

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 04185/2007

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SECTION OFFICER (Judl.)

Hakita  
05/10/2017

CENTRAL JUDICIAL OFFICE  
CHANDIGARH

ORDERS SHEET

1. Original Application No. 185/07

2. Misc Petition No.                     

3. Contempt Petition No.                     

4. Review Application No.                     

Applicant(s) Rahul Gossain vs Union of India & Ors

Advocate for the Applicant(s) B. Choudhury

Advocate for the Respondant(s) Dr. M. E. Sarma  
Railway Advocate

Notes of the Registry

Date

Order of the Tribunal

5.7.2007

Post the case on 11.7.2007.

This application is in form  
is filed/C.F. for Rs. 50/-

deposited vide IPO/BD

No. 246.654530

Dated 27.6.07

/bb/

Registrar

11.7.2007

On the request made on behalf of  
Mr. B. Choudhury, learned counsel for the  
Applicant let the case be posted on  
18.7.2007.

Vice-Chairman

Vice-Chairman

/bb/

Petitioner's Grievance  
for issue which  
are received.

18.7.2007

When the matter came up today for admission Mr.B.Choudhury, learned counsel for the Applicant produced a letter dated 28.10.2004 issued by the Divisional Personnel Officer, N.F.Railway, Rangiya and submitted that Respondents are recovering arrear damage rent amounting to Rs.3264/- p.m. since May, 2004. Applicant's contention is that lion's share has already been recovered from the Applicant towards damage rent. The case of the Respondents is that the Applicant was in unauthorised occupation of the quarter. But the Applicant claimed that he was legally occupying the quarter and even if at all he is declared as unauthorized occupant the damage rent could have been calculated only after six months from the alleged unauthorized occupation.

Considering the issue involved I am of the view that this O.A. has to be admitted. Admit the O.A. Issue notice to the Respondents. Six weeks time is granted to the Respondents to file reply statement.

Post on 31.8.2007. In the interest of justice this Court directs that further recovery of damage rent will not be made from the salary of the Applicant till the next date.

Vice-Chairman

/bb/

Notice & order sent  
to D/Section for  
issuing to R-1 to 7  
by regd. A/D post.

D/No-788 to 794

30/8/07. Dt= 1/8/07-

Notice duly served  
on R-2, 3. (A/D card of  
R-2 at "C" file of OA 191/07).

13/8/07-

Notice duly served  
on R-2, 3, 4.

Wls not filed.

30.8.07.

5-11-185/07

3-

31.8.07.

el. comby ↓  
order dt- 31/8/07  
issuing to both  
the parties.

7/9/07

Notice duly served  
on R- 1, 2, 3 and 4 (postal  
A/D card at file "c" 05.10.07.

OA 19/10/07)

27/9/07

W/s not filed.

4.10.07.

W/s not filed.

30.11.07.

W/s not filed.

3.1.08.

31.8.07 Four weeks time granted to the  
respondents to file written statement as  
prayed for.

Post on 5.10.07 for order. Interim order  
will continue.

Vice-Chairman

pg

Call this matter on 3.12.2007,  
awaiting reply from the Respondents.

(Khushiram)  
Member(A)

Monoranjan Mohanty  
Vice-Chairman

Lm

03.12.2007

No written statement has been filed  
in this case. Dr.M.C.Sharma, learned  
counsel for the Railways, seeks more time  
to file written statement.

Call this matter on 04.01.2008  
awaiting written statement from the  
Respondents.

(Khushiram)  
Member (A)

(M.R.Mohanty)  
Vice-Chairman

/bb/

04. 01.2008

Written statement is undertaken to  
be filed in course of the day  
Mr.B. Choudhury learned counse  
appearing for the Applicant undertakes to  
file rejoinder by 8<sup>th</sup> February, 2008.

Call this matter on 8<sup>th</sup> February,  
2008.

(Khushiram)  
Member(A)

(M.R.Mohanty)  
Vice-Chairman

lm



08.02.2008

In this case reply has already been filed, wherein it has pointedly stated by the Respondents that the Applicant has no justification in his claims, that he has no valid cause of action and understanding of the circumstances and facts relating to the matter, that the application is full of misrepresentation, thereby merits outright dismissal of the case. The Applicant who took an adjournment on 04.01.2008 to file rejoinder by today has not yet filed any rejoinder. Mr B.Choudhury, learned counsel appearing for the Applicant states that the rejoinder has already been drafted and he is waiting for the Applicant to verify the same, for which he needs a maximum period of 10 days now to file the rejoinder.

Heard Dr M.C.Sarma, learned counsel appearing for the Respondents. In the circumstances prayer for vacation of the interim order; by which the Applicant has been protected and enjoying the period by not depositing the market rent levied on him for occupation of a quarter at Delhi unauthorisedly.

Call this matter on 19.02.2008 for final disposal/hearing.

Rejoinder, if any, may be filed by the Applicant by 18.02.2008.

(Khushiram)  
Member(A)

(M.R.Mohanty)  
Vice-Chairman

16.1.08

W/s filed by Respondents. Copy served.

Dr.

Rejoinder not filed.

17.2.08

Rejoinder not filed.

18.2.08

18.2.08

Rejoinder filed in duplicate given for service copy

Dr.

(Khushiram)

O.A. 1805/07 5

20.02.2008

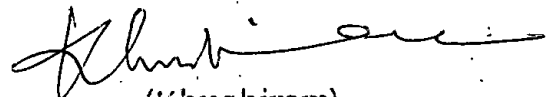
No one is present for the Applicant.

Dr. M. C. Sarma, learned counsel appearing for the Respondents has filed a leave note.

Call this matter on 25.02.2008.

On the next date, in case, no body is present, the matter will be heard <sup>disposal of</sup> ex parte.

Send copy of this order to the Applicant at the address given in the O.A.



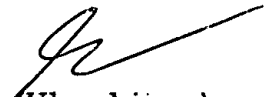
(Khushiram)  
Member(A)

lm

25.02.2008

None present either for the Applicant or for the Respondents.

On the basis of the order passed on 20.02.2008 the case is reserved for final orders.



(Khushiram)  
Member(A)

pg

29.02.2008

For the reasons recorded separately. Application is dismissed as withdrawn.



(Khushiram)  
Member (A)

Lm


P.20-

Order dt-20/02/08

Send to D/Section  
for issuing to  
applicant by post.

20/2/08. D/No- 1117  
DT= 20/2/07

The case is ready  
for hearing.

  
22.2.08

O.A. No. 185/2007

29.02.2008


For the reasons recorded separately,  
the Application is dismissed as withdrawn

Copy of the order is sent to the  
Estate Officer, Northern Railway, New  
Delhi and to the other Respondents also.

12.3.08

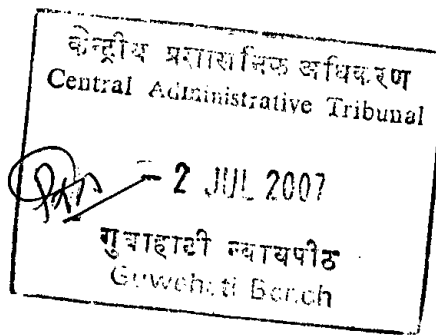
Copy of the  
order sent to the  
D/Sec. for issue  
in line to the  
Respondents along with  
a copy to the  
A.A. for the Rly.  
Hk

nkm

  
(Khushiram)  
Member (A)

18.3.08

Hand note  
D/Not 1353 to  
1360 dtd 14.3.08  
Hk



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI  
BENCH:  
AT GUWAHATI.

ORIGINAL APPLICATION NO: 185 /2007

RAHUL GOSSAIN.

.....APPLICANT.

-VS-

UNION OF INDIA AND OTHERS.

.....RESPONDENTS.

I N D E X

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Filed by :

*Bikram Choudhury*  
2.7.07  
Advocate, Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI  
BENCH:  
AT GUWAHATI.

ORIGINAL APPLICATION NO: 185 /2007

~~RAHUL~~ GOSSAIN.

.....APPLICANT.

-VS-

UNION OF INDIA AND OTHERS.

.....RESPONDENTS.

L I S T O F D A T E S

On being selected by U.P.S.C., the applicant was appointed on probation in Indian Railway Service of Mechanical Engineers (IRSME) 1994 batch and posted as Assistant Mechanical Engineer, N.F.Railway, Lumding, in October 1997.

05.12.99 : on application by the applicant he was transferred to Northern Railway in Delhi Division as CDO.

30.10.02 : Applicant was allotted House no251-1B (Type-IV) by ADGM, Northern Railway.

Annexure-I, Page - 29

04.12.02 : Applicant was transferred to N.F.Railway. However he was not relieved of his charge as stated in the order.

Applicant applied for 6months leave to complete his MBA (part time) course.

17.12.02 : The General Manager, Northern Railway, recommended the leave application to Railway Board for approval and accordingly a letter was sent.

Annexure-II, Page - 30

On the same day (i.e.17.12.02) when the applicant went to the Railway Board for approval of his study leave, the person was posted in his place assumed charge without following the procedure laid for transfer of charge. The applicant had no option but to apply for leave till the disposal of letter dt: 17.12.2002(Annexure-II).

Contd .....

- 10.01.03 : Meantime the applicant applied for 110 days leave w.e.f 17.12.02 before the Addl. Member (Mechanical), Railway Board. However, Addl. Member (Mechanical) ordered that the leave could be sanctioned by Chief Mechanical Engineer. But he did not pass any order on the application.  
Annexure-III, Page - 31
- 17.02.03 : Letter issued by the General Manager (P), Northern Railway that his prayer of 6 months study leaves has been rejected by the Railway Board.  
Annexure-IV, Page - 32
- 17.04.03 : While waiting for grant of leave, the applicant was struck by Hepatitis. The applicant submitted an application along with medical certificate.  
Annexure-V, Page - 33
- 28.10.03 : Applicant continues to remain sick and ultimately he was declared fit for duty by Railway Doctor.  
Annexure-VI, Page - 35
- 27.10.03 : The applicant applied for being relieved to carry out the transfer order.  
Annexure-VII, Page - 37
- 07.11.03 : In response to the letter dt: 27.10.2003, the General Manager (P), Northern Railway advised him to collect the pass from the office.  
Annexure-VIII, Page - 38
- 05.07.03 : Earlier he applied for retention of the quarter allotted to him.  
Annexure-IX, Page - 39
- 27.08.03 : Received letter from the General Manager (G), Northern Railway rejecting his prayer for retention of the quarter.  
Annexure-X, Page - 40
- 09.10.03 : Received show cause notice from the respondent no 6 informing the applicant that he was in unauthorized occupation of the railway flat w.e.f 18.12.2002 and if he does not vacate the railway flat, then eviction proceeding under the Public Premises Act shall be initiated against him and damage rent shall be recovered from him as per rules.  
Annexure-XI, Page - 42

Contd .....

- 12.11.03 : Received final notice from respondent no 6 asking the applicant to vacate the railway flat within 10 days failing which eviction proceeding under the Public Premises Act, 1971 shall be initiated  
Annexure-XII, Page - 43
- 11.12.03 : Received show cause notice U/S 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 from the respondent no 7.  
Annexure-XIII, Page - 44
- 11.12.03 : Received another show cause notice u/s 7 of the Act, from the respondent no 7 asking the applicant to show cause as to why the amount i.e. Rs 11940.24/-p.m. calculated as damage with interest from 18.12.02 till vacation of the quarter should not be recovered from him.  
Annexure-XIV, Page - 46
- 11.01.04 : Submitted reply to the show cause notices u/s 4 and 7 of the Public Premises Act 1971 before the respondent no 7.  
Annexure-XV, Page - 47
- 30.01.04 : Submitted elaborate submissions.  
Annexure-XVI, Page - 50
- 27.04.04 : Respondent no 7 passed judgment and held that the applicant is liable to pay Rs.11,940.24/-p.m for the period from 18.12.02 till the vacation of the premises. Respondent no 7 also passed orders in Form 'B' and Form 'G' under the Act.  
Annexure-XVII, Page - 54
- Being aggrieved, the applicant filed an appeal before the District Judge, Delhi against the order dated 27.04.04, under section 9 of the Act. The appeal was dismissed on 31.5.04 and the order given by the respondent no 7 was upheld.
- 14/18.05.04 : Received the letter from ~~DRM (P), Raigarh~~ <sup>DRM (P), Raigarh</sup> informing that Sr. Divisional General Manager, Northern railway had found the applicant to be in unauthorized occupation of the railway flat since 17.12.02 and the total damage rent was calculated at Rs.1,95,733.44/- for the period and the same shall be recovered @ Rs.11.874.24/- p.m. from his salary.  
Annexure-XVIII, Page - 59

Contd .....

Being aggrieved, the applicant filed O.A. No 316/2006 before this Hon'ble Tribunal.

- 11.01.07 : This Hon'ble Tribunal after hearing directed the applicant to make a comprehensive representation before the competent authority and the same shall be disposed within 3 months by a reasoned order.  
Annexure-XIX, Page - 60
- 05.02.07 : Accordingly, the applicant submitted the representation before the respondent no 2.  
Annexure-XX, Page - 64
- 28.02.07 : Received a letter from Deputy General Manager, (G), Northern Railway rejecting his representation.  
Annexure-XXI, Page - 75
- 24.07.07 : Railway Board letter fixing damage rent for Class A-1 cities for 2 years.  
Annexure-XXII, Page - 77



13  
Rahul Gosain  
Filed by the applicant through  
Bikram Choudhury, Adv., 2.7.07

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

(An Application Under Section 19 of Administrative Tribunal  
Act, 1985)

O.A. 285 of 2007

Shri Rahul Gosain  
S/o- Shri Jatindar Bal,  
Presently working as Sr. Divisional  
Mechanical Engineer, Incharge,  
N. F. Railway, Lumding,  
Dist.- Nagaon, Assam.

... .. Applicant.

-VERSUS-

1. Union of India  
Represented by the Secretary,  
Railway Board, New Delhi.
2. General Manager,  
N. F. Railway, Maligaon, Guwahati -11.
3. Chief Personnel Officer,  
N. F. Railway, Maligaon, Guwahati - 11.
4. Divisional Railway Manager (Personnel),  
N. F. Railway, Lumding, Dist.- Nagaon,  
Assam
5. Sr. Deputy General Manager,  
Northern Railway, Baroda House,  
New Delhi.

Contd .....

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

7. Estate Officer,  
Northern Railway, New Delhi.

..... Respondents.

1. PARTICULAR OF THE ORDERS AGAINST WHICH THE APPLICATION IS MADE :

This application is made against the order of the Estate Officer imposing the damage rent of Rs. 1,95,733'1.44 /-against the applicant and the direction of the respondent authorities to recover the said amount from the salary of the applicant which has started from the month of May, 2004.

2. JURISDICTION OF THE TRIBUNAL :

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

3. LIMITATION:

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

4. FACT OF THE CASE:

1. That the applicant begs to state that on being selected by the UPSC he was appointed on probation on Indian Railway Service of Mechanical Engineers (IRSME) 1994 batch and posted as Assistant Mechanical Engineer, N.F. Railway, Lumding, in October, 1997. In the month of April, 1998 he was transferred to Malda Town, N. F. Railway. Thereafter, on his application he was transferred to Northern Railway where he was posted in Delhi Division on 05.12.1999 as CDO.

Contd .....

Rahul Gosain

2. That the applicant on transfer to Northern Railway resided in rented private house from 05.12.99 to 30.10.2002 and that it was only on 30.10.2002 that he was allotted House No. 251-1B (Type - IV) at P. K. Road, New Delhi by ADGM/Northern Railway vide Allotment Order No. 103/G/ 5 Allot/Sr. Jr./2001 dated 30.10.2002. The applicant states that this allotment of quarter was made only a few weeks before his term of three years on transfer to Northern Railway was to expire.

A copy of allotment order dated 30.10.2002 is annexed herewith and marked as ANNEXURE-I.

3. That in the meantime, the applicant had applied for grant of permission to prosecute MBA (Part time) course in the faculty of Management Studies, Delhi University which was granted and the applicant joined the course.

4. That just on completion of 3 years of his posting at Delhi, the applicant was ordered to be transferred to NF Railway vide office order No. 940E/17-XXXX/EIA dated 4.12.2002. That however the applicant was not relieved of his charge in accordance with the said transfer order.

5. That the applicant prayed for 6 months study leave to complete his MBA (part time) course, permission for which had duly been granted earlier by the Railway Administration. The General Manager, Northern Railway who was the competent authority to sanction study leave instead of sanctioning or refusing the same recommended the leave to Railway Board for approval as the applicant had completed his three years tenure on Northern Railway. Accordingly, letter No. 727E/1635/EIA dated 17.12.2002 was sent to the Railway Board by Smt. Pramila Bhargava on behalf of the General Manager seeking Railway Board's approval in the matter.

A copy of the letter dated 17.12.2002 is annexed herewith and marked as ANNEXURE - II.

6. That on 17.12.2002 itself when the applicant had gone to Railway Board for pursuing his application for grant of 6 months study leave, the person who was ordered to be posted in applicant's place was allowed to

Contd .....

Rahul Gosain

assume the charge of the post of Senior Mechanical Engineer without following the procedure laid down for transfer of charge and that accordingly the applicant had no option but to seek leave pending disposal of his application for grant of 6 months study leave which had been recommended to Railway Board for approval by General Manager by letter dated 17.12.2002( Annexure - II herein).In the meantime, the applicant was neither posted to another post nor was his application for grant of leave disposed of nor he was relieved on transfer to NF Railway.

7. That in response to General Manager,Northern Railway's letter dated 17.12.02 to Railway Board (Annexure-II herein), the Railway Board conveyed its decision vide letter dated 17.02.2003 which was communicated to the applicant by the General Manager (P),Northern Railway by his letter No. 727E/1636/EIA dated 13.03.2003, whereby the prayer of the applicant for grant of 6 months study leave was rejected on the ground that study leave is not admissible for part time course.

A copy of the letter dated 13.03.2003 is annexed herewith and marked as ANNEXURE- III.

8. That in the meantime, the applicant had applied for 110 days leave on 10.01.2003 w.e.f. 17.12.2002 before the Additional Member (Mechanical) Railway Board pending decision of the Railway Board on General Manager,Northern Railway's letter dated 17.12.2002 (Annexure- II herein). However, Additional Member (Mechanical) vide his endorsement on the body of the applicant's application dated 10.01.2003 ordered that the leave could be sanctioned by CME/Northern Railway "who may do so".

A copy of the application dated 10.01.2003 and Additional Member (Mechanical's) order thereon is annexed herewith, and marked as ANNEXURE- IV.

9. That the applicant states that no order on the application dated 10.01.03 submitted by the applicant was passed by CME/Northern Railway on the order of the Additional Member (Mechanical), Railway Board.

Contd .....

Rahul Goswami

10. That the applicant begs to state that while he was waiting for grant of leave as applied for, he fell sick being struck by Hepatitis and had to seek treatment from a private medical practitioner. Accordingly, the applicant submitted medical certificate from the said medical practitioner in support of his sickness along with application dated 17.04.2003 to General Manager (P), Northern Railway.

A copy of application dated 17.04.2003 is annexed herewith and marked as ANNEXURE - V.

11. That the applicant further states that he continued to remain sick and was under the treatment of a private practitioner from 17.04.2003 to 27.10.2003 and he was finally declared fit for duty by Railway Doctor on 28.10.2003.

A copy of Duty Fit certificate dated 28.10.2003 is annexed herewith and marked as ANNEXURE- VI.

12. That the applicant states further that while he was sick and undergoing the treatment of a private practitioner due intimation of which was given to General Manager (P), Northern Railway on 17.04.2003 itself, no Railway Doctor was deputed to visit the Railway quarters where the applicant resided to verify the sickness.

13. That the applicant begs to state that on being declared fit, he applied for being relieved on transfer from Northern Railway to carry out his transfer order to NF Railway and also asked for issuance of a transfer pass by his application dated 27.10.2003.

A copy of application dated 27.10.2003 is annexed herewith and marked as ANNEXURE - VII.

14. That in response to the application dated 27.10.2003 the General Manager (P), Northern Railway by letter No. 727E/1636/EIA dated 7.11.2003 advised the applicant, inter alia, that he "may collect the transfer pass from this office for effecting your transfer order to N.F. Railway".

A copy of letter dated 7.11.2003 is annexed herewith and marked as ANNEXURE- VIII.

Contd .....

*Rahul Gosain*

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15. That the applicant begs to state that he had on 5.7.2003 applied for retention of the Railway quarters allotted to him to ADGM/Northern Railway

A copy of application dated 5.07.2003 is annexed herewith and marked as ANNEXURE-IX.

16. That in response to the applicant's application dated 5.7.2003 for retention of the quarter, Sri R.K.Malhotra, for General Manager (G) vide his letter No. 103-G/13/Retn/42/03 Sh. Rahul Gossain dated 27/08/03 advised the applicant that his request for retention of house no .251/1B, PK Road, could not be acceded as he had not carried out his transfer to N.F. Railway so far. It was further stated that he was an unauthorized occupant of the house w.e.f. 17.12.2002 and was liable to pay damage rent for entire period of unauthorized retention .He was asked to vacate the house immediately to avoid eviction proceeding.

A copy of letter dated 27.08.2003 is annexed herewith and marked as ANNEXURE-X.

17. That Divisional Superintending Engineer (Estate), Northern Railway, New Delhi by his show cause notice no.159EO/07/2620/2003 dated 9.10.2003 informed the applicant that he was transferred from N. Railway, Delhi to NF Railway on 17.12.2002 and was permitted to retain the railway flat upto 17.12.2002 and was supposed to vacate the flat after 17.12.2002 but he failed to do so. As such, he was in unauthorized occupation of railway flat w.e.f. 18.12.2002. The applicant was further asked to vacate the railway flat within 10 days from the date of issue of the said notice failing which eviction proceeding under the Public Premises Act would be initiated against him and recovery on account of damages for unauthorized occupation would be made from his settlement dues as per extant rules.

A copy of the show cause notice dated 09.10.2003 is annexed herewith and marked as ANNEXURE - XI.

18. That again vide final notice no 159EO/7-2620/2003 dated 12.11.2003, Divisional Superintending Engineer(Estate), N. Railway, New Delhi (i.e. Respondent No. 6) asked the applicant to vacate the railway quarters

Contd .....

Rahul Gossain

- 7 -

within 10 days failing which eviction proceedings under the Public Premises Act would be started against him. He was also advised that damages charges as penal rent @ Rs 114/ per sq.meter for 104.16 sq mt., water charges @ Rs 56/ p.m., conservancy charges @ Rs.10/-p.m. and electrical charges etc. as advised by EPO(P), N. Railway were also recoverable.

A copy of the Final Notice dated 12.11.03 is annexed herewith and marked as ANNEXURE - XII.

19. That thereafter, Smt. Pramila H. Bhargava, Estate Officer, issued show cause notice dated 11.12.2003 u/s 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, (hereinafter referred to as Act 1971) holding that she was of the opinion that the applicant was in unauthorized occupation of the public premises mentioned in the schedule and that the applicant should be evicted from the said premises. She further held that the applicant's tenancy to occupy the railway flat had since terminated w.e.f. 18.12.2002 due to his transfer from Northern Railway, Delhi to NF Railway and that the applicant was permitted to retain the flat upto 17.12.2002 but he had not vacated the same in spite of services of notices dated 9.10.2003 and 12.11.2003 issued by respondent no 6. The applicant was further called upon to show cause on or before 6.1.2004 as to why such an order of eviction should not be made.

A copy of show cause notice dated 11.12.2003 is annexed herewith and marked as ANNEXURE - XIII.

20. That, the Estate Officer vide show cause notice dated 11.12.2003 u/s 7 of the Act held that she was satisfied that the applicant was in unauthorised occupation of the public premises mentioned in the schedule thereto and that she considered the damages amounting to Rs. 11940.24/- per month from 18.12.2002 till vacation was due for the period as the rate shown in Schedule-II thereto on account of unauthorised use and occupation of the said premises. The Estate Officer further held that the applicant was also liable to pay simple interest to the Government statutory authority on the said arrears at the rate determined by her till its final payment. That she called upon the

Contd .....

Rahul Gosain

- 8 -

applicant to show cause on or before 6.1.2004 why an order requiring him to pay the said damages together with interest should not be made.

That in Schedule - II of the notice, the damages were assessed at Rs. 11940.24/- p.m. from 18.12.2002 till vacation as was assessed by respondent No 6 by his notices. (Annexure - XI and XII in this original application).

A copy of show cause notice dated 11.12.2003 is annexed herewith and marked as ANNEXURE - XIV.

