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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 231/2004

R.A/C.P No.

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SECTION OFFICER (Judl.)

FORM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET.

Org. App/Misc. Petn/Cont. Petn/Rev. Appl. 231/04

In O.A.

Name of the Applicant(s) Pranab Kr. Das.

Name of the Respondent(s) U. O. I Govt

Advocate for the Applicant M. Chanda, G.N. Chakrabarti
S. Rath, S. Chandan

Counsel for the Railway/C.G.S.C. ✓

OFFICE NOTE:

DATE

ORDER OF THE TRIBUNAL

1.10.04.

is filed/...
deposited vide ...
No. 2001147-13
Dated 1.10.04.

Dy. Registrar

Present: Hon'ble Mr.K.V.Prahladan,
Administrative Member.

Heard Mr.M.Chanda learned
counsel for the applicant and Ms.
U.Das, learned counsel appearing on
behalf of Mr. S. Sarma learned Railway
counsel.

Issue notice on the Respondents
to show cause as to why the applica-
tion shall not be admitted. Returnable
by four weeks. List on 5th November,
2004:

Notice be served by the learned
counsel for the applicant to the
learned counsel for the Respondents.

K.V. Prahladan
Member(A)

lm

5.11.2004

None for the parties. List on
10.12.2004 for admission.

K.V. Prahladan
Member (A)

mb

Steps taken with
envelops.

Notice & order sent
to D/Section for
issuing to resp.
Nos. 1 to 7, by regd.
A/D post.

13/10/04

D/Memo No = 1713 to
1719

dt. 2/10/04

7.4.2005

Mr.B.Pathak, learned proxy counsel appearing on behalf of Mr.B.C.Pathak, learned counsel for the Railways seeks time for filing written statement. Post on 11.5.2005.

Vice-Chairman

bb

11.5.2005

Mr.B.Baruah, learned counsel appearing on behalf of Mr.B.C.Pathak, learned counsel for the respondents seeks for adjournment. Post on 18.5.2005.

Vice-Chairman

bb

~~18.5.05.~~

The counsel for the applicant is absent. Post the matter for Admission on 15.6.05. Office will issue notice to the counsel

~~18.5.05.~~

The counsel for the applicant is absent. Post the matter for Admission on 15.6.05. Office will inform the posting in this case to the counsel for the applicant in his Agartala address.

Vice-Chairman

18.5.05.

Mr.B.C.Pathak, learned counsel for the Respondents submits that the written statement will be filed within a week. Post the matter on 1.6.05. In the meantime the applicant may file rejoinder, if any.

The recovery of the parties be kept in abeyance for three weeks.

Vice-Chairman

lm

For B.C. Pathak
B. Baruah
Adv.
26/5/05

26.5.05

W/s on behalf of
Respondent No. 1 to 6.

4-11-04

W/s on behalf of
Respondent No. 1 to 6
B. Baruah
Adv.

6-4-05

W/s on behalf of
Respondent No. 1 to 6
B. Baruah
Adv.

Notice duly
served on resp.
Nos. 1 & 3 to 7.

25/4

10-5-05

No W/s has been
filed.

(3)

3

| Office Notes. | Date | Order of the Tribunal |
|---------------|------|-----------------------|
|---------------|------|-----------------------|

order dt. 1/6/05
issuing to learned
counsel for the both
the parties.

01.06.2005

Mr. M. Chanda, learned counsel for
the applicant submits that the applicant
wants to file rejoinder to the written
statement. Post on 22.6.2005.

Interim order dated 18.5.2005 shall
continue till next date.

[Signature]

Vice-Chairman

① Wks filed on behalf
of R. No-1-6.

mb

② No. Rejoinder has
been filed.

22.06.2005

Mr. M. Chanda, learned counsel for the
applicant submits that this matter may
kind be adjourned. Post on 27.7.2005.

Interim order dated 18.5.2005 will
continue till then.

[Signature]

Vice-Chairman

order dt. 22/6/05
sent to printing
to both the parties.

[Signature]
21.6.05

[Signature]
Member

bb

27.7.2005

Adjournment is sought on behalf of
Mr. B.C. Pathak, learned counsel for the
Railways. The case is adjourned to
11.8.2005. Interim order dated 18.5.2005
is extended till next date.

[Signature]

Vice-Chairman

① Wks filed on behalf
of R. No-1 to 7.

② No. rejoinder has
been filed.

[Signature]
26.7.05

mb

[Signature]
Member

Pl. compl order
dated 27.7.05

11-8-05

There was a reference Ad.
to 2-9-05

B70

[Signature]
28/7/05

order dt. 27/7/05
issuing to learned
advocate's for both
the parties.

② No. rejoinder has
been filed.

[Signature]
10.8.05

2.9.05

Mr.M.Chanda learned counsel for the applicant is present. There is no representation on behalf of the Railways.

Post the matter on 4.10.05.

Vice-Chairman

lm

3-10-05

① w/s has been filed,

② No Reply has been filed,

By

3.10.05.

Ap. reply order dated 4-10-05.

By 5.10.05

No Reply has been filed.

By

6.10.05

3-11-05

Ready for hearing.

10-11-05

Reply filed on behalf of The applicant at page-40 to 44

By

The case is ready for hearing.

By 13.12.05

4.10.2005

Mr.M.Chanda, learned counsel for the applicant seeks for adjournment. Mr. J.L.Sarkar, learned Standing counsel for the Railways has no objection. Post after the vacation on 7.11.2005.

Interim order will continue till then

Member

bb

7-11-2005

Mr. M. Chanda, learned counsel for the applicant and Mr. J.L. Sarkar, learned Standing counsel for the Railways submit that this matter can be heard on Friday, i.e., on 11.11.2005. Post on 11-11-2005

Vice-Chairman

mb

11.11.2005

Mr.M.Chanda, learned counsel for the applicant is present. Mr.J.L.Sarkar learned Standing counsel for the Railways seeks for an adjournment.

Post on 14.12.2005. Interim order will continue till then.

Vice-Chairman

bb

14.12.2005

Mr. S. Nath, learned counsel for the applicant submits that he is ready but Mr. J.L. Sarkar, learned Standing Counsel for the Railway has got some personal difficulty today. Post on 20.12.2005. Interim order will continue till then.

Vice-Chairman

mb

OA 231/04

- 5 -

| Notes of the Registry | Date | Order of the Tribunal |
|-----------------------|------|-----------------------|
|-----------------------|------|-----------------------|

Order dt- 14/12/05
issuing to learned
advocate's for both
the parties.

CLAS
15/12/05

The case is ready
for hearing.

20
19.12.05

Pl. comply order dated
20.12.05

N.S
20.12.05

Order dt. 20/12/05
issuing to learned
advocate's for both
the parties.

CLAS
22/12/05

Pl. comply order dated

22.12.05

N.S
22/12/05

Order dt. 22/12/05
issuing to learned
advocate's for both
the parties.

CLAS
27/12/05

Pl. comply order dated

16.1.04

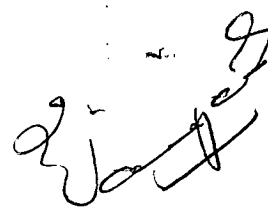
N.S
16.1.06

Order dt. 16/1/06 issuing to
learned advocate's for both parties.

20.12.2005

Mr. M. Chanda, learned counsel for
the applicant and Dr. J.L. Sarkar, learned
standing counsel for the railways are
present.

Post on 22.12.2005. Interim order
dated 18.5.2005 will continue till the
next date.

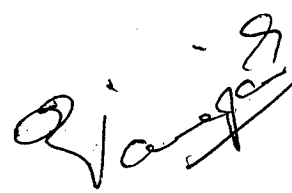


Vice-Chairman

mb

22.12.2005

Mr. M. Chanda, learned counsel for
the applicant and Dr. J.L. Sarkar, learn-
ed standing counsel for the railways
seeks for some more time to ensure the
question of jurisdiction of the Tribunal
in the matter. Post on 11.1.2006. Interim
order dated 18.5.2005 will continue till
the next date.



Vice-Chairman

mb

16.1.06

Mr M.Chanda, learned counsel for
the applicant wants to produce a decision
of the Gauhati High Court.

Post on 30.1.06. Interim order
dated 18.5.05 will continue till next
date.



Vice-Chairman

pg

30.1.06.

Post the matter on 16.2.05.

27-1-06

Interim order dated 18.5.05 will continue till the next date.

- ① Written statement and Reply order filed by the parties. lm

Vice-Chairman

16.02.2006

Counsel for the respondents submits that he is not keeping well. Let the matter be posted on 23.2.2006.

In response to interim order dated 18.05.2006 recovery from the applicants will be kept in abeyance until further orders.

Vice-Chairman

please comply order dated 30-1-06.

N3 31-1-06.

order dt-30/1/06 issuing to learned advocates for both the parties.

mb

23.2.06.

The Registry is directed to bring the decision of the case of the High Court for which the concerned number of ^{the} case is to be furnished to the Court Officer to-day. Let it be done.

Post the matter on 13.3.06.

Vice-Chairman

The case is ready for hearing as regards Ws and Reply order.

15.2.06

Pl. comply order dated 16.2.06.

N2 17.2.06

13.6.06.

~~Mr. S. Sarma learned counsel on behalf of Mr. J. L. Sarkar learned counsel for the Respondents for his personal difficulty. Let the case be listed on 20.3.05.~~

Ms. S. Sarma learned counsel on behalf of Mr. J. L. Sarkar learned counsel for the Respondents for his personal difficulty. Let the case be listed on 20.3.05.

Vice-Chairman

22-2-06

Ws and Reply order filed by the parties.

Received
For Mr. J. L. Sarkar
29/3/06.

Case is ready for hearing.

9.5.06

Judgment delivered in open Court. Kept in separate sheets. Application is allowed. No costs.

Case is ready for hearing.

Vice-Chairman

17.3.06

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

*231 of 2004

O.A. No.

09.05.2006

DATE OF DECISION

Sri P.K.Das

..... Applicant/s

Mr.M.Chanda

..... Advocate for the
Applicant/s.

- Versus -

Union of India & Others

..... Respondent/s

Dr.J.L.Sarkar, Railway Standing counsel

..... Advocate for the
Respondents

CORAM

HON'BLE MR.K.V.SACHIDANANDAN, VICE-CHAIRMAN

1. Whether reporters of local newspapers
may be allowed to see the Judgment ? Yes/No ☒
2. Whether to be referred to the Reporter or not ? Yes/No ☒
3. Whether to be forwarded for including in the Digest
Being compiled at Jodhpur Bench ? Yes/No ☒
4. Whether their Lordships wish to see the fair copy
of the Judgment ? Yes/No ☒

9/5/06
Vice-Chairman (I)

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 231 of 2004.

Date of Order: This, the 9th Day of May 2006.

THE HON'BLE MR. K.V.SACHIDANANDAN, VICE CHAIRMAN.

Sri Pranab Kumar Das
Section Engineer (Electrical)
Working under Deputy Chief Engineer (Workshop)
N.F.Railway, New Bongaigaon.

..... Applicant.

By Advocates S/Shri M. Chanda, G. N. Chakraborty, S.Nath &
S. Choudhury.

- Versus -

1. The Union of India
Represented by the Secretary
to the Government of India
Ministry of Railway
New Delhi - 110 001.
2. The General Manager
North East Frontier Railway
Maligaon, Guwahati-781 011.
3. The Deputy Chief Engineer (Workshop)
N.F.Railway
New Bongaigaon.
4. The Divisional Railway Manager (P)
Alipurduar Junction, N.F.Railway.
5. The District Electrical Engineer (Workshop)
N.F.Railway Hospital
New Bongaigaon.
6. The Medical Superintendent (In-Charge)
N.F.Railway Hospital
New Bongaigaon.
7. Smti. Sovana Das
Female Dresser
O/O the M.S.
N.F.Railway Hospital
New Bongaigaon.

..... Respondents.

By Dr.J.L.Sarkar, Standing counsel for the Railways.

