

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH LUCKNOW

## INDEX SHEET

CAUSE TITLE TA 1037 OF 1987NAME OF THE PARTIES M. S. PaulM. S. Paul Applicant

Versus

U O I Respondent

Part A, B &amp; C

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1	order sheet	A1 to A9 ✓
2	D.M.	A5 to A6 ✓
3	Judgement dt. 28-7-89	A7 to A11 ✓
4	Index sheet	A12 to A13 ✓
5	Petition copy / <u>Amendment</u>	A14 to A41 ✓
6	Power	A42 ✓
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8	Amendment App. / <u>Power</u>	A54 to A72 ✓
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## CERTIFICATE

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

Dated 14/3/11 File B/C destroyed on 09-5-12

Counter Signed.....

Section Officer / In charge

Signature of the  
Dealing Assistant

(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

O.A./T.A. No. 1039/07 198

Applicant(s)

Versus

Respondent(s)

Sr. No.	DATE	Orders
10800	<u>Office report</u>	<p>An application has been received in this Tribunal for transferring the case to Circuit Bench Lko.</p> <p>If approve 26-8-08 may kindly be fixed for attendance before Registrar/D.R.(5).</p> <p>NOTICES have been issued to both the parties fixing 26-8-08.</p> <p>Submitted for orders.</p>
JCN 10/8	<u>D.R.(5)</u>	<p>List this Case before Circuit Bench Lko on 26.8.08 before Registrar/D.R.(5) for attendance.</p>
		<p><u>JCN</u> D.R.(5)</p>

Ar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH AT LUCKNOW.

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C.A./T.A. No. 1039  
1102 1987 (G)

M. S. Pany Applicant(s)

Versus

G.O.2 Respondent(s)

Sl. No.	Date	Orders
A	<u>23.1.09</u>	<p><u>D.R</u></p> <p>Sri A. Bhargava, Counsel for respondent power filed today. Counsel for applicant is also present. The case is fixed for final hearing on 28.3.09 as directed by the order of D.R.(G)</p> <p style="text-align: right;"><u>D.R</u></p>

(A.3)

Hon' Mr. D.S. Mishra, A.M.  
Hon' Mr. D.K. Agrawal, J.M.

28-3-89

The brief holder for the learned counsel for the applicant is present. Shri A. Bhargava learned counsel for the respondents states that he has not received the file from the counsel who was attending to the case at Allahabad. Shri A. Bhargava requests for further adjournment. The case is adjourned to 24-4-89.

This is <sup>a</sup>very old case on 1982, and it will not be possible to adjourn further on this ground.

J.M.

A.M.

22

OR

Counsel for applicant respondents was directed to file reply/objections to the amendment application which was filed in High Court. Counsel for respondents has not filed any objections so far. However the counsel for both the parties were agreed for final hearing in this case. Submitted for hearing.

2/4

Hon' Mr. D.S. Misra, A.M.  
Hon' Mr. D.K. Agrawal, J.M.

24/4/89

On the request of the learned counsel for the applicant, this case is listed for final hearing on 25-4-89. No further adjournment shall be allowed.

OR  
Case is submitted for hearing  
2/4

J.M.

A.M.

(sns)

(A)

10.7.89: Hon. D.K. Agrawal - J.M.

An application for adjournment has been received. However the ordersheet ~~at~~ dated 25.4.89 clearly mentions that no adjournment is to be granted to the applicant. Still in the interest of justice and on account of illness of the Counsel the case is adjourned to 12.7.89 for hearing.

~~12.7.89~~  
Hon. D.K. Agrawal - J.M.  
 No sitting of Division Bench today. Fixed 27.9.89 for hearing.  
 Member (J)

12.7.89  
Hon. D.K. Agrawal - J.M.

Sri Raza Zahir brief holder of  
 Sri S.B. Verma appears for the applicant.  
 Sri Arjun Bhargava appears for the

A5

Registered

O/C

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD  
CIRCUIT BENCH, GANDHI BHAWAN  
LUCKNOW  
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No. CAT/CB/LKO/

Dated : 2/8/89

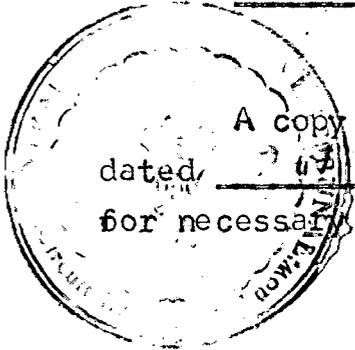
OFFICE - MEMO

Registration No. O.A. 1039 of 1937 (1)  
T.A.

M. S. 1-15 Applicant's

Versus

Union of India Respondent's



A copy of the Tribunal's Order/Judgement dated 27.7.89 in the abovenoted case is forwarded for necessary action.

[Signature]  
2/8/89  
For DEPUTY REGISTRAR (H)

Encl : Copy of Order/Judgement dated 27.7.89

To. [Signature] (Applicant)

[Signature] 2/8/89

dinesh/

[Signature]  
2/8/89

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD

\*\*\*\*\*

T.A. NO. 1039 1987 (L)  
T.A. NO.

DATE OF DECISION \_\_\_\_\_

M. S. Paul

PETITIONER

Shri Raza Zabeer

Advocate for the  
Petitioner(s)

VERSUS

Union of India & Another

RESPONDENT

Arjun Bhargava

Advocate for the  
Respondent(s)

CORAM :

The Hon'ble Mr. Justice Kamleshwar Nath, VC

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether to be circulated to other Benches? No

Dinesh/

\*\*\*\*\*

28/7/89

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
CIRCUIT BENCH AT LUCKNOW

Registration T.A. No.1039 of 1987(L)  
(W.P. No.1599 of 1982)

M.S. Paul ..... Applicant

Versus

Union of India & Another ..... Opposite Parties

Hon. Justice Kamleshwar Nath, V.C.

Writ Petition No. 1599 of 1982 mentioned above was received by transfer under Section 29 of the Administrative Tribunals Act XIII of 1985 for disposal by this Tribunal. The petition was filed on 9.4.1982 for a writ of certiorari to quash the applicant's retirement on 31.5.82 on superannuation on the basis of his date of birth being recorded as 19.5.24 in the service record. The age of superannuation was 58 years.

2. On 19.5.48 the applicant entered in the service of the erstwhile East Indian Railways as a Cleaner in the Running Shed in the Lucknow Division. His date of birth was then recorded as 19.5.24. The applicant says that he did not know the correct date of birth ~~at that time~~ and did not possess any documentary or other proof thereof at that time.

3. In the course of his service he took up High School examination. His case is that on the information received from his mother, his date of birth was recorded in the examination form as well as in the High School Examination, 1973, certificate to be 20.12.25. He said that he had made representations to the Department in 1954, 1955 and 1960 to rectify the date of his birth but the Department did not take any action there on. He

further said that the Department, nevertheless, issued seniority lists on 28.3.60, 7.10.61 and 12.10.61 in which his date of birth was indicated to be 19.5.24; and when the Department again issued a seniority list on 31.7.75, he made a representation, Annexure-4 on 16.10.75. He urged that he represented again on 12.6.81 which representation was dismissed on 30.12.81 by Annexure-9 on the ground that the last date for making the representation was 31.7.73. In course of time, it was notified to him that he would retire on 31.5.82 and therefore he filed the writ petition which has given rise to this case.

4. The Opposite Parties' case is that the applicant had given his own date of birth which was initially recorded in the service record as 19.5.24, that no value is to be attached to the date of birth recorded in a High School Certificate which was procured after entry into service, that there was no representation in 1955 and that after consideration of the period of time during which an employee could make a representation regarding his date of birth, the Railway Board took a decision contained in Annexure-B2 that the employees who were in service before 31.12.71, when the first circular Annexure-B1 was issued on the subject, could make their representation by 31.7.73, after <sup>which</sup> ~~that~~ no further representation could be entertained.

5. I have heard the learned counsel for the parties. It is the own case of the applicant that he did not know the correct date of his birth when he entered into service on 19.5.48 nor he had any proof

further said that the Department, nevertheless, issued seniority lists on 28.3.60, 7.10.61 and 12.10.61 in which his date of birth was indicated to be 19.5.24; and when the Department again issued a seniority list on 31.7.75, he made a representation, Annexure-4 on 16.10.75. He urged that he represented again on 12.6.81 which representation was dismissed on 30.12.81 by Annexure-9 on the ground that the last date for making the representation was 31.7.73. In course of time, it was notified to him that he would retire on 31.5.82 and therefore he filed the writ petition which has given rise to this case.

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5. I have heard the learned counsel for the parties. It is the own case of the applicant that he did not know the correct date of his birth when he entered into service on 19.5.48 nor he had any proof

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B

documentary or otherwise thereof. The important <sup>point</sup> ~~question~~ <sup>is</sup> that if the applicant had no proof, ~~the~~ <sup>in</sup> documentary or otherwise at the time of his entry into service on 19.5.48, how is it that he could receive information of the date of his birth from his mother at the time when he had subsequently submitted the form for admission to the High School Examination. The mother should have been alive even on <sup>19.5.48,</sup> ~~15.4.48~~ and if she was a correct source of the date of applicant's birth, it should have been possible to indicate it at that time. The own admission of the applicant in the petition that he had no "documentary or proof otherwise" of his date of birth at the time of the entry into service, negatives the value of the so called information of the date of birth subsequently received from the mother. That is why the case of the Opposite Parties in para 4 of the Counter Affidavit that no value can be attached to the statement of the date of birth, <sup>in the</sup> ~~any~~ certificate obtained after entry into the service, is not without force.

6. In the matter of making representations, the applicant has filed copy Annexure-1 of the year 1955 only; its receipt has been denied in para 4 of the Counter Affidavit. Copies of representations of 1955 and 1960 have not been filed; it is not possible to lay faith on a bare statement in that respect. It is significant that even if these representations were made, they do not appear to have been accepted by the Department and can well be considered to have been impliedly rejected when seniority lists were issued in 1960 and 1961 indicating the applicant's date of birth as 19.5.24. It does not appear that the applicant

made any representation after the issue of those seniority lists.

7. The next representation is dated 16.10.75, Annexure-7 which followed the seniority list of 31.7.75. Perhaps this was not considered by the Department. The last representation dated 30.12.81 was rejected by order Annexure-9 stating that the last date for making the representation was 31.7.73.

8. The Opposite Parties' case that the last date for submitting the representation was 31.7.73, is correct. It appears that the matter was considered initially by Railway Board's circular dated 3.12.1971, Annexure-B1 in which it was said that alteration in age after completion of period of probation or of three years of service whichever is earlier would not be permitted. Hardship was considered to have been caused by that circular to the cases of those employees who were already in service on 3.12.71 but could not avail of the opportunity afforded. That is why the Subsequent circular dated 4.8.72, Annexure-B2 was issued with a direction for wide publicity, and it was said that those persons who were in employment on 3.12.71 could make their representation by 31.7.73 but not thereafter and if they did make such representation, it would be considered according to Rules. The Department took a decision to treat 31.7.73 as the 'cut off date'. It is not said that the 'cut off date' was unreasonable.

Indeed, employees have to share responsibility for errors in their date of birth, and it is quite fair to fix a reasonable time during which such errors could be got rectified. In respect of employees who were on job on or before 3.12.71, a provision for making representations till 31.7.73 appears to be quite reasonable. There is no error therefore in the decision of the Opposite Parties that the applicant's

2

representation dated 30.12.81, or for that matter  
dated ~~31.7.73~~<sup>16.10.75</sup>, were not entertainable after 31.7.73.

9. The applicant's learned counsel made a submission that Rule 145 of the Railway Establishment Code, Volume I did not fix any time limit during which representation could be made. This is not to say that the Rule had also provided that the representation could be made at any time. In other words, Rule 145 of the Railway Establishment Code contained a gap on the question of the period of time during which representation could be made. That gap could certainly be made good by means of administrative instructions which are contained in the circulars dated 3.12.~~1981~~<sup>1971</sup>, Annexure-B1 and dated ~~23.8.1982~~<sup>4.8.1972</sup>, Annexure-B2.

10. On a careful consideration of all the matters, I am satisfied that the impugned order does not suffer from any infirmity and the application deserves to fail. The application is dismissed. Parties shall bear their own costs.



Vice Chairman

Dated the 28th July, 1989.

RKM

CIVIL  
 SIDE  
 CRIMINAL

GENERAL INDEX

(Chapter XLI, Rules 2, 9 and 15)

Nature and number of case W.P. 1599-82

Name of parties Maddur Sudan Paul

Date of institution 9-4-82

Date of decision.....

File no.	Serial no. of paper	Description of paper	Number of sheets	Court-fee		Date of admission of paper to record	Condition of document	Remarks including date of destruction of paper, if any	
				Number of stamps	Value				
1	2	3	4	5	6	7	8	9	
					Rs.	P.			
	1	Imp. with Domes and affidavits	27	-	102	00			
	2	Power	1	-	5	00			
	3	Comd. 3385(W) of 82 ad. affidavits	7	-	7	00			
	4	Power	1	-	5	00			
	5	Comd. 6527(W) of 85	9	-	7	00			
	6	Power	1	-	5	00			
	7	Comd. 10562(W) of 85 with CA	15	-	7	00			
	8	order sheet	10	-	-	-			
	9	Buch City	1	-	-	-			

I have this \_\_\_\_\_ day of \_\_\_\_\_ 198 \_\_\_\_\_ examined the record and compared the entries on this sheet with the papers on the record. I have made all necessary corrections and certify that the paper correspond with the general index, that they bear Court-fee stamps of the aggregate value of Rs. \_\_\_\_\_ that all orders have been carried out, and that the record is complete and in order up to the date of the certificate.

Date.....

Munsarim  
 Clerk

Group AMU(J)

2708. A13

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

SITTING AT LUCKNOW

Writ Petition No. 1599 of 1982

Madhu Sudan Paul ..... Petitioner

Versus

Union of India & another ..... Opposite Parties

I N D E X

	<u>Pages</u>
1. Writ petition.	... 1 & 9
2. Annexure No.1- Representation dated 27.6.1955.	... 10,
3. Annexure No.2- High School Certificate.	... 11 & 12
4. Annexure No.3- Gazette notification showing petitioner's roll no. and date of birth.	... 13 & 14
5. Annexure No.4- Representation dated 16.10.1975.	... 15,
6. Annexure No.5- Extract of seniority list.	... 16 & 17
7. Annexure No.6- Order of opp. party no.2 dt. 31.12.81 alongwith extract of the retirement list.	... 18- 21
8. Annexure No.7- Petitioner's request for interview dt. 30.12.1981.	... 22 &
9. Annexure No.8- Representation dt. 30.12.1981 handed to Dm on 6.1.82.	... 23 & 24
10. Affidavit.	... 25- 27
11. Vakalatnama.	... 28,
12. Stay application.	...

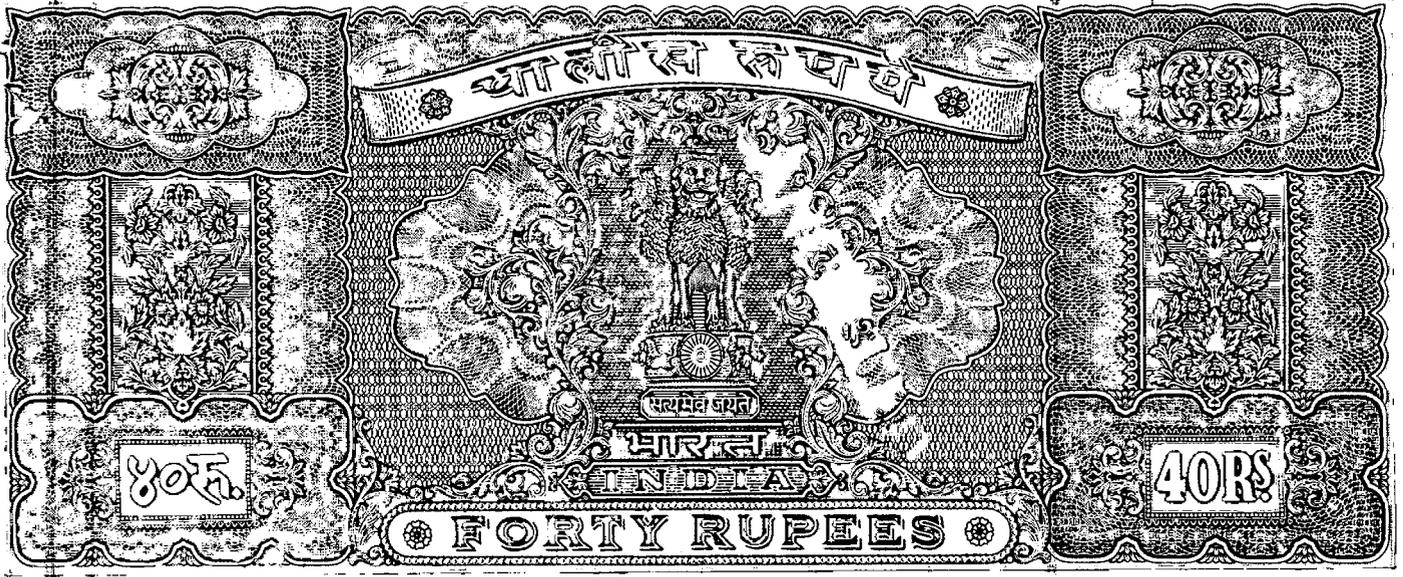
*V. K. Mishra*

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INDIA COURT FEE

A14

40 Rs.



In the Hon.ble High Court of Judicature  
At Allahabad Lucknow Bench L W  
WP no 1599 of 1902

Madhu Sudan pal vs. Commission In death

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

SITTING AT LUCKNOW

Writ Petition No. 1599 of 1982

Madhu Sudan Paul, aged 56 years, son of late B.M. Paul,  
resident of Mohan Niwas, Murli Nagar, Lucknow.

.... Petitioner

Versus

1. Union of India through the General Manager, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.

.... Opposite Parties

Writ Petition Under Article 226  
of the Constitution of India.

The petitioner begs to submit as under :-

1. That the petitioner is working as Senior Clerk in the office of the Senior Divisional Electrical Engineer Northern Railway, Lucknow. He entered service as IV class employee on the post of cleaner in the running shed of the then East Indian Railway in Lucknow Division in the year 1948. The petitioner has served the railway adminis-



M.S. Paul

A16

tration diligently and sincerely and has a clean and satisfactory service record.

2. That at the time of his appointment on 19.5.1948 the petitioner was illiterate and could hardly read or write. In the absence of any documentary proof regarding his date of birth the same was recorded by the clerk concerned on the basis of his own assessment as 24 years. This is evident from the fact that the clerk concerned entered the petitioner's date of birth as 19.5.1924, that is, exactly 24 years from the actual date of appointment of the petitioner which is 19.5.1924. The petitioner at that time did not object to it as he himself did not have any proof documentary or otherwise of his actual date of birth. The petitioner, while in service, continued his education. His date of birth entered in school on the basis of the information received from his mother is 20.12.1925. This was accordingly entered in the High School ~~Certificate~~ form also and it is the actual date of birth of the petitioner as entered in his high school certificate for the examination in the year 1953 and the said certificate was received by the petitioner in the year 1954.

3. That the petitioner on the basis of passing high school examination got a temporary promotion from class IV to class III as Trains Clerk on 9.12.1954 by letter dated 2.12.1954.

4. That the petitioner, while working as Transhipment Clerk, made a representation to the Divisional Superintendent, Northern Railway, Lucknow, by Registered A/D letter dated 27.6.1955 regarding correction of his date of birth. This letter was received on 2.7.1955. This

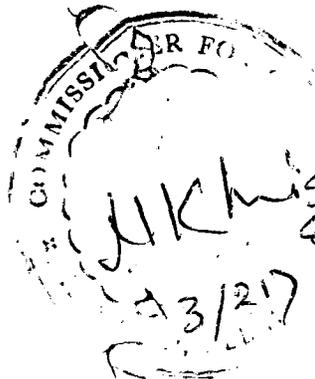
COMMISSIONER FOR  
 HKH SVA  
 8.4.82  
 33/217

husband

was in continuation to his earlier representation dated 16.4.1954 which was the first representation regarding correction of his date of birth. The petitioner along with this representation also submitted an attested copy of his high school certificate. True copy of the representation dated 27.6.1955 is filed as Annexure No.1, a photostat copy of the high school certificate for the examination 1953 showing petitioner's date of birth as 20.12.1925 is filed as Annexure No.2 and a photostat copy of the gazette notification showing the petitioner's roll no. and the date of birth is filed as Annexure No.3 to this writ petition.

5. That as no action was taken on his earlier representation, the petitioner made another representation, on 27.4.1960 after circulation of the seniority list on 28.3.1960 and thereafter on 12.10.1961 on circulation of another seniority list on 7.10.1961. But still no action was taken to correct the petitioner's date of birth in accordance with the high school certificate.

6. That thereafter when the seniority list of clerks of Electrical Branch as on 31.7.1975 was circulated in November 1975 the petitioner's name at sl.no.17 again showed his wrong date of birth as 19.5.1924. The petitioner was thus constrained to make another representation to the Divisional Superintendent requesting for correction of his date of birth in accordance with his high school certificate which is as 20.12.1925. The petitioner also enclosed therewith a copy of high school certificate. True copy of his representation dated 16.10.1975 is filed as Annexure No.4 and an extract of the seniority list of clerks of Electrical Branch, Lucknow Division, as on



Mishra

AIS

31.7.1975 showing the petitioner at sl.no. 17 is filed as Annexure No.5 to this writ petition.

7. That the petitioner in anticipation of his approaching retirement on attaining the age of superannuation, that is 58 years, again made a representation dated 12.6.1981 to the Divisional Railway Manager, Northern Railway, Lucknow.

8. That in spite of the aforesaid representation the list of persons due to retire in the year 1982 was issued in January 1982 according to which the petitioner is to retire on 31.5.1982 in accordance with the wrong date of birth entered as 19.5.1924. True copy of the order of opposite party no.2 dated 31.12.1981 for retirement of the railway personnel in 1982 along with an extract of the retirement list showing the petitioner's date of retirement on 31.5.1982 as Senior Clerk in the office of the Senior Divisional Electrical Engineer, Northern Railway, Lucknow, is filed as Annexure No.6 to this writ petition.

9. That the petitioner having no other alternative wrote a letter dated 30.12.1981 to the Divisional Railway Manager seeking an interview with him in order to apprise him of his grievance regarding correction of his date of birth as all previous representations in this connection had failed to receive any attention from the authorities concerned. The petitioner in response to his request was granted interview by the Divisional Railway Manager on 6.1.1982. The petitioner at the time of his interview with the Divisional Railway Manager handed over to him a detailed representation dated 30.12.1981

COMMISSIONER  
ALLAHABAD  
3/2/82

Instant

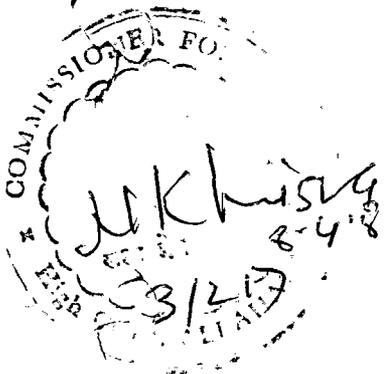
giving the background of his case and referred to rule 145 of the Indian Railway Establishment Code, Vol. I and also the procedure for correcting the date of birth as laid down in the Railway Board Circular dated 3.12.1971. The Divisional Railway Manager after hearing the petitioner gave the following direction to the Divisional Personnel Officer :-

"Examine his case and let me know.

H.S. Chatta  
D.R.M./N.R./Lko/6.1.82"

True copies of the petitioner's request for interview with the Divisional Railway Manager dated 30.12.1981 and the representation dated 30.12.1981 personally handed over by the Petitioner to the Divisional Railway Manager on 6.1.1982 are filed as Annexure Nos. 7 and 8 respectively to this writ petition.

10. That in spite of the directions given by the Divisional Railway Manager to the Divisional Personnel Officer to examine the petitioner's case on the basis of the interview and the representation dated 30.12.1981 personally handed over by the petitioner on 6.1.1982 no steps have been taken by the authority concerned to examine the petitioner's case or to inform the Divisional Railway Manager. Thus it is evident that despite numerous representations made by the petitioner since the year 1954 no action has been taken by the railway administration to correct the petitioner's date of birth in accordance with Rule 145 of the Indian Railway Establishment Code, Vol. I and the Railway Board's letter dated 3.12.1971 regarding procedure for recording date of birth on entering Railway service and its alteration.



*Insaul*

The Railway Board's letter No.E(NG)1170BR/i, dated 3.12.1971, is as follows:-

"Rule 145-RI lays down that every person, on entering Railway service, should declare his date of birth which shall not differ from any declaration, expressed or implied, for any public purpose before entering Railway service. The rule is not specific on the point whether the mere declaration given by the person should be accepted or it should be accepted only on production of a confirmatory documentary evidence. The Rule is also silent as to what confirmatory documentary evidence should be accepted for this purpose. As regards alteration of recorded date of birth, Rule 145(3) RI lays down that where a satisfactory explanation (which should ordinarily be submitted within a reasonable time after joining service) of the circumstances in which the wrong date came to be entered is furnished by the Railway servant concerned together with the statement of any previous attempt made to have the record amended, it is open to the competent authority to affect an alteration. No time limit has been given for alteration...."



*Insant*

11. That the petitioner being the senior most in the cadre of senior clerks has been sanctioned special pay of Rs.35/- per month in the grade of Rs.330-560 (Revised Scale) w.e.f. 1.10.1980 vide Divisional Office Order dated 29.3.1982. The petitioner by virtue of his

seniority is also due for promotion as Head Clerk in the higher grade of Rs.425-700. But owing to his impending retirement on 31.5.1982 the petitioner will be deprived of this chance of promotion.

*Insland*



12. That aggrieved by the inaction of the railway administration to correct the petitioner's date of birth in accordance with his high school certificate despite repeated representations since 1954 and finally when he is being retired on 31.5.1982 on the basis of his wrong date of birth, the petitioner having no alternative efficacious remedy has preferred this writ petition on the following amongst other grounds:-

G R O U N D S

- (A) Because the petitioner's date of birth has been wrongly entered in his service record.
- (B) Because the petitioner's actual date of birth as entered in his high school certificate is 20.12.1925.
- (C) Because the opposite parties have failed to alter and correct the petitioner's actual date of birth in his service record on the basis of his high school certificate despite repeated reminders.
- (D) Because the opposite parties in not correcting the petitioner's date of birth as entered in his high school certificate have acted in contravention of rule 145 of the Indian Railway Establishment Code and the orders of the Railway Board dated 3.12.1971 laying down the procedure for this purpose.

*Vallabhi Patil*

- (E) Because the action of opposite parties in retiring the petitioner on the basis of his wrong date of birth is illegal, arbitrary and in violation of Article 16 of the Constitution of India.
- (F) Because the petitioner will suffer grave miscarriage of justice in case of his illegal and pre-mature retirement on the basis of incorrect age.

P R A Y E R

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

- (i) issue a writ, direction or order in the nature of mandamus commanding the opposite parties to correct the petitioner's date of birth in his service record in accordance with his high school certificate which is 20.12.1925;
- (ii) issue a writ, direction or order in the nature of certiorari quashing the petitioner's date of retirement on 31.5.1982 as shown in the retirement list for May 1982 (Annexure No.6);
- (iii) issue a writ, direction or order in the nature of mandamus commanding the opposite parties not to give effect to the petitioner's date of birth as 19.5.1924 as wrongly entered in his service record;

*Lawyer Jagat Shukla*

- (E) Because the action of opposite parties in retiring the petitioner on the basis of his wrong date of birth is illegal, arbitrary and in violation of Article 16 of the Constitution of India.
- (F) Because the petitioner will suffer grave miscarriage of justice in case of his illegal and pre-mature retirement on the basis of incorrect age.

P R A Y E R

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

- (i) issue a writ, direction or order in the nature of mandamus commanding the opposite parties to correct the petitioner's date of birth in his service record in accordance with his high school certificate which is 20.12.1925;
- (ii) issue a writ, direction or order in the nature of certiorari quashing the petitioner's date of retirement on 31.5.1982 as shown in the retirement list for May 1982 (Annexure No.6);
- (iii) issue a writ, direction or order in the nature of mandamus commanding the opposite parties not to give effect to the petitioner's date of birth as 19.5.1924 as wrongly entered in his service record;

*Navin Kumar Shukla*

(iv) issue such other writ, direction or order as deemed proper in the circumstances of the case;

(v) award the costs of the writ petition to the petitioner.

Dated Lucknow:  
April 8, 1982.

*Lal Mohan Pathak*  
(L.P. Shukla)  
Advocate,  
Counsel for the Petitioner.



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

Writ Petition No.                      of 1982

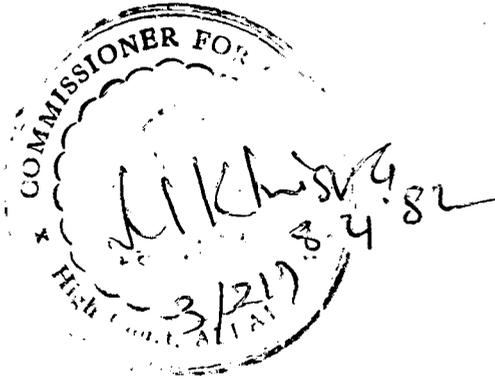
Madhu Sudan Paul                      .....                      Petitioner

Versus

Ujion of India & another                      .....                      Opp. Parties

ANNEXURE NO. 2

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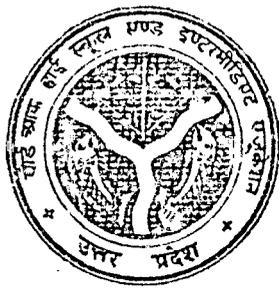


*Handwritten signature or initials*

१८६-४८

90584

उच्च शिक्षण विभाग  
 एम. ए. डिप्लोमा इन एजुकेशन  
 एम. ए. डिप्लोमा इन एजुकेशन  
 एम. ए. डिप्लोमा इन एजुकेशन

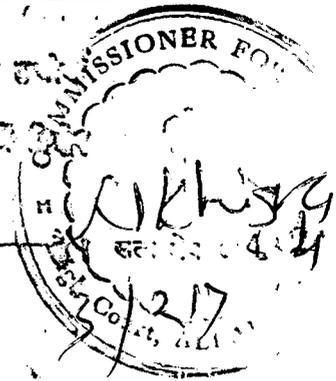


गर्भ सूचना, १९५३

नाम: \_\_\_\_\_ नथु सुदन पाल

पता: \_\_\_\_\_ काशी/मिर्जापुर, १५५३

वर्ग: \_\_\_\_\_ इंग्लिश अंग्रेजी इण्डियन डिप्लोमा



आधार: \_\_\_\_\_  
दिनांक: \_\_\_\_\_

MD 9 2013  
(निराधार प्राप्त गेठी)  
पृष्ठ सं. १५०/१०  
पेज सं. १





15

#  
29

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

Writ Petition No. of 1982

Madhu Sudan Paul ..... Petitioner  
Versus  
Union of India & another ..... Opp. Parties

Annexure No. 4

To,

The Divisional Superintendent,  
Northern Railway,  
Lucknow.

Sir,

With reference to your No.847E/6-3(ELC) dated  
Nov. 1975 regarding seniority list of clerks of  
Electrical Branch, I beg to point out towards the  
enclosed list at serial no.17 of your letter wherein  
my date of birth has erroneously been given as 19.5.24.

According to my High School<sup>o</sup> Certificate it should  
be as 20.12.25. Hence it is prayed that it should kindly  
be corrected and intimated to me and my seniority be fixed  
in that light. In support of my age a true copy of High  
School Certificate is enclosed herewith.

Thanking you in anticipation.

Enclosed:- True copy of  
High School  
Certificate.

Yours faithfully,

Sd/- M.S. Paul  
(M.S. Paul)  
Clerk,

Divisional Superintendent Office  
Hazaratganj, Lucknow.

Dated 16-10-1975.



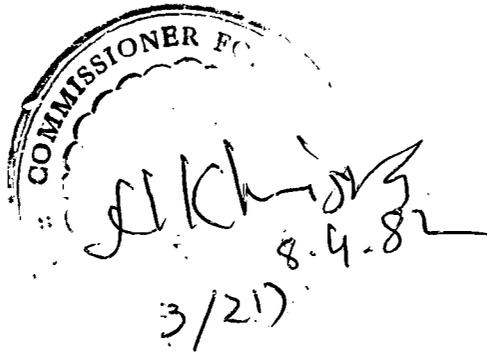
*husban*

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

Writ Petition No.                      of 1982

Madhu Sudan Paul	.....	Petitioner
	Versus	
Union of India & another	.....	Opp. Parties

ANNEXURE NO.5


  
 COMMISSIONER FC  
 8.4.82  
 3/217

*Instant*

*F)*

5

Seniority list of Electrical Branch of Lucknow Division as on 31.7.1975.

425-700  
230-560  
260-400  
Sanctioned Strength: Pt. Temp. W/O  
2  
10  
15  
2

COMMISSIONER  
High Court, Lucknow  
3/2/75  
4.4.75  
K.K. Mishra

W.S. Paul

S. no.	Name	Place of working.	Date of birth	Date of original appt.	Sub-grade	Date of appt. in sub-gr.	Date of confir- -ation.	Date of Offe- -Grade.	Date from which office,	Remarks.
1	Sh. B. Srivastava	EC/Const	10.7.23	4.5.44	210-380	1.4.56	10.11.61	-	-	Transfer to HQ Office w.e.f. 17.9.70 AM.
2	J.S. Saxena	DEL/IKO	8.4.20	21.7.42	425-700	18.5.59	28.5.63	-	-	(Prev.) 425-700 G.II.70 joined on transfer from WPP/CB IKO on promotion.
3	J.E. Tewari	"	1.8.22	21.12.44	330-560	-	-	-	-	
4	H.K. Srivastava	DEE/IKO	5.1.22	25.10.43	-do-	25.5.57	25.5.58	-	-	
5	K.K. Srivastava	-do-	4.6.25	2.3.44	-do-	1.4.56	1.4.63	-	-	
6	S.K. Mukerjee	ELT/TS/ AM	30.3.28	17.7.46	-do-	1.4.56	1.4.63	-	-	
7	C.R. Mukerjee	DEE/IKO	24.10.24	20.11.46	-do-	1.4.56	1.4.63	-	-	
8	G.W. Gupta	-do-	15.12.38	13.5.55	-do-	1.4.56	1.4.63	-	-	
9	R.B. Tripathi	-do-	7.12.23	7.12.46	"	2.10.59	1.4.63	-	-	
10	H.P. Saxena	-do-	25.8.26	18.12.46	"	21.10.59	1.4.63 (Prev.)	-	-	
11	Ved Anrit	HTR/Elect/ IKO	27.3.26	14.6.49	-do-	11.1.60	1.4.64	-	-	
12	A.K. Sinha	-do-	9.9.24	14.5.46	260-400	14.6.46	24.12.54	330-560	26.5.65	
13	Rajbala Pr. Srivastava	EC/Const IKO	2.3.32	27.7.53	"	27.4.53	15.6.56	"	26.5.68	Copy.
14	Har Prasad	EC/TS/ CB/IKO	11.9.27	5.2.55	"	5.2.55	21.8.56	"	28.10.61	
15	Krishna Behari	EC/IKO/ Pump/IKO	10.7.26	18.4.55	"	18.4.55	1.3.57	-	-	
16	V.N. Privedi	ELT/Elect/ IKO	5.7.30	7.7.56	"	7.7.56	25.3.57	-	-	
17	K.T. Paul	DEE/IKO	19.5.24	19.5.48	-do-	19.5.48	16.9.57	-	-	

Contd...2.

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

Writ Petition No. of 1982

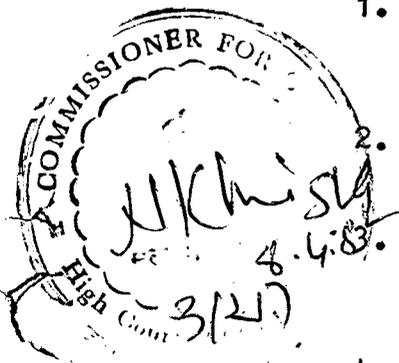
Madhu Sudan Paul ..... Petitioner  
Versus  
Union of India & another ..... Opp. Parties

ANNEXURE No. 6

NORTHERN RAILWAY  
Divisional Office,  
Lucknow: Dt. 31/12/81.

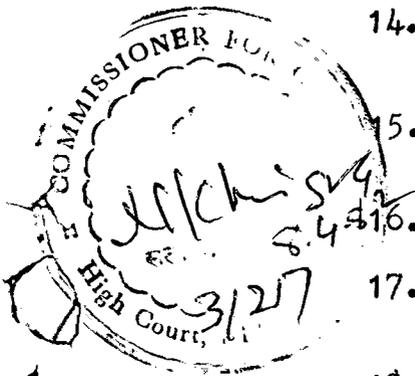
No.E/Settlement/Retirement/1982.

1. Sr. Divl. Accounts Officer, Lucknow (PF) to please see that PF Accounts of the staff are kept ready before their date of retirement.
2. Sr. DAO/N.Rly; Lucknow (Pension) for information and necessary action.
3. The General Manager (P)/N. Railway, Baroda House, New Delhi for information in ref. to his letter No.907E/297(EVA) dated 24.10.64.
4. The Sr. Welfare Inspectors and LIs on Lucknow Division for information and necessary action. They will please see that complete and upto date SRs are received in the Settlement Section alongwith upto date leave account from the Asstt. Engineer and other exterior Officers who maintain them well in advance before an employee is due to retire. They should also ensure that option from the staff for pensionary benefits are pasted in the SRs where necessary and necessary entries to that effect are also made.
5. The Manager, EPC Bank Ltd; 19A, Vidhan Sabha Marg/ Lucknow for information. They will please see that outstanding loan against any of the employees mentioned in the attached lists is cleared before their date of superannuation failing which the employee will be settled up.
6. Asstt. Engineer, I, II, Relaying Spl. LKO FD BSB-SLN PBH AND RBL PRG for information. They will please ensure that SRs of the retiring staff who opted for pension be submitted to this office 15 months prior to their retirement and in the case of SRPF options one year prior to their retirement to this office with complete settlement papers and leave accounts of the retiring staff.



*Insent*

7. The Station Supdts., LKO BSB ALD & PBH for information and necessary action.
8. The Station Masters - RBL ON ACND FDKS JLL BEK NFL NFKA LOT JFG BOY POF CIL MOF KEI SLN SRH PRG JPD SYK GANG ML JNU SHG CHH BTP HCP ANT KVC SOP AY PFM DYP ARP SHNG TKHP VAI AY LGO RCH DNW SYZ SEN TND LLJ AI NPB PTH KSF ULN CHBS SWPR UCR DTJ PHV SWS MGH LOS SGI KBF SME TQA TIKH AMS SKNR.
9. PWIs - PWI I LKO PBH JNU FD BEK PWI I/SLW UCR BCN JNH ROL ON RBL SHG PWI II/LKO SAW CIL PWI-II/LN? BSB JNU NHH KVG GANG PWI TD SLN, PRG
10. IOWs - PBH AHV LKO Estate LKO CB-LKO Line LKO IOW/LKO FD MGS BSH SLN RBL PHG.
11. Loco Foreman LKO PBH FD & BSB.
12. Medical Supdt., Indoor/CB/LKO, MS(Outdoor)CS/LKO, ADMO(C&W)/AHV/LKO, ADMO (Loco Shop)/CB/LKO, MEL.
13. CHI/LKO, Dy. CHCMGS, UG(Vending) BSB, T19Safety)/LKO CTI-LKO, IW(T)/LKO, UC(Vending)/LKO.
14. DME(DSL)NGS, CXP/LKO, FIO/LKO, HTWP/TL/BSB, HTXB/SLN CTXR-PBH, HTXR-JNU, NPO/SLN.
15. SEFO(TL)/LKO, ELC-JNU, ELC/TL/LKO, SEFO/BSB, ELC(HL)/LKO, ELC(Pump)LKO, EFO/AHV/LKO, SEFO/LKO.
16. SI(W)/PBH, SI(E)/BSB, SI(W)/BSB, SI(II)/LKO.
17. Area Officer, DRM OFFICE/LKO, GS/LKO, TCI(W)/LKO, GS/LKO, CTS-LKO, CIC(TBS)BSB, AOS/BSB.
18. SHI/AMV/LKO, CHI-CB/LKO, HI stn. CR/LKO, SBI/BSB, HI/PBH, HI/FD.
19. DEN-II/LKO APO(I), APO(II), APO(G) LKO DEN-I, DEN-III, DEE.
20. Relief Clerk CHC, (Ph), Supdt. Comml., Supdt. 'T' Acctt. Optg. A/cs., Bd. Conf. Steno, Supdt. Mech. RS(CR), AS(Store)/Pass, AS(Elec), Asstt. Hindi Officer, DHN Office, Lucknow for information and necessary action.
21. The SE, ASE and all Hd. Clerk, Dealing Clerks in Sec. DRM Office, LKO. They will please personall check up the date of retirement of the staff as given therein and intimate any error which might come to their notice.
22. ACS/LKO. He will kindly arrange to clear all outstanding Comml. debits of the staff concerned within time.



*Mustaul*

Incharge of various groups in Establishment should note that SRs of the staff concerned in SAPF system should be sent to the Sr. DAO/LKO for verification one year in advance to the date of retirement. The pensionable staff should be handed over to the (Settlement) immediately as the action in all such is to be taken up fifteen months in advance, pension optee, have been distinguished in the retirement

on the basis of information furnished by the dealing clerks which should be checked again.

It is once again emphasised that senior subordinates concerned must spare the retiring staff on their due date of retirement even in absence of relief, failing which they will render themselves liable to disciplinary action. All Subordinates should also note that in future, gratuity (SC to PF) bills of all the staff must bear clear, rolled LTI duly attested on the top of the form G-101 by the subordinate incharge concerned before sending the same to this office for arranging payment. They will also invariably furnish the present home address of the staff retiring. They optee or pensionary optee under clear signature of the competent authority.

Sd/ Illegible  
for Divl. Railway Manager,  
Lucknow.

Note:- All the senior subordinates are required to give wide publicity amongst the retiring staff and also the name of the retiring staff be exhibited on the Notice Board.

....



*[Handwritten notes and signatures on the left margin]*

SHOWING PARTICULARS OF STAFF DUE RETIREMENT IN MAY/82 FOR THE PURPOSE OF PREPARING PREPARATION WORK IN ACCOUNTS OFFICE IN REGARD TO PAYMENT OF PROVIDENT FUND MONEY (REF. BD'S LETTER NO. 512E/1/28/3 DATED 6.9.1952).



Sl. No.	Name	Father's name	Design.	PF L/cs. & Folio No.	Station worked during the pre-ceeding 6 mths. leave.	Date of retirement	Cause of termination	Scale of pay	Rules Governed - i) Scale ii) PF iii) Leave	Pension or GRPF optee.	Remarks.
1	Shri Sumar	Shri Badal	Porter	51C084	SW-JMU	31.5.82	Retd. under age limit.	RS-CP0	GRPF Optee		
2	"	"	"	"	"	"	"	"	"	"	"
3	"	"	"	"	"	"	"	"	"	"	"
4	"	"	"	"	"	"	"	"	"	"	"
5	"	"	"	"	"	"	"	"	"	"	"
6	"	"	"	"	"	"	"	"	"	"	"
7	"	"	"	"	"	"	"	"	"	"	"
8	"	"	"	"	"	"	"	"	"	"	"
9	"	"	"	"	"	"	"	"	"	"	"
10	"	"	"	"	"	"	"	"	"	"	"
11	"	"	"	"	"	"	"	"	"	"	"
12	"	"	"	"	"	"	"	"	"	"	"
13	"	"	"	"	"	"	"	"	"	"	"
14	"	"	"	"	"	"	"	"	"	"	"
15	"	"	"	"	"	"	"	"	"	"	"
16	"	"	"	"	"	"	"	"	"	"	"
17	"	"	"	"	"	"	"	"	"	"	"
18	"	"	"	"	"	"	"	"	"	"	"
19	"	"	"	"	"	"	"	"	"	"	"
20	"	"	"	"	"	"	"	"	"	"	"
21	"	"	"	"	"	"	"	"	"	"	"
22	"	"	"	"	"	"	"	"	"	"	"
23	"	"	"	"	"	"	"	"	"	"	"
24	"	"	"	"	"	"	"	"	"	"	"
25	"	"	"	"	"	"	"	"	"	"	"
26	"	"	"	"	"	"	"	"	"	"	"
27	"	"	"	"	"	"	"	"	"	"	"
28	"	"	"	"	"	"	"	"	"	"	"
29	"	"	"	"	"	"	"	"	"	"	"
30	"	"	"	"	"	"	"	"	"	"	"
31	"	"	"	"	"	"	"	"	"	"	"
32	"	"	"	"	"	"	"	"	"	"	"
33	"	"	"	"	"	"	"	"	"	"	"
34	"	"	"	"	"	"	"	"	"	"	"
35	"	"	"	"	"	"	"	"	"	"	"
36	"	"	"	"	"	"	"	"	"	"	"
37	"	"	"	"	"	"	"	"	"	"	"
38	"	"	"	"	"	"	"	"	"	"	"
39	"	"	"	"	"	"	"	"	"	"	"
40	"	"	"	"	"	"	"	"	"	"	"
41	"	"	"	"	"	"	"	"	"	"	"
42	"	"	"	"	"	"	"	"	"	"	"
43	"	"	"	"	"	"	"	"	"	"	"
44	"	"	"	"	"	"	"	"	"	"	"
45	"	"	"	"	"	"	"	"	"	"	"
46	"	"	"	"	"	"	"	"	"	"	"
47	"	"	"	"	"	"	"	"	"	"	"
48	"	"	"	"	"	"	"	"	"	"	"
49	"	"	"	"	"	"	"	"	"	"	"
50	"	"	"	"	"	"	"	"	"	"	"
51	"	"	"	"	"	"	"	"	"	"	"
52	"	"	"	"	"	"	"	"	"	"	"
53	"	"	"	"	"	"	"	"	"	"	"
54	"	"	"	"	"	"	"	"	"	"	"
55	"	"	"	"	"	"	"	"	"	"	"
56	"	"	"	"	"	"	"	"	"	"	"
57	"	"	"	"	"	"	"	"	"	"	"
58	"	"	"	"	"	"	"	"	"	"	"
59	"	"	"	"	"	"	"	"	"	"	"
60	"	"	"	"	"	"	"	"	"	"	"
61	"	"	"	"	"	"	"	"	"	"	"
62	"	"	"	"	"	"	"	"	"	"	"
63	"	"	"	"	"	"	"	"	"	"	"
64	"	"	"	"	"	"	"	"	"	"	"
65	"	"	"	"	"	"	"	"	"	"	"
66	"	"	"	"	"	"	"	"	"	"	"
67	"	"	"	"	"	"	"	"	"	"	"
68	"	"	"	"	"	"	"	"	"	"	"
69	"	"	"	"	"	"	"	"	"	"	"
70	"	"	"	"	"	"	"	"	"	"	"
71	"	"	"	"	"	"	"	"	"	"	"
72	"	"	"	"	"	"	"	"	"	"	"
73	"	"	"	"	"	"	"	"	"	"	"
74	"	"	"	"	"	"	"	"	"	"	"
75	"	"	"	"	"	"	"	"	"	"	"
76	"	"	"	"	"	"	"	"	"	"	"
77	"	"	"	"	"	"	"	"	"	"	"
78	"	"	"	"	"	"	"	"	"	"	"
79	"	"	"	"	"	"	"	"	"	"	"
80	"	"	"	"	"	"	"	"	"	"	"
81	"	"	"	"	"	"	"	"	"	"	"
82	"	"	"	"	"	"	"	"	"	"	"
83	"	"	"	"	"	"	"	"	"	"	"
84	"	"	"	"	"	"	"	"	"	"	"
85	"	"	"	"	"	"	"	"	"	"	"
86	"	"	"	"	"	"	"	"	"	"	"
87	"	"	"	"	"	"	"	"	"	"	"
88	"	"	"	"	"	"	"	"	"	"	"
89	"	"	"	"	"	"	"	"	"	"	"
90	"	"	"	"	"	"	"	"	"	"	"
91	"	"	"	"	"	"	"	"	"	"	"
92	"	"	"	"	"	"	"	"	"	"	"
93	"	"	"	"	"	"	"	"	"	"	"
94	"	"	"	"	"	"	"	"	"	"	"
95	"	"	"	"	"	"	"	"	"	"	"
96	"	"	"	"	"	"	"	"	"	"	"
97	"	"	"	"	"	"	"	"	"	"	"
98	"	"	"	"	"	"	"	"	"	"	"
99	"	"	"	"	"	"	"	"	"	"	"
100	"	"	"	"	"	"	"	"	"	"	"

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

Writ Petition No. of 1982

Madhu Sudan Paul ..... Petitioner  
Versus  
Union of India & another ..... Opp. Parties

ANNEXURE NO. 7

From

M.S. Paul,  
Senior Clerk,  
Elec. Foreman Office, CB.

Date December 30, 1981

To,

The Divisional Railway Manager,  
Northern Railway,  
Lucknow.

Through the proper channel.

Subject :- INTERVIEW.

Sir,

I humbly beg to state that I submitted several petitions after obtaining High School Certificate for alteration of date of birth as recorded in the School certificate but in spite of my approaches my representations have failed to receive any attention and consideration.

As the date of my superannuation is approaching and the non-disposal of my appeal will put me tremendous loss and this aspect compels me to seek interview to have your goodself apprise my stand ~~press~~ personally for redress.

Hope to be favoured with an early interview.

Thanking you.

Yours faithfully,

Sd/- M.S. Paul  
(M.S. Paul)  
Senior Clerk.

COMMISSIONER FO  
\* (M.K. Khosla)  
8.4.84  
3/21)

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

Writ Petition No. of 1982

Madhu Sudan Paul ..... Petitioner  
Versus  
Union of India & another ..... Opp. Parties

ANNEXURE NO.8

From :

M.S. Paul Dated December 30, 1981.  
Sr. Clerk, Elec. Foreman's Office,  
Charbagh, Lucknow.

The Divisional Railway Manager,  
Northern Railway,  
Lucknow.

Through : Proper Channel

Sub: Alteration of date of birth.

Sir,

With utmost necessity and painful circumstances, I beg to lay the following few lines for favour of your kind perusal, consideration and orders.

That in the year 1948, after the expiry of my father while I was an illiterate, inexperienced youngman, entered railway class IV service as cleaner (Loco shed).

That at the time of appointment and joining service I was made to furnish my date of birth from knowledge and thus the wrong date of birth came to be entered.

That while working in class IV category, I through private coaching continued my studies and several years hard labour and effort could be able to pass High School Examination of the U.P. Board of High School and Inter Examination and placed in II Division.

That at the time of filling up forms for the aforesaid examination, my mother who was alive then, gave my correct date of birth which was recorded and later appeared in the certificate.

That while continuing in class IV service, after qualifying in the minimum education, I submitted a copy of the High School certificate for annexure with the service BOOK and correction of the date of birth.



That after sometime back, subsequent to submission of the school certificate, I was made to appear for promotion examination held then of class IV to class III and declared successful in the test and empanelled for promotion.

That the question of alteration of date of birth previously recorded and that of High School certificate although pressed from my side was however placed by the office before the competent authority for recording his decision and conveyance of the orders.

That I was promoted to class III category and again pressed forward the question of alteration of date of birth, but in action on the part of the office kept me with this vital point at a stand still stage thus suppressing all my claims and requests.

That even now, lately on 12.6.81 I submitted a petition afresh with a photostat copy of certificate for alteration of date of birth followed by a reminder on 12.11.81 which could not receive your kindness's attention due to non-placement of my appeal before you the competent appellate authority and this is how the office has been depriving me of my right of appeal and recorded orders thereon.

Now in the end I would like to request your good-self to please refer Rule 145-RI Procedure to be followed where requests for an alteration of the recorded D.C.B. 19.5.24 supported by a copy of School certificate register and transfer certificate is made near the date of retirement and my request for alteration of the date of birth may please be dealt with accordingly, so that I may not be deprived of the benefit of the law and Rules applicable in the instant case.

Thanking you,

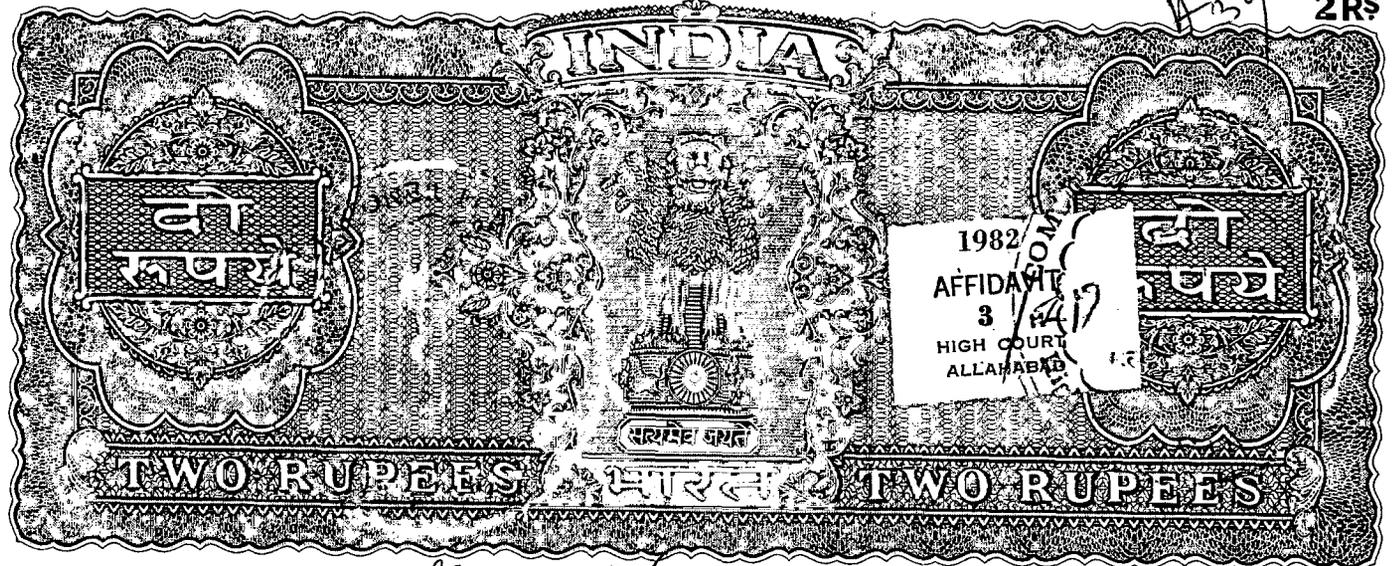
Yours faithfully,

Sd/- M.S. Paul  
(M.S. Paul)  
Senior Clerk.



*husband*

*M.K. Singh*  
OATH COMMISSIONER  
High Court Allahabad.  
Lucknow Bench  
No. 31217  
Date 4.4.82



Affidavit in the High Court of Judicature at  
Allahabad,  
Sitting Bench Lucknow.

Madhu Sudan Pal vs. Union of India & L



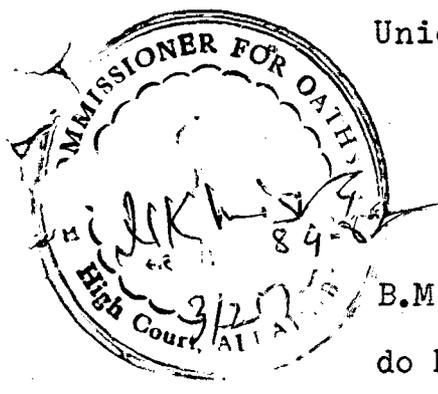
IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD  
SITTING AT LUCKNOW

Affidavit  
In

Writ Petition No. of 1982

Madhu Sudan Paul ..... Petitioner  
Versus  
Union of India & another ..... Opp. Parties

A F F I D A V I T



I, Madhu Sudan Paul, aged 56 years, son of late B.M. Paul, resident of Mohan Niwas, Murli Nagar, Lucknow, do hereby solemnly affirm and state on oath as under :-

1. That the deponent is the petitioner in the above writ petition and as such is fully conversant with the facts of the case.
2. That the deponent has read the accompanying writ petition along with the annexures, the contents of which he has fully understood.
3. That the contents of paragraphs 1 to 11 of the writ petition are true to my own knowledge.
4. That Annexures Nos. 1 to 8 to the writ petition

*Handwritten signature*

#41

are the true copies duly compared from their duplicates and originals.

Dated Lucknow:

*[Signature]*  
Deponent.

April 8, 1982.

VERIFICATION

I, the above-named deponent, do verify that the contents of paragraphs 1 to 4 of this affidavit are true to my own knowledge. No part of it is false and nothing material has been concealed. So help me God.

Dated Lucknow:

*[Signature]*  
Deponent.