21. That, thereafter the applicant submitted his reply to both the show cause notices issued under Sections 4 and 7, on 11.01.2004, where the applicant, inter alia, submitted that he was officially relieved from the Northern Railway only on 10th November, 2003 and it was only when he was officially relieved that the Northern Railway issued to him the transfer pass on 10th November, 2003 and that accordingly he reported for duty at the NF Railway on 14th November, 2003. The applicant states that until 10th November, 2003 he continued to be on the rolls of Northern Railway notwithstanding the transfer order dated 16.12.2002. He further submitted that transfer order by itself does not constitute a relieving order from the post until and unless he is officially relieved from the Railway to be able to join the new zonal railway to which he was transferred.

The applicant further submitted that mere transfer order can neither lead to cancellation of his rightful allotment of the accommodation nor subject him to payment of punitive rent. That he was entitled to retain the flat till such time he was not spared by the Northern Railway.

The applicant further submitted that even after his transfer he was entitled to retain the railway flat allotted to him on the basis of extent orders/rules (governing retention of accommodation on transfer to NF Railway).

The applicant further submitted that the fact as to whether he was relieved by the Northern Railway on 10th November, 2003 or on any

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other date prior thereto is already under consideration before the quasijudicial authority at NF Railway where a proceeding had been initiated against him vide Memo No. E/74/GAZ/446/CON dated 12.09.2003 and that till such time it was decided the Estate Officer is estopped from giving any findings as to when he was relieved of his duties with the Northern Railway.

The applicant further submitted that as per extent orders of the Railway Board vide its letter No. E(G)2002QRI -9 dated 28.6.2002 he was entitled to retain the official accommodation at New Delhi.

The applicant further submitted that he required the premises for the bonafide use of his dependent family members who were dependent on him financially as well as for residence.

The applicant further submitted that the allotment of his flat had never been cancelled, much less by the competent authority.

The applicant further submitted that there is no rule or policy of the railways that the officer becomes an unauthorised occupant of the railway flat on the date of his transfer order itself and that he is not entitled to retain the accommodation even for one day thereafter and immediately becomes an unauthorised occupant.

The applicant further submitted that cancellation of the allotment of the flat is a condition precedent before an allottee could be treated as an unauthorised occupant and that the flat allotted by ADGM/N. Railway had not been cancelled till date by the competent authority and therefore by no stretch of imagination he could be called an unauthorised occupant of the flat allotted to him. That in terms of Railway Board's circular dated 1.6.2001, cancellation of allotment of the officer is a condition precedent to declaring him as unauthorised occupant.

The applicant further submitted that under Para 1711 of the Railway Establishment Manual, no officer can be charged more than 10% of his monthly emoluments irrespective of scales of pay allotted. That more than 10% of the monthly emoluments could be charged from

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the railway officer only when he does not vacate the residence after cancellation of the allotment.

The applicant further submitted that damages from a person could be claimed only from the date on which allotment is cancelled. That the amount of penal rent claimed was too high, arbitrary and without any basis.

A copy of reply dated 11.01.2004 submitted by the applicant is annexed herewith and marked as ANNEXURE- XV.

22. That the applicant again submitted representation dated 30.01.2004 to the Estate Officer, wherein he made elaborate submissions.

A copy of representation dated 30.01.2004 is annexed herewith and marked as ANNEXURE- XVI.

23. That in terms of the representation as aforesaid the applicant had specifically averred that since he was not being sanctioned leave to attend the proceedings before the Estate Officer and that a representative well conversant with the facts and relevant provisions of rules applicable is not available to represent him effectively he was making the submissions therein for judicious consideration of the Estate Officer, and that if those submissions were considered inadequate for her satisfaction the applicant may be allowed further time of at least one month so as to enable him to appear before the Estate Officer and make oral submissions and for adducing additional evidence on as to why proceedings under the Public Premises Act are inapplicable, otiose and liable to be dropped.
24. That the applicant submits that the Estate Officer did not consider the submissions made by the applicant and held the proceedings behind the back of the applicant where the Estate Officer recorded the statement of one Shri M.K. Kamra.
25. That in her order in Form 'B' dated 27.4.2004, the Estate Officer passed the order directing the applicant and all persons who may be in occupation of the said premises to vacate the premises within 15 days

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of the date of publication of the order and that in the event of refusal or failure to comply with the order the applicant and all other persons concerned are liable to be evicted from the premises, if need be by the use of such force as may be necessary. That the reasons for the order were enclosed in the judgment annexed to the said order.

26. That in the judgment the Estate Officer referred to the application marked Exhibit P-3 filed by and on behalf of the Union of India through respondent no 6 against the respondent (the applicant herein) for eviction and recovery of damage charges. The judgment further recorded that it was alleged on behalf of the applicant (before the Estate Officer) that the tenancy to occupy flat No. 251/1B, P.K. Road, New Delhi by the respondent (the applicant herein) had been terminated w.e.f. 18.12.2002 due to his transfer, and that he was permitted to retain the house upto 17.12.2002.

The Estate Officer noted that Dy. General Manager (G) had referred the matter to Railway Board vide No. 103 (G) 13 Retn. 42.03 Shri Rahul Gosain dated 17.12.2003 stating the facts and sought a clarification. It was further noted that the statement of Shri M.K. Kamra was recorded on 27.4.2004 (the date of judgment). It was further noted that Railway Board had clarified by letter no E(G)2003.RN-23 dt:16.3.2004 that the respondent(applicant herein) is not entitled to retain the railway accommodation at New Delhi as applicable in the case of transfer to NF Railway for the respondent was required to serve on NF Railway for a period of ten years w.e.f 24.3.1996 as per extant instructions and was transferred to Northern Railway for a limited period of three years in relaxation of rules on his own request to facilitate him to take treatment at AIIMS. That retention of the railway accommodation is to be regulated as per instructions governing permanent transfer.

The Estate Officer held that in view of the facts and circumstances the respondent(applicant herein) was not entitled to retain the house and therefore he was in unauthorized occupation of the railway accommodation w.e.f. 18.12.2002. That as per personal knowledge of Shri M. K. Kamra the market rent of similar flat in the locality was not less than Rs. 12,500/-.

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The Estate Officer further held that after going through the papers on record, evidence and arguments on behalf of the parties found that the respondent (the applicant herein) was in unauthorized occupation of the railway accommodation w.e.f. 18.12.2002 due to his transfer to NF. Railway.

That the Estate Officer further held that she was satisfied that the respondent was in unauthorized occupation of the premises in question w.e.f. 18.12.2002 and was liable to be evicted therefrom. That he was also liable for payment of damage charges and other charges as due for the unauthorized period from 18.12.2002 till vacation of the premises.

That accordingly she ordered vacation of the premises within 15 days of receipt of the publication of the order. That the Estate Officer further ordered that the respondent (the applicant herein) shall pay Rs. 11,940.24 pm plus other charges for unauthorised occupation for the period from 18.12.2002 till vacation of the premises.

That an order in Form 'G' under Section 7 of the Public Premises Act was also annexed to the above orders

A copy each of the orders of the Estate Officer in Form 'B', Form 'G' and the judgment all dated 27.4.2004 is annexed herewith and marked as ANNEXURE- XVII (series).

27. That, being aggrieved by the order of the Estate Officer, the applicant filed an appeal before the appellate authority, District Judge, Delhi under Section 9 of the Act 1971 wherein he challenged the order as illegal, without jurisdiction, malafide biased and contrary to the rules and regulations and the circular issued by the department and prayed for allowing the appeal and setting aside the order dated 27.4.2004 passed by the Estate Officer. The applicant craves leave of this Hon'ble Tribunal to produce and rely upon the copy of the copy of the appeal at the time of hearing.
28. That the Additional District Judge, Delhi, by his order dated 31.5.2004 dismissed the appeal and upheld the order given by the Estate Officer. The applicant craves leave of this Hon'ble Tribunal to produce and rely

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upon the copy of the Judgment of the Additional District Judge, Delhi at the time of hearing.

29. That the applicant states that the Divisional Railway Manager (P) Rangiya (i.e. Respondent No. 4) by his letter No. E/Q/GAZ/34/101/LPC dated 14/18.5.2004 informed the applicant that Sr.Divisional General Manager, Northern Railway vide his DO letter dated 6.4.2004 had informed that the applicant was unauthorisedly occupying railway quarters No. 251/1B, P.K. Road, New Delhi, since 17.12.2002 and therefore he was required to pay Rs. 11,874.24 pm and that total damage rent accumulated was Rs. 1,95,733.44 which would be recovered from the salary of the applicant in equal instalments. That the applicant states that this rent was assessed and intimated to Divisional Railway Manager (P),Rangia when the Estate Officer had not finally decided the matter. That deduction @ Rs. 11,874/- pm was started from May, 2004, whereas the letter authorizing such deduction from General Manager(G), Northern Railway was received at Rangia only on 10.9.2004.

A copy of letter dated 14/18.05.2004 is annexed herewith and marked as ANNEXURE- XVIII.

30. That, being aggrieved by the actions of the authorities the applicant filed OA No. 316/2006 before this Honourable Tribunal and the same was disposed of by order dated 11.01.2007 with the direction to the applicant to make a comprehensive representation ventilating all his grievances before the competent authority within two weeks from the date of receipt of the order and on receipt of such representation, the competent authority shall consider and dispose of the same by passing appropriate orders thereon within a time frame of three months thereafter.

A copy of the order dated 11.01.07 passed by the Tribunal is annexed herewith and marked as ANNEXURE- XIX.

31. That, accordingly as per direction of the Hon'ble Tribunal the applicant filed a representation dated 05.02.2007 addressed to respondent no 2 ventilating his grievances.

A copy of the ~~representation~~ <sup>copy</sup> dated 05.02.2007 is annexed herewith and marked as ANNEXURE- XX.

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32. That, in response to the representation dated 05.02.2007 as aforesaid filed by the applicant, Shri Sanjay Bajpai, Dy. General Manager (G), Northern Railway by his letter No. 103-G/13/Retn./42/03 Shri Rahul Gosain dated 28.02.2007 disposed of the representation by stating, inter alia, that the applicant who was initially appointed as AME on NF Railway was required to serve NF Railway for a period of ten years w.e.f. 24.3.96, that he was transferred to Northern Railway for a limited period of three years in relaxation of rules in the applicant's own interest; that he was transferred to NF Railway from Northern Railway on 16.12.2002 on expiry of three years, that his request for retention of house was not acceded to by the competent authority as he was not eligible for the same, that his request of sanction of study leave was not acceded to as it was not admissible for part time course, that an officer who has been transferred from a place/railway to another if applies for any leave is liable to do the same with the railway where he has been transferred to, that since the applicant had not relinquished the charge formally he was deemed to have been relieved w.e.f. 16.12.2002, that officers on their transfer to NF Railway are permitted to retain their railway houses at previous place of posting till 30.06.2005, that since the applicant was transferred to Northern Railway for a specified period of three years on his own request he was not eligible for this benefit, that his request dated 15.7.2003 was replied to vide his office letter dated 27.8.2003 stating that his request could not be considered as he had not carried out his transfer order to NF Railway, that the officer who is retaining the railway house unauthorisedly is issued notices etc. before filing the case to the Estate Officer under Act 1971 for eviction as per rules, that the Estate Officer vide its judgment dated 27.4.2004 had ordered the applicant to pay damage rent for the period of unauthorized occupation and passed eviction orders, that accordingly NF Railway was advised to recover the damage rent as per order of the Estate Officer which is a quasi-judicial body, that his appeal filed in the court of Additional District Judge against the order of the Estate Officer was dismissed by the court and his appeal filed in CAT, Guwahati was also withdrawn and treated as dismissed. That in view of the facts, Dy. General Manager (G) decided that the request for waiver of damage rent for the entire period of unauthorized retention cannot be acceded to as this is not within the competence of the Railway and therefore the

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applicant was advised to deposit the damage rent as per order issued by the Estate Officer, Northern Railway.

A copy of the letter dated 28.2.2007 as aforesaid is annexed herewith and marked as ANNEXURE- XXI.

33. That the applicant submits that the dispute relating to eviction of the applicant from the government accommodation is a service matter and the applicant is entitled to approach the Tribunal after the final order is passed by the appellate authority (Rasila Ram - Vs - Union of India, (1989) 10 ATC 737 (FB) CAT, New Delhi).
34. That the applicant submits that if that be the case of the respondents that his transfer to Northern Railway was for a limited period of three years only then they ought not to have granted permission to pursue the course of MBA in the Faculty of Management Studies, Delhi University, and also they ought not to have allotted him the official accommodation a few weeks before his term expired on Northern Railway. That the applicant further submits that these grounds have been taken on second thought only by the authorities and they have no reasonable nexus with the transfer order or the subsequent eviction from the premises.
35. That the applicant further submits that the averments of the respondents that the applicant was liable to be compulsorily transferred after three years as he had not completed the tenure of ten years on NF Railway is totally perverse and unreasonable in that there are instances galore where officers initially posted on NF Railway were transferred to Northern Railway or Central Railway in two to three years and they were not transferred back to NF Railway. Such examples are as follows Dr. Ravi Kansal who was posted on his first appointment as Assistant Divisional Medical Officer, Lumding, sometime in 1985 and within three years he was transferred to Northern Railway and now he is posted at Lucknow. Similarly, one Shri Salahuddin Ansari, an IRTS officer, was initially posted on NF Railway as Assistant Operating Superintendent, Lumding in 1983 and in a couple of years he was transferred to Central Railway and he never returned to NF Railway for not having completed ten years compulsory posting on NF Railway. However, in 2003 he was

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posted on NF Railway on promotion as Chief Passenger Transportation Manager, Maligaon and he was allowed to retain his official accommodation at Jabalpur. That even before completing two years as Chief Passenger Transportation Manager, Maligaon he was transferred to Northern Railway. Recently Sri A.K. Chanda, Workshop Manager of New Bongaigaon Workshop who was posted on his first appointment to N.F. Railway was transferred on May, 2007 within 2 years of his posting. Similarly, Sri Rajesh Kumar Assistant Divisional Mechanical Engineer, Lumding, who on his first appointment joined N.F. Railway on December, 2006 has been transferred on May 2007 i.e. less than 1 year. That in these case too completion of mandatory ten years tenure was not insisted or enforced.

That the applicant further submits that there are more instances demonstrating that the Railway Board selectively applies the rule of ten years compulsory posting of officers on NF Railway and it is not uniformly applied and this has become a tool to practise of favouritism and discrimination. As such, this is illegal, arbitrary and discriminatory.

36. That the applicant further submits that the stand of the authorities that he was deemed to have been relieved w.e.f. 17.12.2002 is totally unreasonable, arbitrary and patently illegal and ultra virus the rules that to in terms of Rule 233 of Indian Railway Establishment Code, Vol. I, 1985 edition, the charge of an office must be made over at its headquarters where both the relieving and the relieved officer must be present and this mandatory condition was not fulfilled in the case of the applicant as the charge of the post of Sr.Mechanical Engineer was assumed by the new incumbent when the applicant had gone to the Railway Board for pursuing the case of sanction of study leave which was referred to the Board by General Manager for approval. That on his return also there was no direction by the competent authority to the applicant to make over the charge to the new incumbent. On the contrary, when the applicant's request for grant of six months study leave was not refused but recommended by General Manager to the Railway Board specifically for approval, the applicant had legitimate expectation that it would be granted. Further, when the applicant applied for 110 days leave w.e.f. 18.12.2002 also he was not refused leave but the recommendation was made by the Additional Member

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(Mechanical), Railway Board that the leave may be granted by Chief Mechanical Engineer, Northern Railway who may do so. This too gave the applicant the legitimate expectation that leave may be sanctioned and at no stage the applicant was told that he has been deemed to have been relieved on transfer to NF Railway on 18.12.2002 itself. That the authorities action in defeating the legitimate expectation of the applicant suffers from illegality, irrationality and procedural impropriety.

37. That the applicant submits that the letter of General Manager (P) dated 7.11.2003 (Annexure- VIII to this OA) is decisive on the point whether the applicant could be deemed to have been relieved on 18.12.2002 or not in that it was clearly mentioned therein that the applicant could collect the transfer pass "for effecting your transfer orders to NF Railway". That this letter admits of the fact that the applicant's transfer had not effectuated till 07.11.2003.
38. That the applicant further submits that the stand taken by the respondents that his occupation was permitted upto 17.12.2002 is unreasonable and specious in that in the allotment order there was no time limit laid down for occupation of the railway accommodation. That this stand has been adopted ex post facto to some how justify their actions which are totally unjustified and unwarranted.
39. That the applicant further submits that there was no order cancelling the allotment of the railway accommodation to the applicant after the order of his transfer to NF Railway. The applicant further submits that in order to justify action for eviction and for liability to pay damage rent for alleged unauthorized occupation of the railway accommodation, four conditions have to be satisfied first, namely, the occupation should be beyond the permitted period, cancellation of allotment, declaration that the occupation was unauthorized and then initiation of action for eviction, and charging damage rent for the over stay, as laid down in Para 1 of Railway Board's letter No. (G) 2000 QRI- 23 dated 1.6.2001. That the term "unauthorized occupation" has been defined under Section 2 (g) of the Public Premises (Eviction of Unauthorised Occupant) Act, 1971 as "the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority

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(whether by way of grant or any other mode of transfer) under which was allowed to occupy the premises has expired or has been determined for any reason whatsoever." Therefore, both under the rules framed by the Railway Board and the Act 1971 the condition precedent to initiate eviction proceeding is occupation of the premises without authority of continuance in occupation after expiry of the authority to occupy the premises or cancellation of such authority. That since the applicant's allotment was at no stage cancelled consequent upon the order of his transfer to NF Railway by the competent authority which in this case was Dy. General Manager (G), N.F Railway no inference of deemed cancellation can be legitimately drawn and as such the applicant was never in unauthorized occupation of the railway premises and no action under the Public Premises Act was warranted.

40. That the applicant further submits that the decision on his application for study leave was conveyed to him vide General Manager (P), Northern Railway's letter dated 13.03.2003 (Annexure- III to this original application), that is, about 3 months after his order of transfer was issued. That his application dated 10.01.2003 for 110 days leave was kept pending without telling the applicant that he was already deemed to have been relieved and that he should immediately move to NF Railway and seek leave there. That by this inaction of the authorities the applicant was misled into believing that his prayers would be considered.
41. That the applicant submits that the damage rent calculated @ Rs. 114/- per square metre of the plinth area per month vide Annexure - XII is wholly arbitrary, without jurisdiction, illegal and perverse in that Railway Board vide its letter No. F(I)/99/11/1 dated 24.7.2002 fixed damage rent for a period of two years which for Class-A -1 city (like New Delhi) was fixed @ Rs. 57/- per square metre of the plinth area per month and not Rs. 114/- as calculated by Divisional Superintendent Engineer, Estate, Northern Railway, New Delhi and mechanically accepted by the Estate Officer.

A copy of the Railway Board's letter dated 24.7.2002 is annexed herewith and marked as ANNEXURE- XXII.

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42. That the applicant submits that the actions of the authorities are malafide, arbitrary, discriminatory, ultra virus the rules and the same are patently illegal and unconstitutional and are liable to be set aside and quashed and as such he has no remedy in law except to approach this Honourable Tribunal for due relief.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

- I. For that, the action of the authorities to recover damage rent suffers from arbitrariness, illegality, irrationality and procedural impropriety and as such the same is liable to be set aside quashed.
- II. For that, the insistence of the authorities on moving him back to NF Railway on completion of three years in Northern Railway was arbitrary and discriminatory in that there is no rule which makes it mandatory for officers with all India transfer liability to work for a minimum period of ten years on NF Railway and had it been so many officers with two-three years of service on NF Railway on their initial appointment, as the instances have been given hereinabove disclose, would not have been transferred to other Zonal Railways without insisting upon and enforcing the said condition.
- III. For that, after permitting the applicant to pursue part time course in MBA from the Faculty of Management Studies, Delhi University, the authorities were estopped from rejecting the request of the applicant on the ground that six months leave for completing the said course was not admissible as study leave for part time course was not permissible.
- IV. For that, the action of the authorities in treating the applicant as deemed to have been relieved from the date next to the date the transfer order was issued is arbitrary, illegal and ultra virus the Rule 233 of the IREC Vol. I and it was clearly malafide exercise of power. The applicant was unlawfully, illegally and in a clandestine manner displaced from the office he was holding which smacks of conspiracy to leave the applicant for grant of study leave the same was not granted by the General Manager, Northern Railway but referred to the Board for approval solely on the ground that since the applicant had completed three years on Northern Railway the Railway Board may approve the same.

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- V. For that, the recommendation of the General Manager while referring the application of the applicant for approval to the Railway Board created legitimate expectation in the applicant's mind that he might be granted the study leave and that this legitimate expectation was not rooted in wish or fancy of the applicant but the prevalent practice and the recommendation for approval by GM. That this legitimate expectation of the applicant ought not to have been defeated by the authorities without affording him the reasonable opportunity of being heard.
- VI. For that, the recommendation of the Additional Member (Mechanical) Railway Board to Chief Mechanical Engineer, Northern Railway to grant 110 days leave to the applicant, which was an instruction of a higher authority to a subordinate authority, the applicant was justified in expecting legitimately that the leave would be granted. The two recommendations, one for study leave and the other for 110 days leave, were reason enough for the applicant to be treated as not relieved from the Northern Railway so as to continue his occupation of the railway accommodation in the legitimate expectation that the same would be granted. Had the applicant been clearly told that the study leave applied for was not admissible and would not be granted and that the leave subsequently applied for could only be applied for before the NF Railway authorities, the applicant would not have waited for so long before moving to NF Railway. Thereafter, the reference to study leave matter by General Manager with his recommendation and later recommendation of leave by Additional Member (Mechanical) to his subordinate authority, Chief Mechanical Engineer, Northern Railway for sanction caused the applicant not to immediately move on transfer to NF Railway and also not to vacate the railway accommodation. As such, due to these facts the Railway authorities are estopped from adopting the attitude they did ex post facto and penalize the applicant.
- VII. For that, General Manager (P), Northern Railway's letter dated 7.11.2003 (Annexure - III to this OA) is wholly arbitrary and unreasonable in that it held that instead of handing over charge on 17.12.2002 the applicant disappeared w.e.f. 17.12.2002 and applied for leave subsequently. The said letter blatantly ignored the fact that the applicant had applied for grant of study leave before 17.12.2002 and

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the same was referred to the Railway Board by GM on 17.12.2002 (Annexure- II to the OA) seeking approval from the Board. That the letter dated 7.11.2003 further held erroneously that leave of an officer who is under order of transfer from one zone to another can be sanctioned by the Administration of the zone to which he has been transferred. This observation is clearly inconsistent with the declared policy of the Railways circulated vide Railway Board's letter No. E (O) III 98 PL/5 dated 07.08.1998 whereby it was clearly laid down : " After the officer has been relieved on transfer he will be deemed to be on the rolls of the Railway to which he has been transferred, that the relieving officer should not entertain any request from such railway servant for grant of leave even on medical grounds .....". That from the aforequoted rule it is evident that grant of leave can be denied to an officer only if he has been relieved on transfer to another zone. That even without relieving the applicant on transfer the respondents could not have lawfully adopted the stand that the applicant was deemed to have been relieved. That this legal fiction of 'deemed relief' on transfer is non est since transfer from one zone to another involves several formalities including issue of LPC and transfer pass etc.

VIII. For that, the letter dated 7.11.2003, on the contrary, admits that the transfer of the applicant had not been effectuated and to effectuate that transfer order the applicant was directed to collect transfer pass from office. That on the basis of this admitted position as demonstrated from Annexure- VIII the applicant could not be deemed to have been relieved and therefore no cause of action for initiating eviction proceeding or to impose damage rent on the applicant could legitimately arise prior thereto.

IX. For that, due to the sickness of the applicant from 17.04.2003 (about which the applicant submitted medical certificate on 17.04.2003 itself) to 27.10.2003, the applicant could not be expected to either vacate the accommodation or to move on transfer. That on being declared fit on 27.10.2003 he applied for being relieved on transfer but the authorities took a week to dispose of his application. That his application for retention of railway accommodation submitted on 05.07.2003 (Annexure- IX) was also disposed of belatedly by issue of letter dated 27.08.2003 (Annexure - X) where it was specifically mentioned that the

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request for retention could not be acceded to as the applicant had not carried out his transfer to NF Railway. That this reason postulated that if the applicant had carried out his transfer order to NF Railway he would have been allowed to retain the accommodation by applying the rule for retention of quarters applicable to officers transferred to NF Railway. That this ground for rejection of request for retention of accommodation was altered as an afterthought to that impermissibility of such retention where the concerned officer has not completed 10 years compulsory posting in NF Railway. That this demonstrates that the authorities have not been consistent in dealing with the case relating to the applicant and this is in contravention of the well recognised principle of public administration that there should be predictability in decision making process. That this has caused great prejudice and injustice to the applicant and that the applicant has not been treated fairly and justly by the respondents in the matter.

