

ANNEXURE - A

CAT

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

INDEX SHEET

CAUSE TITLE T. A 845/87 of 19

NAME OF THE PARTIES

Ram Naresh

Applicant

Versus

U. O. I

Respondent

Part A, B & C

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(1) H.C. order sheet A39 to A41		

Certified that no further action is required to be taken  
and that the case is fit for assignment to the record room (D).

checked  
or off 12/12/

B/C destroyed on 09-3-12.

Ref. No (5)

Ch. Ques / 2012-104

PA: 045/07(7) R N. Mukherjee

Serial  
number  
of  
order  
and date

Brief Order, Mentioning Reference  
if necessary

How complied  
with and  
date of  
compliance

27/11/89

No Setting: Adj. to 20.2.90

This case has been received on transfer.  
Notice were issued to the counsels by the Office  
at Allahabad... No. One is present to the parties...  
Let notice be issued again to the parties as  
directed by Hon'ble Mr. D.K. Agarwal, J.M.

OSR  
Note enclosed

25/12/89

10/12

Hon. K. Obayya, AM  
Hn. J. P. Islam, JM

27/11/89

OS

Case has  
been read. from  
CAT, Allah.

Case is admissible.  
CA/RB not filed

Notice of affl-  
Case has been return-  
back with party  
reman. Collected  
amt & yrly chg.  
and 2nd note  
sent with the  
order.

S. & order

23/4/90

Hon. Mr. D.K. Agarwal, J.M.  
Hon. Mr. K. Obayya, AM

Shri R.C. Saxena, for the petitioner

stats that he has no instructions. He  
has made endorsement of the fact  
on the back of the petition.

Shri A. Srivastav, appears for  
the respondent. It appears that the  
petitioner is not keen on contesting  
the petition. Therefore, the petition  
dismissed for want of prosecution  
without any order as to costs.

AM  
J.M.

I have no  
instructions  
in the case

Advocate  
23/4/90

Sd

01/5  
X2

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**CIRCUIT BENCH LUCKNOW**

**T.A. NO.845 of 1987 (T)**

**(W.P. NO.4767 of 1981)**

**RAM Naresh**

.....

**Applicant.**

**Versus**

**Union of India & Others .....**

**Respondents.**

**23.4.1990**

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

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

Shri R.C. Saxena, for the petitioner stats that he has no instructions. He has made endorsement, of the fact, on the back of the petition.

Shri A. Srivastava, appears for the respondent. It appears that the petitioner is not keen on contesting the petition. Therefore, the petition is dismissed for want of prosecution without any order as to costs.

*checked*  
*ASW*  
*10/5/90*

**Sd/-**

**A.M.**

**Sd/-**

**J.M.**

**II True Copy II**

**cmv/**

*10/5/90*  
**Deputy Registrar**  
**Central Administrative Tribunal**  
**Lucknow Bench,**  
**Lucknow**

*Rendered  
D.K. Obayya  
10/5/90*

## INDIA COURT FEE

75 RS.



In the Hon'ble High Court of Judicature at Allahabad

Lucknow Bench Lucknow

W. P. no 476/ of 1981

Ram Narayan Upadhyay

Plaintiff

vs.

Union of India & others

Off. Parties

1 Sep 2 Rs. 75/-  
10 25/-  
6 of 20 25/-  
-----  
Rs 100/-  
Ses  
5-9-81.



IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

( LUCKNOW BENCH ) : LUCKNOW :

Writ Petition No.

of 1981

4761

Ram Naresh, aged about 26 years, son of  
Sri Ganga Prasad, Presently working as Khalasi,  
under Signal Inspector (Construction),  
North Eastern Railway, Aishbagh, Lucknow.

... Petitioner.

Versus

1. Union of India through General Manager,  
North Eastern Railway, Gorakhpur.
2. District Signal & Tele-communication  
Engineer/Works, N.E. Railway, Ashok Marg,  
Lucknow.
3. Signal Inspector (Construction),  
N.E. Railway, Aishbagh, Lucknow.

...Opposite Parties.

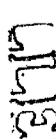
WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF  
INDIA

The petitioner above named most respectfully  
submits as under:-

1. That the present writ petition is directed  
against the order dated June 15, 1981, passed by opposite  
party No. 2, discontinuing the pay scale (Rs. 196-232  
already) granted to the petitioner and allowing him to  
continue only on casual labour rates with a further  
direction to opposite party No. 3 to recover the amount  
alleged paid in excess to the petitioner. A true copy  
of the impugned order dated 15.6.81 passed by opposite  
party No. 2 is filed herewith as Annexure No. 1 to this  
writ petition.



21/6/81



2. That the petitioner on 11.11.1975 was initially engaged/appointed as Khalasi on Casual Kabour rates under opposite party No. 3. His engagement was on open line and not to work on any project. He has to perform his duties in the Construction Wing of the Signal & Tele-Communication Department against the regular nature work.

3. That the petitioner since his appointment has been discharging his duty to the entire satisfaction of his superiors and there has never been any complaint against him.

4. That under para 2501 of the Indian Railway Establishment Manual published by the Government of India, Ministry of Railways, a casual labour acquires the status of a temporary Railway servant if he continues to do the work for which he was engaged or the other work of the same type for a period of more than 6 months without break. This period of 6 months has been reduced to 4 months by Railway Board's letter No. PC/72-F.I.T.-69/3(1) dated 12.7.73, communicated vide circular letter No. E(ii)/57/Casual labour dated 18.8.73 with the result that a casual labour who has worked for a period of 4 months without any break with acquire the status of a temporary Railway servant soon after the expiry of 4 months.

5. That it is respectfully submitted that the petitioner has since worked continuously without any break for a period of more than 4/6 months since 11.11.1975, he has acquired the status of temporary Railway Servant with in the meaning of para 2501 of the Indian Railway Establishment Manual.

6. That a casual labour who acquires the status of temporary Railway Servant becomes entitled under para

21 Nov 1975

2511 of the Indian Railway Establishment Manual to all the rights and privileges admissible to him as laid down in chapter 23 of the Indian Railway Establishment Manual. The petitioner having worked continuously from 11.11.75 and having acquired the status of temporary Railway servant is legally entitled to the benifits and all rights and privileges laid down in Chapter 23 of the Indian Railway Establishment Manual. He is also entitled to the benifit of the Discipline & Appeal Rules 1968 as applicable to all other Railway servants.

