

50/100
4
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

MP-105/2005 order sheet 1 to 3
Date 14/11/2005 Dismissed

O.A/T.A No....93/2005.....
R.A/C.P No....20/2005.....
E.P/M.A No....105/2005.....

1. Orders Sheet.....O.A/93/2005..... Pg.....1..... to.....3..... Date 14/11/05
C.P - 20/2005 Order Pg - 1 to 3 Dismissed

2. Judgment/Order dtd.....14/11/2005..... Pg..... to.....No. 2..... Dismissed

3. Judgment & Order dtd..... Received from H.C/Supreme Court

4. O.A.....93/2005..... Pg.....1..... to.....2.3.....

5. E.P/M.P.....105/2005..... Pg.....1..... to.....4.....

6. R.A/C.P.....20/2005..... Pg.....1..... to.....9.....

7. W.S.O.A/93/2005..... Pg.....1..... to.....2.3.....

8. Rejoinder..... Pg..... to.....

9. Reply..... Pg..... to.....

10. Any other Papers..... Pg..... to.....

11. Memo of Appearance.....

12. Additional Affidavit..... Pg..... 1 to 55

13. Written Arguments.....

14. Amendment Reply by Respondents.....

15. Amendment Reply filed by the Applicant.....

16. Counter Reply.....

SECTION OFFICER (Judl.)

FORM NO. 4
(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

original Application No. 93/05

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicant(s) Tapashi Sankar

Respondents U.O.T. Govt.

Advocate(s) for the Applicant(s) A.K. Roy, L. Wapang
Miss U. Das.

Advocate(s) for the Respondents Addl. C.G.S.C.

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed/C. F. for Rs. 50/- deposited via P.I.D. No. 110411809.</p> <p>Dated 23.4.05</p> <p><i>N. Sankar</i> 25.4.05 11e Dy. Registrar P.M.</p>	27.04.2005	<p>Present : The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.</p> <p>Heard Mr. A.K. Roy, learned counsel for the applicant and also Ms. U. Das, learned Addl. C.G.S.C. for the respondents.</p> <p>The Respondents are directed to show cause as to why the application shall not be admitted.</p> <p>There will be an interim stay of eviction and recovery of damage charge in respect of quarter No. 01-2C at Oakland, Shillong for a period of four weeks.</p> <p>Post on 27.5.2005.</p> <p><i>25.4.05</i> Received Step for R 2 & 3 Usha Das. Addl. C.G.S.C. 29/4/05</p> <p><i>N. Sankar</i> 25.4.05 mb</p>
<p>No court fee stamp is mentioned.</p> <p><i>N. Sankar</i> 25.4.05</p> <p>Defect removed.</p> <p><i>N. Sankar</i> 25.4.05</p> <p>Received Step for R 2 & 3 Usha Das. Addl. C.G.S.C. 29/4/05</p> <p>Notice & order sent to D/Section for issuing to resp. No - 1 by regd. A/D post and others resp No - 2 & 3 received by Hand.</p> <p><i>N. Sankar</i> 29/4/05</p>		
		<p><i>25.4.05</i> Vice-Chairman</p>

Notice duly
Served on resp.
Nos - 2 & 3.
29/4/05.

27.5.05.

Heard learned counsel for the parties
Application is admitted. Post the matter
for hearing on 24.6.05. Meanwhile, the
applicant may file rejoinder, if any. The
interim order dated 27.4.05 shall continue.

Notice duly
Served on resp.
Nos - 1, 2 & 3. 1m

K. D. Balakrishnan
Member

Service Completed.

29/5.

24.6.2005 Present: HOn'ble Justice Shri G.
Sivarajan, Vice-Chairman

Post on 7.7.2005 alongwith
C.P.No.20/2005.

G. Balakrishnan
Vice-Chairman

24.5.05

W/S filed by the nkm
Respondents.

7.7.05 none of the parties
Advised to come on 28.7.05

26.5.05

W/S has been filed.

order dt. 27/5/05
issuing to learned
advocate's for both
the parties.

30/5/05

K. D. Balakrishnan
Member

G. Balakrishnan
Vice-Chairman

29.7.2005

Post on 30.8.2005 alongwith x
C.P. 20/2005.

K. D. Balakrishnan
Member

G. Balakrishnan
Vice-Chairman

W/S has been filed.

30
23.6.05

mb

30.8.05.

Post the matter on 12.9.05.

G. Balakrishnan
Vice-Chairman

W/S has been filed 1m

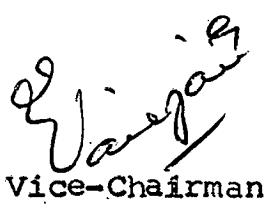
30
29.8.05

12.9.2005

Learned counsel for the applicant and for the respondents seek for adjournment. Post on 14.11.2005.

① W.H. has been fixed.

22/11/05


Vice-Chairman

bb

14.11.2005 Present : Hon'ble Mr. Justice G. Sivaranjan, Vice-Chairman.

Heard Mr. L. Wapang, learned counsel for the applicant and Ms. U. Das, learned Addl. C.G.S.C. for the respondents.

In a Writ Petition (C) No. 193(SH)/2005 filed by the Union of India & Ors. against the interim order passed by this Tribunal in the present case the Hon'ble Gauhati High Court held that in respect of allotment of quarter this Tribunal has no jurisdiction. In that view of the matter, the order passed by this Tribunal was set aside. In view of the decision in the above case, this Tribunal has no jurisdiction to entertain this application. Accordingly, the O.A. is dismissed as without jurisdiction. Consequently the C.P. and M.P. are also dismissed.

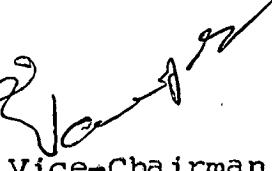
16/11/05
copy of the order
has been sent to the
Office for passing
the same to the applicant
by Post.

Received

Usha Das,

Addl CHSC

16/11/05


Vice-Chairman

mb

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

(An application under section 19 of the Administrative
Tribunal Act 1985)

BETWEEN

Smt. Tapashi Sarkar
W/O Late B.P. Sarkar
P & T Colony, Oakland,
Shillong - 793 001

.....APPLICANT

- AND -

1. Union of India,
Represented by the Secretary,
Department of Communication & Information
Technology,
Dak Bhawan, New Delhi - 110 001
2. The Chief Postmaster General,
N.E. Circle, Shillong - 793 001
3. Asstt. Director (Bldg.)
6/0- Chief Postmaster General,
N.E. Circle, Shillong - 793 001.

.....RESPONDENTS

1. Particulars of order against which this application is directed

This application is made against :-

- i) Letter dated 8.4.2005 (Annexure -J) so far the same is related to recovery of penal rent / damage charge for Quarter No. 01/2C at Oakland, Shillong and process of eviction i.e., (point No. 4,5, and 6 of the letter)
- ii) Letter dated 23.2.2005 by which respondents have sought for recovery of damage charge of Rs 72,712/- (Annexure - G)

2. JURISDICTION :

That the applicant declares that the subject matter

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Filed by the applicant
Smt. Tapashi Sarkar
through Ashok Kumar Roy
Address: 25/4/05

T. Sarkar

of this application is within the jurisdiction of this Hon'ble Tribunal .

3. LIMITATION :

That the applicant also declares that this application is made within the time limit as has been prescribed under section 21 of the Administrative Tribunal Act 1985 .

4. FACT OF THE CASE :

i) That the applicant at present working as Group -D GDS staff under the Respondent NO.2 which is within the jurisdiction of this Hon'ble Tribunal .

ii) That the husband of the applicant was an employee under the respondent NO. 2 and expired on 4.1.2000 while in service leaving ~~the~~ behind the applicant and three minor children . After expiry of husband, the applicant applied for her compassionate appointment and also for retaintion of departmental quarter NO. 01-2C which was allotted to her husband during life time . Accordingly , the respondents allowed the applicant to retain the said quarter for one year w.e.f. 5.1.2000 vide letter dated 4.4.2000 and again for further one year vide letter dated 30.1.2001.

Copies of the letters dated 4.4.2000 and 30.1.2001 are annexed herewith as Annexures - A and B respectively.

iii) That the applicant states that in the meantime the applicant got appointment on compassionate groung as GDS on 26.2.2001 under the respondents and hence vide letter dated 8.1.2002 requested the respondents to reallocate the said quarter in her name . Be it stated here that

even after completion of two years the respondents took the licence fee against the said quarter and the applicant deposited the same till the date of adhoc allotment of the same in her name .

Copy of the representation dated 8.1.2002 is annexed herewith as Annexure -C

iv) That considering the helpless position of the applicant ,the respondent NO. 2 ,after following the due procedure as has been provided in the F.R.S.R. , allotted the said quarter on adhoc basis in the name of the applicant vide order dated 17.8.2004 and accordingly rent was collected w.e.f.1.8.2004.

Copy of the order dated 17.8.2004 is annexed herewith as Annexure -D

v) That the applicant states that all of a sudden the Respondent NO.2 issued one letter dated 1.11.2004 stating interalia that the aforesaid adhoc allotment was irregular and hence she was asked to vacate the quarter on or before 30.11.2004 . But as the shillong is a very hard place to get any rented quarter with a reasonable price and as the applicant's daughter is a heart patient , she could not vacate the quarter within the stipulated period and hence the Respondent NO.2 issued letter dated 13.1.2005 for recovery of damage charge w.e.f.1-12-2004 .

Copy of letter dated 1.11.2004 and letter dated 13.1.2005 are annexed herewith as Annexures-

E and F respectively.

vi) That the applicant states that though the applicant paid the licence fee till July 2004 and the respondents accepted the same without any objection and

also rent for the period w.e.f. August 2004 to November 2004, the Respondent No. 2 issued letter dated 28.2.2005 very illegally and unjustifiably stating the applicant as unauthorised occupant w.e.f 5.1.2002 and thereby sought for a deduction to the extent of Rs72,712/-

Copy of the letter dated 28.2.2005 is annexed herewith as Annexure -G

vii) That the applicant states that the grant of adhoc allotment of quarter was not irregular in as much as there are clear provisions under F.R.S.R. to grant adhoc allotment. Be it also stated that by holding the said provisions, the respondents have allotted a number of quarters to many other GDS staff and they are still in possession of those quarters. The applicant also states that there are vast power under the hand of the respondents to relax any provision of F.R.S.R. in connection of allotment of quarter and hence the respondents may hold those provisions in the instant case also, but for the reasons best known to the respondents treating as unauthorised occupant and ~~want~~ want to evict from the quarter.

viii) That the applicant was also directed to vacate the said quarter under Public Premises (Eviction of Unauthorised Occupation) Act 1971 ~~xxxxxxxxxx~~ and hence she submitted one representation date 23.3.2005 requesting to give some more time considering the fact that her daughter has been suffering from heart problem. But the said representation was not considered and hence the applicant immediately rushed to the Hon'ble Gauhati High

Court (Shillong Bench) by filing a writ petition being W.P.(C) NO 74 (SH) of 2005 and the honourable court was pleased to pass an order dated 1.4.2005 directing the applicant to submit one representation stating her grievances in detail and the respondents were directed to dispose of the same as per law and till disposal the eviction order was kept in abeyance . Accordingly, the applicant submitted her representation dated 7.4.2005 .

