

Group 'A' Service 14 (e) (k)

77

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) ,LUCKNOW.

Writ Petition No. 4735 of 1984

District: Lucknow.

14243

Mohammad Sami

.... Petitioner

Versus

Union of India and others

.... Opp. parties.

I N D E X

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Dinesh Chandra Srivastava
Advocate

(DINESH CHANDRA SRIVASTAVA)

Advocate

Counsel for the petitioner

Lucknow/
Dated: Sept. 20, 1984

2.

Indian Railways, the Railway Board decided to recruit persons working as Shunters grade 'C' on the steamside to man the posts in these units and the Railway Board vide its letter No. E (SI) 57 R 56 dated 3.2.58 laid down the terms of recruitment, training, condition of service ^{Scale} ~~Scale~~ of pay and allowances of the staff to be employed on diesel side.

2. That a note contained in the ^u ~~af~~resaid ^e letter provided that initial recruitment could not be made to the cleaners category in the first instance, the intention was that staff on the steam running side should be absorbed on diesel operation by providing suitable training in handling diesel locos. Steam Staff so ^{absorbed} ~~absorbed~~ as Drivers grade 'C' will be given three advance ~~increments~~ increments after fixation in the grade 'C' of Drivers or over their pay in 'C' grade. It was further ^u ~~clarified~~ ^e that pay on the basis of three advance increments will be drawn by the staff duly for so long as they worked as Diesel Drivers and on their reversion to the steam side their pay too would be fixed as they had not been allowed the benefit of these advance increment.

3. That the note further laid down that so far as Drivers, Assistants and Shunters were concerned staff should also be drawn from the steam side in the first instance. The note further provided

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Mohd Lami



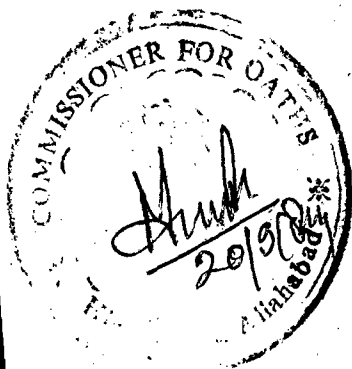
3.

that it was necessary to absorb on the diesel side any matriculation, or if non-matriculantes, those whose literacy Standard is comparable with that of matriculates.

4. That the petitioner along ^{with} S/Sri A.M. Palit and R. Frey was working as Shunter in the Steam side having literacy standard when the Board decided to absorb the aforesaid staff of steam side to Diesel side ^{side} its letter dated 3.2.58. The petitioner alongwith S/Sri A.M. Palit and R. Frey was sent for preliminary course of training as Diesel Driver in view of the letter dated 3.2.1958 and after the petitioner and others completed the training successfully S/Sri A.M. Palit and R. Frey were drafted to work as Driver Grade 'C' on Diesel goods train with effect from 15.12.1962 while the petitioner was drafted to work as driver grade 'C' on Diesel goods train with effect from 24.1.1963 and the petitioner continuously worked as Driver Grade 'C' in Diesel side from 24.1.63 along with S/Sri A.M. Palit and R. Frey.
5. That the petitioner and other above named persons filed a suit for declaration of ^{three} ~~these~~ advance increments and to the benefit of all pay and allowances of the post of Driver grade 'C' on diesel side which was then up-graded and ^{it} ~~it~~ was also claimed that the petitioner and the other above named persons be declared to have been absorbed as Diesel Drivers grade 'C' on the respective

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Mohd Sami



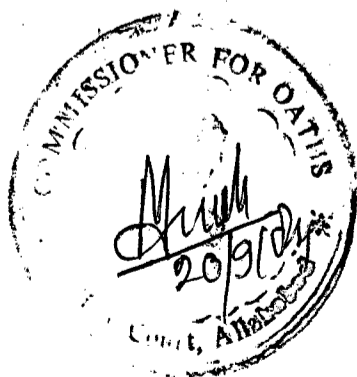
dates of their having started working as such.

6. That the ^{Suit} ~~suit~~ of the petitioner was dismissed by the trial court but ^{was} ~~the~~ appeal the civil Judge Mohanlal Ganj at Lucknow in R.C.A.No. 164/71 decided on 11.3.1972 reversed the findings of the trial court and decreed the suit of the petitioner with cost throughout.
7. That being aggrieved by the judgment in RCA No. 164 of 1971 the Union of India (opp. party No.1) preferred a Second Civil appeal before the Hon'ble Court which was registered ^{as} ~~Second~~ Civil Appeal No.270 of 1972 Union of India through the ^{General} ~~General~~ Manager Vrs. A.M. Palit and others and by the pronouncement dated 28.9.1976 Hon'ble ~~Opposite party~~ ^{O.P.} Trivedi J. held the petitioner to have been recruited ~~to other post~~ ^{of Diesel} to the post of Diesel Driver grade 'C' with effect from 24.1.1963 and also held the petitioner and others to be entitled to three advance increments with all pay and allowances and accordingly dismissed the appeal. A true copy of Judgment in Second Civil Appeal No. 270 of 1972 decided on 28.9.1976 is being annexed with the writ petition as Annexure No.1
8. That the judgment of this Hon'ble Court was accepted by the opposite party No.1 and it was decided not to agitate the matter before the Hon'ble Supreme Court. The Divisional Supdt. Northern Railway Lucknow vide letter No.1-LKO/RSA/Legal-Cell/P-72 dated 11.3.77 was directed to comply with the judgment accordingly. A true copy of the letter is annexed with the writ petition as Annexure No.2.



Mohd Sami

9. That the petitioner was accepted to have been recruited to the post of Diesel Driver grade 'C' w.e.f. 24.1.63 and he was allowed advance increments etc. as per statement a copy of which is annexed herewith as Annexure No.3.
10. That through the fixation of pay etc. of the petitioner was made in compliance with the orders of the Hon'ble Court but the question of seniority of the petitioner was yet to be considered by the opposite parties. It is pertinent to state that the petitioner was working continuously as Diesel Driver from the date of his recruitment to the said post. In the meantime the opposite parties refused seniority to Sri R. Frey from the date of the recruitment and instead he was given seniority from the date of the regular promotion. Sri R. Frey filed a writ petition before the Hon'ble Court which is registered as Writ Petition No. 2728, of 1979 R. Frey Vrs. Union of India and another and a Division Bench consisting of Hon'ble D.N. Jha and Hon'ble K.S. Verma J.J. by the pronouncement dated 14.9.83 allowed the petition of Sri R. Frey and he was allowed seniority in Grade 'C' with effect from his recruitment to that post. A true copy of the Judgment in writ petition No.2728 of 1979 is annexed with this petition as Annexure No.4



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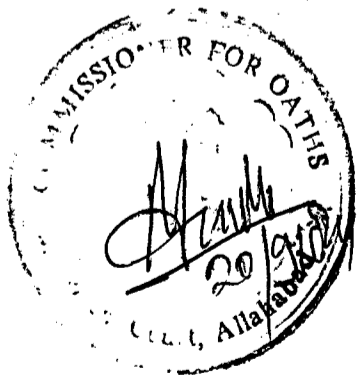
Arshad Sami

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11. That the petitioner after the aforesaid judgment as contained in Annexure No. 4 has been requesting the opposite parties ^{to} to consider his case which was identicle to that of Sri R. Frey but the Opposite party did not pay any heed.
12. That although the petition ^{was} having been held to be recruited in Diesel side w.e.f. 24.1.63 and entitled for his seniority in grade 'C' from that date of his recruitment alongwith all benifits in pay and allowances etc. in view of the judgment as contained in Annexure No.4 yet his seniority has not been fixed by the opposite parties with the result that the juniors to the petitioners enjoy more benefit than him.
13. That the petitioner having been absorbed on diesel side has now nothing to do with steam - side but he has been made ^{to} operate steam engines from December 1983 to which he has ^{been} agitated but of no avail.
14. That the petitioner besides his protests and letters on the aforesaid subject has lastly sent his letter on 5.1.84 to the Oppositeparty No.2 but his seniority according to rules has not been fixed and he is still ordered to operate steam engines. A true copy of application/letter dated 5.1.84 received in the office of opp. party No.2 is being filed herewith this writ petition as Annexure No.5
15. That the acts on the ^{part} ~~part~~ of the opposite parties amounts to refusal in fixing the seniority of the petitioner in view of the judgment passed

M. Mohd Sami

contd. on 7.



7.

by this Hon'ble Court annexed herewith ~~and~~ great prejudice, inconvenience, irreparable loss and injury is caused to the petitioner.

16. That the petitioner is deprived of the right as laid down in the rules and Constitution of India.



17. That the cause of action ^{of} ~~has~~ accrued to the petitioner against the opposite parties on 24.1.63, 28.9.76, 11.3.77, 14.9.83 and on 5.1.84 and every ^{date} ~~long~~ thereafter when the opposite parties ^{of} ~~have~~ withheld the seniority etc. of the petitioner.

18. That since the petition ^{is} ~~is~~ to retire in 1986 there is no speedy and efficacious remedy except by way of writ of mandamus commanding the opposite parties to ^{fix} ~~fix~~ the seniority of the petitioner in grade ^{'C'} ~~w.e.f.~~ 24.1.63 giving him all service benefits and further directing them not to engage him on Steam Side instead of Diesel Side.

Mohd Sami

19. That the petitioner begs to file this writ petition on the following grounds:-

GROUND S

1. Because in view of the departmental rules and in view of the pronouncement of this Hon'ble Court as contained in Annexure No.1 and 4 to this writ petition the petitioner is entitled for his seniority in grade 'C' on Diesel Side W.e.f. 24.1.63 i.e. the date of his recruitment in that side ~~is~~ with all service benefit throughout.

Bhuresh Chandra Biswas contd. on 8.

8.

(ii) Because in accordance with the rules after his absorption in Diesel side the petitioner can not be compelled to operate on steam side.

20. That the petitioner prays for the following reliefs:-

- (A) That the Hon'ble court be pleased to issue a writ of Mandamus or a writ, order or direction in the nature of mandamus commanding the opposite parties to assign seniority to the petitioner on the post of Diesel Driver grade 'C' with effect from 24.1.63 i.e. the date of his recruitment to the said post. ^eWith ^eall service benefit in pay allowances and promotions etc. through out and to further direct the opposite parties not to engage the petitioner on ~~steam~~ steam side after his regularisation on Diesel side.
- (B) That the cost of the writ petition be awarded to the petitioner against the opposite parties.
- (c) That any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case be also granted to the petitioner against the opposite parties.

Dinesh Chandra Srivastava
Adv

(DINESH CHANDRA SRIVASTAVA)
Advocate

Counsel for the petitioner.

Lucknow/
Dated: 20 Sept., 1984

IN THE HON'BLE HIGH COURT OF JUDICATURE, AT ALLAHABAD
(Lucknow Bench), Lucknow

Writ Petition No. of 1984

District: Lucknow

Mohd. SamiPetitioner

Versus

Union of India and anothers.Opp. parties.

ANNEXURE NO.-1

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH, LUCKNOW

Second Civil Appeal No. 270 of 1972

Union of India through the
General Manager Defdt. Appellant

Versus

1. Sri A.M. Palit and ors.Plffs.Respdts.

Claim:- For declaration that the plaintiffs should
be treated to have been absorbed as Diesel Drivers,
Grade 'C' (Grade Rs.150-250).

Valuation of Second Appeal is Rs.4500/-.

Second Civil Appeal against the order and
decree passed by Sri I.S. Mathur, Civil Judge, Mohan-
lalganj, at Lucknow on 11.3.1972 in R.C.A. No.164-71.

Lucknow dated: 28.9.1976

For Appellant: - Sri A.B. Nigam.

For Respondent:- Sri B.C. Saxena.

Hon'ble O.P.. Trivedi.J.

Mohd Sami



2.

Second Appeal No. 270 of 1972

Union of India Vrs. A.M. Palit and others.

Hon'ble Trivedi. J.

This is defendant's second appeal and arises from the judgment and decree of the Civil Judge, Mohanlalganj, Lucknow, dated 11.3.1972 reversing the decree of Munsif North, Lucknow, dated 2.2.71.

Respondents A.M. Palit, R. Rrey and Mohammad Sami were working as Shunters in the Indian Railways on the Steam side. Upon introduction of some units of diesel locos and diesel rail cars on the Indian Railways the Railway Board decided to recruit persons working as shunters or Drivers, grade-C, on the steam side to man the posts in these units and in its letter dated 3.2.1958 (Ext. A.1) laid down the conditions of service : scales of pay and allowances of the staff drafted from the steam side to the diesel side. There is a Note in this letter (Ext.A.1) which is material for the decision of this appeal The note says that "initial recruitment cannot be made to the cleaners' category in the first instance, the intention is that staff on the steam running side should be drafted on the diesel operation by providing suitable training in operation diesel locos. Steam staff so absorbed as Drivers, Grade C- will be given three advance in crements after normal fixation in the grade 'C' of Drivers or over their pay in C grade, pay on this basis of three advance increments will be drawn by the staff only for so long as they work as Diesel Drivers and on their reversion to

Mohd Sami

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the steam side their pay too would be fixed as though they had not been allowed the benefit of these advance increments ".

