid for one month. On the directions of the court, an additional affidavit was filed in which the names, addresses, Class, occupation and stations for which the passes were issued, have also been indicated. The complimentary passes issued by the office of the Minister of Railways shows that neither the address nor occupation nor reason for issuing these passes have been indicated. The discretion which vests with the Ministers could not be questioned if the same is exercised judiciously and for good and valid reasons. The scrutiny and analysis of the said annexures reveal that no reasons for issuing these cheque passes have been indicated. Even the addresses and names have not been furnished. Even according to the affidavit submitted on behalf of the respondents, it is clear that 7362 cheque passes have



: 23 :

been issued by the Minister of Railways and Minister of State for Railways in less than a year?

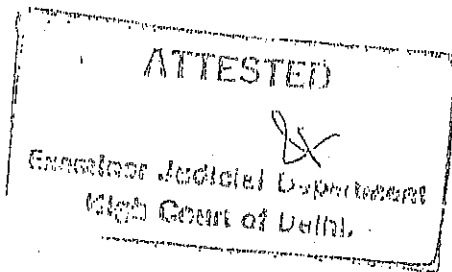
24. On the directions of the court, a supplementary affidavit has been filed by Shri P.K. Goel, Executive Director, Passenger Amenities, Railway Board, Rail Bhawan, New Delhi, on 15.9.1997. In this affidavit, it is mentioned that because of the observations of the court that there were no guidelines for issuing cheque passes, now the Railways have prepared detailed guidelines for issuing complimentary cheque passes in pursuance to the directions of this Court. The guidelines as framed are as under:-

"(i) A person desirous of getting a cheque pass should apply for the same in writing, clearly bringing out the reasons for which the cheque pass is required and giving his address.

(ii) Cheque passes may be issued in deserving cases only on the personal orders of MR/MOS(R)/DMR/Board Members.

(iii) In emergent cases, cheque passes may be issued on the requisition from the Designated officers of Gazetted rank in the Minister's Secretariat communicating the approval of MR/MOS(R)/DMR.

(iv) Cheque passes may be issued on the



: 24 :

following grounds:-

- (a) Medical grounds for major treatment/surgery etc. involving travel over long distance, taking into account the financial position of the applicant and the medical need.
- (b) Compassionate grounds, e.g. in the case of passengers losing their money and belongings in theft/picking of pockets, etc.
- (c) Eminent persons engaged in social, cultural, educational, sports and welfare activities when they have to undertake emergent and specific journeys on matters of importance.
- (d) Poor and destitute persons who are required to perform specific journeys.
- (v) Not more than a maximum of four persons will be allowed on one Cheque Pass.
- (vi) Validity of Cheque Pass will not exceed 15 days for one-way journey and 30 days for both-ways journey or specified by the Issuing Authority on special considerations, depending on the nature of the case.
- (vii) Applications with competent authority's order thereon will be sent to G(Pass) Branch for issuing the Cheque Passes. If the case does not fall within the guidelines, G(Pass)

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Executive Engineer D. S. [Signature]
High Court of Delhi.

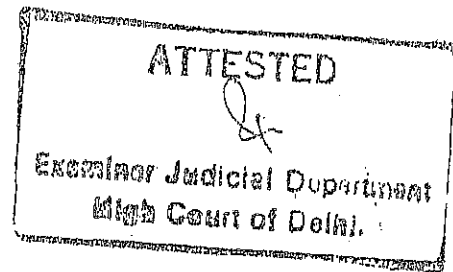
: 25 :

will remit it back to the concerned authority for re-consideration.

25. We are happy to note that on the directions of this Court guidelines have now been framed by the respondent Railways. We trust and hope that the aforesaid guidelines would be followed in by the respondent Railways.

26. Their Lordships of the Supreme Court on a number of occasions reflected and gave comprehensive guidelines how the discretionary powers should be exercised and what necessary precautions, norms, and parameters have to be followed while exercising discretionary powers?

27. In Bangalore Medical Trust Vs B.S. Muddappa And Others reported as (1991) 4 Supreme Court Cases 54 their Lordships of the Supreme Court had an occasion to reflect on the discretionary powers of the executive. The court observed that the discretion is an effective tool in administration. It provides an option to the authority concerned to adopt one or the other alternative. While exercising the discretion,

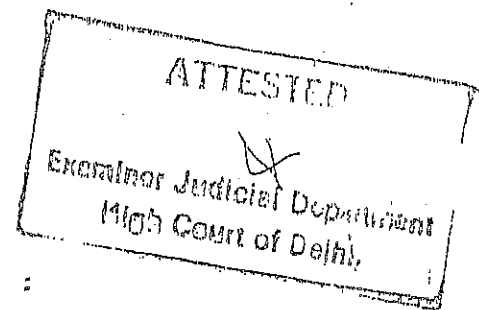


: 26 :

the concerned authority should rationally and objectively take a decision in accordance with the law. Apart from that, the authority concerned cannot act whimsically or arbitrarily. It should be guided by the concept of reasonableness and fairness. The legislature never intends its authority to abuse the law or use it unfairly.