- X. For that, holding the applicant in unauthorized occupation of the railway accommodation w.e.f. 17.12.2002 is wholly arbitrary, unreasonable, illegal and unconstitutional in that in view of the facts of the case the applicant could not be treated to be in unauthorized occupation of the said accommodation. That the conditions precedent to initiation of action for eviction and for imposition of damage charges are not satisfied, namely, that the occupation should be beyond the permitted period, that cancellation of allotment owing to overstay beyond the permitted period, declaration that the occupation was unauthorized. That the mandatory provisions of cancellation of allotment before taking action under the Public Premises Act as laid down in Railway Board's letter dated 6.1.2001 read with Section 2 (g) of the Act was not fulfilled and as such the entire proceeding for eviction and the final order of the Estate Officer including the order imposing damage charges on the applicant is liable to be set aside and quashed.
- XI. For that, Respondent No. 6 had no jurisdiction to declare the applicant an unauthorized occupant of the public premises particularly when the allotting authority had not cancelled the allotment. That declaring the applicant unauthorized occupant of the premises w.e.f. 17.12.2002 was absolutely arbitrary and illegal and it had no legal sanctity.

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- XII. For that, the damage rent calculated by Respondent No. 6 by her final notice dated 12.11.2003 (Annexure - XII to the OA) is exaggerated, erroneous and illegal in that it quantified the penal rent of type IV quarters @ Rs. 114/- per square metre of the plinth area per month on 104.16 square meters of the actual plinth area of the quarter, whereas Railway Board vide its letter No. F (X)I-/99/11/1 dated 24.07.2002 fixed the rates of damage rent for all classes of cities effective for a period of two years. Accordingly, rates of damages effective from 01.05.2002 (to 30.04.2004) for Class A-I cities (applicable to New Delhi) for Type I to IV accommodation was fixed at Rs. 57/- per square meter of plinth area per month. Therefore, the damage rent calculated @ Rs. 114/- per sq. metre of plinth area per month calculated by Annexure - XII to the OA is perverse and without jurisdiction.
- XIII. For that, the formation of the definite opinion by the Estate Officer that the applicant was unauthorized occupant of the railway premises by mechanically adopting the reasoning of the Respondent No. 6, in her show cause notice is violative of the principles of natural justice and fair play in action. That on the complaint of the concerned authority, the Estate Officer was duty bound to act with an open mind and come to a conclusion only after evidence was adduced. That the fact that the Estate Officer did not do so demonstrates that she was biased in favour of the administration and against the applicant while purporting to act quasi-judicially.
- XIV. For that, the Estate Officer acted wholly without jurisdiction, illegally and unlawfully in accepting the complaint of the authorities in toto in regard to the applicant's deemed relieve from Northern Railway and his deemed unauthorized occupation of the railway premises w.e.f. 17.12.2002 itself without any proof of his relief and in absence of the mandatory cancellation of the allotment order. Therefore, the finding of the Estate Officer is totally perverse, malafide, illegal and unsustainable and the same is liable to be set aside and quashed.
- XV. For that, the procedure followed by the Estate Officer while adjudicating on the matter is without jurisdiction, ultra virus the provisions of Public Premises (Eviction of Unauthorized Occupant) Act,

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1971. That the Estate Officer allowed the administration to adduce evidence but she never afforded to the applicant the reasonable opportunity to adduce evidence in spite of his demand. That the Estate Officer did not supply the complaint of the railway administration to the applicant. Instead, she issued the notice in a manner as if she herself were the complainant. That when the applicant in his reply dated 30.1.2004 specifically informed her that he was being denied leave to attend the hearing before her and there was no one who was fully conversant with the rules and regulations to effectively represent him, the Estate Officer continued to hold the hearing in absence of the applicant. That she allowed a witness Shri Kamra to depose in the hearing without any prior notice of his deposition to the applicant. That his deposition was allowed on the same date she delivered the judgment in the case. That the only purpose for allowing deposition of Shri Kamra was to take his opinion about the market rent of the area where the premises were located. That the Estate Officer relied on the personal knowledge and opinion of a Clerk, Shri Kamra to draw a finding on a very crucial question of calculation of rent and the damage rent which is wholly arbitrary and without jurisdiction.

XVI. For that, the findings of the Estate Officer are perverse, arbitrary and a *mechanical reproduction of the notice of the Respondent No. 6* (Annexure- XI and XII to the application) and therefore the same is liable to be set aside and quashed on this ground alone.

XVII. For that the quantification of the damage rent @ Rs. 114/- per square meter of the plinth area per month by the Estate Officer is illegal and without jurisdiction and in violation of the damage rent prescribed by the Railway Board (vide Annexure XXIII to the application) and as such the same is liable to be set aside and quashed.

XVIII. For that, the Estate Officer's order is malafide and without jurisdiction in that while it elaborately discussed and took into consideration the complaint and the submission made on behalf of the railway administration, it totally omitted from consideration the submissions made by the applicant and the same further demonstrates the bias of the Estate Officer against the applicant and as such the judgement of the Estate Officer is liable to be set aside and quashed.

*Contd .....*

Rahul Gosain



XIX. For that, the order of the appellate authority suffers from non application of mind to the facts and circumstances of the case and the submissions made on behalf of the applicant. That the appellate authority erred in holding that the applicant belonged to NF Railway service and he was liable to be postd there. That the applicant being a member of all India services the observation which goes to the root of the matter is perverse and the appellate order therefore is vitiated by non-application of mind and is liable to be set aside and quashed.

XX. For that, non-consideration of the case of the applicant for retention of his accommodation on account of his posting at NF Railway was malafide and discriminatory in that officers similarly circumstanced have been allowed this benefit in the past. That Railway Board's circular No. E(G) 2002 QRI-9 dated 28.6.2002 allows retention of railway accommodation at the previous place of posting for any officer who is transferred to NF Railway without making any distinction as to whether the officer concerned belongs to NF Railway cadre or any other cadre. That the respondents have caused grave injustice to the applicant by misinterpreting the said instructions to the prejudice of the applicant based on no rule or instruction available on the subject. That the discriminatory treatment meted out to the applicant is violative of Articles 14 and 16 of the Constitution and the same is liable to be struck down and quashed.

XXI. For that, in terms of the order of the Estate Officer, Dy. General Manager (G), Northern Railway had referred the matter of admissibility of retention of the premises by the applicant to the Railway Board for clarification vide letter dated 17.12.2003 and the Railway Board clarified vide letter dated 16.3.2004 to the effect that the applicant was not entitled to retain the quarters for the reason that he had not completed 10 years tenure at NF Railway. That this fact of seeking clarification from the Board alone proves that Northern Railway authorities themselves were not sure as to whether the applicant could be allowed to retain the quarters or not, and therefore after receipt of Railway Board's clarification on 16.3.2004 only they could declare that the applicant could not retain the quarters and that he should vacate the same and in the event of his refusal the allotment should have been cancelled and proceeding under the PP Act could be initiated. That the applicant had

*Contd .....*

Rahul Gosain

vacated his railway accommodation on 19.7.2004. That for the aforesaid reasons the applicant had no liability to pay damage charges w.e.f. 18.12.2002 when the matter was finally settled by the Railway Board only on 16.3.2004 as observed by the Estate Officer in her order. Therefore, the order of the Estate Officer imposing the damage charges w.e.f. 18.12.2002 till vacation of the same is wholly arbitrary, illegal and unlawful and the same is liable to be set aside and quashed.

XXII. For that, the impugned orders suffer from illegality, irrationality and procedural impropriety and are also vitiated by malafides and non application of mind and therefore the imposition of damage charges amounting to Rs. 1,95,733.44 is liable to be set aside and quashed.

XXIII. For that, in any view of the matter, the impugned action of the authorities are bad in law and is liable to be quashed and set aside.

6. **DETAILS OF REMEDIES EXHAUSTED :**

That the applicant declares that he has availed of all the remedies available to him under the relevant service rules.

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

That the applicant further declares that he previously filed OA No. 316/2006 before this honourable Tribunal which was disposed of by order dated 11.01.2007 vide Annexure- XX to this OA.

8. **RELIEFS SOUGHT :**

It is, therefore, prayed that Your Lordship may be pleased to admit this application, call for the entire records of the case, ask the respondents to show cause as to why the impugned orders of the Estate Officer in Form 'B' and Form 'G' and judgment dated 27.4.2004 (Annexure - XVII series) and the consequent orders of the respondents to recover damage rent amounting to Rs. 1,95,733.44/- from the salary of the applicant in violation of the rules and laws and the same being communicated to the applicant by

Contd .....

Rahul Gosain

39

Divisional Railway Manager (Kangra) vide his letter dated 14/18. 5.04 (Annexure- XVIII) should not be quashed and set aside and after perusing the causes shown, if any and after hearing the parties, be pleased to quash and set aside the impugned orders of the Estate Officer in Form 'B' and Form 'G' and judgment dated 27.4.04 (Annexure- XVII series) and the consequent orders of the respondents to recover damage rent amounting to Rs. 1,95,733.44 from the salary of the applicant passed in violation of rules and laws and the same being communicated to the applicant by Divisional Railway Manager (Kangra) vide his letter dated 14/18.5.04 (Annexure- XVIII) and/or pass any other order/orders as Your Lordships may deem fit.

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

9. INTERIM RELIEF PRAYED FOR :

It is further prayed that pending disposal of the application Your Lordship may be pleased to direct the respondents to stay deduction/recovery of damage charges from the salary of the applicant which has already started from the month of May, 2004 and/or pass such other order/orders as Your Lordships may deem fit and proper.

10. PARTICULARS OF THE POSTAL ORDER IN RESPECT OF THE APPLICATION FEE :

IPO NO. 3461654520 dated: 27.6.04.....  
Issued by Guwahati Post Office.

11. LIST OF ENCLOSURE :

As per Index enclosed.

Contd .... Verification...

Rahul Gosain

## VERIFICATION

I, **SHRI RAHUL GOSAIN**, son of Shri Jatindar Bai, aged about - 33 years,  
Presently working as Sr. Divisional Mechanical Engineer, Incharge, N. F.  
Railway, Lumding, in the district of Nagaon, Assam, do, hereby verify that  
the statements made in paragraphs nos 1, 3, 6, 8, 9, 10, 12, 13  
15, 22, 23, 24, 25 and 31

\_\_\_\_\_ are true to my personal knowledge and statements made in paragraphs nos 2, 4, 5, 7, 11, 14, 16, 17, 18, 19, 20, 21, 26, 27, 28, 29, 30, 32 and 41 are believed to be true on legal advice and that I have not suppressed any material facts.

Place:- Guwahati

Date:- 2.7.07.

Rahul Gosain

SIGNATURE OF THE APPLICANT

29 -  
Northern Railway

23  
Headquarters office,  
Baroda House,  
New Delhi

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

Dated : 30/10/2002

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

Northern Railway house No. 251/1B, (type-IV), P.K.Road, New Delhi is allotted to Sh.Rahul Gossai, SME/P for residential purposes on turn.

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

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

Copy for information and necessary action to :

1. DSE/Estate/Delhi. DRM office, State Entry Road, New Delhi.
2. Sr.DEE/G, Delhi DRM office, State Entry Road, New Delhi.
3. Sr.DSTE/Delhi DRM office, State Entry Road, New Delhi.
4. FA&CAO/EG.
5. Dy.CAO/G.
6. DY.CPO/G/N.Rly.
7. IOW/Estate/DRM office, State Entry Road, New Delhi.
8. DEN/Estate/ DRM office, State Entry Road, New Delhi.
9. Sr.Section Engg./P, P.K.Road, New Delhi.
10. Sr.Section Engg/Works, N.Rly, P.K.Road, New Delhi.
11. Sh. Sh.Rahul Gossai, SME/P is requested to kindly convey acceptance of the allotment within 3 days and take the possession of the flat within 8 days failing which the allotment will be treated as cancelled. You are also requested to kindly advise the exact date of taking the possession of the flat to this office.
12. General Secretary, NROA, Headquarters office, Baroda House, New Delhi.
13. General Secretary, NRPOA, Headquarters office, Baroda House, New Delhi.

Allotment

उत्तर रेलवे प्राधिकरण शाखा
प्राप्त तिथि/Received on
14/11
31
अनुम

Attested by  
Sawhney  
Sd/-

2004 12:30

CSE/NFR

23461

P.03

NORTHERN RAILWAY

Headquarters Office,  
Baroda House, New Delhi.

Dated: 17-12-2002

No. 727E/1635/EIA.

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

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

- Ref: (i) Rly Board's letter No. E(0)III/98/AE/153  
dt 26-10-1997 and  
(ii) Rly Board's letter No. E(0)XIII-2002/TR/164  
dt 24-5-2002.

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

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

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

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

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

G.M's app'l. App'd

Submitted for Signature

*Pranila H. Bhargava*  
17/12/02

(Pranila H. Bhargava)  
for General Manager.

Attested by  
*Sh. Chandhury*  
Adv.

4 12:30

CSE/NFR

23461

P.04

Northern Railway

Headquarters Office,  
Baroda House,  
New Delhi

No. 727-5/1535/EIA

Dated: 13/03/2003

The General Manager,  
North Frontier Railway,  
Mallison, GuwahatiSub:-Sporing of Shri Rahul Gosain, Sr. Scale  
IRSME from Northern Railway.

...

The request for grant of 6 months study leave to Shri Rahul Gosain, Senior Scale/IRSME for completing his MBA (part time) course for the faculty of Management studies of Delhi University has been considered by the Railway Board. However, the request has not been acceded to as study leave is not admissible to Officer for part time study course in terms of extant rules. A copy of Railway Board's letter No. E(0)III-2002/TR/154 dated 17-2-2003 annex conveying their decision is enclosed.

The officer may be informed accordingly.

BA/As above.

(Mehinder Kumar)  
for General Manager/P

Copy to:-

1. Shri Rahul Gosain, Sr. Scale IRSME, 4/51, N.E.A., Karol Bagh, New Delhi-110005.

12/11/03

18/12/02  
12/11/04

Attested by  
B. S. Dhillon  
Adm

04 12:31

CSE/NFR

23461

P. 05

(94)

Annexure

Additional Member (Mech. Engg.),  
Ministry of Railways,  
Railway Board,  
1, Raisina Road,  
New Delhi-110001.

Dt. 10/1/03

Sub.: Leave to complete M.B.A programme.

I would like to apply for 42 days L.A.P (w.e.f 18/12/02 upto and inclusive of 28/01/03) and further 68 days L.A.P w.e.f 02/02/03 upto and inclusive of 10/04/03 towards completion of the balance of my M.B.A (P.T.) studies at the Faculty of Management Studies, Delhi University.

I have been invited (copy of the invitation letter from SPCP, RSC/BRC enclosed) to attend the Foundation Day programme for the award of Director General's medal for securing top rank with distinction on 31<sup>st</sup> Jan, 2003. I would request that the intervening period i.e 28/01/03 to 01/02/03 (both days inclusive), may please be treated as duty in order to enable me to attend the said programme.

It is certified that the said amount of L.A.P is due to me in my leave account. I am enclosing the applications for L.A.P duly filled in quadruplicate for the periods detailed above.

DA /- As above.

Rahul Gosain  
10/01/03  
(RAHUL GOSAIN)  
Sr. Mech. Engineer/P  
Northern Railway

His leave can be sanctioned by CME/MP who may please do so.

CME/MP

[Signature]  
10-1-03

Attested by  
[Signature]  
Adv





12:35

CSE/NFR

23461

P. 01

(96)

kept in abeyance/pended. Now, that Rly. Bds. decision regarding not acceding to my request for study leave has been communicated to me vide your letter of even number dt. 13/03/03, it is requested that the other alternative of my being allowed to continue in a position in Delhi may please be looked into and a decision regarding the same be please communicated to me at the earliest.

6. If there is any need for clarification regarding any of the points submitted above, then my local telephone number, e-mail id and residential address to which all communication may be addressed is listed below:

7. Accordingly, it is again humbly submitted that:

- a) Communication of sanction memorandum to my previous leave application and payment of leave salary for the months of January, February and March to my account may please be arranged at the earliest.
- b) Further one months commuted leave in continuation with the above in view of my medical condition in order to enable me to take rest and follow-up as directed by the doctor may please be sanctioned.
- c) The current status of my application to the Secretary/TRAI may please be ascertained and accordingly it may please be ensured that the same is immediately forwarded to the concerned office for onward action towards selection.
- d) Rly. Bds. orders No. E(O)-III -2002/TR/164 dt. 24/05/02 held in abeyance/ cancelled in order to allow me to continue in a position in Delhi for at least a further period of two-three years in order to provide a logical conclusion to my efforts thus far in the direction of my treatment for my condition and recovery to good-health.

No.:SME(P)/Misc./2002/3 dt. 17<sup>th</sup> April, 2003

Yours sincerely,

Rahul Gosain  
(RAHUL GOSAIN)

Encl.:

1. A copy of my application for leave dtd. 10/01/03.
2. Medical Certificate from Dr. B.M. Makkar advising rest and treatment for one month in original.
3. Certificate from Dr. B.M. Makkar advising regular follow up every two-three weeks for at least two-three years in original.

Rahul Gosain,

451 W.E.A.,

Karol Bagh,

New Delhi-110005,

India.

Ph: 011-25760185

e-mail: rg1973a@uomail.com

ANNEXURE - VI

(TYPED COPY)

Med C-7/IGRC/2222

45610

NORTHERN RAILWAY  
MEDICAL DEPARTMENT

No. ....

CERTIFICATE OF FITNESS TO RETURN OF DUTY FOR  
GAZETTED OFFICERS

I. Dr. Pankaj Kapoor do hereby certify that I have carefully examined Shri Rahul Gosain, SME/BH/... the Mech. Branch' or Department and that he/she has recovered from his/her illness and is now fit to resume duties in Railway Service with effect from 28.10.03 (FN).

I also certify that the original certificate (s) on which leave was granted or extended was/were produced before me.

Sd/- Illegible  
Signature of the Doctor

Sr. ....  
N. Rly., New Delhi.

Dated 28.10.03  
Place : New Delhi

Attested by -  
Bhaskar Singh  
Adv.

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-23-

PR-2004 12:36

CSE/NFR

23461

35

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P. 02

45610

चिकित्सा नं-7/सि.मो.मि.नं.7/222  
मम C-7/IGRC/1117

उत्तर रेलवे/NORTHERN RAILWAY

चिकित्सा विभाग/MEDICAL DEPARTMENT

मम नं-7/सि.मो.मि.नं.7/222

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

मैं, डॉ. ....

यहाँ तहत डॉ. ... के द्वारा प्रमाणित करता हूँ कि श्री ...

श्री .../या ... विभाग में ... से स्वास्थ्य लाभ कर लिया है। और अब पूर्णतः पर ... होने के लिये योग्य है।

I, Dr. Pankaj Kapoor

Do hereby certify that  
I have carefully examined Shri. Rahul Goswami, S.M.E./N.R.L.S.  
(the Branch ... Branch/for Department and find that he/she has recovered from his/her

illness and is now fit to resume duties in Railway Service with effect from 28/10/03 (FN)

मैं, यह भी प्रमाणित करता हूँ कि छुट्टी लेने के लिये/या बढ़ाने के लिये सभी मूल प्रमाण-पत्र मुझे दिखा दिये थे।  
I also certify that the original certificate (s) on which leave was granted or extended  
was/were produced before me.

दिनांक/Dated. 28/10/03

स्थान : नई दिल्ली  
Place New Delhi

.....  
हस्ताक्षर के हस्ताक्षर/Signature of the Doctor

.....  
N. Rly., New Delhi.

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ANNEXURE - VIIA

98

PR-2004 12:36

CSE/NFR

23461

P. 03

✓ General Manager/P,  
Northern Railway Hqrs.,  
Baroda House,  
New Delhi-110001.

27 OCT 2003

Recd. by Gm  
(P) copy  
27/10/03

dt. 27/10/03

Sub.: Relief on Transfer and Issue of Duty Pass

Ref.: My earlier letter on the same vide letter no. SME(P)/Misc/2002/3 dt. 17/04/03  
Sir,

You are already aware through correspondence resting with my last letter dt. 17/04/03  
(copy enclosed) that due to grave sickness on account of Viral Hepatitis (Type E? / SAH)  
with prolonged course I had not been able to carry out the transfer orders to N.F. Railway.  
I have duly kept apprised the GM/N.F. Railway about this position through repeated  
correspondence. The specialist doctor attending on me has at long last declared me fit  
with effect from 27/10/03 subject to strict observance of a number of conditions having a  
bearing on my ailment. A copy of the said medical certificate of fitness in question is also  
enclosed.

Incidentally, notwithstanding my transfer order I have not yet been officially relieved by  
Northern Railway which is absolutely necessary for my reporting to N.F. Railway as well  
as getting transfer duty pass.

I therefore request you that an immediate relieving order may please be issued in my  
favour to enable me to get the transfer duty pass issued and to carry out the transfer  
without any loss of time.

Yours sincerely,

Rahul Gosain

(RAHUL GOSAIN)

Sr. Mech. Engineer/P

Northern Rly. On Transfer to N.F. Rly.

End. No.: SME(P)/ Re. t. dutypass /2003 dt. 27/10/03

Rahul Gosain,

251-1B,

Railway Officers Enclave,

P.K. Road,

New Delhi.

Tel. No.: 22466 (Rly.) or +91-11-23344863 (DOT)

Attested by  
B. S. D. Singh  
Adv. D.

Annexure-G

NORTHERN RAILWAY

Headquarters Office,  
Baroda House, New Delhi.

No. 727-E/1636/EIA.

Dated: 7/11/2003.

Shri Rahul Gosain,  
Sr. Scale IRSM,  
251-13, Railway Officers Enclave,  
Panchkuian Road,  
New Delhi.

38

Sub: Transfer to N.F. Railway.

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

With reference to your representation dated 27-10-2003, it is advised that your orders for transfer to N.F. Railway were issued vide this office notice dated 09-12-2002 as referred to above and you continued to work as SME(P)/HQRs upto 16-12-2002. Instead of handing over the charge of the post, you disappeared w.e.f. 17-12-2002 and subsequently applied for leave. As per extant instructions, leave of the officer who are under order of transfer from one zone to another, can be sanctioned by the Administration of zone to which he has been transferred. Accordingly, any correspondence in this regard were to be addressed to N.F. Railway. However, you continued to prolong the correspondence on the subject with this office on one pretext or the other.

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

*Deom*  
27/11/03  
(Mahinder Kumar)  
For General Manager/P.

Copy to:-

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

Attested by  
*Shoudhury*  
Adv.

Personally handed over a copy to ADGM on 15/0-/-

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

Sub.: Retention of House

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

Encl./- As Above

Yours Since,

Rahul G.  
(RAHUL GO)

10-11-03  
30-4-04

Attested by.  
R. S. Dhillon  
Adm. Officer

(TYPED COPY)

NORTHERN RAILWAY

HEADQUARTERS OF  
BARODA RLY  
NEW DELHI

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

Dated  
27.8.03.

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

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

Ref : Your letter dated 5.7.03

In reference to your above mentioned request it is informed that your request for retention of house No. 251/1B P.K. Road cannot be acceded as you have not carried out your transfer to N.F. Railway so far. You are an unauthorised occupant of the house w.e.f. 17.12.2002 and is liable to pay damage rent for entire period of unauthorised retention. Kindly vacate the house immediately to avoid eviction proceedings.

Sd/- Illegible  
(R. K. Malhotra)  
for General Manager/G

Copy to :

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

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

Attested by  
R. K. Malhotra  
Adv.



K-2004 12:37

CSE/NFR

23461

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Annexure - H

39

NORTHERN RAILWAY

HEADQUARTERS  
BARODA  
NEW DELHI

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

Dated: 27/3/04

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

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

Ref: Your letter dated 5.7.03.

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

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

Copy to:-

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

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

Retn.-3

show cause notice to the  
applicant for vacation

-A2-

ANNEXURE - XI

9

11

NORTHERN RAILWAY

Registered A.D.

DRM's Office  
New Delhi

SHOW CAUSE NOTICE

No. 159EO/07/ 2620/2003

Dated: - 9 / 11 / 2003

Sh./Smt. Sh. Rahul G. Gopin ✓  
Res. flat No. 251/1B at P.K. Rel.  
N. Ry. N.D. - 11001.