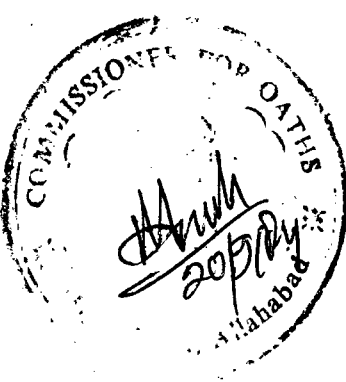
The note further said :

" So far as Drivers, Assistants and Shunters are concerned staff should also be drawn from the steam side in the first instance. It is, however, necessary to absorb on the diesel side any matriculation or if non-matriculいたes, those whose leteracy standard is comparable with that of matriculates."

The respondents filed a suit against the Union of India with the averment that they were non-matriculいたes but with literacy standard comparable to that of matriculいたes. They were sent for preliminary course of training as Diesel Driver in accordance with the letter of 3.2.1958 and after they had successfully completed the preliminary training course plaintiffs 1 and 2- respondents were drafted to work as Driver, Grade-C and Diesel Goods Train with effect from 15.12.1962 while plaintiff No.3 was drafted to work as driver, Grade C, on Diesel Goods

~~Train with effect from 15.12.1962 while plaintiff No. 3 was drafted to work as driver, Grade C, on Diesel Goods~~

Train with effect from 24.1.1963 and they claimed to have been continuously working as Driver, Grade-C , on the diesel side since the aforesaid dates. They claimed right to three advance increments in terms of the Railway Board's letter of 3.2.1958 during the entire period that they had been working as Driver, Grade-C, on the diesel side and they further asserted that they were entitled to pay and allowances of the post as Driver, Grade C- on the diesel side which has since been upgraded and



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admittedly now is in the scale of Rs.150-250. On these facts and allegations the respondents claimed a decree for declaration that they should be treated as having been absorbed as Diesel Driver, Grade-C (Grade Rs.150-150) on the respective dates on their having started working as such on the main line and that they were further entitled to three advance increments in that grade. The suit was resisted by the Union of India which disputed that the respondents were entitled to three advance increments or to the declaration they are entitled to receive pay and allowances in the grade of Rs.150-250 belonging to Driver, Grade -C on the diesel side on the sole ground that under the terms of the letter of the Railway Board dated 3.2.1958 only such running staff is entitled to pay and scales of Driver, Grade-C (now admittedly Rs.150-250) and to three advance increments who continuously work as Driver, Grade -C, .The suit was dismissed by the trial Court. The Plaintiffs appealed and the Civil Judge reversed the Judgment and decree of the trial court, allowed the appeal and granted a decree for declaration that the plaintiffs were absorbed as Diesel Driver, Grade-C in the scale of Rs.150-250 and should be treated as holding that post with effect from 15.12.1962 and 24.1.1963, respectively, and that they are entitled to three advance increments in terms of the Railway Board's letter of 3.2.1958 quoted above, There are also a decree for costs in favour of the respondents.



The submission of Sri A.B. Nigam appearing for the Union of India is that the respondents were not entitled to three advance increments under the letter of the Railway Board dated 3.2.1958 as they had not been continuously working as Driver Grade-C. In the First place, the lower

Mohd Sami

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appellate court has recorded affiding that the respondents should be deemed to have been working continuously as diesel Driver, Grade-C from the dates they started working as such and this is to my mind a finding of fact which does not disclose any error of law. Apart from this the Note contained in the letter of the Railway Board No. E(SL)/57 R 86, dated 3.2.1958 can not be interpreted to imply that a person drafted from the running side on the steam side to the post of Driver, Grade-C on the diesel side and recruited on the post will be entitled to three advance increments only subject to the condition that he actually performed the duty of a Diesel Driver, the intention of the note, on the other had, appears to be that if a person is recruited as Driver, Grade-C on the diesel side after having undergone the necessary training he will be entitled to three advance increments for so long as he hold the post of a Diesel Driver Grade- C and so long as he is not reverted to the steam side for no long as a person holds the post of Driver, Grade-C on the diesel side, he will be deemed to be continuously working as Diesel Driver and he will be deemed to have ceased to so work as from the point of time he is reverted to the steam side. It is in this sense that the note said:

" Three advance increments will be drawn by the staff only for so long as they work as Diesel Drivers and on their reversion to the steam side their pay too would be fixed as though they had not been allowed the benefit of those advance increments. " The phrase ' as

Mohd Samir

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M. Samir
20/9/58

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they work as Diesel Drivers' should be understood as implying ' for so long as they hold the post of Diesel Drivers' and on that view which, to my mind, appears to be the only construction which can be reasonably put on the Note it was not at all material to investigate as to whether the respondents actually working as Driver-Grade-C on the diesel side continuously during the relevant period or not. it is well know that the running staff have spells of ^uperiodic^vrest. They also go on leave and if the Note were given a literal interpretation then it would be destructive of the policy of grant of three advance increments to those working as Drivers, Grade-C on the diesel side and remove the incentive which may have induced the running staff, working on the steam side to opt for the diesel side, for, if the interpretation canvassed for the appellant were to be accepted and pushed to its logical and then drivers, Grade-C, would become disentitled the to three advance increments even for periods of leave or periodic rest.

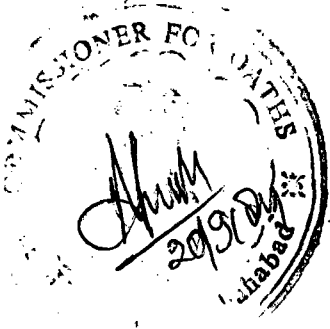
I have no doubt, therefore, in my mind that the meaning and the intension of the Note in the letter of the Railway Board dated 3.2.1958 was that a person, who has been drafted to act and recruited as Driver, Grade-C, on the diesel side from the steam side, shall be entitled to three advance increments in addition to his grade, pay and allowance for so long as he continues to hold the post of Driver , Grade-C, on the diesel side quite irrespective of whether he performed running duty in that period or performed some other static duty in that period or performed some other static duty that may have been assigned to him.



Isrohd Sami

The next submission of learned counsel was that the lower appellate court was in error in declaring that the respondents were absorbed as Diesel Drivers, Grade-C, for it was pointed out that so far the respondents were only holding the post of Driver, Grade-C on the diesel side on an officiating basis and they have not been confirmed on that post. In my opinion the word 'absorbed' in the Note of the letter of the Railway Board of 3.2.1958 (supra) was used in the sense of 'recruited' and not in the sense of 'permanently and substantively appointed'. That being the sense the respondents were entitled to the declaration that they have been recruited as Driver, Grade-C on the diesel side on the dates set out in para-8 of the plaint and not in the sense of their holding a substantive post in the grade of Rs.150-250. But it is equally clear that the respondents are entitled to pay and allowances of the grade of Diesel Driver, Grade-C even during the period they are officiating on that post and so far as their title to pay and allowances is concerned it is unaffected by the fact that they have not so far been confirmed on that post and have not received an order of substantive appointment. In order to bring out this fact clearly the terms of the decree granted by the Civil Judge will need slight modification but otherwise the appeal must fail in substance.

Accordingly, the judgment and decree of the Civil Judge Mohanlalganj, Lucknow, dated 11.3.1972 that A.M. Palit and R. Frey, respondents 1 and 2 and



Mohd Sami

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and MohammadSami, respondent No.3, were recruited as Diesel Driver, Grade-C, in terms of the letter of the Railway Board No. E(SL)/57 RS6, dated 3.2.1958 and are entitled to receive pay in the scale of Rs.150-250 and they are further entitled to three advance increments in terms of the same letter of the Railway Board with effect from 15.12.1962 and 24.1.1963 respectively, with the modification only the decree of the Civil Judge is confirmed. As the appeal fails in substance the respondents shall be entitled to cost, of the appeal from the appellant.

Sd/- O.P. Trivedi
28.9.1976

(TRUE COPY)

Mohd Sami



IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(Lucknow Bench) Lucknow.

Writ Petition No. of 1984

District: Lucknow.

Mohd. Sami Petitioner.

Versus

Union of India And others.Opp. parties.

ANNEXURE NO. 2

NORTHERN RAILWAY

No.1-LKO/RSA/Legal-Cell/P-72 Dt 11.3.77

From: H.Q. Office
Baroda House
New Delhi.

To,

The Divl. Supdt (Lit)
N.Rly. Lucknow.

Sub: Second Civil Appeal No.270 of 1972 in
the High Court of LKO Bench UOI Vs. Sri A.M.
Palit & others DSL Drivers.

Your No.755-E/IIM/1-67 dt 22.2.77

In the above noted case it has been decided that
it is not fit case for agitating further in Supreme
Court.

The High Court Judgment passed in theafore-said
appeal on 28.9.76 may please be accepted and complied
with accordingly.

A copy there of is also sent herewith for taking
necessary action at your end.

D/A as above.

Copy forwarded to Sri A.B. Negain Rly. advocate
210 Ganga Pd. Road LKO for information and necessary
action. He will please arrange to send a certified
copy of Decree sheet along with his bill early to
this office.

TRUE COPY

Mohd Sami
PETITIONER



IN THE HON'BLE HIGH COURT OF JUDICATURE, AT ALLAHABAD
(Lucknow Bench), Lucknow.

Writ Petition No. _____ of 1984

District : Lucknow.

Mohd. Sami Petitioner

Versus

Union of India and

an others.

.... Opp. parties.

ANNEXURE No. - 3

FIXATION STATEMENT OF SRI MOHD. SAMI I. DSL DRIVER 'C'
LUCKNOW:

The Hon'ble High Court of Judicature at Allaha-
bad (Lucknow Bench) Lucknow in the 2nd appeal No.270
of 1972 passed the following orders on 28.9.1976L-

" It is hereby declared that A.M. Palit and
and R. Fray respondent 1&2 and Mohd. Shami
respondent No.3 were recruited as Diesel
Drivers Gr. I.C.I. in terms of Railway Board's
No.E(SL)/57 RS6 dated 3.2.1958 and are
entitled to receive pay in scale 150-260
and they are further entitled to three advance
increments in terms of the same letter of the
Rly. Board w.e.f. 15.12.62 and 24.1.63 respect-
ively."

The General Manager, N.Rly., New-Delhi vide his
letter No. 1-LKO/RSA/Legal-Cell/P-72 dated 11.3.77
has decided that the High Court Judgment passed on
28.9.76 in the above appeal is accepted and complied
with accordingly.

The pay and allowance of the above named respon-
dent No.3 is fixed as under:-

Recruited in Grade 150-240 Driver Gr. 'C'(Dal)
w.e.f. 24.1.63.

1. Pay fixed on 24.1.63 at Rs.168/- instead of Rs.146/-

Mohd Sami

contd. on 2.



wef 24/1/63 after allowing:

3 advance in cement.

2. Pay raised to Rs. 176/- wef. 24.1.64 -do- Rs.150/-20.1.64
3. -do- Rs.184/- wef. 24.1.65 -do- Rs.154/-20.1.65
4. -do- Rs.192/- wef. 24/1/66 -do- Rs.158/-20.1.66
5. -do- Rs.200/- wef. 24.1.67 -do- Rs.162/-20.1.67
6. -do- Rs.208/- wef. 24.1.68 -do- Rs.166/-20.1.68
7. -do- Rs.216/- wef 24.1.69 -do- Rs.170/-20.1.69
8. -do- Rs.224/- " 24.1.70 -do- Rs.175/-20.1.70
9. -do- Rs.232/- " 24.1.71 -do- Rs.180/-20.1.71
10. -do- Rs.240/- " 24.1.72 -do- Rs.185/-20/1/71

Pay fixed as
Driver in Rs.
pay raised to

Rs.452/-	"	1.1.73	-do-	Rs.366/-	"	1.1.72
Rs.462/-	"	2.2.73	-do-	Rs.374/-	"	20.1.73
Rs.476/-	-464/-	1.1.74	-do-	Rs.382/-	"	1.1.74
Rs.488/-	-476/-	1.6.74	-do-	Rs.390/-	"	1.6.74
Rs.500/-	-488/-	1.1.75	-do-	Rs.414/-	"	1.8.74
Rs.515/-	500/	1.1.76	-do-	Rs.416/-	"	1.8.75
Rs.530/-	515/-	1.1.77	-do-	Rs.428/-	"	1.8.76

The arrears of pay and allowances are to be paid
as per judgment of High Court. His S.R. is enclosed
herewith.

Verified

Sd/- Illegible

Sr. Divisional Accounts Officer,
Lucknow.

TRUE COPY

Mohd Sami
PETITIONER.



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IN THE HON'BLE HIGH COURT OF JUDICATURE, AT ALLAHABAD
(Lucknow Bench), Lucknow.

Writ Petition No. _____ of 1984

District: Lucknow

Mohd. Sami Petitioner

Versus

Union of India and anothers. Opp. parties.

Annexure- No. 4

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH, LUCKNOW

WRIT PETITION NO. 2728 OF 1979

R. Frey ... Petitioner

Versus

Union of India and anotherOpp. parties.

PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Lucknow dated 14.9.83

Hon'ble D.N. Jha. J.

Hon'ble K.S. Verma, J.

(Delivered by Hon'ble K.S. Verma, J.).

The prayer made in this writ petition is for quashing of an order passed by the opposite parties, Annexure 6 to the writ petition. A writ of mandamus has also been prayed for commanding the opposite parties to assign seniority to the petitioner on the post of Diesel Driver grade 'C' with effect from 15.12.1962, the date of his recruitment to the said post. It has further been prayed that a mandamus be issued granting the petitioner promotion and seniority in the higher grade post of Driver grade 'B'.

In order to appreciate the controversy between the parties, it should be appropriate to state a few facts, it is not disputed that the petitioner was

Mohd. Sami

contd. on 2.



