

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

INDEX SHEET

CAUSE TITLE 403 of 1987 (T)
W.P. 3002/79

NAME OF THE PARTIES

S. C. Sharma Applicant

Versus

U. O. I. Respondent

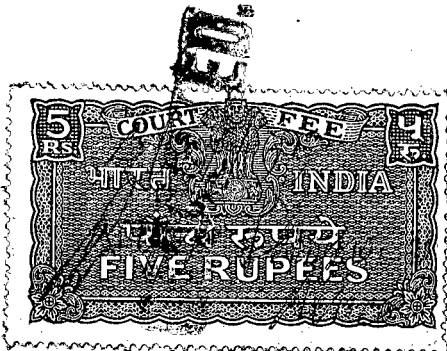
Part A, B & C

Sl. No.	Description of documents	PAGE
<u>A. file</u>	Order of	A-1 to A-4
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Certified that no further action is required to take and that the case is fit for closure and sent to the record room.

Per Clerk
01/01/79

50 (3)



IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH LUCKNOW

Civil Misc. (Stay) Application No. 6893 of 1979
(Under Section 151 of Civil Procedure Code)
on behalf of

Subhash Chandra Sharma

----- Applicant

in

Civil Misc. Writ Petition No. 3082 of 1979
(District Lucknow)

1. Subhash Chandra Sharma s/o Late Hukam Chandra
Sharma, r/o 512/404 3rd Lane, Nishatganj, Lucknow.
----- Petitioner

Versus

1. Union of India
2. ~~Chairman~~ Chairman, Central Board of Direct Taxes, New Delhi
3. Commissioner of Incometax (Cadre Controlling
Authority) Allahabad / Lucknow
4. C.D. Shukla, stenographer (selection grade) aged
35 years s/o Prabhu Dayal c/o Office of the
Inspecting Asstt. Commissioner of Incometax,
Allahabad
5. Har Saran Lal aged 27 years s/o Babu Ram c/o
Office of the Appellate Assistant Commissioner of
Incometax, Moradabad.
6. K.C. Nandi, Steno, Office of the Chief Commandant,
Mana Group of Transit Centres, (Department of
Rehabilitation), Mana Camp, Raipur, M.P.

----- Respondents

Sharma

(Chapter XLI, Rules 2, 9 and 15)

Nature and number of case *W.P. No. 3082-79*Name of parties *Subhas Chandra Sengupta vs. Union of India*Date of institution *5-11-79* Date of decision

File no.	Serial no. of paper	Description of paper	Number of sheets	Court-fee		Date of admission of paper to record	Condition of document	Remarks including date of destruction of paper, if any
				Number of stamps	Value			
1	2	3	4	5	6	7	8	9
					Rs. P.			
	1	W.P. with affidavit and Annexure	48		102-00			
	2	Power -	1-		5-00			
	3	Comdr. 6893(W) of 79 to 84	2-		5-00			
	4	Comdr. 5454(W) of 80 for Amendment	9-		7-00			
	5	Amended Copy	20-		-			
	6	Memo -	1-		-			
	7	order Sheet	2-		-			
	8	Bond copy	1-		-			

I have this day of 197, examined the record and compared the entries on this sheet with the papers on the record. I have made all necessary corrections and certify that the paper correspond with the general index, that they bear Court-fee stamps of the aggregate value of Rs. that all orders have been carried out, and that the record is complete and in order up to the date of the certificate.

Munsarim.

Clerk.

Date.....

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

FORM OF INDEX

~~D.A./T.A./B.A./C.C.P./~~ No. 403 --- 19 87

S.C. Sharma, Vs. U.O.

PART - I

- | | | | |
|----|------------------|----|-------------------------------|
| 1. | Index Papers | :- | 1 to 4 |
| 2. | Order Sheet | :- | 5 to 16 |
| 3. | Any other orders | :- | 17 |
| 4. | Judgement | :- | 18 (512.89) DFD (CAT. I.K.O.) |
| 5. | S.L.P. | :- | — |

Dr. Registrar

Supervising Officer

Dealing Clerk

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

Nil

Dealing Clerk

V.K. Mishra

To

The Hon'ble the Chief Justice and his
companion Judges of the aforesaid court.

The humble petition of the applicant /
petitioner abovenamed

MOST RESPECTFULLY SHOWETH:-

That the applicant is filing a writ petition in
the Hon'ble Court challenging the promotion of
Respondents No. 4, 5 and 6 who have been
promoted vide the impunged orders contained in
Annexures IV and IX to the writ petition.

2. That the respondent no.6 has so far not
joined and one post is still lying vacant.

3. That it is in the interest of justice that
the operation of impunged order dated 31.7.1979
(Annexure IX) to this writ petition) may be
stayed otherwise the applicant will suffer
irreparable loss and injury which cannot be made
good in the event of his success in the above
mentioned writ petition.

PRAYER

It is, therefore, most respectfully prayed
that this Hon'ble Court be pleased to stay the
operation of the impunged order dated 31.7.1979
(Annexure IX to this writ petition) and ad-interim
order to that effect be granted.

Dated: 2/XI/79

R Sharma
Counsel for the Appellant.
(RAJIV SHARMA)

ORDER SHEET
IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
 C.P. No. 3082 of 1979

⑦ C-298

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
	<p>Hon. T.S. Misra J.</p> <p>Hon. K.S. Varma J.</p> <p>Admit-</p> <p>Sd. T.S. Misra</p> <p>Sd. K.S. Varma</p> <p>5-11-79</p> <p>C.M. An No 6893 @ 12/79</p> <p>Hon. T.S. Misra J.</p> <p>Hon. K.S. Varma J.</p> <p>Issue notice -</p> <p>— — — —</p> <p>The stay application shall be listed for orders on 12-11-1979</p> <p>Sd. T.S. Misra</p> <p>Sd. K.S. Varma</p> <p>12.11.79 fixed in C.M. An. No. 6893 (W)-79 by order</p> <p>M. I to O. P. nos 4 to 6 for filing C.A. etc. through Regd Post fixing 12-11-79</p> <p>382</p> <p>7/11/79</p>	

Chf Au / B. Singh
 N.W.
 Please comply
 12/11/79
 6-11-79

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

12

No.

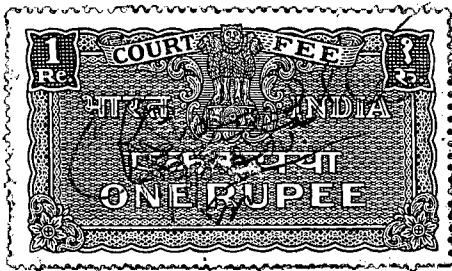
2022

of 1979

vs.

Date	Note of progress of proceedings and routine orders	Date to which case is adjourned
1	2	3
	C.A. 5454 (25) - 2022 Amended	
	125-V-5	
	Put up with and	
	C-125V 21/12/22	
6.10.20	Hear - C.A. 5454 (25) - 2022	Put up 6/10/20
	only	
	✓	
	Hear - U.C.S.-J	
	Hear Counsel for the parties	
	The amendment is allowed	
	Let amendment be incorporated	
	in the writ petition within	
	one week. The petitioner	
	may supply an amended	
	copy of the writ petition for	
	the use of the court within	
	two weeks. Counter affidavit	
	to the amendment application	
	may be filed within two	
	weeks.	

6-10-20



IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH, LUCKNOW

Civil Misc. Application No. 5454 (W) of 1980

Subhash Chandra Sharma Applicant

In Re:

Civil Misc. W.P.No.3082 of 1979.

Subhash Chandra Sharma ... Petitioner

Versus .

Union of India and others ... Respondents

APPLICATION FOR AMENDMENT

The applicant above named most respectfully states
as follows:

1. That the petitioner/applicant had filed the
aforesaid writ petition and had prayed for the quashing
of the impugned orders dated 24-7-1979 and 31-7-1979
contained in Annexures IV and IX to the writ petition,
by which the Respondents No.4, 5 and 6 had been
promoted to the post of Stenographer (Selection Grade)
and had also prayed for the issue of a writ of mandamus
for placing the petitioner at serial no.1 of the select
list and consequential benefits with regard to seniority
and pay.

.....2/-

Rajiv Sharma

ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

T.A. NO. 403/87 OF 198

Subhash Chandra VS. Union of India & others.
Sharma

SL NO of order	Date of order	ORDERS WITH SIGNATURE	Office Notes as to action (if any) taken on order
		<p><u>Office report.</u></p> <p>W.P. 3082-79 has been received on transfer from Hon'ble High Court, Lko.</p> <p>Writ is admitted.</p> <p>C.A. not filed.</p> <p>Writ Petition against the order of promotion of the Respondts.</p> <p>Petition is pending for orders.</p> <p>Notices issued to both parties fix up 13.10.87 by regd post.</p> <p>One undelivered regd cover has been returned back with postal remark 'Not Met'.</p> <p>Submitted <u>per</u> A/10/87</p>	

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

.....Reg.....No....403.....of 1987 Ji

...Sushash Chandra...Union of India
Sharma

Sl.No. of order	Date of order	ORDERS WITH SIGNATURE	Office Notes as to action (if any) taken on order
	<u>15/2/88</u>	<u>Registrar</u> In spite of several notices no one is present for the parties. With this case in court on 14/3/88 for orders. <u>Registrar</u>	
	<u>16-3-88</u>	Hon. D.S. Mishra - AM Hon. A.S. Sharma - JM No One is present for the parties, the Case is adjourned. to 17-5-88. AM JM	

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCULAR BENCH AT LUCKNOW

O.A./T.A. No. 403 1987 (T)

S.C. Sharma

Applicant(s)

Versus

V.O. &

Respondent(s)

Sr.No.	Date	Orders
	18/12/00	No sitting. Adjourned to 27.1.89.
	27/1/89	NO sitting Adjourned to 24/2/89 To Reply
	24-2-89	<u>D.R.</u> None is present. The case is adjourned to 31/3/89 for filing reply
31/3/89		<u>Hon' Mr. D.S. M-isra, A.M.</u> <u>Hon' Mr. D.K. Agrawal, J.M.</u> None is present for the applicant. Shri V.K. Chaudhary, learned counsel files counter on behalf of respondents and states that a copy of the same will be sent to the applicant through registered post. The applicant may file rejoinder, if any, within two weeks on receipt of the counter. List for final hearing on 19-5-89. J.M. A.M. (sns)

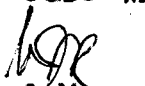
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Hon' Mr. Justice K. Nath, V.C.
Hon' Mr. K.J. Raman, A.M.

7/7/89

None is present for the applicant. Shri V.K. Chaudhary,
learned counsel for respondents is present. This
is an old case. List it for final hearing on 9.8.89.
The case will not be adjourned on that date.


A.M.


V.C.

(sns)

OR
No rejoinder filed
submitted for hear
L
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9.8.89

No Sitting. Adj. to 26.10.89
L
B.O.C

26.11.89

No Sitting of D/B. Adj. to 5.12.89.
Both its counsel are present.

L
B.O.C

OR
No rejoinder filed.
Submitted for hearing
L
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CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH LUCKNOW

T.A. NO.403 of 1987 (T)

(W.P.NO.3082 of 1979)

S.C. Sharma

.....

Applicant.

Versus

Union of India & Others

Respondents.

5-12-1989

Hon'ble Justice K. Nath, V.C.

Hon'ble Mr. K.J. Raman, A.M.

List has been revised. None of the parties are present. The petition is accordingly dismissed for default of the parties.

Sd/-

Sd/-

A.M.

V.C.

checked 26/12

// True Copy //

Neeraj
7/12/04

Deputy Registrar

Central Administrative Tribunal

Lucknow Bench,

Lucknow

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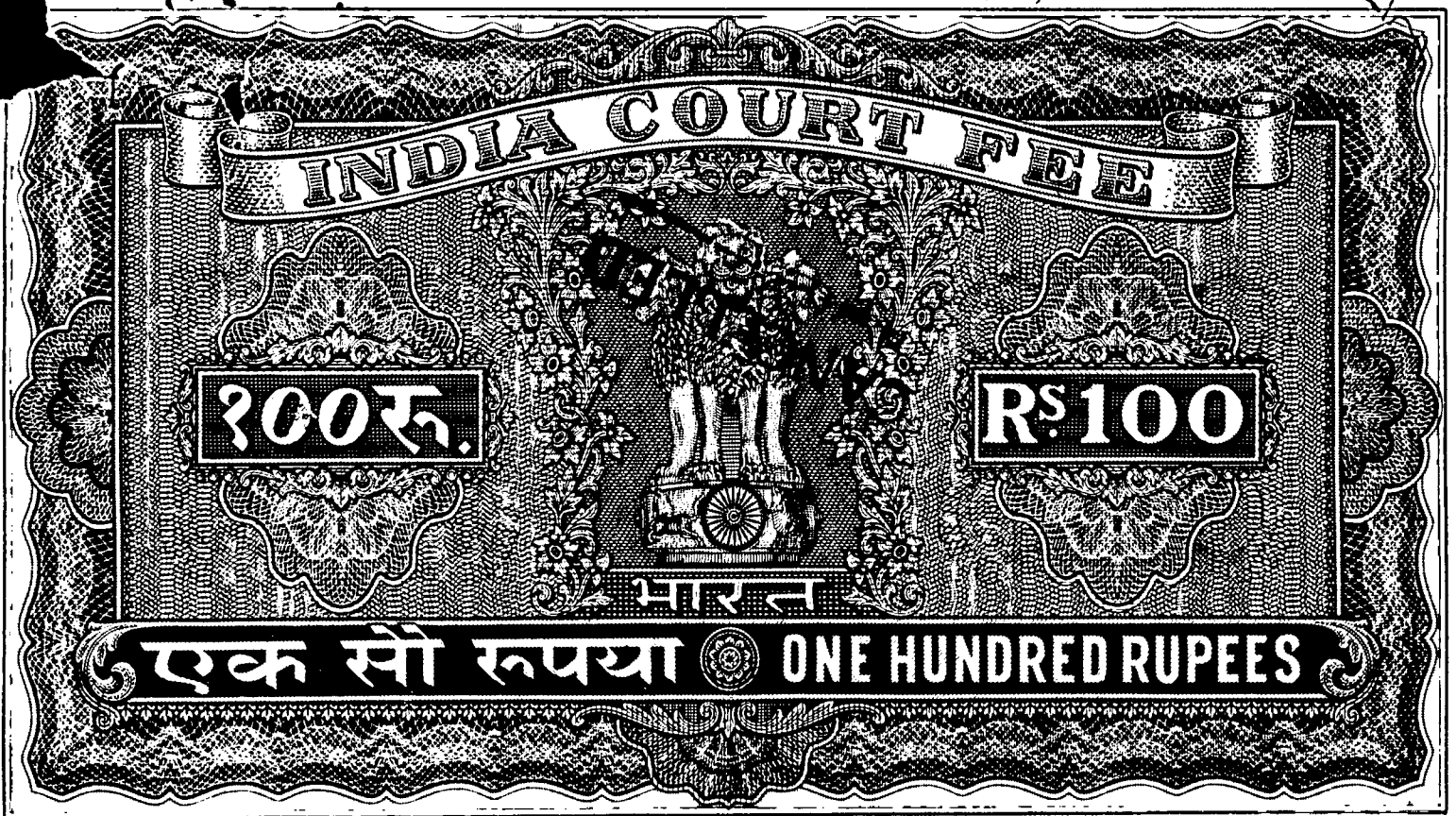
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5/11/79

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100 Rs.



In the High Court of Judicature at Allahabad
Sitting at Lucknow

C.M. writ petition No. 2089 of 1979.

Subhash Chandra Sharma --- Petitioner.
versus.

Union of India & others Respondents

R. Sharma

3/11/79

(For Petitioner)

Advocate
Court for Petitioner

GROUP A - 13 (e)

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH LUCKNOW

I N D E X

IN

CIVIL MISC. WRIT PETITION NO. 3082 OF 1979
(District Lucknow)

Subhash Chandra Sharma - - - - Petitioner
Versus
Union of India & Others - - - - Respondents

<u>Sl.No.</u>		<u>Page No.</u>
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3. Annexure -1	Copy of Rules regulating the method of recruitment to Class II Non-gazetted (Minist-erial) posts in the Incometax Department	22-24
4. Annexure- 2	Extract of the procedure for making promotions of and functioning of the Departmental Promotion Committee	25-28
5. Annexure- 3	Copy of Representation dated 20.7.79 made by the petitioner to the Chairman, C.B.D.T., New Delhi	29-31
6. Annexure- 4	Copy of the order of Commissioner of Incometax dated 24.7.79 regarding promotions, transfer & postings	32
7. Annexure- 5	Copy of circular issued by Govt. of India, Ministry of Home Affairs, New Delhi dt. 11.7.1968 making reservation for S.C. /s.T. in promotion posts	33-36
8. Annexure- 6	Copy of resolution issued by Govt. of India, Ministry of Home Affairs, New Delhi dated 20.3.70 enhancing the percentage of reservation for Schedule Caste/Schedule Tribes	35-37
9. Annexure- 7	Copy of circular issued by Govt. of India, Deptt. of Personnel, New Delhi dated 27.11.72 by which non-selection posts to be filled by Scheduled Caste/Schedule Tribes are reserved	38-40
9. Annexure- 8	Copy of cir. issued by Govt. of India, Deptt. of Personnel and Administration Reforms New Delhi dated 20.7.74, fixing the same ratio of reservation in favour of S.C./S.T. in selection posts to be filled in by promotion	41-42

R. Sharma

10. Annexure - 9 Copy of the order of Commissioner of Incometax, Lucknow dated 31.7.79 appointing Mr.K.C.Nandi of Surplus Cell 43
12. Annexure- 10 Copy of circular issued by Govt. of India, C.B.D.T. New Delhi, dated 27.11.73 regarding re-deployment of Surplus Staff against promotion quota vacancies 44
13. Annexure- 11 Copy of circular dated 18.7.73 by Govt. of India, C.B.D.T. New Delhi regarding redeployment of surplus staff against promotion quota vacancies 45
14. Vakalatnama 46

Lucknow:

Dated: 2.11.1979

R Sharma
3/11/79
(RAJIV SHARMA)
Counsel for the Petitioner

To

The Hon'ble the Chief Justice and his companion Judges of the aforesaid court.

The humble petition of the petitioner abovenamed most respectfully sheweth:-

1. That the petitioner is a stenographer in the ordinary grade in the Incometax Department and is presently posted in Lucknow charge in the office of the Inspecting Assistant Commissioner of Incometax (Audit) Lucknow.
2. That the petitioner was appointed in 1967 as Lower Division Clerk- steno-typist (with special pay) which was redesignated as stenographer (ordinary grade) in the year 1969 and he has been working on the said post for the last 12 years.
3. That the petitioner's services are regulated by the Incometax Department Non-gazetted Ministerial Posts Recruitment Rules, 1969 (hereinafter referred to as Rules) framed by the President of India in exercise of the powers conferred under the proviso to Article 309 of the Constitution. A true copy of the rules is annexed hereto and is marked Annexure I.
4. That the next higher post in the Incometax Department is that of Stenographer Selection Grade, which is a selection post. According to rule~~s~~ of the ~~rules~~ the posts of stenographer (Selection Grade) are to be filled in exclusively by promotion from amongst



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the stenographers in the ordinary grade on the principle of merit-cum-seniority as laid down in ^{Said} ~~the~~ rule of the Rules.

5. That the procedure for promotion as stenographer (Selection Grade) from amongst the stenographer (Ordinary Grade) is that there is a Departmental Promotion Committee which prepares a select list on the basis of merit-cum-seniority. The stenographer (ordinary grade) in the zone of consideration are considered for promotion according to the seniority in the gradation list. The number of persons considered for promotion for inclusion in the select list are 5 to 6 times the number of estimated vacancies as laid down in ~~rule~~ of the Rules. The Departmental Promotion Committee after rejecting those who are unfit for promotion classifies the remaining legible persons in 3 categories viz. 'outstanding', 'very good', and 'good' on the basis of entries in the character rolls for the last 5 years. Thereafter the Departmental Promotion Committee prepares the Select List placing at the top persons in the outstanding category followed by those in very good and good categories. Inter-se-seniority within each category is maintained. This procedure is followed by the Departmental Promotion Committee in accordance with the provisions of the Government of India, Department of Personnel and Administrative Reforms' Office Memorandum No.22011/6/75-Estt(D) dated the 30th December, 1976

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where in the procedure for making promotions and functioning of the Departmental Promotion Committee has been laid down. A true copy of the relevant extracts of the procedure for making promotion and functioning of the Departmental Promotion Committee is annexed hereto as marked Annexure II.

6. That in July, 1979 seven vacancies occurred in the posts of stenographer (selection grade) and in the gradation list prepared by the Department the petitioner was placed at sl.number 9 in the category 'very good' according~~ly~~ to his seniority. The respondents no. 4 and 5 were placed at sl.number 2 and 77 respectively. S/Shri S.C.Bajpai, K.K. Bhattacharya, A.K.Dey Sarkar, Bhola Lal, H.C.Srivastava, Rajneesh Kumar Srivastava and PremPrakash Kapoor were placed at sl.numbers 1, 3, 4, 5, 6, 7 and 8 respectively. S/Shri S.C.Bajpai, K.K.Bhattacharya and Bhola Lal were subsequently found unfit for promotion by the Departmental Promotion Committee and were, therefore, not considered for promotion. After the rejection of S/Shri S.C.Bajpai, K.K.Bhattacharya and Bhola Lal the petitioners was placed at serial number 3 in the Select List.

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7. That out of the candidates eligible for promotion S/Sri A.K.Dey Sarkar, H.C.Srivastava, Rajneesh Kumar Srivastava, Prem Prakash Kapoor and the petitioner had 3 very good character roll entries out of the character roll entries of ^{the last} five years while respondent no. 4 Sri C.D.Shukla had only 2 very good entries to his credit.

8. That although there were only 2 very good entries in the character roll of Sri C.D.Shukla, respondent no.4, yet he was placed at number 1 in the Select List prepared by the Departmental Promotion Committee for promotion to the post of stenographer (selection grade) The names of M/s A.K.Dey Sarkar, H.C.Srivastava, Rajneesh Kumar Srivastava, Prem Prakash Kapoor and the petitioner were placed at sl.numbers 2, 3, 4, 5 and 7 respectively in the Select List according to the seniority.

9. That Sri C.D.Shukla respondent number 4 having only 2 very good entries in his character roll out of the latest 5 character roll entries was not eligible for being considered by the Departmental Promotion Committee and in any case he could not be placed at the top of the Select List. The respondent number 4 could at best be assigned the lowest position in view of the character roll entries of the petitioner named above being better than those of respondent no.4.

10. That in December, 1977 and August, 1978 vacancy had arisen for the post of stenographer (selection grade) and the respondent number 4 was rejected by

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the then Departmental Promotion Committees for not having three very good character roll entries to his credit out of the latest 5 character roll entries. The petitioner accordingly on 20.7.1979 made a representation to the Chairman, Central Board of Direct Taxes, New Delhi against the inclusion of Sri C.D.Shukla name at the top of the Select List. A true copy of this representation dated 20.7.1979 made by the petitioner to the Chairman, Central Board of Direct Taxes, New Delhi is annexed hereto as is marked Annexure III.

10. That on 20.7.1979 the petitioner also represented the matter to the Income Tax Employees Association, Class III, Lucknow and its General Secretary Sri V.K.Rastogi met on or about 21.7.1979 the then Commissioner of Incometax Sri S.K.Lall who was also the Chairman of Departmental Promotion Committee and apprised him of the situation. At the request of Sri V.K.Rastogi Sri S.K.Lall was pleased to send for character roll from the officer of the Commissioner of Incometax at Allahabad and found that the Sri C.D.Shukla was wrongly recommended in violation of the rules and minutes dated 11.7.1979 of the Departmental Promotion Committee for promotion as he had only 2 very good character roll entries to his credit. Sri S.K.Lall also told Sri V.K.Rastogi that the correct facts in regard to the character roll entries were not placed before the Departmental Promotion Committee by the Liasion Officer Sri V.K.Misra and that the name of Sri C.D.Shukla was

3/11

Annexure
3/11

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- 7 -

wrongly included in the panel for promotion, but since the list had been finally prepared he expressed his inability to rectify the same.

11. That the petitioner's representation dated 20.7.1979 to the Chairman, Central Board of Direct Taxes (Annexure 3) has not been considered till today and all those persons placed in the Select List above the petitioner have been promoted to the post of stenographer (selection grade) by the order dated 24.7.1979 of Commissioner of Incometax respondent number 3. A true copy of the said order dated 24.7.79 is annexed hereto and marked as Annexure IV. Had the Select List been prepared correctly in accordance with the rules of the Departmental Promotion Committee the petitioner would have been promoted by the same order.

12. That the promotion of respondent number 4 Sri C.D. Shukla is in violation of ~~rule~~ of the Rules and also in violation of the procedure prescribed for making promotions. That is not only discriminatory but also highly prejudicial to the petitioner and has resulted in violation of the provisions of Article 14 and 16 of the Constitution.

13. That the respondent number 5 who is from Schedule Cast~~e~~/ Schedule tribe was placed at sl. number 77 in the Gradation list of stenographers for promotion to the stenographer (selection grade) and there being only 7 vacancies for the said post of the stenographer (selection grade), the Departmental Promotion Committee ought not to have considered the name of respondent

R. Sharma

Annexure
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number 5 as the number of persons to be considered for the Select List could not exceed 5 to 6 times of the estimated vacancies and there being only 7 vacancies there was no question of the name of the respondent no. 5 being considered.

14. That in 1968 the Government of India, Ministry of Home Affairs by its Office Memorandum No. 1/12/67-Estt.(CST) dated 11.7.1968 made 12.5% and 7.5% reservations for Schedule caste and schedule tribes respectively in selection posts to be filled in by promotion which was subsequently revised and enhanced to 15% and 7.5% respectively by the Ministry of Home Affairs resolution no. 27/25/68/Estt.(SCT) dated 25.3.1970. True copies of the circulars dated 11.7.68 and resolution dated 25.3.70 are annexed hereto and marked as Annexure V and VI respectively.

15. That in 1972 another circular was issued by the Government of India, Department of Personnel Office Memorandum No. 27/2/71-Esstt.(SCT) dated 27.11.72 by which 15% and 7.5% of non-selection posts to be filled in by promotion were reserved by schedule caste and schedule tribes. The said circular dated 27.11.72 is annexed hereto and is marked as Annexure VII.