7. That though the petitioner having continuously worked on the post of Khalasi on casual labour rates for a continuous period of 6 months from 11.11.75 on the expiry of six months had acquired the status of temporary Railway servant and was also entitled to all the benifits of the temporary Railway servant enumerated in Chapter XXIII of the Indian Railway Establishment Manual but the railway authorities allowed him only the benifit of the 1/30th of the scale of Rs. 196.232 w.e.f. 1.4.77 though the petitioner was entitled to all the benefits of Chapter XXIII w.e.f. 11.5.76.

8. That it is respectfully submitted that though no specific order by the Railway authorities to the effect that the petitioner has acquired the status of temporary Railway servant was passed (yet the petitioner in view of the provisions contained in para 2501 of the Indian Railway Establishment Manual will be deemed under law to have acquired the status of temporary Railway servant and all the benefits enumerated in Chapter XXIII of the aforesaid Manual w.e.f. 11.5.76 would be available to him).

*21/11/221*



9. That the Railway Board vide letter No. E(NG) 11-80/CL/25 dated 21.10.1980 ~~present~~ presumably under para 2504 of the Indian Railway Establishment Manual issued the instructions relating to computation of period of casual labour for the purpose of determining as to whether they have completed the continuous service of 120/180 days. A true copy of the said circular letter dated 21.10.80 is filed herewith as Annexure No. 2 to this writ petition.

10. That the circular letter dated 21.10.1980 contained in Annexure No. 2 is applicable only to those casual labour who have been engaged on daily wages and have not acquired the status of temporary Railway Servant. The circular is not applicable to those casual labour who have acquired the status of temporary Railway servants within the meaning of para 2501 of the Indian Railway Establishment Manual.

11. That the opposite party No. 2 treating the petitioner as a casual labour working on a project on daily wages, applied the circular contained in Annexure No. 2 and passed the orders contained in Annexure No. 1 discontinuing the scale which he had been getting since 1.4.1977 with the result the petitioner is being paid his wages @ Rs.6/- per day since the date of passing the order.

12. That as submitted earlier the petitioner was neither working under any project nor the instructions contained in Annexure No. 2 were applicable to him and opposite party No. 2 (committed error of law apparent on the face of record in treating the petitioner as Casual labour working on project having not acquired the status of temporary Railway servant).

21/11/2011

13. That besides the above no opportunity of any kind was offered by the Railway authorities to the petitioner before passing the impugned order contained in Annexure No. 1. The petitioner since 1.4.1977 has been getting the 1/30th of the scale of Rs.196-232 with Dearness Allowances etc. but due to the impugned order contained in Annexure No. 1 his salary is being paid on casual labour rates i.e. Rs.6/- per day putting the petitioner to a concurrent pecuniary loss. Such orders cannot be passed without affording any opportunity.

14. That there is no statutory provision applicable to the petitioner under which the petitioner would loose the status of temporary Railway Servant, deemed to have acquired earlier and would loose the pay scale earlier granted to him in case he remains on leave for more than 20 days.

15. That besides the above the petitioner did not unauthorisely remained absent for a period of more than 20 days as alleged in the impugned order contained in Annexure No. 1 and discontinuation of the pay scale on that ground is (wholly arbitrary and unjusticiable on the part of Railway authorities).

16. That the petitioner having continuously worked for a period of 6 months from the date of his appointment and having acquired the status of temporary Railway servant within the meaning of para 25 of Indian Railway Establishment Manual was entitled to the protection of Railway Servants (Discipline & Appeal) Rules 1968 (and in case he remained absent from his duty he was liable to disciplinary action by adopting the procedure prescribed under the said Rules. The scale of the petitioner could not have been discontinued on the alleged ground of absence from duty without even

dln 725



offering any opportunity to have his say in the matter).

17. That the impugned order contained in Annexure No. 1 causes concurrent pecuniary loss to the petitioner and the orders for recovery of alleged excess paid amount are being implemented and in case the operation of the impugned order and recovery is not stayed the petitioner would suffer irreparable loss.

18. That the petitioner feeling aggrieved with the impugned orders contained in Annexure No. 1 and having no other alternative efficacious remedy begs to prefer the present writ petition on the following amongst the other grounds:-

: G R O U N D S:

(i) Because the opposite party No. 2 erred in law in applying the circular letter dated 21.10.1980 contained in Annexure No. 2 to the petition in passing the impugned order contained in Annexure No. 1.

(ii) Because the petitioner having completed his 4/6 months continuous service on 11.5.1976 and having been allowed the scale at the rate of 1/30 of the scale of Rs.196.232 w.e.f. 1.4.1977 will be deemed to have acquired the status of temporary Railway Servant entitled for all the benefits enumerated in Chapter XXIII of the Indian Railway Establishment Manual and could not have been treated as casual labour on daily wages working under the project.

*Q. Wazilu  
Advocate*  
(iii) Because the impugned order contained in Annexure No. 1 entails penal consequences resulting in pecuniary loss and the loss of status, could not have been passed without affording any opportunity to the petitioner.

IN THE HON'BLE HIGH COURTOF JUDICATURE AT ALLAHABAD

( LUCKNOW BENCH ) : LUCKNOW :

W.P. NO.

OF 1981



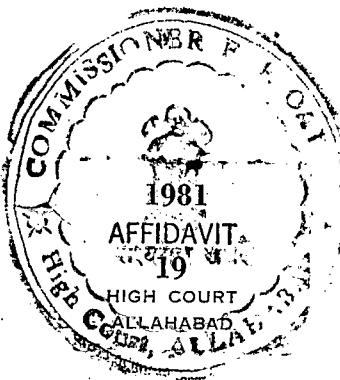
Ram Naresh

... Petitioner

Versus

Union of India and others

... Opp. Parties



Writ Petition under Article 226 of the Constitution of India.

A F F I D A V I T

I, Ram Naresh, aged about 26 years, son of Sri Ganga Prasad, presently working as Khalasi, under Signal Inspector (Construction), North Eastern Railway, Aishbagh, Lucknow, do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the petitioner in the above noted writ petition and is well conversant with facts of the case deposed to hereunder.
2. That the contents of paras 1 to 7, 9, 10, 11, 13, 14 and 17 of the writ petition are true to my own knowledge and those of paras 8, 12, 15 and 16 except bracketed portions, are believed by me to be true.
3. That the Annexure Nos. 1 and 2 of the writ petition are the true copies and the deponent has compared them with their originals.

