

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 795 OF 1998.

25.2.99
Date of Decision:

S. R. Shetty,

Applicant.

Shri G. S. Walia,

Advocate for
Applicant.

Versus

Union Of India & Another,

Respondent(s)

Shri A. I. Bhatkar,

Advocate for
Respondent(s)

CORAM:

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

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

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

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 795 OF 1998.

Dated the 25th day of February, 1999.

CORAM : HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

S. R. Shetty,
Retired Railway Employee
Retired from Central Railway,
Mumbai Division,
Mumbai - 400 008.

Residing at -

A-11/201,
Lok Dhara Co.Op. Housing
Society Ltd.,
Kalyan (E),
Pin - 421 306.

... Applicant

(By Advocate Shri G. S. Walia)

VERSUS

1. Union Of India through
The General Manager,
Central Railway,
Head Quarters Office,
Mumbai C.S.T., Mumbai-400 001.

2. The Divisional Railway Manager,
Mumbai Division,
Central Railway,
DRM's Office,
Mumbai C.S.T.,
Mumbai - 400 001.

... Respondents.

(By Advocate Shri A. I. Bhatkar).

ORDER

¶ PER.: SHRI D. S. BAWEJA, MEMBER (A) ¶

The applicant while working in Central Railway retired from Railway Service on 31.05.1996. The applicant was occupying a quarter at the time of retirement which he vacated on 31.01.1998. The applicant has completed more than 33 years of qualifying service and, therefore,

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claims that he is entitled for two sets of post-retirement passes as per the rules. The applicant made a representation for issue of one set of post-retirement pass in his favour. However, he was replied that he is not entitled for any post-retirement pass till the year 2008 as he had retained the railway quarter unauthorisedly beyond the period he was allowed to retain the quarter after retirement. Feeling aggrieved by this, the applicant has sought legal remedy through this application filed on 11.09.1999 with a prayer that the respondents be directed to issue post-retirement passes to the applicant from the year 1998 onwards.

2. The main plea of the applicant is, that action taken by the respondents to withhold the issue of post-retirement passes linking up with the retention of railway quarter is arbitrary and illegal and in violation of Articles 14 and 16 of the Constitution of India.

3. The respondents have opposed the application through their written statement. The respondents submit that applicant retired from service on 31.05.1996 and he was allowed to retain the quarter for a period of 8 months, i.e. upto 31.01.1997. However, the applicant did not vacate the quarter and, therefore, a show cause notice was issued to him under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The applicant finally vacated the quarter on 04.02.1998 and, therefore, he was under unauthorised occupation of the quarter from 01.02.1997 to 04.02.1998.

It is further stated that as per Railway Board's letter dated 24.04.1982, one set of post retirement pass is to be disallowed for every month of unauthorised retention of railway quarter by the retired employee. In view of this, the applicant shall not be entitled for post retirement passes for the next six years as per the rules. Based on these averments, the respondents plead that the applicant is not entitled for any relief. The respondents have further brought out that similar issue of post retirement passes had come up before this Tribunal in O.A. No. 552/95 in case of Mahadev Singh V/s. Union Of India and the claim of the applicant was rejected as per order dated 15.11.1996 placing reliance on the order of the Full Bench in the case of Wazir Chand V/s. Union Of India & Others.

3. The applicant has not filed any rejoinder-reply.

4. Heard the arguments of Shri G. S. Walia, the Learned Counsel for the applicant and Shri A. I. Bhatkar, the Learned Counsel for the respondents.

5. During the arguments, the Learned Counsel for the applicant placed reliance on the following orders of this Bench of the Tribunal :

- (i) O.A. No. 733 of 1990 in the case of Vishram B. God V/s. Union Of India decided on 15.04.1991.
- (ii) O.A. 1013/95 in the case of D.G. Advani V/s. Union Of India & Others decided on 12.01.1999.

(iii) O.A. 1157 Of 1997 in the case of I. T. Motwani V/s. The Divisional Railway Manager, Central Railway, Mumbai, decided on 03.09.1998.

(iv) O.A. No. 1063 of 1998 in the case of Kashiram T. Chougule V/s. Union Of India & Anr. decided on 21.01.1999.

