

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Lucknow this the 8th day of March 1996.

O.A. No.314/92

HON. MR. V.K. SETH, MEMBER(A)

HON. MR.D.C. VERMA, MEMBER(J)

1. Sri Om Shanker Misra aged about 26 years son of Sri Rameshwar Misra, resident of 559/22, Om Bhawan, Brahma Nagar, Alambagh, Lucknow.

Applicant

By Advocate Shri V.J. Shukla.

versus

1. Union of India through the Chairman, Railway Board, Ministry of Railways Rail Bhawan, New Delhi.

2. The Director General, Govt. of India, Ministry of Railway, R.D.S.O.Lucknow.

3. The Director, Finance, R.D.S.O. Lucknow.

4. The Accounts Officer I, Finance Directorate, R.D.S.O., Lucknow.

5. The Section Officer, E-IV, Finance Directorate, R.D.S.O. Lucknow.

Respondents

By Advocate Shri Anil Srivastava.

O R D E R

HON. MR. V.K. SETH, MEMBER(A)

By means of this O.A., the applicant has prayed for quashing of the order dated 29.5.91 (Annexure No.1) passed by respondent No. 5 and order dated 17.7.91 passed on his

representation against the order of 29.5.91. Vide order of 29.5.91, the services of the applicant who was under probation, for one year, were terminated from the date of issue of the order. In the said order, it was also provided that arrangement had been made for disbursement of the pay of the applicant for one month which he collect from the cashier. The impugned order dated 17.7.91 stated that the competent authority had considered the representation of the applicant (dated 17.7.91) and had decided that the decision to terminate his services during the probation period stands.

2. The respondents have resisted the claim of the applicant and pleadings have been exchanged between the two sides, which we have perused. We have also given careful thought to the submissions made by the learned counsel for the two sides at the time of hearing of the O.A.

3. As a result of the selection the applicant was offered appointment as a Motor Driver grade III in the pay scale of Rs 950-1500 in the office of Finance Directorate of the R.D.S.O., Lucknow by means of a letter dated 22.10.1990 (Annexure 5). Offer of appointment stated the terms and conditions under which the same was being made. The applicant joined on the said post on 5.11.90. According to the averments in the O.A. the respondent No. 4 and 5 have pressurised him to use the car for

their private purpose while he wanted to go strictly according to rules. The applicant alleges that because of this the respondents began to find fault with him, with the result that for his short absence on 14.11.90, he was treated as on leave without pay despite his explanation and express of regret. He was also served with a notice for his absence without information for some period on 14.12.90. The applicant further states that on 14.2.91, while he was taking the car for filling up of air in the ~~tyres~~ a private bus coming from Kanpur side towards Lucknow Railway Station dashed against the right side of the car and damaged its window. The applicant attributes it to the failure of the brakes. The applicant registered the F.I.R. in this connection. It is also stated that a preliminary enquiry was conducted behind his back on 14.2.91 and he was placed under suspension by an order dated 14.2.91 contemplating departmental proceedings against him. The order of suspension was revoked by an order dated 21.5.91 (Annexure 16). Further vide order dated 27.5.91 (Annexure -18), passed by respondent no. 3 the period of suspension of applicant was regularised as duty. Thereafter, vide order of 29.5.91, the services of the applicant were terminated and vide order dated 17.7.91, his representation against the same was rejected as already mentioned.

4. Before we discuss the claim of the applicant, it would be useful to reproduce the relevant orders of appointment of the applicant and also the impugned orders. The offer of appointment to the applicant was made vide letter dated 22.10.90 (Annexure 5) as mentioned earlier, which reads as under:

“ भारत सरकार- रेह मित्रात्म
 अनुसंधान अधिकार्त्य और भानुक संगठन
 भानुक नगर, राजस्थान ।

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उनके दिनांक १९-२-१० ले आदेदन पक्का तथा इस कार्यालय/मर्गितारी चयन आयोग द्वारा नियमित दिन २०-२-१० को हुई चयन परीक्षा ले आधार पर श्री गोपेन्द्र चंद्र मिश्र पुरुष श्री रामेश्वर नियमित द्वारा कार्यालय दे दिया नियमित नै मोटर चालक ग्रेड-११ ले पद पर ₹१९५०/- देवमात्र ₹१९८०-१५०० ले अस्थायी पद ले, तिस नियुक्ति प्रस्तुत दे देता है। इसके साथ हो साथ वह रेतवै बोर्ड ले नियमों दे आधीन सम्बन्धित पर देते अन्य धर्ते पाने के हलदार होंगे।

२- उन्होंने नियुक्ति प्रस्तुता नियत ले अस्थायी है। उन्हें सर्वांगी दे परिवोधाधीन रुपा जास्ता तिसे पद पर उनके कार्यालय छरने की तारीख है माना जास्ता। परिवोधाधीन अवधि प्रशासन द्वारा आगे भी द्वायों जा सकते हैं। परिवोधाधीन अवधि दे दौरान उनको सेवाएं एक महोने का नौटिस देकर बिना कोई लारण ल्ताए समाप्त हो पा सकते हैं। इस कार्यालय मैं कार्यालय छरते समय उनके द्वारा छस्तातर जो जाने वाली रिपोर्ट मैं उल्लिखित नौटिस की अवधि सम्बन्धी रूप उनके परिवोधाधीन अवधि के सफलता पूर्वक पूरा छरने पर लाया होगी।

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The appointment order issued on 5.11.90 is reproduced below:

"Government of India

Ministry of Railways

Research Designs and Standards Organisation

Manak Nagar, Lucknow-11

No. EDB-2180

Dated 5.11.90

Sh. O.M. Sanker Mishra s/o Sh. Rameshwar Mishra has been appointed as Ty. Motor Driver Gr.III wef. 5.11.90 FN and is posted in Finance Dte. section of RDSO Dte./RDSO/ Lucknow. He may be taken on rolls and this slip may be returned to Estt. IV Section for further action."

The impugned order of 29.5.91 reads as follows:

"भारत सरकार- रेत मंत्रालय
अनुसंधान अधिकार्य द्वारा भानक संगठन
लखनऊ-226011-दिनांक 29/05/1991
इपोबो-2160

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श्री ओम शंकर मिश्रा पुढ़े रामेश्वर मिश्रा, मोटर चालक ग्रेड-III, वेतनमान ₹ 950-1500 (पुदेमा) पित्त अनुभाग जिन्हें दिनांक 05.11.90 से इस लार्टिक मैं एक वर्ष है लिये परीक्षाधीन रखा गया था, वो सेवासं समाप्त हो जातो है। यह आदेश दिनांक 29.05.1991 अपरान्त हो जाता है। श्री मिश्रा है एक माह के नौटिक अधिकारी है जैसे लखनऊ शहर का प्रतिष्ठित जिला गया है जिसे वह छांदो/ अ.ज.ना.सै. से प्राप्त कर लकर है।"

The order dated 17.7.91 is as follows:

"Government of India-Minsitry of Railways
Research Designs & Standards organisation
No. EBP-2180 Lucknow Dated 17.7.1991

Memorandum

With reference to his representation dated 13.6.91, Shri Om Shankar Misra, Ex-Motor Driver Gr. III is advised that the competent authority has considered the same and has decided that the decision to terminate his services during probation period stands."

5. The applicant has advanced various arguments and also cited several rulings in support of his claim which are discussed below:

6. The applicant contends that the impugned order has not been passed by the competent authority and is therefore, violative of Article 311(1) of the Constitution of India. In support of his contention he has cited the definition of the appointing authority as contained in Railway Servants (Discipline and Appeal)Rules. In this connection, we note that the offer of appointment dated 22.10.90 Annexure-5 of the O.A. has been signed 'for Director General (R.D.S.O)' and the appointment order dated 5.11.90 has been signed by the Section officer. The impugned order dated 29.5.91 has also been signed 'for Director General(R.D.S.O)'. It is also noteworthy that the impugned order has been issued in accordance with the terms of offer of appointment dated 22.10.90 reproduced earlier and not in terms of the Railway Servants (Discipline and Appeal) Rules. The definition of appointing authority in those rules is therefore, not relevant. As regards violation of Article 311(i) of the Constitution of India, the said Article reads as under;

"No person who is a member of a civil service of the Union or an all-India service or a civil service of

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a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed."

As will be noticed therefrom, it provides that ".....no personshall be dismissed or removed by an authority subordinate to that by which he was appointed." The provisions mentions an 'authority by which he was appointed'. There is no mention of 'appointing authority'. In the present case, both the offer of appointment and the impugned order of termination bear the signatures of the same officer viz. M. Balasubramaniam and the orders are issued 'for Director General'. Therefore, we do not find any violation of Article 311(1) of the Constitution as the same authority has issued both the orders.

7. The second argument of the applicant is that the basis and foundation of the impugned order is damaging of the official car and absence from duty, and therefore, misconduct on the part of the applicant and therefore, his services could not be terminated under the cloak of order simplicitor without affording him opportunity, as envisaged under Article 311(2) of the Constitution of India. Before we discuss this contention, it may be useful to quote the wording of the said provision which reads as under:

"(2) "No such person as aforesaid shall be dismissed, or removed or reduced in rank except after an inquiry in which he has been

informed of the charges against him and given a responsible opportunity of being heard in respect of those charges."

A reading of the provisions of Article 311(1) and 311(2) shows that the same applies to a person who is a member of a civil service of the Union or All India Service or Civil Service of State or holds civil post under the Union or a State and should have been dismissed etc. for some charges. In the present case, the applicant's services were terminated during the period of probation. No material has been laid before us either by the applicant or by his learned counsel to support the view that the applicant can be treated as a member of a civil service etc. or is a holder of a civil post while on probation. Before the applicant can be considered to be holding civil post under the Union, what is important and relevant is that he should have a right to hold such a post. Apparently such a right can accrue to a probationer only after satisfactory completion of probation. We shall, however, discuss the matter further at a later stage in the context of the relevant rulings.

As far Art 311(2), in the present case, according to the applicant's own showing, no charge sheet was served on him, further the impugned order is an order of termination in accordance with the terms of offer of appointment within the probationary period and the English equivalent of the order would be 'the service of.who has kept under probation for a period of one year w.e.f. 5.4.90 in this office are terminated.' The order does not make a mention about dismissal or removal of the applicant on any charges levelled against him. As far as the contention of the applicant that the order was nonetheless punitive attracting the provision of Article 311, the same shall also be discussed further a little later, in the light of the relevant rules.

8. A further argument raised is that the order of suspension of the applicant was not passed by the competent authority and no enquiry was instituted against him.

even after he remained under suspension for about three months. It is therefore, asserted that the respondents intentionally avoided the departmental enquiry lest they should fail to prove the charge of misconduct. Here we may mention that the order of termination of services of the applicant does not make any recital of his alleged misconduct. We have already stated that the termination of services was done in terms of the offer of appointment. We have also demonstrated earlier that the safeguard envisaged under Article 311 (2) is not applicable in the case of a probationer. Nevertheless, we will discuss this matter further in the context of the rulings cited by the two sides.

9. A further point has been made that the salary and overtime and retrenchment compensation was not paid to the applicant on the date of termination of his services. The learned counsel for the applicant, however, failed to cite any statutory rule or relevant instructions on the subject. None the less, he cited the judgment of the Hon'ble Supreme Court reported in A.I.R. 1975, SC. 536 in re ^{dated on 7.10.74.} 'Raj Kumar vs. Union of India and others' We however, notice that the facts and circumstances of that case are distinguishable. The services of the appellant in that case were terminated in terms of the Central Civil Services (Temporary Service) Rules, 1965. It was held that for proviso to rule, 5(1) to be

effective the termination of service has to be simultaneous with the payment to the employee of whatever is due to him, and the operative words of the proviso are 'service of any such government servant may be terminated forthwith by payment'. It is however seen that in the same case Hon'ble Supreme Court vide its judgment dated 19.3.75(presumably on review) reported in 1975, AIR SC, 1116 (Raj Kumar vs. Union of India) reconsidered the amended sec. 5 and held that tendering of notice and payment simultaneously is not obligatory. In view of this the decision quoted by learned counsel from page 536 even otherwise is of no help to the applicant.

10. We may, now discuss the most important contention of the applicant which was repeatedly stressed by his learned counsel during the course of hearing and that is before passing the impugned order, in keeping with the constitutional provisions he should have been subjected to departmental enquiry which required following of procedure prescribed in the Railway Servants (Discipline and Appeal) Rules. We have already stated earlier that the provisions of Article 311 of the Constitution are not attracted in the case of the applicant, nevertheless, we may now discuss the rulings cited by his counsel.

10. In the case of Jarnail Singh and others vs. State of Punjab and others reported in 1986, A.T.C. 208, the matter related to the termination of service of appellants who were surveyors on adhoc basis. It was held that the court could go behind an ex-facie innocuous order to find the real basis. The present case relates to termination of services of the applicant who was appointed on probation.

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11. In the case of Amirt Lal Chhaganlal vs. Senior Superintendent of Post Offices, Junagarh and others reported in 1988(7), A.T.C.,830, the matter related to P&T Extra Departmental Agents and therefore, on facts is distinguishable.

12. In the case of Scientific Advisor to the Ministry of Defence and others vs. S. Danial and others with other connected Civil appeals reported in 1991(15)ATC, 799, the applicant's counsel invited our attention to the observations of their lordships of the Hon. Supreme Court in connection with the authority competent to take action under C.C.S.(C.C.A.) Rules in the context of Article 311(1) of the Constitution of India. In that case the disciplinary proceedings were initiated either under the Central Civil Services(C.C.A) Rules or the Railway Servants (Discipline and Appeal) Rules. No such matter is involved in the present case and impugned action has been taken under the terms of offer of appointment during probation. Moreover, as we have already held there is nothing on record to show that the impugned order was issued by an authority lower in status to the one who appointed the applicant.

13. In the case of Dr.(Mrs.) Sumati P. Shere vs. Union of India, reported in 1989, 11, ATC 127, the matter related to termination of service of the appellant who was appointed on adhoc basis to a permanent post as Assistant Surgeon grade I and her services were terminated after getting usual increments for three years. The apex court held that

the employee should be made aware of the defect in his work and efficiency in his performance and that without any such communication it would be arbitrary to give a movement order to an employee on the ground of unsuitability. In the present case, the applicant was appointed on 5.11.90 and his services were terminated on 29.5.91 i.e. within a period of less than 7 months and during this short period, there were as many as three occasions on 14.11.90 and 12.12.90 when he was warned for careless working and finally on 14.2.91, when he took out the official vehicle without authority and the same met with an accident. In our considered view, if there are several incidents of dereliction of duty and misdemeanour during a short period, it would be reasonable to draw an inference of general unsuitability and termination of services by an order of termination simplicitor cannot be faulted. This is therefore, a case where the applicant was duly aware of the shortcomings in his conduct and performance during the period in question.

14. In the next case cited by the applicant's counsel reported in 1992, 22, ATC, 129, in re Chandrakumari vs. Union of India decided by the Principal Bench of the Tribunal circumstances were somewhat similar and the applicant was not conveyed the defects in her work or deficiency in performance. It was, therefore, held that this infringed the principles of natural justice. While deciding the case, the Bench has drawn support from the case of Dr. Sumati P. Shere, earlier discussed by us.

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15. In Dharam Pal vs. Delhi Administration and others reported in 1993, 23, A.T.C. 486, the matter related to termination of the services of the applicant who was a constable of Delhi Police, it was held that although termination made by innocous order, accidentally, firing of his gun was the foundation of the order. In this case, the applicant was appointed on 15.6.89 and his services were terminated on 7.5.90 on account of one single incident, and therefore, the same is again distinguishable in facts and circumstances from the present case.

16. The learned counsel for the applicant next cited the case of K.S. Radhamani and others vs. Chief Commissioner of Income Tax, reported in 1994, 28, A.T.C. 667, decided by the Bangalore Bench of this Tribunal, to drive home the point that the internal correspondence of the department was not relevant for consideration of grounds urged by the applicant. This contention was raised by the learned counsel in reply to certain Annexures enclosed by the respondents with their Supplementary Counter Affidavit with a view to demonstrate that the impugned order was passed by the competent authority. Even if we ignore the relevant notes cited by the respondents, it is not in dispute that both, offer of appointment and the impugned orders are purportedly issued 'for Director General' R.D.S.O. and it is not disputed that the said authority was competent to issue the impugned order. For demonstrating contrary the onus lay

on the applicant which he has been unable to discharge.

17. The next case of Paramjeet Singh vs. Union Territory of Chandigarh and others reported in 1994, 28, ATC 518, was cited by the applicant's counsel on the same point, e.g. that submission of notings in departmental files was improper, though in that case it was held on facts that even such notings did not spell out any order in favour of the petitioner. In the present case, however, the applicant while questioning the propriety of citing the notings has not disputed the fact that the same showed that the orders were passed by the competent authority. In any case, as mentioned earlier, even if the same are ignored, the applicant's case does not become stronger.

18. The learned counsel for the applicant has invited our attention to para 149 of the Indian Railway Establishment Code. One of the provisions of this para is that notice of termination of service should be given by an authority not lower than the appointing authority. This aspect has already been discussed by us more than once. The other relevant aspects relate to compliance of provisions of Clause (2) of Article 311 in case removal or dismissal is as a disciplinary measure and one month's notice. As far as latter is concerned, the impugned order has already complied with this requirement. As for the former, we have already discussed and held

that compliance of Article 311(2) was not called for for inthe present case as the applicant was a probationer not being entitled to status mentioned in Article 311(1) and also that his services were terminated in terms of offer of appointment on grounds which amounted to general unsuitability.

