

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 698/1997

Date of Decision: 4-9-97

Brijmohan Mulchand Shukla

Applicant.

Shri G.S.Walia

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. M.R.Kolhatkar, Member(A).

Hon'ble Shri.

- (1) To be referred to the Reporter or not? X
- (2) Whether it needs to be circulated to x
other Benches of the Tribunal?

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 698/1997.

Proclaimed, this the 4th day of Sept 1997.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

Brijmohan Mulchand Shukla,
C/o.G.S.Walia,
Advocate, High Court,
Industrial Traders Bldg.,
Opp. Maha. State Co-op Bank,
Nagindas Master Road, Fort,
Mumbai - 400 023.
(By Advocate Shri G.S.Walia)
V/s.

... Applicant.

1. Union of India, through
General Manager,
Western Railway,
Head Quarters Office,
Churchgate,
Mumbai - 400 020.

2. Divisional Railway Manager,
Mumbai Division,
Western Railway,
Mumbai Central,
Mumbai - 400 008.

... Respondents.

(By Advocate Shri V.S.Masurkar)

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

In this O.A. the applicant has challenged the letter dt. 14.1.1997 on the subject of issue of post retirement complimentary passes to him. The applicant retired from Railway service as Chargeman Grade 'B' on 30.6.1994. The applicant vacated the Railway Quarter No.128/1, Kherwadi, Bandra (E) allotted to him only on 30.11.1996. The memorandum referred to above dt. 14.1.1997 states as below :

"In view of above, since you have been retired from Rly. service w.e.f. 30.6.1994 and vacated Rly. Qtr. No.128/1-BA(E) on 30.11.96

with permissible period granted for 8 months i.e. from July, 1994 to October, 1994 and November, 1994 to February, 1995., and as such total period involved for unauthorised occupation of Railway quarter would be 21 months (29 month - 8 month admissible ground) hence total 21 sets of post-retirement are not admissible, which may be noted."

2. The applicant has challenged this memorandum on the ground that after the applicant has vacated Railway quarters, refusal to issue complimentary passes is illegal, discriminatory and against the principles of natural justice. The respondents have also not given a show cause notice before effecting the said refusal.

3. The respondents have opposed the O.A. According to the respondents the applicant was in unauthorised occupation of Railway Quarters for 21 months and in terms of Railway Board Circular dt. 20.12.1989 at Ex. R-3 to the written statement one set of post-retirement pass should be disallowed for every month of unauthorised retention of Railway Quarters by a retired officers/staff. According to Respondents, this Railway Board Circular has not been quashed or set aside by any Court. The Respondents further contend that the proforma of the application to be filed before the CAT under the CAT (Procedure) Rules, 1987 gives a specific heading "Matters not previously filed or pending with any other Court". According to the counsel for the respondents under para 7 the applicant has given a false information in this regard, because there was an O.A. 1089/94

filed by the applicant and his son which was decided by the Tribunal on 1.3.1996 and the relief of regularisation of the Quarters allotted to the applicant in favour of the son was rejected. According to the counsel for the respondents this information was deliberately suppressed by the applicant.

4. The counsel for the applicant has argued that there had been no suppression of material and in para 4.2 he had referred to O.A. 1089/94, there was no reason for him to refer to this O.A. under para 7 because the relief relating to post-retirement complimentary passes was not sought for by him in that O.A. I am inclined to accept the contention of the counsel for the applicant in this regard.

5. Next the counsel for the applicant relies on Full Bench decision in Wazir Chand V/s. Union of India & Ors. reported at Full Bench Judgments of CAT Vol.II, Bahri Brothers page 287 and in particular para 20 thereof. The same refers to 1982 Circular which is para materia with subsequent Circulars. The Full Bench has observed that "Recourse to the withholding of post-retirement passes can be had only after the retired railway servant has been adjudged to be in unauthorised occupation of the railway quarter". It is not the case of the respondents that the applicant was proceeded against under the P.P. Act and adjudged to be in unauthorised occupation of the Railway Quarter. The Full Bench has further

held that issue of show cause notice prior to withholding the post retirement passes is a sine qua non to the taking of action envisaged under the Circular. It is not disputed that no such show cause notice has been issued in the present O.A. The counsel for the applicant has further pointed out that the SLP against Full Bench Judgment in Wazir Chand's case has been dismissed by the Supreme Court and that the ratio of which has become final Wazir Chand is binding on this Tribunal.

6. I am inclined to hold that the ratio of Wazir Chand fully applies to the facts of the case and accordingly the applicant is entitled to the relief. Accordingly, the Western Railway letter dt. 14.1.1997 so far as it relates to refusal to issue post retirement passes is concerned is hereby quashed and set aside. The respondents are directed to issue post retirement passes to the applicant for the year 1997 and onwards. The O.A. is disposed of at the admission stage. There will be no order as to costs.

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER(A)

B.