16. That in the year 1974 again another circular was issued by the Government of India Department of Personnel and Administrative Reforms Office Memorandum No. 10/41/73-Estt.(SCT) dated 20.7.74 a true copy of which is annexed hereto as and is marked Annexure VIII

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Annexure
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- 9 -

fixing the same ratio of reservation in favour of schedule cast and schedule tribe in selection posts to be filled in by promotion of Class II, within class II and upto the lowest rank of Class I.

17. That the Income Tax Department has the following three groups of employees:-

<u>Group A</u>	<u>Group B</u>	<u>Group C</u>
Incometax Officer Class II and Class II above	Incometax Officer Class II	1. Lower Division Clerk 2. Upper Division Clerk 3. Stenographer (ordinary grade) 4. Tax Assistants 5. Head Clerks 6. Stenographer (selection grade) 7. Supervisor Grade II 8. Supervisor Grade I 9. Incometax Inspector

18. That prior to the issue of the aforesaid instructions there was no reservations for the posts of Tax Assistants, Head Clerks, stenographer (selection grade), stenographer (senior scale). The are all selection posts to be filled in exclusively by promotions. There was no reservation in rpomotion from Supervisor grade II to grade I, which is a non-selection post and is to be filled in by promotion exclusively. 50% of the Upper Division Clekrs and $66\frac{2}{3}\%$ of Inspectors are appointed by promotion from amongst the Lower Division Clerks, Upper Division Clerks respectively by the Departmental Promotion Committee on the principle of merit-cum-seniority and there was no reservation in favour of schedule cast and schedule tribe. Lower Division Clerks and stenographers ordinary grade and 50% of

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Upper Division clerks and 33 $\frac{1}{3}$ % of Inspectors were recruited directly and there was reservation of 15% and 7.5% in each post for schedule cast and schedule tribe respectively. Thus there was a quota fixed for the schedule cast and schedule tribe in each cadre in which appointment was to be made by direct recruitment and they were adequately represented.

19. That the number of posts in the Incometax Department to the extent to which these posts are held by the schedule tribe/schedule tribe candidates is as follows:-

Total no. of posts of stenographer (selection grade)+u.d.c.	282
Number of schedule caste/schedule tribe persons in department	48

The extent of reservation in favour of schedule cast or schedule tribe candidates is likely to exceed soon the reservation limit of 50% and already holding 18% posts of both by recruitment and promotion, thus schedule caste/ schedule tribe candidates has deprived the general candidates of being employed. The large percentage of schedule cast/schedule tribe candidates is violative of the provisions of Article 16 of the Constitution of India. The petitioner and all those employees who do not belong to schedule cast or schedule tribe have not only lost their seniority in various cadres but have also been deprived of their promotion. The employees of schedule cast and schedule tribe get 2 or more promotions in a year and go on occupying higher and higher posts leaving their colleagues along with whom they entered the department in their old cell. It is significant to point out here

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that the petitioner was appointed in the year 1967 as Lower Division Clerk (steno-typist) which was redesignated as stenographer (ordinary grade) in the year 1969 ^{whereas} ~~whereas~~ the respondent no. 5 was appointed as stenographer (ordinary grade) in the year 1974 and is much junior to the petitioner but has been promoted. This and similar other instances has caused frustration and heart bruining amongst the employees. Consequently the efficiency of the administration has been adversely affected unjustified.

20. That Article 335 of the Constitution lays down that reservation to posts is to be made having regard to the maintenance of efficiency in the administration. If the reservation made in view of the aforesaid circulars has created not only imbalance, but adversely affected the morale of services and the efficiency in the Administration has gone down.

21. That the Hon'ble Supreme Court in State of Kerala Vs. N.M.Thomas (AIR 1976 SC page 490 at 498) has observed that in making reservation ~~at~~ appointment or posts under article 16(4) the State has to take into consideration the claims of the backward classes consistently with the maintenance of the efficiency of administration. It must not be forgotten that the efficiency of administration is of such a paramount ^{importance} ~~importance~~ that it would be unwise and unpermissible to make any reservation at the cost of ^{efficiency in the} ~~administration~~ administration.

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22. That the persons belonging to schedule caste or schedule tribe having once been recruited on a post hold the same status and financial position as other employees of the same cadre and he cases to belong to socially and economically backward classes and are not entitled to the benefit of reservation under article 16(4) of the Constitution in matter of promotion, particularly where merit is the sole or main criterion.

23. That as a matter of fact no quota can be fixed for posts to be filled in by promotion. Quota may be fixed only at the time of initial appointment and once it is so fixed, it can not be carried forward and extended to a post which is to be filled in by promotion. Reservation twice over one at the stage of initial recruitment and second at the stages of promotion is not permissible either under Article 16(4) or Article 335 of the Constitution. Respondent no. 5 was appointed as stenographer in the ordinary grade in 1974 on the basis of reservation and was very much junior to the petitioner but on account of reservation he has become senior to the petitioner by superseding him.

24. That there are a number of schedule cast and schedule tribe persons who are employed in very good services because of the reservation made for them in different services. Their children have got good education and social back grounds, and they do not

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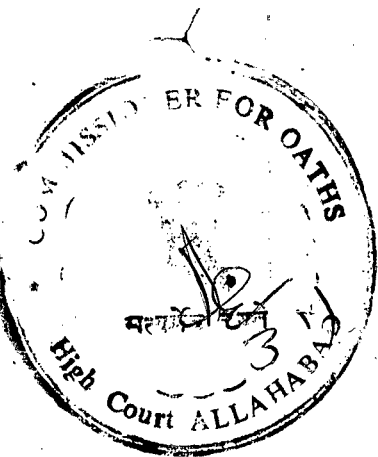
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now need any protection by way of reservation. and should now be treated as ordinary candidates. The impugned reservation does not make any distinction between such schedule cast /schedule tribe candidates who are advanced, economically well off and other schedule cast and schedule tribe candidates. There is also no basis for such different treatment between schedule cast and schedule tribe candidates who are educationally socially and economically advanced and ordinary candidates and as such the provisions of article 14, ~~15~~ and 16 of the Constitution are ~~violated~~. *violated*

25. That the petitioner has been guaranteed the fundamental right of equality in employment and as a result of the aforesaid three circulars the fundamental rights of petitioner of equality in employment is violated and as such the said circulars are violative of Article 14, ~~15~~ and 16 of the Constitution of India.

26. That out of 7 vacancies 6 have already been filled by promotions orders passed on 24.7.79 and one post is still lying vacant. Despite the fact that the petitioner's name finds place in the Select List for promotion, he has not been promoted for the reasons that 7th post has to be filled in by the Surplus Cell, Ministry of Homes, Department of Personnel, New Delhi. The Commissioner of Incometax



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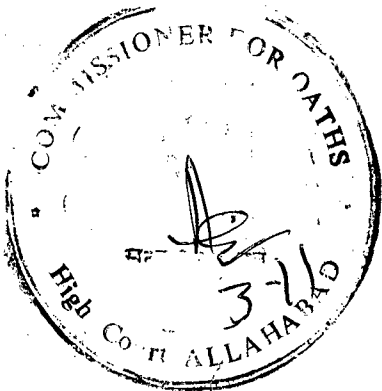
- 14 -

Lucknow by his order No.154 dated 31.7.78 has appointed Sri K.C.Nandi, respondent no. 6 as stenographer (selection grade) from Surplus Cell. A true copy of the order dated 31.7.79 is enclosed hereto and marked as Annexure IX

27. That on 17th July, 1973 the Central Board of Direct Taxes New Delhi issued circulars vide F.No.69/125/72-Ad.VII dated 18.7.78 for re-deployment of surplus staff of various Central Government Departments against promotion quota vacancies also which was to be applied only in Delhi but its operation has now been extended to all other charges of the Income Tax Department by F.No.69/125/72 Ad.VII dated 27.11.73. True copies of circulars dated 18.7.73 and 27.11.73 are annexure hereto and are marked as Annexure X and XI respectively.

28. That the aforesaid circulars are wholly illegal and void because under the Rules applicable to the petitioner appointment to the posts of stenographer (selection grade) can only be made by promotions of the stenographer (ordinary grade) The statutory rules framed under Article 309 of the Constitution can not be altered by administrative instructions issued by the Central Board of Direct Taxes. These administrative instructions can not be of any avail to respondent no. 6.

29. That promotion to a higher post is only the right of employees in the lower cadre in a particular



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charge of the Income Tax Department and no outsider can be imposed. This is also in violation of the provisions of Article 14 and 16 of the Constitution.

30. That prior to the issue of the circulars mentioned in para 26 above, the surplus staff from various other Central Government Department was to be appointed against the direct recruitment vacancies only.

31. That the said circular -Annexure X^{II} and XI^I are violative of Article 14 and 16 of Constitution of India.

32. That the respondent number 6 has been appointed in the vacancy reserved by the Surplus Cell, Department of Personnel Ministry of Homes, New Delhi, He has not yet taken over charge of his office and it is in the interest of justice that he should be restrained from taking over charge as Stenographer (Selection Grade) during the pendency of this writ petition otherwise the petitioner shall suffer irreparable loss and injury which can not be made good in the even of the success of this writ petition.

32A, 32.B, 33c 33d incorporated:

33. That the petitioner has no remedy available, he begs to invoke the jurisdiction of this Hon'ble Court under Article 226 of the Constitution on the following amongst others:

G R O U N D S

(a) Because the Departmental Promotion Committee



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Vide court order
at 4/10/82

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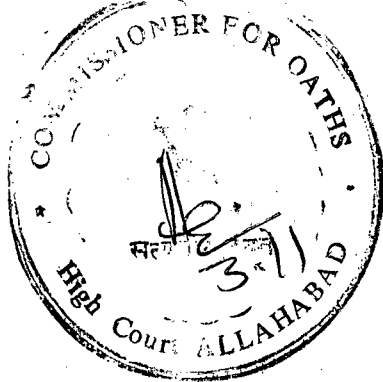
- 16 -

had no jurisdiction to place the respondent no. 5 on top of the Select List inspite of the fact that the character roll entries of the petitioner were better than those of the respondent and in doing so the Departmental Promotion Committee acted in violation of the Rule VI (2) of the Rules and procedure for making promotion and functioning of the Departmental Promotion Committee contained in Annexure II.

(b) Because the Departmental Promotion Committee acted in violation of the rules laid down by the Government of India regarding the functioning of the Departmental Promotion Committee and committed an error apparant on the face of the record by placing the respondent no.4 above the petitioner in the Select List, though he had only 2 very good entries to his credit in the character roll whereas the petitioner had 3 very good entries to his credit in the character roll and thus deprived the petitioner of his fundamental right guaranteed by Article 16 of the Constitution.

(c) Because the promotion of the respondent no. 4 is inviolation of the rules VI(2) (As contained in Annexure II) and also in violation of the procedure prescribed for making promotions is not discriminatory but also highly prejudicial to the petitioner and has resulted in violation of the fundamental rights guaranteed by the Article 14 and 16 of the Constitution.

(d) Because the name of respondent no.5 who was



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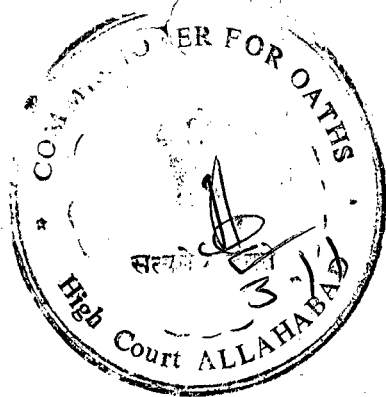
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placed at sl.number 77 in the gradation list might not to have been considered by the Departmental Promotion Committee for promotion as the number of persons to be considered for the Select List 5 to 6 times the number of estimated vacancies and there being only 7 vacancies, the Departmental Promotion Committee in promoting respondent no.5, who was beyond the field of eligibility has committed an error apparrant on the face of the record.

(e) Because the reservation created in favour of the Scheduled Caste/Schedule Tribe has created an embalance and has affected the morale of the service and effected the maintenance of efficiency in the administration in violation of article 335 of the Constitution.

(f) Because the promotion to the post of stenographers (Selection Grade) can be made from amongst the stenographers in ordinary grade, according to the Rules contained in Annexure I framed under Article 309 of the Constitution and cannot be altered by administrative instructions issued by the Central Board of Direct Taxes and the respondent no. 3 in appointing respondent no.6 to the post of stenographer(Selection Grade) from the Surplus Cell acted beyond his jurisdiction and committed an error apparrant on the face of the record.

(g) Because the said orders dated 24.7.79 and 31.7.79 Annexure IV and IX and the said circulars



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Annexure X and XI infringe on the fundamental right of equality in employment guaranteed by the Constitution and as such are violative of Article 14 and 16 of the Constitution.

(h) Because the impugned orders contained in Annexure IV and IX are otherwise manifestly against, illegal and ultravires.

(1)

(2)

grounds added as per court's order dated 14/10/1980

P R A Y E R

It is therefore most respectfully prayed that this Hon'ble Court be pleased to issue

- i) a writ order or direction in the nature of certiorari quashing the orders dated ³¹24.7.79 and ²⁴31.7.79 Annexure IX and IV respectively in respect of the promotion of respondents no.6 and 4 & 5.
- ii) a writ order or direction in the nature of mandamus commanding the respondent no. 2 and 3 not to appoint the respondents no. 4, 5 and 6.
- iii) a writ order or direction in the nature of mandamus commanding the respondent no. 2 to place the petitioner at serial number ¹⁶16 in the Select List.
- iv) any other appropriate writ order or direction that this hon'ble Court deem necessary in the circumstances of the case to safeguard the



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interest and rights of the petitioner.

v) to award the cost of this petition to the petitioner.

vi) A writ order or direction in the nature of mandamus commanding the Respondents No 2 and 3 to fix the seniority of the petitioner with consequential benefits.

Lucknow the
4th November, 1979.
3rd

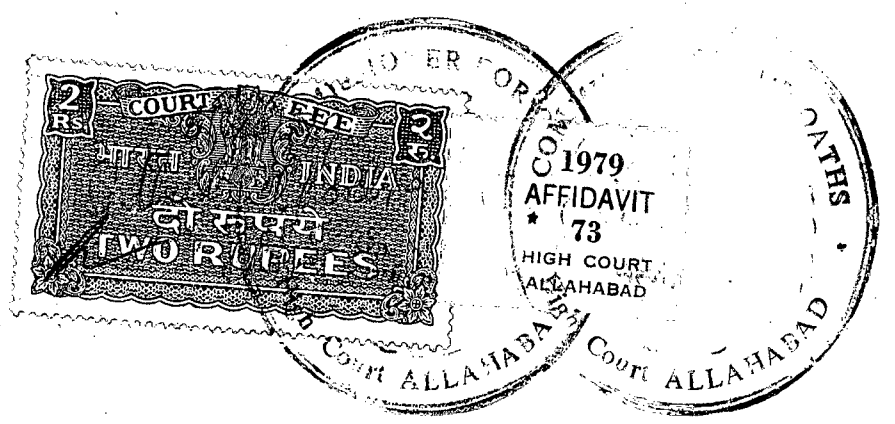
R Sharma
31/11/79.
RAJIV SHARMA
Advocate,
COUNSEL FOR THE PETITIONER.

Amended incorporated
as per court's order
dated 14/10/1980

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH LUCKNOW

Affidavit

in

Civil Misc. Writ Petition No. of 1979

Subhash Chandra Sharma - - - - Petitioner

Versus

Union of India & Others - - - - Respondents

Affidavit of Sri Subhash Chandra Sharma aged
about 35 years s/o Late Hukam Chandra Sharma
r/o 512/404, 3rd Lane Nishatganj, Lucknow
(Deponent)

I, the deponent abovenamed do hereby solemnly
affirm and state as follows:-

1. That ^{the deponent is} ~~I am~~ the petitioner in the abovenoted writ
petition and as such ^{he is fully} ~~I am~~ acquainted with the facts
deposed to hereinbelow.
2. That the deponent has read the contents of the
accompanying writ petition ~~and translated and~~
~~explained~~ and has understood the contents of the same.

Dated: 3/11/79
4/11/79

Subhash Chandra Sharma
(Deponent)

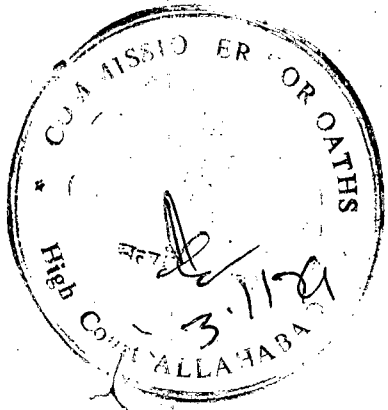
I, the deponent abovenamed do hereby swear on



Subhash Chandra Sharma
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oath that the contents of paragraphs Nos. 1 and 2 of this affidavit and that the contents of paragraphs nos. ^{1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 13} ~~12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24~~ of the accompanying writ petition are true to my personal knowledge; those of paragraphs nos. ^{30, 32} ~~5, 14, 15, 16, 20, 27~~ of the accompanying writ petition are based on the perusal of papers on record of the case and that the contents of paragraphs Nos. ^{12, 21, 28} ~~20, 29, 31, 33~~ of the accompanying writ petition are based on the legal advice, which I believe to be true and correct. That no part of it is false and nothing material has been concealed. So help me God.



Dated: 3.11.79 A
~~11/11/79~~

R. Sharma
(Deponent)

I identify the deponent who signed before me.

R. Sharma
3/11/79.
(Advocate)
(RAJIV SHARMA)

Solemnly affirmed before me on this 3.11.79 day of November, 1979 at 7.36 by the deponent who has been identified by the aforesaid Advocate.

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

A
(Oath Commissioner)

A.C. Srivastava

Pram Singh Jaiswal	
Oath Commissioner	
High Court, Allahabad	
Lucknow Bench.	
No.	343/73/79
Date	3.11.79

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH

ANNEXURE I

A-27

Civil Misc. Writ No. _____ of 1979

Subhash Chandra Sharma - Petitioner

Versus

Union of India & Others - Respondents

(Department of Revenue and Insurance)

New Delhi, the 20th December, 1969

G.S.R. 2799 - In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules regulating the method of recruitment to Class III Non-Gazetted (Ministerial) posts in the Income-tax Department, namely:-

1. Short title and commencement -(1) These rules may be called the Income-tax Department Non-gazetted Ministerial Posts Recruitment Rules, 1969.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Application- These rules shall apply to the posts specified in Column 1 of the Schedule annexed thereto.

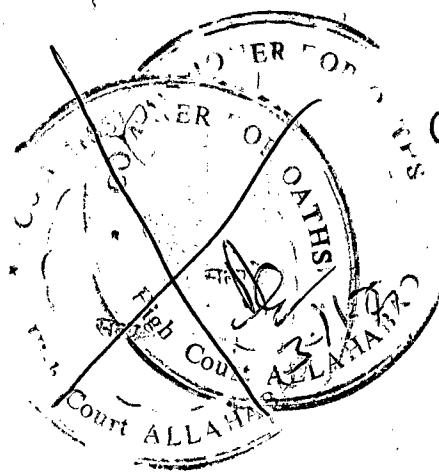
3. Number of posts, classification and scales of pay- The number of the posts, their classification and the scales of pay attached thereto shall be as specified in columns 2 to 4 of the said Schedule.

4. Method of recruitment, age limit qualifications etc. - The method of recruitment to the said posts, age limit, qualifications and other matters connected therewith shall be as specified in columns 5 to 13 of the schedule aforesaid.

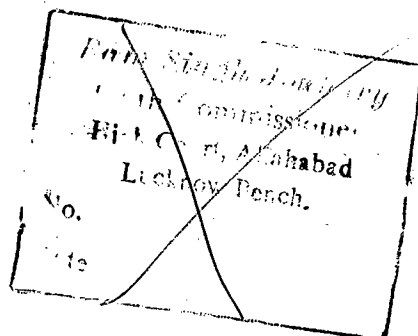
Provided that direct recruitment against posts in an Establishment Unit, comprising one or more of the Charges of the Commissioners of Income-tax shall be made only from amongst candidates opting for that particular Unit and recruitment by promotion against posts in an Establishment Unit shall be made only from amongst persons belonging to the cadres of that particular Unit;

Provided that further the Central Board of Direct Taxes may, if it considers to be expedient or necessary in the public interest or on compassionate grounds so to do, and subject to such conditions as it may specify having regard to the circumstances of the case and for reasons to be recorded in writing, permit a post in one Establishment Unit to be filled by transfer to that Unit of a person belonging to the cadre of another Unit.

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Provided also that the Upper age limit specified in column 6 of the said Schedule for direct recruits may be relaxed in the case of candidates belonging to Schedule Castes, Scheduled Tribes and other special categories of persons, in accordance with the orders issued by the Central Government from time to time.

5. Disqualification - 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 any of the said posts:

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

6. Reservation of vacancies for State Government employees- Notwithstanding any thing contained in these rules, one-third of the total number of permanent vacancies occurring in a calendar year in each of the categories of posts specified in the Schedule to be filled by direct recruitment shall be filled up by transfer from among the employees of the State Government concerned, in accordance with the general instructions issued by the Central Government from time to time.

Note:- For this purpose, there should be a minimum of three permanent vacancies to be filled by direct recruitment during a particular calendar year.

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



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ANNEXURE I(Recruitment Rules for Non-Gazetted Class III Staff
for Income-tax Department)

Name of post	No. of posts	Classification	Scale of pay	Whether selection post or non selection post	Age for direct recruitment	Educational & other qualifications req. for direct recruits	Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees.	Period of probation if any.
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1	2	3	4	5	6	7	8	9
5. Stenographer Senior/ Selection Grade	29	Gen. Central services Cl. III non-gazetted-Ministerial	425-700	Selection post	Not applicable	Not applicable	Not applicable	2 years
6. Stenographer ordinary grade	399	do	330-560	not applicable	18-25 yrs	Matriculation or equivalent qualif. Speed in typing 40 words p.m. & speed in short hand at 100 words p.m.	do	do

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Method of rectt. whether by direct rectt. or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various method.

In case of rectt. by promotion/deputation/transfer **grades** from which promotion/deputation/transfer to be made

If a D.P.C exists, what is its composition

Circumstances in which UP SC is to be consulted in making recruitments.

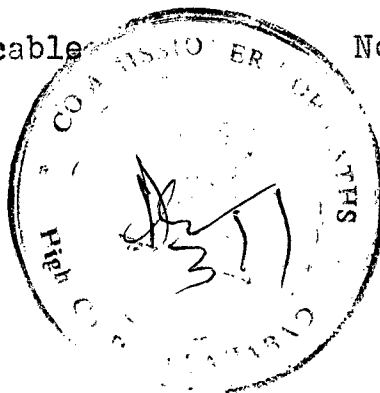
10	11	12	13
100% by promotion	Promotion from amongs (stenographers (ordinary grade) who have put in 5 years of service	Class III D.P.C.	Does not arise

By selection through a competitive test limited to serving lower Div. Clerks/ Upper Division Clerks of the Deptt. possessing the qualifications prescribed in Col. 7 failing which by direct recruitment

Not applicable

Not applicable

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCHANNEXURE ' II '

I N

Civil Misc. Writ No. _____ of 1979

Subhash Chandra Sharma - Petitioner

Versus,

Union of India & Others - Respondents

A copy of the Department of Personnel & Administrative Reforms' Office Memorandum No.22011/6/75-Esstt.(D) dated the 30th December, 1976 received under endorsement F.No.A-32011/1/77/ Coord. dated the 18th Jan. 1977 from Government of India, Deptt. of Revenue and Banking, New Delhi is forwarded to all Heads of Departments and Offices.

Subject: Procedure for making promotions and functioning of the Departmental Promotion Committee.

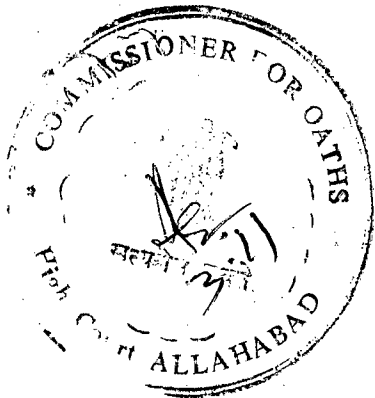
Relevant Extracts;

VI. Procedure
to be
observed
by D.P.C.

1. Each Departmental Promotion Committee should decide its own method and procedure for objective assessment of the suitability of the candidates. Ordinarily a personal interview should not be regarded as necessary and the penal for promotion/confirmation may be drawn up on the basis of assessment of the record of work and conduct of the officers concerned.

2. Selection Method:- Where promotions are to be made by selection method as prescribed in the Recruitment Rules, the field of choice, viz., the number of officers to be considered should ordinarily extend to 5 or 6 times the number of vacancies expected to be filled within a year. The officers in the field of selection, excluding those considered unfit for promotion by Departmental Promotion Committee, should be classified by the Departmental Promotion Committee as "outstanding", "Very Good" and "Good" on the basis of their merit, as assessed by the D.P.C. after examination of their respective records of service. In other words, it is entirely left to the D.P.C. to make its own classification of the officers being considered by them for promotion to selection posts, irrespective of the grading that may be shown in the CRs. The penal should, therefore, be drawn-up to the extent necessary by placing the names of the 'Outstanding Officers' first, followed by the officers categorised as 'Very Good' and followed by the officers belonging to any 'Very Good' and followed by the officers categorised as 'good'. The inter-se-seniority of officers belonging to any one category would be the same as their seniority in the lower grade.

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3. Non-Selection method:- Where the promotions are to be made on non-selection basis according to Recruitment Rules, the Departmental Promotion Committee need not make a comparative assessment of the records of Officers and they should categorise the officers as 'Fit' or 'Not yet fit' for promotion on the basis of assessment of their records of service. The Officers categorised fit should be placed in the panel in the order of their seniority in the grade from which promotions are to be made.