L

ORDER


SACHIDANANDAN, K.V., (V.C.):

The applicant has been working as Section Engineer and posted at Bongaigaon who was allotted Type-III quarter being quarter No. R/39-A, which has been occupied by his wife who is also working as Female Dresser under the respondent No.6. The wife of the applicant has instituted a Title Suit (M) No. 29/2000 before the learned District Judge, Bongaigaon and a decree was obtained on 24.9.2000 in her favour for judicial separation on condition that the applicant would pay to his wife Rs. 2000/- per month in the joined account that would be opened in the United Bank of India and would pay Rs. 2500/- on the day of leaving the house occupied by the wife. It was also stipulated therein "The quarter occupied by the petitioner shall vacate within 6 months from 24.9.2000" (Annexure-1). According to the averments made in the application, he was paying the amount of Rs. 2000/- per month to the wife and he has started to live separately in a rented house. The application of his wife before the learned District Judge seeking recession of the order was dismissed and she continued to occupy the said quarter and the applicant was paying house rent in respect of the said quarter without enjoying the possession thereof and finally fed up with the indifferent attitude of his wife he has written to the respondent No.4 intimating his vacation of the quarter w.e.f. 4.1.2003 and requested

L

to stop recovery of the house rent in respect of the said quarter from his salary w.e.f. January, 2003 and to arrange another appropriate accommodation in his favour. Thereafter, the 5th respondent allotted a Type-IV quarter No.506 to the applicant and under the same order the earlier quarter No. R/99-A (Type-III), which was previously occupied by the applicant, was allotted to one Md. A. Islam, Jr. Engineer. Consequently, the applicant took over the possession of the Type-IV quarter w.e.f. 1.8.2003 (Annexure-5B). The respondents, vide order dated 14.10.2003, ordered recovery of damage rent from the applicant w.e.f. 1.9.2003 in respect of the Type-III quarter No. R/99-A on the allegation that the applicant has not vacated the same against which, the applicant approached the respondents for reconsideration of the order of recovery on the ground that he has already vacated the said quarter w.e.f. 4.1.2003. Further, he has issued a lawyer notice to the respondents seeking, amongst others, regularisation of the rent in respect of the said quarter by allotting the same in the name of his wife. Respondents had not taken any action in the matter till date and aggrieved by the said inaction the applicant has filed this O.A. seeking for the following reliefs:-

"8.1 To declare that the action of the respondents in making recovery from the salary of the applicant on account of the House Rent in respect of Quarter No. R.99(A) (Type-III), which he has vacated with effect




from 04.01.2003, is illegal, erroneous and invalid.

- 8.2 To declare that the recovery of house rent in respect of Quarter No. R. 99(A) (Type-III) from the salary of the applicant is unauthorized and without jurisdiction.
- 8.3 To declare that the applicant is entitled to refund of the house rent in respect of Quarter No. R.99(A) (Type-III) so far recovered from his salary.
- 8.4 To declare that allotment of Quarter No. R.99(A) (Type-III) in the name of the applicant stood cancelled with effect from 04.01.2003 when he had vacated the same or, at least with effect from 01.08.2003 when new quarter was allotted to him.
- 8.5 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper."

2. The respondents have filed a detailed written statement contending that there is no legally supported cause of action to justify the filing the present application. The application is barred by the law of limitation. By judicial separation as provided by the law under Section 9 of the Hindu Marriage Act, 1955, the husband and wife are permitted only to stay separately. The marriage between the two continues to subsist until and unless a decree of divorce is passed under Section 13 of the said Act. In this case, the husband and wife appears to be Hindu and they are still husband and wife in the eye of law. The Title Suit No.20/2000 before the District Judge, Bongaigaon is a matter very much related to the personal


b

affairs of the applicant with his wife and the applicant cannot bind the respondents by any such order passed in a matrimonial case and that too in form of an agreement where the respondents are not parties. It is immaterial what agreement is made between the husband and wife and the fact remains that the quarter allotted to the applicant continues to be occupied by his wife and therefore, it can in no way be considered to be vacated. It is for the applicant to hand over the vacant possession of the quarter No. R/99-A while he is surrendering the quarter allotted to him. It is immaterial whether he is personally staying in the allotted quarter. Therefore, the letter dated 3.1.2003 intimating the so called vacation of the quarter has no legal bearing with the recovery of the house rent from the salary of the applicant. Although the applicant intimated the respondents about the vacation of the quarter that has not yet been physically vacated and as such, damage charges @ Rs.78/- per square meter is being recovered from his salary for unauthorized retention of the said quarter as per extent rules. By the allotment of another Type-IV quarter bearing No.506 vide order No.27/2003 applicant cannot be absolved of the liability of vacating the earlier quarter No. R/99-A and to deliver the vacant possession of the same to the respondents. As the applicant managed to get allotment of the 2nd quarter and continued to occupy the earlier quarter No. R/99-A through his legally married wife, the respondents had no other alternative but to issue order dated 14.10.2003 (Annexure-7) for recovery of damage



rent. The wife of the applicant is also an employee of the Medial Department of the respondents and by her status she is not entitled to Type-III quarter. There is no rule to recover the rent from another employee (the wife) when the quarter stands allotted to the husband employee (applicant). It was the legal duty of the applicant to vacate and hand over the possession of the said quarter to the respondents as soon as he was allotted Type-IV quarter No.506. There is no proof to show that the applicant has vacated the Type-III quarter w.e.f. 4.1.2003 while his wife continued to stay in the said quarter on his behalf.

3. The applicant has filed a rejoinder reiterating his contentions in the O.A. and further added that the O.A. has been filed against a bonafide cause of action, which has arisen due illegal recovery of penal rent from his salary in respect of the Type-III quarter No. R/99-A even after the said quarter was vacated by him. Respondents cannot ignore or lose sight of the contents of the order of the District Judge in as much as the issue of Type-III quarter No. R/99-A, which is a property of the respondents, was also an integral issue involved in the said order of the District Court. That order has specifically directed the applicant therein i.e. Smt. Sovana Das, the wife of the present applicant in this case, to vacate the said quarter within six months from 24.9.2000, which was known to the respondents. The factum of vacating the quarter No. R/99-A has been accepted by the respondents vide letter dated 7.1.2003 (Annexure-3) and a fresh allotment of Type-IV



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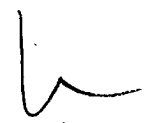
quarter No.506 has been made available to the applicant and quarter No. R/99-A, earlier allotted to the applicant, was allotted to one Md. A. Islam. Further, the applicant submitted his formal occupation report of quarter No.506 and now the respondents cannot deny that the quarter was not vacated by the applicant. Smt. Sovana Das, who is also an employee under the control of the respondents, happened to be an unauthorized occupant in the said quarter and the rules, which are applicable on the applicant, are equally applicable on Smt. Das also in the capacity of an employee. Therefore, the respondents at least could have recovered proper rents from the Smt. Sovana Das since she is also an employee of the respondents. The applicant has not retained two quarters as stated by the respondents since he has vacated the earlier one and the subsequent allotment of 2nd quarter is an indication that the earlier one has been vacated.

4. I have heard Mr.M.Chanda, learned counsel for the applicant and Dr.J.L.Sarkar, learned Standing counsel for the Railways. Parties have taken my attention to various steps, evidences and materials placed on records. Counsel for the applicant argued that the applicant is not in occupation of two quarters, the earlier one has been vacated, which was accepted by the respondents and therefore, recovery of damage rent is unjustified. The order of the learned District Judge, Bongaigaon is binding on the respondents since it was intimated to them. Dr. Sarkar, on the other hand, persuasively argued that as per

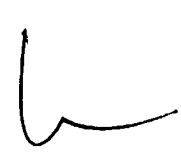
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Hindu Law, judicial separation will never instigate severance between husband and wife except otherwise that a decree of divorce is passed as per law. Therefore, for all service purposes, Smt. Sovana Das has to be considered as his wife and her occupation of Type-III quarter No. R/99-A amounts to the occupation of the applicant and respondents are justified in recovering damage rent from him.

5. While the case was under process, my predecessor has raised a query as to the question of jurisdiction of this Tribunal in the matter in view of the decision of the Hon'ble Gauhati High Court in W.P.(C) No. 193(SH)/2005 passed on 28.9.2005. Later on, said order was brought to my notice and the Hon'ble Gauhati High Court by the said judgment has declared that the impugned order of the Tribunal in O.A. 93/2005 with reference to eviction of the quarter at Oakland Postal Colony, Shillong was set aside on the ground that this Tribunal has no jurisdiction in the matter. Both the counsel for the parties has agreed that in the said case the Lordships have considered the case of vacation of the quarters and subsequent recovery of damage rent. Discussing section 14 of the Central Administrative Tribunals Act, 1985, the Hon'ble High Court had declared that eviction proceeding will not come under the caption "service matters" and therefore, Central Administrative Tribunal has no jurisdiction in such matters. Counsel for the parties have submitted that since different procedures are prescribed for eviction of quarters, their Lordships were justified in entering into a finality that that issue



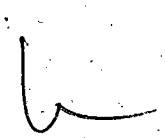
will not come under the "service matters" and this Tribunal has no jurisdiction as far as eviction proceedings are concerned. Counsel for the parties have also submitted that the issue involved in this case is not for eviction but only the recovery of damage rent for unauthorized occupation of an employee, as prescribed by the Railway Rules. They also contended that when a man retires, his retirement dues are withheld for non-payment of rent for the quarter occupied by him and the occupation of a quarter is essential to the service of an employee and elaborate rules have been formulated to that effect. The employees are entitled for allotment of quarters for smooth functioning of the trains. Occupation, allotment and recovery of damage rent are all directly involved in the process of duty and hence, the recovery of rent also come under the purview of "service matters" and therefore, this Tribunal has jurisdiction to entertain this application. The facts and materials placed on record of the case are different to the case considered by the Hon'ble Gauhati High Court. I am in agreement with this argument advanced by the counsel for parties and of the opinion that the occupation of quarter is related to service, which is also a condition of service. The adverse consequence on DCRG and pension matters if an employee continues to occupy the quarter after retirement or beyond the permitted period is an indication that this will come under the purview of "service matters". Moreover, the Government of India order with respect to constitution for Single Bench to dispose of




specified cases issued in exercise of powers conferred under sub-section 6 of Section 5 of the Administrative Tribunals Act specifies that allotment of and eviction from Government accommodation matters shall be posted before the Single Bench. Apart from that as per Rule 154 (a), Appendix- VIII of the Central Administrative Tribunal Rules of Practice, 1993 all the matters regarding allotment or eviction from Government accommodation are classified as the matters of Single Bench.

6. As per the above provisions, I am of the view that so far as the recovery of rent is different from eviction of quarter and since the subject matter of the claim is recovery alone, this present issue will squarely come under the jurisdiction of this Tribunal.

7. Now, coming to the merit of the case it is an admitted fact that the applicant and Smt. Sovana Das were legally wedded persons and in occupation of Type-III quarter No. R/99-A but by virtue of Title Suit No.20/2000 learned District Judge has granted judicial separation. The legal question involved in this case is whether a judicial separation ip-so-facto severs the relationship between the husband and wife in the eye of law. My attention was taken to Section 9 of Hindu Marriage Act, 1955, wherein it is declared that judicial separation only permits the husband and wife to stay separately and their relationships are not severed by it. Section 19 of the said Act denotes that the marriage will continue to subsist until and unless a decree



of divorce is passed. This Tribunal is not going into the matrimonial dispute between the applicant and his wife but take note of the contention of his wife in the recession petition (not admitted) for cancellation of order dated 24.9.2000 passed by learned District Judge that her husband, the present applicant, was still coming to the quarter and living together even after the decree of judicial separation was passed and therefore, he is in joined possession of the quarter. This Tribunal is not interested to go into the details about the evidence on such matter with its germane as well as disposal of the case is concerned. But the fact remains that the applicant's wife is still in occupation of the Type-III quarter No. R/99-A. My attention was taken to Bahri's Railway Establishment Rules and Labour Laws, Page 580 with respect to allotment of quarters and recovery of rent on the caption "Allotment of accommodation to service Husband Wife" with special reference to clauses (i) to (v) and 2 which are reproduced as under:-

- (i) No Railway employee (Gazetted or non-gazetted) shall be allotted a Railway quarter if the spouse has already been allotted a residence at the same station, unless such residence is surrendered. This will, however, not apply where the husband and wife are residing separately in pursuance of an order of judicial separation made by any Court.
 - (ii) Where two employees in occupation of separate residences at the same station allotted under Railway rules marry one
- 

another, they shall within one month of the marriage surrender one of the residences.

