

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O R D E R S H E E T

original Application No. _____

Misc. petition No. _____

Contempt Petition No. 20/05 in M.P. 105/05 in O.A. 93/05

Review Application No. _____

Applicant(s) Dapashi Sarkar

Respondents u. o.i 908

Advocate(s) for the Applicant(s) A.K. Roy, L. Wapang
Miss Lt. Day

Advocate(s) for the Respondents Adv. CG, SC.

Notes of the Registry	Date	Order of the Tribunal
<p>This Contempt petition has been filed by the counsel for the petitioner for willful and deliberate violation of interim order dated 7.6.05 passed in M.P. 105/05 in O.A 93/05 and order dated 27.5.05 passed by this Hon'ble Tribunal.</p> <p>Laid before the Hon'ble Court for further orders.</p> <p><u>Dm.</u></p> <p>for Section officer</p> <p>for <u>Section officer</u> for <u>Section officer</u> immediately order dated 21.6.05</p> <p><i>ST 21/6/05</i></p>	21.6.2005	<p>Present : Hon'ble Sri Justice G. Sivarajan, Vice-Chairman. Hon'ble Sri K.V. Prahladan, Administrative Member.</p> <p>Heard Mr. A.K. Roy, learned counsel for the applicant.</p> <p>Issue notice to the respondents post on 07.07.2005. The respondents will appear in person before this Tribunal on that day.</p> <p>Office will send this order today itself by Registered Speed Post with acknowledgement due to the respondent by</p> <p><i>KV Prahladan</i> Member</p> <p><i>D. J. Sarker</i> Vice-Chairman</p> <p>none in at parbhur. Adjourn to tomorrow 8.7.05 D.J.</p>
	7.7.05	

(2)

Notice & Order
Dt. 21/6/05, Sent
to D/Section
for issuing
respondent by
Speed post with
A/D.

21/6/05.

D/ Memo No-942
Dt. 21/6/05

22/6.

5.7.05

An application
filed by the Respondent
Chief Post Master General
N.R. Circle, Shillong.

AM/

① Copy of the order dtl.

21.6.05 issued to the
respondant vide memo
No - 942 Dtl. 21.6.05,

mb

ICV/DR/

Member

DR/ V.C/

Vice-Chairman

② Service report are still
awaited.

③ An application filed
by the C.P.M.G. N.E Circle,
Shillong.

30
6.7.05 Received
Usha Das,
Advocate
11/7/05

(3)

29.7.2005

The respondent was directed to appear before this Tribunal today. Ms. U. Das, learned Addl. C.G.S.C. appearing on behalf of the respondent submits that the respondent is now hospitalised in Apollo Hospital at Chennai and he is likely to be discharged on 2nd August 2005. In this circumstance, personal appearance is dispensed with and the respondent is directed to appear before this Tribunal on 30.8.2005.

Received
Usha Das
Addl C.G.S.C
10/8/05

K. Palan
Member

2/2
Vice-Chairman

mb

30.8.05

Post the matter on 12.9.05.

2/2
Vice-Chairman

12.9.2005

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

2/2
Vice-Chairman

bb

14.11.2005 Present : Hon'ble Mr. Justice G. Sivarajan, 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 C.P. is dismissed as without jurisdiction. Consequently, the O.A. and M.P. are also dismissed.

16.11.05
Copy of the
order has been
sent to the Office
for issuing the
same to applicant
by post.
tk

Received
Usha Das
Addl C.G.S.C
16/11/05

2/2
Vice-Chairman

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

0 JUN 2005

गुवाहाटी बैचल्याइट
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

(Civil Contempt Jurisdiction)

Contempt Petition No. 20

/2005.

IN THE MATTER OF :

An application under Section 17 of the
Central Administrative Tribunal Act,
1985, read with Section 11 and 12 of
the Contempt of Court Act, 1971.

-AND-

IN THE MATTER OF:

Willful and deliberate violation of
interim order dated 7.6.2005 passed in
Misc. Petition No.105/2005 in O.A.
No.93/2005 and order dated 27.5.2005
passed by this Hon'ble Tribunal.

-AND-

IN THE MATTER OF:

Smti Tapashi Sarkar,
Wife of Late B.P. Sarkar.
R/o. P & T Colony, Oakland,
Shillong-793001.

.....Petitioner

-Vs-

Abijit Ghosh Dostidar

Chief Post Master General,

N.E. Circle, Shillong-793001.

.....Respondent.

Filed by the petitioner
Kamal L. Kapoor
Adv. Adarsh
20/6/05

T. Sarkar

The humble petition of the petitioner
above named -

MOST RESPECTFULLY SHEWETH :

1. That the petitioner approached this Hon'ble Tribunal by filing an Original Application No.93/2005, challenging the eviction from the quarter and illegal recovery of penal rent in respect of the quarter. The original application was moved on 27.4.2005 and this Hon'ble Tribunal was pleased to issue notice and passed an interim order staying the operation of eviction and recovery of penal rent and fixed the case for admission on 27.5.2005.
2. That on 27.5.2005 the aforesaid original application was listed for admission and this Hon'ble Tribunal was pleased to admit the application and fixed for hearing on 24.6.2005 with direction that earlier interim order should continue. But on that very day the respondent sealed the petitioner quarter keeping all the belongings inside the quarter during the absence of the petitioner.
3. That the petitioner after obtaining the certified copy of the order dated 27.5.2005, served the same

Copy of the said Order dated 27.5.2005
is annexed herewith as Annexure-A.

T. Sarkar

to the respondents and requested to unlock the quarter, but the respondents neither give her the receipt copy of the same nor unlock the quarter. The respondents stated that once it is locked, the same is final and the same cannot be unlocked even to take the very essential things.

- That the petitioner being aggrieved by the actions of the present respondent approached this Hon'ble Tribunal by filing Misc. Petition No.105/2005 in O.A. No.93/2005. After hearing both the parties this Hon'ble Tribunal was pleased to passed an order directing the concerned respondents to immediately unlock the premises and put, the petitioner in occupation of the quarter.

Copy of the order dated 7.6.2005 is annexed herewith and marked as Annexure-B.

- That the petitioner after obtaining the certified copy of the order dated 7.6.2005, served the same to the Respondent through Fax on 8.6.2005 and then on 9.6.2005 the petitioner requested the present respondent to unlock the quarter as per the order of this Hon'ble Tribunal. But the said officer refused to unlock the premises by saying that he does not care the Court's order and he will not allow the petitioner to enter in the quarter.

6. That the petitioner states that, at present due to the actions of the respondent she along with her children are taking shelter from one neighbour and using cloths of that family.

7. That the respondent action is completely against the order dated 27.5.2005 of this Hon'ble Tribunal passed in O.A. No.93/2005 and order dated 7.6.2005 passed in Misc. Petition No.105/2005 in O.A. No.93/2005, and hence he is liable to be prosecuted under the contempt of Court's Act, 1971, and is punishable under the said Act for his intentional and wilful violation of the order of this Hon'ble Tribunal.

