

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

INDEX SHEET

CAUSE TITLE T.A. 636 OF 1987 (W.P. 2228/80)

NAME OF THE PARTIES.....

..... C. P. Chaudhary Applicant
 counsel - Sri B. C. Saksena, Advoc.

Versus

..... Union of India & ors Respondent

Part A, B & C counsel Sri B. K. Shukla

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CERTIFICATE

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

Dated 6-4-2011

Counter Signed.....

Section Officer / In charge

Vam
Signature of the
Dealing Assistant

ORDER SHEET

REGISTRATION No. 606 of 1987 (1) ①

APPELLANT
APPLICANT

VERSUS

DEFENDANT
RESPONDENT

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
① 11/11/89	<p>Opposite to El 3 of C.R.O. dated 2-11-89 of 31/10/89 of Part 2 of El 1 of H.T.O. T.A.W.</p> <p style="text-align: right;">- 145</p> <p><u>Hon'ble M. D. K. Agarwal, J.M.</u></p>	<p>The order Adm'dt 11-7-89 w/ 31/10/89 - 81</p> <p>OK</p> <p>This file has been recd. from C.A.T. Adm'd on 11-7-89</p>
② 11/11/89	<p>None appears for the parties. Pleadings are complete for hearing. List the case on 17-1-90 for hearing.</p>	<p>Case is admitted. C.A.R.A. filed.</p> <p>Submitter Date was fixed from C.A.T. Adm'd on 14/9/89. OK attached.</p>
③ 17-1-90	<p><u>(SNS)</u></p> <p>Hon'</p> <p>No sitting of D.B. Adm'd to 9-3-90</p>	<p>Submitted for order 2-11-89</p> <p>Supplementary note filed but not served on the applicant.</p>
④ 9-3-90	<p>No sitting Adm'd to 1-5-90</p> <p><u>h</u></p> <p>Due to National Holiday declared by Govt. of India.</p>	<p>h B.O.C</p> <p>h S. F. O.</p>
5-7-90	<p>Adm'd to 5-7-90</p> <p><u>R</u></p>	<p>26/4</p>

(3)

(10)

90

Hon. Mr. M. V. Desaikar A.M.

Hon. Mr. D. K. Agarwal T.M.

Due to resolution of Bar Association
Case is adj. to 4.12.90

(11)

1.2.90

No sitting adj. to ~~1.2.90~~ 1.2.90.

R

R

D.C

(12)

1.2.91

No sitting adj. to 12.2.91.

R

(13)

12.2.91

No sitting adj. to 22.3.91.

R

(14)

22.3.91

No sitting adj. to 1.4.91

R

OR

No Supply
filed

S.P.H

27/3

1.4.91

Ld. Counsel 2

Respondent is prior
applicant and not
turn up - he did not
file supp. Rejoinder

Put up on 23.5.91

Supp. respondent file

19-11-92

(5)

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

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

Shri B. K. Shukla - Id. Counsel for
the respondents states that the
relief prayed for by the applicant
has already been granted and
this application has become infructuous
and the same may be dismissed.
The applicant has now retired and
his address is also not available.
He is not present. As such the
Statement of the Id. Counsel has
got to be accepted. Accordingly,
the application is dismissed
having ~~been~~ ^{become} infructuous.

W

(u/g)

A. M.

V. C.

Revd
Copied on 5/11/93

Revd
C. B. B. M.
A. M.
9/11/93

CIVIL

SIDE

CRIMINAL

GENERAL INDEX

(Chapter XLI, Rules 2, 9 and 15)

Nature and number of case

W.P. 2228-80

Name of parties

C.P. Chaudhuri v. Union of India & Ors

Date of institution

11-8-80

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
A 1	1	General Index	1	—	—	—		
A 2	2	Order Sheet	1	—	—	—		
A 3	3	Writs with affidavits Answers	40	11	102	—		
B 4	4	Power	1	2	5	—		
	5	Comd. 8580(w) 884 with R.F.	8.		7.00			
	6	Comd. 7560(w) 784 with C.P.	25-		7.00			
	7	Order Sheet	2.	—	—			
	8	Barred Copy.	1—	—	—			

I have this

day of

197 , examined

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

Munsarim.Clerk.

Date

6088

In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow
Writ Petition No. 2220 of 1980

C.P. Chaudhri

--Petitioner

versus

Union of India and another

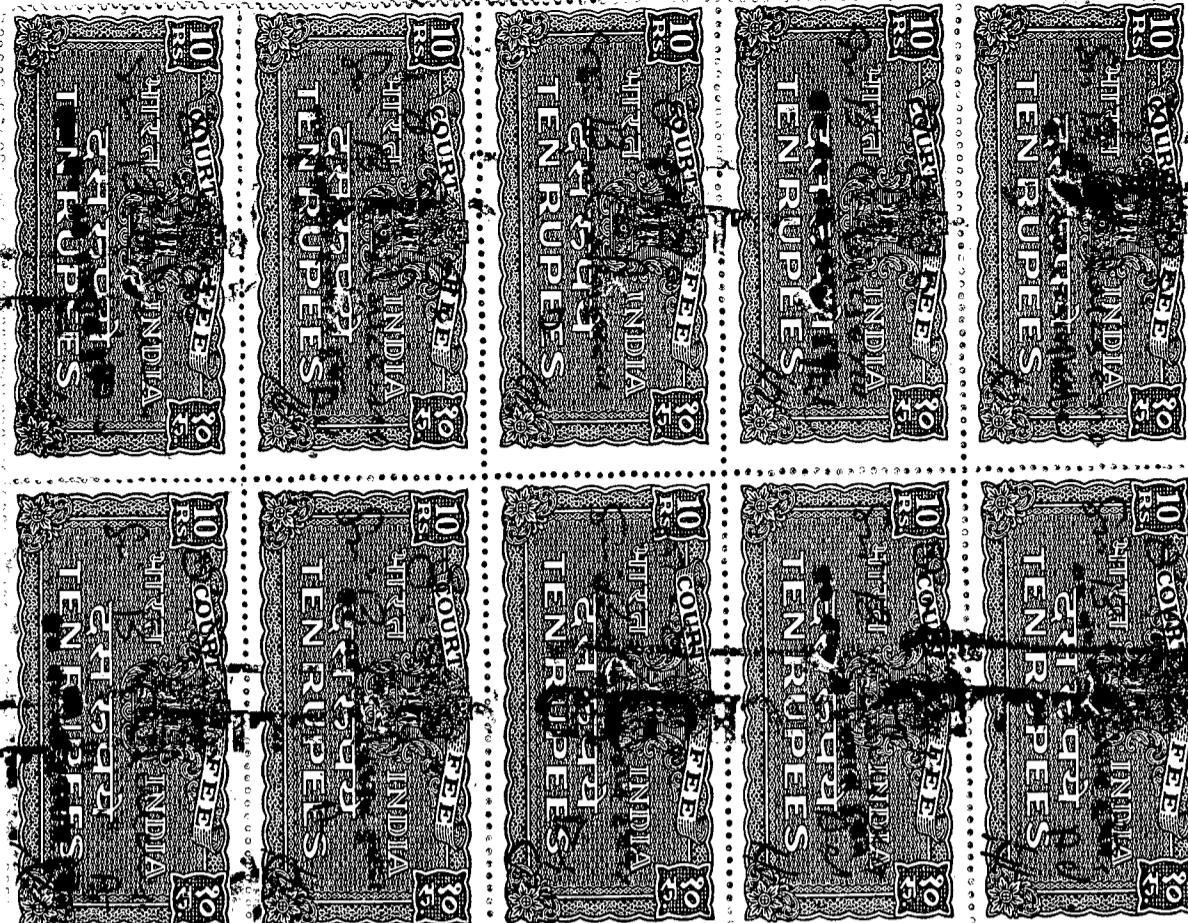
--Opp-parties

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B.C. Saksena

(B.C. Saksena)
Advocate



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

Petition under Article 226 of the Constitution of
India

Writ Petition No. 220 of 1980

C.P. Chaudhri, aged about 50 years, son of Sri Bhullar
at present working in the office of the Divisional
Superintendent (Engineering), N.E.Railway, Ashok
Marg, Lucknow

Petitioner

versus

1. The Union of India through the General Manager,
N.E.Railway, Gorakhpur

2. The Divisional Rail Manager (Personnel), N.E.Railway,
Ashok Marg, Lucknow

Opp-parties

This humble petition on behalf of the petitioner
above-named most respectfully showeth:-

C.P. Chaudhri

1. That the petitioner is at present officiating as Head Clerk in the office of the Divisional Rail Manager (Engineering), N.E.Railway, and is posted at Lucknow.
2. That the present writ petition is directed against an order contained in letter no. E/C.P./Chaudhri / Clerk/ Engg) dated 7.4.1980 issued by opposite-party no. 2 rejecting the petitioners claim for proforma fixation of pay in the grade of senior clerk as a consequence of an administrative error in reverting him. The necessary facts are detailed hereinbelow. A copy of the order dated 7.4.1980 which was served on the petitioner on or about 9.4.1980 is being annexed as Annexure no.1 to this writ petition.
3. That the petitioner who was working as a junior clerk scale Rs. 110-180 was promoted to officiate as senior clerk scale Rs. 130-300 with effect from 16.9.1965 by means of office order dated 27.9.1965 issued by the Divisional Engineer, N.E.Railway, Gonda. A true copy of the said order which bears endorsement no. D/283/4 dated 27.9.1965 is being annexed as Annexure no.2 to this writ petition. The petitioners pay was fixed at Rs. 168/- in scale Rs. 130-300 as a perusal of the said order would show. By the said order, three others, viz., S/Sri S.R.Rawat, I.B.Singh and Gyan Chandra, were also promoted. The names of junior clerks were indicated in their respective order of seniority.
4. That by means of office order bearing endorsement

P. Chaudhri

no. E/283/4 dated 17.1.1969 issued by the District Engineer, Gonda the petitioner was directed to be reverted to the post of junior clerk grade Rs. 110-180 with effect from 1.1.1969 on the ground that the sanction for the work-charged post against which the petitioner was working had expired. It is stated that the said order for reversion was passed ignoring the fact that the petitioner was senior to S/Sri I.B.Sinha, C.M.Pandey and B.M.Singh who, amongst others, were allowed to continue to officiate as Senior Clerks though they were junior to the petitioner in the cadre of Junior Clerks. A true copy of the office order dated 17.1.1969 is being annexed as Annexure no.3 to this petition. It is relevant to point out that since the petitioner had failed to qualify in the suitability test for the post of Senior Clerk held on 20.10.1965, he was directed to be reverted to the post of Junior Clerk by an order dated 10.11.1965. ~~He was, however, against promoted.~~ He was, however, again promoted as a Senior Clerk by office order dated 17.2.1966 and he continued on the said post ~~till~~ when the order for reversion dated 17.1.1969 was passed.

5. That aggrieved by the said order of reversion the petitioner preferred a representation dated 23.1.1969 to the District Engineer, Gonda followed by two reminders but to no avail.

