

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE T.O. NO 443/82
W.P. NO 2344/79 OF

NAME OF THE PARTIES Bhi Kurnth math Serviceman, Applicant

Versus

..... D.O.T. &c. Respondent

Part A.

Sl.No.	Description of documents	Page
1	Index sheet	A1 to A3
2.	order sheet HC.	A4 to A5
3	Cat order sheet	A6 to A10
4	Final order sheet dt. 04-01-90.	A11 to A14
5	Form & Petitions	A15 to A26
6	Reply	A27 to A41
7	Replies	A42 to A50
8	Vokalatnamma	A51 to A57
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16		
17		
18		

CERTIFICATE

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

On check on
Dated 26/08/11

Counter Signed.....

Regd N/18/2011

Section Officer/In charge

A. S. - 2011
Signature of the
Dealing Assistant

CIVIL
SIDE
CRIMINAL

GENERAL INDEX

(Chapter XLI, Rules 2, 9 and 15)

Nature and number of case 20.P.2344/19
Name of parties..... Balkuntha Nath Senastava
Date of institution 23.3.29 Date of decision

File no.	Serial no. of paper	Description of paper	Number of sheets	Court-fee		Date of adm s- sion 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
11		West petition Area and Affidavit	21	5	Rs. 5/-			
12		Power	1	1	5/-			
13	2	C.M. A 5458/19 06/29 for 8y	1	1	5/-			
14		Power	2-		10/-			
15		order Stat.	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.

Date.....

Munsarim.

Clerk.

Annexure - A/7
CAT- 02
CIRCUIT BENCH, ALLAHABAD

(1)

INDEX - SHEET

CAUSE TITLE T. A. 447/87 OF 1980

Name of the Parties Baijnath Nath Srivastava
Versus
C. C. T. & others

Part A, B and C

S. No.	DESCRIPTION OF DOCUMENTS.	PAGE
1.	Criminal Index A ₁ -A ₂	2
2.	Order sheet	3
3.	Judgement A ₃ -A ₇	5
4.	Petition A ₈ -A ₁₁	4
5.	Annexure A ₁₂ -A ₂₁	10
6.	Reply A ₂₂ -A ₃₂	11
7.	Rejoinder A ₃₃ -A ₃₇	5
8.	Vakalatnamas A ₃₈ -A ₄₁	10
9.	Notice of H.C. H. Cont A ₄₈ -A ₅₄	7
10.	<u>B</u> file Ass. - A ₉₁ -37	
11.	<u>C</u> file A ₉₂ -A ₁₀₂ -11	

Copy

20/11/91

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

X
X

FORM OF INDEX

O.A./T.A./R.A./C.C.P. / No. 447/87

P A R T - I

1.	Index Papers	:- 1
2.	Order Sheet	:- 2 to 9
3.	Any other orders	:- NIL
4.	Judgement	:- 10 to 13.
5.	S.L.P.	:- NIL

23/11/98
D.Y. Registrat4
Supervising Officer31/11/98
Dealing Clerk

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

31/12/98
Dealing Clerk

V.K. Mishra

2000.

① One Impressed Rs 75.00
Two Adhesives Rs. 25.00
Total Rs 100.00

Correct bat-final Court-fee notes
will be made on receipt of fees.

Court

In time.

Binders 1-4, Copy of P-

Should also be sent

Copy - Bat

Unsigned order (Ann. 1)

dt. 15-6-79 (vide para 11
of the petition).

Ques
28/8/79.

②.

Hon. R. N. G. J.

Hon. S. C. M. J.

Admit. Issue notice.

L. B.
20-8-79
R.

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

W.P. No. 2344 of 1979

Barberith Nath vs. Union of India

3

Date	Note of progress of proceedings and routine order	Dated of which case is adjourned
1	2	3
23.8.79.	Hon. M.N.G.S. Hon. S.C.M.S.	
	Admit Issue notice.	
	C.M.A. No. 5458/79	
	Issue notice, stay meanwhile.	
	Sd/- M.N.G. S.C.M.	
	15.4.80 Fixed with C.M.	
	A.n. No- 5458 (C) 179 for attendance & C.A.	
	N.I to O.P. No 1 & 2 only, through Regd. Post.	
	Sd/- M.N.G. S.C.M.	
	5458 (C) 175	
	Sd/- M.N.G. — paper filed	
	Sd/- M.N.G. — file done	
	10/8	

A3

CAT/JIT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MURARAJI
ALLAHABAD

D.A./T.A. No. 447 1987

Bai Kunath Srivastava Applicant(s)

B

Versus
Union of India & ors. Respondent(s)

Sr. No.	Date	Orders
		<p><u>Officer's report:</u></p> <p>Writ Petition No. 2344/79 has been received on transfer from Hon'ble High Court Lucknow.</p> <p>Writ petition is admitted.</p> <p>CA has not been filed.</p> <p>W.P. regarding severance of petitioner.</p> <p>Notices issued to both the parties fixing 3.11.87 by registered post.</p> <p>No undelivered registered cover have been returned back.</p> <p>Submitted for orders.</p> <p><u>Jaswinder Singh</u> 30/10/87</p> <p><u>DR</u></p> <p>None present for the parties. Put up with fresh service report on 10/12/87.</p> <p><u>Jaswinder Singh</u> 30/10/87</p> <p>No undelivered registered cover has been returned back.</p> <p><u>DR (J)</u></p>
3/11/87		

Jaswinder Singh
30/10/87

ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

..... 447 No. 0777 of 198 ..

.....Vs.....

A/S

7

T.A. No. 447/87 (T)

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

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

31/3/89

None is present for the respondents.

No reply has been filed by the respondents in this case. Respondents are given last opportunity to file reply within 3 weeks, failing which case will proceed ex-parte.

If reply is filed by the respondents, the applicant may file rejoinder within a week thereafter. On the request on behalf of ~~Learned Counsel for~~ the applicant the case is adjourned for

18.5.89. for final hearing.

J.M. A.M.

(sns)

OR

No reply filed
Submitted
for order

L
17/5

18/5/89

No sitting. The case is adjourned to 2/6/89 for orders.

(sns)

CM

2.6.89

No Sitting. Adjourned to
28/6/89 for Order.

B.C.

OR

Despite of last opportunity given to respondents for filing reply they have failed to file the same. Case is subsumed for Ex-Parte hearing on per curia order.

17/6

TA No. 477/87 AG A/9

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
6-12-89	<p>Hon. Justice K. Nall, V.C. <u>Hon. K. J. Raman, A.M.</u></p> <p>Sri A. Bhaspave appears on behalf of the respondents and requests for ten days time to file a counter affidavit. There had been a number of opportunities in the past for the respondents to file a counter affidavit. Appearance also ^{had also been made} on behalf of the respondents on the part. Since no counter affidavit has been filed the case was adjourned to be taken up for exparte final hearing. However, last opportunity of ten days to file a counter affidavit is given to the respondents, to which the applicant may file a rejoinder affidavit by the next date.</p> <p>List this case for final hearing on 20.12.89.</p> <p style="text-align: center;">W.R. <i>[Signature]</i> V.C. <i>[Signature]</i></p> <p style="text-align: center;">A.M. <i>[Signature]</i></p> <p style="text-align: right;">OK</p> <p style="text-align: right;">M.</p>	<p>⑧</p> <p>OK</p> <p>No reply submitted Order 1 19/12</p>

Dinesh

447/07(7)

A7

X

Serial number of order and date.	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
--	---	---

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

20/12/89

Shri Arjun Bhargava counsel for the opposite parties files counter affidavit. The applicant may file rejoinder, if any, by the next date. List this case for hearing on 1-1-1990.



A.M.

(sns)



J.M.

CR
- No Rejoinder
filed
Submitted to
hearing
20/12

Hon' Mr. Justice Kamleshwar Nath, V.C.

Hon' Mr. K. Obayya, A.M.

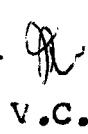
1/1/90

Shri R.C. Saxena says that he will deliver a copy of the rejoinder to the counsel of Opposite parties Shri Arjun Bhargava. Both the parties are agreed to that the case be taken up positively on 3-1-90 for hearing.



A.M.

(sns)



V.C.

R.C. file/hd

P/1/5

3/1/90

Hon' Justice K. Nath, V.C.

Hon' Mr. K. Obayya, A.M.

Put up tomorrow



A.M.



V.C.

Court

11/1/90

Dinesh

EW



A.M.

A8
11

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

(10)

...

Registration T.A. No. 447 of 1987

Arising out of Writ Petition No. 2344 of 1979
filed before the Hon' High Court of Judicature
at Allahabad(Lucknow Bench), Lucknow.

Baikunth Nath SrivastavaPetitioner

Vs.

Union of India and another Opposite Parties

Hon'ble Mr Justice Kamleshwar Nath, Vice Chairman

Hon'ble Mr K. Obayya, Administrative Member

(By Hon'ble Mr Justice Kamleshwar Nath, V.C.)

The above mentioned writ petition has been
received on transfer in this Tribunal under section
29 of the Administrative Tribunals' Act No.XIII of
1985. The relief sought for is to quash the order of
reversion of the petitioner contained in Annexure-No.1,
issued on 15-5-79.