8. That this petition is made bonafide and for the ends of justice.

In the premises aforesaid, it is therefore prayed that Your Lordships may be pleased to issue notice and draw proceeding against the respondents under contempt of Court Act, 1971, for his wilful and intentional violation of the order dated 27.5.2005 and 7.6.2005 of this Hon'ble Tribunal and/or be pleased to pass any other further order or orders as Your Lordships may deem fit and proper.

And for this act, as in duty bound, the petitioner shall ever pray.

AFFIDAVIT

I, Smti Tapashi Sarkar, wife of late B.P. Sarkar, aged about 38 years, resident of P & T Colony, Shillong-793001 (Meghalaya), do hereby solemnly affirm and state as follows:

1. That I am the petitioner in the instant contempt petition and am well acquainted with the facts and circumstances of the case and entitled to swear this affidavit.
2. That the statements made in this affidavit and in paragraphs 1, 3, 5, 6 and 7 of this petition are true to my knowledge, those made in paragraph 2 and 4 being matters of record are true to the information derived therefrom and the rest are my humble submissions made before this Hon'ble Tribunal.

And I sign this affidavit on this 2nd day of June, 2005 at Guwahati.

Identified by -

L. Wapang
20/6/05
Advocate.

T. Sarkar

D E P O N E N T

Solemnly affirmed and declared by the deponent who is identified by Shri L. Wapang, Advocate on this the 2nd day of June, 2005.

DRAFT CHARGE

Laid down before the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati for initiating Contempt proceeding against the Contemners for willful dis obidience and deliberate non-Coplince of interim orders dated 7.6.2005 passed in O.C.M.P. 105/2005 in O.A. 93/2005 and order dated 27.5.2005 passed by this Hon'ble Tribunal.

(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

93/05

original Application No.

Misc. petition No.

Contempt Petition No.

Review Application No.

Applicant(s)

Tapashri Saikia

Respondents

W.O. I Qurs.

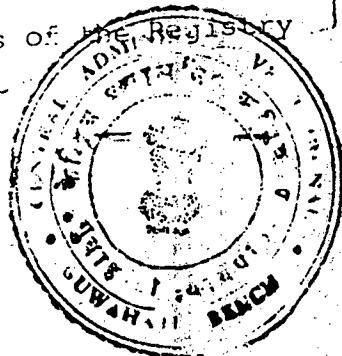
Advocate(s) for the Applicant(s) A.K. Roy, L. Wapang

Advocate(s) for the Respondents CAF

Notes of the Registry

Date

Order of the Tr. No.



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.

Sd/Vice Chairman.

TRUE COPY

stated

30.5.05
Section Officer (A)
Central Administrative Tribunal
Central Administrative Tribunal
Guwahati Bench, Guwahati
Central Administrative Tribunal

Afterwards
Sd/
20/6/05

Subserve.

ORDER SHEET

Original Application No.

105/05 in O.A. 93/05

Misc. Petition No.

Contempt petition No.

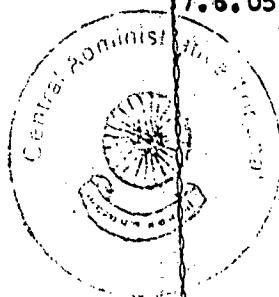
Review Application No.

Applicants. Tapashi Sarkar

Respondents. U.O.T. 908

Advocates for the Applicant. A.K. Roy, L. Wapang

Advocates of the Respondent. Case

Notes of the Registry	Dated	Order of the Tribunal
	7.6.05.	<p>Present: Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman. Hon'ble Mr. K. V. Prahladan, Admini- strative Member.</p> <p>In spite of directions issued on 27.4.05 and on 27.5.05 by granting according the interim stay of eviction from the quarter and recovery of damage charge in respect of quarter No.01/2C at Oakland, Shillong, it is alleged that the respondents have evicted the applicant and locked premises. It is stated that the applicant who is the widow of the deceased Shri B.P. Sarkar is now on the road. The learned counsel for the applicant submits that inspite of the production of the stay of eviction order the concerned respondents have locked the premises. In the circumstances, the Respondents are directed to file affidavit in opposition to the Misc. Petition within a period of two weeks. The interim stay will continue until further order, the concerned respondents will immediately unlock the premises and put the applicant in occupa- tion of the cottage. <i>quarters by</i></p> <p>contd/-</p>

Attested

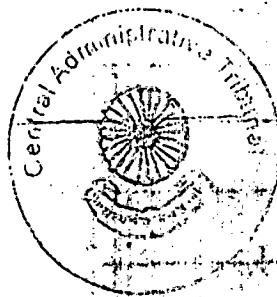
Am
20/6/05

Advocate

7.6.05. Copy of the order be handed over to
the learned counsel for the parties.

Post the matter on 24.6.05. alongwith.

O.A.



Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)

TRUE COPY

प्राप्ति

NS-6
8.6.05.

MS 8/6/05

5 JUL 2005

গুৱাহাটী ব্যাকুল
Guwahati Bench

1

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

CP NO. 20/05

IN MP NO. 105/05

IN OA NO. 93/05

SMTI TAPASHI SARKAR

.....PETITIONER

-VERSUS-

UNION OF INDIA & ORS

.....RESPONDENTS

IN THE MATTER OF

An application filed by the respondent in the above noted Contempt petition praying for dispensing with the direction for personal appearance passed on 21.6.2005 by the Hon'ble Central Administrative Tribunal.

THE HUMBLE PETITION ON BEHALF OF THE RESPONDENTS ABOVE NAMED

MOST RESPECTFULLY SHEWETH

- 1) That the respondent has received a copy of Contempt Petition filed by the petitioner along with the order dated 21.6.2005 directing the respondent for personal appearance passed by the Hon'ble Tribunal and has gone through the same. The respondent has understood the contentions made thereof.
- 2) That the petitioner has filed the Contempt Petition against the non-compliance of the order dated 7.6.2005 passed by the Hon'ble Tribunal by which the Hon'ble Tribunal was pleased to pass an interim order staying the operation of the eviction order and to unlock the premises.
- 3) That the respondents have approached the Hon'ble Gauhati High Court, Shillong Bench against the order dated 7.6.2005 passed by this Hon'ble Tribunal and the

Filed by the Respondent through
(A) GHOSH DASTIDAR
Chief Postmaster General
North Eastern Circle
SHILLONG - 793001
5/7/05

Hon'ble High Court was pleased to pass an interim order directing the parties to maintained status quo as on 24.6.2005 in respect of the quarter which is the subject matter of the controversy in the WPC No.193 (SH) 2005.

A copy of the WPC and a copy of the order dated 24.6.2005 are annexed herewith and marked as Annexure-R1 and R2 respectively.

- 4) That in view of the order passed in the abovementioned Writ Petition this Hon'ble Tribunal may be pleased to pass an order dispensing with the personal appearance of the respondent till finalization of the same.
- 5) That the respondents beg to state that considering the above facts and circumstances narrated above the Hon'ble Tribunal may be pleased to modify/cancel the order and to pass an appropriate order, as your Lordships deem fit and proper.
- 6) That the respondents beg to state that the concerned respondent will appear in person before the Hon'ble Tribunal as and when this Hon'ble Tribunal direct the same. The respondent begs your lordships apology if any contempt has been committed without the Knowledge of the respondent. The respondent being the responsible officer has never violated any order passed by the Hon'ble Tribunal willfully.
- 7) That this application has been filed bonafide and to secure ends of justice.

