

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, MOTI MAHAL, LUCKNOW.

DATED: 24/11/94

Case Title O.A. No. 889 1987

Name of Parties.

S.M. Tripathi Applicant

versus
U.O. 2808 Respondents.

PART-A

Sl.No.	Description of Documents	Page
1-	Check-List	A - A1
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PART -B

B83 - B149

Part -C

C150 - C160

Certified that no further action is required. The case is fit for consignment to record room.

Section Officer

Court Officer

Incharge

[Signature]
20.1.94

Signature of Deaf:
Assistant.

[Signature]
24/11/94

3/10

Promoter

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No. 889 of 1987

APPLICANT (s) S. M. Tripathi

RESPONDENT(s) U.O.I. Secretary of Ministry of Defence

New Delhi & others

Particulars to be examined

Endorsement as to result of Examination

1. Is the appeal competent ?

Yes

2. (a) Is the application in the prescribed form ?

Yes

(b) Is the application in paper book form ?

Yes

(c) Have six complete sets of the application been filed ?

Yes, 7 sets filed.

3. (a) Is the appeal in time ?

No

(b) If not, by how many days it is beyond time ?

(c) Has sufficient case for not making the application in time, been filed ?

4. Has the document of authorisation/Vakalat-nama been filed ?

Yes

5. Is the application accompanied by B. D./Postal-Order for Rs. 50/-

Yes

6. Has the certified copy/copies of the order (s) against which the application is made been filed ?

The application is not against any particular order

(a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?

Yes

(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?

Yes

Particulars to be ExaminedEndorsement as to result of Examination

A1

(c) Are the documents referred to in (a) above neatly typed in double space ?

Ys

8. Has the index of documents been filed and paging done properly ?

Ys

9. Have the chronological details of representation made and the outcome of such representations been indicated in the application ?

Ys

10. Is the matter raised in the application pending before any Court of law or any other Bench of Tribunal ?

No, but a writ petition regarding payment of difference of wages for the post of Supv B/S Gds I is pending before a High Court

11. Are the application/duplicate copy/spare copies signed ?

Ys

12. Are extra copies of the application with Annexures filed ?

N/A

(a) Identical with the original ?

Ys

(b) Defective ?

—

(c) Wanting in Annexures

—

Nos...../Pages Nos.. ..?

13. Have file size envelopes bearing full addresses, of the respondents been filed ?

No

14. Are the given addresses, the registered addresses ?

Ys

15. Do the names of the parties stated in the copies tally with those indicated in the application ?

Ys

16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ?

N/A

17. Are the facts of the case mentioned in item No. 6 of the application ?

Ys

(a) Concise ?

Ys

(b) Under distinct heads ?

Ys

(c) Numbered consecutively ?

Ys

(d) Typed in double space on one side of the paper ?

Ys

18. Have the particulars for interim order prayed for indicated with reasons ?

Ys

19. Whether all the remedies have been exhausted.

If approved the case may be listed. on 13.X.87.

Delivered
24/9/87

Submitted by
V. S. S. S.
24/9/87

आदेश पत्रक
ORDER SHEET

अपील
निर्देश आवेदन रजिस्टर में सं०

009187

No. in Reference Application
Appeal Register

अपील अनिकरण
Appellate Tribunal

अपीलार्थी

आवेदक

Appellant
Applicant

अपीलार्थी

आवेदक

Appellant
Applicant

प्रत्यर्थी द्वारा
Respondent

बनाम

प्रत्यर्थी

Vs.

Respondent

आदेश की क्रम संख्या
और तारीख
Serial number of
order and date

संक्षिप्त आदेश, निर्देश देते हुए, यदि आवश्यक हो
Brief order, mentioning reference, if necessary

पालन कैसे हुआ और पा
करने की तिथि
How complied with
date of compliance

① 13/1/87 See order on the main petition
OR
In compliance of Hon. For benar's
order dt. 13.1.87 It is submitted
that the notices to Respondents
have been issued by R-PAD
fixing 16/11/87

② 16/11/87 Hon. A. John, J.
Hon. P. S. Sharma, J.

to me - 1/11/87

to 12.1.88

③ 11/1/88 On the 1st January 1988
the order dt. 25.2.88

ORDER SHEET

AB

OA No 809 / 01

(7) 22.7.00

Due to sad demise of Sn Bhatt, Ad
adjourned to 22/10/00

Epstein

D.R

(8) 22.10.00

On the request of the Counsel for
Respondents, the Case is adjourned to
18.9.00 for Reply.

for

D.R.

(9) 18.9.00

D.R

Reply filed today. Rejoinder can
be filed by 21.11.00 as prayed

D.R

(10) 21/11/00

No sitting. C.A. filed by
respondents. They have undertaken
to serve the copy of Reply to
the applicant. The case is
adjourned to 23.1.01. The applicant
can file Rejoinder if he so
likes. before the date fixed

21/11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

87 089/87

REGISTRATION No. _____ of 198 .

APPELLANT
APPLICANT

S. M. Tripathi

VERSUS

DEFENDANT
RESPONDENT

U. O. L

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
28.4.89	<p>Hon. D.S. Misra, A.M. Hon. D.K. Agarwal, J.M.</p> <p>None is present for the applicant. In spite of several opportunities given to them, they ^{have} failed to file the rejoinder affidavit.</p> <p>List it for final hearing on 3rd July, 1989.</p> <p>J.M. A.M.</p> <p>brc/ Hon' Mr. Justice K. Nath, V.C. Hon' Mr. K. J. Roman, A.M.</p>	<p>OR Counsel for applicant has filed an order so far as Subm. Orders</p> <p>OR Counsel for respondent has not filed any rejoinder so far as submitted for hearing</p> <p>90/6</p>
16 3/7/89	<p>on the request made on behalf of respondent, Mr. Ramesh Nath ^{S. M. Tripathi} has ^{has} been ^{been} the ^{the} case is listed for final hearing on 1-8-89.</p> <p>A.M. V.C.</p> <p>(S.H.S.)</p>	<p>OR No rejoinder has been filed. Case is submitted for hearing</p> <p>31/7</p>

19/3/90

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

AS

No one appears.
List it for orders on 17/7/90.

AS

A.M.

J.M.

17-7-90

No sitting adj't. 5/11/90

AS

5-11-90

Hon'ble Mr. D.K. Agrawal - J.M.
" Mr. M.V. Prudkar - A.M.

OR
4e for the applicant
has filed app 29/10/90
for condonation of delay
S. F. O.
29/11/90

Due to resolution of Bar Association
Case is adj't to 6.12.90

12.90

No sitting adj't to 16.4.91

BOC

16.4.91

No sitting adj't to 24.5.91

24.5.91

No sitting adj't to 30.7.91

30.7.91

No sitting adj't to 28.11.91

28.11.91

No sitting adj't to 6.1.92

6.1.92

No sitting adj't to 6.2.92

6.2.92

No sitting adj't to 5.3.92

5.3.92

Disen Strike of Advocates
Case adj't to 29.4.92

OR
Case is ready
for hearing

JPH
JPH

O.A.No.889/87

24/2/93

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

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

As the pleadings are complete, the case is disposed of after hearing the Counsels for the parties. Judgement has been dictated in the open Court.

(tgk)


A.M.


V.C.

①

Lucknow Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL (ALLAHABAD BENCH) ALLAHABAD.

O.A. No. 889/87

Lucknow

J.A. NO. 889/87.
T.A. NO.

OF 199

Date of decision: 24/2/93

S. M. Tripathi Petitioner

Mohd. Ilyas Advocate for the petitioner.

Versus

U.O. 1 & Others Respondents.

V. K. Chowdhury Advocates for the Respondent(s)


CORAM :-

The Hon'ble Mr. Justice U. E. Senivastava, v.e.

The Hon'ble Mr. K. Chagya, A.M.

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

NAQVI/


Signature

11

S.M. Tripathi ::::: Applicant

Vs.

Union of India &
Others. ::: Respondents.

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

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

The applicant was employed as Stores-man in the year 1964 in the office of Garrison Engineer(East), Lucknow. According to the applicant, from the year 1964 he was required to act as Supervisor. Notwithstanding the fact that he was required to act as Supervisor, he was never given the letter of appointment as Supervisor and he never received salary as Supervisor although he continued to work as Supervisor. As such after approaching the departmental authorities and Labour Court, he filed this application before this Tribunal. The applicant has prayed that it may be declared that he is entitled to get appointment to the post of Supervisor Grade-II w.e.f. 1-1-66 and senior to all those who have been appointed as Supervisor Gr.II, after 1-1-66. The next promotional post is Storesman/

2. There is no doubt that the applicant was officiating as Supervisor Gr.II, from the year 1966 which is evident from the certificate which has been placed on record. Even though recommendation of the concerned officer was given, but the real promotion and pay as Supervisor was not given to him, which lead him to file Writ Petition before the High Court in the year 1979 (No.2359 of 1979). The writ was dismissed in September, 1980 i.e. on 11-9-80 with certain remarks. In the High Court also the main grievance of the applicant was that he should be redesignated as Supervisor Gr.II since January, 1966.

3. It appears that the post where the applicant was posted, was intermediate post which did not exist. It may be stated here that the Hon'ble High Court of Judicature at ALLAHABAD LUCKNOW BENCH, LUCKNOW, has passed strictures on the department and expressed surprise at the facts represented from the side of the department as under:-

"According to the counteraffidavit, the last selection to the post of Store Keeper Gr.II, took place in 1972 and that no vacancies have arisen since 1973. In the circumstances the petitioner is not entitled to the amended relief sought by him. However, it does appear extraordinary that for a period of seven years no vacancies have arisen and no occasion has arisen for filling up the post in a regular manner in accordance with rules. It is expected that the authorities will not take the short-cut of making adhoc appointments and thereby deny the chance of promotion to the person regularly employed under them and holding lower posts. Recruitment rules should be scrupulously followed and not by-passed in that manner. We have no doubt that the authorities will take due account of these observations. Any step resulting in non-filling of vacancies in regular manner and taking the work of higher posts from person holding lower posts for long periods is liable to result in frustration among their employees."

O.A. №. 889/87.

· Vs .

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

The applicant was employed as Stores-man in the year 1964 in the office of Garrison Engineer(East), Lucknow. According to the applicant, from the year 1964 he was required to act as Supervisor. Notwithstanding the fact that he was required to act as Supervisor, he was never given the letter of appointment as Supervisor and he never received salary as Supervisor although he continued to work as Supervisor. As such after approaching the departmental authorities and Labour Court, he filed this application before this Tribunal. The applicant has prayed that it may be declared that he is entitled to get appointment to the post of Supervisor Grade-II w.e.f. 1-1-66 and senior to all those who have been appointed as Supervisor Gr.II, after 1-1-66. The next promotional post is Storesman/
is

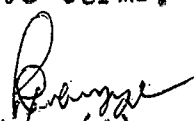
Store-Keeper Gr. II


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4. Notwithstanding these observations, not a single move has been made by respondents to hold examination and to promote the applicant to the said post nor pay scale was given to him, but it appears that he was asked to continue to do the same work. The applicant thereafter approached the Labour Court under section 33(c) of Industrial Disputes Act, for computation of amount, which was dismissed with the observation that the applicant was not entitled for computation for the amount claimed by stating that merely doing clerical work or physical work will not make him Supervisor Gr. II, which a promotion post, for that one has to pass examination and even if there is any recruitment one will have to pass examination and come through that channel. From the pleadings of the parties it appears that adhoc appointment, in between, has been made. In case any adhoc appointment has been made, examination should have been held. But it appears that deliberately or due to some other reasons, examination has not been held, although it was their duty to hold examination. In the mean-time they continued to hold adhoc appointment. In case any adhoc appointment has been made and any person junior to the applicant has been promoted on adhoc basis, the respondents are directed to promote the applicant also. Whenever examination is held, the applicant shall also be allowed to appear in the examination and his case shall be considered in the light of the above directions and on the basis of vacancies existing when he becomes entitled for the said post. The application stands disposed of in the above terms. No order as to the costs.


Member (A)


Vice-Chairman.

Dated: 24th February, 1993, Lucknow.

(tgk)

13/7

1st copy for Tribunal

In the Central Administrative Tribunal
Allahabad

Application No. 889 of 1987

S. M. Tripathi - - - Petitioner
v/s

Union of India & others - - Respondents

A10

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH
AT ALLAHABAD

INDEX

IN

CLAIM PETITION NO 888 OF 1987
BETWEEN

Reg. No 889 of 1987
Central Administrative Tribunal
Additional Bench
ALLAHABAD/PATNA/JABALPUR
Date of Filing 23/9/87
Date of Receipt by Post
S. Chandra
Deputy Registrar.