2. The admitted facts are that the applicant was initially a Porter appointed on 2-12-63, in the scale of Rs. 196 - 232, where in he was confirmed on 19-1-65. On 3-2-75, he was promoted as Shuntman in the scale of Rs. 210 - 270 after qualifying a suitability test in the clear vacancy in substantive capacity. On 1.1.77, he was promoted on ad-hoc as Trains Clerk in the scale of Rs.260 - 400, which was followed by a posting order dated 8.2.77(Annexure No.2), against a permanent post which fell vacant on promotion of one Shri B.B.Srivastava. However, his appointment continued to be in ad-hoc capacity.

3. By the impugned order, the applicant was reverted

QW

from the post of Trains Clerk to that of Porter with the observation that he had been holding a temporary local ad-hoc arrangement and the post of Porter was his substantive post.

4. The petitioner moved the aforesaid writ petition before the Hon'ble High Court, which was admitted and the operation of the impugned order was stayed by an order dated 28.8.79 which continues to be in force.

5. The petitioner's case is that in view of the policy of the Railway Board, contained in a Circular dated 9.6.65 (Annexure-R-II) reconfirmed in the Railway Board's letter dated 21.1.1966 contained in Annexure No.4, the reversion of the applicant could not have been made without some sort of discipline and appeal rules proceedings, as the applicant had already officiated for more than 18 months. It is further urged that the applicant's last substantive capacity appointment was on the post of Shuntman, and, therefore, he could not have been reverted to the still lower post of Porter.

6. Shri Arjun Bhargava, learned counsel for the opposite parties said that the reversion was in fact intended to the post of Shuntman and there seems to be some error in the Annexure, describing the reversion to the post of Porter. We are of the view that legally on the reversion from the post of Trains Clerk, the applicant could not have been reverted to the bottom post of Porter ignoring his intermediate appointment of Shuntman which had been held by him in a clear vacancy in substantive capacity. To that extent the impugned order is erroneous.

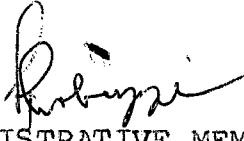
7. However, the real dispute is about the effect of the applicant working for more than 18 months as ad-hoc Trains Clerk before passing of the impugned reversion order. There has been a lot of judicial controversy about the true status of ad-hoc employees, ~~vig.a.vig.~~, their protection against the reversion on completion of more than 18 months appointment in the higher post. A full Bench of this Tribunal had the occasion to examine the cases relating to ad-hoc appointments at great length in T.A. No. 844 of 1986 Shri Jetha Nand and others vs. Union of India and others decided by the Principal Bench on 5-5-89 and published by Bahari Brothers, Delhi, in Full Bench Judgment of the Central Administrative Tribunals' 1986-89. The decision has also been reported in Vol.II of 1989 ATLT (CAT) 444. The material part of the decision, ~~whereas~~ the present case is concerned, is that a promotion from a Class IV post ^{to which} Porter/Shuntman belongs ^{to} a Class III post ^{(to which} Trains Clerk belongs ⁾ has to be through a selection/ suitability test. It has been held that an ad-hoc employee who fails in the selection/ suitability test may have a couple of opportunities to take the test and if, he still fails there in, he may be reverted. The learned counsel for the applicant has tried to distinguish this decision on the ground that the decision deals with a case, where, tests have been held and incumbents ^{have failed and not with a case, where,} no test has ever been held as in the present case. Even so, the ratio of full Bench decision is not in doubt, namely, that there must be a selection/ suitability test. The conclusion is that if there ^{has} ^{been} ^{no} such a test, provision may be made for such

A/11

(B)

a test in future, and in the mean time, the employee may be permitted to continue on the higher post on ad-hoc capacity. That is what we consider to be the appropriate decision in the present case.

8. The petition is partly allowed and while the order of reversion of the petitioner contained in Annexure No.1, so far as it relates to the petitioner is quashed, it is directed that the applicant shall face selection/suitability tests, as may be applicable, to be held by the opposite parties in the light of the observations contained in the above mentioned Full Bench Decision of the Tribunal. We further direct that till the final result of such test, the applicant shall be permitted to continue to work in ad-hoc capacity on the post of Trains Clerk. Parties shall bear their own costs.


ADMINISTRATIVE MEMBER


VICE CHAIRMAN

(sns)

January 4, 1990.

Lucknow.

दाईं कोर्ट इलाहाबाद

(अध्याय १२, नियम १ और ७)

2493

ASG

प्रूफीर्क (पुतफरिका) प्रार्थना-पत्र सं - - - - - सन् १९४९ ही

सं - २३४६ - सन् १९७१ ही में

BaiKunth Nath Srivastava - प्रार्थी

Union of India and others - प्रत्यर्थी

Junior Divisional personal officer

Northern Railway

Divisional office Lucknow

प्रत्यर्थी के नाम

चंकि ऊपर लिखे प्रार्थी ने इस न्यायालय में उपर्युक्त मुकदमे के संबंध में

Copy attached के लिये प्रार्थना-पत्र दिया है, अतः आपको

सूचित किया जाता है कि आप दिनांक - 15 - मार्च - ५ - - - सन् १०

या उससे पहले उपस्थित हो कर कारण बताये कि प्रार्थना-पत्र क्यों न स्वीकार लिया जाय। उक्त प्रार्थना-पत्र की सुनवाई उसके बाद नियमानुसार विज्ञापित किसी और दिन होगी।

विदित हो कि यदि आप ऊपर लिखे दिनांक पर या उसके पहले स्वयं अथवा किसी एडवोकेट या ऐसे व्यक्ति द्वारा, जो आपकी ओर से कार्य करने के लिये कानूनन्तर अधिकृत हो, उपस्थित न होंगे तो उक्त प्रार्थना पत्र की सुनवाई और नियमी आपकी अनुपस्थिति में हो जायेगी।

प्रार्थना पत्र और प्रार्थी द्वारा दिए गए शपथ-पत्र की एक-एक प्रतिलिपि उसी के साथ लगी है।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक - ५ - मार्च ३ -

सन् १९४० को जारी किया गया।

के एडवोकेट

तिथि - - - - -

डिप्टी रजिस्ट्रार

इलाहाबाद/लखनऊ

इस न्यायालय की १९५२ की नियमानुसारी के अध्याय ३७, नियम २ के आधीन प्राप्त मिल गया।

तलवारा पान दाता हस्ताक्षर

C ASY

हाई कोर्ट इलाहाबाद

(अध्याय १२, नियम १ और ७)

प्रूफीर्नि (प्रतफर्नि) प्रार्थना-पत्र सं - ५६५८(८) सन् १९७१ है

सं - २३४४ सन् १९७१ है में

Balkunth Nath Misra - - - प्रार्थी

Union of India and others - - - प्रत्यर्थी
Senior Divisional Prison Officer
Northen Railway
Divisional Officer Lucknow
प्रत्यर्थी के नाम

चांक ऊपर लिखे प्रार्थी ने हस न्यायालय में उपर्युक्त मुकदमे के संबंध में
Copy - Attached के लिये प्रार्थना-पत्र दिया है अतः आपको
सूचित किया जाता है कि आप दिनांक - १५ - मास - ५ - - - सन् १०
को या उससे पहले उपस्थित होकर कारण बतायें कि प्रार्थना-पत्र क्यों न स्वीकार
तिया जाय। उक्त प्रार्थना-पत्र की सुनवाई उसके बाद नियमानुसार विज्ञापित किसी और
दिन होगी।

विदित हो कि यदि आप ऊपर लिखे दिनांक पर या उसके पहले स्वयं अथवा किसी
एडवोकेट या ऐसे व्यक्ति द्वारा, जो आपकी ओर से कार्य करने के लिये कानूनन्तर
अधिकृत हो, उपस्थित न होंगे तो उक्त प्रार्थना पत्र की सुनवाई और नियमी आपकी
अनुपस्थिति में हो जायेगी।

प्रार्थना पत्र और प्रार्थी द्वारा दिए गए शपथ-पत्र की एक-एक घ्रतिलिपि उसी के साथ लग
मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक - ५ - मास - ३
- - - - सन् १९७१ को जारी किया गया।

- - - - - के एडवोकेट

तिथि - - - - -

डिप्टी रजिस्ट्रार

इलाहाबाद/लखनऊ

सूचना-इस न्यायालय की १९५२ की नियमावली के अध्याय ३७, नियम २ के आधीन प्राप्त
तलवाना मिल गया।

तलवाना पाने वाले कानून के हस्ताक्षर

हाई कोर्ट इलाहाबाद

(अध्याय १२, नियम १ और ७)

✓ (AS2)

2493

प्रकीर्णक (मतफरिक) प्रार्थना-पत्र सं - - - - - सन् १९७९ ई०

W.P. - सं - २३५५

- सन् १९७९ ई० में

Balkuntha Nath Srivastava - प्रार्थी

Union of Prati India and Others - प्रत्यर्थी
Union of India through
the General Manager
Northern Railway

Baroda House, New Delhi - प्रत्यर्थी के नाम

यदि ऊपर लिखे प्रार्थी ने हस न्यायालय में उपर्युक्त मुकदमे के संबंध में
Copy attached के लिये प्रार्थना-पत्र दिया है, अतः आपको
सुनिश्चित किया जाता है कि आप दिनांक - १५ - मार्च - ४ - - सन् १९८०
को या उससे पहले उपस्थित होकर कारण बतलायें कि प्रार्थना-पत्र क्यों न स्वीकार
लिया जाय। उक्त प्रार्थना-पत्र की सुनवाई उसके बाद नियमानुसार विज्ञापित किसी और
दिन होगी।

