

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 4 of 1997 decided on 27.4.1998.

Name of Applicants : 1) Sh. Prem Kumar
2) Kumari Anita

By Advocate : Sh. S K Sawhney

Versus

Name of respondent/s Union of India through the
General Manager & Others.

By Advocate : Sh. R L Dhawan

Corum: ~~Three members~~

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

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No

N. Sahu
(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 4 of 1997

New Delhi, this the 27th day of April, 1998

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

(N)

1. Sh. Prem Kumar, S/O Sh. Khillu Ram, R/O 204/4, Railway Colony, Kishanganj, Delhi.
2. Kumari Anita, D/O Sh. Prem Kumar, R/O 204/4, Railway Colony, Kishanganj, Delhi.

--APPLICANTS.

(By Advocate Sh. S K Sawhney)

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Chelmsford Road, New Delhi.
3. Divisional Suptdg. Engineer (Estate) Northern Railway, D.R.M. Office, New Delhi.

--RESPONDENTS.

(By Advocate -Sh. R L Dhawan)

O R D E R

By Mr. N. Sahu, Member(Admnv) -

The following reliefs are claimed in this OA:-

"i) Quash the Railway Board letter dated 12.2.1988, Annexure A-10 being hit by Articles 14 & 16 of the Constitution and not within the powers vested under Article 309 of the Constitution.

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(2)

ii) Direct the respondents to regularise Railway Quarter No. 204/4, Kishanganj Railway Colony, Delhi in the name of Applicant No. 2 on her appointment on 13.6.94. ✓

iii) Direct the respondents to release D.C.R.G. of applicant No. 1 which was due to him on his retirement on 18.9.1991.

iv) Direct the respondents to pay interest on the D.C.R.G. from the date of retirement to the date of appointment at the rate of 18% per annum.

v) Direct the respondents to release post retirement passes of applicant No. 1 which were due to him on his retirement on 18.9.1991.

vi) Grant any other relief that this Hon'ble Court may deem fit; and

vii) Award costs of this application".

The background facts are as under:-

1. The applicant No. 1, Sh. Prem Kumar was declared medically unfit and was retired on 18.9.1991 on medical grounds. His wife Smt. Laxmi Devi applied for

compassionate appointment on 18.12.1991. On 11.2.1993, the respondents, after a gap of 15 months, declined to accede to her prayer, on the ground of advanced age. They stated that her daughter's case could be considered. The daughter, Kumari Anita, Applicant No. 2 immediately applied and after a gap of 10 months thereafter an interview was held in December 1993. After another gap of 6 months, she was appointed as a Commercial Clerk. She under-went training at Zonal Training School, Chandausi from 13.6.1994 to 15.9.1994. She was posted at New Delhi Railway Station on 20.10.1994 on regular basis. She applied for regularisation of Railway Quarter No. 204/4 on 17.11.1994. She was asked to submit certain particulars by a letter dated 2.6.1995 signed by Divl. Suptdg. Engineer/Estate, Northern Railway, New Delhi. The necessary particulars and information were immediately supplied. She was intimated, vide letter dated 13.11.1996, that her request for regularisation of the aforesaid Railway Quarter has been rejected. Thereafter, by a notice dated 21.11.1996 received by the applicant on 9.12.1996, the respondents informed the applicant that he was retired on 18.9.1991 and he was permitted to retain the Railway Quarter upto 31.3.1992 and, therefore, he was declared as an 'Unauthorised Occupant' of the Railway Quarter w.e.f. 1.4.1992. He was, therefore, directed to vacate the said Railway Quarter within 10 days from the date of issue of the notice. It is clearly mentioned, in that notice, that eviction proceedings under the Public Premises (Eviction of Un-authorised Occupants) Act, 1971 would be initiated and recovery on account of damages for unauthorised occupation would be made from the retirement dues as per

(b)