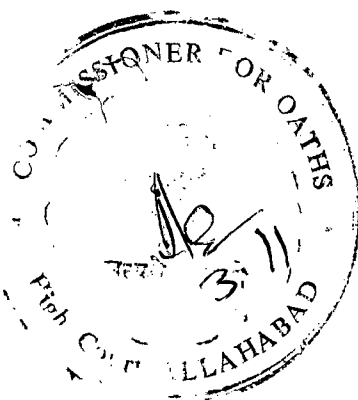
4. Confirmation:- In the case of confirmation, the D.P.C. should not determine the relative merit of officers but it should assess the officers as 'Fit or 'Not yet fit' for confirmation in their turn on the basis of their performance in the post as assessed on the basis of their record of service.

5. Probation:- In the case of probationers also the D.P.C. should not determine the relative grading of officers but only decide whether they should be declared to have completed the probation satisfactorily. If the performance of any probationer is not satisfactory the D.P.C. may advise whether the period of probation should be extended or whether he should be discharged from service.

6. Efficiency bar:- The D.P.C. constituted for considering cases of Govt. servants for crossing the E.B. need not sit in a meeting but may consider such cases by circulation of papers. The D.P.C. may consider such cases on the basis of up-to-date records of performance, performance in written tests and/or trade test prescribed by the administrative Ministry, if any,. The D.P.C. need not to recommend whether the officer concerned is fit or not yet fit to cross the efficiency bar. The review of the case of a Government servant who has been held up at the efficiency bar stage on the due date should also be done in accordance with the same procedure by the D.P.C.

7. Officers under suspension whose conduct is under investigation or against whom disciplinary proceedings initiated or about to be initiated:- In case of officers who are under suspension or whose conduct is under investigation or against whom disciplinary proceedings have been initiated or about to be initiated, the officers' suitability for promotion should be assessed at the relevant time by the D.P.C. and a finding reached whether, if the officer had not been suspended, or his conduct had not come under investigation, he would have been recommended for selection. Where a list is prepared for selection posts, the D.P.C. should also take a view as to what the officers' position in that list would have been, but for his suspension etc. The finding should be recorded separately and attached to the proceedings, in a sealed envelope superscribed "Findings regarding merit and suitability for promotion to confirmation in (Service/grade/post) in

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respect of Shri (name of the officer) and Not to be opened till after the termination of the suspension of disciplinary proceedings against (Shri name of the Officer)". The proceedings of the Departmental Promotion Committee, etc., need not contain the note "The findings are contained in the attached sealed envelope". The authority competent to fill the vacancy should be separately advised to fill the vacancy only in an officiating capacity, where the findings as to the suitability of the officer are for his promotion; and (ii) to reserve a permanent vacancy; where such findings are for his confirmation.

8. Where adverse remarks in the Confidential Record of an officer concerned have not been communicated to him, this fact should be given due weightage by the D.P.C. while assessing the suitability of the officer concerned for promotion/confirmation.

9. In cases, where decision on the representation of officers against adverse remarks had not been taken or the time allowed for submission of representation is not over, the D.P.C. may in their discretion defer the consideration of the case pending decision on the representation.

10. An officer whose increments have been withheld or who has been reduced to a lower stage in the time scale, cannot be considered on that account to be ineligible for promotion to higher grade as the specific penalty of with holding promotion has not been imposed on him. The suitability of the officer for promotion should be assessed by the competent authority as and when occasions arise for such assessment. In assessing the suitability the competent authority will take into account the circumstances leading to the imposition of the general service record of the officer and the fact of the imposition of the penalty he should be considered suitable for promotion. Even where however, the competent authority considers that inspite of the penalty the officer is suitable for promotion, the officer should not be promoted during the currency of the penalty.

11. The D.P.C. should record in their minutes a certificate that the Department/Ministry/Office concerned has rendered the requisite integrity certificate in respect of these recommended by the DPC for promotion/confirmation.

12. The claims of Officers who are away on deputation, foreign service, etc. should also be taken into account by the DPC while considering cases of promotion/confirmations.

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1. Function of
the D.P.Cs

The Recruitment Rules for various civil posts and services prescribe the method of filling up the posts under the Central Government. A post is filled by promotion where the Recruitment Rules so provide. In making promotions, it should be ensured that suitability of the candidate for promotion is considered in an objective and impartial manner. For this purpose, D.P.Cs should be formed in each Ministry/Department/Office whenever on occasions arises for making promotions/confirmations etc. as the case may be, The D.P.Cs so constituted shall judge the suitability of officers for:-

- (a) promotions to selection as well as non-selection posts;
- (b) confirmations in their respective grades/posts.
- (c) assessment of the work and conduct of probationers for the purposes of determining their suitability for retention in service or their discharge from it or extending in the prescribed period of their probation and
- (d) consideration of cases of government servants for crossing the efficiency bar.

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IN THE HIGH COURT OF JUDICATURE ALLAHABAD
LUCKNOW BENCH

ANNEXURE 'III'

I N

Civil Misc. Writ No. _____ of 1979

Subhash Chandra Sharma - Petitioner

Versus

Union of India & Others - Respondents

To

The Chairman,
Central Board of Direct Taxes,
New Delhi.

Through: Proper Channel

Respected Sir,

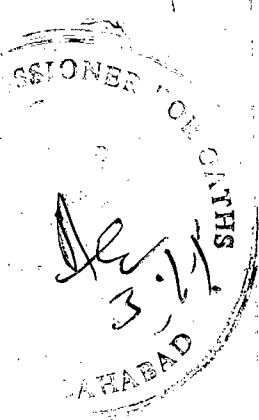
With all due regards I may like to draw your kind attention towards the following facts:-

1. That a Departmental Promotion Committee for considering fitness of ordinary grade stenographers for promotion to the post of Selection Grade stenographers, was held on 11.7.1979/12.7.1979 at Allahabad
2. Seven promotions were likely to be made in the aforesaid Departmental Promotion Committee.
3. According to the Gradation list my position in seriatum is as under:-

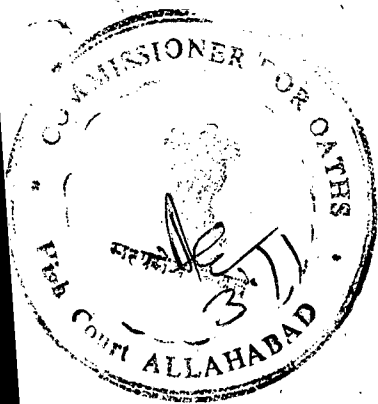
1. S.C. Bajpai
2. C.D. Shukla
3. K.K. Bhattacharya
4. A.K. Dey Sarkar
5. Bhola Lal
6. Harish Chandra Srivastava
7. Rajnesh Kumar Srivastava
8. Prem Prakash Kapoor
9. Subhash Chandra Sharma
10. Har Saran Lal (Schedule Cast)

4. According to the Board's circular containing directions regarding the procedure for departmental promotion from an ordinary grade to a selection grade cadre, minimum Three Very Good C.C.R. entries out of latest 5 C.C.R. entries should be considered for fitness of a candidate. Accordingly so far as my personal knowledge goes Three Very Good C.C.R. entries were considered for fitness of a candidates for promotion to the post of Selection Grade Stenographer in the D.P.C. held on 11.7.1979/12.7.79.

Subhash
9/11



5. So far as my knowledge goes a Panel for promotion in the cadre of Selection Grade Stenographers has been made as under:-
1. C.D.Shukla
 2. A.K.Dey Sarkar
 3. Harish Chandra Srivastava
 4. Rajnessh Kumar Srivastava
 5. Prem Prakash Kapoor
 6. Har Saran Lal (Schedule Cast)
 7. Subhash Chandra Sharma (subject to the clearance of a post of Selection Grade Stenographer Cell from Surplus Cell, New Delh)
6. Since out of three Selection Grade Stenographers vacancies arose due to departmental promotions clearance from Surplus Cell has been given for 2 posts and one post has been detained by it. Therefore my name was put on sl.no.7 separately for promotion to the post of Selection Grade Stenographer exclusively subject to the clearance from the Surplus cell.
7. The point of dispute however is that, so far as my knowledge goes, the Confidential Character Rolls of Shri C.D.Shukla is not upto mark and he possesses only Two Very Good CCR entries out of latest 5 C.C.R. entries at his credit. Accordingly in pursuance to the Board's circular on the subject and also the minutes of the D.P.C. held on 11/12.7.79 Sri C.D.Shukla could not be taken in penal at all. But how this happened it will be well known to the members of the D.P.C. His promotion if made will be wrong and ultra-virus of Rules.
8. In support of my contentions contained in para 7 above verification may be made after calling for Sri C.D.Shukla's C.C.R. at your end. Further this fact may also kindly be verified from the Annexure to the Minutes of the last two D.P.Cs held for the promotion of Selection Grade Stenographer first time in the month of December, 1977 and second time in the month of August, 1978 in which D.P.Cs he had been ignored only due to this very fact and also from other relevant records maintained in this respect in this office.
9. That due to the wrong inclusion of name of Sri C.D.Shukla in the above penal I am directly effected adversely and I will loose my promotion as well as seniority which will be a great injustice in my case.
10. I may make clear that I do not want supersession I do not want that others should suffer loss due to me, I also do not blame any member of the D.P.C. including the learned Chairman of the D.P.C., I only want that justice may kindly be done with me after reviewing the C.C.R. of Shri C.D.Shukla before passing the promotion orders by the C.I.T., Lucknow who is also the Chairman of aforesaid D.P.C.



(31)

: 3:

In the light of the above facts and circumstances your honour is very kindly requested that fair justice may be done with me and the CIT, Lucknow (also Chairman of D.P.C.) may not pass orders of Promotion of Selection Grade Stenographers till my humble petition is not decided either by the Board or D.P.C. may be reviewed by the Chairman himself.

With all kind regards,

Yours faithfully,

Dt: 20.7.1979

Sd/- (S.C. Sharma)
Stenographer (Ord. Grade)
Office of the I.A.C. (Audit), Lucknow.

Copy in advance to:-

The Chariman, C.P.D.T. (Thr. Special Messenger) with the humble request that a justice may kindly be done in my case and C.I.T., Lucknow may not pass orders of promotion till my humble petition is decided by the learned Board.

The Commissioner of Incometax, Lucknow (also the Charirman of D.P.C.) with the humble request that he may kindly review the D.P.C. in the aforesaid circumstances before passing order of promotion for the post of Selection Grade Stenographers or may kindly not pass orders of promotion till my petition is decided by the Board.

Sd/- (S.C. Sharma)
Sg. Ord. Grade, I.A.C. (Audit)
Office, Lucknow.

Copy also forwarded to the Secretary, Lucknow Incometax Employees Association, Lucknow with the request that he should take up the matter either with the C.I.T. or C.P.D.T. Chariman at once without losing any time in the light of the above circumstances. It is also requested that I do not want any favour in this regard but a natural justice is called for in my case and I believe that I should get my due promotion.

Sd/- S.C. Sharma,
Stenographer Ord. Grade,
I.A.C. (Audit) Office, Lucknow.



IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH

ANNEXURE 'IV'

I N

Civil Misc. Writ No. IV of 1979

Subhash Chandra Sharma - - Petitioner
Versus

Union of India & Others - Respondents

Government of India
Office of the Commissioner of Incometax,
Lucknow.

ORDER

Dt. 24.7.1979

Establishment- Central Services- Group '+C'
and 'D' promotions, Transfers, postings etc.--
Orders regarding--

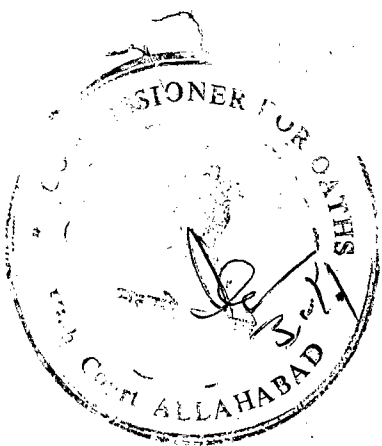
No.116: The following stenographers (Ordinary Grade) are hereby promoted to officiate as stenographers (Selection Grade) in the pay scale of 425-700 with effect from date of taking over as such and until further orders. They will be on probation for a period of two years:-

S/Shri

1. C.D.Shukla, Allahabad Charge
2. A.K.Dey Sarkar, Allahabad Charge
3. Harish Chandra Srivastava, Allahabad Charge
4. Rajnessh Kumar Srivastava, Allahabad Charge
5. Prem Prakash Kapoor, CIT's Office, Lucknow
6. Har Saran Lal (Schedule Caste), I.T.Office, Badaun.

Sd/-

(S.K.Lall)
Commissioner of Incometax,
Lucknow.



A-381 36

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH LUCKNOW

ANNEXURE 'Y'

I-N

Civil Misc. Writ Petition No. of 1979

Subhash Chandra Sharma - - - - - Petitioner

Versus

Union of India & Others ----- Respondents

Ministry of Home Affairs O.M.No.1/12/67-Est(C), dated 11th July, 1968 to all Ministries etc.

Subject: Reservation for Schedule Castes and Scheduled Tribes in posts filled by promotion.

**

In this Ministry's Office Mrmorandum No.1/10/61-Est.(D) dated 8th Nov. 1963, reservation at 12½% of the vacancies were provided for Scheduled Casts and S.T. in Class II and IV posts filled by promotion based on (i) selection or (ii) the results of competitive examinations limited to departmental candidates, in grades or services to which there was no direct recruitment whatsoever. The aforesaid Office Memorandum of 8.11.63 also provided that there would be no reservations for S.C. and S.T. in appoinements made by promotion to a Cl.II or a higher service or post, whether on the basis of seniority-cum-fitness, slection or competitive examinations limited to departmental candidates.

2. The Govt. of India have reviewed their policy in regard to reservations and other concessions to S.C. and S.T. in posts filled by promotion and have in supersession of the orders in the aforesaid O.M. dated 8.11.63 decided as follows:-

A. Promotions through limited departmental competitive examinations:-

There will be reservations at 12½% and 5% of vacancies for S.C. and S.T. respectively in promotion made on the basis of competitive examination limited to departmental candidates, within or to Cl.II, III and IV posts, in grades or services in which the element of direct recruitment, if any, does not exceed 50per cent.

(a) Class I and II appointments:

In promotions by selection from Class III to Class II and within Class II and from Class II to the lowest rung or category in Class I, the following procedure will be adopted.



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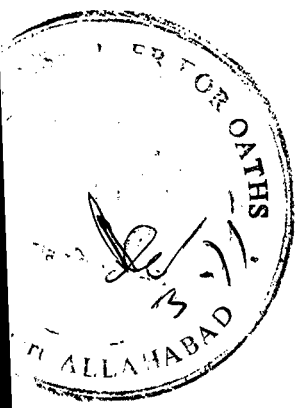
In promotions made by selection, employees in the zone of consideration numbering 5 or 6 times the estimated no. of vacancies are normally considered for inclusion in the select list, vide Ministry of Home Affairs O.M.No. F.1/4/55-RPS, dt. 16.5.57. After rejecting those who are unfit for promotion, the D.P.C. proceeds to categorise the remaining eligible employees into three categories namely Outstanding, Very Good and Good. Thereafter the Committee draws up a select list placing all employees in the Outstanding category at the top, followed by those categorised at very good and then by those categorised as good the inter-se seniority within each category being maintained. As a measure of improving representation of S.C./S.T. in services it has now been further decided that:-

(i) If within the zone of consideration, there are any SC and ST employees, those amongst them who are considered unfit for promotion by the DPC will be excluded from consideration. Thereafter the remaining SC and ST employees will be given by the DPC one grading higher than the grading otherwise assignable to them on the basis of their record of service, i.e. if any SC or ST employee has been categorised by the DPC on the basis of his record as Good he should be categorised by the DPC as very good. Likewise if any SC or ST employee is graded as very good on the basis of his record of service he will be recategorised by the DPC as outstanding. Of course if any SC or ST employee has already been categorised as outstanding no recategorisation will be needed in his case.

~~(ix)~~ The above concession would be confined to only 25% of the total vacancies in a particular grade or post filled in a year from the Select List. While making promotion from the Select List the appointing authority should therefore check up that the SC/ST employees promoted in a year on the basis of this concession are limited to 25% of the posts filled in a year from the Select List prepared according to the procedure outlined above; and

(ii) Those SC/ST employees who are senior enough in the zone of consideration so as to be within the no. of vacancies for which the Select List has to be drawn, should be included in the Select List, if they are not considered unfit for promotion and should also be given one grading higher than the grading otherwise assignable to them on the basis of their record of service and their place in the Select List determined on the basis of this higher categorisation. This would imply that even where, in some cases, the Select List were to consist of say only outstanding, non SC/ST candidates, adequate no. of them being available from the zone of consideration, those of SC/ST candidates who are high up in the zone of consideration and are within the no. of estimated vacancies for which the Select List is being prepared will even if they are only Good and after higher categorisation by one degree are categorised as Very good have to be included in the Select List but they will be placed below the Outstanding candidates in the Select List.

Arduan
3/11



(b) Class III and IV appointments:

There will be reservation at 12½% and 5% of the vacancies for S.C. and S.T. respectively in promotions made by selection in or to Class II and IV posts, in grades or services in which the element of direct recruitment, if any, does not exceed 50 per cent.

Select Lists of S.C./S.T. officers should be drawn up separately to fill the reserved vacancies as at present; officers belonging to these classes will be adjusted separately and not alongwith other officers, and if they are fit for promotion, they should be included in the list irrespective of their merit as compared to other officers. Promotions against reserved vacancies will continued to be subject to the candidates satisfying the prescribed minimum standards.

(c) ~~XX~~ Promotions on the basis of seniority subject to fitness:-

There will be no reservation for SC and ST in appointments made by promotion on the basis of seniority subject to fitness, but cases involving supersession of SC and ST Officers in Class I and II appointments will as at present be subjected for prior approval to the Minister or Dy. Minister concerned. Cases involving supersession of SC and ST officers in Class III and IV appointments will as at present be reported within a month to the Minister or Dy. Minister concerned for information.

3. The following instructions will apply to the filling of vacancies reserved for S.C. and S.T. under the orders contained in this Office Memorandum:-

1(a) S.C. and S.T. Officer who are within the normal zone of consideration should be considered for promotion along with others and adjudged on the same basis as other and those SC and ST amongst them who are selected on that basis may be included in the general Select List in addition to their being considered for separate select list for SC and ST respectively.

(b) If candidates from SC and ST obtain on the basis of their positions in the aforesaid general select list less vacancies than are reserved for them, the difference should be made up by selected candidates of these communities who are in the separate select list for SC and S.T. respectively.

2. In the separate select lists drawn up for (i) SC and (ii) S.T. officers belonging to S.C. or S.T. as the case may be will be adjudged separately amongst themselves and not alongwith other officers, and if selected, they should be included in the concerned separate Select List irrespective of their merit as compared to other officers. It is needless to mention that officers not belonging to S.C. and S.T. will not be considered whilst drawing up separate Select Lists for S.C. and S.T. For being considered for inclusion in the aforesaid separate Select Lists the zone of consideration for the S.C. and S.T. as the case may would be of the same size as that for the general Select List that is if for the general Select List



: : 4 :

the zone of consideration is 5 times the no. of vacancies likely to be filled the zone of consideration for the separate list for SC will also be 5 times the no. of reserved vacancies for them and likewise for S.C. subject of course to the condition that officers coming within such zone are eligible, by length of service etc. as prescribed, for being considered for promotion.

3. For giving effect to the reservation in promotions prescribed in this O.M. it has been decided that a separate roster on the lines of the roster prescribed in Annexure 1 to O.M. No. 1/13/63/SCT(1) dt. 21.12.63 in which points 1, 9, 17, 25 and ~~23~~ are reserved for SC and points 4 and 21 s for ST should be followed. If owing to non availability of suitable candidates belonging to ST or SC as the case may be it becomes necessary to dereserve a reserved vacancy, a ref. for dereservation should be made to this Ministry indicating whether claims of SC/ST candidates eligible for promotion in reserved vacancies have been considered in the manner indicated in (1) and (2) above. When dereservations are agreed to by this Ministry, the reserved vacancies can be filled by other candidates, sub. to the reservations being carried forward to recruitment years in accordance with this Ministry Office M. No. 1/4/64-SCT(1) dt. 2.9.64.

4. Where promotions in the above manner are first made on a long term officiating basis, confirmations should be made according to the general rule viz. that an officer who has secured earlier officiating promotion on the basis of his place in the Select List should also be confirmed earlier and thus enabled to retain the advantage gained by him provided that he maintains an appropriate standard vide para 1(iii) of this Ministry's O.M. no. 1/1/55-RPS dt. 17.2.55. But the principle of reservations would not apply again at the time of confirmation of promotees.

...



Admission
3/11

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH

ANNEXURE 'VI'

I N

Civil Misc. Writ No. VI of 1979

Subhash Chandra Sharma -- Petitioner

Versus

Union of India & Others -- Respondents

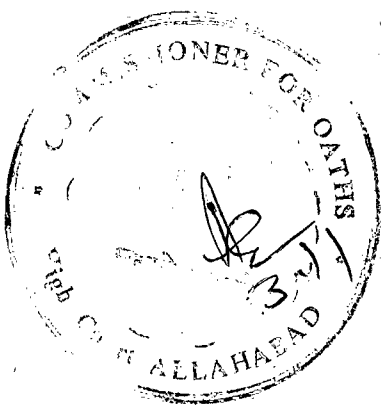
Ministry of Home Affairs Resolution No. 27/25/68-
Est.(SCT), dated 25th March, 1970.

**

Relevant Extracts:

3. The Government of India have also decided that in vacancies in posts filled by promotion in which reservations have been provided vide Ministry of Home Affairs Office Memorandum No. 1/12/67-Est.(C) dated 11th July, 1968, the percentages of reservation for Scheduled Castes and Scheduled Tribes in such posts shall also be raised from 12½% to 15% in favour of Scheduled Castes and from 5% to 7½% in favour of Scheduled Tribes.

4. These orders shall take effect from the date of issue of this Resolution, except where rules for a competitive examination have already been published for where selections for posts to be filled by direct recruitment or for posts to be filled by promotion have already been made prior to the issue of these orders.



A-43 1/4

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH
ANNEXURE 'A' ✓
 IN

Civil Misc. writ No. of 1979
 Subhash Chandra Sharma ... Petitioner
 Versus
 Union of India & others ... Respondents

 Department of Personnel O.M.No.27/2/71-Est(SCT),
 dated 27th November, 1972 to all Ministries etc.

Subject: Reservations for Scheduled Castes and
 Scheduled Tribes in posts filled by
 promotions on the basis of seniority
 subject to fitness.

....

The undersigned is directed to refer to para 2.C of the Ministry of Home Affairs O.M.No.1/12/67-Est(C) dated the 11th July 1968 according to which there is no reservation for Scheduled Castes and Scheduled Tribes in appointments made by promotion on the basis of seniority subject to fitness, although cases involving supersession of Scheduled Castes and Scheduled Tribes officers in Class and Class II appointments are required to be submitted for prior approval to the Minister or Deputy Minister concerned and cases of supersession in Class III and Class IV appointments have to be reported within a month to the Minister or Deputy Minister concerned for information.

2. The policy in regard to reservations for Scheduled Castes and Scheduled Tribes officers in posts filled by promotion on the basis of seniority subject to fitness has now been reviewed and it has been decided, in supersession of the orders contained in the aforesaid para 2.C of the O.M. dated 11th July 1968, that there will be reservation at 15% for Scheduled Castes and 7½% for Scheduled Tribes in promotions made on the basis of seniority subject to fitness, in appointments to All Class I, Class II, Class III and Class IV posts in grades or services in which the element of direct recruitment, if any, does not exceed 50 percent.

3. The procedure to be followed where promotions are made on the basis of seniority subject to fitness has been laid down in paragraph LB of Ministry of Home Affairs O.M.No.1/9/58-RPS dated the 16th May, 1959,

.....2/-

As per
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A-111 1/2

which provides that in such cases a decision has to be taken on the suitability of each individual officer for such promotion although there is no need for a comparative evaluation of their respective merits and that a decision on the fitness or the unfitness of an officer for promotion should be taken by the Departmental Promotion Committee instead by an individual officer. While, therefore, referring proposals to the Departmental Promotion Committee for promotion on the basis of seniority subject to fitness in respect of vacancies expected to arise during a year, the following procedure may be followed to give effect to the decision mentioned in paragraph 2 above:-

- (i) A separate 40 point roster to determine the number of reserved vacancies in a year should be followed on the lines of the roster prescribed in Annexure I to the Ministry of Home Affairs O.M.No.1/11/69-Est(SCT) dated the 22nd April, 1970, in which points 1, 8, 14, 22, 28 and 36 are reserved for scheduled castes and points 4, 17, and 31 are reserved for scheduled Tribes.
- (ii) Wherever according to the points in the roster there are any vacancies reserved for scheduled castes and scheduled tribes, separate lists should be drawn up of the eligible scheduled castes or the scheduled tribes officers as the case may be, arranged in order of their inter se seniority in the main lists.
- (iii) The Scheduled Castes and Scheduled Tribes officers should be adjudged by the Departmental Promotion Committee separately in regard to their fitness.
- (iv) When the Select Lists of officers in the general category and those belonging to scheduled castes and scheduled Tribes have been prepared by the Departmental Promotion Committee, these should be merged into a combined select list in which the names of all the selected officers, general as well as those belonging to scheduled castes and scheduled tribes, are arranged in the order of their inter-se seniority in the original seniority list of the category or grade from which the promotion is being made. This combined select list should thereafter be followed for making promotions in vacancies as and when they arise during the year.
- (v) The select list thus prepared would normally be operative for a period of one year, but this period may be extended by six months to enable such of the officers included therein, as could not be appointed to the higher posts during the normal period of one year, to be appointed during the extended period.
- (vi) If the number of eligible candidates belonging to Scheduled Castes/Scheduled Tribes found fit for promotion falls short of the number of vacancies reserved for either of them during the year, the extent of such shortfall should be reported to this Department alongwith

Annexure
3/11

3.11

: 3 :

proposals, if any, for deservation of vacancies in respect of which the shortfall has occurred. If on a scrutiny of the data furnished in this regard, any deservation is agreed to by this Department, the vacancy so deserved may be filled up by another candidate included in the combined select list subject to the instructions contained in the Ministry of Home Affairs O.M.No.27/25/68-Est(SCT) dated the 25th March, 1970, in respect of carry-forward of such reserved vacancy for the subsequent three recruitment years and exchange of vacancies between scheduled castes and scheduled tribes in the last year to which the reserved vacancies are carried forward.