विदित हो कि यदि आप ऊपर लिखे दिनांक पर या उसके पहले स्वयं अथवा किसी
एडवोकेट या ऐसे व्यक्ति द्वारा, जो आपकी ओर से कार्य करने के लिये कानूनन्
अधिकृत हो, उपस्थित न होंगे तो उक्त प्रार्थना पत्र की सुनवाई और निर्णय आपकी
अनुपरिधि में हो जायेंगे।

प्रार्थना और प्रार्थी द्वारा दिए गए शपथ-पत्र की एक-एक प्रतिलिपि उसी के साथ लगी है।
रे हसताक्षर और न्यायालय की मोहर से आज दिनांक - ५ - मार्च - ३ -
- सन् १९८० को जारी किया गया।
- - - - - के एडवोकेट

डिप्टी रजिस्ट्रार

इलाहाबाद/लखनऊ

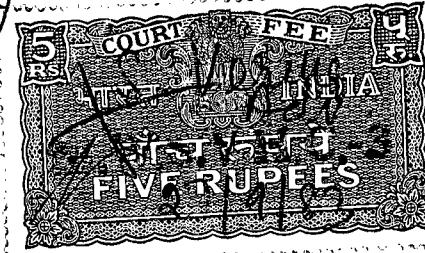
सूचना - न्यायालय की १९५२ की नियमावली के अध्याय ३७, नियम २ के आधीन प्राप्त
तलवा । गया।

thb
तलवाना पाने वाले उल्लेख के हसताक्षर

N.R.

1510

VAKALATNAMA



V. 3

Before In the Hon'ble High Court of Judicature at Allahabad,
In the Court of Lucknow Bench, Lucknow.
Writ Petition No. 2344 of 1979

Sri B. N. Srivastava

Plaintiff
Defendant

Claimant
Appellant
Petitioner

Union of India and
others

Defendant
Plaintiff

Versus

Respondent
Opp.-parties

The President of India do hereby appoint and authorise Shri. Siddharth Verma, Advocate,

116, K-Road, Mahanagar Extension, Lucknow

to appear, act, apply, plead in and prosecute the above described suit/appeal/proceedings on behalf of the Union of India to file and take back documents, to accept processes of the Court, to appoint and instruct Counsel, Advocate or Pleader, to withdraw and deposit moneys and generally to represent the Union of India in the above described suit/appeal/proceedings and to do all things incidental to such appearing, acting, applying Pleading and prosecuting for the Union of India SUBJECT NEVERTHELESS to the condition that unless express authority in that behalf has previously been obtained from the appropriate Officer of the Government of India, the said Counsel/Advocate/Pleader or any Counsel, Advocate or Pleader appointed by him shall not withdraw or withdraw from or abandon wholly or partly the suit/appeal/claim/defence/proceedings against all or any defendants/respondents/appellant/plaintiff/opposite parties or enter into any agreement, settlement, or compromise whereby the suit/appeal/proceeding is/are wholly or partly adjusted or refer all or any matter or matters arising or in dispute therein to arbitration PROVIDED THAT in exceptional circumstances when there is not sufficient time to consult such appropriate Officer of the Government of India and an omission to settle or compromise would be definitely prejudicial to the interest of the Government of India and said Pleader/Advocate of Counsel may enter into any agreement, settlement or compromise whereby the suit/appeal/proceeding is/are wholly or partly adjusted and in every such case the said Counsel/Advocate/Pleader shall record and communicate forthwith to the said officer the special reasons for entering into the agreement, settlement or compromise.

The President hereby agrees to ratify all acts done by the aforesaid Shri. Siddharth Verma.

Advocate

in pursuance of this authority.

IN WITNESS WHEREOF these presents are duly executed for and on behalf of the President of India this the 27th of September, 1983.

ACCEPTED

Dated 27.9.1983.

S. Verma
(SIDDHARTH VERMA)
ADVOCATE

A. J. D. *[Signature]*
Designation of the Executive Officer

Asst. Chief Personnel Officer
Northern Railway, New Delhi

हाई कोर्ट इलाहाबाद

(अध्याय १२, नियम १ और ७) ७९

(A 53)

प्रक्रियक (मुत्तफरिक) प्रार्थना-पत्र सं - ५५५८(८) सन् १९७९ ई० ५६

W.P. - सं-२३४५ - सन् १९७९ ई० में

Balkunth Nath - ~~for Kastha~~ - प्रार्थी

Union of ~~कृति~~ ~~Conditors & Others~~ - प्रत्यधी

~~union of Conditors & Others~~ - The General Manager

Northern Railway

Bandra House New Delhi

चूंकि ऊपर लिखे प्रार्थी ने हस न्यायालय में उपर्युक्त मुकदमे के संबंध में

copy attached के लिये प्रार्थना-पत्र दिया है अतः आपको

सूचित किया जाता है कि आप दिनांक - १५ - मार्च - ५ - - - सन् १९८० को या उससे पहले उपस्थित होकर कारण बतलायें कि प्रार्थना-पत्र स्थों न खीकार लिया जाय। अत प्रार्थना-पत्र की सुनवाई उसके बाद नियमानुसार विज्ञापित किसी और दिन होगी।

विदित हो कि यदि आप ऊपर लिखे दिनांक पर या उसके पहले स्वयं अधवा किरी अधिकृत हो, उपस्थित न होंगे तो उक्त प्रार्थना पत्र की सुनवाई और नियम आपकी अनुपरिधत में हो जायेंगे।

प्रार्थना पत्र और प्रार्थी द्वारा दिए गए शपथ-पत्र की एक-एक प्रतिलिपि उसी के साथ लगी है। मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक - ५ - मार्च - ३ - - सन् १९८० को जारी किया गया।

- - - - - के एडमिट

तिथि - - - - -

डिप्टी रजिस्ट्रार

इलाहाबाद/लखनऊ

सूचना-इस न्यायालय की १९५२ की नियमावली के अध्याय ३७, नियम २ के आधीन प्राप्त

तलवाना मिल गया।

Subd.
तलवाना पाने वाले के हस्ताक्षर

In the Hon'ble High Court of Judicature
At Allahabad (Lucknow Bench) y
792.

N.R.

VAKALATNAMA

Am

G.V. 3.

Before

In the Court of

W.P. 2344 of 79

Plaintiff

Defendant

Defendant

Plaintiff

B. N. Srivastava

Claimant

Appellant

Versus

Petitioner

Union of India Respondent

The President of India do hereby appoint and authorise Shri.... S. Saghir Ahmad

Advocate

2c. ~~to appear, act, apply, plead in and prosecute the above described suit/appeal/proceedings on behalf of the Union of India to file and take back documents, to accept processes of the Court, to appoint and instruct Counsel, Advocate or Pleader, to withdraw and deposit moneys and generally to represent the Union of India in the above described suit/appeal/~~


~~to appear, act, apply, plead in and prosecute the above described suit/appeal/proceedings on behalf of the Union of India to file and take back documents, to accept processes of the Court, to appoint and instruct Counsel, Advocate or Pleader, to withdraw and deposit moneys and generally to represent the Union of India in the above described suit/appeal/~~ g, acting, applying, Pleading and LESS to the condition that unless d from the appropriate Officer of er or any Counsel, Advocate or from or abandon wholly or partly defendants/respondents/appellant/ plaintiff/apposite parties or enter into any agreement, settlement, or compromise whereby the suit/appeal/proceeding is/are wholly or partly adjusted or refer all or any matter or matters arising or in dispute therein to arbitration PROVIDED THAT in exceptional circumstances when there is not sufficient time to consult such/appropriate Officer of the Government of India and an omission to settle or compromise would be definitely prejudicial to the interest of the Government of India and said Pleader/Advocate of Counsel may enter into any agreement, settlement or compromise whereby the suit/appeal/proceeding is/are wholly or partly adjusted and in every such case the said Counsel/Advocate/Pleader shall record and communicate forthwith to the said officer the special reasons for entering into the agreement, settlement or compromise.

The President hereby agrees to ratify all acts done by the aforesaid Shri.... S. Saghir Ahmad Advocate in pursuance of this authority.

IN WITNESS WHEREOF these presents are duly executed for and on behalf of the President of India this the..... day of 19.....

Dated..... 4/4/1980

.....
Designation of the Executive Officer

Aus

Before the Hon'ble High Court of Judicature of Allahabad
बादालत श्रीमान महोदय
वादी (मुद्दे) (Anchors Bench) द्वारा
का वकालतनामा
प्रतिवादी (मुद्दाभलेह)



Balkunth Nath Sriyananda

वादी (मुद्दे)

बनाम

Union of India and Others.

प्रतिवादी (मुद्दाभलेह)

W.P. No. १८० मुकदमा सन १९४९ पेशी की ता० १९ ई०
ऊपर लिखे मुकदमा में अपनी ओर से श्री R. C. Saxena
Advocate. High Court, Lucknow 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 देही व पश्नोत्तर करें या कोई कागज दाखिल
करें या लौटावें या हमारी ओर डिगरी जारी करावें और रुपया
वसूल करें या सुलहनामा या इकबाल दावा तथा अपील व दिगरानी
हमारी ओर से हमारे वा अपने हस्ताक्षर से दाखिल करें और तस्दीक
करें या मुकदमा उठावें या कोई रुपया जमा करें या हमारी या विपक्षी
(फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर
युक (दस्तखती) रसीद से लेवें या पंच नियुक्त करें वकील महोदय द्वारा
की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी इसलिये
यह वकालत नामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

Accepted

Declarer
Adocate

27/8/49

हस्ताक्षर Balkunth Nath Seva Fund

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

२)

महीना

८

१९४९ ई०

Ans

1/50

Page 2.

