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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

M.P- 208/2000 order sheet PG-1 + 2
disposed date 20/11/2000

O.A/T.A No. 232/2000

R.A/C.P No.

E.P/M.A No. 208/2000

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SECTION OFFICER (Judl.)

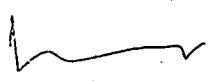
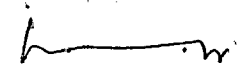

GUWAHATI BENCH : GUWAHATI

APPLICATION NO. 232/2000

OF 199

Rt. Advocate.

Notes of the Registry	Date	Order of the Tribunal
<p>Application is in form of type Condonation is filed/not filed. vide No. 208/2000 F. Rs. 50/- deposited vide BD No. 597/22 d. 11.7.2000.</p> <p><i>Dr. Registrar</i> <i>Bon</i> <i>12/7/2000</i></p> <p><i>quients file</i> <i>00 Notice prepared</i> <i>with OA Petn. Sent. JC</i> <i>for having the Petn. bld</i> <i>to S vide D/No</i> <i>1959 dtd 21/9/2000</i></p>	<p>20.10.00</p> <p>25.10.00</p> <p>1m</p>	<p>Present : Hon'ble Mr. Justice D.N.Choudhury, Vice-Chairman.</p> <p>Mr. V.K.Thomas, learned counsel for the applicant and Mr. J.L.Sarkar, learned Railway Counsel for the respondents.</p> <p>Issue notice to the respondents by registered post as to why the application shall not be admitted. Notice returnable by 25.10.2000. List on 25.10.2000 for further orders.</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>On the prayer of Mr.B.K.Sharma on behalf of Mr.J.L.Sarkar learned counsel for Railway case is adjourned to 8.11.00 for orders. 10</p> <p><i>[Signature]</i> Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal
No. Cause has been shown.	8.11.00	List on 20.11.00 for admission alongwith M.P.208/2000.
<u>24</u> 24.10.00	pg	 Vice-Chairman
Order dtd 20/11/00. Communicated to R/No 1 to 5 by Regd A/D & by Amd Vice D/No 2785 & 2789 dtd 23/11/2000.	20.11.00	Delay in filing this application is condoned vide order passed in M.P.208/2000.
<u>24</u> 24/11/00		Application is admitted. Issue usual notice. Call for the records.
24-11-2000		List on 8.1.2001 for written statement and further orders.
Mr. S. Seegupta, Rly. Advocate for Pt. Vankalamma on behalf of Rly.	pg	Heard Mr P. Bhowmick, learned counsel for the applicant on the interim order.
		Issue notice to show cause as to why the interim order as prayed for shall not be granted. Returnable by 8.1.2001.
		Till the returnable date the respondents are directed not to make any further deduction of damage rent from the monthly pay bill of the applicant.
		 Vice-Chairman
No. Show Cause has been filed.	10.1.2001	Six weeks time allowed for filing of written statement. List it on 22.2.01 for orders. In the meantime the order dated 20.11.2000 shall continue.
<u>24</u> 9.1.2001	nkm	 Vice-Chairman
Order dtd 10/01/01 Communicated to the parties counsel.	11/01/01	
<u>24</u> 12/01/01.	22.2	NO S. B. Adjourned to 5.3.2001.
Service Completed for R/No 1 to 5.		<u>24</u> 12/01/01.

(3)

Notes of the Registry

Date

Order of the Tribunal

5.3.01

List on 11.4.01 to enable the respondents to file written statement. ~~Interim~~ Interim order shall continue.


Vice-Chairman

lm

11.4.01


List on 15.5.01 to enable the respondents to file written statement.


Vice-Chairman

lm

16.5.2001

Three weeks time allowed to the respondents to file their written statement. List for orders on 13.6.01.


Vice-Chairman

nkm

13.6.01

Mr.S. engupta learned counsel for the respondents prays for time for filing of written statement. Prayer is accepted. List on 18.7.01 for orders.


Member

lm

18.7.01


Written statement has been filed. Copy of the written statement has been given to the applicant. The applicant may file rejoinder within two weeks. List on 8.8.01 for orders.


Member

lm

8.8.2001

Written statement has been filed. Post the matter for hearing on on 12.9.01. The applicant may filed rejoinder, if any, in the meantime.


Vice-Chairman

nkm

No. written statement has been filed.

By
12.6.01

17.7.2001

No. W/S has been submitted.



31.7.2001

W/S on behalf of Respondents has been submitted.



No. Rejoinder has been filed.

By
7.8.01

Notes of the Registry	Date	Order of the Tribunal
<p><u>10.9.2001</u></p> <p>affidavit-in-reply filed by the applicant against the R/S</p> <p><i>[Signature]</i></p>	12.9.2001	<p>Mr. S. Sengupta, learned Rly Counsel for the respondents stated that he has received the rejoinder today only and he would like to file reply. Two weeks time is allowed to the respondents to file reply to the rejoinder filed by the applicant.</p> <p>List on 3.10.2001 for hearing.</p> <p><i>[Signature]</i> Member</p>
<p><u>28.9.2001</u></p> <p>Reply to the Rejoinder has been submitted by the applicant against R/S.</p> <p><i>[Signature]</i></p>	3.10.01	<p>Heard counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets. The application is allowed in terms of the order. No order as to costs.</p> <p><i>[Signature]</i> Vice-Chairman</p>
<p><u>10/10/01</u></p> <p>Copy of the Judgment has been sent to the office for issuing the decree to the applicant as well as to the Railway Adv. for the Respondent.</p> <p>HS</p>		

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 232 of 2000.

Date of Decision...3.10.2001...

Sri Jagadish Das

Petitioner(S)

Shri P. Bhowmick

Advocate for the
Petitioner(s)

-Versus-

Union of India & Ors.

Respondent(s)

Sri S.Sengupta, Railway standing counsel.

Advocate for the
Respondent(s)

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN.

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble : Vice-Chairman.

X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 232 of 2000.

Date of Order : This the 3rd Day of October, 2001.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

Sri Jagadish Das,
Mate Gang No. 58,
Office of the Assistant Engineer,
North East Frontier Railway,
Changsari B.G.Colony,
P.O. Changsari, Dist.Kamrup, Assam. . . . Applicant.

By Advocate Shri P.Bhowmick.

- Versus -

1. Union of India,
represented by the Chairman,
Railway Board, Railway Bhawan, --
New Delhi.
2. The General Manager,
North East Frontier Railway,
Maligaon, Guwahati-11.
3. The Divisional Manager,
N.F.Railway, (W-Rent Section),
Alipurduar, West Bengal.
4. The Senior Section Engineer,
Way-BG, N.F.Railway,
Rangia, Dist. Kamrup, Assam.
5. The Assistant Engineer,
N.F.Railway,
Rangia, Dist. Kamrup, Assam. . . . Respondents.

By Sri S.Sengupta, Railway Standing counsel.

O R D E R

CHOWDHURY.J.(V.C)

The controversy raised in this application pertains to legitimacy of the Notice dated 12.11.1998 by which the applicant was charged with damage rent for unauthorised retention of Railway quarter No.13-B, Type-I at Changsari.

2. The applicant was working as a Gangman under the respondents. He was allotted to occupy Railway Quarter No. 13-B, Type-I at Changsari B.G.Railway Colony. The said

contd..2

allotment was made to the applicant as far back as 15.7.87 and the applicant on the strength of the allotment was occupying the said quarter alongwith his family. The applicant was transferred from Changsari to Rangia on promotion as a Mate Gang No.58. According to applicant since the distance between Changsari and Rangia was only 20 Km. approximately he made representation to the respondents to allow him to retain the quarter at Changsari. The said representation was duly forwarded by the respondent No.4 to the higher authorities and he made representations for such retention from time to time. The respondents however denied and disputed the contention of the applicant that any such representations were made. The applicant was served with the order dated 12.11.98 and by the said communication he was informed that for the unauthorised occupation of the Railway quarter with effect from 1.3.95 damage rent was to be recovered from his salary. It was also indicated that the Union represented his case for non recovery of damage rent on 7.9.98 but in terms of the Railway Board Circular damage rent was imposed against the applicant from 11.3.95 to 31.5.95 @ Rs.23/- per Sqm. and @ Rs.28/- per sqm. from 1.6.95 to 15.11.98. Needless to say that the respondents authority realised regular rent of Rs.34/- per month from the applicant. In addition the respondents imposed upon the applicant a total rent of Rs. 79,526/- as being the damage rent for the aforesaid period and the communication further directed that the damage rent would be recovered monthly @ Rs. 182/- per month beyond 15.11.98 as the applicant was continuing his unauthorised occupation of the quarter. The applicant had submitted a representation before the authority and thereafter also issued lawyer's notice and without getting any remedy he has submitted this application assailing

the legality and validity of the said action of the respondents.

3. The respondents submitted its written statement. In the written statement the respondents stated that on his transfer on 1.3.95 normally he was to vacate the quarter. The applicant failed to vacate the quarter and retain the same unauthorisedly. As per Railway Board's letter No. F(X)I-86/11/9 dated 1.4.89 read with Railway Board's letters dated 31.5.91 and F(X)1/03/11/2 dated 26.11.93 and dated 18.8.94 the applicant was required to pay damage rent for the said unauthorised occupation instead of normal rent in absence of any permission from the competent authority. The respondents stated that there are certain conditions for allotment and retention of quarters. Staff quarters are not automatically allotted but allotted only in the absence of adequate living accommodation such quarters are allotted. The applicant after his transfer to Rangia could ask for accommodation at Rangia and on transfer the applicant was duty bound to hand over the quarter to the Railway authority.

4. I have heard Mr P. Bhowmick, learned counsel appearing for the applicant and also Mr S. Sengupta, learned Railway standing counsel for the respondents at length. Mr Bhowmick the learned counsel for the applicant submitted that the order of imposition of penal rent is per se arbitrary and discriminatory. He submitted that the applicant was transferred as far back as 1995 and after his transfer or even before imposition of penal rent the applicant was not served with any order for vacating the quarter. The applicant also only submitted that the distance between the quarter is located at Changsari where the working place is approximately 20 Km. In the quarter he was

living with the members of his family including his school and college going children. The impugned order of imposing damage rent without taking into confidence perse arbitrary. Mr Sengupta, learned Railway standing counsel on the other hand submitted that accommodation was provided to the applicant as per policy guidelines of the Railway administration. For allotment of the quarter certain norms are required to be followed. On transfer the employee was to give the vacant possession of the quarter to the authority. It was within the competence of the General Manager to permit normally for 2 months and excess for 4 months to retain such accommodation to an employee on transfer. If it was not vacated penal rent was to be charged as per the norms prescribed. Mr Sengupta also produced before us the Chart of normal rent and penal rent. On consideration of the materials on record it emerges that the applicant was transferred to Rangia as a Mate Gang on and from 1.3.1995. The applicant had joined at Rangia but he was not allotted any quarter at Rangia and he was attending his duty from Changsari. Admittedly the applicant was also not intimated for vacation of the quarter. He was also not allotted with any quarter at the new place of posting. In the circumstances admittedly the action of the respondents cannot be said to be just, fair and reasonable. On consideration of the facts in its entirety the impugned action of the respondents in imposing the penal rent thus cannot be sustained. It is thus set aside and quashed. Mr Sengupta, learned Railway counsel at this stage submitted that the applicant since he is transferred no impediment should be caused in taking necessary steps by the respondents as per law either to get vacant possession of the quarter or to recover the rent for unauthorised occupation.

5. In the instant case notice dated 12.11.98 is already held to be unlawful and set aside. The decision of the Tribunal shall not however preclude the respondents to act as per law. This shall also not debar the applicant to move the authority for making alternative arrangement at Rangia or for making any other suitable arrangements with the respondents and/or to regularise the present arrangement.

Subject to the observations made above the impugned order dated 12.11.98 is set aside. The application is allowed to the extent indicated.

There shall, however, be no order as to costs.


(D.N.CHOWDHURY)
VICE CHAIRMAN

Central Administrative Tribunal
Guwahati Bench

11 JUL 2000

FORM NO.1

FORM

Kalyan R. Surana
11-7-2000
(Kalyan R. Surana)
Advocate.
on behalf of
Sri Jagadish Das
Applicant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

APPLICATION UNDER SECTION 19 OF
THE ADMINISTRATIVE TRIBUNALS ACT, 1985

O.A. NO. 232 OF 2000

Sri Jagadish Das ...Applicant

- versus -

Union of India & Others ...Respondents

I N D E X

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2.	Annexure-I (Representation dated 20.04.95)	12
3.	Annexure-II (Representation dated 04.12.97)	13
4.	Annexure-III (Impugned letter No. E/301/1 (EW-Bill) Pt.IX dated 12.11.98.	14-15
5.	Annexure-IV (Representation dated 28.04.99)	16
6.	Annexure-V (Representation dated 12.06.99)	17
7.	Annexure-VI series (Notice dated 30.03.99)	18- 22
8.	Annexure- VII (Pay bill for April 2000)	23
9.	Annexure-VIII ((Representation dated 5.12.98)	24- 25
10.	Annexure-IX (Representation dated 02.02.99)	26- 27

(Signature of Applicant)

FOR USE IN TRIBUNAL'S OFFICE:

Date of filing:

For Registrar,

Central Administrative Tribunal, Guwahati

Jagadish Das

ORIGINAL APPLICATION NO. 232 OF 2000

IN THE MATTER OF:

Sri Jagadish Das,
Son of Late Aklu Das,
Mate- Gang No. 58,
Office of the Assistant Engineer,
North East Frontier Railway,
Changsari, B.G. Railway Colony,
P.O. Changsari, Dist. Kamrup, Assam.

...APPLICANT

- versus -

1. Union of India?
Represented by the Chairman,
Railway Board, Rail Bhawan, New Delhi.
2. The General Manager,
North East Frontier Railway,
Maligaon, Guwahati-781011
3. The Divisional Manager,
North East Frontier Railway,
(W-Rent Section), Alipurduar,
West Bengal.
4. The Senior Section Engineer,
WAY - BG, North East Frontier Railway,
Rangia, Dist. Kamrup, Assam.

