

(9)

Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.3266/2001

Hon'ble Shri Shanker Raju, Member(J)

Wednesday, this the 5th day of June, 2002

Shri P.L.Choudhary
s/o Shri N.R.Choudhary
Retired T.I.A.
under FA&CAO (TA)
Central Railway
Mumbai CST. Applicant

(By Advocate: Shri B.S.Maine)

Vs.

1. The General Manager
Central Railway
C.S.T.Mumbai.
2. The Financial Adviser &
Chief Accounts Officer (WST)
T.A.Inspection Section
3rd Floor, New Administrative Building
Mumbai CST. Respondents

(By Advocate: Shri R.L.Dhawan)

O R D E R (Oral)

By Shanker Raju, M(J):

Heard both the parties.

2. Applicant impugns respondents' order dated 21.12.1993 whereby 37 sets of Post Retirement Complimentary Passes have been debited. He has sought for release of Post Retirement Complimentary Passes after he vacated the Railway accommodation in the year 1993.

3. The uncontroverted facts of this case are that applicant had retired on 31.3.1987 and was allowed to retain Railway accommodation till 31.7.1987. He was declared as an unauthorised occupant by the Estate Officer on 20.5.1992 and thereafter he vacated the premises on 9.9.1993.

Respondents issued a memo dated 2.7.1992 disallowing the aforesaid passes till he vacates Railway Quarter No.C-3 at Mathura Junction. Thereafter on persistent requests made, by making several representations, ultimately his request was turned down by the impugned order, whereby 37 sets of passes have been debited from his account, giving rising to the present OA.

4. Learned counsel for applicant placing reliance on Full Bench decision of this Tribunal in Wazir Chand Vs. Union of India & Others, OA 2573/89, where the reference pertains to withholding of post retirement passes on account of unauthorised retention of Railway quarter, the Bench held in Para 20 that "requirement of issuing a show-cause notice as per the Clause (iii) of 1982 Circular is a sine qua non before withholding of post retirement passes" and the 1982 Circular has been declared ultravires, unsustainable on that count. Further placing reliance on a decision of this Tribunal (Mumbai Bench) in S.R.Shetty Vs. Union of India & Others, 1999(3) CAT 541, decided on 25.2.1999, it is contended that Post Retirement Passes cannot be withheld after the employee vacated the quarter and also on a decision in M.S.Benerjee Vs. Union of India & Others, 1996(1) ATJ (CAT (Cal.)) 307 reiterating the aforesaid ratio.

5. Learned counsel has also stated that admittedly no show cause notice has been served upon the applicant and he had received post retirement passes till 1990 and thereafter the same had been discontinued. Further placing reliance on a decision of Mumbai Bench in Kessu Thadharam Dudani Vs. Union

of India & Others, OA 1365/91, decided on 13.10.1995, contended that decision of Full Bench in Wazir Chand's case supra has already been upheld by a reasoned order by the Apex Court and the decision in Raj Pal Wahi's case supra has not dealt with the provisions of 1982 Circular and would not be applicable in the facts and circumstances of the present case. As the decision in Wazir Chand's case supra has been upheld by the Apex Court, is a binding precedent, the same is to be followed. Admittedly, no show-cause notice has been served upon the applicant before withholding of the post retirement passes, the action of the respondents is not legally sustainable.

6. Lastly, placing reliance on Railway Servant Pass Rules, 1986, it is contended that it contains no provision for withholding of passes as contended by the respondents and projected to have taken before the Apex Court in Raj Pal Wahi's case.

7. On the other hand, Shri R.L.Dhawan, learned counsel for respondents took a preliminary objection of limitation by stating that the applicant's passes have been withheld after 1989 and he made a representation in the year 1991 and having received a reply has not approached the Court and the OA filed after more than 14 years is clearly barred by limitation. In support of this, he placed reliance on a decision in Rattan Chandra Sammanta Vs. Union of India & Others, JT 1993(3) SC 418. It is further contended that there is no requirement of show-cause notice in the instant case as applicant had been apprised of withholding of passes, and was aware of

the rules. Being an unauthorised occupant the passes have been withheld as per the Railway Board's Circular which has the force of statutory law as held by the Apex Court. It is also stated that in Raj Pal Wahi's case a clarification has been sought which was placed reliance on a decision in OA No.665/1994 (Ishwar Singh vs. Union of India & Others), it is contended that issue regarding post retirement passes was also dealt with by the Supreme Court in Raj Pal Wahi's case and on an affidavit filed by the Railway Administration, the provisions of Railway Board Circular authorising the withholding of the post retirement passes more particularly which directly related to the unauthorised retention had been mentioned, and thereafter by way of clarification petition in IA 1/92 in the SLP, the Court was held that the petitioner therein is entitled for three passes from February, 1994, i.e., after the period of unauthorised retention is over as per 1982 Circular. As such it is contended that the vires of 1982 instructions had already been gone into and upheld by the Apex Court, it is binding and is to be followed and as the passes have been withheld in accordance with the ratio of the Apex Court there is no illegality on the part of the respondents. Shri Dhawan relied on a decision in OA 1604/93 (Ravi Kumar), O.A.No.2534/97 (M.A.Qureshi) as well as OA 1110/26 (J.P.Kapoor) to substantiate his aforesaid plea.