6. That the petitioner preferred another representation on 28.7.1970 wherein he pointed out that the reversion had been ordered despite the fact that persons junior to him were allowed to continue even though

they were ~~junior~~ working against the work-charged posts and as such, their promotion was purely fortuitous. The petitioner invoked the provisions of para ~~30~~ 320(a) of the Indian Railway Establishment Manual in support of his plea that the reversion was illegal. A true copy of the said representation is being annexed as Annexure no.4 to this petition.

7. That by an office order bearing no. E/II/283/5/ Minist. dated 26.2.1971 the petitioner was promoted to officiate as Senior Clerk in scale Rs. 130-300 and his pay was fixed at Rs. 184/-.

8. That since the petitioners grievance with regard to loss caused to him by the illegal order of reversion and consequent loss of seniority and fixation of pay in the grade of Senior ~~Exx~~ Clerk had not been redressed, the petitioner preferred another representation on 2.12.1971 to opposite-party no.1 through proper channel. With a view to bring on record the facts stated and grounds raised in the said representation, a true copy of the same is being annexed as Annexure no. 5 to this petition. A perusal of the said representation would show that the petitioner relied on the directions contained in the Railway Boards letter bearing no. E(NG)65/ PMI/92 dated 15/17-9-1964. A true copy of the said Railway Boards' letter is being annexed as Annexure no.6 to this petition.

C P Choudhury

9. That by corrigendum issued under the signature of the Divisional Superintendent (P), N.E.Railway,

Lucknow bearing no. E/210/1/Engg/Lucknow/General dated 16/21.11.1972 the petitioner's ~~name~~ was directed to be inserted at serial no. 56 A below the name of Sri S.R.Rawat serial no. 56 and above Sri I.V.Sinha item no. 57 in the seniority list of senior clerks (G) of Engineering Department as on 1.5.1969 circulated under DS(P)/IJN's letter no. E/255/1 dated 14.7.1969. A true copy of the said corrigendum is being annexed as Annexure no.7 to this petition. With the issuance of the said corrigendum the petitioner's grievance in regard to fixation of seniority above Sri I.V.Sinha and others who were junior to him had been remedied but his claim for correct fixation of pay at the stage where it ought to be ignoring the period of his reversion had not been redressed.

10. That the petitioner's representation for proforma fixation of pay in the grade of Senior Clerks in terms of the Railway Boards letter dated 15.9.1964 was favourably recommended by the Divisional Superintendent (P), N.E.Railway, Lucknow by his letter bearing no. E/210/1/Engg/LK0/Genl dated 10.12.1971 a true copy of which is being annexed as Annexure no.8 to this petition. A perusal of the said letter would show that the divisional authorities has accepted that the petitioner due to administrative error had been wrongly reverted and was entitled to fixation of pay in terms of the Railway Board's letter dated 15.9.1964.

11. That the petitioner some time in June 1974 was

served with a copy of letter issued from the office of General Manager (P), Gorakhpur bearing no. E/205/5/Minist/~~IK~~ dated 31.5.1974 . A true copy of the said letter is being annexed as Annexure no.9 to this petition.

12. That aggrieved by the view taken in the said letter the petitioner preferred a representation on 6.9.1974 to opposite-party no. 1. With a view to bring on record the contents of the said representation, a true copy of the same is being annexed as Annexure no. 10 to this petition. A perusal of the said representation would show that the petitioner therein inter alia pointed out that there is a difference between the case of stepping up of pay of the senior person equal to the pay of the junior person if the anomaly has arisen as a result of fixation of pay under rule 2018-B , R-II and that of proforma fixation of pay of the senior person where his claim has been on account of administrative error left ⁱⁿ over. It was also pointed out that the case of stepping up arising out of operation or rule 2018-B. R-II clarification has been laid down in Railway Boards letter no. PC-60/PF-1 dated 19.3.1966 whereas for the purposes of proforma fixation due to administrative error ~~there~~ the provision is laid down in Boards letter no. E(NG)65/PMI/92 dated 15/17-9-1964. The said plea is herein again reiterated. A true copy of the Railway Boards letter dated 19.3.1966 is being annexed as Annexure no.11 to this writ petition whereas

CP Chaudhary

a true copy of the Railway Boards letter dated 15/17-9-1964 has been annexed as Annexure no. 6.

13. That the petitioners aforesaid representation dated 6.9.1974 evoked no response despite repeated reminders. The petitioner later submitted another representation on 10.8.1979 addressed to opposite-party no.1. In the said representation identical facts and pleas as raised in the earlier representation dated 6.9.1974 had been advanced. To avoid adding to the bulk of the petition, copy of the said representation is not being filed.

14. That the said representation dated 10.8.1979 ultimately evoked response and by letter bearing no. E/ C.P/Chaudhari/Clark dated 7.4.1980 issued for and on behalf of opposite-party no.2 it was cryptically stated that on a consideration of the appeal dated 10.8.1979 it has been found that the earlier decision contained in opposite-party no.2's office letter dated 1.5.1974 needs no modification. A copy of the letter dated 7.4.1980 which was served on the petition on 9.4.1980 has been annexed as Annexure no.1 to this petition. It may be pointed out that opposite-party no.2's letter dated 1.5.1974 was communicated by means of annexure 9 to the writ petition.

15. That in the circumstances detailed above and having no other equally effective and speedy alternative remedy, the petitioner seeks to prefer this petition and sets forth the following amongst others,

C. Chaudhari

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Grounds:

(a) Because in view of the circumstance that the petitioners reversion by office order dated 17.1.1969 was considered to have been issued because of administrative error and the said administrative error having been rectified in so far as the question of seniority is concerned, the denial to apply the provisions of the Railway Boards letter dated 15/17-9-1964 is wholly baseless and untenable.

(b) Because opposite-party no.1 has failed to appreciate the fact that in the circumstances of the case it the provision of the Railway Boards letter dated 15.9.1964 that would apply and not the provision of rule 2018-B R-II and of the Railway Boards letter dated 19.3.1966.

(c) Because admittedly Sarvasari I.V.Sinha, C.M. Pandey and B.M. Singh who were allowed to continue to officiate as senior clerks were working against work-charged post and as such their promotion being fortuitous in terms of the provisions of para 320(a) of the Indian Railway Establishment Manual they would not gain any seniority by reason of the petitioners reversion.

the representation.

Wherefore, it is respectfully prayed that this Hon'ble Court be pleased:

- (i) to issue a writ of certiorari or a writ, order or direction in the nature of certiorari to quash the order dated 7.4.1980 contained in annexure 1 to the writ petition.
- (ii) to issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the opposite-parties to give to the petitioner the benefit of proforma fixation of pay in terms of the provisions of the Railway Boards letter dated 14.9.1964 and to pay him the arrears of salary and allowances which accrue due accordingly.
- (iii) to issue such other writ, direction or order, including an order as to costs which in the circumstances of the case this Hon'ble Court may deem just and proper.

Dated Lucknow

3.7.1980

8.8.

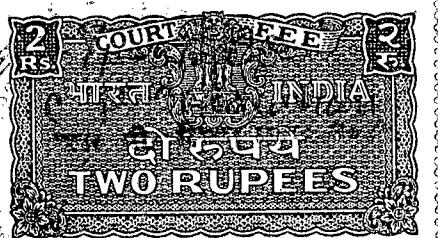
B.C. Saksena
(B.C. Saksena)
Advocate
Counsel for the petitioner

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17

A3
A11

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



Affidavit

in

Petition under Article 226 of the Constitution
of India

Writ Petition No. of 1980

C.P. chaudhri

--Petitioner

vs.

Union of India and another

--Opp-parties

I, C.P. Chaudhri, aged about 50 years, son of Sri Bhullar at present working in the office of the Divisional Superintendent (Engineering), N.E. Railway, Ashok Marg, Lucknow, do hereby solemnly take oath and affirm as under:-

1. That the deponent is the petitioner in the above-noted writ petition and is fully acquainted with the facts of the case.
2. That contents of paras 1 to 14 of the accompanying petition are true to my own knowledge.
3. That annexures 2 to 11 have been compared and are certified to be true copies.

Dated Lucknow


Deponent

4.7.1980

11
18
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-2-

I, the deponent named above, do hereby verify that contents of paras 1 to 3 of this affidavit are true to my own knowledge. No part of it is false and nothing material has been concealed; so help me God.

Dated Lucknow

P. Chaudhuri
Deponent

13.7.1980

I identify the deponent who has signed in my presence.

B.C. Saksena
(Clerk to Sri B.C. Saksena, Advocate)

Solemnly affirmed before me on 4.7.80
at 4.10 a.m/p.m by *C P. Chaudhuri*
the deponent who is identified by Sri
~~clerk to sri B.C. Saksena~~
Advocate, High Court, Allahabad. I have satisfied myself
by examining the deponent that he understands the
contents of the affidavit which has been read out and
explained by me.

1053-cb
4-7-80

12

3 (19)
A B

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

Writ Petition No. of 1980

C.P. Chaudhri

-Petitioner

versus

Union of India and another

--Opp-parties

Annexure no.1



C.P. Chaudhri

इस दिन अपरोक्ष राहि कोई जाति नुस्खा या इन दसावावाप स्थिर है
स्त्री वी चौधरी 13
प्रतिपादा आज इ-उत्तमाला अंगुली पाई क

०२/४

२०

३/४

पूर्वी तर रेलवे

कार्यालय
मैडल रेल प्रबन्धक (का०)

लखनऊ

दिन ७-४-८०

स० ई/सी धी / चौधरी/लिपिक/
इन्जी०

श्री स० ई० धी० चौधरी,
प्रबन्धक वत्तमान प्रधान लिपिक,
प्र० म० ई कार्यालय, लखनऊ

विषय: आपका प्रीमर्मा फिलेसन

संदर्भ: आपकी अपील दिनांक १०-८-७० महा

प्रबन्धक, गोखपुर को सम्बोधित ।

====

आपके उपरोक्त अपील के संदर्भ में मैडल महाप्रबन्धक (का०)
गोखपुर ने सूचित किया है कि आपकी अपील पर विस्तार पूर्वक विचार
किया गया जिसका निर्णय पूर्वी ही हो। जिसकी सूचना आपको
पहले भी महाप्रबन्धक (का०) गोखपुर के निर्देशानुसार इस
कार्यालय स० ई० /२१०/१/इंजी/लखनऊ दिनांक १-५-७४
इवारा दी जा चुकी है। अब पूर्व निर्णय में परिवर्तन करने का
कोई बोचिस्य नहीं है।

कृते मैडल रेल प्रबन्धक (का०)
लखनऊ

Chowdhury

====

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3
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In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow

Writ Petition No. of 1980
C.P. Chaudhri --Petitioner
versus
Union of India and another --Opp-parties

Annexure no.2

District Engineers Office,
Gonda
Dated 23/27.9.1965

Office order

The following junior Clerks (110-180) are temporarily promoted to officiate as Sr. Clerks in scale 130-300 with effect from 16.9.1965 against work charged posts of (illegible) quarry during S.E. 20.2xx 30.9.1965.

The promotion is provisional subject to their passing the prescribed examination. This will not confer any right for seniority and retention in the post.