Lucknow:

Dated: September 5 1981.

21222

DEPONENT.

Verification

I, the deponent named above, do hereby verify that the contents of paras 1 to 3 of this Affidavit are true to my own knowledge.

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

Lucknow:

Dated: September 5, 1981.

*Ram Naresh*  
DEONENT.

I identify the deponent who has signed before me.

*R.C. Saxena*  
ADVOCATE.

Solemnly affirmed before me on September 5, 1981, at 8.25 a.m./p.m. by Sri Ram Naresh, the deponent, who is identified by Sri R.C. Saxena, Advocate, High Court, Lucknow Bench, Lucknow.

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

*G.C. SAXENA*  
G.C. SAXENA  
OATH COMMISSIONER  
High Court (Lucknow Bench)  
No. 219/1981  
Date: 5-9-81

— 10 —  
K.V  
IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

( LUCKNOW BENCH ) : LUCKNOW

W.Petition No. of 1981

Ram Naresh

... Petitioner.

Versus

Union of India and others.

... Opp. Parties.

ANNEXURE NO. 1

N.E. RLY

MEMORANDUM

The project rate of pay, granted to the under noted casual employees, who have remained absent from duty for more than 20 days within the last 6 months i.e. Oct/80 to March/81 is hereby ordered to be discontinued from the date noted against each i.e. the date every individual has exceeded 20 days of absence. They are however, allowed to continue on casual rates thereafter.

S.No.	Name	Desig	Total absent	Date of discontinuance.
1.	Krishan Kumar S/o Laxminarain	Kl.Kli.	26 days	3.2.81
2.	Ram Naresh S/o Ganga Prasad	"	23 "	27.3.81
3.	Gouri Shanker Sharma S/o Raj Gir Sharma	El.Fitter	29 "	23.3.81
4.	Yogendra Pratap Singh S/o Ram Shyam Singh	Cl.wireman	24 "	23.2.81
5.	Suresh Chandra Sharma S/o Hoti Lall Sharma	Cl.Khi	24 "	31.12.81
6.	Ram Milan Gupta S/o Kalpanath Gupta	"	34 "	20.4.81
7.	Biswa Nath S/o Ram Autar	"	34 "	23.2.81

Distt. S & T Engineer/Works.  
Lucknow.

21<sup>nd</sup> 21

43

- 11 -

No. N/175/8/0-A/Con/Pt. A/255 Lucknow: Dt. 15.6.1981

Copy for information and necessary action

to:-

1. The SI/Con/ASH in reference to his letter no. n/con/ASH/ 462 dt. 1.5.81. He will arrange necessary recoveries of the amount already paid to them in project rate beyond the dates as noted above.
2. Bill Clerk.
3. DAO/NER/LJN.

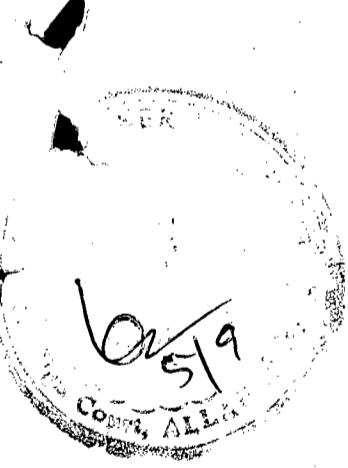
Sd/-

Distt. S&T Engineer/Works.

Lucknow.

TRUE COPY

21-6-81



(iv) Because the opposite party No. 2 by passing the impugned order contained in Annexure No. 1 has acted totally in contravention of the principles of natural justice that no one should be condemned unheard.

(v) Because the petitioner did not remain absent for a period of more than 20 days as alleged in the impugned order contained in Annexure No. 1 and the same is based on a mistaken belief in existence of non-existent fact infected with abuse of power.

(vi) Because even otherwise also the petitioner could not have been subjected to loss of his status scale of pay without adopting the procedure laid down in Railway Servants (Discipline & Appeal) Rules 1968 as the petitioner had acquired the status of temporary Railway Servant long before the passing of the impugned order.

: P\_R\_A\_Y\_E\_R :

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

(a) issue a writ, direction or order in the nature of certiorari quashing the impugned order dated 15.6.81 contained in Annexure No. 1 to this writ petition so far as it relates to the petitioner.

(b) issue writ, direction or order in the nature of mandamus commanding the opposite parties to treat the petitioner having acquired the status of temporary Railway Servant and entitled to the benefits provided in Chapter XXIII of the Indian Railway Establishment Manual.

(c) 14 days notice may kindly be waived in view of the urgency of the matter.

Lucknow:

Dated: September 5, 1981.

  
( R.C. Saxena )  
Advocate,  
Counsel for the Petitioner.

Verification

I, the deponent named above, do hereby verify that the contents of paras 1 to 3 of this Affidavit are true to my own knowledge.

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

Lucknow: *h*

Dated: September *5*, 1981.

*dated*  
DEPONENT.

I identify the deponent who has signed before me.

*R. C. SAXENA*  
ADVOCATE.

Solemnly affirmed before me on September *5*, 1981, at 8.25 a.m./p.m. by Sri Ram Naresh, the deponent, who is identified by Sri R.C. Saxena, Advocate, High Court, Lucknow Bench, Lucknow.

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

*G C SAXENA*  
G C SAXENA  
OATH COMMISSIONER  
High Court (Lucknow Bench)  
No. 129/1981  
Date: *5-9-81*

\*3

No. N/175/8/0-A/Con/Pt. A/255 Lucknow: Dt. 15.6.1981

Copy for information and necessary action  
to:-

1. The SI/Con/ASH in reference to his letter no. n/con/ASH/ 462 dt. 1.5.81. He will arrange necessary recoveries of the amount already paid to them in project rate beyond the dates as noted above.
2. Bill Clerk.
3. DAO/NER/LJN.

Sd/-

Distt. S&T Engineer/Works.

Lucknow.

TRUE COPY

*21/6/81*



10  
K.W

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

W.Petition No. of 1981

Ram Naresh

... Petitioner.

Versus

Union of India and others.

... Opp. Parties.