S.M. TRIPATHI - - - - - PETITIONER

AND

UNION OF INDIA AND OTHERS - - - - - RESPONDENTS

- - - - -

Sl No	PARTICULARS OF PAPERS	PAGE NO
1.	Claim Petition - - - - -	1 - 16
2.	ANNEXURE 1 GE(E) Lucknow letter No 1535/A/47/E1 dt 08 Oct 83	17 - 18
3.	ANNEXURE 2 Certificate dated 15-7-71	19
4.	ANNEXURE 3 Certificate dated 20-7-72	20
5.	ANNEXURE 4 Certificate dated 30-7-81	21
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8.	ANNEXURE 7 Letter No 1071-A/FRI/E1 dated 19 May 78 issued by Major Hupendra Singh GE(W) Lucknow	24
9.	ANNEXURE 8 Lteer No 1071-A/SMT/120/E1 dt. 9 Mar 82 issued by Major L.K. Ojha GE(E) Lucknow	25 - 28
10.	ANNEXURE 9 Letter No 10-A/SMT/169/E1 dt. 10 Oct 83 issued by Major Rakesh Chander GE(E) Lucknow.	29 - 31

Contd..../-

noted for
13.10.87
Rakesh
13/9

Sl No	PARTICULARS OF PAPERS	PAGE NO
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11.	ANNEXURE 10 Letter No 1071-A/SMT/194/EI	32
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dated 09 Mar 84 issued by

Major Rakesh Chander GE(E) Lucknow

12.	ANNEXURE 11 Letter No 1071-A/SMT/220/EI	33
-----	---	----

dated 16 Apr 84 issued by

Major Rakesh Chander, GE(E) Lucknow

13.		
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Vakalat Nama

34.

Dated: 28.9.1987

Counsel for the Applicant.

23(910)

Realdyas

CU
AN

BEFORE THE CENTRAL ADMINISTRATION TRIBUNAL, ALLAHABAD BENCH
AT ALLAHABAD

S.M. TRIPATHI Petitioner
UNION OF INDIA & OTHERS Respondents

CLAIM PETITION NO 889 OF 1987

CLAIM PETITION U/S 19 OF ADMINISTRATIVE
TRIBUNAL ACT 1985

1. Particulars of the applicant :-

- (i) Name of applicant : S.M. Tripathi
- (ii) Name of father : Sri R.N. Tripathi
- (iii) Designation and office : Storeman (Officiating
in which employed : Supvr B/S Gde I & Gde II
wef Jan 1966.
- (iv) Office address : (1) Garrison Engineer(East)
Rani Laxmi Bai Marg
Lucknow-226 002
(2) Garrison Engineer(West)
11, Sardar Patel Marg
Lucknow - 226 002.

2. Particulars of the respondent.

- : (1) Union of India, Secretary
Ministry of Defence, Govt
of India.
- (2) Engineer-in-Chief, Army HQ
Kashmir House, New Delhi.
- (3) Chief Engineer, Central Comd
Mahatma Gandhi Road,
Lucknow- 226 002.

/ Cont'd....2

(4) Garrison Engineer (West)

11 Sardar Patel Marg

Lucknow- 226 002

(5) Garrison Engineer (East)

18 Rani Laxmi Bai Marg

Lucknow- 226 002

3. Particulars of the order against which application is made. : The application is against not appointing the applicant as Supervisor B/S Gde II in spite of his continuously discharging the duties of supervisor B/S Gde I, B/S Gde II besides the duties of Storeman waf Jan 66. The matter had been under the consideration of the respondents and has not been acceded to till today, hence the Petition.
4. Jurisdiction of the Tribunals : The applicant declares that the subject matter of the Order against which he wants redressal is within the jurisdiction of the Tribunal.
5. Litigation : The applicant further declares that the application is within limitation prescribed in section 21 of Administrative Tribunal Act, 1985, as the matter has been under consideration until 1984. On 22.2.84, it has been said that the case of applicant is in progress with higher authorities.

/ Cont'd...3

5. Facts of the Case:
1. That the applicant had been working as Storeman since 11.9.64.
 2. That the applicant was allotted to officiate duties as Supervisor B/S Gde I, B/S Gde II wef Jan 1966 besides the duties of Storeman, simultaneously.
 3. That the applicant has been performing the duties of Supervisor B/S Gde I, B/S Gde II besides his own duties of Storeman.
 4. That there had been the post of Supervisor B/S Gde I and Supervisor B/S Gde II since 1966 in Bakshi-ka-Talab, Memaura Lucknow but no substantive appointment had been made since 1966 and the applicant had been doing and performing the duties of Supervisor B/S Gde I and B/S Gde II and as the report regarding the work has been above board, and most satisfactory with commendable remarks in whole division, therefore the respondents did not care and bother to make substantive appointment on the post of Supervisor B/S Gde I and B/S Gde II for Bakshi-ka-Talab, Memaura, Lucknow. The photostat copy of Annual Inspection report dated 8.10.83 wherein it being held by Garrison Engineer (East) is that "during the inspection of C.E. it was observed that records maintained by Sri S.M. Tripathi are best in this division is Annexure I to this application.

/Cont'd...4

5. That since the performance of the applicant had been highly appreciated as regards the duties of Supervisor B/S Gde I and Supvr B/S Gde II wef 1966 to date besides his own duties of Storeman, therefore he continued making representation for appointments to the post of Supervisor B/S Gde II continuously.
6. That the duties of Supervisor B/S Gde I and B/S Gde II is entrustment of independent duties of "Revenue, Furniture and stores". These duties the applicant had been performing upto date since Jan 66.
7. That the applicant has been issued Certificate on 15.7.71 by Shri A.R. Singh, Offg A.G.R. (MES) Memaura, Lucknow, certifying the entrustment of independent duties of Revenue, Furniture and stores in place of Supervisor B/S Gde I and Supervisor B/S Gde II and carried them out most satisfactory to the officers of the department at this station during the period 1966 to Jan 69 and further certifying that the applicant is capable, efficient and expert and on control on the said job and during his stay at this station there was complete satisfaction to the users as evidence from the records and further opined that the applicant is honest, conscientious worker. The said certificate is Annexure (2) to this application.

/ Cont'd...5

8. That another certificate was issued by Major M.J. Ganapathy, Garrison Engineer(P) Lucknow on 20.7.72 whereby he certified that the applicant is capable of holding independent charge of revenue, furniture and stores and was entrusted with independent duties at Memaura and Bakshi-ka-Talab, Lucknow and carried them out most efficiently and further certified that the applicant is capable, reliable, efficient and conscientious worker. The said certificate is Annexure (3) to this application.
9. That another certificate was issued by Shri Krishan Lal B.S.O., Garrison Engineer(West) Lucknow on 30.7.81 whereby he certified that the applicant was entrusted with duties in E-3 section of Garrison Engineer(W) Lucknow and carried them out most satisfactorily to the interest of department and further certified that during the period of his stay it was seen that the applicant has got thorough knowledge of Revenue, Furniture and stores and is holding full capacity and better control to carry out the independent duties of Supvr B/S Gde II being Graduate and his practical experience regarding B/S cadre is appreciable and he is capable, reliable, efficient and hard working man. The said certificate is Annexure (4) to this application.
10. That office order has been issued to entrustment of maintenance of furniture and its connected stores, Revenue and Bakshi-ka-Talab and all reports and returns. The photostat copy of the office order dated 23.7.70 is Annexure (5) to this application.

11. That by his letter No 122/431/E1, AGE(MES) Bakshi-Ka-Talab ,Lucknow on 28.7.1978 in reply to G.E.(West) Lucknow letter No GE NZ letter No 121606/335/E1D dated 4.7.1978 regarding promotion to the post of Supvr B/S Gde II he observed that the case of the applicant is genuine and he deserves for promotion to supervisor Gde II as the applicant has worked in place of Supvr B/S Gde I and B/S Gde II and discharged duties to the entire satisfaction of the department continuously for a long period. He recommended for promotion to the post of Supervisor B/S Gde II very strongly. The said letter is Annexure(6) to this application.
12. That Major Bhupendra Singh, Garrison Engineer(West) by his letter No 1071-A/FRI/E1 dated 19th May 1978 wrote to HQ CWR(P) Lucknow certified that the case of the applicant has been examined from all angles, now inference has been drawn that his case being genuine, it is strongly recommended to be promoted as he has worked as B/S Gde II satisfactorily to the superiors in duty station, and he deserves to be promoted. The photostat copy is Annexure (7) to this application.
13. That the applicant having being tired about the indifferent attitude of the respondents No 1 & 2 made application to Hon'ble Defence Minister of India, New Delhi on 1.1.1982 ,on which parawise comments were called from the Garrison Engineer (East) ,respondent No 5 who by his letter No 1071-A/SMT/120/E1 dated 9.8.83 inter alia replied as under :-

/Cont'd...7

- (a) That the applicant has been representing his case right from the very beginning to the higher authorities, however, nothing tangible has resulted as finalisation of his case in the lines applied for, involves amendment/exceptions to the recruitment rules which can only be sanctioned by the Ministry of Defence.
- (b) That the applicant pointed out the case of Sri Rajendra Prasad Daiman who was initially appointed as Storeman casual and subsequently recruited as Supvr B/S Gde II during 1971 stood less qualified/Junior to him on the following grounds:-
- (i) Sri Rajendra Prasad Daiman was allowed to appear as departmental candidates for the post of Supvr B/S Gde II in the recruitment test conducted vide CE CC Lucknow letter No 910126/9/41/ELC dated 3.7.1971 whereas he being employee did not fulfil the condition for qualifying as departmental candidate.
- (ii) The individual, that is the applicant, on the other hand, was a regular employee of the same department in the same category ie Storeman (Regular) was not given the opportunity to appear in the above recruitment test as a departmental candidate.
- (iii) Further, if Sri Rajendra Prasad Daiman was allowed to appear in the recruitment test for Supvr B/S Gde II on the strength of being retrenched employees under the provision of CPD 76 to 79, it was a wrong interpretation of rules since the post being filled did not fall in the category as the post from which Sri Daiman was retrenched.

- (iv) The name of Shri Rajendra Prasad Dhiman was also not sponsored by the Employment Exchange for the category of Supvr B/S Gde II at any time before he was allowed to appear in the recruitment test for that post.
- (c) That having narrated the aforesaid facts the respondent No 5 commented that in the circumstances stated above the individuals that is applicant's representation that the appointment of Shri Rajendra Prasad Dhiman was inter alia illegal and thus he was deemed to be junior to him may well be given due consideration while deciding the applicant's case for appointment of Supvr B/S Gde II with retrospective effect under special sanction of the Government.
- (d) That the respondent No 5 commented in para 6 of his letter under reference that the fact that the applicant was shouldering much higher responsibility ie Supvr B/S Gde I & B/S Gde II and doing quite ~~xx~~ efficiently has been correctly stated.
- (e) That in para 8 of respondent No 5 letter under reference it was replied that the appointment of the applicant in the category of Supvr B/S Gde II with retrospective effect is recommended.
14. That after parawise commenting and replying to the representation of the applicant dated 1.1.82 addressed to the Hon'ble Minister of India, the respondent made the recommendation, "If possible by any means the individual's application for appointment as Supvr ~~for~~ B/S Gde II with retrospective effect from Jan 1966 may be acceded." The photostat copy of the letter of respondent No 5 is Annexure (8) to this application.

Thus there has been discrimination and violation of Articles 14 & 16 of the Constitution. The applicant will remain senior to Shri Rajendra Prasad Daiman.

15. That the respondent No 3 referred to the case of the applicant to Standing Counsel (Central Government) High Court, Lucknow Bench for his legal opinion as regards payment of officiating pay for the post of Supvr B/S Gde I.
16. That the Standing Counsel by his letter dated 6.8.83 made certain enquiries.
17. That in answer to the queries of Standing Counsel (Central Govt) High Court, Lucknow Bench the respondent No 5 gave the following reply-
 - (a) That a certificate dated 15.7.71 was given by AGE Memaura, certifying that Shri SM Tripathi had been entrusted with the independent duties of Revenue, Furniture and stores in the place of Supvr B/S Gde I during the period from Jan 66 to Jan 69 and he had carried out these duties most satisfactorily.
 - (b) That in Jan 1969 Shri SM Tripathi was transferred to A.G.E. Bakshi-ka-Talab and by an order dated 10.1.69 issued by AGE Memaura and Bakshi-ka-Talab and was directed to look after the revenue works and maintenance of furniture.
 - (c) That a certificate dated 20.7.72 issued by the Garrison Engineer would indicate that Shri SM Tripathi had been entrusted with independent duties of Revenue, Furniture and stores and AGE MES Memaura and Bakshi-Ka-Talab. He discharged above duties with full satisfaction.

/Cont'd...10

-10-

- (d) That Shri SM Tripathi had been continuously holding an independent charge of Revenue, Furniture and stores by an order dated 23.7.70, Shri SM Tripathi was allotted the duties for dealing with :-
- (i) Maintenance of Furniture and its connected stores and
 - (ii) Revenue at Bakshi-ka-Talab and all reports and returns.
- (e) That vide an order dated 1 Jul 76 the additional duty of -
- (i) Electrical/Mechanical and
 - (ii) Building/Road was assigned to Shri SM Tripathi.
- (f) That AGE MES Bakshi-Ka-Talab vide his letter No 122/431/E1 dated 28 Jul 78 has certified that Shri SM Tripathi worked in the place of Supervisor B/S Gde I and II continuously for a long period and discharged duties on the said post to the entire satisfaction.
- (g) His performance to the higher posts are also reflected in the Annual Confidential Reports. In this connection please refer to Chief Engineer Lucknow Zone Lucknow letter No 121606/881/E1D dated 18 Nov 78 and Chief Engineer Central Command Lucknow letter No 910126/9/¹⁵⁹¹EIC(I) dated 16 Jan 79.
- (h) That Garrison Engineer(East) Lucknow vide his letter No 1071-A/GMT/120/E1 dated 9 Mar 82 has offered parawise comments on application of MES/443281 Shri SM Tripathi dated 1 Jan 82 addressed to Hon'ble Defence Minister of India, showing factual position of the case. The case has been recommended by the Garrison Engineer on the basis of facts and genuineness of the case. The CWE(P) Lucknow has also recommended his case on the same lines vide his letter No 11088/1294/1/EIC(I) dated 12.4.82.