(iii) Where two employees (husband and wife) are in occupation of separate residences at the same station, one allotted under Railway rules and another from a different pool on account of the allottee being an employee of another Government Department, any one of them shall surrender his/her residence within one month of the marriage.

(iv) If a residence is not surrendered as required under (ii) or (iii) above, the allotment of the Railway residence shall be deemed to have been cancelled on the expiry of such period.

(v) In the event of either of the two employees (husband and wife) being transferred to another station, he/she (as the case may be) shall be entitled for allotment of the Railway quarter under the relevant rules.

2. Railway Administrations should accordingly review the cases where both the husband and wife are having separate quarters and take action to get one of the quarters vacated under these instructions."

My attention was further drawn to the definition of "members of family" in the Railway Services (Conduct) Rules, 1966 which is defined in clause 2(c) as under:-

(c) "members of family" in relation to a railway servant includes:

(i) the wife or husband, as the case may be, of the railway servant, whether residing with the railway servant or



not but does not include a wife or husband, as the case may be, separated from the railway servant by a decree or order of a competent court;

(ii) son or daughter or step-son or step-daughter of the railway servant and wholly dependent on him, but does not include a child who is no longer in any way dependent on the railway servant or of whose custody the railway servant has been deprived by or under any law;

(iii) any other person whether by blood or marriage, to the railway servant or to the railway servant's wife or husbands, and wholly dependent on the railway servant."

8. From the reading of the above, it is quite clear that a judicial separation made by any Court is not applicable to such rules and what is sought in the said rules is that one of the quarters occupied husband and wife cannot get vacated by the respondents. That rules do not squarely applicable in this case. But one thing is clear from the said rules that the judicial separation does not ip-so-facto entitle to declare that the husband and wife are residing separately. Therefore, I am of the view that the applicant de-facto in occupation of the Type-III quarter No. R/99-A since their relationship has not been severed legally once for all.

9. Next question came for consideration was whether the Railway is justified in allotting a quarter to the

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applicant near his transferred place while he was holding earlier Type-III quarter No. R/99-A. It may appear to be strange but when this query was put to counsel for the Railways, he answered that the applicant is working in an almost essential department i.e. electrical department and his services are at the beck and call of the respondents and therefore, a Type-IV accommodation, which was available near the station, was allotted to him for the smooth and efficient functioning of the Railway, which is the paramount objective for the safety of running the trains. His point is well taken and I am of the view that respondents in the special circumstances allotted the 2nd quarter to the applicant, though it is not strictly as per rules.

10. Next question came for consideration was whether the applicant has vacated his earlier Type-III quarter No. R/99-A as per rules. The applicant has submitted that he had actually vacated and handed over the possession of the said quarter to the respondents. When the quarter was said to have been vacated and the allotment was made to another Md. A. Islam, Junior Engineer, the respondents should have taken due care and insisted for the actual physical vacation of the quarter as per rules, which was not done in this case. However, taking peculiar situation and circumstances in this case, "wife of the applicant, who is admittedly in occupation of the said quarter, being an employee under the control of the respondents, could have been proceeded with proceedings under CCS (CCA) Rules", was

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the argument advanced by the counsel for the applicant. I am not convinced with the above argument since the respondent/Railway was not a party of the personal dispute between the applicant and his wife. However, though the Railway was not a party before the proceeding of the learned District Judge, the matter was informed to the Railway and the Railway is fully aware of the proceedings and in the order dated 24.9.2000 the learned District Judge has observed as under: -

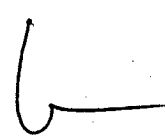
" Case has put up in Lok Adalat. The parties were present in Lok Adalat. The matter was discussed and the conciliators tried to reconcile them, but could not succeed any they insisted on judicial separation. The conciliator failed in their effort to reconcile and ultimately it was settled through discussion for passing an order of judicial separation. Accordingly, the suit is decreed for judicial separation from to-day on the following conditions:- to pay Rs.2500/- on this date of leaving the house occupied by the petitioner. From onwards now the respondent shall pay Rs.2000/- p.m. in the A/C to be opened in the joint account in United Bank of India, Bongaigaon. The quarter occupied by the petitioner shall vacate within 6 months from 24.9.2000. The account shall be opened after puja. Pass-book of the A/C shall be handed over to the petitioner."

It was also reiterated in the Annexure-2 letter dated 3.1.2003 by the applicant. From the said document it is clear that learned District Judge, Bongaigaon has permitted

the wife of the applicant to continue to stay in the said quarter for six months from 24.9.2000. The learned District Judge in the judgment dated 5.6.2003 passed in the recession petition filed by the wife of the applicant i.e. Smt. Sovana Das, which was dismissed, in Paragraph 6, has also observed as under:-

"6. The respondent after receipt of notice appeared and he submitted both written statement in respect of earlier petition U/s 10(i) of the Act of the petitioner as well as written statement against he subsequent prayer to rescind the decree for judicial separation. Vide this objection the respondent has denied to have lived together with petitioner in the same house. He also denies having co-habitation with the petitioner after the decree for judicial separation. As to non-complying of condition of Lok Adalat decree, he has stated that decree was not specific as to opening the joint account in whose name and that is why he has not opened the joint account nor deposit to Rs.2000.00 P.M. in that account. On the other hand, the petitioner has also not vacated the quarter allotted in his name by Railway department and occupied by petitioner herself and for that reason he has not paid the other amount of Rs.2500.00 to the petitioner. In that view, he is not agreeable to rescind the decree for judicial separation dtd 24.9.2000 allowed by Lok Adalat."

The learned District Judge has applied his mind and justified in not paying the alimony of Rs.2500/- since he has not vacated the quarter. Therefore, I am of the view that the learned District Judge after judicial application



of mind in coming to the interpretation of the agreement between the parties and permitted the wife of the applicant to continue in the quarter for six months. In other words, she was occupying the said quarter with a legal sanction.

The argument that even after expiry of that six months period the respondents Railway did not take any step to vacate the said quarter is a different aspect altogether, which is not a subject matter in this proceeding. However, no action has been taken against the applicant till 1.9.2003 when the applicant has sent a letter declaring that he has vacated the said quarter from next date. For better elicitation the Annexure-5(A) letter is worth reproducing, which is reproduced as under:-

" The following allotment of Qrs. are made to take with immediate effect.

1. On vacation by Sri S.P.Chakraborty, Ex. SSE/TI/NPO Type IV Qrs. No.506 at Bongaigaon is hereby allotted to Shri Pranab Kr. Das, SE under SSE/GERS/NBQ.

2. On vacation by Sri Pranab Kr. Das SE under SSE/GERS/NBQ (item No. 1 above) the type III Qrs. No.R/99-A at NBQ is allotted to Md. A. Islam JE/II under SSE/EMWS/NBQ.

Staff concerned should submit vacation and occupation report of within 7 days of receipt of order."

11. Counsel for the applicant has brought my attention to the decision in the case of Vinod Krishna Kaul vs. Union Of India & Ors. reported in (1996) 1 SCC 41 wherein the Apex Court discussed about liability to pay damages in case of failure to surrender govt. residence by

officer owning a house and held that since the applicant therein was owning a house jointly with his brother it cannot be said he owns a house and damage rent could be collected from him. The facts of this case are different from the given case and thus not squarely applicable in this case. My attention was further drawn to another decision in Union of India vs. Rasila Ram and Others reported in (2001) 10 SCC 623 wherein the subject matter that has been discussed is as to the question of jurisdiction of this Tribunal where the Hon'ble Supreme Court has held that in the "matter relating to eviction of unauthorized occupants from government quarters" Administrative Tribunal has no jurisdiction to proceed with. I am in respectful agreement with the above dictum and since the matter in dispute here is with regard to collection of damage rent (not eviction) the decision is not squarely applicable in this case.


12. It is submitted that damage rent is a rent i.e. being collected for illegal/unauthorized occupation of a premises whereas the penal rent is rent collected for the extended period of stay than the sanctioned. The damage rent is calculated in terms of square feet value in consonance with the market rate whereas the penal rent is calculated imposing a penalty as prescribed by the Rules. In any case damage rent will always be higher than penal rent.

13. Taking all the aspects into consideration, I am of the opinion that the applicant is in de-facto possession

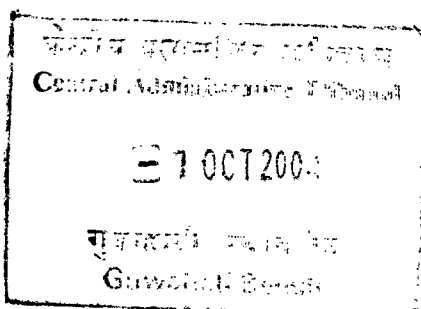
of the Type-III quarter No.R/99-A and since the learned District Judge, Bongaigaon has given sanction for certain period for the occupation of the same to his wife, it cannot be said that it is altogether an unauthorized occupation. Only in a case where unauthorization is proved, damage rent can be recovered from the incumbent. In all other cases, Railway is only entitled to recover the penal rent. Therefore, I am of the considered view that respondent/Railway is not justified in recovering damage rent from the applicant, but they can always proceed with penal rent against him.

14. For all the reasons, the attempt on the part of the respondents, in so far as recovery of damage rent is concerned, is not sustainable in law and therefore, the same is set aside and quashed. The respondent/Railway are at liberty to recover penal rent from the applicant for the disputed ^{and further} period. The question, whether disciplinary proceeding has to be initiated against the applicant or Smt. Sovana Das, his wife, is a matter to be decided by the respondents and they are at liberty to initiate eviction proceeding to vacate the Type-III quarter No.R/99-A as per rules.

With the above observations the Original Application is partly allowed and disposed off. In the circumstances, there is no order as to costs.



(K.V. SACHIDANANDAN)
VICE CHAIRMAN



**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI**

O.A. No. 231 /2004

Sri Pranab Kr. Das.

-Vs.-

Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 24.09.2000-** Decree of judicial separation passed by the District Judge, Bongaigaon on 24.09.2000 in Title Suit (M) No. 20/2000 in favour of the applicant subject to the condition that the applicant would pay to his wife Rs. 2000/- pm in the joint account to be opened in th UBI and a further sum of Rs. 2500/- on the day he leaves the quarter. It was also conditioned that the wife would vacate the quarter within 6 months from 24.09.2000. (Annexure-1).
- 30.03.2001-** The wife of the applicant move an application before the District Judge, Bongaigaon seeking recession of the order darted 24.09.2000 passed in Title Suit (M) No. 20/2000 and on that plea she continued to occupy the quarter. Consequently, the applicant has to keep on paying the Home Rent for the said quarter every month, whereas he was staying in Rented house.
- 03.01.2003-** Applicant intimated the Respondent No. 4 and 5 regarding his vacation of quarter from 04.01.03 and requested to stop recovery of House Rent in respect of the said quarter from January'03. (Annexure-2)

Pranab Kumar Das

- 07.01.2003- Respondent No.5 brought the matter under the notice of the Respondent No.4 and also to the District Judge, Bongaigaon. (Annexure-3).
- 05.06.200- District Judge, Bongaigaon dismissed the application filed by the wife of the applicant seeking recession aforesaid.
- 01.08.2003- Applicant took over the possession of one Type-IV quarter No. 506 which was newly allotted to him and the previous quarter No. Type-III/R.99 (A) was allotted to one Md. J.Islam.
- 14.10.2003- Respondent No.5 issued order for recovery of Damage Rent from the applicant in respect of quarter No. R.99 (A). (Annexure-7)
- Applicant objected to this and pleaded that the said rent could well be recovered from his wife who was also an employee under the respondents and who occupied the quarter.
- Applicant also served Lawyer's notice to the respondent that he vacated the quarter No. 99(A) from 04.01.03 and his wife did not vacate the quarter within 6 months in terms of the order dated 24.09.2000 of the District Judge, Bongaigaon.
- The respondents have not taken any action and have been continuously deducting the rent against quarter No. 99 (A) from the applicant.
- Hence this Original Application before this Hon'ble Tribunal.

