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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1798 of 1996

New Delhi, this the 3rd day of October, 1997.

Hon'ble Mr. N. Sahu, Member(A)

Akshem Chand
S/o Shri Karam Singh
Retd. Chunter/Driver,
N.Rly./Delhi Sarai Rohilla
R/o Qtr. No.116-A
DCM Loco Shed Colony
Delhi Kishanganj
Delhi

... Applicant

(By Advocate : Sh.G.D.Bhandari)

Versus

1. Union of India through
The General Manager
Northern Railway
Baroda House
New Delhi
2. The Divisional Railway Manager
Northern Railway
Bikaner

... Respondents

(By Advocate : Shri P.S.Mahendru)

ORDER

By Mr. N. Sahu, Member(A)

In this OA the applicant seeks a direction for payment of gratuity, commutation of pension with interest and to set aside the notice of the respondents dated 11.11.1995 whereby he was directed to vacate railway quarter within seven days. He further seeks a direction to the respondents to release the post-retirement complementary passes with effect from the date of vacation of railway quarters. When this matter came up for admission, the learned counsel for the applicant stated that he would be satisfied for a direction with respect to Para 8(b) and 8(c) and not for payment of gratuity and

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commutation of pension with 18% interest for which he would be filing a separate OA. This was decided after the court pointed out that the reliefs claimed in Para 8 are plural reliefs and inadmissible under Rule 10. The admitted facts are that the applicant was appointed as a Loco Cleaner and thereafter promoted as Fireman-B and Shunter. Thereafter he was promoted as Driver (Goods) vide letter dated 22.04.1991 subject to medical test. He was declared unfit for medical category A-1 to B-2 and he was declared fit for C-1 with C-2. He was, therefore, offered the post of Head Clerk in the grade of Rs.1400-2300 (Annexure A-5) which he refused and requested for retirement on medical grounds vide his letter dated 29.07.1994 (Annexure A-6). The applicant was due to retire on superannuation on 30.11.1994, his recorded date of birth being 07.11.1936. He was occupying railway quarter No.116-A, DCM Loco Shed Colony, Kishanganj, Delhi. After his retirement, he was allowed to retain the said quarter from 25.11.1994 to 24.03.1995 by an order of the competent authority dated 22.02.1995. He did not vacate the said quarter after the extended date and, therefore, his retirement dues by way of gratuity, commutation of pension as well as complementary passes were withheld.

2. The applicant contends that post-retirement complementary passes have to be given in accordance with the provisions of Rule 1554 of Indian Railway Establishment Manual and there cannot be any abridgement of this facility. He further states that

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recovery of penal rent without following the provisions of Section 7 of the Public Premises Eviction Act, 1971 is bad in law. He relies on Union of India & Ors. Vs. Shiv Charan decided on 23.04.1990 (Annexure A-12).

3. The respondents contend that as per Railway Board's letter dated 04.06.1983, PS No.8346, one set of post-retirement complementary passes is liable to be disallowed for every month of retention of railway quarter unauthorisedly by a retired railway employee. As per Railway Board's letter dated 26.05.1984 as circulated by GMPs letter No.720E/0/XXVIII(Pension) dated June, 1984 a show cause notice is required to be issued to the retired railway employee on receipt of his requisition for issue of post-retirement complementary passes. The applicant was not issued any show cause notice because he has not yet submitted any such requisition.

4. The Hon'ble Supreme Court in the case of Raj Pal Wahi & Ors. (SLPs 7688-91 of 1988) noted that -

"the only ground of challenge was that the Railway authorities were wrong in withholding the DCRG benefits and complimentary passes on the basis of administrative instructions issued by the Railway Board on 24.04.1982". The Supreme Court held that the petitioners were not entitled to get interest on the delayed payment of DCRG on the basis of

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the Railway Circular (dated 24.04.1982).

The Supreme Court had also noted the provisions in this Circular authorising the concerned Railway administration to withhold post-retirement passes directly related to unauthorized retention of Railway accommodation."