/Cont'd...11

-11-

- (j) That there is no doubt that Sri SM Tripathi has been officiating on the post of Supervisor B/S Gde I/II from 1966 to Oct 79 (14 years). The officiating duties on the said post have been accepted with entire satisfaction from lower to the higher authorities of the department.
- (k) That as per judgement in the Court of City Magistrate Bareilly Case No 14 of 1971, Sri Suresh Chander Saxena Store Keeper Gde II of Izatnagar Bareilly had been paid officiating allowances ie the difference of salaries and allowances of the post of Supervisor B/S Gde I and what he was drawing as Gde II.
- (l) That as per CSR Article 162, the responsibility for the consequences of irregular officiating arrangement will devolve on the authority ordering such arrangements.
- (m) That as per B/S procedure, Organisational duties of Barrack and stores Branch of the MES, as issued by the Ministry of Defence in its para 73 and 74, the duties carried out the Sri SM Tripathi from Jan 1966 to October 1979 by the orders of the Departmental authorities, was the duties of Supervisor B/S Gde I only.

18. That the respondent No 3 having given the reply of the queries made by the Standing Counsel (Central Government) high court, Lucknow Bench observed in para 10 as follows:-

"The performance of the officiating duties for the post of Supvr B/S Gde I/II from Jan 66 to Oct 79 in respect of MES/443281 Sri SM Tripathi was very satisfactory to the entire satisfaction of the Dept. The case is very genuine and strongly recommended for your suitable action". The photostat copy of the said letter of respondent No 3 is Annexure(9).

/Cont'd.....12

-12-

19. That the Standing Counsel gave his opinion in favour of the applicant on 28.2.84 but the respondent No 1 & 2 did not pay heed.

20. That the respondent No 3 and 5 pleaded and recommended the case of the applicant to the respondent No 1 & 2 and also recommended for special sanction of the Government or amendment or exception to the recruitment rules, but all recommendations of respondent No 3, 4 & 5 (the high officers at the helm of affair) because of no consequence.

21. That after the legal opinion the respondent No 5 by his letter No 1071-A/SMT/194/E1 dated 9.3.84 informed in reply to the applicants application dated 22.2.84 that the case is in progress. The photostat copy of the letter of respondent No 5 is Annexure (10) to this application.

22. That Major Rakesh Chander, Garrison Engineer respondent No 5 on 16.4.84 by his letter No 1071-A/SMT/220/E1 dated 16th Apr 84 observed that the case of Shri SM Tripathi the applicant, is strongly recommended for payment of officiating allowance for the post of Supvr B/S Gde I from 1.1.66 till todate and appointment to the post of Supvr B/S Gde II with retrospective effect from 1.1.66. The photostat copy of the said letter is Annexure (11) to this application.

23. That thus from whatever has been stated from paras (1) to 6 (22iii) it is amply borne out that the high authorities respondents No 3 to 5 at the helm of affair of the applicant had been certifying continuous officiation of the applicant as Supvr B/S Gde I and B/S Gde II wef Jan 66 to date besides his own duty of storeman and had been strongly recommending to the respondent No 1 & 2 for promotion of the applicant to the post of Supvr B/S Gde II and for special sanction/amendment of rules or exemption but their recommendations has been ignored without rhyme and reason.

/Cont'd...13

-1-3-

24. That it has been laid in AIR 1986 SC(April Part) Page 638 that continuous officiation for a period of 15 to 20 years cannot be said to have no claim to that post, in such circumstances entire period of officiation has to be counted for his seniority, particularly where the Government is endowed with the power to relax the Rules to avoid unjust results. In the instant case unjust result is perpetrating as the applicant is officiating the duties of the post of Supvr B/S Gde I & II and is not appointed to the posts of Supvr B/S Gde II in spite of strong recommendation of the respondents No 3 to 5 for appointment of the applicant, as Supvr B/S Gde II with retrospective effect, that is, wef 1.1.66 to date.

25. That since 1966 there has been several appointments to the post of Supvr B/S Gde II but neither the applicant was called for test, or appointed when others were appointed as given in Annexure (8) to this application. Only the officiating work of the post of Supvr B/S Gde I & II had been taken since 1966 with commendable remark about the applicant's performance, who could be better candidate for the post than the applicant who has earned continuous praise for performance of duties of Supvr B/S Gde I and Gde II.

26. That in the instant case Articles 14 and 16(1) of the Constitution will be violated because the temporary service of the applicant in the post in question is not for a short period intended to meet some emergent or unforeseen circumstances when the Govt is endowed with the power to relax Rules to avoid unjust results. (AIR 1986 S.C. Page 638).

/ Relief ..Cont'd..14

-14-

7. **Reliefs Sought:** In view of the facts mentioned in para 6 above, the applicant prays for the following reliefs:-

- (1) To declare that the applicant is entitled to the post of Supvr B/S Gde II with effect from 1.1.66 and is senior to all those who have been appointed as Supvr B/S Gde II after Jan 66.

8. **Interim Order if prayed for:-**

Pending final decision of the present position, the applicant seeks the following reliefs:-

- (1) That the applicant may be allowed to officiate on the post of Supvr B/S Gde I & II till the disposal of the application, as he is presently discharging the duties of these posts.

9. **Particulars of** : The applicant had been making representations to the respondents, Hon'ble Defence
Remedy exhausted. Minister, Govt of India and Hon'ble the Prime Minister on 1st Jan 1982 and 13 Apr

10. **Matter not pending** : Matter not pending with any other court
with any other but as regards the payment of difference
court etc. of wages for the post of Supvr B/S
Gde I is pending before the Hon'ble
High Court in W.P. No. _____

/Cont'd...15

-15-

11. Particulars of Bank Draft: Postal Order No ^{DP} 045537
 ✓ Postal order in respect of for Rs. fifty only
 the application fee.

(i) Name of bank on which drawn:

(ii) Name of Issuing post office: dal Bagh, Lucknow

(iii) Date of Issue of Postal order: 16-09-1987

(iv) Post office at which payable.: Allahabad

12. Details of Index : An Index is appended to the application with details of the documents which have been annexed.

13. List of Enclosures:

- | | | |
|--|--------------|------------------------|
| (1) G.E. (E) Lucknow letter No 1535/A/47/E1 dated 08 Oct 83 | - | Annexure 1. |
| (2) Certificate dated 15.7.71 | - | Annexure 2. |
| (3) Certificate dated 20.7.72 | - | Annexure 3. |
| (4) Certificate dated 30.7.81 | - | Annexure 4. |
| (5) G.E. (E) Lucknow letter No 1535/A/47/E1 dated 08 Oct 83 | - | Annexure 5. |
| (5) Office Order No 4 dated 23 Jul 70 issued by Captain Jagdish Chandra AGE (MES) Memaura & Bakshi-ka-Talab. | - | Annexure 5. |
| (6) Letter No 122/431/E1 dated 28.7.78 issued by AGE (MES) Bakshi-Ka-Talab. | - | Annexure 6. |
| (7) Letter No 1071-A/FRI/E1 dated 19 May 78 issued by Major Bhupendra Singh, G.E. (W) Lucknow. | - | Annexure 7. |
| (8) Letter No 1071/SMT/120/E1 dated 9 Mar 82 issued by Major L.K. Ojha, G.E. (East) Lucknow. | - | Annexure 8. |

/Cont'd...16

- (9) Letter No 1071-A/SMT/160/E1 dated 10 Oct 83
issued by Major Rakesh Chandra, Garrison Engineer
(East) Lucknow. - Annexure 9.
- (10) Letter No 1071-A/SMT/194/E1 dated 9 Mar 84
issued by Major Rakesh Chander, Garrison Engineer
(East) Lucknow. - Annexure 10.
- (11) Letter No 1071-A/SMT/220/E1 dated 16 Apr 84
issued by Major Rakesh Chander, Garrison Engineer
(East), Lucknow. - Annexure 11.

I, S.M.Tripathi S/O Shri R.N.Tripathi aged about 45 years,
r/o Mangal Pandey Road, Ram Charan Ka Mata, Piggery Cantt, Lucknow
do hereby verify that the contents of paras 1 to 13 of the
application are true to my personal knowledge and belief and
that I have suppressed no material facts.

Place: Lucknow

S.M. Tripathi
(S.M. Tripathi)
Signature of Applicant.

Dated : 20/9/87

To

The Registrar
Central Administrative Tribunal
Allahabad Bench
Allahabad.

Tele Mily : 640

Garrison Engineer (East)
Lucknow-2

(17)

A20

1535/A/47/E1

08 Oct 83

AGE B/R I Lucknow
 AGE B/R II Lucknow
 AGE E/M Lucknow
 BSO F/S Lucknow
 BSO (Rev) Lucknow
 All Sections

ANNUAL INSPECTION OF CWE (P) LUCKNOW

1. During the inspection of CWE (P) Lucknow on 3 Oct 83 following points were observed:-

- a) Files for important policy letters:
 Files for important policy letters should be opened separately each for letters received from EinC's Br, CE CC, CE LZ and CWE (P) Lucknow. Action All Sub Divn. All Sections.
- b) Fire fighting equipment/practices:
 Deficiency of fire fighting equipment as per authorisation should be reported to station headquarters. All fire fighting equipments should be in 100% serviceable condition. A proper record of fire fighting practice should be available. All Sub Divn AGE (T) OS (Adm)
- c) Leave Details from Sub Divisions:
 Leave details of the individuals are being received late from sub divisions resulting in delay of publication of PTOs. This must be submitted as per out letter No. 1183/B/RI/191/E1 dated 9.10.83 for publication on the subsequent monday by E1 Section. All Sub Divn E1 Sec
- d) A serious view wastaken by the CWE for pending CR Parts 'A' and 'B'. details are required by him Sub Division wise for his action. Immediate action action should be taken to clear the pending CR Parts 'A' and 'B'. All Sub Divn E8 E2
- e) Audit objections: CWE has asked for details of pending audit objections sub divisions wise and expressed his dissatisfaction over their numbers. An all out effort will be made to clear these audit objections. The sub Divn will submit the details of double full scape paper on the following format to E5 Sec who will persue the case till settlement:- All Sub Divn E5 All Sec.

Sl Brief of the Reply of Endorsement/settlement Remarks
 No objections the GE details by audit authy

Contd...2.

(f) List of contractors: A record should be maintained in a proper register and updated register should be put up to the undersigned by 20.10.83. E8 Section

(g) Final Bills: An all out effort be made to reduce the number of pending final bills. E8 Section

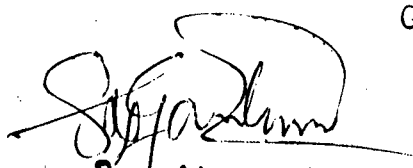
(h) TE's Observations: A list of contractors involved in TE's observations with amount shown against each, will be forwarded to CWE (P) by 10 Oct 83. E8

2. Chief Engineer Lucknow Zone Lucknow will carry out an annual inspection of this division during Oct/Nov 83. During his inspection all the records as per inspection proforma will be updated and kept in CE's Office for the perusal of the CE and his staff. The present standard of files and maintenance of documents is unsatisfactory and needs immediate improvement. During the inspection of the CE it was observed that the records maintained by Shri SM Trinath are the best in this Divn. The files must not have more than 100 pages. Proper folders must be opened for policy letter with proper covers.

3. An all out effort will be made from now itself to ensure that a very high standard is achieved before the visit of CE.

C.T.C

Sd/-x-x-x-x-
Major
Garrison Engineer (E)


S. N. Gauram
Barrack Stores Officer
M.E.S. LUCKNOW.

Attested & certified
True copy,
Reddyas
A.S.
20/10/83

(19)
A30

COPY

Annexure No 5 2

C E R T I F I C A T E

It is certified that Shri S.M. TRIPATHI, Storeman, had been entrusted with independent duties of Revenue, Furniture and Stores in the place of Supervisor B/S Gde II and Supervisor B/S Gde I and carried them out most satisfactorily to the department at this Station during the period 1966 to Jan 1969.


He is capable, efficient and expert to full control on the said jobs. During his stay at this station there was complete satisfaction to the users as evidenced from the records. He is honest and conscientious worker to the best of my knowledge.

SA/- XXXX

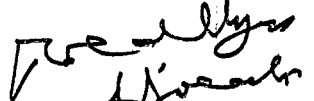
Dated: 15.7.71.

(AR SINGH)
OFFG. AGE (MES)
MEMAURA

C.T.C


S. N. Gautam
Barrack Stores Officer
M.E.S. LUCKNOW.

Attested & certified
Tom City.