1. Sri S.R.Raut T.I. under PWI/BNY
2. Sri C.P. Chaudhri Jr. Clerk AEN's office/GD
3. Sri I.V.Sinha Store Clerk, under PWI/VI/GKP
~~4. Gangaram~~
4. Gayan Chandra Jr. Clerk DEN's office/ GD

The pay of Shri C.P.Chaudhri is fixed at Rs. 168/- per month in scale 130-300, the pay of Sri Gyan Chandra is fixed at Rs. 160/-, the pay of Shri S.R.Raut is fixed at Rs. 176/- in scale 130-300 and the pay of Shri I.V.Sinha is fixed at Rs. 155/-.

DEN/GD.

No. E/283/4 dated 27.9.1965

(23)

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A/B

-2-

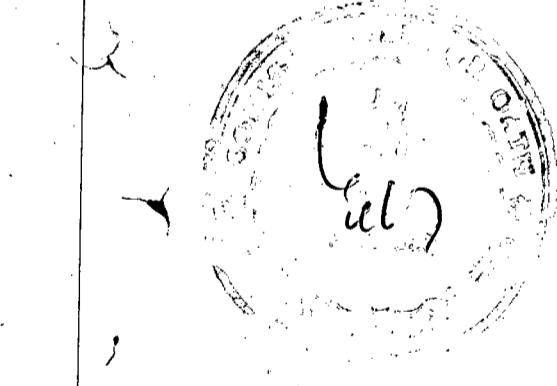
Copy forwarded for information and necessary
action to:-

1. CE/P/GKP
2. FA& CAO/GKP
3. C.C.(G) Office
4. Cadre Clerk
5. Cardex clerk
6. BOS Clerk
7. Bill Clerk office and GKP/GD
8. 4 spare copies for personal files
9. Employees concerned.

Sd. Radha Kant

For DEN/GD

TRUE COPY



P. Chowdhury

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

Writ Petition No. of 1980

C.P. Chaudhri

--Petitioner

versus

Union of India and others

--Opp-parties

Annexure no.3

N. E. Railway

Office Order

Consequent on expiry of the work charged posts of Senior Clerks (130-300) the under-noted Jr. most Sr. Clerks (G) are reverted to their substantive post of Jr. Clerk (110-180) from the date as mentioned against each and allowed to continue in DEN's office Gonda against existing posts of Jr. Clerks.

1. Sri C.P.Chowdhary from 1.1.1969
 2. Sri V.K. Srivastava from 1.1.1969

Their pay is fixed at Rs.175/- and Rs.151 /- P.M. respectively.

District Engineer,
Gonda

N.P. E/283/4 Dated 17.1.1969

Copy for information and necessary action to:

1. FA& CAO/ GKP
2. C.D(G) DEN's office/Gonda
3. Cardex Clerk
4. Cadre Clerk
5. Bill Clerk
6. Sanction Clerk
7. Persons concerned
8. Spare copies for R.C. F

Sd. Illegible

17.1.1969

17.1.1969
District Engineer,
Gonda

True copy

17
25
3
AS

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

Writ Petition No. of 1980

C.P. Chaudhri

--Petitioner

versus

Union of India and another

--Opp-parties

Annexure no.4

To

The Divisional Superintendent (Engg)
N.E.Railway,
Lucknow

Subject:- Determination of seniority on promotion
to non-selection post

Respected Sir,

With due respect and humble submission I beg
to lay down the following few facts for your kind
consideration and favourable decision.

1. That I appeared in the Seniority cum-suitability
test held in the year 1965 but as ill luck would have it,
I could not come out successful. I again appeared in the
test on 1-5-1968 and passed the same.
2. That I was promoted as Sr. Clerk w.e.f. 17.2.1966
and continued to officiate till 1.1.1969 when I was
reverted under Ex. DEN/GD's order no. E/283/4 dated
17.1.1969.
3. That my reversion despite the fact my juniors
were allowed to continue to officiate against some work
charged posts, is against the rules on the subject as
well as against the common law.

C.P. Chaudhri

(26)

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4. In this regard I am inviting your attention to para 320(a) of Establishment Manual according to which a junior railway servant qualifying in an earlier test may claim the seniority above his seniors only if he has been promoted against a vacancy which is non-fortuitous. It will not be out of place to point out that the promotion of my juniors is against the vacancies which are purely fortuitous. The term "Fortuitous" has been defined in the chambers Twentieth Century Dictionary as happening by chance, that is which is not a regular feature."

5. In this way your honour will see that work-charged posts are not the regular posts but they are inter-related with the works i-e. they happen per chance and they cannot be termed as non-fortuitous.

6. In the end I fervently request your honour to please consider my case and do justice.

Thanking you, Sir,

Yours faithfully,
Sd. C.P. Chaudhri
28.7.1970
Jr. Clerk
DS(Engg)Offic/IJN

True copy

C.P. Chaudhri

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In the Hon'ble High Court of Judicature at Allahabad:
Lucknow Bench : Lucknow.

Writ Petition No. _____ of 1980
C.P.Chaudhari.....Petitioner.
Versus
Union of India and another.....Opposite-Parties.

Annexure No. 5.

To

The General Manager,
N. E. Railway,
Gorakhpur.

(Through Proper Channel).

Sir,

Subject:-Mitigation of hardships arisen as a
result of administrative errors -
proforma fixation of pay.

Ref.: -G.M.(P) G.K.P's letter no. _____
dated _____.

Most respectfully and humbly I beg to lay down
the following few facts for your honour's kind consi-
deration and favourable orders:-

(1) That I was appointed as a Junior Clerk with
effect from 13.4.49 and continued to hold that post
till 18.2.66 when I was promoted as Sr.Clerk in scale
Rs.130-300.

(2) That I passed the seniority cum suitability
test on 1.6.68 whereas my juniors Sarv sri I.V.Singha
G.M.Pandey and B.C. Singh passed the said test on
20.10.65. But all the above-named three juniors could
not be ^{promoted} appointed as Sr.Clerk ^{against} ~~that~~ a non fortuitous

C.P. Chaudhary

vacancy till 1.5.1968, the date when I passed the test. Therefore, in terms of Rule 320 Estt. Manual they cannot be given any ~~promotion~~ ^{protection} for seniority.

(3) In this way your honour will see that on 1.5.68 the date of my passing the seniority ~~and even~~ suitability test, all my juniors along with ~~some more~~ officiating against fortuitous vacancies and till that date none of us had ever officiated against non-fortuitous vacancies. Thereby my juniors will also ~~even~~ ^(sic) in the officiating post of Sr.Clerk rank junior to me despite their having passed the suitability test at an earlier chance and if my reversion is caused on any ground the junior most person should suffer reversion.

(4) That on ³¹ 23.12.68 the sanction of a work-charged post expired and consequently the junior most person ~~B.M.~~ Shri D.N. Singh should have been reverted but as against this rightful course I was reverted on a false assumption that I had passed the suitability test at a latter ~~x~~ date & I should rank junior.

(5) That repeatedly I appealed against this wrongfu ^{DS} reversion when at last the ~~SB~~ / IJN considered my case and ordered for my immediate promotion even at the cost of reversion of the junior-most person.

(6) That in compliance with the orders of D.S. I have been promoted with immediate effect as Sr.Clerk but the proforma fixation of my pay admissible under Rly. Board's letter No. 5 (--) 65/ -- / -- dated 15/ -- 15/17.9.64 had not been allowed to me and it has been stressed upon by the Railway Administration that my case does not ~~fully~~ fall within the ambit of Rule 2010-BR ~~(sic)~~ - II.

C. P. Choudhury

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(7) That I may please be allowed to point out the difference between a case of stepping up of pay of the senior person equal to the pay of the junior person if the anomaly has arisen on a result of fixation of pay under Rule 2018-BR-II (sic) and that of proforma fixation of pay of the senior person ~~where~~ where his claim has been on account of Administrative error, left over. In the case of stepping up arising out of operation of Rule 2018-BR-II ~~Nil~~ is admissible under Board's letter No. FC-60/FP/1 dated 19.3.66, it is not essential that the senior person should have been promoted earlier and the junior person should have been promoted at a later date, even then the senior person should have been getting a lower rate of pay, in that case the pay of the senior person may be stepped up equal to the pay of the junior, whereas in the case of proforma fixation arising out of hardships to the senior employee where his claim has been jeopardised out of administrative error, the pay of the senior employee is fixed proforma as ~~against~~ against stepping up at a stage which would have been arrived at if he would have been promoted at the correct date.

In this way it will be seen that stepping up under rule 2018-BR-II as admissible under Board's letter No. FC-60/FP/1 dated 19.3.66 and proforma fixation vide Board's letter No. E(NG)65/PNI/92 dated 15/17.9.64 are distinctly two different things and can't be termed interchangeable. ✓

P. Chaudhuri I have been persistently claiming for my proforma fixation of pay as my reversion with effect from 1.1.1969 was entirely wrong caused by Administrative error whereas the Railway Administration is dealing

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with my case as a case of stepping up under Rule
2018-B-II.

This fact has already been decided by the DS/LJN that my reversion was wrongful on account of administrative error. The Administration has alleged that the pay of juniors/~~is~~ higher than that of mine on account of their (junior's) accelerated promotion but I am not claiming for fixing up my pay equal to that of my juniors but I am claiming to fix up my pay at the stage which I would have drawn but for wrongful reversion on account of Admin. Administrative error.

In the above circumstances I request your honour to order proforma fixation of my pay at the stage which I would have drawn but for my wrong reversion in terms of E(Ne) 65/Pm/92 dated 15/17.9.64.

Thanking you Sir,

Yours faithfully,

Sd/- C.P.Chaudhari

2.12.71

(C.P.Chaudhari)

Sr. Clerk

...Office/LJN.

Dated: 2/11/71:

Copy in advance forwarded to:-

1. The General Manager/N.R.Rly./Gorakhpur.
2. The Chief Personnel Officer/N.E.Rly./Gorakhpur.
3. The Divisional Supdt./N.E.Rly./Lucknow Jn.
4. The Divisional Personnel Officer/N.E.Rly./Lucknow Jn.
5. The Divisional Secretary/____/Lucknow Jn.

Sd/- C.P.Chaudhari

2.12.71

(C.P.Chaudhari)

Sr.Clerk

____Office/LJN.

True Copy

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

--
Writ Petition No. of 1980

C.P. Chaudhri

--Petitioner

versus

Union of India and another

--Opp-parties

Annexure no. 6

Copy of Railway Board's letter no. E(NG) 63 PMI/92 dated 15/17th September, 1964 from Shri B.N. Soni, Asstt. Director, Estt. Addressed to General Manager, All Indian Railways and others

--
Sin: Hardship to no-Gazetted staff due to administrative errors- loss of seniority and pay.

It has been represented to the Board that sometimes due to administrative errors staff are overlooked for promotion to higher grades. This could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotions or some other reasons. Broadly, loss of seniority due to administrative errors can be of two types:-

(a) where a person has not been promoted at all because of administrative errors; and

(b) where a person has been promoted but not on the date from which he should have been promoted but for the administrative errors.

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C.P. Chaudhri

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2. The matter has been considered and the Board desire that each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative errors, should on promotion be assigned correct seniority vis-a-vis their juniors already promoted irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the stage which the employee would have reached if he was promoted at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable, as he did not actually shoulder the duties and responsibilities of the higher grade post.

