FORM NO. 21

(*See* rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ...BENCH

OA/TA/RA/CP/MA/PT 161 of 20 87

Smt. Mariyam .....Applicant(S)

Versus

U.O.I. & others .....Respondent(S)

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Certified that the file is complete in all respects.

B.S. Chauhan Court Distt. Jaipur

Signature of S.O. 16/7/2012

Signature of Deal. Hand

Annexure - A
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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE T.A. 1601/87 OF 198

Name of the Parties Smt. Mariyam

Versus

Union of India and ors.

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लालचन्द प्रजापति
12/5/89

CAT/J/11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

O.A./T.A. No. 1601/87 198

Applicant(s)

Versus

Respondent(s)

Sr. No.	DATE	Orders
	18/8/88.	Office report An application has been received in this Tribunal for transferring the Case to Lko Circuit Bench. If approved 23rd August 1988 may kindly be fixed at Lko before Registrar/D.R.J. Notices has been sent to both the parties fixing 23-8-88 by regd/post. Submitted for orders DRO 16/8 List this Case before Circuit Bench Lko on 23-8-88. DR(J)
	23.8.88	DR.J. Sri Anil Srivastava file his power on behalf of respondents. Reply can be filed by 23.9.88. DR.J.
	23/8	

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
SITTING AT LUCKNOW.

REGISTRATION NO. 1601 (T) of 1987.
(W.P. NO. 2814 of 1984)

Smt. Mariyam. .....Petitioner

versus

Union of India and others.. .....Respondent/
Opp. Parties.

F. F. 24-2-1989

COUNTER REPLY.

I, J.N. Srivastava aged about 45 years, working as Asstt Personnel Officer in the office of Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow do hereby state as under:

1. That I, the ~~[illegible]~~ above named being the Asstt. Personnel Officer fully conversant with the facts of the case and has read the writ petition, understood its contents and has been authorised by respondents to file the counter-reply.

2. That before giving parawise reply to the said petition, the respondents crave leave of this Hon'ble Tribunal to point out that the present petition is directed against the order passed on 22.3.1976 but the petition was only preferred on 24.5.1984 i.e. after a delay of about more than 8 years without any cogent explanation of delay.

3. That the contents of para 1 of the writ petition is not admitted as stated. However, it is admitted that Mohammad Sarwar joined his services in Northern Railway on 7.5.1948 as a Class IV employee but rest of the contents are denied for want of knowledge.

4. That the contents of para 2 of the writ petition are denied for want of knowledge. Petitioner did not report for duty from 22.9.1975 till 22.3.1976 i.e. till the date of his removal from service nor submitted any Leave-Application on any ground whatsoever. It is further clarified that the office of the respondents did not receive any paper or information regarding the alleged illness of the petitioner. It is also not clarified in the paragraph under reply that why he was taking treatment under a private doctor while he could have been treated in the Railway- hospital free of cost.

5. That the contents of paragraphs 3, 4 & 4 of the petition are admitted to the extent ~~that these~~ it is a matter of record but rest of the contents of the paragraphs under reply are denied.

6. That the contents of paragraph 5 of the petition are admitted to the extent ~~that~~ it is a matter of record and rest of the contents are denied. The order of removal under Rules 14 (ii) was passed by the competent authority on 22.3.1976.

7. That the contents of paragraphs 6 of the petition is categorically denied and the

22.2.89

petitioner be put to strict proof ~~for~~ of the same. There is no such document in the record of the opposite parties which shows that the husband of the petitioner ever reported for duty in the month of April, 1976 as alleged.

8. That the contents of paragraph 7 of th petition are categorically denied and the petitioner be put to strict proof that her husband had preferred the appeal dated 24.4.1976 against the removal order as alleged. There is no such document available in the records of the opposite parties which indicates that the husband of the petitioner had preferred an appeal against his rwmoval as alleged.

9. That the contents of para 8 of the petition is denied as alleged but, however, it isadmmitrd that the applicant's husband could not be provided medical treatment in Railway Hospital as he had already been removed from service. He was further advised that the he could only be taken back in service when he is declared medically fit.

10. That the contents of para 9 of the petition are denied and petitioner be put to a strict proof for the same. There is no such document available in the records of opposite parties which proves the contents of the para under reply.

11. That the contents of para 10 of the writ petition is denied for want of knowledge.

22.2.89

65 A3/9

12. That the contents of paragraphs 11 and 12 of the petition do not call for a reply as being irrelevant.

13. That the contents of para 13 of the petition is categorically denied and the petitioner be put to strict proof for the same.

14. That in reply to the contents of para 14 of the writ petition it is stated that as per theirown admission the last representation submitted by the ~~petitio~~ husband of the petitioner (which is not in the records of the opp. parties) was in the year1977 while the husband of the petitioner allegedly died in the year 1979 but the said matter was not perused since 1977 to 1984 and only before filing (for the purpose of filing this writ petition) this representation dated 16.2.1984 was submitted by the petitioner which will itself explain the motive of the petitioner.

15. That the contents of paragraphs 15 to 17 of the writ petition are denied for want of knowledge but, however, the petitioner be put to strict proof for the same.

16. That the contents of paragraphs 18 & 19 of the writ petition are denied as the matter is argumentative and is to be decided by this Hon'ble Tribunal.

17. That the Grounds (A) to (H) of the writ petition have no force of law and the relief sogught

22.2.89

66

A3/5

could not be granted to the petitioner.

Lucknow, Dated.
22-2-89

Respondent,

Verification.

I, the above named officer, do hereby verify that the contents of paragraph 1 of the counter-reply are true to my own knowledge and those of paragraphs 2 to 16 are true to my knowledge derived from perusal of official records and those of paragraph 17 are believed to be true on the basis of legal advice.

Lucknow, Dated
22-2-89

Respondent.

.....

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW.
****

~~O.A.~~/T.A. No. 1601 1987 (L)

Smt. Maniyam Applicant(s)

Versus

U.O.I. Respondent(s)

Serial No.	Date	Orders
	23.1.89.	Hon. D.S. Misra, Am. Hon. G.S. Sharma, Jm. Sri D.P. Shukla for the applicant and Sri Anil Srivastava are present. On the request of the learned counsel for the ~~respondents~~ he is allowed two weeks time to file reply. Rejoinder, if any, may be filed within a week thereafter. List it for final hearing on 22/2/89.
	22/2	OR No sitting. Adjourned to 24/2/89 for Hearing. Sri A.N Varma power filed today. Rom 22/2
	24/2/89.	Hon. D.S. Misra, Am. Hon. G.S. Sharma, Jm. Reply has been filed today on behalf of respondents. On the request of the learned counsel for the applicant he is allowed 1000 weeks time to file rejoinder. Put up on 14-3-89 for hearing.

Jm Am.

A1/2/13

CENTRAL ADMINISTRATIVE TRIBUNAL
Circuit Bench at LUCKNOW

...

Gandhi Bhawan, Lucknow

APRIL , 1989

Registration T.A. No. 1601 of 1987 (TL)

Smt. Mariyam ..... Applicant

Vs.

