

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

13

CAUSE TITLE O.A. 1014 OF 1987

NAME OF THE PARTIES Ajay Kumar Applicant

Versus

Union of India Respondent

Part A.

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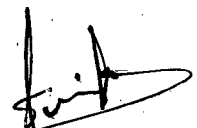
CERTIFICATE

Certified that no further action is required to be taken and that the case is fit for consignment to the record room. (decided)

Dated 06-6-11

Counter Signed.....

Checked on
02/12/12
m


Signature of the
Dealing Assistant

Section Officer/In charge

Discharge from Service.

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

A

Registration No. 1814 of 1987

APPLICANT (s) Ajay Kumar

RESPONDENT(s) U.O.I. through G.M., N.Rly, New Delhi & 2 Others

Particulars to be examined

Endorsement as to result of Examination

1. Is the appeal competent ?
2. (a) Is the application in the prescribed form ?
(b) Is the application in paper book form ?
(c) Have six complete sets of the application been filed ?
3. (a) Is the appeal in time ?
(b) If not, by how many days it is beyond time ?
(c) Has sufficient case for not making the application in time, been filed ?
4. Has the document of authorisation, Vakalat-nama been filed ?
5. Is the application accompanied by B. D./Postal-Order for Rs. 50/-
6. Has the certified copy/copies of the order (s) against which the application is made been filed ?
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?
(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?

Yes

Yes

No

Yes, 6 sets filed.

Yes

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Yes

Yes

Yes

Yes

Yes

Particulars to be ExaminedEndorsement as to result of Examination

- (c) Are the documents referred to in (a) above neatly typed in double space ? 48
8. Has the index of documents been filed and paging done properly ? 48
9. Have the chronological details of representation made and the outcome of such representations been indicated in the application ? 48
10. Is the matter raised in the application pending before any Court of law or any other Bench of Tribunal ? No
11. Are the application/duplicate copy/spare copies signed ? ~~3~~ 3 Copies signed.
12. Are extra copies of the application with Annexures filed ? 48
- (a) Identical with the original ? 48
- (b) Defective ? —
- (c) Wanting in Annexures —
- Nos...../Pages Nos., ?
13. Have file size envelopes bearing full addresses, of the respondents been filed ? No
14. Are the given addresses, the registered addresses ? 48
15. Do the names of the parties stated in the copies tally with those indicated in the application ? 48
16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ? N.A.
17. Are the facts of the case mentioned in item No. 6 of the application ? 48
- (a) Concise ? 48
- (b) Under distinct heads ? 48
- (c) Numbered consecutively ? 48
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18. Have the particulars for interim order prayed for indicated with reasons ? No
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If approved the case may be listed
on 2.11.87

28.10.87

Submitted by
Chandor
20.10.87

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ORDER SHEET

OFFICE REPORT

An application has been filed in this Tribunal for transferring the case No. P.L.N. of ...87... to the Circuit Bench, Lucknow.

If approved, 22.8.88 may kindly be fixed for hearing at Circuit Bench Lucknow. In this regard the notices may be sent to the parties counsel.

Shri M.
22-8-88

20/7/88

Hon. Ajay Mohan Pr.
Shri M. P. Sharma for applicant
Shri D. C. Saxena for respondents.

On the request of the learned Counsel for both the parties the case is adjourned to 22-8-88.

Hon.

22.8.88

Hon. A. Mohan A.M.

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On the request of Counsel for applicant, respondent case is adjourned to 22.9.88

Ad.
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Pr.
A.M.

Order sheet

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30.5.08 ddl

Leopolder here already been ^A/₆
but, but before court for hearing
on 20.7.08. The applicant counsel
have moved an application separately that
this case be heard at Lucknow.

[Signature]

20.07.08

For this case, today's
date is fixed.

It could not be
listed today. Send
it to the Honorable
Court for suitable
directions/hearing

[Signature]

22.9.88

Hon. D.S. Misra, Am
Hon. G.S. Sharma, JM

Heard Sri M.P. Sharma to the
applicant and Sri D.C. Saxena to the
respondents. The case is adjourned
to 27.10.1988 for hearing.

20/0/120

[Signature]
JM

22.9.88
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[Signature]
Am

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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
Circuit Bench at Lucknow.

Registration O.A. No.1014 of 1987

Ajay Kumar Applicant
Versus
Union of India & Others Respondents.

Hon. D.S.Misra, A.M.

Hon. G.S.Sharma, J.M.

(By Hon.D.S.Misra, A.M.)

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985 praying for the quashing of the order dated 18.12.86 passed by the Assistant Works Manager(M), Northern Railway, Locomotive Workshops, Lucknow discharging from service the services of the applicant.

2. The applicants's case is that he joined as Casual Labour on 26.3.84 and was appointed temporarily as Khalasi in a substantive vacancy in the first week of August, 1986; that he has been performing his duties satisfactorily but he has been discharged from service by the Assistant Works Manager, respondent No.3 in an illegal manner on the false ground that the education certificate of Class 8th pass submitted by him has been found to be false. The applicant contends that the order has been passed by way of punishment without affording any opportunity to the applicant to defend himself.

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3. In the reply filed on behalf of the respondents it is stated that the claim of the applicant that he was appointed as Casual Labour being the son of a railway employee, who was due to retire after about two years is denied; that the applicant was engaged as a Casual Labour being found qualified in the selection on the basis of information furnished by him in his application form; that the applicant's father is totally illiterate is disproved from the fact that the applicant's father has put his signature on the application form; that the certificate in respect educational qualification submitted by the applicant was found to be false on the basis of the verification from the concerned educational institution; that the services of the applicant were terminated as per rules and he has been paid wages for one month notice and compensation as admissible under the Industrial Disputes Act, 1947.

4. We have heard the arguments of the learned counsel for the parties and have carefully considered the documents on record. The applicant's main contention is that the application form seeking employment under the respondents was not filled by him and that he had merely put his signature and that the completion of the form was done by someone else at the request of his father. It is thus contended that an opportunity should have been given to the applicant to clear his position

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before making the allegations and passing the impugned order of discharge. It is also contended that having acquired the status of a regular temporary employee he was entitled to be protected under Article 311 of the Constitution of India and his services could not be terminated without holding an enquiry under the Railway Servants (Discipline & Appeal) Rules, 1968. The respondents have denied that the applicant was a temporary employee. The applicant has failed to produce any evidence in support of his contention that he was a regular temporary employee. The respondents have contended that by virtue of having worked as Casual Labour for more than 120 days the applicant had acquired the status of a temporary railway servant. The respondents also contended that the service of a temporary railway servant can be terminated without following the procedure prescribed under the Railway Servants (Discipline & Appeal) Rules, 1968. The respondents have also stated that the minimum educational qualification prescribed for appointment as Casual Labour is class 8th passed. The certificate of educational qualification furnished by the applicant (copy Annexure-CA.3) disclosed that the applicant had passed class 8th examination from Aminabad Inter College, Lucknow. When an enquiry was made into the matter a reply was received from Aminabad Inter College, Lucknow that no such certificate was issued from that Institution (copy Annexure-CA.2). The respondents have filed a copy of the notice

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dated 4.11.82 inviting applications from sons of the staff of Locomotive Works, Northern Railway, Charbagh, Lucknow and P.S.Ts who were retiring in the years 1984, 1985 and 1986 to form a panel of Casual Labours (copy Annexure-CA.1). In this notice it is clearly stated that the minimum qualification for recruitment will be 8th class passed. It is thus alleged that as the transfer certificate submitted by the applicant in proof of his educational qualifications and date of birth were found to be false, his candidature and appointment was in fact void ab initio. It is contended on behalf of the applicant that the certificate filed with the application was due to the bonafide mistake on the part of his father and the certificate of Bappa Srinarain Vocational Inter College, Lucknow issued on 24.12.86 (copy Annexure-2) was the correct certificate and his correct date of birth and educational qualification is correctly stated in this certificate. We have considered the contentions of the parties and we are of the opinion that the certificate filed by him with the application at this late stage cannot be taken into consideration for deciding the issue under consideration. The applicant has admitted that he had signed a blank application form and having done so he is bound by the information contained in the application form which was filed with the respondents and which enabled him to get the job of a Casual Labour under the respondents. We are also of the opinion that the applicant cannot

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escape the consequence of this action on his part. The charge of supplying false information to the respondents is clearly established against him. Under these circumstances, the applicant was not entitled to being given any opportunity of showing cause against the impugned order. We are also of the opinion that the impugned order of discharge of the applicant from the service of the Railway Administration is in accordance with the rules and there is no illegality in the impugned order.

5. On the facts and circumstances of the case, there is no merit in the petition and the same is dismissed without any order as to cost.

Sharma
Member (J)

Sharma
30.1.89
Member (A)

Dated the 30th Jan., 1989.

RKM

Ag

2/11/87

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Date of Filing..... 27/1/87

CR

By Order of Registrar.

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BETWEEN

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I N D E X

1. Application 1-23
2. Annexure No.1 (True copy of the discharge order dated 12.12.1986) 24
3. Annexure No.2 (Photostat copy of Transfer Certificate) 25
4. Annexure No.3 (True copy of appeal dated 12.2.1987) 26-29
5. Annexure No.4 (True copy of Applicant's reminder dated 27.8.1987) 30-31

Signature of the Applicant.

MB Shree Ach

Noted for 2/11/87
mmg

14/2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Application U/S 19 of the Administrative Tribunals Act, 1985.

14/3

AJAY KUMAR APPLICANT
BETWEEN
UNION OF INDIA & OTHERS RESPONDENTS.

DETAILS OF APPLICATION

1. Particulars of the applicant :

- (i) Name of the applicant : Ajay Kumar
- (ii) Name of Father/
Husband : Shri Chanan Lal
- (iii) Designation and office : Khalasi,
in which employed Office of the Works
Manager, N.Rly.
Locomotive Workshops,
Charbagh, Lucknow.
- (iv) Office Address : Office of the Assistant
Works Manager(M),
N.Rly. Locomotive
Workshops, Charbagh,
Lucknow.
- (v) Address for service : 554-K/45, New Arjun
of all notices Nagar, Alambagh,
Lucknow.

2. Particulars of the respondent:

- (i) Name and/or designa-) 1. Union of India,
tion of the respondent) Through the General
Manager, N.Rly.,
(ii) Office address of the) Baroda House,
respondent) New Delhi.
(iii) Address for service) 2. Works Manager,
of all notices) N.Rly. Locomotive
Workshops, Charbagh,
Lucknow.

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3. Assistant Works Manager(M), N. Rly., Locomotive Workshops, Charbagh, Lucknow.

3. Particulars of the order :
against which application is made.

The application is against the following order :-

- (i) Order No. C 570925/011419
- (ii) Date : 12.12.1986.
- (iii) Passed by : Assistant Works Manager(M), N. Rly., Locomotive Workshops, Charbagh, Lucknow.
- (iv) Subject in : Illegally discharged from the brief temporary status as Khalasi.

(contained in Annexure No.1 to this Application).

4. Jurisdiction of the Tribunal :

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

5. Limitation :

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

6. Facts of the case :

The facts of the case are given below :-

- (A) That the Applicant's father Shri Chanan Lal, S/o Shri Chet Ram, at present residing at 554-K/45, New Arjun Nagar, Alambagh, Lucknow was working as highly skilled Grade I in the Locomotive Workshops, N. Rly., Charbagh, Lucknow and retired as such on 31.1.1986.

- (B) That under the Policy of the Railway Board

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Administration it was made a beneficial provision with regard to the employment of the Wards of the working employees in the Locomotive Workshops, N.Rly., Charbagh, Lucknow by giving a suitable employment to the Wards of the persons and employees who were scheduled to retire in between 1984 to 1986 and as the father of the Applicant was scheduled to retire on 31.1.1986, therefore, he was entitled to nominate his Ward, the Applicant in accordance with his qualifications to be employed under the Policy adopted by the Railway Board Administration.