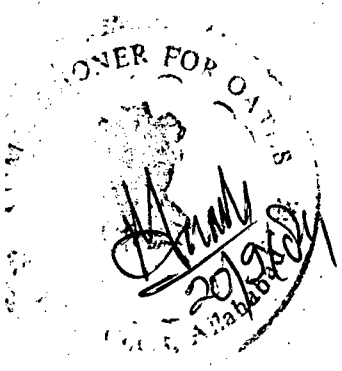
recruited as a Railway Driver on the Steam Side. Subsequently, a scheme was introduced whereby Railway drivers were to be appointed on the Diesel side. Annexure 1 to the writ petition is judgment rendered by this court on 28.9.1976 in second appeal No.270 of 1972. A perusal of the said judgment indicates that a declaratory decree was passed whereby the petitioner along with others was held to have been as Diesel Driver Grade 'C' in the terms of the letter of Railway Board No. D(SL) 57 R 56 dated 3.2.1958. The said judgment also indicates that the petitioner was held entitled to three advance increments with effect from 15.12.1962, the date of the petitioner's appointment as a driver of the diesel side.

After the decision in Second Appeal No. 270 of 1972, question of seniority arose between the parties. The case of the petitioner is that the recruitment of the Diesel side is separate and has nothing to do with recruitment on the Steam side on the seniority of the petitioner has to be fixed with effect from the date of recruitment on the Diesel Side. On the other hand, the case of the opposite parties is that the petitioner was assigned seniority with effect from his regular promotion as Driver grade 'c', i.e. 19.1.1973. It is also the case of opposite parties that the post of Driver grade 'B' was a selection post. The petitioner appeared in the selection held in 1979 but was not selected. It is, therefore, contended that the persons who were selected in the selection held in 1979 have become senior to the petitioner.

During the course of arguments , Mr.C. Saxena

Mohd. Sam

contd. on 3.



3.

stated that he confines his prayer in the writ petition only to the prayer in regard to declaration of seniority of the petitioner on the post of Diesel Driver grade 'C' we proceeded to hear the arguments on this point, in this background. Our attention has been drawn to a decision reported in Rama Kant Chaturvedi Jagdish Chandra and S.B. Upadhya and others, V. Divisional Superintendent, Northern Railway Moradabad(A.I.R.1981) Supreme Court ,287). It may be relevant to note that Notification dated 3.2.1958 which engaged the attention of this court in Second Appeal No. 270 of 1972 also came up for consideration before the Supreme Court. A perusal of the said decision indicates that while interpreting the Railway Board's letter dated 3.2.1958 their Lordships observed that in determining the seniority of persons who had been recruited on the Diesel side, the consideration of seniority by reference to the steam side was uncalled for and had no relevance. Their Lordships took the view that since Diesel side and the Steam side were separate, the seniority shall be determined by reference to the recruitment on the Diesel side. At page 359, the Hon'ble Judges observed as follows:-

" But merely because the appointments were on officiating basis, we do not see how those who were drafted into the diesel unit earlier on the diesel side merely because others who were senior to them on the steam side came in or chose to come in at a later stage. If seniors on the steam side did not come in earlier it was because they were barred from coming in by the requirement of a minimum education qualification. The subsequent relaxation of the rule cannot enable them to take



Mohd. Sami

contd. on 4.

4.

'frog leap' over the heads of those who had come into the diesel side earlier. The seniority on the steam side is of no relevance in determining seniority on the diesel side. "

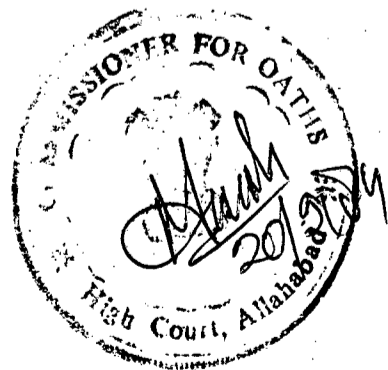
In the instant case it is obvious that the petitioner was appointed on the Diesel side on 15.12.1962

In view of the observations of the Supreme Court quoted, above, it is clear that the steam side and diesel side have been constituted as different branches. This interpretation also finds support from Annexure-1 where in this court observed that the word 'absorbed' in the Notice of the letter of the Railway Board dated 3.2.1958 was used in the sense of 'recruited' and not in the sense of 'permanently and substantively appointed'. The declaration given by this Court in the aforesaid second appeal is that the petitioner was recruited on the Diesel side with effect from 15.12.62. In view of the facts stated above in view of the principles ~~enunciated~~^{enunciated} by the Supreme Court it is obvious that the seniority of the petitioner has to be determined in Diesel driver grade 'C' on the basis of the recruitment with effect from 15.12.1962.

We accordingly, allow the writ petition in part. Annexure 6 to the writ petition dated 27.8.1979 fixing the seniority of the petitioner with effect from 19.1.1973 is quashed. We further issue a writ of mandamus to the opposite parties and directed them to determine the seniority of the petitioner in Grade 'C'

W. S. S.

contd. on 5.



13/12

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5.

by reference to the recruitment made on 15.12.1962
The relief for granting promotion and seniority to
to the petitioner in Grade 'B' is refused. Costs
shall be borne by the parties. Stay order, if any,
is vacated.

Sd/- D.N. Jha,

Sd/- K.S. Verma

14.9.83

(True Copy)

Mohd Sam



25
1/33

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(Lucknow Bench) LUCKNOW

Writ Petition No. _____ of 1984.

District : Lucknow.

Mohd. Sami Petitioner

Versus

Union of India and others. Opp. parties.

ANNEXURE -No. 5

To:

The Divisional Railway Manager,
Northern Railway
Lucknow

(Through: Proper Channel)

Reg: Assignment of Seniority from the date
of Dieselisation that is 15.12.1962.

Sir,

With due respect I beg to say that my case
along with Sri R.Frey was in the High Court, Allahabad
(LKO Bench) and in the judgment he has been assigned
seniority of Diesel with effect from 15.12.62 and
accordingly he has been promoted as Driver Gr. 'A'
and posted at Pratapgarh.

It is requested that my case is identical to
that of Sri R.Frey hence I should also be assigned
DSL Seniority with effect from 24.1.63 and promoted
as Driver Gr. 'A' similarly.

I hope you will very kindly look into my case
favourably and convey your decision for early promotion
Driver Grade 'A'.

Thanking you,

Yours faithfully,

Sd/-

(Mohd. Sami)

Driver Gr. 'B'

Loco R/Shed, N.Rly-Lucknow

TC/7/86

Loco Foreman
N.Rly LKO

Sub: Appeal for
Seniority and
promotion.

Recd.

Sd/- Illegible Dated: 5.1.84

25/1/84

Advocate with Commission
Allahabad High Court

TRUE COPY

Mohd Sami
PETITIONER.

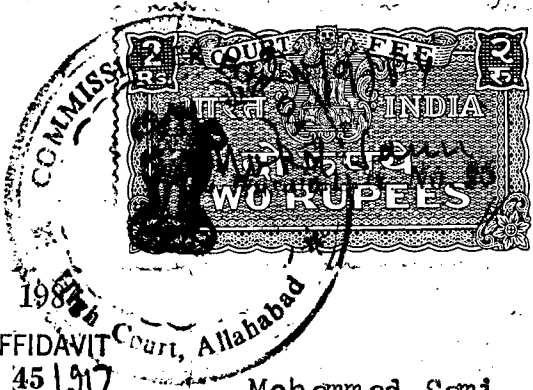
43/917 28/9/84



26
17/34

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(Lucknow Bench) LUCKNOW



Writ Petition No. _____ of 1984

District: Lucknow.

AFFIDAVIT
45/1917
HIGH COURT
ALLAHABAD

Mohammad Sami

.... Petitioner

Versus

Union of India and an other

.... Opp. parties.

AFFIDAVIT

I, Mohammad Sami aged about 56 years son of Sri Mohammad Ismail Driver Grade 'A' N. Railway Head Quarter Lucknow residing at House No. 134 Maqboolganj Shutar Khana P.S. ~~Qaiserbagh~~ Qaiserbagh Lucknow do hereby solemnly affirm and state as under:-

1. That the deponent is the petitioner in the above noted writ petition and as such is fully conversant with the facts of the case.
2. That the contents of paras 1 to 20 of the accompanying writ petition are true to the personal knowledge of the deponent except the legal averments which are believed by the deponent to be true being based on legal advice.
3. That the Annexures No. 1 to 5 of the petition are the true copies of their respective originals.

Lucknow/
Dated Sept. 20, 1984

Mohd Sami

DEPONENT



contd. on 2.

VERIFICATION

I, the above named deponent do hereby verify that the contents of paras 1 to 3 of this affidavit are true to my own knowledge. Nothing material has been concealed and no part of it is false, so help me God.

Mohd Sami

Lucknow/
dated Sept. 20, 1984

DEPONENT

I know and indentify the deponent who has signed before me.

Dinesh Chandra Srivastava
Advocate

Solemnly affirmed before me on 20/9/84 at 2.30 a.m./p.m. by the deponent *Mohamed Sami* Sri Mohd. Sami who has been identified by Sri Dinesh Chandra Srivastava Advocate, High Court Allahabad, Lucknow Bench, Lucknow.

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



M. M. D. Saxena
(M. M. D. Saxena)
Advocate Oath Commissioner
Allahabad High Court
Lucknow Bench, Lucknow

No. 45/917 Date 20/9/84

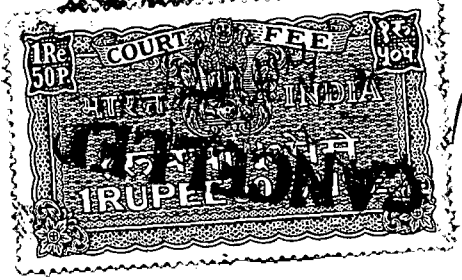
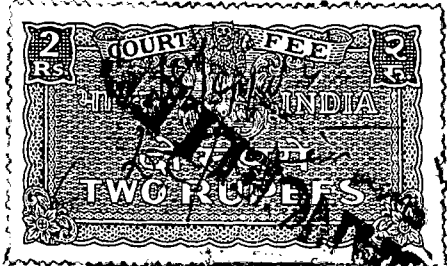
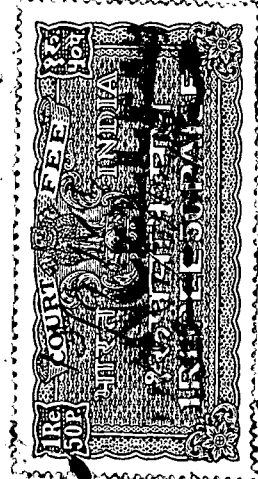
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व अदालत श्रीमान्
[वादी] मपीनान्ट

Humble High Court of Judicature
at Allahabad महोदय

Delhi ~~2/1/04~~ ~~2/1/04~~ वकालतनामा



Mohammed Sami

मि. बनारस ~~2/1/04~~ प्रतिवादी (रिस्पॉण्डेंट)

नं० मुकद्दमा सन् पेशी की ता० १६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री Dinesh Chandra Prasad
Advocate 20/9/04 Ghazipur

Mohd Sami वकील
महोदय एडवोकेट

नाम अदालत
मुकद्दमा नं०
नाम फरीकते
बनाम

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जबाब देही व प्रश्नोंत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया वसूल करें या मुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करें मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी विपक्षी (फरीकसानो) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करें—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता हूंगा अगर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फंसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

Accepted
Accepted
Accepted

हस्ताक्षर Mohd Sami

साक्षी (गवाह) _____ साक्षी (गवाह) _____

20. 9. 1904

दिनांक _____ महीना _____ सन् १६ ई०

Wakalatnama

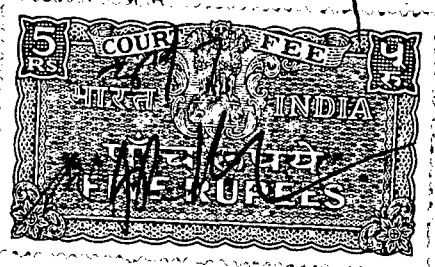
व अदालत श्रीमान

महोदय

6

वादी (मुद्दे)
प्रतिवादी (मुद्दालेह)

का वकालतनामा



Mahammad Sami

[Signature]

V3

वादी (मुद्दे)

Union of India and

बनाम

[Signature]
प्रतिवादी (मुद्दालेह)

W.P.N.

नं० मुकद्दमा 1735 सन् 1884 पेशी की त० 18 ई०
ऊप लिखे मुकद्दमा में अपनी ओर से श्री

[Signature] A.R. Khan

एडवोकेट

महोदय

[Signature] R.V. Singh

वकील

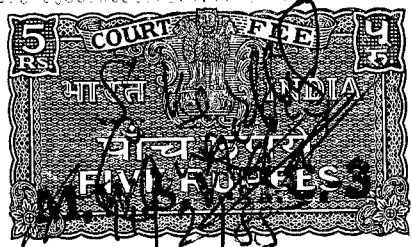
नाम अदा
नं० मुकद्दमा
नाम करीबिन

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और सदीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी या विपक्ष (रीकसानी) का दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करे - वकील महोदय द्वारा की ई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि मैं हर पेशी स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरी वकील पर न होगी। इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर *[Signature]*

साक्षी (गवाह) साक्षी (गवाह)
दिनांक महीना

[Handwritten signatures and notes]



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11/1/84
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व अदालत श्रीमत्. Hon'ble High Court of Judicature at Allahabad
(Chicknow Bench) Lucknow

276

Mohammed Sami
बनाम

वादी/अपीलेंट/ Petitioner

प्रतिवादी/रेस्पॉण्डेंट/

Union of India & another

Opp Parties

व/प सं० मुकदमा 4735 सं० 19 84 पेची की त्तो 19 ई०

ऊपर मुकदमा में अपनी ओर से श्री Siddharth Verma, Advocate

एडवोकेट/वकील महोदय को अपना वकील नियुक्त करके इकरार करता हूँ और लिखे देता हूँ कि मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर करे या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिग्री जारी करावें और रुपया वसूल करें या सुलहनामा या इकवाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक रक या मुकदमा उठावें या कोई रुपया जमा करें या हमारी विपत्ती/फरीकसानगी का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर मुक्त/दस्तखती/रसीद से लेवे का पंच 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 आवे ।।

18-1-84

हस्ताक्षर. Divisional Railway Manager,
Lucknow Railway,
LUCKNOW.

