

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 465/98

21-1-99
Date of Decision:

G.S.Sarin

Applicant.

Shri G.S.Walia

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri S.C.Dhawan

Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri.

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal? 7

D.S. Baweja
(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO.465/98

this the ^{21st} day of January 1999.

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

G.S.Sarin,
Ex.Enquiry-cum-Reservation Clerk,
at Bombay V.T. under D.R.M.,
Mumbai Division, Central Railway,
Mumbai.

By Advocate Shri G.S.Walia

... Applicant

V/S.

1. Union of India through
General Manager,
Central Railway,
Headquarters Office,
Mumbai C.S.T., Mumbai.
2. Divisional Railway Manager,
Mumbai Division,
Central Railway,
Mumbai C.S.T., Mumbai.

By Advocate Shri S.C.Dhawan

... Respondents

ORDER

(Per: Shri D.S.Baweja, Member (A))

The applicant while working as Enquiry-cum-Reservation Clerk under Divisional Railway Manager, Mumbai Division, Central Railway, Mumbai was imposed punishment of removal from service from 31.7.1991. The applicant joined railway service on 16.6.1953 and had therefore completed more than 30 years of service before he was imposed punishment of removal from service. The applicant alleges that he has not been paid the provident fund as well as the Group Insurance. The applicant further submits that he had made an application for grant of post retirement complementary passes but the same were

denied to the applicant for which he was entitled as per the extant rules. Feeling aggrieved, the present application has been filed on 4.5.1998 seeking the following reliefs :- (a) to direct the respondents to make payment of Provident Fund (Applicant's contribution) along with interest of 18% p.a. (b) To direct the respondents to pay the amount of Group Insurance with interest of 18% p.a. (c) to direct the respondents to issue Post Retirement Complimentary Passes to the applicant from the year 1998 onwards.

2. The respondents have filed a written reply opposing the application. The respondents submit that Provident Fund contribution of the applicant amounting to Rs.5761/- had been already paid on 23.9.1998. The delay in payment has taken place on account of the fact that the applicant had not filled up the forms and therefore he is not entitled for any payment of interest for delay in filing the application. As regards the entitlement of Post Retirement Complimentary Passes, the respondents submit that in terms of Rule 57 of Central Railway Pass Manual, the applicant is not entitled for the same as he has been removed from service. As per Rule 57, a person who is removed from service is entitled for passes only if he has been granted retirement gratuity either in part or full by the Competent authority. In the case of the applicant no retiring gratuity has been granted by the competent authority. The respondents have also taken a plea that the application is barred by limitation as per the provisions of Section 21 of the Administrative Tribunal Act, 1985.

3. The applicant has not filed any rejoinder reply.

4. Since the application involves a short question of law, the matter has been finally heard at the stage of admission with the consent of counsel of the parties. Heard the arguments of Shri G.S.Walia, learned counsel for the applicant and Shri S.C.Dhawan, learned counsel for the respondents.

5. As brought out earlier, the applicant has made two set of reliefs. The reliefs 8 (a) and (b) concern the payment of settlement dues, i.e. provident fund and group insurance. The learned counsel for the applicant during arguments stated that he does not press for these reliefs through the present OA. as some payment of provident fund has already been made. He further stated that he will make representation to the department for payment of these dues and in case he is still aggrieved, he will agitate the matter separately. He, therefore, made a prayer that liberty be granted to the applicant to agitate the matter for the payment of settlement dues separately if so warranted. Keeping these submissions of the applicant in view, the matter with regard to payment of settlement dues is not being gone into. Liberty is also granted to the applicant to agitate the matter for the payment of the settlement dues as per the provisions of law.


6. The second relief 8 (c) refers to non issue of Post Retirement Complimentary Passes. It is admitted fact that the applicant had been imposed punishment of removal from service and at the time of removal from service he had completed more than 30 years of service.

The short question which requires to be answered is whether a Railway employee who has been removed from service is entitled for Post Retirement Complimentary passes. The applicant in the original application in Para 4.3 has stated that he is entitled for Post Retirement Complimentary Passes even though he has been imposed the penalty of removal from service. However, the applicant has not brought on record any relevant rules to support this contention. Therefore, the counsel for the applicant during the arguments was directed to argue on the matter with the relevant rules. The learned counsel for the applicant thereafter argued on the matter with reference to the Railway Servants (Pass) Rules, 1986. These rules were made available during the hearing and applicant drew my attention to Rule 8 (1) under which the applicant claimed that he is entitled for the Post Retirement Complimentary Passes even though he was removed from service. On going through the Rule 8 (1), it is noted that Post Retirement Complimentary Passes may be issued to either a Railway servant after retirement or after he ceases to be a Railway servant. Rule 8.2 refers to Schedule IV whereⁱⁿ the circumstances and conditions under which various categories of Railway Servants are entitled for Post Retirement Complimentary Passes^{have been detailed}. Referring to Schedule IV, it is noted that item (iv) under the column "Conditions for issue of post-retirement complimentary pass", it is provided that Post Retirement Complimentary Passes shall not be issued to those Railway servants who are dismissed from service. Relying upon this provision in the rules, the learned counsel for the applicant argued that only a Railway servant who is dismissed from service is not entitled for the Post Retirement

