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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

**Original Application No. 128/2004
This the 18th day of March, 2005.**

CORAM :

Hon'ble Mr. G.R. PATWARDHAN, ADMINISTRATIVE MEMBER

Jagdish Prasad Sharma S/o Shri Kanhaiyal Ji aged about 57 years, resident of Near Arya Samaj, Nagaur (Raj) at present working on the post of Assistant Post Master, Head Post Office, Nagaur (Raj).

Applicant.

(Mr. B.Khan, Counsel for the applicant.)

VERSUS



Union of India through the Secretary to Government of India, Ministry of Communication, Department of Post, New Delhi.

The Post Master General,
Rajasthan Western Region, Jodhpur.

The Director, Postal Services,
Rajasthan Western Region, Jodhpur.

4. The Superintendent of Post Offices,
Nagaur.

Respondents.

(Mr. Vineet Mathur, Counsel for respondents)

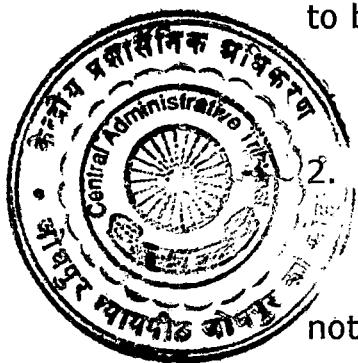
ORDER

(BY THE COURT)

In this O.A. filed by Jagdish Prasad Sharma, who is working as Assistant Post Master, Nagaur, two orders passed by the Superintendent of Post Offices, Nagaur, Respondent No.4, on 23.02.2004 and 19.03.2004 placed at Annexure A/1 and A/2, are under challenge. There are three respondents the Secretary, Department of Posts, the PMG, Jodhpur and the Director , Postal Services, Jodhpur. The impugned orders one in Hindi and other in

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English give an indication of the latest in a series of grievances. One at Annexure A/1 informs the Post Master, Nagaur that the applicant has been paid excess house rent allowance for which the audit party has raised valid objections and that the excess payment of Rs. 13857/- should be realised from the applicant. Annexure A/2 issued to the Post Master, Nagaur on a later date says that Jaipur authorities of the Department have informed that the irregularity detected by audit authority is correct and as per rules recovery has to be made from the applicant.



2. Facts as revealed by pleadings are:

The applicant while working as Assistant Post Master was notified to work as Post Master, Nagaur on 26.12.2000 and continued to remain on that post till 1.10.2003. It is admitted position that rent free accommodation is available for the Post Master and the applicant was asked to inform vide Annexure A/3 whether he had occupied the earmarked quarter. He was also asked to pay the water and electricity bills from 01.03.2001. It further directed him to explain in case of non-payment as to why the water and electriciy charges were not paid by him.

Vide Annexure A/4, dated 06.08.2002, he was asked by the Superintendent, Post Office, Respondent No. 4, to explain why water supply was discontinued and to remove office records from the quarter. A sum of Rs. 120/- was also sanctioned to assemble sorting table for postman. He was also told that no orders were passed to keep the office furniture in the quarter. The applicant vide Annexure A/5 informed the Superintendent that he had no knowledge as to when the water supply was discontinued. He also enlightened him on what the Director, Postal Services had observed

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in August, 1994 about the electrical fittings in the earmarked quarter. He maintained that perhaps this observation of the Director was not followed up by the authorities and that he was prepared to get the water connection restored at his own cost but the pipeline needed to be repaired by the Department. Soon thereafter it seems, in the month of November, 2002 an audit party visited the place, detected the irregularity of not occupying earmarked quarter and suggested recovery of certain amounts from the applicant in June, 2003 vide Annexure A/7.

3. In support of the prayer, to quash communications in Annexures A/1 & A/2, the applicant has taken the following grounds:-

- (a) Because the applicant never occupied the quarter attached to post as he was only officiating on the post of Post Master. Further it was not vacant and in proper condition to live. It was kept vacant from very long time. The applicant also requested the authority to make the resident/quarter is proper condition to live.
- (b) Because no show cause notice was given to applicant prior to passing the order of recovery. This case was considered by respondent No.2 and advised to admit the recovery. But thereafter without issuing any show cause notice or cogent reason the recovery has been ordered.
- (c) Because the so-called letter/order dated 27.01.2004 has never been communicated to applicant and he had no opportunity to make representation against the same. The action of respondent is arbitrary, illegal and discriminatory.
- (d) Because this Original application is sustainable on many others legal grounds, which he craves, leave to urge at the time of admission and hearing of this case.

4. The learned counsels for both the parties have been heard. O.A has been filed on 26.05.2004 and its reply under the signature of Supd. Post Office, Nagaur on 04.01.2005. The matter has been heard on 15.03.2005. Initially on 26.05.2004 at the time of admission, operation of the two orders under challenge were stayed



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till the next date of hearing and on 15.02.2005, the respondents were asked to furnish the details about the taking over the charge by the applicant. At the time of hearing, the respondents produced letter dated 11.03.2005 from respondent No. 4 to Senior SCGC which contains the details. It informs that the applicant Mr. J.P. Sharma was ordered to work at Post Master, Nagaur till further orders on 26.12.2000, the post of Post Master having fallen vacant due to superannuation of the incumbent. It is admitted fact that Mr. J.P. Sharma was appointed temporarily to the post (which is of HSG II Cadre) upto 12.10.2003 and Mr. J.P. Sharma worked on this post from 01.01.2001 to 12.10.2003 and received pay and allowances of HSG II cadre.



