

50/100

3

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 18/2005

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet.....*OA*.....Pg. *1*.....to *2*.....
2. Judgment/Order dtd. *4.1.5.2005*.....Pg. *x*.....to *10. Separat order withdrawn*
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....*10/2005*.....Pg. *1*.....to *32*.....
5. E.P/M.P.....Pg.....to.....
6. R.A/C.P.....Pg.....to.....
- ✓ 7. W.S.....Pg. *1*.....to *33*.....
8. Rejoinder.....Pg.....to.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendement Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Gahla
01.11.17

FORM No.4

(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O R D E R S H E E T

Original Application No. 10/05

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicants:- Rahul Gosain

Respondents:- H. O. I. Ford

Advocates for the Applicant A. Rahman, M. Ahmed, Ghoshuddin

Advocates of the Respondents R. S. Thakur, H. Q. Jamal

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

19.01.2005

Present: The Hon'ble Mr. Justice R.K. Batta, Vice-Chairman.

Heard learned counsel for the applicant.

Notice to respondents on admission as also on interim relief. At this stage I do not find any urgency to grant interim relief since the impugned order in question was passed way back on 18.5.2004 and the applicant had approached this Tribunal only in this month.

Dr. M.C. Sharma, learned Railway counsel, accepts notice on behalf of all the respondents. Learned counsel for the applicant to furnish copies of the application alongwith the documents to Railway counsel within one week from today.

List on 18.2.2005.

R.
Vice-Chairman

bb

Notice & orders sent to O/section for issuing to resp. Nos. 1, 3, 4, 5, 6 & 7 by regd. A/D post and resp. No. 2 received by hand.
28/01/05

18.2.2005

Learned counsel for the respondents seeks time to produce records.
List on 8.4.2005.

Notice duly
served on
resp. Nos. 5, 7.

23/2/05.

Notice duly
served on
resp. Nos. 1, 2 & 6

24/2/05.

7-4-05

No. 15 has been
filed

11.4.05

W/s submitted by
the Respondents.

Pro.

11.5.05

Cert of the order
has been sent to
the Dy. Sec. for giving
the same to the applicant
as well as to the Dy.
Standing counsel.

mb

08.04.2005

Dr. M.C. Sarma, learned

Standing counsel for the Railways

submits that written statement is

being filed today. Post for hearing

on 4.5.2005. Rejoinder, if any, in

the meantime. Learned counsel for the

applicant is also present.

Vice-Chairman

mb

04.05.2005 Present: Hon'ble Mr. Justice G.

Sivarajan, Vice-Chairman.

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

Today, when the matter came up
for consideration, Mr. M. Ahmed, learned
counsel for the applicant submits that
the applicant may be permitted to with-
draw the application with liberty. We
have also heard Dr. M.C. Sarma, learned
counsel for the respondents. Since the
applicant wants to withdraw the applic-
ation, the application is dismissed as
withdrawn. This shall not preclude the
applicant for taking up the matter before appro-
priate authority, if he so advised.

Member (A)

Vice-Chairman

mb

10 JAN 2005

Original Application No. 40/2005.

Rahul Gosain

....Applicant

- Vs -

Union of India & Ors.

.....Respondents

LIST OF DATES

- 30.12.2002 The applicant was allotted a quarter at Delhi while working as C.D.O/DLI over Delhi Division
ANNEXURE-1 page 20
- 16.12.2002 The applicant was transferred to N.F.Railway.
The applicant is entitled to retain his quarter at Delhi as per the Circular dated 28.6.2002.
ANNEXURE-2B page 24
- 15.7.2003 Application to A.D.G.M to retain the said quarter at Delhi.
ANNEXURE 3 page 27
- 12.11.2003 Notice issued to the applicant to vacate the said quarter at Delhi within 10 (ten) days.
ANNEXURE-4 page 28
- Rs.11,874 abd Rs.3,264/- deducted as a penal rent and arrear rent from the salary of the applicant for the month of May 2004.
ANNEXURE-6 page 31
- 18.5.2004 Impugned notice received by the applicant for recovery of damage rent amounting to Rs.1,95,733.44 with effect from 17.12.2002 to 30.4.2004.
ANNEXURE-7 page 32

Prayer

To stop the recovery of damage rent of Rs.1,95,733.44.

Filed by :

Ali Mustafa Ahmed

Ali Mustafa Ahmed

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

An application under Section 19 of the
Central Administrative Tribunal Act, 1985.

ORIGINAL APPLICATION NO. 10 /2005.

Shri Rahul Gosain,
son of Shri Jatindar Bal,
presently residing at Rangia,
working as Sr. Divisional Mechanical
Engineer, N.F. Railway, Rangia,
District - Kamrup (Assam).

... APPLICANT

- Versus -

1. The Union of India,
represented by the Secretary,
Railway Board, New Delhi.
2. The General Manager,
N.F. Railway, Maligaon, Guwahati-11.
3. Chief Personnel Officer,
N.F. Railway, Maligaon, Guwahati-11.
4. Divisional Railway Manager(Personnel),
Rangia, District-Kamrup (Assam).

Contd...2

5
filed by the applicant

Rahul Gosain

07/01/05
through Mr. Mostafa Ahmed,
Adv.

5. Sr. Deputy General Manager,
Northern Railway,
Baroda House, New Delhi.

6. Divisional Superintending
Engineer (Estate), Northern
Railway, New Delhi.

7. A.D.G.M., Northern Railway,
Baroda House, New Delhi.

... RESPONDENTS.

I. PARTICULARS OF THE ORDER AGAINST WHICH
THIS APPLICATION IS MADE :

This application is made against the deduction of ~~Panel~~ rent for the House No.251/1B Type- IV in New Delhi from the salary of the applicant from the month of May, 2004.

II. JURISDICTION :

That the applicant declares that the cause of action of this application is within the jurisdiction of this Hon'ble Tribunal.

III. LIMITATION :

The applicant further declares that the application is filed within the limitation prescribed under Section 21 of the Administrative Tribunal Act, 1985.

Contd...3

6
Rahul Gosain
07/01/05

IV. FACTS OF THE CASE :

1. That your humble applicant begs to state that after selection of the applicant by the Union Public Service Commission, the applicant was initially appointed as Assistant Mechanical Engineer (P) at Lumding and later on he is transferred to Malda as AME/DSI and subsequently the applicant was transferred to Northern Railway for a period of 3(three) years and joined as C.D.O./DLI over Delhi Division on 5.12.1999.

2. That your humble applicant begs to state that as per the terms and conditions of the Railway, a Railway accommodation was allotted to your applicant at P.K. Road, New Delhi on turn. The said allotted quarters No. was 251/1B Type IV in P.K. Road, New Delhi which was allotted by the A.D.G.M., Northern Railway on 30.10.2002 under Order No. 103-G/5/ALLOT. In the said order it was mentioned that this accommodation is allotted for the bonafide use of the applicant and cannot be used for any other purpose other than residence. Any violation in this respect would result in cancellation of the allotment of the accommodation.

A copy of the said Order is enclosed herewith and marked as Annexure-1.

3. That your humble applicant begs to state that your applicant was transferred back from New Delhi to N.F. Railway on 16.12.2002. At that time, your humble applicant requested for a grant of six months study leave for completion of balance study of MBA (PT) from

Rahul Goswami
07/01/05

University of Delhi, Faculty of Management Studies. The said request for completion of balance study was actively considered by the General Manager on 17.12.2002 and the matter was referred by General Manager, N.F. Railway to Railway Board for their decision.

A copy of the letter dated 17.12.2002 issued by the General Manager is enclosed herewith and marked as Annexure-2.

4. That your humble applicant begs to state that by the time Railway Board's decision regarding his study leave was conveyed to him, the applicant fell ill with hepatitis (Type E ?/SAM), which caused him to seek another Sick Leave from Northern Railway and the applicant after the prolong treatment was finally declared fit by the Railway Doctor on 28.10.2003 and thereafter the applicant applied for necessary relieving Order and transfer duty pass to carry out the transfer Order to N.F. Railway.

A copy of the Medical Certificate dated 28.10.2003 issued by the Railway Doctor is enclosed herewith and marked as Annexure - 2(A).

5. That the applicant begs to state that after being declared fit, the Railway authority had issued the transfer pass to the applicant on 10.11.2003 and the applicant joined his duties over N.F. Railway on 14-11-2003.

6
Rahul Gosain
07/01/05

The N.F. Railway authority posted the applicant at Lunding and from Lunding he was again transferred to Rangia on promotion as Senior Divisional Mechanical Engineer under N.F. Railway.

9
Rahul Gosain
07/01/05

6. That your humble applicant begs to state that as per order of transfer your applicant came to N.F. Railway leaving aside his family members including his old parents in quarter in Delhi which was allotted by the A.D.G.M.

7. That your humble applicant begs to state that as there was official circular issued by the Ministry of Railway on 28.6.2002 addressed to all the General Managers on the subject " retention of Railway quarters at the previous place of posting by the Railway employees posted to North East Frontier Railway.

8. That your humble applicant begs to state that as per the Railway Board Circular it was distinctly mentioned that the Railway Officers posted to N.F. Railway is allowed to retain their quarters in the previous place of posting on the bonafide reasons that their family members are actually residing in the Railway quarter at their last station of his quarter and at the normal rent they can retain the quarters in the old place of posting. The contents of the Board's order/letter are reproduced below :-

" Instructions have been issued from time to time regarding grant of permission for retention of Railway accommodation on payment of normal rent at the previous

place of posting in favour of officers posted to N.F. Railway. The existing instructions issued vide letter No.F(G) 98 QR.1-17 dated 17.11.99 were valid upto 30.6.2002. The question of further extension of this facility beyond 30.6.2002 has been considered and it has now been decided to extend these instructions for a period of 3 (three) years upto 30.6.2005 or till revised orders are issued whichever is earlier.

Since the retention of quarter at the previous place of posting in favour of the officers who have been transferred and posted to N.F.Railway is allowed for bonafide use of the dependant family of transferred Railway Officers, he/she will furnish certificate on 1st July and 1st January of every year, stating that his/her dependent family members are actually residing in the railway quarter at the last station of his/her posting. Such a Certificate will also have to be furnished at the time of seeking retention.

If no such certificate is received by 31st January and 31st July every year respectively, the quarter Controlling Authority may cancel the allotment of the quarter in question.

The request for retention of entitled accommodation should be received within a period of one month from the date of relinquishing of charge at the last station of posting."

A copy of the said letter is enclosed herewith and marked as Annexure - 2(B).

9. That your humble applicant begs to state that as your applicant was transferred from New Delhi to N.F. Railway he

10
Rahul Gossain
107/01/05

submitted an application before the A.D.G.M., Northern Railway for permission to retain his old quarter as per the above circular.

A copy of the said application is enclosed herewith and marked as Annexure-3.

10. That your humble applicant begs to state that although your applicant have submitted an application before the A.D.G.M. on 15.7.2003, no action was initiated on the basis of the letter and no reply has been received by the applicant. As such, your applicant believes that his prayer was considered by the railway authority and so no reply has been given to your applicant in response to the letter dated 15.7.2003.