20/9/07

COPY

ANNEXURE NO 3

(20)

A31

CERTIFICATE

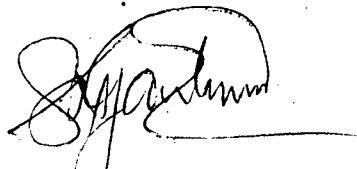
It is certified that Shri S.M. TRIPATHI is capable of holding independent charge of revenue, Furniture and Stores. He had been entrusted with independent duties at Memaura and Bakshi-Ka-Talab and carried them out most effeciently. He is capable, reliable, efficient and conscentious worker.

Sd/-XXXX

(MJ GANAPATHY)
MAJOR
GARRISON ENGINEER
(P) LUCKNOW

Dated: 20.7.72

C.T.C



S. N. Gautam
Barrack Stores Officer
M.E.S. LUCKNOW.

Attested & certified
True copy,
[Signature]
A.S.
20/7/72

(21)

A32

COPY

ANNEXURE NO 4

CERTIFICATE

It is certified that MES/443281 Shri S.M. TRIPATHI, Storeman was entrusted his duties in E-3 Section of Garrison Engineer (West) Lucknow and carried them out most satisfactorily to the interest of department.

During the period of his stay it is seen that Shri S.M. Tripathi has got thorough knowledge of Revenue, Furniture and Stores, and he is holding full capacity and better control to carry out the independent duties of Supvr B/S Gde II being Graduate. His practical experience regarding B/S Cadre work is appreciable.

He is capable, reliable, efficient and hard working man to the best of my knowledge.

Sd/- xxx

(KRISHAN LAL)
BSO 30.7.81
Garrison Engineer (W)
LUCKNOW

C T C



S. N. Gautam
Barrack Stores Officer
M.E.S. LUCKNOW.

Attested & certified
For C.T.C.
Recd
20/7/81

(~~44~~)
✓

~~22~~

(22)

133

COPY

ANNEXURE NO 6

5

OFFICE ORDER

ISSUED BY

CAPTAIN JAGDISH CHANDRA, AGE(MES) MEMAURA & BKT

STATION: LUCKNOW

SL NO . 4

Dt. 23 Jul 70

DUTIES AT BAKSHI KA TALAB

With immediate effect following duties are allotted :-

- | | |
|---------------------------|---|
| 1. SHRI S.K. SHUKLA SK II | 1. Deal with project stores at BKT. |
| | 2. Receipt of new furniture and its accounting. |
| 2. SHRI SM TRIPATHI S/MAN | 1. Deal with maintenance of furniture and its connected stores. |
| | 2. Revenue at BKT and all reports and return. |

Sd/-xxx

(JAGDISH CHANDRA)

CAPT

AGE(MES)MEMAURA & BKT

Copy to:-

1. Supdt B/R Gde-I BKT
2. Supdt E/M Gde II BKT
3. Shri SK Shukla ,SK II
4. Shri SM Tripathi, S/Man.,

C.T.C

For compliance.

[Signature]

Sd/ Gautam
Barik Stores Officer
MES LUCKNOW

Attended & certified
Team - 109.
[Signature]
20/7/70

(46)

(23)

A34

COPY

ANNEXURE NO

(8)

6

LJO: MILY: 613

GARRISON ENGINEER (WEST)
SARDAR PATEL ROAD
LUCKNOW CANTT
19 MAY 78

1071-A/FRI/E1

HQ CWE (P) LUCKNOW

PROMOTION OF STOREMAN: SHRI SM TRIPATHI

An application dated 15-5-78 addressed to E-in-C's Branch AHQ NEW DELHI received from SHRI SM TRIPATHI, STOREMAN requesting for consideration of his case for promotion to Supvr B/S Gde II is forwarded herewith for your further disposal action please.

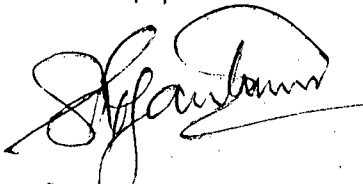
2. The case of Shri SM Tripathi has been examined from all angles, now inference has been drawn that his case being genuine, it is strongly recommended to be promoted. He has worked as B/S II with satisfactorily to the superiors in the duty station, he deserves to be promoted.

Sd/

(BHUPENDRA SINGH)
MAJOR
GARRISON ENGINEER

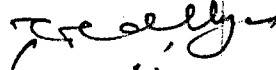
Encls: Application in
quadruplicate.

C.T.C



S. N. Gautam
Barrack Stores Officer
M.E.S. LUCKNOW.

Attested & certified
True copy.



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ANNEXURE NO. 7

NO 122/431/EI

OFFICE OF THE A.G.E. (MES)
BAKSHI KA TALAB

28 JUL 78

TO

GE (WEST) LUCKNOW

PROMOTION OF STOREMAN : SHRI SM TRIPATHI

Reference your Office letter No. 1071-A/83/EI dt 25 Jul 78.

2. The reply of CE NZ letter No. 121606/335/EID dated 04-7-78 received from Shri SM Tripathi, Storeman of this office requesting again for consideration of his case for promotion to Supvr B/S Gde II is forwarded herewith.

3. The case of Shri S.M. Tripathi is genuine. He deserves for promotion to Supvr B/S II as the individual has worked in the place of Supvr B/S Gde I and B/S II and discharged duties to the entire satisfaction to the department, continuously for a long period. It is strongly recommended for favourable consideration please.

Encl: In triplicate.

Sd/- XX XX XX
AGE (MES)
BAKSHI KA TALAB

C.T.C

[Signature]

S. N. Gautam
Barrack Stores Officer
M.E.S. LUCKNOW.

*Attested & certified
True copy.
[Signature]
[Signature]
[Signature]*

TELE MILY : 640

COPY

ANNEXURE NO 21

(25)

8A36

GARRIBENGINEER (EAST)
LUCKNOW-2.

1071/A/SMT/120/E1

09 Mar' 82

HQ CWE (P)
LUCKNOW

RECRUITMENT/APPOINTMENT OF DEPARTMENTAL
CANDIDATES FOR THE POST OF SUPERVISOR B/S
GRADE II IN THE MES FROM JANUARY, 1966

1. Reference your Headquarters letter No 11088/1269/
EIC(I) dated 19 Feb 82.
2. Parawise comments on application of MES/443281 Shri
SM Tripathi, Storeman dated 01 Jan 82 addressed to Hon'ble
Defence Minister of India, New Delhi, are given in the
succeeding paragraphs.
3. Para 1. Reference verified.
4. Para 2. Details of residence and present appointment
verified.
5. Para 3. The individual has been representing his
case right from the very beginning to the higher
authorities, however, nothing tangible has resulted
as finalisation of his case in the lines applied
for, involves amendment/exceptions to the recruitment
rules which can only be sanctioned by the Ministry
of Defence.
6. Para 4. No comments.
7. Para 5 & 6. The individual was stated that Chief
Engineer Central Command Lucknow letter No 910126/
9/99/EIC(I) dated 16 Jan 79 (Annexure 2) and
the subsequent letter vide Annexure III do not
represent the facts correctly. He is emphasising
basically on the following points:-
 - (a) That he had pointed out the case of Shri
Rajendra Prasad Dhiman who was initially appointed
as Storeman casual and subsequently recruited as
Supvr B/S Gde II during 1971 stood less qualified/
Junior to him on the following counts:-
 - (i) Shri Rajendra Prasad Dhiman was allowed to
appear as Departmental candidate for the post of
Supvr B/S Gde II in the recruitment test conducted
vide CE CC Lucknow letter No 910126/9/41/EIC(I)
dated 03 Jul 71 whereas he being a casual employee
did not fulfil the conditions for qualifying as
departmental candidate.
 - (ii) The individual, on the other hand, was a
regular employee of the same department in the same
category ie Storeman(Regular) was not given the
opportunity to appear in the above recruitment
test as a departmental candidate.

Cont'd....2

(iii) Further if Shri Rajendra Prasad Dhiman was allowed to appear in the recruitment test for Supvr B/S Gde II on the strength of being retrenched employee under the provisions of CPRO 76 of 70, it was a wrong interpretation of the rules since the post being filled did not fall in the same category as the post from which Shri Rajendra Prasad Dhiman was retrenched.

(iv) The name of Shri Rajendra Prasad Dhiman was also not sponsored by the Employment Exchange for the category of Supvr B/S Gde II at any time before he was allowed to appear in the recruitment test for that post.

(v) In the circumstances stated above the individual's representation that the appointment of Shri Rajendra Prasad Dhiman was inter-alia illegal and thus he was deemed to be junior to him may well be given due consideration while deciding his case for appointment of Supvr B/S Gde II with retrospective effect under special sanction of the Government.

(b) The fact that no DPC was conducted for Storeman to SK Gde II was not the fault of the individual and even if the fault/lapse did not rest with CE CC, it very much lied with the Government or those representing the Government ie Engineer-in-Chief's Branch or the authorities higher to it since the vacancies for SK Gde II did exist in the department and has such vacancies been released within a reasonable period and DPC/conducted the individual would certainly have been promoted to that category. It may be stated here that the Hon'ble High Court of Judicature at ALLAHABAD LUCKNOW BENCH LUCKNOW has passed strictures on the department and expressed surprise at the facts as represented from the side of the department in the following language.

"The other grievance is that during this period a number of appointments have been made to posts higher than post of Storeman, but the petitioner never got intimation of the selections. According to the counter affidavit the last selection to the post of Store Keeper Gde II took place in 1972 and that no vacancies have arisen since 1973. In the circumstances, the petitioner is not entitled to the amended relief(aa) sought by him. However, it does appear extraordinary that for a period of seven years no vacancies have arisen and no occasion has arisen for filling up the post in a regular manner in accordance with rules. It is expected that the authorities will not take the short-cut of making adhoc appointments and thereby deny the chance of promotion to the person regularly employed under them and holding lower posts. Recruitment rules should be scrupulously followed and not by passed in that manner. We have no doubt that the authorities will take due account of these observations. Any step resulting in non-filling of vacancies in regular manner and taking the work of higher posts from person holding lower posts for long periods is liable to result in frustration among their employees".

Contd....3.

6. Para 7 & 8. The contention of the individual is that although he was holding the appointment of a Storeman on paper wef Sep 64 he was de-facto utilised in the capacity of B/S Gde I, the appointment then authorised under AGE Memaura in the establishment, from Jan 66 to Jan 69 and that of B/S Gde II/I from Jan 69 to Oct 79 as authorised in the establishment of MES at Bakshi-Ka-Talab. He has further stated that the higher responsibility so entrusted to him were carried out very satisfactorily by him as could be verified from various correspondence and his ACRs, in so far as B/S duties carried on smoothly at Memaura and Bakshi-Ka-Talab primarily due to his capability and devotion to duty. The fact that the individual was shouldering much higher responsibility i.e. Supvr B/S Gde I/II and doing so quite efficiently has been correctly stated.
7. Para 9. No comments. However, observations by the Hon'ble High Court of Judicature Allahabad as brought out in para 5 above are relevant.
8. Para 10. Appointment of the individual in the Category of Supvr B/S Gde II with retrospective effect is recommended. This will, however, need special sanction of the Government which is recommended to be processed by the department. As regards to his then qualifying to the category of Supvr B/S Gde I at a subsequent date, the issue may be settled in due course.
9. Para 11. It is correct that the individual holds the requisite qualification for being appointed as Supvr B/S Gde II. He was also selected for this category during 1972 and his name appeared in the panel for recruitment to that category, however, due to ban imposed by the Government before the said panel could be exhausted he could not be actually appointed in that category. Subsequently when the ban on filling the post of Supvr B/S Gde II were lifted it was stated by the authorities representing the department that the validity of the panel in which the name of the individual was included at serial 23 had expired. It is frankly commented that for a departmental candidate the question of expiry of the validity period is debatable, for the Storeman who was suitable for appointment as Supvr B/S Gde II in 1972 and who continued to work in that capacity was ipso-facto suitable for Supvr B/S Gde II at any time afterwards thus the expiry of the validity period of the panel is, if at all, only a technical point which competent authority could very well set aside.
10. Para 12. As to why the individual was not called upon to appear in the examination for the recruitment of Supvr B/S Gde II held during Dec 81 may be verified from CwE (P) Lucknow.
11. Paras 13, 14, 15 and 16. Though it is a fact that Writ Petition No. 2359 of 79 has been dismissed by the Allahabad High Court Lucknow Bench on 11 Sep 80, the Hon'ble Court in Part II of their judgement has made serious observations on the department which should be taken due note of.
12. Para 17. No comments.
13. Para 18. Prayer of the individual may be viewed sympathetically.

Contd....3.

- (28)
A 37
14. Para 19. The facts may be verified from the records of CE CC Lucknow and GE Izatnagar Bareilly.
15. Para 20. As before
16. Para 21. As before
17. Para 22 (a b & c). The following recommendations are made by us:-

- (a) If possible by any means the individual's application for appointment as Supvr B/S Gde II with retrospective effect from Jan 66 may be acceded.
- (b) In case (a) above is not possible the individual may be appointed as Supvr B/S Gde II wef the date on which he would have actually been appointed had the ban not imposed by the authorities on further filling of the posts of Supvr B/S Gde II from the panel made for recruitment of Supvr B/S Gde II vide CE CC Lucknow letter No 910126/9/MON/EIC(I) dated 18 Sep 72 (Annexure 7). All other issues may be settled accordingly.

