

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW,

INDEX SHEET

CAUSE TITLE 658 OF 87

NAME OF THE PARTIES Singh Dal Applicant

Versus

NOT of m Respondent

Part A.

Sl.No.	Description of documents	Page
1		
2	Final order of 8.5.90	10-12
3	order sheet	1-9
4	Write petition	1-55
5	Vakalatnamah	56
6	counter	62-69
7		
8		
9		
10		
11		
12		
13		
14		
15		
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)


File B/C Decided and destroyed

Dated

Counter Signed.....



Section Officer/In charge



Signature of the
Dealing Assistant

PPAT
CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

Sumai Tal - 101

FORM OF INDEX

O.A./T.A./R.A./C.C.P./ No. 658-----1987

PART - I

1. Index Papers :- 16
2. Order Sheet :- 3
3. Any other orders :-
4. Judgement dt. 8.5.90 :- 12/01/85 (3 pages)
5. S.L.P. :-

9.3.12/18
DY. Registrar

4
Supervising Officer

Dealing Clerk

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

Dealing Clerk

V.K. Mishra

ANNEXURE -A

CAT

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

INDEX SHEET

CAUSE TITLE 7.4.6.5.8 of 1987

NAME OF THE PARTIES S. Prasad

Applicant

Versus

Respondent

Part A, B & C

Sl.No.	Description of documents	PAGE
1.	Order of appointment	A-1
2.	Appointment letter	A-2
3.	Order of promotion	A-3
4.	Order of transfer	A-4
5.	Order of retirement	A-5
6.	Order of suspension	A-6
7.	Order of reinstatement	A-7
8.	Order of termination	A-8

3

MEMO.
One impressed Rs 75 ~
Four Adhesive Rs 25 ~
Total 100 - -

Correct but final Court fee stamp
shall be made on receipt of lower
Court record.

In time up to.

It is filed. Copy of P. O.

shall also be filed

Yr. - Each

Writ of Mandamus.

Nil
18.2.80

2/20
25.2.80

Mr T. S. Misra J.

Mr K. S. Verma J.

Admit some notice.
Link it along with writ
Petition no. 114 of 1980.

Mas

25.2.1980

Date	Note of progress of proceedings and routine orders	Date to which case is adjourned
1	2	3
	X19 600 in 1st of the 2nd in W.P. No. 28, 500 for settlement - 1/2 2/2	
1.1.82	<u>Report in W.P.</u> petition moved to opp. side. 154 by regd. post on 27.11.80 have not been received back as undelivered so far. <u>Chambers</u> 20.1.82 fixed in up move 20.4.82 for now	
3.4.82	In service report 21-22 JP as nos 1 to 4 are sufficiently served under Chapter VIII rule 12 of the Rules of Court. Issued like 30.4.82 HJ	4.82

21.6.02

Report in wks?

positions around 15 officers.

154 by regd. post on
~~27~~ 27.01.00 have not been
received back as undelivered
so far.

Григорьев
20.4.1921

7. 11. 1922

fixed in up in air


204.92 for over

30.4.82	In Service Report 81-28	4.82
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nos 1 to 4 are sufficiently served under Chapter VIII rule 12 of the Rules of Court. is correct

30 4p-22



(2)

Order Sheet. TA G-8/S7

(A)

224

Order Sheet

This is up NZ 445/SK Transferred
from the High Court Auctioneer Bench Helms

Notices were issued fixing 29. 12. 88
by Regd Post. both the parties

Notices have not received back
after service

Submitted
only

3-10-00 SK

SK is not appearing for
application. No one appearing for
report. Amount of 1441 on
19.12.00. Amount of 1441 on
19.12.00.

SK

19.12.00 SK

SK is not appearing for
report. Amount of 1441 on
19.12.00.

SK

24.1.01 SK

SK is not appearing for
report. Amount of 1441 on
19.12.00.

SK

22/2 DR. (U) 7 12 (S)

Reply: filed on behalf of OP No 1704. Rejoinder may be filed by 31/3/89.

D.R.

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

31/3/89 None is present for the applicant. and no reply has been filed by the applicant. Shri K.N. Kumar learned counsel for the respondents is present. List the case for final hearing on 8-5-89. The applicant may file, rejoinder if any, in the meantime. It is a very old case of 1980 and no further adjournment will be given.

J.M.

A.M.

(sns)

8.5.89

Hon. G.S. Sharma, JM
Hon - K.J. Ramani, AM

None is present for the parties. None was present for the Applicant even on the last date. The Applicant has not filed any rejoinder despite orders and it appears that he is not interested to prosecute this case any further.

The petition is accordingly dismissed in default of the Applicant.

DR
 AM

8.5.89

uuz

OR
 Counsel for -
 - court has not filed
 any rejoinder so far
 Case is submitted
 for hearing as directed
 by court

Aug
 5/5

19/5/85
 19/5/85

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

REGISTRATION No. 650 of 1987

APPELLANT
APPLICANT

S. Pal

VERSUS

DEFENDANT
RESPONDENT

U. U

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
3/7/89	Hon' Mr. Justice K Nath, J.C. Hon' Mr. K. S. Ramam A.M. On the request of Shri K. M. N. Chak the case be listed for orders on <u>27-7-89</u> . <i>KSR</i> A.M. <i>Ch</i> J.C.	OR This case was dismissed in pursuance of the application of 5/89 by the bench consisting of Hon. J.S. Sharma & Hon. K.S. Ramam. The learned counsel for the applicant has filed the application in order submitted for order. in 30/0
27.7.89	(S.H.) No sitting Adj to 21-9-89 <i>h</i> 21/7 Hon' Mr. D.K. Agrawal, J.M.	ch Case was adj. to 27.7.89 for submission for order. in 26/7
21-9-89	Shri K. M. N. Chak appears for the applicant and requests that the applicant be granted opportunity to engage another counsel because he, having been appointed standing counsel for Govt of V.P. is not in a position to ^{conduct} conduct the case. The applicant is allowed to engage another counsel. List this case on <u>23-9-89</u> for orders. <i>De</i> J.M.	OR Case is submitted for order on restoration application. Submitted to bench in 26/9

(S148)

∴ 2 ∴ 660/676

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

30, 1190

Prof. Arthur K. Roth, Jr.

Mr. C. J. Rogers, An.

On the request of the
learned counsel for the
opposite parties sine Prothonot.
notar list for final hearing

on 9/3/90. This was
given to TET No 648/07. (T)

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24/4/90

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

Shri P. P. Srivastava for the
petitioner and Shri P. N. Mathur for
the respondents.

Heard. Judgment reserved.

This order shall govern

T A MC 648/87 also

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(a)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

O.A.NO. 648 1987.
T.A.NO.S 658

DATE OF DECISION 5.9.0

Singh Bah. & Shiv Kumar PETITIONER
for Mr. Sinha Advocate for the
Petitioner(s)

VERSUS

Union India & Co. RESPONDENT
for P. H. Mathur Advocate for the
Respondent(s)

CORAM :

The Hon'ble Mr. Dr. Agarwal. Jm

The Hon'ble Mr. K. Oberoi. Am

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? 1.
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether to be circulated to other Benches ? ✓

Dinesh/

Dinesh ✓

19 46
Reserved

Central Administrative Tribunal, Allahabad
CIRCUIT BENCH LUCKNOW

Registration T.A.No. 658 of 1987

Suraj Pal ... Petitioner

Vs.

Union of India & others ... Respondents.

Connectec with

Registration T.A.No. 648 of 1987

Shiv Kumar ... Petitioner

Vs.

Union of India and others ... Respondents.

~~Hon.D.K.Agrawal, J.~~
Hon.D.K.Agrawal, J.
Hon.K.Obayya, A.

By Hon.D.K.Agrawal, J.

Civil Misc. Writ Petition No. 114 of 1980 and C.W.Writ Petition No. 445 of 1980 filed by Shiv Kumar and Suraj Pal in the High Court, Lucknow Bench on transfer to the Tribunal under the provisions of S.29 of the Administrative Tribunals Act XIII of 1985 were registered as T.A.nos. 658 and 648 of 1987, as indicated above.