11. That your humble applicant begs to state that as there was no communication from the A.D.G.M., Northern Railway, your applicant was working at Rangiya leaving his family members at New Delhi in his old allotted accommodation i.e. House No. 251/1B, at Railway Officers Enclave in P.K. Road, New Delhi.

12. That your humble applicant begs to state that in the old place of posting the parents of the applicant as well the school going children were staying at New Delhi.

13. That your humble applicant begs to state that on 24.11.2003 he received a final notice in his official residence in New Delhi by which your humble applicant was treated as unauthorised occupant of the railway bungalow and it was directed to vacate the railway quarter within a period

Rahul Gosain
07/01/05

of ten days from the date of receipt of this notice. Though the notice was issued on 12.11.2003, but it was received on 24.11.2003 in the official residence of the applicant Sri Rahul Gosain at New Delhi.

A copy of the said Notification is enclosed herewith and marked as Annexure - 4.

14. That your humble applicant begs to state that in reply to the notice for unauthorised occupation of the railway quarter, your applicant has submitted a reply to the show cause notice and prayed before the Deputy General Manager, Northern Railway who is the authority to allow him to retain the railway quarter in New Delhi and to drop the notice of show cause on the ground of unauthorised accommodation of the railway quarter.

A copy of the said reply is enclosed herewith and marked as Annexure - 5.

15. That your applicant begs to state that though your applicant submitted an application before the authority to allow him to retain the quarter in his old place of posting, but suddenly the Divisional Railway Manager (Personnel) has started deduction of penal rent at the rate of Rs. 11,874.24 as penal rent with arrear rent of Rs. 3,264/- for the quarter which is reflected in the Pay Slip of your applicant which was issued at Rangiya.

16. That your applicant begs to state that before deduction of penal rent from the salary of the applicant no reasoned notice was issued to your humble applicant.

12
Rahul Gosain
07/01/05

Rahul Gossain
07/01/05

which is required as per the provisions of law for any deduction from the salary of your applicant.

17. That your applicant begs to state that only from the pay slip of your applicant it was found that an amount of Rs. 11,874.24 was deducted as penal rent and Rs.3,264/- as arrear rent from the salary of the humble applicant from the month of May, 2004 which is without jurisdiction.

A copy of the pay slip issued by the authority is enclosed herewith and marked as Annexure - 6.

18. That your humble applicant begs to state that from May, 2004 the authority has started deduction of penal rent from the salary of the humble applicant. On the other hand, eviction case was started against your humble applicant under the unauthorised occupation Act.

19. That your applicant begs to state that the eviction proceeding was started by the Estate Officer under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

20. That when the eviction case was started in New Delhi, your applicant filed an appeal against the order of the Estate Officer in the Court of the Addl. District Judge, Tishazari Court, New Delhi which was registered as P.P.A.No. 34/2004.

21. That your humble applicant begs to state that the appeal was heard by the Addl. District Judge, Tishazari Court,

New Delhi and the Hon'ble Court was pleased to dismiss the appeal after hearing the submissions made by the applicant.

22. That your humble applicant begs to state that when the eviction proceeding was started in New Delhi, the N.F.Railway authority started to deduct Rs. 11,874/- per month as penal rent and Rs. 3,264/- per month as arrear rent for the house retained at Delhi by your humble applicant.

23. That your humble applicant begs to state that your applicant is entitled for a reasoned notice before any recovery of damage rent. But prior to recovery of rent, the Railway authority failed to issue any notice to your humble applicant.

24. That your humble applicant begs to state that as per Public Premises (Eviction of Unauthorised Occupants) Act, 1971 a person can be evicted if he/she is occupying the house unauthorisedly without having any allotment order in favour of the applicant. But in the present case your applicant begs to state that the quarter which the applicant was occupying in Delhi is a departmental quarter allotted to your humble petitioner as he was working in New Delhi as Senior Mechanical Engineer in the Northern Railway and subsequently he has been transferred from Northern Railway to N.F.Railway. As per Railway Board Circular your applicant retained the railway quarter in previous place of posting in terms of the condition as laid down in the Railway Board Circular for which your humble applicant have submitted an application before the authority which was not replied.

14
Rahul Gosain
10/7/01/05

19
Rahul Gosain
07/01/05

25. That your humble applicant begs to state that ~~the~~ as per the Railway Board Circular when it was permissible to retain the railway quarter in old place of posting and when your humble applicant has submitted an application for permission to retain the quarter in New Delhi, it is presumed that the application was considered and so no reply has been given to your applicant. The conduct of the respondents for no reply to the application bonafide presumed to be allowed the prayer of the applicant and your humble applicant continued to retain the quarter at New Delhi for his old parents and for the family members of the applicant.

26. That your humble applicant begs to state that the penal rent at the rate of Rs. 11,874/- was deducted by the authority from May, 2004 without issuing any reasoned notice and without any authority of law and jurisdiction as the actual letter authorizing such deduction from General Manager/G, Northern Railway was received at Rangiya, only on 10/09/04.

27. That your applicant begs to state that when the penal rent was recovered from May, 2004 your applicant ultimately compelled to vacate the quarter at New Delhi and he has already vacated the railway quarter on 19/07/04 in New Delhi after the judgment and order passed by the Addl. District Judge, Tishazari Court at New Delhi.

28. That your humble applicant begs to state that on 18.5.2004 your applicant received an impugned notice for recovery of damage rent amounting to Rs. 1,95,733.44 at the rate of monthly instalment basis of Rs. 11,874.24 from 17.12.02 to 30.4.2004 till such date on which the quarter was vacated by the applicant.

29. That your humble applicant begs to state that prior to issuance of this notice recovery was already made from the salary of the applicant from the month of May, 2004 which is still going on.

A copy of the letter is enclosed herewith and marked as Annexure - 7.

30. That your humble applicant begs to state that being highly aggrieved by the letter dated 18.5.04 your applicant filed this application before this Hon'ble Tribunal for redressal of this genuine grievances.

V. LEGAL GROUNDS FOR RELIEF :

- a) For that your humble applicant is a Class-I Officer, appointed by the Railway who was initially posted at Lumding. Subsequently, apart from holding other positions he had been transferred to Northern Railway for a period of three years and later on transferred back to N.F. Railway on 16.12.2002. As per Railway Board Circular he is allowed to retain the quarter (allotted to him on 30/10/02) for which the applicant submitted his application on 15.7.2003.
- b) For that as the application of the applicant was not disposed of nor any reply is given it is presumed that prayer of the applicant is considered by the department and as such, your humble applicant retained his railway accommodation in New Delhi where his parents were staying at New Delhi.

16
Rahul Goswami
07/01/05

- c) For that as per Railway Board Circular retention of railway accommodation is permissible for the officers of the N.F. Railway in their old place of posting considering the necessity of education and for bonafide reasons. Your humble applicant retained his quarter for bonafide reason for accommodating his old parents for which the application was submitted to the authority.
- d) For that after the notice for unauthorised occupation your applicant submitted his application in reply to the show cause notice which was also not disposed of by the authority.
- e) For that simultaneous proceeding for unauthorised accommodation/occupation under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and deduction of penal rent was not permissible as the applicant was never treated as unauthorised occupant as the allotment order was issued in favour of the petitioner which was never cancelled prior to the recovery of penal rent. If the allotment order which was issued to your applicant was not cancelled he cannot be treated as unauthorised occupant. But the recovery of rent was made from 17.12.2002 on which date he was not treated as unauthorised occupant as his allotment was not cancelled on that day. Further, the application for retention of quarter was submitted to the authority on 15.7.2003 which was neither rejected nor any reply was given to the applicant.

Rahul Gosain
16/01/05

Co
Rahul Gossain
07/01/05

- f) For that an unauthorised person can be evicted under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. But your applicant is not an unauthorised occupant till the order of allotment was not cancelled and as such, a penal or damage rent can not be recovered from your humble applicant as it is done in the present case.
- g) For that your applicant have already vacated the quarter in New Delhi as his appeal was dismissed by the Hon'ble Court of Addl. District Judge, Tishazari Court and as such, your applicant cannot be treated as unauthorised occupant from 17.12.2002 and the penal rent cannot be recovered from the applicant from 17.12.2002 to 30.4.2004 which is amounting to Rs. 1,95,737.44.
- h) For that even if the applicant is treated as unauthorised occupant then the allotment order which was issued by the authority must have been cancelled which was not cancelled on 17.12.2002 and so a penal rent cannot be recovered from the applicant and the rent against the normal rent can only be recovered from the applicant.
- i) For that, since no salary was paid to the applicant during this period so the normal rent could not be recovered from the applicant for the period from

19
Rahul Gosain
07/01/05

17.12.2002 to 30.4.2004. However the normal rent as applicable may be set off against the recovery already effected from the applicant and the excess amount recovered refunded back to the applicant.

- j) For that your applicant was an allottee of the railway accommodation in Delhi and quarter was allotted by the competent authority of the Northern Railway. As such, he has not violated any of the conditions of allotment and so his allotment was never cancelled by the authority.
- k) For that as per procedure laid down in the Railway Board Circular, your humble applicant submitted an application for retention of the quarter in the old place of posting as he has been transferred to N.F. Railway for which the Railway Board Circular has authorised him to keep the quarter in the old place of posting.
- l) For that the deduction of arrear rent from May, 2004 is still going on at the rate of Rs. 3,264/- P.M. without any authority of law. Also Arrear charges for utilities are being deducted from his salary.
- m) ~~From~~ For that when the penal rent is already recovered for his unauthorised occupation of the railway quarter w.e.f. May, 2004 that cannot be retrospectively deducted

from 17.12.2002 as on that date he was not treated as an unauthorised occupant nor his allotment was declared to be cancelled and in such a situation, the railway authority can not now recover arrear penal rent for the period from 17.12.2002 to 30.4.2004. If the penal rent is fixed for the period of 17.12.2002 to 30.4.2004, the same cannot be recovered from the month of May, 2004 onwards as the applicant has already surrendered his accommodation at New Delhi.

- n) For that your humble applicant is not declared as an unauthorised occupant and so the penal rent cannot be recovered as it is done in the present case.
- o) For that the action of the respondents for deduction of the penal rent for the period from 17.12.2002 is unjustified and not based on any legal authority and hence, the action may be set aside and quashed.
- p) For that in any view of the matter, the deduction of penal rent for Rs. 1,95,733.44 has badly affected the applicant. As per the Board Circular the quarter can be retained in the old place of posting in the case of the officers transferred to N.F.Railway.

20
Rahul Gosain
07/01/05

21
Rahul Gosain
07/01/05

VI. DETAILS of THE REMEDY EXHAUSTED:

There is no other remedy available to the applicant except @ filing this application before this Hon'ble Tribunal as your applicant has exhausted all the remedies available to him.

VII. MATTERS NOT PENDING IN ANY OTHER COURT/ TRIBUNAL

The applicant declares that he has not filed any other application before any Court or Tribunal.

VII. RELIEF PRAYED FOR:-

It is, therefore, prayed that Your Lordships may be pleased to admit this application, issue a show cause notice to the respondents and after hearing the respondents may be pleased to issue a direction to the respondents to set aside the order dtd. 18.5.2004(Annexure- 7) by which a damage rent for the period from 17.12.2002 to 30.4.2004 is sought to be recovered from your humble applicant and already started recovery from the month of May, 2004 which is illegal and in violation of the Railway Board Circular directing the respondents to refund the excess amount recovered in the name of penal rent or damage rent to your humble applicant and pass necessary order/orders as your Lordships may deem fit and proper.

