

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 8th day of August 1996.

Original application No. 899 of 1995.

Hon'ble Mr. D.S. Baweja, AM

Jawahar Lal Sonkar, S/o Budhoo Ram,
R/o House No. 31, Pura Padain, Daraganj,
Allahabad (Ex. Switchman) Fatehpur Station,
Northern Railway.

..... Applicant.

C/A Sri K.N. Katyar

Versus

1. Union of India through General Manager,
Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern
Railway, Allahabad.
3. Senior Divisional Personnel Officer,
Northern Railway, Allahabad.

..... Respondents.

C/R Sri A.K. Shukla

O R D E R

Hon'ble Mr. D.S. Baweja, AM

This application has been filed with a prayer to direct the respondents to issue two sets of post retirement Railway Complementary passes per year prospectively.

2. The applicant while working as Switchman

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Fatehpur Station, Northern Railway under Allahabad Division retired from service on 28.2.87 after completion of 39 years of service. As per para 101 of pass Manual of Northern Railway (extract placed at annexure A-1) the applicant is entitled for two sets of post retiral complementary passes every year. The applicant vacated the Railway quarter at Fatehpur on 30.4.91. Due to non vacation of the quarter after retirement, the entire amount of gratuity and leave encashment and issue of passes was withheld. These payments were released in August 1991 when he vacated the quarter. However the complementary Railway passes as admissible are not being issued. The applicant has made several representations starting with application dated 13.7.91 but no reply has been received from the Administration. Being aggrieved, the present application has been filed on 31.8.95.

3. The applicant has based his claim for relief on the grounds (a) Non issue of Railway passes entails double jeopardy as this penalty is in addition to withholding of gratuity, leave encashment and recovery of penal rent. (b) Stoppage of issue of passes for non vacation of quarter and further non issue even after the vacation of the quarter is a penalty imposed without following the rules and in fact there is no such provision in para 178 of the Northern Railway pass Manual. Therefore the action of the respondents is arbitrary, illegal and ultra vires of the Constitution of India. The applicant has sought support of judgements (i) Principal Bench, New Delhi, "Inderjit Singh Vs. U.O.I. (1993) 25 ATC 446 (ii) Wazir Chand Vs. U.O.I. (1996) 32 ATC 370 (FB) Principal Bench, New Delhi.

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4. The applicant in the application has prayed for relief of issue of two complementary Railway passes every year prospectively from 1991 onwards. However during the hearing for admission on 13.9.95, the applicant's counsel made a statement at Bar that the relief of issue of passes prospectively from 1995 onwards is sought instead of 1991. This was also confirmed by the applicant's counsel at Bar during ^{the} final hearing on 19.7.96.

5. Respondents have resisted the application through counter affidavit. It is submitted that for unauthorised occupation of the house, withholding of payment of gratuity, leave encashment, recovery of the penal rent and disallowing of the passes had been done, in terms of Railway Board Letter dated 24.4.82 and circulated by Northern Railway vide Pension circular PS No. 7/82 of 4.6.82 (Annexure I of the counter). ^{As regards} Issue of complementary passes in terms of Railway Board's policy instruction dated 24.4.82 for every month of unauthorised occupation of Railway quarter, one set of post retirement complementary pass is to be disallowed. Keeping in view the period of unauthorised occupation of the Railway quarter, no pass becomes due at the present. In addition to these averments, the respondents have also opposed the application being highly time barred, as the applicant retired on 28.2.87 and filed the application only on 31.8.95. In view of these facts the application is not maintainable and the applicant has also not made any grounds to sustain this application on merits.

6. Since the pleadings were complete, the case was finally heard at the admission stage with the consent of

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learned counsel for the parties. The applicant has filed rejoinder to the counter affidavit. We have given careful thought to the material brought on the record and the pleadings made during the hearing.

7. Before we go into the merits of the case, the submission of the respondents that the application is highly time barred will be dealt with. As per the pass Manual extract at annexure A-1, the applicant is entitled for two sets of post retiral complementary 2nd class passes every year. Therefore cause of action will arise every year continuously as per the extant rules if the issue of the passes are disallowed every year. This has been done in the present case, We therefore do not agree with the contention of the respondents and the application is not time barred.

8. From the rival pleadings, the short question to be determined is whether the disallowing of the post retiral complementary passes is legally sustainable. In this connection, we refer to the judgement of full Bench of Principal Bench "Wazir Chand Vs. U.O.I." cited by the applicant (1996 32 ATC 370), wherein this issue has been examined. In para 20 of the judgement, the validity of Railway Board's circular dated 24.4.82 (issued under Northern Railway's policy circular PS T/82 of 4.6.82) which is quoted as authority for withholding complementary passes for non ^{vacation} ~~violation~~ of the quarter after retirement has been considered. It is concluded that this circular infringes Article 14 of the Constitution and therefore the action to withhold post retirement passes on the basis of this

circular is unsustainable. I am in respectful agreement with this judgement and in view of what is held in this judgement the applicant is entitled for the post retiral complementary passes .

9. In consideration of the above facts, the application is allowed with the direction that the applicant shall be entitled for regular issue of the post retiral complementary pass^{es} as due as per the extant rules. Since the passes are issued on calender year basis, regular issue of the passes shall be allowed from the current year i.e. 1996 onwards. No order as to costs.

Sharma
Member -

Arvind.