

10

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1193/2002

This the 20th day of December, 2002

HON'BLE SH. SHANKER RAJU, MEMBER (J)

Sh. N.K.Jain
aged about 72 years,
son of late Sh. Shiv Charan Lal Jain,
Resident of Block-R, DDA Flats, No.29-G,
Dilshad Garden, Delhi-110095.

(By Advocate: Sh. Surinder Singh)

Versus

Union of India through

1. The General Manager,
Western Railway,
Church Gate,
Mumbai.
2. Sh. S.N.Trivedi,
FA, CAO,
Western Railway,
Church Gate,
Mumbai.
3. Sh. M.H.Khan,
SNO (FIA)'s Office,
Western Railway,
Kishan Ganj,
Delhi.

(By Advocate: Sh. R.L.Dhawan)

ORDER (ORAL)

Applicant a retiree from Railways impugns respondents order dated 18.9.2001 whereby his post retirement complementary passes have been withheld on account of unauthorised occupation of Govt. accommodation from 1.5.91 to 15.7.93. He was made entitled for passes w.e.f. 30.6.2005.

2. Applicant retired as Senior Section Officer (Accounts) and was in possession of Railway quarter No.219/1, Kishan Ganj, Delhi. His son also joined Railways and also sought regularisation of the accommodation. The aforesaid quarter

was taken forcibly from the applicant on 15.7.93. Aforesaid action was challenged in OA-47/98. By an order passed on 7.1.98, applicant withdrew the OA with liberty to file OA for complementary passes.

3. Applicant filed OA-1690/2000 which was disposed of with the directions to the respondents to dispose of the representation and he was also accorded opportunity to file OA, if any grievance subsist.

4. Respondents, by an order dated 18.9.2001 after 12 years from his retirement, have decided to treat the order declining post retirement complementary passes till 30.6.2005 and decided to treat the order of representation as notice, which applicant filed as reply, but no orders have been passed giving rise to the present OA.

5. Counsel of the applicant Sh. Surinder Singh, impugns the order on the ground that unauthorised retention of quarter has no connection with withholding of retiral complementary Railway passes and for unauthorised retention separate procedure is laid down under the rules. He impugns the action on the principle of double jeopardy and further places reliance on the decision of this bench in OA-3266/2001 decided on 5.6.2001 titled as P.L.Choudhary vs. Union of India wherein on a similar issue this court placing reliance on the decision of Full Bench in Wazir Chand vs. Union of India in OA-2573/89 upheld by the apex court allowed the claim of the applicant for release of its retiral passes prospectively by holding that a show cause notice prior to withholding of passes has not been issued and moreover the decision of the

apex court in Rajpal Wahi's case is not applicable in the facts and circumstances and moreover the issue regarding withholding of passes and unauthorised occupation are two different cases and cannot be covered altogether. Sh. Surinder Singh ^{states that this case is covered} in all four by the ratio laid down in P.L.Choudhary's case (supra).

6. Sh. Dhawan appearing for the respondents vehemently opposed the contention and stated that applicant retired on superannuation on 31.7.90 and was in unauthorised occupation of the Govt. quarter from 1.5.91 to 15.7.93. In view of the Railway Board's instructions dated 4.6.83, post retirement complimentary passes should be disallowed for every month of unauthorised retention of railway quarter. Accordingly, it has been decided to withhold passes for a period of 26-1/2 months and applicant would be entitled for complimentary passes only from 30.6.2005.

7. It is further contended that there has been a delay in filing application as the applicant retired on 31.7.90 whereas OA has been filed on 17.4.2002 and one stage of post retirement complimentary passes shall be disallowed for every month of unauthorised occupation.

8. With regard to Wazir Chand's case (supra) it is contended that the action of the respondents to withhold post retirement passes has been ^{up} upheld and in view of the Wahi's case.

9. I have carefully considered the rival contentions of the parties and perused the material on record. All the contentions taken by the applicant have been meticulously dealt with in OA-3266/2001. In the light of decision of Wazir

Chand (supra) which has been upheld by the apex court, it has been held that in absence of any show cause notice prior to withholding of passes on account of unauthorised occupation the action taken by the respondents was not legally sustainable. The limitation aspect was also not considered as issuance of pass is a continuing cause of action, on which the limitation will not apply.

10. Further in the aforesaid OA, it has been held that non-compliance of provision 3 of 1982 rules of not giving show cause notice has been held ultra virus. In the light of the ratio laid down to which I agree, applicant has not been served any show cause notice and now in compliance of the directions to the respondents have issued so far as rejecting the representation of the applicant. The stipulation that the same may be treated as show cause notice cannot be countenanced. Moreover, the show cause notice has not been replied to as no orders to show cause notice have been passed. Moreover, after a period of 12 years it would be against the principles of natural justice as well as fair play that the respondents are allowed to rectify the mistake. Applicant who has already attained 72 years of age with and keeping in view the expectancy of life in our country, passes which have been withheld till 30.6.2005 he would not be able to avail the benefits which are related to his superannuation.

11. As no show cause notice has been served upon the applicant before withholding the passes, the decision of the respondents dated 18.9.2001 cannot be legally sustained. In the result, OA is allowed. Impugned order is quashed and set aside. Respondents are directed to release post retirement

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14

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passes to the applicant prospectively from the date of this order within a period of 3 months from the date of receipt of a copy of this order. No costs.

S. Raju

(SHANKER RAJU)
Member (J)

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