(C) That the Works Manager, N.Rly., Locomotive Workshops Charbagh, Lucknow prescribed a schedule form for employment under his office and anyhow such form was obtained by the father of the Applicant from the office of the Respondent No. 2.

(D) That the father of the Applicant after obtaining the said form sent it to the Applicant at the material point of time when the Applicant was residing at the residence of his maternal uncle in Mohalla Chitta Katra, Distt. Amritsar and accordingly as the application form was sent to the Applicant by his father on the assurance and direction that the Applicant may sign only over the form and return it to his father so that the father may arrange to fill the form through his Union Members who were well versed about the filling of the form and other resources as required by the Respondent No.2 and as per direction of his father the Applicant only put his signatures over the form at the relevant columns where signatures were required to be put by

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the Applicant and the said blank form after putting his signatures the applicant had sent by returning the same to his father.

- (E) That the father of the Applicant was illiterate totally and, therefore, he persuaded a Member of the Union belonging to the Locomotive Workshops, N.Rly, Charbagh, Lucknow who was kind enough to fill the columns of the form behind the back of the Applicant. The said form which was duly filled by the Union Member of the said Locomotive Workshops, was deposited at Lucknow with the Respondent No.2 by the father of the Applicant *Thyph* member of the Dept. association.
- (F) That it is specifically pleaded that the columns pertaining to Sl.No. 1 to 8 have not been filled by the Applicant but contrary to this he believed that his father shall be able to fill the aforesaid form ~~correctly~~ correctly as per his information and records available in his house pertaining to the Applicant's case.
- (G) That, however, as per the Policy adopted by the Railway Board Administration, Northern Railway the Applicant was given the appointment as a Casual Worker by the Respondent No.2 and accordingly his father called the Applicant from Amritsar by saying and informing to the applicant that he has been appointed as a Casual Labour on daily wage by the Respondent No.2 in Locomotive Workshop, N.Rly., Charbagh, Lucknow and after receiving the information the applicant came back from Amritsar to Lucknow and joined as Casual Labour on 26.3.1984.

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- (H) That on 26.3.1984 or onwards it was the duty of the Respondent No. 2 to ask the Applicant to supply all the relevant information with regard to his qualifications, age, etc. etc. but it is specifically submitted that no information was called for either by the Respondent No.2 or Respondent No.3 subseauent to the Applicant's appointment as Casual Labour on 26.3.1984.
- (I) That when the Petitioner joined as Casual Labour under the Respondent Nos. 2 and 3 at Lucknow his father was in service under the Respondent Nos. 2 and 3 in the same Locomotive Workshop.
- (J) That it was incumbent and obligatory on the part of the Respondent Nos. 2 and 3 to prepare the service record of the applicant including the Service Book or Service Chart or Personal File etc. and for that purpose the Respondent Nos. 1, 2 and 3 were also required to ask the Applicant to supply the relevant information for the purpose of Service Record of the Applicant as and when needed but no such information was called for by the Respondent Nos. 2 and 3 when the Applicant was allowed to continue on appointment as Casual Labour on 26.3.1984.
- (K) That it is further submitted that after sometime the Applicant was appointed temporarily as Khalasi in regular, clear and substantive vacancy by the Respondent No. 2 after perusal of the good and hard work of the applicant as Casual Labour and on the

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regular side the Applicant was allowed to resume his duties by the Respondent No.1 in the 1st week of August, 1986 in the scale of pay Rs. 196 - 232.

- (L) That since August, 1984 the Applicant was working as regular temporary employee as Khalasi under the Respondent No. 2 and 3.
- (M) That there are service rules under the Railway Board Administration to the effect that as and when the Casual Labour has been appointed in regular temporary clear substantive vacancy the Railway Administration was further required to ask the Applicant to submit his details of Academic qualifications, age, experience etc. and entire particulars of his antecedents etc. for the purpose of maintaining service record and personal file of the petitioner as a regular temporary employee appointed against the substantive vacancy but it is specifically submitted that at this stage also no such information was called for from the Applicant by the Respondent No. 2 and 3.
- (N) That it is submitted that the Casual Labour appointed and allowed to continue near about 3/4 months having temporary status, it was not necessary to declare the date of birth at the stage of appointment as Casual Labour on daily rate but in the case of an employee like the Applicant appointed on regular side against the clear and substantive vacancy on any post particularly as Khalasi also it was mandatory on the part of the Respondents to call for

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the particulars of service records, date of birth and other particulars of antecedents of an employee who was appointed as regular temporary Khalasi or any other such details for the purpose of maintaining correct service records and entering the date of birth under Rule 145 of the Establishment Code.

- (O) That it is further submitted that at the time of regular appointment of the Applicant no such information was called upon by the Respondent No. 2 from the Applicant to produce the original Certificates or any information relating to his educational qualifications and also the antecedents of the Applicant and, therefore, there was no occasion for the Applicant to disclose and declare his date of birth in accordance with the terms stated in the numerous Railway Board orders or Rules prevailing on the point.
- (P) That it is specifically submitted that the date of birth of the Applicant is 21-6-1962. A photostat copy of the Transfer Certificate issued by the Principal, Bappa Shrinarain Vocational Inter College, Lucknow is enclosed herewith as Annexure No.2 to this Application in which the date of birth of the Applicant is recorded as 21-6-1962.
- (Q) That it is specifically submitted that as per the Circulars, Orders and the Policy adopted by the Railway Board to accommodate the Ward of an employee under the Respondents, particularly Respondents Nos. 2 and 3 it was the requirement that at the time of

recruitment to any service the Ward of the working employee should have minimum age of 18 years and maximum age of 28 years and as per the date of birth of the Applicant, i.e. 21-6-1962 he was within the age limit prescribed by the Respondents for the purpose of any appointment on any post either Casual or on regular basis.

(R) That the Applicant as submitted earlier since August, 1984 to the date of illegal discharge dated 12.12.1986 continued to hold the temporary post of Casual Labour being a temporary Government Servant continuously without any blame or adverse remarks in his service. His conduct was throughout good and he has not earned any adverse entry or any misconduct entry and he never faced any departmental proceeding. Contrary to this, his work was always praised. He was allowed two annual increments under Fundamental Rule 24 in which it is provided that the annual increment is to be sanctioned to the person and employee like the applicant whose work and conduct remained satisfactory during the crossing and allowing the annual increments and as such the work and conduct of the Applicant was good. He was allowed two increments in time-scale prescribed for the regular temporary Khalasi working on the substantive post.

24/12/86

✓ (S) That, however, vide Order dated 12.12.1986 Annexure No. 1 the Respondent No.3 without any

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authority in law discharged the Applicant on the ground that the Applicant has submitted a false certificate of VIIIth Class passed.

- (T) That the order dated 12.12.1986 contained in Annexure No.1 is stigmatic and passed by way of punishment without ascertaining the facts whether the Applicant has actually submitted any false document or not. No such opportunity was given to the Applicant to clear his position before making the allegation against the Applicant for his removal from service by saying in a simple word discharged on the ground of submitting false certificate of Class VIII passed.
- (U) That it is submitted that the Petitioner has not submitted any false certificate and on what basis the Department came to the conclusion that the Applicant has submitted false certificate of Class VIIIth passed is not known to the Applicant till this day of filing this Application.
- (V) That the correct date of birth of the Applicant is 21-6-1962 as apparent on the face of Annexure No.2.
- (W) That it is further submitted that the application form which was got filled from a Member of the Union of the Locomotive Workshops by the Applicant's father was not binding upon the Applicant particularly when the contents of the form filled by the third party was not known to the Applicant.

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- (X) That under the Services Rules of the Railway Board Administration it is submitted that mere filling the form is not the service record because it is an action of the applicant to fill the form prior to the stage of entering into the service and, therefore, it was the pre-conduct of the Applicant as and when he was not in Government service.
- (Y) That it is submitted that submitting an application is something else and after entering into the service the declaration of the date of birth is required under rule 145 of the Establishment Code Manual is something else.
- (Z) That the Respondents were not liable to act upon the mere application of a party who has applied for the job but as per procedure of the Railway Department applicable to whole India services after entering into the the services the Department was required to invite all together information which was required for the purposes of maintaining the service book and as said earlier that no such information was required by the Respondents from the Applicant to declare his date of birth for the purposes of Rule 145 of the Establishment Code, therefore the Applicant was not obliged to declare his date of birth for the purposes of making any record of service either for his post or for the purposes of his retaining service in the Railway Department.

(AA) That under the provisions of Rule 145 of the

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✓ of the Establishment Code it was incumbent upon the Department to seek a declaration from the Applicant for his correct date of birth so that his service record is prepared for the purpose of determining his date ~~of birth~~ of superannuation and not otherwise.

(BB) That under Rule 145 of the Establishment Code it has been provided that even in case of false declaration of date of birth the General Manager or the delegated authority on his behalf is to examine the correctness of the date of birth and after examination the same is required to be corrected on the basis of authentic proof of date of birth but in the instant case before passing the discharge-cum-removal order from service contained in Annexure No.1 no such enquiry as contemplated under Rule 145 was done by the Respondents, but out-right without making any enquiry by disclosing the same to the Applicant in a short-cut way the services of the Applicant have been discharged/removed by way of punishment.

(CC) That it is submitted that before entering into the service if any mistake or otherwise committed by the Applicant that does not amount to any misconduct. ^{after} Misconduct means that the person/entering and joining the services of the Government post commit any misconduct then the service rule, if any, follows and not before it.

(DD) That prior conduct, if any, either it is wrong or bonafidely it was negligently treated to be wrong that does not amount to any ~~misconduct~~ misconduct in service and the said conduct, if any although not on the part of the Applicant shall not be treated as committed

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during the employment under the Respondents by the Applicant, therefore prior to entering into the service if there was any mistake or any irregularity was found the same was required to be corrected by disclosing the same to the Applicant so that the Applicant could get an opportunity to meet the irregularity if any and ~~xxxx~~ disclosing the correct facts for the valuable consideration of the Respondents particularly Respondent Nos. 2 and 3.

(EE) That as the petitioner being a temporary regular Khalasi appointed against the substantive post and the said post is still in existence and has not been ordered to be abolished, therefore having held the civil post as contemplated under Article 311 of the Constitution of India it was incumbent upon the Respondents to proceed against the applicant before removing him from service vide order dated 12.12.1986 contained in Annexure No.1 to this Application and also by giving an opportunity in accordance with the principle of natural justice to meet the allegation levelled against the applicant as per order dated 12.12.1986 but the Respondents have neither followed the provisions of Article 311 of the Constitution of India nor the principle of natural justice nor the ~~xxxxxx~~ service rules particularly the Service Rule 145 of the Establishment Code, therefore the order dated 12.12.1986 being punitive in nature is void ab-initio.

30/11/87

(FF) That as the applicant was ordered to resume his duties under the orders of the Works Manager the Respondent No.2, therefore the Assistants Works Manager (M) had no authority to pass the discharge order

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particularly when he was not specifically assigned to pass such order by the Railway Board.

(GG) That the alleged order of discharge/removal although on the face of it stigmatic is passed by way of punishment without giving any opportunity to defend to the applicant and, therefore, it is illegal and void ab-initio.

(HH) That the alleged removal order contained in Annexure No.1 is solely passed on the concealment of facts and for submitting false certificate, therefore, it is passed by way of punishment and is not a simple order for discharge and as no opportunity before passing such order has been afforded to the applicant, therefore it is against the principle of natural justice also.

(II) That the alleged order, as it appears from the face of it, has been passed under the garb of the provisions of Industrial Disputes Act. It is specifically submitted that ^{under} the provisions of Industrial Disputes Act there is specific provision to the effect that if the order is passed by way of punishment which amounts to dismissal or removal from service then the prescribed procedure as envisaged under the law is to be followed but in this case also no such procedure has been followed by the Respondents, therefore, on this count also the order is bad in law and void.