28. The concerned authority while exercising the discretion must bear in mind that they are accountable for their actions. The proper exercise of the discretion would be one where the said decision can be successfully tested on anvil of rule of law, fairness or justice. Apart from these considerations, while exercising the discretion, the authorities must keep public interest or general good or social betterment in view.

29. In Kumari Shrilekha Vidyarthi and Others Vs State of U.P. and Another 1991 (1) SCC 212 the Court observed that the Constitution does not envisages or permit unfairness or unreasonableness in state



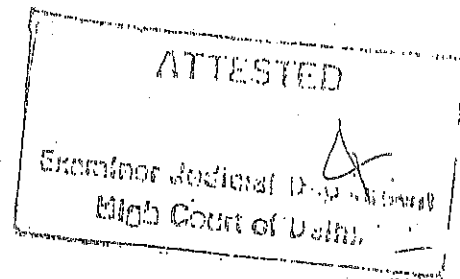
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action in any sphere of its activities.

30. In the said case, the Court observed that the private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions is expected to keep the public good and public interest in mind. The well known constitutional expert Professor Wade in his classic critics on 'INTERNATIONAL LAW' (6th Edition) observed at pages 400-401 which we quote the relevant passage and reproduce the same.

"the whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for public good."

31. Every holder of the public office—by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As a matter of fact every holder of the public office is a trustee whose highest



: 28 :

duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant for public good. In the said judgment their Lordships have observed as under:

"Every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test is every state action is sine qua non to its validity and in this respect the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind. Arbitrariness is anathema to State action in every sphere and wherever the vice percolates, the Court would not be impeded by technicalities to trace it and strike it down. This is the surest way to ensure the majesty of rule of law guaranteed by the Constitution of India.

Conferment of the power together with the discretion which goes with it to enable proper exercise of the power is coupled with the duty to shun arbitrariness in its exercise and to promote the object for which the power is conferred, which undoubtedly is public interest and not individual or private gain, whim or caprice of any individual. All persons entrusted with any such power have to bear in mind its necessary concomitant which

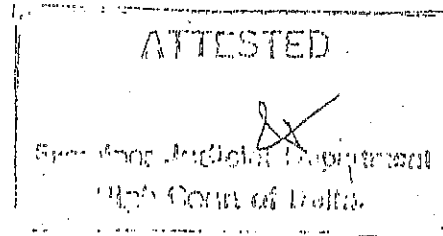
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&
Clerk of Judicial Department
High Court of Delhi
29

alone justifies conferment of power under the rule of law.

The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary.

32. In Ramana Dayaram Shetty Vs International Airport Authority of India 1979 (3) Supreme Court 409 and Kasturi Lal Lakshmai Reddy Vs State of Jammu and Kashmir, (1980) 4 SCC 1; the Court observed that Article 14 of the Constitution regarding equality applies to matters of Governmental policy and if the policy or any action of the Government even in contractual matters fails to satisfy the test of reasonableness, it would be unconstitutional.

33. The basic requirement of Article 14 is



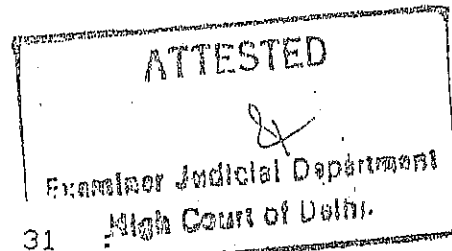
: 30 :

fairness in action by the State and the State cannot be permitted to act otherwise in any field of its activity.

34. Their Lordships of the Supreme Court in these aforesaid cases observed that even in the matter of grant of largesses including award of jobs, contracts, quotas and licences, the Government must act in fair and just manner and any arbitrary distribution of wealth would violative the law of the land.

35. It has been observed by the then Chief Justice of the apex court S. Mukherjee in Dwarka Das Marfatia & Sons Vs Board of Trustees 1989 (3) SCC 293 that every action of the executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, it should meet the test of Article 14.

