

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE TA-786/82
CO.P. No. 461/81 OF

NAME OF THE PARTIES Yadve mandon Prasad Applicant

Versus

Union of India Ltd. Respondent

Part A.

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CERTIFICATE

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

*The file received from record room without
Basta.*

Checked on Dated 06-9-11.....

Counter Signed.....

Agarwal
06/9/2011

Signature of the
Dealing Assistant

Section Officer/In charge

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

T. A.

NO.

786

OF 198

7

VS.

SL NO of order	Date of order	ORDERS WITH SIGNATURE	Office Notes as to act (if any) taken on or
		<p><u>Office Report</u></p> <p>This is a wp No. 461/81 Transferred from the High Court Lucknow Bench Lucknow.</p> <p>The notices were issued fixing 25.10.86 by Regd Post both the parties.</p> <p>Notices has not received back after service.</p> <p>Submitted m/c</p> <p>25.10.86 <u>Leg</u></p> <p>Applicant is present. Counsel may be put by 21.12.86</p> <p><u>Leg</u></p>	

D.R.

The file of this case has been read today.

Applicant is present in person. The case is adjourned to 28/3/89.

D.R.

28/3/89

DR

An amendment application filed today by Shri M.R. Mishra Adv. As the presiding officer is not present, the case is adjourned to 13-4-89.

for

k

13.4.89

Due to strike of advocates today, applicants want some more time. The case may be listed on 05.7.89.

13/4

J DR.

OR

C.M. application
No. 80/89 (C)
filed by app
cont on 28-3-89
for amendment
submitted
for orders.

4/7

- 2 -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

REGISTRATION No. TA 786/87 (T) of 198

APPELLANT
APPLICANT

Yadmandan Prasad

VERSUS

DEFENDANT
RESPONDENT

U. O. I & Ors.

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
	<p><u>From pre page.</u></p> <p>The respondents may file counter affidavit within four weeks to which the applicant may file rejoinder within two weeks thereafter. List this case for final hearing on <u>8-11-89</u>.</p> <p>This is a writ petition of 1981, therefore, the respondents will not be allowed permitted indulgence, if they do not file counter affidavit within the time permitted to them as mentioned above.</p> <p align="right">J. M.</p> <p>(SNS)</p>	<p><u>OR</u></p> <p>Neither the applicant counsel has incorporated the amendment nor the results have filed counter</p> <p>Submitted for hearing</p> <p align="right">R 7/11/89</p>

706/07/71

15/4

Hon. K. O. Bays, AM

The amendment had not yet been incorporated in the original petition. The applicant must incorporate the amendment and may file a rejoinder within two weeks. List for hearing on 27/90


AM

2/7/90

No sitting adjourn to 4.9.90



4.9.90

No sitting Adjourn to - 13.11.90



13/11/90

Hon. Mr. Justice K. Math, VC.
Hon. Mr. M. Y. Pralbar, AM.

OR

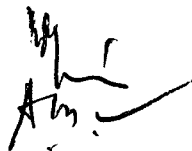
4c for the applicant
Can not incorporate
amendment. as per court
order dt. 16.3.90.


J. S. AM

The applicant is in person and is present. He requests for adjournment on the ground that his counsel is not available. List for final hearing on 15/1/91.

L
1/4

L
12


AM


VC



5.1.91

No sitting Adj to 13.3.91.

13.3.91

No sitting Adj. to 3.4.91



10.12.91

Honbl. Mr. Justice B. C. Srinivasan
Honbl. Mr. A. B. Sarkar A.M.

On the request of both
parties counsel case is adjourned
to 11.2.92 for a hearing

1
A.M.

1
K

11.2.92

No sitting adj to 3.3.92
Q

or
CA/RA have
been exchanging
submitted for
hearing
1
26.2.92

3.3.92

Honbl. Mr. Justice B. C. Srinivasan
Honbl. Mr. A. M. Tialk A.M.

Put up tomorrow

1

1
A.M.

1
K

4.3.92

Direct Strike advocates
case is adjourned to 22.4.92

22.4.92

No sitting of D.M. adj to
13.5.92
Q

1
Boe

13.5.92

No sitting of D.M. adj
to 20.7.92
Q

20.7.92

No sitting of D.M. adj to
3.8.92
Q

IN THE GENERAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

Q.A. NO. 186 199 (L)

T.A. NO. 186 199

Date of Decision 11.9.1991

PETITIONER.

Advocate for the Petitioner(S)

VERSUS

RESPONDENT.

Advocate for the Respondent(S)

CORAM

The Hon'ble. Mr. Justice H.C. Prasad, J.

The Hon'ble. Mr. Justice A.K. Sarkar, J.

1. Whether Respondent's legal papers may be allowed to see the Judgment?
2. To be referred to the reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether to be circulated to other benches ?

Vice-Chairman/Member

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Transfer Application No. 786 of 1987

(Writ Petition No. 461 of 1981)

Yadunandan Prasad Applicant

Versus

Union of India & Others Respondents.

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

Hon'ble Mr. K. Ubayya, Member (A)

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

This transfer application has been filed under section 29 of the Administrative Tribunals, Act, 1985. The applicant filed a writ petition for quashing the order passed by the General Manager, N.E. Railway dated 9.12.80 and 4.9.1980 and for mandamus directing them to regularise appointment of the applicant as commercial Controller and to fix inter-se seniority and also to allow the authorised grade of Rs. 550-750/- and that ~~he~~ should not be reverted. During the pendency of this application a selection took place on 30.10.1983 for the post of Commercial Controller and on this post, the applicant was also selected and his services have also been regularised. The applicant demanded from the Railway authorities his due seniority from ^{off} 23.12.1967, the date/which he was initially appointed as Commercial Controller, but, his demand is not being accepted. which is evident from the facts and seniority list in which his name has been shown below ~~from~~ many other persons.

2. The applicant ~~who was~~ entered in the Railway service as a permanent Ticket Collector in the year 1967. Two temporary posts of Commercial Controller, were created and accordingly the Chief Commercial Superintendent North

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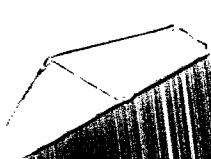

:: 2 ::

Eastern Railway, Gorakhpur, asked the District Commercial Superintendent to appoint two Commercial Controllers for day and night shifts. The applicant was considered suitable and accordingly vide order dated 22.12.1967 he was appointed one of these posts. Meaning thereby that in the very year he was posted as Ticket Collector Lucknow and he was given an assignment. The copy of assignment and letter of appointment has not been filed by the applicant, in which the terms of appointment have been indicated.

3. It has been stated by the respondents that as a matter of fact the applicant was appointed as Ticket Collector in the grade of 110-180 on 19.8.1964 at Sitapur Railway Station, where he worked till 1967. Before the sanction was received for the Post of Commercial Controller, the then Chief Commercial Superintendent, N.E. Railway directed the Divisional Commercial Superintendent, N.E. Railway that two employees may be deputed to work as Commercial Controller in Control Office. In pursuance of these directions the applicant was put to work on special duty in the Control Office, North Eastern Railway Lucknow w.e.f. 23.12.1967. Thus, according to them, though the applicant was not appointed as Commercial Controller as such, as he was a Ticket Collector in lower scale, his services were utilised as Commercial controller; Meanwhile on special duty in his capacity the applicant was selected as Ticket collector., Admittedly the post was declared as a selection post on 18.2.1980 prior to which it was a cadre post.

4. As the applicant was considered and was found

Contd..3/-



to be very junior in the Ticket Collector category in the year 1971, it was decided to return him back to the post of Ticket Collector. The applicant filed a writ petition before the High Court which was decided on 20.2.1975, in which it was held that the appointment of the applicant was an administrative appointment and the applicant will not be entitled to the benefit of 18 months rules. But as one Bhagwan Mishra, who was similarly appointed was given a particular weightage, a direction was given that the applicant should be given weightage. In the end the High Court observed :

"That opposite party will not revert the petitioner from specific post except as provided by rules and a proper selection is made and let a mandamus be issued accordingly."

In view by the direction given by the High Court, the pay of the applicant was fixed at Rs. 250/- per month in the scale of 250-330/- w.e.f. 25.8.1989. Before the direction of selection post, the matter was governed by the Chief Commercial Controller of his letter dated 11/6.5.1972 which follows the earlier letter which is on the record, in which it has been specifically provided that the procedure for filling-up the post of Commercial Controller in the grade of Rs. 250-230 is laid down as under :

- (i) The commercial and operating staff with a minimum services of 6 years in the scale Rs. 150-240 who volunteered for the selection of this post will be eligible to appear in the Selection. Which will consist of a written as well as oral test.
- (ii) The written test will consist three papers on three subjects viz. transportation, goods.
- (iii) The candidates should be given sufficient time

for preparation on the subjects mentioned above. The standard of the written test should be adequately high so as to select only ~~out~~ the ^{of} best ~~from~~ the candidates...

5. Even after 1982, the applicant did not face any selection as indicated, but it appears ^{never} continued. After declaration of the post as selection post, the selection for the first time took place in the year 1983 and the applicant was also selected. The applicant's grievance is that as he has been working from the year 1969, his due seniority should be given w.e.f. the date as has been noted, the applicant could not have been appointed as selection post and his appointment was an administrative ~~expediency~~. He was holding the said post as Ticket Collector and when he was even discharged, he has worked only three years as full fledged Ticket Collector. Merely because, he was given an appointment, which appointment can not be said in accordance with rules and procedure but it was only arrangement and at the most adhoc appointment. The applicant can not claim seniority w.e.f. the date. The applicant having ^{been} selected w.e.f. the particular date, and his regularisation ~~have been~~ taken place in the year 1983. He can claim for his seniority w.e.f. that date itself. In this connection a reference has been made ^{to} the case of Ashok Gulati & Others Vs. B.S. Jain & Others (A.I.R. 1987, S.C. page 424) wherein it has been stated that :

" Period of Adhoc and fortuitous appointment can not be reckoned over length of continuous officiation for counting seniority."

The similar view was taken, in the case of Vardharao Vs. State of Karnataka & Others (A.I.R. 1987 S.C. 287) wherein

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it has been observed :

"On the subsequent regularisation on promotion a person was not entitled to claim seniority indicating below the regular appointee, his position is being different from that of regular appointee."

5. As the applicant did not get regular appointment in accordance with the rules as has been listed and got. the appointment after it was declared a selection post. the applicant can not claim his seniority with effect from the year 1969. The amendment relief which is the claim of the applicant can not be granted to him, and accordingly the application is dismissed. No order as to the costs.


Member(A)


Vice-Chairman

Lucknow dated 3.8.1992.

(MKA)

CIVIL

SIDE

GENERAL INDEX

CRIMINAL

(Chapter XLI, Rules 2, 9 and 15)

Nature and number of case..... 441-81.

Name of parties.....

Date of institution.....

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	Rs. P.	7	8	9
			1	-	- -			
			44	6	102 -			
	4-		1	3	5 -			
	5-	Supplementary affidavit	6		2.00			
	6-	Comd 8966(W) of 82	4		7.00			
	7-	CM.A. 11390(W) of 82	5		7.00			
	8-	CM.A. 484(W) of 82	5		7.00			
	9-	Power -	1		5.00			

I have this

day of

198 ,

examined

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

Munsarim

Clerk

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

Writ Petition No. 461 of 1981

Yadunandan Prasad.....Petitioner.

VERSUS

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

I N D E X

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3.	Annexure No.1 - true copy of Railway Board's letter dated 18.3.1972.	17 → 18
4.	Annexure No.2 - true copy of reply to the representation of the petitioner.	19 → 20
5.	Annexure No.3 - true copy of Railway Board's letter dated 11.7.1977.	21 to 24
6.	Annexure No.4 - true copy of Railway Board's letter dated 8.2.1980.	25 - ∞
7.	Annexure No.5 - true copy of Rly.Gazette dated 15.2.1953.	26 - ∞
8.	Annexure No.6 - true extract of decision by Dy.G.M.(P),NER,Gorakhpur..	27 → 28
9.	Annexure No.7 - true copy of office order.	29 - ∞
10.	Annexure No.8 - true copy of order dated 14.8.1980.	30 → 31
11.	Annexure No.9 - true copy of petitioner's representation.	32 to 37
12.	Annexure No.10 - true copy of petitioner's representation dated 22.4.1980.	38 → 39
13.	Annexure No.11 - true copy of letter in reply to petitioner's representation.	40 - ∞

Contd...

S.No.	Description of documents	Page Nos.
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14. Annexure No.12 - true copy of
petitioner's application sent
to General Manager (P), N.E.R.,
Gorakhpur.

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15. Annexure No.13 - letter
communicating rejection of
petitioner's representation.

44 - 50

16. Vakalatnama.

45 - 50

~~17. Application for stay. ~~

Lucknow dated, }
January , 1981. }

M R Mini
Advocate
Counsel for the Petitioner

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A/2

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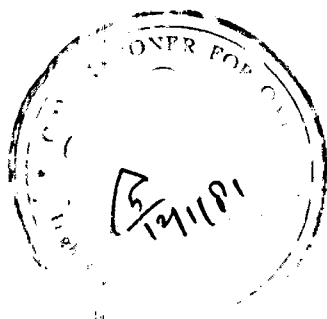
1. That the petitioner was a permanent Ticket Collector in the North Eastern Railway and was posted at Lucknow in the year 1967. At this time the Railway Administration created two temporary posts of Commercial Controller and accordingly the Chief Commercial Superintendent, North Eastern Railway, Gorakhpur, asked the District Commercial Superintendent to appoint two Commercial Controllers for day and night shifts vide his order No. C/387/68(R&D), dated 15.11.1967.

2. That on the receipt of this order the District Commercial Superintendent, Lucknow Junction, found the petitioner also a suitable person for being promoted to this post and accordingly vide his order No. C/Com/Controller/L.Jn., dated 22.12.1967 appointed him to one of these posts which the petitioner joined on 23.12.1967 at the District Control Office, Lucknow.

3. That the petitioner worked on this post successfully for two years to the utter satisfaction of his superior officers, who finding the petitioner capable of handling this job efficiently allowed him to receive special training in Goods and Coaching, which the petitioner successfully completed and in this way he became fully qualified to hold this post.

4. That in the mean-time these two posts of Commercial Controller were declared permanent and their scale of pay had also been fixed to Rs. 250-380/- per month; the petitioner was fixed over one of these posts and he is continuing as such till today.

5. That although the petitioner had been promoted on this post since its inception in the year 1967, and



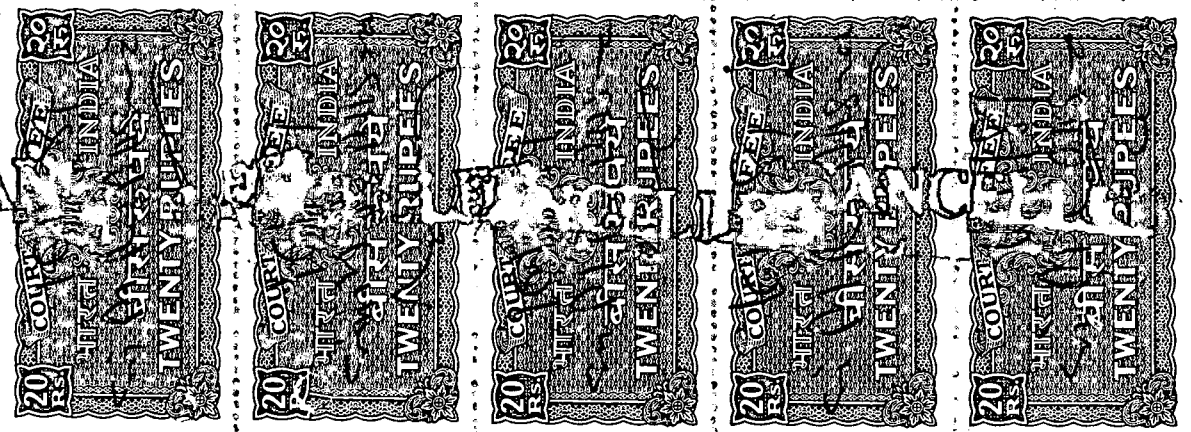
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was successfully performing his duties, still neither he was confirmed on this post nor even given this sanctioned grade. He presented several representations in this respect but no attention was given to any of them. The then Divisional Commercial Superintendent became very angry with the petitioner on frivolous grounds. He threatened the petitioner very much and created such grounds that the petitioner was forced to file a Writ Petition before this Hon'ble Court, registered as Writ Petition No. 370 of 1970 - Yadunandan Prasad Versus Chief Commercial Superintendent (P), N.E. Railway, Gorakhpur and others.

6. That this writ petition was contested on behalf of the Railway Administration but ultimately the writ petition of the petitioner was allowed in part on 20.2.1975 inasmuch as this scale of Rs. 250-380/- was allowed to the petitioner from 25.8.1969 with all his arrears of pay and it was ordered that the petitioner be not reverted from his present post of Commercial Controller till the selection had been made as provided by Rules. An appeal against this order filed by the Railway Administration as well as the petitioner were dismissed.

7. That the Railway Board has by its direction contained in R.B's No. E(NG)55 SR 6-7 of 13.8.1959 laid down that the suitability of a candidate for promotion should be judged ^e on the date of the vacancy in the higher grade or as close to it as possible and accordingly the suitability of the petitioner had been judged on 22.12.1967 when he had been appointed by promotion on the post of Commercial Controller. The





In the Hon^{ble} High Court of Judicature at Allahabad:
Lucknow Bench : Lucknow.

Writ Petition No. 461 of 1981

Time : 1 Hour

Yadunandan Prasad, aged about 40 years, son of
Sri Baikunth Prasad Misra, resident of Village and
Post Misrauli, District Sultanpur.

.....Petitioner.

V E R S U S

1. Union of India, through the General Manager,
North Eastern Railway, Gorakhpur.
2. General Manager (P), North Eastern Railway,
Gorakhpur.
3. Divisional Railway Manager (P), North Eastern
Railway, Ashok Marg, Lucknow.

.....Opposite parties.

Writ Petition under Article 226 of the Constitution
of India

The above-noted petitioner begs to submit as
under:-

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latest revision in classification of posts as Selection or non-Selection has been circulated vide Board's letter No. E(NG)1-74 P.M.1/6 of 6.8.1974 (N.R.S.N.6186) where it has been provided that the appointment by promotion to non-selection posts has to be made on seniority-cum-suitability basis; the petitioner has been appointed by promotion on this post having been found senior and quite suitable to it.

8. That Railway Board by its direction contained in R.B's No. E(NG)1-69 CN-5/31 of 5.2.1972 - N.R.S.N. 5586 has laid down that the working of the staff promoted on a post even if the permanent vacancy does not exist should be reviewed after the completion of one year's continuous officiating service with a view to determine his suitability for retention in the grade and the decision to revert him or to retain him be taken and implemented within a period of 18 months of officiating service. There should be no question of denying the benefits of confirmation to an employee on completion of two years officiating service in a clear vacancy for the reason that he is not fit for confirmation.

9. That one another order of the Railway Board contained in R.B's No. E(NG)-1-70 C.N.5/31 of 2.12.70 (N.R.S.N.5178) states that when a Railway Servant is put to officiate in a higher grade for 5 years or more, he should be confirmed (if appointed on regular basis after due selection or suitability test) against the quota reserved for direct recruitment.

10. That the Railway Board had in his letter No.0 611-F dated 4th August, 1938 has directed that,

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'a temporary post may be held either substantively or in an officiating capacity. Substantive appointments to temporary posts shall be made only ^{they have been sanctioned for a period} when ~~it is not~~ there is reason to believe that it will not terminate within a period of 3 years. In all other cases, appointments to temporary posts shall be made in an officiating capacity.'

11. That Selection Posts and Non-Selection Posts have been defined in the Indian Railways Establishment Manual Chapter II Section B, Rule 209(2) and 209(3) where it has been laid down that "Non-Selection Posts are posts, Grades or classes which have not been declared as Selection Posts" and "Selection Posts are posts, grades or classes to which promotion are made on the basis of selection".

12. That in view of all these orders of the Railway Board which have a binding effect, the petitioner was not considered for confirmation in this grade of Commercial Controller in spite of his working on this post for full 13 years, without any adverse remarks and having fully qualifying himself for this post and further having been rewarded for his devotion to his duties.

13. That one more letter relevant for the purpose had been issued by the Railway Board dated 12.8.1971 directing all its Heads of Department to confirm their subordinate officials whose work had been found satisfactory, which had been reiterated in a subsequent order dated 15.3.1972. A true copy of it is filed as Annexure No.1.



महेश्वर शर्मा

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14. That in spite of the fact that the writ petition of the petitioner was pending before this Hon'ble Court, he repeatedly made requests to the Railway authorities to confirm him on this post on the basis of the orders passed by the Railway Board. On repeated requests and representations a reply was received, a true copy of which is being filed as Annexure No.2.

15. That the Special Appeal filed by the Railway Administration as well as the one filed by the petitioner were dismissed on 1.12.1976 and then ~~xxx~~ he was allowed the sanctioned grade of the Commercial Controller. On account of his good work, the petitioner was allowed to cross his efficiency bar as well. Several awards had also been awarded to the petitioner on account of his good work as Commercial Controller, as such one representation was again sent to the Railway authorities inviting their attention to the case of the petitioner for confirmation, for fixing his seniority in the cadre, to regularise his posting and then to allow him the next grade of Rs.550-750/-.

16. That the post of Commercial Controller is of class III of N.E. Railway Service. From this post, promotions are made to class II of this service, the conditions of eligibility for promotion from class III to class II have been laid down in the Railway Board's letter No.F(G.P.)74/2/20 dated 11.7.1977, a true copy of which is filed as Annexure No.3.

17. That the petitioner had served the Railway as Commercial Controller and had been placed in the grade of Rs.455-700/- as such he was eligible for promotion to class II of the Railway Service, if his seniority was

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determined and his posting was regularised.

18. That this post of Commercial Controller had not been declared to be a Selection Post by the Railway Board till 18.2.1980 when a letter No.E(NG)-1-76-PMT/142 Pt.(J.C.M.) dated 8.2.1980 had been issued by the Board, by which it was declared that the Ministry of Railways agreed to the post of Commercial Controller (Rs.455-700) being treated as a 'Selection Post'. A true copy of this letter is filed as Annexure No.4.

19. That the claim of the petitioner was not entertained only because according to the stand taken by the Railway authorities since 1972, this post was a selection post and the petitioner having not been selected to this post could not be confirmed on it. But this post had not been a selection post before 18.2.1980, as such the stand taken by the Railway authorities was not correct.

20. That even on Selection Posts the officials, who had been appointed without selection, were regularised in case they had been found suitable for the post on their working satisfactorily on the post for sufficiently long time. This fact could be substantiated by stating that the post of Section Controller is a Selection Post and in the year 1949 when selection to this post was made, about 15 officials had been exempted from appearing for selection. Out of these 15 persons, there was one Ambar Prasad, who had appeared before the Selection Board on two previous occasions, but could not qualify himself for selection, still he was exempted from selection on the third time

12/11/81

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and his posting to the post of Section Controller was regularised and his seniority had been maintained. This fact can be substantiated by filing a true ^{extract} copy of the Railway Gazette dated 15.2.1953 as Annexure-5. Feeling dissatisfied from this fixation of seniority, Sri Ambar Prasad had filed a representation, a true ~~extract~~ copy of the decision taken by the Deputy General Manager (P), Northern Eastern Railway, Gorakhpur in this respect is filed as Annexure No.6, which gives a clear picture of the controversy.

21. That this practice was followed in the case of non-selection posts as well. In Chief Engineer's Head Quarter Unit of North Eastern Railway, Gorakhpur, the appointments used to be made on permanent posts on ad-hoc basis or on temporary basis and later on their appointments used to be regularised without their appearing in the suitability test. To substantiate this fact a true copy of an office order is filed as Annexure No.7.

22. That from the above submissions it would be clear that the Railway Administration was not so much strict about the officials appearing in the selection tests, ~~what~~ ^{what} was required was the actual efficiency and when it was found that the official was quite efficient to hold a post by his long experience and specialised training, his appearing in the suitability test was avoided and his appointment was regularised. In a recent Government Order dated 14.8.1980 several appointments had been ordered to be regularised; a true copy of this order is filed as Annexure No.8.

12/11/81

25/11/81

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23. That under such circumstances the petitioner again submitted a representation to Chief Commercial Superintendent (P), North-Eastern Railway, Gorakhpur bringing to his notice all relevant facts and circumstances of the case; a true copy of this representation is filed as Annexure No.9, but no reply to it had been received, as such on another representation was sent to the General Manager (P), North-Eastern Railway, Gorakhpur on 22.4.1980; a true copy of it is filed as Annexure No.10.

24. That thereafter the petitioner got a reply in which it was stated that on account of the fact that this ~~post~~ post of Commercial Controller has now been declared to be a 'Selection Post', the question of regularising or determining his seniority does not arise. This letter was received by the petitioner in the month of September, 1980. A true copy of it is filed as Annexure No.11.

25. That the petitioner was advised to send one another representation for reviewing this order to the General Manager (P), North Eastern Railway, Gorakhpur, as such an application was again sent to him, a true copy of which is filed as Annexure No.12. But this application has also been rejected on similar grounds; a copy of this letter received by the petitioner is filed as Annexure No.13.

26. That the lien of the petitioner had also been transferred from the post of Ticket Collector to this Commercial Controller post, which he is holding in a substantive capacity. It was on account of this reason

सुपरीम ७/१५

that Sri Habib Ahmad, who was just junior to the petitioner on the post of Ticket Collector, has been posted as Senior Ticket Collector in the grade of Rs.330-560 and the petitioner has been left out.

27. That the opposite-parties are very much displeased with the petitioner only because he had filed the above-mentioned writ petition before this Hon'ble Court and had been given relief against them. They are bent upon sending back the petitioner to the post of Ticket Collector to the pay of Rs.330/- when the petitioner is at present getting Rs.660/-. He would be sent back to ^{the post of Ticket Collector} ~~Class III~~ ^{Commercial Controller} ~~post~~ from the post of ~~Class II~~ resulting in loss of pay, & loss of several other amenities and several other civil consequences with utmost hardship and he would lose all future chances of promotion to class II of the Railway service.

28. That against these arbitrary actions of the opposite-parties and losing all hopes of any remedy from them and there being now no other alternative remedy against it, this writ petition is being filed on the following -

G _ _ _ R _ _ _ O _ _ _ U _ _ _ N _ _ _ D _ _ _ S

(a) That the post of the Commercial Controller had been declared to be a Selection Post in the year 1980 only and before that date it had been a non-selection post, but the opposite-parties were treating this post to be a Selection Post from its very inception, i.e., since the year 1967, which action is nothing but arbitrary, hence illegal.

A/24

(b) That in the year 1969 these posts were sanctioned to be permanent and their grade had also been fixed. It was evident from the sanctioning order that the posts were Divisional controlled posts and the Divisional head was free to fill the posts at his own discretion which had been done, as such, the petitioner should have been deemed to have been posted in accordance with rules; the action of the opposite-parties in violating these rules is nothing but arbitrary.

(c) That according to the relevant Railway Board's order dated 5.2.1972 the decision to revert him or to retain him should have been taken and implemented within period of 18 months from the date of his initial appointment as Commercial Controller and he should not have been denied the benefits of confirmation after the expiry of two years of his continued service in a clear and permanent vacancy. The decision of not confirming him on this post after an expiry of 13 years is nothing but arbitrary.

(d) That in various Board's Orders it had been repeatedly laid down that if an official had put in long efficient service on a post, his posting on that post should be regularised and he be confirmed on the post and be allowed his seniority but these orders are being violated on the arbitrary whim of the opposite-parties; the action as such is arbitrary.

(e) That the petitioner had been appointed on this post first on the officiating basis in the year 1967, and when the post was considered to last for more than 3 years, it was sanctioned to be permanent with its

M. R. Munim
A/24

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separate scale of pay the officiating nature of the appointment became a substantive one and the posting of the petitioner on this post also became substantive; in this view of the matter the opposite-parties should not have denied him the benefit of seniority and regularisation; their action as such in rejecting his prayer for such reliefs is nothing but arbitrary.

(f) That a post could be only a non-selection post unless it was declared by the Railway Board to be a Selection Post, as such this post of Commercial Controller got the nature of Selection Post when on 18.2.1980 it was declared to be a selection post when the Ministry of Railways agreed to treat this post as a 'Selection Post', as such after this date only appointment to it could be made by selection and not previous to it; the action of the opposite-parties in refusing to treat the petitioner as duly appointed on this post which existed prior to this date by selection was nothing but arbitrary.

(g) That on the non-selection posts the opposite-parties were appointing persons on ad-hoc basis on permanent posts and later on their appointments used to be regularised without their appearing in the suitability test on the ground that their suitability stood judged on their completing the continuous service for 3 years and on their not being reverted. The petitioner being an equally placed person and on the same principles should have been confirmed and regularised on this post on account of his serving the administration for full 13 years to the best of his efficiency; the action of the opposite-parties as such is nothing but arbitrary.

M. R. Mun
R. M.

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(h) That even in the case of Selection Post, the opposite-parties have regularised the appointments of those persons who have appeared before the Selection Committee but were not selected and several others whose appointments had been regularised & without their appearing before the Selection Committee or any suitability test, but the petitioner is being discriminated in this respect as well and in spite of the fact that the attention of the opposite-parties nos. 2 and 3 had been drawn by repeated representations they have rejected the request of the petitioner arbitrarily.

(i) That on account of his seniority in service and crossing successfully the efficiency bar, the petitioner was entitled to the next higher grade of Rs.550-750/- but on account of the malicious intention of the opposite-parties even this grade is not being given to the petitioner, although he is otherwise fully entitled to it; the action of the opposite-~~xxx~~ parties as such is nothing but arbitrary.

(j) That the opposite-parties have given no consideration to the fact that after having served as Commercial Controller for 13 years if the petitioner is kept in a suspense and reverted to the post of Ticket Collector, he will be put to a very great and irreparable loss for no fault on his part; this action of the opposite-parties would amount to punishment and in this way the petitioner would be punished indirectly, losing all chances of future promotion to class II of the Railway Service.

M. R. Munz
ashli

Under the circumstances it is most respectfully prayed that the Hon'ble Court be pleased to -

- (i) Issue a writ in the nature of Certiorari quashing the order passed by the opposite-party no.2 dated 9.12.1980 ^{Mr 4.9.80} and ^{by the Mr} ~~opposite-party no.3 dated 4.9.1980~~ ^{Mr}, copies of which are Annexures Nos. ¹³ ~~11~~ and ¹¹ ~~13~~ ^{Mr} respectively, after summoning their originals from the opposite-parties nos. 2

Amendment incorporated
Advocate
15.1.81

~~Mr and Mr~~ The seniority list prepared and published on 4.12.1980 may also be quashed being quite illegal and unoperative.

- (ii) Issue a writ of Mandamus commanding the opposite-parties to regularize the appointment of the petitioner as ~~as~~ Commercial Controller and to fix his

inter-se seniority and seniority ^{Mr} according to law taking into the consideration the entire period of his service as commercial controller since 23.12.1977 and to allow him all benefits and allowances to which he would have been otherwise entitled.

Amendment incorporated
Advocate
Adv.

- (iii) ~~Direct the opposite-parties to allow the petitioner the authorized grade of Rs 550-750.~~

Amendment incorporated
Advocate
Adv.

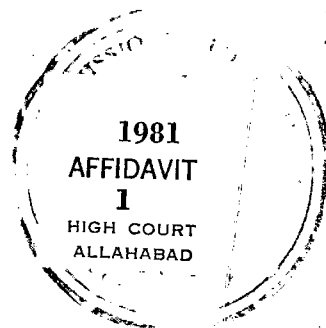
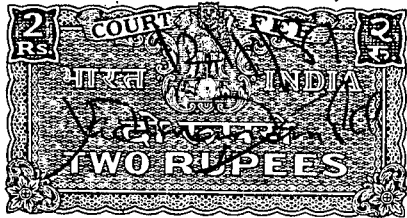
- (iv) ~~Direct the opposite-parties not to revert the petitioner from his present post of Commercial Controller.~~

- (v) Grant such other relief as well, to which the petitioner may be found entitled, with costs of this petition.

Lucknow dated, }
January 16, 1981. }

M. R. Mune
Advocate
Counsel for the Petitioner

Certified that there are no defects in this writ petition to the best of my knowledge.



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

A F F I D A V I T

In re:

Writ Petition No. _____ of 1981

Yadunandan Prasad.....Petitioner.

Versus

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

I, Yadunandan Prasad, aged about ^h40 years, son of Sri Baikunth Prasad Misra, resident of Village and Post Misrauli, District Sultanpur, take oath and state as under:-

1. That the deponent is the petitioner in the above-noted writ petition.
2. That the contents of paras 1 to 27 of the above-noted writ petition are true to deponent's own knowledge.

Lucknow dated,
January ²12, 1981.

यदुनन्दन प्रसाद
Deponent


I, the abovenamed deponent, do hereby verify that the contents of paras 1 and 2 of this affidavit are true to my own

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

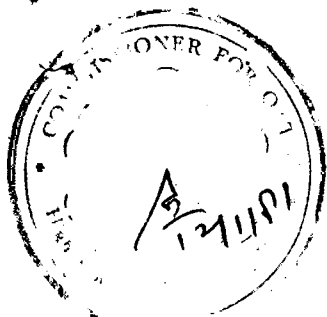
Lucknow dated,
January 12th, 1981.

यदुनान प्रसाद
Deponent

I identify the deponent who has signed in my presence.


(Raja Ram)
Clerk to Sri M.R. Misra,
Advocate.

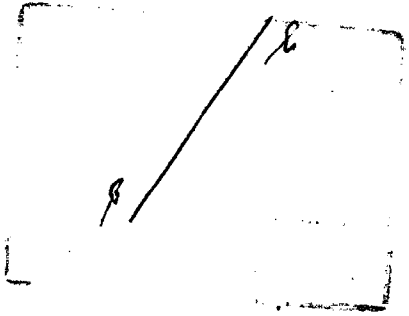
Solemnly affirmed before me on 12th 1.1981 at 6th A.M./P.M. by Sri Yadunandan Prasad, the deponent, who is identified by Sri Raja Ram, Clerk to Sri M.R. Misra, Advocate, High Court, Allahabad, Lucknow Bench, Lucknow.



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

Adviser Spec. Sec.

No.	171901
Date	12-1-81



17

A/P

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

Writ Petition No. _____ of 1981
Yadunandan Prasad.....Petitioner.
Versus
Union of India and others.....Opposite-Parties.

Annexure No. 1

North Eastern Railway

S.No. 2376

Office of the
General Manager (P)
Gorakhpur.

No.E/301/13/4/3(II).

Dated: 15.3.72

The General Manager,
All Heads of Department.
All Divisional Supdts.
All Personnel Officers.
All extra Divisions.
North Eastern Railway.

Reg:-Confirmation of staff officiating in
higher grades.

....

A copy of Board's letter No.E(NG)I-69CN5/31
dated 5.2.72 on the above subject is forwarded for
information. The Board's letter No.E(NG)I-69CN5/31
dated 12.8.71 referred to therein has already been
circulated under this office no.E/301/13/4/3(II)
dated 3.9.71.

Sd. Illegible
for General Manager (P).

Copy of Board's letter No.E(NG)I-69CN5/31
dated 5.2.72.

....

Sub:-Confirmation of staff officiating in
higher grades.

....

...2.

In continuation of the instructions contained in letter of even number dated 12.8.71, the Board desire that the cases of staff who have been promoted on a regular basis should be reviewed after completion of one year's continuous officiating service, ~~or~~ even if a permanent vacancy does not exist, with a view to determining their suitability for retention in the grade. The review should be completed early and a decision to continue the employee in the officiating post or revert him, taken and implemented within a period of 18 months of officiating service. Having followed this procedure, there should be no question of denying the benefits of confirmation to an employee on completion of two year's officiating service in a clear permanent vacancy for the reason that he is not fit for confirmation.

Please acknowledge receipt.

....

A
17/11/81

TRUE COPY

महेश्वर ७/११/८१

इनदिआनरेबुलहाइ कोर्ट आफ जुडीकेवर एट इलाहाबाद,

✓

लखनऊ बेंच, लखनऊ।

रिट पिटीशन नं०

आफ 1981.

यदुनन्दन प्रसाद- - - - - पिटीशनर

बनाम

यूनियन आफ इण्डिया - - - - - अपा०- पार्टीज

अनैज्जर नं०- 2

पू० उ० रे०

अ० सं०

नं०- ई०/ वाई०/ टी० सी०

प्रिय रघुनाथ प्रसाद।

मुनेश्वर प्रसाद सिंह,

सकाधि/ लखनऊ

विषय श्री यदुनन्दन प्रसाद मिश्र, वाणिज्य नियंत्रक का वेतन मान नियत करना तथा वाणिज्य नियंत्रक में पुष्टि करना।

सन्दर्भ :- आपका अ० सं० पत्र सं० ई०/210/15/17- 3/249 सी० वा० नि०/ छः दिनांक 26- 27- /7/76.