Complimentary Passes and since the applicant has been removed from service, he is entitled for the same. The learned counsel for the applicant also brought to my notice the provisions in Para 1554 of the Indian Railway Establishment Manual 1968 Edition where also it is provided that the Railway servant removed from service is entitled for Post Retirement Complimentary Passes. The respondents, on the other hand, have contested the claim of the applicant placing reliance on Rule 57 of Central Railway Pass Manual. This Pass Manual was made available during the hearing. On going through the Rule 57, it is noted that a Railway servant who is removed from service after completion of 20 years or more is entitled for Post Retirement Complimentary Passes provided he is granted gratuity in part or full. The learned counsel for the respondents argued that Rule 8 read with Schedule IV of Railway Servants (Pass) Rules, 1986 is silent with regard to the entitlement of the passes for the Railway servants removed from service. In view of this, provisions in Rule 57 of the Central Railway Pass Manual will apply to have a harmonious ^{baring} ^{of} ~~lend~~ of rules. This argument he advanced ⁱⁿ support ^{of} the provisions of Rule 16 of the Railway Servants (Pass) Rules, 1986. It is noted that Railway Servants (Pass) Rules, 1986 have been issued by the Railway Board under the powers conferred by the proviso to Article 309 of the Constitution of India. Rule 16 has been laid down to link up the existing Pass Manuals of the Railways with the statutory rules issued in 1986. Rule 16 reads :- "The provisions contained in Pass Manuals issued by the respective Railway or any other provisions on Passes contained in any other Manual/Rules etc. shall be valid provided it is not in contravention

with the provisions laid down in these Rules".

The learned counsel for the applicant was at pains to argue that the statutory Rules of 1986 are silent with regard to the Railway servant removed from service. The Central Railway Pass ^{therefore} Manual will prevail upon and therefore as per Rule 57 a person who is removed from service and not granted gratuity either in part or in full is not entitled for the Post Retirement Complimentary Passes. As indicated earlier, the applicant has ~~not~~ been granted any retiring gratuity. On careful reading of the provisions of the Railway Servants (Pass) Rules, 1986 and Central Railway Pass Manual, I am not impressed by the argument of the respondents. The statutory rules ^{have} in Schedule IV clearly laid down that Railway servants who are dismissed from service shall not be issued any Post Retirement Complimentary Passes. A plain reading of this rule would mean that a Railway servant removed from service is not excluded from the entitlement of the Post Retirement Complimentary Passes. In view of this, I do not accept the argument of counsel for the respondents that 1986 rules are silent with regard to the Railway servants who are removed from service. Accordingly, the contention of the respondents that the provisions of Rule 56 of Central Railway Pass Manual will apply is not correct. The Pass Manual of Railway cannot provide rules which are in contravention of the statutory rules as made clear in Rule 16 of the Railway Servants (Pass) Rules, 1986. The pass manual ^{cannot have any rule of the benefit} which ~~deprives~~ the railway servant that what has been provided in the statutory rules. If the provisions of Central Railway Pass Manual are accepted, then the Railway servant who is removed from service is not



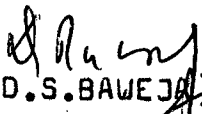
entitled for the Post Retirement Complimentary Passes and therefore Central Railway Pass Manual puts such categories of Railway servants on disadvantage. Keeping these facts in view, I am unable to be persuaded by the arguments of the respondents. The statutory rules issued in 1986^{have} and relied upon by the applicant/clearly laid down that the Railway servants removed from service are entitled for the Post Retirement Complimentary Passes.

7. The applicant also brought out that same issue had been gone into in OA.NO.636/89 by this Bench of the Tribunal and through order dated 20.11.1989, the passes to Railway employee removed from service had been allowed. Copy of this order was made available during the hearing. On going through this order, it is noted that the counsel for the respondents conceded during the hearing that the Railway employee who is removed from service is entitled for Post Retirement Complimentary Passes. Based on this, the relief was granted to the applicant. I am in respectful agreement with the direction in this OA. in view of the deliberations above where contentions raised by the respondents opposing the relief have been gone into detail.

8. The respondents have also opposed the application on the plea that it is barred by limitation stating that the applicant was removed from service w.e.f. 31.7.1991 and the present application has been filed only on 4.5.1998. The learned counsel for the applicant contested this stating that the entitlement of Post Retirement Complimentary Passes is a recurring

cause of action as the passes become due every year. Keeping in view the facts of the case, I am in agreement with the contention of the applicant and the objection raised by the respondents with regard to the limitation is not sustainable.

9. In the result of the above discussions, the application is allowed with the direction that the Post Retirement Complimentary Passes as admissible to the applicant as per the extant rules shall be issued from the year 1999 onwards as and when applied for. No order as to the costs. For the other reliefs, observations in Para 5 will apply.


(D.S. BAWEJA)
MEMBER (A)

mrj.