18. Para 23 and 24. Covered already

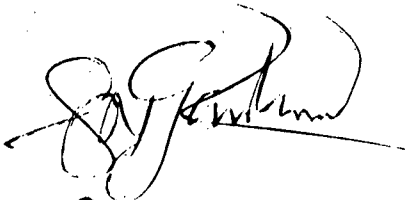
19. Appeal dated 01 Jan 82 in respect of MES-443281 Shri SM Tripathi, Storeman is resubmitted herewith for further action as recommended above.

Encls: As above.

C.T.C

Sd/-x-x-x-x-
(LK Ojha)

Major
Garrison Engineer


S. N. Gautam
Barack Stores Officer
M.E.S. LUCKNOW.

Handwritten notes:
further certified
True copy.
J. S. S. S.
J. S. S. S.
20.6.82

Page-12

COPY

Page No-4

TELE. NO. : 640

ERED A/D

ISON ENGINEER (EAST)

NOW-2.

1071-A/SMT/169/EI

10 Oct 83

Shri Diwan Singh Randhawa
Senior Standing Counsel
Central Government
Gurdwara Road,
Lucknow

RECRUITMENT/APPOINTMENT OF DEPARTMENTAL
CANDIDATES FOR THE POST OF SUPERVISOR B/S
GRADE II IN MES FROM JANUARY 1966 AND
PAYMENT OF OFFICIATING ALLOWANCES FOR THE
POST OF SUPERVISOR B/S GDE I FROM JANUARY
1966 TO OCTOBER 1979

Dear Sir,

1. Reference your letter No Nil dated 6/14 Sep 83.
2. Parawise replies to your letter quoted under reference regarding the case of Shri SM Tripathi are given in the succeeding paragraphs.
3. Para 1 (a)
 - (a) That a certificate dated 15.7.71 was given by AGE (MES) Memaura, certifying that Shri SM Tripathi had been entrusted with the independent duties of Revenue, Furniture and stores in the place of Supervisor B/S Gde I during the period from Jan 1966 to Jan 1969 and he had carried out these duties most satisfactorily (See Annexure No 7 & now see Annexure No 6).
 - (b) That in Jan 1969 Shri SM Tripathi was transferred to AGE (MES) Bakshi-ka-Talab and by an order dated 10.1.69 issued by AGE MES Memaura and Bakshi-ka-Talab he was directed to look after the Revenue work and maintenance of furniture. (See Annexure No 9 & now see Annexure No 7).
 - (c) That a certificate dated 20.7.72 issued by the Garrison Engineer would indicate that Shri SM Tripathi had been entrusted with independent duties of Revenue Furniture and Stores at AGE MES Memaura and Bakshi-ka-Talab. He had discharged above duties with full satisfaction. (See Annexure 12 & now see Annexure No 8).
 - (d) That Shri SM Tripathi had been continuously holding an independent charge of Revenue, Furniture and stores by an order dated 23.7.70 Shri SM Tripathi was allotted the duties for dealing with (1) Maintenance of Furniture and its connected stores, and (2) Revenue at Bakshi-ka-Talab and all reports and returns. (See Annexure No 12 & now see Annexure No 9).
 - (e) That vide an order dated July 1, 1976 the additional duty of (1) Electrical/Mechanical and (2) Building/Roads Stores was assigned to Shri SM Tripathi. (Annexure No 11 & now See Annexure No 10).

Cont'd....2

-2-

(f) That AGE MES Bakshi-Ka-Talab vide his letter No 122/431/EI dated 28 Jul' 78 has certified that Shri SM Tripathi worked in the place of Supervisor B/S Gde I and II continuously for a long period and discharged duties on the said post to the entire satisfaction. (See Annexure No 14 & Now See Annexure No 11).

(g) His performance to the higher posts are also reflected in the Annual Confidential reports. In this connection please refer to Chief Engineer Lucknow Zone Lucknow letter No 121606/881/EID dated 18 Nov 78 and Chief Engineer Central Command Lucknow letter No 910126/9/59/EIC(I) dated 16 Jan 79.

(h) That Garrison Engineer (East) Lucknow vide his letter No 1071-A/SMT/120/EI dated 09 Mar 82 has offered parawise comments on application of MES/443281 Shri SM Tripathi dated 01 Jan 82 addressed to Hon'ble Defence Minister of India, showing factual position of the case. The case has been recommended by the Garrison Engineer on the basis of facts and genuineness of the case. The CWE(P) Lucknow has also recommended his case on the same lines vide his letter No 11088/1294/1 EIC(I) dated 12.4.82.

(j) That there is no doubt that Shri SM Tripathi has been officiating on the post of Supervisor B/S Gde I/II from 1966 to Oct 79 (14 years). The officiating duties on the said post have been accepted with entire satisfaction from lower to the higher authorities of the department.

(k) That as per judgement in the Court of City Magistrate Bareilly Case No 14 of 1971, Shri Suresh Chander Saxena Store Keeper Gde II of Izatnagar Bareilly had been paid officiating allowances ie the difference of salaries and allowances of the post of Supervisor B/S Gde I and what he was drawing as SK Grade II. (Annexure No 19 and now See Annexure No 13).

(l) That as per CSR Article 162, the responsibility for the consequences of irregular officiating arrangement will devolve on the authority ordering such arrangements.

(m) That as per B/S Procedure, Organisational duties of Barrack and Stores Branch of the MES, as issued by the Ministry of Defence in its para 73 and 74, the duties carried out by Shri SM Tripathi from Jan 1966 to October 1979 by the orders of the Departmental authorities, was the duties of Supervisor B/S Gde I only.

4. Para 1(b). The available relevant records showing the performance of duties of Higher post by Shri SM Tripathi will be produced in person by representative of this office.
5. Para 1(c). Same as stated in reply to para 1(a) above.

Cont'd.....3

-3-

6. Para 1(d). The copies of the notes of recommendations and the representations submitted by the individual will be produced by the representative of this office.
7. Para ii(i) to (iii). The matter has been referred to higher authorities for obtaining requisite details and the same will be produced as and when received.
8. Para III. Copy of Writ Petition No 2359 of 1979 (SM Tripathi Vrs Union of India and others) and other connected information will be produced by the representative of this office.
9. The case was discussed between Union Representative including General Secretary of UP MES Workers Union (Shri SS Misra) on 08 Mar 82 in presence of Brig AS Sharma, Additional Chief Engineer Central Command Lucknow and DHARNA which commenced on 26.2.82 was withdrawn by Shri SM Tripathi on 8.3.82 on assurance by the Additional Chief Engineer Central Command Lucknow to put up the case for officiating allowance for entire period admissible to Shri SM Tripathi for grant of payment by the competent authority vide his letter No 910126/SMT/76/EIC(I) dated 09 Mar 82.
10. The performance of the officiating duties for the post of Supervisor B/S Gde I/II from Jan 1966 to October 1979 in respect of MES/443281 Shri SM Tripathi was very satisfactory to the entire satisfaction of the department. The case is very genuine and strongly recommended for your suitable advice.

Yours faithfully,

Sd/- xxxx

(RAKESH CHANDER)
 MAJOR
 GARRISON ENGINEER (E)

Copy to:-

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Chief Engineer
Lucknow Zone
Lucknow 2. CwE(P) Lucknow | <p>With reference to this Office
letter No 1071-A/SMT/166/EI
dated 22 Sep 83 for further
action please.</p> |
|---|---|

S N Gautam
 S N Gautam
 Barrack Stores Officer
 MES LUCKNOW.

*Attended & certified
 From 10/7/83
 10/7/83
 20/9/87*

COPY

ANNEXURE NO. 23 10

From: GE (E) LUCKNOW

To

MES-443281
Shri SM Tripathi,
Storeman

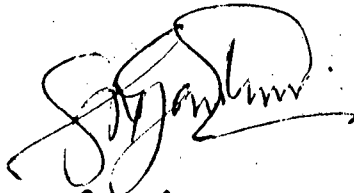
NO. 1071-A/SMT/194/EI

Station: LKO Date 09 Mar 84

RECRUITMENT/APPOINTMENT OF DEPARTMENTAL
CANDIDATES FOR THE POST OF SUPVR B/S GDE-II
IN MES FROM JAN 66 AND PAYMENT OF OFFICIATING
ALLOWANCES FOR THE POST OF SUPVR B/S GDE -I
FROM JAN 1966 TO OCT 1979/

1. Reference your application dt 22.2.84.
2. Your case is in progress.

C.T.C


S N Gautam
Barrack Stores Officer
M.E.S. LUCKNOW.

Sd/-x-x-x-x-x-
(RAKESH CHANDER)
MAJOR
GE (EAST) LKO

Attended & certified for 19/11/84
20/9/84

COPY

Tele Milly : 640

Garrison Engineer (East)
Lucknow.

1071-A/SMT/220/E1

16 Apr 84

HQ CWE
LUCKNOW

PAYMENT OF OFFICIATING ALLOWANCE FOR THE
POST OF SUPERVISOR B/S GRADE I FROM
01 JAN 1966 TILL TO DATED AND THE APPOINTMENT
TO THE POST OF SUPERVISOR B/S GRADE II WITH
RETROSPECTIVE EFFECT FROM 1ST JAN 66

1. Reference further to this office letter No. 1071-A/SMT/218/E1 dated 14-4-84.
2. An application dated 13/4/84 received from MES/443281 Shri SM Tripathi, S/Man alongwith enclosures as per index, in file cover bearing No. LKO/SMT/01 addressed to Hon'ble Prime Minister of India, New Delhi is forwarded herewith.
3. Parawise comments on application of Shri S.M. Tripathi, Store Man dated 13.4.84 addressed to Prime Minister of India are given in the succeeding paragraphs.


Para 1 to 2. References verified.

- Para 3. In this connection please refer to this office letter No. 1071-A/SMT/169/E1 dated 10 Oct 83 addressed to Shri Diwan Singh Randhawa, Senior Standing Counsel, Central Government and copy to your HQ and further to this office letter No. 1071-A/SMT/120/E1 dated 09 Mar 82 addressed to your HQ and also please refer to legal opinion given by Senior Standing Counsel, Central Govt.
4. The case of Shri S.M. Tripathi, S/Man is strongly recommended.

Encls: 50 Pages

C.T.C

Sd/- xx xx xx
(Rakesh Chander)
Major
Garrison Engineer


S. N. Gautam
Barrack Stores Officer
M.E.S. LUCKNOW.

*Attested & Verified
True copy.
Theally
20/9/87*

A-18

व अदालत अधीमान्

[वादी] अपीलान्त

प्रतिवादी [रेषाडेन्ट]

Central Administrative Tribunal

महोदय
वकीलतनामा

Allahabad

S. M. Tripathi



(अपीलान्त)

Union of India & an

बनाम

प्रतिवादी (रेखाडेन्ट)

मं० मुकद्दमा claim before

1987 पेशी की ता०

१६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री

Mohd. Aliyaz Hussaini } S.R.A.
Mohd. Ayaz Hussaini } Bazar

वकील Lucknow

महोदय

एडवोकेट

नाम अदालत	नाम अपीलान्त	नाम प्रतिवादी

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पेंरवी व जबाब देही व प्रश्नोंत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया वसूल करें या मुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करें मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी विपक्षी (फरीकसाली) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करें—वकील महोदय द्वारा की गई यह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पेंरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकीलतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर

S. M. Tripathi

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

23/9/87

महीना

Bengaluru

सन् १९

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स्वीकृत

Filed today,
19/7

AuB

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALLAHABAD.

OBJECTION ON BEHALF OF THE RESPONDENT

IN

REGISTRATION NO. 889 OF 1987

(DISTRICT : LUCKNOW)

S.M. Tripathi ----- Applicant

Versus

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

The respondent respectfully submits
the following objection :

1. That the application is barred by limitation under Section 21 of the Act. The grievance relates to the year 1966. Under Paragraph 13(b) the applicant states that in 1971 Shri Rajendra Prasad was appointed as Supvt B/S Gde II whereas he was not given an opportunity to appear

Au7

-2-

for recruitment test. Under Para 13 it is stated that applicant made representation to Defence Ministry on 1.1.1982. As such the cause of grievance is pertaining to the period prior to 1.11.1982 and cannot be entertained.

2. That the applicant had already availed of remedy by way of filing writ petition before Hon'ble High Court at Allahabad. The writ petition was bearing no.2359 of 1979, decided on 11.9.1980 by Hon'ble Mr. Justice Mahavir Singh and Hon'ble Mr. Justice K.N. Goel in Division Bench. The writ petition was dismissed by Hon'ble Bench.

3. That the petitioner had also availed of the remedy by way of going before Presiding Officer, Central Government Industrial Labour Court, Kanpur, by way of L.C.A. No.20 of 1984, S.M. Tripathi Versus Engineer-in-Chief and another. The Hon'ble Central Government Labour

Court Kanpur has also held that applicant is not entitled for computation of amount claimed and that the petition was dismissed.