Copies of representations dated 23.3.2005 and 7.4.2005 are annexed herewith as Annexures -

H and I respectively.

ix) That the applicant states that though the applicant submitted her representation dated 7.4.2005 , the respondents did not applied their mind to the pros and cons and on the next day i.e., 8.4.2005 they disposed of the same vide letter dated 8.4.2005 taking the unchallant attitude to recover the penal rent /damage charge and to evict her from the quarter .

Copy of the letter dated 8.4.2005 is annexed herewith as Annexure - J

x) That the applicant , at any rate can't be termed as unauthorised occupant w.e.f.4.1.2002 in as much as the respondents have accepted the lisence fee till July 2004 and rent till November 2004 and hence for that period ,no damage charge can be charged . Besides, it is also stated that the adhoc allotment can't be treated as irregular in as much as there is clear provision of granting adhoc allotment , in case of necessary , and as the due procedure was followed in the present case as has been done in many other cases .

T.Sarkar

xi) That the respondents ,intentionally , took the unchallant attitude towards the applicant and hence being aggrieved she approache this Hon'ble Tribunal by filing this application on the following grounds amongst others :

5. GROUNDs :

- i) For that recovery of damage charge /penal rent w.e.f 5.1.2002 is illegal in as much as they have accepted the lisence fee and rent for that period .
- ii) For that as there is provision under F.R.S.R , for granting of adhoc allotment and as the same proceedure was followed in the instant case , the same should not be treated as irregular .
- iii) For that as many other GDS staffs have been allotted quarter by following the same proceedure and as those staffs are still allowed to continue ,the applicant's allotment of quarter should not be treated as irregular in isolated and step motherly manner .
- iv) For that as there is sufficient power in the hand of the respondents to relax any provisions regarding allotment of quarter and as the same has been adopted in many other cases in granting allotment of quarter , the respondents should adopt the same provisions and proceedure considering the helpless position of the applicant .
- v) For that action of the respondents are illegal and whimsical which has been restored only with intention to harass the applicant .

vi) For that at any rate the letter dated 28.2.2005 is not sustainable in as much as she can't be termed as unauthorised occupant w.e.f.5.1.2002.

vii) For that the action of the respondents is illegal in as much as the same violates the Article 14 of the Constitution of India as they have treated the applicant isolately ,though the similarly situated staff are still ~~enjoying~~ enjoying quarter facility.

6. DETAILS OF REMEDIES EXHAUSTED :

That the applicant states that she has availed all the remedies as stated in paragraphs 4 of this application but failed and hence there is no other alternative ready to her other than to approach this Hon'ble Tribunal .

7. MATTER NOT PREVIOUSLY FILED OR PENDING BEFORE ANY COURT

That the applicant further declares that the applicant has not filed any application ,writ petition or suit ,except as stated in paragraphs 4 , regarding this matter before any court or any other bench of this Hon'ble Tribunal or any such petition or suit is pending before any of them .

8. REMEDIES SOUGHT FOR :

Under the facts and circumstances stated above , the applicant prays the following reliefs :-

- i) To set aside and quash letter dated 28.2.2005 regarding recovery of Rs 72,712/- as damage charge .(ANNEXURE - G)
- ii) To set aside and quash the letter dated 8.4.2005

(ANNEXURE - J) so far the same is related to recovery of penal rent /damage charge for Quarter NO.01/2C at Oakland ,and process of eviction from the said quarter.

iii) To direct the respondents to consider the case of the applicant by adopting the power of relaxation as has been provided under F.R.S.R..

iv) To pass any other order or orders as Your Lordships may deem fit and proper.

9. INTERIM RELIEF PRAYED FOR :

Under the facts and circumstances stated above Your Lordships may further be pleased to pass necessary order directing the respondents not to evict from the quarter and not to recover the damage charge in respect of quarter NO.01-2C ,at Oakland ,Shillong till the disposal of this application .

10.

11. PARTICULARS OF I.P.O .:

i) I.P.O. NO : 11G 411803

ii) DATE of issue :- 23/4/05

iii) Payable at :- Guwahati

12. LIST OF ENCLOSURES :

As stated in Index .

VERIFICATION

I, Smt. Tapashi Sarkar, wife of Late B.P.Sarkar, aged about 33 years, resident of P & T Colony, Shillong -793 001, in the East Khasi Hills district, Meghalaya, at present working as Group -D GDS under the respondents, do hereby solemnly verify that the statements made in paragraphs 1 to 12 of the application are true to my personal knowledge and the submissions made therein, I believe the same to be true as per legal advice and I have not suppressed any material fact of the case.

And I sign this verification on this 14th day of April 2005 at Guwahati.

Dated : 14/4/05

Place :- Guwahati

T. Sar Kar

SIGNATURE

४८-७/Cont-7

भारतीय डाक विभाग/Department of Posts, India

एपार्टमेंट/Office of the

Bldg/27-7/76/Pt-II, dt 4/4/2000

✓
V
ANNEXURE-A

To

Smt. Tapashi Sarkar
W/o Late B.P. Sarkar,
Qtr no 01-2c, Oakland,
Postal Complex,
Oakland, Shillong.

Sub: Request for permission to retain
Dept Accommodation-period for
one year-reg:

ref: Your letter no nil dated 14-03-2000

I am directed to convey the approval of the
C.P.M.G for your request to retain the departmental
Qtrs no 01-2c, Postal Complex, Oakland, Shillong
for the period of one year with effect from 5-1-2000.

S.M.I
Asst. Director (Bldg),
O/o the C.P.M.G.,
Shillong.

Copy to
1. The A.P.M.G, O/o the C.P.M.G., Shillong for information
and necessary action.

S.M.I
Asst. Director (Bldg),
O/o the C.P.M.G., Shillong.

प्रधाराम् रात-MCIP (FU) Sant.

Attested by

Alka Datta
Advocate



DEPARTMENT OF POSTS: INDIA.
OFFICE OF THE CHIEF POSTMASTER, CENTRAL N.E. CIRCLE: SHILLONG-1.
888888888888

No. Bldg/27-49/89/Pt-II Dated at Shillong, the 30th Jan' 2001.

To,

~~Sati Tapashi Sarkar,~~
W/O Late S.P. Sarkar,
Near Postal I.B.
Oakland, Shillong-1.

*Approved by
S. K. Roy*

Sub:- Retention of Departmental Quarter No.01-2C, Oakland,
Shillong.

With reference to the above mentioned subject, you
are permitted to retain the above quarter for a period of 1 (One)
year w.e.f. 4-1-2001 to 4-1-2002 you are also directed to pay
licence fee in advance for the whole year in the shape of a Bank
draft/cash.

S. K. Roy
(T. K. Roy)
Asstt. Director (Bldg)
For Chief Postmaster General,
N.E. Circle, Shillong.

.....

Attested by

Abhijit Guha
Advocate.

To
The Chief Postmaster General, (Bldg)
N.E. Circle, Shillong.

Sub: Retention of Deptt. Quarter No. 01-2C, at Oakland, Shillong.

Ref: C.O., Casemark. Bldg/27-49/89/Pt-II dated 30.01.2001.

Respected sir,

I have the honour to intimate that I was allowed to retain the Quarter noted above upto 04.01.2002.

As the period is over, I request your kindself to do the needful at your end to reallot me the quarter for another one year or more.

In this connection, I like to draw your kind attention to the fact that I am an approved candidate for Gr. "D" in C.O./ Shillong under compassionate appointment rules and presently engaged as "ED" in C.O., Shillong and going to be absorbed in C.O., Shillong in the near future as Gr. "D", when vacancy arises.

In view of aforsaid, I appeal to your kindself to reallot me the abovenoted quarter or otherwise I shall be in "DIRE STRAITS" with my three minor children and oblige.

Dated at Shillong,
The 8th Jan, '02.

Yours faithfully,
T. Sarkar
8.1.02
(Tapashi Sarkar)

Attested by
A. B. S.
Advocate.

245
DEPARTMENT OF POSTS: INDIA
O/O THE CHIEF POSTMASTER GENERAL, NE CIRCLE,
SHILLONG-793001.

No: Bldg/27-38/88-89

Dated at Shillong the 17-08-04.

Approval of the Chief Postmaster General, NE Circle, Shillong is hereby conveyed to the adhoc allotment of the departmental type I Qr. No. 01-2/C at Oakland Postal Colony, Shillong to Smt. Tapashi Sarkar, GDS Gr. 'D', C.O. Shillong (Originally allotted to late B.P. Sarkar, Dufty C.O., Shillong & husband of Smti. Tapashi Sarkar).

2. The rent of the quarter will be recovered as per revised rules as communicated to the Disbursing Officer from time to time w.e.f 01-08-2004.

Sd/-

Assistant Director (Bldg),
For Chief Postmaster General,
NE Circle, Shillong.

Copy to:

1. Smt. Tapashi Sarkar, GDS Gr. 'D', C.O. Shillong for information.
2. The Director of accounts (postal), Calcutta.
3. The A.D (A/Cs), C.O., Shillong for information and effect of recovery of rent from the pay of the officials at the rate applicable to type-I departmental quarter w.e.f 01-08-2004.

For Chief Postmaster General,
NE Circle, Shillong

Attended by
A. K. Datta
Advocate

DEPARTMENT OF POSTS: INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL N. E. CIRCLE: SHILLONG-793 001.

No. Bldg/27-38/88-89

Dated at Shillong, the 1st November 2004.

ANNEXURE - E

To

Sri Tapashi Sarkar,
Gr. 'D', Circle Office,
Shillong-793 001.

Subject:- Vacation of quarter no.01-2/C at Oakland.

Madam,

With reference to the above mentioned subject it is to intimate you that the qtr. no.01-2/C at Oakland had been given adhoc allotment which is irregular.

Therefore, I am directed to request you that the quarter allotted to you should be vacated on or before 30th November' 2004. In case you do not vacate the said quarter by 30th Nov' 04, than not only will you be liable to be charged penal rent, but also be liable to be evicted adhering to legal proceedings. On vacation, the key should be handed over to A.D. (Bldg), C.O., Shillong.