श्री यदुनन्दन प्रसाद के भाई के आवेदन पत्र पर पैरावाईज टिप्पणी निम्न है: -

श्री यदुनन्दन प्रसाद रेलवे सर्विस कमीशन द्वारा चुने जाने पर दिनांक 19.8.64. को सीतापुर में टी० सी० के पद पर नियुक्त किये गये। सीतापुर में वे 1967 तक टी० सी० का कार्य करते रहे। वाणिज्य नियंत्रक की पोस्ट सैंक्शन होने से पहले मुख्य वाणिज्य अधीक्षक गोरखपुर ने आदेश दिया कि 2 वाणिज्य नियंत्रक इस कार्य पर लगाये जायें। इस सिलसिले में श्री यदुनन्दन प्रसाद को विशेष कार्य के लिये दिनांक 23.12.67 को कन्दौल आफिस में लगा दिया गया।

दिनांक 11/8/81

महा प्रबन्धक का० गोरखपुर के ज्ञापन संख्या ई०/59/एल०जे. एन०/41/ दिनांक 25.8.69. के द्वारा वाणिज्य नियंत्रक की 2 पोस्ट वेतन मान 250- 380 में मंजूर हुई। श्री यदुनन्दन प्रसाद टी० सी० - 110- 180 लखनऊ जं० के अस्थायी रूप से कन्दौल आफिस में दिनांक

23.8.69. को विशेष कार्य करने के लिये आदेश दिया गया। जूलाई 71 में यह निर्णय किया गया कि श्री युदुनन्दन प्रसाद टी०सी० चुकी पद मान में बहुत जूनियर हैं। इसलिये इनको टी०सी० कोटि में वापस कर दिया जाये। अभी तक यह आदेश कार्यान्वित नहीं हुआ था कि श्री युदुनन्दन प्रसाद ने उच्च न्यायालय लखनऊ बेंच में समादेश याचिका दि० 20.2.75. को प्रस्तुत की जिसके फलस्वरूप श्री युदुनन्दन प्रसाद अभी भी कानूनी आफिस में विशेष कार्य टी०सी० के केंद्र मान ₹260-400 में कार्य कर रहे हैं।

अक्टूबर 75 में न्यायालय ने फैसला दिया कि श्री युदुनन्दन प्रसाद को वाणिज्य नियंत्रक का केंद्र मान 250-380 बिनांक 25.8.69. के दिया जाय और उनको टी० सी० के पद पर रिवर्ट न किया जाय। इसपर रेल प्रशासन ने उच्च न्यायालय में विशेष अपील प्रस्तुत कर दी।

रिवार्डज् केंद्र मान लागू होने पर वाणिज्य नियंत्रक का केंद्र मान 455 - 700 होगा परन्तु श्री युदुनन्दन प्रसाद का मामला न्यायालय के अधीन होने के कारण उनको वाणिज्य नियंत्रक का केंद्र मान नहीं दिया गया और कनफर्म नहीं किया गया। श्री युदुनन्दन प्रसाद इस समय भी टी.सी. 260-400 में केंद्र पा रहे हैं।

मई 74 की हड़ताल में श्री युदुनन्दन प्रसाद ने भाग नहीं लिया था।

आवेदन पत्र के अन्त में कहा गया है कि :-

§1§ श्री युदुनन्दन प्रसाद का केंद्र मान वाणिज्य नियंत्रक के पद मान में नियत किया जाये और उसका बकाया भुगतान किया जाये।

§2§ अपील जो रेल प्रशासन ने की है उसे वापस ले ली जाये और श्री युदुनन्दन प्रसाद को वाणिज्य नियंत्रक के पोस्ट पर कनफर्म कर दिया जाये।

उपरोक्त के सन्दर्भ में यह कहना है कि श्री युदुनन्दन प्रसाद का केंद्र मान 455-700 में नियत नहीं किया जा सकता क्योंकि उनका मामला न्यायालय के विचाराधीन है और अपील वापस लेने के बारे में महा प्रबन्धक § ला § गोरखपुर का राय लेना होगा।

आप-का ,

साइन्ड/-

6.8.76.

§ भुनेश्वर प्रसाद सिंह §

श्री रघुनाथ प्रसाद

सहायि § यज्ञतायात §
गोरखपुर।

सत्य-प्रतिनिधि

प्रकाशनालय

21

4/34

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

Writ Petition No. _____ of 1981
Yadunandan Prasad.....Petitioner.
Versus
Union of India and others.....Opposite-parties.

Annexure No. 3

Northern Railway

Headquarters Officer,
Baroda House,
New Delhi.

No.752-E/473(Eia)

Dated 18.7.77.

All Divl. Supdts. &
Extra Divl. Officers,
Northern Railway.

P.S.No. 6815

Sub:-Promotion from class III to class II
services- Conditions of eligibility.

A copy of Railway Board's letter No. F(GP)74/2/2
20, dated 11.7.77 is sent herewith for information
and guidance. Railway Board's letter dated 26.10.76
mentioned hereon has been circulated vide this
office letter of even number dated 12.11.76 (P.S.
No. 6659).

DA/As above.

(B.S.Dhir)
for General Manager (P)

Copy to All SPOs and APOs Hd. xtrs.office.

Copy to All Supdt. Supdts./Asstt. Supdt. Hd. xtrs.
(Concerned Section) for information and
necessary action.

Copy to Supdt. Confdl. for information.

Copy to Railway Board's letter No. E(GP)74/2/20 dated 11th July, 77 to the General Managers, All Indian Railways and copy to others.

Sub:- As above.

In partial modification of the conditions of eligibility laid down in this Ministry's letter of even number dated 26.10.76 for selection to class II posts under the revised scale of pay the Railway Ministry have decided as under:-

(a) All permanent staff in the revised scale of Rs.425-640 and above should be eligible for selection to class II posts in all departments, provided they have rendered three years non-fortuitous service in this grade or above.

(b) The seniority of employees should be determined.

(i) Within a stream, the inter-scale seniority should be regulated on the basis that those in the higher scale would be senior to those in a lower scale. For example, if in a stream, the top scale is Rs.840-1040 and the next scales below are Rs.700-900, Rs.550-750 and so on, those in the scale of Rs.840-1040 will be senior to those in the scale of Rs.700-900, those in the scale of Rs.700-900 to those in Rs.550-750 and so on.

(ii) For purpose of drawing up an integrated seniority list of staff belonging to various streams, service in the top most scale in each stream should be considered equivalent to such service in the top most grade in the other, irrespective of whether such

grades are in different scales of pay. For example, if in one stream, the top scale carries Rs.700-900, in another stream, the top scale carries Rs.550-750 and in the third stream, the top scale carries Rs.840-1040 the length of service rendered in these different streams i.e. is Rs.700-900, 550-750 and 840-1040 will be the basis on which to determine the inter stream seniority of staff in these grades. Similarly, the staff in the next below grade in each different stream will be assigned seniority on the basis of their length of service in each of these grades and so on. In other words, the mere fact that in a stream the top scale carries a higher scale than in another stream does not make the higher top scale in that stream more weighty than the lower top scale in another stream.

2. Para 1(c) & (b) of Railway Ministry's letter of even number dated 26.10.1976 will, therefore, be substituted by paras 1(a) and 1(b) above and para 1(d) will be deleted.

3. The note appearing below para 1(b) of the Ministry's letter dated 26.10.1976 will be deleted and the following Note will appear below para 1(a) as substituted above:-

Note - When it is considered by the Government that the above categories would not constitute an adequate field of choice, qualifying service for the permanent staff in grade Rs.425-640(RS) and above may be reduced to two years.

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or on your non-fortuitous service
as considered necessary by the Ministry
of Railways.

All India Traffic Controllers Association

Dear Brotheren,

Rise to the occasion at least now otherwise
Control category will doom for ever. We want to
fight for our Constitutional right in the Court of
law? Request donation to control Body whole
heartedly and your opinion on the issue at the
earliest.

Sd. B.S.Kalsi

(B.S.Kalsi)
General Secretary/NR,
A.I.T.C.A. 161/E,
Thompson Road, N.Delhi.

...



True Copy

महोदय महोदय

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K/3

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

Writ Petition No. _____ of 1981
Yadunandan Prasad.....Petitioner.
Versus
Union of India and others.....Opposite-Parties.

Annexure No. 4

Copy of Board's letter No.E(NG)I-76PMI/142 Pt
(JCM) dated 8.2.1980 addressed to the General
Manager, N.E.Railway, Gorakhpur.

Sub : Classification of non-gazetted posts
on introduction of revised scales of pay.

Ref : Correspondence relating with Sri R.L.
Seth's D.O. letter No.E/254/2 Pt.6(IV)
dated 18.1.1980.

The matter has been examined and in view of
the position explained in additional GPO's D.O.
No.E/254/2/Pt.6(IV) dated 24.8.1979, the Ministry
of Railways agree to the post of Commercial
Controller (Rs.455-700) being treated as a 'Selection
Post' on your Railway.

(S)
7/11/81

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सदरतः प्रमाणित

Kuo

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

Writ Petition No. _____ of 1981

Yadunandan Prasad.....Petitioner.

Versus

Union of India and others.....Opposite-parties.

Annexure No. 6

North Eastern Railway, Gorakhpur
General Manager's Office. No.E/11/1/Ofts./SNY-3
Dated 26.5.1955.

The District Traffic Superintendent,
N.E. Railway,
Gonda.

Re:- Representation dated 27.9.54 of Sri Ambar Prasad Srivastava, TNL, Gonda, against the Provisional ~~in~~ Combined Seniority List of TNL in grade 200-300.

The contention of Shri Ambar Prasad that he was selected as Section Controller in grade 200-300 on 23.3.45 is incorrect. The facts are that he was chosen for being trained in Control work. He after which he was interviewed in July, 1946 by a properly constituted Selection Board, but was not as a Section Controller owing to shortage of selected section Controllers he as well as some others were, provisionally promoted with effect from 8.11.47 to work as Section Controller pending formation of fresh panel for that post. He again appeared before another Selection Board held on 10.2.49 but again was not selected.

However he got exemption from appearing before

a Selection Board, under G.M's orders, and was ~~placed~~ placed below those who were selected as Section Controllers by Selection Boards held upto 10.2.49.

The post of Section Controller in grade 200-300 is a selection grade and as per Board's directive promotion without selection to that post is fortuitious. Apart from this his non-fortuitious service, in no case, can be more than those who were selected as ~~station~~ Section Controllers upto 10.2.49. Therefore, he has been credited with 2 years 5 months and 25 days non-fortuitious service to the extent of his next senior in the same unit. His seniority position has been correctly fixed according to rules and orders on the subject and no change is necessary.

As regard the seniority position of Shri M.M. Ghosh, it is regretted that through an over sight the C.Ps (P)'s letter No.13-E/338(T) dated 18.2.54 could not be taken into consideration while preparing combined seniority list. Necessary correction has since been made and position of Shri Ghosh fixed accordingly. This, however, will not affect the seniority position of Shri Ambar Prasad.

The representationist Shri Ambar Pd. Srivastava may be informed accordingly; a spare copy enclosed for the employee.

For Dy. ~~Gen~~ General Manager(P)

(5)
17/11/54

TRUE COPY

25/11/54

A/42

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

Writ Petition No. _____ of 1981

Yadunandan Prasad.....Petitioner.

Versus

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

Annexure No. 7

North Eastern Railway

Office Order

The following General clerks in Grade Rs.110-180 (AS) of CEs Head Quarter unit, GKP have been exempted from appearing in the Departmental test as Jr.Clerk to the post of Sr.Clerk in scale (Rs.130-300).

This issues with the approval of PA to CE.

S.No.	Name	Men where working
1	2	3
1.	Shri S.M.Husain	XEN(B)/GKP
2.	Shri Ram Ugran Pandey	SCO/GKP
3.	Shri Ram Baran Lal Srivastava.	-do-

Sd/-

for Chief Engineer:(P)
Dt. 4/11/1962.

R/VIII/210/2/5/RXM.

TRUE COPY

महानगर नगर

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X/13

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

Writ Petition No. _____ of 1981
Yadunandan Prasad.....Petitioner.
Versus
Union of India and others.....Opposite-Parties.

Annexure No. 8

Government of India (Bharat Sarkar)
Ministry of Railways (Rail Mantralaya)
(Railway Board)
No. E(NG)/III/79-RGI/80 New Delhi Dt. 14.4.80.

The General Managers,
All Indian Railways,
ICR/CLW/DLW.

Sub:-Regularisation of Adhoc-appointments.

.....

A reference is invited to Para 4.1 of Board's letter No. E(NG)/III-77/LOS/1 dated 23.7.1977 in which it was inter alia stated that appointments made.

- 12/11/81
- i) In excess of the 20% quota for sons and daughters of loyal staff,
 - ii) In excess of sports quota.
 - iii) persons who did not satisfy the standard laid down by RSCB as current on the date of appointment; and
 - iv) others appointed as per Ministry of Railways

A/44

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orders.

~~Next~~ be treated as ad-hoc appointments.
A list indicating the approximate number of such appointments in Class - III as advised by the Railways is enclosed.

2. The matter has been considered by the Ministry of Railways carefully and it has been decided that all such appointments made during 1974 to 1977 may be treated as regular with effect from the dates on which they were originally appointed. Similar appointments made in class IV if any, may also be regularised. Necessary action may now be taken accordingly.

3. Please acknowledge receipt.

4. Hindi version will follow.

Sd/-

(D.D. Assarwal)
Joint Director Estt(N)
Railway Board,
New Delhi.

15/11/81

TRUE COPY

सुबोधन झा

A/S

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

Writ Petition No. _____ of 1981
Yadunandan Prasad.....Petitioner.
Versus
Union of India and others.....Opposite-Parties.

Annexure No. 9

To

The Chief Commercial Supdt.(P)
North Eastern Railway, Gorakhpur.

Through:- Proper Channel.

Sir,

Sub:-Regarding regularization of posting
and seniority.

With due respect I beg to draw your kind
attention towards the following few facts for
favourable consideration and necessary orders.

That the applicant was appointed as Ticket
Collector in the year 1964 (17th August) in Lucknow
Division of N.E.R.

That there after in the year 1967 he has been
posted as Commercial Controller and accordingly he had
joined this post w.e.f. 23.12.67. This information
had been given to your honour also vide DCS
letter No.C/Com/Controller/LJN dated 20.1.68 in reply
to your ~~letter~~ letter No.C/387/84(R&D) dated 8.1.68 is
filed as Annexure-I to this application for your kind
perusal.

17/1/81

That the applicant had been given the training of Goods (P) and Coaching (P) for this purpose, which had been completed successfully vide Supdt. Zonal Training School Muzaffarpur letter No. T/327/2 dt. 21.7.69. The result was declared on 4.7.69 and 13.8.69 vide Superintendent Zonal Training School Muzaffarpur letter No. T/327/23/Goods and T/327/23/Hindi and applicant had been declared passed in both the courses.

That in the year 1969 the grade of Comm1. Controller has been decided with creation of two permanent posts for Lucknow Division vide CCS(P)/GKP letter No. E/59/C/LJN/4/(IX) dated 25.8.69 (upto this time the post was being treated as Non Selection and Divisional controlled posts as nothing was mentioned in the sanction letter in this regard and Divisions were free to fill up the post by his own accord).

That according to this decision the grade and the pay of the applicant as Comm1. Controller had been fixed w.e.f. 25.8.69 vide Divisional Supdt. (P) letter No. E/YP/TC/77 dated 28.5.77 on the decision of Hon'ble High Court Lucknow Bench.

That it is for the first time in the year 1972 (16.5.72) vide GM(P)/GKP letter No. E/210/15/0/CD/GMI(IX) the post was declared as ex-cadre selection and Divl. Control post is also evident that prior to 1972 the post was non selection also Divisional Controlled posts upto this time.

That in the year 1977 (20.7.77) vide GM(P)/GKP letter No. E/2/210/15/0/AVC/GMI the post has been



declared as head quarter control post is quite evident that prior to 1977 the posts were Divisional Controlled posts and Divisions had full right to fill up the post by his own accord.

That for the first time in the year 1980 Railway Board vide his letter No. E/HQ/I-76 PMI/142/Pt.(JCM) dated 8.2.80 informed that Ministry of Railway agreed to the post of Commercial Controller (Rs.455-700) being treated as a selection post in NER, which is quite evident that prior to 8.2.80 there was no approval of Railway Board for treating it as selection post in NER.

That the applicant has ~~xxx~~ crossed the efficiency bar in the year 1976 and is still continued to work as Commercial Controller on the same post and grade (455-700) and his pay at present is Rs.640/- even after about 13 yrs. continuous and blotless service, he could not get any promotion so far because the posting of the applicant as Comm. Controller has not been regularised so far and seniority is still undecided.

That the Superiors of the applicant are quite satisfied with the working of the applicant as it is quite evident with the certificate issued by them from time to time. Copy of one, such certificate is filed as Annexure 2 of the application for your kind perusal.

That occasionally Senior Divl. Comm. Supdt. has also pleased to give Cash Award and appreciated the good work done by the applicant vide his letter No. C/Misc/OS/Award/79 dated 30.10.79 and DCS/SS-7/72

dated 5.3.80. Copies of which are filed as Annexure 3 and 4 for your kind perusal.

That Sri Anbar Prasad Srivastava Head quarter Gonda, Moti Lal Gupta HQ Gorakhpur, Rang Bahadur HQ Sonpur, K.C. Ghosh, K. Shaumik HQ Banaras, M.C. Saxena HQ Sonpur, A.K. Kanji Lal HQ Samastipur, C.B. Asthana HQ Banaras Cantt., J. Chandra Lal HQ Gonda, S.K. Ghosh HQ Gorakhpur were officiating as TNL in the year 1949 had been exempted from Selection Board under GM's order and their postings had been regularised without appearing in the selection on the basis, that they had satisfactorily officiated continuously as more than two years on the post of TNLs. This exemption was published in the supplement of NER Gazette No. 4 of 15th Feb/1953 and an extract of the same is filed as Annexure-5 for your kind perusal.

That in the year 1962 General Clerk Sri S.M. Husain of XEN(B) Gorakhpur Sri Ram Ugrin Pandey SCO/GKP Sri Ram Baran Lal Srivastava of SCO Gorakhpur were also exempted from appearing in the deptl. test as Jr. Clerk to the post of Sr. Clerk vide Chief Engr. (P) letter No. E/VIII/210/2/5/EXM dated 4.11.62 on the similar ground. A copy of this letter filed as Annexure 6 of this application for your kind perusal.

Therefore in the interest of Justice the applicant approach to your honour for favourable and kind consideration on the following grounds.

(A) Since the post of Comd. Controller prior to 1972 were non selection and Divl. Control post, the

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applicant should be given the benefit of this and be exempted from appearing in the selection of Comm. Controllers which is now selection post in the year 1980 as the applicant was posted w.e.f. 23.12.67 and had been given the grade w.e.f. 25.8.69 when it was non selection post.

(B) That the applicant should also be exempted from appearing in the selection on the ground as done in the cases of Section Controller (TNLS) and Jr. Clerks who were officiating on the post of TNLS and Sr. Clerks and had been exempted from appearing in the selection Board and test.

(C) That the applicant has crossed the efficiency bar and now ^{reaching} ~~proceeding~~ at the maximum pay to his grade and his working throughout these about 13 years were quite satisfactory is the sufficient ground to his exemption from appearing in the selection.

I, the applicant, therefore, requested your honour to kindly consider the case of applicant sympathetically and regularise his posting by giving exemption from the Selection of Comm. Controller (455-700) as now decided in the year 1980 and also to decide the seniority of the applicant in the interest of justice and to free the applicant from the worries so that he may give much more better service in the interest of Railway and nation.



Thanking you for the trouble.

Yours faithfully,

Sd/-

(Yadunandan Prasad)

S/O Sri B.P. Misra.
Comml. Controller,
N.E. Railway/Lucknow.

Dated: 10.4.80.

Advance copy for information and necessary
action to:-

1. The General Manager (P)/ N.E.Rly.,/Gorakhpur.
2. The Addl.Chief Comml.Supt:(G)/N.E.Rly.,/
Gorakhpur.
3. The ~~Ch~~ Chairman Railway Board, New Delhi.

Sd/- (Yadunandan Prasad)

12/1/81

True Copy

यदुनन्दन प्रसाद

38
A/S

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

Writ Petition No. _____ of 1981
Yadunandan Prasad.....Petitioner.
Versus
Union of India and others.....Opposite-parties.

Annexure No. 10

To

The General Manager (P),
North Eastern Railway/Gorakhpur.

(Through: Proper Channel).

Sir,

Sub:-Regarding seniority.

With due respect I beg to draw your kind attention towards the following few facts for favourable consideration and necessary orders.

That the applicant was appointed as Ticket Collector in the year 1964 (17th August) in Lucknow Division of N.E.R.

That thereafter in the year 1967 he had been posted as Commercial Controller and according he joined this post w.e.f. 23.12.67.

That the applicant had been given the training of Goods and Coaching for this purpose which had been completed successfully vide Superintendent Zonal Training School Muzaffarpur letter No.T/327/2 dated 21.7.69.

That in the year 1969 the grade of Commercial Controller had been decided with creation of two permanent post for Lucknow Division CCS(P)/Gorakhpur letter No.E/59/C/LJN/4(IX) dated 25.8.69.

That according to this decision the grade and the pay of the applicant as Commercial Controller had been fixed w.e.f. 25.8.69, vide Divisional Supdt.(P) letter No.C/YP/TC/77 dated 28.5.77 on the decision of Hon'ble High Court (Lucknow Bench).

That the applicant is still continue to work on the same post and the grade (455-700) and his pay at present is 640/-, even after 13 yrs. continuous service without any break, he could not get any promotion so far because the seniority of the applicant is still not decided.

I, the applicant therefore, request your honour to kindly look into the matter and decide the seniority of the applicant at the earliest in the interest of justice, before stagnation of my pay.

Thanking you for the trouble.

Yours faithfully,

(Yadunandan Prasad)
S/o Late Sri B.P. Misra,
Commercial Controller,
N.E.Rly.,/Lucknow.

Dated: 22.4.80.

Advance copy for information and necessary action to:-

- 1). General Manager, (P)/N.E.Rly.,/Gorakhpur.
- 2). Add.Chief Commercial Supdt., (G)/
N.E.Railway./Gorakhpur.

Sd/-Y. Prasad
(Yadunandan Prasad)

TRUE COPY

सुदरन प्रसाद

५०
इन दि आनरेबुल हाई कोर्ट आफ जुडीकेवर एट इलाहाबाद, 57
लखनऊ बैन्च, लखनऊ।

रिट पिटीशन नं० आफ 1981.

यदुनन्दन प्रसाद - - - - - पिटीशनर

बनाम

यूनियन आफ इण्डिया अ - - - - - अपो- पाटीजि

अनैम्बर नं०- 11

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A/51

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

Writ Petition No. _____ of 1981
Yadunandan Prasad.....Petitioner.
Ver us
Union of India and others.....Opposite-Parties.

Annexure No.12

The General Manager (P),
North Eastern Railway,
Gorakhpur.

Through Proper Channel.

Respected Sir,

Sub: Regularization and fixation of seniority
of Yadunandan Prasad Commercial
Controller on the post of Commercial
Controller.

Ref: Your letter No.Ka/210/15/17-3/VI/GNL/Pt.I,
dated 14.7.80 and DRM(P)/LJN's letter
No.E/YP/GNL dt. 4.9.80 with reference
to my application dated 10.4.80/16.5.80.

With due respect I beg to invite your kind
attention to paragraph 13 (Annexure 5) of my above
mentioned application, where in it was stated that
Shri Amber Prasad and other 15 Controllers were also
appointed similarly and under the same circumstances,
without any selection, where as the post of Controller
was also a selection post as agreed by the Railway
Board and selection had been made accordingly. They
had been given the required training and exempted from
selection board under GM's order, on the basis of
their satisfactory working for the longer period.
They had been assigned their seniority along with
other selected candidates, but the case of applicant

A/12/11/81



पूर्वोत्तर रेलवे

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N. E.—G. 112

N. E. Railway

मंडल रत्न - पंचक (५)

Office

स्थान

2100

सं. १०००. गा. १. सी. १०००. दिनांक

4- 9-

Dated

श्री गुरुनन्दन प्रसाद
विर. नि. / गुरुवत्स

वार्ड नं. १/भारवक

संवेदन: आग का आग्रे दल एक दि० 10-4-80
फोस्टिंग निगमिता करने तथा घोषणा
है।

आप के उपरोक्त आशेष पद के संदर्भ में
न्यायाधीश (का.) / गोरखपुर ने अपने पत्र क्र:-
का/ 210/15/17-3/VI/CA/4/197) दि. 14-7-80 आ
पद सूचित किया है कि - "रेल परिवहन द्वारा
व्यापारिक निष्पत्ति 455-700 का यह 'चपान' पद
सूचित हुआ है। यदि श्री मदनमोहन प्रसाद ए
पद के लिये चपानित नहीं हैं अतएव व्यापारिक
निष्पत्ति (455-700) पर या उनकी पोहोच के
निष्पत्ति को न्याय वरीयता देने का प्रश्न
नहीं उठता है।"

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A/SS

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has been discriminated unjudiciously and unreasonably, whereas the applicant has also been appointed similarly and under the same circumstances in the year 1967 and has been given the grade of Commercial Controller in the year 1969, when the same was created. He has also been given the training of goods and coaching for this purpose. The applicant crossed the efficiency bar in the year 1976 and is continuously working on this post for more than 13 years. His work was quite satisfactory, which is evident from paragraph 11, 12 and Annexure 2, 3 and 4 of his above mentioned application under reference.

That the post of Commercial Controller has been declared as a selection post by Railway Board in the year 1980, which is filed as Annexure 1 to this application. Whereas the applicant was appointed on the post of Commercial Controller in the year 1967 and its grade was given to him in the year 1969 after its creation. The rule of selection post should be applicable to the appointment after 1980 and not before it as it was not in existence prior to 1980. Therefore, the applicant should be exempted from the selection board and his seniority be decided according to the rules of natural justice.

A/12/11/81

I, the applicant, therefore, request your honour kindly to consider my case sympathetically without any discrimination keeping in view the principles of equality before law and justice and considering his long continuous devotional service of more than 13 years on the post of Commercial Controller without any complaint, which is the

material factor to be taken into consideration.

The posting of applicant as Commercial Controller be regularised and his seniority be assigned from the due date to save him from misery, harassment, mental tension, worries and irreparable loss, so that he may be able to perform much more better service to the Railway and the country.

I hope that my above humble prayer will find favour from your generous consideration for which I shall be ever grateful.

Yours faithfully,

(Yadunandan Prasad)
Commercial Controller,
N.E.Railway, Lucknow.

Dated: 15.9.80.

Copy for information and necessary action to:-

1. CHB/Railway Bhawan, New Delhi.
2. Director Establishment, Railway Board, Rxx Rail Bhawan, New Delhi.
3. General Manager, N.E.Railway, Gorakhpur.
4. General Manager(P)/N.E.Railway, Gorakhpur.
5. Chief Commercial Supdt., N.E.Railway, Gorakhpur.
6. D.R.M.(P), N.E.Rly., Lucknow with reference to his letter No.E/YP/CNL dt. 4.9.80.

(Yadunandan Prasad)
Commercial Controller,
N.E.Railway, Lucknow.

15/9/80

TRUE COPY

इन दि आनरेबुल हाई कोर्ट आफ जुडीकेयर एट इलाहाबाद ,

लगनऊ बेन्च, लगनऊ।

रिट पिटीशन नं० आफ 1981.

यदुनन्दन प्रसाद - - - - - पि-टीशनर

बनाम

यूनियन आफ इण्डिया - - - - - अपो- पार्टीज

अनैम्जर नं०- 13.

पूर्वोत्तर रेलवे

9.12.80

प्रेक्ष,

सेवा में,

महा प्रबन्धक
गोरखपुर।

मं० रं० प्र०॥ का०॥
लगनऊ।

विषय:- श्री यदुनन्दन प्रसाद वा० नियंत्रक का आवेदन पत्र।

सन्दर्भ :- आपका पत्र ड/ वाई. पी. / सी०एत०एत० दिनांक
6.11.80.

✓ वाणिज्य नियंत्रक 455-700 का पद चयन पद है। श्री प्रसाद
चूँकि इस पद के लिये चयनित नहीं है अतः उन्हें नियमित करने का प्रश्न
नहीं उठता है। नियमानुसार यदि वे चयन में सम्मिलित होने के लिये
पात्र होंगे तो उन्हें चयन में शामिल होना पड़ेगा।

कर्मचारी को तदनुसार सूचित कर दें।

कृते महा प्रबन्धक का०॥

12/11/81

सत्य - प्रतितिपि

यदुनन्दन प्रसाद

In the Honble Allahabad High Court sitting
At Lucknow

C.M. An No 11390/82

^{here}
w.p. No. 461 of 1981

Yadunandan Pal Misra — Petitioner

vs

Union of India & others —

op/p Parties

In the ^{case} aforesaid, I reserved copy
of Stay Application.

dated

24-11-82

Received (three) copies

Copy - Commr
C/O Shri. B. S. Chandra
29/11/82

உரிமையு

महाराष्ट्र

४७

(३१६६) १३१६

(३११५) ॥३॥

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Accepted
in R. M. M. M.
R. M. M. M.

को अपना वकील नियुक्त करके प्रतिज्ञा इकट्ठा करना है और निवेदन में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पुरवी व जवाब देही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और कपया वसूल करें या सूदनहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने इस्ताफर से दाखिल करें और नस्दीक करें या मुकदमा उठावें या कोई कपया जमा करें या हमारी विपक्षी (फरीकमाना) का दाखिल किया हुआ कपया अपने या हमारे इस्ताफर मुकल (इस्तखली) रसीद से लेवें या एवं नियुक्त करें वकील महोदय द्वारा को गई वहे सब कार्यवाही हमको सर्वथा स्वीकार है और होगी इसलिफ यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे ।

Advocate High Court, Lucknow
वकील मजिस्ट्रेट

કપર તિલે મકરમાં મેં અવતી અરે મેં જી

॥२५॥ ०८

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புதுப்புது

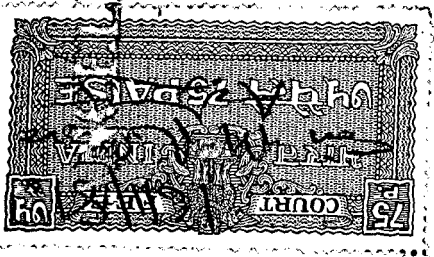
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Union of India

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कलकत्ता

(24125) LSI 12164K

बारा (३३६)

ॐ श्रीगणेशाय नमः

ਸਤਿਨਾਮ

In the Hon'ble High Court, Lucknow
Bench, U.O.

W.P. No. 461 of 1981

16/2/81

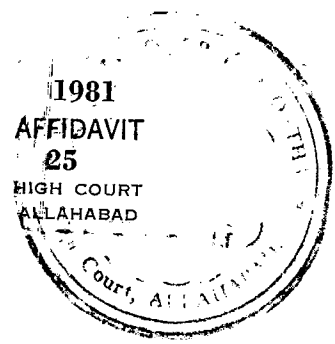
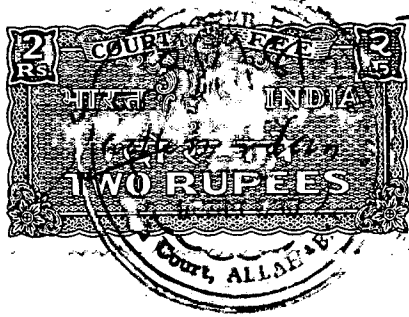
(76)
3
5/2/81

Yadunandan Id. — Petitioner
vs
Union of India — app. conts

In the above noted case I —
filing the supplementary affidavit with
enclosed copies of court order dt-22-1-81, here with attached
with in time.

DT
5/2/81

M. R. Munir
Counsel for petitioner



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

Writ Petition No. 461 of 1981

Yadunandan Prasad.....Petitioner.

Versus

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

Supplementary Affidavit

I, Yadunandan Prasad, aged about 40 years, son of Sri Baikunth Prasad, resident of Village and Post Misrauli, District Sultanpur, take oath and state as under:-

1. That the petitioner had been appointed by the District Commercial Superintendent, Lucknow on the orders of the Chief Commercial Superintendent, North-Eastern Railway, Gorakhpur vide his order dated 20.1.1968; a true copy of communication notifying this appointment supplied to the petitioner is filed herewith as Annexure No.14.

2. That while performing his duties as a Commercial Controller, the petitioner had been sanctioned an Award, which had been notified by Senior Divisional Commercial Superintendent, Lucknow. A true copy of this notification is filed as Annexure No.15.

3. That in appreciation of good work of the

यदुनन्दन प्रसाद

5/2

petitioner performed as Commercial Controller, the petitioner had been given Cash Award as well, a true copy of one such communication is filed herewith as Annexure No. 16.

4. That this Supplementary Affidavit is being filed in accordance with the orders passed by this Hon'ble Court dated 22.1.1981.

Lucknow dated,)
February 2, 1981.)

यदुनन्दन प्रसाद
Deponent

I, the abovenamed deponent, do hereby verify that the contents of paras 1 to 4 of this supplementary affidavit are true to my own knowledge; that no part of it is false and that nothing material has been concealed, so help me God.

Lucknow dated,)
February 2, 1981.)

यदुनन्दन प्रसाद
Deponent

I identify the deponent who has signed in my presence.

Raja Ram
(Raja Ram)
Clerk to Sri M.R.Misra,
Advocate.

Solemnly affirmed before me on 2.2.1981 at 8.30 A.M./P.M. by Sri Yadunandan Prasad, the deponent, who is identified by Sri Raja Ram, Clerk to Sri M.R.Misra, Advocate, High Court, Lucknow.

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

श्रीविवेक सहाय सेन्सले

No.	257-7-1981
Date	2.2.1981

5/3

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

Writ Petition No. _____ of 1981
Yadunandan Prasad.....Petitioner.
Versus
Union of India and others.....Opposite-Parties.

Annexure No.14

N.E.Railway

Office of the Distt.Comml.Suptd./LJN.
No.C/Comm1/Controller/LJN. Dated: 20.1.68.

To

The Chief Comm1.Suptd.,
Gorakhpur.

Sub:-Posting of Comm1.Controller for
LJN District.

Ref:-Your XR No.C/367/84(R&D)
Dt. 8.1.68.

21/10/81

Sri Yadunandan Prasad TC/LJN has been posted
to work as Commercial Controller in Distt.Control
Office on Special duty w.e.f. 23.12.1967.

Sd/-

for Distt.Comml.Suptd.

True Copy

यदुनन्दन प्रसाद

X/62 5/4

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

Writ Petition No. _____ of 1981

Yadunandan Prasad.....Petitioner.

Versus

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

Annexure No. 15

North Eastern Railway

Memorandum

Sanction is accorded by the undersigned for payment of group award of Rs.25.00 (Rupees Twenty five) only to S/Shri Yadunandan Prasad and S.N.Srivastava, Commercial Controller at Lucknow, in appreciation of efficient and outstanding discharge of their duties on 20th and again on 22nd October, 1979, to achieve 100% punctuality of all Mail/Express and passenger trains in the Division on both these dates.

Fund is available and is allocated under item 8.03 of SOPEST.

(A.K.Das)
Sr.Divl.Comml.Supt./Lucknow.

No.C/MIOC/OS/AWARD/79. Dt. 26-30/1/79.

Copy to the following for information and necessary action:-

- 1). DAO/LJN along with pay order No.4462/8 dt. 29th October, 1979 for Rs.25/- for check and payment.
2. Budget section of this office.

True Copy

पुनर्मा प्रमाण

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

Writ Petition No. _____ of 1981
Yadunandan Prasad.....Petitioner.
Versus
Union of India and others.....Opposite-Parties.

Annexure No. 16

North Eastern Railway

Divisional Office,
Lucknow.

M E M O R A N D U M

In exercise of powers delegated vide item No.8.03 of the SOPGST, the following cash awards are sanctioned to the staff.....in appreciation of the good work done by them during the year.

- | | | |
|--|----|------------|
| 1. Sri Bhowmick A.K., Sr.Clerk | .. | : Rs.30.00 |
| 2. Sri Kanaujia N.K., Head Clerk | .. | : Rs.50.00 |
| 3. Sri Ghaffar, A., Sr.Clerk. | .. | : Rs.30.00 |
| 4. Sri Srivastava S.N., Comml.&
Controller. | .. | Rs. 40.00 |
| 5. Sri Misra, Y.N., Comml.Controller | .. | : Rs.40.00 |
| 6. Sri Karidhal, G.C., Chief Resn.
Supervisor | .. | Rs.50.00 |
| 7. Sri Krishna SS, Comml.Controller,
Gonda. | .. | : Rs.30.00 |
| 8. Sri Srivastava J.K., Head Clerk/
Comml. | .. | : Rs.50.00 |
| 9. Sri Chhiddoo, R/Lifter. | .. | : Rs.15.00 |
| 10. Sri Davi Prasad, Peon | .. | : Rs.15.00 |
| 11. Sri Shukla, R.C. C/Steno. | .. | : Rs.50.00 |
| 12. Sri Vijayan E., Steno. | .. | : Rs.50.00 |



Sd/-(A.K.Das)
Sr.Divl.Commercial Supdt.,
Lucknow.

No.DCS/SS-7/72 Dated: 5.3.1980.

Copy forwarded for information and necessary action to:-

1. DAO/LJN alongwith pay order No. _____ dated _____ for Rs. _____ for arranging payment early.
2. Divl.Audit Officer/Lucknow.
3. Staff concerned.
4. Head Clerk/Estt./Comm1. A copy of this order may please be placed in the Folder/P case of each staff mentioned above. (DA/12 spare copies).
5. C/Steno to Sr. DCS. He will keep a copy of the same in the CR Folder of the staff concerned. (DA/12 spare copies).
6. CA to DRM. He will please keep the copy in the DA/4 spare copies).

Sd/-Illegible
Sr.Divl.Comml.Supt.,
Lucknow.

