

(17)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

RA 338/93 in
DA 450/90

Date of decision: 05.10.1993

Union of India, through
the General Manager,
Northern Railway,
New Delhi.

... Petitioner(Respondents
herein)

Versus

Shri Ram Sarup Sharma & Anr.

... Respondents(Petitioners
herein)

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. S.R. ADIGE, MEMBER(A).

For the petitioner - None.

For the respondents(review
petitioners) - Shri O.P. Gupta, Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,
Chairman)

This application is for review of the judgement
of the Tribunal rendered in O.A. No. 450/1990 decided
on 25.1.1991. The first petitioner Shri Ram Sarup Sharma was
holding the post of Assistant Office Superintendent/Head Clerk
in the Northern Railways. He was allotted a Type-II quarter
in which he was residing until he retired from service on
31.12.1984. He was permitted to stay till 31.8.1985. He was
treated as being in an unauthorised occupation from 1.9.1985.
The petitioner actually vacated the said quarter on 20.10.1986.
On the retirement of the petitioner, out of the retirement benefits
to which he was entitled to, certain amounts were deducted on

the ground that the first petitioner was in unauthorised occupation from 1.9.1985 and that, therefore, the Administration was entitled to deduct for the said unauthorised occupation the rent at market rates in accordance with law.

The petitioner challenged the action of the administration in deducting the said amount out of his retirement benefits in an application filed u/s 33-C(2) before the Labour Court.

The Labour Court allowed the said application and directed the Administration to refund to the petitioner the deducted amount of Rs.7,526/- with interest @ 12% per annum. It is the said decision that was challenged by the administration in O.A.450/90.

That application was allowed on 25.1.1991 and the order of the Labour Court was set aside. The petitioner has challenged the said order of the Tribunal in this review application.

2. The relief claimed in this review application is on the ground that the order of the Tribunal suffers from an error apparent on the face of the record. It was submitted that the authorities having regularised the quarter in favour of his son Ajay Kumar who was holding the post of Peon in the same Railway Administration, there was no justification to treat the petitioner as being in unauthorised occupation in respect of the period which is covered by regularisation in favour of the petitioner's son. It is necessary to note that the Tribunal has not examined the merits of the case in this behalf and recorded a finding against the petitioner. What the Tribunal has examined is a limited question as to whether the Labour Court

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exceeded its jurisdiction in granting the relief to the first petitioner in the application filed u/s 33-C(2). The Tribunal relying upon the two judgements of the Supreme Court held that the application u/s 33-C(2) is in the nature of the execution proceedings and that, therefore, the Labour Court exceeded its jurisdiction in going ⁱⁿ to the disputed rights of the parties and in adjudicating on the question of entitlement of the parties. We find on a plain reading of the order that there was dispute in regard to the right claimed before the Labour Court. Whereas the petitioner asserts that he cannot be regarded as an unauthorised occupant in the light of the order of regularisation made in favour of his son, the Administration took the view that so far as the first petitioner is concerned, he was entitled to Type-II quarter whereas his son was entitled to Type-I quarter and that, therefore, the petitioner was in unauthorised occupation of the quarter w.e.f. 1.9.1985. In other words, the Labour Court entered into the disputed question between the parties in regard to the right of the administration to claim higher rent on the basis that the first petitioner was in unauthorised occupation of the quarter for the relevant period. As the very basis of the claim was disputed and the dispute was bona fide, it was not open to the Labour Court to examine the merits of the case and to record a finding in favour of the one party or the

other. The question regarding adjudication of the rights of the parties could be legitimately gone into u/s 10 of the Industrial Disputes Act and not u/s 33-C(2). It is a well settled law. The Tribunal was justified in holding that the Labour Court exceeded its jurisdiction in going into the merits of the claim of the petitioner. As we are in agreement with the view taken by the Tribunal, the question of interfering on the ground that there is an error on the face of the record does not arise. It is equally settled law that it does not bar the parties to get the right adjudicated in appropriate proceedings in accordance with the law. As the proceedings in question were under Sec.33-C(2), it is open to the parties to seek adjudication in accordance with law. Without prejudice to the rights of the parties, this application is dismissed.

No costs.



(V.S. MALIMATH)
CHAIRMAN

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(S.R. ADIGE)
MEMBER(A)

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