Sub:- Unauthorised occupation of Railway flat No. 251/1B at P.K. Rel.  
at P.K. Rel. by Sh./Smt. Rahul Gopin Type: IV

You were retired/removed/transferred from N. Railway/DLI  
to ..... N.F.R. .... on 17-12-02 and was permitted to retain  
the above said Railway flat upto 17-12-02 and you were  
supposed to vacate the above flat upto 17-12-02 but you failed  
to do so. As such you are in unauthorised occupation of Railway  
flat No. 251/1B at P.K. Rel. N.D. 11001,  
w.e.f. 18-12-02.

Please vacate the above mentioned Railway flat within  
10 days from the date of issue of this notice, failing which the  
Eviction proceedings under public premises (Eviction of un-  
authorised occupants) Act, 1971 will be initiated against you  
and recovery on account of damages for unauthorised occupation of  
above quarter will be made from your settlement dues as per extent  
rules.

In case no reply is received within the said period then  
it will be presumed that you have nothing to say in this matter  
and action will be taken in this regard without any further ref.  
to you.

This is without prejudice to any other action against you  
under the rules/law.

Please acknowledge the receipt of this notice.

Divl. Sundtg. Engineer/Estate  
N. Railway, New Delhi.

Copy to :- 1. C.E.F.O. (Power) Northern Railway Balane Pithurgen 11055.

2. The GM/G, N. Railway, Hd. Qrs. Office, Baroda House, NDLS  
Inref. to his letter No. 1036/13/Retn/VA Ch 6-10-13  
d 1036/13/Retn/42/03/84. Rahul Gopin d 27/8/03

Attested by  
Providing  
Adv.

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ANNEXURE - XII

For kind Attn. Sh Rahul GOSAIN

(DME)

Fax No. - 03674-265049

NORTHERN RAILWAY

Recd on 24/11/2003

REGISTERED A.S. 21/11/03

No. 159.EQ/7-262/2003  
Dated 10/11/2003

FINAL NOTICE.

DRM'S Office  
New Delhi  
Encl. N.R. 11-001

TO Sh. Smt. Rahul Gosain  
Office Rtg colony flat 251/1B at P.K. Rd.  
NDLS - 11-001 -

Sub:- Unauthorised occupation of Railway Bungalow/Flat/Quarter  
No. 251/1B at P.K. Rd. by Sh. Smt. Rahul Gosain

You were required to vacate the above Bungalow/  
Flat/Quarter No. 251/1B on 17-12-02 according to the  
provisions of extant rules of allotment of residential accommo-  
dation on account of your having been transferred/gone on depu-  
tation/retired/ termination of Mutual exchange/resigned on 17-12-02  
but you failed to do so. The tenancy of the said Bungalow/Flat/  
quarter stands cancelled wef. 18-12-02.

Please vacate the above mentioned Railway Bungalow/  
Flat/quarter within 10 days from the date of issue of this notice,  
failing which Eviction proceeding under public premises Eviction  
Act. 1971 will be started against you. Damages charges as noted  
below are also recoverable from you w.e.f. 18-12-02.

1. Penal rent of type IV @ Rs. 114/- Per Sqm. or 104-16 Sqm. 54/-
2. water charges Rs 35/- per month.
3. Conservancy charges Rs 10/- per month.
4. Lawn maintenance charges @ Rs 0.88 paise per sqm for X sqm per month.
5. Electrical charges etc. be advised by EFO(P) Northern Railway  
Endorsement charging.

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

The standard rent of the flats is Rs 230/- w.e.f. 1-7-87 and Rs. 232/- w.e.f. 9-4-01.

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

Copy to the following for information and necessary action:

1. G.M(G)N. Railway B. House, New Delhi in ref. to his letter No. 1836/13/10/12/03/Ref. dated 27-8-03 for information.
2. FA&CRO/N. Railway, B. House, NDLS The above noted charges from the above named occupant w.e.f. may be recovered.
3. Dy CPO(G)N. Rly. B. House, NDLS
4. Sr. DAO/N. Railway, NDLS.
5. DPO(Bills)N. Rly. NDLS
6. C EFO(P)N. Rly. P.K. Rd. NDLS-11-005.
7. PAY and Accounts officer, Rly Board, Rail Bhawan New Delhi.
8. Cash-I Branch, Railway Board, NDLS
9. Secretary, Railway Board, NDLS in ref. to their letter No. dated \_\_\_\_\_.

Attested by.  
Sh. Dhruv Singh  
Adv.

ANNEXURE - XIII

(TYPED COPY)

Northern Railway

Headquarter's Office  
Baroda House, New Delhi  
Dated 11.12.2003

Speed Post

Case No. 2100/DLI/PPEA/HQ 2003

FORM - 'A'

Notice under Sub-Section (1) and Clause (b) (ii) of Sub-Section (2) of Section of the Premises Eviction of Unauthorised Occupants Act of 1971

To,  
Shri Rahul Gosain,  
Rly. Flat No. 251 B,  
Punchkuain Road, New Delhi.

Whereas, I the undersigned am of opinion on the grounds specified below that you are in unauthorised occupation of the Public Premises mentioned in the Schedule below and that you should be evicted from the said premises :

Grounds

That your tenancy to occupy Rly. Flat No. 251-B Punchpuain Road, New Delhi has since been terminated w.e.f. 18.12.2002 due to you were transferred from N. Rly. Delhi to NF Rly and you were permitted to retain the flat up to 17.12.2002, but you have not vacated the same despite of service of Regd. A. D. notice dated 9.10.2003 and 12.11.2003 issued by DSE Estate, New Delhi.

Now, therefore in pursuance of Sub-Section (1) of Section 4 of the Act, I, hereby call upon you to show cause on or before 6.1.2004 why such an order of eviction should not be made.

And in pursuance of clause (b) (ii) of sub-section (2) of Section 4, I also call upon you to appear before me in person or through a duly authorised representative capable to answer all material questions connected with the matter along with the evidence which you intend to produce in support of the cause shown on 6.1.2004 at 15.00 hours for personal hearing in my Room No. 130. Baroda House, New Delhi. In case you fail to appear on the said date and time the case will be decided exparte.

Schedule :

Rly. Flat No. 251 B. Punchkhuaain Road, New Delhi

Sd/- Illegible  
11.12.03  
(Pramila H. Bhargava),  
Estate Officer

Copy to :- Divil. Supdtg. Engineer Estate, X. Rly. DRMs Office, New Delhi  
for infn. in ref. to his File No. 159-F.O. 07 2620 2003

Attested by  
[Signature]  
Adv

-45-

①  
⑬ 57

Fax Message For sh. RAJUL GOSAIN D.M.E. I/c - Undertaking  
Ranger

Northern Railway

Headquarters Office,  
Baroda House, New Delhi.  
Dated: 11.12.2003.

Speed Post

Case No. 2109/DLI/PPE/MIQ/2003

FORM 'A'

Notice under Sub-Section (1) and Clause (b) (i) of Section (2) of Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

To,

Shri Rajul Gosain,  
Rly. Flat No. 251 B,  
Punchkuain Road, New Delhi.

Whereas, I, the undersigned, am of opinion, on the grounds specified below, that you are in unauthorised occupation of the Public Premises mentioned in the Schedule below and that you should be evicted from the said premises:

Grounds

That your tenancy to occupy the Rly. Flat No. 251-B, Punchkuain Road, New Delhi has since been terminated w.e.f 18.12.2002 due to you were transferred from N. Rly Delhi to NF Rly. and you were permitted to retain the flat up to 17.12.2002, but you have not vacated the same despite of service of Regd. A. D. notices dated 9.10.2003 and 12.11.2003 issued by DSE Estate, New Delhi.

Now, therefore, in pursuance of Sub-Section (1) of Section 4 of the Act, I hereby call upon you to show cause on or before 6.1.2004 why such an order of eviction should not be made.

And, in pursuance of clause (b) (ii) of sub-section (2) of Section 4, I also call upon you to appear before me in person or through a duly authorised representative capable to answer all material questions connected with the matter along with the evidence which you intend to produce in support of the cause shown, on 6.1.2004 at 15.00 hours for personal hearing in my Room No.130, Baroda House, New Delhi. In case, you fail to appear on the said date and time, the case will be decided ex parte.

SCHEDULE:

Rly. Flat No. 251 B, Punchkuain Road, New Delhi.

*Pramila*  
11/12/03  
(Pramila H. Bhargava),  
Estate Officer.

Copy to:- Divl. Supdtg. Engineer Estate, N. Rly., DRMs Office, New Delhi for info. in ref. to his File No. 159-EO/07 2620 2003.



Personally Handled over to Mr. S.P. Singh along with  
proof of posting etc 3/9/01, 3 pages of proof, 1 book of evidence.

Date:- 11.01.04

The Estate Officer,  
Headquarters' Office  
Baroda House,  
New Delhi

Subject:- Reply to the Notice under sub-section (1) and Clause (b)  
(ii) of Sub-section (2) of section 4 and section 7 of "The  
Public Premises (Eviction of Unauthorized Occupants) Act.  
of 1971"

Madam,

1. I am in receipt of the two Notices under reply and would like to submit that the no proceedings can be initiated against me under the "The Public Premises (Eviction of Unauthorized Occupants) Act. of 1971" and the proceedings against me are liable to be quashed.
2. I would like to submit that I was posted in Delhi vide orders dated 26/10/99 and had reported to Delhi for duty on 05/12/99.
3. I would like to bring to your kind knowledge that I was officially relieved from the Northern Railway only on 10<sup>th</sup> November 2003 and it was only when I was officially spared that the Railways issued me the transfer duty pass on 10<sup>th</sup> November 2003 and I could report on duty with the North East Frontier Railway only on 14<sup>th</sup> November 2003. In other words until 10<sup>th</sup> November 2003 I continued to be officially on the rolls of the Northern Railways notwithstanding the transfer order dated 16/12/2003 referred in your notice. Legally it cannot be denied that the transfer order by itself does not constitute a relieving from the post until a GROUP 'C' ORDER is issued relieving officially from the Railway to be able to join the new Zonal Railway to which he stands transferred.
4. In view of these bare facts stated above the mere transfer order can neither lead to cancellation of my rightful allotment of the accommodation nor subject me to payment of punitive rent in consequence thereof. That, without prejudice to my rights it is stated that even otherwise I am entitled to retain the flat till such time I was with the Northern Railway i.e. till such time I am not spared by the Northern Railway. It is further stated that thereafter I am entitled to retain the railway flat allotted to me on the basis of the extant orders/rules.
5. The fact as to whether I was relieved by the Northern Railway on 10<sup>th</sup> November 2003 or on any date prior to that time is already under consideration before the quasi-judicial authority at N.F. Railway headquarters.
6. You are informed that the Northern Frontier Railway has already initiated the necessary proceedings vide Memo dated E/74/GA7Z/446/CON dt 12/09/2003, and till such time, it is decided by the Quasi judicial authority there, already seized of the matter, as to when I was formally relieved of my duties with the Northern Railway you, are estopped from giving any findings as to when I was relieved of my duties with the Northern Railway. It is further submitted to two

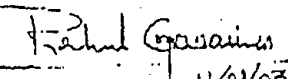
Attested by.  
R. S. Chawla  
Adv.

separate authorities of the railways cannot be and the same alleged act as before both the authorities the only core and vital issue required to be decided is, as to when I was relieved of my duties formally by the Northern Railways

7. That any decision by you would tantamount to encroaching upon the authority of the said quasi judicial authority, which, were initiated prior in time. You are therefore requested to stay the eviction proceedings before your good self till a decision is taken on the on the aforesaid memo dated 12/09/2003 lest any pre-emptive action on your part in pursuance of the notices under reply should severely prejudice my rightful case before the other quasi-judicial authority at NF Railways, Maligaon, Guwahati-11.
8. I say that, as per the extant orders vide letter no E(G)2001 QR I did, 28/06/2002, I am entitled to retain the official accommodation i.e. the Railway flat no.251-1B,P.K.Road,New Delhi.
9. I say that I require the premises for the bonafied of my dependent family members i.e. my parents who were and are staying in the Railway flat. My parents are dependent on me financially as well as for residence. You are further informed that my ailing parents are totally dependent upon me and at this stage of their lives when they need my support I cannot shirk from my responsibilities of providing them a shelter.
10. That I shall be supplying the necessary certificate as per the extant orders/rules.
11. That without prejudice to my submission made above I would like to state that the allotment of my flat has not been cancelled, much less by the competent authority.
12. That without prejudice to my rights it is stated that there is no rule or policy of the Railways that the officer becomes an authorized occupant of the Railway flat on the date of his transfer itself and is not entitled to retain the accommodation even for one day there after and immediately becomes an unauthorized occupant. The under lying policy of permitting the officers to retain the accommodation is that, the Railway officers should not be uprooted from the present accommodation and brought on the roads on his transfer from one place to another.
13. I say that mere transfer of an officer does not ipso facto make the officer and unauthorized occupant of the flat allotted to him.
14. I beg the allotment of the said flat in the name of petitioner was never cancelled by the competent authority i.e. the General Manager (NR) the Quarter owning authority and therefore it could not by any stretch of imagination be said that I am an unauthorized occupant. It is the settled principles of law that the cancellation of the allotment is a condition precedent to the rendering of the possession of a Railway servant under order of transfer etc. as unauthorized.
15. It is pertinent to mention here that the cancellation of the flat allotment of the flat is a condition precedent before an allottee can be treated as an unauthorized occupant. Keeping in view the fact that the allottee is still under the employment of the Railways and has a lien over the same, I say that I cannot be equated to the retired officers of the



- 49 -
- (5)
- whose occupation becomes unauthorized immediately on leaving from.
16. That in view of the same, the notices on the basis of which, the proceedings have been and therefore had in law and the proceedings before you have to be dismissed in-limbo.
  17. I would like to submit to your goodself that the flat in question had been allotted to me by the ADGM/N.Rly vide his letter No.-103-G/S/Allot/Sr.Jr./2001 dtd. 30-10-02 and the allotment of the same flat has not been cancelled till date by the Competent Authority i.e. the General Manager/N.R and therefore by any stretch of imagination I cannot be termed as an unauthorized occupant of the Railway flat allotted to me.
  18. I say that even as per the circular of the Railways dtd. 1<sup>st</sup> June, 2001 the cancellation of allotment of the officer is a condition precedent to the declaration of the officer as unauthorized occupant.
  19. I say that the Railways cannot claim any penal rent from me, as I have not been declared as an unauthorized occupant by the act of cancellation of the allotment of the petitioner by the Competent Authority.
  20. Without prejudice to my rights it is stated that as per the clause 1711 of Railways Establishment Manual no officer can be charged more than 10% of his or her monthly emoluments irrespective of the scales of pay allotted. It is further added that an excess of 10% of his monthly emoluments can be charged from the Railway Officer only when he does not vacate the residence after the cancellation of the allotment - This clearly shows that the allotment of the flat has to be cancelled before the penal rent can be charged from the officer and the officer is not liable to make the payment of the penal rent ipso-facto from the date of his transfer.
  21. The eviction proceedings are even otherwise liable to be set aside as the notice and the proceedings initiated under the public premises Act against me are bad in law, as the Railways cannot call a person as a unauthorized occupant with retrospective effect and further demand damage/penal rent with retrospective effect.
  22. I say that the impugned show cause notice are even otherwise not tenable under law and the same are liable to be set aside, because as per law you cannot demand and award penal rent/damages with retrospective effect. It is the settled principle of law that one can demand damages from a person prospectively only, that is from the date from which the allotment is cancelled.
  23. That the amount of penal rent as claimed by the office is too high/arbitrary and without any basis.
  24. I may be therefore permitted to raise any other submission before your goodself in support of my case. You are therefore requested to dismiss the proceedings against me in the above facts and circumstances of my case.

  
11/01/03  
(RAJUL GOSAIN)  
SS-I R.S.M.E.  
N.F. Railway.

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ANNEXURE - XVI

23 JAN 2004 12:20

05E/NFR

23401

P. UT (87)

011-25781744

(16)

From:  
Rahul Gosain,  
Divisional Mech. Engineer/IC,  
Lumding, N.F. Railway,  
At & P.O. Lumding, Dist: Nagaon,  
Assam.

Date: 30.01.2004

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To:  
Smt. Pramila H. Bhargava,  
Estate Officer, Room No. 130, Borada House,  
New Delhi -

Sub: - Notice under Sub-section (1) and clause (b) (ii) of sub section (2) of section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, in case No.2100/DLI/PPEA/HQ/2003 dated.11.12.2003.

Madam,

1. In terms of the above Notice dated 11.12.2003 I was called upon to show cause on or before 06.01.2004 as to why an order of eviction should not be made for alleged unauthorised occupation of Railway Flat no.251-1B, Panchkuian Road, New Delhi. I was also called upon to appear before you in person or through a duly authorised representative capable to answer all material questions connected with the matter along with the evidence which I intended to produce in support of the cause shown on 6.1.04. On 11.01.04 I caused submission of a reply to the above show cause notice. However, the date was deferred to 20.01.04 and again to 10.02.04.
2. Owing to the fact that I have carried out my transfer order to N. F. Railway and at present I am working as Divisional Mech. Engineer/IC/Lumding and since my applications for sanction of leave for attending the hearing in this matter in your office have been rejected due to exigency of service, I have been unable to physically appear for the hearing in your office on the previous two dates. In spite of my best efforts I do not think it likely that I shall be able to get leave for the hearing on 10<sup>th</sup> Feb'2004 as well. The circumstances are such that a representative well conversant with the facts and relevant provisions of rules applicable is not available to represent me effectively. Therefore, I make the following submissions for your judicious consideration. However, if these submissions are considered inadequate for your satisfaction I may kindly be allowed further time of at least one month so as to enable me to appear before you and make oral submissions and for adducing additional evidence on as to why proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is inapplicable, otiose and liable to be dropped.
3. Submissions  
(1) That I belong to I.R.S.M.E. batch of 1994. On 24.3.1996 I joined N.F. Railway on probation, posted as AME(P)/Lumding in October, 1997 and transferred to Malda Town, N.F. Railway, in 1998, in April. In October 1999 I was transferred to Northern Railway and I joined Delhi Division on 05.12.99.

Contd.--2

Attested by:  
Rahul Gosain  
Adv

(2) That since 5.12.99 to 30.10.2002 I resided in rented private house and it was only on 30.10.02 that I was allotted House No. 251-1B(Type -IV) at P.K. Road, New Delhi by ADGM/Northern Railway vide Allotment No. 103-G/5Allot/Sr.Jr./2001 dt.30.10.2002.

(3) That even before a period of three years had elapsed I was transferred to N.F. Railway vide order No. 940E/17-XXXXX/EIA Dt. 4.12.2002. That I was not relieved of my charge in accordance with the said transfer order.

(4) That another order was issued on 16.12.2002 wherein another person was posted in my place and my transfer order to N.F. Railway remained in place.

(5) That subsequent to my order of transfer dated 4.12.2002 I applied for 6 months study leave to complete my MBA(Part time)from the Faculty of Management Studies, Delhi University, for which I had sought and was granted permission by the Rly. Administration.

(6) That when on 17.12.2002 the person who was ordered to be posted in my place assumed the charge of the post of SME in my absence when I had gone to Rly. Board, I had no other option but to seek leave pending reply to my application seeking 6 months time to complete MBA.

(7) That vide letter No.727E/1635/EIA dated 17.12.2002, signed by you for General Manager, N. Railway, The Secretary, Railway Board was requested in accordance with the desire of General Manager to extend their approval for the grant of further 6 months study leave beyond 06.12.2002.

A copy of Pramila H. Bhargava's letter dated 17.12.2002 is annexed herewith and marked as Annexure-A

(8) That in response to Northern Railway's letter dated 17.12.2002 as mentioned in the preceding paragraph, Railway Board conveyed their decision vide letter dated 17.2.2003 which was communicated to me vide General Manager/P/N. Railway's letter No. 727-E/1636/EIA dated 13.03.2003.

A copy of GM (P)/N. Railway's letter dated 13.03.2003 is annexed herewith and marked as Annexure -B.

(9) That neither a relieving order nor any decision on my leave application had been communicated to me. Pending decision of GM(P)/N. Railways letter dated 17.12.2002 (Annexure -A) by the Railway Board, I again applied for 110 days leave on 10.01.03 w.e.f. 17.12.02, which was addressed to Additional Member (Mechanical). However, Addl. Member (Mech.) vide his endorsement on the body of my application dated 10.01.03 ordered that my leave could be sanctioned by CME/NR who might do so.

A copy of my application dt. 10.01.03 and AM(Mech.)'s order thereon is annexed herewith and marked as Annexure - C.

(10) That no order was passed by CME/N. Rly. on the order of AM(Mech.).

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(11) That while I was waiting for leave as applied for, I fell sick and had to seek treatment from a private medical practitioner. Accordingly, I submitted medical certificate from the medical practitioner along with my application dated 17.04.02 to GM(P)/N. Railway.

A copy of application-dated 17.04.02 is annexed herewith and marked as Annexure - D.

(12) That I remained sick and under the treatment of private medical practitioner since 17.04.03 to 27.10.03 and I was finally declared fit for duty by Railway Doctor on 28.10.03.

Copy of Duty Fit certificate dated 28.10.03 is annexed herewith and marked as Annexure - E.

(13) That on being declared fit I applied for being relieved from N. Railway to carry out my transfer order to N.F. Railway and also for issuance of a transfer pass vide my application dt.27.10.03.

A copy of application dt.27.10.03 is annexed herewith and marked as Annexure - F.

(14) That in response to my application as at Annexure-F, GM(P)/N. Railway vide its letter No. 727-E/1636/HIA dt. 7.11.2003 advised me that my orders for transfer to N. F. Railway were issued vide notice dt. 09.12.02 (Which is incorrect in as much as the correct date of notice was 16.12.02) and that I continued to work as SME(P)/Hqrs. up to 16.12.02 (Which again is not correct). It was further mentioned, *ibid*, that as per extant instructions, leave of officers who are under order of transfer from one Zone to another, can be sanctioned by the Administration of the zone to which he has been transferred. I submit that this statement too is incorrect in that in terms of Railway Board's letter No. E(O)/11 98PL/5 dated. 07.08.1998 it has been decided that "After the officer has been relieved on transfer he will be deemed to be on the rolls of the Railway to which he has been transferred, that the relieving railway should not entertain any request from such railway for grant of leave even on medical grounds and the officer concerned should not be paid any salary for the period after the date of relief; that as soon as the officer is relieved, the relieving Railway should send an intimation to the CPO and the PHOD of the Railway to which the officer has been transferred indicating the date of relief, number of days of joining time to which he is entitled etc., that his last Pay Certificate, service Book, Leave Account, Personal File etc. should also be sent to the new Railway immediately."

That it is evident from the above instructions of the Railway Board that being relieved on transfer for another Railway is a condition precedent to invoke the procedure outlined in these instructions. That I had not been relieved as no relieving order had ever been served on me, nor my last pay certificate etc. as mentioned above had been sent to N.F. Railway. It is further pointed out that GM(P)/N. Railway vide its letter dated 7.11.03 as mentioned above also categorically asked me to collect transfer pass from its office for effectuating my transfer. This by itself is indicative of the fact that my transfer had not been effectuated by 7.11.03.

A copy of GM(P)/N. Railway's letter Dt. 7.11.03 is annexed herewith and marked as Annexure - G.

Contd...4

11/12/03 11/12/03

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CSE/NFR

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P. 02

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5. Further, in view of the fact that my request for retention of the quarters was not acceded to solely and purely on the ground that I had not carried out my transfer to N.F. Railway, which otherwise would have invoked the provision for allowing retention of quarters (Since I was transferred to N.F. Railway for which there is special provision for allowing retention of quarters at the previous place of posting if the transfer at the first instance is to N.F. Railway excluding Katihar division.) . At Lunding itself, there are at least two officers, namely Sri M.C. Chauhan, ADRM/Lunding and Dr. Rajendra Prasad Sr. DMO/LMG who have been transferred to this Railway and have been permitted to retain their official residences in New Delhi, their Qrs. Nos. being 55-A Railway colony, S.P. Marg, Chanakya Puri and 246-3B, Railway Officers Enclave, P.K. Road, New Delhi respectively.

6. In view of the aforesaid, I submit that it would be sheer discrimination and persecution if I am not allowed to retain the house at P.K. Road, New Delhi on my transfer to N.F. Railway which would be violative of Articles 14, 16 and 21 of the Constitution as well as rules discussed above.

In view of the foregoing, I request you to kindly drop the proceedings for being mala fide, ultra vires the rules and for being violative of Articles 14, 16 and 21 as well as Article 31A(h) of the Constitution of India. Further the proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is otiose, unwarranted and inapplicable in the present fact situation.

Encl: A to H

Certificate for Retention required for bonafide use of dependent family members residing therein.