True Copy

अनंत कुमार

2/2/81

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

Writ Petition No. 461 of 1981

Yadunandan Prasad.....Petitioner.

Versus

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

Supplementary Affidavit

I, Yadunandan Prasad, aged about 40 years, son of Sri Baikunth Prasad, resident of Village and Post Misrauli, District Sultanpur, take oath and state as under:-

1. That the petitioner had been appointed by the District Commercial Superintendent, Lucknow on the orders of the Chief Commercial Superintendent, North-Eastern Railway, Gorakhpur vide his order dated 20.1.1968; a true copy of communication notifying this appointment supplied to the petitioner is filed herewith as Annexure No.14.

2. That while performing his duties as a Commercial Controller, the petitioner had been sanctioned an Award, which had been notified by Senior Divisional Commercial Superintendent, Lucknow. A true copy of this notification is filed as Annexure No.15.

3. That in appreciation of good work of the

M.R. Munshi

petitioner performed as Commercial Controller, the petitioner had been given Cash Award as well, a true copy of one such communication is filed herewith as Annexure No. 16.

4. That this Supplementary Affidavit is being filed in accordance with the orders passed by this Hon'ble Court dated 22.1.1981.

Lucknow dated, }
February . 1981. }

Deponent

I, the abovenamed deponent, do hereby verify that the contents of paras 1 to 4 of this supplementary affidavit are true to my own knowledge; that no part of it is false and that nothing material has been concealed, so help me God.

Lucknow dated, }
February . 1981. }

Deponent

I identify the deponent who has signed in my presence.

(Raja Ram)
Clerk to Sri H.R. Misra,
Advocate.

Solemnly affirmed before me on .2.1981

at A.M./P.M. by Sri Yadunandan Prasad, the deponent, who is identified by Sri Raja Ram, Clerk to Sri H.R. Misra, Advocate, High Court, Lucknow.

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

T.C
M.R. Munshi
Ashok

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

Writ Petition No. _____ of 1981
Yadunandan Prasad.....Petitioner.
Versus
Union of India and others.....Opposite-Parties.

Annexure No. 14

N.E. Railway

Office of the Distt. Comm'l. Supdt./LJN.
No.C/Comm'l/Controller/LJN. Dated: 20.1.68.

To

The Chief Comm'l. Supdt.,
Gorakhpur.

Sub:-Posting of Comm'l. Controller for
LJN District.

Ref:-Your XR No.C/337/84(R&D)
Dt. 8.1.68.

Sri Yadunandan Prasad TC/LJN has been posted
to work as Commercial Controller in Distt. Control
Office on Special duty w.e.f. 23.12.1967.

Sd/-

for Distt. Comm'l. Supdt.

True Copy

M. R. Mun
Sd/-

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

Writ Petition No. _____ of 1981

Yadunandan Prasad.....Petitioner.

Versus

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

Annexure No. 15

North Eastern Railway

Memorandum

Sanction is accorded by the undersigned for payment of group award of Rs. 25.00 (Rupees Twenty five) only to S/Shri Yadunandan Prasad and S.N. Srivastava, Commercial Controller at Lucknow, in appreciation of efficient and outstanding discharge of their duties on 20th and again on 22nd October, 1979, to achieve 100% punctuality of all Mail/Express and passenger trains in the Division on both these dates.

Fund is available and is allocated under item 8.03 of SOPEST.

(A.K. Das)
Sr. Divl. Commr. Supdt.:/Lucknow.

No.C/MICC/OS/AWARD/79. Dt. 26-30/1/79.

Copy to the following for information and necessary action:-

- 1). DAO/LJN along with pay order No. 4462/8 dt. 29th October, 1979 for Rs. 25/- for check and payment.
2. Budget section of this office.

True Copy

M. R. Min
dhr

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

Writ Petition No. _____ of 1981

Yadunandan Prasad.....Petitioner.

Versus

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

Annexure No. 16

North Eastern Railway

Divisional Office,
Lucknow.

MEMORANDUM

In exercise of powers delegated vide item No.8.03 of the SOFEST, the following cash awards are sanctioned to the staff.....in appreciation of the good work done by them during the year.

- | | | |
|---|-------|------------|
| 1. Sri Bhowmik A.K., Sr.Clerk | .. | : Rs.30.00 |
| 2. Sri Keneujia N.K., Head Clerk | .. | : Rs.50.00 |
| 3. Sri Ghaffar, A., Sr.Clerk | .. | : Rs.30.00 |
| 4. Sri Srivastava S.N., Comm'l. & Controller. | .. | † 40.00 |
| 5. Sri Misra, Y.N., Comm'l. Controller | .. | : Rs.40.00 |
| 6. Sri Karidhal, G.C., Chief Resn. Supervisor | .. | † Rs.50.00 |
| 7. Sri Krishna SS, Comm'l. Controller. Gonda. | .. | : Rs.30.00 |
| 8. Sri Srivastava J.K., Head Clerk/Comm'l. | .. | : Rs.50.00 |
| 9. Sri Chhiddoo, R/Lifter. | | : Rs.15.00 |
| 10. Sri Davi Prasad, Peon | | : Rs.15.00 |
| 11. Sri Shukla, R.C. C/Steno. | | : Rs.50.00 |
| 12. Sri Vijayan B., Steno. | | : Rs.50.00 |

M. R. Munshi

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Sd/-(A.K.Das)
Sr.Divl.Commercial Supdt.,
Lucknow.

No.DCS/SS-7/72

Dated: 5.3.1980.

Copy forwarded for information and necessary action to:-

1. DAO/LJW alongwith pay order No. _____ dated _____ for Rs. _____ for arranging payment early.
2. Divl.Audit Officer/Lucknow.
3. Staff concerned.
4. Head Clerk/Estt./Comm1. A copy of this order may please be placed in the Folder/P case of each staff mentioned above. (DA/12 spare copies).
5. C/Steno to Sr. DCS. He will keep a copy of the same in the CR Folder of the staff concerned. (DA/12 spare copies).
6. CA to DRM. He will please keep the copy in the DA/4 spare copies).

Sd/-Illegible
Sr.Divl.Comml.Supt.,
Lucknow.

True Copy

M.R. M. *[Signature]*

In the Hon.ble High court of

Judicature at Allahabad (Lucknow
Bench, Lucknow.



W. P. No 461 of 1981

Yadunandan Prasad - - Petitioner
vs.

Union of India and others - - O. P.

I am filling a three envelopes
with registered cover
and six notes for opposite party No.
1, 2 and 3

5.11.81

M. R. Mini
Advocate
and for the petitioner



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

Civil Misc. An. No. 8966 (w) of 1982.

Yadunandan Prasad, son of Sri Baikunth Nath,
resident of Villa e and Post Office Misrauli
District Sultanpur.

... APPLICANT.

In re

Writ Petition No. 461 of 1981.

Yadunandan Prasad. ... PETITIONER.

V E R S U S

Union of India and others. ... OPPOSITE-PARTIES.

APPLICATION FOR EARLY HEARING OF THE WRIT PETITION.

The above-noted applicant begs to submit as follows :-

1. That he is stating all the necessary facts in the accompanying affidavit on which he relies for purposes of this application.

It is, therefore, respectfully prayed that on consideration of the facts disclosed in the accompanying affidavit the Hon'ble Court be pleased to order that the writ Petition of the petitioner be heard out of turn at an early date.

Lucknow dated
September 2, 1982.

M. R. Mina
Advocate
Counsel for the Applicant.

1142
5/11/81



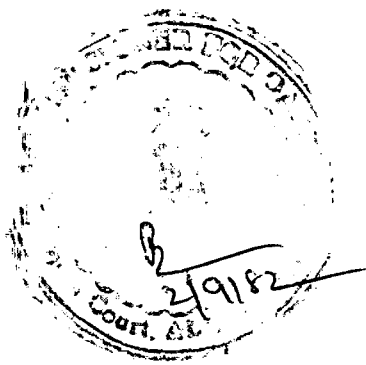
In the Honble Allahabad High Court at Allahabad
Sitting at Lucknow
w.p. No. 461 of 1981

Yachumandan Pat.

—
vs

Petitioner

Union of India & others — respondents



A/67 6/3

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

A F F I D A V I T

IN

APPLICATION FOR EARLY HEARING OF THE WRIT PETITION.

Yadunandan Prasad. Applicant.

In re

Writ Petition No. 461 of 1981.

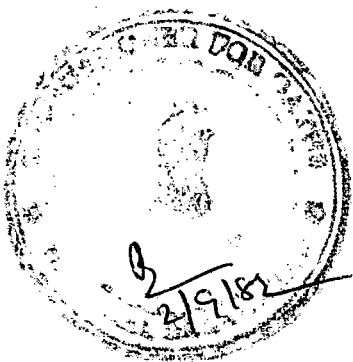
Yadunandan Prasad. Petitioner.

V E R S U S

Union of India and others. Opposite-Parties.

I, Yadunandan Prasad, aged about 41 years, son of Sri Baikunth Nath, resident of Village and Post Office Misrauli, District Sultanpur, do hereby take oath and state as under :-

1. That the deponent is the applicant in the above-noted application and is thus fully acquainted with the facts deposed to hereunder.
2. That the above-noted writ Petition had been filed in the year 1981 and is pending since then. The Petition is directed against the action of the opposite-parties in not regularising the appointment of the petitioner and not fixing his seniority.
3. That the petitioner has reached to his highest pay in the grade and the next promotion is withheld by the Authorities on account of the pendency of this Writ Petition and the next increment of pay has also been stagnated.



Yadunandan Prasad

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4. That the opposite-parties are now making selection for the post which the petitioner is holding at present (and in case any incumbent is selected in respect of the ~~post~~ post held by the petitioner, the opposite-parties may revert the petitioner, causing a further loss to him.)
5. That on account of the pendency of the Writ Petition the petitioner had not been called even for the ~~next~~ regular selection and his case is hanging causing a state of uncertainty.
6. That the petitioner is not been given further promotion on account of the pendency of this Writ Petition although the promotions are being done to higher posts. The petitioner is otherwise entitled to promotion to higher posts.
7. That all these matters can be very well cleared in case the Writ Petition is heard and decided at an early date.

Lucknow dated

September 2, 1982.

Yadunandan Prasad

Deponent.

I, the above-named deponent do hereby verify that the contents of paras 1 to 6 except portion within brackets in para 4 of this affidavit are true to my own ~~knowledge~~ knowledge and the contents of portion within brackets in para 4 and para 7 of this affidavit are believed by me to be ~~true~~ true and no part of it is false and nothing material has been concealed, so help me God.

Lucknow dated

September 2, 1982.

Yadunandan Prasad

Deponent.

I identify the deponent who has signed in my presence

Solemnly affirmed before me on 2-9-82 at 8.10 a.m./p.m. by Sri Yadunandan Prasad, the deponent who is identified by Sri *Mohd. R. Misra* Clerk to Sri *M.R. Misra* Advocate High Court, Allahabad.

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

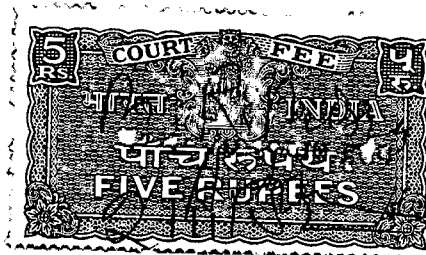


ATTEST
High Court, Allahabad,
Lucknow Bench

398/72
2-9-82

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

Civil Misc. Application No. 11390 of 1932.



Yadunandan prasad, aged about 41 years,
son of Sri Baikunth Prasad, resident of
Village and Post Misrauli, District Sultampur
..... Applicant

In re:

Writ Petition No. 461 of 1931.

Yadunandan prasad

... petitioner

Versus

Union of India and others

... Opposite parties

Application for Stay

.....

The above named application begs to submit as
follows:-

That for the facts, reasons and ~~under~~ the
circumstances stated in the accompanying ~~which is the~~
~~which is the~~ affidavit, it is most humbly and
respectfully prayed that the Hon'ble Court be pleased
to issue an injunction order restraining the opposite
parties from reverting the applicant from the post of
the Commercial Controller which he is holding at
present till the final disposal of the writ petition
by this Hon'ble Court.

(contd....2)

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An ad-interim injunction order may very kindly
be passed meanwhile.

Lucknow dated,
2nd Nov., 1932.

M. R. Misra
Advocate
(Madho Ram Misra)

Advocate,

Counsel for the Applicant.

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A/H

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

C.M. App. No.

(W) of 1932.

C/A No. 16350

Try. Form No. 385

RECEIPT FOR PAYMENT TO GOVERNMENT

(Form No. I, Chapter III, Paragraph 26, Financial
Handbook Volume V, Part I)

005346

High Court of Judicature at

Place Allahabad (Lucknow Bench)

Department id office

Received from

the sum of Rupees

on account of

Sr. M. R. Muzumdar

Rs. Two only

Cashier or Accountant

Signature of Government Servant
granting the receipt,

Designation

(P)

1982

AFFIDAVIT

62

HIGH COURT,
ALLAHABAD

---Applicant

Application No. 461 of 1931.

---Petitioner

Versus

thers

---Opp-Parties

A f f i d a v i t

in support of Application for stay on behalf of the
Applicant.

I, Yadunandan Prasad, aged about 41 years,
son of Sri Baikunth Prasad, resident of village
and post Misrauli, District Sultampur, the deponent
do hereby solemnly affirm and state on oath as
under :-

1. That the deponent is sole 'petitioner-applicant'
in the above noted case and as such is fully
conversant with the facts deposed to hereunder.

2. That the applicant has filed the above
noted writ petition before this Hon'ble Court which
is still pending.

Handed

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:: 2 ::

3. That after this writ petition has been filed, the concerned Railway Authorities have held a fresh selection on 30.10.1932, for the post of the Commercial Controllers- the post which the applicant is holding .

4. That the result of the selection has not been announced as yet and it has been learnt from the office of the Divisional Railway Manager (P) N.E.Railway, Lucknow, that the opposite-party no. 2 is going to appoint a newly selected person on the post of which the applicant is holding.

5. That the applicant has prayed in his writ petition that he is entitled for this post and that it should have been regularised by the opposite-party no.2, which had not been so regularised and as such this writ petition had been filed.

6. That in case any new person is appointed, the applicant would be consequently reverted, which would result in diminishing his pay to a great extent causing an economical break down to the entire family.

7. (That in case of such reversion from the post which he is holding since last 15 years) the future chances of promotion to higher post would go for ever.

(contd....3)

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:: 3 ::

3. (That the applicant is at present drawing his maximum salary in the grade and his promotion is now over due), which the authorities are not giving on account of the vindictiveness and in case they succeed in reverting the applicant , the very object of the writ petition would be frustrated.

Lucknow dated,
2.11.1932.

Yadunandan Prasad
Deponent.

Verification

I, Yadunandan Prasad, the deponent named above do hereby verify that the contents of Paras 1, 2, 3, 4, ⁵ para-7 with in bracketted portion , para-3 within bracketted portion, are true to my own knowledge, and the contents of paragraphs - 3, 6, para-7 and para-8 are believed by me to be true, that no part of it is false and that nothing material has been concealed, so help me God.

Lucknow dated,
2.11.1932.

Yadunandan Prasad
Deponent.

I identify the deponent who has signed before me.

Solemnly affirmed before me on 2.11.32 at 11.40 AM/PM by Sri Yadunandan Prasad, the deponent, who is identified by Sri *M. R. Misra*

M. R. Misra
Advocate.

Clerk to Sri Advocate, High Court, Allahabad, Lucknow Bench, Lucknow I have satisfied myself by examining the deponent & he understands the contents of this affidavit which been read out and explained by me.

A. M. D.
OATH COMMISSIONER
High Court, (Lucknow Bench)
LUCKNOW

No. 62/379
Date 2/11/32

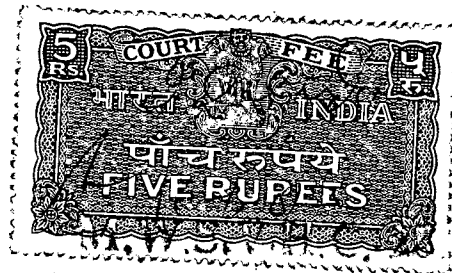
8/7
A/74

In the Hon'ble High Court of Judicature at Allahabad,
sitting at Lucknow.

C.M.Application No. 484 (w) of 1982

In re:

Writ Petition No. 461 of 1981.



Radunandan prasad

---Applicant (petitioner)

Versus

Union of India and others

---Opp-parties

Application for re-calling the order
dated 10.1.1983 in the above noted case.

The humble petition of the above named applicant
(petitioner) most respectfully sheweth as under:-

1. That the applicant has engaged as Counsel
Shri I.D. Dwivedi, Advocate, in the above writ
petition, who had to appear in argue the case
in the Hon'ble Court, on behalf of the applicant-
(petitioner).
2. That due to an accident on the road, and
the road was blocked, consequently by which Sri
I.D. Dwivedi, Advocate was coming to Lucknow by bus
could not reach in time and reached at 1.30 P.M.,

2.

8/2

under these circumstances the counsel for the applicant(petitioner) could not present himself at the time of calling of the case and on inquiry he was informed that the case was adjourned for another date.

3. That the applicant(petitioner) is working as the commercial controller till to-day, if the stay application is not disposed of to-day (i.e. 10th January, 1983) the applicant-petitioner will suffer irreparable loss and injury by a reversion order likely to be passed by the opposite-parties Nos. 2 and 3.

-: P r a y e r :-

Wherefore, it is most humbly and respectfully prayed that this Hon'ble Court be pleased to re-call the order dated 10.1.1983 passed by the Hon. Court in the above noted writ petition, so that the stay application may very kindly be disposed of today.

Lucknow dated,
10th January, 1983.

J. D. Dwivedi
(I.D. Dwivedi)
Advocate,
Counsel for the Applicant
(Petitioner).

*** **

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High
In the Court of Judicature at Allahabad,
Lucknow Bench, Lucknow.



C.M. Application No. of 1983.

In re:

Writ petition No. 461 of 1981.

vadunandan prasad.

... Applicant (petitioner)

~~XXXXX~~ Versus

~~vadunandan prasad~~

... Opp-Parties

Union of India & others

A f f i d a v i t

In re:

Application for re-calling the order
dated 10.1.83 in the above noted case.

I, vadunandan prasad aged about 41 years,
son of Sri Baikunth prasad, resident of
Village and post Misrauli, District Sultanpur
do hereby solemnly affirm and state on oath as
follows:-

1. That the deponent is familiar with the
facts of the case and as such he himself 'petitioner'
in the above noted writ petition.

2. That the applicant has engaged as counsel -
Shri I.D.Dwevidi, Advocate, in the above writ
petition, who had to appear in argue the case
in this Hon'ble Court, on behalf of the applicant-
petitioner.



Yadunandan Prasad

2.

3. That due to an accident on the road , and the road was blocked. Consequently by which I.D. Dwivedi, Advocate was coming to Lucknow by bus could not reach in time and reached at 1.30 P.M., under these circumstances the counsel for the petitioner could not present himself at the call of the case and on inquiry he was informed that the case was adjourned for another date.

4. That the deponent is working as the Commercial Controller till to-day, if the stay application is not disposed of to-day (i.e. 10th January, 1983) the applicant-petitioner will suffer irreparable loss and injury by a reversion order likely to be passed by the opposite-parties No.2 and 3 .

Lucknow dated,
10.1.1983.

yadunandan Prasad
Deponent.

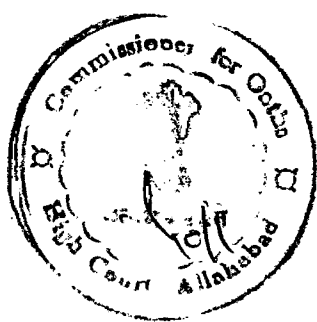
Verification

I, yadunandan prasad, the deponent named above do hereby verify that the contents of paragraphs 1 to 4 of this affidavit are true to my own knowledge, that no part of it is false and that nothing material has been conceal so help me God.

Lucknow dated,
10.1.1983.

yadunandan Prasad
Deponent.

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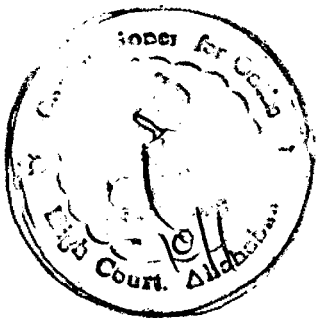
3.

I identify the deponent named above
who has signed before me.

J. Lal Singh

Advocate.

solemnly affirmed before me on 10-1-83
at 9.35 AM/PM by Sri *yadunandan Prasad*
the deponent who is identified by
Shri I.D. Dwivedi, Advocate, High Court,
Allahabad, Lucknow Bench, Lucknow.



yadunandan Prasad

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

A. N. Sen
Joint Commissioner
High Court Allahabad
Lucknow Bench

No. *41-220*
Date *10/1/83*

In the presence of *Mr. K. L. Dube* *Magistrate*

ब अदालत श्रीमान

महोदय

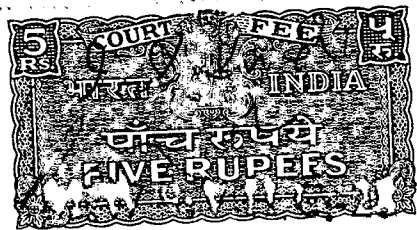
वादी (मुद्द)

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प्रतिवादी

(मुद्दालेह) का



Wachhindpur बकालतनामा

वादी (मुद्द)

बनाम

प्रतिवादी (मुद्दालेह)

Union of India
नं मुकद्मा 461 सन १९८१ पेशी की ता १९ ई०

ऊपर लिखे मुकद्मा में अपनी ओर से श्री

J. S. Sharma Per

एडवोकेट

महोदय
वकील

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ इस मुकद्मा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोंत्तर करें या कोई कागज दाखिल करें या लौटावें या हथारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से दाखिल करें और तसदीक करें या मुकद्मा उठावें या कोई रुपया जमा करें या हमारी या विपक्षी (फरीकस्थानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करें या कोई वकील महोदय द्वारा की गई वह सब कार्यवाही हमको हर्बदा स्वीकार है और होगी इसलिए यह बकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर *Jadumandan Prasad*

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

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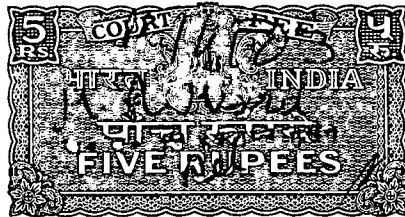
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Accepted

J. S. Sharma

10/11/83



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

----- 4300
Civil Misc. An. No. (w) of 1983.

Yadunandan Prasad, son of Sri Baikunth Prasad,
resident of Village Misrauli, District Sultanpur.

... .. Applicant.

In re

Writ Petition No. 461 of 1981.

Yadunandan Prasad. Petitioner.

V E R S U S

Union of India and others. Opposite-Parties.

APPLICATION FOR INTERIM RELIEF.

The above-noted applicant begs to submit as follows :-

- 7552
1. That the petitioner has been appointed on the post of Commercial Controller in the North Eastern Railway on December 23, 1967 and since then he is working on this post to the utter satisfaction of his superior officers.
 2. That inspite of the fact that the applicant had been ~~given~~ given special training for this job and he was discharging his duties quite efficiently still on account of the malice of the ~~the~~ then Divisional Commercial Superintendent neither the petitioner was confirmed, nor given the sanctioned grade and this grade was allowed to the petitioner only when he had filed a Writ Petition against such action, which Writ Petition had been ultimately allowed by this Hon'ble Court.
 3. That as per Board's Order as contained in its various communications the applicant should have been conf

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on the completion of two years officiating service in a clear vacancy but the applicant had not been so confirmed upto this day.

4. That several representations had been sent to the Railway Administration for regularising his service and to confirm him with retrospective effect, and to fix his seniority but to no use. Against this arbitrary action of the Railway Administration this Writ Petition has been filed which is pending before this Hon'ble Court.
5. That from this post of Commercial Controller, which is a Class III post, promotions are made to the Class II of the Railway service. The petitioner ~~xxx~~ is in all respect competent to be promoted to Class II of this service, but the Railway Administration out of malice and vengeance have not considered him for being promoted ~~xx~~ on this post.
6. That now the General Manager (P) North-Eastern Railway-Gorakhpur has issued a Circular dated March 24, 1983 by which it had been decided to hold a selection for Class II service and has fixed 17th April, 1983 for holding an examination, from amongst the persons who have been marked in List 'A' of the enclosed list.
7. That this list which has been marked ^{'A'} ~~by~~ the General Manager in his this Circular has been prepared on the basis of seniority but because the seniority of the applicant has not been fixed as yet, as such he has not been shown in this list although several persons who are quite junior to the applicant are mentioned in this List 'A'.
8. That the persons whose names are entered in this List 'A'

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'A' are being asked to give their consent for appearing in this test but the applicant has not been called for this purpose.

9. That it all goes to show that the applicant would not be allowed to appear in this test and as such his valuable chance of promotion would be denied to him affecting his future career for all times to come.
10. That this Circular has been circulated in the Office and the applicant could get its knowledge on April 8, 1983 as such this application could not be presented earlier. The applicant is filing a true copy of ~~the~~ this Circular as Annexure 'A'.

Under the circumstances it is most respectfully prayed that the Hon'ble Court be pleased to direct the opposite-parties to allow the applicant full and complete opportunity to compete in this ~~selection~~ⁱⁿ selection to Class II of the Railway Service and in case he qualifies in the examination and viva-voce, to select him on one post.

Lucknow dated
April 11, 1983.

M. R. Mura
Advocate
Counsel for the Applicant.

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HIGH COURT
ALLAHABAD



10/4
A/83

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

A F F I D A V I T

IN

APPLICATION FOR INTERIM RELIEF.

Yadunandan Prasad. Applicant.

In re

Writ Petition No. 461 of 1981.

Yadunandan Prasad. Petitioner.

V E R S U S

Union of India and others. Opposite-Parties.

I, Yadunandan Prasad, aged about 41 years, son of Sri Baikunth Prasad, resident of Village Misrauli, District Sultanpur, do hereby solemnly affirm and state on oath as under :-

1. That the deponent has been appointed on the post of Commercial Controller in the North Eastern Railway on December 23, 1967 and since then he is working on this post to the utter satisfaction of his superior officers.

2. That inspite of the fact that the deponent had been given special training for this job and he was discharging his duties quite efficiently, still on account of the malice of the then Divisional Commercial Superintendent neither the deponent was confirmed, nor given the sanction to this grade and this grade was allowed to the deponent only when he had filed a Writ Petition against such action, which Writ Petition has been ultimately allowed by this Hon'ble Court.

3. That as per Board's order as contained in its communications the deponent should have been

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Yadunandan Prasad

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on the completion of two years' officiating service in a clear vacancy but the deponent had not been so confirmed upto this day.

4. That several representations had been sent to the Railway Administration for regularising his service and to confirm him with retrospective effect and to fix his seniority but to no use. Against this arbitrary action of the Railway Administration this Writ Petition has been filed which is pending before this Hon'ble Court.
5. That from this post of Commercial Controller, which is a Class III post, promotions are made to the Class II of the Railway service. The petitioner is in all respects competent to be promoted to Class II of this service, but the Railway Administration out of malice and vengeance have not considered him for being promoted on this post.
6. That now the General Manager (P) North-Eastern Railway, Gorakhpur has issued a Circular dated March 24, 1983 by which it had been decided to hold a selection for Class II service and has fixed 17th April, 1983 for holding an examination from amongst the persons who have been in List marked 'A' of the enclosed ~~list~~ list.
7. That this list which has been marked 'A' by the General Manager in his this Circular has been prepared on the basis of seniority but because the seniority of the deponent has not been fixed as yet, as such he has not been shown in this list although several persons who are quite junior to the deponent are mentioned in this List 'A'.
8. That the persons whose names are entered in this List 'A' are being asked to give their consent for appearing in

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Yadunandan Prasad

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this test but the deponent has not been called for this purpose.

9. That it all ~~gxxx~~ goes to show that the deponent would not be allowed to appear in this test and as such his valuable chance of promotion would be denied to him affecting his future career for all times to come.
10. That this Circular has been circulated in the Office and the deponent could get ~~th~~ its knowledge on April 8, 1983 as such this application could not be presented earlier. The deponent is filing a true copy of this Circular as Annexure 'A' to this ~~xxx~~ affidavit.

Lucknow dated

April 11, 1983.

Yadunandan Prasad
Deponent.

I, the above-named deponent do hereby verify that the contents of paras 1 to 8 and 10 of this affidavit are true to my own knowledge and the contents of para 9 of this affidavit are believed by me to be true and no part of it is false and nothing material has been concealed, so help me God.

Lucknow dated
April 11, 1983.

Yadunandan Prasad
Deponent.

I identify the deponent who has signed in
my presence.

M.R. Misra
Advocate

Solemnly affirmed before me on 11.4.83

at 9.00 a.m./p.m. by Sri Yadunandan Prasad,
the deponent who is identified by Sri ~~Ignite~~ Chandra

Clerk to Sri M.R. Misra
Advocate High Court, Allahabad,
I have satisfied myself by examining the deponent
that he understands the contents of this affidavit
which has been read out and explained by me.

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

A F F I D A V I T

IN

Application for Interim Relief.

Yadunandan Prasad. Applicant.

In re

Writ Petition No. 461 of 1981.

Yadunandan Prasad. Petitioner-

V E R S U S

Union of India and others. Opposite-Parties.

A N N E X U R E No. 'A'

North Eastern Railway.

No. E/254/4-73/Pt.I(L)Comml. Office of the G.M.(P)
Gorakhpur, Dated 24/3/1983.
The CCS, ACCS (G), Addl. GMS, Addl. CNO, Du. CCS/OL. Dy. ESS (Survey)
The Sr. DCS/IZN, SEE, HSB.
The SCO (G), SCO (Rates), SCO (TC-Hq), DGS/LJB, DCS/CTC/GKP,
The SCO (Catering)/GKP, DCS/SPJ, PA to DRM/LJN, SCO/HQ
The ACO (Claims), ACO (S), ACO (Rates), ACO (G), ACO (CB), AFC (CL)
The ACO (Refund), ACS/GD, AGS/BSB, AGS/SEE, ACS/SPJ
The Area Officer/MFP, ACO (Claims)/GKP, AGS/IZN, ACC (Marketing)
The ACO (GL)/GKP, ACS/IZN, ACO (TC)/GKP, AGS/SEE, Area Officer/SHC
The AGS/LKO, ACS/S, EE, ACO/GKP
The DRM/LJN, IZNBSB, SEE & SPJ
The Dy. CCS/Con//GKP, DPO/SPJ, SEE, BSB, IZN & LGN.
N.E. Railway.

Sub:- Selection for the post of ACS/ACO (Group 'B')/
N.E. Railway against 75% of vacancies.

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It has been decided to form a panel of 23 ACS/ACO (Group 'B'). The date of written test has been fixed on 17.4.83 at and viva-voce will be notified later on. The written test will be held in the CCS Office/N.E. Railway Gorakhpur against 75% of vacancies, a list of 68 eligible candidates of commercial Department Marked 'A' is enclosed. A list marked 'B' of further candidates who may be called at the written test in case some of the candidates in list 'A' are unwilling for the selection is also enclosed. The candidates of List 'B' may please be advised to be readiness. The candidates from list 'B' may also be called at the written test at short notice upto the numbers of List 'A' candidates who express their unwillingness for the above selection.

The enclosed lists have been prepared in order of seniority in accordance with Railway Board's letter No. E (CP)/81/2/17, dated 5.2.83. The candidates should be asked to keep themselves in readiness to appear for selection at short notice and this letter should be treated as notice for the above selection.

To avoid delay, unnecessary correspondence in obtaining the willingness or otherwise from the candidates mentioned in the enclosed list, it is suggested that they may be

Yadunandan Prasad

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called in your office ~~and~~ immediately and asked to give their willingness/~~or otherwise~~ unwillingness on the proforma attached by 5.4.83. The willingness or otherwise must be given with clear signature of candidates concerned with date, month and year. It should be made perfectly clear to them that if they do not give their willingness or otherwise as required or willingness furnished conditionally or evade to give the required declaration, ~~it~~ it will be assumed that they are not willing and this office held the written test without waiting further willingness from such staff anymore. The willingness or otherwise so obtained should be forwarded under sealed D.O. cover in one hunch addressed to Dy.CPO/Gag by name through special messenger so as to reach on or before 8.4.83 positively.

The willingness intimated by the candidates after 5.4.83 will not be entertained and they will be treated as unwilling. A list showing names of candidates working under you who have not given their willingness should also be sent along with the list of willing of the candidates certifying that all willingness received upto 5.4.83 have been furnished.

The information furnished by the candidates against each items of the enclosed form should be properly checked and corrected where necessary, while forwarding the forms along with willingness. The information against them regarding plural marriage of the enclosed form must be filled in by the candidates.

If any one of the employers mentioned in the ~~xxx~~ lists enclosed is on leave/training/deputation or has been transferred, this should be sent to him at his present address immediately by registered post with A.D. and he should be asked to send his reply regarding willingness/unwillingness to appear at the Selection by 5.4.83.

If any employer who does not fulfil service conditions for being considered for Class II selection on 24.4.83 he will not be called for selection.

Candidates who are under suspension and/or against whom disciplinary proceeding for imposition of major penalty have been initiated or proposed to be initiated may appear in the written examination and viva-voce test, But particulars of such cases must be reported to this office while forwarding their willingness or otherwise.

The copy of the notice may be posted on the Notice Board.

DA/ As above.

Sd/-
(P.C. Mulik)
For General Manager

Copy forwarded for information and necessary action to :-

1. EA. to CCS, CA ti GOPS. Please intimate the SPE/Vig cases against the candidates if any.
2. Copy to Area Supdt/GKP.

Sd/-
(P.C. Mulik)
For General Manager.

Copy forwarded for information and necessary action to :

1. DCS/ACS/LJN
2. DCI/LJN BHK GD GKP, MIN.
3. CTTL/LJN, GKP (4) -SS/LAN
5. OS/Commercial (DRM Office/LJN)
6. GM(P)/GKP in reference to his letter No. E/254/4-78(Ex.II) Comml. Dt. 24/3 and 26/3 received in ~~xxxxx~~ this office on 4/4/83.

No. E/II/254/15/DCI 7/4/83

Sd/- Illegible
Divl. Railway Manager (P)/ELKE

Sd/- V.S. Verma.

yadunandan Prasad

True Copy

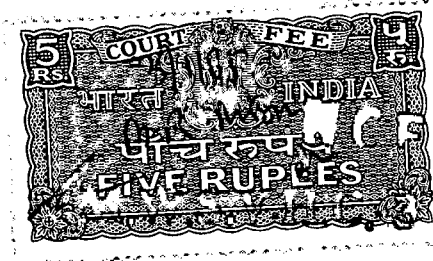
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In the Hon'ble High Court of Judicature at Allahabad,
Lucknow Bench, Lucknow.

C.M. Application No. 86 (W) of 1984.



Yadunandan Prasad Misra, son of Sri
Baikunth Prasad Misra, resident of
village and post office Misrauli,
district Sultanpur. .. Applicant

In re:

Writ Petition No. 461 of 1981.

Yadunandan Prasad Misra .. Petitioner

Versus

Union of India and others .. Opposite Parties.

Application for amendment of Writ Petition

The abovenoted applicant begs to submit
as follows;

1. That due to some new development, it
has become very much necessary to amend the writ
petition, as follows;

a) That after para 27, the following paras,
be ~~ad~~ allowed to be added as paras no. 27-A and
27-B.

"27-A. That on 30.10.1983, a selection to

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the post of Commercial Controller was held, in which the petitioner had also been selected and as such, his service has now been regularised.

27-B. That the petitioner demanded ~~for~~ from the railway authorities his due seniority from 23.12.1967 - the date of his initial appointment as Commercial Controller, but the railway ~~authorities~~ administration is not accepting the demand of the petitioner, inspite of repeated demands and representation."

(b) That in ground no. i) the following words, be allowed to be added after 'Rs. 500-750' - "and subsequently to Rs. 700-900 and Rs. 840-1040 from the due date with the difference of salary and others benefits"

(c) That in this ground no. i) the following words be allowed to be added after the words 'opposite parties even.....', "these grades are", the words "this grade is" be allowed to be deleted and in the last but one line, the word "it" be changed to "these grades."

(d) That in relief no. ii), after the words "Commercial Controller" the words "since 23.12.1967" be allowed to be added. After the words "interse seniority and seniority", the words "since this date" be allowed to be added.

(e) That in relief no. iii), the following

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words be allowed to be added in the end
of this para-

"and subsequently admissible grade of Rs.
700-900 and 840-1040 alongwith the
difference of salary and other benefits to
the petitioner."

It is, therefore, prayed that the above
amendments be allowed to be incorporated in the
writ petition in the interest of justice.

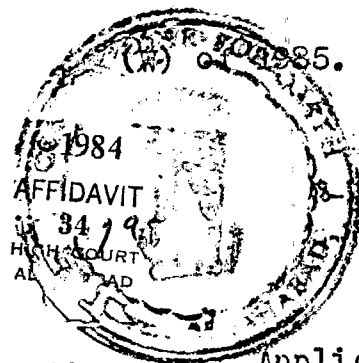
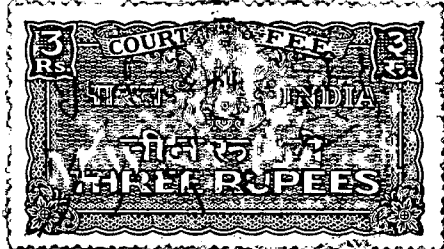
Lucknow: Dated;
Jan. 3 , 1985.