4. The above instructions take effect from the date of issue of these orders except where a Select List, if any, for the promotion by seniority subject to fitness has already been prepared by a Departmental Promotion Committee and approved by the appropriate authority before the date of issue of these orders.

5. The Ministry of Finance etc. are requested to kindly to bring the above decisions to the notice of all Attached and Subordinate offices under them and Semi-Government and Autonomous Bodies with which they are administratively concerned.

6. In so far as officers serving under Indian Audit and Accounts Department are concerned, separate orders will issue in due course.

...



Agreement
9/11

(41)

448 1/2

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH

ANNEXURE 'A'

IN

Civil Misc. Writ No. of 1979

Subhash Chandra SharmaPetitioner

Versus

Union of India & Others ... Respondents

Department of Personnel & Administrative Reforms
O.M.No.10/41/73-Estt.(SCT) dated 20th July 1974
to all Ministries etc.

Subject: Reservations for Scheduled Castes and Scheduled tribes in posts filled by promotion - promotions by selection to Class II, within Class II and upto the lowest rung of Class I.

....

The question whether the scheme of reservations for candidates belonging to scheduled castes and scheduled tribes in promotions by selection should be extended to posts in Class II services and beyond, and if so to what extent, has been under the consideration of Government. It has now been decided, in supersession of the orders contained in paragraph 2B(a) of the Ministry of Home Affairs O.M.No.1/12/67-Estt(C) dated the 11th July, 1968 that there will be reservations at 15% and 7½% of the vacancies for Scheduled Castes and Scheduled Tribes respectively in promotions made by selection from Class III to Class II, within Class II and or services in which the element of direct recruitment, if any, does not exceed 50%.

Referenced 3/11

2. The following instructions will apply to the filling up of vacancies reserved for scheduled castes and scheduled tribes in terms and of the instructions contained in this Office Memorandum :-

- (i) Selection against vacancies reserved for Scheduled Castes and Scheduled Tribes will be made only from amongst those Scheduled Castes/Scheduled Tribes officers who are within the normal zone of consideration.
- (ii) If candidates from scheduled castes and scheduled tribes obtain on the basis of merit with due regard to seniority on the same basis as others, less number of vacancies than that reserved for them, the difference should be made up by selecting candidates of these communities who are in the zone of consideration irrespective of merit but who are considered fit for promotion.
- (iii) A Select List then be prepared in which the names of all the selected officers, general as well as those belonging to Scheduled castes and scheduled tribes, are arranged in the order of merit and seniority according to the general principles for promotion to selection posts laid down in the Ministry of Home Affairs O.M.No.1/4/55-RPS dated 16th May, 1957, i.e. by placing the names in the three categories viz. 'Outstanding', 'Very-Good' and 'Good' in that order, without disturbing the seniority inter-se within each category. This Select List should,

3-11
ALLAHABAD

thereafter, be followed for making promotions in vacancies as and when they arise during the year.

- (iv) For Determining the number of vacancies to be reserved for Scheduled tribes and Scheduled Castes in a Select List, a separate roster on the lines of the roster prescribed in Annexure I to Office Memorandum No.1/11/69-Estt(SCT) dated the 22nd April, 1970 (in which points 1,8,14,22,28 and 36 are reserved for Scheduled Castes and points 4,17 and 31 for Scheduled Tribes) should be followed. If, owing to non-availability of suitable candidates belonging to scheduled castes or scheduled tribes, as the case may be, it becomes necessary to dereserve a reserved vacancy, a reference for dereservation should be made to this Department indicating whether claims ~~fm~~ of scheduled castes/scheduled tribes candidates eligible for promotion in reserved vacancies have been considered in the manner indicated in this O.M.
- (v) There will, however, be no carry forward of reservations from year to year in the event of an adequate number scheduled caste/scheduled tribes candidates not being available in any particular year.
- (vi) While vacancies reserved for Scheduled Castes and Scheduled Tribes will continue to be reserved for the respective community only, a scheduled caste officer may also be considered for appointment against a vacancy reserved for scheduled tribes, or vice versa, in the same year itself in which the reservation is made, where the appropriate reserved vacancy could not be filled by a scheduled tribe or a scheduled caste candidate, as the casemay be.
- Reserve 3/11*
(vii) Where promotion in the above manner are first made on a long-term officiating basis, confirmations should be made according to the general rule viz. that an officer who has secured earlier officiating promotion on the basis of his place in the select list should also be confirmed earlier and thus enabled to retain the advantage gained by him. provided that he maintains an appropriate standard vide para 1(iii) of Ministry of Home Affairs office Memorandum No.F.1/1/55-RPS dated the 17th February, 1955. But the principle of reservations would not apply again at the time of confirmation of promotees.

3. The above instructions take effect from the date of issue of these orders except where a Select List for promotion by selection has already been prepared by the Departmental Promotion Committee and approved by the appropriate authority before the date of issue of these orders.

4. Ministry of Finance etc. are requested to bring the above decisions to the notice of all concerned.

5. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these orders issue in consultation with the Comptroller and Auditor General.

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High Court 3.11

(49)

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH

ANNEXURE : X

I N

Civil Misc. Writ No. _____ of 1979

Subhash Chandra Sharma - Petitioner

Versus

Union of India & Others - Respondents

Government of India
Office of the Commissioner, of Incometax,
Lucknow.

O R D E R

Dt. 31.7.1979 (Forenoon)

Establishment- Central Services- Group 'C' and 'D'-
Absorption, Regularisation, Postings etc.--
Orders regarding--

No. 154: In pursuance of letter No.4/2/79-CS.III dated 21.7.79 from the Department of Personnel & A.R. New Delhi, the following surplus personnel presently on the roll of that Department are hereby absorbed in the Incometax Department in the cadres noted against each with effect from the date of joining and until further orders. They will be on probation for a period of two years:-

Sl. Names of the surplus personnel	Cadre in which absorbed in the	
<u>No. with present postal address</u>	<u>I.T. Deptt. with pay scale</u>	
1 ----- 2 -----	3 -----	

As per Annexure 2/11

1. Sukumar Bose, Asstt. Commandant, Office of the Chief Commandant, Mana Group of Transit Centres (Dept. of Rehabilitation). Mana Camp, Raipur, M.P.	Inspector of Incometax Rs.425-800
--	--------------------------------------

2. K.C.Nandi, Steno(Sr.Gr.) Office of the Chief Commandant, Mana Group of Transit Centres, (Deptt. of Rehabilitation), Mana Camp, Raipur, M.P.	Stenographer(Selection Grade) Rs.425-700
--	---

No. 156: Inter alia, consequent upon the above, the following transfers and postings are hereby ordered with immediate effect:-

Sl. Names of the officials with	Office to which posted/services
<u>No. present place of posting</u>	<u>placed at the disposal of</u>
1 ----- 2 -----	3 -----

22. K.C.Nandi, nominee Steno (Sr.Gr.) Raipur, M.P.	Acquisition Branch, Lucknow.
---	------------------------------

Sd/-

S.K.Lall,
Commissioner of Incometax,
Lucknow.

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(48)

A-49

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH

ANNEXURE : X :

I N

Civil Misc. Writ No. _____ of 1979

Subhash Chandra Sharma - Petitioner

Versus

Union of India & Others - Respondents

F.No.69/125/72-Ad. VII
Government of India
Central Board of Direct Taxes

New Delhi, the 27th November, 1973.

To

All Commissioners of Incometax
Director of Inspection(I.T.& Audit)/(Inv.)/(RS&P),
New Delhi.
Director Organisation and Management Services,
New Delhi.

Sir,

Subject:- Redeployment of surplus staff- against
promotion quota vacancies- Clarification
regarding--

Assumed 3/11

I am directed to refer to the Board's letter of even number dated the 18th July, 1973, on the above subject and to say that the question of exempting the Income-tax Department from the re-deployment of the surplus staff against promotion posts was taken up with the Department of Personnel at a High level. That Department have expressed their inability to make any change in the general policy of making nominations of the surplus staff against promotion posts in favour of the Incometax Department, as there might be repercussion in other Ministries/Departments. However, the Department of Personnel have intimated that the nominations to promotion posts in the Income-tax Department would be made by them as sparingly as possible. In the circumstances, the Board have accepted this as a practical solution to the problem. The Department of Personnel have also agreed that, as far as possible, the surplus staff would be nominatated evenly amongst the various Income-tax Charges and not to the Delhi Charges only.

2. It may, however, be added if any unsuited person is nominated against the posts to be filled in by direct recruitment/rpromotion, the matter may be reported to the Board immediately before accepting the nomination.

Sd/- A.C.Chodhary,
Under Secretary, Central Board
of Direct Taxes.

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7/28

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH LUCKNOW

ANNEXURE 'X'

Civil Misc. Writ No. _____ of 1979

Subhash Chandra Sharma - Petitioner

Versus

Union of India & Others - Respondents

F.No.69/125/72-Adv. VII
Government of India
Central Board of Direct Taxes.

New Delhi the 18th July, 1973

To

All Commissioners of Incometax

The Director of Inspection (I.T. & Audit)/(Inv.)/(R.S.&P), New Delhi.

Directorate of O&M Services, New Delhi.

Subject: Re-deployment of surplus staff against
promotion quota vacancies-
Clarification regarding--

Sir,

I am directed to say that the question of redeployment of surplus staff, through Central (Surplus Staff) Cell in the Incometax Department against vacancies intended for promotees has been taken up with the Department of Personnel and Administrative Reforms. Pending a decision in the matter you are advised not to accept the nomination of surplus staff against promotion quota vacancies.

Yours faithfully,

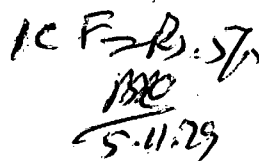
Sd/-(N.C.Jain)
Under Secretary, Central Board of Direct
Tax.

..



वकालतनामा

15/2/1



बनाम

Union of India & others - - - - Respondent.

WP No 41979

प्रतिवादी (मुद्राअलेख)

नं० मुकदमा सन १६ पेशी की ता० १६ ई०
ऊपर लिखे मुकदमा में अपनी ओर से श्री PRASHANT CHANDRA

RAJIV SHARMA + SAMIR SAINI 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 जवाब देहो व प्रश्नोंत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारो 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 तस्दीक करें या मुकदमा उठावें या कोई रुपया जमा करें या हमारो विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करें वकील महोदय द्वारा को गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी इसलिये यह वकालत नामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महोना

9.2 50

IN THE

IN

CIVIL PETITION NO. _____

OF 1979

(District Muzaffarpur)

Dr. Bhabha Chandra Sharma

----- Petitioner

Versus

Union of India & Others

----- Respondents

Sl. No.

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Lucknow:

Dated: 4.11.1979

(RAJIV SHARMA)
Counsel for the Petitioner

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LICHTED SEVEN LUCKNOW

CIVIL MISC. WRIT PETITION NO. _____ of 1979
(Under article 226 of the Constitution of India)
(District Lucknow)

Subhash Chandre Sharma aged 35 years s/o Late
Bakam Chandre Sharma, r/o 512/404 3rd Lane,
Bishtganj, Lucknow.

PETITIONER

Verans

1. Union of India
2. Chairman, Central Board of Direct Taxes,
New Delhi
3. Commissioner of Incometax (Cedre Controlling
Authority) Allahabad / Lucknow
4. C.D. Shukla aged 35 years s/o Prabhu Dayal s/o
Office of the Inspecting Asstt. Commissioner of
Incometax, Range-II, Allahabad
5. Har Suran Lal aged 27 years s/o Babu Ram, s/o
Office of the Appellate Assistant Commissioner
of Incometax, Moradabad
6. K.C. Nandi, Steno (Senior Grade) Office of the
Chief Commandant, Nana Group of Transit Centres,
(Department of Rehabilitation), Nana Camp,
Raipur, M.P.

PROPOSANTS

To

The Hon'ble the Chief Justice and his companion
Judges of the aforesaid court.

The humble petition of the petitioner above named
most respectfully sheweth:-

1. That the petitioner is a stenographer in the
ordinary grade in the Income-tax Department and is
presently posted in Lucknow charge in the office of the
Inspecting Assistant Commissioner of Income-tax (and its
business).
2. That the petitioner was appointed in 1937 as
Lower Division Clerk- stenotypist (with special pay)
which was redesignated as stenographer (ordinary grade)
in the year 1939 and he has been working on the said
post for the last 13 years.
3. That the petitioner's services are regulated by
the Income-tax Department Non-permitted Ministerial Posts
-recruitment Rules, 1939 (hereinafter referred to as
Rules) framed by the President of India in exercise of
the powers conferred under the proviso to Article 309
of the Constitution. A true copy of the rules is
annexed hereto and is marked Annexure I.
4. That the next higher post in the Income-tax
Department is that of stenographer Selection Grade,
which is a selection post. According to rule of the
rules the posts of stenographer (Selection Grade) are
to be filled in exclusively by promotion from amongst

the stenographers in the ordinary grade on the principle of merit-cum-seniority as laid down in rule of the Rules.

6. That the procedure for promotion as stenographer (Selection Grade) from amongst the stenographer (Ordinary Grade) is that there is a Departmental Promotion Committee which prepares a select list on the basis of merit-cum-seniority. The stenographer (ordinary grade) in the same of consideration are considered for promotion according to the seniority in the graduation list. The number of persons considered for promotion for inclusion in the select list are 3 to 6 times the number of estimated vacancies as laid down in rule of the Rules. The Departmental Promotion Committee after rejecting those who are unfit for promotion classifies the remaining eligible persons in 3 categories viz. 'satisfactory', 'very good', and 'good' on the basis of entries in the character rolls for the last 5 years. Thereafter the Departmental Promotion Committee prepares the select list picking of the top persons in the satisfactory category followed by those in very good and good categories. Inter-cum-seniority within each category is maintained. This procedure is followed by the Departmental Promotion Committee in accordance with the provisions of the Government of India, Department of Personnel and Administrative Reforms' Office Memorandum No. 22311/3/75- att(3) dated the 31st December, 1975

where in the procedure for making promotions and functioning of the Departmental Promotion Committee has been laid down. A true copy of the relevant extracts of the procedure for making promotion and functioning of the Departmental Promotion Committee is annexed hereto as marked Annexure II.

6. That in July, 1979 seven vacancies occurred in the posts of stenographer (selection grade) and in the gradation list prepared by the Department the petitioner was placed at sl.number 9 in the category very good accordingly to his seniority. The respondents no. 4 and 5 were placed at sl.number 2 and 77 respectively. S/Shri S.C.Bajpai, K.K. Bhattacharya, A.K.Dey Sarkar, Bhola Lal, H.C.Srivastava, Rajneesh Kumar Srivastava and PremPrakash Kapoor were placed at sl.numbers 1, 3, 4, 5, 6, 7 and 8 respectively. S/Shri S.C.Bajpai, K.K.Bhattacharya and Bhola Lal were subsequently found unfit for promotion by the Departmental Promotion Committee and were, therefore, not considered for promotion. After the rejection of S/Shri S.C.Bajpai, K.K.Bhattacharya and Bhola Lal the petitioner was placed at serial number 7 in the Select List.

7. That out of the candidates eligible for promotion 3/rd A.H. Roy Barker, H.C. Trivastava, Rajnesh Kumar Trivastava, Prem Prakash Kapoor and the petitioner had 3 very good character roll entries out of the character roll entries of five years while respondent no. 4 Sri C.D. Shukla had only 2 very good entries to his credit.

8. That although there were only 2 very good entries in the character roll of Sri C.D. Shukla, respondent no. 4, yet he was placed at number 1 in the Select List prepared by the Departmental Promotion Committee for promotion to the post of stenographer (selection grade). The names of 1/2 A.H. Roy Barker, H.C. Trivastava, Rajnesh Kumar Trivastava, Prem Prakash Kapoor and the petitioner were placed at sl. numbers 2, 3, 4, 5 and 7 respectively in the Select List according to the seniority.

9. That Sri C.D. Shukla respondent number 4 having only 2 very good entries in his character roll out of the latest 5 character roll entries was not eligible for being considered by the Departmental Promotion Committee and in any case he could not be placed at the top of the Select List. The respondent number 4 could at best be assigned the lowest position in view of the character roll entries of the petitioner name above being better than those of respondent no. 4.

10. That in December, 1977 and August, 1978 vacancies had arisen for the post of stenographer (selection grade) and the respondent number 4 was rejected by

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the then Departmental Promotion Committee for not having three very good character roll entries to his credit out of the latest 5 character roll entries. The petitioner accordingly on 20.7.1970 made a representation to the Chairman, Central Board of Direct Taxes, New Delhi against the inclusion of Sri G.D. Chhabla's name at the top of the Select List. A true copy of this representation dated 20.7.1970 made by the petitioner to the Chairman, Central Board of Direct Taxes, New Delhi is annexed hereto as is marked Annexure XII.

10. That on 20.7.1970 the petitioner also represented the matter to the Income Tax Employees Association, Class III, Jaipur and its General Secretary Sri V.L. Testagi met on or about 21.7.1970 the then Commissioner of Income Tax Sri V.L. Ball who was also the Chairman of Departmental Promotion Committee and apprised him of the situation. At the request of Sri V.L. Testagi Sri V.L. Ball was pleased to send for character roll from the offices of the Commissioner of Income Tax at Jaipur and found that the Sri G.D. Chhabla was wrongly recommended in violation of the rules and minutes dated 11.7.1970 of the Departmental Promotion Committee for promotion as he had only 3 very good character roll entries to his credit. Sri V.L. Ball also told Sri V.L. Testagi that the correct facts in regard to the character roll entries were not placed before the Departmental Promotion Committee by the Liaison Officer Sri V.L. Agar and that the name of Sri G.D. Chhabla was

wrongly included in the panel for promotion, but since the list had been finally prepared he expressed his inability to rectify the same.

11. That the petitioner's representation dated 23.7.1978 to the Chairman, Central Board of Direct Taxes (Annexure 3) has not been considered till today and all those persons placed in the Select List above the petitioner have been promoted to the post of stenographer (collection grade) by the order dated 24.7.1978 of Commissioner of Income Tax respondent number 2. A true copy of the said order dated 24.7.78 is annexed hereto and marked as Annexure IV. Had the Select List been prepared correctly in accordance with the rules of the Departmental Promotion Committee the petitioner would have been promoted by the same order.

12. That the promotion of respondent number 4 Sri G.D. Chhabla is in violation of rule of the Rules and also in violation of the procedure prescribed for making promotions. That is not only discriminatory but also highly prejudicial to the petitioner and has resulted in violation of the provisions of Article 14 and 13 of the Constitution.

13. That the respondent number 6 who is from Schedule Caste/ Schedule tribe was placed at sl. number 77 in the promotion list of stenographers for promotion to the stenographer (collection grade) and there being only 7 vacancies for the said post of the stenographer (collection grade), the Departmental Promotion Committee ought not to have considered the name of respondent

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number 6 as the number of persons to be considered for the Select List could not exceed 5 to 6 times of the estimated vacancies and there being only 7 vacancies there was no question of the name of the respondent no. 6 being considered.

14. That in 1963 the Government of India, Ministry of Home Affairs by its Office Memorandum No. 1/19/67-Subt.(C.T.) dated 11.7.1963 and 12.61 and 7.61 reservations for Schedule caste and schedule tribes respectively in selection posts to be filled in by promotion which was subsequently revised and enhanced to 10% and 7.6% respectively by the Ministry of Home Affairs resolution no. 87/83/83-Subt.(C.T.) dated 23.3.1970. True copies of the circulars dated 11.7.63 and resolution dated 23.3.70 are annexed hereto and marked as Annexure V and VI respectively.

15. That in 1970 another circular was issued by the Government of India, Department of Personnel Office Memorandum No. 87/2/71-Subt.(C.T.) dated 27.11.70 by which 10% and 7.6% of non-selection posts to be filled in by promotion were reserved by schedule caste and schedule tribes. The said circular dated 27.11.70 is annexed hereto and is marked as Annexure VII.

16. That in the year 1974 again another circular was issued by the Government of India Department of Personnel and Administrative Reforms Office Memorandum No. 10/41/73-Subt.(C.T.) dated 20.7.74 a true copy of which is annexed hereto as and is marked Annexure VIII

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fixing the open ratio of reservation in favour of schedable cast and schedable tribe in selection posts to be filled in by promotion of Class II, within class II and upto the lowest rank of Class I.

17. That the Income Tax Department has the following three groups of employees:-

<u>Group A</u>	<u>Group B</u>	<u>Group C</u>
Inspection Officer Class II and Class III above	Inspection Officer Class II and Class III above	1. Lower Division Clerk 2. Upper Division Clerk 3. Stenographer (ordinary grade) 4. Tax Assistants 5. Head Clerks 6. Stenographer (collection grade) 7. Supervisor Grade II 8. Supervisor Grade I 9. Inspector Inspector

18. That prior to the issue of the aforesaid instructions there was no reservation for the posts of Tax Assistants, Head Clerks, stenographer (collection grade), stenographer (senior scale). The one all selection posts to be filled in exclusively by promotion. There was no reservation in promotion from Supervisor grade II to grade I, which is a non-selection post and is to be filled in by promotion exclusively. 50% of the Upper Division Clerks and 50% of Inspectors are appointed by promotion from amongst the Lower Division Clerks, Upper Division Clerks respectively by the Departmental Promotion Committee on the principle of merit-cum-seniority and there was no reservation in favour of schedable cast and schedable tribe. Lower Division Clerks and stenographers ordinary grade and 50% of

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Upper Division clerks and Staff of Inspectors were recruited directly and there was reservation of 15% and 7.5% in each post for schedule cast and schedule tribe respectively. Thus there was a quota fixed for the schedule cast and schedule tribe in each cadre in which appointment was to be made by direct recruitment and they were adequately represented.

10. That the number of posts in the Income Tax Department of the extent to which these posts are held by the schedule tribe/schedule tribe candidates is as follows:-

Total no. of posts of stenographer (collection grade)
Number of schedule casts/schedule tribe persons in Department

The extent of reservation in favour of schedule cast or schedule tribe candidates is likely to exceed soon the reservation limit of 50% and already holding of posts of both by recruitment and promotion, thus schedule cast / schedule tribe candidates has deprived the general candidates of being employed. The large percentage of schedule cast/schedule tribe candidates is violative of the provisions of article 16 of the Constitution of India. The petitioner and all these employees who do not belong to schedule cast or schedule tribe have not only lost their seniority in various cadres but have also been deprived of their promotion. The employees of schedule cast and schedule tribe get 2 or more promotions in a year and go on occupying higher and higher posts leaving their colleagues alongside whom they entered the department in their old call. It is significant to point out here

that the petitioner was appointed in the year 1937 as Lower Division Clerk (steno-typist) which was redesignated as stenographer (ordinary grade) in the year 1939 whereas the respondent no. 5 was appointed as stenographer (ordinary grade) in the year 1974 and is much junior to the petitioner but has been promoted. This and similar other instances has caused frustration and heart braining amongst the employees. Consequently the efficiency of the administration has been adversely affected unjustified.

23. That article 333 of the Constitution lays down that reservation to posts is to be made having regard to the maintenance of efficiency in the administration. If the reservation made in view of the aforesaid circulate has created not only imbalance, but adversely affected the morale of services and the efficiency in the administration has gone down.

24. That the Hon'ble Supreme Court in State of Kerala Vs. T.N. Thomas (AIR 1975 SC page 400 at 403) has observed that in making reservation at appointments or posts under article 16(4) the State has to take into consideration the claims of the backward classes consistently with the maintenance of the efficiency of administration. It must not be forgotten that the efficiency of administration is of such a paramount

that it would be unwise and undesirable to make any reservation at the cost of administration.

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22. That the persons belonging to schedule cast or schedule tribe having once been recruited on a post held the same status and financial position as other employees of the same cadre and he comes to belong to socially and economically backward classes and are not entitled to the benefit of reservation under article 16(4) of the Constitution in matter of promotion, particularly where merit is the sole or main criterion.

23. That as a matter of fact no quota can be fixed for posts to be filled in by promotion. Quota may be fixed only at the time of initial appointment and once it is so fixed, it can not be carried forward and extended to a post which is to be filled in by promotion. Reservation twice over one at the stage of initial recruitment and second at the stages of promotion is not permissible either under Article 16(4) or Article 335 of the Constitution. Respondent no. 5 was appointed as stenographer in the ordinary grade in 1974 on the basis of reservation and was very much junior to the petitioner but on account of reservation he has become senior to the petitioner by superseding him.

24. That there are a number of schedule cast and schedule tribe persons who are employed in very good services because of the reservation made for them in different services. Their childrens have got good education and social back grounds, and they do not

now need any protection by way of reservation, and should now be treated as ordinary candidates. The impugned reservation does not make any distinction between such scheduled cast /scheduled tribe candidates who are advanced, economically well off and other scheduled cast and scheduled tribe candidates. There is also no basis for such different treatment between scheduled cast and scheduled tribe candidates who are educationally socially and economically advanced and ordinary candidates and as such the provisions of article 14, 15 and 16 of the Constitution are violated.

25. That the petitioner has been guaranteed the fundamental right of equality in employment and as a result of the aforesaid three circulars the fundamental rights of petitioner of equality in employment is violated and as such the said circulars are violative of Article 14, 15 and 16 of the Constitution of India.

26. That out of 7 vacancies 6 have already been filled by promotional orders passed on 24.7.79 and one post is still lying vacant. Despite the fact that the petitioner's name finds place in the Select List for promotion, he has not been promoted for the reason that 7th post has to be filled in by the surplus Cell, Ministry of Home, Department of Personnel, New Delhi. The Commissioner of Income Tax

known by his order No.154 dated 31.7.73 has appointed Sri K.C.Bandi, respondent no. G as stenographer (selection grade) from Surplus Cell a true copy of the order dated 31.7.73 is enclosed hereto and marked as Annexure A

27. That on 17th July, 1973 the Central Board of Direct Taxes New Delhi issued circulars vide F.No.69/125/72-Ad.VII dated 18.7.73 for re-deployment of surplus staff of various Central Government Departments against promotion quota vacancies also which was to be applied only in Delhi but its operation has now been extended to all other charges of the Income Tax Department by F.No.69/125/72 Ad.VII dated 27.11.73. True copies of circulars dated 18.7.73 and 27.11.73 are enclosed hereto and are marked as Annexure X and XI respectively.