2. Briefly, the facts are that the Petitioners Shiv Kumar and Suraj Pal and one other person, namely, Badloo were employed as casual labour by Northern Railway on different dates. Their services were terminated by Asstt. Engineer Rae Bareilly. They filed separate Suit numberred as 50 of 1963; 51 of 1963 and 52 of 1963 in the Court of Munsif Rae Bareilly for declaration that the order of termination of services passed by Asstt. Engineer Rae Bareilly was illegal and against the provisions of rules 149 and 170B of the Railway Establishment Code and in contravention of Art.311 of the Constitution. All the three suits were decreed by a composite judgment dated 2.5.1964. The Union of India filed an appeal in the Court of District Judge. That appeal was dismissed on 17.8.1965. The Union of India then approached High Court in Second Appeal but that too was dismissed on 5.8.1968. The Petitioners and the other person, namely, Badloo were reinstated w.e.f. 17.1.1970. However, they were paid salary for the period 18th Jan.1967

Deagan

to 16th Jan.1970 but not paid salary from the date of discharge to 17th Jan.1967 on the ground that it was barred by time. The other person, namely, Badloo filed Writ Petition No.1979 of 1971 in the High Court, Lucknow Bench which was decided in his favour by judgment and order dated 21.12.1977 wherein order was made for payment of salary for the entire period, i.e., from the date of discharge to the date of joining - 17th Jan. 1970 after making adjustment of the amount already paid to him for the said period or part thereof by way of salary and allowances and to allow him to other benefits that may be available to him under the rules and law. Shiv Kumar and Suraj Pal (the present Petitioners) filed the present writ petition in the year 1980.

3. The matter is very simple. The Petitioners as well as Badloo are to be treated on equal footing. There is no reason why the Petitioners be not paid salary for the period from the date of discharge to 17.1.1967, i.e., why the Petitioners be not treated at par with Badloo. The only objection taken on behalf of the Respondents is that the claim is barred by time. To our mind, the plea of limitation raised by the Respondents does not stand to reason. Railway administration itself should have allowed the same benefit to the Petitioners as was granted to Badloo by High Court in writ petition no.1979 of 1971. From the facts set out above, it is manifest that the order terminating the services of the Petitioners was declared illegal and ultra vires by the learned Munsif, Rae Bareilly on 2.5.1964. That decree merged into the decree of appellate Court. Thereafter, the Petitioners approached the authorities for justice but it was denied to them. The short question for determination, therefore, is whether the Union of India was justified in not paying the Petitioners their salary from the date of discharge to 17.1.1967? It would appear that the authorities even after the decision of High Court in Second Appeal dated 5.8.68 did not put the Petitioners on duty and the matter was allowed to

Dr. Singh

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drag on till 17.1.1970 when the Petitioners were actually put on duty. It is the statutory right of the Petitioners to get the arrears of salary on reinstatement and it is statutory obligation on the part of the railway authorities to pay the same to the Petitioners. The performance of that obligation on refusal can be enforced by writ of mandamus.

4. Therefore, we hereby direct the Respondents to pay the salary to the Petitioners from the date of termination of their services to 16.1.1970, after making adjustment of the amount which has already been paid to them for the said period or any part thereof by way of salary and allowances and to allow them other benefits that may be available to them under the rules and law. The parties are however left to bear their own costs.


MEMBER (A)


8.5.90
MEMBER (J)

Dated: 8th May 1990
kkb

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SIDE
CRIMINAL

GENERAL INDEX

(Chapter XLI, Rules 2, 9 and 15)

Nature and number of case—W.D. 445 - 570
Name of parties—Surej Lal vs. Union Jander
Date of institution—25-2-80 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	Memorial Book	1	-	- -			
	2	Index Sheet	1	-	- -			
	3	Account with Affidavit and Annexes	43	6	102 00			
	4	Receipt	1	2	05 00			
	5	Order Book						
	6	Bush City	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.

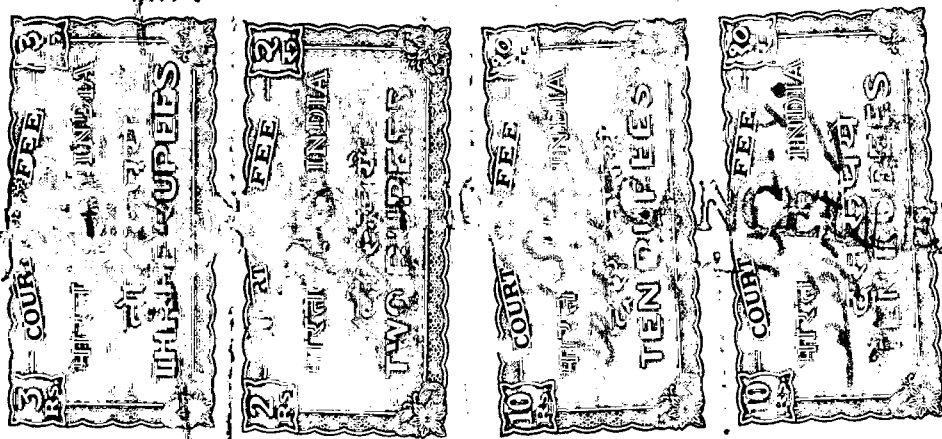
Date—

75 Rs. ~~MD~~



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In the Honble High Court of Judicature at Allahabad
Unknown Bench Unknown

W.P. No 445 of 80

1 July 75/2
2 July 75/2

100/Suraj Pal

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Union of India res

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

WRIT PETITION NO. OF 1980
Suraj Pal ...Petitioner

Versus

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

.....
I N D E X
.....

<u>Sl. No.</u>	<u>Description of papers</u>	<u>Annexure</u>	<u>Pages</u>
1.	Writ petition	-	1 to 10
2.	Affidavit in support of writ petition.	-	11 to 12
3.	Annexure	No.1	13 to 24
4.	Annexure	No.2	25 to 27
5.	Annexure	No.3	28 to 35
6.	Annexure	No.4	36 to 38
7.	Annexure	No.5	39 to 41

.....
Lucknow Dated

[Signature]
21/4/80

K. M. R. Chak
Advocate

COUNSEL FOR THE PETITIONER

2.

the weaker section of the society.

2. That the petitioner was appointed as a Khalasi by the Northern Railway at Rae Bareilly on 11th December, 1959. The Assistant Engineer, Rae Bareilly - opposite party no. 4 terminated the services of the petitioner on 2nd November 1962.

3. That the petitioner challenged that order in a suit filed by him in the Court of Munsif, Rae Bareilly seeking a declaration that the order of Assistant Engineer, Rae Bareilly terminating the services of the petitioner was illegal and ultravires and the suit was decreed by the learned Munsif on 2nd May 1964.

4. That an appeal was filed on behalf of Union of India, the opposite party No. 1 against the order of learned Munsif in the court of District Judge and the Second appeal in the Hon'ble High Court of Judicature at Allahabad, Lucknow bench which were dismissed on 7th August 1965 and 15 August 1968 respectively. The

सुरजपाल

3.

applicant was ultimately reinstated on 17th January 70.

5. That the petitioner's services had been illegally terminated as a consequence the petitioner would be deemed to be in continuous service of opposite party No. ^{true} 4 A/copy of the Judgement of the Learned Munsif is being filed as Annexure no. 1 to this petition.

5. That the petitioner was paid the salary for the period from 5th January 1967 to 16th January 1970 but was not paid the salary for the period from the date of his termination i.e. 2.11.62 to 16th January 1967. That in spite of the aforesaid decision, the opposite parties did not treat the petitioner's service continuous and refused to pay wages for the period 2.11.62 to 16.1.67.

7. That the petitioner wrote several times to the authorities and also personally contacted them but nothing could be done as the departmental authorities did not show any response.

4.

8. That one Shri Badloo, whose services were also terminated like the services of the petitioner also had filed suit No. 50 of 1963, in the Court of Munsif Rae Bareilly and the same was decreed by the Court. The learned District Judge, Rae Bareilly and also by the Hon'ble High Court of Judicature sitting at Lucknow in Second Appeal. A true Copy of the judgement of learned Munsiff is Annexure No. 1 to this writ petition and a true copy of the judgement of Hon'ble High Court of Judicature Lucknow Bench is filed herewith as Annexure No. 2 to this writ petition.

9. That the suit of petitioner and said Shri Badloo were of similar nature and character as such their suits were decided by a common judgement by the learned Munsif and appeals against the same were also decided by the learned District Judge by a common Judgement.

10. That on re-instatement of said Shri Badloo the opposite parties refused to pay the arrears

.....5

हरिप्रताप

5.

of salary for the period 2.11.62 to 16.1.67 ,
on the ground that the arrears are not payable
as they were beyond limitation, ~~and~~ his services
were also not made continuous, pay and
seniority were also not fixed.

11. That on refusal of pay and the arrears
to said Shri Badloo, by opposite parties and
denial of making the services continuous, fixation
of pay and seniority , Shri Badloo filed a
writ petition no. 1979 of 1971 against the
opposite parties for a writ of mandamus for ~~xxx~~
directing the opposite parties to pay the
arrears of salary for the period 2/11/62 to
16/1/67, to fix his pay and seniority and to
treat him in continuous service. The said
writ petition of Shri Badloo was allowed
on 21.12.1977. A true copy of the order of this
Hon'ble Court is filed herewith as Annexure No. 3
to this writ petition.

12. That in the month of January, 1970 , the
petitioner came to know about the fate of
the writ petition of said Shri Badloo from

3/8

6.

