

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the **25th** day of **April** 2011

Original Application No.339 of 2005

Hon'ble Mr. Justice S.C. Sharma, Member (J)

Hemant Kumar Gupta, aged about 54 years, Son of Late Badhu Lal,
Resident of 35-C/2, Jayantipur, Dhoomanganj, Allahabad.

. . .Applicant

By Adv : Sri A. Srivastava

V E R S U S

1. Union of India through Divisional Railway Manager, North Central Railway, Allahabad.
2. Sr. Divisional Mechanical Engineer (O & F), North Central railway (Mechanical Branch), Allahabad.
3. Sri Rakesh Kumar Srivastava, Senior Section Engineer (LOCO), North Central Railway, Diesel Loco Shed, Allahabad.

. . .Respondents

By Adv: Shri Anil Kumar

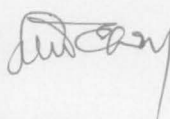
O R D E R

1. Instant OA has been instituted for the following reliefs:-

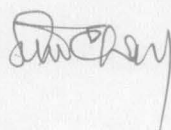
- "A. To issue a suitable order or direction in the nature of mandamus commanding the respondents to pass an order of cancellation of allotment in the name of applicant of the Quarter No.316AB Malgodam Railway Colony, Allahabad.
- B. To issue a suitable order or direction in the nature of mandamus commanding the respondents to refund the total amount to the applicant, so far deducted from the salary of the applicant towards rent and electricity dues of the quarter in question."

2. The facts of the case may be extracted as follows:-

It is alleged that applicant was an employee Shunter of North Central Railway and posted as Diesel at Loco-Shed Allahabad. In that capacity Quarter no.316 AB Malgodam North Central Railway,



Allahabad was available to the employee of the North Central Railway on the basis of allotment by the competent Railway authority as per demand and vacancy. That one Sri Ashique Ullah was allotted the aforesaid quarter and was residing in the said quarter with his family. He retired from service in the year 1994 but the said Ashique Ullah never vacated the house and the possession was never delivered to the applicant in pursuance of the allotment order by the authorities. The said Ashique Ullah continued to stay in the house and hence the possession was never delivered to the applicant but the rent of the said quarter alongwith the electricity dues were regularly deducted from the monthly salary of the applicant since the date of allotment. From time to time complaints as well as applications were made to the authorities in this connection but even then neither the possession was delivered to the applicant of the quarter nor the deduction of rent and electricity charges was stopped rather continued to deduct illegally. That the applicant is entitled to recover. That a notice dated 17.07.2003 was received by the applicant under the signature of Sri Rakesh Kumar Srivastava, Senior Section Engineer (Loco) North Central Railway, Allahabad. That the accommodation is in the name of the applicant and the same has been cancelled by the Railway authorities and the applicant was directed to vacate the said quarter within three months failing which he will be evicted forcefully. It is specifically alleged that the applicant had been living at his residence at House No.35-C/2 Jayantipur, Dhoomanganj, Allahabad and the applicant never received any order for cancellation of the allotment order. The letters were sent by posting certificates as well as by registered post but nothing has been done by the respondents in this connection. The details of



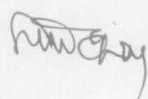
the letters have been given in the OA which is not necessary to be mentioned specifically. As the illegally recovery has been made from the salary of the applicant of the rent as well as electricity dues, hence the OA.

3. The respondents filed the written statement and denied from the allegations of the applicant. It has been alleged that the applicant is an employee of the Railway and was posted as Shunter of North Central Railway as Diesel at Loco-Shed Allahabad. But from 30.05.2002 he was transferred to Kanpur under Senior Section Engineer, (Loco), Kanpur. All the facts alleged in the OA are wrong and misconceived and denied emphatically. That the disputed accommodation was allotted to the applicant but his written application and as per rules the allotment is made only after vacating the vacation by previous occupant. Earlier the accommodation was in the possession of one Sri Ashique Ullah, Driver who vacated on 23.08.1994 and the same day applicant occupied it which is evident from the letter dated 29.09.1994 and "Inventory of fitting" etc. Dated 23.8.1994. These documents shows that after vacation the accommodation was delivered to the applicant that this OA has been instituted with malafide intention. It has also been alleged that applicant in order to gain indirectly from the disputed accommodation he delivered the possession of the disputed accommodation to one Sri Mohd. Maruf and recovered from him as advance money and it is a cunningness on the part of the applicant Mohd. Maruf delivered the letter to this effect on 24.12.2002. As a matter of fact the applicant is an absconder, departmental proceedings were initiated against him which are however, pending. There is no prima-facie case that the

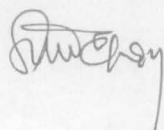
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vacation was made from the salary of the applicant of rent and electricity charges illegally. No correspondence was received by the respondents as alleged in the application. Notice was received and proper reply of the notice was given. That OA lacks merits and the same is liable to be dismissed. In respect to the CA of the respondents, applicant filed the Rejoinder and denied from the allegations made in the counter reply. Further supplementary affidavit has also filed annexing different correspondence, which took place with the department/respondent. Supplementary counter has also been filed on behalf of the respondents disputing the allegations made in the supplementary affidavit of the applicant.