April 8, 1982.

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

*[Signature]*  
Advocate.



Solemnly affirmed before me on 8.4.1982

at 12<sup>30</sup> a.m./p.m. by Sri Madhu Sudan Paul

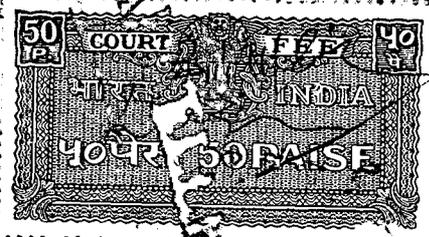
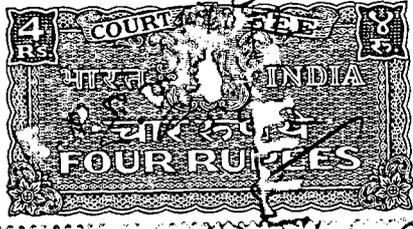
the deponent who is identified by

Sri — *A. Singh* —  
Clerk to Sri *L. P. Shukla*

Advocate, High Court, Allahabad.

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

*[Signature]*  
OATH COMMISSIONER  
High Court, Allahabad.  
Lucknow Bench  
31217  
8.4.82



Court Madras 12/10

#42

व अट

वादी (मुद्दे) प्रतिवादी (मुद्दालेह)

का व

Handwritten signature/initials

Shri Madhu Suddan Paul

वादी (मुद्दे)

वनाम प्रतिवादी (मुद्दालेह)

नं० मुकद्दमा सन् १६ पेशी की ता० १६ ई०  
ऊपर लिखे मुकद्दमा में अपनी ओर से श्री L.P. Shukla

C.700 Mahanagar एडवोकेट महोदय वकील

नाम अदालत  
नं० मुकद्दमा  
नाम फरीकैन

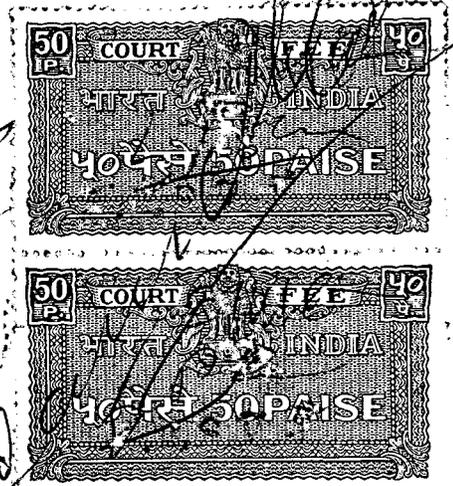
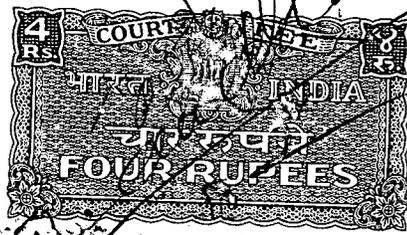
को अपना वकील नियुक्त करके प्रतिज्ञा [इकरार] करता हूँ और लिखे देता हूँ इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी या वियत्ती [फरीकसानी] का दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युक्त [दस्तखती] रसीद से लेवें या पंच नियुक्त करें - वकील महोदय द्वारा की गई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह स्वीकार करता हूँ कि मैं हर पेशी पर स्वयं या किसी अपने पैरो को मेजता रहूँगा अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर न होगी। इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

Madhu Suddan Paul  
हस्ताक्षर

साक्षी (गवाह) साक्षी (गवाह)

दिनांक 8 महीना 4 १६८ ई०

Accepted  
Handwritten signature



3 CF = Rs 5/-  
32  
9/4/82

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

C.M. Application No. 33025(C) of 1982

In

Writ Petition No. 1599 of 1982

Madhu Sudan Paul ..... Petitioner/Applicant

Versus

Union of India & another ..... Opposite Parties

STAY APPLICATION

The applicant most respectfully begs to submit as under :-

1. That for the facts and circumstances stated in the writ petition it is most respectfully prayed that this Hon'ble Court may be pleased to stay the operation of the order of opposite party no.2 dated 31.12.1981 in so far as it relates to the petitioner/applicant seeking to retire him w.e.f. 31.5.1982 as Senior Clerk (Electrical) on the basis of his wrong date of birth.

*(Signature)*

Dated Lucknow:

April 8, 1982.

(L.P.Shukla)

Advocate,

Counsel for the Applicant



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

Affidavit

In

Writ petition No. 1599 of 1982

Madhu Sudan Paul

...Petitioner

Versus.

Union of India & another

...Opp. Parties.

A F F I D A V I T

I, Madhu Sudan Paul, aged 56 years, son of Late B.M. Paul, resident of Mohan Niwas, Murli Nagar, Lucknow, do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the petitioner in the above Writ petition and as such is fully conversant with the facts deposed to herein.
2. That the deponent's last representation to the Divisional Rly. Manager dated 30.12.1981 handed over to him during personal interview on the same date has been rejected on 6.5.1982 on the ground that the last date of submitting representation was 13.1.1973. A photo Stat copy of the

dated 6.5.1982 is filed as Annexure No. 9 to this affidavit. This order has not been served on the deponent and has been obtained from the office.

3. That the aforesaid order completely ignores the fact that the petitioner has made various representations prior to 13.1.1973. His earlier representation dated 27.6.1955 sent to the Divisional Suptd. Northern Rly Lucknow, has been filed as Annexure No.2 and to the Writ petition. It was sent by registered A/D and was duly received. A photostat copy of the postal receipt alongwith the A/D Card shewing that it was received by the D. S. Office is filed as Annexure No.10 to this affidavit.

4. That the deponent has been promoted as Head Clerk in the grade of Rs. 425-700 (R. S.) on adhoc basis with effect from 25.3.1982 by the notice issued by the Divisional Personnel Officer Lucknow. dated 18.5.1982. A photostat copy of the Notice date 18.5.82 is filed as Annexure No.11 to this affidavit.



Dated, Lucknow

May 31, 1982

*[Signature]*  
Deponent.

VERIFICATION

I, the above named deponent, do hereby verify that the contents of paragraphs 1 to 4 of this affidavit are true to my own knowledge. No part of it

A  
AG

3/11

-3-

is false and nothing material has been concealed.  
So help me God.

Dated, Lucknow,  
May 31, 1982

*[Signature]*  
Deponent.

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

*[Signature]*  
Advocate

*[Circular Stamp]*  
31.5.82

*[Signature]*

**Prabhakar Tewari**  
OATH COMMISSIONER,  
High Court, Allahabad,  
Lucknow Bench  
S, No. 36258/82  
Date 31/5/82

Solemnly affirmed before me on 31.5.82  
at 2.45 a.m./p.m. by Sri Madhu Sudan Paul  
the deponent who is identified by  
Sri Anandh Singh  
Clerk to Sri K.P. Shukla  
Advocate, High Court, Allahabad, Bench, Lucknow.

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

In The Hon'ble High Court of Judicature at Allahabad  
Sitting at Lucknow

Writ Petitioner No

Madhusudan Paul

HAT 3/8

Petitioner

vs.

Union of India & others

Opp. Parties

Annexure No - 9

Recd. 11/5/82

OFFICE OF THE GENERAL MANAGER  
NORTHERN RAILWAY

Recd. 10/01/82

Divisional Office,  
Lucknow.

No. H/6-3/H200.

Dt/- 6-5-82.

To,  
The SFO/LA/CB/  
Lucknow.

Sub :- Alteration in date of birth.

....

Ref :- Representation of Shri H.S. Paul  
dt/- 30.12.81.

....

The request of Shri H.S. Paul, Sr. Clerk  
under SFO/LA/CB/LKO, for change in date of birth  
has not been accorded to as the last date of subse-  
quon of representation was 31.7.73.

( K. K. Mishra )  
Sd/- Divl. Personnel Officer,  
Lucknow.

31/5/82

In The Hon'ble High Court of Judicature at Allahabad Sitingot Lucknow

Writ Petition No

Madhu Sudan Paul

versus

Union of India & others

Petitioner  
A  
A  
Opp. Parties

Annexure No - 11

जी.एल. 19/G.L. 19

जनरल 99-बड़ा/Genl. 99-Large

उत्तर रेलवे/NORTHERN RAILWAY

No. 56IE/6-3/Elect.

Divl. Office,  
Lucknow Dt. 18/5/82.

NOTICE.

The following promotions are hereby ordered.

- 1). Shri S.K. Mankerji, Hd. Clerk Gr. B. 425-700 (RS) under E.P.O./TS/AMV, Lucknow is temporarily promoted to officiate as Asstt. Supdt. Grade B. 550-750 (RS) on adhoc basis w.e.f. 25.3.82.
- 2). Shri M.S. Paul, Sr. Clerk Grade B. 330-560 (RS) under SEFO/LA/CB/LKO is temporary promoted to officiate as Hd. clerk in grade B. 425-700 (RS) on adhoc basis vice item 1 above w.e.f. 25.3.82,
- 3). Shri L.B. Nath, Singh Sr. clerk Grade B. 330-560 (RS) under SEFO/LA/CB/LKO is temporarily promoted to officiate as Hd. clerk in grade B. 425-700 (RS) against w/c post and will continue thereafter retirement of Shri Paul w.e.f. 25.3.82.

This has the approval of D.P.O. I.

Sd/-

for Divl. Personnel Officer,  
Lucknow.

Copy to:-

DEE/Lucknow.  
DEFO/LA/CB/Lucknow.  
EFO/TS/AMV/LKO.  
Sr. DCO/Lucknow.  
Supdt./bills.

Attested

20/5/82

20/5/82

20/5/82

Handwritten signature

Deputy Registrar

450

In reply to the query made by Hon Kaul, J. I am to submit as under:-

That on 28.5.82 I was handed over a list of Cases entered on an order sheet (which were unlisted on that day) comprising of about 26 Cases and odd by the Bench Secretary asking me to list those Cases on 31st May 1982 as verbally ordered by his Lordship. Hence the Cases were listed on 31.5.82.

That the said list was pinned to the register of Cases which are to be listed on a particular day but, somehow, it is not traceable at present.

That on the top of the said list by the Bench Secretary it was written "as per verbal direction of his Lordship the following Cases he listed on 31.5.82".

Submitted

2.6.82

} A. S. Srivastava  
Asst  
Writ Section

DR.

May kindly peruse the above report of Perki Clerk. Somehow the list supplied by the Bench Secretary is not traceable at present ~~in the~~

Submitted

SP

2-6-82  
S.O. (Writ)

In The Hon'ble High Court of Judicature at Allahabad Siting at Lucknow

Writ Petition No

Madhu Sudan Paul

versus

Union of India & others

Petitioner  
A  
A  
Opp. Parties

Annexure No - 11

जी.एस. 19/G.L. 19

जनरल 99-बड़ा/Genl. 99-Large

उत्तर रेलवे/NORTHERN RAILWAY

No. 561E/6-3/Elect.

Divl. Office,  
Lucknow Dt. 18/5/82.

NOTICE.

The following promotions are hereby ordered.

- 1). Shri S.K. Mekerji, Hd. Clerk Gr. Rs. 425-700 (RS) under E.P.O./TS/AMV, Lucknow is temporarily promoted to officiate as Asstt. Supdt. Grade Rs. 550-750 (RS) on adhoc basis w.e.f. 25.3.82.
- 2). Shri M.S. Paul, Sr. Clerk Grade Rs. 330-560 (RS) under SEFO/LA/CB/LKO is temporary promoted to officiate as Hd. clerk in grade Rs. 425-700 (RS) on adhoc basis vice itam 1 above w.e.f. 25.3.82,
- 3). Shri L.B. Nath, Singh Sr. clerk Grade Rs. 330-560 (RS) under SEFO/LA/CB/LKO is temporarily promoted to officiate as Hd. clerk in grade Rs. 425-700 (RS) against w/c post and will continue thereafter retirement of Shri Paul w.e.f. 25.3.82.

This has the approval of D.P.O. I.

SD/-

for Divl. Personnel Officer,  
Lucknow.

Copy to :-

DEE/Lucknow.  
DEFO/LA/CB/Lucknow.  
EFO/TS/AMV/LKO.  
Sr. DDO/Lucknow.  
Supdt./bills.

Attended

Recd

20/5/82

...

Handwritten signature

Deputy Registrar -

#50

In reply to the query made by Hon Kaul, J. I am to submit as under -

That on 28.5.82 I was handed over a list of Cases entered on an order sheet (which were unlisted on that day) comprising of about 26 Cases and odd by the Bench Secretary asking me to list those Cases on 31st May 1982 as verbally ordered by his Lordship. Hence the Cases were listed on 31.5.82.

That the said list was pinned to the register of Cases which are to be listed on a particular day ~~but~~, Somehow, it is not traceable at present.

That on the top of the said list by the Bench Secretary it was written "as per Verbal direction of his Lordship the following Cases he listed on 31.5.82."

Submitted

2.6.82

} AP D. Srinivasawa  
Asst  
Writ Section

DR.

May kindly peruse the above report of Perkiel. Somehow the list supplied by the Bench Secre is not traceable at present ~~in the~~

Submitted

SP

2-6-82

S.O. (Writ)

In The Hon'ble High Court of Judicature at Allahabad  
Sitting at Lucknow

A7 3/

Writ Petitioner No

Madhusudan Paul

Petitioner

Vs.

Union of India & others

Opp. Parties

Annexure No - 9

Order 11/5/82

10/02/82

NORTHERN RAILWAY

Divisional Office,  
Lucknow.

No. 1/6-3/1100.

Dt/- 6-5-82.

The SFO/LA/CB/  
Lucknow.

Sub :- Alteration in date of birth.

Re :- Representation of Shri H.S. Paul  
dt/- 30.12.81.

The request of Shri H.S. Paul, Sr. Clerk  
under SFO/LA/CB/LKO, for change in date of birth  
has not been accepted as the last date of outbreak  
of representation was 31.7.73.

( K. K. Mehta )  
Sd/- Divl. Personnel Officer,  
Lucknow.



Handwritten signature

In The Hon'ble High Court of Judicature ~~at~~ Allahabad  
sitting at Lucknow

A 48 30

Writ Petition No

Madhu Sudan Paul \_\_\_\_\_ Petitioner  
vs.  
Union of India and others \_\_\_\_\_ opp. Parties

Annexure No. 10

No. 55

For Insurance Notices in return  
Stamps affixed except in case of airmail  
letters of not more than the initial weight  
prescribed in the Post and Telegraph Acts  
on which no acknowledgment is due.

Received & registered\* *Co. U. S.*

Addressed to *Asstt. Personal Officer*

Initials of Receiving Officer *[Signature]*

Insured for Rs. (in figures) \_\_\_\_\_ (in words) \_\_\_\_\_

Insurance fee Rs. \_\_\_\_\_ Aa. \_\_\_\_\_ (in words) \_\_\_\_\_

Name and address of sender \_\_\_\_\_

*27 JUN 55*



**Acknowledgment.**

(To be returned to office of posting for delivery to sender)

Received & registered\*

Addressed to (name) *Sini, R. D. Gupta*  
*Asstt. Personal Officer*  
*Divl. Supdt. Office*  
*North India Railway*  
*Lucknow.*

Insured for Rs. \_\_\_\_\_

Weighting (in words) \_\_\_\_\_

Signature of addressee \_\_\_\_\_

Date of delivery \_\_\_\_\_

*27.5.55*

Post No. 6010-20045-27,100-2

[H. A. 3-27-55]

*Madhu*

Joint Registrar.

A51

On the perusal of the order sheet of this Writ Petition it appears that it was presented on 9.4.1982 and subsequently admitted on 12.4.1982 with the direction that it be finally heard on 11.5.1982 with the stay application. Since 11.5.1982 was a Local Holiday on account of Mahabirji-ka-Mela, the case was listed on 12.5.1982 on which date it was ordered to be listed next week.

On 21.5.1982 it was directed to be listed on 26.5.1982.

On 26.5.1982 although this case was shown at Serial No. 3 for the purposes of admission, but it was not sent by the office to the Court. (Since the case being wrongly listed for admission) The entry with regard this fact was noted on the Cause List. of the Court. Although in view of Court's order it should have been listed for final hearing before the appropriate Bench. Since this was not done as such the learned counsel Sri L.P.Shukla, Advocate made a request to the Hon'ble Bench on 27.5.1982 instead of 26.5.1982 that the file be summoned from the office and be heard today. This request was orally made by the learned counsel and upon which the Court directed verbally that it shall be taken up next day i.e. on 28.5.1982. In view of this order the Bench Secretary informed the office through a slip that the case i.e. Writ Petition No. 1599 of 1982 be sent to this Court for 28.5.1982. After some time similar request was made by Sri Hargur Charan, Advocate for a case at Serial No. 9 of the list dated 26.5.1982, on which the Court was again pleased to order for taking it up tomorrow. The Bench Secretary then pointed out to the Court that for this purpose an application is to be made in writing by both the learned counsel. Since files were not available to the Court on that date. Sri Hargur Charan, Advocate immediately made an application in view of aforesaid order and his case was ordered on that application to be listed for 28.5.1982, but Sri L.P.Shukla, Advocate did not make such application as such no orders in writing could be passed.

On 28.5.1982 the Division Bench consisting of Hon'ble T.S. M. J and Hon'ble Mahavir Singh, J was constituted in Court No. also to receive all Fresh Bench Matters including

listed as well as unlisted cases. On that day Fresh Petition continued till 1.15 P.M. and also at 2.00 P.M. when the Bench again resumed few more Fresh Petition were presented for admission and orders. Upon this some learned Advocates then present in the Court started requesting the court that their cases were most urgent and important as such those cases be heard first. (Since it was last working day before Vacations and the Bench was only available upto 3.15 P.M.). Since it was not possible for the Court to take up all cases in which the request was made by the learned counsel and also the Fresh Petition which were presented at 2.00 P.M., the Bench desired me to sent the Fresh Petitions presented at 2.00 P.M. and one bundle of unlisted cases (which were about 20 cases in number) to Court No. 3 consisting of Hon'ble R.C.Deo Sharma, J and Hon'ble S. Saghir Ahmad, J atonce and immediately after this orders the Bench took up some unlisted cases contained in the other bundle. After hearing two or three unlisted cases the Bench started dictating the judgment in Habeas Corpus petition which was heard before this Bench earlier. At about 3.00 P.M. the Hon'ble Bench desired me to sent all the remaining unlisted cases to Court No. 3 atonce. Since the cases which were to be sent to Court No. 3 were approximately 40 or 45 in number, it was not at all possible for the Bench Secretary to write down the order on order sheet of each case and then to sent the same to Court No. 3. Besides, when all those cases were ordered to be sent by a general order of the Court in the presence of the learned counsel concerned the Bench Secretary sent those cases accordingly at once without delay to Court No. 3, and without making entries on any of the order sheet of the cases so transferred as per existing practice. I may point out that on several occasions when the cases from one Court are transferred to some other Court the order sheets are never filled in by the Bench Secretaries of the Court transferring such cases.

Under these circumstances stated above:

- (1) the order sheet for 26.5.1982 and 27.5.1982 could be filled because the file in question was not available with the Bench Secretary on those date

(2) on 28.5.1982 since by the said general order of the Court the cases were sent to Court No. 3 at 3.00 P.M. the order sheets remained unfilled.

Submitted.

*Ambika Narain*  
3.6.82

(Ambika Narain)

Bench Secretary Court No

(1)  
3.6.1982.

*Submitted to Hon'ble Senior Vacation Judge*

*Discharge*  
*J. A.*  
*3/6/82*

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

C.M. Application No. 6527(u) of 1985.



*Handwritten signature and date: 29/11/85*

Madhu Sudan Paul, aged about 58 years, son of  
Late B.N. Paul, resident of Mohan Niwas, Murli Nagar,  
Lucknow.

--- Applicant/Petitioner.

Versus.

1. Union of India, through the General Manager,  
Northern Railways, Baroda House, New Delhi.
2. Divisional Manager, <sup>RAILWAY</sup> Northern Railways, Hazaratganj,  
Lucknow.

--- Opposite Parties.

In Re :

Writ Petition No. 1599 of 1982.

Madhu Sudan Paul --- Petitioner.

Versus.

Union of India, through the General Manager  
Northern Railways, and another.

--- Opposite Parties.

Application for amendment of Writ Petition

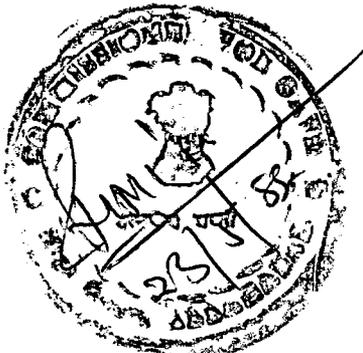
No. 1599 of 1982.

contd...p-2,

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*Handwritten number: 545/1*



This application of the Petitioner, most respectfully, sheweth : -

- 1- That on April 8, 1982 the Petitioner, above-named filed the above-noted Writ Petition which was admitted on the same day and in view of the urgency of the matter, it was ordered to be listed on ~~May~~<sup>h</sup> 11, 1982 along with Stay Application ( C.M. An.No.3385(w) of 1982 ) after notice to the Opposite Parties requiring them to file Counter Affidavits within two weeks and the Petitioner to file Rejoinder Affidavit within a week, thereafter.
- 2- That the ~~P~~<sup>n</sup>etitioner, through the Writ Petition and the Application for Stay had prayed for quashing the so-called date of retirement on 31-5-1982 as shown in the Departmental List of retirement ( ANNEXURE <sup>h</sup>No. 6 ) prepared on the basis of his wrong date of birth on assumption at the time of his entry into service and not in accordance with the actual date of birth<sup>h</sup> as recorded in the High School Certificate.
- 3- That, in the circumstances that followed, after 11-5-1982, the Writ Petition could not be heard and disposed of and in consequence the Application for Stay without any interim relief having been granted by this Hon'ble High Court, became infructuous after retirement of the Petitioner forced by the Opposite Parties on 31-5-1982.



5/3

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- 3 -

4- That the Opposite Parties No. 1 and 2, inspite of notice of this Writ Petition did not file their Counter Affidavits within the time granted by this Hon'ble High Court ; they, again, did not file the same on 30-8-1982, the date on which it was taken up for hearing and their counsel sought for one month's time to file Counter Affidavit, thereafter, they, again, on 3-9-1982 sought for six weeks' time for the purpose but no Counter Affidavits on their behalf has been filed upto this date.

5- That in view of the subsequent events and forced retirement of the Petitioner, inspite of his protests and in utter disregard and violation of the Departmental Rules, particularly, Rule 2046 (FR-56) of Indian Railway Establishment Code, Volume II applicable in his case, it is expedient and necessary to amend the original Writ Petition in the following terms :

- (i)- After paragraph 11 of the W.P., a fresh Paragraph 11-A, be allowed to be added.
- 11-A. That in any case, the Petitioner is entitled to serve the Railways upto the age of 60 years, by virtue of his first appointment in Class IV post in the service of ex- East India Railways, holding ministerial post on 31-5-1982, the date on which he was forced to retire illegally in violation of the Railway Board's letter No. PC-67/R.T-

contd ...p-4,



A 57  
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- 4 -

-8 dated 22-9-1967 read with Rule 2046 (FR-56) of Indian Railway Establishment Code, volume II, as amended.

A true copy of the Railway Board's letter of 22-9-1967, referred to above, is filed hereto as ANNEXURE No. 9 to this Writ Petition.

(ii) Thereafter, another Paragraph 11-B be allowed to be added.

11-B. That the Petitioner, in the circumstances, is entitled to be called back to duty to serve the Railways upto 20 th. 1985 the date on which the Petitioner shall attain the age of 60 years in accordance with his age, recorded in the High School Certificate and, in the alternative, he is entitled to get his full average pay with all benefit increments and allowances, as if he would have been/continuing in service throughout.



(iii) In Paragraph 12, line 4, the words/after, & figures the word ' finally ' and in line 5 upto ' retired ' be deleted and after 31.5.1982 the following words be allowed to be added. " the date on which the Petitioner was forced to retire illegally ".

(iv) In the Grounds of Writ Petition, the additional ground marked as (G) be allowed to be added.

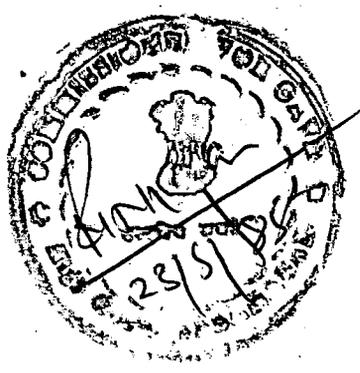
contd...5,

A 56  
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(G) Because the act of the Opposite Parties No.1 and 2 in forcing retirement of the Petitioner, illegally and prior to his attainment of the age of 60 years, that is before 20-12-1985 according to his date of birth recorded in the High School Certificate is without jurisdiction and void.

(v) In the Prayer columns, sub-paragraphs (iv) & (v) be allowed to be numbered as (v) & (vi) respectively and before those, a fresh sub-paragraph (iv) be added :

(iv) issue a writ, direction or order in the nature of mandamus commanding the opposite parties to call back the petitioner to duty to serve the Railways for the remaining period of his service upto 31-12-1985, the date ending for the month of December, 1985 ; 20-12-1985 being the date on which the petitioner shall attain the age of 60 years in accordance with his age recorded in the High School Certificate and pay him the back salary ; and in the alternative to pay him full average pay with all benefits, increments and allowances, as if he would have been continuing in service throughout.

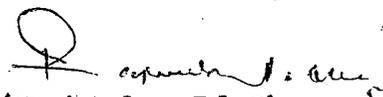


A 39

5/6

P r a y e r.

It is, therefore, humbly prayed that this Hon'ble Court may be pleased to order that the Petitioner's amendment application be allowed in its terms and that the consequential amendments thereof be incorporation in the original Writ Petition for the ends of justice.



(Rajendra Pd. Sharma); Advocate

Lucknow : Dated May 23, 1985.

Counsel for the  
Petitioner/Applicant.

160  
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IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD,

LUCKNOW BENCH, LUCKNOW.

Writ Petition No. 1599 of 1982.

Madhu Sudan Paul - - - - - Petitioner.  
Union of India, through the G.M., N.R. - Opp. Parties.

ANNEXURE No. 9

Circular No. 831-E/169/2/II(E-iv) dated 22-11-1967.

Sub.- Amendment to Rule 2046(FR-56) of Indian Railway Establishment Code, Volume II - clarification regarding -

A copy of Railway Board's letter No. PC-67/RT-8 dated 22-9-1967 is forwarded for information and guidance.



(1) ...

(2) ...

(3) ...

(4) Whether ex-Company staff, i.e., Ex-R.I. Railway Co./ A B Railway Co./ B D Railway Co./ N. Railway Co. etc. staff taken over by Indian Government Railways opted and to be governed by Indian Government Railway Rules, now holding ministerial posts may go upto 60 years of age subject to their fulfilling the conditions laid down in rule 2046 (b)-R-II.

The Board desire to clarify the position on the above points seriated as under :

(1) ...

(2) ...

(3) ...

(4) Yea.

*P. N. Vigam*  
Advocate Oath Commissioner  
Allahabad High Court  
Lucknow Bench Lucknow

82/15148 Date 23/5/85 Lucknow : Dated May 23, 1985.

*[Signature]*  
Deponent



H 71  
5/9

4- That annexure No.9 hereto is the true copy  
duly compared with its original.

Lucknow : Dated May 23, 1985.

*Madhu Paul*  
Deponent.

Verification.

I, Madhu Sudan Paul, the deponent, do hereby  
verify that the contents of paragraphs 1 to 4 of  
this affidavit are true to my own knowledge.

No part of it is false and nothing material  
has been concealed. So help me God.

*Madhu Paul*  
Deponent,

Lucknow Dated May 23, 1985.

I identify the deponent who has  
signed before me,

*Rajendra Pd. Sharma*  
(Rajendra Pd. Sharma) Esq.  
Advocate.

Solemnly affirmed before me on 23.5.85  
at 2.35 A.M./P.M. by Sri Madhu Sudan Paul  
the deponent who is identified by  
Sri Rajendra Pd. Sharma Advocate  
clerk to Sri  
Advocate High Court, Allahabad.

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



*P. N. Nigam*  
Advocate Oath Commissioner  
Allahabad High Court  
Lucknow Bench Lucknow  
No. 8... Date ... 23/5/85

442

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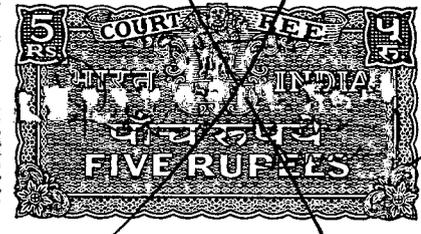
व्य अदालत श्रीमान् *Hon'ble High Court of Judicature*  
[ वादी ] वपीनान्द *at Madhav, Lucknow* महोदय  
प्रतिवादी [ रेंस्पाडेन्ट ] ---का **वकालतनामा**

*San Mahesh Sudan Pat*

839

टिकट

वाद



*Union of India & others*

बनाम प्रतिवादी (रेंस्पाडेन्ट)  
नं० मुकद्दमा W.P. 1598 / सन् 1902 पेशी की ता० १६ ई०  
ऊपर लिखे मुकद्दमा में अपनी ओर से श्री *Rajwara Prasad Shama*

101 *Nagar Bapn Lucknow* ---वकील--- महोदय  
एडवोकेट

नाम अदालत  
मुकद्दमा नं०  
नाम करीबन

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 पैरवी 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 सुलहनामा व इकवाल दावा तथा अपील निगरानी हमारी ओर से हमारी वा अपने हस्ताक्षर से दाखिल करें और तसदीक करें मुकद्दमा उठावें या कोई रुपया जमा करें या हारी विपक्षी (फरोकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करें—वकील महोदय द्वारा की गई वह 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 पैरवी में एक तरफ मेरे खिलाफ फैसला हो जात्रा है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर *Sudan*

साक्षी (गवाह) \_\_\_\_\_ साक्षी (गवाह) \_\_\_\_\_

दिनांक *29-3-* महीना \_\_\_\_\_ सन् १९०५ ई०

स्वीकृत

*Handwritten signature*

*Handwritten signature*

*Accepted Rajwara Prasad Shama Advocate 29-3-05*

4/132

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

C.M. Application No. 10,562(u) of 1985

Union of India & another .. Applicants.

In re:

Writ Petition No.1599 of 1982

Madhusudan Paul .. Petitioner

Versus

Union of India & another .. Opp. parties.

11934



1 CF = Rs. 5/-  
3800  
16/9/85

Application for condonation of delay.

CS  
Disent  
NO 25  
20.9.87

The applicant, above named, most respectfully submits as under:-

That in the above noted case verification of record had to be done from different places which took sufficient time as such delay in filing the counter affidavit also occurred which was unavoidable.

Wherefore, it is prayed that the delay in filing the counter affidavit may please be condoned and the counter affidavit may be taken on record.

Lucknow:

Dated: Sept. 6 1985

C.A. Basir  
( C.A. Basir. ),  
Advocate,  
Counsel for the applicant.

*Handwritten signature/initials*

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

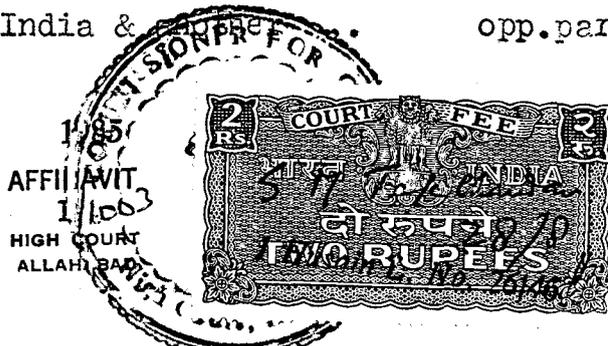
Counter Affidavit  
In

Writ Petition No.1599 of 1982

Madhusudan Paul .. Petitioner

Versus

Union of India & .. opp. parties.



Counter affidavit on behalf  
of opposite parties.

I, *S.H. Jeychandani* aged about *56* years,  
son of *Sri Ansonal* working as Assistant  
Personnel Officer in the Office of Divisional Railway  
Manager, Northern Railway Hazratganj, Lucknow do  
hereby solemnly affirm and state on oath as under:-

1. That the deponent is working as Assistant  
Personnel Officer in the office of Divisional Railway  
Manager, Northern Railway, Hazratganj, Lucknow as  
such is fully conversant with the facts of the case.

2. That the deponent has read the writ petition,  
understood its contents and has been authorised by  
the opposite parties to file this counter affidavit  
on their behalf.



*Handwritten signature*

47523

3. That the contents of para 1 of the writ petition are admitted to the extent that the petitioner was appointed as Cleaner on 19.5.48 and is working as Senior Clerk.

4. That the averments made in para 2 of the writ petition are not admitted as this is incorrect to say that the dealing clerk concerned had assessed the age of 24 years of the petitioner at his own accord. The age of the petitioner as 24 years was certified by the IMO/E.I.Railway, Lucknow on 17.5.48. In case of staff who passed Matriculation certificates etc. after entering railway service, such certificates are not be taken as basis for revision of the recorded date of birth.

5. That the averments made in para 3 of the writ petition are not admitted. The petitioner has been promoted as Trains Clerk w.e.f. 20.12.1954 against quota reserved for promotion of class IV staff to class III and in which passing of High School is not required.

6. That the averments made in paras 4 and 5 of the writ petition are not admitted as after a gap of 23 years, it is not possible to search out the record of 1955. Further the question of changing the date of birth as 20.12.1925 on the basis of High School Certificate does not arise, in view of remarks given in para 4 of this counter affidavit.

7. That in reply to the averments made in para



Enclosed

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6 of the writ petition only this much is admitted that the seniority list of Clerks as on 31.7.1975 was circulated under this office letter No. 247-E/6-3(EIC) dated 27.3.1975 and not in November, 1975 as mentioned by the petitioner in which it was already mentioned that if any of the employee had any objection or representation against fixation of seniority he may represent within 30 days and after that no representation is to be entertained and the seniority list shall be treated as final. The representation dated 16.10.1975 Annexure-4 to the writ petition has not been received in this office and also after a lapse of 30 days the petitioner's representation has got no weightage. Further the issue of seniority list is for the purpose of promotion and not for any attestation of service particulars viz. date of birth etc.

8. That the averments made in para 7 of the writ petition are admitted to the extent that the retirement list was announced on the basis of date of birth recorded in service record and rest of the contents of the para under reply are denied.

9. That in reply to the averments made in para 8 of the writ petition it is stated that the representation of the petitioner dated 12.6.1981 was in process. The retirement list of 1982 of all the staff on the Division due retirement has to be issued to facilitate payment of settlement dues.



*Signature*

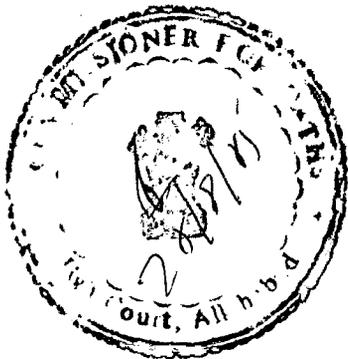
10. That the averments made in para 9 of the writ petition are admitted to the extent that Railway Board had issued circulars from time to time with regard to correction of date of birth. The same are annexed as Annexure B-1 and B-2 to this counter affidavit. Representation of the petitioner with regard to correction of date of birth was duly considered by the administration and the reply furnished with reasons is annexed at Annexure B-3 to this counter affidavit. It may be mentioned here that the first representation of the petitioner is dated 4.5.1982 vide Annexure-1 to the writ petition i.e. it was submitted one month before his retirement. Having made no representation prior to 31.7.1973 as provided in Railway Board's circulars the petitioner was advised accordingly. Thus the petitioner had no case for alternation of his date of birth as claimed.

Annexure B-1  
Annexure B-2

Annexure B-3

11. That the averments made in para 10 of the writ petition are not admitted. No representation for change in date of birth is to be entertainable after 31.7.73 as laid down in Printed Serial No.5719.

12. That in reply to the averments made in para 11 of the writ petition it is stated that the petitioner was allowed the special pay of Rs.35/- w.e.f. 1.10.1980 and he was promoted as Head Clerk in grade Rs.425-700(RS) vide this office letter No.561-E/6-3/Elect.dated 18.5.1982.



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13. That in reply to the averments made in para 12 of the writ petition it is stated that the petitioner is not entitled to the reliefs claimed.

Lucknow:

*[Signature]*  
Deponent

Dated: August 28, 1985

Verification

I, the above named deponent do hereby verify that the contents of paras 1 and 2 are true to my personal knowledge, those are paras 3 to 12 are based on records hence are believed by me to be true, and that of para 13 are based on legal advice. No part of it is false and nothing material has been concealed in it so help me God.

Lucknow:

*[Signature]*  
Deponent

Dated: Aug 28, 1985  
6/9



I identify the deponent who has signed before me.

*C.A. Basir*  
Advocate.

Solemnly affirmed before me on 28/8/85 at 9 a.m./p.m. by the deponent who is identified by Sri C.A. Basir, Advocate, High Court, Lucknow Bench, Lucknow.

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

*[Signature]*  
OATH COMMISSIONER  
High Court, Allahabad,  
(Lucknow Bench)

No. 1/1003

Date 28/8/85

A M J

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

Writ Petition No.1599 of 1982

Madhusudan Paul .. Petitioner

Versus

Union of India & another .. Opp. parties.

Annexure No.B-1

Northern Railway HQrs. Office, No.93-E/Opt.II(Eiv)  
Baroda House, Dt. 5.1.1972.  
New Delhi. Serial No.5511

Copy of letter No.E(NG)II700BR/1. dated 3.12.71 from Joint  
Director Estt. Railway Board, New Delhi to the General  
Managers, All Indian CLW, DLW, ICDF, and others etc.etc.

\*\*\*\*\*

Sub: Procedure for recording date of birth on entering  
Railway Service and its alteration.

.....

Rule 145-RI lays down that every person, on  
entering Railway Service, should declare his date of birth  
which shall not differ from any declaration, expressed or  
implied, for any public purpose before entering Railway  
Service. The rule is not specific on the point whether  
the mere declaration given by the person should be accep-  
ted or it should be accepted only on production of a conf-  
irmatory documentary evidence. The Rule is also silent  
as to what confirmatory documentary evidence should be  
accepted for this purpose. As regards alteration of  
recorded date of birth, Rule 145(3)(iii) RI lays down  
that where a satisfactory explanation(which should  
ordinarily be submitted within a reasonable time after  
joining service)of the circumstances in which the wrong  
date came to be entered is furnished by the Railway ser-  
vant concerned together with the statement of any pre-



Done &

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Vy

attempt made to have the record amended, it is open to the competent authority to affect an alternation. No time limit has been given for alteration.

2. The Board have revised the existing provisions of Rule 145 RI in the light of experience and have decided as under:-

(i) WHEN A CANDIDATE IS ABLE TO STATE HIS AGE.

(a) When a candidate declares his date of birth in accordance with paragraph 145-RI, he should be asked to produce confirmatory documentary evidence such as Matriculation Certificate or a Municipal Birth Certificate. If he is not able to produce such an evidence he should be asked to produce any other authenticated documentary evidence to the satisfaction of the appointing authority. Such authenticated documentary evidence could be the School Leaving Certificate, a Baptismal certificate in original or some other reliable document, However, horoscope should not be accepted as an evidence in support of the declaration of age;

(b) When a candidate is not able to produce a confirmatory documentary evidence or any other authenticated proof to the satisfaction of the appointing authority in accordance with above, he should be asked to produce an affidavit in support of the declaration of his age;

(c) In the case of Class IV employees care should be taken to see that the date of birth as declared on entering regular class IV service is not different from the declaration expressed or implied, given earlier at the time of employment as a Casual labour or as a subst

(ii) WHEN A CANDIDATE IS NOT ABLE TO STATE HIS AGE

Rule 145(2) (c) provides that when a person



*[Handwritten signature]*

A 8/2/79

unable to state his age it should be assessed by a Railway Medical Officer and the age so assessed entered in his record of service. The Board have now decided that this provision need not be retained and a person who is not able to declare his age, should not be appointed to Railway Service.

(iii) PERIOD FOR ALTERATION OF RECORDED DATE OF BIRTH

lays  
Rule 145(3)(iii) Railways/down that where a satisfactory explanation(which should ordinarily be submitted within a reasonable time after joining service) is submitted it is open to competent authority to alter recorded date of birth. The Board have had under consideration the period of time that should normally be accepted as a reasonable time for the purpose of Rule 145(3)(iii)-RI. They have decided that no alteration in date of birth should be allowed after completion of the probation period or three years service, whichever is earlier.

3. In view of the above decisions, the President in exercise of the powers conferred on him by the proviso to article 309 of the Constitution hereby directs that Rule 145 RI of the Indian Railway Establishment Code Volume I (Revised Edition) shall be amended as in the enclosed advance correction slips No.302 and No.303-RI.

4. Receipt of this letter may please be acknowledged.

.....

Copy of letter No.93-E/O-Pt.II(EIV) dated 5.1.72 from General Manager(P), Northern Railway, Headquarters Office, Baroda House, New Delhi to all Divisional Supdt.N.Rly. and copy to others.

Serial No.5511

Sub: Procedure for recording date of birth on entering Railway Service and its alteration.

.....



Signature

A 82  
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A copy of Railway Board's letter No.E(NG) 1170'BR/1 dated 3.12.1971 is forwarded for information and guidance.

Please acknowledge receipt.

DA/As above.

.....

.....

Indian Railway-Establishment Code Volume-I(Revised Edition).

CORRECTION SLIP NO.302 RI.

Rule 145-RI

Delete clause(e) of sub-Rule(2) of this Rule.

(Railway Board's letter No.E(NG)II70BR/1

dated 3.12.71.

....

Indian Railway Establishment Code Volume I(Revised Edition )

ADVANCE CORRECTION SLIP NO.303 RI.

Rule 145-RI.

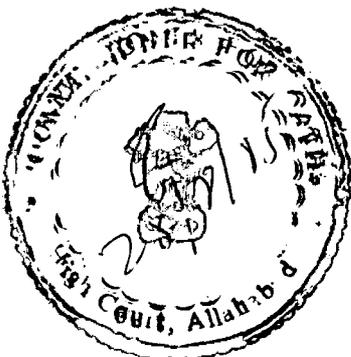
The following may be substituted for the existing bracketted provision occuring in clause(iii) of sub-rule (3) of this Rule.

"( Which should not be entertained after completion of the probation period or three years' service, whichever is earlier).

(Railway Board's letter No.E(NG)1170-BR/1 dated 3.12.71 ).

\*\*\*\*\*

.....



*Signature*

A 837

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

Writ Petition No. 1599 of 1982

Madhusudan Paul .. Petitioner

Versus

Union of India & others .. Opp. parties.

Annexure 9-2

Serial No.5719-Circular No.932/0-RI(EIV),dt.23.9.72

Sub:- Procedure for recording date of birth on entering Railway Service and its alteration.

.....

A copy of Railway Board's letter No.E(NG)II-70BR/1 dated 4.3.72 is forwarded for information and guidance. Railway Board's letter No.E(NG)-II-70BR/1,dated 3.12.71 referred to therein was circulated vide this office letter of even number dated 5.1.72(P.S. 5511). It may please be ensured that wide publicity is given to these orders amongst the staff through various publicity media to enable aggrieved staff to ask for rectification of any mistake in their recorded date of birth upto 31.7.73 as no second opportunity for this purpose will be given to them after 31.7.73.

Copy of letter No.E(NG)II70BR/1,dated 4.3.1972 from Dwarika Dass, Assistant Director, Estt.Railway Board to the General Managers, All Indian Railways and etc.etc.

Sub: Procedure for recording date of birth on entering Railway Service and its alteration.

.....

1. Attention is invited to advance correction slip



*Sma 2*

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No.303 to the Indian Railway Establishment Code Volume I forwarded with Railway Board's letter of even number dated 3.12.1971 which requires that requests for alteration of date of birth should not be entertained after completion of the probation period or three years service whichever is earlier.

2. It has been represented that the above amendment would cause hardship to the railway servants who were already in employment on 3.12.1971 and who did not take advantage of the provision of the rule regarding alteration of date of birth as it stood before the above amendment.

3. The Board have considered the matter and have decided that such employees may be given an opportunity to represent against their recorded date of birth upto 31.7.1973. Such requests should be examined in terms of the rule as they stood before the amendment.

4. The Board desire that vide publicity should be given to these orders through railway gazettes to enable aggrieved staff to ask for rectification of any mistake in their recorded date of birth. No second opportunity will be given after 31.7.1973 and all requests for alteration of date of birth thereafter should be disposed off strictly in accordance with the amendment referred to above.

\*\*\*\*\*

Serial No.5719-Circular No.93E/o-RI(EIV) dt.23.8.72.

Sub:- Procedure for recording date of birth on entering Railway Service and its alteration.

.....

A copy of Railway Board's letter No.E(NG)II-70BR/



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1, dated 4.8.1972 is forwarded for information and guidance. Railway Board's letter No.E(NG)-II-70BR/1, dated 3.12.1971 referred to therein was circulated vide this office letter of even number dated 5.1.1972(P.S. 5511 ). It may please be ensured that wide publicity is given to these orders amongst the staff through various publicity media to enable aggrieved staff to ask for rectification of any mistake in their recorded date of birth upto 31.7.73 as no second opportunity for this purpose will be given to them after 31.7.73.

Copy of letter No.E(NG)II70BR/1,dated 4.8.1972 from Dwarka Dass, Assistant Director, Estt., Railway Board to the General Managers, All Indian Railways and etc.etc.

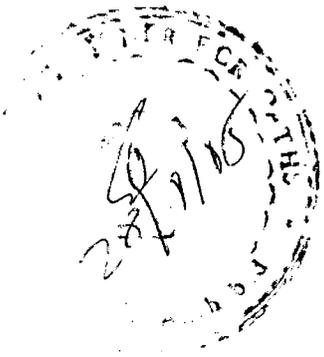
.....

Sub:- Procedure for recording date of birth on entering Railway Service & its alteration.

1. Attention is invited to advance correction slip No.303 to the Indian Railway Establishment Code Volume I forwarded with Railway Boards's letter of even number dated 3.12.1971 which requires that requests for alteration of date of birth should not be entertained after completion of the probation period or three years service whichever is earlier.

2. It has been represented that the above amendment would cause hardship to the railway servants who were already in employment on 3.12.1971 and who did not take advantage of the provision of the rule regarding alteration of the date of birth as it stood before the above amendment.

3. The Board have considered the matter and have



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A 869 / 14

decided that such employees may be given an opportunity to represent against their recorded date of birth upto 31.7.1973. Such requests should be examined in terms of the rule as they stood before the amendment.

4. The Board desire that vide publicity should be given to these orders through railway gazettes to enable aggrieved staff to ask for rectification of any mistake in their recorded date of birth. No second opportunity will be given after 31.7.1973 and all requests for alteration of date of birth thereafter should be disposed off strictly in accordance with the amendment referred to above.

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*[Handwritten signature]*



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

Writ Petition No.1599 of 1982

Madhusudan Paul .. Petitioner

Versus

Union of India & another .. Opp.parties.

Annexure B-3

NORTHERN RAILWAY

Divisional Office  
Lucknow.

No.E/6-3/Misc.

Dated 6.5.1982.

The SEFO/LA/CB  
Lucknow.

Sub: Alteration in date of birth

Ref:- Representation of Shri M.S.Paul dt/30.12.81

The request of Shri M.S.Paul, Sr.Clerk under SEFO/LA/CD/LKO, for change in date of birth has not been accorded to as the last date of submission of representation was 31.7.73.

Sd/-  
(K.K.Mehta ),  
for Divl.Personnel Officer,  
Lucknow.



*[Handwritten signature]*

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

ASS

Writ Petition No.1599 of 1982

Madhusudan Paul .. Petitioner

Versus

Union of India & another .. Opp. parties.

Annexure D-3

NORTHERN RAILWAY

Divisional Office  
Lucknow.

No.E/6-3/Misc.

Dated 6.5.1982.

The SEFO/LA/CO  
Lucknow.

Sub: Alteration in date of birth

Ref:- Representation of Shri M.S.Paul dt/30.12.81

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Sd/-  
(K.K.Mahta ),  
for Divl. Personnel Officer,  
Lucknow.

Filed to  
msb  
vls

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD

LUCKNOW BENCH LUCKNOW

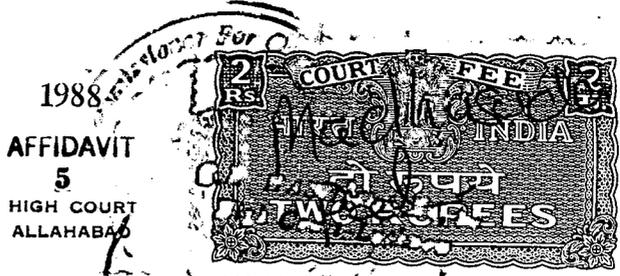
AS9

C.M. APPLICATION NO.

OF 1988

IN RE. 1039/87 (T)

WRIT PETITION NO. 1599 OF 1982



19-9-88

Madhusudan Paul

....

Petitioner

Versus

Union of India & another

....

Opp. Party

Rejoinder affidavit on behalf of the petitioner

I, Madhusudan Paul aged about 63 years son of  
B.N. Paul resident of Mohan Niwas Murli Nagar, Lucknow the  
deponent do hereby solemnly affirm and state on oath as

19-9-88

under :-

1. That the deponent is the petitioner himself and  
as such he fully conversant with the facts and  
circumstances of the case deposed herein as u
2. That the contents of para 1, 2 and 3 of the co  
affidavit needs no comments.

*Handwritten signature*

A90

3. That the averments made in para 4 of the counter affidavit are denied and it is added that the petitioner was illeterate and clerk recorded his date of birth on his own rough estimate in absence of any witness required by the rules. If the date of birth in <sup>Matriculation</sup> ~~Matriculation~~ certificate is proved to be correct it is immaterial that the petitioner passed matriculation ~~in~~ during service. It may be added.

4. That by subtracting 24 from the date of appointment the date of birth was fixed which is clearly incorrect, and the petitioner can prove correct date of birth by cogent evidence.

5. That as regards para 5 of the counter affidavit the annexure No.1 dated 5 Nov 1954 shows that application were invited from matriculate Class IV Staff.



1954 28

5. That averments made in para 6 & 7 of counter affidavit are reiterated. The papers are supposed to be in possession of respondents and they could search out and file the same, difficult in searching is no excuse. As already stated there is no legal bar in proving the date of birth by filing the matriculation certificate.

Mishra

6. That para 8 of the counter affidavit needs no comments.
7. That as regards para 9 of the counter affidavit averments made are reiterated.
8. That as regards para 10 of counter affidavit it is incorrect to say that no representation was made before 31.7.73 the petitioner's representation cannot be rejected merely on the ground that it was made beyond the period fixed by the passed in 1973 if there is cogent evidence to prove that date of birth is incorrectly recorded.
9. That as regards averment made in para 11 of counter affidavit are denied. The petitioner can prove even after 1973 by cogent evidence that date of birth ~~is~~ recorded is incorrect.
10. That para 12 of counter affidavit needs no comments.
11. That as regards para 13 of the counter affidavit ~~it~~ is wrong to assert that the petitioner is not entitled to relief claimed.
12. That it may be added that at any stage before his retirement a Government servant can get his date of birth corrected if he proves by

M. S. D.

A 92 ✓

cogent evidence that the date of birth has been incorrectly recorded and the it should therefore be eorrected by putting the correct date of birth which has been proved by cogent evidence. As already stated the figure of 24 years was arrived at on rough calculation and it was substracted from the date of appointment and the age ~~80~~ calculated was recorded. So there is no doubt that recorded date of birth is incorrect. The petitioners can prove correct date of birth by cogent evidence without any bar of limitation. In any case according to the rules and the Court's instruction the petitioners should have been made to retire at the age of 60 years and on this ~~ground~~<sup>score</sup> he is entitled to all consequential reliefs.

*[Signature]*

Deponent

Lucknow:Dated:  
Sept 19 ,1988

Verification

I, the above named deponent do hereby verify that the contents of paras 1 to 12 of this affidavit are true to my knowledge. Nothing is false and nothing material has been concealed so help me God.

*[Circular stamp]*  
*[Signature]*  
19-9-88

*[Signature]*

Deponent

Lucknow:Dated  
Sept 19 ,1988

I identify the deponent who signed before me.

*[Signature]*

Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH LUCKNOW

INDEX SHEET

CAUSE TITLE TA 1043 OF 1987

NAME OF THE PARTIES R. A. Agarwal

Applicant

Versus

V.O.I

Respondent

Part A, B & C

Sl. No.	Description of documents	Page
1	High Court order sheet	1 ✓
2	CAT order sheet	2 to 3 ✓
3	B. Index	4 ✓
4	Petition	5 to 22 ✓
5	Affidavit	23 to 25 ✓
6	Vakalatnamo	26 ✓
7	App. for I.R. CM No. 46521	27 to 28 ✓
8	CA/RA	29 to 36 ✓
9	Judgement <u>27-6-90</u>	37 to 40 ✓
10		
11		
12		
13		

CERTIFICATE

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

Checked  
Dated 12-4-12

File B/C destroyed on 09-5-12.

Counter Signed.....

Section Officer / In charge

Signature of the  
Dealing Assistant



(A/C)

Serial Number of the order	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
----------------------------	--	--

21/12/89

Hon' Mr. Justice Kamleshwar Nath, V.C.  
Hon' Mr. K. Obayya, A.M.

None appears for the applicant.  
Issue fresh notice to the applicant (by name) as well as his counsel.  
Shri Arjun Bhargava appears on behalf of Opposite parties. Opposite parties are directed to file counter within four weeks to which the applicant may file rejoinder within two weeks thereafter and list this case for orders on 2/2/90.

*[Signature]*  
A.M.

*[Signature]*  
V.C.

(sns)

OR  
Case has been recd. from CAT, And on 19/12/89.

Case is admitted & stay is also granted  
CA/RA has not filed  
Date was fixed from CHT, And.  
Submitted for order  
20/12

OR  
Notice issued  
12/11/90

2/2/90

Hon. Justice K. Nath, VC.  
Hon. K. J. Ramani, AM.

Applicant has filed an application for amendment of the application. Sri Arjun Bhargava appearing on behalf of the opposite parties requests for and is allowed three weeks time to file reply and list for orders on 2/4/90.

*[Signature]*  
A.M.

*[Signature]*  
V.C.

OR  
Notices were issued on 12/11/89.  
Neither  
nor any issue of repd. case has been taken care.  
S. F. order  
11/2/90

OR  
No reply filed  
S. F.

20/13

(A/13)

21/5/90

Hon. Mr. Justice B.C. Mathur V.C.,  
Hon. Mr. D.K. Agrawal, J.M.

Shri L.P. Mishra, learned counsel for the applicant & Shri A. Bhargava, learned counsel for the respondents are present. No reply has been filed by the respondents. The learned Counsel for the applicant seriously objects to any more time to be given to the respondents for filing their counter affidavit. As this is a very old case and this Tribunal on 2/4/90 had passed specific order that no further time would be given for filing counter affidavits. The counsel for the ~~applicant~~ <sup>respondents</sup> state that the papers were with the advocate at Allahabad, but he wants time to file counter affidavit on 25/5/90. This may be ~~ptd~~ <sup>ptd</sup> in the court on 25/5/90 at morning. And the copy may be give to the counsel for the applicant. It ~~is~~ <sup>is</sup> made clear that no further time will be given and <sup>the</sup> case will be heard on that.

Sd/

D.K. Agrawal  
J.M.

*[Signature]*  
21.5.90  
V.C.

25-5-90.

~~Case not reached~~  
~~adjourned to 26.5.90~~

C.A. filed. ~~no~~ <sup>Resouder within</sup>  
Date changed ~~to~~ <sup>B.O.L.</sup> ~~in~~ <sup>the</sup> presence  
of Counsel of parties - Dr L.P. Mishra &  
A. Bhargava, to ~~31.5.90~~ <sup>27.6.90</sup>  
for hearing. No adjournment shall  
be permitted. *[Signature]*

Reply filed today  
27/5/90

CIVIL

SIDE

GENERAL INDEX

C.F. 1937A

Sl. 2122-82  
(Chapter XLI, Rules 2, 9 and 15)

(A/4)

Nature and number of case..... R. A. Agarwal. vs Union Bank

Name of paper.....

Date of institution..... 10-5-82

Date of decision.....

File no.	Serial no. of paper	Description of paper	Number of sheets	Court-fee		Date of admission of paper to record	Condition of document	Remarks including date of destruction of paper, if any
				Number of stamps	Value			
1	2	3	4	5	6	7	8	9
					Rs.	P.		
	1-	W.P. with Annex. and affidavits	18-	-	102-	00		
	2-	Power	1-	-	5-	00		
	3-	Contd. 4652 (W) 882 for shy	2-	-	-	-		
	4-	memo.	1-	-	-	-		
	5-	Power	1-	-	5-	00		
	6-	order sheet	1-	-	-	-		

I have this day of 198 , examined

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

Date.....