Shri Badloo, hence he made a demand to the opposite parties to pay him the arrears of his salary for the aforesaid period. A true copy of the demand is filed herewith as Annexure No. 4 to this petition. The opposite parties have not yet complied with the demand of the petitioner.

13. That the petitioner and said Shri Badloo both are workman under the employment of opposite parties and were dismissed on the same date.

14. That the petitioner and said Shri Badloo both belong to the same class under the employment of the opposite parties.

15. That the petitioner came to know on 7.7.79 from the said Shri Badloo that opposite parties have paid him his unpaid arrears for the period 1.11.62 to 16.1.67 in accordance with the judgement passed by this Hon'ble Court in writ petition No. 1779 of 1971 in the month of July 1979 still opposite parties have not paid the arrears to the petitioner.

16. That on 27.6.1979, petitioner made a demand to the opposite parties to clear his

श्री बादलू

Ms
at

7.

arrears of salary as they have cleared the arrears of salary of said Shri Badloo and also demanded not to discriminate him with said Shri Badloo. The opposite parties have not paid any attention to the demand of the petitioner. A true copy of the demand is being filed ~~xxx~~ herewith as annexure No. 5 to this petition.

17. That ~~xxxxxxxxxxxxxxxx~~ owing to very poor financial position and lack of knowledge about the law, the petitioner could not file a writ petition against opposite parties.

18. That the opposite parties are under constitutional obligation to pay the arrears of salary to petitioner, specially when he belongs to a weaker section of the society and not to exploit him.

19. That the petitioner was under the impression that he would get his arrears from opposite parties after the result of the writ petition of Shri Badloo as the case of both the persons was similar and decreed under a common judgement of this Hon'ble Court in Second Appeal.

6/11

सुरजगल

8.

20. That the petitioner has been advised to state that ~~the~~ opposite parties are under the constitutional obligation to follow the law laid down by this Hon'ble Court in writ petition No. 1379 of 1971 and pay the arrears of salary to the petitioner demanded through Annexure No. 4 to this petition.

21. That the petitioner has been advised to state that the opposite parties cannot take the plea of limitation in respect of the payment of arrears of salary to the petitioner.

22. That the petitioner has been advised to state that the opposite parties are under constitutional obligation to act like a model employer.

23. That while paying to aforesaid Shri Badloo his arrears of salary and denying the payment of arrears of salary for the same period to the petitioner treating the petitioner's services not in continuity fixation of seniority and pay is nothing

.....9

HRS/11/17

9.

but violation of the provisions of Article-14 and 16 of the Constitution of India . That having no other equal efficacious alternative remedy the petitioner files this petition, on

the following amongst other:-

G R O U N D S

- (a) That refusal by opposite parties to comply the demand made by the petitioner in Annexure No. 4 and 5 is refusal to obey the order passed by this hon'ble Court in Annexure No. 3.
- (b) That applying the Law and Directive laid down by this Hon'ble Court in Annexure No, 3 for said Shri Badloo and denying the same for the petitioner is clear violation of the provisions of Articles 14 and 16 of the Constitution of India and rule of law.
- (c) That the opposite parties being a state are under Constitutional obligation to act as a model employer and cannot take the plea of the bar of limitation in the present case in order to exploit the petitioner.

सुरजपाल

(d) The refusal of petitioner's demand in Annexure Nos, 4 and 5 is nothing but his exploitation by opposite parties.

(e) That opposite parties are bound to apply the law and direction laid down in Annexure 3 for petitioner also.

WHEREFORE, it is respectfully prayed that a writ of mandamus be issued to opposite parties with a direction to treat the petitioner's services with reference to his original date of appointment and to pay him salary for the period of 2.11.62. to ~~16.1.67~~ 16.1.67 at the rate according to law and rules, with an interest at the rate of 6% per annum be awarded on the unpaid salary to the petitioner, cost of this petition be awarded and any suitable order may be passed in the circumstances of the case.

Lucknow Dated
~~October, 1980~~
 01/21/80

K. M. N. Chakr.
 Advocate
 COUNSEL FOR THE PETITIONER

I, certify that the petition has no defect.

K M N Chakr
 Advocate

HRJ 9/1

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
UNKNOWN BENCH UNKNOWN.

WRIT PETITION UNDER ARTICLE 226 OF CONSTITUTION
OF INDIA

AFFIDAVIT IN

Writ Petition No. of 1979

Suraj Pal

...Petitioner

Versus

Union of India and others

...Opp. Parties.

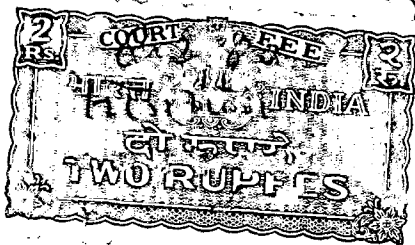
I, Suraj Pal aged about 48 years s/o

Jaganna th r/o Garhi Mutwalli P.O. Munshi ganj

Distt. Rae Bareilly hereby solemnly affirm

on oath and state as under:-

1. That the deponent described above to the petitioner in the above noted writ petition and is such is well acquainted with the facts of the case.
2. That the paragraphs 1 to 4 and 6 to 17 of the accompanying affidavit are true to my own knowledge.
3. That the contents of paragraphs 5 and 18 to 23 of the accompanying writ petition are believed to be true on



ALLAHABAD
HIGH COURT
10
AFFIDAVIT
1980

सुरजपाल

18.

on the basis of legal advice.

4. That the contents of paragraphs of the accompanying writ petition are true on basis of information received from Shri Badloo whose name had been mentioned in the accompanying writ petition, which the deponent believes to be true.

Lucknow Dated

~~8.2.80~~
8.2.80

सुरजपाल
Deponent

I, Suraj Pal, the deponent above named do hereby verify that the contents of paragraphs 1 to 2 of this affidavit are true to my own knowledge, while those of paragraphs 3 and 4 are believed to be true on the basis of legal advice and information from Shri Badloo. No part of it is false and nothing material concealed. So help me God.

Lucknow Dated
8.2, 1980

Deponent सुरजपाल

I identify the deponent, who has signed before me.
(WIRANKAR PRASAD)

Solemnly affirmed before me on 8.2.80

at 5 p.m. by Shri Suraj Pal, who is identified by Shri Wirankar Prasad clerk to Shri B.L. Shukla Advocate High court, Allahabad.

लका
Joint Commissioner
High Court, Allahabad
210 - 80
8.2.80

सुरजपाल

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

Writ Petition No. of 1979.
Suraj Pal ...Petitioner
Versus
Union of India and others ...Opp. Parties.

Annexure No. 1

Copy of Judgement passed by Sri Sidha Nath
Pandey R a e Bareilly on 2.5.1964 in regular suit no.
51 of 1963.

Surajpal son of Jagannath ~~xxxxxxx~~
ex- Khalasi, Northern Railway aged 50 years residen
of village Garhi Mutwalli P.O.Munshiganj district
Rae Bareilly.

Plaintiff

Versus

1. Union of India, Secretary of Railway Ministry,
New Delhi.
2. General Manager, N. Railway, New Delhi.
3. The Divisional Superintendent, N.R., Lucknow
4. The Assistant Engineer, Northern Railway
Rae Bareilly.

Defendants

Claim for declaration suit valuation is Rs.300/-

- - - -

In the court of Munsif Rae Bareilly

Present: Sri Sidh Nath Munsif Rae Bareilly

suit No. 50 of 1963

Badloo versus Union of India

Suit no. 51 of 1963

Shiva Kumar Versus Union of India

Suit no. 52 of 1963

Surajpal Versus Union of India

सुरजपाल

11
2.

Judgement

These are three connected suits in which there is a common relief for a declaration that the termination orders dated 3.10.1962 and 9.10.1962 passed by the defendants was against the rule no. 149 and 1708 Railway Establishment Rules and article 311 of the Constitution of India.

In suit no. 50 of 1963 the plaintiff alleges that the plaintiff was a member of scheduled caste community and entitled to the facilities of quota fixed for them; that he was on the panel from 1951 to 1956 and was selected in the vacancy of a mason and from 7.10.56 up to 2.11.1962 he had served on the capacity continuously enjoying the entire benefit given to the temporary or permanent Government servant, that the termination of his service was ultra vires as the Asst. Engineer Northern Railway had no jurisdiction to terminate his service that the termination amounted to penalty and was against rule no 149 and no. 1708 Railway Establishment Rules and Article 311 of the Constitution of India. In the next two suits the plaintiffs have claimed themselves to be the members of backward classes and alleged that they had been working as Khalasis from 1950 to 1958 in case of 51 of 1963 and up to 1959 in case of suit no. 52 of 1963, that Sri Shiva Kumar was selected and posted in the regular vacancy on 30.10.1968 and Sri Surajpal was posted on 17.12.1959 after the examination, that they had worked on the said posts continuously for more than three years and availed the entire

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Facilities of due increments. Railway passes P.F.O. and fixation of pay well in time. That the termination order passed by the Assistant Engineer were ultra vires in view of the provisions of rules 149 and 1708 Railway Establishment Rules and Article 311 of the Constitution of India and hence these suit.