(4)

rules. Under the rules further one set of post retirement/complimentary pass is liable to be disallowed for each month of unauthorised retention of Railway Quarter. (A)

2. The applicant contends that the delay in granting an appointment to applicant No. 2 was entirely attributable to the respondents. The applicant No. 2 is, otherwise, fully eligible for consideration of regularisation. The applicants relied on the Full Bench case of **Wazir Chand Vs. Union of India** and the Hon'ble Supreme Court's decision in the case of **R Kapoor Vs. Union of India**. It is also urged that the withholding post retirement passes of the applicant No. 1 was in breach of the statutory provisions as contained in Railway Servants (Pass) Rules, 1986.

3. After notice, the respondents stated that under the Railway Board instructions No. E(G) 90 QR 1-11, dated 15.3.1991 and another letter of the said Board No. E (G) 85 ARI-9, dated 15.1.1990, the applicant's claim for regularisation cannot be allowed. Annexure R-1 cited (Supra) states that the regularisation of allotment of Railway Quarters in the name of eligible dependent of Railway employee who retires from service cannot be considered after the lapse of 12 months from the date of retirement. In terms of Rule 16 (7) of the Pensions Rules 1993, it is stated that a Railway servant shall vacate the railway accommodation immediately after retirement. Rule 16 (8) states that in case where a Railway accommodation is not vacated by a Railway servant after superannuation, the full amount of retirement

gratuity, and special contribution to provident fund shall be withheld. The amount so withheld shall remain with the Administration in the form of cash which shall be released immediately on the vacation of such railway accommodation. Therefore, on the basis of Rules 16 (7) and 16 (8) of the Railway Service (Pensions) Rules, 1993, the respondents declared that the applicant No. 1 is in unauthorised occupation of the Railway quarter from 1.4.1992.

4. Learned counsel for the respondents Sh. R L Dhawan had submitted that the Hon'ble Supreme Court laid down the law in the case of S.S. Tiwari Vs. Union of India as well as in Kehar Singh's case, to the effect, "that a Ward who got employment more than one year after the retirement/ death of the original allottee is not entitled for regularisation of the quarter, in his name." In the case of Union of India Vs. Ujagar Lal (JT 1996 (10) SC 42), the Hon'ble Apex Court has upheld the rights of the Railway administration to withhold the full amount of gratuity for non-vacation of Railway quarter and rejected the claim of the railway servant for payment of interest on gratuity. There is acute shortage of railway accommodation and the list of waiting staff is long. Thus, unauthorised occupation does not call for any relief. As eviction proceedings are usually protracted, and used as a handle for continued stay, the Railway administration had taken the steps not only to withhold the amount of gratuity which is as per statutory rules 16 (8) but also decided that one set of post retirement/complimentary pass should be withheld for each month of unauthorised occupation. In spite of these

draconian, deterrent measures the retirees, like the applicants, continue to stay for long, there is no case for showing any sympathy for such persons.

5. The learned counsel for the respondents cited the Circular of the Railway Board dated 4.6.82 and the decision of this Tribunal in the case of **Sh. Iswar Singh Vs. Union of India** in OA 685/94; the later it is held as under:-

"13. As regards the relief relating to release of post retirement passes this issue was also before the Hon'ble Supreme Court in Raj Pal Wahi's case mentioned *supra* : (SLP 7688-91-1988). In the affidavit filed by the Railway Administration the provisions of the Railway Board circular authorising the withholding of post retirement passes directly related to the period of unauthorised retention had been mentioned. This position was noted by the Hon'ble Supreme Court in the orders passed by the Apex Court on 27.11.1989 in this SLP. Further clarificatory petition was filed by the Railway Administration and this

clarificatory petition in IA 1/92 in the said SLPs were disposed of with the following order:-

The application for clarification of the order dated 27.11.89 does not survive any more as admittedly the petitioner Sh. Raj Pal Wahi is entitled to 3 passes from Dec 1994. In the result the IA is dismissed.

