

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

O.A./1084/99

Order, this the ^{July} 3rd day of ~~June~~, 2004

D.C.VERMA : VICE CHAIRMAN(J)
MR. D.R.TIWARI : MEMEBR(A)

S.D .Dubey,
S/o. sri Sambhudhar Dubey,
R/o. Ajad Nagar, Bichia Jungle,
Tulsi Ram, Gorakhpur.

.....APPLICANT

ADVOCATE : MR. B. TEWARI

V/S.

1. Divisional Rail Manager,
N.E. Railway, Lucknow.
2. Union of India, thorough
The General Manager, N.E. Railway,
Gorakhpur.

.....RESPONDENTS

ADVOCATE : MR. P.MATHUR

ORDER

MR. D.C.VERMA : VICE CHAIRMAN (J)

By this OA the applicant has prayed for setting aside the order dated 25/03/1999 passed by DRM (P) N.E. Railway, Lucknow rejecting the applicant's claim for Post Retirement Complementary Passes after holding the Railway Board letter dated 3/11/1999 as unconstitutional and ultravires of the Constitution of India.



2. During the course of his service, the applicant was occupying the railway quarter No. T/2E, Station Colony, N.E.Railway, Gorakhpur. The applicant retired from service on 31/3/1988 but failed to vacate the allotted quarter, so proceedings under the Public Premises (Unauthorised Occupation) Act (in short P.P. Act) was initiated against the applicant. The quarter was finally demolished on 5/8/1999. The department, inspite of request of the applicant, failed to release the post retiral complimentary passes and rejected the claim by the impugned order, hence the present OA.

3. The respondents' case is that though the applicant retired on 31/3/1988, he retained the quarter till 5.8.99. The department permitted the applicant to retain the quarter from April 1988 to July 1988 as such the applicant was ~~in~~ unauthorised occupant from 1/8/1988 till 5/8/1999, when the said quarter was demolished. The applicant lost the proceedings under the P.P.Act and filed an appeal before Additional District Judge, Gorakhpur which was dismissed on 18/03/1988. The applicant filed a writ petition before the Hon'ble High Court of Allahabad against the said order. The High Court stayed realisation of the penal/damage rent. The submission of learned counsel for the respondents is that the applicant was unauthorised occupant hence as per the railway board circular dated 24.4.82 the department has correctly disallowed the post retirement complementary passes.


4. Counsel for the parties have been heard at length. The relevant facts are not disputed. Though in the impugned order dated 25.3.1999 it is



mentioned that the applicant had not vacated the quarter till the date of letter, in their reply the respondents have admitted that the applicant was unauthorised occupant from 1/8/88 till 5/8/99, i.e. the date, the quarter was demolished.

5. The question for determination is whether the respondents can withhold post retirement complementary passes for every month on unauthorised retention of railway quarter in the light of the railway board circular dated 24.4.82, which has been directed to be incorporated in the Railway Servant Pass Rules 1986 (in short Rules of 1986) by issue of correction slip.

6. Learned counsel for the applicant has placed reliance on the decision of this Tribunal (Allahabad Bench) in OA 1031/96 in the case of Sadhu Ram Saraswat v/s. UOI & Ors. where also post retirement complementary passes were not issued due to non vacation of railway quarter. The Tribunal allowed the claim and the respondents were directed to issue the passes as and when the applicant applies therefore. The writ petition against the said order filed by the UOI was dismissed by the Hon''ble High Court of Allahabad vide its order dated 18/2/1999 in Civil Misc. Writ Petition no. 6425/1999. The U.O.I took up the matter unsuccessfully upto the Supreme Court by filing Civil Appeal No.2393/2000. The learned counsel for the applicant has also placed reliance on the full bench decision of this Tribunal in the case of Wajir Chand v/s. UOI & Ors. decided on 25/10/1990 reported at page 287 in Full Bench decisions of CAT (1989-1991) Vol.II published



by Bahri Brothers, Dehli. Relying on the said decision the learned counsel submitted that disallowing one set of post retirement passes for every month for unauthorised retention of railway quarter is unwarranted. On its basis, it is submitted that the impugned railway board circular issued on 3/11/1999 to incorporate the earlier railway board circular of 24/4/82 in the Rules of 1986 is totally invalid and ultravires of the Constitution.

7. On going through the decisions in the case of Sadhu Ram Saraswat (supra) we find that the validity of the provisions to disallow one set of post retirement passes for every month for unauthorised retention of railway quarter was negatived by the Hon'ble Hgh Court in the Civil Misc. Writ Petition No. 6425/1999. It was also observed by the Hon'ble High Court that the decision in Wajir Chand's case (supra) was upheld by the Apex Court in the S.L.P. so the decision in Wajir chand's case is final.

8. The railway board circular dated 24/04/1982 has not been filed by ~~the~~⁵ any of the parties. Respondents have only filed the Raiway board letter dated 3/11/1999 whereby the instructions contained in the letter dated 24.4.82 were directed to be incorporated in the Rules of 1986. We, however, note that the railway board circular dated 24.4.82 have been considered in detail in the Wajir chand's case (supra). For clear understanding of the point in issue, the relevant part of the Wajir Chand's case is being reproduced below :

"10. Coming to the crux of the matter, we may extract Circular of the Railway Board No. E(G) 81QR 1-51 dated 24th April, 1982 (for short '1982 Circular') pertaining to steps to be taken for



vacation of unauthorised retention of Railway quarters by retired railway officers and staff as also Northern Railway Circular No. 720-E/XXVI/Pension dated 4th May, 1982 (Pension Circular No. 7/32) (for brevity's sake called 'Pension Circular'). This would facilitate the examination of the issues in correct perspective :-

Copy of Railway Boards' letter No. E(G) 81 QR 1-51 dated 24.4.82 from Desk Officer, Estt. (Genl.), Railway Board New Delhi addressed to General Manager, Northern Railway and others.

