

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 201/99

Date of Decision: 23/4/99

Shri G.S. Michael

Applicant.

Shri G.S. Walia

Advocate for
Applicant.

Versus

Union of India & Anr.

Respondent(s)

Shri Suresh Kumar

Advocate for
Respondent(s)

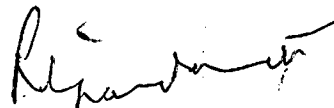
CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, Vice Chairman.

Hon'ble Shri.

- (1) To be referred to the Reporter or not? *No*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *No*

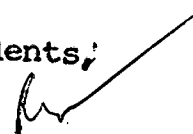
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(R.G. VAIDYANATHA)
VICE CHAIRMAN

2. Respondent's in their reply have justified the action of the respondents in refusing to release post retirement passes to the applicant. It is admitted that the applicant vacated the quarters on 31/7/97. Then a show cause notice was sent. Since there was no reply from the applicant, the department issued order dated 9/3/98 rejecting the request of applicant for post retirement passes. It is stated as per the Railway Board letter dated 24/4/82, the Railway administration has powers to withhold the passes if there is delay in vacating the quarters. Therefore, the action of the administration in denying the passes to the applicant is well within the rules framed by the Railway Board. It is therefore stated that the applicant is not entitled to any of the reliefs prayed for.

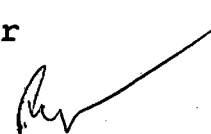
At the time of argument, the learned counsel for applicant strongly relied on the decision of Full Bench in Wazirchand's case reported in 1989-91 Full Bench Judgements, Vol.II page-287 and also judgement of Division Benches and Single Benches of the Tribunal where consistent view has been taken that the Railway administration has no right to withhold passes after the official vacates the quarter. On the other hand, the learned counsel for respondents questioned the correctness and legality of the finding given by the Full Bench and some other benches and he contended that Railway Administration has statutory rules which empower the administration to withhold passes on certain conditions and when the Railway Board Circular has not been quashed by any Court or Tribunal, the Railway Administration has every right to withhold passes under certain conditions. Infact, at onestage he made a suggestion that the matter should be referred to larger bench to decide this question.

3. After hearing both sides, I find that there is no merit in the contention of counsel for respondents;



The judgement of Full Bench is binding on all Division Benches and Single Benches of the Tribunal. A Single Bench cannot go into the correctness of the decision of a Full Bench even if another view is possible. As such, the arguments even if accepted, then there will be no end and in every case it can be pressed that the decision of Full Bench requires re-consideration and the question should be referred to a larger bench. The law of Precedents is based on the public policy, namely there should be certainty and uniformity and finality in the laws of the country. That is why Precedents are always cited so that uniform view may be taken. Otherwise there^{will} be uncertainty in every walk of life.

At one stage, the learned counsel for the respondents contended that the vires of 1982 circular or the right of the Railway Administration to withhold passes due to unauthorised possession of quarters was not directly in issue in Wazirchand's case. One of the issues posed before Full Bench was whether in terms of 1982 circular, the Railway Administration has a right to withhold passes even after the official vacates the quarters or not. The question was directly in issue. Then the other issue before Full Bench was whether the Railway Administration can withhold payment of Gratuity till the official vacate the quarters. The Full Bench has gone into this question in detail and referred to number of decisions including judgement of Supreme Court and came to conclusion that the Railway Administration has no right to withhold full Gratuity till the official vacates the quarters and further it has no right to withhold the passes. In more than one place, the Full Bench has observed that 1982 circular is bad being in violation of article 14 of Constitution. Full Bench further mentioned about the vires of the 1982 circular regarding the right of the administration to withhold passes. Another part of the discussion is about Gratuity. The Full Bench has held that the Railway Administration

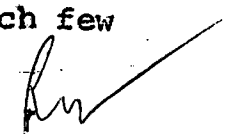


cannot withhold the passes after the official vacates the quarters.

