

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 230 of 1994
alongwith

Original Application No. 1352 of 1993

Allahabad this the 26th day of November 1998

Hon'ble Mr. S. Dayal, Admn. Member

Hon'ble Mr. S.L. Jain, Judicial Member

O.A. No. 230/94

Chandra Bhoosan Mishra, Aged about 36 years, S/o Sri
Madhav Narain Mishra, R/o 643-A, Nawab Yusuf Road,
Traffic Colony, District Allahabad.

Applicants

By Advocate Sri Sudhir Agrawal

Versus

1. Union of India through General Manager, Northern
Railway, Baroda House, New Delhi.

2. Divisional Railway Manager, D.R.M. Office, Nawab
Yusuf Road, Allahabad.

3. Senior Divisional Commercial Manager, Northern Railway,
D.R.M. Office, Nawab Yusuf Road, Allahabad.

4. Senior Divisional Operating Manager, Northern
Railway, D.R.M. Office, Nawab Yusuf Road, Allahabad.

5. Divisional Commercial Manager, Northern Railway,
D.R.M. Office, Nawab Yusuf Road, Allahabad.

6. Station Manager, Northern Railway, Allahabad
Junction Station, Allahabad.

7. Chief Controller Northern Railway, D.R.M. Office,
Allahabad.

8. R.P. Singh, Head Ticket Collector, through Senior
D.C.M. Northern Railway, Nawab Yusuf Road, Allahabad.

Respondents

By Advocate Sri S.N. Gaur

Sri O.P. Singh (for respondent no.8)

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O.A. No. 1352 of 1993

Sri R.P. Singh Son of Shri I.D. Singh, resident
of 606, Krishna Nagar, Kydganj, Allahabad.

Applicant

By Advocate Sri O.P. Singh

Versus

1. Union of India through the Secretary, Govt.
B Dept. Ministry of Railway, Rail Bhawan, New
Delhi.
2. Sri K.C. Lenka, Hon'ble Minister of State
Railways, Railway Bhawan, New Delhi.
3. General Manager, Northern Railways, Baroda
House, New Delhi.
4. Divisional Railways Manager, Northern Rail-
ways, Allahabad Division, Allahabad.
5. Sri C.B. Mishra, Travelling Ticket Examiner,
Northern Railways, Allahabad, resident of Qr.
No. 837-B, Loco Colony, Northern Railway,
Allahabad.

Respondents

By Advocates Sri S.N. Gaur.
Sri S. Agrawal (for respondent no.5)

O R D E R

By Hon'ble Mr. S. Dayal, Member (A)

These two O.A.s have been filed under
Section 19 of the Administrative Tribunals Act, 1985.
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2. These cases have been heard together and a common judgment is being written in order to deal with the contentious issues raised by the applicants in these two cases in their proper perspective.

3. In original application no. 230/94, the applicant Shri C.B. Misra has approached this Tribunal for the following reliefs:-

- (i) An order of the Tribunal to set aside order dated 21.1.93 of Respondent no. 2, allotting quarter no. 643 A, Nawab Yusuf Road, Allahabad, to Respondent no. 8.
- (ii) An order to the Respondents to revoke the major penalty charge sheet dated 10.8.93 issued by the Respondent no. 5 to the applicant.
- (iii) An order to set aside order dated 07.1.94 of Respondent no. 3 for recovery of penal rent at a rate of Rs. 2048-10 from the salary of the applicant from 10.6.93.
- (iv) A direction to the respondents to revoke the eviction proceedings initiated against the applicant under the Public Premises (Unauthorised Occupation) Act, 1971 initiated by Estate Officer, Northern Railway Allahabad vide order dated 29.12.93/05.1.94.
- (v) A direction to the respondents to regularise the Railway Quarter No. 643 A, Nawab Yusuf Road, Allahabad in favour of the applicant in compliance of the order dated 15.7.93 from the Jt. Director, Establishment, Ministry of Railways to the respondents.

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(vi) A direction to the respondents to pay cost of the application to the applicants.

