

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH :ALLAHABAD**

ORIGINAL APPLICATION NO.1456 OF 2003

ALLAHABAD THIS THE 15th DAY OF MAY, 2007

HON'BLE DR. K.B.S. RAJAN, J.M.

Dr. J.K. Singh, S/o Late Jugul Kishore Singh, R/o 7A
Inspector's colony, Gaya

.Applicant

By Advocate: Shri S.K. Dey

Versus

1. Union of India
through the G.M. E.C. Railway,
Hajipur, Bihar.
2. The D.R.M.,
E.C. Railway,
Mugalsarai

.Respondents

By Advocate : Shri K.P. Singh

ORDER

This is the second round of litigation. In the earlier round when the applicant approached the Tribunal for an order directing the respondents not to impose any damage rent, vide order dated 12th September, 2003 in OA 1094/03, at Annexure A13, the Tribunal directed the respondents to consider the representation of the applicant and pass a speaking order. The impugned order is in pursuance of the

said Directions of this Tribunal. Aggrieved by the same the applicant has presented this OA.

2. The Facts: The applicant is a serving Medical Officer and in the Junior Administrative Grade. He is entitled to a Type V accommodation. He was in occupation of Bungalow No. 7A in the Inspectors Colony, Gaya, which is a type IV Accommodation. Identical type of accommodation was Bungalow No. 3 of the said Colony with the same extent of licence fee of Rs. 273. The said Bungalow was under occupation of one Dr. M. Lal, who, on his transfer had vacated the same. Hence, the applicant took possession of the said Bungalow No. 3 on 26-02-2003 vide letter dated 26-02-2003 at Annexure A-4. The said letter reads as under:-

"Dr. M. Lal, the then MS/Gaya on being transferred to East Central Railway/Hazipur as Dy. CMD/Hazipur, he has vacated Bunglow no. 03 at Gaya in the afternoon of 25.2.2003 and handed over to the undersigned alongwith all Engg. Electrical and telecommunication fittings.

The undersigned will take over the physical occupation of the above Bungalow after white washing and other minor Engg. And Electrical repairs.

This is for your information and immediate necessary action please.

Sd/-

Medical Superintendent
E.C. Railway Hospital
Gaya.

Copy for information and necessary action to:-

- 1) The Divl. Rly. Manager, E.C. Rly/MGS.
- 2) Sr. Divl. Personnel Officer (PB)/Gazetted/ MGS.
- 3) Divl. Accounts Officer, E.C. Rly./MGS.
- 4) Sec. Engineer (Works)/E.C. Rly./Gaya.
- 5) Sec. Engineer (Elect.) E.C. Rly. Gaya.
- 6) Sec. Engineer (Telecom.)/E.C. Rly. Gaya.

Medical Superintendent

E.C. Rly., Gaya."

3. It appears that repair work of the said quarter was undertaken by the authorities and on completion of the same, the house was taken over by the applicant after vacating Railway Quarter No. 7A, vide Annexure A5 letter dated 12-03-2003 and a copy of this letter was addressed to all the concerned authorities. The vacant house was later on allotted to one Shri Sanjay Kumar JE vide order dated 24-03-2003 at Annexure A-6. The applicant was charged the normal rent for the accommodation he was in possession as is evidenced from Annexure A-8 pay slip. Monthly statement of the details of various occupants as of March, 2003 also reflected the name of the applicant in respect of Bungalow No. 3, vide Annexure A-7. However, it was by communication dated 23-06-2003, Annexure A-9 that the respondents have held that the exchange of accommodation without due and proper authority from the competent authority was illegal and hence the applicant was directed to shift back to his earlier accommodation within a week, failing which, damage rent was sought to be imposed upon the applicant. The applicant through Annexure A-10 communication, submitted that the accommodation he had taken over is within his entitlement and his handing over of the accommodation 7A was with the approval of the authorities, prior to which he had only given a no objection for such exchange. Nevertheless, the applicant was prepared to move to 7A again, subject to the same being handed over to him by the then

incumbent i.e. Shri Sanjay Kumar, JE. This was followed by Annexure A-12 letter dated 6th August, 2003, when by Annexure A-11 communication dated 29-07-2003 the respondents have imposed damage rent @ Rs 26836/- p.m. Upon the applicant. It was later on that OA No. 1094/03 came to be filed and on its disposal the impugned Annexure A-16 order dated 20-10-2003 has been passed. Of course, Annexure A-11 is also challenged in this OA along with Annexure A-16 order.

