

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

FORM OF INDEX

D.A./T.A./B.A./C.L.P./ No. 860-1987

S. N. Pattnak
P A R T - I V. 1/1987

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860/1/49

✓

W.M.S.
Dealing Clerk
28/1/1987
(V.K. Mishra)

D.Y. Registrat

(Shreedhar Kumar)

Supervising Officer

(Kulbir Singh)

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Dealing Clerk

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Regd

SOL

File B/C destroyed on 09-5-92

V.K. Mishra

Central Administrative Tribunal
Lucknow Bench

1

(W.P.5377-81.)

Cause Title TA 860/87 of 1993

Name of the Parties

S. Nasel Pathak/C. Applicant

Versus

State of U.P (C.I.L.)

Respondents.

Part A. P.C.

Sl. No.

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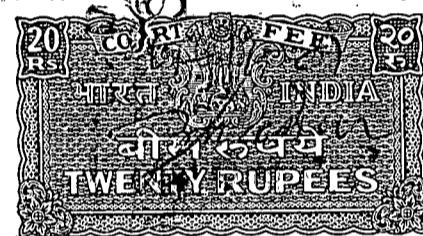
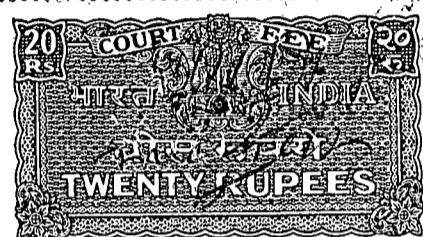
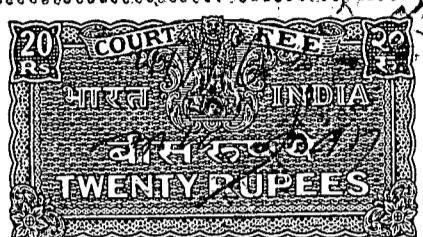
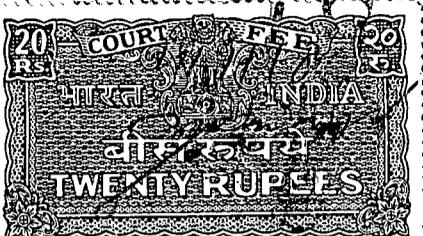
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Extra copy of petition

A11

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



Writ petition No. 537 of 1981

537
Sep 26/81
4/11

Sachida Nand Pathak son of Shri Ganga Sahai Pathak
Deputy Conservator of Forests, at present posted as
Divisional Director, ^{Social} Foresty Division, Kanpur.

... petitioner

versus

1. State of Uttar Pradesh, Department of Forests, Government of Uttar Pradesh, Lucknow.
2. Union of India, ^{Department of} Ministry of Personnel and Reforms, Administrative Affairs, through its Secretary, New Delhi.

... Opposite parties.

WRIT PETITION
UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

The petitioner above named begs to submit as under:-

1. That the petitioner who was initially recruited in the U.P. Forests Service in the year 1956, was subsequently selected and appointed on the initial stage with effect from 1-10-1966 to the Indian Forests Service.
2. That the petitioner during his entire tenure both in the U.P. Forests Service and also when he remained on deputation with the Government of India as Class I Officer for eleven years with effect from January 1956

1/1

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

450

No.

5377

of 1981

vs.

461

A. L. T.

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
5-11-81	Hon. t. & V.J.	
	Hon. S.S.A.J.	
	List this Petition for orders on 23rd Nov. 1981.	
	Sd. t. & V.	
	Sd. S.S.A.	
	5-11-81	
23-11-81	Hon. Verma, J.	
	Hon. S.S. Ahmad, J.	
	List after six weeks to enable the counsel for the Central Government to file a counter-affidavit and then list the case thereafter.	
Roj		
	S. J. K.	
4. 1. 82	Roj	
4-1-81	C. H. N. S. J. S. J.	2
	Learned counsel for opposite party no. 2 prays for and is granted three weeks further time for filing counter-affidavit	S. J.
Roj.		S. J.

6
61/2
PLS
ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Crl.

No.

5371

of 198

vs.

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
27/7/82	Court for aden Habibker vs. Habibullah No 20 27.7.82	
28/7/82	Court for aden Habibker vs. Habibullah S. No.	
24 8/62	24. 8. 62 fixed for Co order Habibkar vs. B Habibullah	So back
9/10/82	Fixed for aden Habib Karimullah Habibullah	24/10/82
14/10/82	Fixed for aden Habib Karimullah Habibullah	9

4-10-82

ORDER SHEET
IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

W. P.

No.

537)

of 1981

vs.

Re. 81

Date	Note of progress of proceedings and routine orders	Date to which case is adjourned
1	2	3
5.8.83	<p>Hon'ble D.N. Thakur Hon'ble K.S. Varma, J.</p> <p>Today, unfortunately, neither the Standing Counsel for the State nor the Standing Counsel for the Union of India is in possession of his office file. We direct that this case shall be taken up on 11th August, 1983 on which date both the learned Standing Counsel must apprise the Court of the correct facts. If necessary record may be obtained by them and placed before the Court and some Senior Officer may also be called to instruct them. A list for final disposal on 11th August, 1983.</p>	

Gsy

5.8.1983

(10)

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
No. 57353 of 1981

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
		<u>Fixed for Order</u>
		<u>Two</u>
20.10.83	Writ f. o Hc v CS 5 Hc K N G 5	
25.10.83	Writ for orders	
28.10.83	Hon. U. E. S. J. Hon. K. N. L. J.	
25.11.83	Writ for orders	
	Hon. D. N. Jha J. Hon. R. C. D. S. J. J.	
1.12.83	Writ f. o Hc K N G 5 Hc S S A 5	

PC
B

FA:060/01/17

12

Serial
number
of
order
and date

Brief Order, Mentioning Reference
if necessary

How complied
with and
date of
compliance

23/11/90

No Sitter Adt to 15.2.90

This case has been received on transfer.
Notices were issued to the counsels by the Office
at Allahabad.... None ...present.....
Let notice be issued again to the parties as
directed by Hon'ble Mr. D.K. Agarwal, J.M.

23/11/90

15/12/90

or

Notice issued

15.2.90

No Sitter Adt to 2.3.90

2.3.90

Hon. Justice K. Nath V.C.
Hon. K. J. Rawal, A.M.

Sr. P. Srivastava, learned
counsel of Sr. P. Kant, learned counsel
for the applicant, prays for
adjournment of the case on account
of indisposition of Sr. Kant. A
letter has also been received from
the Chief Conservator of Forests
for change of date to available
in the Department to appoint
a lawyer. The case is ripe
List for fixed hearing
on 27.4.90.

DR

DR

A.M.

V.C.

m

Dinesh

TD 860/87G

28.9.90

Hon. Mr. Justice K. Nath. V.C.

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

On prayer for adjournment made on behalf of applicant's counsel, the case is adjourned to 5-11-90 for hearing. There shall be no further adjournment.

A.M.

V.C.

S.11.90
Hon'ble Mr. D. K. Agarwal - J.M.
" Mr. M. V. Bhatker - A.M.

Due to resolution of Bar Association
case is adjourned to 19.12.91.

19.12.90

No sitting Adj to 27.2.91.

B.C.

27.2.91

No sitting adj to 2.5.91. ~~8~~

2.5.91

No sitting adj to 5.7.91.

~~8~~

5.7.91

Hon. Justice V.C S, rc

On prayer for adjournment made on behalf of applicant's counsel, the case is adjourned to 4.10.91 for hearing.

~~lin~~

~~VC~~

4.10.91

No sitting Adj to 4.12.91.

4.12.91

No sitting adj to 3.1.92 ~~8~~

~~8~~

3-192

No Billing off to 10-3-92

(RB)

T-11-86/82-T

10-3-92

No Billing off to 10-3-92

(S)

15

20-5-92

Case no. read off to
22-6-92

Done

or
SPT
2-15-92

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH LUCKNOW.

Registration T.A. No. 860 of 1987
(W.P. NO. 5377 of 1981)

Sachida Nand Pathak Petitioner/
Applicant.
Versus

State of U.P. and another Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

This is a transferred case under Sec. 29 of the Administrative Tribunals Act, 1985. The applicant filed a writ petition before the High Court at Lucknow Bench which by operation of law has been transferred to this Tribunal. In the writ petition, the applicant has prayed that a mandamus be issued directing the respondents to give him selection grade w.e.f. 12.7.1977. The ground of the applicant is that the adverse entry because of which the applicant was not given the selection grade having been washed out and it was incumbent upon the respondents to have given him the selection grade retrospectively w.e.f. 12.7.1977. The adverse entry was given to the applicant because of the malafides of the then Forest Secretary that the applicant was given an alleged adverse entry inspite of the commendable recommendation made by the Chief Conservator of Forest who had also recommended the promotion of the applicant out of turn, as such, the said entry could not have been made the basis of rejecting the applicant from being given the selection grade. The State Government did not apply its mind while deciding the representation of the applicant and inspite of the assurances

Given by the Secretary as well as the Minister, he has been given selection Grade from 29.8.1978, but the same was wrongly refused by the applicant while the same was given to his juniors w.e.f. 12.7.1977 and not only this, even by the notification, by virtue of which, the applicant was given selection grade w.e.f. 29.8.1978, three persons have ~~been~~ been given selection grade w.e.f. 12.7.1977 and two posts still remained unfilled, as such there was no occasion for not giving the selection grade to the applicant w.e.f. 12.7.1977.

2. The applicant who was initially recruited in the U.P. Forests Service in the year 1947 and promotion in 1956 as Asstt. Conservator selected and appointed on the initial stage w.e.f. 1.10.1966 to the Indian Forests Service. The applicant during his entire tenure both in the U.P. Forests Service and also when he remained on deputation with the Government of India as Class-I Officer for ~~several~~ ^{several} years w.e.f. ~~January, 1956 to April, 1966~~ and thereafter when he was a member of the Indian Forests Service, worked with integrity and devotion. The applicant was also deputed to the Food and Agriculture Organisation, ~~United Nations~~ United Nations for study tour of various countries of Europe. It was only in the month of January, 1978, when the applicant was communicated with the alleged adverse entry for the year 1976-77 by Shri N.P. Tripathi, the Secretary Forests, and which was not communicated to him as against rule 8(1) of the Indian Forests Service (Confidential Rolls) Rule, 1970, as such the applicant made a representation on 20.3.1978 for being communicated the full entry, but it was not supplied to him. The applicant made another representation on 1.7.1978 to the State Government for expunging the said entry. In the meantime, it was only the State Government vide its order

dated 9.2.1979 expunged the said adverse entry.