M. R. Munshi
Advocate,
Counsel for the applicant.

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

C.M. Application No.



Yadunandan Prasad Misra ..

Applicant

In re:

Writ Petition no. 461 of 1981

Yadunandan Prasad Misra ..

Petitioner

Versus

Union of India and others ..

Opposite Parties.

Affidavit in support of application for
amendment of the writ petition.

I, Yadunandan Prasad Misra, aged about 43 years, son of Sri Baikunth Prasad Misra, resident of village and post office Misrauli, district Sultanpur, the deponent-applicant, take oath and state as under;

1. That due to some new development, it has become very much necessary to amend the writ petition as follows;

(a) That after para 27, the following paras be allowed to be added as paras no. 27-A and 27-B.

"27-A. That on 30.10.1983, a selection to



Yadunandan Prasad

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the post of Commercial Controller was held, in which, the petitioner had also been selected and as such, his service has now been regularised.

27-B. That the petitioner demanded from the railway authorities, his due seniority from 23.12.1967 - the date of his initial appointment as Commercial Controller, but the railway administration is not accepting the demand of the petitioner, inspite of repeated demands and representations."

Lucknow: Dated;
Jan. 2nd, 1985.

Yadunandan Bera
Deponent.

Verification

I, the deponent named above, do hereby verify that the contents of paras 1, (a), 27-A and 27-B 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.

Lucknow: Dated;
Jan. 2nd, 1985.

Yadunandan Bera
Deponent.

I identify the deponent who has signed before me.

Chaitanya Mishra
Advocate.



Solemnly affirmed before me on 2.1.85 at 6.00 a.m./p.m. by the deponent who has been identified by Sri *Chaitanya* clerk to Sri *Chaitanya* Advocate, High Court, Allahabad. I have satisfied by examining the deponent that he understands the contents of this affidavit which has been read over and explained to him by me.

Chaitanya
Advocate.
High Court, (Lucknow Bench,
LUCKNOW)

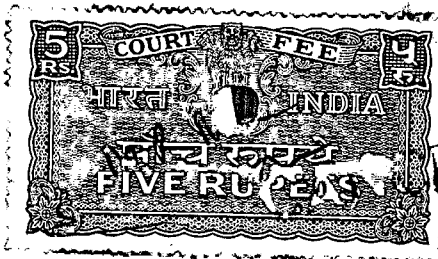
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In the Hon'ble High Court of Judicature at Allahabad.

Lucknow Bench, Lucknow.

C.M. Application no. 1097

(W) of 1985



Yadunandan Prasad Misra, son of Sri
Baikunth Prasad Misra, resident of
village and post office Misrauli,
district Sultanpur.

Applicant.

In re:

Writ Petition no. 461 of 1981

Yadunandan Prasad Misra ..

Petitioner

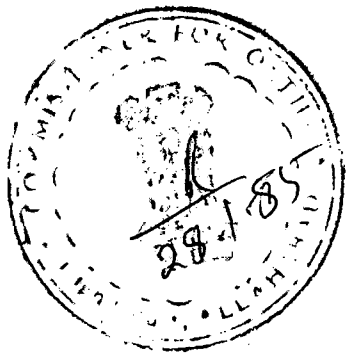
Versus

Union of India and others .. Opposite Parties

Application for fixation in new cadre according to
seniority.

The abovenamed applicant begs to submit as
follows;

1. That he has filed the abovenoted writ petition, which is pending before this Hon'ble Court.
2. That in the writ petition, the main grievance of the petitioner is that his seniority is not being fixed according to the length of his service, but is fixed quite arbitrarily.



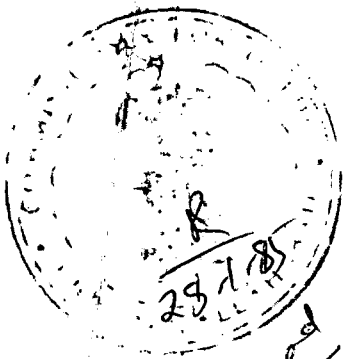
Yadunandan Prasad

3. That the petitioner had been initially appointed on the post of Commercial Controller on 23.12.1967 and after getting complete and successful training ~~xxxx~~, is working on this post since then, without any break whatsoever.

4. That now, according to the Board's letter no. PC III/84/UPG/9 dated 16.11.1984, the Railway administration is going to restrict the employees of group C and D of the Railway Service according to their seniority in the cadre.

5. That the petitioner belongs to 'C' cadre of the service and in this restruction, the authorities are going to fix the petitioner at such a place which is very much low than what it should be, taking his seniority from the year 1983 quite arbitrarily, ^{when} ~~what~~ he should have been fixed at a position by counting the seniority from 23.12.1967 the date of his initial appointment on this post which they are not doing and are placing the petitioner much below others who are very much junior to the petitioner.

6. That on account of such fixation, the pay of the petitioner and several other allowances, which will be admissible to him, will be denied, to which he is otherwise entitled. This will cause a very great financial loss and humiliation to the petitioner, causing a very ~~gr~~ great prejudice to his service career for all times to come.



Yadunandan Prasad

7. That under such circumstances, it is very much necessary that the opposite parties be directed to fix the petitioner at such a position in the restructured cadre which is warranted by taking his seniority from 23.12.1967 and which they are not doing as such, an interim order by this Hon'ble Court is very much necessary.

8. That in case, the interim order will not be granted, the petitioner will suffer a very great injury and it will cause multiplicity of proceedings.

It is, therefore, most respectfully prayed that the Hon'ble Court be pleased to direct the opposite parties to fix the petitioner at such senior position in the restructured cadre ~~which~~ by calculating his seniority from 23.12.1967 and not any other, which will be subject to the ultimate result of the writ petition.

M. R. Muna

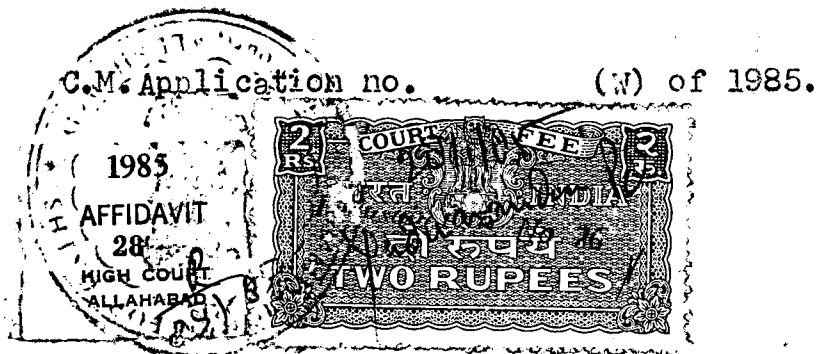
Lucknow: Dated;
Jan. 28, 1985.

Advocate,
Counsel for the applicant.

Yadwinder Puri

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



Yadunandan Prasad Misra .. Applicant

In re:

Writ Petition no. 461 of 1981

Yadunandan Prasad Misra .. Petitioner

Versus

Union of India and others .. Opposite Parties

A_F_F_I_D_A_V_I_T

I, Yadunandan Prasad Misra, aged about 43 years, son of Baikunth Prasad Misra, resident of village and post office Misrauli, district Sultanpur, the deponent, do hereby solemnly affirm and state on oath as under;

1. That the deponent is the applicant-petitioner in the abovenoted writ petition and as such, is thoroughly conversant with the facts of the case deposed in the accompanying application.

28/8
Yadunandan Prasad

2. That the contents of paras 1 to 6 of the accompanying application are true to my own knowledge and those of paras 7 and 8 are believed by me to be true.

Lucknow: Dated;
Jan. 29, 1985.

Yadunandan Prasad
Deponent.

Verification

I, the deponent named above, do hereby verify that the contents of paras 1 and 2 of this affidavit are true to my own knowledge. No part of it is false and nothing material has been concealed, so help me God.

Lucknow: Dated;
Jan. 29, 1985.

Yadunandan Prasad
Deponent

I identify the deponent who has signed before me.

K. Lal
GOSWAMI, R. M. S. Advocate.



R. M. S.

Solemnly affirmed before me on 28-1-85 at 09-20 a.m./p.m. by the deponent *Yadunandan Prasad* who has been identified by Sri *K. Lal* clerk to Sri *M. R. Mishra* Advocate, High Court, Allahabad. I have satisfied by examining the deponent that he understands the contents of this affidavit which has been read over and explained to him by me.

R. M. S.

R. M. S.
HIGH COURT, ALLAHABAD
LUCKNOW BENCH
NO. 28/1/85
DATE 28/1/85

2/2056
25/9/85



Application for Inspection

13
1

To,
The Deputy Registrar,
High Court of Judicature at Allahabad,
(Lucknow Bench) Lucknow.

Please allow inspection of the papers passed below. The application is urgent/ ordinary. The applicant is not a party to the case.

Full Description of the case	Whether case pending or decided	Full particulars papers of which inspection is required	Name of person who will inspect record	If applicant is not a party reason for inspection	Office report and order
18/11917. N.D.M.	Yadunandan U.O. No.	Law ching	K. Chandra A. Chandra		<p>Office Report</p> <p>Order for Inspection</p> <p>Deputy Registrar</p> <p>Date</p>

Date

24-9-85

Inspection commenced at

Inspection concluded at

Inspection fee paid by the applicant

Additional fee if any

Signature of applicant or his Advocate

on

198

22/9/85

14/3

ORDER SHEET
IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

No. _____

of 198

vs. _____

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
6.1.83	Cm. 11390-02 for us Hon V C J	
	The name of S. K. Chandra learned Counsel for Respondent has not been shown in the Court list. Put up to order by 6-1-83 L	
7-1-83	Cm. No. 11390 (W) 82 M. U. C. J. list next week list on 13/1/83 7-1-83 Put up on 10.1.83. by 7-1-83	
10.1.83	Cm. 11390-02 W 3 In V C J learned counsel is not present. list for case next week. by 10-1-83 L	

ORDER SHEET
IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

A/
100

14
2

No. _____ of 198
vs. _____

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
5-11-81	Writ in P.F.R. Hon. K-S. Verma J. Hon. S.C. Mathur J. For S.S. N. N. V. PP (Sd) 5.11.81	
21-1-82	Fixed w.P. for Attendance S. N. to S.P. 1, 2, 3, through Registered Post	
7-9-82	C.M. No. 8966 (C)/82 for early hearing S.R. Sent with pre viewed papers before Hon. S.S. Self, U.D. Shukla 7-9-82	
	C.M. 8966/82	57

ORDER SHEET
IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

No. 461

of 1981

vs.

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
22-1-81	<p>Hon. Jha, J. Hon. Goyal, J. Learned Counsel for - - - - - List after two weeks for admission S.D. D.N.J. S.D. K.N.G. 22-1-81.</p>	
	<p>16-2-81</p>	<p>F.O. M. 2-27 F.O. B</p>
3-4-81	<p>Fixed for order. Hon. Jha, J. Hon. K.N.M.J.</p>	
9-4-81	<p>Fixed for order. Hon. D.N.Jha, J. Hon. K.N.M.J. not admitted but 19/4/81</p>	

14
4

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102

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

No.

461

of 198

vs.

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
12/4/83	Fixed on 12.4.83 for the	
	<u>Hous court</u>	
	Part of this	
	<p>Learned Counsel for the petitioner prays that this application may be taken up tomorrow and he would inform Sr. Umesh Chandra, the learned Counsel for the opposite parties. Intimation for tomorrow's date shall be given to the learned Counsel for the opposite parties Sr. Umesh Chandra and his acknowledgement shall be obtained on a separate work mark paper and the same shall be filed in the Court.</p>	
	Shree	12.4.1983
13.4.1983	Hon. S. C. Mathur, J.	
	<p>Put up tomorrow as prayed for by the learned counsel for the petitioner.</p>	
Dil		13.4.1983

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

No. 661

of 1981

14/1/81

1

1

ad

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
	25.4.83	
	Cm 4300 (W/O)	
26-4-83	Final order in 4300-83 for and	
	SCM.	
2-5-83	Hon SCM.	
6-5-83	Hon. S.C.M., J	
12/5/83		
18-5-83	Hon SCM.	
9/1/85	9.1.85	
	C. 4300 (W/O) 8/6/85	
	Hon. K.C. Agarwal, J.	
	Hon. C.M. The P. J.	
	in connection to the order of 8/6/85	
	may be given in the order of 8/6/85	
	in connection to the order of 8/6/85	

(8/1/85) 86 (41)

Some order is allowed

14/1/81

14/1/81

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

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AMENDED WRIT PETITION

Writ Petition no. 461 of 1981

Yadunandan Prasad, aged about 40 years,
son of Sri Baikunth Prasad Misra, resident
of village and Post Misrauli, District
Sultanpur.

..

Petitioner

Versus

1. Union of India, through the General
Manager, North Eastern Railway, Gorakhpur.
2. General Manager (P), North Eastern
Railway, Gorakhpur.
3. Divisional Railway Manager (P), North
Eastern Railway, Ashok Marg, Lucknow.

..

Opposite Parties.

Writ Petition under Article 226 of the
Constitution of India

The abovenoted petitioner begs to submit
as ~~fn~~ under;

1. That the petitioner was a permanent Ticket
Collector in the North Eastern Railway and was posted
at Lucknow in the year 1967. At this time, the

11/11/81
G/K

Railway Administration created two temporary posts of Commercial Controller and accordingly the Chief Commercial Superintendent, North Eastern Railway, Gorakhpur asked the District Commercial Superintendent to appoint two Commercial Controllers for day and night shifts vide his order No. G/287/68 (R&D), dated 15.11.1967.

2. That on the receipt of this order the District Commercial Superintendent, Lucknow Junction, found the petitioner also a suitable person for being promoted to this post and accordingly vide his order No. C/Com/Controller/L.Jn. dated 22.12.1967 appointed him to one of these posts which the petitioner joined on 23.12.1967 at the District Control Office, Lucknow.

3. That the petitioner worked on this post successfully for two years to the utter satisfaction of his superior officers, who finding the petitioner capable of handling this job efficiently allowed him to receive special training in Goods and Coaching, which the petitioner successfully completed and in this way he became fully qualified to hold this post.

4. That in the meantime, these two posts of Commercial Controller were declared permanent and their scale of pay had also been fixed to Rs. 250-380/- per month; the petitioner was fixed over one of these posts and he is continuing as such till today.

5. That although the petitioner had been promoted on this post since its inception in the year 1967 and was successfully performing his duties, still neither he was confirmed on this post nor even given this sanctioned grade. He presented several representations in this respect but no attention was given to any of them. The then Divisional Commercial Superintendent became very angry with the petitioner on frivolous grounds. He threatened the petitioner very much and created such grounds that the petitioner was forced to file a writ petition before this Hon'ble Court, registered as Writ Petition No. 370 of 1970 - Yadunandan Prasad Versus Chief Commercial Superintendent (P), N.E. Railway, Gorakhpur and others.

6. That this writ petition was contested on behalf of the Railway Administration but ultimately the writ petition of the petitioner was allowed in part on 20.2.1975 inasmuch as this scale of Rs. 250/- 380/- was allowed to the petitioner from 25.8.1969 with all his arrears of pay and it was ordered that the petitioner be not reverted from his present post of Commercial Controller till the selection had been made as provided by Rules. An appeal against this order filed by the Railway Administration as well as the petitioner were dismissed.

7. That the Railway Board has by its direction contained in R.B's No. E(NG)55 SR 6-7 of 13.8.1959 laid down that the suitability of a

candidate for promotion should be judged on the date of the vacancy in the higher grade or as close to it as possible and accordingly the suitability of the petitioner had been judged on 22.12.1967 when he had been appointed by promotion on the post of Commercial Controller. The latest revision in ~~staff~~ classification of posts as Selection or non-Selection has been circulated vide Board's ~~ord~~ letter No. E(NG)1-74 P.M. 1/6 of 6.8.1974 (N.R.S.N.6186) where it has been provided that the appointment by promotion to non-selection posts has to be made on seniority-cum-suitability basis; the petitioner has been appointed by promotion on this post having been found senior and quite suitable to it.

8. That Railway Board by its direction contained in R.B's No. E(NG)1-69 CM-5/31 of 5.2.1972-N.R.S.N.5586 has laid down that the working of the staff promoted on a post even if the permanent vacancy does not exist should be reviewed after the completion of one year's continuous officiating service with a view to determine his suitability for retention in the grade and the decision to revert him or to retain him be taken and implemented within a period of 18 months of officiating service. There should be no question of denying the benefits of confirmation to an employee on completion of two years officiating service in a clear vacancy for the reason that he is not fit for confirmation.

9. That one another order of the Railway Board contained in R.B's No. E(NG)-1-70 C.N.5/31 of

~~2:12:720~~

2.12.70 (N.R.S.N.5178) states that when a Railway servant is put to officiate in a higher grade for 5 years or more, he should be confirmed (if appointed on regular basis after due selection or suitability test) against the quota reserved for direct recruitment.

10. That the Railway Board had in his letter No. 0611-F dated 4th August, 1938 has directed that 'a temporary post may be held either substantively or in an officiating capacity. Substantive appointments to temporary posts shall be made only when they have been sanctioned for a period of not less than or there is reason to believe that it will not terminate within a period of 3 years. In all other cases, appointments to temporary posts shall be made in an officiating capacity.'

11. That Selection Posts and Non-Selection Posts have been defined in the Indian Railways Establishment Manual Chapter II Section B, Rule 209(2) and 209(3) where it has been laid down that "Non-Selection posts are posts, Grades or classes which have not been declared as Selection Posts" and Selection Posts are posts, grades or classes to which promotion are made on the basis of selection."

12. That in view of all these orders of the Railway Board which have a binding effect, the petitioner was not considered for confirmation in this grade of Commercial Controller in spite of his

working on this post for full 13 years, without any adverse remarks and having fully qualifying himself for this post and further having been rewarded for his devotion to his duties.

13. That one more letter relevant for the purpose had been issued by the Railway Board dated 12.8.1971 directing all its Heads of Department to confirm their subordinate officials whose work had been found satisfactory, which had been reiterated in a subsequent order dated 15.3.1972. A true copy of it is filed as Annexure No.1.

14. That in spite of the fact that the writ petition of the petitioner was pending before this Hon'ble Court, he repeatedly made requests to the Railway authorities to confirm him on this post on the basis of the orders passed by the Railway Board. On repeated requests and representations a reply was received, a true copy of which is being filed as Annexure No. 2.

15. That the Special Appeal filed by the Railway Administration as well as the one filed by the petitioner were dismissed on 1.12.1976 and then he was allowed the sanctioned grade of the Commercial Controller. On account of his good work, the petitioner was allowed to cross his efficiency bar as well. Several awards had also been awarded to the petitioner on account of his good work ^{as} ~~and~~ Commercial Controller, as such, one representation was again sent to the

Railway authorities inviting their attention to the case of the petitioner for confirmation, for fixing his seniority in the cadre, to regularise his posting and then to allow him the next grade of Rs. 550-750/-.

16. That the post of Commercial Controller is of class III of N.E. Railway Service. From this post, promotions are made to class II of this service, the conditions of eligibility for promotion from class III to class II have been laid down in the Railway Board's letter No. E(G.P.)74/2/20 dated 11.7.1977, a true copy of which is filed as Annexure no. 3.

17. That the petitioner had served the Railway as Commercial Controller and had been placed in the grade of Rs. 455-700/- as such he was eligible for promotion to class II of the Railway Service, if his seniority was determined and his posting was regularised.

18. That this post of Commercial Controller had not been declared to be a Selection Post by the Railway Board till 18.2.1980 when a letter No. E(NG) 1-76-PMF/142 Pt.(J.C.M.) dated 8.2.1980 had been issued by the Board, by which it was declared that the Ministry of Railway agreed to the post of Commercial Controller (Rs. 455-700) being treated as a 'Selection Post'. A true copy of this letter is filed as Annexure no. 4.

19. That the claim of the petitioner was not entertained only because according to the stand taken by the Railway authorities since 1972, this post was a selection post and the petitioner having not been selected to this post could not be confirmed on it. But this post had not been a selection post before 18.2.1980, as such the stand taken by the Railway authorities was not correct.

20. That even on Selection Posts the officials, who had been appointed without selection, were regularised in case they had been found suitable for the post on their working satisfactorily on the post for sufficiently long time. This fact could be substantiated by stating that the post of Section Controller is a Selection Post and in the year 1949 when selection to this post was made, about 15 officials had been exempted from appearing for selection. Out of these 15 persons, there was one Ambar Prasad, who had appeared before the Selection Board on two previous occasions, but could not qualify himself for selection, still he was exempted from selection on the third time and his posting to the post of Section Controller was regularised and his seniority had been maintained. This fact can be substantiated by filing a true extract copy of the Railway Gazette dated 15.2.1953 as Annexure no. 5. Feeling dissatisfied from this fixation of seniority, Sri Ambar Prasad had filed a representation, a true copy of the decision taken by the Deputy General Manager (P), North Eastern Railway, Gorakhpur in this respect is filed as Annexure no. 6, which gives a clear picture of the controversy.

21. That this practice was followed in the case of non-Selection Posts as well. In Chief Engineer's Head Quarter Unit of North Eastern Railway, Gorakhpur, the appointments used to be made on permanent posts on ad-hoc basis or on temporary basis and later on their appointments used to be regularised without their appearing in the suitability test. To substantiate this fact a true copy of an office order is filed as Annexure No. 7.

22. That from the above submissions it would be clear that the Railway Administration was not so much strict about the officials appearing in the selection tests, what was required was the actual efficiency and when it was found that the official was quite efficient to hold a post by his long experience and specialised training, his appearing in the suitability test was avoided and his appointment was regularised. In a recent Government Order dated 14.8.1980 several appointments had been ordered to be regularised; a true copy of this order is filed as Annexure No. 8.

23. That under such circumstances the petitioner again submitted a representation to Chief Commercial Superintendent (P), North Eastern Railway, Gorakhpur bringing to his notice all relevant facts and circumstances of the case; a true copy of this representation is filed as Annexure No. 9, but no reply to it had been received, as such, one another representation was sent to the General Manager

(P), North Eastern Railway, Gorakhpur on 22.4.1980; a true copy of it is filed as Annexure No. 10.

24. That thereafter the petitioner got a reply in which it was stated that on account of the fact that this post of Commercial Controller has now been declared to be a 'Selection Post', the question of regularising or determining his seniority does not arise. This letter was received by the petitioner in the month of September 1980. A true copy of it is ~~fat~~ filed as Annexure No. 11.

25. That the petitioner was advised to send one another representation for reviewing this order to the General Manager (P), North Eastern Railway, Gorakhpur, as such, an application was again sent to him, a true copy of which is filed as Annexure No. 12. But this application has also been rejected on similar grounds; a copy of this letter received by the petitioner is filed as Annexure No. 13.

26. That the lien of the petitioner had also been transferred from the post of Ticket Collector to this Commercial Controller post, which he is holding in a substantive capacity. It was on account of this reason that Sri Habib Ahmad, who was just junior to the petitioner on the post of Ticket Collector, has been posted as Senior Ticket Collector in the grade of Rs. 330-560 and the petitioner has been left out.

27. That the opposite parties are very much displeased with the petitioner only because he had filed the above-mentioned writ petition before this Hon'ble Court and had been given relief against them. They are bent upon sending back the petitioner to the post of Ticket Collector to the pay of Rs. 380/- when the petitioner is at present getting Rs. 660/-. He would be sent back to the post of Ticket Collector from a post of Commercial Controller resulting in loss of pay, ~~and~~ loss of several other amenities and several other evil consequences with utmost hardship and he would lose all future chances of promotion to class II of the Railway service.

27-A. That on 30.10.1983, a selection to the post of Commercial Controller was held, in which the petitioner had also been selected and as such, his service has now been regularised.

27-B. That the petitioner demanded from the railway authorities his due seniority from 23.12.1967 - the date of his initial appointment as Commercial Controller, but the railway administration is not accepting the demand of the petitioner, inspite of repeated demands and representation.

28. That on 4.1.1985, a seniority list had been published by the Railway Administration in which the petitioner was shown at a much junior place. His name had also been incorrectly mentioned, as such, an objection was filed against this seniority list. A photostat copy of this application is filed as Annexure no. 14.

29. That it had been urged before the General Manager, North Eastern Railway that the seniority of the petitioner should have been fixed from 23.12.1967 when he had been regularly appointed as Commercial Controller and not from 28.11.1983 when he was formally said to have been selected on this post. It had been pointed out to him by the petitioner that his entire period of service on this post should have been taken into consideration while deciding his seniority - the relevant ruling - A.I.R. 1984 S.C.1527, G.P.Doval Versus Chief Secretary, U.P.Government and others, had also been placed before him.

30. That inspite of hearing all which had been stated above, the General Manager, North Eastern Railway rejected the objection of the petitioner as communicated to the petitioner by the General Manager (P) vide his communication dated 2.7.1985 - a true copy of this communication is filed herewith as Annexure no. 15.

31. That the petitioner had not been supplied the complete order passed by the General Manager, North Eastern Railway, as such, a review application was sent by the petitioner, a photostat copy of which is filed as Annexure no. 16, which has also been rejected by him by an order dated 10.11.1986, a true copy of which is filed as Annexure no. 17.

32. That in view of the above submission the petitioner has no hope of judicious treatment

from the railway authorities.

33. That against these arbitrary actions of the opposite-parties and losing all hopes of any remedy from them and there being now no other alternative remedy against it, this writ petition is being filed on the following;

G_R_O_U_N_D_S

a) That the post of the Commercial Controller had been declared to be a Selection Post in the year 1980 only and before that date, it had been a non-selection post, but the opposite-parties were treating this post to be a Selection Post from its very inception, i.e. since the year 1967, which action is nothing but arbitrary, hence illegal.

b) That in the year 1969, these posts were sanctioned to be permanent and their grade had also ~~ha~~ been fixed. It was evident from the sanctioning order that the posts were Divisional controlled posts and the Divisional head was free to fill the posts at his own discretion which had been done, as such, the petitioner should have been deemed to have been posted in accordance with rules; the action of the opposite parties violating these rules is nothing but arbitrary.

c) That according to the relevant Railway Board's order dated 5.2.1972, the decision to revert hi

or to retain him should have been taken and implemented within period of 18 months from the date of his initial appointment as Commercial Controller and he should not have been denied the benefits of confirmation after the expiry of two years of his continued service in a clear and permanent vacancy. The decision of not confirming him on this post after an expiry of 13 years is nothing but arbitrary.

d) That in various Board's Orders it had been repeatedly laid down that if an official had put in long efficient service on a post, his posting on that post should be regularised and he be confirmed on the post and be allowed his seniority but these orders are being violated on the arbitrary whim of the opposite-parties; the action as such is arbitrary.

e) That the petitioner had been appointed on this post first on the officiating basis in the year 1967 and when the post was considered to last for more than 3 years, it was sanctioned to be permanent with its separate scale of pay the officiating nature of the appointment became a substantive one and the posting of the petitioner on this post also became substantive; in this view of the matter the opposite-parties should not have denied him the benefit of seniority and regularisation; their action as such in rejecting ~~him~~ his prayer for such ~~relax~~ reliefs is nothing but arbitrary.

f) That a post could be only a non-selection post unless it was declared by the Railway Board to be a Selection Post, as such, this post of Commercial Controller got the nature of Selection Post when on 18.2.1980 it was declared to be a selection post when the Ministry of Railwayseagreed to treat this post as a 'Selection Post' as such after this date only appointment to it could be made by selection and not previous to it; the action of the opposite-parties in refusing to treat the petitioner as duly appointed on this post which existed prior to this date by selection was nothing but arbitrary.

g) That on the non-selection posts the opposite parties were appointing persons on ad-hoc basis on permanent posts and later on their appointments used to be regularised without their appearing in the suitability test on the ground that their suitability stood judged on their completing the continuous service for 3 years and on their not being reverted. The petitioner being an equally placed person and on the same principles should have been confirmed and regularised on this post on account of his serving the administration for full 13 years to the best of his efficiency; the action of the opposite parties as such is nothing but arbitrary.

h) That even in the case of selection post, the opposite-parties have regularised the appointments of those persons who had have appeared before the Selection Committee but were not selected and several others whose appointments had been regularised without

their appearing before the selection committee or any suitability test, but the petitioner is being discriminated in this respect as well and in spite of the fact that the attention of the opposite-parties nos. 2 and 3 had been drawn by repeated representations they have rejected the request of the petitioner arbitrarily.

i) That on account of his seniority in service and crossing successfully the efficiency bar, the petitioner was entitled to the next higher grade of Rs. 550-750/- ^{and subsequently to Rs 700-900} and Rs. 840-1040/- from the due date with the difference of salary and other benefits, but on account of the malicious intention of the opposite-parties even these grades are not being given to the petitioner, although he is otherwise fully entitled to these grades; the action of the opposite-parties as such is nothing but arbitrary.

j) That the opposite-parties have given no consideration to the fact that after having served as Commercial Controller for 13 years if the petitioner is kept in a suspense and reverted to the post of Ticket ~~San~~ Collector, he will be put to a very great and irreparable loss for no fault on his part; this action of the opposite-parties would amount to punishment and in this way, the petitioner would be punished indirectly, losing all chances of future promotion to class II of the Railway Service.

Under the circumstances, it is most respectfully prayed that the Hon'ble Court be pleased to;

X/20
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In the Hon'ble High Court of Judicature at Allahabad:
Lucknow Bench : Lucknow.

T.A.N. 786 of 1987
Writ Petition No. _____ of 1981

Yadunandan Prasad.....Petitioner.

Verano

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

Annexure No. 1

North Eastern Railway

Office of the
General Manager (P)
Gorakhpur.

S.No. 2376

No.E/301/B/4/3(II).

Dated: 15.3.72

File ready
15.7.71
The General Manager,

All Heads of Department.

All Divisional Superdts.

All Personnel Officers.

All extra Divisions.

North Eastern Railway.

ROG:-Confirmation of staff officiating in
higher grades.

....

A copy of Board's letter No.E(WG)I-69CW3/31
dated 5.2.72 on the above subject is forwarded for
information. The Board's letter No.E(WG)I-69CW3/31
dated 12.3.71 referred to therein had already been
circulated under this office no.E/301/B/4/3(II)
dated 3.9.71.

Sd. Illomable
for General Manager (P).

Copy of Board's letter No.E(WG)I-69CW3/31
dated 5.2.72.

....

Sub:-Confirmation of staff officiating in
higher grades.

....

- i) issue a writ in the nature of certiorari quashing the order passed by the opposite party no. 2 dated 9.12.1980 and 4.9.1980, copies of which are Annexures nos. 13 and 11 respectively, after summoning their originals from the opposite ~~parties~~ party no. 2. The seniority list prepared and published on 4.1.1985 may also be quashed being quite illegal and ~~in~~ inoperative.
- ii) issue a writ of mandamus commanding the opposite parties to regularise the appointment of the petitioner as Commercial Controller since 23.12.1967 and to fix his interse seniority and seniority since that date according to law taking into the consideration ~~o~~ the entire period of his service as Commercial Controller since 23.12.1967 and to allow him all the benefits and allowances to which he would have been otherwise entitled.
- iii) grant such other relief as well to which the petitioner may be found entitled, with costs of this petition.

Lucknow: Dated;
, 1989.

Advocate,
Counsel for the petitioner.

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इन्विज्वानरुज्ज्वाह कोर्ट आफ मुद्राकर एंड हस्ताक्षर आद,

सम्पत्ति वेन्ना, लखनऊ

रिट पिटीशन नं०

आफ 1981.

यदुनन्दन प्रसाद - - - - - पिटीशनर

अनाम

प्रतिपक्ष आफ दफिद्वारा - - - - - अटो-पार्टी

अनैज्जर नं०- 2

पू० ३० रोज

३० रोज

नं०- ६०/ वा ६०/ टो १०

प्रिय रजुनाथ प्रसाद।

मुनेश्वर प्रसाद सिंह,

सकाधि/ लखनऊ

विषय श्री यदुनन्दन प्रसाद सि., वाणिज्य नियंत्रक का केन मान
नियत करना तथा वाणिज्य नियंत्रक में प्रति करना।

सन्दर्भ :- आपका ३० रोज प. सं० ६०/२१०/१५/१७- ३/२४९ रोज
वा १०/ १: दिनांक २६- २७- १७/७६.

श्री यदुनन्दन प्रसाद के भाई के आवेदन पर पर पौरावाहज
टिप्पणी निम्न है: -

श्री यदुनन्दन प्रसाद रेलवे सर्विस कमोशन द्वारा बुने जाने
पर दिनांक १९.८.६४. को सोतापुर में ०.०.०.० के पद पर नियुक्त किये गये।
सोतापुर में वे १९६७ तक ०.०.०.० का कार्य करते रहे। वाणिज्य नियंत्रक
को पोस्ट सैक्शन होने से पहले मुख्य वाणिज्य अधीक्षक गोरखपुर ने आदेश
दिया कि २ वाणिज्य नियंत्रक ब्रह्मपुर एवं कार्य पर लगाये जायें। हम
विशेषज्ञों में श्री यदुनन्दन प्रसाद को विशेष कार्य के लिये दिनांक २३.१२.६७
को कन्ट्रोल आफिस में लगा दिया गया।

महा पञ्चक [का०] गोरखपुर के ज्ञान संख्या ६०/५९/६३०७.
एन०/४। दिनांक २५.८.६९. के द्वारा वाणिज्य नियंत्रक को २ पोस्ट
केन मान २५०- ३८० में मंजूर हुई। श्री यदुनन्दन प्रसाद ०.०.०.० -
११०- १८० सम्पत्ति नं० के अधीन ५ से कन्ट्रोल आफिस में

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In continuation of the instructions contained in letter of even number dated 12-8-71, the Board desire that the cases of staff who have been promoted on a regular basis should be reviewed after completion of one year's continuous officiating service, or even if a permanent vacancy does not exist, with a view to determining their suitability for retention in the grade. The review should be completed early and a decision to continue the employee in the officiating post or revert him, taken and implemented within a period of 18 months of officiating service. Having followed this procedure, there should be no question of denying the benefits of confirmation to an employee on completion of two year's officiating service in a clear permanent vacancy for the reason that he is not fit for confirmation.

Please acknowledge receipt.

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ADMINISTRATIVE COPY

23.8.69. को विशेष कार्य करने के लिये आदेश दिया गया। अतः 71 में यह निर्णय किया गया कि श्री यदुनन्दन प्रसाद जी 1000 रुपए पद मान में बहुत पुनियर हैं। इसलिये उनकी 1000 कोट्टी में वापस कर दिया जाये। जो तब यह आदेश कार्यात्मक नहीं हुआ था कि श्री यदुनन्दन प्रसाद ने उच्च न्यायालय अन्तर्गत केस में समादेश पा लिया दि 20.2.75. को प्रस्तुत की जिसके फलस्वरूप श्री यदुनन्दन प्रसाद को श्री कमलेश आफिस में ब्योक्काई की गयी है जैन मान [260-400] में कार्य कर रहे हैं।

अतः 75 में न्यायालय ने फैसला दिया कि श्री यदुनन्दन प्रसाद को वाणिज्य निर्यात का जैन मान 250-380 दिनांक 25.8.69. के दिया जाय और उनकी 1000 कोट्टी के पक्ष पर रिजर्ट न दिया जाय। इसपर रेल प्रशासन ने उच्च न्यायालय में विशेष अपील प्रस्तुत कर दी।

रिवाज से जैन मान लागू होने पर वाणिज्य निर्यात का जैन मान 455-700 होगा परन्तु श्री यदुनन्दन प्रसाद का मामला न्यायालय के अधीन होने के कारण उनकी वाणिज्य निर्यात का जैन मान नहीं दिया गया और कम्पर्स नहीं दिया गया। श्री यदुनन्दन प्रसाद उस समय भी 1000 कोट्टी 260-400 में जैन मान कर रहे हैं।

मह 74 का हस्ताक्षर में श्री यदुनन्दन प्रसाद ने मान नहीं दिया था।

आवेदन पत्र के अन्त में कहा गया है कि :-

111 श्री यदुनन्दन प्रसाद का जैन वाणिज्य निर्यात के पद मान में नियत किया जाये और उसका बकाया चुकान दिया जाये।

121 अपील जो रेल प्रशासन ने की है उसे वापस ले ली जाये और श्री यदुनन्दन प्रसाद को वाणिज्य निर्यात के पोस्ट पर कम्पर्स कर दिया जाये।

अपरीत के सम्पर्क में यह कहना है कि श्री यदुनन्दन प्रसाद का जैन मान 455-700 में नियत नहीं किया जा सकता क्योंकि उनका मामला न्यायालय में विचाराधीन है और अपील वापस लेने के बारे में महा पत्र 111 और 121 का राय लेना होगा।

आप-का ।

साहस/-

6.8.76.

श्री प्रेमचंद प्रसाद सिंह ।

श्री रघुनाथ प्रसाद
सहाय । यत्नायत
गोरखपुर।

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

Writ Petition No. _____ of 1981
Yadunandan Prasad.....Petitioner.
Versus
Union of India and others.....Opposite parties.

Annexure No. 3

Northern Railway

Headquarters Office,
Baroda House,
New Delhi.

No. 752 P/473 (Pia)

Dated 18.7.77.

All Divl. Supts. &
Extra Divl. Offices,
Northern Railway.

P.S. No. 6815

Sub:- Promotion from class III to class II
services- Conditions of eligibility.