The learned Counsel for the applicant contended that the above case of Raj Pal Wahi could be distinguished on the ground that the extant orders and Railway Board circulars are not discussed. The same objection was raised in O.A. No.782 of 1993 which was decided on 16.09.1993 with the following observations: -

"The portion extracted from Raj Pal Wahi v. Union of India decided in the Hon'ble Supreme Court is reproduced below:

"There is no dispute that the petitioners stayed in the Railway Quarters after their retirement from service and as such under the extant rules, penal rent was charged on these petitioners which they have paid. In order to impress upon them to vacate the Railway Quarters, the Railway Authorities issued orders on the basis of the Railway Circular, dated the 24th April, 1982. Purporting to withhold the payment of death-cum-retirement

Paras 10-12

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gratuity as well as the Railway passes during the period of such occupation of quarters by them. The delay that occurred is on account of withholding of the death-cum-retirement gratuity on the basis of the aforesaid Railway Circular. In such circumstances, we are unable to hold that the petitioners are entitled to get interest on the delayed payment of death-cum-retirement gratuity as the delay in payment occurred due to the order passed on the basis of the said Circular of Railway Board and not on account of administrative lapse. Therefore, we are unable to accept this submission advanced on behalf of the petitioners and so we reject the same.

The Special Leave Petitions, thus disposed of. The respondents, however, will issue the passes prospectively from the date of this order."

In the above SLPs before the Supreme Court it was mentioned that the stopping of post-retirement complementary passes was only for a limited period directly related to the unauthorised retention of accommodation and is not for all times. This position was also noted by the Supreme Court.

5. From the above, it is clear that post-retirement complementary passes are liable to be withheld as long as the applicant was in unauthorised

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occupation of the quarter. However, this withholding can be done only after issuing a show cause notice. This issue of show cause notice does not depend on the requisition of the applicant for a free passage pass. The format prepared for the issue of show cause notice by the railway rules has no relationship with the requisition. By withholding the passes, the respondents are depriving the applicant of a valuable right. They should have issued the show cause notice and intimated their intention to withhold the complementary passes.

6. Be that as it may, as decided in OA-1638/93 on 09.11.1993 by the Principal Bench in the case of T.N. Sinha Vs. Union of India & Anr., withholding of passes has a direct relationship to the unauthorised retention of accommodation. This was impliedly approved by the Supreme Court in Raj Pal Wahi's case. Thus, till the applicant vacates the quarter, passes only covering the period of unauthorised occupation can be withheld. All subsequent passes after the vacaton of the quarter shall be released to the applicant within three weeks from the requisition given by him for such passes for the period after the date of surrendering the quarter on vacant possession to the respondents.

7. The only other ground that survives is the impugning of Annexure-A dated 11.11.1995. There are some decisions which favour the view that penal rent cannot be realised unless the allotment of the quarter was cancelled and the allottee remained in occupation

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even thereafter. Shri Bhandari, learned counsel for the applicant relies on the Full Bench decision in Wazir Chand - Full Bench Judgment of CAT Vol.II 287, according to which a Government employee is bound to pay licence fee for residential accommodation at the normal rate. Emphasis has been placed at Para 1711(v) of Clause 5 of IREM Vol.2 in which it was laid down that penal rent could be charged after the cancellation of the allotment but in Hingo Rani's case (AIR (1987) SC 808 and Shiv Charan's case 1991 Supp.2 SCC 386 their Lordships held that there was no necessity of issuing notice because a Government servant retaining the accommodation allotted to him beyond the prescribed period, the liability to pay damages equal to the market rent would arise from the period of such unauthorised occupation. By a circular dated 15.01.1990 issued to consolidate all the instructions on the subject of allotment and vacation of quarters, and also issued in supersession of all previous orders. By this circular dated 15.01.1990 if the period of retention of the quarter is not extended by the competent authority, the allotment would be deemed to have been automatically cancelled. There remains, therefore, no ground for passing a separate order of cancellation. In this view of the matter and in view of a long list of cases beginning from Shanker & others Vs. Union of India & others [(1994) 26 ATC 2781 which establish that damages and penal rent can be charged, cancellation order of allotment is not necessary and that there is no need to take recourse

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to the Public Premises Eviction Act for charging penal rent, there is no need to interfere with the notice dated 11.11.1995.

OA is disposed of as above. No costs.

N. Sahu 3-X-97
(N. Sahu)
Member (A)

/Kant/