In the premises aforesaid it is most respectfully prayed that Your Lordships would graciously be pleased to pass an order dispensing with the personal appearance of the respondent before the Hon'ble Tribunal on 7.7.2005 and /or to pass an appropriate order in modification of the order dated 21.6.2005 passed by this Hon'ble Tribunal and/or to pass an appropriate order as Your Lordships deem fit and proper considering the facts and circumstances of the case.

And for this act of kindness the humble respondent as in duty bound shall ever pray

3 ↵

AFFIDAVIT

I, Shri ABHISHEK GHOSH-DASTIDAR aged about 58 years at present working as CHIEF POSTMASTER GENERAL at NORTH EAST CIRCLE, SHILLONG who is the respondent in the present Contempt Petition and hence competent to sign this affidavit do hereby solemnly affirm and state that the statement in paragraphs 1,2,3 are matter of records, are true to my information derived there from and the paragraph 4 & 5 are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this affidavit on this 2nd day of July, 2005 at Guwahati

Identified by me

Usha Das.
advocate

A. GHOSH DASTIDAR
Chief Postmaster General
North Eastern Circle
SHILLONG - 793001

Solemnly affirm and state by the deponent, who is identified by Miss Usha Das, Advocate, on this 2nd day of June, 2005 at Guwahati

M. A. Ahmed
Addl. Commr.
5/7/05

-4-
Annexure - 1
10

DISTRICT: EAST KHASI HILLS

IN THE GUWAHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

SHILLONG BENCH

(Write Petition Original Jurisdiction)

(Write petition (C) No. (SH) of 2005

Code No.

To,

The Hon'ble Shri B.K. Roy, MA, B.L., the Chief Justice of the
Guwahati High Court and his Lordship's companion Justices of
the said High Court.

IN THE MATTER OF

A petition under
article 226/227 of the
Constitution of India,
for issuance of the
writ in the nature of
mandamus, ciretoroi
and any other
writ/writs,
order/orders,
directions.

-AND-

IN THE MATTER OF

Order dated
27.04.2005 and
27.05.2005 passed
by Learned Central
Administrative
Tribunal, Guwahati
Bench, Guwahati in
OA no. 93/2005.

5-
-AND-IN THE MATTER OF:-

Order dated 07.06.2005 passed by learned Central Administrative Tribunal, Guwahati Bench, Guwahati.

-AND-

IN THE MATTER OF:-

1. Union of India represented by the Secretary to the Government of India, Ministry of Communications, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, N.E. Circle, Shillong.
3. The Assistant Director (Building), Office of the Chief Postmaster General, N.E. Circle, Shillong.

....Petitioners

- Versus -

1. Smt. Tapashi Sarkar, wife of late B.P. Sarkar, P&T Colony, Oakland, Shillong
2. The Central Administrative Tribunal, Guwahati Bench, Guwahati.

.... Opposite parties

The humble petition of the above named petitioners:

Most Respectfully sheweth:-

1. That this petition is preferred by the Union of India through the Chief Postmaster General, N.E. Circle, Shillong, impugning the order dated 27.04.2005 passed by the learned Central Administrative Tribunal, Guwahati Bench, Guwahati, in original application No. 93/2005, granting interim stay in the operation of the order dated 08.04.2005 and 28.02.2005, and

the order dated order dated 27-05-2005 extending the said interim order inspite of the show cause filed by the petitioners and the order dated 07-06-2005 passed by the learned Central Administrative Tribunal, directing the petitioners to unlock the quarter No.- 01/2C at Oakland, Shillong. Copy of the orders are annexed herewith and marked as ANNEXURE - 1, 2 and 3.

2. That the husband of the respondent, Shri B P Sarkar had been serving as duftary in the office of the Chief Postmaster General, NE Circle Shillong, who died in harness on 04-01-2000, who has been residing in the departmental staff quarter NO. 01/2C, at Oakland Postal Coloney, Shillong, with his family.

3. That following the demise of said B P Sarkar, his widow the respondent was allowed to retain the quarter for 02 years from 01-05-2000 in accordance with SR-317-B-11. Copy of the SR is annexed herewith and marked as ANNEXURE - 4.

4. That eventually, on the representation on the respondent, for further retention of the said quarter on humanitarian consideration, she was allowed to retain the same on adhoc basis vide Memo No. Bldg/27-38/88-89 dated 17-08-2004, for the period of _____. Copy of the letter dated 17-08-2004 is annexed herewith and marked as ANNEXURE - 5.

5. That meanwhile the respondent applied for appointment on compassionate ground and her name was recommended for Grade-D post by the Circle Relaxation Committee for short CRC in March 2000, and she joined as Gramin Dak Sevak in the Circle Office Shillong since Feb 2001, but not as a Grade-D

6. That as per rule 3 of GDS (Conduct and Employment) Rules 2001, a gramin dak sevak shall be outside the civil service of the union of India and hence a gramin dak Sevak shall not claim to be at par with a govt. servant. Therefore, a gramin dak sevak does not hold a post to be eligible for allotment of a govt. quarter. Copy of the GDS (Conduct and Employment) Rules 2001 is annexed herewith and marked as ANNEXURE - 6.

7. That adhoc allotment of the quarter to the respondent, therefore, was reviewed and found to be irregular, by the allotment committee in view of the specific bar under the said rules, and accordingly the respondent was directed to vacate the quarter by 30.11.2004, vide office letter dated 01.11.2004. Copy of the letter dated 01.11.2004 is annexed herewith and marked as ANNEXURE - 7.

8. That the respondent in spite of the receipt of the said letter, did not vacate the said quarter and on her failure vide letter dated 23.12.2004, the respondent was again asked to vacate the quarter immediately. Copy of the letter dated 23.12.2004 is annexed herewith and marked as ANNEXURE-8.

9. That consequent upon the persistent default of the respondent to vacate the govt. accommodation, she became an unauthorized occupant in the govt. quarter and became liable to pay damage charges under SR-317-B-22 for such unauthorized occupation and the Senior Postmaster, Shillong GPO, the drawing and disbursing officer was directed by the office of the Chief Postmaster General vide letter dated 13.01.2005 to make recovery of damage amount @Rs.1920 per month from the

allowance of the respondent and simultaneously that she was asked to vacate the quarter within 10 days. Copy of the letter dated 13.01.2005 is annexed herewith and marked as ANNEXURE – 9.

10. That since the respondent did not vacate the quarter, it has been asked for, on several occasions, her case of occupation on the Govt. accommodation was reviewed afresh and was treated as unauthorized occupants since 05.01.2002 i.e. after the expiry of two years from the demise of her husband, which is the period permissible under the related rules. The order for recovery of damage charges, therefore, with effect from 05.01.2002 was issued vide letter dated 28.02.2005. Copy of the letter dated 28.02.2005 is annexed herewith and marked as ANNEXURE – 10.