3. The respondents have resisted the claim of the applicant and have stated that for giving selection grade, a selection committee was constituted as per rules and over all performances were considered by the selection committee and the applicant was not found fit after due consideration. It is not only the character roll entries but the over all performances of the candidates were considered. The adverse entry was communicated to the applicant on 21.12.1977, though recorded on 27.6.1977. Final representation against the adverse entry was submitted by the applicant on 1.7.1978, whereas the selection for the post was held on 10.4.1978 and his representation was pending when the question of selection grade was considered. In the next selection, the case of the applicant was considered and he was given selection grade for the vacancy existed. The expunction of the adverse remarks of the applicant was admitted. From the facts, it appears that the question of selection grade was considered and the representation of the applicant against the adverse remarks was also considered, and it appears that the selection committee did not take into consideration the representations of the applicant side by side and have taken into consideration the adverse remarks only. If the adverse remarks will be considered, the representations of the applicant ought to have been considered, and if the representations of the applicant have not been considered, the same vitiates the proceedings of the selection committee. So far as the selection grade is considered, undoubtedly, over all

performance will be considered. If there would not have been an adverse entry, it was not possible that the applicant would not have been given the selection grade. In this connection a reference may be made to the case of Gurdial Singh Fiji Vs. State of Punjab and others, AIR 1979, SC, page 1622, in which it was observed that an adverse report in a confidential roll can-not be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report, such an opportunity is not empty formality, its object basically being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned whether the adverse report is justified. In the case of Brij Mohan Singh Chopra Vs. State of Punjab, AIR, 1987 SC, page 948, it was a case of compulsory retirement. It was held in this case that adverse entries should be communicated to the affected Government Servant and his representation against such entries should be disposed of before taking into account the entries with a view to form any opinion against him. In the case of Hiranya Lal Vs. Union Public Service Commission, 1988, SCC, (I&S) page, 484 it was also a case of an IPS Officer, the court observed @@@@ that it can not be said that the selection committee could not have taken into consideration the adverse remarks entered into the records which have not been communicated to the respondent no. 1. It was further held that the selection committee was directed to reconsider the merits of the respondents in the said case viz-aviz the official who was junior to him. In the @@@@ cases referred to above, it has been held that if the

representation of the applicant is pending, the same shall also be considered and in case the uncommunicated entries are considered and the representations are not considered, the same shall vitiate the selection proceedings. In this case also the representation of the applicant against the adverse remarks is pending which was ultimately expunged, obviously, the respondents are duty bound to re-consider the case of the applicant. Even though, the applicant has retired from service, the respondents are directed to convene a review selection committee within a period of 2 months from the date of receipt of the copy of this judgment and consider the case of the applicant again for promotion w.e.f. the date his juniors were promoted and expunged in case he is found fit after the adverse remarks subsequently he may be given selection grade notionally with effect from the date his juniors were given the said grade. Thereafter, the applicant will be entitled to all consequential benefits including the pensionary benefits etc. and which shall also be given to him within the period of another 3 months. The application is disposed of with the above observations. Parties to bear their own costs.

Rubenzell
Member(A)
Dated: 22.6.1992

W
Vice-Chairman

(n.u.)

CIVIL
CRIMINAL **SIDE**

GENERAL INDEX

(Chapter XLI, Rules 2, 9 and 15)

Nature and number of case

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	6	7	8	9
					Rs. P.			

I have this

day of

198

examined

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

Date.....

Munsarim

Clerk

Group A (R)

Bench 8009.

189

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

Writ petition No. 537 of 1981

1372

1898

Sachida Nand Pathak

petitioner

versus

State of U.P. & another.

Opposite parties.

I N D E X

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Lucknow

dated 4.11. 1981

Pradeep Kant
Advocate
counsel for the petitioner

to April 1966 and there after when he was a member of the Indian Forests Service, worked with integrity, hard labour, honesty and devotion.

3. That the work of the petitioner was highly appreciated and his character roll remained unblemished.

4. That the petitioner was also deputed to the Food and Agriculture Organisation, United Nations (F.A.O.) for study tour of various countries of Europe and was also deputed to Nepal from November 1959 to April 1966 under Indian ~~Forests~~ ^{foreign} Service terms.

5. That it was only in the month of January 1978, when the petitioner was communicated with the alleged adverse entry for the year 1976-77 by Shri N.P. Tripathi, the Secretary Forests. A copy of the said communication which gives extract of the entry, which was the only communication to the petitioner is being Annexed herewith as Annexure no. 1 to the writ petition.

6. That the petitioner was not communicated the entry as provided under rule 8(1) of the Indian Forests Service (Confidential rolls) Rules 1970 as such the petitioner made a representation on 20-3-1978 for being communicated the full entry. Inspite of his representation and requests, the petitioner was not supplied with the substance of the entire confidential ^{report} ~~entry~~. The petitioner however, made a representation on 1-7-1978, to the State Government for expunging the said entry.

7. That in the month of April 1978, selection for the 16 selection Grade posts in the senior time scale of U.P. Cadre of Indian Forests Service was made. It may be



mentioned here that these posts were created from 12th July 1977 and selection for retrospective appointments for these 16 posts was decided to be held on 10-4-1978.

8 That the petitioner was one of the eligible candidates for the said appointment but because of the aforesaid adverse remarks recorded by the then Forest Secretary, Shri N.P. Tripathi in the confidential roll of the petitioner for the year 1976-77 sometimes during the end of December 1977 to abnegate the remarks of the Chief Conservator of Forests and his recommendations for out of turn promotion under the same confidential roll, the petition was passed over.

9 That the aforesaid representation was made against the said adverse remarks by the petitioner and the State Government after due consideration enpunged the said adverse entry in toto from the confidential roll of 1976-77 vide its order dated 9-2-1979. A copy of the said communication dated 9-2-1979, received by the petitioner through the Chief Conservator of Forests is being annexed herewith as Annexure no. 2 to the writ petition.

10 That the selection of the petitioner was refused on one of the 16 posts of the Selection Grade in the senior time scale of U.P. Cadre of Indian Forests Service only because of the said adverse entry against which the representation of the petitioner was already pending before the State Government.

11 That the selection committee which consisted of the then Forest Secretary, Shri N.P. Tripathi, the Chief Conservator of Forests, Shri S.C. Dey and the ^{Chief} ~~Joint~~ Secretary to the Government Shri D.K. Bhatashaya [✓] ~~Dasgupta~~ did not



20/1/1980

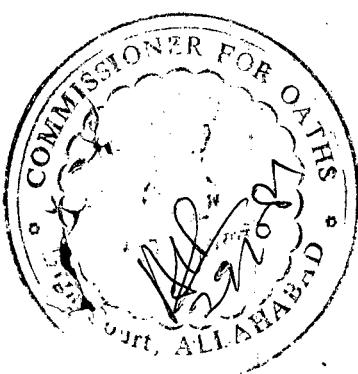
A14

A 29

consider as the adverse entry upon which they were relying was not absolute and final and the matter was still drawing attention of the State Government and the representation of the petitioner was pending. They also did not consider the representation which was pending before the State Government and rejected the petitioner's candidature on the grounds which could not be taken into consideration.

12 That it may be mentioned here that the Forest ~~SECRET~~ Secretary, Shri N.P. Tripathi who was annoyed with the petitioner, because of his enthusiasm, zeal and honesty in preventing all sorts of encroachments on the forest land and also mis-appropriation of the forest ^{property} ~~wood~~ which was being encroached illegally by the local politician, of Khatima in district Nainital.

~~xxxxxxxxxx~~ Shri Tripathi asked the petitioner to leave such matters to be settled later on and not to interfere in the ~~working~~ ^{matter of} of the encroachments which was to be perpetuated by the local M.L.A. The petitioner who was an honest and dutiful officer did not consider any such proposition and incurred great displeasure of Shri Tripathi. Malafide is also apparent as the Chief Conservator of Forests, Shri B.P. Srivastava had given excellent entry and had recommended the promotion of the petitioner out of turn but because Shri Tripathi was having strained relations with the petitioner as well as the Chief Conservator of Forests, he taking advantage of his position introduced the aforesaid adverse remarks in the confidential roll of the petitioner although he ~~was~~ ^{was}



To whom

he knew fully well that the said remarks were not correct and there was no question for such adverse remarks, as otherwise it would have brightened the chance of promotion of the petitioner in super time scale and for which the petitioner had full claim on fixation of his seniority. But under the instructions and advice of Shri N.P. Tripathi, as Forest Secretary, three writ petitions were filed before this hon'ble High Court. One writ petition was filed challenging the jurisdiction of the U.P. Public Service Tribunal in 1977 ~~which was numbered as writ petition no.~~

~~which~~ which was ultimately dismissed by this Hon'ble Court holding the legality and propriety of the orders passed by the Public Service Tribunal holding that it was the jurisdiction of the Public Service Tribunal to decide the dispute involved in the matter. The other two writ petitions ~~xx~~ have been filed against the final orders passed by the Public Service Tribunal, holding the claim of the petitioner regarding seniority which have also been filed under the instructions and advice of Shri N.P. Tripathi, the Forest Secretary and are still pending. These writ petitions are still pending decision before this hon'ble court and are numbered as writ petition no. 2598 of 1978 and writ petition no. 1903 of 1981.

13 That thus it is evident that because of malafide and biased action of the then Forest Secretary, Shri N.P. Tripathi that the petitioner has been deprived of his promotional anevues ^{and} better prospects, at various times and this time also, when the petitioner represented

to men

after expunction of the aforesaid adverse entry, that he should be given one of the posts in the selection grade with effect from 12-7-1977 his prayer was not accepted by the State Government. A copy of the representation dated 6-6-1979, of the petitioner is being annexed herewith as Annexure no. 3 to the writ petition.

14 That significant to mention here is that in pursuance of the result of the selection made in April 1978, only 11 posts were filled in out of the 16 selection grade posts and 5 posts were left vacant. Out of these 11 posts ~~were six~~ which were filled in, 4 (four) were filled in by the persons junior to ~~that of~~ the petitioner in the Indian Forests Service gradation list. The names of such persons are given below:-

1. Krishna Prakash Awashti ~~Avasthi~~ ^{Avastha}
2. Anom S warup Gulati
3. Anup Chandra Dhawan
4. Krishna Dev Sharma. Θ

Out of the remaining five posts ~~which~~ ^{three} were filled in in January 1981, i.e. much after the expunction of the entry in the confidential roll of the petitioner and after its communication to the petitioner and the representation dated 6-6-1979 (annexure no.3) made by the petitioner to the State Government as well as to the Forests Minister. The ~~some~~ ^{remaining} posts are still lying vacant and have not been filled in. The two selection grade posts are still available ^{in which} ~~and~~ no person has yet been

to whom

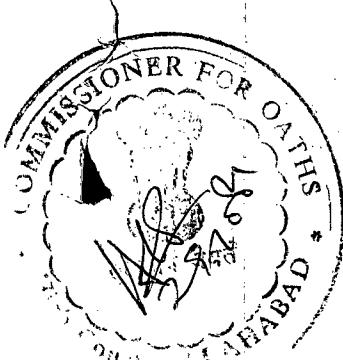


given selected grade with effect from 12-7-1977.