36. It is said that absolute discretion leads to absolute arbitrariness. Douglas, J. in the celebrated judgment United States Vs Wunderlich, 342 US



31

28 : 96 Law Ed 113 (1951) observed that "Law has reached its finest moments, when it has freed man from the unlimited discretion. Where discretion is absolute, man has always suffered. It is in this sense mentioned that the rule of law may be said to be sworn enemy of caprice".

37. Lord Masfield in famous case John Wilkes (1770) 3 Burr 2528 observed:

"Discretion means sound discretion guided by law. It must be governed by rule of not humour. It must not be arbitrary, vague and fanciful."

38. In Lucknow Development Authority Vs M.K. Gupta (1994) 1 Supreme Court Cases 243 Their Lordships of the Supreme Court quoted : Rooked Vs Barnard (1964) 1 All ER 367 with approval where Devlin observed that the servants of the government are also the servants of the people and the use of their powers must always be subordinate to their duty of service.

ATTESTED

Examiner Judicial Department,
High Court of Bihar.

: 32

39. The authority empowered to function under a statute while exercising powers discharges public duty. It has to act to subserve general welfare and common good. In a modern society, no authority can arrogate to itself the power to act in a manner which is arbitrary. In Lucknow Development Authority Vs M.K. Gupta (1974) 1 Supreme Court Cases 243 the Court observed that public servants can not arrogate to himself the power to act in a manner which is arbitrary.

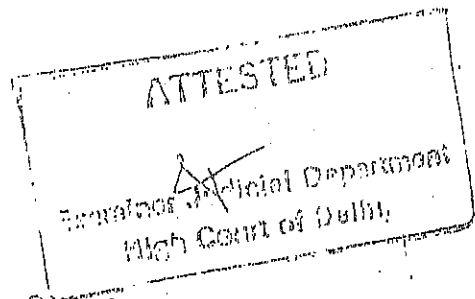
40. Their Lordships of the Supreme Court in Common Cause : A Registered Society Vs Union of India A. Ora. : JT 1976 (8) Supreme Court 613 observed that the Government today - in a welfare State - provides a large number of benefits to the citizens. It distributes wealth in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas and licences, etc. Government distributes largesses in various forms. A Minister who is the executive head of the department concerned

ATTESTED
33
Secretary Judicial Department
High Court of Delhi

distributes these benefits and largesses. He is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He cannot commit breach of the trust reposed in him by the people. In case the discretion is used wholly in an arbitrary and unjust manner, then it cannot be sustained.

41. In Mahinder Kumar Gupta and Others Vs Union of India, Ministry of Petroleum and Natural Gas; (1995) 1 Supreme Court Cases 85 the Court observed that the distribution of the largesses of the State is for the common good and to subserve the common good of as many persons as possible. The Court observed that every action of the executive government must be informed with reasons and should be free from arbitrariness. This is the very essence of rule of law and its bare minimal requirement.

42. An American Professor Rich in his famous article "The New Property" in 73 Yale Law Journal 733. "That Government action be based on standards that are



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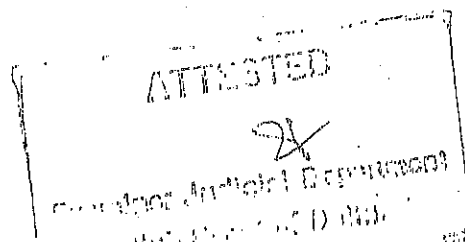
not arbitrary or unauthorised." The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The Government is still the Government when it acts in the matter of granting largesse and it cannot act arbitrarily. It does not stand in the same position as a private individual."

43. On the analysis of these judgments of the Supreme Court and words of wisdom of other distinguished jurists and authors, it becomes abundantly clear that the discretionary powers must be exercised rationally, fairly and objectively. The holders of public office must exercise the discretionary powers solely for the public good. Proper exercise of the discretionary powers is to shun arbitrariness. Powers and discretion are conferred for the public interest and not for the private gain of any individual or a group of individuals who happen to be holders of the public office. On the basis of the

ATTESTED
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: 35 : Secretary Judicial Department
High Court of Delhi.

principles as laid down by their Lordships of the Supreme Court, our conclusions and findings on the main issues involved in the petition are as follows:-

44. We have carefully analysed these suggestions and recommendations given by the expert committee to mitigate the sufferings of the travelling public. The recommendations and suggestions given by the Committee are indeed very important and proper implementation of these recommendations would certainly go a long way in mitigating and solving the problems and sufferings of the travelling public. These recommendations need to be implemented as expeditiously as possible in the larger public interest. It is also imperative to supervise and oversee the implementation of these recommendations and suggestions. The Railways may consider creating a 'Special Cell' of experts which may oversee and supervise these recommendations so that the recommendations and suggestions are taken to their logical conclusion. There should be a continuous process of improving the system looking to the needs of the travelling public because the Railways is the



: 36 :

principal and dominant mode of transportation of passengers and goods in this country.