5. Shri Vidya Prasad.	Under SM Sultanpur.
6. Shri Ram Ujagar.	Under SS Lucknow.
7. Shri Ambika Pd. Mandal.	Under SM Sultanpur.
8. Shri Mithlesh Pd. Singh.	Under CHC LKO.
9. Shri Krishna Pd. Singh.	Under CHC LKO.

The above orders should be carried out immediately
advising this office.

HINDI VERSION OF THE ABOVE WILL FOLLOW.

File K-11/1/1966
For Sr. Divisional Personnel Officer
Lucknow.

Copy to:-

1. Station Superintendent, N.Railway, Lucknow, Varanasi, PBH.
2. Station Master, N.Railway, Barabanki, Sultanpur, FYG.
Lobby Moghalsarai.
3. Sr. Divisional Accounts Officer, N.Railway, Lucknow.
4. Head Clerk Pay Bill DS Office, Lucknow.
5. Staff concerned.
6. Yard Swadit, N. Rly. LKO.
7. As (PB), DS Office, LKO.
8. ES/9, ES/10 Group.
9. H.C. Office

TRUE COPY

B.N.Srivastava

4893

A 2

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO 2344 OF 1979

BAIKUNTH NATH SRIVASTAVA

... ... PETITIONER.

VERSUS

UNION OF INDIA & OTHERS.

... OPPOSITE PARTIES.

: I_N_D_E_X:

SL.NO.	DESCRIPTION OF PAPERS	PAGE NUMBERS
1.	Writ Petition under Article 226 of Constitution of India.	1 - 8
2.	A F F I D A V I T	9 - 10
3.	Annexure No. 1	11 - 13
4.	Annexure No. 2	14 - --
5.	Annexure No. 3	15 - 17
6.	Annexure No. 4	18 - 21

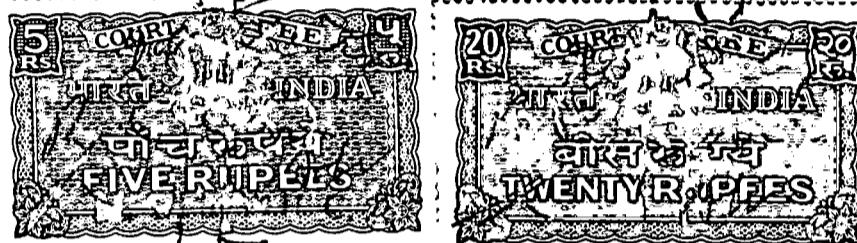
LUCKNOW:

DATED: AUGUST 20, 1979.

R.C. SAXENA
(R.C. SAXENA)
ADVOCATE
COUNSEL FOR THE PETITIONERS.

INDIA COURT FEE

75RS.



Before the Hon'ble High Court of Judicature at Allahabad
(Lucknow Bench): Lucknow,
Writ Petition No of 1979

Baiikunth Nath Soirastava — Petitioner
vs.

Union of India and others — opposite
parties

Writ Petition under Article 226 of the Constitution
of India

P. T.O.

the said post w.e.f. 19.1.1965.

3. That the work, conduct and integrity of the petitioner always remained unblamished and there has never been any complaint whatsoever in respect of performance of duties by the petitioner.
4. That the petitioner on 3.2.75 after qualifying the requisite suitability test prescribed under the rules, was further promoted from the post of Porter to the next higher post of Shuntman.
5. That it is respectfully submitted that the aforesaid promotion of the petitioner on the post of Shuntman was made in clear vacancy and in substantive capacity and it was not his adhoc or officiating promotion.
6. That the petitioner since the date of his promotion as Shuntman always worked with utmost honesty and devotion and his all departmental superior authority remained satisfied with his work and conduct.
7. That the petitioner in the year 1977 was promoted on the next higher post of Trains Clerk in grade Rs. 260-400 w.e.f. 1.1.1977 and was posted to work at Faizabad.
27.8.79
8. That vide office order No. 941-E/5-4(J) TNC dated 8.2.1977 when one Sri B.B. Srivastava, Trains Clerk, Barabanki, grade Rs. 260-400 was promoted in the higher

*Baitul Maali
Srivastava*

X

(A.M.)

grade Rs. 330-560 under Station Master, Rae Bareli, the petitioner who was working as Trains Clerk at Faizabad was promoted against the vacant permanent post previously held by said Sri B.B. Srivastava at Barabanki. A true copy of promotion order dated 8.2.1977 is filed herewith as Annexure No. 2 to this writ petition.

9. That the petitioner respectfully submits that his promotion from the post of Shuntman to the post of Trains Clerk was made against the permanent vacant post in the temporary capacity but it was not in any way either a temporary Local adhoc arrangement which is evident from the orders contained in Annexure No. 2 to this writ petition.

10. That the petitioner on the post of Trains Clerk on which he was promoted w.e.f. 8.2.1977 always performed his duties to the entire satisfaction of his all superiors and it will not be irrelevant to submit here that he never gave a chance of complaint regarding his work, conduct and integrity.

11. That the petitioner was promoted as Trains Clerk in the month of February 1977 vide Annexure No. 2 and after rendering more than two years whole hearted efficient services, he was ordered to be reverted from the post of Trains Clerk to the post of Porter vide office order No. 220-E/5-4(TNC) dated 15.6.1979 contained in Annexure No. 1 to this writ petition, which forms the part of the present writ petition.

Baikeenth Nath
Srivastava

12. That the petitioner feeling aggrieved with

27.8.79

the impugned order of reversion ~~dated 8.2.1979~~ contained in Annexure No. 1 preferred a representation dated 8.2.1979 against the said reversion order to the opposite party No. 2 stating all the relevant facts and circumstances and specifically submitted that his reversion is illegal for the following reasons:-

(I) The petitioner has been reverted two grades below i.e. from the post of Trains Clerk to the post of Porter which is not permissible under the rules.

(II) While passing the reversion order the petitioner's promotion on the post of Trains Clerk has been considered as Local adhoc arrangement which is factually wrong. The petitioner's promotion on the post of Trains Clerk was not made in Local adhoc arrangement.

(III) The petitioner having rendered more than 18 months continuous satisfactory service could not have been reverted from the post of Trains Clerk in view of Railway Board's order issued on the subject.

A true copy of the representation dated 8.2.1979 is filed herewith as Annexure No. 3 to this writ petition.

13. That the perusal of petitioner's representation contained in Annexure No. 3 clearly indicates that the petitioner requested the opposite party No. 2 to set aside the reversion order dated 15.6.1979 but no action on the representation of the petitioner has been taken/communicated so far.

Balakrushna
S. V. Patnaik

29.8.79

14. That the order of reversion contained in Annexure No. 1 is penal in nature and adversely effects the right of the petitioner to hold the post of Trains Clerk (and the said order is hit by the provisions of Article 311 of the Constitution of India).

15. That the reversion order of the petitioner is against the Railway Board's order No.E(D&A) 65-RG-6-24 dated 9.6.1965 which provides that any person who is permitted to officiate beyond 18 months must not be reverted without following the procedure prescribed in the Discipline and Appeal Rules. In petitioner's case although his work has always been satisfactory and he has been holding permanent vacant post for a period of more than 18 months he has been subjected to his reversion without following the procedure prescribed in the Discipline and Appeal Rules. A true copy of Circular letter dated 21.1.1966 referring Railway Board's Circular letter dated 9.6.1965 is filed herewith as Annexure No.4 to this writ petition.

16. That the opposite party No. 2 has committed an error apparent on the face of record in reverting the petitioner from the post of Trains Clerk to the post of Porter treating the petitioner's promotion on the post of Trains Clerk as Local adhoc arrangement.

My 16. ~~That the opposite party No. 2 has committed an error apparent on the face of record in reverting the petitioner from the post of Trains Clerk to the post of Porter treating the petitioner's promotion on the post of Trains Clerk as Local adhoc arrangement.~~

17. That even otherwise the petitioner under any circumstances could not have been reverted on a post lower than the post of Shuntman on which he was promoted after qualifying the requisite suitability test. The opposite party No. 2 failed to consider that the post of Porter is two grades below than the post of Trains

Benkenth Nath
Govardhan

Clerk (and thus the reversion order is illegal).

18. That the reversion order of the petitioner is arbitrary and has been passed by the opposite party No. 2 without any authority of law and the same is also against the principles of natural justice.

19. That the petitioner is ill and on Medical leave since ^{by} 16-6-1979 ^{by} and the order of reversion contained in Annexure No. 1 has not been given effect so far. In case the operation of the impugned order contained in Annexure No. 1 is not stayed, the petitioner would suffer ^{by} irreparable loss and the same cannot be compensated in terms of money.

For
27.8.79

20. That feeling aggrieved with the impugned order contained in Annexure No. 1 (and having no other alternative efficacious remedy) begs to prefer the present writ petition on the following amongst the other:

: G_R_O_U_N_D_S :

(i) Because the impugned order contained in Annexure No. 1 is penal in nature and adversely affects the right of the petitioner, the same could not have been passed without complying with that mandatory provisions of Article 311 of the Constitution of India.

(ii) Because the opposite party No. 2 has committed an error apparent on the face of record in passing the reversion order as he has treated the petitioner's promotion as Local adhoc arrangement which is factually wrong.