11. Thereafter the Estate Office appointed by the competent authority issued notice dated 18.03.2005 under section 3(A) of the Public Premises (Eviction of unauthorized Occupants) Act 1971, against the respondent, asking her to vacate the govt. accommodation. Copy of the order dated 18.03.2005 is annexed herewith and marked as ANNEXURE – II.

12. That the respondent impugning the said order under PP Act preferred writ petition (C) No.74 (SH)/2005 before the Shillong Bench of the Hon'ble Guwahati High Court, which was contested by the appellant by filing affidavit-in-opposition, controverting the allegations and assertions made by the respondent, and the Hon'ble Court after hearing the parties was pleased to dispose of the writ petition vide a order dated 01.04.2005 with direction as hereunder:-

"The petition is given the liberty to seek allotment of a residential quarter in terms of relevant govt. 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 18.3.2005, aforementioned, then, the impugned order, dated 18.3.2005, aforementioned shall be kept in abeyance until the application made by the petitioner is disposed off by the respondents / authorities concerned in terms of the direction 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. Sarkar, but for allotment of quarter in general category in her capacity as a Extra Departmental Agent."

13. That the respondent in pursuance with the said order dated 01.04.2005 passed by this Hon'ble Court, had submitted her representation 07.04.2005, which however, was rejected on proper appreciation of the related rules vis-à-vis the assignment she has been holding, after application of mind and proper appreciation of the facts and circumstances of the case, as she is not eligible for Govt. accommodation, in accordance with the related rules, in the allotment of the quarters by the Department, and the said decision rejecting the representation of the respondent was

communicated to her vide letter dated 08-04-2005. Copy of the letter dated 08-04-2005 is annexed herewith and marked as ANNEXURE -12.

14. That being aggrieved the respondent filed the Original Application No.- 93/2005 before the learned Central Administrative Tribunal, Guwahati Bench, Guwahati, impugning the letter dated 08-04-2005, praying inter alia to quash the letter dated 28-02-2005 regarding recovery of damaged charge and recovery of penal rent. Copy of the OA is annexed herewith and marked as ANNEXURE - 13.

15. That the learned Administrative Tribunal while issuing notice of motion vide interim order dated 27-04-2005, was pleased to stay the "eviction and recovery of damage charge" in respect of the quarter No.- 01-2C at Oakland, Shillong, "for a period of four weeks". Copy of the order is annexed herewith and marked as ANNEXURE -14.

16. That the appellant submitted the showcause on 18-05-2005, challenging the jurisdiction of the learned tribunal to entertain the case, controverting the allegations made by the respondent, besides pointing out the un-tenability of her claim supported by the relevant rules, before the returnable date, but the matter was not heard on 27-05-2005. However the learned tribunal was pleased to allow the petitioner to file a rejoinder to the showcause with the continuation of the interim order dated 27-04-2005. Copy of the order is annexed herewith and marked as ANNEXURE -15.

- 11 - B

17. That your petitioner would respectfully submit that the order dated 27-04-2005 staying the operation of the impugned order till the returnable date, four weeks expired on 27-05-2005, and the petitioner on bonafide good faith initiated the process for eviction of the respondent, since the legitimacy of the claim of the respondent had already been decided by the Hon'ble High court in the WP © No. 74 (SH)/2005 vide order dated 01-04-2005, with liberty to the respondent to submit a representation to the petitioners to mitigate her grievances and the petitioners were asked to consider her representation in accordance with the related rules for allotment of Govt accommodation and charging of penal charges for occupation of the Govt accommodation beyond permissible period.

18. That your petitioners would respectfully submit that the unauthorised occupation of the said quarter by the respondent has denied the Govt accommodation to the legitimate claimant of the department in the waiting list for years together, as such the petitioners were constrained to take steps for eviction of the respondent on 30-05-2005, inspite of being repeatedly asked to vacate the same and in spite of the determination of her claim by the Hon'ble High Court.

19. That your petitioners were not aware of the continuation/extension of the interim order dated 27-04-2005 by the learned tribunal vide order dated 27-05-2005, on 30-05-2005 and it is only on 02-06-2005 your petitioners were informed that the said interim order stands extended for further period.

20. That respondent thereafter had filed a Misc petition No. 105/2005, praying inter alia for direction on your petitioner to restore her the possession to the said quarter, and the learned

tribunal vide order dated 07.06.2005, was pleased to direct the petitioners that "the interim stay will continue until further order, the concerned respondents will immediately unlock the premises and put the applicant in occupation of the quarters".

21. That your petitioners would respectfully submit that the respondent being a gramin dak Sevak, is not holding a civil post under the Union of India, and as such the learned tribunal has no jurisdiction to entertain the petition filed by the respondent, and hence the impugned orders passed are without jurisdiction and liable to be set aside and quashed.

22. That the learned single judge of this Hon'ble Court, while adjudicating the writ petition (C) No.74 (SH)/2005, preferred by the respondent has held that "in view of the matter the petitioner is not entitled to retain the residential quarter on the basis of her allotment made on concessional grounds and the impugned order dated 18.3.2005 cannot be interfered with", as such the rejection of the representation submitted by the respondent, does not entitle the respondent to file afresh petition before the learned tribunal, and hence the orders passed by the learned tribunal is wholly erroneous, not tenable under law and facts and liable to be set aside and quashed.

23. That the learned tribunal has miserably failed to appreciate that there is a tremendous dearth of govt accommodations and to allow an unauthorized occupants to retain the same for indefinite period under various pretext results into the deprivation of the legitimate and expectation of the bonafide employees of the Department in the waiting list, and as such the impugned order, besides being passed without jurisdiction is discriminatory and liable to be set aside and quashed.

24. That the petitioners have a commitment towards their employees and are expected to be guided by fairness and equality, and as such to accommodate the claim of an employee who is merely an extra departmental employee, renamed as gramin dak Sevak, will result in denial of departmental accommodation to a legitimate claimant, and hence the impugned orders are liable to be set aside and quashed.

25. That your petitioners would respectfully submit that the order passed by the learned tribunal besides being without jurisdiction is highly oppressive and will legitimize the unjust claim of an extra departmental employee, at the cost of a bona fide employee of the department, waiting for a departmental accommodation for years together, and as such the impugned orders are liable to be set aside and quashed.

26. By the interim order the learned tribunal has granted final relief to the respondent which is not permissible in accordance with law and as such impugned order is liable to be set aside and quashed.

27. That the orders passed by the learned tribunal are otherwise bad in law, justice and equity, and as such liable to set aside and quashed.

28. That your petitioners have prayed for justice but were denied.

29. That your petitioners have no other alternative and efficacious remedy and the relief prayed for would be just and adequate.

30. That this petition is made bonafide and for the ends for the justice.

In the above premises, most respectfully it is prayed that your lordships would graciously be pleased to admit this petition, call for the records, issue rule on the respondent, to show cause as to why the impugned orders dated 27.04.2005, 27.05.2005 and 07.06.2005 passed by the respondent No.2, learned Tribunal, should not be set aside and quashed and after causes being shown, if any, and hearing the parties, be pleased to set aside and quash the said orders, and

In the interim be pleased to stay the operation of the orders dated 07.06.2005 and be pleased to pass such other order/orders, as your lordships may deem fit, and proper, and for that act of kindness, your petitioners as in duty bound shall ever pray.