Munsarim  
Clerk

Group A-14(e)

(A/5)

3531

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

Writ Petition No. 2122 of 1982.

R.A. Agarwal

... Petitioner

Versus

Union of India and others

... Opp-parties.

I N D E X

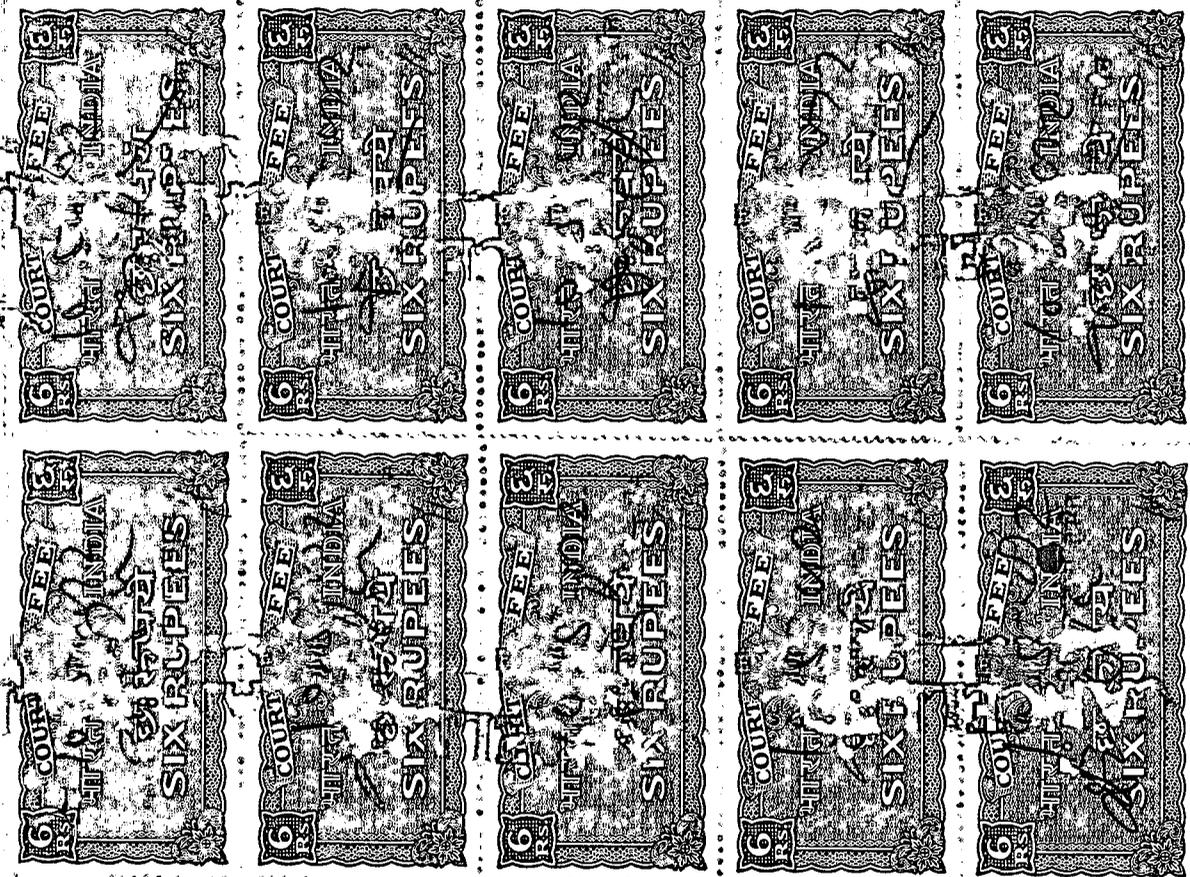
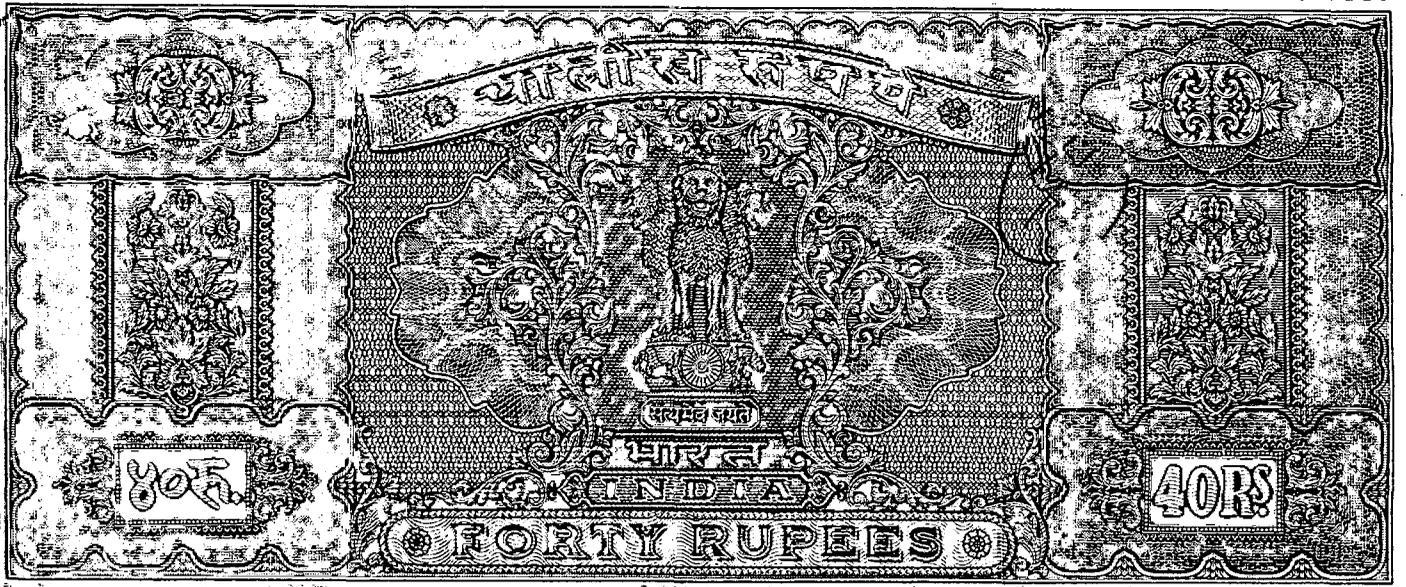
Sl No.	Particulars	Page No.
1.	Writ Petition	.. 1 - 9
2.	Annexure-1 (Order dt. 18.2.78 empanel- ing 8 candidates)	.. 10 - 11
3.	Annexure-2 (Order dt. 7.2.79 cancelling the promotion)	.. 12
4.	Annexure-3 (Order dt. 4th Feb. 1981 promoting the petitioner as T.I.)	.. 13 - 14
5.	Annexure-4 (Order of reversion dated 6.5.82)	.. 15 - 16
6.	Affidavit to the writ petition	.. 17 - 18
7.	Application for interim relief	.. 19 - 20

Dated Lucknow:

May 10, 1982.

(Dr. L.P. Misra)

Counsel for the Petitioner.



In the Honble High Court of Judicature at Madras  
 sitting at Madras  
 Vol. No. 2/22 of 1982

R. A. Agarwal

bedim

Union of India, Govt.

for Name

(A/5)

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

Writ Petition No. of 1982.

2/22

R.A. Agarwal, aged about 48 years, son of Sri  
K.P. Agarwal, resident of Mithla Bhawan, 30-Shashtri-  
Nagar, Lucknow-4.

... Petitioner

Ver sus

1. Union of India, through Secretary, Railways,  
Government of India, New Delhi.
2. General Manager, Northern Railway, Baroda House,  
New Delhi.
3. Divisional Railway Manager, Northern Railway,  
Lucknow Division, Hazratganj, Lucknow.
4. Divisional Personnel Officer, Northern Railway,  
Division Office, Hazratganj, Lucknow.

... Opp-parties.



RA Agarwal

WRIT PETITION UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA,

(A/O)

- 2 -

The petitioner, above named, most respectfully showeth as under :-

1. That the petitioner was initially appointed as Assistant Station Master (A.S.M.), Northern Railway, Lucknow Division.
2. That the post of Traffic Inspectors (T.I.s) is a selection post and the selection to the post of Traffic Inspector is made in accordance with the provisions contained in Chapter-II of the Indian Railway Establishment Manual.
3. That in the year 1977, 91 candidates appeared in the written test held for filling up the few <sup>regular</sup> vacancies of traffic inspectors. Out of those 91 candidates appearing in the written test, 18 candidates qualified the said written test and those 18 candidates were called for interview.
4. That all the 18 candidates qualifying the written test attended the interview on 8.2.78 held at the Divisional Headquarters of Northern Railway at Lucknow and out of them 8 candidates were found suitable and they were empanelled for the promotion of traffic inspectors. A true copy of the order dated 18.2.78 empaneling 8 candidates including the petitioner is being annexed herewith as Annexure-1 to this writ petition.
5. That a perusal of the panel prepared vide Annexure-1 makes it clear that the petitioner was



RACarawal

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placed at Serial No. 7 in the said panel.

6. That the promotion orders in accordance with the empanelment are issued in accordance with the position in the panel.

7. That after the declaration of the panel vide order dated 18.2.78, the petitioner like other empanelled candidates was sent for completing the requisite training known as 'P-16 Course' at Chandausi and the petitioner successfully completed the said training.

8. That the panel prepared vide Annexure-1 was partly given effect to and some of the empanelled candidates were promoted as T.Is and in the mean time an order dated 7.2.79 was passed cancelling the promotion orders issued on the basis of selection held vide Annexure-1. A true copy of the order dated 7.2.79 cancelling the promotion is being annexed herewith as Annexure-2 to this writ petition.

9. That the order dated 7.2.79 (Annexure-2) cancelling the promotions made vide Annexure-1 was challenged through Writ Petition No. 345 of 1979 - Mahavir Ram & another Vs. Union of India and others - and the said writ petition was allowed by a Division Bench of this Hon'ble Court vide order dated 8.10.80 and the Railway Board decided not to challenge the judgment & order passed by the Hon'ble High Court in the aforesaid writ petition and this decision was communicated to Divisional Railway Manager vide order dated 11.3.81.

Revised



10

10. That <sup>after</sup> allowing of the writ petition No. 345 of 1979, the candidates empanelled vide Annexure-1, who could not be promoted earlier, were promoted and the petitioner was also promoted as Traffic Inspector vide order dated Feb. 4, 1981. A true copy of which is being annexed herewith as Annexure-3 to this writ petition.

11. That one M.M. Jauhari found place at Serial No. 8 in the list of empanelled candidates circulated vide order dated 18.2.78 and his name further found place at Serial No. 6 in the order dated 4th Feb. 1981 whereas the petitioner was placed at Serial No. 7 in the list of empanelled candidates and at Serial No. 5 in the order dated 4th Feb. 1981.

12. That the scale of Traffic Inspector is Rs. 455-700 and the scale of the up-graded post of Traffic Inspector is Rs. 550-750/-.

13. That the post of Traffic Inspector, Faizabad was <sup>an</sup> up-graded post of Traffic Inspector in the scale of Rs. 550-750/- and the said post was down-graded vide order dated Feb. 4, 1981 (Annexure-3) in the scale of Rs. 455-700 (RS) and one M.M. Jauhari, who was placed at Serial No. 8 in the panel (Annexure-1) was appointed on that post.

Revised

14. That in the functioning of the Northern Railways the officials ~~who worked~~ whose work and conduct is found outstanding are assigned the special duties as



and when such occasions arise and the efficient officials of outstanding and meritorious service record are sent on special duties irrespective of their seniority.

15. That the petitioner was sent on special duties from time to time on several occasions and the persons who were working as Senior Traffic Inspectors were not assigned those special duties whereas the petitioner was chosen for those assignments.

16. That one S.D. Kharbanda is working as Traffic Inspector, Safety, Lucknow in ad hoc capacity and Sri Kharbanda has never been selected for regular promotion as Traffic Inspector. On the other hand Sri Kharbanda had appeared along with the petitioner for the selection held in the year 1977 and he could not qualify the written test and as such could not be selected as T.I.

17. That all of a sudden an order dated 6.5.82 has been issued sending back the petitioner as A.S.M. in the scale of Rs. 425-640/- which the petitioner held before his selection as Traffic Inspector. A perusal of the order dated 6.5.82, a true copy of which is being annexed herewith as Annexure-4 to this writ petition, further makes it clear that the post of Traffic Inspector, Raibareilly which was held by the petitioner after his selection as Traffic Inspector

RAibareilly

A/12

- 6 -

vide annexure-1, was up-graded in the scale of Rs. 550-750 and one P.S. Srivastava, Traffic Inspector, Sultanpur, who was also empanelled like the petitioner in the selection of Traffic Inspector by the same order has been promoted on the up-graded post of Traffic Inspector, Raebareli.

18. That it is noteworthy that the post of Traffic Inspector, Faizabad was an up-graded post and for the time being it was down-graded.

19. That the persons who are junior to the petitioner and who have not even been regularly selected as Traffic Inspectors are being retained as such whereas the petitioner has been asked by the impugned order (Annexure-4) to go back to his original post of Asstt. Station Master.

20. That the appointing authority for the post of Traffic Inspector is Senior Divisional Personnel Officer.

21. That being aggrieved and having no alternative and efficacious remedy, the petitioner begs to prefer this writ petition on the following amongst other ;

RACARUWAL

-: G R O U N D S :-

i) Because in the circumstances of the case the up-gradation of the post of Traffic Inspector, Raebareli

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B

was not legally permissible and if any up-<sup>gradation</sup>~~gradation~~ was to be made then it was to be made in regard to the post of Traffic Inspector, Faizabad which was earlier an up-graded post and was down-graded for the time being ~~was~~ when one M.M. Jauhari was appointed as Traffic Inspector.

- ii) ~~XXXX~~ Because the person who was placed below the petitioner in the panel is being retained as Traffic Inspector and the persons who have not even been selected regularly as Traffic Inspectors are being continued as Traffic Inspectors and the petitioner has been reverted to the post of A.S.M. That being so, the impugned order of reversion is not only illegal but is arbitrary and discriminatory and is violative of the provisions contained under Articles 16 and 14 of the Constitution of India.
- iii) Because the normal practice in the Railways is to assign the special duties to the outstanding officials and the petitioner was assigned the special duties from time to time and the reversion of the petitioner is not legally permissible.
- iv) Because the petitioner was selected as Traffic Inspector on regular basis through a regular selection as contemplated in Chapter-II of the Indian Railway Establishment Manual. That being so, the petitioner's reversion is illegal and without jurisdiction.

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- v) Because the factum of the post of Traffic Inspector, Faizabad earlier being an up-graded post and the same having been down-graded for the time being coupled with the factum of the said post not being up-graded and the post held by the petitioner being up-graded speaks in itself that the impugned order of reversion is arbitrary and capricious in nature.
  
- vi) Because the appointing authority for the post of traffic inspector is Senior Divisional Personnel Officer whereas the order of reversion has been passed by the Divisional Officer who is not the appointing authority of the petitioner.

-: P R A Y E R :-

WHEREFORE, it is most respectfully prayed that this Hon'ble Court may be pleased ;

- a) To issue a writ, order or direction in the nature of certiorari quashing the order dated 6.5.82 passed by the Divisional Personnel Officer, Northern Railway, Lucknow reverting the petitioner to the post of A.S.M. (contained in Annexure-4 to the writ petition).
  
- b) To issue a writ, order or direction in the nature of mandamus commanding the Opp-parties not to give effect to the order dated 6.5.82

15

passed by the Divisional Personnel Officer, Northern Railway, Lucknow and not to revert the petitioner on the basis of the said order dated 6.5.82 (Annexure-4).

- c) To award the cost of this petition in favour of the petitioner.
- d) To issue any other order, writ or direction which this Hon'ble Court deems fit and proper in the circumstances of the case.



Dated Lucknow:  
May 10, 1982.

(Dr. L.P. Misra)  
Counsel for the Petitioner.

16

10

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

Writ Petition No. of 1982.

R.A. Agarwal ... Petitioner

Versus

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

-----  
ANNEXURE-1  
-----

Northern Railway.

No. 752-E5/1/T.I.

Divl. Supdt.'s Office,  
Lucknow Dt. 18.2.78.

The Station Superintendent,  
Northern Railway,  
BSB & LKO.

Reg:- Selection for the post of Traffic  
Inspector in Scale Rs. 455-700 (RS).

As a result of selection for the post of  
traffic Inspector in R/S Rs. 455-700 held in this  
office on 8.5.77, 22.5.77, 29.8.77, 23.12.77 and  
9.2.78 the following have been found suitable for  
placement on the panel of traffic inspectors.

1. Sri H.S. Upadhy, SM/GNG.
2. Sri P.S. Srivastava, Dv. CHC/MGS
3. Sri V.B. Srivastava, TI/RBL
4. Sri S.M.L. Nigam, ASM/LKO
5. Sri P. Yadav, SCNI/MGS
6. Sri Mahabir Ram, S/C, Guard/Lucknow.
7. Sri R.A. Agarwal, ASM/LKO.
8. Sri M.M. Jauhari, ASM/LKO.

*R.A. Agarwal*



All are warned that retention of their names on the panel is subject to their work being satisfactory during the currency of the panel and the ... fact that they have been placed on the panel does not guarantee that they will be offered the post for which they have been selected.

Sd. R. Ram  
For Sr. Divl. Personnel Officer,  
Lucknow.

*Handwritten mark* Copy to : CHC/LKO  
SM/GNG, RBL,  
Dy. CHC/MGS  
ALL T.Is  
Sr. DOS/DOS/DSO  
Chief Clerk in Office.

*Handwritten signature*

*Handwritten mark*

149 12

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

Writ Petition No. of 1982.

R.A. Agarwal ... .. Petitioner  
Versus  
Union of India and others ... .. Opp-parties.

-----  
ANNEXURE-2  
-----

NORTHERN RAILWAY.

No. 752-E/5/1/TT Divl. Supdt's Office,  
Lucknow D/ 7.2.1979.

8/2/79

The Station Superintendent, N. Railway, Lucknow  
and Varanasi, Chief Controller Lucknow. Station Masters  
Gauriganj, Rae Bareilly, Phaphamau. Dy. Chief Controller,  
Moghaisarai.

TIs LKO FD BSB SLN PAG PBH RBL Safety Lucknow.

Copy to :- Sr. DOS/DOS/DSO LKO AOS BSB YS LKO

Relief clerk in Office.

Reg. Panel of Traffic Inspectors Scale  
Rs. 455-700 (RS).

As per Headquarter's Orders the panel of TIs  
Scale Rs. 455-700 (RS) as circulated vide this office  
letter of even number dated 18.2.1978, is hereby  
cancelled.

Sd. 7.2.79

V.K. Agarwal  
Sr. Divl. Personnel Officer,  
Lucknow.

True copy.

Agarwal

(A/19)

13

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

Writ Petition No. of 1982.

R.A. Agarwal

... Petitioner

Versus

Union of India and others

... Opp-parties.

-----  
ANNEXURE-3  
-----

NORTHERN RAILWAY.

Divisional Office

No. 757 E/S-1/TI

Lucknow, the 4th Feb. 81.

NOTICE

1. The following staff are hereby temporarily appointed to officiate as T.I. in scale as indicated against each in local ad-hoc arrangement. They are likely to be replaced by regular selected incumbents against Hd. Qrs. controlled post and the promotion of staff as T.I. Rs. 455-700 (RS) is subject to clearance by Hd. Qrs. Office.

These promotions will not give any prescriptive right for holding the posts on a regular basis unless and until such promotions are regularised in due course.

Sl. No.	Name /Sri	Present			Promoted/posted			Remarks
		Desig.	Stn.	Grade.	Desig.	Stn.	Grade	
1.	Inamul Haq	TI	FD	550-750	T.I.	PRG	700-900	Against vacancy.
2.	B.N. Srivastava.	SM	KEI	-do-	T.I.	BSB	-do-	-do-
3.	S.M.L. Nigam	Sr.ASM	LKO	455-700	T.I.	SLN	455-700	Vice Sh. R.D. Rai

Agarwal

14  
20

4.	Mahavir Ram (S/C)	Guard Spl.Gr.A	LKO	425-640	T.I.	Model Car.	455-700	already posted as SM/BLG. Vice Sh. Sri Ram reverted.
5.	R.A. Agarwal	ASM	LKO	425-640	T.I.	RBL	-do-	Vice vacancy.
6.	M.M. Jauhari	ASM	LKO	425-640	T.I.	FD	-do-	Vice Item I by down grading.

2. The post of TI/FD scale Rs. 550-750 (RS) is down graded to scale Rs. 455-700 (RS) till further orders as a temporary measure.

3. Sh. Sri Ram, Offg. T.I. scale Rs. 455-700 (RS) in local ad-hoc arrangement is reverted back to his substantive post as Spl grade -A in scale Rs. 425-640 (RS) under SS/LKO.

Movements should be advised to this office.

Sd. Illegible

for Sr. Divisional Personnel Officer,  
Lucknow.

Copy to :-

1. CHC/LKO. It may please be ensured that S/Sri R.D. Rai and Sri Ram are spared atonce.
2. SS/LKO, BSB. AM/KEI, RBL. TIs concerned, Sr. DOS/LKO Sr. DSO/LKO. DOS/LKO, Sr. DAO/LKO. As (Bills). Relief Clerk.

*Agarwal*

21

15

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

Writ Petition No. of 1982.

R.A. Agarwal

...

Petitioner

Versus

Union of India and others

...

Opp-parties.

-----  
ANNEXURE-4  
-----

NORTHERN RAILWAY.

No. 757E/5-1/1018 T.I.

Divisional Office

Lucknow, dt/- 6.5.82.

NOTICE

1. Shri R.A. Aggarwal, Offtg. T.I./RBL grade 455-700 is posted back to his substantive post of ASM grade 425-640 under SS/Lucknow against an existing vacancy.
2. The post of T.I./RBL grade 455-700 is upgraded to scale Rs. 550-750 in lieu of the post of TI/FB which was down-graded to scale Rs. 455-700 vide this office notice of even No. dated 4.2.81 and consequent upon this upgrading Shri P.S. Srivastava TI/SLN grade Rs. 455-700 is temporarily promoted and on adhoc basis to officiate as TI grade 550-750 for a period of six months and posted as TI/RBL.

This is purely temporary local adhoc arrangement and will not confer upon Shri P.S. Srivastava any

R.A. Agarwal

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perspective right for similar promotion in future in preference to his seniors. His working may be watched for six months, a special report may be submitted to DRM ~~immediately~~ immediately thereafter by Sr. DOS through D.P.O.

3. Shri P. Yadav, Dy. CHC/Lobby/LKO grade 700-900 who was borne on the panel of SCNL grade 470-750 & T.I./grade 455-700, has opted for TI and as such he is posted as TI/SLN in grade Rs. 455-700 temporarily vice item ~~NO~~ No. 2 above.

This has the approval of DRM.  
Movement should be advised.

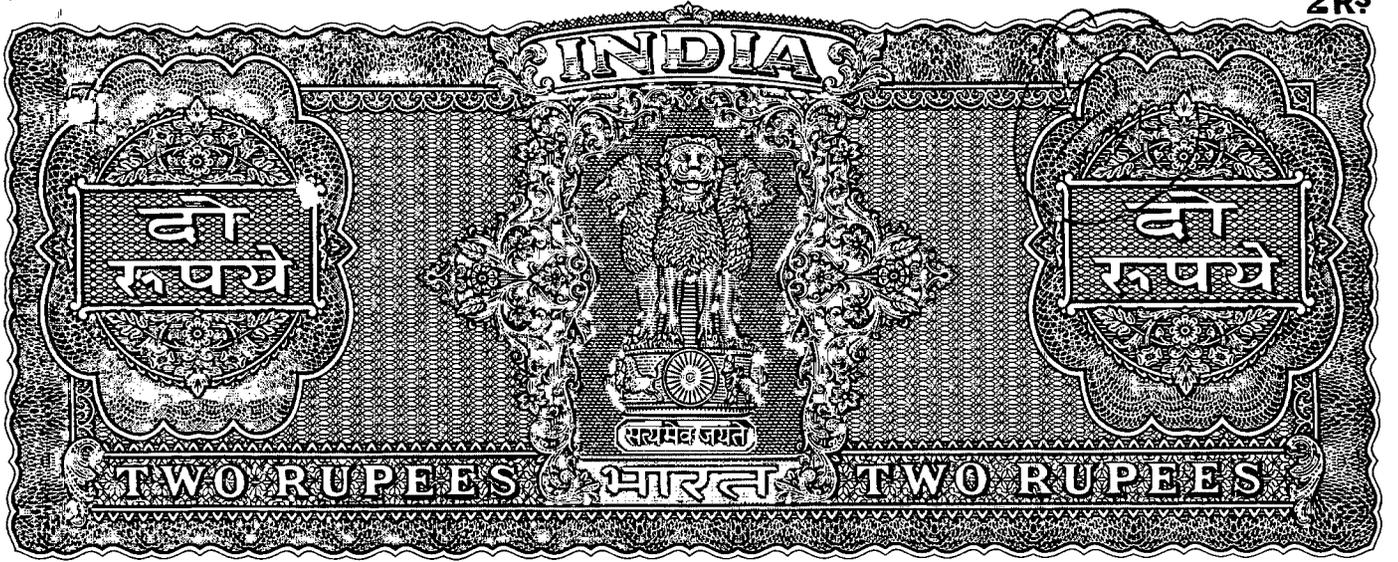
Sd. S.N. Misra

Divl. Personnel Officer,  
Lucknow.

Copy to :-

1. SS/LKO
2. CHC/LKO
3. Dy. CHC/Lobby/LKO
4. TIs RBL/SLN.
5. G.M.(P) N.Rly. Hd.Qrs. Office, N.Rly., Baroda House, New Delhi.
5. AS/Bills.
7. Sr. DOS/LKO.

Revised



In the Honble Hsh Court of Judicature at Allahabad  
 sitting at Lucknow

W.L. No.

of 1982

R. A. Agarwal -

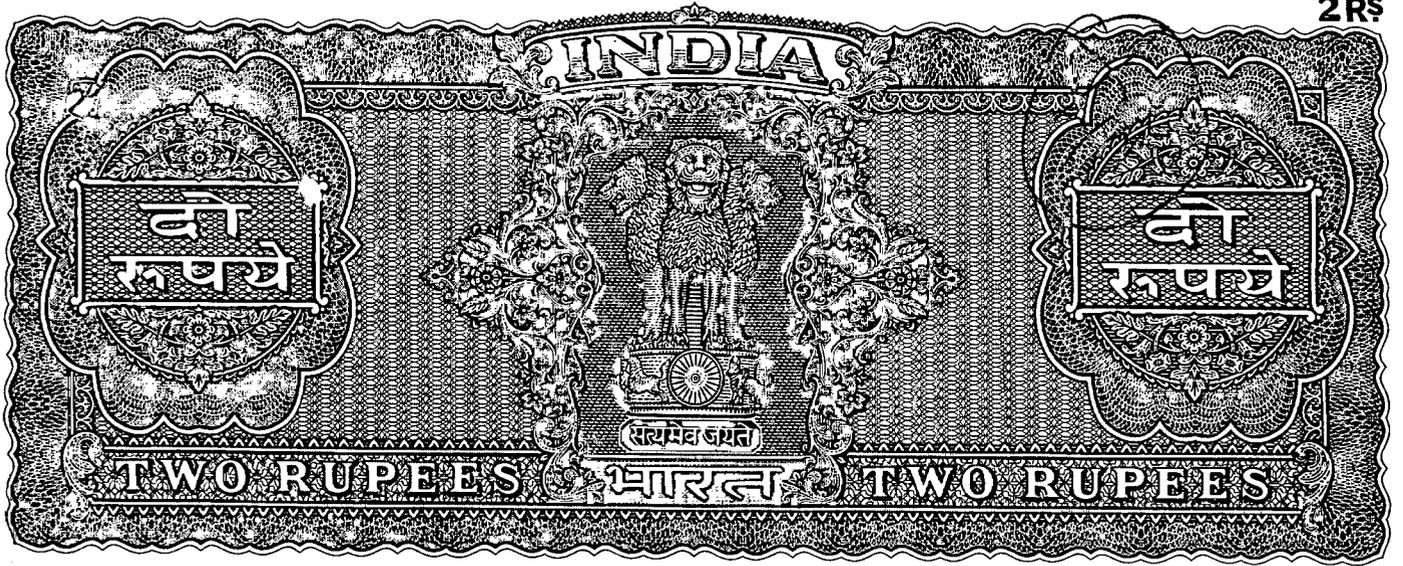
- Petitioner

v.

Union of India & ors -

- Respondent

AFFIDAVIT



In the Honble High Court of Judicature at Allahabad  
 sitting at Lucknow

W.L. No.

of 1982

R.A. Agarwal - Petitioner

v.

Union of India - Respondent

AFFIDAVIT

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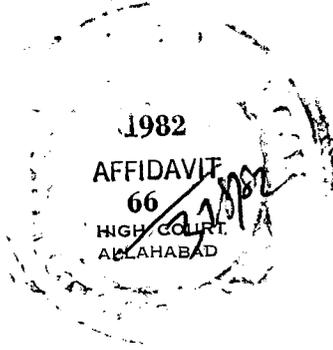
17

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

AFFIDAVIT

IN

Writ Petition No. of 1982.



R. A. Agarwal

...

Petitioner

Versus

Union of India and others

...

Opp-parties.

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I, R.A. Agarwal, aged about 48 years, son of Sri K.P. Agarwal, resident of Mithla Bhawan, 30-Shastri-Nagar, Lucknow-4, do hereby solemnly affirm and state on oath as under :-

Ty-d

1. That the deponent is the petitioner in the above noted writ petition and, as such, is fully conversant with the facts deposed to hereunder.
2. That the deponent has read the contents of the writ petition and has fully understood them.
3. That the contents of paragraphs 1 to 20 of the writ petition are true to the own knowledge of the deponent.

Agarwal

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4. That the Annexures 1 to 4 to the writ petition are certified to be true copies of their originals.

Dated Lucknow:

May 10<sup>th</sup>, 1982.

*[Signature]*

Deponent

Verification

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

Dated Lucknow:

May 10<sup>th</sup>, 1982.

*[Signature]*

Deponent

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

*[Signature]*  
Advocate's Clerk.



Solemnly affirmed before me on 10/5/82 at 9.30 a.m./p.m. by Sri R. A. Agarwal

the deponent who is identified by

Sri S. P. Srivastava  
Clerk to Sri Dr. L. P. Mishra

Advocate, High Court, Allahabad.

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

High Court, Allahabad  
Lucknow Bench.

1275  
6/4/32/82  
10/5/82

ब अदालत श्रीमान High Court of Judicature at Allahabad  
Selling at auction महोदय

वादी(मुद्दई)  
प्रतिवादी (मुद्दालेह)

का

वकालतनामा



1928  
R. A. Agarwal

मुद्दई (मुद्दई)

वनाम  
Union of Indis Dohes प्रतिवादी (मुद्दालेह)

नं० मुकद्दमा सन् १६ पेशी की ता० १६ ई०  
ऊपर लिखे मुकद्दमा में अपनी ओर से श्री *R. P. Mishra*

एडवोकेट

महोदय  
वकील

को अपना वकालत नियुक्त करके प्रतिज्ञा [इकरार] करना हूँ और लिखे देता हूँ इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुनहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी या विपत्ती [फरीकसानी] का दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युक्त [दस्तखती] स्सीद से लेवें या पंच नियुक्त करें - वकील महोदय द्वारा की गई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह स्वीकार करता हूँ कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर न होगी । इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे ।

हस्ताक्षर

*R. Agarwal*

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

१६ ई०

नाम अदालत
नाम फरीकैन
नं० मुकद्दमा

Receipt  
*[Signature]*

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In the Central Administrative Tribunal Allahabad  
Circuit Bench Lucknow.

T. A. No.            of 1987  
(W.P. NO. 4652 of 1982)

R. A. Agarwal	....	Petitioner
Versus		
Union of India and others	....	Opp. Parties.

Reply on behalf of the Opposite Parties.

Para 1: Needs no reply.

Para 2: Not denied.

Para 3: Not denied-

Para 4: Not denied.

Para 5: Not denied.

Para 6: Not denied.

Para 7: Not denied.

Para 8: Not denied.

Para 9: Not denied.

Para 10: Not denied.

Para 11: Not denied.

Para 12: Not denied.

Para 13: Not denied.

Para 14: Denied.

*R. A. Agarwal*  
..... 2  
Northern Railway

*2/2/87*

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Para 15: The contents being vague are not admitted. The petitioner, unless gives in detail of his special posting reply cannot be given.

Para 16: In reply it is submitted that the post of Traffic Inspector, Safety Lucknow is Ex cadre post, on which shri Kharbanda ~~is working~~ <sup>was posted</sup> in adhoc capacity. It is not denied that shri Kharbanda appeared and failed in the selection held in the year 1977.

Para 17: In reply, it is not denied that the petitioner was reverted back to his post of A.S.M. in the scale of Rs. 425- 640 vide orders dated 6.5.'82 as contained in Annexure 4 to the writ petition. It is also not denied that the Post of Traffic Inspector Rai Bareilly was upgraded in the scale of Rs. 550-750 and Shri P.S. Srivastava Traffic Inspector Sultanpur was promoted on upgraded post of Traffic Inspector Raebareilly.

Para 18: In reply it is not denied that the post of Traffic Inspector Faizabad was downgraded.

Para 19: In reply, it is stated that the petitioner has been reverted to his earlier post of A.S.M. as he was found unsuitable for the post of Traffic Inspector. The reversion due to unsuitability does not attract the provision of retaining the juniors. As such there is no illegality in the order passed reverting the petitioner to the post of A.S.M. earlier held by him before being promoted as T.I..

*[Signature]*  
Northern Railway 3

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Para 20: It is not denied that the appointing authority for the post of Traffic Inspector is \_\_\_\_\_

Para 21: Denied. There was an alternative remedy by way of representation etc. against reversion, which he did not avail, hence this writ petition is not maintainable.

It is also stated that none of the grounds are tenable under law.

It is also stated that the petitioner is not entitled to any relief claimed and the petition is liable to be dismissed with costs to the opposite parties.

Lucknow  
dated: 25.5.90

*Prabhu Das*  
Opp. Parties  
District Personnel Officer,  
Northern Railway  
LUCKNOW

Verification:

I, *Shri Pujan Prasad* working as *Asst Personnel Officer* in the office of D.R.M. Northern Railway Lucknow and being competent and authorised to sign and verify this reply, do hereby verify that the contents of paras 1 to 21 of this reply are true to best of my belief based on information derived from the record and legal advice recd.

*Prabhu Das*  
District Personnel Officer,  
Northern Railway  
LUCKNOW

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH,  
LUCKNOW

T.A. NO. 1043 OF 1987

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Fixed For - 27-6-90.

R.A. AGARWAL

... PETITIONER

VERSUS

UNION OF INDIA & OTHERS

... OPPOSITE PARTIES

REJOINDER AFFIDAVIT

Paras 1 to 13:- Need no reply.

Paras 14 & 15:- Denied and those of para 14 of the  
petition are reiterated. The petitioner  
was assigned the following special  
duties after being promoted as T.I.  
5.7.81 to 11.7.81 - Dilkusha Cabin  
Non Interlocking  
24.12.81 to 29.12.81 - Lucknow goods  
yard special duty.  
4.1.82 to 8.1.82 -do-  
12.1.82 to 19.1.82- Kumbh Mela, Prayag.  
23.1.82 to 27.1.82 - -do-  
18.3.82 to 21.3.82 - Lucknow goods yard.  
26.4.82 to 7.5.82 - Lucknow vice T.I.  
Lucknow in addition to  
his duties.

It is note worthy that the persons senior  
to the petitioner having been placed above  
him in the Panel, such as Mahabir Ram will  
available but the petitioner was assigned

Contd...2

received today  
28  
30/5/90

Agarwal

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the special duties. The copies of the few such ~~ask~~ also pertaining to assignment of special duties are annexed as ANNEXURE NOS. R-1 to R-3.

Para 16:- Need no comments except that Mr. Kharbanda was retained whereas the petitioner was sought to be reverted under the impugned order.

Paras 17 & 18:- Need no comments.

Para 19:- Denied as alleged. At no point of time any short coming in the functioning of the petitioner was pointed to him nor was any letter or notice issued to him requiring any improvement in his work. On the other hand, the petitioner was assigned the special duties which are assigned only to the outstanding T.Is.

Para 20:- Not denied.

Para 21:- Denied.

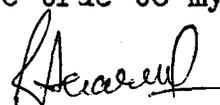
LUCKNOW

DATED 30-5-90  
Verification

  
PETITIONER

I, R.A. Agarwal verify this rejoinder affidavit do verify that the contents of para 1 to 21 of this rejoinder affidavit are true to my knowledge and legal advice received.

30-5-90

  
PETITIONER

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,  
CIRCUIT BENCH, LUCKNOW.

T.A. NO. 1043 OF 1987

R.A. AGARWAL

... PETITIONER

VERSUS

UNION OF INDIA & OTHERS

... OPPOSITE PARTIES

ANNEXURE NO. R-1

TI RBL

In view of critical situation prevailing in TI LKO's section having the report of stations closure due to shortage of staff- long hrs. on duty etc. and TI LKO having proceeded on leave, you are to remain at LKO to tidy up the matter. On 25.4.82 UTR was on the point of closing down.

Today 26.4.82 Bakkas has closed down

You will now look after TI LKO's section as well till his arrival and please remain at LKO and take stock of the situation and then bring back to shape crumbling organisation of TI LKO.

Sd/-Illegible

ABJ (6)

26.4.82

*R. Agarwal*

(35)

ANNEXURE R (2)

NO: TT 93/30/AK Mela/82

Dated: 6.1.82

ARUN KUMBH MELA 1982

Reg: Deployment of Senior Supervisors on Lucknow Division.

Senior Supervisors mentioned below will be on Kumbh Mela duty at stations indicated against each. On arrival at their respective stations, they shall advise their location to the control.

Sl. No.	LOCATION	Name of Staff	Design.	P E R I O D			
				To	From	To	From
				12.1.82	21.11	7.2	
				10.1.82	31.11	9.2	
-----							
		S/Sri					
1.	PRAYAG GHAT	1. B.L. Dubey 2. S.N. Singh 3. R.A. Agarwal	WMI/PLP CYM/LKO EI/RBL				
2.	PRAYAG	1. H.K. Misra 2. S.D. Kharbenda 3. Manzoor Abbas	WII TI/S/II LI/S				
3.	PHAPHAMAU	1. I. Haq 2. P.S. Srivastava	EI/PRG TI/S IN				
4.	AEDDHYA	1. P.L. Bhargu 2. T.N. Verma	DE/LKO WMI/LKO				
5.	FALGABAD	1. H.M. Jauhari	EI/PD				
6.	Jaunpur	1. S.K. Prasad	WMI/BSB				
7.	Sultanpur	1. R.S. Pandey	L/CNL/SLN				
8.	Lucknow (Sta)	1. H.M. Dhyani 2. A.P. Dixit	EI/LKO WMI/LKO				
9.	Varanasi	1. K.D. Jha	WMI/BSB				
10.	Pratapgarh	1. Gopi Singh	EI/PRH				
11.	Rai-Bareilly	1. Mahabir Ram	EI (Sta)				

*(Signature)*

(Nishanth M. Katara)  
Divl. Operating Supdt,  
Lucknow.

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ANNEXURE R(3)

Northern Railway

Divisional Office  
Lucknow.

NO. 77287/Workord/82

Dated: 4.1.1982

With effect from to-day (4.1.82) the following Senior Subordinates are deputed to work in Lucknow yard till 9.1.82:

<u>Sl.No.</u>	<u>Name</u>	<u>Designation</u>	<u>Shift</u>
1.	Shri R. A. Agarwal	FI/REL	0/8 hrs
2.	Shri N. C. Dewan	SWMI/LKO	8/16 hrs
3.	Shri N. K. Misra	WMI/LKO	16/24 hrs

The senior supervisors will be responsible in their respective shifts for monitoring the work done by the various yard pilots in both East and West end. Sick line placement and withdrawal, transference of Goods shed leads, clearing of mixed stock in the hump yard, etc., would be watched by each of the above named. One most important duty in each shift would be to watch the reception and despatch of through goods in both Up and Down directions. The target for FGs in LKO yard is only 15" and the trains must be started with this time. In this connection instructions have already been issued to the CWM, Lobby and the Control which must be read by above mentioned persons for compliance.

  
(Nishanth K. Kataria)  
Divl. Operating Spt  
Lucknow.

FI/REL  
SWMI/LKO  
WMI/LKO

Reared

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

CIRCUIT BENCH  
LUCKNOW

A/37

T.A. 1043/87(T)

(Writ Petition 2122/82 of High Court of Judicature  
at Allahabad, Lucknow Bench, Lucknow)

R.A. Agrawal ...Petitioner

versus

Union of India & others ...Respondents

Hon. Mr. Justice K. Nath, Vice Chairman.

Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. Justice K. Nath, V.C.)

The Writ Petition described above before us  
from High Court, Allahabad, Lucknow Bench  
stood transferred to this Tribunal under section 29 (i)  
of the Administrative Tribunals Act, 1985 for quashing  
of the order dated 6.5.82 (Annexure 4) whereby the  
petitioner was reverted from the post of Traffic Inspector  
to the post of Assistant Station Master.

2. It appears that while working as Assistant Station  
Master, the petitioner went through the selection test  
for the post of Traffic Inspector and was ultimately  
selected for appointment by panel dated 18.2.1978 (Ann. 1) &  
that panel having been cancelled on 7.2.79 (Ann. 2), a Writ  
Petition No. 345/79 was filed before the Hon'ble High Court  
of Allahabad, Lucknow Bench. The petition was allowed  
by order dated 8.10.80, with the result that the competent  
authority gave effect to the panel and the petitioner was  
promoted to the post of Traffic Inspector by order dated  
4.2.81 (Annexure -3). <sup>Cur</sup> ~~Prov~~ <sub>n</sub>viously enough, this order described

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the appointment of the petitioner to be an adhoc arrangement likely to be replaced by a regularly selected incumbent.

3. On 6.5.82 the impugned order of reversion Ann. 4 was passed with the approval of the D.R.M. and issued by the Divisional Personnel Officer. The petitioner was <sup>posted</sup> ~~passed~~ back to the original post of Assistant Station Master.

4. The petitioner's case is that the petitioner had been regularly selected and promoted as Traffic Inspector and the averment in the promotion order Annexure -3 that it was an adhoc arrangement had no standing in the eyes of law. It was said that having been so promoted, he could not be reverted without an opportunity to show cause and without reasons. It was also pointed out in para 16 of the petition that one Shri S.B. Kharbanda <sup>who</sup> had failed at the selection for the post of Traffic Inspector in 1977, was nevertheless promoted to continue to work as Traffic Inspector while the petitioner was reverted and therefore the reversion was arbitrary.

5. The case in the counter is that the petitioner had been reverted because <sup>of unsuitability</sup> ~~his reinstatement~~ for the post of Traffic Inspector. It is pointed out in para 17 of the Counter that a reversion on account of unsuitability did not attract "the provisions of retaining the juniors", and therefore, there was illegality in the impugned reversion order.

6. In para 16 of the Counter it was admitted that Shri Kharbanda had failed in the examination and was promoted but continued to work as Traffic Inspector while the petitioner was reverted by the impugned order that ~~it~~ was sought to be explained by the statement that the appointment was adhoc and the post was ex-cadre post.

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7. We have heard Shri L.P. Mishra, Counsel for the petitioner and the learned counsel for the respondents and have gone through the record. We do not think that the petitioner's promotion as Traffic Inspector by order dated 4.2.81 (Annexure 3) could validly be stated to be an adhoc promotion/arrangement to be replaced on a regular selection. Indeed, as indicated above he had been promoted after a regular selection. We think therefore, that the principles which inhere to the posting or an officiating promotion in the matter of reversion, cannot be applied to regular employees appointed after regular selection and therefore, the principles of reversion for unsuitability cannot be extended to the case of the petitioner. He ought to have been given an opportunity to show that he did not suffer from what he may have been considered to be unsuitable for the post. Secondly, the respondents have completely failed to show that the petitioner was found to be unsuitable. Indeed, the pleadings of the respondents in the counter are wholly inadequate on this subject. The fact whether or not a person is <sup>unsuitable</sup> ~~entitled~~ for a post is inference from his performance and conduct; it is not a statement of fact by itself. It is the facts which could form the basis of "unsuitability", which should have been pleaded in the counter.

8. The learned counsel for the respondents says that he has not been able to get confidential record of the petitioner in which the matter of the petitioner's unsuitability may have been adjudged. The department has only to thank for it. There have been more than one opportunities to the respondents to file the ~~papers~~ appropriate counter and to keep the record available if so desired. We are satisfied that the mere failure of the respondents to get the confidential record ~~of~~ cannot

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~~be justified~~ ~~that~~ the respondents' case that the petitioner must have been found to be unsuitable for the post of Traffic Inspector.

9. The further case of the petitioner in the context of the continued employment of Kharbanda as Traffic Inspector in the light of the admitted facts on that point, is not without substance. The impugned order of reversion, considered in the totality of the facts and circumstances of the case, including the context of Kharbanda's matter, show that the order of reversion was also arbitrary. The petition must succeed.

10. The petition is allowed and the impugned order dated 6.5.82 (Annexure 4) reverting the petitioner from the post of Traffic Inspector to the post of A.S.M. is quashed. The petitioner shall be deemed to have continued to work as Traffic Inspector on and after 6.5.82. The operation of the impugned order had already been stayed by the interim order of the Hon'ble High Court. It is directed that the respondents shall accord such consequential benefits to the petitioner, as he may be found to be entitled to during the period from 6.5.82 upto date, including the claims, if any, for promotion etc, according to law. The respondents shall pay the costs to the petitioner which we assess at Rs 2000.00

  
Adm. Member.

  
Vice Chairman

Lucknow Dated: 27.6.90

Office

Photocopy of this judgment will not be issued; whenever a copy has to be issued it must be typed out correctly when issued



27.6.90

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH LUCKNOW

INDEX SHEET

CAUSE TITLE TA 1033 OF 1987

NAME OF THE PARTIES Dr. R.B. Prasad

U.O.I. & others Applicant

Versus

Respondent

Part A, B & C

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2	General Index	A 5 ✓
3	Petition Copy	A 6 to A 22 ✓
4	Affidavit Annexure	A-23 to A 24 ✓ A 25 to A-30 ✓
5	Power	A 39 ✓
6	C.M. Application: 2682	A-40 to 41 ✓
7	C.M. Application: 4547	A 42 ✓
8	C.A.	A 43 A 54 ✓
9	Annexure	A-55 to A 66 ✓
10	Affidavit	A 67 to A 70 ✓
11	Annexure	A 79 to A 84 ✓
12	R.A.	A 85 to A 110 ✓
13	High court order sheet	A 111 to A 113 ✓

CERTIFICATE

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

Dated: 22.3.11

*File B/c destroyed on 09-5-12*

Counter Signed.....



Section Officer / Incharge

Signature of the  
Dealing Assistant

(A1) 11

Office Report

This is writ-petition No. ~~1033~~ 10/82  
Transferred from the High Court - Lucknow  
Bench Lucknow

Notices were issued during 29.9.88  
by Regd Post both the parties.  
Makalat name of Sri A. Srinivasan Adv.  
for respondents filed  
Notices has not received back  
after service.

Submitted  
mlg

29.9.88 leg  
No one appears for the  
applicant. Sent fresh notice  
to the applicant as well as to  
the counsel fixing 16.11.88

16.11.88 leg  
No one appears for applicant  
office to input - by 4.11.88  
within the order of 29.9.88  
have been complied with -

2.11.88 Office report  
In compliance S. Court's  
order dt. 29.9.88. Notices has been  
sent to the applicant as well as to  
the counsel fixing 16.11.88.  
No unserved regd cover  
has been return back.

Submitted. leg  
2.11.88

A1/3

TA 1033/87

22-12-89. Sri A.V. Sri neelam Present-  
Reply may be filed by  
18-1-90

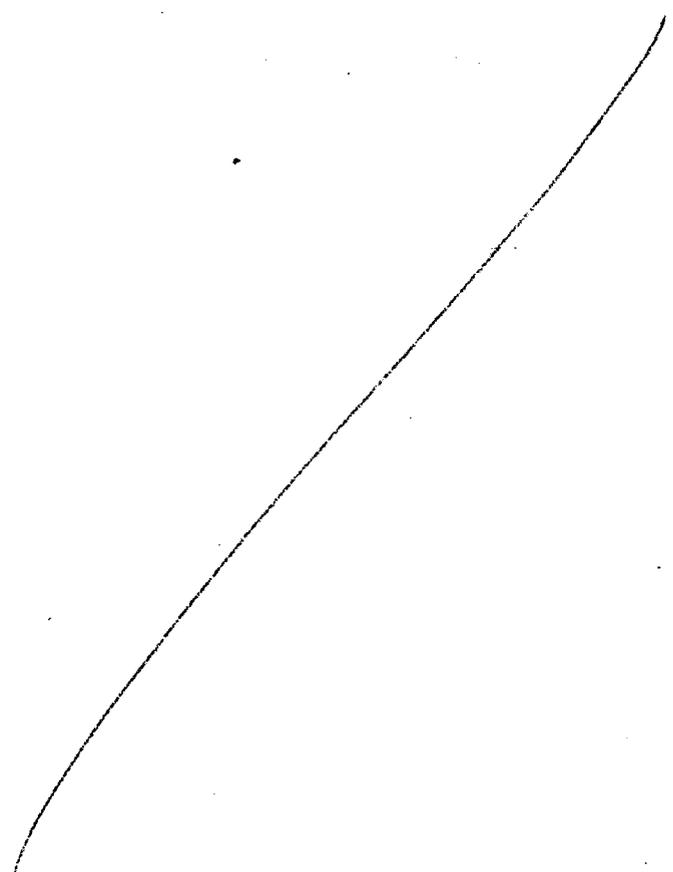
✓  
Ragr

18-1-90 On the Request-Reply  
may be filed by 6-2-90

✓  
Ragr

6-2-90 On the Request, Reply  
may be filed by 6-3-90

✓  
Ragr



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

A1/y

C.A./T.A. No. 1033 1987

Dr. R.B. Prasad Applicant(s)

Versus

U.O.D Respondent(s)

SL.No.	Date	Orders
	6-3-90	DR None present for the applicant. This is a transferred writ petition from Lucknow High Court. As per direction of Hon. V.C. let the case is transferred to C.A.T. Lucknow bench. Comm. Fix for 29-3-90 for orders. Counsel for respdts have been informed the applicant's counsel at Lucknow.
	29-3-90	DR(S) No sitting adj. to 20-7-90 Notice issued to the applicant, Sr. div. in Lucknow as per order.
	20-7-90	NO sitting adj. to 7/11/90
		This case has been read on 19.3.90. Notice was issued to the applicant.

File has been read on from C.A.T. Allahabad 19.3.90 L

No reserved report  
Case has been returned  
been  
CA/RA filed  
SFO  
L  
6/4

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CIVIL

SIDE

GENERAL INDEX

~~CR~~

(Chapter XLI, Rules 2, 9 and 15)

Nature and number of case... *w.P. 1310-82*...

Name of parties... *D. R. Raja Bijendra P. vs Union of Andhra*

Date of institution... *23.3.82*.....

Date of decision.....

File no.	Serial no. of paper	Description of paper	Number of sheets	Court-fee		Date of admission of paper to record	Condition of document	Remarks including date of destruction of paper, if any
				Number of stamps	Value			
1	2	3	4	5	6	7	8	9
					Rs.	P.		
	1	General Index	1					
A	<del>2</del>	<del>Cover sheet</del>	<del>1</del>					
A	3	Writ with affidavits	34	9	103			
B	4	Power	1	3	5			
A	5	Ans Stay C.M.A. 2682 (W) of 82	2	3	5			
	6	Cont. 45 (W) of 84 with CA	25		7.00			
	7	Specimen affidavit	8		2.00			
	8	C.M.A. 5819 (W) of 84 with affidavit	5		7.00			

I have this \_\_\_\_\_ day of \_\_\_\_\_ 198 \_\_\_\_\_ examined

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

Date.....

Munsarim  
Clerk

2190

23.3.82

Group A 184 (F)

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

--  
Writ Petition No. 1310 of 1982

Dr. Raja Bijendra Prasad

--Petitioner

versus

Union of India and others

--Opp-parties

INDEX

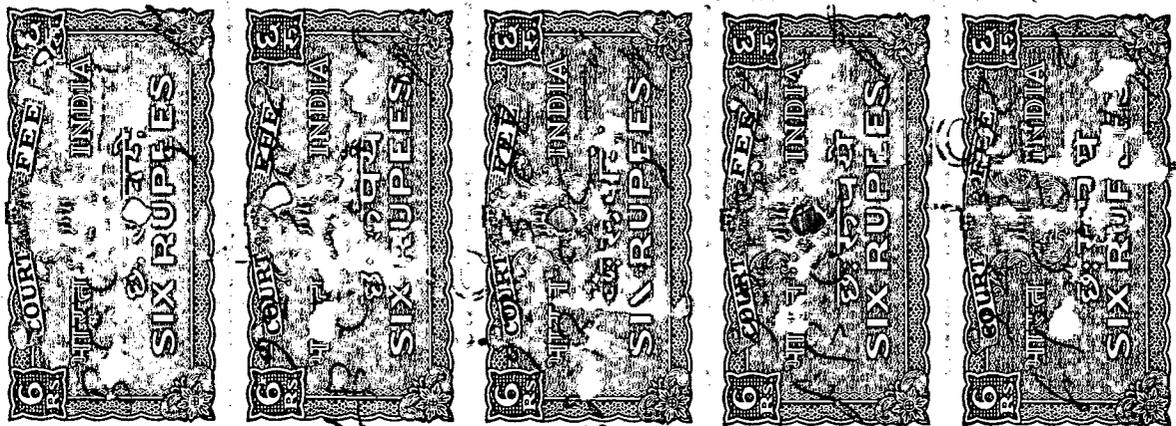
Sl. No.	Description of paper	Annex.	page
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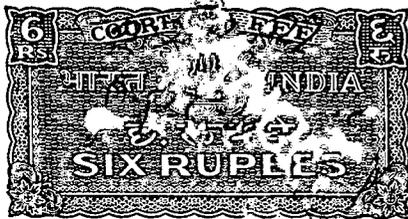
( B.C. Saxena )  
Advocate

INDIA COURT FEE

60 Rs.



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1 dup 260-00  
7 dup 240-00  
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10 dup 500-00  
28/3

At the Hon'ble High Court of Judicature at  
Allahabad Lucknow Bench L.K.6  
WP no 1310 of 1982  
Dr Raja Bijendra Prasad — Petitioner  
vs  
Union of India others — opp Parties

(B. C. Sengupta)  
Advocate

CA 211 AB

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

Petition under Article 226 of the Constitution of  
India

Writ Petition No. 1310 of 1982

Dr. Raja Bijendra Prasad, aged about 46 years, son of late  
Sri Raja Ram Chandra Prasad, resident of 63, N.E.  
Railway Colony, Aishbagh, Lucknow

Petitioner

versus

1. The Union of India through the Secretary, Ministry of Railways, ex-officio Chairman, Railway Board, Rail Bhawan, New Delhi
2. The Secretary, Department of Personnel and Administrative Reforms, Ministry of Home Affairs, Government of India, New Delhi
3. The General Manager, N.E. Railway, Gorakhpur
4. The Chief Personnel Officer, N.E. Railway, Gorakhpur

Opposite-parties

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

21/3/82

1. That the petitioner is at present posted as Divisional Medical Officer, N.E. Railway, Aishbagh, Lucknow, which is a Class I Senior Scale post carrying the scale of Rs. 1100-1800. The petitioner was promoted to the said post by office order no. 293 dated 14.12.1981 passed on behalf of opposite-party no. 3. A true copy

S. Raja Bijendra Prasad

A-2 A-9

of the said office order is being annexed as Annexure no.1 to this petition.

2. That the petitioner joined the post of Divisional Medical Officer (hereinafter referred to as the DMO) on 14.12.1981 and till date is continuing on the said post.

3. That the petitioner was initially appointed in the N.E.Railway as Assistant Surgeon Grade I on or about 20.10.1960 . He was promoted to the next higher post of Assistant Medical Officer on 1.1.1966 and was further promoted as Assistant Divisional Medical Officer (hereinafter referred to as ADM.O) Class I , Junior Scale, with effect from 1.1.1973. The petitioner while working as ADMO was promoted to the post of DMO as a consequence of the upgradation of about 300 posts of ADMOs to the rank and status of DMO in pursuance of the Railway Board's letter no. 81E/CC) 12-54 (IRMS) (SS) dated 31.7.1981. A true copy of the said Railway Board's letter dated 31.7.1981 is being annexed as Annexure no.2 to this petition.