4. That in view of the fact that the petitioner had already availed of remedy by way of going to the Labour Court, it is not open to the petitioner to file present petition, after availing of the remedy under the Labour Laws.

5. That the petition deserves to be dismissed, as belated and the petitioner has already availed of remedy of approaching the Labour Court and Hon'ble High Court.

N.B.S.

(N.B. SINGH)
Senior Standing Counsel
Central Government.

Dated: 19 Sept 80

Aug

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

(CIRCUIT BENCH AT LUCKNOW)

CIVIL MISC. ADJOURNMENT APPLICATION NO. OF 1988

On behalf of

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

IN

REGISTRATION NO. 889 OF 1987

(DISTRICT : LUCKNOW)

S.M. Tripathi ----- Applicant

Versus

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

To,

The Hon'ble Vice Chairman and his
company Members of the aforesaid
Tribunal.

The humble application of the
abovenamed applicant Most Respectfully Sheweth :

Asd

-2-

1. That the Senior Standing Counsel appearing on behalf of the Union of India in this case. The objection of maintainability and show cause notice is being filed.

2. That the Senior Standing Counsel is busy on the date fixed in the case at Allahabad hence the case may be adjourned for some other date.

P R A Y E R

It is, therefore, most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to adjourn the case for some other date.

NBS/

(N.B. SINGH)
Senior Standing Counsel
Central Government

Dated: 19 Sept 98

Filed 1-1-68
2/1/1
1787

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALLAHABAD

A F F I D A V I T

IN

REGISTRATION NO. 889 OF 1987

(DISTRICT : LUCKNOW)

S.M. Tripathi ----- Applicant

Versus

Union of India & others ----- Respondents

AFFIDAVIT of B.D. Laroia
aged about 54 years, son of
~~at present post~~
Sri Satyapaul Laroia
at present posted as Assistant
Harrison Engineer Technical
G E East Lucknow.

Mohamed Durr Longan
(DEPONENT)

I, the abovenamed deponent do hereby
solemnly affirm and state on oath as under :

Asr

1. That the deponent is the

and has been authorised to file the short affidavit regarding the maintainability of the petition and deserves his right to file the counter affidavit and as such he is well acquainted with the facts of the case deposed to below.

2. That the only show cause notice has been issued for admitting the petition the court has not yet admitted the petition. However, it appears that due to some mistake it is listed for hearing.

3. That the respondent is placing his objection for the admission of the case on various grounds/as stated below.

4. That the petition deserves to be dismissed as being delated and the applicant has already taken recourse for the same cause of action by filing writ petition in the Hon'ble High Court as well as going

Prabhu Chandra

-3-

before the Labour Court. ~~A photostat copy of the same is attached herewith and the same is marked as ANNEXURE-1 to this affidavit.~~ *for R*

5. That the respondent duty bound to place correct facts before the Tribunal and in case the Hon'ble Tribunal admits admits the petition in that case the Hon'ble Tribunal may grant six weeks time for filing detailed counter affidavit parawise as matters relate to 1976-82 and being a more old matter in that case respondent will require no time.

6. That the respondent deserve his right and prays the Tribunal for filing the detailed counter affidavit in case the preliminary objection regarding the maintainability of the petition is rejected.

7. That the application is barred by limitation under Section 21 of the Act. The grievance relates to the year 1966. Under Paragraph 13(b) the applicant states

Prabhu Dandekar

-4-

that in 1971 Shri Rajendra Prasad was appointed as Supvr B/S Gde II whereas he was not given an opportunity to appear for recruitment test. Under Para 13 it is stated that applicant made representation to Defence Ministry on 1.1.1982. As such the cause of grievance is pertaining to the period prior to 1.11.1982 and cannot be entertained.

8. That the applicant had already availed of remedy by way of filing writ petition before Hon'ble High Court at Allahabad. The writ petition was bearing No.2359 of 1979, decided on 11.9.1980 by Hon'ble Mr. Justice Mahavir Singh and Hon'ble Mr. Justice K.N. Goel in Division Bench. The writ petition was dismissed by Hon'ble Bench.

9. That the applicant had also availed of the remedy by way of going before Presiding Officer, Central Government Industrial Labour Court Kanpur, by way of L.G.A. No.20 of 1986 S.M. Tripathi Vs. Engineer-in-Chief

Mahendra Singh

and another. The Hon'ble Central Government Labour Court Kanpur has also held that applicant is not entitled for computation of amount claimed and that the petition was dismissed.

10. That in view of the fact that the petitioner had already availed of remedy by way of going to the Labour Court, it is not open to the petitioner to file present petition, after availing of the remedy under the Labour Laws.

11. That the applicant is a employed as S'Man since 1964. The cadre structure is as under :

Storeman - Class IV post

Store Keeper Gde II - Class III on promotion from storeman.

Store Keeper Gde I - On promotion after the SK II passes Storekeeper Exam.

Supervisor Barrack Stores Gde II i) On promotion from SK I

ii) Direct recruitment of Graduates. Selection by a

Ambar Das Gupta

written test followed by an interview with a condition that during probation of 2 years the candidate has to pass Store Keeper Exam for confirmation.

Supervisor Gde I - On promotion from Supvt B/S II who passes Supvt Exam.

12. That the applicant on the basis of certain certificates of 1971, 1972, 1981 etc. claims that he was officiating in the post of Supervisor B/S Gde I since 1966 and as such he is entitled for promotion to the post of Sypvt and also for computation of difference in pay drawn by him and that of Supv since 1966.

13. That on the first issue that he was entitled to the post of Supvr the applicant filed a writ petition No.2359 of 1979 in the Hon'ble Court, Allahabad Lucknow Bench which was dismissed by Division Bench dated 11th September, 1980 with observation "He was never appointed as a Supvr Gde I nor was he ever appointed as a casual labour on

Ankur D. Singh

the post of Supvr B/S Gde I
The main relief asked by the petitioner
that he should be designated as Supvr Gde I
cannot, therefore, be granted to him."

14. That on the second issue for
computation of money that he was working
as Supvr B/S Gde I since 1966, the
applicant filed an application in the
Hon'ble Labour Court Kanpur LCA No.20
of 1986 which was dismissed by order
dated 1.1.1987 with the following
observations :-

"Even if it is conceded that he
worked as Supvr Gde I he cannot
be paid emolument of that post
in view of the law laid down in
Dhirendra Chamoli Versus State
of U.P. as it will have to be
adjudicated that on permanent post
he was required to work where other
were getting pay of the post and
the workman was denied though he
too worked for then. Secondly
as the word indicates that post was
Supervisory ~~xxxx~~ B/S Gde II

Mukherjee

-8-

workman will have to show that he is performing the supervisory work that is supervising work of some subordinate in his department. Merely doing clerical work or physical work of Supvr B/S Gde II, ~~that~~ does will not make him supvr B/S Gde II, that is a promotional post which one have to pass stages and even if there be any recruitment test workman will have to come through that channel.

Thus is any view of the matter discussed above, the applicant is not entitled for computation of the amount claimed. The result is that the application has been dismissed."

15. That as para 10 of application (page 14) the applicant states that a case with regard to difference in payment of wages for the post of Supvr B/S Gde I is pending before the Hon'ble High Court. As such he cannot have a double litigation and the application merits dismissal on this ground alone.

Prabhu D. Singh

16. That reason for the delay which was been concealed by the applicant is that there was litigation in the Labour Court and his case was dismissed by a detailed order on 1.1.1987. As such the application is barred by limitation and this Hon'ble Tribunal has no jurisdiction to admit the application.

17. That the certificates issued by the authorities on which the applicant has taken stand that he was officiating as Supervisor are not valid. The officers are not authorised to issue such certificates. "The Government would not be bound by the acts of its officers and agents, who act beyond the scope of their authority. A person dealing with an agent of Government must be held to have noticed all the limitations of his authority." AIR 1986 page 345.

18. That the petition deserves to be dismissed, as belated and the petitioner has already availed of remedy of approaching the Labour Court and the Hon'ble Court.

Ankur Dasgupta

-10-

I, the abovenamed deponent do hereby
declare that the contents of paragraphs

of this affidavit are true to my personal
knowledge; those of paragraphs 11 to 18

of this affidavit are based on perusal of
record and those of paragraphs 1 to 10

of this affidavit are based on legal advice
which all I believe to be true, no part of
it is false and nothing material has been
concealed.

SO HELP ME GOD.

Abraham D. Long

(Deponent)

21 / 11 / 88

(25)
A61

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

Writ Petition No. 2269 of 1970,

Shri. Tripathi...

Petitioner,

VERSUS

Union of India and others...

Respondents,

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

Lucknow Dated: September, 11, 1980.

Hon'ble Mahavir Singh, J.

Hon'ble K.N. Goyal, J.

(Delivered by Hon'ble K.N. Goyal, J.)

The petitioner held the post of Storeman.

While holding this post, he was asked to perform the

duties of Supervisor B/S Grade I for a long time. It

appears that there are three intermediate grades of posts

between the post of Storeman and that of Supervisor B/S

Grade I. These three categories are Storekeeper Grade II

(the post immediately higher to that of Storeman),

Store-Keeper Grade I and Supervisor B/S Grade II. The

reason why even while working as Storeman the petitioner was

on duties attaching to the post of Supervisor B/S Grade II

has been stated to be that at the place where he was

posted, the intermediate posts did not exist. The

petitioner, however, continued to draw the salary of

Storeman throughout. He was never appointed to officiate

as Supervisor B/S Grade I, nor was he ever appointed as a

casual labourer on the post of Supervisor B/S Grade I. Thus

the decision of this Court in Special Appeal No. 176 of

1974 (Madan Bhatt v. Union Government), a copy of which

is annexed to the writ petition, does not assist

the petitioner.

The main relief(s) asked by the petitioner that

AG2

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(5)
he should be designated as Supervisor B/S Grade I since January 1968 cannot, therefore be granted to him.

The other grievance is that during this period a number of appointments have been made to posts higher ^{than post} of Storeman, but the petitioner never got intimation of the selections. According to the counter-affidavit the last selection to the post of Store-keeper Grade II took place in 1972 and that no vacancies have arisen since 1972. In the circumstances, the petitioner is not entitled to the amended relief (a-) sought by him. However, it does appear extraordinary that for a period of seven years no vacancies have arisen and no occasion has arisen for filling up the posts in a regular manner in accordance with rules. It is expected that the authorities will not take the short-cut of making ^b ad hoc appointments and thereby deny the chance of promotion to the person regularly employed under them and holding lower posts. Recruitment rules should be scrupulously followed and not by-passed in that manner. We have no doubt that the authorities will take due account of these observations. Any step resulting in non-filling of vacancies in a regular manner and taking the work of higher posts from person holding lower posts for long periods is liable to result in frustration among their employees.

With these observations, we dismiss the writ petition in limine. No orders as to costs.



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4/12/81
Clerk to the Court, Lucknow Bench
LUCKNOW

Sd/- Mahavir Singh,
Sd/- K.B. Goyal,
September, 11, 1980.

3/2/89

Before Shri R. B. Srivastava Presiding Officer
Central Government Industrial Labour Court
Kanpur.

Case No 20 of 1986

Shri S. M. Tripathi
189 New Model House
Lucknow.

Applicant

Versus

1. Engineer - in - Chief
Army Hq. Kashmere House
New Delhi.

2. Chief Engineer
Central Command
Mahatma Gandhi Road
Cantt. Lucknow.

3. Garrison Engineer (East)
Rani Lakshmi Bai Marg
Cantt Lucknow.

4. Garrison Engineer West
11 Sardar Patel Marg
Cantt. Lucknow.

Opp. Party.

Order



1. This is an application for computation of money benefit amounting to Rs. 145225/85 paise on the ground that he is working under opposite party employers since 11.9.64, and is designated as store man but he is allotted to do duties of supervisors BS Grade (1) since January 1986 (barrack and stores) that as per procedure of B/S branch of the MES the duties of said supervisor to hold independent charge of furniture revenue and store. The workman was entrusted with the above said duties since Jan 66, but the applicant has been paid emoluments of storeman only during the period 66 to 85 and in view of the duties performed, he is entitled to the emoluments of B/S Grade I supervisor. It is further averred that the workman is posted in the workshop of Garrison Engineer East Lucknow, which is covered under the Factories Act. That the workman is in the civil service of the workshop of Garrison Engineer where the work of production, manufacturing is done and thus it is a industry. That the opposite party has not paid the amount to the workman despite request, hence the application for computation.

2. In the schedule attached to the application workman has given the details of the amount ought to be computed i.e. Rs. 145225/85.

3. Management has not disputed the designation of the applicant as store man and has denied that he has been allotted duty of supervisor BS Gr. I. It is further averred that store man post is a class IV post and the post of supervisor B/S Gr. I is a post to which direct promotions can not be made and there are several other ladders to be crossed. It is further averred therein that supervisor BS Grade I supervises the work of BS Grade II Store keeper Gr. 1 and 2 and storeman and that the applicant was never allotted duty of supervisor BS Gr. I and the workman simply been discharging the duties of storeman. It is also averred that for promotion to intervening post one has to pass through trade test. In the end

- : 2 : -

it is averred that the opposite party is not connected with any production or manufacturing activities and is not an industry. The application is misconceived and is liable to be dismissed.