Humble petitioner

Dated, Shillong
The _____ June, 2005

AFFIDAVIT

I, Shri Abhinav Walia, son of Mr. R S Ahluwalia, aged about 40 years by occupation Government service, residing at Oakland Postal Quarter Complex, Shillong, East Khasi Hills, Meghalaya do hereby solemnly affirm and state as follows :-

1. That I am the Director Postal Services, in the office of the Chief Postmaster General, N.E. Circle, Shillong and I am well acquainted with the facts and circumstances of the case and am competent to swear this affidavit on behalf of the petitioners.
2. That the statements made in paragraphs _____ to _____ are true to my knowledge and that in paragraphs _____ are matters derived from records and true to my information and knowledge and the rests are my submission before the Hon'ble Court and I sign this affidavit this the _____ day of Jun 2005 at Shillong.

DEPONENT

Identified by :

Advocate.

1
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

OA NO. 93/05

SMTI TAPASI SARKAR

.....APPLICANT

-VERSUS-

UNION OF INDIA

.....RESPONDENTS

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 ~~dear~~ died in harness on 04.01.2000.

On death of the said B. P. Sarkar, Duftry, his wife, Smti. Tapashi Sarkar (05-01-2000 in 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

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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, Smti 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, Smti Tapashi 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 Smti Tapashi Sarkar. Simultaneously, the latter was directed to vacate the quarter, within 10 days.

Since Smti Tapashi Sarkar failed to vacate the quarter, as directed several times, the case was reviewed afresh and Smti 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 Smti Tapashi Sarkar directing her to vacate the quarter forthwith. Therefore, Smti 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 upto 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 ~~regular~~ ^{regular}, 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.

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.

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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.

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VERIFICATION

I Shri Abinav Walia at present
working as Director Postal Services at Shillong 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
are true
to my knowledge and belief, those made in paragraph
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 18 the day of March 2005 at
Guwahati.

Abinav Walia
✓ *D.S (A.M.)*
Shillong

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

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

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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

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DEPARTMENT OF POSTS: INDIA

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

Dated at Shillong the 28-02-05

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

ANNEXURE

To
The Sr. Postmaster,
GPO Shillong-793001.

By Hand

Subject: Recovery of damages from unauthorized occupant of Qtr. no. O-
1/2 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-1/2 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 Febray'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.

Sd/-
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.

U/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

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40.

(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

93/05

original application No. _____

Misc. petition No. _____

Contempt petition No. _____

Review Application No. _____

Tapashri Sarukhani

W.O. I Quas.

Applicant(s) _____

Respondents _____

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

Advocate(s) for the Respondents C.A.L.

NOTES OF THE REGISTRY

Date

Order of the Trial



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.

Sd/vice chairman.

TRUE COPY

stamps

N. S. 30.5.05
Section Officer (A)
Guwahati Bench
Central Administrative Tribunal
Extra Session Court
Guwahati Bench, Guwahati
Central Administrative Tribunal

Le. 05.

ORDER SHEET

Original Application No.

105/05 in O.A. 93/05

Sc. Petition No.

Interim petition No.

Review Application No.

Tapashri Sarkar

Applicants.

U.C.I. 9013

Respondents.

Advocates for the Applicant. A.K. Roy L. Waupang

Advocates of the Respondents. Case

Notes of the Registry

Dated

Order of the Tribunal

7.6.05.



Present: Hon'ble Mr. Justice G. Sivarajan,
Vice-Chairman.
Hon'ble Mr. K. V. Prahладан, Admini-
strative Member.

In spite of directions issued on 27.4.05 and on 27.5.05 ^{by granting} according the interim stay of eviction from the quarter and recovery of damage charge in respect of quarter No. 01/2C at Oakland, Shillong, it is alleged that the respondents have evicted the applicant and locked premises. It is stated that the applicant who is the widow of the deceased Shri B.P. Sarkar is now on the road. The learned counsel for the applicant submits that inspite of the production of the stay of eviction order the concerned respondents have locked the premises. In the circumstances, the Respondents are directed to file affidavit in opposition to the Misc. petition within a period of two weeks. The interim stay will continue until further order, the concerned respondents will immediately unlock the premises and put the applicant in occupation of the cottage. quarters

contd/-

ANNEXURE - I

SWAMY'S—FUNDAMENTAL RULES

[S.R. 317-B]

waiting list for the next month and an allotment will be given to him in his turn on the next month's waiting list only.
(G.I. Dir. of Estates, O.M. No. 12035 (19)/90-Pol. II, dated the 1st October, 1990.)

Period for which allotment subsists and the concessional period for further retention

S.R. 317-B-11. (1) An allotment shall be effective from the date on which it is accepted by the officer and shall continue in force until,—
(a) the expiry of the concessional period permissible under sub-clause (2) after the officer ceases to be on duty in an eligible office in Delhi.
(b) it is cancelled by the Director of Estates or is deemed to have been cancelled under any provision in these rules;
(c) it is surrendered by the officer, or
(d) the officer ceases to occupy the residence.

(2) A residence allotted to an officer may, subject to sub-rule (3) be retained on the happening of any of the events specified in Column (1) of the table below for the period specified in the corresponding entry in Column (2) thereof, provided that the residence is required for the bona fide use of the officer or members of his family—

Events

Permissible period for retention of the residence
(2)

(i) Resignation, dismissal or removal from service, termination of service or unauthorized absence without permission

1 month.

(ii) Retirement or terminal leave

1 [Two months on the normal licence fee and another two months on double the normal licence fee.]

2 [12 months.] Now 2 years.—
See SR 317-B-22.

(iii) Death of the allottee

2 months.

(iv) Transfer to a place outside Delhi

2 months.

(v) Transfer to an ineligible office in Delhi

2 months.

1 Substituted vide G.I., M.U.A. & E., Dir. of Estates, Notification No. 12035/28/96-Pol. II, dated the 19th November, 1996, published as G.S.R. 542 in the Gazette of India, dated the 30th November, 1996 and takes effect from 1-1-1997.

2 G.I., M.U.D., Notification No. 12035/1/92-Pol. II, dated 14-5-1992

[S.R. 317-B]

GOVERNMENT RESIDENCES

Events

(1)

Permissible period for retention of the residence
(2)

2 months.

4 months.

For the period of leave but not exceeding four months.

For the period of maternity leave plus leave granted in continuation subject to a maximum of five months.

For the full period of leave on maximum 180 days in the case of leave preparatory to retirement inclusive of the period permissible in the case of retirement.

(a) In case the officer is in occupation of accommodation below his entitlement, for the entire period of study leave.

(b) In case the officer is in occupation of his entitled type accommodation, for the period of study leave but not exceeding six months: Provided that where the study leave extends beyond six months, he may be allotted alternative accommodation, one type below his entitlement, on the expiry of six months or from the date of commencement of the study leave, if he so desires.