4. That a perusal of the Railway Board's aforesaid letter dated 31.7.1981 would show that upgradation of the posts of ADMOs to DMOs. was decided upon as a result of ~~review~~ restructuring of the Gazetted cadre of Medical Department of the Indian Railways. As a result of the said review, it was decided that 300 existing posts of ADMOs. in the Indian Railways Medical Service should be placed in the senior scale as DMOs. The railway wise and location wise details for the said upgradation were given in a statement

21/3/82

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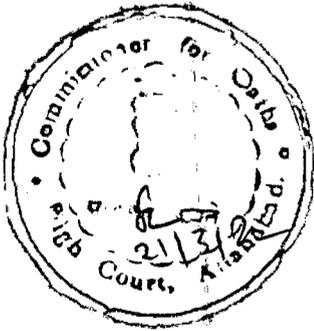
A2/3 A10

enclosed to the letter dated 31.7.1981.

5. That in pursuance of the decision contained in the Railway Board's aforesaid letter dated 31.7.1981 19 posts of ADMOs. Class I scale Rs. 700-1600 were directed to be upgraded as DMOs in senior scale Rs.1100-1800 with effect from the date of operation by the General Manager, N.E.Railway, Gorakhpur. The said orders are contained in the letter dated 19.8.1981 a true copy of which is being annexed as Annexure no.3 to this petition.

6. That the post of DMO, N.E.Railway, Aishbagh is one of the four posts of the Lucknow Division, N.E. Railway and thus was one of the posts which under the orders contained in memorandum dated 19.8.1981 has been allocated for upgradation.

7. That in paragraph 6 of its letter dated 31.7.1981 copy of which has been annexed as Annexure no.2 to this petition the Railway Board had laid down that the filling of the upgraded posts should be regulated in accordance with the clarifications given in the Board's letter no. 81E(R)II/7/66 dated 31.7.1981. A true copy of the said letter dated 31.7.1981 is annexure 2 to this petition while true copies of the letters referred to in the said letter viz., letters dated 12.4.1979 and 15.9.1980 are being annexed as Annexure nos 5 and 6 to this petition.



Dr. Raja Brijendra Prasad 8. That at the time of the issuance of the letter dated 31.7.1981 on the subject of filling up of the posts of ADMOs on Indian Railways as a consequence of

upgradation of the said posts under the recruitment rules recruitment to the extent of 25 per cent of the posts was required to be made by direct recruitment, & the rest 75 per cent to be filled up on the basis of promotion. It is stated that quota for direct recruitment has even been given up and is no longer extant with the result that the posts of DMOs. are required to be filled up only by promotion.

9. That recruitment to the post of DMOs is governed by the rules called the Indian Railway Medical Service (District Medical Officers) Recruitment Rules, 1973 as amended from time to time. The said recruitment rules for reasons indicated in the Railway Board's letter dated 31.7.1981 were not to apply for purposes of filling up the posts of ADMOs upgraded to the rank of DMOs.. The upgradation did not involve the element of promotion <sup>to</sup>. The posts of ADMOs to the extent of 300 were being upgraded and consequently the same number of ADMOs on the basis of seniority alone were given the upgraded rank. The petitioner prior to his upgradation to the rank of DMO was holding the post of ADMO at Aishbagh, Lucknow and after the upgradation was placed in the scale of Rs. 1100-1800.

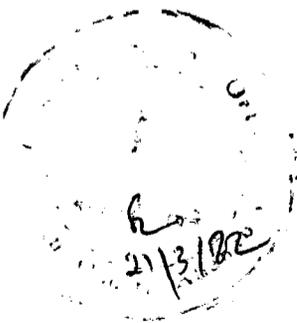
10. That it appears that certain clarifications were asked for by some of the railways on the question whether reservation for scheduled castes and scheduled tribes would be applicable while filling up the upgraded posts of DMOs. On the said subject the opposite-party 1 appears to have consulted the opposite-party 2 and a decision was taken to the effect that



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reservation for scheduled castes and scheduled tribes would be applicable while filling up the posts of DMOs as a consequence of the upgradation. Such a decision has been communicated by the Additional Director, Estt (R), Railway Board, New Delhi by means of his circular letter no. X 78-E (SCT) 15/13(Pt.II) dated 22.2.1982. A true copy of the said letter is being annexed as Annexure no.7 to this petition.

11. That a perusal of the said letter would show that it indicates and contains no reasons for the clarification it gives to the effect that reservation for scheduled castes and scheduled tribes would be applicable ~~while~~ <sup>while</sup> filling up the posts of DMOs. The said letter also does not indicate that the Railway Board's letter dated 31.7.1981 on the subject of filling up of the posts of DMOs on the Indian Railways as a consequence of upgradation of posts has been taken into consideration. It is stated that since the letter dated 22.2.1982 does not state that the decision therein is in supersession of the decision contained in the aforesaid letter dated 31.7.1981, Opposite-parties 1 and 2 have not applied their minds to the earlier decision of the Railway Board on the question of filling up of the upgraded posts.



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12. That the tenor of the letter dated 22.2.1982 also would show that the clarification which was stated to have been sought was on a question which has purposely been framed in a manner which does not represent true state of affairs. As stated earlier, the upgraded posts of DMOs were filled up only on the basis of

seniority of the officers working as ADMOs. and not on the basis of seniority cum suitability. Further no element of promotion was involved since the posts of ADMOs for reasons indicated in the Railway Boards letter dated 31.7.1981 had been ordered to be upgraded. and the upgradation was effected <sup>u u u</sup> ~~to be pin pointed~~ by pin pointing the upgraded posts. It is stated that initially 19 posts of ADMOs were pin-pointed for upgradation in the entire N.E. Railway. Subsequently three more posts were pin pointed for such upgradation and thus a total number of 22 posts of AD?Os were factually ~~in fact~~ upgraded to the rank and status of the post of DMOs. Except for three officers who were prior to the implementation of the upgradation working as ADMOs all the other officers who were so working were given the upgraded grade at the same place where they were prior to the upgraded working as ADMOs.

13. That the clarification contained in the impugned Railway Board's letter also ignores the extent of reservation for scheduled castes and scheduled tribes which has been laid down by the Railway Board as also the Ministry of Home Affairs against posts in Class I. It is stated that reservation to the extent of 22½ per cent for both scheduled castes and scheduled tribes has been provided while making promotion from class II to Class I. The said letters reference to which would be made hereinafter lay down and provide for reservation in favour of scheduled castes and scheduled tribes to Class I lowest rung posts. In other words, in departments where <sup>there is</sup> exists no junior scale class I post and promotion from Class II is straightaway

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made to Class I Senior Scale post then senior class posts being for those departments the Class I lowest rung posts, reservation would be available to scheduled castes and scheduled tribes candidates against the said senior scale posts. Similarly, in posts and departments where promotion from Class II is made straightaway to Class I Junior Scale posts, the said post being the class I lowest rung post, the reservation would be available. No such reservation would be available when promotion is made from Class I Junior Scale to Class I Senior Scale in those departments.

14. That with effect from 1.1.1973 on the basis of the recommendations of the Third Pay Commission the revised scales of pay have been introduced in the Indian Railways. In the medical department of the Indian Railways the post of ADMO has been placed in Class I integrated scale viz., 700-1600 and the post of DMO has been placed in scale Rs. 1100-1800. In other departments of the Indian Railways the Junior Scale of Class I is in scale Rs. 600-1300 while the Senior Scale is Rs. 1100-1800 and accordingly the scale in which the post of ADMO on the Indian Railways has been placed and categorised as an integrated scale while the scale of Rs. 1100-1800 has been categorised as Class I Senior Scale. Accordingly, it is stated that the post of ADMO in the Medical Department of the Indian Railways is a Class I post of the lowest rung while the post of DMO is not a Class I lowest rung post and hence there is no reservation quota prescribed for promotion from a post in Class I



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integrated grade to Class I senior scale in the medical departments of the Indian Railways; in other words from the post of ADMO to the post of DMO.

15. That the Ministry of Railways, Government of India, Railway Board has issued a Brochure on reservation for scheduled castes and scheduled tribes in railway services in the second edition of 1976. Extent and ambit of the reservation quota for scheduled castes and scheduled tribes has been indicated in chapter IV. In Chapter IV-(A) the relaxation and concession admissible to scheduled castes and scheduled tribes in case of direct recruitment posts has been indicated while in Chapter IV(B) concession in case of posts filled by promotion has been indicated. The provisions contained therein relevant for purposes of the issues involved in the present writ petition are as under:-

" (B) Promotion

1. As would be seen from para 1(C) of Chapter II, in the case of posts filled by promotion the percentages of reservation in favour of Scheduled Castes and Scheduled Tribes are as under:-

	Scheduled Castes	Scheduled Tribes
(i) Through limited departmental competitive examination in or to Class II, III and IV in grades or posts in which the element of direct recruitment, if any, does not exceed 66-2/3 per cent (Letter no. (i) E(SCT) 68CM 15/10 dated 27.8.1968 (ii) E(SCT) 70CM 15/10 dated 20.4.1970 and (iii) 76E(SCT) 15/10 dated 19.4.1976)	15%	7 1/2%

(ii) By selection to and within Class III from Class III to Class II and from Class II to the lowest rung of Class I provided the element of direct recruitment, if any, does not exceed 66-2/3 per cent	15	7 1/2
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(Letter nos. (i) E(SCT) 68CM 15/10 dated 27.8.1968  
(ii) E(SCT) 73 CM 15/13 dated 17.8.1974 and  
(iii) 76E(SCT) 15/10 dated 19.4.1976)



Dr. Raja Bijendra Prasad

	Scheduled caste	Scheduled Tribe
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(iii) Made on the basis of seniority-cum-suitability in Class I, II, III and IV provided the element of direct recruitment does not exceed 66- 2/3 per cent

	15	7½
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(Letter nos. E(SCT)72 CM15/5 dated 11.1.1973 and 76E(SCT) 15/10 dated 19.4.1976)

Note (1) In promotion by selection to posts within Class I, which carry an ultimate salary of Rs.2250 per month or less, the Scheduled Castes/Scheduled Tribes Officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would be included in that list provided they are not considered unfit for promotion.

(O.M. no. 1/10/74 Est (SCT) dated 23rd December 1974 from department of Personnel).

(2) In departments where there are no Junior Scale posts, viz., Stationary and Printing, Chemical and Metallurgical, Security, Medical etc. promotions from Class II are made straight to Senior Scale. In these departments, the Senior Scale happens to be the lowest rung in Class I Service. Therefore, reservation quota for Scheduled Castes/Scheduled Tribes has to be applied in such promotions.

In other departments, viz., Accounts, Transportation (Traffic and Commercial, Mechanical, Electrical Signal, Civil Engineering etc., where the Junior Scale posts have been provided and in which cases 66-2/3 per cent of the vacancies are filled by direct recruitment reservation quota for Scheduled Castes and Scheduled Tribes would also be admissible in permanent promotions from Class II to Junior Scale.

(Letter no. 75E (SCT) 15/23 dated 16.7.1975)

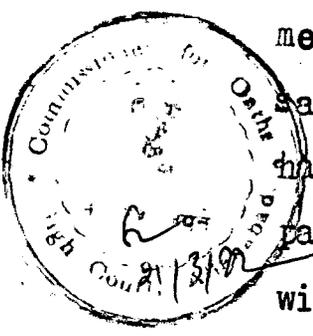


S. Raja Bijendra Prasad

(3) In the case of Personnel Department reservation orders will apply in respect of <sup>all</sup> permanent promotions from Class II to Class I and all officiating promotions from Class II to Senior Scale.

(Letter no. 75E(SCT) 15/27 dated 28.9.1975) "

It is relevant to point out that the said Brochure was published on 21.2.1975 at a time when the recommendations of the Third Pay Commission had not been decided to be implemented . The recommendation was implemented some time in September, 1976 though with retrospective effect from 1.1.1973 and for this reason note (2) quoted above indicates that in the Medical Department as also in other departments referred to therein there are no junior scale posts. At the said relevant time the posts of Medical Officers in the Medical Department were designated as Assistant Medical Officer and they were categorised as Class II Gazetted post. The Third Pay Commission recommended abolition of Class II posts in the Medical Department and substituted the same with a ~~Class II~~ Class I integrated scale for hitherto before known as Assistant Medical Officers to be re-designated as Assistant Divisional Medical Officer and categorised them as Class I integrated scale post while the DMO as mentioned above continued as Class I Senior Scale. The said change brought about by the Third Pay Commission has, therefore, not been noted in the aforesaid Note no. (2) of para 1 of Chapter IV-B. The same is, therefore to be read with the aforesaid modification.



D. Raja Bijendra Prasad

16. That the Railway Board by different orders had directed upgradation of Class I Junior Scale posts to Class I Senior Scale in almost all other departments of the

Indian Railways besides the Medical Department and the said upgradation has been implemented on the Indian Railways including the N.E. Railway in the aforesaid other departments. It is stated that in no other department of the Indian Railways action similar to the one that is sought to be implemented under the impugned order dated 22.2.1982 has been taken while making promotions against the upgraded posts no reservation for scheduled Castes and Scheduled Tribes candidates has been given or resorted to .

17. That as a consequence of the so-called clarification contained in the impugned order dated 22.2.1982 the petitioner has reasonable apprehension that as a consequence of the same an order for his reversion from the post of DMO to that of ADMO is imminent to be passed by the opposite-parties and order for promotion to the post of D.M.O. would be passed in favour of a Scheduled Castes or Scheduled Tribes candidate. The petitioner is the junior most amongst the ADMOs appointed against one of the upgraded post of DMO.

18. That the opposite-parties with a view to implement the clarification given in the impugned order dated 22.2.1982 will pass an order for the petitioner's reversion and an order for promotion of a scheduled castes/scheduled Tribes candidate simultaneously and by one order. Since the upgradation is implemented by placing a ~~particular~~ particular incumbent on the upgraded post, the same would be given effect to by transferring



D. Raja Bijendra  
Prasad

the post which the petitioner is holding to the place where the scheduled castes candidate likely to be so promoted is at present working. It would not be necessary for the said officer to take charge from the petitioner to avail of the upgradation and that being so, the moment an order for promotion and reversion are passed, they would take effect immediately and would be a fait accompli.

19. That the Andhra Pradesh High Court at Hyderabad has passed an interim order directing the General Managers of South Central Railway and the Chief Personnel Officer, South Central Railway, Secunderabad, opposite parties in the writ petition filed before it viz., Writ Petition no. 9082 of 1981 "not to apply Recruitment Rules and reservation rules while implementing upgradation of posts conveyed under letter no. 81E(GC-12-54(IRMS) (SS) dated 31.7.1981 of the Railway Board pending further orders on the petition. The said interim order was passed on 1.10.1981 on an application for interim relief in the said writ petition filed by Dr. (Mrs.) A.J. Lalitha and others vs. The General Manager South Central Railway, Secunderabad.

Dr. Raja Bijendra Prasad



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

GROUNDS:

(a) Because the clarification contained in the impugned

order dated 22.2.1982 annexure 7 to the writ petition appears to have been passed without application of mind to the purpose and ambit of the upgradation ordered by the Railway Board with regard to 300 posts of ADMOs to that of DMOs and also appears to have been passed in ignorance of the directions and provisions contained in the Railway Board's letter dated 31.7.1981 annexure 4 to the writ petition.

(b) Because the directions given in the impugned letter also have not been taken into consideration the fact that no reservation quota has been prescribed against posts in Class I Senior Scale which is not a post of the lowest rung in Class I of the said department. It has wholly been ignored that no reservation quota has been prescribed for purposes of appointment/promotion of ADMOs to DMOs in the Indian Railways either by the Railway Board of the Ministry of Home Affairs.

(c) Because since upgradation does not involve an element of promotion neither any vacancy arises and as such no direct recruitment would be possible thereby; even for other reasons and provisions contained in various other letters of the Railway Board no reservation quota can be said to be available against the upgraded posts of DMOs.

(d) Because in view of the circumstance that though upgradation of posts in Class I Junior Scale /Class I integrated scale has been directed to be implemented by the Railway Board in departments other than medical department in the Indian Railways, a direction to

to provide reservation quota against such upgraded posts in the medical department of Indian Railways alone has been issued by the Railway Board while no such direction has been issued in respect of similarly situated posts in departments other than medical and thus the impugned order is violative of Articles 14 and 16 of the Constitution of India and is arbitrary and capricious.

(e) Because no reservation prescribed against posts in Class I Senior Scale while making promotion to the said posts from incumbents of Class I Junior Scale has been provided for by the Railway Board even against posts which have not been upgraded from Class I Junior Scale / integrated scale to Class I Senior Scale, and as such there is no warrant for the directions given in the impugned order.

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

(i) to issue a writ of certiorari or a writ, order or direction in the nature of certiorari to quash the directions contained in the Railway Boards letter dated 22.2.1982 contained in annexure 7 to the writ petition.

(ii) to issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the opposite-parties to desist from giving effect to the direction with regard to the reservation against the upgraded posts of Divisional Medical Officers.

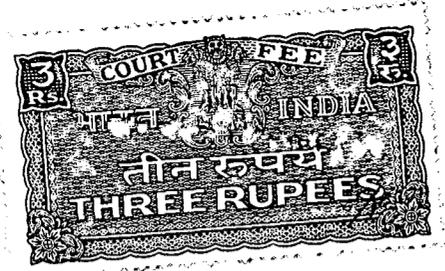
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(iii) to issue such other writ, direction or order, including an order as to costs which in the circumstances of the case this Hon'ble Court may consider just and proper.

Dated Lucknow  
22.3.1982

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

(A312) A-25



1982  
AFFIDAVIT  
61  
HIGH COURT  
ALLAHABAD

16

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

--

Affidavit

in

Petition under Article 226 of the Constitution of  
India

-

Writ Petition No.

of 1982

Dr. R.B. Prasad

-Petitioner

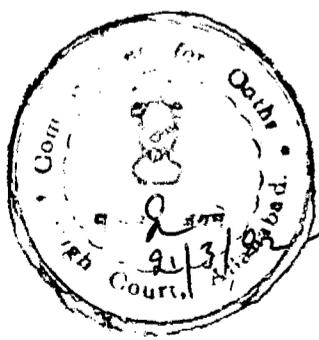
versus

Union of India and others

-Opp-parties

--

I, Dr. Raja Bijendra Prasad, aged about 46 years,  
son of late Sri Raja Ram Chandra Prasad, resident of  
63, N.E. Railway Colony, Aishbagh, Lucknow, do hereby  
solemnly take oath and affirm as under:-



1. That I am the petitioner in the above-noted writ  
petition and I am fully acquainted with the facts of the  
case.

2. That contents of paras 1 to 19 of the accompanying  
petition are true to my own knowledge.

3. That annexures 1 to 7 have been compared and are  
certified to be true copies.

Dated Lucknow  
21.3.1982

*Dr. Raja Bijendra Prasad*  
Deponent



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

*S. Raja Bijendra Prasad*  
Deponent

Dated Lucknow  
21.3.1982

I identify the deponent who has signed in my presence.

*R. K. Sinastora*  
(Clerk to Sri B.C. Saksena, Advocate)

Solemnly affirmed before me on <sup>u</sup> 21.3.82  
at <sup>u</sup> 7<sup>u</sup> a.m/p.m by *R. B. Prasad*  
the deponent who is identified by Sri *R. K. Sinastora*  
clerk to Sri *B. C. Saksena*  
Advocate, High Court, Allahabad. I have satisfied myself by examining the deponent that he understands the contents of the affidavit which has been read out and explained by me.

*S. Shadr*  
21/3/82  
Oath Commissioner  
High Court, Allahabad  
Lucknow Bench  
No 61/202  
Date 21-3-82

A-25  
18

एन दि आनरेबल वार्डनी ई आफ जूरीवेयर एट ल्हा हाबाद  
लखनऊ बेन्च लखनऊ

रिट पेटोशन नं आफ 1982

खआरओओ प्रसाद ----- पिटोशनर

बनाम

यूनियन आफ द्रोण्या तथा अन्य----- जपीविट पाठि

एनेजर नं ।  
-----

पूर्वोत्तर रेलवे

कार्यालय आदेश संख्या 293

1- खओओएमओ पओ मेस्ता, स्थानापन्न सहायक मण्डल  
चिकित्सा अधिकारी / मण्डल चिकित्सालय, समस्तीपुर को अनन्तिम स  
से प्रवर वेतनमान में पदोन्नति करके मण्डल चिकित्सा अधिकारी /  
समस्तीपुर के पद पर जो सहायक मण्डल चिकित्सा अधिकारी/  
समस्तीपुर के पद के प्रवर वेतनमान में अपग्रेड दिया गया उ नियुक्त किये  
जाते हैं ।



2- खओओओवठर्जा स्थानापन्न सहायक मण्डल चिकित्सा  
अधिकारी / लओ नाओ मिओ चिकित्सालय / गोरखपुर को अनन्तिम  
स से प्रवर वेतनमान में पदोन्नति करके मण्डल चिकित्सा अधिकारी/  
लओओमिओचिकित्सालय, गोरखपुर के पद पर जो खओओओ के जपकोश  
प्राप्त करने से रिक्त है नियुक्त किये जाते हैं ।

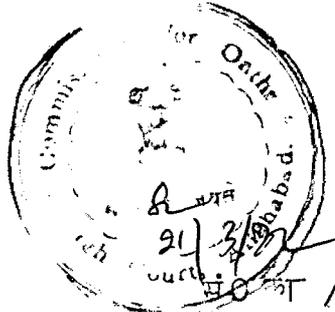
Dr. Raja Bijendra  
Prasad

3- खओओएनओओओ, स्थानापन्न सहायक मण्डल चिकित्सा

अधिकारी /मण्डल चिकित्सालय हज्जतनगर को अनन्तिम स्तर से प्रवर वेतनमान में पदोन्नति करके मण्डल चिकित्सा अधिकारी हज्जतनगर के पद पर जो सहायक मण्डल चिकित्सा अधिकारी / हज्जतनगर के पद के प्रवर वेतनमान में अपग्रेड किया गया है नियुक्त किये जाते है ।

4- ज आरओ/प्रसाद, स्थानापन्न सहायक मण्डल चिकित्सा अधिकारी / लखनऊ को अनन्तिम स्तर से प्रवर वेतनमान में पदोन्नति करके मण्डल चिकित्सा अधिकारी /लखनऊ में जो सहायक मण्डल चिकित्सा अधिकारी / लखनऊ के पद के प्रवर वेतनमान में अपग्रेड किया गया है नियुक्त किये जाते हैं ।

अरोक्त आदेश महा प्रबन्धक द्वारा अनुमोदित है ।



हO अयुक्तिय  
14-12-81  
(पीओ/मालिक)  
श्री महा प्रबन्धक

सं. 210/10 भाग-8 (1) गोरखपुर - दिनांक 14-12-1981

प्रतिलिपि सूचनाय एवं आवश्यक कार्यवाही गंगगोरखपुरमसुभगायक हेतु प्रेषित :-

- 1- वित्त सलाहकार एवं मुख्य लेखाधिकारी / गोरखपुर ।
- 2- महा प्रबन्धक के सचिव / प्रेषितक सलायक, गोरखपुर ।
- 3- अतिरिक्त महा प्रबन्धक ( आयरेशन / टेक्नीकल ) / गोरखपुर ।
- 4- प्रवर ज महा प्रबन्धक / अ महा प्रबन्धक ( सामान्य ) / गोरखपुर
- 5- म0रे0प्र0/मोधि/महाधि/समस्तापुर सोतापुर, जाराणसी, लखनऊ हज्जतनगर ।
- 6- नगर हजोनियर / सकेई ( कालीनो ) गोरखपुर ।

Dr. Raja Bijendra Prasad

-3-

- 7- वृण्ण विवेक्सा अधिकारी / गीण्ण गरवरा,  
 8- विवेक्सा अधीकार / वृण्णतनगर, लखनउ वाराणसा, सीतापुर,  
 समस्तोपुर / वाराणसी ।  
 9- वृण्णमोवेक्सा, समविधि / समस्तोपुर ।  
 10- वृण्णवेक्सा समविधि/लखनउमिवेक्सालय / गोरखपुर ।  
 11- वृण्णवेक्साहरी, समविधि/वृण्णतनगर ।  
 12- वृण्णवेक्साप्रसाद, समविधि/ लखनउ ।  
 13- वृण्णवेक्सा/लखनउमिवेक्सालय/गोरखपुर ।

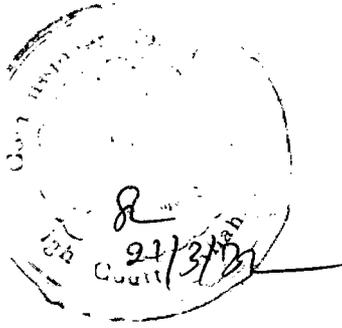
अतिरिक्त प्रतिलिपि:

मुचिधि/मुचिधि तथा वृण्णके गीण्णनोय सलय ।

संकाथ ( मुख्यालय ) गोरखपुर ।

सत्य प्रतिलिपि

Dr. Raja Bijendra Prasad



Ay B A28

21

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

--

Writ Petition no. of 1982  
Dr. R.B.Prasad --Petitioner  
versus  
Union of India and others --Opp-parties

Annexure no.2

Government of India (Bharat Sarkar)  
Ministry of Railways ( Rail Mantralaya )  
Railway Board  
No. 81E(GC-12-54(IRMS) (SS) New Delhi dated 31.7.1981

The General Managers,  
All Indian Railways and C.L.W.

Sub:- Restructuring of gazetted cadre of Medical Deptt.  
--upgradation of posts from Asstt. Divl. Medical  
Officers to Divl. Medical Officers

had

The Ministry of Railways have/under review the  
Gazetted cadre of the Indian Railway Medical Service.  
An overall view of organisational and medicare  
structure of the Indian Railways has been taken  
keeping in view the basic objectives of improving  
effectiveness and quality of service. As a result of  
the review , it has been decided that 300 existing  
posts of Asstt. Divisional Medical Officers in the Indian  
Railways Medical Service should be placed in the senior  
scale as Divisional Medical Officers. The Railwaywise  
and location wise details are given in the enclosed  
statement.

21/3/82

Dr. Raja Bijendra  
Prasad

2. Accordingly, sanction of the Ministry of Railways  
is communicated to 300 existing posts of ADMs being  
placed in Senior Scale as D.M.Os. as per Railway wise and

-2-

location wise distribution given in the annexure.

3. The following criteria have been broadly kept in view in determining the aforesaid railway wise and location wise distribution.

i) 7 DMOs to be provided in each of the ten Central Hospitals including Kharagpur Hospital.

ii) 5 DMOs each to be provided in Divisional Hospitals.

iii) One DMO each to be provided in Sub-Divisional hospitals and

iv) One DMO to be provided in selected Health Units where 3 to 6 doctors are working on the basis of workload and to provide more effective supervision.

4. The posts which are permanent in the lower grade may be treated as permanent in the upgraded scale. As regards posts which are temporary in the lower grade, the Ministry of Railways may be approached as usual for extension of currency ~~of~~ in the higher grade.

5. Full particulars of the specific posts pinpointed for the upgradation may please be intimated to this Ministry as early as possible along with the dates from which the upgraded posts have been filled.

6. Filling up of the posts sanctioned above should be regulated by you in accordance with the clarification given in Boards letter no. 81E(GRII/7/66 dated 3.7.1981 copy attached for ready reference.

7. It has also been decided that the 13 existing leave reserve posts of DMOs, as per Railwaywise distribution given below, should be downgraded to leave reserve posts of ADMOs with the same Railwaywise distribution.

S. Raja Bijendra  
Basal

24/3/82

-3-

Railway	Number of posts
Central	1
Western	2
Northern	2
North Eastern	1
North east Frontier	1
Southern	2
South Eastern	2
Western	2
	<hr/>
	14
	13

Accordingly , sanction of the Ministry of Railways is communicated to the 13 existing leave reserve posts of DMOs being downgraded as Leave Reserve ADMOs as per Railwaywise distribution indicated above.

8. This issues with the concurrence of the Finance Directorate of the Ministry of Railways

9. Hindi version will follow

10. Please acknowledge receipt.

Sd.

( V. Sivaraman )  
Jt. Director, Estt (Gaz.)  
Ministry of Railways

No. 81E (GC) 12-54 (IRMS)(SS) New Delhi dated 31.7.81

copy forwarded for information to:-

1. The GMS, DLW ICF etc. etc.

Sd. Raja Bijendra Prasad



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

Writ Petition No. of 1982

Dr. R. B. Prasad..... Petitioner

Versus

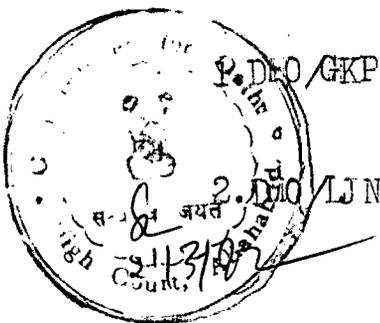
Union of India and others..... Opp. parties

Annexure No. 3

NORTH EASTERN RAILWAY  
MEMORANDUM

The Railway Board vide their letter No.81-E(GO) 12-53 (IRMS) (JAG) dated 24.7.81 have upgraded the following posts of Medical Department as Medical Supdt. in JA Grade Rs. 1500-2000 w.e.f. the date of operation-

<u>Name of post upgraded</u>	<u>No. of Post upgraded</u>	<u>Allocation of upgradation</u>
P. DDO / GKP	2	LN.M. Central Hospital Gorakhpur.
2. ADMO / LKN	1	Divisional Hospital Badshahmager.
3. ADMO Class I	1	LKN Hospital
Total - 4		



*Sd. Raja Bijendra Prasad*

The General Manager has approved one upgraded post of M.S. at LKN at item (3) above to/operated at SEE for 6 months from the date of operation and the present post of MS/SEE which was temporarily transferred from Izatnagar to Sonapur vide office order no.28 endorsement No. E/41/10/Pt. 3(I) dated 27.1.81 is

transferred back to Izatnagar

(2) The Railway Board vide their letter No. E900) 12-54(IRMS) (SS) dated 31.7.81 have upgraded the following posts of ADMOs Class 1 scale Rs.700-1600 as DMO in senior Scale Rs.1100-1800 w.e.f.the dates of operation:-

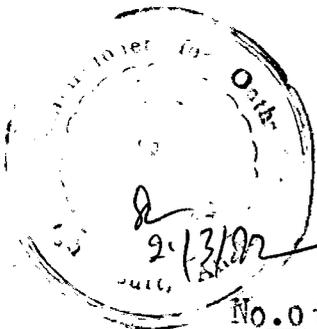
No.of post upgraded	Allocation of upgradation
6	L.N.M. Central Hospital/Gorakhpur
4	Divisional Hospital, Varanasi.
4	Divisional Hospital, Badshahnagar.
3	Divisional Hospital, Samastipur.
2.	Divisional Hospital,, Izatnagar.

The General Manager has approved the distribution of the following posts of PSP & LJM Hospitals as sanctioned above to be operated in the hospitals as shown against each, for 6 months from the date of operation:-

2 posts of LJM will be operated one each at Gonda Hosrital & Garahra Hospital.

1 post of BSS will be operated at SEE.

The distribution of upgraded posts will be as under:-



No.of post upgraded	Allocation of upgradation
6	L.N.M. Central Hospital, Gorakhpur
3	Divisional Hospital, Varanasi
2	Divisional Hosrital, Badshahnagar
3	Divisional Hospital, Samastipur.

S. Raj Brijendra Prasad

- 2 Divisional Hospital, Izatnagar.
- Sub-Divisional Hospital, Gonda ) 2 posts of
- Sub-Divisional Hospital, ) L.J.N will be
- Gorakhpur. ) operated
- here (D & GHZ)
  
- 1 Divisional Hospital ) One post of PSB will be
- Sonepur. ) operated here i.c. SEE.

Total 19

Sd/- Illegible  
19.8.81

( P.C. Maulik )  
for General Manager

No. E/41/14/7(I) Gorakhpur dated: 19/8/1981

Copy forwarded for information & n/a to:-

- 1. The PA & CAO/BE/NER/GKP ( 2 copies)
- 2. The Secy. to GM for GM's information ( 2 copies)
- 3. The Sr. DM/DMM (C)/AGM ( T & O )
- 4. The PA to GM/NER/GKP
- 5. The CAO/NER/GKP ( 5 copies)
- 6. The DM/DAO/DPO IJN, IZN, BSB, SPJ, SEE ( 2 copies)
- 7. The MS/SPJ, SEE, BSB ( 2 copies)
- 8. The DMO/IZN, BNZ, GL, GHZ, DLW/BSB
- S/c for E/210/10 Pt. 8(I)

24/8/81

S. Raja Bijendra Prasad True copy

24/10 A34

27

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

--

Writ Petition No. of 1982

Dr. R.B. Prasad -Petitioner

vs.

Union of India and others -Opp-parties

Annexure no.4

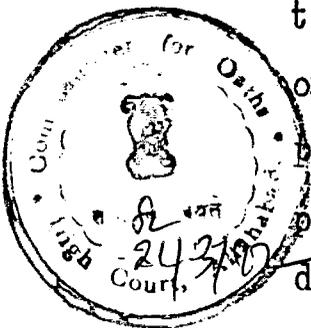
No. 81E (R) II/8/77 dated 31.7.1981

Sub: Filling ~~of~~ of posts of DMO on Indian Railway.

Ref: Upgradation of posts arising out of cadre review

Please refer to this Ministry letter no. 81-E/  
(SC)/R/54 (IRMS) (SS) dated 31.7.1981 regarding  
upgradation of the posts of ADMOs to DMOs in Medical  
Department of I.R. arising out of cadre review.

Instructions were issued vide this Ministry  
letter no. E(D) III/79/PM6/7 dated 12.4.1979 and  
15.9.1980 as to how the post of DMOs arising out of  
normal vacancies against wastage should be filled up  
in accordance with recruitment rules. It is clarified  
that the above instructions donot apply to the posts  
of DMOs which have neenspecially upgraded from the  
posts of ADMOs vide Boards letter referred to the  
para 1, above as there will be really no vacancies and no  
direct recruitment against 25% of the posts will be  
possible.



Please acknowledge receipt.

Sd.  
(K. Baru)  
Joint Director (Estt) T- I  
Ministry of Railways

A. Raja Byenore Prasad

24/4 A-35

28

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

Writ Petition No. of 1982

Dr.R.B.Prasad -Petitioner

versus

Union of India and others -Opp-parties

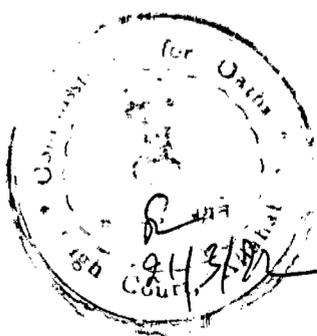
Annexure no. 5

No.E(0) III-79 PM6/7 New Delhi dated 12.4.1979

The GMS/All Indian Railways.

Sub:- Promotion of Assistant Divisional Medical Officers as Divisional Medical Officers.

The Ministry of Railways have had under consideration the question as to how the posts of Divisional Medical Officers should be filled up from amongst Asstt. Divisional Medical Officers on Railways in accordance with the recruitment rules issued vide their notification no. 75/E(R) 1/7/72 dated 14.7.1978, and have decided that for the present, railway administrations should draw up seniority lists of Assistant Divisional Medical Officers on their Railways and ~~not~~ promote them as offg. Divisional Medical Officers in accordance with the recruitment rules. They have further decided that for filling up for specialists posts of Divisional Medical Officers, Railway administrations can come to the Board for assistance.



2. If there is any doubt in my case reg. relative seniority of Asstt. Divisional Medical Officers, these cases may be referred to the Board for their decision with full particulars.

3. Please acknowledge receipt.

Sd.  
Joint Secretary (E)/Railway Board

S. Raja Bijendra Prasad.

Am/122 A-35

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

--

	Writ Petition No.	of 1982
Dr. R.B.Prasad		-Petitioner
	versus	
Union of India and others		-Opp-parties

Annexure no. 6

Government of India (Bharat Sarkar)  
Ministry of Railways ( Rail Mantralaya )  
(Railway Board )

No. E(0) III-79- PW6/77      Dated 15.9.1980

The General Manager,  
All Indian Railways,  
and C.L.W.

Sub:- Filling up the posts of Divisional Medical  
Officers on the Indian Railways

The Ministry of Railways in letter no. E(0)III-79  
PM6/7 dated 12.4.1979 had issued instructions that the  
Railways Administrations should draw seniority lists of  
ADMOs on their Railways and promote them as officiating  
DMOs in accordance with the Recruitment Rules. It has come  
to the notice of the Board that a large number of ADMOs  
are officiating as DMOs on adhoc basis. The Board desire  
that 75% of the permanent posts which have not yet been  
filled up by regular promotion should be immediately filled  
up by regular promotion from the rank of ADMOs who are  
eligible for promotion in terms of the Recruitment Rules  
circulated vide notification no. 75E(R)1/6/73 dated  
14.7.1978 as amended vide notification of the same  
number dated 14.7.1980

21/3/80

Please acknowledge receipt.

sd.  
( B. B. Bhagat )

Deputy Secretary (E) Railway Board

DA/ Nil  
Copy to E(R) IIII.

S. Raja Bijendra Basu

Am/125 A37 30

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

--

Writ Petition No.	of 1982
Dr. R.B. Prasad	-Petitioner
Union of India and others	-Opp-parties

Annexure no. 7

Government of India  
Ministry of Railways  
(Railway Board)

Nb. X-78-E(SCT) 15/13 ( Pt. II)

New Delhi dated 22.2.1982

The General Managers,  
All Indian Railways including CLW, DLW ICF  
MTP (Railways/ Calcutta and  
G.M.(Const)/ Southern Railway, Bangalore  
Wheel and Axle Plant, Bangalore,  
The Director General, RDSO., Lucknow  
The Chief Administrative Officer, Indian Railways Diesel  
component works, Nabha Road, Patiala (147001),  
The Chairman, Railway Service Commission, Allahabad,  
Bombay, Calcutta, Madras, Muzaffarpur/Gauhati/  
Secunderabad/ Bangalore,  
The Principal Railway Staff College, Vadedara,  
The Principal, Indian Railway Instt. of Signal Engg.,  
and Telecom., Secunderabad,  
The Principal, Indian Railways Institute and  
Mechanical and Electrical Engg., Jamalpur,  
The Principal, Indian Railways Institute of  
Advanced Track Technology, Pune,  
The Joint Director, Railway Movement, Moghalsarai,  
The Chief Administrative Officer, M.T.P. (Railways),  
New Delhi, Bombay, Madras  
The Secretary, Railway Rates Tribunal, Madras-28,  
The Joint Director, Iron and Steel, 3, Koilaghat Street,  
Calcutta,  
The Railway Liaison Officer, New Delhi  
The General Secretary, I. R.C.A., New Delhi .

--

Sub:- Reservations for scheduled castes and scheduled Tribes.

Some of the Railways have asked clarifications  
 whether reservations for scheduled castes and scheduled Tribes would be applicable while filling up the posts of DMOs by promoting A.D.M.Os on the basis of seniority-cum- suitability. It is clarified in consultation with the department of Personnel that reservation for SCs/

S. Raja Bijendra Prasad

Ay/m A38 31

-2-

STs are applicable while filling up the posts of  
D.M.Os.

Hindi version will follow.

Sd. D. S. Nigah,  
Addl. Director, Estt. (R),  
Railway Board.

No. 78E(SCT) New Delhi dated 22.2.1982

Copy to department of Personnel and Administrative  
Reforms, Ministry of Home Affairs with refer to their  
U.D. No. 36011/40/81 Estt (SCT) dated 10.2.1982.

Sd. D. S. Nigah  
Addl. Director, Estt. (R).,  
Railway Board

S. Raja Bijendra Prasad

21/3/82

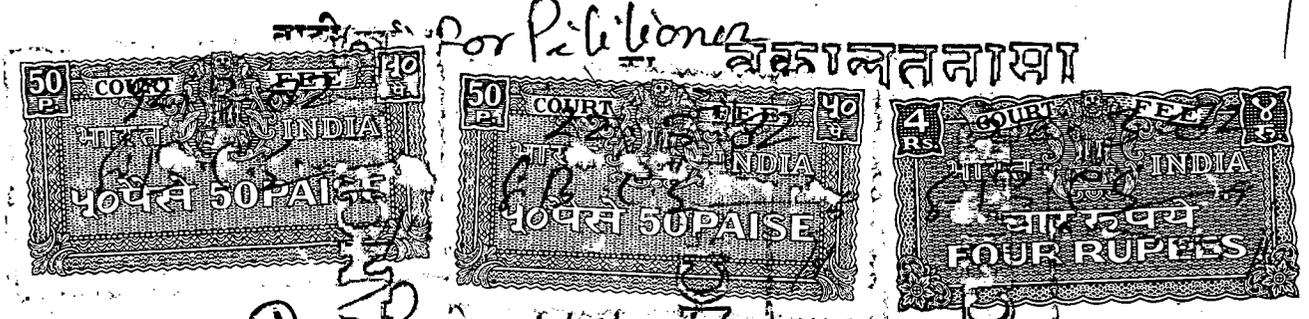
Asst A-39 39

The Honble High Court of Judicature at Allahabad  
Lucknow Bench Lucknow

ब अदालत श्रीमान

महोदय

4



Dr. Raja Bijendra Prasad

इंदौर (मुहई) 25/3

वनाम  
Union of India <sup>वकील</sup> प्रतिवादी (मुद्दालेह)

नाम दालत  
नं० मुकदमा  
नाम फरीकसनी

नं० मुकदमा सन् १९४२ पेशी की ता० १६ ई०  
ऊपर लिखे मुकदमा में अपनी ओर से श्री

Sri B. C. Saxena Advocate एडवोकेट महोदय  
वकील

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

Accepted  
A. Sakseena

S. Raja Bijendra Prasad  
हस्ताक्षर

साक्षी (गवाह)

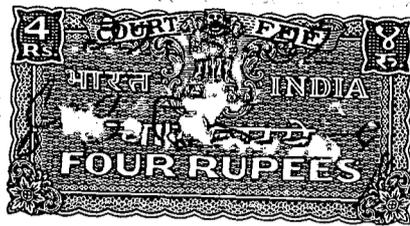
साक्षी (गवाह)

दिनांक

महीना

१६ ई०

Act A. No



37-5/2

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

Application for interim relief

C.M. Application No. *2682 (w)* of 1982

Writ Petition No. *1316* of 1982

Dr. Raja Bijendra Prasad, aged about 46 years, son  
of late Sri Raja Ram Chandra Prasad, resident of  
63, N.E. Railway Colony, Aishbagh, Lucknow

Petitioner-applicant

versus

1. The Union of India through the Secretary, Ministry of Railways, ex-officio Chairman, Railway Board, Rail Bhawan, New Delhi
2. The Secretary, Department of Personnel and Administrative Reforms, Ministry of Home Affairs, Government of India, New Delhi
3. The General Manager, N.E. Railway, Gorakhpur
4. The Chief Personnel Officer, N.E. Railway, Gorakhpur

Opp-parties

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

*Per*

A6/2 AMI  
5/2

That on the basis of the facts stated and grounds raised in the accompanying petition the applicant prays that this Hon'ble Court be pleased:-

(i) to pass an ad interrim order staying the operation of the direction in the Railway Boards letter no. X-78-E(SCT) 15/13 ( Pt. II) dated 22.2.1982 contained in annexure 7 to the writ petition and direct the opposite parties to refrain from giving effect to the same or pass an order for the petitioners reversion as a consequence thereof.

(ii) to pass such other order as in the circumstances of the case this Hon'ble Court may deem just and proper.

Dated Lucknow  
22.3.1982

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

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0  
/x

IN THE HIGH COURT OF JUDICATURE AT LUCKNOW

SITTING AT LUCKNOW

C.M.A.N. (W). 4597/CS OF 1984.

The Union of India through Govt. . Applicant

Inre

Writ petition No. 1310/82



Dr. Raja Bijindra Pd.

.. Petitioner.

Versus

Union of India & others.

.. Opp. Parties.

APPLICATION FOR CONDONATION OF DELAY IN FILING COURT

AFFIDAVIT

Applicant respectfully states as under:-

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

PRAYER

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

Lucknow:

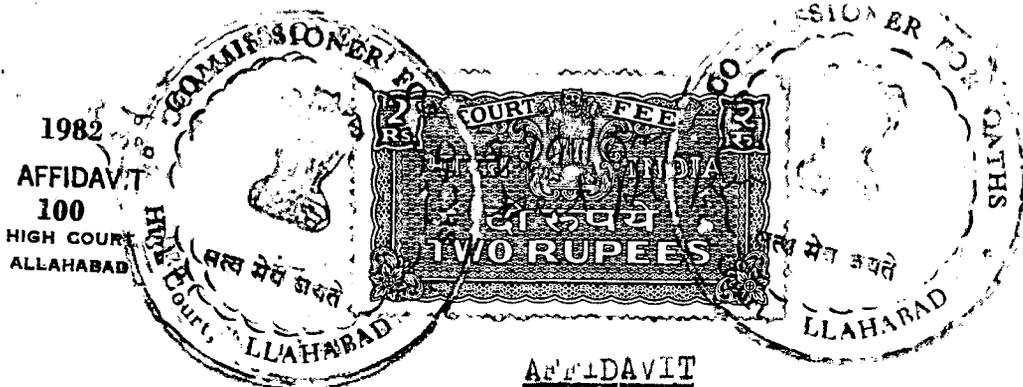
Dated:- 13 April 1984

*Uday Chandra*  
Counsel for applicant/Opp.

Parties.

5925

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



In

Writ Petition No.1310 of 1982.

Dr. Raja Bijendra Prasad Officiating DMO/ N.E.Railway

.... Petitioner

VERSUS

Union of India and others

... Opposite parties.

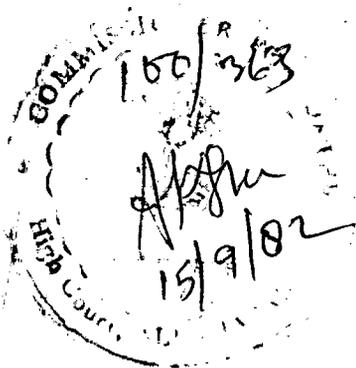
I Leynant Shikha do hereby solemnly affirm  
and state as under:

1) That the deponent, s/o Late Shri Faiyaz  
aged 42 years resident of Moh: Husain Khan  
is posted as Asst Personnel Officer N.E.Railway, Gorakhpur.

2) That the deponent has read the contents of the  
writ petition (hereinafter referred to as petition),  
has fully understood the contents of the same and is  
aware of the facts deposed belows

3) That it is hereby submitted that with regard

Kash



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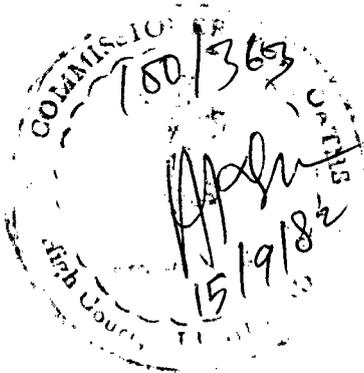
contents of the petition, true facts and the correct position with regard to rules on the subject is explained herein as under :-

(A) The Government of India, Ministry of Railways ( Railway Board) brought out brochure on reservation for Scheduled Caste and Scheduled Tribes in the Railway services in 1975, embodying instructions and procedures concerning the representation of Scheduled Caste and Scheduled Tribes in Railway services. The relevant rules regarding reservation for SC/ST in class I service, as given in Chapter II of the said brochure, are re-produced below :

✓  
22

"1. Subject to exemptions and exclusions referred to in chapter III, the following percentages of reservations are in force in favour of SC/ST ~~and~~ in filling vacancies in posts in and under the Ministry of Railways, Zonal Railways, Production Units and attached subordinate offices

(c) Posts filled by promotion-	<u>SC</u>	<u>ST</u>
(ii) By selection to and within		
class III to class II and from	15	7.1/2
class II to the lowest rank		
of class I provided the		
element of direct recruitment,		
if any, does not exceeds		
50 percent.		



(Letter Nos. (i) E(SCT)68CM 15/10 dated 27.8.68 and (ii) R(SCT)73 CM 15/13 dated 17.8.74) -

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SC ST *6/3*

(iii) Made on the basis of seniority-cum-suitability 15 7.1/2 in class I, II, III and IV provided the element of direct recruitment does not exceed 50 percent.

(Railway Board's letter no.E(SCT)72CM 15/5 dated 11.1.1973).

(B) The Railway Board vide their letter no.81-E(SCT) 15/93 dated 15.1.82 further indicated as under:-

" During the course of discussion in GM's Conference held last year, a point was raised whether for filling of upgraded post the reservation rules will be applicable. Apparently reservation rules are not being enforced on certain railways in filling up the upgraded post. It is pointed out that there is no sanction for this course of action . It is clarified that the rules in respect of reservation are applicable to all vacancies irrespective of the background of their occurrence whether they were normal retirement or otherwise on account of cadre re-structuring."

A copy of Railway Board letter dated 16.1.82 is annexed as Annexure A-1 with this affidavit.

(C) Some of the railways asked for clarification whether reservation for SC/ST should be applicable while filling up the post of DMOs by promoting ADMOs on the basis of seniority-cum-suitability. The Railway Board vide their letter dated 22.2.82 clarified in consultation with the Department of

Personnel that r

*100/363*  
*AKM*  
*15/9/82*

*K. Anand*

A-4  
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Personnel that reservation for SC/ST are applicable while filling up the posts of DMUs.

(D) On a reference from this railway, the Adviser of Industrial Relation, Railway Board conveyed vide his letter dated 14.5.82 that the Board have approved vide their letter dated 16.1.82 that reservation rules are applicable in all the vacancies irrespective of their occurrence whether they are by normal retirement or otherwise on account of cadre restructuring. He also mentioned in his letter that these rules should have been made applicable with effect from 27.11.72 in terms of Board's letter dated 11.1.73 and that in any case it is difficult to review the past cases from 27.11.72, it has been decided that the reservation orders should be applied from 31.7.81, the date on which the upgradation from ADMU to DMUs was conveyed to the Railways.

A copy of Board's letter dated 14.5.82 is annexed as Annexure A-2 with this affidavit.

Ann.A-2

(E) The Railway Board vide their letter No.78-E (SCT)15/13 dated 19.5.82 indicated that in terms of Board's letter dated 11.1.73 reservation for SC/ST are applicable for promotion from Junior Scale (Class I) to Senior Scale (Class I) on seniority-cum-suitability where the direct recruitment in senior scale (Class I) ~~now~~ does not exceed 66.2/3%. The Railway Board further desired to know whether these rules are being followed in all departments while filling up the senior scale (Class I) vacancies on seniority-cum-suitability basis. They also

100/363  
16/9/82

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They also desired to know the number of posts reserved for SC/ST and those actually filled by SC/ ST candidates while promoting ADMOs to DMOs against the upgraded posts.

A copy of Board's letter dated 19.5.82 is annexed as Annexure A-3 to this affidavit.

(F) The said provisions alongwith certain directions of Railway Board were challenged as being ultra vires the Constitution, before the Supreme Court of India in writ petition No.1041 and 1044 of 1979- Akhil Bhartiya Shoshit Karamchari Sangh versus Union of India and others. The Supreme Court of India by their Judgment dated 13/14 November 1980 while rejecting these petition upheld the legality and constitutional validity of the aforesaid provisions. I crave leave to refer to and rely upon the said judgment when produced. The relevant portion of the said judgment is reproduced below:

" Looking at the problem from the point of view of Law and logic and the constitutional justification under article 16(4) for ~~sex~~<sup>5</sup> reservation in favour of the Pancham proleteriat, there is nothing to strike down in Annexure K( Board's letter No.E(SCT)72 CM 15/5 dated 11.1.73. The writ petition as well as the special leave petition cannot but be dismissed- V.R. Krishna Iyer."

" Accordingly, the writ petitions are dismissed but without any order as to costs-R.S.Pathak."

" Judged in the light of this discussion I am

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*[Signature]*  
15/9/82

*[Signature]*

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-6-

unable to find any thing illegal or unconstitutional in any one of the impugned orders and circular. Each order and circular has been individually discussed by my brother Krishna Iyer Judge with whose reasoning and conclusion I agree and to which I wish to add no more.

O Chinnappa Reddy."

(G) That writ petition No.5856 of 1981 filed by K.Ramkrishna and others and writ petition no.6960 of 1981 by Dr. (Mrs.) A.J.Lalitha in the High Court of Andhra Pradesh at Hyderabad against such resignation was heard on 15.4.82 and the Hon'ble court decided that the rules for reservation do apply to the upgraded post also as decided by the Board and the writ petitions were dismissed. (Copy of the judgment is annexed as Annexure A-4).

~~XX~~ (H) That rule 1 of the chapter III of the aforesaid brochure also stipulates that the reservation for SC/ST should invariably be made in all posts filled by direct recruitment unless ~~xxxx~~ exempted by special or general instructions issued by the Ministry of Railway ( Railway Board)

The petitioner has not produced any special or general instructions issued by the Railway Board whereby promotions from the post of ADMOs to the post of DMOs are to be made without observing prescribed percentage of SC/ST candidates. On the

100/363

*[Signature]*  
15/9/82

*[Signature]*

contrary as already mentioned in foregoing paragraph Railway Board have issued specific clarifications from time to time, the last one being dated 19.5.82 that rules of reservation do apply in respect of promotions from the post of ADMOs to DMOs even if the vacancies have arisen on account of cadre re-structuring.

4) That contents of paragraphs 1 and 2 of the petition are not disputed.

5) That with regard to contents of paragraph 3 of the writ petition, it is stated that out of 300 posts upgraded as DMOs, 19 posts were allotted to N.E. Railway vide Board's letter dated 31.7.81. Subsequently the Railway Board vide their letter no.81-E(GC)/12-54(IRNSS) dated 23.9.81 upgraded 3 more posts of ADMOs to the post of DMOs and the petitioner was promoted as DMO against one of the said post and posted at Aishbagh. ~~vide~~

6) That contents of paragraphs 4 and 5 are not disputed.

7) That contents of paragraph 6 of the petition are denied. It is submitted that according to Annexure 3 to the writ petition that 2 posts were allotted for Divisional hospital Lucknow, one for Badshahnagar ~~annexure~~ Hospital, Lucknow and one to Divisional hospital Gonda.

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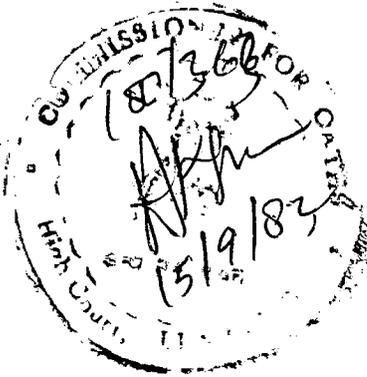
8) That with regards to paragraph 7 of the writ petition it is admitted so far as contents of Board's letter dated 31.7.81 and 12.4.79 are concerned and it is further stated that in pursuance to Railway Board's letter referred to in paragraph 3 of this affidavit while promotion for the post of ADMO to post of DMO is to be made on the basis of seniority-cum-suitability the rules in respect of reservation are applicable to it.

9) That the contents of paragraph 8 of the writ petition are admitted.

10) That the contents of paragraph 9 of the writ petition are not admitted as stated. It is further stated that the upgradation involve promotions from the post of ADMOs to the post of DMOs and accordingly extent rules including rules of reservation of SC/ST are applicable for such promotions.

11) That with regard to extent of paragraph 10 of the writ petition it is admitted that the Railway Board issued letter dated 22.2.82 clarifying therein that the reservation for SC/ST are applicable while filling up the post of DMOs.

12) That with regard to the contents of paragraph 11 of the writ petition it is stated that the Railway Board's impugned letter dated 22.2.82 is a letter of clarification and as would be evident from the facts contained in paragraph 3 of this affidavit. It has been issued after the examination of the extent rules on the subject.



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13) That with regards to contents of paragraph 12 of the writ petition it is stated that Board's letter dated 22.2.82 is in keeping with the rules of reservation applicable to promotions from junior scale (Class I) to senior scale (Class I) and that filling up the upgraded posts involve element of promotions and though most of ADMOs were promoted as DMOs at the place of their work because of this upgradation of those posts, it did not mean automatic upgrading of the individuals occupying the said possts as ADMO but it had to be done by promotion on the basis of seniority-cum-suitability and as per recent clarifications by the Board based on the earlier instructions in this regard rules of reservation in respect of SC/ST are applicable to it. Contention to the contrary are denied.

14) That the contents of paragraph 13 of the writ petition are not admitted and it is stated that as per extant rules, reservation for SC/ST are applicable even in respect of junior scale (Class I) to senior scale (Class I) including for filling up of the post of DMO from ADMOs by promotion.