Jagadish Das

Filed by
Kalyan R. Sarana
1/11/00
(Kalyan R. Sarana)
Advocate
on behalf of
Sri Jagadish Das
- Applicant

5. The Assistant Engineer,
North East Frontier Railway,
Rangia, Dist. Kamrup, Assam.

...RESPONDENTS

1. DETAILS OF APPLICATION:

PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS
MADE:

This application is directed against order No. E/301/1
(EW-Bill) Pt.IX dated 12.11.98, whereby the Respondent No.3
intimated the applicant about his decision to recover arrear
damage rent amounting to Rs.79,526/- (Rupees seventy nine thou-
sand five hundred twenty six only) for alleged unauthorized
retention of Railway Quarter No. 13-B, Type - I at Changsari with
effect from 10.03.95 to 15.11.98 and recovery of Rs.182/- (Rupees
One hundred eighty two only) per month as damage rent from the
monthly salary of the applicant.

2. JURISDICTION OF THE TRIBUNAL:

The Applicant declares that the subject matter of the
order against which he wants redressal is within the jurisdiction
of the Tribunal.

3. LIMITATION:

The applicant further declares that the application is
not within limitation period prescribed in Section 21 of the
Administrative Tribunals Act, 1985, and as such, the applicant

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Jayad's Das

has filed a separate application for condonation of delay under Section 21(3) of the Administrative Tribunals Act, 1985. ✓

4. FACTS OF THE CASE:

4.1. That the applicant is working as Mate - Gang No. 58 under the Respondent No.5. The applicant is in occupation of Railway Quarter 13-B, Type - I at Changsari B.G. Railway Colony, P.O. Changsari in the district of Kamrup, Assam, which has been regularly allotted to him by the competent authority on 15.07.87, though no formal allotment letter was issued.

4.2 That as far back as on 20.04.95, the applicant requested the Respondent No.4 to allow him to retain his quarter at Changsari, as he had not been allotted any residential quarter at Rangia. The said representation was duly forwarded by the Respondent to the higher authorities for consideration, and the applicant was made to believe that the said representation was under active consideration. Thereafter again vide representation dated 04.12.97, the applicant requested the Respondent No.4 to sanction retention of his railway quarter at Changsari, and the Respondent No.4 again duly forwarded the said representation to the higher authorities for consideration, and once again the applicant was made to understand that his representation was under active consideration.

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Jagdish Das

Copies of the representation dated 20.04.95 and 04.12.97 are annexed herewith and marked as Annexure- I and II respectively.

4.3 That all along the applicant was given an impression that his representations for sanction to retain his railway quarter at Changsari was under consideration, but surprisingly, the applicant received a communication bearing No. E/301/1(EW - Bill) Pt.IX dated 12.11.98 from the Respondent No.3 to the effect that damage rent for unauthorized occupation of railway quarter at Changsari amounting to Rs.79,526/- (Rupees Seventy nine thousand five hundred twenty six only) was imposed for the period 10.03.95 to 15.11.98, and thereafter damage rent at the rate of Rs.182/- (Rupees one hundred eighty two only) per month would be realized from him. It may be pertinent to state here that on the date of the notice an amount of Rs.1,513/- (Rupees One thousand five hundred thirteen only) had already been recovered and balance amount of Rs.78,013/- (Rupees Seventy eight thousand thirteen only) remained to be recovered for the said period.

Copy of the aforesaid letter dated 12.11.98 is annexed herewith and marked as Annexure-III.

4.4 That upon receipt of the aforesaid letter dated 12.11.98 (Annexure-III), the applicant represented before the Respondent No.3 through proper channel on

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12/11/98

Jayalisk Das

12

28.4.99
12.6.99

28.04.99 to allow him to retain his quarter at Changsari, and again the applicant was given an impression that his said representation was under consideration. The Applicant having not received any formal communication on his representation again on 12.06.99 represented before the Respondent No.5 to allow him to retain his quarter at Changsari, but no reply whatsoever has been received by the applicant till date.

Copies of the representation dated 28.04.99 and 12.06.99 are annexed herewith and marked as Annexure - IV and V respectively.

4.5 That the applicant states that under the situation, the applicant was constrained to serve a lawyer's notice on 30.03.2000 through his Counsel demanding upon the Respondents to refrain from effecting any further pay cut towards recovery of damage rent for alleged unauthorized occupation of the railway quarter at Changsari under Rangia Junction, and to refund the amount of money already recovered from the applicant towards alleged damage rent failing which it was made clear that the applicant would approach this Hon'ble Tribunal for redressal of his grievance.

A copy of the aforesaid notice dated 30.03.2000, its postal receipt and acknowledgement card are annexed herewith and marked as Annexure-VI series.

4.6. That the applicant states that after receipt

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Jagdeep Singh

of the aforesaid notice dated 30.03.2000, the Respondents had continued to deduct arrear damage rent from the monthly salary of the applicant at the rate of Rs.1,000/- (Rupees One thousand only) per month. The respondents have also been deducting the usual house rent from the monthly salary from monthly pay bill of the applicant.

A copy of one such pay bill for the month of April 2000 is annexed herewith and marked as Annexure-VII.

4.7. That applicant states that at his present place of posting, which is situated about 20 kms. from his occupied quarter, the railways do not have any quarters, and as such, the applicant is compelled to stay in his present quarter.

4.8. It may be pertinent to mention here that the applicant's cause was taken up by the N.F.Railway Employees Union by submitting representations No. EU/RNY(DR) 98/5 dated 05.12.98 EU/DIVN/APDJ/Engg/3 dated 02.02.99, but till date no reply whatsoever has been communicated to this applicant on the fate of such representations.

Copies of the representations dated 05.12.98 and 02.02.99 are annexed herewith and marked as Annexure- VIII and IX respectively.

contd..7

Jagdish Das

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:

5.1. For that it was improper on the part of the respondents to deduct damage rent amounting to Rs.79,526/- (Rupees Seventy nine thousand five hundred twenty six only) at the rate of Rs.1,000/- (Rupees One thousand only) per month from the monthly pay bill of the applicant without serving him any opportunity to show cause, thereby giving a complete go bye to the principles of natural justice and administrative fair play.

5.2. For that the respondents had never served upon the applicant any order for vacating the railway quarter, nor had issued any fresh allotment order of the quarter in question upon any other railway staff. In the absence of these relevant considerations and more particularly in view of the fact that 3 or 4 railway quarters were lying vacant at Changsari, the respondents were not justified in imposing damage rent upon the applicant.

5.3. For that the applicant was not allotted any quarter at Rangia where he has been serving after being promoted to the post of Gang mate on 01.03.95 and particularly in view of the fact that no gang huts have been provided for the staff working in Gang No. 58 where the applicant is serving. As such, the applicant had no option but to retain the quarter in question.

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Jagdeep Singh Des

Failure on the part of the respondents to appreciate this aspect of the matter while imposing damage rent on the applicant renders the impugned order dated 12.11.98 bad in law, and as such, the same is liable to be set aside and quashed.

5.4. For that the applicant had not been informed in writing about the proposal to impose damage rent upon him over and above the normal rent and the applicant has not been given reasonable opportunity of making a representation against the proposal in violation of Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968.

5.5. For that imposition of damage rent over and above the normal rent amounts to imposition of minor penalty within the meaning of Rule 6(1)(iii) of the Railway Servants (Discipline & Appeal) Rules, 1968, and as such, it is incumbent upon the respondents to hold an enquiry in the manner laid down in Sub-Rule (3) to (19) of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, and as per the provisions of Rule 11(i)(b) of the aforesaid Rules. Failure on the part of the respondents to adhere to the aforesaid safeguard before imposing damage rent upon the applicant makes the impugned order dated 12.11.98 bad in law and liable to be set aside and quashed.

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5.6. For that failure on part of the respondents to pass any speaking order on any of the representation made by the applicant renders the impugned order dated 12.11.98 violative of Rule 11(i)(c) of the Railway Servants (Discipline & Appeal) Rules, 1968, and as such, the same is liable to be set aside and quashed forthwith.

5.7. For that failure on the part of the respondents to serve upon the applicant a copy of the statement of imputations of misconduct or misbehaviour before imposing damage rent, renders the impugned order dated 12.11.98 liable to be set aside and quashed.

6. DETAILS OF REMEDIES EXHAUSTED:

The applicant declares that he has availed of all the remedies available to him under the relevant service rules, etc. Inasmuch as after receipt of the impugned letter dated 12.11.98 whereby he was communicated with the decision of the respondents to impose damage rent upon him, the applicant represented before the respondent No.3 on 28.04.99 through proper channel to allow him to retain his quarter, but no reply whatsoever was received by him. Again on 12.06.99, the applicant represented before the respondent no.5 to allow him to retain his quarters at Changsari, but the same has not been replied to by the respondents. These apart on 05.12.98, the Branch Secretary of N.F. Railway Employees Union, Rangia Branch, also represented before the respondent no.3 on behalf of the applicant urging upon him not to deduct damage

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Jyoti's / D-3

rent from the applicant and to allow him to retain his quarter, at Changsari. A similar representation was made to the Assistant Divisional Railway Manager, N.F. Railway, Alipurduar Junction on 02.02.99 on behalf of the applicant by the Divisional Secretary, N.F. Railway Employees Union, but the respondents have not bothered to reply to the same.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT

The applicant further declares that he has not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any Court, or any other authority or any other Bench of the Tribunal, nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT:

In view of the facts mentioned above, the applicant prays for the following reliefs :-

- Interim order on 20.11.06*
- i. To set aside and quash the letter no.E/301/1 (EW-Bill_ Pt.IX dated 12.11.98 (Annexure-III) issued by the Divisional Railway Manager, Alipurduar Junction, N.F. Railway.
 - ii. To direct the respondents to refund the damage rent already deducted from the monthly pay bill of the applicant.

contd...11

Jagadei S Das

9. INTERIM ORDER, PRAYED FOR:

To direct the respondents not to deduct damage rent from the monthly pay bill of the applicant.

10. The application is filed through Advocate.

11. Particulars of the postal order filed in respect of the application fee :-

- (i) Postal order no. : 26-597192
- (ii) Date of Issue : 10.07.2000
- (iii) Issued from : G.P.O., Guwahati.
- (iv) Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the list.

- V E R I F I C A T I O N -

I, Sri Jagadish Das, son of Late Aklu Das, aged about 45 years, presently working as Mate- Gang No. 58 in the Office of the Assistant Engineer, North East Frontier Railway, Rangia, resident of B.G. Railway Colony, Quarter No. 13-B, Type - I, P.O. Changsari, in the district - Kamrup, Assam, do hereby verify that the contents of paragraph 1, 4, 6, 7, 10, 11 and 12 are true to my personal knowledge, those made in paragraphs 2, 3, 5, 8 and 9 are believed to be true on legal advice and that I have not suppressed any material fact.

Date: 11.7.2000.

Place: Guwahati

(Signature of the applicant)

Jagadish Das

Jagadish Das

As stated in the -----

- V E R I F I C A T I O N -

I, Sri Jagadish Das, son of Late Aklu Das, aged about 45 years, presently working as Mate- Gang No. 58 in the Office of the Assistant Engineer, North East Frontier Railway, Rangia, resident of B.G. Railway Colony, Quarter No. 13-B, Type - I, P.O. Changsari, in the district - Kamrup, Assam, do hereby verify that the contents of paragraph 1, 4, 6, 7, 10, 11 and 12 are true to my personal knowledge, those made in paragraphs 2, 3, 5, 8 and 9 are believed to be true on legal advice and that I have not suppressed any material fact.

Date: 11.7.2000

Place: Guwahati

Jagadish Das

(Signature of the applicant)

To,
The Senior Section Engineer (P WAN) BG,
N.F.Railway, Rangia Jn,

Sub: Prayer for retention of Rly Qtr. No. BG 13(B)
Type-I Spl at CGS

Sir,

I have the honour to state you that I have a Rly Qtr at CGS from the time of my posting as Keyman at CGS.

That Sir, I had been transferred and posted at G/No.58 on promotion but my qtr was at CGS as I was not provided with Rly.Qtr at Rny.

That Sir, in terms of AEN/Rny's letter no. forwarded to G/No.58.

That Sir, I do not have the Rly Qtr on the educational ground and I want to retain the qtr no. BG 13(B) Type-I spl at CGS.

I, therefore, pray your honour to be kind enough to accord your sanction to retain the Rly qtr no. BG 13(B) Type-I spl at CGS and oblige.

sd/- illegible

23.06.95

Yours faithfully,

sd/- illegible (Jagadish Das)

Mate/G/No. 58

20.04.95

CERTIFIED TO BE TRUE

Kalyan R. Surana
11/7/00
(KALYAN R. SURANA)
ADVOCATE

To,
The Sr. Section Engineer (P-WAN) BG,
N.F.Railway, Rangia Jn.

Sub: Prayer for retention of Rly Qtr. No. BG 13(B)

Type-I Spe at CGS

Sir,

I have the honour to state you that I have a Rly Qtr at CGS from the time of my posting as Keyman at CGS.

That I had been transferred and posted at G/No. 58 on promotion but my qtr was at CGS as I was not provided with Rly Qtr at Rny.

That Sir, in terms of AEX/Rny's letter no. E/2-170 dated 29.10.97, I have been transferred to G/No. 59 at KDKN.

That Sir, I do not want to have the rly qtr at KDKN on the educational ground and I want to retain the qtr No. BG 13(B) Type-I Spl at CGS.

Therefore, I pray your honour to be kind enough to accord your sanction to retain the Rly Qtr No. BG 13(B) Type-I Spl at CGS and oblige.

Dated: 04.12.97

Yours faithfully,

To,

AEH/Rny

sd/- illegible (Jagadish Das)

forwarded for n/a please

Mate G/No.58

sd/- illegible 25.12.97

CERTIFIED TO BE TRUE

K. Surana
11/7/00
(KALYAN R. SURANA)
ADVOCATE

N. E. Railway.

Office of the
Divl. Rly. Manager(P),
Alipurduar Junction.

No. E/30 V 1 (EW-Bill) Pt. IX

Dt. 12/11/98.

To:

Sri Jagadish Das,
Mate, Gang No. 58
under SSE(P.Way)/BG/FNY.Through: COM/BC/FNY.Sub:- Damage rent for un-authorised
retention of Rly. Crs. No. 13-B
type-I at CGS.

You were transferred from Changsari to COM/BC/FNY as
Mate of Gang No. 58. On and from 1-3-95. After transfer from
Changsari, you retaining un-authorisedly Rly. Crs. No. 13-B type-I
at CGS w.e.f. 1.3.95, and onward. Plinth area of the said Rly. Crs.
No. is 65.02 Sqn.

Rent is being recovered from your salary @ 34/- P.M.

You are un-authorisedly retaining the said Rly. Crs.
w.e.f. 1.3.95, as such damage rent is to be recovered from your
salary.