ANNEXURE NO. 1

N.E. RLY

MEMORANDUM

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S.No.	Name	Desig	Total absent	Date of discontinuance.
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3.	Gouri Shanker Sharma S/o Raj Gir Sharma	El.Fitter 29	"	23.3.81
4.	Yogendra Pratap Singh S/o Ram Shyam Singh	Cl.wireman 24	"	23.2.81
5.	Suresh Chandra Sharma S/o Heti Lall Sharma	Cl.Khi	24 "	31.12.81
6.	Ram Milan Gupta S/o Kalphath Gupta	"	34 "	20.4.81
7.	Biswa Nath S/o Ram Autar	"	34 "	23.2.81

Distt. S & T Engineer/Works.

Lucknow.

21<sup>nd</sup> 21

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

( LUCKNOW BENCH ) : LUCKNOW :

W. Petition No. of 1981

Ram Naresh ... Petitioner.

Versus

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

ANNEXURE NO. 2

NORTH EASTERN RAILWAY

Office of the General Manager(P)  
Gorakhpur.  
No.E/227/20/2(V)Pt.III Dated 1.11.1980

All Heads of Departments,  
All Divisional Rail Managers,  
All Personal Officer,  
All Extra Divisional Officers,  
North Eastern Railway.

Sub:- Casual Labour

Copy of Railway Beard's letter No.E(NG)11-80/CL/25 dated 21.10.1980.

On the above subject in circulated to all concerned for information guidance and necessary action.

Sd/-

for General Manager (P)

Copy of Railway Board's letter No.E(NG) 11-80/CL/25 dated 21.10.1980 addressed to the G.M. all Indian Railways and others.

Sub:- Casual Labours

The problems of casual labours have been engaging the attention of the Ministry of Railways (Railway Board) and instructions have been issued from time to time to improve their service conditions in order to ameliorate their lot further, following instructions should be implemented immediately in supersession of any instructions to the contrary.

*21/10/80*

(i) Instruction already exist that casual labour on completion of 120 days continuous service on open line should be given regular scale of pay similarly, casual labour employed on projects should be remunerated @ 1/30th of the minimum of the scale plus Dearness Allowance on completion of continuous service of 180 days as daily wages. These orders should be scrupulously observes and on deliberate break should be caused in the service of casual labours when work for their continued service is available.

(ii) Unauthorised absence upto 3 days and authorised absence upto 20 days will not constituted break in the employment of casual labour.

(iii) On completion of works or for non availability of further productive work when casual labour on daily wages or in regular scale of pay or 1/30th of the minimum of scale plus Dearness Allowance is discontinued and employed later when work is available such gaps in the service will not count as breaks for the purpose of reckoning of continuous service of 120 days or 180 days as the case may be.

(iv) Before giving regular scale of pay or 1/30th of the minimum scale plus dearness allowance on completion of 120 days or 180 days continuous service as the case may be a preliminary verification in regard to age and completion of requisite number of days of continuous service will be done by the Asstt. Officer.

(v) If any person having worked as a casual labour in the past and presently out of employment due to break in his service because of non-availability of work approaches an appropriate Railway Authority, his record should be checked and at the opportunity of next recruitment for a casual labour work he should naturally be given preference over his juniors.

Before the Hon'ble High Court of India Calcutta  
ब अदालत श्रीमान (Chetan Banerjee) महोदय

वादी (मुद्दे) Ram Naresh Upadhyay  
प्रतिवादी (मुद्दालेह) का वकालतनामा



1925  
१३३३

वादी (मुद्दे)

main object वनाम and others

प्रतिवादी (मुद्दालेह)

WP No ०४१९८

नं० मुकदमा सन् १६ पेशी की ता० १६ ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री R. C. Sen

Advocate, High Court एडवोकेट

Bench, Calcutta वकील महोदय

को अपना वकील नियुक्त करके प्रतिज्ञा [इकरार] करता हूँ और  
लिखे देता हूँ इस मुकदमा में वकील महोदय स्वयं अथवा अन्य  
वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या अन्य  
कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी  
जारी करावें और रुपया वसूल करें या सुलहनामा या इकबाल  
दावा तथा अपील व निगरानी हमारी ओर से हमारे आ अपने  
हस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा उठावें  
या कोई रुपया जमा करें या हमारी या विपक्षी [फरीकसानी] का  
दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युक्त [दस्तखती]  
रसीद से लेवें या पंच नियुक्त करें - वकील महोदय द्वारा की  
गई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी इसलिए  
यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर  
काम आवे ।

हस्ताक्षर रामनारायण

साच्ची (गवाह)

साच्ची (गवाह)

दिनांक

महीना

१६ ई०

THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

( LUCKNOW BENCH ) : LUCKNOW :

WRIT PETITION NO. OF 1981.

\*\*\*

RAM RAJESH

... PETITIONER.

VERSUS

UNION OF INDIA AND OTHERS

... OPPOSITE PARTIES.

\*\*\*

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4.	ANNEXURE NO. 2 --- --- --- (Circular letter dated 21.10.80)	12 to 13

LUCKNOW:

DATED: SEPTEMBER 4, 1981.

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

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

( LUCKNOW BENCH ) : LUCKNOW :

Writ Petition No.

of 1981

Ram Naresh, aged about 26 years, son of  
Sri Ganga Prasad, Presently working as Khalasi,  
under Signal Inspector (Construction),  
North Eastern Railway, Aishbagh, Lucknow.

... Petitioner.

Versus

1. Union of India through General Manager,  
North Eastern Railway, Gorekhpur.

2. District Signal & Tele-communication  
Engineer/Works, N.E. Railway, Ashok Marg,  
Lucknow.

3. Signal Inspector (Construction),  
N.E. Railway, Aishbagh, Lucknow.

...Opposite Parties.

WIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF  
INDIA

The petitioner above named most respectfully  
submits as under:-

1. That the present writ petition is directed  
against the order dated June 15, 1981, passed by opposite  
party No. 2, discontinuing the pay scale (k. 196-232  
already) granted to the petitioner and allowing him to  
continue only on casual labour rates with a further  
direction to opposite party No. 3 to recover the amount  
alleged paid in excess to the petitioner. A true copy  
of the impugned order dated 15.6.81 passed by opposite  
party No. 2 is filed herewith as Annexure No. 1 to this  
writ petition.

2. That the petitioner on 11.11.1975 was initially engaged/appointed as Khaleesi on Casual Labour rates under opposite party No. 3. His engagement was on open line and not to work on any project. He has to perform his duties in the Construction Wing of the Signal & Tele-Communication Department against the regular nature work.