Cur/ 11/11/04
(A. B. Dutta)
Asstt. Director (Bldg)
For Chief Postmaster General,
N. E. Circle, Shillong.

*11/11/04
A. B. Dutta
Asstt. Director (Bldg)*

DEPARTMENT OF POSTS, INDIA
O/O THE CHIEF POSTMASTER GENERAL, NE CIRCLE,
SHILLONG-793001.

No: Bldg/27-38/88-39

Dated at Shillong the 13-01-05.

To
The Sr. Postmaster,
Shillong GPO-793001, Regd/AD

Subject: Recovery of damages from unauthorized occupant of Qr. No. O-1/2 C at Oakland Postal Colony.

1. Reference: There is no previous reference.

2. On the captioned subject, it is informed that the qr. No. O-1/2 C at Oakland Postal Colony has been occupied unauthorizedly by Smt. Tapashi Sarkar, GDS, Gr. "D", Banashree Post Office, w.e.f 01-12-04.

3. The terms and conditions of recovery of damages are as follows:

Rs. 75/- per sq m of Living area per month, i.e.

Rs. 75/- x 25.60 sq m = Rs. 1920/- p.m

4. Necessary action may kindly be taken at your end.

SAP
Asst. Director (Bldg),

For the Chief Postmaster General.
NE Circle, Shillong

Copy to:

✓ Smt Tapashi Sarkar, GDS Gr. "D" Banashree Post Office, Shillong for information. You are directed to vacate the quarter within 10 days from the date of receipt of this letter.

✓ 131
For the Chief Postmaster General.
NE Circle, Shillong

Attended by

Q.W.S.
Advocate, 1985

DEPARTMENT OF POSTS: INDIA

O/O THE CHIEF POSTMASTER GENERAL, NE CIRCLE, SHILLONG-793001.

No: Bldg//27-38/88-89

Dated at Shillong the 28-02-05

ANNEXURE - G

To

The Sr. Postmaster,
GPO Shillong-793001,

By Hand

Subject: Recovery of damages from unauthorized occupant of Qtr. no. O-
I/2 C at Oakland Postal Colony.

1. Reference: This office letter of even no. Dated 13-01-05.

2. On the captioned subject, it is informed that the quarter no. O-I/2 C at Oakland Postal Colony has been occupied unauthorizedly by Smt Tapashi Sarkar; GDS Gr. 'D', Banashree Post office, Shillong w.e.f 05-01-2002 to Feburay'2005 and onwards.

3. The terms and conditions of recovery of damages are as follows:

Rs. 75/- per sq m of living area per month for 37 months 27 days
i.e.

(Rs. 75/- x 25.60 sq m) = Rs. 1920.00 x 37 months = Rs. 71040.00
for 27 days = Rs. 1672.00

Total amount to be recovered = Rs. 72712.00
(Rupees Seventy two thousand seven hundred twelve) only

4. The above amount to be recovered from March, 2005 onwards from the pay and allowances and dearness relief of Family pension of Smti Tapashi Sarkar GDS Gr."D" Banashree Post office, Shillong till recovery complete.

5. The Chief PMG, N.E. Circle, Shillong has seen the case.

Asst. Director (Bldg),
For Chief Postmaster General.
NE Circle, Shillong-793001

Copy to:

Regd. 1) Smt. Tapashi Sarkar, GDS Gr.'D' Banashree Post office, Shillong-793003 for information.

O/E 2) The Sr. Supdt. Of Post offices, Meghalaya Division, Shillong-793001 for information and necessary action.

For Chief Postmaster General.
NE Circle, Shillong-793001

Attested by

Advocate

Advocate.



~~Annexure H~~

Dated Shillong, the 23rd March, 2005.

To

The Estate Officer, &
Asstt. Post Master General (Est.),
O/o the Post Master General,
N.E.Circle, Shillong -793001.

Sub: Vacating of the Quarter.

Ref: Your Order u/s '3A' of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 dtd. 18.3.2005.

Sir,

I have the honour to inform you that I have received your above quoted Order on the subject yesterday the 22nd March, 2005.

In this connection I would like to inform you that my daughter has been suffering from heart problem and is undergoing treatment and that she requires detailed investigation and treatment as recommended by the attending Doctor. As such, the Doctor advised to keep her away from emotional strain and any form of anxiety and tension, which may endanger her peaceful living and even her life. The Doctor's Certificate is enclosed herewith.

I would, therefore, request you kindly to consider the critical situation of my daughter and be kind enough to give me some more time to vacate the quarter and not to evict me from the said premises, for which act of your kindness I shall remain ever grateful to you.

Yours faithfully,

T. Sarkar
23.3.05

(Smti. Tapashi Sarkar)
Quarter No. O.I/2-C,
Oakland P & T Colony, Shillong.

Attested by
Albany
Advocate.

कोर-71 Corr-7

भारतीय डाक विभाग / Department of Posts, India
कार्यालय / Office of the P & T Dispensary, Shillong.

This is to certify that Smt. Poonam
Sarker, aged 17 years, female, suffers from
attacks of sweating, tremor, palpitation and
increased heart rate, as a result of anxiety
hiccups. She had even attempted self
poisoning on one occasion. Her parents
are thus advised not to impose any
emotional strain upon her.

Chowdhury.

2.11.04.

(DR. A. K. Chowdhury)

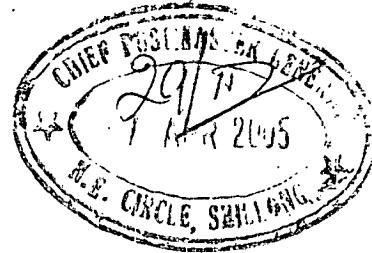
Chief Medical Officer
I/C P. T. Dispensary
Shillong

Attending by

ABM
Advocate

To

The Chief Postmaster General,
 North Eastern Circle, Shillong – 793001
 (Through proper Channel)



Sub:- (1) Prayer for regular absorption as Group 'D' in the C. O., Shillong, and
 (2) Prayer for allotment of Departmental Quarter No. 01-2C at Oakland, Shillong;
 and
 (3) Prayer for waiver of the recovery of the damage charges for the occupation of
 the Qtr No. 01-2C at Oakland, Postal Colony.

Reference: (1) Circle Office Letter No. Staff/26-14/77/II dated 16/08/2002.
 (2) C. O. Letter No. Bldg/27-38/88-89 dated 28/02/2005.
 (3) C. O. Letter No. Staff/ 175-SEL/99 dated 22/03/2000.

Respected Sir,

With due respect and humble submission, I beg to state the following few lines
 before your goodself for favour of your kind perusal and sympathetic consideration.

2). That Sir, I beg to state that in the recent years as many as (5) five Group 'D' vacancies
 had fallen vacant under the Circle Office establishment while due to the wrong
 assessment of the Group 'D' vacancies I have been deprived of and discriminated
 upon of my legitimate posting as a Group 'D' in the Circle Office, Shillong. The
 particulars of (5) five Group 'D' vacancies which had fallen vacant from time to time
 are appended below for favour of your kind perusal and ready reference.

2(a) Shri B. P. Sarkar, the then Duftry, C. O. Shillong died in harness on 04/01/2000 and in
 the resultant vacancy Shri Uday Raj Sharma, Group 'D' was promoted as Duftry and
 in the resultant vacancy of Group 'D' of Shri Uday Raj Sharma, Shri Sumit Deb Nath,
 GDS, was appointed as Group 'D' on regular basis.

2(b) Shri Babu Ram Sunar, the then Caretaker, C. O. Shillong has retired from service on
 attaining the age of superannuation and in the resultant vacancy, Shri N.
 Nongkynrieh, Duftry was promoted as Caretaker, C. O. Shillong and in the resultant
 vacancy, Smt. F. Nongrum, Group 'D' was promoted as Duftry, while in the resultant
 vacancy of Group 'D' of Smt. F. Nongrum, Smt. Dipali Dey was appointed as Group
 'D' on compassionate grounds.

Attested by
 (Signature)
 Advocate. 11/11/05

Contd.....2

2(c) Shri Rabi Prasad Sharma, who was originally appointed as Caretaker, Postal Holiday Home, Shillong and for a stop-gap period, the said Rabi Prasad Sharma was posted as Group 'D' in the C. O. Shillong and in the resultant vacancy of the Caretaker, Postal Holiday Home, Shillong, Shri Jasbir Roy, EDA / GDS, C. O. Shillong was promoted and posted as Caretaker, Postal Holiday Home, Shillong on adhoc basis.

2(d) Consequent on the transfer of Shri Ramesh Singh, Caretaker, Postal IB, Oakland, Shillong as a Group 'D' under Rule 38 to the Office of the Chief Postmaster General, U. P. Circle, Lucknow, Shri Rabi Prasad Sharma, who was posted as a Group 'D' in the C. O. Shillong was transferred and posted against the vacancy of Caretaker, Postal IB, Oakland, Shillong and in the resultant Group 'D' vacancy of Shri Rabi Prasad Sharma, Shri Jasbir Rai, Caretaker, Postal Holiday Home, Shillong was again posted as a Group 'D' in the C. O. Shillong, while Shri Jasbir Rai has been ordered to remain attached to the Postal Holiday Home, Shillong, and thereby Shri Jasbir is holding two posts of both Caretaker, Postal Holiday Home, Shillong and Group 'D', C. O. Shillong at a time which is against the principle of Govt. Rules. Since one official cannot hold two posts at two different places at a time and the said Shri Jasbir Rai is physically working against the post of Caretaker, Postal Holiday Home, Shillong and Shri Jasbir Rai is not performing the duty of the Group 'D' Staff in the C. O. Shillong and therefore the 9th post of Group 'D' in the C. O. Shillong is still lying vacant. Moreover, the said Shri Jasbir Rai was allotted a Departmental Quarter at Oakland in the capacity of Caretaker, Postal Holiday Home, Shillong and hence there is no benefit of doubt that Shri Jasbir Rai is working as a Caretaker in the Postal Holiday Home, Shillong and not as a Group 'D' in the C. O. Shillong and the 9th post of Group 'D' in the C. O. Shillong is very much lying vacant.

i 2(e) That Sir, it is quite interesting to point out that while Shri Rabi Prasad Sharma, Caretaker, Postal Holiday Home, Shillong was posted as a Group 'D' in the C. O. Shillong, then in the resultant vacancy of the Caretaker, Postal Holiday Home, Shillong, Shri Jasbir Rai EDA(GDS) C. O. , Shillong was promoted and posted as Caretaker, Postal Holiday Home, Shillong on adhoc basis as mentioned in paragraph 2(c) above, whereas when Shri Rabi Prasad Sharma was posted against the clear vacancy of Caretaker, Postal IB, Shillong on transfer of Shri Ramesh Singh as a Group 'D' to the office of the Chief Postmaster General, U. P. Circle, Lucknow, under Rule 38 as mentioned at Paragraph 2(d) above then the post of the Caretaker, Postal Holiday Home, Shillong, which was earlier held by Shri Rabi Prasad Sharma had clearly been fallen vacant and despite of occurring a clear vacancy of the Caretaker, Postal Holiday Home, Shillong, Shri Jasbir Rai was posted as a Group 'D' in the C.O. Shillong although Shri Jasbir Rai is still physically working as a Caretaker of the Postal Holiday Home, Shillong and therefore, there is no benefit of doubt that the 9th post of Group 'D' in the C.O. Establishment is very much lying vacant.