15 That even ~~even~~ apart from the above two selection grade posts ~~on 18-4-1978~~, further selection grade posts were created either because of the increase in the cadre (three posts from August 1978) or because of the vacancies caused by promotion. Inspite of the fact that the petitioner was eligible for being given the said grade and selected, his claim was ignored this time again and the persons junior to him were given the selection grade namely, Daya Shankar Pandey, who ^{and S. M. S. Bhat} ~~was~~ junior to the petitioner ^{were} ~~was~~ given selection grade with effect from 11-5-1978 on the vacancy caused by the promotion and sarvshri (1) R. S. Bhadaria (2) K. C. Thethayal ^{and 18-9-78}

— (3) R. C. Joshi were given selection grade with effect from 29-8-78. All these persons are junior to the petitioner and these promotional appointments were made after ignoring the candidature of the petitioner and without considering his case.

16 That the petitioner kept on approaching the State Government as well as the Minister for Forests and the Minister informed the petitioner that his case would be considered and his representation would be looked into and necessary orders would be passed shortly. The Minister also assured the petitioner that he would get the selection grade with effect from 12-7-1977 as the entry upon which the petitioner's candidature was rejected no longer existed. There-after the petitioner did not hear any thing and it was only ~~sometimes~~ in January 1981 that a notification was issued on 15-1-1981 in which the petitioner was given selection grade from 29th August 1978. A copy of the said notification dated 15-1-1981 is being annexed herewith as



to whom

Annexure no. 4 to the writ petition.

17 That the petitioner was shocked to note from the notification that he has been given the selection grade with effect from 29th August 1978 and not from 12-7-1977 as was assured to him by the Minister as also by the Secretary Forests. The petitioner was also otherwise eligible for being given the selection grade with effect from 12-7-1977 and his name was wrongly refused-on the basis of the adverse entry which never existed after its expunction by the State Government. The petitioner therefore made a representation again on 29-1-1981, to the Secretary Forests. A true copy of the said representation dated 29-1-1981 is being annexed herewith as Annexure no. 5 to the writ petition.

18 That the petitioner in his representation gave all the details and also made a mention of the assurances given by the Minister of Forests and also the Secretary Forests, Shri T.N. Dhar. The petitioner also brought to the notice of the Secretary that the petitioner has been disregarded in as much as three persons namely Shri Y.C. Rai, Jagat Narain and Ram Soch Singh have been given the selection grade retrospectively with effect from 12-7-1977 and the case of the petitioner not being ~~the~~ different, could not have been dealt with otherwise.

19 That the petitioner sent several reminders but he did not receive any reply from the State Government and lastly sent another reminder on 21-9-1981. A copy of the said reminder is being annexed herewith as Annexure no. 6 to the writ petition.

to men

20 That it was thereafter that the petitioner received an order dated 5-10-1981, which was received by the petitioner on 10-10-1981 communicating him that the representation of the petitioner has been rejected by the State Government after due consideration. A true copy of the said communication dated 5-10-1981 is being annexed herewith as Annexure no. 7 to the writ petition.

21 That the order rejecting the petitioner's aforesaid representation and by not giving him the selection grade with effect from 12-7-1977, he has been discriminated in the matter of employment and has also been adversely affected financially.

22 That the petitioner has not been given the selection grade with effect from 12-7-1977 as assured by the Secretary as well as the Minister and the persons junior to the petitioner have been promoted and appointed on the selection grade from 12-7-1977, secondly two posts are still lying unfilled with effect from 12-7-1977, thirdly three persons names of whom are referred to above were recruited by the same notification by virtue of which the petitioner has been appointed with effect from 29-8-1978, with effect from 12-7-1977, fourthly the State Government is obliged to create a ^{Spec. Post} numerary post in case no post is available where the petitioner could be posted in the selection grade, and fifthly the petitioner could be given notional promotion in the selection grade with effect from 12-7-1977 with entitlement of payment of selection grade salary from the said date i.e. from 12-7-1977, Thus it is evident that the case of the petitioner

to whom

being genuine for giving him the selection grade from 12.7.1977 has not been deliberately and properly dealt with by the state Government because of which the petitioner is suffering great loss and mental agony.

23. That being aggrieved, the petitioner having no other affacious, legal, speedy and alternative remedy left open begs to file the present writ petition on the following amongst other grounds:

G R O U N D S

- a) That the adverse entry because of which the petitioner was not given the selection grade having been washed out it was incumbent upon the opposite parties to have given the selection grade ~~with~~ with retrospectively w.e.f. 12.7.1977.
- b) That it was because of the malafides of the then Forest Secretary that the petitioner was given ~~xxx~~ an alleged adverse entry in-spite of the commendable recommendation made by the Chief Conservator of Forest who had also recommended the promotion of the petitioner out of turn, as such the said entry could not have been made the basis of rejecting the petitioner from being given the Selection Grade.
- c) That the State Government did not apply ~~its~~ mind while deciding the representation of the petitioner and in spite of the assurances given by the Secretary as well as the Minister he has been given the Selection Grade from 29.8.1978.
- d) That the Selection Grade could have been given to the petitioner evenif he has to be given as a special case because he was wrongly refused the same because of his malafide action on behalf of the then Chief Forest Secretary.

e) That persons junior to the petitioner have been given the Selection Grade w.e.f. 12.7.1977 and not only this even by the notifications by virtue of which the petitioner was given Selection Grade w.e.f. 29.8.1978, three persons have been given Selection Grade w.e.f. 12.7.1977 and two posts still remained unfilled, as such there was no occasion for not giving the Selection Grade to the petitioner w.e.f. 12.7.1977.

f) That the ~~action~~ ^{action} of the opp. parties in not giving the Selection Grade retrospectively w.e.f. 12.7.77 and in not treating equally in the matter of employment ~~is~~ ^{is} highly discriminatory and is violative of Article 14 and 16 of the Constitution.

g) That in any case the petitioner was entitled to get the Selection Grade from the due date and after the expunction of the adverse entry without prejudice to his rights as against the persons junior to him and having not better record of service.

WHEREFORE it is respectfully prayed that the order contained in Annexure No.7 passed by the State Government be quashed.

- A writ, order, direction in the ~~nature~~ ^{writ} nature of mandamus directing the opposite parties to give the Selection Grade w.e.f. 12.7.1977.
- Such other appropriate orders as this hon'ble court deems just and proper in the nature of the case be also passed.
- Cost of the petition be awarded.

Bendap Venk
Advocate
Counsel for the petitioner

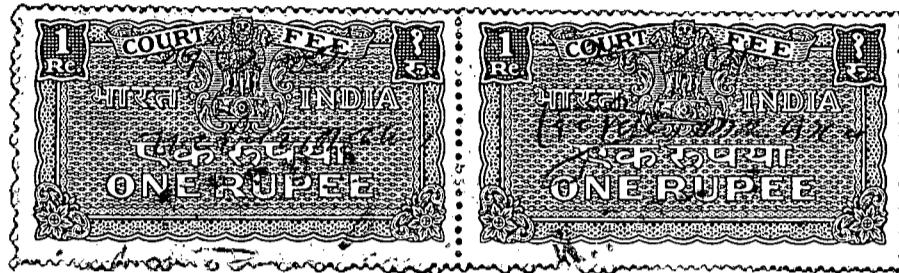
Lucknow

dated 4.11.1981

Atty Venk

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

Writ petition No. of 1981



Sachida Nand Pathak

petitioner

versus

State of U.P. and others.

opposite parties

AFF IDAVIT

I, Sachida Nand Pathak, aged about 56 years son of late Shri Ganga Sahai Pathak, Deputy Conservator of Forests, at present posted as Divisional Director, Forestry division, Kanpur do hereby solemnly affirm and state as under:-

- 1 That the deponent is the petitioner in the above noted writ petition and is fully conversant with the facts of the same.
- 2 That the contents of paras ~~1 to 23~~ of the writ petition are true to my own knowledge, those of paras _____ are true from perusal of records and those of paras _____ are true to my belief.

Lucknow

dated 29-11-1981

Deponent

I, the deponent named above do hereby verify that

the contents of paras 1 and 2 of the affidavit are true to my own knowledge. No part of it is false and no material fact has been concealed. So help me God.

Lucknow.

dated 29-7-1981

Sachida Nand Pathak
Deponent

I, after perusal of records identify the deponent who has signed before me.

Mehdi Seedi
Advocate



solemnly affirmed before me on 29-7-81 at 6.30pm by the deponent, Sachida Nand Pathak, who has been identified by Shri *Mehdi Seedi*, Advocate, High Court.

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

A K Bhatnagar
(A K BHATNAGAR)
SHERIFF FOR OATHS
Shri P.K. Mehdiseedi, Allahabad
Lucknow Bench
19/3/81
29-7-81

इन दि आनुकूल हाईकोर्ट आफ जूडीकेवर एट इलाहाबाद
(लखनऊ बच)लखनऊ ।

रिटिप्टीशन नं० आफ १६८१ ।

सचिवदानन्द पाठक - - पिटीशनर

बनाम

स्टेट आफ यू०पी० एचड ब्रदर्स । - - अपौ०पाटीज

अनेकजर नं० १

संलग्नक ॥

गौपनीय

कायालिय अरण्यपाल, अनुस्थान एवं विकास वृत्त, उ०प्र० लखनऊ के श्री सचिवदानन्द पाठक, उप-अरण्यपाल की सम्बोधित पत्रांक १७७शि। २-३, (एस०पाठक) दिनांक दिसम्बर ३१, १६७७ की प्रतिलिपि ।

विषय:- भारतीय वन सेवा उत्तर प्रदेश सर्वी के अधिकार्यों की वर्ष १६७६-७७ की वार्षिक गौपनीय प्रविष्ट्यां ।

संदर्भ:- मुख्य अरण्यपाल, उ०प्र० की पृष्ठांकन संख्या १०१८-अ०० सी० । १०-४। (एस०पाठक) दिनांक ८-१२-१६७७ में सुलग्न है ।

उपरोक्त संदर्भित पत्र आपको मूल में सूचनार्थ भेजा जा रहा है कृपया पत्र में निर्दिशित पंक्तियों के अनुसार वर्णित पत्र की प्राप्ति स्वीकृति रसीद ह स कायालिय के माध्यम से दो प्रतियों में ४ जनवरी १६७८ तक अवश्य भेज दें ।

संलग्न:- उपरोक्तानुसार मूल में ।

(दैवकी नन्दन लौहानी)
अरण्यपाल,
अनुस्थान एवं विकास वृत्त, उ०प्र०
लखनऊ

प्रतिलिपि वन (एक) अनुमान, गौपनीय शासकीय पत्र संख्या १४३६३। १४-एक-३। ८८-टी० सी० (दो) दिनांक २१ दिसम्बर १६७७ प्रेषक- श्री एन०पी० त्रिपाठी सचिव, उ०प्र० शासन सेवा में श्री एच० सी० डै० मुख्य अरण्यपाल उ०प्र० लखनऊ ।

विषय:- भारतीय वन सेवा (उत्तर प्रदेश सर्वी) के अधिकार्यों की वर्ष १६७६-७७ की वार्षिक गौपनीय प्रविष्ट्यां ।

मुझे यह कहने का निर्देश हुआ है कि राज्यपाल महीद्य भारतीय

वन सेवा (उत्तर प्रदेश संकाय) के निम्नलिखित अधिकारियों की वर्ष १९७६-७७ में, उनके नाम के सम्मुख अंकित वनाधिकारियों द्वारा, प्रदान की गई प्रविष्ट संसूचित करने के आदेश प्रदान करते हैं:-

Sri S.Pathak, Dy.C.F.