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(JJ) That the employment under the Union ~~XX~~ Government particularly the Railway Administration is a matter of livelihood of the Applicant and the Applicant has right to be protected under Article 221 of the Constitution of India also in which the Applicant has right to say that his services should not be removed like the basis as mentioned in Annexure No.1 to this Application unless and until the due process of law is followed and as such no due process of law and no disciplinary proceedings in accordance with the Railway Servant Disciplinary Proceeding Rules of 1968 have been followed, therefore the order which was passed as contained in Annexure No.1 to this Application is in violation of Article 221 of the Constitution of India.

✓ (KK) That the Petitioner has filed an appeal dated 12.2.1987 to the Respondent No.2 against the order contained in Annexure No.1 passed by the Assistant Works Manager(M) which is contained herewith as Annexure No.3 to this Application and the same is pending decision inspite of a reminder given to the said authority on 27.8.1987 which is enclosed herewith as Annexure No. 4 to this Application.

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(LL) That the applicant at the material time of submission of the application form for the job under the Respondent Nos. 2 and 3, was out of station and, therefore, he has neither filled the columns of the form nor supplied any false certificate as alleged in the discharge order and the contents of form which were submitted by his father were also not known to the applicant and it was also not disclosed by the Respondents to the applicant till this day of filing this application

~~xxxxxxRelief(s)sought~~

~~In view of the facts mentioned in para 6~~

~~xxxxxx~~

(MM) That after receiving the discharge order the applicant has enquired from his father from where he received the application form and how he submitted it to the Respondents and on enquiry his father informed to the applicant that he received the application form through his Union and the same was got filled and submitted through of the Office-bearer of the union/Locomotive Workshops Charbagh, Lucknow to the Respondent No. 2.

7. Relief(s) sought

In view of the facts mentioned in para 6 above, the applicant prays for the following relief(s):

That it is most respectfully prayed that this Hon'ble Tribunal be pleased to quash the order contained in Annexure No.1 and the Appellate Order, if any, goes against the applicant by declaring

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G R O U N D S

1. Because the applicant at the material time of submission of the application form for the job under the Respondent Nos. 2 and 3, was out of station and, therefore, he has neither filled the columns of the form nor supplied any false certificate as alleged in the discharge order and the contents of form which were submitted by his father were also not known to the applicant and it was also not disclosed by the Respondents to the applicant till this day of filing this application.

2. Because the applicant has not filled the form but only signed on blank form and returned it to ~~his~~ his father at the time of entrance into the service.

3. Because the father of the applicant was illiterate totally and, therefore, he persuaded a Member of the Union belonging to the Locomotive Workshops, N.Rly., Charbagh, Lucknow who was kind enough to fill the columns of the form behind the back of the applicant. The said form which was duly filled by the Union Member of the said Locomotive Workshops, was deposited at Lucknow with the Respondent No.2 by the father of the applicant.

4. Because the columns pertaining to Sl.No.1 to 8 have not been filled by the applicant but contrary to this he believed that his father shall be able to fill the aforesaid form correctly as per his information and records available in his house pertaining to the applicant's case.

5. Because after entering into the service the Respondents have not called upon the ~~Examinee~~ applicant to declare his date of birth for the purpose of recording the date of birth in accordance with Rule 145 of the Railway Establishment Code and, therefore, it is totally incorrect to say that the applicant has disclosed any wrong date of birth.

6. That before entering into the service mere submission of an application form through his father duly filled by a Member of the Union does not amount to misconduct and moreover the contents of the form were not in the knowledge and notice of the applicant and it was also not disclosed to the applicant before alleging that the applicant has submitted the false certificate.

7. Because since August, 1984 the applicant was working as a regular temporary employee and holding the civil post, therefore, he was entitled to be protected under Article 311 of the Constitution of India.

8. Because as evident from the Annexure No.2 to the application the date of birth of the applicant is 21.6.1962 and he was within the age limit prescribed by the Respondents for appointment under Northern Railway Locomotive Workshops, Charbagh, Lucknow and the applicant has never claimed any benefit for extension etc. of service.

9. Because the work and conduct of the applicant remained good during his service as Khalasi in regular

capacity.

10. Because vide order dated 12.12.1986 the Respondent No.3 without any authority in law discharged the applicant on the ground that the applicant has submitted a false ~~certificate~~ certificate of VIIIth class passed.

11. Because the order dated 12.12.1986 contained in Annexure No.1 is stigmatic and passed by way of punishment without ascertaining the facts whether the applicant has actually submitted any false document or not. No such opportunity was given to the applicant to clear his position before making the allegation against the applicant for his removal from service by saying in a simple word discharged on the ground of submitting false certificate of Class VIIIth passed.

12. Because the application form which was got filled from a Member of the Union of the Locomotive Workshops by the applicant's father was not binding upon the applicant particularly when the contents of the form filled by the third party were not known to the applicant.

13. Because under the Service Rules of the Railway Board Administration it is submitted that mere filling the form is not the service record because it is an action of the applicant to fill the form prior to the stage of entering into service and, therefore, it was the ~~pre-condition of the~~ pre-conduct of the applicant as and

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when he was not in Government service.

14. Because submitting an application is something else and after entering into the service the declaration of the date of birth is required under rule 145 of the Establishment Code Manual is something else.

15. Because the Respondents were not liable to act upon the mere application of a party who has applied for the job but as per procedure of the Railway Department applicable to whole India services after entering into the services the Department was required to invite all together information which was required for the purposes of maintaining the service book and as said earlier that no such information was required by the Respondents from the Applicant to declare his date of birth for the purposes of Rule 145 of the Establishment Code, therefore the applicant was not obliged to declare his date of birth for the purposes of making any record of service either for his post or for the purposes of his retaining service in the Railway Department.

16. Because under Rule 145 of the Establishment Code it has been provided that even in case of false declaration of date of birth the General Manager or the delegated authority on his behalf is to examine the correctness of the date of birth and after examination the same is required to be corrected on the basis of authentic proof of date of birth but in the instant case before passing the discharge-cum-removal order from service contained in Annexure No.1 no such enquiry as contemplated under Rule 145 was done

by the Respondents but out-right without making any enquiry by disclosing the same to the Applicant in a short-cut way the services of the applicant have been discharged/removed by way of punishment.

17. Because before entering into the service if any mistake or otherwise committed by the applicant that does not amount to any misconduct. Misconduct means that the person after entering and joining the services of the Government post commit any misconduct then the service rule, if any, follows and not before it.

18. Because prior conduct, if any either it is wrong or bonafidely it was negligently treated to be wrong that does not amount to any misconduct in service and the said conduct, if any although not on the part of the applicant shall not be treated as committed during the employment under the Respondents by the applicant, therefore prior to entering into the service if there was any mistake or any irregularity was found the same was required to be corrected by disclosing the same to the applicant so that the applicant could get an opportunity to meet the irregularity if any and disclosing the correct facts for the valuable consideration of the Respondents particularly Respondent Nos. 2 and 3.

19. Because as the applicant was ordered to resume his duties under the orders of the Works Manager the Respondent No.2, therefore the Assistants Works Manager(M) had no authority to pass the discharge order

particularly when he was not specifically assigned to pass such order by the Railway Board.

20. Because the alleged order of discharge/removal although on the face of it stigmatic is passed by way of punishment without giving any opportunity to defend to the applicant and, therefore, it is illegal and void ab-initio.

21. Because the alleged removal order contained in Annexure No.1 is solely passed on the concealment of facts and for submitting false certificate, therefore, it is passed by way of punishment and is not a simple order for discharge and as no opportunity before passing such order has been afforded to the applicant, therefore it is against the principle of natural justice also.

22. Because the alleged order, as it appears from the face of it, has been passed under the garb of the provisions of Industrial Disputes Act. Under the provisions of Industrial Disputes Act there is specific provision to the effect that if the order is passed by way of punishment which amounts to dismissal or removal from service then the prescribed procedure as envisaged under the law is to be followed but in this case also no such procedure has been followed by the respondents, therefore on this count also the order is bad in law and void.

23. Because the employment under the Union Government particularly the Railway Administration

is a matter of livelihood of the applicant and the applicant has right to be protected under Article 221 of the Constitution of India also in which the Applicant has right to say that his services should not be removed like the basis as mentioned in Annexure No. 1 to this application unless and until the due process of law is followed and as such no due process of law and no disciplinary proceedings in accordance with the Railway Servant Disciplinary Proceedings Rules of 1968 have been followed, therefore the order which was passed as contained in Annexure No.1 to this application is in violation of Article 221 of the Constitution of India.

8. Interim order, if prayed for :

Nil.

9. Details of the remedies exhausted :

Appeal filed to the Works Manager on 12.2.1987 and reminder sent on 27.8.1987 and the same are still pending.

10. Matter not pending with any other court, etc.:

The applicant further declares that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of the Tribunal.

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11. Particulars of Bank Draft/Postal order
in respect of the Application Fee :

1. Number of Indian Postal Order(s)

20/3 828858

2. Number of the issuing Post Office

Lucknow

3. Date of issue of Postal Order(s)

10.10.87

4. Post Office at which payable

GPO Allahabad

12. Details of Index :

An index in duplicate containing the details
of the documents to be relied upon is enclosed.

13. List of enclosures : Annexure Nos. 1 to 4

In verification :

✓ Noted
Signature of Ajay Kumar

I, Ajay Kumar, S/o Shri Chanan Lal, aged about
25 years, resident of 554-K/45, New Arjun Nagar,
Alambagh, Lucknow do hereby verify that the contents
from 1 to 13 are true to my personal knowledge and
belief and that I have not suppressed any material
facts.

11. Particulars of Bank Draft/Postal order
in respect of the Application Fee :

1. Number of Indian Postal Order(s) 20 3 028858
2. Number of the Issuing Post Office Kuruk

3. Date of Issue of Postal Order(s) 10.10.87

4. Post Office at which payable GPO Alwar

12. Details of Index :

An index in duplicate containing the details
of the documents to be relied upon is enclosed.

13. List of enclosures : Annexure Nos. 1 to 4

In verification :

I, Ajay Kumar, S/o Shri Chanan Lal, aged about

25 years, resident of 554-K/45, New Arjun Nagar,

Alambagh, Lucknow do hereby verify that the contents

from 1 to 13 are true to my personal knowledge and

belief and that I have not suppressed any material

Facts.

Place : Lucknow.

Signature of the applicant.