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C.P. Chaudhuri

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

Writ Petition no. of 1980

C.P. Chaudhri

--Petitioner

versus

Union of India and others

--Opp-parties

N.E.RAILWAY

CORRIGENDUM

Please insert the name of Sri C.P. Chowdhry
Sr. Clerk at serial no. 56A below the name of Sri
S.R. Rawat serial no. 56 and above Sri I.V. Sinha
item no. 57 in the seniority list of Sr. Clerks(G)
of Engg. Department as on 1.5.1969 circulated under
DS(P) /LJN's letter no. E/255/1 dated 14.7.1969.

This issues with the approval of DS/LJN.

Sd. Illegible
Divisional Superintendent (P)/LJN

No. E/210/1/Engg/Lucknow/Genl. Dated 15/21.11.1972

Copy for information and necessary action to:-

1. AEN/E, West/LJN, SIP GD BRK GD West GKP
2. IOWs/PWIs, ASH BNZ JLD CPA MLN PIK LMP GD
SIP ML BRK BST BLP NNP BNY ANDN JAW? West GKP East GKP
3. CC/Engg
4. Sri C.P. Chowdhary, Sr. Clerk through PWI/SIP

Sd. Illegible

Divisional Superintendent

T.C.

C.P. Chowdhary

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

Writ Petition No. of 1980

C.P.Chowdhary

--Petitioner

versus

Union of India and others

--Opp-parties

Annexure no. 8

N.E.Railway

Office of the

Divisional Superintendent /LJN

No. E/210/1/Engg/LKO/Genl.

Dated December 10, 1971

The General Manager (P)
N.E.Railway,
Gorakhpur

Sub: Proforma fixation of pay of Sri C.P.Chowdhary
Sr. Clerk DS(Engg)/LJN

Ref: Your no. E/205/5/Minist/IX dated 31.11.1971

An application of Sri C.P.Chowdhary, Sr. Clerk
Engg. addressed to General Manager in connection
with the above is sent herewith for disposal.


Full facts of the case were already mentioned
in this office letter of even no. dated 30.4.71/3.5.71
which needs no further comments.

The decision in the case actually rests on the
basic issue as enumerated by the applicant in para 7
of his application. Since all the junior persons to

Sri Chowdhary were also working against fortuitous vacancies, they are not entitled to claim seniority over Sri Chowdhary despite their passing the suitability test earlier. Sri Chowdhary was therefore wrongly reverted w.e.f. 1.1.1969. Had Sri Chowdhary continued as Sr. Clerk which was not done due to administrative error, he would have received more pay than his juniors; hence he is entitled to proforma fixation of pay interms of Railway Boards no. E(NG)/63 PMI/92 dated 15.9.1964.

Divisional Supdt. (P)/LJN.

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P. Chowdhury

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

--

Writ Petition No. of 1980

C.P. Chowdhary

--Petitioner

versus

Union of India and another

--Opp-parties

Annexure no. 9

No. E/205/5/Minist/IX

From

Office of GM(P)/GKP

To

The DS(P)
Lucknow

Sub:- Proforma fixation of pay of Shri C.P. Chowdhary
Sr. Clerk of DS(Engg)/IJN

Ref: ~~Ex~~ DPO/IJN's D.O. No. E/210/1/Engg/LK0 dated
April 1973 and DS D0 letter of even no.
dated 12.2.1974.

After examination of the relevant record Dy CPO/
IA has decided that Sri C.P. Chowdhary failed in Deptt.
test on 1.5.1968, he started officiating as Sr. Clerk
against work charge post with effect from 17.2.1966
to 31.12.1968 when the currency of the post expired.


C.P. Chowdhary
The three persons junior to him had passed the
Dept test earlier than him were all promoted as Sr.
clerk against work charge post and not against any
fortuitous vacancies their inter se seniority was
not disturbed.

The promotion against the work charge post

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is treated as fortuitous and there is therefore no case for proforma fixation of pay in this case.

Sri Chaudhary may be informed accordingly.

Sd.

GM(P)/GKP

No. E/210/1/LKO dated 1.5.1974

Forwarded to the AEN SIP for information. He will intimate Sri C.P. Chaudhary Sr. Clerk accordingly.

No. E/34/1/SIP 976 dated 31.5.1974

Copy to Sri C.P. Chaudhary for information.

Sd.

AEN/ SIP.

T.C.

Ch. Chowdhury

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

Writ Petition No. of 1980

--Petitioner

C.P. Chaudhri

versus

Union of India and another

--Opp-parties

Annexure no.10

To

The General Manager,
N.E.Railway,
Gorakhpur

(Through proper channel)

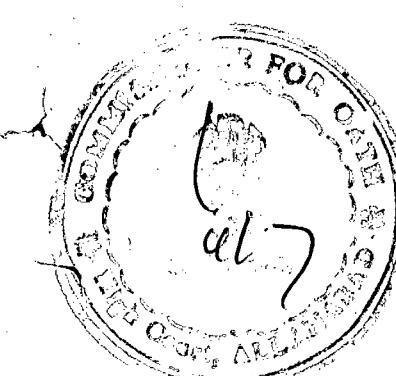
Sir,

Sub: Mitigation of hardships arisen as a result
of administrative errors-- proforma fixation
pay

Ref: G.M.(P)/Gorakhpur's letter no E/2050 Minist/IX
dated nil intimated under AEN/SIP's no.
E/210/1/LKO dated 1.5.1974

Most respectfully and humbly I beg to lay down
the following few facts for your honours kind con-
sideration and favourable orders:-

C.P. Chaudhri



1. That I was appointed as a Junior Clerk with effect from 13.4.1949 and continued to hold that post till 16.2.1966 when I was promoted as Sr. Clerk in scale Rs. 130-300.
2. That I passed the seniority cum suitability test on 1.5.1968 whereas my juniors S/shri I.V.Sinha, C.M.Pandey and S.N.Singh passed the said test on

20.10.1965. But all the above named three juniors could not be promoted as Senior Clerk against a non-fortuitous vacancy till 1.5.1968. The date when I passed test. Therefore, in terms of rule 320 Estt. Manual they cannot be given any protection for seniority.

3. In this way your honour will see that on 1.5.1968 the date of my passing the seniority cum suitability test all my juniors along with me were officiating against fortuitous vacancies and till that date none of us had ever officiated against non-fortuitous vacancies. Thereby my juniors will also even in the officiating post of Sr. Clerk rank junior to me despite their having passed the suitability test at an earlier chance and if any reversion is caused on any ground the juniormost person should suffer reversion.

4. That on 31.12.1968 the sanction of a work charged post expired and consequently the juniormost person Shri B.N.Singh should have been reverted but as against this rightful course I was reverted on a false assumption that as I had passed the suitability test at a later date so I should rank junior.

5. That repeatedly I appealed against this wrongful reversion when at last the DS/LJN considered my case and ordered for my immediate promotion even at the cost of reversion of the juniormost person.

6. That in compliance with the orders of D.S. I have been promoted with immediate effect as Sr. Clerk but the proforma fixation of pay admissible under

C.P. Chowdhury

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Railway Boards letter no. E(NG)63/PMI/92 dated 15/17-9-1964 has not been allowed to me and it has been stressed upon by the railway administration that my case does not fall within the ambit of rule 2018 BR- II.

7. That I may please be allowed to point out the difference between a case of stepping up of pay of the senior person equal to the pay of the junior persons if the anomaly has arisen as a result of fixation of pay under rule 2018 BR-II and that of proforma fixation of pay of the senior person where his claim has been, on account of administrative error, left over. In the case of stepping up arising out of operation of Rule 2018-BR-II as admissible under Boards letter no. PC-68/PF-1 dated 19.3.1966, it is most essential that the senior person should have been promoted earlier and the junior person should have been promoted at a later date even than the senior person should have been getting a lower or rate of pay, in that case the pay of the senior person may be stepped up equal to the pay of the junior whereas in the case of proforma fixation arising out of hardships to the senior employee where his claim has been jeopardised out of administrative error, the pay of the senior employee is fixed proforma as against stepping up at a stage which would have been arrived at if he would have been promoted at the correct date.

In this way it will be seen that stepping up under rule 2018-BR-II as admissible under Boards letter no. PC-60/PF/-1 dated 19.3.1966 and proforma

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fixation vide Boards letter no. E(NG)63/PMI/92 dated 15/17.9.1964 are distinctly two different things and cannot be termed interchangeable.

I have been persistently claiming for my proforma fixation of pay as my reversion with effect from 1.1.1969 was entirely wrong ly caused by administrative error whereas the Railway Administration is dealing with my case as a case of stepping up under rule 2018 BR- II.

This fact has already been decided by the DS/LJN that my reversion was wrongful on account of administrative error. The Administration has alleged that the pay of juniors is higher than that of mine on account of their (juniors) accelerated promotion but I am claiming to fix up my pat at the stage which I would have drawn but for wrongful reversion on account of administrative error.

In the end I beg to state that in terms of GM(P)/GKP's no. E/205/5?inst/IX dated nil I have been informed that all the four persons Shri C.P. Chaudhary (myself), Shri I.V. Sinha, C.M. Pandey, B.M. Singh were working against fortuitous (work-charged) vacancies, and the currency of one of the posts expired on 31.12.1968, therefore Shri Chaudhary (myself) the seniormost person was reverted, what a ridiculous decision has been taken that with the lapses of currency of one of the posts the seniormost person is asked to revert, so far as my mind goes, the juniormost person should have been reverted and not myself who is the seniormost person. If a judicious decision would have been taken by the railway administration



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I should have continued to officiate as senior clerk with effect from 17.2.1966 to date. Thus your honour will see that my reversion is entirely wrong-
ful and has been caused by an administrative error.

Therefore, I have been protractedly appealing for proforma fixation of pay but it has been turned down arbitrarily. I hope your learned honour will personally look into my case and award justice.

In the above-circumstances I request your honour to order proforma fixation of pay at the stage which I would have drawn but for my wrong reversion in terms of Railway Boards letter no. E(NG)65 PMI/92 dated 15/17.9.1964.

Thanking you, Sir,

Yours faithfully,

(C.P. Choudhary)
Sr. Clerk under PMI/STP
copy in advance forwarded to:-

1. The General Manager /N.E.Railway, Gorakhpur
2. The C.P.O.,/GKP, DS/LJN, DPO/LJN.

C.P. Chaudhari
6.9.1974

T.C.

C.P. Chaudhari

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In the Hon'ble High Court of Judicature at Allahabad:
Lucknow Bench : Lucknow.

Etix Petition No. _____ of 1980
C.P.Chaudhari.....Petitioner.
Versus
Union of India and another.....Opposite Parties.

Annexure No. 11.

(10)(i) By a strict application of the above rule, it may happen that a railway servant promoted or appointed to a higher post on or after 1st April, 1961 may draw a lower rate of pay in that post than another railway servant, junior to him in the lower grade and promoted or appointed subsequently to another identical post.

(ii) In order to remove this anomaly it has been decided that in such cases the pay of senior employee in the higher post should be stepped up to a figure equal to the pay as fixed for the junior employee in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior employee and will be subject to the following conditions; namely -


Ch. Chaudhari
(a) both junior and senior employees should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre.