*Debajit Nath
Advocate*

(iii) Because the petitioner had already rendered more than 18 months continuous satisfactory service, he could not have been reverted from the post of Trains Clerk without following the procedure prescribed under Discipline and Appeal Rules.

(iv) Because in any circumstances the petitioner cannot be reverted two grades below i.e. from the post of Trains Clerk to the post of Porter as the petitioner was holding the post of Shuntman in the substantive capacity.

(v) Because in any case the reversion order contained in Annexure No. 1 is arbitrary, against the rules of natural justice and is the effect of non-application of mind by opposite party No. 2.

PRAYER :

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

(a) issue a writ, order or direction in the nature of certiorary quashing the impugned order of reversion of the petitioner from the post of Trains Clerk to the post of Porter as contained in Annexure No. 1 to this writ petition.

(b) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to treat the petitioner in continuous service on the post of Trains Clerk in grade Rs. 260-400 with all the benifits of pay

and allowances, ~~increment~~ increments and seniority etc.

(c) any other writ, order or direction which is deemed fit and proper under the circumstances of the case may also be passed in favour of the petitioner.

(d) 14 day notice may kindly be waived
in view of urgency of matter.

LUCKNOW:

DATED: 37. 8. 79

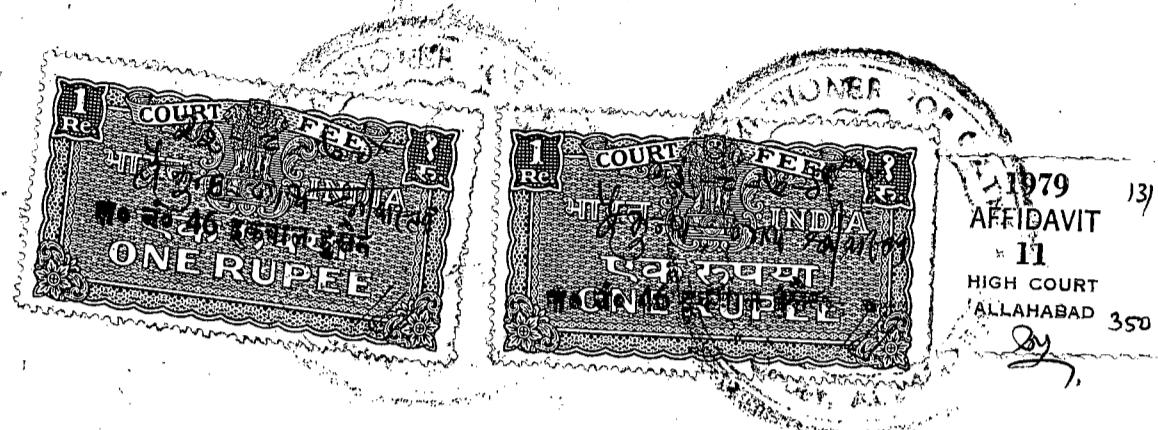
R.C. SAXENA
(R.C. SAXENA)
ADVOCATE,
COUNSEL FOR THE PETITIONER.

A 20
A 21

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

Writ Petition No. of 1979.



Baikunth Nath Srivastava

... Petitioner.

VERSUS

Union of India & Others.

... Opposite Parties.

WRIT PETITION UNDER ARTICLE 226 of CONSTITUTION OF INDIA

A F F I D A V I T

I, Baikunth Nath Srivastava, aged about 39 years, S/o Sri R.C. Srivastava, R/o Qr.No.T-34, Railway Coloney, Barabanki, do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the Petitioner in the above noted writ petition^{by} and he is fully conversant with the facts of the case deposed to hereunder.

2. That the contents of paras 1 to 20 of the writ petition, except bracketed portions, are ~~not~~ true to my own knowledge.

Lucknow: 27.8.79

Dated: August 27, 1979.

Baikunth Nath Srivastava

DEPONENT.

A 21

✓

VERIFICATION

I, the deponent named above, do hereby verify that the contents of paras 1 and 2 of this Affidavit are true to my own knowledge.

That no part of it is false and nothing material has been concealed, so help me God.

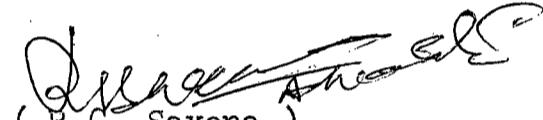
Lucknow: By

Baikunth Nath Srivastava

Dated: August 27, 1979.

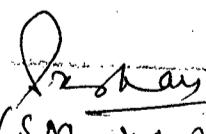
DEPONENT.

I identify the deponent who has signed before me.


(R.C. Saxena)
ADVOCATE.

Solemnly affirmed before me on August 27, 1979, at 8:30 a.m./p.m. by Sri Baikunth Nath Srivastava, the deponent, who is identified by Sri R.C. Saxena, Advocate, High Court, Allahabad, Lucknow Bench, Lucknow.

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


(S.M. VARMA)
DATE COMMISSIONED
High Court, Allahabad
131/11/350

27. 8. 79

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH) : LUCKNOW :
WRIT PETITION NO. OF 1979

Baikunth Nath Srivastava ... Petitioner.

Versus

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

ANNEXURE NO. 1

Northern Railway

No. 220-E/5-4(TNC).

Divisional Office,
Lucknow.Dt. 6.79

Notice

A. The undernoted staff (who were officiating as TNC in temporary local ad-hoc arrangement) are hereby reverted and posted to their substantive posts with immediate effect.

1. Shri Kashi Nath Tewari, ^{offg} TNC/Lko	- Leverman
2. Shri Baikunth Nath, TNC/BBK	- Ported at BSB
3. Shri Kishori Lal, TNC/PYG	- Porter at PYG
4. Shri R.M. Tewari, TNC/BSB	- SH.Man at B.S.B.
5. Shri Ishwar Deen, TNC/BSB	- Porter at Varanasi posted at BSB
6. Shri Ram Dhari I, TNC/BSB	-
7. Shri Shesh Narain, TNC/BSB	-
8. Shri Narottam Lal, TNC/KKO	- Shuntman at Lucknow.

B. Orders of transfer of the following TNCs are hereby ordered on employees requests as given below. They are not entitled for transfer allowance, transfer passes or joining leave etc.

1. Shri Baboo Lall.	TNC.	DS(R) Tfd. to SS Lko.
2. Shri K.N. Gupta.	TNC.	SLN Tfd. to SS Lko.
3. Shri Noor Ali.	TNC.	PBH Tfd. to SS Lko.
4. Shri Madan Lal.	TNC.	Lobby MGS Tfd. to SS BSB vice Item No. 4
5. Shri Harnam Singh.	TNC.	SLN Tfd. to BBK.
6. Shri R.K. Bose.	TNC.	Lobby MGS Tfd. to BSB vice Item 5
7. Shri B. Mirdha.	TNC.	SLN Tfd. to BSB vice Item 6
8. Shri B.K. Srivastava.	TNC.	LKO Tfd. to BSB vice Item 7

Baikunth Nath
Srivastava

27.8.79

C. The following staff are temporarily promoted to officiate as TNC in Scale Rs. 260/-400 and posted as shown against each.

1. Shri Chinta Mani. Shuntman DS/R LKO is posted under SM SLN. on request.
2. Shri Vijai Nath Upadhyay. Shuntman BSB posted under SS BSB vice Item 4 of 'A' above.
3. Shri Hari Lal. Shuntman LKO posted under SS LKO
4. Shri Pyare Lal. Porter PYG posted under SM PYG.
5. Shri Vishnu Lal. Porter FD under S.M. SIN.
6. Shri Ram Pal Singh. Porter BSB under Lobby MGS. Since he has not qualified in TNCs Promotional Course he must pass the same at the first opportunity from ZTS CH. Next Promotional course of TNCs is arranged from 23.8.1979 to 17.9.79 at ZTS CH. Till he does not qualify in the promotional course it will be treated as a temporary local ad-hoc arrangement liable replacement by a qualified staff. He must be spared in the promotional course arranged from 23/8/79.
7. Shri Ganga Prasad VG Porter RBL under S.M. PBH.
8. Shri Mohd. Akil. TO Porter LKO under SS LKO.

D. The following probationary TNCs are posted as under:-

1. Shri Raghu Nath Ram. Under SS BSB.
2. Shri Surjit Burman. Under Lobby MGS.
3. Shri Jitendra Nath Haldar. Under Lobby MGS.
4. Shri Mithlesh Kumar. Under Lobby MGS.
5. Shri Vidya Prasad. Under SM Sultanpur.
6. Shri Ram Ujagar. Under SS Lucknow.
7. Shri Ambika Pd. Mandal. Under S.M. Sultanpur.
8. Shri Mithlesh Pd. Singh. Under CHC LKO.
9. Shri Krishna Prashad. Under CHC LKO.

*24
27.8.79*
The above orders should be carried out immediately advising this office.

HINDI VERSION OF THE ABOVE WILL FOLLOW.

Sd/-

For Sr. Divisional Personnel Officer,
Lucknow.

*Banke Nath
Srivastava*

Copy to:-

1. ~~Station Master~~ Station Superintendent, N. Railway, Lucknow, Varanasi, PBH.
2. Station Master, N. Railway, Barabanki Sultanpur, PYG. Lobby Moghalsarai.
3. Sr. Divisional Accounts Officer, N. Railway, Lucknow.
4. Head Clerk Pay Bill DS Office, Lucknow.
5. Staff concerned.
6. Yard Superintendent, N. Railway, Lucknow.
7. AS (PS), DS Office, Lucknow.
8. E5/9, E5/10 Group.
9. HC, Relief.