In the suit of 1963 the following issues were framed:-

1. Whether the plaintiff was a member of scheduled caste community and was entitled to any benefits?
2. Whether the suit is barred by section 49 specific relief Act?
3. Whether the suit is barred under section 49 C.P.C. against defendants 2 to 4 and they are entitled to special costs?
4. Whether the termination of service of plaintiff was in contravention of the provision of rule 1708-1k and 149IR and Article 311 of the Constitution of India?
5. Whether the plaintiff continued in the panel even after 1955 and his appointment in 1958 was not made as a casual labourer?
6. To what relief, if any, is the plaintiff entitled?

The following issues were framed in suit no.

51 of 1963 and 52 of 1963:-

Suit no. 51 of 1963

1. Whether the plaintiff was in service of defendant from 1949 and became a permanent employee?
2. Whether the plaintiff was of backward class caste, If so, he is entitled to continue in employment as alleged in para 1 of the plaint?

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3. Whether the services of th plaintiff were terminated on 9.11.1962 without any valid reasons?

4. Whether the services were terminated by unauthorised person ,If so its effect?

5, Whether the plaintiff was not given an opportunity of being heard before the termination of service and thus rules 1708 and 149 of Constitution of India were contravened? the effect ?
the notice under section 80C.P.C.

[illegible]

7. Whether defendants 2 to 4 are unnecessarily impleaded?

8. To what relief, if any is plaintiff entitled ?

Suit no. 52 of 1963

1. Whether plaintiff belongs to backward class community and is entitled to the benefits?

2. Whether suit is barred under section 42 of the Specific Relief Act?

3. Whether the suit is barred under section 79C.P.C. against defendants 2 to 4 and those defendants are entitled to special ~~extra~~ costs ?

4. Whether the termination of service of the plaintiff is in contravention of the provisions of rules 1708-81 and 149 RI and Article 311 of the constitution of India?

5. Whether plaintiff continued in the panel even after 1959 and his appointment in 1959 was not made as a casual labourer?

6. To what relief, if any, is the plaintiff entitled?

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FINDING

Issue No. 1 of suit no. 50 of 1963 and No. 52 of 1963 and No. 2 of No. 51 of 1963.

The plaintiffs have examined Shri Badloo P.W.1 and has affirmed that Shri Shiv Kumar and Shri Surajpal are the members of backward class community.

This position has been admitted by the learned counsel for the defendants as well.

There is therefore, no bone of contention in this connection. The only question is whether a member of scheduled caste community and member of backward class community are entitled to certain benefits according to the constitutional guarantees or not, In this Sub-section 4 Article 16 of the Indian Constitution, while discussing the various fundamental rights it has been specifically provided that nothing in this article shall prevent the state from making any provision for the reservation of appointments or posts in favour of any backward class citizens which in the opinion of the state is not adequately represented in the services under the State. There are several case laws on this point and there is unanimity that in order to bring the

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Scheduled caste up to the mark in the march of progress along with other people, it is essential to make certain reservation in appointments for them. Thus so far reservation has been made only in respect of candidates belonging to scheduled castes and there are no reservation in the state services for recruiting the candidates belonging to backward class community. There is no evidence before us and no law has been cited accordingly to which reservation was possible in favour of backward class candidates also. I have therefore no other alternative to express that reservation in service have so far been made for the members of scheduled caste only.

It was open to the state Government to increase the list by adding certain other socially and economically backward classes in the said list and by curtailing the list of the scheduled caste after judging that a certain number of sub-castes have required sufficient progress to compete with other candidates in the open competition. I, therefore, hold that Shri Badloo is entitled to the benefit of reservation whichever according to the case of the defendants is not less than 17 per cent. But since Shri Shiv Kumar and Surajpal have not been able to claim the benefit given to the member of the scheduled castes, they are not entitled to be recruited or absorbed in services on that account. These issues are decided according to

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accordingly.

Issue No. 3 of suit No. 50 of 1963 and 52/63
Issue no. 6 of suit no. 51 of 1963.

In this connection Shri Badloo and Surajpal have filed documents showing that all the defendants have been given the notice under section 80 and 79 and services of the same were completed vide exts 1 to 9 and Surajpal also issued ~~xxxx~~ notices to all the defendants and the services of the same were completed (Exts. 1 to 6). I, therefore find no ground to believe the case of the defendants, that suit is bad for want of notice under section 79 C.P.C.

As regards issue No. 6 of suit No. 51 of 1963 the plaintiff Shri Shivr Kumar has filed documents (Exts 2 to 10) which prove that notice under section 80 C.P.C. were issued to the defendants and the same were received by them. The notice, therefore, cannot be said to be invalid. Issue No. 6 is decided accordingly.

Issue No. 4 and 5 of suit No. 50 of 1963, Nos. 3, 4, and 5 of suit No. 51 of 1963 and issue no. 4 and 5 of suit No. 52/63.

The P.W.1 Shri Badloo has deposed that he worked as temporary mason upto 1953 and from 27.10.55 to 2.11.1952 he continued in the service as mason without any break;

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that he got the entire privileges given to the temporary or permanent government servants in respect of Railway passes, P.T.O., leave etc. and there was no question of his being a casual labour.

Similarly the other two plaintiffs were also working for more than six months. The plaintiffs summoned certain documents from the defendants and those documents have been exhibited as Exts. Nos. 11 to 38. I have perused all those documents and observe that they relate to salary, casual leave railway passes, service record and other entries in respect of the plaintiff. There are three service records before me and a perusal of the same above that the pay fixation has been done by the defendants in the cases of all the plaintiffs. It is worth mentioning that the basic pay of the plaintiffs have been shown in the column of substantive grade. There are three more columns which relate to officiating grade. All these documents which clearly prove that the plaintiffs have been appointed on temporary capacity as they finished their work for six months and approved by the defendants, they continued in the services even after the period of six months. In this connection the documents are of great

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importance. These are exhibited 11 to 15. These documents affirm that any person retained for more than six months continuously would be treated as a temporary Government servant and was entitled to railway passes and privileges tickets order and other facilities afforded to the temporary railway servants, these documents further prove that a casual labourer cannot get the passes and P.T.O. etc. facilities in any way.

I, therefore, come to the conclusion that even according to the case of the defendants, the plaintiffs have put in more than six months continuous service and they have enabled themselves for the privileges of temporary Government servant without any reservation. Since the plaintiffs are the temporary railway and Govt. servants, it was incumbent on the defendants to provide them an equal opportunity under rule 149 and 1708 Railway Establishment rules and Article 311 of Constitution of India as the termination of the services of the plaintiffs could not have been done without resorting to the law of the land. The defendants' principles of natural justice is that nobody can be condemned unheard. But the Assistant Engineer Northern Railway has thrown a challenge to these provisions of Railway Establishment Code and the Constitution of India. Even according to their documents the present plaintiffs are at least temporary Government servants whose services could not be terminated without any notice or showing cause in view of the fact that there was no contract between the parties regarding the fixation of the duration of the tenure of the post. There has been a clear violation of the rules and constitutional rights on the part of the defendants and the plaintiffs cannot suffer for the laches of the Assistant Engineer who has terminated the services of the plaintiffs. Ext. 10 of suit No. 50 of 1963 is the

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termination order passed by the Assistant Engineer R. S. Pareli on 3.10.62 and this order shows that there were certain irregularities on the appointment of plaintiffs and as such their services would be terminated with effect from the date noted against their names. But the irregularities as alleged in this termination order could not be made an offence for uprooting the plaintiffs in any manner. The defendants ~~have~~ committed the mistake and the consequences of such mistakes were being imposed on the present plaintiffs which could not be done by any sanctity of law. If there is no fault on the part of the plaintiffs, why they should be punished.

I, therefore come to the conclusion that the termination of the services of plaintiffs were against the provisions of rules 1708 and 149 of Railway Establishment Code and Article 311 of the Constitution of India. It is also proved that Shri Padloo continued in the panel after 1955 and his appointment in 1956 was not as a casual labourer. Thus the services of the plaintiffs were terminated without any authority. The above issues of all three suits are disposed of accordingly.

Issue no. 1 of suit no. 51 of 1963.

Since there are no documents to prove ~~that~~ that Shri Shiv Kumar was confirmed, I hold that the plaintiff was not a permanent employee, but in view of the above findings he was continuously as a temporary Government servant. The issue is decided accordingly.

Issue No. 7 of suit No. 51 of 1963

Since defendants 2 to 4 are the different party of the defendant No. 1 controlling the plaintiffs, they are necessary parties and the issue is decided in

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the negative.