P R A Y E R S

Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the

Pranab Kumar Das

case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

1. To declare that the action of the respondents in making recovery from the salary of the applicant on account of the House Rent in respect of Quarter No. R. 99 (A) (Type - III), which he has vacated with effect from 04.01.2003, is illegal, erroneous and invalid.
2. To declare that the recovery of house rent in respect of Quarter No. R. 99 (A) (Type - III) from the salary of the applicant is unauthorized and without jurisdiction.
3. To declare that the applicant is entitled to refund of the house rent in respect of Quarter No. R. 99 (A) (Type - III) so far recovered from his salary.
4. To declare that allotment of Quarter No. R. 99 (A) (Type - III) in the name of the applicant stood cancelled with effect from 04.01.2003 when he had vacated the same or, at least with effect from 01.08.2003 when new quarter was allotted to him.
5. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for.

During subsistence of this application, the applicant prays for the following relief: -

1. To restrain the respondents from making recovery from the salary of the applicant on account of the House Rent in respect of Quarter No. R. 99 (A) (Type - III), which he has vacated with effect from 04.01.2003.

Ranab Kumar Das

1 OCT 2004

गुवाहाटी न्याय बेंच
Guwahati Bench

Filed By: -

Surjit Choudhury
Advocate
on 1.10.2004

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

Title of the Case:

O.A. No 231 /2004

Sri Pranab Kumar Das:

Applicant

- Versus -

Union of India & Others:

Respondents

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Date: - 1.10.2004.

Filed by: -
Surjit Choudhury
Advocate

Pranab Kumar Das

Filed By: - 1
Suryjit Choudhury
Advocate
on 1.10.2004

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(Application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. _____/2004

BETWEEN

Sri Pranab Kumar Das

Section Engineer (Electrical)

Working under Deputy Chief Engineer (Workshop)

NF Railway, New Bongaigaon.

...Applicant

-AND-

1. The Union of India,
Represented by the Secretary to the Government of India,
Ministry of Railways,
New Delhi 110 001.
2. The General Manager
North Eastern Frontier Railways
Maligaon, Guwahati - 781011.
3. The Deputy Chief Engineer (Workshop)
NF Railway, New Bongaigaon.
4. The Divisional Railway Manager (P)
Alipurduar Junction, NF Railway.
5. The District Electrical Engineer (Workshop)
NF Railway Hospital, New Bongaigaon.
6. The Medical Superintendent (In-Charge)
NF Railway Hospital, New Bongaigaon.
7. Smti. Sovana Das,
Female Dresser,
O/O- The M.S

Pranab Kumar Das

N.F. Railway Hospital,
New Bongaigaon.

...Respondents

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made against the illegal and unreasonable action of the respondents in making recovery from the salary of the applicant on account of the House Rent in respect of Quarter No. R. 99 (A) (Type - III) which he has vacated with effect from 04.01.2003 and praying for a direction upon the respondents to stop such recovery as well as to refund the House Rent which has been already recovered from him on account of the said Quarter.

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of this application is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation.

The applicant also declares that this application has been filed within the period of limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case.

4.1 The applicant, being a citizen of India, is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India and other laws of the land.

4.2 The applicant has been working as a Section Engineer under the respondents being posted at Bongaigaon. He

Purnab Kumar Das

had been allotted a Type - III Quarter being Quarter No. R. 99 (A) that he had been occupying along with his now separated wife Smti Sovana Das (for short, the "wife") who is working as a Female Dresser under the respondent no. 6.

- 4.3 The "wife" of the applicant had instituted a suit being Title Suit (M) No. 20/2000 in the Court of the District Judge, Bongaigaon, seeking for a decree of Judicial Separation. The said suit was decreed in favour of the wife of the applicant on 24.09.2000 in a session of Lok Adalat held in the Court of the District Judge, Bongaigaon. Noteworthy that the decree for Judicial Separation was granted on the condition that the applicant would pay to his "wife" a sum of Rs. 2000/- per month in the Joint Account that would be opened in the United Bank of India and would pay Rs. 2500/- on the day of leaving the house occupied by the "wife". It was also conditioned that the "wife" would vacate the quarter within 6 (six) months from 24.09.2000.

A copy of the aforesaid Order dated 24.07.2000 passed in Title Suit (M) No. 20/2000 is annexed herewith as Annexure - 1.

- 4.4 The applicant, since after passing of the aforesaid Order, has been paying the sum of Rs. 2000/- per month to the "wife". He has also started living separately in a rented house since after passing of the aforesaid Order. Incidentally though, it may be mentioned that the "wife" of the applicant had moved an application

Pranab Kumar Das

dated 30.03.2001 before the Court of the District Judge, Bongaigaon seeking recession of the Order dated 24.09.2000 passed in Title Suit (M) No. 20/2000 and on the plea of the matter becoming sub-judice, had continued to occupy the said quarter. Consequently, the applicant continued to pay the House Rent in respect of the said quarter, however, without enjoying the possession thereof. It may be mentioned that the "wife" of the applicant has not vacated occupation of the Quarter No. R. 99 (A) till date.

- 4.5 The applicant being fed up with the approach of his "wife" in not vacating the Quarter, had ultimately took up the matter with the respondent no. 4 with a copy endorsed to the respondent no. 5 through his letter dated 03.01.2003 and intimated him about his vacation of the Quarter No. R. 99 (A) with effect from 04.01.2003. By the said letter, the applicant had also requested the respondent to stop recovery of the House Rent in respect of the said Quarter from his salary with effect from January 2003 and to arrange another appropriate Railway accommodation in his favour.

A copy of the said letter dated 03.01.2003 is annexed herewith as Annexure-2.

- 4.6 The respondent no. 5, in his way, vide his letter dated 07.01.2003 had also brought the matter to the notice of the respondent no. 4 and solicited necessary action. A copy of the said letter was also forwarded to the

Sanat Kumar Das

office of the District Judge, Bongaigaon, for information the receipt of which was duly acknowledged.

A copy of the said letter dated 07.01.2003 is enclosed herewith as Annexure-3.

- 4.7 The applicant, however, continued to stay in a rented accommodation in absence of any new Quarter being allotted to him by the respondents. Nevertheless, the respondents continued to make recovery of House Rent in respect of the said Quarter No. R. 99 (A) from his salary from time to time.

Copies of the some of salary statements of the applicant are annexed herewith as Annexure-4 (Series).

- 4.8 The respondent no. 5 by Allotment Order No. 27/2003 had allotted a Type-IV Quarter being Quarter No. 506 to the applicant and under the same Order the Quarter No. R. 99 (A) (Type-III) which was previously occupied by the applicant was allotted to one Md. J. Islam, Junior Engineer. The applicant, consequently, took over possession of the said Type-IV Quarter with effect from 01.08.2003 from its previous occupier Sri Satya Ranjan Chakraborty.

Copies of the said Allotment Order dated 28.07.2003 and the communication to the respondent no. 5 intimating handing over and taking over of possession of the Quarter No. 506 are annexed herewith as Annexure - 5A & 5B respectively.

Pranab Kumar Das

4.9 The Court of the District Judge, Bongaigaon, in the meantime, by its Judgment dated 05.06.2003 had dismissed the application filed by the applicant's "wife" seeking rescission of the Decree of Judicial Separation granted on 24.09.2000 in TS (M) No. 20/2000.

A copy of the Judgment referred to above is annexed herewith as Annexure - 6.

4.10 The respondent no. 5, thereafter, quite surprisingly issued an Order No. EL/E/8/0/1/599 dated 14.10.2003 and ordered for recovery of Damage Rent with effect from 01.09.2003 in respect of the Type-III Quarter No. R. 99 (A) from the applicant on the allegation of the applicant's not vacating the same.

A copy of the aforesaid Order dated 14.10.2003 is annexed herewith as Annexure - 7.

4.11 The applicant, being aggrieved with the action of the respondents, had approached them seeking reconsideration of the order of recovery on the ground that he had vacated the said Quarter with effect from 04.01.2003. Moreover, the said Quarter being in possession of his "wife" who is also an employee under the respondents, the rent as against the same could well be recovered from her. But the applicant's pleadings fell into deaf ears of the respondents and they did not take any action whatsoever in favour of the applicant's claim.

4.12 The applicant being saddled with the rent in respect of the said Quarter No. R. 99 (A), however, had served

Pranab Kumar Das

lawyer's notices to the respondents seeking, amongst others, regularization of the rent in respect of the said quarter by allotting the same in the name of his "wife". It was also brought to the notice of the respondents that as per the decree passed by the District Judge, Bongaigaon, the applicant's "wife" was liable to vacate the quarter and she by not having been done so had become an illegal occupant of the said quarter. It was thus solicited of the respondents either to realize the rent in respect of the said quarter from the "wife" of the applicant or to take action against her in accordance with law.

Copies of the said Notices are annexed herewith as
Annexure - 8A & 8B respectively.

4.13 The respondents have not taken any action till date in the matter and have been continuously deducting the rent in respect of the Quarter No. R. 99 (A) from the applicant's salary besides making deduction on account of the house rent in respect of the Quarter No. 506 (Type-IV) presently occupied by him.

4.14 The action of the respondents is palpably unreasonable and unjustified and such an action has put the applicant to double taxation. The applicant having vacated the Quarter No. R. 99 (A) cannot be made to pay the rent against the same. But the respondents are acting arbitrarily according to their whims and fancies and such of their action warrants interference by this Hon'ble Tribunal to salvage the situation.

Pranab Kumar Das

4.15 The applicant files this application bona fide and for the ends of justice.

5. Grounds for relief(s) with legal provisions.

- 5.1 For that, the impugned action of the respondents in making recovery from the salary of the applicant on account of the House Rent in respect of Quarter No. R. 99 (A) (Type - III) which he has vacated with effect from 04.01.2003 is palpably illegal, erroneous and liable to be declared invalid.
- 5.2 For that, the respondents having not taking any action against the unauthorized occupant of the quarter cannot make the applicant to pay house rent in respect of the same.
- 5.3 For that, the applicant having vacated the Quarter No. R. 99 (A) with effect from 04.01.2003, cannot be saddled with the liability to pay the rent in respect of the said quarter and the action of the respondents in this regard is unauthorized and without jurisdiction.
- 5.4 For that, the quarter in question being under possession of another Railway employee, the same can be allotted/retained in her name and the rent thereof can be easily realized from her which not having been done, has rendered the entire action of the respondents liable to be declared arbitrary, unreasonable and unjust.
- 5.5 For that, in view of the Judgment & Decree passed by the District Judge, Bongaigaon in TS (M) No. 20/2000, the applicant cannot be made liable for the default of his "wife" in vacating the quarter in terms of the decree.

Primal Kumar Das

5.6 For that, the action of the respondents in deducting the rent in respect of the Quarter No. R. 99 (A) from the applicant's salary besides making deduction on account of the rent in respect of the Quarter No. 506 (Type-IV) presently occupied by him has put the applicant to double taxation which cannot be allowed to sustain.

5.7 For that, in any view of the matter, the action of the respondents is bad in law, liable to be interfered with and declared illegal and unjustified.

6. Details of remedies exhausted.

The applicant states that he has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of this Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

Pranab Kumar Das

- 8.1 To declare that the action of the respondents in making recovery from the salary of the applicant on account of the House Rent in respect of Quarter No. R. 99 (A) (Type - III), which he has vacated with effect from 04.01.2003, is illegal, erroneous and invalid.
- 8.2 To declare that the recovery of house rent in respect of Quarter No. R. 99 (A) (Type - III) from the salary of the applicant is unauthorized and without jurisdiction.
- 8.3 To declare that the applicant is entitled to refund of the house rent in respect of Quarter No. R. 99 (A) (Type - III) so far recovered from his salary.
- 8.4 To declare that allotment of Quarter No. R. 99 (A) (Type - III) in the name of the applicant stood cancelled with effect from 04.01.2003 when he had vacated the same or, at least with effect from 01.08.2003 when new quarter was allotted to him.
- 8.5 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During subsistence of this application, the applicant prays for the following relief: -

- 9.1 To restrain the respondents from making recovery from the salary of the applicant on account of the House Rent in respect of Quarter No. R. 99 (A) (Type - III), which he has vacated with effect from 04.01.2003.