28. That the aforesaid circulars are wholly illegal and void because under the Rules applicable to the petitioner appointment to the posts of stenographer (selection grade) can only be made by promotion of the stenographer (ordinary grade) The statutory rules framed under Article 302 of the Constitution can not be altered by administrative instructions issued by the Central Board of Direct Taxes. Hence administrative instructions can not be of any avail to respondent no. G.

29. That promotion to a higher post is only the right of employees in the lower cadre in a particular

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charge of the Income Tax Department and no outsider can be imposed. This is also in violation of the provisions of Article 14 and 16 of the Constitution.

30. That prior to the issue of the circulars mentioned in para 26 above, the surplus staff from various other Central Government Department was to be appointed against the direct recruitment vacancies only.

31. That the said circular -Annexure XI and XII are violative of Article 14 and 16 of Constitution of India.

32. That the respondent number 6 has been appointed in the vacancy reserved by the Surplus Cell, Department of Personnel Ministry of Homes, New Delhi. He has not yet taken over charge of his office and it is in the interest of justice that he should be restrained from taking over charge as Stenographer (Selection Grade) during the pendency of this writ petition otherwise the petitioner shall suffer irreparable loss and injury which can not be made good in the even of the success of this writ petition.

33. That the petitioner has no remedy available he begs to invoke the jurisdiction of this Hon'ble Court under Article 226 of the Constitution on the following amongst others:

G R O U N D S

(a) Because the Departmental Promotion Committee

had no jurisdiction to place the respondent no. 5 on top of the Select List in spite of the fact that the character roll entries of the petitioner were better than those of the respondent and in doing so the Departmental Promotion Committee acted in violation of the Rule VI (2) of the Rules and procedure for making promotion and functioning of the Departmental Promotion Committee contained in Annexure II.

(b) Because the Departmental Promotion Committee acted in violation of the rules laid down by the Government of India regarding the functioning of the Departmental Promotion Committee and committed an error apparent on the face of the record by placing the respondent no. 4 above the petitioner in the Select List, though he had only 2 very good entries to his credit in the character roll whereas the petitioner had 3 very good entries to his credit in the character roll and thus deprived the petitioner of his fundamental right guaranteed by Article 16 of the Constitution.

(c) Because the promotion of the respondent no. 4 is in violation of the rules VI(2) (As contained in Annexure II) and also in violation of the procedure prescribed for making promotions is not discriminatory but also highly prejudicial to the petitioner and has resulted in violation of the fundamental rights guaranteed by the Articles 14 and 16 of the Constitution.

(d) Because the name of respondent no. 5 who was

placed at sl.number 77 in the gradation list ought not to have been considered by the Departmental Promotion Committee for promotion as the number of persons to be considered for the Select List 5 to 6 times the number of estimated vacancies and there being only 7 vacancies, the Departmental Promotion Committee in promoting respondent no.5, who was beyond the field of eligibility has committed an error apparrant on the face of the record.

(e) Because the reservation created in favour of the Scheduled Caste/Schedule Tribe has created an embalance and has affected the morale of the service and affected the maintenance of efficiency in the administration in violation of article 336 of the Constitution.

(f) Because the promotion to the post of stenographer (Selection Grade) can be made from amongst the stenographers in ordinary grade, according to the Rules contained in Annexure I framed under Article 309 of the Constitution and cannot be altered by administrative instructions issued by the Central Board of Direct Taxes and the respondent no. 3 in appointing respondent no.6 to the post of stenographer(Selection Grade) from the Surplus Cell acted beyond his jurisdiction and committed an error apparrant on the face of the record.

(g) Because the said orders dated 24.7.79 and 31.7.79 Annexure VII and IX and the said circulars

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Annexure X and XI infringe on the fundamental right of equality in employment guaranteed by the Constitution and as such are violative of Article 14 and 16 of the Constitution.

(h) Because the impugned orders contained in Annexure IV and IX are otherwise manifestly against, illegal and ultravires.

P R A Y E R

It is therefore most respectfully prayed that this Hon'ble Court be pleased to issue

- i) a writ order or direction in the nature of certiorari quashing the orders dated 24.7.79 and 31.7.79 Annexure IX and IV respectively in respect of the promotion of respondents no.6 and 4 & 5.
- ii) a writ order or direction in the nature of mandamus commanding the respondent no. 2 and 3 not to appoint the respondents no. 4, 5 and 6.
- iii) a writ order or direction in the nature of mandamus commanding the respondent no. 2 to place the petitioner at serial number/8 in the Select List.
- iv) any other appropriate writ order or direction that this hon'ble Court deem necessary in the circumstances of the case to safeguard the

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- 2 -

oath that the contents of paragraphs Nos. 1 and 2 of this affidavit and that the contents of paragraphs nos.

of the accompanying writ petition are true to my personal knowledge; those of paragraphs nos.

of the accompanying writ petition are based on the perusal of papers on record of the case and that the contents of paragraphs Nos.

of the accompanying writ petition are based on the legal advice, which I believe to be true and correct. That no part of it is false and nothing material has been concealed. So help me God.

Dated:

(Deponent)

I identify the deponent who signed before me.

(Advocate)

Solemnly affirmed before me on this day of November, 1978 at by the deponent who has been identified by the aforesaid advocate.

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

(Oath Commissioner)

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
JUDICIAL DEPT. LUCKNOW

Affidavit

in

Civil Misc. Writ Petition No. of 1970

Gobind Chandra Sharma - - - - Petitioner

Versus

Union of India & Others - - - - Respondents

Affidavit of Sri Gobind Chandra Sharma aged
about 35 years s/o Late Hakim Chandra Sharma
r/o 612/424, 2nd Lane Dighatganj, Lucknow
(Deponent)

I, the deponent abovesigned do hereby solemnly
affirm and state as follows:-

1. That I am the petitioner in the abovesigned writ
petition and as such I am acquainted with the facts
deposed to hereinbelow.
2. That the deponent has read the contents of the
accompanying writ petition and translated and
explained and has understood the contents of the same.

Dated:

(Deponent)

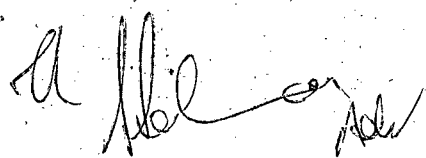
I, the deponent abovesigned do hereby swear on

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interest and rights of the petitioner.

v) to award the cost of this petition
to the petitioner.



Lucknow the
4th November, 1979.

RAJIV SHARMA
Advocate,
COUNSEL FOR THE PETITIONER.

Provided also that the Upper age limit specified in column 6 of the said Schedule for direct recruits may be relaxed in the case of candidates belonging to Schedule Castes, Scheduled Tribes and other special categories of persons, in accordance with the orders issued by the Central Government from time to time.

5. Disqualification - 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 any of the said posts:

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

6. Reservation of vacancies for State Government employees- Notwithstanding any thing contained in these rules, one-third of the total number of permanent vacancies occurring in a calendar year in each of the categories of posts specified in the Schedule to be filled by direct recruitment shall be filled up by transfer from among the employees of the State Government concerned, in accordance with the general instructions issued by the Central Government from time to time.

Note:- For this purpose, there should be a minimum of three permanent vacancies to be filled by direct recruitment during a particular calendar year.

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

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
JUDICIAL DEPARTMENT

ORIGINAL 'I'

Civil Misc. Suit No. _____ of 1970

Sudhanshu Chandra Sharma - Petitioner
Versus

Union of India & Others - Respondents

(Department of Revenue and Insurance)

New Delhi, the 20th December, 1969

O.S.N. 2709 - In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules regulating the method of recruitment to Class III Non-Gazetted (Ministerial) posts in the Income-tax Department, namely:-

1. Short title and commencement -(1) These rules may be called the Income-tax Department Non-gazetted Ministerial Posts Recruitment Rules, 1969.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. Application- These rules shall apply to the posts specified in Column 1 of the Schedule annexed thereto.
3. Number of posts, classification and scales of pay- The number of the posts, their classification and the scales of pay attached thereto shall be as specified in columns 2 to 4 of the said Schedule.
4. Method of recruitment, age limit qualifications etc. - The method of recruitment to the said posts, age limit, qualifications and other matters connected therewith shall be as specified in columns 5 to 13 of the schedule aforesaid.

Provided that direct recruitment against posts in an Establishment Unit, comprising one or more of the Charges of the Commissioners of Income-tax shall be made only from amongst candidates opting for that particular Unit and recruitment by promotion against posts in an Establishment Unit shall be made only from amongst persons belonging to the cadre of that particular Unit;

Provided that further the Central Board of Direct Taxes may, if it considers to be expedient or necessary in the public interest or on compassionate grounds as to do, and subject to such conditions as it may specify having regard to the circumstances of the case and for reasons to be recorded in writing, permit a post in one Establishment Unit to be filled by transfer to that Unit of a person belonging to the cadre of another Unit.

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ANNEXURE I

(Recruitment Rules for Non-Gazetted Class III Staff
for Income-tax Department)

Name of post	No. of posts	Class-ification	Scale of pay	Whether select- ion post or non se-lection post	Age for dir- ect rec- ruit ts	Educational & other qua- lifications req. for di- rect recrui ts	Whether age and educat- ional quali- fications prescribed or direct recruits will apply in the case of pro- mottees.	Period of probati- on if any.
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1	2	3	4	5	6	7	8	9
5. Stenogra- per Senior/ Selection Grade	29	Gen. Cent- ral ser- vices Cl. III non- gazetted- Minister- ial	425-700	Selec- tion post	Not appli- cable	Not applica- ble	Not appli- cable	2 years
6. Stenogra- pher ordi- nary grade	399	do	330-560	not appli- cable	18-25 yrs	Matriculation or equivalent qualif. Speed in typing 40 words p.m. & speed in short hand at 100 words p.m.	do	do

Method of rectt. whether by direct rectt. or by promo- tion or by deputa- tion/transfer and percentage of the vacancies to be filled by various method.

In case of rectt. by promo- tion/deputation/transfer grades from which promotion/ deputation/transfer to be made

If a D.P.C exists, what is its composition

Circumstances in which UP SC is to be consulted in making recru- itments.

10	11	12	13
100% by promotion	Promotion from amongs (steno- graphers (ordinary grade) who have put in 5 years of service	Class III D.P.C.	Does not a- rise

By selection throug a competitive test limited to serving lower Div. Clerks/ Upper Division Clerks of the Deptt. possessing the qualifications presc- ribed in Col. 7 failing w which by direct recruit- ment

Not applicable

Not applic- ble -de-

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

ANNEXURE 'II'

I N

Civil Misc. Writ No. _____ of 1978

Subhash Chandra Sharma - Petitioner

Versus

Union of India & Others - Respondents

A copy of the Department of Personnel & Administrative Reforms' Office Memorandum No. 32011/6/75-Sectt. (D) dated the 20th December, 1975 received under endorsement P.No. 1-32011/1/77/ Coord. dated the 18th Jan. 1977 from Government of India, Deptt. of Revenue and Banking, New Delhi is forwarded to all Heads of Departments and Offices.

Subject: Procedure for making promotions and functioning of the Departmental Promotion Committee.

Salient Extracts:

VI. Procedure
is as
stated
in D.P.C.

1. Each Departmental Promotion Committee should decide its own method and procedure for objective assessment of the suitability of the candidates. Ordinarily a personal interview should not be regarded as necessary and the panel for promotion/confirmation may be drawn up on the basis of assessment of the record of work and conduct of the officers concerned.

2. Selection Method:- Where promotions are to be made by selection as prescribed in the Recruitment Rules, the field of choice, viz., the number of officers to be considered should ordinarily extend to 3 or 4 times the number of vacancies expected to be filled within a year. The officers in the field of selection, excluding those considered unfit for promotion by Departmental Promotion Committee, should be classified by the Departmental Promotion Committee as "outstanding", "Very Good" and "Good" on the basis of their merit, as assessed by the D.P.C. after examination of their respective records of service. In other words, it is entirely left to the D.P.C. to make its own classification of the officers being considered by them for promotion to selection posts, irrespective of the grading that may be shown in the GNs. The panel should, therefore, be drawn-up to the extent necessary by placing the names of the 'Outstanding Officers' first, followed by the officers categorized as 'Very Good' and followed by the officers belonging to any 'Very Good' and followed by the officers categorized as 'good'. The inter-se-seniority of officers belonging to any one category would be the same as their seniority in the lower grade.

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3. Generalization method: Where the promotions are to be made on non-collection basis according to Desirability Rules, the Departmental Promotion Committee need not make a comparative assessment of the records of Officers and they should categorize the officers as 'Fit' or 'Not yet Fit' for promotion on the basis of assessment of their records of service. The officers categorized fit should be placed in the panel in the order of their seniority in the grade from which promotions are to be made.

4. Confirmation: In the case of confirmation, the D.P.C. should not determine the relative merit of officers but it should assess the officers as 'Fit' or 'Not yet fit' for confirmation in their turn on the basis of their performance in the post as assessed on the basis of their record of service.

5. Probation: In the case of probationers also the D.P.C. should not determine the relative merit of officers but only decide whether they should be declared to have completed the probation satisfactorily. If the performance of any probationer is not satisfactory the D.P.C. may advise whether the period of probation should be extended or whether he should be discharged from service.

6. Efficiency bar: The D.P.C. constituted for considering cases of Govt. servants for crossing the E.P. need not sit in a meeting but may consider such cases by circulation of papers. The D.P.C. may consider such cases on the basis of up-to-date records of performance, performance in written tests and/or trial test prescribed by the administrative Ministry, if any. The D.P.C. need not to recommend whether the officer concerned is fit or not yet fit to cross the efficiency bar. The review of the case of a Government servant who has been held up at the efficiency bar stage on the due date should also be done in accordance with the same procedure by the D.P.C.

7. Officers under suspension whose names are under consideration for promotion or against whom disciplinary proceedings are initiated or about to be initiated: In case of officers who are under suspension or whose conduct is under investigation or against whom disciplinary proceedings have been initiated or about to be initiated, the officers' suitability for promotion should be assessed at the relevant time by the D.P.C. and a finding reached whether, if the officer had not been suspended, or his name had not come up for investigation, he would have been recommended for selection. Here a list is prepared for selection posts, the D.P.C. should also take a view as to what the officers' position in that list would have been, but for his suspension etc. The finding should be recorded separately and attached to the proceedings, in a sealed envelope superscribed 'Findings regarding merit and suitability for promotion to confirmation in (Service/grade/post) in

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request of the officer) and not to be opened till after the termination of the suspension of disciplinary proceedings against (the name of the officer). The proceedings of the Departmental Promotion Committee, etc., need not contain the note "The findings are contained in the attached sealed envelope". The authority competent to fill the vacancy should be separately advised to fill the vacancy only in an officiating capacity, where the findings as to the suitability of the officer are for his promotion; and (ii) to reserve a permanent vacancy, where such findings are for his confirmation.

8. Where adverse remarks in the Confidential Record of an officer concerned have not been communicated to him, this fact should be given due weightage by the D.P.C. while assessing the suitability of the officer concerned for promotion/confirmation.

9. In cases, where decision on the representation of officers against adverse remarks had not been taken or the time allowed for submission of representation is not over, the D.P.C. may in their discretion defer the consideration of the case pending decision on the representation.

10. An officer whose increments have been withheld or who has been reduced to a lower stage in the time scale, cannot be considered on that account to be ineligible for promotion to higher grade as the specific penalty of withholding promotion has not been imposed on him. The suitability of the officer for promotion should be assessed by the competent authority as and when occasions arise for such assessment. In assessing the suitability the competent authority will take into account the circumstances leading to the imposition of the general service record of the officer and the fact of the imposition of the penalty he should be considered suitable for promotion. Even where however, the competent authority considers that in spite of the penalty the officer is suitable for promotion, the officer should not be promoted during the currency of the penalty.

11. The D.P.C. should record in their minutes a certificate that the Department/Ministry/Officer concerned has rendered the requisite integrity certificate in respect of those recommended by the DPC for promotion/confirmation.

12. The claims of Officers who are away on deputation, foreign service, etc. shall also be taken into account by the DPC while considering cases of promotion/confirmations.

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The Recruitment Rules for various civil posts and services prescribe the method of filling up the posts under the Central Government. A post is filled by promotion where the Recruitment Rules so provide. In making promotions, it should be ensured that suitability of the candidate for promotion is considered in an objective and impartial manner. For this purpose, B.B.s should be formed in each Ministry/Department/Office whenever an occasion arises for making promotions/confirmations etc. as the case may be, the B.B.s so constituted shall judge the suitability of officers for:-

- (a) promotions to selection as well as non-selection posts;
- (b) confirmations in their respective grades/posts.
- (c) assessment of the work and conduct of probationers for the purposes of determining their suitability for retention in service or their discharge from it or extension in the proscribed period of their probation and
- (d) consideration of cases of government servants for crossing the efficiency bar.

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IN THE HIGH COURT OF JUDICATURE ALLAHABAD
LUCKNOW Bench

ANNEXURE 'TL'

IN

Civil Misc. Writ No. _____ of 1979

Subhash Chandra Sharma --

Petitioner

Versus

Union of India & others --

Respondents

To

The Chairman,
Central Board of Direct Taxes,
NEW DELHI.

THROUGH : PROPER CHANNEL

Respected Sir,

With all due regards I may like to draw your kind attention towards the following facts:-

1. That a Departmental Promotion Committee for considering fitness of ordinary grade stenographers for promotion to the post of Selection Grade stenographers, was held on 11.7.1979/12.7.1979 at Allahabad.
2. Seven promotions were likely to be made in the aforesaid Departmental Promotion Committee.
3. According to the Gradation list my position in seriatum is as under:-

1. S.C. Bajpai
2. C.D. Bhukla
3. K.K. Bhattacharya
4. A.K. Day Barker
5. Bhole Lal
6. Varish Chandra Srivastava
7. Rajnesh Kumar Srivastava
8. Prem Prakesh Kapoor
9. Subhash Chandra Sharma
10. Nar Saran Lal (Schedule Cast)

4. According to the Board's circular containing directions regarding the procedure for departmental promotion from an ordinary grade to a selection grade cadre, minimum Three Very Good C.C.R. entries out of latest 5 C.C.R. entries should be considered for fitness of a candidate. Accordingly so far as my personal knowledge goes THREE VERY GOOD C.C.R. entries were considered for fitness of a candidate for promotion to the post of Selection Grade Stenographer in the D.P.C. held on 11.7.79/12.7.79.

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10. I may make clear that I do not want supersession. I do not want that others should suffer loss due to me, I also do not blame any member of the D.P.C. including the learned Chairman of the D.P.C., I only want that JUSTICE MAY FINALLY BE done with me after reviewing the C.C.M. of Shri C.D. Shukla before passing the promotion orders by the C.I.T., Lucknow who is also the Chairman of aforesaid D.P.C.

In the light of the above facts and circumstances your honour is very kindly requested that FAIR JUSTICE may be done with me and the C.I.T., Lucknow (also Chairman of D.P.C.) may not pass orders of Promotion of Selection Grade Stenographers till my humble petition is not decided either by the Board or D.P.C. may be received by the Chairman himself.

With all kind regards,

Yours faithfully,

Dt: 20.7.1979

Sd/- (S.C. Sharma)
Stenographer (Ord. Grade)
Office of the I.A.C.(Audit), Lucknow.

Copy in advance to:-

The Chairman, C.P.D.T. (Thr. Special Messenger) with the humble request that a justice may kindly be done in my case and C.I.T., Lucknow may not pass orders of promotion till my humble petition is decided by the learned Board.

The Commissioner of Income-tax, Lucknow (also the Chairman of D.P.C.) with the humble request that he may kindly review the D.P.C. in the aforesaid circumstances before passing order of promotion for the post of Selection Grade Stenographers or may kindly not pass orders of promotion till my petition is decided by the Board.

Sd/- (J.C. Sharma)
Sg. Ord. Grade, I.A.C.(A)
Office, Lucknow.

Copy also forwarded to the Secretary, I.A.C. Employees Association, Lucknow with the request that he should take up the matter either with the C.I.T. or C.P.D.T. Chairman at once without losing any time in the light of the above circumstances. It is also requested that I do not want any favour in this regard but a natural justice is called for in my case and I believe that I should get my due promotion.

(S.C. Sharma)
Stenographer Ord. Grade,
I.A.C.(A) Office, Lucknow.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
JUDICIAL MINE

SECTION - VI

I H

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Civil Misc. Suit No. _____ of 1970

Ganesh Chandra Sharma - Petitioner
Versus

Union of India & Others - Respondents

Government of India
Office of the Commissioner of Income-tax,
Lucknow.

Open
Dt. 24.7.1970

Establishment- Central Services- Group 'C'
and 'D' promotions, Transfers, postings etc.--
Orders regarding--

No. 1161. The following stenographers (Ordinary Grade) are hereby promoted to officiate as stenographers (Selection Grade) in the pay scale of 425-700 with effect from date of taking over as such and until further orders. They will be on probation for a period of two years:-

C/Chr I

1. C.D. Chakla, Allahabad Charge
2. A.K. Dey Sarkar, Allahabad Charge
3. Harihar Chandra Srivastava, Allahabad Charge
4. Rajmohan Kumar Srivastava, Allahabad Charge
5. Prem Prakash Kapoor, CIR's Office, Lucknow
6. Mr. Gagan Lal (Schedule Caste), I.T. Office, Madgaon.

sd/-

(S.R. Lall)
Commissioner of Income-tax,
Lucknow.

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH LUCKNOW

ANNEXURE 'V'

I N

Civil Misc. Writ Petition No. of 1979

Subhash Chandra Sharma - - - - - Petitioner

Versus

Union of India & Others ----- Respondents

Ministry of Home Affairs O.M.No.1/12/67-Est(C), dated
11th July, 1968 to all Ministries etc.

Subject: Reservation for Schedule Castes and
Scheduled Tribes in posts filled by
promotion.

**

In this Ministry's Office Memorandum No.1/10/61-Est.(D) dated 8th Nov. 1963, reservation at 12½% of the vacancies were provided for Scheduled Caste and S.T. in Class II and IV posts filled by promotion based on (i) selection or (ii) the results of competitive examinations limited to departmental candidates, in grades or services to which there was no direct recruitment whatsoever. The aforesaid Office Memorandum of 8.11.63 also provided that there would be no reservations for S.C. and S.T. in appointments made by promotion to a Cl.II or a higher service or post, whether on the basis of seniority-cum-fitness, selection or competitive examinations limited to departmental candidates.

2. The Govt. of India have reviewed their policy in regard to reservations and other concessions to S.C. and S.T. in posts filled by promotion and have in supersession of the orders in the aforesaid O.M. dated 8.11.63 decided as follows:-

A. Promotions through limited departmental competitive examinations:-

There will be reservations at 12½% and 5% of vacancies for S.C. and S.T. respectively in promotion made on the basis of competitive examination limited to departmental candidates, within or to Cl.II, III and IV posts, in grades or services in which the element of direct recruitment, if any, does not exceed 50 per cent.

(a) Class I and II appointments:

In promotions by selection from Class III to Class II and within Class II and from Class II to the lowest rung or category in Class I, the following procedure will be adopted.

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In promotions made by selection, employees in the zone of consideration numbering 5 or 6 times the estimated no. of vacancies are normally considered for inclusion in the select list, vide Ministry of Home Affairs O.M.No. F.1/4/55-RPS, dt. 16.5.57. After rejecting those who are unfit for promotion, the D.P.C. proceeds to categorise the remaining eligible employees into three categories namely Outstanding, Very Good and Good. Thereafter the Committee draws up a select list placing all employees in the Outstanding category at the top, followed by those categorised at very good and then by those categorised as good the inter-se seniority within each category being maintained. As a measure of improving representation of S.C./S.T. in services it has now been further decided that:-

(i) If within the zone of consideration, there are any SC and ST employees, those amongst them who are considered unfit for promotion by the DPC will be excluded from consideration. Thereafter the remaining SC and ST employees will be given by the DPC one grading higher than the grading otherwise assignable to them on the basis of their record of service, i.e. if any SC or ST employee has been categorised by the DPC on the basis of his record as Good he should be categorised by the DPC as very good. Likewise if any SC or ST employee is graded as very good on the basis of his record of service he will be recategorised by the DPC as outstanding. Of course if any SC or ST employee has already been categorised as outstanding no recategorisation will be needed in his case.

(ii) The above concession would be confined to only 25% of the total vacancies in a particular grade or post filled in a year from the Select List. While making promotion from the Select List the appointing authority should therefore check up that the SC/ST employees promoted in a year on the basis of this concession are limited to 25% of the posts filled in a year from the Select List prepared according to the procedure outlined above; and

(iii) Those SC/ST employees who are senior enough in the zone of consideration so as to be within the no. of vacancies for which the Select List has to be drawn, should be included in the Select List, if they are not considered unfit for promotion and should also be given one grading higher than the grading otherwise assignable to them on the basis of their record of service and their place in the Select List determined on the basis of this higher categorisation. This would imply that even where in some cases, the Select List were to consist of say only outstanding, non SC/ST candidates, adequate no. of them being available from the zone of consideration, those of SC, ST candidates who are high up in the zone of consideration and are within the no. of estimated vacancies for which the Select List is being prepared will even if they are only Good and after higher categorisation by one degree are categorised as Very good have to be included in the Select List but they will be placed below the Outstanding candidates in the Select List.

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(b) Class III and IV appointments:

There will be reservation at 12½% and 5% of the vacancies for S.C. and S.T. respectively in promotions made by selection in or to Class II and IV posts, in grades or services in which the element of direct recruitment, if any, does not exceed 50 per cent.

Select Lists of S.C./S.T. officers should be drawn up separately to fill the reserved vacancies as at present; officers belonging to these classes will be adjusted separately and not alongwith other officers, and if they are fit for promotion, they should be included in the list irrespective of their merit as compared to other officers. Promotions against reserved vacancies will continued to be subject to the candidates satisfying the prescribed minimum standards.

(c) In Promotions on the basis of seniority subject to fitness:-

There will be no reservation for SC and ST in appointments made by promotion on the basis of seniority subject to fitness, but cases involving supersession of SC and ST Officers in Class I and II appointments will as at present be subjected for prior approval to the Minister or Dy.Minister concerned. Cases involving supersession of SC and ST officers in Class III and IV appointments will as at present be reported within a month to the Minister or Dy.Minister concerned for information.