Issue No. 2 of Suit no. 50 of 1963

It has been contended that a more declaration could not be claimed as the plaintiff was not in possession. But the relief sought shows that the order of termination passed by the Assistant Engineer, Rae Bareilly was ultra vires and illegal and as such the dispossession of the plaintiffs from their posts was void ab initio and the suits are barred under section 48, Specific Relief Act. The plaintiffs still thought themselves to be in continuous service. As such the issue is decided in the negative.

Issue No. 6 of suit no. 50 of 1963 and No. 52 of 1963 and Issue No. 8 of suit No. 51 of 1963.

In view of the findings given by me on the various issues as discussed above I come to the conclusion that the services of the plaintiffs were terminated as a measure of penalty and the same could not have been done without resorting to the compliance of provisions laid down in rule 1708 and 149 Railway Establishment Code and Article 311 of the Constitution of India. The writs therefore succeed and the issues are decided accordingly.

ORDER

The suit No. 50 of 1963 is decreed for the declaration that the order of termination of services of Badloo passed by the Assistant Engineer Railway Rae Bareilly on 3.10.1962 is illegal and against the provisions of rules 149 and 1708 of Railway Establishment Code and contravening the provisions of Article 311 of the Constitution of India and for costs.

Suit No. 51 of 1963 and 52 of 1963 are also decreed for the declaration that the

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orders of termination of service of Sri Shiv Kumar and Surajpal respectively passed by the Assistant Engineer, Rae Bareilly railway, Rae Bareilly on 9.10.1962 are illegal and against the provisions of Rule 149 and 1708 of Railway Establishment Code and contravening of provisions of Article 311 of the Constitution of India and for costs.

Let copies of the judgement be placed in suit No. 51/63 and 52/63.

Sd/- Sd Nath

Munsif Rae Bareilly
2.5.1964

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

Writ petition No. of 1979

Surajpal ...Petitioner

Versus

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

Annexure No. 2
Second appeal no. 394 of 1965

1. Union of India through the General Manager Northern Railway Headquarters Office, Baroda House New Delhi.
 2. The Divisional Superintendent, Northern Railway, Hazratganj Lucknow.
 3. General Manager Northern Railway Headquarters Office Baroda House New Delhi.
 4. Assistant Engineer Northern Railway Rae Bareilly
- Appellants

Vs.

1. Sri Badloo Ex Karigar, Northern Railway aged about 38 years son of Mahabir, r/o North Mahanabad, near Naka Katpur, District Rae Bareilly.

Respondent

Opposite parties No. 2 and 3 transferred as appellante No. 3 and 4 vide court's order passed in C.M.No. No. 371 (s) of 66 dated 19.8.66

sd/-V. Kumar
20.5.66

Claim- for declaration that the termination of plaintiff's service was illegal and void.

Valuation appeal Rs35/-

Second appeal against the order and the decree passed by Sri S.R. Bhargava, Civil Judge, Rae Bareilly on 17. 6. 65 in Regular Civil Appeal No. 51 of 64.

Lucknow dated 5-8-68

For Appellant -Sri A.B.nigam

For Respondent-No.1 .Shri B.L.Shukla

S.A.No. 394 and 401 of 1965

Hon'ble R. Chandra Ji.

These three connected appeals have been filed by the

Union of India through the General Manager, Northern Railway

Headquarters' Office, Baroda House New Delhi The Divisional

Superintendent , Northern Railway Hazratganj Lucknow General

Manager Northern Railway Headquarters' Office Baroda House

New Delhi and Assistant Engineer , Northern Railway Rae Bareilly

and are directed against the common judgement given by

the civil Judge, Rae Bareilly, on 17th August 1965, Badlioo Sheo Kumar and Surajpal, respondents challenged the legality of the termination of their services by the Railway. So they filed three separate suits for a declaration that the various termination orders violated rules 149 and 1708 of the Railway Establishment Rules and Article 311 of the Constitution of India - Both the courts below found that the plaintiff are entitled to the relief for declaration and the suits were accordingly decreed. The present appeal are directed against the last order passed by the Civil Judge. I have heard the learned counsel for the parties.

The undisputed facts are that the plaintiff respondents worked as casual labourer with the railway, They served the Railway continuously for more than six months. On that ground, they also earned the benefit of increments, passes, P.T.Os and others facilities such as Medical aid and leave etc. Both the Courts below repelled the appellant's contention that after six months continuous services as casual labourers they did not become temporary servants. They on the other hand, found that they were actually the temporary servants of the Railway. On these findings, it was conceded on behalf of the appellants that for termination of the services of the plaintiff respondents fourteen days clear notice was required under the rules. The learned counsel also tried to show

सुरजपाल

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from the record that enstead of fourteen days notice
actually one month's notice was given to the respondents but
but he could not satisfy me that from the actual date of ~~an~~
service on respondents
clear fourteen days notice was given to them. In the
circumstances the courts below were justified in holding
that no proper notice was given to the respondents
before terminating their services. In the circumstances
the orders passed by them are emply justified and need no
interference. No other point was urged. The appeals are
devoild of suit and are accordingly desmissed with
costs throught.

Sd/-R. Chandra,
Aggust, 5, 1968

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

Writ Petition No. of 1979

Surajpal ...Petitioner

Versus

Union of India and others ...opp. parties

Annexure No. 3

Writ petition No. 1979 of 1971

Badloo Meson ..petitioner

versus

Union of India and others ...Opp. Parties

Writ petition under article 226 of the Constitution
of India.

Lucknow Dated: 21.12.1977

Hon'ble T.S.Misra, J.

Hon'ble Mahavir Singh, J.

(Delivered by Hon'ble T.S.Misra, J.)

Court seal

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WRIT PETITION NO. 1979 of 1971

.....
Hon'ble T.S.Misra, J.

Hon'ble Mahavir Singh, J.

(Delevered by Hon'ble T.S.Misra, J.)

This is a petition under Article 226 of the Constitution. The facts in brief are those:-The petitioner was appointed as learn by the Northern Rail-
way at Rae Bareli on 27th ^{Oct.} ~~April~~, 1956. He was granted ~~EE~~ C.P.C. scale on 27th April, 1957 at Rs. 60/- per month and therefore increments were sanctioned to him on 27th April 1958, 27th April 1959, 27th April 1960 and 27th April 1961. However, the Assistant Engineer, ~~Rae Bareli~~ the opposite party No. 4 terminated the service of the petitioner impugned that order in a suit filed by him in the court of Munsif, Rae Bareli seeking declaration that the termination of ~~his~~ his service was illegal and ultra vires. That suit was decreed by the learned Munsif on 2nd May 1964. A copy of his judgement as Annexure 1 to the writ petition. The learned Munsif passed the decree declaring that the ~~order~~ order of termination of service of "adloo" passed by the Assistant Engineer, Railway, Rae Bareli on 3rd Oct. 1962 was illegal and against the provisions of rules 149 and 1708 of Railway establishment Code and in contravention of Article 311 of Constitution of India

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The Union of India filed an appeal in the Court of the District Judge, from that decree. That appeal was desmissed on 17th August 1965. The Union of India then approached this Court on Second Appeal but that too was dismissed on 5th August 1968. The petitioner was ultemataly reinstated on 17th January, 1970. The petitioner was paid salary for the period from 18th January 1967 to 16th January 1970 but was not paid salary for the period from 3rd November, 1962 to 16th January 1967 on the ground that it was barred by time. The petitioner then wrot a letter dated 7th May 1971 to the labour Reforcement Officer (central) Government of India, Lucknow requesting for his intervention in respect of wages from 3rd November, 1962 to 16th January 1970 with arrears of increments less wages already drawn on 4th May 1971 and for the correction of his date of appointment in the service record as also for fixation of wages at Rs 155/- per month. A true copy of that letter is Annexure 2 to the writ petition. The Labour Reforcement Officer by his letter dated 26th October, 1971 infomed the petitioner that he had been paid arrears for three years under the law of limitation in terms of the Railway Board's letter dated: 22nd september, 1961 and that arrears for the remaining period could not be paid to him as the case was not covered by the rules, hence he was told that nothing further could be done by the said officer

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and in case the petitioner was not satisfied, he could move in the matter through his P.W.M. or he could file a case in the court of law. The petitioner, therefore filed this petition under Article 226 of the Constitution of India for a writ of Mandamus directing the opposite parties to treat the petitioner's service be continuous and such his pay and seniority with reference to his original date of appointment namely 27th October, 1956 and to pay him the salary at the rate of Rs 155/- per month according to the time scale as also to pay him the salary for the period from 3rd November 1962, ~~that his date of appointment~~ to 16th January 1967.

The petition is opposed by the Union of India. In paragraph 12 of the counter affidavit it is alleged that the petitioner was appointed as Casual labour on 27th Oct. 1956, that his date of appointment has not been changed in service record, that he was paid arrears with effect from 17th January, 1967 to 16th January 1970 and that fixation of his pay has been made with effect from 17th January 1967 as per direction of the General Manager(P). It was ~~was~~ admitted that the petitioner was paid salary ~~for~~ for the ~~period~~ period 17th January 1967 to 16th January 1970 and no payment had been made beyond three years in terms of General Manager's letter dated 30th Nov. 1961 and the instructions of the Railway Board. In the rejoinder affidavit filed by the petitioner the events made in the petitioner have been reiterated.