10.
This application is filed through Advocates.

11. Particulars of the I.P.O.

- i) I. P. O. No.: 20 G J J 4713
 ii) Date of Issue: 1.10.04
 iii) Issued from: S.P.O. Guwahati
 iv) Payable at: S.P.O. Guwahati

12. List of enclosures.
As given in the index.

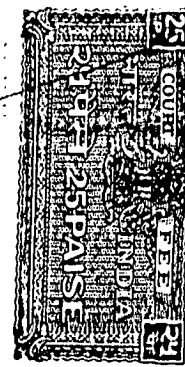
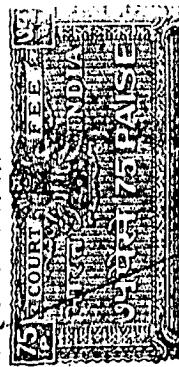
Ranab Kumar Das

VERIFICATION

I, Sri Pranab Kumar Das, aged about 50 years, working as Section Engineer (Electrical) under Deputy Chief Engineer (Workshop), NF Railway, New Bongaigaon, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 30th day of September, 2004.

Pranab Kumar Das



ANNEXURE - 1

| Date of Application for the copy | Date fixed for notifying the requisite number of stamps and folios | Date of delivery of the requisite stamps and folios | Date on which the copy was ready for delivery | Date of making over the copy to the applicant |
|----------------------------------|--|---|---|---|
| 04.01.2001. | 08.01.2001. | 02.03.2001. | 03.03.2001. | 03.03.2001. |

HIGH COURT FORM NO. (3) 137. A

Form of Order Sheet.

DISTRICT :- Bongaigaon.

COURT OF :- District Judge, Bongaigaon.

Present :- Sri R. K. Paul, District Judge, Bongaigaon.

T. S. (M) NO. :- 20/2000.

Petitioner :- Smt. Govana Das.

- Versus -

Respondent :- Sri Premab Kumar Das.

Date.

ORDER

Signature.

24.9.00.

Case has put up in Lok Adalat.

The parties were present in Lok Adalat.

The matter was discussed and the

conciliators tried to reconcile then,

but could not succeed and they insisted

on judicial separation. The conciliator

failed in their effort to reconcile and

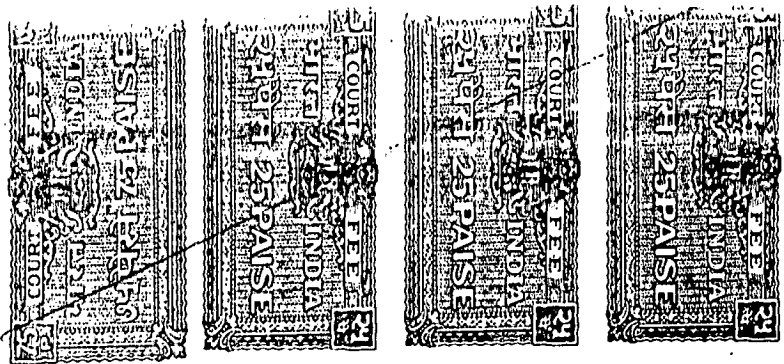
and ultimately it was settled through

discussion for passing an order of

judicial separation. Accordingly, the

contd....p/2.

*True copy
Sujit Choudhary
Advocate
dt. 1.10.01.*



| Date of Application for the copy | Date fixed for notifying the requisite number of stamps and folios | Date of delivery of the requisite stamps and folios | Date on which the copy was ready for delivery | Date of making over the copy to the applicant |
|----------------------------------|--|---|---|---|
| | | | | |

= 2 =

the suit is decreed for judicial separation from to-day on the following conditions - to pay Rs. 2500/- on this date of leaving the house occupied by the petitioner. From onwards now the respondent shall pay Rs. 2000/- p.m. in the A/c to be opened in the joint account in United Bank of India, Bongaigaon. The quarter occupied by the petitioner shall vacate within 6 months from 24.9.2000. The account shall be opened after puja. pass-book of the A/c shall be handed over to the petitioner.

Sd/- Sri R. V. Paul,
District Judge,
BONGAIGAN.

Certified to be a true Copy.
Barada Kanta Bhagabati.
3/3/2001
District Judge,
Bongaigaon.
Subscribed at Bongaigaon on 3rd day of March 2001.

COPIED BY: mx
28.02.2001.

Calculated 37.
28/2/2001

NO - GER/F-6/06.

14 -

Annexure - 2

45

Date : 03.01.2003.

To,

Divisional Railway Manager (N), ARD,
N. F. Railway.

Through : The Proper Channel.

Sir,

Sub : Vacation of Rly. Qtr. No. R/99-A Type-III
under workshop shed at NBQ, which is occupying
at present by Smt. Savana Das female prisoner
working under M.S.(IC) NBQ, N.F.Rly. (separated
wife as per Hindu Marriage Act).

Ref : District Judge Bongaigon ,

- (1) Order No.:- TSV/20/2000 Dt.24.9.2000.
- (ii) Decree IN ORIGINAL SUIT (Order 29, Rules 6 & 7.
Code of Civil procedure) District Judge Bongaigon
TS(M) suit No. 20/2000.

With due respect and humble submission, I beg to state a
few lines to bring to your kind notice and favourable action please.

That Sir, wing to unusual circumstance the said quarter
is now being used by Smt. Savana Das my separated wife for which the
District Magistrate Bongaigon had given his verdict to stay her in
that Railway Quarter upto 6 (Six) month u.s.f. 24.9.2000. which has
since been over as per terms and condition given by District Judge,
Bongaigon. Now I would like to vacate my allotted Quarter as mentioned
above right from 4th Jan/2003. As such rent recovery of said quarter will
be stopped from January/2003 from my monthly salary through Bill Unit
No. 09/255.

It is on the ground that I have been working under DEE/W/NBQ as
section engineer/GER-shed/NBQ, an junior subordinate in-charge is most
essential for me to enable to perform my duty sincerely, smoothly and as
well as to enable me to get Railway accommodation and oblige.

Thanking you,

Yours faithfully,

(PRANAB KUMAR DAS)
SECTION ENGINEER/GER's NBQ,
UNDER DEE/W/NBQ, N.F.RLY.

Copy to 1. DEE/W/NBQ - You are requested to stop my house rent
recovery from monthly salary u.s.f. January/2003
through Bill Unit No. 09/225 and also requested
for arranging one Rly. accommodation in favour me
as early as possible on out of turn basis at
Bongaigon.

2.M.S(IC)/NBQ Rly. Hospital. -for information and necessary actionpl.
3. Honourable District Judge, Bongaigon. - for kind information
please.

Yours faithfully,

Pranab Kumar Das
(PRANAB KUMAR DAS)
SECTION ENGINEER/GER's/NBQ
UNDER DEE/W/NBQ, N.F.RLY.

- NA - (1) Form of Order sheet (2 copies).
(2) DECREE from High Court Form No.(C)25
(4 copies).

with regards,

To be copy
Sent by
Advocate
on 1.10.07.

d/c

N.F. Railway

No. EL/E/3/A-1/ 639

Office of the

DEE/MS/MSQ.

Dt: 07-01-03

To,

- i) Divisional Railway Manager(P)/APDJ.
- ii) Honourable District Judge/Bongaigaon.
- iii) MS/IC/MSQ/Rly. Hospital.

Sub:- Vacation of Rly. Gr.No. R/99/A.

Type-III under Workshop pool at MSQ.

Sri Pranab Kumar Das, SE/GERS/MSQ working under DEE/MS/MSQ has submitted his Vacation Report of Gr. No- R/99/A, at New Bongaigaon is sent herewith for your necessary action please.

DA/ 07(Seven)

copies enclosed.

07/01/03
(District Electrical Engineer (MS)
N.F. Railway/New Bongaigaon.



14/1/03
Time of
Sanjit Choudhary
Advocate
on 1.10.09.

-16-

Annexure - 4
(Series)

47

N F RAILWAY (RMV DIV) UNIT 09-255 * PAY BILL FOR 16 AUGUST 2004 * I.DUE -- DEDUCTIONS CONTO -- I.DUE DEPT ELECTRIC SRL.NO 2

ANNEXURE - 4

(Series)

| | | | | | |
|-----------------------|--------------|---------|--------------|---------|----|
| PRANAB KUMAR DAS | BASIC PAY | 7900.00 | PF | 932.00 | |
| DE:SGM SE | DEARNESS-PAY | 3950.00 | VPF | 1000.00 | |
| PFNO #02011918-NC | DA | 1304.00 | HOUSE RENT | 228.00 | |
| | CONVEY ALL | 200.00 | PROF-TAX | 195.00 | |
| | SCA | 160.00 | GIS | 30.00 | |
| DUTY DAYS 31 LEAVE 00 | | | ARR/PNL RENT | 4835.00 | 98 |
| | | | ELECTRIC | 316.00 | 2 |
| | | | HP/CO-OP/PND | 822.00 | 14 |

GROSS PAY * 13514.00

TOT.DEDNS* 8414.00

NET PAY * 5100.00

LAP LHAP LWP ABS LND
DB 060 040 0001 - - -
CR - - - - -
DB - - - - -
CD 060 040 0001 - - -

True copy
Sanjit Chaudhary
Advocate
on 1.10.09.

Arant N^y
Rarp
Runt

N F RAILWAY (RNY DIV) UNIT 09-255 * PAY BILL FOR NOVEMBER 2003 * I.DUE -- DEDUCTIONS CONTD -- I.DUE DEPT ELECTRIC SRL NO 3

PRAMAB KUMAR DAS
DESIGN SE
PFND #02011918-NC
DUTY DAYS 30 LEAVE 00
LAP LHAP LWP ABS LND
DB 030 020
CR
DB
CB 030 020

| | | | |
|------------|---------|--------------|------------|
| BASIC PAY | 7700.00 | PF | 642.00 |
| DA | 4543.00 | VPF | 300.00 |
| CONVEY ALL | 200.00 | HOUSE RENT | 228.00 |
| SCA | 160.00 | PROF-TAX | 175.00 |
| | | GIS | 30.00 |
| | | D.P.ADVANCE | 150.00 8 |
| | | ARR/PNL RENT | 2099.00 98 |
| | | ELECTRIC | 128.00 1 |
| | | HP/CO-OP/PND | 822.00 23 |

GROSS PAY * 12603.00
TOT.DEDNS* 4574.00
NET PAY * 8029.00

N F RAILWAY (RNY DIV) UNIT 09-255 * PAY BILL FOR MARCH 2004 * I.DUE -- DEDUCTIONS CONTD -- I.DUE DEPT ELECTRIC SRL NO 2

PRAMAB KUMAR DAS
DESIGN SE
PFND #02011918-NC
DUTY DAYS 31 LEAVE 00
LAP LHAP LWP ABS LND
DB 045 030
CR
DB
CB 045 030

| | | | |
|------------|---------|--------------|------------|
| BASIC PAY | 7900.00 | PF | 658.00 |
| DA | 4819.00 | VPF | 1000.00 |
| CONVEY ALL | 200.00 | HOUSE RENT | 228.00 |
| ARREAR DA | 308.00 | PROF-TAX | 195.00 |
| SCA | 160.00 | GIS | 30.00 |
| | | D.P.ADVANCE | 150.00 4 |
| | | ARR/PNL RENT | 2099.00 94 |
| | | HP/CO-OP/PND | 822.00 19 |

GROSS PAY * 13387.00
TOT.DEDNS* 5182.00
NET PAY * 8205.00

Handwritten signature

Northeast Frontier Railway.allotment order No. 27/2003/A

The following allotment of Qrs. are made to take with immediate effect.

1. on vacation by Sri S. P. Chakraborty, Ex. SSE/TI/NTQ Type IV Qrs. No. 506 at Tengaigaon is hereby allotted to Shri Pranab Kr. Das, SE under SSE/GERS/NTQ.
2. On vacation by Sri Pranab Kr. Das SE under SSE/GERS/NTQ (Item No. 1 above) the type III Qrs. No. P/99-A at NTQ is allotted to Md. A. Islam JE/II under SSE/EMWS/NTQ.

Staff concerned should submit vacation and occupation report of within 7 days of receipt of order.

District Electrical Engineer (WS),
New Tengaigaon.

No. EL/E/8/7/1/210 dated, 28/7/2003.

Copy forwarded for information and necessary action to :-

With: SSE/E/NTQ - FGN.

2. SSE/W/NTQ - FGN.

Qrs-3. SSE/GER/NTQ.

4. SSE/EMWS/NTQ.

5. Staff concerned.

6. Secy. NERMU, BU & SC/ST Association/NTQ.

7. SSE/Telephone/BNC/N - For information

and necessary action pl.

Within 7 days of receipt of order.