साक्षी/गवाह। साक्षी/गवाह।
दिनांक. महीना.
सन् 19 ई०

SD
19-12-84

Accepted
Siddharth Verma
(Siddharth Verma)
Advocate

20/1/84
etc

Driver 'Grade 'C' and further direct them to allow the petitioner to work and discharge the duties as Diesel Engine Driver in Diesel side and not in Steam side and not to interfere in his working as Diesel Engine Driver in the aforesaid grade and such other orders as are deemed just and proper in the circumstances of the case may also kindly be passed.


Advocate,

Counsel for the Petitioner.

Lucknow,

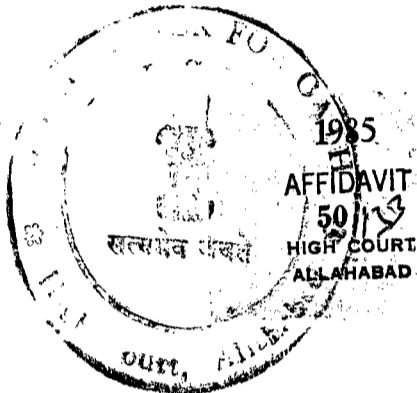
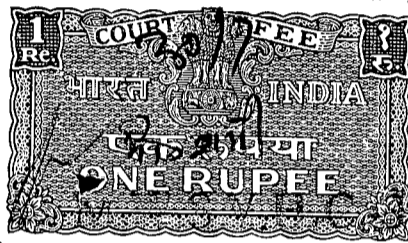
Dated July 30, 1985.

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IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH) LUCKNOW.

Affidavit in

Civil Misc. Application No. of 1985.



In re :

Writ Petition No. 4735 of 1984.

Mohammad Sami Petitioner.

Versus.

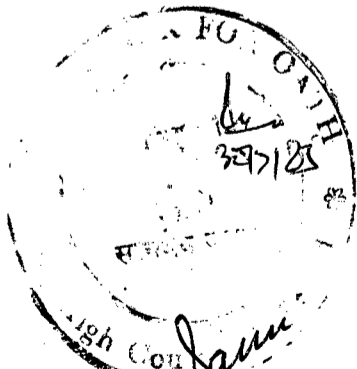
Union of India through its General Manager & others.

..... Opposite Parties.

A F F I D A V I T

I, Mohammad Sami, aged about 57 years, son of Mohammad Ismail, Driver 'A' N/Railway, Head Quarter, Lucknow, resident of House No. 134, Maqboolganj, Shutar Khana, police station Qaiserganj, Lucknow, do hereby solemnly affirm and state on oath as under :-

1. That the deponent is the petitioner in the above noted writ petition and as such is well conversant with the facts of the case deposed to below.



Mohd. Sami

5/2

2. That the petitioner as well as A.M.Palit and R.Fray were working as Shunters in the Steam side, Literacy Standard, and the aforesaid staff of steam side was absorbed in diesel side vide letter dated 3.2.58.

3. That the petitioner along with the aforementioned persons were sent for preliminary course and training of Diesel Driver in view of the letter dated 3.2.58. They successfully completed the training course and accordingly A.M.Palit and R.Fray were directed to work as Drivers Grade 'C' of Diesel Goods Trains with effect from 15.2.1962 and the petitioner had been appointed and entrusted with the work to discharge his duties as drivers grade 'C' on Diesel Goods Train with effect from 24.1.1963 and accordingly the petitioner resumed his duties and since then he is continuously working and discharging his duties on the aforesaid post along with the aforementioned posts.



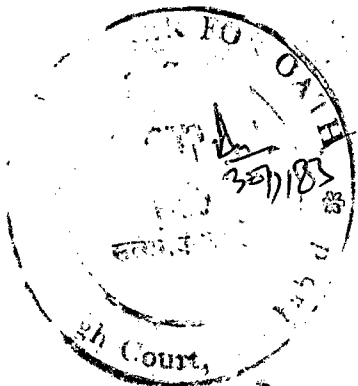
Am Mohd. Sami

4. That there was some dispute, as such a suit for declaration was filed which was dismissed against which an appeal was filed and the said appeal was registered as R.C.A.No. 164 of 1971 and the same was transferred for hearing before the Civil Judge, Mohanlalganj, at Lucknow who was pleased to decide the same and allowed the aforesaid appeal vide judgment and decree dated 11.3.72 with costs throughout.

5. That against the aforesaid judgment and decree a second appeal was filed before this Hon'ble Court which was numbered as Second Civil Appeal No. 270 of 1972 Union of India through General Manager v. A.M. Palit and others, and the said appeal was heard and decided by this Hon'ble Court vide judgment and decree dated 28.9.76 and the order passed by the Civil Judge was affirmed to some extent and it was thereafter that it was held that the petitioner had been recruited to the post of Diesel Driver Grade 'C' with effect from 24.1.63 and it was also held that the petitioner and others are entitled to three advance increments and all allowances. A copy of the said judgment and decree has already been annexed as Annexure-1 to the writ petition.

6. That the aforesaid matter was not challenged before Hon'ble the Supreme Court and the same attained finality and as such the petitioner's claim was accepted and the petitioner's recruitment to the post of Diesel Driver with effect from 24.1.63 was also accepted and he was also allowed advance increments.

7. That the petitioner made several representations and complaints to the higher officials and authorities requesting therein that the petitioner's seniority be fixed, but his seniority has not been fixed besides the



Mohd. Sameer

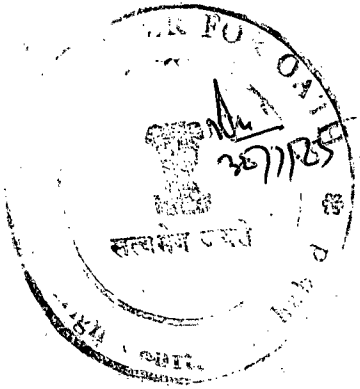
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aforementioned persons, As such R.Fray filed a writ petition before this Hon'ble Court and the said writ petition was admitted and was registered as Writ Petition No. 2728 of 1979 and a Division Bench of this Court consisting of Hon'ble D.N.Jha, J and Hon'ble K.S.Varma, J, allowed aforesaid writ petition of Sri R.Fray and directed the opposite party for giving seniority to the petitioner from the date of initial appointment as a Diesel Driver. A copy of the said order has already been annexed as Annexure-4 to the writ petition.

8. That despite the fact that the petitioner's appointment was held to be valid and his seniority was to be counted with effect from 4.1.63, but the opposite party did not pay any heed towards the petitioner's request and also transferred the petitioner and deputed him to work as Steam Engine Driver.

9. That the petitioner made several representations but of no avail and as such he took shelter of this Hon'ble Court and filed the aforementioned writ petition which was admitted and this Hon'ble Court was pleased to issue notice on 24.2.1979.

10. That the petitioner has not been allowed to work and discharge the duties as Diesel Engine Driver and his seniority has not been counted from the date of his appointment i.e., 24.1.1963 as it has already been held by this



M. S. Jha

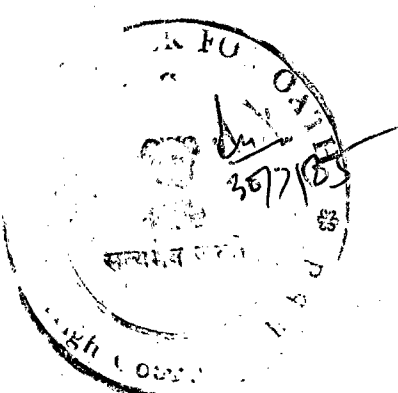
Hon'ble Court while considering the grievances of R. Fray and the petitioner's appointment has also been taken into consideration by this Hon'ble Court in second appeal and the claim of the petitioner has been accepted vide judgment and order passed by this Hon'ble Court on 28.2.76.

11. That in view of the fact that the seniority of the similar situated employees who have been appointed along with the petitioner as Diesel Engine Driver has been counted from the date of appointment in Diesel side, but the petitioner's grievance has not been taken into consideration in view of the judgment passed by this Hon'ble Court in Second Appeal and the Writ Petition No. 2728 of 1979 decided on 14.9.73 - R. Fray v. Union of India, as such the petitioner is suffering irreparable loss and injury and he has been denied chance of further promotion and he has been asked to work as Steam Engine Driver and thus the opposite party deserves to be directed to consider the petitioner's seniority from the date of his appointment i.e, 24.1.63 to the post of Diesel Driver and may also direct the opposite party to allow the petitioner to work and discharge the duties as Diesel Engine Driver in the aforementioned grade.

Amrohd Saund

Lucknow,
Dated July 30, 1985.

Deponent,



5/8
12/16

Verification.

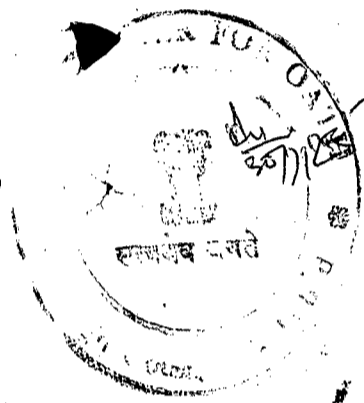
I, the above named deponent do hereby verify that the contents of paras 1 to 11 of the affidavit are true to my own personal knowledge. Nothing material has been concealed and no part of it is false. So help me God.

Mohd Sami

Deponent.

Lucknow,

Dated July 30, 1985.



I, after perusal of the record identify the deponent who has signed/put his thumb marks before me.

[Signature]

Advocate.

Solemnly affirmed before me on 30.7.85 at 7.45 am/pm by Sri *Mohd. Sami*..... the deponent who is identified by Sri *Abdul Razzaq Khan*.....

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

A. U. SIDDIQI

A. U. SIDDIQI
OATH COMMISSIONER
HIGH COURT, ALLAHABAD
LUCKNOW-BENCH
No. 50/133..... D. 30/7/85

Group 'A' Service 10(e)(k)
Bench Copy

13/17

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH), LUCKNOW.

Writ Petition No. _____ of 1984

District: Lucknow.

Mohammad Sami Petitioner

Versus

Union of India and others Opp. parties.

I N D E X

<u>Sl. No.</u>	<u>Particulars</u>	<u>Page No.</u>
1.	Writ Petition.	1-8
2.	Copy of Judgment in S.C.A. No. 270 of 1972 Decided on 28.9.76, <u>Annexure No.1.</u>	9-16
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4.	Fixation Statement of petitioner. <u>Annexure No.3</u>	18-19
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(DINESH CHANDRA SRIVASTAVA)
Advocate

Counsel for the petitioner

Lucknow/
Dated: Sept 20, 1984

T. C. Singh
A.N.

D
48

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

AT ALLEENABAD

(LUCKNOW BENCH) LUCKNOW.

Writ Petition No.

OF 1984

Mohammad Sami aged about 56 years son of Sri Mohammad Ismail, Driver Grade 'A' N/ Railways Head Quarter Lucknow resident of House No.134 Maqboolganj, Shutar Khana P. S. East Qaiserbegh, Lucknow.

.... Petitioner

Versus

1. Union of India through the General Manager Northern Railway Baroda House, New Delhi.
2. The Divisional Railway Manager Northern Railway Hazratganj, Lucknow.

.... Opposite parties

PETITIONER UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

The humble petitioner most respectfully begs to submit as under:-

1. That consequent to the introduction of some units of Diesel Loco's and Diesel Rail Cars in the

contd. on 2.

Indian Railways, the Railway Board decided to recruit persons working as Shunters grade 'C' on the steamside to man the posts in these units and the Railway Board vide its letter No. E (SI) 57 R 56 dated 3.2.58 laid down the terms of recruitment, training, condition of Service ^{Scale} ~~Scale~~ of pay and allowances of the staff to be employed on diesel side.

2. That a note contained in the aforesaid letter provided that initial recruitment could not be made to the cleaners category in the first instance the intention was that staff on the steam running side should be absorbed on diesel operation by providing suitable training in handling diesel locos. Steam Staff so ~~absorbed~~ ^{absorbed} as Drivers grade 'C' will be given three advance increments after fixation in the grade 'C' of Drivers or over their pay in 'C' grade. It was further classified that pay on the basis of three advance increments will be drawn by the staff duly for so long as they worked as Diesel Drivers and on their reversion to the steam side their pay too would be fixed as they had not been allowed the benefit of these advance increment.
3. That the note further laid down that so far as Drivers, Assistants and Shunters were concerned staff should also be drawn from the steam side in the first instance. The note further provided

3.

that it was necessary to absorb on the diesel side any matriculation, or if non-matriculates, those whose literacy standard is comparable with that of matriculates.