(b) the scales of pay of the lower and higher posts in which they are entitled to draw pay

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should be identical; and

(c) the anomaly should be directly as a result of the application of rule 2018-B(F.R.22-C)-R.II. For example, if even in the lower post the junior employee draws from time to time a higher rate of pay than the senior by virtue of fixation of pay under the normal rules say due to grant of advance increment or due to accelerated promotion etc., the provisions contained in this letter will not be invoked to step up the pay of the senior employee.

(iii) The orders refixing the pay of the senior employees in accordance with the provisions of this letter shall be issued under rule 2023(F.R.27)-R.11. The next increment of the senior employee will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.

(iv) These order take effect from 2nd February, 1966. Cases of seniors drawing less pay than juniors in respect of promotions occurring on or after 1st April, 1961 may also be regulated under these orders but the actual benefit would be admissible from 2nd February, 1966.

(Authority:- Board's letter No. PC-60/PP/1, dated 19th March, 1966).

P. Chawdhuri

(11) The benefit of stepping up of pay under President's decision No.4 above, should also be allowed to such of the seniors as are confirmed in the

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higher grade before the junior is promoted to the higher grade. In such cases the conditions for the eligibility to the benefit of stepping up of pay viz., conditions (a) & (b) of para 2 of decision No.4 should be determined with reference to the date on which the senior employee was promoted to the higher post but the quantum of x stepping up of pay will depend on the pay admissible to the junior man on the date of his promotion to the higher post.

The above will take effect from 1st April, 1961 but the actual benefit would be admissible from 2nd February, 1966.

(Authority:-Board's letter No. PC-60/PP/1, dated 22nd July, 1966).

(12) Benefit of pay admissible in an intermediary higher post which would have been held by a railway servant but for his promotion to a still higher post:- The point whether after introduction of rule 2018-B(F-R-22-C)R-II a railway servant who while holding a post is appointed to officiate in a higher post, can be allowed protection of officiating pay of an intermediary post to which he would have been appointed in an officiating capacity but for his officiating appointment in the higher post, if such officiating pay of the intermediary post happens to be higher than the officiating pay admissible in the higher post has been considered and it has been decided that:-

Ch. Chaudhuri

(i) The pay that the railway servant would have got from time to time in the intermediary post but for his appointment in the higher post shall be protected by grant of personal

pay, from the date his next (eligible) junior is the relevant seniority (promotion) group is promoted to the intermediary post. The pay in the higher post will not be refixed under 2018-B-R-II with reference to the proforma pay in the intermediate grade.

(ii) In case any junior is promoted to the higher post after first getting promotion in the intermediary post, the senior directly promoted to the higher post, will be entitled to the benefit of stepping up, if due, in terms of President's decision No. 4 above.

The above orders take effect from 1st April, 1961, but arrears are payable from 5th January, 1967 only.

(Authority:- Board's letter No. PC-64/PP/5, dated 5th January, 1967 and 8th March, 1968).

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True Copy

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Dr. Chenchavi

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

ब अदालत श्रीमान

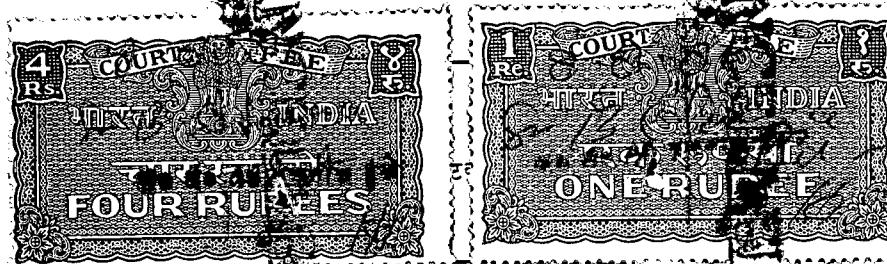
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वादी अरीलान्ट for Petitioner

का प्रतिवादी रेस्पान्डेंट

वकालतनामा



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C. P Chaudhri

(वादी मुद्रई)

बनाम

Union of India and others प्रतिवादी (मुद्राभलेह)

W. P. न० मुकद्दमा सन् १९४० पेशी को ता० १६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री

Shri B. C. Jaksena Advocate

एडवोकेट

महोदय

वकील

नाम	अदालत
न०	मुकद्दमा
नाम	फरिकैन

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या चौटावें या हमारी ओर से डिगरी जारी करावें और रुपया बसूल करें या मुलहनामा या इकबाल दाबा तथा अपील व निगरानी हपारी ओर से हमारे या अपने हस्ताक्षर से दाखिल फरें और दसदीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी या विपक्ष (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त [दस्तखति] रसीद से लेवें या पंच नियुक्त करें-वकील महोदय द्वारा की गई वह सब कार्यवाही हमको स्वंथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूँगा अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी। इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

Accepted
B. C. Jaksena

हस्ताक्षर

साक्षी [गवाह]

12/11/40

C. P. Chaudhri

साक्षी [गवाह]

दिनांक

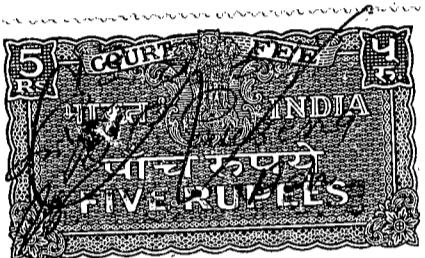
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In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow



Application for condonation of delay in
filing rejoinder-affidavit

C.M. Application No. 8580(w) of 1984

Writ Petition no. 2228 of 1980

12277
C.P. Chaudhari

-Petitioner-
applicant

versus
Union of India and others

-Opp-parties

for
This application on behalf of the applicant
above-named most respectfully sheweth:-

1. That copy of the counter-affidavit was served
on the applicants counsel who on its receipt
informed the petitioner about the same and the
necessity to file a rejoinder-affidavit.

2. That to meet the allegations contained in the
counter-affidavit was necessary to obtain certain
information which has taken some time ; hence
delay in filing the rejoinder-affidavit.

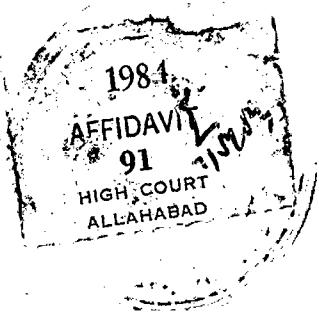
for

3. That the delay in filing the rejoinder-affidavit has not occasioned any adjournment of the hearing of the petition.

Wherefore, it is respectfully prayed that this Hon'ble Court be pleased to condone the delay in filing rejoinder-affidavit and direct that the same which accompanies this application be brought on record.

Dated Lucknow
13.8.1984

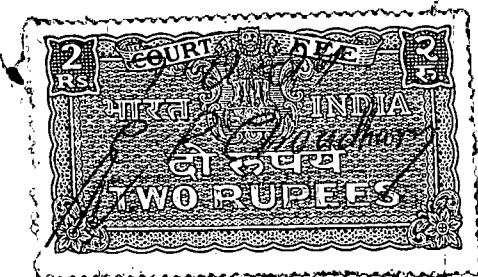
B.C.Saksena
(B.C. Saksena)
Advocate
Counsel for the applicant



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5,3

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



Rejoinder-affidavit in reply to the
counter-affidavit of opposite-parties

Writ Petition No. 2228 of 1980

C.P. Chaudhari

-Petitioner

versus

Union of India and others

--Opp-parti



I, C.P. Chaudhari, aged about 54 years, son
of Sri Bhullar at present working in the office of
Divisional Railway Manager (Engineering), N.E.
Railway, Ashok Marg, Lucknow, do hereby solemnly take
oath and affirm as under:-

C.P. Chaudhari

1. That I am petitioner in the above-noted writ petition and am fully acquainted with the facts of the case. I have perused the counter-affidavit filed on behalf of the opposite-parties and have understood the content of the same.
2. That the contents of paras 1 to 4 do not call for any reply.

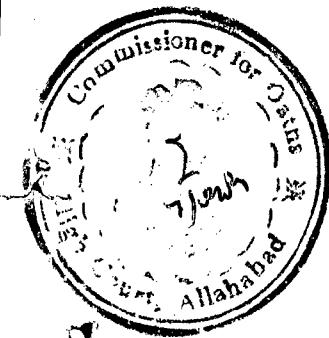
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3. That in reply to the contents of para 5 it is stated that the order dated 27.9.1965 is already on record as Annexure 2 to the writ petition. The contents of para 5 in so far as they are borne out by the contents of annexure 2 do not call for any reply. It is, ~~however~~, not disputed that the petitioner was again promoted by an order dated 17.2.1966 copy of which is Annexure A-1 to this counter-affidavit. It is, however, relevant to indicate that three persons junior to the petitioner whose names have been shown in para 3 of the writ petition were also promoted to officiate against the work-charged posts of Senior Clerks.

4. That in reply to the contents of para 6 the assertions made in para 4 of the writ petition are reiterated. It is stated that the various persons whose names have been indicated in para 6 were junior to the petitioner. They did not gain seniority over the petitioner by the circumstance of their having passed the suitability test for the post of Senior Clerk in the year 1965 earlier to the petitioner by reason of the fact that they were not promoted against non-~~fortuitous~~ vacancies but were promoted against work-charged posts. The petitioner admittedly passed the suitability test in 1968 and, as such, by reason of the provisions of Para 320-(a) of the Indian Railway Establishment Manual, the petitioner continued to be senior to the said persons. It is further relevant to point out that admittedly the



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petitioner has been assigned seniority above these persons on a consideration of his representation vide corrigendum dated 21.11.1972 Annexure 7 to the writ petition. The plea in para 6 that the said persons became senior in the list of Senior Clerks to the petitioner and as such were not required to be reverted is legally untenable and baseless. It further ignores the fact that the order for the petitioners reversion was passed on 17.1.1969 when admittedly he had passed the suitability test earlier to that in 1968. It is stated that the said junior persons were not promoted as alleged but they continued to officiate against work-charged posts only and not against regular nonfortuitous vacancies. The petitioners seniority was restored by reason of the said circumstance. The pleas in para 6 to the contrary are, therefore, legally untenable being based on incorrect assumption of facts and are, therefore, denied.



C. Chandra

5. That the reply contained in para 7 does not in any manner controvert the specific assertions made in paras 5 and 6 of the writ petition. Nevertheless, the said assertions are herein again reiterated.
6. That the contents of para 8 do not call for any reply since the assertions made in para 7 of the writ petition have not been denied.
7. That the contents of para 9 in so far as they

do not controvert the specific assertions made in para 8 of the writ petition call for no reply. The order passed by the G.M.(P) is under challenge in the writ petition and the same for the reasons and grounds mentioned in the writ petition was clearly illegal and untenable. The railway Board's letter dated 13.3.1966, as a bare perusal of the same would show, does not apply to the grievance raised by the petitioner in his representation.

8. That the contents of para 10 in so far as they do not deny the assertions of facts made in para 9 of the writ petition call for no reply. The reason for not granting proforma fixation of pay on the basis of the grounds raised in the writ petition is clearly illegal.

