

(See rule 114)

~~OA/TA/RA/CP/MA/PT~~ 1611/07.....of 20.....

L. R. Massey

Applicant(S)

Versus

U.O.I. & others

..Respondent(S)

Serial No.	DESCRIPTION OF DOCUMENTS	PAGE
1	High court order sheet. 25-5-99	1 to 3
2	CAT order Sheet	4 to 9
3	Petition with Annexure.	10 to 47
4	Power	48
5	CIA.	49 to 69
6	Supp. Affidavit	70 to 76
7		
8		
9		

Certified that the file is complete in all respects.

Monday Feb 28 1884

Signature of S.O.

Signature of Deal. Hand

12/11/2014

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

B.P. No. 2644 of 1984

25.

Date	Note of progress of proceedings and routine orders	Date of which case is adjourned
1	2	3
23-5-84.	Hon D.N. Jha, J Mem lost in July 1984. instructions. Sd. D.N. Jha 23-5-84. 19.7.84 B B Went for orders on July Hon R.C.D.S.S. Sri Randhawa, learned counsel for the opposite parties prays for and is allowed three weeks' time to file counter affidavit. List the petition immediately thereafter for orders as regards admission. The matter is also likely to be finally disposed of on that date. 19-7-1984.	

fo
67

Date

Note of progress of proceedings and routine orders

Date to
which
case is
adjourned

1

2

3

14/12/84

wait for orders
Hans CS 5list it before a bench
of which I am not a
member.learned counsel states that
the matter is urgent and
the matter may be listed
in the next week. list
accordingly.

✓

MHS/-

14-12-84

21.12.84

to

(S)

Hans
Hans
Hans
Hans

21-12-84

Hans R. T.

Adjourned at the
illness ship of Mr. R. Nath.

Hans

21-12-84

to
HansHans
Hans

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

W.P. No. 2644 of 1984

25.

	Date	Note of progress of proceedings and routine orders	Date of which case is adjourned
	1	wait for order. ²	3
	4-1-85.	Hon. J.C.B. J.	
		<p>wrongly listed. It was already ordered that it should be listed before some other Bench. office has again listed it before me when it should not have been listed before me. The office shall remain careful in future. The learned counsel states that it may be listed next week. If possible it may be listed next week before some other Bench. The name of Sri H.N. Tilkani shall also be printed as counsel for the Union of India instead of Sri Ramdhara.</p>	

4-1-85
2

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

W.P.

No.

2644

of 198

25.

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
26-8-85	C.M. Appn no 9456 (a) 185 Dismissal of the W.P. Hon. Cm Prakash J Hon. G. B. Singh J List with previous remed for order Sd. Cm Prakash J Sd. G. B. Singh J 26-8-85	
24/9/85	24 H. G. JS present for order dismissal Hon. K.S. Verma J. One week's time granted to file the rejoinder affidavit. List thereafter.	for (1) 7
	24.9.85 8.10.85	for

Source

the

Serial number of order and date
Brief Order, Mentioning Reference if necessary
TA 1611 of 1987

LR Massey vs U.O.S.

~~File~~

Hon' Mr. D.K. Agrawal, J.M.

2/11/89

None appears for the parties. This case was received on transfer. Let notice be issued to the counsel for the parties. List this case for orders on 4-1-90.

① Noted for 4-1-90
Pankaj Nath
Advocate
Counsel for Applicant
3/11/89

J.M.

(sns)

Hon' Mr Justice Kamleshwar Nath, V.C.
Hon' Mr K. Obayya, A.M.

4/1/90

Shri R. Nath appears on behalf of the applicant and says that the applicant has died and he has no instructions. Shri V.K. Chaudhary is present on behalf of Op.Ps. A notice may be sent to the applicant's address by name and the case be listed for admission on 7/2/90.

OP
\$P.S. was not available hence notice could be not issued to 7-2-90 L
B/L

A.M.

V.C.

(sns)

No Selly / Adj to 19.8.90
None is present L

7/90

No Selly. Adj to 28.4.80
None is present L

7/80

78

Dinesh

OK

This WP no 2644/84 received on transfer from High Court, Lucknow in May '87 along with other cases.

In this case, on the date of transfer admitte A filed

Notices issued to both counsel. All office received but neither non under cover recall back so far submitted

3-7
please see

OR 31/11/88
Notices were issued on 0.11. No under repd. cases has return case submitted order. This case is admitted.

Order of 4.1.90. 17.11.88 ON

Order 5/8 24/8

16/11/87 - (T)

Hon. Mr. D. K. Agrawal, J.M.
Hon. Mr. K. Oberoi, A.M.

Shri P. Nath appears for the petitioner. No one appears for the respondents. The sole petitioner, namely, Shri L.R. Massey is said to have died on 4/3/86.

No application for substitution has moved so far. Civil Misc.

Appl. No. 280/90 date 25/4/90

has been moved by the widow and son of the descendant. The

subject matter of the writ petition was promotion to higher posts.

Therefore, it is highly doubtful, if cause of action survive, after the death of the petitioner.

The second question is as to whether the proceedings have abated under the law and the application for substitution abated without the application for condonation of delay is ~~also~~ filed.

The learned counsel for the petitioner want time to address us on these two aspects.

list it for orders on 18/7/90

[Signature]

J.M.

(5)
19.7.91

D.R.

Both the parties
are present today.

Counsel for the applicant
has complied with
the Orders of Hon. Court
dt. 7.2.91 today. In this
case counter has ~~also~~
already been filed.

Now this case is to be
listed for filing Reply
by the applicant
on or before 30/8/91.

30.8.91

D.R.

Both the parties
are absent today
Applicant to file
Reply by 15/10/91.

20/9/90

No sitting Adj to 1/11/90

(W)

1.11.90

Due to holiday Adj to 19.12.90.

19.12.90

No sitting Adj to 24.1.91.

24.1.91

No sitting Adj to 7.2.91

7.2.91

Hon. Mr. Justice K Math, VC
Hon. Mr. K. C. Ayer, AM

OR

The applicant has not
filed any application
S. 40

C.M.A 280/90, application for
substitution of legal representatives
of the deceased petitioners. The delay
appears to have been mainly caused
by the enforcement of AT Act. The
application is allowed and it is directed
that the persons named in para 5 of the
application as also Mrs Kamal George,
the daughter of the deceased may be brought
on record as LRs. The applicant, however, shall
obtain the consent of Mrs Kamal George or
arrange to array her as proforma
respondents. Counter has been filed. The
applicant may file rejoinder within
a week, and the case be listed
for final hearing on 18.4.91

6/2/91

AM

OR

OR
The amendments
have been incorporated
and the case has been filed
S. 40

4.7.91

No sitting Adj to 19.7.91.

17/7

Central Administrative Tribunal
Lucknow Bench, Lucknow.

ORDER SHEET

Date / Office Report / Order

O.A./T.A. No. 1611/07

24-2-93

D.R.

This file has been traced
undated during physical
verification.

OK
file received
today at 5:45 P.M.

26/2/93

OK
NOTICE issued
on 26/2/93

12-3-93

by U.P.C.

Mr. M. Singh
Mr. M. Singh

Dr. M. Singh
in 26.4.93

Dr.

Dr.

OK
Encl. Case
is no 1116/92
TAN
and TAN 1116/92

OK
Notices
back

MANISH/-

Dr.

28/4/93

TA 1116/87

29.4.93

Hon. Mr. Justice Ve. Srinadana, VC
Hon. Mr. K. Abbaya, JM.

Dr. Ashok Nigam has prayed
for and is allowed 2
weeks time to seek instructions
from the department ~~and~~
which was earlier indicated
by Sri V. K. Chandhari,
list this case on 12.7.93
for hearing.

[Signature]

VC
JM

12/7/93

Hon. Mr. S.N. Prasad, J.M.
Hon. Mr. B.K. Singh, A.M.

None responds on behalf of
applicant. Shri A. Gulathi
who is ~~junior~~ of Dr. A
Nigam Counsel for the
respondents in present.
list this case on 14/9/93
for hearing & disposal.

[Signature]

A.M.

J.M.

14.9.93

No sitting of D-m only
to 4.11.93

VC
JM

Come new date 12-13

OP
Ashok Nigam
29/4/93

OP
S.P.H. RA
10/9

OP
Ashok Nigam
10/9

(7)

OR

0.4.94

C.A. Exchanged.
No. R. Affid.
Substantive for hearing
L
27/4

Present. Mr. Justice R. K. Verma VC
Present. Mr. V. K. Sethi AM

None responds either of the
parties. L.P. in case on 27.5.94
for hearing

OR

C.A. filed but no R. Affid.
filed.
Substantive for hearing.
L
26/5

W K
AM

RKR
VC

27/5/94

Hon. Mr. Justice B. C. Saksena, VC
Hon. Mr. V. K. Sethi A.M.

The Request for adjournment
has been made of the case on
behalf of Dr. A. Nigam learned
counsel for the respondents on
ground of illness. List on
12/7/94.

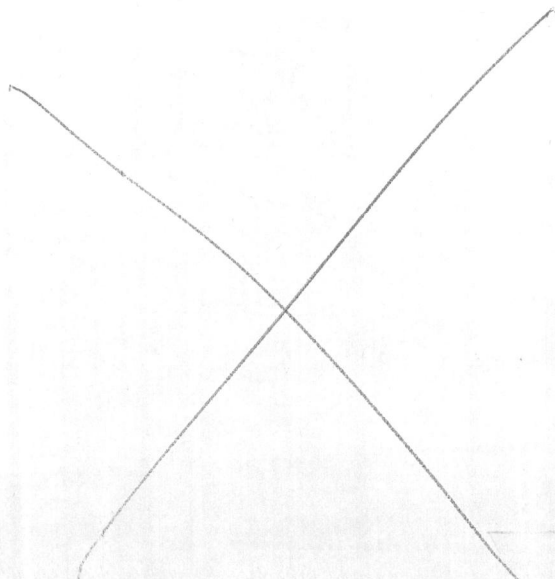
g

W K
A.M.

BoC
VC

12-7-94

no sitting of D.B.
adj to 19-8-94
th
BoC



T.A. No. 1611/87

14/12/93

Hon-Mr. S.N. Prasad, J.M.
Hon-Mr. V.K. Seth, A.M.

Dr. Aslok Nigam,
learned Counsel for the
respondents sought
adjournment. ~~Set~~
learned Counsel for
the applicant is also
not present. List
this case on
18/1/94 for hearing/
disposal.

OR
CA Exchanged, No
R. A filed
SG Hegd
17/11/94

in S
A-M

J-M

18/1/94

Hon. Mr. S.N. Prasad J.M.
Hon. Mr. V.K. Seth, A.M.

None for the applicant.
List this case on 25/2/94
for hearing & disposal.

in S
A.M.

J.M.

25.2.94

Disc & Seal deposed by S.L. Venk. Adv.
Call at 8-4-94

13/2/94

OR
CA filed, No R.A.
filed.
Submitted for
24/2

T.A No. 1611/87

(8)

19/8/94

Hon. Mr. Justice B. C. Saxena, V. C.
Hon. Mr. V. K. Seth, A. M.

This is a 1987 matter.

A request for adjournment has been made on behalf of the learned Counsel for the respondents. The learned Counsel for the applicant is also not present. The case is directed for preamptuary hearing. The case shall be listed within the first five cases for hearing. List on 25/8/94 for hearing.

(Chair)

V. K.
A. M.

B. C.
V. C.

OR

MP 1027/042 1020/94
with supply Affidavit
Filed.
Submitted for reg.
h
24/8

25/8/94 Hon. Mr. Justice B. E. Saksena, V.C.
Hon. Mr. K. Muthukumar, A.M.

Application has been filed today on behalf of the opposite parties along with supplementary affidavit. In the supplementary affidavit it has been indicated that for the same relief, as prayed for in the present T.A., the applicant had filed a Writ Petition before the Hon'ble Supreme Court, Civil Misc. petition No. 745/86. The Hon'ble Supreme Court passed the following order in the said petition :-

" It appears that the petitioner is now satisfied with the mode of calculation adopted in his case. No further orders are necessary and the writ petition is disposed of accordingly. "

In view of the said facts, the opposite party urged that the T.A. has become infructuous. The T.A. is accordingly dismissed as ^{having} become infructuous. When the case was called out the counsel for the applicant did not appear. There is no request for adjournment also.

h
A.M.

Boh
V.C.

OR
copies of order dt. 25-8-94
prepared today & sent
to reception counter on same
day. R-13-9-94.
(Nand)

TA/611/87(U)

4200

INDEX

In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow.

Writ Petition No. 2644 of 1984.