Date :

20/10/87

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24/10/87

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Recd No 2

बप्पा श्रीनारायण वोकेशनल इण्टर कालेज, लखनऊ

छात्र लेखा-पत्रक तथा परिवर्ति-पत्र

छात्र रजिस्टर संख्या १४२४

छात्र का नाम /	छात्र के पिता अथवा संरक्षक का नाम, व्यवसाय तथा पता	छात्र की जन्म तिथि	अन्तिम विद्यालय का नाम जहां छात्र ने शिक्षा प्राप्त की हो।
अजय कुमार राजपूत	श्री चान्त लाल राजपूत म. नं. ॥ २२८ रेलवे वरहावल लोनी लखनऊ	२१-६-६२ इकोस जून सन् बसठ ई०	वेल्सको वायज रून्ड गर्ल्स स्कूल

कक्षा	प्रवेश तिथि	उत्तीर्ण तिथि	त्याग तिथि	त्याग कारण जैसे शुल्क न देना, कुटुम्ब प्रस्थान विद्यालय निःसारण	वर्ष	चरित्र और कार्य
८						
९						
८	१५-७-७५				१९७५-७६	Good and Fair Sd. S.S. Ojha
	Promoted 20-5-76		✓			
B3	Promoted 20-5-77		✓		१९७६-७७	Good and Fair Sd S.S. Ojha
				TRIE-COPY,		
B3	Failed —		✓		१९७७-७८	Good and Poor Sd. S.S. Ojha
B3	Failed —	30-6-79	✓	End of Session	१९७८-७९	Good and Poor Sd. S.S. Ojha
११						
१२						

प्रधानाचार्य
24-12-86

बप्पा श्रीनारायण वोकेशनल इन्स्टीट्यूट
(इण्टर कालेज) लखनऊ

कक्षा	मीटिंग सं० जो हुई हैं	उपस्थिति की मीटिंग संख्या	यह प्रमाणित किया जाता है कि उपर्युक्त छात्र लेखा-पत्रक शिक्षा विभाग के विधानानुसार त्याग तिथि तक यथोचित लिखा गया है।
८			हस्ताक्षर लिपिक.....
१०			हस्ताक्षर जांचकर्ता.....
११			दिनांक.....
१२			

Sd. S.S. Ojha
प्रधानाचार्य

नोट—कालेज आफिस से टी० सी० मिलने के पश्चात् इसमें छात्र, अभिभावक अथवा किसी भी व्यक्ति द्वारा किसी प्रकार का परिवर्तन अथवा काट-छांट करना नियमानुसार अपराध समझा जाएगा।

(A/27) 26

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Application U/S 19 of the Administrative Tribunal Act, 1985.

AJAY KUMAR : Applicant.

BETWEEN

UNION OF INDIA & OTHERS : Respondents.

TO,

The Works Manager,
Northern Railway,
Loco Shops,
Charbagh, Lucknow.

Sir,

Reg :- APPEAL AGAINST THE ORDERS OF DISCHARGE FROM
SERVICE BEARING S.NO: 941 DATED 12/12/1986.

Most respectfully I beg to prefer this Appeal against the orders bearing S.NO.941 dated 12.12.1986 discharging me from service issued under the Signatures of learned Asstt.Works Manager(M) Northern Railway, ELB Shops in Loco Shops/CB/LKO on the following among other grounds for kind, sympathetic and judicious consideration of your generosity in these hard days of employment crisis.

(A) BRIEF HISTORY:

I having been appointed to work as KHALLASI IN ELB Shop under Asstt.Works Manager(M) in Loco Shops, N.Rly. Charbagh, Lucknow attained temporary status in the category of UNSKILLED labour w.e.f. 26.7.1984 in Scale Rs.196-232 (Rs) after putting in continuous, blotless, sincere and loyal service continuously for the period prescribed for affording Temporary status with allied benefits, privileges and conditions of service as perscribed for other temporary

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Railway servants in Chapter XXIII of Indian Railway Establishment Manual as amended from time to time read with instructions contained in G.M.(P)N.Rly. New Delhi's printed Serial No.7850 and 8952. I am astonished to receive notice referred to above discharging me from service w.e.f. 13.12.1986, by paing one month's wages in lieu of notice, wages upto 13.12.1986 and retrenchment compensation as admissible under the Industrial Dispute Act 1947. (The correctness or otherwise of amount of compensation could not yet be examined). The discharge notice under reference contains the following asper-
asion/allegations attacking to my character and accord-
ing to which I have been subjected to the victamisation of instant discharge from service w.e.f. 13.12.1986 with-
out affording me an opportunity to defend as provided in Article 311(2) of the Constitution of India).

(B) GROUND: -

That the discharge notice under reference is arbitrary and void because: -

(A) I being a temporary status Workman employed under Asstt.Works Manager (M) Northern Railway, Loco Shops, Charbagh Lucknow am also governed by R.S.D.& A.Rules-1968 embody-
ing in it the detailed procedures for taking up the employees for any sort of allegations leading to their Misconduct or mis-behaviourss but I have been discharge from service without following the provisions of R.S.D.& A Rules 1968.

(B) The Discharge notice under reference is also in violation of provisions of Rules 149³ R-I dealing with "Termination of service of temporary railway servant" read with Rly.Board's instructions and guide lines contained in their letter NO.E(D&A) 64RG-6-16 dated 4.3.1965.

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means the termination by the Employer of the Service of a Workman for any reasons that so ever OTHERWISE, than as a punishment inflicted by way of disciplinary action."

In view of the facts as aforesaid and violation of rules and the Law in of the Land e.g. Article 311(2) of the Constitution of India, R.S.D. & A. Rules -1968, Railway Board's Instructions contained in their letter NO.E(D&A) 64 RG-6-16 dated 4.3.1965 docketting copy of U.O. Note NO.5458/Adv(B) dated 9.10.1964, norms laid down for application of Rule 149 R-I and the provisions of Industrial Disputes Act 1947 as illucididated in foregoing paragraphs(d) under caption "GROUNDS". I most humbly pray that :-

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may please be set aside; and

2. I may please be reinstated in service extending justice to me.

I and my family will always remain grateful for kind act of your generorsity by way of ordering my re-instatement as prayed here in enabling me to save my children from starvation.

Yours Faithfully,

Dated 15.2.1987.

(AJAY KUMAR)
T.NO.ELE-138.
ELB Shops/N.Rly Loco Shops,
Charbagh, Lucknow.

RESIDENTIAL ADDRESS: -

C/O. Shri Chanan Lal,
554-K/45 New Arjun Nagar,
Alambagh, Lucknow.

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एम०पी० शर्मा एडवोकेट
३९-बी. ओडियन बंगलो में
ओडियन सिनेमा के सामने
कैन्ट रोड, लखनऊ

अजय कुमार

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Application Us/19 of the Administrative Tribunal
Act, 1985.

AJAY KUMAR

.....

Applicant.

BETWEEN.

UNION OF INDIA & OTHERS:

Repondents.

TO,

Recd no 4

The Works Manager,
Northern Railway,
Locomotive Works,
Charbagh, Lucknow.

Sir,

REG: - APPEAL AGAINST THE ORDERS OF DISCHARGE FROM
SERVICE BEARING NO.5.NO.941 DATED 12.12.86.

Ref: - Appeal dated 15.2.1987.

Respectfully I beg to invite attention of your kind honour to my appeal referred to above which was despatched to you under Registered A.R. cover. It is very unfortunate that so far no response could be given to me with reference to my appeal under reference and a period over six months has elapsed. I may be excused to mention that it is on record that not only the action of discharging me from service is violative of extant rules and discharging me and prescribed norms but the action

Contd. P..2.2.

प्रमाणित किया जाता है
३१-१०-१९८६ को
कोर्टघर सिनेमा के सामने
रास्ता रोड, लखनऊ

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of no response to my appeal. Keeping it pedding; as is the fate of my appeal under reference, for such a long period over six months, itself is in violation of prescribed norms of disposing appeals. Brining out these facts of violation of rules and prescribed norms I would once again request your Honour to be considerate, kind and Judicious enough to intimate me a line in response to my appeal under reference (a copy enclosed for ready reference) to enable me to seek redressal at other appropriate level accordingly.

Thanking you in anticipation.

Yours Faithfully,

Sd :- xxxxxxxxxx

(AJAI KUMAR)

ELB - 538,

ELB Shops/N.Rly. Loco Shops,
Charbagh, Lucknow.

Dated : August 27.1987.

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ए.पी. राय एडवोकेट
३३-वी, ओडिसा क
बोडिंगम सिनेमा के
कन्द रोड, लखनऊ

अजय कुमार

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Written statement on behalf of Union of India

and others Respondents.

IN

Registration Case No. 1014 of 1987.

Ajay Kumar Applicant.

Versus

Union of India and others Respondents.

Written statement of Sri B. R.

Tiwari aged about 53

years S/o Sri Bachchu Tiwari

_____ serving as Asstt.

Personnel Officer N. Rly. Loco

_____ Lucknow.

श्री पन्त
मरा ११/१२
११/३/८८

Counsel for the
petitioner not
available. Hence
copy of CA speed
with DR (I)
deposed.
Counsel Union
of India (Railways)
11.3.1988

1. That I am serving as Asstt. Personnel Officer N. Railway Lucknow and have been deputed to file this written statement on behalf of opposite parties and as such I am fully acquainted with the facts deposed to below.

2. That I have read and understood the contents of the above noted registration case and am in a position to give

लगातार अधिकारी a parawise reply.

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Asstt. Personnel Officer

N. Rly. Locomotive W. Shop C.B. Lko.

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3. That the averments made in paras 1 to 5 of the petition required no comments.

4. That in reply to para 6(a) of the petition it is admitted that the petitioners father ~~x~~ Chaman Lal was working in the Loco motive work shop Charbagh, Lucknow and that he retired on 31.1.1986.

5. That in reply to para 6(b) of the petition it is stated that it is absolutely wrong to allege that any right was ever given to a retiring ~~worker~~ worker to make any nomination in favour of his ward. The correct position is that the jobs to wards of retiring ~~the~~ employees are provided but subject to selection and consideration of merits of the candidate.

6. That the averments made in para 6(c) of the petition call for no comments.

7. That in reply to para 6(d) of the petition it is

सहायक कार्मिक अधिकारी

उ० र० इंजन कार० चारबाग लखनऊ

Asstt. Personnel Officer

N. Rly Locomotive W Shop B. Lko

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stated that the answering respondents have no knowledge as to what transpired between the petitioner, his father and his maternal uncle. It is however relevant to mention that the petitioners' form duly filled in all respect was received the said form bears signatures of the petitioners as well as of his father.

8. That in reply to para 6(e) of the petition it is stated that on the very face it is wrong to allege that the petitioner's father is totally illiterate very fact that the petitioner's father had put his signatures on application form ^{Shows} that the plea of being illiterate has been falsely taken up with the ulterior motive. Rest of the averments made in the para under reply are not at all worthy of any ^{Credence} ~~evidence~~ in the circumstances of the case.

It is further stated that there being the signatures of the applicant as well as of his father on the application form the petitioners plea is totally untenable.

9. That in reply to the para & 6(f) of the petition it is stated that the averments made there in are incorrect and the same are denied. It is further stated that there

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कारो चारबाग लखनऊ
Personnel Officer
Motive W Shop - B. Lko.

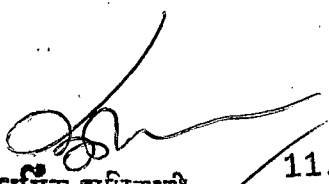
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are clear signatures after column no. 8 of the application form which shows that the form ^{was} filled up by the applicant. It is further significant to mention that the petitioner has certified that the column filled in are correct.

10. That in reply to para 6(g) of the petition it is stated that the petitioner was engaged as a casual labour being found qualifide in the selection he was appointed with effect from 26.3.1984. It is further stated that the petitioner engagement as a casual labour was made on the basis of the information given by him in the application form and the certificate submitted by him. It is pertinent to mention that the certificate in respect of educational qualification submitted by the petitioner was found to be false on the basis of the verification from the concerned educational institutions. Under these circumstances the services of the petitioner were terminated as per rules.



सहायक कर्मिक अधिकारी

डो. रो इंजन कारो चारवाग लखनऊ

Asstt. Pers. no. 10110

Locomotive W. Sup. B. Lko,

11. That in reply to the averments in para 6(h) of the petition it is stated that the said averments are based on

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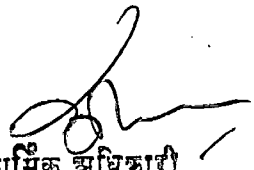
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misconception of facts and law. It is further stated that at the time of entertainment of applications attested copies of educational certificate, age certificate etc. were obtained by the railway administration in support of the declaration given by the petitioner on the application form itself. The entries in the application forms and the certificate submitted alongwith the application form are fully binding upon the petitioner. There is absolutely no requirement of law that the certificates etc. should be called again.