4. That the petitioner along ^{with} S/Sri A.M. Palit and R. Frey was working as Shunter in the Steam side having literacy standard when the Board decided to absorb the aforesaid staff of steam side to Diesel side ^{vide} its letter dated 3.2.58. The petitioner alongwith S/Sri A.M. Palit and R. Frey was sent for preliminary course of training as Diesel Driver in view of the letter dated 3.2.1958 and after the petitioner and others completed the training successfully S/Sri A.M. Palit and R. Frey were drafted to work as Driver Grade 'C' on Diesel goods train with effect from 15.12.1962 while the petitioner was drafted to work as driver grade 'C' on Diesel goods train with effect from 24.1.1963 and the petitioner continuously worked as Driver Grade 'C' in Diesel side from 24.1.63 alongwith S/Sri A.M. Palit and R. Frey.
5. That the petitioner and other above named persons filed a suit for declaration of ^{these} ~~these~~ advance increments and to the benefit of all pay and allowances of the post of Driver grade 'C' on diesel side which was then up graded and it was also claimed that the petitioner and the other above named persons be declared to have been absorbed as Diesel Drivers grade 'C' on the respective

contd. on 4.

dates of their having started working as such.

6. That the ^{fact} ~~such~~ of the petitioner was dismissed by the trial court but ⁱⁿ ~~the~~ appeal the civil Judge Mohanlal Ganj at Lucknow in R.C.A.No. 164/71 decided on 11.3.1972 reversed the findings of the trial court and decreed the suit of the petitioner with cost throughout.
7. That being aggrieved by the judgment in RCA No. 164 of 1971 the Union of India (opp. party No.1) preferred a Second Civil appeal before the Hon'ble Court which was registered ² Second Civil Appeal No.270 of 1972 Union of India through the ^{General} ~~General~~ Manager Vrs. A.M. Palit and others and by the pronouncement dated 28.9.1976 Hon'ble ~~Opposite party~~ O.P. Trivedi J. held the petitioner to have been recruited ~~undisputed~~ ^{to} ~~to~~ the post of Diesel Driver grade 'C' with effect from 24.1.1963 and also hold the petitioner and others to be entitled to three advance increments with all pay and allowances and accordingly dismissed the appeal. A true copy of Judgment in Second Civil Appeal No. 270 of 1972 decided on 28.9.1976 is being annexed with the writ petition as Annexure No.1
8. That the judgment of this Hon'ble Court was accepted by the opposite party No.1 and it was decided not to agitate the matter before the Hon'ble Supreme Court. The Divisional Supdt. Northern Railway Lucknow vide letter No.1-LKO/RSA/Legal-Cell/P-72 dated 11.3.77 was directed to comply with the judgment accordingly. A true copy of the letter is annexed with the writ petition as Annexure No.2. contd. on 5.

9. That the petitioner was accepted to have been recruited to the post of Diesel Driver grade 'C' w.e.f. 24.1.63 and he was allowed advance increments etc. as per statement a copy of which is annexed herewith as Annexure No.3.
10. That though the fixation of pay etc. of the petitioner was made in compliance with the orders of the Hon'ble Court but the question of seniority of the petitioner was yet to be considered by the opposite parties. It is pertinent to state that the petitioner was working continuously as Diesel Driver from the date of his recruitment to the said post. In the meantime the opposite parties refused seniority to Sri R. Frey from the date of the recruitment and instead he was given seniority from the date of the regular promotion. Sri R. Frey filed a writ petition before the Hon'ble Court which is registered as Writ Petition No. 2728, of 1979 R. Frey Vrs. Union of India and another and a Division Bench consisting of Hon'ble D.N. Jha and Hon'ble K.S. Verma J.J. by the pronouncement dated 14.9.83 allowed the petition of Sri R. Frey and he was allowed seniority in Grade 'C' with effect from his recruitment to that post. A true copy of the Judgment in writ petition No.2728 of 1979 is annexed with this petition as Annexure No.4

11. That the petitioner after the aforesaid judgment as contained in Annexure No. 4 has been requesting the opposite parties to consider his case which was identicle to that of Sri R. Frey but the Opposite party did not pay any heed.
12. That although the petition ^{having} been held to be recruited in Diesel side w.e.f. 24.1.63 and entitled for his seniority in grade 'C' from that date of his recruitment alongwith all benifits in pay and allowances etc. in view of the judgment as contained in Annexure No.4 yet his seniority has not been fixed by the opposite parties with the result that the juniors to the petitioners enjoy more benefit than him.
13. That the petitioner having been absorbed on diesel side has now nothing to do with steam - side but he has been made to operate steam engines from December 1983 to which he has agitated but of no avail.
14. That the petitioner besides his protests and letters on the aforesaid subject has lastly sent his letter on 5.1.84 to the Oppositeparty No.2 but his seniority according to rules has not been fixed and he is still ordered to operate steam engines. A true copy of application/letter dated 5.1.84 received in the office of opp. party No.2 is being filed herewith this writ petition as Annexure No.5
15. That the acts on the ^{part} of the opposite parties amounts to refusal in fixing the seniority of the petitioner in view of the judgment passed

by this Hon'ble Court annexed herewith and great prejudice, inconvenience, irreparable loss and injury is caused to the petitioner.

16. That the petitioner is deprived of the right as laid down in the rules and Constitution of India.
17. That the cause of action has accrued to the petitioner against the opposite parties on 24.1.63, 28.9.76, 11.3.77, 14.9.83 and on 5.1.84 and every ^{day} ~~long~~ thereafter when the opposite parties have withheld the seniority etc. of the petitioner.
18. That since the petition is to retire in 1986 there is no speedy and efficacious remedy except by way of writ of mandamus commanding the opposite parties to fix the seniority of the petitioner in grade w.e.f. 24.1.63 giving him all service benefits and further directing them not to engage him on Steam Side instead of Diesel Side.
19. That the petitioner begs to file this writ petition on the following grounds:-

G R O U N D S

1. Because in view of the departmental rules and in view of the pronouncement of this Hon'ble Court as contained in Annexure No.1 and 4 to this writ petition the petitioner is entitled for his seniority in grade 'C' on Diesel Side W.e.f. 24.1.63 i.e. the date of his recruitment in that side ~~is~~ with all service benefit throughout.

(11) Because in accordance with the rules after his absorption in Diesel side the petitioner can not be compelled to operate on steam side.

20. That the petitioner prays for the following reliefs:-

- (A) That the Hon'ble court be pleased to issue a writ of Mandamus or a writ, order or direction in the nature of mandamus commanding the opposite parties to assign seniority to the petitioner on the post of Diesel Driver grade 'C' with effect from 24.1.63 i.e. the date of his recruitment to the said post. ^{with} ~~with~~ all service benefit in pay allowances and promotions etc. through out and to further direct the opposite parties not to engage the petitioner on ~~steam~~ steam side after his regularisation on Diesel side.
- (B) That the cost of the writ petition be awarded to the petitioner against the opposite parties.
- (c) That any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case be also granted to the petitioner against the opposite parties.

(DINESH CHANDRA SRIVASTAVA)
Advocate

Counsel for the petitioner.

Lucknow/
Dated: 20 Sept., 1984

T.C. Beek
+2

9 P/36

IN THE HON'BLE HIGH COURT OF JUDICATURE, AT ALLAHABAD
(Lucknow Bench), Lucknow

Writ Petition No. of 1984

District: Lucknow

Mohd. Sami Petitioner

Versus

Union of India and anothers. Opp. parties.

ANNEXURE NO. 1

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH, LUCKNOW

Second Civil Appeal No. 270 of 1972

Union of India through the
General Manager Defdt. Appellant

Versus

1. Sri A.M. Palit and ors. Plffs. Respdts.

Claim:- For declaration that the plaintiffs should
be treated to have been absorbed as Diesel Drivers,
Grade 'C' (Grade Rs.150-250).

Valuation of Second Appeal is Rs.4500/-.

Second Civil Appeal against the order and
decree passed by Sri I.S. Mathur, Civil Judge, Mohan-
lalganj, at Lucknow on 11.3.1972 in R.C.A. No.164-71.

Lucknow dated: 28.9.1976

For Appellant: - Sri A.B. Nigam.

For Respondent:- Sri B.C. Saxena.

Hon'ble O.P. Trivedi, J.

2.

Second Appeal No. 270 of 1972

Union of India Vrs. A.M. Palit and others.

Hon'ble Trivedi, J.

This is defendant's second appeal and arises from the judgment and decree of the Civil Judge, Mohanlalganj, Lucknow, dated 11.3.1972 reversing the decree of Munsif North, Lucknow, dated 2.2.71.

Respondents A.M. Palit, R. Frey and Mohammad Sami were working as Shunters in the Indian Railways on the Steam side. Upon introduction of some units of diesel locos and diesel rail cars on the Indian Railways the Railway Board decided to recruit persons working as shunters or Drivers, grade-C, on the steam side to man the posts in these units and in its letter dated 3.2.1968 (Ext. A.1) laid down the conditions of service : scales of pay and allowances of the staff drafted from the steam side to the diesel side. There is a Note in this letter (Ext.A.1) which is material for the decision of this appeal. The note says that "initial recruitment cannot be made to the cleaners' category in the first instance, the intention is that staff on the steam running side should be drafted on the diesel operation by providing suitable training in operation diesel locos. Steam staff so absorbed as Drivers, Grade C- will be given three advance increments after normal fixation in the grade 'C' of Drivers or over their pay in C grade, pay on this basis of three advance increments will be drawn by the staff only for so long as they work as Diesel Drivers and on their reversion to

the steam side their pay too would be fixed as though they had not been allowed the benefit of these advance increments".

The note further said :

" So far as Drivers, Assistants and Shunters are concerned staff should also be drawn from the steam side in the first instance. It is, however, necessary to absorb on the diesel side any matriculation or if non-matriculいたes, those whose leteracy standard is comparable with that of matriculates."

The respondents filed a suit against the Union of India with the averment that they were non-matriculいたes but with literacy standard comparable to that of matriculates. They were sent for preliminary course of training as Diesel Driver in accordance with the letter of 3.2.1958 and after they had successfully completed the preliminary training course plaintiffs land 2- respondents were drafted to work as Driver, Grade-C ^{or} Diesel Goods Train with effect from 15.12.1962 while plaintiff No.3 was drafted to work as driver, Grade C, on Diesel Goods ~~Train with effect from 15.12.1962 while plaintiff No.3 was drafted to work as driver, Grade-C, on Diesel Goods~~ Train with effect from 24.1.1963 and they claimed to have been continuously working as Driver, Grade-C, on the diesel side since the aforesaid dates. They claimed right to three advance increments in terms of the Railway Board's letter of 3.2.1958 during the entire period that they had been working as Driver, Grade-C, on the diesel side and they further asserted that they were entitled to pay and allowances of the post as Driver, Grade C- on the diesel side which has since been upgraded and

contd. on 3.

1-24-

admittedly now is in the scale of Rs.150-250. On these facts and allegations the respondents claimed a decree for declaration that they should be treated as having been absorbed as Diesel Driver, Grade-C (Grade Rs.150-250) on the respective dates on their having started working as such on the main line and that they were further entitled to three advance increments in that grade. The suit was resisted by the Union of India which disputed that the respondents were entitled to three advance increments or to the declaration they are entitled to receive pay and allowances in the grade of Rs.150-250 belonging to Driver, Grade -C on the diesel side on the sole ground that under the terms of the letter of the Railway Board dated 3.2.1958 only such running staff is entitled to pay and scales of Driver, Grade-C (now admittedly Rs.150-250) and to three advance increments who continuously work as Driver, Grade -C, .The suit was dismissed by the trial Court. The Plaintiffs appealed and the Civil Judge reversed the Judgment and decree of the trial court, allowed the appeal and granted a decree for declaration that the plaintiffs were absorbed as Diesel Driver, Grade-C in the scale of Rs.150-250 and should be treated as holding that post with effect from 15.12.1962 and 24.1.1963, respectively, and that they are entitled to three advance increments in terms of the Railway Board's letter of 3.2.1958 quoted above, There are also a decree for costs in favour of the respondents.

The submission of Sri A.B. Nigam appearing for the Union of India is that the respondents were not entitled to three advance increments under the letter of the Railway Board dated 3.2.1958 as they had not been continuously working as Driver Grade-C. In the First place, the lower

appellate court has recorded affiding that the respondents should be deemed to have been working continuously as diesel Driver, Grade-C from the dates they started working as such and this is to my mind a finding of fact which does not disclose any error of law. Apart from this the Note contained in the letter of the Railway Board No. E(SL)/57 R/6, dated 3.2.1953 can not be interpreted to imply that a person drafted from the running side on the steam side to the post of Driver, Grade-C on the diesel side and recruited on the post will be entitled to three advance increments only subject to the condition that he actually performed the duty of a Diesel Driver, the intention of the note, on the other had, appears to be that if a person is recruited as Driver, Grade-C on the diesel side after having undergone the necessary training he will be entitled to three advance increments for so long as he hold the post of a Diesel Driver Grade-C and so long as he is not reverted to the steam side for no long as a person holds the post of Driver, Grade-C on the diesel side, he will be deemed to be continuously working as Diesel Driver and he will be deemed to have ceased to so work as from the point of time he is reverted to the steam side. It is in this sense that the note said:

" Three advance increments will be drawn by the staff only for so long as they work as Diesel Drivers and on their reversion to the steam side their pay too would be fixed as though they had not been allowed the benefit of those advance increments. " The phrase ' as

they work as Diesel Drivers' should be understood as implying ' for so long as they held the post of Diesel Drivers' and on that view which, to my mind, appears to be the only construction which can be reasonably put on the Note it was not at all material to investigate as to whether the respondents actually working as Driver-Grade-C on the diesel side continuously during the relevant period or not. It is well known that the running staff have spells of ~~rest~~ ^{periodic rest}. They also go on leave and if the Note were given a literal interpretation then it would be destructive of the policy of grant of three advance increments to those working as Drivers, Grade-C on the diesel side and remove the incentive which may have induced the running staff, working on the steam side to opt for the diesel side, for, if the interpretation canvassed for the appellant were to be accepted and pushed to its logical end then drivers, Grade-C, would become disentitled ~~to~~ to three advance increments even for periods of leave or periodic rest.