3. The following instructions will apply to the filling of vacancies reserved for S.C. and S.T. under the orders contained in this Office Memorandum:-

1(a) S.C. and S.T. Officer who are within the normal zone of consideration should be considered for promotion along with others and adjudged on the same basis as other and those SC and ST amongst them who are selected on that basis may be included in the general Select List in addition to their being considered for separate select list for SC and ST respectively.

(b) If candidates from SC and ST obtain on the basis of their positions in the aforesaid general select list less vacancies than are reserved for them, the difference should be made up by selected candidates of these communities who are in the separate select list for SC and S.T. respectively.

2. In the separate select lists drawn up for (i) SC and (ii) S.T. officers belonging to S.C. or S.T. as the case may be will be adjudged separately amongst themselves and not alongwith other officers, and if selected, they should be included in the concerned separate Select List irrespective of their merit as compared to other officers. It is needless to mention that officers not belonging to S.C. and S.T. will not be considered whilst drawing up separate Select Lists for S.C. and S.T. For being considered for inclusion in the aforesaid separate Select Lists the zone of consideration for the S.C. and S.T. as the case may be would be of the same size as that for the general Select List that is if for the general Select List

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the same of commutation is 3 times the no. of vacancies likely to be filled the same of commutation of the same to list for 1 will also be 3 times the no. of reserved vacancies for them and likewise for 2. Subject of course to the condition that officer so coming within such rule are old hands, by length of service etc. as prescribed, for being considered for promotion.

3. On giving effect to the Reserve list a proportion is prescribed in this R.O. It is now decided that a separate account in the list of the reserve prescribed in Ministry 1 to 1.1. 10.1/10/33/10(1) dt. 21.12.63 in which points 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 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593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559, 1560, 1561, 1562, 1563, 1564, 1565, 1566, 1567, 1568, 1569, 1570, 1571, 1572, 1573, 1574, 1575, 1576, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1627, 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1635, 1636, 1637, 1638, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, 1655, 1656, 1657, 1658, 1659, 1660, 1661, 1662, 1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670, 1671, 1672, 1673, 1674, 1675, 1676, 1677, 1678, 1679, 1680, 1681, 1682, 1683, 1684, 1685, 1686, 1687, 1688, 1689, 1690, 1691, 1692, 1693, 1694, 1695, 1696, 1697, 1698, 1699, 1700, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1731, 1732, 1733, 1734, 1735, 1736, 1737, 1738, 1739, 1740, 1741, 1742, 1743, 1744, 1745, 1746, 1747, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1755, 1756, 1757, 1758, 1759, 1760, 1761, 1762, 1763, 1764, 1765, 1766, 1767, 1768, 1769, 1770, 1771, 1772, 1773, 1774, 1775, 1776, 1777, 1778, 1779, 1780, 1781, 1782, 1783, 1784, 1785, 1786, 1787, 1788, 1789, 1790, 1791, 1792, 1793, 1794, 1795, 1796, 1797, 1798, 1799, 1800, 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1825, 1826, 1827, 1828, 1829, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1837, 1838, 1839, 1840, 1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201,

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
LICENSING DEPARTMENT

Writ No. VI.
I B

C-221

Civil Misc. Suit No. _____ of 1979

Subhash Chandra Sharma -- Petitioner

Versus

Union of India & Others -- Respondents

Ministry of Home Affairs Resolution No. 27/25/63-
Est.(Gt), dated 25th March, 1970.

Relevant Extracts:

3. The Government of India have also decided that in vacancies in posts filled by promotion in which reservations have been provided vide Ministry of Home Affairs Office Memorandum No. 1/12/67-3st.(C) dated 11th July, 1968, the percentages of reservation for Scheduled Castes and Scheduled Tribes in such posts shall also be raised from 12½ to 15½ in favour of Scheduled Castes and from 3½ to 7½ in favour of Scheduled Tribes.
4. These orders shall take effect from the date of issue of this Resolution, except where rules for a competitive examination have already been published for where selections for posts to be filled by direct recruitment or for posts to be filled by promotion have already been made prior to the issue of these orders.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
JUDICIAL COMMISSION

MANUFILE . X .

I N

Civil Misc. Writ No. _____ of 1970

Subhash Chandra Sharma - Petitioner

Versus

Union of India & Others - Respondents

P.No.69/125/72-Ad. VII
Government of India
Central Board of Direct Taxes

New Delhi, the 27th November, 1973.

To

All Commissioners of Income-tax
Director of Inspection(I.T. & Audit)/(Inv.)/(MSAP),
New Delhi.
Director Organisation and Management Services,
New Delhi.

Sir,

Subject:- Redeployment of surplus staff- against
promotion quota vacancies- Clarification
regarding--

I am directed to refer to the Board's letter of even number dated the 17th July, 1973, on the above subject and to say that the question of exempting the Income-tax Department from the re-deployment of the surplus staff against promotion posts was taken up with the Department of Personnel at a High level. That Department have expressed their inability to make any change in the general policy of making nominations of the surplus staff against promotion posts in favour of the Income-tax Department, as there might be repercussion in other Ministries/Departments. However, the Department of Personnel have intimated that the nominations to promotion posts in the Income-tax Department would be made by them as sparingly as possible. In the circumstances, the Board have accepted this as a practical solution to the problem. The Department of Personnel have also agreed that, as far as possible, the surplus staff would be nominated evenly amongst the various Income-tax charges and not to the Delhi Charges only.

2. It may, however, be added if any unsuited person is nominated against the posts to be filled in by direct recruitment/promotion, the matter may be reported to the Board immediately before accepting the nomination.

Sd/- A.C. Chodhary,
Under Secretary, Central Board
of Direct Taxes.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW Bench LUCKNOW

AMENDURE * XL *

C-229

Civil Misc. Writ No. _____ of 1972

Subhash Chandre Sharma - Petitioner

Versus

Union of India & Others - Respondents

P.No.69/125/72-Adv. VII
Government of India
Central Board of Direct Taxes.

New Delhi the 18th July, 1973

To

All Commissioners of Income-tax

The Director of Inspection (I.T. & Audit)/(Inv.)
(R.S.A.), New Delhi.

Directorate of Gen Services, New Delhi.

Subject: Re-deployment of surplus staff against
promotion quota vacancies-
Clarification regarding--

Sir,

I am directed to say that the question of redeployment of surplus staff, through Central (Surplus Staff) Cell in the Income-tax Department against vacancies intended for promotions has been taken up with the Department of Personnel and Administrative Reforms. Pending a decision in the matter you are advised not to accept the nomination of surplus staff against promotion quota vacancies.

Yours faithfully,

86/-(N.C.Jain)

Under Secretary, Central Board of Direct
Tax.

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C-230

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH LUCKNOW

Civil Misc. (Stay) Application No. of 1979
(Under Section 151 of Civil Procedure Code)
on behalf of

Subhash Chandra Sharma - - - - - Applicant

in

Civil Misc. Writ Petition No. of 1979
(District Lucknow)

1. Subhash Chandra Sharma s/o Late Dukan Chandra
Sharma, r/o 512/404 3rd Lane, Nishatganj, Lucknow.
- - - - - -Petitioner

Versus

1. Union of India
2. Chariam, Central Board of Direct Taxes, New Delhi
3. Commissioner of Incometax (Cadre Controlling
Authority) Allahabad / Lucknow
4. C.D. Chukla, stenographer (selection grade) aged
35 years s/o Prabhu Dayal c/o Office of the
Inspecting Asstt. Commissioner of Incometax,
Allahabad
5. Har Saran Lal aged 27 years s/o Babu Ram c/o
Office of the Appellate Assistant Commissioner of
Incometax, Moradabad.
6. K.C. Nandi, Steno, Office of the Chief Commandant,
Main Group of Transit Centres, (Department of
Rehabilitation), Main Camp, Raipur, M.P.

- - - - - Respondents

1291
C-231

To

The Hon'ble the Chief Justice and his
companion Judges of the aforesaid court.

The humble petition of the applicant /
petitioner abovenamed

MOST RESPECTFULLY SHOWNETH:-

That the applicant is filing a writ petition in
the Hon'ble Court challenging the promotion of
Respondents No. 4, 5 and 6 who have been
promoted vide the impugned orders contained in
Annexures IV and IX to the writ petition.

2. That the respondent no.6 has so far not
joined and one post is still lying vacant.

3. That it is in the interest of justice that
the operation of impugned order dated 31.7.1979
(Annexure IX) to this writ petition) may be
stayed otherwise the applicant will suffer
irreparable loss and injury which cannot be made
good in the event of his success in the above
mentioned writ petition.

PRAYER

It is, therefore, most respectfully prayed
that this Hon'ble Court be pleased to stay the
operation of the impugned order dated 31.7.1979
(Annexure IX to this writ petition) and ad-interim
order to that effect be granted.

Dated:

Counsel for the Appellant.

293
233

विद्वान् विद्वान्

हार्द कोर्ट इल्लहाबाद
(अध्याय १२, नियम १)

प्रीति (मुद्रांकित) प्रार्थना-पत्र सं० 689 3(10) स् १६-७९-६०

--- cep --- सं० 3082 स् १६७९-६०

Subhash Chandra Sharma

प्रति

Union of India & others

Sri K. E. Nandi, Secy, office of the Chief
Commandant, Mana Group Transit Centres (Depart-
ment of Rehabilitation) - Mana Camp, Raii (M.P.)
प्रतिवादी के नाम

मुक्ति लाने लिये प्रार्थना है इस न्याय का मैं उचित रूपों में प्रस्तुत है ---
--- है ---

ए प्रार्थना-पत्र दिया है। उक्त: आपकी आदेश दिया जाता है कि आप दिनांक 12
वात-11- स् १६-७९ को या उससे पहले उपस्थित होना चाहें कि
प्रार्थना-पत्र क्यों न स्वीकार कर लिया जाय। उक्त प्रार्थना-पत्र को सुनाई उसके बाद
निष्पत्तनुसार किस्मि किसी और दिन होगा।

विदित हो कि यदि आप ऊपर लिखे दिनांक पर या उसके पहले यहां अथवा किसी
एडवोकेट या ऐसे व्यक्ति द्वारा जो आपकी और हैं कान बाने के लिये सम्मन उपस्थित
हों, उपस्थित न हों तो उक्त प्रार्थना-पत्र की सुनाई और निर्णय आपकी अनुमति
में हो जायेंगे।

प्रार्थना-पत्र और प्रार्थना द्वारा दिये गये उक्त पत्र को एक प्रतिनिधि इसी के साथ
ली है।

मेरे हस्ताक्षर और न्याय का मेरे से आज दिनांक ---
मास 12- स् १६-७९ को जाये दिया गया।

--- के एडवोकेट
तिथि ---

हिंदी सिद्धांत
महाराष्ट्र सरकार

सूचना:- इस न्याय का १६५२ को निष्पत्ति है अध्याय २०, नियम २ के अन्तर्गत
प्राप्त रहना मिल गया।

सामान्य रूप से जाने के लिये हस्ताक्षर

दिनांक-विभाग

हार्द कोर्ट इलाहाबाद
(अध्याय १२, नियम १ और ७)

अपील (मूल निका) प्रार्थना-पत्र सं० ----- स् १६-79- सं०

W.P. सं० 3082 स् १६-79- सं०

Subhash Chandra Sharma प्रार्थी

प्रति
Union of India and others

Sri C.D. Gnauka, Stenographer (Selection grade)

S/o Prabhu Dayal C/o Office of the Inspecting
Asstt. Commissioner of In Committee, Allahabad.

प्रतिवादी के बाद

चूंकि ऊपर लिखे प्रार्थी ने इस न्याय का में उपर्युक्त न्यायों के सम्बन्ध में -----

के -----
लिए प्रार्थना-पत्र दिया है। उक्त: आपकी आदेश दिया जाता है कि आप दिनांक-12

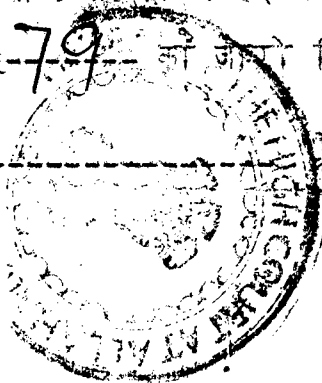
मास-11- स् १६-79- को या उससे पहले उपस्थित होकर कहेंगे कि
प्रार्थना-पत्र क्यों न खोकार कर लिया जाय। उक्त प्रार्थना-पत्र को सुनवाई उसके बाद
नियमानुसार किफाई किसी और दिन होगी।

विदित हो कि यदि आप ऊपर लिखे दिनांक पर या उसके पहले स्वयं अथवा किसी
रहबोकैट या ऐसे व्यक्ति द्वारा जो आपकी और से काम करने के लिये कानूनन अधिकृत
हों, उपस्थित न हों तो उस प्रार्थना-पत्र की सुनवाई और निर्णय आपकी अनुपस्थिति
में हो जायेगा।

प्रार्थना-पत्र और प्रार्थी द्वारा दिये गये साथ पत्र की एक प्रतिलिपि इसी के साथ
ली है।

मेरे हस्ताक्षर और न्याय का में मोहर से आज दिनांक-7
मास-11- स् १६-79- को जमा किया गया।

तिथि -----



रहबोकैट

हिप्पी रविंद्र
सहायक न्यायाधीश

सूचना:- इस न्यायालय की १६५२ की नियमावली के अनुच्छेद ३०, नियम २ के अन्तर्गत
प्राप्त तलबाना मिल गया।

तलबाना देने वाले कर्म के हस्ताक्षर

विशेष विभाग

हार्द कोट इलाहाबाद

(अध्याय १२, नियम ३)

प्रार्थना (मुद्रादि)

प्रार्थना-पत्र सं०

6893(10)

सं० ५९

exp.

सं० 3082

सं० ५९

S. C. Sharma

प्रति

Union of India

C. D. Shukla Steno-Grapher

(Selection Grade)

Office of Insp. & Asst.

Commissioners of Meemeta Station

चूंकि ऊपर लिखे प्रार्थना ने इस न्याय का मैं उपरिष्ठ न होने के सम्मान में

है

एक प्रार्थना-पत्र दिया है। अतः आपको अवगत दिया जाता है कि आप दिनांक 12

मास 11 सं० १६-79 को या उससे पहले उपरिष्ठ होकर व्यक्त करें कि

प्रार्थना-पत्र क्यों न स्वीकार कर लिया जाय। उक्त प्रार्थना-पत्र को सुनवाई उसके बाद निम्नानुसार किन्ति किसी और दिन होंगे।

विदित हो कि यदि आप ऊपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी सदस्य के या ऐसे व्यक्ति द्वारा जो आपकी ओर से काम करने के लिये नियुक्त हों, उपरिष्ठ न हों तो उक्त प्रार्थना-पत्र की सुनवाई और निर्णय आपकी अनुपस्थिति में हो जायेगा।

प्रार्थना-पत्र और प्रार्थना द्वारा दिये गये उत्तर पत्र को एक प्रतिनिधि इसी के साथ लगी है।

मेरे हस्ताक्षर और न्याय का मैं माहिर से आज दिनांक

7

मास 11 सं० १६-79 को जाये दिया गया।

के सदस्य

तिथि

डिप्टी सचिव

हस्ताक्षर

सूचना:- इस न्याय का मैं १६५२ को नियमावली के अनुसार ३, नियम २ के अन्तर्गत प्राप्त तहसील में दिया गया।

तहसील वाले वाले कार्ड के हस्ताक्षर

71
2706-296
230

विनीति विभाग

हार्द कोट बलराज

(अध्याय १२, नियम १ नंबर ५)

प्रार्थना (मुद्रांकित) प्रार्थना-पत्र नं०

6893(60)

Ref.

नं० 3082

नं० 2074

नं० 2074

Subhash Chandra Sharma

प्रति

Union of India & others

Sri Har-Saran Lal go Babu Ram

C/o Office of the Appellate Estt. Commissioner

of Income Tax Maratha Road

प्रतिवादी के नाम

हैं कि ऊपर लिखे प्रार्थना ने इस न्याय का मैं उपरिष्ठ नुसार के प्रमाणों में 12

एक प्रार्थना-पत्र किया है। उक्त: आपकी वादें दिया जाता है कि 12

मास 4 नं० १६-74- के मा उससे पहले उपरिष्ठ होकर बतलाए कि प्रार्थना-पत्र क्यों न स्वीकार कर लिया जाय। उक्त प्रार्थना-पत्र को सुनवाई उससे बाद निम्नानुसार किमति किसी और दिन होगी।

विदित हो कि यदि आप ऊपर लिखे दिनांक पर या उससे पहले जहां कसबा किसी खंडोकेट या ऐसे व्यक्ति द्वारा जो बाकी और है काम करने के लिए समुन्नत अधिकृत हो, उपरिष्ठ न हो तो उक्त प्रार्थना-पत्र की सुनवाई और निपटारा बाकी अनुपस्थिति में हो जायेंगे।

प्रार्थना-पत्र और प्रार्थना द्वारा दिये गये उक्त पत्र को एक प्रतिनिधि इसी के साथ लाये हैं।

मेरे हस्ताक्षर और न्याय का मैं मौहूर से आज दिनांक 7 मास 12 नं० १६-74- के जाये दिया गया।

के खंडोकेट

डिप्टी सचिव

सूचना:- इस न्याय की १६५२ की नियमावली के अध्याय १२, नियम २ के अंतर्गत प्राप्त होकराना मिल गया।

राज्यपाल के कार्यालय के द्वारा

C-297
237

विद्वान् विभाग

हार्स कोर्ट इलाहाबाद
(अध्याय १२, नियम १ और ७)

प्रार्थना (मुद्रा-रिफ) प्रार्थना-पत्र सं० ----- स् १६-७९-६०

----- सं० ३०८७ स् १६-७९-६०

S. C. Sharma

प्रार्थना

Union of Indig

Har Saram Lal

C/o office of the Appellate
Asst-Commissioner of
Income Tax Moradabad

चूंकि ऊपर लिखे प्रार्थना ने इस न्याय ताल में उपस्थित न होने के कारण है -----

एक प्रार्थना-पत्र दिया है। उक्त आपकी आदेश दिया जाता है कि आप दिनांक -----

मास ----- १६-७९ को या उससे पहले उपस्थित होकर बतलावें कि
प्रार्थना-पत्र क्यों न स्वीकार कर लिया जाय। उक्त प्रार्थना-पत्र को सुनवाई उसके बाद
नियमानुसार विनिश्चित किसी और दिन होगी।

विदित हो कि यदि आप ऊपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी
एडवोकेट या ऐसे व्यक्ति द्वारा जो आपकी और से काम करने के लिये नियुक्त
हो, उपस्थित न हों तो उक्त प्रार्थना-पत्र की सुनवाई और निर्णय आपकी अनुपस्थिति
में हो जायेगा।

प्रार्थना-पत्र और प्रार्थना-द्वारा दिये गये तथ्य की एक प्रति निम्न बूटी के साथ
ली है।

मेरे हस्ताक्षर और न्यायालय की मोहर से आपकी बूटी -----
मास १२-७९ स् १६-७९ को जाने लिये गयी।



तिथि ----- के एडवोकेट

डिप्टी रजिस्ट्रार
उच्च न्यायालय, मुरादाबाद

सूचना:- इस न्यायालय की १६५२ को नियमावली के अध्याय २, नियम २ के अंतर्गत
प्राप्त तल्लाना मिल गया।

तल्लाना जाने वाले कर्क के हस्ताक्षर

u/v
A-53

: 2 :

2. That after the filing of the aforesaid writ petition which was admitted by this Hon'ble Court on 5-11-1979, certain new developments have occurred and it has, therefore, become necessary to amend the aforesaid Writ Petition as follows:

3. That after paragraph 32 of the Writ petition, the following be added as paragraph 32A, 32B, 32C and 32D:

32A. That the Respondent No.6 Sri K.C.Nandi who was promoted to the post of Stenographer (Selection Grade) from the Surplus Cell, by the order dated 31-7-1979 (Annexure-IX) had not joined at the said post at the time of the filing of the Writ Petition, but he had subsequently joined on 10-12-1979 in the office of the Inspecting Assistant Commissioner of Income-tax (Acquisition) 57 Ram Tirth Marg, Lucknow.

32B. That by an order dated 12-6-1980 passed by the Respondent No.3, the petitioner was also promoted to the post of Stenographer (Selection Grade) by the same order he was posted to the office of the Inspecting Assistant Commissioner of Incometax (Assessment), Moradabad. A true copy of the order dated 12-6-1980 is annexed hereto and is marked as Annexure No.XII.

32C. That the petitioner ought to have been promoted in the first batch itself as the petitioner should have been placed at S.No.1 in the selection list but the petitioner was wrongly placed at

.....3/-

Rajin Sharma

43
A-54
: 3 :

s.no.7 in the select list and as such was not promoted by the order dated 24-7-1979 (Annexure-IV). The petitioner has now been promoted by the order dated 12-6-1980, but in the process he has lost 10 months seniority as persons who were wrongly placed above the petitioner in the said select list were promoted earlier, resulting in the loss of seniority of the petitioner who has now become junior to the persons wrongly promoted by the order dated 24-7-1979.

32D. That the petitioner ought to have been promoted by the respondent no.3 by the order dated 24-7-1979 and in not doing so, and promoting the petitioner later on by the order dated 12-6-1980, the Fundamental Right of the petitioner guaranteed under Article 16 of the Constitution have been infringed.

4. That the following be added as ground no.(i) and (j) after ground no.(h)

(i) Because the petitioner has been deprived of 10 months seniority and has been arbitrarily placed at S.No.7 of the select list without any justification and was not promoted by the order dated 24-7-1979.

Rajin Sharma

.....4/-

4/11

A-55

: 4 :

(j) Because the Respondent No.3 ought to have promoted the petitioner by the order dated 24-7-1979 and by not doing so the Fundamental Right of the petitioner guaranteed under Article 16 of the Constitution of India have been infringed.


5. That the following be added as prayed No.(VI) after prayer No.(V).

(VI) A writ order or direction in the nature of mandamus commanding the Respondents no.2 and 3 to fix the seniority of the petitioner with consequential benefits.

P R A Y E R

It is, therefore, most respectfully prayed that the petitioner be allowed to amend the writ petition accordingly.

Lucknow dated
19th Sept. '1980


(RAJIV SHARMA)
Advocate
Counsel for the Applicant

A-56 W/C

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
FOR LUCKNOW BENCH, LUCKNOW



AFFIDAVIT IN
SUPPORT OF AMENDMENT APPLICATION
IN RE:

1980
AFFIDAVIT
83/437
HIGH COURT
ALLAHABAD

Civil Misc. W.P.No.3082 of 1979

Subhash Chandra Sharma Petitioner

Vs.

Union of India and others ... Respondents

Affidavit of Subhash Chandra Sharma aged about
35 years s/o late Sri Hukam Chandra Sharma, r/o
512/404 3rd Lane, Nishatganj, Lucknow

Deponent

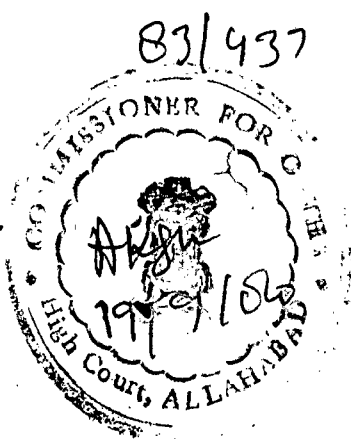
I, the deponent above named do hereby solemnly affirm
and state on oath as follows:

1. That the petitioner/applicant had filed the aforesaid writ petition and had prayed for the quashing of the impugned orders dated 24-7-1979 and 31-7-1979 contained in Annexures IV and IX to the writ petition, by which the Respondents no.4, 5 and 6 had been promoted to the post of Stenographer (Selection grade) and had also prayed for the issue of a writ of mandamus for placing the petitioner at serial no.1 of the select list and consequential benefits with regard to seniority and pay.
2. That the deponent is the petitioner in the above mentioned writ petition and as such he is fully conversant with the facts deposed to herein below.
3. That after the filing of the aforesaid writ petition which was admitted by this Hon'ble Court on 5-11-1979, certain new developments have occurred and it has, therefore become necessary to amend the aforesaid writ petition as follows:
4. That after paragraph 32 of the writ petition the following be added as paragraph 32A, 32B, 32C and 32D:

32-A. That the Respondent no.6 Sri K.C.Nandi,
who was appointed to the post of

.....1/-

Subhash Chandra Sharma



4/10

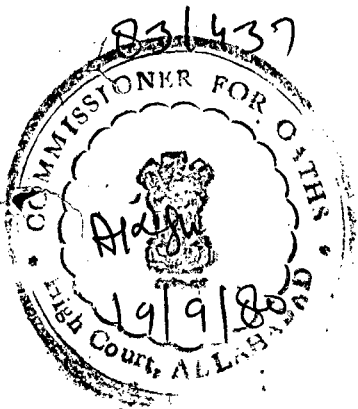
A-57

= 2 =

stenographer (selection grade) from the Surplus Cell by the order dated 31-7-1979 (Annexure IX) had not joined at the said post at the time of the filing of the writ petition, but he had subsequently joined on 10-12-1979 in the office of Inspecting Assistant Commissioner of Incometax (Acquisition), Lucknow.

32-B. That by an order dated 12-6-1980 passed by the ~~Commissioner~~ respondent no.3, the petitioner was also promoted to the post of Stenographer (Selection grade) and by the same order he was posted to the office of the Inspecting Assistant Commissioner of Income-tax (Assessment), Moradabad. A true copy of the order dated 12-6-1980 is annexed hereto and is marked as annexure No.XII.

32-C. That the petitioner ought to have been promoted in the first batch itself as the petitioner, should have been placed at serial no.1 in the select list but the petitioner was wrongly placed at s.no.7 in the select list and as such was not promoted by the order dated 24-7-1979 (Annexure-IV). The petitioner has now been promoted by the order dated 12-6-1980, but in the process he has lost 10 months seniority as persons who were wrongly placed above the petitioner in the said select list were promoted earlier resulting in the loss of seniority of the petitioner who has now become junior to the persons wrongly promoted by the order dated 24-7-1979.