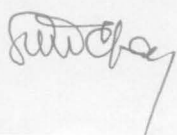
4. I have heard Mr. A. Srivastava, Advocate for the applicant and Mr. Anil Kumar, Advocate for the respondents and perused the entire facts of the case. From perusal of the facts of the case it is evident that the controversy involved in the present case is very narrow. It is regarding illegal deductions of rent and electricity charges from the salary of the applicant. It has been alleged by the applicant that earlier in Quarter No.316 AB, Malgodam, North Central Railway one Ashique Ullah was residing and it was allotted to him. That Ashique Ullah retired in the year 1994 but even after retirement from service he never vacated the house and vacant possession was never delivered to the applicant whereas the respondents started making illegal deductions from the salary of the applicant of the rent and the electricity charges. Several letters allegedly were sent to the respondents for cancellation of the allotment order as well as stopping of deductions of the rent and electricity dues from the salary but to no avail. Numerous



correspondence allegedly taken place between the applicant and the respondents file but it is a definite case of the respondents that admittedly earlier in accommodation No.316 AB Malgodam, North Central Railway, Allahabad was allotted to one Ashique Ullah and during the continuance of his service he resided in the house and it has also been alleged that Ashique Ullah was retired in the year 1994 but according to the applicant even after retirement of Ashique Ullah he never vacated the vacation which was allotted to the applicant whereas according to the respondents after retirement of Ashique Ullah he vacated the accommodation and the vacant possession was delivered to the applicant. One story has also been set up in the written statement that Ashique Ullah on superannuation vacated the accommodation in the year 1994 and the vacant possession delivered to the applicant but surprisingly the applicant subletted the accommodation to the son of Ashique Ullah and it has also been alleged that he received a sum of Rs.10000/- from the son of Ashique Ullah namely Mohd. Maruf and it has also been alleged by Mohd. Maruf that a sum of Rs.800/- P.M. was paid to the applicant as rent. The respondents also alleged that, as the accommodation was subletted to Mohd. Maruf the son of Ashique Ullah hence he was ultimately transferred to Kanpur. It has also been alleged by the respondents that the applicant mostly remained an absconder. But it is not a matter to be decided in this OA. It is regarding the recovery of the rent as well as electricity dues from the salary of the applicant. It is undisputed fact that the accommodation in dispute was allotted to the applicant and it is also undisputed fact that the deductions were made from the salary of the rent as well as electricity dues. But it is also to be decided whether actual and physical possession

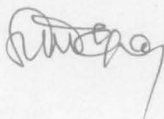


was delivered to the applicant after vacation of the house by Ashique Ullah on his retirement in the year 1994. There is also one very important circumstance, which has been stated even by the respondents. It has been alleged that although Ashique Ullah vacated the accommodation in question in the year 1994 and the vacant possession was delivered to the applicant. But simultaneously a inconsistent stand has also been taken by the respondent to the fact that although Ashique Ullah previous occupant of the accomodation vacated the house on retirement but at the same time the applicant delivered the vacant possession of the accommodation to the son of Ashique Ullah namely Mohd. Maruf. It is undisputed and uncontroverted fact that Ashique Ullah resided in the house till his retirement and afterwards one Mohd. Maruf who is known but the son of the previous occupant of the house. When it has come in the notice of the respondents that the house was vacated by Ashique Ullah and vacant possession was delivered to the applicant of the accommodation in question but at the same time it has come in the notice that the applicant for illegal gain sublet the accommodation to Mohd. Maruf the son of the applicant. It shows that as to why it may not be inferred that it was an artificial vacation by Ashique Ullah. If really Ashique Ullah vacated the accommodation on his retirement then there appear no reasons that as to why the son of previous occupant got the accommodation as a subtenant and what were the necessity either to Ashique Ullah or to Mohd. Maruf to get the accommodation as a sub tenant. Moreover, it is a serious misconduct on the part of the government employee. The accommodations are meant for the government or Railway employee in order to facilitate them to discharge effectively their



duty near working place. The Government or Railway accommodation was not meant for wrongful gain by the employee. Evidently it is a gross misconduct. The learned ocunsel for the respondents failed to show that what action has been initiated against the applicant if he sublet the accommodation to Mohd. Maruf the son of previous occupant after getting the sum of Rs.10000/- as advance and Rs.800/- P.M. and afterwards enhanced the amount of rent. It may be possible that this statement was recorded in the year 2002 but it is not expected that the respondents will close their eyes from all these developments.