(Remarks recorded by Sri N.P.Tripathi, Van Sachiv).

Inquiry into a complaint, in respect of Sri S.Pathak's tenure as D.F.O.Pilibhit where he was till about the middle of June, 76, revealed that (i) Sri Pathak entertained a time-barred application of a contractor for shortage of trees and made good the shortage without referring the matter to and obtaining orders from his Conservator and (ii) entered into private financial transaction with his subordinates. A warning was issued to him by the Government vide G.O. No. 12500/14-1-80(21)/1975 dated 29-12-1976, for these omissions, under the circumstances it is difficult to accept remarks relating to (a) straight forwardness approach and (b) promotion out of turn, of the Chief Conservator of Forests,

2. xxxx xxx xxxxxx

3. कृपया पैरा एक में उल्लिखित प्रतिकूल प्रविष्टियों सम्बद्ध अधिकारियों की संसूचित कर दें और उनसे प्रविष्टियों की प्राप्ति रसीद प्राप्त करके शासन की भेज दें। ०००० कृपया इसकी प्राप्ति स्वीकार करें।

गोपनीय

कायलिय मुख्य अरण्यपाल, उत्तर प्रदेश, लखनऊ
पत्र संख्या-१०१६-टी सी। १०-४, एस०पा०ठक, दिनांक लखनऊ दिसम्बर २८, १९७७
प्रतिलिपि श्री एस०पा०ठक, उप-अरण्यपाल, वन संसाधन सर्वेक्षण प्रभाग उद्दर
प्रदेश को अरण्यपाल, अनुसंधान एवं विकास बृत, के माध्यम से सूचनार्थी प्रेषित। वे
कृपया इस पत्र की प्राप्ति स्वीकृति रसीद की प्रतिलिपियों में इस कायलिय की
उचित माध्यम से ५ जनवरी ७८ तक अवश्य भेज दें।

(सचू सी०डै)

मुख्य अरण्यपाल,
उ०प०लखनऊ

(सत्य प्रतिलिपि)

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1/6

इन दि आनैबुल हाई कोर्ट आफ जूडीकैवर स्ट हलाहाबाद
(लखनऊ बैच) लखनऊ ।

रिटिपिटीशन नं० आफ १६८१ ।

सचिवानन्द पाठक - - - - - पिटीशनर

बनाम

स्टेट आफ यू०पी०एण्ड अद्दि । - - - अप०पाटीजि

अनैक्यर नं० २

गौपनीय

कार्यालय मुख्य अरण्यपाल, उत्तर प्रदेश, लखनऊ ।

पत्र संख्या १०१६-टीसी। १०-४ (स्स०पाठक) : दिनांक, लखनऊ, फरवरी १६, १९७७
सेवा में,

श्री स्स०पाठक,
उप अरण्यपाल, वन संसाधन संकाण प्रभाग,
लखनऊ ।

शूः- अरण्यपाल, अनुसंधान एवं विकास वृत, उ०प्रदेश, लखनऊ ।

विषय:- श्री सचिवानन्द पाठक, उप अरण्यपाल का वर्ष १९७६-७७ की
गौपनीय प्रविष्टि के विरुद्ध प्रत्यावैदन ।

स्पार:-

उपर्युक्त विषयक उचित माध्यम से शासन को संबोधित आपके
प्रत्यावैदन दिनांक १ जुलाई ७८ के संदर्भ में मुक्त आपको यह सूचित करने का
निर्देश हुआ है कि राज्यपाल महोदय ने आपके प्रश्नगत प्रत्यावैदन पर विचारोप-
रान्त यह आदेश प्रदान किये हैं कि वर्ष १९७६-७७ की प्रविष्टि में से निम्न-
लिखित अंश विलुप्त कर दिये जायें:-

"Inquiry into a complaint in respect of Sri S.Pathak's
tenure as D.F.O.Pilibhit where he was till about the middle
of June 1976, revealed that (1) Sri Pathak entertained a time-
barred application of a contractor for shortage of trees and
made good the shortage without referring the matter to and
obtaining orders from his Conservator and (2) entered into

cont...2

private in financial transactions with his subordinates. A warning was issued to him by the Government vide G.O. No. 12500/14-1-80(21)/1975 dated 29-12-1976 for these lapses. Under the circumstances it is difficult to accept remarks relating to (a) straight forwardness of approach and (b) promotion out of turn, of the Chief Conservator of Forests."

२- संख्या इस पत्र की प्राप्ति स्वीकार करें। आपकी चरित्र पंजी में आवश्यक संशोधन कर दिये गये हैं।

८०

(एच० सी० है)

मुख्य अरण्यपाल, उत्तर प्रदेश

लखनऊ ।

संख्या - १०१६-टीसी। १०-४ (स०पाठक) : दिनांकित ।

प्रतिलिपि सचिव, वन(एक) अनुमांग, उ०प० शासन, लखनऊ की शासकीय पत्र संख्या १०१८५। १४-१-८० (२१)। १६७५ दिनांक २ फारवरी ७६ के संदर्भ में सूचनार्थ प्रेषित। श्री पाठक की प्राप्ति स्वीकृति शासन की शीघ्र ही में जावेगी।

(एच० सी० है)

मुख्य अरण्यपाल, उत्तर प्रदेश

लखनऊ ।

(सत्य प्रतिलिपि)



१८४

१८५

इन दि आनरेबुल हाई कोर्ट आफा जुहीकेवर स्ट इलाहाबाद
(लखनऊ बैच), लखनऊ ।

रिट पिटीशन नं० आफा १८८१ ।

सचिवानन्द पाठक - - - - - पिटीशनर
बनाम

स्टेट आफा य०पी० स्प० अदसै । - - - अप०पाटीज

अनेकजर नं० ३
ज्ञ-०-०-०-०-०-०-०-०

सेवा में,

माननीय कन पन्नी महोदय,
उत्तर प्रदेश शासन,
लखनऊ ।

झारा:- उचित मार्ग ।

विषय:- श्री सचिवानन्द पाठक, उप-अरण्यपाल की भारतीय वन सेवा के वरिष्ठ वैतनमान में चयन श्रेणी में नियुक्ति ।

माननीय महोदय,

अत्यन्त विनप्रता पूर्वक आपकी सेवा में मैं, सू पाठक, उप-अरण्यपाल नियमांकित निवैदन करने की इजाजत चाहता हूँ:-

(१) प्रार्थी भारतीय वन सेवा के उत्तर प्रदेश सर्वर्गी में उप-अरण्यपाल के स्थाई पद पर नियुक्त है ।

(२) वर्ष १८७६-७७ हेतु श्री न० प्र० त्रिपाठी, वन सचिव झारा प्रार्थी की चरित्र पंजिका में अंकित एक प्रतिकूल प्रविष्ट जनवरी, १८७८ में प्रार्थी को प्राप्त हुई थी ।

(३) यह प्रविष्ट अस्तिल भारतीय सेवा (चरित्र पंजी) नियमावली १८७० के नियम द(१) के अनुसार संसूचित न होने के कारण प्रार्थी ने अपने पत्रांक -१४११ दिनांक २० मार्च १८७८ झारा नियमानुसार पूरी प्रविष्ट दिये जाने की प्रार्थना की ।

(४) प्रार्थना के बावजूद भी नियमानुसार प्रविष्ट संसूचित नहीं की गई ।

(५) अस्तिल, मई १८७८ में भारतीय वन सेवा के उप-अरण्यपालों में से चयन श्रेणी हेतु चुनाव कर लिया गया। यह चुनाव केवल चरित्र पंजियों के आधार पर किया गया ।

-2-

(६) बाद में प्रतिकूल प्रविष्टि पर किये गये प्रार्थी के रिप्रेजेन्टेशन पर राज्य पाल महोदय ने १९७६-७७ की प्रविष्टि में से पूरी की पूरी प्रतिकूल अंश विलुप्त किये जाने का आदेश फरवरी, ७६ में दे दिया ।

(७) प्रतिकूल प्रविष्टि के विरुद्ध रिप्रेजेन्टेशन पैदिंग होने पर भी उसी प्रविष्टि के आधार पर प्रार्थी को चुनाव में रिजेक्ट कर दिया गया, ऐसा करना अवैध था ।

(८) अप्रैल-मई ७८ के चयन के नतीजे में जुलाई १९७७ में मौजूद १६ में से केवल ११ स्थान भरे गये थे, ५ जगहें खाली छोड़ दी गयी थीं ।

(९) उक्त ११ तैनातियाँ में से ४ अधिकारी मुक्त से जूनियर तैनात किये गये ।

(१०) जबकि प्रार्थी की वह प्रतिकूल प्रविष्टि, जिसकी बिना पर प्रार्थी को चयन ऐण्डी में नहीं लिया गया, विलुप्त (एक्सपन्ज) करदी गयी है, तो जुलाई १९७७ से मारतीय वन सेवा के चयन ऐण्डी वैतन मान में खाली चली आ रही ५ जगहों में से एक में प्रार्थी की नियुक्ति किये जाने हेतु चयन का पुनरीदाण किया जाना ही वैध होगा । व्याँकि प्रतिकूल प्रविष्टि के विलुप्त होने पर यह माना जाता है कि ऐसी विलुप्त हुई प्रविष्टि किसी समय भी चरित्र पंजी में मौजूद नहीं थी । अतः अप्रैल-मई १९७८ के चयन के सम्म प्रार्थी की चरित्र पंजी उक्त विलुप्त (एक्सपन्ज) हुई प्रविष्टि के बिना देखी जानी चाहिये थी । उच्चतम न्यायालय के फैसला में भी ऐसी ही रूलिंग दी जा चुकी है ।