3. That the petitioner since his appointment has been discharging his duty to the entire satisfaction of his superiors and there has never been any complaint against him.

4. That under para 2501 of the Indian Railway Establishment Manual published by the Government of India, Ministry of Railways, a casual labour acquires the status of a temporary Railway servant if he continues to do the work for which he was engaged or the other work of the same type for a period of more than 6 months without break. This period of 6 months has been reduced to 4 months by Railway Board's letter No. PC/72-P.I.T.-69/3(1) dated 12.7.73, communicated vide circular letter No. E(11)/57/Casual Labour dated 18.8.73 with the result that a casual labour who has worked for a period of 4 months without any break with acquire the status of a temporary Railway servant soon after the expiry of 4 months.

5. That it is respectfully submitted that the petitioner has since worked continuously without any break for a period of more than 4/6 months since 11.11.1975, he has acquired the status of temporary Railway Servant with in the meaning of para 2501 of the Indian Railway Establishment Manual.

6. That a casual labour who acquires the status of temporary Railway Servant becomes entitled under para

2511 of the Indian Railway Establishment Manual to all the rights and privileges admissible to him as laid down in chapter 23 of the Indian Railway Establishment Manual. The petitioner having worked continuously from 11.11.75 and having acquired the status of temporary Railway servant is legally entitled to the benefits and all rights and privileges laid down in Chapter 23 of the Indian Railway Establishment Manual. He is also entitled to the benefit of the Discipline & Appeal Rules 1963 as applicable to all other Railway servants.

7. That though the petitioner having continuously worked on the post of Khalasi on casual labour rates for a continuous period of 6 months from 11.11.75 on the expiry of six months had acquired the status of temporary Railway servant and was also entitled to all the benefits of the temporary Railway servant enumerated in Chapter XXIII of the Indian Railway Establishment Manual but the railway authorities allowed him only the benefit of the 1/30th of the scale of Rs. 196.232 w.e.f. 1.4.77 though the petitioner was entitled to all the benefits of Chapter XXIII w.e.f. 11.5.76.

8. That it is respectfully submitted that though no specific order by the Railway authorities to the effect that the petitioner has acquired the status of temporary Railway servant was passed (yet the petitioner in view of the provisions contained in para 2501 of the Indian Railway Establishment Manual will be deemed under law to have acquired the status of temporary Railway servant and all the benefits enumerated in Chapter XXIII of the aforesaid Manual w.e.f. 11.5.76 would be available to him).

9. That the Railway Board vide letter No. 5(NC) 44-80/CL/725 dated 21.10.1980 present presumably under para 2504 of the Indian Railway Establishment Manual issued the instructions relating to computation of period of casual labour for the purpose of determining as to whether they have completed the continuous service of 120/180 days. A true copy of the said circular letter dated 21.10.80 is filed herewith as Annexure No. 2 to this writ petition.

10. That the circular letter dated 21.10.1980 contained in Annexure No. 2 is applicable only to those casual labour who have been engaged on daily wages and have not acquired the status of temporary Railway Servant. The circular is not applicable to those casual labour who have acquired the status of temporary Railway servants within the meaning of para 2501 of the Indian Railway Establishment Manual.

11. That the opposite party No. 2 treating the petitioner as a casual labour working on a project on daily wages, applied the circular contained in Annexure No. 2 and passed the orders contained in Annexure No. 1 discontinuing the scale which he had been getting since 1.4.1977 with the result the petitioner is being paid his wages @ Rs.6/- per day since the date of passing the order.

12. That as submitted earlier the petitioner was neither working under any project nor the instructions contained in Annexure No. 2 were applicable to him and opposite party No. 2 (committed error of law apparent on the face of record in treating the petitioner as Casual labour working on project having not acquired the status of temporary Railway servant).

13. That besides the above no opportunity of any kind was offered by the Railway authorities to the petitioner before passing the impugned orders contained in Annexure No. 1. The petitioner since 1.4.1977 has been getting the 1/30th of the scale of Rs.196-232 with Dearness Allowances etc. but due to the impugned order contained in Annexure No. 1 his salary is being paid on casual labour rates i.e. Rs.6/- per day putting the petitioner to a concurrent pecuniary loss. Such orders cannot be passed without affording any opportunity.

14. That there is no statutory provision applicable to the petitioner under which the petitioner would loose the status of temporary Railway Servant, deemed to have acquired earlier and would loose the pay scale earlier granted to him in case he remains on leave for more than 20 days.

15. That besides the above the petitioner did not unauthorisely remained absent for a period of more than 20 days as alleged in the impugned order contained in Annexure No. 1 and discontinuation of the pay scale on that ground is (wholly arbitrary and unjusticiable on the part of Railway authorities).

16. That the petitioner having continuously worked for a period of 6 months from the date of his appointment and having acquired the status of temporary Railway servant within the meaning of para 25 of Indian Railway Establishment Manual was entitled to the protection of Railway Servants (Discipline & Appeal) Rules 1968 (and in case he remained absent from his duty he was liable to disciplinary action by adopting the procedure prescribed under the said Rules. The scale of the petitioner could not have been discontinued on the alleged ground of absence from duty without even

offering any opportunity to have his say in the matter).

17. That the impugned order contained in Annexure No. 1 causes concurrent pecuniary loss to the petitioner and the orders for recovery of alleged excess paid amount are being implemented and in case the operation of the impugned order and recovery is not stayed the petitioner would suffer irreparable loss.

18. That the petitioner feeling aggrieved with the impugned orders contained in Annexure No. 1 and having no other alternative efficacious remedy begins to prefer the present writ petition on the following amongst the other grounds:-

**: G R O U N D S:**

- (i) Because the opposite party No. 2 erred in law in applying the circular letter dated 21.10.1980 contained in Annexure No. 2 to the petition in passing the impugned order contained in Annexure No. 1.
- (ii) Because the petitioner having completed his 4/6 months continuous service on 11.5.1976 and having been allowed the scale at the rate of 1/30 of the scale of Rs.196-232 w.e.f. 1.4.1977 will be deemed to have acquired the status of temporary Railway Servant entitled for all the benefits enumerated in Chapter XXIII of the Indian Railway Establishment Manual and could not have been treated as casual labour on daily wages working under the project.
- (iii) Because the impugned order contained in Annexure No. 1 entails penal consequences resulting in pecuniary loss and the loss of status, could not have been passed without affording any opportunity to the petitioner.