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2(f) Shri B. M. Barua, Farash, C. O. Shillong has retired from service on 30/11/2004 on attaining the age of superannuation and in the resultant vacancy of Farash, C. O. Shillong, Smt. Bayana Marbaniang, GDS, C. O., Shillong was appointed as a Farash, C. O., Shillong, whereas by retaining the 9th Post of Group 'D' as mentioned at Paragraph 2(d) above vacant my appointment to the Group 'D' Cadre was not regulated and I have been deprived of and discriminated upon of my legitimate posting of Group 'D' in the C. O., Shillong.

3. I therefore pray to your goodself kindly to look into the matter personally and pass necessary orders to regulate my service as a Group 'D' in the C. O. Shillong against the 9th Post of Group 'D' to remove the discrimination for the ends of justice.

4. That Sir, it may be pointed out here that in the capacity of Group 'D', Smt. Dipali Dey is entitled to get a Type I Quarter only, whereas the said Smt. Dipali Dey was allotted one Step-up Type-II Quarter at Banasree Postal Complex (which was earlier allotted to her husband (L) Sebak Kumar Dey) which is against the spirit of the Quarter allotted and the allotment of Type-II Quarter to Smt. Dipali Dey at Banasree Postal Complex (above her entitlement) was regularised only after the regularisation of the appointment of Smt. Dipali Dey in Group 'D' Cadre.

5. That Sir, in this respect I beg to draw your kind attention to my representations dated 03/09/2003, 16/08/2004 and 02/11/2004 and beg to appeal to your goodself once again kindly to look into the matter personally and pass necessary orders to regulate my service as a Group 'D' in the C. O., Shillong against the 9th Post of Group 'D' C. O., Shillong. I also beg to appeal to your goodself kindly to allot the Quarter No. 01-2C at Oakland, Shillong in my favour as was done in the case of Smt. Dipali Dey as mentioned at Paragraph 4 above. Since there is a precedent of regularisation and allotment of Quarter to the dependant of the Deceased Employee after regularisation of the Appointment on compassionate grounds as was done in the case of Smt. Dipali Dey as mentioned in the Paragraph 4 above to remove the discrimination and for the ends of justice.

6. That Sir, I beg to mention here that Shri Jasbir Rai, on his adhoc appointment as a Caretaker, Postal Holiday Home, Shillong was allotted a Departmental Quarter at Oakland, Shillong and thereby there is evident precedent that an official on his adhoc appointment also becomes eligible to get a Departmental Quarter.

7. I therefore once again pray to your goodself to be kind enough kindly to consider my case with sympathy and kindness and in the light of the facts as mentioned in the forgoing paragraphs, kindly pass necessary orders to regulate my appointment against the 9th Post of Group 'D' in the C. O., and also to regulate the allotment of Quarter in my favour as was done in the case of Smt. Dipali Dey and Shri Jasbir Rai to remove the discrimination for the ends of Justice.;

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8. That Sir, I beg to draw kind attention to the C. O. Letter No. Bldg/27-38/88-89 dated 17/08/2004 wherein the Quarter No. 01-2C at Oakland, Postal Colony Shillong was allotted to me on adhoc basis with effect from 01/08/2004 and as such I do hope that your goodself will agree with me that I can neither be termed as unauthorised of the Quarter nor the damages charges as ordered under C. O. Letter No. Bldg/27-38/88-89 dated 28/02/2005 can be applicable on me, rather I am a victim of the mis-calculation of the Group 'D' vacancy in the C. O. Shillong. I therefore beg to appeal to your kindself kindly to consider the case with sympathy and kindness and kindly pass necessary orders for the waiver of the recovery charges as ordered under C.O. Letter No. Bldg/27-38/88-89 dated 28/02/2005 and for this act of your kindness I shall remain ever grateful to you.

I shall be highly obliged if the above matters are settled at your earliest convenient time.

With kind regards.

Yours faithfully

Dated : At Shillong

The 07th April 2005.

(Smt. Tapasi Sarkar)

GDS/EDA, Banosree Post Office,
Shillong.

Copy in advance to :-

1. The Chief Postmaster General, North Eastern Circle, Shillong for favour of kind information. His goodself is requested to be kind enough kindly to look into the above cases personally and pass necessary orders for regular absorption as a Group 'D', C. O. Shillong and (2) regularisation of the Departmental Quarter No. 01-2C at Oakland, Postal Colony, Shillong and (3) Waiver of the recovery of the damages charges as ordered under C.O. Letter No. Bldg/27-38/88-89 dated 28/02/2005 as prayed above and for this act of your kindness I shall remain ever grateful to him. I shall be highly obliged if the above matters are settled at your earliest convenient time.
2. The Estate officer, o/o the Chief P.M.G, N.E. Circle Shillong, for information.

With kind regards

Yours faithfully

T. Sarkar

(Smt. Tapasi Sarkar)

GDS/EDA, Banosree Post Office,
Shillong.

Attested by

Nancy
Advocate 15/4/05

07/04/05
10:55 A.M.

DEPARTMENT OF POSTS
OFFICE OF THE CHIEF POSTMASTER GENERAL, NORTH EAST CIRCLE
SHILLONG-793 001

NO. VIG/LC-19/05 (COURT)

Dated at Shillong, the 08 April, 2005.

To

Smt. Tapashi Sarkar,
 GDS, Banasree Post Office,
 Shillong-793 003.

REGISTERED POST

Subject: - Order of Guwahati High Court (Shillong Bench) in a WP (C) dated 1.4.2005, and the corresponding request from Smt. Tapashi Sarkar vis-à-vis the Court Order.

1. Reference : Application dated 7.4.2005 from Smt. Tapashi Sarkar regarding (i) Prayer for regular absorption as Group-'D' in C.O., Shillong, (ii) Prayer for allotment of Departmental Quarter No. 01/2C at Oakland, Shillong, and (iii) Prayer for waiver of the recovery of the damage charges for the occupation of the Qtr No.01-2C at Oakland Postal Colony.

2. The official, viz. Smt. Tapashi Sarkar was originally recommended for Group 'D' cadre, Departments of Posts, N.E. Circle, based on available vacancies, as per recommendations of Circle Relaxation Committee, dated 22.3.2000. Subsequently, the official opted for functioning as an Extra Departmental Agent [(EDA) now known as Gramin Dak Sevak (GDS)] vide application dated 8.2.01; this was further confirmed by the official vide her letter dt. 24.5.04. Having once opted for functioning as GDS, as per Rules, she cannot now be absorbed as a Group-'D' in C.O., Shillong. As per existing Recruitment Rules, she can gain promotion to Group-'D' cadre, at a future date, by virtue of her seniority in GDS/EDA Seniority List for Shillong/Meghalaya Division.

3. Contrary to the "need to know principles" as inferred from the Indian Official Secrets Act, 1923, and in violation of instructions, as contained in the Indian Official Secrets Act, 1923, Smt. Tapashi Sarkar has cited various official decisions/contents of different official matters, relating to the Office of the Chief Postmaster General, North-East Circle, Shillong. The references submitted by the official are irrelevant and are extraneous to the present case.

4. Under no Rules/Regulations of the Department of Posts can a Departmental residential staff quarter be allotted to a GDS/EDA.

5. By virtue of being widow of a deceased departmental official, Smt. Tapashi Sarkar was legally entitled to retain her present occupied quarter (Quarter No.01/2C at Oakland, Shillong) till 4.1.2002; beyond this date Smt. Tapashi Sarkar is an illegal occupant and her occupation is not supported by any Government Order, or Departmental instruction or any Law of the land. Hence, Smt. Tapashi Sarkar must continue to pay Penal Rent as instructed vide this office letter No.Bldg/27-38/88-89 dated 28.2.2005.

6. In view of the foregoing, Smt. Tapashi Sarkar is an illegal occupant of the above mentioned residential staff quarter from 5.1.2002 onwards. Therefore, as per Government Rules/Regulations she is required to vacate the above mentioned quarter immediately. Her controlling authorities are required to process her eviction without any further delay.

7. In sum, Smt. Tapashi Sarkar's prayers for (i) regular absorption as Group-'D' in C.O., Shillong, (ii) for allotment of Departmental Quarter No. 01/2C at Oakland, Shillong, and (iii) for waiver of the recovery of the damage charges for the occupation of the Qtr No.01/2C at Oakland Postal Colony are rejected. The reasons for rejection have already been discussed *supra*.

8. This issues with the approval of Chief Postmaster General, North-East Circle, Shillong.

(MANIK DAS)
 Asstt. Director (Bldg)

8/4/05

Attested by

15/4/05
 Advocate.

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संकेतिय अधिकारी विभाग Central Administrative Tribunal
21 4 MAY 2005
गुवाहाटी बैचल BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

Filed by
 the Respondent
 on 21/5/2005
 Addl. Class. Ct. No. 1515
 C.A.T. 24/2005

OA NO. 93/05

SMTI TAPASI SARKAR

.....APPLICANT

-VERSUS-

UNION OF INDIA

.....RESPONDER


 Addl. Class. Ct. No. 1515
 Director of Postal Services (M.Q.)
 N. E. Circle, Shillong - 793001

WRITTEN STATEMENT FILED BY THE RESPONDENTS

- 1) That the respondents have received a copy of the OA filed by the applicant and have gone through the same. Save and except the statements, which are specifically admitted herein below, rest may be treated as total denial. The statements, which are not borne on record, are also denied and the applicant is put to the strictest proof thereof.
- 2) That before traversing various paragraphs the respondents would like to give the Brief History of the case.

Departmental staff quarter No. 01/2C at Oakalnd Postal Colony Shillong was under occupation of B.P. Sarkar, Duftry, Office of the Chief Postmaster General N. E. Circle, Shillong who died in harness on 04.01.2000.