Though the O.A. mentioned that at the time of arguments additional grounds in support of the prayer would be taken, the learned counsel for the applicant decided to go strictly by his averments which essentially mean that the quarter was not occupied and was not worth occupation and that he cannot be made to suffer the loss of HRA. No effort was made to show that a particular right of the applicant was violated by the respondents.

There was a feeble attempt to say that it was not a regular posting but only officiating arrangement. All the same, it appears necessary here to recapitulate the statutory provisions pertaining to earmarked accommodation which is contained in FRSR and is reproduced below:-

"S.R. 311. When a building owned or leased by Government or a portion thereof has been made available by the Government for use as a residence by an officer under its administrative control, the competent authority may allot such building or part of a building to a post specified in the order of allotment for use as a residence by the incumbent of the post.

S.R.312.(1) The incumbent of a post to which a

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residence has been allotted under Rule 311 shall be considered to be in occupation of the residence during the period of his incumbency unless the allotment is changed or suspended under these rules.

(2) An officer shall not be considered to be in occupation of a residence only by reason of the fact that he shares it with an officer who is in occupation thereof.

(3) An officer shall be considered to be in occupation of his residence when absent on tour or at hill station where he is permitted, but not required by Government to reside.

(4) An officer shall not be considered to be in occupation of a residence when he proceeds on leave, unless the competent authority otherwise directs.

S.R. 313.(1) The competent authority may suspend the allotment of a residence to a post-

(a) which is temporarily held by an officer under Fundamental Rule 49 in addition to another post, if the officer does not actually occupy the residence;

(b) the incumbent of which discharge the duties off another post, if such duties prevent him for occupying the residence;

(c) to which an officer has been transferred from another post in the same station, if the officer is in occupation of a residence allotted to such other post and the competent authority does not consider it necessary that he should change his residence; or

(d) Deleted.

(e) Deleted.

(f) in which an officer is officiating for a period not exceeding two months, if the officer is prevented from actually occupying the residence by circumstances which, in the opinion of the competent authority, justify the suspension of the allotment.

(2) No allotment shall be suspended otherwise than in accordance with sub-rule (1) save by order of the President.

(3) An order of suspension under this rule shall terminate on the next change of incumbents or when the circumstances justifying the suspension cease to exist, whichever is earlier.

(4) When the allotment of a residence to a post has been suspended under this rule, the competent



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authority may allot the residence to any officer of Government or, if it is not required by any such officer, to any suitable person:

Provided that the allotment to such officer or person shall terminate not later than the date upon which the period of suspension terminates."



Apart from what has been referred to above, Government of India in the Department of Post on 13.12.2001 informed all heads of Postal Circles and PMGs staff that it was mandatory for the incumbents of posts to which quarters are attached, whether they were being posted on regular or temporary basis, to occupy the attached quarter wherever available unless the accommodation was suspended by the competent authority as provided under Fundamental Rules and Supplementary Rules, and in case of default, HRA is not admissible.

7. Reading the two provisions together, it goes without saying that the applicant was under bounden duty to occupy the quarter. His plea that it was being used as a store for office furniture or was used by the postal staff does not merit even mention for the simple reason that the applicant was made in charge of that post office. For an in-charge to take such pleas only defies the logic of his being made to head that unit and if the incharge cannot even shift the office furniture from his quarter then he is not worth the post.

8. More ridiculous is the plea taken to justify the failure to occupy quarter by saying that the applicant does not know as to when the water supply was disconnected and that someone a few years back had commented about the loose electric connection.

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9. The issue basically is entitlement of HRA to the applicant, not so much its recovery which is being agitated by saying that it is illegal. Only if the HRA was admissible, its recovery without following procedure could be termed irregular. That is not the case.

Hon'ble the Apex Court in the case of Director, CPCR Institute V. M. Purushotaman and ors in 1994(4) SLR has observed as under:-

"It must be remembered in this connection that the Government or the organisation of the kind of the appellant spends huge public funds for constructing quarters for their employees both for the convenience of the management as well as of the employees. The investment thus made in constructing and maintaining the quarters will be waste if they are to lie unoccupied. The HRA is not a matter of right. It is in lieu of the accommodation not made available to the employees. This being the case. It follows that whenever the accommodation is offered the employees have either to accept it or to forfeit the HRA. The management cannot be saddled with double liability, viz. To construct and maintain the quarters as well as to pay the HRA."



10. The O.A. also appears to be time barred having been filed late. The cause of action arose on or about 7.11.2001 when the applicant was asked to occupy quarter and confirm (Annex. A/3). If he sincerely believed that he was not under an obligation to occupy the same, he should have approached the Tribunal. Failure to do so, has not been explained and is therefore fatal.

11. The applicant has not been able to establish violation of any of his rights, much less justify his approach. O.A. is therefore dismissed. Interim order vacated. No costs.

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(G.R. Patwardhan)
Adm. Member

Part II and III destroyed
in my presence on 8/19/14
under the supervision of
section officer (1) as per
order dated 18/12/13

8/19/14
Section officer (Record)

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