6. The only short question to be decided in this O.A. is, whether the respondents are legally entitled to with-hold the issue of post-retirement passes to the applicant for unauthorised occupation of the quarter after retirement ?

7. The respondents have indicated that the applicant was in unauthorised occupation of the quarter for a period from 01.02.1997 to 04.02.1998 and, therefore, in terms of the Railway Board's letter dated 24.04.1982, the applicant is not entitled for any post-retirement passes for a period of six years. On going through the orders cited by the Learned Counsel for the applicant as well as by the Respondents, it is noted that this issue has been gone into by the Full Bench in the case of Wazir Chand V/s. Union Of India as reported in 1989-1991 Full Bench Judgements of Central Administrative Tribunal page 287 and 1991 (1) ATJ 60. Based on what is held in the case of Wazir Chand by the Full Bench, all the four O.As. cited by the applicant have been decided in favour of the applicants with the direction that the applicant be issued post-retirement passes after the vacation of the quarter. Out of these four orders, two orders in the case of Vishram B. God and D. G. Advani.

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are of the Division Bench while other two orders are of the Single Member Bench.

8. The Counsel for the respondents on the other hand submit that in the case of Mahadev Singh, the Bench has taken a different view relying upon the order of the Full Bench in the case of Wazir Chand laying down that the applicant is not entitled for the post-retirement passes for unauthorised occupation of the quarter and he will be entitled for release of the post retirement passes as per the extant rules i.e. with-holding of one set of pass for every month of unauthorised occupation. I have carefully gone through the orders cited by the applicant and the order in the case of Mahadev Singh cited by the respondents. By dated 24.04.1982 of Railway Board referring to the order in the case of Wazir Chand, the issue with regard to dis-allowing of one set of post- retirement passes for every month of unauthorised retention of quarter was referred to the Full Bench. The Full Bench has discussed this issue in para 20 of the order and finally, while answering on this issue in para 27 has held - "disallowing one set of post- retirement passes for every month of unauthorised retention of railway quarter is also unwarranted." With these findings of the Full Bench, it is clear that with-holding of post-retirement passes (one set for every month of unauthorised retention of quarter is not legally permissible. Based on these findings of the Full Bench, all the four O.As. cited by the applicant have been decided in favour of the applicants.

However, in the case of Mahadev Singh cited by the respondents, the Single Member Bench has taken a different view. On going through para 8 of this order, it is noted that while deciding the issue, reliance has been placed on the observations of the Full Bench in para 20. On careful consideration, I am of the opinion that the observations of the Full Bench relied upon in rejecting the claim of the applicant have been referred to in isolation and are not ~~in line~~ with the final decision recorded by the Full Bench in ^{considered} para 27. In my opinion, what is decided in the case of Wazir Chand has not been correctly applied in the case of Mahadev Singh. As indicated earlier, the Division Bench in an earlier order in the case of Vishram B. God in O.A. No. 733/90 decided on 15.04.1991, had allowed the relief to the applicant based on what is held in Wazir Chand's case. This order, perhaps had not been brought to the notice of Single Member Bench while deciding the matter in the case of Mahadev Singh. A ^{similar} view had been taken in the ^{subsequent} three orders. In view of this, I am of the opinion that the order in the case of Mahadev Singh is ^{a binding precedent and} per incuriam and cannot be relied upon by the respondents ^{as} to advance the argument that the case of the applicant in the present O.A. is not covered by the order of the Full Bench in Wazir Chand's case. In view of this fact ⁱⁿ situation, I have no hesitation to conclude that the case of the applicant in the present O.A. is covered by the ratio of the decision in the four orders cited by the applicant and therefore, the applicant is entitled for the relief claimed.

9. In the result of the above, the O.A. is allowed with a direction to the respondents that applicant will be issued post-retirement passes as admissible as per rules from the year 1999 onwards regularly. The passes will be issued to the applicant when he makes a request for the same. In the circumstances of the case, there will be no order as to costs.

D. S. Bawej
(D. S. BAWEJA)
MEMBER ~~SAC~~.

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