5. It may be possible that so many correspondence has been alleged by the applicant which he had delivered to the respondents and several times applicant informed the respondents that he had not received the vacant possession of the accommodation inspite of the allotment. The respondents specifically denied from receipt of all these correspondence form the side of the applicant. However, there are certain correspondence which was sent by registered post and it cannot be said that no such correspondence was received by the respondents. But there is one very important circumstance from which the respondents cannot deny rather they have admitted that a notice was sent on behalf of applicant by the Advocate of the applicant namely Sri Alok Chandra and this notice was served on 26.5.2003 although in the year 2002. Applicant has already been transferred from Allahabad to Kanpur and it may be possible and argued by learned counsel for the respondents that for so many years the applicant remained silent and did not adopted any legal recourse by approaching the Tribunal earlier and at this stage Mr. Anil Kumar Advocate stated that the applicant

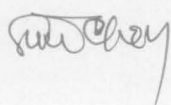


was charge sheeted for unauthorized absent but this is a controversy in the present case. I am mostly concerned whether vacant possession was delivered to the applicant and whether applicant sublet the accommodation to one Mohd. Maruf the son of previous occupant and it is a very strange co-incident either to substantiate the claim of the applicant or the respondents that instead of subletting the accommodation the some third persons, applicant preferred it more safe to sublet to the accommodation to the one of previous occupant. The circumstances otherwise shows that as even after alleged date of vacation of the accommodation by Ashique Ullah the son Mohd. Maruf continued the leave in the house and it may be possible as stated by Mr. A. Srivastava, Advocate for the applicant that in case a retired employee continued to over stay in a government accommodation after retirement then his retrial benefits can be delayed or forfeited. And in order to save the Ashique Ullah from that liability this theory has been developed that Mohd. Maruf continued to reside in the house as a subtenant and the applicant was benefited.

6. There is one more circumstances as stated by the counsel for the respondent that the applicant had been a habitual absconder from the service and a person who is at was path with the department cannot take this risk of inviting the respondent department to initiate one more proceedings against him of misconduct of subtitling. There are other circumstances, which show that the possession was never delivered to the applicant after vacating by Ashique Ullah. And instead letting out to Ashique Ullah's son the previous occupant continued to remain in possession but the recovery was made from the salary of the

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applicant of the rent as well as electricity dues. Whereas there are circumstances which shows that numerous letters were written to the department by the applicant calling upon them that the possession of the house was not delivered to him and hence the allotment order be cancelled but no action was initiated by the respondents on it. It has been argued by Mr. Anil Kumar that in the year 2003 Mohd. Maruf vacated the accommodation and after vacating by him the house was allotted to another employee Rafik Ahmad but no circumstances has been shown by the respondents that possession was ever delivered to the applicant except preparing the Inventory which the respondents show that this is a document of the possession. But the respondents are trying to blow hot and cold in the same breath that on one hand the vacant possession was delivered to the applicant and at the same time theory has been developed to the effect that one Mohd. Maruf son of the previous occupant remained in the possession as a sub tenant and he illegally paid the money to the applicant. Under these circumstances the inference can be drawn that possession was never delivered to the applicant of the accommodation. But even then the respondents continued to deduct from the salary of the applicant rent along with electricity dues. It has been argued by the learned counsel for the respondents that there is a much delay in filing the OA before the Tribunal. The illegal deductions from the salary were made since 1994 and continued till 2002 but during this period the applicant never approached the Tribunal in getting any relief against the illegal deductions. But learned counsel for the applicant argued that several other proceedings were initiated against the applicant regarding service and as many as five OAs were filed by the applicant on different cause of action,



but not for this cause of action. But it is a continuing process that the OA is barred by limitation.

7. The learned counsel for the respondents argued that there is judgment of Hon'ble Apex Court in which the matter of limitation has been dealt with. But considering the facts and circumstances of the case the limitation is not so material in the present case.

8. For the reasons mentioned above, I have come to the conclusion that although the disputed accommodation was allotted to the applicant in the year 1994 on the superannuation of Ahsique Ullah but the circumstances shows that actual possession was never delivered to the applicant of the accommodation whereas the deductions were made from the salary of the applicant of rent as well as of the electricity dues. The applicant is liable for deductions of rent and electricity dues in case the possession was delivered to him. Hence possession was not delivered and hence is not liable to pay the rent etc. Relief has also been claimed of cancellation of the allotment, but as Mr. A. Srivastava admitted himself that the allotment has been cancelled and the accommodation has been allotted to one Rafik Ahmad on 13.10.2003 hence there is no necessity to grant this relief, however, as deductions have been made from the salary of the applicant of rent as well as electricity dues. Hence, he is entitled to recover that amount of the rent as well as electricity dues. The OA deserves to be allowed.

9. OA is allowed. The respondents are directed to settle the account regarding deductions of the rent along with electricity



dues and make the payment of the same. The applicant is also directed to furnish the details of the deductions to the respondents so that they may verify from their own account and can settle the amount. This exercise shall be completed within a period of three months from the date when copy of this order is produced before them. The applicant shall also deliver the copy of the order alongwith deduction made from him. The applicant shall also be entitled for interest @ 9% per annum. No order as to costs.


Member-J

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