9. That the contents of para 11 do not in any manner controvert the specific assertions made in para 10 of the writ petition. Nevertheless, the said assertions are herein again reiterated. It is stated that the petitioner at no time was served with a copy of the D.O. letter dated 15.3.1972 which has been annexed as Annexure no.A8 to the counter-affidavit. It is, however, stated that the reason set out therein to deny the petitioner benefit of proforma fixation of his pay at par with his juniors is clearly untenable.

10. That the contents of para 12 in so far as they

C.P. Cleaver

do not deny the assertions made in para 11 of the writ petition call for no reply. It is once again reiterated that the reason set out in the letter dated 31.5.1974 is wholly untenable. Admittedly three persons junior to the petitioner were working against work-charged posts. The plea that the same cannot be taken to be fortuitous vacancies is baseless. It is further stated that by reason of the corrigendum dated 21.11.1972 the question of inter-se seniority between the petitioner and the said three junior persons has been finally decided in favour of the petitioner. It is wholly baseless to allege that the said persons by reason of having passed the suitability test earlier than the petitioner gained in seniority over him. The reply in para 12 clearly ignores the assignment of higher seniority position to the petitioner by means of the said corrigendum dated 21.11.1972.

11. That in reply to the contents of paras 12 and 13 the assertions made in paras 12 to 14 of the writ petition are herein again reiterated. Anything contrary contained in para 13 of the counter-affidavit is denied. The plea that the petitioners case was not covered under the provisions of the Railway Boards letter dated 17.9.1968 is legally untenable.

12. That the contents of paras 14 and 15 are denied and the assertions made in para 15 of the writ petition are reiterated.

C. Chowdhury

18. That the plea in para 16 is

13. That the plea in para 16 is highly presumptuous and is denied.

C.P. Chaudhary
Deponent

Dated Lucknow

7.8.1984

I, the deponent named above do hereby verify that contents of paras 1 to 13 are true to my own knowledge. No part of it is false and nothing material has been concealed; so help me God.

C.P. Chaudhary
Deponent

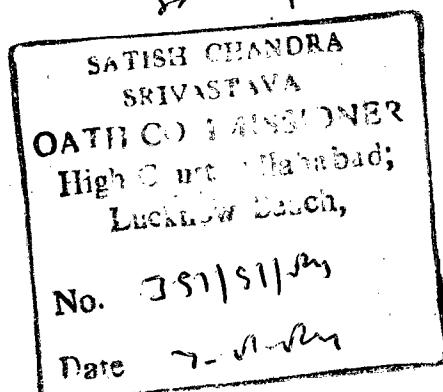
Dated Lucknow

7.8.1984

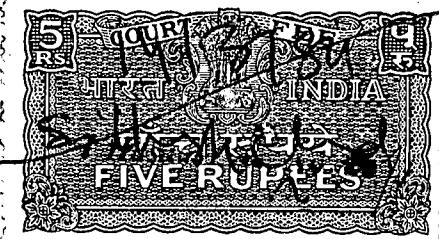
I identify the deponent who has signed in my presence.

(R.K. Srivastava) Minister
(Clerk to Sri B.C. Saksena Advocate)

7/5/84
Solemnly affirmed before me on 7-8-84
at 6:15 a.m./p.m. by S. C. Chaudhary
the deponent who is identified by Sri R.K. Srivastava
clerk to Sri B.C. Saksena
Advocate, High Court, Allahabad. I have satisfied
myself by examining the deponent that he understands
the contents of the affidavit which has been read out
and explained by me.



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



C.M. AM. (I). 7560 (u)

OF 1984

Union of India through Govt.

Applicant

In re

Writ petition No. 2228 of 1980

C.P. Choudhary

Petitioner.

Versus

Union of India and others.

Opp. Parties.

APPLICATION FOR CONDONATION OF DELAY IN FILING COUNTER

AFFIDAVIT

Applicant respectfully states as under:-

1. That in the above mentioned case counter affidavit could not be filed on behalf of the Opp. Parties within time in this Hon'ble Court.
2. That the counter affidavit was prepared but the same was misplaced in chamber of the counsel.
3. That the filing of counter affidavit is necessary and is being filed herewith.
4. That the delay in filing counter affidavit is genuine and bonafide.

PRAYER.

WHEREFORE, it is respectfully prayed that the delay in filling counter affidavit may kindly be condoned and the counter affidavit may be brought on record.

Lucknow:

Dated : April 17 1984.

217101 —

Thel Choudhary
COUNSEL FOR APPLICANT/OPP.
PARTIES

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

Writ petition No. 2228 of 1980



C.P. Chaddhary

....Petitioner.

Versus.

Union of India & others

....Opp. Parties.

COUNTER AFFIDAVIT ON BEHALF OF OPPOSITE PARTIES.

I, Sheo Murti S/O Sri A. Behari aged about 49 years, Assistant Personnel Officer North Eastern Railway Lucknow R/O 18/3 Malviya Nagar do hereby affirm and state as under:-

1. That the deponent is working as Assistant personnel Officer North Eastern Railway Lucknow and is conversant with the facts of the case.
2. That the deponent has read the contents of the writ petition and has understood the same.
3. That the contents of paras 1 of the writ petition is not denied.
4. That the contents of para 2 of the writ petition do not call for any reply.

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5. That in reply to the contents of para 3 of the writ petition it is stated that the petitioner was promoted to the post of Sr. Clerk in Scale Rs. 130-300 (AS) temporarily with effect from 16.9.65 under DEN/Gonda's order No. E/283/4 dt. 27.9.65 against workcharged post without conferring any right of seniority or retention on the post. (Annexure 2 to the writ petition) The pay of the petitioner was fixed at Rs. 168/- under the rules. The petitioner ~~was~~ continued upon the post upto ~~23.10.65~~. The petitioner was again promoted as Sr. Clerk under DEN/Gonda's office No. E/210/3. dt. 17.2.66 against the work charged post provisionally subject to his passing suitability test for promotion to the post of Sr. Clerk. He continued to work on the said post as Sr. Clerk till ~~31.12.68~~. A copy of the office order dated 17.2.66 is annexed with this counter affidavit, is marked as Annexure A-1. The statements contrary to it are denied.

6. That in reply to para 4 of the writ petition it is stated that the petitioner was reverted to the post of junior clerk in scale Rs. 110-180 (AS) in accordance with office order, a copy of which is annexure 3 to the writ petition on the expiry of the sanction of the post. The petitioner though senior in the group of junior clerks S/Sri I.B. Sinha, C.M. Pandey and B.N. Singh yet S/Sri J.B. Sinha, C.M. Pandey

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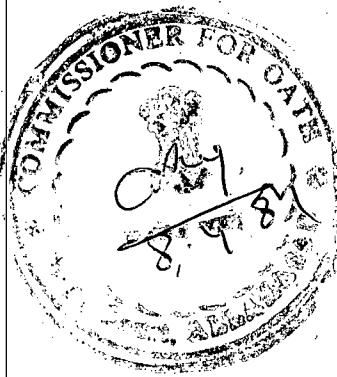
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and B.N. Singh passed the suitability test for the post of senior clerk in the year 1965 earlier to the petitioner who passed the suitability test in 1968 and they became senior in the list of senior clerk in scale of Rs.130-300 (AS) and as such were not required to be reverted. The petitioner had also appeared in the suitability test for the post of senior clerk in 1965 but had failed. The promotion of petitioner again in the year 1966 which was under adhoc arrangement did not confer any right upon the petitioner to continue in the post of senior clerk over other regularity promoted and those senior to him in the post of Sr. Clerk. statements contrary to it are denied. A copy of the result of the suitability test in which S/Sri I.B. Singh, C.M. Pandey and B.N. Singh etc. qualified in the year 1965 and the petitioner qualified in 1968 are annexed with this counter affidavit and are marked as Annexures A-2 and A-3 respectively.

7. That in reply to paras 5 and 6 of the writ petition it is stated that the petitioner submitted representation dated 23.1.69 and 28.7.70 against his reversion and after consideration of the same he was replied under DEN/Gondal's letters No. E/210/3 dated 11.3.69 and DS(P)/LJN's letter No. 21 E/210/1/Engg/LKO/GD dated 26.9.70 that the reversion was correctly ordered. Copies of these letters are annexed with this counter affidavit and are marked as Annexures A-4 and A-5 respectively.

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8. That the contents of para 7 of the writ petition are not denied.

9. That in reply to para 8 of the writ petition it is stated that the petitioner had submitted representation dated 2.12.1971 (Annexure 5 to the writ petition) and the same was forwarded to the competent authority for decision. The General Manager (P) N.E. Rly Gorakhpur the competent authority ~~the competent authority~~ conveyed its decision that the petitioner was not entitled for the proforma fixation of pay in accordance with the Rly. Board's letter No. PC-60/PP-1 dt. 19.3.66 and accordingly the petitioner was replied under the D.R.M. (P)/LJN letter No. E/210/1 Engg/LKO/General dt. 11.11.71. A copy of Rly Board's letter No. PC-60/PP-1 dt. 19.3.66 circulated under G.M.(P)/EKP's letter (S.No.455) E/IV/205/15 dt. 6.4.66 and D.R.M.(P) LJN's letter No. E/210/1/Engg/LKO/General dt. 11.11.1971 are annexed with this counter affidavit and are marked as Annexures A.6 and A-7 respectively.

10. That the contents of para 9 are not denied. The proforma fixation of pay was not granted as it was not found admissible under the rule by the competent authority as stated in reply to para 9 above.

11. That of the contents of para 10 of the writ petition it is admitted that the representation



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of the petitioner was forwarded by the DS(P) N.E. Rly Lucknow to the General Manager (P) N.E. Rly Gorakhpur for consideration and decision regarding fixation of pay of the petitioner. Rest of the contents of the para are not admitted as alleged. The office of General Manager (P) /Gorakhpur ~~copy~~ coveyed its decision on D.O. No. E/205/5 minist (IX) dt, 15.3.72 that the petitioner could not be given benefit of proforma fixation of pay at par with his juniors as the promotions of the juniors than the petitioner was against work charged post and was an accelerated one. A copy of the D.O. letter No. E/205/5/Minist (IX) dt. 15.3.72 is annexed with this counter affidavit and is marked as Annexure A-8.

12. That the contents of para 11 of the writ petition are not denied. It is however stated that the G.M. (P) /N.E. Rly Gorakhpur decided that since the promotion against work charged post is fortuitous promotion there was no case of the petitioner for proforma promotion under the rules. Besides the three juniors to the petitioner passed the suitability test for higher grade post long before the petitioner. The promotion of the three persons were against the work charged post and thus not against fortuitous vacancies and thus their seniority remained intact and undisturbed as replied to the petitioner in Annexure 9 to the writ petition.



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13. That in reply to paras 12, 13 and 14 of the writ petition it is stated that the petitioner submitted his representation dt. 6.9.74 and again on 10.8.79 both the representations were forwarded to the G.M. (P)/GKP on 6.5.75 and 14/11/79 respectively for consideration and decision. The General Manager (P)/GKP conversed its decision that the decision taken earlier did not merit charges. The petitioner was accordingly replied on 7.4.80 as contained in annexure 1 to the writ petition. The case of the petitioner is not covered under the Rly Boardes letter No. E/(NG)65PM 1/92 dt. 15/17-9-64 (Annexure 6 to the writ petition) as there is no~~x~~ question of ~~error~~ in since the petitioner had failed two times in the suitability test for promotion to the post of Sr. Clerk held on 16.1.65 and 20.10.65 and his juniors had passed. the juniors were rightly promoted and the benefit of proforma fixation of pay is not admissible to the petitioner both under the Rly. Boards letter dt. 15/17-9-69 (Annexure 6 to the writ petition) and dated 19.3.66 (Annexure A-7) to the counter affidavit.).