12. That the averments made in para 6(g) of the petition call for no comments.

13. That the averments made in para 6(j) of the petition are wholly misconceived and the same are denied. It is further stated that the attested copies of the certificates received from the petitioner alongwith his application form were used while making the service record in good faith that the certificate in question were genuine. In the circumstances of the case there was absolutely no necessity



सहायक कार्मिक अधिकारी

उ० र० इंजन कार० चारबाग लखनऊ

Asstt. Personnel Officer

N. R. Locomotive Workshop B. L. R.

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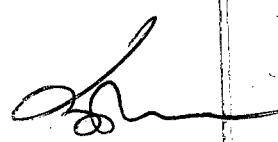
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to obtain certificate a fresh from the petitioner.

14. That ^{in reply to} the averments made in para 6(k) of the petition it is stated that it is wrong to allege that the petitioner was appointed as a khalasi in regular, clear and substantive vacancy. As per rules of the railway administration the casual labour after completion of 120 days of job becomes entitled for the status of a temporary casual labour and also for the grade. The Railway Administration has merely acted according to the aforesaid rule in the case of the petitioner and not on any other ground as alleged by the petitioner.

15. That the averments made in para 6(l) of the petition are not admitted. It is wrong to allege that the petitioner was ever working as a regular temporary employee. The correct position, as stated above is that the petitioner was serving as a casual labour and he merely attained temporary status.



सहायक कार्मिक अधिकारी

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Asstt. Personnel Officer

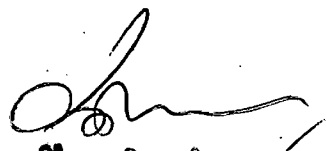
N. Dy. Locomotive W. Shop - B. Lko.

16. That the averments made in para 6(m) of the petition

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petition are not admitted and it is further stated that for the appointment of a casual labour the prescribed age limit is 18 to 28 years and it was therefore necessary to obtain the age certificate from the candidate to consider his candidature.

17. That in reply to the averments made in para 6(n) of the petition it is stated that the said averments are not only incorrect but are wholly untenable in the eyes of law. It is further stated that it is assential for the railway administration to obtain the date of birth / birth certificate from the candidate concern to determine his illigibility (as per prescribed age limits) for engagement as a casual labour and which ~~is~~ obviously has to be done before the recruitment. It is further pointed out that there is no provision of law to provide two opportunities for declaring (two or different dates of birth on the alleged different stages).



सहायक कार्मिक अधिकारी
बोरो इंजन कारो चारबाग लखनऊ
Asstt. Personnel Officer
N.Y. Locomotive W. Shop B. Lko.

18. That in reply to the averments made in para 6(e) of the petition it is stated that at the time of


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engagement of a casual labour the candidates are required to furnish age certificate, educational qualification certificate etc. The attested copies of the certificate submitted by the candidates are accepted by the railway administration, in good faith that the attested copies are genuine. This how ever does not take away the right of the railway administration in cases where forged certificates have been submitted by the candidate. It is relevant to mention here that in the circular no. 105 E/A dated 4.12.1982 provision had been made that the applications shall be submitted alongwith attested copies of certificates regarding date of birth, educational qualification etc. In this very circular it has been mentioned that a wrong declaration will be seriously viewed. A photo stat copy of the said circular letter is filed herewith as Annexure C-A.-1 to this written statement.

From the above facts and circumstances it is abundantly clear that the information given in the application form and the certificate submitted alongwith the application were believed to be true in good faith. There was therefore no occasion to obtain the original at that stage. However


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after verification from the institution concerned ~~was~~ it was revealed that the certificate submitted by the petitioner was false.

19. That in reply to averments made in para 6(p) of the petition it is stated that the petitioner had submitted a transfer certificate from Aminabad Inter College, Lucknow showing his date of birth to be 13.7.1961. It is absolutely wrong to allege that the petitioner submitted any transfer certificate from Bappa Shri Narayan Vocational Inter College, Lucknow. It is ~~ex~~ relevant to mention that the Principal Aminabad Inter College Lucknow ^{vide} letter dated 8.12.1986 very clearly certified that the transfer certificate in favour of Ajay Kumar has not been issued from that college. A photo stat copy of the said letter dated 8.12.86 is being filed herewith as Annexure -C.A.-2 to this written statement. It is on the very face evident that the petitioner is trying to mislead by producing another transfer certificate (Annexure-2 to the petition) from a different institution.

In the circumstances of the case the said transfer

certificate can not be relied upon. Moreover the petitioner

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Asst. Personl. Officer
N. Ry. Locomotive W. Shop + B. Lko.


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is bound by his declaration and certificates submitted by him in his original application.

20. That in reply to averments made in para 6(q) of the petition it is stated that the petitioner submitted the forged transfer certificate alleging to have been issued by the principal Aminabad Inter College, Lucknow and in which the date of birth of the petitions is shown as 13.7.1961. A photo stat copy of the aforesaid transfer certificate is filed herewith as Annexure C.A.-3 to this written statement. The petitioner is bound by his declaration and is also liable for the consequences for giving a wrong declaration. The petitioner's date of birth as disclosed by him in his application form is 13.7.1961 and not as 21.6.1962 as alleged by him. From the facts and circumstances stated above the assertions made by the petitioner do not inspire any confidence. The petitioner has deliberately played a fraud upon the railway administration by filing bogus and fake certificates.


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उ० र० इंजन कारो चारवाग लखनऊ
Asstt. Personl Officer
N. Rly Locomotive W. Shop C.B. Lko.

21. That the averments made in para 6(r) of the peti

are not admitted. It is further stated that the petitioner was discharged from service w.e.f. 12.12.1986. as the certificates submitted by him in respect of his educational qualifications and age were found to be false. It is wrong to allege that the petitioner was working against a substantive post. The benefits refferred to in the para under reply were afforded to the petitioner just in the normal course and not on account of the grounds. stated by the petitioner.

22. That in reply to para 6(s) of the petition it is stated that the Principal Aminabad Inter College Lucknow vide letter dated 8.12.1986 (Annexure C/II' to this written statement) clearly informed that the certificate in question is false under these circumstances the services of the petitioner were rightly and discharged vide order dated 12.12.1986 (Annexure 'I' to the petition. A bare perusal of the aforesaid order dated 12.12.1986 will show that the entire dues of the petitioners were remitted through D.A. cheque alongwith the order. The services of the petitioner in the circumstances of the case were x rightly discharged.

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23. That the averments made in para 6(t) of the petition are not admitted. The certificate in question was submitted by the applicant himself and this being so. The petitioner is bound by the same. It was initially accepted by the Railway Administration. There was no occasion for seeking clarification as the Principal of the concerned college has sent a very ~~xxx~~ clear report.

24. That the averments made in para 6(u) of the petition are not admitted. As already stated the Principal Aminabad Inter College, Lucknow vide his letter dated 8.12.1986 informed the Railway Administration that the certificate in question is false.

25. That para 6 (v) of the petition is not admitted. it is further pointed out that the applicants' date of birth as per certificate filed by the petitioner is 13.7.1961. and as such the alleged date 21.6.1962 is prima facie wrong.



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इंजन कारो चारवाग लखनऊ
Asstt. Personnel Officer
Rly. Locomotive W. Shop - B. Lko

26. That the averments made in para 6(w) of the petition

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are denied. The application form duly filled in all respects ~~admitted~~ bears clear signatures of the petitioner. The entries contained in the application form are fully binding upon the petitioner. The averments made to the contrary are wholly misconceived.

27. That in reply to averments made in paras 6(x) of the petition it is stated that the averments made therein are wholly misconceived & hence denied. The petitioner is trying to raise frivolous pleas just to find a pretext for his fraudulent acts. The plea is however wholly untenable.

28. That in reply to the averments made in para 6(y) of the petition it is stated that, as per instructions. On the application, the form is to be filed by the applicant and has to be signed by him. Under these circumstances entries in the form are fully binding upon the petitioner and he is fully responsible for his conduct, & irrespective of the stage (i.e. pre or post service conduct). The entries in the application form of the accompanying certificates are deemed genuine of the same are accepted as such. However this does not take away the right of the Railway Administration to take action against the employee when it is detected that wrong entries have been made by the applicant and he has filed false certificates.

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29. That in reply to para 6(z) of the petition it is stated that the averments made therein are wholly misconceived and hence denied. A party is always bound by his declaration and this being so the railway administration was perfectly justified in acting on the basis of the declaration contained in the application which was duly signed by the petitioner. The averments made to the contrary they are wrong and have been introduced just to create a defence for a the fraudulent act done by the petitioner. There was no need to call for any declaration from the petitioner to declare his date of birth again for any purpose. The service record of the petitioner was prepared on the basis of the recorded date of birth shown in the transfer certificate which was submitted by the petitioner.

30. That in reply to the averments made in para 6(aa) of the petition it is stated that the said averments are not admitted. It is further stated that there exists no rule from the railway board otherwise to afford two chances for furnishing date of birth.

31. That the averments made in para 6(bb) of the petition are not admitted. It is further stated that the certificate viz. transfer certificate submitted by the petitioner in proof of his educational qualifications and date of birth were found false after enquiry from the

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Principal of the concerned institution. In the circumstances of the case the petitioner is guilty of making false declaration and practicing fraud upon railway administration by filing false certificate and this being so the petitioner was rightly discharged from service.

32. That the averments made in para 6(cc) of the petition it is stated that the said averments are wholly misconcieved and in fact are purtantly and manifestly erroneous. The petitioner is clearly guilty of having deliberately filed false certificate.

33. That in reply to para 6(dd) of the petition it is stated that the alleged distinction of misconduct, prior conduct and misconduct after service is illusory. Such an enterpretation, if accepted will lead to palpably absurd and fallacious conclusion. The petitioner is bound by his declaration and in view of the fact that the certificate filed by him were found to be false. The petitioner's candidature and his appointment was in fact ~~abnition~~ void ab inito

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34. That in reply to averments made in para 6(ee) of the petition it is stated that the petitioner had been

सहायक कार्मिक अधिकारी
कोरो ईजन
Assst. Commr.
L. Ray, Secy. to Govt.
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serving as a casual labour for which sanction was accorded time to time by the competent authorities. It is wrong to allege that the petitioner was ever posted against the substantive post. However as per existing law the petitioner was given a temporary status on completion of 120 days of service as casual labour. It is totally wrong to allege that the order dated 12.12.86 suffers ~~substance~~ from any infirmity what so ever. It is further relevant to point out that a bare perusal of said order dated 12.12.1986 (Annexure -1 to the petition) will show that all the dues of the petitioner's were settled and paid to him. In this view of the matter also the petitioner can not have any grievance.

35. That the averments made in para 6(ff) of the petition are not admitted and it is clarified that any authority equal or higher in rank is fully empowered to discharge a casual labour.

36. That in reply to para 6(gg) of the petition ~~xxxxxx~~ it is stated that the averments made in are incorrect and the same are denied. It is wrong to allege that the order of discharge suffer from any legal infirmity what so ever. It is pertinent to mention here that the petitioner having played a fraud upon the railway administration. The appointment itself was void

सहायक कार्यालय अधिकारी
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~~abnatio~~ having been obtained frauduntly.

37. That the averments made in para 6(ii) of the petition are not correct and the same are denied. The relevant provisions of Industrial Dispute Act 1947 have fully been complied with and in persuance of the said act the petitioner has been paid Rs. 1519.50 paisa as retrenchment compensation alongwith other dues. The petitioner's claim is therefore further barred by the principles of waiver, estopple and acquiescence.

38. That the averments made in para 6(jj) of the petition are based on misconception of facts and law. Suitable and detailed reply will be given at the time of arguments.

39. That in reply to para 6(kk) of the petition it is stated that the petitioner's case was put up before the competant authority who ordered that the candidate discharged on furnishing false educational certificates is debarred for further employment in railway administration.