Union of India and ors ... Respondents

Hon' Mr. D.S. Misra, A.M.
Hon' Mr. D.K. Agrawal, J.M.

(Hon' Mr. D.S. Misra, A.M.)

This is a writ petition, which has come on transfer under section 29 of the Administrative Tribunals Act, 1985. The petitioner has prayed for quashing the order dated 22-3-1976 (Annexure No. 1), removing the services of Mohd. Sarwar B.T. Boiler Maker of Loco Shed, Northern Railway, with immediate effect under Rule 14 (ii) of the Railway Servants Discipline and Appeal Rules, 1968. The petitioner is the wife of Mohd. Sarwar, and has inter-alia claimed the post retirement benefits, such as, pension and gratuity to which she becomes entitled. Her petition was admitted on 25-5-84 after condoning the delay in filing the petition.

2. The admitted facts of the case are that the petitioner's husband, Mohd Sarwar, was working as B.T. Boiler Maker under the Loco Foreman, Northern Railway, Alambagh, Lucknow, and he remained absent from duty from 22-9-1975 onwards, when the order of removal was passed by the Senior Divisional

...2/-

A1/2/2 4

Mechanical Engineer, Lucknow. The respondents have denied receipt of any leave application from Mohd. Sarwar for grant of leave on medical ground. They have also denied the allegation contained in para 6 of the petition that after recovery from illness Mohd. Sarwar reported for duty to the Loco Foreman in the month of April, 1976 and that he was not allowed to resume duty. The respondents have also denied the receipt of the appeal dated 24-4-76 (copy Annexure-2). However, the respondents do admit the receipt of an application dated 7-6-1977 of Mohd. Sarwar seeking re-appointment on the post of Boiler Maker Khalasi and providing facility for treatment in the Railway Hospital. Mohd. Sarvar died in the year, 1979 and it was in the year1984, that the petitioner submitted a representation on 16-2-1984 (Copy Annexure-5). They have denied the receipt of the representation dated 19-12-1977 (Copy Annexure-No. 4).

3. We have heard the learned counsel for the parties and carefully perused the documents on record. The main point for consideration is, whether, the impugned order dated 22-3-1976, suffers from any illegality? A plain reading of this order would show that the disciplinary authority has passed the impugned order by holding that, it is not reasonably practicable to hold an inquiry in the manner provided in the Railway Servants Discipline and Appeal Rules, 1968, as the whereabout of Mohd. Sarwar are not known. The only justification for coming to this conclusion by the disciplinary authority is as follows :

" I contacted the Shed. They have no

...3/-

A1/2/3 85

trace of him. They made efforts but were unable to locate his whereabouts.

He is nowhere available. It is, therefore, not feasible or practicable to carry out a DAR inquiry. He is removed under Rule 14(ii). "

4. We have considered the matter and we are of the opinion that the disciplinary authority himself did not make any effort to serve a copy of the charge sheet for alleged unauthorised absence of Mohammad Sarwar. Under the Rules of Railway Administration, a Service Book is maintained for each Railway Servant, which contains information about the permanent address of the railway servant. The personal file of the government servant contains the information regarding place of duty of the government servant from time to time and the residential address of the government servant. The respondents have not denied that Mohammad Sarwar, petitioner's husband joined service in the Northern Railway on 7-5-1948, as a Class IV employee, and therefore, had thus, rendered about 28 years of service under the respondents, when his services were terminated. It is the duty of the disciplinary authority, to have sent Registered/AD letter at the permanent address of Mohammad Sarwar, if, he was not available at his temporary residence at the place of his posting. Mohammad Sarwar was suffering from Tuberculosis. It is not uncommon for a Class IV employee to have more faith in the indigenous system of treatment of the disease than what is provided in the dispensaries/hospitals run by the Railway Administration. Although, Tuberculosis

A112/4

is a curable disease, it is still considered a very serious ailment by low paid employee, who cannot afford the cost of medicines and nourishment required for a Tuberculosis patient. It is, therefore, not surprising that the applicant's husband left his duty without informing his superior authority and applying for leave, due to worry on account of his illness. The respondents have neither stated anywhere, nor produced any documentary evidence to establish that they made efforts to inform Mohd. Sarwar, through Registered Post at his permanent address. We are of the opinion that the failure on the part of the disciplinary authority, and the conclusion arrived at, by the disciplinary authority, that it is not feasible or practicable to hold an inquiry under the Railway Servants Discipline and Appeal Rules, 1968, has not been passed on reasonable grounds, and therefore, it is not sustainable in law. Accordingly, we hold that the order dated 22-3-1976 (Annexure No. 1 to the petition), suffers from illegality, and is hereby quashed. With the passing of this order, Mohd. Sarwar will be deemed to be in the service of Railway Administration until his death in 1979. The applicant, is the widow of Mohd. Sarwar, the deceased Railway servant, and is, therefore, entitled to post retirement benefits, such as, pension, gratuity etc. according to the rules.

5. For the reasons mentioned above, we direct

....5/-

A1/2/57

the respondents to grant family pension, gratuity etc. as may be admissible to the petitioner under the rules within a period of three months from the date of receipt of this order. The application is disposed off accordingly. There is no order as to cost. We would also like to place on record the services rendered by Shri L.P. Shukla, Advocate, learned counsel for the applicant for pleading the case on behalf of Legal Aid and Advisory Committee, High Court Bench, Lucknow.

28/4/89

MEMBER (J) MEMBER (A)

(sns)

Lucknow

APRIL 28, 1989.

CIVIL
SIDE
CRIMINAL

GENERAL INDEX

(Chapter XLI, Rules 2, 9 and 15)

Nature and number of case ..... W.P. No. 2814 - 84

Name of parties ..... Smt. Maniyam v. Union of India

Date of institution ..... 25-5-84 ..... Date of decision.....

File no.	Serial no. of paper	Description of paper	Number of sheets	Court-fee: Number of stamps	Court-fee: Value Rs.	Court-fee: Value P.	Date of admission of paper to record	Condition of document	Remarks including date of destruction of paper, if any
1	2	3	4	5	6		7	8	9
	1	W.P. with Annex. and affidavit	23		102	00			
	2	Power	1	-	5	00			
	3	Order Sheet	1	-		-			
	4	Bench Copy	1	-		-			

I have this day of 198 , examined the record and compared the entries on this sheet with the papers on the record. I have made all necessary corrections and certify that the paper correspond with the general index, that they bear Court-fee stamps of the aggregate value of Rs. that all orders have been carried out, and that the record is complete and in order up to the date of the certificate.

Date.....

Munsarim

Clerk

4392

9

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

SITTING AT LUCKNOW

Writ Petition No. 2014 of 1984

Smt. Mariyam ..... Petitioner

Versus

Union of India & others ..... Opp. parties

INDEX

.....

(L. P. Shukla)
Advocate

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

SITTING AT LUCKNOW

Writ Petition No. 2014 of 1984

Smt. Mariyam, aged 50 years, widow of Mohd. Sarwar, resident of House No.4 Rustamnagar Dariwala, P.O. Saadatganj, Lucknow.