315 (21) 13
DEPARTMENT OF POSTS: INDIA
O/O THE CHIEF POSTMASTER GENERAL, NE CIRCLE,
SHILLONG-793001.

Dated at Shillong the 17-08-04

No: Bldg/27-38/88-89

1. 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, Duftry 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

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Postal Training Centres/other recruiting authorities in your Circle at the earliest and confirm to this office within a week's time that the needful has been done.

[D.G., Posts., No. 22-1/2000-ED & Trg., dated the 24th, April 2001.]

2. Application

These rules shall apply to Sevaks of the Department of Posts, Ministry of Communications, Government of India.

3. Definitions

In these rules, unless the context otherwise requires:—

- (a) "Assistant Superintendent/Inspector" in relation to a Postal/ Railway Mail Service Sub-Division, the Assistant Superintendent or Sub-Divisional Inspector of Post Offices or Railway Mail Service in charge of Sub-Division, as the case may be;
- (b) "Government" means the Central Government;
- (c) "Gramin Dak Sevak" means—
 - (i) a Gramin Dak Sevak Sub-Postmaster;
 - (ii) a Gramin Dak Sevak Branch Postmaster;
 - (iii) a Gramin Dak Sevak Mail Deliverer;
 - (iv) a Gramin Dak Sevak Mail Carrier;
 - (v) a Gramin Dak Sevak Mail Packer;
 - (vi) a Gramin Dak Sevak Mail Messenger;
 - (vii) a Gramin Dak Sevak Mailman;
 - (viii) a Gramin Dak Sevak Stamp Vendor.
- (d) "Head of a Circle" means the Head of a Postal Circle and includes Chief Postmaster-General/Principal Chief Postmaster-General;
- (e) "Head of a Division" in relation to a Postal or Railway Mail Service, the Senior Superintendent or Superintendent of a Postal or Railway Mail Service Division, as the case may be;
- (f) "Head of a Region" in a Postal Circle means Postmaster-General (Region);
- (g) "Members of the family" in relation to a Gramin Dak Sevak includes—
 - (i) the wife, child or stepchild of such Sevak, whether residing with him or not, and in relation to a Sevak who is a woman, the husband residing with her and dependent on her; and
 - (ii) any other person related, whether by blood or by marriage to such Sevak or to such Sevak's wife or husband and wholly dependent on such Sevak, but does not include a wife or husband legally separated from such Sevak or a child or

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stepchild who is no longer in any way dependent upon such Sevak or of whose custody the Sevak has been deprived by any law;

- (h) "Record Officer" in relation to Railway Mail Service, the Sub-Record Officer or the Head Record Officer in charge of a Sub-Record Office or Head Record Office;
- (i) "Sevak" means a person working as a Gramin Dak Sevak;
- (j) "Postmaster" in relation to a Post Office, a Deputy Presidency Postmaster, Gazetted Postmaster including a Gazetted Sub-Postmaster in charge of a Town Sub-Office, Postmaster in Higher or Lower Selection Grade (in his own office) except a Postmaster in charge of a Town Sub-Post Office.

NOTE I.— The persons holding the posts of Extra-Departmental Agents under the Posts and Telegraphs Extra-Departmental Agents (Conduct and Service) Rules, 1964 on regular basis on the date of commencement of these rules shall be deemed to have been appointed to and hold the posts of Gramin Dak Sevaks in accordance with the provisions of these rules;

NOTE II (i) A Sevak shall not be required to perform duty beyond a maximum period of 5 hours in a day;

- (ii) A Sevak shall not be retained in employment beyond 65 years of age;
- (iii) A Sevak shall fulfil the compulsory condition of alternate independent source of income preferably derived from landed property or immovable assets as a pre-condition for employment as Sevak and shall maintain the same after his employment as Sevak;
- (iv) Sevak shall not have any transfer liability;
- (v) A Sevak shall be outside the Civil Service of the Union;
- (vi) A Sevak shall not claim to be at par with the servant of the Government;
- (vii) Residence in post village/in the delivery jurisdiction of the Post Office before appointment shall be mandatory for a Sevak;
- (viii) Post Office shall be located in the accommodation to be provided by Gramin Dak Sevak Sub-Postmaster/Branch Postmaster suitable for use as Post Office premises;
- (ix) Combination of duties of a Sevak shall be permissible;
- (x) A Sevak can be discharged from employment before attaining the mandatory age of 65 years if he is declared prematurely incapacitated for future employment by a Competent Medical Authority.

DIRECTOR-GENERAL'S INSTRUCTIONS

- (1) Categories other than those prescribed not to be employed.— It has been decided that EDAs of categories other than those prescribed should

345 (344) Annex - 1
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.

To

ANNEXURE - 1

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 intimation 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.

C. B. Dutta
(A. B. Dutta)
Asstt. Director (Bldg)
For Chief Postmaster General,
N. E. Circle, Shillong.

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35/11

Annex - B
M/C

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

Dated at Shillong the 23-12-04.

No: Bldg/27-38/88-89

To
Smt. Tapashi Sarkar,
Gr. "D" Barashree Post Office,
Shillong-793001.

Regd/AD

Subject: Vacation of garage at O/land Postal Colony.

With reference to this office letter of even no. dated 01-11-04 it is to intimate that the qtr no. 01-2/C is not yet vacated by you.

Therefore, it is directed that the quarter allotted to you should be vacated immediately. In case, you do not vacate the said quarter, the legal action will be taken against you. On vacation the key should be handed over to AD (Bldg), C.O., Shillong. This is most urgent.

23/12
Asst. Director (Bldg),
For the Chief Postmaster General,
NE Circle, Shillong-793001

367 (H) 12 JAN 2005
Annex - 9
RAN 12/188

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

Dated at Shillong the 13-01-05.

No: Bldg/27-38/88-89

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 unauthorized 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.

Necessary action may kindly be taken at your end.

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.

13/1
For the Chief Postmaster General,
NE Circle, Shillong

37-
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

To
The Sr. Postmaster,
GPO Shillong-793001.

By Hand

Subject: Recovery of damages from unauthorized occupant of Qtr. no. O-1/2 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-1/2 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 Febray'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.

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

For Chief Postmaster General,
NE Circle, Shillong-793001

DEPARTMENT OF POSTS: INDIA
the G. I. of Posts

THE POSTS: INDIA
O/o the Chief Postmaster General, NE Circle, Shillong.

Order under section '3A' of the Public Premises (Eviction of Unauthorized occupants) Act, 1971.

To

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

Whereas I, the undersigned, am satisfied for the reasons recorded below that Smt. Tapashi Sarkar is in unauthorized occupation of the public premises specified in the Schedule below.

Reasons

Smt. Tapashi Sarkar was allotted purely on temporary basis the occupation of Public Premises specified in the Schedule below under Postal Circle office memo no. Bldg/27-38/88-89 dated 17-07-04

The case was reviewed and the adhoc allotment treated as irregular. Being GDS employee, Smt. Tapashi Sarkar is not entitled to have allotment of any departmental quarter. Therefore, Smt. Tapashi Sarkar was asked to vacate the quarter on or before 30th Nov'04 vide Circle office, Shillong's letter no. Bldg/27-38/88-89 dated 01-11-04. But she has been continuing to occupy the same even after the expiry of the stipulated date i.e. 30th Nov'2004.