DEE/WS/NTQ.

True Copy
Sujit Choudhary
Advocate
dt 1.10.09

PM

allotted

To

The District Electrical Engineer (W3),
N. F. PLY./New Longaigach.

(Through proper channel.)

Sir,

Sub:- occupation report of Ors. No. 506
at NFB/TNGM.Ref:- your allotment order No. 27/2003/A

In terms of your above mentioned allotment orders
I have handed over the charge of the Ors. No. 506
Type IV at BNGM with all Electrical & Engg.
fittings on the (date) to Sri Pranab Kumar Das

Yours faithfully,

S. R. Chakraborty

Name Sabya Ranjan Chakraborty

To

Designation EX SSE/T2/NBQThe District Electrical working under DSE/W/NBQ
N. F. PLY./New Longaigach.

(I have taken over the charge of the above Ors. with all
electrical & Engg. fittings on 01-8-03 (date)
Sir,

Signature Pranab Kumar DasDesignation SE/GER SSK/INAWorking under DSE/W/NBQ

Copy to :- 1) SSE(P)/W3 - New Longaigach allotment orders
I have handed 2) SSE/W3/TNGM - New Longaigach Ors. No. 506
Type IV 3) OS/T/elect. with all Electrical & Engg.
fittings on 4) F. S. Section in office

Yours faithfully,

Name

Designation

The District Electrical working under
N. F. PLY./New Longaigach.

(I have taken over the charge of the above Ors. with all
electrical & Engg. fittings on (date)

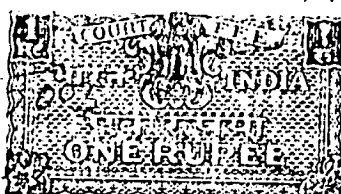
Sub:- occupation report of Ors. No.

Designation

Ref:- working order No.

St. Section Engineer (GEN)
N. F. PLY./New Longaigach

True copy
Digitally
Adwo Cole
on 1.10.09



| Date of application for the copy. | Date fixed for notifying the requisite number of stamps and fees. | Date of delivery of the requisite stamps and fees. | Date on which the copy was ready for delivery | Date of making over the copy to the applicant. |
|---|---|--|---|--|
| 15.1.2003. | 19.1.2003 | 21.1.2003 | 21.1.2003 | 28.01.2003 |
| IN THE COURT OF THE DISTRICT JUDGE ::: BONGALGAON ::: | | | | |

Title Suit (M) 20/2000.

Smt Sovana Das ... Petitioner
vs
Sri Pranab Kr Das ... Respondent

Present : Sri B. D. Bhuyan,
District Judge,
Bongalgaon.

Appearance : Mr N. K. Ghosh, advocate
for the petitioner.

Mr S. K. Som, advocate
for the respondent.

Date of Argument - 8.5. 2003.

Date of Judgement - 5.6.2003.

J U D G M E N T

1. This is a petition U/s 10(2) of Hindu Marriage Act, 1985 (for short the Act) submitted by petitioner Smt Sovana Das praying to rescind the decree for judicial separation passed by Kok Adalat on last 24.9.2000 held at Bongalgaon. This decree was passed in connection with her earlier petition U/s 10(1) of the Act whereby she prayed before this Court to pass a decree for judicial separation from her husband/respondent Pranab Kr. Das.

2. It would relevant to mention that petitioner in her earlier petition stated, inter-alia, that her marriage with respondent was performed on 22.10.78 as per Hindu rites and rituals as well as registered before the Sub-Registrar,

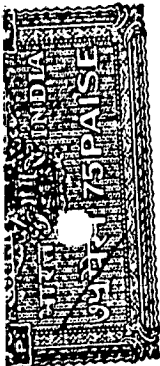
By
District Judge,
BONGALGAON

Tone COPY
Sujit Choudhary
Advocate
on 1.10.09

111 2 111

Kokrajhar in presence of the witnesses. Before her such marriage, she was a widow alongwith her one son Sanju aged 5 months through her earlier husband. After such marriage she lived with respondent peacefully and thus they have got 3(three) other children namely Smt Srimita Das (20 years), Smt Sushmita Das (18 years) and Sri Ritwan Das (10 years). All are school student, while her earlier son Sanju was a college student at the time of filing of her this petition.

3. In course of time, she came to know that her husband is a heavy drunker. Being intoxicated very often, ^{he} assaulted, rebuked ^{her} and thus tortured her mentally and physically. That apart, her husband had some illicit connection, first with one Rita Dutta. However, at the intervention of local people he gave up his relation with said Rita Dutta. But, after the birth of last son Sri Ritwan, the respondent again repeated his adulterous behaviour with another woman Saraswati Hazarika, who is also an employee of N.F. Railway, Bongaigaon where petitioner and respondent are also employees of different categories. At the protest of petitioner against such ^{unbearable} ~~unpleasant~~ behaviour of the respondent, she was even beaten mercilessly by a bamboo stick on 21.6.2000 and of the following day the respondent drove out her alongwith her children, as a result of which she was compelled to live in the house of some well wishers. Initially, she tolerated this rude behaviour of the respondent thinking her future life and for the interest of happy conjugal relation. But, when respondent repeated his such ^{unbearable} ~~unpleasant~~ behaviour, so she became intolerable and therefore, being compelled, she filed petition U/s 10(1) of the Act praying for judicial separation from the respondent.



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4. ^{After} Before the service of notice to the respondent he appeared and wanted time to submit written statement. But before his written statement was submitted, the suit was referred to Lok Adalat held on 24.9.2000. Accordingly, with the help of Conciliators, the dispute was settled up and decree was passed as follows.

" Judicial sepeation settled and accepted from this date 24.9.2000 and agreed to pay Rs. 2500.00 on the date of leaving the house occupied by petitioner. From now onwards respondent shall pay Rs. 2000.00 P.M. in the account to be opened in the joint A/c in United Bank of India, Bongaigaon. The quater now occupied by the petitioner shall vacate within 6(six) months from the date of 24th September, 2000. All belongings shall beillegible previously at the custody of the petitioner. The account shall be opened after Puja. Pass^{Book} of the A/c shall be handed over to petitioner."

5. Thus, after passing of such decree by Lok Adalat, the parties were silent till 30.3.2001, that is about one year. There was no any complaint ^{from} on either of the parties as to execution or non-execution of the decree dtd 24.9.2000 passed by Lok Adalat. Thereafter, the petitioner has again come up with this present petition dtd 30.3.2001 stating, inter-alia, that after passing of decree by Lok Adalat, the respondent/husband did not comply the condition of the decree, i.e., to say he had not paid Rs. 2500.00 to her nor ^{she} vacated the quater belonging to respondent and occupied by her. The other condition to open joint account and to deposit Rs. 2000.00 P.M. is also not complied with by the respondent. However, in the



Noted for
action

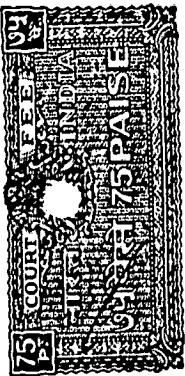
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meantime they are living together having their co-habitation. That being the subsequent development between the parties, the petitioner has prayed to rescind the decree dtd 24.9.2000 passed by Lok Adalat. So notice was served respondent as to this petition.

6. The respondent after receipt of notice appeared and he submitted both written statement in respect of earlier petition U/s 10(1) of the Act of the petitioner as well as written objection against her subsequent prayer to rescind the decree for judicial separation. Vide this objection the respondent has denied to have lived together with petitioner in the same house. He also denies having co-habitation with the petitioner after the decree for judicial separation. As to non-complying of condition of Lok Adalat decree, he has stated that decree was not specific as to opening of joint account in whose name and that is why he has not opened the joint account nor deposit to Rs. 2000.00 P.M. in that account. On the other hand, the petitioner has also not vacated the quarter allotted in his name by Railway department and occupied by petitioner herself and for that reason he has not paid the other amount of Rs. 2500.00 to the petitioner. In that view, he is not agreeable to rescind the decree for judicial separation dtd 24.9.2000 allowed by Lok Adalat.

7. The respondent vide his written statement against the original petition U/s 10(1) of the Act submitted by him further prayed to grant dissolution of his marriage with petitioner by decree of divorce. But this court considers this written statement to be irrelevant in view of decree by Lok Adalat.

8. In order to prove the ground for rescinding the decree for judicial separation, the petitioner has examined two witnesses including herself while respondent has also examined himself as



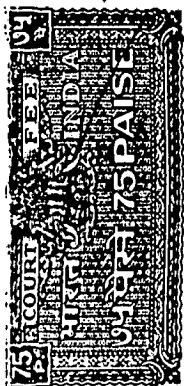
Chief Judge,
Muzaffargarh

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witness to support his objection against the prayer for rescinding decree for judicial separation.

9. I have heard ld. advocates for both the parties. Perused the prayer for rescinding decree for judicial separation, its objection raised by respondent and their evidence on record. Therefrom, it is seen that, although, the suit for judicial separation is not fit for compromise between the parties without recording evidence in support of their different averments, since Lok Adalat had passed decree dtd 24.9.2000 and a decree passed by Lok Adalat is not questionable by appeal, revision etc. so, I find that decree for judicial separation passed by Lok Adalat on 24.9.2000 stands as it is. The question whether conditions of the decree have been or not complied by either of the parties is a different aspect. In the event of non-complying of the conditions of the decree, then it was the option of the parties to appear before this Court and to take necessary solution/answer as to non-compliance of the decree. But record shows that after passing of such decree, neither of the parties approached this Court for execution of the same.

10. Now, the present petition of the petitioner is U/s 10(2) of the Act to rescind the decree for judicial separation obtained earlier. The ground for rescinding the decree is also stated to be mainly that subsequently both the parties used to live together and thus they have co-habitation between the them. If, it is so, then that would be a subsequent development between the parties for which the decree for judicial separation obtained earlier may be or can be rescinded. The question is how far the subsequent development is true. Since the petitioner has herself averred that she used to live



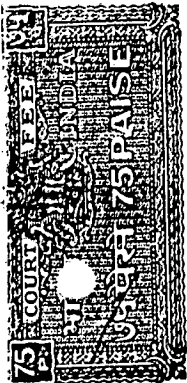
CHIEF JUDGE
MADRAS

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together with respondent in the same quarter and co-habitation is also going on between them, so, burden lies upon her to prove this subsequent development. But on perusal of her evidence it is seen that she is not successful to prove that respondent is living with her in the same house and they have co-habitation between them in the same mess. On the other hand, the respondent has flatly denied to have such situation in between them.

11. Again, On the other hand, the respondent has stated that after his ambitter relation with petitioner since December, 2001 he has been staying at Bongaigaon Railway station in his office room. Prior to that he stayed alone at Bagan road of Bongaigaon town in a rented house belonging to one Khiren Ch Das. For some times, he also lived in a hotel. Necessary information as to his separate living from his wife had also been given to his competent authority. That he is living separately is the proof of telephone bill under Ext 1, installed in his rented house at Bagan road. Ext 1(1), (2) and (3) are the relevant bills. Ext-2 is the copy of letter addressed to higher authority indicating the fact of separate living from his wife.

12. So, from the evidence on record, it is ^{not} crystal clear that both the parties are living together having co-habitation after they obtained decree for judicial separation. The ground stated by petitioner for rescission of decree for judicial separation are found not to be convincing and acceptable. It was decided in a reported case --- as the section empowers the Court to rescind its own decree, it is to be exercised that due caution and with compelling reason. This provision is based



11/11/2002
Bongaigaon

111 7 111

on the consistent object of the law to see that every opportunity is given to the spouses for a reconciliation notwithstanding the decree for judicial separation. Where an application for rescission is made by both the spouses together or where the decree holder himself or herself files an application for rescission, the Court without going into the details can pass an order of rescission, but where the application is contested by the other spouse there is heavy burden on the applicant to prove the ground for rescission (Godabal Vs Narayan Lingalji, 1973 MP 4).

13. Here, in the instant case the decree for judicial separation was passed ^{at} the initiative of petitioner herself and subsequently, it is the petitioner who has come up with prayer to rescind that decree for judicial separation. Since the respondent has vehemently contested the prayer for rescinding decree for judicial separation, this heavy burden casts upon the petitioner herself. In view of nature of evidence tendered by her and her witness, I find that she has failed to discharge such heavy burden. That being the situation, I find that there is no merit in her petition. According, it is rejected without cost.

