

**Central Administrative Tribunal Lucknow Bench Lucknow.**

**Original Application No. 150/2007.**

**This, the 19th day of May, 2008.**

**HON'BLE MR. M. KANTHAIAH, MEMBER (J)**

D.D. Kumar aged about 62 years s/o Late N.D. Sharma resident of C/o Sunil Kumar Sharma, Sharma Niwas, Near St. Merry School, Para Road, Lucknow.

**Applicant.**

By Advocate: Shri Alok Trivedi.

**Versus**

1. Union of India through General Manager, N. Rly, New Delhi.
2. The Chief Works Shop Engineer, N. Rly, Hd. Quarter Baroda House, New Delhi.
3. The Chief Works Manager, N. Rly C&W Alambagh, Lucknow.
4. Dy. FA&CAO (S&W), Northern Railway, (C&W), Amv, Lucknow.
5. The Divisional Engineer (HQ), Northern Railway, Hazratganj, Lucknow.

**Respondents.**

BY Advocate Shri M.K. Singh.

**Order**

**By Hon'ble Mr. M. Kanthaiah, Member (J)**

The applicant has filed the original application to quash the impugned orders dated 14.3.2006 (Annexure A-1), dated 3.1.2007 (Annexure 2) and dated 14.2.2007 (Annexure A-3) issued by respondent authorities and to treat that he was not in unauthorized occupation of the Railway quarter for the period from 1.9.2005 to 8.11.2005 and also not liable for payment of damage rent as claimed by the authorities.

2. The respondents have filed counter affidavit denying the claim of the applicant stating that no error committed by the respondents, while passing the impugned orders and thus supported their action stating that the applicant was in unauthorized occupation of the quarter.

3. The applicant has filed rejoinder affidavit denying the stand taken by the respondents and also reiterated his pleas in the original application.
4. Heard both sides.
5. The point for consideration is whether the applicant is entitled for the relief as prayed for.
6. The admitted facts of the case are that the applicant while working as Office Superintendent in the office of Respondent No. 3 occupied Railway Quarter, bearing No. 5-59,B Type, Sleeper Ground, Alambag Lucknow. He retired on 31<sup>st</sup> December 2004, on attaining superannuation. He made representation dated 17.1.2005 for retention of the said quarter for four months after his retirement i.e. 1.1.2005 to 30.4.2005 and the same was permitted by the authorities covered under Annexure A-5 dated 27.1.2005. Subsequently, the applicant also made another request dated 6.6.2005 for extension of another four months and the same was also permitted by the respondents extending such period from 1<sup>st</sup> May 2005 to 31<sup>st</sup> August 2005 on payment of rent admissible under the rules and Annexure 6 dated 19.6.2005 is the copy of the said order. Subsequently, the applicant made representation to the respondent No. 3 under application-dated 11.8.2005, intimating his intention to vacate the quarter and also informed the authorities for allotment of it to others. It is the case of the applicant that immediately thereafter he shifted his house luggage to his native place and Annexure 4 is the copy of receipt issued by truck owner.
7. In the meantime, the respondent authorities though allotted the quarter to Shri Mewa Lal but he did not occupy and thereafter, the same was allotted to Shri Ram Karan Shukla , and he too did not occupy. Again it was allotted to Shri Devi Kumar and Shri J.P. Shukla, but they did not occupy it. Annexure A-8, A-9, A11 and A14 are copies of such allotments made in favour above allottees. Thereafter, in the month of November 2005, the quarter was allotted to Km. Van Lata Marandi under Annexure 15 dated 7.11.2005, who occupied the same on 8.11.2005. Annexure 16 dated 8.11.2005 is the copy of handing over and taking over between the applicant and the allottee Km. Van

Lata Marandi took place in the presence of Senior Section Engineer ,Works Estate, Northern Railway Lucknow. The recitals of the said letter also shows that the authorities imposed rent @ Rs. 85/- p.m. and water charges @ Rs.35/- p.m. w.e.f. 1.7.2005 and also claimed penal rent @ Rs. 4935/- p.m. to be recovered and marked the copies of the said letters to the applicant and Km. Van Lata Marandi and other concerned officials.

8. Thereafter, the applicant made representation to the respondent No. 3 covered annexure A-17 dated 21.12.2005 stating that he vacated the quarter on 20<sup>th</sup> August 2005 itself and the period from 1.9.2005 to 8.11.2005 may not be treated on his account, because of lapse on the part of administration . there was such delay in allotment to new allottees and thus requested to settle his claims. The respondents have also issued letter to the applicant covered under annexure A-1 dated 9.3.2006 under which they claimed damage rent of Rs. 10553/- from the applicant. Thereupon, the applicant made representation to the respondents covered under Annexure A-18 dated 6.8.2006 stating that he was not in occupation of the quarter from 1.9.2005 to 8.11.2005 and because of lapse on the part of the respondent authorities, no allottee had been joined there in the quarter and thus, he is not liable to pay any damage rent. The respondent No. 3 forwarded such representation of the applicant to the respondent No. 1 for consideration of his claim covered under Annexure a-19 dated 22.11.2006. But the first respondent rejected such claim of the applicant and informed the same to the respondent No. 3 under Annexure A-2 dated 3.1.2007 and subsequently, the respondent No. 3 communicated such decision to the applicant covered under annexure A-3 dated 14.2.2007. Aggrieved by such orders of the respondents, covered under Annexure A-1, A-2 and A-3 , the applicant has filed this application stating that he was not in unauthorized occupation of the quarter from 1.9.2005 to 8.11.2005 and thus, he is not liable to pay any damage rent as claimed by the respondents and further no reasons are assigned for rejection of his request for waiver of damage rent as claimed by the authorities.