14. In view of the above, the relief regarding retirement passes cannot be granted and the applicant will be eligible for the passes as per rule."

6. In view of the Hon'ble Supreme Court's decisions cited above, the claim of the applicant for regularisation of the Railway quarter at Kishan Ganj, Railway Colony is rejected. The claim of the applicant for release of D.C.R.G. cannot be allowed till he is in occupation of the quarter. In view of the Ujagar Lal's case, the claim of the applicant for payment of interest on the D.C.R.G. is also rejected.

(21)

7. Counsel for the respondents has cited a decision of this Bench dated 25.11.1995 in the case of **Union of India and Others Vs. Amar Nath Dhupar**, OA No. 403/95 and also cited a judgement in the case of **A. N Bandyapadyay Vs. Union of India**, OA No. 562 of 1994, dated 14.2.1995. He further cited that the applicant has signed a declaration immediately after retirement "that in the event of unauthorised retention of Railway quarter, the entire D.C.R.G. payable to me shall be withheld till the quarter is finally vacated and the arrears of rent, electricity and other charges are cleared by me." He also gave the undertaking "that for everyone month of unauthorised retention of Railway quarter one set of post retirement passes admissible to me under the rules shall also be disallowed."

8. Learned counsel for the applicant cited the decision of CAT, Principal Bench, dated 15.4.1991 in the case of **Manmohan Singh Vs. Union of India**. The Larger Bench decision ^{in WAZIR CHAND AIR} was to the effect that the 1982 Circular was ultra vires of Article 14 of the Constitution. As far as Raj Pal Wahi is concerned, this matter was not raised before the Hon'ble Supreme Court. Similarly, on the payment of interest also no question was raised that only an appropriate amount of DCRG should have been retained and the retention of any amount in excess of the appropriate amount was illegal and, therefore, such retention should render the respondents liable for payment of interest.

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9. After this order was passed, we have on the Statute Book Rule 16 (8) which permits retention of the entire amount of gratuity and, therefore, the applicant cannot now question whether a part of the gratuity can only be retained. The order in OA 2163/89 has now become unenforceable in view of the statutory provisions in the amended Pension Rules.

10. Compassionate appointment and regularisation of the railway quarter are two different and unrelated issues. The delay in disposing of the applicant's claim for compassionate appointment has no relationship with the vacation of quarter. After retirement, the applicant has no moral or legal right to continue to occupy the quarter depriving similarly placed other railway employees of their rightful claim to occupy the quarter. There is no need for Railway administration to give any notice that the applicant is an unauthorised occupant if it does not want to invoke the Public Premises Act. The rules on the subject are very clear. There is a period of permissible extended stay of four months after the retirement and immediately after that period expires, the rules state that the applicant can only be treated as an unauthorised occupant. I would respectfully follow the decisions of Division Bench, Calcutta in the case of **Arun Kr. Sarkar Vs. Union of India & Others** - OA No. 384 of 1994 Swamy's Case Law Digest - 1994/2 842 and **Suda Iswar Rao Vs. Union of India & Others** - OA No. 463 of 1994 Swamy's Case Law Digest - 1994/2 846. In the latter decision, the Division Bench held as under:-

(23)

"We are of the considered view that we have to hold relying on our earlier judgment in Shankar and Others Vs. Union of India [1993 (2) ATJ 553], that the respondent authorities have jurisdiction to recover penal rent from the applicant for his occupation of quarter after expiry of two months of his transfer from Asansol, as in view of the appropriate Railway Board's circular, his occupation after expiry of two months from transfer to Mughalsarai is unauthorized.

As regards the other points taken by the learned Advocate for the applicant, namely, that proceedings for recovery of penal rent had to be initiated under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, our earlier judgment has clearly considered and held that this is one of the alternative remedies and is not the only remedy.