A copy of Railway Board's letter No. P(OP)74/2/2
20, dated 11.7.77 is sent herewith for information
and guidance. Railway Board's letter dated 26.10.76
mentioned hereon has been circulated via this
office letter of even number dated 12.11.76 (P.S.
No. 6659).

DA/AD above.

(B.S. Dhir)
for General Manager (P)

Copy to All SPOs and APOs Hd. Quarters Office.

Copy to All Supt. Supts./Asst. Supt. Hd. Qrs.
(Concerned Section) for information and
necessary action.

Copy to Supt. Comd. for information.

Copy to Railway Board's letter No. R(OP)74/2/20 dated 11th July, 77 to the General Managers, All Indian Railways and copy to others.

Sub:- AD above.

In partial modification of the conditions of eligibility laid down in this Ministry's letter of even number dated 25.10.76 for selection to class II posts under the revised scale of pay the Railway Ministry have decided as under:-

(a) All permanent staff in the revised scale of Rs 640-640 and above should be eligible for selection to class II posts in all departments, provided they have rendered three years non-fortuitous service in this grade or above.

(b) The seniority of employees should be determined.

(1) Within a stream, the inter-se seniority should be regulated on the basis that those in the higher scale would be senior to those in a lower scale. For example, if in a stream, the top scale is Rs 840-1040 and the next scales below are Rs 700-900, Rs 550-750 and so on, those in the scale of Rs 840-1040 will be senior to those in the scale of Rs 700-900, those in turn, the scale of Rs 700-900 to those in Rs 550-750 and so on.

(2) For purpose of drawing up an integrated seniority list of staff belonging to various streams, service in the top most scale in each stream should be considered equivalent to such service in the top most grade in the other, irrespective of whether such

700-900
3-83
50-900
840-1200
425-640

grades are in different scales of pay. For example, if in one stream, the top scale carries Rs.700-900, in another stream, the top scale carries Rs.650-750 and in the third stream, the top scale carries Rs.840-1040, the length of service rendered in these different streams i.e. in Rs.700-900, 650-750 and 840-1040 will be the basis on which to determine the inter-se seniority of staff in these grades. Similarly, the staff in the next below grade in each different stream will be assigned seniority on the basis of their length of service in each of these grades and so on. In other words, the mere fact that in a stream the top scale carries a higher scale than in another stream does not make the higher top scale in that stream more weighty than the lower top scale in another stream.

2. para 1(a) & (b) of Railway Ministry's letter of even number dated 26.10.1976 will, therefore, be substituted by paras 1(a) and 1(b) above and para 1(d) will be deleted.

3. The note appearing below para 1(b) of the Ministry's letter dated 26.10.1976 will be deleted and the following Note will appear below para 1(a) as substituted above:-

Note - When it is considered by the Government that the above categories could not constitute an adequate field of choice, qualifying service for the permanent staff in grade Rs.425-540(RS), and above may be reduced to two years.

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or one year's non-fortuitous service
as considered necessary by the Ministry
of Railways.

All India Traffic Controllers Association

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Dear Brothers,

Rise to the occasion at least now otherwise
Control category will doom for ever. Are we to
fight for our Constitutional right in the Court of
law? Request donation to control Body whole
heartedly and your opinion on the issue at the
earliest.

sd. B.S.Kalel

(B.S.Kalel)
General Secretary/WR,
A.I.T.C.A. 161/8,
Thompson Road, N. Delhi.

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True Copy

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In the Hon'ble High Court of Judicature at Allahabad: K/138
Lucknow Bench : Lucknow.

Writ Petition No. _____ of 1981

Yadumandan Prasad.....Petitioner.

Versus

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

Annexure No. 4

Copy of Board's letter No. B(NG)I-76/PUI/182 Pt
(JCN) dated 8.2.1980 addressed to the General
Manager, N. G. Railway, Gorakhpur.

Sub : Classification of non-gazetted posts
on introduction of revised scales of pay.

Ref : Correspondence relating with Sri P. L.
Seth's D.O. letter No. B/234/2 Pt. 6 (IV)
dated 18.1.1980.

The matter has been examined and in view of
the position explained in additional GPO's D.O.
No. B/234/2/Pt. 6 (IV) dated 24.8.1979, the Ministry
of Railways agrees to the post of Commercial
Controller (B-455-700) being treated as a 'selection
Post' on your railway.

1 H U R C O P Y

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

Yrle Petition No. _____ of 1931
Yadunandan Prasad.....Petitioner.
Versus
Union of India and others.....Opposite-Parties.

Annexure No. B

North Western Railway

Supplement to N.W. Railway Gazette No. 4 of 18th February 1933
Seniority list of Section Controller - Page 15

S. No.	Name	Station	Qualification	Date of birth	Date of appointment	Subsidiary	Pay	Date of confirmation	Official Remarks
50	Adhar P. S. - -varadava.	GD		19.3.1922	4.1.1936	ASM	64-170 -	-	Officialing on T. & S. Board under O.M.D. order.
51	Moti Lal Jaina	GRF	M	25.7.1916	25.7.1935	"	64-170 80	-	-do-
52	Jang Bahadur	SFR	M	15.4.1918	25.11.1936	"	64-170 -	-	-do-
53	K. Chandra	SFR	M	23.4.1918	14.7.1936	"	64-170 88	-	-do-
54	K. Mohan	SFR	M	1.7.1917	7.6.1936	"	64-170 80	-	-do-
55	M. S. Sanyal	SFR	M	7.7.1914	3.2.1931	"	64-170 80	-	-do-
56	A. K. Anand	SFR	M	1.7.1922	12.3.1944	"	64-170 80	-	-do-
57	A. K. Anand	SFR	M	1.8.1919	28.6.1940	"	64-170 84	-	-do-
58	A. K. Anand	SFR	M	16.7.1919	22.12.1940	Guard	60-170 80	-	-do-
59	A. K. Anand	SFR	M	16.7.1919	16.3.1944	Chief	55-130 -	-	-do-
60	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
61	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
62	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
63	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
64	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
65	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
66	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
67	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
68	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
69	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
70	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
71	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
72	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
73	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
74	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
75	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
76	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
77	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
78	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
79	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
80	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
81	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
82	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
83	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
84	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
85	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
86	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
87	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
88	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
89	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
90	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
91	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
92	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
93	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
94	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
95	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
96	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
97	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
98	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
99	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-
100	A. K. Anand	SFR	M	1.8.1922	16.3.1944	Chief	55-130 -	-	-do-

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

Lucknow Bench : Lucknow.

Writ Petition No. _____ of 1981

Yadunandan Prasad.....Petitioner.

Versus

Union of India and others.....Opposite-parties.

Annexure No. 6

North Eastern Railway.

Corakhpur

General Manager's Office.

No. E/11/1/Cftg./SNY-3

Dated 26.8.1985.

The District Traffic Superintendent,
N.E. Railway,
Gonda.

AC3:- Representation dated 27.9.54 of Sri Amber Prasad Srivastava, TNL, Gonda, against the provisional 2nd Combined Seniority List of TNL in grade 200-300.

The contention of Sri Amber Prasad that he was selected as Section Controller in grade 200-300 on 28.3.45 is incorrect. The facts are that he was chosen for being trained in Control work. He after which he was interviewed in July, 1943 by a properly constituted Selection Board, but was not as a Section Controller owing to shortage of selected Section Controllers he as well as some others were, provisionally promoted with effect from 8.11.47 to work as Section Controller pending formation of fresh panel for that post. He again appeared before another Selection Board held on 10.2.49 but again was not selected.

However he got exemption from appearing before

a Selection Board, under G.O.'s orders, and was placed below those who were selected as Section Controllers by Selection Boards held upto 10.2.49.

The post of Section Controller in Grade 200-300 is a selection grade and as per Board's directive promotion without selection to that post is fortuitious. Apart from this his non-fortuitious service, in no case, can be more than those who were selected as Station Section Controllers upto 10.2.49. Therefore, he has been credited with 2 years 5 months and 23 days non-fortuitious service to the extent of his next senior in the same unit. His seniority position has been correctly fixed according to rules and orders on the subject and no change is necessary.

As regard the seniority position of Shri M. M. Choch, it is regretted that through an oversight the G.O. (P)'s letter No.13-P/335(T) dated 18.2.54 could not be taken into consideration while preparing combined seniority list. Necessary correction has since been made and position of Shri Choch fixed accordingly. This, however, will not affect the seniority position of Shri Ambar Prasad.

The representative Shri Ambar Pr. Srivastava may be informed accordingly; a spare copy enclosed for the employee.

For Dy. SO General Manager (P)

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

Writ Petition No. _____ of 1931
Yadunandan Prasad.....Petitioner.
Versus
Union of India and others.....Opposite-Parties.

Annexure No. 7

North Eastern Railway
Office Order

The following senior clerks in Grade B-110-180 (AS) of CPO Head Quarter unit, GKP have been exempted from appearing in the Departmental test as Jr. Clerk to the post of Sr. Clerk in scale (B-180-300).

This issued with the approval of PA to CPO.

<u>Sr. No.</u>	<u>Name</u>	<u>Where working</u>
1	2	3
1.	Shri S. N. Hadda	YBW(B)/GKP
2.	Shri Ram Ugras Pandey	SCO/GKP
3.	Shri Ram Baran Lal Srivastava.	-do-

sd/-
for Chief Engineer: (P)
Dt. 4/11/1932.

R/VIII/210/2/3/RM.

TRUE COPY

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A/143

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

Writ Petition No. _____ of 1981
Yadunandan Prasad.....Petitioner.
Versus
Union of India and others.....Opposite-Parties.

Annexure No. 8

Government of India (Bharat Sarkar)
Ministry of Railways (Rail Mantralaya)
(Railway Board)
No. FNG)/III/79-MGI/80 New Delhi Dt. 14.4.80.

The General Managers,
All Indian Railways,
ICP/CLW/DLV.

Sub:-Regularisation of adhoc-appointments.

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A reference is invited to Para 4.1 of Board's letter No. FNG)/III-77/LOS/1 dated 23.7.1977 in which it was inter alia stated that appointments made.

- i) In excess of the 20% quota for sons and daughters of loyal staff.
- ii) In excess of sports quota.
- iii) persons who did not satisfy the standard laid down by RSCB as current on the date of appointment; and
- iv) others appointed as per Ministry of Railways

That the applicant had been given the training of Gendo (P) and Coaching (P) for this purpose, which had been completed successfully vide Supdt. Local Training School Muzaffarpur letter No.T/32/2 dt. 21.7.69. The result was declared on 4.7.69 and 13.8.69 vide Superintendent Local Training School Muzaffarpur letter No.T/32/23/Goods and T/32/23/Hindi and applicant had been declared passed in both the courses.

That in the year 1969 the grade of Comm. Controller has been decided with creation of two permanent posts for Lucknow Division vide GGS(P)/GKP letter No.G/59/C/LJN/4/(IX) dated 23.8.69 (upto this time the post was being treated as Non Selection and Divisional controlled posts as nothing was mentioned in the sanction letter in this regard and Divisions were free to fill up the post by his own accord).

That according to this decision the grade and the pay of the applicant as Comm. Controller had been fixed u.s.f. 23.8.69 vide Divisional Supdt.(P) letter No.G/YF/10/77 dated 23.8.77 on the decision of Hon'ble High Court Lucknow Bench.

That it is for the first time in the year 1972 (16.5.72) vide UN(P)/GKP letter No.G/210/15/0/CN/GMY(IX) the post was declared as ex-cadre selection and Divl. Control post is also evident that prior to 1972 the post was non selection also Divisional Controlled posts upto this time.

That in the year 1977 (20.7.77) vide GN(P)/GKP letter No.G/2/210/15/0/AM/GMI the post had been

declared as head quarter control post is quite evident that prior to 1977 the posts were Divisional Controlled posts and Divisionals had full right to fill up the post by his own accord.

That for the first time in the year 1980 Railway Board vide his letter No. E/HQ/I-76 PH1/142/Pt.(JCM) dated 8.2.80 informed that Ministry of Railway agreed to to the post of Commercial Controller (B-455-700) being treated as a selection post in N.P.R. which is quite evident that prior to 8.2.80 there was no approval of Railway Board for treating it as selection post in N.P.R.

That the applicant has not crossed the efficiency bar in the year 1976 and is still continued to work as Commercial Controller on the same post and grade (455-700) and his pay at present is Rs.640/- even after about 13 yrs. continuous and blameless service, he could not get any promotion so far because the posting of the applicant as Comm. Controller has not been regularized so far and seniority is still undecided.

That the Superiors of the applicant are quite satisfied with the working of the applicant as it is quite evident with the certificate issued by them from time to time. Copy of one such certificate is filed as Annexure 2 of the application for your kind perusal.

That occasionally Senior Divl. Comm. Supdt. has also pleased to give cash awards and appreciated the good work done by the applicant vide his letter No. C/Misc/OS/Award/79 dated 30.10.79 and DCS/SS-7/72

dated 5.8.80. Copies of which are filed as Annexure 3 and 4 for your kind perusal.

That Sri Ambar Prasad Srivastava Head Quarter Gonda, Moti Lal Gupta HQ. Gorakhpur, Rang Bahadur HQ Sonpur, K.C. Ghosh, K. Shyamik HQ Banaras, M.C. Saxena H HQ Sonpur, A.K. Kanjil Lal HQ Samastipur, C.B. Aothana HQ Banaras Cantt., Javahar Lal HQ Gonda, S.K. Ghosh HQ Gorakhpur were officiating as TNL in the year 1949 had been exempted from Selection Board under G.P. order and their posting had been regularised without appearing in the selection on the basis, that they had satisfactory officiated continuously as more than two years on the post of TNLs. This exemption was published in the supplement of N.G. Gazette No-4 of 15th Feb/1953 and an extract of the same is filed as Annexure-5 for your kind perusal.

That in the year 1962 General clerks Sri S.M. Husain of XGN(B) Gorakhpur Sri Ram Ugran Pandey SCO/ GKP Sri Ram Baran Lal Srivastava of SCO Gorakhpur were also exempted from appearing in the depttl. test as Jr. Clerk to the post of Sr. Clerk vide Chief P.N.G. (P) letter No. P/VIII/210/2/5/P.N.G. dated 4.11.62 on the similar ground. A copy of this letter filed as Annexure 6 of this application for your kind perusal.

Therefore in the interest of Justice the applicant approach to your honour for favourable and kind consideration on the following grounds.

(A) Since the post of Comm. Controller prior to 1972 were non selection and Divl. Control post, the

applicant should be given the benefit of this and be exempted from appearing in the selection of Coml. Controllers which is now selection post in the year 1980 as the applicant was posted u.o.f. 25.12.67 and had been given the grade u.o.f. 25.8.69 when it was non selection post.

(B) That the applicant should also be exempted from appearing in the selection on the ground as done in the cases of Section Controller (TWLO) and Jr. Clarke who were officiating on the post of TWLO and Sr. Clarke and had been exempted from appearing in the selection Board and test.

(C) That the applicant has crossed the efficiency bar and now ^{reaching} ~~proceeding~~ at the maximum pay to his grade and his working throughout these about 18 years were quite satisfactory is the sufficient ground to his exemption from appearing in the selection.

I, the applicant, therefore, requested your honour to kindly consider the case of applicant sympathetically and regularize his posting by giving exception from the selection of Coml. Controller (455-700) as now decided in the year 1980 and also to decide the seniority of the applicant in the interest of justice and to free the applicant from the worries so that he may give much more better service in the interest of railway and nation.

Thanking you for the trouble.

Yours faithfully,

Sd/-

(Yadunandan Prasad)

S/O Sri G. P. Misra.
Comm. Controller.
W. G. Railway/Lucknow.

Dated: 10.4.30.

Advance copy for information and necessary action to:-

1. The General Manager (P)/ W. G. Rly./ Gorakhpur.
2. The Addl. Chief Comm. Supdt: (G)/ W. G. Rly./ Gorakhpur.
3. The Chairman Railway Board, New Delhi.

Sd/- (Yadunandan Prasad)

True Copy

38

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

8/50

Writ Petition No. _____ of 1981

Yadunandan Prasad.....Petitioner.

Versus

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

Annexure No. 10

To

The General Manager (P).
North Eastern Railway/Gorakhpur.

(Through: Proper Channel).

Sir,

Sub:-Regarding seniority.

With due respect I beg to draw your kind
attention towards the following few facts for
favourable consideration and necessary orders.

That the applicant was appointed as Ticket
Collector in the year 1964 (17th August) in Lucknow
Division of N.E.R.

That thereafter in the year 1967 he had been
posted as Commercial Controller and according to
he joined this post w.e.f. 23.12.67.

That the applicant had been given the training
of Goods and Coaching for this purpose which had been
completed successfully vide Superintendent Zonal
Training School Muzaffarpur letter No.T/327/2 dated
21.7.69.

That in the year 1969 the grade of Commercial Controller had been decided with creation of two permanent post for Lucknow Division CCS(B)/Gorakhpur letter No. G/39/C/LJW/4(IX) dated 23.8.69.

That according to this decision the grade and the pay of the applicant as Commercial Controller had been fixed w.o.f. 23.8.69, vide Divisional Supdt.(P) letter No. C/YP/TC/77 dated 23.8.77 on the decision of Hon'ble High Court (Lucknow Bench).

That the applicant is still continue to work on the same post and the grade (455-700) and his pay at present is 640/-. even after 13 yrs. continuous service without any break, he could not get any promotion so far because the seniority of the applicant is still not decided.

I, the applicant therefore, request your honour to kindly look into the matter and decide the seniority of the applicant at the earliest in the interest of justice, before stagnation of my pay.

Thanking you for the trouble.

Yours faithfully,

(Yadunandan Prasad)
S/o Late Sri B. P. Mishra,
Commercial Controller,
N. G. Rly., Lucknow.

Dated: 22.4.80.

Advance copy for information and necessary action to:-

- 1) General Manager, (P)/N. G. Rly., Gorakhpur.
- 2) Addl. Chief Commercial Supdt., (G)/
N. G. Railway, Gorakhpur.

Sd/-Y. Prasad
(Yadunandan Prasad)

TRUE COPY

इन दि आनरेबुल हाई कोर्ट आफ जुडिकेवर एट इलाहाबाद,
लखनऊ बेंच, लखनऊ।

रिट पिटीशन नं०

आफ १९८१.

यदुनन्दन प्रसाद

— — पिटीशनर

बनाम

यूनियन आफ इण्डिया

— — — — — अपो- पार्टीज

अनैम्बर नं०- ११

एन० ई०आर०७५- ७६०२३५.२ सैबस- १३.७.७५.

पूर्वोत्तर रेलवे

पृ० ३० जो० ११२

॥सोल॥
इन्डिय
रेलवे॥

एन० ई०- रेलवे।

एन० ई० जो ११२.

मण्डल रेलवे प्रबन्धक [का०] कार्यालय
लखनऊ — आपिस
स्टेशन

सं० ई०/ बाई०पी/सी एन०एल, दिनांक - ४.९.८०.
हट्ट

श्री यदुनन्दन प्रसाद,
वा० नि०/ लखनऊ

सन्दर्भ :- आपका आवेदन पत्र दि० १०.४.८०. पोस्टिंग
नियमित करने तथा वरिष्ठता हेतु।

आपके उपरोक्त आवेदन पत्र के सन्दर्भ में महा प्रबन्धक [का०]
/ गोरखपुर ने अपने पत्र सं० - का/ २१०/१५/१७- ३ /पी/सी.एल.एल./
प्रो.एण्ड जे॥ दि० १४.७.८०. द्वारा यह सूचित किया है कि "रेल परिवार
द्वारा वाणिज्य नियंत्रक ४५५-७०० का पद "व्ययन पद" घोषित हुआ है।
चूंकि श्री यदुनन्दन प्रसाद इस पद के लिये व्ययनित नहीं है अतएव वाणिज्य
नियंत्रक [४५५-७००] पदपर उनकी पोस्टिंग को नियमित करने तथा
वरिष्ठता देने का प्रश्न नहीं उत्पन्न है।"

ह०- अपठनीय।

४.९.८०.

कृते मण्डल रेलवे प्रबन्धक [का०]

लखनऊ।

सत्य- प्रतिलिपि

41

In the Hon'ble High Court of Judicature at Allahabad: ^{A/153}
Lucknow Bench : Lucknow.

Writ Petition No. _____ of 1931
Yadumanjan Prasad.....Petitioner.
Versus
Union of India and others.....Opposite-Parties.

Annexure No. 12

The General Manager (P),
North Eastern Railway,
Gorakhpur.

Through Proper Channel.

Respected Sir,

Sub: Regularization and fixation of seniority
of Yadumanjan Prasad Commercial
Controller on the post of Commercial
Controller.

Ref: Your letter No. Ka/210/16/17-S/VI/CWL/Pt. I,
dated 14.7.30 and PM(P)/LJN's letter
No. P/YP/CWL dt. 4.9.30 with reference
to my application dated 10.4.30/16.5.30.

With due respect I beg to invite your kind
attention to paragraph 13 (Annexure 5) of my above
mentioned application, where in it was stated that
Shri Anbar Prasad and other 16 Controllers were also
appointed similarly and under the same circumstances,
without any selection, where as the post of Controller
was also a selection post as agreed by the Railway
Board and selection had been made accordingly. They
had been given the required training and exempted from
selection boards under G.P.O. order, on the basis of
their satisfactory working for the longer period.
They had been assigned their seniority along with
other selected candidates, but the case of applicant

has been discriminated unjudiciously and unreasonably, whereas the applicant has also been appointed similarly and under the same circumstances in the year 1937 and has been given the grade of Commercial Controller in the year 1969, when the same was created. He has also been given the training of seeds and coaching for this purpose. The applicant crossed the efficiency bar in the year 1976 and is continuously working on this post for more than 18 years. His work was quite satisfactory, which is evident from paragraph 11, 12 and Annexure 2, 3 and 4 of his above mentioned application under reference.

That the post of Commercial Controller has been declared as a selection post by Railway Board in the year 1980, which is filed as Annexure 1 to this application. Whereas the applicant was appointed on the post of Commercial Controller in the year 1937 and its grade was given to him in the year 1969 after its creation. The rule of selection post should be applicable to the appointment after 1980 and not before it as it was not in existence prior to 1980. Therefore, the applicant should be exempted from the selection board and his seniority be decided according to the rules of natural justice.

I, the applicant, therefore, request your honour kindly to consider my case sympathetically without any discrimination keeping in view the principles of equality before law and justice and considering his long continuous devotional service of more than 18 years on the post of Commercial Controller without any complaint, which is the

material factor to be taken into consideration.

The posting of applicant as Commercial Controller be regularised and his seniority be assigned from the due date to save him from misery, harassment, mental tension, worries and irreparable loss, so that he may be able to perform much more better service to the Railway and the country.

I hope that my above humble prayer will find favour from your generous consideration for which I shall be over grateful.

Yours faithfully,

(Yadunandan Prasad)
Commercial Controller,
N.P.Railway, Lucknow.

Dated: 15.9.80.

Copy for information and necessary action to:-

1. CMB/Railway Bhawan, New Delhi.
2. Director Establishment, Railway Board, B.R. Rail Bhawan, New Delhi.
3. General Manager, N.P.Railway, Gorakhpur.
4. General Manager(P)/N.P.Railway, Gorakhpur.
5. Chief Commercial Supt., N.P.Railway, Gorakhpur.
6. D.R.M.(P), N.P.Rly., Lucknow with reference to his letter No. R/YP/CNI dt. 4.9.80.

(Yadunandan Prasad)
Commercial Controller,
N.P.Railway, Lucknow.

2 R H A COPY

इन दि आनरेबुल हाई कोर्ट आफ बुलोजेयर एंड इनाहाबाद .

सम्पन्न वेम्प, सल्लनऊ।

रिट पिटीशन नं० ५५५ १९८१.

यदुनन्दन प्रसाद - - - - - पि- १०१२२

बनाम

युनिपन आफ इण्डिया - - - - - पी०- पी०

नं०- १३.

पुर्वोत्तर रेलवे

१-१२-८०

प्रेम्प.

सेवा में,

महा प्रबन्धक
गोरखपुर।

नं० २० प्र० का०
सम्पन्न.

विषय:- श्री यदुनन्दन प्रसाद का० नियंत्रक का आवेदन पत्र।

सन्दर्भ :- आपका पत्र ड/ वार्ड. पी. / सी.एस.एस.० दिनांक

६.११.८०.

बाणिज्य नियंत्रक ५५५-७०० का पद खपन पत्र है। श्री प्रसाद
पूछे इस पत्र के लिये खपनित नहीं है अतः उन्हें नियमित करने का प्रश्न
नहीं उठता है। नियमानुसार यदि वे खपन में सम्मिलित होने के लिये
पात्र होते तो उन्हें खपन में शामिल होना पड़ेगा।

कर्मचारी को तदनुसार सूचित कर दें।

एसे महा प्रबन्धक का०

To,

The General Manager(P),
North Eastern Railway,
Gorakhpur

Through: Proper channel

Reg:- Fixation of correct seniority.

Ref:- Your letter No. E/225/15/84/VI dt. 2.1.85.

...

Sir,

With profound respect and humble submission, I am to bring to your kind notice the following few lines for your kind consideration and sympathetic orders:-

1. That I had been posted by DCS/LJN to work as Comml. Controller w.e.f. 23.12.67 (copy of the DCS's orders is filed as annexure '1' for ready reference).
2. That two permanent posts of commercial controller (grade 250-380AS) had been created and sanctioned for Lucknow Division w.e.f. 25.8.69, with Hqr at Lucknow.
3. That I got this sanctioned grade of commercial controller vide DRM(P)/LJN's letter No. E/YP/TC/77 dated 28.5.77 (copy is filed as annexure '2' to this application for ready reference).
4. That I am working since 23.12.67 without any break as commercial controller and was finally selected through proper selection Board by GM(P)/GKP on 28.11.83 and continued to work as commercial controller to the entire satisfaction of my seniors and superiors.
5. Since my AVC for promotion in scale 550-750 and above is in the channel of commercial Inspectors, which is a Hqr. controlled post and is manned on the basis of inter-seniority of the whole zone.
6. At present my seniority (Sl.No.85) has been given from the date of passing the selection disregarding the length of service. I had worked as commercial controller.
7. That my point of argument is since I have been working as commercial controller without any break, my seniority should be fixed from the date actually I am working as commercial controller and not from the date of passing the selection and other benefits, which have been deprived of. The posting letter (annexure '1') also does not mention any such contrary orders which stops or debars me in claiming and getting my due seniority w.e.f. 23.12.67, the date of my initial posting as commercial controller.
8. To illustrate my point of argument more precisely I quote below the instances of the latest judgement of Supreme Court, which is binding to all and goes in my favour also:-

" The Supreme Court of India while disposing the Appeal in the case of G.P. Dowl Vs Chief Secretary U.P. Govt, reported in AIR Supreme Court Sept. 1984 page 1527-- The court held, where officiating appointment is followed by confirmation, unless a contrary rule is shown, the services rendered as officiating appointment cannot be ignored for determining the place in the seniority list. The stop gap appointment of Khandasari Inspector had been subsequently confirmed by the service commission, their past service could not be ignored in determining their seniority(para 15)."

I would like to quote another example in which Shri Jhan, commercial controller of Samastipur Division got decree by the Patna High Court and GM(P)/GKP has corrected his seniority from the length of service working as commercial controller.

The third example is of Shri Dass Gupta of Varanasi Division who has been given benefit of his entire service as Commercial controller while fixing his seniority by the GM(P)/GKP.

It is, therefore, prayed that my seniority should be fixed in view of the back ground mentioned above with all other benefits and with retrospective effect.

My name has also been misprinted in the seniority list of 1.4.84 drawn on 4.1.85 by GM(P)/GKP as YADUNATH PRASAD instead of YADUNANDAN PRASAD which may please be corrected.

I beg to remain Sir,
Thanking you,

DA/-2

Dated:- 15.2.85

Yours faithfully,

(Yadunandan Prasad)
Commercial Controller,
N.E.Rly/Lucknow.

✓ Copy forwarded to the Director(Establishment) Railway Board, New Delhi for information and necessary action pl.

Yadunandan
(Yadunandan Prasad)

यदुनन्दन प्रसाद ---

... प्राथी

अनाम

युनिजन आफ इन्डिया आदि ---

... विपक्षीय।

अनुराग नं. 15

पूर्वोत्तर रेलवे

सं. 210/15/17-3/वा. नियन्त्रक / II दिनांक- 9.7.1985

मन्त्र रेल प्रबन्धक का. 1.

पूर्वोत्तर रेलवे,

लखनऊ।

विषय : श्री यदुनन्दन प्रसाद वाणिज्य नियन्त्रक लखनऊ।

सन्दर्भ: मकार्थि/11/ लखनऊ का. 30 सं. 30 सं. 30 सं. 30 / II.

/ कामशिल / पीठ / व. 1/

दिनांक- 13-5-85

श्री यदुनन्दन प्रसाद वाणिज्य नियन्त्रक, लखनऊ अपनी वरीयता के सम्बन्धमें महा प्रबन्धक महोदय से मिले। महा प्रबन्धक महोदय ने निम्न दिया कि वरीयता धन के उपरान्त हो जा सकती है। वरीयता पिछली तदर्थ रूप से आम करने को अवधि पर निर्धारित नहीं हो जा सकती है।

कृपया श्री यदुनन्दन प्रसाद वाणिज्य नियन्त्रक को सूचित करने को व्यवस्था करें।

महा प्रबन्धक का. 30

सत्य- प्रतिलिपि।

To,

A/
160

The Hon'ble General Manager,
North Eastern Railway,
Gorakhpur.

Sub: Review application for fixation of correct seniority of Yadumandan Pd. Comml. Controller N.E.Rly/Lucknow.

Ref:- GM(P)/Gorakhpur's letter No. E/210/15/17-30
CNL/VI dt. 9.7.1985.

....

The applicant beg to draw your kind attention towards the following few facts for favourable consideration and sympathetic orders:

That the applicant has been posted as Commercial Controller in Lucknow Control of N.E.Rly w.e.f. 23.12.67.

That the applicant has got the training of Goods and Coaching in this regard in the year 1969 and declared successful.

That the applicant has got the grade of commercial controller w.e.f. 25.8.69 as per decision of Hon'ble High Court, Allahabad (Lucknow Bench).

That in the year 1980, the post of Commercial controller has been declared as selection post in N.E.Rly vide Board Letter No. E/HQ/1-76 PMR/1-42/Pt.JCM dated 9.2.80.

That the applicant submitted his option for selection on 25.10.80 in view of the above order to regularise himself on the post of Commercial Controller on demand from G.M(P)/Gorakhpur.

That inspite of this option applicant had not been called int he selection for which applicant has represented to GM(P)/Gorakhpur well in time with several reminder but all in vain.

That the applicant resubmitted his option under protest on 13.5.83 and finally selected for the post of commercial controller in grade (455-700) vide GM(P)/GKP's letter No. E/210/15/17-30/VI/CNL dt. 28.11.83, and appointment as Commercial Controller has been regularised.

That a seniority list has been published from GM(P)/GKP on 4.1.85 in which the applicant has been shown as junior most at SN 85 although a number of junior persons to me has been shown as senior inspite of the fact that they are junior to the applicant.

That the applicant represented to G.M(P)/GKP to fix up correct seniority, taking into account the whole period of service as commercial controller from the date of joining on the post w.e.f. 23.12.67 and not from the date of selection as has been done.

That the Hon'ble General Manager, N.E.Rly called the applicant on 24.6.85 to give his personal hearing vide GM(P) GKP's letter No. E/210/15/17-3/CML/VI dt. 19.6.85

That in compliance of the above order the applicant attended the Hon'ble G.M. on 24.6.85 and requested his honour to order for fixing correct seniority of the applicant as commercial controller, taking into account the whole period w.e.f. 23.12.67 from the date of joining as commercial controller, explaining the whole case.

That after hearing the whole case his lordship observed that before selection the applicant was performing the duty and enjoying the grade of commercial controller from the last 15 yrs on the court decision as such administration is not supposed to do any thing in this regard to fix up the seniority from the date of appointment on the post of Comm. Controller and decided that seniority may be assigned only after selection. A copy of the decision taken by the Hon'ble G.M./NER is filed herewith as annexure-1 to this application for ready reference.

That the applicant begt to submit in this regard to his lordship, that the court decision is binding to the parties which is always decided by laws and any one if aggrieved he may file an appeal before the competent court. The applicant's submission is that ~~xxxxxx~~ since the administration has decided not to file any appeal against the final decision of the court, it will not be correct to say that period of 15 yrs prior to selection is covered up with court decision and is on adhoc basis, hence seniority of that period cannot be accounted for. The applicant feels it injustice and to file this review application for sympathetic consideration to decide the issue in favour of the applicant. Keeping in view of, that the duties performed during the disputed period was in special circumstances and in the interest of the railway administration and at that time when several staff who has been called for this job were unwilling to work on this post and submitted their refusal, on the eve of opening of this scheme in the year 1967.

That so far the period prior to selection is being treated as adhoc basis is concerned, it is submitted by the applicant that at the time of posting as Commercial Controller in 1967 he had never been informed that his appointment is being made on adhoc basis and that he will be deprived of for claiming seniority from the date of joining on this post. Any how if it is now being treated on adhoc basis, even then the applicant may not be deprived for claiming seniority from the date of joining on the post of commercial controller in view of the latest decision of Supreme Court in the case of G.P. DOVA Vs Chief Secy U.P. Govt. AIR Supreme Court Sept. 1984 page 1527, the court held:-

" Para 151

"Where officiating appointment is followed by confirmation unless a contrary rule is shown, the services rendered as officiating appointment cannot be ignored for determining the place in the seniority list. The stop gap appointment of Khandasari Inspector had been subsequently confirmed by the Service Commission, their past services could not be ignored in determining their seniority."

It is, therefore, requested that this issue be decided in favour of the applicant as a special case on the fundamental principle that the length of service is the material factor for determining correct place in the seniority list, which may not be ignored. The applicant's whole period w.e.f. 23.12.67 may kindly be counted for fixing up correct seniority as he is performing duty as commercial controller w.e.f. 23.12.67 without any break and the same has been regularised after selection on 23.11.83.

DA/-One

Yours faithfully,

Sd/-

Dated: 20-3-86

(Yadunandan Prasad)
Commercial Controller,
N.E.Rly/Lucknow

Advance copy to:-

1. The General Manager, North Eastern Railway, Gorakhpur for information and necessary action.
2. Director Establishment, Railway Board (Rail Bhawan) New Delhi.

Yadunandan Prasad
(Yadunandan Prasad)

माननीय केन्द्रीय कैबिनेट टिब दिव्युनल, लखनऊ, ४७६ पी०, लखनऊ।

A/163

यदुनन्दन प्रसाद ---

--- प्राची

बनाम

युनिफन आफ इण्डिया आदि ---

--- विपक्षी गण।

अनैम्बर नम्बर- 17

पूर्वोत्तर रेलवे

कायलिय,
महा प्रबन्धक : का० : गोरखपुर
दिनांक 10-11-86

सं० का/ 210/15/17-3/ वा० नियन्त्रक / व० : पाट ।

मन्डल रेल प्रबन्धक : का० :
पूर्वोत्तर रेलवे,
लखनऊ।

विषय : श्री यदुनन्दन प्रसाद वार्णिज्य नियन्त्रक,
पूर्वोत्तर रेलवे, लखनऊ को उही वरियता नियत।

उप्युक्त विषयक श्री यदुनन्दन प्रसाद, वार्णिज्य नियन्त्रक, लखनऊ
के अध्यावेदन दिनांक 20.3.86 एवं 26.9.86 पर विचार किया गया।
इस सम्बन्ध में इस कायलिय के पत्र सं० ई/210/15/17-3/वा० नियन्त्रक /
०० दिनांक 9.7.85 द्वारा जेम्मे म्ये नियम में परिवर्तन करने का कोई औचित्य
नहीं है।

यह महाप्रबन्धक महोदय के अनुमोदन से जारी किया गया है।
कृपया श्री यदुनन्दन प्रसाद वा० नियन्त्रक को सूचित करने की
व्यवस्था करें।

हस्ता 7/11

महा प्रबन्धक : का० :

सत्य - प्रतिलिपि।

1/164

BEFORE THE GENERAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH AT LUCKNOW.

INDEX

IN

REGISTRATION NO. 786 of 1987 (T)

Yadunandan Prasad -----Petitioner.

Versus

Union of India and others -----Respondents.

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1. Written Statement. 1 to 23

2. Annexure No. 1: True copy of
Judgement dated 20.2.75.

2. Annexure No. 2 - True copy of letter
3. Annexure No. 3: True copy of letter dated 11/16.5.72

4. Annexure No. 4: True copy of
letter dated 23.5.80.

5. Annexure No. 5: True copy of
letter dated 3.10.85.

A.K. Gaur
(A.K. Gaur)
Railway Advocate
COUNSEL FOR THE RESPONDENTS

Dated: Feb. 26, 1990.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW.

WRITTEN STATEMENT

On behalf of

Union of India and others-----Respondents.

IN

REGISTRATION NO.786 OF 1987(T)

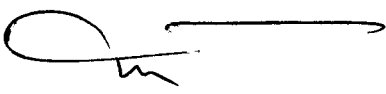
Yadunandan Prasad -----Petitioner.

Versus

Union of India and others---;-----Respondents.

The humble reply ~~in~~ to the aforesaid
petition on behalf of the abovenamed respondents
Most Respectfully Sheweth as under:-

1. That before dealing with parawise reply
to the petition, respondents crave leave of this
Hon'ble Tribunal to mention certain important facts ~~in~~
which are very relevant for the purposes of the
instant case.