प्रार्थना
००००००००

उपरोक्त तथ्याँ के आधार पर सादर प्रार्थना है कि प्रार्थी के मामले पर सहमति पूर्वक विचार कर दिन १२-७-१९७७ से अब भी उपलब्ध ५ खाली जगहों में से एक पर उसे तैनात करने की महती कृपा की जावे ।

प्रार्थी

(सचिवानन्द पाठक)
मारतीय वन सेवा
उप-अध्यपाल

६ जून, १९७६

अग्रिम प्रति माननीय वन मन्त्री जी की सेवा में प्रेषित ।

(सत्यप्रतिलिपि)

ਇਨ ਦਿ ਆਨੰਦੇਕੁਲ ਹਾਵੀ ਕੌਟੀ ਆਫ ਜੂਡੀਕੈਵਰ ਏਟ ਵਲਾਹਾਬਾਦ
(ਲਖਨਾਊ ਬੈਂਚ), ਲਖਨਾਊ ।

रिटिप्रिटेशन नं० आफ इद्दू ।

सच्चिदानन्द पाठ्क - - - - पिटीशनर

ବନାମ

स्टैट आफा यू०पी०एण्ड अर्दस्स । - - - अपौ०पार्टीज

અનેકજર નંબર ૪

संख्या-२६७। १४-१-८१-३० (५)। १६७६

प्रैषाक,

श्री बसन्त बल्लभ फालिद्याल,
संयुक्त सचिव,
उत्तर प्रदेश शासन ।

सेवा में

मुख्य अरण्यपाल,
उत्तर प्रदेश, लखनऊ ।

ਵਨ ਅਨੁਮਾਗ-(੧) ਦਿਨਾਂਕ, ਲਖਨਊ, ੧੫. ਜਨਵਰੀ, ੧੯੬੯

विषय:- भारतीय वन सेवा संवर्ग में सेलिक्शन ग्रैंड के पदों पर स्थानापन्न नियुक्ति।

महोदय,

उपर्युक्त विषयक शासनादेश संघ्या - ६१८२। १४-१-७८-३० (१०)। १९७७, दिनांक, २६ अक्टूबर, १९७८ के क्रम में मुक्त यह कहने का निषेश हुआ है कि राज्य पाल फ्रौद्य ने भारतीय वन सेवा उत्तर प्रदेश संवर्ग में स्लैक्शन ग्रेड (वैतन मान-रु १६५०-७५-१८००) की उपलब्ध रिकित्यों में भारतीय वन सेवा उत्तर प्रदेश संवर्ग के वरिष्ठ काल वैतनमान के निम्नलिखित वनाधिकारियों को, प्रत्येक के नाम के सम्मान के अंकित तिथि से स्थानापन्न रूप से नियुक्ति किये जाने के आदेश प्रदान किये हैं :-

(१)	श्री वाई० सी० राय	दिनांक १२-७-१९७७ से
(२)	श्री जगत नारायण	दिनांक १२-७-१९७७ से
(३)	श्री राम सौच सिंह	दिनांक १२-७-१९७७ से
(४)	श्री सच्चिदानन्द पाठक	दिनांक २६-८-१९७८ से
(५)	श्री उर्वा० दत्त जौशी	दिनांक २६-८-१९७८ से

२- अनुरोध है कि कृप्या संबंधित अधिकारियों को उपरोक्तानुसार सूचित कर दें तथा उन्हें हस श्रादेश की अतिवित्त प्रतियाँ (संलग्न) भी उपलब्ध कराएँ।

भवदीय,

४०। बसन्त बल्लभ फलिड्याल संयक्त सचिव

संख्या T-२६७ (१) | १४-१-८१-३० (पू.) | १६७६

प्रतिलिपि निम्नलिखित को सूचनार्थी एवं आवश्यक कार्यवाही हेतु प्रेषितः-

- (१) सचिव, भारत सरकार, कार्मिक एवं प्रशासनिक सुधार विभाग, गृह मन्त्रालय नहीं दिल्ली ।
- (२) सचिव, भारत सरकार, कृषि मन्त्रालय, कृषि एवं सहकारिता विभाग, नहीं दिल्ली ।
- (३) महालेखाकार-३, उत्तर प्रदेश, गजेटेड आफिट अनुभाग, इलाहाबाद ।
- (४) सम्बन्धित अधिकारी ।
- (५) व्यक्ति पत्रावली ।

आत्मा से,

४० बसन्त बल्लभ फालिद्याल,

संयुक्त सचिव

(सत्य प्रतिलिपि)



21

In The Hon'ble High Court of Judicature at Allahabad
(Lucknow Bench)- Lucknow.

A32 8842

Writ Petition No. of 1981.

Sachida Nand Pathak

Peptitioner.

versus

State of Uttar Pradesh

Opposite parties.

ANNEXURE NO. 5

To,

The Forest Secretary,
Government of Uttar Pradesh,
Lucknow.

Through proper channel.

Subject:

Representation of Sri S. Pathak I.F.S.
regarding appointment to the selection grade
effective 12.7.1977.

Sir;

Respect fully I beg to state as under for favour
of issuing favourable orders:-

(1) That I joined the I.F.S. on its formation in October,
1966 as an Initial Recruit and I have been working since
then in the senior scale of Rs. 1100-1600/-

(2) That a selection grade of Rs. 1650-75-1800 was
introduced in the senior scale of the I.F.S. w.e.f.
12.7.1977 and 16 posts were sanctioned in that grade
in the U.P. Cadre of the I.F.S.

for me

A33

3/3

(3) that by the virtue of my seniority as a Deputy Conservator in the U.P. Cadre of the I.F.S. I was eligible for appointment to one of these 10 selection grade posts that became available w.e.f. 12.7.1977.

(4) That a selection for appointment to the said 10 posts of selection grade was held in April 1978 and I was not selected by the selection committee for any of the posts mentioned above.

(5) That it was later known that an adverse remark recorded in my character roll for 1976-77 by the Forest Secretary was placed before the selection committee at the time of consideration of my name for appointment in the selection grade of the senior scale of the I.F.S.

(6) That the said adverse remarks of the then Forest Secretary in my confidential roll of 1976-77 was recorded in December 1977 and was communicated to me in January 1978 by the C.C.P.

(7) That the representation against the aforesaid adverse remark was pending disposal with the Government at the time the selection was held.

(8) That the adverse remarks of the then Forest Secretary in my confidential roll of 1976-77 should have neither been placed before the selection committee nor the selection Committee should have considered the adverse remark of the then Forest Secretary in my confidential roll of 1976-77 unless my representation

to me

P.S.Y

1/1

filed under the All India Services (Confidential rolls) Rules, 1970 was a show of under rule 10 of the rules supra.

(9) That the adverse remark of the then Forest Secretary in my confidential roll of 1976-77 was subsequently expunged by Govt. order No. 10135/14-1-30(31)/1975. dated 3-2-1979 made under rule 10 of the A.I.S. (C) Rules 1970.

(10) That thereafter a representation was submitted by me to the then Van Mantri Ji on 6.6.79 requesting there in that I should be a point in the selection grade of the senior scale of the I.F.C. against one of the 16 posts sanctioned from 13.7.77 on the ground that if the impugned adverse entry of the then Forest Secretary in my Confidential roll of 1976-77 were ignored as being only provisional till decision of the Govt. under rule 10 supra. I would have been selected for a appointment to the selection grade in one of the available 16 vacancies.

(11) That Van Mantri Ji assured me that he would get my representation examined by the Aarmil Vibhag of the Government and dispose it of justly.

(12) That I again met the then Van Mantri Ji ~~xxxxxxxxxx~~ in August 1979 in this connection when I was informed that my representation had been favourably disposed of and that formal orders of my appointment to the selection grade from 13.7.77 would soon issue.

(13) That I, thereafter, met the then Forest Secretary Sri T.N. Ihar and requested him for suitable orders in the matter when he informed me that the a

AB5

AB6

orders would be passed after formal approval of my name by the Departmental Selection Committee.

(14) That formal orders on my representation handed over to Van Mantri Ji in June, 79 and mentioned in para 10 above have not yet been issued by the Government and I was all along expecting Govt. orders for my appointment in the selection grade of the senior scale of the I.F.S. with effect from 12.7.77.

(15) That contrary to my just and equitable demand of my appointment in the selection grade w.e.f. 12.7.77 and against the assurance given by the then Van Mantri Ji and the then Forest Secretary Notification No. 297/ 14-1-81-30 (5) 1979, dated 15.1.1981 has been issued by the Government appointing me in the said selection grade w.e.f. 29.8.79 although 3 other officers namely Parvasri Y.C. Rai Jagat Natain and R.S. Singh have been appointed from 12.7. 77.

(16) That I should also have been appointed in the said selection grade of the I.F.S. w.e.f. 12.7. 77 as ordered by the then Van Mantri Ji on the advice of Pathak Vibagh. My appointment in the said selection grade of the I.F.S. w.e.f. 29.8. 78 is contrary to rules and canons of natural justice.