..... Petitioner

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.

2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.

3. Sr.Divisional Mechanical Engineer, Northern Railway, Hazratganj, Lucknow.

..... Opposite Parties

Writ Petition under Article 226 of the Constitution of India.

The petitioner most respectfully begs to state as under :-

1. That the petitioner is the widow of late Mohd. Sarwar who died on 18.12.1979. The petitioner's husband Mohd. Sarwar joined service in the Northern Railway on 7.5.1948 as a class IV employee. He was working as B.T. Boiler Maker under the Loco Foreman, Northern Railway, Alambagh, Lucknow, when he fell seriously ill. The ailment was initially diagnosed as asthma but subsequently it was diagnosed that Mohd. Sarwar was suffering from tuberculosis.

2. That Mohd. Sarwar on account of his illness remained absent from duty for some time from 22.9.1975. He was confined to bed and was unable to move about. He sent his application for leave on medical grounds certified by a private doctor to the Loco Foreman, Northern Railway, Alambagh, Lucknow. He also sent messages to the Loco Foreman through his colleagues to inform him about his prolonged illness and his inability attend to his duty.

3. That the prolonged absence of Mohd. Sarwar was treated as unauthorised absence and consequently a chargesheet was framed against him that he remained absent from 22.9.1975 to date and his whereabouts are not known. The said chargesheet is reproduced below:-

> "As the said employee Sri Mohd. Sarwar, B.T. Boiler Maker, remained absent from 22.9.1975 to date and his whereabouts are not known."

R.T.I.

4. That on the aforesaid charge the following orders were passed by competent authority:-

> "I contacted the shed. They have no trace of him. They made efforts but were unable to locate his whereabouts.
>
> He is nowhere available. It is, therefore, not feasible or practicable to carry out a DAR inquiry. He is removed under Rule 14(ii)."

5. That on the basis of the aforesaid charge and the finding thereon that the shed was contacted and there was no trace of Mohd. Sarwar and his whereabouts could not be located despite efforts it was not found feasible or practicable to carry out a DAR inquiry Mohd. Sarwar was consequently removed from service under Rule 14(ii) of the Railway Servants Discipline and Appeal Rules by the order of the Sr. Divisional Mechanical Engineer, Lucknow, dated 22.3.1976.

6. That after recovery from illness Mohd. Sarwar reported for duty to the Loco Foreman in the month of April, 1976. He was not allowed to resume his duty on the ground that his services had already been terminated under Rule 14(ii) of the Railway Servants Discipline and Appeal Rules 1968 by an order passed by the then Sr. Divisional Mechanical Engineer, Northern Railway, Lucknow. On his request a copy of the said order was given to him. The order dated 22.3.1976 alongwith the

R.T.I.

annexure indicating the charges and the orders passed by the competent authority is filed as Annexure No.1 to this writ petition.

7. That against the aforesaid order Mohd.Sarwar preferred an appeal dated 24.4.1976 to the Divisional Superintendent, Northern Railway, Lucknow, explaining his absence from duty on account of his illness as chronic patient of asthma which becomes aggravated in the form of severe attacks in the winter season. Mohd. Sarwar explained that he had gone on duty for washing of engines when all of a sudden he fell seriously ill on the night of 21.8.1975 and he was unable to speak and to move about and remained under the treatment of a private doctor in his locality. Mohd. Sarwar further stated in his appeal that he is the sole bread winner of the family and his family will be reduced to starvation if he is removed from service. He, therefore, requested for sympathetic consideration and setting aside the punishment awarded to him. In case it was not possible to change the said order, Mohd. Sarwar requested for his retirement so that he may avail of pensionary benefits permissible to him. A true copy of the letter dated 24.4.1976 in the form of appeal by Mohd. Sarwar to the Divisional Superintendent, Northern Railway, Lucknow, is filed as Annexure No.2 to this writ petition.

8. That on the basis of the aforesaid appeal and

representation made by Mohd. Sarwar the railway authorities recalled the order of his termination dated 22.3.1976 under Rule 14(ii) of the Railway Servants Discipline and Appeal Rules 1968 and decided to reinstate him. The case of Mohd. Sarwar was consequently referred to the railway doctor and on a thorough medical check up and examination of Mohd. Sarwar the Divisional Medical Officer certified that Mohd. Sarwar was suffering from tuberculosis for which treatment was necessary. On the question of sending him for treatment in a railway hospital the authorities took the view that because he had already been removed from service he could not be sent for treatment in a railway hospital. It was further ordered that Mohd. Sarwar will be permitted to resume his service after he has been declared medically fit. The order dated 12.9.1977 passed by the Divisional Superintendent, Northern Railway, Lucknow, is filed as Annexure No.3 to this writ petition.

9. That as the financial condition of the petitioner's husband did not permit him to take a prolonged treatment of tuberculosis through a private doctor, Mohd. Sarwar by his letter dated 19.12.1977 to the Divisional Superintendent, Northern Railway, Lucknow, referred to his previous application dated 24.4.1976 and renewed his request for retirement from service on medical grounds. He requested that he may be considered as medically unfit and retired in accordance with the Rules applicable in his case, as on

R.T.I.

account of financial hardship he is unable to take medical treatment privately. A true copy of the letter dated 19.12.1977 by Mohd. Sarwar to the Divl. Superintendent is filed as Annexure No.4 to this writ petition.

10. That thereafter on account of financial difficulties Mohd. Sarwar was unable to take necessary and adequate medical treatment for tuberculosis as diagnosed by the railway doctor and his condition deteriorated and he died on 18.12.1979.

11. That Mohd. Sarvar had put in about 28 years of service and was entitled for taking retirement on medical grounds and he was constantly making this request to the railway authorities. According to rules he could seek voluntary retirement after 20 years of service. In case of death, the widow of a railway employee is entitled to family pension. The mode of payment of pension in the aforesaid cases is elaborately laid down in the Liberalised Pension Rules under the Railway Establishment Code.

12. That Mohd. Sarwar's date of birth was 7.5.1929 and he would have retired on 31.5.1987 after attaining the superannuation age of 58years. At the time of his death the age of Mohd. Sarwar was 50 years 7 months.

13. That the petitioner approached the railway authorities requesting that Mohd. Sarwar be taken to have retired on medical grounds as the order of removal

R.T.I.

from service under Rule 14(ii) dated 22.3.1976 stood withdrawn by the subsequent order dated 12.9.1977 of the Divisional Superintendent.

14. That when no action was taken by the Railway administration the petitioner finally made a representation in writing to the Hon'ble Minister for Railway, New Delhi, with copies to the General Manger, Northern Railway, New Delhi and the Divisional Railway Manager, Northern Railway, Lucknow, requesting that on the facts and circumstances of the case relating to her late husband Mohd. Sarwar, he should be deemed to have retired from service on medical grounds and the petitioner being his widow is entitled to the pensionary benefits accruing to her late husband. These representations were duly served on the authorities. A true copy of the petitioner's representation dated 16.2.1984 is filed as Annexure No.5 to this writ petition.