L.R. Massey

Versus

...Petitioner

Union of India & others

...Respondents

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Lucknow:

Dated: 21st May, 1984.

R.N.
(R. NATH)
Advocate

Counsel for the Petitioner

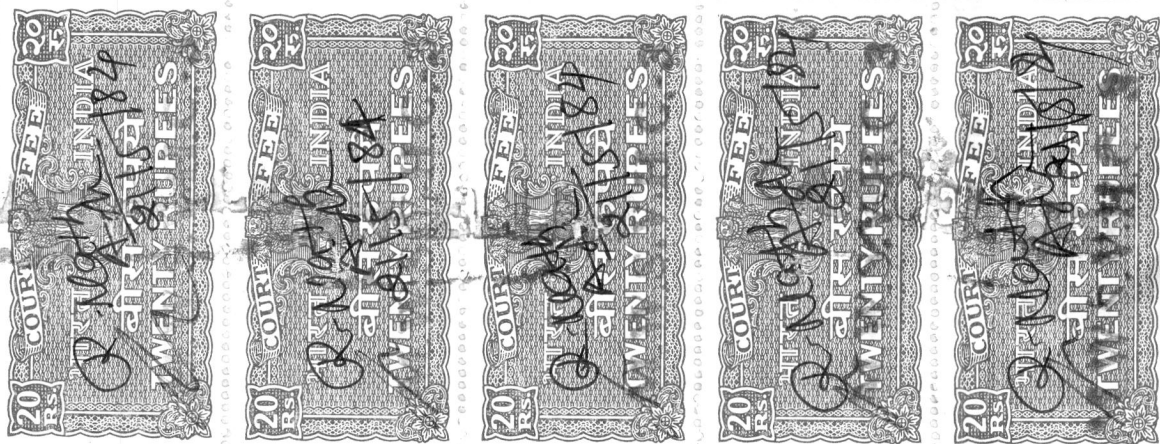
42 days
P.V. Q4
Mr. & P
S. J. K. v

7092

- 1/1 Mrs. Alice R. Massey, aged about 58 years.
Widow of late Sri L. R. Massey, 554/207 Chhota
Barha, near Anand Nagar, Lucknow.
- 1/2 Sunil Robertson Massey, aged about 29 years
Son of late Sri L. R. Massey, 554/207 Chhota Barha
near Anand Nagar, Lucknow.
- 1/3 Mrs. Kamal George wife of Mr. H. George
and daughter of late Sri L. R. Massey.
c/o Mrs. Alice R. Massey, 554/207 Chhota Barha,
near Anand Nagar, Lucknow.

Amended / Substituted as
Legal Representatives of
deceased petitioner Sri L. R. Massey.
in pursuance of Hon'ble Tribunal's
order dated 7.2.91.

Bhupaj Nalli
Advocate
19/7/91



5/2/84
2/5

In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow.

Writ Petition No. 2649 of 1984.

To be moved on
23.5.1984

L.R.Massey, aged about 60 years, son of Late Sri J.Massey,
resident of 554/207 Chhota Barha, near Anand Nagar,
Lucknow.

...Petitioner

Versus

1. Union of India through Secretary to the Government of India in the Ministry of Defence, New Delhi.
2. D.E.M.E. (Director, Electrical & Mechanical Engineers) Army Headquarters, New Delhi.
3. Officer-in-Charge, E.M.E. Records, Records Office, Secunderabad.
4. Officer Commanding, Station Workshop, E.M.E., P.O. Dilkusha, Lucknow-226 002.

...Respondents

Writ Petition under Article 226
of the Constitution of India

The petitioner most respectfully submits as under:

1. That in 1948 the petitioner joined the services of Union of India in M.E.S., as Vehicle Mechanic, Station Workshop, FME, Bareilly, in the scale of Rs110 - 155.

2. That in 1952 the petitioner was promoted to the post of Leading Hand (Technical) in the pay scale of Rs110 - 180 + S.P.Rs10 and was made quasi permanent as such on 2.1.1957 with effect from 1.7.1955 under



Legal Representatives
of deceased petitioner
have been brought on
record in compliance
of this Hon'ble
Tribunal's order
dt. 7-2-91

Pankaj N Singh
Advocate
19/7/91

R. Nath
(R. NATH)
Advocate

Impressed
Per Adhesive 10100/-
Total

Correct but final Court fee report

will be made on receipt of lower

Court record.

In

Papers filed Copy of

There are

Single - 1/1.

Last Impo order due 11/2/12+283/9.1.84

Dist. Cuckoo

By order 90 days by 42 days

Indemnity
21-5-84

21-5-84

21/5/84

Honible D. N. Tha, J.

List in July, 1984

In the meantime the
Standing Counsel will
obtain instructions.

Notice for 23-5-84.

Received copy for 15/4.

Embaron

(D S RANDEWA)

Senior Standing Counsel

Civil Court

21-5-84.

MHS/-

23-5-84

rules 3 and 4 of Civilians in Defence Services (Temporary Service) Rules, 1949.

3. That in January 1961, the petitioner was placed under suspension and in December, 1961 he was reverted to the post of Vehicle Mechanic, from the non-industrial post of Q.P.L.H.(T) to an industrial post of Grade B.

4. That while under reversion the petitioner was appointed as E.E.Mech. in Grade 'A' (industrial post) in the scale of Rs150 - 240 with effect from 30.7.1963, which scale was equivalent to the scale of Supervisor Grade III - to which post he would have been promoted with effect from 6.4.1961 when his junior Sri G.N.Lakra was so promoted, had he not been reverted from the post of Leading Hand (Technical).

5. That his departmental appeal against his reversion was allowed, the reversion orders were set aside with full pay and allowances for the entire period and suspension period was to be taken as period spent on duty and he was required to take over as L.H.(T).

6. That the petitioner insisted that since his junior had been promoted in the meanwhile, he should also be given his proforma promotion from the said date and permitted to resume as Supervisor Grade-III.

7. That this controversy ultimately led the petitioner to file his writ petition no.417 of 1970 before this Hon'ble Court which was allowed by a learned single Judge vide judgment and order dated 8.1.1975, a true copy of which is attached as Annexure 1.

Ann.1.

8. That the Special Appeal filed by the department was allowed but in review they were again directed to consider the case of the petitioner for promotion from 6.4.1961, the date from which his junior Sri G.N.Lakra was so promoted in accordance with the rules then in force. True copies of the judgment and order dated 3.3.1977, passed in Special Appeal No.44 of 1975 and judgment and order dated 4.12.1980, passed in Review Application No.30 (w) of 1977, are attached as Annexures No.2 and 3 respectively.

Ann.2 and 3.

Rush
R. NATH)
Advocate

Ann.4.

9. That vide letter dated 21.4.1982, a true copy of which is attached as Annexure 4, the petitioner was informed that he had not been found fit for promotion by the Departmental Promotion Committee.

Ann.5.

10. That the petitioner, in reply, vide his letter dated 17.5.1982, a true copy of which is attached as Annexure 5, questioned the decision of the Departmental Promotion Committee. He respectfully submitted that he had not earned any adverse reports, none had been communicated to him and the promotion being based on seniority subject to the exclusion of unfit, there was no reason for the rejection of ~~h~~ his case.

Ann.6.

11. That a copy of the C.P.R.O. dated 24.11.1952 laying down the criterion for promotion on the basis of seniority subject to the exclusion of the unfit, is attached as Annexure 6.

Ann.7.

12. That vide letter dated 10.6.1982, a true copy of which is attached as Annexure 7, the petitioner was informed that Annual Confidential Reports for the 3 years, 1958 to 1960 were placed before the DPC February, 1982 for consideration for promotion to Supervisor Grade-III and based on over all performance with particular emphasis on the recommendations for promotion to next higher post, the DPC February, 1982 had arrived at a conclusion and found him unfit for Supervisor Technical Grade III.

Ann.8.

13. That vide his letter dated 14.1.1983, a true copy of which is attached as Annexure 8, the petitioner reiterated that having not been communicated any adverse remark and since there was nothing adverse against him and it was also not a case where he had not been recommended in his ACRs continuously for the last 3 years, he was to be considered fit for promotion. He also submitted that since the DPC had laid particular emphasis on the recommendations ~~which had~~ ^h ~~not~~ ^h ~~been~~ ^h ~~biased~~ ^h for promotion to the next higher post, it was obvious that it was these recommendation which had biased his case before it and resulted in the adverse finding against ^h him and in the circumstances, he will be grateful to ~~learn~~ ^h learn the recommendations which were taken into account by the DPC, the date thereof and the authority or authorities who made it so that he may take further

14

steps in the matter as he may be advised in accordance with law.

14. That on 8.7.1983, the petitioner sent a letter to the D.E.M.E., Army Headquarters, New Delhi, making reference to ~~the~~ his earlier letter of 14.1.1983 (Annexure 8 to the writ petition), requested him to reply the same within one month or he will take it that the authorities were not willing to tell him the facts and he will be compelled to file a writ petition again before the Hon'ble High Court, placing the entire matter before it, A true copy of the same is attached as Annexure 9.

Ann.9.

15. That vide letter dated 24.8.1983, the petitioner was informed that his case was under consideration at the Army Headquarters and necessary action will be taken on receipt of their decision. A true copy of the same is attached as Annexure 10.

Ann.10.

16. That vide letter dated 12.12.1983, it was informed that the petitioner's case had been examined by the authorities concerned at Army Headquarters and since the determinations of the DPC are of confidential in nature and therefore cannot be questioned by the individual. It was further stated that supercession in selection grade posts inevitable and that cannot be challenged. A true copy of the same is attached as Annexure 11.

Ann.11.

17. That thus from the above it is clear that the abauthorities/respondents had applied wrong criterion of merit with due regard to seniority instead of the ~~the~~ criterion of seniority subject to exclusion of unfit.

18. That it was only in 1964 when the posts in question was declared selection post, as had been admitted by the department itself in para 5(vi) of the supplementary counter-affidavit, filed on behalf of the authorities in writ petition no.417 of 1970.

19. That vide judgment and order dated 4.12.1980 (Annexure No.3 to writ petition) the respondents were directed to consider the case of the petitioner's promotion to the post of Supervisor Grade III in accordance with the rules of 1961 and with reference to



[Handwritten signature]

Dush.
(R. NATH)
Advocate

date of 6.4.1961.

20. That in 1961 the criterion for promotion to the post of Supervisor Grade III was seniority subject to exclusion of unfit, as at that time the post was not a selection post.

21. That thus having not applied the correct criterion for promotion while considering the case of the petitioner, the respondents have caused serious prejudice to the petitioner and he has been discriminated.

22. That the entire action of the authorities/ respondents was arbitrary, malafide, without jurisdiction, discriminatory and against the principles of natural justice.

23. That the respondents have thus failed to perform the duty cast on them by this Hon'ble Court vide its judgment and order dated 4.12.1980 (Annexure 3 to writ petition).

24. That the respondents have also not paid the petitioner the amount due under orders at page 1 of 3 of D.O. Part No. CIV/II/IND/73, dated 23rd July, 1973, issued by Officer Commanding, Station Workshop, EME, Lucknow withdrawing the increments granted across EB from 1967 onwards, the cancellation of which was quashed by this Hon'ble ~~High~~ Court in the earlier writ petition. and which was upheld by this Hon'ble Court in Special Appeal No. 44 of 1975. The amount in question is approximately Rs6, 000/- and on the said amount he is also entitled to the interest as admissible during the period in question, from time to time.

25. That even on the present post the petitioner is not being treated fairly by the respondents. According to the recommendations of the Second Pay Commission his pay should have been fixed at Rs452 + 6/- Adhoc increment but against this the same had been fixed at Rs440/- per month.

26. That again when ^{in 1979} the petitioner was promoted to the selection Grade post, his pay had been fixed incorrectly at Rs600/- per month as against Rs640/- per month.



[Handwritten signature]
w-ct 1.1.73

[Handwritten signature]
(R. NATH)
Adv.

27. That since the petitioner's date of superannuation being 31.10.1984, this incorrect fixation of pay would also effect his pension etc.

28. That had the petitioner being promoted from 6.4.1961 to the post of Supervisor Grade-III, now Chargeman, and if received his further promotions accordingly, he would have retired at the age of 58 years and accordingly, the petitioner is entitled to be deemed to have retired at 58 years and his further service should be treated as a period of re-employment with all the consequential benefits in pension, gratuity etc.

29. That the last order dated 12.12.1983 (Annexure 11 to writ petition) referred to in paragraph 16 above, were noted down by the petitioner on 9.1.1984 but the writ petition could not be filed within 90 days on account of counsel's illness and the petitioner craves the indulgence of this Hon'ble Court for the delay.