22
Rahul Gosain
1.07/01/05

IX. INTERIM RELIEF PRAYED FOR:

The applicant further prays before Your Lordships to direct the respondents to stay the deduction of penal rent or damage rent from the salary of the applicant which is already started from the month of May, 2004 till disposal of the case.

X. PARTICULARS OF THE POSTAL ORDER :-

Postal Order No. 2002135696

Date of issue :-

Issued from :- G.P.O. Guwahati,

Payable at: Guwahati.

XI. DETAILS OF INDEX:-

An index showing the particulars of documents are enclosed.

XII. LIST OF ENCLOSURES:-

As per index.

VERIFICATION

I, Shri Rahul Gosain, son of Shri Jatindar Bal
aged about _____ years, presently working as Senior
Divisional Mechanical Engineer at Rangiya in the district
of Kamrup (Assam) and I do hereby solemnly affirm and
verify the statements made in this application as follows:-

1. That I am the applicant in the above application
and as such, I am acquainted with the facts and circum-
stances of this case.
2. That I am fully competent to verify this application
and I do verify this application as true to my knowledge
and belief and I have not suppressed any material facts.

AND

I sign this Verification on this the 10th day
of ^{Jan} ~~December~~, 2004 at Guwahati.

Rahul Gosain
DECLARANT

Place:-

Date :-

- 20 -

- 19 -

Annexure- 1.

Northern Railway

Headquarters office
Baroda House, New Delhi.

No.103-G/5/Allet/Sr.Jr/2001

Dated 30.10.2002

Sub: Allotment of House No 251/1B (Type-IV),
P.K. Road, New Delhi.

Northern Railway house No, 251/1B, Type-IV, PK Road, New Delhi
is allowed to Sri Rahul Gossain, SME/P for residential
purposes on turn.

Note:- It is clarified that Rly. accommodation allotted
to you is meant only for your bona fide use and
not be used for any purpose other than residence.
Any violation in this respect would result in
cancellation of allotment of the accommodation besides
besides initiation of disciplinary action under
Railway Servants (D & A) Rules.

Sd/-

(S.P. Sawhaney)
A.D.G.M.
Northern Railway

Copy for information and necessary action to:

1. DSE/Estate/Delhi, DRM Office, State Entry Road,
New Delhi.
2. Sr. DEE/G, Delhi DRM Office, State Entry Road,
New Delhi.
3. Sr. DSTE/Delhi DRM Office, State Entry Road, New Delhi.
4. FA & CAO/EO
5. Dy CAO/G
6. DY CPOSS/N. Rly.
7. IOW/Estate/DRM office, State Entry Road, New Delhi
8. DEN/Estate/DRM Office, State Entry Road, New Delhi.
9. Sr. Section Engg/ PK Road, New Delhi.

*Certified to be true
copy
Ali Mustafa Ahmed,
Secy.*

-21-

-20-

10. Sr. Section Engg/Works, N.Rly, PK Road, New Delhi.
11. Sh. Sh Rahul Gossai, SME/P is requested to kindly convey acceptance of the allotment within 3 days and take the possession of the flat within 8 days failing which the allotment will be treated as cancelled. You are also requested to kindly advise the exact date of taking the possession of the flat to this office.
12. General Secretary, NROA, Headquarters office, Baroda House, New Delhi.
13. General Secretary, NRPOA, Headquarters office, Baroda House, New Delhi.

Sd/-

Office Seal

Certified to be true copy
Ali Mustafa Ahmed, Adv.

Annexure - 2
NORTHERN RAILWAY

31

No. 727E/1636/EIA.

The Secretary,
Railway Board,
Rail Bhawan,
New Delhi.

Headquarters Office,
Baroda House, New Delhi.

Dated: 17-12-2002

Sub: Grant of Study leave for a period of six months.

Ref: (i) Rly Board's letter No. E(O) III/98/AE/153
dt 26-10-1999 and

(ii) Rly Board's letter No. E(O) III-2002/TR/164
dt 24-5-2002.

Shri Rahul Gosain while working on N.F. Rly. was transferred to N.Rly for a period of three years by Rly Board vide their letter referred to (i) above. Subsequently also Railway Board vide their letter No. referred to (ii) above communicated their decision that N.Rly should relieve Shri Rahul Gosain on completion of three years for repatriation on N.F.Rly under advice to them.

In pursuance to Rly Board's above letters, transfer/posting orders of the Sh Rahul Gosain have been issued by this office under Notice No. 940E/17-XXXX/EIA dt 4-12-2002. However Sh. Rahul Gosain has made a request to the grant of six months study leave to complete his MBA (part time) from the Faculty of Management Studies, Delhi University, for which he sought for and was granted permission by the Rly Administration.

In connection with permission for executing MBA (part time) from faculty of Management Studies of Delhi University, it is submitted that the permission to Sh Rahul Gosain was granted only after obtaining an undertaking from the officer that he will not use the permission for executing MBA (part time) as an immunity for transfer from Delhi and will not create any hindrance of his official duty. It is also pertinent here to mention that Sh Rahul Gosain has submitted several other applications for deputation, British Chovening Gurukul Scholarship etc in the month of November 2002.

Further powers for granting study leave within India are vested with General Manager. Accordingly case was put up to him explaining the full facts of the case for his decision. GM has desired that case be referred to Rly Board for their approval to grant further 6 month study leave to Sh Gosain beyond 06-12-2002, as he has completed his three years on N.Rly on 06-12-02.

In view of facts and circumstances explained above, Board are requested to communicate their decision.

G.M.'s app'l. dt 17/12/02

Submitted for Signature

(Pranila H. Bhargava)
for General Manager.

Dy CEO/6

Certified to be true copy
Ali Mustafa Ahmed, Adv.

Annexure - 2 (A)

45610

चिकित्सा विभाग-7/आई.ओ.एच.सी./2004
MoU C-7/IGHC/2004

उत्तर रेलवे/NORTHERN RAILWAY

चिकित्सा विभाग/MEDICAL DEPARTMENT

पृष्ठ सं. / No.

राजपत्रित अधिकारियों के लिए चिकित्सा प्रमाण-पत्र
CERTIFICATE OF FITNESS TO RETURN OF DUTY FOR
GAZETTED OFFICERS

मैं, डॉ.

यहाँ तहत आज करने के बाद यह प्रमाणित करता हूँ कि श्री/...

श्री/मै: विभाग ने घोषणा की है स्वास्थ्य लाभ कर लिया है। और अब इसकी पर्याप्तता होने से इसे जारी है।

I, Dr. Pankaj Kapoor

do hereby certify that
I have carefully examined Shri. Rahul G. S. Sin, S.M.E./B.H. Indpls.(The ... Branch/Department and find that he/she has recovered from his/her
illness and is now fit to resume duties in Railway Service with effect from 28/10/03 (FN)मैं, यह भी प्रमाणित करता हूँ कि छुट्टी लेने के लिये/या बढ़ाने के लिये सभी मूल प्रमाण-पत्र मुझे दिखा दिये हैं।
I also certify that/the original certificate (s) on which leave was granted or extended
was/were produced before me.

हस्ताक्षर के हस्ताक्षर/Signature of the Doctor

दिनांक/Dated.. 28/10/03

स्थान : नई दिल्ली
Place New Delhiस्थान : नई दिल्ली
N. Rly., New Delhi.Certified to be true copy
At: Mustafa Ahmed, Adv.

- 21 -

Annexure- 2(B)

MINISTRY OF RAILWAY
(RAILWAY BOARD)

No.E(G)2001 BR.1-9 Dated 28.6 2002

The General Managers,
All Indian Railways &
Production Units.

Sub:-Retention of Railway quarter at the
previous place of posting by Railway
employees posted to Northeast Frontier
Railway.

Instructions have been issued from time to time
regarding grant of permission for retention of Railway
Accommodation on payment of normal rent at the previous
place of posting in ~~previous~~ favour of officers
posted to N.F. Rly. The existing instructions issued vide
No.E(G) 98 QR.1-17 dated 17.11.99 were valid up to
30.6.2002. The question of further extension of this
facility beyond 30.6.2002 has been considered and it
has now been decided to extend these instructions for a
period of 3 years up to 30.6.2005 or till revised orders
are issued whichever is earlier.

*Certified to be
true copy
At Mustafa Ahmed
Adv.*

Since the retention of quarter at the previous
place of posting in favour of the officers who have been
transferred and posted to N.F Railway is allowed for
bona fide use of the dependent family of transferred railway
officer, he/she will furnish certificate on 1st July and
1st January of every year, stating that his/her dependent
family members are actually residing in the railway
quarter at the last station of his/her posting. Such

- 25 -

a certificate will also have to be furnished at the time of seeking retention.

If no such certificate is received by 31st January and 31st July every year respectively, the quarter controlling authority may cancel the allotment of the quarter in question.

The request for retention of entitled accommodation should be received within a period of one month from the date of relinquishing of charge at the last station of posting.

This issues with the concurrence of Finance Director of the Ministry of Railways.

Sd/-
(Ravinder Pandey)
Desk Officer Estt. (Genl)

No. E(S) 2002QR1- 9 New Delhi dtd. 28.6.2002.

Copy forwarded to:-

1. FA & CAO, All Indian Railways and Production Units.
2. Joint Director (Finance) RDSO, Lucknow.
3. General Secretary, IRCA, New Delhi.

Sd/-
(Ravinder Pandey)
Desk Officer Estt. (Genl)

No. E(G).2002/QR 1-9 New Delhi dtd. 28.6.2002

Copy to DAI(Railways) with 46 spares)

Sd/-
For Financial Commissioner/Rlys.

No. E(G).2002 QR 1-9 New Delhi dtd. 28.6.2002

Copy(with 35 spares forwarded to:-

- 26 -

1. The General Secretary, AIRF, 4, State Entry Road, New Delhi.
2. The General Secretary, NFIR, 3, Chelmsford Road, New Delhi
3. The General Secretary, IRPOF.
4. All Members of the National Council/Department Council and Secretary, Staff Side, 13-C, Ferroseshah Road, New Delhi
5. The General Secretary, FROA, New Delhi.
6. The Secretary General, RPF, Association, Room No. 549 Rail Bhawan, New Delhi.

Sd/-
For Secretary, Railway Board.

Copy to:-

P.Ss to :- CRB, IC, MS, AM(S) EDE and EDLM.
F(X) IIF(X) 1 with 10 spapres, G(ACC) LM(B), Sec(E)
E(NG) I, E(NG) II, E(Rep) 1, II, III, E(LR) 1 Branches of
Railway Board.

Certified to be true
Ali Mostafa Ahmed, Adv.

31

- 27 -
~~27~~
Annexure- 3

A.D.G.M., Northern Railway
N.R. Hqrs. Office,
Baroda House, New Delhi.

Sub:- Retention of House.