14. That the contents of para 15 read with grounds there under are not admitted.

15. That the grounds taken by the petitioner are not tenable and the petitioner is not entitled to the reliefs prayed for.

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16. That the Writ Petition is liable to be dismissed with costs.

W.O.

DEONENT.

LUCKNOW.

DATED: 2.1984.

VERIFICATION.

I, the above named deponent, do hereby verify that the contents of paragraph 1 and 2 are true to my own knowledge, those of paragraph 3 & 4 are true to my informations derived from the records, which are believed by me to be true and those of paragraph 5 & 6 are based on legal advice. No part of it is false and nothing material has been concealed, so help me God.

W.O.

DEONENT.

LUCKNOW.

DATED: 2.84.
8.4.84

I identify the deponent who has signed before me.

*Ispalla et
Shri Umesh Chandra*

ADVOCATE.

Solemnly affirmed before me on 8.4.84 at 9.30 A.M./
P.M. by Shri Sheo Murti the
deponent who is identified by Shri Dhaval AG
Clerk/Advocate of Shri Umesh Chandra Advocate High Court
of Judicature at Allahabad Lucknow Bench Lucknow. I have
satisfied myself by examining the deponent, that he
understands the contents of the affidavit which has
been read out and explained by me.

Amit Day
SARFAZI EXAMINER
High Court, Allahabad
Lucknow Bench

37/337
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IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW BENCH LUCKNOW:

Writ petition No. of 1980

C.P. Chaudhary Petitioner

Versus

Union of India & others Opp. Parties

ANNEXURE NO. A-1

Distt. Engineer's Office

Gonda, dated :- 17/2/1966

OFFICE ORDER

The following Jr. Clerks 'G' (110-180) are promoted to officiate as Sr. Clerks 'G' (130-300) against work charged establishment. These promotion orders will take effect from the date of issue this office order and are purely on local & tentative arrangements. They have no claim over seniority etc. They will have to pass the suitability test of Sr. Clerks 'G' which will be held recently.

1) Shri Chandrika Prasad Chowdhari Gr. Clerk ('g' (110-180) of DEN's Office Gonda is promoted to officiate as Sr. Clerk 'G' (130-300) and retained in the same section. His pay on promotion in scale Rs.130-300 is fixed at Rs.168/- P.M. plus usual allowances as admissible under rules. 100



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2) Shri Gyan Chandra Srivastava Jr. Clerk 'G' (110-180) DEN's Office/ Gonda is promoted to officiate as Sr. Clerk 'G' (130-300) and retained in the same section. His pay on promotion in scale Rs.130-300 is fixed at Rs. 160/-p.m. plus usual allowances as admissible under rules.

3) Shri Kailash Shankar Jr. Clerk 'g' (110-180) of IOW/BST is promoted to officiate as Sr. Clerk 'G' (130-300) and retained as time Keeper under IOW/BST. His pay on promotion in scale Rs. 130-300 is fixed at Rs. 150/- P.M. plus usual allowance as admissible under rules.

4) Shri Virendra Kumar Srivastava Jr. Clerk (110-180) of DEN's office/GD is promoted to officiate as Sr. Clerk 'G' (130-300) and retained in the same section. His pay on promotion in scale Rs.130-300 is fixed at Rs.145/- P.M. plus usual allowances as admissible under rules.

Sd/-

Distt Engineer, Gonda

No. E/210/3 Gonda, dated:- 17/2/66

Copy forwarded for information and necessary action to:-

1. FA & CAO/GKP/ENGA	4. C.C.'G' Office
2. AEn/GKP	5. Head Clerks (a), (S), (W)&(E) for P.C. Files.
3. IOW/BST	6. Cadre Clerk/Office/GD
7. Bill Clerk/Office, GD	8. Seniority clerk
9. B.O.S. Clerk	10. Cadet Clerk
11. Employee concerned	12. Four spare copies to R/L

Sd/-

Distt. Engineer, Gonda

True copy

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

WRIT PETITION NO. OF *(1) 1980

C.P. Chowdhary ... Petitioner.

Versu.

Union Of India & others. ... Opp. Parties.

Annexure No. A- 2

N.E. Railway.

Distt Engineer's Office

G O N D A.

Dt.

OFFICE ORDER.

As a result of suitability test held on 20.x.65 against 90% quota the following junior clerks have passed:-



- 1:- Shri S.R. Raut T.K. under PWI/BNY.
- 2:- " I.V. Sinha Jr. Clerk under PWI/W/GKP
- 3:- " C.M. Pandey Jr. Clerk under IOW/GD
- 4:- " B.M. Singh Jr. Clerk under IOW/BRK.

Out of the above the following Jr. Clerks have already been promoted as a clerk vide office order No. E/ 283/4 dt. 27.9.65,.

1:- Shri S.R. Raut T.K. under PWI/ NBY
2:- " I.V. Sinha Jr. Clerk under PWI/W/GKB.

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The following Jr. Clerks (110-180) are temporarily promoted as Sr. Clerk in scale (130-300) w.e.f. 23.10.65 against work charged posts. This is purely local arrangement. They will be entitled for the benefit of pay only.

1:- Shri C.M. Pandey Jr. Clerk under IOW/GD

2:- " B.M. Singh Jr. Clerk under IOW/GDK

The pay of Shri C.M. Pandey is fixed at Rs. 145/- P.M. in scale (130-300) and the pay of Shri B.M. Singh is fixed at Rs.145/- P.M. in scale (130-300).

The following Sr. Clerks (G) who were promoted as Sr. Clerk (130.300) vide office order No. E/283/4 dt. 27.9.65 are reverted as Jr. Clerk ~~xxxx~~ on their substantive post in scale (110-180) w.e.f. 26.10.65 as they not qualified the suitability test held on 20.10.65.

1:- Shri Chandrika Pd. Chowdhary Sr. Clerk (G) DEN's office /GD

2:- " Gyan Chandra " " " Distt Engineer/ Gonda.

No. E/210/3

Dt. 2.11.65.

Copy forwarded for information and necessary action to:-

1. AEN/GD, BRK & GKP
2. C.C. (G) in office.
3. B.O. S Clerk. He will please issue the memorandum against which the pay of Shri

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C.M. Pandey B.M. Singh will be charg.

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4. Cadre clerk/ Office GD & BRK.
5. Bill clerk /GD & BRK.
6. IOW/GD, & BRK.
7. Employee concerned.
8. 4 spare copies for P/Files.
9. FA & CAO/GKP.
10. PWI/BNY/W/GKP.

Distt Engineer,

G O N D A .

True copy.

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

XXXX Writ petition No. of 1980

C.P. Chowdhary Petitioner.

Versus.

Union of India & others. Opp. Parties.

ANNEXURE NO. A-3

N.E. RAILWAY

Office of Distt Engineer.,
Gonda. Dated 30/5/68;

NOTIFICATION

Result of suitability test held on 1/5/68 against
90% quota of Jr. Clerk(G) in scale Rs.110-180 for
promotion as Sr. Clerk (G) in scale Rs.130-300.

<u>S.No.</u>	<u>Name</u>	<u>Designation</u>	<u>Station</u>	<u>Remark</u>
1.	Shri C.P. Chowdhary	Jr. Clerk	DEN's Office	GD Passed.
2.	Shri V.K. Srivastava	Jr. Clerk	-do- -do-	Passed.
3.	Sh. Chakkan Singh	Jr. Clerk	Under IOW/JAW	Failed.
4."	Gyan Chandra	Jr. Clerk	DEN's Office	GD Failed.
5."	Kailash Chander	Jr. Clerk	Under IOW/BST	Failed.
6."	Ram Lekhan Sharma	Jr. Clerk	DEN's Office	GD Failed.

Distt Engineer,

Gonda.

No. E/210/3 dt. 30/5/68

Copy forwarded for information to:-

1-	AEN/GD/GKP	4- BOS Clerk
2-	CC(G) in office.	5- Folder Clerk
3-	IOW/BST/JAW	6- Employee concerned.

Sd/-Distt Eng.

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

WRIT PETITION NO. OF 1980

C.P. Chowdhary Petitioner.

Versus.

Union of India & others. Opp. Parties.

Annexure No. A-4

NORTH EASTERN RAILWAY

OFFICE OF THE DISTRICT ENGINEER:

No. E/210/3. GONDA: DATED 11/2/69:

Sri C.P. Chaudhari,
Clerk, DEN's Office/ Gonda.

Sub:- Your presentation dated 23/1/69 in
respect of your reversion vide this
office order No. E/283/4 dated 7.1.69.

Your representation has been gone through and
you are informed as under:-

You were promoted to officiate as Sr. Clerk
purely on a local and tentative arrangement from 17/2/66
as will be evident from the office order No E/210/3
dated 17/2/66. On expiry of the sanction of the work
charged post and you being the junior most man have been
reverted from 1/1/69 vide this office order No. E/283/4
dated 17/1/69.



7 (11) 6/16
-: 2 :-

In going through your case it is also seen that you had failed to qualify your self in the suitability test for the post of Sr. Clerk held on 16/1/65 and 20/10/65. It was in the suitability test held on 1/5/68 that you qualified yourself for promotion to the post of a Sr. Clerk as declared vide this office No. E/210/3 dated 1/6/68.

Your contention contained in the various paras are not correct and are far from the facts of the case. The 10% promotion have correctly been made according to the number of vacancies which have occurred. Neither the names of the two persons nor the rules have been quoted in your appeal. However the persons who have been promoted against 10% quota are S/Shri K.C. Misra and Rajendra Nath who had passed the said merit examination on 19/5/63 17/10/65 respectively and promoted from 4/9/63, 23.10.65.

It is recalled where as these persons had passed the merit selection test held on the dates given you had failed in two suitability test held on 16/1/65 and 20/10/65.

The persons appealed against have passed their merit test earlier on 19/5/63 and 17/10/65, so if any claim of yours is there for promotion to the post of Sr. Clerk is only after the date of qualifying for the same on 1/5/68.

You have been correctly reverted to the post of Je. Clerk and will be considered for next promotion as and when vacancy occurs in your own due terms.

This also disposes of your reminders dated 12/2/69 and 7/3/1969.

100

Sd/- (P.N. DUBEY)

District Engineer/Gonda.

(72) 6/7

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW BENCH LUCKNOW:

Writ petition No. of 1980

C.P. Chowdhary Petitioner.

Versus.

Union of India & others. Opp. Parties.

ANNEXURE No. A-5

N.E. RAILWAY

No. E/210/1/Eng/LKO/Genl. OFFICE OF DIVISIONAL SUP'T.

Lucknow; Dt. Sept 26. 1970

Shri C.P. Chowdhary,

Clerk DEN's Office/LJN,

c/o CC/DEN/LJN.