Yours faithfully,

Rahul Gosain  
29/01/04  
(RAHUL GOSAIN)  
DME/IC/Lunding,  
N.F. Railway.

(51/67)

Northern Railway

Speed post

Case No. 2100/DL/PP/EA/11Q/2000.

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

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

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

1. Shri Rahul Gosain,  
Ply. Flat No. 251/1-B,  
Punchkuain Road, New Delhi.2. Shri Rahul Gosain,  
Sr. Divl. Aech. Engineer RNY,  
Rangiya, N. R. Rly., Al & P. O. Rangiya,  
Distt: Kamrup, Assam-781354.

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

REASONS:

As shown in Judgement.

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

SCHEDULE:

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

DA One Judgement.

*Pramila H. Bhargava*  
27/04/04  
(Pramila H. Bhargava),  
Estate Officer  
DRMs Office, New Delhi for

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

Attested by  
*Pramila H. Bhargava*  
Adv.

## Northern Railway

Speed post

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

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

FORM 'G'

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

To,

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

2. Shri Rahul Gosain.  
Sr. Divl. Meeh. Engineer RNY,  
Rangiya, N.F.Rly., Al P.O. Rangiya,  
Distt: Kamrup, Assam 781351.

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

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

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

The objections raised by you have been duly considered.

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

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

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

SCHEDULE:

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

(Pramila H. Bhargava)

Estate Officer

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

Attested by  
P. S. Choudhary  
Adv.

- 56 -

(53)  
(65)  
5/1/06

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

CASE NO: 2100/DLI/PEA/HO/2003.

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

Applicant

Versus

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

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

..... Respondent

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

Judgment

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

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

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

Contd... ..2

Attested by  
Shri Jatender Bal  
Adv



(54) (64)

In the meanwhile it was made known that Dy. G. M. (G) has already referred the matter to Railway Board vide No. 103(G) 13 Retn 42 03 Sh Rahul Gosain dt. 17.12.2003 stating the facts that the respondent was transferred to Northern Railway from N. F. Railway for a period of three years on 26.10.1999. On expiry of 3 years period he was transferred back to N F Rly. on 4.12.2002. The respondent had requested for retention of the house on the grounds as applicable to the officers transferred to N. F. Railway. It was further stated in this letter that his request was not acceded as the respondent had come to N. Railway from N. F. Railway for a specific period of three years. A clarification was sought from Railway Board. The proceedings were held on 20.1.2004, 10.2.2004, 23.3.2004 and 27.4.2004. The statement of Shri M.K. Kamra was recorded on 27.4.2004. The Railway Board had clarified vide their letter No. E (G) 2003 RN3-23 dt. 16.3.2004 that the respondent is not entitled to retain the Railway accommodation at New Delhi as applicable in the case of transfer to N.F. Railway for the respondent was required to serve on N.F. Railway for a period of ten years w.e.f. 21.3.1996 as per the extant instructions and was transferred to N.Rly., for a limited period of three years in relaxation of rules on his own request to facilitate him to take treatment at AIIMS. The retention of the Rly. accommodation is to be regulated as per instructions governing permanent transfer.

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

I have gone through the papers on record, evidence and arguments on behalf of the parties and found that the respondent is in unauthorised occupation of the railway accommodation Flat No. 251-1-B, Punchkuain Road, New Delhi w.e.f. 18.12.2002 due to his transfer back to N. F. Railway.

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

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

Contd.....3

(55) (62)

Therefore, in exercise of the powers conferred upon me under Section 7 (2) of the Public Premises (Eviction of Unauthorised Occupants) Act of 1971, I, do hereby order that the respondent shall pay Rs. 11,940.24 p.m. plus other charges including outstanding electric charges, water charges etc. as due for unauthorised occupation for the period from 18.12.2002 to till vacation of the premises.

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

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

*Pramilla H. Bhargava*  
27/4/04

(Pramilla H. Bhargava),  
Estate Officer

- 50 -

ANNEXURE - XVIII

- 32 -

- 29 -

(A2)

CONFIDENTIAL

20

N.F.Railway.

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

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

Dt: 14-05-04

18

To,

Shri Rahul Gosain,  
Sr.DME/RNY.

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

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

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

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

This is for your kind information and necessary action.

for DRM(P)/RNY

Copy for information and necessary action to :-

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

for DRM(P)/RNY.

For [Signature] (P.O. No. [Signature])

For [Signature] (P.O. No. [Signature])

g0

N.F.

Attested by  
[Signature]  
Adv

(11)

(21)

## CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH

Original Application No. 316 of 2006.

Date of Order: This, the 11th day of January, 2007.

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

Shri Ratul Gohain  
Son of Shri Jatindar Bal  
Presently residing at Rangia  
Working as Sr. Divisional Mechanical Engineer  
N.F.Railway, Rangia  
Dist: Kamrup, Assam.

...Applicant.

By Advocates S/Shri N.N.B.Choudhury, C.K.Nath &amp; T. Deori.

- Versus -

1. The Union of India  
Represented by the Secretary  
Railway Board, New Delhi.

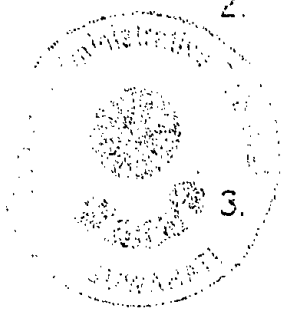
2. The General  
N.F.Railway, Maligaon  
Guwahati-11.

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

4. The Divisional Railway Manager (Personnel)  
Rangia, Dist: Kamrup  
Assam.

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

6. The Divisional Superintending



Filed by  
Choudhury  
Adv.

- 61 -

Engineer (Estate)  
Northern Railway  
New Delhi.


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

... Respondents.

By Dr.J.L.Sarkar, Railway Standing Counsel.

O R D E R (ORAL)

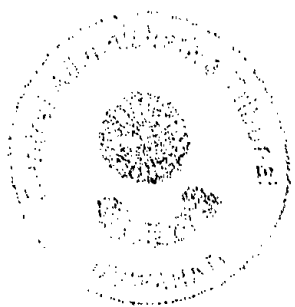
SACHIDANANDAN. K.V., (V.C.):



This Original Application has been filed by the present Applicant who is working as Senior Divisional Mechanical Engineer, N.F.Railway, at Rangia. His case is that he was allotted quarter in Delhi while working as C.D.O./DLI. He was transferred to N.F.Railway on 16.12.2002. The Applicant claims that he is entitled to retain the quarter at Delhi as per official circular issued by the Ministry of Railways on 28.06.2002 and therefore, he submitted application for retention of quarter in Delhi. He was permitted to retain the same for some time. But notice was issued on 12.11.2003 requesting him to vacate the quarter in Delhi within 10 days. The said notice was received by the Applicant on 24.11.2003 against which Applicant submitted his reply praying to allow him to retain

the quarter. But the deduction of penal rent at the rate of Rs.11,874.24 was started with arrear rent of Rs.3,264/- for the quarter from the month of May, 2004 onwards. On 18.05.2004 the Applicant received the impugned notice for recovery of damage rent amounting to Rs.1,95,733.44 at the rate of monthly instalment basis of Rs.11,874.24 from 17.12.2002 to 30.04.2004 and the deduction is still going on. Aggrieved by said action of the Respondents the Applicant has filed this Original Application seeking the following reliefs:-

"..... and after hearing the respondents may be pleased to set aside the order dtd. 18.5.2004 (Annexure-G) by which a damage rent for the period from 17.12.2002 to 30.4.2004 is sought to be recovered from your humble applicant and already started recovery from the month of May, 2004 which is illegal and in violation of the Railway Board Circular directing the Respondents to refund the excess amount recovered in the name of penal rent or damage rent to your humble applicant and pass necessary order/orders as your Lordships may deem fit and proper."



2. Heard Mr.T.Deori, learned counsel for the Applicant and Dr.J.L.Sarkar, learned Standing counsel for the Railways. Mr. Deori submitted that the damage rent is not liable to be recovered from the Applicant's pay since he has already vacated the quarter.

✓

However, he submits that Applicant would be satisfied if he is permitted to make a comprehensive representation putting forward all his grievances and the Authority be directed to consider and dispose of the same within a time frame. Counsel for the Respondents has no objection in adopting such exercise.

3. Considering the submissions made as above, this Tribunal directs the Applicant to make comprehensive representation ventilating all his grievances before the concerned competent authority within two weeks from the date of receipt of this order and on receipt of such representation, the competent authority shall consider and dispose of the same by passing appropriate orders therein within a time frame of three months thereafter.

The Original Application is disposed of as above. No order as to costs.

Sd/ VICE CHAIRMAN

TRUE COPY  
प्रतिनिधि

/BB/

N. S. Singh  
6-2-07  
अनुमान अधिकारी  
Section (1) & (2) (a)  
Cent of Labour & Welfare Tribunal  
मुम्बई नगर क्षेत्र  
अ. नं. 1/2007  
मुम्बई, महाराष्ट्र

10/6/2007

To,  
The General Manager,  
N.F. Railway,  
Maligaon, Guwahati-11.

Sub: Representation filed as per direction of the  
Central Administrative Tribunal, Guwahati vide  
order dtd. 11.1.07 in O.A. No. 316/2006.

Sir,

With regards to the direction of the Central  
Administrative Tribunal, Guwahati vide order dtd.  
11.1.07 in O.A. No. 316/2006 I beg to state as under:

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

That your humble applicant begs to state  
that as per the terms and conditions of the Railway, a  
Railway accommodation was allotted to your applicant at  
P.K. Road, New Delhi on turn. The said allotted quarters  
No. was 251/1B Type IV in P.K. Road, New Delhi which was  
allotted by the A.D.G.M., Northern Railway on 30.10.2002  
under order No. 103-G/5/ALLOT. In the said order it was  
mentioned that this accommodation is allotted for the

Contd..P/-

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Attested by  
Shundhany  
Adv



- 65 -

... use of the applicant and cannot be used for any other purpose other than residence. Any violation in this respect would result in cancellation of the allotment of the accommodation.

That your humble applicant begs to state that your applicant was transferred back from New Delhi to N.F.Railway on 16.12.2002. At that time, your humble applicant requested for a grant of six months study leave for completion of balance study of MBA (FT) from University of Delhi, Faculty of Management Studies. The said request for completion of balance study was actively considered by the General Manager on 17.12.2002 and the matter was referred by General Manager, N. Railway to Railway Board for their decision.

That your humble applicant begs to state that by the time Railway Board's decision regarding his study leave was conveyed to him, the applicant fell ill with hepatitis, which caused him to seek another Sick Leave from Northern Railway and the applicant after the prolonged treatment was finally declared fit by the Railway Doctor on 22.10.2003 and thereafter the applicant applied for necessary relieving order and transfer duty pass to carry out the transfer order to N.F.Railway.

That your humble applicant begs to state that after being declared fit, the Railway authority had

Contd..P/-

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25

issued the transfer pass to the applicant on 10.11.2003 and the applicant joined his duties over N.F.Railway on 14.11.2003. The N.F.Railway authority posted the applicant at Lunding and from Lunding he was again transferred to Rangia on promotion as Senior Divisional Mechanical Engineer under N.F.Railway.

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

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

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

Contd..P/-

place of posting. The contents of the Board's order/letter are reproduced below:-

"Instructions have been issued from time to time regarding grant of permission for retention of Railway accommodation on payment of normal rent at the previous place of posting in favour of officers posted to N.F. Railway. The existing instructions issued vide letter No. F(6) 98 QR.1-17 dated 17.11.99 were valid upto 30.6.2002. The question of further extension of this facility beyond 30.6.2002 has been considered and it has now been decided to extend these instructions for a period of 3(three) years upto 30.6.2005 or till revised orders are issued whichever is earlier.

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

Contd..P/-

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

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

That your humble applicant begs to state that as your applicant was transferred from New Delhi to N.F. Railway he submitted an application before the A.D.G.M., Northern Railway for permission to retain his old quarter as per the above circular.

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

Contd..P/-

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

That your humble applicant begs to state that in the old place of posting the parents of the applicant : ~~my father and mother were~~ were staying at New Delhi.

That your humble applicant begs to state that on 24.11.2003 he received a final notice in his official residence in New Delhi by which your humble applicant was treated as unauthorised occupant of the railway bungalow and it was directed to vacate the railway quarter within a period of ten days from the date of receipt of this notice. Though the notice was issued on 12.11.2003, but it was received on 24.11.2003 in the official residence of the applicant Sri Rahul Gosain at New Delhi.

That your humble applicant begs to state that in reply to the notice for unauthorised occupation of the railway quarter, your applicant has submitted a reply to the show cause notice and prayed before the Deputy General Manager, Northern Railway who is the authority

Contd..P/-

- 70 -

to allow him to retain the Railway quarter in New Delhi and to drop the notice of show cause on the ground of unauthorised accommodation of the railway quarter.

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

That your humble applicant begs to state that before deduction of penal rent from the salary of the applicant no reasoned notice was issued to your humble applicant which is required as per the provisions of law for any deduction from the salary of your applicant.

That your humble applicant begs to state that only from the pay slip of your applicant it was found that an amount of Rs.11,874.24 was deducted as penal rent and Rs.3264/- as arrear rent from the salary of the humble applicant from the month of May, 2004 which is without jurisdiction.

Contd..P/-

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

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

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

That your humble applicant begs to state that the appeal was heard by the Addl. District Judge, Tishazari Court, New Delhi and the Hon'ble Court was pleased to dismiss the appeal after hearing the submissions made by the applicant.

That your humble applicant begs to state that when the eviction proceeding was started in New Delhi, the N.F. Railway authority started to deduct Rs. 11,874/- per month as penal rent and Rs. 3264/- per month as

Contd..P/-

-72-

arrear rent for the house retained at Delhi by your humble applicant.

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

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

Contd..P/-



bonafide presumed to be allowed the prayer of the applicant and your humble applicant continued to retained the quarter at New Delhi for his old parents and for the family members of the applicant.

That your humble applicant begs to state that the penal rent was recovered from May, 2004 your applicant ultimately compelled to vacate the quarter at New Delhi and he has already vacated the railway quarter on 19.7.04 in New Delhi after the Judgment and order passed by the Addl. District Judge, Tishazari court at New Delhi.

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

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

That on 11.1.07 the Hon'ble Tribunal passed an order stating inter alia that the applicant should make a comprehensive representation ventilating all his

Contd..P/-

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grievances, and as such this representation is filed by  
the applicant praying that the order dtd. 18.5.04 may be  
set aside and <sup>Penal and</sup> damage rent which is being recovered from  
May, 2004 from the applicant may be refunded to him.

Thanking you,

Yours faithfully

Rahul Gosain

75 -  
Northern Railway

ANNEXURE-XXI  
23  
Headquarters Office,  
Baroda House,  
New Delhi.

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

Dated : 28/02/07

Sh. Rahul Gosain,  
Sr. Divisional Mechanical Engineer,  
N. F. Railway, Lumbding,  
Dist. Kamrup, Assam.

Sub : Representation filed as per direction of the Central  
Administrative Tribunal, Guwahati vide order dated  
11/01/07 in O.A. No. 316/2006.

Ref : Your representation dated 05/02/07.

The points raised in your representation referred to above have been  
examined and the remarks on these points are furnished as under:

1	You were initially appointed as AME on N. F. Railway and were required to serve on N.F. Railway for a period of 10 years w.e.f. 24/03/96 as per the extant instructions. You were transferred to Northern Railway from N.F. Railway for a limited period of three years in relaxation of rules on your own request.
2	You had registered your name for allotment of Railway house and house No. 251/1-B, P.K. Road was allotted to you on turn for residential purposes.
3	You were transferred back to N. F. Railway from N. Rly on 16/12/02 on expiry of three years. Your request for retention of N. Rly house No. 251/1-B, P.K. Road was received on 15/07/03 at this office. The request for retention of house was made on the basis of your transfer to N. F. Railway, which was not acceded to by the competent authority, as you were not eligible for the same due to the reasons explained in para 1 above.
4	You had applied for sanction of study leave to GM/P and your request was not acceded to by Railway Board and GM/P, on the context that study leave is not admissible to the officer for the part time study course and you were doing a part time management course at that time.
5	An officer who has been transferred from a place/railway to another place/railway if apply for any leave etc. is liable to apply the same to the railway where he has been transferred. As you had not relinquished the charges formally you were deemed to have been relieved w.e.f. 16/12/02. You were not sanctioned any type of leave by Northern Railway.

cont.

Attested by  
Sh. Chandra Kumar

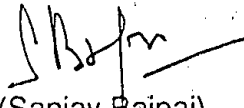
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6	The officers/staff on their transfer to N. F. Railway are permissible to retain their Railway houses at previous place of posting till 30/06/05 (As per the prevailing instructions), benefit of which is now extended to 30/06/08. You were transferred to Northern Railway for a specific period of three years on your own request thus you were not eligible for these benefits and Railway Board also clarified this aspect and they have also rejected your request.
7	Your request dated 15/07/03 was replied vide this office letter of even number dated 27/08/03 (Copy enclosed) stating that your request can not be considered as you had not carried out your transfer orders to N.F. Railway.
8	The officer/employee who is retaining the railway house unauthorisedly are issued notices etc. before filing the cases to the Estate officer under PPE/act for eviction as per rules. Estate officer vide their judgment dated 27/04/04 had ordered you to pay damage rent for the period of unauthorised occupation and passed eviction orders. Accordingly N. F. Railway was advised to recover the damage rent as per orders of Estate Officer, which is a Quasi Judicial body.
9	Your contention is wrong that eviction case was started in May 2004 when the recovery of damage rent has been started from you. As stated in para 5 above Estate Officer issued a judgment on 27/04/04 and after that recovery was affected from your salary in N.F. Railway.
10	Moreover, Your appeal filed in the court of the Add. District Judge, Tis Hazari against the orders of Estate Officer was <u>dismissed</u> by the Hon'ble court and further your appeal filed in the Hon'ble CAT/Guwahati was also withdrawn by you and was treated as dismissed.

Hence, in view of the facts mentioned above, your request for waiver of damage rent for the entire period of unauthorised retention cannot be acceded to, as this is not within the competence of this Railway. You are, therefore, advised to deposit the damage rent as per orders issued by the Estate officer Northern Railway.

DA: 2/11

  
 (Sanjay Bajpai)  
 Dy. General Manager/G

Copy to:

1. General Manager, N. F. Railway, Maligaon, Guwahati.
2. Chief Personnel Officer, N.F. Railway, Maligaon, Guwahati.
3. Divisional Railway Manager, Rangia, Dist. Kamrup, Assam.
4. Sr. DEN/Estate, DRM's office, S.E. Road, New Delhi.
5. The Secretary, Railway Board, Rail Bhawan, New Delhi – for information pl.

[25]

**Subject :** Revision of rates of damages for unauthorised occupation of Railway accommodation.

[No. F(X)I-99/11/1, dated 24.7.2002.]

In terms of this Ministry's letter No. F(X)I-86/11/9, dated 1.4.1989, it was decided that the rates of damages fixed for unauthorised occupation of Railway accommodation would remain in force for a period of two years or till further orders, from the date of effect of orders issued on the subject matter. As a result, the damage rates, last fixed for unauthorised occupation of Railway accommodation vide this Ministry's letter No. F(X)I-97/11/5, dated 30.12.1997 (*Bahri's RBO 1997, p. 271*) have now undergone two revisions.

2. Accordingly, in partial modification of all orders/guidelines issued on the subject matter in the past, it has now been decided to revise the rates of damages for unauthorised occupation of Railway accommodation as under :—

(i) Rates of damages effective from 1.11.1999 to 30.4.2002.

(Rupees per sq.m. of plinth area/per month)

Type of accommodation	Existing rates			Revised rates effective from 1.11.1999		
	Class 'A-I'	Class 'A', 'B-I' & B-II	Class 'C' & unclassified	Class 'A-I'	Class 'A', 'B-I' & B-II	Class 'C' & unclassified
I to IV	49	37	33	57	43	38
V & above	72	54	48	83	63	56

(ii) Rates of damages effective from 1.5.2002.

(Rupees per sq.m. of plinth area/per month)

Type of accommodation	Existing rates effective from 1.11.1999 revision			Revised rates effective from 1.5.2002		
	Class 'A-I'	Class 'A', 'B-I' & B-II	Class 'C' & unclassified	Class 'A-I'	Class 'A', 'B-I' & B-II	Class 'C' & unclassified
I to IV	57	43	38	114	86	76
V & above	83	63	56	166	126	112

3. The rates as stipulated in para 2(ii) above will remain in force for a period of two years from the date of effect or till further orders.

4. In old cases, where the unauthorised occupation existed/exists before 1.11.1999/1.5.2002 and the same had continued/continues thereafter, the damages at the revised rates as mentioned in para 2(i) and (ii) will be recovered respectively from 1.11.1999 or 1.5.2002, as applicable.

5. In addition garden charges and other charges as applicable in respect of above two revisions, will also be recovered.

6. These rates will be effected in respect of revisions made vide :

- Para 2(i) above, from 1.11.1999 till 30.4.2002; and
- Para 2(ii) above, from 1.5.2002 to two years or till further orders.

[26]

**Subject :** Upgradation of 10% posts of Sr. Clerks in scale Rs. 4,500-7,000 to the posts of Head Clerk in scale of Rs. 5,000-8,000.

[No. PC-V/97/11/1/24, dated 6.8.2002.]

In terms of Railway Board's letter No. PC-III/79/11/1/JDC, dated 11.7.1979, upto 10% posts of Upper Division Clerks e.g., Senior Clerks, Clerks Gr. I in scale Rs. 330-560 (IIIrd CPC Scale) in the non-Secretariat Administrative offices attending to work of a more complex and important nature higher than those normally expected of Senior Clerks, Clerks Gr. I, etc., were granted a special pay of Rs. 35 per month. During the IV CPC time quantum of above mentioned special pay was enhanced to Rs. 70 per month. V CPC dispensed with the special pay and recommended improved scale of pay of Rs. 5,000-8,000 instead. Accordingly, in implementation of the recommendations of V CPC such posts of Senior Clerks as carrying special pay of Rs. 70 per month have been upgraded as Head Clerks in scale Rs. 5,000-8,000 vide Board's letter of even number dated 17.8.1998.

2. As RCF and DCW came into existence much later, the above scheme was not implemented in these two PUs. The matter of upgradation of 10% posts of Senior Clerks in scale Rs. 4,500-7,000 to the posts of Head Clerks in scale Rs. 5,000-8,000 in RCF and DCW has been under consideration and it has now been decided that up to 10% posts of Senior Clerks in RCF and DCW as carrying discernible duties of complex natures may be upgraded to the posts of Head Clerks in scale Rs. 5,000-8,000 subject to the condition that additional expenditure should be met with by matching surrender of Sr. Clerk posts in these organizations.

3. Percentage of posts should be worked out on the basis of sanctioned strength of Senior Clerks in consultation with FA&CAO.

4. Laid down procedure for promotion of Senior Clerks to Head Clerks may be followed.

[27]

**Subject :** Proposed tax on privilege passes/PTOs — Gazette Notification (Extraordinary) — 22nd Amendment of Income Tax Rules, (2001) dated 25.9.2001 and 2nd Amendment of Income Tax Rules (2002), dated 4.2.2002.

[No. F(X)I-2001/23/1, dated 7.8.2002.]

Two copies of Ministry of Finance and Company Affairs (Department of Revenue), Central Board of Direct Taxes (CBDT)'s Gazette Notification dated 1.8.2002, amending sub-rule (6) & (9) of Rule (3) of Income Tax Rules, 1962, pertaining to above noted subject, are sent herewith for information and guidance. It is further stated that Ministry of Finance (Department of Revenue), CBDT's notifications dated 25.9.2001 and 4.2.2002 cited above and circulated vide this Ministry's letter of even number dated 6.2.2002 may also please be connected in this regard.

Attended by  
Bhaskar

File in Court on.. 4.4.15.08.

km  
Court Officer.

Filed by:

Mukherjee 04/01/2008

Dr. M. C. Sarma

M.Com, Ph.D., LL.B. 90

Advocate, Gauhati High Court.

Railway Advocate, Central Administrative Tribunal, Guwahati

Pradeep Kumar Singh, District Officer/942

N.F. Railway, Maligaon

Guwahati-11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH.

IN THE MATTER OF

O.A.185/2007

Shri Rahul Gosain

...

Applicant

Versus

Union of India & Others

...

Respondents.

AND

IN THE MATTER OF

Written Statement on behalf of the Respondents.