On the point as to whether a show-cause notice is required to be issued before recovering penal rent, we have already taken the view in the earlier judgment that as the applicant, being a railway employee was fully aware of the appropriate Railway Board's circulars and was also aware that in case of unauthorized occupation he will be liable for penal rent, prior show-cause notice was not required to be issued. The Supreme Court has clearly held that in all cases, the principle of natural justice is not required to be followed before passing an appropriate order."

11. The question that finally remains to be answered is whether complimentary passes can still be withheld for non-vacation of the quarters. There are several category of passes; one such category is post retirement passes.

(2A)

This is governed by Schedule IV. Rule 8 of the Railway Servants (Pass) Rules, 1986 and the relevant provisions of Schedule IV are extracted hereunder:-

Rule 8

8. Post-retirement Pass- (1) A post-retirement pass may be issued to a railway servant after retirement or after he ceases to be a railway servant.

(2) The category of railway servants, the circumstances and the conditions subject to which a pass under sub-rule (1) may be issued shall be as specified in Schedule IV.

Extracts of Schedule IV

Post-retirement complimentary pass

Category	Number of passes admissible in one year
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Group A & B

- a) With 20 years service on Railways and above but less than 25 years 2 sets
- b) With 25 years service on Railways and above. 3 sets

Group C

- a) With 20 years service in the Railways and above but less than 25 years. 1 set

Conditions for issue of post-retirement complimentary pass

(i) Post-retirement Complimentary Passes are issued to railway servants for self, wife/husband and children only subject to the same conditions as applicable to railway servants in service

Other facilities

(i) A retired railway servant may be issued on his request one set of complimentary pass in the last month of the current calendar year for journey commencing on the next year duly debiting such issue of complimentary pass in the next year's account.

(25)

12. The power to retain the full amount of the gratuity for non-vacation of the quarter has now a statutory basis. There is no similar provision by way of an amendment in the Railway Servants (Pass) Rules, 1986 enabling the Railway Administration to withhold such passes. The operative substantive portion is extracted above. Withholding of retirement pass has been disapproved by the Full Bench in the case cited (Supra) as unconstitutional. The Hon'ble Supreme Court, in Raj Pal Wahi's case, has held that after the vacation of the quarter passes can be issued prospectively. In the present case, the applicant was retired on 18.9.1991. At the rate of one set of pass for one months' unauthorised occupation, the applicant shall be denied this benefit even if he lived for another 30 years because he continued to occupy the quarter for more than six years after retirement. The question to be answered is, what is the relationship between issue of retirement passes and unauthorised occupation of quarter? Secondly, what purpose does such a step subserve? If the idea is to deprive the applicant from a facility conferred by a statute, merely ^{an} executive ^{an} instruction cannot enable the respondents to take such a drastic step. With regard to gratuity, there is a causal relationship between unauthorised occupation and withholding of gratuity. By unauthorised occupation, the employee exposes himself to penal rent. The recovery of this penal rent alongwith normal rent poses a problem. If gratuity is also released, the employer has no means of realising arrears of rent, penal rent to be levied for the period of unauthorised occupation and other such dues. Thus, withholding of gratuity for recovery of outstanding



dues, losses which are defined in Section 15 of the Railway Pension Rules 1993 and penal rent is done as a measure to safeguard the interest of revenues of the Railway Administration. This withholding has a statutory sanction under Section 15 and 16 of the Railway Pension Rules. No such purpose could be achieved by withholding the railway passes. No such statutory sanction also exists. Even if such a step is perceived as serving as a deterrent, it does not seem to have any rational basis. Respondents have taken a declaration from the applicant that he would forego these passes. What is due to him under the statute cannot be taken away from him by means of a self-denying declaration which he is forced to make in order to continue to retain Govt. accommodation. The Railway (Pass) Rules, 1986 are framed under Article 309. Executive instructions can be issued only to fill up gaps on matters in respect of which the rules are silent. It is settled law that the rules cannot be amended ~~are~~ ^{or} superceded by administrative instructions. It is also settled law that administrative instructions cannot be superimposed to enforce any other obligation inconsistent with the rules. For the above propositions, the following are the authorities of the Hon'ble Supreme Court:-

1. The Commissioner of Income-tax, Gujrat Vs. M/s. A-Raman & Company - AIR 1968 SC 49.
2. State of Gujrat Vs. Akhilesh C. Bhargav & Others - AIR 1987 SC 2135.
3. P D Aggarwal & Others Vs. State of U.P. & Others - AIR 1987 SC 1676.