19. On their part, the respondents, while resisting the claim of the applicant, have cited the decision of Subhash Chander vs. Lt. Governor of Delhi and others decided by the Principal Bench of this Tribunal reported in 1995 31, ATC 277. In the said case, the services of the applicant who was undergoing his probationary period ~~his services~~ were terminated by an order simplicitor under rule 5 of C.C.S. (Temporary Service) Rules, 1965 on account of his absence from duty from 27.10.90 to 19.3.91. It was held that lifting of the veil and search for motives behind the order was not called for or justified in every case, otherwise rule 5 of CCS (Temporary Service)Rules, 1965 would be rendered negatory, as will be noticed, the view taken by the Principal bench fortifies our view in the present case.

20. We may also refer to the decision of the apex court in the case of State of Uttar Pradesh and another vs. Kaushal Kishore Shukla decided by a three judg Bench on 11.1.91 and reported in 1991 SCC (L&S) 587. This judgment is of particular relevance not only because of judicial dicta which form part of it, but also the fact that it has discussed and drawn on various earlier rulings of the apex court on this subject. The cases referred are as follows:

- i) Parshotam Lal Dhigra vs. Union of India, AIR 1958, SC 36: 1958 SCR 828 (1958) 1 LLJ 554.
- ii) State of Orissa vs. Ram Narayan Das AIR 1961 SC 177(1961) 1 ACR 606 (1961) 1 LLJ 552.
- iii) R.C. Lacy vs. State of Bihar C.A. No. 590 of 1962, decided on 23.10.1963 (SC).
- iv) Champaklal Chimanlal Shah vs. Union of India AIR 1964 SC 1854, (1964) 5 SCR 190: (1964) 1 LLJ, 752
- v) Jagdish Mitter vs. Union of India, AIR 1964 SC 449; (1964) 1 LLJ 418.
- vi) A.G. Benjamin vs. Union of India, (1967) 1 LLJ 752.
- vii) Shamsher Singh vs. State of Punjab (1974) 2 SCC 831: 1974 SCC (L&S) 550: (1975) 1 SCR 814
- viii) State of Punjab vs. Sukh Raj Bahadur, AIR 1968 SC 1089: (1968) 3 SCR 234: (1970) 1 LLJ 373;
- ix) Shyam Lal vs. State of U.P., AIR 1954 SC 369: (1955) 1 SCR 26.

21. The respondents in the case of State of U.P. vs. Kaushal Kishore Shukla was appointed on adhoc basis on February 18, 1977 as a Assistant Auditor and his services were extended from time to time, till the same were terminated by the order dated 23.9.80. The court while allowing the appeal dismissed the respondent's writ petition, with certain observations which are relevant for our purposes. These are reproduced below:

"A temporary government servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary government servants. A temporary government servant can, however, be dismissed from service by way of punishment. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his service in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action it may hold a formal inquiry by framing charges and giving opportunity to the government servant in accordance with the provisions of Article 311 of the Constitution...."(para 7).

22. While discussing in the same para, the decision in the case of Parshotam Lal Dhingra vs. Union of India & others (AIR 1958 SC 36), it has been mentioned that a Constitution Bench has held that the mere use of expressions like 'terminate' or 'discharge' is not conclusive and inspite of the use of such expressions, the court may determine the true nature of the order to ascertain whether the action taken against the government servant is punitive in nature. The court further held that in determining the true nature of the order the court should apply two tests (1) whether the temporary government servant had a right to the post or the rank or (2) whether he has been visited / evil consequences..... It was also observed that a temporary government servant has no right to hold the post and termination of such a government servant does not visit him with any evil consequences, and further the evil consequences as held in Parshotam Lal Dhingra case do not include the termination of services of a temporary government servant in accordance with the terms and conditions of service. As we have already observed that a probationer's right to hold a post is subject to his satisfactory completion of his probation. It is also noticed that wording of the impugned order does not cast any stigma on the applicant as there is no recital of any misconduct on his part.

23. While discussing the case of Champaklal Chimanlal Shah vs. Union of India (AIR 1964 SC 1854), in the same judgment, it was observed that appellant was a temporary employee and the order of termination was not an order of punishment and appellant was not entitled to the protection of

Article 311(2) of the Constitution of India. In the same judgment, the court also reproduced the observation of the apex court as below:

"....That is why this court emphasised in parshotam Lal Dhingra case and in Shyam Lal vs. State of Uttar Pradesh that the motive or the inducing factor which influences of the government to take action under the terms of the contract of employment or the specific service rule is irrelevant."

24. An extract of the judgment of the Hon'ble Supreme Court in A.G. Benjamin case (1967 (1) (L&J) 618) reproduced in Kaushal Kishore's case is very relevant for our purpose and is given below:

"If therefore, the authority decides for some reason to drop the formal departmental enquiry even though it had been initiated against the temporary Government servant, it is still open to the authority to make an order or discharge simplicitor in terms of the contract of service or the relevant statutory rule. In such cases the order of termination of service of the temporary Government servant which in form and in substance is no more than his discharge effected under the terms of contract or the relevant rules, cannot, in law be regarded as his dismissal, because the appointing authority was actuated by the motive that the said servant did not deserve to be continued in service for some alleged inefficiency or misconduct."

25. The above observation shows that even the initiation of formal departmental inquiry would not be a bar to discharge simplicitor in terms of the contract of service or the relevant statutory rule.

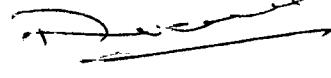
26. Before we conclude the discussion, we may also refer to the judgment of the apex court in the case of Hukam Chand Khundia vs. Chandigarh Administration & others (1995) 6 SCC 534. In that case, the applicant was appointed as a temporary clerk and he was continuing on probation and his services were terminated. The Hon'ble Supreme Court observed that since the petitioner was holding a temporary service and was on probation, an order of

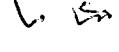
termination simplicitor has been passed without attracting any stigma against him. It is also stated that since service records were found unsatisfactory, termination order cannot be held to be arbitrary and capricious.

27. The sum and substance of the foregoing discussions is that a temporary civil servant and more so a probationer, cannot successfully challenge an order of termination of service passed in terms of contract or order of appointment unless the wording of the order itself indicates that it is by way of punishment or otherwise casts stigma on him.

28. Viewed in the conspectus of the facts and circumstances of the case we hold that the applicant's claim is devoid of merit. The O.A. is accordingly, hereby dismissed.

28. In the facts and circumstances of the case there shall be no order as to costs.


MEMBER (J)


MEMBER (A)

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Writ Petition No. 14-95-Sub - 14-11-95

Writ Petition No. 14-95-Sub - 14-11-95

For application Mr. V.D. Shukla, learned counsel.

Mr. D. Choudhury, appearing for Sri Manik Singh, learned counsel gave for adjournment for personal reasons of the counsel.

Act as Part Heard on 14-11-1995.

Re. No.

Jell.

Re. No.

14-11-95

Re.

Learned counsel for the defendant is present for the hearing of the application. Please hear the file in the court on 14-12-95 at 10.00 hours as per fixed.

R

14-11-95

Re. No. 14-11-95-Sub - 14-11-95

Learned counsel for the defendant is present for the hearing of the application. Please hear the file in the court on 14-12-95 at 10.00 hours as per fixed.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD,
CIRCUIT BENCH, LUCKNOW

O.A. No. 314 of 1992

Om Shanker Misra Applicant
versus
Union of India & others ... Respondents

I N D E X

COMPILED NO. 1

Sl. No.	Details of documents enclosed	Annexure No.	Pages From To
1.	Crossed Indian Postal Order No. of from Sunderbagh P.O., Lucknow.	-	-
2.	Application	-	1 to 22
3.	Impugned order dated 29.5.91	1	23
4.	Impugned order dated 17.7.91	2	24
5.	Vakalatnama	-	24A

Lucknow :

Dated : 10.7.92

Signature of the applicant.

18/7/92
107/92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD,
CIRCUIT BENCH, LUCKNOW

O.A. No. 314 of 1992

Sri Om Shanker Misra, aged about 26 years,
son of Sri Rameshwar Misra, resident of
559/22, Om Bhawan, Brahma Nagar,
Alambagh, Lucknow.

Applicant

Versus

1. The Union of India, through,
the Chairman, Railway Board,
Ministry of Railways, Rail Bhawan,
New Delhi.
2. The Director General,
Govt. of India, Ministry of Railways,
Research, Designs & Standards
Organisation, Manak Nagar, Lucknow.
3. The Director, Finance,
Research, Designs & Standards
Organisation, Manak Bhawan, Lucknow.
4. The Accounts Officer I,
Finance Directorate,
Research, Designs & Standards
Organisation, Manak Bhawan, Lucknow.
5. The Section Officer, E-IV,
Finance Directorate,
Research, Designs & Standards
Organisation, Manak Bhawan,
Lucknow.

Respondents

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DETAILS OF APPLICATION

1. Particulars of the order against which the application is made The application is made against the order No. EPB-2180 dated 29.5.1991 passed by Sri M. Balasubraminium, Section Officer E-IV, Finance Directorate, R.D.S.O., Lucknow, respondent No. 5 and the order No. EPB-2180 dated 17.7.91 communicated by Sri M. Subramenium, Section Officer E-IV, R.D.S.O., Lucknow without disclosing the authority which passed the said order. True copies of the said orders dated 29.5.1991 and 17.7.91 are annexed as Annexures Nos. 1 and 2 to this application.

Annexures Nos.

1 and 2

2. Jurisdiction of the Tribunal

The applicant declares that the subject matter of the orders 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 period prescribed in section 21 of the Administrative Tribunals Act, 1985.

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4. Facts of the case :

The facts of the case are given below :-

4.1 That the applicant was selected by a properly constituted Selection Board after a test for the post of Motor Driver, Grade III in scale Rs.950-1500 (RPS) held on 20.9.90 in R.D.S.O. office, Lucknow. A call letter dated 9.10.1990 for the purpose issued to him to appear in the test is filed as Annexure No. 3 to this application.

Annexure No. 3

4.2 That the applicant was declared successful by the said Selection Committee and he was placed second in order of merit on the panel dated 1.10.1990. A true copy of the said panel dated 1.10.1990 is filed as Annexure No. 4 to this application.

Annexure No. 4

4.3 That the applicant was appointed as a Motor Driver, Grade III in scale Rs.950-1500 (RPS) on pay Rs.950/- per month vide letter No. E/AP/Mis(M.D)/68 (Part-II) dated 22.10.90 under certain terms and conditions laid down therein and was posted in the Finance Department under the respondent no. 3. A true copy of the said letter dated 22.10.90 is filed as Annexure No. 5 to this application.

Annexure No. 5

4.4 That the applicant joined his appointment, so offered to him, on 5.11.90 F.N. A true copy of letter No. EPB-2180 dated 5.11.90 is filed as Annexure No. 6 to this application.

Annexure No. 6

4.5 That the applicant had performed his duties sincerely and honestly and there was no complaint against him.



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4.6 That the applicant, being a new appointee in the service, wanted to use the motor car for the govt. work and fill in the motor car movement register strictly according to rules but the respondents Nos. 4 and 5 generally pressurised him to use the govt. car for their private purposes as well as for those of the respondent no. 3. This caused annoyance to them and they wanted to get rid of him and utilize their old driver, Shri Karnail Singh who acted according to their wishes, legally and illegally as they wanted.

4.7 That the respondents nos. 3, 4 and 5 began to find fault with the applicant and directly punished the applicant by absenting him and regularising his pay for 14.11.90 as leave without pay for his short term absence on the said date from forenoon to 4.20 P.M. without issuing a prior show cause notice to him. The said authorities also required an explanation of the applicant to this effect within a week from 16.11.90. A true copy of the said letter dated 16.11.90 is annexed as Annexure no. 7 to this application.

4.8 That the applicant very respectfully submitted his explanation dated 19.11.90 in response to the said punishment dated 16.11.90 that he was feeling cold due to extreme cold winter season and he had gone to the third floor in the open space in the sun. He also expressed regret for failing to inform the Finance Officer. A true copy of the said reply dated 19.11.90 is enclosed as Annexure no. 8 to this application.

-5-

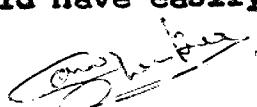
4.9 That the applicant was again served with a notice dated 14.12.90 for his absence without information from 14.00 hrs. to 14.45 hrs. of 14.12.90 and was further asked to explain his unauthorised absence in writing and why action should not be taken against him. A true copy of the said notice dated 14.12.90 is enclosed as Annexure no. 9 to this application

Annexure No.9

4.10 That the applicant in response to the said notice dated 14.12.90 submissively replied on 14.12.90 that he had not been feeling well on 12.12.90 and all of a sudden he felt pain in his stomach, so he had gone for natural call in the latrine. He had such an acute pain that he was unable to inform anyone. He expressed regret for this and prayed to forgive him. A true copy of the said reply dated 14.12.90 is annexed as Annexure no. 10 to this application

Annexure No.10

4.11 That on 14.2.91 the respondent no. 4 directed the applicant to keep his govt. motor car No. UAM/5753 ready, get its tyres checked up and attend the respondent no. 3 with the car at his residence. The applicant accordingly checked the car and finding that it required filling up air in the tyres took out the car from the garage and was going to Sardari Khera and hardly he had reached the crossing just ahead of the Rly.underground bridge on Lucknow Charbagh railway station to Alambagh than a private bus coming from the Kanpur side towards the Lucknow railway station dashed against the right side of the car and slightly damaged its window. The accident could have easily been avoided but for the brakes



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which suddenly failed, the car met with the accident and the applicant narrowly escaped the serious head-injury. It caused only slight damage to the car.

4.12 That the applicant registered an P.I.R. in the Police Station Alambagh, Lucknow on 14.2.91 regarding the accident of the aforesaid car. A true copy of the said report dated 14.2.91 along with the receipt ^{wil} for expenses for meeting /the repairs of brake are Annexures Nos.11&12 filed as Annexures 11 and 12 to this application.

4.13 That a preliminary enquiry was conducted on 14.2.91 behind the back of the applicant to find out if a *prima facie* case was made out to take disciplinary action against the applicant.

4.14 That after the preliminary enquiry the applicant was placed under suspension by an order dated 14.2.91 passed by the respondent no. 4 contemplating the departmental proceeding against him. A true copy of the said order dated 14.2.91 is filed as Annexure No.13 to this application.

4.15 That as a result of the aforesaid suspension order his salary for the month of February 1991 was stopped for payment by an order dated 19.2.91. A true copy of the said order dated 19.2.91 is filed as Annexure No.14 to this application.

4.16 That the Dy. Director Finance, R.B.S.O., Lucknow by an order dated 26.4.91 directed the applicant to report for duty to S.O./E-17 with immediate effect..



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But he was not allowed to join duty ^{there} ~~then~~ unless his suspension was revoked and his suspension period was regularised. A true copy of the said letter dated 26.4.91 is filed as Annexure No. 15 to this application.

Annexure No.15

Annexure No.16

4.17 That thereafter the order of suspension dated 14.2.91 was revoked by the respondent no. 4 by an order dated 21.5.91. A true copy of the said order dated 21.5.91 is filed as Annexure No. 16 to this application.

Annexure No.17

4.18 That the applicant requested the respondent no. 3 ~~xxm~~ vide his application dated 25.6.91 to furnish him with copies of police report dated 14.2.91, his statements dated 14.2.91, 15.2.91, and 16.2.91 and report of the mechanical workshop but neither any reply was given nor his request was acceded to. A true copy of the said application dated 25.6.91 is filed as Annexure No. 17 to this application.

Annexure No.18

4.19 That all of a sudden by an order dated 27.5.91 the period of suspension from 14.2.91 to 21.5.91 A.N. of the applicant was regularised as duty by the respondent no. 5. A true copy of the said order dated 27.5.91 is filed as Annexure No. 18 to this application.

4.20 That shortly after by an order dated 29.5.91 passed by the respondent no. 5 the services of the applicant were terminated with effect from 29.5.91 and with a provision for payment of one month's salary

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in lieu of one month's notice in advance. A true copy of the said order dated 29.5.91 is filed as Annexure No. 1 to this application.

4.21 That although the services of the applicant were terminated, he was not paid up his salary, allowances compensation and bonus as due on the date of termination. He was still due to his salary, allowances, compensation and bonus. A letter dated 30.5.91 from the respondent no. 5 to the concerned authorities is filed as Annexure No. 19 to this application.

Annexure No.20
4.22 That aggrieved by the impugned orders, the applicant made a representation dated 13.6.91 to the respondent no. 2 detailing therein the illegalities committed in passing the said orders. A true copy of the said representation is filed as Annexure no. 20 to this application.

Annexure No.21
4.23 That the applicant also served a legal notice dated 15.7.91 on the respondents through his counsel but to no effect. A true copy of the said notice dated 15.7.91 is filed as Annexure no.21 to this application.

4.24 That the respondent no. 5 by an order dated 17.7.91 informed the applicant that his appeal dated 13.6.91 had been rejected by the competent authority. A true copy of the said order dated 17.7.91 is filed as Annexure No. 2 to this application.

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4.25 That aggrieved by the orders dated 17.7.91 aforesaid the applicant made a further representation dated 24.7.91 to the respondent no. 2 but no reply has been received as yet. A true copy of the said representation dated 24.7.91 is filed as Annexure No. 22 to this application.