40. That in reply to para 6(ll) of the petition it is stated that the averments made therein are not admitted. The application for appointment which was

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received from the railway administration was duly signed by the petitioner and this being so it is absolutely incorrect to say that the petitioner was not aware of the entries made therein by himself on his father. The entries and the accompanying certificates are fully binding upon the petitioner. The petitioner has raised the present ~~prevalous~~ ^{involous} plea just to save his skin.

41. That the averments made in para 6(mm) of the petition relates to something alleged to have transpired between the petitioner and his father and hence no comments are possible. However such a situation even if accepted would not change the factual and legal position in respect of submission of false certificates and making false declaration.

42. That in reply to para 7 of the petition it is stated that the petition is ~~devoid~~ ^{devoid} of merits. The petitioner is not entitled for any relief and the petition merits dismissal with special costs.

43. That none of the grounds taken in the petition are tenable being based on misconceived notions of facts and law. Suitable and detailed reply will be given at the time of arguments of the case.

सहायक कार्मिक अधिकारी

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Asstt. Secy. to Govt.

N. Rly. Locomotive W. Sh. B. Lko.

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V E R I F I C A T I O N

I Shri Baburam Tiwari - - - - - serving as
Asstt. Personnel Officer Locomotive Shop, Lucknow - - - - - do hereby
verify that contents of paras 1 to 2 are true to my
personal knowledge, and belief, those of paras 3 to 41 - -
- - - - - are true to my personal knowledge derived
from record, those of paras . - - 42 to 43 - - - - -
are verified from legal advice.

Place: Lucknow
Date: 8.3.88.


Signature
सहायक कार्मिक अधिकारी
बोरो इंजन कारो चारबाग लखनऊ
Asstt. Personnel Officer
N. Ry Locomotive W. Shop : B Lko.

C A "I" - (38) (A5/20)

NORTHERN RAILWAY - LOCOMOTIVE WORKS, CHARBACH, LUCKNOW.

NO: 105E/A

DATED: 04/11/1982

The All Shop Supdt. and Secretary
NRMU/URMU, Locoshops, Charbagh,
LUCKNOW.

Applications are invited from the staff of these Works and PSTS who are retiring in the years 1984, 1985 and 1986 and from the staff belonging to SC/ST communities who are retiring in the years 1985 & 1986, and 1987 to form a panel of Casual Labourers.

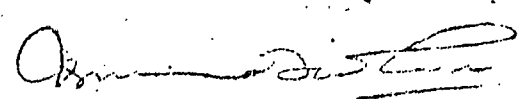
The minimum qualification for the recruitment will be VIII Class passed. The staff whose one son is already employed in the Workshop need not apply for the above posts. The wrong declaration by the staff will be seriously viewed. The candidates should be between the age of 18 and 28 years as on 20-12-1982. Notice should also be circulated to staff in the Night Shift.

All the respective Shop Supdt. are requested to entertain the applications from the staff working under them, in connection with the above on the proforma Annexure 'A' & 'B' and forwarded these applications to this office alongwith attested copies of Certificates regarding date of birth, education qualification, technical qualification, proficiency of games, SC/ST certificates (in case the candidates claiming themselves to be members of these communities).

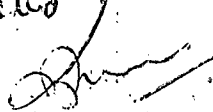
S.S. concerned should collect the applications from his staff by 20-12-'82 and forwarded the same to this office under covering letter giving the full details of the staff who have submitted the applications & number of enclosures with each application should be checked up by the S.S. concerned and compared with those indicated in application forms. The application will not be entertained after 20-12-1982.


The applications must be properly filled in and accompanied with the attested copies of Certificates otherwise these are liable to be rejected.

No action will be taken on the applications submitted by the employee of these works prior to issue of this notice.


for Addl: Chief Mechl: Engineer(W),
N.Rly., Locoshops, CB-Lucknow.

BAWERJEN/27-11

Attested

Asstt. Personnel Officer
Locomotive Shop CB, Lko.


Asstt. Personnel Officer
N. Rly. Locomotive Shop CB, Lko.

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Tele. No. : 44562

अमीनाबाद इंटर कालेज,
लखनऊ

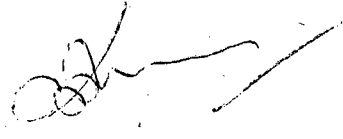
दिनांक... 2-12-1964

कार्यालय सु. यांत्रिक अभियंता
लोकल मरि नगर लखनऊ

गहापथ

आपके पते पर गलत से H.L. दिनांक 12-86 से संबंधित
कासने मूल दी गई थी, मजबूत उग्र राई को मने लाते, S.R.
14-12-25 जो अक्षित है मेका है वह इत न्यायेन करा
जारी नही की गई है। इस जमाना मजबूत मुमिद की दीदी।
अल्टिमेट न्या गावरी है।

Attention



H.O. 1/11

सहायक फ. वि. अधिकारी
30 रो इंजन कारो मरपाग लखनऊ
Asstt. Person. Officer
M. Rly. Locomotive Shop C.B. Lko



र. र. मरपाग
2-12-64
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अमीनाबाद इण्टर कांसेज, फाजिलनऊ

B. Registrar No. 8255

स्कालर रजिस्टर तथा सी. सी. फार्म

Scholar's Register & Transfer Certificate

संकायक सं.

विद्यार्थी का नाम

सी. सी. फार्म सं.

Admission File No. ---

Withdrawal File No.

T. C. File No.

छात्र का नाम तथा धर्म Name of the Scholar with Caste if Hindu, otherwise religion				संरक्षक का नाम व्यवसाय तथा पता Name, occupation and address of parent or guardian	छात्र की जन्म तिथि	व्यक्तिगत विवरण अर्थात् पि विद्यापीठ में इसके पहले विद्यापीठ
अजय कुमार				श्री. अजय कुमार प्रध्यापक, अमीनाबाद इण्टर (मौजरी) नगर, फाजिलनऊ, लखनऊ	१५-६-१९५९	
कक्षा Class	प्रवेश तिथि Date of Ad- mission	उत्तीर्ण तिथि Date of Pro- motion	हटाव तिथि Date of Removal	हटाव होने का कारण Cause of removal i. e. Non payment of dues removal of family, expulsion. etc.	वर्ष Year	चरित्र और कार्य Conduct and work
I						
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VI	१६/६/५९	२०/५/६०			१९६०-६१	उत्तम, समतुल्यजनक
VII	२०/६/५९	१५/५/६०			६१-६२	उत्तम, समतुल्यजनक
VIII	२०/६/५९	२०/५/६०	३०/६/५९	काम न करने के कारण	६२-६३	उत्तम, समतुल्यजनक
IX						
X						
XI						
XII						

Attested

सहायक कार्यालय अधिकारी

अमीनाबाद इण्टर कांसेज

सहायक कार्यालय अधिकारी

Asstt. Personell Officer
Locomotive W. Shop Lko.

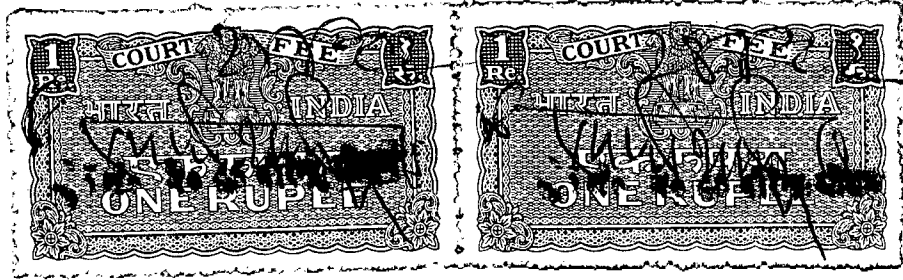
यह प्रमाणित किया जाता है कि उपर्युक्त छात्र का नाम पत्रक शिक्षा विभाग के विद्यालयों में तब तक प्रदर्शित किया गया है।
Certified that above Scholar's Register has been posted up to date scholar's leaving as
required by the Departmental Rules
दिनांक :- १५-१२-६२

Filed today
26/4/88

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration Case No. 1014 of 1987.



AJAY KUMAR APPLICANT.
VERSUS
UNION OF INDIA & OTHERS RESPONDENTS.

REJOINDER AFFIDAVIT OF AJAY KUMAR,
ADULT, S/O SHRI CHANAN LAL, R/O
ALAMBAGH, LUCKNOW.

I, the above named deponent, do hereby
state on oath as under :-

1. That the deponent is Applicant in the
aforesaid case and is well acquainted with the
facts of the case. He has perused the Written
Statement filed by the Department and understands
the same and is making reply as under :-
2. That Paras 1, 2, 3 and 4 of the Written
Statement need no comments.
3. That in reply to Para 5 of the Written
Statement it is submitted that the necessary
provision was made by the Railway Department to
provide a job to the ward of the retiring government
servant and accordingly under the said Scheme the
deponent was selected for the job by the Respondents.



Recd copy today
for 301 P.C. Saxena
26/4/88

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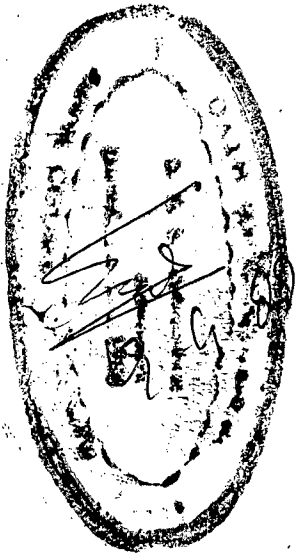
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4. That para 6 of the Written Statement needs no comments.

5. That in reply to Para 7 of the Written Statement the contents of Para 6 (D) of the Application filed by the deponent are reiterated. It is submitted that in the Application Form tendered to the Department the Deponent had only marked his initials and left the columns of the Application unfilled which were subsequently filled through the father of the Deponent. The deponent had not filled the columns of the Application Form in his own hand-writing and that would be proved by perusal of the said application form in question.

6. That in reply to Para 8 of the Written Statement it is submitted that mere putting the signatures by the father of the deponent does not mean that he was literate. Actually the Deponent's father was illiterate and the contents mentioned in paragraph 6(E) were not put up for any ulterior motive as alleged. It is further submitted that as stated above only the signatures have been made by the deponent and the rest of the columns of the application form were left blank and the said blank columns have not been filled in the presence of the deponent as it was bonafide presumption on the part of the deponent that the father of the deponent shall get a gentleman who may bonafide fill all the requirements under the columns of the application form of the deponent and this was in good faith shown by the deponent.



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7. That in reply to Para 9 of the Written Statement it is submitted that the contents of Para 6(F) of the Application are correct. It is further submitted that the deponent has never denied his signatures but claimed that the other columns of the Application Form were blank and he had only put his signatures over it and the same was sent to him out-station from his father. The certificate was also given by the deponent on the belief that the columns of the Application shall be filled later on by his father through a gentleman who was requested to fill the form bonafide.

8. That in reply to Para 10 of the Written Statement it is submitted that the appointment of the deponent was made because the deponent had qualifications VIIIth Class Pass and not on the basis of false certificate. The deponent has never attached any false certificate as alleged but as evident from the enclosure with the application he had produced the genuine certificate claiming that he had passed VIIIth Class when the Application was made.



It is further submitted that the Deponent had obtained the status of the temporary Government Servant which as the ground disclosed by the Department is that due to false verification and submission of certificate the services of the deponent were terminated, therefore, it is clear that the services of the Deponent were terminated in forgery and misconduct without compliance of the Central Civil Services Rules which is applicable

in the case of the deponent and, therefore, the termination order is void ab-initio as well as against the principles of natural justice.