TRUE COPY

Benkunth Nath
Srivastava

27.8.79

ਇਨ ਦਿ ਆਨਰੋਕੁਲ ਹਾਈਕੋਰਟ ਆਫ ਜੂਡੀਕੇਚਰ ਏਟ ਇਲਾਹਾਬਾਦ
(ਲਖਨਊ ਬੈਨਚ) ਲਖਨਊ

रिट प्रिटीशन नं० ०००००००० ऑफ १९७९

ବନାମ

युनियन ऑफ इण्डिया स्टड अदर्स अपोजिट पार्टीज

अनेजर नै०२

नार्दन रेलवे

मण्डल अधीक्षक वार्यालिय
लखनऊ, दिनांक ४-२-७७

संख्या १४१८०/५४ (१५०) टी०स्म०सी०

• नैटिंग •

- 1- श्री जे०पी०सिंह, सीनियर गाड़ी बाबू, ग्रेड 330-560/, मुख्य नियंत्रक, लखनऊ को जो कंट्रोल में कार्य करने में जसमर्थ हैं, का सानस्तरण-प्रताप गढ़ स्टेशन मास्टर के अधीनस्थ किया जाता है।
- 2- श्री कै०के०निगम-गाड़ी बाबू 260-400/जिनको पदोन्नति करके प्रताप गढ़ पोस्ट किया गया था उनको मुख्य नियंत्रक लखनऊ के अधीनस्थ पदोन्नति पर ग्रेड 330-560/में पोस्ट किया जाता है।
- 3- श्री वी०वी०श्रीवास्तवा-गाड़ी बाबू बाराबैकी ग्रेड 260-400/की पदोन्नति पर ग्रेड 330-560 में स्टेशन मास्टर रायबरेली के अधीनस्थ किया जाता है।
- 4- श्री बैकुन्ठ नाथ-गाड़ी बाबू पैजाबाद ग्रेड १०२६०-४०० जौ कुम्ह मेले में पैजाबाद कार्य कर रहे थे उनको स्टेशन मास्टर बाराबैकी के अधीनस्थ पोस्ट किया जाता है। (उपर्युक्त ब्र० क्र० ०३०३ के बदले में) ये उनकी अस्थायी पदोन्नति है।

इन आदेशों की व०म०कार्मिक अधिकारी का अनुसूदन प्राप्त है।

इन अंदेशों का पालनकिया जाये और इस कार्यरूप वो सचित किया जाय।

ह०अस्पृष्ट
कृते द०म०का०अधिकारी,
लखनऊ

परिलिपि :-

- १- मृद्घ नियंत्रक/लखनऊ।
- २- स्टेशन मास्टर, प्रतापगढ़, रायबरेली, फैजाबाद, बाराबैकी।
- ३- ई०६८०(पेक्षिल)लखनऊ।
- ४- डी०३०६८०/लखनऊ।
- ५- ब०५४७० अधिकारी/लखनऊ।

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO.

OF 1979

Baikunth Nath Srivastava

... Petitioner.

Versus

Union of India and others

... Opp. Parties.

ANNEXURE NO. 3

To

Senior Divisional Personnel Officer,
Northern Railway,
Lucknow.

Through: Proper Channel

Subject:- Your Office order No. 220-E/S-4(TNC) Lucknow
Dated 15th. June, 1979, reverting Baikunth
Nath, from the post of Trains clerk to the
post of porter.

....

Sir,

The applicant most respectfully begs to
submit as under:-

1. That the applicant was initially appointed as a porter on 2.12.1963 in the Northern Railway Lucknow. He was later on confirmed on the said post w.e.f. 19.1.1965.
2. That since the work, conduct and integrity of the applicant always remained unblamed, he was promoted to the post of Shuntman w.e.f. 3.2.1975 after qualifying the requisite suitability Test prescribed under the Rules.
3. That the applicants' promotion against the post of shuntman was made in clear vacancy and in substantive capacity.
4. That thereafter the applicant was further promoted on the post of Trains clerk temporarily vide officer order No. 941-E/5-4(J) TNC dated 8.2.1977 and was posted at Barabanki.

Baikunth Nath
Srivastava

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5. That the applicant has been successfully working on the post of trains clerk ever since the date of his promotion to the said post and there has never been any complaint against him.
6. That after about $2\frac{1}{2}$ years, the applicant has been ordered to be reverted from the post of Trains clerk to the post of porter vide order mentioned above.
7. That it is respectfully submitted that the reversion order is apparently illegal for the following reasons:-
 - (a) The applicant has been reverted two grades below i.e. from the post of Trains clerk to the post of Porter which is not permissible under Rules.
 - (b) While passing the reversion order the applicant's promotion on the post of TNC has been considered as local adhoc-arrangement which is factually wrong. The applicant's promotion on the post of Trains Clerk was not made in local Adhoc arrangement.
 - (c) The applicant having rendered more than 18 months continuous satisfactory service could not have been reverted from the post of Trains clerk in view of Rly. Board's order issued on the subject.
8. That the order of reversion passed against the applicant deserves to be set aside and it is expedient in the interest of justice that he may be permitted to continue on the post of Trains clerk and the reversion order may not be given effect to.
9. That the applicant is ill and is taking treatment under Railway Doctor, Barabanki and is residing at Rly. Quarter No. T-34 Northern Railway Colony, Barabanki.
10. That the applicant respectfully request that the present representation may kindly be decided within 10 days and the orders passed thereon may be communicated to the applicant on the address given above.

Barabanki
S. S. V. S. V.

27-8-79

11. That in case the reversion order is not set aside the applicant will be compelled to file Writ Petition against the reversion order in the Hon'ble High Court.

12. Wherefore, it is most respectfully requested that the reversion dated 15.6.79 may kindly be set aside and the order dated 15.6.79 may not be given effect to and in case the same is not possible, the present representation of the applicant may be decided within 10 days and the order passed thereon may be communicated to the applicant at his address given below:-

Yours faithfully,

Dated- 2.8.79

(B.N. Srivastava)

Trains clerk,
Qr. No. T-34,
Railway Colony, Barabanki.

Advance copy to:-

Senior Divisional Personnel Officer, N.Rly., Lucknow,
for urgent decision on the above representation.

TRUE COPY

Banke Mitali No 75
Srivastava

27.8.79

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

WRIT PETITION NO.

OF 1979

Baikunth Nath Srivastava

... Petitioner.

Versus

Union of India and others

... Opposite Parties.

ANNEXURE NO.4

North Eastern Railway

No.E/210/0(Con)

Office of the General Manager
(Personnel Branch)

Gorakhpur Dt.21.1.1966.

The FA & CAO/C.S.O.
All District Officers,
All Assistant Officer in independent charge,
All Personnel Officers,
N.E. Railway.

Sub: Reversion of employee officiating
in higher grades.

....

Attention is invited to this office Confidential letter No.E/232/7 dated 23.6.1964, vide which instructions were issued laying down the procedure to be followed in the matter of reversion of employees officiating in higher grades. The position has been further reviewed and the instructions contained in the paragraphs which follow are issued in supersession of the instructions issued vide letter No.E/232/7 dated 23.6.1964.

As per Board's directions contained in their letter No. E(D&A) 61RC6-30 dated 30.11.61, efforts are to be made to confirm staff officiating in higher grades in clear vacancies, if they are found suitable, after trial over a reasonable period not exceeding 18 months. It is however observed that in practice no proper system is being followed in this respect with the result that staff continue to officiate in higher grades for long

Baikunth Nath
Srivastava

27.8.79

periods and in several cases staff who have officiated for a number of years have been reverted on account of inefficient working. Such reversion are contrary to the extent orders.

3. With a view to ensure that a proper assessment of the working of staff officiating in higher grades, is made and an action to revert such employees, as are found to be unsatisfactory in work in the higher grade, is taken in time, the following procedure is being introduced for strict compliance by all concerned.

4. Whenever an employee is out to officiate in a higher post which may be a selection post or a non-selection post, his immediate superior should send an assessment report as soon as the employee has completed 3 months officiating period to the authority who had ordered his promotion. In the case of an unsatisfactory report a warning letter should also be issued to the employee and in which instances of his failures should be pointed out to him. A similar further report should be prepared 3 months later i.e. at the end of 6 months officiating period and sent to the authority who had ordered the promotion. If this report is also unsatisfactory the employee concerned may be reverted with the personal sanction of a senior scale officer in the case of Class IV employees and of a Head of Department in the case of Class III employee.

5. If an employee is reverted after 6 months due to his unsuitability, it is to be assumed that either his record of service was not consulted at the time of ordering his promotion or if consulted it did not give a correct assessment of his abilities and in case of selection posts the selection committee committed an error of judgement in assessing his abilities. This aspect also should be examined by the authority ordering

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Srivastava

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the reversion in every such case.

6. When an employee is reverted for inefficient working from a selection post, his name will be automatically deleted from the panel. For re-promotion, he will have to appear before a selection Board afresh. Where an employee is reverted for in- efficiency from a non-selection post, his case should be reviewed at intervals of six months and if he is considered fit for promotion, he should be re-promoted against the next vacancy.

7. In terms of Board's letter No.E(D&A) 65R06-24 dated 9.6.65, Circulated under this office letter No. E/VII/232/7(Con) dated 30.6.65 any person who is permitted to officiate beyond 18 months must not be reverted for unsatisfactory work without following the procedure prescribed in the Discipline and Appeal Rules.