Meanwhile Branch Secy./NFRMU/FNY vide his L/No. MU/FNY/Crs/98
dt. 7.9.98, has represented for non-recovery of damage rent from
your salary.

In terms of Rly. Bd's L/No. F(X) 1-93/11/2 dt. 13.8.94,
rate of damage rent is Rs. 23/- per Sqn. Hence damage rent is imposed
against you w.e.f. 11.3.95 to 31.5.95 and in terms of Rly. Bd's L/No.
F(X) 1/93/11/2 dt. 21.12.95, under GM(P)/MLG's L/No. 1550

at $\frac{4}{8} - \frac{3}{3} - \%$, rate of damage rent is Rs. 23/- per Sqn., which is also
imposed against you w.e.f. 1.6.95 and onwards.

Detail calculation is as under :-

Already reco :-

1.3.95 to 15.11.98

@ 34/- PM. = Rs. 1513/-

Should be reco. :-

@ 23/- per Sqn. Rs. 3954

on 65.02 Sqn.

wef. 11.3.95 to 31.5.95.

@ 28/- per Sqn. Rs. 75572

on 65.02 Sqn.

wef. 1.6.95

to 15.11.98.

Grand Total : Rs. 79526/-

Thus total damage rent comes to Rs. 78013 (79526/- - 1513/-)
for un-authorised retention of Rly. Crs. No. 13-B type-I at CGS wef.
10.3.95 to 15.11.98,

Further, it is reiterated that damage rent will be recovered
monthly @ 182/- per month beyond 15.11.98, as you are still in
un-authorised occupation of the said Rly. Crs. and arrears damage
rent Rs. 79526/- will be recovered in early instalment from your
salary.

CERTIFIED TO BE TRUE

(KALYAN R. SURANA)

ADVOCATE

for Divl. Rly. Manager(P),
Alipurduar Junction.

(Contd..2.)

1 - : (2) :-

Copy to :-

- (1) CPWI/BG/RNY. He is requested to deduct damage rent @ Rs. 482/- P.M. and arrear damage rent of Rs. 730 13/- & Rs. 1821/- be recovered in early instalment.
- (2) ADV/RNY for information please.
- (3) Branch Secy./HFMU/RNY for information please.

for H.V. M. Manager(P),
Alipurduar Junction.

(adv/124198)

CERTIFIED TO BE TRUE

K R Surana
11/7/02

(KALYAN R. SURANA)

ADVOCATE

To,

- 16 -

29

DRM(p) APDJ

(Through proper Channel).

Sub:- Retention of Rly Qr. No. 13 BT/I at CGS.

Sir,

I beg to state that I had submitted several appeals to retain the Qr.No.13 BT/I at CGS showing the detail reasons forwarded by SSE/P.Way/BG/RNY on 3-12-96 and 25-12-97 to AEN/RNY but of no avail. (1) Appeals submitted by me on 23-6-95. (2) Appeals Submitted by me on 04-12-97

I was transferred on promotion as Mate & posted in G/No 58 vide AEN/RNY's No.E/2-641 of 7-3-95. Again posting order issued vide AEN/RNY's No.E/2-170 dt 27-10-97 in G/No 598 and finally posting order was issued vide AEN/RNY's NO-E/2-203 of 7-8-98 in G/No.58.

So, in such way, I was given the final order by Aug/98 itself. Here, I should state that to take a final shape of my posting about $3\frac{1}{2}$ years time was taken which was not my responsibility.

The following few lines are now appended below for your consideration please.

- 1) Finally joined on 8-8-98 at G/No. 58.
- 2) Distance from Gang No. 50 Tools box to CGS=19 K.M.
- 3) Applied twice as indicated above paragraphs.
- 4) Retention of Qr. No. 13 BT/I elec at CGS is yet pending.
- 5) No. Ganghut is meant for G/No. 58 and Question of Getting Qr. does not arise. Even no. Qr. is allow at RNY.
- 6) Uptill this date 28-04-99, no order was issued to vacate the said Qr. at CGS from SSE/Way/BG/RNY or So.
- 7) There are still $3/4$ Qrs lying vacant at CGS.

Yours faithfully,

S. Jagadish Das

(SRI JAGADISH DAS.)
 Desig- MATE G/No. 58
 Under SSE/Way/BG/RNY
Dt-28-04-99

Copy to:-

- 1) DRM(W-Rent Section) APDJ
- 2) AEN/RNY
- 3) Sr. SE/Way/BG/RNY

- For information please.

CERTIFIED TO BE TRUE

Kalyan R. Surana
 up/100
 (KALYAN R. SURANA)
 ADVOCATE

To,
The Assistant Engineer,
N.F. Railway, Rangia Jn.
(Through SE/Way/BG/RNY)

Sub: Qr. at RNY

Ref: SE/WAY/BG/RNY'S L.No. Qr/1 dated 28.5.99

Sir,

I beg to state that I had severally been submitting appeals in earlier times asking retention of my qr. at CGS putting adequate reasons which is known to you. Apart from that my following childs -

(1) Smt. Pinki Das (Daughter) - CGS Balika Vidyalaya - Class-IX.

(2) Sri Anil Kr. Das (Son) - CGS High School - Class - VII.

(3) Sri Sunil Kr. Das (Son) CGS N.B. School - Class - IV.

are studying and it will be quite unjusticed to disturb each of them in just middle of current academic year 1999 where also each had to appear before the coming half yearly exams. Even, the formalities to draw the T.C. (Transfer certificate) from different educational sectors would not have been issued.

In such circumstances, you are requested once again to allow me to retain the CGS Qr. for another 6 (six) months more.

sd/- illegible

15.06.99

Yours faithfully,

sd/- illegible (Jagadish Das)

name: Jagadish Das

Desig. Mate G/No. 58.

Under SE/Way/BG/RNY.

Dated 12.06.99.

CERTIFIED TO BE TRUE

KR Surana
11/7/00
(KALYAN R. SURANA)
ADVOCATE

Kalyan R. Surana
ADVOCATE

-18-

S. K. MARKET, GROUND FLOOR
TIP TOP GALLI, S. S. ROAD
LAKHTOKIA, GUWAHATI - 781 001
PHONE : 0361 - 517654 (RES.)

To,

Dated: 30.03.2000

1. North East Frontier Railways,
Represented by its General Manager,
Maligaon, Guwahati-11
2. The General Manager,
NF Railway,
Maligaon, Guwahati-11
3. The Divisional Manager,
NF Railway, (W - Rent Section),
Alipurduar, West Bengal.
4. The Assistant Engineer,
NF Railway, Rangia, Dist. Kamrup.
5. The Senior Section Engineer,
WAY - BG,
NF Railway, Rangia, Dist. Kamrup.

Sub: Notice for and on behalf of my client Sri Jagadish Das, son of Late Aklu Das, Mate - Gang No. 58, Office of the Assistant Engineer, N.F. Railway, Resident of Changsari BG Railway Colony, P.O. Changsari, Dist. Kamrup.

Sirs,

Under instructions and upon authority of my client above named, I hereby give you this notice to the following effect :-

1. That my above named client is presently working as Mate under Gang No.58, and is placed with the Office of the Assistant Engineer, NF Railway, Rangia, Dist. Kamrup, Assam.
2. That as far back as on 20.04.95, my aforesaid client requested the Senior Section Engineer (P-WAN), BG, NFR, Rangia, to allow him to retain his quarter No. BG 13(B) - Type-I at Changsari, as he had not been accommodated with any residential Railway quarter at Rangia, that the said letter was duly received and my client was informed that his representation dated 20.04.95 was sent to higher authorities for consideration. Thereafter again vide representation dated 04.12.97, my client again requested the said Authority to sanction retention of his earlier quarters at Changsari, and the said authority again forwarded the said representation to the higher authorities for consideration.
3. That all along, my client was given an impression that his representation for sanction to retain his quarters at Changsari was under consideration, but surprisingly, my

Kalyan R. Surana
30/3/00

CERTIFIED TO BE TRUE

Kalyan R. Surana
11/7/00
(KALYAN R. SURANA)
ADVOCATE

client received a communication under No. E/301//1(EW-Bill) Pt.IX dated 12.11.98, to the effect that his damage rent for unauthorized occupation of railway quarters at Changsari amounted to Rs.78,013.00 (Rupees Seventy eight thousand thirteen only) from 10.03.95 to 15.11.98, and thereafter damage rent would be charged at the rate of Rs.182/- per month.

4. That after receipt of the said notice dated 12.11.98, my client represented before the Divisional Railway Manager (P), Alipurduar, through proper channel, to allow him to retain his earlier quarters at Changsari, and again my client was given an impression that his said representation was under active consideration. Again on 12.06.99, my client represented before the Assistant Engineer, NF Railway, Rangia, to allow him to retain his quarters, but no reply whatsoever had been received by my client till date, and as such, my client continued to be a protected tenant and legally and bonafide retaining his residential quarters at Changsari so as to enable him to provide better education to his children.

5. That all along my client had been given to understand that he will be allowed to retain his quarters which he was occupying since his earlier posting till he was allotted another accommodation at Rangia, and no occasion to show cause was accorded to my client before effecting his pay cut to recover the damage rent from my client, inasmuch as my client is lawfully bonafide occupying the said quarter

6. I, therefore, give you this notice of demand, demanding forthwith of you to refrain from effecting any further pay cut from my client towards recovery of damage rent for alleged unauthorized occupation of Railway Quarters at Changsari under Rangia Junction, and to refund the amount of money already recovered from my client towards the alleged damage rent within two months from the date of receipt of this notice failing which my client shall be compelled to approach this appropriate Court/Tribunal of law for redressal of his grievance. This notice may be considered as a statutory notice under the provisions of Section 80 of the Code of Civil Procedure.

7. Take notice that this notice is being issued as a measure of abundant caution, and notwithstanding the issuance of this notice, my client shall be at liberty at any time to approach appropriate Court/Tribunal established in law for redressal of his grievance against you all, even prior to the date allowed in this notice.

Yours sincerely,

Kalyan R. Surana

30.3.99

(Kalyan R. Surana)

enc: Relevant Correspondence.

CERTIFIED TO BE TRUE

K Surana
11/7/00

(KALYAN R. SURANA)

ADVOCATE

भारतीय डाक



<<GRIHAKATI GPR >> Cntr.
REF AD 7199
NAME:DIV MAN.N F RLY
CITY:ALIPURHAR 000

INS FOR RS. 0 / P-STAMP Rs. 0
ANT: 25.00/ Rs.52M / 30/03/2000 12:13

भारतीय डाक



<<GRIHAKATI GPR >> Cntr.
REF AD 7200
NAME:ASST ENG.N F RLY
CITY:RAWGATA 000

INS FOR RS. 0 / P-STAMP Rs. 0
ANT: 25.00/ Rs.52M / 30/03/2000 12:14

भारतीय डाक



<<GRIHAKATI GPR >> Cntr.
REF AD 7201
NAME:SE SEC ENG.N F RLY
CITY:RAWGATA 000

INS FOR RS. 0 / P-STAMP Rs. 0
ANT: 25.00/ Rs.52M / 30/03/2000 12:14

भारतीय डाक



<<GRIHAKATI GPR >> Cntr.
REF AD 7202
NAME:M F F RLY.RF RY GEN MAN
CITY:GH 11 000

INS FOR RS. 0 / P-STAMP Rs. 0
ANT: 25.00/ Rs.52M / 30/03/2000 12:14

भारतीय डाक



<<GRIHAKATI GPR >> Cntr.
REF AD 7203
NAME:GEN MAN.N F RLY
CITY:GH 11 000

INS FOR RS. 0 / P-STAMP Rs. 0
ANT: 25.00/ Rs.52M / 30/03/2000 12:14

CERTIFIED TO BE TRUE

K.R. Surana
11/7/00

(KALYAN R. SURANA)
ADVCCATE

ACKNOWLEDGEMENT

- 2 -

Received a Registered Letter

To,
The General Manager, N.F.
Railway, Maligaon, Guwahati - 11
Date: 3 APR 77
Signature & Seal of Addressee
N. F. Railway
Maligaon, Guwahati

ACKNOWLEDGEMENT

Received a Registered Letter

To,
North East Frontier Railways
Represented by its General
Manager, Maligaon, Guwahati - 11
Date: 3 APR 77
Signature & Seal of Addressee
Office of the
General Manager.

ACKNOWLEDGEMENT

Received a Registered Letter

To,
The Assistant Engineer,
N.F. Railway, Raaga DIB
Krupa
Date: 5-4-77
Signature & Seal of Addressee