4. In O.A. No. 1352 of 1993, the applicant-
Sri R.P. Singh seeks the following reliefs;

- (i) A direction to the Divisional Railway Manager to hand over the peaceful possession of Qr. No. 643 A, Nawab Yusuf Road, Allahabad to the applicant.
- (ii) A direction to the Divisional Railway Manager to evict Shri C.B. Misra, unauthorised occupant of the said quarter.
- (iii) A direction to the respondents not to regularise the quarter in the name of Shri G.B. Misra.
- (iv) A direction to the respondents not to cancel the allotment of the said quarter in the name of the applicant or allot it to some other official.
- (v) A direction to the respondents to pay the cost of the application.

5. Thus, there is an ~~and~~ ^{interrelationship} between relief no. i, iv and v of the first O.A. and reliefs no. ii, iii and iv respectively of the second O.A.

6. The facts of the case in O.A. 230 of 1994 as narrated by Shri C.B. Misra are that he was working as Travelling Ticket Examiner and had been in possession of Railway Quarter No. 837 B, Loco Colony since 1990. He moved an application alongwith Shri M.M. Sharma, Chief Controller, for exchange of his quarter with that of Railway Quarter No. 643 A.

Nawab Yusuf Road, Allahabad, which was in occupation of Shri M.M. Sharma. This application was moved on 03.2.92. This application was processed and put up for orders of Sr.D.C.S. towards end of June, 1992. The Sr. D.C.S. asked for Rules of Mutual Exchange of quarters. The matter regarding mutual exchange of quarters pended at this stage. One Shri R.P.Singh, Head Ticket Collector, who is Respondent no.8 in this case applied for quarter no.643-A, Nawab Yusuf Road, Allahabad in September, 1992. Respondent no.4 ordered on the application of Respondent no.8 that the latter should be allotted first available quarter from SS/Port if his priority stood at serial no.1. The Respondent no.8 applied for restoration of his priority from 02.2.76 on 21.9.92 and the same was allowed. Respondent no.8 was allotted Quarter No. 584 J, Loco Colony, on 08.12.92 but he refused the allotment on the ground that he had already applied for quarter no. 643 A, which was under consideration. The quarter was allotted on 10.7.92 to one Shri S.K. Tiwari ~~on~~ pending vacation by Shri M.M. Sharma. One Shri K.P. Mishra, Divisional Secretary of Uttariya Railway Mazdoor Union sent a letter addressed to D.R.M., Allahabad, mentioning that sister union was favoured with out of turn allotment to three officials including Shri C.B. Mishra, Vice President of N.R.M.U. and that Shri R.P. Singh be also given out of turn allotment of quarter no. 643 A, Nawab Yusuf Road. The D.R.M. on this letter ordered allotment of the quarter on 21.1.93 and also ordered that Commercial Pool will give a quarter to Controller's Pool in exchange on vacation. Shri M.M.Sharma informed Assistant Operating Manager on 09.6.93 that he was vacating the quarter requesting him to take

possession of the quarter. This intimation was sent to the Chief Controller who ordered on it that the quarter may be handed over to the proper allotted. It is the contention of Shri C.B. Misra that since the Railway authorities did not take charge of the quarter, Shri M.M. Sharma handed over the quarter to the applicant in pursuance of application dated 03.2.92. Shri C.B. Misra by letter dated 11.6.93 informed the respondents that he had taken possession of Quarter No. 643 A from Shri M.M. Sharma and requested for regularisation of the quarter in his favour. The respondents on 15.6.93 launched an enquiry through Joint Enquiry Committee and Respondent no.4 issued a notice to Shri C.B. Misra for unauthorised occupation of quarter asking him to vacate the quarter within twenty four hours. The wife of Shri C.B. Misra at this stage moved a representation dated 22.6.93 to Minister for Railways alleging that vested interests were sitting on papers of mutual exchange, forcing her husband to vacate the quarter and allot it to some other staff who was not the staff of Chief Controller, Allahabad. Shri C.B. Misra was placed under suspension by the respondents by their letter dated 22.6.93. The Assistant General Secretary of N.R.M.U. wrote a letter dated 24.6.93 to General Manager, Northern Railway, who is respondent no.1. The Chief Personnel Officer wrote to D.R.M. Allahabad to deal with the matter of disputed quarter at his own level and thereafter inform him. The D.R.M. sent the details of the case to the Chief Personnel Officer by his letter dated 09.7.93. The representation dated 22.6.93 was sent by Minister's office to Joint Director, Establishment, Railway Board and the Joint Director, Railway Board wrote on 15.7.93 to Chief Personnel Officer, Northern Railway that the Minister of State for Railway desired