On death of the said B. P. Sarkar, Duftry, his wife, Smti. Tapashi Sarkar (the applicant) was allowed to retain the quarter for 2 (two) years from 05.01.2000 in accordance with SR- 317-B-11.

Subsequently, considering her prayer for further retention, the said quarter was allotted to her on ad-hoc basis under this office memo no. Bidg/27-38/88-89, dated 17.8.2004.

It is pertinent to mention here that Smti Tapashi Sarkar, upon the demise of her husband, B. P. Sarkar had applied for compassionate appointment. Consequently, the Circle Relaxation Committee (CRC) recommended her name for

Gr. 'D' official in March 2000. Thereafter, she joined as Gramin Dak Sewak, Circle Office, Shillong in February 2001 and not as Group- D official.

As per Rule 3 of GDS (Conduct and Employment) Rules 2001, a Gramin Dak Sewak shall be outside the Civil Service of the Union of India and hence a Gramin Dak Sewak shall not claim to be at par with a Government servant. Therefore, a Gramin Dak Sewak does not hold a post to be eligible for allotment of Govt. quarter.

The case of ad-hoc allotment of quarter to Smti Tapashi Sarkar was reviewed and treated as irregular by the allotment committee, because a Gramin Dak Sewak is not entitled to have allotment of any Government quarter. Accordingly, Smt. Tapashi Sarkar was directed to vacate the quarter by 30.11.2004 under the office letter dated 01.11.04, but she failed to vacate the quarter by 30.11.04. She was again directed under the office letter dated 23.12.2004 to vacate the quarter immediately. However, she did not comply with the order of the competent authority. Consequently on her defiance of the directions of the competent authority, Smt. Tapasi Sarkar is treated as being in unauthorized occupation of Govt. quarter and damage charges under SR 317-B-22 for unauthorized occupation were calculated and levied. Accordingly, Senior Postmaster, Shillong GPO, the Drawing and Disbursing Officer (DDO), was asked under the office letter dated 13.01.2005 to make recovery of damage charge @ Rs. 1920/- only per month from the allowances of Smt. Tapashi Sarkar. Simultaneously, the latter was directed to vacate the quarter, within 10 days.

Since Smt. Tapashi Sarkar failed to vacate the quarter, as directed several times, the case was reviewed afresh and Smt. Tapashi Sarkar was treated as unauthorized occupant since 05.01.2002 i. e. after expiry of two years from the death of her husband, which is the permissible period. Order for recovery of damage charge therefore, with effect from 05.01.2002 onwards was issued under letter-dated 28.02.2005.

The Estate Officer of the office at Shillong issued order dated 18.03.2005 under Section 3A of Public Premises (Eviction of Unauthorized Occupants) ACT, 1971 TO Smt. Tapashi Sarkar directing her to vacate the quarter forthwith. Therefore, Smt. Tapashi Sarkar filed a Writ Petition under W.P. (C) No. 74 (SH) 2005 before the Hon'ble Gauhati High Court, Shillong Bench. The said W.P. was disposed of and passed an order on 01.04.2005 with direction as stated hereunder:

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“ The petitioner is given the liberty to seek allotment of a residential quarter in terms of relevant Government instructions. If such an application is made within a period of one week from today, the respondents/ authorities concerned shall consider and dispose of the same in accordance with law. If the application, as directed, is made within the period aforementioned, then, the impugned order, dated 18.03.2005, aforementioned shall be kept in abeyance until the application made by the petitioner is disposed of by the respondents/authorities concerned in terms of the directions given hereinabove.

Turning to the petitioner's grievances with regard to unlawful recovery of rents, the petitioner may make necessary representation/ application in this regard to the respondents/authorities concerned. If such representation/application is made, the respondents/ authorities concerned shall dispose of the same in accordance with law. The representation/ application, which may be made with regard to recovery of rent, shall be treated and dealt with independent of the decision that may be taken by the respondents/ authorities concerned on the basis of the petitioner's application/ representation for allotment of quarter not on concessional ground or on the ground that she is widow of late B. P. Sarker, but for allotment of quarter in general category in her capacity as an Extra Departmental Agent.

With the above observations and directions, this Writ Petition shall stand disposed of”.

A copy of the order dated 01.04.2005 passed in W.P. (C) No. 74 (SH) /2005 is annexed herewith and marked as Annexuer-2.

As per direction of the Hon'ble High Court, Smti. Tapashi Sarkar had submitted her representation dated 7.04.2005 which was considered and rejected, reckoning with the Rules and the direction was communicated to her accordingly under the office letter dated 8.04.2005.

Since the grievances had already been placed before the Hon'ble High Court on the same ground and facts, the present OA is not maintainable and liable to be dismissed in the admission stage itself.

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3) That with regard to the statement made in paragraph 1 of the OA, the respondents beg to state that both the orders were issued in accordance with Govt's orders and rules relating to allotment of quarters.

4) That with regard to the statement made in paragraph 2 of OA, the respondents beg to state that in view of the agitation made before the Hon'ble Gauhati High Court, Shillong Bench under WP (C) No. 74/2/5 on the same ground, the case is not maintainable again before the Hon'ble Tribunal.

5) That with regard to the statement made in paragraph 3 of OA, the respondents beg to offer no comment.

6) That with regard to the statement made in paragraph 4 (i) of OA, the respondents beg to state that upon the demise of her husband, Late B. P. Sarkar, Smt. Tapashi Sarkar had applied for compassionate appointment. Consequently, her name was recommended for Group D, if necessary vacancy available, by Circle Recruitment Committee (CRC) in March 2000. Thereafter, she joined as Gramin Dak Sewak, Circle Office, Shillong in February 2001, as per existing available vacancies. Till date Smt. Tapashi Sarkar remains a Gramin Dak Sewak officials; and not a departmental Group D or Group C official.

7) That with regard to the statement made in paraprapg 4 (ii) of OA, the respondents beg to offer no comment.

8) That with regard to the statement made paragraph 4 (iii) of OA, the respondents beg to state that Smt. Tapashi Sarkar joined as Gramin Dak Sewak in February 2001, Circle Office, Shillong. Hence, the claim by the applicant that she got appointment on compassionate ground as Gramin Dak Sewak on 26.2.2001 is correct. In any case, the applicant did not vacate the quarter on her own even after the expiry of permitted period, and continued to deposit the license fee on her own. There was no permission from competent authority to retain the quarter or any order as to the realization of license fee, ipso facto, does not validate the unauthorized occupation. The husband of the applicant died on 4.1.2000. Therefore, as per Government of India FR & SR, SR.317-B-11, the applicant was entitled to retain existing Type- I residential accommodation up to 4.1.2002; accordingly, she was allowed to retain the said quarter unto 4.1.2002. Thereafter, the applicant is an unauthorized occupant, and liable to pay penal rent per month, as per instructions contained in Directorate of Estates, Government of India, New

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Delhi letter No. 12035/4/98-Pol. II dated 09.06.1998 conveyed vide Postal Directorate, New Delhi letter No.10-3/98-Bidg. Dated 18.08.1998.

Copies of the letters are annexed herewith
and marked as Annexure-R2

9) That with regard to the statement made in paragraph 4 (iv) of OA, the respondents beg to state that the ad hoc allotment, without approval from competent authority, was made pending regularization by the allotment committee and scrutiny of the entitlement later on.

10) That with regard to the statement made in paragraph 4 (v) of OA, the respondents beg to state that the case of ad hoc allotment of the staff quarter to Smt. Tapashi Sarkar was reviewed by the allotment committee and treated the ad hoc allotment as ~~irregular~~, as Smt. Tapashi Sarkar, being a Gramin Dak Sewak was not entitled to have allotment of any Departmental quarter. The applicant, in accordance with Rule 3 of GDS (Conduct & Employment) Rules, 2001, is outside the Civil Service of Union of India and not at per with the Government Servants and, as such, does not hold a post to be eligible for allotment of Govt. quarter. Accordingly, the ad hoc allotment made to the applicant, was cancelled and she was ordered to vacate the quarter by 30.11.2004 under the Office Letter No. Bldg/27-38/88-89, dated 01.11.2004. Since the applicant failed to vacate the quarter by 30.11.2004, as asked for, she was again directed to vacate the quarter immediately under letter No. Bldg/27-38/88-89, dated 23.12.2004, but the applicant did not vacate the quarter as directed. Ergo, the occupation of the quarter was treated as unauthorized and damage charge was levied lawfully, as per provision of rule SR 317-B-22. Simultaneously, the applicant was directed to vacate the quarter within 10 days, the argument of the applicant the Shillong is a very hard place to get any rented quarter with reasonable price is ludicrous. It is not the case that all residents/inhabitants of Shillong are earning well and residing in their own houses. A lot of inhabitants reside in rented houses. In any case the applicant had two years time to have a rented house, but she did not do so. The applicant has stated that her daughter is a heart patient and, as such, she could not vacate the quarter within the stipulated period. The applicant failed to adduce supporting documents, etc. regarding treatment of her daughter. Moreover, the diagnosis by the Chief Medical Officer, P & T Dispensary Shillong for the

daughter of the applicant is 'anxiety neurosis'. This is distinct from diagnosing someone as a 'heart patient'.

- 11) That with regard to the statement made in paragraph 4 (vi) of OA, the respondents, while denying the contentions made therein beg to state that the averment ^{made} by the applicant is sheer surmise and conjecture. Payment of license fee does not regularize unauthorized occupation of a quarter. The license fee was deposited by the applicant at the Post Office on her own without having any valid order of recovery from the competent authority.
- 12) That with regard to the statement made in paragraph 4 (vii) of OA, the respondents while denying the contentions made therein beg to state that the contentions of the applicant is fallacious and fabricated. Moreover, it is made with ill motive to get a favorable decision from the concerned authority. There is not a single case of allotment of a quarter to any GDS not only at Shillong but in any other places of N. E. Postal Circle, too. The provision of ad hoc allotment of a quarter to the wards of a Govt. employee who dies while in service, *inter alia*, is that the applicant should be eligible to have allotment of the office, provided that such an appointment is secured within 12 months. The applicant is not an employee in an eligible Office for getting the allotment of Govt. accommodation.
- 13) That with regard to the statement made in paragraph 4 (viii) of OA, the respondents while denying the contentions made therein beg to state that since the applicant did not vacate the quarter though she was directed several times to vacate the quarter, the Estate Officer of this Department in Shillong issued an order dated 18.03.2005 under Section 3 A of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 to the applicant with direction to vacate the quarter forthwith. Being aggrieved, the applicant filed a Writ Petition bearing No. W P (C) No. 74 (SH) 2005 before the Hon'ble Gauhati High Court, Shillong Bench on the same ground, that is stated in the present OA. The said Writ Petition was disposed of in the Hon'ble High Court, and an order was passed on 1.4.2005 directing to consider allotment of quarter to the applicant not on concessional ground or the ground that she is a widow of late B. P. Sarker, but for allotment of quarter specifically in her capacity as an Extra Departmental Agent.
- 14) That with regard to the statement made in paragraph 4 (ix) of OA, the respondents while denying the contentions made therein beg to state that the averment is neither convincing nor tenable. The representation-dated 07.04.2005

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of the applicant has been duly considered reckoning with the Rules in force and rejected on valid ground. Therefore, the question of non-applying of mind to pros and cons of the matter and also having a nonchalant attitude etc. does not arise.