24-28
Assistant Personnel Officer
V. S. R. Y. Gorakhpur.

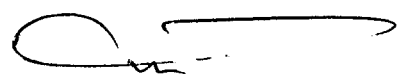
A/166

-2-

2. That the petitioner was appointed and posted as Ticket Collector in grade Rs.110-180 on 19.8.64 at Sitapur Railway Station where he worked till 1967. Before the sanction was received for the post of Commercial Controller, the then Chief Commercial Superintendent, North Eastern Railway, Gorakhpur directed ^{the} ~~to~~ Divisional Commercial Superintendent, North Eastern Railway, Lucknow that two employees may be deputed to work as Commercial Controller in ^{Control} ~~Commercial~~ Office. In pursuance of these directions the petitioner was put to work on special duty in the ~~Commercial~~ Control Office, North Eastern Railway, Lucknow with effect from 23.12.67.

3. That ~~the~~ two posts of Commercial Controller in grade Rs.250-380(SS) were sanctioned vide General Manager(P), North E Eastern Railway, Gorakhpur's memorandum No.E/59/C/LJY/4(IX) dated

25.8.69.


24.8.69,
Assistant Personnel Officer

V. R. Gorakhpur.


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4. That the petitioner was since a very junior in the category of Ticket Collector, it was decided in the year 1971 to return him to his parent post of Ticket Collector.

5. That the orders could not be implemented as the a petitioner filed a writ petition No.370 of 1970 before Hon'ble High Court Allahabad, Lucknow Bench Lucknow and ^{obtained} ~~give~~ stay order.

6. That the said writ petition No.370 of 1970 was partly allowed vide judgment dated 20.2.1975 with direction to fix the grade of the petitioner in the scale of Rs.250-380 with effect from 25.8.69. It was also directed by the Hon'ble High Court not to revert the petitioner from his present post i.e. from the post of Commercial Controller except as provided by rules. The petitioner was allowed to continue as Commercial Controller in compliance of the Hon'ble High Court's order. A true copy of the Judgement


24-26,
Assistant Personnel Officer
V. S. R. Gorkh ur.

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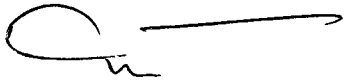
-4-

dated 20.2.1975 is being filed herewith and marked herewith as Annexure No.1 to this reply.

7. That the post of Commercial Controller was classified as Selection Post by the Railway Board in the year 1980 and as such the selection for the post of Commercial Controller was held in the year 1982 in which the petitioner was selected in the year 1983 on the basis of which he was promoted on regular basis to the post of Commercial Controller in grade Rs.4550-700 vide office order dated 13.12.83 and his seniority was accordingly assigned in the cadre of Commercial Controller with

effect from 13.12.1983. *A True copy of office order dated 13.12.83 is being filed and marked as Annexure no 2 to this reply.*


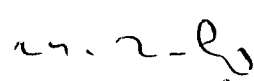
8. That in reply to the contents of paragraph no.1 of the petition it is stated that the petitioner being selected by the Railway Service

 Commission was posted as Ticket Collector at Sitapur
Railway Station. The Railway Administration for the
Assistant Personnel Officer
N. R. J. Gokhale.

better and more effective work of the Commercial Organization created two posts of Commercial Controller. Rest of the allegations contained in para under reply does not require specific reply.

9. That the contents of paragraph no.2 of the petition as stated by the petitioner are not admitted and are denied. It is stated that the petitioner ~~xxxxx~~ while working as Ticket Collector was attached to work in the District Control Office on special duty and he joined as such on 23.12.67. It is denied that the petitioner was found suitable and promoted to work as Commercial Controller.

10. That the contents of paragraph no.3 of the petition are denied only to this extent that the petitioner became fully qualified to hold the post of Commercial Controller. The petitioner's working for some time in the Control Office on special duty in the capacity of Ticket Collector and having



 Assistant Personnel Officer
 N. R. Gokhale

undergone training in goods and coaching are however not disputed but that ^{does} ~~does~~ not confer upon him any right for his promotion and holding the post of ~~Commercial Controller~~ Commercial Controller. It is further submitted that the post of Commercial Controller was required to be filled in after positive act of selection comprising both written and oral test from amongst the staff of Commercial and Operating branches in the scale of Rs.150-240 who have a minimum service of 6 years and (as) volunteered for the post of the Commercial Controller.

11. That the contents of paragraph no.4 of the petition are denied. The petitioner was neither

selected nor appointed as Commercial Controller on regular basis, It is, however, submitted that in compliance of the Hon'ble High Court's directions, the pay of the petitioner was fixed at Rs 250/- p.m. in scale Rs. 220-380 w.e.f. 25.8.68.

12. That in reply to the contents of paragraph

no.5 and 6 of the petition it is stated that the

petitioner filed a writ petition no.370 of 1970

Yadunandan Prasad Versus Chief Commercial Superintendent

Assistant Pottery Officer

M. A. Gokulur.

which was allowed by the Hon'ble High Court irrespective of the fact that the petitioner was not selected nor in fact promoted to hold the post of Commercial Controller and according to the High Court's direction he was allowed the pay scale of the post of Commercial Controller from 22.8.69 while working as ticket collector on special duty in Control Office and he continued on the post till finalisation of the ~~xxx~~ selection for the post of Commercial Controller in the scale of Rs.250-380(AS). The leave to appeal filed by the petitioner and administration were dismissed.

13. That in reply to the contents of paragraph no.7 of the petition it is stated that issue of the letters of the Railway Board dated 13.8.69 and 6.8.74 are admitted but the averments made by the petitioner are denied. The post of Commercial Controller is classed as " Selection" post and was required to be filled in from amongst the volunteers

24-2-9,
Assistant Personnel Officer

M. K. Gokul

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from the categories of staff of Operating and Commercial branches having a minimum of 6 years service in that particular scale and after positive act of selection consisting of both written and oral test. The General Manager (P) Gorakhpur vide its ~~xxxx~~ letter No.E/210/15/C.I./C.I.M.(vi) dated 11/16.5.72 conveyed the Divisional Superintendent Lucknow that the post was treated as ex-cadre and Divisional Controlled. It is denied that the petitioner was either appointed or promoted as Commercial Controller having ^{been} ~~being~~ found senior and ^{selected} ~~quite~~ suitable to the post. The petitioner continued as Ticket Collector on special duty but was allowed the grade and pay of Commercial Controller on the direction of the Hon'ble High Court in writ petition No.370 of 1970 Yadunandan Prasad Versus Chief Commercial Superintendent (P) and others till such time selection for the post was made.

14.

That in reply to the contents of

24-2 R
Assistant Personnel Officer

V D R J. Gorbunur.

-9-

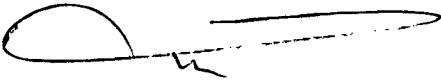
paragraph no.3 and 9 of the petition, it is stated that the Railway Board's letter dated 2.12.70 and 5.2.72 referred to by the petition^{er} is not applicable to the case of the petitioner as he has not been appointed on the post of Commercial Controller in the scale of Rs.250-350 in accordance with the prescribed procedure stated in earlier paragraphs. He has not been selected for the post and does not hold the post of Commercial Controller on regular basis. He is in fact allowed to work as Commercial Controller on special duty while working as Ticket Collector and allowed the pay and grade of Commercial Controller till such time selection for the post of Commercial Controller is held and finalised. The petitioner's working as Commercial Controller on special duty does not confer upon him any right to continue on the post of Commercial Controller by virtue of his such working. The petitioner is liable to be replaced by

24-12-72
Assistant Personnel Officer
N. C. R. Y. Gorkh ur.

the selected person for the post of Commercial Controller.~~by~~ The question of his confirmation on the post of Commercial Controller, in view of above submissions does not arise. The statements contrary to it are denied.

15. That in reply to the contents of paragraph no.10 of the petition, it is stated that the appointment of the petitioner on the post of Commercial Controller is not on regular basis after holding the selection and also that his appointment is on special duty as Commercial Controller while working as Ticket Collector, his working as Commercial Controller is in fact purely temporary on adhoc basis and his such working does not confer upon him any right to continue in the post and he is liable to be replaced by selected candidates for the post of Commercial Controller. The statements contrary to it are denied.

16. That the contents of paragraph no.11


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Assistant Personnel Officer
V. R. Gokhale.

of the petition are admitted. It is, however, submitted that the post of Commercial Controller is classified as " Selection Post " and is to be filled by positive act of ~~xxx~~ selection from amongst eligible categories of staff of commercial branch.

17. That in reply to the contents of paragraph no.12 of the petition, reply given in paragraph no.9 of this reply is reiterated. Since the petitioner is not working as Commercial Controller on regular arrangement after selection for the post, his services are not approved and question of his confirmation as such does not arise.


18. That in reply to the contents of paragraph no.13 of the petition it is stated that issue of the Railway Board's letter referred in para under reply are admitted but it is stated that the said letters of the Board are not applicable in the instant case as these letters are applicable to such staff who have been appointed or promoted to a

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particular post in accordance with the prescribed procedure like selection. The post of Commercial Controller held by the petitioner for the present has not been filled by holding the selection and the petitioner is liable to be replaced by the selected candidates.

19. That in reply to the contents of paragraph no.14 of petition, it is stated that the representations of the petitioner were examined and reply was sent to him that the same had no force. The reply Annexure-2 to the writ petition referred by the petitioner is not a reply to petitioner but an official D.O. reference to the Headquarters office of the Personnel Branch. The statements contrary to it are denied.

20. That in reply to the contents of paragraph no.15 of the petition, it is admitted that the appeal filed by the Railway Administration and the petitioner were dismissed. The appointment of the


24-46,
Assistant Personnel Officer
N. S. R. Y. Gorkhaur.

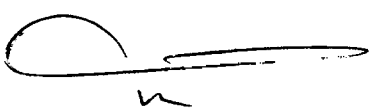
A/175

-11-

of the petition are admitted. It is, however, submitted that the post of Commercial Controller is classified as " Selection Post " and is to be filled by positive act of ~~xxxx~~ selection from amongst eligible categories of staff of commercial branch.

17. That in reply to the contents of paragraph no.12 of the petition, reply given in paragraph no.9 of this reply is reiterated. Since the petitioner is not working as Commercial Controller on regular arrangement after selection for the post, his services are not approved and question of his confirmation as such does not arise.

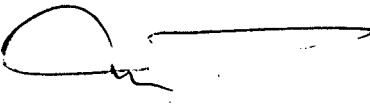
18. That in reply to the contents of paragraph no.13 of the petition it is stated that issue of the Railway Board's letter referred in para under reply are admitted but it is stated that the said letters of the Board are not applicable in the instant case as these letters are applicable to such staff who have been appointed or promoted to a


Assistant Personnel Officer
N. R. Gerkhour.

particular post in accordance with the prescribed procedure like selection. The post of Commercial Controller held by the petitioner for the present has not been filled by holding the selection and the petitioner is liable to be replaced by the selected candidates.

19. That in reply to the contents of paragraph no.14 of petition, it is stated that the representations of the petitioner were examined and reply was sent to him that the same had no force. The reply Annexure-2 to the writ petition referred by the petitioner is not a reply to petitioner but an official D.O. reference to the Headquarters office of the Personnel Branch. The statements contrary to it are denied.

20. That in reply to the contents of paragraph no.15 of the petition, it is admitted that the appeal filed by the Railway Administration and the petitioner were dismissed. The appointment of the


24-46,
Assistant Personnel Officer
N. S. R. Y. Gorkhaur.

High Court in Writ Petition No.370 of 1970, Yadunandan Prasad Versus C.C.S.(P)/ Gorakhpur and is not a selected person for the Commercial Controller as admitted by the petitioner himself in paragraph 6 of this writ petition, he is not entitled to and eligible to the class II post. The statement contrary to it are denied.

22. That in reply to the contents of paragraph no. 18 and 19 of the petition, it is stated that consequent upon creation of post of Commercial Controller, the Railway Board did not classify the post and lay down the policy to be adopted for filling up the post and as such the Zonal Railways itself formulated the policy for filling up the post. The General Manager(P), North Eastern Railway, Gorakhpur under its letter No.E/210/1570/CI/CMI(vi) dated 11/16-5-72 treating the post as ex-cadre and to be filled on selection from staff

of Operating and Commercial Departments in scale of

24-2-83
Assistant Personnel Officer

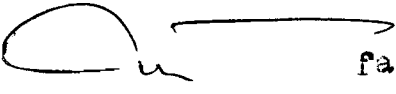
N R Gorakhpur.

4/12/79

-15-

Rs.150-240 who may opt for it and may have 6 years of service on the Railway. A true copy of aforesaid letter dated 11/16.5.72 is being filed herewith and marked as Annexure No.3 to this reply. The petitioner who was a Ticket Collector in lower scale was utilised as Commercial Controller meanwhile on special duty in his capacity as Ticket Collector itself. The Railway Board also in their letter dated 8.2.1980 which is annexed as Annexure No.4 to the writ petition classified the post as " Selection Post" after examination and reference received from the Railway Administration. Since the matter about classification of the post as " Selection Post" was under reference and under the examination of the Railway Board, the statement of the petitioner that it was not a " Selection Post is not correct and are denied.

23. That in reply to the contents of paragraph no.20,21 and 22 of the petition, it is stated that the facts mentioned therein are not material and relevant


Assistant Personnel Officer
V. R. Gokhale.

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for the petitioner. However, it is mentioned that "~~xxxxxx~~ " Section Controller" and " Commercial Controller" are two different categories. Moreover, the case of Amber Prasad is not at par with the petitioner as it relates to a period dated 2.9.49 when rules were not codified. Besides, annexure -6 to the petition itself shows that Ambar Prasad was granted exemption by the General Manager from appearing in the Selection whereas it is not so in the case of the petitioner. The petitioner's statement as such has no locus standi. Similar is the position in regard to the General Clerk of Chief Engineer's Office, Gorakhpur as contained in Annexure -7 to the writ petition. The facts, nature and circumstances of each case differ and the administrative decisions in a case can not be made to be applied in other case. The contrary allegations contained in para under reply are distorted on all material points and are denied.

24.

That in reply to the contents of

paragraph nos 23, 24 and 25 of the petition, it is

Assistant Personnel Officer

V. K. Gokhale

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stated that the representations submitted by the petitioner were considered and the decision of the competent authority was communicated to the petitioner.

25. That the contents of paragraph no.26 of the petition are denied. The petitioner holds his lien in the category of Ticket Collector and has been given his due promotion at par with his juniors.

26. That in reply to the contents of paragraph no.27 of the petition it is stated that it is not correct that the respondents are displeased as there is no cause ~~for~~ for it. As regards his continuity upon the post of Commercial Controller, it is submitted that the petitioner has no right to continue upon the post of Commercial Controller as he is not eligible for it and is liable to be replaced by eligible and selected candidates and is liable for

reversion to his substantive post in the category

of Ticket Collector. It is incorrect to say that the

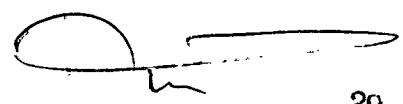
24-18
Assistant Personnel Officer

V. K. Gokhale

petitioner will lose his future chance of promotion to class II post from the category of Ticket Collector. The contrary allegations made in para under reply are denied.

27. That the contents of ^{amended} paragraph no. 27-A of the Amended petition are not disputed.

28. That in reply to the contents of amended paragraph no. 27-B of the petition it is submitted that the claim of the petitioner for assigning his seniority from 23.12.67 is not permissible under the rules and ~~his~~ he has been informed from time to time with the decisions of the competent authority. A true copy of reply communicated to the petitioner vide General Manager (P), North Eastern Railway, Gorakhpur's letter No.E-Ka/210/15/17-3/VI Commercial Controller dated 23.5.80 is being filed herewith and marked as Annexure-3 to this reply.

29.

 Assistant Personnel Officer
 N.E.R. Gorakhpur. ~~XXXXXX~~

That in reply to the contents of amended

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paragraph no.28 of the petition it is stated that the representation dated 15.2.85 made by the petitioner against his seniority Annexure No.14 to the writ petition is only admitted. The other allegations contained in para under reply are denied. It is submitted that his representation dated 15.2.85 was considered by the Competent Authority who has decided that there was no justification for any change in the seniority position of the petitioner in the seniority list published as on 1.4.85 wherein his name finds place at Serial No.85. The said seniority position of the petitioner has been ~~xxxxxx~~ correctly assigned on the basis of his positive selection to the post of Commercial Controller in grade RS.455-700 in the year 1983 on the basis of which he has been promoted on regular basis vide office order dated 13.12.83 and accordingly his seniority has been assigned with effect from 13.12.83.

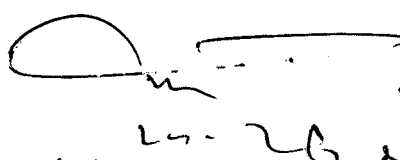
A reply was sent by the office of the General

24-7-85
Assistant Personnel Officer
N. L. R. Gorakhpur.
() Manager(P), Gorakhpur to Divisional Railway Manager(P)

Lucknow
~~Izzatnagar~~ vide letter No.E/255/15/84/CD/VI dated
3.10.85. ~~xxxxx~~ A true copy of the aforesaid letter
dated 3.10.85 is being filed herewith and marked
as Annexure No. 5 to this reply.

30. That in reply to the contents of *amended*
paragraph no.29 of the petition it is submitted that
the General Manager, North Eastern Railway, Gorakhpur
called the petitioner for personal hearing in
reference to his representation dated 29.10.84
made through Shri K.P.Tewari, M.P. The petitioner met
with the General Manager on 24.6.85 and his decision
was communicated to the petitioner vide letter dated
9.7.85 (Annexure No.15 to the writ petition).

31. That in reply to the contents of *amended*
paragraph no.30 of the petition , it is submitted
that in view of the facts mentioned in the preceding
of *after considering*
paragraphs/~~xx~~ this reply the General Manager has
yes case has been
been pleased to reject the claim of the petitioner

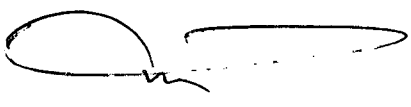

Assistant Personnel Officer,
N. E. R., Gorakhpur.

for giving him the seniority with effect from 23.12.67.

32. That in reply to the contents of paragraph no.31 of the petition, it is stated that the decision of the General Manager has been communicated to the petitioner vide letter dated 9.7.85. A perusal of aforesaid letter dated 9.7.85 would ~~go to~~ show that General Manager has decided ^{that} the seniority can be given only ~~after~~ selection to the post. The benefit of seniority to the post for adhoc period cannot be given. It is further to mention here that in reply to an earlier letter dated 22.3.84 ^{from} Shri K.P.Tewari, M.P. regarding fixation of seniority of the petitioner, the then General Manager has ^{replied} written to him as under:-

^{cc} No.E/210/15/17-3/Commercial Controller/VI

D.Hari Ram
General Manager,
North Eastern Railway,
Gorakhpur.
5th July, 1984.


Dear Shri Tewari,

24-28
Assistant Personnel Officer
V. R. Gorakhpur.

Reg. Seniority position of Shri Yadunandan
Prasad, Commercial Controller, Lucknow.

Ref, Your letter dated 23.3.84.

XXXX

Shri Yadunandan Prasad enjoyed a higher grade as on adhoc basis, which was intended and fortuitous of a regularly selected candidates had not been posted for 16 years, it was also a good fortune of the staff that he enjoyed the benefits of higher grade without proper selection. His actual seniority in the selection will have to be counted only from the date of his empanelment and his position in the panel. No retrospective benefit can be given to him.

With regards.

Yours sincerely,

Sd/- D.Hari Ram

Shri K.P.Tewari,
Member of Parliament,
125, Hewet Road;
Allahabad, 211003.

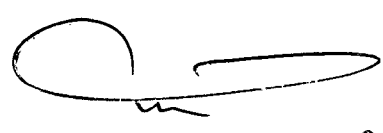
That the contents of paragraph no.32 of

the petition alongwith grounds are not admitted and
Assistant Personnel Officer
N. R. J. Gorkhpur.

are denied.

34. That the writ petition is not maintainable and the petitioner is not entitled to the directions prayed for by him and the writ petition is liable to be dismissed.

35. That the petitionersxxxxxxxxxxxxxx petition is frivolous, vexatious and liable to be dismissed with cost.


24-2-90
~~Assistant Personnel Officer~~
N E R, Gorakhpur.
(For Respondents)

Verification

I, Balwant Rai working as Asstt.

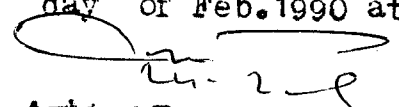
Personnel Officer In the office of the Chief Personnel

Officer, North Eastern Railway, Gorakhpur do hereby
He is duly authorized to file reply on behalf of respondents & that
verify that the contents of paragraph no.1 to 35 & of

this reply are based on perusal of official record and legal advice received which all I believe to be true.

Verified on this
Allahabad. Lucknow

Dated: 24.2.90

day of Feb.1990 at

24-2-90
~~Assistant Personnel Officer~~
(For Respondents)
N E R, Gorakhpur.

TANW 786 of 87CT)

Yadunandan Prasad,

Union of India & others.

Annexure No. 1

19.2.73.

In the Hon^{ble} High Court of Judicature at Allahabad, Lucknow Bench,
Lucknow.

Writ Petition No. 370 of 1970.

Yadunandan Prasad. Petitioner.

Vs.

Chief Commercial Superintendent(P) N.E.Rly.
Corakhpur and others.

....Opp-parties.

Petition under Article 226 Constitution of India.

Lucknow dated:- 20.2.1975.

For petitioner:- Sri Unash Chandra

For opposite party:- Sri A. K. Marji.

.....

Hon^{ble} D.M. Jha, J.

The petitioner Yadunandan Prasad has filed this petition under Article 226 of the Constitution against his reversion.

The petitioner was appointed by the Chief Commercial Superintendent, opposite party no. 1 as a temporary Ticket collector in the year 1964 and he was put on probation. After his training, vide order dated 19.3.1964 he was posted at Sitapur as a relieving Ticket Collector. In the year 1966 he was transferred to Lucknow. In the meantime two new posts of Commercial Controllers had been created by the Railway Administration and the Chief Commercial Superintendent vide his order no. C/337/66(229), dated 15.11.1967 ordered the District Commercial Superintendent to appoint two Commercial Controllers. On 28.12.1967 the petitioner was posted on one of the posts under the orders of the District Commercial Superintendent, Lucknow. A copy of this order is enclosure-17.

According to this the petitioner was directed to work in the District Control Office on special duty with effect from 28.12.1967. The petitioner was accordingly relieved from his office which he was previously holding. On 3.1.1968 the Chief Commercial Superintendent issued a telegram for posting of two Commercial Controllers

True copy

Assistant Registrar, O.C.C.

N. S. R. Y. Gov. u

in the control office and reply was sought with respect to the action taken in this connection. Copy of this telegram is Annexure-13. On 20.1.1968 a letter was issued from the District Commercial Superintendent intimating the Chief Commercial Superintendent, Gorakhpur to the effect that the petitioner has been posted to work as Commercial Controller in the District Control Office on special duty with effect from 23.12.1967. A copy of this letter is Annexure 1-8. The petitioner continued to work on the said post till the date of the filing of the writ petition, viz. 23.3.1970. The petition was admitted on 27.5.1970 and on 23.7.1971 an interim order was passed directing not to revert the petitioner. While the petitioner was working on the post of Commercial Controller on 14.8.1968 he applied for commercial training in goods and coaching to the District Commercial Superintendent so that he may be able to discharge his duties more efficiently. The petitioner received training for 3 months from March 1969 to June 1969 and he again resumed his duties as Commercial Controller in the month of July 1969. It may be mentioned that he was declared successful in the result of the training and the said result was declared on 13.8.1969. In the meantime a scheme was introduced according to which Lucknow had been declared as one of the Divisional Headquarters of the North-Eastern Railway and Sri M.L. Talwar was appointed as a Divisional Commercial Superintendent of the Division. A regular sanction and creation of the post of Commercial Controller in the scale of Rs.250-330 under DCC/LM came into effect from 25.9.1969. The petitioner as mentioned above continued to hold the post of Commercial Controller even after this date. The petitioner has alleged that Sri M.L. Talwar, opposite party no.2 after being posted, had been behaving with subordinate employees of the establishment in general and with the petitioner in particular. On 12.1.1969 at about 11 A.M. Sri Talwar had hurled filthy abuses on the petitioner without any provocation from his side. The petitioner resented and that

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Assistant Pers. Officer
N. E. R. Lucknow.

It is now how he had incurred the displeasure of Sri Talwar. It is further asserted that on account of misbehaviour of Sri Talwar the "hazak" of the A.E. Railway on 14.3.1969 staged a demonstration in front of the Divisional Office, Lucknow condemning his general bad behaviour and the fact was also brought to the notice of higher officers of the Central Government. It is asserted that the petitioner was blamed by Sri Talwar for the demonstration and representation. Sri Talwar adopted retaliatory measures and revengeful attitude towards the petitioner to harm him in every possible manner. The contention of the petitioner as stated in the writ petition is that in view of the sanction of the post and the grade, the petitioner was entitled for the same and his pay should have been fixed accordingly but that was not done. The petitioner met Sri M.L. Talwar and requested him to look into the matter but due to malice he paid no heed to it. Hence the petitioner gave an application on 10.10.1969, a copy of which is Annexure-2 giving out full details about his case and requested for the grade of Commercial Controller to be sanctioned to him. It is stated that Sri Talwar after taking this application shelved it and took no steps in respect of it and every time the petitioner enquired evasive replies were given to him. On this the petitioner himself directly sent another application to the Chief Commercial Superintendent. It is asserted that at the Chief Commercial Superintendent at the instance of Sri Talwar neither confirmed the petitioner although he had worked on the post for a long time nor was his grade fixed in spite of his representations. On 3.3.1970 the petitioner met Sri Talwar and requested him to look into the matter and on this Sri Talwar told the petitioner that he was recommending the higher authorities to remove the petitioner from his post and asked him to go and wait for the orders of reversion. It is further asserted in the petition that the petitioner had worked on the post and the Chief Controller, A.E. Railway who is the immediate superior officer had sent an assessment

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Assistant Divisional Officer

V. S. R. Y. G. & Co. Ltd.

report which was satisfactory and as such nothing more was required. He claims that since he had worked for more than two years under the existing rules the petitioner should have been confirmed on the said post after he had completed his one year's satisfactory service against the vacancy which existed and was existing. A reliance has been placed in this connection on a circular dated 23.6.1964 attached in Annexure-3 to the petition. The petitioner in these circumstances has come up before this court by means of the present petition and has prayed for issue of a mandamus commanding the opposite parties to fix the grade of the petitioner in accordance with the order contained in Annexure-1 and has also sought for issue of a mandamus to the opposite parties to confirm the petitioner on the post of Commercial Controller with effect from due date. He has further prayed for a direction to the opposite parties for not reverting the petitioner from his present post except as provided by rules.

The petition has been contested on behalf of opposite parties. A counter affidavit has been filed by Sri M.L.Talwar and the allegations of mala fide have been denied and it is asserted that they are irresponsible, incorrect and without any substance. With respect to the demonstration it is stated that he was not aware such a demonstration by an unrecognized 'Chamak Sangh' of N.E. Railway. He has further stated that petitioner did not meet him in connection with fixation of pay. Moreover the matter regarding fixation of pay is dealt with by the Divisional Personnel Officer of Establishment Branch according to Establishment Rules. He has denied taking of any application from the petitioner and as such stated that the question of shelving the same did not arise. He has categorically stated that he never recommended for removal of the petitioner from the post of Commercial Controller to higher authorities and at no stage had asked the petitioner to wait for his orders of reversion.

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Assistant Person Officer
N E Railway.

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In a rejoinder affidavit the assertions of Sri M.L. Misra are denied and the contents of the writ petition have been reiterated. It has further been stated in the rejoinder affidavit that the affidavit of Sri Charu Chandra Misra, Divisional Secretary, Charamik Singh, N.E. Railway, Lucknow, has been filed in support of the allegations of the demonstration. It is asserted that a report of this meeting and demonstration is available at the office of the Assistant Security Officer, Special Intelligence Branch, North-Eastern Railway, Gorakhpur.

On behalf of Chief Commercial Superintendent opposite party No.1, the Assistant Personnel Officer Sri Dina Nath Srivastava has filed a counter affidavit and it is stated that the petitioner was selected by the Railway Service Commission for the post of Ticket Collector and he was appointed as temporary Ticket Collector by District Commercial Superintendent vide letter dated 19.3.1964 and not by the Chief Commercial Superintendent. It is further stated that vide letter dated 11.11.1964 the petitioner was posted as Rest-giver T.C., Lucknow junction. It is stated that creation of two posts of Commercial Controller vide order No. C/337/64 (H & D) dated 15.11.1967 as alleged are incorrect. The above order referred to was an administrative direction for engaging two staffs from among the existing commercial staff to function as Commercial Controller. It is stated that no selection was held for the post of Commercial Controller in pursuance of Divisional Commercial Superintendent's letter No. C/Com/Controller/LJH dated 22.12.1967. It is said that the petitioner was put to work on special duty with effect from 23.12.1967. It is said that the petitioner was put to work on special duty with effect from 13.12.1967. It is admitted that the petitioner had applied for coaching and was declared successful vide the result declared by the Superintendent, Local Training School, Meerut dated 13.2.1967. It is admitted that two posts of Commercial Controller were sanctioned in the scale of Rs.250-300 vide letter dated 25.3.60.

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 Assistant Secretary, Office,
 North Eastern Railway,
 Gorakhpur.

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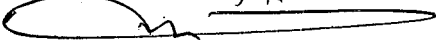
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It is asserted that no selection was held for selecting Commercial Controller in the scale of Rs. 250-300 and it is asserted that since the petitioner was not selected for the post of Commercial Controller he was not entitled to the benefit claimed by him nor any claim accrued to him. A supplementary counter affidavit on 17.11.1972 was filed on behalf of opposite parties on the ground that by inadvertence certain documents which should have been annexed could not be annexed and since it was necessary to give a clear picture. It is stated that there are several departments in the P.W. Railway and one of them is Operating Department and the Operating Department has a section which is known as Control section and is manned by controllers who control movements of the trains. The Railway Board decided that an organisation of Commercial Controllers be set up at Headquarters and the district offices for collection and transmission of various informations relating to it and other matters. This decision of the Railway Board was conveyed by means of D.O. No. 8/327/34(S & D) dated 7.9.1967. A copy of this is annexure 1-2 to the supplementary counter affidavit. On this the Railway Board decided that arrangement should be made to collect the information relating to goods operation and other matters and two posts with their designation as Commercial Controllers were to be created on which appointments were to be made. On 15.11.1967 the Chief Commercial Superintendent sent a telegram to all District Commercial Superintendents that with immediate effect & two members of the staff in the District Control Office should function as Commercial Controllers in day and night shifts and bodies for this purpose should be found by redistribution of duties amongst the commercial staff. A copy of this telegram is annexure-3. On 12.12.1967 by means of a telegram the Chief Commercial Superintendent sent a reminder to the Divisional Commercial Superintendents for compliance with the orders. Copy of this is Annexure -4. On 20.12.1967 the office of District Commercial Superintendent, Lucknow submitted a proposal before the District Commercial Superintendent

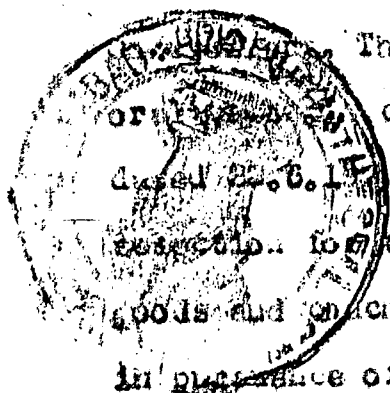
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Assistant Secretary - Office
N. S. Bhatnagar

that M/s. Vinod Chari Misra and Sharda Hand Prasad, Inquiry clerks, working in the scale of 150-242 is deputed to work as Commercial Controllers in the Control Room of the office of the District Commercial Superintendent. A copy of the proposal dated 20.12.1967 is annexed as Annexure A-5. On 21.12.1967 the D.C.S. sent a letter to the Station Superintendent, Lucknow for directing M/s Vinod Chari Misra and Sharda Hand Prasad to see the D.C.S. Lucknow on 22.12.1967. A copy of this letter is Annexure A-6. On 22.12.1967 both M/s Vinod Chari Misra and Sharda Hand Prasad saw the District Commercial Superintendent and the District Commercial Superintendent did not order that they be deputed to perform the duties of Commercial Controllers and instead he ordered that the petitioner be spared and ~~xxxxxxx~~ directed to work in the District Control Office on special duty from 23.12.1967. The order dated 22.12.1967 has been filed as Annexure-7. The petitioner accordingly joined his special duty and started performing the duties in the Control Room pertaining to collection and transmission of the various informations relating to goods operation and other matters vital to the earning potential of the Railway. The petitioner after his posting continued to draw the salary in the scale of Rs.130-140 which he was drawing as Ticket Collector. No special pay or allowance was payable to the petitioner in connection with special duty to which he was assigned. On 3.1.1968 the Chief Commercial Superintendent sent a telegram to District Commercial Superintendent, Lucknow seeking information about the action taken regarding the post of two persons in the office of the District Control Office. A copy of this is Annexure A-8. On 20.1.1968 the District Commercial Superintendent, Lucknow sent a telegram to Chief Commercial Superintendent in reply to the telegram dated 3.1.1968 informing him that the petitioner has been posted to work as Commercial Controller in the District Control Office on special duty with effect from 23.12.1967. A copy of this is Annexure A-9 which is the same as Annexure ⁴² filed by the petitioner to the rejoinder Affidavit. It is asserted that although it was mentioned in the letter

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 Assistant Personnel Officer
 N. E. R., Gorakhpur.

that the petitioner was posted to work as Commercial Controller but upto this time no post of Commercial Controller had been created or sanctioned. The posting of the petitioner in the District Control Office was in connection with special duty that he was required to perform in that office with a view to carry out the aforesaid orders of the C.C. S. for collection and transmission of various informations relating to goods. On 25.3.1969 the Chief Commercial Superintendent accorded sanction for the creation of two permanent posts of Commercial Controllers in the scale of Rs.250-330. A copy of this is Annexure A-10. In compliance with this two posts were surrendered vide memorandum dated 22.7.1970 and two permanent posts of Commercial Controllers thus came into existence. On 12.3.1970 the Divisional Superintendent Lucknow laid down in detail the duties of the Commercial Controller. A copy of this order is Annexure A-11. On 11/16 May 1972 the General Manager wrote letter No. E/310/15/0/CI/ CMI (IV) dated 11/16.5.1972 to Divisional Superintendents of the North-Eastern Railway conveying the decision of the Chief Commercial Superintendent Gorakhpur about the selection for the post of Commercial Controller in the scale of Rs.250-330. In this letter it was mentioned that the C.C. S. had decided that the post of Commercial Controllers will be treated as ex-cadre and will be controlled by divisions. The procedure for filling up the posts of Commercial Controllers was also laid down and as such Commercial and Operating staff having the minimum service of 6 years in the scale of Rs.150-240 who volunteered for selection were to be eligible to appear in the selection for the posts of Commercial



The selection was to consist of both written as well as oral test. A copy of this is Annexure A-12. By means of D.O. letter dated 22.6.1972 the Chief Commercial Superintendent notified that the selection for the post of Commercial Controller should be confined to goods and coaching. A copy of this D.O. is Annexure A-13. It is stated in pursuance of the same the Divisional Superintendent, Lucknow

issued a notification dated 11.7.1972 intimating that it had been

[Signature]
Assistant Personnel Officer
N E R Y. Gorakhpur.

decided to hold a selection board for the post of Commercial Controller in the scale of Rs. 250-330 and that the date for the written and viva voce test would be intimated later. The staff eligible for the selection was required to apply for the selection of Commercial Controller upto 9.9.1972 in a prescribed form. Copy of this notification dated 11.7.1972 is Annexure A-14. It is stated that selection and appointment has not yet been made. It is asserted that petitioner was not selected nor appointed on the post of Commercial Controller and in fact it was not possible to do so for, the post of Commercial Controller had not been created when the petitioner was required and called on to perform the special duty in the office of the Divisional Controller. The post of Commercial Controller is in grade of Rs. 250-330 while the petitioner continues to draw his salary in the grade 110-180 which is the scale of Ticket Collectors. The duties of the post of the Commercial Controller are added to the Special duty for which the petitioner was deputed in the Division Control Office, Lucknow and as such if the petitioner has been shown in any register or document as Commercial Controller, it does not mean that he stood appointed to one of the posts of Commercial Controllers. This has been stated actually to rebut the documents filed by the petitioner along with rejoinder affidavit in order to show that he was being treated as Commercial Controller. The relevant annexures are 8, 10 and 11.

I have heard the learned counsel for the parties. The learned counsel for the petitioner vehemently argued that the petitioner was

appointed as Commercial Controller and he placed reliance on annexure A-9 as the same as Annexure A-9 and as such he was entitled to work in the grade of Rs. 250-330. In order to appreciate the arguments of the learned counsel it is necessary to consider the contents of Annexure-4 which reads as under:-

Shri Rajendra Kumar T.C./LJH has been posted to work as Commercial Controller in District Control Office on special

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 Assistant Personnel Officer
 N. B. R. Y. Gorhpur.

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duty with effect from 23.12.67."