CERTIFIED TO BE TRUE

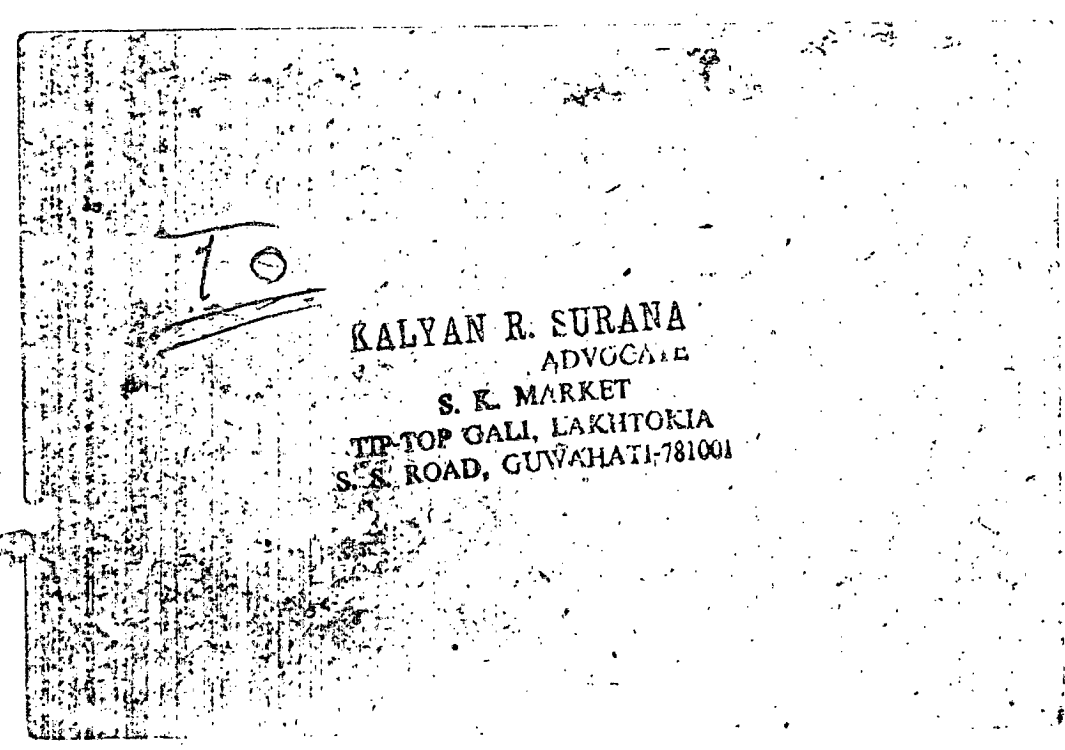
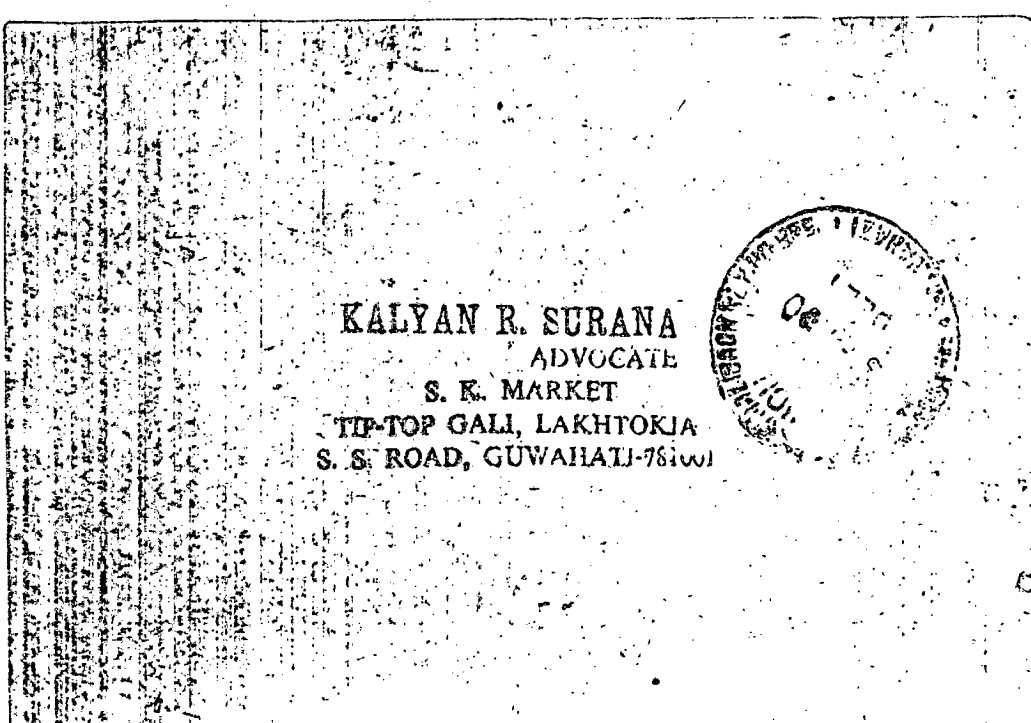
KRISHNA
11/7/00

(KALYAN R. SURANA)
ADVOCATE

35 -22-
00-4-5



KALYAN R. SURANA
ADVOCATE
S. K. MARKET
TIP-TOP GALLI, LAKHTOKIA
S. S. ROAD, GUWAHATI-781001



CERTIFIED TO BE TRUE
KR Surana
11/7/70
(KALYAN R. SURANA)
ADVOCATE

-23-

ANNEXURE - VII

PAGE NO 1

BU PGNO. 46

1334

M.F.RAILWAY BILL UNIT S1-340 G/NO58 * PAY BILL FOR APRIL 2000 * I.DUE -- DEDUCTIONS CONTD -- I.DUE DEPT ENGRNG SRL.NO 1

0000
0000

JAGADISH DAS	BASIC PAY	3093.00	PF	258.00	GROSS PAY *	4499.00
	DA	1145.00	HOUSE RENT	34.00		
DESGM G/RAN	CONVEY ALL	75.00	INSURANCE	712.00	TOT.DEDNS*	2234.00
	NPA	106.00	PROF-TAX	50.00		
PFNO W03124149-NC	SCA	80.00	GIS	30.00	NET PAY *	2265.00
			D.P.ADVANCE	150.00		
DUTY DAYS 29 LEAVE 01			O/P OF PAY	1000.00		

0000
0000

LAP LHAP LWP ABS LND
DB 255 150 0006 003 -
CR - - 01 001 -
DB - - - - -
CB 255 150 0007 004 -

CERTIFIED TO BE TRUE

K R Surana
11/7/00

(KALYAN R. SURANA)
ADVOCATE

N. F. RLY. EMPLOYEES' UNION

RANGIYA BRANCH

Affiliated to NFIR of INTUC Recognised by the Rly. Administration

President—Sri R. S. Ram

Br. Secretary—Sd. M. Rahman

Phone—Office—89

Residence—94

No.—EU/RNY(DR)98/5

Date—05/12/98

To
DRM/P/APDJ
N.F. Railway

Sub:- Deduction of Damage Rent of Sri Jagdish Das
Gangmate Gang No. 58

Ref:- Your letter No E/301/1(EW-811)PTix dt.
12/11/98

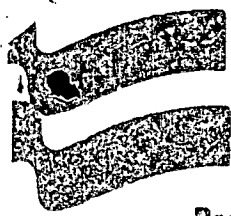
Sir,

A huge amount has been Ordered to recover from the salary of Sri Jagdish Das Gangmate of Gang No. 58 which is unjustified under the following Points.

1. Sri Jagdish Das Gangmate of Gang No. 58 has been transferred from CGS to RNY on and from 01-3-95 leaving his family and children at CGS. Thereafter he applied for his transfer from RNY to CGS as there was post lying vacant at the time of his transfer.
2. After effecting transfer Sri Das appealed several times previously for retention of his quarter at CGS showing legal causes and verbally also approached to the previous AEN and SSE/WAY/BG/RNY who gave assurance for retention the quarter with advice to stay in the quarter. But permission for retention or regret not yet been intimated to Sri Das in Black and White by SSE/WAY/BG/RNY.
3. In this connection Sri Das met with the Previous AEN/RNY and SSE/WAY/BG/RNY several times and expressed his troubles for consideration the case.
4. His children are continuing their study in the schools at CGS.
5. Sri Jagdish Das belongs to SC Community and the Employee of SC/ST Community should not be disturbed as far as possible by transferring if post available vide Rly. Boards No. E(SCT)60 cm 1/60, dated 8-12-60, E(SCT)70 cm 15/15/3 dated 19-11-70, E(SCT)72 cm 15/58 dated 14-1-75 NRSN 1020, 5161, and 6260 and Rly. Boards Instruction No 85-E(SCT)1-43/1 dated 24/12/85 recirculated by DRM/P/APDJ's NO REPLY 133 dated 26/5/86 and transfer of Sri Jagdish Das is simply violation of the above Instructions.
6. There is instances of Employees occupying Railway Quarters without allotment or authority resulting Railway Administration losing Revenue for years together. What action taken against them. Such as:-

Sri Timal Sada Gangman enjoying Rly Quarter No PC/7 at CGS for last 4(four) years unlawfully without any allotment and moreover he is drawing the AMOUNT of house rent every month from the Railway. In this way Railway Administration losing REVENUE from both sides for

contd.....



N. F. RLY. EMPLOYEES' UNION

4

RANGIYA BRANCH

Affiliated to NFIR of INTUC Recognised by the Rly. Administration

President—Sri R. S. Ram

Br. Secretary—Sd. M. Rahman

Phone—Office—89

Residence—94

No.—

Date—

- : 2 : -

(for) years together and responsibility completely goes to SSE/WAY/BG/RNY Sri Van. Why the Damage rent of that Quarter should no be recovered from SSE/WAY/BG/RNY Sri Van and Gangman Sri Timal Sada.

7. Sri Jagdish Das belongs to Backwar class and poor paid employee and is the Damage Rent is deducted, than his family will have to starve and Administration will have to bear all responsibility for any mishap of his family.

8. Notice should be served to staff concern from Administration side before ordering ~~XXXXXX~~ for the deduction of Damage Rent. But no Notice or intimation received by Sri ~~XXXXXX~~ Jagdish Das Mate.

9. Another Gangmate named Karuna Kanta Saloi working in Gang No. 58 without Job and taking salary sitting Idle everymonth without BOS for about one year. There had been several meeting between Employees' Union RNY and AEN and Union advised several times to take action and to send Saloi to other places. But all in vain. So clarification should be given why the full amount of salary of Sri Saloi for one year should not be recovered from the salary of SSE/WAY/BG/RNY Sri van.

Hope you would go through the matter seriously and order for the stoppage of deduction of damage rent from the salary of Sri Jagdish Das at an early date.

Yours faithfully

BRANCH SECRETARY

N. F. RLY. Employees Union

Rangiya Branch

For Information & necessary action please.

"	"	"	"	"	"
"	"	"	"	"	"
"	"	"	"	"	"

Copy to:-
 AEN/RNY
 Sr.DEN/LINE/APD3
 Divn. Secy. NFREU/APD3
 CVO/MLG

Branch Secretary EU/RNY

BRANCH SECRETARY

N. F. RLY. Employees Union

Rangiya Branch

CERTIFIED TO BE TRUE

Kalyan R. Surana

(KALYAN R. SURANA)

ADVOCATE

N.F. Rly. Employees' Union

(Registered & Recognised by the Rly. Administration
Affiliated to National Federation of Indian Railwaymen)

INDIAN NATIONAL TRADE UNION CONGRESS
DIVISIONAL COUNCIL/APDJ.



Divisional President : M. R. DEY
Divisional Secretary : B. DEB ROY

General Secretary : A.K. Deb Chowdhury

Ref. No. : EU/DIVN/APDJ/188g/3.

Date : 2/2/99.

To :
The Addl. Divisional Railway Manager,
N.F.Rly./Alipurduar Junction.

Sir,

Sub:- Harrasment of a poor-paid backward community(SC)
Railway personnel.

Ref:- Branch Secy/NFREU/RNY's L/No.EU/RNY(DR)98/5
dated 5.12.98.

...

The undersigned received a copy of letter addressed to you from Branch Secy/NFREU/RNY in which it has been explained that how injustice has been made with Shri Jagadish Das, Gang Mate of Gang No.58 by imposing damage rent on him amounting to Rs.79526.00.

Shri Das was initially promoted to the post of Mate vide AEN/RNY O.O.No.E/2-637 dated 1.3.95 copy of which was not served to Shri Das. AEN/RNY vide his O.O. No.E/2-641 dated 7.3.95 issued promotion order of Shri Das with posting at Gang No.58 by which the earlier posting order was revised with the persuasion of other Organisation as it is learnt.

Shri Das carried out his promotion order and resumed duty at Gang No.58 as Mate on 9.3.95. At the same time he preferred two application to AEN/RNY, one for retention of his Rly.Qrs. at CGS and another for his re-transfer at CGS against an available vacancy at CGS being a 'SC' candidate. On 1.8.96 Shri Das again preferred application to AEN/RNY but on both the occasion he did not receive any response from the side of AEN/RNY.

The undersigned, after careful examination of the case has come to the conclusion that Shri Das could have been exempted from damage rent amounting to Rs.79526.00, be allowed to retain his Rly.Qrs. at CGS and be retained at CGS(on promotion) on the following grounds:-

- (1) After materialisation of transfer order Shri Das neither received any order for vacation of his existing Rly.Qrs. at CGS nor no fresh allotment order of the said Qrs. was issued in favour of any staff to whom he could handover his existing Rly.Qrs.
- (2) Distance between CGS and Gang No.58(working spot) is only 20 Kms.(Appx.)
- (3) No Ganghuts have been provided for the staff working in Gang No.58.
- (4) At CGS, 3/4 Rly.Qrs. are still lying vacant having no applicant.

(Contd...2...)

1.3.95 Transfer

12/11/98 Notice for Damages

R (6)(3)

-::(2)::-

- (5) As a member of back-ward community(SC), Shri Das could be retained at CGS against available vacancies as per provision of Rly.Board's letter No.85-E(SCT)1-43/1 dated 24.12.35.
- (6) Shifting of his School/College going children, who are presently studying at CGS, will adversely affect academic carrier of the students.

In view of above, you are requested to apply your judicious mind to save a poor Rly.employee of back-ward community from just starvation.

With regards,

Yours faithfully,

(B. Deb Roy)
Divl.Secretary/NFREU/APDJ.

Copy forwarded for information and necessary action please.

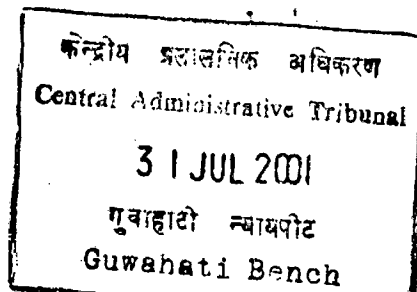
- 1) ☒ DRM(P)/APDJ.
2) ☒ Branch Secy/NFREU/RNY.

Divl.Secretary,
NFREU/APDJ.

R
Das
04-02-99
B. Deb Roy (P)
B. Deb Roy

CERTIFIED TO BE TRUE

Kalyan R. Surana
11/7/00
(KALYAN R. SURANA)
ADVOCATE



Filed by:
Sukomal Gungpla
Railways Advocate
Guwahati.
31.7.2001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH ::: GUWAHATI.

IN THE MATTER OF :

O.A. No. 232 OF 2000

Shri Jagadish Das

.... Applicant

- Vs -

1. Union of India
2. The General Manager, N.F. Railway,
Maligaon.
3. The Divisional Manager,
Alipurduar Junction.
4. The Senior Section Engineer,
(Way - B.G). N.F. Railways,
Rangiya, Dist. Kamrup.
5. The Assistant Engineer, N.F. Railway,
Rangiya, Dist. Kamrup.

..... Respondents.

- AND -

IN THE MATTER OF :

Written Statement for and on behalf
of the respondents.

The answering respondents most respectfully
beg to sheweth as under :

महोदय
Divisional Personnel Officer
प.सी. रेलवे, अलीपुरद्वार जं.
N. F. Railway/Alipurduar Jn.