A Annexure No.22

4.26 That the applicant was paid his balance of salary and allowances as late as 30.10.91 by cheques dated 14.10.91 and 30.10.91 for Rs.862/- and Rs.3200/- only from respondent no. 2. But his compensation and O.T. allowance have not been paid to him as yet. True copies of the said cheques dated 14.10.91 and alongwith supporting bills 30.10.91 are filed as Annexures nos 23 and 24 to this application.

Annexures Nos.
23 and 24

4.27 That getting no response from any corner the applicant made another representation dated 15.4.92 to the Hon'ble Minister for Railways and all the respondents under registered A.D. covers but no reply has been received from any of them. A true copy of the said representation dated 15.4.92 alongwith its A.D. and postal receipts are filed as Annexures nos.25 to this application.

Annexure No.25

4.28 That a careful survey of the whole case clearly reveals that the respondents committed the following illegalities in passing the impugned orders dated 29.5.91 and 17.7.91 :-

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- (1) That the impugned order of termination from service of the application^{nt} is made by way of punishment and it is not termination simpliciter according to terms of the appointment without any stigma.
- (2) That there is a patent violation of the rights of the applicant as provided in Article 311(2) of the Constitution of India, in defiance of Articles 14 and 16 of the Constitution of India and against the principles of natural justice.
- (3) That the impugned order is made by way of punishment as the allegation of damaging of car, absence from duties are the basis and foundation for not considering the applicant to be fit for being retained in service.
- (4) That the personnel junior to the applicant in the merit list (annexure no. 4) is still working and Sri Karnail Singh, Motor-car driver a man of choice of the respondents nos. 3 to 5 who was previously working in place of the applicant with the respondent no. 3 has been utilized vice the applicant just on termination of his services on 29.5.91 A.N. clearly show that the respondent No. 3, 4 and 5 were ^{and} prejudiced with the applicant/wanted to get rid of him.
- (5) That the real test, whether the impugned order is punitive in nature or a mere termination simpliciter is that but for the incident whether the order of termination would have

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been passed. If not, the order is definitely punitive and not termination simpliciter. In the instant case the applicant's services would not have been terminated but for the incidence of accident. The order is decidedly punitive in nature.

(6) That a proper show cause notice was absolutely necessary to be issued to the applicant to regularise his pay for 14.11.90 for his short period absence but the respondent no. 3, contrary to rules and against principles of natural justice directly passed an order dated 16.11.90 (Annexure No. 7) for regularising his pay as leave without pay without issuing the said notice prior to punishment being imposed.

(7) That while making a preliminary enquiry on 14.2.91 the statements of certain officials were recorded behind the back of the applicant and he was obliged to sign statement dictated by respondent no. 4 on the clear assurance given by the respondents nos. 3, 4 and 5 that it would avoid termination of his services. The impugned act, terminating his services without any show cause notice, enquiry or supply of particulars of alleged damage etc. having been given to him, was bad in law and against principles of natural justice, violation of Articles 311, 14 and 16 of the Constitution of India.

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(8) That after the preliminary enquiry a prima facie case was made out against the applicant and he was placed under suspension by an order dated 14.2.91 (annexure no. 13) passed by the respondent no. 4 who was not competent to suspend him.

(9) That the applicant requested the respondent no. 3 to furnish him with copies of documents detailed in para 4.18 above but he was not supplied with the same. He was, thereby, kept handicapped in making his proper defence, by way of appeal to the appellate authority with full facts.

(10) That suspension should be resorted to only when a prima facie case for removal or dismissal from service is made out after a formal departmental enquiry against misconduct of a government servant otherwise one should not be suspended. In this particular case applicant was suspended after necessary preliminary enquiries and after a prima facie case for misconduct was made out against him. He was accordingly suspended but suspension was revoked and suspension period regularised as duty. This was purposely done to avoid proper and formal departmental enquiry against the applicant although it was absolutely necessary and unavoidable and was a MUST in this case.



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-13-

(11) That the impugned order dated 29.5.91 (annexure no. 1) is passed by the authority not competent to pass the said order.

(12) That the order of suspension dated 14.2.91 (annexure no. 13) was also passed against the applicant by the authority not competent to suspend him.

(13) That though services of the applicant were terminated by the impugned order dated 29.5.91, his salary, allowances and bonus were paid as late as 30.10.91 and his overtime allowance and retrenchment compensation have still not been paid to him although the same must have been paid to him on the very date i.e. 29.5.91 of passing the impugned order of termination as required under law. So the applicant is still continuing in service.

(14) That the appeal dated 13.6.91 preferred by the applicant has been illegally rejected by the order dated 17.7.91 without disclosing the authority which passed the said orders without reasons, without a speaking order, without application of mind, without examining the facts and circumstances of the case, hence the orders are illegal, inoperative, unconstitutional, without application of mind, without examining the facts and circumstances of the case and without authority and power vested in it.

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(15) That service of government servant even though contractual initially, cannot be determined by terms and conditions of the contract, once he is appointed and he acquires a status. The applicant's services although contractual could not be dispensed with without resorting to procedure of Article 311(2) of the Constitution.

(16) That the accident to the car, F.I.R. (annexure No. 11), letter dated 16.11.90 (annexure No. 7), letter dated 14.12.90 (annexure no. 9), preliminary enquiry dated 14.2.91, suspension order dated 14.2.91 (annexure no. 13) show that the impugned orders of termination were passed by way of punishment and cast stigma on the applicant.

(17) That if the termination from service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and requirement of Article 311 must be complied with but it was not done in the instant case.

(18) That the circumstances preceding or attendant on the order of termination show that the order is punitive in nature based on misconduct.

(19) That the impugned order visits with evil consequences and casts an aspersion, hence it is ^l by way of punishment.

(20) That the form of the order is not conclusive of its true nature but it is merely a cloak camouflage for the order founded on misconduct.

-15-

In the instant case althouth the order in form is simpliciter, it is actually punitive in nature.

- (21) That the termination of applicant's services is arbitrary, illegal, void, being punitive in nature.
- (22) That no one can be condemned without hearing in the essence of justice in both quasi-judicial and administrative action as has been done in the instant case of the applicant.
- (23) That the impugned order though couched in innocuous terms is in reality founded on the adverse report made behind the back of the applicant. In view of it the impugned order is unsustainable.
- (24) That once the services of a govt. employee whether permanent or temporary are sought to be terminated on charges of misconduct or inefficiency or corruption the provision of Article 311(2) of the Constitution of India has to be followed. But this has been ignored totally in this case.
- (25) That it is clear and evident in the context of the aforesaid facts and circumstances of the case that the impugned order of termination though couched in the innocuous terms as being made in accordance with the terms



as being made in accordance with the terms and condition of appointment, yet the impugned order of termination from service of the applicant, in fact, is made by way of punishment being based on misconduct.

(26) That the impugned orders dated 29.5.91 and 17.7.91 have not been passed by authorities under their own designation with their seals, hence illegal and liable to be set aside.

5. Grounds for relief with legal provisions:

5.1 Because the impugned order though couched in innocuous terms is in reality founded on adverse report made behind the back of the applicant.

5.2 Because there is a patent violation of the rights of the applicant as provided in Article 311 of the Constitution of India and against the principles of natural justice.

5.3 Because the allegations of damaging of car, absence from duty are the basis and foundation for misconduct and the applicant's services could not be terminate under the cloak of order simpliciter without affording him an opportunity as envisaged under Article 311(2) of the Constitution of India.

5.4 Because the order of termination would not have been passed against the applicant but for the incident of car-damaging, absence from duty, hence the termination is punitive in nature.

5.5 Because the respondent no. 3 directly passed a order against the applicant that he was absent

from duty on 14.11.90 without pay instead of issuing him a prior show cause notice before passing the said order. It is quite illegal and against the principles of natural justice.

- 5.6 Because termination of service of the applicant is by way of punishment and is not termination simpliciter according to term of appointment without any stigma.
- 5.7 Because the person junior to the applicant is still working and the person who was working prior to the engagement of the applicant has been utilized vice him ~~or~~ just on termination of his services clearly show that the respondents nos. 3, 4 and 5 were prejudiced ~~against~~ with him as he was not illegally working according to their wishes, so they wanted to get rid of the applicant and engage their own man of choice who would satisfy ^{them} legally and illegally as they wished.
- 5.8 Because the applicant prayed for supply of documents as detailed in annexure no. 17 but he was not supplied with the same so he could not make a pin-point appeal to the appellate authority in his defence.
- 5.9 Because the applicant was obliged to sign certain statements dictated by the respondent no. 4 without supplying copies of the same to him with an assurance that he would not be removed from service but he ~~was~~ intentionally made out a case for termination of his service keeping him in dark with the joint conspiracy of respondents nos. 3, 4 and 5.

5.10 Because impugned order was not passed by the competent authority. It is in clear violation of Article 311(1) of the Constitution of India.

5.11 Because the suspension order was also not passed by the competent authority. It is in clear violation of para 4 of Northern Railway Servants Discipline and Appeal Rules, 1968.

5.12 Because it was only after making a prima facie case against the applicant that he was placed under suspension in contemplation of a departmental enquiry against him. But after remaining under suspension for about 3 months no enquiry was instituted. It is a clear proof that the respondents intentionally avoided a departmental enquiry lest they should fail to prove the charge of misconduct which was the foundation of termination of his services.

5.13 Because the applicant was not paid all his salary, allowances, overtime and retrenchment compensation on the date of termination of his service as required under law, hence he is still continuing in service.

5.14 Because the order dated 17.7.91 rejecting the appeal of the applicant is without disclosing the rank of the ~~same~~ competent authority, without issuing speaking order, without giving reasons for rejection, without examining the facts and circumstances of the case. They are illegal, inoperative, unconstitutional, without application



of mind and without examining the circumstances preceding or attendant on the order of termination.

5.15 Because the services of the applicant, though contractual initially, could not be determined by term and conditions of the contract, ~~one~~ he is appointed and he acquired a status without resorting to procedure under Article 311(2) of the Constitution of India.

5.16 Because documents and incidents such as car-accident, preliminary enquiry dated 14.2.91, suspensions order dated 14.2.91, F.I. Report dated 14.2.91, document dated 16.11.90 and 14.12.90 show that impugned orders of termination were passed by way of punishment casting stigma on the applicant though in the guise of an order of simpliciter.

5.17 Because the termination order in the instant case is founded on misconduct, negligence, inefficiency so it is a punishment and requirement of Article 311 was a MUST which was not followed.

5.18 Because the impugned order visits with evil consequences and casts an aspersion hence it is by way of punishment.

5.19 Because termination of applicant's services is arbitrary, illegal and void being punitive in nature.



5.20 Because on the facts and circumstances of the case the impugned order of termination though couched in the innocuous term as being made in accordance with the term and condition of appointment, yet in fact, it is made by way of punishment being based on misconduct.

5.21 Because the impugned orders dated 29.5.91 and 17.7.91 having been not passed by the authorities under their own designation and seals are illegal, invalid and liable to be quashed on that ground.

6. Details of remedies exhausted :

6.1 That aggrieved by the impugned order dated 29.5.91 the applicant made a representation dated 13.6.91 (annexure no. 20) to the respondent no. 2 but no reply was received.

6.2 That getting no response the applicant served a legal notice dated 15.7.91 (annexure no. 21) on the respondents through his counsel but to no effect.

6.3 That the respondent no. 3 by an order dated 17.7.91 (annexure no. 2) informed the applicant that his appeal dated 13.6.91 had been rejected by the competent authority. But the said authority did not disclose the rank of the said authority.

6.4 That aggrieved by the order dated 17.7.91 the applicant made further representation dated 24.7.91 (annexure no. 22) to the respondent no. 2 but no reply has been received as yet.

[Signature]

6.5 That getting no response from any corner the applicant made another representation dated 15.4.92 (annexure no. 25) to the Hon'ble Railway Minister and all respondents under registered A.D. covers but no reply has been received from them.

7. Matter nor previously filed or pending with any other court :

The applicant further declares that he has not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any court or any other authority or any other bench of Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Reliefs sought :

In view of the facts mentioned in para 4 above the applicant prays for the following reliefs :-

(i) The Hon'ble Tribunal may be graciously pleased to quash the impugned orders dated 29.5.91 passed by the respondent no. 5 and the order dated 17.7.91 passed on appeal as contained in annexures nos. 1 and 2 of this application.

(ii) The Hon'ble Tribunal may kindly be pleased to direct the respondents to deem the applicant continuing in service with all privileges and benefits of salary, allowances and other benefits as he would have drawn had his services not been terminated with effect from 29.5.91.

(iii) The Hon'ble Tribunal may kindly award costs and any other relief which it may find just and proper.

9. Interim order, if any, applied for :

Pending final decision on the application, the applicant seeks the following interim relief:-

No interim order applied for, hence not applicable.

10. In the event of the application being sent by registered post, it may be stated whether the applicant desires to have oral hearing at admission stage, and if so, he shall attach a self-addressed post-card or inland letter at which intimation regarding a date of hearing could be sent to him.

Not applicable in the instant case.

11. Particulars of postal order filed for Rs.50/- in respect of the application fee :

(i) Number of Indian Postal Order 02 437537

(ii) Name of the Issuing Post Office Sundernagh, Lucknow

(iii) Date of issue of postal order 4.7.92

(iv) Post Office at which payable Allahabad G.P.O.

12. List of enclosures :

As per index enclosed.

Verification

I, Om Shanker Misra, aged about 26 years, son of Sri Rameshwar Misra, resident of 530/22, Om Bhawan, Brahma Nagar, Alambagh, Lucknow do hereby verify that the contents of paras 1 to 4, 6 to 7, 9 to 12 are true to my personal knowledge and those of paras 5 and 8 are believed to be true on legal advice and that I have not suppressed any material fact.

Lucknow :
Dated : 10.7.92

Signature of the applicant.

To

The Registrar,
Central Administrative Tribunal,
Lucknow Circuit Bench, Lucknow.

(Signature)
10.7.92

THE LUCKNOW MUSEUM

Annexure No. 1

टेलीफोन

J. 50037 & 50017

23

भारत सरकार - रेल मंत्रालय अनुसंधान, अधिकार्य और सानक संगठन

Government of India -- Ministry of Railways
RESEARCH DESIGNS & STANDARDS ORGANISATION

लखनऊ-226011-दिनांक 29/05/1991

LUCKNOW-226 011-Date

બાળ પંચ

श्री गोम शंकर निवास पुत्र श्री रामेश्वर मिश्रा, मोटर वाहन ग्रेड-III, देशमान रु 950-1500 पुढ़ेगा। धित्त अद्भुत जिन्हें दिनांक 03.11.10 से इतकायांत्रिय में एक वर्ष के तिये परीबीक्षाधीन रखा गया था, को तेवारं सत्त्वाया की जाती है। यह आदेश दिनांक 29.05.1991 अपराह्न से लागू होगा। श्री मिश्रा के एक माह के नोटेश अवधि के देशम भूमतान का प्रबंध किया गया है जिसे उह लजांची/अ.ज.मा.सं. ते प्राप्त कर तकते हैं।

111 (Date 25/5/51)
सम. दालाहुमण्डपम् ।

तंत्र-नकः:- उठ नहीं

कृते महानिदेश

जी तो य पंकर गिरा,

मोटर चालना है- ॥ ॥ ॥ दित्त अनुभाग ॥

ज.ड.मा.तं. /लवन्त-226011

प्रतिलिपि :- 11 अद्भुत जधिकारी/त्यापना-3 - उन्हें उद्दरोध है कि वह
जी झोम झंकर निका का स्फ माह के देवान का वित्त
1 दिनांक 30.05.91 से 29.06.91 तक। दरा कर दित्त
अद्भुत को भुगतान करने हेतु तुरंत भेजे।

21. निटेंडो। दित्त।/डॉ. झू. मा. तं।/लघनउ को जावायक लार्डवाही हेतु।

त्रिलोक नाथः लिख नामः

१ रम. वातानुगमनिकम् १

करते महानिदेश

કૃતી/26051991

Annexure No 2

(24)

तार : शोधमानक-लखनऊ
Telegrams : 'RAILSTAND' LKO.

टेलीफोन) 50567 & 50071
Telephone)

REGISTERED A/D



भारत सरकार - रेल मंत्रालय

अनुसंधान अधिकाल्प और मानक संगठन
GOVERNMENT OF INDIA - MINISTRY OF RAILWAYS
RESEARCH DESIGNS & STANDARDS ORGANISATION

पत्र संख्या

Our Reference No. E/PB-2180

लखनऊ-226011-दिनांक

LUCKNOW-226011-Dated 17.07.1991

M E M O R A N D U M

With reference to his representation dated 13.06.1991, Shri Om Shanker Misra, Ex-Motor Driver Gr.III is advised that the competent authority has considered the same and has decided that the decision to terminate his services during probation period stands.

DA:Nil

(M. BALASUBRAMANIAM)
for Director Finance

Shri Om Shanker Misra,
House No. 559/22,
Brahm Nagar,
Alambagh, Lucknow-5.

