

**(2005) 09 GAU CK 0017**

**In the Gauhati High Court**

**Case No :** Writ Petition (C) No. 193 (SH) of 2005

Union of India (UOI) and Others

APPELLANT

Vs

Tapashi Sarkar and Another

RESPONDENT

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**Date of Decision :** 28-09-2005

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 14, 3

**Citation :** (2005) 4 GLT 492

**Hon'ble Judges :** B. Lamare, J;Aftab H. Saikia, J

**Bench :** Division Bench

**Advocate :** S.C. Shyam, for the Appellant; B.K. Deb Roy, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

A.H. Saikia, J.—Heard Mr. S.C. Shyam, learned Counsel for the Petitioners. Also heard Mr. B.K Deb Roy, learned Counsel for the Respondent.

2. By this writ petition, the Petitioners have challenged the impugned orders dated 27.4.05, 27.5.05 and 7.6.05 passed by the learned Central Administrative Tribunal (for short, "the CAT") which stayed eviction and recovery of damage charge in respect of Quarter No. 01/2C at Oakland Postal Coloney, Shillong issued against the Respondent for a period of four weeks in entertaining an application being O.A. No. 93/05 filed by the Respondent who was allegedly in illegal occupation of the said quarter after the demise of her husband Late B.P. Sarkar who died-in-harness on 4.1.2000 while working as Duftary in the establishment of the Chief Post Master General, N.E. Circle Shillong with further direction that the Petitioners to unlock the premises which was put under lock and key by them after evicting her therefrom.

3. This Court at the time of issuance of notice of motion vide order dated 24.6.05 provided that until further orders the status quo as on that date should be maintained in respect of the quarter which was the subject matter of controversy in the present writ petition

4. Challenging the impugned orders, Mr. Shyam, learned Counsel for the Petitioners, has contended that those impugned orders were passed by CAT precisely without having any jurisdiction inasmuch as Section 14 of the Administrative Tribunals Act, 1985 (for short "the Act") does not extend any jurisdiction to the CAT to entertain and deal with the matter in hand which basically relates to occupation of the Government quarter, not being included within the definition of "service matters". According to him, Section 14 of the Act has categorically spelt out the jurisdiction, power and authority of the CAT with regard to recruitment and matters concerning recruitment to any All India Service or to any Civil service of the Union or a civil post under the Union etc. and all service matters concerning any All-India Service. It is contended that the Respondent is neither holding the Civil post nor does the matter relate to the recruitment or any service matters which has been defined the Section 3(q) of the Act. According to him, admittedly, the Petitioner is holding the post of Gramin Dak Sevak which is not a civil post under the Union of India. He has drawn our attention to Section 14 as well as Section 3(q) of the Act which read as under:

14. Jurisdiction, powers and authority of the Central Administrative Tribunal:

1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts except the Supreme Court in relation to:

(a) Recruitment and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) All service matters concerning-

i) A member of any All-India Service; or

ii) A person not being a member of an All-India Service or a person referred to in Clause (C) appointed to any civil service of the Union or any civil post under the Union; or

iii) A civil not being a member of an All-India Service or a person referred to in Clause (c) appointed to any defence services or a post connected with defence.

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation (or society) owned or controlled by the Government;

(c) All service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in Sub-clause (ii) or Sub-clause (iii) of Clause (b), being a person whose services have been placed by a State Government or any local or other authority or any

corporation (or society) or other body, at the disposal of the Central Government for such appointment.

3 (q). "Service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation (or society) owned or controlled by the Government, as respects-

- (i) Remuneration (including allowances), pension and other retirement benefits;
- (ii) Tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) Leave of any kind;
- (iv) Disciplinary matters; or
- (v) Any other matter whatsoever.

5. On a bare perusal of the above provisions of law under the Act, it appears to us that the issue raised herein which solely relates to occupation of the Govt. quarter by the Respondent does not fall within the definition of service matters as provided u/s (q) and as such in terms of Section 14 of the Act as noticed hereinabove, the CAT lacks jurisdiction in such cases.

6. In view of the same, we are of the firm opinion that the CAT has no jurisdiction to entertain such type of petition which pertains to the occupation of a quarter of the department. It is to be noted herein that as per SR- 317-B-11 Sub-clause (2) under Swamy's Fundamental Rules, the quarter allotted to the employee shall remain in allotment only for two years after the death of the employee. S.R. 317-B-11 maybe quoted as under:

S.R. 317-B-11. (1) An allotment shall be effective from the date on which it is accepted by the officer and shall continue in force until,

- (a) The expiry of the concessional period permissible under Sub-clause (2) after the officer ceases to be on duty in an eligible office in an eligible office in Delhi.
- (b) It is cancelled by the Director of Estates or is deemed to have been cancelled under any provision in these rules;
- (c) It is surrendered by the officer, or
- (d) The officer ceases to occupy the residence.

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

7. In the instant case, it is admitted position that after the death of the husband of the Respondent on 4.1.2000, she was allowed to be in occupation of the quarter in terms of the above provision only for two years i.e. up to 3.1.2002. However, after the expiry of that period also the Respondent has been occupying and holding the said quarter without any authority of law.

8. For the foregoing reasons, discussions and observations, this Court is of the view that these impugned orders deserve interference by this Court and accordingly, those impugned orders stand quashed. It is ordered that in view of Section 14 of the Act, the proceeding in O.A. 93/2005 and subsequent analogous proceedings thereto pending before the CAT are also hereby quashed.

9. In the result, this writ petition stands allowed. No costs.