4. The respondents have contested the O.A. According to them, the applicant had no authority to decide allotment of a particular accommodation to himself; nor does he enjoy the authority to allot accommodation to any one else. Thus, in taking over the possession of Quarter No. 3 by the applicant himself, he had allotted the said quarter unto him and by allowing Shri Sanjay Kumar, JE to occupy 7A, he had allotted the accommodation to the said Sanjay Kumar. Both being illegal, he had to pay damage rent for the accommodation he had held. The respondents were clear that occupation of an accommodation is unauthorized when the same was not duly allotted to a particular individual. It is the case of the respondents that allotment of accommodation of 7A to Sanjay Kumar was on the misstatement by the applicant that the said accommodation is of Type III, while actually it was type IV and the said Sanjay Kumar was not entitled to the same. Had the wrong information been not furnished by the

applicant, it would not have been allotted to the said Sanjay Kumar.

5. The applicant had filed his rejoinder to the counter filed by the respondents.

6. Counsel for the applicant submitted that the entire transaction had taken place to the full knowledge of the respondents, inasmuch as the copy of the intimation regarding taking over possession from Dr. M. Lal prior to its repairs etc., was made available to all the concerned parties; copy of the taking over possession of Bungalow No. 3 was also equally after informing every one concerned; that the mutual exchange by Shri Sanjay Kumar of Qr. No. 7A to his earlier allotment was made by the authorities concerned and that the contribution by the applicant in this regard is only to the extent of giving no objection for the exchange. The two accommodations i.e. Bungalow No. 3 and 7A are of identical type with the same licence fee and that the applicant is entitled to the said accommodation. Apart from all the above, it is the case of the applicant that the move of the applicant to the said accommodation was not objected to earlier as is evident from the fact that it was the normal rent that had been charged and the details of occupants of various accommodation as contained in Annexure A-

7.

7. Counsel for the respondents submitted, an unauthorized occupant is one who has been in

possession of any government accommodation without proper allotment and the applicant being of that category should be charged damage rent.

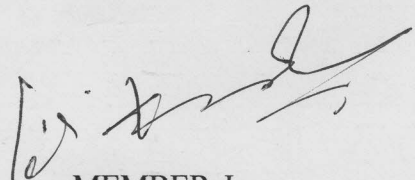
8. Arguments were heard and documents perused. Admittedly, the applicant kept the authorities concerned at every stage - viz., when he took over the Bungalow No. 3 from Dr. Lal, and handed over the same to the authorities for conducting the repairs; when he had, after the repair was conducted, took possession of the said accommodation. Annexures A-4 and A-5 refer. Again, when Quarter No. 7A was taken over by Shri Sanjay Kumar, JE, it was by a proper authority that the exchange was permitted vide Annexure A-6. And on his taking over, the details of occupants of accommodation prepared by the respondents and charging of normal rent of Rs 273 for the month of March, 2003 go to show that the authorities had recognized the occupation by the applicant of Quarter No. 3, Inspectors Colony Gaya. The fact that the applicant is entitled to type V accommodation and that there is no type V accommodation available at Gaya have all been admitted. Taking over the Bungalow, getting the same duly repaired and taking possession of the same after repairs, charging of licence fees during the month of such taking possession would all go to show that at every stage the authorities are in the knowledge of the happening. Again, when the Bungalow No. 3 was taken over vide Annexure A-4, copy of the information as to the same having been made

available to all the authorities, there was no objection to the same. So was the case when the Bungalow was taken over. After all, there is a purpose in endorsing copy of such communication to various authorities. If at all there be any illegality, the same is expected to be highlighted so that the error if any could be rectified at the earliest. It would have been a different matter, had communication of taking over the accommodation etc., vide Annexure A-4 and 5 been not there and all the actions were clandestine. Such is not the case here. Nor is it the case of the respondents that the applicant is not at all entitled to the accommodation. Mutual exchange in respect of Railway accommodation is also not uncommon. If at all, failure of the applicant to obtain formal allotment letter under the circumstances of this case, could only be viewed, as a case of irregularity and not illegality and this irregularity could easily be ratified. Thus, viewed from any angle, it appears that the respondents were not right to charge damage rent of a stupendous sum of Rs 26,000/- plus from the applicant, whose carry home pay would not be to that extent. Again, the applicant was ready and willing to move to his earlier Bungalow, provided the same became available for occupation. Likewise, the contention of the respondents that mutual exchange of Bungalow 7A by Shri Sanjay Kumar was allowed on the basis of the misinformation given by the applicant also does not sound logic, as it was

for the respondents to properly verify from the records or from competent authorities as to the type of any accommodation and the entitlement of the aspirant to the said accommodation. The reasoning given by the respondents is rather illogical.

9. In view of the above, the **OA is allowed**. The impugned order dated 29-07-2003 and 20-10-2003 are quashed and set aside. It is declared that the applicant cannot be charged any damage rent on his taking possession of Accommodation No. 3 in February/March, 2003. Any amount already recovered from the applicant in this regard shall be refunded within a period of two months.

10. Under the above facts and circumstances, there shall be no orders as to cost.



MEMBER-J

GIRISH/-