I have no doubt, therefore, in my mind that the meaning and the intension of the Note in the letter of the Railway Board dated 3.2.1958 was that a person, who has been drafted to act and recruited as Driver, Grade-C, on the diesel side from the steam side, shall be entitled to three advance increments in addition to his grade, pay and allowance for so long as he continues to hold the post of Driver, Grade-C, on the diesel side quite irrespective of whether he performed running duty in that period or performed some other static duty ~~for the period or performed some other static duty~~ that may have been assigned to him.

7-

The next submission of learned counsel was that the lower appellate court was in error in declaring that the respondents were absorbed as Diesel Drivers, Grade-C, for it was pointed out that so far the respondents were only holding the post of Driver, Grade-C on the diesel side on an officiating basis and they have not been confirmed on that post. In my opinion the word 'absorbed' in the Note of the letter of the Railway Board of 3.2.1958 (supra) was used in the sense of 'recruited' and not in the sense of 'permanently and substantively appointed'. That being the sense the respondents were entitled to the declaration that they have been recruited as Driver, Grade-C on the diesel side on the dates set out in para-8 of the plaint and not in the sense of their holding a substantive post in the grade of Rs.150-250. But it is equally clear that the respondents are entitled to pay and allowances of the grade of Diesel Driver, Grade-C even during the period they are officiating on that post and so far as their title to pay and allowances is concerned it is unaffected by the fact that they have not so far been confirmed on that post and have not received an order of substantive appointment. In order to bring out this fact clearly the terms of the decree granted by the Civil Judge will need slight modification but otherwise the appeal must fail in substance.

Accordingly, the judgment and decree of the Civil Judge Mohanlalganj, Lucknow, dated 11.3.1972 that A.M. Palit and R. Frey, respondents 1 and 2 and

8.

and Mohammadsami, respondent No.3, were recruited as Diesel Driver, Grade-C, in terms of the letter of the Railway Board No. E(SL)/57 R/6, dated 3.2.1962 and are entitled to receive pay in the scale of Rs.150-250 and they are further entitled to three advance increments in terms of the same letter of the Railway Board with effect from 15.12.1962 and 24.1.1963 respectively, with the modification only the decree of the Civil Judge is confirmed. As the appeal fails in substance the respondents shall be entitled to cost, of the appeal from the appellant.

Sd/- O.P. Trivedi
28.9.1976

(TRUE COPY)

TC *sh*

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IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(Lucknow Bench) Lucknow.

Writ Petition No. of 1984
District: Lucknow.

Mohd. Sami Petitioner.

Versus

Union of India and others. Opp. parties.

ANNEXURE NO. - 2

NORTHERN RAILWAY

No.1-LKO/RSA/Legal-Cell/P-72 Dt 11.3.77

From: H. Q. Office
Baroda House
New Delhi.

To,

The Divl. Supdt (Lit)
N.Rly. Lucknow.

Sub: Second Civil Appeal No.270 of 1972 in
the High Court of LKO Bench UOI Vs. Sri A.M.
Palit & others DSL Drivers.

Your No.755-E/IIM/I-67 dt 22.2.77

In the above noted case it has been decided that
it is not fit case for agitating further in Supreme
Court.

The High Court Judgment passed in thefore-said
appeal on 23.9.76 may please be accepted and complied
with accordingly.

A copy there of is also sent herewith for taking
necessary action at your end.

D/A as above.

Copy forwarded to Sri A.B. Negain Rly. advocate
210 Ganga Pd. Road LKO for information and necessary
action. He will please arrange to send a certified
copy of Decree sheet along with his bill early to
this office.

TRUE COPY

PETITIONER

18
B
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IN THE HON'BLE HIGH COURT OF JUDICATURE, AT ALLAHABAD
(Lucknow Bench), Lucknow.

Writ Petition No. _____ of 1984

District : Lucknow.

Mohd. Sami Petitioner

Versus

Union of India and

an others.

..... Opp. parties.

ANNEXURE No. - 3

FIXATION STATEMENT OF SRI MOHD. SAMI I.DSL DRIVER 'C'
LUCKNOW:

The Hon'ble High Court of Judicature at Allahabad (Lucknow Bench) Lucknow in the 2nd appeal No.270 of 1972 passed the following orders on 23.9.1976L-

" It is hereby declared that A.M. Palit and and R. Pray respondent 1&2 and Mohd. Shami respondent No.3 were recruited as Diesel Drivers Gr. I.C.I. in terms of Railway Board's No.E(SL)/57 R86 dated 3.2.1958 and are entitled to receive pay in scale 150-260 and they are further entitled to three advance increments in terms of the same letter of the Rly. Board w.e.f. 15.12.62 and 24.1.63 respectively."

The General Manager, N.Rly., New-Delhi vide his letter No. 1-LKO/RSA/Legal-Cell/P-72 dated 11.3.77 has decided that the High Court Judgment passed on 23.9.76 in the above appeal is accepted and complied with accordingly.

The pay and allowance of the above named respondent No.3 is fixed as under:-

Recruited in Grade 150-240 Driver Gr. 'C'(Dal)
w.e.f. 24.1.63.

1. Pay fixed on 24.1.63 at Rs.163/- instead of Rs.146/-

contd. on 2.

19

B/66

2.

wef 24/1/63 after allowing:

3 advance in cement.

2. Pay raised to Rs. 176/- wef. 24.1.64 -do- Rs.150/-20.1.64

3. -do- Rs.184/- wef. 24.1.65 -do- Rs.154/-20.1.65

4. -do- Rs.192/- wef. 24/1/66 -do- Rs.158/-20.1.66

5. -do- Rs.200/- wef. 24.1.67 -do- Rs.162/-20.1.67

6. -do- Rs.208/- wef. 24.1.68 -do- Rs.166/-20.1.68

7. -do- Rs.216/- wef 24.1.69 -do- Rs.170/-20.1.69

8. -do- Rs.224/- " 24.1.70 -do- Rs.175/-20.1.70

9. -do- Rs.232/- " 24.1.71 -do- Rs.180/-20.1.71

10. -do- Rs.240/- " 24.1.72 -do- Rs.185/-20/1/71

Pay fixed as
Driver in Rs.
pay raised to

Rs.452/-	"	1.1.73	-do-	Rs.366/-	"	1.1.72
Rs.462/-	"	2.2.73	-do-	Rs.374/-	"	20.1.73
Rs.476/-464/-	"	1.1.74	-do-	Rs.382/-	"	1.1.74
Rs.488/-476/-	"	1.6.74	-do-	Rs.390/-	"	1.6.74
Rs.500/-488/-	"	1.1.75	-do-	Rs.414/-	"	1.8.74
Rs.515/-500/-	"	1.1.76	-do-	Rs.416/-	"	1.8.76
Rs.530/-515/-	"	1.1.77	-do-			

The arrears of pay and allowances are to be paid
as per judgment of High Court. His S.R. is enclosed
herewith.

Verified

Sd/- Illegible

Sr. Divisional Accounts Officer,
Lucknow.

TRUE COPY

PETITIONER.

TC *sdh*

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B/G

IN THE HON'BLE HIGH COURT OF JUDICATURE, AT ALLAHABAD
(Lucknow Bench), Lucknow.

Writ Petition No. _____ of 1984

District: Lucknow

Mohd. Sami Petitioner

Versus

Union of India and anothers. Opp. parties.

Annexure- No. - 4

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD.
LUCKNOW BENCH, LUCKNOW

WRIT PETITION NO. 2728 OF 1979

R. Frey ... Petitioner

Versus

Union of India and another Opp. parties.

PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Lucknow dated 14.9.83

Hon'ble D.N. Jha, J.

Hon'ble K.S. Verma, J.

(Delivered by Hon'ble K.S. Verma, J.).

The prayer made in this writ petition is for quashing of an order passed by the opposite parties, Annexure 6 to the writ petition. A writ of mandamus has also been prayed for commending the opposite parties to assign seniority to the petitioner on the post of Diesel Driver grade 'C' with effect from 15.12.1962, the date of his recruitment to the said post. It has further been prayed that a mandamus be issued granting the petitioner promotion and seniority in the higher grade post of Driver grade 'B'.

In order to appreciate the controversy between the parties, it should be appropriate to state a few facts, it is not disputed that the petitioner was

contd. on 2.

2.

recruited as a Railway Driver on the Steam Side. Subsequently, a scheme was introduced whereby Railway drivers were to be appointed on the Diesel side. Annexure 1 to the writ petition is judgment rendered by this court on 28.9.1976 in second appeal No.270 of 1972. A perusal of the said judgment indicates that a declaratory decree was passed whereby the petitioner along with others was held to have been as Diesel Driver Grade 'C' in the terms of the letter of Railway Board No. D(SL) 57 R 56 dated 3.2.1958. The said judgment also indicates that the petitioner was held entitled to three advance increments with effect from 15.12.1962, the date of the petitioner's appointment as a driver of the diesel side.

After the decision in Second Appeal No. 270 of 1972, question of seniority arose between the parties. The case of the petitioner is that the recruitment of the Diesel side is separate and has nothing to do with recruitment on the Steam side on the seniority of the petitioner has to be fixed with effect from the date of recruitment on the Diesel Side. On the other hand, the case of the opposite parties is that the petitioner was assigned seniority with effect from his regular promotion as Driver grade 'c', i.e. 19.1.1973. It is also the case of opposite parties that the post of Driver grade 'B' was a selection post. The petitioner appeared in the selection held in 1979 but was not selected. It is, therefore, contended that the persons who were selected in the selection held in 1979 have become senior to the petitioner.

During the course of arguments, Mr. C. Saxena

contd. on 3.

3.

stated that he confines his prayer in the writ petition only to the prayer in regard to declaration of seniority of the petitioner on the post of Diesel Driver grade 'C' we proceeded to hear the arguments on this point, in this background. Our attention has been drawn to a decision reported in Rama Kant Chaturvedi Jardish Chendra and S.B. Upadhya and others, V. Divisional Superintendent, Northern Railway Moradabad (A.I.R. 1981) Supreme Court, 287). It may be relevant to note that Notification dated 3.2.1958 which engaged the attention of this court in Second Appeal No. 270 of 1972 also came up for consideration before the Supreme Court. A perusal of the said decision indicates that while interpreting the Railway Board's letter dated 3.2.1958 their Lordships observed that in determining the seniority of persons who had been recruited on the Diesel side, the consideration of seniority by reference to the steam side was uncalled for and had no relevance. Their Lordships took the view that since Diesel side and the Steam side were separate, the seniority shall be determined by reference to the recruitment on the Diesel side. At page 359, the Hon'ble Judges observed as follows:-

- " But merely because the appointments were on officiating basis, we do not see how those who were drafted into the diesel unit earlier on the diesel side merely because others who were senior to them on the steam side came in or chose to come in at a later stage. If seniors on the steam side did not come in earlier it was because they were barred from coming in by the requirement of a minimum education qualification. The subsequent relaxation of the rule cannot enable them to take

23 1/10

4.

'frog leap' over the heads of those who had come into the diesel side earlier. The seniority on the steam side is of no relevance in determining seniority on the diesel side. "

In the instant case it is obvious that the petitioner was appointed on the Diesel side on 15.12.1962.

In view of the observations of the Supreme Court quoted, above, it is clear that the steam side and diesel side have been constituted as different branches.

This interpretation also finds support from Annexure-1 where in this court observed that the word 'absorbed'

in the ^{Note} ~~Notice~~ of the letter of the Railway Board dated 3.2.1958 was used in the sense of 'recruited' and not in the sense of 'permanently and substantively appointed'.

The declaration given by this Court in the aforesaid second appeal is that the petitioner was recruited on the Diesel side with effect from 15.12.62.

In view of the facts stated above in view of the principles enunciated by the Supreme Court it is obvious that the seniority of the petitioner has to be determined in Diesel driver grade 'C' on the basis of the recruitment with effect from 15.12.1962.

We accordingly, allow the writ petition in part. Annexure 6 to the writ petition dated 27.8.1979 fixing the seniority of the petitioner with effect from 19.1.1973 is quashed.

We further issue a writ of mandamus to the opposite parties and directed them to determine the seniority of the petitioner in Grade 'C'

contd. on 5.

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5.

by reference to the recruitment made on 15.12.1962
The relief for granting promotion and seniority to
to the petitioner in Grade 'B' is refused. Costs
shall be borne by the parties. Stay order, if any,
is vacated.

Sd/- D. N. Jha,

Sd/- K. S. Verma

14.9.83

(True Copy)

T.S.J.
Sd/-

(25) B 72

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(Lucknow Bench) LUCKNOW

Writ Petition No. _____ of 1984

District : Lucknow.

Mohd. Sami Petitioner

Versus

Union of India and others. Opp. Parties.

