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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

OA 2438 of 1989

Decided on 3-8-1990

Shri M.P.Singh Bali,
r/o B-49, Greater Kailash-II,
New Delhi

.... Applicant

VERSUS

Union of India through
the General Manager,
Northern Railway, Baroda House,
New Delhi. ... Respondent

For the applicant - Mr. B.S.Mainee, Advocate
For the respondent - Mr. O.N.Moolri, Advocate.

JUDGMENT : (delivered by Hon'ble Mr.B.S. Sekhon, VC)

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The grievance which the applicant seeks to get redressed by filing this Application under Section 19 of the Administrative Tribunals Act, 1985 is against the order of withholding of 10 sets of complimentary passes. The reason for withholding of complimentary passes is the alleged unauthorised occupation of the Railway quarter by the applicant. Applicant retired from the post of Chief Claims Officer, Northern Railway on 31st August, 1987 after putting in about 30 years of service in I.R.T.S.cadre. He was permitted to retain the railway accommodation for a period of four months on payment of normal rent and for a further period of four months ending 30th April, 1988 on usual normal rent. Applicant has assailed the impugned order dated 8-11-89 (Annexure A-1). The salient grounds on which the applicant has assailed the impugned order are

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that no show cause notice as envisaged by Railway Board letter No. E(G)/81-QR/1/51 dated 17.5.85 had been issued to him prior to withholding the post retirement passes; the retention of railway quarter by him cannot be deemed to be unauthorised till the heavy amount of gratuity was paid to him; and that withholding of complimentary passes is a penalty and has ^{been} subjected to double jeopardy.

2. Respondent's defence as disclosed in the counter is that the applicant was a highly placed officer, who had full knowledge of the consequences of retention of quarter beyond the authorised period; the withholding of passes is justified as the applicant was in unauthorised occupation of the railway quarter; and that the issuing of a show cause notice is not a mandatory requirement. It has been further pleaded by the respondents that the issuance of complimentary passes is only a matter of privilege and is not a matter of right and that the withholding thereof is not a punishment.

3. After considering the arguments addressed by the learned counsel for the parties, the pleadings of the parties and the documents on record, we find that the impugned order is clearly unsustainable. A perusal of the instructions contained in Railway Board's letter dated 24.4.1982 goes to show that requirement of issuing a show cause is a sine qua non to the withholding of post retirement passes even in the case of unauthorised retention of a railway quarter. The plea that the applicant was a highly placed officer,

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had knowledge of the rules and as such no show cause notice was required to be issued in his case is clearly untenable. The aforesaid instructions do not make any distinction between a highly placed officer and a junior officer regarding the condition-precedent of issuing show cause notice. We are also unable to countenance the plea that the issuing of a show cause notice is not mandatory. The requirement of issuing a show cause notice has been prescribed with a view to complying with the principles of natural justice. In view thereof, the aforesaid submission cannot be said to be directory. The same is mandatory and we hold so. No show cause notice had, admittedly, been issued to the applicant prior to passing the impugned order. The aforesaid omission to give a show cause notice is fatal to the impugned order and vitiates the same. Consequently, the impugned order is hereby quashed. No order as to costs.

I.K.Rasgotra
(I.K.Rasgotra)
AM 31/8/90

B.S.Sekhon
(B.S.Sekhon)
VC
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