15. That the petitioner was unable to approach the railway authorities earlier as after the death of her husband she being a pardanashin lady was unable to approach them directly. Further she was not aware of the facts and circumstances leading to removal of her husband from service under Rule 14(ii) and also the papers and correspondence in this matter between Mohd. Sarwar and the railway administration.

16. That the petitioner discovered the aforesaid papers after the death of her husband and consequently

R.T.I.

on the advice of the colleagues of her late husband she approached the railway administration and made a representation that the petitioner's husband Mohd. Sarwar be deemed to have retired on medical grounds and in view of his service in the railway the petitioner is entitled to all the post retirement benefits accruing to her husband.

17. That the petitioner being unable to contest her claim in this Hon'ble Court on account of her financial hardship was advised to approach the Legal Aid Board. Her case was processed by the Board and it decided to give the necessary legal aid to the petitioner and hence the above writ petition is being filed before this Hon'ble Court.

18. That the writ petition has been preferred on account of her husband's illegal and arbitrary removal from service under Rule 14(ii) of the Discipline and Appeal Rules and also against imposition of illegal and arbitrary condition to take back Mohd. Sarwar in service on his being declared medically fit by order dated 12.9.1977 of the Divisional Superintendent (Annexure No.3) and refusal to allow him treatment in the railway hospital. No notice of proposed action under rule 14(ii) was served on Mohd. Sarwar

19. That aggrieved by the refusal of the railway administration to decide the representation of the petitioner (Annexure No.5) and to give relief to the petitioner in the form of post retirement benefits such as pension, gratuity etc. accruing to her husband, the

R.T.L.

petitioner, having no alternative speedy remedy available to her, has preferred this writ petition on the following amongst other grounds:-

GROUNDS

(A) Because the order dated 22.3.1976 (Annexure No.1) removing Mohd. Sarwar from service under Rule 14(ii) of the Railway Servants Discipline and Appeal Rules is illegal, arbitrary and without jurisdiction.

(B) Because no notice to show cause was, however, issued to Mohd. Sarwar before treating his absence as unauthorised as it amounts to punishment and the action under Rule 14(ii) is, therefore, in violation of Article 311 of the Constitution and also against the principles of natural justice.

(C) Because the charge of unauthorised absence is baseless and the finding thereon is totally perverse as it is not based on any evidence on record.

(D) Because the fact of unauthorised absence of Mohd. Sarwar was neither established nor proved through a proper inquiry as contemplated under the Rules.

(E) Because the order of removal under Rule 14(ii)

dated 22.3.1976 was subsequently withdrawn as evident from the order dated 12.9.1977 by the Divisional Superintendent (Annexure No.3).

(F) Because the railway authorities illegally refused treatment of Mohd. Sarwar in a railway hospital to which he was legally entitled.

(G) Because Mohd. Sarwar was not in a position to take private treatment in order to be medically fit for resuming duties and this condition was palpably unjust and arbitrary.

(H) Because the petitioner is entitled to all the post retirement benefits accruing to her late husband Mohd. Sarwar by treating him on duty till the date of his death on 18.12.1979.

P R A Y E R

WHEREFORE it is most respectfully prayed that this Hon'ble Court may be pleased to :-

(i) issue a writ, direction or order in the nature of certiorari quashing the order dated 22.3.1976 (Annexure No.1);

(ii) issue a writ, direction or order in the nature of mandamus commanding the opposite parties to treat Mohd. Sarwar on duty upto 18.12.1979;

(iii) issue a writ, direction or order in the nature of mandamus commanding the opposite parties to treat the petitioner entitled to all the post retirement benefits such as pension, gratuity etc. accruing to her late husband;

(iv) issue such other writ, direction or order as deemed just and proper in the circumstances of the case;

(v) award the costs of the writ petition to the petitioner.

(L.P. Shukla)
Advocate,
Counsel for the petitioner.
(Appointed by High Court Legal Aid & Advisory Committee, High Court Bench, Lucknow.

Dated Lucknow:
May 24, 1984.

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

SITTING AT LUCKNOW

Writ Petition No. of 1984

Smt. Mariam ..... Petitioner

Versus

Union of India & others ..... Opp. Parties

Annexure No.1

Northern Railway

Divisional Supdt's Office,
Lucknow Dt. 22.3.76

No. 170E/26/Mohd Sarvar.

Sri Mohd Sarwar,
B.T. Boiler Maker.

1. Whereas Sri Mohd Sarwar, B.T. Boiler Maker under LF/LKO is responsible for being on un-authorised absence from 22.9.75 and is still absent contravening Rule 3(i) and (ii) of the Rly Service Conduct Rules 1966. His whereabout also are not known.

2. Whereas the interest of Rly and also of general public, and further retention of Sri Mohd Sarwar B.T. Boiler Maker in Railway service is undesirable.

3. Whereas it is considered that circumstances of the case are such that it is not reasonably practicable to hold an enquiry in the manner provided in Rly. Service Disciplinary and Appeal Rules 1968.

4. Now, therefore, in exercise of the powers conferred by rule 14(ii) of Disciplinary and Appeal Rules 1968, the undersigned hereby removes the said Sri Mohd Sarwar, B.T. Boiler Maker of LKO shed with immediate effect.

COMMISSIONER FOR OATHS
High Court, ALLAHABAD
24-5-84

Encl. 1. Annexure indicating the charges.

2. Orders passed by competent authority.

Sd/- Illegible
Sr. Divl. Mech. Engineer,
Lucknow.

R.T.I.

Instructions

Under Rule 18 of the Railway Service Discipline and Appeal Rules 1968 the appeal against these orders lies to Divl. Supdt., provided :-

1) The appeal is preferred within 45 days from the date of issue of these orders.

2) The appeal is presented to the authority to whom the appeal lies and a copy is forwarded by him to the authority which needs the orders appeal against. It does not contain any dis-respectful or improper language.

Copy to :-

1. L.F. Lucknow in duplicate. He will arrange to paste one copy on the notice Board of the Office and also arrange to deliver one copy of the employee if he is traceable.

2. The D.A.O. Lucknow.

3. Sr. D.M.E. Lucknow.

R.T.I.

ANNEXURE INDICATING THE CHARGES

As the said employee Sri Mohd Sarwar, B.T. Boiler Maker remained absent from 22.9.75 to date and his whereabouts are not known.

ORDERS PASSED BY COMPETENT AUTHORITY.

I contacted the shed. They have no trace of him. They made efforts but were unable to locate his whereabouts.

He is no where available. It is therefore not feasible or practicable to carry out a DAR enquiry. He is removed under Rule 14(ii).

COMMISSIONER FOR OATHS
High Court, ALLAHABAD
24-5-87

R.T. C

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

SITTING AT LUCKNOW

Writ Petition No. of 1984

Smt. Mariam ..... Petitioner

Versus

Union of India & others ..... Opp. Parties

Annexure No.2

To,

The Divl. Superintendent,
N. Rly., Lucknow.