18/7/91

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD,
CIRCUIT BENCH, LUCKNOW

O.A. No. 314 of 1992

Om Shanker Misra Applicant
Versus
Union of India and others Respondents

I N D E X

COMPILED NO. 2

Sl. No.	Description of documents	Annexure No.	Pages From	Pages To
1.	True copy of call-letter dated 8.90	3	25	26
2.	True copy of panel dated 1.10.90	4		27
3.	True copy of Letter of appointment dated 22.10.90	5	28	29
4.	True copy of letter of posting dated 5.11.90	6		30
5.	True copy of letter dated 16.11.90 from Finance Deptt. to applicant	7		31
6.	True copy of reply dated 19.11.90 by the applicant	8		32
7.	True copy of letter dated 14.12.90 from S.S.C. (Adm) to applicant	9		33
8.	True copy of reply dated 14.12.90 by the applicant	10		34
9.	True copy of F.I.R. dated 14.12.91	11		35
10.	True copy of money receipt dated 14.2.91	12		36
11.	True copy of suspension order dated 14.2.91	13		37
12.	True copy of letter dated 19.2.91 from D.D.R.I. to A.O.-I	14		38
13.	True copy of letter dated 26.4.91	15		39
14.	True copy of revocation order dated 21.5.91	16		40
15.	True copy of application dated 25.6.91 from Sri Om Shanker Misra to Director Finance	17		41

contd..

Sl. No.	Description of documents	Annexure No.	Pages From	Pages To
16.	True copy of order dated 27.5.91 from Director Finance	18		42
17.	True copy of order dated 30.5.91	19		43
18.	True copy of representa- tion dated 13.6.91 from applicant to respondent No. 2 and others	20	44	47
19.	True copy of legal notice dated 15.7.91	21	48	50
20.	True copy of representation dated 24.7.91 from the applicant to respondent no. 2 and others	22		51
21.	True copy of cheque dated 14.10.91	23		52
22.	True copy of cheque dated 30.10.91	24	53	55
23.	True copy of representation dated 15.4.92 from the applicant	25	56	61

Lucknow :

Dated : 10.7.92

Signature of the applicant

18/7/92

REGULATED

Roll No.....

Application No.....

GOVERNMENT OF INDIA : MINISTRY OF RAILWAYS
 RESEARCH DESIGNS & STANDARDS ORGANISATION
 MANAK NAGAR, LUCKNOW-226011.

No. Recd./Advt./H.D./A.R.D./.....

Dated: 1/2/1998

MEMORANDUM

Sub:- Recruitment to the post of scale is (RPS) for RDSO to be held on 20-9-98.

Ref:- His/Her Application for the above mentioned post.

Shri/Smt./En. is directed to report on at 09.00 hrs. for the above mentioned test at RDSO Admn. Bldg. (Recruitment Section), Manak Nagar, Lucknow-226011.

2. He/She must bring all his certificates etc., in original in support of age, educational/technical qualifications, experience etc., which he/she will have to produce both on the day of the test/interview. In case he/she fails to produce original documents in support of age, educational/technical qualifications, experience etc., as mentioned in his application, he/she will not be allowed to appear in the test/interview.

3. He/She should also bring with him/her drawing instruments ink-pot, portable, slide rule, pens and pencils etc., for the test except paper which will be supplied by this office.

4. The use of English or Hindi is permitted during written test and interview.

5. In case he/she is already in government service and his/her application was not forwarded through his/her department, he/she should bring with him/her a 'NO OBLIGATION CERTIFICATE' from his/her office failing which he/she will not be allowed to appear in the test/interview.

6. No travelling allowance, daily allowance or any other incidental charges will be paid by this office in connection with the test and interview.

7. He/She will have to take his/her own arrangements for boarding and lodging for the period of his/her stay in connection with the test which may last 3 or 4 days.

8. The call for the test and interview for the above mentioned post does not involve any commitment on the part of this office in respect of conditions regarding pay etc. which may have been stipulated in his/her application form.

9. In case, the candidate belongs to Scheduled Castes, Scheduled Tribes community a certificate on the prescribed form in support thereof, shall have to be produced by him/her at the time of test and interview, if not submitted with his/her original application.

10. This office will not be responsible for any delay in transit or the communication despatched in this connection. In case he/she fails to get any reason to attend the aforesaid selection on the appointed date and time, a supplementary selection will be held thereafter. 26

11. A IIInd Class Railway Free Pass No..... is enclosed for Scheduled Caste and Scheduled Tribe candidate only to cover his/her journey to Lucknow. The pass for return journey will be issued to him/her after the selection is over. In case he/she is unable to attend the test, the unused pass should be returned immediately to this office under a 'REGISTERED COVER'.

12. The candidate should read the printed instruction on the Railway pass carefully and before commencement of the journey he/she should put the date and his/her signature on the pass and also put the signature on completion of the journey, and surrender the pass on his reporting to this office for selection.

Pass IIInd Class Pass

(For Director General)

TENTATIVE PROGRAMME

Dated: 26-1-90

Candidate should report to RDSC/
(Recruitment Section for written test)

08.00 hrs.

Dated: 1-2-90

Candidate should report to Recruitment
Section for ascertaining the result of
written test and time of interview.

14.00 hrs.

N.B. If necessary the interview will be held on 2nd day.

Shri/Smt./En. Chandrasekhar Ch.

Copy/11/1990

SS

27
S.V. NO. 201 OF 1990 : M.R.D. & C. RAILWAYS
RESEARCH DESIGN & STANDARDS ORGANISATION
WAKF MASAR: L.C.R.D. 211

NOTICE

Annexure No 4

As a result of recruitment held on 20.09.1990, for the post of Motor Driver, Gr.III, scale is. 950-1500(RPS), the following three candidates have been placed on the panel. Their names are given below in order of merit :

1. Shri Sunil Sarker(SC)
S/o Shri Biraj Chandra Sarker
2. Shri Om Shanker Misra
S/o Shri Kameshwar Misra
3. Shri Mahadev Paul
Shri Kali Charan Paul

2. The above panel will remain current up to 26.09.1992.

3. This has the approval of Addl. Director General.

D.A.: 'IL
Dated: 01/10/1990
(File No. Rectt/Adv. NID/2010-90-1)

(O.N. DUE 14)
Section Officer/recruitment

DISTRIBUTION

SO/E-IV

Notice Board

Sc/4
h5/10

18/10/90

bapi/01101990

भारत सरकार - रेल मंत्रालय
जनुसंखान अधिकारी और मानक संगठन
मानक नगर, लखनऊ।

सं: ६०/१०८०/५५८०(ए०ड०) ६४(पट-II) दिनांक: २५-१०-१०

ग्राहन

उनके दिनांक: १९-२-१० के अधेदन एवं तथा इस कार्यालय/कर्मचारी चयन आयोग द्वारा संचालित ६०:२०-१-१० की हुई चयन परियोग के आधार पर श्री/श्रीमती/कुप्रीती अमृता द्वारा दूसरे पुत्र/पुत्री श्री रमेशदत्त नाथशाह को इस कार्यालय के डॉक्टर नियुक्ति भूमिका में नियुक्तम् () को लिख दिया गया है। इसके साथ ही साथ वह के आश्रयी पद के लिए नियुक्त प्रस्ताव भेजा जाता है। इसके साथ ही साथ वह लेख बोर्ड के नियमों पर जीवन सम्पर्कसमय पर देय अन्य भत्ते परने इकारार होगी।

(2) उनकी नियुक्ति प्रथमता नितान्त ही असली है। उन्हें एक धर्ष के लिए परिवीक्षाधीन रखा जाएगा जिसे पढ़ पाए उनके अधिकार करने की तारीख से माना जाएगा। वरिवीक्षाधीन जवाहि प्रशासन द्वारा जाए भी बदायी जा सकती है। परिवीक्षाधीन जवाहि के दौरान उनकी सेवाएं एवं मर्हीने का नीटिस देकर बिना कोई कारण बताए समाप्त की जा सकती है। इस कार्यालय नीटिस की जवाहि सम्बन्धी शर्त उनके परिवीक्षा जवाहि के सफलता पूर्वक पूरा करने पर लागू होगी।

(3) उनकी नियुक्ति मॉडल चिकित्सा अधिकारी, उल्लार रेलवे, लखनऊ द्वारा उन्हें सरकारी सेवा के लिए स्वयं धोषित कर दिए जाने पर की जाएगी तथा डॉक्टरी परियोग की व्यवस्था इस कार्यालय द्वारा दी जाएगी। डॉक्टरी सरीख डॉक्टरी परियोग से पहले डॉक्टर द्वारा से ६०: २०/- वसूल दिए जाएंगे। उन्हें इस लिए भेजने से पहले उनके द्वारा द्वारा इस कार्यालय द्वारा नियुक्त प्राप्त करने से पहले भारत तथा विभिन्न भारत के संविधान के प्रति निष्ठा की रूपाय ग्रहण करनी चाही।

(4) नियुक्त होने पर यह कार्यालय उनके लिए आवासीय (साकारा) लववा (प्राइवेट) की व्यवस्था करने में असमर्थ रहेगा। इसलिए लेनदेन में उन्हें आवास थाने की स्थानीय व्यवस्था करनी पड़ेगी।

(5) पद का कार्यभार ग्रहण करने के लिए उन्हें इस कार्यालय द्वारा किसी भी यात्रा अथवा अन्य किसी प्रसारित व्ययों का भुगतान नहीं किया जाएगा।

(6) यह नियुक्ति प्रस्ताव इस शर्त पर भी है, कि उनके एक से अधिक जीवित पत्नी नहीं है।

11/18/2019 4/3
कृते मुख्यनिदेशक।

replies

Annexure No. 6

(30)

Government of India
Ministry of Railways
Research Design & Standards Organisation
Manak Nagar
Lucknow- 11

No. EPRB-2180

Dated: 5-11-70

Sh. AM SHANKER MISHRA s/o Sh. RAMESHWAR MISHRA
has been appointed as Ty. Under Driver Gr-III w.e.f. 05-11-70 E/I/IV
and is posted in Finance. Dte. Section of R.D.S.O.
Dte. 1970/Lucknow. He may be taken on rolls and this slip may be
returned to Estt. IV Section for further action.

DA:Nil

M. D.

Section Officer (E/I/IV)

Director Finance

R.D.S.O.

LUCKNOW....

Copy forwarded to 3C/Ett.III/34/7-8-9

Section Officer (E/I/IV)

S. D. Bain
Re. take into my rule
from today in
5/11

Sh. D.

5/11/70

नोट्स
प्रिवेट
नोट्स
Annexure No 7
31

विना/ प्रश्ना/ सामाजिक/ ई. वा. आर। १०-१।

दिन। १६-१-९०

लिखित : कारों से अलगिकृत अनुभासिति।

आप दिन। १५-१-९० को पूछी हैं कि विना किसी अधिकारी को सूचित किये अपराह्न के चार बजकर २० मिनी तक कार्यालय से कार रद्द विकाश पता लगाने के लावजूद क्या न मिल सके।

आप को उक्त तिथि को विनावेतन अवकाश पर समझा जाता है। परं निलाने के सक सम्भाहन अन्दर आप सुनि हैं कि किसी अनुभासिति से आप करोंगे।

श्री ओम शेखर मिश्र

गाड़ी चालक (Car driver).

विना निवेशा।

आ अ. ना. ६०८०८०

१५ जनवरी १९९०
वृ० ३ ग्रु. अधि. प्रभारी

Annexure № 8

32

तार्किकी विद्या

३०. ३०. ३०. ३०. ३०.

संस्कृतः अस्ति वाचस्पतिः इति । अप्यत्रिप्तिः विद्युतः । अप्यत्रिप्तिः विद्युतः ।

ମୁଦ୍ରାକାରୀ

315n2112 29

19.11.30

Parade No. 9

35

Finance & Accounts
RDSO / Lucknow

No. F/Admn/Misc/DAK/90-1

14.12.90

Sub - Absence from office.

You were absent on 14.11.90 without any intimation, for which
we're責任ed.

Now, again for rd time you were absent without any
intimation from 14.02 Hrs to 14.45 Hrs. Explain your unauthorised absence
in writing, and why action should not be taken against you.

Amrit
SSA (Adm)

18/12/90

Annexure No. 10

34

उन्. अ. मा. रा. ल/रा. ३ -

ਮੈਂ ਨਿਰਧਾਰਿਤ ਹੋਵੇਂ ਪਾਸ - ਪ੍ਰਾਹਿਂ ਤੋਂ ਸ਼ਾਮਿਆਤ - ਹੀਲਾ - ਤੇ ਪੱਧਰ
ਲੋਕ ਵਾਲੇ ਦੂਜੇ ਮੁਹੱਲੇ : 12/12/1960 ਨੂੰ ਸਾਡਾ ਹੈ - ਪ੍ਰਾਹਿਂ ਤੋਂ ਪੱਧਰ ਵੱਡੇ ਹੋਏ
ਹੋਏ ਹੋਏ - ਕਿਵੇਂ ਹੁਣੀ ਹੈ - ਕਿਵੇਂ ਹੋਏ - ਕਿਵੇਂ ਹੋਏ - ਹੁਣੀ ਹੈ - 16. 21
ਕਿਵੇਂ ਹੋਏ - ਕਿਵੇਂ ਹੋਏ - ਕਿਵੇਂ ਹੋਏ - ਹੁਣੀ ਹੈ - 16. 21

କୁଣ୍ଡଳ କରନ୍ତି କରନ୍ତି କରନ୍ତି ।

27/11/2013

14/61 f90.

1866

पर गा ॥ निम्न ग्रन्थाम ७०/१४१/२१९१

इस दस्तावेज़ का अनुसंधान निम्न गा. गा. गा. गा. गा. गा. ३५

ग्रन्थाम ७०/४१/२२ ग्रन्थाम ग्रन्थाम ग्रन्थाम ग्रन्थाम
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18/12/

Annexure No 12

संग्रहालय द्वारा दिलें
गोपनीय विद्युत विभाग
14/2/91
संग्रहालय नं 5753

ફોન પાછાં નેટ - 35 = 00
(ફોન પાછાં ફાટના) - / /

त्रिं उत्तरां जाग अन् ॥
जाग र रात्रि असि
उत्तर वर्ष वर्ष ३
जाग र रात्रि ॥

4 (1951) 12120

కృష్ణ

द्वारा भारतीय विदेशी
लंगड़ी फाइल, जोड़ देशी लंगड़ी

188

Standard Form of Order of Suspension (Rule 5 (1) of
the Railway Servants (Discipline and Appeal) Rules, 1968)

Annexure No 13

No. F/AD/P/121/ OS Misra

Name of Railway Administration: Finance & Accounts Directorate
R.D.S.O.

Place of Issue : Lucknow

Dated: 14.2.1991

ORDER

WHEREAS a disciplinary proceeding against
Shri Om Shankar Misra, Driver is contemplated.

NOW, therefore, the President/the Railway Board/
the undersigned (the authority competent to place the
Railway servant under Suspension in terms of the Schedules
I, II and III appended to Railway Servants (Discipline and
Appeal) Rules, 1968/ an authority mentioned in proviso to
Rule 5 (1) of the Railway Servants (Discipline and
Appeal) Rules 1968). In exercise of powers conferred by
Rule 4/Proviso to Rule 5 (1) of the Railway Servants
(Discipline and Appeal) Rules, 1968, hereby places the said
Shri Om Shankar Misra, Driver under suspension
with immediate effect/ with effect from 14.2.1991 (Forenoon).

It is further ordered that during the period this
order shall remain in force, the said Shri Om Shankar Misra,
Driver shall not leave the headquarters without obtaining
the previous permission of the competent authority.

Signature

Name : (N. S. SINHA)
Accounts Officer-I
R.D.S.O. Maraknagar/Lucknow

Copy to:

1. Shri Om Shankar Misra, Driver (In Office). Orders regarding
subsistence allowance admissible to him during the period
of suspension will issue separately.
2. Sr. SC Accounts (Admn) RDSO, LHC. for necessary action.

(N.S.Sinha)
Accounts Officer-I R.D.S.O.
Lucknow.

18/2/91

Annexure No 14

(38)

6/PL
Note No. DDM/I/Misc. C/10

Dt. 19.2.1991.

Sub: Subsistence allowance to Shri
Om Shanker Misra, Meter Driver.

Ref: Your note No. F/AD/P/121/OS Misra
dt. 15/19.2.1991.

...

E-III Section is not aware whether any Charge-sheet is issued to the above employee and he has been placed under suspension. A copy of the suspension order may be addressed to E-III Section. Also a copy of the order notifying the payment for subsistence allowance w.e.f. 14.2.91 may be issued immediately.

2. The employee may also be directed to give a certificate as per rules before he is paid the subsistence allowance. Till such time the payment is being off salary for the month of February, 1991 is being stopped.

(S. Bhatia)
DDM-I.

A.O. -I.

6/PL
S. Bhatia
DDM-I.

15/2/91

Annexure No 15

(39) 18

R.D.O.O. FINANCIAL ACCOUNTS DIRECTORATE

No. F/AD/P/121/0.0.M.

Maukheri, Lucknow-11
Dated: 26.4.1931

S.O.O. No. 8 1931

Shri Om Shankar Misra, Motor Driver Grade-III
attached to Finance Directorate vide SC/E-IV letter No.
1/PS-2180 dated 5.11.9, and who is presently under
suspension is directed to report to SC/E-IV with
immediate effect.

(Ravinder Seth)
Dy. Director, Finance

Copy for information and encircumvention to -

SC/E-IV

SCA-III

Secy. to D.G.

✓ Shri Om Shankar Misra, Motor Driver (Under Suspension)

Transfer letter to be sent C.R.C

Suspension is to be lifted and posting is
regularised.

DDF.

Shri

Secy. to D.G.

11/82-1
26/4/31

ANNEXURE IV

2/3/S Annexure 16

Standard Form or Order for Revocation of Suspension Order.

(Rule 5 (5)(c) of Railway Servants (Discipline & Appeal) Rules 1968
No. F/AD/P/12105 Misra.

(Name of Railway Administration) Finance and Accounts Dept.,
(Place of Issue) Lucknow..... RDSO.
Dated 21.5.1991.