4. Management by amendment took plea that the workman had filed a writ petition in the Hon'ble High Court Allahabad, Lucknow Bench for designation of supervisor BS Grade I and the writ was dismissed on 11.9.83.

5. Management has filed internal posting/transfer orders of superordinates wherein applicant's designation is shown as storeman and he was transferred from section -1 to E-1 laveries.

5. Workman along 1th rejoinder filed annexure I written by Chief Engineer dt.9th March, 82, written by Additional Chief Engineer stating the case of Shri S M Tripathi applicant of this case, wherein decision was taken after a meeting with the MES workers for direct recruitment to the post of BS Gr. II he will be asked to appear before the board when such vacancies are released by engineer in chief branch. Annexure IV is the letter written by GE to Sr. Standing counsel mentioning that a certificate was given to the workman that he was entrusted with the independent duty of revenue furniture and store in place of supervisor BS Grade I and that there was no duty that the workman have been officiating on the post of supervisor BS Gr. II from 62 to 79, 14 years and he had been carrying out it by orders of the departmental authority on which his advise was sought. Senior standing counsel given his opinion that the workman may be allowed allowances of higher post store keeper grade II. Annexure 6 is the certificate referred earlier which shows that he was entrusted with independent duty of revenue and furniture and stores in place of supervisor BS Grade I, II. Annexure 8 is the certificate that the workman is capable of performing independent charge of above referred. Annexure 9 is the copy of the order dt.23rd July 70 showing that the workman was allotted duty of maintaining of furnitures, connected stores and revenue at Bakshi Ka Talab AGE and GE had recommended the case of workmans promotion paper annexure 10 and 11. Annexure 12 is certificate by GE. Annexure 14 is inspection report of GE which shows that the records maintained by workman is best in the division.

6. Workman has given his evidence on two affidavits which he has tendered stating his case and admitted that he was initially appointed as storeman. He deposes in the cross that from January 66 to 69 besides duties of storeman he was also given the work of supervisor BS grade I. He deposes that annexure 6 to the rejoinder is order for working as supervisor BS Grade I. It is mentioned that annexure 6 is only certificate issued to the workman being storeman had been entrusted independent charge in place of supervisor BS Grade I and 2. He again said that he worked as supervisor BS Gr I but the orders were verbal. He has admitted that duties of BS grade I is defined in memorandum of procedure organisation and duties of barrack and stores branch of the MES shop under the authority of Government Of India. He admits that in the office of GE West he was given work of procurement of stores tools plants etc and one of laveries for trades men and other stores.

AGS

- 3 -

7. On the other hand Shri S M Gautam BS Officer of GE East has filed his affidavit.

8. In cross examination he has deposed that he is barreck and stores officer and that under him one UDC one LIC and one storeman is posted and one laveries is given to the storeman and administration section revenue furniture and store is given in the charge of BS. He has further stated that store keeper grade I is not given independent charge of revenue furniture and laveries. Supervisor grade I is given charge of revenue furniture and laveries under the charge of BSO.

9. In this case two points have to be decided. Whether application lies under section 33-c-2 as the opposite party management is not an industry and ID Act does not apply. On this point it may be mentioned that the workman is a civilian and not an army officer. MES under GE which is a purely army post workshop and their store etc are maintained for which civilian are employed. All the persons working in the workshop of the GE and also in stor s etc under him would not be officers of the army to which provision of the ID Act does not apply. On the point whether GE stores where the workman is employed comes within the definition of industry. The same has to be tested on the envil of three test laid down in Bangalore Water Supply Vs A Rajjappa 1978 1 LLJ 349SC. The 3 tests are systemetic activity, cooperation between employer and employee and third production distribution of goods and service calculation to satisfy human wants and wishes. Thus in GE workshop besides the above two there is production distribution and service calculated to satisfy human wants and thus the person working there as civilian for that purpose would be said to be working in an industry and ID Act would apply, the application is thus maintain able.

10. Coming to the question whether the applicant is entitle to computation of money claimed. The ambit of section 33-c-2 has to be considered. In a case u/s 33-c-2 only existing right has to be seen and not some thing which has to be determined as the applicants wants in this case, that he worked as supervisor BS Gr.I. In order to get salary of that post, matter has to be adjudicated upon and that the workman is entitle to that post and it is only after entitlement that has a question of next corralery he will be entitled to emoluments to that. Even if it is conceded that he worked as supervisor BS Grade I he can not be paid emoluments of that post in view of the law laid down in Dhirendra Chamoli Versus State of U P as it will have to be adjudicated that on a permanent post he was required to work where ~~xxxx~~ others were getting pay of the post and the workman was denied though he too worked for them. Secondly as the word indicates that post was supervisory BS Gr II. Workman will have to show that he is performing the supervisory work i.e. supervising work of some subordinate in his depart ment. Merely doing clerical work or physical work which a supervisor BS Grade II does will not make him supervisor BS gr.II that is a promotional post for which one has to pass stages and even if there be any recruitment test workman h will have to come through that channel.

11. Thus in any view of the matter discussed above, the applicant is not entitle for computation of the

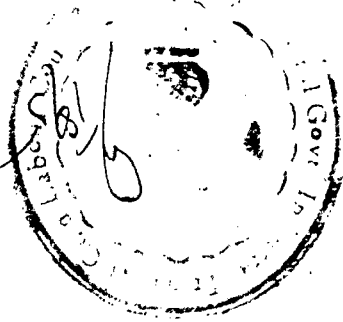


amount claimed. The result is that the application has to be dismissed and computation in the circumstances of the case is made zero in favour of the applicant.

12. I, therefore, order accordingly.

(R B Srivastava)
Presiding Officer
Central Govt. Labour
Court, Kanpur.

5/1-1-87



CERTIFIED COPY
(S. S. SHARMA)
Secretary
Central Govt. Labour Court, Kanpur.

5/1-1-87

CERTIFIED COPY
(S. S. SHARMA)
Secretary
Central Government Industrial
- Cum - Labour Court - Kanpur.

19/1/87

1st copy for Tribunal

A67

Before the Central Administrative Tribunal, Allahabad
Bench, Lucknow Circuit.

C.M. An 280/1987 (L)

Claim Petition No. 889 of 1987

S.M. Tripathi Applicant

Vs.

Union of India and others Opp. Parties

Application under section 21 (3) of Central
Administrative Act, 1985 for condonation of
delay.

The humble applicant most respectfully
begs to submit as under :-

1. That for the reasons mentioned in the accompanying affidavit it is expedient for the ends of justice that delay, if any, occurred in filing the claim application is liable to be condoned.

Wherefore it is most respectfully prayed that the delay occurred in filing the application under section 19 of the Central Administrative Tribunal Act, may kindly be condoned.

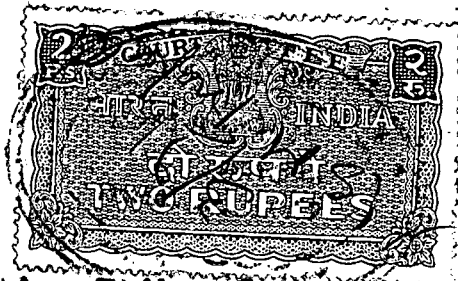
(Signature)
Applicant

(Signature)
Counsel for the Applicant

3/11/89

3/11/89

*Filed today
3/11/89*



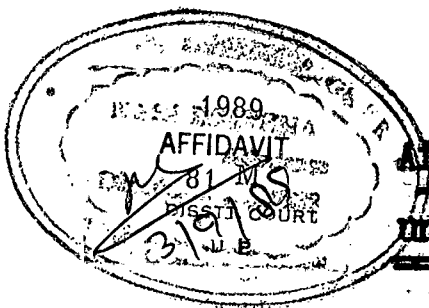
In the Hon'ble Central Administrative Tribunal,
Additional Bench At Allahabad. A68
Lucknow Circuit.

Registration No. 889 of 1987.

S.M. Tripathi Applicant

Versus

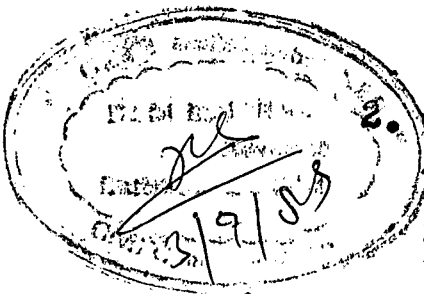
Union of India and Others .. Respondents



Affidavit in support of Application
under section 21 (3) of C.A.T. Act, 1985.

I, S.M. Tripathi aged about 45 years son of Sri R.N. Tripathi r/o Mangal Pandey Road, Ram Charan Ka Hata, Piggery, Cantt. Lucknow do hereby solemnly affirm as under :-

1. That the applicant is working and discharging the duties of Superv. B/S grade I and Superv B/S grade II in addition to his duties as storeman.
2. That there has been existing the post of Superv. B/S gr. I and Superv. B/S Gr. II since 1966 in Bakshi Ka Tal, Memaure, Lucknow but no substantive appointment had been made since 1966 as the applicant had been doing and discharging the duties of Superv. B/S Gr I and Superv. B/S Gr II and the work and performance of the petitioner had been commendable and above board therefore no appointment of Superv. B/S Gr I and Superv. B/S Gr. II had been made in Bakshi Ka Tal, Memaure, Lucknow.



Day

3. That as the performance of the applicant had been to the entire satisfaction of the officers therefore the officers kept praising the applicant in the performance of his duties as Superv B/S Gr I and Superv. B/S Gr II in addition to his own duties of storeman and so the applicant kept representing his case continuously for promotion to these posts.
4. That on the representation of the applicant the action had been going on and it is on 19th. May, 1978 vide letter No. 1071-A/FRI/EI (Annexure -2) the G.E. (West), Lucknow wrote to H.Q. C.W.E (P) Lucknow certifying that the case of the applicant has been examined from all angles and has been found genuine and as such he strongly recommended that the applicant be promoted to the post of Superv B/S Gr II as the applicant worked satisfactorily and deserves to be promoted.
5. That when no action was taken on the recommendation of G.E. (West) Lucknow, the applicant had to file writ petition No. 2359 of 1979 for designating the applicant as Superv. B/S Gr I.
6. That ~~re~~ on the statement of the respondents that the applicant did not officiate as Superv. B/S Gr I and Superv. B/S Gr II and that there was ^{no} intermediary post between storeman and Superv. B/S Gr I and II made falsely, the writ petition of the applicant was dismissed in limine but the Hon'ble High Court made the following observations.
(i) It is expected that the authorities will not take the short cut of making ad-hoc appointments thereby deny the chance of promotion to the person regularly employed under them and

holding lower post.

(ii) It is expected that the authorities appear to have acted extra-ordinary in that for a period of seven years no vacancies have arisen and no occasion has arisen for filling the posts in a regular manner in accordance with rules.

(iii) Recruitment rules should be scrupulously followed and not by passed in that manner.

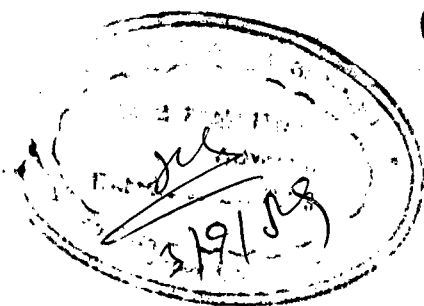
(iv) We have no doubt that the authorities will take due account of these observations.

(v) Any step resulting in non-filling of vacancies in regular manner and taking the work of higher posts from person holding lower post for long period is liable to result in frustration among their employees.

(vi) The reason why even while working as Storeman ~~as~~ the applicant was put on duties attaching to the post of Superv. B/S Gr I has been stated to be that at the place where he was posted, the intermediate posts did not exist.

7. That since the Hon'ble High Court had made observations and expected the authorities to follow the departmental rules scrupulously therefore the matter had to be re-opened as the statement of the respondents in the said writ petition was falsely and wrongly made and so the correct position was scrutinized.

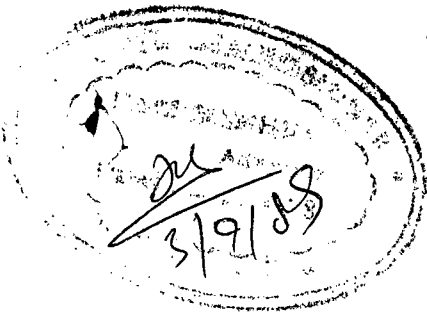
8. That since the statement made before the Hon'ble High Court that the petitioner did not officiate Superv. B/S Gr I and that there was no intermediate



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posts between Storeman and Supervisor B/S Gr I were on scrutiny by the department on the observations made by the Hon'ble High Court to be false and wrong for which ~~the~~ reason the writ petition of the applicant was dismissed in limine therefore respecting the observations of the Hon'ble High Court the correct facts were brought into being. The correct facts on review by the authorities were that the petitioner was appointed to officiate as Superv. B/S Gr. I and Superv. B/S Gr II in addition to his own duties of the Storeman and as such there existed intermediate post of Superv. B/S Gr II at the place where the applicant was posted and so matter had to be re-examined and re-opened to give full effect to the observations of the Hon'ble High Court.