PRAYER

It is therefore prayer submitted that my appointment in the selection grade of the senior scale of the I.F.S. with effect from 29.8.78 may kindly be reviewed and I may be appointed in the said selection grade with effect from 12.7. 77 against one of the two vacancies out of 16 for the U.P. Cadre of the I.F.S. still available w.e.f. 12.7. 77.

for me

Yours faithfully,

(S. PATHAK)

Deputy Conservator of Forests,
Forests Resources Survey Division

U.P. Lucknow

ਇਨ ਦਿ ਆਨੰਦ ਕੌਰੀ ਆਫ ਜੂਡੀਕੈਵਰ ਏਟ ਵਲਾਹਾਬਾਦ
(ਲਖਨਾਊ ਬੰਚ), ਲਖਨਾਊ ।

रिटप्रिटीशन नं०

ଆପଣ ୧୯୮୧ ।

सच्चिदानन्द पाठ्क - -

पिटीशनर

बनाम

स्टैट आफ य०पी०एण्ड अदर्सि ।

ଆପାତ୍ତିଜ

अनेकजर नं०६

सत्या में

वन सचिव प्रहोदय
उत्तर प्रदेश शासन
लखनऊ

द्वारा:- उचित प्राध्यम ।

विषय:- श्री सच्चिदानन्द पाठ्क, उप अरण्यपाल का भारतीय वन स्कूल की
क्या श्रेष्ठी मे १२-७-१९७७ से पदीन्नति संबंधी रिपोर्टेशन।

संक्षेप:- (१) श्री पाठक का वन मंत्री जी को सम्बोधित दिनांक ६ जून, १९७६ का रिपोर्टेशन।

(२) वन-सचिव की सम्बोधित २६-१-८१ का स्मरण पत्र सर्व-

(3) वन मंत्री जी की सम्बोधित रट-४-इ१ का प्रतिवेदन।

सहैदय

विनप्रतापूर्वक आपका, ध्यान उपरीक्त संभर्ति की और आकर्षित करते हुए सादर निवेदन है कि भारतीय वन सेवा के वरिष्ठ वेतनमान की चयन श्रेणी में १२-७-१६७७ को भरी नियुक्ति किये जाने विषयक रिपोर्टेशन का निस्तारण अब यथाशीघ्र करके मुक्ते सूचित किये जाने की महती कृपा की जाय ।

इस सम्बन्ध में यह भी निवेदन है कि गत मास इस कैस के सारांश से अवगत कराते हुए मामूले के शीघ्र निस्तारण हेतु आपसे भेंट कर अधिक प्रार्थना भी की जा चकी है।

भवदीय

लखनऊ

ह० स० पाठ्क

दिनांक २१-६-८१

। सू पाठक । मातृवृत्ते
डिप्टी कन्जरैटर ब्राफ फारेस्ट
७।२ डालीबाग, लखनऊ ।

.(सत्यप्रतिलिपि)

A37

इन दिशानके बुल हाई कोर्ट शाफ्ट जुडी केवर ऐट इलाहाबाद,
लखनऊ बैच, लखनऊ।

हिट पिटी शन नं० शाफ्ट-१६८९

सचिवानन्द पाठक

पिटी शनर

बनाम

स्टेट शाफ्ट यू०पी० व अन्य

शपौजिट पाठीजू

शनैर्जूर नं०-७

कार्यालय मुख्य अरण्डपाला, उत्तर प्रदेश, लखनऊ।
पत्र संख्या -१६२४। १-२-६४, दिनांक लखनऊ अक्टूबर १६, १६८९।

सेवा में,

१-श्री एस०पाठक, श्र००ब०स०

७२, डा लौ बाग, लखनऊ।

२- श्री एस०पाठक,

प्रभागीय निदेशक,

सामाजिक वानिकी वन प्रभाग,

कानपुर।

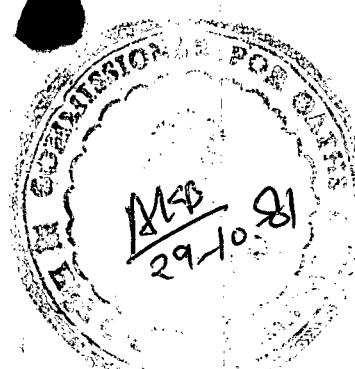
विषय:- भारतीय वन सेवा की चयन शैषी में दिनांक १२-७-७७ से
नियुक्ति के सम्बन्ध में श्री एस०पाठक, उप अरण्डपाल का
प्रत्यावैदन।

सन्दर्भ:- शापका प्रृत्यावैदन दिनांक २८-४-१६८९।

स्मारा।

शापके उपरान्त प्रत्यावैदन के सन्दर्भ में शासन ने शासनादेश
संख्या-३०३३। १४-१-३०(१०)। ७७ टौ०स०० दिनांक ५-६-१६८९ द्वारा
सुचित किया है कि शासन ने शापके प्रश्नगत प्रत्यावैदन पर पूछर्सि से
विचार करने के उपरान्त उसे अस्वीकृत कर दिया है।

ह०। दैवन्बमूर्णा मिश,
अरण्डपाल, मुख्यालय एवं मुख्य अरण्डपाल
के सहायक, उत्तर प्रदेश, लखनऊ।



-२-

पत्र संख्या - (१) १-२-६४, तद् दिनांक,

प्रतिलिपि सचिव, उत्तर प्रदेश शासन, वन अनुभाग-१, लखनऊ-
की शासनादेश संख्या ३०३३। १४-१-३० (१०)। ७७ हेठोसी० दिनांक
५-६-१९८१ के सन्दर्भ में सूचनार्थ पैरिषद् ।

(दैवी-द्व पूषाणा शिक्षा)

श्रीराधरपाल, मुख्यालय एवं
मुख्य श्रीराधरपाल के सहायक,
उत्तर प्रदेश, लखनऊ।

संख्या प्रतिलिपि

MCS
29-10-81

Kumar

ब अदालत श्रीमान

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

महोदय

वादी(मुद्दे)

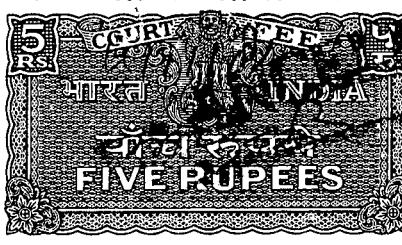
प्रतिवादी (मुद्दालेह)

का वकालतनामा

A39

W.P.

रु. 150/-



1C/25-

म
८/१५१

५१

Sachidanand Patake वादी (मुद्दे)
बनाम

B4/1

W.P.

रु. 150/-, State of U.P. vs. the प्रतिवादी (मुद्दालेह)

नं० मुकदमा सन् १९ पेशी की ता० १९ ई०
ऊपर लिखे मुकदमा में अपनी ओर से श्री प्रदीप लाल पांडा, के
जी. लाल के जीवास्तव लॉब्लॉयड एडवोकेट
महोदय
श्री. लाल के. पांडा लॉब्लॉयड वकील
को अपना वकील नियुक्त करके प्रतिज्ञा [इकरार] करता हूँ और
लिखे देता हूँ इस मुकदमा में वकील महोदय स्वयं अथवा अन्य
वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या अन्य
कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी
जारी करावें और रूपया वसूल करें या सुलहनामा या इकबाल
दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने
हस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा उठावें
या कोई रूपया जमा करें या हमारी या विद्वानी [फरीकसानी] का
दाखिल किया रूपया 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

10/11/2017

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

१९ ई०

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

4614 90/11
Civil Misc. Appln. No. (W) 1983

State of U.P. & others. .. Applicants

Inre;

Writ Petition No. 5377 of 1981

Sachidanand Pathak .. Petitioner.

Versus

State of U.P. & others. .. Opp. Parties.

Application for condonation of delay in filing
counter affidavit.

The applicant abovenamed most respectfully
begs to state as under:-

That for the facts and circumstances stated in
the accompanying counter affidavit is most respectfully
prayed that this Hon'ble High Court may be graciously
pleased to condone the delay in filing the counter affidavit,
and the same is liable to be taken on record.

Lucknow Dated:
Sept. 3, 1983

J. Bhalla
Counsel for the applicants.

5/1

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

5/1

WRIT PETITION NO. 5377 of 1981

Sachidanand Pathak son of Late Ganga

Sahai Pathak, Deputy Conservator of Forests,
at present posted as Divisional Director,
Social Forestry Division, Kanpur. Petitioner.

1983
AFFIDAVIT
HIGH COURT
ALLAHABAD

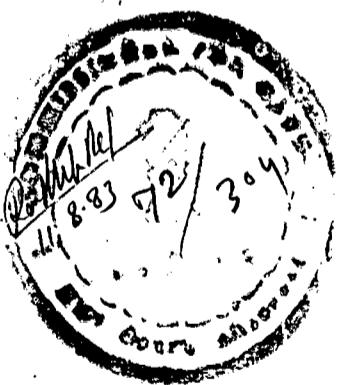
Versus.

1. State of U.P. Department of
Forests, Government of U.P.,
Lucknow.
2. Union of India, Department of
Personnel and Administrative Reforms,
Ministry of Home Affairs, through
its secretary, New Delhi. Opposite Parties.

.....
COUNTER AFFIDAVIT ON BEHALF OF OPPOSITE PART NO. 1

I, Bhuwan Chandra Joshi, aged about 43 years,
son of Sri Mathura Dutt Joshi working as Assistant in
the Government Secretariat Van Anubhag-1, U.P. Sashan
Lucknow do hereby solemnly affirm and state on oath
as under:-

1. That the deponent is working as assistant
in Secretariat Van Anubhag-1, in the Office of U.P.
Sashan, Lucknow and is fully conversant with the facts
of the case.
2. That the deponent has read the writ petition
filed by the petitioner and has understood the contents
thereof.
3. That the contents of para 1 as stated are not
admitted. The petitioner was appointed as Forest
Ranger in the year 1947 and later on he was promoted
to U.P. Forest Service as Assistant Conservator of
Forests with effect from 14.11.56 and was subsequently
selected in the Indian Forest Service with effect from
1.10.1966 on initial recruitment. 2



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4. That the contents of paras 2,3 and 4 are not disputed.
5. That the contents of para 5 of the writ petition are not disputed.
6. That with regard to the contents of para 6 it is stated that the Adverse entry was communicated as per Rule 8(1) of I.F.S. (C.R.S) Rules, 1970.
7. That the contents of para 7 of writ petition are admitted.
8. That the contents of para 8 of the writ petition are admitted to the extent that the petitioner was one of the eligible candidates for appointment to the selection grade. Rest of the contents of para 8 are denied. In fact, for giving selection grade, a selection committee was constituted as per rules. Over all performances were considered by the selection committee and the petitioner was not found fit after due consideration. It is not only character roll entries but the over all performance of the candidates were considered. In fact for providing selection grade a selection committee duly constituted considered the eligible officers for appointment on the basis of merit with due regard to seniority as the criteria. On that basis the petitioner was not found suitable by the selection committee for selection.
9. That the contents of para 9 of the writ petition are admitted.
10. That the contents of para 10 of the writ petition are admitted.

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11. Admitted to the extent of constitution of the selection committee. The adverse entry was recorded in petitioners C.R. on 27.6.77 and it was communicated on 21.12.1977. Final representation against that adverse entry was submitted by the petitioner on 1.7.1978 as already admitted by him in para 6 above whereas the selection for the post was held on 10.4.78 (i.e. prior to the representation for expunction of the adverse entry) hence it can not be said that the representation of the petitioner was pending before Govt.

12. That the contents of para 12 are admitted to the extent that two writ petitions are pending decision in this Hon'ble High Court at Lucknow and the matter is subjudice, hence no comments. These are numbered as writ petition no. 2598/78 and writ petition no. 1903/81.