Subject : Unauthorised retention of Railway quarters by retired Railway Officers and Staff-Steps to be taken for vacation of.

On the Railways there is an acute shortage of Railway Quarters for officers and staff. This shortage is further accentuated by unauthorised retention of the quarters by officers and staff after their retirement. Eviction proceedings for getting the quarters vacated, are normally protracted. As a result, a large number of officers and staff is deprived of the privilege of Railway quarters. The Ministry of Railways have viewed this situation with concern and have decided that the Railway Admn. should take the following steps to discourage unauthorised retention of Railway quarters by retired officers and staff :-

- (i) 'No claim' certificate should not be given unless the employee after retirement has vacated the Rly. Quarter and cleared all his arrears of rent, electricity and other charges etc..
- (ii) Settlement dues of the employee should be finalised with an appropriate "hold-back" amount from DCRG/Spl. Contribution to P.F. as the case may be, for rent recoveries, as permissible under the extant rules.

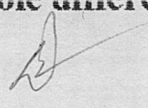


- (iii) For every one month of unauthorised retention of Railway quarters, one set of post-retirement passes should be disallowed. A show cause notice to this effect may be issued to the retired employee before disallowing the Pass.

The above stipulations apply to officers/staff occupying transit flats, Railway Rest House, Railway leased houses and Railway quarters temporarily transferred to Directorate of Estates Pool, but do not apply to officers and staff occupying houses owned by the Directorate of Estates."

* * * * *

"13. Concluding para of 1982 Circular provides that the above stipulations [which include clauses (i) and (ii)] apply to officers/staff occupying transit flats, Railway Rest House, Railway leased houses and Railway Quarters temporarily transferred to Directorate of Estates pool, but do not apply to officers and staff occupying houses owned by the Directorate of Estates. The aforesaid para classifies the railway servants for the purposes of the instructions in question into two separate classes. One class is the class of railway servants occupying transit flats, Railway Rest House, Railway leased houses and Railway quarters temporarily transferred to Directorate of Estates Pool and the other class is that of the railway servants occupying houses owned by the Directorate of Estates. The instructions contained in this Circular are aimed at discouraging the unauthorised retention of railway quarters by retired officers and staff. There is no material whatsoever on the record to show even remotely as to whether the unauthorised retention of the railway quarters by railway servants belonging to the former class is acute or more acute as compared to the class of retired railway servants and staff occupying the houses owned by the Directorate of Estates. In the absence of any such material, splitting of retired railway servants and officers who continue to be in unauthorised retention of the railway quarters on the mere basis of their occupying certain categories of houses, will not seem to be founded on an intelligible differentia. At any rate, the intelligible differentia, if there be



any, can not be said to have a reasonable nexus to the object sought to be achieved by the 1982 Circular. We are thus of the view that it is not a case of 'reasonable classification'. Consequently, 1982 Circular appears to be infractive of Article 14 of the Constitution."

09. A reading of the above quoted paragraphs extracted from the Wajir Chand's judgement shows that the railway board circular dated 24th April 1982 applies to officers/staff occupying transit flats, Railway Rest House, Railway leased houses and Railway quarters temporarily transferred to Directorate of Estates Pool, but do not apply to officers and staff occupying houses owned by the Directorate of Estates. This circular has been considered by the Full Bench and has been held that splitting of retired railway servants and officers who continue to be in unauthorised retention of the railway quarters on the mere basis of their occupying certain categories of houses, will not seem to be founded on an intelligible differentia. It was on its basis it was held that it is not a case of 'reasonable classification', so the 1982 circular has been held to be infractive of Article 14 of the Constitution. It is this very circular 24th April 1982, which has been held to be infractive of Article 14 of the Constitution, has been directed to be incorporated in the Rules of 1986 by letter dated 3/11/1999. This is impermissible. Further as per the last para of the Railway Board Circular dated 24th April 1982 it is not applicable to officers and staffs occupying houses owned by the Directorate of Estates. In the case in hand, the respondents' own case is that the Directorate of Estates had started proceedings under the P.P. Act against the applicant indicating thereby that the quarter occupied by the applicant was owned by the Directorate of



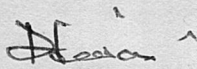
Estates. It is not the case of the applicant that the applicant was occupying a transit flats, Railway Rest Houses, railway leased house or a Railway quarter temporarily transferred to Directorate of Estates Pool. From this angle also the Railway Board circular dated 24th April 1982 would not be applicable in the case of the present applicant.


10. After discussion in the Wajir Chand's case the full Bench held as below :

“ Holding as we do that 1982 circular infracts Article-14 of the Constitution, the action to withhold the post retirement complimentary passes on the basis of this circular shall also have to be held unsustainable. We hold so.”

11. Thus the circular which has been held to be based on unreasonable classification^{and} in violation of Article 14 of the Constitution of India could not have been directed to be incorporated in the Rules of 1986 by issue of letter dated 3/11/1999.

12. In view of the discussions made above the OA is allowed. The impugned orders are quashed and the respondents are directed to release the post retirement complementary passes to the applicant for the year 2004 onwards as and when the applicant applies for the same. No costs.


(MR. D.R. TIWARI)
MEMBER(A)


(D.C. VERMA)
VICE CHAIRMAN(J)

Cmj/