ORDER

Whereas an order placing Shri...~~Om. Shankar Misra, Driver Gr. III~~
(name and designation of the Railway servant) under suspension
was made/ by...~~the undersigned~~.... on 14.02.1991.....

Now, therefore, the President/the Railway Board/the
undersigned (the authority which made the order of suspension
or any other authority to which that authority is subordinate)
in exercise of the powers conferred by clause (c) of
sub-rule (5) of Rule 5 of the Railway Servants (Discipline
and Appeal) Rules 1968, hereby revokes the said order of
suspension with immediate effect/with effect from 21.5.1991 A.N.

* (By order and in the name of the President)

Om. Shankar Misra
21.5.91
.....
(Signature)

(Name) *Om. Shankar Misra*

Designation of the Authority making the
this order) *Director Finance, RDSO, Lucknow*

Copy to:

✓ Shri ~~Om. Shankar Misra, Driver Gr. III, RDSO, Lucknow.~~
(name and designation of the suspended Railway servant)
JDA-III RDSO, LKO.
SOE.IV RDSO/LKO.

Om. Shankar Misra
21.5.91
for Director Finance,
RDSO/Lucknow

Slur

Mr. *Om. Shankar Misra*
Account Officer,
RDSO/Lucknow.

Annexure No 17

41

Garhi

आ लक्ष्मीनारायण

लूका विहारी

अम अम भाव से

लूका विहारी

विषय : श्री-द्वारा-आपको देखा गया
दृश्यों का युक्ति पाने के सम्बन्ध में;

संदर्भ : I युक्ति देखा गया 14/2/91

II वक्तव्य - 14/2/91

III वक्तव्य - 15/2/91 16/2/91 16/2/91

IV अलगीले लोक द्वारा आपको देखा गया

14/2/91

आपको संक्षेप में आपके प्राप्ति देखा गया

उपरोक्त संदर्भों का देखा गया

यह देखा गया कि आपको

देखा गया

देखा गया

लूका

देखा गया 25/2/91

लूका देखा गया I

आपको देखा गया II

25/2/91

आपको देखा गया

मालवा-लूका देखा गया III

25/2/91 देखा गया

आपको देखा गया

18/2/91

Annexure No (8)

(42)

GOVERNMENT OF INDIA-MINISTRY OF RAILWAYS
RESEARCH DESIGNS AND STANDARDS ORGANISATION
MANAK NAGAR/LUCKNOW-226011

No: EPD-2180

Dated: 27.5.91

O R D E R

The period of suspension of Sh. Om Shankar Mishra, Motor Driver, Gr-III/Finance from 14.2.91 to 21.5.91 A.N. has been regularised as duty.

DA/NL.

11/522-27/5/91
(M. Balasubramanian)
for Director(Finance)

Copy to:-

✓ 1) Sh. Om Shankar Mishra, Motor Driver Gr-III/Finance Dte, RDSO/LEO.
2) SO/E-III. The difference of pay from 14.2.91 to 21.5.91 will be drawn after receipt of NO DEMAND CERTIFICATE from all concernd.
3) Director/Finance, RDSO/Lucknow-11.

DA/NL.

MSR (M. Balasubramanian)
for Director General.

Annexure No 19

(43)

RESEARCH DESIGNS AND STANDARDS ORGANISATION
MANAK NAGAR/LUCKNOW.

No: ERB -2180

Dated: 30/5/91.

Sub: No Demand Certificate in favour of
Sh. Om Shankar Mishra, M.D., Gr-III/
Finance Dte.

....

Sh. Om Shankar Mishra, S/o Sh. Paraswar Mishra, Motor Driver Gr-III/
Finance Dte has been removed from service w.e.f 29.5.91 A/N. The concerned
sections are requested to furnish "NO DEMAND CERTIFICATE" in his favour
early but not later than 14.6.91. In case no reply is received by the above
date, his dues will be settled accordingly treating that nothing is due from
him and will be responsibility of the concerned section to realise the dues
if any found recoverable later on.

11/2/91
(M. Balasubramaniam)
for Director General.

32

DISTRIBUTION

AO-I SO/E-III SO/Hindi. SO/Confdi. SO/Pass. Secy. to D.G.
Estate Supervisor, D.C.O.S. Security Inspector. (ICN/Estate)
Sr. Electrical Foreman, HECT and CS Recreation Club. HTO, SO/Adm.

him
391

18/5/91

The Director General,
RDSO, Ministry of Railways,
Lucknow.

Annexure No 20

(44)

Representation/Appeal against Order no. EPB/1180
dated. 29.5.91 passed by Director General/RDSO
for termination of the service of the representa-
tionist without any reference or reasons.

.....
Respected Sir,

Aggrieved by the above order, the representa-
tionist respectfully submit as under:

1. That as a result of recruitment held on 20.9.90
for the post of motor Driver Grade III scale Rs. 950-1500
(RPS), the representationist was placed on the panel on no.
second in order of merit.

2. That thereafter, on the terms and conditions laid
down in memorandum No. E/AP/Misc(MD)/68 (Part II) dated
22.10.90, the representationist was appointed on the aforesaid
post of the Motor Driver and joined duty w.e.f. 5.II.90.

3. That according to para 2 of the above mentioned
memorandum dated 22.10.90, containing the terms and conditions
the representationist was appointed on the said post of Motor DR
Driver being a probationer for a period of one year with a
further condition that his services, during the probation
period, were liable to be terminated at any time without assign-
-ing any reason but on One Month Notice!

4. That it was not at all provided in the aforesaid
Memorandum dated 22.10.90 containing the service condition
that the service of the representationist, during the period
of the probation, can also terminated on one month's pay in lieu /
of one month's Notice.

5. That in view of the facts mentioned in para 3 & 4
the conditions precedent for terminating the services of the
representationist during the probation period were that:

- (a) the employer was bound to give one month's notice
to the representationist,
- (b) the notice must be simpliciter, and that it was
not the option of the employer to pay one month's
pay to representationist in lieu of one month's
Notice, which was mandatory under the terms of
agreement.

(45)

6. That there was no agreement at all between the representationist and his employer with regards to termination of service on one month's pay, thus the order of termination having been passed without one month's notice to the representationist is illegal and against the contractual liabilities. The representationist, in such circumstances, is still in the service of the RDSO organisation under your kind control.

7. That the order of termination of services of the representationist has been passed in a mechanical manner and in colourable exercises of powers vested in the authority passing the order; and it has been passed in gross violation of the principles of Natural Justice and without being given him an opportunity to show cause. Thus the termination order is not simpliciter and, therefore is violative of the service conditions laid down in the memorandum dated 22.10.90 rather it is malafideas would be seen from the events mentioned below:

(a) By an order No. F/AD/P/121/ OS Misra dated

I4.2.91 passed by the Account Officer - I, RDSO, Lucknow, the representationist was placed under suspension with effects from I4.2.91 on the grounds that a disciplinary proceeding against him was contemplated.

(b) The aforesaid order of suspension was passed in exercise of the powers conferred by rule 4/ provision to rule 5(I) of the railway servants (Discipline & Appeal) Rules 1968.

(c) That after suspension, vide S.O.O. No. 8 dated 26.4.91, the representationist was asked by Dy. Director Finance to report to S.O.E-IV, upon which the S.O.E-IV had endorsed his remark that ' Transfer cannot be done till suspension is revoked and the period is regularised.

(d) That as provision of the D & A Rules, only Dy. Director Finance-cum- Pay Account Officer is competent to suspend any class III employee but not the Account Officer being a class Two Officer.

(e) That after suspension, during the period of three months neither any charges have been framed nor any charge sheet issued against the representationist.

(f) Therefore, by an order No. F/AD/P/121/OS Misra dated 21.5.91 passed by the Account Officer-I the aforesaid order of suspension was revoked w.e.f. 21.5.91 AN but was handedover to representationist only on 20 May'91(FN).

(g) The above order of revocation was passed in

(46)

exercise of the powers conferred by clause(e) of sub-rule (5) of Rule 5 of D & A Rules 1968.

(h) Thereafter by an order no. EPB/2180 Dated. 27.5.1991, passed by the Director Finance the period of Suspension was regularised as duty, but this was delivered through despatch on 30 May '91 and with endorsed with the remarks to SOE-III that the bills for the difference of the pay will only be made after receipt of the "No Demand Certificate."

(i) Thereafter, by an order No. EPB/2180 Dated 29.5.91 passed by the Director General, RDSO/Lko the service of the representationist were terminated with immediate effects and was delivered on 29 May '91.

From the facts mentioned above, it is evidently clear that the service of the representationist have been terminated as a measure of punishment and in violation of the principles of Natural Justice particularly when the person junior to him was still in service. In such circumstances, the termination notice cannot be said to be a simpliciter.

8. That in the facts and circumstances mentioned above the termination order of the representationist is malafide and the action of revoking the order of suspension and regularising the period of suspension are based on the ill motives just to prepare a field to remove the representationist from the service without any reference, reasons or affording an opportunity to him to make a proper defence. The facts is that the representationist is innocent in the matter and has commit'ed no wrong or misconduct warranted his removal from service.

9. That since the service of the representationist have been terminated without any chargesheet and opportunity to make his proper defence against the charges, if any, in the disciplinary proceeding contemplated against him, is gross violation of rule of Natural Justice, has been deprived of his right of self defence, which is unconstitutional and was violated the Articles 14, 16, and 21(2) of the constitution of India.

10. That apart from what have been mentioned above, it is further respectfully submitted that the service of the representationist have been terminated in violation of the various provisions of constitution, and under predetermined conspiracy made in collaboration with the officer ad establish-

ment section on the wrong presumption and misinterpretation of para 2 of the appointment letter dated 22. 10.90, which is evidently proved by the contents of the order dated 27.5.91 (regularisation of the period of suspension) , which was delivered to representationist on 30 May'91.

Would it had been issued earlier or on 27.5.91 a suitable action would have been taken deemed fit under the circumstances. But It has been deliberately delivered late only to concealed the manipulation of the establishment officer and clerk.

II. That in the facts and circumstances mentioned above, a great injustice has been inflicted upon the representationist by terminating his service without any references or Reasons.

It is therefore, respectfully prayed that your goodself may kindly be pleased to consider this "Appeal" representation with a judicious view and be pleased further to set aside the termination order of the representationist and he may be reinstated in service to meet the end of justice.

With a hope to get justice from you, Sir.

Thanking you.

Yours Faithfully.

Lucknow.

Dated. 13 June'91.

(Om Shanker Misra)
Motor Driver Gr. III
Finance Directorate/REDO/Lko

Copy forwarded to the Director Finance/REDO, with a request to review the termination order and reinstate the representationist on the post held by him.
Copy to Account Officer-I for information and action.P1.

Lucknow.

Dated. 13 June'91.

Copy forwarded to the Director Finance/REDO, with a request to review the termination order and reinstate the representationist on the post held by him.
Copy to Account Officer-I for information and action.P1.
(O.S.Misra)

2/C

18/6/91

S. L. Ahluwalia

M.A., LL.M. (Luck.)

11, L. P. Marg

Lucknow

Email:

does Consult it

E-2768
Rajaji Puja
LUCKNOW-226017

Legal Notice

Date 15th July'91

To The Chairman, Rly. Board, New Del' /.
 Ref. No. The Director General/RDSO/Lucknow., Date.....
 The Director Finance, RDSO/Lucknow.../
 Sh. NC Sinha, AO-I/RDSO, Lucknow//.
 Sh. M. Balasubramaniam SO/E-IV, RDSO, Lucknow//.

Sir,

As per instruction of My client Shri Im Shanker Misra s/o Shri Rameshwar Misra r/o 559/22, Brahm nagar, Lucknow, and on his behalf , I am serving you this legal notice as following:

1. After having been selected as a Motor Driver Gr. III in scale Rs. 950-1500 my cleint has joined duty on 5th November'90 on the terms and conditions laid down in appointment letter dated 22.10.90 and was deputed with Director Finance, RDSO, Lucknow.
2. That on 14.2.91 , the motor vehicle no. UAM/ 5753 met with an accident due to failure of the Brake, in which my client was narrow escaped with some head injury and some damage to vehicle also.
3. That as a measure of punishment, my client was suspended by an incompetent authority as D & A Rules without any charges levelled against him , contemplating the departmental proceedings against him.
4. During the period of three months, neither any charges has been framed against my client nor any charge-sheet issued or no enquiry has been conducted as per procedure laid down in D & A Rules of the Railway Board under provisions of , my client was suspended.
5. That After keeping silence for the period of three months and eight days, the suspension of my client was revoked vide memo , dated 21.5.91 FN , but was served to my client only on 29th May'91 FN.
6. That the suspension period of my client was regularised by Director Finance on 27.5.91, but was served to my client only on 30.5.91 through despatch, with a remark to SO-E-III (cash) that, his payment will only be made after receiving "no objection certificate."
7. That on 29th May AN at 17 hours, in the presence of Sh. M. Balasubramaniam SO/E-IV and dealing asstt. Shri S. L. Ahluwalia, Mr. NC Sinha AO-I has served the notice of termination to my client with immediate effects with one month pay for the month of June'91 in lieu of one month notice and thus violating the contractual conditions laid down in the appointment letter dated 22.10.90, and too without making the payment of salary (Subsistence allowances) for the month of May' 91.

Adv. S. S. Chaturvedi
M.A., LL.B. (Luck)
Advocate
High Court Lucknow
Adv. Adm.
Consultant

E-2768
Rajaji Puram
LUCKNOW-226017

- 2 -

Date.....

That my client's removal was made in a predetermined malafide intention as a measure of punishment without assigning any reasons or references for termination of service.

9. That the suspension, revoke of suspension and regularisation of suspension period was done with the planned conspiracy for the removal of my client without any charges or references, is evidently proved to establish your predetermined malafide intention to remove my client during probation, arbitrarily under clause 2 of the appointment letter dated 22.10.90, because during suspension period no termination can be made.

10. That the payment of the salary of the June'91 in lieu of one month notice is irregular and illegal and against the contractual agreements and too without making the "subsistence allowance" for the month of May'91, which is so violated the provision of "payment of wages" etc.

11. Th rather than framing the charges or issuing a chargesheet or conducting an enquiry for fixing the responsibilities of accident or damage to vehicle, if any, all of you have manipulated, twisted and misinterpreted the facts and deliberately concealed the facts of accident as a measure of punishment, terminated my client from service under para 2 of appointment letter, which is twisted and misinterpreted by SO/E-IV, which leads to misguided the higher officers and termination of my client.

12. That as a measure of punishment, the termination failed to fulfil the proceeding laid down under article 317(2) of the constitution of India, which is deliberately violated by all of you, with also infringement of article 14 & 16 of the constitution of India.

13. That the concealment of accident is tentatively to misuse the powers and deliberate intention of the govt. property and funds by the senior administrative officers, Director Finance, AO/I and SO/E-IV.

14. Therefore on the facts, stated above, it is submitted that:

- The termination order may be withdrawn and reinstate my client on the post w.e.f. 29th May'91.
- That an enquiry may kindly be arranged to fix the responsibilities of accident and damage the vehicle, if any, and whatever responsibilities of damage upon my client, my client is ready to pay whatever deemed fit under the circumstances of the accident.

Chand Chaturvedi

M.A., LL.M. (Luck.)

Advocate

High Court Lucknow

Trials.

Legal Consultant

E-2768

Rajaji Puram

LUCKNOW-226017

- 3 -

Date.....

IX. (x) O. provide me Sir, an opportunity to see your honour personally to settle the issues amicably without being in any kind of litigation, between employer and employee.

14 (c). That if no action would be taken as per para (a), (b), or a suitable reply is made within a period of 'Three weeks' from the date of the receipt of this notice then there would be no other alternate way client except to seek redress in the competent court for relief and justice, at your cost and consequences please.

God may prevail you good counsel.
Thanking you.

Yours Sincerely.

Lucknow.

Dated. June 95.

A.P. Chaturvedi
Advocate.

1. The "Union of India" through the Chairman, Railway Board, Rail Bhawan, New Delhi. I.
2. Shri O.P. Jain Director General RDSO, Lucknow. II.
3. Razia Azam Director Finance, RDSO Lucknow. II.
4. Shri N.C. Minha Acct. Officer I Finance Directorate RDSO/ Lucknow. II.
5. Shri M. Balasubramaniam SO E-IV RDSO, Lucknow. II.

18/6/95

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Annexure No 22

To

The Director General,
RDSO(Min. of Railways),
Manak Nagar,
Lucknow-226011.

Kind Attention Sir O.P.Jain

Sub: Appeal/Representation dated 13.6.91 against
order of termination passed by your Honour
on 29.5.91.

Ref: i) My appeal dt. 13.6.91. ii) My interview with your / on 14.6.91.
iii) Reply of Dir. Finance No. E/2100 dt. 17.7.91

Sir,

With due regards, I beg to state that against the order of termination of my services, I have submitted an appeal to your Honour, because you are the head of the Organisation with a copy to Director, Finance/RDSO/Lucknow.

2. For such appeal, you are the competent authority. Moreover, during interview, you have assured me that 'let the file come, I will see'.

3. But on 19.7.91, I surprised to see the reply dt. 17.7.91 from Director Finance, in which Dir. Finance has communicated the decision being an incompetent authority, because the appeal has been submitted to you, being an appealant authority (copy attached) in this case.

4. Infact, Sir, I have been made a target of a conspiracy made by Dir. Finance in collaboration with A.O.I and J.C.E-I7, and these people do not want to place my file before your Honour, Sir. They are adamant to harass me in these hard days when employment is beyond the reach of poor people like me.