Aswamee

.....3/-

27

P-50

: 3 :

32-D. That the petitioner ought to have been promoted by the respondent no.3 by the order dated 24-7-79 and in not doing so, and promoting the petitioner later on by the order dated 12-6-1980, the fundamental right of the petitioner guaranteed under Article 16 of the Constitution have been infringed.

5. That the following be added as ground no.(i) and (j) after ground no. (h):

(i) Because the petitioner has been deprived of 10 months seniority and has been arbitrarily placed at sl.no.7 of the select list without any justification and was not promoted by the order dated 24.7.1979.

(j) Because the Respondent no.3 ought to have promoted the petitioner by the order dated 24-7-1979 and by not doing so the Fundamental Right of the petitioner guaranteed under Article 16 of the Constitution of India have been infringed.

6. That the following be added as prayer No.(VI) after prayer No. (V).

.....4/-



Atchamma

A-59

(VI) a writ order or direction in the nature of mandamus commanding the respondents no.2 and 3 to fix the seniority of the petitioner with consequential benefits.

Dated: 21st Sept., 1980.

A. Sharma
DEPONENT

I, the deponent above named do hereby swear on oath that the contents of paragraph nos.1 to 6 of this affidavit are true and correct to my personal knowledge. That no part of it is false and nothing material has been concealed. So help me God.

A. Sharma
DEPONENT

I identify the deponent who signed before me.

R. Sharma
ADVOCATE

Solemnly affirmed before me on this 19th day of September, 1980 at 7.00 P.M. by the deponent who has been identified by the aforesaid Advocate.

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

A. Sharma
OATH COMMISSIONER
High Court, Allahabad
Lucknow Bench

OATH COMMISSIONER

83/437
19/9/80

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH, LUCKNOW

Annexure-XII

Civil Misc. Application No. (W) of 1980
Subhash Chandra Sharma ... Applicant

In Re:

Civil Misc.W.P.No.3082 of 1979
Subhash Chandra Sharma ... Petitioner
Versus

Union of India and others .. Respondents

Government of India
Office of the Commissioner of Income-tax,
Lucknow

O R D E R
DT.11.6.1980

Sub: Establishment - Central Services - Group 'C'
Promotion, Appointment, Transfers & Postings
etc. - ---

no.35: Sri S.C.Sharma, Stenographer (OG), Audit Branch
Lucknow is hereby promoted to officiate as Stenographer
(Selection Grade) in the pay scale of Rs.425-700 with
effect from the date of taking over as such and until
further orders. He will be on probation for a period
of two years.

no.36. X X X

no.37. X X X

S.No. Names of the officials with present place of posting. Office to which poste
services placed at
the disposal of.

1 2 3

S/Sri

1. S.C.Sharma, promotee Office of the I.A.C.
Steno (Sel.Gr.)Audit (Assessment) Moradabad
Branch, Lucknow

2. x x x

3. x x x

A.K. Sharma
OATH COMMISSIONER
High Court Allahabad
Lucknow Bench

Sd/- Dharni Dhar
Commissioner of Incometax
Lucknow

No. 831437
19/9/80

C-238

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH, LUCKNOW

Civil Misc. Application No.....(W) of 1980

Subhash Chandra Sharma Applicant

In Re:

Civil Misc. W.P.No.3082 of 1979.

Subhash Chandra Sharma ... Petitioner

Versus

Union of India and others ... Respondents

APPLICATION FOR AMENDMENT

The applicant above named most respectfully states as follows:

1. That the petitioner/applicant had filed the aforesaid writ petition and had prayed for the quashing of the impugned orders dated 24-7-1979 and 31-7-1979 contained in Annexures IV and IX to the writ petition, by which the Respondents No.4, 5 and 6 had been promoted to the post of Stenographer (Selection Grade) and had also prayed for the issue of a writ of mandamus for placing the petitioner at serial no.1 of the select list and consequential benefits with regard to seniority and pay.

.....2/-

2. That after the filing of the aforesaid writ petition which was admitted by this Hon'ble Court on 5-11-1979, certain new developments have occurred and it has, therefore, become necessary to amend the aforesaid writ petition as follows:

3. That after paragraph 22 of the writ petition, the following be added as paragraph 32A, 32B, 32C and 32D:

32A. That the Respondent No.6 Sri K.C.Nandi who was promoted to the post of stenographer (collection grade) from the surplus Cell, by the order dated 31-7-1979 (Annexure-IX) had not joined at the said post at the time of the filing of the writ petition, but he had subsequently joined on 26-12-1979 in the office of the Inspecting Assistant Commissioner of Income-tax (Acquisition) 57 New Fifth Cross, Lucknow.

32B. That by an order dated 12-6-1980 passed by the Respondent No.3, the petitioner was also promoted to the post of Stenographer (collection grade) by the same order he was posted to the office of the Inspecting Assistant Commissioner of Income-tax (Assessment), Moradabad. A true copy of the order dated 12-6-1980 is annexed hereto and is marked as Annexure No.XII.

32C. That the petitioner ought to have been promoted in the first batch itself as the petitioner should have been placed at S.D.I in the select list but the petitioner was wrongly placed at

C-2407

: 3 :

s.no.7 in the select list and as such was not promoted by the order dated 24-7-1979 (Annexure-IV). The petitioner has now been promoted by the order dated 12-6-1980, but in the process he has lost 10 months seniority as persons who were wrongly placed above the petitioner in the said select list were promoted earlier, resulting in the loss of seniority of the petitioner who has now become junior to the persons wrongly promoted by the order dated 24-7-1979.

32D. That the petitioner ought to have been promoted by the respondent no.3 by the order dated 24-7-1979 and in not doing so, and promoting the petitioner later on by the order dated 12-6-1980, the Fundamental Right of the petitioner guaranteed under Article 16 of the Constitution have been infringed.

4. That the following be added as ground no.(i) and (j) after ground no.(h)

(i) Because the petitioner has been deprived of 10 months seniority and has been arbitrarily placed at S.No.7 of the select list without any justification and was not promoted by the order dated 24-7-1979.

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C-241

: 4 :

(j) Because the Respondent No.3 ought to have promoted the petitioner by the order dated 24-7-1979 and by not doing so the Fundamental Right of the petitioner guaranteed under Article 16 of the Constitution of India have been infringed.

5. That the following be added as prayed No.(VI) after prayer No.(V).

(VI) A writ order or direction in the nature of mandamus commanding the Respondents no.2 and 3 to fix the seniority of the petitioner with consequential benefits.

P R A Y E R

It is, therefore, most respectfully prayed that the petitioner be allowed to amend the writ petitions accordingly.

Lucknow dated
17th Sept. '1980

T/C
R. Sharma
(RAJIV SHARMA)
Advocate
Counsel for the Applicant

C-242

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH, LUCKNOW

AFFIDAVIT IN
SUPPORT OF AMENDMENT APPLICATION
IN RE:

Civil Misc. W.P.No.3082 of 1979

Subhash Chandra Sharma Petitioner
Vs.

Union of India and others ... Respondents

Affidavit of Subhash Chandra Sharma aged about
35 years s/o late Sri Mukam Chandra Sharma, r/o
512/404 3rd Lane, Nishatganj, Lucknow

Deponent

I, the deponent above named do hereby solemnly affirm
and state on oath as follows:

1. That the petitioner/applicant had filed the aforesaid writ petition and had prayed for the quashing of the impugned orders dated 24-7-1979 and 31-7-1979 contained in annexures IV and IX to the writ petition, by which the Respondents no.4, 5 and 6 had been promoted to the post of Stenographer (Selection grade) and had also prayed for the issue of a writ of mandamus for placing the petitioner at serial no.1 of the select list and consequential benefits with regard to seniority and pay.
2. That the deponent is the petitioner in the above mentioned writ petition and as such he is fully conversant with the facts deposed to herein below.
3. That after the filing of the aforesaid writ petition which was admitted by this Hon'ble Court on 5-11-1979, certain new developments have occurred and it has, therefore, become necessary to amend the aforesaid writ petition as follows:
4. That after paragraph 32 of the writ petition the following be added as paragraph 32A, 32B, 32C and 32D:

32-A. That the Respondent no.6 Sri K.C.Nandi who was appointed to the post of

.....1/-

stencographer (selection grade) from the Surplus Cell by the order dated 31-7-1979 (Annexure IX) had not joined at the said post at the time of the filing of the writ petition, but he had subsequently joined on 10-12-1979 in the office of Inspecting Assistant Commissioner of Incometax (Acquisition), Lucknow.

32-B. That by an order dated 12-6-1980 passed by the Rammis respondent no.3, the petitioner was also promoted to the post of Stenographer (Selection grade) and by the same order he was posted to the office of the Inspecting Assistant Commissioner of Income-tax (Assessment), Moradabad. A true copy of the order dated 12-6-1980 is annexed hereto and is marked as annexure No.XII.

32-C. That the petitioner ought to have been promoted in the first batch itself as the petitioner should have been placed at serial no.1 in the select list but the petitioner was wrongly placed at s.no.7 in the select list and as such was not promoted by the order dated 24-7-1979 (Annexure-IV). The petitioner has now been promoted by the order dated 12-6-1980, but in the process he has lost 10 months seniority as persons who were wrongly placed above the petitioner in the said select list were promoted earlier resulting in the loss of seniority of the petitioner who has now become junior to the persons wrongly promoted by the order dated 24-7-1979.

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32-D. That the petitioner ought to have been promoted by the respondent no.3 by the order dated 24-7-79 and in not doing so, and promoting the petitioner later on by the order dated 12-6-1980, the fundamental right of the petitioner guaranteed under Article 16 of the Constitution have been infringed.

5. That the following be added as ground no.(i) and (j) after ground no. (h):

(i) Because the petitioner has been deprived of 10 months seniority and has been arbitrarily placed at sl.no.7 of the select list without any justification and was not promoted by the order dated 24.7.1979.

(j) Because the Respondent no.3 ought to have promoted the petitioner by the order dated 24-7-1979 and by not doing so the Fundamental Right of the petitioner guaranteed under Article 16 of the Constitution of India have been infringed.

6. That the following be added as prayer No.(VI) after prayer No. (V).

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C-245

: 4 :

(VI) a writ order or direction in the nature of mandamus commanding the respondents no.2 and 3 to fix the seniority of the petitioner with consequential benefits.

Dated: 27th Sept. 1980.

DEPONENT

I, the deponent above named do hereby swear on oath that the contents of paragraph nos.1 to 6 of this affidavit are true and correct to my personal knowledge. That no part of it is false and nothing material has been concealed. So help me God.

DEPONENT

I identify the deponent who signed before me.

T. C. R. Shauk
ADVOCATE

Solemnly affirmed before me on this day of September, 1980 at by the deponent who has been identified by the aforesaid Advocate.

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

OATH COMMISSIONER

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH LUCKNOW

T.A. NO.403 of 1987 (T)

(W.P.NO.3082 of 1979)

S.C. Sharma

.....

Applicant.

Versus

Union of India & Others

.....

Respondents.

5-12-1989

Hon'ble Justice K. Nath, V.C.

Hon'ble Mr. K.J. Raman. A.M.

List has been revised. None of the parties are present. The petition is accordingly dismissed for default of the parties.

Sd/-

Sd/-

A.M.

V.C.

*checked
26/12*

// True Copy //

rrm/

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH LUCKNOW

T.A. NO.403 of 1987 (2)

(S.P.NO.3082 of 1979)

S.C. Sharma

.....

Applicant.

Versus

Union of India & Others

Respondents.

5-12-1989

Hon'ble Justice K. Nath, V.C.

Hon'ble Mr. K.J. Raman. A.M.

List has been revised. None of the parties are present. The petition is accordingly dismissed for default of the parties.

Sd/-

Sd/-

A.M.

V.C.

*Checked
4/6/12*

// True Copy //

rrm/

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH LUCKNOW

T.A. NO.403 of 1987 (2)

(N.P.NO.3082 of 1979)

S.C. Sharma

.....

Applicant.

Versus

Union of India & Others

Respondents.

5-12-1989

Hon'ble Justice K. Nath, V.C.

Hon'ble Mr. K.J. Raman, A.M.

List has been revised. None of the parties are present. The petition is accordingly dismissed for default of the parties.

Sd/-

Sd/-

A.M.

V.C.

*Checked
4/6/12*

// True Copy //

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A-69 ~~14~~ S/1

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH LUCKNOW

.....

Civil Misc. Writ petition No. 3082 of 1979

(Under article 226 of the Constitution of India)
District Lucknow)

.....

AMENDED COPY

Subhash Chandra Sharma aged 35 years s/o late
Hukam Chandra Sharma, r/o 512/404 3rd lane,
Nishatganj, Lucknow

..... Petitioner

VERSUS

1. Union of India
2. Chairman, Central Board of Direct Taxes, New Delhi.
3. Commissioner of Incometax (Cadre Controlling Authority)
Lucknow/Allahabad
4. C.D.Shukla aged 35 years s/o Prabhu Dayal C/o Office of
the Inspecting Asstt. Commissioner of Incometax,
Range-II, Allahabad
5. Har Saran Lal aged 27 years s/o Babu Ram, c/o Office of
the Appellate Assistant Commissioner of Incometax,
Moradabad
6. K.C.Nandi, Steno (Senior Grade) Office of the Inspecting
Asstt. Commissioner of Incometax (Acquisition), Lucknow.

..... RESPONDENTS

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To

The Hon'ble the Chief Justice and his companion
Judges of the aforesaid court.

The humble petition of the petitioner abovenamed
most respectfully sheweth:-

1. That the petitioner is a stenographer in the ordinary grade in the Incometax Department and is presently in Lucknow charge in the office of the Inspecting Assistant Commissioner of Incometax(Assessment) Moradabad.
2. That the petitioner was appointed in 1967 as Lower Division Cler^ksteno-typist (with special pay) which was redignated as stenographer (ordinary grade) in the year 1969 and he has been working on the said post for the last 12 years.
3. That the petitioner's services are regulated by the Income-tax Department Non-gazetted Ministerial Posts Recruitment Rules, 1969 (hereinafter referred to as Rules) framed by the President of India in exercise of the powers conferred under the proviso to Article 309 of the Constitution. A true copy of the rules is annexed hereto and is marked Annexure-I.
4. That the next higher post in the Income-tax Department is that of Stenographer Selection Grade, which is a selection post. According to Rules, the posts of stenographer(Selection Grade) are to be filled in exclusively by promotion from amongst the stenographers in the ordinary grade on the principle of merit-cum-seniority as laid down in said Rules.

.....3/-

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: 3 :

5. That the procedure for promotion as stenographer (Selection Grade) from amongst the stenographer (ordinary grade) is that there is a Departmental Promotion Committee which prepares a select list on the basis of merit-cum-seniority. The stenographer (ordinary grade) in the zone of consideration are considered for promotion according to the seniority in the gradation list. The number of persons considered for promotion for inclusion in the select list are 5 to 6 times the number of estimated vacancies as laid down in Rules. The Departmental Promotion Committee after rejecting those who are unfit for promotion classifies the remaining legible persons in 3 categories viz. 'outstanding', 'very good', and 'good' on the basis of entries in the character rolls for the last 5 years. Thereafter the Departmental Promotion Committee prepares the select list placing at the top persons in the outstanding category followed by those in very good and good categories. Inter-seniority within each category is maintained. This procedure is followed by the Departmental Promotion Committee in accordance with the provisions of the Government of India, Department of Personnel and Administrative Reforms' Office Memorandum No.22011/6/75-Estt(D) dated the 30th December, 1976 where in

.....4/-

the procedure for making promotions and functioning of the Departmental Promotion Committee has been laid down. A true copy of the relevant extracts of the procedure for making promotion and functioning of the Departmental Promotion Committee is annexed hereto as marked Annexure-II.

6. That in July, 1979 seven vacancies occurred in the post of stenographer (selection grade) and in the gradation list prepared by the Department the petitioner was placed at sl.number 9 in the category very good according to his seniority. The respondents no.4 and 5 were placed at sl.number 2 and 77 respectively. S/Shri S.C.Bajpai, K.K.Bhattacharya, A.K.Dey Sarkar, Bhola Lal, H.C.Srivastava, Rajneesh Kumar Srivastava and Prem Prakash Kapoor were placed at sl.numbers 1,3,4,5,6,7 and 8 respectively. S/Sri S.C.Bajpai, K.K.Bhattacharya and Bhola Lal were subsequently found unfit for promotion by the Departmental Promotion Committee and were, therefore, not considered for promotion. After the rejection of S/Sri S.C.Bajpai, K.K.Bhattacharya and Bhola Lal the petitioner was placed at serial number 7 in the Select List.

7. That out of the candidates eligible for promotion S/Sri A.K.Dey Sarkar, H.C.Srivastava, Rajneesh Kumar Srivastava, Prem Prakash Kapoor and the petitioner had 3 very good character roll entries out of the character roll entries of the last five years while respondent no.4 Sri C.D.Shukla had only 2 very good entries to his credit.

8. That although there was only 2 very good entries in the character roll of Sri C.D.Shukla, respondent no.4, yet he was placed at number 1 in the Select List prepared by the Departmental Promotion Committee for promotion to the post of Stenographer (selection grade). The names of M/s A.K. Dey Sarka, H.C.Srivastava, Rajneesh Kumar Srivastava, Prem Prakash Kapoor and the petitioner were placed at sl. numbers 2, 3, 4, 5 and 7 respectively in the Select List according to the seniority.

9. That Sri C.D.Shukla respondent no.4 having only 2 very good entries in his character roll out of the latest 5 character roll entries was not eligible for being considered by the Departmental Promotion Committee and in any case he could not be placed at the top of the Select List. The respondent number 4 could at best be assigned the lowest position in view of the character roll entries of the petitioner named-above being better than those of respondent no.4.

10. That in December, 1977 and August, 1978 vacancy had arisen for the post of stenographer (selection grade) and the respondent number 4 was rejected by the then Departmental Promotion Committees for not having three very good character roll entries to his credit out of the latest 5 character roll entries. The petitioner accordingly on 20-7-1979 made a representation to the Chairman, Central Board of Direct Taxes, New Delhi against the inclusion of Sri C.D.Shukla name at the top of the Select List. A true copy of this representation dated 20-7-1979 made by the petitioner to the Chairman, Central-Board of Direct Taxes, New Delhi is annexed hereto as is marked Annexure-III.

11. That on 20-7-1979 the petitioner also represented the matter to the Income Tax Employees Association, Class-III, Lucknow and its General Secretary Sri V.K.Rastogi met on or about 21.7.1979 the then Commissioner of Income-tax Sri S.K.Lall who was also the Chairman of Departmental Promotion Committee and apprised him of the situation. At the request of Sri V.K.Rastogi, Sri S.K.Lall was pleased to send for character roll from the office of the Commissioner of Incometax at Allahabad and found that Sri C.D.Shukla was wrongly recommended in violation of the rules and minutes dated 11.7.1979 of the Departmental Promotion Committee for promotion as he had only 2 very good character roll entries to his credit. Sri S.K.Lall also told Sri V.K.Rastogi that the correct facts in regard to the character roll entries were not placed before the Departmental Promotion

Committee by the Liassion Officer Sri V.K.Misra and that the name of Sri C.D.Shukla was wrongly included in the panel for promotion, but since the list had been finally prepared he expressed his inability to rectify the same.

11. That the petitioner's representation dated 20.7.1979 (Annexure 3) has not been considered till today and all those persons placed in the Select List above the petitioner have been promoted to the post of stenographer (selection grade) by the order dated 24.7.1979 of Commissioner of Income-tax respondent number 3. A true copy of the said order dated 24.7.79 is annexed hereto and marked as Annexure IV. Had the Select List been prepared correctly in accordance with the rules of the Departmental Promotion Committee the petitioner would have been promoted by the same order.

12. That the promotion of respondent number 4 Sri C.D. Shukla is in violation of the procedure prescribed for making promotions. That is not only discriminatory but also highly prejudicial to the petitioner and has resulted in violation of the provisions of Article 14 and 16 of the Constitution.

13. That the respondent number 5 who is from Schedule Caste/Schedule tribe was placed at sl.number 77 in the Gradation list of stenographers for promotion to the stenographer (selection grade) and there being only 7 vacancies for the said post of the stenographer (selection grade), the Departmental Promotion Committee ought not to have considered the name of respondent number 5 as the number of persons to be considered for the Select List

could not exceed 5 to 6 times of the estimated vacancies and there being only 7 vacancies there was no question of the name of the respondent no.5 being considered.

14. That in 1968 the Government of India, Ministry of Home Affairs by its office memorandum no.1/12/67-Estt.(EST) dated 11.7.1968 made 12.5% and 7.5% reservations for schedule cast and schedule tribes respectively in selection posts to be filled in by promotion which was subsequently revised and enhanced to 15% and 7.5% respectively by the Ministry of Home Affairs resolution no.27/25/68/Est.(SCT) dated 25.3.1970. True copy of the circulars dated 11.7.68 and resolution dated 25.3.70 are annexed hereto and marked as Annexure V and VI respectively.

15. That in 1972 another circular was issued by the Government of India, Department of Personnel Office Memorandum No.27/2/71Estt.(SCT) dated 27.11.1972 by which 15% and 7.5% of non-selection posts to be filled in by promotion were reserved by schedule caste and schedule tribes. The said circular dated 27.11.72 is annexed hereto and is marked as Annexure VII.

16. That in the year 1974 again another circular was issued by the Government of India, Department of Personnel and Administrative Reforms Office Memorandum No.10/41/73-Estt.(SCT) dated 20.7.74 a true copy of which is annexed hereto and is marked Annexure VIII, fixing the same ratio of ~~15%~~ reservation in favour of schedule caste and schedule tribe in selection posts to be filled in by promotion of Class-II, within class II and upto the lowest rank of Class-I.

17. That the Income Tax Department has the following three groups of employees:

<u>Group A</u>	<u>Group B</u>	<u>Group C</u>
Incometax Officer Class II and above	Incometax Officer Class II.	1. Lower Division Clerk 2. Upper Division Clerk 3. Stenographer (Ord. grade) 4. Tax Assistants 5. Head Clerks 6. Stenographer (Sel. Grade) 7. Supervisor Grade II 8. Supervisor Grade I 9. Incometax Inspector

18. That prior to the issue of the aforesaid instructions there was no reservations for the posts of Tax Assistants, Head Clerks, Stenographers (Selection grade), Stenographer (Senior scale). They are all selections posts to be filled in exclusively by promotions. There was no reservation in promotion from Supervisor grade II to grade I, which is a non-selection post and is to be filled in by promotion exclusively. 50% of the Upper Division Clerks and 66 % of Inspectors are appointed by promotion from amongst the Lower Division Clerks, Upper Division Clerks respectively by the Departmental Promotion Committee on the principle of merit-cum-seniority and there was no reservation in favour of schedule cast and schedule tribe. Lower division clerks and stenographers ordinary grade and 50% of Upper division clerks and 33 % of Inspectors were recruited directly and there was no reservation of 15% and 7.5% in each post for schedule cast and schedule tribe respectively. Thus ~~before~~ there was a quota fixed for the schedule cast

and schedule tribe in each cadre in which appointment was to be made by direct recruitment and there were adequately represented.

19. That the number of posts in the Income-tax Department of the extent to which these posts are held by the schedule tribe/schedule tribe candidates is as follows:-

Total no.of posts of stenographer (selection grade) plus U.D.C.	282
Number of schedule caste/schedule tribe persons in department	48

The extent of reservation in favour of schedule cast or schedule tribe candidates is likely to exceed soon the reservation limit of 50% and already holding 18% posts of both by recruitment and promotion, thus schedule cast/schedule tribe candidates has deprived the general candidates of being employed. The large percentage of schedule cast/schedule tribe candidates is violative of the provisions of article 16 of the Constitution of India. The petitioner and all those employees who do not belong to schedule cast or schedule tribe have not only lost their seniority in various cadres but have also been deprived of their promotion. The employees of schedule cast and schedule tribe get 2 or more promotions in a year and go on occupying higher and higher posts leaving their colleagues alongwith whom they entered the department in their old cell. It is significant to point out here that the petitioner was appointed in the year 1967 as Lower Division Clerk (stenotypist) which was redesignated as stenographer (ordinary grade) in the year 1969 whereas the respondent no.5 was

appointed as stenographer (ordinary grade) in the year 1974 and is much junior to the petitioner but has been promoted. This and similar other instances has caused frustration and heart burning amongst the employees. Consequently the efficiency of the administration has been adversely affected unjustifiably.

20. That Article 335 of the Constitution lays down that reservation to posts is to be made ~~by~~ having regard to the maintenance of efficiency in the administration. If the reservation made in view of the aforesaid circulars has created not only imbalance, but adversely effected the morale of services and the efficiency in the administration has gone down.

21. That the Hon'ble Supreme Court in State of Kerala Vs. N.M. Thomas (AIR 1976 SC page 490 at 498) has observed that in making reservation to appointment or posts under article 16(4) the State has to take into consideration the claims of the backward classes consistently with the maintenance of the efficiency of administration. It must not be forgotten that the efficiency of administration is of such a paramount importance that it would be unwise and unpermissible to make any reservation at the cost of efficiency in the administration.

22. That the persons belonging to schedule cast or schedule tribe having once been recruited on a post held the same status and financial position as other employees

A-73

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of the same cadre and he ceases to belong to socially and economically backward classes and are not entitled to the benefit of reservation under article 16(4) of the Constitution in matter of promotion, particularly where merit is the sole or main criterion.

23. That as a matter of fact no quota can be fixed for posts to be filled in by promotion. Quota may be fixed only at the time of initial appointment and once it is so fixed, it can not be carried forward and extended to a post which is to be filled in by promotion. Reservation twice over one at the stage of initial recruitment and second at the stages of promotion is not permissible either under Article 16(4) or Article 335 of the Constitution. Respondent no.5 was appointed as stenographer in the ordinary grade in 1974 on the basis of reservation and was very much junior to the petitioner but on account of reservation he has become senior to the petitioner by superceding him.

24. That there are a number of schedule cast and schedule tribe persons who are employed in very good services because of the reservation made for them in different services. Their children have got good education and social back grounds, and they do not now need any protection by way of reservation and should now be treated as ordinary candidates. The impunged reservation does not make any distinction between such

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schedule caste/schedule tribe candidates who are advanced, economically well off and other schedule cast and schedule tribe candidates. There is also no basis for such different treatment between schedule cast and schedule tribe candidates who are educationally socially and economically advanced and ordinary candidates and as such the provisions of article 14 and 16 of the Constitution are violated.