On reading of this annexure it is clear that he was undoubtedly designated as Commercial Controller but it is to be noted that in this letter no scale of pay is mentioned. At the bottom of this letter there is an endorsement of A.C.S./L.JN. dated 22.1.63 which is as under:-

"We should get clarification from H.C.I. about the grade of the Commercial Controller."

There is, however, nothing on record to show that correspondence ensued thereafter and whether any pay or grade was sanctioned. It is not disputed that the post of Commercial Controller in the grade of Rs.250-300 was sanctioned and created for the first time with effect from 25.3.1969. The learned counsel argued that since he had been performing duties which were similar to the one finally approved and were similar to the one finally approved and were in no way different than the one described in Annexure I-11; as such he was entitled to draw the salary in the grade of Rs.250-300. He placed reliance on para 2013 of Railway Establishment Code Vol. II. I have given my anxious thought to the argument advanced by the learned counsel for the petitioner and I am of the view after considering the entire documents on record that actually no sanction for the grade Rs.250-300 had been sanctioned and as such the petitioner cannot make any grievance that he should have been put in the grade any grievance that he should have been put in the grade of Rs.250-300 and should have been allowed to draw this salary as ultimately fixed when the

post was permanently sanctioned on 25.3.1969. The petitioner did not make any grievance from 23.12.1967 till 25.3.1969 to ensure that he was paid salary higher than the grade of Ticket Collector. The petitioner continued to draw his salary which he was drawing as Ticket Collector. The appointment letter also does not indicate any grade. It is, therefore, difficult to hold that even though

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N. E. R. J. Gorkhpur.

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The petitioner was designated to work as Commercial Controller he was entitled to draw his salary in the grade Rs.250-330. It is not disputed between the parties that the two permanent posts were sanctioned in the grade of Rs.250-330 and came into existence on 25.3.1969. It is also not disputed that the petitioner continued to work as Commercial Controller after 25.3.1969 till the filing of the writ petition, viz. 23.3.1970. A direction not to revert him was passed by this Court on 29.7.1971. It is thus clear that till 29.7.1971 the petitioner continued to work as Commercial Controller and was not removed from the office by the opposite parties. In this view of the matter I have no hesitation in holding that the petitioner is entitled from 25.3.1969 to draw his salary in the grade of Rs.250-330 in pursuance of paragraph 2013. I do not find myself in agreement with the submission of the learned counsel for the opposite parties that the petitioner was not appointed as Commercial Controller but was posted to work as Commercial Controller on special duty and as such the said letter cannot be treated as an appointment of the petitioner as Commercial Controller. The posting of a person on a post amounts to his appointment and as such no valid and logical distinction can be made between the two connotations. I am further supported in my view from the fact that he continued to discharge the duties of a Commercial Controller and since it has not been denied that the duties performed by the petitioner were in any way in variance with the duties ultimately prescribed for the post of Commercial Controller, I have therefore, come to the conclusion that the petitioner was legally entitled to draw the salary in the grade Rs.250-330 from 25.3.1969 when the permanent posts were sanctioned and created. I am supported by the decision, P. H. Bhawan versus State of Himachal Pradesh and others (1973 All India Services Law Journal 853) wherein a Single Judge of the Himachal Pradesh High Court held:-

"A Government officer draws his pay at a particular scale or scale according to the statutory rules or according to his

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Assistant Personnel Officer
N. B. R. Y. Gorkhpur.

service contract. If he holds a post for which a definite scale of pay is prescribed, he cannot be awarded a lower scale for the simple reason that the duties and responsibilities of the post he is holding entitled him to receive the scale assigned to such post. It would be incongruous to award him lesser emoluments for the duties and responsibilities he is performing for the post for which higher emoluments are prescribed."

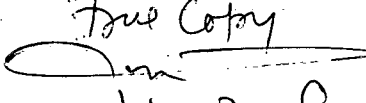
Since no grade had been prescribed prior to this date, as such the petitioner in my opinion is not entitled to get the benefit of the grade which was subsequently sanctioned and created. The grade did not exist when the petitioner was posted as Commercial Controller and since it did not exist he cannot legitimately be entitled for the same. A legal right can only follow with respect to a thing which is in existence. When the grade of Rs.250-330 did not exist I think the petitioner could have, no legal right, for the same.

The learned counsel next argued that by virtue of circular contained in Annexure-3 he was entitled to be confirmed as he had been officiating in higher grade for more than 13 months. The submission in nutshell is that since he had manned the post for more than 13 months he was entitled to the benefit under the circular which had the force of law. In this connection the learned counsel relied on a single Judge decision of this Court, O. S. Bakena versus The General Manager, N.E. Railway, Gorakhpur and another (Writ Petition no. 944 of 1969) decided on 3.8.1971. Hon'ble Jagmohan Lal, J. had an occasion to consider the said circular which was also relied upon in that case and he was of opinion that since it was issued in pursuance of rule 153 of the Railway Establishment Code, Volume I, it has the force of law. It

is observed:-

..... the mere fact that the letter was marked 'confidential' is not sufficient to conclude that it has no statutory force and does not constitute the terms and conditions of service.

Under rule 157 of the Railway Establishment Code Volume I,

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 Assistant Personnel Officer
 N E R Y, Gorakhpur.

the Railway Board and under rule 153 of the same Code the General Managers have been given full powers to make rules with regard to non-gazetted railway servants under their control."

In the same judgment he further observed:-

"... the directions issued by the Railway Board or the General Manager in the form of circular letters for the guidance of subordinate authorities must be taken to be rules made by these authorities by virtue of the powers conferred on them under the said rules 157 and 153."

This view of the learned Single Judge was in keeping with the view expressed by a Division Bench of Orissa High Court in Gashi - usan Khuntia v. Union of India and others (1971 Labour and Industrial Cases 546). In the said decision of the Orissa High Court reliance had been placed on some earlier decisions of Bombay and Delhi High Courts, M.P. Patil v. D.P. Khanna and another (A.I.R. 1965 Bombay 267) and Harinder Mohan Das v. General Manager Northern Railway (A.I.R. 1967 Delhi 79). The view expressed by the learned Single Judge of this Court has also been affirmed in a Division Bench decision of this Court in, The General Manager, North Eastern Railway, Gorakhpur and another versus G.P. Saxena (Special Appeal No. 100 of 1971). The Bench consisting of Hon. Prem Prakash and S.K. Kaul, JJ, after considering the various provisions of law observed:

"The directions issued by the Board in the form of letters from time to time for the guidance of the subordinate authorities under Rule 157 of the Code must be taken to be rules made by the Board under the Code itself. They being statutory directions, the breach thereof in a particular case is subject to the limitation of judicial review."

I find myself in agreement with the observations and I am, therefore, of opinion that in order to succeed the petitioner has only to show that his case fell within the purview of the circular and he

Tom Cofy
Assistant Personnel Officer
N E R Y. Gorakhpur.

is likely to suffer by the non-observance of the same; hence to my mind in order to resolve the controversy the relevant parts of the circular which have been relied upon by the learned counsel has to be noticed;

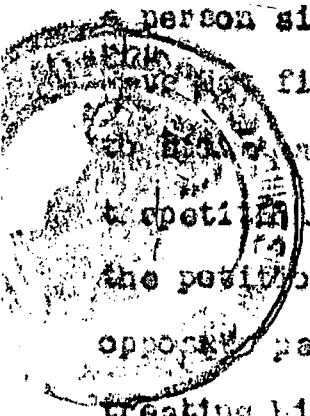
"Sub: Reversion of Employees officiating in higher grade

Under this office letter No. E(SS), 19.7.Pt.VI(C) dated 6.2.63, a copy of Board's confidential letter No.3(D&S) 61 RG-6-SG dated 30.11.1961, as sent to all offices. As per Board's directions efforts are to be made to confirm staff officiating in higher grades in clear vacancies. If they are found suitable after trial over a reasonable period not exceeding 18 months.....Whenever an employee is put to officiate in a higher post, which may be a selection post or a non selection post, his immediate superior should send an assessment report as soon as the employee has completed six months of officiating period. If this report is unsatisfactory, a similar further report should be sent 3 months later i.e. at the end of 9 months officiating period and again 3 months after i.e. at the end of 12 months officiating period.....If it is proposed to revert an employee who has completed more than 18 months of officiating period other than by following the D.A.S. procedure, the personal sanction of a Head of Department must be obtained in the case of Class IV employees and C.M.'s personal sanction must be obtained in the case of Class III staff.....If an employee is not confirmed in higher grade post for want of permanent vacancy, he cannot be reverted after he has completed 18 months of officiating period on the charge of unsatisfactory working except after following the D.A.S. procedure, the procedure being the same for a confirmed employee or an officiating employee."

The learned counsel vehemently argued that the petitioner had been officiating in higher post and having completed a period of more than 18 months satisfactorily his reversion could not be ordered and his reversion attracted the applicability of the circular. In my opinion the contention of the learned counsel is not well founded. The circular

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 N. E. R. Y. Gerkhur.

denied the same. It would appear that this fact was mentioned for the first time in the rejoinder affidavit filed on 12.1.1972. It has not been controverted even in the supplementary affidavit filed on behalf of opposite parties. The allegation in the circumstances stands uncontroverted. The only distinction apparently appears is that Sri Bhagwan Misra was appointed on 25.3.1971, viz. after the sanction of permanent posts in the grade of Rs.250-330. This distinction in my opinion as pointed out by the learned counsel cannot be of any avail to the opposite parties. There is nothing to show that the petitioner was not allowed to work on one of these posts after 25.3.1969. The learned counsel for the petitioner contended that Sri Bhagwan Misra had also not been selected by any Selection Board like the petitioner and he was also administratively appointed like the petitioner and Sri Bhagwan Misra is junior to the petitioner; as such the reversion of the petitioner would be in violation of Articles 14 and 16 of the Constitution. I have given my anxious consideration to the arguments of both the learned counsel on this point. The doctrine of equality recognizes that statutory authority or executive agency may classify for the purpose but requires that the classification must be reasonable. It should have ensured that persons similarly situated are all similarly treated. The measure of reasonableness of classification is the degree of its success in treating those similarly situated. What the Constitutional code of equality requires is that among equals the law should be equal and they should be treated alike. I am of the opinion that in the present case the petitioner can claim that he was a person similarly situated with Sri Bhagwan Misra. The opposite parties have not filed any letter of appointment of Sri Bhagwan Misra in order to show that his appointment stood on a different footing than that of the petitioner. In my opinion the contention of the learned counsel for the petitioner is well founded and it can, therefore, be said that the opposite parties have discriminated against the petitioner in not treating him a similarly situated person like Bhagwan Misra. In my



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Assistant Personnel Officer
 N. B. R. J. Gorkh up.

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opinion therefore for the reasons mentioned above I find force in the challenge made by the learned counsel for the petitioner on the alleged contravention of the doctrine of equality ensured under Article 16 of the Constitution. This view of mine finds support from an unreported decision of this Court in Union of India v. Chandra Shekhar Thakur and others (Special Appeal No. 84 of 1973), decided on 10.1.1973.

In the result the writ petition succeeds partly and is allowed. The opposite parties are directed to fix the grade of the petitioner in the scale of Rs.250-330 with effect from 25.8.1969 and the petitioner will be paid the difference of his salary from that date. I further direct that opposite parties will not revert the petitioner from his present post except as provided by rules, and a proper selection is made. ^{Let} writ mandamus be issued accordingly. I make no order as to costs in the ² special circumstances of the case.

d/- J.S.J. 20.2.1975.

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Assistant Personnel Officer
N E. R.Y. Gorkhpur.

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Union of India & others
पूर्वोक्ता रिश्ते

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Annexure No

कार्यालय बाह्य संख्या-12

कार्यालय निर्देश (495-700) एवं हि राज्य में अनतिम रूप से चयनित निम्नलिखित अध्यापिका की अर्जाएँ एवं हि कार्यालय निर्देश (495-700) में परीक्षाएँ करके उनके नाम के सामने अंकित स्थानों में पर्यवेक्षण किया जाता है:-

प्राप्त नाम	पद नाम	संस्थान कार्यस्थल	495-700 में परीक्षाएँ
सर्वप्रथम			डा. प्रो. वि. प्र. प्र.
1. यमश्री 00 वास्तव्य, प्रधान यमश्री 00, धीनपुर मंडल			कारागार मंडल
2. यमश्री 00 वास्तव्य, प्रधान यमश्री 00			..
3. यमश्री 00 मिश्र, त. र. यमश्री 00, लखनऊ मंडल			लखनऊ मंडल
4. यमश्री 00 सिद्धांत, प्रधान मिश्र		मुद्रापी कार्य	कारागार मंडल
5. यमश्री 00 सिंह
6. यमश्री 00 सिंह	..	धीनपुर मंडल	समस्तपुर मंडल
7. यमश्री 00 पांडेय, प्रधान मिश्र		लखनऊ मंडल	कारागार मंडल
8. यमश्री 00 प्रधान, प्रधान मिश्र		मुद्रापी कार्य	समस्तपुर मंडल

उपरोक्त परीक्षाएँ करके प्रधान यमश्री एवं सर्वप्रथम अध्यापिका की अर्जाएँ एवं हि कार्यालय निर्देश (495-700) में परीक्षाएँ करके उनके नाम के सामने अंकित स्थानों में पर्यवेक्षण किया जाता है।

इसके लिए उम्मीदवार/प्राप्त का अनुमोदन प्राप्त है।

वृत्ति महाप्रबंधक/कार्यालय

संख्या-210/19/172/1

गीतपुरा,

दिनांक 13.12.1903

प्रतिनिधि सुचनाएँ एवं बाह्य कार्यवाही हेतु निम्नलिखित की प्रेषित:-

1. विप्रमुनि/गीतपुरा।
2. मीर(बा०), धीनपुर, समस्तपुर, कारागार, लखनऊ।
3. यमश्री(बा०), गीतपुरा।
4. यमश्री(बा०)-1, 2 प्रति भ।

वृत्ति महाप्रबंधक/कार्यालय

आन/91203

मंडल कार्यालय अधिकारी
पूर्वोत्तर रेलवे, लखनऊ

In The Central Administrative Tribunal
Civil Bench, Lucknow

TA No. 786 of 87 (D)

1/2/84

yadunandan Pd,
u/s

Union of India 2099.

Annexure No. 3.

DATE: 12/15.3.1972

No. W/210/15/0/CI/0.H(VI)

D. 12/15.3.1972
W. 12/15.3.1972.

The Divisional Superintendent,
North Western Railway,
Izamnagar, Lucknow, Banastipur, Varanasi.

Sub:- Selection for the post of Commercial
Controller (250-330).

...

After careful consideration it has been decided by the
CCs that the post of Commercial Controller (250-330) will be
treated as Ex-Cadre and Divisional Controlled.

The procedure for filling up the post of Commercial
Controller in Grade C. 250-330 is laid down as under:-

- (1) Commercial and Eng. staff with a minimum service of
6 years in the scales 15-24 may volunteer for the
selection of this post with all info to appear in the
selection. This will consist of a written as well as
Oral.
- (2) The written test will consist of three papers on three
subjects viz. transportation, goods and loading.
- (3) The candidates should be given sufficient time for
preparation on the subjects mentioned above. The
standard of the written test should be reasonably
high so as to select only out the best from the
candidates.
- (4) The performance of those candidates who will be posted
after having passed the test will be watched for one
year and if not found satisfactory they will be
reverted.

Efforts may also be made to fill the selection for
the post of Commercial Controller (250-330) as quickly as possible
under advise to the concerned.

This issues with the approval of Chief Commercial
Superintendent..

cc/-

for ... (C)

True Copy

IR/10984.

24-28
Assistant Personnel Officer
N. E. R. Y. Gorkhpur.

केन्द्रीय प्रशासनिक अधिकरण
सर्किट ब्लेक, लखनऊ
टी. ए. नं० 786/87 (टी)
यदुनन्दन प्रसाद मिश्रा

बनाम

भारत मुद्रा एवं अन्य,

अनेकजरी नं० 34

सं. का/210/15/17-3/VI/वा. निष्पत्रक

दिनांक 23-5-80
24

श्री यदुनन्दन प्रसाद,

वाणिज्य निष्पत्रक/लखनऊ,

द्वारा- स. रे. प्र. (का०)/लखनऊ

विषय:- वाणिज्य निष्पत्रक के वरीयता सम्बन्ध में ।

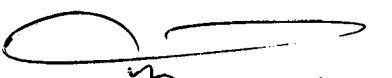
संदर्भ:- आप का आवेदन पत्र दिनांक 22-4-80

वाणिज्य निष्पत्रक 455-700 का पद 'चयन पद' है । इस पद के लिये चयन में उत्तीर्ण घोषित होने के पश्चात् पदोन्नत होने पर ही वरीयता दी जा सकती है । चूंकि आप इस पद के लिये चयनित नहीं घोषित हुए हैं अतः पितृहास आप के वरीयता निर्धारण का प्रश्न नहीं उत्पन्न है ।

True Copy

ह०

कृते महाप्रबन्धक(का०)


Assistant Personnel Officer
N. E. R. Y. Gorkhaur.

केन्द्रीय प्रशासनिक अधिकरण,

सर्किट ब्लेच, लखनऊ

टी. ए. नं. 786/87 (टी)

यदुनन्दन प्रसाद मिश्रा

बनाम

भारत सूचा एवं अन्य

एनेक्जर नं०-----

पूर्वोत्तर रेलवे

संख्या का/255/15/84/सीआई/V।

कार्यालय, महाप्रबन्धक(कार्मिक)

गोरखापुर, दिनांक 3-10-1985

मण्डल रेल प्रबन्धक(कार्मिक),

पूर्वोत्तर रेलवे,

लखनऊ,

विषय:- वाणिज्य नियंत्रक 455-700 पद के वरीयता सूची के विरुद्ध
प्रार्थना पत्र ।

सन्दर्भ:- आपका पत्र संख्या ई/11/254/सीएनएल दिनांक 28-3-85

सर्वश्री यदुनन्दन प्रसाद, नानक प्रसाद एवं एस०एस०श्रीवास्तव, वाणिज्य
नियंत्रक (रु 455-700) की वरीयता सम्बन्धी अभिवेदनों पर विचार किया
गया । इन कर्मचारियों की वाणिज्य नियंत्रक (रु 455-700) के पद पर
चयनित होने के बाद हुई पदोन्नति के पक्षस्वरूप वरीयता निश्चित की गई है
जो ठीक है अतएव उसमें वरिक्ति करने का कोई औचित्य नहीं है । इस सम्बन्ध
में कृपया इस कार्यालय के पत्र संख्या ई/210/15/17-3/वा० नियंत्रक/17 दिनांक
9-7-85 का भी अवलोकन करें जिसके द्वारा महाप्रबन्धक महोदय के निर्णय
से आप को अवगत कराया गया है ।

True Copy

lu-26

Assistant Personnel Officer
N. B. R. Y. Gorkhpur.

ह०

कृते महाप्रबन्धक(कार्मिक)

Before the Hon'ble Central Administrative Tribunal,
Lucknow.

208

Registration No. 786 of 1987 (T)

Yadunandan Prasad Misra .. Petitioner
Versus
Union of India and others .. Opposite Parties.

Rejoinder to the reply filed on behalf of
the opposite parties.

I, Yadunandan Prasad Misra, aged about 49 years, son of Late Sri B.P. Misra, resident of village and post office Misrauli, district Sultanpur, take oath and state as under;

1. That the contents of para 1 of the reply need no comment.

2. That in reply to the contents of para 2 of the reply, it is asserted that on the creation of these two posts of Commercial Controller on 15.11.1967, the petitioner was appointed on one of the two posts and he joined his new post on 23.12.1967.

3. That in reply to the contents of para 3 of the reply, it is asserted that the grade of pay to this post had not been fixed earlier, as such, it was fixed on 25.8.1969 and the post had also been made permanent.

Yadunandan Prasad

Filed today
3/4/91

4. That as regards the contents of para 4 of the reply, it is asserted that the petitioner was the senior most person in the grade of Commercial Controller, as such, there was no question of his reversion to the post of Ticket Collector .

5. That the contents of para 5 of the reply need no reply.

6. That the contents of para 6 of the reply need no comment, but it is asserted (that the Hon'ble High Court had further directed to pay to the petitioner the difference of pay since 25.8.69, which had been subsequently paid to the petitioner).

7. That in reply to the contents of para 7 of the reply, it is submitted that while the petitioner was continuing with his appointment as Commercial Controller since 1967, this post was classified as Selection Post in the year 1980 and in the selection held on 1983, he was successfully selected for this post and continued on this post. In this way, his appointment now continued as a selected person, but his seniority can not be determined from this selection as he was continuing since 1967. The period of service from 1967 can not be legally ignored. Fixing his seniority since 13.12.1983 was not legal at all.

8. That the contents of para 8 of the reply need no reply.

9. That the contents of para 9 of the reply are not correct and they are denied ~~as those~~ and those of para 2 of the petition are reiterated. The appointment of the petitioner on this post of Commercial Controller was a regular appointment and was not a temporary arrangement as stated. The duties of these two posts - Ticket Collector and Commercial Controller are quite different. The petitioner had been given special training for this work by the Railway administration. It is not correct to say that the petitioner had been attached to this post. He had been promoted to this post on account of his suitability and good work.

10. That the contents of para 3 of the petitioner are reiterated and those of para 10 of the reply are denied. It is further asserted that the petitioner never worked as Commercial Controller in the capacity of a ticket collector. After his appointment as Commercial Controller, he had been given a complete training in ~~goods and~~ goods and coaching and after completing his training successfully, he performed his duties as Commercial Controller. The Ticket Collectors are never given any training in goods and coaching. The assertion as such ~~is~~ in this para of the reply is not at all correct. In this connection, the deponent is filing a true copy of the ~~relief~~ relieving order dated 21.7.1969 as Annexure no. 18, which shows that his designation was a Commercial Controller and not Ticket Collector. The petitioner had a right to hold the post, when he had been duly appointed to it and the post was existing .

Yadunandan Prasad

11. That the contents of para 11 are not correct and they are denied and those of para 4 of the petition are reiterated.

12. That the contents of para 12 relate to the judgment of the Hon'ble High Court, which may kindly be perused for its correct appreciation.

13. That in reply to the contents of para 13 of the writ petition, it is asserted that the averments made in para 7 of the writ petition are quite correct, the contrary allegations contained in para 13 of the reply are denied. The post of Commercial Controller had been classed as 'Selection' post in the year 1980. But he had been duly appointed on this post in the year 1969 and continuing on this post, as such, the period of service from 1969 to 1983 for the purposes of his seniority could not be ignored. This is also correct that the petitioner having been found suitable and senior had been promoted and posted on the post of Commercial Controller in the year 1967. The contrary allegations contained in this para 13 of the reply are denied.

14. That in reply to the contents of para 14 of the reply, it is asserted that the contents of paras 8 and 9 of the petition are reiterated. The letters of Railway Board referred in these paras are very much relevant and applicable to case of the petitioner. The petitioner had been appointed in accordance with the procedure as existing at that time.

Radunadar Prasad

He had been promoted and appointed on the post of Commercial Controller in accordance with the procedure approved ~~from~~ for promotion and appointment. It was at a latter stage that the post had been graded as selection post, but such gradation could not take away the ~~has~~ benefit which accrued to the petitioner during this period, ~~which~~ What is said in this para of the reply had never been the stand of the opposite parties and had never been stated in any letter or order issued to the petitioner. The plea as such is an after-thought plea taken only to defeat the claim of the petitioner. The petitioner had been appointed in a clear vacancy and never worked in addition to his duties as Ticket Collector - which stand in this para of the reply is quite false. It is also incorrect to say that the petitioner was liable to be replaced by the selcted persons for this post. The petitioner deserved to be confirmed on the principles laid down in the letters of the Board as stated in the writ petition.

15. That the contents of para 15 of the reply are the mere repetition of the same fact again and again to create a confusion. They are all dehied in view of what has been stated above.

16. That the contents of para 16 of the reply are not correct and they are denied and those of para 11 of the petition are reiterated.

17. That the contents of para 17 of the

yadunadan Prasad

reply are not correct and they are denied and those of para 12 of the petition are reiterated. It is reiterated that the petitioner is working as a regular Commercial Controller since 1967 in a regular arrangement after being promoted and appointed and as such, he was entitled to be confirmed as such.

18. That in reply to the contents of para 18 of the reply, it is asserted that the orders as contained in these letters of the Railway Board were fully applicable to the case of the petitioner and it is for the consideration of the Hon'ble Tribunal to see and appreciate this point. The prescribed procedure at the time of the appointment had been fully followed. The appointment in the year 1967 could not be made on the basis of selection as there was no provision of selection at that time.

19. That in reply to the contents of para 19 of the reply, it is asserted that no copy of any order has been filed by the opposite parties passed over the representation of the petitioner. The assertion as such that the Annexure no. 2 is not a reply to the petitioner is not correct.

20. That the contents of para 20 of the reply ~~and~~ are not correct and they are denied and those of para 15 of the writ petition are reiterated.

21. That in reply to the contents of para 21

yadunandan Pandey

of the reply, it is asserted that order passed by the Hon'ble High Court, can not be flouted in this way. What has been stated in this para goes to show that because the Hon'ble High Court had reminded the wrong done to the petitioner even then he will not be allowed any future benefits because the benefits illegally withheld by the Railway Administration had been set at rest and had been allowed to the petitioner.

22. That the contents of para 22 of the reply are denied and those of paras 18 and 19 of the petition are reiterated. It is further asserted that the Railway Board is the only authority which can classify a post to be a selection post, as such, when this post had not been ~~staff~~ classified as selection post till 1980, it remained a non-selection post till 1980. The Zonal Railway had no jurisdiction to formulate any policy for filling a post in a manner different than the method formulated by the Railway Board. The letter by the General Manager (P), North Eastern Railway, Gorakhpur dated 11/16.5.72 treating the post as ex-cadre and to be filled by selection as such was without any authority and was absolutely ineffective. (The petitioner had never been utilised as Commercial Controller as stated, but had been duly appointed on one of the post by a competent authority and after taking the charge as such continued on this post not in the capacity of a Ticket Collector, but as a Commercial Controller. It is however correct that the Railway Board by its letter dated 8.2.1980 (Annexure 4) classified this post as selection post.

Nadunadew Prasad

After this date, the post became a selection post and not ~~hfor~~ before.

23. That the contents of para 23 of the 'Reply' are incorrect and they are denied and those of paras 20,21 and 22 of the petition are reiterated. It is asserted that the relevancy of a fact will be judged by the Hon'ble Tribunal. The administration can not discriminate between his employees. The discrimination as such was most arbitrary and could not be allowed on such false and unwarranted pretext.

24. That the contents of para 24 of the 'Reply' need no comments, but it is asserted that the decision as such was most arbitrary and illegal.

25. That the contents of para 25 of the 'Reply' are not correct and they are denied. No document has been filed in this respect to substantiate this assertion.

26. That the contents of para 26 of the reply are not correct and they are denied and those of para 27 of the petition are reiterated. The petitioner had a right to hold this post and there was absolutely no reason or justification to send him back to the post of Ticket Collector.

27. That the contents of para 27 of the 'Reply' need ~~no~~ no comments.

Madan Mohan Prasad

28. That the contents of para 28 of the 'Reply' are not correct and they are denied. The claim of the petitioner for maintaining his seniority since 23.12.67 is quite just and deserves to be allowed. The decision contained in annexure no. 4 of this reply had never been communicated to the petitioner. It is however asserted that ~~the~~ this decision is quite arbitrary and illegal.

29. That the contents of para 29 of the 'Reply' in so far as they are against the assertion contained in para 28 of the petition, are not correct and they are denied and those of para 28 of the petition are reiterated. This letter dated 3.10.1985 had also never been served over the petitioner. The decision as contained in this letter is most arbitrary and illegal having been passed without affording any opportunity of hearing to the petitioner.

30. That the contents of paras 30 and 31 of the reply need no comments.

31. That the contents of para 32 of the reply need no comment, but it is asserted that the reasons given in this para for rejecting the claim of the petitioner were not correct. The petitioner never received any copy of the reply which had been sent to Sri K.P.Tewari in this respect. The reasons given in this letter for not giving the due seniority to the petitioner were also arbitrary and quite illegal.

Yadunandan Bhusal

32. That the contents of para 33 of the reply are not correct and they are denied and those of para ~~32~~ 32 of the petition are reiterated.

33. That the contents of paras 34 and 35 of the 'Reply' are not correct and they are denied. The petition is fit to be allowed by the Hon'ble Tribunal with costs to the petitioner.

Lucknow: Dated;
June 14th 1999.

Yadumandan Prasad
Deponent

Verification

I, the deponent named above, do hereby verify that the contents of paras 2,3,4,6(bracketted portion), 7,9 to 14,16,17,19,20,22 (bracketted portion),28,32 of this rejoinder are true to my knowledge and those of paras 1,5,6 (unbracketted portion),8,15,18,21,22 (unbracketted portion),23 to 27,29 to 31 and 33 are believed by me to be true. No part of it is false and nothing material has been concealed, so help me God.

Lucknow: Dated;
June 14th 1999.

Yadumandan Prasad
Deponent.

Plough -
M R. Manna
Prasad

A/
2/2

Before the Hon'ble Central Administrative Tribunal,
Lucknow.

Registration No. 786 of 1987 (T)

Yadunandan Prasad Misra .. Petitioner
Versus
Union of India and others .. Opposite Parties.

**** Annexure - 18

North Eastern Railway

OFFICE ORDER

21.7.69.

Sri Yadunandan Prasad Misra Designation Commercial
Controller H/Q LJM is spared in the A.N. of 21.7.69
after completion of his training in Goods (P) course
class No.2. He is directed to report to the D.S./LJM
for further order.

Sd. Illegible
for Superintendent/ZTS/MFP.

No.1/547/27/3 dated 21.7.69.

Copy forwarded to the D.S./LJM for information.
The following leave was sanctioned to the above named
during his training period at ZTS/MFP. He had
reported here for training on 9.4.69. Casual leave
from 19/5 & 30/5 (other date not readable) L.A.P.
from --(Blank) to Blank.

for Superintendent/ZTS
Guzaffarpur.

TRUE COPY

-yadunandan prasad misra

Before Hon'ble High Central Administrative Tribunal
Allahabad
Lucknow Bench Lucknow.

T. A. N. 786 of 1987

Yadunandan Pal Misra - - - - - Petitioner

vs

Union of India. - - - - - Atty Gen

I am filling here with Postal
Receipt of Sri A.K. Gaur Advocate.

बीमा नहीं NOT INSURED		क्रमांक 816
लगाये गये डाक टिकटों का मूल्य	रु० 6 पै० 00	No.
Amount of Stamps affixed	Rs. 6 P. 00	
एक रजिस्ट्री	प्राप्त किया	
Received at Registrar	A.K. Gaur	
पानेवाले का नाम		Date Stamp
Addressed to	Allahabad	
पानेवाले अधिकारी के हस्ताक्षर Signature of Receiving Officer		

lucce
Dated 26.7.89

[Signature]
K.L. Vishwakarma
Cause for the petition

13

Filed today
L
28/3

Before the Hon'ble Central Administrative Tribunal,

Lucknow Bench, Lucknow.

C.M. An No 80/89 (C)
2

T.A. no. 786 of 1987

Yadunandan Prasad, son of Sri
B.P. Misra, resident of village
and post office Misrauli,
district Sultanpur.

.. .. Applicant.

In re:

W.P.no. 461 of 1981

Yadunandan Prasad .. Petitioner

Versus

Union of India and others .. Opposite Parties

Application for amendment

The abovenoted applicant begs to submit
as follows;

1. That this writ petition was filed before the Hon'ble High Court Allahabad, Lucknow Bench, in the year 1981 and since then, it was pending. On the creation of the Central Administrative Tribunal, this writ petition has been transferred to this Hon'ble Tribunal and is pending before it.

M. R. Min
Rm

2. That in the meantime, there had been certain developments in the controversy which are necessary to be placed before the Hon'ble @ Tribunal and which will enable the Hon'ble Tribunal to appreciate the controversy in its real prospective.

3. That under such circumstances, the petition will require some amendments, which are proposed to be made as follows;

"28. That on 4.1.1985, a seniority list had been published by the Railway administration in which the petitioner was shown at a much junior place . His name had also been incorrectly mentioned, as such, an ~~application~~ objection was filed against this seniority list. A photostat copy of this application is filed as Annexure-14."

"29. That it had been urged before the General Manager, North Eastern Railway that the seniority of the petitioner should have been fixed from 23.12.1967, when he had been regularly appointed as commercial controller and not from 28.11.1983 when he was formally said to have been selected on this post. It had x been pointed out to him by the petitioner that his entire period of service on this post should have been taken into consideration while deciding his seniority - the relevant ruling - A.I.R. 1984 S.C.1527, G.P. Doval Versus Chief Secretary, U.P. Government and others, had also been placed before him."

m R m

"30. That ~~in~~^{what has} spite of hearing all ~~which~~ had been stated above, the General Manager, North~~er~~ Eastern Railway rejected the objection of the petitioner as communicated to the petitioner by the General Manager (P) vide his communication dated 9.7.1985 - A true copy of this communication is filed herewith as Annexure no. 15."

"31. That the petitioner had not been supplied the complete order passed by the General Manager, North Eastern Railway, as such, a review application was sent by the petitioner, a photostat copy of which is filed as Annexure no. 16, which has also been rejected by him by an order dated 10.11.1986, a true copy of which is filed as Annexure no. 17."

"32. That in view of the above & submissions, the petitioner has no hope of ~~judicious~~ judicious treatment~~from~~ from the railway authorities."

4. That the present para 28 be allowed to be changed to para 33.

5. That in prayer no. (i), the following sentence be allowed to be added in the end;

"The seniority list prepared and published on 4.1.1985 may also be quashed being quite illegal and inoperative."

m R Mmm

6. That in the end of prayer no. (ii), the following words be allowed to be added;

~~xxx~~

"according to law taking into the consideration the entire period of his service as commercial controller since 23.12.1967 and to allow him all the benefits and allowances to which he would have been otherwise entitled."

7. That prayer no. (iii) and (iv) be allowed to be deleted.

It is, therefore, most respectfully prayed that the Hon'ble Tribunal be pleased to allow the above mentioned amendments, in the petition in the interest of justice, so that the Hon'ble Tribunal could be able to adjudicate over the matter effectively.

Lucknow: Dated;
Oct. , 1988.

M. R. Mune
Advocate,
Counsel for the applicant

Before the Honble Central Administrative Tribunal
Lucknow Bench Lucknow

T. A. No. 786 of 1987

Yadunandan Pal — — — Applicant

vs

Union of India and others — — — opposite party

Annexure No. 14

To,

The General Manager(P),
North Eastern Railway,
Gorakhpur

Through: Proper channel

Reg:- Fixation of correct seniority.

Ref:- Your letter No. E/225/15/84/VI dt. 2.1.85.

...

Sir,

With profound respect and humble submission, I am to bring to your kind notice the following few lines for your kind consideration and sympathetic orders:-

1. That I had been posted by DCS/LJN to work as Comml. Controller w.e.f. 23.12.67 (copy of the DCS's orders is filed as annexure 1 for ready reference).
2. That two permanent posts of commercial controller (grade 250-380AS) had been created and sanctioned for Lucknow Division w.e.f. 25.8.69, with Hqr at Lucknow.
3. That I got this sanctioned grade of commercial controller vide DRM(P)/LJN's letter No. E/YP/TC/77 dated 28.5.77 (copy is filed as annexure '2' to this application for ready reference).
4. That I am working since 23.12.67 without any break as commercial controller and was finally selected through proper selection Board by GM(P)/GKP on 28.11.83 and continued to work as commercial controller to the entire satisfaction of my seniors and superiors.
5. Since my AVC for promotion in scale 550-750 and above is in the channel of commercial Inspectors, which is a Hqr. controlled post and is manned on the basis of inter-se seniority of the whole zone.
6. At present my seniority (Sl.No.85) has been given from the date of passing the selection disregarding the length of service. I had worked as commercial controller.
7. That my point of argument is since I have been working as commercial controller without any break, my seniority should be fixed from the date actually I am working as commercial controller and not from the date of passing the selection and other benefits, which have been deprived of. The posting letter (annexure '1') also does not mention any such contrary orders which stops or debars me in claiming and getting my due seniority w.e.f. 23.12.67, the date of my initial posting as commercial controller.
8. To illustrate my point of argument more precisely I quote below the instances of the latest judgement of Supreme Court, which is binding to all and goes in my favour also:-

" The Supreme Court of India while disposing the Appeal in the case of G.P.Dowl Vs Chief Secretary U.P.Govt, reported in AIR Supreme Court Sept. 1984 page 1527-- The court held, where officiating appointment is followed by confirmation, unless a contrary rule is shown, the services rendered as officiating appointment cannot be ignored for determining the place in the seniority list. The stop gap appointment of Khandasari Inspector had been subsequently confirmed by the service commission, their past service could not be ignored in determining their seniority(para 15)."

I would like to quote another example in which Shri Jhan, commercial controller of Samastipur Division got decree by the Patna High Court and GM(P)/GKP has corrected his seniority from the length of service working as commercial controller.

The third example is of Shri Dass Gupta of Varanasi Division who has been given benefit of his entire service as Commercial controller while fixing his seniority by the GM(P)/GKP.

It is, therefore, prayed that my seniority should be fixed in view of the back ground mentioned above with all other benefits and with retrospective effect.

My name has also been misprint in the seniority list of 1.4.84 drawn on 4.1.85 by GM(P)/GKP as YADUNATH PRASAD instead of YADUNANDAN PRASAD which may please be corrected.