(B. D. Bhuyan)
District Judge,
Bongaigaon.

Dictated and Corrected by me

(B. D. Bhuyan)
District Judge,
Bongaigaon.

Distt Judge,
Bongaigaon.

....

*True copy
Sanjit Chandra
Advocate
or 11.10.09.*

Distt Judge,
Bongaigaon

Northeast Frontier Railway

No. EL/E/8/0/1/599

Office of the
DEE/WS/NBO.
DT: 14/10/03

To : OS/E(Elec)

Sub:- Damage rent of Qrs.No. R/ 99/A,
Type-III at NBO.

Ref:- This office allotment Order No.
27/2003/A, dt: 28.7.2003.

Sri P.K.Das, SE/GERS was allotted type-IV Qrs.
506 at BNGN vide allotment Order mentioned above and he took
over the same w.e.f 01.8.03.

But type-III Qrs.No.R/99/A which was under
his occupation so long, has not yet been vacated by Sri Das,
SE/GERS which is highly irregular and liable to strict
disciplinary action.

Hence you are advised to recover damage rent
for unauthorised occupation of Type-III Qrs. No.R/99/A at NBO
by Sri Das,SE.w.e.f 01.9.03.

This is urgent.

District Electrical Engineer(WS)
N.F.Railway/New Bongaigaon.

Copy to : 1) Sri P.K.Das, SE/GERS/NBO.- for information.
ii) APO/WS/NBO.- For information pl.


14.10.03
District Electrical Engineer(WS)
N.F.Railway/New Bongaigaon.

*True copy
Sent by
Advo. Clerk
on 1.10.09.*

Read with A/D

28/4/04

To,

Smt. Savana Das
W/O Sri Pranab Kr. Das
R/O Rly. Qtr. No. R-99/A
Officers Colony, New Bongaigaon
PO. New Bongaigaon.
Dist. Bongaigaon.

Sub :- Legal Notice

Madam,

Under the instructions from my client Sri Pranab Kr. Das, S/O Late Sachindra Ch. Das, presently residing at Rly. Qtr. No. 506, Old Colony, under PS. & PO. Bongaigaon, Dist. Bongaigaon, Assam, I do hereby like to intimate you as under :-

That, you are well aware that, an order of Judicial Separation between you and my client was passed by the Hon'ble District Judge, Bongaigaon, on 24.9.2000 at Lok Adalat in Title Suit (M) 20/2000, so filed by you, seeking relief of judicial separation from your husband Sri Pranab Kr. Das.

You are also aware that, the said judicial separation was granted with a condition that my client to deposit an amount of Rs. 2000/- (Rupees two thousand) per month in the Bank Account to be opened jointly by you and my client in United Bank of India, Bongaigaon Branch, and you are to vacate the official quarter of my client so occupied by you within 6 (six) months from 14.09.2000 and accordingly you are to vacate the quarter by 14.03.2001 as per the Order and Decree so passed by the Hon'ble District Judge. But you have failed to comply with the order of the Hon'ble Court, rather you filed a petition before the Hon'ble District Judge on 30.03.2001 with a prayer to rescind the decree of judicial separation dtd. 24.09.2000. And ultimately the said petition was dismissed vide Judgement dtd. 05.06.2003.

That, you did not turn up to open joint Bank Account with my client at United Bank of India, Bongaigaon Branch, in terms of the decree inspite of repeated requests from the part of my client.

Contd to P2.....

A. K. Das
28/4/04

Tone copy
Sujit Choudhary
Advocate
on 1.10.04.

60

- 29 -

-: page-2 :-

That, moreover, you have failed to vacate the official quarter of my client till date, as a result of which my client is to pay penal rent at the rate of Rs. 2099/- (Rupees two thousand ninety nine) per month for unauthorised retention of his official quarter by you and due to non-vacation of the quarter, the Controlling Officer of my client warned him to face strict disciplinary action vide his Office Letter No. EL/E/8/0/1/599 dtd. 14.10.2003.

Under the circumstances, I at the instance of my client like to request you to come forward to open a joint Bank Account with my client and also to vacate the official quarter of my client within a period of 15 (fifteen) days from the receipt of this Legal Notice.

Please note that, in default of compliance of the terms of this notice as per the direction of the decree as referred above, my client shall have no other alternative, but to file execution proceeding before the Court of competent Jurisdiction for your eviction in terms of the decree without any further reference at your own risk and peril.

Hope, you shall understand the gravity of the decree and do the needful in complying the same to avoid unnecessary unpleasant situation and consequent bitter relationship between you and my client.

Yours faithfully


(D J Mukherjee)

Swapan Kumar Dutta

Advocate

Bongaigaon District Court

STD : 03664
Residence : 222036
Bar Association : 223084

ANNEXURE-8(B)

Residence:

Netaji Nagar

P.O. & Dist. Bongaigaon
(Assam) PIN - 783380

27-04-2004

Date

Registered with A/p

To,
The Deputy Chief Electrical Engineer (W.S.)
N.F. Railway, New Bongaigaon,
P.O. New Bongaigaon,
Dist. Bongaigaon, Assam.

Ref:- Letter No. RL/E/S/O/1/599 dtd. 14.10.03
of the District Electrical Engineer (W.S.)
N.F. Rly, New Bongaigaon addressed to O.S./
E(Electrical), the copy of which was
docketed to my client Sri Pranab Kumar Das,
SF/GRES/NBQ.

Sir,

Under the instructions from my client Sri Pranab Kr. Das S/O Late Sachindra Ch. Das, presently residing at Rly. Qtr. No. 506, Old Colony, under P.S. & P.O. Bongaigaon, in the District of Bongaigaon, Assam, I do hereby like to intimate you as under :

That, you have directed the Office Superintendent, Establishment (Electrical) of your office to recover damage rent for unauthorized occupation of Type III Quarter No. R 99/A at New Bongaigaon from my above-named client who is serving in the capacity of Section Engineer under you. In this context I would like to mention here that prior to this on 3-1-2003 my client intimated DRM(P), AFDJ under what circumstance he was not in a position to vacate the Qtr. No. R 99/A, the copy of the said letter was also docketed to your predecessor-in-chair, DEE/W/NBQ. However I am enclosing the photostat copy of the said letter once again for your ready reference.

That, this is for your information that the wife of my client Smt. Sovana Das, who is an employee under Medical Superintendent, New Bongaigaon Rly. Hospital in the capacity of Female Dresser, filed Title Suit (M) No. 20/2000 in the Court of Hon'ble District Judge, Bongaigaon against my client Sri Pranab Kumar Das for Judicial Separation and the Hon'ble District Judge was pleased to grant Judicial Separation vide Order dtd. 24.9.2000 and Decree dtd. 29.9.2000.

Thereafter, said Smt. Sovana Das filed a petition before the Hon'ble Court to rescind the said Decree, which was dismissed vide Judgement dtd. 5-6-2003 by the Hon'ble District Judge and accordingly the Judicial Separation between my client and Smt. Sovana Das still subsists. In the said Decree it was

Contd.....P/2.

27/4/04.

T. J. Das
Advocate
1.10.04.

An Kumar Dutta
Advocate
Bongaigaon District Court

STD : 03664
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(Assam) PIN - 783380

Date.....

(Page - 2)

directed that the petitioner Smt. Sovana Das shall vacate the the Quarter within 6 (six) months from 24.9.2000, but inspite of specific direction of the Hon'ble District Judge, said Smt. Sovana Das being an employee of Rly. Administration failed to vacate the said quarter at her own whims. My client tried his level best to compel said Smt. Sovana Das to vacate the Quarter, but in vain.

I am enclosing herewith the photostat copy of the certified copy of the Order dtd. 24-9-2000 and Decree dtd. 29.9.2000 passed by the Hon'ble District Judge, Bongaigaon in Title Suit (M) No. 20/2000 and also enclosing the certified copy of Judgement dtd. 5-6-2003 passed by the Hon'ble District Judge in the above suit for your perusal in support of the above contention.

That my client also issued legal Notice to said Smt. Sovana Das asking her to comply with the Order of the Hon'ble Court within 15 (fifteen) days and also intimated the above fact to the Medical Superintendent, New Bongaigaon Rly. Hospital, the employer of Smt. Sovana Das, so that, the Medical Superintendent can take necessary steps to get the quarter vacated.

I am also enclosing the photostat copy of legal Notice dtd. 26.4.2004 addressed to Smt. Sovana Das and Notice dtd. 27.4.2004 addressed to the Medical Superintendent, New Bongaigaon Rly. Hospital for your perusal as ready reference.

In view of the above, I at the instance of my client like to intimate you that my client has no fault in vacating the Type III Qtr. No. R 99/A. It is Smt. Sovana Das, who is an employee of Rly. Department has illegally retained the same and at the fault of Smt. Sovana Das, my client cannot be penalised by paying damage rent.

So, you are requested to review your Order dtd. 14-10-2003 and to realise the damage rent from Smt. Sovana Das or to compell her to vacate the quarter or to regularise the said quarter in the name of Smt. Sovana Das.

Contd....P/3.

M
27/4/04

Sa Kumar Dutta
Advocate
Bongaigaon District Court

STD : 03664
Residence : 22036
Bar Association : 23084

Residence:
Netaji Nagar
P.O. & Dist. Bongaigaon
(Assam) PIN - 783380

Date.....

(Page - 3)

Lastly, I at the instance of my client like to request you once again to stop to realise damage rent from my client from the next month's salary, else, my client shall have no other alternative but to take shelter of law for his redressal, please note,

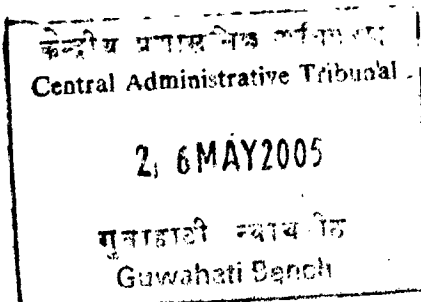
Enclosed : As stated above.

Yours faithfully,

S. K. Dutta
27/4/04.
(S.K. Dutta)

*True copy
Sujit Choudhary
Advocate
on 1.10.07*

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File No. 231/04
Advocate
26/5/05

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

OA No. 231 of 2004

Sri Pranab Kr. Das Applicant

-Vs-

Union of India & others Respondents

Chief Personnel Officer
N.F. Railway, Muzgaon
Guwahati, Assam

(Written statements filed by the Respondent No.
1 to 6)

The written statements of the Respondents are as follows:-

1. That a copy of the Original Application No. 231/04 (hereafter referred to as the "application") has been served on the respondents. The respondents have gone through the same and understood the contents thereof.
2. That save and except these statements which are specifically admitted by the respondents, the rest of the statements made in the application may be treated as denied.
3. That with regard to the statements made in Para 1 of the application, the respondents state that in fact there is no legally supported cause of action

Handwritten signature
 Chief Personnel Officer
 N.F. Railway, Maligaon
 Guwahati-11

to justify the filing of the present application and as such the application is liable to be dismissed with cost.

4. That the answering respondents have no comment to offer to the statements made in para 2 and 3 of the application, the respondents state that the application is barred by the law of limitation as provided under Section 21 of the Administrative Tribunals Act, 1985.

5. That with regard to the statements made in para 4.1, 4.2, 4.3, 4.4 and 4.5 of the application, the respondents state that by judicial separation as provided by the law under Section 9 of the Hindu Marriage Act, 1955, the husband and wife are permitted only to stay separately only. The marriage between the two continues to subsist until and unless a decree of divorce is passed under Section 13 of the Hindu Marriage Act, 1955. In this case the husband and wife appears to be Hindu and they are still husband and wife in the eye of law. So far as the T.S. No.20/2000 and the order dated 24.7.2000 is concerned it is a matter very much related to the personal affairs of the applicant with his wife and the applicant cannot bind the respondents by any such order passed in a matrimonial case and that too in form of an agreement where the respondents are not parties. Therefore, it is immaterial what agreement is being entered into between the husband and the wife. The fact remains that the quarter allotted to the applicant continues to be occupied by his wife and hence it can in no way be considered to be vacated. It is for the applicant to hand over the vacant possession of the quarter No. R99(A)

while he is surrendering the Quarter allotted to him. It is immaterial whether he is personally staying in the allotted quarter. Therefore the letter dated 3.1.2003 intimating the so called vacation of the quarter has no legal bearing with the recovery of the House Rent from the salary of the applicant. Although the applicant intimated the respondents about the vacation of the Quarter that has not yet been physically vacated and as such damage charges at the rate of Rs. 78/- per square meter is being recovered from his salary for unauthorized retention of the said quarter as per extent rules.

