

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH

FORM OF INDEX

D.A./T.A./R.A./C.C.P./ No. 1615/1987  
in W.P. 4923/83 N.P. Tripathi  
P A R T - I -V3-  
U.O.E.

1.	Index Papers	:- 1 ✓
2.	Order Sheet	:- 3 to 12 ✓
3.	Any other orders	:- Nil
4.	Judgement	:- 12 to 15, 13-16 ✓ dt 31-7-91
5.	S.L.P.	:- Nil

DY. Registrat

Supervising Officer

Dealing Clerk  
(ABHIMANYU)

Note :- If any original document is on record - Details.

- written Petition A17 to A29 Nil
- Counter Affidavit A40 to A46.
- L.A. A47 to A51 A47
- Power A47
- Any paper A48

2/30/12  
Dealing Clerk  
(ABHIMANYU)

80(5)-

V.K. Mishra

CENTRAL ADMINISTRATIVE TRIBUNAL  
Circuit Bench, Lucknow  
Opp. Residency, Gandhi Bhawan, Lucknow

APPLICATION No.

of 19

TRANSFER APPLICATION No.

of 19

OLD WRIT PETITION No.:

CERTIFICATE

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

Dated :

COUNTER SIGNED :

Signature of the  
dealing Assistant

Section Officer/Court Officer

(2)

# ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

w.p.

No.

4923

of 1983

25.

Date	Note of progress of proceedings and routine orders	Date of which case is adjourned
1	2	3
16-9-83	<p>Hon'ble CS, J Hon'ble NG, J</p> <p>Petitioners Counsel prays for and is allowed -</p> <p>not immediately thereafter</p> <p>Sd: U.C.S. Sd: K.N.G. 16-9-83</p>	
16-9-83	<p>CM. An No 10394 (W.D.) 83</p> <p>Hon'ble CS, J Hon'ble NG, J</p> <p>Part up with w.p. Sd: U.C.S. Sd: K.N.G. 16-9-83</p>	
11-12-83	<p>Hon'ble DN Ghosh Hon'ble RS Verma J</p> <p>CM. An No 13571 (W.D.)</p> <p>List along with the record on 9.12.83</p>	<p>PG 115 29.9.83</p> <p>Sett Sett</p>

9.12.83 filed with CM. An No  
No. 13571 (W.D.) for order

Bench  
F.O.  
Bye law

On 12/10/

Date	Note of progress of proceedings and routine orders	Date to which case is adjourned
1	2	3
9.12.83	Fixed with C.M.A.I.C 13511/83 Hon.ACS Hon.Lohit Nath	
15-12-1983	Hon. M. N. Shukla, A.C.J. Hon. Gopi Nath, J.	
	List this petition for admission after three days. In the meantime, the petitioner may file a supplementary affidavit along with the rules relating to his service.	
	SS13	Dr. S.S.
22-12-83	Fixed with Cm 13511-83	F.O. Bench List after 3 days
5.1.84	Fixed with C.M.A.I.C 13511-83 F.O. Hon. K.N.G. S Hon. S.S. S List after a month on 30th Jan. 1984	
	of 5.1.84	

PSUP-A.P. 1 Uchh Nyavalva. - 13-4-83-173-1983-50 000

FD.  
Bench  
By court

30.1.84

## ORDER SHEET

3.4.7

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

No. \_\_\_\_\_ of 198

vs. \_\_\_\_\_

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
30.1.84.	Fixd with ca 13511-83 for Hon. K.S.V. J. Hon. S.C.M. J.	
8.2.84.	Fixed with ca 13511-83 for orders. Hon. D.R.Jha. J. Hon. S.S.D. J. Sd/ By F. C. Burch	

24

5  
iv

MEMO.

Impressed  
Five Adhesive Rs. 10/-  
Total

Correct but final Court fee ~~will be~~  
will be made on receipt of lower  
Court record.

In time up to

Papers filed. Copy of P. ~~or~~  
Should also be filed.  
Circle - Bench.

count or endorsement to be made  
in Rule 7 (2) & (3) of Rule.

Date Letter

Indore  
9/9/83  
2  
9/9/83

Hon. Ucs J  
Hon. U.V.G. J

Peltier's Civil prays  
for as is allowed one  
week to file a  
Supplementary affidavit  
giving the pay scales  
of employees ~~of~~ <sup>of</sup> employees  
of Comptroller Board  
holding posts equivalent  
to those mentioned in rule  
7(2). List immediately thereafter  
16/9/83

Note for 12.9.83  
Received Copies for P. 1 to 3  
Dr. R. S. Raghavachari  
(D.S. Raghavachari)  
Senior Standing Counsel  
Central Govt.  
9.9.83

Note for 16.9.83  
Dr. R. S. Raghavachari  
15.9.83

IN THE HON'BLE COURT OF JUDICATURE AT ALLAHABAD

AIU

AT LUCKNOW

WRIT PETITION NO. 4923 OF 1983.



Narayan Prasad Tripathi  
S/O Late Shri Bhagwat Prasad Tripathi  
resident of 31, Old Haidarganj,  
P.O. Victoriaganj,  
Distt. Lucknow.

SCF-1081  
Ren.  
9-9-83

..... Petitionr

Versus

1. Union of India  
through  
The Secretary,  
Ministry of Defence,  
New Delhi.
2. The Director General,  
DL&C, Ministry of Defence  
Block-4, Sector-1,  
New Delhi-110066
3. The Additional Director,  
National Institute of Management  
and Accounts, Ayudh Path,  
Meerut Cantt.



..... Opposite Parties

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION  
OF INDIA

To,

Hon'ble the Chief Justice and  
the other Companion Justices of the above named  
High Court of Uttar Pradesh.

10/15/02/91

(12)

4-9-90

No setting Adj to 8-10-90

(13)

8-10-90

No sittip adj to 6-11-90

(14)

6-11-90

Hon' Mr. M. H. Pratikar - AM,  
Hon. Mr. D. K. Agarwal - JM.

Due to reselection of Association  
case is adjourned to 20.11.90

(15)

20-11-90

Hon' Mr. Jagdish K. Mathur  
Hon' Mr. M. M. Singh JM

No Supplementary  
CR filed as per  
court's order dt.

11-4-90

S. PO

L  
19/11/91

S

HM

AM

VC

(16)

22-1-91

No setting Adj to 26-2-91.

(17)

26-2-91

No setting Adj to 26-3-91.

20-3-91

No setting Adj to 4-4-91

J

① ② TA 1615/07/11

③ RA

l/c for the applicant

has filed C.M.A. No  
75/90, for amendment  
S. F. order

④ 21/2/90

Hon. Justice K. Isath, Vc  
Hon. K. Obayya, Adv.

Heard the applicant's counsel.

The amendment prayed for  
is allowed. The amendment  
may be incorporated within  
one week and the amended  
copy of the petition be given to  
the opposite parties' counsel within  
a week. It will be open to the  
opposite parties to file a supplementary  
complaint within three weeks in the  
light of the amended petition.  
Should the applicant may  
choose the applicant may  
file supplementary rejoinders,  
if any, within further two  
weeks time. List for further  
order on 11/4/90.

Q  
V.C.

AM

Amendment made  
Liday 16/3

⑤

11-4-90

Hon. P.S. Habeeb Mohamed AM l/c for the applicant has  
Hon. T P Sharma T M incorporated amendment but  
no supplementary C.M. filed.  
S. F. O

Two weeks time is  
allowed to supplementary  
counter to the amended  
writ petition, copy of which  
has already been furnished.  
List on 8-8-90 for order.)

Dear  
J.M.

ML  
A.M.

⑥

8/8/90

No sitting Adj to 4/9/90

8/8/90

(A7)

1. (2) (8)  
this case is  
to be listed on  
9.5.91 for orders  
before the Hon. Bench.

24. 6. 91

Hon. Mr. Justice K. Math. V.C.  
Hon. Mr. R. Chagge  
B.M.

On the request of applicant  
case is adjourned to 5.7.91  
for hearing.

S

R  
B.M.

W  
V.C.

9

11

8

3

10

4/4/91

TA/16/5/91

Hon. Mr. A. B. Tripathi, A.M.  
Hon. Mr. S. M. Prasad, J.M.

Sri C. B. Pandey holding brief for  
Sri U. C. Dhowan for respondents, prays  
for a short adjournment. We also find  
that the Supplementary Counter which  
should have been filed by the  
respondents has not yet been. This  
may be done within two weeks time.  
Rejoinder, if any, may be filed within  
one week through dist for admission/  
final hearing on 7/5/91.

✓

J. M.

✓  
A.M.

OR

✓

No Sabley. CA filed

h  
3/5/91

9/5/91

✓  
10

7-5-91  
D.R.