Sub:- Your representation dated 28.7.70

regarding determination of seniority.


In this connection please refer to DEN/GD's letter No. E/210/3, dated 11.3.69 vide which your case has already been decided.

Sd/-

Divisional Sup't. (P)

LUCKNOW

TRUE COPY

VOLO

(13) 6
18

NORTH EASTERN RAILWAY

OFFICE OF THE
DIVISIONAL SUPDT. (P)

L U C K N O W:

No. E/210/1/Engg/LKO/Engl. Dated July 8/9/1971.

The General Manager (P)
NER/Gorakhpur.

SUB:- Proforma fixation of pay of Shri
C.P. Chowdhary, Sr. Clerk of DS(E)/LJN.

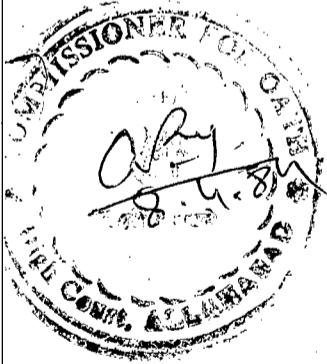
REF:- Your letter No. E/205/5/Minist/(IX)
dated 11/6/71.

The seriatim reply is as under:-

Item1-3-Shri C.P. Chowdhary, Clerk was promoted as

Sr. Clerk w.e. from 27.9.65 to 23.10.65 and
then again from 17.2.66 to 31.12.68.

The correct position is detailed in the
enclosed statement Annexure 'A'.



ITEM4- The case has been decided in terms of para 320(a) of railway establishment manual which provides that a railway servant once promoted against a vacancy which is nonfortutous should be considered as senior in that grade to others who are subsequently promoted. The suitability of a Railway servant for ~~promoted~~ promotion should be judged on the date of vacancy in the higher grade or close to it as possible. It further enjoins that an employee who qualified in an earlier test and gets promotion against non-fortutous vacancy but reverted to the lower grade before a subsequent test is held will rank senior to all others who qualify in the

(74) 6/12
-: 2 :-

subsequent test. In respect of those who have either officiated in fortutious vacancy or did not officiate at all will not be given any ~~protected~~ protection for seniority on subsequent promotion.

In short the above provisions indicate that an employee who although having qualified himself in the suitability test earlier but has either not been promoted in the higher grade or has been promoted against a fortutious vacancy will not have any claim of seniority over his seniors who subsequently qualifies in the suitability test.

DA:- 1

DIVISIONAL SUPDT: (P)/LJN

True copy

22

WQ



*

(13) 6/25

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD.
LUCKNOW BENCH LUCKNOW
WRIT PETITION NO. OF 1980

C.P. Chowdhary Petitioner.
Versus.

Union of India & others ... Opp. Parties.

Annexure No. A-6

NORTH EASTERN RAILWAY

Office of the General Manager (Personnel)

Sl. No. 455 Branch Gorakhpur, dated 6.4.1966

No. E/IV/205/15.

The F.A. & C.A.O./C.S.O./Gorkahpur,

All District Officers,

All Asstt. Officers (in independent)

All Personnel Officers.

North Eastern Railway.

SUB:- Fixation of pay of promotion or appointment
to higher posts anomalies arising out
of the application of Rule 2018-B (FR22-C)
R-II.

A copy of railway Board's letter No. PC-60/PP
-1 dated 19.3.1966 (in Hindi English) is forwarded for
information and necessary action. This is in
reference to this office circular No. E/IV/205/15 dated
15.10.1965.

DA/ as above.

Sd/- S.P. Sinha

for General Manager (P)

WQ

(76) 6/2
-: 2 :-

COPY of the Railway Board's letter No. PC-60/PP-1
dated 19.3.1966 addressed to the General Managers, All
Indian Railway & others.

SUB:- Fixation of pay on promotion or appointment
to higher posts anomalies arising out of the
application of Rule 2018-B (FR-22-C) R-II.

The question of removing certain anomalies arising
as a result of fixation of pay of railway servants
promoted or appointed to higher posts after the introduc-
tion of rule 2018-B (FR 22-C) R. 14 has been under the
consideration of the Board for some time past.

2. By a strict application of the above rule, it
may happen that a railway servant promoted or
appointed to a Higher post on or after 1.4.1961 may
draw a lower rate of pay in that post than another
railway servant junior to him in the lower grade and
promoted or appointed subsequently to another identical
post.

3. In order to remove this anomaly the President
is pleased to decide that in such case the pay of the
senior employee in the higher post should be stepped
up to a figure equal to the pay as fixed for the
junior employee in that higher post. The stepping up
should be done with effect from the date of
promotion or appointment of the junior employee
and will be subject to the following conditions; namely:-

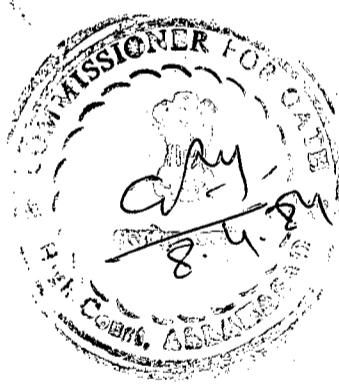
10
a) Both the junior and Senior employees should

78 6/3
-: 4 :-

6. The clarifications issues vide letter No. PC65/PP-1 dated 18.9.65 (except item 3) would apply mutatis mutandis in the above cases.

7. It has also been decided clause(d) of para 3 of Board's letter No. PC 60/PP/1-2 dated 25.5.62 should also be deleted and pay should be refixed proforma on the basis as if this clause never existed in that letter No. arrears prior to 22/66 should be allowed.

Sd/- 1/3
Senior Personnal Office
N.E. Rtu Gorakhpur
(SEAL).



True copy.

W.G.

(19) 6/24

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

LUCKNOW BENCH LUCKNOW

Writ petition No. of 1980.

C.P. ChaudharyPetitioner

Versus.

Union of India & others.Opp. Parties.

ANNEXURE No. A-7

NORTH EASTERN RAILWAY

OFFICE OF DIVISIONAL SUPDT: (P)

No. E/210/Engg/
Iko/Eenl.

LUCKNOW: DATED 11/11/71;

Sri C.P. Chawdhary,
Sr. Clerk/ DEN-LJN.

Ref:- Proforma Fixation of pay

The case was referred to GM(P) GKP for decision
who has ordered as under:-

■ The promotion of all the juniors to Sri
C.P. Chawdhary for the period in question being against
workcharged post is an accelerated and fortuitous one
will not involve to the proforma fixation of pay in hi
former in terms of para 3(c) of the Board's letter No.
PC-60/PP-1 dated 19/3/66 circulated under GM(P)/GKP's
letter No. S.No. 455 E/IV/205/15 dated 6/4/66 does not
fall within the perview in Board's letter quoted your
above letter. J.

Divisional Supdt; (P) Iko.

True copy

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

LUCKNOW BENCH LUCKNOW

Writ petition No. of 1983.

C.P. ChowdharyPetitioner.

Versus.

Union of India & others.Opp. Parties.

ANNEXURE No. A-8.

TEJ BAHADUR SINGH

APO (IV)

D.O. NO. E/205/5/Minist/IX

OFFICE OF THE

GENERAL MANAGER (PERSONNEL)

NORTH EASTERN RAILWAY
GORAKHPUR;

Dated:- March 15-1972

Dear Shri Verma,

Sub:- proforma fixation of pay of

Shri C.P. Chowdhary Sr. Clerk
B.S. (Engg) /NER-LJN.

Ref:- Your D.O. No. 10/1/Eng/Lko/Genl Dt.16-2-72

The main point is whether the promotion of Junior to Shri. C.P. Chowdhary for the period for which proforma fixation has been claimed for by him is against fortuitous/accelerated post or against regular cadre post.

As the promotion of his junior for the period in question, is against workcharged i.e. an accelerated one no benefit of proforma fixation of pay against such such promotion can be given to Shri. C.P. Chowdhary in terms of para 3(c) of ~~JK~~ Board's letter No. PC-60/PP-1 dated 6.4.1066.

He should be informed accordingly.

This issues with the approval of Dy. CPO/IA

Shri. K.C. Verma
Divl Personnel Officer,
North Eastern Railway/Lucknow.

You're sincerely.
Sd/-
(TEJ BAHADUR SINGH)

A2

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

W.P. No. 2228 of 1980

C.P. Chandni vs. Union of India for

Date	Note of progress of proceedings and routine orders	Date to which case is adjourned
1	2	3
11-8-80	<p>Han. H.S.J</p> <p><u>Han. K.S.V.J</u></p> <p>Put up to-morrow.</p>	
	<p>Sd. H.S.</p> <p>Sd. K.S.V.</p>	
	<p>11-8-80</p>	
12-8-80	<p>Han. H.S.J</p> <p><u>Han. K.S.V.J</u></p>	
	<p>Admit. Issue notice.</p>	
	<p>Sd. H.S.</p>	
	<p>Sd. K.S.V.</p>	
	<p>12-8-80</p>	
	<p>Service report.</p>	
	<p>All the opp. parties are served</p>	
	<p>through of stand Con Counsel</p>	
	<p>Office proceed in ordinary</p>	
	<p>Course.</p>	
	<p>S.P.M.</p>	
	<p>(16.12.80)</p>	
	<p>S.O. (J.B.)</p>	
		<p>B.K.</p>

ORDER SHEET
IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
Civil No. 9998 of 1980

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
11/01/21	Feb 887 Delay condoned W.M. 1/225	

VAKALATNAMA

Before
in the Court of

(81)
In The Central Administrative Tribunal
Circuit Bench, Lucknow

TAN. 686 of 87 (D)

Plaintiff C. P. Chaudhary Claimant
Defendant Appellant

Versus Petitioner

Defendant Union of India and Others Respondent
Plaintiff

The President of India do hereby appoint and authorise Shri B. K. Shukla
Railway Advocate, Lucknow

to appear, act, apply, plead in and prosecute the above described suit/appeal/proceeding 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/proceeding 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 or 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 agree to ratify all acts done by the aforesaid Shri B. K. Shukla
Railway Advocate, Lucknow
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 198 .

Dated 198

NER-84850400-8000-4784

S. M. N. Islam
Designation of the Executive Officer,
पूर्वोत्तर रेलवे, लखनऊ
Sr. Divisional Personnel Officer,
G. E. Railway, Lucknow.

For Union of India

A/2
O/C

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
23-A, Thornhill Road, Allahabad- 211 001

No. CAT/Alld/Jud/

Dated the _____

T.A. No. 19

APPLICANT'S

VERSUS

RESPONDENT'S

To

Whereas the marginally noted cases has been transferred by _____ Under the provision of the Administrative Tribunal Act XIII of 1985 and registered in this Tribunal as above.

Writ Petition _____

The Tribunal has fixed date of 14-9-1989 for the hearing of the matter in Circuit Bench, C.A.T., Gandhi Bhawan, Lucknow.

of 198 .

of the Court of _____

arising out of order _____

dated _____

passed by _____

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

the matter will be heard and decided in your absence.

Given under my hand seal of the Tribunal this

day of _____

1989.

Amit/

Mahavir
DEPUTY REGISTRAR