- 15) That with regard to the statement made in paragraph 4 (x) of OA, the respondents while denying the contentions made therein beg to state that the occupation of Govt. accommodation under the Rules, as emphasized in Govt. of India's instruction No. 5 (2) (iii) appended below SR 317-B-26 in Swamy's Compilation of FR & SR, 2003. Therefore, the action of the respondents is quite logical and in accordance with Rules in force for allotment of Govt. quarters and regulations, thereof.
- 16) That with regard to the statement made in paragraph 4 (xi) of OA, the respondents while vehemently objecting the averment beg to state that the respondents acted in accordance with the extant Rules, in allotment of quarters and with fairness, too.

A copy of the Govt. of India's instructions
is annexed herewith and marked as
Annexure-R3.

- 17) That with regard to the statement made in paragraph 5 (i) of OA, the respondents while denying the contentions made therein beg to state that the levy of recovery of damage charge w.e.f. 05.01.02 is regular, legal and supported by Govt. of India's instruction at 5 (2) appended under SR 317-B-26 in Swamy's Compilation of FR&SR 2003.

A copy of the Govt. of India's instruction
is annexed herewith and marked as
Annexure-III.

- 18) That with regard to the statement made in paragraph 5 (ii) of OA, the respondents while denying the contentions made therein beg to state that the ad hoc allotment made to the applicant is not supported by the terms and conditions prescribed for the purpose, wherein. It is clearly enjoined that the eligible dependent is a Govt. servant and is entitled for general pool accommodation or gets an employment in an eligible Office even after the death of the (related) official, provided that such an appointment is secured within a period of 12 months after the death of the Officer, as per Govt. of India's instructions No. 5 (3) SR 317-B-26 in Swamy's Compilation of FR & SR, 2003. In the instant case, the applicant is not a Govt.

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servant but a GDS who cannot claim ^{at} per with Govt. servant. Thus, the applicant is not entitled to have allotment of Govt. accommodation, under any provision of FR & SR. besides she has been in unauthorized occupation of the quarter since 05.01.2002.

- 19) That with regard to the statement made in paragraph 5 (iii) of OA, the respondents while denying the contentions made therein beg to state that the question of allotment of govt. accommodation to a GDS does not arise at all. The contentions of the applicant are a blatant lie, as no other GDS has been given accommodation in Govt. quarters. Moreover, there is no such allotment (for GDS) existing in N. E. Postal Circle, or for that matter, any other Postal Circle in India. An irregular allotment does not make another irregular allotment regular.
- 20) That with regard to the statement made in paragraph 5 (iv) of OA, the respondents while denying the contentions made therein beg to state that no discretionary power is vested any of the respondents to make an ineligible person/official for accommodation into an eligible one. Relaxation of provision in the instant case toward allotment of quarter, under no circumstances, is permissible. No discretionary power can be awarded to an ineligible aspirant.
- 21) That with regard to the statement made in paragraph 5 (v) of OA, the respondents while denying the contentions made therein beg to state that the ground adduced in this paragraph is sheer surmise and conjecture. The respondents acted in conformity to the Rules in force, on this score.
- 22) That with regard to the statement made in paragraph 5 (vi) of OA, the respondents while denying the contentions made therein beg to state that the applicant was rightly treated as unauthorized occupant on expiry of permissible period of retention of quarter i.e. up to 04.01.2002. Depositing of license fee to the Post Office on her own, ipso facto, does not regularize her occupation nor does it make her eligible for allotment of the quarter.
- 23) That with regard to the statement made in paragraph 5 (vii) of OA, the respondents while vehemently denying the contentions made therein beg to state that raising the issue of equality, by the applicant, needs to be situated in context. Being GDS, she cannot claim the same set of treatment, as laid down in rules, for full time Govt. servants. The question of isolating the applicant does not arise, nor has any favour been made to any GDS vis-à-vis allotment of quarter.

32

24) That with regard to the statement made in paragraph 6 of OA, the respondents while denying the contentions made therein beg to state that the applicant states that she has 'availed all the remedies, but failed'. The premise of the applicant is correct, but conclusion is incorrect. Her representations have been taken cognizance of and suitably disposed of, too.

25) That with regard to the statement made in paragraph 7 of OA, the respondents beg to state that the applicant agitated the Hon'ble Gauhati High Court, Shillong Bench on the same ground. The Hon'ble High Court decided the case on its merit and, therefore, the case is not maintainable in the Hon'ble Central Administrative Tribunal. It is liable to be rejected summarily.

26) That with regard to the statement made in paragraph 8 (i) to 8 (iii) of OA, the respondents while denying the contentions made therein beg to state that under the conspectus of above premises, the applicant is not entitled to the relief and remedies sought for.

27) That with regard to the statement made in paragraph 9 of OA, the respondents while denying the contentions made therein beg to state that the applicant is ineligible for allotment or retention of Govt. accommodation with effect from 05.01.2002 and, therefore, deserves no interim relief. Instead, the application deserves to be summarily rejected.

28) That with regard to the statement made in paragraphs 10 to 12 of OA, the respondents offer no comment.

Abhinav Walla
 Director of Postal Services (H.Q.)
 N. E. Circle, Shillong-793001

33

VERIFICATION

I Shri Abhinav Walia at present

working as Director Postal Services at _____

Guwahati who is taking steps in this case, being duly authorized and competent to sign this verification, do hereby solemnly affirm and state that the statement made in paragraph

1,5,11,28 are true

to my knowledge and belief, those made in paragraph

2,3,4,6 to 27 being matter of records, are

true to my information derived there from and the rest are my humble submission before this Humble Tribunal. I have not suppressed any material fact.

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


Abhinav Walia
Director of Postal Services (H.Q.)
N. E. Circle, Shillong-793001

82
11the requisite number of
stamps and folios.Date of delivery of the
requisite stamp and
folios.Date on which the copy
was ready for
delivery.Date of mailing
the copy to
applicant.

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IN THE GAUHATI HIGH COURT
 (THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
 MANIPUR AND TRIPURA)
 SHILLONG BENCH
 CIVIL APPELLATE SIDE

Appeal from Ver. P (C)

Civil Rule

Sri Taposhri Sarker

No. 94 (C) 05

of 20

Appellant
Petitioner

Writ of Mandamus Versus

Respondent
Opposite-Party

Appellant Mr. B. K. Deb Roy
 For

Petitioner JOINT OF AG

Respondent Mr. R. Deb Nati
 For

Opposite-Party MLC G. Sarker

Noting by Office or Advocate

Serial
No.

Date

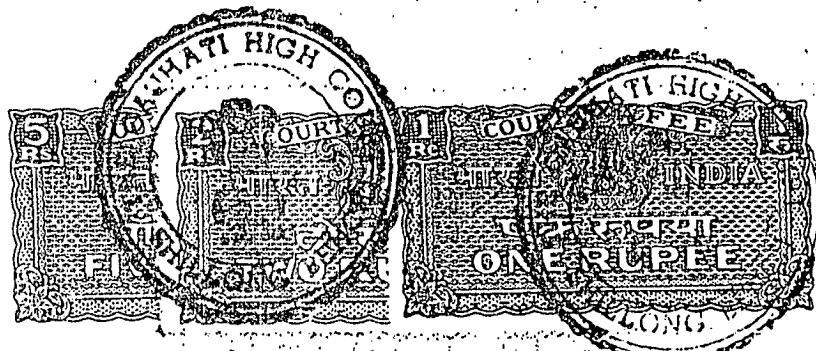
Office notes, reports, orders or proceedings
with signatures

1

2

3

4



AND -

29

IN THE MATTER OF:-

Smti Tapashi Sarkar,

W/o Late B. P. Sarkar,

P & T Colony, Oakland,

Shillong - 793001,

East Khasi Hills District,

Meghalaya.....

PETITIONER

VERSUS -

1. Union of India,

Represented by the Secretary to the

Department of Communication

& Information Technology,

Dak Bhawan, New Delhi 110 001.

2. The Director General,

Department of Posts, Government of

India, New Delhi - 110 001.

3. The Chief Postmaster General,

N. E. Circle, Shillong 793001.

4. The Estate Officer & Assistant

Postmaster General (Est.)

O/o the Chief Postmaster General,

N.E.Circle, Shillong -793001

RESPONDENTS.

Petitioner

Defendant

Witness

Other

Evidence

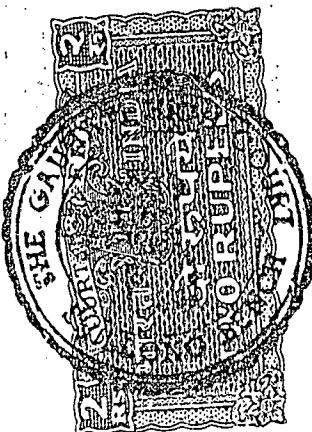
Other

Other

Other

37 - 16 - W

Ruling by Officer or Advocate	Serial No.	Date	Office copy, report, order or proceeding with signature
	3	3	WP(C) 74 (SH) 2005
			BEFORE THE HON'BLE MR. JUSTICE I.A. ANSARI
		01.04.2005.	
			Heard Mr. BK Deb Roy, learned counsel for the petitioner, and Mr. R. Deb Nath, learned Addl CGSC, appearing on behalf of the respondents.
			By the impugned order, dated 18.03.2005, passed by the respondent No. 4, namely, Estate Officer & Assistant Postmaster General, (Est.) NE Circle, Shillong, the petitioner has been directed to vacate the residential quarter, which is presently in her occupation. This residential quarter was allotted to the petitioner on concessional ground. The allotment made on concessional ground in terms of the relevant Government instructions, will remain in force for a period of 12 months from the date of allotment. In the present case, the petitioner was allotted the residential quarter in question, as far back as on 05.01.2000. Thus, the petitioner has remained in occupation of the said residential quarter far longer than what was permissible under the relevant instructions.
			In the above view of the matter, the petitioner is not entitled to retain the residential quarter on the basis of her allotment made on concessional ground and



1. Party Office or Advocate	2. Serial No.	3. Date	4. Office notes, reports, orders or proceedings with signatures
1	2	3	4
	38		
			<p>the impugned order, dated 18.03.2005, aforementioned cannot be interfered with.</p> <p>Independent of the allotment of the quarter, in question, to the petitioner on concessional ground and independent of the impugned order, dated 18.03.2005, aforementioned passed for vacating the quarter, the petitioner may, in terms of the relevant instructions, relating allotment of quarter, in general, apply for allotment of quarter, for making of such an application is not barred under the relevant instructions and/or the law.</p> <p>In view of the above, the petitioner is given the liberty to seek allotment of a residential quarter in terms of relevant Government instructions. If such an application is made within a period of one week from to-day, the respondents/authorities concerned shall consider and dispose of the same in accordance with law. If the application, as directed, is made within the period aforementioned, then, the impugned order, dated 18.03.2005, aforementioned shall be kept in abeyance until the application made by the petitioner is disposed of by the respondents/authorities concerned in terms of the directions given hereinabove.</p> <p>Turning to the petitioner's grievances with regard to unlawful recovery of rents, the petitioner may make necessary</p>

oting by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signatures
1	2	3	4

representation/application in this regard to the respondents/authorities concerned. If such representation/application is made, the respondents/authorities concerned shall dispose of the same in accordance with law. The representation/application, which may be made with regard to recovery of rent, shall be treated and dealt with independent of the decision that may be taken by the respondents/authorities concerned on the basis of the petitioner's application/representation for allotment of quarter not on concessional ground or the ground that she is widow of late B.P. Sarkar, but for allotment of quarter in her capacity as a Extra Departmental Agent.