(iv) Because the opposite party No. 2 by passing the impugned order contained in Annexure No. 1 has acted totally in contravention of the principles of natural justice that no one should be condemned unheard.

(v) Because the petitioner did not remain absent for a period of more than 20 days as alleged in the impugned order contained in Annexure No. 1 and the same is based on a mistaken belief in existence of non-existent fact infected with abuse of power.

(vi) Because even otherwise also the petitioner could not have been subjected to loss of his status scale of pay without adopting the procedure laid down in Railway Servants (Discipline & Appeal) Rules 1968 as the petitioner had acquired the status of temporary Railway Servant long before the passing of the impugned order.

P.R.A.Y.E.R.:

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

(a) Issue a writ, direction or order in the nature of certiorari quashing the impugned order dated 15.6.81 contained in Annexure No. 1 to this writ petition so far as it relates to the petitioner.

(b) Issue writ, direction or order in the nature of mandamus commanding the opposite parties to treat the petitioner having acquired the status of temporary Railway Servant and entitled to the benefits provided in Chapter XXIII of the Indian Railway Establishment Manual.

(c) 14 days notice may kindly be waived in view of the urgency of the matter.

Lucknow:

Dated: September 4, 1981.

(R.C. Saxena)  
Advocate,  
Counsel for the Petitioner.

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

( LUCKNOW BENCH ) : LUCKNOW :

W.P. NO. OF 1981

Ram Naresh

... Petitioner

Versus

Union of India and others

... Opp. Parties

\*\*\*\*\*

Writ Petition under Article 226 of the Constitution of India.

AFFIDAVIT

I, Ram Naresh, aged about 26 years, son of Sri Ganga Prasad, presently working as Khalasi, under Signal Inspector (Construction), North Eastern Railway, Aishbagh, Lucknow, do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the petitioner in the above noted writ petition and is well conversant with facts of the case deposed to hereunder.

2. That the contents of paras 1 to 7, 9, 10, 11, 13, 14 and 17 of the writ petition are true to my own knowledge and those of paras 8, 12, 15 and 16 except bracketed portions, are believed by me to be true.

3. That the Annexure Nos. 1 and 2 of the writ petition are the true copies and the deponent has compared them with their originals.

Lucknow:

Dated: September 4, 1981.

DEPOSITOR.

Verification

I, the deponent named above, do hereby verify that the contents of paras 1 to 3 of this Affidavit are true to my own knowledge.

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

Lucknow:

Dated: September 4, 1981.

DEPONENT.

I identify the deponent who has signed before me.

ADVOCATE.

Solemnly affirmed before me on September 4, 1981, at a.m./p.m. by Sri Ram Naresh, the deponent, who is identified by Sri R.C. Saxena, Advocate, High Court, Lucknow Bench, Lucknow.

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

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD  
( LUCKNOW BENCH ) : LUCKNOW  
N.Petition No. of 1981

Ram Naresh

... Petitioner.

Versus

Union of India and others.

... Opp.Particles.

ANNEXURE NO. 1

N.E. RLY

MEMORANDUM

The project rate of pay, granted to the under noted casual employees, who have remained absent from duty for more than 20 days within the last 6 months i.e. Oct/80 to March/81 is hereby ordered to be discontinued from the date noted against each i.e. the date every individual has exceeded 20 days of absence. They are however, allowed to continue on casual rates thereafter.

S.No.	Name	Desig	Total absent	Date of discontinuance
1.	Krishan Kumar S/o Laxminarain	K1.Kli.	26 days	3.2.81
2.	Ram Naresh S/o Ganga Prasad	"	23 "	27.3.81
3.	Gouri Shanker Sharma S/o Raj Gir Sharma	El.Fitter 29	"	23.3.81
4.	Yogendra Pratap Singh S/o Ram Shyam Singh	Cl.wireman 26	"	23.2.81
5.	Suresh Chandra Sharma S/o Hoti Lall Sharma	Cl.Khi	24 "	31.12.81
6.	Ram Milan Gupta S/o Kalpanath Gupta	"	34 "	20.4.81
7.	Biswa Nath S/o Ram Autar	"	34 "	23.2.81

Distt. S & T Engineer/Works.

Lucknow.

No. B/175/8/0-A/Con/Pt. A/255 Lucknow Dt. 15.6.1981

Copy for information and necessary action  
to:-

1. The SI/Cen/ASH in reference to his letter no. n/con/ASH/ 1462 dt. 1.5.81. He will arrange necessary recoveries of the amount already paid to them in project rate beyond the dates as noted above.
2. Bill Clerk.
3. DAO/NER/LJM.

Sd/-

Distt. S&P Engineer/Works.

Lucknow.

TRUE COPY

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

( LUCKNOW BENCH ) : LUCKNOW :

W. Petition No. of 1981

Ram Naresh

... Petitioner.

Versus

Union of India and others.

... Opp. Parties.

ANNEXURE NO. 2

**NORTH EASTERN RAILWAY**

Office of the General Manager(P)

No.E/227/20/2(V)Pt.III

Gorakhpur.

Dated 1.11.1980

All Heads of Departments,  
All Divisional Rail Managers,  
All Personal Officer,  
All Extra Divisional Officers,  
North Eastern Railway.

Sub:- Casual Labour

Copy of Railway Board's letter No.E(NG)11-80/  
dated 21.10.1980.

On the above subject in circulated to all  
concerned for information guidance and necessary action.

Sd/-

for General Manager (P)

Copy of Railway Board's letter No.E(NG) 11-80/  
CL/25 dated 21.10.1980 addressed to the G.M. all Indian  
Railways and others.

Sub:- Casual Labour

The problems of casual labourers have been  
engaging the attention of the Ministry of Railways  
(Railway Board) and instructions have been issued from  
time to time to improve their service conditions in order  
to ameliorate their lot. Further, following instructions  
should be implemented immediately in supersession of any  
instructions to the contrary.

(i) Instruction already exist that casual labour on completion of 120 days continuous service on open line should be given regular scale of pay similarly, casual labour employed on projects should be remunerated @ 1/30th of the minimum of the scale plus Dearness Allowance on completion of continuous service of 180 days as daily wages. These orders should be scrupulously observed and on deliberate break should be caused in the service of casual labours when work for their continued service is available.

(ii) Unauthorised absence upto 3 days and authorised absence upto 20 days will not constitute break in the employment of casual labour.