I have been allotted Type- IV House No. 251-1B at Railway Officers Enclave, P.K. Road in December, 2002 and subsequently orders for my transfer to N.F. Rly. were issued vide NR Hqrs. O.O. No. 2002/ I R.S.M.E/166 dtd. 16.12.2002 (a copy of the above orders is also being enclosed). Thus, I may please be allowed to retain the above accommodation as per extant rules.

Encl- As above.

Yours Sincerely
Sd/- Rahul Gosain

*Certified to be true copy
Ali Moshfiq Ahmed, Adv.*

32

- 28 -

- 25 -

Annexure- 4

NORTHERN RAILWAY

Registered
No. 159.EQ/7 262/2003
dtd. 12.11.2003

DRM's Office, New Delhi

FINAL NOTICE

To

Shri Rahul Gosain,
OFFICER RLY COLONY, Flat No. 251/1B
at P.K.Road, N. Rly- 110001

Sub: Unauthorised occupation of Railway Bungalow /
Flat/Quarter No. 251/ 1B at PK Road. by Shri
Rahul Gosain.

You were required to vacate the above Bungalow
Flat/quarter No. 251/ 1B on 17.12.2002 according to the
provisions of extant rules of allotment of residential
accommodation on account of your having been transferred
gone on deputation/retired/termination of Mutual
exchange/ resigned on 17.12.2002 but you failed to do so.
The tenancy of the said Bungalow /Flat/ quarter stands
cancelled w.e.f. 18.12.2002.

Please vacate the above mentioned Railway
Bungalow/Flat/ quarter within 10 days from the date of
issue of this notice. failing which Eviction proceeding
under public premises Eviction Act, 1971 will be started
against you. Damages charges as noted below are also
recoverable from you w.e.f. 18.12.2002.

1. Penal rent of Type IV @ Rs 114/- per
2. Water Charges Rs. 56 per month.
3. Conservancy charges Rs. 10/- per month.
4. Lawn maintenance charge @ Rs. 0.88 paise per sqm for x
sq. m per month.
5. Electrical charges etc. @ be advised by EFO(P).

*Authenticated to be
true copy
Shri Mohan Singh
Adv.*

37

- 29 -

- 26 -

Northern Railway

Please also note that after expiry of this notice period Electric & Water supply will also be disconnected from the Railway premises in question if the Railway premises is not vacated.

The standard rent of the flat is Rs.230/ w.e.f. 1.7.99 and Rs.292/- w.e.f. 9.4.01

Sd/-
Divl Supdtg Engineer/Estate
Northern Railway, New Delhi.

Copy to the following for information and necessary action.

1. GM(S)N Railway, B. House, New Delhi in ref to his letter No. 1036 13/Retn/42/03/R. Gosain dtd. 27.8.2003 for information.
2. FA& GAO/N. Railway, B House, NDLS. The above noted Charges from the above named accoupanant w.e.f. may be recovered.
3. Dy CPO(G2) N Rly, B.house, NDLS
4. Sr. DAO/N. Rly, NDLS
5. DPO/(Bills) N Rly, NDLS.
6. EFO(:P) N Rly Paharganj NDS- 110055.
7. Pay and Accounts officer, Rly Board, Rly Bhawan, New Delhi.
8. Cash- 1 Branch, Railway Board, NDLS
9. Secretary, Railway Board, ND LS in ref. to their letter No. Dtd.

Certified to be

true copy

Ali Mostafa Ahmed, Adv.

-30-
~~24~~

Date : 25/11/2003
34

ANNEXURE-5

The

Divl. Suptg. Engineer/Estate.
Northern Railway
New Dehi

Subject: Unauthorised occupation of Railway Flat No. 251/1B Type IV at P.K. Road by Sh. Rahul Gosain.

Ref.: Your Notice No. 150EO/7-2620/2003 dated 12-11-03.

With reference to the above notice dtd. 12/11/2003 (Received by us on 24th Nov.03) asking us to vacate the said flat and pay penal rent, we wish to state that Sh. Rahul Gosain has been relieved from Northern Railway & joined N.F. Railways on 14-11-2003 as per letter No. 36/2003(MECH) copy enclosed in Landing Division. Further we the parents of Sh. Rahul Gosain are currently in need of the said flat as we are residing in it. Also the request for retention has been forwarded under Regd. Letter No. SME(P) Reply to notice dated 14/11/2003 under the extant rules vide letter No. E(G)2002-QR1-9 we are entitled to retain the said flat. Kindly make arrangements to regularise our retention of the said premises.

There is no such distinction between officers re-transferred to N.F. Railway & those originally posted there as mentioned in your letter E(G)2002-QR1-9.

Therefore kindly arrange to do the needful we are willing to provide any information and co-operate in any manner to claim the entitlement under extant rules as applicable to officers posted to North Frontier Railways.

IT is urged that the concerned authorities may not proceed any eviction proceedings prejudicial to the interest of the dependent family members in violation of the rules. In the event of failure to do so, the applicant / dependent family members may be compelled to take recourse to any remedy available to them.

Yours sincerely,

Jatinder Bal

JATINDER BAL
F/o. Sh. Rahul Gosain
DME-I/C
Landing
N.F. Railways

Certified to be
true copy
Atk. Mustafa Ahmad, Adv.

Kind attention Mr Jaiendra Bal,

N F RAILWAY ERNY DIV, UNIT 73-426 * PAY BILL FOR		MAY 2004 * I.DUE -- DEDUCTIONS CONTD -- I.DUE DEPT MECHANCL SRL NO 3	
RAHUL GOSAIN	BASIC PAY 10650.00	PF 1331.00	GROSS PAY * 22326.00
DESIGN * SR/DME	DEARNESS-PAY 5325.00	PROF-TAX 205.00	
	DA 1757.00	GIS 120.00	TOT.DEDNS* 16999.00
IND NO 405883386-NC	ARR SPL DUTY 1997.00	ARR/PHL RENT 3264.00 59	
	SCA 200.00	P/TAX/ARREAR 205.00 98	NET PAY * 5327.00
DUTY DAYS 31 LEAVE 00	SPL DUTY ALL 1997.00	RENT 11874.00 98	
	CONV HIRE 400.00		
LAP LHAP LUP ADS LND			
DB	-	-	-
DB	-	-	-
DB	-	-	-
DB	-	-	-

B/F GRS: \$62,233.00

B/F DED: \$25,451.00

B/F NET: \$36,782.00

Certified to be true copy
At: Mustafa Ali, Ali.

Confidential

N.F.Railway.

Office of the
Divl. Rly. Manager (P),
Rangiya

No. E/Q/Gaz/34/RN/LPC

Dt: 14-05-04

18

To,

Shri Rahul Gosain,
Sr. DME/RNY.Sub:--Recovery of damage rent against Railway
Quarter No. 251/I-B, P.K. Road, New Delhi.Ref:--SDGM/Northern Railway's D.O. No. 103-G/13/
Retn/42/03/Shri Rahul Gosain dated 06-04-2004.

SDGM/Northern Railway vide his DO letter referred above informed that you are unauthorizedly occupying Railway Qrs. No. 251/I-B, P.K. Road, New Delhi since 17-12-2002 and therefore liable to pay damage rent @ Rs. 11874.24 P.M. and eviction proceedings have also been started against you.

Total damage rent already accumulated w.o.f. 17-12-02 to 30-04-04 as per above information is Rs. 1,95,733.44 (Rupees One lakh Ninety five thousand Seven hundred thirty three & Paise forty four) only. It will be recovered from your salary in equal instalments as per extant rules, in addition to the current damage rent till your vacation of the quarter.

This is for your kind information and necessary action.

for DIM(P)/RNY

Copy for information and necessary action to :-

1. Shri S.K. Budhalakati, Sr. DGM/Northern Railway Board House, New Delhi in reference to D.O. No. 103-G/13/Retn/42/03/ Sh. Rahul Gosain.
2. DRM/RNY for kind information.

for DIM(P)/RNY.

For Divisional Railway Manager

g=

N. F. Railway.

Certified to be
true copy
At Masthead Road, Adm.

1 1 APR 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

IN THE MATTER OF

O.A.10/2005.

Shri Rahul Gosain

...

Applicant

Versus

Union of India represented by
the General Manager, N.F. Railway
and Others

Respondents.

AND

IN THE MATTER OF

Written Statement on behalf of the Respondents

The answering respondents respectfully SHEWETH :

1. That the answering respondents have gone through the copy of the application filed and have understood the contents thereof. Save and except the statements which have been specifically admitted hereinbelow or those which are borne on records all other averments/allegations as made in the application are hereby emphatically denied and the applicant is put to the strictest proof thereof.

2. That for the sake of brevity meticulous denial of each and every allegation/statement made in the application has been avoided. However, the answering respondents have confined their replies to those points/allegations/averments of the application which are found relevant for enabling a proper decision on the matter.

3. That the answering respondents beg to humbly submit that the application is barred by RES JUDICATA since the matter under dispute submitted by the same party on the same issues has been conclusively dealt with by the learned Additional District Judge, Tis Hazari Court, New Delhi in Appeal case No. PPA:34/04 under Section 9 of the Public Premises (Eviction of Unauthorised Occupation) Act, 1971 vide order dated 31.05.2004. The appeal was filed by the present applicant against order of the Estate Officer, Northern Railway, New Delhi issued ~~xxx~~ on 27.04.2004 in case No. 2100/DLI/PPEA/HQ/2000.

A copy of the order dated 27.04.2004 by the Estate Officer, Northern Railway is annexed herewith as ANNEXURE A.

A copy of the judgment of the learned Addl. District Judge, Tis Hazari Court, New Delhi, dated 31.05.2004 is annexed herewith and marked as ANNEXURE B.

Filed by
Dr. M. C. Sarma
Ry. Advocate.

37
Dr. Chandra Kumar Singh
Chief Personnel Officer
N.F. Railway, Maligaon
Guwahati-11

(2)

It is submitted with due respect that in case the applicant desired to appeal against the order of the learned Additional District Judge, Tis Hazari Court, New Delhi, the same should have been directed at an appropriate Civil Court at New Delhi or at the Hon'ble Delhi High Court for the next legal remedy.

It is therefore prayed that the application under consideration be dismissed at the threshold as having been filed at the wrong Forum and due to the failure of the applicant to approach the proper Court of Law.

4. That the application suffers from want of a valid cause of action as will be clear from the submissions made in the relevant paragraphs below.

4.1. That the application suffers from wrong representation and lack of understanding of the circumstances and facts relating to the matter on hand as will be clear from the submissions made hereinbelow.

5. Facts of the case:

5.1. Shri Rahul Gosain, Junior scale officer of the Indian Railway Service of Mechanical Engineers, who was posted in N.F. Railway with headquarters at Maligaon, Guwahati and whose condition of service included service in N.F. Railway for at least ten years, was transferred to Northern Railway, Delhi vide Railway Board's wireless message No. E(0)III.98/AE/153 dated 26.10.99. He was posted in Delhi Division of Northern Railway as C.D.O., Delhi and was allotted house No. 251/1-B in P.K. Road on 30.10.2002 on his turn.

5.2. Railway Board's wireless dated 26.10.99 clearly stated that Shri Gosain was transferred to Northern Railway "For a period of three years". Therefore, on completion of three years, Shri Gosain was transferred back to N.F. Railway vide General Manager, Northern Railway's letter No. 940-E/17XXXXX/Eia dated 04.12.2002.