8. A question may be raised whether this safe-guard applies to persons who are officiating in promotion as a stop gap measure and not after empanelment (In the case of selection posts) and after passing the suitability test (in the case of non-selection posts). It is clarified that the safeguard applies to only those employees who have acquires prescriptive right to the officiating posts by virtue of their empanelment or having been declared suitable by the competent authorities. It does not apply to those officiating on promotion as a stop gap measure and also to those cases where an employee duly selected has to be reverted after a lapse of 18 months because of cancellation of Selection Board proceedings or due to a change in the panel position consequent to rectification of mistake in seniority etc.

27.8.79

Balaklal Nath
Sarkar

9. Since no officiating individual whose working is unsatisfactory could have been allowed to continue beyond 18 months except under very special circumstances, confirmation must be made after two years officiating period has been completed subject to permanent post being available for the purpose. In the case of staff with satisfactory reports, confirmation against available vacancies can be ordered after one year. If it is proposed to defer the confirmation of an individual after 2 years General Manager's prior sanction should be obtained.

10. The assessment reports referred to above should be marked 'Confidential' and a proper record kept of these communications. The Establishment Section should watch the case each employee and initiate action when the employee completes 3 months of officiating period by putting up a note to the executive officer for the purpose.

11. The above procedure should also be followed in the case of Class III employees promoted to officiate in Class II in their case, the assessment report should be sent to the Head of Department and where an officer has been reported on adversely the papers should be put up to the General Manager personally for his information and orders.

12. Please acknowledge receipt.

Sd/-

for General Manager.

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In the Central Adminstrative Tribunal Allahabad

Circuit Bench Lucknow.

T.A. No. 447 of 1987

(W.P. No. 2344 of 1979)

Baijunth Nath Srivastava

Petitioner

Versus

The Union of India and another

Opposite Parties.

Reply on behalf of the Opposite Parties.

Para 1: In reply, only the issue of order No. 220-E/5-4 (TNC)Lko dated 15.6.79 passed by Sr. D.P.O. as contained in Annexure No.1 is not denied. It is also not denied that the petitioner was reverted from the post of Trains Clerk to the Post of Shuntment, it being his substantive post.

Para 2: Needs no reply.

*Received
Duplicata
J. D. S.
Advocate
19/12/81*

Para 3: Denied in view of non availability of record. Moreover it is irrelevant for the decision of the case.

Para 4: Needs no reply.

*F.T.
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20/12/81*

Para 5: Needs no reply.

Para 6: In reply it is not denied that the petitioner was working as shuntmen at the time of being given duty as Trains Clerk. Rest of the facts alleged are denied. Moreover they are irrelevant for the decision of the case.

J.S.
Asstt Personnel Officer
N. R. Lko.

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Para 7: -In reply it is not denied that the petitioner was promoted temporarily on the post of Trains Clerk in grade Rs. 260-400 w.e.f 8.2.77 (and not 1.1.77 as alleged) at Fyazabad vide office notice no.941 -E/5-4-/1J/TNC dated 8.2.77. Allegations contrary to and contained in para under reply are denied.

Para 8: Issue of order dated 8.2.77 as contained in Annex 2 to the petition is not denied. The alleged facts are verifiable from the annexure itself.

Para 9: Denied. The promotion to the post of Trains Clerk was purely temporary. It is submitted that promotion to trains clerk from the post of Shuntment was a selection one. As such the question of the petition being posted /promoted permanently without undergoing selection could not arise.

Para 10: In reply only this much is not denied that the petitioner was temporarily promoted as Trains Clerk w.e.f. 8.2.1977. Rest of the contents are denied for want of record. Moreover they are irrelevant for the decision of the case.

Para 11: In reply, only the issue of office order No. 220-E 5-4(TNC) dated 15.6.1979 as contained in Annexure No.1 is not denied. ~~Reextxmf~~ It is also not denied that the petitioner was put to duty on purely temporary

Asstt Personnel Officer
N. R. Lko

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basis on the post of Trains Clerk, which conferred no legal right in him to hold the post, it being a post to be filled by selection. The petitioner was not born on panel of Trains Clerk.

Para 12: Denied. No representation appears to have been & received in the office of the opposite parties.

13: It is submitted that the petitioner was reverted to his substantive post viz. shuntman and not porter as alleged. It is also submitted that the promotion was purely temporary in view of the fact that the post of Trains Clerk was to be filled by selection and the petitioner was not born on panel. The temporary arrangement made cannot be treated as permanent promotion in a substantive capacity or confer any legal right in the petitioner to hold the said post. It is further submitted that merely working on the post for more than 18 months also does not confer any legal right to hold the post. The reversion to the substantive post viz. shuntman is therefore perfectly legal and valid.

Para 14: Denied. It is submitted that promotion to post of Trains clerk is by means of selection. The petitioner was not ^{born} on the panel of Trains Clerk. As such the reversion to the substantive post is neither panel in nature nor adversely effects the right of the petitioner. The petitioner has no legal right to hold the post of Trains Clerk. The Order does not hit the provisions of Article 311

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Para 15: In reply, it is submitted that rule of 18 months or more is applicable to non selection post and not to selection post. The trains Clerk post is a selection post and unless the petition was born on panel, he was not eligible to hold the post of trains clerk. The reversion from a purely temporary post to be filled by selection is not to be governed by Discipline and Appeal Rules. The Discipline and Appeal rules apply only to reversion from permanent post, and not from one held temporarily.

Para 16: Denied. No error has been committed by the opposite parties. The reversion has been correctly done i.e. from the post of Trains Clerk, where the petitioner was working temporarily to the substantive post viz. shuntman.

Para 17: Denied. It is submitted that the petitioner has been reverted to his substantive post viz. shuntman. Allegations contrary to that are emphatically denied. The reversion order is perfectly legal.

Para 18: Denied. The reversion order is not arbitrary or can be termed as without any authority or is against the principles of natural justice. The order is correct and legal.

Para 19: The alleged facts are no ground for staying the reversion order. However in obedience to the stay order passed, the petitioner was allowed to work as Trains Clerk. The petitioner is not entitled to

Asstt Personnel Officer
N. R. Lko

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not entitled to any order of stay from the Tribunal and the same is liable to be vacated, in view of the facts and circumstances stated above.

Para 20: Denied. None of the grounds raised in the petition are tenable under law. The petitioner is not entitled to any of the reliefs claimed and the petition is liable to be dismissed with costs.

Lucknow

dated: 11.12.89

Opposite Parties.
Ass'tt Personnel Officer
N. R. Lko.

Verification.

I, J. N. Srivastava, working as Ass'tt Personnel Officer in the office of Divisional Railway Manager Northern Railway at Lucknow and also duly authorised to execute and sign this reply do hereby verify that the contents of para 1 to 20 of this reply are believed by me to be true and correct on basis of information derived from record and legal advice received.

Ass'tt Personnel Officer
N. R. Lko.

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BEFORE THE CENTRAL ADMINISTRATIVE, TRIBUNAL

(LCUKNOW BENCH), LUCKNOW.

(Writ Petition No: 2344 of 1979)
T.A.no: 447-87(T)

BAIKUNTH NATH SRIVASTAVA - - - - - APPLICANT

Versus

THE UNION OF INDIA & OTHERS - - - OPPOSITE-PARTIES

REJOINDER-REPLY ON BEHALF OF THE APPLICANT

I, B. N. SRIVASTAVA, aged about 48 years, son of Sri R.C. Srivastava, resident of Quarter No:T-34, Railway Colony, Barabanki, do hereby state on oath as under:-

(1) That the applicant has read the reply filed on behalf of the opp-parties, and he is well conversant with the facts stated hereunder.

(2) That with reference to the contents of para-1 of the reply, it is humbly submitted that the applicant by means, of the impugned order has reverted to the post of porter and not shuntman as stated by the opposite-parties in para under reply. The applicant is filing herewith the photo-stat copy of order dated 15.6.1979, which was served to him

B N Srivastava to make the position clear. In the original cyclostyled impugned order dated 15.6.1979, the word

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"Porter at Barabanki" in front of the name of the applicant have been cut and thereafter the words "posted at RES" have been written by the concerned Officer/Official. The applicant's place of posting as porter was changed from "Barabanki" to "RES" i.e. Rasauli, which is a road side station and no shunting of the trains ever takes place there. Since Rasauli is a road side station and shunting work is not possible there, the applicant could not have been posted as shunter at Rasauli.

(3) That, the contents of para-3 of the "reply" are denied and in reply while re-iterating the contents of para-3 of the writ petition, it is respectfully submitted that there is no question of non-availability of the record with the opposite-parties as alleged. The opposite-parties are the custodian of the ~~since~~ record of the applicant and the same is available with them.

(4) That the contents of para-6 of the "reply" are wrong and denied and those of para-6 of the writ petition ~~are reaffirmed of para-6 of the writ-petition are~~ ~~by~~ reaffirmed of as correct.

(5) That, the contents of paras 7 and 8 of the "reply" are denied and thereby paras 7 and 8 of the writ-petition are reaffirmed as correct.

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(6) That, the contents of para-9 of the "reply" are wrong and denied and those of para-9 of the writ petition are reaffirmed as correct. The post of Trains-Clerk is filled by promotion from amongst Shuntmen after suitability test. It is not a selection post as alleged.