(iii) On completion of works or for non availability of further productive work when casual labour on daily wages or in regular scale of pay or 1/30th of the minimum of scale plus Dearness Allowance is discontinued and employed later when work is available such gaps in the service will not count as breaks for the purpose of reckoning of continuous service of 120 days or 180 days as the case may be.

(iv) Before giving regular scale of pay or 1/30th of the minimum scale plus dearness allowance on completion of 120 days or 180 days continuous service as the case may be a preliminary verification in regard to age and completion of requisite number of days of continuous service will be done by the Asstt. Officer.

(v) If a person having worked as a casual labour in the past and recently out of employment due to break in his service because of non-availability of work approaches an appropriate Railway Authority, his record should be checked at the opportunity of next recruitment for a casual labour work he should naturally be given preference over his juniors.

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) : LUCKNOW :

C.M. Application No. 513 (W) of 1981

IN - RE:  
W.P. No. 1561 of 1981



Ram Naresh, aged about 26 years, S/o Sri Ganga Prasad, Presently working as Khalasi, under Signal Inspector (Construction), North Eastern Railway, Aishbagh, Lucknow.

... Petitioner.

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. District Signal & Tele-communication Engineer/Works, N.E. Railway, Ashok Marg, Lucknow.
3. Signal Inspector (Construction), N.E. Railway, Aishbagh, Lucknow. ...Opp. Parties.

-----  
STAY APPLICATION

That for the detailed facts and the reasons given in the writ petition supported by an affidavit it is most respectfully prayed that the orders for recovery from petitioner's pay in pursuance of Annexure No. 1 may kindly be stayed during the pendency of the writ petition and an ad-interim order to the same effect may also be passed in favour of the petitioner.

  
( R.C. SAXENA )

Advocate

Counsel for the Petitioner.

Lucknow:

Dated: September 4, 1981.

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

... - (LUCKNOW BENCH) : LUCKNOW :

C.M. Application No. (V) of 1981

1/22

IN - RE:

W.P. No. of 1981

Nam Naresh, aged about 26 years, S/o Sri  
Ganga Prasad, Presently working as Khalasi,  
under Signal Inspector (Construction),  
North Eastern Railway, Aishbagh, Lucknow.

... Petitioner.

Versus

1. Union of India through General Manager,  
North Eastern Railway, Gorakhpur.
2. District Signal & Tele-communication  
Engineer/Works, N.E. Railway, Ashok Marg,  
Lucknow.
3. Signal Inspector (Construction),  
N.E. Railway, Aishbagh, Lucknow. ...Opp. Parties.

STAY APPLICATION

That for the detailed facts and the reasons  
given in the writ petition supported by an affidavit  
it is most respectfully prayed that the orders for  
recovery from petitioner's pay in pursuance of  
Annexure No. 1 may kindly be stayed during the pendency  
of the writ petition and an ad-interim order to the  
same effect may also be passed in favour of the  
petitioner.

Lucknow:

( R.C. Saxena  
Advocate  
Counsel for the Petitioner )

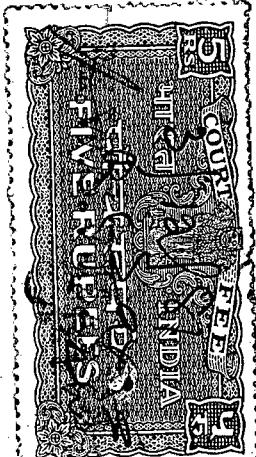
Dated: September 4, 1981.

TC  
Ghoshal  
sd

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

( LUCKNOW BENCH ) : LUCKNOW

C.M. APPLICATION NO. 10294 (W) 1981



1609/1  
ED

Ram Naresh, aged about 26 years, son of Sri Ganga Prasad, Presently working as Khalasi, under Signal Inspector(Construction), North Eastern Railway, Aishbagh, Lucknow.

... Applicant.

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.

2. District Signal & Tele-communication Engineer/Works, N.E.Railway, Ashok Marg, Lucknow.

3. Signal Inspector(Construction), N.E. Railway, Aishbagh, Lucknow.

... Opp. Parties.

-----  
IN-RE

W.P. No. 4761 of 1981

Ram Naresh

... Petitioner.

Versus

Union of India and others

... Opp. Parties.

-----  
APPLICATION FOR RESTORATION OF WRIT PETITION DISMISSED IN  
DAFAULT ON 19.11.1981

That for the detailed facts and the reasons stated in the accompanying affidavit, it is most respectfully prayed that the order dated 19.11.1981 dismissing above noted writ petition for non-appearance may kindly be recalled and the writ petition may be restored to its original number.

LUCKNOW:

DATED: December 3, 1981.

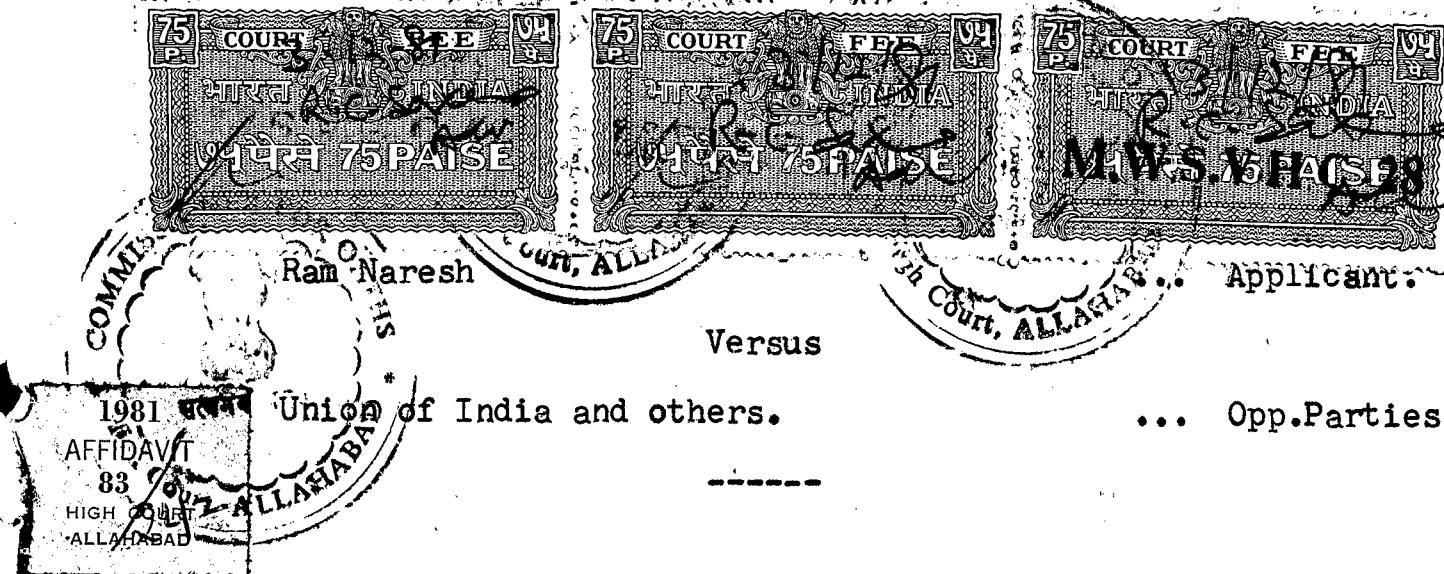
*R.C. SAXENA*  
( R.C. SAXENA )  
ADVOCATE  
COUNSEL FOR PETITIONER.