A copy of the wireless dated 26.10.99 is annexed herewith and marked as ANNEXURE C.

5.3. Shri Rahul Gosain, instead of handing over charge of SME/P/HQ, requested for grant of study leave, which was not acceded to by the Railway Board as he was doing a part time course. His request for leave was rejected because as per rules the Railway to which the Officer is transferred is competent to sanction such leave. As he had not formally

.... P. 3.....

38
By: *[Signature]*
N.F. Railway, Maligaon, Guwahati-781001

relinquished the charge and worked as SME/P till 16.12.2002 he was deemed to be relieved from 16.12.2002 vide General Manager, Northern Railways letter No.727-E/1636/E1A dated 7.11.2003.

A copy of this letter dated 7.11.2003 is annexed herewith and marked as ANNEXURE C(i)

5.4. Shri Rahul Gosain made a request for retention of the house occupied by him at Delhi on the basis of his transfer to N.F. Railway on 15.07.2003. As he was not eligible to retain the house on the basis of his re-transfer to N.F. Railway, his parent Railway, on completion of his three-year tenure in Northern Railway, he was declared unauthorised occupant of the house with effect from 17.12.2002 and advised to vacate the house vide General Manager, Northern Railway's letter No.103-G/13/Retn/42/03/Sh. Rahul Gosain dated 27.8.2003.

A copy of this letter dated 27.8.2003 is annexed herewith and marked as ANNEXURE D.

5.5. On Shri Rahul Gosain's request the Railway Board was asked to clarify if he was eligible for retention of ~~the~~ the quarter on par with others transferred to N.F. Railway. Vide their letter No.E(G)2003 RN3-23 dated 16.3.2004, the Railway Board clarified that "Shri Rahul Gosain, IRSME is not entitled to retain Railway quarter at New Delhi, as applicable in the case of transfer to N.F. Railway, for he was required to serve on N.F. Railway for a period of 10 years w.e.f. 24.3.96 as per extant instructions and was transferred to Northern Railway for a limited period of three years in relaxation of rules, on his own request to facilitate him to take treatment at AIIMS."

A copy of this letter dated 16.3.2004 is annexed herewith and marked as ANNEXURE E.

5.6. Eviction proceedings were initiated against Shri Gosain and his father represented him in the same on 6.1.2004 and 11.1.2004. After following the required legal procedures and affording due opportunities to all parties the Estate Officer, Northern Railway passed judgment declaring Shri Gosain as unauthorised occupant of the house and passed order for his eviction on 27.04.04. A copy of this judgment has been placed as ANNEXURE A to this W.S.

5.7. Not being satisfied with the said order of the Estate Officer, Northern Railway, Shri Rahul Gosain filed an appeal in the Court of the Additional District Judge, Tis Hazari Court, New Delhi, who dismissed the appeal. A copy of this judgment is placed as ANNEXURE B to this W.S.

5.8. Shri Rahul Gosain vacated the house No.251/1-B at New Delhi on 19.07.2004 and he was asked to deposit the damage rent of the house for the unauthorised period with effect from 18.12.2002 to 18.07.2004 @ Rs.11,940/24 per month.

6. Parawise comments

6.1 As regards paragraphs IV.1 and IV.2, the answering respondents have no remarks to offer except to state the the applicant is put to strict proof of his statements.

6.2. As regards paragraph IV.3, the answering respondents beg to state that the Railway Board did not grant any study leave to the applicant and, therefore he should have carried out his transfer to N.F. Railway after he came to know of the refusal. General Manager, Northern Railway, Delhi made it clear vide his letter No.103-G/13/Retn/42/03/Sh. Rahul Gosain, dated 27.08.2003 (Annexure D of this W.S.) that the applicant cannot be allowed to retain his quarter at Delhi. ~~xx~~ He was further advised that he was an unauthorised occupant of his quarter with effect from 17.12.2002 and was liable to pay damage rent for the entire period of unauthorised occupation.

6.3. As regards paragraphs IV.4 and IV.5, the answering respondents beg to state that instead of handing over charge of the post held by him at Delhi, the applicant applied for study leave which was not acceded to by the Railway Board. His further request for leave was rejected because as per rules the authority competent to grant such leave is the Railway to which the officer is transferred. The applicant was therefore advised that he was deemed to have been relieved from 16.12.2002 vide letter No.727-E/1636/EiA dated 7.11.2003 (ANNEXURE C.I).

6.4. As regards paragraph IV.6, the answering respondents beg to state that as the applicant failed to carry out his transfer to N.F. Railway as per order dated 4.12.2002 he was considered relieved from Northern Railway with effect from 16.12.2002 as indicated above. As regards his family members the applicant was expected to take care of the problem after release from Northern Railway.

6.5. As regards paragraphs IV.7 and IV.8, the answering respondents beg to state that the circular dated 28.06.2002 referred to by the applicant is not applicable in his case. The circular in question applied to officers of other zonal Railways posted to N.F. Railway whereas the applicant is an Officer posted originally in the cadre of the N.F. Railway, but temporarily transferred for a limited period of three years from N.F. Railway to Northern Railway at his own request. Therefore, when he was transferred back to his original Railway, namely N.F. Railway, the right to retain accommodation at Delhi

Pradeep Kumar Singh
Dy. Chief Personnel Officer/32
Northern Railway, Maligaon

at normal rent is not available to him. In this connection the ANNEXURE E referred to in paragraph 5.5 above provides Railway Board's clarification conclusively.

6.6. As regards paragraphs IV.9, IV.10, IV.11 and IV.12, the answering respondents beg to state that it was expected of the applicant to get a proper clarification on the matter of occupation of the accommodation at Delhi without authority and as he failed to vacate the quarter in time he was accountable for non-vacation of his quarter. The applicant requested for retention of his quarter only on 15.7.2003 although his transfer order was issued on 4.12.2002.

A copy of his application dated 15.7.2003 is annexed herewith and marked ANNEXURE F.

6.7. As Shri Gosain was not eligible to retain his accommodation at Delhi on the basis of his transfer to N.F. Railway, he was declared an unauthorised occupant with effect from 17.12.2002 and advised to vacate the house vide General Manager, Northern Railway's letter No.103-G/13/Retn/42/03/Sh. Rahul Gosain dated 27.8.2003.

A copy of this letter dated 27.8.2003 is annexed herewith as ANNEXURE G.

6.8 As regards paragraphs IV.13 and IV.14, the answering respondents beg to state and deny that the applicant was not advised about his unauthorised occupation prior to issue of letter dated 24.11.2003. As a responsible gazetted officer, the applicant should have been aware of the risk of unauthorised occupation when he did not vacate the quarter after his transfer to N.F. Railway in December, 2002 and of other consequences such as risk of damage rent and other penal action.

6.9. As regards paragraphs IV.15, IV.16 and IV.17, the answering respondents beg to state that the deduction of penal rent was proceeded with as per rule and as per communication to the applicant vide letter No.E/Q/Gaz/34/RN/LPC dated 18.05.04 from DRM, Rangiya and letter No.159-EO/07/2620/2003 dated 17.8.2004 from Senior Divisional Engineer, Northern Railway, New Delhi.

A copy each of the letter dated 18.05.04 and 17.08.04 is annexed as ANNEXURE H AND ANNEXURE I respectively.

6.10. The applicant's assertion that he was not issued any reasoned notice is based on falsehood as he was clearly advised vide letter dated 28.8.2003 (ANNEXURE G) that he was liable to pay damage rent from 17.12.2002 on account of his unauthorised occupation of his quarters. His father had also written to the Divisional Superintending Engineer/Estates

Dy. Secy. (Personnel) Officer
 N.F. Railway, Delhi

New Delhi on 25.11.2003 in response to eviction notice dated ~~25.11.2003~~ 12.11.2003 threatening legal action on the eviction notice (Annexure 5 of O.A.)

Moreover, the applicant had faced proceedings under Section 4 and 7 of Public Premises (Eviction of unauthorised Occupants) Act, 1971 in case No. 2100/Dli/PPEA/110/2003. In these proceedings the applicant was represented by his father on 6.1.2004 and the judgment of the Estate Officer was delivered on 27.4.2004 ordering recovery of Rs. 11,940/24 paise per month plus other charges as dues for unauthorised occupation. (ANNEXURE A of this W.S.)

Secondly the applicant himself went on appeal to the Additional District Judge, Tis Hazari Court, New Delhi against the order of the Estate Officer dated 27.4.2004 and his appeal was dismissed on 31.5.2004 as already indicated vide ANNEXURE B of this W.S.

It is therefore clear that the applicant's insinuation that he was innocent and unaware of his wrong action until the start of the recovery process cannot be accepted and can be clearly termed as afterthought. There was therefore no question of any hint of denial of natural justice in the matter.

6.11. As regards paragraphs IV.18 to IV.23, the ~~XXXXX~~-answering respondents submit that the applicant was provided with adequate opportunity to defend himself in the eviction proceedings started by the Estate Officer and the learned Additional District Judge, New Delhi. He was also clearly advised sufficiently in advance about the proposed recovery of the dues on account of unauthorised occupation of the house by him by various communications such as the notice dated 12.11.2003 referred to by the applicant himself in Annexure 5 of the O.A. and vide letter dated 27.8.2003 indicated in ANNEXURE G of this W.S. The answering respondents fail to understand as to what more notice need be issued to the applicant for recovery of dues from him as per rule.

6.12. As regards paragraphs IV.24 to IV.26 the answering respondents beg to reiterate that in the case of the applicant, who was borne on the cadre of the N.F. Railway the general rule of retention of quarter in the previous place of posting at normal rent did not apply and, as he did not vacate his accommodation on his retransfer to N.F. Railway, he was considered unauthorised occupant of the quarter at Delhi after his deemed date of release on transfer to N.F. Railway on and from 17.12.2002. It was considered that sufficient opportunity was given to the applicant to save himself from financial losses by sending him various communications referred to above.

Pradeep Kumar Singh
Joint Personnel Officer
N.F. Railway, Maligaon

6.13. As regards paragraphs IV.28 and IV.29, the answering respondents beg to submit that penal rent/damage rent was charged only upto the time of unauthorised occupation of the New Delhi quarter by the applicant. The recoveries were as per railway rules and as per law.

Under the circumstances, the answering respondents beg to state that the O.A. be dismissed as having been filed at the wrong Forum, the proper Forum, in view of the judgment of the Learned Civil Judge, Tis Hazari Court, Delhi, being a higher Civil Court.

The answering respondents also submit that the averments/allegations of the applicant regarding wrongful deductions of penal/damage rent is not sustainable on facts of the case stated in detail in this W.S. and that therefore the case be dismissed for want of any cause of action and without merit.

And for this act of kindness as in duty bound the answering respondents shall ever pray.

(8)

VERIFICATION.

I, Shri PRADEEP KUMAR SINGH, son of
SHRI BHUP LAL SINGH, at present working
as Dy CPO / Gaz, N.F. Railway, Maligaon, do hereby
verify and solemnly affirm that the statements made in
paragraphs 1 to 6 are true to the best of my knowledge
and information derived from records which I believe to
be true and the rest are my humble submissions before
the Hon'ble Tribunal.