30. That being aggrieved by the orders contained in annexures 4, 7 and 11 aforesaid and there being no equally efficacious remedy available to him in the alternative, the petitioner invokes the aid of article 226 of the Constitution of India and presents this writ petition, amongst other, on the following grounds:

G R O U N D S

I. Because the entire action of the authorities was arbitrary, malafide, without jurisdiction, discriminatory and against the principles of natural justice;

II. Because in 1961 the criterion for promotion was seniority subject to rejection/exclusion of the unfit and not merit with due regard to seniority;

III. Because according to the department itself it was only in 1964 when the post in question was declared selection post and not prior to it;

IV. Because the petitioner's case for promotion was to be considered as per directions of this Hon'ble Court in accordance with the rules of 1961 and with reference to the date, 6.4.1961 and that having not been done, the respondents have failed to perform

R. Nath
(R. NATH)
Advocate

duty cast on them by this Hon'ble Court;

V. Because the respondent/authorities have also not treated the petitioner fairly on the present post in fixation of his pay and allowances;

VI. Because the respondents have also not paid the amount due to the petitioner referred to in paragraph 24 above, to which he was entitled pursuant to the directions of this Hon'ble Court in Special Appeal No.44 of 1977;

VII. Because the withholding of the said amount is against the all cannons of law and fair play; and

VIII. Because the petitioner was entitled to his promotion as Supervisor Grade III, now Chargeman, from 6.4.1961 and to his futher promotions in accordance therewith and to his retirement at the age of 58 years, the consequential benefits in pension and gratuity etc. and for further period of his service being counted as re-employment;

PRAYER

31. Wherefore, it is most respectfully prayed that this Hon'ble Court be pleased to call for the records of the case and by:

- i) a writ, order or direction in the nature of Certiorari quash the orders contained in Annexures No.4, 7 and 11 and to hold the proceedings of the selection held by the DPC, February, 1982 as void and of no effect;
- ii) a writ, order or direction in the nature of mandamus command the respondent/authorities to treat the petitioner duly promoted to the post of Supervisor Grade-III, now chargeman from 6.4.1961, and to accord him all the consequential benefits of promotion, pension, gratuity etc. as shown above;
- iii) a writ, order or direction in the nature of mandamus command the respondent/authorities to fix the petitioner's pay and allowances at Rs452 +6/-ad hoc increment with effect from 1.1.1973 as a result of Second Pay Commission's report and at Rs640/-per month with effect from 1979 in selection grade;

R. Nath
(R. NATH)
Advocate

- iv) a writ, order or direction in the nature of mandamus command the respondent/authorities to pay the petitioner Rs6,000/- or the amount due to him pursuant to the decision of this Hon'ble Court itself together with the interest @12% per anum;
- v) ^{issue} such other writ, order or direction as may be deemed fit and proper by this hon'ble court in the circumstances of the case and in the interest of justice; and
- vi) allow the costs of the writ petition.

Lucknow:

Dated: 21st May, 1984.

R. Nath
(R. NATH)
Advocate

Counsel for the Petitioner.



In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow.

Writ Petition No. of 1984.

L.R.Massey

...Petitioner.

Versus

Union of India & others

...Respondents.

ANNEXURE NO. 1.

Copy of Judgment and order
dated 8.1.1975 passed by
this Hon'ble Court in Writ
Petition No. 417 of 1970.

Hon'ble D.N.Jha, J.

The petitioner L.R.Massey has filed this petition under Article 226 of the Constitution of seeking relief of certiorari for quashing of the orders dated 31.8.1968 contained in annexure no.A-3, dated 17.2.1969 contained in annexure no.15, dated 24.12.1969 contained in Annexure no.14 and dated 23.7.1973 contained in annexure no.18. He has further sought relief by way of issue of mandamus to opposite parties to treat the option dated 11.3.68 as of no consequence and further that the opposite parties be commanded to treat the petitioner as Leading Hand (Technical) notwithstanding his remustering on the post of Engineering Equipment Mechanic with effect from 30.7.1963 and to confirm him to the post of Leading Hand (Technical) in his turn. He has also claimed for issue of mandamus for payment of arrears of his increments to him from 30th July 1963 upto dated and also for payment of other increments which fell due to him and to allow him crossing of the efficiency bar with retrospective effect from 30.7.1967 and payment of his arrears on that account along with ad-hoc increment of Rs7/- since he was drawing the maximum of the pay scale.

The case of the petitioner as set out in the petition is that he was employed as Engineering Equipment Mechanic(hereinafter to be referred as EE Mech., the departmentally abbreviated form) at the Station Workshop, E.M.E., Lucknow. He was a civilian employee. These workshops are maintained and run by the Union of India at several places, through the Ministry of defence. In the year 1948 the petitioner was appointed as a Vehicle Mechanic at the Station Workshop, E.M.E., Bareilly and thereafter he was promoted to the post of Leading Hand (Technical), (hereinafter to be referred as L.H.(T), the depart-


(L.R.Massey)
Petitioner

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Annexure No.1 Continued


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mentally abbreviated form). This post held by the petitioner was in the non-industrial group while the post earlier held in 1948 was in the industrial group. The petitioner was promoted in the year 1952 in the non-industrial group. On 2.1.1957 the petitioner was made quasi-permanent on the post of L.H.(T) with effect from July 1, 1955, under rules 3 and 4 of the civilians in Defence Services (Temporary Service) Rules 1949. A copy of this order is annexure 1. In the year 1956 the petitioner was posted at Allahabad and in the same year was transferred to Meerut and subsequently towards the end of 1958 he was transferred to Lucknow and in September 1960 orders were received from E.M.E. Records Office, Secunderabad, to send a senior man of his rank to Allahabad, and the petitioner was directed to proceed to Allahabad. The petitioner submitted a representation to opposite party no.2, Director, Electrical and Mechanical Engineers, Army Headquarters, New Delhi and in the meanwhile requested the Commanding Officer to defer his transfer till the disposal of his representation.



The representation of the petitioner was treated as disobedience of the orders and he was subjected to disciplinary proceedings. In January, 1961 he was placed under suspension and same year in the month of December he was reverted to the post of Vehicle Mechanic. The petitioner submitted an appeal and the same was allowed by the Director, Electrical and Mechanical Engineers (hereinafter to be referred as D.E.M.E.) The daily order passed in this connection dated 8.7.1964 is annexure no.2 on the record. In the month of July 1963 the petitioner was sent for the trade test for the industrial post of E.E.Mech. in grade A, by the Department. He was called upon to give an undertaking that his services were being re-mustered. This undertaking was given by the petitioner while working on the post of Vehicle Mechanic. The petitioner has further stated that this circumstance was created by the Department on account of the reversion order and not while working on the post of L.H.(T) from which post he could not have been allowed to go on the post of E.E.Mech. The relevant trade test was passed by the petitioner and he was allowed to remuster as E.E.Mech. in the scale of Rs150-240.

While the petitioner was serving out the punishment of reversion his name was removed from the seniority list of L.H.(T) by the E.M.E. Records Office, Secunderabad and he subsequently learnt about the persons junior to him being promoted to the post of Supervisor, Technical Grade III. A list of promotees has been mentioned in paragraph 17 of the writ petition.



(L.R. Massey)
Petitioner.

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Annexure No.1 Continued.

Page No.3.

to 21.12.
1961

The reversion order of the petitioner was set aside by the D.E.M.E., Army Headquarters. The petitioner was allowed to draw full pay and allowances for the period of suspension/absence from duty from 13.1.1961/and the said period was directed to be treated as though spent on duty. The communication of the order is contained in annexure no.2 to the petition. The case of the petitioner is that on account of the reversion order having been set aside he never ceased to be a L.H.(T). However, the petitioner instead of being placed on the seniority list of L.Hs.(T) from which he had been reverted and was not allowed the benefits of promotion to the post of Supervisor Grade III, the E.M.E.Records, Secunderabad took the view that since the petitioner was then employed as E.E.Mech. in a higher scale of pay than that of L.H.(T) he would naturally be interested to continue in that post. With this background they initiated the question to petitioner's opting either to continue as E.E.Mech. as a fresh entrant or to work as L.H.(T). A communication dated ~~22~~ 8.8.1964 asking the petitioner to give a declaration was sent. A copy of this declaration is annexure no.3. The petitioner was not able to exercise the option either way because if he opted to remain as L.H.(T) he would have been deprived of higher emoluments of E.E.Mech. although he held to his credit additional experience and if he opted to remain as E.E.Mech, he would be deprived of his quasi-permanent status and other benefits attached to non-industrial posts. On 31.8.1964 the petitioner submitted a representation praying that he be posted as Supervisor technical in the non-industrial group. The copies of the representations are annexures nos.3(a) and 4 to the writ petition. The Officer-in-charge, E.M.E.Records Secunderabad, vide his letter dated 18.1.1965, communicated the decision of the D.E.M.E. in reference to his representation ~~xxx~~ contained in Annexure No.4 accordingly as under:-

- "(i) Had the petitioner continued to serve as Leading Hand Technical, he would not have fallen within the zone of promotion to the post of Supervisor technical grade III based on his seniority-cum-merit;
- (ii) He was allowed to re-muster as Engineering Equipment Mechanic because of his reversion to the post of vehicle mechanic and had he remained as Leading Hand Technical he would not have been eligible for re-mustering to an industrial post. His appointment to the post of Engineering Equipment Mechanic will, therefore, be considered as a fresh ~~appointment~~ appointment at his own request. He will be eligible for promotion to the post of supervisor technical grade II (part I) cadre along with other group 'A' tradesmen subject to his qualifying the efficiency bar/supervisory test.

(L.R.Massey)
Petitioner.

- (iii) He may be paid as Leading Hand Technical upto 29th July, 1963 unless he applied to remain in the non-industrial appointment of leading hand technical."

On 10.2.1965 the petitioner submitted another representation against the decision. A copy of the same is annexure 5(a) to the petition. This representation of the petitioner was rejected by E.M.E.Records, Secunderabad. He appealed to the D.E.M.E. and the same was rejected on 9.3.1966. The petitioner served thereafter a notice under section 80 C.P.C. dated 23.6.1966. On 14.10.1966 the petitioner was called by the Officer Commanding of his workshop and after discussion the petitioner gave an option for the post of Supervisor technical grade III, with effect from the date the punishment had been set aside, provided that there was no loss in his emoluments. A copy of letter dated 17.10.1966 is Annexure 7. The Officer Commanding issued a daily order, part II, on 25.5.1967 to the effect that the petitioner had been allowed to continue as E.E.Mech. with effect from 30.7.1963 on the ground that the petitioner had failed to exercise his option to continue as L.H.(T). The petitioner then on 26.6.1967 submitted a detailed representation against the above order. The petitioner in pursuance of his appeal dated 26.6.1967 was informed by the Commanding Officer vide 2.3.1968, a true copy of which is annexure 10, that his case had been examined by the higher authorities and that it had been decided that if he was willing to continue as E.E.Mech. he would retain the lien of the post of ~~Supervisor Technical~~ L.H.(T) till his turn for promotion to the post of Supervisor Technical, grade III came and he was selected for the same. It was pointed out that since promotion to the post of Supervisor technical, Grade III, was by way of selection he could not be treated as such automatically on the basis of pay drawn as E.E. Mech. The petitioner was hence given an option to show his willingness to continue as L.H.(T) on the clear understanding that services rendered by him as E.E.Mech from 30.7.1963 to date would be counted as an additional experience but would not entitle him to the pay and allowances of E.E.Mech ~~from 30.7.1963~~ for the period of his service as E.E.Mech. copies of the proforma are enclosed as annexures 10(a) and 10(b). On 11.3.1968 the petitioner submitted his option to the effect that he was willing to continue as E.E.Mech with effect from 30.7.1963 on the understanding that he would have his lien on the post of Q.P.L.H.(T) till his promotion to the post of Supervisor grade III came and he was promoted if selected. A copy of the forwarding letter and the option exercised by the petitioner are attached as annexures II and 11(a) respectively. It may be

Annexure No.1 Continued.Page No.5.

stated here that the option exercised in annexure 11(a) was one of the option certificates required from the petitioner and sent as a proforma along with annexure 10. The above certificate given by the petitioner was accepted by the department and in pursuance of it the Commanding Officer was pleased to issue a daily order part II on 16.3.1968 confirming that the petitioner would continue as E.E.Mech. with effect from 30.7.1963 with a lien on the post of Q.P.L.H.(T). Copy of the order is annexure 12. This was issued in pursuance of authority of Army Headquarters letter dated 21.2.1968. In spite of all this the claims of the petitioner were superseded from time to time and were disregarded. The petitioner time and again represented but since they were of no avail the petitioner has come before this court by means of the above petition.