That rest of the contents of para 12 are not admitted. It is wrong to say that the then Forest Secretary Sri N.P. Tripathi was annoyed with the petitioner. The details of Khatima Tehsil of Nainital District cited herein are out of context and do not relate to this case. The petitioner has cited this instance only to add colour to the case. The allegations of mala fide are wrong and incorrect and are denied. It is also admitted that the jurisdiction of U.P. Public Service Tribunal was challenged by the State Govt. which was later on dismissed. It is wrong to say that the adverse remarks of 76-77 was not correct. The decision of selection committee was final and it was never motivated otherwise by the then Forest Secretary.

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13. That in contents of para 13 of writ petition are admitted to the extent that the representation of the petitioner was rejected after due consideration.

14. That in reply of contents of para 14 of writ petition it is cited that since the petitioner was not selected by the Selection Committee & juniors named by the petitioner in the para were selected by the selection committee and they were appointed in selection grade. The posts which were left vacant were reserved for officers senior to the petitioner whose cases were being scrutinised in connection ~~with~~ disciplinary or other enquiry matters.

15. That in reply to contents of para 15 of writ petition it is to say that the persons mentioned by the petitioner were selected on the basis of the selection held on 10.4.1978.

16. That in reply contents of para 16 of writ petition it is to say that after the exhaustion of the selection list dt. 10.4.1978 the case of the petitioner was considered for selection for the vacancy existed with retrospective effect (i.e. 29.8.78).

17. That in reply of para 17 of writ petition as already stated earlier the previous selection was made on 10.4.1978 at that time there was adverse entry recorded in the C.R. of the petitioner & the entry was expunged on 2-2-1979~~01~~, hence the selection made earlier can not be undone. In due course when the vacancy existed petitioner was selected on the Selection grade post w.e.f. 29.8.78.

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18. That in reply to para 18 of writ petition it is submitted that due to enquiries their cases were not taken up at that time but later on they were allowed ~~selection~~ grade.

19. That contents of para 19 of writ petition are admitted.

20. That the contents of para 20 of the writ petition are not disputed.

21. That the contents of para 21 are denied. Selection grade is given by the selection committee and its decisions are final and are based on over all performance of the officer concerned. It is wrong to say that the order rejecting petitioner's representation is wrong or the petitioner has been discriminated in the matter of employment. It was based on the recommendations of the Committee constituted as per ~~work~~ of the rules pertaining to the I.F.S.

22. That in reply to contents of para 22 of writ petition this much is admitted that petitioner was not given selection grade w.e.f. 12.7.77. It is denied that any assurances were given by Forest Minister or Forestry Secretary regarding this. Reply to other allegations have already been given in previous paras selection grade is given on the basis of recommendations of the selection committee Remaining contents of this para ~~do~~ are denied.

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23. That the contents of para 23 of the writ petition are denied. The grounds mentioned in the writ petition are untenable in law and the writ petition is liable to be dismissed with costs. The petitioner was considered fit for selection grade only from 29.8.78 as per recommendations of selection committee which was constituted in accordance with the provisions of Indian Forest Service (Pay) III Amendment Rules, 1977.

Lucknow: August 11, 1983

3 for argu

DEPONENT.

I, the deponent above named do hereby verify that the contents of paragraphs 1 and 2 of the affidavit are true to my personal knowledge and the contents of paragraph 22 of the affidavit are true to my information derived from the records which are believed by me to be true and the contents of paragraphs 23 of the affidavit are based on legal advice. No part of it is false and nothing material has been concealed. So help me God.

Lucknow: August 11, 1983

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DEPONENT.

I identify the deponent who has signed before me.

3 for argu
Chief Standing Counsel's Officer.

Solemnly affirmed before me on 11.8.83 at 2.00 11.30 AM p.m. by Bhawan Chandra Joshi the deponent who is identified by Sri K.K. Saxena, Clerk of Chief Standing Counsel's High Court Allahabad, Lucknow Bench Lucknow, I have satisfied myself by examining the deponent that he understands the contents of affidavit which has been read out and explained, by me.

High Court, Lucknow Bench,
Lucknow.

3 for argu
Ram Murki Rd.
OATH COMMISSIONER
H. Lucknow Bench
KNOW

No. 72/34
Date 11.8.83

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

6/1
6/1

Civil No. 5377 of 1981

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131

Sachidanand Pathak .. Petitioner

versus

State of Uttar Pradesh .. Opp. Parties.

REGISTRAR,

I AM appearing as Chief Standing Counsel, on
behalf of Applicant/Respondent/Opp. Parties ..!

Brijesh Kumar

Chief Standing Counsel/
Addl. Chief Standing Counsel.

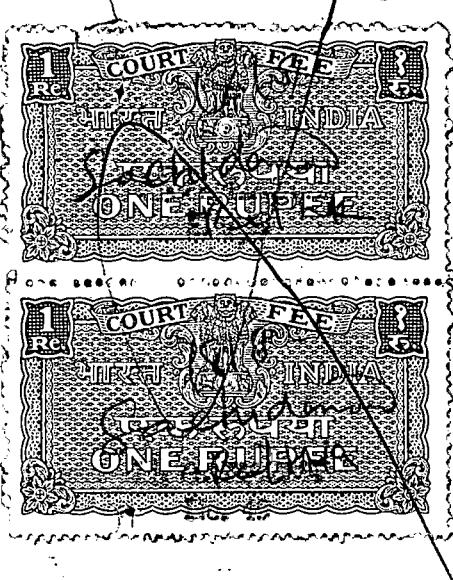
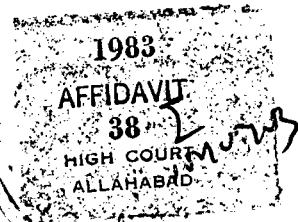
Dated : 6/9

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Aug

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

Writ petition No. 5377 of 1981



Sachidanand Pathak

petitioner

versus

State of U.P. and others

opposite parties

REJOINDER AFFIDAVIT

I, Sachidanand Pathak aged about 58 years son of late Shri Ganga Sahai Pathak, resident of Social Forestry Division, Kanpur do hereby solemnly affirm and state as under:

- 1 That the deponent is the petitioner in the above noted writ petition and is fully conversant with the facts of the case.
- 2 That the contents of para 1 of the counter affidavit need no reply.
- 3 That the contents of para 2 of the counter affidavit need no reply.
- 4 That the contents of para 3 of the counter affidavit need no reply.

To W.M.D.



5. That the contents of para 4 of the counter affidavit need no reply.

6. That the contents of para 5 of the counter affidavit need no reply.

7. That the contents of para 6 of the writ petition are reiterated and those of para 6 of the counter affidavit are denied. It is incorrect to say that the adverse entry was communicated to the deponent as per Rule 8(1) of the Indian Forest Service (IFS) Rules 1970 (hereinafter referred to as the said Rules).

8. That the contents of para 7 of the counter affidavit need no reply.

9. That the contents of para 8 of the writ petition are reiterated and those of para 8 of the counter affidavit are denied. It is incorrect to say that over-all performance was considered by the Selection Committee and the deponent was not found fit after due consideration. It was only because of the adverse entry that the deponent was passed over by the Selection Committee of which Shri N.P. Tripathi was one of the Members. The deponent craves leave of this hon'ble court to summon the records of the proceedings of the Selection Committee for perusal of this hon'ble

for Union

court the reasons for not giving the selection grade to the deponent. As a matter of fact the only consideration which weighed the Selection Committee was the adverse entry. The allegations to the contrary are incorrect and are denied. It is rather strange that the opposite party no. 1 has stated that the Selection Committee considered the over-all performance of the deponent when it has already admitted in reply to para 3 of the writ petition that the work of the deponent was highly appreciated and his character roll remained unblemished. Under these circumstances the opposite party no. 1 has not mentioned as to what was the over-all performance which was considered by the Selection Committee to decide that the deponent was found unsuitable as compared to other persons including his juniors.

10 That the contents of para 9 of the counter affidavit need no reply.

11 That the contents of para 10 of the counter affidavit need no reply.

12 That the contents of para 11 of the writ petition are reiterated and those of para 11 of the counter affidavit are denied. As already stated in the writ petition and not denied by the opposite party no. 1, the deponent had ~~is~~ already made representation in March 1978 for communicating

for me

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the substance of the entire entry under Rule 8(1) of the said Rules but the deponent was not favoured with the reply. The deponent thus again made a representation on 1-7-1978 which which is also corroborated by admission of the fact by the opposite party no. 1, that final representation was made on 1-7-1978. It may not be out of place to mention that one Shri U.D. Joshi, Deputy Conservator of Forest, Indian Forest Service, was also communicated was also communicated the adverse entry without giving substance of the entire entry. He, therefore, made a representation as was done by the deponent in February 1978 on which substance of the adverse entry was communicated to him in July 1978 after which he had made final representation on which action was taken. In this view of the matter it cannot be said that the deponent was also conveyed full entry and entire substance as is required under Rules. The allegations to the contrary are incorrect and denied. Non communication of substance of the ~~adverse~~ ^{entire} entry has resulted great mis-carriage and caused prejudice to the interest of the deponent. Unless full entry is communicated, it cannot be said that there was any communication in the eyes of law and there being no adverse entry on the date of selection, there was no question for passing over the deponent on the basis of such an adverse entry which cannot be said to have been communicated in accordance with law. In any case

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To whom

the adverse entry having been expunged later on the deponent was entitled for the Selection Grade with effect from 12-7-1977.

13 That the contents of para 12 of the writ petition are reiterated and those of para 12 of the counter affidavit are denied. The deponent to the counter affidavit could have no authority to deny these allegations as it is only Shri N.P. Tripathi who can refute the same. However, it is stated for the purposes of the present case, that the entry which was implemented was given by Shri N.P. Tripathi, even after the recommendations of the Chief Conservator of Forests who recommended out of turn promotion of the deponent because of his meritorious work that such an adverse entry was given by Shri N.P. Tripathi. It is further stated that the deponent to the counter affidavit has no authority to say, even after expunging the adverse entry that it was correct. This averment itself speaks of malafide and is also denied.

14 That the contents of para 13 of the writ petition are reiterated and those of para 13 of the counter affidavit are denied. The representation was decided without application of mind and by a non speaking order.

15 That the contents of para 14 of the writ

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petition are reiterated and those of para 14 of the counter affidavit are denied. It is reiterated that the Selection Committee did not act in accordance with law and it did not take into consideration the representation made by the deponent made in the month of March 1978 in which the deponent has specifically raised grievance that the deponent has not been favoured with the entire substance of the ~~adverse~~ entry as is required under Rules. The assessment of the Selection Committee cannot be said to be correct. Equally incorrect is to say that the posts which were left vacant were reserved for the officers senior to the deponent whose cases were being scrutinised in connection with disciplinary proceedings and other enquiry matters. In fact certain posts which were left vacant were left for the persons who were junior to the deponent and were having no better service record. Names of Shri C.L. Bhasin and Shri S.P. Choudhary are being mentioned for the purpose.