Applicant's side

is present, O.P. is  
absent. Supplement  
any counter has not  
been filed yet. Respon-  
dent to file it,  
by 4/7/91.

Hon. Mr. Justice U. C. Sivastava. — NC  
Hon. Mr. A. B. Tripathi A.M.

On the request of counsel for  
applicant case is adjourned to  
24.6.91 for admission hearing.

✓  
NC

Later on Sri R.S.

Tripathi Jd. counsel  
for the applicant filed  
an application for  
listing the case before  
the Hon. Bench. He

✓  
10

No Sabley. CA filed

S.P.M

h  
14/6/91

(1)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

(A2)

(J)  
(T)

REGISTRATION No. 1615 of 1987 (T)

APPELLANT  
APPLICANT

N. P. Trifalhi

DEFENDANT  
RESPONDENT

VERSUS

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
(1) 22/5	No sitting. Adjourned to 6-7-89 for orders.	<p><u>OK</u> Case has been received from Adv. on -- notices issued to the both the parties. <del>Adv.</del> No application comes hence been return back Submitted and</p>
(2) 6-7-89	<p>Hon'ble Justice K. Nath, V.C. Hon'ble K. J. Roman, A.M.</p> <p>It is stated on behalf of the learned counsel for respondents that the draft of the counter reply has been sent to respondents, but it has not yet been received. He requests for and is allowed three weeks time to file a counter and list the case for orders on 27-7-89. The office will ensure to print the name of the parties counsel in the cause list.</p> <p><i>W.D. A.D.</i></p>	<p><u>OK</u> No notice have been returned back after service &amp; Adv. filed with for orders.</p> <p><i>57</i></p>
(3) 21-7-89	<p>(S.H.S.)</p> <p>No sitting. Adj. to 14-9-89.</p> <p><i>W 27/7</i></p>	<p><u>OK</u> No reply has been filed by the cont'd order on 6-7-89 submitted for order</p>
(4) 14-9-89	<p>नियमित तिथि का प्राप्ति नहीं हुई 27-X-89 की आपेक्षा 10 दिन 21-9-89 की तिथि का प्राप्ति हुई</p> <p><i>refd. 14/15</i></p>	<p><u>OK</u> No reply filed submitted for order.</p> <p><i>h 26/1</i></p>

16151m/s

A3

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⑤

27/4/09. Hon. Justice K. Pathi, V.C.

Comes up that it has been  
filed on behalf of opposite  
parties / At 3. The applicant  
may file rejoinder within  
two weeks and list for final  
hearing on 4/12/09.

OR

V.C.

OR  
No Rejoinder filed  
Submitted for  
hearing.

1/12/09

Re

⑥

4/12/09. Hon. Justice K. Pathi, V.C.  
Hon. K. J. Roman, A.M.

The applicant in person  
files rejoinder. On the  
request of the learned counsel  
for the opposite parties for  
time to address arguments  
the case be adjourned &  
list for final hearing  
on 4/11/09

OR  
A.M.

DR  
V.C.

Submitted for  
hearing

1/12/09

⑦

4/1/09

Can not reached. Put up  
tomorrow.

OR  
B.O.C.

cm 75/cols  
filed today

1/1

⑧

9.2.09

No S.tly Ad. 1/21.2.09

OR

(X8)

(11)

(12)

ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD.

T. A. NO.

1615 OF 1987

N.P. Tripathi. v. O.S.

Sl.No.	Date	Office Report	Orders
1	2	3	4
			<p style="text-align: center;">31-7-91 Judgment delivered Today. The application is dismissed with no order as to costs.</p> <p style="text-align: right;">JMC</p>

Received  
22/8/91  
13/8/91

Recd Copy  
Mohamed  
Gohi UK Dhon  
Adv.  
12-9-91

PANKAJ/

P.T.O.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH

LUCKNOW

(12)

13

T.A. 1615/87

(Writ Petition No. 4923 of 1983)

Narayan Prasad Tripathi

Petitioner.

versus

Union of India & others

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. A.B. Gorthi, Admn. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

This is a transferred case under section 29 of the Administrative Tribunals Act, 1985. The applicant filed a writ petition before the Lucknow Bench of the Allahabad High Court praying for issue of a mandamus commanding the opposite parties not to make any appointment in pursuance of the examination conducted by them and declare sub-rules (2) and (3) of rule 7 of the Rules known as Military Lands and Cantonments (Cantonments Executive Officer) Service (Group B) Rules, 1983 as ultravires. This case has come to this Tribunal on transfer.

2. The applicant, at the relevant point of time was working as U.D.C., having promoted from the post of Lower Division Clerk in the Military Land and Cantonments service. Under section 280 of the Cantonments Act, the Rules of 1983, which has been challenged, were framed by the Central Government. Rule 7 of the said rules provides as under:

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"(1) After the initial constitution of the service has been completed by the appointment of officers in accordance with rule 6 vacancies shall be filled in the manner as hereafter provided.

(2) 50 percent of the vacancies in the service shall be filled by promotion from Office Superintendent Grade I. Office Superintendents Grade II and Technical Assistants who have passed the Matriculation Examination from a recognised University/Board/School or equivalent and have rendered 20 years of total regular service. The selection shall be made on the basis of the examination held by the Director General, Military Lands and Cantonments in accordance with the scheme of examination as may be prescribed by the Government from time to time. The maximum number of chances which would be availed of by a candidate will be restricted to three.

(3) The remaining 50 percent vacancies in service shall be filled by transfer from among the employees of the Cantonment Boards drawing a basic salary of not less than Rs 425/- per month who have passed the Matriculation Examination from a recognised University/Board/School or equivalent and have rendered 20 years continuous service in the Cantonment Board. The Selection shall be made on the basis of the examination held by the Director General, Military Lands and Cantonments in accordance with the scheme of the examination as may be prescribed

ALL

CB  
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by the Government from time to time.

Note: While computing 20 years of qualifying service, experience of an employee in any other Department of the Central Government will be taken into account, provided he has been permanently absorbed in Military Lands and Cantonments service/Cantonments Boards, as the case may be."

The contention of the applicant is that although the applicants are drawing more salary but 50 percent posts have been reserved for others who are drawing lower salary and are to be appointed on transfer from Cantonments Boards and thus discrimination is being done between the employees of the department and outsiders and rules are thus discriminatory and arbitrary.

3. In the Counter affidavit by the ~~Railway~~ Administration, the position has been very clearly explained. It has been stated that the employees of the Defence Lands and Cantonments Services are departmental candidates for appointment as Cantonment Executive Officers (Group 'B') and they are Central Government employees. The Cantonment Board employees are not Central Government employees and in fact they serve under the autonomous body constituted by the Central Government as Cantonment Boards. The Cantonment Board employees are not liable to be transferred on All-India basis. The rules of 1983 were framed in order to have larger quotas and were more beneficial.

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HS

than the earlier one. Moreover, there is a basic difference between promotion and transfer. The employees of Defence Lands and Cantonments service being departmental candidates are to be considered for promotion and not for appointment on transfer.

4. Thus, factually, the position is very clear. The rule making authority i.e. the Government had full power to decide as to mode and methods, choice and qualification regarding the appointment in service and no challenge to the same can be made and instead of one source more in higher executive posts, not only to the departmental candidates but to the outsiders who have something to do some duties and who are also for something much to do under the Cantonment Act. The rules cannot be said to be unreasonable or arbitrary or in excess of the powers of the government. There is no merit in this application. Accordingly, this application is DISMISSED. No order as to costs.

*Shakeel*  
Adm. Member

*lu*  
Vice Chairman.

Shakeel

*Allahabad*  
Lucknow Dated 31 -7-91.

2

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

AT LUCKNOW

WRIT PETITION NO.

Y923  
OF 1983

7317

Narayan Prasad Tripathi

.. Petitioners

Versus

Union of India and others

.. Opposite parties.

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2.	Annexure I True copy of the Military Lands and Cantonments (Cantonments Executive Officers) Service (Group B) Rules 1983.	13 to 18
3.	Annexure II <sup>Letter of</sup> True copy of the Director General, Defence Lands and Cantonments, Ministry of Defence, New Delhi-110066 letter No.132/ 1/ADM/L&C dated 6th July, 1983.	19 to 20
4.	Affidavit	21 to 22
5.	Stay application	23
6.	Vakalatnama	24

Lucknow: dated:

8.9.1983

16

Ram Sewak Tripathi  
 (Pt. Ram Sewak Tripathi)  
 Advocate.  
 Counsel for the Petitioner.