The petitioner has been resisted on behalf of opposite parties. The facts as stated in the writ petition are not much in variance except for the fact that the stand of the opposite parties in short is that since the petitioner continued as E.E.Mech. he had to sever his connections from the post of Q.P.L.H.(T) to become eligible to the post which was in direct line of promotion from E.E.Mech. The petitioner, according to opposite parties, could not be considered in the non-industrial posts. It is maintained by the opposite parties that industrial personnel belonging to group 'A' trades, Group B and below trades are eligible for promotion to both cadres and are unit controlled, that is, their transfer and promotion are regulated by the unit in which they serve. Seniority rolls are maintained by the Controlling Authorities for the purpose of promotion, service particulars of industrial personnel are called for by E.M.E. Records. They state that non-industrial posts of Supervisors technical have been divided into two distant cadres in part I and II. The chain of promotion for each trades has been mentioned in paragraph 5 of the counter affidavit. It is asserted that Engineering Equipment Mechanic belonged to Group A tradesmen (Part I Cadre) and is in direct line of promotion to Supervisor technical, grade II (Part I cadre) which now is known as Senior Chargemen. Supervisor technical, grade III now known as chargemen are in part II cadre and has no connection whatsoever with E.E.Mech. of group 'A' tradesmen which is in direct line of promotion to part I cadre. The promotion of vehicle mechanic, the post on which the petitioner was reverted is not ~~xx~~ in direct line of E.E.Mech. Any person irrespective of his trade can qualify in the trade of EE. Mech and having thus qualified can request for a change of his trade to E.E.Mech. According to them this process is known as re-mustering and is

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(L.R.Massey)
Petitioner.



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Annexure No.1 Continued.

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and is distinct from promotion. Thus they have maintained that the post of vehicle Mechanic is not in line of promotion as asserted in the writ petition. The case is that the petitioner was promoted to the post of L.H.(T) in the non-industrial group in 1952 as there were vacancies of the said posts. It is further stated that the individuals mentioned in paragraphs 17 and 18 were promoted to superior technical grade III during the period when the petitioner was under disciplinary action and in the circumstances petitioner was not eligible for promotion pending finalisation of disciplinary case. His case was finalised on 9.12.1961 and since he was awarded the punishment of reversion to the post of Vehicle Mechanic his name was removed from the seniority roll of L.H.(T). It is admitted that the Commanding Officer, Station Workshop, E. M.E. Lucknow did call upon the petitioner to furnish an option in any of the three proformas indicated in Annexures 10(a), 10(b) and 11 (a) to the writ petition.

I have heard the learned counsel for the parties at some length and have perused the averments made in the writ petition counter-affidavit and the rejoinder affidavit. In my opinion the controversy rests in a very narrow ambit. The learned counsel for the opposite parties conceded that on setting aside of the order of reversion the petitioner was entitled to be reinstated on the post held by him at the time of passing of the order of punishment. The petitioner admittedly at the time of reversion was holding the post of L.H.(T). It is also not contested that the petitioner had received training and had duly qualified himself for the post in the non-industrial group. The petitioner, in the circumstances for all practical purposes on setting aside of the order, was entitled to the post of L.H.(T). The learned counsel for the opposite parties failed to satisfy that the petitioner was not entitled to promotion in the direct line of non-industrial posts. The petitioner, in my opinion, obviously ceased to be on the industrial posts and as such the stand taken by the opposite parties obviously is incorrect. The opposite parties on their own had sent an option to the petitioner and relevant proformas in this connection had been sent by them to be opted by the petitioner. The petitioner opted the form prescribed and contained in annexure 11 (a) attached to the petition. On behalf of the opposite parties it is not disputed that this proforma contained in annexure 11(a) was not the option given by the opposite parties to the petitioner. In the circumstances I am of ~~the~~ opinion that it was not possible for the opposite parties to resile from the said option offered by them and accepted by the petitioner. This option reads as under:

(L.R.Massey)
Petitioner.

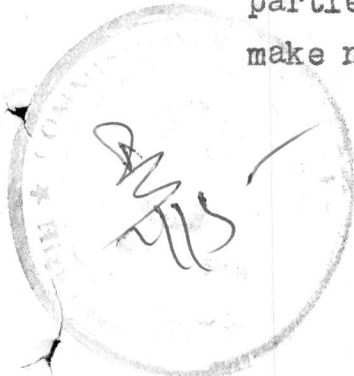
"Certified that I, T.No.99 Civ Engr. Equpt. Mech. L.R.Massey am willing to continue as an Engr. Equip. Mech with effect from 30.7.1963. I understand that I will have lien on the ~~post~~ post of Q.P.Leading Hand (Tech) till my turn for promotion to the post of Supervisor Grade II comes and I am promoted if selected."

On the fact of this certificate in my opinion opposite parties were left with no option but to comply with their own desired instructions issued to the petitioner. The petitioner in the circumstances as alleged was duly entitled for promotion on the non-industrial post and it would be unjust, improper and illegal on the part of the opposite parties to deny the same to the petitioner. The learned counsel appearing on behalf of the opposite parties at first argued that it was not an unqualified option but since it was accompanying a letter it was open to the Department to refuse acceptance of the same. I am not satisfied with this argument of the learned counsel. In my opinion once the option prescribed by the opposite parties was duly signed by the petitioner it does not lie neither in the month of the petitioner that it was qualified in any manner and likewise it is also not open to the ~~petitioner~~ opposite parties to say that since it was qualified by despatch of a letter the opposite parties rightly did not accept it. The wordings of the above certificate were proposed by the opposite parties as well as the petitioner. This in my opinion settles the main dispute between the parties and this writ petition centres round the interpretation of this document and the entire argument advanced by both the parties centres round this document. The petitioner accordingly is entitled for promotion on the post on the non-industrial side and it is incorrect that since he was at the time of quashing of the reversion order working as Vehicle Mechanic to which post he was reverted and then subsequently having acquired training for Group A, was not entitled for promotion on the non-industrial side and it also cannot be legally sustained.

In the result the writ petition is allowed and I quash the orders contained in Annexures 15, 14 and 18 attached to writ petition and Annexure A-3 to the counter-affidavit dated 17.2.1969 respectively. Let certiorari be issued cancelling the same from the original record. I further direct that opposite parties will treat the petitioner on the post of L.H. (T) with effect from 30.7.1963 and shall deem the petitioner to be working as such and he would be confirmed on his due turn. I further direct that the petitioner shall ~~be~~ deemed the petitioner to be working as such and he would be confirmed on his due turn. I further direct that the petition

Annexure No.1 Continued.Page No.8.

shall be deemed entitled for promotion to the post of Supervisor technical, grade III (now renamed as Chargeman) from 6.4.61 and he shall be entitled for future promotion according to his seniority on the post of Supervisor technical, grade II. The petitioner shall be entitled to be paid all benefits, increments and seniority to which he is found eligible. Let mandamus be issued accordingly to the opposite parties. In the special circumstances of the case I ~~am~~ make no orders as to costs.



Sd/-D.N.Jha,

8.1.1975.

TRUE COPY

A handwritten signature in ink, appearing to be 'L.R. Massey'.

(L.R. Massey)
Petitioner.

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Annexure 2

In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow.

Writ Petition No. of 1984

L.R. Massey

... Petitioner

vs

Union Of India & others

... Respondents

Annexure 1 2

In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow.

Special Appeal No. 44 of 1975.

Union of India & others

... Appellants

vs

L.R. Massey

... Respondents

Special Appeal against the judgment and order
dated 8.1.1975 passed by Hon'ble Single Judge (Hon.
Justice Mr. D.N. Jha) in writ petition no. 417 of
1970.

Lucknow:
Dated : 3.3.1977

Hon. Hari Swarup, J.

Hon. Prem Prakash, J.

(Delivered by Hon. Prem Prakash, J.)

This special appeal has been directed against
the judgment of a learned single Judge of this
Court in Writ Petition No. 417 of 1970 and arises
in ~~the~~ the following factual background.

L.R. Massey (to be hereinafter referred as the
petitioner) was employed in the year 1948 as

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Petitioner

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Vehicle Mechanic at the Station Workshop, F.M.F., Bareilly, and thereafter he was promoted to the post of Leading Hand (Technical) (to be hereinafter referred as L.H.(T)) which is a non industrial post. On 20th January, 1957, the petitioner was made quasi-permanent on that post with effect from July 1, 1955 under Rules 3 and 4 of the Civilians in Defence Services (Temporary service) Rules, 1949. Due to certain reasons he was considered as disobeying the orders of the higher authorities; he was placed under suspension in January 1961, and the same year in the month of December he was reverted to the post of Vehicle Mechanic. In appeal the order of reversion was set aside. The Daily Order passed in this connection dt. 8th July, 1964, is Annexure 2 to the writ petition. In the meantime, the petitioner was sent for the trade test for the industrial post of F.M. Mechanical, in Grade A, by the department, he was called upon to give an undertaking that his services were being remustered. This undertaking was given by the petitioner while working on the post Vehicle Mechanic. While the petitioner was serving out the punishment of reversion, his name had been removed from the seniority list of L.H. (T). In the result of the reversion order being set aside, the petitioner was allowed to draw full pay and allowances for the period of suspension-absence from duty from 12 January, 1961 to 27th December, 1961, and the said period was directed to be treated as though spent on duty. In Annexure 2 it was not, however, stated whether after the reversion order having been set aside, the petitioner will revert to the post of L.H. (T) or not, and it was this omission in the order which resulted in the subsequent correspondence

(L.R. Massey)
Petitioner

between the petitioner and the Army Headquarters. On 8th August, 1964, the Army Headquarters sought for the option from the petitioner in these terms" It is considered that he opts to continue as an Engineer Equip Mechanic he would be deemed to have been relieved from the post of L.H. (T) to take up that appointment w.e.f. 30 July, 1963. In pursuance of the direction, the Station Workshop, T.M.T, Lucknow wrote to the petitioner on 2nd March, 1968, whether he wanted to continue as Engineer Equip. Mechanic with lien or without lien on the post of Leading Hand (Tech) or he wished to continue as Leading Hand (Tech). The reply was to be received by 11th March, 1968. The relevant option certificate (Annexure 11(a) bearing the signatures of the petitioner reads as thus: " Certified that I, INo. 99 Engr. Equip. Mech L.R. Massey, am willing to continue as an Engr Equip Mech w.e.f. 30 July 1963. I understand that I will have lien on the post of Leading Hand (Tech) till my turn for promotion to the post of Supervisor Grade III comes and I am promoted if selected." Obviously this option was not in conformity with the requirements of the terms of the option given by the Army Headquarters in Annexure 3(Para 3). The mistake was due to the commanding officer misconstruing the terms of the option in the said letter (Annexure 3). The matter went on. The petitioner had submitted a representation and on 27.2.1968 the Army Headquarters took the decision directing the petitioner to give his definite option as to whether he wanted to continue as Engineer Equipment Mechanic or Leading Hand(Technical) and in the event of his not giving


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Ann. 2 (Contd.)

Page 4.

definite reply by an stipulated date or if the reply was a vague one, it was to be assumed that he wanted to continue as L.H.(T) only. In terms of that order, Annexure A-III was issued by the Director of Electrical and Mechanical Engineering on 31st August, 1968, stating therein that if the petitioner was willing to continue as E.E. Mech, he should sever his connections with the post of L.H.(Tech) to become eligible for promotion to the post which was in direct line of promotion from E.E. Mech. Annexures 14 and 15 rejecting his representation again intimated to him that as the petitioner was willing to continue as E.E. Mech. the post held by him he will have to sever his connection with the post LHT. The plea of the petitioner was that the option having been accepted and acted upon by the competent authority, Annexures A- III to the contrary not correct in law and the decision made earlier could not have been reopened. The petitioner's contention was that he was entitled to be promoted post of Supervisor Technical Grade III inasmuch as he never ceased to be L.H.(T) and as he was entitled to be promoted on the principle of selection and his name was not sent to the Departmental Promotion Committee, he was seriously prejudiced and further that he should not have been deprived of his increments for the intervening period between 1967 and onwards after having crossed the efficiency bar in 1967. In this manner relief was sought to quash Annexures 14, 15, A-III, A-IV and 18.


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Petitioner

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(Ann. 2 contd. Page 5.)

