

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. 73/93
T.A. No.

DATE OF DECISION 26-7-93

Shri D.R. Pandyā

Petitioner

Shri M.K. Paul

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondent

Shri B.R. Kyāda

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.B. Patel Vice Chairman.

The Hon'ble Mr. V. Radhakrishnan Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

Shri Durgashanker Revashanker Pandya
 Bhagwati Krupa
 Udyonagar, Suraj Karadi
 Taluka Dwarka, Dist. Jamnagar

Applicant.

Advocate Shri M.K. Paul

Versus

1. The Union of India
 Owing Western Railway
 Through The General Manager
 Western Railway, Churchgate
 Bombay

2. The Divisional Railway Manager
 Western Railway, Kothi Compound
 Rajkot.

Respondents

Advocate Shri B.R. Kyada

O R A L J U D G E M E N T

In

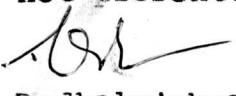
O.A. 73 of 1993

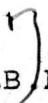
Dt: 26-7-1993

Per Hon'ble Shri N.B. Patel

Vice Chairman.

Amendment as permitted by our order in M.A. 192/93
 is not carried out and the matter has had to be unnecessarily
 adjourned thrice thereafter. Even today Mr. Paul and applicant
 are not present. Dismissed for default.


 (V. Radhakrishnan)
 Member (A)


 (N.B. Patel)
 Vice Chairman.

*AS.

DATE	OFFICE REPORT	CHAIRMAN
5-10-1993	<p><u>M.A. 517/93.</u></p> <p>M.A. 517/93 allowed. The order dismissing the O.A. 73/93 set aside. The said O.A. is restored to file. M.A. 517/93 stands disposed of.</p> <p><u>O.A. 73/93</u></p> <p>At the request of Mr. Trivedi, permission is granted to carry out amendment in the O.A. as per the order passed in M.A. 190/93 with the clear caution that if the amendment is not carried out today it will not be permitted to be carried out.</p> <p>O.A. to be placed for admission hearing on 19-10-1993.</p> <p><u>NR</u></p> <p>(V. Radhakrishnan) Member (A)</p>	
		<p><u>NB</u></p> <p>(N.B. Patel) Vice Chairman.</p>
19/10/93	<p>*AS.</p> <p><u>Other</u> As the learned Member of the Bench is not available, the matter is adjourned to... 21/10/93.....</p> <p><u>NB</u> N.B. Patel Vice Chairman</p>	

2/11/1993 At the request of Mr.Trivedi
and with the consent of Mr.Kyada,
adjourned to 10.11.1993. The
respondents are directed to produce
Railway Board's letter dated 4.6.1993
referred to in Annexure A-3 dated 23.9.92.


(V.Radhakrishnan)
Member (A)


(N.B.Patel)
Vice Chairman

a.a.b.

Date	Office Report	Order
10-11-1993		<p>Admitted. Adjourned to 8-12-1993 for filing reply. The applicant may file rejoinder, if any, within one week after the filing of the reply. Along with their reply the respondents are again directed to produce the Railway Board letter dated 4-6-1993 referred to in Annexure A-3. Whether the reply and the rejoinder are filed or not within the aforesaid period, the matter may be fixed for final hearing on 3-1-1994.</p>
		<p>(V. Radhakrishnan) (N.B.Patel) Member (A) Vice Chairman.</p>
		<p>*AS.</p>
03.01.1994.		<p>At the request of Mr.K.M.Paul, for Mr.M.K.Paul, adjourned to 15.03.1994.</p>
		<p>(K.Ramamoorthy) (N.B.Patel) Member (A) Vice Chairman</p>
		<p>AIT</p>
15/3/94		<p>Heard Mr.M.K.Patal and Mr.B.R.Kyada.</p>
		<p>Judgment reserved.</p>
		<p>(K.Ramamoorthy) (N.B.Patel) Member (A) Vice Chairman</p>
		<p>a.a.b.</p>

Date 12.9.94	Office Report	Judgement pronounced in open Court (K. Ramamoorthy) (N. B. Patel) Member (M) Vice chairman.	Order
			Order