Sir,

Reg.: Removal Notice No.170E/26/Mohd Sarvar

Dated : 24-4-76

Respectfully I beg to state that I am an old patient of Asthma and feel its severe attacks in the winter season. I went to work on washout of engines. All of a sudden fell seriously ill on the night of 21st of Sept. 75 and became unable to speak what to say of movement from bed and remained under the treatment of a private Doctor of my locality and a certificate of whome is also attached herewith.

I am the only member carrying the burden of whole of my family and all of them will be thrown to starvation if I am deprived of my livelihood.

I am therefore to request you to kindly consider my case sympathetically and set aside the punishment awarded to me. However if in case it is not possible to differ from the orders already passed, I would request you to kindly get me retired instead of removing me so that I may be able to get full pensionary benefits whatsoever permissible to me.

Yours faithfully,

Dated 24/4/76

Sd/- Mohd Sarver
Ex BT Boiler Maker
Lucknow. N. Rly.
Ticket No. 737

COMMISSIONER FOR OATHS
High Court, ALLAHABAD
24.5.84

R.T.I

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

SITTING AT LUCKNOW

Writ Petition No. of 1984

Smt. Mariam ..... Petitioner

Versus

Union of India & others ..... Opp. Parties

Annexure No.3

उत्तर रेलवे

नम्बर १७० ई।१६।मो० सरवर दिनांक १२.६.१९७७

प्रेषक, सेवा में,

मंडल अधीक्षक
लखनऊ

श्री मोहम्मद सरवर
भू०पू० बी०एम० खलासी
लोको फोरमैन।वाराणसी

संदर्भ : व्वायलर मेकर खलासी के पद पर दुबारा नियुक्ति।

सं इस कार्यालय का दि० ७।६।७७ का समसंख्यक पत्र

.....

उपरोक्त पत्र के बाद डाक्टरी के लिए भेजे जाने पर मंडल चिकित्सा अधिकारी ने प्रमाणित किया है कि आप टी०बी० ग्रस्त है जिसके उपचार की आवश्यकता है।

चूंकि आप पहले से ही नौकरी से निकाले जा चुके है। अत: रेलवे अस्पताल में उपचार हेतु आपको नहीं भेजा जा सकेगा।

तथा

आपको नौकरी पर वापस मेडिकल फिटनेस के बाद ही लिया जा सकेगा।

ह० चन्दू लाल
१२।६।७७

(चन्दू लाल)
कृते मंडल अधीक्षक,
लखनऊ.

COMMISSIONER FOR OATHS
High Court, ALLAHABAD
24-5-84

R-2 I

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

SITTING AT LUCKNOW

Writ Petition No. of 1984

Smt. Mariam ..... Petitioner

Versus

Union of India & others ..... Opp. Parties

Annexure No.4

To,

TheDivisional Superintendent,
N. Railway, Lucknow.

Subject :. Removal Notice No.170E/6/Mohd.Sarwar
Dated 24.4.76

Ref:- Your letter No.170E/1-6/Mohd Sarwar Dt. 12.9.77

Sir,

From the contents of your letter quoted above I have been told that I am no more a Rly. servant and as such I am not entitled for any treatment from the Rly. dispensary, which I require to be cured from T.B. as declared by the Railway Doctor.

I, therefore, once again refer to my previous application dated 24.4.76 (copy attached) where in I had already requested that I am an old patient of Asthama though now a days I am in a better condition than before, and that I may please be made to retire from service on medical grounds and not as a punishment but the same could not be considered.

Under the circumstances stated above I pray your honour to kindly consider my case in the light of recommendation of DMO/LKO and treat my self to be medically unfit in absence of any monetary help either in the shape of pay or pensionary benefit I am unable to take treatment outside the Railway.

Thanking you,

Yours faithfully,

Dated 19.12.77

(Mohd. Sarwar)
BT/Boiler Maker
T-No. 737 Lucknow.

COMMISSIONER FOR OATHS
High Court, ALLAHABAD
245-84

R.T.I

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

SITTING AT LUCKNOW

Writ Petition No. of 1984

Smt. Mariyam ..... Petitioner

Versus

Union of India & others ..... Opp. Parties

Annexure No.5

The Hon'ble Minister for Railways,
Government of India, Ministry of Railways,
Railway Board, Rail Bhawan, New Delhi.

Sub: Petition for grant of pension and other benefits to this widow petitioner.

Hon'ble Sir,

On having been denied justice at the low level, this poor and helpless lady, who is the widow of late Mohd. Sarwar, who was employed as a B.T. Boiler Maker under the then Divisional Supdt., Northern Railway, Lucknow posted in the Loco Running Shed, Alambagh/LKO, dares to approach your honour through this petition for justice and mercy. The facts of the case are as under :-

1) That the aforesaid late Shri Mohd. Sarwar while working as a B.T. Boiler Maker under the Loco Foreman, Northern Railway, Alambagh, Lucknow fell seriously ill in the month of September, 1975 and as such was unable conduct his own affairs. He was completely confined to bed and as such continued his treatment under the private medical practitioner of the locality which informations he had been sending to his Loco Foreman of and on.

2) That on having recovered from illness, he reported for duty to his Loco Foreman in the month of April, 1976. He was not allowed to resume his duty on the ground that his services were already terminated under Rule 14(2) of the Railway Servants Discipline and Appeal Rules, 1968 by an order passed by the then Senior Divisional Mechanical Engineer, Northern Railway, Lucknow. On request made by him, a copy ofthe said order was delivered to him.

R.T.I

3) That on receipt of the aforesaid order, the petitioner's aforesaid husband came to know that his services were terimanated with effect from 22.9.1975 i.e. from the date when he fell ill. The said order is dated 22.3.1976 and a copy of whichis being enclosed herewith as Annexure 'A'.

4) That on receipt of the aforesaid order, the petitioner's husband preferred an appeal immediately to the then Divisional Supdt., Northern Rly., Lucknow and stated therein the true facts of his illness duly supported by the medical certificate any prayed for the cancellation of the said order.

5) That the competent authority took a judicious view of the matter and decided to reinstate the petitioner's husband in service. The petitioner's husband, by the order of the dompetent authority, was directed to appear before the Divisional Medical Supdt., Northern Railway, Lucknow for his medical examination and fitness. Accordingly, the petitioner's husband appeared before the said Medical Authority and got himself examined.

6) That thereafter, the petitioner's husband received a letter bearing No.170-E/106/Md. Sarwar dated 12.9.1977 issued by the then Divisional Supdt., Northern Rly., Lucknow intimating him that since he was declared to be a T.B. patient by the Divisional Medical Supdt., Northern Railway, Lucknow, he can be taken back in service only after his medical fitness. He was further informed that medical treatment cannot be given to him in the Railway Hospital because he was already removed from service. A photostat copy of the said letter is being enclosed herewith as Annexure 'B'.

7) That on receipt of the aforesaid letter, the petitioner's husband requested the authorities that instead of treating him as removed from service under rule 14(2) of the D&A Rules he may be retired from service on medical ground, so that he may be able to get his pension and other benefits arising therefrom at such a stage when he had completed about 28 years of his services but had no means of livelihood for him as well as for the members of his family. He also met the authorities personally and requested for the said relief, but all the time he was advised to get him treated privately so as to get his reinstatement in service on medical fitness.