With the above observations and directions this writ petition shall stand disposed of.

S/II A. Daisari
Judge.

Certified To Be True Copy

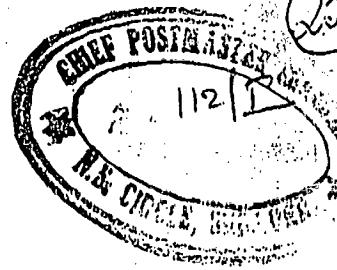
Superintendent (Judicial)
Gauhati High Court
Shillong Road

Typed By
Read By
Compared By
S/II A. Daisari

Annexe - R2 - 17 -

Bldg. Sec.

40



No. 103/98-Bldg.
Government of India
Ministry of Communications
Department of Post
(Bldgs. Branch)

Dak Bhavan, Sansad Marg,
New Delhi-110 001.

Dated: 18-8-98

1. All Chief Postmasters General
2. Postmasters General
3. Postal Training Centres -
Saharanpur, Darbhanga, Mysore,
Vadodara, Madurai.
4. Postal Staff College, Ghaziabad.

Kindly find enclosed letter No. 12035/4/98-Pol. II dated 9.6.98 regarding permissible period of retention of Govt. accommodation in case of death of the allottees.

2. This rule shall apply to the Postal Pool also.
3. Kindly ensure that the matter is circulated widely in the respective units.

A. Kharkwal
(A. Kharkwal)
Asstt. Director General (Bldgs.)

Encl. as above

415 - 18 - 25/1
No. 12035/4/98-Pol.II
Government of India
Directorate of Estates

New Delhi, the 9.6.98

OFFICE MEMORANDUM

Subject:- Permissible period of retention of Govt. accommodation in case of death of the allottees.

As per provisions of SR-317-B-11, permissible period of retention of Govt. accommodation is one year in case of death of the allottee on payment of normal rates of licence fee. No further retention is permissible under SR-317-B-22 and the family is required to vacate the premises immediately thereafter and is liable to pay damages rates of licence fee for the period of over-stay. Representations have been received from various quarters to allow further retention as the families of deceased Govt. servants, who are in dire need of accommodation, face great hardship. The matter has been considered in this Ministry and it has now been decided to allow further retention of one year, on payment of normal licence fee, to mitigate the hardship being faced by the families of the deceased allottees.

Retention
2M
allow
cases

2. Retention of accommodation for a period of one more year will be permissible under the provisions of SR-317-B-22, on payment of normal rate of licence fee. The family of the deceased allottee shall be required to apply for such retention and the licence fee shall be paid in advance through Bank Draft drawing in favour of the Ass't. Director of Estates (Cash). The extended period of retention under SR-317-B-22 will, however, not be permissible in cases where the deceased officer or his/her dependents own a house at the place of posting.

3. A copy of the Notification dated 29-5-1993, amending the provisions of the Allotment Rules (SR-317-B-22) is enclosed herewith, which has been given effect from 1-6-1993, i.e. the date of publication of the Notification in the Gazette.

4. The benefit of retention of Govt. accommodation under SR-317-B-22 will be admissible in all such cases where the normal retention period of one year, as admissible under SR-317-B-11, has not expired as on 1-6-93. All allotment Sections are requested to decide such cases accordingly. The Allotment Sections will maintain separate Register in r/o officers who expired while in service and watch timely cancellation/retention/vacation of the Govt. accommodation.

Sd/-
(R.D. SAHAY)
DY. DIRECTOR OF ESTATES (POLICY)

Overstay in residence after cancellation of allotment

S.R. 317-B-22. Where, after an allotment has been cancelled or is deemed to be cancelled under any provision contained in these rules, the residence remains or had remained in occupation of the officer to whom it was allotted or of any persons claiming through him, such officer shall be liable to pay damages for use and occupation of the residence, services, furniture and garden charges as may be determined by Government from time to time, or twice the licence fee he was paying, whichever is higher:

Provided that an officer, who was paying licence fee under FR 45-A may, ¹ [in special cases, except in case of death, be allowed] by the Directorate of Estates, to retain a residence for a period not exceeding six months beyond the period permitted under SR 317-B-11 (2) on payment of twice the standard licence fee under FR 45-A or twice the pooled standard licence fee under FR 45-A, whichever is higher but not exceeding 30% of the emoluments (as defined under FR 45-C) last drawn by the officer. In case of an officer who was not paying licence fee under FR 45-A, he may be allowed to retain a residence for the same period on payment of twice the standard licence fee under FR 45-A or twice the pooled standard licence fee under FR 45-A, or twice the licence fee that he was paying, whichever is higher.]

² [Provided further that in the event of death of the allottee, his/her family shall be eligible to retain the Government accommodation for a further period of one year on payment of normal licence fee. The extended period of retention shall not be allowed in cases where the deceased officer or his/her dependant owns a house at the place of posting.]

GOVERNMENT OF INDIA'S ORDER

Rate of licence fee to be charged for the period of retention of residential accommodation beyond the normal permissible period.—See GIO (5) below SR 317-B-11.

Continuance of allotments made prior to the issue of these rules

S.R. 317-B-23. Any valid allotment of a residence which is subsisting immediately before the commencement of these rules under the rules then in force shall be deemed to be an allotment duly made under these rules notwithstanding that the officer to whom it has been made is not entitled to a residence of that type under SR 317-B-5 and all the preceding

1. Substituted vide G.I., M.U.D., Notification No. 12035/1/92-Pol. II, dated 14-5-1992 (GSR 265, dated 30-5-1992).

2. Inserted by G.I., M.U.A. & E, Directorate of Estates, Notification No. 12035/4/98-Pol. II, dated the 29th May, 1998; published as G.S.R. 287 (E) in the Gazette of India, Extraordinary, dated the 1st June, 1998.

provisions of these rules shall apply in relation to that allotment and that officer accordingly.

Interpretation of rules

S.R. 317-B-24. If any question arises as to the interpretation of the rules in this Division, it shall be decided by the Central Government.

Relaxation of rules

S.R. 317-B-25. The Government may, for reasons to be recorded in writing, relax all or any of the provisions of the rules in this Division in the case of any officer or residence or class of officers or type of residences.

Delegation of powers or functions

S.R. 317-B-26. The Government may delegate any or all the powers conferred upon it by the rules in this Division to any officer under its control, subject to such conditions as it may deem fit to impose.

GOVERNMENT OF INDIA'S ORDERS

(1) Allotment of Government quarters to dependants/relations of Government employees on their retirement (including voluntary retirement).—When a Government servant in occupation of Government residence retires from service, his/her son, unmarried daughter, wife or husband, as the case may be, may be allotted Government residential quarters on *ad hoc* basis, subject to the following conditions:—

1. The dependant/relation should be a Government servant eligible for allotment of Government residence.

2. He should submit an application to the authority competent to allot the accommodation in the prescribed form along with an affidavit (as given in Annexure) from the retired Government servant.

3. He should have been residing continuously with the retiring Government servant for at least three years immediately preceding the date of retirement of the Government servant. During the same period of three years, he should not have been drawing House Rent Allowance. The condition of non-withdrawal of HRA is applicable only in cases where the dependant is employed in the same station and residing with the official in the same Government accommodation.

4. If he has been appointed to Government service within a period of three years preceding the date of retirement of the Government servant or has been transferred to the place of posting of the retiring Government servant within a period of three years preceding the date of retirement of the Government servant, the date on which he was so appointed or transferred to the station of posting of the retiring Government servant, shall be the date applicable for the purpose enforcing of the condition stipulated in Para. 3 above. The

concession of *ad hoc* allotment would not be available in the case of a dependant who secures employment after the date of retirement of parent but during the period of re-employment.

5. The concession of *ad hoc* allotment to eligible dependant would not be available in case any other dependant is already in occupation of Government accommodation.

6. The retiring Government servant or any member of his family should not own a house in the place of the applicant.

7. The eligible dependant/relation will be allotted Government residence one type below his entitlement, provided that in no case allotment will be made to a higher type of quarter than in occupation of the retiring Government servant except in the case of an eligible dependant/relation who will be allotted accommodation in Type B on *ad hoc* basis even though he is entitled to Type B or any higher accommodation, despite the fact that the retiring Government servant was occupying Type A accommodation. *Ad hoc* allotment of lower type of accommodation is to be restricted to the same area or adjoining area where retired official is having the accommodation. However, licence fee/damages will have to be paid by the retired official, if there is any delay in allotment of alternative accommodation due to restriction of allotment to such colony.

8. All the dues/outstanding in respect of the quarters in occupation of the retired Government servant should be cleared, after which the allotment to the dependant/relation will be considered. Where arrears are due from retired persons, a statement indicating arrears due should be furnished to the dependant and he should be asked to furnish a certificate regarding payment of licence fee/damages from the office where the official was working during the period such arrears were due, in case recovery has already been made or should be asked to make payment of the amount and this should be stipulated as a condition in the letter sanctioning *ad hoc* allotment.

9. The concession of *ad hoc* allotment would not be available to temporary employees of ICMR, ICAR, CSIR, CRRI and CBI & P Organizations on retirement of their parent/spouse.