The answering respondents respectfully SHEWETH :

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

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

3. That the answering respondents beg to humbly submit that the application is barred by RES JUDICATA since the matter under dispute submitted by the same party on the same issues were settled by order dated 27.04.2004 issued by the learned Estate Officer, Northern Railway (Annexure X, p.66 of the present O.A.) and the judgment of the learned Additional District Judge, Tis Hazari Court, New Delhi, dated 31.05.2004 (Annexure XI, p.69 of the present O.A.). The applicant approached this Hon'ble Tribunal for redressal of his imaginary grievances vide O.A.10/2005 and the Hon'ble Tribunal was kind enough to dismiss the same vide orders dated 04.05.2005. Thereafter another O.A.No.316/2006 was filed on the same matter and the same was disposed of vide order of the Hon'ble Tribunal dated 11.01.2007. The applicant thereafter filed a representation on 05.02.2007 (Annexure XX of the present O.A.) as per direction of the Hon'ble Tribunal and the respondent General Manager, Northern Railway disposed of the same vide his reply dated 28.02.2007 after examining all aspects of the matter. The applicant has been

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Received copy  
Sukumar Choudhury  
4.01.08

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repeatedly advised by the Northern Railway authorities that he was unauthorisedly occupying the quarter at New Delhi for which proceedings were initiated by the Estate Officer for eviction under the Public Premises (Eviction of Unauthorised ~~Occupants~~ Occupants) Act, 1971. When an eviction order was issued by the Estate Officer on 27.04.2004 the applicant filed an appeal (No.FPA:34/04) in the Court of Additional District Judge, Tis Hazari Court, New Delhi. The Court examined in detail all aspect of the matter and dismissed the appeal vide order dated 31.05.2004 (Annexure XI of the present O.A.). The present O.A.No.185/07 is the third application the applicant filed before the Hon'ble Tribunal on a matter which has been repeatedly and conclusively dealt with by it on each occasion. No doubt the applicant has every right to bring up matter of genuine grievances for redressal but when an action appears to be an act of litigation for the sake of litigation a question may arise about its legitimacy. The Hon'ble Tribunal is therefore urged with due respect to consider this aspect.

Brief history of the case.

3.1. Shri Rahul Gosain, a Junior scale officer of the Indian Railway Service of Mechanical Engineers, had joined as Assistant Mechanical Engineer, Lumding, N.F. Railway and worked in the N.F. Railway at various places as indicated in para 4.1 of his O.A. It is to be noted that as per Railway Board's letter No.E(G)2003 RN3-23 dated 16.3.2004, copy of which has been enclosed as Annexure VIII of the O.A., Shri Gosain was required to serve on N.F. Railway for a period of 10 years with effect from 24.3.96. Vide Railway Board's order No.E(O)III.98/AE/153 dated 26.10.99 he was transferred to Northern Railway, Delhi for a specific period of three years.

3.2. On his transfer to Northern Railway, the applicant was posted as C.D.O., Delhi and jointed on 05.12.1999 as indicated in paragraph 4.1 of the O.A.

3.3. The applicant registered his name for allotment of type IV house in the waiting list and was allotted house No.251/1-B, P.K.Road on 30.10.2002 in his turn.

3.4. On completion of three years, the applicant was transferred back to N.F. Railway vide order dated 4.12.2002 as indicated in paragraph 4.4, page 3 of the O.A.

3.5. On receipt of the transfer order to N.F. Railway, the applicant was expected to carry out the transfer after handing over charge of his post (SME/P/HQ). Instead of doing so, the applicant requested for grant of study leave to the railway Board. Unfortunately the Board did not accede to the

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

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

applicant's request as the course for which the leave was requested was a part-time course. The applicant then applied for 11 days' LAP which was sanctioned as a special case. He applied for more leave but this had to be refused by the Northern Railway authorities because as per rules the Railway to which the Officer is transferred is only competent to sanction such leave. As the applicant worked in the Northern Railway as SME/P/HQ till 16.12.2002 and as he did not formally relinquish charge as required, he was deemed to be relieved from Northern Railway with effect from 16.12.2002, as per letter No.727-E/1636/EIA dated 7.11.2003 (Annexure VIII of the O.A. at P.38)

3.6. Although the applicant was transferred to N.F. Railway vide order dated 4.12.2002 and was informed that he was relieved from Northern Railway with effect from 17.12.2002 (Annexure VIII of O.A.), he had made a request for retention of his house at New Delhi only on 15.07.2003. As he was not eligible to retain the house as per extant instructions, he was declared an unauthorised occupant of the house with effect from 17.12.2002 and was advised to vacate the house vide Northern Railway's letter dated 27.08.2003 (Annexure X of O.A.). In this connection Railway Board's letter No.E(G)2003 RN3-23 dated 16.3.2004 explaining why the applicant is not entitled to retain Railway quarter at New Delhi is referred

न्यायिक प्रशासनिक अधिकरण  
Central Administrative Tribunal

गुवाहाटी न्यायपीठ  
Guwahati Bench

A copy of Railway Board's letter No.E(G)2003 RN3-23 dated 16.3.2004 is submitted herewith as ANNEXURE A

3.7. Eviction proceedings were initiated against the applicant by the Estate Officer on 11.12.2003 (Annexure XIII of the O.A.) and a judgment order was issued on 27.04.2004 (Annexure XVII of the O.A.) declaring the applicant as unauthorised occupant and ordering vacation within 15 days of the date of publication of the order. The applicant filed an appeal under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 before the Additional District Judge, Tis Hazari Court, Delhi contesting the eviction proceedings and order for charging damage rent issued by the Estate Officer, Northern Railway. This appeal was dismissed by the Additional District Judge vide order dated 31.05.2004 ~~(ANNEXURE)~~.

A copy of the order/judgment of the Additional District Judge, Tis Hazari Court, Delhi in PPA NO.34/04 dated 31.05.2004 is annexed herewith as Annexure B

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Pradeep Kumar  
N.F. Railway, Mailgaon



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3.8. The applicant had finally vacated the house No.251/1-B at P.K.Road, New Delhi he so unauthorisedly occupied from 17.12.2002, on 19.07.2004. As there was clinching evidence of his unauthorised occupation of the house as per order of the Estate Officer and upon dismissal of his appeal before the Additional District Judge, Tis Hazari Court, the applicant was advised vide letter No.159-EO/07/2620/2003 dated 17.08.2004 to pay damage rent @ Rs.11874/24 from 16.12.2002 to 18.07.2004 and other connected charges.

A copy of this letter No.159-EO/07/2620/2003 dated 17.08.2004 is annexed herewith as Annexure-C

Accordingly, as per advice of the Northern Railway authorities, the Divisional Railway Manager, Rangiya Division, where the applicant has been working, is recovering these legitimate dues.

#### 4. Parawise comments

4.1. That as regards paragraphs 4.1 and 4.2, the answering respondents have no remarks to offer except to state that the allotment of the Railway house to the applicant at New Delhi was made from the list of Senior scale Officers waiting for allotment of type IV house as per turn.

4.2. That as regards paragraphs 4.3, 4.4 and 4.5, the respondents beg to state that after completion of his three years term at Northern Railway, the applicant was transferred back to the N.F. Railway on 04.12.2002. In this connection it is submitted that Railway Board's wireless order dated <sup>26.10.99</sup> ~~04.12.2002~~ clearly stated that the applicant was transferred to Northern Railway "for a period of three years".

A copy of the Wireless No.E(0)III.98/AE/153 dated 26.10.99 is annexed herewith as Annexure-D

The applicant was released on transfer to N.F. Railway Northern Railway's order dated 04.12.2002.

A copy of this order dated 04.12.2002 is annexed herewith as Annexure-E

However, instead of handing over his charge as SME/P/HQ, the applicant requested for grant of study leave, which the Railway Board refused to grant as he was doing a part-time course. Moreover, the applicant never applied to the proper authority, namely the ~~XXXX~~ N.F. Railway to which he was transferred because as per rule leave can be granted by the Railway to which one is transferred. As the applicant had not formally relinquished the charge and worked only till 16.12.2002 in Northern Railway, he was deemed to have been relieved from 16.12.2002. This fact is clear from Northern Railway's letters dated 27.08.2003 and 7.11.2003.

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Pradeep Kumar Singh  
Chief Personnel Officer  
N.F. Railway, Maligaon  
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केन्द्रीय प्रशासनिक आयोग  
Central Administrative Tribunal

गुवाहाटी न्यायपीठ  
Guwahati Bench

In their letter No.103-G/13/Retn/42/03/Sh.Rahul Gosain dated 27.08.2003 Northern Railway authorities informed the applicant clearly stating "...Your request for retention of house No.251/1B P.K.Road cannot be acceded as you have not carried out your transfer to N.F.Railway so far. You are an unauthorised occupant of the house with effect from 17.12.2002 and is liable to pay damage rent for entire period of unauthorised retention. Kindly vacate the house immediately to avoid eviction proceedings." Letter No.727-E/1636/EIA dated 7.11.03 clarified the matter of leave.

A copy of letter dated 27.08.2003 is annexed herewith as Annexure F.

A copy of letter dated 7.11.2003 is annexed herewith as Annexure G.

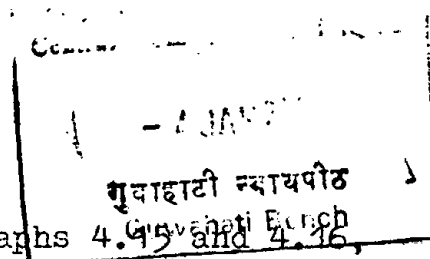
4.3. That as regards paragraph 4.6, respondents beg to state that the claim of the applicant that he was not relieved to carry out the order of transfer to N.F.Railway is wrong as he was released by the order of the Northern Railway dated 04.12.2002 as is clear from Annexure E above.

4.4. That as regards paragraph 4.7, respondents beg to state that by the applicant's own admission he was made aware by the Railway Board's letter dated 17.02.2003 that he was not entitled to study leave. It would therefore have been in his own interest to carry out the transfer order to N.F.Railway immediately as he was posted out instead of stubbornly refusing to do so for years on end. A class I Officer of his standing was expected to know the rules by obtaining clarifications from concerned authorities and thereby avoid incurring the adverse financial impact of occupying an official house without authority in a place like Delhi where there is always a very severe shortage of accommodation:

4.5. That as regards paragraphs 4.8, 4.9, 4.10, 4.11, 4.12, 4.13 and 4.14, the respondents beg to submit that the applicant/~~continued~~ failed for a long period to approach the proper authority, namely the General Manager, N.F.Railway, to which he was transferred and for carrying out transfer to which Railway he was spared on 16.12.2002. Instead he continued to approach the Northern Railway or the Railway Board although he was spared from that Railway under orders issued by the Railway Board. In view of this, it is submitted that the correspondence by the applicant as set out in Annexures IV and V appears to have no relevance viewed in the background of the fact that he was spared on transfer to N.F.Railway in December, 2002 and the proper authority to be approached was the N.F.Railway.

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Chief Personnel Officer  
N.F. Railway, Maligaon  
Guwahati

(6)



4.6. That in regards to paragraphs 4.15 and 4.16, respondents beg to state that through the applicant was spared on transfer to N.F.Railway on 17.12.2007, ~~he~~ and he was required to vacate the house at New Delhi on his being spared, he appears to have applied for retention of his house only 5.7.2003. What exactly prevented him from approaching the authorities for this purpose immediately after he was spared is known to the applicant only. The consequences of all this was evident from Annexure X of the O.A. whereby the Northern Railway authorities made the position of unauthorised occupation by the applicant quite clear.

4.7. That as regards paragraphs 4.17, 4.18, 4.19 and 4.20, respondents beg to state that the applicant vacated the house 251/1-B, P.K.Road, New Delhi on 19.07.2004 and was asked to deposit the damage rent of the house for the period of unauthorised occupation from 17.12.2002 to 18.07.2004 at the rate of Rs.11,874/24 per month. An eviction proceeding under Public Premises (Eviction of ~~an~~ unauthorised Occupants) Act, 1971 was also initiated against the applicant and the applicant's father represented him in the proceedings held on 06.01.2004 and 11.01.2004. After duly following the required legal procedure and affording reasonable and due opportunities to all parties, the Estate Officer, Northern Railway passed a judgment on 27.04.2004 declaring the applicant an unauthorised occupant of the house in question.

However, being aggrieved by the order/judgment of the Estate Officer, the applicant filed appeal case No.PPA:34/04 in the court of Additional District Judge, Tis Hazari Court, New Delhi. The learned Additional District Judge however dismissed the appeal vide his order dated 31.05.2004 as already referred to in paragraph 3.7 on this W.S.above.

4.8. That as regards paragraph 4.21, the respondents beg to submit that the applicant was transferred to the Northern Railway for a limited period of three years vide annexure D of this W.S. On completion of three years of his work in Northern Railway he was transferred back to the N.F. Railway as indicated in Annexure E of this W.S. In this connection it is pointed out that although Officers posted in N.F. Railway are generally entitled to retain quarters in their old places of posting under certain conditions specified in Railway Board's instructions issued from time to time, in the applicant's case these instructions did not apply as clarified in Railway Board's letter annexed as Annexure A herewith.

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Y. Chief Personnel Officer, Pradyum Kumar Singh  
N.F. Railway, Maligaon  
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That Railway Board's instructions contained in their letter No.E(G)2002QRI-9 dated 28.6.2002 did not apply in the applicant's case was clearly indicated in Railway Board's letter No.E(G)2003RN3-23 dated 16.03.2003 (Annexure A of this O.A) as follows:-

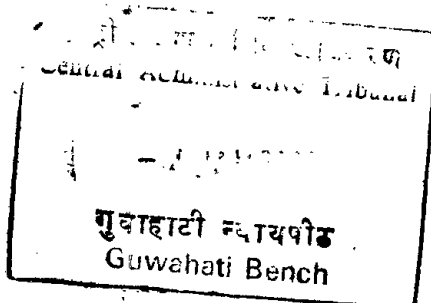
"Shri Rahul Gosain, IRSME is not entitled to retain Railway quarter at New Delhi, as applicable in the case of transfer to Northeast Frontier Railway, for he was required to serve on N.F. Railway for a period of 10 years with effect from 24.3.96 as per the extant instructions and was transferred to Northern Railway for a limited period of three years in relaxation of rules, on his own request to facilitate him to take treatment at AIIMS. The retention of the Railway quarter by Shri Gosain may, therefore, be regulated as per instructions governing permanent transfer".

It is therefore respectfully submitted that the applicant's difficulty arose only because he was labouring under the delusion he was working under that he was entitled to retain the quarter at New Delhi although the real position that he was not entitled to the facility should have been clear to him at the time of his joining the Northern Railway on transfer from N.F. Railway in 2002. It is therefore regretted that under the circumstances the respondents are unable to help the applicant at this stage.

4.9. That as regards paragraphs 4.22, 4.23, 4.24, 4.25, 4.26, 4.27 and 4.28, respondents beg to state that the action of the Estate Officer, Northern Railway cannot be questioned as the rules and procedure prescribed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 were strictly followed in the proceedings. As will be clear from Annexure XVII (Series) of the O.A., notice was given to the applicant & in time at the proper address and the applicant was represented by his father in the proceedings before the Estate Officer, who passed the order declaring the applicant as unauthorised occupant of the house and ordered eviction and payment of Rs. 11,910/21 P.M. (subsequently reduced to Rs. 11,874/24 P.M. vide Annexure C of this W.S.). If there was any doubt about the validity and legality of the order of the Estate Officer, the same was settled by the order of the Additional District Judge, Tis Hazari Court, Delhi as indicated in Annexure B of this W.S.

In this connection, it is submitted that the applicant brought this matter before the Hon'ble Tribunal in O.A. 10/2005 and the Hon'ble Tribunal was pleased to order dismissal of the O.A. as withdrawn on 04.05.2005.

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Chief Personnel Officer  
N.F. Railway, Maligaon

The applicant filed another O.A., namely O.A.316/2006 and the Hon'ble Tribunal was pleased to dispose of the O.A. with a direction to the applicant to submit a representation. In response to the representation, the respondents replied to the applicant vide their letter No.103-G/13/Retn/42/03/Sh.Rahul Gosain, dated 22.02.07 as follows:

"Hence, in view of the facts mentioned above, your request for waiver of damage rent for the entire period of unauthorised retention cannot be acceded to, as this is not within the competence of this Railway. You are, therefore, advised to deposit the damage rent as per orders issued by the Estate Officer, Northern Railway"

A copy of this letter dated 22.02.07 is annexed herewith as Annexure-H

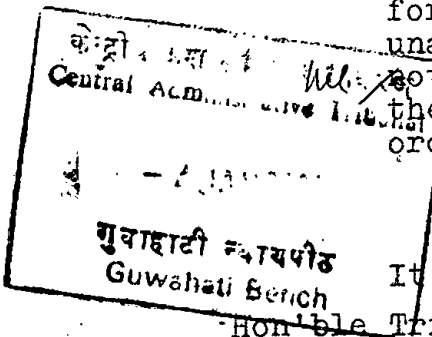
It is further submitted for kind appraisal of the Hon'ble Tribunal that the respondents on their own have been deducting an amount much smaller than the monthly damage rent from the applicant from the monthly salary. Instead of over Rs.11,874/- per month, a monthly deduction of only Rs.3,264/- only is being ~~deducted~~ <sup>made</sup> from the salary of the applicant as per respondent's letter No.340E/1/401(0) dated 22.9.06.

A copy of this letter dated 22.9.06 is annexed herewith as Annexure-I

4.10. That as regards paragraph 4.29, it is submitted that the action of DRM/Rangiyax for recovery of extra rent as advised by Northern Railway's letter dated 18.05.04 06.04.2004 (Annexure XVIII of O.A.) from the month of May, 2004 was quite legitimate and cannot be questioned.

4.11. That as regards paragraphs 4.30, 4.31, 4.32, 4.33, 4.34, 4.35, 4.36 and 4.37, the respondents beg to reiterate the submissions made hereinabove and state that respondents replied to the representation of the applicant after full application of mind and giving full justification as to why damage rent has to be paid by him for the period of unauthorised occupation by the applicant in New Delhi as per extant instructions and as indicated in detail in Annexure H. As per Annexure A of this W.S., the applicant was required to serve in N.F. Railway for a period of 10 years from 24.3.96. The applicant's attempt to by-pass this condition by citing certain exceptions does not help him because in the first place nobody forced him to accept the posting in N.F. Railway with this condition attached.

4.12. That as regards paragraphs 4.38, 4.39, 4.40 and 4.41, the respondents beg to state that there is no justification in the claim of the applicant that the Northern Railway's declaring him to be on unauthorised occupation of the house at Delhi was questionable as the Estate Officer



Dr. Chhetri Personnel Officer, N.F. Railway, Maligaon

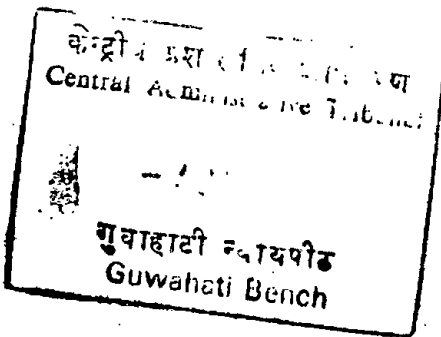
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of Norther Railway followed the rules and procedure as prescribed by the concerned statute and that reasonable opportunity was given to the applicant to present his case. While passing the order, it is submitted, the Estate Officer followed the provisions of the Act both in letter and spirit.

The respondents therefore beg to submit that the respondents passed legitimate orders for recovery of damage rent after proving beyond doubt that the applicant was in unauthorised occupation of the house in question and that these orders were NOT malafide, arbitrary, discriminatory, ultra vires and unjustified. It is respectfully submitted that the orders were strictly legal and constitutional and therefore cannot be questioned by the applicant only because they affect him adversely, although through his own fault.

Under the circumstances and in the premises detailed hereinabove, the respondents beg to submit the the applicant has no justification in his claims, that he has no valid cause of action and understanding of the circumstances and facts relating to the matter, that the application is full of misrepresentation, thereby merits outright dismissal of the application with costs.



#### VERIFICATION

I, Shri Pradeep Kumar Singh, son of Shri Bhuplal Singh, aged about 43 years, and at present working as DY. CPO / GAZ, H.F. Railway, Maligaon, do hereby verify and solemnly affirm that the statements made in paragraphs 1 to 4.12 are true to the best of my knowledge and information derived from records which I believe to be true and the rest are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the 4th day of January, 2008.

*Pradeep Kumar Singh*  
Signature

Designation

DY. Chief Personnel Officer / 2

N F. Railway, Maligaon

Guwahati-11

(15)

3/VS/2003/ANNEXURE-A

ANNEXURE-A. (10) 92

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

No. E(G)2003 RN3-23.

New Delhi, dated 16.3.2004

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

Dy GM/G

17/03/04  
03/04

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

Ref: N.Rly's letter No. 103-G/13/Retn./42/03/Rahul  
Gosain dated 17/12/2003. — S.N. 31

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

  
(M.D. PILLAI)

JT. DIRECTOR ESTT. (GENL.)

① Sr ADGM  
② Estate Officer

Manela  
18/03/04

hy  
Affected  
(Vijay)  
Asst. Chief Personnel Officer (Genl.)  
N.F. Railway, Maligaon  
Guwahati-11

~~ANNEXURE-X~~

ANNEXURE-B

11

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

68

5100

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

PPA NO. : 34/04

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

Second Address

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

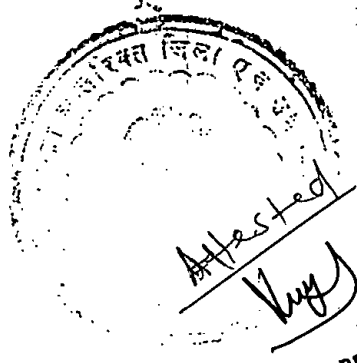
APPELLANT

Versus

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

RESPONDENTS

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



Attested  
by  
Chief Personnel Officer  
N.F. Railway, Mellingaon  
Guwahati-11

*Order*  
The file in the  
Case of Sh. Gosain  
and a copy  
of the same way  
be sent to  
Respondent.  
5/6



(12) 101  
50/200

## J U D G E M E N T

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

The brief facts leading to the present appeal are that appellant is a Central Government employee and was appointed with Ministry of Railways as an Assistant Mechanical Engineer and posted to NF Railway. The parents of the appellant were residing in a rented accommodation in Karol Bagh. The appellant was posted to Delhi on 5.12.1999 and applied for allotment of house. He had thereafter applied for permission to study for MBA in Delhi University. The permission was granted for study by the competent authority on 30.10.2002. The appellant was allotted accommodation bearing no. 251-1B Type IV Panch Kuian Road, New Delhi. The appellant had taken possession of the house but had fallen sick w.e.f. 10.04.2003 and remained under medical treatment from 17.04.2003 to 27.10.2003. Thereafter the appellant was relieved from Delhi and joined NF Railway on 11.2003. The appellant is

ku  
Attested  
Vijay

By Chief Personnel Officer (G)  
N.F. Railway, Maligaon  
Guwahati-11

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30/11/02

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still serving in NE Railway as Senior Divisional Mechanical Engineer and his parents are residing in the Government accommodation.

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

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

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

Attested  
Vijay

Dr. Chief Personnel Officer (G)  
N.F. Railway, Meligaon  
Guwahati-11

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

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

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Attested  
Vijay

Dr. Chief Personnel Officer (G)  
N.F. Railway, Maligaon  
Guwahati-781001

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

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

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*[Signature]*  
Chief Personnel Officer (G)  
N.F. Railway, Maligaon  
Guwahati-11

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

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

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

by

Attested  
Vijay

Asst. Chief Personnel Officer (G)  
N.F. Railway, Nallgaon  
Guwahati-11

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

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

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

Attested  
*Vijay*

or Chief Personnel Officer (G)  
N.F. Railway, Maligaon  
Guwahati-11

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

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

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

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Attested  
Vijay

Mr. Chief Personnel Officer (4)  
N.F. Railway, Maligaon  
Guwahati-11

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

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

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

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A.H. Reddy  
Vijay  
Dr. Chief Personnel Officer (G)  
M.F. Railway, Malgaon  
Guwahati-11



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

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

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A.H. tested  
Vijay

or Chief Personnel Officer (G)  
N.F. Railway, Mellingon  
Guwahati-11

(21) 30/16  
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himself of the opportunity an order against him cannot be passed without hearing him.'

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

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

Attested  
*[Signature]*

Asst. Chief Personnel Officer (G)  
N.F. Railway, Maligaon  
Guwahati-78

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

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

sd/r

(Announced today i.e.  
on 31.05.2004)

(BRIJESH SETHI)  
Additional District Judge, Delhi

Attested true Copy

(Signature)

Additional District Judge  
Delhi

24/6/04  
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Attested  
(Signature)

cr. Chief Personnel Officer (G)  
M.F. Railway, Maligaon  
Guwahati-77

NORTH

WAY

DRM'S OFFICE

NEW DELHI.