Quoted copy
R. Chandra
Advised
18/7/2001

1. That, the answering respondents have gone through the copy of the application filed by the applicant and have understood the contents thereof.
2. That, save and except the statements which are specifically admitted herein below or are borne on records, all other averments/allegations as made in the application are emphatically denied herewith and the applicant is put to strictest proof thereof.
3. That, for the sake of brevity the meticulous denial of each and every statements of the application have been avoided. However, the answering respondents have been advised to confine their replies on those points/averments of the applicant which are relevant for a proper decision in the case.
4. That, the application suffers for want of valid cause of action. The applicant has no valid cause of action or right for filing this application.
5. That, the application is barred by limitation as will appear from the fact of the case .
6. That, all the actions taken in the case are quite in consonance to the rules, law and procedure in vogue. There has been definite lapses/default on the part of the applicant in vacating the railway quarter under his occupation in the old station of posting within the time limit as prescribed under rules/circulars, and, the damage rent etc. recoverable under rules for the unauthorised retention of the quarter, are recoverable from the applicant.

महोदय अधिकारी
Divisional Personnel Officer
प.स. वि. बल्लभपुर द्वारक.
P. S. Ballabhpur Dwarka

7. That, the application is fit ~~ame~~ to be dismissed in limine. The applicant has deliberately flouted the provisions of extant rules and law regarding retention of the railway quarter beyond the permissible period without receipt of any permission from competent authorities for such retention consequent on his transfer from Changsari to Rangia on 1.3.95 and thus not only violated the provisions of extant rules and discipline but also caused loss of revenue to the Government besides causing inconvenience to other workers who are to be housed in the railway quarter at Changsari. His such conduct and in disciplined act caused much administrative inconveniences also. As he has not come before the Hon'ble Tribunal with clean hands, his application and prayers before the Hon'ble Tribunal is liable to outright rejection/dismissal with award of cost to the respondents.

8. That, for proper appreciation of the case, the history of the case, in brief, is also submitted here in below :

Shri Jagadish Das (the applicant) Male, under Senior Section Engineer (Way) B.G., Rangiya, had joined at Rangiya Unit on transfer on promotion from the Ganghut of Changsari on 1.3.95. While the applicant was posted at Changsari, he was in occupation of the Railway quarter No. 13/B. Type I allotted to him. After his transfer from Changsari to Rangiya he was required to vacate this Railway quarter. But the applicant failed to vacate the Railway quarter and has retained the same under his occupation unauthorizedly. As such, in terms of Railway Board's letter No. F(X)I-86/11/9 dated 1.4.89, read with Railway Board's letters dated 31.5.91 and F(X) 1/03/11/2 dated 26.11.93 and 18.8.94 circulated under General Manager (P), N.F. Railway, Maligaon's

circular letter No. Mis - 1559

No. E/9/0-1(c) Pt.IV(c) dated 4/8.3.1996

copies of which were circulated to the recognised Union of the Staff i.e. N.F. Railway Employees Union and N.F. Railway, Mazdoor Union etc. the applicant is required to pay damage rent of the said quarters instead of normal rent in absence of any permission from the competent Authorities for retention of the Government/Railway quarter beyond the permissible period. The above said Railway Boards letter dated 1.4.89 clearly stipulates that if any employee retain railway quarter unauthorisedly in his old station of posting even after his transfer, he is required to pay damage rent for occupation/retention of the quarter and this fact has been well circulated to all concerned.

As the railway quarter at Changsari is still under occupation of the applicant letter had to be issued for recovery of the damage rent for unauthorised occupation of the railway quarter, (which has so far been calculated upto 15.11.98), from the salary of the applicant through his salary bill (which is a permissible deduction as per provisions of rules), subject to issuing further calculation sheet for recovery, of damage rents from 16.11.98 upto the date on which he would vacate this railway quarter.

9. That, with regard to averments at paragraph 4.1, of the application, it is stated that the applicant has been continuing with the unauthorised occupation of the quarter even now after his transfer to a new station, Rangia from the old place of posting i.e. Changsari on 1.3.95 i.e. for about 6 years. It is not a correct to say that no formal letter of allotment

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N.F. Railway/Alipurjail
Director Personnel Officer
N.F. Railway/Alipurjail

was issued for his occupation of Railway Quarter No. 13-B, Type I at Changsari. Such statements are quite contradictory as (i) by his own averment he says that the said quarter was regularly allotted to him, and, (ii) regular allotment implies the issue of formal allotment order.

10. That, with regard to averments at paragraph 4.2 of the application it is to state that correctness of the statements of the applicant are denied. No such applications dated 20.4.95 and the second representation dated 4.12.97 submitted after about 2½ years, as alleged, appears to have been received or are on record. Submission of any such application by the applicant for retention of the railway quarter beyond permissible period or holding any conversation in between him and the respondent no.4 (i.e. the Senior Section Engineer, Way - B.G. N.F. Railway Rongiya) or giving any under standing by the Respondent No.4, to the applicant that the applicants such requests for retention of the Railway quarter at Changsari beyond the permissible period was under active consideration by the Competent Authorities, are quite wrong, unfounded/baseless and as such are emphatically denied herewith. The incorrectness of his submissions are well apparent from the time interval in between so called submissions of the applications i.e. about 2½ years as stated above, which clearly shows that he never Cared to ~~per~~ pursue such matters and remained silent all those years ; if his statements had any element of truth.

In this connection, it is to mention herein

that as per extant provisions of law/rules, an employee after his transfer from his existing place of posting to another

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place/unit is supposed/obliged to vacate his quarter under his occupation at the old station after expiry of the permissible period as provided in the rules/Railway Boards circulars, and, in default, he is liable to penal/damage rent besides other disciplinary measures. Further, non-vacation of quarters also causes administrative inconveniences in not making such quarters available for allotment/occupation to other working staff stationed at the station, besides causing loss of revenues to Government.

But in the instant case the applicant retained the Railway quarter at the old station for number of years without having any written permission or authority from the Competent Authorities for such retention of the quarter, which is quite an illegal act under law/rules.

The applicants averments in the application about the submission of the so called applications (i.e. Annexures I & II to the application) are not accepted as correct and applicant is put to strictest proof thereof and these appears to be out-come of his after-thought.

11. That, with regard to averments at paragraph 4.3, of the application^{is} is to state that his assertions regarding submission of any representation for sanction for retention of the Railway quarter at Changsari or that he was given any impression that his case for sanction for retention of the quarter was under consideration, are quite ^{false} and hence all such statement are ~~denied~~ denied emphatically. Further, his averment that he became surprise after receiving the communication in the matter of effecting recovery of damage rent for his unauthorised retention of the railway quarter

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N. F. Railway/Alipurduar

beyond permissible period, are quite unacceptable and not correct. The applicant is holding the post of Mate, a Group 'C' post, and he being a responsible railway servant is well conversant with the railway rules and the consequences for retention of the railway quarter unauthorisedly beyond permissible period .

It is submitted herein that recoveries of damage rent are to be made as per rules and the employee retained the railway quarter knowing its consequences well. The damage rent as assessed in terms of the Railway Board's directions/orders etc. was recoverable from him for his unauthorised occupation/retention of the quarter, and, an amount of Rs. 79,526/- was assessed taking the plinth area of his quarter as 65.02 square metre (for period from 1.3.95 to 15.11.98) and letter No. E/301/1 (LW-Bill) Pt.IX dated 12.11.98 (Copy annexed as Annexure III to the application) was issued for effecting necessary recovery through the salary bill. However, on review it could be ascertained that the plinth area of the quarter is only 41.22 sqm. and hence this recoverable amount had been revised and recasted as Rs. 48,927/- instead of Rs. 78,013/- (i.e. 79526/- minus Rs. 1513/- already recovered) for the period from upto 15.11.98 period. The employee (applicant) was also intimated that this arrear damage rent will be recovered from his salary by way of monthly instalment at the rate of Rs. 182/- per month.

It is also pertinent to mention here-in that the monthly instalment rate for recovery of the recoverable dues were fixed to lessen any hardships on the applicant and that

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Personnel Officer
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that this damage rent is recoverable from him due to his own default by retention of the quarter unauthorisedly beyond permissible period.

Further, from paragraph 2 of the application it is well evident that the applicant was well aware about the rules for retention of quarters and he himself asserts that he approached the railway Administration for permission on 20.4.95 (after his transfer on 1.3.95) and on 4.12.97 etc. (Reference Annexure - I and II to the application). As such it was very much incumbent on his part to vacate the quarter when no such permission was received by him, if his such statement of ~~the~~ approaching respondent no. 4 or submission of representation dated 4.12.97 has got any element of truth. Further there should not have been any cause for further retention of the quarter even after receipt of the ~~bill~~ ^{letter} dated 12.11.98 when he could know that order for realisation of the damage rent for his unauthorised retention of the railway quarter was already issued under letter no. E/301/1 (EW-BILL) Pt. IX dated 12.11.98.

12. That, with regard to averments at paragraph 4.4, of the application, it is stated that nothing are admitted except those which are matters of record or are admitted specifically hereunder. No such representation dated 28.4.99 and 12.6.99 appears to have been received or are on record and hence receipt of such representations are denied. Moreover, ^{submitted} such representations, even if would have been by the ~~aff~~ applicant as alleged by him, could not also bring in any change in effecting recovery of damage rent etc. from the staff for his unauthorised occupation of the railway quarters for all these years

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since no decisions^{of} any Government official could go against any extant provision of rules/laws on the subject. From own statement of the applicant it also transpires that he had no written authority ~~from~~ from the Competent Authorities for retention of the railway accomodation beyond the permissible period, Mere putting up some staries about submission of application or saying that he was given on impression that his alleged representation was under consideration, which are not true at all, cannot be the substitute for the requirements of rules or the specific written permission of the Competent Authorities for retention of the railway quarters beyond permissible periods. As per provisions under rules an employee can be permitted to retain his quarters at his old station on the ground of sickness, children's education etc. upto 4/8 months or at least upto the end of the current academic session and not beyond that period and that also on varying rates of rent/damage rent and this retention cannot be for indefinite period .

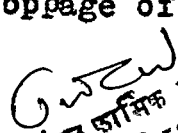
Since the applicant was transferred on 1.3.95 from Changsari to Rangiya which also became more^{than} 4 years on the date of his so called application dated 28.4.99 etc . (Annexure - IV and V) to the application) such application for retention of quarter is itself not maintainable and calls for no further favourable consideration. Retention period, which could be permitted only upto 1.9.95, was also over.

13. That, with regard to averments at paragraph 4.5 of the application it is submitted that the applicant was transferred from Changsari to Rangiya on 1.3.1995 and he was supposed to vacate the Railway quarter at Changsari immediately

thereafter or at least after expiry of the permissibly period. But he retained the quarter under his occupation at Changsari unauthorisedly without obtaining any express permission. As such, for his illegal/unauthorised occupation of the Railway quarter he is required to pay the damage rent of the quarter till vacation of it which is also in terms of the Railway Board's directives under letter No. F(X)1-86/11/9 dated 1.4.89 and Railway Boards letter No. F(X)1/93/11/2 dated 21.12.95.

Copies of the above said letter No. F(X)1-86/11/9 dated 1.4.89 and Railway Boards letter no. F(X)1/93/11/2 dated 21.12.95 (copy of which was also circulated to different officials and recognised Unions of the railway staff) are annexed hereto as Annexures A and B respectively for ready perusal.

It is also to state herein that the contentions of the applicant as put forward through this paragraph for ~~refraining~~ from effecting recovery of damage rent or refund of money already recovered etc, are quite against extant rules and laws on the subject. Lawyers notice cannot be the instrument for stoppage of recovery of legal dues of the Government etc. and the applicant, it is observed, is resorting to other means /ways instead of complying with the requirement of laws/rules and vacating the railway accomodation straight away without prolonging the matter which results in the accumulation of further arrears ^{of} recoverable damage rents etc. besides causing other inconveniences etc. As the Government revenue is thus affected and his acts ^{of} unauthorised occupation of the quarter is involved, the question of stoppage of further recovery of damage


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Gurdwar Jn.

damage rent or refund of damage rent so recovered does not also arise at all. The applicant is still continuing with the unauthorised occupation of this Government/Railway quarter and he cannot evade the damage rent etc. payable by him for the entire unauthorised occupation period.

14. That, with regard to averments at paragraph 4.6, of the application it is stated that the contention of the applicant as expressed in this paragraph are not correct and hence not admitted. It is quite incorrect that the arrear damage rent has been deducted after receipt of any lawyer's notice dated 30.3.2000 only or usual/normal rent is also under recovery. In fact, the damage rent are being deducted in terms of the Railway Boards guidelines/laid down instructions, and, orders etc in connection of recovery of damage rent as mentioned herein above. Rs. 34/- shown against the House Rent column at Annexure VII was a wrong input through over sight while the current damage rent recoverable comes to Rs. 1154.00 approximately, and this error was also corrected subsequently on detection. It is also to mention herein that all such government dues will be adjusted when the damage rent for the period from 16.11.98 to the date of his vacating this Railway quarter ^{will be calculated} and this aspect was already communicated to the applicant under letter No. E/301/1~~EW~~ -Bill// Pt.x dated 9.5.2000. A copy of this letter dated 9.5.2000. is also annexed hereto as Annexure - c for ready perusal.

Further, it is submitted that there is no

question of recovery of normal rent for this quarter since the normal period for which the quarter could be retained by the applicant with express/specific permission, at the old station

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of his posting was already over and for all further occupation, the damage rent is ~~of~~ recoverable besides resorting to other disciplinary measures for such unauthorised occupation/non-vacation of the Railway quarter, as required/provided under extant rules.

15. That, with regard to his assertion at paragraph 4.7 of the application, to the effect that the railways do not have any quarters at his new place of posting at Rangiya and that for this reason only the applicant is compelled to stay in this Railway Quarter at the old station i.e. at Changsari, it is stated that such averments are quite far from truth and hence denied herewith. In this connection it is submitted herein that there are sufficient number of quarters at Rangiya and the applicant should have applied for allotment of quarters at his present place of posting at Rangiya, if he desired to have any railway accommodation at his new place of posting at Rangiya. Further, till he is provided with a railway quarter at his new place of posting at Rangiya he could have drawn house rent allowance as admissible under rules/orders of the government at his new station, if so applied by him, after vacating the railway quarter at the old station.

~~Further, as the applicant is not provided with railway quarters at his new station, he could claim house rent allowance in lieu of railway quarters which is also subject to his vacating the railway quarter at his old station. As per rules the provision of railway quarter/accommodation to the railway employees is not guaranteed and he cannot have any claim or right for same.~~

In this connection, an extract of paragraph 1901 of the Indian Railways code for the Engineering Department

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(1989 Edition) is furnished herein below which clearly lays down the conditions for provision of staff quarters and lays down interalia that railway quarter cannot be claimed as a right :

Extract from para 1901 E

" 1901-E conditions for provisions of staff quarters :-

While residential quarters for staff may be provided by railways, where conditions are such that private enterprise does not adequately meet the demand for housing the staff, or where it is necessary for special reasons to provide quarters for certain staff near to their work, no employee has any right to be provided with quarters".