15) That the contents of paragraph 14 of the writ petition are not admitted as stated and it is submitted that as has been mentioned in paragraph 3 of this affidavit as per extract of brochure quoted therein the reservation for SC/ST are applicable in filling up the vacancies on the basis of seniority-cum-suitability in class I, II, III and IV and accordingly the reservation for SC/St is applicable for promotion for junior <sup>scale</sup> (class I) to senior scale (Class I).



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16) That while admitting the contents of paragraph 15 of the writ petition and so far as extract of brochure quoted therein is concerned, it is stated that the Ministry of Railway have in consultation with department of Personnel have specifically clarified that reservation for SC/St are applicable while filling of the post of DMO and this clarification is fully in consonance to the rules circulated vide Board's letter dated 11.1.73 and 19.4.76.

17) That the contents of paragraph 16 of the writ petition are not admitted. It is further stated that it would be evident from Board's letter dated 19.5.82 annexed with this affidavit as Annexure , reservation for SC/St are applicable in promotion from junior scale (Class I) to senior scale(Class I) in all departments and Board has sought for confirmation from the Railways in regard to application of this reservation in promotion in Class I cadre from one scale to another scale in all ~~the~~ departments.

18) That the contents of paragraphs 17 and 18 of the writ petition , it is stated that action has to be taken in pursuance of Board's letter dated 22.2.82 and subsequent letter as mentioned in para 3 of this affidavit and those belonging to Scheduled Caste or Scheduled Tribes who ought to have been promoted from 21.7.81 and thereafter will be promoted even by reverting those who have so far been promoted in excess of quota.

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15/19/82  
15/19/82

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-11-

19) That with regards to contents of paragraph 19 of the writ petition it is stated that the writ petition filed by Dr. (Mrs.) A.J.Lalitha in Andhra High Court has since been decided by judgment dated 15.4.82 holding therein that rules of reservation do apply to the upgraded posts also as decided by the Railway Board and others.

Ann.A-4

Photostate copy of the judgment is annexed as Annexure A-4.

20) that contents of paragraph 20 of the writ petition are not admitted and it is stated that since the petitioner has equally effective remedy of submitting appeal to the President of India, the writ petition being pre-mature is liable to be dismissed. It is also stated that the grounds taken by the petitioner are tenable in law and such are denied.

21) That it is further submitted that in the background of the aforesaid facts and circumstances, the Hon'ble Court will appreciate that the existing rules provide for reservation of posts for SC/ST in the matter of promotion of Assistant Divisional Medical Officers ( junior scale-Class I) to that of Divisional Medical Officer ( senior scale- Class I) in the upgraded posts. There is no ambiguity in the directions given by the Railway board as regards reservations for SC/ST in the matter of promotions based on seniority-cum-suitability to the upgraded posts of DMUs ( senior scale- Class I).

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15/9/82

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22) That none of the grounds taken by the petitioner are tenable in law, hence the writ petition is liable to be dismissed with cost.

Lucknow  
Dated 15/9/82

*[Signature]*  
Deponent

VERIFICATION.

I, the above named deponent, do hereby verify that the contents of paragraphs 1 and 2 of the counter affidavit are true to my own knowledge; those of paragraphs 3 to 21 are true to my information derived from the records maintained in the Railway Administration which are believed by me to be true, and those of paragraph 22 are based on legal advice. No part of it is false and nothing material is concealed, so help me God.

Dated Lucknow,

*[Signature]*  
Deponent.  
*[Signature]*  
*[Signature]*

Solemnly affirmed before me on 15/9/82 at 9.45 a.m. by *[Signature]* Ali Khan the deponent who is identified by Sri *[Signature]* Advocate, High Court, Allahabad.

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

*[Signature]*  
Commissioner  
High Court, Allahabad  
Lucknow Bench

100/363  
15/9/82

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6/14

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

ANNEXURE -A-1

In

Writ Petition No.1310 of 1982

Dr. Raja Bijendra Prasad Officiating DMU/

N.E.Railway

.....Petitioner

VERSUS

Union of India and others.

... Opp. parties.

Government of India ( Bharat Sarkar)

Ministry of Railways ( Rail Mantralaya)

Railway Board.

No.81-E(SCT)15/93

New Delhi, dated 16.1.1982.

The General Managers,

All Indian Railway including CLW, DLW, ICF,

Southern Railway ( Construction) Bangalore and

MTP( Railways) Calcutta.

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16/19/82

x x x

x x x

Sub :- Reservation Rules in favour of SC/STs.

*[Handwritten signature]*

During the course of discussion in General

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-2-

~~General~~ Managers' Conference held last year a point was raised wither for filling up of upgraded posts the reservation rules will be applicable. Apparently reservation rules are not being enforced on certain Railways in filling up upgraded posts. It is pointed out that there is no sanction for this course of action, it is clarified that the rules in respect of reservation are applicable to all vacancies irrespective of the background of their occurrence whether they are by normal recruitment or otherwise on account of cadre restructuring.

Please acknowledge receipt.

Sd/-

( Gulzar Chand )

Jt. Director, Esst (R) II

Railway Board

180/363

*[Signature]*  
15/9/82

True Copy

*[Signature]*

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6/16

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD  
SITTING AT LUCKNOW

ANNEXURE- A-2

In

Writ Petition no.1310 of 1982

Dr. Raja Bijendra Prasad officiating DMV/  
N.E.Railway ...Petitioner.

VERSUS

Union of India and others  
..Opp. parties.

T.V.MADHAV  
ADVISER( INDUSTRIAL RELATIONS)  
D.O.no.78-E(SCT)15/13(Pt.II) New Delhi, dated 14.5.1982.

~~My dear~~

My dear Bhaduri,

Subj: Reservation of Scheduled Castes and  
scheduled Tribes in the matter of  
promotion from the post of ADMOs to  
DMOs

Ref :- Your D.O. letter no.Ka/210/10Pt.VIII(I)  
dated 31.3/ 1.4.1982.

Some of the Railways had doubts whether the  
reservation rules will apply when promoting ADMOs  
as DMOs on the basis of seniority-cum-suitability. The  
matter has been examined in detail in consultation  
with the Ministry of Home Affairs. The Ministry of  
Home Affairs has clarified that while making promotions  
from ADMOs to DMOs, the reservation rules s

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15/19/82

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should be made applicable.

2. The Board's letter no.81E(GR)11-7/17 dated 31.7.81 only indicated that the upgraded posts of ADMOs to the scale of DMU will be filled up only by promotion, although under normal circumstances, 25% of the vacancies of DMUs are filled by direct recruitment and 75% by promotion. This clarification does not mean that there will be no reservation for SCs/SYs while filling up the upgraded posts by promotion. In this connection Board's letter no.81-E(SCT)15/93 dated 16.1.1982 wherein it has been clarified that reservation rules are applicable in all the vacancies irrespective of their occurrence whether they are by normal retirement or otherwise on account of cadre structure. A copy of this letter is also enclosed herewith for ready reference.

3. Application of reservation rules for filling up of the posts of DMOs should have been normally from 27.11.1982 in terms of Board's letter No.E(SCT)72 CM 15/5 dated 11.1.1973, it has been decided that the reservation orders should be applied from 31.7.1981 the date on which the upgradation from ADMOs to DMOs was conveyed to the Railways.

With regards,

Yours sincerely,

Sd/-  
( T.V.Madhav)

Shri A.K.Bhaduri,  
General Manager,  
M.E.Railway,  
Gorakhpur.

True Copy

*(Handwritten signature)*



AA/S-159  
6/18

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD  
SITTING AT LUCKNOW

ANNEXURE- A-3

In  
Writ Petition No.1310 of 1982

Dr. Raja Bijendra Prasad Officiating DMO/  
N.E. Railway ... Petitioner

VERSUS

Union of India and others  
... Opp. parties.

Government of India  
(Bharat Sarkar)  
Ministry of Railways  
( Rail Mantralaya )  
D.O.No.78-E(SCT)15/13  
New Delhi, May 19, 1982.

Dear Shri

In terms of Board's letter No.E(SCT)/72 CM 15/5 dated 11.1.73, reservations for SC/STs are applicable in promotions from junior scale class I to senior scale class I on senior-cum-suitability basis where the direct recruitment in senior scale class I does not exceed 66-2/3%. While filling up the posts of DMO by promoting ADMOs on senior-cum-suitability basis, it was again clarified in consultation with Department of

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15/4/82  
ALLAHABAD

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24/6

Also

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personnel vide Board's letter of even number dated 22.2.82 that reservations for SC/STs are applicable while filling up the posts of DMOs.

2. In view of the above, Board would like to have confirmation that reservations rules for SC/ST are followed in all departments while filling up senior scale class I vacancies on seniority-cum-suitability basis where direct recruitment in senior scale is not more than 66-2/3%.

3. In connection with upgradation of ADMOs posts to CMOs, Board would like to know the total number of posts filled up, number of posts reserved for SC/ST, actual number filled up by SC/ST candidates.

Yours sincerely,

Sd/-

( D.S.Nigah )

Shri  
Chief Personnel Officer,

*Handwritten signature*

100/363  
14/5/82  
OFFICE OF THE  
CHIEF PERSONNEL OFFICER

A47 A-61  
A-4 6/20

IN THE HIGH COURT OF JUDICATURE ANDIA PROVINCE  
SOCIAL ORIGINAL JURISDICTION

On the fifteenth day of ...  
One thousand nine hundred and eighty two.

Present,  
The Hon'ble Mr. Justice Jovan roddy  
PETITION Nos. 5856 & 6960 of 1981.

D.P. No. 5856/1981

Between

- 1. Dr. K. Ramkrishnaiah.
- 2. Dr. P. Venkatappa... petitioners.

And

- 1. The General Manager, South  
Central Railway Secunderabad.
- 2. Chief personnel officer Personnel  
Branch south central railway Secunderabad.  
... Respondents.

Petition under article 226 of the constitution of India  
praying that in the circumstances stated in the affidavit  
filed herein the High court will be pleased to issue an  
appropriate writ declaring the action of the respondents in  
not following the rule of reservation for scheduled Tribes in  
the matter of promotion to the posts of Divisional Medical  
officers from Assistant Divisional Medical officers as ar-  
bitrary illegal unconstitutional and void and issue a con-  
sequential direction to promote the petitioners against the  
reserved vacancies by following the points in the roster with  
due seniority and consequential benefits of Salary and allowances

D.P. No. 6960/81

Between

- 1. Mr. (Mrs). A. J. Kalitha
- 2. Dr. Shivraj Nathar.
- 3. Dr. C. Narasimham.
- 4. Dr. P. Hemadri Rao... petitioners.

And

- 1. The General Manager S.C. Railway Rail Bilayan  
Secunderabad.
- 2. The Chief personnel officer S.C. Railway Secunderabad
- 3. Dr. K. Ramkrishnaiah.
- 4. Dr. P. Venkatappa.
- 5. Dr. S. S. Roy.
- 6. Dr. Venkatratnam ... Respondents.

Petition under Article 226 of the constitution of India  
praying that in the circumstances stated in the affidavit fil-  
ed herein the High court will be pleased to issue a writ of  
Mandamus or any other appropriate writ or order or directions  
commanding the respondents (1) and (2) to give effect to para  
6 of Board's letter No. 81 B (J.C) 12-54 (I.R.M.B) (33) dated  
31-7-81 and Board letter No. 81 B (J.C) 11/7/76 dated 31-7-81  
and consequently not to apply the reservation rules for ST and  
S P B while filling up the posts under upgradation conveyed  
by Railway Board in letter No. 81 B (J.C) 12-54 (I.R.M.B) (33)  
dated 31-7-1981.

100/363

FOR THE PETITIONERS D.P. No. 5856/81... Mr. P. Sivanandri Babu.  
Advocate.

FOR THE PETITIONERS D.P. No. 6960/81 :- Mr. H. Raghavulu  
Advocate

FOR THE RESPONDENTS 1 and 2 :- in D.P. No. 5856/81 and D.P.  
6960/81 Mr. V. Venkateswaraiah  
standing counsel for railway  
on behalf of the respondents  
1 and 2 as both are

Handwritten signature and date 15/9/82

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AA/S A-62 6/21

IN THE MATTER OF THE PETITIONERS 9 of 0 in W.P. 6960/81:- Dr. P. Subramaniam  
Dada Advocate.

THE COURT DELIVERED THE FOLLOWING:

**SUMMARY:-** These two writ petitions can be disposed of  
in a common order.

In the matter of promotion to several categories  
in the Railways, the competent authorities have provided for re-  
servations in favour of scheduled castes and scheduled Tribes.  
It is 15% in favour of Scheduled Castes and 7 2/3% in the case of  
scheduled Tribes. It would be sufficient if I refer to the Rail-  
way Board's letter No. 76-2 (SCT) 15/10 dated 5th April 1976.  
IT READS AS FOLLOWS:

- One: Reservation for scheduled castes and  
Scheduled Tribes in posts filled by pro-  
motion element of direct recruitment limit  
raised from 50 per cent to 66- 2/3 per cent &  
for the purpose of

Reference is invited to Railway Board's letter  
No. B (SCT) 68 CM 15/10 dated 27th August  
1968, S (SCT) 72 CM 15/5 dated 11th January  
1973 and S (SCT) 73 CM 15/13 dated 17th August  
1974. The instructions contained in these  
letters provide for a reservation quota of  
15 per cent for Scheduled Castes and 7 2/3 per  
cent for scheduled Tribes in posts filled by  
promotion (i) in class I, II, III and IV ser-  
vices made on the basis of seniority and suitability  
(ii) in class II, III, and IV services made  
on the basis of competitive examination limited  
to departmental candidates and (iii) promotion  
within class III from class III to class II and  
from class II to the lowest rung of class I on  
the basis of selection, provided in all these  
cases the element of direct recruitment does  
not exceed 50 per cent.

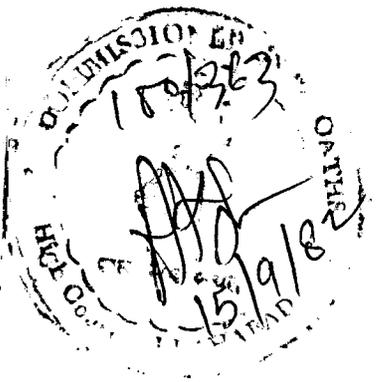
2. The question of enlarging the scope of the  
existing scheme of reservation for scheduled  
castes and scheduled Tribes in the aforesaid  
cases has been under the consideration of the  
instructions containe contained in the above  
letters it has now been decided that hence forth  
the reservations in posts filled by promotion  
under the existing scheme as indicated above  
would be applicable to all grades or services  
where the element of direct recruitment, if  
any does not exceed 66- 2/3 per cent as against  
50 per cent as at present.

3. These orders take effect from 25th February  
1976 except where a panel/ select list for pro-  
motions under the relevant orders has already  
been prepared by the selection Board/ depart-  
mental promotion committee and approved by the  
competent authority before that date.)

The validity of this provision has been upheld by the supreme  
court in AIR 1961 SC 1211, ROHIT K. MANCHARI Sadas ( Rly) v. UNION  
OF INDIA (1) 1961 (1) S.C.C. 246.

The petitioners belong to Railway Medical  
Service. They are concerned with the Railway Medical  
Service. They are concerned with the Railway Medical  
Service. They are concerned with the Railway Medical  
Service.

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A4/10

A-54

6/23

The letter dated 31-7-1981 referred to in paragraph 6 of the above letter reads to the following effect:

GOVERNMENT OF INDIA ( DIRECTOR GENERAL )  
MINISTRY OF RAILWAYS ( RAIL MANTRALAYA )  
( RAILWAY BOARD )

No. 81 (GR) 14/7/66 New Delhi D/31-7-81.

The General Managers,  
All India Railways and CDT.

Subj:- Filling up the posts of D.M.Os. on the Indian Railways  
Upgradation of posts arising out of cadre review.

Please refer to this Ministry's letter No. 81E(GC) 12/54  
(FMS (E3) d/31-7-81 regarding upgradation of the posts  
of A.D.M.Os. to D.M.Os. in the medical department of the  
Indian Railways arising out of cadre review.

- Instructions were issued vide this Ministry's letter No. B(O) III/79/146/7 dated 12-4-79 and dt. 15-9-80 as to how the post of D.M.Os. arising out of normal vacancies against wastage should be filled up in accordance with the Recruitment Rules. It is clarified that the above instructions do not apply to the posts of D.M.Os. which have been specially upgraded from the posts of A.D.M.Os. vide Board's letter referred to in para 1 above as there will be really no vacancies as such and no direct recruitment against 25% of the posts will be possible.

Please acknowledge receipt.  
od/.

Joint Director ( ESTT ) ( B ) I,  
Ministry of Railways.

Indeed by a subsequent letter dated 3-9-1981 the Ministry of Railways reiterated their view that the rule of reservation will not apply for promotions from A.D.M.O. to D.M.O. The reason for this is stated to be the fact that the initial recruitment to the category of Assistant Divisional Medical officers is entirely by direct recruitment.

It is in view of the aforesaid letter dated 31-7-1981 ( second mentioned letter ) and the letter dated 3-9-1981 that certain members of the scheduled Tribes filed writ petition 5856 of 1981. They asked for the issuance of an appropriate writ declaring the action of the railways in not following the rule of reservation in the matter of promotion to the post of Divisional Medical officers as arbitrary, illegal and unconstitutional and further to direct them to observe the said rule in that behalf. Apprehending that the railways may implement the rule of reservation in the matter of said promotion certain persons not belonging to the said categories have filed writ petition 6960 of 1981. The prayer in this writ petition is for the issuance of an appropriate writ order or direction commanding the railways to give effect to paragraph 6 of the railway board's letter dated 31-7-1981 and its another letter of the same date ( referred to above ) and subsequently not to apply the rule of reservation in the matter of promotion to the post of Divisional Medical officers. While the railway Board has now come forward with a clarification dated 20-2-1982 stating that the rule of reservation does apply in the matter of promotion and that therefore, it should also be applied to the promotions effected under the railway board's first mentioned letter dated 31-7-1981. In view of this letter, writ petition 5056/81 becomes unnecessary because the purpose of the said writ petition is served by the clarification now issued by the Railways. Accordingly only writ petition 6960/81 was heard on merits.

*[Handwritten signature]*

MISSION  
100/363

*[Handwritten initials]*  
15/9/82

(A4/H)

A-65

6/24

It is necessary to notice that directly was done under the Railway Board's letter dated 31-7-1981 (first mentioned letter). Existing posts of assistant divisional medical officers were placed in the senior scale as Divisional Medical officers. As is now explained by the Railway that 300 posts in the category of assistant Divisional Medical officers were reduced and correspondingly 300 posts were added in the category of divisional medical officers (these 300 posts are of course spread over all the railway zones in the country). In truth and reality this is nothing but a promotion. It is not a case of mere revision of scale or upgradation of a category as such. As I stated above the category of Assistant Divisional Medical officers and the category of Divisional Medical officers are entirely different and the latter category is a promotion category for the former category. The only mode of recruitment to the category of Divisional Medical officers is either by direct recruitment (to the extent of 1/3rd) or by promotion (to the extent of 2/3rd). There is no other method of recruitment to the post of Divisional Medical officer. The 'upgrading' therefore of 300 assistant Divisional Medical officers in the category of Divisional Medical officers is only an up/gradation same for that is in truth and reality a promotion. If or it is understandable as to how the rule of reservation can be dispensed with. It is not the case of the petitioners that the rule of reservation applicable in the matter of promotion to the category of Divisional Medical officers has either been revoked at any time, what all was done was that certain letters by way of clarification were issued (two on 31-7-1981 and one other on 3-9-1981 which I have already referred to above) stating that the rule of reservation does not apply in this behalf. These clarifications which were issued without changing or amending the general rule of reservation of the main rule as it can be called is of little effect. In any event today the position is that the Railway Board has revised its opinion expressed earlier and it is now standing by the rule of reservation.

The learned counsel for the petitioners relied upon the Full Bench decision of the Kerala High Court reported in N.J. PILLAI V. State J.J. (2) 1973(2) service Law Reporter 251. But a reading of that decision makes it clear beyond any doubt, that that was not a case of promotion from one category to another but merely one of upgradation with a view to give certain financial benefits. In the facts of that case it was observed by the Full Bench that in that case the Government merely raised the salary scale of a few of the posts of stenographers to give them better service conditions and the seniority lists were so drawn as to give the benefit of upgradation to the concern. It was further observed that it was not a case where the persons left their place to occupy a higher place and that no appointment was involved in that case. It was also clarified that promotion is appointment to a different post carrying a higher scale of pay in the service and that a mere betterment of the conditions of service of the incumbents in posts in the same category is not a promotion. It is therefore unable to see any analogy or comparability between that case and the present one. Here it is not a mere case of upgradation in the same category but a transfer of the incumbent from one category to another which can not be done except by way of promotion or by direct recruitment as the case may be. It is not possible to conceive a third method of recruitment to the category of Divisional Medical officers. It is therefore of the opinion that the rule of reservation does apply to the 'upgrading' of 300 assistant divisional medical officers in the category of divisional Medical officers in pursuance of and as contemplated by the letter dated 31-7-1981 (first mentioned

100/365

15/9/82

*[Handwritten signature]*

A-10/11

A 67

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

AFFIDAVIT

In

Writ Petition No.1310 of 1982.

Dr. Raja Bijendra Prasad Officiating DMO/ N.E.Railway

.... Petitioner

VERSUS

Union of India and others

... Opposite parties.

I *Liakat Ali Khan* do hereby solemnly affirm  
and state as under :

1) That the deponent, s/o  
aged                      resident of  
is posted as                      N.E.Railway, Gorakhpur.

2) That the deponent has read the contents of the  
writ petition(hereinafter referred to as petition ),  
has fully understood the contents of the same and is  
aware of the facts deposed below:

3) That it is hereby submitted that with regard

A-10  
-20

contents of the position, true facts and the correct position with regard to rules on the subject is explained herein as under:-

(A) The Government of India, Ministry of Railways (Railway Board) brought out brochure on reservation for Scheduled Caste and Scheduled Tribes in the Railway services in 1975, embodying instructions and procedures concerning the representation of Scheduled Caste and Scheduled Tribes in Railway services. The relevant rules regarding reservation of SC/ST in class I service, as given in Chapter II of the said brochure, are re-produced below:

1. Subject to exemptions and exclusions referred to in chapter III, the following percentages of reservations are in force in favour of SC/ST in filling vacancies in posts in and under the Ministry of Railways, Zonal Railways, Production Units and attached subordinate offices

(c) Posts filled by promotion-	<u>SC</u>	<u>ST</u>
(ii) By selection to and within class III to class II and from class II to the lowest rank of class I provided the element of direct recruitment, if any, does not exceeds 50 percent.	15	7 1/2

(Letter Nos. (1) E(SCT)68CH 15/10 dated 27.8.68 and (11)R(SCT)73 CH 15/13 dated 17.8.74)-

(iii) Made on the basis of  
seniority-cum-suitability 15 7.1/2  
in class I, II, III and IV  
provided the element of direct  
recruitment does not exceed  
50 percent.

(Railway Board's letter no.E(SCT)72CH 15/5  
dated 11.1.1973).

(B) The Railway Board vide their letter  
No.81-B(SCT) 15/93 dated 15.1.82 further indicated  
as under:-

" During the course of discussion in GM's  
Conference hold last year, a point was raised whether  
for filling of upgraded post the reservation rules  
will be applicable. Apparently reservation rules are  
not being enforced on certain railways in filling up  
the upgraded post. It is pointed out that there is  
no sanction for this course of action . It is  
clarified that the rules in respect of reservation  
are applicable to all vacancies irrespective of the  
background of their occurrence whether they were  
normal retirement or otherwise on account of cadre  
re-structuring."

A copy of Railway Board letter dated 16.1.82 is  
annexed as Annexure A-1 with this affidavit.

(C) Some of the railways asked for clarification  
whether reservation for SC/ST should be applicable  
while filling up the post of DMOs by promoting  
ADMOs on the basis of seniority-cum-suitability.  
The Railway Board vide their letter dated 22.2.82  
clarified in consultation with the Department of  
Personnel that r

A70  
A70

-4-

Personnel that reservation for SC/ST are applicable while filling up the posts of DMOs.

(D) On a reference from this railway, the Advisor of Industrial Relation, Railway Board conveyed vide his letter dated 14.5.82 that the Board have approved vide their letter dated 16.1.82 that reservation rules are applicable in all the vacancies irrespective of their occurrence whether they are by normal retirement or otherwise on account of cadre restructuring. He also mentioned in his letter that these rules should have been made applicable with effect from 27.11.72 in terms of Board's letter dated 11.1.73 and that in any case it is difficult to review the past cases from 27.11.72, it has been decided that the reservation orders should be applied from 31.7.81, the date on which the upgradation from ADMO to DMOs was conveyed to the Railways.

A copy of Board's letter dated 14.5.82 is annexed as Annexure A-2 with this affidavit.

Ann. A-2

(E) The Railway Board vide their letter No.78-E (SCT)15/13 dated 19.5.82 indicated that in terms of Board's letter dated 11.1.73 reservation for SC/ST are applicable for promotion from Junior Scale (Class I) to Senior Scale (Class I) on seniority-cum-suitability where the direct recruitment in senior scale (Class I) EMOs does not exceed 66.2/3%. The Railway Board further desired to know whether these rules are being followed in all departments while filling up the senior scale (Class I) vacancies on seniority-cum-suitability basis. They also

They also desired to know the number of posts reserved for SC/ST and those actually filled by SC/ ST candidates while promoting ADMOs to DMOs against the upgraded posts.

Ann. A-3

A copy of Board's letter dated 19.5.82 is annexed as Annexure A-3 to this affidavit.

(7) The said provisions alongwith certain directions of Railway Board were challenged as being ultra vires the Constitution, before the Supreme Court of India in writ petition No.1041 and 1044 of 1979- Ashil Bhartiya Shoshit Karamchhari Sangh versus Union of India and others. The Supreme Court of India by their Judgment dated 13/14 November 1980 while rejecting these petition upheld the legality and constitutional validity of the aforesaid provisions. I crave leave to refer to and rely upon the said judgment when produced. The relevant portion of the said judgment is reproduced below :

" Looking at the problem from the point of view of Law and logic and the constitutional justification under article 16(4) for reservation in favour of the Punchnam proletariat, there is nothing to strike down in Annexure K( Board's letter No.E(SCT)72 CH 15/5 dated 11.1.73. The writ petition as well as the special leave petition cannot but be dismissed- V.R. Krishna Iyer."

" Accordingly, the writ petition s are dismissed but without any order as to costs-R.S.Pathak."

" Judged in the light of this discussion I am

A-71  
A10/57

A10/6  
A12

-6-

unable to find any thing illegal or unconstitutional in any one of the impugned orders and circular. Each order and circular has been individually discussed by my brother Krishna Iyer Judge with whose reasoning and conclusion I agree and to which I wish to add no more.  
O Chinnappa Reddy."

(G) That writ petition No.5856 of 1981 filed by K.Ramkrishna and others and writ petition no.6960 of 1981 by Dr. (Mrs.) A.J.Lalitha in the High Court of Andhra Pradesh at Hyderabad against such resignation was heard on 15.4.82 and the Hon'ble court decided that the rules for reservation do apply to the upgraded post also as decided by the Board and the writ petitions were dismissed. ( Copy of the judgment is annexed as Annexure A-4).

~~III~~ (H) That rule 1 of the chapter III of the aforesaid brochure also stipulates that the reservation for SC/ST should invariably be made in all posts filled by direct recruitment unless exempted by special or general instructions issued by the Ministry of Railway ( Railway Board)

The petitioner has not produced any special or general instructions issued by the Railway Board whereby promotions from the post of ADMOs to the post of DMOs are to be made without observing prescribed percentage of SC/ST candidates. On the

A73

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07-

contrary as already mentioned in foregoing paragraph Railway Board have issued specific clarifications from time to time, the last one being dated 19.5.82 that rules of reservation do apply in respect of promotions from the post of ADMOs to DMOs even if the vacancies have arisen on account of cadre re-structuring.

4) That contents of paragraphs 1 and 2 of the petition are not disputed.

5) That with regard to contents of paragraph 3 of the writ petition, it is stated that out of 300 posts upgraded as DMOs, 19 posts were allotted to N.E. Railway vide Board's letter dated 31.7.81. Subsequently the Railway Board vide their letter no.81-E(GC)/12-54(IRNSS) dated 23.9.81 upgraded 3 more posts of ADMOs to the post of DMOs and the petitioner was promoted as DMO against one of the said post and posted at Aishbagh.

6) That contents of paragraphs 4 and 5 are not disputed.

7) That contents of paragraph 6 of the petition are denied. It is submitted that according to Annexure 3 to the writ petition that 2 posts were allotted for Divisional Hospital Lucknow, one for Badshahnagar Hospital, Lucknow and one to Divisional Hospital Gonda.

At 8/8 AM

8) That with regards to paragraph 7 of the writ petition it is admitted so far as contents of Board's letter dated 31.7.81 and 12.4.79 are concerned and it is further stated that in pursuance to Railway Board's letter referred to in paragraph 3 of this affidavit while promotion for the post of ADMO to post of DMO is to be made on the basis of seniority-cum-suitability the rules in respect of reservation are applicable to it.

9) That the contents of paragraph 8 of the writ petition are admitted.

10) That the contents of paragraph 9 of the writ petition are not admitted as stated. It is further stated that the upgradation involve promotions from the post of ADMOs to the post of DMOs and accordingly extent rules including rules of reservation of SC/ST are applicable for such promotions.

11) That with regard to extent of paragraph 10 of the writ petition it is admitted that the Railway Board issued letter dated 22.2.82 clarifying therein that the reservation for SC/ST are applicable while filling up the post of DMOs.

12) That with regard to the contents of paragraph 11 of the writ petition it is stated that the Railway Board's impugned letter dated 22.2.82 is a letter of clarification and as would be evident from the facts contained in paragraph 3 of this affidavit. It has been issued after the examination of the extent rules on the subject.

A10/9 275

13) That with regards to contents of paragraph 12 of the writ petition it is stated that Board's letter dated 22.2.82 is in keeping with the rules of reservation applicable to promotions from junior scale (Class I) to senior scale (Class I) and that filling up the upgraded posts involve element of promotions and though post of ADMOs were promoted as DMOs at the place of their work because of this upgradation of those posts, it did not mean automatic upgrading of the individuals occupying the said posts as ADMO but it had to be done by promotion on the basis of seniority-cum-suitability and as per recent clarifications by the Board based on the earlier instructions in this regard rules of reservation in respect of SC/ST are applicable to it. Contention to the contrary are denied.

14) That the contents of paragraph 13 of the writ petition are not admitted and it is stated that as per extant rules, reservation for SC/ST are applicable even in respect of junior scale (Class I) to senior scale (Class I) including for filling up of the post of DMO from ADMOs by promotion.

15) That the contents of paragraph 14 of the writ petition are not admitted as stated and it is submitted that as has been mentioned in paragraph 3 of this affidavit as per extract of brochure quoted therein the reservation for SC/ST are applicable in filling up the vacancies on the basis of seniority-cum-suitability in class I, II, III and IV and accordingly the reservation for SC/St is applicable for promotion for junior *scale* (class I) to senior scale (Class I).

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16) That while admitting the contents of paragraph 15 of the writ petition and so far as extract of brochure quoted therein is concerned, it is stated that the Ministry of Railway have in consultation with department of Personnel have specifically clarified that reservation for SC/St are applicable while filling of the post of DMO and this clarification is fully in consonance to the rules circulated vide Board's letter dated 11.1.73 and 19.4.76.

17) That the contents of paragraph 16 of the writ petition are not admitted. It is further stated that it would be evident from Board's letter dated 19.5.82 annexed with this affidavit as Annexure , reservation for SC/St are applicable in promotion from junior scale (Class I) to senior scale (Class I) in all departments and Board has sought for confirmation from the Railways in regard to application of this reservation in promotion in Class I cadre from one scale to another scale in all ~~the~~ departments.

18) That the contents of paragraphs 17 and 18 of the writ petition , it is stated that action has to be taken in pursuance of Board's letter dated 22.2.82 and subsequent letter as mentioned in para 3 of this affidavit and those belonging to Scheduled Caste or Scheduled Tribes who ought to have been promoted from 21.7.81 and thereafter will be promoted even by reverting those who have so far been promoted in excess of quota.

19) That with regards to contents of paragraph 19 of the writ petition it is stated that the writ petition filed by Dr. (Mrs.) A.J.Lalitha in Andhra High Court has since been decided by judgment dated 15.4.82 holding therein that rules of reservation do apply to the upgraded posts also as decided by the Railway Board and others.

Ann.A-4      Photostate copy of the judgment is annexed as Annexure A-4.

20) that contents of paragraph 20 of the writ petition are not admitted and it is stated that since the petitioner has equally effective remedy of submitting appeal to the President of India, the writ petition being pre-mature is liable to be dismissed. It is also stated that the grounds taken by the petitioner are tenable in law and such are denied.

21) That it is further submitted that in the background of the aforesaid facts and circumstances, the Hon'ble Court will appreciate that the existing rules provide for reservation of posts for SC/ST in the matter of promotion of Assistant Divisional Medical Officers ( junior scale-Class I) to that of Divisional Medical Officer ( senior scale- Class I) in the upgraded posts. There is no ambiguity in the directions given by the Railway Board as regards reservations for SC/ST in the matter of promotions based on seniority-cum-suitability to the upgraded posts of DMOs ( senior scale- Class I).

2/10/12  
BFA

22) That none of the grounds taken by the petitioner are tenable in law, hence the writ petition is liable to be dismissed with cost.

Lucknow  
Dated

Deponent

VERIFICATION.

I, the above named deponent, do hereby verify that the contents of paragraphs of the counter affidavit are true to my own knowledge; those of paragraphs are true to my information derived from the records maintained in the Railway Administration which are believed by me to be true, and those of paragraphs are based on legal advice. No part of it false and nothing material is concealed, so help me God

Dated Lucknow,

Deponent.

Solemnly affirmed before me on

at a.m./p.m. by

the deponent who is identified by Sri Advocate, High Court, Allahabad.

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

Auth A-79

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

ANNEXURE -A-1

In

Writ Petition No.1310 of 1982

Dr. Raja Bijendra Prasad Officiating DMO/

N.E.Railway

.....Petitioner

VERSUS

Union of India and others.

... Opp. parties.

Government of India ( Bharat Sarkar)

Ministry of Railways ( Rail Mantralaya)

Railway Board.

No.81-B(SCT)15/93

New Delhi, dated 16.1.1982.

The General Managers,

All Indian Railway including GM, DLN, ICF,

Southern Railway ( Construction) Bangalore and

MTP( Railways) Calcutta.

x x D

x x x

Sub :- Reservation Rules in favour of SC/STs.

During the course of discussion in General

44/2 A-20

At the Managers' Conference held last year a point was raised wither for filling up of upgraded posts the reservation rules will be applicable. Apparently reservation rules are not being enforced on certain Railways in filling up upgraded posts. It is pointed out that there is no sanction for this course of action, it is clarified that the rules in respect of reservation are applicable to all vacancies irrespective of the background of their occurrence whether they are by normal recruitment or otherwise on account of cadre restructuring.

Please acknowledge receipt.

Sd/-

( Gulzar Chand )

Jt. Director, Es&C (R) II

Railway Board

True Copy

Ann/3 ASI

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD  
SITTING AT LUCKNOW

ANNEXURE- A-2

In

Writ Petition No.1310 of 1982

Dr. Raja Bijendra Prasad Officiating DM/ N.E.Railway ...Petitioner.

VERSUS

Uni-nof India and others ...Opp. parties.

T.V.HADEAV

ADVISTR( INDUSTRIAL RELATIONS)

D.O.No.78-E(SCT)15/13(Pt.II) New Delhi, dated 14.5.1982.

My dear

My dear Bhaduri,

Subj Reservation of Scheduled Castes and scheduled Tribes in the matter of promotion from the post of ADMOs to DMOs

Ref :- Your D.O. letter no.Ka/210/10Pt.VIII(I) dated 31.3/ 1.4.1982.

Some of the Railways had doubts whether they reservation rules will apply when promoting ADMOs as DMOs on the basis of seniority-cum-suitability. The matter has been examined in detail in consultation with the Ministry of Home Affairs. The Ministry of Home Affairs has clarified that while making promotions from ADMOs to DMOs, the reservation rules s

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should be made applicable.

2. The Board's letter No.81B(GR)11-7/17 dated 31.7.81 only indicated that the upgraded posts of ADMOs to the scale of DMU will be filled up only by promotion, although under normal circumstances, 25% of the vacancies of DMOs are filled by direct recruitment and 75% by promotion. This clarification does not mean that there will be no reservation for SCs/SYs while filling up the upgraded posts by promotion. In this connection Board's letter no.81-E(SCT)15/93 dated 16.1.1982 wherein it has been clarified that reservation rules are applicable in all the vacancies irrespective of their occurrence whether they are by normal retirement or otherwise on account of cadre structure. A copy of this letter is also enclosed herewith for ready reference.

3. Application of reservation rules for filling up of the posts of DMOs should have been normally from 27.11.1982 in terms of Board's letter No.E(SCT)72 CM 15/5 dated 11.1.1973, it has been decided that the reservation orders should be applied from 31.7.1981 the date on which the upgradation from ADMOs to DMOs was conveyed to the Railways.

With regards,

Yours sincerely,

Sd/-  
( T.V.Madhav)

Shri A.K.Bhaduri,  
General Manager,  
N.E.Railway,  
Gorakhpur.

True Copy



Att/6 ASU

Personnel vide Board's letter of even number dated 22.2.82 that reservations for SC/STs are applicable while filling up the posts of DMOs.

2. In view of the above, Board would like to have confirmation that reservations rules for SC/ST are followed in all departments while filling up senior scale class I vacancies on seniority-cum-suitability basis where direct recruitment in senior scale is not more than 66-2/3%.

3. In connection with upgradation of ADMOs posts to CMOs, Board would like to know the total number of posts filled in up, number of posts reserved for SC/ST, actual number filled up by SC/ST candidates.

Yours sincerely,

Sd/-

( D.S.Nigah )

Shri

Chief Personnel Officer,

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD,  
SITTING AT LUCKNOW.



1984  
AFFIDAVIT  
24  
HIGH COURT  
ALLAHABAD  
218

AFFIDAVIT IN REPLY TO THE REJOINDER AFFIDAVIT IN THE  
WRIT PETITION NO. 1310 OF 1982.

Dr. Raja Bijendra Prasad

..Petitioner

- V e r s u s -

Union of India and others

.. Opp.-parties.

I, Gorakh Nath, aged about 56 years,  
son of late Sri N.N.Lal, resident of Bichhia  
Colony, Gorakhpur

do hereby solemnly affirm as under:-

1). That the deponent Gorakh Nath aged 56 year  
son of Late N.N.Lal , resident of  
Bichhia Colony Gorakhpur  
Assistant Personnel Officer,  
is posted as N.E.Railway Gorakhpur.

2). That the deponent has read the contents  
of the rejoinder affidavit ( hereinafter referred to as  
affidavit), has fully understood the contents of  
the same and is aware of the facts deposed to  
below :-

*Gorakh Nath*  
24/1/84

A12/2  
A11/2  
A11/2

2.

3). That the contents of paragraphs 1 and 2 of the affidavit need no reply.

4). That with regard to the contents of paragraph 3 of the affidavit it is stated that the rules for making provision of reservation of post for SC/ST community are obligatory on the part of the Government under Article 335, 48,16(I),16(2),16(4) which read as under:-

Article 335.

" The claims of the members of the Scheduled caste and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with affairs of the Union or of a State."

Article 46

" The State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

Article 16(4).

"16(1) There shall be equality of opportunity

24/1/89

for all citizens in matters relating to employment of appointment to any office under the State."

"16(4). Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of State is not adequately represented in the services under the State."

Article 16(2).

"No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence of any of them, be ineligible for, or discriminated against in respect of any employment or office under the State."

The provisions of Reservations made under these articles are made by the Ministry of Home Affairs, Dept of Personnel as the nodal Ministry in the Government of India and who is empowered to issue directives to all the Ministries of the Government of India. These are scrupulously being followed by the Ministry of Railways and the offices under it.

Based on these directives, the Ministry of Railways, Railway Board, vide their letter No.

E(SCT)CM 15/5 dated 11.1.73 issued directives

*Amal Kumar*  
24/1/84

to the All Indian Railways making provision of reservation of posts @ 15% and 7½% for SCs and STs respectively in their promotion from class IV to III, Class III to Class, II, Class II to the lowest rung of Class I, On the basis of seniority-cum-suitability where the element of direct recruitment does not exceed 50% (later this 50% has been raised to 66-2/3%). These basic principles of reservation rules have already been upheld by the Hon'ble Supreme Court in the writ petition (civil) No.1041 of 1979 filed by Akhil Bhartiya Socit Karamchari Sangh( Railway) Vs. Union of India & others. Later some of the Railways sought clarification from <sup>the Railway Board</sup> ~~this office~~ whether the reservation for SC and ST Railway employees are applicable in their promotion from ADMOs to DMOs on the basis of seniority-cum-suitability. In this regard a reference was made to the Ministry of Home Affair, Deptt. of Personnel, and on receipt of their directives a clarification was issued to the Railways vide Board's letter No.78-R(SCT) 15/13 dated 22.11.1978 clarifying that reservation of posts for SCs and STs are applicable in promotion from ADMOs to DMOs on the basis of seniority-cum-suitability.

Further instructions were also issued vide letter No.81-E(SCT)15/93 dated 16.1.82 wherein it was clarified that reservations rules are applicable to all vacancies irrespective of their background of occurrence whether they are on normal retirement or otherwise on account of cadre restructuring. It was also emphasised in Board's letter No.78-E(SCT)15/13 dated 14.5.82 that the directives issued by Board's letter No.81-E(GR) II-7/66 dated 31.7.81

wherein it was indicated that the upgraded posts of ADMOS

*Amrinder Singh*  
24/11/84

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A-819  
2/5  
5.

to the scale of DMOs are only to be filled by promotion although under normal circumstances 25% of vacancies of DMOs are filled by direct recruitment and 75% by promotion does not mean that there will be no reservation for SC/ST while filling of the upgraded posts by promotion and the instructions contained in Board's letter No.81-E(SCT)15/93 dated 16.1.82 are applicable in the promotion of ADMOs to DMOs.

Letter No.78-E(SCT)15/13 dated 22.2.82 which was issued in consultation with Ministry of Home Affairs, Department of Personnel that reservation for SCs and STs are applicable in promotions from junior scale class I to Sr. c scale class I on seniority-cum-suitability basis where the direct recruitment in senior scale class I does not exceed 66-2/3% D.O.No.78-E(SCT)15/E3 dated 19.5.82 was a follow up action of the implementation of the instructions in regard to reservation in promotion from ADMOs to DMOs.

In view of the above, it is apparent that reservation regarding SC/ST is applicable to the post of DMOs.

5). That with regard to paragraph 4 of the affidavit it is stated that as already explained that Railway Board's letter dated 16.1.82 and not 15.1.82 have binding force in the matter of promotion from the post of ADMOs to DMOs.

6). That with regard to paragraph 5 of the affidavit ~~explained~~ contents of paragraph 3(c) of the counter affidavit are reiterated as correct.

*[Handwritten signature]*  
24/1/87

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7). That with regard to paragraph 6 of the affidavit it is submitted that the letter of the Adviser Industrial Relation dated 14.5.82 having binding force in the matter of promotion and as such is fully applicable.

8). That with regard to paragraph 7,8,9 and 10 of the affidavit contents of paragraph 3(e),3(f)(g) & (h) of the counter-affidavit are reiterated as correct.

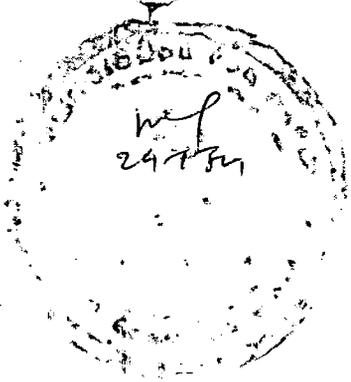
9). That with regard to the contents of paragraphs 11,12 and 13 of the affidavit the contents of paragraphs 4,5 and 6 of the counter affidavit are reiterated.

10). That with regard to the contents of paragraph 14 of the affidavit the contents of paragraph 7 of the counter affidavit are reiterated.

11). That with regard to the contents of paragraphs 15,16,17 and 18 of the affidavit the contents of paragraphs 8,9,10 and 11 of the counter affidavit are reiterated.

12). That with regard to the contents of paragraph 19 of the affidavit it is stated that the impugned order dated 22.2.82 has been issued in terms of the extent rules on the subject.

13). That with regard to the contents of paragraph 20 of the affidavit it is submitted that upgraded post of DMO has been filled up on the basis of seniority-cum-suitability and that the upgradation of the post involved



*Sanjay Kumar*  
24/1/84

A12/7

11/11

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element of promotion.

14). That with regard to the contents of paragraph 21 of the affidavit the contents of paragraph 14 of the counter affidavit are reiterated as correct.

15). That with regard to the contents of paragraph 22 and 23 of the affidavit contents of paragraph 15 and 16 of the counter-affidavit are reiterated.

It is also submitted that as has been stated in earlier paragraphs the provisions contained in the Railways Board's letter dated 11.1.73 and subsequent letters in that regard are fully applicable to the cases of promotion from the post of ADMOs to DMUs as is evident from Annexure 'A'-3 to the counter affidavit.

16). That with regard to the contents of paragraph 24 of the affidavit the contents of paragraph 17 of the counter affidavit are reiterated as correct.

17). That with regard to the contents of paragraphs 25, 26, 27 and 28 of the affidavit it is stated that the contents of paragraphs 18, 19, 20, 21 and 22 of the counter affidavit are reiterated as correct.

Dated Lucknow  
January 27, 1984.

*[Signature]*  
Deponent. 27/1/84

VERIFICATION.

I, the above named deponent, do hereby verify

*[Circular stamp]*  
26/1/84

*[Signature]*  
27/1/84

A12/8

Apr

7/8

8.

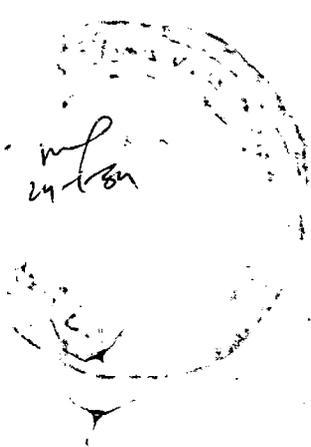
that the contents of paragraphs 1 and 2 of the counter affidavit are true to my own knowledge, those of paragraphs 3 to 17 are true to my information derive from the records maintained in the Railway Administration which are believed by me to be true. No part of it is false and nothing material has been concealed so help me God.

Dated Luckn w  
January 27<sup>th</sup> 1984.

*[Signature]*  
Deponent.

I, identify the deponent who has signed before me.

*[Signature]*  
Sri Vishwan Chandra  
Advocate



Solemnly affirmed before me on 27/1/84.

at 10:05 a.m./p.m. by *[Signature]*

the deponent who is identified by

Sri *[Signature]*

Advocate, High Court, Allahabad.

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

*[Signature]*  
LUC-1/84  
27/1/84

12/9  
A93

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD,  
SITTING AT LUCKNOW.

AFFIDAVIT IN REPLY TO THE REJOINDER AFFIDAVIT IN THE  
WRIT PETITION NO. 1310 OF 1982.

Dr. Raja Bijendra Prasad ..Petitioner

- V e r s u s -

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

I, Gorakh Nath aged about 56 years,  
Son of Late Sri N.N. Lal, resident of Buehna  
Colony, Gorakhpur

do hereby solemnly affirm as under:-

1). That the deponent Gorakh Nath aged 56 years,  
SON OF Late N.N. Lal , resident of Buehna

Colony, Gorakhpur  
is posted as <sup>Asst. Personnel Officer</sup> No. 1. Railway Gorakhpur.

2). That the deponent has read the contents  
of the rejoinder affidavit ( hereinafter referred to as  
affidavit), has fully understood the contents of  
the same and is aware of the facts deposed to  
below :-

13  
X

A12/10  
AGM

3). That the contents of paragraphs 1 and 2 of the affidavit need no reply.

4). That with regard to the contents of paragraph 3 of the affidavit it is stated that the rules for making provision of reversion of post for SC/ST communit, are obligatory on the part of the Government under Article 335, 48,16(I),16(2),16(4) which read as under:-

Article 335.

" The claims of the members of the Scheduled caste and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with affairs of the Union or of a State."

Article 46

" The State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

Article 16(4).

"16(1) There shall be equality of opportunity

A 98

(A 12/14)

3.

for all citizens in matters relating to employment of appointment to any office under the State."

"16(4). Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of State is not adequately represented in the services under the State."

Article 16(2).

"No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State."

The provisions of Reservations made under these articles are made by the Ministry of Home Affairs, Dept of Personnel as the nodal Ministry in the Government of India and who is empowered to issue directives to all the Ministries of the Government of India. These are scrupulously being followed by the Ministry of Railways and the offices under it.

Based on these directives, the Ministry of Railways, Railway Board, vide their letter No. E(SCT)OM 15/5 dated 11.1.73 issued directives

Ar 2/12

A 9/6

to the All Indian Railways making provision of reservation of posts @ 15% and 7% for SJs and STs respectively in their promotion from class IV to III, Class III to Class, II, Class II to the lowest rung of Class I. on the basis of seniority-cum-suitability where the element of direct recruitment does not exceed 50% (later this 50% has been raised to 66-2/3%). These basic principles of reservation rules have already been upheld by the Hon'ble Supreme Court in the writ petition (civil) No.1041 of 1979 filed by Akhil Bharatiya Karmachari Sangh (Railway) Vs. Union of India & others. Later some of the Railways sought clarification from ~~the office~~ <sup>the Railway Board</sup> whether the reservation for SJ and ST Railway employees are applicable in their promotion from ADJs to DJs on the basis of seniority-cum-suitability. In this regard a reference was made to the Ministry of Home Affairs, Deptt. of Personnel, and on receipt of their directives a clarification was issued to the Railways vide Board's letter No.78-R(SCT) 15/13 dated 22.11.1978 clarifying that reservation of posts for SJs and STs are applicable in promotion from ADJs to DJs on the basis of seniority-cum-suitability.

Further instructions were also issued vide letter No.81-B(SCT)15/93 dated 16.1.82 wherein it was clarified that reservations rules are applicable to all vacancies irrespective of their background of occurrence whether they are on normal retirement or otherwise on account of cadre restructuring. It was also emphasised in Board's letter No.78-L(SCT)15/13 dated 14.5.82 that the directives issued by Board's letter No.81-L(GR) II-7/66 dated 31.7.81 wherein it was indicated that the upgraded posts of ADJs

Am/13  
A-97

5.

to the scale of DMs are only to be filled by promotion although under normal circumstances 25% of vacancies of DMs are filled by direct recruitment and 75% by promotion does not mean that there will be no reservation for SC/ST while filling of the upgraded posts by promotion and the instructions contained in Board's letter No.81-E(SCT)15/93 dated 16.1.82 are applicable in the promotion of ADMs to DMs.

Letter No.78-F(SCT)15/13 dated 22.2.82 which was issued in consultation with Ministry of Home Affairs, Department of Personnel that reservation for SCs and STs are applicable in promotions from junior scale class I to Sr. scale class I on seniority-cum-suitability basis where the direct recruitment in senior scale class I does not exceed 66-2/3% D.O.No.78-E(SCT)15/83 dated 19.5.82 was a follow up action of the implementation of the instructions in reg rd to reservation in promotion from ADMs to DMs.

In view of the above, it is apparent that reservation referring SC/ST is applicable to the post of DMs.

5). That with regard to paragraph 4 of the affidavit it is stated that as already explained that Railway Board's letter dated 16.1.82 and not 15.1.82 have binding force in the matter of promotion from the post of ADMs to DMs.

6). That with regard to paragraph 5 of the affidavit and the contents of paragraph 3(c) of the counter affidavit reiterated as correct.

A12/1B  
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7). That with regard to paragraph 6 of the affidavit it is submitted that the letter of the Adviser Industrial Relation dated 18.5.82 having binding force in the matter of promotion and as such is fully applicable.

8). That with regard to paragraph 7,8,9 and 10 of the affidavit contents of paragraph 3(e),3(f)(g) & (h) of the counter-affidavit are reiterated as correct.

9). That with regard to the contents of paragraphs 11,12 and 13 of the affidavit the contents of paragraphs 4,5 and 6 of the counter affidavit are reiterated.

10). That with regard to the contents of paragraph 14 of the affidavit the contents of paragraph 7 of the counter affidavit are reiterated.

11). That with regard to the contents of paragraphs 15,16,17 and 18 of the affidavit the contents of paragraphs 8,9,10 and 11 of the counter affidavit are reiterated.

12). That with regard to the contents of paragraph 19 of the affidavit it is stated that the impugned order dated 22.2.82 has been issued in terms of the extent rules on the subject.

13). That with regard to the contents of paragraph 20 of the affidavit it is submitted that upgraded post of DFO has been filled up on the basis of seniority-cum-suitability and that the upgradation of the post involved

A12/16  
A-150

that the contents of paragraphs 1 and 2 of the counter affidavit are true to my own knowledge, those of paragraphs 3 to 17 are true to my information derive from the records maintained in the Railway Administration which are believed by me to be true. No part of it is false and nothing material has been concealed so help me God.

Dated Lucknow  
January , 1984.

Deponent.

I, identify the deponent who has signed before me.

Solemnly affirmed before me on

at a.m./p.m. by

the deponent who is identified by

Sri

Advocate, High Court, Allahabad.

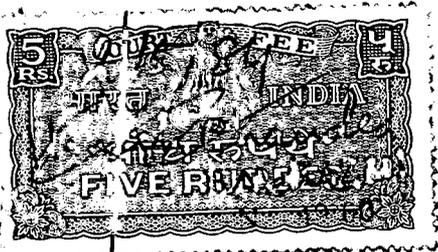
I have satisfied myself by examining the

deponent that he understands the contents of this

affidavit which have been read out and explained by me.

A12/17/81 / A101

I. THE HON'BLE COURT OF JUDICATURE AT ALLAHABAD  
SITING AT LUCKNOW



CIVIL PROC. NO. 5819 (W) OF 1984

14/2/85  
21/5/84

1. The Union of India,
2. The General Manager, N.E.Railway,  
Gorakhpur
3. The Chief Personnel Officer,  
N.E.Railway, Gorakhpur

..Applicants

Inre:

Writ Petition No.1310 of 1982

Dr. Raja Bijendra Prasad ... Petitioner

Versus

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

692)

The applicants above-named beg to submit as  
under:-

1. That by means of the aforesaid writ petition, the petitioner has challenged the Railway Board's instructions contained in their letter No.78/E(SC)/15/13/Part II dated 22.2.1982 ( Annexure 7 to the writ petition ) by means of which reservations for promotions to the post of Divisional Medical Officer from Assistant Divisional Medical Officer on the basis of seniority cum suitability was provided to the extent of per-centage prescribed in the roster.

2. That on 1.4.82, this Hon'ble Court was pleased to pass the following stay order:-

" Counsel, for the Union of India, Ministry of



9. Chand  
21.5.84.

A-12/18  
A/102  
2

Railways, representing opposite parties 1, 3 and 4 prays that he may further be allowed time to obtain instructions. Pray is allowed subject to condition that no interim arrangement shall be made on the basis of the impugned annexure and the petitioner will not be reverted.

List this petition immediately after one week."

3. That on account of the aforesaid order dated 1.4.82 for persons belonging to scheduled caste/ scheduled tribe community who were due to be promoted on reservation on the basis of the impugned Annexure 7 to the writ petition could not be promoted.

4. That it is in the interest of justice that the promotion of scheduled caste/ scheduled tribes candidates to the post of Divisional Medical Officer on the basis of reservation ——— may be made in pursuance of the Railway Board's instructions dated 22.2.82 contained in Annexure 7 to this writ petition.

5. That in order that there may not be any resentment amongst scheduled caste/ scheduled tribe candidates as a result of their non-promotion against reserved quota as laid down in the Railway Board's instructions contained in their letter No.78-E(SCT)/15/13/ Part 2 dated 22.2.82, it is necessary that the stay order dated 1.4.82 may be vacated/ suitably modified by



9 (Hand)  
21.5.84

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A103  
8/1/83



this Hon'ble Court.

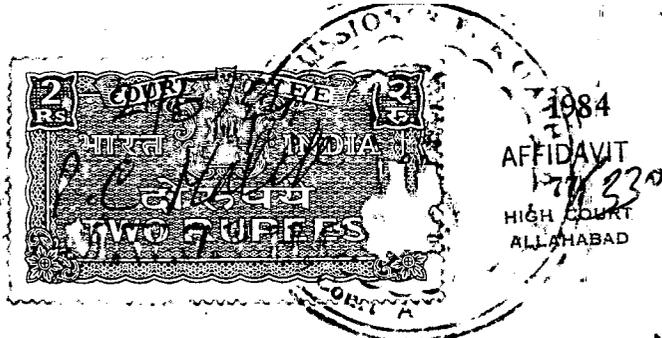
F. AYLA

WHEREAS, it is respectfully prayed that the interim order of stay dated 1.4.82 passed by this Hon'ble Court may be vacated/ suitably modified.