The Union of India resisted the claim on a variety of grounds. It was asserted that the option, which was contained in Annexure 11(a) to the writ petition was not an option in conformity with the orders of the Army Headquarters and that the authority inferior to D.F.M.F. was not authorised to accept such Commanding Officer, Station Workshop, F.M.F., Lucknow, had called upon the petitioner to furnish option in the three proformas, Annexures 10(a), 10(b) and 11(a) to the writ petition. As regards refusal to pay the increments after 1967, the case of the Union of India was that during the course of audit it was found that the petitioner was not entitled on certain grounds to increments after that year.

The learned single Judge upon a scrutiny of the affidavit quashed the orders contained in Annexures 14, 15 and 18 as also Annexures A-III with a further direction to the opposite parties to treat the petitioner on the post of L.H.(T) with effect from 30th July 1963, the declared that the petitioner shall be entitled for promotion to the post of Supervisor Technical Grade III from 6th April, 1961, and shall be entitled to received further promotion according to his seniority on the post of Supervisor Technical Grade II. The petitioner was further held entitled to all the benefits of increments and seniority to which he was found eligible.


(L.R. Massey)

Petitioner

Ann. 2 (Contd.)
Page 6.

Being aggrieved against that order, the Union of India has come up in appeal and the main submission canvassed by the learned counsel ~~for~~ is that the option contained in Annexure 11(a) was not an option as contemplated by the Army Headquarters and if the Commanding Officer gave a proforma to the contrary, it will not bind the competent authority requiring it to act upon such option. We have already noticed in the foregoing what the Army Headquarters had direct the petitioner to do. At the risk of repetition, we may state that the intention of the Army Headquarters was to ascertain whether the petitioner wanted to continue as ~~Supervent~~ Mechanic or to go back to his post of L.H.(T) with effect from 30th July 1963 (Vide Annexure 3). The Commanding Officer did not act in accordance with para 2 of Annexure A-IV, but under some misapprehension he sent a proformas to the petitioner which was not in keeping with para 2 of Annexure A-IV. That being so, the petitioner cannot invoke to his aid the option (Annexure 11(a)) to support his claim that while ~~continuing as~~ continuing as T.T.M., his lien on the post of L.H.(T) should be maintained, so long he is not promoted to the post of Supervisor, Grade III, When there was a lien of the petitioner on the post of L.H.(T), the Army Headquarters were justified in asking from him whether he desired to retain his lien on the post of that he wanted to continue on the post of T.T.M. from July 1963. If, therefore, the Station Officer, Workshop T.T.E., Lucknow or some other authority misconstrued the directions of the Army Headquarters and obtained

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 Petitioner

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Page 7.

an option from the petitioner in terms not contemplated by the Army Headquarters, the petitioner cannot come forward and say that if the Army Headquarters have taken a decision in conformity with the previous instructions, it suffers from any error in law. In this view of the matter, we are inclined to hold that Annexure A-III dated 31st August, 1968, does not suffer from any error much less any manifest error.



The petitioner has been continuing on the post of T.T.M. because its emoluments were higher than those admissible to an incumbent of the post of I.H.(T). His lien continues on that post and he had in the representations made to the Army Headquarters repeated again and again his claim in that behalf. So long his lien on that post is there and the lien is not terminated, the petitioner cannot obviously claim either promotion or a substantive rank in the cadre of T.T.M. That being so, and in order to rectify the mistake, if any, resulting from misapprehension in the mind of the Station Officer, we consider it necessary that the petitioner should be given a fresh opportunity to exercise the option in terms of Annexure A-III. If he exercises the option within a period of three months from the date he is asked to do so, by the Army Headquarters, the latter will consider his claim for promotion in the cadre to which he opts. The posts of Supervisor, Grade II/ and Supervisor Grade III being selection posts, the decision of the authorities not


(L.R. Massey)
Petitioner

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Ann. 2 (Condt.)
Page 8.

to treat him as promoted to that post cannot be deemed to be erroneous in law. Unless he is found suitable to the post, no benefit attached to that post could be available to him.

Now, as to the question of withholding of increments, it is acknowledged by the appellants in the supplementary counter affidavit that no opportunity before passing Annexure 18 was given to the petitioner. That being so, howsoever justified the department may consider that order in view of the objection raised by the audit, the principles of fair play and justice required that opportunity should have been given to the petitioner before withholding his increments to which otherwise he should have been entitled after crossing the efficiency bar. Annexure 18 is, therefore, liable to be quashed.

For the discussion in the above, the judgment of the learned single Judge is maintained to the extent it quashes Annexure 18 to the writ petition, but in other respect the order is set aside with a direction to the appellants to give an opportunity to the petitioner to exercise his option in terms of Annexure A-III to the counter affidavit which the petitioner may be required to exercise within a period of three months from the date the Army Headquarters intimates to him in that behalf. In the circumstances, costs shall be borne by the parties throughout.

Sd. Hari Swarup
Sd. Prem Prakash
3.3.1977

True Copy

(L.R. Massey)
Petitioner.



In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow.

Writ Petition No. of 1984

L.R. Massey

... Petitioner

vs

Union of India & others

... Respondents

Annexure 3

In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow.

Review Application No. 30(W) of 1977 arising
out of Special Appeal No. 44 of 1975, in
Writ Petition No. 417 of 1970.

L.R. Massey

... Petitioner/Applicant

vs

Union of India & others

... Respondents/O.Ps.

Application for Review of Judgment and
order dated 3.3.1977, passed by the Hon'ble Mr. Justice
Hari Swarup and the Hon'ble Mr. Justice Prem Prakash,
in Special Appeal No. 44 of 1975, under rule 12 of
Chapter V, read with rules 12/14 of Chapter IX of
the Rules of Court, and section 151 of the Code of
Civil Procedure.

Lucknow: Dated: 4.12.1980

Hon'ble Hari Swarup, J.

Hon'ble S.C. Mathur, J.

(Delievered by Hon'ble Hari Swarup, J.)

This application has been made for the



(L.R. Massey)
Petitioner

Ann. 3 contd.
Page no. 2.

review of the judgment dated 3.3.1977 passed by a Division Bench of which one of us was a party. It is not necessary to give the facts of the case as they are containing in the judgment. The grounds of review is a mistake in the sentence quoted below which appears on page 7 of the judgment:

"The posts of Supervisor, Grade II and Supervisor Grade III being selection posts, the decision of the authorities not to treat him as promoted to that post cannot be deemed to be erroneous in law. Unless he is found suitable to the post, no benefit attached to that post could be available to him."

It is contended by the learned counsel for the petitioner that the post of Supervisor Grade III was not a selection post. Learned counsel for the respondent has stated that though in the strict sense it was not a selection post, the selection had to be made in view of the fact that this was to be filled up on the basis of seniority subject to suitability. It also appears from the statement of the learned counsel for the respondent that there was some confidential entry against the petitioner, but because the petitioner had not made an option as required, he was passed over. Learned counsel for the petitioner has stated that even though he does not concede that there was any necessity for him to give option the petitioner will give option for being considered for the post. Learned counsel for the respondent has stated that if the option is given


(L.R. Massey)
Petitioner

Ann. 3 (Contd.)

Page no. 3.

his case will be considered in accordance with the rules existing in 1961 for the post of Supervisor Grade III. In view of these statements of the order given in the judgment dated 3.3.1977 does not need to be modified except to the extent mentioned above. In order to avoid any difficulty we clarify that in case the petitioner gives his option within two months from today, the respondent will consider his case for promotion to the post of Supervisor Grade III in accordance with the rules of 1961 and with reference to the date, 6.4.1961.

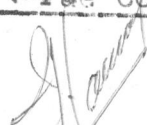


Sd. Hari Swarup

Sd. S.C. Mathur

4.12.1980.

(True Copy)


(L.R. Massey)
Petitioner

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ANNEXURE NO. 4

In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow.

Writ Petition No. of 1984.

L.R.Massey

...Petitioner.

Versus

Union of India & others

...Respondents.

ANNEXURE NO. 4.

Tele-Sig 79251/338

E.M.E.Records

Secunderabad

500 021

21st April, 1982

30348/P876/75/CA III

Station Workshop E.M.E.

Lucknow.

Special Appeal No. 44 of 1975 Union of India
Versus Shri L.R.Massey of station Work shop
E.M.E., Lucknow.

1. Reference your letter no.21201/PC L.R.Massey dated
26 March 82.

2. The ~~particulars~~ particulars of P-876 Shri L.R.Massey were
placed before D.P.C. file 82 for consideration of his
promotion to the post of Chargeman. The D.P.C. has not
found him fit for promotion to Chargeman.

3. Please inform the individual accordingly.

Sd/-

(A.S.David)

E.M.E.Officer ()

Assistant Record Officer
for Officer in Charge
Records.

TRUE COPY
(L.R.Massey)
Petitioner.

39

29

Annexure 5

In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow.

Writ Petition No. of 1984

L.R. Massey

... Petitioner

VS

Union of India & others

... Respondents

Annexure 5

~~XXXXXXXXXXXXXXXXXXXX~~

17.5.1982

Q1/C EME Records
Record Office
Secundrabad 500 021

THROUGH PROPER CHANNEL

Reference: Your letter No. 30348/P876/75/CAIII Station
Workshop EME Lucknow, dated 21.4.1982.

1. That in your letter under reference you have informed that the particulars of P876/PC/L.R. Massey were placed before DPC February 1982 for consideration of his promotion to the post of Chargeman and that the DPC had not found him fit for promotion to the post of Chargeman .

2. In terms of the direction of the Hon'ble High Court my case was to be considered for promotion as on 6.4.1961 where my juniors had been promoted in accordance with principle of seniority and fitness. Since there was nothing against me in my ACRs. Therefore, my seniority in question stands in tact and as such the question of being found unfit by the DPC is thus absurd.

3. No reasons have been given in the order for holding me unfit for promotion in the circumstance. I would request you to kindly communicate the same to me at an early date.

Yours faithfully,

(L.R. Massey)
17.5.1982

TRUE COPY

(L.R. Massey)
Petitioner

In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow.

Writ Petition No. of 1984

L.R. Massey

... Petitioner

vs

Union of India & others

... Respondents

Annexure 6

COPY OF C.P.R.O. DATED
16.9.1969 and 30.3.1976

— Non Selection Posts

Min. of Def DO No.
10828/D/Appts dt.
24 Nov. 1952 & CPRO
123/77.
Army HQ Letter No.
24250/17/EME CIV
dt. 17th Sept, 1969.

10. Promotions are to be ordered strictly on the basis of seniority subject to the exclusion of the unfit. The last three years Annual Confidential Reports will form the basis for adjudging the suitability for promotion with specific emphasis on recommendations of the last Annual Confidential Reports and keeping in view the length of service in the lower grade. If there is nothing adverse reported against him, he is normally to be considered fit for promotion unless he has not been recommended for promotion continuously for the last three years.

Cabinet Secretariat
Deptt. of Pers & AR
OM No. 21011/1/76-
Ests(a) dt. 30.3.76

20. It has been clarified that 'Average' reports are not treated as adverse.

TRUE COPY

(L.R. Massey)
Petitioner

In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow.

Writ Petition No. of 1984

L.R. Massey

... Petitioner

vs

Union of India & others

... Respondents

Annexure 7.

CONFIDENTIAL

Telephone Signal 79251/338

30348/P-876/77/CA III

Station Workshop EME

Lucknow 226 002.

Vidyut Aur Yantrik Engineer

Abhelekh Karyalaya

EME Records

Secundrabad 500 021

Dated: 10th June, 1982

Special Appeal No. 44 of 1975 Union of
India versus Shri L.R. Massey of Station
Workshop EME, Lucknow.

1. Refer to your letter no. 12201/PC/L.R. Massey
dated 16th May 1982.

2. Annual Confidential Report for the three years 1958
to 1960 relating to P-876 LH(Tech) Shri L.R. Massey of
year unit were placed before DPC February 1982 for
consideration for promotion to Supervisor Grade III.

3. Based on the ~~other~~ all performance of the above
individual with particulars emphasis on the recommendations
for promotion to the next higher post, The Depart-
mental Committee February, 1982 have arrived at a conclusion
and found him unfit for Supervisor Technical Grade III.

4. The individual may please be informed accordingly.

Sd/- Illegible.
Chief Record Officer
For Officer Incharge.

TRUE COPY

(L.R. Massey)
Petitioner

Annexure No.8

In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow.

Writ Petition No. of 1984

L.R. Massey

... Petitioner

VS

Union of India & others

... Respondents

Annexure No.8

To

The Officer-in-Charge,
EME Records
Records Office
Secunderabad 500 021.

THROUGH: PROPER CHANNEL.