9. That the contents of Para 11 of the Written Statement are incorrect and denied. At the time of inviting the alleged application it was never disclosed to the deponent that the same shall be used against him. Moreover, that application was not tendered under the rules in which it has been provided for recording the correct date of birth of the deponent as well other government employees and if the Department had chosen to ask the ~~Department~~ deponent to explain the position in that event he would have been able to clear his position but no such procedure has been adopted by the department at the time of terminating the services of the deponent. The deponent submits that the contents of Para 6(H) are not based on any misconception of facts or law and the same are again re-iterated.



10. That Para 12 of the Written Statement needs no comments.

11. That in reply to Para 13 of the Written Statement it is submitted that the deponent has never submitted any attested copy alongwith the Application in question. ^uWho has submitted the said attested copy ~~XXXXXXXXXXXXXXXXXXXX~~ ^A~~XXXXXXXXXXXXXXXXXXXX~~ ^Ais not known to the deponent. The deponent has attached a photostat copy of his VIIIth Class Pass Certificate

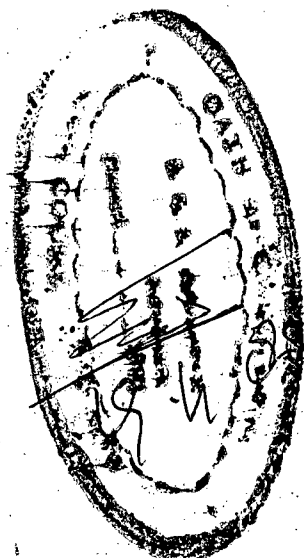
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alongwith the Application and the same is still correct and the same is being also admitted by the deponent. It is totally false to say that the deponent had submitted a attested copy alongwith the Application.

12. That in reply to Paras 14 and 15 of the Written Statement it is submitted that at the time of termination the deponent had the status of a temporary Railway servant and having the status of a temporary Railway Servant he was required to be dealt with under the Railway Servant Conduct Rules and Disciplinary Rules but without taking any recourse to those rules the Department was not authorised to dismiss the services of the deponent outright without following the procedure of the Control Rules as well as under Article 311 of the Constitution of India.



13. That in reply to Para 16 of the Written Statement it is submitted that at the time of his initial appointment as Casual Labourer the Deponent was within the age group and also he was VIIIth Class Pass. The deponent has never desired to achieve any advantage on the basis of age ^a ~~age~~ but sticks at this stage also on the basis of his certificate tendered with the application in question.

14. That the contents of Para 17 of the Written are incorrect and denied. The Railway Administration was bound to obtain the age certificate or any other declaration when the deponent entered into the services and not to act on the application or other

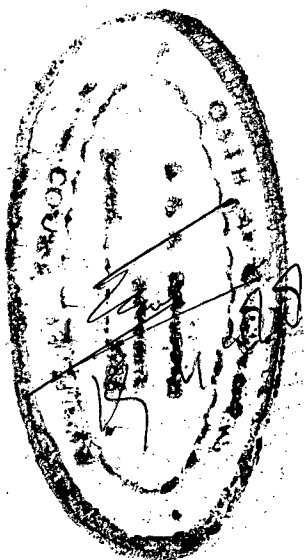
बनने गमने

particularly when the purpose of the same was not disclosed to the deponent. The deponent had never any intention to declare wrong date of birth but still claims the date of birth as per the certificate enclosed with the Application.

15. That in reply to Para 18 of the Written Statement it is submitted that the Deponent has stated the circumstances under which he had filled the form. He also claimed that he had never enclosed attested copy of the certificate as claimed by the Department with the application form as the same was not available to him. The Annexure No. C-3 enclosed with the Written Statement has not been supplied by the deponent and the Annexure No. 1 enclosed with the Written Statement itself proves the Scheme to absorb a ward of a retiring employee.

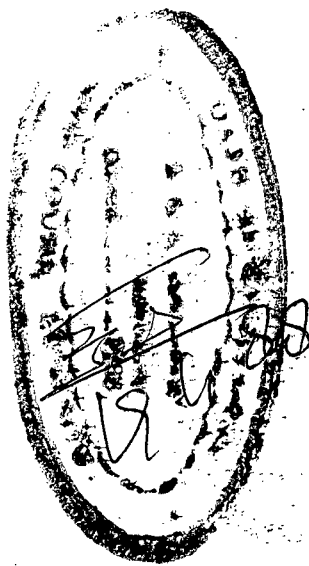
It is further submitted that as and when the Department was required to prepare the service roll of the Deponent in accordance with Paragraph 145 of the Railway Establishment Code in that event it was the bounden duty of the Department to obtain a Declaration after appointing and resuming the duties allotted to the deponent but the same was not asked for and required from the deponent, therefore, the deponent was not responsible for the allegations levelled by the Department.

16. That the contents of Para 19 of the Written Statement are totally incorrect and baseless. The deponent had never supplied the Transfer Certificate issued by Aminabad Inter College, Lucknow particularly



20/12/2012

when it was never in the possession of the Deponent as the Deponent had never read in Aminabad Inter College, Lucknow. The deponent had supplied the correct copy of the certificate alongwith the Application form and that has not been challenged by the Department. Who had supplied the copy of the certificate from Aminabad Inter College, Lucknow it was not known to the deponent and has never been disclosed to the deponent by the Department before terminating the services of the deponent. It is further submitted that Annexure No. CA-2 has never been disclosed to the deponent before terminating the services of the deponent. Under what circumstances the said annexure was written and submitted to the Railway Authorities^a the deponent has no knowledge about it.



17. That in reply to Para 20 of the Written Statement it is submitted that Annexure No. CA-3 has not been supplied by the deponent and no opportunity was given to the deponent to explain his position before the alleged termination. The assertion and explanation tendered to the circumstances of filling the form have correctly been explained in the Application and the same are reiterated again.

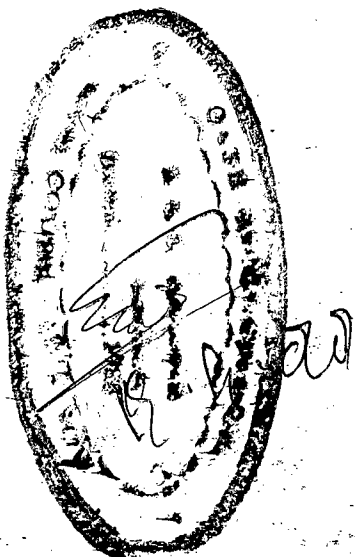
18. That in reply to Para 21 of the Written Statement it is submitted that the appointment of the deponent was made against the substantive clear vacancy which is still in existence. The deponent had never claimed any benefit of the alleged date which has been claimed by the Department. In fact,

अनुवाद

the declaration of date of birth has not been obtained from the deponent at the time of terminating the services under Paragraph 145 of the Railway Establishment Code and, therefore, the averment and justification made by the Department is not tenable in law.

19. That the contents of Para 22 of the Written Statement are incorrect and denied. No opportunity has been given to rebut the contents of Annexure No. 2 to the written statement and while terminating the services of the deponent the contents of Annexure No. 2 were relied upon by the Department behind the back of the deponent and, therefore, the material which has not been disclosed to the deponent cannot and should not be a ground for terminating the services of the deponent without giving opportunity to the deponent to make his defence.

20. That the contents of Paras 23 and 24 are incorrect and denied. The deponent had never tendered the alleged certificate as shown. Who had supplied to the Department it was not known to the deponent. The Railway Administration has illegally accepted the same while under Paragraph 145 of the Railway Establishment Code there is a provision that the competent authority can even rectify the mistake, if any, based on false grounds. The Railway Administration over-looked their provision of such rules. The letter of the Principal of ~~Aminabad~~ ^a Aminabad Inter College, Lucknow is not binding upon the deponent as he was not given any opportunity to rebut the same.



अनुमति प्राप्त

21. That in reply to Para 25 of the Written Statement it is submitted that the date of birth shown in the certificate supplied by the deponent with his application aforesaid is the correct date of birth and the same was required to be recorded in his Service Roll in accordance with the provisions of law.

22. That in reply to Para 26 of the Written Statement it is submitted that why the Deponent had made signatures and left the blank of the application form the same has already been explained in the application itself which is pending before this Hon'ble Tribunal and the same contents are reiterated.

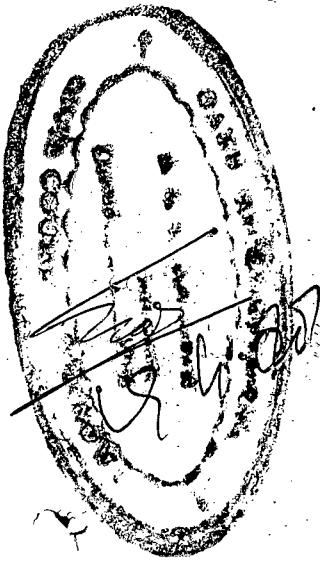
23. That the contents of Para 27 of the Written Statement are incorrect and denied. The pleadings made in paragraph 6 (X) are correct and the same have not been raised for frivolous pleas or to take any advantage of any pretext. The plea of the Deponent is maintainable in accordance with the rules as well as in accordance with the principle of natural justice.

24. That the contents of Paras 28 and 29 of the Written Statement are not correct and denied. In fact, as stated in the application that the deponent was out-station and his father had sent the application form with the instructions that the deponent may sign over the application and the rest form his father will manage to get it filled bonafide. Accordingly beleiving and having confidence in his father the deponent

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delivered the duly signed blank form to his father who was illiterate and the same was got filled through his colleague and Union Member bonafide and the contents whatever it were filled were not disclosed to the deponent even at the time of termination of services of the deponent either by his father or by the Railway Administration. It is submitted that the Railway Administration was required to give an opportunity and proceed against the deponent in accordance with the provisions of the Constitution of India and Under Article 311 as well as Disciplinary & Control Rules of the Railway Department but the same has not been done.



25. That in reply to Para 30 of the Written Statement the rule 145 of the Railway Board as available in the Establishment Code is binding upon the Railway.

26. That the contents of Para 31 of the Written Statement are incorrect and denied. The deponent had never submitted the alleged certificate enclosed with the Written Statement contained as Annexure No. 3. No disciplinary enquiry as contemplated under the Rules, Constitution and in accordance with the principle of natural justice was conducted by the Railway Board and whatever enquiry has been conducted the same was conducted behind the back of the deponent and the said enquiry is not binding upon the Deponent until and unless he was informed of the charges and proper proceeding was drawn against him and then only the decision should have been taken against or in favour of the deponent by the Railway Administration.

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27. That the contents of Para 32 of the Written Statement are incorrect and denied. The deponent was not guilty of having deliberately filled false certificate as alleged. The action on the part of the deponent was throughout bonafide.

28. That the contents of Para 33 of the Written Statement is the legal aspect of the matter. There is clear distinction in between the misconduct prior to employment and after employment. The deponent has never committed any misconduct during the course of employment, therefore, no charge can be levelled against him. The deponent has not filed the certificate in question which has been alleged to be false. The deponent's appointment was valid, perfect and even in case of void appointment or irregular and illegal appointment in that event too the deponent was required to be given an opportunity to plead that his appointment was perfect and legal.

29. That in reply to Para 34 of the Written Statement it is submitted that at the time of termination of the deponent's services, the deponent was a temporary Railway Servant and was also entitled to the ^aprotection of Railway Servant Classification Control and Appeal Rules as well as provision of Article 311 of the Constitution of India and the principle of natural justice but no such protection has been given to the deponent before removing the deponent from service.

30. That the contents of Para 35 of the Written Statement are incorrect and denied. The higher authority

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was not competent to terminate the services of the deponent as the appointing authority means who has actually appointed the person as declared by the Hon'ble Supreme Court in 1975 AIR (SC) 1265.

31. That the contents of Para 36 of the Written Statement are incorrect and denied. The impugned order in question is totally illegal and in violation of service rules and procedure for initiating the departmental proceedings as well as against the principle of natural justice and in violation of Article 311 of the Constitution of India. The deponent had not obtained any appointment order on fraudulent grounds.