4. In my view the arguments of counsel for respondents that Full Bench did not consider all the questions and did not give a detailed reasoning in support of its finding has no merit and at any rate is not a matter which can be urged before single Bench. A single Bench cannot sit in judgement about the correctness and legality of view of Full Bench. If the Full Bench had made only some casual or ~~stray~~ observation then the matter would be different. I find from the points referred to Full Bench, one of the issues was the right of the Railway Administration to withhold passes. Then, after detailed discussion, the Full Bench in the operative portion of judgement particularly in para-27 has held at 27(11) as follows:-

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

In view of the specific finding by Full Bench, it is too late for Railway Administration to continue to withhold the passes even after the official vacates the quarter. It is interesting to notice that the applicant before Full Bench was not satisfied with certain observations of Full Bench and therefore filed SLP in Supreme Court., in SLP No.12305/93 and by order dt. 28/2/91, dismissed the SLP both on the grounds of delay as well as on merits. It is interesting to notice that the Railway Administration did not take any steps to challenge the findings of Full Bench by approaching the Supreme Court. The Full Bench view was rendered on 25/10/90. Now 9 years have lapsed and the decision is holding the field. What is more the said decision has been followed by number of judgements of Division Bench^s and Single Bench^s of this Bench of which few are placed before me.



5. In an unreported judgement dated 15/4/91 in OA-733/90 to which the Western Railway was a party respondent, and who is the respondents in the present case, a Division Bench of this Tribunal following the Full Bench held that the Railway Administration cannot withhold passes after the official vacates the quarters.

Then we have a judgement of Division Bench of this Tribunal dated 12/1/99 in OA-1013/95 where the the Bench of which I was a Member took the same view following the Full Bench decision that Railway Administration cannot withhold the passes after the official vacates the quarters. There also the Western Railway is a party respondent.

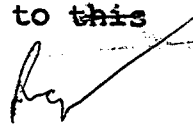
Then similar views are taken by different benches in many unreported judgements namely

	<u>order dated</u>	<u>O.A.No.</u>
i)	25/2/99	795/98
ii)	3/9/98	1157/97
iii)	15/4/91	733/90
iv)	12/1/99	1013/95
v)	29/1/99	1063/98 (my own judgement)

Applicant's counsel also brought to my notice a reported judgement of Single Bench of this Tribunal in the case of Amulya Kumar Guha v/s. Union of India and Ors. reported in 1997(1)ATJ 54.

In all these cases Single Benches and Division Benches have taken a consistent view following the Full Bench decision that the Railway Administration has no right to withhold the passes, in which Western Railway is the party respondents.

The Railway Administration has not challenged any of these judgement right from 1990 till today for the last 9 years either before High Court or Supreme Court. The Principles of Stare decisis is also attracted to this this case.



6. In view of the above discussion, I hold that the action of Railway Administration in declining to issue post retirement passes to applicant is ^{wholly} ~~wholly~~ unwarranted ^{decisions in} ~~in view of the~~ number of judgements of this Tribunal.

7. In the result the application is allowed. The respondents are directed to issue post retirement passes to the applicant for the calender year 1999 and onwards. Liberty to the applicant to make a proper application to the Railway Administration and on such application, the respondents should issue the passes expeditiously. No costs.


(R.G. VAIDYANATHA)
VICE CHAIRMAN

abp.

15.10.99

Both Comsels present.

On the request of
respondents counsel, adjourned
to 22.10.99.

Ghulane
(D.S. Ghulane)
M(A)

R. S. Vaidyanathan
(R.S. Vaidyanathan)
nc

QA 201/99 (16)

Dated: 22.10.1999

Shri G.S. Walia counsel for the
applicant. Ms. Ghulane for ~~XXXXXX~~
Shri Suresh Kumar counsel for
the respondents.

The learned counsel for the
applicant states that the orders
have since been complied with.
CP 37/99 is disposed of, accordingly.
Notices issued stands dis-charged.

S.L. Jain
(S.L. Jain)
Member (J)

B.N. Bahadur
(B.N. Bahadur)
Member (A)

NS

22/10/99
Order/Judgement despatched
to Applicant/Respondent(s)
on 29/10/99

W