45. The other two issues raised in this petition pertain to the distribution of largesses such as issuing of free passes and platinum passes. The Minister of Railways and the Minister of State for Railways in a period of less than one year (3-6-96 to 1-6-97) distributed 7362 cheque passes. In the amended guidelines, it is mentioned that one cheque pass can be allowed for four persons and for both ways of the journey. The petitioner has not made the grievance that the concerned Ministers should not be given discretionary powers in this regard but the grievance is restricted to the manner in which the discretionary powers have been used. In a period of less than a year, 7326 cheque passes have been issued without any justification except in a very few cases.

46. On analysis of the documents placed on record along with the affidavit it is revealed that in most cases, even the addresses, occupation and the

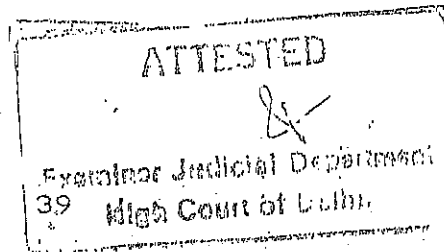
reasons for which these passes were issued had not been shown. No valid and/or good reasons have been shown for issuing Railway passes cheque passes and card passes. A large number of recipients of these passes belong to a particular constituency in Bihar. On the basis of documents on record, we can safely conclude that no norms were followed while issuing these passes. It has to be realised by the holders of the public office that what was distributed in the form of largesses is not the part of personal empire or asset of any individual but all that belonged to the people of this country. The holders of the public office are trustees of the national assets and it is their highest duty that in all their decisions, the public interest must always remain paramount. We can safely conclude without any reservation that the discretionary powers in issuing free cheque passes were exercised in a most arbitrary manner in total disregard of public interest.

47. In order to ensure that such abuse or misuse of the discretionary powers may not take place in future, we requested the learned counsel appearing

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Registrar Judicial Department
High Court of Delhi.

: 38 :

for the Railways that on their own, the Railways must put a ceiling on the number of free passes, cheque passes and card passes to be issued by the Ministers in a year because it is very heavy strain on the public exchequer. The learned counsel appearing for the Railways categorically stated that it is not possible to fix any upper limit on the discretionary quotas of the Ministers. Ordinarily this court may not question the discretion which vests with the Ministers, if the same is exercised judiciously and for good and valid reasons. But as we have seen that there has been great indiscretion in exercising the discretionary powers, therefore, we are constrained to observe that a ceiling should be laid down with regard to the maximum number of such passes to be issued in a year. On the basis of past experience of normal use of this discretion, the Railways should specify the maximum limit. This should be done within three months. Our object in fixing the limit is that the discretionary quota of the Ministers may not be abused or abused in future in the same manner.



48. Now we revert to the issue of distribution of largesses in the form of life time bonanza of unlimited free travel by First Class AC Coach, for the serving and retired members of the Railway Board, with their family members. This has also been carefully examined by us. As indicated in the preceding paragraphs that serving and retired members of the Railway Board with their families are otherwise entitled to three sets of passes every year which entitle them to travel in any part of the country in First Class AC Coach with their other members of family free of cost. This facility is also extended to other Railway-men and they can also travel with their family members according to the classes of their entitlement.

49. There is hardly any justification or good reason for giving this additional life time bonanza by carving out a very special class of passes for some senior officials of the Railways. In our

considered opinion, giving Special Platinum Passes and Card Passes to have all attributes of Platinum Passes would mean unlimited free travel by 1st class ACC for rest of their life for serving and retired members of the Railway Board and their families alone would be discriminatory because this privilege is not extended to other Railway officials or employees. On the parity of reasoning, officials of other organizations, such as Air India, Indian Airlines and many more may ask for a similar privilege. On consideration of all the relevant facts and circumstances, the Memos dated 30.4.1997 and 3.6.1997 by which this special privilege given Platinum Passes to a very special class of Railway officials deserved to be quashed and we accordingly quash the same.

50. No further directions are necessary and this writ petition is disposed of in terms of aforesaid directions. No costs.

51. Before parting with this Judgment, we would like the holders of public offices to always remember [as indicated in Kumari Shrilekha's case supra] that "Be you ever so high, the laws are above you".

(DALVEER BHANDARI)
Judge

(ARUN KUMAR)
Judge

13. 1998.

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