that the quarter should be regularised in favour of Shri C.B. Misra. Shri C.B. Misra claims to have orally informed the respondents that the Joint Director of Establishments had ordered for regularisation of quarter in dispute in his favour on which respondent no. 4 directed respondent no. 3 to issue a major penalty charge sheet to Shri C.B. Misra. Respondent no. 3 directed respondent no. 5 to issue a major penalty charge-sheet which was issued on 10.8.93. With regard to order dated 15.7.93 of Joint Director, Establishment, Railway Board the Respondent no. 2 mentioned that full facts had been sent to Respondent no. 1 and closed the file. Respondent no. 8 filed the O.A. no. 1352 of 1993 before the Central Administrative Tribunal on 07.9.93 and obtained an interim order that the quarter may not be allotted to Shri C.B. Misra or any other person as the applicant claimed to be allottee of the said quarter. Shri C.B. Misra claims that the respondents started harassing by initiating D.A.R. proceedings, issuing an order of recovery of penal rent and taking eviction proceedings on the same cause of action. The respondents initiated the Disciplinary Enquiry by ~~then~~ nominating Enquiry Officer on 24.11.93. The suspension of Shri C.B. Misra was revoked on 16.12.93. He was served with a copy of the order of respondent no. 3 for recovery of penal rent at the rate of Rs. 2048-10 w.e.f. 10.6.93. This order was passed on 07.1.94. The order of eviction was passed in his quarter and it had been passed on 29.12.93/05.1.94.

7. The facts of the case in O.A. No. 1352 of 1993 are that the applicant joined as a Ticket Collector in Allahabad on 02.2.76 and ~~was posted as~~ ^{was posted as} Head Ticket Collector on 01.1.84. The applicant made an application

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for allotment of quarter in 1976. T.T.E. are entitled to Type II and H.T.C. to Type III quarter. The applicant is thus eligible for Type III quarter. Shri C.B. Misra is entitled to type II quarter and he was initially allotted a Type II quarter no. 538-C Ghanshyam Nagar in 1986 and was given a change to Type II quarter no. 561 B, Traffic Colony on his request on 16.6.89 and was given another change to Type II quarter 837 B, Loco Colony, Allahabad which is under his occupation. Shri M.M. Sharma, Chief Controller was in occupation of Type III Rly. Qr. No. 643 A Traffic Colony, Nawab Yusuf Road but he was transferred to New Delhi and was relieved on 8.7.92. He was allotted a Railway Quarter in New Delhi and was residing in that. The applicant was not allotted Railway Quarter as Type III quarter were not available. At the request of Shri K.P. Misra, Divisional Secretary of Uttariya Rly. Mazdoor Union, the D.R.M. allotted Type III Qr. No. 643 A, Nawab Yusuf Road to the applicant on 21.1.93. The letter of allotment was issued to the applicant on 29.1.93. Shri M.M. Sharma was allowed permission to retain the quarter upto 30.4.95 ie. upto school session. Shri Man Mohan Sharma is alleged to have demanded illegal gratification from the applicant and on his denial, handed over the quarter to Shri C.B. Misra on 11.6.93, although Shri C.B. Misra had no letter of allotment and was in occupation of Qr. No. 837-B, Loco Colony with the good offices of Shri M.M. Sharma, Shri C.B. Misra was able to obtain an order for regularisation/allotment of disputed quarter in his name from the then Minister of State for Railways.

8. The arguments of Shri S.C. Budhwar assisted by Sri Sudhir Agrawal for Shri C.B. Misra, Shri S.N.Gaur counsel for official respondents and Shri O.P. Singh for Shri R.P. Singh have been heard. The pleadings including written arguments have been taken into account.

