
(2008) 08 JH CK 0152
In the Jharkhand High Court

Ashraf Ali Khan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-08-2008

Acts Referred:

Citation : (2008) 4 JCR 627

Hon'ble Judges : Gyan Sudha Mishra, C.J; Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This writ petition has been filed by the petitioner, Ashraf Ali Khan who had been functioning as a driver with the Railways and was posted at Dhanbad where he was allotted a quarter to reside. The earlier allotment was substituted by allotment of another quarter No. 426/II/23 at Hill Colony, Dhanbad to which the petitioner shifted after vacating the earlier quarter No. 143/L. In due course of time the petitioner also retired from service of the Railways and the quarter which was in his occupation was allotted to another driver. But the petitioner failed to vacate the quarter which was in his occupation and there is dispute also in regard to the fact whether he vacated the earlier quarter or not.

2. According to the respondent-authorities of the Railways at Dhanbad, the petitioner remained in occupation of the previous quarter and also subsequent quarter which was allotted to him. Thus, he remained unauthorisedly in occupation of the two quarters and thereafter he superannuated. The audacity of the petitioner went to the extent of not vacating the quarter even after his retirement hence the railway authorities withheld the amount of gratuity payable to him by way of retrial benefits in terms of the Rules of the Railways under which it was permitted to withhold the post retrial dues, if any amount was payable by the employee to the Railways. But before withholding the amount of gratuity which was payable to the petitioner, an enquiry was initiated and conducted by the Sr. Divisional Personnel Officer, East Central Railways, Dhanbad wherein the enquiry officer granted sufficient opportunity to the petitioner to

establish the fact as to whether he had vacated the quarter after his retirement and whether he had retained two quarters at a time while he was in service. After a thorough enquiry based on the evidence led by the parties the report was submitted by the Sr. Divisional Personnel Officer, Dhanbad as contained in Annexure-8 to this writ petition wherein the entire controversy had been dealt with and the evidence led before the enquiry officer was also discussed and as per the own admission of the petitioner before the enquiry officer, it appears that he had retained two quarters and failed to vacate the subsequent quarter even after his retirement. It is for this reason that the retrial benefit of the petitioner which was payable by way of gratuity was withheld.

3. The petitioner therefore, filed an application before the Central Administrative Tribunal, Circuit Court at Ranchi where he assailed the order by which amount of gratuity was withheld. The petitioner reiterated his case before the Tribunal and submitted that he was not in unauthorized occupation of the quarter which he could not establish as per his own version made before this Court through his Advocate. He was residing in the same quarter in which he was residing earlier but he asserted that the said quarter was allotted to his son. However, he could not produce any order of allotment in favour of his son much less an order indicating that allotment had been made in favour of his son where he was residing earlier.

4. Even if we accept that the petitioner is residing legally and validly along with his son in the quarter allotted by the railways, the fact that he remained unauthorizedly in the quarter belonging to the railways could not be demolished or refuted by the petitioner by any iota of evidence. In the enquiry also which was conducted by the Sr. Divisional Personnel Officer, Dhanbad, the petitioner failed to establish that he was not in unauthorized occupation of the quarter. The railway authorities, on the contrary, has been able to establish that the quarter which was allotted to the petitioner was subsequently allotted to another driver and yet he failed to vacate it.

5. Thus, the petitioner has miserably failed to demolish the case of the respondents that he remained in unauthorized occupation of the accommodation provided to him as an employee of the railways and it could also not be established that the deduction of retrial dues on account of his unauthorized occupation was contrary to the Rules of the Railways. Admittedly, the respondent-railways is entitled to deduct retrial dues of an employee like the petitioner against whom demand has been raised by the railways by way of rent on account of occupation in a government building without legal entitlement to live in the same.

6. Under the circumstances, the Tribunal has rightly rejected the application filed by the petitioner. Thus, we find no merit in this writ petition. Consequently it is dismissed.

However, in the interest of equity justice, we observe that if, at any point of time,

the petitioner is able to establish before the authorities of the railways by way of representation supported by cogent evidence that he had vacated the premises, the authorities, after deducting the market rent payable by the petitioner, shall pay the balance amount payable to the petitioner towards his retrial dues.

7. It is implied that if the petitioner fails to establish that he had vacated the premises, the respondents-railway authorities shall be at liberty to proceed against him.