

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD

Dated the 21st Day of November, 1997

ORIGINAL APPLICATION NO. 176 OF 1996

HON'BLE MR.D.S.BAWEJA, MEMBER(A)

Tej Bahadur Singh, Ex-Office Supdt.,
Asstt. Engineer (Bridge), E.Rly.,
Mughalsarai, Varanasi.

.... Applicant

C/A : - Shri A.K.Banerjee

Versus

- (1) Union of India through the General Manager, Eastern Railway, Fairlee Place, 17, Netaji Subhas Road, Calcutta-1.
- (2) The Divisional Railway Manager, E.Railway, Mughalsarai, Varanasi.
- (3) The Sr. Divisional Personnel Officer, E.Railway, Mughalsarai, Varanasi.

.... Respondents

C/R : - Shri A.K.Gaur

O R D E R
(ORDER BY HON'BLE MR.D.S.BAWEJA, MEMBER(A))

This application has been filed making prayer for the following reliefs:-

- (a) To quash impugned order dated 16.01.95 rejecting the claim of the applicant for issue of post retirement complimentary passes.
- (b) To direct the respondents to reimburse the amount already incurred as expenses for purchasing the tickets for destinations to cover journeys amounting to Rs.1,09,342/- from the year 1988 to 1994 alongwith 18% interest per annum till the date of payment.

(V)

2. The applicant while working as Supdt. Grade-II, under Asstt.Engineer(Bridge), Eastern Railway, Mughalsarai was imposed a punishment of removal from service which was subsequently converted into compulsory retirement on Revision Appeal. The applicant had challenged the punishment order through O.A. No. 1085 of 1989. The applicant at the time of imposition of penalty of removal from service was occupying a railway quarter at Mughalsarai. After imposition of the penalty, the applicant was treated as unauthorised occupant of the quarter and no complimentary passes were issued to the applicant since 1988. The applicant made several representations against the same. However, only by the impugned order dated 16.01.1995, the applicant has been replied stating that as per the extant rules, one set of post retirement complimentary pass will be disallowed for every one month of unauthorised retention of the railway quarter. Being aggrieved, the present application has been filed on 13.02.96 seeking reliefs as detailed above.

3. The applicant has advanced the following grounds in support of the reliefs prayed for :-

(i) Withholding of passes of either serving railway servant or retired servant cannot be done without following disciplinary proceedings under the extant rules as withholding of passes is one of the minor penalties laid down in the Rule 6 of Railway Servants (Discipline & Appeal)Rules,1968. In respect of retired railway servant, sanction of ^{the} President is required to impose any such penalty.

(ii) Railway Board's letter dtd.24.04.82 circulated by Chief Personnel Officer, Eastern Railway under circular no.84/82 provides issue of show cause notice to the retired employee before disallowing the passes. However, no such show cause notice was issued before disallowing the complimentary passes to the applicant. Hence, the action of the respondents is illegal.

(iii) The respondents are only authorised to deduct the penal rent for the alleged unauthorised occupation of the quarter under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 but there is no authority to withhold the post retirement complimentary passes.

4. The respondents have opposed the application by filing Counter Affidavit. The respondents have submitted that on imposition of punishment of compulsory retirement, the applicant should have vacated the quarter. However, he did not vacate the quarter and in terms of Circular No.84 of 1982 of Eastern Railway which contains the contents of the Railway Board's letter dtd.24.04.82, one set of pass has been disallowed for each month of unauthorised retention of railway quarter. The action has been taken as per the extant rules laid down by the Railway Board and thus no irregularity has been committed in disallowing the passes to the applicant. In view of these facts, the respondents state that there is no merit in the application and the same deserves to be dismissed.

5. The applicant has controverted the contention of the respondents through rejoinder reply. The grounds taken in the original application have been reiterated. The applicant has also submitted that as the final order dtd.31.05.96 in O.A.No.1085 of 1989, the punishment of compulsory retirement has been declared as illegal and void.

6. I have heard Shri A.K.Banerjee, learned counsel for the applicant and Shri M.K.Sharma, brief holder to Shri A.K.Gaur, learned counsel for the respondents. The material brought on the record has been also carefully considered.

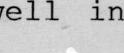
7- The facts with regard to the imposition of punishment of compulsory retirement and retention of the quarter by the applicant after imposition of punishment are admitted. The main defence of the respondents is that the post retirement complimentary passes have been disallowed for unauthorised

occupation of the quarter in terms of the instructions laid down in the Railway Board's letter dtd.24.04.82 brought on record at R-1 with the counter reply. The applicant has contested this stating that the Railway Board's letter under reference was the subject matter of consideration by the Full Bench in the case of Wazirchand v/s Union of India & Others and it has ^{been} held that the post retirement complimentary passes cannot be withheld for unauthorised occupation of the quarter. The applicant has also cited the support of the order in the case of M.S.Banerjee v/s.Union of India & Others of Calcutta Bench 1996(I) ATJ 307 and ~~also~~ the order of the Patna Bench in O.A.No.19 of 1997 in the case of Shiv Shanker Vishwakarma V/s Union of India & Others decided on 04.08.97.

8. I have gone through the judgment of Full Bench in the case of Wazirchand v/s.Union of India & Others wherein the validity of the Railway Board's letter dtd.24.04.82 has been considered. The question with regard to the disallowing of one set of pass for every month of unauthorised retention of the quarter has been answered as under:-

"Disallowing of one set of post retirement pass for every month of unauthorised retention of railway quarter is also unwarranted."

Order of Calcutta Bench in the case of M.S.Banerjee v/s.Union of India & Others has also held the same view referring to the decision of Full Bench in the Wazirchand's case. Subsequent to the Full Bench judgment, a similar view has been held in several orders of the various Benches that the post retirement complimentary passes cannot be disallowed for unauthorised occupation of the quarters. Some of the recent reported cases are, Amarnath Dhupal V/s.Union of India & Others (1996) 33 ATC 809 and M.P.Kanal V/s Union of India & Others (1997) 35 ATC 208. ~~and~~ in all the judgments referred to above, complimentary passes have been allowed to be issued prospectively. Keeping in view of the decision of the Full Bench in the Wazirchand's case and the other various Benches subsequent to that, I hold that the applicant is entitled for issue of the post retirement complimentary passes prospectively.

9. As regards the claim of the applicant for reimbursement of the expenditure incurred by him in undertaking the journeys from 1988 to 1994, I do not find any merit in the same. The journeys have been undertaken by the applicant at his own risk. In case the applicant felt aggrieved due to non issue of the passes, then he should have agitated the matter well in time for seeking the relief. The applicant has been keeping  quiet since 1988 and undertaking journeys to his requirement. No reimbursement for making such journeys can be allowed. As indicated earlier, issue of passes can be allowed only prospectively and non issue of the passes for earlier years cannot be allowed to be converted into money value. This view has been also taken in the order in the case of M.P.Kanal v/s.union of India & Others, referred to above.

10. In view of the above, the application is partly allowed with the direction that the respondents will start issuing the passes to the applicant prospectively as per the extant rules starting from the current year of 1997 onwards. No order as to costs.

~~MEMBER (A)~~

/rsd/