

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.183/2000.

this the 22nd day of August 2000.

Coram: Hon'ble Shri D.S.Baweja, Member (A).

Phiroz R.Daruwalla,
Railway Quarter No.80/10,
Western Railway Colony,
Matunga Road,

(By Advocate Shri G.S.Walia)

...Applicant.

Vs.

1. Union of India, through
The General Manager,
Western Railway,
Headquarters Office,
Churchgate,
Mumbai - 400 020.
2. Divisional Railway Manager,
Mumbai Division,
Western Railway,
Mumbai Central,
Mumbai - 400 008.

(By Advocate Shri Suresh Kumar)

...Respondents.

: O R D E R :

{Per Shri D.S.Baweja, Member (A)}

The applicant while working as Safety Counsellor on Western Railway, Mumbai Division voluntarily retired from service on 24.6.1992. The applicant was occupying a the Railway Quarter at the time of his retirement. Subsequently, his daughter was appointed in Railway Service on 15.11.1996. The quarter occupied by the applicant was regularised in the name of his daughter as per order dt. 12.10.1998 w.e.f. 15.11.1996 in pursuance of the order of the Estate Officer. It is the case of the applicant that as per the extant rules, the applicant has required

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qualifying service to be eligible for issue of post-retirement complimentary passes. The applicant contends that since the Quarter occupied by him has been regularised in the name of his daughter, he is no longer in unauthorised occupation of the Quarter and therefore he is entitled for issue of the passes. However, the Railway Administration is not issuing post-retiral complimentary passes. Aggrieved by this, the present OA has been filed on 16.3.2000 seeking direction to the respondents to issue two sets of post-retiral complimentary passes from the year 1999 onwards.

2. The respondents have filed written statement opposing the OA. The respondents submit that in terms of Railway Board's Circular dt. 30.3.1988 wherein the contents of the earlier letter dt. 24.4.1982 have been reiterated, withholding one set of post-retirement pass for every one month of unauthorised retention of the Quarter is to be done. Since the applicant was in unauthorised occupation of the Quarter, in terms of the Railway Board Circular, he is not entitled to any passes at the present. The respondents, further submit that the Railway Board's Circulars dt. 24.4.1982 and 30.3.1988 are statutory in nature as held by the Hon'ble Supreme Court in the case of Union of India Vs. Shanti Swarup & Ors. {(1980) 1 SCC 254}. The applicant has also not challenged the vires of the Circular dt. 24.4.1982 and 30.3.1988. It is also submitted that the regularisation of quarter in the name of his daughter has no relation so far as the applicant's status of unauthorised occupation of the quarter is concerned, in view of the law laid down by the Hon'ble Supreme Court in the case of Amitav Kumar Vs. The Director of Estates {1997 SCC (L&S) 698}. The respondents

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further add that the provisions in the Circular dt. 24.4.1982 have been since incorporated in the Schedule-IV of "Railway Servants Pass Rules, 1986" as per the Railway Board's letter dt. 12.11.1999. In the light of these submissions, respondents plead that the applicant is not entitled for the post-retirement complimentary passes and therefore, the OA deserves to be dismissed.

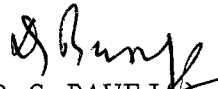
3. The applicant has not filed any rejoinder reply.

4. I have heard the arguments of Shri G.S.Walia and Shri Suresh Kumar, the learned counsels for the applicant and respondents respectively.

5. The respondents have opposed the issue of post-retirement complimentary passes to the applicant relying upon the Railway Board Circular dt. 24.4.1982 which has been subsequently reiterated in the Circular dt. 30.3.1988 and has been incorporated as per letter dt. 12.11.1999 in "Railway Servants Pass Rules, 1986". The respondents submit that the applicant was in unauthorised occupation of the quarter after retirement and therefore one set of post-retirement pass for every one month of unauthorised occupation is to be withheld. The applicant, on the other hand, has relied upon the various order of the Tribunal where it has been held that for unauthorised occupation of the quarter the issue of post-retirement complimentary pass cannot be withheld. He has cited two such orders of the Tribunal viz. a) S.R.Shetty Vs. Union of India [1999 (CAT) SLJ 541}, b) O.A. No.1013/95 decided on 12.1.1999 - D.G.Advani Vs. Union of India. On going through these orders, it is noted that one of the orders cited in case of S.R.Shetty has been pronounced by the same Bench. In both these orders it has been held that the applicants

are entitled for post-retirement complimentary passes after vacation of the quarter in view of the law laid down by the Full Bench in the case of Wazir Chand reported in 1989-1991 Full Bench Judgments of CAT Vol.II. In the case of Wazir Chand, the issue under examination was the Railway Board's circular dt. 24.4.1982 i.e. the same circular relied upon by the respondents. Referring to this circular, the Full Bench has concluded that disallowing of one set of post-retirement pass for every month of unauthorised retention of Railway Quarter is not warranted. In the present case, the quarter occupied by the applicant has been regularised in the name of his daughter and therefore it will mean that the applicant has vacated the quarter from that date. The arguments of the respondents that regularisation of the quarter in the name of the daughter citing the case of Amitav Kumar (supra) is not tenable so far as entitlement of the pass is concerned. The respondents may deal with the unauthorised occupation as per the rules, but once the quarter has been regularised in the name of the daughter, the applicant is deemed to have vacated the quarter. Once the applicant has vacated the quarter, then in view of the law laid down by the Full Bench in Wazir Chand's case and as reiterated in the above referred two orders, I have no hesitation to hold that the applicant is entitled for the relief prayed for.

6. In the result of the above, I allow the OA with a direction to the respondents to start issuing post-retirement complimentary passes as admissible to the applicant from the year 2000 onwards. No order as to costs.


(D.S. BAWEJA)
MEMBER(A)

B.