8) That with a hope of reinstatement in service as assured by the authorities, the petitioner's husband started his treatment privately but due to poverty and there being no means of income, he could not continue the costly treatment in a regular and proper

R.T.I

manner and consequently on 18.12.1979 he died leaving behind this helpless lady, two unmarried daughters and one dependant son.

9) That after some time, this petitioner moved representations to the authorities concerned for grant of her pension and other benefits by treating her aforesaid husband as retired from service on medical ground instead of treating him as removed from service as the order under rule 14(2) of the D&A Rules, 1968 removing her husband from service was highly unjustified and the same was passed without any enquiry and that the petitioner's husband was never on unauthorised absence. He was seriously ill and confined to bed which informations he had been sending to his Loco Foreman for grant of leave on medical ground. It is regretted that no action has yet been taken by the authorities concerned. The petitioner and other members of family have been starving and passing very hard days. Her daughters have attained the marriageable ages but there being no means of income, she is unable to marry them. On being denied justice, this helpless lady approaches your honour for justice and immediate relief.

In the name of justice, this helpless widow of the aforesaid late Mohd. Sarwar, Ex- B.T. Boiler Maker under the then Divisional Supdt., Northern Railway, Lucknow with her folded hands requestes your honour to call for the records and take a judicious view of the matter and by cancelling the order of removal from service of her said husband, this poor lady may be granted family pension by treating her said husband as having been retired from service with all other benefits arising from retirement, so that she and her children may not face hardship and days of starvation.

The petitioner hopes that her request would be considered at your end in the interest of a poor and helpless lady at your earliest as she and her children have been facing a very hard life.

Thanking you,

Yours faithfully,

Thumb impression

(Smt. Mariyam) widow of
late Shri Mohd. Sarwar,
Ex. B.T. Boiler Maker under
the Divl. Railway Manager,
Northern Railway, Lucknow.

Dated 16.2.84

Address: House No.4, Rustam Nagar,
Dari Wala, P.O. Sadatganj
Lucknow(U.P.).

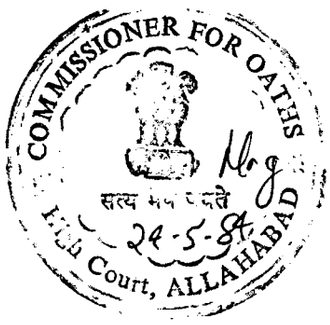
COMMISSIONER FOR OATHS
High Court, ALLAHABAD
24-5-84

R.T.I

Copy to :-

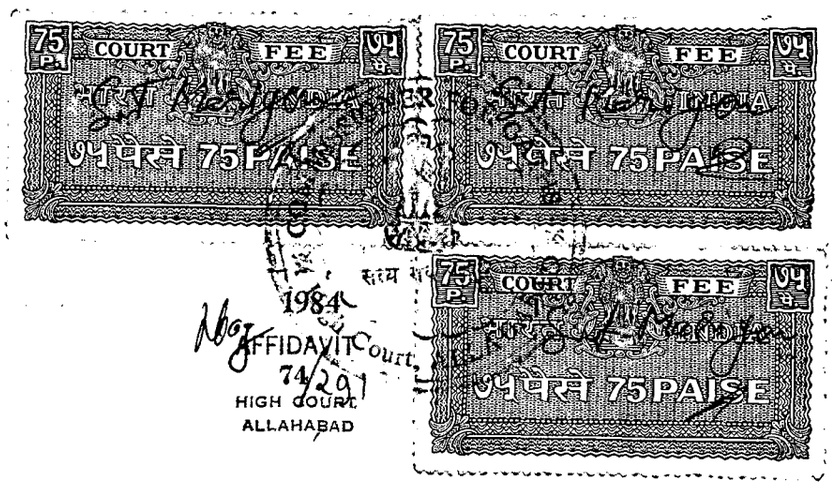
i) The General Manager, Northern Railway, Baroda House, New Delhi for information and similar action and

ii) the Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow for information and similar action. This is in continuation of her previous representations.



R.T.I

22 31



IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

SITTING AT LUCKNOW

Affidavit

In

Writ Petition No. of 1984

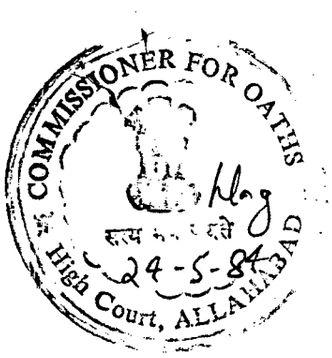
Smt. Mariyam ..... Petitioner

Versus

Union of India & others ..... Opposite parties

AOF F I D A V I T

I, Smt. Mariyam, aged 50 years, widow of Mohd. Sarwar, resident of House No.4 Rustamnagar Dariwala, P.O. Saadatganj, Lucknow, do hereby solemnly affirm and state on oath as under :-



1. That the deponent is the petitioner in the above writ petition and as such is fully conversant with the facts deposed to herein.

2. That the deponent has been read the accompanying writ petition along with the annexures, the contents of which she has fully understood.

R.T.I

3. That the contents of paragraphs 1 to 18 of the

writ petition are true to my own knowledge.

4. That Annexures Nos. 1 to 5 to the writ petition are the true copies duly compared from their duplicates and originals.

Dated Lucknow: Deponent. R.T.I.

May 24, 1984.

Verification

I, the above-named deponent, do verify that the contents of paragraphs 1 to 4 of this affidavit are true to my own knowledge. No part of it is false and nothing material has been concealed. So help me God.

Dated Lucknow: Deponent. R.T.I.

May 24, 1984.

I identify the above-named deponent who has signed before me.

Advocate.

COMMISSIONER FOR OATHS High Court, ALLAHABAD 24-5-84

Solemnly affirmed before me on 24.5.1984 at 10.00 a.m./~~p.m.~~ by Smt. Mariyam the deponent who is identified by Sri L. P. Shukla

Advocate, High Court, Allahabad.

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

KULDEEPAK NAG
OATH COMMISSIONER
High Court Allahabad
Lucknow, Bench
No. 74/281
Date 24-5-84

24 33

In The Hon'ble High Court of Judicature At Allahabad
Sitting at Lucknow

ब अदालत श्रीमान ~~Sitting at Lucknow~~ महोदय

दी (मुद्दई)
दी (मुद्दाअलेह) का **वकालतनामा**

Writ Petition No. of 1984

Smt. Mariyam

vs.

बनाम

Union of India & others

प्रतिवादी (मुद्दालेह)

नं० मुकद्दमा सन् १९ पेशी की ता० १९ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री

L. P. Shukla Advocate महोदय

C-700, Mahanagar, Lko. वकील

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 तसदीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी या विपक्ष (फरीकसानी) का दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करे - वकील महोदय द्वारा की गई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी मै यह भी स्वीकार करता हूँ कि मै हर पेशी स्वयं या किसी अपने पैरोकार को भेजता रहूगा 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।

नाम अदालत
नं० मुकद्दमा
नाम फरीकैन

Accepted
L. P. Shukla

R.T.I
हस्ताक्षर Smt Mariyam

साक्षी (गवाह) ..... साक्षी (गवाह) .....