9. The basic issue in these applications is relief no.5 of O.A. 230/94 read with relief no.(iii) of O.A.1352 of 1993, which is the claim of Shri C.B.Misra for allotment and regularisation of Railway Quarter no. 643 A, Nawab Yusuf Road. The learned counsel for Shri C.B. Misra has argued at length that all the procedural formalities required for exchange of residential accommodation on mutual basis had been gone through and only the issuance of allotment letter to Shri C.B. Misra has been denied. However, the fact that neither the poolholder nor any superior authority has allotted the residential accommodation to Shri C.B.- Misra and yet he claimed to be in its possession by virtue of obtaining its possession from ex-allottee Shri M.M. Sharma makes the occupation of this accommodation unauthorised. The argument of learned counsel for Shri C.B. Misra is that the Poolholders had been vested with the authority of interchange of residential accommodation from one pool to another and permit mutual exchange. But even this does not confer any right upon Shri C.B. Misra to occupy the residential accommodation in question until and unless orders are passed by poolholders, in case they are competent, to interchange the residential accommodation in question and after that to allot them to the officials applying for mutual exchange. This admittedly was not done and, therefore,

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Shri C.B. Misra had to make a prayer for regularisation. The learned counsel for Shri C.B. Misra has, however, not taken into account the fact that when Shri C.B. Misra took possession of the house from Shri M.M. Sharma, Shri M.M. Sharma was not handing it over in mutual exchange but was handing over its possession as he had been transferred to Delhi as early as July, 1992, and had come back on 09.6.93 to hand over the quarter which he was permitted to retain after taking over charge in Delhi on normal rent upto 30.4.93. Shri M.M. Sharma could, therefore, not have given it on the ground of mutual exchange to the applicant without permission of higher authorities at that time and in any case no rule has been shown to us permitting an official in such circumstances to hand over residential accommodation to another on the ground of mutual exchange or on the ground that the official respondents had refused to take possession of the house.

10. The learned counsel for Sri C.B. Misra has contended that once the Jt. Director of Establishment of the Railway Board had directed the Chief Personnel Officer, Northern Railway, to regularise, nothing remained to be done except passing an order of allotment in favour of Sri C.B. Misra because the inferior authority had no other option except to abide by directions issued by a superior authority. We cannot, however, overlook the fact that the representation of the wife of Shri C.B. Misra necessarily presented a one sided picture in favour of the applicant to the effect that possession of the quarter had been obtained by Shri C.B. Misra on the basis of no objection of pool owners and the vested interests were preventing formal order. The letter of Joint Director (Establishment) of the Railway Board addressed to Chief

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Personnel Officer, Northern Railway, forwarding the application of Shri C.B. Misra's wife and communicating the desire that the quarter may be regularised, action taken report sent and the Board informed whether the employee belonged to SC/ST community. Before this letter was received from the Railway Board, the D.R.M. had already sent a report to the Chief Personnel Officer Northern Railway to the effect that Railway Quarter No. 643-A already stood allotted in favour of Shri R.P. Singh under discretionary powers of the D.R.M. as Shri R.P. Singh stood first in the priority register and that Shri C.B. Misra obtained the possession of the quarter unauthorisedly from Shri M.M. Sharma and retained possession of the quarter no. 837-B also, it was also mentioned that Shri C.B. Misra was advised to vacate unauthorised occupation within twenty four hours and was suspended for disobedience of these orders. In short the divisional authorities put the matter in its perspective in their report to the Chief Personnel Officer, Northern Railway. The divisional authorities did not consider it proper in the frame work of rules to allot the quarter to Shri C.B. Misra. It is also quite clear that Shri C.B. Misra in O.A. 230/94 did not consider the letter of the Joint Director of the Railway Board to be a direction to allot the quarter as in that case he would have invited the attention of the Railway Board. In any case mere issuance of such a letter by the Jt. Director, Railway Board, which did not result in any letter of allotment in favour of Shri C.B. Misra, does not confer any right on him to obtain and continue possession of the quarter in question. We, therefore, do not find any merit in Shri C.B. Misra's claim for regularisation of the quarter.