SUBJECT: Special Appeal No. 44 of 1975
Union of India vs L.R. Massey
of Station Workshop EME, Lko.

Sir,

Respectfully, I beg to submit that vide your letter No. 30348/P-876/77/CAIII dated June 10, 1982, it was intimated that while considering my case for promotion in compliance with the orders of the Hon'ble High Court, my Annual Confidential Reports for the years 1958 to 1960 were placed before the DPC February 1982 for consideration for promotion to Supervisor Grade III and that based on my overall performance with particulars emphasis on the recommendation for promotion to the next higher post, the DPC February 1982 had arrived at a conclusion and found me unfit for Supervisor Grade III.

2. My case was to be considered on the basis of seniority-cum-fitness and according to Ministry of Defence UO No. 10828/D/Appts dated 24th November 1952, one's suitability and fitness for promotion was to be adjudged on the basis of the last 3 years ACRs with specific emphasis on recommendations of the last ACRs and keeping in view the length of service in the lower grade and if there was nothing adverse reported against him, he was normally to be considered fit for promotion unless he had not been recommended for promotion continuously for the last three years.

(L.R. Massey)
Petitioner

Page 2...

3. I had never been communicated any adverse remarks and since there was nothing adverse reported against me and it was also not a case where I had not been recommended in my ACRs continuously for the last 3 years, I was to be considered fit for promotion and I have been greatly shocked to learn that the DPC February 1982 should have found me unfit for promotion on the basis of my overall performance with particular emphasis on the recommendations for promotion to the next higher post.

4. Since the DPC have laid particular emphasis on the recommendations for promotion to the next higher post, it is obvious that it is those recommendations which had biased my case before it and resulted in the adverse finding against me.

5. As already submitted, I had not been communicated any adverse remarks. Accordingly, the question of there being any adverse recommendations regarding my promotion to the next higher post in my 3 years ACRs placed before DPC did not arise and since reference to these 3 ACRs, the question of finding me unfit for promotion also could not arise.

6. In the circumstances, I shall be ~~extremely~~ grateful to learn of the recommendations which were taken into account by the DPC, the date thereof and the authority or authorities who made it so that I may take further steps in the matter as I may be advised in accordance with law.

Yours faithfully,
(L.R. Massey)

Address:

Station Workshop
EME, Lucknow.

Dated: 14th January, 1983.

TRUE COPY

(L.R. Massey)
Petitioner.

In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench) Lucknow.

Writ Petition No. of 1984

L.R. Massey

... Petitioner

vs

Union of India & others

... Respondents

To

Annexure No. 9

The DEME
Army Headquarters AEQ
New Delhi

THROUGH PROPER CHANNEL

Special Appeal No. 44 of 1975 Union of India versus
L.R. Massey of Station Workshop EME, Lucknow.

Sir,

Most respectfully I beg to refer you to my letter dated 14.1.1983 requesting you to kindly let me know the recommendations which were taken into accounts by the DPC, the date thereof and the authority or authorities who made it while considering my case for promotion in compliance with the orders of the Hon'ble High Court I attach herewith a copy of my letter dated 14.1.1983 for reference. When I approached the local authorities I have been told that no reply has been received and that I should wait for the same.

I submit that already more than 5 months have elapsed and no reply has been sent to me for which there could hardly any justification.

In the circumstances, it may kindly be noted that in case I do not get a reply by the end of this month I shall take it that the authorities are not willing to tell me the facts and I shall be compelled to file a writ petition again in the Hon'ble High Court, placing the entire matter before it.

Encl. One: My letter dt. 14.1.1983

Yours faithfully,

Address:
Station Workshop EME
Lucknow:

(L.R. Massey)

8.7.1983

TRUE COPY

(L.R. Massey)
Petitioner



In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow.

Writ Petition No. of 1984

L.R. Massey

... Petitioner

vs

Union of India & others

... Respondents

Annexure No. 10


Telephone Signal 7925/338

Vidyut Aur Mantrik
Abelakh Karyalaya
EME Records
Secundrabad 500 021

36851/P-876/86/CA III
Station Workshop EME
Lucknow 226 002.

Dated: 24.8.1983

Special Appeal No. 44 of 1975 Union
of India versus Shri L.R. Massey,
Station Workshop EME Lucknow.

- 
1. Refer to your letter no. 50603/L.R. Massey dated 10th August, 1983.
 2. Application dated 8th July 1983 addressed to DEME has been forwarded to Army Headquarters.
 3. The case is under examination at Army Headquarters and necessary action will be taken on receipt of a decision.

Sd/- MK RANA RAO
E M E Office
Asstt. Record Officer
For Officer Incharge.

TRUE COPY

(L.R. Massey)
Petitioner

In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow.

Writ Petition No. of 1984

L.R. Massey

... Petitioner

vs

Union of India & others

... Respondents

Annexure No. 11

Telephone Signal 7925/338

CONFIDENTIAL

Vidyut Aur Yantrik

~~KARYALAYA~~ Karyalaya

EME Records

Secundrabad 500 021

Dated: 12.12.1983

3605/P-876/92/EATII
Station Workshop EME
Lucknow 226 002.

Special Appeal No. 44 of 1975 Union of
India versus Shri L.R. Massey of Station
Workshop EME, Lucknow.

1. Refer to (a) your letter no. 50603/L.R. Massey dated 10th August, 1983 addressed to this office and copy endorsed to you.

2. The case has been examined by the authorities concerned at Army Headquarters, in this connection it is stated that since the determinations of the DPC are of confidential in nature and therefore cannot be questioned by the individual. It is further stated that supersession in selection grade posts ~~is~~ inevitable and that cannot be challenged.

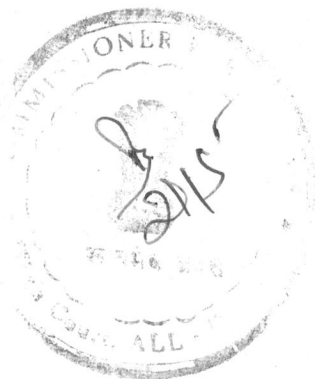
3. In view of the position explained above, Shri L.R. Massey be informed accordingly.

(Auth: AHQ letter no. 37215/533/EME CW2 dt. 29.11.83)

Sd/- Illegible
Lt. Colonel
Chief Record Office
for 01/c EME Record

TRUE COPY

(L.R. Massey)
Petitioner.



1984
AFFIDAVIT
22
HIGH COURT
ALLAHABAD.



37

AFFIDAVIT

In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow.

Writ Petition No. of 1984

L.R. Massey

... Petitioner

VS

Union of India & others

... Respondents

Affidavit in support
of writ petition.

I, L.R. Massey, aged about 60 years, son of late Sri J. Massey, resident of 554/207 Chhota Barha, near Anand Nagar, Lucknow, do hereby solemnly affirm and state as under:

1. That the deponent is the writ petitioner himself and fully conversant with the facts and circumstances of the case.

2. That the contents of paragraphs 1 to 9 of the writ petition are true to deponent's own knowledge.

3. That the writ petition is accompanied by ... Annexures which are all true copies and have been compared by the deponent from the originals.

Lucknow:

(L.R. Massey)
Deponent.

Dt: 21.5.84

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

Lucknow:

(L.R. Massey)
Deponent.

Dt: 21.5.84

I know the deponent who has signed before me.

Pankaj Nath
(Pankaj Nath)
Advocate

Solemnly affirmed before me on 21.5.84 at 9.45 am by the deponent, Sri L.R. Massey, who is identified by Sri Pankaj Nath, Advocate, High Court, Lucknow. I have satisfied myself by examining the deponent that he understands the contents of this affidavit which has been read out and explained by me.

Desh Deepak
OTAH COMMISSIONER
High Court Allahabad,
Lucknow Bench

No. 22-84
Date 21.5.84

38

In the Hon'ble High Court of Judicature at Allahabad
व अदालत श्रीमान (Lko. Bench), Lko. महोदय

(वादी) अपीलान्त
प्रतिवादी (रेस्पान्डेन्ट) श्री.....का **वकालतनामा**

W.P. No. ११९४



L. R. Massey

वादी (अपीलान्त)

बनाम

Union of India & others

प्रतिवादी (रेस्पान्डेन्ट)

नं० मुकद्दमा

सन् १६

पेशी की तारीख

१६

ई०

ऊपर मुकद्दमा में अपनी ओर से श्री Sri R. Nath

Rajesh Nath & Pankaj Nath

एडवोकेट वकील

महोदय

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं कि इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जबाबदेही व प्रश्नोत्तर करे या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहानामा 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 विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त कर वकील महोदय द्वारा कौ गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर.....

साक्षी गवाह.....

साक्षी (गवाह)

दिनांक.....

21/5

महीना...

May

सन् १९८४

ई०

Accepted

R. Nath Adv.

Rajesh Nath
Accepted

Accepted

Pankaj Nath
Adv.

(49)

In the Hon'ble High Court of Judicature at Allahabad,

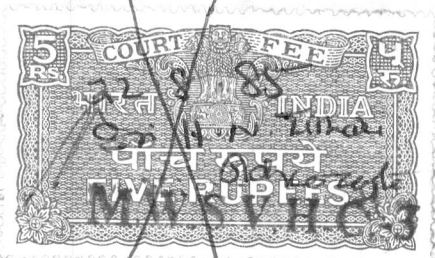
at

LUCKNOW

Civil Misc Application No. 9456(u) 3
of 1985

Filed in

Writ Petition No. 2644 of 1984.



L.R. Massey

..... Petitioner.

Versus

Union of India and others

..... Opp parties.

11/190

The opposite parties mentioned in the above writ petition most humbly submit and pray that in view of the facts and circumstances narrated and allegations made in the accompanying affidavit this Hon'ble Court may kindly be pleased to dismiss the writ petition and in particular to vacate the interim order if any.

Lucknow dated :-

Hari Nath Lilhara

22.8.85

Sr. Central Govt Standing Counsel.

Counsel for the Opp parties.

One Bench Copy & one Extra Copy is being attached
herewith

Hari Nath Lilhara

26/8/85

(a)

Recd. 4pm.

Drnk.

22.8.85

ADW.

Ha on Sakash f

Ha GB Singh f

~~Ha on Sakash f~~

list with previous record.
for order

re 8/85



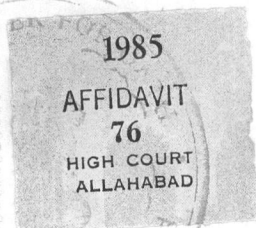
over



In the Hon'ble High Court of Judicature at Allahabad,
at

L U C K N O W

Writ Petition No 2644 of 1984



L.R. Massey

..... Petitioner.

Versus

Union of India and others

..... Opp parties.

Counter Affidavit on behalf of Opposite Parties
No 1 to 4.



I, S S Pundir aged about 47 years, son of Late Shri Ranbir Singh, Officer Commanding, Station Workshop EME, Lucknow hereinafter described as the deponent solemnly affirm and state as under

That deponent is Officer Commanding, Station Workshop EME, Lucknow and is authorised and competent to swear and file the counter affidavit on behalf of the opposite parties.

2.

That the deponent has read the writ petition alongwith its annexures and has understood its contents. The deponent is well acquainted with the facts of the case and deposed herein-after.

3.

That the allegations of para 1 of the petition are not admitted as drafted. It is stated that

...2/-

Shri L.R. Massey was employed in Jan 1948 as a Fitter @ Rs 47/- per month plus allowances.

4.

That in reply to allegations of para 2 of the writ petition, it is stated that the petitioner was promoted to the post of Leading Hand (Technical) with effect from 01 Apr 1952 in the pay scale of Rs 55-3-85-4-125-5-130 and was declared Quasi Permanent with effect from 01 Jul 1955.

5.

That the allegations of para 3 of writ petition are not denied.

6.

That the allegations of para 4 of the writ petition as drafted are not admitted. The correct facts are that the petitioner while under reversion was remustered at his own request from Vehicle Mechanic to Engineering Equipment Mechanic with effect from Jul 1963. The averment of the petitioner that he would have been promoted as a Supervisor Grade III, had he not been reverted from the post of Leading Hand (Technical) is totally hypothetical and is not admitted.

7.

That the allegations of para 5 of writ petition are not denied to this extent that the appeal of the petitioner against his reversion was allowed by the Director of Electrical and Mechanical Engineers, Army Headquarters. It is stated that it was allowed on the technical grounds that the disciplinary proceedings against the individual had not been conducted in accordance with the

...3/-



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procedures contained in the Central Civil Services (CC&A) Rules 1952 and his suspension/absence from duty was treated as period spent on duty.