I beg to remain Sir,

Thanking you,

Yours faithfully,

DA/-2

Dated:- 15.2.85

(Yadunandan Prasad)
Commercial Controller,
N.E.Rly/Lucknow.

✓ Copy forwarded to the Director(Establishment)Railway Board, New Delhi for information and necessary action pl.

Yadunandan
(Yadunandan Prasad)

माननीय सेन्ट्रल सेक्रेटारिस्टेटिव दिब्युनल, लखनऊ छण्ड पीठ, लखनऊ।

यदुनन्दन प्रसाद --

..., प्रार्थी

बनाम

यूनियन आफ इन्डिया आदि --

..., विपक्षी गण।

अनैम्बर नम्बर- 15

पूर्वोत्तर रेलवे

सं० ई/ 210/15/17-3/वा० नियन्त्रक / II दिनांक- 9.7.1985

मन्डल रेल प्रबन्धक § का० §,

पूर्वोत्तर रेलवे,

लखनऊ।

विषय : श्री यदुनन्दन प्रसाद वाणिज्य नियन्त्रक लखनऊ।

सन्दर्भ: मकाधि/11/ लखनऊ का अ० सं० प० सं० ई/ II
/ कामक्षित / पीसी / वह/।

दिनांक- 13-5-85

श्री यदुनन्दन प्रसाद वाणिज्य नियन्त्रक, लखनऊ अपनी वरीयता के सम्बन्धमें महा प्रबन्धक महोदय से मिले। महा प्रबन्धक महोदय ने निष्पक्ष दिया है कि वरीयता वचन के उपरान्त हो दी जा सकती है। वरीयता पिछली तदर्थ रूप से काम करने की अवधि पर निर्धारित नहीं की जा सकती है।

कृपया श्री यदुनन्दन प्रसाद वाणिज्य नियन्त्रक को सूचित करने की व्यवस्था करें।

महा प्रबन्धक § का० §

सत्य- प्रतिलिपि।

Before the Hon'ble Central Administrative Tribunal
Lucknow Bench Lucknow

T.A.N. 786 D/1987

Yadunandan Prasad ——— Applicant

vs

Union of India and others ——— Opp. Parties

Annexure N. 16

To,

The Hon'ble General Manager,
North Eastern Railway,
Gorakhpur.

Sub:- Review application for fixation of correct seniority of Yadunandan Pd. Comml. Controller N.E.Rly/Lucknow.

Ref:- GM(P)/Gorakhpur's letter No. E/210/15/17-30
CNL/VI dt. 9.7.1985.

....

The applicant beg to draw your kind attention towards the following few facts for favourable consideration and sympathetic orders:

That the applicant has been posted as Commercial Controller in Lucknow Control of N.E.Rly w.e.f. 23.12.67.

That the applicant has got the training of Goods and Coaching in this regard in the year 1969 and declared successful.

That the applicant has got the grade of commercial controller w.e.f. 25.8.69 as per decision of Hon'ble High Court, Allahabad (Lucknow Bench).

That in the year 1980, the post of Commercial controller has been declared as selection post in N.E.Rly vide Board letter No. E/HQ/1-76 PMR/1-42/Pt.JCM dated 8.2.80.

That the applicant submitted his option for selection on 25.10.80 in view of the above order to regularise himself on the post of Commercial Controller on demand from G.M(P)/Gorakhpur.

That inspite of this option applicant had not been called int he selection for which applicant has represented to GM(P)/Gorakhpur well in time with several reminder but all in vain.

That the applicant resubmitted his option under pretest on 13.5.83 and finally selected for the post of commercial controller in grade (455-700) vide GM(P)/GKP's letter No. E/210/15/17-3/VI/CNL dt. 28.11.83. And appointment as Commercial Controller has been regularised.

That a seniority list has been published from GM(P)/GKP on 4.1.85 in which the applicant has been shown as junior most at SN 85 although a number of junior persons to me has been shown as senior inspite of the fact that they are junior to the applicant.

That the applicant represented to G.M(P)/GKP to fix up correct seniority, taking into account the whole period of service as commercial controller from the date of joining on the post w.e.f. 23.12.67 and not from the date of selection as has been done.

That the Hon'ble General Manager, N.E.Rly called the applicant on 24.6.85 to give his personal hearing vide GM(P) GKP's letter No. E/210/15/17-3/CNL/VI dt. 19.6.85

That in compliance of the above order the applicant attended the Hon'ble G.M. on 24.6.85 and requested his honour to order for fixing correct seniority of the applicant as commercial controller, taking into account the whole period w.e.f. 23.12.67 from the date of joining as commercial controller, explaining the whole case.

That after hearing the whole case his lordship observed that before selection the applicant was performing the duty and enjoying the grade of commercial controller from the last 15 yrs on the court decision as such administration is not supposed to do any thing in this regard to fix up the seniority from the date of appointment on the post of Comm. Controller and decided that seniority may be assigned only after selection copy of the decision taken by the Hon'ble G.M./NER is filed herewith as annexure-1 to this application for ready reference.

That the applicant beg to submit in this regard to his lordship, that the court decision is binding to the parties which is always decided by laws and any one if aggrieved he may file an appeal before the competent court. The applicant's submission is that ~~xxxxxx~~ since the administration has decided not to file any appeal against the final decision of the court, it will not be correct to say that period of 15 yrs prior to selection is covered up with court decision and is on adhoc basis, hence seniority of that period cannot be accounted for; the applicant feels it injustice and to file this review application for sympathetic consideration to decide the issue in favour of the applicant. Keeping in view of, that the duties performed during the disputed period was in special circumstances and in the interest of the railway administration and at that time when several staff who has been called for this job were unwilling to work on this post and submitted their refusal, on the eve of opening of this scheme in the year 1967.

That so far the period prior to selection is being treated as adhoc basis is concerned, it is submitted by the applicant that at the time of posting as Commercial Controller in 1967 he had never been informed that his appointment is being made on adhoc basis and that he will be deprived of for claiming seniority from the date of joining on this post. Any how if it is now being treated on adhoc basis, even then the applicant may not be deprived for claiming seniority from the date of joining on the post of commercial controller in view of the latest decision of Supreme Court in the case of G.P. DOVA Vs Chief Secy U.P. Govt. AIR Supreme Court Sept. 1984 page 1527, the court held:-

" Para 15:

Where officiating appointment is followed by confirmation unless a contrary rule is shown, the services rendered as officiating appointment cannot be ignored for determining the place in the seniority list. The stop gap appointment of Khandhari Inspector had been subsequently confirmed by the Service Commission, their past services could not be ignored in determining their seniority."

It is, therefore, requested that this issue be decided in favour of the applicant as a special case on the fundamental principle that the length of service is the material factor for determining correct place in the seniority list, which may not be ignored. The applicant's whole period w.e.f. 23.12.67 may kindly be counted for fixing up correct seniority as he is performing duty as commercial controller w.e.f. 23.12.67 without any break and the same has been regularised after selection on 28.11.83.

DA/-One

Yours faithfully,

Sd/-

Dated: 20-3-86

(Yadunandan Prasad)
Commercial Controller,
N.E.Rly/Lucknow

Advance copy to:-

1. The General Manager, North Eastern Railway, Gorakhpur for information and necessary action.
2. Director Establishment, Railway Board (Rail Bhawan) New Delhi.

Y. Prasad

(Yadunandan Prasad)

माननीय सेन्ट्रल सेक्रेटरीटिव दिव्युनल, लखनऊ छण्ड पीठ, लखनऊ।

यदुनन्दन प्रसाद ---

--- प्राथी

बनाम

यूनिवर्सल आफ इण्डिया आदि --

--- विपक्षी गण।

अनैगजर नम्बर- 17

पूर्वोत्तर रेलवे

कायलिय,
महा प्रबन्धक ॥ का०॥ गोरखपुर
दिनांक 10-11-86

सं० का/ 210/15/17-3/ वा० नियन्त्रक /वा०॥पार्ट 1 ॥

मन्डल रेल प्रबन्धक ॥ का०॥
पूर्वोत्तर रेलवे,
लखनऊ।

विषय : श्री यदुनन्दन प्रसाद वाणिज्य नियन्त्रक,
पूर्वोत्तर रेलवे, लखनऊ को सही वरीयता नियतन।

उप्युक्त विषयक श्री यदुनन्दन प्रसाद, वाणिज्य नियन्त्रक, लखनऊ के अभ्यावेदन दिनांक 20.3.86 एवं 26.9.86 पर विचार किया गया। इस सम्बन्ध में इस कायलिय के पत्र सं० ई/210/15/17-3/वा० नियन्त्रक / 00 दिनांक 9.7.85 द्वारा भेजे गये निष्पत्ति में परिवर्तन करने का कोई औचित्य नहीं है।

यह महाप्रबन्धक महोदय के अनुमोदन से जारी किया गया है।

कृपया श्री यदुनन्दन प्रसाद वा० नियन्त्रक को सूचित करने की व्यवस्था करें।

हस्ता 7/11

महा प्रबन्धक ॥ का०॥

सत्य - प्रतिलिपि,

2

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALLAHABAD.

REGISTRATION NO. 706 OF 1987 (T)

Yadunandan Prasad Mishra-----Petitioner.

Versus

The Union of India and others-----Respondents.

The humble objection to the amendment
application on behalf of the respondents is as under

1. That the amendment application is misconceived and liable to be dismissed.
2. That the amendment application if allowed would cause serious injustice to the respondents.
3. That the amendment sought is highly belated and by the time it is allowed the fresh suit would be time barred.
4. That in any view of the matter the amendment application is liable to be dismissed.

Sep. 20,
Dated: July , 1989.

A.K. Gour
(A.K. Gour) Advocate
Counsel for the Respondents.

RT
L
24

Filed today
2
2M

Before the Hon'ble Central Administrative Tribunal,

Lucknow Bench, Lucknow.

C.M. An No 20/09(C)
2

T.A. no. 786 of 1987

Yadunandan Prasad, son of Sri
B.P. Misra, resident of village
and post office Misrauli,
district Sultanpur.

.. .. Applicant.

In re:

W.P.no. 461 of 1981

Yadunandan Prasad Petitioner

Versus

Union of India and others Opposite Parties

Application for amendment

The abovenoted applicant begs to submit
as follows;

1. That this writ petition was filed before the Hon'ble High Court Allahabad, Lucknow Bench, in the year 1981 and since then, it was pending. On the creation of the Central Administrative Tribunal, this writ petition has been transferred to this Hon'ble Tribunal and is pending before it.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALLAHABAD.

REGISTRATION NO. 786 OF 1967 (T)

Yadunandan Prasad Mishra-----Petitioner.

Versus

The Union of India and others-----Respondents.

The humble objection to the amendment
application on behalf of the respondents is as under:-

1. That the amendment application is
misconceived and liable to be dismissed.
2. That the amendment application if allowed
would cause serious injustice to the respondents.
3. That the amendment sought is highly
isolated and by the time it is allowed the fresh suit
would be time barred.
4. That in any view of the matter the
amendment application is liable to be dismissed.

Dated Sep. 20

Noted. July 1968

(A.K.Gaur) Advocate
Counsel for the Respondents.

2. That in the meantime, there had been certain developments in the controversy which are necessary to be placed before the Hon'ble Tribunal and which will enable the Hon'ble Tribunal to appreciate the controversy in its real prospective.

3. That under such circumstances, the petition will require some amendments, which are proposed to be made as follows;

"28. That on 4.1.1985, a seniority list had been published by the Railway administration in which the petitioner was shown at a much junior place. His name had also been incorrectly mentioned, as such, an application objection was filed against this seniority list. A photostat copy of this application is filed as Annexure-14"

"29. That it had been urged before the General Manager, North Eastern Railway that the seniority of the petitioner should have been fixed from 23.12.1967, when he had been regularly appointed as commercial controller and not from 28.11.1983 when he was formally said to have been selected on this post. It had been pointed out to him by the petitioner that his entire period of service on this post should have been taken into consideration while deciding his seniority - the relevant ruling - A.I.R. 1984 S.C.1527, G.P. Doval Versus Chief Secretary, U.P. Government and others, had also been placed before him."

"30. That in spite of hearing all which had been stated above, the General Manager, North Eastern Railway rejected the objection of the petitioner as communicated to the petitioner by the General Manager (P) vide his communication dated 9.7.1985 - A true copy of this communication is filed herewith as Annexure no. 15"

"31. That the petitioner had not been supplied the complete order passed by the General Manager, North Eastern Railway, as such, a review application was sent by the petitioner, a photostat copy of which is filed as Annexure no. 16, which has also been rejected by him by an order dated 16.11.1986, a true copy of which is filed as Annexure no. 17."

"32. That in view of the above & submissions, the petitioner has no hope of ~~judicial~~ judicious treatment from the railway authorities."

4. That the present para 28 be allowed to be changed to para 33.

5. That in prayer no. (1), the following sentence be allowed to be added in the end;

"The seniority list prepared and published on 4.1.1985 may also be quashed being quite illegal and inoperative."

6. That in the end of prayer no. (ii), the following words be allowed to be added;

~~xxx~~
 "according to law taking into the consideration the entire period of his service as commercial controller since 23.12.1967 and to allow him all the benefits and allowances to which he would have been otherwise entitled."

7. That prayer no. (iii) and (iv) be allowed to be deleted.

It is, therefore, most respectfully prayed that the Hon'ble Tribunal be pleased to allow the above mentioned amendments, in the petition in the interest of justice, so that the Hon'ble Tribunal could be able to adjudicate over the matter effectively.

Lucknow: Dated;
 Oct. , 1988.

Advocate,
 Counsel for the applicant

Before the Hon'ble Central Administrative Tribunal
Lucknow Bench Lucknow

T.A.N. 786 A/1987

Yadumandan Prasad --- Appellant.

vs

Union of India and others --- Opp parties

Annexure II - 14

The General Manager(P),
North Eastern Railway,
Gorakhpur

Through: Proper channel

Reg:- Fixation of correct seniority.

Ref:- Your letter No. E/225/15/84/VI dt. 2.1.85.

...

Sir,

With profound respect and humble submission, I am to bring to your kind notice the following few lines for your kind consideration and sympathetic orders:-

1. That I had been posted by DCS/LJN to work as Comm'l. Controller w.e.f. 23.12.67 (copy of the DCS's orders is filed as annexure '1' for ready reference).

2. That two permanent posts of commercial controller (grade 250-380AS) had been created and sanctioned for Division w.e.f. 25.8.69, with Hqr at Lucknow.

3. That I got this sanctioned grade of commercial controller vide DRM(P)/LJN's letter No. E/YP/TC/77 dated 28.5.77 (copy is filed as annexure '2' to this application for ready reference).

4. That I am working since 23.12.67 without any break as commercial controller and was finally selected through proper selection Board by GM(P)/GKP on 28.11.83 and continue to work as commercial controller to the entire satisfaction of my seniors and superiors.

5. Since my AVC for promotion in scale 550-750 above is in the channel of commercial Inspectors, with Hqr. controlled post and is manned on the basis of seniority of the whole zone.

6. At present my seniority (Sl.No.85) has been given the date of passing the selection disregarding the length of service. I had worked as commercial controller.

7. That my point of argument is since I have been working as commercial controller without any break, my seniority should be fixed from the date actually I am working as commercial controller and not from the date of passing the selection and other benefits, which have been deprived of. The posting letter (annexure '1') also does not mention any such contrary orders which stops or debars me in claiming and getting my due seniority w.e.f. 23.12.67, the date of my initial posting as commercial controller.

8. To illustrate my point of argument more precisely I quote below the instances of the latest judgement of Supreme Court, which is binding to all and goes in my favour also:-

" The Supreme Court of India while disposing the Appeal in the case of G.P.Dowl Vs Chief Secretary U.P.Govt, reported in AIR Supreme Court Sept. 1984 page 1527-- The court held, where officiating appointment is followed by confirmation, unless a ~~rank~~ contrary rule is shown, the services rendered as officiating appointment cannot be ignored for determining the place in the seniority list. The stop gap appointment of Khandasari Inspector had been subsequently confirmed by the service commission, their past service could not be ignored in determining their seniority(para 15)."

I would like to quote another example in which Shri Jhan, commercial controller of Samastipur Division got decree by the Patna High Court and GM(P)/GKP has corrected his seniority from the length of service working as commercial controller.

The third example is of Shri Dass Gupta of Varanasi Division who has been given benefit of his entire service as Commercial controller while fixing his seniority by the GM(P)/GKP.

It is, therefore, prayed that my seniority should be fixed in view of the back ground mentioned above with all other benefits and with retrospective effect.

My name has also been misprintain the seniority list of 1.4.84 drawn on 4.1.85 by GM(P)/GKP as YADUNATH PRASAD instead of YADUNANDAN PRASAD which may please be corrected.

I beg to remain Sir,

Thanking you,

Yours faithfully,

DA/-2

Dated:- 15.2.85

(Yadunandan Prasad)
Commercial Controller,
N.E.Rly/Lucknow.

✓ Copy forwarded to the Director(Establishment)Railway Board, New Delhi for information and necessary action pl.

Yadunandan
(Yadunandan Prasad)

माननीय सेन्ट्रल फेडमिनिस्ट्रेटिव दिव्युनल, लखनऊ छण्ड पीठ, लखनऊ।

यदुनन्दन प्रसाद ---

..., प्राथी

बनाम

यूनियन आफ इन्डिया आदि --

..., विपक्षीगण।

अनैम्बर नम्बर- 15

पूर्वोत्तर रेलवे

सं० ई/ 210/15/17-3/वा० नियन्त्रक / VI दिनांक- 9.7.1985

मन्डल रेल प्रबन्धक § का० §.

पूर्वोत्तर रेलवे,

लखनऊ।

विषय : श्री यदुनन्दन प्रसाद वाणिज्य नियन्त्रक लखनऊ।

सन्दर्भ: मकाधि/11/ लखनऊ का अ० सं० प० सं० ई/ II
/ कामश्रियल / पीसी / बह/।

दिनांक- 13-5-85

श्री यदुनन्दन प्रसाद वाणिज्य नियन्त्रक, लखनऊ अपनी वरीयता के सम्बन्धमें महा प्रबन्धक महोदय से मिले। महा प्रबन्धक महोदय ने निष्पक्ष दिये कि वरीयता घयन के उपरान्त ही दी जा सकती है। वरीयता पिछली तदर्थ रूप से काम करने की अवधि पर निर्धारित नहीं की जा सकती है।

कृपया श्री यदुनन्दन प्रसाद वाणिज्य नियन्त्रक को सूचित करने की व्यवस्था करें।

महा प्रबन्धक § का० §

सत्य- प्रतिलिपि।

Before the Hon'ble Central Administrative Tribunal
Lucknow Bench Lucknow

T.A.N. 786 of 1987.

Yadu Nandan Prasad - -

- - - Applicant

vs

Union of India and Others - -

- - - Respondents

Annexure N. 16

To,

The Hon'ble General Manager,
North Eastern Railway,
Gorakhpur.

Sub:- Review application for fixation of correct seniority of Yadunandan Pd. Comml. Controller N.E.Rly/Lucknow.

Ref:- GM(P)/Gorakhpur's letter No. E/210/15/17-30
CNL/VI dt. 9.7.1985.

....

The applicant beg to draw your kind attention towards the following few facts for favourable consideration and sympathetic orders:

That the applicant has been posted as Commercial Controller in Lucknow Control of N.E.Rly w.e.f. 23.12.67.

That the applicant has got the training of Goods and Coaching in this regard in the year 1969 and declared successful.

That the applicant has got the grade of commercial controller w.e.f. 25.8.69 as per decision of Hon'ble High Court, Allahabad (Lucknow Bench).

That in the year 1980, the post of Commercial controller has been declared as selection post in N.E.Rly vide Board letter No. E/HQ/1-76 PMR/1-42/Pt.JCM dated 9.2.80.

That the applicant submitted his option for selection on 25.10.80 in view of the above order to regularise himself on the post of Commercial Controller on demand from G.M(P)/Gorakhpur.

That inspite of this option applicant had not been called int he selection for which applicant has represented to GM(P)/Gorakhpur well in time with several reminder but all in vain.

That the applicant resubmitted his option under protest on 13.5.83 and finally selected for the post of commercial controller in grade (455-700) vide GM(P)/GKP's letter No. E/210/15/17-30/VI/CNL dt. 28.11.83, and appointment as Commercial Controller has been regularised.

That a seniority list has been published from GM(P)/GKP on 4.1.85 in which the applicant has been shown as junior most at SN 85 although a number of junior persons to me has been shown as senior inspite of the fact that they are junior to the applicant.

That the applicant represented to G.M(P)/GKP to fix up correct seniority, taking into account the whole period of service as commercial controller from the date of joining on the post w.e.f. 23.12.67 and not from the date of selection as has been done.

That the Hon'ble General Manager, N.E.Rly called the applicant on 24.6.85 to give his personal hearing vide GM(P) GKP's letter No. E/210/15/17-3/CNL/VI dt. 19.6.85

That in compliance of the above order the applicant attended the Hon'ble G.M. on 24.6.85 and requested his honour to order for fixing correct seniority of the applicant as commercial controller, taking into account the whole period w.e.f. 23.12.67 from the date of joining as commercial controller, explaining the whole case.

That after hearing the whole case his lordship observed that before selection the applicant was performing the duty and enjoying the grade of commercial controller from the last 15 yrs on the court decision as such administration is not supposed to do any thing in this regard to fix up the seniority from the date of appointment on the post of Comm. Controller and decided that seniority may be assigned only after selection copy of the decision taken by the Hon'ble G.M./NER is filed herewith as annexure-1 to this application for ready reference.

That the applicant beg to submit in this regard to his lordship, that the court decision is binding to the parties which is always decided by laws and any one if aggrieved he may file an appeal before the competent court. The applicant's submission is that ~~xxxxxx~~ since the administration has decided not to file any appeal against the final decision of the court, it will not be correct to say that period of 15 yrs prior to selection is covered up with court decision and is on adhoc basis, hence seniority of that period cannot be accounted for; the applicant feels it injustice and to file this review application for sympathetic consideration to decide the issue in favour of the applicant. Keeping in view of, that the duties performed during the disputed period was in special circumstances and in the interest of the railway administration and at that time when several staff who has been called for this job were unwilling to work on this post and submitted their refusal, on the eve of opening of this scheme in the year 1967.

That so far the period prior to selection is being treated as adhoc basis is concerned, it is submitted by the applicant that at the time of posting as Commercial Controller in 1967 he had never been informed that his appointment is being made on adhoc basis and that he will be deprived of for claiming seniority from the date of joining on this post. Any how if it is now being treated on adhoc basis, even then the applicant may not be deprived for claiming seniority from the date of joining on the post of commercial controller in view of the latest decision of Supreme Court in the case of G.P. DOVA Vs Chief Secy U.P. Govt. AIR Supreme Court Sept. 1984 page 1527, the court held:-

" Para 15:

Where officiating appointment is followed by confirmation unless a contrary rule is shown, the services rendered as officiating appointment cannot be ignored for determining the place in the seniority list. The stop gap appointment of Khandhari Inspector had been subsequently confirmed by the Service Commission, their past services could not be ignored in determining their seniority."

It is, therefore, requested that this issue be decided in favour of the applicant as a special case on the fundamental principle that the length of service is the material factor for determining correct place in the seniority list, which may not be ignored. The applicant's whole period w.e.f. 23.12.67 may kindly be counted for fixing up correct seniority as he is performing duty as commercial controller w.e.f. 23.12.67 without any break and the same has been regularised after selection on 28.11.83.

DA/-One

Yours faithfully,

Sd/-

Dated: 20-3-86

(Yadunandan Prasad)
Commercial Controller,
N.E.Rly/Lucknow

Advance copy to:-

1. The General Manager, North Eastern Railway, Gorakhpur for information and necessary action.
2. Director Establishment, Railway Board (Rail Bhawan) New Delhi.

Yadunandan Prasad

(Yadunandan Prasad)

माननीय सेंट्रल सेडमिस्ट्रेटिव दिव्युनल, लखनऊ, सुण्ड पीठ, लखनऊ।

यदुनन्दन प्रसाद ---

--- प्राथी

बनाम

यूनियन आफ इण्डिया आदि -

--- विपक्षी गण।

अनैम्बर नम्बर- 17

पूर्वोत्तर रेलवे

कायलिय,
महा प्रबन्धक ॥ का०॥ गोरखपुर
दिनांक 10-11-86

सं० का/ 210/15/17-3/ वा० नियन्त्रक / व००॥ पाट । ॥

मन्डल रेल प्रबन्धक ॥ का०॥
पूर्वोत्तर रेलवे,
लखनऊ।

विषय : श्री यदुनन्दन प्रसाद वाणिज्य नियन्त्रक,
पूर्वोत्तर रेलवे, लखनऊ की सही वरीयता नियतन।

उपयुक्त विषयक श्री यदुनन्दन प्रसाद, वाणिज्य नियन्त्रक, लखनऊ
के अभ्यावेदन दिनांक 20.3.86 एवं 26.9.86 पर विचार किया गया।
इस सम्बन्ध में इस कायलिय के पत्र सं० ई/210/15/17-3/वा० नियन्त्रक /
०० दिनांक 9.7.85 द्वारा भेजे गये निर्णय में परिवर्तन करने का कोई औचित्य
नहीं है।

यह महाप्रबन्धक महोदय के अनुमोदन से जारी किया गया है।

कृपया श्री यदुनन्दन प्रसाद वा० नियन्त्रक को सूचित करने की
व्यवस्था करें।

हस्ता 7/11

महा प्रबन्धक ॥ का०॥

सत्य-प्रतिलिपि,

NS/CCS.

64

वकालतनामा

केन्द्रीय प्रशासनिक आधिकारण

के समक्ष

इलाहाबाद उच्च न्यायालय

निक पेट्रीशन नं० 461/81 उच्च न्यायालय इलाहाबाद (न्यायक, जज, ट्रायलर)

Regn. No 786 of 87 (T)

वादी
प्रतिवादीतिवादी
वादी

बनाम

भारत संघ एंव अन्य

दावेदार
अपीलार्थीअर्जीदार
प्रत्यार्थी

भारत के राष्ट्रपति इसके द्वारा श्री

इलाहाबाद

एच के सी एन एल अधिवक्ता

को उपर्युक्त वाद/अपील/कार्यवाही में भारत संघ की ओर से उपसंजात होने, कार्य करने, आवेदन करने, अभिवचन करने और आगे कार्यवाही करने के लिए दस्तावेज दाखिल करने और वापस लेने, न्यायालय की आदेशिका स्वीकार करने, काउन्सेल, अधिवक्ता या प्लीडर नियुक्त करने और उन्हें अनुदेश देने, रुपया वापस लेने और उसका निक्षेप करने तथा उपर्युक्त वाद/अपील/कार्यवाही में भारत सरकार का साधारण प्रतिनिधित्व करने और भारत संघ के लिए इस प्रकार उपसंजात होने, कार्य करने, आवेदन करने, अभिवचन करने और आगे कार्यवाही करने की अनुषांगिक सभी बात करने के लिए नियुक्त और प्राधिकृत करते हैं। किन्तु यह इस शर्त के अधीन रहते हुए होगा कि जब तक भारत सरकार के समुचित प्राधिकारी से उस निमित्त पहले ही स्पष्ट प्राधिकार प्राप्त नहीं कर लिया गया है, तब तक उक्त काउन्सेल/अधिवक्ता/प्लीडर या उसके द्वारा नियुक्त काउन्सेल/अधिवक्ता/प्लीडर सभी या किसी प्रतिवादी/प्रत्यार्थी/अपीलार्थी/वादी/विरोधी पक्षकार के विरुद्ध उस वाद/अपील/दावा/प्रतिरक्ष/कार्यवाही को पूर्णतः या भागतः न तो वापस लेगा, न उसका अधिव्यजन करेगा, न ऐसा कोई करार करेगा या समझौता करेगा जिसके द्वारा वाद/अपील/कार्यवाही पूर्णतः या भागतः समायोजित की जाए और न उससे उद्भूत या उसमें विवादग्रस्त सभी या किसी विषय को मध्यस्थ को निरूपित करेगा, परन्तु आपवादिक परिस्थितियों में जब भारत सरकार के समुचित प्राधिकारी से परामर्श करने के लिए पर्याप्त समय नहीं है और वाद में समझौता करने में लोप करना निश्चित रूप से भारत सरकार के हित के प्रतिकूल होगा तो उक्त प्लीडर/अधिवक्ता/काउन्सेल ऐसा कोई करार या समझौता कर सकेगा जिसके द्वारा उक्त वाद/अपील/कार्यवाही पूर्णतः या भागतः समायोजित हो जाय और ऐसे प्रत्येक मामले में काउन्सेल/अधिवक्ता/प्लीडर करार या समझौता करने के विशेष कारण बताते हुए उक्त अधिकारी को तत्काल संसूचित करेगा।

राष्ट्रपति इस प्राधिकार के अनुक्रम में श्री

इलाहाबाद

एच के सी एन एल अधिवक्ता

द्वारा किए गए सभी कार्यों का अनुसमर्थन करने को सहमत हैं।

इसके साक्ष्यस्वरूप भारत के राष्ट्रपति के लिए और उनकी ओर से इस विलेख को आज तारीखको सम्यक् रूप से निष्पादित किया जाता है।

तारीख 19

उपस्थित न्यायाधीश अपिहारी

.....
निष्पादन करने वाले अधिकारी का
पदनाम

For Govt use

In the Court of C.A.T. Allahabad.

NS/CCS

54

VAKALATNAMA

Before
in the Court of

Rego No 786 of 87 (T)

Yadav Nandan Prasad.

Plaintiff
Defendant

Claimant
Appellant

Versus

Defendant
Plaintiff

U. O. G. and other

Petitioner
Respondent

The President of India do hereby appoint and authorise Shri... A. K. G. A. V. R......
Rly. Advocate, 5, Thornhill Road, Allahabad.


.....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.....

.....
in pursuance of this authority.

IN WITNESS WHEREOF these presents are duly executed for and on behalf of the President of India this theday of198 .

Dated198


Designation of the Executive Officer,

Regd

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

T. A. No. 785 OF 1937

Yadunandan Prasad --- Applicant

VS.

Union of India and Others --- Opposit Party

P.F. 25.10.88

The above noted applicant begs to submit as follows:-

1. That a notice has been received by him that the above noted case is fixed for hearing before the Hon'ble Tribunal on 25/10/88 at Allahabad.
2. That the applicant is a resident of Lucknow and had paid the entire fee to his advocate of the High Court.

That in case the hearing of this case is done by the Hon'ble Tribunal at Lucknow the applicant gave a lot and will be able to get his case done by his High Court Advocate who is quite conversant with the case.

That the applicant will be beneficial other wise also in case the matter is heard at Lucknow.

It is therefore, most respectfully prayed that the Hon'ble Tribunal be pleased to hear his case at Lucknow.

Lucknow

Dated: 8-10-88

Yadunandan Prasad
APPLICANT

7/80, A. Ashbagh Rly
Colony, Jwalam

Notices issued to
the Parties fixing 22.2.89
for LKO Circuit Bench LKO.
Y.K.S.
T.R. 89

EB LKO

24/10/88

12/10 to
Deputy Registrar
(5) C.A.T. at
Allahabad
on 12/10/88

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

T. A. No. 703 OF 1937

Yadumandan Prasad -- -- -- Applicant

VS.

Union of India and Others -- -- -- Opposite Party

P.P. 25.10.88

The above noted applicant begs to submit as follows:-

1. That a notice has been received by him that the above noted case is fixed for hearing before the Hon'ble Tribunal on 25/10/88 at Allahabad.
2. That the applicant is a resident of Lucknow and has paid the costs fee to his advocate of the High Court.
3. That in case the hearing of this case is done by the Hon'ble Tribunal at Lucknow the applicant will save a lot and will be able to get his case argued by his High Court Advocate who is quite conversant with the case.
4. That the applicant will be beneficial other wise also in case the matter is heard at Lucknow.

It is therefore, most respectfully prayed that the Hon'ble Tribunal be pleased to hear his case at Lucknow.

So (T)

Please
draw up
with your
respectful
signature

Lucknow

Dated: 8-10-88

Yadumandan Prasad

APPLICANT

7/30, A, Ashbagh Rly
- Colony, Lucknow

12/X

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

T. A. No. 786 OF 1987

Yadunandan Prasad -- --- Applicant

Vs.

Union of India and Others -- --- Opposit Party

F.F. 25.10.88

The above noted applicant begs to submit as follows

1. That a notice has been received by him that the above noted case is fixed for hearing before the Hon'ble Tribunal on 25/10/88 at Allahabad.
2. That the applicant is a resident of Lucknow and had paid the entire fee to his advocate of the High Court.
3. That in case the hearing of this case is done by the Hon'ble Tribunal at Lucknow the applicant will save a lot and will be able to get his case argued by his High Court Advocate who is quite conversant with the case.
4. That the applicant will be beneficial other wise also in case the matter is heard at Lucknow.

It is therefore, most respectfully prayed that the Hon'ble Tribunal be pleased to hear his case at Lucknow.

Lucknow:

Dated: 8-10-88

Yadunandan Prasad
APPLICANT
T/30, A.
Aishbagh Rly Colony
Lucknow

So (T)
for n.a.
12/11

7c

Registered
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD
Post Bag No. 013
23-A, Thornhill Road, Allahabad -211 001

No.CAT/Alld/Jud/32715

Dated the 09

Registration T.A.No. 786 of 1987 (T)

Jadumandan Prasad Applicant's

Versus

Union of India & others. Respondent's
To Jadumandan Prasad, S/o Sh B. P. Misra,
R/o village and Post Misrauli District
Sultanpur.

① Union of India through the General Manager
Northern Eastern Railway Gorakhpur.

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

Writ Petition No. 461
of 1981
of the
Court at High Court Lucknow
of
arising out of order dated
passed by
in

The Tribunal has fixed date
of 25-10- 1988.
For the hearing of the matter.
If no, appearance is made
on your behalf by you or some
one duly authorised ~~to~~ Act

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

Recd for A.K. Gaur
Given under my hand and seal of the Tribunal
this 1-9- day of 1988.

② General Manager (P) North Eastern Railway,
Gorakhpur.

③ Divisional Railway Manager Chander
DEPUTY REGISTRAR (J)

(P) North Eastern Railway, Ashok Man
Lucknow.

1 to 3 - ③ Through Sh A.K. Gaur, Advocate

In the Central Adm. Tribunal,
Addl. Bench (Circuit Bench)
Allahabad.

Reg. No. 786 of 87

Yadumandan Prasad _____ Petitioner
vs

Union of India _____ Respondent.

In the aforesaid case 5/7/89
has been fixed as next
date. As I am not coming
to Lucknow due to one
personal work, the case
may be adjourned.

Prayer

It is, therefore, prayed
that this Hon^{ble} Tribunal
be pleased to fix either
20/7/89 or 7/8/89 as next

date:
7/8/89

Signature
Adm
(Copy for vef.)

In the Central Adm. Triben.

Filed

Rep. No. 786/87 (T)

Yadunandan Patel.

Y. V. O. - Doshi

Sir,

As I am busy with a
personal work, it is not
possible to attend the
trial today.

Prayed

VAKALATNAMA

Before
In the Court of

In The Central Administrative Tribunal
Civilian Bench, Lucknow

TAN. 786 of 87 (D)

Plaintiff
Defendant

Gadumandan Prasad

Claimant
Appellant

Versus

Defendant
Plaintiff

Union of India and
Others.

Petitioner
Respondent

The President of India do hereby appoint and authorise Shri.....

R. 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.....

R. 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-84850400-8000-4 7 84

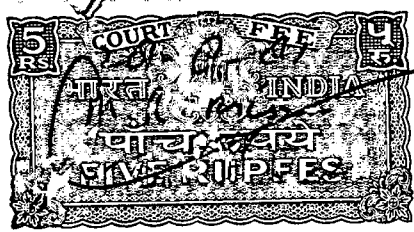
Accepted
R. K. Shukla
Advocate

Smt. Usha
(S.M.N. Islam)
Designation of the Executive Officer,
Central Administrative Tribunal,
Civilian Bench, Lucknow

Sr. Divisional Personnel Officer,
U. R. Railway, Lucknow

for Union of India

In The Hon'ble High Court of Judicature at Allahabad
District - Meerut - District



W.P. No 461 of 1981

78701

Yadunandan Prasad

— — — Petitioner

v

Union of India & Anr

— — — Official Petitioner

The above titled petition bears to read as follows:-

as follows:-

1. This due to inadvertence the

steps could not be taken for service of notice on the Official Petitioner.

2. That the duplicate copies of the W.P. are being served one to each of the Official Petitioner and the receipt is filed herewith.

It is therefore prayed that the Court be pleased to condone the delay in taking steps and may allow the receipt to be filed by the petitioner.

Y. L. Mishra

Advocate

For the petitioner

28.8.1981

Madhav Ram Misra

40

Advocate

High Court-Lucknow.

8, Rani Laxmi Bai Marg,

Lucknow-226 001

Phone : 47592

Ref. No.

Dated...10.12.91....

Before Honble Central Administrative Tribunal
Lucknow.

Registration No 786 of 1987 (T)

Yadunandan Prasad Misra — — — Applicant
✓
Union of India — — — Opposite Parties

Sir,

In the above noted case I am appearing for the applicant. I have met with an accident, in which I am badly hurt, on account of which I am quite unable to attend the Honble Tribunal and argue the case.

It is therefore requested that the Honble Tribunal be pleased to adjourn this case, and my kindly fix some new date for hearing.

M. R. Misra
Advocate
for applicant.