The humble petition of the petitioner  
above named most humbly sheweth as under:-

1. That the petitioner initially joined as Lower Division Clerk in Military Lands and Cantonments Service in the year 1963. The petitioner earned promotion in the year 1970 and was promoted to the post of Upper Division Clerk. The petitioner has completed qualifying service of more than 20 years.
2. That the basic salary of the petitioner is Rs.452/- per month excluding other various allowances.
3. That the Military Lands and Cantonments Service is established u/s 280 (cc) of the Cantonments Act, 1924 (Act 2 of 1924), for supervision and administrative control of the Cantonment Boards, ~~this service constituted under the Cantonments Act, 1924.~~
4. That the next promotion to the petitioner is due to the post of Technical Assistant in the Service.
5. That the Central Government has framed rules under sub-section (1) of Section 280 of the Cantonments Act, 1924 with a view to constitute the Military Lands and Cantonments (Cantonment Executive Officers) Service (Group B), hereinafter referred to as Cantonment Executive Officers (Group B). True copy of the Military Lands and Cantonments (Cantonment Executive Officers) Service (Group B) Rules 1983 appearing in Gazette of India dated 11th February, 1983 issued by Ministry of Defence, is being annexed herewith as Annexure - I to the Writ Petition.



*Attn: [Signature]*

6. That rule 3 of Military Lands and Cantonments (Cantonment Executive Officers) Service (Group B) Rules 1983 reads as under:-

3. Constitution of the Military Lands and Cantonments (Cantonment Executive Officers) Service (Group B)- There shall be constituted a Service known as the Military Lands and Cantonments (Cantonment Executive Officers) Service (Group B) consisting of persons appointed to the Service under rules 6 and 7. All the posts included in the Service shall be classified as Group B posts.

7. That rule 4 further provides the authorised strength of the Service as 24.

8. That rule 5 reads as under:-

5. Members of the Service- (1) The following persons shall be the members of the Service:-  
 (a) Persons appointed to the Service at the commencement of these rules under rule 6 from the date of such commencement.  
 (b) Persons appointed to duty posts after the commencement of these rules from the date they are so appointed.

(2) -----

(3) -----



*[Handwritten signature]*

9. That rule 6 provides for the initial constitution of the Service which reads as under:-

6. Initial constitution of the Service-

(1) All Officers appointed to the posts of Cantonment Executive Officers (Group B) in the erstwhile Military Lands and Cantonments Service on regular basis on the date of commencement of these rules shall be deemed to have been appointed to the Service.

Note:- ---

(2) To the extent the authorised regular strength in the service is not filled at the time of the initial constitution, it shall be filled in accordance with rule 7.

10. That it is very clear from the foregoing rules that there are two channels for the initial constitution of the service namely:-

(i) Officers appointed to the posts of Cantonment Executive Officers (Group B) in the old service on regular basis shall be absorbed under the new Service on the date of commencement of new Rules;

(ii) The remaining posts which cannot be filled up in the manner stated above shall be filled according to rule 7.

11. That rule 7 reads as under:-

7. Future maintenance of the Service-

(1) After the initial constitution of the Service has been completed by the appointment of officers in accordance with rule 6 vacancies shall be filled in the manner as hereafter provided.

A  
21  
B12

(2) 50 percent of the vacancies in the Service shall be filled by promotion from Office Superintendent Grade I, Office Superintendents Grade II and Technical Assistants who have passed the Matriculation Examination from a recognised University/Board/School or equivalent and have rendered 20 years of total regular service. The selection shall be made on the basis of the examination held by the Director General, Military Lands and Cantonments in accordance with the scheme of examination as may be prescribed by the Government from time to time. The maximum number of chances which would be availed of by a candidate will be restricted to three.

(3) The remaining 50 percent vacancies in Service shall be filled by transfer from among the employees of the Cantonment Boards drawing a basic salary of not less than Rs.425 per month who have passed the Matriculation Examination from a recognised University/Board/School or equivalent and have rendered 20 years continuous service in the Cantonment Board. The selection shall be made on the basis of the examination held by the Director General, Military Lands and Cantonments in accordance with the scheme of the examination as may be prescribed by the Government from time to time. ....



*Atal Patel*

A 19

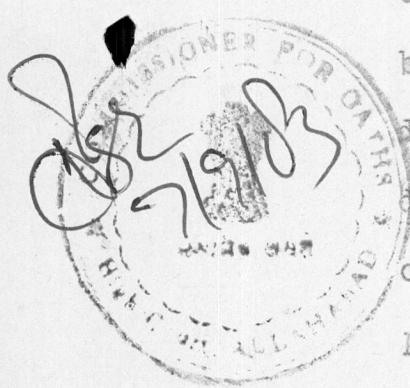
A  
52

Note:- While computing 20 years of qualifying service, experience of an employee in any other Department of the Central Government will be taken into account, provided he has been permanently absorbed in Military Lands and Cantonments Service/Cantonment Board, as the case may be.

(4) --- --- ---

12. That employees of Cantonment Boards drawing a basic salary of ~~Rs. 1000/-~~ Rs.425/- per month ~~who~~ have been ~~authorized and~~ made eligible to appear for promotion to the Service whereas employees of Military Lands and Cantonment Service excluding the persons mentioned in sub-rule 2 of rule 7, to which the petitioner belongs, have been debarred from appearing in the examination for departmental promotion resulting in hostile discrimination and other similar persons of the cadre of petitioner. It is further relevant to point out that under rule 7(2) of the Rules, only classified persons, ~~as~~ such Office Superintendent Grade I, Office Superintendents Grade II and Technical Assistants ~~who~~ are eligible to the ~~of the M.L.C. Service~~ promotional examination and other persons, including the petitioner, ~~of the Military Lands and Cantonments Service~~ are disqualified to appear in the said examination whereas employees of Cantonment Boards irrespective of any classification based on the status of the Service, are eligible to appear in the promotional examination.

*Attn: [Signature]*





A 20

A 23

13. That rule 7 sub-clause (3) segregates the employees of Military Lands and Cantonments Service to which the petitioner belongs from the employees of Cantonment Boards having no un-common qualification which is irrelevant to the purpose of the rules contained in Annexure-I of the Writ petition.

14. That rule 7 sub clauses (2) & (3)

~~handicap the petitioner from appearing~~ ~~make hostile~~  
~~discrimination as against the petitioner~~  
~~in the examination in two ways; firstly, it~~

~~petitioner, who is~~ ~~employees of~~  
~~The Cantonment Board drawing basic salary of Rs. 425/-, &~~  
~~petitioner from the field of eligibility by making~~  
~~classification namely, office Superintendent Grade-I,~~  
~~Office Superintendents Grade II and Technical~~  
~~Assistants; secondly, it makes hostile discrimination~~  
~~of the petitioner and~~  
~~by excluding to mention the persons in the cadre~~  
~~of petitioner in sub-rule (3) removing the petitioner~~  
~~from the field of eligibility enjoyed by the~~  
~~employees of the counter-parts namely, the employees~~  
~~of the Cantonment Boards irrespective of any cadre~~  
~~to which they belong.~~

15. That rule 7 sub-clauses (2) & (3) ~~is and~~

*para 15 A  
and 15 B in one  
dated 1/2/90  
QST Pathi  
10/3/90*  
 arbitrary and devoid of any intelligible differentia which distinguishes the employees of Cantonment Boards from the persons belonging to the cadre of the petitioner and further segregation of the persons belonging to the cadre of the petitioner and the petitioner himself is irrelevant to the purpose and object of the rules, namely, to open promotional avenues to the employees to boost inspiration and avoid stagnation.

.. 2 ..

(b) that the pay scale of the employees working in the Military Lands and Cantonments service has not been revised in 1979 and the un-revised pay scales are as follows :-

Office Supdt. Gr.I	.. Rs.550-20-650-25-750
Office Supdt. Gr.II	.. Rs.425-15-500-EB-560-20-700
T.A. (Technical Assistant)	.. Rs.425-15-560-EB-20-640
Upper Division Clerk	.. Rs.330-10-380-EB-12-500- 15-560

" 15-B - That the petitioner is getting salary of more than Rs.425/- per month as per unrevised scale and has put in more than 20 years of qualifying service. Similarly a junior clerk in the service of Cantonment Board after putting in 20 years regular service is getting less than Rs.425/- per month in the revised pay scale and in the like manner even the senior clerk and office Supdt. of different grades, in Cantonment service get less salary than the petitioner who belongs to Defence Lands & Cantonments service.

" 15(C) - That it is relevant to state that opposite party no.2 instead of declaring the result of the examination under challenge has made appointment of Cantonment Executive Officers from amongst the candidates who had applied for the examination held in 1983."