8.

That in reply to the allegations of para 6 of the writ petition, it is stated that the question of petitioner's promotion as Supervisor (Technical) Grade III does not arise since the individual was remustered at his own request on 30 Jul 1963 and he was paid his arrears of pay as Leading Hand (Technical) upto 29 Jul 1963 and thereafter as Engineering Equipment Mechanic. In this connection it was ruled by the EME Record Office vide their letter No 30348/P-876/A-iii dated 16 Sep 1968 that "since Shri L.R. Massey is willing to continue as EE Mech, the post now held by him, he should sever his connections with the post of Leading Hand (Technical) to become eligible for promotion to the post to which he is in the direct line of promotion from EE Mech". The petitioner failed to submit any option as required under the rules. His pay therefore was fixed as Engineering Equipment Mechanic. It is incidently brought out that the pay scale of Engineering Equipment Mechanic and Supervisor Grade III the post which the petitioner has been claiming, is the same.



9.

That the allegations of para 7 are not denied.

...4/-

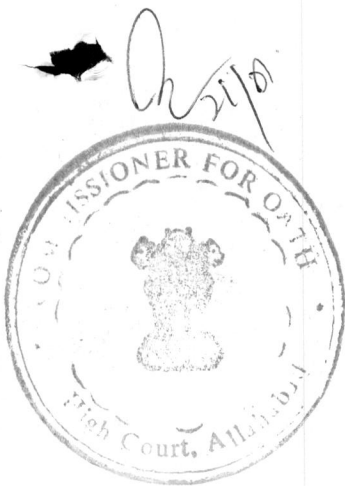
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10. That the allegations of para 8 of writ petition need no comments. The contents of the judgments given by this Hon'ble Court can be verified from the record itself or from annexure 1,2,3 to writ petition.
11. That the allegations of para 9 of writ petition are admitted to this extent that the particulars of the petitioner were placed before the Departmental Promotion Committee held in Feb 1982 for consideration of his promotion to the post of Supervisor Grade III and Supervisor Grade II (now Chargeman and Senior Chargeman) but he was not found fit for the same as intimated vide EME Records office letter No 30348/P-876/75/CA-iii dated 21/23 Apr 82 and even No. dated 21 Apr 84 as mentioned in annexure 4 to the present writ petition. It is pertinent to bring out here that the petitioner Shri L.R. Massey was asked to exercise an option by severing his connections with the post of Engineering Equipment Mechanic to which he was remustered voluntarily on 30 Jul 1963. Shri L.R. Massey gave an option wherein he wanted to continue as Engineering Equipment Mechanic and at the same time holding a lien on the post of Leading Hand (Technical) on 11.3.68. This option was not found in order by Government of India, since there is no such provisions to give willingness to work in a particular grade and holding a lien on different

...5/-



SH

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post which are quite different to each other. Post of Engineering Equipment Mechanic is an Industrial post, whereas Leading Hand (Technical) is a non-industrial post and service conditions to these posts are vastly different.

12.

That in reply to the allegations of para 10 and 12 of the writ petition it is stated that the petitioner Shri L.R. Massey had submitted an application to EME Records through proper channel questioning the decision of the Departmental Promotion Committee for his supersession on the ground that he had not earned any adverse remark and no adverse remarks have ever been communicated to him. The EME Records had informed the petitioner through proper channel that "Annual Confidential Report for the three years 1958-1960 were placed before the Departmental Promotion Committee in Feb 82 for consideration of promotion to Supervisor (Technical) Grade III based on the overall performance of the above individual with particular emphasis on the recommendations in relation to question of promotion to next higher post. The Departmental Promotion Committee Feb 82 on consideration of his performance found him unfit for promotion to Supervisor Grade III and he was informed accordingly". It is also brought out that his Annual Confidential Report for the year 1960 had certain adverse remarks against him which were communicated to the petitioner verbally by the concerned authorities.

...6/-



SH

13. That the allegations of para 11 of the writ petition need no comments.
14. The allegations of para 13, 14, 15 of the writ petition relate to petitioner's representation and their contents. Para 15 deals with the reply to annexure 9 to the writ petition and para 16 deals with subject matter of Chief Record Officer letter dated 12.12.83. In reply thereto it is stated that the averment made by the petitioner that "having not been communicated any adverse remarks and since there was nothing adverse against him and it was also not a case where he had not been recommended in his Annual Confidential Report continuously for the last three years, he was to be considered fit for promotion", is not correct. As revealed during the examination of the relevant documents of that period the petitioner was apprised of certain adverse remarks in his Annual Confidential Report for the year 1960 and he was not recommended for promotion also in the same Annual Confidential Report. He was further informed that proceedings of the Departmental Promotion Committee are of Confidential nature and therefore cannot be questioned by the petitioner. The promotion of the petitioner to the post of Supervisor Grade III was considered by the Departmental Promotion Committee as directed by the Hon'ble High Court based on the position existing on 06 Apr 61 and Departmental Promotion Committee found him unfit

...7/-



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for promotion and the same was communicated to him. The promotion cannot be claimed as a matter of right by the individual.

15. That the allegations of para 17 of the writ petition are not correct and so denied, and the contents of para 14 above are reiterated.

16. That the allegations of para 18 of the writ petition need no comments.

17. That in reply to the allegations of para 19 and 20 of the writ petition, it is stated that the name of the petitioner was placed for promotion to the Departmental Promotion Committee held in Feb 82. His case was considered on the basis of rules applicable on 06.4.61 as directed by the Hon'ble High Court and was not found fit by the Departmental Promotion Committee. The decision of the Departmental Promotion Committee was communicated to the petitioner. It may also be mentioned that under rules as then applicable in 1961 annexed herewith as Annexure I, it is provided that seniority rolls and extracts from recommendations of Confidential Reports of individuals are to be considered by the Departmental Promotion Committee and are to be made available to the Departmental Promotion Committee by Officer-in-Charge EME Records. That as per Rule 7 of the Rules for Departmental Promotion Committee Non-Gazetted civilian staff of the corps of EME on all India Roster as in 1961 it was provided that the post of Supervisor Grade III

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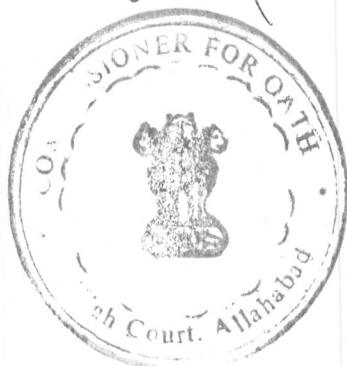
was non-selection post. Rule 8 provided that selection for promotion or confirmation in case of non-selection post shall be made on the basis of seniority subject to the exclusion of unit. Rule 4 (b) dealing with General procedure to be followed provided as under :-

"Seniority rolls and extracts from recommendations/Confidential records of individuals to be considered by committee will be made available by OIC EME Records at the meeting".

18.

That the allegations of para 21 to 23 of the writ petition are not correct and are denied. The correct position is that as directed by the Hon'ble High Court the case of the petitioner for promotion to the post of Supervisor Technical Grade III was considered as per rules existing on 6.4.61 and Departmental Promotion Committee found him unfit for promotion. As brought out earlier the performance of the petitioner during the period was below the required standard and petitioner was apprised of his shortcomings. Based on the poor performance of the petitioner he was not recommended for promotion by the authorities responsible for assessment of his performance. The Annual Confidential Report of the petitioner were placed before the Departmental Promotion Committee in Feb 82 and he was found unfit. Findings of the Departmental Promotion Committee were communicated to the petitioner.

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19.

That the allegations of para 24 of the writ petition are not correct and are denied. It is further stated that the increment of the individual has been correctly regulated from the date of passing the efficiency bar test in accordance with the provisions contained in Government of India, Min of Defence letter No 12477/228/EME 2(c) 885/D (Appts) dated 04 Feb 66.

20.

That the allegations of para 25 of the writ petition are denied. It is stated that the petitioner's pay fixation at Rs 440/- per month with effect from 01 Jan 73 in accordance with the recommendations of the Third Pay Commission was correctly done. This was duly verified by the audit authorities of Government of India and petitioner has not given any basis for his fixation of his pay at Rs 452/- + Rs 6/- as adhoc increment.

21.

That the contention of the petitioner made in para 26 of the writ petition is incorrect, and is denied since the fixation made by the department is only after consultation and verification by the audit authorities.

22.

That the allegations of para 27 of the writ petition are not correct and denied since his pay had been correctly fixed in consultation with audit authorities. Date of superannuation of the petitioner as claimed by the petitioner is 31 Oct 1984 as stated in para 27 of the writ petition and that the petitioner has retired on 31 Oct 1984.

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23. That the allegations of para 28 of the writ petition are all conjunctures and hypothetical and as such are not admitted.
24. That the allegations of para 29 of the writ petition if correct then need no comments.
25. That the present writ petition and the grounds mentioned therein are without substance and merits. The deponent has been advised to state and so states. It is further stated that case of petitioner for promotion to the post of Supervisor Grade III has been examined by the Departmental Promotion Committee as per the rules existing on 06 Apr 1961 and he was found unfit for promotion which was communicated to him.
26. That the various representations regarding his promotion and other matters have been examined by the competent authorities at different levels and their decisions have been communicated to him from time to time.
27. That the petitioner is not entitled to get the relief claimed in writ petition in view of above facts. The deponent has been advised to state that as the petitioner has retired as well on 31.10.84, no effective relief can be granted in petitioner's favour and that the writ petition as such as well is liable to be dismissed as infructious. The deponent has been advised

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to state and believing the advice to be correct, the deponent does so state.

Lucknow

Dated : 18 Aug 1985

L. P. Singh
Deponent

I, the deponent named above do hereby verify that the contents of para 1 and 2 of this Affidavit are true to my own knowledge and those of paras 3 to 27 are verified by me on the basis of information received from Record, and from the Counsel in the form of legal advice as well. Nothing material has been concealed, no part of this Affidavit is false or untrue, so help me God.



L. P. Singh
Deponent

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I identify the deponent who has signed and verified before me as Lt Col SS Pundir son of Late Shri Ranbir Singh on the basis of the perusal of the Identification Card of deponent bearing No 059151 and photograph of deponent and signature of Lt Col SS Pundir that the deponent is Lt Col SS Pundir.



Shri Hari Nath Tilhari

Advocate/Clerk

Shri Hari Nath Tilhari Advocate
Sr. Central Govt. Standing Counsel
High Court of Uttar Pradesh
at Lucknow

Solemnly affirmed before me on 21.8.85 at 7.30 P.M. by the deponent S.S. Pundir is identified by Shri H.N. Tilhari Adv. High Court at Lucknow.

I have satisfied my self by examining the deponent that he understands the contents of the affidavit which have been read out and explained by me.

S.N. Srivastava

OATH COMMISSIONER
High Court, Allahabad
Lucknow Bench, Lucknow

No. 76 of 85

Date 21.8.85

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

WRIT PETITION NO. 2644 OF 1984.

L.R. Massey

..... Petitioner

Versus

Union of India and others

..... Opp parties

ANNUEXURE NO. 1

Approved
(~~Exxxd~~ under Ministry of Defence U.O. No 10828/D Appts
dated 14 November 1952)

RULES FOR DEPARTMENTAL PROMOTION COMMITTEE NON-GAZETTED
CIVILIAN STAFF OF THE CORPS OF ELECTRICAL AND MECHANICAL
ENGINEERS ON ALL INDIA ROSTER

PART I

1. Constitution

The Departmental Promotion/confirmation Committee for Non-Gazetted Civilian Staff of Class III service in the corps of EME is constituted as under :-

- (a) O.I/C EME Records
- (b) An officer to be detailed by the DEME.
- (c) -do- Brig EME Eastern Comd
- (d) -do- Brig EME Southern Comd
- (e) -do- Brig EME Western Comd

The senior officer will preside. A Secretary for the Committee will be provided by the O.I.C. EME Records.

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2. Functions

The Committee will make recommendations for :-

- (a) Confirmation of the temporary staff into permanent appointment.
- (b) Promotion from one Non-Gazetted post to another, both permanent and temporary.
- (c) Promotion from a lower to a higher grade.
- (d) Promotion from a non-selection post to a selection post.

3. Session

The committee will normally meet twice a year or as often as may be necessary. The meetings will be held at EME Records, Office.