A handwritten signature in cursive script, appearing to read "Ganga Prasad".

Counsel for the applicants.

Lucknow.  
21<sup>st</sup> May, 1984



IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW BENCH LUCKNOW

C.MISC CASE NO. OF 1984.

In re:

Writ petition No. 1310 of 1982.

Dr. Raja Bijendra Prasad .. Petitioner.

Versus

Union of India & others. ..opp . Parties.

AFFIDAVIT

I, P.C. Maulik S/O Late P.C. Maulik,

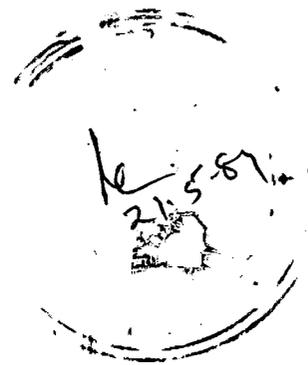
Deputy Chief Personal Officer, (Gazetted), North Eastern Railway Gorakhpur, R/O Banglow No. 35, Railway Colony Gorakhpur do hereby by solemnly affirm and state an oath as under:-

1. That the deponent is working as Deputy Chief Personal Officer (Gazetted), North Eastern Railway Gorakhpur and is conversant with the facts deposed to hereunder:
2. That the contents of paras 1 to 5 of the application accompanying this affidavit is to <sup>true</sup> my knowledge derived from the record of the administration.

Lucknow:

*P.C. Maulik*  
Deponent

Dated:- 21<sup>st</sup> May 1984.



A/105  
A/12/21  
8/15

V E R I F I C A T I O N

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

Lucknow:

P. C. Maulik  
Deponent

Dated:- 21<sup>st</sup> May 1984.

I identify the deponent

who has signed before me.

P. Chandra  
Advocate.

Solemnly affirmed before me on 21.5.84

at 12.05 a.m./p.m. by P. C. Maulik

the deponent who is identified by Sri Krishna Chandra

Advocate High court (Allahabad), Lucknow Bench Lucknow.

I have satisfied myself by examining the deponent that

he understood the contents of the affidavit

which has been read out and explained by me.



P. Chandra  
Advocate  
Lucknow

No.....  
Date: 21.5.84

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3/12

A-106

A12/22

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD  
SITTING AT LUCKNOW  
CIVIL MISC. AN. NO. 9275(W) CF 1984

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1

(2)

19257  
3/10/84



Union of India, through  
General Manager, N.E.Railway,  
Gorakhpur ... Applicant

Inre:

Writ Petition No.1310 of 1982.

Dr. Raja Bijendra Prasad ... Petitioner

Versus

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

13/96

The applicant, above-named respectfully states as under:-

1. That the petitioner has filed the above mentioned writ petition challenging the Railway Board's letter dated 22.2.82 contained in Annexure-7 to the writ petition, by means of which reservation for promotion to the post of Divisional Medical Officer from Assistant Divisional Medical Officer on the basis of seniority-cum-suitability was provided to the extent of percentage prescribed on the roster.
2. That on 1.4.82 when the writ petition was listed for admission before a Division Bench consisting of the Hon'ble Mr. Justice K.S.Varma and the Hon'ble Mr. Justice Saghir Ahmand, their lordship was pleased to grant further time to the Railway administration to obtain instructions, but an interim order was also granted to the effect that in the meantime petitioner shall not be reverted on the basis of Railway Board's



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letter dated 22.2.82( Annexure-7 to the writ petition).

3. That the counter affidavit on behalf of opposite party was filed and the rejoinder affidavit was also filed by the petitioner in reply to the counter affidavit in November 1982. A counter-affidavit to the rejoinder-affidavit was also filed on behalf of the Railway administration in January, 1984.

4. That the case was listed a number of times on 13.4.82, 22.3.84 and 21.4.84, but the case could not be taken due to paucity of time.

5. That on 21.5.84, an application for vacation/ modification of the stay order dated 1.4.82 was filed on behalf of the Railway Administration in this Hon'ble Court, but the above application has not so far been listed.

6. That on account of the aforesaid stay order dated 1.4.82, 4 persons belonging to Scheduled Cast/ Scheduled Tribes due to be promoted on the basis of reservation in pursuance of the Railway Board's letter dated 22.2.82( Annexure-7 to the writpetition , could not be promoted.

7. That it is in the interest of justice that promotion of Scheduled Caste/ Scheduled Tribes candidates to the post of Divisional Medical Officer on the basis of reservation as provided in the aforesaid Railway Board's letter dated 22.2.82 be made.

8. That in order that there may not be any



Chandra  
Adv

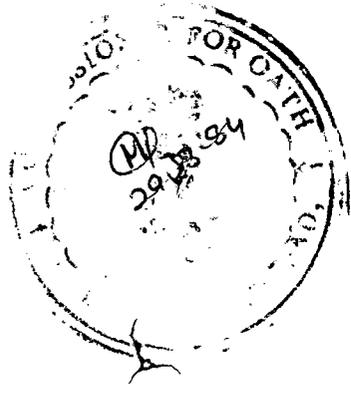
R. K. Sauri

A108

A12/24

9/3

resentment amongst the Scheduled Caste/ Scheduled Tribes candidates as a result of their non-promotion against <sup>reverted ✓</sup> ~~reverted~~ quota as laid down in the Railway Board's letter dated 22.2.82( Annexure-7 to the writ petition), it is necessary that the stay order dated 1.4.82 may be vacated or suitably modified <sup>✓</sup> by this Hon'ble Court.



PRAYER

WHEREFORE, it is respectfully prayed that the interim order dated 1.4.82 passed by this Hon'ble Court may be vacated or suitably modified.

*(Signature)*  
 K. Chandra.  
 Counsel for the applicant

*(Signature)*

Lucknow:  
 Dt. August 29, 1984.  
 Sep 3

A109

A12/25

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e

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD  
SITING AT LUCKNOW

Civil Misc. An. No. 1984.

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

Applicant

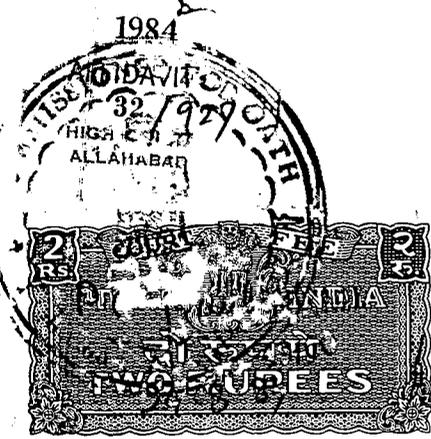
Inre:

Writ Petition No.1310 of 1982

Dr. Raja Bijendra Prasad ... Petitioner

Versus

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



AFFIDAVIT

I, P.C.Maulik son of late P.C.Maulik, aged about 52 years, Deputy Chief Personnel Officer (Gazetted), North Eastern Railway Gorakhpur, resident of Bungalow No.35, Railway Colony Gorakhpur do hereby solemnly affirm and state as under:-

1. That the deponent is working as Deputy Chief Personnel Officer (Gazetted), North Eastern Railway Gorakhpur and he is fully conversant with the facts deposed to in the accompanying application .

2. That the contents of paragraphs 1 to 8 of the accompanying application are true to the knowledge of the deponent.

*P.C. Maulik*

Deponent.

Lucknow:

Dt. August 29, 1984.



~~A-110~~ A12/26  
A-110  
9  
3

VERIFICATION

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

Lucknow:  
Dt. August 29, 1984.

P. C. Maulik  
Deponent.

I identify the deponent who has signed before me.

*[Signature]*  
Advocate.

Solemnly affirmed before me on 29.8.84 at 9.55 a.m./p.m. by P.C. Maulik the deponent who is identified by Krishna Chandra Advocate, High Court, Allahabad.

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



for Krishna Pandey  
District Commissioner  
(Lucknow)  
29.8.84

A13/12 AM  
 10/10

ORDER SHEET  
 IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

No. 1310 of 1982.  
 In Raja Bijendra Prasad vs Union of India

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
23-3-82	Hon K.S.V.J <u>Hon S.S. Ahmad J</u>	
	Notice of this petition has been taken by Mr Umesh Chandra on behalf of opposite parties 1, 2 & 4. Set this petition for orders immediately after a week to enable the counsel for the opposite parties to obtain instructions. s.d. K.S.V. s.d. S.S. Ahmad 23-3-82 <u>C.M. An. No. 2682 @ 82</u>	
	Hon K.S.V.J <u>Hon S.S. Ahmad J</u> Set along with the writ petition. s.d. K.S.V. s.d. S.S. Ahmad	
31-3-82	31. 3. 82 List with C.M. 2682-82 for or. s.d. K.S.V. s.d. S.S. Ahmad Pick up tomorrow	Byrd 10 5

**ORDER SHEET**

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

No. 1310 of 1978-2-

25.

A13/2  
A112  
10/2

Date	Note of progress of proceedings and routine orders	Date to which case is adjourned
1	2	3
5.8.83	Writ for order.	
	Hon. D.M. Jha J.	
	Hon. K.S.V. J.	
	List of for orders on	
	the 11th August, 1983	
	to enable the Standing	
	Counsel to file a counter	
	affidavit.	
	5.8.1983	
	11.8.83	
	for	
	Hon. J. I. Jha J.	
	Hon. K.S.V. J.	
	22.3.84	
	Fixed for order.	
	Hon. D.M. Jha J.	
	Hon. S.S.A. J.	

B  
R  
K

11.8.83

11.8.83

11.8.83

A13/3  
A108  
A113  
3

**ORDER SHEET**  
IN THE HIGH COURT OF JUDICATURE AT **ALLAHABAD**  
No. \_\_\_\_\_ of 198  
\_\_\_\_\_

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
11.9.84.	Fixed withs. in A. 9275-84	
	Hon. D. N. Chakraborty	
	Hon. K. S. Chakraborty	

3  
R  
D

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH LUCKNOW

INDEX SHEET

CAUSE TITLE TA 1027 OF 1987

NAME OF THE PARTIES

Hon. Narayan Tewari

Applicant

Versus

Respondent

Part A, B & C

Sl. No.	Description of documents	Page
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2	Order sheet	2 To 20 ✓
3	Judgement 06-5-91	21 to 24 ✓
4	Petition	25 to 39 ✓
5	Annexure	39 to 78 ✓
6	App. for Grant of Stay	79 to 81 ✓
7	Counter Affidavit	82 to 93 ✓
8	Rejoinder Affidavit	94 to 99 ✓
9	Power	100 to 107 ✓
10		
11		
12		
13		

CERTIFICATE

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

Dated.. 15/3/11.....

File B/c destroyed on 09-5-12

Counter Signed.....



Section Officer / In charge



Signature of the  
Dealing Assistant

CIVIL SIDE

GENERAL INDEX

CRIMINAE

(Chapter XLI, Rules 2, 9 and 15)

Nature and number of case..... B. 62... 62.....

Name of parties... Hari Narain Singh Teerari vs Union Genl of India & Ors.

Date of institution..... 19... 2... 62.....

Date of decision.....

File no.	Serial no. of paper	Description of paper	Number of sheets	Court-fee		Date of admission of paper to record	Condition of document	Remarks including date of destruction of paper, if any
				Number of stamps	Value			
1	2	3	4	5	6	7	8	9
					Rs.	P.		
A	1	G. index	1					
	2	ord sheet	1					
A	3	w-p. App'l Annex wt	5 <del>5</del>	9	103			
B	4	Process	1	1	5			
A	5	Comm. 18310782 for stay	2	1	5			
	6	Power -	2		10.00			
	7	ord sheet	4					

I have this day of 198 , examined

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

Date.....

Munsarim  
Clerk

Docket Sheet  
w.p. 865-82

A2

7

Hari Narsain Tewari vs Union Govt  
of India.

---

14.2.82

Hon K.S. Varma

Issue notice to opposite parties to  
show cause why the writ petition be  
not admitted. The notice be issued  
for a specific date.

sd K.S. Varma

14.2.82

--- C.M. An. No. 1831-82 1482

---

Hon K.S. Varma

put up with writ petition.

sd K.S. Varma

14.2.82

30-3-82

No steps taken within time.

Keep  
23/3/82

sd [Signature]  
[Signature]

7/4  
82

J. U. M. P. S. A.  
Fixed P. F. R. tar  
adde

Houbunc. 3.

So

88

A4

2/2

ORDER SHEET  
IN THE HIGH COURT OF JUDICATURE AT AYLHABAD

No. 865 of 1982

vs.

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
16.7.82	<p>Wm for ords. de V C S J.</p> <p>Learned counsel for the opp parties prays for and is allowed two weeks further time to file counter affidavit. Reply may be filed within a week thereafter. List after three weeks. Till then status quo as it exists today shall be maintained.</p> <p>16.7.82</p>	
23.8.82	<p>23.8.82 Wm for ords. de V C S J.</p> <p>No time left. Adjourned B.O. etc.</p>	<p>PO</p> <p>↓</p> <p>↓</p> <p>↓</p>
27.8.82	<p>Wm for ords. de V C S J.</p> <p>No time left. Adjourned B.O. etc.</p>	<p>↓</p> <p>↓</p> <p>↓</p>

B.S.

A6

7/3

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

wt

No.

865

of 1982

vs.

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
209-83	P.P. Report dhan [unclear]	P.P.O
	<p>The petitioner is allowed forty eight hours' time to take the steps requested by the other side and not taken within this period the writ petition shall stand dismissed without further orders of the Court against opposite party and the interim order, if any, operating against the said opposite party shall also stand discharged.</p>	
	<p>For P.F. Report</p>	
	<p>Learned counsel for the petitioner has not taken steps for service and way time allowed by court has been expired.</p>	

209-83

submitted.  
D. S. [unclear]  
22-11-83

AO

2/4

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

W.P. No. 865

of 1982.

Hari Narain Tewari

vs. Union of India & ors.

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
16.8.84	<p><u>Ad Regs</u></p> <p>This report dated 26.7.84 be listed before Court for orders since Court's order dated 20.9.83 is a Stop order and no orders can be passed by Addl. Registrar.</p> <p>By <u>[Signature]</u> 16.8.84</p>	
10/9/84	<p>Fixed.</p> <p>Hon. J. to Mr. Suman Singh stand out.</p> <p>Boyle</p> <p>10/9/84</p>	
22/10/84	<p><u>P.F. Ahmad</u></p> <p>HONEST</p> <p>HONEST</p> <p>So far this case was being listed before a learned Single Judge. Today, it has been listed before a Division Bench. If the case is to be listed before a Single Judge, it shall</p>	

8 B

By

16.8.84

Fixed.

Hon. J. to Mr. Suman Singh

stand out.

Boyle

10/9/84

22/10/84

P.F. Ahmad  
HONEST  
HONEST

So far this case was being listed before a learned Single Judge. Today, it has been listed before a Division Bench. If the case is to be listed before a Single Judge, it shall

आदेश पत्रक  
ORDER SHEET

T.A. No. 1027-87

W.P. 865-82

Hari Narain Tewari  
VS  
Union of India & Ors.

अपील  
निर्देश आवेदन रजिस्टर में सं०  
No. in Reference Application Register  
Appeal

अपील अनिकरण  
Appellate Tribunal

अपीलार्थी  
अभिदक

Appellant  
Applicant

अपीलार्थी  
अभिदक द्वारा

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 पालन  
करने की तारीख  
How complied with and  
date of compliance

Office report

W.P. No. 865-82 has been  
received on transfer from Hon'ble High  
Court Uzo.

W.P. Admitted.

CA/R.A. not filed.

Notices issued to both the  
parties fixing 5.2.88 by RP.

No undelivered signed  
cover has been return back.

Submitted for orders.

Asst  
-3/1/88

(3)

A12

ORDER SHEET  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD

.....No..... *TOT 1027* .....of 198*7*

.....Vs.....

Sl.No. of order	Date of order	ORDERS WITH SIGNATURE	Office Notes as to action (if any) taken on order
	<i>5-5-07</i>	<i>ddl</i> <i>comer has been paid today. Besides if any may be paid by 31-5-07</i> 	

3

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ORDER SHEET  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD

TA NO. 1027/87 OF 1987  
VS.

No. of Order	Date of order	ORDERS WITH SIGNATURE	Office Notes as to action (if any) taken on order
--------------	---------------	-----------------------	---

Office Note

An application has been filed in this Tribunal for transferring the case No. 1027/87 (9) of \_\_\_\_\_ to the Circuit Bench, Lucknow. If approved, 26 ~~May~~ May 1987 may kindly be fixed for hearing at Circuit Bench, Lucknow. In this regard the notices may be sent to the parties counsel.

*Desai*  
6/3/88 List this case on 26th May 88 before D.R.S. for orders.

D.R.(J)

24-5-88 D.R.(T)

Sig. P. Agarwal has moved an application for adjournment of the case to-day.

o the case is adjourned to 20-7-88.

20-07-88

Registrar

*ca*  
D.R.(T)

None responds, inform parties by mail 19/9/88 for further orders.

Mailed 19/9/88

Respondent

Suresh Mohan

P 20  
7

Registrar

(5)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUTT BENCH AT LUCKNOW.  
\*\*\*\*

O.A./T.A. No. 1027 1987 (T)

Hazi Nazam Dewari Applicant(s)

Versus

Union of Indira Respondent(s)

Sr. No.	Date	Orders
20-2-89	No sitting, Adjourned to 3-3-89.	<u>Rsm</u> 20/2
<u>8-3-89</u>	<u>DR</u>	Counsel for applicant is Present. The case is adjourned to <u>13/4/89</u> for filing rejoinder.
13/4/89	Hon' Mr. Ajay Johri, A.M. Hon' Mr. D.K. Agrawal, J.M.	<u>ER</u> Counsel for applicant has not filed any rejoinder as per submitted for orders <u>Arif</u> 11/4
	Due to strike of lawyers at Lucknow today, the case is adjourned to <u>20-4-89</u> for orders.	
	<u>D</u> J.M.	<u>3</u> A.M.
	(sns)	

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH, LUCKNOW

A17

ORDER SHEET

REGISTRATION No. 1027 of 1987 (T)

APPELLANT  
APPLICANT

VERSUS

DEFENDANT  
RESPONDENT

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
4.9.89	<p>Hon. Justice K. Nath v.c. Hon. K. J. Raman, A.M.</p> <p>An appearance has been made on behalf of the respondents. The case is ripe for final hearing. It may be listed for final hearing on 25.10.89.</p> <p><i>[Signature]</i> A.M. v.c.</p>	
25.12.89	<p>No Sitting of D/B. Adj to 13.12.89. Both the counsel are present.</p> <p><i>[Signature]</i> B.O.C.</p>	
13.12.89	<p>No Sitting Adj to 10.1.90. Both the counsel are present.</p> <p><i>[Signature]</i> 13/12/89</p>	
10-1-90	<p>No Sitting Adj to 29-1-90</p> <p><i>[Signature]</i> 6/1/90</p>	<p>OR Submitted for hearing</p> <p><i>[Signature]</i> 25/1/89</p>

27.9.90.

Honible Mr. Justice K. Nalk V.C.  
" " K. Obayya A.M.

Case called out. No one is present for the applicant. Sri S. P. Srinivasa is present for the respondents. The case is dismissed in default of the applicant.

*[Signature]*  
(A.M.)

*[Signature]*  
(V.C.)

*[Signature]*

12-9-90

Honible Mr. Justice K. Nalk V.C.  
Honible Mr. M.M. Singu A.M.

Issue notice to the respondents  
pick up the orders on 12.9.90

*[Signature]*  
A.M.

*[Signature]*  
V.C.

Noticed 24.9.90  
24-9-90

Notice of OP No. 4  
has been returned  
back

OR

As per court's order dt  
12.9.90, notices were  
issued on 24.9.90.

Notice of OP No 4  
has been returned back  
with postal remark  
dt of court  
S.F.O.

13/11/90

## CENTRAL ADMINISTRATIVE TRIBUNAL

## ALIAHABAD BENCH

....

Registration T.A. No. 1027 of 1987(L)

Hari Narain Tewari ... Petitioner

versus

Union of India and others .... Respondents

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

Hon'ble Mr A.B. Gorthi, A.M.(By Hon'ble Justice U.C. Srivastava,  
V.C.)

This writ petition has been received on transfer under section 29 of the Administrative Tribunals Act 1985. The petitioner earlier filed a writ petition before the High Court challenging his removal order dated 3-10-1981 and also against rejection of his review appeal dated 27-11-1981. The applicant started service with Railway Administration as a Cleaner and later on he was promoted to the post of Coach Attendant. It appears that during the Kumbh Mela, in order to cope with extra work, ad-hoc arrangements for Ticket Collectors were made and the applicant was also willing to work as Ticket Collector, was temporarily appointed as such. He was not found suitable in the selection by the Selection Board and consequently he was not absorbed as Ticket Collector, <sup>and</sup> ~~as such~~, he was sent back to work as Coach Attendant. For some misconduct he was suspended, but later on his suspension order was recalled and a disciplinary inquiry against him in respect of charge against him proceeded. The charge against him was that he offered a bribe of

Rs.400/- to the Minister's P.A. for giving him promotion. Witnesses were examined and thereafter an Inquiry Officer submitted his report to the Disciplinary Authority who agreed with the findings of Inquiry Officer, passed an order that he may be removed from service. The petitioner had preferred appeal ~~against~~ the Inquiry Report/ Order, as such, passed by the Disciplinary Authority. The Appellate Authority also agreed with the Disciplinary Authority that the charges levelled against him are proved. Since a compassionate view in the matter of punishment was taken, the applicant was awarded punishment of withholding of increments for two years and by withholding of increments for three years and was also reduced in rank to his substantive post of Cleaner. The superior authority agreed with the findings of the Inquiry Officer, thereafter, the applicant filed a second review appeal. The second review appeal was rejected on the ground that Divisional Railway Manager had already reviewed his case on his own motion and no second review appeal is permissible. The applicant has chosen not to file the copy of the first review order and has not challenged it. Although the application is defective on the above score, but we have heard the applicant as well. The applicant has challenged the Inquiry Proceedings on some grounds and the necessary assertions in this behalf are contained in paragraph 25 to paragraph 28 of this application. It has been alleged that <sup>certain</sup> witnesses were not examined and the witnesses gave contradictory statements.

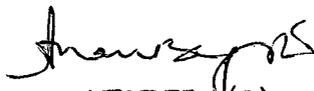
A23

:: 3 ::

and he was not given personal hearing and that in similar offence some other persons were given minor punishment than the punishment given to him. This part has been explained in the counter affidavit and it has been explained that the applicant's record was not unblemished. He was earlier 'censured' and his increment was once withheld for two years and thereafter for three years. Now so far the inquiry is <sup>concerned,</sup> ~~conducted,~~ it has been stated that the inquiry was conducted in accordance with rules, and on one day when he was not available, the applicant left away giving a letter to the Inquiry Officer stating that he has no further time for inquiry. It has been stated that the Inquiry Officer could not compel the witnesses to appear, and the applicant has not been able to point out as to whether the applicant had applied for summoning of some witnesses who were not examined, no assertion in this behalf has been made. So far as the personal hearing is concerned, it has been stated that personal hearing by the Inquiry Officer, as well as by the Appellate Authority was given and the assertion in this behalf is not correct, and his allegation that his <sup>to case</sup> ~~stipulatory~~ was not examined was also not correct. As a matter of fact he was examined and the proceedings were signed by the applicant as well as, his defence Assistant. Thus it appears that we have also not been able to find any flaw in the proceedings and we are satisfied that the opportunity of hearing was given to the

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applicant and the same was not denied to him.  
We cannot sit <sup>as</sup> over the appellate Court against  
the disciplinary authority to which the applicant  
also has not chosen to file . Accordingly, there  
is no substance in the writ petition and the same  
is dismissed with no order as to costs.

  
MEMBER (A)

  
VICE CHAIRMAN

(sns)

May 6, 1991.

Lucknow.

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

Civil Misc. Writ Petition No. 865 of 1982.

Hari Narain Tewari ..... Petitioner.

Versus

Union Govt. of India and others ..... Respondents.

(6)

LIST OF DOCUMENTS

<u>S.No.</u>	<u>Particulars</u>	<u>Page number</u>
1.	Writ Petition .....	1 to 11
2.	<u>Annexure - 1</u> ..... (True copy of impugned order dated 3.10.1981)	12 to 13
3.	<u>Annexure - 2</u> ..... (True copy letter No. Vig/3/SP-2/79-LCS dated 27.11.1981 regarding rejection of review appeal)	14
4.	<u>Annexure - 3</u> ..... (True copy of letter No. Vig/3/SP-2/79/LCS dated 4.11.1981 regarding suspension)	15
5.	<u>Annexure - 4</u> ..... (True copy of letter no. Vig/3/SP-2/79/LCS dated 29.3.1979 regarding Charge sheet)	16 to 21
6.	<u>Annexure - 5</u> ..... (True copy of letter <del>xxx</del> dated 10.4.1979 of the petitioner regarding documents and prosecution witnesses)	22 to 23
7.	<u>Annexure - 6.</u> ..... (True copy of <del>xxxxx</del> defence brief dated 20.5.1981 submitted by the petitioner)	24 to 29
8.	<u>Annexure - 7</u> ..... (True copy enquiry report regarding removal from service)	30 to 38
9.	<u>Annexure - 8</u> ..... (True copy of order dated 4.7.1981 regarding removal of the petitioner from service.)	39 to 40
10.	<u>Annexure - 9</u> ..... (True Copy of petitioner's appeal regarding removal order)	41 to 45
11.	<u>Annexure - 10</u> ..... (True copy of petitioner's review appeal dated 4.11.1981 regarding removal)	46 to 49
12.	<u>Annexure - 11</u> ..... (True copy of petitioner's letter dated 2.11.1981 regarding posting)	50
13.	Affidavit .....	51 to 52
14.	Power	

28/11/82

Handwritten scribble

Discontinued

for the petitioner

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

Civil Misc. Writ Petition No. **865** of 1982.

Hari Narain Tewari,  
aged about 42 years,  
S/o Sri Mathura Prasad Tewari,  
Ex Coach Attendant, Northern Railway, Lucknow. ... Petitioner.

Versus

1. Union of India,  
through the General Manager,  
Northern Railway, Baroda House,  
New Delhi.
2. Divisional Railway Manager,  
Divisional Office,  
Northern Railway,  
Lucknow.
3. Additional Divisional Railway Manager (R&C),  
Divisional Office, Northern Railway,  
Lucknow.
4. Senior Divisional Commercial Superintendent,  
Lucknow. ... Respondents.

Writ Petition under Article 226 of the Constitution of India

To,

The Hon'ble Chief Justice and his other companion  
Judges of this Hon'ble Court,

the humble petitioner above named most respectfully

during September 1978 failed to maintain absolute integrity and committed misconduct in as much as he offered a bribe of Rs. 400/- on 13.9.1978 to Sri H.P. Singh, Additional Private Secretary to the Minister of State for Railways in his office at Raj Bhawan, New Delhi for getting his promotion to the post of Ticket Collector and thereby, he contravened rule 3(1)(1) of Railway Services Conduct Rules 1966.

12. That in reply to the above Charge Sheet, the petitioner requested in his letter dated 10.4.1979 that the attested copies of all the documents relied upon may be supplied and the details of prosecution witnesses indicating the evidences which each of witnesses are expected to give, may also be given to enable the petitioner <sup>to</sup> get adequate opportunity of defence. A true copy of letter dated 10.4.1979 is enclosed as Annexure - 5, to this Writ Petition.

13. That the petitioner submitted his defence brief on 20.5.1981 duly signed by the petitioner as well as his defence counsel Sri V.S. Arivedi. A true copy of the defence brief is enclosed as Annexure - 6, to this Writ Petition.

14. That the enquiry in this case was conducted by Sri A.M. Mittal enquiry officer (Vigilance) Northern Railway New Delhi who submitted his enquiry report in the matter a true copy of the enquiry report which was given to the petitioner alongwith the order of removal from service issued on July 4, 1981 is enclosed as Annexure - 7, to this Writ Petition.

15. That after consideration of the findings submitted by the enquiry officer, the respondent

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the petitioner guilty of the charge contained in memorandum of charge sheet dated 30.3.1979 and passed order vide his no.VIG/3/SFE/79/LCS dated July 4, 1981 removing the petitioner from service. A true copy of the above letter dated July 4, 1981 is enclosed as Annexure - 8, to this Writ Petition.

16. That the petitioner filed an appeal against the removal order issued by respondent no.4 on July 4, 1981. A true copy of Appeal is enclosed as Annexure - 9, to this Writ Petition.

17. That the respondent no. 3 while considering the appeal of the petitioner made observations that although the procedure laid down has been complied with, the findings of the disciplinary authority are warranted by the evidences on record and the petitioner had been granted personal hearing but the penalty imposed was severe and that the ends of justice would be met by awarding a punishment short of removal from service. He, therefore, vide letter no.VIG/3/SFE/79/LCS/ October 3, 1981 reduced the petitioner to the substantive post of C & A Cleaner in the grade of Rs. 196-232 at Rs. 196/- for a period of 3 years affecting his pay on restoration. A true copy of the above letter is already enclosed as Annexure - 1, to this Writ Petition.

18. That the petitioner feeling aggrieved by the order of respondent no.3 filed a review appeal before the respondent no. 2 on 4.11.1981, a true copy of which is enclosed as Annexure - 10, to this Writ Petition.

19. That the petitioner was subsequently informed vide letter no.VIG/3/SFE/79/LCS dated 27.11.1981 of respondent no.2 that the respondent no.3 in terms of rule 25(D) had already reviewed the case of the petitioner. on his motion and had agreed with the orders passed by the

Handwritten notes and a circular stamp on the left side of the page. The stamp contains the text "RECEIVED" and "18 OCT 1981". There are also some illegible handwritten marks and a signature-like scribble.

the appellate authority, no further review is permissible under the rules. A true copy of letter dated 27.11.1981 is already enclosed as Annexure - 2, to this writ petition.

20. That the petitioner also made an application to the respondent no.2 on 2.11.1981 requesting therein for his posting on the post of C & N Cleaner but he has not been communicated any posting order so far with the result that order of reduction has not been complied with. A true copy of the above application is enclosed as Annexure - 11 to this writ petition. In case, the operation of the order of reduction is not stayed, the petitioner will suffer irreparable loss and damage to his career.

21. That the petitioner had passed <sup>examination</sup> for promotion to the post of Ticket Collector in the year 1977 but his legal and fundamental right of being promoted has been denied and his juniors serve Sri Sri Sam II, Sri Sam -III, Shyam Sunder, Mahood Ali, C.N. Mehrotra, K... Sharma were promoted to the post of Ticket collector and the petitioner was discriminated and left over.

22. That Sri M.M. Dwari has recently been promoted to the post of Ticket Collector but again the petitioner has been left over.

23. That the petitioner worked on the post of Coach Attendant during full month of June 1981, but his pay and allowances for this period has not been paid so far despite repeated requests..

24. That the petitioner had good service records in comparison to that of Sri Shyam Sunder who was given punishment of stoppage of 3 increments permanently but still he was given promotion to the post of Ticket

Collector in reference to the petitioner.

25. That the enquiry into the case of the petitioner was not conducted according to the rules. Sri Harendra Pratap Singh, who was the complainant and chief witness of prosecution was not examined by the prosecution and the petitioner was not given any opportunity to cross-examine him. It is also submitted that the enquiry officer asked him to attend the enquiry but he did not turn up despite persistent summoning.

26. That Sri Charam Singh, Public Relation Officer to the then Speaker Vidhan Sabha, who was an important witness in this case also did not turn up inspite of the fact that the ~~meeting~~<sup>date</sup> of enquiry was fixed up in Lucknow specially for the purpose.

27. That the statements of the witness who were examined in support of charge sheet are contradictory to one another and therefore their testimony cannot be relied upon.

28. That the petitioner was not given any opportunity of personal hearing by the respondent no. 3 before passing final order on his appeal made against the order of removal from service.

29. That feeling aggrieved and having no effectuous remedy the petitioner is left with no option except to invoke the jurisdiction of this High Court under article 226 of the Constitution of India.

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30. That it is also wrong to allege that the petitioner had been granted personal hearing. In fact neither the petitioner nor Sri V.L. Trivedi who was defence counsel was asked to appear for personal hearing.

31. That Sarve Sri Ram Das Agrawal & S.D. Trivedi who were important witnesses of the prosecution either did not give any evidence or they were subsequently dropped.

32. That the envelope alleged to be containing a sum of Rs. 400/- was said to have been opened in the presence of Sri Ram Das Agrawal but there is no evidence of the said Sri Agrawal that Rs. 400/- actually came out from that very envelope.

33. That Sri S.J. Trivedi, Deputy Director Intelligence, simply stated that he was busy in reading a news paper and he did not state that the money was given by the petitioner as bribe. He had further stated that he did not remember to have seen whether the envelope was closed or open<sup>ed</sup> while it was handed over to Sri H.L. Singh.

34. That the original statements given by Sri H.L. Singh and other witnesses prior to institution of disciplinary enquiry are not relevant material to be taken into account to hold the petitioner guilty and punish on hearsay evidence.

35. That the disciplinary authority has committed wrong and acted arbitrarily in not considering the defence note given by the petitioner's counsel objectively and making recommendations on arbitrary indications.

36. That the cause of action arose when the petitioner was informed vide letter dated 27.11.1981 (Annexure 2) that no further review was permissible.

37. Therefore, the petitioner prefers this writ petition for redressal of his grievances on the following amongst other:

*[Handwritten notes and signatures]*

GROUND

- (1) Because the charge sheet was served upon the petitioner illegally and in an improper manner in as much as the charges are based on mere surmises, wrong notions and without evidences.
- (2) Because, the enquiry was not conducted according to the rules and even the important evidences of prosecution were not produced and opportunity of cross examination was not given.
- (3) Because, the extraneous material has been used against the petitioner for holding him guilty into the charges.
- (4) Because, no opportunity was given to the petitioner to examine and cross examine the witnesses and also to produce evidences in his defence.
- (5) Because, the opportunity as required in C.C. 1. Rules *as well as Discipline and Appeal Rules for Railway Servants* was not given to the petitioner to make representation against the punishment of reversion to the post of C & L Cleaner.
- (6) Because, the withholding of pay of suspension period is wholly unwarranted and unjustified.
- (7) Because, the order of reversion, not only violates the mandatory provisions contained in Article 311(2) of the Constitution of India but also the Central Civil Services (Classification, Control & Appeal) Rules.
- (8) Because, the petitioner has already suffered a lot of account of illegal charge sheet, harassment and humiliation during course of enquiry and the punishment imposed and in case the injustice caused is not rectified soon, he will suffer irreparable and

D. Chauhan

perpetual damage throughout his service career and his family will be ruined. The impugned order is liable to be set aside by this Hon'ble High Court.

- (9) because the punishment imposed, is not only unlawful and arbitrary but also contravenes the principles of natural justice and is not legally maintainable.
- (10) because, the order of appellate authority is violative to the relevant rules as well as the principle of natural justice.
- (11) Because the petitioner has a legal right to get his case reviewed by the competent authority which was denied arbitrarily and illegally.

P R A Y E R

Therefore, on the facts and grounds stated above, it is most respectfully prayed that the Hon'ble High Court may be pleased :

- (a) To issue a writ of Certiorary or writ order or direction in the nature of certiorary to quash the impugned order dated 3.10.1981 (Annexure - 1) reverting the petitioner from the post of Coach Attendant to the post of C & J Cleaner and also the order dated 27.11.1981 (Annexure -2) rejecting his review appeal.
- (b) To issue a writ of mandamus or writ direction or order in the nature of mandamus commanding the respondents not to give effect to the impugned order dated 3.10.1981 and to treat the petitioner on duty as Coach Attendant without interruption with full and retrospective benefits of salary, increments and seniority etc. accordingly.

D. Chauhan

- (c) To issue a writ of Mandamus or writ direction or order in the nature of mandamus commanding the respondents to allow him full salary and allowances for the suspension period with full benefits.
- (d) To issue such other writ, direction or order including an order as to costs which in the circumstances of the case, this Hon'ble High Court may deem just and proper.

Lucknow : Dated :  
February 4 , 1982.

*D. Chaube*  
( D. Chaube )  
Advocate  
Counsel for the petitioner.

A30

In the Hon'ble High Court of Judicature At Allahabd  
Lucknow Bench. Lucknow.

Civil Misc. Writ Petition No. of 1981

Hari Narain ... .. Petitioner

Vs.

Divisional Manager, N.R. Lucknow  
& Others ... .. Respondents.

Annexure-1

No. VIG/3/SPE/79/LCE  
3rd October, 1981

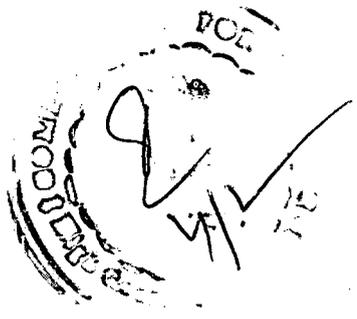
Divisional Office,  
Northern Railway,  
Lucknow.

Shri Hari Narain,  
Ex-Coach Attendant,  
Lucknow  
(In Office)

Sub:- Appeal against the orders of removal from  
service issued by Sr. DCS/Lucknow vide N.I.P.  
No. VIG/3/SPE/79/LCS dt. 4.7.1981.

....

In terms of Rule 22(2) of Railway Servants (DEA)  
Rules, 1968, the appellate authority- Additional Divisional  
Railway Manager (TGEC) Lucknow, has carefully considered  
your appeal dated 10.9.1981 against the orders of the Senior  
Divisional Commercial Superintendent, Northern Railway  
Lucknow, imposing upon you a penalty of removal from service  
vide Punishment order No. VIG/3/SPE/79/LCS dated 4.7.1981  
and has observed as under:



1. The procedure laid down has been complied with;
2. The findings of the Disciplinary authority are warranted by the evidence on the record;
3. the penalty imposed is severe;
4. Shri Hari Narain has been granted personal hearing;

Reducing the punishment imposed by the Disciplinary authority, the appellate authority has made the following observations:

" I have carefully considered the appeal of Shri Hari Narain, Coach Attendant, the CBI & Enquiry Officer's Report and the findings of the Disciplinary authority.

I agree that Shri Hari Narain is found guilty of the charges and warrants a severe punishment. It is, however, felt that the ends of justice would be met by awarding a punishment short of removal

Hari Narain

from service. Shri Hari Narain, is, therefore, reduced to the substantive post CGW Cleaner in grade 196-232 RS at Rs. 196/- for a period of 3 years affecting his seniority and pay on restoration."

Your punishment of removal from service is therefore reduced and you are reduced to the substantive post of C & W Cleaner in grade Es. 196-232 RS at Rs. 196/- for a period of 3 years affecting your seniority and pay on restoration.

Sd/-  
for Divisional Railway Manager,  
Lucknow.

Copy to:

G.M. (Vig.), Northern Railway, Baroda House, New Delhi  
in reference to HQS case No. 11-Vig/8/79/SEP.

2. Supdt. (E) for necessary action.

*Har Narain*

A40

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

Civil Misc. Writ Petition No. of 1981

Hari Narain ... .. Petitioner

Versus

Divisional Manager, N. R., Lucknow  
& others ... Respondents

Annexure- 2

NORTHERN RAILWAY

Division Office,  
Lucknow.

CONFIDENTIAL

No. Vig/3/SPE/79-LCS  
Dated: 27.11.1981

Shri Hari Narain,  
Ex-Coach Attendant/LKO  
S/o Late Pathura Pd,  
Vill. Tewari-Ka-Purwa,  
P.O. Darshan Nagar,  
Faizabad.

Sub: Review appeal to DRM/LKO dt Nil.

---

In terms of rule 25(i) the Divl. Rly. Manager had  
already reviewed your case on his own motion and had  
agreed with the orders passed by appellate authority.  
Since, as per extant orders, only one review is permissible  
which has already been done, no further review lies in this  
case.

Sd: - Illegible  
for Divl. Rly. Manager  
Lucknow.

Hari Narain

RECEIVED  
NOV 29 1981

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4/2

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

Civil Misc. Writ Petition No. \_\_\_\_\_ of 1978  
Hari Narain ... .. Petitioner  
Versus  
Divisional Manager, L.R. Lucknow  
& others ... .. Respondents.

Annexure 3

No. .... Vig/S/spe/70/lcs Name of Railway Administration.. Divl..  
Sudt. Rs. O. office,  
Place of issue .Lucknow. Dated. 4.11.78..

ORDER

Whereas disciplinary proceeding against Shri.....  
(Name and designation of the railway servant is contemplated/pending  
Whereas a case against Shri  
Hari. Narain, Coach. Attendant  
.Lucknow..... (Name and  
designation of the Railway  
servant ) in respect of a  
criminal offence is under  
investigation/

Now, the afore, the undersigned ( the authority competent to place  
the railway servant under suspension in terms of the Schedules I, II  
and III appended to RC(R.S.) Rules , 1968 /an authority mentioned in  
proviso to Rule 5(1) of the RC(R.S.) Rules, 1968 ,in exercise of the  
powers conferred by Rule 4/proviso to Rule 5(1) of the RS(DCA) Rules  
1968. hereby places the said Shri.... Hari. Narain.... under suspension  
with immediate effect with effect from .....

It is further ordered that during the period this order shall  
remain in force, the said Shri... Hari. Narain.....  
shall not leave the Headquarters without obtaining the previous  
permission of the competent authority.

Copy to-  
Shri Hari Narain, C.../LRO  
Through Sd/Lucknow  
S. S./Lucknow, S. Sudt' L'/LRO

Signature.....  
Name ..... C. G. GUPTA .....  
Designation of the suspending  
authority

Hari Narain



AUB

relevance of the documents required by him for inspection. The disciplinary authority may refuse permission <sup>to</sup> inspect all or any such documents as are, in its opinion, not relevant to the case or it would be against the public interest or security of the State to allow access thereto. He should complete inspection of additional documents within five days of their being made available. He will be permitted to take extracts from such of the additional documents as he is permitted to inspect.

3. Shri HARI NARAN is informed that request of access to documents made at later stages of the inquiry will not be entertained unless sufficient cause is shown for the delay in making the request within the time limit specified above and the circumstances shown clearly that the request could not have been made at an earlier stage. No request for access to additional documents will be entertained after the completion of the inquiry unless sufficient cause is shown for not making the request before the completion of the inquiry.

4. Shri HARI NARAN is further informed that he may, if he so desires, take the assistance of any other railway servant / an official or a Railway Trade Union or a retired railway employee (who satisfies the requirements of rule 9(9) (a)&(b) of the Railway Servants (Discipline & Appeal) Rules, 1968 as amended vide Amendment Rules, 1970 and note 1 and or note 2 thereunder as the case may be) for inspecting the documents and assisting him in presenting his case before the Inquiring authority in the event of an oral inquiry being held. For this purpose he should nominate one or more persons in order of preference. Before nominating the assisting railway servant (s) or Pky. Trade Union official (s) or a retired railway employee, Shri HARI NARAN should obtain an undertaking from the nominee (s) that he (they) is / are willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of their case (s), if any, in which the nominee (s) has already undertaken to assist and the undertaking should be furnished to the undersigned alongwith the nomination.

Hari Naran

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5. Shri Hari Narain is hereby directed to submit to the undersigned a written statement of his defence within 10 days of receipt of the memorandum, if he does not require to inspect any documents for the preparation of his defence, and within 10 days after completion of inspection of documents if he desires to inspect documents if he desires to inspect documents, and also-

(a) to state whether he wishes to be heard in person, and

(b) to furnish the names and addresses of the witnesses, if any, whom he wishes to call in support of his defence; and

(c) to furnish a list of documents, if any, which he wishes to produce in support of his defence.

6. Shri Hari Narain is informed that an inquiry will be held only in respect of the articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

7. Shri Hari Narain is further informed that if he does not submit his written statement of defence within the period specified in para 5 or does not appear in person before the inquiring authority or otherwise fails or refuses to comply within the provisions of rule 9 of P.W. Servants (Discipline & Appeal) Rules, in pursuance of the said rule, the inquiring authority may hold the inquiry ex parte.

8. The attention of Shri Hari Narain is invited to Rule 20 of the P.W. Servants (Conduct Rules) 1966 under which no railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri Hari Narain is aware of such a representation and that if it has been made at his instance no action will be taken against him for violation of Rule 20 of the Railway Servants (Conduct) Rules, 1966.

Hari Narain

9. The receipt of this memorandum may be acknowledged.

CC: Annexures I, II, III & IV

( N. S. Bedi )  
Assistant Commercial Superintendent  
Senior Divi. Commercial Superintendent  
LUCKNOW

10.

Shri Hari Narain,  
Coach Attendant, Lucknow  
Through: Divl. CII/Lucknow.

Annexure-I.

Article of charge against Shri Hari Narain, Coach Attendant, Lucknow.

.....

That Shri Hari Narain while functioning as Coach Attendant, N. Railway at Lucknow during September, 1978 failed to maintain absolute integrity and committed misconduct in as much as he offered a bribe of Rs. 400/- on 13.9.78 to Shri P.P. Singh, Additional Private Secretary to the Minister of State for Railways in his office at Rail Bhavan, New Delhi for getting his promotion to the post of Ticket Collector .

Thus thereby said Shri Hari Narain contravened rule No. 3(1) of Railway Services Conduct Rules, 1966.

( N. S. Bedi )  
Asstt. Commercial Superintendent (ID)  
LUCKNOW.

Annexure - II

Statement of imputation of misconduct on the bases of which article of charge has been framed against Shri Hari Narain , Coach Attendant, Lucknow,

.....

Shri Hari Narain was working as Coach attendant, Northern Railway Lucknow during September, 1978 at Lucknow . He has been working as Coach attendant since 9.7.1969. He appeared for the departmental examination for the post of Ticket Collector and there after appeared in the interview of this post on 12.9.78. On the same day he met Shri Charan Singh , Public Relation Officer to Speaker Vidhan Sabha , Uttar Pradesh and requested him to address a recommendatory letter to Shri P.P. Singh, Additional Private Secretary to Minister of State for Railways for his promotion .

Hari Narain

FOR

Handwritten signature and initials

Accordingly he obtained a letter dated 12.9.78 from said Shri Narain Singh addressed to Shri H.P. Singh in a open envelope. After obtaining the said Shri H.P. Singh letter he put Rs.400/- in the said envelope, closed the same and there after on 13.9.78 handed over the same to said Shri H.P. Singh. The said envelope was opened by Shri H.P. Singh in the presence of Shri Nam Dass Agarwal C/o Shri Rameshwar Dass Agarwal r/o Shri Ram Chavan, Chandrak (Orissa) and S. S. Trivedi, Deputy Director, Intelligence Bureau, Ministry of Home Affairs, and it was found to contain Rs.400/- beside the said letter. On being asked by Shri H.P. Singh about the money, Shri Hari Narain folded both his hands and told that the case of his promotion was held up.

Thus said Shri Hari Narain committed misconduct in contravention of Rule 3(1) (i) of Railway Services Conduct Rules 1966.

( N. S. Bedi )  
Asstt. Commercial Instdt. (I)  
Lucknow.

Annexure-III.

List of witnesses.

1. Shri H.P. Singh, Addl. Private Secretary to the Minister of State for Railways.
2. Shri Nam Dass Agarwal C/o Shri Rameshwar Dass Agarwal, B/o Shri Ram Chavan Chandrak, National Highway (Orissa).
3. Shri Satya Deo Trivedi, Dy. Director, Intelligence Bureau, Ministry of Home Affairs.
4. Shri Keshwa Pand C/o Shri Ganga Dutt C/o B3, Li Sanj Lodi Road, New Delhi, Peon, in the Secretariate in the Minister of State for Railway.
5. Shri D.U. Vanjani C/O Shri Usha Ram W/o 2/8, Ram Nagar, Railway Colony, New Delhi working as Assistant in the Secretariate of the Minister of State for Railways.
6. Shri R.K. Jain, Director (Vic), Railway Board, Ram Chavan, New Delhi.
7. Shri Joga Prasad, Addl. Director (Vic) Railway Board, New Delhi.

Hari Narain

8. Shri Sharam Singh, P.T.O. to Speaker Vidhan Sabha, Uttar Pradesh, Lucknow.
9. Shri Sunder Lal Jain, S/o Shri Lathan Lal Jain, R/o #7/4, Asaf Ali, Lucknow.
10. Shri M. Khan, Dy. S.P. Singh SP/CSI/CO/4/-44 Delhi Branch, New Delhi.
11. Shri S. Mukherjee, Inspr /SP/CSI/CO/4/ Delhi Branch, New Delhi.
12. Shri V. Gargwal, Senior Divisional Personnel Officer, Northern Railway, Lucknow.
13. Shri Arshan Singh, Inspr /SP/CSI/CO/4/ Delhi Branch, New Delhi.

( M. S. Bedi )  
Assistant Coml. Superintendent (ID)  
Lucknow.

Annexure -IV.

LIST OF DOCUMENTS.

1. Original compl int of Shri S.P. Singh, Addl. P.O. to ASP dated 13.9.78 addressed to Supt. of Police, SP, Delhi Branch, New Delhi.
2. FIR of case PC 35/78-LI dated 13.9.78.
3. Memo of personal search dated 13.9.78 of Shri Narain.
4. Letter dated 13.9.78 from Shri Sharam Singh, Public Relation Officer to Speaker Vidhan Sabha, Uttar Pradesh, Lucknow addressed to Shri Narendra Pratap Singh.
5. Envelope in torn condition bearing the seal of Speaker Vidhan Sabha, Uttar Pradesh addressed to Shri Narendra Pratap Singh First P. State Mly. Minister, Govt. of India, New Delhi.
6. Site plan of the place of occurrence of crime in case PC 35/78-LI dated 13.9.78.
7. G.S. notes of Rs. 50/- each numbering eight total Rs. 400/-
8. Selection papers for the post of Ticket Collector from Class IV staff held during 1976 and 1978 of Lucknow Division.
9. Personal file of Shri Hari Narain, Coach Attendant, Northern Railway, Lucknow.

( M. S. Bedi )  
Asst. Commercial Superintendent (ID)  
Lucknow.

Narain

In the Hon'ble High Court of Judicate at Allahabdd  
Lucknow Bench, Lucknow.

Civil Misc. Writ Petition No. of 1981

Hari Narain ... .. Petitioner  
Vs.

Division Manager, Northern Railway,  
Lucknow & Others ... Respondents

Annexure- 5

To,

The Asstt. Commercial Suptd. (I),  
Northern Railway,  
Lucknow.

Through Proper Channel.

Ref:- Your memorandum of Chargesheet No. Vig/5/SPE/  
78/LCS Dated 30.3.79 (received on 3.4.79)

Sir,

With reference to your memorandum of chargesheet  
cited above calling upon the applicant to submit written  
statement of the defence, it is respectfully submitted as  
under:-

1. That alongwith the aforesaid memorandum of charge-sheet there is a list of witnesses (Annexure-III) by whom and list of documents (Annexure-IV) by which the Charges levelled against the applicant is proposed to be substantiated in the enquiry.
2. That inspite of the above facts, the meorandum of chargesheet is not accompanied by a copy of the documents relied upon and as mentioned in the said list of documents (Annexure. IV) to enable the applicant to submit written statement on his defence.
3. That notaly the above but also the adminstration has not mentioned the relevency of the prosecution witnesses as shown in the list of witnesses (Annexures-III) and as such the applicant is not aware as to what part of the prosecution story will be proved by the said witnesses, which outht to have been made known to him before hand to enable him to ask for the relevant and concerning additional documents so as to cross-examine witnesses well in the enquiry to find out truth.

Hari Narain

4. That for reasons stated above, the applicant is handicapped to submit list of additional documents necessary for defence, Not only this but also the applicant, for the said reasons, will have to face substantial loss in defending his case in the enquiry in case the material asked for is not made available to him and as such it will result into failure of justice.
5. That since the applicant is not a well educated person and also the case being made out of a complaint from Shri H.P. Singh, Addl. P.S. to MSR, the more inspection of the documents asked for will not serve the propose and in that way, the applicant defence is bound to suffer serious prejudice, which shall result into failure of justice.

In view of the facts and circumstances stated show, it is respectfully prayed that in order to submit written statement of defence, list of additional documents and to undertake a proper defence in the enquiry proposed to be held, the applicant be given the following:-

1. Attested copy all the documents relied upon except item no. 7 and 9 vide list of documents (Annexure-IV) annexed with the memorandum of C/Sheet.
2. Relevancy of all the prosecution witnesses as shown in the list of witnesses (Annexure-III) annexed with the memorandum of Charge-sheet showing as to what part of the prosecution story will be provided by them.
3. The personal file of the applicant (Item 9) be also returned to him to defend the case.

It is hoped that the applicant would not be deprived of his right to get adequate opportunity of defence as prayed.

Thanking you,

Yours faithfully,

Sd/- Hari Narain  
Coatch Attendant

Under Suspension/LKO.

Dated: 10.4.79

*Hari Narain*

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

Civil Misc. Writ Petition No. of 1981

Hari Narain ... .. Petitioner  
Vs.

Divisional Manager, N.R. Lucknow  
and Others ... .. Respondents.

Annexure- 6

DEFENCE BRIEF IN THE CASE OF SHRI HARI NARAIN, COACH ATTENDANT

\*\*\*\*\*

In reference to Order Sheet dated 16.5.81 a written brief in four copies is submitted for kind consideration before findings are drawn on each charge.

- 1) There were 13 witnesses from prosecution side but only S/Sri S.D. Trivedi, Keshwa Nand, B.U.Vanjani, R.K. Jain, Darshan Singh and A.A. Khan were produced during enquiry. rest were not produced by the Presenting Officer.
- 2) Since the action is to be taken against the defendant on the basis of documents adduced during the course of enquiry and the witnesses attended the enquiry, the brief for defence is totally based and limited to the same.
- 3) As per extant rules unless cross-examination of any witness is not allowed to the defendant or his helper the statement recorded in fact finding enquiry can not be taken into cognizance either for defence or for prosecution. It is, therefore, requested that witnesses who have been procured and adduced during the course of enquiry can only be taken into consideration and no cognizance should be given to any other witness or documents to plead the defendant guilty of the charge.
- 4) According to the memorandum issued by ACS/LKO the defendant has been charged for not maintaining absolute integrity and committed mis-conduct in as much as he offered a bribe of Rs. 400/- on 13.9.1978 to Shri H.P. Singh, Addl. Private Secretary to Minister of State for Railways in his office at Rail Bhawan, New Delhi for getting his promotion to the post of Ticket Collector.
- 5) According to the statement of Imputation of mis-conduct on the basis of which article of charges have been framed against the defendant are that he appeared for the examination of Ticket Collector and thereafter he was interviewed on 12.9.78 and on the same day he met Shri Dharam Singh, P.R.O., Speaker, Vidhan Sabha, U.P. and requested him to address a recommendatory letter to Shri H.P. Singh, Addl. P.S. to MSR for his promotion.

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4/12

Hari Narain

6) The second Imputation of mis-conduct was that after obtaining an open envelope and the said letter he put Rs. 400/- in the said envelope, closed the same and thereafter on 13.9.78 handed over the same to the said Shri H.P. Singh.

SUBMISSION

7) That none of the witnesses during the course of enquiry has said that the defendant put Rs. 400/- in the said envelope, neither there is any documentary or oral evidence against him to this fact. None of the witnesses has said that the envelope was opened and he gummed it after putting Rs. 400/- So the question of putting money insite the envelope is not proved during enquiry on the basis of evidece adduced.

8) That none of the witnesses has said that the so called money which was in the envelope was offered to Sri H.P. Singh as bribe even if it was found under any circumstances- in the envelope.

9) The first document is F.I.R. dated 13.9.78 which Ex. B/2. This F.I.R. is addressed to SP/SPE, New Delhi. It is also a fact that the defendant was implicated and got arrested. It is also a fact that he was bailed. It is also a fact that no substantial evidence could be adduced in his case to proceed court of law and therefore this short-cut method of departmental enquiry (proceedings) to sack the innocent employee has been adopted otherwise if the evidence was sufficient to prove the charge why C.N.I. failed to proceed in the court is to be taken into consideration which is a vital fact, because witnesses were of most high is a vital fact, because witnesses were of most high dignity like Sri S.D. Trivedi, Dy. Director, Int., Addl. P.S. to MSR Sri R.K. Jain, Director Vigilance etc. and these gentlemen would have stood like a rock of evidence but the case was not tried by C.B.I. since there was no evidence at all.