6. That with regard to the statements made in para 4.6, 4.7 and 4.9 of the application, the respondents state that as stated hereinabove it is a case of personal relationship between the husband and wife and the respondents in no way could be held responsible for such private matters. Therefore the respondents are left with no alternative but to go by the provisions of law and to recover the house rent for the quarter.

7. That with regard to the statements made in Para 4.8 and 4.10 of the application, the respondents state that by the allotment of another type IV Quarter No. 506 vide order No. 27/2003 the applicant cannot be absolved of the liability to vacate the earlier quarter No. R99(A) and to deliver the vacant possession of the same to the respondents. As the applicant managed to get allotment of a second quarter and continued to occupy the earlier quarter No. R99(A) through his legally married wife, the respondents have not

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Chief Personnel Officer
N.F. Railway, Maligaon
Guwahati-78

other alternative but to issue the order dated 14.10.2003 (Annexure 7).

8. That with regard to the statements made in Para 4.11, 4.12 and 4.13 of the application, the respondents state that the wife of the applicant is an employee of the Medical Department and by her status she is not entitled to Type III Railway quarter. The applicant belongs to the Electrical Department. There is no rule to recover the rent from another employee (the wife) when the quarter stands allotted to the husband employee. As such it is also immaterial whether the husband or the wife is occupying the quarter. So far as the decree passed in the civil suit is concerned, the same is a matrimonial matter binding the husband and the wife only. Such decree or order cannot operate against a third party, i.e. the respondents, more particularly when such third party is not a party defendant in the suit. Moreover, by the decree of the civil court the relationship between the husband and the wife has not been snapped and ended - they have only been permitted to live separately. Such order pertaining to personal relationship and the private life of the applicant cannot interfere with the provisions of law and the function of the respondents. The respondents allotted the type III quarter No. R99(A) to the applicant and not to the wife of the applicant. Hence it is the legal duty of the applicant to vacate and hand over vacant possession of the said quarter to the respondents as soon as he was allotted the type IV quarter No. 506 at Bongaigaon. In this connection the respondents state that the applicant has no proof to show that he has vacated the type III quarter from 4.1.2003 while his wife continued to occupy

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Chief Personnel Officer
N.F. Railway, Manglaon
Guwahati-11

the same on his behalf. Moreover, the applicant cannot show certificate from the IOW concerned which is required to be done in case of such vacation of quarter and delivery of vacant possession. The respondents also state that the type III quarter cannot be allotted to the wife of the applicant as she is not entitled to type III quarter. Moreover, there is no law to show that due to the order of judicial separation both the husband and wife has to be provided with separate quarter individually.

9. That with regard to the statements made in Para 4.14 and 4.15 of the application, the respondents state that for the reasons and facts as stated above, the action of the respondents cannot be termed as unjustified and double taxation or arbitrary and requiring interference from this Hon'ble Tribunal. The respondents state that the application is not bonafide and has been filed for wrongful gain. The respondents further state that it is the applicant who is to be blamed for his failure to resolve personal disputes with his wife and to settle the matter of occupancy of the quarter at his personal level. Such matters does not come within the parameters of Section 14 of the Administrative Tribunals Act, 1985.
10. That with regard to the statements made in para 5.1 to 5.7 of the application showing the different grounds to vindicate the cause of filing of the application are not tenable in law as the grounds shown by the applicant are no grounds at all in view of the facts and circumstances of the present case and the settled position of law as stated hereinabove in this written statements.

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Chief Personnel Officer
N.F. Railway, London

Hence, the application is liable to be dismissed as devoid of any merit.

11. That with regard to the statements made in para 6 and 7 of the application, the answering respondents state that the matter raised before this Hon'ble Tribunal pertains to matrimonial disputes between the husband applicant and his wife. It is not a matter pertaining to any conditions of service. Hence the application is liable to be dismissed with costs.

12. That with regard to the statements made in para 8.1 to 8.5 and 9.1 of the application, the respondents state that the applicant is in fact retaining 2 quarters and has failed to deliver the vacant possession of the earlier allotted quarter which is being occupied by his wife. Hence, the respondents respectfully submit that under the facts and circumstances of the case and the provisions of law, the applicant is not entitled to any relief whatsoever as prayed for and the application is liable to be dismissed with cost.

In the premises aforesaid, it is therefore prayed that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records shall also be pleased to dismiss the application with cost.

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Verification

I, A. Kispatta, at present working as the
Dy. CPO/IR in the office
of the N.F. Railway, Maligaon Ghy-11,
being competent and duly authorized to sign this
verification do hereby solemnly affirm and state
that the statements made in para
1, 2, 3, 4, 5, 6, 8 and 9 are true to my knowledge and
belief, those made in para 7 being
matter of records are true to my information
derived therefrom and the rest are my humble
submission before this Hon'ble Tribunal. I have
not suppressed any material fact.

And I sign this verification on this 18th day of
May, 2005 at Guwahati.



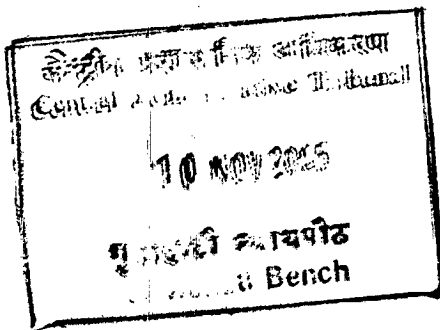
DEPONENT

Chief Personnel Officer
N.F. Railway, Maligaon
Guwahati-11

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(filed by the applicant -
through: Subrata Nath
Advocate
24/9/05)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI



In the matter of: -

O.A. No. 231 of 2004.

Shri Pranab Das.

..... Applicant.

-Vs-

Union of India and Others.

..... Respondents.

-AND-

In the matter of: -

Rejoinder submitted by the applicant in
reply to the written statements
submitted by the Respondents.

The humble applicant abovenamed most humbly and respectfully state as
under: -

1. That the applicant has gone through the written statement and has understood the contents thereof.
2. That in reply to the statements made in para 2 and 3 of the written statement, the applicant denies those averments and further beg to state that this application has been filed against a bonafide cause of action which has arisen due to illegal recovery of penal rent from the salary of the applicant in respect of one quarter No. R. 99 (A)/Type-III even after the said quarter was vacated by the applicant. As such the application deserves to be allowed with costs.
3. That the applicant categorically denies the statements made in Para 4 of the written statement and begs to submit that as per the settled position of

law, the recovery of alleged penal rent from the applicant in every month gives rise to a fresh cause of action every month and it is a continuous wrong in the law and as such it is not bared by the law of limitation, rather will be within the period of limitation as per law. This apart, the impugned letter under challenge herein having been issued on 14.10.03 (Annexure -7 to the O.A.), this OA has been filed on 1.10.04 and as such it is well within the period of limitation as prescribed under Section -21 of the Administrative Tribunals Act, 1985.

4. That the applicant categorically denies the statements made in para 5, 6, 7, 8 and 11 of the written statement and most respectfully begs to submit that although the order dated 24.7.2000 passed in T.S. No. 20/2000 by the Hon'ble Court relates to a matrimonial dispute between the applicant and his wife as averred by the Respondents, nevertheless the Respondents cannot ignore or lose sight of the contents of the said order in as much as that the issue of one quarter No. R.99 (A)/ Type -III which is a property under the Respondents, is also an integral issue involved in the said order of the Court. It is relevant to mention here that it was clearly directed in the Courts order dated 24.7.2000 that the applicant of the T.S. No. 20/2000 Smti Sovana Das has to vacate the said quarter within six months from 24.9.2000 which was known to the Respondents, and as such it casts a duty on the Respondents to be alive on the issue since it involves a part of their property, more so when this applicant as an allottee of the said quarter also vacation report against the said quarter. It is evident (Annexure-2 to the O.A.) of the applicant that he has vacated the quarter No. R. 99-A/Type -III w.e.f. 04.01.03 which has been accepted by the Respondent No. 5 vide his letter dated 07.01.03(Annexure-3 to the O.A.). Thereafter, vide order dated 26.07.03 (Annexure -5(A) to the O.A.) a fresh allotment of quarter No. 506/Type -IV has been made in favour of the applicant has been allotted to one Md. A. Islam. Further to that, the applicant also submitted his formal occupation report of quarter No. 506

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on 01.08.03 (Annexure- 5 (B) to the O.A.) which also accepted by the Respondents. As such the factum of vacation of quarter No. R.99-A by the applicant and subsequent allotment of the said quarter to another person (Md. A. Islam) by the Respondents themselves cannot be denied by the Respondents.

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From the above stated facts it is abundantly clear that the applicant was no longer in possession/occupation of the quarter No. R.99-A w.e.f. 04.01.03, which was an established fact. Assuming but not admitting that the Courts order dated 24.7.2000 in T.S. No. 20/2000 was not binding on them as averred by the Respondents, even then, their own allotment orders, vacation Report, occupation Report etc. as stated above are conclusive evidences to show that the quarter No. R.99-A stood vacated by the applicant since 04.01.03 and it was not allotted to Smti Sovana Das who had been occupying the said quarter and as such Smti Sovana Das happened to be an unauthorized occupant in the said quarter. Admittedly, Smti Das is the wife of the applicant but more than that she is an employee under the control of the Respondents as well and all the service conditions, conduct Rules which are applicable on the applicant are equally applicable on Smti Sovana Das in the capacity of an employee. When the Respondents were well aware of the Courts Order and their own allotment orders including the vacation report and occupation report of the applicant and further the status of Smti Sovana Das in respect of quarter No. R.99-A was also known to them, the respondents in all fitness of the things, ought to have initiated all actions against Smti Sovana Das for her unauthorized occupancy of the said quarter which they would have taken against any other unauthorized occupant in the normal course, failing which they could have atleast recover proper rents from Smti Das since she is also an employee like the applicant. But the respondents kept sleeping on the issue and thereafter in order to cover up their lapses later on, they resorted to recover penal rent against the quarter No. R-99-A from the applicant in addition to the rent for quarter No. 506 in an

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arbitrary and illegal manner although it is an established fact that the applicant not only vacated the said quarter No. R-99-A w.e.f. 04.01.03 but the said quarter stood allotted to another person thereafter. The contention of the Respondents that the applicant and the unauthorized occupant Smti Sovana Das were husband and wife and that the Court's order was not binding on them etc. are not sustainable since there was no impediments whatsoever for the Respondents to initiate administrative actions including recovery of proper rents against Smti Sovana Das who was more an employee under the respondents than the wife of the applicant, more so when her relationship with the applicant was suspended through a decree of judicial separation by a competent Court for which all records were available with the respondents. As such the contentions of the respondents are categorically denied and the recovery of penal rent from the applicant against quarter No. R.99-A is arbitrary, malafide, illegal, unfair and liable to be set aside.

5. That the applicant categorically denies the statements made in para 9,10 and 12 of the written statement and begs to submit that the applicant has not retained two quarters as stated by the respondents. He has vacated the quarter No. 506 w.e.f. 01.08.03 as allotted to him. As such recovery of rent/penal rent for both the quarters from the applicant is a double taxation on the applicant and thereby the action of the respondents are unjustified and arbitrary and this application has been filed on bonafide grounds and in accordance with the provisions of law only, as stated above. As such the applicant is legitimately entitled to get all the reliefs sought for in this application.
6. That in the facts and circumstances, the applicant humbly submits that he is entitled to the reliefs prayed for and the O.A. deserves to be allowed with costs.

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VARIFICATION

I, Shri Pranab Kumar Das, aged about 50 years, working as Section Engineer (Electrical) under Deputy Chief Engineer (Workshop), NF Railway, New Bongaigaon, applicant in the instant Original Application, do hereby verify that the statements made in paragraph 1 to 5 of the rejoinder are true to my knowledge and records and rest are my humble submission before the Hon'ble Tribunal, I have not suppressed any material fact.

And I sign this verification on this the ____ day of August, 2005

Pranab Kumar Das.