(21)

4. S L Sachdev & Others vs.
Union of India & Others -
AIR 1981 SC 411.

13. That the statutory rules cannot be altered by administrative instructions is laid down by the Hon'ble Supreme Court in the case of Ex. Capt. K Balasubramanian & Others vs. State of Tamil Nadu & Others - (1991) 2 SCC 708.

14. The instructions to withhold and impliedly to forfeit one set of passes for one month of unauthorised occupation has no sanction either in statute or in a rule which has statutory force. There is no rational connection between the restrictions sought to be imposed and the object it seeks to achieve. The railway passes, like pension and gratuity, are rights in property. Only gratuity can be retained because there is a statutory power authorising the step. The above statutory provisions relating to issue of passes cannot be modified ~~out of~~ ^{only} existence by an executive instruction. The vires or constitutionality of such an act has not been raised or discussed in the judgement of the Hon'ble Supreme Court in Raj Pal Wahi's case. Even otherwise, Raj Pal Wahi clearly allowed release of the passes prospectively after the retirees vacated the accommodation.

15. In view of the decision of the Full Bench cited (Supra) and also in view of Raj Pal Wahi's case, the respondents can only enforce non-issue of passes till the accommodation is not released by vacation of the same. But once the accommodation is released, the respondents cannot still deprive the applicant of the said passes on

the ground that he forfeits the same at the rate of one set of passes per month. To enforce such a rule is ~~at least~~ ^{defensible} from the date from which the applicant is no longer a defaulter. In doing so, the respondents are not attaching any sanctity to what the retiree has earned after rendering a life time of service. The Full Bench has held, in the case of **Wazir Chand Vs. Union of India & Others**, Full Bench Judgments (CAT) Vol. II 303, as under:-

"20. Re (ii) - Adverting to the question of validity of withholding of one set of post-retirement pass for each month of retention of railway quarter, it is scarcely necessary to point out the obvious import of the provisions contained in clause (iii) of para 1 of 1982 Circular. This clause envisages disallowing of one set of post-retirement pass for each month of unauthorised retention of railway quarters. Recourse to the withholding of post-retirement passes can be had only after the retired railway servant has been adjudged to be in unauthorised occupation of the railway quarter. In other words, disallowing of post-retirement passes before such adjudication would not be legally in order. The question of this Circular being hit by Article 14 of the Constitution, however, a separate question. We may also pause here to point out that the requirement of issuing a show-cause notice prior to withholding the post retirement passes is a sine qua non to the taking of action envisaged by clause (iii). This wholesome condition precedent is more often observed in breach. This point has come to our notice in several Applications, which have been allowed on account of the failure to give a show-cause notice. Holding as we do that 1982 Circular infracts Article 14 of the Constitution, the action to withhold post-retirement

passes on the basis of this circular shall also have to be held unsustainable. We hold so. (29)

16. In this case, I hold that there cannot be a running account of withholding 72 sets of passes depriving the applicant the right to free travel for 72 years, for six years of non-vacation and the respondents cannot enforce withholding for 72 years after retirement. This is a draconian measure which is unheard of. I, therefore, hold that the passes shall be released from the calendar year from which the applicant vacated the quarter and no cumulative carry forward punishment contemplated under the instructions can be held against him.

17. The OA is disposed of as above. No costs.

Kumar
(N SAHU)
MEMBER (ADMNV) 27-4-98

/sun/