15.c. incorporated vide order  
dated 21.2.80

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16. That sub-rule (2) and (3) of rule 7 run counter to the letter and spirit of Article 14 and 16 of the Constitution snatching away the opportunity in the matter of public employment from the petitioner.

17. That the Director General, Defence Lands and Cantonments vide his letter No.132/1/ADM/L&C dated 6th July, 1983 circulated to all the authorities concerned that an examination for fulfilling the requirement of sub-rules (2) and (3) of rule 7 of the Rules for appointment as Cantonment Executive Officers (Group B) in the Military Lands and Cantonments Service shall be held on 4th and 5th August, 1983. A true copy of the aforesaid letter issued by the Director General, Defence Lands and Cantonments is being annexed as Annexure-II to the Writ Petition.

18. That the petitioner made several representations to the Ministry of Defence drawing attention to remove <sup>the</sup> vice in sub-rules (2) and (3) of rule 7 but to no effect.

19. That petitioner made application to the Director General, Defence Lands and Cantonments <sup>offering</sup> ~~offering~~ himself as a candidate for Examination alongwith other candidates on 18th July, 1983 within the prescribed time.

20. That no intimation to appear in the examination was sent to the petitioner and the examination was held on the scheduled dates i.e. 4th and 5th August, 1983 and the petitioner was deprived of the ~~opportunity~~ in the examination.

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21. That the petitioner entertains strong hope of success in the Writ Petition and in ends of the justice and fairness, it is necessary that declaration of the result of the examination held on August 4th and 5th, 1983 at National Institute of Management Accounts, Ayudh Path, Meerut Cantt. may be stayed, and opposite parties may be further directed not to make appointment in pursuance of the aforesaid examination.



22. That to the best knowledge of the petitioner, the result has not been declared so far.

23. That the petitioner having no alternative and efficacious remedy prefers this Writ Petition on inter alia the following grounds:-

#### G R O U N D S

1. That rule 7 sub clause (2) & (3) makes out hostile discrimination against the petitioner in removing the petitioner from the field of eligibility in the examination enjoyed by the counter parts of the petitioner, namely, employees of Cantonment Boards contrary to the letter and spirit of the Articles 14 and 16 of the Constitution.

2. That sub rules (2) & (3) of rule 7 do not stand to the test laid down for permissible classification and as such the same are liable to be struck down.

Ramswak Tripathi  
Adv.

3. That employees of Cantonment Boards drawing a basic salary of ~~not less than~~ Rs.425/- per month ~~who~~ have been authorised and made eligible to appear for promotion to the Service whereas employees of Military Lands and Cantonment Service excluding the persons mentioned in sub-rule 2 of rule 7, to which the petitioner belongs, have been debarred from appearing in the examination for ~~hostile~~ departmental promotion resulting in hostile discrimination ~~as against the~~ <sup>petitions</sup> and other similar persons of the cadre of Petitioner. It is further relevant to point out that under rule 7(2) of the Rules only classified persons such as Office Superintendent Grade I, Office Superintendents Grade II and Technical Assistants ~~who~~ are eligible to ~~the~~ appear in promotional examination and other persons, including the petitioner, of the Military Lands and Cantonment Service are disqualified to appear in the said examination whereas employees of Cantonment Boards irrespective of any classification based on the status of the Service, are eligible to appear in the promotional examination.

4. That rule 7 sub-clause (3) segregates the employees of Military Lands and Cantonments Service to which the petitioner belongs from the employees of Cantonment Boards having no uncommon qualification which is irrelevant to the <sup>contained</sup> purpose of the rules ~~claimed~~ in Annexure-I of the Writ Petition.

Ramdevan Tripathi  
Adv.

25. That rule 7 sub-clauses (2) & (3) of the Rule make hostile discrimination as against the ~~handicaps~~ the petitioner from appearing in the examination in two ways; firstly, it ~~petitions~~ excludes the ~~persons~~ similarly situate as the ~~employees~~ of the Cantonment Board drawing basic salary of Rs. 425/- ~~petitioner~~ from the field of eligibility by making classification, namely, Office Superintendent Grade I, Office Superintendents Grade II and Technical Assistants; secondly, it makes hostile discrimination by excluding ~~to~~ mention the ~~petitions~~ persons in the cadre of petitioner in sub-rule (3) removing the petitioner from the field of eligibility enjoyed by the employees of the Counter-parts, namely, the employees of the Cantonment Boards, irrespective of any cadre to which they belong.

#### P R A Y E R -

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

(i) Rule nisi.

(ii) Issue writ of mandamus commanding the opposite parties not to make any appointment in pursuance of the examination conducted under the letter and instructions contained in Annexure-II to the Writ Petition.

~~Declare sub rule (2) & (3) of~~

rule 7 of the Rules contained in

Annexure I as ~~unreasonable and discriminatory~~ <sup>unreasonable</sup> ~~ultravires~~

Constitution, null and void,

Ramdev Singhpal

Incorporated  
Court of  
H. 21.2.90

Answered 5/2  
one date 2/2/90  
Q Sripath  
16/2/90

" Direct the opposite party no.2 to appoint  
the petitioner to the post of Cantonment  
Executive Officer (Group-B) like others."

(iv) Make any other order or direction appropriate to the facts and circumstances of the case,

(v) Allow the writ petition with cost.

(vi) incorporated vide court's order dated

21.2.90 Q8 for P-16.3.90

(Please see  
on the left page)  
Q8 for P-16.3.90

Ram Sewak Tripathi

Lucknow: Dated

(Pt. Ram Sewak Tripathi)  
Advocate.

8.9. 1983.

Counsel for the Petitioners. .

Amendments have been  
incorporated in my presence  
as per Hon'ble Court's order  
D.S. 21.2.90. An amended  
Copy of the petition for  
Leave to file has been filed.  
16.3.1990.

AT LUCKNOW

WRIT PETITION NO.

OF 1983

Narayan Prasad Tripathi

- Petitioner

Versus

Union of India and others ..

Opposite parties.

ANNEXURE- I

MINISTRY OF DEFENCE

NOTIFICATIONS

New Delhi, the 11th February 1983.

S.R.O. 65 - Whereas draft of the Military Land and Cantonments (Cantonment Executive Officers) Service (Group-B) Rules 1982 was published with the notification of the Government of India in the Ministry of Defence No.S.R.O. 226 dated the 7th August 1982 in the Gazette of India, Part II, ~~date~~ Section 4 dated the 11th September 1982 as required by sub section (1) of Section 280 of the Cantonments Act, 1924 (2 of 1924) for inviting objections and suggestions from all the persons likely to be affected thereby till the 29th October 1982.

And whereas the aforesaid gazette was made available to the public on the 14th September 1982;

And whereas all the objections and suggestions received before the date specified have been duly considered by the Central Government.

Now therefore, in exercise of the powers conferred by Section 280 of the said Act the Central Government hereby makes the following rules namely:-

RULES.

1. Short title and commencement - (1) These rules may be called the Military Lands and Cantonments (Cantonment Executive Officer) Service (Group B ) Rules 1983.
2. They shall come into force on the date of their publication in the Official Gazette.

2. Definitions - In these rules unless the context otherwise requires -

(a) "Commission" means the Union Public Service Commission.

(b) "Departmental Promotion Committee" means a Committee constituted to consider promotion and confirmation in the Service;

(c) "Duty post" means a post, whether permanent or temporary included in sub rule (1) of rule 4.

(d) "Examination" means the examination which may be held by the Director General, Military Lands and Cantonments for appointment in the Service in accordance with the scheme of examination as may be prescribed by the Government from time to time.

(e) "Government" means the Government of India.

(f) "Regular Service" in relation to any grade means the period or periods of service in the grade rendered after selection according to the prescribed procedure for long term appointment to that grade and includes any period or periods -

(i) taken into account for purposes of seniority in the case of those appointed at the initial constitution of the Service;

(ii) during which an officer would have held a duty post in that grade but for being on leave or otherwise not being available for holding such posts;

(g) "Scheduled Castes" and "Scheduled Tribes" shall respectively have the same meaning as assigned to them respectively in clause (24) and (25) of article 366 of the Constitution.

(h) "Service" means the Military Lands and Cantonments (Cantonment Executive Officer) Service (Group B) constituted under rule 3.

3. Constitution of the Military Lands and Cantonments (Cantonment Executive Officers) Service (Group B) - There shall be constituted a Service known as the Military Lands and Cantonments (Cantonment Executive Officers) Service (Group B) consisting of persons appointed to the Service under rule 6 and 7. All the posts included in the Service shall be classified as Group B post.