ANNEXURE - No. 5

To:

The Divisional Railway Manager,
Northern Railway
Lucknow

(Through: Proper Channel)

Reg: Assignment of seniority from the date
of Dieselisation that is 15.12.1962.

Sir,

With due respect I beg to say that my case along with Sri R.Frey was in the High Court, Allahabad (LKO Bench) and in the judgment he has been assigned seniority of Diesel with effect from 15.12.62 and accordingly he has been promoted as Driver Gr. 'A' and posted at Pratapgarh.

It is requested that my case is identical to that of Sri R.Frey hence I should also be assigned DSL Seniority with effect from 24.1.63 and promoted as Driver Gr. 'A' similarly.

I hope you will very kindly look into my case favourably and convey your decision for early promotion Driver Grade 'A'.

Thanking you,

Yours faithfully,

Sd/-

(Mohd. Sami)

Driver Gr. 'B'

Loco Shed, N.Rly-Lucknow

TC/7/86

Loco Foreman
N.Rly LKO

Sub: Appeal for
Seniority and
promotion.

Recd.

Sd/-Illegible Date: 5.1.84

5/1

TRUE COPY

PETITIONER.

TC. Sd/-

26 B/3

IN THE HON'BLE HIGH COURT OF JUDICATURE, AT ALLAHABAD

(Lucknow Bench) LUCKNOW

Writ Petition No. of 1984

District: Lucknow.

Mohammed Sami Petitioner

Versus

Union of India and an other Opp. parties.

AFFIDAVIT

I, Mohammed Sami aged about 56 years son of Sri Mohammed Ismail Driver Grade 'A' N. Railway Head Quarter Lucknow residing at House No. 134 Magboolganj Shuter Khana P. S. Dusi Qaiserbagh Lucknow do hereby solemnly affirm and state as under:-

1. That the deponent is the petitioner in the above noted writ petition and as such is fully conversant with the facts of the case.
2. That the contents of paras 1 to 20 of the accompanying writ petition are true to the personal knowledge of the deponent except the legal averments which are believed by the deponent to be true being based on legal advice.
3. That the Annexures No. 1 to 5 of the petition are the true copies of their respective originals.

Lucknow/

Dated Sept. 20, 1984

DEPONENT

contd. on 2.

VERIFICATION

I, the above named deponent do hereby verify that the contents of paras 1 to 3 of this affidavit are true to my own knowledge. Nothing material has been concealed and no part of it is false, so help me God.

Lucknow/
dated Sept. 20, 1984

DEPONENT

I know and indentify the deponent who has signed before me.

Advocate

Solemnly affirmed before me on
at a.m./p.m. by the deponent
Sri Mohd. Sami who has been identified
by Sri Dinesh Chandra Srivastava Advocate,
High Court Allahabad, Lucknow Bench, Lucknow.

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

TC/ [Signature]

15

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH), LUCKNOW

C.M. An. No. of 1984

Writ Petition No. of 1984

Mohd. Ismail aged about 66 years s/o Sri Mohd. Ismail
Driver Grade 'A' Northern Railway Head Quarter, Lucknow,
r/o House No. 134 Maghbohraj Shuterkhana, P. S. Quiser-
bagh, Lucknow.

....Petitioner

Versus

1. The Union of India through the General Manager
Northern Railway, Baroda House, New-Delhi,
Railway
2. The Divisional/Manager, Northern Railway, Hazratganj,
Lucknow.

.... Opp. parties.

APPLICATION FOR ISSUING DIRECTION TO THE O.Ps.

For the facts, circumstances and reasons stated
in the writ petition and affidavit it is most humbly
prayed that this Hon'ble Court be pleased to direct
the opposite parties not to engage or employ the
petitioner in steam side to operate steam locomotives
instead of diesel engines till the disposal of the
writ-petition. And in the mean while interim order
or any other direction or order which may be deemed
fit in the circumstances of the case be kindly passed
in favour of the petitioner.

Lucknow/
Dated: Sept. 20, 1984

(DINESH CHANDRA SRIVASTAVA)
ADVOCATE
Counsel for the Petitioner

TC. 15/2

B
76

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH) LUCKNOW.

Civil Misc. Application No. of 1985.

In re :

Writ Petition No. 4735 of, 1984.

Mohammed Sami Petitioner

Versus,

Union of India and others Opposite Parties.

APPLICATION FOR STAY.

The petitioner, named above, begs to submit as
under :

That for the facts and reasons stated
in the accompanying affidavit it is most
respectfully prayed that this Hon'ble Court may
kindly be pleased to direct the opposite parties
to count the petitioner's seniority with effect
from 24.1.63 when he was entrusted with the work
of discharging his duties as Diesel Engine

Driver 'Grade 'C' and further direct them to allow the petitioner to work and discharge the duties as Diesel Engine Driver in Diesel side and not in Steam side and not to interfere in his working as Diesel Engine Driver in the aforesaid grade and such other orders as are deemed just and proper in the circumstances of the case may also kindly be passed.

Advocate,

Counsel for the Petitioner.

Lucknow,

Dated July ,1985.

D
7/8

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) LUCKNOW.

Affidavit in

Civil Misc. Application No. of 1985.

In re :

Writ Petition No. 4735 of 1984.

Mohammad Sami Petitioner.

Versus.

Union of India through its General Manager & others.

..... Opposite Parties.

A F F I D A V I T

I, Mohammad Sami, aged about 57 years,
son of Mohammad Ismail, Driver 'A' N/Railway, Head
Quarter, Lucknow, resident of House No. 134, Maqboolganj,
Shutar Khana, police station Qaiserganj, Lucknow,
do hereby solemnly affirm and state on oath as
under :-

1. That the deponent is the petitioner in
the above noted writ petition and as such is well
conversant with the facts of the case deposed to
below.

2. That the petitioner as well as A.M. Palit and R. Fray were working as Shunters in the ^{Steam} ~~Steam~~ side, Literacy Standard, and the aforesaid staff of steam side was absorbed in diesel side vide letter dated 3.2.58.

3. That the petitioner along with the aforementioned persons were sent for preliminary course and training of Diesel Driver in view of the letter dated 3.2.58. They successfully completed the training course and accordingly A.M. Palit and R. Fray were directed to work as Drivers Grade 'C' of Diesel Goods Trains with effect from 15.2.1962 and the petitioner had been appointed and entrusted with the work to discharge his duties as drivers grade 'C' on Diesel Goods Train with effect from 24.1.1963 and accordingly the petitioner resumed his duties and since then he is continuously working and discharging his duties on the aforesaid post along with the aforementioned posts.

4. That there was some dispute, as such a suit for declaration was filed which was dismissed against which an appeal was filed and the said appeal was registered as R.C.A.No. 164 of 1971 and the same was transferred for hearing before the Civil Judge, Mohanlalganj, at Lucknow who was pleased to decide the same and allowed the aforesaid appeal vide judgment and decree dated 11.3.72 with costs throughout.

5. That against the aforesaid judgment and decree a second appeal was filed before this Hon'ble Court which was numbered as Second Civil Appeal No. 270 of 1972 Union of India through General Manager v. A.M. Palit and others, and the said appeal was heard and decided by this Hon'ble Court vide judgment and decree dated 28.9.76 and the order passed by the Civil Judge was affirmed to some extent and it was thereafter that it was held that the petitioner had been recruited to the post of Diesel Driver Grade 'C' with effect from 24.1.63 and it was also held that the petitioner and others are entitled to three advance increments and all allowances. A copy of the said judgment and decree has already been annexed as Annexure-1 to the writ petition.

6. That the aforesaid matter was not challenged before Hon'ble the Supreme Court and the same attained finality and as such the petitioner's claim was accepted and the petitioner's recruitment to the post of Diesel Driver with effect from 24.1.63 was also accepted and he was also allowed advance increments.

7. That the petitioner made several representations and complaints to the higher officials and authorities requesting therein that the petitioner's seniority be fixed, but his seniority has not been fixed besides the

2/5/81

above-mentioned persons, As such R. Fray filed a writ petition before this Hon'ble Court and the said writ petition was admitted and was registered as Writ Petition No. 2728 of 1979 and a Division Bench of this Court consisting of Hon'ble D.N. Jha, J and Hon'ble K.S. Varma, J, allowed aforesaid writ petition of Sri R. Fray and directed the opposite party for giving seniority to the petitioner from the date of initial appointment as a Diesel Driver. A copy of the said order has already been annexed as Annexure-4 to the writ petition.

8. That despite the fact that the petitioner's appointment was held to be valid and his seniority was to be counted with effect from 4.1.63, but the opposite party did not pay any heed towards the petitioner's request and also transferred the petitioner^{and} deputed him to work as Steam Engine Driver.

9. That the petitioner made several representations but of no avail and as such he took shelter of this Hon'ble Court and filed the above-mentioned writ petition which was admitted and this Hon'ble Court was pleased to issue notice on 24.2.1979.

10. That the petitioner has not been allowed to work and discharge the duties as Diesel Engine Driver and his seniority has not been counted from the date of his appointment i.e., 24.1.1963 as it has already been held by this

1/82

Hon'ble Court while considering the grievances of R. Fray and the petitioner's appointment has also been taken into consideration by this Hon'ble Court in second appeal and the claim of the petitioner has been accepted vide judgment and order passed by this Hon'ble Court on 28.2.76.

11. That in view of the fact that the seniority of the similar situated employees who have been appointed along with the petitioner as Diesel Engine Driver has been counted from the date of appointment in Diesel side, but the petitioner's grievance has not been taken into consideration in view of the judgment passed by this Hon'ble Court in Second Appeal and the Writ Petition No. 2728 of 1979 decided on 14.9.63 - R. Fray v. Union of India, as such the petitioner is suffering irreparable loss and injury and he has been denied chance of further promotion and he has been asked to work as Steam Engine Driver and thus the opposite party deserves to be directed to consider the petitioner's seniority from the date of his appointment i.e, 24.1.63 to the post of Diesel Driver and may also direct the opposite party to allow the petitioner to work and discharge the duties as Diesel Engine Driver in the aforementioned grade.

Lucknow,
Dated July , 1985.

Deponent.

Verification.

I, the above named deponent do hereby verify that the contents of paras 1 to 11 of the affidavit are true to my own personal knowledge. Nothing material has been concealed and no part of it is false. So help me God.

Deponent,

Lucknow,

Dated July, 1985.

I, after perusal of the record identify the deponent who has signed/put his thumb marks before me.

Advocate.

Solemnly affirmed before me on
at....am/pm by Sri
the deponent who is identified by
Sri
.....

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

U/14

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Circuit Bench, Lucknow.

No. CAT/AKO/Jud/ 3869 date the: 6/3/90

T.A.No. 15-96/87 of 1990 (T)

No. 264
#15-3-90
Q/117/90

..... mohd. Same Applicants.

Varsus.

..... Union of Jodha Respondents.

(Jud)
(S. Reg)
11/9/90

To Sri Dinesh Chandara Srivastava

Adv
High court Lucknow

Whereas the marginally noted cases has been transferred by H. e. L. K. under the provision of the Administrative Tribunal Act-13 of 1985 and registered in this Tribunal as above.

Writ petition No. 4735/84
of 19.....
of the Court of H. e. L. K.
..... arising out of
of order
passed by in
.....

The Tribunal has fixed date of 30/3/90 1990. The hearing of the matter. if no appearance is made on your behalf by our some one duly authorised to Act and Plead on your behalf.

The matter will be heard and decided in your absence. Given under my hand seal of the Tribunal this
..... day of 3 1990.


DEPUTY REGISTRAR

Bhartiya

o/c

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Circuit Bench, Lucknow.

u/o

No. CAT/AKO/Jud/ *3269* date the *6/3/90*

T.A.No. *1596/87* of ~~1990~~ (T)

mold same Applicants.

Varsus.

Union of India Respondents.

To *Sri Dinesh Chandara Srivastava*

High Court Lucknow

Whereas the marginally noted cases has been transferred by *H.E.L.Ko* under the provision of the Administrative Tribunal Act 13 of 1985 and registered in this Tribunal as above.

Writ petition No. *41735/89*
of 19.....
of the Court of *H.E.L.Ko*.....
.....arising out of
of order dated.....
passed by.....in
.....

The Tribunal has fixed date of *30/3/90* 1990. The hearing of the matter. if no appearance is made on your behalf by our some one duly authorised to Act and Plead on your behalf.

The matter will be heard and decided in your absence. Given under my hand seal of the Tribunal this *6* day of *3* 1990.