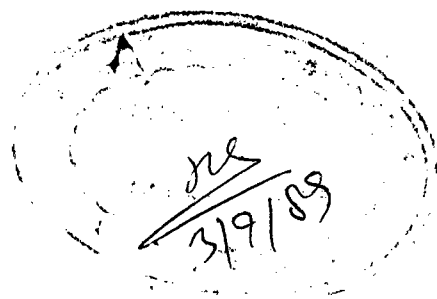
- 9 That on the passing of the observations by the Hon'ble High Court the petitioner also made representations.
9. That on the representation of the ~~the~~ applicant para-wise comment were called for from G.E. (East) who gave parawise comment vide letter No. 1071/A/SMT/120/EI dated 9th. March, 1982. In para E 7(b) it was commented by the G.E. (East) that, "it may be stated here that the Hon'ble High Court of Judicature At Allahabad, Lucknow Bench, Lucknow has passed strictures on the department and expressed surprise at the facts as represented from the side of the department and in para 11



Only

further re-iterated that though it is fact that writ petition No. 2359 of 1979 has been dismissed by the Hon'ble High Court, Lucknow Bench on 11th. Sept., 1980 the Hon'ble Court in para II of their judgment has made serious observations on the department which should be taken note of.

10. That although the writ petition was dismissed but because of observations of the Hon'ble High Court the department took the matter seriously to do substantial justice and so the matter was reopened.
11. That when the matter remained under consideration and kept pending so that the applicant made application to Hon'ble Defence Minister on 1-1-1982 on which parawise comments were called from the G.E. (East) who by his letter, here as Annexure (8) inter alia replied that the applicant had been representing his case right from the very beginning to the higher authorities, however, nothing tangible has resulted as finalisation of the applicant's case involves amendment / excepting to the recruitment rules which can only be made and sanctioned by the Ministry of Defence and so made favourable recommendations and remarks quoting certain instances. The G.E. (East) Lucknow thus made recommendation for promotion of the applicant as Superv. B/S Gr II with retrospective effect.
12. That since according to G.E. (East) Lucknow the matter involved amendment / exception to the



11/2

rules of the recruitment therefore it was a matter which could only be done by the Prescribed Authority and prescribed procedure and required considerable time and so the applicant was told likewise. Thus the applicant had to wait as action in his favour was going on and it was to be done by following course of law by the Ministry of Defence or by the Parliament. The applicant had no cause of action and grouse seeing such a favourable attitude of the higher authorities in view of the observations of the Hon'ble High Court.

13. That the matter was also referred to the Senior Standing counsel, Lucknow Bench for giving his opinion. The senior standing counsel gave his opinion in favour of the applicant.
14. That the applicant remained under impression that the sanction of Defence Ministry will be obtained on the recommendation of the higher authorities or suitable amendment will be made in rules and the recommendation given in favour of the applicant will be given effect to, hence the applicant kept waiting for suitable action by the Defence Ministry on the recommendation of the ~~Defence Ministry~~ higher authorities.
15. That as the applicant had been working and discharging the duties of Superv. B/S Gr I and II and he was not being paid the wages for the work and duties done by the applicant therefore on the authority of the Hon'ble Supreme Court that

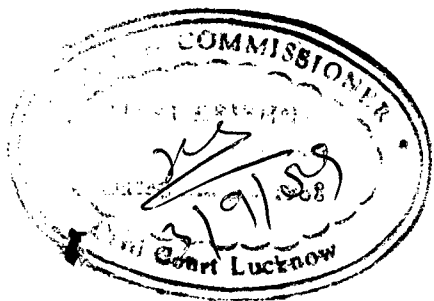


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the incumbent should be paid equal pay for equal work the applicant moved the Labour Court for payment of wages of Supervisor B.S. Gr I but the same was denied and the application of the applicant was rejected ~~and the applicant~~ but the applicant as regards his promotion kept waiting for the suitable action by the Ministry as there was the question of exception or amendment to the rules, which could alone be done by the Ministry of Defence and as such the applicant had to wait. The order of Labour Court was challenged in Writ Petition No. 2406 of 1987 which was admitted on 14.4.1987.

16. That after the dismissal of application for payment of wages for the officiating period for the posts of Suprv. B.S. Gr. I and Superv. B.S. Gr. II the applicant in July 1987 learnt from various sources that now no action will be taken on the recommendation of the higher authorities for payment of offg. wages and for appointment to the post of Superv. B.S. Gr. II or Superv. B.S. Gr. I as there has come a finding of the Labour Court, therefore the occasion arose to seek remedy by filing the present application.

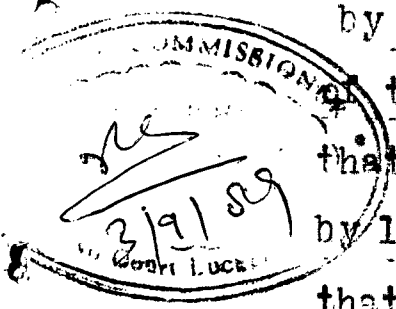
17. That since there was strong recommendation of the immediate and higher authorities for exception or amendment to the rules of promotion to the post of Superv. B.S. Gr. I and Superv. B.S. Gr. II the applicant had no cause of action to file writ



Im/par

or appeal or application as it was realised on consideration of the ^{strictures} ~~strictures~~ expressed on the department that the matter was re-opened and reviewed in its correct perspective as it was felt that the defence to the writ petition set up by the department was that the applicant did not officiate as Superv. B.S. Gr. I and Superv. B.S. Gr. II and which the writ petition was dismissed in limine was not correct and it is ~~xx~~ because of this reason the matter was re-opened to do substantial justice to the applicant and it is in this context that the matter was referred to the senior standing counsel of Hon'ble High Court of Lucknow Bench for legal advice on 26-2-1983 and the legal advice given by the said senior standing counsel was in favour of the applicant. It is on receipt of legal advice that the applicant on 9th. March 1984 was informed by letter ~~xxxx~~ No. 1071-1/SMT/194/EI (Annexure -10) that the case is in progress and by letter dated 16-4-84 the opposite party No. 4 strongly recommended the case of the applicant for payment of officiating allowance for the post of Superv. B.S. Gr. I from 1-1-1966 till to date and appointment to the post of Superv. B.S. Gr. II with retrospective ~~xx~~ effect from 1 st. Jan., 1966.

18. That on re-opening and reviewing the matter by the authorities at the helm of affair the dismissal of the writ petition on incorrect supply of information to the Hon'ble High Court became out of question. A fresh cause of action in favour of the applicant for officiating allowance and for ~~appointment to the post of B.S. Gr. II accrued~~



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appointment to the post of B.S. Gr. II accrued and continued to exist as it remained under consideration and action in favour of the applicant was going on. When action was going on in favour of the applicant under intimation to him how could the applicant agitate the matter by filing a writ or application to make the matter sub-judice and thereby to stop the authorities from taking action in his favour. When the applicant was seeing action in his favour by immediate and higher authorities there was no justification in filing the application. It is only in July 1987 that the applicant from various sources came to know that now no action will be taken in his favour as he has lost his case in the Labour Court. It is under these circumstances that the application could not be filed earlier.



19. That it is for the aforesaid reasons that the applicant could not file his claim earlier and so delay occurred in filing the claim before this Hon'ble Tribunal which is bonafide and was beyond the control of the applicant, hence deserves to be condoned.

Imfor

C. no 81 M

10.00 AM S. M. Tripathi
Deponent

Imfor
Deponent

I, the above named deponent do hereby verify that the contents of para 1 to 19 are true to my own and personal knowledge, no part of it is false and nothing material has been concealed, so help me God.

Imfor
3/9/89

Oath Commissioner of

3-9-89

Imfor
Deponent

Imfor
Deponent

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH AT LUCKNOW

WRITTEN STATEMENT

(On behalf of Respondents)

IN

REGISTRATION NO. 669 OF 1987 (T)

(DISTRICT : LUCKNOW)

S.M. Tripathi -----
Petitioner

Versus

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

The respondent beg to submits as under :

1. That before giving allegations made in the application it is necessary to submit the preliminary objection by the answering respondent regarding the maintainability of the aforesaid petition.

2. That the present application is barred by time under section 21 of the Central Administrative Tribunal Act as the grievances of the petitioner relates to the year 1966 under Paragraphs 1-a-b the applicant/petitioner states that in 1971 Sri Rajendra Prasad was appointed as Supervisor B/S Grade II

16/4/91
S.M.
Filed today

Refer Com.
S.M.
next date 22-5-91

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whereas he was not given an opportunity to appear for recruitment test under paragraph 1st it has been submitted that the petitioner made representations to the Defence Ministry on 1.1.1982 as such the grievances of the applicant/petitioner pertaining to the period prior to 1982 and as such the same cannot be entertained.

3. That it is also submitted that the present petition is liable to be dismissed only on the ground that the grievances of the petitioner has already been touched to finality as the petitioner in the year 1979 has filed a writ petition before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench Lucknow bearing writ petition No.259 of 1979 the same was dismissed on 11.9.1980 by Hon'ble Mr. Justice Mahabir Singh and Hon'ble Mr. Justice K.N. Goel, JJ. a Division Bench of this Hon'ble High Court. The judgment and order dated 11.9.1980 has become final as such now the petitioner cannot raise the similar plea which has already become final.

4. That it is also relevant to mention here that the petitioner has already availed the other remedy by way of filing an application before

the Presiding Officer , Central Government Industrial Tribunal IVth Kanpur by way of L.C.A. No.20 of 1986 S.M. Tripathi versus Engineer in Chief and another the Hon'ble Central Government Labour Court Kanpur has also held that the petitioner is not entitled for computation of amount claimed and the claim petition was dismissed.

5. That in view of the aforesaid facts as the petitioner has already ~~he~~ availed two remedies now at this stage it is not open for the petitioner to file a present petition after availing the remedies mentioned above. The petition deserves to be dismissed as belated as the petitioner has already availed the remedies.

6. That Shri S.M. Tripathi is working as a Storeman since September 1964. The petitioner has filed an application No.889 of 1987 in Central Administrative Tribunal Allahabad (now transferred to Lucknow Bench). In the application, the petitioner has contended that he was performing the duties of Supervisor B/S Grade I under A-GE '(I) Memora, GE (East) Lucknow and even now in GE (East) Lucknow. He has supported

his contention by enclosing copies of letters, office of order, legal opinion etc. for the period 1971 to 1984. He is claiming that he is entitled for the post of Supervisor B/S Grade II a post between ^{B/S} Grade I and Storekeeper Grade I, further one has to pass Storekeeper examination for promotion as Storekeeper Grade I. Even if there is direct recruitment to the post of Supervisor B/S Grade II, he has to be selected after having qualified in the examination and thereafter during probation has to pass Storekeeper examination for retention in service. As such declaring him Supervisor B/S Grade II is absolutely against the Recruitment Rules.

B

7. That the petitioner was selected for the post of Supervisor B/S Grade II in 1971 as a direct recruit and his serial number in the panel was 27. He was not given appointment as there was ban on recruitment. When the ban was lifted the validity of the panel had expired. The petitioner is taking support of this point also in his case.

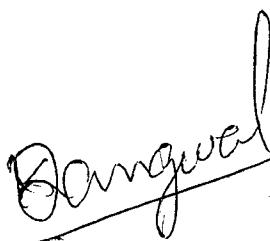
8. That the petitioner approached Hon'ble High Court Allahabad, Lucknow Bench through a writ petition No.259 of 1979 that he be appointed as Supervisor B/S Grade I. This writ was dismissed by a Double Bench judgment on 11th September, 1980 stating that the petitioner was never appointed to officiate as Supervisor B/S Grade I. The order has observed with concern over delay in departmental promotions and that recruitment rules should be scrupulously followed by the department.

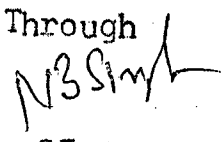
9. That the petitioner approached Central Government Industrial Labour Court Kanpur through LCA No.20 of 1986, for computation of money benefit amounting to Rs.1,45,225.85. The case was contested. The Hon'ble Court examined whether workman was entitled to the post of Supervisor B/S Grade I in order to get salary of that post. It was observed that Supervisor B/S Grade II is a promotional post for which one has to pass stages and even if there be recruitment test, workman will have to come through that channel. It was ruled that applicant was not entitled any with computation as zero, the application was dismissed on 1.1.1987.

10. That the petitioner has moved present application before the Central Administrative Tribunal Allahabad (now transferred to Lucknow Bench). The facts of the case are similar to those already decided and dismissed by Hon'ble High Court as well as Labour Court.

11. That in view of the facts and circumstances stated above it is expedient in the interest of justice that the present petition deserves to be dismissed, as belated and the petitioner has already availed of remedy of approaching the Labour Court and Hon'ble High Court.

I, Maj K K Dangwal, GE (East)
do hereby verify that the contents of paragraphs 1 to 11 of this reply are true to my personal knowledge; which all I believe to be true, no part of it is false and nothing material has been concealed.


(K K DANGWAL)
MAJOR
GE (EAST) LUCKNOW.

Through

N.B. SINGH
Senior Standing Counsel
Central Government
Central Administrative Tribunal