From the facts set out above it is manifest that the order dated 2nd November, 1962 terminating the service of the petitioner was declared illegal and ultravires by the learned Munsif, Rae Bareilly on 2nd May 1964. That decree merged into the decree of the appellate court. The first

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appeal preferred by the Union of India was dismissed on 17th August, 1965 and its second appeal was dismissed on 9th January, 1968 and even then he was not paid the arrears of a salary. Ultimately on 4th May, 1971 the arrears of salary for three years only were paid to him and the rest was refused on the ground of having become barred by 4 time. The petitioner approached the authorities for justice but but it was denied to him vide Labour Enforcement officers' letter dated 28th October, 1971 Annexure 3. He had filed this petition on 20th December, 1971. The short question for determination, therefore, is whether the Union of India was justified in not paying the petitioner his salary from 3rd November, 1962 to 16th January 1967. The Order dated 2nd November, 1962 terminating the service of the petitioner was found by the learned Munsif as also by this court on Second appeal to be illegal and in contravention of Article 311 of the Constitution. The effect was that the petitioner would be deemed to be in continuous service. He was wrongly prevented from discharging his duties. Even after the dismissal of the second appeal on 5th August, 1968 the authorities did not permit him to join his duties till 17th January 1970. He was, therefore entitled to salary from 3rd November, 1962 to 16th January 1970. He has been paid certain amount towards his salary from the period from 17th January 1967 to 16th January, 1970. Thus he has yet to receive salary for the period from 3rd November, 1962 to 16th January 1967. There was not question of his salary or according one or long as the order dated 2nd November, 1962 termination of his employment stood. His claim for salary accrued due when the said order was declared to be illegal and ultra vires and thus set aside by the Court. As pointed out earlier, the trial court had passed the decree on 2nd May, 1964. Had the Union of India reinstated him on 3rd May, 1964, then the

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authorities could not have rejected his claim for salary for the period 3rd November, 1962 to 2nd May, 1964 on the ground that it was barred by time; rather they would have paid it. But the Union of India preferred an appeal before the District Judge. The appeal was dismissed on 17th August 1965 and the decree passed by the learned Munsif was affirmed. Not satisfied, the Union of India preferred a second appeal in this Court which was dismissed on 5th August, 1968. Thus, if there was any delay, it was because of the Union of India. The authorities even after the decision of the second appeal did not immediately put the petitioner on duty nor did they pay his salary to him. The matter was dragged on till 17th January, 1970 when the petitioner was put on duty. On such reinstatement the payment of salary for the entire period the petitioner was prevented from attending to his duties should have followed as a matter of course. It is a statutory right of the petitioner to get the arrears of salary on such reinstatement and it is statutory obligation on the part of the railway authorities to pay the same to the petitioner. The performance of that obligation on refusal may be enforced by a writ of mandamus. The opposite parties have in the instant case wrongfully declined to pay the salary for the period from 3rd November 1962 to 16th January, 1967.

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The petitioner has claimed that his service be treated as continuous and that his pay and seniority may be fixed with reference to the original date of appointment, ~~xxx~~ namely 27th October, 1956. In paragraph 12 of the counter affidavit it is admitted that the petitioner was appointed on 17th October, 1956 and that his date of appointment has been changed in the service record. It

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is, however, stated in this paragraph of the Counter affidavit that fixation of ~~his~~ his pay has been made with effect from 17th January, 1967. This is obviously wrong.

The order of termination having been set aside, the petitioner's service shall be treated as continuous. His pay and seniority has therefore to be fixed with reference to his original date of appointment, namely 27th October, 1956.

The petitioner has further claimed that the opposite parties may be directed to pay him the salary at the rate of Rs. 155/- per month from the date he became entitled to it according to the time scale. In this connection it is to be observed that the petitioner would be entitled to receive salary at such rate as may be admissible to him under the rules and his salary is to be fixed and paid accordingly the petitioner is no doubt entitled to the salary for period from 3rd November, 1963 to 16th January, 1967 and he is entitled to other benefits legally permissible to him-

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In the result, the petition is allowed with costs.

Let a writ of Mandamus is a commanding the opposite parties to treat the petitioner's service continuous

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and fix his pay and seniority with reference to his original date of appointment, namely 27th October, 1956 and to pay him salary at the rate that may be fixed in accordance with rules and according to the time scale for the period 3rd November, 1962 to 16th January, 1970 after making adjustment of all the same that right have been paid to him so far for the said period or any part thereof by any of salary and allowances and to allow him all other benefits that may be available to him under the rules and law.

Sd/T.S.Misra

Sd/Mahavir Singh

21/12/1977

सुरजपाल



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

WRIT PETITION NO. OF 1979

SURAJPAL S/O JAGANNATH

r/o Garhi Mutwalli C.P.

Munshiganj, Distt. Rae Bareli.

...Petitioner

Versus

Union of India and others

...Opp. Parties

Annexure No. 4

FROM THE OFFICE OF P.S. BAJPAL: ADVOCATE : RAE BARELI
Surajpal s/o Jagannath r/o Garhi Mutwalli

P.O. Munshiganj Distt. Rae Bareli.

Applicant.

~~...XXXXXXXXXX~~

Versus

1. Union of India, through chief Secretary to the central Government, sitting at Baroda House, New Delhi.
 2. General Manager, Railway Board, Baroda House, New Delhi.
 3. Divisional Superintendent, N. Railway, Lucknow Div. Lucknow.
 4. Assistant Engineer, Northern Railway, Rae Bareli
- ...Opp. Parties.

NOTICE UNDER SEC. 80 CPC ON BEHALF OF THE ABOVE NOTED

APPLICANT FOR RECOVERY OF ARREARS DUE AND TO BE TREATED IN SERVICE FROM HIS ORIGINAL DATE OF APPOINTMENT i.e. 30 OCTOBER, 1958.

WHEREAS on behalf and under the instructions of my client I am hereby inclined to give notice under section 80 c.p.c. to realise the arrears due and to be treated my client in depose the facts as given under:-

1. That applicant was appointed as a khalasi by Northern Railway at Rae Bareli on 30 October, 1956. party no. 4 terminated the services of applicant on 2nd November, 1962.

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2. That applicant impugned that order in a suit filed by him in the court of Munsif, Rae Bareilly seeking the declaration that the order of Asstt. Engineer Rae Bareilly terminating the services of applicant was illegal and ultravire and the suit was decreed by the learned Munsif on 2nd May, 1964.

3. That an appeal was filed on behalf of Union of India against the order of learned Munsif in the Court of District Judge and the second appeal in the hon'ble High Court of Judicature which were dismissed on 7th August, 1965 and 15th August 1968 respectively.

The applicant was ultimately reinstated on 17th January, 1970.

4. That the applicant was paid the salary for the period from 17th January, 1967 to 16th January 1970. But was not paid salary for the period from the date of his termination to 16th January, 1967.

5. That the applicant has severally written to the authorities and personally contacted but nothing could be done, as the departmental authorities did not take over and all efforts made by the applicant were meaningless and could not solve the purpose.

6. That after a long negotiation with the authorities the applicant could get nothing against the despotic attitude of the authorities specially the applicant was

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economically thrust badly during long atanding litigation ; and it was not possible tin the lack of money to seek legal remedy through Court.

7. That Badloo Manson who was also one of the party in the civil suit in the Court of Munsif represented through writ petition No. 1972 of 1971 in the hon'ble High Court of Judicature at Allahabad, Lucknow Bench Lucknow. ~~xxx~~ requesting to issue writ of ~~xxxx~~ nonedemus according the opposite party to treat his services contineous and fix his pay and seniority with references to original date of appointment namely and to pay his salary at the rate ~~that~~ may be fixed in accordance to the rules and the petition was aoolwed with ~~xxx~~ cost. A copy of judgement is attached herewith for the perusal.

8. That the case of the applicant is quite similar to the case of Badloo Meason who has already received with reference of original date of appointment and in the light of decision given by the Hon'ble High Court is inforeseble with the applicant.

Therefore, it is for your kingconsideration to look into the matter and treat the applicant's service contineous and fix his pay and seniority with reference of his original date of appointment namely 30th October, 1958 and to pay his salary at the rate that may be fixed according to the rules.

Failing so after expiry of 60days a writ ~~shk~~ shall be filed against th Union of India in the Court of competency and all the expences incurreng in litigation shall lie upon the ~~xxxx~~ Union of India.