दिनांक ..... महीना

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Copy to :-

1) The General Manager, Northern Railway, Baroda House, New Delhi for information and similar action and

2) The Divisional Railway Manager, Northern Railway, Moradabad, Lucknow for information and similar action. This is in continuation of her previous supplementary advice.

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3777

हाईकोर्ट इलाहाबाद लखनऊ बेन्च, लखनऊ

(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रकीर्णक (मुतफर्रिक) प्रार्थना - पत्र संख्या ..... सन १९८४ ई०

Writ Petition सं० ~~2771~~ 2814 सन १९८४ ई० में

Smt. Mariyam ..... प्रार्थी

प्रति

Union of India and ors ..... प्रत्यार्थी

To The Divisional Railway Manager, Northern Railway Hazratganj Lucknow ..... प्रत्यार्थी

चूंकि ऊपर लिखे प्रार्थी ने इस न्यायालय में उपर्युक्त मुकदमें के सम्बन्ध में ..... के नाम ..... के लिये प्रार्थना-पत्र दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक 27 माह 8 सन १९८४ को या उससे पूर्व उपस्थित होकर कारण बतलायें कि प्रार्थना-पत्र क्यों न स्वीकार कर लिया जाय। उक्त प्रार्थना-पत्र की सुनवाई उसके बाद नियमानुसार विज्ञप्ति किसी और दिन होगी।

विदित हो कि आप ऊपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी एडवोकेट या ऐसे व्यक्ति द्वारा, जो आपकी ओर से कार्य करने के लिए कानूनन अधिकृत हों उपस्थित न होंगे तो उस प्रार्थना-पत्र की सुनवाई और निर्णय आपकी अनुपस्थित में हो जायेंगे।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक 10 माह 7 सन १९८४ को जारी किया गया।

Sd/ A P Shukla
के. एडवोकेट

तिथि .....

डिप्टी रजिस्ट्रार
इलाहाबाद/लखनऊ

सूचना—इस न्यायालय की १९५२ की नियमावली के अध्याय ३७ नियम २ के अधीन प्राप्त तलवाना मिल गया।

तलवाना प्राप्त करने वाले क्लर्क के हस्ताक्षर

3770

59

हाईकोर्ट इलाहाबाद लखनऊ बेन्च, लखनऊ

(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रकीर्णक (मुतफर्रिक) प्रार्थना - पत्र संख्या ..... सन १९ ई०

Writ Petition सं० 2814/ सन १९८४ ई० में

Smt. Mariyan ..... प्रार्थी

प्रति

Union of India & ors ..... प्रत्यार्थी

Senior Divisional Mechanical Manager,
Northern Railway,
Hazratganj, Lucknow ..... प्रत्यार्थी

चूंकि ऊपर लिखे प्रार्थी ने इस न्यायालय में उपर्युक्त मुकदमें के सम्बन्ध में ..... के नाम ..... के लिये प्रार्थना-पत्र

आदेश दिया जाता है कि आप दिनांक 27 माह 8 सन १९८४ पस्थित होकर कारण बतलायें कि प्रार्थना-पत्र क्यों न स्वीकार कर प्रार्थना-पत्र की सुनवाई उसके बाद नियमानुसार विज्ञप्ति किशी और

कि आप ऊपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी व्यक्ति द्वारा, जो आपकी ओर से कार्य करने के लिए कानूनन अधिकृत गे तो उस प्रार्थना-पत्र की सुनवाई और निर्णय आपकी अनुपस्थित

और न्यायालय की मोहर से आज दिनांक 10 माह 7 सन १९८४

Insurance ... को जारी किया गया।

Sd/ [illegible] के एडवोकेट

तिथि .....

डिप्टी रजिस्ट्रार
इलाहाबाद लखनऊ

सूचना—इस न्यायालय की १९५२ की नियमावली के अध्याय ३७ नियम २ के अधीन प्राप्त तलवाना मिल गया।

तलवाना प्राप्त करने वाले क्लर्क के हस्ताक्षर

3779
60

हाईकोर्ट इलाहाबाद लखनऊ बेन्च, लखनऊ

(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रकीर्णक (मुतफर्रिक) प्रार्थना - पत्र संख्या ..... सन १९ ई०

Writ Petition No. 2814/ सन १९८४ ई० में

Smt. Mariyam ..... प्रार्थी

प्रति

Union of India and ors. ..... प्रत्यार्थी

The Union of India
through the General Manager
Northern Railway, Baroda House,
New Delhi ..... प्रत्यार्थी

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

..... के नाम ..... के लिये प्रार्थना-पत्र

माह ..... सन १९८४

क्यों न स्वीकार कर

ार विज्ञप्ति किशी और

हले स्वयं अथवा किसी

के लिए कानूनन अधिकृत

र्णय आपको अनुपस्थित

माह ..... सन १९८४

R. P.-51 (a)

No. L 1840 Stamps affixed except in case of unin- Rs. P.
sured letters of not more than the initial
weight prescribed in the Posts and Telegraphs Stamp
Guide on which no acknowledgment is due. Date
Received a V. P. registered
addressed to

Write here "Registered" or "railway receipt" signature of Receiving Officer and the word "insured" before it when necessary

To be filled in only when the article is to be insured : otherwise to be crossed out by means of two diagonal lines.

Insured for Rs. (in figures) ... .(in words) .....

Insurance fee Rs ....P.....(in words) } weight / rates / Grams

..... के एडवोकेट

तिथि .....

डिप्टी रजिस्ट्रार
इलाहाबाद/लखनऊ

सूचना—इस न्यायालय की १९५२ की नियमावली के अध्याय ३७ नियम २ के अधीन प्राप्त सलवाना मिल गया।

सलवाना प्राप्त करने वाले क्लर्क के हस्ताक्षर

ORDER SHEET

61 3

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

W.P. No. 2814 of 1984

vs.

	Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
	1	2	3
	25-5-84.	Hon D.N. Jha, J. Hon Brijesh Kumar, J. Admit. Issue notice. Sd. D.N. Jha. Sd. Brijesh Kumar 25-5-84.	
		HW 6/6/84	
		27-8-84 Fixed for attendance and for filing C.A. in W.P. No. 1 to O.P. No. 1 to 3 by R.P. Bano 10-7-84	

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INTHE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,
CIRCUIT BENCH, LUCKNOW.

T.A. No. 1601 of 1987 (T)

(Writ Petition No. 2814 of 1984)

Smt. Mariyam ... Petitioner.

Versus

Union of India & others .. Respondents.

I n d e x.

S. No.	Particulars.	Page no.
1.	Rejoinder	1 to 5
2.	Annexure No. A-1. Orginal Order No. 170-E/26/ Mohd. Sarwar dated 22.3.76 passed by the Sr. Divl. - Mechanical Engineer, Northern Railway, Lucknow removing Mohd. Sarwar from service under rule 14(ii) of Discipline and Appeal Rules, 1968.	6 to 8

Mt Sk Mariam

Petitioner.