5. Therefore, it is requested to Sir, that you personally look into the matter and call for files for doing justice with me. For favourable action please.

Thanking you,

Yours faithfully,

DA: Copy of letter of Dir. Finance (O.S.MISRA) dt. 17.7.91.

557/22, Brahma Nagar, Alambagh,
Lucknow-22.
24.7.91.

18/18

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Annexure No 23

BOOK NO

012543

CHEQUE NO

D 627101

LKO
8

R. D. S. O.

DIVISION

STATE BANK OF INDIA

TO THE RESERVE BANK OF INDIA

THE ASSISTANT SUB-SECRETARY OFFICER

GOVERNMENT OF INDIA

MINISTRY OF RAILWAYS

8-1-47

CODE NO. 2
141091

DATED

Pay to

Rupies

Chandigarh Branch, Lucknow

or order

RS. 562.02

and charge the same against the account of

NORTHERN RAILWAY (R.D.S.O.)

For Lt. Director Finance & Administration
Offices (A/c), R.D.S.O., Lucknow

NB THIS CHEQUE IS CURRENT FOR THREE MONTHS ONLY AFTER THE MONTH OF ISSUE.

18/1/62

Drawn 2 time payment in #10 Dr. on Skinkar Mura, EPB-2180 dt. 21/11
 Motor driver Gr. 111. Suspended fr 14.2.91 to 21.5.91. Terminated on 29.6.91 KN.
 Drawn Month No. of day Pay Date Cash Total V. No. Ref. No.

Feb. 91 1/5 RHC 615 - 299 35 250 1279 - KN/2219/10/11
 Mar. 91 April " 475 - 2045 35 250 964 - KN/17/6/11
 April 91 Mars. for 2 & 3/91 475 - 2423 35 250 1095 - KN/239/91/11
 May, 91 29 No pay: drawn

Total = 1645 838 105 750 3338 -

Due
 Feb. 91 RHC 950 485 35 250 1720 -
 Mar. 91 " 950 485 35 250 1720 -
 April 91 " 950 485 35 250 1720 -
 May, 91 29 881 453 35 234 1609 -

Total = 3739 1908 138 984 6769 -
 (-) 1645 838 105 750 3338 -

Pay

diff due - 2094 1070 33 234 3431 -

Balance
 1070

RDSC/MOPF/1/GEN/1/PERIODICAL

Supply MLC

1. Schedule pertaining to the General Scheme
Group Insurance Scheme/1986.

Name of Bill pertaining to year: 1986/1987/Examination.

Bill Unit: C.I.I. General Estt. for: Oct, 1987.

Ver. No. NC 701114211 S-12 dt. 21-10-87

Category of staff: Govt. of India Admin. & Technical

Group: A 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 10010 10011 10012 10013 10014 10015 10016 10017 10018 10019 10020 10021 10022 10023 10024 10025 10026 10027 10028 10029 10030 10031 10032 10033 10034 10035 10036 10037 10038 10039 10040 10041 10042 10043 10044 10045 10046 10047 10048 10049 10050 10051 10052 10053 10054 10055 10056 10057 10058 10059 10060 10061 10062 10063 10064 10065 10066 10067 10068

The Minister for Railways,
Rail Bhawan,
NEW DELHI - 1

56
Last - Reminder

Annexure No. 25

Representation/Appeal against Order no. EPB/2180
dated. 29.5.91 passed by Director General/RDSO
for termination of the service of the representa-
tionist without any reference or reasons.

.....
Respected Sir,

Aggrieved by the above order, the representa-
tionist respectfully submit as under:

1. That as a result of recruitment held on 20.9.90 for the post of motor Driver Grade III scale Rs. 950-1500 (RPS), the representationist was placed on the panel on No. second in order of merit.
2. That thereafter, on the terms and conditions laid down in memorandum No. E/AP/Misc(MD)/68 (Part II) dated 22.10.90, the representationist was appointed on the aforesaid post of the Motor Driver and joined duty w.e.f. 5.II.90.
3. That according to para 2 of the above mentioned memorandum dated 22.10.90, containing the terms and conditions the representationist was appointed on the said post of Motor ~~Driver~~ Driver being a probationer for a period of one year with a further condition that his services, during the probation period, were liable to be terminated at any time without assigning any reason but on One Month's Notice.
4. That it was not at all provided in the aforesaid Memorandum dated 22.10.90 containing the service condition that the service of the representationist, during the period of the probation, can also terminated on one month's pay in lieu of "one month's Notice".
5. That in view of the facts mentioned in para 3 & 4 the conditions precedent for terminating the services of the representationist during the probation period were that:
 - (a) the employer was bound to give one month's notice to the representationist,
 - (b) the notice must be simpliciter, and that it was not the option of the employer to pay one month's pay to representationist in lieu of one month's Notice, which was mandatory under the terms of agreement.

(57)

6. That there was no agreement at all between the representationist and his employer with regards to termination of service on one month's pay, thus the order of termination having been passed without one month's notice to the representationist is illegal and against the contractual liabilities. The representationist, in such circumstances, is still in the service of the RDSO organisation under your kind control.

7. That the order of termination of services of the representationist has been passed in a mechanical manner and in colourable exercises of powers vested in the authority passing the order; and it has been passed in gross violation of the principles of Natural Justice and without being given him an opportunity to show cause. Thus the termination order is not simpliciter and, therefore is violative of the service conditions laid down in the memorandum dated 22.10.90 rather it is malafideas would be seen from the events mentioned below:

- (a) By an order No. F/AD/P/121/03 Misra dated 14.2.91 passed by the Account Officer - I, RDSO, Lucknow, the representationist was placed under suspension with effects from 14.2.91 on the grounds that a disciplinary proceeding against him was contemplated.
- (b) The aforesaid order of suspension was passed in exercise of the powers conferred by rule 4/ provision to rule 5(I) of the railway servants (Discipline & Appeal) Rules 1968.
- (c) That after suspension, vide S.O.O. No. 8 dated 26.4.91, the representationist was asked by Dy. Director Finance to report to S.O.E-IV, upon which the S.O.E-IV had endorsed his remark that ' Transfer cannot be done till suspension is revoked and the period is regularised.
- (d) That as provision of the D & A Rules, only Dy. Director Finance-cum- Pay Account officer is competent to suspend any class III employee but not the Account Officer being a class Two Officer.
- (e) That after suspension, during the period of three months neither any charges have been framed nor any charge sheet issued against the representationist.
- (f) Therefore, by an order No. F/AD/P/121/03 Misra dated 21.5.91 passed by the Account Officer-I the aforesaid order of suspension was revoked w.e.f. 21.5.91 AN but was handedover to representationist only on 29 May'91(FN).
- (g) The above order of revocation was passed in

exercise of the powers conferred by clause (c) of sub-rule (5) of rule 5 of D & A Rules 1963.

(h) Thereafter by an order no. EPB/2180 Dated. 27.5.1991, passed by the Director Finance the period of Suspension was regularised as duty, but this was delivered through despatch on 28 May'91 and was endorsed with the remarks to DCE-III that the bill for the difference of the pay will only be made after receipt of the No Demand Certificate.

(i) Thereafter, by an order No. EPB/2181 Dated 28.5.91 passed by the Director General, HQD,Lko the service of the representationist were terminated with immediate effects and was delivered on 29 May'91.

From the facts mentioned above, it is evidently clear that the service of the representationist have been terminated as a measure of punishment and in violation of the principles of Natural Justice particularly when the person junior to him was still in service. In such circumstances, the termination notice cannot be said to be a simpliciter.

8. That in the facts and circumstances mentioned above the termination order of the representationist is malafide and the action of revoking the order of suspension and regularising the period of suspension are based on the ill motives just to prepare a field to remove the representationist from the service without any reference, reasons or affording an opportunity to him to make a proper defence. The facts is that the representationist is innocent in the matter and has committed no wrong or misconduct warranted his removal from service.

9. That since the service of the representationist have been terminated without any chargesheet and opportunity to make his proper defence against the charges, if any, in the disciplinary proceeding contemplated against him, is gross violation of rule of Natural Justice, has been deprived of his right of self defence, which is unconstitutional and was violated the Articles 14, 16, and 311(2) of the constitution of India.

10. That apart from what have been mentioned above, it is further respectfully submitted that the service of the representationist have been terminated in violation of the various provisions of constitution, and under predetermined conspiracy made in collaboration with the officer ad establish-

(59)

ment section on the wrong presumption and misinterpretation of para 2 of the appointment letter dated 22. 10.90, which is evidently proved by the contents of the order dated 27.5.91 (regularisation of the period of suspension), which was delivered to representationist on 30 May'91.

Would it had been issued earlier or on 27.5.91 a suitable action would have been taken deemed fit under the circumstances. But it has been deliberately delivered late only to concealed the manipulation of the establishment officer and clerk.

II. That in the facts and circumstances mentioned above, a great injustice has been inflicted upon the representationist by terminating his service without any references or Reasons.

It is therefore, respectfully prayed that your goodself may kindly be pleased to consider this "Appeal" representation with a judicious view and be pleased further to set aside the termination order of the representationist and he may be reinstated in service to meet the end of justice.

With a hope to get justice from you, Sir.

Thanking you.

Yours Faithfully.

Lucknow.

Dated.

15/4/1992

(Om Shanker Misra)
Motor Driver Gr. III
Finance Directorate/RDSD/Lko

Copy to :

1. The Minister for Railways Rail Bhawan New Delhi-1.
2. The Chairman Railway Board Rail Bhawan New Delhi-1.
3. The Member of Staff, Railway Board New Delhi-1.
4. The Director-General R.D.S.O. Manak Nagar, Lucknow-11.
5. The Additional Director General R.D.S.O. Manak Nagar, Lucknow-11.
6. The Director Finance R.D.S.O. Manak Nagar, Lucknow-11.
- Mr. J. S. Jain, 10/F100/Manak Nagar, Lucknow-11.

Lucknow

Dated

APRIL - 1992

(O.S. Misra)

Ad- 559/22 Braham nagar

Alam bagh Ph. - 5

15/4/92

(60) १६

बीमा नहीं NOT INSURED

ये टाक दिये गए हैं १५३ ।
Amount of stamp affixed Rs १५३।

दिनांक १५३।

मुद्रांशु ग्रन्थी

कानूनी नाम Recd. by Kallen

दिनांक १५३।

मुद्रा १६४
मुद्रा के लिए दिये गए हैं।
Amount of stamp affixed १६४।



बीमा नहीं NOT INSURED

ये गये टाक दिये गए हैं १५४ ।
Amount of stamp affixed Rs १५४।

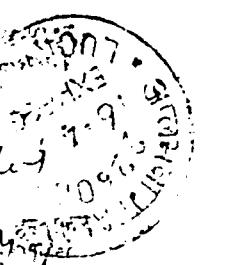
दिनांक १५४।

मुद्रांशु ग्रन्थी

कानूनी नाम Aly Board

दिनांक १५४।

मुद्रा १६५
मुद्रा के लिए दिये गए हैं।



बीमा नहीं NOT INSURED

ये गये टाक दिये गए हैं १५५ ।
Amount of stamp affixed १५५।

दिनांक १५५।

मुद्रांशु ग्रन्थी

कानूनी नाम Aly Board

दिनांक १५५।

मुद्रा १६६
मुद्रा के लिए दिये गए हैं।



बीमा नहीं NOT INSURED

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Amount of stamp affixed Rs १५६।

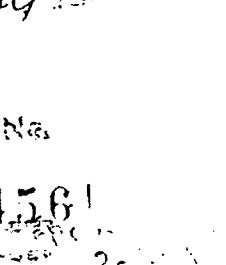
दिनांक १५६।

मुद्रांशु ग्रन्थी

कानूनी नाम D.C.

दिनांक १५६।

मुद्रा १६७
मुद्रा के लिए दिये गए हैं।



बीमा नहीं NOT INSURED

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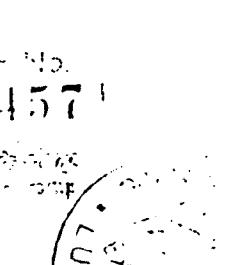
दिनांक १५७।

मुद्रांशु ग्रन्थी

कानूनी नाम Recd. by D.C.

दिनांक १५७।

मुद्रा १६८
मुद्रा के लिए दिये गए हैं।



बीमा नहीं NOT INSURED

ये गये टाक दिये गए हैं १५८ ।
Amount of stamp affixed Rs १५८।

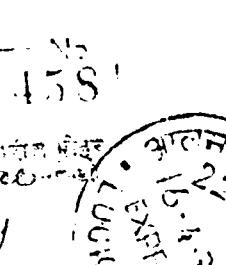
दिनांक १५८।

मुद्रांशु ग्रन्थी

कानूनी नाम D.C.

दिनांक १५८।

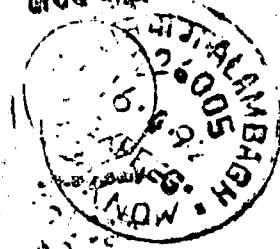
मुद्रा १६९
मुद्रा के लिए दिये गए हैं।



8/6

RECEIVED IN REPLY MAIL
DEPT. OF POSTS & TELEGRAMS

61



Mr. Shankar Misra
559/22 Braham Nagar
Aligarh U.P.
Lucknow

18/10

8/2

ANSWER

(52)

and you are writing us

1458

The Director Finance 166
R.D. New Market
Tel. No. 226311

Ans
T. S.

will get a general signature of reference

18/6/63

BEFORE THE HON'BLE GENERAL ADMINISTRATIVE TALJUNAL

LUCKNOW & L.D.C., LUCKNOW.

Title:

Registration C.A. No. 314 of 1972.

Or. SHANKAR KISHORE Applicant.

versus

UNION OF INDIA & OTHERS Respondents.

COUNTER REPLY ON BEHALF OF THE
RESPONDENTS.

I, H.N. Sehgal, aged about 52 years, son of Sri D.D. Sehgal, resident of C-147/3, Janak Nagar, Lucknow do hereby solemnly affirm and state as under :-

2. That the official above named is working as Dy. Director, Estt-I in the office of the Director General, Research, Designs and Standards Organisation (herein after called R.D.S.O), (Ministry of Railways), Lucknow and has been duly authorised on behalf of the respondents for filing the instant reply. The official above named has perused the available relevant records of the instant case and has also gone through the Application and has understood the facts and circumstances of the case.

3. That before giving parawise replies to the application, the answering Respondents crave leave of the Honourable Tribunal to state certain relevant facts which are necessary and essential in appreciating the controversy involved in the instant case :

3.1 That in order to fill up 3 posts of Motor Drivers Grade -III in scale Rs. 55-1500 (R.S) a Direct Recruitment/Selection was held on 20.9.90 and as a result, a panel of 3 candidates was formed and notified on 1.10.90. The applicant's name appeared at S.No.2 of the panel. Accordingly, the Applicant was offered appointment to the post of Motor Driver Grade -III under certain terms and conditions as stipulated in the appointment letter which were accepted by him and appointed on 5.11.90 in the Finance Directorate of this Organisation.

3.2 That on 14.2.91, the applicant took out the Vehicle No. CA-5753 without any authority and the said vehicle met with an accident which caused considerable loss to the Administration. On discovery of the damaged vehicle in the garage of Administrative building, the applicant was questioned and his answers were obtained in writing which is annexed as Annexure CA-1. In serious dereliction of duty the Applicant was placed under suspension w.e.f. 14.2.91 (A.M.). The suspension period was regularised in terms of extant rules.

Annexure
CA-1.

3.3 That later due to his un-satisfactory working during probation period, his services were terminated w.e.f. 20.3.91 (A.M.) making payment of

X/10

one month's salary in lieu of serving one month's notice in terms of para 2 of his appointment letter.

The parawise replies are given as under :-

4. That the contents of paras 1, 2 & 3 of the Original Application need no reply being matter of records.
5. That the contents of paras 4.1 and 4.2 of the Original Application are admitted to the extent that the petitioner was placed at Serial No.2 of the panel of 3 candidates formed as a result of direct recruitment held on 20.9.1990.
6. That the contents of para 4.4 of the Original Application need no reply being matter of record.
7. That the contents of para 4.5 of the Original Application are false, incorrect and mis-leading, hence denied. It is submitted that the applicant was careless and negligent worker and was often warned verbally for dereliction in duty. The applicant was warned verbally, he was warned in writing as well for being casual and careless in working on 14.11.90 and 12.12.90 (Annexed as Annexure 7 & 9 of the Application) to improve his conduct and work sincerely during probation period, but the applicant never cared and continued to neglect his work.
8. That the contents of para 4.6 of the Original Application are incorrect, hence denied. The allegations made in para under reply are false and misleading and figments of applicant's own imagination.

The staff car is used for official purpose only as per extant rules and for which the log book is maintained. It is further submitted that the services of Suri Karnail Singh were utilised after removal of the applicant and even before the appointment of the applicant by arrangement with the transport Cell of the R.D.S.C., which is not under control of the Finance Directorate.

9. That in reply to the contents of paras 4.7 and 4.8 of the Original Application, it is submitted that the applicant was issued with a letter dated 16.11.90 (annexed at Annexure 4.7 to the Application) calling explanation for his absence from duty since fifteen to 16.20 hours on 14.11.90 within a period of 7 days from the date of receipt of the letter. He was also informed that his absence would be treated as Leave without pay for that day. When the applicant gave the required explanation, the applicant was given only verbal warning and he was not considered as being on leave without pay. It is further submitted that the aforesaid action was necessary to instil sense of discipline in the applicant in view of his carelessness since joining service as costly Government asset was placed at his disposal.