Date	Office Report	Order
10-11-1993		<p>Admitted. Adjourned to 8-12-1993 for filing reply. The applicant may file rejoinder, if any, within one week after the filing of the reply. Along with their reply the respondents are once again directed to produce the Railway Board letter dated 4-6-1993 referred to in Annexure A-3. Whether the reply and the rejoinder are filed or not within the aforesaid period, the matter may be fixed for final hearing on 3-1-1994.</p> <p><i>Reply not filed</i></p> <p><i>28/11/93</i></p>
03.01.1994.		<p><i>Ad</i></p> <p>(V. Radhakrishnan) Member (A)</p> <p>(N.B. Patel) Vice Chairman.</p> <p>*AS.</p> <p>At the request of Mr. K. M. Paul, for Mr. M. K. Paul, adjourned to 15.03.1994.</p> <p><i>R</i></p> <p>(K. Ramamoorthy) Member (A)</p> <p>(N.B. Patel) Vice Chairman</p> <p>AIT</p>
15/3/94		<p>Heard Mr. M. K. Paul and Mr. B. R. Kyada.</p> <p>Judgment reserved.</p> <p><i>K. Ramamoorthy</i></p> <p>(K. Ramamoorthy) Member (A)</p> <p>(N.B. Patel) Vice Chairman</p>
		<p>a.a.b.</p>

Date	Office Report	Order
12-4-94		<p>Judgement pronounced in open Court oral request of Mr. Raval to stay the petition & this order refused 12</p> <p>(K. Ramamoorthy) (N. B. Patel)</p> <p>Member (A) Vice chairman</p>

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No.
~~73/1993~~

73 of 1993.

DATE OF DECISION 12th April, 1994.

Shri Durgashanker Revashanker Petitioner
Pandya

Shri M.K.Paul Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

Shri B.R.Kyada Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.B.Patel : Vice Chairman

The Hon'ble Mr. K.Ramamoorthy : Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

: 2 :

Shri Durgashanker Revashanker Pandya,
Bhagwati Krupa,
Udyonagar, Suraj Karadi,
Taluka Dwarka, Dist.Jamnagar.

...Applicant.

(Advocate : Mr.M.K.Paul)

Versus

1. The Union of India,
Owning Western Railway,
Through : The General Manager,
Western Railway,
Churchgate,
Bombay.
2. The Divisional Railway Manager,
Western Railway,
Kothi Compound,
Rajkot.

...Respondents.

(Advocate : Mr.B.R.Kyada)

J U D G M E N T
O.A.NO. 73 OF 1993.

Dated: 12th April, 1994

Per : Hon'ble Mr.K.Ramamoorthy : Member (A)

Thei Original Application is concerned with the question of appropriateness of the punishment imposed by the railways in withholding the railway passes available to a retired railway employee. The applicant was working as a Station Master at Railway Station Bhimrana and retired from the railway service on 30.11.1986. However, the applicant continued to retain the railway quarter upto 25.7.1989. For this overstay, in addition to payment of the rent including penal rent for the period of overstay, the railway board also held back 32 sets of complimentary passes in terms of Railway

: 3 :

Board's letter dated 04.06.1993 and the Head Quarter's letter dated 28.6.1993. The Railways had calculated the total period of 32 months of stay after retirement as unauthorised occupation. On an earlier reference to the Tribunal, vide O.A./98/90, this Tribunal had directed that the Railways may review this order on a representation if preferred by the applicant. On such a representation, the Railways have passed the order dated 23.9.1992, whereby the stoppage of the post retirement complimentary passes was reduced to 24 sets from 32 sets. The applicant has approached this Tribunal on being dis-satisfied with this order.

2. There is no dispute regarding the fact of overstaying in the Railway Quarter. There is no dispute also on the fact that the applicant paid rent at the penal rate for the period he had overstayed in the quarter beyond the normal permissible limit. It is also not denied that the Railways, because of this unauthorised occupation, had held back the gratuity and released this gratuity after two years and 11 months (without any interest) and paid only after the formal vacation of the quarter by the applicant.

3. It is true that on 23.9.1992, the Railways have reduced the stoppage of post retirement complimentary passes to 24 instead of 32 sets. But it is seen that this act has been done by way of a necessary correction that

: 4 :

was required in the earlier order. 32 months of overstay was not all "unauthorised" stay. The Competent authority was permitting the Railway quarter to be occupied normally for four months from the date of retirement on normal rent and next four months on double the licence fee and the actual period of 'unauthorised stay' was only 24 months.

The intention of the Tribunal was for the Railways to basically look into the facts and consider revision on merits. The Railway do not seem to have done this.