3. I have carefully considered the rival contentions of both the parties and perused the material on record. In so far as the objection on limitation is concerned, the same is not maintainable

notice. As, no show cause notice has not been served upon the applicant, there has been a breach of statutory rules and the action of the respondents is liable to be vitiated on that count alone.

12. In so far as the contention that in view of the Raj Pal Wahi's case supra after a clarification, prospectively the passes have been released and the provisions of 1982 have been gone into, the vires being upheld by the Apex Court, it is not open to the applicant/respondents to resort to Raj Pal Wahi's case supra, cannot be accepted. The aforesaid ratio has been meticulously dealt with in K.T.Dudani's case, and distinguished by holding that in Raj Pal Wahi's case the issue was interest in respect of amounts which has held and the provisions of 1982 Rules have not been dealt with. As per Full Bench decision in Wazir Chand's case supra non-compliance of the provisions of the Clause (iii) for want of show cause notice has been held ultravires and the action as illegal. This applies mutatis mutandis to the facts and circumstances of the present case. As the aforesaid provision of Rules and question of show-cause notice prior to withholding of passes has not been dealt with Apex Court and no filing has been arrived at, the same is distinguishable and would not apply in this OA. I agree with the decision of Mumbai Bench, in K.T.Dudani's case. The decision of the respondents without giving showcause notice is not in accordance with the Full Bench decision which is binding on me.

in view of the fact that as per Railway Servant Pass Rules, 1986, Railway employee is entitled to get two sets of post retirement passes. As the applicant's grievance is that since his retirement, he has not been issued even a single pass, cause of action is continuing and for which no limitation applies and Section 21 of the Administrative Tribunals Act, 1985 would not be attracted.

9. In so far as, the claim of the applicant is good on merits, in the interest of justice, the same is to be disposed of on merits as well. The contention of the applicant that he has not been served with a show cause notice as per the statutory rules/instructions issued by the respondents, in the year, 1982 is concerned, there is no rebuttal to it. Respondents, however taken a plea that as the applicant is aware about withholding of passes and was in an unauthorised occupation, is a deemed show cause to him and the action taken by them to withhold retiral passes is in order and in accordance with law. This cannot be countenanced. These instructions have force of law and provisions of Clause (ii) (iii) thereof have to be meticulously observed being a salutary provision. Before withholding these Post Retirement Passes, a show cause notice, is mandatory which admittedly has not been complied with in the present case.

10. As regards the knowledge about the rules or order issued by the respondents in 1992 would not confirm to the requirement of Clause (iii) ibid and consequently cannot be treated as deemed show cause

notice. As, no show cause notice has not been served upon the applicant, there has been a breach of statutory rules and the action of the respondents is liable to be vitiated on that count alone.

12. In so far as the contention that in view of the Raj Pal Wahi's case supra after a clarification, prospectively the passes have been released and the provisions of 1982 have been gone into, the vires being upheld by the Apex Court, it is not open to the applicant/respondents to resort to Raj Pal Wahi's case supra, cannot be accepted. The aforesaid ratio has been meticulously dealt with in K.T.Dudani's case, and distinguished by holding that in Raj Pal Wahi's case the issue was interest in respect of amounts which has held and the provisions of 1982 Rules have not been dealt with. As per Full Bench decision in Wazir Chand's case supra non-compliance of the provisions of the Clause (iii) for want of show cause notice has been held ultravires and the action as illegal. This applies mutatis mutandis to the facts and circumstances of the present case. As the aforesaid provision of Rules and question of show-cause notice prior to withholding of passes has not been dealt with Apex Court and no filing has been arrived at, the same is distinguishable and would not apply in this OA. I agree with the decision of Mumbai Bench, in K.T.Dudani's case. The decision of the respondents without giving showcause notice is not in accordance with the Full Bench decision which is binding on me.

12. Lastly, the learned counsel for applicant resorted to the decision in S.R.Shetti's case supra, which is latest on issue, it has been clearly laid down after meticulously dealing with the Mahadev's case as well as Wazir's cases post retirement passes cannot be withheld after the employee vacates the quarter, the same also, in all fours, covers the present case as well.

13. In the result, having regard to the discussion made and reasons recorded above, the present OA is allowed. The impugned order is quashed. Respondents are directed to release Post Retirement Passes to the applicant prospectively, i.e., from the date of the order. The aforesaid direction shall be complied with by the respondent within three months from the date of receipt of copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

/rao/