(7) *regarding* That the contents of paragraph-10 of the "reply" it is respectfully stated that the contents of para-10 of the writ petition are correct. The record of the applicant is available with the opp-parties.

(8) That with regard to the contents of para-11 of the "reply" it is humbly stated that it is wrong to say that the temporary promotion of the applicant, which was made on the post of Trains-Clerk in the month of February-1977 did not confer any right in him to hold the said post specifically when the said promotion is made only on the basis of a suitability test. The applicant has been continuously holding the said post without any complaint and his work and conduct have always remained above the mark. He has been earning his all annual increments and have also crossed his efficiency bars as and when fill due. It is also significant that ~~mix~~ the opposite-parties neither gave any opportunity to the applicant before his promotion to appear in the suitability test nor even

B N Sivagala

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to hold the post in question beyond that period, he cannot be reverted without ^{the} following procedure as laid down in Railway Board's Circular dtd. 9/6/65, a true copy of which is filed herewith As annexure-R-2 to this rejoinder reply.

ANNEXURE R-2

(10) That, the contents of para-14 of the "reply" are wrong and denied and those of para-14 of the writ petition are reaffirmed as correct. The promotion to the post of trains-clerk is made after a ~~suitability~~ ^{test} which the opp:parties never conducted, and not by selection as alleged. Since the applicant's promotion continued for a long time, it cannot be regarded as Ad-hoc and he cannot be reverted without following the procedure as laid down in discipline and appeal rules.

(11) That, the contents of para-15 of the "reply" are wrong and denied and those of para-15 of the writ-petition are re-affirmed as correct. As already stated the post of trains-clerk is filled by promotion of ~~xxxx~~ eligible suitable shunt-men and ~~not~~ by ^{selection} ~~section~~ as alleged. The opp-parties never conducted ^{the} ~~the~~ suitability test either before promotion or even thereafter till date. The applicant has never been found to be unsuitable as such he cannot be reverted from the post in question. Eighteen months' Rule is applicable in the applicant's case too and it does not protect only the rights of those incumbant who held the selection posts. The rule is regarding officiating promotion which continues for a period of more than 18 months.

(contd...6)

B N Sivastava

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thereafter although about 13 years time has already elapsed since then. Under these circumstances it cannot be held that the applicant is unsuitable to hold the post of trains-clerk. A temporary promotion after 13 years which is still continuing cannot be regarded as ad-hoc. Ad-hoc promotions are made for short-term and cannot be prolonged for unreasonably long period causing undue hardship to the incumbants in the event of their reversion.

(9) That the contents of paragraphs 12 and 13 of the "reply" are wrong and denied and those of paragraphs 12 and 13 of the writ-petition are re-iterated as correct. The applicant duly submitted the representation by registered post (Receipt No: 3293) and also through proper channel i.e. Station-Master, Barabanki. The reply of the opposite-parties regarding receipt of representation is vague and evasive and is not worthy of confidence.

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So far as the question of legal right is concerned the applicant has already explained the same, in paragraph-8 above. Regarding suitability the applicant refers paragraph-7 of the R.B's Circular contained in, Annexure-4 and respectfully submits that the maximum period for ad-hoc

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Rs. 260-400 (revised to Rs. 900-1500) but also further
they have been promoted as trains-clerks Grade-II

Rs. 330-~~560~~ (revised to Rs. 1200-~~2040~~). In case, the
~~the~~
opposite-parties would have held the suitability test
and called the applicant, he would have been declared
suitable long back and would have been further promoted
as trans-clerk Grade-II Rs. 330-~~560~~ (revised to Rs. 1200-
~~2040~~) in which Grade his juniorts ~~claimed~~ ^{named} above have
~~the~~
been promoted. The reversion of the applicant under
the facts and circumstances of the case cannot be
held to/justified. His promotion to the ~~trans~~ ^{post of} Clerk
Grade Rs. 260-400 is to be treated regular and it is
to be declared that now no suitability test is
required.

B.N.Srivastava

Lucknow dated,
1.1.90.

Applicant

Verification

I, the applicant named above, do hereby verify
that the contents of paragraphs 1 to 16 of this
rejoinder-reply are true to my own knowledge and that
I have not suppressed any material fact.

Lucknow dated,
1.1.90.

B.N.Srivastava

Applicant.

(Ans)

Before the Central Administrative Tribunal
(Lokayukta Bench): Lucknow.
T.A. No 447 - 87 (T)

K.C.

Brikanta Nath Srivastava - Appellant
VS.

The Union of India
and others - opposite parties

A. No. R-II

No. E (D&A) 653/26-24

Dt. 9-6-65

Sub: Reversion on grounds of General unsuitability of staff officiating in higher grade or post.

"In Shri N. Kamalakara Rao, Director Establishment's D.O. No.E 55 BGG-23, dated 21-5-56 it was interalia stated that any person who is permitted to continue to officiate beyond 18 months cannot in future be reverted for unsatisfactory work without following the procedure prescribed in the Discipline and Appeal Rules. Those instructions were cancelled vide Board's letter No. E (D&A) 60 RGG-5 dt. 1-2-60 and 14-5-60, 1964 permitting the reversion of an employee officiating in a higher post on grounds of general unsuitability at any time, and not necessarily within a period of 18 months, without following the procedure prescribed in the Discipline and Appeal Rules.

The Board have reconsidered the matter and feel that it would not be correct to effect such reversions after prolonged officiating period. They have, therefore, decided that in future any person who is permitted to officiate beyond 18 months cannot be reverted for unsatisfactory work without following the procedure prescribed in the Discipline and Appeal Rules.

TRUE COPY

B.N. Srivastava

Before the Central Administrative Tribunal
(Lokmanya Bench), Lucknow
T.A. No 447- 87 (T) A.M.C.

Baikuntha Nath Srivastava --- Applicant
VS.

The Union of India & others --- opposite parties
A. No. R-1

Northern Railway.

No. 220-E/5-4 (TNC).

Divisional Office,
Lucknow.D/ 6.1979.

Notice.

A. The undernoted staff (who were officiating as TNC in temporary local ad-hoc arrangement) are hereby reverted and posted to their substantive posts with immediate effect.

1. Shri Kashi Nath Tewari, TNC/10 Leverman ~~at Lucknow~~ ^{DS/R} ~~at~~
2. Shri Baikuntha Nath, TNC/BEK - Porter ~~at Barabanki~~ ^{at}
3. Shri Kishori Lal, TNC/PYG Porter ~~at PYG~~ ^{at}
4. Shri R.M.Tewari, TNC/BSB SW. Man ~~at BSB~~ ^{at}
5. Shri Ishwar Deen, TNC/BSB Porter ~~at Varanasi~~ ^{at}
6. Shri Ram Dhari I. TNC/BSB SW. Man ~~at Varanasi~~ ^{at}
7. Shri Shesh Narain, TNC/BSB SW. Man ~~at Varanasi~~ ^{at}
8. Shri Narottam Lal, TNC/LKO Shuntman at Lucknow.
9. Shri

B. Orders of transfer of the following TNCs are hereby ordered on employees requests as given below. They are not entitled for transfer allowance, transfer passes ~~etc~~ or joining leave etc.

1. Shri Baboo Lal. TNC. DS (R) Tfd. to SS LKO.
2. Shri K.N.Gupta. TNC. SLN Tfd. to SS LKO.
3. Shri Noor Ali. TNC. PBH Tfd. to SS LKO.
4. Shri Madan Lal. TNC. Lobby MGS Tfd. to SS BSB ~~vice Item 5~~
5. Shri Harnam Singh. TNC. SLN Tfd. to BEK.
6. Shri R.K.Prasad. ~~DS/R~~ TNC. Lobby MGS Tfd. to BSB ~~vice Item 5~~
7. Shri B.Mirdha. TNC. SIN Tfd. to BSB ~~vice Item 6~~
8. Shri B.K.Srivastava. TNC. LKO Tfd. to BSB. ~~vice Item 7~~

C. The following staff are temporarily promoted to officiate as TNC in Scale Rs.260-400 and posted as shown against each.

1. Shri Chinta Mani. Shuntman DS/R LKO is posted under SM SIN. on request.
2. Shri Vijai Nath Upadhyaya. Shuntman BSB posted under SS BSB ~~vice Item 4 of 'A' above.~~
3. Shri Hari Lal. Shuntman LKO posted under SS LKO.
4. Shri Pyare Lal. Porter PYG posted under SM PYG.
5. Shri Vishnu Lal. Porter FD under SM SIN.
6. Shri Ram Pal Singh. Porter BSB under Lobby MGS. Since he has not qualified in TNCs Promotional Course he must pass the same at the first opportunity from ZTS CH. Next promotional course of TNCs is arranged from 23.8.1979 to 17.9.79 at ZTS CH. Till he does not qualify in the promotional course it will be treated as a temporary local ad-hoc arrangement liable replacement by a qualified staff. ~~He must be promoted in the promotional course arranged from 23/8/79.~~
7. Shri Ganga Prasad VG Porter RBL under SM PBH.
8. Shri Mohd. Akil. TO Porter LKO under SS LKO.

D. The following probationary TNCs are posted as under:..

1. Shri Raghu Nath Ram. Under SS BSB.
2. Shri Surjit Burman. Under Lobby MGS.
3. Shri Jitendra Nath Haldar. Under Lobby MGS.
4. Shri Mithlesh Kumar. Under Lobby MGS.

p.t.o.

TRUE COPY
B.N.Srivastava