In fact the Railways have in this impugned order reiterated the fact that "no discretion is given to any authority about dis-allowance of one set of pass of every month of period of retention of Railway quarter without authority."

We do not agree with this proposition.

4. Withholding of pass is essentially an administrative power vested in the Railways to prevent the misuse of the facility of the use of a Railway quarter. This is not to be taken as a mechanical rule. The prescription of disallowance of one set for every month is the maximum punishment proposed and cannot be interpreted as the only punishment that can be given. The Full Bench of the Central Administrative Tribunal, (Principal Bench) has since laid down **the law** in this regard in its judgment in O.A./2573/89 where it has been clearly stated that

: 5 :

even when one set of pass is disallowed it is to be preceded by a show cause notice. Thus, it becomes clear that withholding of this pass is a discriminatory administrative act. In the same judgment it has also been stated that the DCRG also cannot be held back on the ground of non-vacation of the Railway quarter. In this particular case as shown earlier the DCRG was only paid only after the quarter was vacated. It is clear that the respondent has while passing its order of 23.9.1992, not applied its mind in the sense that this Tribunal had directed on 23.3.1993, for a review by the respondents "keeping in view the circumstances of the applicant's case including the fact that recoveries at enhanced rate have been made for the period of overstay and also considering the applicant's record of service."

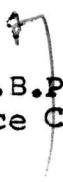
5. The Tribunal has, therefore, gone through the pleadings of the application once again. Taking all the facts into consideration as enumerated in the foregoing paragraphs, the Tribunal has come to the conclusion that the action already taken by the Railways in withholding the passes so far, should suffice with whatever requirements that might be necessary to ensure discipline in vacation of the quarters. The impugned order No. ET/D/15, of

: 6 :

Divisional Railway Manager, Western Railway, Rajkot,
dated 23.9.1992, is set aside and the respondents are
directed to lift the ban on stoppage of post retirement
complimentary passes now due to the applicant, forthwith.
The respondents are directed to issue the complimentary
passes as are due to the applicant from time to time
from this year onwards.

The application stands disposed of as above,
with no order as to costs.


(K.Ramamoorthy)
Member (A)


(N.B.Patel)
Vice Chairman

ait.

Submitted,

Letter dated 6/6/1995 received from Supreme Court of India, New Delhi stating that the Supreme Court vide its order dated 6/12/1995 has dismissed the S.L.P. No: 4305/95 arising out of O.A.No: 73 of 1993 of this Bench.

1002 25/1/95
Deputy Registrar (J)

1. Hon'ble the Vice Chairman. 7/29/95
2. Hon'ble Mr. V. Radhakrishnan, Member (A)
3. Hon'ble Mr. K. Ramamoorthy, Member (A).

X-X-X-X

S:17/95

Supreme Administrative Tribunal
Administrative
Court of India
New Delhi
Date 26/5/95

Section IX
SUPREME COURT OF INDIA
NEW DELHI.
DATED:- 09/05/95

6/6/95

From: The Registrar
Supreme Court of India.
NEW DELHI.

To

The Registrar,
Central Admn. Tribunal,
Ahmedabad Bench,
Ahmedabad.

PETITION FOR SPECIAL LEAVE TO APPEAL CIVIL No 4305 /95

(Petition under Article 136(1) of the constitution of India from
the Judgment and Order dated 12/04/94
of the High court of Judicature at GUJRAT

in OA 73/93

... PETITIONER(S)

UNION OF INDIA

-vs-

... RESPONDENT(S)

DURGASHANKAR RAVANSHANKAR PANDYA

Sir,
I am directed to inform you that the petition above mentioned
filed in the Supreme Court was dismissed
by the Court on 06/02/95.

Yours faithfully

Blau 6/6/95
For Registrar

COPY TO
MR. ARVIND KUMAR SHARMA (Adv)

CENTRAL ADMINISTRATIVE
Ahmedabad Bench

Application No. 09/73/93 of 19

Transfer Application No. _____ Old W.Pett No. _____

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided)

Dated : 27/07/93.

Countersigned :

Blr/27/07/93

Section Officer/Court officer

Signature *RSR* of the Dealing Assistant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT AHMEDABAD BENCH

INDEX SHEET

CAUSE TITLE DA/73/93 OF 19

NAMES OF THE PARTIES P. R. Pandya.

VERSUS

U. of T. 8 018

PART A B & C