And I sign this verification on this the 7th day
of April, 2005.

✓
Pradeep Kumar Singh
Signature

Dy CPO / Gaz
Designation.

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

Northern Railway

Speed post

Headquarter's Office,
Baroda House, New Delhi.
Dated: 27.4.2004.

Case No. 2100/DLI/PT/CA/11Q/2000.

FORM 'B'

Order Under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

Whereas, I, the undersigned, am satisfied for the reasons recorded below that:

Shri Rahul Gosain,
Ply. Flat No. 251/1-B,
Punchkuain Road, New Delhi.

2. Shri Rahul Gosain,
Sr. Divl. Mech. Engineer RNY,
Rangiya, N. R. Rly., At & P. O. Rangiya,
Distt. Kamrup, Assam-781354.

is in unauthorised occupation of the Public Premises specified in the Schedule below:

REASONS:

As shown in Judgement.

Now, therefore, in exercise of powers conferred on me under Sub - Section (1) of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act of 1971, I, hereby order that the said Shri Rahul Gosain and all persons who may be in occupation of the said premises or in any part thereof to vacate the said premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above, the said Shri Rahul Gosain and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

SCHEDULE:

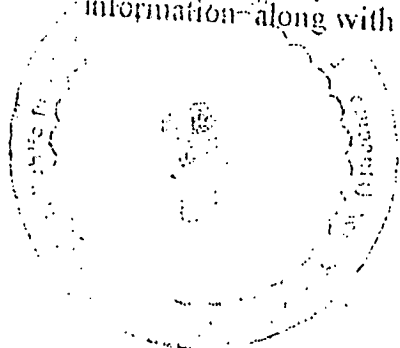
"Away Flat No. 251/1-B, Punchkuain Road, New Delhi (IV).

DA/One Judgement.

Pramila
27/04/04

(Pramila H. Bhargava),
Estate Officer

Copy to: The Divl. Supdtg. Engineer T. N. Rly., DRMs Office, New Delhi for information along with Judgement.



Speed post

Northern Railway

Headquarter's Office
Baroda House, New Delhi.
Dated: 27.4.2004.

Case No. 2100/DLI/PPEA/IIQ/2003.

FORM 'C'

Order under Sub-section (2) and (2A) of Section-7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

To,

Shri Rahul Gosain,
Rly. Flat No. 251-B,
Punchkuain Road, New Delhi.2. Shri-Rahul Gosain,
Sr. Divl. Mech. Engineer RNY,
Rangiya, N.E.Rly., Al P.O. Rangiya,
Distt: Kamrup, Assam 781351.

Whereas, I, the undersigned, am satisfied that you are in unauthorised occupation of public premises mentioned in the Schedule below:

And whereas by a written notice dated 11.12.2003 you were called upon to show cause on or before 6.1.2004 why an order requiring you to pay damages prevailing for the period from 18.12.2002 to till vacation along with the other charges simple interest for unauthorised use and occupation of the such premises as due should not be made.

And, whereas, I have considered the evidence produced before me.

The objections raised by you have been duly considered.

Now, therefore, in exercise of the powers conferred on me by sub-section (2) of Section-7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, hereby order you to pay @ Rs. 11,940.21 ps p.m. along with other charges as due on account of your unauthorised occupation of the premises w.e.f. 18.12.2002 to till vacation.

In exercise of the powers conferred by Sub-Section (2A) of Section 7 of the said Act, I also hereby require you to pay simple interest @ Rs. 7% per annum on the above sum w.e.f. 27.4.2004 till its balance payment.

In the event of your refusal or failure to pay the damages or any installment thereof within the said period or in the manner aforesaid, the amount will be recovered as an arrear of land revenue.

SCHEDULE:

Railway Flat No. 251-B, Punchkuain Road, New Delhi.

(Pramila H. Bhargava)
Estate Officer

Copy to:- The Divl. Supdtg. Engineer Estate, Northern Railway, DRMs Office, New Delhi for information and necessary action.

- 11 -

(65) 51/10
47

Before Smt. Pramila H. Bhargava, Estate Officer, Northern Railway, Headquarter's Office, Baroda House, New Delhi.

CASE NO: 2100/DLI/PPEA/110/2003.

Union of India through
Divl. Supdtg. Engineer/Estate,
N.Rly., DRMs Office,
New Delhi.

Applicant

Versus

Shri Rahul Gosain,
Rly. Flat No. 251/1-B,
Punchkuain Road, New Delhi.

2. Sr.DME, N.F.Rly.,
Rangiya.

..... Respondent

Proceedings under Sections 4 and 7 of Public Premises (Eviction of Unauthorised) Occupants) Act of 1971.

Judgment

Present application marked Exhibit P-3 has been filed by and on behalf of Union of India through Divl. Supdtg. Engineer-Estate, N. Rly., DRMs Office, New Delhi against the respondent for eviction and recovery of damage charges. It is alleged on behalf of the applicant that the tenancy to occupy the Rly. Flat No.251/1-B, Punchkuain Road, New Delhi (Type-IV) by the respondent had been terminated w.e.f. 18.12.2002 due to his transfer. He was permitted to retain the house up to 17.12.2002. It has also been alleged that the respondent was served with Regd. A.D Notice dated 9.10.2003 and 12.11.2003 (Ex. P-1 and p-2) by DSE Estate, N. Rly., DRMs Office, New Delhi requiring him to vacate the flat within 10 days from the date of issue of notice and damage charges are also recoverable as per rules, but he failed to vacate the premises and to deposit the damage charges.

Show cause notice dated 11.12.2003 on form "A" and "F" under sections 4 (1), 4 (2) and 7 (3) of the Public Premises (Eviction of Unauthorised Occupants) Act of 1971, were served on the respondent calling upon him to appear on 6.1.2004 in person or through his representative as to why eviction order and recovery of damage charges should not be passed.

On 6.1.2004 Shri Ramesh Kumar, Clerk DSE-Estate, N Rly., DRMs Office, Delhi was present on behalf of the applicant. The respondent was represented by his father Shri Jatender Bal. The respondent submitted a detailed representation dt. 11.1.2004.

Contd.....2

-12- (64) 48

In the meanwhile it was made known that Dy. G. M. (G) has already referred the matter to Railway Board vide No. 10304/13 Retn dt. 03 Sh Rahul Gowan dt. 17.12.2003 stating the facts that the respondent was transferred to Northern Railway from N. F. Railway for a period of three years on 26.10.1999. On expiry of 3 years period he was transferred back to N F Rly. on 4.12.2002. The respondent had requested for retention of the house on the grounds as applicable to the officers transferred to N. F. Railway. It was further stated in this letter that his request was not acceded as the respondent had come to N. Railway from N. F. Railway for a specific period of three years. A clarification was sought from Railway Board. The proceedings were held on 20.1.2004, 10.2.2004, 23.3.2004 and 27.4.2004. The statement of Shri M.K. Kamra, was recorded on 27.4.2004. The Railway Board had clarified vide their letter No. E (G) 2003 RN3-23 dt. 16.3.2004 that the respondent is not entitled to retain the Railway accommodation at New Delhi as applicable in the case of transfer to N.F. Railway for the respondent was required to serve on N.F. Railway for a period of ten years w.e.f. 21.3.1996 as per the extant instructions and was transferred to N.Rly., for a limited period of three years in relaxation of rules on his own request to facilitate him to take treatment at AIIMS. The retention of the Rly. accommodation is to be regulated as per instructions governing permanent transfer.

In view of the facts and circumstances the respondent is not entitled to retain the house. Therefore he is in unauthorised occupation of the Railway accommodation w.e.f. 18.12.2002. Sh. M. K. Kamra has stated that the market rent of similar flat in the locality is not less than Rs. 12,500/- p.m. as per his personal knowledge. Sh. Kamra further stated that outstanding Electric charges and other charges are also recoverable from the respondent as due and shall continue to be recoverable till the quarter is vacated. The respondent has not vacated the premises till date leaving no alternative but to decide the case on the available facts and documents as per provisions of the fact.

I have gone through the papers on record, evidence and arguments on behalf of the parties and found that the respondent is in unauthorised occupation of the railway accommodation Flat No. 2511-B, Panchkuain Road, New Delhi w.e.f. 18.12.2002 due to his transfer back to N. F. Railway.

As discussed above, I am satisfied that the disputed property is the public premises as defined under Section 2 (c) of the Public Premises (Eviction of Unauthorised Occupants) Act of 1971, and I hold that the respondent is in unauthorised occupation of the premises in question w.e.f. 18.12.2002 and is liable to be evicted therefrom. He is also liable for payment of damage charges and other charges as due for the unauthorised period from 18.12.2002 to till vacation of the premises.

Therefore in exercise of the powers conferred upon me under Section 5 (1) of the Public Premises (Eviction of Unauthorised Occupants) Act, of 1971, I, do hereby order that the respondent or any other person in unauthorised use and occupation of the premises as mentioned above shall vacate the same within 15 days of the receipt or publication of this order.

Contd.....3

-13-

(62)

49

Therefore, in exercise of the powers conferred upon me under Section 7 (5) of the Public Premises (Eviction of Unauthorised Occupants) Act of 1971, I, do hereby order ~~the~~ the respondent shall pay Rs. 11,940.24 ps p.m. plus other charges including outstanding electric charges, water charges etc. as due for unauthorised occupation for the period from 18.12.2002 to till vacation of the premises

Failing to implement of this order action for recovery of damage charge shall be taken as provided under the said Act, and Rules.

Given under my hand and Seal of this Court on this 27th day of April, 2004.

Pramila H. Bhargava
27/04/04

(Pramila H. Bhargava),
Estate Officer

Court of Sh. BRIJESH SETHI
Additional District Judge
Room No. 149, 1st floor
Tis Hazari Courts, Delhi

(168) S.N.

IN THE COURT OF SHRI BRIJESH SETHI : ADDITIONAL
DISTRICT JUDGE : TIS HAZARI COURTS : DELHI

PPA NO. : 34/04

✓ Shri Rahul Gosain, S/o Shri Jatinder Bal,
Senior Divisional Mechanical Engineer,
Rangia N.P. Railway, Assam

Second Address

Rahul Gosain, S/o Shri Jatinder Bal,
Resident of House No. 251-1B, Railway Officers
Enclave, Panch Kulian Road,
New Delhi.

APPELLANT

Versus

1. Union of India, through Secretary,
Ministry of Railway Board,
1, Raisina Road, New Delhi
2. Smt. Pramila Bhargava,
Estate Officer No. 130,
Baroda House, New Delhi.
3. Divisional Railway Manager (Personnel),
Rangia Division, N.P. Railway, Rangia,
Assam.

RESPONDENTS

APPEAL UNDER SECTION 9 OF THE PUBLIC
PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS)
ACT, 1971

*Office
The file in the
Case of Gosain
and a copy
of the same way
be sent to
Rangia. J
5/6*

-15- 51 S.N. 3011

J U D G E M E N T

This is an appeal against the order of the Estate Officer passed U/s 5 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as PP Act in short) dated 27.04.2004.