16 That the contents of para 15 of the writ petition are reiterated and those of para 15 of the counter affidavit are denied. The deponent to the counter affidavit would have given the names of such officers who were given selection grade subsequently when more posts of selection grade were created or fell vacant after the selections which were held on 10-4-1978, as such the contents of para 15 of the counter affidavit ~~xx~~ cannot be said to be correct.

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17 That the contents of para 16 of the writ petition are reiterated and those of para 16 of the counter affidavit are denied. It is stated that the ^{more} selection grad posts were created after the selection held on ~~10~~ 10-4-1978. It is mis -- conceived to say that after exhaustion of the selection list on 10-4-1978, the case of the deponent was considered by the selection committee with retrospective effect from 29-8-1978.

18 That the contents of para 17 of the writ petition are reiterated and those of para 17 of the counter affidavit are denied. ~~There~~ In view of the facts stated above no further reply is needed.

19 That the contents of para 18 of the writ petition are reiterated and those of para 18 of the counter affidavit are denied.

19 That the contents of para 19 of the ~~writ~~ counter affidavit need no reply.

20 That the contents of para 20 of the counter affidavit need no reply.

21 That the contents of para 21 of the writ petition are reiterated and those of para 21 of the counter affidavit are denied. In view of the fact that the deponent to the counter affidavit has not come with correct facts and has not correctly given the proceedings of the

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selection committee which the deponent verily believes were swayed away only for the adverse entry as no reasons have been given. It is respectfully submitted that the opposite parties be directed to produce the record of the selection which was held on 10-4-1978.

23 That the contents of para 22 of the writ petition are reiterated and those of para 22 of the counter affidavit are denied.

24 That the contents of para 23 of the writ petition are reiterated and those of para 23 of the counter affidavit are denied.

25 That the deponent further submits that even till date two posts of the selection grade are lying vacant with effect from 12-7-1977 and the deponent ought to have been given selection grade on one of these posts with effect from 12-7-1977.

26 That the action of the opposite parties is arbitrary and is not sustainable under law.

Lucknow

dated 18.8.1983

Deponent

for W.M.S.

I, the deponent above named do hereby verify that the contents of paras 14 & 26 of the affidavit are true to my own knowledge, those of paras 14 & 26 are true from perusal of record and those of paras 14 & 26 are true to my belief. No part of it is false

for M.S.

and no material fact has been concealed.

So help me God.

Lucknow.

to me

dated 18.8.1983

Deponent

I, after perusal of record
identify the deponent who has
signed before me.

Dh.Sabu

Advocate

solemnly affirmed before me on 18.8.1983 at 8.30 a.m
by the deponent *Sadanand* who is
identified by Shri *D.R.Khan* Advocate
High Court.

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

Subd 18.8.1983

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

Writ petition No. 5377 of 1981

Sachidanand Pathak

petitioner

versus

State of U.P. and others

opposite parties

REJOINDER AFFIDAVIT

I, Sachidanand Pathak aged about 58 years son of late Shri Ganga Sahai Pathak, resident of Social Forestry Division, Kanpur do hereby solemnly affirm and state as under:

1. That the deponent is the petitioner in the above noted writ petition and is fully conversant with the facts of the case.
2. That the contents of para 1 of the counter affidavit need no reply.
3. That the contents of para 2 of the counter affidavit need no reply.
4. That the contents of para 3 of the counter affidavit need no reply.

5. That the contents of para 4 of the counter affidavit need no reply.
6. That the contents of para 5 of the counter affidavit need no reply.
7. That the contents of para 6 of the writ petition are reiterated and those of para 6 of the counter affidavit are denied. It is incorrect to say that the adverse entry was communicated to the deponent as per Rule 8(1) of the Indian Forest Service (IFS) Rules 1970 (hereinafter referred to as the said Rules).
8. That the contents of para 7 of the counter affidavit need no reply.
9. That the contents of para 8 of the writ petition are reiterated and those of para 8 of the counter affidavit are denied. It is incorrect to say that over-all performance was considered by the Selection Committee and the deponent was not found fit after due consideration. It was only because of the adverse entry that the deponent was passed over by the Selection Committee of which Shri N.P. Tripathi was one of the Members. The deponent craves leave of this hon'ble court to summon the records of the proceedings of the Selection Committee for perusal of this hon'ble

court the reasons for not giving the selection grade to the deponent. As a matter of fact the only consideration which weighed the Selection Committee was the adverse entry. The allegations to the contrary are incorrect and are denied. It is rather strange that the opposite party no. 1 has stated that the Selection Committee considered the over-all performance of the deponent when it has already admitted in reply to para 3 of the writ petition that the work of the deponent was highly appreciated and his character roll remained unblemished. Under these circumstances the opposite party no. 1 has not mentioned as to what was the over-all performance which was considered by the Selection Committee to decide that the deponent was found unsuitable as compared to other persons including his juniors.

10 That the contents of para 9 of the counter affidavit need no reply.

11 That the contents of para 10 of the counter affidavit need no reply.

12 That the contents of para 11 of the writ petition are reiterated and those of para 11 of the counter affidavit are denied. As already stated in the writ petition and not denied by the opposite party no. 1, the deponent had ~~is~~ already made representation in March 1978 for communicating

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the substance of the entire entry under Rule 8(1) of the said Rules but the deponent was not favoured with the reply. The deponent thus again made a representation on 1-7-1978 which which is also corroborated by admission of the fact by the opposite party no. 1, that final representation was made on 1-7-1978. It may not be out of place to mention that one Shri U.D. Joshi, Deputy Conservator of Forest, Indian Forest Service, was also communicated ~~was also communicated~~ the adverse entry without giving substance of the entire entry. He, therefore, made a representation as was done by the deponent in February 1978 on which substance of the adverse entry was communicated to him in July 1978 after which he had made final representation on which action was taken. In this view of the matter it cannot be said that the deponent was also conveyed full entry and entire substance as is required under Rules. The allegations to the contrary are incorrect and denied. Non communication of substance of the ^{entire} adverse entry has resulted great mis-carriage and caused prejudice to the interest of the deponent. Unless full entry is communicated, it cannot be said that there was any communication in the eyes of law and there being no adverse entry on the date of selection, there was no question for passing over the deponent on the basis of such an adverse entry which cannot be said to have been communicated in accordance with law. In any case

the adverse entry having been expunged later on the deponent was entitled for the Selection Grade with effect from 12-7-1977.

13 That the contents of para 12 of the writ petition are reiterated and those of para 12 of the counter affidavit are denied. The deponent to the counter affidavit could have no authority to deny these allegations as it is only Shri N.P. Tripathi who can refute the same. However, it is stated for the purposes of the present case, that the entry which was implemented was given by Shri N.P. Tripathi, even after the recommendations of the Chief Conservator of Forests who recommended cut of turn promotion of the deponent because of his meritorious work that such an adverse entry was given by Shri N.P. Tripathi. It is further stated that the deponent to the counter affidavit has no authority to say, even after expunging the adverse entry that it was correct. This averment itself speaks of malafide and is also denied.

14 That the contents of para 13 of the writ petition are reiterated and those of para 13 of the counter affidavit are denied. The representation was decided without application of mind and by a non speaking order.

15 That the contents of para 14 of the writ

petition are reiterated and those of para 14 of the counter affidavit are denied. It is reiterated that the Selection Committee did not act in accordance with law and it did not take into consideration the representation made by the deponent made in the month of March 1978 in which the deponent has specifically raised grievance that the deponent has not been favoured with the entire substance of the ~~diverse~~ entry as is required under Rules. The assessment of the Selection Committee cannot be said to be correct. Equally incorrect is to say that the posts which were left vacant were reserved for the officers senior to the deponent whose cases were being scrutinised in connection with disciplinary proceedings and other enquiry matters. In fact certain posts which were left vacant were left for the persons who were junior to the deponent and were having no better service record. Names of Shri C.L. Bhasin and Shri S.P. Choudhary are being mentioned for the purpose,

16. That the contents of para 15 of the writ petition are reiterated and those of para 15 of the counter affidavit are denied. The deponent to the counter affidavit would have given the names of such officers who were given selection grade subsequently when more posts of selection grade were created or fell vacant after the selections which were held on 10-4-1978, as such the contents of para 15 of the counter affidavit ~~xx~~ cannot be said to be correct.

17 That the contents of para 16 of the writ petition are reiterated and those of para 16 of the counter affidavit are denied. It is stated that ^{more} selection grad. posts were created after the selection held on 10-4-1978. It is mis -- conceived to say that after exhaustion of the selection list on 10-4-1978, the case of the deponent was considered by the selection committee with retrospective effect from 29-8-1978.

18 That the contents of para 17 of the writ petition are reiterated and those of para 17 of the counter affidavit are denied. ~~Therexis~~ In view of the facts stated above no further reply is needed.

19 That the contents of para 18 of the writ petition are reiterated and those of para 18 of the counter affidavit are denied.

19 That the contents of para 19 of the ~~writ~~ counter affidavit need no reply.

20 That the contents of para 20 of the counter affidavit need no reply.

21 That the contents of para 21 of the writ petition are reiterated and those of para 21 of the counter affidavit are denied. In view of the fact that the deponent to the counter affidavit has not come with correct facts and has not correctly given the proceedings of the

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selection committee which the deponent varily believes were swayed away only for the adverse entry as no reasons have been given. It is respectfully submitted that the opposite parties be directed to produce the record of the selection which was held on 10-4-1978.

23 That the contents of para 22 of the writ petition are reiterated and those of para 22 of the counter affidavit are denied.

24 That the contents of para 23 of the writ petition are reiterated and those of para 23 of the counter affidavit are denied.

25 That the deponent further submits that even till date two posts of the selection grade are lying vacant with effect from 12-7-1977 and the deponent ought to have been given selection grade on one of these posts with effect from 12-7-1977.

26 That the action of the opposite parties is arbitrary and is not sustainable under law.

Lucknow

dated 1983

Deponent

I, the deponent above named do hereby verify that the contents of paras of the affidavit are true to my own knowledge, those of paras are true from perusal of record and those of paras are true to my belief. No part of it is false

and no material fact has been concealed.
So help me God.

Lucknow.

dated 17, 8, 1983

Deponent

I, after perusal of record
identify the deponent who has
signed before me.

Advocate

solemnly affirmed before me on at
by the deponent who is
identified by Shri Advocate
High Court.

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