10. The date of regularization of *ad hoc* allotment should be the date from the date of cancellation in case the eligible dependant is already in Government service and is entitled for regularization and not from the date of issue of the orders for *ad hoc* allotment. The *ad hoc* allotment of Type A made to an eligible dependant can be regularized at his request, if such officer becomes entitled to Type B or higher type of accommodation at the time of regular allotment.

[G.I., M. W. & H., O.M. No. 12035 (7)/79-Pol. II, dated the 1st May, 1981 and M.U.D., Director of Estates, O.M. No. 12035 (14)/82-Pol. II (Vol. II) (i), dated the 19th November, 1987.]

43 20

ANNEXURE

AFFIDAVIT

[To be furnished by the retired officer]

I, _____, son/daughter of Shri _____ at present allottee of Government Quarter No. _____ and a permanent resident of (District) _____ do hereby solemnly affirm and declare that I do not own or possess a house either in whole or in part, in my own name or in the name of my wife or son or unmarried daughter, in the local or adjoining Municipality of the place of my posting.

2. I further declare that I or my wife or my son or unmarried daughter do not own or possess a residential plot in the local or adjoining Municipality of the place of my posting.

3. I also declare that I or my wife, son or unmarried daughter is not a member of any Co-operative House Building Society.

4. I declare that the above statements are true and correct.

Signature _____

Date _____

Solemnly affirmed and declared before me.

MAGISTRATE

SEAL

(2) Concession of *ad hoc* allotment on retirement extended to married daughter also.—In exercise of the powers conferred under S.R. 317-B-25 of Allotment of Government Residence (General Pool in Delhi) Rules, 1963, the instructions exist that when a Government servant who is an allottee of General Pool Accommodation retires from service, his/her son/unmarried daughter or wife/husband, as the case may be, may be allotted accommodation from the general pool on *ad hoc* basis, subject to fulfilment of prescribed conditions [see Order (1) above]. It has now been decided to extend the scope of this concession to the married daughter of a retiring official, in case he does not have any son or in case where married daughter is the only person who is prepared to maintain the parent(s) and the sons are not in a position to do so (e.g., minor sons). This will be subject to the following conditions which are also applicable to the other eligible wards seeking such concession:—

1. The ward should be continuously residing with the retiring Government servant and not drawing HRA for at least 3 years immediately preceding the date of his/her retirement. In case, however, a person is appointed to the Government service within the period of 3 years preceding the date of retirement or has been transferred to the place of posting of the retiring

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1. Subs
11, dated 6
10th Novem
ber, 1987.

2. Subsri
R. 265, date

Overstay in residence after cancellation of allotment

S.R. 317-B-22. Where, after an allotment has been cancelled or is deemed to be cancelled under any provision contained in these rules, the residence remains or had remained in occupation of the officer to whom it was allotted or of any persons claiming through him, such officer shall be liable to pay damages for use and occupation of the residence, services, furniture and garden charges as may be determined by Government from time to time, or twice the licence fee he was paying, whichever is higher:

Provided that an officer, who was paying licence fee under FR 45-A may, ¹ [in special cases, except in case of death, be allowed] by the Directorate of Estates, to retain a residence for a period not exceeding six months beyond the period permitted under SR 317-B-11 (2) on payment of twice the standard licence fee under FR 45-A or twice the pooled standard licence fee under FR 45-A, whichever is higher but not exceeding 30% of the emoluments (as defined under FR 45-C) last drawn by the officer. In case of an officer who was not paying licence fee under FR 45-A, he may be allowed to retain a residence for the same period on payment of twice the standard licence fee under FR 45-A or twice the pooled standard licence fee under FR 45-A, or twice the licence fee that he was paying, whichever is higher.]

² [Provided further that in the event of death of the allottee, his/her family shall be eligible to retain the Government accommodation for a further period of one year on payment of normal licence fee. The extended period of retention shall not be allowed in cases where the deceased officer or his/her dependant owns a house at the place of posting.]

GOVERNMENT OF INDIA'S ORDER

Rate of licence fee to be charged for the period of retention of residential accommodation beyond the normal permissible period.—See GIO (5) below SR 317-B-11.

Continuance of allotments made prior to the issue of these rules

S.R. 317-B-23. Any valid allotment of a residence which is subsisting immediately before the commencement of these rules under the rules then in force shall be deemed to be an allotment duly made under these rules notwithstanding that the officer to whom it has been made is not entitled to a residence of that type under SR 317-B-5 and all the preceding

1. Substituted vide G.I., M.U.D., Notification No. 12035/1/92-Pol. II, dated 14-5-1992 (GSR 265, dated 30-5-1992).

2. Inserted by G.I., M.U.A. & E., Directorate of Estates, Notification No. 12035/4/98-Pol. II, dated the 29th May, 1998; published as G.S.R. 287 (E) in the Gazette of India, Extraordinary, dated the 1st June, 1998.

44-22

provisions of these rules shall apply in relation to that allotment and that officer accordingly.

Interpretation of rules

S.R. 317-B-24. If any question arises as to the interpretation of the rules in this Division, it shall be decided by the Central Government.

Relaxation of rules

S.R. 317-B-25. The Government may, for reasons to be recorded in writing, relax all or any of the provisions of the rules in this Division in the case of any officer or residence or class of officers or type of residences.

Delegation of powers or functions

S.R. 317-B-26. The Government may delegate any or all the powers conferred upon it by the rules in this Division to any officer under its control, subject to such conditions as it may deem fit to impose.

GOVERNMENT OF INDIA'S ORDERS

(1) Allotment of Government quarters to dependants/relations of Government employees on their retirement (including voluntary retirement).—When a Government servant in occupation of Government residence retires from service, his/her son, unmarried daughter, wife or husband, as the case may be, may be allotted Government residential quarters on *ad hoc* basis, subject to the following conditions:—

1. The dependant/relative should be a Government servant eligible for allotment of Government residence.

2. He should submit an application to the authority competent to allot the accommodation in the prescribed form along with an affidavit (as given in Annexure) from the retired Government servant.

3. He should have been residing continuously with the retiring Government servant for at least three years immediately preceding the date of retirement of the Government servant. During the same period of three years, he should not have been drawing House Rent Allowance. The condition of non-drawal of HRA is applicable only in cases where the dependant is employed in the same station and residing with the official in the same Government accommodation.

4. If he has been appointed to Government service within a period of three years preceding the date of retirement of the Government servant or has been transferred to the place of posting of the retiring Government servant within a period of three years preceding the date of retirement of the Government servant, the date on which he was so appointed or transferred to the station of posting of the retiring Government servant, shall be the date applicable for the purpose enforcing of the condition stipulated in Para. 3 above. The

concession of *ad hoc* allotment would not be available in the case of a dependant who secures employment after the date of retirement of parent but during the period of re-employment.

5. The concession of *ad hoc* allotment to eligible dependant would not be available in case any other dependant is already in occupation of Government accommodation.

6. The retiring Government servant or any member of his family should not own a house in the place of the applicant.

7. The eligible dependant/relative will be allotted Government residence one type below his entitlement, provided that in no case allotment will be made to a higher type of quarter than in occupation of the retiring Government servant except in the case of an eligible dependant/relative who will be allotted accommodation in Type B on *ad hoc* basis even though he is entitled to Type B or any higher accommodation, despite the fact that the retiring Government servant was occupying Type A accommodation. *Ad hoc* allotment of lower type of accommodation is to be restricted to the same area or adjoining area where retired official is having the accommodation. However, licence fee/damages will have to be paid by the retired official, if there is any delay in allotment of alternative accommodation due to restriction of allotment to such colony.

8. All the dues/outstanding in respect of the quarters in occupation of the retired Government servant should be cleared, after which the allotment to the dependant/relative will be considered. Where arrears are due from retired persons, a statement indicating arrears due should be furnished to the dependant and he should be asked to furnish a certificate regarding payment of licence fee/damages from the office where the official was working during the period such arrears were due, in case recovery has already been made or should be asked to make payment of the amount and this should be stipulated as a condition in the letter sanctioning *ad hoc* allotment.

9. The concession of *ad hoc* allotment would not be available to temporary employees of ICMR, ICAR, CSIR, CRRI and CBI & P Organizations on retirement of their parent/spouse.

10. The date of regularization of *ad hoc* allotment should be the date from the date of cancellation in case the eligible dependant is already in Government service and is entitled for regularization and not from the date of issue of the orders for *ad hoc* allotment. The *ad hoc* allotment of Type A made to an eligible dependant can be regularized at his request, if such officer becomes entitled to Type B or higher type of accommodation at the time of regular allotment.

[G.I., M. W. & H., O.M. No. 12035 (7)/79-Pol. II, dated the 1st May, 1931 and M.U.D., Director of Estates, O.M. No. 12035 (14)/82-Pol. II (Vol. II) (i), dated the 19th November, 1987.]

45-23

S.R. 317-B]

ANNEXURE
AFFIDAVIT

[To be furnished by the retired officer]

I, _____, son/daughter of Shri _____ at present allottee of Government Quarter No. _____ and a permanent resident of (District) _____ do hereby solemnly affirm and declare that I do not own or possess a house either in whole or in part, in my own name or in the name of my wife or son or unmarried daughter, in the local or adjoining Municipality of the place of my posting.

2. I further declare that I or my wife or my son or unmarried daughter do not own or possess a residential plot in the local or adjoining Municipality of the place of my posting.

3. I also declare that I or my wife, son or unmarried daughter is not a member of any Co-operative House Building Society.

4. I declare that the above statements are true and correct.

Signature _____
Date _____

Solemnly affirmed and declared before me.

MAGISTRATE

SEAL

(2) Concession of *ad hoc* allotment on retirement extended to married daughter also.—In exercise of the powers conferred under SR 317-B-25 of Allotment of Government Residence (General Pool in Delhi) Rules, 1963, the instructions exist that when a Government servant who is an allottee of General Pool Accommodation retires from service, his/her son/unmarried daughter or wife/husband, as the case may be, may be allotted accommodation from the general pool on *ad hoc* basis, subject to fulfilment of prescribed conditions [see Order (1) above]. It has now been decided to extend the scope of this concession to the married daughter of a retiring official, in case he does not have any son or in case where married daughter is the only person who is prepared to maintain the parent(s) and the sons are not in a position to do so (e.g., minor sons). This will be subject to the following conditions which are also applicable to the other eligible wards seeking such concession:—

1. The ward should be continuously residing with the retiring Government servant and not drawing HRA for at least 3 years immediately preceding the date of his/her retirement. In case, however, a person is appointed to the Government service within the period of 3 years preceding the date of retirement or has been transferred to the place of posting of the retiring