11. Shri C.B. Misra has sought a relief no. (iv) in his Original Application, the revocation of eviction proceedings against him under Public Premises (Unauthorised Occupation) Act, 1971. The facts narrated by Shri C.B. Misra himself in his application show that order for eviction has been passed in this case and has been communicated to him on or before 24.1.94 by affixation of the order on the premises. Since we have arrived at the finding that the occupation by the applicant of the premises in question was not authorised, we see no reason to interfere with order of eviction passed under Public Premises (Unauthorised Occupation) Act, 1971. Shri C.B. Misra's claim for validity of possession is bared on the contention that no fault was found on the part of Shri M.M. Sharma for handling over the possession of the quarter in question for Shri C.B. Misra. Such a plea does not make the occupation of the quarter on the part of Shri C.B. Misra authorised. The possession of Shri C.B. Misra remained unauthorised for want of order of allotment of the quarter in his favour. Hence this relief is not admissible.

12. Shri C.B. Misra has sought stay on the order of operation of Respondent no. 3 for recovery of penal rent from him. The order of recovery of penal rent has been challenged on the ground that the respondents have started three proceedings for the same cause of action-eviction, recovery of penal rent and disciplinary enquiry. This is not tenable. The possession of the premises in question was clearly unauthorised on the part of Shri C.B. Misra and yet he has continued his occupation of the premises. He is liable for any rent

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which may be leviable from him under the Rules for continuing to have such possession. This recovery of rent under departmental rules has been upheld in a Full Bench decision of this Tribunal in 'Ram Poojan vs. Union of India and another (1996) 34 A.T.C. 434'. It may be mentioned here that the possession of M.M.Sharma after his transfer was authorised only upto 30.4.93 after which Shri M.M. Sharma's possession itself was not authorised and the allotment stood automatically terminated in terms of the Full Bench judgment in Rem Poojan's case (supra). This position is clear from letter dated 10.6.93 of Shri M.M. Sharma (annex-A-13 to the O.A.) regarding vacation of Rly. Qr. No. 643-A, Traffic Colony, Allahabad, addressed to D.R.M. Allahabad. The motivation for recovery result from period of occupancy while that for eviction results from nature of occupancy. The only commonality is the unauthorised nature of occupancy. The motivation for departmental proceedings is being examined in the ensuing paragraphs.

13. Shri C.B. Misra has sought the revocation of major penalty charge-sheet dated 10.8.93 issued by the respondents against him. One of the grounds on which Shri C.B. Misra has claimed this relief is that he has been subjected to three jeopardies for the same act of possession of a railway quarter. However, it is clear that the applicant has been subjected to three liabilities for unauthorised occupation and rules do not bar action for the three liabilities damage/penalty for unauthorised occupation-eviction from premises unauthorisedly occupied and misconduct. The applicant Shri C.B. Misra has himself cited Railway Board Circular dated 9.1.63 which permits dealing with staff indulging in unauthorised

occupation and retention with both D&AR proceedings and action under Public Premises (Unauthorised Occupation) Act, 1971. The D&AR charge-sheet issued to the applicant is for failure to maintain absolute integrity, devotion to duty and acting in a manner unbecoming of railway servants required under Rule 3.1 (i), (ii) or (iii). The charges against the applicant are that he occupied Railway Quarter No. 643-A Traffic Colony Allahabad on 10.6.93 unauthorisedly, forcibly, illegally arbitrarily and without any proper allotment order from any competent authority; that he was also in occupation of Railway Qr. No. 337-B, Loco Colony, Allahabad, since long and occupation of quarter no. 643-A was in addition that he disregarded the order of vacation of Sr. Divisional Operating Manager of 643-A within 24 hours, and that he was not willing to vacate quarter no. 643-A even after being placed under suspension. We do not see any reason to interfere with D & AR proceedings at interlocutory stage and relief no. 8(ii) is, therefore, not admissible.