16. That with regard to the avernments at paragraph 4.8 of the application it is stated that the contentions of the applicant as made in this paragraph are not admitted. In this connection it is submitted that the railway staff himself i.e. the applicant was clearly and specifically informed that his actions in retaining the quarter at the old station at Rangt Changsari beyond the permissible period is unauthorised one and that for the period of his unauthorised occupation i.e. occupation of the quarter at the old station beyond the period permissible under rules, he will be liable to pay the damage rent at the prescribed rates based on the plinth area of the quarter at Changsari station. From the Divisional Railway Manager (P) / Alipurduars Junctions letter No. E/301/1/(EW-Bill) Pt.IX dated 12.11.98 addressed to the applicant with copies of

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of same to CPWI/BG/RNY, AMN/RNY and the Railway staff Unions, (a copy of which has already been annexed by the applicant as Annexure III to the application), it is quite evident that the decision of the Railway Administration for recovery of the damage rent was already intimated to the applicant on 12.11.98. The recoverable dues as was calculated earlier for the period from 1.3.95 to 15.11.98 period and communicated under letter No. E/301/1/(EW-Bill) Pt.IX dated 12.11.98 was however revised subsequently by letter no. E/301/1/(EW-Bill) Pt. X dated 9.5.2000 due to change of plinth area of the said Railway quarter, and the total recoverable dues for the period from 1.3.95 to 15.11.98 has been calculated as 50,440/- and same was already made known to the staff . The recoverable dues for the period from 16.11.98 to upto date is also beeing worked out in consultation with the rules and the instructions/ circulars etc. issued by the Railway Board to this effect. In this connection copy of the Divisional Railway Manager (P)/ Alipurduar Junctions letter No. E/301/1(EW-Bill)/Pt.X dated 9.5.2000 and the copy of the Railway Boards letter no. F(X)1-86/11/9 dated 1.4.1989 issued in connection with charging of damage rent for unauthorised occupation of Residential ~~Acc~~ accomodation have been annexed hereto as Annexures A and B respectively. The applicant has not made any staff Union as party in the case.

17.

The with regard to the grounds for relief and

legal provisions as mentioned at paragraphs 5 and 8 of the application it is submitted that none of the grounds as put forward by the applicant are sustainable under rules and fact of the case and hence all are emphatically denied herewith.

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Personnel Office
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However, the following which have got direct bearing in such cases, are also submitted herein :

(a) the impugned order dated 12.11.98 (Annexure III to the application) through which he was informed about his illegal action in retaining the railway quarter at Changsari and the matter regarding recovery of damage rents etc. for such unauthorised retention/continued occupation of the government quarter, is quite legal, valid and proper. However, so far as the quantum of damage rent is concerned, the same was immediately reduced after receipt of the correct plinth area of this railway quarter and same was also intimated to the applicant. The recoverable dues upto the period of 15.11.98 is now Rs. 48,927.00 (i.e. Rs. 50,440.00 less Rs. 1513/- already recovered). Besides above since the railway quarter is still under the unauthorised occupation of the applicant the dues from 16.11.98 to upto date is also to be recovered and is under calculation and the applicant will also be liable to pay all such dues also in terms of the extant bills on the subject and there is no escape from it.

(b) The extant rules are quite clear on the points that a railway servant on transfer from one Station to another which necessitates change of residence may be permitted to retain the Railway quarters at the former station of posting for a period of two months on payment of normal rent. On request by the employee, the period of retention of the quarters may however, be extended for further period of 6 months on grounds of education of his children or sickness of self or of members of his family on payment of Spl. license fee i.e. double the normal rent. Further extension beyond the said period may be

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granted to cover the current academic session of his children. But on medical grounds the retention may be for 6 months beyond the normal period of two months.

Further, the applicant, who is now is a 'C' grade employee is supposed to know about the extant rules that if any staff is transferred from a station to another place he is to vacate the railway accommodation at the old station immediately, or, alternatively is required to seek permission of the competent authorities for retention of such quarter at the normal rent or double the assessed rent etc. as the case may be for some period beyond permissible period.

(c) The allegations of the applicant that it was improper on the part of the respondents to deduct damage rent from the monthly pay bill of the applicant without serving him any opportunity to show cause and giving a complete go by to the principle of natural justice and administrative fair play, are completely unsustainable and incorrect and hence denied herewith emphatically.

In respect of above, it is pertinent to mention the following.

1. In the instant case, action for recovery of damage rent has been taken in terms of the extant rules and also instructions/rules issued by Railway Board etc.

Further, neither any right has been conferred by the statute or extant rules on the applicant for retention of the government/railway quarter for longer period than are permissible under rules as to continue with the unauthorised occupation of the

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N. F. Railway/Alipurduar Jn.

railway quarter for unlimited period without payment of damage rent, nor, there has been any violation of extant rules or procedures established thereunder in respect of dealing with unauthorised occupants and recovery of damage rents etc.

(ii) Natural Justice is a concept of changing content and can be excluded by statute rules etc. What particular rules of natural Justice should apply to a given case must depend to a great extent on the facts and circumstances of the case, the framework of the rules under which such action for recovery of the damage rents has been taken etc.

(iii) From applicants own averments at paragraph 4.2 of the application it is well apparent that he was well aware about requirements of specific permissions from the competent authority for retention of the Government quarters beyond the permissible period and about the consequences if no such permission is received (Reference : his alleged representation dated 20.4.1995 and representation after 2 years on 4.12.97 as stated to have been submitted by him)

As such when no specific written permission was granted to him, it was incumbent on him to vacate the quarter immediately without delay, which action he did not take. In such situation the rule of *audi - alterem partem* is inapplicable not by way of fair play in action but because nothing unfair can be inferred by not ^{extra}affording an opportunity to show cause. Principles of natural Justice are ultimately

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weighed in the balance of fairness and to extend these principles in the present case it would cause more injustice than justice.

iv. It is submitted that the statute/extant rules nowhere provides for issuing any show cause notice for the cases like the present one and thus by necessary implication it precludes the rule of natural Justice as mentioned by the applicant i.e. affording the applicant further opportunity to show cause/hearing etc. and as such the action under the extant rules/procedures cannot suffer from infirmities etc. Rather, providing him with extra privileges for show cause etc. would be in the nature of granting him undue advantage of protracting the proceeding some how and nullifying the objectives laid down in the extant rules/laws for getting the unauthorised occupation vacated without further delay and prevent further loss of revenue to the Government of India in respect of enforcing recovery of rent of the quarter, especially when the aspect of unauthorised occupation and the consequences that would follow under extant rules are quite in the knowledge of the applicant.

v. It is quite incorrect to say that the respondents never asked him to vacate the railway quarter. Rather, he has been retaining the railway quarter all these years unauthorisedly and without having any written premission from the competent officials for such retention etc. knowingly about consequences

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N. F. Railway/Airpurduar Jn.

of such retention. Further, the extant rules never contemplates/provides for issuing any separate or prior notice on the staff concerned before effecting recovery of damage rent etc. and no legal right of the staff have been infringed/vilated by the Railway Administration in effecting recovery of the damage rent as required under rules. It is submitted that the plea of notice is completely unfounded and aimed at to divert the main issue and has got no rationale as can be well perceived from the fact that the applicant has not yet vacated the railway quarter even after receiving the railway administrations' communication No. E/301/1/(EW-Bill) Pt.IX dated 12.11.98. wherein the fact of his unauthorised occupation of the quarter etc was clearly spelled out.

- d). Question of allotment of this quarter to another staff would arise only after he vacates the quarter kept by him under his occupation. The plea that some quarters at Changsari is lying vacant cannot regularise or justify his action in retaining this quarter under his occupation illegally. For such retention, he is liable to pay damage rent as per rules.
- e). The question of allotment of any railway quarter in his favour at Rangiya could arise only if he applied for allotment of any railway quarter at Rangiya, after vacating the railway quarter under his occupation at Changsari. The applicant did neither vacate this quarter nor did he apply for allotment of any quarter

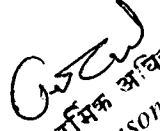
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मंडल कार्यालय अधिकारी
Divisional Personnel Officer
१.सी. रेलवे अलीपुरद्वार जं.
N. F. Railway/Ali purduar Jn.

at Rangiya.

f). The order for recovery of damage rent is quite legal and proper. The recoverable dues was already reduced vide order dated 9.5.2000 i.e. prior to filing of this application. The applicant has deliberately suppressed/avoided to mention in the application while filing this application (moved on 20.10.2000) before the Hon'ble Tribunal. The order of 12.11.98 was already modified by revised letter dated 9.5.2000 as mentioned herein before and the application is liable to be dismissed on the *ground* of suppression of the material facts in the case .

g). The question of furnishing reasonable opportunity or violation of the Railway servants Discipline and appeal Rules does not arise in the case. Further, no action has yet been taken against him under Discipline and Appeal Rules. As the actions for recovery of damage rent etc. have been taken quite in terms of railway rules/Railway Board circulars etc. question of issuing any imputation of misconduct or misbehaviour or passing speaking order etc. as contended by the applicant does not arise in such cases.

h). Under the fact and circumstances of the case, no relief as sought by the applicant are also admissible.


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N. F. Railway/Alipurduar Jn.

18. That, the answering respondents crave leave of the Hon'ble Tribunal to permit it to file additional written statement, if necessary for the ends of justice.

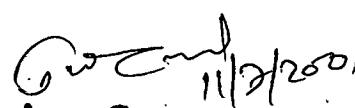
19. That, under the facts and circumstances of the case, as stated above, the instant application is not maintainable and is also liable to be dismissed with award of cost to the respondents for lending Government in ~~un-~~
~~necessary~~ unnecessary litigation expenses.

C. S. Chatterjee
मंडल कार्यालय अधिकारी
Divisional Personnel Officer
प.सी. रेलवे, अलीपुरद्वार जं.
N. F. Railway/Alipurduar Jn.

verification.....

V E R I F I C A T I O N

I, Shri parimal sarkar son of Late
M.K. Sarkar aged about 55 yrs by profession service,
now working as divisional personnel officer, N.F. Railway
Alipurdhar you do hereby submit that the statements made
at paragraphs 1 and 3 are true to my personal knowledge and
those made at paragraphs 8, 9, 10, 11, 12, 13, 14, 15 and 16
are based on informations as derived from records which
I believe to be true and the rest are my humble submissions
before the Hon'ble Tribunal.


11/2/2001
संलग्न कार्यालय अधिकारी
Divisional Personnel Officer
द.सी. रेलवे अलीपुरद्वार ब.
for Enquiry/Representation of the
respondents.

ANNEXURE - A

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

New Delhi, dt. 1-4-1989.

NO: F(X)I-86/11/9.

To:
The General Managers,
All Indian Railways including CLW, DLW & ICF.

& others.

Sub : Charging of damages for unauthorised occupation of Residential Accommodation- implementation of the recommendations of the 4th Pay Commission.

In terms of Board's letter No.F(X)I/72/RN3/1 dt. 23-9-76 market rent is recovered at 5-times, 4-times, 3-times & 2-times the assessed rent or 10 percent of the emoluments whichever is higher depending upon the classification of city/town. Board's have reconsidered the entire issue in the light of the latest instructions issued by the Ministry of Urban Development vide their OM. NO: 18011(12)/73-POL/III dated 27.8.87 and have decided that :-

- (i) The instruction issued vide Board's letter NO.F(X)I-72/RN3/1 dated 23-9-76 are hereby withdrawn.
- (ii) A damage rate of Rs. 15/- per sq.m. of Plinth Area in respect of types A to D (types I to IV) and Rs. 16/- per sq.m. of the Plinth Area in respect of types E and above (type V and above) is fixed. In addition, garden charges and other charges are applicable will also be recovered.
- (iii) The above rates of damages will be valid for a period of 2 years (upto 31.3.91) and revised rates will be prescribed thereafter by the Board and intimated to the Railway.
- (iv) The rate of damages as above would be effective from the date of issue of these orders. All pending cases prior to the date of issue of these orders may be disposed of based on the pre-revised orders.

The term 'market rate' will no more be applicable for charging/recovery of damages.

- (v) Receipt of this letter may please be acknowledged.

Sd/-

(Dipali Khanna)
Joint Director, Finance (Exp.)
Railway Board.

Asstt. Personal Officer

[deb]

30/10/89
Railway, Ahmedabad

ANNEXURE - B

NORTHEAST FRONTIER RAILWAY.

MISC - 1559.

No. E/9/D-1/(C) Pt. IV (C).

Malignant dt. 4-3-1996.

All HQS.

All DRGs.

All DAs, LAs/NDs & QWS.

All Controlling Officers of the non-Divisionalised Offices/N.F. Railway.

The General Secretary/RRMU & NFEU/PIO.

The General Secretary/ASCTREA/MLG

Sub: Revision of rates of damages for unauthorised occupation of Railway accommodation.

A copy of Railway Board's letter No. F(X)I/93/11/2 dated 21.11.95 regarding the above is forwarded herewith for information and necessary action. Board's earlier letters No. F(X)I/86/1/93/11/2 dated 26.11.93 and 10.8.94 are referred to in III/9 dated therein present letters were circulated under CPO's circulars 5.91 & N5 MISC-1427 of 1.1.90 and MISC 1536 of 10.6.94 and MISC-1541 of 14/27.9.94 respectively.

DA : As above.

For GENERAL MANAGER (P).

(Copy of Railway Board's letter No. F(X)I/93/11/2 dt. 21.11.95.)

Sub: Revision of rates of damages for unauthorised occupation of Railway accommodation.