J DEPUTY REGISTRAR

Bhartiya

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हाईकोर्ट इलाहाबाद, लखनऊ बेंच, लखनऊ
(अध्याय १२, नियम १ और ७)

4/6

दीवानी विभाग

प्रकीर्णक (मूतफरिफ) Com An No. 10171 (W) 1984
प्रार्थना-पत्र संख्या... सन १९८० ई०
Writ Petition No. 4735 1984
स०... सन १९८० ई० में

Mohd. Saun

प्रार्थी
Umai India प्रति
To The Divisional Railway Manager
Northern Railway
Hazratganj Lucknow प्रत्याथी

चूंकि ऊपर लिखे प्रार्थी ने इस न्यायालय में उपर्युक्त मुकदमें के सम्बन्ध में Umai India के नाम Henry Dicoction के लिये प्रार्थना-पत्र

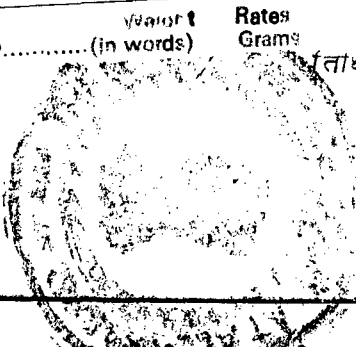
दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक 19 माह 12 सन 84 को या उससे पूर्व उपस्थित होकर कारण बतलायें कि प्रार्थना-पत्र क्यों न स्वीकार कर

बाद नियमानुसार विज्ञप्ति किशी और

र या उससे पहले स्वयं अथवा किसी से कार्य करने के लिए कानूनन अधिकृत मुमवाई और निर्णय आपकी अनुपस्थित

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रजिस्ट्रार
इलाहाबाद, लखनऊ

सूचना—इस न्यायालय की अदालत को मिरकाटली के अध्याय ३७ नियम ६ के अधीन प्राप्त तलवाना मिल गया।

तलवाना प्राप्त करने वाले क्लर्क के हस्ताक्षर

IN THE HON'BLE HIGHCOURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH), LUCKNOW

C.M. An. No. ~~4735~~ 10,191(w) of 1984

Writ Petition No. 4735 of 1984



Mohd. Sami aged about 56 years s/o Sri Mohd. Ismail
Driver Grade 'A' Northern Railway Head Quarter, Lucknow,
r/o House No. 134 Magbooganj Shutarikhana, P.S. Qaiser-
bagh, Lucknow.

....Petitioner

Versus

1. The Union of India through the General Manager
Northern Railway, Baroda House, New-Delhi.
Railway
2. The Divisional/Manager, Northern Railway, Hazaratganj,
Lucknow.

.... Opp. parties.

APPLICATION FOR ISSUING DIRECTION TO THE O.Ps.

For the facts, circumstances and reasons stated
in the writ petition and affidavit it is most humbly
prayed that this Hon'ble Court be pleased to direct
the opposite parties not to engage or employ the
petitioner in steam side to operate steam locomotives
instead of diesel engines till the disposal of the
writ-petition. And in the mean while interim order
or any other direction or order which may be deemed
fit in the circumstances of the case be kindly passed
in favour of the petitioner.

Lucknow/
Dated: Sept. 20, 1984

Dinesh Chandra Srivastava
(DINESH CHANDRA SRIVASTAVA)
ADVOCATE
Counsel for the Petitioner

2/8/04

In the High Court of Judicature
at Allahabad Lucknow Bench
Lucknow

Mohd. Sami _____ Petitioner
vs

Union of India and
another

_____ vs
W.P. No. 4735 of 2004
C.M.A. No. 10171 (w) of 2004

In the above noted W.P.

4 Copies alongwith notes and
seal envelope with postage stamps
as sent filed herewith

Swish Chandra Prasad

01/x/04

Advocate -
Counsel for the Petitioner

Postage stamps 6-25 each

Swish Chandra Prasad

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हाईकोर्ट इलाहाबाद, लखनऊ बेंच, लखनऊ
(अध्याय १२, नियम १ और ७)

6243

दीवानी विभाग

प्रकीर्णांक (मुतफरिफ)

CM An No. 10171 (W) 1904
प्रार्थना-पत्र संख्या... सन १९०४ ई०

Work Relation No. 4735 1904
सं०... सन १९०४ ई० में

Mohammad Sami

प्राथी

Union of India through G.M. N. Dey
प्रत्याप्री

To The Union of India
through the General Manager
Northern Railway
Baroda House
New Delhi

प्रत्याथी

चूंकि ऊपर लिखे प्राथी ने इस न्यायालय में उपर्युक्त मुकदमें के सम्बन्ध में

Union of India के नाम Issuing Direction के लिये प्रार्थना-पत्र

दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक 19/12/04 सन १९०४ को या उससे पूर्व उपरिथत होकर कारण बतलायें कि प्रार्थना-पत्र क्यों न स्वीकार कर लिया जाय। उक्त प्रार्थना-पत्र की सुनवाई उसके बाद नियमानुसार विज्ञप्ति किसी अंर

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उस प्रार्थना-पत्र की सुनवाई और निर्णय आपकी अनुपरिथत

न्यायालय की मोहर से आज दिनांक 12/11/04 सन १९०४

Pehdani के एडवोकेट

तिथि

लिप्टी रजिस्ट्रार
इलाहाबाद लखनऊ

सूचना—इस न्यायालय की एडवोकेट की नियमावली के अध्याय ३७ नियम ६ के अधीन प्राप्त
तलवाना मिल गया।

तलवाना प्राप्त करने वाले क्लर्क के हस्ताक्षर

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH
Gandhi Bhawan, Cap. Residency, Lucknow

15/11/90

No. CAT/Allc/Transfer/ 3176 Dated the 18/11/90

3170

APPLICANT'S

VERSUS

RESPONDENT'S

To

Whereas the marginally noted cases has been transferred by H.R. Khan under the provision of the Administrative Tribunal Act XIII of 1985 and registered in this Tribunal as above.

Writ Petition No. 211/90 The Tribunal has fixed date of 23/11/90 of 1990. of the Court of 23/11/90 1990. The hearing of the matter.

arising out of order dated 18/11/90 If no appearance is made on your behalf by your some one duly authorised to Act and plead on your behalf.

The matter will be hard and decided in your absence. given under my hand seal of the Tribunal this 18 day of 18/11/90 1990.

dinesh

DEPUTY REGISTRAR

O/C 4/2

C.A. NO. 1595 of 1987

No. CAT/A116/Jud 3934-4 dated the _____

Uhd. Semi

APPLICANT(S)

VERSUS

Union of India

RESPONDENT(S)

TO

- 1- Sri D. T. Prasad vs, Advocate, Lucknow High Court Lucknow.
- 2- Sri Sider Nayana, Advocate, Lucknow High Court Lucknow.

Whereas the marginally noted cases has been transferred by

H.C. LKO

Under the provision of the

Administrative Tribunal Act XIII of 1985 and registered in this Tribunal as above.

Writ Petition No. 4735
of 1984
of the Lucknow High Court, Lucknow

The Tribunal has fixed date of

14-1-1989 1989. The

hearing of the matter at Gandhi Bhawan, Opp. Residency, Lucknow.

If no appearance is made on your behalf by your name one duly authorised to act and plead on your behalf

The matter will be heard and decided in your absence.

Given under my hand seal of the Tribunal this 25th day of August 1989.

dinesh/

DEPUTY REGISTRAR

appellate court has recorded affirming that the recordant
 should be deemed to have been working continuously
 as diesel driver, Grade-C from the date they started
 working as such and this is to my mind a finding of
 fact which does not disclose any error of law. Apart
 from this the note contained in the letter of the Railway
 Board No. (13)/57 B.C., dated 3.2.1963 can not be
 interpreted to imply that a person drafted from the
 main line side of the steam side to the post of driver,
 Grade-C on the diesel side and recruited on the post
 will be entitled to three advance increments only
 subject to the condition that he actually performed the
 duty of a diesel driver. The intention of the note,
 on the other hand, appears to be that if a person is
 recruited as driver, Grade-C on the diesel side after
 having undergone the necessary training he will be
 entitled to three advance increments for so long
 as he holds the post of a diesel driver Grade-C and
 so long as he is not reverted to the steam side for so
 long as a person holds the post of driver, Grade-C on
 the diesel side, he will be deemed to be continuously
 working as diesel driver and he will be deemed to have
 earned to the extent to which the point of time he is
 reverted to the steam side. It is in this sense that
 the note reads

" Three advance increments will be drawn by the
 staff only for so long as they work as Diesel Drivers
 and on their reversion to the steam side their pay too
 would be fixed as though they had not been allowed the
 benefit of these advance increments. " The phrase " as

contd. on 6.

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IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW - BENCH) LUCKNOW.

Civil Misc. Application No. of 1985.

In re :

Writ Petition No. 4735 of 1984.

Mohammed Jami Petitioner

Versus.

Union of India and others Opposite Parties.

APPLICATION FOR STAY.

The petitioner, named above, begs to submit as
under :

That for the facts and reasons stated
in the accompanying affidavit it is most
respectfully prayed that this Hon'ble Court
kindly be pleased to direct the opposite parties
to count the petitioner's seniority
from 24.1.63 when he was entrusted
of discharging his duties as

Driver 'Gugle 'C' and further direct them to allow the petitioner to work and discharge the duties as Diesel Engine Driver in Diesel side and not in Steam side and not to interfere in his working as Diesel Engine Driver in the aforesaid grade and such other orders as are deemed just and proper in the circumstances of the case may also kindly be passed.

Advocate,

Counsel for the Petitioner.

Lucknow,

Dated July , 1985.

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) LUCKNOW.

Affidavit in

Civil Misc. Application No. of 1985.

In re :

Writ Petition No. 4735 of 1984.

Mohammad Sani Petitioner,

Versus,

Union of India through its General Manager & others

..... Opposite Parties.

A F F I D A V I T

I, Mohammad Sani, aged about 57 years, son of Mohammad Ismail, Driver 'A' N/Railway, Head Quarter, Lucknow, resident of House No. 134, Maghoolganj, Shutar Khana, police station Gaiserganj, Lucknow, do hereby solemnly affirm and state on oath as under :-

1. That the deponent is the petitioner in the above noted writ petition and as such is well conversant with the facts of the case deposed to below.

2. That the petitioner as well as A.M. Palit and R. Pray were working as Shunters in the ~~Steam~~^{Clear} side, Literacy Standard, and the aforesaid staff of steam side was absorbed in diesel side vide letter dated 3.2.62.

3. That the petitioner along with the aforementioned persons were sent for preliminary course and training of Diesel Driver in view of the letter dated 3.2.62. They successfully completed the training course and accordingly A.M. Palit and R. Pray were directed to work as Drivers Grade 'C' of Diesel Goods Trains with effect from 15.2.1962 and the petitioner had been appointed and entrusted with the work to discharge his duties as drivers grade 'C' on Diesel Goods Train with effect from 24.1.1963 and accordingly the petitioner resumed his duties and since then he is continuously working and discharging his duties on the aforesaid post along with the aforementioned posts.

4. That there was some dispute, as such a suit for declaration was filed which was dismissed against which an appeal was filed and the said appeal was registered as R.C.A.No. 164 of 1971 and the same was transferred for hearing before the Civil Judge, Mhanlalgani, Lucknow who was pleased to decide the same and allowed the aforesaid appeal vide judgment and decree dated 11.3.72 with costs throughout.

5. That against the aforesaid judgment and decree a second appeal was filed before this Hon'ble Court which was numbered as Second Civil Appeal No. 270 of 1972 Union of India through General Manager v. A.A. Palit and others, and the said appeal was heard and decided by this Hon'ble Court vide judgment and decree dated 23.9.76 and the order passed by the Civil Judge was affirmed to some extent and it was thereafter that it was held that the petitioner had been recruited to the post of Diesel Driver Grade 'C' with effect from 24.1.63 and it was also held that the petitioner and others are entitled to three advance increments and all allowances. A copy of the said judgment and decree has already been annexed as Annexure-1 to the writ petition.

6. That the aforesaid matter was not challenged before Hon'ble the Supreme Court and the same attained finality and as such the petitioner's claim was accepted and the petitioner's recruitment to the post of Diesel Driver with effect from 24.1.63 was also accepted and he was also allowed advance increments.

7. That the petitioner made several representations and complaints to the higher officials and authorities requesting therein that the petitioner's seniority be fixed, but his seniority has not been fixed besides the

above-mentioned persons, As such R. Fray filed a writ petition before this Hon'ble Court and the said writ petition was admitted and was registered as writ Petition No. 2728 of 1979 and a Division Bench of this Court consisting of Hon'ble D. N. Jha, J and Hon'ble Y. S. Varma, J, allowed aforesaid writ petition of Sri R. Fray and directed the opposite party for giving seniority to the petitioner from the date of initial appointment as a Diesel Driver. A copy of the said order has already been annexed as Annexure-4 to the writ petition.

8. That despite the fact that the petitioner's appointment was held to be valid and his seniority was to be counted with effect from 4.1.63, but the opposite party did not pay any heed towards the petitioner's request and also transferred the petitioner^{and} deputed him to work as Steam Engine Driver.

9. That the petitioner made several representations but of no avail and as such he took shelter of this Hon'ble Court and filed the above-mentioned writ petition which was admitted and this Hon'ble Court was pleased to issue notice on 24.2.1979.

10. That the petitioner has not been allowed to work and discharge the duties as Diesel Engine Driver and his seniority has not been counted from the date of his appointment i.e., 24.1.1963 as it has already been held by this

Hon'ble Court while considering the grievances of R. Fray and the petitioner's appointment has also been taken into consideration by this Hon'ble Court in second appeal and the claim of the petitioner has been accepted vide judgment and order passed by this Hon'ble Court on 29.2.76.

11. That in view of the fact that the seniority of the similar situated employees who have been appointed along with the petitioner as Diesel Engine Driver has been counted from the date of appointment in Diesel side, but the petitioner's grievance has not been taken into consideration in view of the judgment passed by this Hon'ble Court in second appeal and the writ petition No. 2722 of 1979 decided on 14.9.73 - R. Fray v. Union of India, as much the petitioner is suffering irreparable loss and injury and he has been denied chance of further promotion and he has been asked to work as Steam Engine Driver and thus the opposite party deserves to be directed to consider the petitioner's seniority from the date of his appointment i.e., 24.7.63 to the post of Diesel Driver and may also direct the opposite party to allow the petitioner to work and discharge the duties as Diesel Engine Driver in the aforementioned grade.

Deponent.

Lucknow,
Dated July

1985