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

T.A. No. 1601 of 1987 (T)

(Writ Petition No. 2814 of 1984)

Smt. Mariyam ... Petitioner.

Versus

Union of India & others .. Respondents.

REJOINDER TO THE COUNTER REPLY
FILEDON BEHALF THE RESPONDENTS.

.....

The petitioner begs to submit as under :-

1. That the contents of para 1 of the counter reply call for no remarks.

2. That the contents of para 2 of the counter reply being irrelevant are denied as stated.

3. That the contents of para 3 of the counter reply, in so for as they are contrary to the facts, are denied and the averments made in para 1 of the writ petition are reiterated.

4. That the contents of para 4 of the counter reply are denied and the averments

..2.

made in para 2 of the writ petition are reiterated. Since the husband of the petitioner was not residing in the railway quarter and the railway hospital is about 9 Km. away from his residence, he was authorised to take treatment out side.

5. That the contents of para 5 of the counter reply, in so for as they are not specific, are denied and the averments made in paras 3 and 4 of the writ petition are reiterated.

6. That the contents of para 6 of the counter reply call for no remarks. It is, however, clarified that the order of removal from service has not been validly passed under rule 14 (ii) of the Railway Servants(Discipline & Appeal) Rules, 1968 specially when a Chargesheet was issued in the case wherein an enquiry,under rule 9,was a must and in case the husband of the petitioner was not participating in the enquiry after due notice to him, the enquiry should have been held exparte as provided under the said rules. It may be mentioned that no notice for holding the enquiry was received by the husband of the petitioner though his permanent residential address was available in his Service Record.

7. That the contents of para 7 of the counter reply are denied and the averments made in para 6 of the writ petition are reiterated. The receipt of removal order, which

bears the signature of the opposite party no.3, is a conclusive proof to the effect that it was delivered to the husband of the petitioner when he reported for duty. The original order of removal from service dated 22.3.1976 is being filed herewith as ANNEXURE NO. A-1 to this rejoinder.

8. That the contents of para 8 ofthe counter reply are denied and the averments made in para 7 of the writ petition are reiterated. The issue of letter dated 12.9.1977 (Annexure No. 3 to the writ petition) by the opposite party to the husband of the petitioner is indicative of the fact that it was issued as a result of an appeal preferred by the husband of the petitioner. It is evident from the contents of letter dated 12.9.1977 that the husband of the petitioner was sent to railway doctor for medical examination for taking him back on duty but he was declared as a T.B. patient and as such was not taken back on duty. These are the conclusive proof that such actions were taken by the opposite parties as a consequence of the appeal preferred by him.

9. That from the contents of para 9 of the counter reply, the averments made in para 8 of the writ petition stand admitted by the opposite parties, hence they do not call for remarks.

10. That the contents of para 10 of the counter reply are denied and the averments made in para 9 of the writ petition are reiterated.

11. That in reply to contents of para 11 of the counter reply, averments made in para 10 of the writ petition are reiterated.

12. That the contents of para 12 of the counter reply are denied and the evarments made in paras 11 and 12 of the writ petition are reiterated.

13. That in reply to contents of para 13 of the counter reply, averments made in para 13 of the writ petition are reiterated. Annexure No.3 issued in response to Annexure no. 2 to the writ petition supports the contention of the petitioner.

14. That the contents of para 14 of the counter reply are denied as stated and the averments made in para 14 of the writ petition are reiterated.

15. That in reply to contents of para 15 of the counter reply, averments made in paras 15 to 17 of the writ petition are reiterated.

16. That in reply to contents of para 16 of the counter reply, averments made in paras 18 and 19 are reiterated.

17. That the contents of para 17 of the counter reply are denied and the averments made in grounds (A) to (H) of the writ petition are reiterated. The petitioner is entitled to the reliefs claimed. The writ petition is liable to be allowed with cost.

RTI
Smt Marian

Lucknow: Petitioner.
Dated -3-1989.

Vetification:

I, the above-named petitioner, do hereby verify that the contents of paragraphs 1, 2, 3, 5, 9 to 12, 14 to 16 of this rejoinder are correct to my knowledge and those of paragraphs 4, 6, 7, 8, 13 ~~to~~ & 17 are correct to my believe and ~~those of paragraphs~~ — to — are true on the basis of legal advice.

RTI
Smt Marian

Lucknow: Petitioner:
Dated -3-1989.

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A4/6

In the Central Administrative Tribunal, Allahabad,
Circuit Bemch, Lucknow.

T.A. No. 1601 of 1987

Smt. Maryam ... Petitioner.

Versus

Union of India & others ... Respondents.

.....

ANNEXURE NO. A-1.

RTI
Smt Maryam

2

Northern Railway.

Divisional Supdt's Office
Lucknow Dt. 22-3-76

No: 170-E/26/Mohd Sarwar.

Sri Mohd Sarwar,
D.T.Boiler Maker,

1. Whereas Sri Mohd Sarwar, D. T Boiler Maker under LF/LF is responsible for being on un-authorised absence from 22.9. and is still absent contravening Rule 3 (1) and (ii) of the Rly Service Conduct Rules 1966. His whereabout also are :

2. Whereas the interest of Rly and also of general public any further retention of Sri Mohd Sarwar D.T. Boiler Maker in Railway service is undesirable.

3. Whereas it is considered that circumstances of the ca are such that it is not reasonably practicable to hold an enquiry in the manner provided in Rly. Service Disciplinary Appeal Rules 1968.

4. Now, therefore, in exercise of the powers conferred by rule 14 (ii) of Disciplinary and Appeal Rules 1968, the undersigned hereby remove the said Sri Mohd Sarwar, B.T.Boiler Maker of HO shed with immediate effect.

Encl. 1. Annexure indicating the charges.

2. Orders passed by competent authority.

Sr. Divl. Mech. Engineer
Lucknow.

Instructions.

Under Rule 18 of the Railway Service Discipline and Appeal R 1968 the appeal against these orders lies to Divl. Supdt., provided :-

1) The appeal is preferred within 45 days from the date of issue of these orders.

2) The appeal is presented to the authority to whom the app lies and a copy is forwarded by him to the authority whi made the orders appeal against. It does not contain any dis-respectful or improper language.

Copy to :-

1. L.P. Lucknow in duplicated. He will arrange to paste one copy on the Notice Board of the Office and also arrange to deliver one copy of the employee if he is traceable.

2. The D.A.O. Lucknow.

3. Sr. D.M.E. Lucknow.

75 A4/8 8

ALLEGATIONS INDICATING THE CHARGES.

As the said employee Sri Mohd Sarwar, D.F. Boiler Maker remained absent from 22.9.75 to date and his whereabouts are not know.

ORDERS PASSED BY COMPETENT AUTHORITY.

I contacted the shed. They have no trace of him. They made efforts but were unable to locate his thereabouts.

Him He is no where available. It is therefore may not feasible or practicable to carry out a DAR enquiry. He is removed under Rule 14 (ii).

RTI Smt Mohan