

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO. 1815/88

DATE OF DECISION: November 7, 1990

SHRI BISHAMBER NATH MALHOTRA APPLICANT

VERSUS

UNION OF INDIA

RESPONDENTS

SHRI B.S. MAINEE

COUNSEL FOR THE APPLICANT

SHRI O.N. MOOLRI

COUNSEL FOR THE RESPONDENTS

CORAM:

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

JUDGEMENT

(Delivered by Hon'ble Mr. I.K. Rasgotra, Member(A))

Shri Bishamber Nath Malhotra has filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the order of the respondents forfeiting his post-retirement complimentary passes and recovery of penal rent from the Death-Cum-Retirement Gratuity (DCRG) due to him. A brief resume of the case is that the applicant retired on superannuation on 31.10.1982 but did not vacate the railway quarter until 14.10.1984. Thereafter, in the month of November, 1984 an amount of Rs. 14,753/- was paid to the applicant as DCRG after deducting the penal rent for the period of his over stay in the quarter. In the meantime post-retirement complimentary passes were also disallowed in accordance with the Railway Board's letter No. E(G)81/QRI-51 dated 4.6.1983 at the rate of disallowance of one post-retirement complimentary pass for every one month of unauthorised retention of the said railway quarter. This decision was intimated to


Contd...2

him vide Memorandum No. 724 E/577(E III) dated 26.3.1984 at Annexure A-I (page 12 of the paper book). In fact the order dated 26.3.1984 is the cause of action and not Annexure A-2, termed as the impugned order in the application. The said Annexure A-2 is nothing but a letter dated 28.12.1987 from the applicant requesting the respondents to issue him post-retirement complimentary passes.

By way of relief the applicant has prayed that the order of the respondents dated 26.3.1984 be quashed and the respondents be directed to issue him the post-retirement complimentary passes; and that the respondents be directed:

- (a) to pay interest on the amount of DCRG from the date of expiry of 2 months from the date of retirement till November, 1984; and
- (b) to refund the amount of penal rent recovered from the gratuity.

2. Shri B.S. Mainee, learned counsel for the applicant submitted that the case of the applicant is fully covered by the Full Bench Judgement of the Tribunal in the case of Shri Wazir Chand Vs. UOI In OA No. 2573/89 delivered on 25.10.1990. He, therefore prayed that the benefits available in terms of the Full Bench Judgement(Supra) may be extended to the applicant.

3. Shri O.N. Moolri, the learned counsel for the respondents submitted that the applicant has only challenged the order regarding non-issuing of post-retirement complimentary passes to the applicant

and the scope of relief prayed for by the applicant should be restricted to that issue alone. He contended that the applicant has no right to claim interest on the DCRG, and refund of the penal rent, as no order relating to these grievances has been challenged by him.

4. We have heard the learned counsel for both the parties and considered their submissions and the record carefully.

It is not disputed that the impugned order relates only to the post retirement complimentary passes. Nevertheless, the core issue in the case is that of non-vacation of the Railway quarter by the applicant and consequently the withholding of the post retirement complimentary passes and the DCRG by the respondents. All the three grievances are inter-related. In other words, they originate from the same source. We, therefore, are not persuaded to accept the argument that the Tribunal should consider relief only in respect of the order challenged by the applicant.

As far as the issue of post-retirement complimentary passes is concerned, the Full Bench of the Tribunal in its Judgement dated 25.10.90 in OA NO. 2573/89 has held that:

"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 imports of the provisions contained in clause (iii) of para 1 of 1982 Circular.

This clause envisages dis-allowing 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 is, 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".

In this case the respondents have failed to issue the show cause notice to the applicant before taking decision to disallow the post retirement complimentary passes. In the circumstances the order of the respondents dated 26.3.1984 is not legally sustainable and is accordingly set aside.

Again on the issue of DCRG, the Full Bench has held that withholding of entire amount of DCRG of a retired railway servant so long as he does not vacate the railway quarter is legally impermissible. We find that the DCRG to the applicant fell due after the date of his retirement on 30.10.1982. He has not even been paid the interest at the rate allowed under the rules from the date the DCRG fell due, to the actual date of payment in November, 1984. Keeping in view the circumstances of the case and the fact that DCRG was withheld illegally, we order and direct that the applicant should be paid interest at the rate of 12% from 1.2.1983 to the date of actual payment in November, 1984 on the amount of DCRG actually disbursed to him.

Regarding the refund of the penal rent we find that neither the applicant nor the respondents have filed any papers leading to the declaration of the continued occupation of the railway quarter after retirement as unauthorised, action taken thereafter under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and orders passed for recovery of the penal rent, if any. In the absence of relevant material before us we decline the relief claimed.

In summary, we order and direct ~~that~~ the respondents:

- i) to restore post-retirement complimentary passes to the applicant; and

ii) to pay interest at 12% on the amount of gratuity paid to him from 1.2.1983 to the date of actual payment in November, 1984.

There will be no orders as to the costs.

I.K. Rasgotra
(I.K. Rasgotra)
Member(A) 2/11/1990

AB 2-11-90
(Amitav Banerji)
Chairman