Dated 27.2.1979

Sd./P.S. Bajpai, M.A.LL.B.
Advocate,
Rae Bareli (UP)

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

Writ petition No. of 1979

Surajpal

...Petitioner

Versus

Union of India and others

....Opp. Parties

ANNEXURE NO.5

REGISTERED A.D.

N O T I C E

To

1. The Union of India, through the Secretary 1 Ministry of Railway, Rail Bhawan, New Delhi.
2. The General Manager, Northern Railway, Baroda House, New Delhi.
3. The Divisional Superintendent, Northern Railway Hazaratganj, Lucknow.
4. The Assistant Engineer, Northern Railway, Rae Bareilly.

The applicant respectfully states as under:-

1. That applicant was appointed as a Khalasiby the Northern Railway at Rae Bareilly on 30th October, 1958. However, the Assistant Engineer, Rae Bareilly ~~xxxxxxx~~ opposite partyes 4 illegally terminated the services of applicant on 2nd November, 1962.

2. That applicant challenged the order by a suit filed by him in the court of Munsif, Rae Bareilly seeking a declaration that the order of Assistant Engineer, Rae Bareilly, terminating the services of applicant was illegal and ultravires. The suit was decreed by the learned Munsif on 2nd May, 1964.

3. That an appeal was filed on behalf of Union of India against the order of learned Munsif in the court of District Judge, and a second appeal in the Hon'ble High court of Judicature at Allahabad, Lucknow

2.

Bench, which were dismissed on 7th August, 1965 and 15th August, 1968 respectively. The applicant was ultimately reinstated on 17th January 1970.

4. That the applicant was paid his salary for the period from 17th January 67 to 16th January 1970 but was not paid salary from the date of the order of ~~this~~ termination to 16th January 1967.

5. That the applicant has repeatedly written to the authorities and has also personally contacted them but nothing could be done, as the departmental authorities did not take care and all efforts made by the applicant were futile.

6. That one Shri Badloo, mason, whose services and also been similarly terminated and who had also filed a similar suit in the Court of Munsif Rae Bareilly having succeeded in all the Courts was instated alongwith the applicant. He was also similarly paid for the period 17.1.1967 to 16.1.70. In his case also, the Department refused to treat his services as continuous and he was not paid salary for the period 2.11.1962 to 16.1.67. Aggrieved by the refusal of the Department to pay his salary for the entire period, the said Shri Badloo filed the writ petition no. 1979 of 1971 (decided on 21.12.1977) in the Hon'ble High court of Judicature at Allahabad Lucknow Bench. The writ petition was allowed and it was ordered by the Hon'ble High Court that his services shall be deemed to be continuous and no questions ~~xxx~~ of limitation arose in the case and it was accordingly ordered that he should be paid salary for the entire period from 2.11.62 to 16.1.67.

7. That there is no distinction between the case

सुरजपाल

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of Shri Badloo and that of the applicant.

8. That on 7th July, 1979, the applicant learnt from Badloo that the department has complied with the orders passed in the writ petition filed by him and he had been paid the entire salary which was due to him.

9. That there is no reason to discriminate between the applicant and Shri Badloo.

10. It, is, therefore, requested that the applicant be paid the arrears of salary for the period 2.11.1962 to 16.1.1967 in accordance with the judgement passed by the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in writ petition No. 1979 of 1971 without delay. The applicant accordingly makes this demand and if the entire amount due to the applicant for his salary from 2.11.1962 to 16.1.1967 is not paid within a fortnight, the applicant shall have no alternative but to approach court of law for redress of his dues.

Dated at Rae Bareilly
The August, 1979

Sd/(SurajPal)
s/o Jagannath
r/o Garhi Mutwalli
PO. Munshiganj
Distt. Rae Bareilly

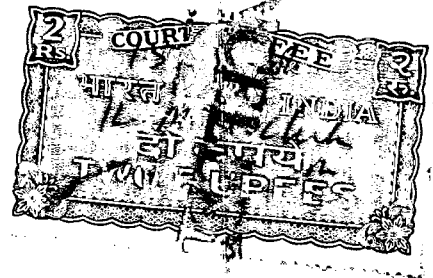
सुरजपाल

व अदालत श्रीमान
वादी (मुद्दे)

प्रतिवादी (मुद्दे)

का

वकालतनामा



25/1/57

25/1/57

208-55

15.2.57

वादी (मुद्दे)

बनाम

प्रतिवादी (मुद्दे)

प्रतिवादी (मुद्दे)

नं० मुकदमा

सन १६

पेशी की ता०

१६

ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री

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 जबाब देही व प्रश्नोंत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तस्दीक करें या मुकदमा उठावें या कोई रुपया जमा करें या हमारी विपक्षी (फरीकमानो) 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।

हस्ताक्षर

सुरमा

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

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नाम अध्यापक

नं० मुकदमा

नाम वकील

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1/10/1914

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

प्रार्थी (सुकरिंद) प्रार्थना-पत्र संख्या - - - - - सन १६

W.P. नं० - 445 - - - सन १६ १००० में

Surya Lal - - - - - प्रार्थी

प्रति
The Union of India - - - प्रत्यधी
The Divisional Superintendent
Northern Railway - -
Lucknow - - -

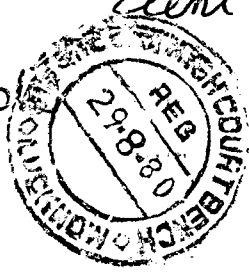
प्रत्यधी के नाम

चूंकि ऊपर लिखे प्रार्थी ने इस न्यायालय में उपर्युक्त मुद्दमें के सम्बन्ध में
- - - - - ले लिये प्रार्थना-पत्र दिया है, अतः आपको सूचित
करा जाता है कि आप दिनांक - 29 - - - मास 8 - - - सन 16 को या उससे
- - - - - न स्वीकार लिया जाय।

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विज्ञापित किसी और दिन होंगी।
क पर या उसके पहले स्वयं अथवा
द्वारा से कार्य करने के लिए कानूनन
सुनवाई और निर्णय आपको

3 75
The Divisional Superinten
N.R
Lucknow



एक-एक प्रतिलिपि उसी के साथ

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ज दिनांक - 27 - - मास 8

- - - - - सन १६ 16 को जारी दिया गया।

- - - - - के सहोदर

P. R. Orhang

10/10/14

डिप्टी रजिस्ट्रार

इलाहाबाद। लकनऊ

सूचना - इस न्यायालय को १९५२ की नियमावली के अध्याय १६, नियम २ के अन्तर्गत
प्राप्त तत्त्वाना मिल गया।

तत्त्वाना पाने वाले के हस्ताक्षर



496 ✓
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ही कार्यालय

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

प्रार्थना (सुनवाई) प्रार्थना-पत्र संख्या - - - - - सं. १६

W.P. सं. - 442 - - - - - सं. १६ दि. १८० ई० में
Suraj Lal - - - - - प्रार्थी

प्रति
Union of India - - - - - प्रत्यर्थी
The General Manager, Northern Railway
Railway House - - - - -
New Delhi - - - - -

प्रत्यर्थी के नाम

चूंकि ऊपर लिखे प्रार्थी ने इस न्यायालय में उपर्युक्त मुकदमें के सम्बन्ध में
- - - - - ले लिये प्रार्थना-पत्र दिया है, अतः आपको सूचित
किया जाता है कि आप दिनांक - - 28 - मास - 7 - - - - को या उसके
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 एजेंट या ऐसे व्यक्ति द्वारा, जो आपकी ओर से कार्य करने के लिए कानूनन
अधिकृत हो, उपस्थित न होंगे तो उक्त प्रार्थना पत्र को सुनवाई और निर्णय आपको
आपस्थिति में हो जायेंगे।

प्रार्थी - - - - - दि. १८० गण प्रार्थना-पत्र को एक-एक प्रतिलिपि उसी के साथ

संज्ञा दिनांक - - 27 - - मास

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R. D. Singh

पट्टी रजिस्ट्रार

इलाहाबाद। लखनऊ

The General Manager

N. R

New Delhi

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नियम २ के अधीन

के हस्ताक्षर

नीचलिखित

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

प्रार्थना (सुनवाई) प्रार्थना-पत्र संख्या - - - - - सन १९८०

W.P. नं० - 445 - - - - - सन १९८० ई० में

Suraj Pal

प्रार्थी

प्रति
The Union of India
The Assistant Engineer,
Northern Railway,
Rae Bareilly

प्रत्यर्थी

प्रत्यर्थी के नाम

चूंकि ऊपर लिखे प्रार्थी ने इस न्यायालय में उपर्युक्त मुकदमें के सम्बन्ध में
ले लिये प्रार्थना-पत्र दिया है, अतः आपको सूचित
किया जाता है कि आप दिनांक - 29 - मास - 7 - सन 1980 को या उसके
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।

निर्दिष्ट 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 लिए कानूनन
अधिकृत हो, उपस्थित न होंगे तो उक्त प्रार्थना पत्र की सुनवाई और निर्णय आपकी
अपस्थिति में हो जायेंगे।