4. Authorised strength of the Service and its review-1) The duty post included in the Service, their number and scale of pay on the date of commencement of these rules shall be as specified below:-



*Attn: Palw*

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Sl. No.	Name of the post	No. of posts scale of pay.
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(1)	Cantonment Executive Officer (Group B)	24	Rs.650-30-740- 35-810-EB-35- 880-40-1000- EB-40-1200
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(2) After the commencement of these rules the authorised permanent strength of the duty posts shall be such as may from time to time, be determined by the Government.

(3) The Government may make temporary addition or delections to the strength of the duty posts as deemed necessary from time to time.

(4) The Government may, in consultation with the Commission includes in the Service any post other than those included in sub rule (1) or exclude from the service a post included in the said sub rule.

(5) The Government may, in consultation with the Commission, appoint an officer whose post is included in the Service under sub rule (4) of this rule to the service in a temporary capacity or in a substantive capacity as may be deemed fit, and fix his seniority after taking into account continuous regular service in the analogous grade.

(6)

5. Members of the Services - (1) The following persons shall be the members of the Service:-

(a) Persons appointed to the Service at the commencement of these rules under rule 6 from the date of such commencement.,

(b) Persons appointed to duty posts after the commencement of these rules from the date they are so appointed.

(2) A person appointed under clause (a) of sub rule (1) shall on such commencement be deemed to be member of the Service in the corresponding grade.

(3) A person appointed under clause (b) of sub rule(1) shall be a member of the Service in the corresponding grade from the date of such appointment.

5. Initial constitution of the Service - (1) All officers appointed to the posts of Cantonment Executive Officers (Group B) in the erstwhile Military Lands and Cantonments Service on regular basis on the date of commencement of these rules shall be deemed to have been appointed to the Service.

Note. The regular continuous service of officers mentioned in sub rule (1) prior to their appointment to the Service shall count for the purposes of qualifying service for promotion, confirmation and pension in the service.

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(2) To the extent the authorised regular strength in the service is not filled at the time of the initial constitution, it shall be filled in accordance with rule 7.

7. Future maintenance of the Service (1) After the initial constitution of the Service has been completed by the appointment of officers in accordance with rule 6 services shall be filled in the manner as hereafter provided.

(2) 50 per cent of the vacancies in the Service shall be filled by promotion from Office Superintendent Grade-I, Office Superintendents Grade II and Technical Assistants, who have passed the Matriculation Examination from a recognised University/Board/School or equivalent and have rendered 20 years of total regular service. The selection shall be made on the basis of the examination held by the Director General, Military Lands and Cantonments in accordance with the scheme of examination as may be prescribed by the Government from time to time. The maximum number of chances which would be availed of by a candidate will be restricted to three.

(3) The remaining 50 per cent vacancies in the Service shall be filled by transfer from among the employees of the Cantonment Boards drawing a basic salary of not less than Rs.425/- per month who have passed the Matriculation Examination from a recognised University/Board/School or equivalent and have rendered 20 years continuous service in the Cantonment Board. The selection shall be made on the basis of the examination held by the Director General, Military Lands and Cantonments in accordance with the scheme of the examination as may be prescribed by the Government from time to time. The maximum number of chances which could be availed by a candidate will be restricted to three.

*Signature*  
Note. While computing 20 years of qualifying service experience of an employee in any other Department of the Central Government will be taken into account, provided he has been permanently absorbed in the Military Lands and Cantonments Service/ Cantonment Board, as the case may be.

*Signature*  
(4) The selection of officers for promotion and confirmation shall be made on the recommendation of the Departmental Promotion Committee constituted in accordance with the composition specified below:-

1. Joint Secretary(P&W) Ministry of Defence. - Chairman
2. Director General/Deputy Director General ML&C - Member.
3. Chief Administrative Officer, Ministry of Defence. - Member.

Note-1 : The proceedings of the DPC relating to confirmation shall be sent to the Commission for approval. If, however, these are not approved by the Commission, a fresh meeting of DPC to be presided over by the Chairman of a member of the UPSC shall be held.

Note-2: If an officer is considered for the purpose of appointment to the Service, all persons senior to him in the grade shall also be considered notwithstanding that they may not have rendered the requisite number of years of service.

8. Probation- (1) Every persons on appointment to the probation in accordance with the instruction issued by the for a period of two years.

Provided that the Government may extend the period of probation in accordance with the instruction issued by the Government from time to time:

Provided further that the decision regarding the ~~experience~~ extension of probation period should be taken immediately after the expiry of the initial probationary period (ordinarily within a period of 6 to 8 weeks) and communicated to the employee together with the reason in case of any extension in the probationary period.

(2) On completion of the period of probation persons shall if considered fit for permanent appointment be retained in their appointment on regular basis and be confirmed in due course against the available substantive vacancies, as the case may be-

(3) If, during the period to probation referred to in sub rule (1) or any extension thereof, as the case may be the Government is of the opinion that a candidate is not fit for permanent appointment or if at any time during such period of probation, or extension thereof, the Government is satisfied that the candidate will not be fit for permanent appointment on the expiry of such period of probation or extension thereof, the Government may discharge or revert the candidate to his substantive post as the case may be.

(4) During the period of probation the candidates may be required by the Government to undergo such course of training and instructions and to pass such examinations and tests (including examination in Hindi) as it may deem fit as a condition of satisfactory completion of the probation.

9. Appointment to the Service, postings and transfer of members of the Service - All appointments to the Service shall be made by the Government and postings and transfers of the members of the Service shall be made by the Director General, Defence Lands and Cantonments.

10. Liability for service in any part of India and other conditions of service - (1) Officers appointed to the Service shall be liable to serve anywhere in India or outside.

(2) Officers, if deputed, shall be liable to serve in any other Ministry/Department of the Government or Corporations and Industrial Undertakings of the Government;

(3) The conditions of service of the members of the service in respect of matters for which no provision is made in the rules shall be the same as are applicable from time to time, to officers of Central Civil Service in general.

11. Disqualifications - No Person -

(a) who has entered into or contracted a marriage with a person having a spouse living; or

(b) who, having a spouse living has entered into or contracted a marriage with any person

shall be eligible for appointment to the Service.

Provided that the Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party for the marriage and that there was other grounds for so doing, exempt any person from the operation of this rule.

12. Power to relax - Where the Government is of the opinion that it is necessary or expedient so to do, it may be order, for reasons to be recorded in writing and in consultation with the Commission, relax any of the provisions of these rules with respect to any class or category persons.

13. Saving - Nothing in these rules shall affect reservations, relaxation of age limit and other concessions required to be provided for persons belonging to the Scheduled Castes and the Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Government from time to time.

14. Interpretation- If any question relating to interpretation of these rules arises, it shall be decided by the Government.

15. Repeal - The Military Lands and Cantonments Service (Group A and Group B) Rules 1951 as amended from time to time and in so far as they relate to posts to which these rules are applicable are hereby repealed:

Provided that such repeal shall not affect anything done or action taken under the said rules, before such repeal.

(File No. 103/44/ADM/L &C(PC).

IN THE HON'BLE COURT OF JUDICATURE AT ALLAHABAD  
AT LUCKNOW

Writ Petition No.

of 1983.

Narayan Prasad Tripathi

....Petitioner

Vs.

Union of India & others

...Opposite Parties.

Annexure-II

MOST IMMEDIATE

NO. 132/1 ADM/L&C

Government of India,

Ministry of Defence (Dte. General, DL&C)  
New Delhi, the 6 July 1983.

To

The Director, DL&C the Commands,  
All Deputy Directors, DL&C (Ind)  
All Military Estates Officers (Ind. ULC & Acq)  
All Cantonment Executive Officers  
All Assistant Military Estates Officers (Ind).

Subject:- HOLDING OF COMMON COMPETITIVE EXAMINATION FOR  
SELECTION OF GROUP C EMPLOYEES OF THE M&C  
SERVICE CANTONMENT FUND SERVANTS FOR APPOINT-  
MENT AS CANT. EXECUTIVE OFFICERS (GROUP B).

It has been decided to hold a common competitive examination as prescribed under sub-rule 2(d) of the Military Lands and Cantonments (Cantonment Executive Officers) Service (Group B) Rules 1983 for selection of Group C employees of the M&C Service/Cantt. Fund servants, fulfilling the requirements of sub-rules (2) and (3) of Rule 7 of the Rules ibid, for appointment as Cantonment Executive Officers (Group B) in the M&C Service in the office of the Additional Director, National Institute of Management and Accounts, Ayudh path, Meerut cantt on 4th and 5th August, 1983. The examination shall be held on the syllabus prescribed by the Government under their letter No. 131/29/ADM/L&C/976-S/D (Appts), dated 21.4.1983, copy already circulated under letter No. 131/29/ADM/L&C dated 7.5.83.

Contd..... 2 ...