In partial modification of this Ministry's letter No. F(X)I/86/11/9 dated 1.4.89 & 31.3.91 and F(X)I/93/11/2 dated 26.11.93 & 10.8.94 regarding damages rates for unauthorised occupation of residential accommodation, it has been decided to revise the rates of damages from the present rates as under :-

(Per Sq.m. of platform area per month)

Category	Existing Rates	Revised Rates
Class A	Rs. 34/-	Rs. 28/-
Class B	Rs. 28/-	Rs. 23/-
Class C	Rs. 23/-	Rs. 18/-
Class D	Rs. 18/-	Rs. 15/-
Class E	Rs. 15/-	Rs. 12/-
Class F	Rs. 12/-	Rs. 10/-
Class G	Rs. 10/-	Rs. 8/-
Class H	Rs. 8/-	Rs. 6/-
Class I	Rs. 6/-	Rs. 5/-
Class J	Rs. 5/-	Rs. 4/-
Class K	Rs. 4/-	Rs. 3/-
Class L	Rs. 3/-	Rs. 2/-
Class M	Rs. 2/-	Rs. 1/-
Class N	Rs. 1/-	Rs. 0.50/-
Class O	Rs. 0.50/-	Rs. 0.25/-
Class P	Rs. 0.25/-	Rs. 0.10/-
Class Q	Rs. 0.10/-	Rs. 0.05/-
Class R	Rs. 0.05/-	Rs. 0.02/-
Class S	Rs. 0.02/-	Rs. 0.01/-
Class T	Rs. 0.01/-	Rs. 0.00/-

Contd. 2/-

In addition, garden charges, and other charges as
shown in the schedule will also be recovered. These rates will be
effective from 1.6.95 and will be in force for a period of
two years or till further orders. The rates decided upto
31.5.95, garden charges will be continued in terms of Board's
letter of even number dated 13.1.95 for Class A, B, C and
other than Class A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AB, AC, AD, AE, AF, AG, AH, AI, AJ, AK, AL, AM, AN, AO, AP, AQ, AR, AS, AT, AU, AV, AW, AX, AY, AZ, BA, BB, BC, BD, BE, BF, BG, BH, BI, BJ, BK, BL, BM, BN, BO, BP, BQ, BR, BS, BT, BU, BV, BW, BX, BY, BZ, CA, CB, CC, CD, CE, CF, CG, CH, CI, CJ, CK, CL, CM, CN, CO, CP, CQ, CR, CS, CT, CU, CV, CW, CX, CY, CZ, DA, DB, DC, DD, DE, DF, DG, DH, DI, DJ, DK, DL, DM, DN, DO, DP, DQ, DR, DS, DT, DU, DV, DW, DX, DY, DZ, EA, EB, EC, ED, EE, EF, EG, EH, EI, EJ, EK, EL, EM, EN, EO, EP, EQ, ER, ES, ET, EU, EV, EW, EX, EY, EZ, FA, FB, FC, FD, FE, FF, FG, FH, FI, FJ, FK, FL, FM, FN, FO, FP, FQ, FR, FS, FT, FU, FV, FW, FX, FY, FZ, GA, GB, GC, GD, GE, GF, GG, GH, GI, GJ, GK, GL, GM, GN, GO, GP, GQ, GR, GS, GT, GU, GV, GW, GX, GY, GZ, HA, HB, HC, HD, HE, HF, HG, HH, HI, HJ, HK, HL, HM, HN, HO, HP, HQ, HR, HS, HT, HU, HV, HW, HX, HY, HZ, IA, IB, IC, ID, IE, IF, IG, IH, II, IJ, IK, IL, IM, IN, IO, IP, IQ, IR, IS, IT, IU, IV, IW, IX, IY, IZ, JA, JB, JC, JD, JE, JF, JG, JH, JI, JJ, JK, JL, JM, JN, JO, JP, JQ, JR, JS, JT, JU, JV, JW, JX, JY, JZ, KA, KB, KC, KD, KE, KF, KG, KH, KI, KJ, KK, KL, KM, KN, KO, KP, KQ, KR, KS, KT, KU, KV, KW, KX, KY, KZ, LA, LB, LC, LD, LE, LF, LG, LH, LI, LJ, LK, LL, LM, LN, LO, LP, LQ, LR, LS, LT, LU, LV, LW, LX, LY, LZ, MA, MB, MC, MD, ME, MF, MG, MH, MI, MJ, MK, ML, MM, MN, MO, MP, MQ, MR, MS, MT, MU, MV, MW, MX, MY, MZ, NA, NB, NC, ND, NE, NF, NG, NH, NI, NJ, NK, NL, NM, NN, NO, NP, NQ, NR, NS, NT, NU, NV, NW, NX, NY, NZ, OA, OB, OC, OD, OE, OF, OG, OH, OI, OJ, OK, OL, OM, ON, OO, OP, OQ, OR, OS, OT, OU, OV, OW, OX, OY, OZ, PA, PB, PC, PD, PE, PF, PG, PH, PI, PJ, PK, PL, PM, PN, PO, PP, PQ, PR, PS, PT, PU, PV, PW, PX, PY, PZ, QA, QB, QC, QD, QE, QF, QG, QH, QI, QJ, QK, QL, QM, QN, QO, QP, QQ, QR, QS, QT, QU, QV, QW, QX, QY, QZ, RA, RB, RC, RD, RE, RF, RG, RH, RI, RJ, RK, RL, RM, RN, RO, RP, RQ, RR, RS, RT, RU, RV, RW, RX, RY, RZ, SA, SB, SC, SD, SE, SF, SG, SH, SI, SJ, SK, SL, SM, SN, SO, SP, SQ, SR, SS, ST, SU, SV, SW, SX, SY, SZ, TA, TB, TC, TD, TE, TF, TG, TH, TI, TJ, TK, TL, TM, TN, TO, TP, TQ, TR, TS, TT, TU, TV, TW, TX, TY, TZ, UA, UB, UC, UD, UE, UF, UG, UH, UI, UJ, UK, UL, UM, UN, UO, UP, UQ, UR, US, UT, UY, UZ, VA, VB, VC, VD, VE, VF, VG, VH, VI, VJ, VK, VL, VM, VN, VO, VP, VQ, VR, VS, VT, VU, VV, VW, VX, VY, VZ, WA, WB, WC, WD, WE, WF, WG, WH, WI, WJ, WK, WL, WM, WN, WO, WP, WQ, WR, WS, WT, WU, WV, WW, WX, WY, WZ, XA, XB, XC, XD, XE, XF, XG, XH, XI, XJ, XK, XL, XM, XN, XO, XP, XQ, XR, XS, XT, XU, XV, XW, XX, XY, XZ, YA, YB, YC, YD, YE, YF, YG, YH, YI, YJ, YK, YL, YM, YN, YO, YP, YQ, YR, YS, YT, YU, YV, YW, YX, YY, YZ, ZA, ZB, ZC, ZD, ZE, ZF, ZG, ZH, ZI, ZJ, ZK, ZL, ZM, ZN, ZO, ZP, ZQ, ZR, ZS, ZT, ZU, ZV, ZW, ZX, ZY, ZZ.

All other clauses of this Ministry's letter No.
F(X)1/86/11/3 dated 1.4.89 shall remain unchanged.

Planned acknowledge receipt

Ant/4.3.96.

ANNEXURE — C.

N. F. Railway.

Office of the
Divl. Rly. Manager(P),
Alipurduar Junction.

No. E/301/1(EW-Bill)/Pt. X

Dt. 9/5/2000.

To:

SSE(P. W&V)/BG/RNY.

Sub:- Damage rent for un-authorised ~~retention~~
retention of Rly. Qrs. No. 13-B type-I
at CGS by Sri Jagadish Das, Mate Gang
No. 58.

It reveals from L/No. Q/I dated 4.5.2000 issued by AEN/RNY that
plinth area of Rly. Qrs. No. 13-B type-I at CGS is 41-22 Sqm. which is
un-authorisedly in occupation of Sri Jagadish Das, Mate of Gang No.58,
under your establishment.

Earlier damage rent erroneously was worked out based on plinth
area 65.02 of the said Rly. Qrs. and you were advised to deduct such
damage rent from salary of Sri Das vide this Office L/No. E/301/I(EW-Bill)
Pt. IX dt. 12.11.98.

Due to change of plinth area of the said Rly. Qrs. revised calcula-
tion of damage rent is as under for the period 11.3.95 to 15.11.98 :-

Already recovered :-

1.3.95 to 15.11.98

@ 34/- PM. = Rs. 1513/-

Should have been recovered.

upto 10.3.95 = Rs. 11/-

11.3.95

to 31.5.95

@ 23/- P. Sqm.

on 41.22 Sqm. = Rs. 2538/-

Rs. 2549/-

1.6.95

to 15.11.98

@ 28/- Sqm.

on 41.22 Sqm. = Rs. 47891/-

Total:- Rs. 50440/-

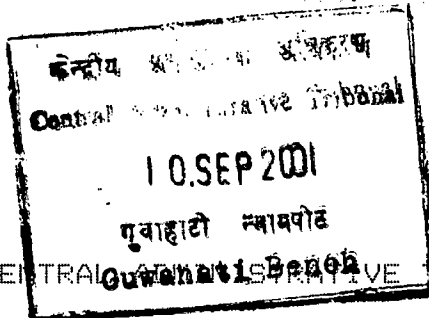
Besides this, since the said Rly. qrs. is still un-authorisedly
in occupation of Sri Das, for which damage rent wef. 16.11.98 to till
date is being worked out and will be intimated later on.

for Divl. Rly. Manager(P),
Alipurduar Junction.

Copy to :- 1) AEN/RNY for information in reference to his quoted above
mentioned letter please.

for Divl. Rly. Manager(P),
Alipurduar Junction.

(akp/8500)



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH : GUWAHATI

filed by -

Jagadish Das

- Applicant

through -
Kalyan R. Dorena
Advocate

10/9/2001

O.A. NO. 232 OF 2000

IN THE MATTER OF:

Sri Jagadish Das

...Applicant

- versus -

Union of India & Ors.

...Respondents

- And -

IN THE MATTER OF:

Affidavit-in-reply filed by applicant
against written statement of by the
defendants.

A F F I D A V I T I N R E P L Y

I, Sri Jagadish Das, son of Late Aklu Das, Mate- Gang
No. 58, aged about 48 years, by occupation - Service as Mate-
Gang No. 58, NF Railway, resident of Changsari BG Railway colo-
ny, PO. Changsari, Dist. Kamrup, do hereby state and solemnly
affirm as follows:-

1. That I have received a copy of the written statement
filed by the respondents through my Counsel, and having read the
same I have understood the contents thereof.

2. That save and except what has been specifically admit-
ted herein all the statements made in the said written statement

contd..2

Jagadish Das

Copy Enclosed

is deemed to have been denied by this deponent and the respondents are put to strict proof thereof.

3. That this deponent does not comment on the correctness of the statements made in paragraph 4 of the written statement. The statement is vague and devoid of material and better particulars.

4. That with regard to the statement made in paragraph 5 of the written statement it is stated that the cause of action being partially barred by limitation, this deponent states that such delay has been condoned under the facts and circumstances of the case.

5. This deponent denies the correctness of the statement made in paragraph 6 of the written statement. It is stated that the relevant rules have been violated while imposing damage rent upon this deponent as it amounts to minor penalty/punishment. This deponent has been denied natural justice by the respondents, and as such, any rule which denies natural justice to this deponent will be in violation of the rule of law, and beyond the scope of Railway Act, and cannot be acted upon.

6. The correctness of the statements made in paragraph 7 is denied vehemently. The allegation about flouting of existing rules are vague and devoid of material particulars, and no specific rule which has been purportedly violated has been quoted. In this context this deponent states that the back bone of the railway system lies through "mate gang" whose duty is to maintain

contd..3

Jagadish Das

railway track in good condition. That throughout the length and breadth of NF Railway i.e. from Tinsukia to Kathiar all mate gang have been provided with quarters whereas the applicant has been discriminated against by not allotting any quarter after his transfer as 'Mate- Gang No.58' inspite of repeated requests and reminders for quarter for reasons best known to the respondents.

7. This deponent denies the correctness of the statements made in paragraph 8 of the written statement. It is stated that there is no rule which authorizes the Respondents to bind this deponent without informing the deponent of the alleged rule, inasmuch as, the alleged circulation of letters to recognized union cannot be deemed to be communication to this deponent. The respondents are conspicuously silent as to why only this deponent has not been provided with quarters though all the other 'Mate gangs' have been provided with quarters. The respondents are also conspicuously silent as to how this deponent would be able to maintain his family and educate his children if family quarters are not provided to him as he has to do his duty on railway tracks which are far from habitation and civilization. Hence the respondents have failed in their duty to provide basic amenities to this deponent forcing him to occupy his existing quarters as the respondents had not disposed of his several representations and letters for continuance of occupation of the said quarter.

8. This deponent denies the correctness of the statements made in paragraph 9 and reiterates his statement made in paragraph 4.1. of his application that no formal letter of allotment for quarter was issued to this deponent.

contd...4

✓ Jagadish Das

9. This deponent denies the correctness of the statement made in paragraph 10 and reiterates his statements made in paragraph 4.2 of his application. The deponent shall produce the copy of letters duly receipted at the time of hearing. This deponent while denying that he was required to pursue the matter regarding quarters, states that it was the bounden duty of the respondents to provide him with quarters and they cannot be allowed to take advantage of their own inaction by not replying to the representations and letters on the subject given by this deponent. This deponent denies that any penalty can be imposed on him without consulting the Board.

10. This deponent denies the correctness of the statements made in paragraph 11 and reiterates his statement made in paragraph 4.3 of the application. The respondents are bound to provide quarters to this deponent, and as such, the question of levy, imposition and collection of damage rent dues not arise as except for 'mate gang No.58' all other gang members throughout NF Railway has been provided with family quarters.

11. This deponent denies the correctness of the statements made in paragraph 12 and reiterates his statement made in paragraph 4.4 of the application as well as his reply made in paragraph 9 above. It is stated that there are still several vacant quarters within the Changsari and Rangia region of NF Railway, and it is not the pleaded case of the respondents that the quarters now occupied by the petitioner is required to be allotted to some NF Railway employee, hence the respondents are not suffering any inconvenience but in the event the petitioner is to vacate

contd..5

✓ Jogadish Das

his quarter his children would suffer set-back in education due to lack of good school, habitation and civilization in the vicinity of railway tracks under 'mate Gang No. 58'.

12. This deponent denies the correctness of the statements made in paragraph 13 and reiterates his statement made in paragraph 4.5 of the application. That under compelling circumstances this deponent has continued occupation of his present quarters as the respondents have failed to provide him with alternative accommodation as enjoyed by similarly situated persons. Hence the respondents has not suffered any loss or damages.

13. This deponent denies the correctness of the statements made in paragraph 14 and reiterates his statement made in paragraph 4.6 of the application. It is false to state that this deponent was provided with any such alleged letter No. E/301/1/EW/-Bill/Pt.X dated 09.05.2000. That such false and misleading statement is unbecoming of the respondents who are State within the definition of Article 12 of the Constitution of India.