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

भरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक - 30 - मास 1980
को जारी किया गया।

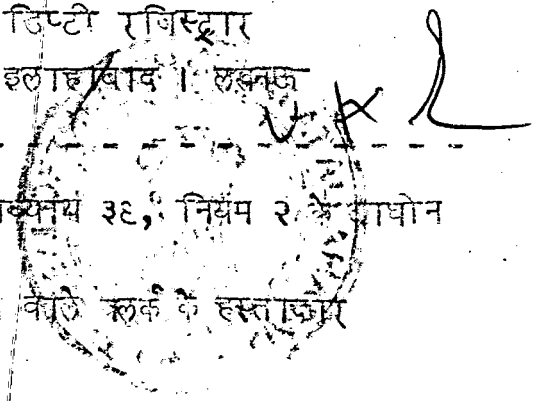
सन १९८०

के एडवोकेट

P. R. Bhatnagar

डिप्टी रजिस्ट्रार
इलाहाबाद

इस न्यायालय को १९५२ की नियमावली के अनुसूची ३६, नियम २ के अधीन
प्राप्त तत्वाना मिल गया।
तत्वाना पाने वाले क्लर्क के हस्ताक्षर



हाई कोर्ट इलाहाबाद
(अध्याय १२, नियम २ और ७)

693

प्रार्थना (सुनवाई) प्रार्थना-पत्र संख्या - - - - - संव ३६

W.P.

443

संव ३६ १९८० ई० में

Suraj Lal

प्रार्थी

प्रति

Union of India and others

प्रत्यर्थी

The Union of India through the
Secretary, Ministry of Railway

New Delhi

प्रत्यर्थी के नाम

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

ले लिये प्रार्थना-पत्र दिया है, अतः आपको सूचित

किया जाता है कि आप दिनांक - - - 27 - - मास - - - ६ - - संव ३६ को या उसके

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।

निर्दिष्ट हो कि यदि आप ऊपर लिखे दिनांक पर या उसके पहले स्वयं अथवा किसी एजेंट या ऐसे व्यक्ति द्वारा, जो आपकी ओर से कार्य करने के लिए कानूनन अधिकृत हो, उपस्थित न होंगे तो उक्त प्रार्थना पत्र को सुनवाई और निर्णय आपकी अभावावस्थिति में हो जायेंगे।

प्रार्थना पत्र और प्रार्थी द्वारा दिए गए शपथ-पत्र को एक-एक प्रतिलिपि उसी के साथ

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दिनांक - - - 27 - - मास

The Union of India

New Delhi

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टी रजिस्ट्रार

इलाहाबाद। सुनवाई

य ३६, नियम २ के अधीन

तत्त्वज्ञान पाने वाले क्लर्क के हस्ताक्षर

and its annexure and in a position to reply the same.

3. That in reply to the contents of para 1 of the writ petition hereinafter called application it is submitted that the applicant ~~Shitaj~~ Pal is working as Khalasi under IOW/Rae Bareli and belongs to the back word community as entried under the constitution.

4. That in reply to the contents of para 2 of the application it is submitted that the applicant was initially engaged as casual labour value man w.e.f. 30.11.1958 for 6 months @ 1/25 per day and was allowed CPC Scale w.e.f. 30.4.1959 @ 30/- per month and other allowances as permissible under the relevant rules but not 11th Dec. 1959 as alleged in the instant petition .

Further the applicant was discharged w.e.f. 9.11.1962 as per office record but not on 2nd Nov. 1962 as alleged in the instant petition.

5. That the contents of para 3 of the petition are admitted with a submission that the applicant

10/2/62

21/11/62
AEN-2152

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was put back to duty on from 17.1.1970 as per DPO Lucknow letter No. 239/E/IID RBL-Badloo dated 10.10.69.

6. That the contents of para 4 of the application are admitted.

7. That in reply to the contents of para 5 of the application it is submitted that the applicant was put back to duty as per courts orders compliance with 3 years back wages as permissible under the railway rules.

8. That in reply to the contents of para 6 of the petition it is submitted that the applicant was paid the arrears from 17.1.1967 to 17.1.1970 as per our office record in accordance with the Railway Rules.

9. That the contents of para 7 of the application are not admitted and are denied as no letter in the form of representation is available on the record of the answering respondent. More over the applicant had failed to adduce any evidence of the same being sent to the respondents. Further the assertion that the applicant ~~and~~ had personally meet the authorities

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AEM-2202

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(AU)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL BENCH
AT ALLAHABAD.

REPLY

ON BEHALF OF RESPONDENT NO. 1 to 4

IN REGISTRATION NO. 658 of 1987(T)

Arising out of Writ Petition No. 658 of 1989(T)

Suraj Pal - - - - - Applicant

Versus

Union of India & others - - - - - Respondents.

I, R.P. Mishra S/o Late Sri S.P. Mishra

aged about 45 years is presently posted as Assistant
Engineer Northern Railway, Rai Bareilly most respect-
fully submits as under:-

1. That I am the respondent No. 4 in the instant
petition filed under Article 226 of the Indian
Constitution Before the Hon'ble High Court at
Judicature Allahabad Lucknow Bench Lucknow and
is duly authorised on behalf of others respon-
dents to file the instant reply.

2. That I have gone through the petition filed
under article 226 of the Indian Constitution

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20/12/87
JEN-132

concerned is also denied as the applicant had received the payment arranged by the answering respondents with out protest or grudge.

Further the claim of the applicant had becoem time barred as the instant ^{with} ~~with~~ petition was filed on November 1979 where as the applicant had claimed the wages for the period 2.11.1962 to 16.1.1967.

10. That the contents of para 8 of the application are at all ⁱⁿ relevant for the decision of the present case and needs no reply.

11. That the contents of para 9 of the application are not admitted in the form they stand. In reply there to it is submitted that both the suits were filed under different numbers and the issues framed were also not common hence the question of same charactor does not came in between.

12. That the contents of para 10 and 11 of the application are not at all relevant for the decision of the instant application hence requires no comments.

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13. That the contents of para 12 of the application are self explanatory as the applicant had himself mentioned that he had moved the representation only after January 1979 and had filed a notice dated August 1979 alleged to be sent through his counsel but the same is not available on the record of the answering respondents. More over the applicant had failed to adduce any evidence of the same being same to the respondents.

Further it is emphatically submitted that that claim of the applicant is highly time barred and the same can not be entertained by this Hon'ble Court and is liable to be rejected with cost.

14. That the contents of para 13, 14 and 15 of the instant petition are vague and misconceived and requires no comments.

More over the same are not at all relevant for the decision of the instant petition.

15. That in reply to the contents of para 16 of the instant petition the contents of para 13 of the counter are retreated.

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AEN-2032

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16. That in reply to the contents of para 17 of and 18 of the application it is submitted that the applicant cannot be granted any advantage of his ignorance of had as the instant petition is highly time barred as deserve to be dismissed with cost to the respondents.

17. That in reply to the contents of para 19 of the application it is submitted that the applicant was taken back on duty as per court order on the declaratory suit filed by the applicant before the learned Munsif Rae Bareli having suit no. 52 of 1963 seeking the termination order dated 9.10.1962 passed by the Assistant Engineer Northern Railway Rae Bareli as null and void and the same was up held at the appellate stage. But the applicant had failed to move any representation or suit for arrears and as such the present claim is not only time barred but the instat writ petition is not maintainable and is liable to be dismissed with special cost to the respondents.

18. That the contents of para 20, 21 and 22 of the application are vague and misconceived hence

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are emphatically denied. Further the contents are based on ill advised obtained by the applicant and can not be helpfull in manner to the applicant and as the present application is highly time barred. More over the applicant had failed to vail the department remedy available to him under stationary rules.

Hence the present application is liable to be rejected with special cost to the respondents.

19. That the contents of para 23 of the application are vague and misconceived and are emphatically denied. It is emphatically submitted that there is no voilation of Article 14 of and 16 of the Constitution in any manner nor the legal right of the applicant had been in firnged by the answering respondents.

20. That none of the grounds taken by the applicant in the instant writ petition are tenable

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under the law and the present application is devoid of any merits. The applicant had failed to establish the cogent grounds for the interference of the Hon'ble Court as the instant petition is not only highly time barred but is also against the general norms to avail the department remedy first.

In the light of the above submission the Writ petition filed by the applicant is not at all maintainable and liable to be dismissed as time barred with special cost to the respondents.

for adv

V E R I F I C A T I O N

I the deponent named above named do hereby verify that the contents of para 1 to 12 of this Counter are true to my personal knowledge . The contents of para 3 to 18 are based on the perusal of record and the contents of paras 20 of the application is based on the legal advice which I believe to be true . Nothing material has been concealed in the counter. So help me God.

Verified at..Rae Bareilly

Dated 12.7.89

31/7/89
Deponent
सत्यमेव जयते