25. That the petitioner has been guaranteed the fundamental right of equality in employment and as a result of the aforesaid three circulars the fundamental rights of petitioner of equality in employment is violated and as such the said circulars are violative of Article 14 and 16 of the Constitution.

26. That out of 7 vacancies 6 have already been filled by promotions orders passed on 24.7.79 and one post is still lying vacant. Despite the fact that the petitioner's name finds place in the Select List for promotion, he has not been promoted for the reasons that 7th post has to be filled in by the Surplus Cell, Ministry of Homes, Department of Personnel, New Delhi. The Commissioner of Incometax, Lucknow by his order No.154 dated 31.7.78 has appointed Sri K.C.Nandi, respondent no.6 as stenographer (selection grade) from Surplus Cell. A true copy of the order dated 31.7.79 is enclosed hereto and marked as Annexure IX.

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27. That on 17th July, 1973 the Central Board of Direct Taxes, New Delhi issued circulars vide F.No.69/125/72-Ad. VI dated 18.7.78 for re-employment of surplus staff of various Central Government Departments against promotion quota vacancies also which was to be applied only in Delhi but its operation has now been extended to all other charges of the Income-tax Department by F.No.69/125/72 Ad.VII dated 27.11.73. True copy of circulars dated 18.7.73 and 27.11.73 are annexed hereto and are marked as Annexure X and XI respectively.

28. That the aforesaid circulars are wholly illegal and void because under the Rules applicable to the petitioner appointment to the posts of stenographer (selection grade) can only be made by promotions of the stenographer (ordinary grade). The statutory rules framed under Article 309 of the Constitution can not be altered by administrative instructions issued by the Central Board of Direct Taxes. These administrative instructions can be of any avail to respondent no.6.

29. That promotion to a higher post is only the right of employees in the lower cadre in a particular charge of the Income-tax Department and no outsider can be imposed. This is also in violation of the provisions of Article 14 and 15 of the Constitution.

30. That prior to the issue of the circulars mentioned in para 26 above, the surplus staff from various other Central Government Departments was to be

: 15 :

appointed against the direct recruitment vacancies only.

31. That the said circular Annexure X and XI are violative of Article 14 and 16 of Constitution of India.

32. That the respondent number 6 has been appointed in the vacancy reserved by the Surplus Cell, Department of Personnel Ministry of Homes, New Delhi. He has not yet taken over charge of his office and it is in the interest of justice that he should be restrained from taking over charge as Stenographer (Selection Grade) during the pendency of this writ petition otherwise the petitioner shall suffer irreparable loss and injury which can not be made good in the event of the success of this writ petition.

32A. That the respondent no.6 Sri K.C.Mandi who was promoted to the post of stenographer (selection grade) from the Surplus Cell, by the order dated 31-7-1979 (Annexure IX) had not joined at the said post at the time of the filing of the writ petition but he had subsequently joined on 10-12-1979 in the office of the Inspecting Assistant Commissioner of Income-tax (Acquisition), 57 Ram Tirth Marg, Lucknow.

32B. That by an order dated 12-6-1980 passed by the respondent no.3, the petitioner was also promoted to the post of stenographer (selection grade) by the same order he was post to the office of the Inspecting Assistant Commissioner of Incometax (Assessment), Moradabad. A true copy of the order dated 12.6.1980 is annexed hereto and is marked as Annexure XII.

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32C. That the petitioner ought to have been promoted in the first batch itself as the petitioner should have been placed at serial no.1 in the select list but the petitioner was wrongly placed at serial no.7 in the select list and as such was not promoted by the order dated 24-7-1979 (Annexure IV). The petitioner has now been promoted by the order dated 12.6.1980, but in the process he has lost 10 months seniority as persons who were wrongly placed above the petitioner in the said select list were promoted earlier, resulting in the loss of seniority of the petitioner who has now become junior to the persons wrongly promoted by the order dated 24-7-79.

32D. That the petitioner ought to have been promoted by the respondent no.3 by the order dated 24.7.1979 and in not doing so, and promoting the petitioner later on by the order dated 12.6.1980, the fundamental right of the petitioner guaranteed under Article 16 of the Constitution have been infringed.

33. That the petitioner has no remedy available he begs to invoke the jurisdiction of this Hon'ble Court under Article 226 of the Constitution on the following grounds amongst others:

GROUNDS

(a) Because the Departmental Promotion Committee had no jurisdiction to place the respondent no.5 on the top of the Select List inspite of the fact that the character roll entries of the petitioner were better than those of

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the respondent and in doing so the Departmental Promotion Committee acted in violation of the Rule VI(2) of the Rules and procedure for making promotion and functioning of the Departmental Promotion Committee contained in Annexure II.

(b) Because the Departmental Promotion Committee acted in violation of the rules laid down by the Government of India regarding the functioning of the Departmental Promotion Committee and committed an error apparent on the face of the record by placing the respondent no.4 above the petitioner in the Select List, though he had only 2 very good entries to his credit in the character roll whereas the petitioner had 3 very good entries to his credit in the character roll and thus deprived the petitioner of his fundamental right guaranteed by article 16 of the Constitution.

(c) Because the promotion of the respondent no.4 is in violation of the rules VI(2) (As contained in Annexure II) and also in violation of the procedure prescribed for making promotions is not discriminatory but also highly prejudicial to the petitioner and has resulted in violation of the fundamental rights guaranteed by the Article 14 and 16 of the Constitution.

(d) Because the name of respondent no.5 who was placed at serial number 77 in the gradation list ought not to have been considered by the Departmental Promotion Committee for promotion as the number of persons to be considered for the Select List 5 to 6 times the number of estimated vacancies and there being only 7 vacancies,

: 18 :

the Departmental Promotion Committee in promoting respondent no.5, who was beyond the field of eligibility has committed an error apparent on the face of record.

(e) Because the reservation created in favour of the schedule caste/schedule tribe has created an imbalance and has affected the morale of the service and affected the maintenance of efficiency in the administration in violation of article 335 of the Constitution.

(f) Because the promotion to the post of stenographer (selection grade) can be made from amongst the stenographers in ordinary grade, according to the Rules contained in Annexure I framed under Article 309 of the Constitution and cannot be altered by administrative instructions issued by the Central Board of Direct Taxes and the respondent no.3 in appointing respondent no.6 to the post of stenographer (selection grade) from the Surplus Cell acted beyond his jurisdiction and committed an error apparent on the face of the record.

(g) Because the said orders dated 24.7.79 and 31.7.79 Annexure IV and IX and the said circulars Annexure X and XI infringe on the fundamental right of equality in employment guaranteed by the Constitution and as such are violative of Article 14 and 16 of the Constitution.

(h) Because the impugned orders contained in Annexure IV and IX are otherwise manifestly against, illegal and ultravires.

(i) Because the petitioner has been deprived of 10 months seniority and has been arbitrarily placed at

.....19/-

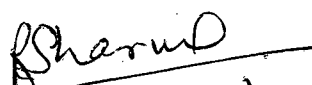
serial no.7 of the select list without any justification and was not promoted by the order dated 24-7-1979.

(j) Because the respondent no.3 ought to have promoted the petitioner by the order dated 24-7-1979 and by not doing so the fundamental right of the petitioner guaranteed under Article 16 of the Constitution of India have been infringed.

P R A Y E R

It is, therefore, most respectfully prayed that this Hon'ble Court be pleased to issue:

- i) a writ order or direction in the nature of certiorari quashing the order dated 31.7.79 and 24.7.79 Annexure IX and IV respectively in respect of the promotion of respondents no.6 and 4 and 5.
- ii) a writ order or direction in the nature of mandamus commanding the respondent no.2 and 3 not to appoint the respondents no.4, 5 and 6.
- iii) a writ order or direction in the nature of mandamus commanding the respondent no.2 to place the petitioner at serial number 1 in the Select List.
- iv) any other appropriate writ order or direction that this Hon'ble Court deem necessary in the circumstances of the case to safeguard the interest and rights of the petitioner.
- v) to award the cost of this petitioner to the petitioner
- vi) a writ order or direction in the nature of mandamus commanding the respondents no.2 and 3 to fix the seniority of the petitioner with consequential benefit


(RAJIV SHARMA)
Advocate
Counsel for the petitioner

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Annexure-XII

In the High Court of Judicature at Allahabad
Lucknow Bench

Civil Misc. Application No3082. of 1979

Subhash Chandra Sharma Petitioner
Versus

Union of India and others ... Respondents

Government of India
Office of the Commissioner of Income-tax
Lucknow

Order
Dt. 11.6.1980

Establishment - Central services - Group 'C' -
Promotion, appointment, transfers & Postings etc.

No.35: Sri S.C.Sharma, Stenographer (OG), Audit Branch, Lucknow is hereby promoted to officiate as Stenographer (Selection Grade) in the pay scale of Rs.425-700 with effect from the date of taking over as such and until further orders. He will be on probation for a period of two years.

No.36: Sri D.D.Saxena, Peon, Audit Branch, Lucknow is hereby ~~prom~~ approved for officiating appointment as Lower Division Clerk in the pay scale of Rs.260-400 with effect from the date of joining and until further orders against temporary vacancy in the cadre. He will be on probation for a period of two years.

No.37: Interalia consequent upon the above, the following transfers and postings are hereby ordered with immediate effect:

S.No.	Name of the officials with present place of posting.	Office to which posted/ services placed at the disposal of
1	2	3
1.	S/Sri . S.C.Sharma, promotee steno(sel.gr.)Audit Branch, Lucknow	Office of I.A.C.(Asstt) Moradabad.
2.	D.D.Saxena, appointee LDC Audit Branch, Lucknow	services placed at the disposal of CIT,Allahabad
3.	Har Dayal Trivedi, LDC CIT's office,Allahabad.	CIT's office, Lucknow (with the concurrence of CIT, Alld.)

Sd/- Dharni Dhar
Commissioner of Income-tax
Lucknow

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

.....*W.P.*..... No. 30 *Dr* of 1979

.. *Sulhash Chandra Sharma* Petitioner.

Versus

.. *Union of India and others* Opposite-Parties.

REGISTRAR,

I am appearing as Standing Counsel Income
Tax Department, on behalf of Applicant/Respondent/
opposite-parties

Dated *28/11*...19*82*

Sair

(S.C. Misra)

Advocate.

Standing Counsel/Income
Tax.

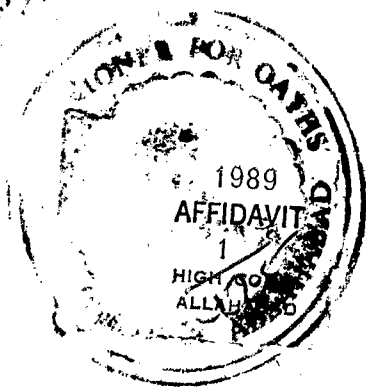
Lucknow.

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CENTRAL ADMINISTRATIVE TRIBUNAL
BEFORE THE 'HON'BLE ~~MEMBER~~ ~~OF THE~~ ~~TRIBUNAL~~ ~~AT~~ ~~LUCKNOW~~
CIRCUIT - ~~LUCKNOW~~ BENCH, LUCKNOW

T.A. No. 403 of 1987 (L)



Subhash Chandra Sharma

... Applicant

Versus

Union of India and others

.. Opp. parties.

COUNTER AFFIDAVIT ON BEHALF OF OPP: PARTY NOS. 1, 2 & 3

I, L. N. PANT

aged about 32 years, son of Shri I. D. PANT
resident of MG 58, SECTOR 'C' ALIGANJ, LUCKNOW
do hereby solemnly affirm and state as under:-

1. That the deponent posted as
in the office of the Opp. party No. 3 and have been
authorised to file this counter affidavit on behalf
of O.P. Nos. 1, 2 & 3.

2. That the deponent has read and understood the
contents of the application filed by the applicant
as well as the facts deposed to herein under in re
the file of:

3. That the contents of para 1, 2 & 3 of the
writ petition are admitted.

4. That the contents of para 4 of the writ
petition are admitted except that the Stenographer
(selection grade) in the Department is not a selection



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post. and

5. That the contents of para 5 of the writ petition are true to some extent. The petitioner while referring Office Memorandum No.22011/6/75-Estt.(D) dated 30.12.1976 fails to appreciate this succeeding contents of the Memorandum wherein it was clearly been emphasised that ' it is entirely left to the D.P.C. to make its own classification of the officers being considered by them for promotion to Non-selection posts. Each DFC has authority to decide its own method and procedure for objective assessment of the suitability of the candidate on the basis of CRs."

6. That the contents of para 6 of the writ petition are admitted but it is not true that Respondent No.4 & 5 were placed at Sl. No.2 and 7 respectively at the panel; it is evident from the relevant DFC Minute that Respondent No.4 & 5 were placed at Sl. No.1 & 6 respectively in the said panel. Petitioner's claim that his name was at Sl No.7 in the panel is also wrong because in fact his name was placed at serial no.1 in a separate panel which was prepared for anticipated vacancies.



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7. That the contents of pars 7, 8 & 9 of the writ petition have no force and denied with regard to the approval of Shri CD Shukla, Respondent No.4 for his promotion to the post of Stenographer Selection

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grade the DFC considered this official as 'very good' because there were two clearly 'very good' reports; the other three reports earlier had some items above mere good; finally the reports before the five years period had been of such clearly 'very good' category that the intervening good reports if they are treated only as such, involved down grading (fall in standards) which ought to have been communicated to the official as required in the Ministry of Home Affairs O.M. No.51/3/68-Estt.(n) dated 2.3. 68, the same as per adverse remarks. This communication provision was however, not complied with thereby reflecting on the total maintainability of these good reports, if they are taken only as such. The DFC's decision was, therefore, apparently in order on overall assessment. As per Memorandum quoted as above 'Departmental promotion committee should decide its own method and procedure for objective assessment of the suitability of the candidates and accordingly the DFC considered. Respondent No.4 as 'Very good' for the promotion at the post of Stenographer selection grade and being senior among his other colleagues mentioned in the panel, his name was placed at the top in the said panel.



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8. That the contents of para 10 of the writ petition are not accepted. The Respondent No.4 was considered as 'Very Good' for promotion as S.C. (Sel. Grade) by the DFC and his name was not rejected by DFC. The petitioner made a representation to the

Chairman, C.B.D.T. New Delhi against his non promotion to the post of Steno (Selection Grade) and the same was rejected by the Board vide their letter vide F.No.A-82 32019/32 /79-Ad.VII dated 22.1.1980.

9. That the contents of para 11 are denied as it has no force. The petitioner's statement that Shri S.K. Lall found that Shri C.D. Shukla was wrongly recommended in violation of rules and minutes dated 11.7.79 of the DPC is totally false and baseless because Shri Lall was Chairman of that DPC and panel was prepared after careful consideration as per rules prescribed by the Board.

Shri SK Lall, Chairman of the said DPC told Shri

10. VK Rastogi that correct facts in regard to the character rolls entries were not placed before the DPC is not true because as per relevant records it is evident that all relevant CCRs were present before DPC thereafter wrongly inclusion of name in the said panel of

Shri CD Shukla does not arise and there is no question for rectification of prepared panel.

10. The petitioner's representation dated 20.7.79 was considered by the Board and the same was rejected. Since all the candidates of that panel were found fit for the promotion, they were accordingly promoted. The question of promotion of the petitioner does not arise as his name was not in that panel. The select list was prepared as per rules by the DPC and petitioner being junior in comparison to his other colleagues, he could not be promoted.



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10. That the contents of para 12 are wrong and hence denied. Since Respondent No.4 Shri CD Shukla was deserving candidate, his name was included in select list by the DPC according to procedure prescribed by the Board, there is no discrimination and violation of the provisions of Articles 14 and 16 of the constitution.

11. That ~~xxx~~ in reply to para 13 of the Writ petition it is submitted that it is true that number of persons to be considered for the select list could not exceed 5 to 6 times of the estimated vacancies but the assertions that the name of respondent No.5 does not find mention in the case of consideration for promotion list are mis-leading in as much as he belongs to a schedule caste and is a fit candidate for consideration to the post of Stenographer(Selection Grade) was liable to be considered for the promotion to the respective post against the Reserve Quota for Schedule Castes and Scheduled Tribes on the serial No. in the gradation list and having regard to the roster maintained by the department. All promotions are made strictly in accordance with service rules and the instructions issued by the Central Government from time to time including those with regard to the reserve quota for Schedule Casts and Schedule Tribes. The assertions to the contrary are incorrect and mis-conceived.



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12. That the contents of paras 14, 15, 16, 17 & 18 of the writ petition need no comments.

13. That in reply to para 19 of the Writ petition, it is submitted that the reservation for the Scheduled

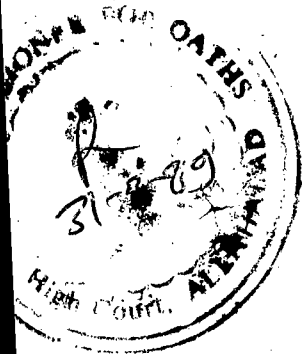
Castes and Schedule Tribes is for various posts adequately protected by the constitution of India. These reservations are in accordance with in carrying the start under lined in Article 16 of the constitution of India. The reservation in favour of Schedules Casts and Scheduled Tribes is made with wider national interest to uplift backward classes so that they may fall in line with the advanced section of society. The grievances made by the petitioner in para under reply was negative by the Supreme Court while deciding the case reported as the State of Punjab -vs- Hira Lal - 1971 - S.L.R. Page-98. It may be added that the reservation made in the departmental posts for schedule caste and scheduled tribes are not at the cost of sacrifice of efficiency and by making these reservations efficiency of administration as enunciated in article 335 has been kept in mind. It is wrong that as result of promotion of persons belonging to scheduled castes and scheduled tribes against reservation quota for scheduled castes and schedule tribes the petitioner and other employees of the Department are deprived of their promotions. The petitioner is and will be confident for promotion in accordance with rules. The conflict of the petitioner that on account of the policy to reserve certain seats for Scheduled Castes and Scheduled Tribes in the matter of promotion the petitioner loses his seniority etc. is wholly unfounded and unsustainable in eyes of law. The apprehension that Respondent No.5 who is junior to the petitioner and has been promoted earlier to the petitioner has no force and



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and is mis-conceived as promotions are made accordance with the instructions issued from time to time from Board.

The assertions that the promotions to the Schedule Castes people have caused heart burning amongst the employees is incorrect. The petitioner has failed to approach the question from the wider interest of upliftment of the people belonging to the backward society and from the national point of view likewise the assertion that the efficiency of the administration has been adversely affected is not correct. The reservations for these posts were created by the orders issued by the Govt. from time to time within the limits contained in Article 16(4) of the constitution of India. These reservations have not created any monopoly or have unduly disturbed the legitimate interest of other employees. The powers of reservation have been used solely with a view to give adequate representation to the members of the Scheduled Castes. To give effect to the reservation policy and by reserving 15% and 7.5% for Scheduled Caste and Scheduled Tribes respectively the Govt. has not created any monopoly in favour of any one or this has unduly disturbed the legitimate interest of the employees. The statement that efficiency of the administration has adversely affected and reservation has caused frustration and heart burning are totally incorrect and can not be sustained.



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13. That the contents of para 20 of the Writ petition are baseless and are not admitted.

The criteria has already been described in the preceding paragraphs. The assertion that reservation has created not only unbalance but adversely affected the morale of service and the efficiency of administration are wholly incorrect and are based on correct factual dates. While making reservation the provisions of article 335 of the constitution have been kept in mind and there had been no violation of the point contained in the said article.

14. That the contents of para 21 of the writ petition have no force because the appointments or promotions made out of reservation quota are also based on certain criteria and Article 335 of the Constitution is kept in mind so that appointment made on reservation basis does not hamper, the efficiency in the administration.

15. That the contentions made in paragraphs 22, 23 & 24 of the writ petition are not tenable and without any substance. The reservations made in favour of Scheduled Castes and Scheduled Tribes are in accordance with Article 16(4) read with Article 335 of the constitution and therefore, they are valid and constitutional. As such there is no question of violation of Article 14 and 16 of the constitution.



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16. That in reply to the contents of para 25 of the Writ petition, it is submitted that the deponent states that there had been no violation of the fundamental rights guaranteed to the petitioner in equality in employment. The three circulars referred to by the petitioner are not in violation of the Article 14 and 16 of the constitution and as such assertions to the contrary are incorrect.

17. That the contents of para 26 are admitted but it is not true that 7th post out of 7 vacancies for promotion in cadre of stenographer (Selection grade) was to be filled in by the surplus cell, Ministry of Homes, Department of Personnel, New Delhi. In fact the name of the petitioner was also taken on panel separately against anticipated vacancy and decision of the Department of Personnel & A&R regarding nomination of a surplus personnel for absorption in the cadre of Steno (Selection Grade) had not been received till the date of DPC for which a special messenger was deputed to New Delhi and came after the DPC had been over. The said Department gave clearance for the said post on 28.7.79 on phone that the name of surplus personnel has since been sponsored by them for absorption on the cadre of Steno (Selection Grade.) in Lucknow charge consequently Shri KC Nandi Respondent No.6 was appointed as per



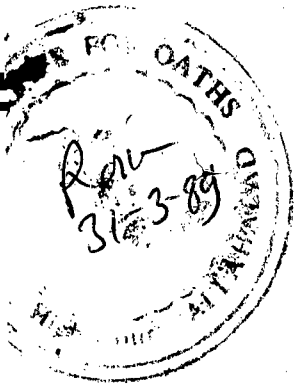
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instructions given by the Board.

18. That the contents of para 27 of the writ petition need no comments.

19. That the contents of para 28 of the writ petition are not admitted because the instructions issued by the Board are in the nature of orders and not administrative instructions. The rules which governs the service condition of the petitioner ~~which~~ makes specific provisions for following such orders and instructions of the Central Board of Direct Taxes is in contravention of the statutory rules framed under the Article 309 of the Constitution of India are incorrect.

20. ^{in reply to} That the contents of para 29 of the writ petition it is submitted that promotion to a higher post is only the right of employees in the lower cadre in a particular charge of incometax department and that no outsider can be imposed., but vide Board's circular dated 27.11.73 the question of exempting the Incometax Department from the re-deployment of the surplus staff against promotion posts was taken up with the Department of personnel at a High level. The department have expressed their inability to make any change in general policy of making no inations of the surplus staff against promotion posts in the favour of the ~~incometax~~ Income Tax Department, as there might be repurcussions in other ministries/Departments. However the Department



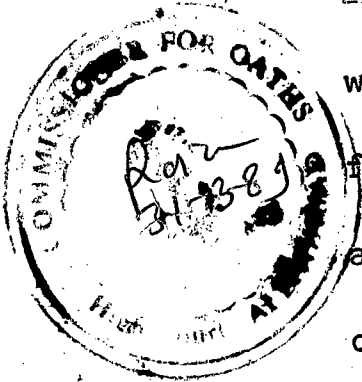
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of Personnel have intimated that the nominations to promotion posts in the Incometax Department would be made by them as sparingly as possible and, therefore Shri KC Nandi, Respondent No.6 being outsider was to be appointed on promotion post. Thus it is not violation of Article 14 and 15 of the consitution.

21. That the contents of para 30 of the writ petition are not admitted because appointment of surplus staff were made only against direct recruitment vacancies. No doubt, the department make appointments, preferably, against direct vacancies but both the ways ie. against direct vacancies and out of promotion quota appointments of surplus staff are made.

22. That the contents of para 31 of the writ petition are wrong hence deniced as it has no force and without force, said circulars of the para are not violation of Article 14 and 16 of the consitution of India.

23. That the contents of para 32 of the writ petition are wrong and hence denied. The question of irreparable loss and injury to the petitioner does not arise as Respondent No.6 has been appointed as per rules.



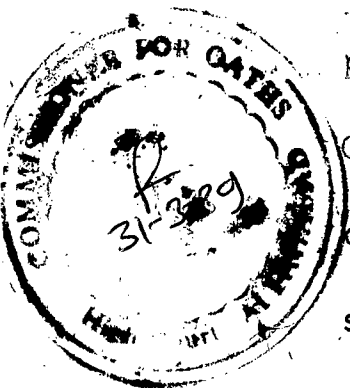
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24. That the contents of para 32-A of the writ petition need no comments.

25. That the contents of para 32-B are admitted but the petitioner was promoted as stenographer (Sel. grade) vide C.I.T's order dated 11.6.80 not vide order dated 12.6.80.

26. That the contents of para 32-C of the writ petition are not admitted. The assertions that the petitioner's name was placed at sl. No. in select list for promotion of Steno (Sel. Grade) is not correct. As stated in preceding para his name was also taken on the panel separately, against anticipated vacancy as the final decision of the Department of Personnel & R regarding nomination of a surplus personnel for absorption in the cadre of steno (Sele. Grade) had not been received. The other colleagues of petitioner were not wrongly placed above him but being senior and deserving candidates they were placed above to petitioner in selected list and accordingly promoted in the said post. Therefore, question of loss of seniority etc. does not arise in the case of petitioner.

27. That the contents of para 32-D of the writ petition have no force hence not admitted. All the promotions dated 24.7.79 and 11.6.80 made by Respondent No.3 are according to the instructions issued by the Government from time to time hence petitioner's rights guaranteed under Article 16 of the constitution have not been infringed.



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28. That in view of the facts as stated above the application filed by the applicant is liable to be dismissed with costs. ~~the tax the tax~~

[Signature]
Deponent. 13/3/89

Lucknow,

Dated:

13.3.89

Verification.

I, the above named deponent do hereby verify that the contents of paragraph 1 to 2 are true to my personal knowledge, those of paragraphs 3 to 2 (124527) are believed to be true on the basis of record, while those of paragraphs 22 to 29 are also believed by me to be true on the basis of legal advice. No part of this affidavit is false and nothing material has been concealed. So help me God.

[Signature]
Deponent. 13.3.89

Lucknow,

Dated:

13.3.89

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

[Signature]
(V.K. Chaudhari)
Advocate, High Court.

Solemnly affirmed before me on 31-3-89 at 11-05 am/pm by the deponent who is identified by Shri VK Chaudhari, Advocate, High Court.

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

Oath Commissioner.

[Signature]
11/705
31-3-89