The brief facts leading to the present appeal are that appellant is a Central Government employee and was appointed with Ministry of Railways as an Assistant Mechanical Engineer and posted to NF Railway. The parents of the appellant were residing in a rented accommodation in Karol Bagh. The appellant was posted to Delhi on 5.12.1999 and applied for allotment of house. He had thereafter applied for permission to study for MBA in Delhi University. The permission was granted for study by the competent authority on 30.10.2002. The appellant was allotted accommodation bearing no. 251-1B Type IV Panch Kunj Road, New Delhi. The appellant had taken possession of the house but had fallen sick w.e.f. 10.04.2003 and remained under medical treatment from 17.04.2003 to 27.10.2003. Thereafter the appellant was relieved from Delhi and joined NF Railway on 1.11.2003. The appellant is

16- 52 2012
3
still serving in N.F. Railway as Senior Divisional Mechanical Engineer and his parents are residing in the Government accommodation.

The case of the appellant is that proceedings under the PP Act were initiated against him against the rules and regulations governing Railways employees. An order of eviction was passed against him without providing him any opportunity of hearing. As per the Ministry of Finance Order dated 14.12.1983, the appellant is entitled to retain the accommodation in Delhi. The appellant is also entitled to retain the accommodation as per the instructions dated 28.06.2002 issued by the Ministry of Railways. He has, therefore, prayed that eviction order as well as order of damage be set-aside in the interest of justice.

Notice—of—the appeal—was issued to the respondents. They had appeared and filed the Estate officer's record (hereinafter referred to as EO record in short.

I have heard the Id. Counsel for the parties and gone through the record carefully.

-17- 53 30/3

4

The Id. Counsel for the appellant has submitted that that proceedings under the PP Act were initiated against the appellant against the rules and regulations governing Railways employees. An order of eviction was passed against him without providing him any opportunity of hearing. As per the Ministry of Finance Order dated 14.12.1983, the appellant is entitled to retain the accommodation in Delhi. The appellant is also entitled to retain the accommodation as per the instructions dated 28.06.2002 issued by the Ministry of Railways. He has further argued that allotment of accommodation in favour of the appellant was itself illegal. He has further argued that no fair and proper opportunity was granted to the appellant to cross-examine the witnesses. He has therefore, submitted that eviction order as well as order of damages be set-aside in the interest of justice.

The Id. Counsel for the respondent Shri K.D. Sharma has submitted that appellant was not entitled to retain the Govt. accommodation as per rules. He was given a fair and proper opportunity by the Estate Officer. He had put in his appearance through his father as well as his

18
30/4
51

5

advocate and witness was examined in his presence. He had also filed a reply to the show cause notice. It cannot be, therefore, said that proceedings were not conducted in accordance with principles of natural justice.

I have carefully considered the rival contentions and given my thoughts to the matter. The appellant belongs to NF Railway Services and was transferred to Delhi for three years from December, 1999. His term had come to an end on 17.12.2002 and thereafter he was transferred back to NF Railways. Ld. Counsel for the appellant has argued that as per the instructions dated 01.06.2001 issued by Ministry of Railways regarding retention of Railway accommodation, an employee in the event of his transfer can retain the Railway accommodation at former station of posting for a period of two months on payment of normal rent. On request by the employee on educational or sickness ground, the period of retention can be extended for a further period of six months on payment of special licence fee. Further extension can also be granted but only on educational grounds to cover the academic session. He has, therefore, argued that appellant could have retained the premises on educational as well as medical grounds and cancellation of

19
30/5

6

his allotment immediately after the date of his transfer is illegal.

I have perused the above instructions and am of the opinion that the same does not apply to the appellant for the simple reason that he belongs to NF Railway and had come to Delhi for a specific period of three years only. I am further of the opinion that these information do not help the appellant as the word used in the instructions is **may** and not **shall**. It was for the Railway Administration to decide whether to grant appellant a period of two months to retain the quarter or to allow him to continue for another six months on ground of education or sickness. However, in the present case, the Railway had chosen not to exercise the discretion in favour of the appellant for the reason that after his transfer from Delhi, he had not reported to NF Railway. The same is also clear from the correspondence placed on record in EO file. The contention of Id. Counsel therefore, cannot be accepted.

The Id. Counsel for the appellant had next argued that appellant had applied for leave for 110 days from 10.03.2002 upto 10.04.2003 which was duly sanctioned

117

20 - 2 31

7

by the Railway Administration and on the basis of the said leave, the appellant was entitled to retain the quarter. I have perused the EO record. As per the EO record, the leave of the appellant was never sanctioned by the Railway Board and he was, therefore, not entitled to retain the quarter on the said ground. The said fact is also clear from letter dated 13.03.2003 issued by General Manager(Per.) and placed in EO record.

The Id. Counsel for the appellant has next argued that as per the instructions dated 28.06.2002 issued by the Ministry of Railways, the appellant could have retained the quarter at Delhi. As per the said instructions, the retention of quarter at the previous place of posting in favour of the officer who has been transferred and posted to NF Railway is allowed for bonafide use of the dependent family of transferred Railway Officer. The Officer is also required to furnish certificate on 31st January and 31st July of every year stating that his/her dependent family members are actually residing in the Railway quarter.

I have carefully considered the above contention and am of the opinion that the same is of no help to the

51

21 30/1
51

8

appellant. The instructions only apply to those cases where the officer has been transferred to NF Railway and not in such cases where the officer belongs to NF Railway but was transferred to Delhi for a specific period of three years only. The contention of the Id. Counsel for the appellant, therefore, cannot be accepted.

The Id. Counsel for the appellant has next relied upon the Office Memorandum issued by Ministry of Finance bearing no. 20014/3/83-E.IV dated 14.12.1983 regarding various allowances and facilities admissible to Civilian Central Government Employees serving in the states of Assam, Meghalaya, Mizoram etc. The said office memorandum has been quoted in the judgement reported as **S.S. Sharma, IAS Vs. Directorate of Estates, 109(2004) DLT 580**. He has argued that as per the office memorandum, the appellant is also entitled to retain accommodation at Delhi.

I have perused the said judgement of the Hon'ble High Court. Vide the said judgment, the Hon'ble High Court had dismissed the writ petition filed against the judgement of this court vide which this court had held that

22

30/8

petitioner is not entitled to have the benefit of office memorandum as he was not a Civilian Central Government Employee.

I have carefully perused the office memorandum quoted in the above judgment and am of the opinion that the same also does not apply to the case of the appellant because of the reason that he is an employee of Ministry of Railways and not a Civilian Central Government Employee. I am further of the opinion that it does not apply to the appellant for the reason that it comes into operation only when an employee is transferred to NE States. This is not the case of the appellant. The appellant in fact was an employee of NE Railway and was never an employee of Northern Railway. He was posted from NE Railway to Northern Railway for a fixed period of three years on his request. The office memorandum is, therefore, of no help to the appellant.

The next contention of the Id. Counsel for the appellant was that he was not granted fair and proper opportunity by the respondent.

I have perused the EO record. Notices U/s 4 as well as 7 of the PP Act were issued and duly served upon him. He had filed his replies dated 11.01.2004 and 30.01.2004 along with documents before the Estate Officer. As per the letter dated 11.01.2004 appearing in EO record, he had authorised his father as well as his advocate to appear before the Estate Officer. It cannot, therefore, be said that fair and proper opportunity was not granted to the appellant. The Railway had examined witness Shri M.K. Kamra in the presence of the father of the appellant who was duly authorised to represent him. He was not cross-examined by the representative for the reasons best known to him. The principles of natural justice only demands that opportunity of hearing should be provided to a person but it does not require that if the person does not avail of the said opportunity, no order can be passed against him. Our own Hon'ble High Court in **Dr. K.R.K. Talwar Vs. Union of India & Another**, AIR 1997 DELHI 189 has also held as under :-

"The rule of audi alteram partem only requires that an opportunity to be heard should be given to the person concerned. It does not require that even if the said person does not avail

~~himself~~ of the opportunity an order against him cannot be passed without hearing him.

Our own Hon'ble Delhi High Court has further held in **Union of India Vs. S.M. Aggarwal & 31 Ors.**, 1995(33)DRJ(DB), that onus to prove the fact that occupant was not an unauthorised occupant of the premises is on the unauthorised occupant. The record also reveals that no evidence was led by the appellant and in such circumstances, there is no illegality which warrants interference with the order of eviction as well as damages passed by the Estate Officer.

The appellant has also been asked to pay damages from the date when he was declared unauthorised occupant. As per the statement of Railway witness Shri M.K. Kamra, the damages have been charged as per the Railway Board's letter dated 24.07.2002 which is Ex.P-4. This witness was not cross-examined by the appellant for the reasons best known to him. His statement is, therefore, unrebutted. There are no grounds to interfere with the order fixing damages which have been levied on rational basis as per the

25- 30/11
41

Railway Board's letter dated 24.07.2002. The contention of the appellant that the damages are not in accordance with law, therefore, cannot be accepted.

In view of the above discussions, I do not find any illegality or irregularity in the order of eviction and damages passed by the Estate Officer against the appellant. The appellant has been given fair and proper opportunity to defend his case. The appeal, therefore, fails and the same is dismissed. A copy of this order be sent to Estate Officer along with EO record. File be consigned to record room.

Sd/r

(Announced today i.e.
on 31.05.2004)

(BRIJESH SETHI)
Additional District Judge, Delhi

Attached True Copy

① Same

24/6/04
Additional District Judge
Delhi

Abp

ANNEXURE - C

GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS (RAIL MANTRALaya)
(RAILWAY BOARD)

WIRELESS/POST COPY
ISSUED ON: 26-10-99

THE GENERAL MANAGERS
NORTHERN RAILWAY/NEW DELHI
N. RAILWAY/ GUWAHATI

NO. E(CELL 98/A)M/53 (A) MINISTRY OF RAILWAYS HAVE TAKEN THE
APPROVAL OF THE PRESIDENT DECIDED THAT SHRI IATUL
GOSAIN, JUNIOR SCALE/URSMEM/ NF RAILWAY, SHOULD
TRANSFERRED TO NORTHERN RAILWAY FOR A PERIOD OF
THREE YEARS (A)

DATES ON WHICH SHRI GOSAIN IS RELIEVED/RESIGNED OF
DUTY MAY BE ADVISED (A)

DATE: 26/10/99

DEPUTY SECRETARY
RAILWAY BOARD.

Copy to:

1. The General Managers, All Indian Railways & Production Units.
2. The OSDs, North Central Railway/Allahabad, South Western Railway/Bangalore, East Central Railway/Hajipur, East Coast Railway, Bhubaneswar, West Central Railway/Jabalpur and North Western Railway/Jalpur. OSD/Bilaspur Zone.
3. The CAO(R)s, GOFMOW, Tilak Bridge, New Delhi and DCW/Patla.
4. The Directors, All Training Institutes.
5. The General Secretary, IRCA, New Delhi, IRPOF, Room No. 268 and the Secretary General FROA, Room No. 256-A, Rail Bhawan, New Delhi.
6. The General Secretaries, AURE, Room NO. 248 and NER, Room No. 254-C, Rail Bhawan New Delhi.
7. The Principal Directors of Audit, Northern and NF Railways.
8. The PA & CAOs, Northern and NF Railways.
9. OSD/KRB.
10. ES to MR, MOS(R), CRE, MM, Secretary, AM(R), OSD(R), OSD(MR), JS(S), JS(C), EDE(E&R), Director(Trg.), DE(OC), DS(E), DS(P), US(E) Vg(C), NER, CA/Secy, Railway Board.
11. PC/Chairman Passenger Amenities Committee, Rail Bhawan, New Delhi.