Now, therefore, in exercise of the powers conferred on me under section 3A of the public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order that the said Smt. Tapashi Sarkar of the said premises to vacate the premises forthwith. In the event of refusal or failure to comply with this order, the said Smt. Tapashi Sarkar is liable to be evicted from the said premises, if need be, by use of such force as may be necessary.

Schedule

Quarter No. O-1/2 C.
Oakland P & T Colony
Shillong-793001

Signature and seal of the Estate Officer

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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
(MANIK DAS)
Asstt. Director (Bldg)

8P4 US

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
QUADRANT BENCH

Case No. 90-A-99 93/2005
Central Govt. vs.

Smt. Tapashi Sarkar

VERSUSApplicant

Union of India & Others

.....Respondents

LIST OF DATES

<u>DATES</u>	<u>PARTICULARS</u>	<u>PABA</u>	<u>AMT</u>	<u>PAGE</u>
4.1.2000	Applicant's husband expired	ii		
4.4.2000	Respondent's letter allowing applicant to retain quarter for one year w.e.f 5.1.2000	ii		
30.1.2001	Respondent's letter allowing to retain quarter for further one year	ii		A
25.2.2001	Applicant was appointed as Group 'D' CDS under the respondents	ii		B
9.1.2002	Applicant's representation requesting to reallocate the quarter in her name and respondents continued to collect licence fee for quarter till July 2004	iii		
17.8.2004	Respondent No. 8 allotted the quarter on adhoc basis in her name	iii		C
1.11.2004	Respondent letter stating that allotment was irregular and thereby directed to vacate the quarter on or before 30.11.2004	iv		D
13.1.2005	Respondent's letter for recovery of damage charge w.e.f. 1.12.2004	v		E
25.2.2005	Respondent's letter for recovery of damage charge w.e.f. 1.1.2005	v		F
18.3.2005	Letter of Estate Officer to vacate quarter	vi		G
23.3.2005	Applicant's representation requesting to give more time	vii		
1.4.2005	High Court's direction to consider the representation.	viii		H
7.4.2005	Applicant's representation as per High court's direction	viii		
8.4.2005	Letter of respondent No.3 rejecting prayer of applicant holding to recover damage charge and to evict.	viii		I
		ix		J

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BRANCH

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

Dated the 10th day of April 2006
ORIGINAL APPLICATION NO. 2006

Smt. Tapophi Sarker

.....Applicant

VERSUS

Union of India & others

.....Respondents

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For use in the office

Signature -

Date -

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

QUARTER I BENCH

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

BETWEEN

the applicant whose details are as follows
Mr. Tapashi Sarker
W/O Late B.P. Sarker, 1004, Block 1, Oakland,
P & T Colony, Oakland,
Shillong - 793 001 of the above address, the
Respondent

.....APPLICANT

- AND -

1. Union of India,
Represented by the Secretary,
Department of Communication & Information
Technology, Post & Telegraph Department, Technology,
Dak Bhawan, New Delhi - 110 001
2. The Chief Postmaster General,
H.E. Circle, Shillong - 793 001
3. Asst. Director (Bldg.)
O/C Chief Postmaster General,
H.E. Circle, Shillong - 793 001.

.....RESPONDENT

1. Particulars of order against which this application
is directed

This application is made against :-

- 1) Letter dated 9.4.2005 (Annexure - J) so far the
same is related to recovery of penal rent /
damage charge for Quarter No. 01/20 at Oakland,
Shillong and process of eviction 1.0., (points
No. 4,5, and 6 of the letter)
- 2) Letter dated 23.2.2005 by which respondents have
sought for recovery of damage charge of Rs 78,712/-
(Annexure - G)

2. JURISDICTION

That the applicant declares that the subject matter

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 XW6 behind the applicant and three minor children. After expiry of husband, the applicant applied for her compassionate appointment and also for retention of departmental quarter No. 01-8C 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 ground as GDS on 28.2.2001 under the respondents and hence this letter dated 8.1.2002 requested the respondents to release the said quarter in her name. Be it stated here that even after completion of two years the respondents collected the licence fee against the said quarter and the applicant

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 P.R.C.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 u.e.f. August 2004 to November 2004, the Respondent No. 2 issued letter dated 23.2.2005 very illegally and unjustifiably stating the applicant as unauthorised occupant u.e.f 6.1.2002 and thereby sought for a deduction to the extent of Rs. 712/-

Copy of the letter dated 23.2.2005 is annexed herewith as Annexure -0

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 P.R.S.R. to grant adhoc allotment. Be it also stated that by holding the said provisions, the respondents have already allotted a number of quarters to many other ODS 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 P.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 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 ~~immediately~~ and hence the 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 her 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 2 and 1 respectively.

ix) That the applicant states that though the applicant submitted her representation dated 7.4.2005, the respondents did not apply 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 unchalliant 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 licensee 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.

(ii) that the respondents, intentionally, took the unchalliant attitude towards the applicant and hence being aggrieved she approaches this Hon'ble Tribunal by filing this application on the following grounds amongst others :

5. GROUNDS :

- i) For that recovery of usage charge / rental Rent w.e.f 5.1.2002 is illegal inasmuch as they have accepted the licensee fee and rent for that period.
- ii) For that as there is provision under P.R.B.B. for granting of adhoc allotment and as the same procedure was followed in the instant case, the same should not be treated as irregular.
- iii) For that as many other CDS staffs have been allotted quarter by following the same procedure 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 procedure 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 as per rate the letter dated 23.2.2005 is not sustainable in as much as she can't be termed as unauthorised occupant v.e.f.5.1.2002.

vii) For that the action of the respondent is illegal in as much as the same violates the Article 21 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 paragraph 4 of this application but failed and hence there is no other alternative ~~con~~ 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 paragraph 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. RELIEF SOUGHT FOR :

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

- 1) To set aside and quash letter dated 23.2.2005 regarding recovery of Rs 72,712/- as damage charge. (ANNEXURE - C)
- 2) To set aside and quash the letter dated 8.4.2005

(ANNEXURE - J) so far the same is related to recover of penal rent / damage charge for Quarter no.01/SC of Oakland, and process of eviction from the said quarter

111) To direct the respondents to consider the application by adopting the power of relaxation as has been provided under P.R.S.R. 111) To pass any other order or orders as your Lordship may deem fit and proper.

9. INTERIM RELIEF PRAYED FOR
Under the facts and circumstances above your Lordship may further be pleased to pass necessary order directing the respondents not to recover the damage charge from the quarter and not to recover the damage charge in respect of quarter no.01-SC, at Oakland, Shillor till the disposal of this application.

10.

11. PARTICULARS OF I.P.O.

1) I.P.O. NO 1

2) DATE OF ISSUE 1-

3) PAYABLE AT 1-

12. LIST OF ENCLOSURES

As stated in Index.