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

Dated: 17-8-2004.

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

17 5 AUG 2004

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

Sh.Rahul Gosain, Ex.SME(P) was allotted Railway Flat No. 251/1-B at P.K.Road, New Delhi. He was transferred to N.F.Railway on 17.12.2002 and has vacated this Railway Flat No.251/1-B at P.K.Road, New Delhi on 19.07.2004. Following rent plus other charges of this Railway Flat for the period w.e.f:16.12.2002 to 18.07.2004 are therefore, required to be recovered from his salary/dues. Please ensure recovery thereof from his salary/dues, if not already recovered in full or part, and forward the same to Dy.CAC/TA/N.Railway State Entry Road, New Delhi, under intimation to this office. The Plinth area of above said Railway Flat is 104.16 Sqmts. and Normal Rent w.e.f:1.7.99 is Rs 230.00 per month and w.e.f:1.4.2001 is Rs 292.00 per month:

'A' RENT :

(1.) w.e.f:16.12.2002 to 18.07.2004 : Damage Rent at the rate of Rs 114/-per Sqmt.for 104.16 Sqmts. of Plinth area of the Flat per month i.e. Rs 11874.24 P.M.

'B' WATER CHARGES :

(1.) w.e.f:16.12.2002 to 18.07.2004 @ Rs 56.00 per month.

'C' CONSERVANCY CHARGES :

(1.) w.e.f:16.12.2002 to 18.07.2004 @ Rs 10.00 per month.

'D' ELECTRICITY CHARGES :

(1.) w.e.f:16.12.2002 to 18.7.2004: Electricity charges will be intimated by SSE (Power Supply) N.Rly. Paharganj, New Delhi.

Attested  
Vijay  
Asst. Chief Personnel Officer (G)  
N.F. Railway, New Delhi

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

Copy to the following for information & necessary action:-

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

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

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

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

(24)

S.N. 113

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

THE GENERAL MANAGERS  
NORTHERN RAILWAY/NEW DELHI  
NF RAILWAY/GUWAHATI

NO. E(O)III. 98/AE/153 (.) MINISTRY OF RAILWAYS HAVE WITH THE  
APPROVAL OF THE PRESIDENT DECIDED THAT SHRI RAHUL  
GOSAIN, JUNIOR SCALE/RSME/ NF RAILWAY, SHOULD BE  
TRANSFERRED TO NORTHERN RAILWAY FOR A PERIOD OF  
THREE YEARS(.)

DATES ON WHICH SHRI GOSAIN IS RELIEVED/REPORTS FOR  
DUTY MAY BE ADVISED (.)

RAILWAYS(.)

(D. RAHUL)  
DEPUTY SECRETARY (.)  
RAILWAY BOARD.

Copy to:

1. The General Managers, All Indian Railways & Production Units.
2. The OSDs, North Central Railway/Allahabad, South Western Railway, Bangalore, East Central Railway/Hajipur, East Coast Railway, Bhubaneswar, West Central Railway/Jabalpur and North Western Railway/Jaipur.
3. OSD/Bilaspur Zone.
4. The CAO(R)s, COFMOW, Tilak Bridge, New Delhi and DCW/Patiala.
5. The Directors, All Training Institutes.
6. The General Secretary, IRCA, New Delhi, IRPOF, Room No.268 and the Secretary General FROA, Room No.256-A, Rail Bhawan, New Delhi.
7. The General Secretaries, AIRF, Room NO. 248 and NFIR, Room No.256-C Rail Bhawan New Delhi.
8. The Principal Directors of Audit, Northern and NF Railways.
9. The FA& CAOs, Northern and NF Railways.
10. OSD/CRB.
11. PSs to MR, MOS(R), CRB, MM, Secretary, AM(M), OSD(M), OSD(MS), JS(C), JS(C), EDE(E&R), Director(Trg.), DF(BC), DS(E), DS(P), US(D) Vig(C), IRB-I, CA/Secy, Railway Board.
12. PS/Chairman Passenger Amenities Committee, Rail Bhawan, New Delhi.

Chief Personnel Officer  
M. R. V. S. S. S. S.  
Guwahati

14-00000

नानी दिल्ली

च. ना :- भार. सं. 2032/भा. सं. भार. र. म. ई. 746

निम्नलिखित आदेश जारी किये जाते हैं:-

निम्नलिखित आदेश जारी किये जाते हैं:-  
श्री राहुल गोसाई हरि० सांस्कृतिक अभियन्ता/पी/प्र. का जो उत्तर पूर्व लोमान्ता  
क्षेत्र के लिए, उत्तर रेलवे पर स्थानान्तरित होकर दिनांक 06.12.1999 को अपने  
नौ नवंबर पर पूरे होने पर उत्तर पूर्व लोमान्ता रेलवे पर स्थानान्तरित किया जाता है।  
श्री डी.आर. रंगा हरि. वैनगान अभिकारी को अन्तर्गत में दायाँ मुखांतर हरि०  
को अभियन्ता/पी/प्र. का के पद पर श्री राहुल गोसाई के स्थान पर लगाया जाता है।  
उपरोक्त आदेशों को सक्षम अधिकारी का अनुमोदन प्राप्त है। कार्यभार छोड़ने  
करने की कार्य रिपोर्ट कार्यालय को भेजें।

17/12/02

महेश्वर कृष्ण

दिनांक 4.12.2002

40ई/17xxxxx/वि. 1. र.

सूचिका 40/17xxxxx/वि. 1.2.  
प्रतिलिपि सूचना एवं आदेशों का कार्यालय 1-  
प्रतिलिपि सूचना एवं आदेशों का कार्यालय 2- वि. सल

[illegible]

सभी निम्नलिखित स्थानों पर उनके वोटों का हिसाब दारा 848 तारीख 10/11/2017 को  
लखनऊ, गुरदासपुर, इलाहाबाद, अमृतसाला, जोधपुर, फिरोजपुर एवं टीकानग

51. मुख्य कारखाना प्रत्यक्ष जगाधरो एवं चारबाग/लखनऊ  
जोधपुर, लीकानेर, आलमबाग, लखनऊ एवं

51. मुख्य कारखाना प्रत्यक्ष/अधिवार, जोधपुर, लीकानेर, आलमनगर, लखनऊ  
 52. उप मुख्य कारखाना अभियन्ता/अधिवार, जोधपुर, लीकानेर, आलमनगर, लखनऊ  
 53. चारखाना/लखनऊ

7. उप मुख्याचार्य अभिमानता/डीजल/शुक्रर स्ती। १८१ प्रिंसिपल डायरेक्टर/आन डी. ए. पी.  
नाउस नवी दिल्ली। १९१ सचिव/सी. एस. टी. ई./तेली. प्रधान कार्यालय १०१ प्राप्ति  
देवी (अवकाश)। १११ सचिव/गन्धर्वान्धक, अपर गन्धर्वान्धक, मन्त्री सचिव

आजिस्टर्स एलेमिएशन/प्रकाश १११६ सचिव/गुणप्रलम्भ, अपर मीडिया/प्रकाश १११६  
गो. १११२ एस. डी. जी. एस./प्रकाश ११३६ डिप्टी जनरल सेक्रेटरी/एस. भार. एस. गु. एवं  
गो. १११२ एस. डी. जी. एस./प्रकाश ११३६ डिप्टी जनरल सेक्रेटरी/एस. भार. एस. गु. एवं

गो. ११२६ एम. डी. जी. एम. प्रकाश ११३६ उप. वि.  
 द. आर. रा. प्र. का. ११४६ उप. मुख्य कार्मिक अधिकारी, एम. आई. पी. एम. प्रकाश  
 ११६६ श्री. राहुल गौगर्डी, तस्मिन् अर्थ. वि. प्र. का.  
 ११७६ श्री. राहुल गौगर्डी, तस्मिन् अर्थ. वि. प्र. का. ११७६ श्री. राहुल गौगर्डी, तस्मिन् अर्थ. वि. प्र. का.

१६६ श्री. राहुल गौगार्ड, त्रिभुवन, काठमाडौं, नेपाल / १५/१२/२०७३  
 १६७ श्री. डी. आर. रंगा मार्केट सचिव, मु. गां. अ. वि. / १५/१२/२०७३ / काठमाडौं, नेपाल / १५/१२/२०७३  
 १६८ श्री. रमेश शर्मा, गौगार्ड, काठमाडौं, नेपाल / १५/१२/२०७३  
 १६९ श्री. रमेश शर्मा, गौगार्ड, काठमाडौं, नेपाल / १५/१२/२०७३  
 १७० श्री. रमेश शर्मा, गौगार्ड, काठमाडौं, नेपाल / १५/१२/२०७३

19. लखित, 1911/12, शेखटे पोई, उनके पत्र सं, एा ई०भी०-111/98/ए.ई. 153 दिनांक 24.5.2002 के संदर्भ में।

Wm

Detected  
Very

**Chief Personnel Officer**  
**N.F. Railway, Malleson**  
**Gurukul**

~~ANNEXURE F~~

ANNEXURE - F.

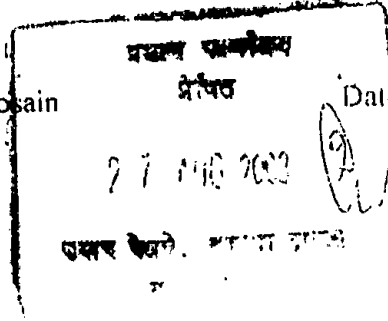
26

NORTHERN RAILWAY

HEADQUARTERS OFFICE  
BARODA HOUSE,  
NEW DELHI

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

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



Dated: 27/8/2003

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

Ref: Your letter dated 5.7.03. S.S.S

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

( R K Malhotra )  
for General Manager/G

Copy to:-

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

( R K Malhotra )  
for General Manager/G

Attested  
Vijay

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

Retn.:-

Headquarters Office  
Baroda House, New Delhi

No. 727-E/1636/EIA

Dated: 7/11/2003

Shri Rahul Gosain,  
Sr. Scale IRSE,  
251-1-3, Railway Officers Enclave,  
Panchsuan Road,  
New Delhi

Sub: Transfer to N.F. Railway

Ref: This office notice No. 940-E/17/PC/XXXXX/  
EIA, dated 9-12-2002 and endorsement of  
this office letter of even number dated  
19-5-2003.

With reference to your representation dated 27-10-2003, it is advised that your orders for transfer to N.F. Railway were issued vide this office notice dated 09-12-2002 as referred to above and you continued to work as SME(P)/HQZ upto 16-12-2002. Instead of handing over the charge of the post, you disappeared w.e.f. 17-12-2002 and subsequently applied for leave. As per extant instructions, leave of the officer who are under order of transfer from one zone to another, can be sanctioned by the Administration of zone to which he has been transferred. Accordingly, any correspondence in this regard were to be addressed to N.F. Railway. However, you continued to prolong the correspondence on the subject with this office on one pretext or the other.

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

(Mahinder Kumar)  
For General Manager

Copy to:-

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

by  
Affected  
Vijay  
34 - Chief Personnel Officer  
N.F. Railway, Maligaon  
Guwahati-781005



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~~ANNEXURE~~ 281  
ANNEXURE H (27)  
(28)

Northern Railway

Headquarters Office,  
Baroda House,  
New Delhi.

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

Dated : 28/02/07

Sh. Rahul Gosain,  
Sr. Divisional Mechanical Engineer,  
N. F. Railway, Lumding,  
Dist. Kamrup, Assam.

Sub : Representation filed as per direction of the Central  
Administrative Tribunal, Guwahati vide order dated  
11/01/07 in O.A. No. 316/2006.

Ref : Your representation dated 05/02/07.

The points raised in your representation referred to above have been  
examined and the remarks on these points are furnished as under:

- |   |  |
|---|--|
| 1 | You were initially appointed as AME on N. F. Railway and were required to serve on N.F. Railway for a period of 10 years w.e.f. 24/03/96 as per the extant instructions. You were transferred to Northern Railway from N.F. Railway for a limited period of three years in relaxation of rules on your own request.  |
| 2 | You had registered your name for allotment of Railway house and house No. 251/1-B, P.K. Road was allotted to you on turn for residential purposes.   |
| 3 | You were transferred back to N. F. Railway from N. Rly on 16/12/02 on expiry of three years. Your request for retention of N. Rly house No. 251/1-B, P.K. Road was received on 15/07/03 at this office. The request for retention of house was made on the basis of your transfer to N. F. Railway, which was not acceded to by the competent authority, as you were not eligible for the same due to the reasons explained in para 1 above. |
| 4 | You had applied for sanction of study leave to GM/P and your request was not acceded to by Railway Board and GM/P, on the context that study leave is not admissible to the officer for the part time study course and you were doing a part time management course at that time.  |
| 5 | An officer who has been transferred from a place/railway to another place/railway if apply for any leave etc. is liable to apply the same to the railway where he has been transferred. As you had not relinquished the charges formally, you were deemed to have been relieved w.e.f. 16/12/02. You were not sanctioned any type of leave by Northern Railway.  |

*Handwritten signature*  
By: Chief Personnel Officer  
N.F. Railway, Naligaon  
Guwahati-11

cont.

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6	The officers/staff on their transfer to N. F. Railway are permissible to retain their Railway houses at previous place of posting till 30/06/05 (As per the prevailing instructions), benefit of which is now extended to 30/06/08. You were transferred to Northern Railway for a specific period of three years on your own request thus you were not eligible for those benefits and Railway Board also clarified this aspect and they have also rejected your request.
7	Your request dated 15/07/03 was replied vide this office letter of even number dated 27/08/03 (Copy enclosed) stating that your request can not be considered as you had not carried out your transfer orders to N.F. Railway.
8	The officer/employee who is retaining the railway house unauthorisedly are issued notices etc. before filing the cases to the Estate officer under PPE/act for eviction as per rules. Estate officer vide their judgment dated 27/04/04 had ordered you to pay damage rent for the period of unauthorised occupation and passed eviction orders. Accordingly N. F. Railway was advised to recover the damage rent as per orders of Estate Officer, which is a Quasi Judicial body.
9	Your contention is wrong that eviction case was started in May 2004 when the recovery of damage rent has been started from you. As stated in para 5 above Estate Officer issued a judgment on 27/04/04 and after that recovery was affected from your salary in N.F. Railway.
10	Moreover, Your appeal filed in the court of the Add. District Judge, Tis Hazari against the orders of Estate Officer was dismissed by the Hon'ble court and further your appeal filed in the Hon'ble CAT/Guwahati was also withdrawn by you and was treated as dismissed.

Hence, in view of the facts mentioned above, your request for waiver of damage rent for the entire period of unauthorised retention cannot be acceded to, as this is not within the competence of this Railway. You are, therefore, advised to deposit the damage rent as per orders issued by the Estate officer Northern Railway.

DA: A/A-

*(Signature)*  
(Sanjay Bajpai)  
Dy. General Manager/G

Copy to

1. General Manager, N. F. Railway, Maligaon, Guwahati.
2. Chief Personnel Officer, N.F. Railway, Maligaon, Guwahati.
3. Divisional Railway Manager, Rangia, Dist. Kamrup, Assam.
4. Sr. DEN/Estate, DRM's office, S.E. Road, New Delhi.
5. The Secretary, Railway Board, Rail Bhawan, New Delhi - for information pl.

*(Signature)*  
Dy. Chief Personnel Officer /9  
N.F. Railway, Maligaon  
Guwahati-11

NORTHEAST FRONTIER RAILWAY

Office of the  
General Manager(P)  
Maligaon dated:22.9.06

No.340E/1/401(O)  
To,  
General Manager (General)  
Headquarters' office  
Northern Railway  
Baroda House  
New Delhi

Attention : (Shri R.K.Malhotra,ADGM)

Sub:- Retention of Bungalow No.251/B,P.K.Road,New Delhi,  
Unauthorisedly by Shri Rahul Gosain, SS/IRSME.  
Ref:- GM/Gen/N.Rly. letter No. 103 G/13/Retn./42/03/Shri Rahul  
Gosain, dated: 21.8.06.

In reference to letter quoted above it is to inform you that the  
damage rent at @ 3264/- is being deducted every month from the salary  
of Shri Rahul Gosain, at present working as Sr.DME/LMG.

An amount of Rs. 104448/- is to be recovered in 32  
instalments at @ 3264/- from September,2006 onwards.

This is for your kind information please.

(S.P. Sengupta)  
APO/GAZ  
For General Manager(P)

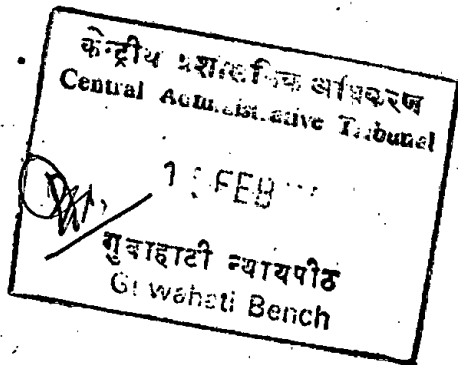
Copy to:-

1. DRM(P)/LMG-Please ensure that recovery of rent is credited to Northern  
Railway every month.
2. DFM/LMG - Requested for similar action.
3. Shri Rahul Gosain, Sr. DME/LMG

(S.P. Sengupta)  
APO/GAZ  
For General Manager(P)

Attested  
By  
Chief Personnel Officer (G)  
N.F. Railway, Maligaon  
Guwahati-11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI  
BENCH: GUWAHATI



O.A. No. 185/2007

Shri Rahul Gosain

..... Applicant

-Vs-

Union of India & Others.

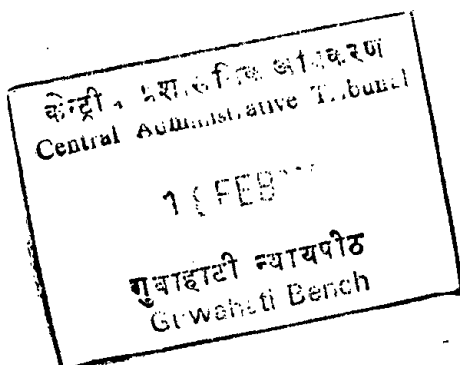
..... Respondents.

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2.	Annexure-XXIII	14
3.	Annexure-XXIV	15-16.

Filed by

*Sikham Choudhury*  
Advocate. 18.2.08

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI  
BENCH: GUWAHATI



O.A. No. 185/2007

Shri Rahul Gosain

..... Applicant

-Vs-

Union of India & Others.

..... Respondents.

A rejoinder by the applicant to the written statement filed by the respondents.

The applicant above -named

MOST RESPECTFULLY BEGS TO STATE :

1. That the applicant begs to state that he has received a copy of the written statement submitted by the respondents and has understood the contents thereof. At the outset, before replying to the various statements made in the written statement, this applicant states that none of the statements made therein are admitted save and except those, if so specifically admitted in this reply.
2. That before replying to the statements made in the written statement the applicant begs to state that the respondents have raised the plea of Res Judicata against the adjudication of this O.A. on the ground that the same issues were settled by the Estate Officer by order dated 27.04.2004 and the judgment dated 31.5.2004 of the learned Additional District Judge, New Delhi, and subsequently O.A. No. 10/2005 filed before this Honourable Tribunal and which was dismissed vide order dated 04.05.2005 and thereafter O.A. No. 316/2006, which was also disposed of vide order dated 11.01.2007. Thereafter, as per direction of this Hon'ble Tribunal in O.A. No. 316/2006, the applicant submitted a representation which was disposed of by General Manager, Northern Railway. It is the contention of the respondents that any further litigation by the applicant relating to the same issues is barred by the principle of res judicata.

The applicant respectfully submits that the applicant has approached this Hon'ble Tribunal after the final order was passed by the Appellate Authority (Additional District Judge, New Delhi) as

Contd.....

Filed by the  
applicant through  
Bikram Choudhary  
Advl  
18.2.08

Rahul Gosain

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Guwahati Bench

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allotment and cancellation of residential accommodation to a civil servant and eviction therefrom and payment of rent and recovery of damage rent are regulated by the rules relating to conditions of service of a civil servant. This point was settled in a case Rasila Ram -Vs- Union of India and 2 other cases which was reported in 1989 (10 )ATC 737 (FB) (CAT, New Delhi)).

It is further submitted that the applicant had filed O.A. No. 10/2005 but it was prayed for withdrawing the same with liberty and as such the said OA was dismissed as withdrawn. The Hon'ble Tribunal did not adjudicate the issues in the said OA on merit and as such the dismissal of O.A. No. 10/2005 would not operate as a bar of res judicata.

The applicant further states that he had filed O.A. No. 316/2006 which was disposed of with a direction to the applicant to file a representation before the respondent authority and the respondent authority were directed to consider and decide the same. Therefore, this direction of the Tribunal in O.A. No. 316/2006 was also not a final decision on merits and it was not conclusive. As such, the disposal of OA No. 316/2006 would not operate as a bar against filing of this O.A. against the decision of the respondent authority.

The applicant submits that it is a well settled principle of law that plea of res judicata is not available where there is no final judgment after contest or where there is no conscious adjudication of an issue. It is only a final judgment on the merits of a case which is conclusive as to the rights of the parties and their privies that constitutes an absolute bar to a subsequent action involving the same claim and in the instant case the same was not done. Moreover, when an order is a nullity it cannot be supported by invoking the procedural principles like estoppel, waiver or res judicata.

The applicant further submits that he has raised a question of law in this case as to whether an order of allotment of quarters can be deemed to have been cancelled and the allottee treated as "unauthorized occupant" solely because a transfer order has been issued without issuing a specific order canceling the allotment. Since the Tribunal has also to adjudicate on this pure question of law the principle of res judicata would not apply. As such, the plea of res judicata raised by the respondents is untenable in law and the same is liable to be rejected.

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Rahul Goswami

3. That the statements made in paragraphs no 1 and 2 are routine in nature and needs no reply.
4. That with regard to the statement made in paragraph no 3 this applicant begs to state that it has been admitted by the respondents that after issuance of the transfer order on 4.12.2002, the respondents did not issue any order releasing the applicant from Northern Railway to report to N.F. Railway. Instead, when the applicant applied for 6 months study leave to complete his MBA (Part time) course, General Manager, Northern Railway desired that his application be referred to Railway Board for approval vide letter dated 17.12.2002 (Annexure-II to this OA), thereby raising legitimate expectation of the applicant that the leave may be granted by the Board. However, Railway Board rejected his request vide letter dated 17.02.2003, which was communicated to him on 13.3.03 (Annexure-III to this O.A). Before that since no decision on his application for study leave was communicated to him, the applicant by his letter dt: 10.1.03 applied for 110 days leave before the Additional Member (Mechanical) Railway Board, who by his endorsement ordered that the leave could be sanctioned by CME/Northern Railway (Annexure IV to this OA). Had the applicant at that stage being told or informed that he is deemed to have been released w.e.f. 18.12.2002 and no more an officer of the Northern Railway, if that be the fact as is now being claimed, then he could have applied for such leave through N.F. Railway. Instead, the applicant was told that leave of 110 days could be sanctioned by CME of Northern Railway who never took any decision on that application. As such the action of the authorities in keeping the decision pending or forwarding the same to the Railway Board reflected that the leave applied for by the applicant shall be granted. Therefore, in such an eventuality while the applicant was given to nurse the legitimate expectation that his requests may be acceded. In such circumstance, there was no warrant for the applicant to vacate the quarters allotted. More so, when no order canceling the allotment was passed by the competent authority. It is a well settled principle of law of estoppels that where one person ("the representor") had made a representation to another person ("the representee") in words or by acts and conduct, or (being under a duty to the representee to speak or act) by silence or inaction with the intention (actual or presumptive), and with the result, of inducing the representee on the faith of such representation to alter his position to his detriment, the representor in any litigation which may afterwards take place between him and the

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representee is estopped, as against the representee from making, or attempting to establish by evidence, any averment substantially at variance with his former representation, if the representee at the proper time, and in the proper manner, objects thereto.