9. The short question involved in this O.A. is whether the applicant was unauthorized occupation of the quarter from 1.9.2005 to 8.11.2005 and he is liable to pay damage rent as claimed by the respondents.

10. Admittedly, from the pleadings and documents of both the parties, the applicant was permitted to occupy the quarter till 31.8.2005 under Annexure -6 dated 19.6.2005. But before completion of such period, the applicant made application Annexure -7 dated 11.8.2005 to Respondent No. 3 intimating his intention to vacate the quarter and thus requested the authority for allotment of same to other employees. Though the authorities allotted the said quarter to Sri Mewa Lal, Sir Ram Karan Shukla, Sri Devi Kumar and Sri J.P. Shukla, they did not occupy and lastly, Km. Van Lata Marandi occupied it on 8.11.2005 after allotment to her under Annexure A-15 dated 7.11.2005.

11. It is main contention of the learned counsel for the applicant that there was delay in allotment of the quarter from administration and allottees also, did not occupy immediately and thus there was delay and for such delay, applicant should not held responsible. Admittedly, non allotment or allotment of quarter to other employees with delay and also non occupation of it, by such allottees is the headache of the department and for such latches, the applicant should not be held responsible. At the same time, it is the duty of the applicant to vacate and hand over possession to the quarter to the authorities immediately after expiry of his permitted period and it is not at all concern to him either in allotment to other employees or their occupation etc.

12. It is the contention of the applicant that he shifted of his luggage to his native place before the expiry of permitted period. When he shifted of his luggage, where is the necessity to keep the key of the quarter with him and also there was no problem for handing over of such quarter with keys to the concerned officer. Further when he is leaving the quarter, what is the necessity to him to wait till the allotment of it new allottee. Mere expressing of his intention to vacate the quarter, is entirely different with that of actual vacation of it. Thus, non-delivering of possession and occupation of the quarter and also its keys to the concerned authorities and waiting till the occupation of new occupant and handing over of such possession to him by the applicant on

20.8.2005 itself implies that he was still in occupation of the quarter till such period. Thus, mere intimation of his intention to vacate the quarter on 20.8.2005 and also mere shifting of his luggage from the quarter and also non residing it by the applicant are not at all helpful to disown his responsibility till he vacate and hand over possession to the authorities or the unauthorized agent of the department.

13. Annexure A-15 dated 7.11.2005 is the allotment letter of the quarter to Km. Van Lata Marandi and it clearly shows that the same has been allotted to Km. Van Lata Marandi for occupation on vacation of it by the applicant D.D. Kumar. From this, it is clear that the applicant was still in occupation and possession of the said quarter. Coming to the document Annexure A-16 filed by the applicant dated 8.11.2005, is the handing over and taking over possession of the quarter shows that the applicant vacated the quarter on 8.11.2005 and on the same day, the allottee Km. Van Lata Marandi, occupied it. From this, it is clear that the applicant himself vacated and handed over the possession of the quarter to allotted Km. Van Lata Marandi on 8.11.2005. From these two documents, it is clear that the applicant was in possession and occupation of the quarter and he vacated it on 8.11.2005.

14. It is not at all the case of the applicant that he was permitted to occupy the quarter till 8.11.2005 or till the new allotted occupied it. It is also not the case of the applicant that the respondents authorities refused to take possession of the quarter from him at any time. In such circumstances, the possession of the applicant till 8.11.2005 is nothing but on unauthorized occupation for which, he has to face the consequences and further, it is not open to the applicant to blame the respondents authorities on the ground of non allotment of it to other employees or non occupation of the allottees. Thus there is no justification in blaming the respondents authorities for his non vacation of the quarter till 8.11.2005. Under the above circumstances, it is clear that the applicant was in possession and occupation of quarter till 8.11.2005 on which dated he handed over to Km. Van Lata Marandi and such occupation of the applicant from 1.9.2005 to 8.11.2005 is nothing but an unauthorized occupation and for which, there is no irregularity or illegality on

the part of the respondents branding the applicant as unauthorized occupant and also asking him to pay damage rent for such unauthorized occupation

15. In view of the above discussion, there are no merits in the claim of the applicant for quashing the orders covered under Annexure A-1 to A-3 rejecting of the claim of the applicant for waiver of damage rent and also asking the applicant to deposit damage rent for such a period from 1.9.2005 to 8.11.2005 treating his occupation as unauthorized and as such, the O.A. is liable for dismissal.

In the result, O.A. is dismissed. No costs.

  
(M. Kanthaiah)

19-05-2008

**Member (J)**

V.