VERIFICATION

I, Smt. Tapashi Sarkar, wife of Late B.P. Sarkar, aged about 38 years, resident of P & I Colony, Shillong -793 001, in the East Khasi Hills district, Meghalaya, at present working as Group -D GDS under the respondent(s), 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 the _____ day of April 2005 at Guwahati.

Dated :-

Place :-

SIGNATURE

SIR

1. 8. 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)

Tapasli Sankar

Respondents

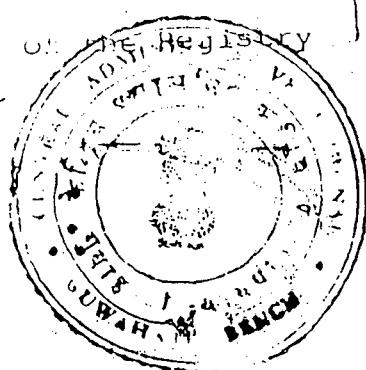
W.D. I QRS.

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

Advocate(s) for the Respondents CAF

Date

Order of the Tr



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.

sd/vice chairman.

TRUE COPY
stating

30.5.05

Section Officer (A)

Guwahati Bench (Central Admin.
 Central Administrative Tribunal
 Central Administrative Tribunal
 Guwahati Bench, Guwahati
 Assam, India)

LNS.

ORDERSHEET 52

93/OS

69

Application No.

Petition No.

Empt Petition No.

New Application No.

Tapashi Sarker

U.O.I. 94/1

A.K. Roy, L. Dapang

case

Applicant(s)

Respondents

Advocate(s) for the Applicant(s)

Advocate(s) for the Respondents

Order of the Tr

present : The Hon'ble Mr. Justice
C. Sivarajan, Vice-Chairman.

Heard Mr. A.K. Roy, learned
counsel for the applicant and also
Ms. U. Das, learned Addl. C.G.S.C.
for the respondents.

The Respondents are directed to
show cause as to why the application
shall not be admitted.

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.

Post on 27.5.2005

sd/ VICE CHAIRMAN

Seal to be used
before signing

27.4.05

Section Officer (I)

C.A.T. GUWAHATI BENCH
Guwahati, 8/4/05

Locality	Date of delivery of the 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 the applicant.
27-6-85	27-6-85	27-6-85	27-6-85	27-6-85

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

Appeal from V.L.P. (c) **No.** 193(84)65 **of 20**
Civil Rule

Reverin & Andheri & Ors

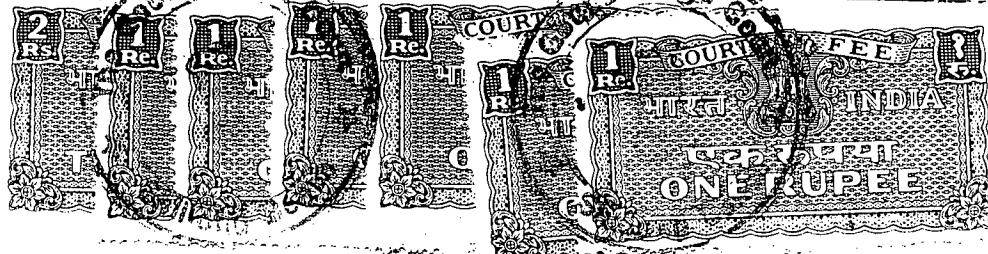
Appellant
Petitioner

Respondent
Opposite-Party

Appellant Mr. S. C. Rayamajhi
For 1/20 C. & S.C.
Petitioner 1/20 C. & S.C.

Respondent
For
Opposite-Party

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



-AND-

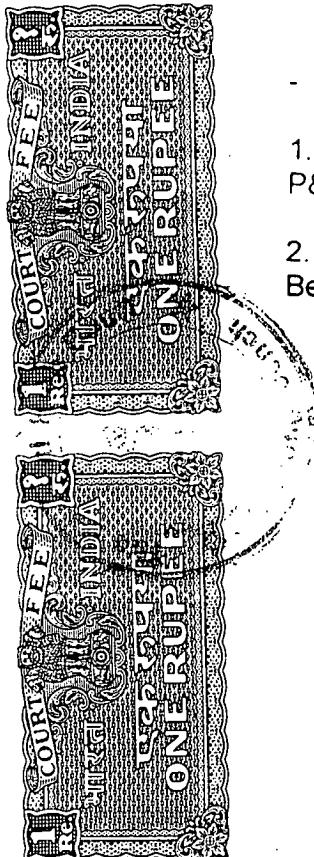
IN THE MATTER OF:-

Order dated 07.06.2005 passed by learned Central Administrative Tribunal, Guwahati Bench, Guwahati.

-AND-

IN THE MATTER OF:

1. Union of India represented by the Secretary to the Government of India, Ministry of Communications, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, N.E. Circle, Shillong.
3. The Assistant Director (Building), Office of the Chief Postmaster General, N.E. Circle, Shillong.



....Petitioners

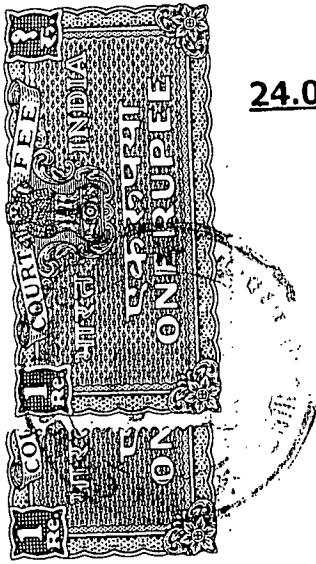
- Versus -

1. Smt. Tapashi Sarkar, wife of late B.P. Sarkar, P&T Colony, Oakland, Shillong
2. The Central Administrative Tribunal, Guwahati Bench, Guwahati.

.... Opposite parties

ORDER

BEFORE
THE HON'BLE MR. JUSTICE IA ANSARI
THE HON'BLE MR. JUSTICE BK SHARMA.



24.06.2005

Heard Mr. SC Shyam, learned Addl. CGSC for the petitioners.

Let a notice of motion issue calling upon the respondents to show cause as to why a Rule should not be issued as prayed for; and or why such further order or orders should not be passed as this Court may deem fit and proper.

Considering the nature of controversy, which the present writ petition involves, the notice is made returnable on 11-07-2005.

Let notices be issued accordingly by registered post with AD as well as by ordinary process. Steps be taken by today itself.

Heard Mr. SC Shyam, learned Addl. CGSC, on the prayer for interim directions, sought for by the petitioner. Perused, in this regard, the order, dated 01-04-2005, passed in WP(C) No. 74(SH) of 2005 and also the impugned order, dated 07-06-2005, passed in OA No. 93 of 2005.

Let notices be issued on the prayer for interim directions, making also the same returnable on 11-07-2005.

In the interim, it is provided that till further order, status quo as on today shall be maintained by the parties concerned in respect of the quarter which is the subject-matter of the controversy in the writ petition.

Endeavour will be made to dispose of the writ petition on the returnable date itself.

82/1 B.L. Shrivastava
Secty -

82/1- S.A. Ansari
Secty