Headquarters Office
Baroda House, New Delhi

Dated: 7/11/2003

No. 727-E/1636/EIA

Shri Rahul Gosain,
Sr. Scale IRSE,
251-13th Railway Officers Enclave,
Panchkulan Road,
New Delhi

Sub: Transfer to N.F. Railway.

Re: This office notice No. 940-E/17/PT. 10000X/
EIA, dated 9-12-2002 and endorsement of
this office letter of even number dated
19-5-2003.

With reference to your representation dated 27-10-2002, it is advised that your orders for transfer to N.F. Railway were issued vide this office notice dated 09-12-2002 as referred to above and you continued to work as SME(P) Alond upto 16-12-2002. Instead of handing over the charge of the post, you disappeared w.e.f. 17-12-2002 and subsequently applied for leave. As per extant instructions, leave of the officer who are under order of transfer from one zone to another, can be sanctioned by the Administration of zone to which he has been transferred. Accordingly, any correspondence in this regard were to be addressed to N.F. Railway. However, you continued to prolong the correspondence on the subject with this office on one pretext or the other.

Under the circumstances as mentioned above, you stand relieved from this Railway w.e.f. 16-12-2002 (AN) and any request for leave for regularisation of the intervening period may be addressed to N.F. Railway only where you have been transferred in terms of this office notice dated 9-12-2002. You may collect the transfer pass from this office for effecting your transfer orders to N.F. Railway.

(Mahinder Kumar)
For General Manager

Copy to:-

1. Secretary to CME. He is requested to please issue transfer pass to Shri Rahul Gosain for effecting his transfer orders to N.F. Railway.
2. General Manager(P) North-East Frontier Railway, Guwahati in continuation to this office letter of even number dated 19-5-03.
3. Shri Rahul Gosain, Sr. Scale, IRSE, 4/51, W.E. A, Karol Bagh, New Delhi-110005.

ANNEXURE - D

- 28 -

57/51/9

NORTHERN RAILWAY

HEADQUARTERS OFFICE
BARODA HOUSE
NEW DELHI

No: 103-C/13/Retn/42/03/Sh. Rahul Gosain

प्रमाण पत्र

Dated 27/8/2003

Sh. Rahul Gosain,
House No. 251/1-B,
P.K. Road,
New Delhi.

27 AUG 2003

उत्तर देना

Sub: Retention of house No. 251/1-B, P.K. Road, New Delhi.

Ref: Your letter dated 5.7.03.

In reference to your above mentioned request it is informed that your request for retention of house No. 251/1B P.K. Road cannot be acceded as you have not carried out your transfer to N.F. Railway so far. You are an unauthorised occupant of the house w.e.f. 17/12/2002 and is liable to pay damage rent for entire period of unauthorised retention. Kindly vacate the house immediately to avoid eviction proceedings.

(R.K. Malhotra)
for General Manager/G

Copy to:-

Divl. Supdtg. Engineer/Estate, DRM's Office, S.E. Road, New Delhi
He is requested to initiate eviction proceedings immediately

(R.K. Malhotra)
for General Manager/G

Retn

GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF RAILWAYS/RAIL MANTRALAYA
(RAILWAY BOARD)

No. E(G)2003 RN3-23.

New Delhi, dated 16 5/2004

The General Manager,
Northern Railway,
Baroda House,
New Delhi.

Dy GM/G

17/08/04
Dy GM

Sub: — Retention of Northern Railway accommodation at
251/1-B, P.K. Road, New Delhi by Shri Rahul
Gosain, IRSME.

Ref: N.Rly's letter No. 103-G/13/Retn./42/03/Rahul
Gosain dated 17/12/2003.

The matter has been examined in consultation with Secretary and Finance Directorates of Ministry of Railways. Shri Rahul Gosain, IRSME is not entitled to retain Railway quarter at New Delhi, as applicable in the case of transfer to Northeast Frontier Railway, for he was required to serve on N.F.Rly for a period of 10 years w.e.f. 24/3/96 as per the extant instructions and was transferred to Northern Railway for a limited period of three years in relaxation of rules, on his own request to facilitate him to take treatment at AIIMS. The retention of the Railway quarter by Shri Gosain may, therefore, be regulated as per instructions governing permanent transfer.

clarification
required
with record
if any.


(M.D. PILLAI)

JT. DIRECTOR ESTT. (GENL.)

① S. ADGM
② State Officer

Mano.
18/03/04

Office. 157
ANNEXURE - I
30
66 51/8
A.D.G.M,
Northern Railway,
N.R. Hqrs. Office,
Baroda House,
New Delhi.

Sub.: Retention of House

I have been allotted Type-IV house No. 251-1B at Railway Officers Enclave, P.K.Road in December 2002 and subsequently orders for my transfer to N.E. Railway were issued vide N.R. Hqrs. O.O.No.-2002/I.R.S.M.E/166 dtd.16/12/2002(a copy of the above orders is also being enclosed). Thus, I may please be allowed to retain the above accomodation as per extant rules.

Encl./- As Above

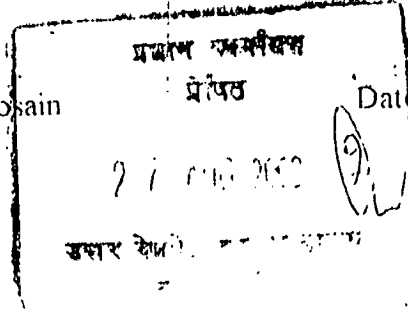
Yours Sincerely,

Rahul Gosain
(RAHUL GOSAIN) 15/01/03

NORTHERN RAILWAY

HEADQUARTERS OFFICE
BARODA HOUSE,
NEW DELHI.

No: 103-G/13/Retn/42/03/Sh. Rahul Gosain

Sh. Rahul Gosain,
House No. 251/1-B,
P.K. Road,
New Delhi

Dated: 27/8/2003

Sub: Retention of house No. 251/1-B, P.K. Road, New Delhi

Ref: Your letter dated 5.7.03.

In reference to your above mentioned request it is informed that your request for retention of house No. 251/1B P.K. Road cannot be acceded as you have not carried out your transfer to N.F. Railway so far. You are an unauthorised occupant of the house w.e.f. 17/12/2002 and is liable to pay damage rent for entire period of unauthorised retention. Kindly vacate the house immediately to avoid eviction proceedings.

(R.K. Malhotra)
for General Manager/G

Copy to -

✓ Dtl. Suptg Engineer/Estate, DRM's Office, S.E. Road, New Delhi -
He is requested to initiate eviction proceedings immediately

(R.K. Malhotra)
for General Manager/G

Rem

3. Sh. Rahul Gosain, Sr. DMF, N.F. Railway, Rangia Assam.

32-
H.F. Railway.

ANNEXURE H

Confidential

Office of the
Divl. Rly. Manager (P),
Rangia

Dt: 14-05-04

18

H.F./Q/Unz/34/IRI/LIC

To,

Shri Rahul Gosain,
Sr. DME/IRIY.

Sub:-Recovery of damage rent against Railway
Quarter No. 251/I-B, P.K. Road, New Delhi.

Ref:-SDGM/Northern Railway's D.O. No. 103-G/13/
Rtn/42/03/Shri Rahul Gosain dated 06-04-2004.

SDGM/Northern Railway vide his DO letter referred above informed that you are unauthorizedly occupying Railway Qtr. No. 251/I-B, P.K. Road, New Delhi since 17-12-2002 and therefore liable to pay damage rent @ Rs. 11874.24 P.M. and eviction proceedings have also been started against you.

Total damage rent already accumulated w.o.f. 17-12-02 to 30-04-04 as per above information is Rs. 1,95,733.44 (Rupees One lakh Ninety five thousand Seven hundred thirty three & Paise forty four) only. It will be recovered from your salary in equal instalments as per extant rules, in addition to the current damage rent till your vacation of the quarter.

This is for your kind information and necessary action.

for DME(P)/IRIY

Copy for information and necessary action to :-

1. Shri S.K. Bhadhalakati, Sr. DGM/Northern Railway Board House, New Delhi in reference to D.O. No. 103-G/13/Rtn/42/03/ Sh. Rahul Gosain.
2. DME/IRIY for kind information.

for DME(P)/IRIY.

3. Sh. Rahul Gosain, Sr. DME, N.F. Railway, Rangia Assam.

NORT

WAY

DRM'S OFFICE

NEW DELHI.

No.159-EO/07/2620/2003.

Dated: 17-8-2004.

F.A. & C.A.O (DG)
N. Railway Hd. Qrs. Office,
Baroda House, New Delhi.

17 5 AUG 2004

SUB: Vacation of Type-IV Railway Flat No.251/1-B at P.K. Road
New Delhi by Sh. Rahul Gosain, Ex. SME(P) on 19.7.2004.

Sh. Rahul Gosain, Ex. SME(P) was allotted Railway Flat No. 251/1-B at P.K. Road, New Delhi. He was transferred to N.P. Railway on 17.12.2002 and has vacated this Railway Flat No.251/1-B at P.K. Road, New Delhi on 19.07.2004. Following rent plus other charges of this Railway Flat for the period w.e.f:16.12.2002 to 19.07.2004 are therefore, required to be recovered from his salary/dues. Please ensure recovery thereof from his salary/dues, if not already recovered in full or part, and forward the same to Dy. CAG/TA/N. Railway State Entry Road, New Delhi, under intimation to this office. The Plint area of above said Railway Flat is 104.16 Sqmts. and Normal Rent w.e.f:1.7.99 is Rs 290.00 per month and w.e.f:1.4.2001 is Rs 292.00 per month:

D. RENT :

(1.) w.e.f:16.12.2002 to 19.07.2004 : Damage Rent at the rate of Rs 114/- per Sqmt. for 104.16 Sqmts of Plint area of the Flat per month i.e. Rs 11874.24 p.m.

E. WATER CHARGES :

(1.) w.e.f:16.12.2002 to 19.07.2004 @ Rs 36.00 per month.

F. CONSERVANCY CHARGES :

(1.) w.e.f:16.12.2002 to 19.07.2004 @ Rs 10.00 per month.

G. ELECTRICITY CHARGES:

(1.) w.e.f:16.12.2002 to 19.7.2004: Electricity charges will be intimated by SSE (Power Supply) N.RJ Paharganj, New Delhi.

Sr. Divl. Engineer, Estate
Northern Railway
NEW DELHI.

Copy to the following for information & necessary action:-

1. Dy. General Manager (G) N. Railway Hd. Qrs. Office, Baroda House, New Del in reference to his letter No.103-G/13/Retn./42/03/Sh. Rahul Gosai dated:27.8.2003 & 02.7.2004.

2. SSE (Power Supply) N. Railway Paharganj, New Delhi.

3. Sh. Rahul Gosain, Sr. DME, N.P. Railway, Rangia Assam.

19 Inform
DGM/NF
Rangia: 26/8

17/8