10. That in reply to the contents of paras 4.9 and 4.10 of the Original Application, it is submitted that the applicant was absent from duty during office hours on 12.12.90 without informing his controlling officer for which he was asked to explain. The explanation was again submitted by the applicant on 14.12.90 stating that he was not well and regretting the absence. The reply was filed.

11. That the contents of para 4.11 of the Original Application are factually incorrect, hence denied. The car was not to be taken out on 14.2.91 for which Shri C. Shankar Misra was verbally instructed by Respondent No.3 and 4 in the evening of 13.2.91. This has also been stated by him in writing on being questioned on 14.2.91 (Annexure SA-1) after the discovery of the damage to staff car. As per standing instruction, Shri C. Shankar Misra was required to deposit the keys of staff car after parking it in garage of Administrative building with the Accounts Officer -III Shri A.K. Mathanagar daily in the evening after performing the assigned duties. But he did not deposit the keys of staff car in the evening of 13.2.91 with the Accounts Officer -III Shri A.K. Mathanagar, hence keys remained with him upto the morning of 14.2.91 from 13.2.91.

The requirement of filling up the air in the tyre of staff car on 14.2.91 cannot be ascertained by Administration. However, Shri C. Shankar Misra was not required to take out the staff car on 14.2.91. He had taken out the staff car on his own without permission as the keys of staff car were with him as they were not deposited by him in the evening of 13.2.91 after performing the assigned duties. This fact has been specifically admitted by Shri C. Shankar Misra while answering the question No.2 & 3 when he was questioned on 14.2.91 (Annexure SA-1).

Annexure
SA-1.

Administration is not aware of the circumstances leading to the accident. In the morning of 11.2.81 he reported around 7.15 A.M. and was found in good cheer. He neither requested nor reported to Railway Hospital for any examination of any injury. The car was damaged very badly and remained stalled for four months. The cost of repair was approximately Rs.25,000/-.

12. That the contents of para 4.12 of the Original Application need no comments, as the administration has no knowledge of these facts.

13. That the contents of para 4.13 of the Original Application are incorrect, hence denied. No preliminary inquiry was conducted on 14.2.1981.

14. That the contents of para 4.14 of the Original Application are incorrect, hence denied. As stated in para 13 of this reply, no preliminary enquiry was conducted. However, the applicant was placed under suspension for serious dereliction of duty.

15. That in reply to the contents of para 4.15 of the Original Application, it is submitted that the salary for the month of February was stopped with a view to finalise the subsistence allowance of the applicant.

16. That the contents of para 4.16 of the Original Application need no comments, being matter of record.

17. That the contents of para 4.17 of the Original Application are admitted. The order of suspension was revoked and his services were regularised as per extant rules.

18. That the contents of para 4.18 of the Original Application, are incorrect, hence denied. Under the extant provisions, the applicant is not entitled to get the documents.

19. That the contents of para 4.19 of the Original Application are admitted.

20. That the contents of para 4.20 of the Original Application, are incorrect, hence denied. The applicant's services were terminated for his un-satisfactory work during the probation period strictly in terms of his appointment. The applicant was given one month's salary in terms of para 2 of the Memorandum contained in the offer of the appointment to post, which the applicant accepted before appointment to the post of Actor Driver Grade-II.

21. That the contents of para 4.21 of the Original Application are incorrect, hence denied. The applicant was appointed on purely temporary basis with a probation period of one year only on the terms and conditions, which the applicant had accepted before joining on the post. One month's salary was paid to the applicant via Voucher no. AG-III/1424 (91-92) dated 21.10.91. No compensation and / or bonus as claimed are admissible as a probationer.

22. That the contents of para 4.22 of the Original Application are incorrect, hence denied. It is submitted that the said order terminating the services of the applicant was passed strictly in accordance

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with terms & conditions of appointment to the post contained in para 2 of Memorandum annexed at Annexure No. 5 to the Application. The representation dated 13.6.91 of the applicant was considered and replied to via Memorandum dated 17.7.1991 at Annexure No.2 to the Application.

23. That the contents of para 4.23 of the Original Application need no comments.

24. That the contents of para 4.24 of the Original Application are incorrect, hence denied. The averments made in para 22 of this Counter Reply are reiterated.

25. That the contents of para 4.25 of the Original Application are incorrect, hence denied. It is submitted that the representation of the applicant dated 24.7.1991 was considered, but no reply was given again since the decision of the patent authority was already communicated to the applicant against his earlier representation, (copy annexed at Annexure No. 2 of the Case).

26. That the contents of para 4.26 of the Original Application, are incorrect, hence denied. As averred in preceding paras of this Counter Reply, no compensation is admissible to the applicant.

27. That the contents of para 4.27 of the Original Application, are incorrect, hence denied. The applicant made exactly the same application contained in Annexure No.25 of Original Application as was made by him earlier dated 13.6.1991 with only a view to mislead this honorable Tribunal.

28. That the contents made in para 4.2. of the original Application and sub-para's therein are incorrect, hence denied. It is submitted that there is nothing illegal in passing the said order. The applicant was appointed on a purely temporary basis with a probation period of one year only and his services were terminated in accordance with the Memorandum containing the offer of appointment to the applicant. It is further submitted that the contents in sub-para's to the para 4.2. of the Criminal Application are of purely legal aspects, which shall be suitably replied during the course of arguments.

29. That in reply to the contents of para 5 of the Criminal Application, it is submitted that none of the grounds taken in the C.A. are tenable. That in reply to the contents of para 5 of the original Application it is submitted that no new grounds have been put-forth by the applicant for any interference by this Appellate Tribunal and as such the Applicant is not legally entitled for any relief as claimed and the instant Application is therefore liable to be dismissed. Also besides the relief as claimed, the interim relief is also not legally tenable and the same is liable to be rejected with costs.

30. That the contents of para's 6 & 7 of the Original Application need no comments.

31. That the reply to the contents of para 3 of the Original Application it is submitted that the application has no merit and deserves to be dismissed with cost in view of the averments made in para 2e of the instant reply.

32. That the contents of paras 9, 10 and 12 of the Original Application need no comments being matter of record.

Place : Lucknow.

MV
RESPONDENT

Dated : 14 - 12 - 1992.

VERBAL STATEMENT

I, Mr. SINGH, do hereby verify that the contents of paras 1 and 2 of the instant reply are true to my personal knowledge and those of paras 3 to 32 of the instant reply are based on knowledge derived from the perusal of the records of the instant case kept in the official custody of the answering respondents. Nothing material has been concealed and nothing stated therein are false.

Place : Lucknow.

M. Singh —
REPRESENTATIVE

Date : 14 - 12 - 1992.

ਅਧਿਆਤਿ ਪ੍ਰਾਗਾਂ ਕਾਨੂੰ ਮਨਸ਼ਾ ਪ੍ਰਾਗਾਂ ਕਾਨੂੰ

मिश्र - वालों २२०५४५२ - ०८२ ०८८५७५३.

प्रश्न- आज सुना क्या है? आपके पास क्या है?

त्रितीय- आज प्रातः ७-१५ बोर्डों आठ बोर्डों पर दूरी-
मी. गोड़ी की दूरी साइड के पाइया गी एवं दूरी गोड़ी
बोर्डों की भी बोर्डों १५ बोर्डों पर बोर्डों
से गोड़ी निम्नों आई. दूरी दूरी के बोर्डों की
विशेष घटना एवं उत्तराभ बोर्डों के पाइया- की-
रात- की सरदारी रवेंडा जो रदा या रेल अचाम्पा
उत्तराभ बोर्डों या रात के बोर्डों पर बोर्डों की दूरी की-
बोर्डों की बोर्डों की तरफ से आती- दूरी दूरी-
बोर्डों की बोर्डों की गई। बोर्डों की बोर्डों की
लंबाई भी बोर्डों की गई। बोर्डों की बोर्डों की
पुराने- आज गोड़ी बोर्डों की जो बोर्डों की। तब उपरा- १५ बोर्डों की

पुरन- आज गोड़ी बाईर- नदी जोना- ५। तब आपने- निकला
 उन्होंने गोड़ी निकला- । यदि आने लियो जोप- तो- हवा
 वाम थी तो यह लोप लोपीलय का समय- तो अति-
 र व्याप्त हो सकता था। इसी बाये परिवर्षतार्थ- ५-
 ०। जिनके लोरों इतनी सुबह आपने- हवा
 धूम- लोरों आवश्यक- समझा- ।

ਤੁਲਤ-! ਰਾਇ ਸਦਾ ਪੁਨਾਰ ਖੇ ਰਖਨੀ ਹੈ ਵਿਚ-

સ્ટાન્ડર્ડ - $\frac{1}{100}$ ઇન્ચ દીઠી - 2 કિલો ક્રમ રાખાલે ક્રમાંક ૧૨૦૦૦૦
ને. ક્રમાંક પુછામ કોઈ રૂપ પૂર્ણ કરી નિ. = ૫.

५० - आज पुस्तक आपने चाली जमानारों का -
००२०१० दी बताया आप ने आज गाड़ी निमंत्तने
के लिए असम्भव है अपेक्षा भी उन्नुमति नहीं
लो इसका क्या करें।

३० - आज शुतः मैं चाली जमाने बाया दुखा था
परन्तु बिल्ली बाटे को रुक्की के लगाते हैं एवं उसके पारात
कुत्तों बिट्ठा था इस तरीके जूझे दौड़ाया तो वह इसे
- लिए हैं ने ने चाली दी जासा कर सके नहीं
उन्नुमति हो सकता है।

५० - आज बुक दरकार रहे यह पता चलता है कि आपने
१३/२/११ को आज बुक नहीं मारी है क्या करों।

३० - आज बुक ने बिल्ली का करारा कर दिया है।

५० - गाड़ी का अवलोकन करा पर लाइफ बुक आया है।
सीट-पर असुरक्षित-स्थिति रखे हुई थीं जिनका दुखी हो।
जो पश्चात गाड़ी के दाइनी आइ-के दरवाजे पुराने
रखते हुए थे तथा आप उसे लिया किसी को चुनौती
से नहीं गाड़ी रखी नहीं। अनुप्रियत-पाये गए।
स्थिति परिवर्तित हो आपको लिपरवादी का कारण होता
बुक चोरी भी नहीं रखती थी।

३० - दुधदूना-दूना-को बोय मैं इसी आदेश के बाहर
दूना चाहा था तो सिर्फ इसके बाहर का लिंगाने से लिया।
मैं भी लिया - आपके उपरान्त रामेश्वर दुध बैंडोर
के द्विरक्षण तो गाया चाहे बदा को द्विरक्षणी-दूना-दूना-
इसलिए जैसे खगड़ी का डैरिया के उपरान्त जौका रामेश्वर हो।

१३/२/११

मानव

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDL.BENCH, ALLAHABAD/ CIRCUIT BENCH, LUCKNOW

Cm Shanker Mishra
VERSUS
Union of Indian Authors

No. OA 314 of 1992

I / we the undersigned do hereby nominate and appoint Shri Manick Sinha

and Shri _____

Advocate, to

be counsel in the above matter, and for me / us and on my / our behalf to appear, plead, act and answer in the above Court or any Appellate Court or any Court to which the business is transferred in the above matter, and to sign and file petitions, statements, accounts, exhibits, compromises or other documents whatsoever, in connection with the said matter arising there from, and also to apply for and receive all documents or copies of documents, depositions, etc, etc, and to apply for issue of summons and other writs or subpoena and to apply for and get issued any arrest, attachment or other execution, warrant or order and to conduct any proceeding that may arise thereout and to apply for and receive payment of any or all sums or submit the above matter to arbitration.

Provided, however, that, if any part of the Advocate's fee remains unpaid before the first hearing of the case or if any hearing of the case be fixed beyond the limits of the town, then, and in such an event my / our said advocate shall not be bound to appear before the court and if my/our said advocate doth appear in the said case he shall be entitled to an outstation fee and other expenses of travelling, lodg^g, etc. Provided ALSO that if the case be dismissed by default, or if it be proceeded ex parte, the said advocate(s) shall not be held responsible for the same. And all whatever my / our said advocate(s) shall lawfully do, I do here by agree to and shall in future ratify and confirm.

ACCEPTED :

1r Advocate

19/10/99

Signature of Client:

2- Advocate

..... १००० रुपये ।

A
10/2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD,
CIRCUIT BENCH, LUCKNOW

O.A. NO. 314 OF 1992

Om Shankar Misra Applicant
versus
UNION OF INDIA AND OTHERS ... Respondents

REJOINDER ON BAIL IF OF THE APPLICANT

the applicant most respectfully says to submit :

1. That before giving paravise replies to the counter-reply of the respondents, the applicant humbly prays the Hon'ble Tribunal to allow him to throw some light on certain relevant and material facts which form the background of the instant case.
- 1.1 That the Railway Board, New Delhi issued an order (in power and possession of the respondent no. 2) regarding 'saving of petrol' in the railway department to all concerned. According to that, there are clear instructions that the Govt. cars be used only three days a week so that a petrol may be saved. The cars were to be used only on Mondays, Wednesdays, and Fridays in a week for official use only. But contrary to these instructions the applicant had to use the car on other days on Mondays, Thursdays, Saturdays and sometimes on Sundays also on verbal orders of the respondent no. 4 who forced the applicant to show this unauthorised use of car for official work although the car was actually used both for official as well as for private work and this was the root cause of the trouble. The applicant did not like this and sometimes resisted this sort of unfair work. He wanted to fill in the

1/1/92

contd...2

motor-car movement register strictly according to rules. But the respondents nos. 4 and 5 pressurised him to use the car for their private purposes also and show the consumption of petrol for official work. The applicant, for lack of worldly experience, could not foresee that this might turn to ultimately termination of his service

- 1.2 That it is absolutely wrong to state that the car was not used on Thursdays for official purposes as the car was used on 15.1.90, 22.1.90, 31.1.91, 30.1.91, 17.1.91 and other dates on Thursdays by the orders of the respondents nos. 3 and 4.
2. That the contents of para 1 to 3 need no comments.
3. That the contents of para 3.1 of the counter need no comments.
4. That the contents of para 3.2 are incorrect, hence denied. The statements recorded on 14.2.91 (Annexure no. CR-1 of the counter) are not the independent statements of the applicant. The respondents nos. 4 and 5 dictated the questions as well as their replies to the applicant and directed him to write as they were dictating. They assured the applicant that they would let him off. The applicant relying upon the respondents nos. 4 and 5 signed the statements in good faith, knowing little the plot which they were making against him to get rid of him as he did not act according to their wishes in using the car for their private purposes as and when they so required. Only this much is admitted that the applicant was placed under suspension with effect from 14.2.91 and the period of suspension was subsequently

regularised ^{as} on duty by the respondent no. 5. Rest is not admitted.

5. That regarding the contents of para 3.3 ~~that~~ only this much is admitted that services of the applicant were terminated on 29.5.91. But neither he was paid his salary, allowances, compensation and bonus as fell due on 29.5.91, the date of termination of his services nor was there any condition in para 2 of the appointment letter (Annexure no. 5 of the original application) that he would be paid one month's salary in lieu of serving one month's notice in case he...

6. That the contents of para 4 of the counter-Reply need no comments.

7. That the contents of para 5 need no comments.

8. That the contents of para 6 need no comments.

9. That the contents of para 7 of the counter are quite wrong, hence denied. The applicant always performed his duties sincerely and honestly. The complaints pointed out in the said para are of trifling and negligible nature and the nature of the complaint itself connotes that the respondents nos. 4 and 5 were always finding fault with the applicant. Generally masters ignore such complaints of their servants specifically the motor car drivers are apt to commit such negligible mistakes in their day to day duties and their masters never take it seriously.

10. That the contents of para 8 of the counter are quite wrong, hence denied and those of para 4.6 of the

contd...4

application are re-iterated.

11. That the contents of para 9 of the counter are incorrect, hence denied and those of para 4.7 and 4.8 of the application are re-iterated. The said paras of the application show how much the respondents nos. 4 and 5 were prejudiced against the applicant.
12. That the contents of para 10 of the counter-reply are wrong, hence denied and those of paras 4.9 and 4.10 of the application are re-iterated.
13. That the contents of para 11 of the counter-reply, in view of the reply under para 3 of this rejoinder are quite wrong, hence denied and the contents of para 4.11 of the original application are re-iterated.
14. That the contents of para 12 of the counter-reply are incorrect, hence denied and those of para 4.12 of the application are re-iterated.
15. That the contents of para 13 of the counter-reply are emphatically denied and those of para 4.13 of the original application are re-iterated. A preliminary enquiry was conducted against the applicant on 14.2.91 behind his back.
16. That the contents of para 14 of the counter-reply so far as they are inconsistent with those of para 4.14 of the original application are wrong, hence denied. The applicant was placed undersuspension after a *prima facie* case was made out against him by the respondent no. 4 who was not competent to suspend him.