*Patwari*

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2. All eligible employees serving under your jurisdiction including the officials serving as Cantonment Executive Officers (Group B) on ad-hoc basis, may please be advised to submit their ~~ka~~ applications in the enclosed proforma to this Directorate General latest by 27th July 1983, after getting necessary endorsement made by their immediate Superior officer directly with copy to concerned Director, DL&C of the Command.

3. Applications received after due date will not be entertained in any event.

Sd/- x x x xx  
Director General  
Defence Lands and Cantonments.

Copy to:-

The Additional Director,  
N.I.M.A. Meerut Cantt. - for information and taking  
necessary action.

All sections in the Dte. General.

True Copy.



IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

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AT LUCKNOW

WRIT PETITION NO. OF 1983

Narayan Prasad Tripathi

.. Petitioners

Versus

Union of India and others

.. Opposite parties

### AFFIDAVIT

I Narayan Prasad Tripathi aged about 42 years S/O Late Sri Bhagwat Prasad Tripathi, resident of 31, Old Haidarganj, Victoriaganj, Lucknow hereinafter described as deponent do hereby solemnly affirm and state on oath as under:-

- (1) The deponent is the petitioner himself and is well conversent with the facts and circumstances of the case,
- (2) That the contents of paragraphs 1 to 13, 17 to 23 are believed to be true on personal knowledge of the deponent and contents of paragraphs 14, 15 to 16 are believed to be true on legal advice of the Counsel,
- (3) That Annexures I and II are the true copies of the respective documents which have been ~~being~~ compared with their originals.



Lucknow dated:

27-9-1983

*Narayan Prasad Tripathi*  
Deponent.

Verification

I, the deponent above verify that paragraphs 1 to 3 of the affidavit are true. Nothing stated is false and untrue. So help me God.

Lucknow: dated:

*N.P. Talyari*  
Deponent.

27-9- 1983.

I, identify the deponent who has signed before me.

*Ramdev Nath Talyari*

Advocate.

Solemnly affirmed before me on 2-9-83  
at 11.00 a.m./p.m. by Shri N.P. Talyari  
the deponent who is identified by Shri R.S. Tripathi  
Advocate, High Court, Allahabad, Lucknow Bench, Lucknow.

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

*Asif*

**OATH COMMISSIONER**

High Court, Allahabad

Lucknow Bench

32/388/83  
7-9-83

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
CIRCUIT BENCH AT LUCKNOW.

COUNTER-AFFIDAVIT ON BEHALF OF  
OPPOSITE PARTIES NO. 1 TO 3.



In re

T.A. NO. 1615 OF 1987.

Narayan Prasad Tripathi. ... .. Petitioner/Applicant

VERSUS

Union of India and others. .. Respondents/Opposite-  
Parties.

*I, Narayan Prasad, aged about 42 years, son of late  
Shri Buda Singh, Deputy Director, Defence  
Estates, Headquarter Central Command, Lucknow Cantt.  
do hereby solemnly affirm and state on oath as under :*

*W 1/2*

1. That the deponent is Deputy Director, Defence Estates, Headquarter Central Command, Lucknow Cantt. and is thus competent to swear this counter-affidavit on behalf of respondents/opposite-parties no. 1 to 3. The contents of the petition have been read over and explained to the deponent who has understood the same and its parawise reply is under.
  
2. That the contents of paras 1 to 11 of the petition are not disputed.
  
3. That the contents of para 12 of the petition as stated are denied. It is further submitted that the employees of the Defence Lands and Cantonment services are departmental candidates for appointment as Cantonment Executive Officers (Group 'B').

*verified*

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and they are Central Government employees. The Cantonment Board employees are not Central Government employees and in fact they serve under the autonomous body constituted by the Central Government as Cantonment Boards. The Cantonment Board employees are ~~not~~ liable to be transferred on All-India basis/like Defence Lands and Cantonments Service employees. It is also submitted that there is no provision for the inclusion of the Cantonment Board employees for competing for appointment as Cantonment Executive Officers (Group 'B') under the rules. The rules of 1983 were framed in order to have larger quotas and were more beneficial than the earlier one. Moreover, there is a basic difference between promotion and transfer. While in promotion, departmental candidates in the ~~next~~ lower grade or one more step below are to be considered. In the case of transfer, the ~~officers~~ officers are to be absorbed permanently in the posts. In such cases permanent arrangements are to be made without resorting to the method of open direct recruitment and to select the best person available in the feeder grade prescribed for the purpose. It is within the discretion of Government to fix the field of choice for such appointment on transfer. The necessity for throwing open the posts of Cantonment Executive Officers (Group 'B') to the employees of the Defence Lands and Cantonments Service serving in the grades of Rs 330-560 or Rs 260-400 has not been considered necessary as it would lead to premature promotion before the employees can



*ved*

readily demonstrate their competence/potential for holding the higher posts for which the method of appointment is through promotion. In view of this, the employees of the Defence Lands and Cantonments Service, who are not in a pay scale starting from Rs 425.00 cannot be included in the field of promotion due to the reasons stated above. Moreover, there is no anomaly in the case as separate quotes for both the categories have been prescribed and the Cantonment Board employees are to be considered against their quota vacancies only. It is also stated that there is a basic difference between the provisions of the 1951 Rules and the 1983 Rules.

Unlike the provisions of Rule 5(e) of the 1951 Rules, the common competitive examination to be held under Rule 7 of the 1983 Rules is a competitive examination and it is necessary to have large field of competition in respect of Cantonment Board employees so as to attract best person available for appointment. No such benefit can be extended to the petitioner or similarly placed employees who are departmental candidates and can only be appointed as Cantonment Executive Officer (Group 'B') on their promotion. No hostile discrimination has been shown to any body as alleged. It may be pointed out that similar differences existed between Cantonment Board employees and Defence Lands and Cantonments Staff under the repealed 1951 Rules also. The Central Government in exercise of the powers conferred by the provisions to Article 309 of the Constitution and in supersession of the Military Lands and Cantonments



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(Cantonment Executive Officers) Service (Group 'B') Rules, 1983 has framed the Defence Estates Service (Cantonment Executive Officers (Group 'B') Recruitment Rules, 1987. ✓

4. That with respect to the contents of para 13 of the petition it is submitted that as both the categories of employees are to be appointed by different methods for which separate provisions have already been provided under Rules 7(2) and 7(3) of the 1983 Rules.
5. That with respect to the contents of para 14 of the petition it is submitted that Rules 7(2) and 7(3) of the Rules do not make hostile discrimination against any body including the petitioner who is placed similar to a Cantonment Board employee as the conditions of service in respect of both the categories are different and are governed by different sets of Rules. Rule 7(3) relates to Cantonment Board employees and the petitioner being an employee of the Defence Lands and Cantonments Service cannot be covered under this sub-rule. Being a departmental employee, he can only be considered for promotion and the field of choice for promotion to the post of Cantonment Executive Officer (Group 'B') can be retained to immediate lower grades in order to avoid premature promotion as well as undue jump in grades. With this in view, the categories of employees serving as Upper Division Clerks and Lower Division Clerks in the field of choice, for promotion. It is denied that there is any parity between the Defence Lands and Cantonments Service and Canton-



*Madhu*

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ment Board employees. There was no such parity under the old Rules also and this position was never challenged by the petitioner. Both belong to separate cadres and cannot be given equal treatment in any way.

6. That the contents of para 15 of the petition are denied. It is specifically denied that provisions of sub-rules (2) and (3) of Rule 7 are arbitrary and devoid of any intelligible differentia as alleged by the petitioner. It has already been ~~made~~ made clear that the Cantonment Board employees, being not Central Government employees cannot be promoted and are to be appointed on transfer basis. As such, separate provisions for both the categories of employees have rightly been provided and are not to be examined ~~as~~ in conjunction with each other as the basic conditions of services are different.

7. The employees of Defence Lands and Cantonments Service being departmental candidates are to be considered for promotion and ~~as~~ not for appointment on transfer. As has been explained earlier, field of choice for promotion has to be restricted to a suitable level so as to avoid undue jump in pay and premature promotion and also to ensure that the officials have sufficient experience and competence for holding the higher posts for which the method of appointment is through promotion. Moreover the existing provision had existed in the 1951 Rules and the ~~same~~ has been retained in its original spirit. No segregation has been made between the persons belonging to



*See further*

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then Defence Lands and Cantonments Service as alleged by the petitioner. The Central Government have only kept the field of choice at a level deemed to be appropriate for consideration of employees for promotion. This is most important for efficiency and quality of administration. In no other Department, Upper Division Clerks and Lower Division Clerks in the pay scales of Rs 350-560 and Rs 260-400 have been allowed to compete with senior officials for promotion to a Gazetted post, having higher responsibilities to shoulder by the incumbents. It is also added that the discretion of the Government in providing field of choice for promotion to higher posts (including change in class of post from Group 'C' to Group 'B') cannot be disputed when the employees of the Cantonment Boards are not to be appointed through the procedure as provided for the departmental employees.