Handwritten signature and date 4/12

10) The first witness which was adduced during enquiry was Sri Keshwanand, Peon to MSR. The defendant has already said in his statement that there were two peons, one Peon was Keshwanand who was deputed to MSR, Addl. P.S. to MSR had another peon and it is now clear that Shri Keshwanand was not the Peon of Addl. P.S. to MSR, Addl. P.S. to MSR who took the envelope from him at 10 O. Clock and put the same on the table of Addl. P.S. to MSR who was not present in his room at at that time. Right from 10 AM to 13 PM what happened with that envelope is not known either to the defendant or to P.S. to MSR. He has also mentioned in his statement that he remained standing out side the room of Addl. P.S. to MSR. He has also mentioned in his statement that he remained standing out side the room of Addl. P.S. to MSR right from 10/- to 13/- O' Clock and when he saw that officers will go for lu-nch, he without permission forcibly entered into the room of Sri H.P. Singh and handed over another envelope containing representation of his own addressed to M.S.R.

Handwritten signature: Hanuman

and also gave a reference of previous letter of Shri Dharam Singh, P.R.O. This fact has been accepted by Shri Keshwanad in his statement and he has also said that he warned the defendant that he should not enter into the chamber of Addl.P.S. to MSR without permission.

11) The defendant was continuously being ignored and denied his promotion. He had offered a written representation right from D.C.S. to the President of India, being a Govt. servant and therefore he correctly made a written representation for redressal of his grievances.

12) From the contents of letter dated 12.9.78 from Shri Dharam Singh, PRO which at Ex.P/4 none can say that it was a recommendatory letter but it was a letter written by a government servant fully paid to another government servant who is fully paid by the Government of India. Moreover it is the business of that man and the terms with the officer to whom he writes and therefore the contention of P.O. as mentioned in his brief that the defendant procured a recommendatory letter is baseless, unfounded and false.

13) Another witness Sri B.U. Vanjani who was sitting in the room nearby the Addl. P.S. to MSR and did not know anything and therefore even by this witness the charges against the defendant could not be proved, rather he has unnecessarily been adduced by the P.O.

14) The third witness was Sri R.K.Jain, Director Intelligenece, Railway Board. He is also not an eye witness of even presenting the said letter. According to his statement the defendant was not present in the room of Addl.P.S. to MSR and therefore this witness of high dignity could not throw any light except the story which was prepared against the defendant. The presenting Officer in his brief of prosecution with Sri Keshwanand P.W.1 had witnessed the defendant presenting the envelope to Shri H.P.Singh but Shri Keshwanand in his statement said that he was called by Sri H.P. Singh and he did not even see presenting the envelope and thus the brief of P.O. on this particular fact is not based on evidence.

15) Another witness Shri Dharam Singh, Inspector, SPE/NDS who has investigated the case has also said that the transaction of so called bribe was not done in his presence and he had merely investigated this case after the incidence. He has also admitted in cross-examination that the case was not filed in a court of law. The most interesting fact has been admitted by Sri Dharam Singh in his examination-in-chief that all the witnesses supported the prosecution story that the defendant had offered a bribe of Rs.400/-. Thus the use of word 'STORY' itself speaks the truth because it was a concocted story based on beauracratic anger and it was not a fact, otherwise the Inspector of SPE Sri Singh would have not used the word 'STORY' and should have used the word case. Thus a poor employee cannot be held responsible for a story as admitted by the prosecution Inspector Shri Singh.

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and also gave a reference of previous letter of Shri Dharam Singh, P.R.O. This fact has been accepted by Shri Keshwanad in his statement and he has also said that he warned the defendant that he should not enter into the chamber of Addl.P.S. to MSR without permission.

11) The defendant was continuously being ignored and denied his promotion. He had offered a written representation right from D.C.S. to the President of India, being a Govt. servant and therefore he correctly made a written representation for redressal of his grievances.

12) From the contents of letter dated 12.9.78 from Shri Dharam Singh, PRO which at Ex.P/4 none can say that it was a recommendatory letter but it was a letter written by a government servant fully paid to another government servant who is fully paid by the Government ~~gov~~ of India. Moreover it is the business of that man and the terms with the officer to whom he writes and therefore the contention of P.O. as mentioned in his brief that the defendant procured a recommendatory letter is baseless, unfounded and false.

13) Another witness Sri B.U. Vanjani who was sitting in the room nearby the Addl. P.S. to MSR and did not know anything and therefore even by this witness the charges against the defendant could not be proved, rather he has unnecessarily been adduced by the P.O.

14) The third witness was Sri R.K.Jain, Director Intelligenece, Railway Board. He is also not an eye witness of even presenting the said letter. According to his statement the defendant was not present in the room of Addl.P.S. to MSR and therefore this witness of high dignity could not throw any light except the story which was prepared against the defendant. The presenting Officer in his brief of prosecution with Sri Keshwanad P.W.1 had witnessed the defendant presenting the envelope to Shri H.P.Singh but Shri Keshwanad in his statement said that he was called by Sri H.P. Singh and he did not even see presenting the envelope and thus the brief of P.O. on this particular fact is not based on evidence.

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Har Narain

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16) Another witness was Shri A. A. Khan, Dy. S.P./SPE, New Delhi. He has also admitted in cross-examination that the so called bribe did not take place in his presence. He has also mentioned that the defendant had admitted his guilt in presence of Sri H.P. Singh, Ram Das Agarwal and Sri D.K. Chopra but all these three gentlemen have been dropped by the P.O. and therefore no reliance can be placed on the statement of Sri Khan as there was no such evidence otherwise P.O. must have adduced these gentlemen as a prosecution witness to establish the fact. Sri Khan also did not record any statement because the case was transferred to Sri Darshan Singh.

17) The last prosecution witness was Sri S.D. Trivedi, Dy. Director, Intelligence. He was also along with Sri H.P. Singh and was not present in the room when the defendant had sent the envelope through peon. According to his statement given U/S 161 Cr.P.C. to investigating Inspector on 27.9.78 i.e. after 14 days clearly shows that he was sitting with the Minister and when the Minister got up saying that he was going for lunch, he accompanied Shri H.P. Singh Addl. P.S. to MSR who was also present in the room of Minister. This corroborates the statement of the defendant that when the envelope was sent through Peon at about 10/-A.M. the Addl. P.S. to MSR was not in his room and few people were waiting has already been established by the prosecution. Shri Trivedi in cross-examination stated that he was busy in reading a paper and his attention was only drawn when when Shri H.P. Singh uttered "Yeh Kya Hai" Now the following facts may be given due consideration as to how this prosecution witness can be relied upon:-

i) He was busy in reading a paper. Thus how he can see handing over an envelope to Sri Singh as he has already admitted that his attention was only drawn when Sri H.P. Singh said "Yeh Kya Hai."

ii) The envelope was closed. It was handed over and then it must have been seen because it was bearing seal of U.P. Govt. and then it was torn. Thereafter the letter was taken out along with the contents from the envelope and then Sri H.P. Singh said that "Yeh Kya Hai" and only then Sri Trivedi must have turned his eyes from the news-paper towards Shri Singh. It means that Shri Trivedi did not see physically handing over the envelope by the defendant. In his cross-examination he has said that he has never mentioned that it was a bribe even if there was money inside the envelope. Thus the so called recovered money from the envelope was not a bribe is established because neither the defendant nor any prosecution witness has said that the defendant offered Rs. 400/- to Shri H.P. Singh by saying that it is a bribe, which should be accepted by him and he should be promoted.

iii) Shri S.D. Trivedi, P.W./7 has also established that the envelope was gummed and this Ex. P/5 was examined by him during the cross-examination and it was certified that it was in pasted condition and it was torn open subsequently. Shri H.P. Singh was a political man and was appointed Addl. P.S. to MSR, there can be 100 rivals to

Har Narain

such personality and some body might have done mischief to defame Addl.P.S. to MSR since the envelope remained at his table right from 10 AM to 13 AM.

18) The presenting Officer has relied upon the statement of Sri Dharam Singh, PRO. He has also mentioned that the statement was recorded U/S 161 Cr. PC. No statement given before a Magistrate and therefore the statement of Sri Dharam Singh, what-so-ever it may be can not form a part of enquiry proceedings and therefore the contention of P.O. mentioned in his brief is unfounded and he has acted beyond jurisdiction.

19) So far utterance narrated by Sri Trivedi is concerned that "Saheb Galti Hoo Gai Maaf Kya Jaaye. Hamare Bibi Bachchey Hain" has not been said to have been correct because he himself has said that defendant uttered in no voice something to Sri Singh. Unless the P.O. inspect the spot and find out the distance between the defendant, Sri Trivedi and Sri H.P. Singh, the statement to this effect can not be relied upon. Since P.O. has dropped Ex. E/6 (Site Plan) thus the defendant could not get a chance to defend himself in absence of site plan which was intentionally dropped by P.O. If the site plan would have been given it was quite possible for the defence to establish that the distance between all the three viz. the defendant, Sri Trivedi and the Addl. P.S. was such that it was not possible for him to hear.

FACTS AND GROUNDS OF APPEAL

20) It is a fact that the defendant was worried as he was ignored in viva-voce to be promoted as T.C. Every railway servant has right to represent upto President of India if he feels that he has not got justice. It is established during the enquiry that he was ignored in 1976 also and therefore he had represented his case to D.S.R. to find out justice and there was no question of recommendation or help from Addl. P.S. to M.S.R.

21) So far the question of giving Rs. 400/- as bribe is concerned it can not be imagined that Addl. P.S. to M.S.R. can be purchased in Rs. 400/-. It is a common factor that even bribe is offered, it is offered keeping the status of that man and therefore bribe of Rs. 400/- only as alleged was too meagre for the status of Addl. P.S. to MSR and thus it can be said that it was only a concocted story.

22) So far I believe, the act of defendant of entering into the Chamber of Addl. P.S. to MSR specially when Sri Trivedi and other gentlemen were available was taken as an insult or unnecessary interference in their talks and he might have threatened him for giving him to Vigilance or SPE and the defendant felt sorry for entering into his room without permission as well as bringing a letter from Shri Dharam Singh who was not belonging to the same party to which Addl. P.S. to MSR was belonging or M.S.R. was belong.

*Har Manu*

23) For argument sake the defendant could have pleaded very easily that he brought a letter and put his own money in the envelope as he had to pocket and handed over the said envelope to Sri H.P.Singh in hurry and in this way there was no case but this pleas was not taken by him since he is a Class IV employee and innocent man. Therefore he simply denied that he did not offer any money.

24) Even a foolish man can not act in such a manner to give bribe to such a high dignity in face of so many persons and therefore the story made by SPE and presented by P.O. can not be believed.

Under the facts mentioned in this brief of defence and evidence adduced during enquiry oral or recorded it is proved beyond doubt that it was a story and not a case of bribe and therefore the defendant be let of.

Counter signed

Sd/- Hari Narain  
Defendant

Sd/-V.P.Trivedi  
Defence Counsel

Dated: 20.5.1981.

8/12

Hari Narain

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

Civil Misc. Petition No. \_\_\_\_\_ of 1981  
Shri Narain ... .. Petitioner  
Versus

Divisional Manager, N.W. Lucknow  
& others ... .. Respondents.  
Annexure 7

Confidential  
No. Vig/3/SPE/70/LCS

Enquiry Report in the ... Enquiry proceedings in the case of  
Shri Hari Narain Coach Attendant Northern Railway, Lucknow.

PREAMBLE.

1. In terms of Rule 9(2) of the Railway Servants Discipline and  
Appeal Rules, 1968, Shri D.J.D. Cunha, Enquiry Officer, (Vig) was  
appointed as inquiring authority in this case vide disciplinary  
authority (Sr. D.C.O., Northern Railway, P.M. Office, Lucknow) to  
enquire into the charges as brought out against Shri Hari Narain,  
Coach Attendant Northern Railway, Lucknow vide Memorandum  
chargesheet No. Vig/3/SPE/70/LCS dated 30/3/1979. The enquiry was  
partly conducted by Shri D.J.D. Cunha and consequent upon his  
transfer, the disciplinary authority nominated and appointed A.N.  
Littal as inquiring authority vide his order dated 14/4/1981 in  
place of Sh. D.J.D. Cunha, in terms of Rules 9(2) of the R.S. Rules, 1968  
read with Rule 9(1c). Accordingly the enquiry was completed by me.

FACTS OF THE CASE.

2. The enquiry was held on 2/7/80, 4/8/80, 22/10/80, 23/10/80,  
24/10/80, 17/12/80, 18/12/80, 30/1/81, 26/3/81, 27/3/81, 7/5/81, and 8/5/81.  
The hearing on 17/12/80 was held at Lucknow the rest of the hearing  
was held at Delhi, the enquiry was conducted in terms of the  
provision of the aforesaid Discipline and Appeal Rules, 1968 keeping  
in view the principles of natural justice.

At the out-set of the enquiry, Shri Hari Narain, Coach Attendant,  
Northern Railway, Lucknow, hereinafter referred to as the charged  
officer was presented with the following charges which were denied  
by him.



*Hari Narain*

"That Shri Hari Narain while functioning as Coach Attendant Northern Railway, at Lucknow during September, 1978, failed to maintain absolute integrity and committed misconduct in as much as he offered a bribe of Rs. 400/- on 13/9/81 to Shri H.P. Singh, Additional Private Secretary to the Minister of State for Railways in his office at Ballabhawan, New Delhi for getting his promotion to the post of Ticket Collector .

Thus thereby said Shri Hari Narain contravened Rule 3(D) (i) of Railway Service Conduct Rules, 1966".

EVIDENCE.

A. CRS.

3.1) Prosecution.

Out of 13 witnesses cited by the disciplinary authority to prove the charges, of six witnesses were produced & examined in course of the enquiry and their depositions are placed at pages of the proceedings as shown below :-

- i) Shri Aeshwar Mandreem to Railway Board. P-1 P-2 3
- ii) Shri B.U. Vanjani, Asst. Lt. P. Board. P-2 5
- iii) Shri ... Jain, Director Vigilance P. Board, P-3 6
- iv) Shri Darshan Singh, Inspector C.I. GOVT C.I. P- 4
- v) Shri ... Khan, Dy. Insp. C.I. NEDS. P-4-5 8
- vi) Shri S. D. Arivedi, Dy. Inspector Intelligence P-6 9

Shri ... Sharma, S.I. C.I. ... Delhi was appointed as presenting officer in this case by the disciplinary authority vide his order dated ... day, 1980. He marshalled the evidence on behalf of the disciplinary authority.

/ Shri Charan Singh, Sunder Lal Jha, Lakraj and Yogiendra Rajpal, prosecution witnesses, have been dropped by the presenting officer as mentioned in the ordersheet dated 17/12/80, 26/3/81, 32/10/80 and 17/5/81. S/ Shri ... P. Singh, Ambassador, Agarwal, V.A. Agarwal have not appeared in the enquiry inspite of ample opportunities having been offered to them to attend the enquiry. However Shri H.P. Singh, who was working as private secretary to ... at the time of incident, appeared before the enquiry officer on 7/5/81 immediately after the presenting officer had sought an adjournment for arranging his ... Shri S.D. Arivedi.

*Hari Narain*

attendance in the afternoon on 7/5/81. Shri. H.P. Singh, finding the presenting officer being not available, handed over a letter marked as Ex. E-17 stating that he had to attend some other urgent work and had further time to attend the enquiry. Under the circumstances evidence of Sh. H.P. Singh could not be recorded. The presenting officer could not arrange attendance of the witnesses mentioned in this paragraph above and closed the prosecution case without their deposition.

4.i) Defence.

The Charged Officer was assisted by Sh. V.F. Trivedi, Jr. W.M.I. Northern Railway, Lucknow in presenting his case. The Charged Officer submitted his written statement of defence vide para 10 of the Enquiry proceedings and was examined by the Inquiring Authority vide page 11-12. The Charged Officer did not produce any defence witness in his defence.

ii) ACCUSATION.

4.i) Prosecution.

The documents marked as Ex. E-1 to E-17 as per Annexure IV.

i) Defence.

The documents marked as Ex. G-1 as per Annexure IV.

ii) Enquiry Officer.

The document marked as Ex. C-1 as per Annexure IV.

Written briefs of U and DDO have also been taken into consideration while drawing the findings infra.

LEGEND AND DELISTION OF EVIDENCE ON THE CHARGES.

5. According to the imputations of misconduct / misbehaviour, Shri Hari Narain while working as Coach Attendant during September, 1978, at Lucknow, appeared in the departmental examination for selection to the post of ticket collector and appeared for interview on 12/9/79. On the same day he met Sh. Charan Singh, Public Relation Officer to speaker, Jhansi Bahadur Prasad requested him to address a recommendatory letter to Shri H.P. Singh M.D. Private Secretary to Minister of State for Railways to facilitate his promotion.

*Hari Narain*

After obtaining a letter dated 12/9/70 from Sh. Charan Singh addressed to Sh. H.P. Singh in an open envelope he put currency notes worth Rs. 400/- in the said envelope, closed it and thereafter handed it over on 13/9/70/ to Sh. H.P. Singh. On opening the said envelope by Sh. H.P. Singh in presence of S/Ch Ram Dass Agarwal and S. S. Arivedi Dy. Director, Intelligence Bureau, Ministry of Home Affairs, it was found that the said envelope contained Rs. 400/- besides the said letter. On being questioned by Sh. H.P. Singh, the Charged Officer, with folded hands, narrated that his case for promotion had been held up.

6. The Charged Officer admitted that he had been working as Coach Superintendent, Under Div. Lucknow, on the aforesaid date still continued to be work as such, that his case for promotion as ticket collector was pending and he approached Sh. Charan Singh P.O. through Sh. S.C. Tewari S.I. to secure justice in the case and also to exercise influence towards this end effort was made to contact Shri H.P. Thigdon phone but he was not available. The Charged Officer again met Sh. S.C. Tewari and Sh. Charan Singh at the residence of Shri Mansi Dass when Sh. Tewari procured and handed over envelope to the Charged Officer addressed to Sh. H.P. Singh, Additional Private Secretary to the Minister of State for Railways. The Charged Officer delivered the envelope to Sh. H.P. Singh through his peon on 13/9/70/ at about 10hrs. in the evening. The charged officer denied to have any knowledge if Sh. H.P. Singh was available in his room and stated that he could not meet him till 13-00 hrs without permission and ignoring the peon he entered his room handed over to him the envelope (Ex. F-5) giving a reference of Sh. Charan Singh P.O. according to the C.O. Sh. Singh did not the said introductory letter and commented " yey kya hai. Charan Singh, doosri party ke admi hain " On which the C.O. replied hasan kya maloom. Balti he gayse ." The C.O. was pushed out of the room. Thus the charged officer denied having put any money inside the envelope amounting to Rs. 400/- handed over to Sh. H.P. Singh on 13/9/70/, though he admitted to have delivered the envelope and identified the Ex. F-5 to be the same envelope which was delivered by him to Sh. H.P. Singh. Thus he admitted the fact of delivery of the envelope (Ex. F-5) in question.

Handwritten signature and initials, possibly "H.P. Singh" and "M/V".

Handwritten signature: Hari Narayan

possession, knowing that it contained notes found therein.

7. Shri ... Hand Teon to ... -1 while ... the contents of Ex.P-7 recorded under Section 161 Cr. P.C. denied a portion of the statement underlined in red and stated that he was called inside the room by ... M.P. Singh Adl. P.C. to ... Shom Ch. H.F. Singh enquired as to how the charged officer had come to his room the witness told that the charged officer had come there without his permission.

8. Shri ... Vanjani, Assistant ...-2, deposed that on the date of incident he was sitting in the room near to that of Sh. H.F. Singh Additional Private Secretary to the Minister of State for Railways. He could throw no light on the charges levelled.

9. Shri ... Jain, Director Vigilance, Railway Board, P-3 deposed that he was contacted by Sh. H.P. Singh at about 10.00 hours on 13/9/78 to deal with a case of a person who had offered bribe of Rs. 400/- ... the time of his arrival in Sh. Singh's room, the charged officer was not present in the room. He advised Shri ... Singh that the matter was to be dealt with by the CBI and later he arranged summoning of CBI personnel through his Adl. Director, Shri Rajpal. The witness deposed that he had seen the C.S notes of Rs. 400/- in the denomination of Rs. fifty each, which were shown to him by Sh. H.F. Singh after taking out the same from an envelope which was similar to Ex-5 and bore seals. He had also seen the letter but can not say if he had read it.

10. Shri ... Singh Inspector ... CBI ... Delhi Branch P-4 investigated the case (705/70) after the case was transferred to him by the original I.C.M. ... when by ... CBI. He deposed that the documents Ex.P-5 containing the recommendatory letter from Sh. Charam Singh and the currency notes Ex. P-5 to P-15 were seen by him and on the basis of the evidence collected by him, he had come to a conclusion that Rs. 400/- were offered by the charged officer as bribe. He however admitted that the transaction did not take place in his presence. According to him Sh. A.D. Agarwal and S. J. Privedi were in the room witness. He stated that he had contacted Sh. Charam Singh who acknowledged to have written Ex.P-4.



11. Sh. S. S. Khan, Dy. SP, JPB 221 (P-5) was entrusted with the investigations of this case at initial stage. According to him Sh. H. F. Singh Adl. 7 to MSJ produced an envelope Ex. F-5 which contained letter Ex. F-4 and C.C. notes of Rs. 400/- in the denomination of Rs. fifty each, now available as Ex. F-5 to F-15. A case was registered by CBI on receipt of Sh. H. F. Singh's complaint dt. 13/9/70/ (Ex-1) which was incorporated in the FIR P-5 deposed that the charged officer had admitted his guilt of offering a bribe of Rs. 400/- before him as his case was held up for promotion and so he obtained a recommendatory letter but the transaction did not take place in his presence. ~~He confirmed that the case & transaction did not take place in his presence.~~ He confirmed that the case was transferred by him to Shri Jarshan Singh, Inspector CBI after conducting part investigation in the matter.

12. Shri S. J. Pravedi, Director, Intelligence Bureau (P-6) admitted the contents of Ex. F-16 to have been correctly reordere<sup>d</sup> by the I.I. He confirmed that Ex. F-5 was opened in his presence by Sh. H. F. Singh while he was sitting in his room on 13/9/70/. The witness identified C.C. present in the enquiry as the person who had handed over the envelope Ex. F-5 to Shri H. F. Singh. Shri S. J. Pravedi categorically confirmed that on Sh. H. F. Singh's saying 'Yea kaya hai' when a wad of C.C. notes of Rs. 50/- denomination fell on the table from the envelope, the charged officer had replied that "Jehib Galti hai mauf niya jai hamars bibi Lacha hain." He also confirmed that Sh. Jain, Director Vigilance was contacted by Sh. H. F. Singh and come in his room immediately.

13. Both the presenting officer and the helper of the charged officer have submitted their briefs in support of their version of the case. The charged officer vide para 6 above had admitted having delivered the envelope of offering bribe to Sh. H. F. Singh but has pleaded not guilty of the charge and the helper contended that the charged officer being ignorant of his promotion had approached Sh. H. F. Singh for justice but the letter had laid out a case against C.C. on account of political rivalry.

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Handwritten signature: Han Narain

to disprove the allegation of offering bribe he has relied on the evidence gap that none of the P.S has deposed that the C.O had put Rs. 400/- in the envelope nor there was any documentary evidence to prove this allegation. He has ventured even a hypothetical plea that the charged officer could have put his own money, having no pocket on his shirt, and handed over the envelope in hurry to Sh. H.P. Singh. The hypothesis is far too imaginary to be given any evidentiary significance & rather gives an insight into the defence thinking to venture all sorts of pleas to save their skin.

14. Taking into account the documentary evidence contained in ex. F-1 C-1 and C-1 the oral evidence tendered before the Inquiring Authority, it is clear that the coach attendant & the post of ticket collector was reading and the charged officer had turned a political source to help him. It is established beyond doubt that the promotion case of Sh. Hari Narain Coach attendant to the post of ticket collector was pending and the charged officer had turned a political source to help him (ex. F-4) in the matter through Sh. Tiwari, J.I. and got a recommendatory letter from Sh. Sharam Singh MCO to the Speaker, Legislative Assembly U.P. in the name of H.H.P. Singh, J.I. Private Secretary to C.M. It may or may not be coincidental but is patently significant that the persons directly concerned with the letter (ex. F-4) & envelope (F-5) i.e. Sh. Tiwari, J.I., Sh. Sharam Singh P.S.S and Sh. Tiwari, J.I. a potential D. have not deposed before this enquiry & using an evidence gap both in the prosecution and defence case equally. But the evidence gap can be fairly bridged by the depositions of other witnesses PW-6 Sh. S.D. Tiwari Dy. Director, Intelligence Bureau confirmed that ex. F-5 is the envelope which was handed over by the charged officer and this envelope contained the currency notes of Rs. 400/- ex. F-6 to F-15 in the shape of denomination of Rs. fifty each. Shri A.N. Jain, Director Vigilance, Railway Board PW-3 also confirmed that the envelope ex. F-5 seen by him is similar and bore the seal. It is also established that the transaction did not take place in presence of any witness except PW-6, who had confirmed that ex. F-5 is the same envelope from which the notes had fallen on the table when Sh. H.P. Singh took out the recommendatory letter ex. F-4 from the envelope.

Han Narain

15. Where as all other elements have been settled by the evidence on record, the only question before the Inquiring Authority is as to whether Sh. Hari Narain, Coach Attendant had offered Rs. 400/- as bribe to Sh. H.P. Singh while handing over the envelope Ex. 1-5 brought by him with a recommendory letter from Sh. Dharam Singh, PRO through Sh. to the Officer H.P. to seek assistance from Sh. H.P. Singh in connection with his promotion as Ticket Collector from the post of the Coach Attendant. It is significant that the charged officer has admitted that he had brought the recommendory letter for help Sh. Dharam Singh, PRO through Sh. Hari Narain, who is known to the charged officer. Taking into account the totality of oral documentary and circumstantial evidence it is clear that the charged officer getting no relief as stated by him from the repeated requests to the administration for his promotion felt that he was left with no alternative but to bring influence from Sh. H.P. Singh on the authorities for getting his work done. In case the charged officer did not appear and defend any damage from the depositions of Sh. Dharam Singh and Hari Narain he would have produced them in his defence to fortify the defence else when the prosecution had failed to produce Hari Dharam Singh. These persons who had gone out of way to help him in his desire to get promotion would surely have not left him in the lurch unaided and unprotected when he was facing the charge that had stemmed from the very recommendory letter given to him by them. The obvious inference is that the charged officer knowing fully the situation that he had himself put in the money, could not take the risk to produce Sh. Dharam Singh & Sh. Hari Narain in his defence to support his case because he appeared to be conscious of the fact that they would not leave him a helping hand in face of the development that had lowered their position. Before Sh. H.P. Singh, the non-appearance of Sh. H.P. Singh after making a complaint to the CBI does not in any way help the charged officer since the charged officer ~~since the charged officer~~ has admitted to have delivered the envelope to Sh. Singh & both Sh. G. Shri Privedi have deposed about Shri Singh's complaint that he found Rs. 400/- in the envelope given to him by the charged officer. The letter from Sh. Dharam Singh (Ex. 1-4) does not make any mention of sending Rs. 400/- in the envelope given to him by the charged officer.

A circular stamp with illegible text is partially visible on the left side of the page. Overlaid on it is a handwritten signature that appears to be 'H.N.' or similar initials.

Hari Narain

the letter from Mr. Sharam Singh (ex-1-4) does not make any mention of his sending it to Shri H.P. Singh through Mr. Mirari and thus the only inference preponderantly probable in this case is that the amount had been put in the envelope by the charged officer for gaining favour of Shri Singh. In such a precarious position the charged officer had no alternative but to beg apology with the words 'Mauf kar Bijie'. The evidence of Ch. S. Mirivedi 1-6, a highly placed officer, and availability of amount in ex. 1-5 itself is a sufficient proof that the money was put in the envelope before hand with a view to seek favour from Ch. H.P. Singh to get the job done. The charged officers action in obtaining a recommendatory letter and delivering it to Sh. H.P. Singh with no loss of time clearly shows that he was confident that Sh. H.P. Singh help in the form of a telephonic recommendation to some divisional authority could be of immense help to his promotion and with this belief he had procured the letter through Ch. Mirari alone with a view to bring the said letter. The charged officer has admitted that he remained outside and Ch. Mirari alone went to bring the said letter. As such Ch. Mirari could have brought the envelope in open condition with a view to satisfy the charged officer that he had done his job. The envelope was delivered in gummed condition to Ch. Singh & the only possibility of inserting the amount in the envelope could be after it had been inserted either by Ch. Mirari. There is no reason to infer that the money had been inserted either by Ch. Sharam Singh or by Shri Mirari who had handed the envelope to the charged officer.

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(16) Under the circumstances the inescapable conclusion is that the charged officer had acted in a manner unbecoming of a Railway servant procuring a recommendatory letter & offering Rs. 400/- as bribe to Mr. H.P. Singh for his personal gain to get the desired promotion.

Findings and conclusion.

The article of charge against the charged officer Ch. Mirari Mirari coach attendant stands proved.

( A.N. Mirari )

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

Civil Misc. Writ Petition No. of 1981

Hari Narain ... .. Petitioner

Vs.

Divisional Manager, N.R. Lucknow  
& Others ... .. Respondents.

Annexure- 8

NORTHERN RAILWAY

No: Vig/3/SPE/79/LCS

Divisional Office,  
Lucknow:  
Dated July 4th, 1981

Shri Hari Narain,  
Coach Attendant,  
Lucknow.

I have carefully considered the findings submitted by the Enquiry Officer in respect of the charges contained in Memorandum of Charge Sheet No. Vig/3/SPE/78/LCS dated 29/30.3.1979 and have decided as under:

"I have gone through the entire enquiry report evidences adduced and the reasons for the findings of the enquiry officer and accept the findings that the charge -

That Shri Narain while functioning as Coach Attendant, N.Rly., at Lucknow during September 1978, failed to maintain absolute integrity and committed misconduct in as much as he offered a bribe of Rs. 400/- on 13.9.78 to Shri H.P. Singh, Additional Private Secy. to the Minister of State for Railways in his office at Rail Bhawan, New Delhi, for getting his promotion to the post of Ticket Collector " stands proved.

Sri Hari Narain C.A. is, therefore, removed from service."

2. I, therefore, hold you guilty of the charge contained in Memorandum of Charge Sheet No. Vig./3/SPE/78/LCS dated 29/30.3.1979 levelled against you and have decided to impose upon you the penalty of Removal from service. You are, therefore, removed from service with immediate effect.

3. Under Rule 18 of the Railway Servants (Discipline and Appeal Rules, 1968) an appeal against

*Hari Narain*

*4/12*

these orders lies to the Addl. Divl. Railway Manager(TS), Northern Railway, Lucknow, provided:-

- (i) the appeal is submitted through proper channel within 45 days from the date you receive the orders, and
- (ii) the appeal does not contain improper or disrespectful language.

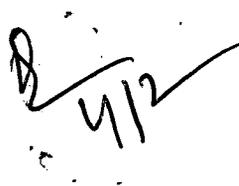
4. A copy of the findings is enclosed.

Please acknowledge receipt.

DA- as above.

Copy to:

Sdp/- S.K. Nanda  
SENIOR DIVL. COMMERCIAL SUPDT.,  
LUCKNOW.

8 APR 1955  


Har Nanda

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

Civil Misc. Writ Petition No. of 1981

Hari Narain ... .. Petitioner

Vs.

Divisional Manager, N.R. Lucknow,  
& Others. ... Respondents.

Annexure-9

To,

The Addl. Divl. Rly. Manager (TS),  
Northern Railway,  
Lucknow.

Through: Proper Channel

Subject:- Appeal against the removal order issued  
by Sr. Divl. Comml. Superintendent, Lucknow  
U/R 18 of DAR/1968.

Reference:- Punishment Notice No. Vig/3/SPE/79/LCS/  
dated 4.7.1981, received on 1.9.1981.

Having faith in your extreme sense of justice  
tinctured with generosity I beg to submit as under:-

1- I was charged " that Sh. Hari Narain while  
functioning as Coach Attendant, N.Rly. at Lucknow during  
September 1978 failed to maintain absolute integrity and  
committed misconduct in as much as he offered bribe of  
Rs. 400/- on 13.9.78 to Sri H.P. Singh, Additional Private  
Secretary to Minister of State for Railways in his  
office at Rail Bhawan, New Delhi for getting promotion  
to the post of Ticket Collector."

2- The Enquiring Officer has devoted all his  
energy in proving that letter was gummed afterwards and  
the charged officer handed over the said envelope to

Hari Narain

Shri H.P. Singh containing the recommendatory letter of Shri Dharam, P.R.O./ Vidhan Sabha, Lucknow, whereas no such reference was made in the memorandum as such this issue does not require any further comments.

3- 2ndly he tried to prove that G.C.notes were kept in the envelope by the charged officer. There is no reference of this issue in the memorandum and therefore requires no further comments.

4- That in paragraph 14 of his enquiry report he came to main charge mentioned in the memorandum "that Shri Harin Narain while functioning Coach Attendant, Lucknow offered a bribe of Rs.400/- on 13.9.78 to Shri H.P.Singh...."

The Enquiring Officer has drawn the inference in para 14. " when the prosecution failed to produce Shri Dharam Singh, PRO and Shri Tewari, it was the duty of the charged officer to produce them in his defence, since he failed to do obviously inference is drawn that charged officer knowing fully well that he had himself put in the money could not take the risk to produce them in his defence. The Enquiry Officer erred in drawing the aforesaid inference in view of that they were PWs.

5- The Inquiring Officer in his order sheet page 2 date 22.X.80 has passed the order "The statement of witness recorded by investigating officer U/S 161 Cr. P.C. has no value unless the charged officer gets an opportunity of cross-examination of the witness." Contrary to his own orders as above he has mentioned in para 14 of his finding

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that non-appearance of Sri H.P. Singh after making complaint to C.B.I. does not in any way help the charged officer, since both S/Sri Jain (PW.3) and S.C. Trivedi(PW.6) deposed about Shri Singh complaint that he found Rs.400/- in the envelope given to him by the charged officer.

6- The deviation of the Enquiring Officer from his own orders in his order sheet page 2 dt. 22.10.80 in respect of P.W. Sri R.D. Agarwal S/o Ramesh Dass Agarwal, in respect of Shri H.P. Singh complainant and to shift the burden of prosecution for producing P.Ws. Shri Dharam Singh, PRO, U.P. and Tewari S.I. on the charged officer is malice in law.

7- Whatever Sri S.D. Trivedi, P.W.6 and Sri R.K. Jain (P.W.3) have deposed in respect of the complaint of Shri H.P. Singh, has no meaning in the eyes of law, in the circumstances when the complainant after his appearance before Enquiring Officer on 7.5.81 as per his order sheet dt.8.5.81 handed over a letter to him, Sri Singh in his concluding para has ascertained that he had no further time to attend the enquiry. It is strange that the learned E.O. commented on the non-appearance of S/Sri Dharam Singh and R.C.Tewari, S.I.(PWs), but offered no comments about Sri H.P.Singh's (Complainant) refusal to appear before inquiry. This goes to prove that the enquiry officer was sitting to prove the charges in any way and not for justice.

8- That the Enquiring Officer has tried to prove that envelope was given to Sri H.P. Singh by the charged Officer, and the same contained Rs.400/-.

9- That none of the witnesses has deposed before Enquiring Officer that the said G.C. notes were offered to Sri H.P.(6) has categorically denied that he had never

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said that the money was given as bribe. He has also deposed that he could see only a wed of notes of Rs.50/- had fallen on the table. Sri R.K. Jain at the same time has deposed that he (H.P. Singh) had envelope in his hand which was already opened and he drew out notes from the envelope of Rs.50/- each. He told me that total was 400/-Shri Hari Narain was not present in the room..." The contradictory statements goes to prove that Sri S.D.Trivedi was not an actual eye witness. This also proves that nothing was falled from the envelope as stated by Shri S.D. Trivedi.

10. The learned Enquiring Officer has again drawn inderence that the amount was kept by the charged officer for gaining favour of Sri H.P. Singh.

11. That thus the whole find.ing is based on inference and surmises without any evidence. Specially in view of the fact that the complainent did not appear before the enquiry to confirm his complaint. Thus the complaint or statement under section 161 Cr.PC. of Sri H.P. Singh has no legs to tand in the eyes of law. Similar is the position of the PWs who appeared to support the complaint.

12- That Sir, in the end I would submit that the benefit of doubt always goes in favour of accused. It was the complainant to confirm whether the money was in the envelope when he opened the same and the witnesses were to support the statement of the complainant as per law of the land. The non-appearance of the complainant and also refusal inw writing to E.O. for not appearing before E.O., itself proves that the complainant has no complaint against the charged officer. Thus the whole finding of the E.O. is bad in law, and is quashable.

Hari Narain

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13- That I therefore request you to kindly quash the finding and exonerate me from the charges. The order under appeal may also kindly be quashed. That I may kindly be given personal hearing for the same of natural justice.

Yours faithfully,

Sd/- Hari Narain  
Ex. Coach Attendant  
under S.S./LKO.

Dated: 10.9.1981

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

Civil Misc. Writ Petition No. of 1981

Hari Narain ... .. Petitioner

Versus

Divisional Manager, N. R., Lucknow  
& others ... .. Respondents.

Annexure-10

ADVANCE COPY TO D.R.M./LKO.

To,

The Divisional Railway Manager,  
Northern Railway,  
Lucknow.

Sir,

Re:- REVIEW APPEAL.

Ref: ADM's orders vide No. Vig/3/SEP/79/LCS  
dated 3rd October, 1981.

.....

Respectfully I beg to submit the Review Appeal  
as per extent rules for your kind consideration and justice.  
I am thankful that learned A.D.R.M. has quashed my removal  
and has awarded punishment of reduction to the substantive  
post of CGW Cleaner in grade Rs.196-232(RS) and has fixed  
my pay at Rs.196/- for a period of 3 years effecting my  
seniority and pay on restoration.

2. According to the findings of the Enquiry Officer  
and according to the decision of Disciplinary authority only  
the following charges were found as proved for which I was  
initially punished by Sr.DCS, Lucknow.

"Shri Hari Narain while working as Coach Attendant, N. Rly./  
Lucknow during September 1978 failed to maintain absolute  
integrity and committed mis-conduct in as much as he  
offered a bribe of Rs. 400/- on 13.9.78 to Shri H.P. Singh,  
Private Secretary, to Minister of State for Railways in his  
office at Rail Bhawan, New Delhi forgetting promotion to the  
post of T.C."

Hari Narain

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3. The learned appellate authority has mentioned vide item 2 of his orders under reference that Findings of the disciplinary authority are warranted by the evidence on record. It is the only important point which is to be taken into consideration by Reviewing Authority.

4. Vide item 4 the appellate authority has also mentioned in his order referred to above that Sri Hari Narain has been granted personal hearing which is not correct. I had requested for personal hearing along with Defence Counsel Shri V.P. Trivedi, Divisional Secretary, N.R.M.U. I simply met ADRM/Lucknow to expedite my appeal and in that course of meeting he enquired about the case which I tried to explain. It is unfortunate that the said meeting has been termed as personal hearing. It is further mentioned that Sri V.P. Trivedi was not at all requisitioned to appear as Defence Counsel at the time of personal hearing and therefore, this Review Appeal has much weight on this ground too.

5. According to findings of learned Enquiry Officer, number of prosecution witnesses who have not been adduced by the presenting officer has already been admitted. According to the history of the case it is alleged that I approached Shri H.P. Singh, Addl. P.S. to M.S.R. along with a letter written by Sri Dharam, P.R.O., Vidhan Sabha Lucknow. The said envelope was containing a sum of Rs. 400/- and the same was opened by Sri H.P. Singh in presence of S/Sri Ram Das Agarwal and S.D. Trivedi. Rest of the witnesses as mentioned in Annexure 3 of the memorandum were called afterwards. Thus these are only 4 important witnesses so far the prosecution is concerned. All these four witnesses either did not give any evidence or dropped. Thus the disciplinary authority did not carefully considered the findings and the basis of the findings before awarding such a severe punishment of removal as well as the Appellate authority also ignored this very fact.

*Har Narain*

6. Shri Dharam Singh, P.R.O. who was written a letter to Sri H.P. Singh, might have put Rs. 400/- and might have telephonically informed to Sri H.P. Singh about its use which might have taken by him or might have given for any other purpose of bringing or purchasing anything for Dharam Singh.

7. After lodging a report by Sri H.P. Singh at the very initial stage he must have enquired from Shri Dharam Singh also that if he had sent Rs. 400/- to him. Since S/Sri Dharam Singh and H.P. Singh both did not appear as a prosecution witness the mystery remains undisclosed and only an inference was drawn that I had put Rs. 400/- in the said envelope and offered the same to Sri H.P. Singh as bribe.

8. The envelope was opened in presence of Shri Agarwal. He also did not appear as a witness and to certify that Rs. 400/- actually came out from that very particular envelope.

9. So far Sri S.D. Trivedi, Dy. Director, Intelligence is concerned he has simply stated that he was busy in reading a newspaper and he did not even in statement in Chief or anywhere stated that the money was given as bribe by me. He has further mentioned that he did not remember to have seen whether the envelope was closed or opened while it was handed over to Sri H.P. Singh as he was busy in reading a newspaper. Thus the entire prosecution which was based on these four important witnesses has miserably failed to prove that I handed over Rs. 400/- to Sri H.P. Singh, and these were given as bribe.

10. According to extant rules, evidences which is adduced during enquiry is only to be considered and if any evidence has not been adduced in DEAR Enquiry is not

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to be taken into account but the Enquiry Officer as well as the Disciplinary authority and the Appellate authority have given much weight on the original statement given by Sri H.P.Singh and other witnesses, which is not in compliance with the Discipline and Appeal Rules. If these four witnesses are excluded then every thing becomes a hear say and not as evidence.

11. The Defence Note given by my Defence Counsel has fully explained the situation and the same has also not been considered by the Disciplinary authority or a appellate authority while passing orders in their turn. I once again enclose the same for your kind consideration in this review appeal as mentioning all those points here again will make it unnecessarily lengthy and tiresome.

12. I conclude my Review and very humbly request that the order of learned ADRM as mentioned in this review may kindly be quashed. The entire period may be treated as duty. I may be given personal hearing along with Shri V.P.Trivedi, Defence Counsel so that your honour may be convinced as to how findings are unwarranted, orders of disciplinary authority are not based on evidence adduced during DAR enquiry and as to how Appellate Authority disposed my appeal in most casual manner.

Yours faithfully,

Dated: 4/11/1981  
 10/2/82  
 Sd/-Hari Narain  
 Ex.Coath Attendant,now waiting  
 for Posting as CEW Cleaner.

*Hari Narain*

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CM No 1031 (W) 1981

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

Lucknow Bench, Lucknow.

Civil Misc. Writ Petition No.

865

of 1981.



1 CF = Rs 5/-

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19/1/81

Mr. Narain Tewari

.....

Petitioner

Versus

Union Govt. of India and others.....

Respondents.

Application for grant of Stay

The applicant above named most respectfully states as under :-

1. That the aforesaid writ Petition has been filed *inter alia* challenging the reduction order dated 3.10.1981 passed by the Respondent No. 2 (Annexure - 1 of the Petition).

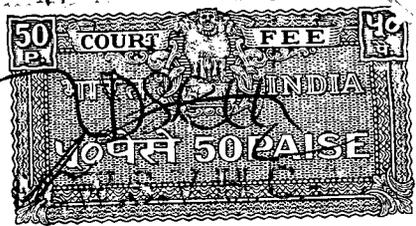
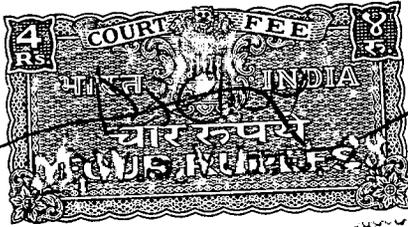
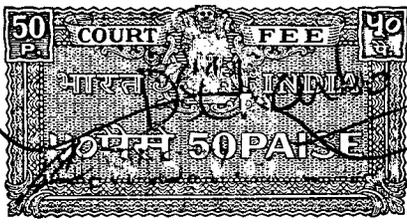
2. That from the facts and reasons disclosed in the accompanying writ petition. It would be evident that the reduction order passed by the Respondent No. 2 on 3.10.1981 is unjust, illegal and arbitrary. In case, the above impugned order is not stayed pending disposal of writ petition, the petitioner would suffer perpetual and irreparable loss, apart from financial hardship and substantial injury.

P R A Y E R

WHEREFORE, it is most respectfully prayed that the Hon'ble High Court may be graciously pleased to stay the operation of order dated 3.10.1981 (Annexure - 1 of the Petition) regarding reduction of the petitioner from the post of Coach Attendant to the post C & R Cleaner pending disposal of the above Writ Petition.

Lucknow : Dated :  
February . 1982.

*D. S. Chaube*  
(D.S. Chaube)  
Advocate  
Counsel for the Petitioner.



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

In Re  
Writ Petition no 865/82  
Hari Narain Tewari Vs  
Union of India

Reg. filing Process in the case

The undersigned respectfully begs to  
state as under:-

1. That in the above case, Process can  
not be filed in time and there  
has been delay in taking steps  
due to unavoidable circumstances.
2. That necessary steps are being  
taken today and Process is being filed  
which may kindly be accepted  
after condoning the delay.

7.4.1982

D. Phande  
Advocate  
Counsel for  
Petitioner

A 82

Before the Hon'ble Central Administrative Tribunal at  
Allahabad.

Counter ~~Reply~~ Affidavit.

In

Registration No. 1027 of 1987(7)

Sri Hari Narain Tiwari - - - - -Petitioner.

Versus.

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

~~Counter Reply~~ Affidavit  
on behalf of  
opposite parties no.1 to 4.

I, P.G. KESWANI aged 54 year  
about years, son of Sri Late GEHIRAM

residing at Lucknow

do here by solemnly affirm and state on oath as under:-

1- That the deponent is working as Assistant  
Personal officer in the office of Divisional Railway  
Manager Northern Railway Lucknow and is well conversant  
with the facts of the above mentioned writ petition.  
The deponent is authorised by the opposite parties  
no. 4 to file this affidavit on their behalf.

2- That the contents of paragraph 1 of the  
writ petition need no comments.

*Confidential and  
should be sent  
on the official address  
may be in what pattern*  
B.H. to S.P. Srivastava  
(Rly. Authority)

*[Signature]*  
NORTHERN RAILWAY,  
LUCKNOW.

-2-

3- That the contents of paragraph 2 of the writ petition are admitted.

4- That the contents of paragraph 3 of the writ petition as stated, are denied. It is most respectfully admitted that the post of coach attendant is a selection post and the staff found fit in the selection were absorbed as coach attendant. The petitioner was one of these selected persons.

5- That in reference to paragraph 4 of the writ petition it is most respectfully admitted that at the time of Kumbh Mela in order to cope with the extra rush of work ad hoc arrangements for Ticket collectors were made from amongst the willing class IV and III Staff. The petitioner being willing to work as Ticket collector was temporarily utilised for the post during the Kumbh Mela purely on ad-hoc basis conferring no right of promotion on the expiry of the above arrangements.

6- That the contents of paragraph 5 of the writ petition are denied. It is most respectfully submitted that only those persons who were selected for the post of Ticket collector and found suitable in the selection by the selection Board were absorbed as Ticket collector. Since the petitioner Shri Hari

  
Personnel Officer  
SOUTHERN RAILWAY  
MCO-37.

Narain had not qualified for the post of Ticket collector he was sent back to work as coach attendant.

7- That the contents of paragraph 6 and 7 of the writ petition are admitted.

8- That in reference to the contents of paragraph 8 of the writ petition, it is most respectfully submitted that the suspension of the petitioner was revoked in terms of order No. WIG/3/SPE/78/LCS dated 26.9.79. A true copy of this order is being attached here with as Annexure C-1 of this affidavit. A copy of this order was also sent to the petitioner through the station superintendant Lucknow.

9- That the contents of paragraph 9 of this writ petition are admitted.

10- That the contents of paragraph 10 of the writ petition are denied. It is most respectfully submitted that the deponent has been advised to state that in terms of discipline and appeal rules an officer who can impose any sort of punishment can issue memorandum for major penalty or institute inquiry proceedings under his own signature.

11- That the contents of paragraph 11, 12, and 15 need no comments.

Assistant Personnel Officer  
NORTHERN RAILWAY  
LUCKNOW.

A 85

12- That the contents of paragraph 16 and 17 of the writ petition are admitted.

13- That the paragraph 18 of the writ petition need no comments.

14- That the contents of paragraph 19 of the writ petition are admitted. It is most respectfully submitted that in terms of rule 25(I) of the discipline and appeal rules the reviewing authority (In this case the divisional Railway Manager Northern Railway Lucknow), of his own motion reviewed this order passed by the appellate authority and confirmed the orders passed by the appellate authority on the appeal preferred by the petitioner.

15- That the contents of paragraph 20 of the writ petition are denied, It is most respectfully submitted that no such request for posting was made by the petitioner. After the issue of order dated 3.10.81, reducing the petitioner to the substantive post of C & W cleaner he attended office where he was interviewed by the A.M.B (C&W) on 12.11.81. The petitioner was advised that as per pay commission report the post of C & W cleaner has been reduced as C&W safaiwala and that if he was willing to work as safaiwala he will be issued the posting order.

Personnel Officer  
NORTHERN RAILWAY,  
LUCKNOW

-5-

The petitioner asked for time to consider proposal before accepting the post of Safaiwala. Thereafter he never turned up until his request dated 14.5.82 was received in the office on 20.5.82, where after he was called to attend office in terms of letter no.220-E/2-3/HN-CA/81 dated 2.6.82 under registered post at his home address. The petitioner has not attended office till date.

The issue of posting of the petitioner was also taken up by the Divisional secretary N.M.R.U. on 22.12.81 and the above decision was also communicated to the Divisional secretary N.M.R.U. for the information of the petitioner in terms of letter no.220-E/2-3/HN-CA/81 dated 26.12.81.

However the petitioner has now been posted under CTXR, Faizabad as C & W Safaiwala in grade Rs, 196-232 on Rs 196/- per month under this office letter No.220-E/2-3/HN-CA/81 dated 23.6.82 sent under registered post at his home address.

16- That the contents of paragraph 21 of the writ petition are denied. It is most respectfully submitted to that since the petitioner had failed in the written examination held for the post of ticket collector, he had no lien on the said post.

  
 GENERAL MANAGER  
 NORTH WESTERN RAILWAY  
 LUCKNOW.

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-6-

17- That the contents of paragraph 22 of the writ petition are admitted only to the extent that Shri K.K. Tiwari has been promoted to the post of Ticket collector since he had secured 60% marks in aggregate prescribed for selection and the General Manager has ordered his promotion under his own powers.

18- That the contents of paragraph 23 of the writ petition are denied. The payment for 30 days for the month of June 81 has been drawn in the favour of the petitioner in the regular salary bill of June 1981.

19- That the contents of paragraph 24 of the writ petition are denied. The petitioner was awarded the following punishment during the services his career can not be considered as unblemished and/ or satisfactory

(i) The petitioner was censured on 13.9.1965.

(ii) The petitioner was punished by with holding of increments for 2 years on 14.2.77, 29.4.78 and he was also punished by with holding of increments for 3 years on 31.3.1981.

(iv) Removed from service on 4.7.81 (punishment reduced to reversion to the substantive post as cleaner (C&W) in Grade Rs 196-232.)

  
Assistant General Manager  
Northern Railway  
New Delhi

-7-

Even though, Sri Shyam sunder has been awarded punishment of with holding of increment permanantly for 3 years , but the punsihment being not effective at the time of promotion, he was promoted as per extent rules.

20- That the contents of paragraph 25 of the writ petition, as stated, are denied. It is most respectfully submitted that the plea of the petitioner that the inquiry was not conducted according the rules, is not correct. Sri M.P. Singh attended the inquiry on 8.5.81 and finding that the P.O. was not available, left giving a letter the enquiry officer stating there in that he had no further time to inquiry.

21- That in reference to the paragraph 26 of the writ petition it is most respectfully stated that the departmental (Discipline and rules) inquiries being not judicial inquiries the department has no power to compel any person to tender his evidence before enquiry officer.

22- That the contents of paragraph 27 of the writ petition are denied as they are based on surmises and conjunctures. It is not worthy that the petitioner has not quoted any soecific instance.

  
~~Personnel Officer~~  
~~INDIAN RAILWAYS~~  
~~AGRA~~

23- That the contents of paragraph 28 of the writ petition are denied. The petitioner was given personal hearing as indicated in the orders passed by the appellate authority. The contention of the petitioner is, therefore, denied.

24- That the contents of paragraph 29 of the writ petition need no comments.

25- That the contents of para 30 of the writ petition are denied. The petitioner was granted personal hearing on his appeal as is evident from the appellate orders itself. Since no acknowledgement with regard to petitioner having availed the said opportunity of personal hearing was obtained from him in good faith such false plea is being taken by him.

26- That the contents of para 31 is so far as they relate to dropping of Sri S.D. Trivedi are in correct rather false. Sri Trivedi was examined and cross examined by the petitioner on 7.5.81 and to that effect he as well as in defence helper signed the proceedings of the inquiry of that date.

With regard to dropping of Shri Ram Das Agarwal, it is most respectfully submitted that Sri Agarwal was one of the witnesses of the prosecution

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 NORTH EASTERN RAILWAYS  
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and it was not obligatory on the part of the prosecution to examine all the witnesses cited in the chargesheet.

It is evident from the order sheet dated 7-5-81 duly signed and accepted by the petitioner and his defence helper that the prosecution dropped the aforesaid witness as its case, in its view was proved by the evidence already examined in the inquiry.

Further, it is worth while to mention here that neither the petitioner nor his defence helper made any protest on that action of dropping of witness by the prosecution before the enquiry officer. He also placed so request before the Inquiry officer to call for that witness. Under these circumstances the petitioner is stopped to take such plea. His allegations therefore, are based on after ~~xxxx~~ thought.

It is further submitted that if the aforesaid witness (Sri R.D. Agarwal) was at all an important witness of the case, the petitioner had every liberty to call for him in his defence witness but he did not do so. In these circumstances, so prejudice was caused to defence case as was the petitioner cannot raise such plea at this stage.

The contents of para 31, in the facts

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and circumstances mentioned above are denied.

27- That the contents of para 32, of the writ petition are denied as stated. The case against the petitioner stands proved by the evidence on the record. The findings of the Inquiry officer is Meritted and warranted by the evidence adduced in the enquiry.

28- That in view of the comments made in para 27 of this counter reply the contents of para 33 , of the writ petition are denied. The issue raised by the petitioner in the para under reply is a matter of findings of fact and since the findings of the enquiry officer is supported by the evidence on the record. The Hon'ble Tribunal cannot set as a court of appeal in the instent case.

29- That the contents of paragraph 34 and 35 are denied.

30- That the contents of paragraph 36 need no comments.

31- That the contents of paragraph 37 of the writ petition need no comments.

Lucknow; Dated

  
Deponent.

  
Personal Officer  
NORTH INDIA RAILWAY  
LUCKNOW.

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VERIFICATION

I, the deponent above named do here by verify that the comments of paragraph 1 of this affidavit are true to my personal knowledge those of paragraphs 2 to 3), \_\_\_\_\_ are based on records and the same are believed by me to be true, that the paragraphs \_\_\_\_\_ are based on the legal advise and they are believed by me to be true. That no part of it is false and nothing material is concealed so help me God.

Lucknow. Dated.

✓   
Deponent.

I , identify the deponent who has signed before me.

(Sd/-)

Solemnly affirmed before me on \_\_\_\_\_ at \_\_\_\_\_ a.m/p.m by the deponent who has been identified by Shri \_\_\_\_\_ Advocate High court, Allahabad I have satisfied myself by examining the deponent that he understands the contents of this affidavit which have been read out to him and explained by me.

✓   
Assistant-Inspector of Police  
NORTHERN BAILWAYS  
LUCKNOW.

MEMORANDUM

To: Mr. [Name]

Medical Officer,  
Lucknow

21.10.57

SUBJECT

Reference is made to the report of Mr. [Name], [Rank], [Department], Lucknow, dated [Date], regarding the [Subject].

It is noted that the [Subject] is covered by clause (a) of sub-rule (b) of Rule 1 of the [Regulation] (Medical and General) Rules, 1954, which provides the [Subject] of [Subject] with [Subject] of [Subject].

(Sd/-) [Name]  
[Rank] [Department], Lucknow

Copy to:

1. Mr. [Name], [Rank], [Department], Lucknow

2. Mr. [Name]

3. Mr. [Name]

They will please keep an eye on the working of Mr. [Name] and submit monthly report on his conduct.

4. Copy of the [Subject] and necessary action

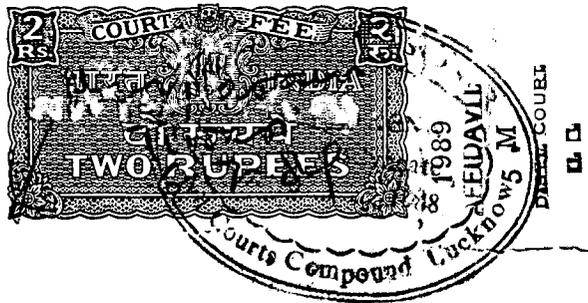
5. The General Manager (Mg), Northern Railway, Lucknow, for information. He will please connect his office file to [Subject] in this connection.