4. Procedure

It is left to the committee to decide how the proceedings of the meetings will be conducted. Otherwise, the General procedure will be as follows :-

- (a) EME Records will prepare the agenda for the meeting. Particulars of vacancies to be considered will be arranged categorywise and issued alongwith the agenda three weeks in advance.
- (b) Seniority Rolls and extracts from Recommendations/ Confidential reports of the individuals to be considered by the Committee will be made available by the Officer-in-Charge EME Records at the meeting.
- (c) Minutes of the meetings will be issued under the signature of the Chairman and other members participating. The Minutes will be in the form of list of names of individuals arranged in order of seniority/merit subject to the provision in Rule 8

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below. Separate list will be prepared for filling
(i) Permanent vacancies (ii) Temporary vacancies.
When confirmation/promotion involves supersession,
brief reasons for supersession will be recorded.

5. Recommendations

In making their recommendations the Committee will
be guided by the Basic Rules set out in Part II below.
The Recommendations of the Committee as ratified by the
DEME (in consultation with the Ministry of Defence when
necessary) will be final.

PART II

6. Selections for confirmation/promotion will be made
from Seniority Rolls maintained by the OIC EME Records
strictly in accordance with Army Instruction No 241/50
as may be modified from time to time.

7. For the purpose of regulating confirmation/promotions,
all posts shall be classified as mentioned below :-

(i) Selection Post

Head Clerks, Supervisor Technical Grade I,
Storekeepers Grade III.

(ii) Non-Selection Posts

Non-Industrial posts other than at (i) above.

8. Selection for promotion/confirmation will be made
strictly on the basis of merit in the case of posts referred
to in para 7 (i) above and Seniority shall be determining
factor where there are two or more candidates of equal merit.
Selection for promotion/confirmation in the case of posts

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referred to at 7 (ii) above shall be made strictly on the basis of seniority subject to the exclusion of unfit.

9. The normal chain of promotion will be as indicated below :-

*Tradesmen (*For tradesmen of Group 'A', direction promotion to Supvr (Tech) is permissible)

Leading Hand Tech

Supervisor Grade III

Supervisor Grade II

Supervisor Grade I

(b) Labourer

Mukkadam where in position

Leading Hand (Non-Technical)

Supervisor Non-Technical Grade II

Supervisor Non-Technical Grade I

(c) Lower Division Clerks

Upper Division Clerks

and/or

Stenographers @ (@amended vide Army Headquarters

letter 62994/MG/ME-2B dt 15.4.55)

(d) Tracer

D/Man Grade IV

D/Man Grade III

D/Man Grade II

(e) Storeman

Storekeeper Grade IV

Storekeeper Grade III

The selection will be so regulated that no one is advanced by more than one step in the chain of promotion shown above at any one time.

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10. The Educational and other qualifications required of a candidate for selection for confirmation/promotion will be as laid down in Annexure I to these Rules. The qualification may be relaxed at the discretion of DEME in case of candidates who are otherwise "Outstanding".

Annexure 'I' (to Ministry of Defence
U.O. No 10828/B Appts dated 14 Nov52)

Schedule of Educational and other qualifications

Appointment

Minimum Qualifications

Head Clerk : If temporary must have a degree and 10 years service or if holding a permanent or quasi permanent appointment 10 years service.

Upper Division Clerks : If temporary must have a degree and 3 years service as UDC or if holding a permanent or quasi permanent appointment with 3 years service as UDC.

Lower Division Clerks : Matriculate or equivalent or those who have rendered 3 years service on 01.1.49.

Storekeeper Bde III : Graduate with 3 years or Matriculate or equivalent with 5 years experience in storekeeping duties.

Storekeeper Gde IV : Graduate with one year experience in storekeeping duties in a Govt. department or in a reputable firm or Matriculate or equivalent with 5 years service in the EME,

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Appointment

Minimum Qualifications

subject in the latter case, to the successful passing of a Departmental Test.

Storeman

: Matriculate or equivalent.

Supervisor

: Degree/Diploma in Engineering with one

Technical Gde I

year's approved practical experience or Matriculate or equivalent with 4 years practical experience in a Factory, Workshop etc or in deserving cases Middle standard or equivalent with 6 years practical experience in a Factory, Workshop etc.

Supervisor

: (i) Direct recruits should have a Degree/

Technical Gde II

Diploma in Engineering with one year's approved practical experience or Matriculate or equivalent with 3 years approved practical experience.

(ii) Serving personnel must be educationally of Middle Std or equivalent. Must be first rate tradesmen with 5 years experience

Supervisor

: (i) Direct recruit should have a degree/

Technical Gde III

Diploma in Engineering with one year's approved practical experience or Matriculate or equivalent with 3 years^{approved} practical experience.

(ii) Serving personnel must be educationally of middle standard or equivalent. Must be first rate tradesmen with 3 years experience.

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Appointment

Minimum Qualifications

Supervisor (Non- : Matriculate or equivalent with 5 years
Technical) Gde I experience of Control of labourers.

Supervisor (Non- : Must be able to read and write English.
Technical) Gde III Must have 3 years experience of control
of labourers.

Leading Hand + : Must be educationally of middle standard
(Technical) or equivalent. Must be^a first rate
tradesmen.

Leading Hand : Must be educationally of middle standard
(Non-Technical) or equivalent. Must be a first rate
tradesmen.

Draughtsman : Diploma in Mechanical Drawing or in
Gde II Mechanical or Electrical Engg with 2 years
experience, or if no Diploma is held must
be a Matriculate with 6 years practical
experience.

Draughtsman : Diploma in Mech Drawing or in Mechanical
Gde III or Electrical Engg with 1 year experience
or if no diploma held should be matriculate
with 4 years practical experience.

Draughtsman Gde : Diploma in Mech Drawing or in Mech or
IV Electrical Engg or if no Diploma is held
should be matriculate with 4 years
practical experience.

Tracer

: Matriculate or equivalent who has worked
with a civil or Mechanical or Electrical
Engineering Firm.

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Appointment

Minimum Qualifications

- Motor Driver : Must be literate and have 5 years driving experience including heavy vehicles.
- Telephone Operators : Matriculate or equivalent.
- Stenographers : Matriculate or equivalent with a speed of 80 words per minute in typing.
- Daftries/Messengers/Office Orderlies : Must have passed Middle School std of have been in continuous service from a date prior to the 29th March 52.

Note :- Whenever Matriculation is prescribed as qualification, persons who are non-matriculate but are covered by Army Instruction 16/S/49 will be treated as Matriculate.



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TA 1611/82

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

MP - 1027/94

T.A. No. 1116 of 1987 (T)

FR 12-8-94

L.R. Massey

... Applicant.

Versus

Union of India & others

... Respondents.

APPLICATION FOR TAKING ON RECORD
THE SUPPLEMENTARY AFFIDAVIT

Place before the
Hon'ble Bench
for order on the date 12/8/94
Dy. Registrar

The Applicants/Respondents abovenamed
most respectfully submit as under:-

1. That subsequent to the filing of the Counter Affidavit certain developments have taken place which are necessary to be brought on record of the Hon'ble Tribunal for a proper appreciation and adjudication of the controversy involved in the T.A. which are being brought to the knowledge of the Hon'ble Tribunal through filing a Supplementary Affidavit.

2. That it would be expedient in the interest of justice if the Hon'ble Tribunal is

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pleased to take the accompanying supplementary Affidavit on record.

WHEREFORE, it is most respectfully and humbly prayed that this Hon'ble Tribunal may very graciously be pleased to take the accompanying supplementary affidavit on record in the interest of justice.

Ashok Nigam
(Dr. Ashok Nigam)

Lucknow : Dated

Advocate

February, ~~22~~ 25, 1994.

Counsel for the Respondents/
Applicants.

[Handwritten signature]

(72)

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

MP 1028/94
T.A. No. 1116 of 1987 (T)

L.R. Massy

... Applicant.

Versus

Union of India & others

... Respondents.

APPLICATION FOR DISMISSAL OF THE
TRANSFERRED APPLICATION

The Applicants/Respondents abovenamed
most respectfully submit as under:-

That for the facts, reasons and circumstances narrated in the accompanying affidavit it is most respectfully and humbly prayed that this Hon'ble Tribunal may very graciously be pleased to dismissed the Transferred Application with cost in favour of Respondents.

Any other order or direction deemed just and proper may kindly be passed in favour of Respondents.

Ashok Nigam
(Dr. Ashok Nigam)

Lucknow : Dated

Advocate

February, 20, 1994.

Counsel for the Respondents/
Applicants.

(X3)

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

T.A. No. 116 of 1987 (T)

L.R. Massey

... Applicant.

Versus

Union of India & others

... Respondents.

SUPPLEMENTARY AFFIDAVIT ON BEHALF
OF RESPONDENTS

I, Lt Col Vimal Kapoor, aged about 45 years, son of *Shri Hans Raj Kapoor* presently posted as Administrative Officer, Station Workshop EME Lucknow, the deponent, do hereby solemnly affirm and state as under:-

1. That the deponent is Administrative Officer in the office of Respondent No. 4 i.e. Officer Commanding Station Workshop EME Lucknow, as such he is fully conversant with the facts of the case deposed to hereunder. He has been authorised by Respondents No. 1 to 4 to file the instant Supplementary Affidavit and to do necessary pairvi in the case on their behalf.

2. That the Applicant in the above noted Transferred Application had raised the similar grievance by filing a Writ Petition before the Hon'ble Supreme Court which was numbered as Writ Petition No. 745 of 1986, A.R. Massey Vs. Union of India.

3. That the Hon'ble Supreme Court had disposed off his petition at preliminary hearing stage itself on 23rd March 1987. The deponent seeks leave of the Hon'ble Tribunal to reproduce the order passed by the Hon'ble Supreme Court as under for a ready reference of the Hon'ble Tribunal:-

"

ORDER

It appears that the petitioner is now satisfied with the mode of calculation adopted in his case. No further orders are necessary and the Writ Petition is disposed of accordingly."

A true copy of the said order dated 23.3.1987 is being filed herewith as Annexure No SA-1.

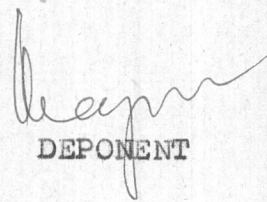
4. That the Applicant has concealed the above noted facts in his Transferred Application.

5. That the deponent most respectfully submits that since the matter has already been decided by the Hon'ble Supreme Court in the year 1987 itself

the Applicant cannot raise the same grievance by way of filing the above noted Transferred Application which is not maintainable and liable to be dismissed by this Hon'ble Tribunal in view of the Order of Hon'ble Supreme Court.

6. That Annexure SA-1 annexed with this affidavit is true copy of its original duly compared by the deponent.

Lucknow : Dated
February, 25, 1994.


DEPONENT

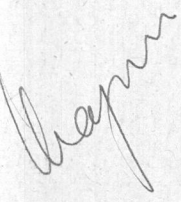
VERIFICATION

I, the deponent abovenamed, do hereby verify that the contents of paragraphs 1, 2, 4, 5 of this affidavit are true to my personal knowledge, those of paragraphs 3, 6 are believed to be true on the basis of records, while those of paragraphs are also believed to be true on the basis of legal advice and that I have not suppressed any material fact.

Lucknow : Dated
February, 25, 1994.


DEPONENT

I identify the deponent who has signed before me and personally known to me.


Raj Bahadur
Chk to Sn. Advocate. Nigam

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Amended No 5 A-1

No. 11

Court No 4

Section 2A

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) No. 745

OF 1986 (For Prel. Hearing) A/R

A.R. Messey

...PETITIONERS

VERSUS

Union of India & Ors.
(With appln. for stay)

...RESPONDENTS

Date: 23.3.87

: This Petition was called on for hearing today.

CORAM:

Hon'ble Mr. Justice
Hon'ble Mr. Justice
Hon'ble Mr. Justice

The Chief Justice
Ranganath Misra

For the Petitioners

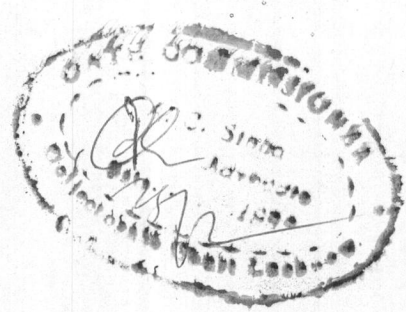
: Mr. S.F. Jain, Adv.

For the Respondents

: Mr. M.S. Rao, Mr. Adv., Mr. Nity Kumar Mangalam,
Ms. S. Ratan, Adv.

UPON hearing counsel the Court made the following
ORDER.

It appears that the petitioner is now satisfied
with the mode of calculation adopted in his case. No
further orders are necessary and the Writ Petition is
disposed of accordingly.



(N.K. CHAVLA)
Court Master.