18/10/92

17. That the contents of para 15 of the counter-reply so far as they are inconsistent with those of para 4.15 of the original application are wrong and denied.
18. That the contents of para 16 of the counter-reply need no comments.
19. That the contents of para 17 of the counter-reply so far as they are inconsistent with those of para 4.17 of the original application are incorrect and are denied.
20. That the contents of para 18 of the counter-reply are quite wrong and denied. The non-supply of requisite documents is against the provision of Article 311(2) of the Constitution of India and also against the principle of natural justice.
21. That the contents of para 19 of the counter-reply need no comments.
22. That the contents of para 20 of the counter-reply are incorrect, hence denied. The impugned order of termination from service of the applicant is made by way of punishment and it is not termination simplicitor according to terms of the appointment without any stigma.
23. That the contents of para 21 of the counter-reply are quite wrong, hence denied. The applicant was not paid his salary, allowances, compensation and bonus as found due on 29.5.91, the date of on which his services were terminated. He was also due compensation and bonus which must have been paid to him on 29.5.91 but were paid as late as 14.10.91 and that too only part of them. He is still due his O.T. allowances.

24. That the contents of para 22 of the counter-reply are wrong and denied. The impugned order is made out by way of punishment as the allegations of damaging the car, absence from duties ^{as} the basis and foundation for not considering the applicant to be fit for being retained in service.
25. That the contents of para 23 of the counter-reply need no comments.
26. That the contents of para 24 of the counter-reply are incorrect and denied.
27. That the contents of para 25 of the counter-reply do not give sufficient cause, hence denied.
28. That the contents of para 26 of the counter-reply are incorrect, hence denied. The applicant must have been paid his pay, ~~xxx~~ allowances, compensation and O.T. allowances on 29.5.91 but only part was paid and the balance was paid as late as 30.11.91 excluding compensation and O.T. allowances which were due to him.
29. That the contents of para 27 of the counter-reply are wrong and denied and those of para 4.27 of the application are re-iterated.
- 30.1 That the contents of para 28 of the counter-reply are wrong ~~xxx~~ hence emphatically denied and those of para 4.28 with its sub-paras of the original application are re-iterated. The impugned order (annexure No. 1) was passed by the authority not competent to pass the said order. The said order is ~~xxx~~

1/1/92

made by way of punishment against the provision contained in Article 311F of the Constitution of India, in defiance of Articles 14 and 16 of the Constitution of India and against the principles of natural justice. It has been made by way of punishment on the allegation of damaging of car. Had there been no incidence of car-damage, the applicant services would not have been terminated. The punishment is on the basis of misconduct and not a termination simplicitor according to the terms of appointment without any stigma. The applicant's services have been terminated without affording him reasonable opportunity in defence. The respondents nos. 4 and 5 were also prejudiced against the applicant.

30.2 That the mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an ad-hoc appointee is a termination simplicitor in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order i.e. the attending circumstances as well as the basis of the order that have to be taken into consideration. When an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms it is incumbent on the court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of in order to determine whether the order was made on ground of misconduct, or inefficiency or not.

30.3 That in the instant case though the impugned order was made under the camouflage or cloak of an order of

termination simplicitor according to the terms of the employment yet considering the attendant circumstances which are the basis of the said order of termination, it is clear that the order of termination had been made by way of punishment on the ground of misconduct without affording the applicant any opportunity of a hearing and without following the procedure provided in Article 311(2).

30.4 That the services of the applicant had been arbitrarily terminated while others who were junior to him had been retained, hence termination of the services of the applicant were illegal and bad being in contravention of Articles 14 and 16 of the Constitution of India.

31. That the contents of para 29 of the counter-reply are incorrect, hence denied and those of para 5 of the application are re-iterated. The applicant has sufficient grounds for reliefs claimed and prayed for.

32. That the contents of para 30 of the counter-reply need no comments.

33. That the contents of para 31 of the counter-reply are incorrect and baseless, hence denied. The application is quite legal, valid and liable to be allowed.

34. That the contents of para 32 of the counter-reply need no comments.

LUCKNOW :

Dated : 9.3.1993


REDDY
APPLICANT

ccn to...9



VERIFICATION

I, Om Shankar Misra, son of Shri Kameshwar Misra, resident of 559/22, Om Bhawan, Brahma Nagar, Alambagh, Lucknow, do hereby verify that the contents of paras 1 to 29, 32 and 34 of this rejoinder are true to my personal knowledge and those of paras 30, 31 and 33 are believed to be true on legal advice and that I have not suppressed any material fact.

Lucknow :

Dated : 9.3.93


Signature of the applicant


Signature of the witness

Central Administrative
Lokayukta Bench
Date of Filing 23-8-95
Date of Receipt by Post

re
By Registered

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUC/NO. BENCH, LUC/NOC.

MISC. PETITION NO. OF 1995

ON BEHALF OF

Union of India Petitioner/Applicant

In re

O.A. No. 314 of 1992

Om Shankar Mishra Applicant

versus

Union of India and others Respondents.

APPLICATION FOR TAKING ON RECORD

SUPPLEMENTARY COUNTER

The supplementary Counter on behalf of the Respondents containing Annexures and supported by an affidavit are being annexed herewith which may kindly be taken on record.

LUC NO.:
DATED: August, 23, 1995

W.S.
(WILAYAT SITTA)
Advocate,
Counsel for the Respondents

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW.

O.A. NO. 314 OF 1992

OM SHARAN NISAR APPLICANT

V E R S U S

UNION OF INDIA & OTHERS RESPONDENTS.

AFFIDAVIT IN SUPPORT OF SUPPLEMENTARY
COUNTER ON BEHALF OF RESPONDENTS.

I, Manik Sinha Advocate, aged about 54 years, son of Late Prof. J.P. Sinha, Addl. Central Govt. Standing Counsel High Court Lucknow the deponent do hereby state on oath as under :-

1. That the deponent is counsel for the respondents in the instant O.A.
2. That the aforesaid case was listed on 2.6.95 and the deponent was required to file supplementary Counter reply on behalf of the respondents, but same could not be filed because the bench copies of the Supplementary counter was missing from the file. However office copy

of the same is available in the records of the deponent.

3. That this Hon'ble Court was pleased to grant two days time to file the counter to the same. As such the supplementary counter has to be filed today.

4. That the supplementary counter was sworn and signed on 18.5.95 by Shri N.N. Sahgal on behalf of the respondents, bench copies of which are missing. Shri Sahgal who has signed the supplementary counter is not immediately available for preparing fresh supplementary counter.

5. That the deponent is annexing herewith a true and photostat copies of the same alongwith the annexures marked as Annexure No. S-1 and S-2 are being annexed.

6. That it is expedient in the interest of justice that a true copy of the supplementary counter affidavit annexed with this affidavit alongwith its Annexures be taken on record.

LUCKNOW:
DATED: August, 23, 1995

M.S.
(MANIK SINGH)
Advocate,

VERIFICATION

I, the above named deponent, do hereby verify that the contents of para 1 to 6 of this affidavit are true to my personal knowledge. No part of it is false and nothing material has been concealed. SO HELP ME GOD.

LUCKNOW:
DATED: August. 27, 1995

W.S.
(WILAYAT SINGH)
Advocate,
B.C.P.W.L.

solemnly affirmed before me on
at a.m/p.m by the deponent,
who is identified by Shri
Advocate, High Court, Lucknow Bench, Lucknow.

I have satisfied myself by examining the deponent that he understands the contents of this affidavit which have been read over and explained to him by me.

CATH. CO. WITNESS.

S.M. 25

DEPUTIES TO THE CHIEF COMMISSIONER OF LUCKNOW & IV. TAHAL
LUDHIANA BAGH, LUCKNOW.

Miscellaneous Petition No. of 1995.

UNION OF INDIA & OTHERS Applicants/
Respondents.

In Re:

O.A. No. 314 of 1992.

EW Shankar Misra Applicant.

Versus

Union of India & Others Respondents.

SUPPLEMENTARY COUNTER AFFIDAVIT OF BILAL
OF RESPONDENTS.

I, B.M. JURICAL, aged about 54 years, son of
Shri B.D. Sehgal resident of C-147/3, Manak Nagar,
Lucknow do hereby solemnly affirm and state as under :

1. That the official above named is working as
Dy. Director/Offt. I in the office of Director General,
Research Designs and Standards Organisation (hereinafter
called RDSO), Ministry of Railways, Lucknow and has been
duly authorised on behalf of the respondents for filing
the instant supplementary Counter Affidavit. The above
named official has perused the available relevant
records of the instant case and has understood the facts
and circumstances of the case.

N.B. -

P/16

2. That the above case was taken up for hearing on 21.04.95. During the course of arguments, the learned counsel for the Applicant pointed out that the termination order of the applicant (Annexure No. 1 to the Original Application) is defective in as much as it has not been signed by the competent authority.

3. That it is an established practice that the approval of the competent authority is taken on the file and orders are communicated by subordinate officers. In this case, the competent authority is Addl. Director General, R.D.S.O., whose approval was obtained before issuing termination order of the applicant. A copy of the order of the competent authority is enclosed as Annexure S-1 to the instant reply.

4. That in the same manner, the orders of the competent authority i.e. Addl. Director General, R.D.S.O. for appointment were obtained on the concerned file, a copy of the order is annexed to this reply as Annexure S-2.

5. That in view of the facts and circumstances explained above, there is no force in the arguments advanced by the learned counsel of the applicant and the appointment as well as termination orders are quite in order.

Place : LUCKNOW.

Dated : 18 -05- 95.

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D R P O B 3 H Y

(N. 11041)

2
M. A. M. S., L. L. B. - 11

MS C

Verification

I, H.N. Sehgal, Dy. Director/Att. I, R.D.S.O.
 (Ministry of Railways), Lucknow do hereby verify
 that the contents of para 1 of the instant Supplemen-
 tary Counter Affidavit is true to my personal knowledge
 and belief and those of para 2 to 5 are based on
 knowledge derived from the perusal of the records of
 the instant case kept in the official custody of the
 answering respondents and legal advice. Nothing
 material has been concealed and nothing stated herein
 are false.

Place : Lucknow.
 Dated : 18-05- 95.

H.N. Sehgal
 DEPUTY DIRECTOR
 (H.N. Sehgal)
 D
 R.D.
 Lucknow, Lucknow 22

Wise

From ~~for~~ ^{for} self

अ अ मा सं
R D S O

DF may please see for orders.

83
20.5.91

As per D&A Rules An order of suspension is to be revoked by the authority which made the order or by any authority to which that authority is sub-ordinate. In case it is decided to terminate the services of Sri Misra in terms of Para-2 of appointment letter by giving him one month's notice or pay in lieu thereof, the same can be done after suspension is revoked and the period of suspension is regularised.

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S.O.E. 111

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(St. 4) (color Arlins.)

~~DDF = 1~~ for immediate at row 0

AOI. For action as detailed & discussed
p.

111

21/5 (DDF)

Submitted for Govt. comment before case is sent to S.D.A.-III for taking necessary action in the matter.

10.00

SN - 21/5

(ADG)

D.F.

21/8

60 fm

Mr

अ. अ. मा. म
R D S O

from pre-page:-

SNo: 132 : To Secy. to D. C. Dt. 3.2.90

SNo: 133 : To all concerned (SPO No 136 & 1990) Dt. 9.8.90.

SNo: 134 : From 30/Recd: Dt. 25.8.90

SNo: 135 : From A.S. to D.G. on 7/MI/8/ Staff dt. 20.9.90

SNo: 136 From Sh. Ram Narayan/Driver Dt. 12.9.90

As a result of outside recruitment held on 20.9.90 for the post Sk. Motor Driver Gr-III, scale Rs. 950-1500 (RPS), the following three (3) candidates have been selected and placed on the panel :-

1) Sh. Sunil Kumar (S/C).
 2) Sh. Om ~~Prakash~~ Mishra.
 3) Sh. Mahadeo Paul.

2. At present five (5) vacancies of Sk. Motor Driver Gr-III are available in the following Directorates :-

Directorate	No. of vacancies	Available w.e.f.	REMARKS.
1. Transport.	2	1. 24.12.88 2. 24.8.89	Existing vacancy.
2. E.D.	1	22.6.89	Newly created.
3. Finance.	1	23.5.89	-do-
4. C/Stores.	1	4.1.90	-do-

3. Out of 5 vacancies one post was reserved for ST (Backlog). It is understood from Recd. Section that no ST candidate appeared in the test. After the empanelled candidates are appointed, 2 vacancies will still remain vacant. As such these two vacancies which pertain to 50% outsider quota will have to be rendered. Out of 2 vacancies one will be reserved for ST (Backlog).

4. It is proposed that the above empanelled candidates may be offered the appointment and posted as per availability of vacancies as indicated below :-

1) Sh. Sunil ~~Kumar~~ ^{Sarkar} - L.D. Directorate.
 2) Sh. Om ~~Prakash~~ ^{Shankar} Mishra - Finance Directorate
 3) Sh. Mahadeo Paul. - Transport Section.

5. One vacancy in each in Transport and Central Stores will be filled on the availability of fresh panel as per Para-3 above. The concerned Directorates have already cleared the vacancies for being

..... (P.T.O.)

Wre

From page 1.

filled in, after a due review.

ADG may kindly see for approval before issue of

Appointment orders

9/10/90

Subj: Appointment of Mr. Mohd. A. Rehman

9/10/90

Rehman

12/10/90

SO/B-IV

JDA-III

Adm. D.G.

E/H/4

pppd

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29.8.95 (1)
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IN THE CENTRAL ASSESSMENT TRIBUNAL AT ALWANNAH,

LUCKNOW BENCH, LUCKNOW.

Misc. Petition No. C 1995

(arising out of C.A. No. 314 of 1992)

File No. 11-100-78

Om Shuker Misra Applicant

Vaccua

Union of India and others Respondents

SUPPLEMENTARY ARGUMENT AND REPLY TO THE PETITION OF
THE APPLICANT COMING ON 21.6.95 AND 22.6.95
ON THE RECORDS IN THE C.A. NO. 314 OF 1992
HELD ON 23.5.95 AND 24.5.95

The applicant most respectfully begs to submit :-

1. That the contents of para 1 of the supplementary counter need no comments.
2. That the contents of para 2 need no comments. It is, however, pertinent to state that the counsel for the applicant on 21.6.95 submitted before the Hon'ble Tribunal that the impugned order dated 29.5.91 (annexure no. 1 of O.A.) was liable to be quashed as the orders therein were not passed by the appointing authority or the authority competent to appoint the applicant on 29.5.91, the date of termination of his services as required under Article § 311 of the Constitution of India.
3. That in the instant case the impugned orders dated 29.5.91 (annexure no. 1 of O.A.) have been signed by Sri N. Subramanya, Section Officer for Director Central of the services of an employee may be terminated either by

(Signature)

KJ/

the appointing authority or by an authority who is empowered to make appointment of the said employee on the date of termination of his services, whichever of the two is higher in rank.

3.1 That in the instant case appointing authority is not available as is quite apparent from the appointment letter dated 22.10.90 (annexure no. 5 of O.A.) as it is also signed by someone for Director General.

3.2 That in the absence of non availability of the appointing authority the services of the applicant could be terminated by the highest authority which in the instant case is Director General and not by a lower authority. This is fully supported by Railway Board's letter dated 21.8.64. A true copy of the said letter Annexure S-(R-1) dated 21.8.64 is annexed as Annexure No. S-(R-1) to this reply.

3.3 That according to definition of appointing authority it means : -

"The authority empowered to make appointment to the post which the railway servant 'at the time being holder' or

"The authority which appointed the railway servant to such service, grade or post, as the case may be, or whichever authority is the highest authority."

contd...3

(3)

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3.4 That since appointing authority of the employee has to be determined with reference to his original appointment as also the officiating post held by the employee at the time of taking disciplinary action, all promotions and appointments orders issued invariably be signed by or on behalf of S.P.O./D.P.O./A.P.O./L.M. etc. as the case may be over their respective designations to avoid any complications at a later stage. A true copy of note (ii) appearing under the caption 'Definitions' in Discipline and Appeal Rules, 1968 by Sri B.S. Mehta is annexed as Annexure S-(R-2) Annexure no. S-(R-2) to this reply.

3.5 That regarding imposition of penalty - the orders of punishment shall be communicated to the delinquent railway servant on a punishment notice under signature of the disciplinary authority himself who has passed the orders imposing the penalty. A true copy of Railway Board's orders dated 20.12.67 and Annexure S-(R-3) 18.11.70 are annexed as Annexures No. S-(R-3) to this reply.

3.6 That in the instant case the impugned orders dated 29.5.91 have neither been communicated under the designation of the authority communicating it nor by the appointing authority or the competent authority, hence the orders are quite illegal and liable to be quashed.

18/09

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3.7 That it is the orders issued by the competent authorities, communicated and served upon an employee which alone can create rights and not which are in the files.

3.8 That the internal correspondence of the department is not relevant for the purpose of consideration of the grounds urged in support of one's claim. It is only the final decision, which will have to be considered and one can be heard only regarding the legality or otherwise of the final order.

3.9 That no specific orders for termination of the applicant's services have been passed by the competent authority which is Director General in the instant case in the notings (S-1) which can be considered by the Hon'ble Tribunal in view of para 3.7 and 3.8 above.

4. That ~~as~~ the annexure (S-2) of the respondents shows only the approval regarding the filling of vacancies of Motor Drivers and not the actual appointment of the applicant. It has no bearing with the point at issue here.

5. That in view of the facts, circumstances and rules stated above the contentions of the respondents are quite baseless, against the principles of law and their application is liable to be rejected outright.

Lucknow :

Dated : 25.8.95


APPLICANT



contd...5

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VERIFICATION

I, Om Shankar Kismi, applicant above, do hereby verify that the contents of paras 1, 2 and 5 of this supplementary rejoinder are true to my own knowledge and those of paras 3 and 4 are believed to be true on legal advice.

Signed and verified this 25th day of August 1995
at Lucknow.

Lucknow :

Dated : 25.8.95


APPLICANT


18/8/95