6/2

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

( LUCKNOW BENCH ) : LUCKNOW :

W. P. NO. 4761 of 1981



AFFIDAVIT IN SUPPORT OF RESTORATION APPLICATION

I, R.C. Saxena, advocate, S/o late Sri T.S. Saxena, R/o 565/566, Rajendra Nagar, Lucknow, do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the practising advocate appearing as a counsel for the petitioner in the above noted case and is fully conversant with the facts deposed to hereunder.
2. That the above noted writ petition No. 4761 of 1981 was listed on 21.10.81 before the bench consisting of Hon'ble Mr. Justice Gopi Nath and Hon'ble Mr. Justice Zaheer Hasan for admission.
3. That on 21.10.81 after the arguments on behalf of the petitioner it was noticed by the bench that the name of Sri B.L. Shukla, Advocate, has wrongly been shown in the cause list as counsel for opposite parties as such the Hon'ble bench passed orders directing the office to print the name of Sri Umesh Chandra as Counsel for opposite parties instead of Sri B.L. Shukla.
4. That the said writ petition was again listed for admission on 19.11.1981 before the Bench consisting of



*S. S.  
Advocate*

Hon'ble Mr. Justice K.S. Varma and Hon'ble Mr. Justice Saghir Ahmad and inspite of the Court's order dated 19.11.1981, the name of Sri B.L. Shukla, Advocate was again shown as a Counsel for opposite parties.

5. That this mistake in the cause list was pointed out by the deponent to the bench Secretary attached to Court No. 7 and the order dated 21.10.81 was also pointed out to the bench Secretary.
6. That the deponent reasonably and bonafidely believed that the case listed before the bench would not be taken due to the mistake in the cause list inspite of the order dated 21.10.81 after pointing out to the bench Secretary went to the U.P. Public Services Tribunal to attend his other cases.
7. That the aforesaid writ petition was dismissed for non-appearance on 19.11.81 by the bench consisting of Hon'ble Mr. Justice K.S. Varma and Hon'ble Mr. Justice Saghir Ahmad.
8. That the above noted writ petition was again listed on 25.11.81 for admission in Court No. 1 on which date the deponent came to know that the said writ petition was already dismissed in default on 19.11.1981.
9. That the absence of the deponent on 19.11.1981 was due to the aforesaid reasons and the deponent has never been negligent in appearing before the Court on the date on which the cases are listed.

LUCKNOW:

DATED: December 3, 1981.

*Chandru*  
DEPONENT.

VERIFICATION

I the deponent named above do hereby verify that the contents of paras 1 to 9 of this affidavit are true to my own knowledge.

Signed and verified this 3<sup>rd</sup> day of December 1981 in the Court Compound.

LUCKNOW:

DATED: DECEMBER 3, 1981.

DEONENT.

I identify the deponent who has signed before me.

*R. C. Saxena*  
ADVOCATE  
3.12.81

Solemnly affirmed before me on December 3, 1981, at 1.20 a.m.p.m. by R. C. *Saxena* Advocate, the deponent, who is identified by *C. S. Tiwari*, Advocate, High Court, Lucknow Bench, Lucknow.

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

*Commissioner*

Oath Commissioner	
High Court, Allahabad	
Lucknow Bench	
No.	831242
Date	31/12/81

## ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

6-1

4761

of 1981

No.

vs.

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
22/9/81	Hon. S.C. Mullen J.	
	Al though Notice of other Petitions	
	-----	-----
	-----	-----
	be listed in the next week for orders.	
	Sd. S.C.M.	
	22-9-81	
	C.M. No. 8513(2) of 7/9/81	
	Please	
	-----	-----
	L. L. J.	FO
1-10-81	Wait with C.M. No. 8513-81	S/
	for orders.	P.
	Hon. Mullen J.	
	-----	
15-10-81	Wait with C.M. No. 8513-81	
	for orders.	
	Hon. L.S.V.J.	
	Hon. S.C.M.J.	
	-----	
21-10-81	Hon. G.N.J. M.A.	
	Hon. Z.H.J.	
	List for admission with the	

Ago 72  
ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

W.D.

No.

676

of 1981

vs.

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
4-12-81	C.M. No. 10794 (C.S. - 2)	
	Not before the Bench concerned with previous before	
15-12-81	C.M. 10794 - 01. W.C.S.	
	de K.N.G.J.	
	de S.N.J.	
	No time left. Adjourned	
	R.O. etc.	
21-12-81	de K.S.V.J.	
	de S.S.J.	
	R.K.	
	21-12-81	
23-12	de L.C.S.V.J.	
	de S.S.J.	
	List with against with	
	the name of Sri Krish	
	Chandra as counsel for the	
	opposite party in place of	
	Sri B. L. Shukla.	

A/11

ORDER SHEET  
IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

No. 4761 of 1981.

vs.

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
13.4.82	Fixed Cm An. 10794-81 for orders	
	Hon. K. S. Y. J.	
	Hon. S. A. J.	
	Stand out due to illness of Mr. R. C. Saxena.	
		13.4.82
22.4.82	22.4.82 Date in Cm 10794 (no) 01	T.S. CS 05 S. S. A. J.
	Hon. K. S. V. J.	
	Hon. S. S. A. J.	
	Expt. - Allowing adjournment	
		22.4.82
		R