14. Lastly the question of cancellation of allotment of quarter to Shri R.P. Singh has been raised by the applicant Shri C.B. Misra. The learned counsel for the applicant has challenged the allotment on the ground that the allotment order was made not on the application of Shri R.P. Singh but on a letter of the Divisional Secretary of his Union and that at the time of making the allotment, the papers of allotment were not called from the office by the Divisional Railway Manager. This ground raised by the learned counsel for the applicant is not tenable because the occupancy of the premises in question by the applicant

remains unauthorised and for this reason he has forfeited any right to challenge the allotment of quarter to another official. The learned counsel for the applicant has challenged the right of the Divisional Railway Manager to allot such a quarter out of turn to anyone on grounds other than those of physical handicaps or medical reasons or to an eligible dependant of a deceased or retired railway employee. It is true that out of turn allotments have been limited to 5 % of the vacancies in a year by the Railway Board and that main reasons for out of turn allotment are those enumerated above. But the authority of D.R.M. to make out of turn allotment in other cases is not totally barred. In Rules providing for constitution and functioning of Housing Committees for allotment as applicable to Allahabad Division (contained in Policy file produced by the Respondents for our perusal), it is stipulated that "Allotment of quarters on 'out of turn' basis can be made under specific approval of D.R.M. to essential staff. In exception cases, however, considered on merits and discretion of the D.R.M., such allotment may be made to non-essential staff also." Sri R.P. Singh has annexed a copy of allotment order dated 29.1.93 for out of turn allotment to him which has been issued by Sr. Divisional Commercial Manager, Northern Railway, Allahabad. It is clear from their order that the office of Sr. Divisional Commercial Manager had processed the order of the D.R.M. and thereafter issued the letter of allotment. The learned counsel for the applicant has also contended that the allotment of quarter to Shri R.P. Singh was irregular because on the day of allotment, the quarter was under authorised possession of Shri M.M. Sharma, it stood allotted to Shri S.K. Tiwari, and in addition. This is true but on the day the possession

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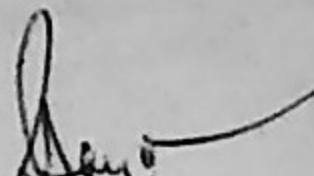
of the quarter was handed over by Shri M.M. Sharma to Shri C.B. Mishra, Shri M.M. Sharma in unauthorised possession and the allotment to Shri S.K. Tiwari stood already cancelled by an order of C.H.C. dated 05.02.93 on the ground that the quarter had been allotted to Shri R.P. Singh. Besides the Respondents in a supplementary counter affidavit of Shri D.P. Singh, Divisional Commercial Manager, Allahabad has filed a copy of letter dated 20.03.95 of General Manager (P), Headquarters office, Northern Railway, Baroda House, New Delhi in O.A. 230 of 1994 in which approval of General Manager to out of turn allotment of quarter has been communicated. We have also considered the fact that Shri R.P. Singh was granted original seniority in the list of officials awaiting allotment of Railway Quarter, whereby he was first in the waiting list. Only part which was out of turn in the allotment of Shri R.P. Singh was that quarter no. 643 A, Nawab Yusuf Road was in Controller Pool while Shri R.P. Singh was entitled to a quarter in Commercial Pool. The Divisional Railway Manager by his powers has transferred this quarter from Controller Pool to Commercial Pool so that it could be allotted to Shri R.P. Singh and had stipulated in the same order that the Commercial Pool will give the quarter to Controller Pool in exchange ^{or} ~~of~~ vacation. Hence this ground ^{is} also not tenable. In effect, the allotment of quarter to Shri R.P. Singh remains valid.

15. We, therefore, direct that the ^{official} respondents shall obtain possession of the premises in question viz 643-A, Nawab Yusuf Road, Allahabad, from Shri C.B. Mishra and hand over the possession to Shri R.P. Singh within three months from receipt of a copy of this order from either Shri C.B. Mishra or Shri R.P. Singh.

Thus the relief claimed in O.A.1352/93 stands allowed in terms of the above order. Respondent No.5 Sri C.B. Mishra shall pay cost of the applicant application to the applicant amounting to rupees six hundred and fifty only.

The relief claimed in O.A. 230/94 can not be allowed and this O.A. is dismissed as lacking in merits. The parties in this O.A. shall bear their own costs.

Syndic
Member-J.



Member A.