*See further*



7. That with respect to the contents of para 16 of the petition it is submitted that the provisions of sub-rules (2) and (3) of Rule 7 are not running counter to the letter and spirit of Articles 15 and 16 of the Constitution as alleged by the petitioner as the modes of appointment under these sub-rules are different and are for catering to the requirement of different categories of ~~any~~ employees. Separate provisions have rightly been provided and are in accordance with law.

8. That the contents of para 17 of the petition need no comments.

9. That with respect to the contents of para 18 of the petition it is submitted that only a representation purporting to be an objection to the draft rules has been received from the petitioner much after the expiry of the date notified for receipt of objection. No other representation has been received by the Government as alleged by him.
10. That the contents of para 19 of the petition are not disputed. It is further submitted that the case of the petitioner was not covered under ~~this~~ Rule 7(2) and hence was not to be entertained.
11. That with respect to the contents of para 20 of the petition it is submitted that the need for sending any reply to the petitioner was not felt as it was explicitly clear from the plain reading of Rule 7(2) that he was not to be considered as a candidate for appearing in the examination and as such, he was not allotted any Roll Number as it would have amounted to infringement of the provisions of the Rules.
12. That with respect to the contents of paras 21, 22 and 23 of the petition it is submitted that the petition has no force. The grounds taken in the petition are untenable. In view of the submissions made above it is submitted that the applicant is not entitled to any of the reliefs claimed and the present petition may kindly be dismissed with costs as it has no legal force

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD)

CIRCUIT BENCH AT LUCKNOW

T.A. No. 1615 of 1987

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NARAYAN PRASAD TRIPATHI .... Petitioner

Versus

UNION OF INDIA & OTHERS .... Opposite Parties

REJOINDER AFFIDAVIT

TO THE COUNTER AFFIDAVIT FILED BY OPPOSITE PARTIES 1 TO 3.

I, Narayan Prasad Tripathi, aged about 48 years son of Late Sri Bhagwat Prasad Tripathi, resident of 31 Old Haider Ganj, Victoriaganj, Lucknow, herein-after described as 'deponent' do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the petitioner himself in the above mentioned TA case and is well conversant with the facts and circumstances of the case. The deponent has read the contents of the counter affidavit and has understood the same.
2. That as regards paragraphs 1 and 2 of the counter affidavit, the allegations thereof need no comments.
3. That as regards the allegations of paragraphs 3 of the counter affidavit, it is not denied that the Cantonment Board is an Autonomous Body and the employees of the same are not liable to be transferred from one Cantonment Board to other Cantonment Board and also the Defence Lands and Cantonments Service

X/8

(2)

(previously known as Military Lands & Cantonments Service) is distinct and separate service constituted in pursuance of Section 280(CC) of the Cantonments Act 1924. It is relevant to indicate here that the petitioner belongs to the cadre of Defence Lands and Cantonments service mentioned above. However, it is emphatically denied as misconceived that the appointment to the service of Cantonment Executive Officers (Group 'B') is made through promotion from amongst the employees of the Defence Lands & Cantonments Service. It is further relevant to state that Rule 7 of the Military Lands and Cantonments (Cantonment Executive Officer) Service (Group 'B') Rules 1933 provides for direct recruitment to the service through the process of Competitive Examinations. It is further denied that the employees of Cantonment Board drawing the salary of Rs.425/- per month demonstrate better competence and potentiality. It is further relevant to state that the petitioner belongs to the grade of Upper Division Clerk getting basic salary of Rs.1560/- per month whereas the counter part employees of the Cantonment Board are getting basic salary much less than the petitioner. The Defence Lands and Cantonments Service is the Centralised Service and the petitioner enjoys better pay scale and length of service as compared to the employees in the Cantonment Board which is statutory and Autonomous Body controlled entirely by the Cantonments Act, 1924. It is further relevant to state that the object of holding competitive Examination is to attract the best candidates and as such exclusion of petitioner is arbitrary. It is wrong to say that there is any promotion avenue open to the petitioner to the post of Cantonment Executive Officer (Group 'B') as the recruitment to the service is made by direct appointment through the Competitive Examination.

(3)

It is further stated that the provisions of Defence Estates Service (Cantonment Executive Officer (Group 'B')) Recruitment Rules 1987 are arbitrary and discriminatory in the like manner as the provisions of the old Rules.

4. That as regards the allegations made in paragraph 4 of the counter affidavit, it is stated that Rule 7 is discriminatory and runs counter to the letter and spirit of Articles 14 and 16 of the Constitution.

5. That as regards paragraph 5 of the counter affidavit the allegations thereof are misconceived and are denied to be true. It is further stated that right to appear in the examination has been conferred on the Upper Division Clerk of the Cantonment Board whereas the same opportunity has been denied to the petitioner despite the fact that nature of work is the same. It is further stated that the appointment to the service is not made through promotion as suggested by the answering opposite parties. The field of eligibility is extended to the employees of the Cantonment Board and as such it is unreasonable to preclude the petitioner from the field of eligibility. In further reply the allegations made in paragraph 14 of the petition are reiterated.

6. That as regards paragraph 6 of the counter affidavit, the allegations thereof are misconceived and are denied to be true. It is absolutely wrong to say that employees of Cantonment Board exhibit better competence and possess special merit and are more experienced. It is further stated that the service constituted under the 1983 rules was equivalent to the Cantonment Executive Officer Class II and Assistant Military Estates Officers constituted under Rule 5(b) of the 1951 Rules. It is further stated that the petitioner had no occasion to challenge the discriminatory provisions under the 1951 rules as the petitioner

had not completed the length of service under the Rules 1951. It is further denied that the Cantonment Fund Employees possess better qualification and merit as suggested. In further reply the allegations made in paragraph 15 of the petition are reiterated.

7. That as regards paragraph 7 of the counter affidavit, the allegations made are misconceived and are denied. The correct position has been stated in the foregoing paragraphs of this affidavit.

8. That paragraph 8 of the Counter Affidavit needs no comments.

9. That the allegations made in paragraph 9 of the counter affidavit are not correct and as such are denied. The petitioner has constitutional right to challenge the validity of the Rules.

10. That as regards paragraph 10 of the counter affidavit, it is stated that the Rule 7 is discriminatory.

11. That as regards paragraph 11 of the counter affidavit the provisions of Rule 7 are arbitrary and non-<sup>est</sup> in the eyes of law.

12. That as regards paragraph 12 of the counter affidavit, the allegation made therein are denied. In further reply the allegation made in paragraphs 21, 22 and 23 of the petition are reiterated.

13. That it is relevant to state that the Rules of 1983 were framed under Section 280(CC) of the Cantonments Act, 1924 and had the status of statutory rules. The rules framed in November 1987 known as Defence Estates Service (Cantonment Executive Officer (Group 'B')) Recruitment Rules 1987 purported to have been framed under Article 309 of the Constitution are merely executive instructions and the Central Government <sup>1983 Rules</sup> has no power to alter the same to the prejudice of the

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(5)

petitioner during the pendency of this petition.

14. That the opposite party No.2 without declaring the results of Examination held by him in pursuance of the Notification dated 6th July 1983 ~~ppm~~ contained in Annexure No. 2 to the petition, has made direct appointment of the persons who had applied for the examination. The petitioner is also entitled similar appointment as the counter part Upper Division Clerks serving in the Cantonment Board have been absorbed in the service in the Cadre of Defence Estates Organisation Cantonment Executive Officer (Group-B) Service.

Lucknow, dated  
December, 1989

Deponent

VERIFICATION

I, the deponent above named do hereby verify  
that the contents of paragraphs 1 to ~~14~~<sup>3,5 to 12 and 14</sup> of this  
rejoinder affidavit are true to the knowledge of the  
deponent, and the allegations of paras 4 and 13 are believed to be true on legal advice. Nothing stated is false and untrue. So help  
me God.