5. That, with regard to the statements made in paragraphs no 3.1, 3.2, 3.3, 3.4 and 3.5 of the written statement, the applicant states that the respondents are in agreement with the facts cited in the OA. However, they have attempted to interpret the same in a different perspective than when the facts took place so as to justify the actions of the authorities. The submission that the applicant was deemed to be relieved from Northern Railway w.e.f. 16.12.2002 is a specious plea since there can be no relieve from one railway zone to another except after observing certain formalities including a relieving order, issue of transfer pass, issue of Last Pay Certificate etc. The rules of transfer do not envisage any deemed relief. Reliance has been placed on letter dated 7.11.2003 (Annexure VIII of the OA) by the respondents to contend that the applicant was deemed to be relieved w.e.f. 16.12.2002. The said letter was issued in response to applicant's application dated 27.10.03 (Annexure VII to the OA) where the applicant had sought a relieving order and a transfer pass to carry out his transfer. It was in response thereto that GM(P)/Northern Railway took the plea that the applicant was required to seek leave from the zone where he was transferred and that he stood relieved w.e.f. 16.12.2002. On both counts GM(P)/Northern Railway was in error as the instructions referred to by it does not provide such provision. In Railway Board's letter No. E(O)III 98 PL/5 dated 07.08.1998 it was decided that "After the officer has been relieved on transfer he will be deemed to be on the rolls of the Railway to which he has been transferred." It is clear from the aforequoted provision that there can be no deemed relieve but that an officer can be deemed to be on the rolls of the zone where he has been transferred only after he has been relieved from the zone where he is working. This provision also postulates issuance of a relieving order as a condition precedent to apply the principle of seeking leave from the railway where he has been transferred. Therefore, when there was no relieving order the applicant could not be deemed to be on the rolls of NF Railway. It is established from letter dated 7.11.2003 (Annexure VIII to the OA) that the applicant's transfer from Northern Railway was effectuated only on 7.11.2003 as the said letter clearly asked the applicant to collect the transfer pass from that office "for effecting your

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Rahul Goswami



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transfer orders to NF Railway". This sentence in the said letter establishes beyond an iota of doubt that the applicant's transfer was effectuated only after 7.11.2003 and not before that.

6. That, in so far as the statement made in paragraph 3.6 of the written statement is concerned, it is stated that the stand of the respondents in the matter of retention of quarters by the applicant has been inconsistent and contradictory because in the letter dated 27.8.03 (Annexure X to the OA) the applicant was informed that his request for retention of the quarters could not be acceded to as he had not carried out his transfer to NF Railway, whereas by letter dated 16.3.2004 (Annexure A to the WS) the General Manager, Northern Railway was informed that the applicant was not entitled to retain quarters at New Delhi as he had not completed his 10 years tenure at N.F. Railway. While letter dated 27.8.03 made a promise that if the applicant carried out his transfer order he would be allowed to retain the quarters and the same was issued before getting any reply from the Railway Board as it transpires from letter dated 16.3.04 which reneged on that promise with ulterior motives, as completion of 10 year tenure on NF Railway has never been uniformly followed and officers have served only for a couple of years have been allowed to be posted in other zones without insisting on fulfillment of this condition.
7. That the statement made in paragraph no 3.7 of the written statement are matters of records and the deponent begs to offer no comments.
8. That the statement made in paragraph no 3.8 of the written statement are denied and this applicant begs to state that in order to constitute unauthorized occupation the occupation should be beyond the permitted period, thereby cancellation of allotment owing to overstay beyond the permitted period, declaration that the occupation was unauthorized. These are mandatory conditions as laid down in Railway Board's letter No. (G) 2000QRI-23 dated 1.6.2001 as also in Sec. 2(g) of the Public Premises Act. Therefore, the contention of the respondents that the applicant was in unauthorized occupation of the house w.e.f. 16.12.2002 is unreasonable, unfair and in defiance of law and as such the plea of the respondents is liable to be rejected.

The relevant extract of the letter dt 1.6.01 is annexed herewith and marked as ANNEXURE-XXIII.

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9. That the statement made in paragraphs no 4.1 and 4.2 of the written statement is denied and this applicant begs to state that as per Railway Board's letter No. E (O) III98 PL/5 dated 07.08.1998 an officer shall be deemed to be in the rolls of the Railway to which he has been transferred only on being relieved formally by the Railway in which he was working. Thereby, meaning that there has to be a formal relieving order which was lacking in the instant case.

A copy of Railway Board's letter dated 07.08.1998 is annexed herewith and marked as ANNEXURE-XXIV.

Further it has been averred that the applicant was deemed to have been relieved from 16.12.2002 when he did not formally hand over charge. It is submitted that the authorities did not at any stage asked him to hand over charge and the man posted in applicant's place was allowed to clandestinely and irregularly assume charge of the post held by the applicant during momentary absence of the applicant. Even then the authorities could have sought handing over a charge from the applicant in accordance with the provisions of Rule 233 of Indian Railway Establishment Code, Vol. I, 1985 Edition, whereby the charge of an office must be made over at its headquarters where both the relieving and the relieved officer must be present. Instead, the authorities entertained leave applications of the applicant and took considerable time in disposing of the same and even recommended grant of such leave to the applicant. Had the applicant been relieved or found deemed to be relieved the authorities could not have entertained his leave applications in violation of Railway Board's letter dated 07.08.1998 (Annexure-XIV annexed to this rejoinder).

The statement that the applicant was informed by letter dated 27.08.2003 that he was an unauthorized occupant of the house w.e.f. 17.12.2002 was just an opinion of GM (P)/Northern Railway and it does not constitute an order canceling allotment of the quarters as laid down in Railway Board's letter No. (G) 2000 QRI-23 dated 1.6.2001. That since no order canceling the allotment was passed by the competent authority, the opinion of GM(P)/Northern Railway expressed in its letter dated 27.08.03 (Annexure X to the OA) that the applicant was in unauthorized occupation of the house was erroneous and it did not constitute an order as envisaged under Railway Board's letter dated 1.6.2001 referred to hereinabove. It is submitted that when the law lays down the procedure

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Rahul Goswami

to be adopted before penal consequences ensue, then compliance of the procedure prescribed is sine qua non before any penal action can be taken. Therefore, the plea of the respondents is liable to be rejected.

10. That with regard to the statement made in paragraph no 4.3 of the written statement this applicant begs to state that the stand of the respondent is specious and devoid of merit and is liable to be rejected because the letter dated 7.11.03 referred to in the paragraph wrongly interprets the provisions of Railway Board's letter No. E(O)III 98 PL/5 dated 07.08.98 by stating that the extant instructions provide that leave of the officer who are under order of transfer from one zone to another can be sanctioned by the administration of the zone to which he has been transferred. The extant instructions lay down in the said letter clearly state that this procedure of seeking leave from the zone where the officer has been transferred is applicable only "After the officer has been relieved on transfer..." The letter dated 7.11.2003 (Annexure G to the written statement) is not a release order as is sought to be projected. On the contrary, the said letter clearly asked the applicant to "collect the transfer pass from this office for effecting your transfer order to N.F. Railway". That from this sentence it is crystal clear that the transfer of the applicant had not been effectuated before 7.11.2003. Therefore, the plea of the respondents that the said letter had the effect of releasing the applicant from Northern Railway is liable to be rejected.
11. That the statement made in paragraphs no 4.4 of the written statement is denied and this applicant begs to reiterate what is stated in paragraph no 4 of this rejoinder. Had the applicant been straightaway told that no leave would be sanctioned the applicant could not have waited for grant of leave. At that stage, Northern Railway did not take the stand it has been taking before the Honourable Tribunal that leave was to be sought from N.F. Railway. In point of fact, Northern Railway could not have legitimately taken that stand in view of the extant instructions laid down in Railway Board's letter dated 07.08.1998 referred to above.
12. That with regard to the statement made in paragraphs no 4.5 of the written statement this applicant begs to state that the contention of the respondents that the applicant was spared from Northern Railway on 16.12.2002 is totally false and the respondents may be put to strictest proof to support this statement. As stated hereinabove as per extant instructions the applicant could have applied to N.F. Railway authorities for grant of leave only after he had been relieved from Northern Railway

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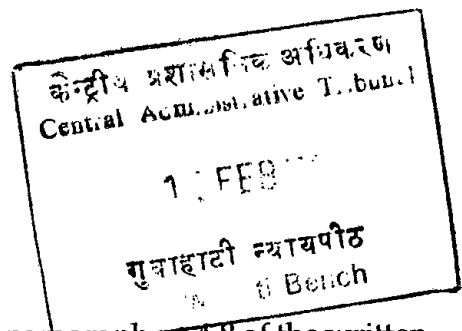
Rahul Goswami

and since he was not relieved from Northern Railway before 7.11.2003 the applicant correctly applied for leave with Northern Railway and thereafter to the Railway Board and both these leave applications were entertained by the authorities addressed, in one case the leave was recommended for sanction to the Railway Board by GM and in another case Railway Board referred the application to Northern Railway for sanction. The applicant further begs to reiterate what is stated in paragraphs no 4.8.to 4.14 of the O.A. since the same have not been specifically denied by the respondents.

13. That the statement made in paragraph no 4.6 of the written statement is totally incorrect and this applicant begs to state that the respondents themselves have admitted in paragraphs no 3.5. of the written statement that the applicant was deemed to have been relieved w.e.f. 17.12.2002 when he did not formally hand over the charge. How then he was spared on 17.12.2002. This is patently a false statement which is liable to be rejected outrightly. It is reiterate that Annexure X of the OA is a mere expression of opinion that too contrary to law as laid down in Sec. 2 (g) of the Public Premises Act as well as Railway Board's circular dated 1.6.2001 as referred to hereinabove. Therefore, the plea of the respondents made in paragraph no 4.6 of the written statement is liable to be rejected.
14. That with regard to the statement made in paragraph 4.7 of the written statement, it is stated that insofar as statement of facts is concerned, the same is admitted. However, it is denied that the applicant was an unauthorized occupant of the house and that it is also denied that the Estate Officer followed due legal procedure while adjudicating on the issue. It is once again submitted that the Estate Officer did not applied its mind to the facts of the case and instead he blindly followed the views of Divisional Superintending Engineer (Estate), Northern Railway and accepted the submissions of the said authority and did not took into consideration the submissions made by the applicant. However, it is submitted that the respondents have not specifically denied the averment made in Para 4.20 of the OA where it was stated that even before taking evidence the Estate Officer expressed its satisfaction in the show cause notice dated 11.12.2003 that the applicant was in unauthorized occupation and quantified the damage rent on the mere say-so of the Divisional Supertending Engineer (Estate), Northern Railway. Therefore, the statement made in Para 4.20 of OA may be deemed to have been admitted by the respondents.

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Rahul Goswami



15. That with regard to the statement made in paragraph no 4.8 of the written statement, it is stated that the respondents have not specifically denied the statements made in paragraph no 4.21 of the OA to the effect that mere transfer order can neither lead to cancellation of his rightful allotment of the accommodation nor subject him to payment of punitive rent and that transfer order by itself does not constitute a relieving order, and as such the said statement may be deemed to have been admitted by the respondents.

The applicant further states that the statement made that he was not entitled to retain the quarters at New Delhi as Railway Board's letter No. E(G)2002 QRI-9 dated 28.6.2002 did not apply to him is a specious plea totally devoid of merit. As stated in the OA there are instances galore where officers belonging to NF Railway cadre have been posted out of NF Railway within two to three years of their posting and whenever they are posted back to NF Railway they have been allowed to retain their accommodation at previous places of posting. Thus, the applicant has been discriminately treated by the respondents. The said letter dated 28.6.2002 does not make a distinction between the officers who are posted to NF Railway from other zones and the officers belonging to NF Railway cadre working elsewhere posted back to NF Railway for the purpose of retention of quarters at previous place of posting. For instance, one Shri Salahuddin Ansari, an IRTS officer belonging to NF Railway cadre worked only for a couple of years in NF Railway and was transferred to Central Railway and when he was posted back to NF Railway in 2002 he was allowed to retain his quarters at Jabalpur where he was posted before coming to NF Railway. Therefore, in 2005 he was again transferred to Northern Railway without insisting on compliance of the condition of completion of 10 years tenure. Therefore, the discriminatory treatment meted out to the applicant is unconstitutional being violative of Articles 14 and 16 of the Constitution and the same deserves to be remedied.

16. That with regard to the statements made in paragraph no 4.9 of the written statement this applicant begs to state that the Estate Officer was duty bound to consider the submissions made in the representation dated 30.01.2004 (Annexure-XVI to the OA) and pass a reasoned order. Instead, the Estate Officer did not took into consideration the points raised in the representation and mechanically accepted unreasonable submissions made by the authorities which were contrary to rules laying

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Rahul Gosain

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Guwahati Bench

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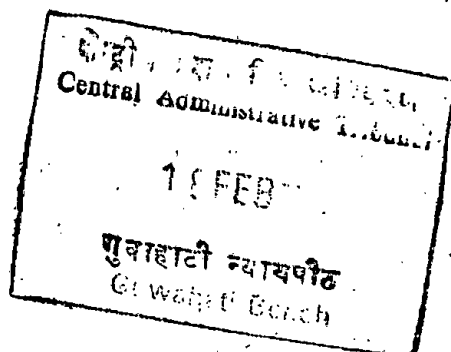
down the conditions precedent to initiation of proceeding under the Public Premises Act and charging of damage rent. The Estate Officer also failed to allow further time to the applicant to be heard as he was finding it difficult to get leave for appearing before it. Instead, the Estate Officer held the proceedings behind the back of the applicant and also recorded the statement of a clerk, Shri M.K. Kamra who was working under Divisional Superintendent Engineer (Estate), Northern Railway, without any prior notice to the applicant and based its finding of the market rate of the locality on the on the basis of personal knowledge of Shri Kamra. That the procedure adopted by the Estate Officer was unfair, unjust and contrary to principles of natural justice and fair play. The Additional District Judge, New Delhi gave its finding mechanically and based on incorrect premises and irrelevant factors and as such the same is liable to be set aside and quashed.

17. That with regard to the statement made in paragraph 4.10 of the written statement, it is stated that the Estate Officer passed the order in Form 'B' and Form 'G' and the judgment on 27.4.2004 (Annexure XVII series of the OA) but the Sr. DGM/Northern Railway by his letter dated 6.4.2004 informed DRM(P)/Rangiya to recover Rs. 11,874.24 p.m. from the applicant's salary and worked out total damage rent at Rs. 1,95,733.44 even before the Estate Officer had passed the judgement. This fact demonstrates that the Estate Officer was acting in concert with and at the behest of the Northern Railway authorities and as such the order of the Estate Officer loses its sanctity on the ground of its bias in favour of the Railway Administration and against the applicant. Therefore, the order of the Estate Officer being malafide is liable to be set aside.
18. That the statement made in paragraph no 4.11 of the written statement is denied and the applicant begs to reiterate what is stated in the paragraphs no 4.30 to 4.37 of the OA.

In the paragraph it is stated by the respondents that the applicant was required to serve for 10 years on N.F.Railway and that his attempt to by-pass this condition by citing certain exceptions does not help him because in the first place nobody forced him to accept his posting in N.F.Railway with this condition attached is a specious plea which is aimed at evading the main issue of practice of the policy of discrimination by the respondents. It is submitted that the applicant or any officer does not have a choice in respect of the allotment of cadre in

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Rahul Gossain



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a particular zonal railway. The choice is forced upon him. If any officer refuses his cadre allotment he has to forego his appointment to the railway service. Therefore, the allotment of cadre has the element of force attached to it and the averment of the respondent is incorrect. Secondly, as cited in the OA and hereinabove the respondents have not insisted on fulfillment of the condition of completion of 10 years service on the N.F. Railway in a large number of cases and there are instances galore where the Railway Board has transferred officers allotted NF Railway cadre even after two years of their initial posting. Therefore, the 10 year tenure on NF Railway cannot be considered mandatory, and the respondents have singled out the applicant for fulfillment of this condition arbitrarily and just to punish the applicant for not surrendering to the discriminatory treatment meted out to him. Therefore, the exercise of power by the respondents in refusing his retention at New Delhi or for retention of his quarters at New Delhi smacks of arbitrariness, unreasonable and discrimination infringing the fundamental rights of the applicant guaranteed under Article 14 and 16 of the Constitution.

19. That the statements made in paragraphs no 4.12 of the written statement is denied and the applicant begs to reiterate what is stated in paragraphs 4.38 to 4.41 of the OA. The applicant further states that he could not be treated as unauthorized occupant of the house on the basis of deemed relief when there is no such provision of such deemed relief in the rules. Sec 2 (g) of the Public Premises Act defines the term unauthorised occupation as "occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

The Railway Board's letter no E(G) 2000QRI-23 dt: 1.6.01 the laid down as follows:

"1. Permanent Transfer:

- (a) A railway employee on transfer from one station to another which necessitates change of residence may be permitted to retain the Railway accommodation at the former station of posting for a period of two months on payment of normal rent or single flat rate of licence fee. On request by the employee, on educational or sickness account, the period of retention of Railway accommodation may be extended for a further period of six months

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on payment of licence fee i.e double the flat rate of licence fee/rent. Further extension beyond the aforesaid period may be granted on educational ground only, to cover the academic session in which he/she was transferred on payment of special licence fee. Beyond the permitted /permissible limits, however, no further extension will be allowed on any ground whatsoever. Therefore, no request or representation on this score shall be entertained. For all occupation beyond the permitted period, immediate action should be taken to cancel the allotment, declare the occupation as unauthorized and initiate eviction proceedings, charging damage rent for the over-stay."

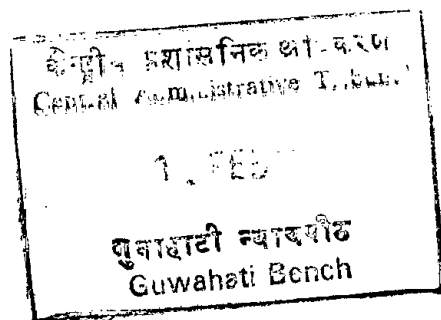
From the aforequoted passage, it is evident that cancellation of allotment before declaring the occupation as unauthorized is a condition precedent for initiation of eviction proceedings, charging of damage rent for the over stay. In the instant case the same was not done and as such the action of the respondents are arbitrary and in violation of the rules and the same is liable to be set aside.

20. That the applicant begs to state that from what is stated above and in the original application it will be apparent that the respondents have failed to rebut the statements made by the applicant in the original application and the applicant has made out a case for interference by this Hon'ble Tribunal and as such this Hon'ble Tribunal may be pleased allow the application as prayed for.

Rahul Gosain



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### VERIFICATION

I, Shri Rahul Gosain, son of Sri Jatindar Bal, aged about 33 years, presently working as Sr. Divisional Mechanical Engineer, Incharge, N.F. Railway, Lumding, in the district of Nagaon, Assam do hereby verify that the statements made in paragraph Nos. 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 20 are true to my personal knowledge and statements made in paragraph Nos. 8, 9 and 19 are believed to be true on legal advice and that I have not suppressed any material facts.

Place : Guwahati

Date : 18.2.08

Rahul Gosain

SIGNATURE OF THE APPLICANT

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Annexure - XXII)

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केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal
1. FEB
गुवाहाटी न्यायपीठ Guwahati Bench

R.B.E. NO 100/2001

Subject: Retention of Railway quarter on transfer, deputation, retirement etc.

(No.E(G) 2000 QRI-23 dt: 1.6.01)

The instructions governing retention of Railway accommodation by Railway employees in the event of their transfer, deputation, retirement etc., as contained in Ministry of Railways (Railway Board)'s letter of even number dt: 30.11.2000 have been further reviewed by the Railway Board and it has been decided to revise/modify the said instructions as under:-

1. Permanent Transfer:

(a) A railway employee on transfer from one station to another which necessitates change of residence may be permitted to retain the Railway accommodation at the former station of posting for a period of two months on payment of normal rent or single flat rate of licence fee. On request by the employee, on educational or sickness account, the period of retention of Railway accommodation may be extended for a further period of six months on payment of licence fee i.e double the flat rate of licence fee/rent. Further extension beyond the aforesaid period may be granted on educational ground only, to cover the academic session in which he/she was transferred on payment of special licence fee.

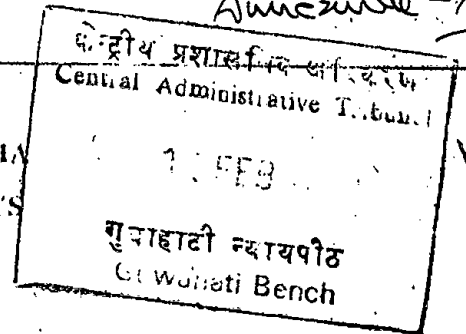
Beyond the permitted /permissible limits, however, no further extension will be allowed on any ground whatsoever. Therefore, no request or representation on this score shall be entertained. For all occupation beyond the permitted period, immediate action should be taken to cancel the allotment, declare the occupation as unauthorized and initiate eviction proceedings, charging damage rent for the over-stay.

(b) Where the request made for retention of Railway quarter is on ground of sickness of self or a dependant member of the family of the Railway employee, he will be required to produce the requisite Medical Certificate from the authorized Railway Medical Officer.

(c) In the event of transfer during the mid-school/college academic session, the permission to be granted by the competent authority for retention of Railway accommodation in terms of item (a) above will be subject to his production of the necessary certificates from the concerned school /college authority.

Attested by  
[Signature]  
Adv.

भारत सरकार GOVERNMENT OF INDIA  
रेल मंत्रालय MINISTRY OF RAILWAYS  
(रेलवे बोर्ड RAILWAY BOARD)



No. E(O)III 98 PL/5

रेल. भवन, नयी दिल्ली - 110001, दिनांक 07.08.1998  
Rail Bhavan, New Delhi-110001, date 07.08.1998

The General Managers (P),  
All Indian Railways &  
Production Units  
(As per standard list 'A')

Sub: Implementation of inter-Railway transfer order of officers.

In terms of extant instructions, as soon as transfer/posting orders of officers are received by the Railways, the concerned officer is required to be spared by Railway without waiting for his relief, unless permission thereof is obtained by General Manager concerned within a week's time from the Member Incharge. It has also been laid down in Board's instructions contained in letter No. E(O)III-81/TR2/210 dated 08.12.1981 that the leave to the officers, who are under orders of transfer from one Railway to another, can be granted by the Zonal Railway administration to which the officers have been transferred after they have reported to those administrations on being relieved.

2. Several instances have, however, come to the notice of the Board where officers when transferred from one place to another, do not report to the concerned Railway administration where they have been transferred even after they have been relieved on transfer. Neither do they send any intimation regarding their absence. This causes serious administrative problems.

3. In continuation of the aforesaid instructions, it has now been decided by the Board that the following instructions should be scrupulously followed by all concerned in regard to carrying out orders of transfer of officers:-

(i) After the officer has been relieved on transfer he will be deemed to be on the rolls of the Railway to which he has been transferred and that it will be the responsibility of Chief Personnel Officer of that Railway to monitor his reporting for duty on that Railway. To ensure this, the following guidelines are laid down:-

a) The relieving Railway should not entertain any request from such officer for grant of leave even on medical grounds and the officer concerned should not be paid any salary for the period after the date of relief.

b) As soon as the officer is relieved, the relieving Railway should send an intimation to the CPO and PHOD of the Railway, to which the officer has been transferred, indicating the date of relief, number of days of joining time to which he is entitled, his residential postal address, telephone no., etc. His last Pay Certificate, Service Book, Leave Account, Personal File, etc. should also be sent to the new Railway immediately.

... 2/-

Attested by  
Branching  
Adv.

1 FEB

गुवाहाटी न्यायपीठ  
Guwahati Bench

(ii) The PHOD of the Railway to which an officer has been transferred, after receiving the intimation regarding relief of the officer from the relieving Railway, will keep liaison with CPO and the relieving Railway for keeping track of the movement of the officer under transfer and to ensure that the officer joins the new Railway immediately.


(iii) However, there may be cases where the officer may be unable to join the new Railway due to genuine reasons such as illness or any other circumstances beyond his control. In such a situation the officer concerned should apply for leave to the Railway to which he has been posted/transferred. Leave shall, however, not be granted normally for more than 15 days at a time.

(iv) Necessary instructions should be issued to the CMD/concerned medical authorities not to issue medical certificates for more than 15 days at a time and the medical certificate should clearly indicate the nature of illness. The medical certificate should be countersigned by the Medical authority next higher to Authorised Medical Attendant. In case leave on medical certificate is extended beyond two months, the medical certificate should be countersigned by CMD and for the period beyond 3 months, the medical certificate should be issued with the approval of DG/RHS, Railway Board.

(v) The CPOs of all the Railways will ensure that a statement indicating the case of officers who have not joined on transfer to new Railway within 15 days after the expiry of joining time, is sent to Joint Secretary (G), Railway Board every month indicating the action taken in such cases, for submission to Board.

4. The above instructions should be given wide publicity and brought to the notice of all Railway officers at the earliest.

Kindly acknowledge receipt of the letter.

  
(A.C. Bakshi)  
Joint Secretary (G)  
Railway Board