14. This deponent denies the correctness of the statements made in paragraph 15 and reiterates his statement made in paragraph 4.7 of the application. It is reiterated that the respondents have failed in their duty to provide quarters to this deponent as provided to similarly situated person, hence the respondents cannot impose damage rent on this deponent. In this context it is reiterated that there are vacant railway quarters at Rangia and Changsari, and the respondents have not shown cause that

contd..6

✓ Jagadish Das

there are existing demand for housing the staff, thus no case is made out for imposition of damage upon this deponent by denial of natural justice before levy of such damage rent.

15. This deponent denies the correctness of the statements made in paragraph 16 and reiterates his statement made in paragraph 4.8 of the application. This deponent was never informed about the referred letter dated 01.04.89 and this deponent is not required to know about such letters as they are not within the ambit of rule and/or law ^{and ultra-vires The Railways Act & Rules,} hence no liability can be attached to him on the basis of the letter dated 01.04.89. Qs

16. This deponent denies the correctness of the statements made in paragraph 17 and reiterates and relies on paragraph 5 and 8 of the application and the grounds on which the application is based. The reply under paragraph 17 being vague requires no specific reply for want of better particulars.

17. This deponent denies the correctness of the statements made in paragraph 17(a) to (h) and reiterates his statement made in paragraph 14 above. In this regard it is stated that this deponent sought permission from the competent authority to retain his quarters, and in absence of any reply from their end, this deponent cannot be saddled with any liability towards damage rent. It is specifically denied that there is any rule which authorizes imposition of damage rent amounting to minor penalty without observing the procedure established by law. Moreover, this deponent was never asked to vacate the premises now occupied by him before imposing damage rent.

contd..7

✓ Jagadish D/S

18. This deponent states that the respondents have not been able to show that they had disposed of the representations dated 20.04.95 and 04.12.97 (Annexure-1 and II) of the applications. It is not shown that the respondents have asked this deponent to vacate the existing quarter prior to imposition of minor penalty. It has not been shown that any notice before imposition of minor penalty was given to this deponent. It has not been shown that the quarter now occupied by this deponent is bonafide required by the respondents. The vacancy position of quarters at Rangia and Changsari is purposefully withheld by the respondents so that the malafide action against this deponent is not evident. Hence no case is made out by the respondents to sustain imposition of minor penalty upon this deponent, and the same is liable to be set aside and quashed in terms of the prayer made in the application by this deponent.

19. This deponent states that deduction of any part of the salary amounts to imposition of minor penalty according to the Railway Servants (Disciplinary & Appeal) Rules, 1968, and a procedure has been laid down under the said rules before such penalty is imposed. The respondents have not observed the said procedure established by law before deduction of pay of this deponent. Hence the said pay deduction cannot be sustained as respondents have disregarded the established principle that if the statute prescribes doing of an act in a particular manner, then the said act cannot be considered to have been done unless it was done in the prescribed manner alone.

contd..8

✓ Jagadish Das

19. That the statements made in this affidavit and in paragraphs 1 to 17 above are true to my knowledge and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this affidavit in the presence of my Advocate on this the day of September, 2001, at Guwahati.

Signed before me:

Kalyan R. Sinha

Advocate.

✓ *Jagadish Das*

DEPONENT

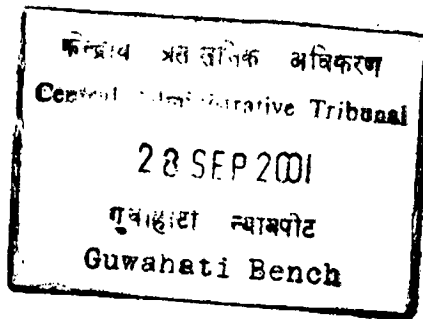
The Deponent is identified by me:

Jayanta Kalukola

Advocate

The copy of the affidavit-in-reply in OA 232/2000 will be served to the Learned Counsel of the Railways as and when contact since

Jayanta Kalukola
Advocate
10.09.01



Filed by:
Sukumar Sinha
Railway Advocate
Guwahati
28.9.2001

Permitted
28.9.2001
Sukumar Sinha
Railway Advocate
Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :::: GUWAHATI

O.A. NO. 232 OF 2000

Shri Jagadish Das .

- Vs -

..... Applicant .

Union of India & Ors.

..... Respondents .

- And -

In the matter of :

Reply to the Rejoinder filed by the
Applicant against the Written state-
ment filed in the O.A. by the
Respondents.

The respondents most respectfully submit
as under :

1. That, the respondents have gone through the copy
of the aforesaid Rejoinder filed by the applicant in the
case and have understood the contents thereof.

2. That, save and except those statements which are
admitted here-under or those which are borne on records, all
other averments/allegations as made in the Rejoinder are
emphatically denied herewith and the applicant is put to
strictest proof thereof.

3. That, for the sake of brevity, the meticulous denied of each and every allegations/statements made in the Rejoinder have been avoided. However, the answering respondents have been advised to confine their replies only on those points / allegations/averments of the applicant which have got bearing on the case and are found to be relevant for a proper decision in the matter.

4. That, the Regionder does not reflect any new point etc. which have not been dealt with in the written statement filed in the case and as such without repeating all those answers as given in the written statement, filed in the case the respondents hereby confine their reply only on those material points which requires further elaborations. The respondents also crave leave of the Hon'ble Tribunal to permit it during hearing stage ^{to} refer to the different statements submitted in their written statement already filed in the O.A. which are relevant to the case, whenever required.

5. That, with regard to the averments at paragraph 3 of the Rejoinder, the respondents beg to re-state and re-affirm their statements made at paragraph 4 of the written statement filed in the case. It is denied that submissions made at paragraph 4 of the written statement are incorrect, vague, and devoid of material particulars etc. as alleged. The applicant has not elaborated as to in which respect the submissions in the written statement can be said to be incorrect etc. as alleged.

32
Jal
11.11.85
D.P.O.
A.P.S.

6. That, with regard to averments made at paragraph 4 of the Rejoinder it is stated that the Applicant himself while admitting that the cause of action is parti-ally barred by limitation, has tried to assert that the delay has been condoned under the facts and circumstances of the case. It is submitted that such assertions cannot be admitted as correct. The case is quite barred under Law of limitation and section 21 of the Central Administrative Tribunal Act 1985 and the respondents re-affirm and re-state their statements made at paragraph 5 of the written statement.

7. That, with regard to the averments/statements made at paragraph 5 of the Rejoinder it is submitted that all the allegations/averments made in paragraph 5 are incorrect and hence denied. The statements made in paragraph 6 of the written statement filed in the case is hereby re-stated and re-affirmed. It is emphatically denied that :

(a) recovery of rent amount to infliction of minor penalty or the case invokes provision of the Railway Servants (Discipline and Appeal) Rules 1968 or that,

(b) relevant rules have been violated while imposing damage rent recovery, or, that,

(c) the Applicant has been denied r/ natural Justice etc.

28
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91. 92. 93. 94. 95.
96. 97. 98. 99. 100.

It is reiterated that the present case is a case which can safely be placed in a category where natural Justice concept before taking the present action of recovery of damage rent only stood excluded and the action for recovery of the damage rent is quite in consonance to the extant rules and orders on the subject laid down in Railway codes, manuals and mandatory orders of the Railway Board etc. and there is complete absence of any arbitrary action etc. on the part of the Railway Administration/Authorities. Issuing of any prior notice or show cause notice etc. is not called for by extant order/rules/law etc. as applicable to the nature of the present case. The applicant himself is quite aware of the fact that his action in retention of the Railway quarter for all these years is an unauthorised act and he is liable to pay damage rent for such breach of rules etc. and such provisions are already in the laid rules.

8. That, with regard to paragraph 6 of the Rejoinder it is submitted that all the allegations as made in this paragraph are quite incorrect and hence denied. The submissions made in paragraph 7 of the written statement is re-stated and re-affirmed. It is an undisputed fact that the Applicant has violated the rules regarding retention of the quarters at the old station for unauthorised period without prior approval/written permission from the competent Authorities. It is also a quite wrong statement by the Applicant that there has been any discrimination in allotment of railway quarters to the Applicant at Rongiya (his present place of posting) or that he ever submitted any application or request to the

Changsari was illegal/unauthorised one, he has not yet vacated that quarter at Changsari.

9. That, the allegations/averments made at paragraph 7 of the Rejoinder are from truth and are denied herewith. All the letter/circulars issued by Railway Administration/Authorities have been well circulated and plea of ignorance of law/rules are not tenable under law. The applicant never applied for railway quarter at Rangiya and as per extant Rules the allotment of railway quarters cannot be claimed as a matter of right. Records further reveals that no representation/letters/prayer of the Applicant for continuance of occupation of the said quarter at old station (Changsari) is on record. Further, the rule [redacted] provides for retention of the railway quarters [redacted] with prior permission from the Competent Authority, only for a few months or so on specified conditions and circumstances as detailed herein before and not for years and on the grounds stated by the Applicant.

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10. That, the allegations made at paragraph 8 of the ^{Rejoinder} ~~Application~~ are denied herewith and the respondents re-state and re-affirm their statements made at paragraph 9 of their written statement.

11. That, the allegations/averments made at paragraphs 9 and 10 of the ^{Rejoinder} ~~Application~~ are denied herewith as these are not correct. As has already been submitted earlier the Railway Administration is not duty found to provide railway quarters to each of the railway staff, though it endeavors to provide such on welfare measure under certain circumstances. The question of issuing the prior notice or show cause for effecting recovery of damage rent etc. does not arise in the fact of the case and under the rules of natural law which clearly lays down the exclusion clause. It is to state herein that the Applicant never submitted any application etc for allotment of railway quarter at Rangiya. The rules regarding realisation of damage rent is quite clear and is also not dependant on allotment of any other alternative quarter etc and it is purely related to retention of the quarter unauthorisedly, beyond the authorised period. The order for realisation of damage rent etc. has been passed correctly and as per law/rules invogue. The respondents hereby re-states and re-affirm their submissions made at paragraphs 10 and 11 of their written statement ~~is~~ submitted in the case.

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12. That, with regard to averments made at paragraphs 11 and 12 of the Rejoinder it is submitted that all the contentions/allegations of the Applicant are quite incorrect and hence denied herewith. It is quite a wrong statement that the respondents have failed to provide the Applicant with ^{Rw.} ~~any~~ quarters at Rangiya as enjoined by similarly situated persons, as alleged. In fact, the Applicant never approached the Railway Administration with applications for allotment of quarter. It is denied that the respondents have not suffered any loss or damages .

It is submitted that the applicant has been trying to mis-represent his case and he knows well that retention of the railway quarter without prior permission at the old station and without authority is illegal one and invokes ~~realization~~ realisation of damage rent. His own submission in the Application also quite reveals the same. The answering respondents re-state and re-affirm their submissions made at paragraphs 12 and 13 of their written statement.

13. That, the allegations made at paragraph 13 of the Rejoinder are quite incorrect and hence denied herewith. The respondents re-state and re-affirm their submissions made at paragraph 14 of their written statement. The Annexure C to the written statement will clearly reveal that this letter dated 9.5.2000 was issued in continuation of the prior letter dated 12.5.1998 and by this letter recoverable amount of damage rent from 11.3.95 to 15.11.98 period was only reduced

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It is submitted that the computation of delay period as 240 days only is quite incorrect and misleading.

(a) the respondents have failed in their duty to provide the applicant with quarters or

(b) there has been any discrimination of him with similarly situated persons.

15. That, with regard to paragraphs 16, 17 and 18 of the Rejoinder it is submitted that the allegations of the Applicants

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are quite wrong and hence emphatically denied herewith. The respondents re-state and re-affirm their statements made at paragraphs 17 and 19 17(a) to (h) of their written statement submitted in the case. It is denied that the applicant submitted any application seeking permission for retention of the quarter beyond authorised period or that the imposition of damage rent amount to imposition of minor penalty within the meaning of Railway servants (Disciplinary and Appeal) Rules 1968 or that the Applicant should have been asked seperately to vacate the quarters at the old station, & consequent on his transfer from Changsari to Rangiya, prior to imposition of damage rent or, that, prior to imposition of damage rent, the railway administration is bound to p furnish the vacant quarters position both at Changsari and Rangiya, as alleged or, that the orders for realisation of damage rent is liable to be set aside and quashed or that any of the so contended representations dated 20.4.95 and 4.12.97 (Annexures I and II of the Application) were submitted by the Applicant or are lying unreplyed to/undisposed as alleged or, no case has been made out for imposition of the damage rent or sustaining it.

In this connection it is to mention herein that the Applicant was transferred from Changsari to Rangiya Jn. on 1.3.95 and if his statements that he submitted applications dated 20.4.95 and 4.12.97 (Annexures I and II of the Application) has any truth, (which is not admitted), ^{from} these also

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it is well evident that :

- (a) the Applicant was aware of the rules for vacating the quarters at the old station consequent on his transfer ;
- (b) he know that the prior permission from the Competent Authorities for retention of the quarter at Old station ^{is required} and as such for non-receipt of permission damage rent is leviable.
- (c) the applicants contention for retention of the quarter on educational ^{ground etc.} cannot be extended beyond the School session. But the Applicant has not vacated the quarter for the last 6 years.
- (d) as he is aware of the need for having prior permission etc. for retention of the quarter, he is debarred from taking plea that prior notice for recovery of damage rent is required to be served on him or that he is not aware of the Railway Boards letters/orders ~~for~~ dated 1.4.89 etc for recovery of damage rent etc.
- (e) there is no explanation from the Applicant for retention of the railway quarter even after educational session of the children was over and also after receipt of the railway administrations' letter dated 12.11.98 (i.e. the impugned letter as per contention of the Applicant, the Annexure-

Verification

V E R I F I C A T I O N

I, Shri C. Saikia son of

aged about 36 years, by occupation,
Railway Service, now working as Senior Divisional Personnel Officer
of the Alipurduar Junction Division, N.F. Railway, Alipurduar
Junction, District Jalpaiguri, do hereby solemnly affirm

and state that the statements made in paragraphs 1, 2 and 3
are true to my knowledge and those made at paragraph
4, 5, 7 to 15 are matters of records of the case which

I believe to be true and the rest are my humble submissions
before the Hon'ble Tribunal, and I sign this verification
on this 26th day of September 2001.



Sr.DFO/AFDJ.
N.F. Railway, Alipurduar

For and on behalf of the respondents.