Lucknow, dated  
Dec. 1989

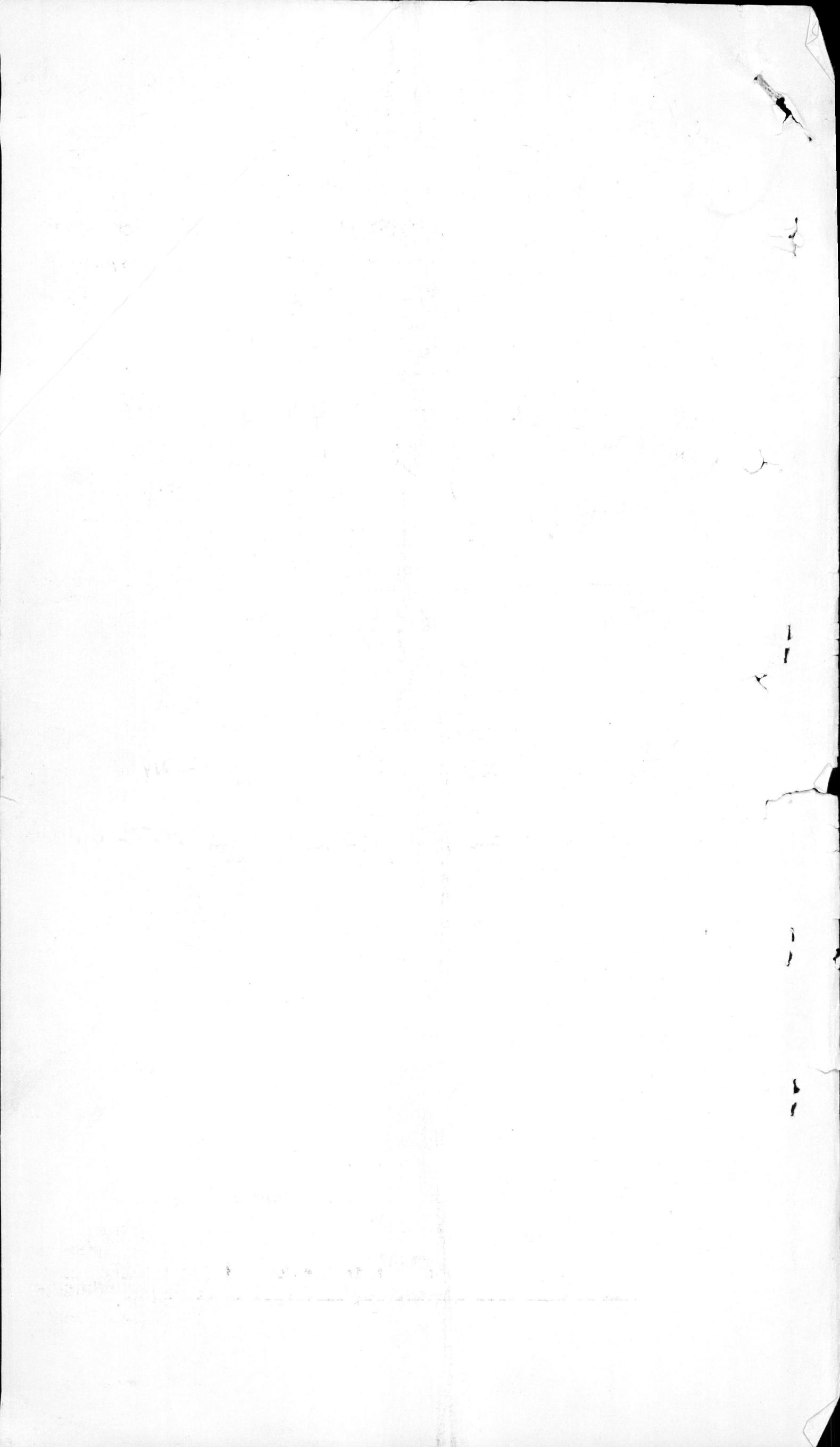
Deponent

I identify the deponent who has signed  
before me.

Advocate

Solemnly affirmed before me on  
at a.m./p.m. by the deponent  
who is identified by Shri R.S. Tripathi, Advocate.

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



Aug  
In the Hon'ble High Court of Judicature  
at Hyderabad

ब अदालत श्रीमान

At Lucknow

महोदय

पर



का वकालतनामा

Ref. No.  
Rev. No. 83

of 1983

Narain Prasad Tripathi — फैलाई  
बाड़ी (मुद्दई)

बनाम

Union of India (राज्य)

प्रतिवादी (मुद्दालेह)

नं० मुकदमा सन् १९ पेशी की ता० १९ ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री

Pt. Ram Sevak Tripathi एडवोकेट

महोदय

वकील

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और  
लिखे देता हूँ इस मुकदमा में वकील महोदय स्वयं अथवा अन्य  
वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या अन्य  
कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी  
जारी करावें और रुपया वसूल करें या सुलहनामा या इकबाल  
दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने  
हस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा उठावें  
या कोई रुपया जमा करें या हमारी या विपक्ष (फरीकसानी) का  
दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युवत (दरतरुती)  
रसोद से लेवें या पंच नियुक्त करे - वकील महोदय द्वारा वी  
गई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं  
यह भी स्वीकार करता हूँ कि मैं हर पेशी स्वयं या किसी  
अपने पैरोकार को भेजता रहूँगा अगर मुकदमा अदम पैरवी  
में एक तरफा मैरे खिलाफ पैसला हो जाता है तस्वीर जिसमें  
दारी मेरी वकील पर न होगी। इसलिए यह वकालतनामा  
लिख दिया कि प्रमाण रहे और समय परकाम आवे।

हस्ताक्षर *[Signature]*

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

दिनांक ..... महीना

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X-48  
-8-

and merits.

Lucknow dated

*Neelkanth*  
Deponent

On behalf of the Respondents/Opposite-  
22-8 , 1989. Parties.

### VERIFICATION

I, the above-named deponent do hereby verify that the contents of paras 1 to 11 of this counter-affidavit are true to my own knowledge based on perusal of relevant records and documents and the contents of para 12 of this counter-affidavit are believed by me to be true on the legal advice tendered and no part of it is false and nothing material has been concealed, so help me God.



Signed and verified this 22<sup>th</sup> day of August  
1989 in the Court Compound at Lucknow.

*Neelkanth*  
Deponent  
On Behalf of the Respondents/Opposite-  
Parties.

I identify the deponent who is personally known to me and who has signed in my presence.

*M*  
(Mohan Lal)  
Clerk to Shri U.K. Dhaon  
Additional Standing Counsel  
Central Government.

Voluntary & stated on 22-8-89 at  
9.13 AM by the defendant, Ved Prakash,  
who has been identified by Sri Molan Lal  
C/o Sri N. K. Dhan, Advocate, High Court  
Bench, Lucknow.

I have satisfied myself by  
explaining to the defendant that he understands  
the contents of this affidavit.

R.P.

R P. SINGH  
Notary Commissioner, Lucknow, Allah  
Bench

Reg. No. 91

Date 22-8-89

189  
C189  
OK  
Registered

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

No. CAT/CB/LKO/

1283 To. 1285

Dated the

Registration T.A. No. 1615/87 of 198 (T)

Narayan Prasad Tripathi

Applicant's

Versus

Union Of India & Others.

Respondent's

To.

1. Narayan Prasad Tripathi, S/O Late Shri Bhagwat Prasad Tripathi, Resident of 31, Old Haidarganj, P.O. Victoriaaganj, Distt. Lucknow.

2. Union Of India through the Secretary, Ministry of Defence New Delhi.

Whereas the marginally noted cases has been transferred by High Court Lucknow under the provision of the Administrative Tribunal Act 13 of 1985 and registered in this Tribunal as above.

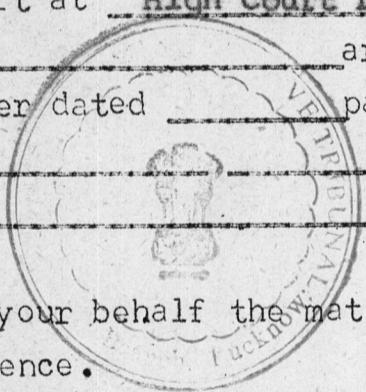
Writ Petition No. 4923/83

of 198 of the

Court at High Court Lucknow.

of arising out

order dated passed by

 in

The Tribunal has fixed

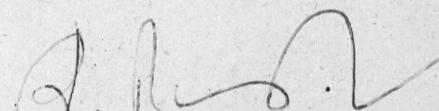
Date of 22-5-89

The hearing of the matter.

If no appearance is made on your behalf by your some one duly authorised to Act and

on your behalf the matter will be heard and decided in your absence.

Given under my hand and seal of the Tribunal this 10 th day of May. 89.

  
For Deputy Registrar (J)

dinesh/

① Received 22/5/89  
R.P. (A.P. 10/5/89)

3. The Director General, D.L.C.  
Ministry of Defence - Block-4, Sector-1, New Delhi. 110066.

4. The Additional Director  
National Institute of Management  
and Accounts, Ayudh Path  
Meerut Cantt.