32. That in reply to Para 37 and 38 of the Written Statement it is submitted that against the stigmatic order the deponent has recourse to make a complaint that the provisions of Article 311 of the Constitution of India have not been complied with and the deponent has right to claim the provisions of Article 311 of the Constitution of India as well as the Service Rules applicable to him, therefore, to attack the said impugned order on the grounds of statutory provisions and constitutional provisions the same is available to the deponent and mere passing a termination order under some acts will not debar the deponent to claim the benefits of the Constitution as available to him.



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33. That the contents of Para 39 of the Written Statement are illegal and misconceived. The deponent

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Dr. G. W. H. H. H.

I, the above named deponent, do hereby verify that the contents of Paras 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 of this Rejoinder Affidavit are true to my own knowledge and those of paras 13, 18 to are believed by me to be true on the basis of records and those of paras 12, 17, 29, 30, 31, 32 to 34 are believed to be correct on the basis of legal advice tendered.

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application in review
of the court below
to grant a writ

Application allowed:

P. A. No. 277 of 1945—May 7, 1954.

HAFIZUDDIN (Plaintiff-Appellant)

THE GOVERNOR GENERAL OF INDIA
IN COUNCIL. (Defendant-Respondent)

First Appeal, against the order dated 20th March 1944, passed by MAHESHWARI DAYAL ESQR., Civil Judge, Basti.

Govt. of India Act, 1919, Sec. 96 (B)—
Discharge of Income Tax Officer by Com-
missioner of Income Tax—Act ratified by
Govt. of India—Discharge must be deemed
to be by Govt. of India.

Where a superior authority ratifies and acts upon an order of discharge passed by a subordinate authority the discharge by the subordinate authority becomes in substance, both in fact and in law, a discharge by the superior authority.

Where the plaintiff, who was an Income Tax Officer, was discharged by the Commissioner of Income Tax but the Govt. of India repeatedly accepted the position that the plaintiff had been discharged under its own directions, then in this state of affairs the plaintiff must be deemed to have been discharged from his office by the Government of India on the date on which his discharge was ratified and acted upon by them and the plaintiff cannot complain that his discharge was illegal by reason of the provisions of Sec. 96 (B) of the Government of India Act.

S. N. Kutju and Isbaq Ahmad for the
appellant.

S. C. for the respondent.

AGARWALA, J.—This is a plaintiff's appeal arising out a suit which was instituted in December 1942 for a declaration that the order of the Commissioner, Income Tax, dated 19th Aug. 1932 discharging the plaintiff from service was illegal and void and that the plaintiff still continued to be in service. The plaintiff also claimed a decree for arrears of salary for all the period that had elapsed since

his discharge from service till the institution of the suit. The plaintiff's case briefly stated was as follows. The plaintiff was appointed an Assistant Income Tax Officer by the U. P. Government under their Notification No. 343, dated 7th May, 1921 and was confirmed as Income Tax Officer in January 1924. In August 1932 when the plaintiff was drawing a salary of Rs. 590 per month, the Income Tax Department conceived of a scheme to effect reduction in expenditure in that department by discharging some Income Tax Officers and in their place appointing Inspectors of Income Tax on lesser salary. The scheme was proposed by the Income Tax Commissioner U. P. and C. P. and was approved by the Government of India. As a part of the scheme directions were given by the Government of India for selecting persons for discharge. Quite contrary to these directions the Commissioner of Income Tax included the name of the plaintiff as one of the persons to be discharged. A notice of discharge was thereupon issued by the Commissioner of Income Tax to the plaintiff-appellant on 19th August, 1932 stating that the plaintiff's services would be dispensed with effect from 31st October 1932, but that he would be allowed leave with full pay up to the 1st week of January, 1933. The plaintiff was in fact discharged from the office of Income Tax Officer on 31st October, 1932 and compelled to go on leave. While he was on leave he was re-employed as an Assistant Income Tax Officer with effect from 21st December 1934 upon a lower salary. This re-employment rendered ineffective the order of discharge and the plaintiff became entitled to draw the emoluments equivalent to the pay he was drawing before the illegal order of discharge was passed. Since, however, the plaintiff was technically discharged he made representations to the Commissioner of Income Tax and to the Government of India against his retrenchment. His representations were finally rejected by an order dated 14th December, 1936, which was communicated to him on the 23rd December 1936. The plaintiff continued to work as re-employed Assistant Income Tax Officer up to March 1935 when he was employed as Inspector of Income Tax which office he held up to April 1938, when his services were completely dispensed with. The plaintiff then served a notice upon the Governor General of India in Council on the 23rd July 1942 as required by Sec. 80 of the Civil Procedure Code and instituted the suit which has given rise to this appeal for the relief

Appeal dismissed

On the 5th November 1948 one Asarul Haq and the petitioner (Amar Nath Khanna) executed a deed and stamped it with general stamps worth Rs. 18|12 only. The document was presented for registration to the Sub Registrar, Ferozabad the same day. The Sub-Registrar impounded the document as, in his opinion, it was not properly stamped and was really not a deed of partnership but a deed of lease. In his opinion a stamp duty of Rs. 830|10|- was payable on the document. He consequently reported the matter to the Collector of Agra, and the reference appears to have been made through the Inspector of Stamps. The Inspector also agreed with the Sub Registrar and recommended to the Collector that the deficiency in the stamp duty

The suit is also barred by the principle of stoppel. After the plaintiff was discharged from service, he applied for the grant of bene-

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In the Civil Court Adalat

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[वादी] अपीलान्त

प्रतिवादी [रेस्पान्डेन्ट]

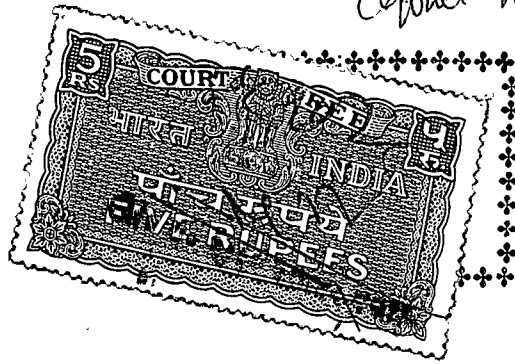
श्री

वकालतनामा

Case no

1987

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बनाम

Agai Kumar
वादी अपीलान्त
Kumar & Sons

प्रतिवादी (रेस्पान्डेन्ट)

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मुकदमा नं०

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ऊपर लिखे मुकदमा में अपनी ओर से

M. P. Sharma

Advocate

वकील

महोदय

एडवोकेट

नाम अदालत	नाम	बनाम
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को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ कि इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पंरबी व जबाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया बसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा उठावें या कोई रुपया जमा करे या हमारी या विपक्षी (फरीकतनी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसोद लेवें यह पंच नियुक्त करें-वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकदमा अदम पंरबी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर

साक्षी (गवाह)

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अभिभाषक पत्र (वकालतनामा)
हाई कोर्ट आफ जूडीकेचर एट इलाहाबाद

नं० 1014 सन् १९८७

Ajay Kumar

वादी/प्रतिवादी
अपीलान्त

Union of India & others

वादी/प्रतिवादी
रेस्पान्डेंट

मैं कि Ajay Kumar vs Sri Chaman Lal
R/o Alam Bagh, Lucknow

उपरोक्त प्रकरण (मुकदमा) में मैं अपना पक्ष समर्थन हेतु

Shanker Lal Kulkarni Advocate
R/o 10, Old Seebahar Bagh, Allahabad

को कानूनी शुल्क (मेहनताना) नियत करके अपना/हमारा अभिभाषक (वकील) नियुक्त करता हूँ और यह स्वीकार करता हूँ कि उक्त सज्जन हमारी ओर से वाद-पत्र (अर्जीदावा), प्रतिवाद-पत्र (बयान तहरीरी), वाद स्वीकार पत्र, विवाद-पत्र, पुनरवलोकन एवं पुनर्निर्णय प्रार्थना-पत्र (दरखास्त), शापथिक कथन (हलफनामा), प्रवर्तन-पत्र (दरखास्त इजराय), मुजबात अपील, निगरानी इत्यादि हर प्रकार के अन्य प्रार्थना पत्रादि एवं लेखादि की प्रतिलिपियाँ अपने हस्ताक्षर करके न्यायालय में प्रस्तुत करें अथवा किसी पत्र पर आवश्यकतानुसार शापथिक पुष्टीकरण करें, और आवश्यक सवाल जबाब करें और लेखादि की प्रतिलिपियाँ एवं हमारे प्राप्य धन को अपने हस्ताक्षरी पावती देकर प्राप्त करें, हमारी ओर से किसी को मध्यस्थ तथा साक्षी (गवाह) मानें और उससे सम्बन्धित प्रार्थना-पत्र प्रस्तुत करें तथा उसका समर्थन करें तथा तसदीक करें, वाद-पत्र उठावें छोड़ें अथवा समझौता करें तथा सुलहनामा दाखिल करें तथा उसके सम्बन्ध में प्रार्थना-पत्र दाखिल करके उनका समर्थन करें अर्थात् प्रकरण से सम्बन्ध रखने वाली कुल कार्यवाही डिग्री के भर पाई होने के समय तक स्वतः या संयुक्त करें। आवश्यकता होने पर किसी अन्य वकील महोदय को वकील करें।

उक्त सभी कार्यवाही जो उक्त सज्जन करेंगे प्रत्येक दशा में अपने किये की भांति हमको सर्वथा स्वीकार मुझको

होगी। अगर मैं कानूनी शुल्क तथा विशेष शुल्क आखिरी वहस के वक्त उक्त सज्जन को न दूँ/दें तो उनको अधिकार होगा कि वह हमारी ओर से मुकदमा की पैरवी न करें। उपरोक्त दशा में उक्त सज्जन का कोई उत्तरदायित्व न रहेगा।

अतएव यह अभिभाषक पत्र लिख दिया कि प्रमाण रूप से समय पर काम आये।

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सं० 1988

Accepted
Shanker Lal Kulkarni
Advocate
26.4.88



प्रकाश-वाक्

ब्रह्म

ਪ੍ਰੀਤਪਾਲ ਸਿੰਘ (ਸਕਿੰਪ)

Reg No: 1014 of 1987 प्रतिवादी । रेस्पान्डेन्ट।

सं० मुकदमा CAT-1014 सब 1987 पेशी की तारीख 11-12-1987 को

ऊपर मुकुटमा में अपनी ओर से श्री

ॐ नमो भगवते वासुदेवाय ॥ श्रीगणेशाय नमः ॥

एडवोकेट / वकील महोदय को अपना वकील नियुक्त करके । इकरार । करता हूँ
और निवेदित करता हूँ कि मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा
जो कुछ पैरवी व जवाब दे ही व प्रश्नोत्तर करे या कोई कागज दाखिल करें या
ब्रीटिंग या हमारी ओर से डिमरी जारी करावे और रुपया जमा करें या मुकदमा
जामा या इक्वाल दावा तथा अपील व निगरानी हाजिरी और हमारे या
अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा उठावे या कोई रुपया
जमा करें या हमारी विपक्षी प्यरीकषाजी का दाखिल किया हुआ रुपया अपने
या हमारे हस्ताक्षर पुस्तक दस्तखती । रसीद से लेवे जो पूर्व नियुक्त करें.....
वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और
होगी । इसलिये यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम
आवेगा ।

W. J. [Signature]

ਪ੍ਰਤੀ ਪੰਨੇ 'ਤੇ ਲਿਖਿਆ ਹੋਵੇ।

Works Manager (b)
Lace Shop (Chabang).

हस्तक्षेप: By: Chet. L. ... (W)

Charbagh : Lucknow

दिनांक:-

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नाम अदालत
 जे० मुकदमा
 नाम फरीदैन ————— बजाय

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