Assistant Personnel Officer  
NORTHERN RAILWAY,  
LUCKNOW.

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IN THE COURT OF CENTRAL ADMINISTRATIVE TRIBUNAL,  
CIRCUIT BENCH, LUCKNOW.

T.A. No. 1027 of 1987.



Hari Narayan Tiwari .. .... Petitioner.

Versus

Union of India & Others .. .... Opp. Parties.

REJOINDER AFFIDAVIT ON BEHALF OF THE  
PETITIONER.

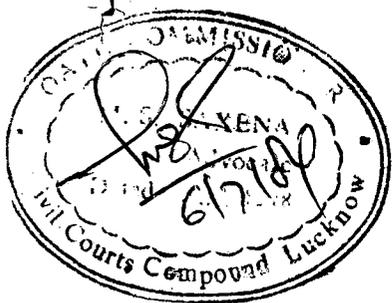
I, Hari Narayan Tiwari aged about 48 years son of Sri Mathura Prasad Tiwari, Catch Attendant, Northern Railway, Charbagh, Lucknow, the deponent, do hereby solemnly affirm and state on oath as under :-

1. That the deponent himself is the petitioner in the above noted case and, as such he is fully conversant with the facts of the case deposed herein.

2. That the contents of paras 1 to 3 of the counter affidavit under reply need no comments.

3. That the contents of para 4 of the

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A95

counter affidavit under reply are not disputed.

4. That the contents of para 5 of the counter affidavit under reply are wrong; hence denied, and the contents of para 4 of the writ petition are reiterated.

5. That the contents of para 6 of the counter affidavit are denied and the contents of para 5 of the writ petition are reiterated.

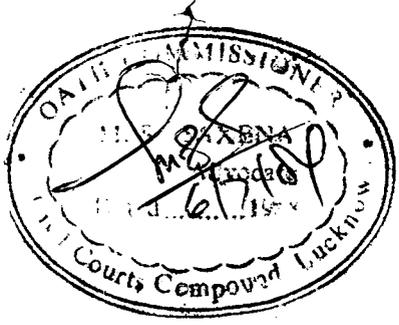
6. That the contents of para 7 of the counter affidavit need no comments.

7. That the contents of para 8 of the counter affidavit under reply is admitted only to the extent of revocation of suspension order dated 26.9.1979 and rest of the contents are denied. Further averments made in para 8 of the writ petition are reiterated.

8. That the contents of para 9 of the counter affidavit under reply need no comments.

9. That the contents of para 10 of the counter affidavit under reply are denied. It is further submitted that the charge-sheet was issued by the authority lower in grade than the appointing authority of the deponent, and as such the said charge-sheet was not issued by the competent authority.

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



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A-76

11. That the contents of para 12 of the counter affidavit need no comments.

12. That the contents of para 13 of the counter affidavit need no comments.

13. That the contents of para 14 of the counter affidavit under reply are not disputed.

14. That the contents of para 15 of the counter affidavit under reply are wrong; hence denied.

15. That the contents of para 16 of the counter affidavit are wrong; hence denied. It is further submitted that the petitioner had passed the examination for promotion to the post of Ticket Collector in the year 1977, but was not promoted by the respondents-opposite parties, while his juniors were promoted to the post of Ticket Collector and as such the petitioner's legal and fundamental rights of being promoted prior to the juniors has been denied and the petitioner has been descriminated by the Railway Administration.

16. That the contents of para 17 of the counter affidavit are denied and the contents of para 22 of the writ petition are reiterated.

17. That the contents of para 18 of the counter affidavit under reply are denied. The deponent was never paid his salary for the period of June, 1981



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A90

can be paid, but the enquiry officer <sup>2 has</sup> ~~quiet~~ failed to appreciate this point and placed reliance upon these statements and ~~give~~ his findings against the deponent which is ~~clear~~ evident from the findings of the enquiry officer itself.

22. That the contents of para 23 of the counter affidavit are wrong; hence denied. No personal hearing was afforded to the deponent by the opposite party no. 3 before passing the final order on his appeal against the orders of removal from service passed by the disciplinary authority.

23. That the contents of para 24 of counter affidavit need no comments.

24. That the contents of para 25 of counter affidavit under reply are wrong; hence denied.

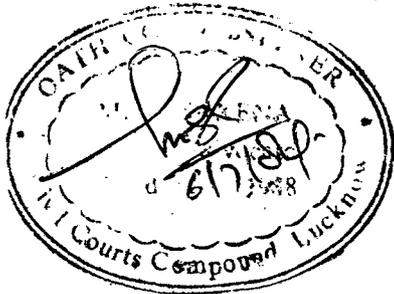
25. That the contents of para 26 counter affidavit under reply are denied.

26. That the contents of para 2



denied. This Hon'ble Tribunal has jurisdiction and competence to appreciate and value the findings of the enquiry officer and if founds against the evidence on record can set aside.

28. That the contents of paras 29 to 31 of the counter affidavit under reply needs no comments and the contents of paras 34 to 37 of the writ petition are reiterated and reaffirms, and the writ petition of the deponent deserves to be allowed with cost against the opposite parties.



Lucknow:Dated:

May 9<sup>th</sup> 1989.  
6<sup>th</sup> July 1984.

*[Handwritten signature]*

DEPONENT.

Verification

I, the abovenamed deponent do hereby verify that the contents of paras 1 to 25 of this affidavit are true to my own knowledg-e and those of paras are based on record and those of paras 26 to 28 are based on legal advice which I believed to be true. No part of it is

S M  
I have solemnly affirmed before me in office to-day  
is identified by Sri  
to Sri  
I have  
I have  
I have  
I have

false and nothing material has been concealed, so

help me God.  
~~9th May 1989~~  
6th July 1984

*[Handwritten signature]*

DEPONENT.

*[Handwritten signature]*  
6/7/84  
Oain Commissiona  
Svii Courts Lka

I identify the deponent who has signed before me.

*[Handwritten signature]*

Solemnly affirmed before me on at a.m./p.m. by Sri Hari Narayan Tiwari, the deponent who is identified by Sri Vinay Shanker, Advocate, HighCourt.

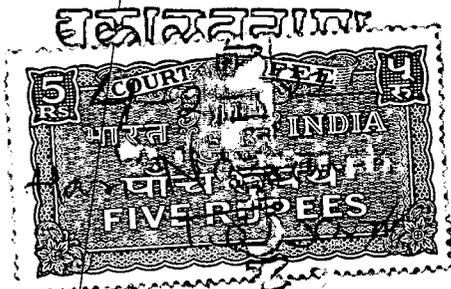
I have satisfied myself by examining the deponent that he understands the contents of this affidavit, which have been readout and explained by me.

A100

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प पदायज पीमान् In the Honorable High Court of Judicature at  
Allahabad, Lucknow Bench, Lucknow

पादी (अपीलान्ट) श्री Hosi Narain Tewari  
प्रतिवादी (रेस्पान्डेन्ट)



10/25  
10.2.21

Hosi Narain Tewari

पादी/अपीलान्ट

बनाम

Union Govt. of India and others

प्रतिवादी/रेस्पान्डेन्ट

नं० मुकदमा सन १६ पेशी की ता० १६ ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री ... डी० रसू० चौबे ... एडवोकेट

... महोदय वकील

को अपना वकील नियुक्त करके प्रतिज्ञा (एडरार) करता हूं और लिखे देण हूं कि इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरपी व जवाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या मुलहनामा या इकवाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करे और तसदीक करें या मुकदमा उठावें या कोई रुपया जमा करें या हमारी बिपत्ती (फरीकसानो) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंख नियुक्त कर वकील महोदय द्वारा को गई वह सब कार्यवाही हमको संबंधी स्वीकार है और होगी इसलिये यह वकालतनामा जिले दिया कि प्रमाण रहे और समय पर काम आवे ।

नाम पदायज  
नं० मुकदमा  
नाम फरीकन

Accepted  
D. S. Chauhan  
Advocate

हस्ताक्षर Hosi Narain  
14.12.21

साक्षी गवाह ... साक्षी गवाह ...  
दिनांक ... 4 ... महीना ... 2 ... सन १९२१ ई०

राजा राम मिश्रा, लाइसेन्सदार,  
जिला कचेररी, लखनऊ

ब अदालत श्रीमान Honble High Court Lucknow.  
Lucknow Bench. महोदय  
लखनऊ

वादी अपीलान्त Relitioner का वकालतनामा  
प्रतिवादी रेस्पान्डेंट



Hari Narain Tewari वादी (मुद्दई)

बनाम Union of India प्रतिवादी (मुद्दाअलेह)

नं० मुकद्दमा 865 सन् 1982 पेशी की ता० 18 ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री विनय शंकर श्रीवास्तव एडवोकेट

टी-41/बी, हैदर कैनाल कालोनी, चारबाग, लखनऊ महोदय

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

हस्ताक्षर Hari Narain Tewari

साक्षी (गवाह) \_\_\_\_\_ साक्षी (गवाह) \_\_\_\_\_

दिनांक 17 महीना 6 सन् 1982

106)



श्री

नाम अपीलान्त  
नं० मुकद्दमा  
नाम फारिकैन

स्वीकार किया

Accepted

Shanker

Single  
Fo

plaintiff/apposee parties or enter into any agreement, settlement, or compromise whereby the suit/appeal/proceeding is/are wholly or partly adjusted or refer all or any matter or matters arising or in dispute therein to arbitration PROVIDED THAT in exceptional circumstances when there is not sufficient time to consult such/appropriate Officer of the Government of India and an omission to settle or compromise would be definitely prejudicial to the interest of the Government of India and said Pleader/Advocate of Counsel may enter into any agreement, settlement or compromise whereby the suit/appeal/proceeding is/are wholly or partly adjusted and in every such case the said Counsel/Advocate/Pleader shall record and communicate forthwith to the said officer the special reasons for entering into the agreement, settlement or compromise.

The President hereby agrees to ratify all acts done by the aforesaid Shri... Siddharth Verma ..... in pursance of this authority.

IN WITNESS WHEREOF these presents are duly executed for and on behalf of the President of India this the... 25<sup>th</sup> ..... day of May..... 1982

Dated... 25.5 ..... 1982

[Signature]  
.....  
Designation of the Executing Officer

ACCEPTED

R.P.P. Delhi—1979—1/153—7500 F

[Signature]  
(SIDDHARTH VERMA)  
ADVOCATE

उपर मुख्य कामक अधिकारी  
प्रधान कार्यालय  
वयो दिल्ली

SP. 101

257 21-1-82

A03

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हाई कोर्ट इलाहाबाद, लखनऊ बेंच लखनऊ  
(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रकीर्णांक (सुत्रफरिंक) प्रार्थना सं० ..... सन् १९..... ई०

..... सं० ४११ ..... सं० ४६५ ..... सन् १९..... ई० में

Mani Shankar Tewari ..... प्रार्थी

प्रति

Union of India ..... प्रत्यार्थी

To Union of India through  
The General Manager Northern Railway  
Baroda House,  
New Delhi

..... प्रत्यार्थी

चूंकि ऊपर लिखे प्रार्थी ने इस न्यायालय में उपर्युक्त लिखे मुकदमें के सम्बन्ध में .....  
..... लिये प्रार्थना-पत्र दिया है अतः आपको आदेश दिया जाता है कि  
आप दिनांक ..... माह ..... सन् १९..... ई० ..... को या उससे  
पहले उपस्थित होकर कारण बतलायें कि प्रार्थना-पत्र क्यों न स्वीकार कर लिया जाय उक्त प्रार्थना-  
पत्र की सुनवाई उसके बाद नियमानुसार विज्ञप्ति किसी और दिन होगी।

बोम्ब

ऊपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी एडवोकेट  
और से कार्य करने के लिए कारन अधिकृत हों, उपस्थित न होंगे  
और निर्णय आपकी अनुपस्थित में ही जायगा।  
की मोहर से आज दिनांक ..... माह .....  
..... करी किया गया।



*[Handwritten signature]*

डिप्टी रजिस्ट्रार  
इलाहाबाद/लखनऊ

सूचना—इस न्यायालय की १९५२ की नियमावली के अध्याय ३७, नियम २ के आधीन प्राप्त तलवाना  
मिल गया।

तलवाना पाने वाले क्लर्क के हस्ताक्षर

CP No 3

25/4

2/4/2

A-105

हाई कोर्ट इलाहाबाद, लखनऊ बेंच लखनऊ  
(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रकीर्णांक (मुतफरिफ) प्रार्थना सं० ..... सन् १९..... ई०

..... स० ८७५ ..... सन् १९..... ई० में

Hari Shankar Tewari ..... प्रार्थी

प्रति  
Union of India ..... प्रत्याथी

To Additional Divisional Railway Manager

Divisional Office N. Railway

Lucknow ..... प्रत्याथी

चूंकि ऊपर लिखे प्रार्थी ने इस न्यायालय में उपर्युक्त लिखे मुकदमें के सम्बन्ध में .....  
..... लिये प्रार्थना-पत्र दिया है अतः आपको आदेश दिया जाता है कि  
आप दिनांक ..... २५ ..... माह ..... ५ ..... सन् १९ ..... ई० ..... को या उससे  
पहले उपस्थित होकर कारण बतलायें कि प्रार्थना-पत्र क्यों न स्वीकार कर लिया जाय उक्त प्रार्थना  
..... के बाद नियमानुसार विज्ञप्ति किसी और दिन होगी।

लगा  
An  
एक  
एक  
पाने  
Ad

लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी एडवोकेट  
से कार्य करने के लिए कानून अधिकृत हों, उपस्थित न होंगे  
र निर्णय आपकी अनुपस्थित में हो जायगा।  
ही मोहर से आज दिनांक ..... माह ..... ५

तिथि.....



डिप्टी रजिस्ट्रार  
इलाहाबाद/लखनऊ

सूचना—इस न्यायालय की १९५२ की नियमावली के अध्याय ३०, नियम २ के अधीन प्राप्त तलवाना मिल गया।

तलवाना पाने वाले क्लर्क के हस्ताक्षर

A107

25/5

21/5

हाई कोर्ट इलाहाबाद, लखनऊ बेंच लखनऊ  
(अध्याय १२, नियम १ और ७)

हीवानी विभाग

प्रकीर्णांक (मुतफरिफ) प्रार्थना सं० ..... सन् १९..... ई०

..... स० २६५ ..... सन् १९..... ई० में

Mam Shankar Tewari ..... प्रार्थी

प्रति

Union of India ..... प्रत्याथी

To Senior Divisional Commercial Substn

Juceno

..... प्रत्याथी

चूकि ऊपर लिखे प्रार्थी ने इस न्यायालय में उक्त लिखे मुकदमें के सम्बन्ध में .....  
..... लिये प्रार्थना-पत्र दिया है अतः आपको आदेश दिया जाता है कि  
आप दिनांक ..... २५ ..... माह ..... ५ ..... सन् १९ ..... ई० ..... १९०२ को या उससे  
पहले उपस्थित होकर कारण बतलायें कि प्रार्थना-पत्र क्यों न स्वीकार कर लिया जाय उक्त प्रार्थना  
पत्र की सुनवाई उसके बाद नियमानुसार विज्ञप्ति किसी और दिन होगी।

विदित हो कि यदि आप ऊपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी एडवोकेट  
या ऐसे व्यक्ति द्वारा जो आपकी ओर से कार्य करने के लिए कानून अधिकृत हों, उपस्थित न होंगे  
तो इस प्रार्थना-पत्र की सुनवाई और निर्णय आपकी अनुपस्थित में हो जायगा।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक ..... १५ ..... माह ..... ९ .....  
१९ ..... १९०२ को जारी किया गया।

S. S. Chaur ..... एडवोकेट

विधि .....



हाई कोर्ट इलाहाबाद  
लखनऊ बेंच

सूचना—इस न्यायालय की १९५२ की नियमावली के अध्याय ३७, नियम २ के अधीन प्राप्त तलवाना  
मिल गया।

तलवाना पाने वाले क्लर्क के हस्ताक्षर

A106

1072

2586 21/4/02

हाई कोर्ट इलाहाबाद, लखनऊ बेंच लखनऊ  
(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रकीर्णक (मुतफरिफ) प्रार्थना सं० ..... सन् १९..... ई०  
..... स० ..... सन् १९..... ई० में  
Haan Shankar Dewan ..... प्रार्थी

प्रति

Union of India ..... प्रत्यायी  
To the Divisional Railway Manager,  
Divisional Office N. Railway  
Lucknow ..... प्रत्यायी

चूकि ऊपर लिखे प्रार्थी ने इस न्यायालय में उपयुक्त लिखे मुकदमें के सम्बन्ध में .....  
..... लिये प्रार्थना-पत्र दिया है अतः आपको आदेश दिया जाता है कि  
आप दिनांक ..... 25 ..... माह ..... 5 ..... सन् १९ ..... ई० ..... को या उससे  
पहले उपस्थित होकर कारण बतजाय कि प्रार्थना-पत्र क्यों न स्वीकार कर लिया जाय उक्त प्रार्थना  
पत्र की सुनवाई उनके बाद नियमानुसार विज्ञप्ति किसी और दिन होगी।

विदित हो कि यदि आप ऊपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी एडवोकेट  
या ऐसे व्यक्ति द्वारा जो आपकी ओर से कार्य करने के लिए कानून अधिकृत हैं, उपस्थित न होंगे  
तो इस प्रार्थना-पत्र की सुनवाई और निर्णय आपकी अनुपस्थित में हो जायगा।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक ..... 15 ..... माह ..... 1902  
सन् १९ ..... को जारी किया गया।

A.S. Chandra ..... के एडवोकेट



.....

तिथि .....

डिप्टी रजिस्ट्रार  
इलाहाबाद/लखनऊ

सूचना—इस न्यायालय की १९५२ की नियमावली के अध्याय ३७, नियम २ के आधीन प्राप्त तलबाना  
मिल गया।

तलबाना पाने वाले क्लर्क के हस्ताक्षर

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH LUCKNOW

INDEX SHEET

CAUSE TITLE JA 1066 OF 1987

NAME OF THE PARTIES.....

A. P. Tewari

Applicant

Versus

Union of India (NE Rly)

Respondent

Part A, B & C

Sl. No.	Description of documents	Page
1	General Index	1 ✓
2	Order Sheet	2 to 7 ✓
3	Judgement <u>08-3-91</u>	8 to 9 ✓
4	Petition	10 to 19 ✓
5	Annexure	20 to 22 ✓
6	Affidavit	23 to 25 ✓
7	Counter Affidavit	26 to 35 ✓
8	Vakalatnama	36 to 41 ✓
9	Application	42 ✓
10	App. for I.R.	43 to 44 ✓
11	Affidavit	45 to 53 ✓
12	Ind App. for I.R.	54 to 59 ✓
13		

CERTIFICATE

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

Dated.. 15/3/11...

*File B/C destroyed on 09-5-12*

Counter Signed.....

Section Officer / In charge

Signature of the  
Dealing Assistant

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Case No. 2193

of 1982

vs.

Date	Note of progress of proceedings and routine orders	Dated which case is adjourne
1	2	3
12-5-82	<p>Hon R.C. Das Sharma, J  <u>Hon SS Ahmad, J</u></p> <p>Put up on 17th May 1982 by which            Adv. the chief standing counsel            shall obtain instructions.</p> <p>Sd R.C. Das Sharma            Sd SS Ahmad            12-5-82</p>	
- dt	<p><u>C.M. Am. No. 4755</u> (w) B</p> <p>Hon R.C. Das Sharma, J  <u>Hon SS Ahmad, J</u></p> <p>Put along with the petition.</p> <p>Sd R.C. Das Sharma            Sd SS Ahmad            12-5-82</p>	
17-5-82	<p>Writ with Am 4755-82            for orders.</p> <p>Hon. J.S.V.J.            &amp; M.S.J.</p>	
27/5.82	<p><del>Writ with Am 4755-82 for orders            Hon. T.S.M.J.            Hon. J.N. Jha, J</del></p>	

(Amir)  
A.3

12/2

ORDER SHEET  
IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

W.P. 2193

No. 82

of 198

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
3-11-82	<p>Cm. An. No. 11366 (C) 82 Application for II Application for Interim Relief.</p> <p>Hon Mathur J Hon Sharma J</p> <p>List with bundle papers.</p> <p>Sd- Mathur Sd- Sharma 3-11-82</p>	
3-11-82	<p>Cm. An. 11367 (C) 82 Application for amendment of the W.P.</p> <p>Hon Mathur J Hon Sharma J</p> <p>List with bundle papers.</p> <p>Sd- Mathur Sd- Sharma 3-11-82</p>	

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
4.5.83	FO	
	<p>Lost it on 13th  May, 1983 as prepared  by the 2d court  for the opp party  He may file counter  affidavit, if any  during this period.</p>	<p>Beal  Pud</p>
	<p>6-5-83</p>	
13.5.83	FO	
		<p>Beal  Pud</p>
13-5-83	<p>wait for order  Hon. K. N. Singh  Hon. D. N. Jha</p>	
19-5-83	<p>H 80 M J.  H 88 A J.</p>	

Delhwal

Beal  
Pud

(A2V)  
A-5

12/4

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

No.

2193

of 198

2

vs.

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
3.6.83	<p>Service report            OP 1. Power Jhd by Sr. C.A. Sood, Adv. of            OP 283 Notices have been serve to Sr            Unnes Chandra, Adv. C.A.            counter application filed.            May office proceed</p>	
	<p>Yes            Khar            14/7/83</p>	<p>30/8</p>
		<p>B/C</p>

Order Sheet

A-6 (H/2)

6.10.88. D.R.S.

Applicant present in person and prays for adjournment is allowed. With this case on 20.12.88 before D.R.S.

*[Signature]*

20.12.88 No sitting. adjourned to 27.1.89.

27-1-89 No sitting. Adjourned to 29/3/89.

h  
20/12  
By  
27/1

29-3-89 DR

Navne is present on behalf of respondent. Fee on 9-5-89.

mahandji  
for DR

OR  
Case was adjourned to 9-5-89 for order submitted for order

Hon' Mr. G.S. Sharma, J.M.

HON' Mr. K.J. Raman, A.M.

9/5/89 The applicant in person and Shri A.V. Srivastava, learned counsel for the respondents are present. On the request of the petitioner, the case is adjourned to 29-5-89 for orders.

*[Signature]*  
A.M.

}  
J.M.

(sns)

OR  
Case was adjourned to 29.5.89. Submitted for hearing

29/5

No sitting. Adjourned to 7/8/89 for hearing.

7.8.89

No sitting adj to 17/10/89

B.O.C.

h  
B.O.C

OR  
29/5.  
No response filed by the applicant. Submitted for hearing

6/4/90

Hon. - Justice, K. Nath, V.C  
 Hon. Mr. K. J. Ramani, A.M

The applicant is present in person. Shri A.V. Srivastava, is present for the opp. ps. This is an application for amendment of the writ petition on the ground that during the pendency of the petition, the applicant was acquitted by the Appellate Criminal Court, while the impugned suspension order had been passed on account of pendency of the Criminal Trial.

The amendment prayed for is allowed, which shall be incorporated by the applicant within 2 weeks. The applicant shall also file the attested photo copy of the Judgement of the acquitted. The counsel for the opp. ps requests for and is allowed 4 weeks time to file supplementary affidavit to which the applicant may file supplementary rejoinder, if any, within 2 weeks there-after.

list the case for final hearing  
 on 25/5/90

for

A.M

sd

for

V.C.

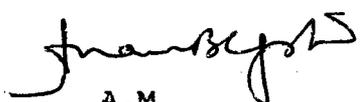
The 4c for the applicant has not incorporated amendment. Submitted for order

to 21/5



(A9)

question is as to whether he is to be paid the full salary for the period 6.10.80 to 19.5.83. The Application has become infructuous. In so far as money claimed is concerned, the applicant may approach the Railway Administration for the appropriate relief and in case he fails to get any relief from the Railway Administration, it will be open for him to approach the competent court or the authority as may be advised. In view of this and subsequent developments, the application is dismissed. There will be no order as to costs.

  
A.M.

  
V.C.

Lucknow Dated: 8.3.91.

Group A-14 (d)

(A8)

(A10)

3440

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

Writ Petition No. 2193 of 1982.

Ayodhya Prasad Tewari.....Petitioner.

<sup>India</sup> Versus

Union of ~~Government~~ and Others.....Opp. Parties.

I N D E X

Sl.No.	Particulars.	Page Nos.
1.	Application for Interim relief.	1 to 1
1.	Writ Petition.	2 to 8
2.	Duty Memo. Annexure No. I.	9 <del>10-11</del>
3.	Suspension order Annexure no. 2 dt. 5.10.82.	10 & 11
4.	Affidavit.	12 - 14
5.	Vakalatnama.	15

Stop

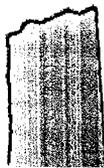
Lucknow; dt. 22.4.82.

R. N. Singh 16  
 COUNSEL FOR THE  
 PETITIONER.  
 Kaulakant Singh  
 32

5784

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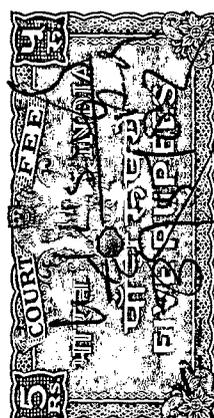
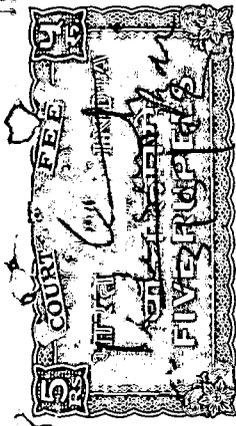
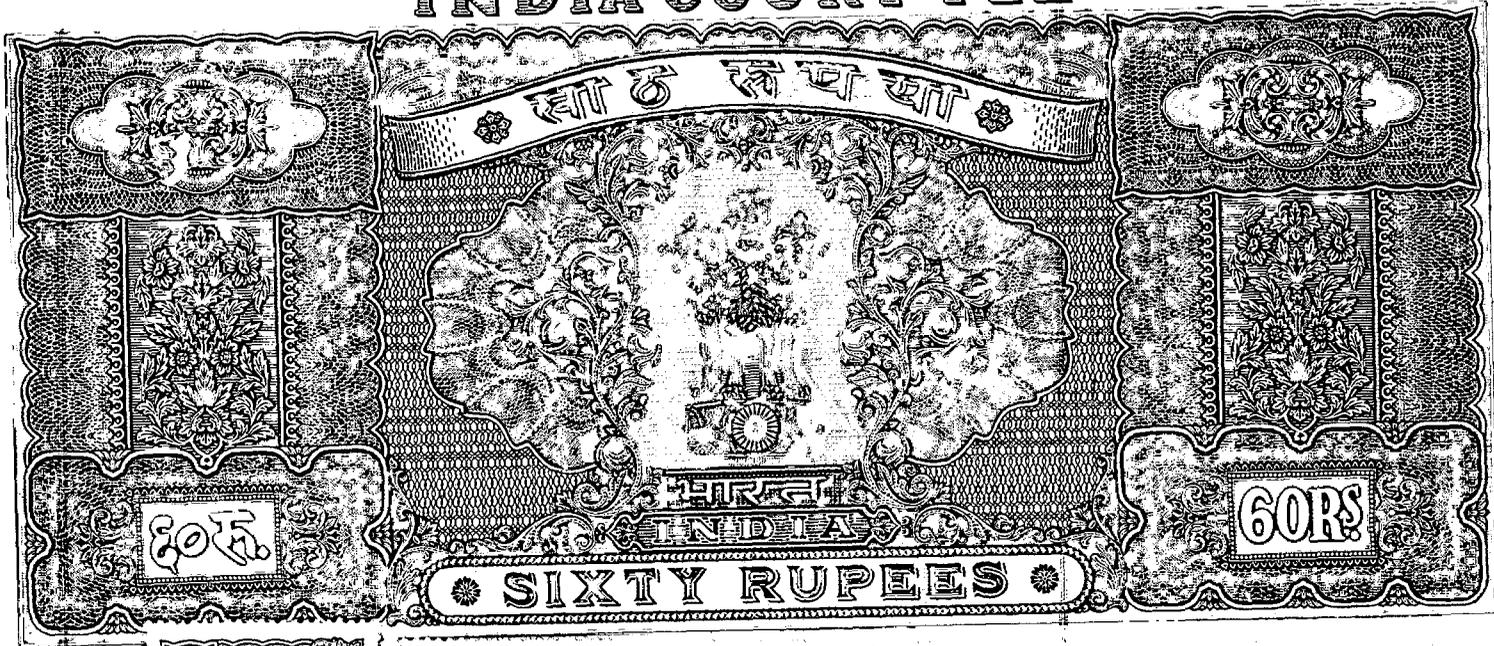
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INDIA COURT FEE

Ad All

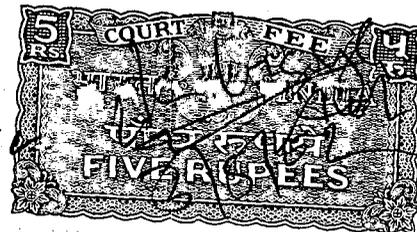
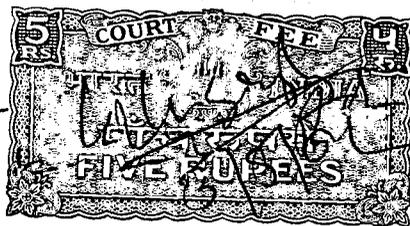
60RS.



one stamp Rs. 60.-  
 20 of Rs. 40.-

Total Rs. 100.-

Rs.  
 3/5



In the High Court of Judicature at Allahabad Lucknow Bench  
 2193-02  
 Lucknow  
 Ayodhya Lawan Tewari - Petitioner  
 Umran vs. Subri - Opp.

197

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

Writ Petition no. 2193 of 1982.

Ayodhya Prasad Tewari, aged about 52 years, s/o Sri  
Triloki Nath Tewari, r/o 66, Nakrathi Ganj, Gonda, U.P.

... .. Petitioner.

Versus

- 1. Union ~~Government~~ of India through its Secretary, Railways Department, Central Secretariat New Delhi.
- 2. Divisional ~~Security~~ <sup>Safety</sup> Officer, N.E.R. Lucknow.
- 3. Divisional Manager, N.E.R. Lucknow.

... .. Opposite Parties.

Writ Petition under Article 226 of the  
Constitution of India.

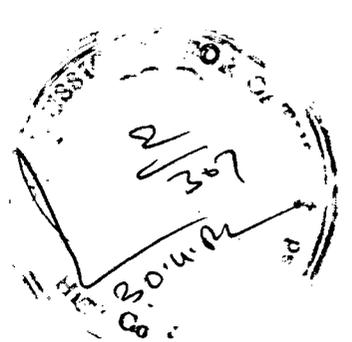
To,

The Hon'ble the Chief Justice and his other  
Companion Hon'ble Judges of the aforesaid Court.

The petitioner most humbly sheweth as under :-

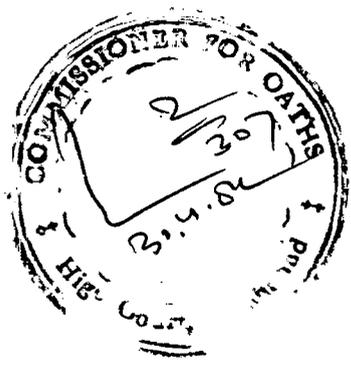
- 1. That the petitioner was appointed at the post of ~~Subdivisional~~ asstt. Gaurd in the year 1952 after being selected by the ~~State Service Commission~~ <sup>Selection Committee</sup>

Received  
Duplicate for OP.  
nos. 2 and 3 only  
Shri Sumant  
Singh  
4/5/82  
Union of India  
Lucknow



Handwritten signature

- 2. That the petitioner has been working under the Senior Divisional Operating Superintendent Lucknow on the post of Assistant Gaurd.
- 3. That the petitioner is a ever sincer ,honest and hard worker through out . There has been no complaint against the petitioner and no adverse entry or departmental punishment has been awarded to the petitioner.
- 4. That the petitioner is qualified upto the High School standard and his date of birth according to the high school certificate/departmental records is .
- 5. That the petitioner as Assistant Gaurd performed his duties till 30.8.1981 on 31.8.81.
- 6. That the petitioner was <sup>not</sup> challenged in a false Criminal case registered as Crime No. 11780 U/S 3 of Railway Property (unlawful possession) Act on 31.8.80 by Railway Protection Force Gonda.
- 7. That the petitioner was ~~br~~ailed out in the above noted case after only 16 (Sixteen) hours of his arrest by the Judicial Magistrate concerned.
- 8. That when the petitioner was not given duty till 5.9.80, he moved an application to the authority concerned to give the duty to the petitioner. On the same day the petitioner was served with a Duty out off memo by Gaurd Booking Incharge to the effect



*Handwritten signature*

(PIL)

that the further orders are awaited with regard to the duty of the petitioner . The True copy of the Duty but Memo is being filed herewith as Annexure No.1 to the Writ Petition.

9. That the petitioner surreptitiously received Cyclostyled a suspension order dated 6.10.80. signed by the opposite party no. 2 on 28.10.80  
A true photostat Copy of the suspension order is being filed herewith as Annexure No.2 to this Writ petition.

10. That the suspension order placing the petitioner under suspension has been issued and signed by the person (Opp.Party No.2) who is not the competent authority to suspend the petitioner. Moreover the opp.party no. 2 did not apply his mind at the time of suspending the petitioner at all, while signing the cyclostyled suspension order.

11. That the suspension order discloses neither any allegation against the petitioner , nor any other specification which may call for the petitioner to be placed under suspension nor any departmental proceeding /other proceeding pending or contemplated against the petitioner.

12. That in the pursuance of the suspension order (Annexure No. 2), the petitioner is running under



*[Handwritten signature]*

(AIB)

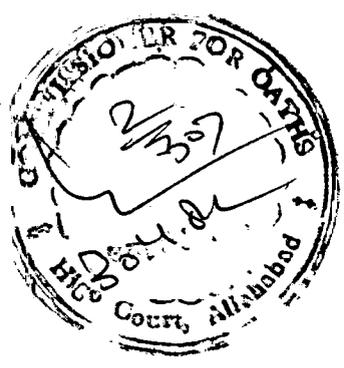
suspension since 6.10.80. The petitioner has moved several times to get the matter expedited or to get the suspension revoked but the authorities did not give any response towards the oral and written requests. The petitioner has a big family to maintain and there is no other person to support the family of the petitioner.

13. That since 6.10.80 neither any charge-sheet regarding departmental enquiry has been submitted nor any Enquiry Officer has been appointed to conduct the enquiry if any against the petitioner.

14. That in fact the petitioner has been implicated in the aforesaid criminal case referred above on account of the fact that the petitioner has so many times made complaints (oral as well as written) against the R.P.F. personnels and as such the petitioner was chosen as their victim in order to teach a lesson to the petitioner and to get him harrassed.

15. That the petitioner can not be placed under suspension by the order of the opp. party no. 2 for the simple reason that the opposite party No.2 is not an appointing authority of the petitioner. Moreover, the opposite party No. 2 has not been given any power by way of delegation empowering him to place the petitioner under suspension.

16. That the competent authority to place the petiti-



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A13

itioner under suspension is Senior Divisional Operating Superintendent M.E.R. Lucknow who is the appointing authority of the petitioner.

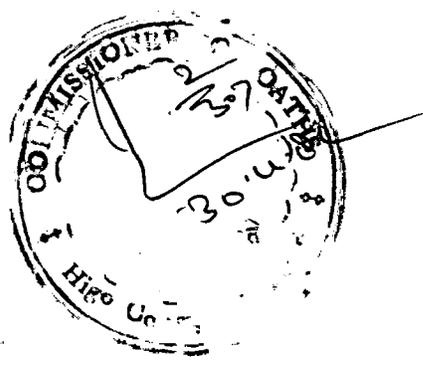
17. That the suspension order passed by the opposite party No. 2 placing the petitioner under suspension is prima facie illegal and without jurisdiction and authority which is not sustainable in the eyes of law.

18. That it is submitted that Railway Servants Discipline and Appeal Rules 1968 provide that the suspension of a Railway servant shall not prolong unnecessary than what is absolutely necessary. The relevant rule regarding suspension is reproduced below Rule:-

(3) Staff deemed to be suspended:- A railway servant shall be deemed to have been suspended by an order of competent authority in the following cases. The information to this effect should be conveyed to the employee on Standard Form No.2.

(a) With effect from the date of his suspension detention, if he is detained in custody whether on a criminal case charge or otherwise, for a period exceeding 48 hours.

(b) With effect from the date of his conviction if in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding 48 hours and is not forthwith dismissed or removed or compulsorily retired consequent to such



Accepted

conviction.

19. That rule 3 enables the appointing authority to place a Railway employee under suspension if the employee is detained in custody for a period exceeding 48 (Forty Eight Hours) hours but in the petitioner case, the petitioner was released from the custody after 16 hours (Sixteen hours) only. The relevant rule 3 is reproduced as below :-

(7) SUSPENSION FOR MINIMUM POSSIBLE PERIOD:- An employee should not be kept under suspension for a period longer than what is absolutely necessary.

20. That it is submitted that the petitioner should be presumed innocent unless proved guilty. It is pertinent to note that the criminal case against the petitioner is pending in the Court of Judicial Magistrate (Railway) Gonda in its premature stage. In that case even the statement of the petitioner has not been recorded in the court and no charge has been framed against him.

21. That no departmental enquiry against the petitioner has been initiated as yet and he has not been served with any departmental charge sheet etc. In fact the department has not taken any step to initiate the any enquiry against the petitioner but the petitioner is running under suspension since 6.10.80.



As per Court's order dated 25/5/90 amendment incorporated  
30/5/90

*[Handwritten signature]*

AS AIB



22. That feeling aggrieved by the order of the suspension the petitioner files the writ petition, since there is no other alternative remedy is open to him, against the other on the following :-

G R O U N D S

- (i) Because in absence of any enquiry contemplated or pending against the petitioner, he can not be placed under suspension exceeding one and half year.
- (ii) Because the opposite party No. 2 has not applied his mind while passing the impugned order in cyclostyled form.
- (iii) Because the suspension order is illegal, invalid and has been passed without any authority by the opposite party No. 2.
- (iv) Because the suspension order does not disclose any allegation etc. against the petitioner.
- (v) Because neither Enquiry Officer has been appointed to conduct any enquiry against the petitioner nor any charge sheet has been submitted so far.

*Handwritten signature or initials at the bottom left corner.*

(vi) Because the opposite party no. 2 is not a competent authority to place the petitioner under suspension.

(vii) Because the rules relating to the suspension do not enable the authorities to suspend the petitioner exceeding six months.

(viii) Because the petitioner should be presumed innocent unless otherwise proved in the court of law.

P R A Y E R

The petitioner prays for the following reliefs:-

(A) That a writ in the nature of certiorari quashing the suspension order dated 6.10.80 Annexure no.2 may kindly be issued by this Hon'ble Court.

As per Court A Order dated 25/5/90 amendment (B) incorporated 30/5/90

That any other writ, order may kindly be issued or passed by this Hon'ble Court which is deemed proper in the circumstances of the case.

(C) That the cost of the petition be may kindly be awarded to the petitioner.

Lucknow; Dated 22.4.82.

(Petitioner)

R. N. M. Through: Kanda Kanta Singh

Counsel for the petitioner.

Accepted 2



(A21)

(A10)

(10)

In the Hon'ble High Court of Judicature  
at Allahabad (Well known Bench under

WP. No of 1982

Ajadhya Lal Tewari — Petitioner  
& Union <sup>of</sup> ~~of~~ India — Op.

ANNEXURE NO 2



*[Handwritten signature]*

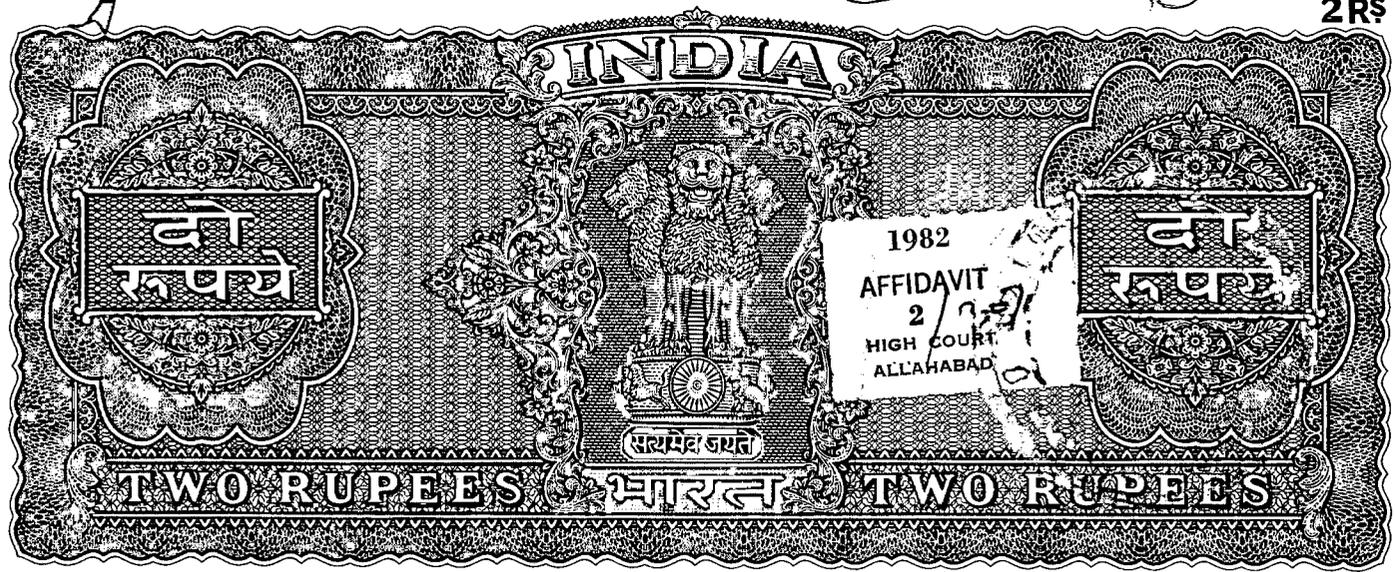
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In the Hon'ble High Court of Judicature at  
Allahabad, Lucknow Bench Lucknow

Ayodhya Prasad Tewari — Petitioner  
vs

Union of Government and others ~~op~~ Parties



A 24

13

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

Writ Petition No. of 1982.

Ayodhya Prasad Tewari . . . . . Feticioner

Versus

India

Union of ~~Government~~ and others . . . . . Opposite Parties

AFFIDAVIT

Affidavit of Ayodhya Prasad aged about 52  
years, son of Sri Triloki Nath Tewari, R/O 66,  
Nakrathi Ganj, Gonda, U.P.

I, the deponent, above named do hereby  
solemnly affirm and state on oath as under:-

1. That the deponent above named has filed  
the present writ petition against the  
suspension order dated 6.10.80. Being  
the petitioner he/well versed with the  
case.

..2



*Ayodhya Prasad*

A25

147

A22

2. That the contents of paragraphs 1 to 21  
of the writ petition are true to my  
personal knowledge.

Lucknow Dated  
April 30<sup>th</sup>, 1982

*[Signature]*  
Deponent

VERIFICATION

I, Ayodhya Prasad, the deponent named above  
do hereby verify that the contents of paragraphs  
4 to 21 of this affidavit are true to my  
own knowledge and no part of it is false and that  
nothing material has been concealed. So help me God.

Verified this 30<sup>th</sup> day of April, 1982 in the  
court compound.

Lucknow Dated  
April 30<sup>th</sup>, 1982

*[Signature]*  
Deponent

I identify the deponent who has signed this  
affidavit before me.

*[Signature]*  
Advocate *[Signature]*

Solemnly affirmed before me on 30.4.82 at  
A.M./P.M. by Ayodhya Prasad the deponent who is  
identified by Sri K.K. Singh, Advocate High Court,  
Lucknow.

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



*[Signature]*  
OATH COMMISSIONER  
High Court, (Lucknow Bench)  
LUCKNOW  
No. .... 21.307 ...  
Date ... 30.4.82 ...

A28

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1

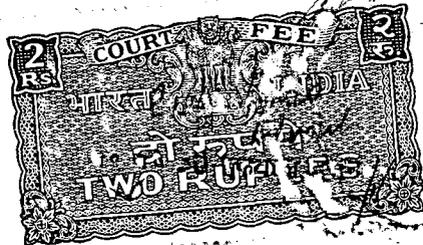
In the Hon'ble High Court of Judicature at Allahabad  
Lucknow Bench, Lucknow.

Writ Petition no.2193 of 1982.

Ayodhya Pd. Tewari .. Petitioner

Versus

Union of India & others .. Opp. parties.



1982  
AFFIDAVIT  
97/55  
HIGH COURT  
ALLAHABAD

Counter Affidavit on behalf  
of Opposite parties.

I, DARSHAN SINGH ✓  
S/o ✓  
years son of Sri Bhagat Singh ✓  
aged about 55 ✓  
working as  
Assistant Personnel Officer, in Divisional Railway  
Manager's Office, North Eastern Railway, Ashok Marg,  
Lucknow do hereby solemnly affirm and state on oath  
as under:

1. That the deponent is at present working as  
Assistant Personnel Officer in the office of Divisional  
Railway Manager, North Eastern Railway, Ashok Marg,  
Lucknow and as such he is fully conversant with the  
facts of the case and has been authorised by the  
opposite parties to file this counter affidavit on  
their behalf.

2. That in reply to para 1 of the petition it  
stated that the petitioner was appointed as Peon in  
the scale of 30-35 on 8.4.1952. The petitioner was

13/5/82

Darshan Singh

A27

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promoted as Courier in scale of 40-60(P.S.), thereafter as Breakman in scale of 50-80(P.S.), 100-130(A.S.) and 225-308(R.S.) w.e.f. 4.12.1963. The allegations contrary to it are denied.

3. That in reply to para 2 of the petition it is stated that the controlling authority of the petitioner is Senior Divl. Operating Supdt. but his appointing authority is senior scale officer(D.T.S.),

4. That in reply to para 3 of the petition it is stated that the averments made in this para are not admitted. As per record, the petitioner was awarded under noted punishments:

- (a) Censure 19.7.56
- (b) With-holding of passes for one year. 16.9.57
- (c) Censure 25.3.1961
- (d) With-holding of increment for 6 months with loss of seniority temporarily. 30.8.62
- (e) With-holding of increment for one year temporarily. 25.7.66.
- (f) Stoppage of passes for one year. 28.10.80.

The above mentioned punishments were awarded for the acts of negligence, misconduct and acts of omission and commission on his part after issue of memorandum for punishment.

5. That with regard to para 4 of the petition it is stated that records available with the railway

MS  
1375103

Saschar Singh

A28

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show that the date of birth of the petitioner is 25.1.1929 as assessed on the basis of Medical Certificate issued by the medical authority as 23 years on 25.1.1952. There is no information in railway records of the petitioner having his qualification as High School passed. The writ Petition's copy does not mention date of birth.

6. That in reply to para 5 of the petition it is stated that the petitioner worked as Assistant Guard upto 30.8.1980.

7. That with regard to para 6 of the petition it is stated that the crime case no.10/80 and 11/80 of 31.8.1980 were registered against the petitioner and the same have been filed in the court of Judicial Magistrate, Railways, Gonda in the month of Feb., 1981 and the same have been transferred to the court of Munsif Magistrate-VIII, Gonda where it was pending under trial u/s 244 of Cr.P.C.

8. That with regard to para 7 of the petition it is stated that the petitioner remained in the custody of R.P.F. Gonda from 31.8.1980 to 1.9.1980 and was released on bail on furnishing personal bonds.

9. That in reply to para 8 & 9 of the petition it is stated that the fact of suspension by the competent authority and the annexure no.1 of the writ petition is not denied.



*Darshan Singh*

A29

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u

10. That with regard to para 10 of the petition is is stated that the suspending authority is a senior scale officer who was fully competent to place the petitioner under suspension. The allegations contrary to it are not admitted. The decision to suspend the petitioner was taken by the competent authority after application of mind and the suspension order was issued on the prescribed form for the same.

11. That with regard to para 11 of the petition it is stated that as per Disciplinary and Appeal Rules, 1968 the petitioner was placed under suspension in accordance with para 5(2) and 5(c) of DAR 68 which reads as under:

5(2) A railway servant shall be deemed to have been placed under suspension by an order of the competent authority.

- (a) With effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise, for a period exceeding 48 hours;
- (c) when a case against him in respect of any criminal offence, is under investigation inquiry or trial.

12. That in reply to para 12 of the petition it is stated that as the petitioner was placed under suspension in connection with the criminal case of

MCO  
15/11/03

Darshan Singh

A2A

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theft registered against him and the same is under trial in the court of Munsif Magistrate, Gonda, his representations regarding revokcation of suspension and increase in subsistence allowance have been duly examined by the competent authority and it was found expedient to keep the petition under suspension. With regard to enhancing of subsistence allowance, the same was also considered and it was not found justified to enhance the subsistence allowance for reasons given in reply of the representation. The question of revokation was also considered and it was found not justified for the present vide Annexure A-1.

Annexure A-1

13. That in reply to para 13 of the petition it is stated that a criminal case as referred to in preceding paragraphs of this counter affidavit is still pending under trial in the court of Munsif Magistrate, Gonda it was not considered expedient to go into departmental enquiry when the competent criminal court was seized of the matter.

14. That in reply to para 14 of the petition it is stated that the averments made in this para are not admitted.

15. That in reply to paras 16,17,18 and 19 of the petition it is stated that the facts as averred by the petitioner are not admitted in the light of reply given in the preceding paragraphs of this counter affidavit. The authority who issued the order of suspension was

M.C.  
15/5/10

Sarshan Singh

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fully competent to issue the suspension order in terms of schedule of powers of Railway Servants Disciplinary & Appeal Rules, 1968.

16. That in reply to para 20 of the petition it is stated that as the criminal case is still pending the averments regarding the petitioner being innocent unless proved guilty is incorrect.

17. That in reply to para 21 of the petition it is stated that in view of pendency of criminal case of theft against the petitioner no departmental enquiry was started on the same matter by the department.

18. That with regard to petitioner's application for amendment of the petition dated 19.10.1982 it is stated that paras 1 to 3 of the application are not denied.

19. That in reply to para 4 of the application the averments regarding pendency of the case in the Court of Munsif Magistrate, Gonda is admitted but the fact of getting the case adjourned by the prosecution is denied. In fact the petitioner had moved application for transfer first time from the court of J.R.M. Gonda which was transferred to Munsif Magistrate, Gonda but the case was again transferred to J.R.M. Gonda for trial. Second time petitioner made another application for transfer of the case and it was transferred to the court of Munsif Magistrate VIII, Gonda. The petitioner had again moved that PP/RPF/Gonda should not be

13/10/83

Darshan Singh

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permitted to prosecute the case and instead of him, A.P.O. from Police should take prosecution of the case. Thus the delaying and dilatory tactics of petitioner is hampering speedy trial of the case.

20. That in reply to para 5 of the amendment application it is stated that the petitioner's case for revocation of suspension was considered on his representation by the competent authority but it was not found fit to warrant revocation of the petitioner's suspension in the light of reply given in the preceding paragraph of the counter affidavit.

21. That the facts as averred in paras 21A, 21B and 21C are not denied. The cases were reviewed and decisions were taken on merits of each case.

22. That with regard to para 21D of the Am. Application it is stated that as criminal case is pending trial against the petitioner and the petitioner himself avers about the recovery of locks and dhoties hence revocation of the suspension was not found justified by the competent authority.

23. That with regard to para 21E of the Am. Application it is stated that enhancement of subsistence allowance has not been considered justified by the competent authority since the petitioner's case is under trial in the court of law and for the delay in quick

M. S. Singh  
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Sarshan Singh

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disposal of the case before Munsif Magistrate, Gonda the Railway Administration is not responsible but the petitioner himself which has been fully explained in para 19 of the counter affidavit.

24. That in reply to para 21 F of the Am. Application it is stated that the matter of enhancing the subsistence allowance was considered by the competent authority and was not found justified to warrant any change in the subsistence allowance, petitioner has been informed about the same (Annexure A-1)

25. That for detailed reasons set forth in this counter affidavit about the involvement of the petitioner in the case under trial, recovery of the material from his custody and the dilatory tactics adopted by the petitioner in speedy finalization of the case, the case neither merits revocation of suspension nor enhancement of subsistence allowance is warranted and the case merits dismissal.

Lucknow: \_\_\_\_\_  
Dated: May 13, 1983.

*Darshan Singh*  
Deponent

Verification

I, the above named deponent do hereby verify that the contents of para 1 of this counter affidavit are based on personal knowledge, paras 2 to 24 are based on record and are believed to be true and those of

*Darshan Singh*

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13/5/83

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para 25 are based on legal advise.

*Darshan Singh*

Lucknow:

Deponent

Dated: May 15, 1983

I declare that I am satisfied by the perusal of the records, papers and details of the case narrated to me by the person alleging himself to be Sri is that person.

*C. A. Basir*  
Advocate.

*13/5/83*

Solemnly affirmed before me on *13/5/83* at *10-35* a.m./p.m. by the deponent *Darshan Singh* who is identified by Sri C.A. Basir, Advocate, High Court, Lucknow Bench, Lucknow.

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

*McGivern*  
COMMISSIONER  
(Lucknow Bench)  
JUDICIAL  
*921255/83*  
*13/5/83*

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

Writ Petition No.2193 of 1982

Ayodhya Pd.Tewari .. Petitioner  
Versus  
Union of India & others .. Opp.parties

Annexure No.A-1

North Eastern Railway

No.DSO/SS-RPF/3/80

Office of the  
Divisional Railway Manager(  
(Safety),

Lucknow:Dated: 12.5.1983.

Shri A.P. Tewari,  
Brakesman/Gonda  
(Under suspension).

Your appeal dated 28.9.1982 addressed to the  
Divisional Railway Manager has been duly considered.  
Since the case against you is still pending in the  
court of Additional Munsif Magistrate, Gonda and the  
charges are of grave nature, it has not been considered  
proper to revoke your suspension order for the present.

2. Your request for enhancement of subsistence  
allowance has also been considered. It is found that  
the delay in finalisation of the court case against  
you has taken place because the case has been trans-  
ferred from one court to another thrice on your request.  
You have also prayed that the case should not be dealt  
with by P.P./RPF/Gonda, instead it should go to P.  
Civil Police. It is thus seen that you have been  
adopting delaying tactics, hence it is not considered  
possible to increase your subsistence allowance.

Sd/-  
Divl.Safety Officer  
Lucknow.

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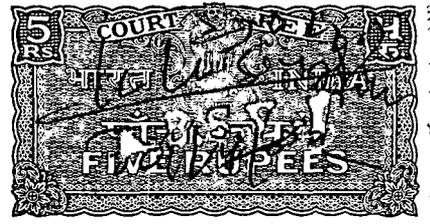
ब अदालत श्रीमान

In the Honble High Court of Judicature  
at Lucknow Bench Lucknow

वादी (मुद्दई)

प्रतिवादी (मुद्दा मलेह)

का वकालतनामा



Ayadhaya Prasad Esq.

1 c.f. Rs. 5, 00

नाम

वादी (मुद्दई)

ms  
3/5

Union of Government ~~Attorney~~  
प्रतिवादी (मुद्दा मलेह)

नं० मुकद्दमा सन् १६ पेशी की ता० १६ ई०  
उपर लिखे मुकद्दमा में अपनी ओर से श्री R.N. Gupta Esq.

Shri Kunda Kant Singh एडवोकेट  
महोदय  
वकील

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

हस्ताक्षर [Signature]

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

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महीना

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नाम अदालत  
नं० मुकद्दमा  
नाम फरीक

उत्कृत  
Kunda Kant Singh  
Accepted  
R. N. Gupta

A34

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NS/GCS  
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VAKALATNAMA

Before  
In the Court of

The Central Administrative Tribunal  
Circuit Bench, Lucknow

TA No. 1046 of 1987 (T)

A. P. Tiwari — App.

Versus

Union of India and others - Resp.

I/We. K.P. Singh, Divl. Ry. Manager, NERly, Lucknow

A.C. Lathé Sr. Divl. Safety Officer, NERly, Lucknow

do hereby appoint and authorise Shri. Anil Srivastava

Railway Advocate, Lucknow to appear, act apply and prosecute the above described Writ/Civil Revision/Case/Suit/Application/Appeal on my/our behalf, to file and take back documents, to accept processes of the Court, to deposit moneys and generally to represent myself/ourselves in the above proceeding and to do all things incidental to such appearing, acting, applying, pleading and prosecuting for myself/ourselves.

I/We hereby agree to ratify all acts done by the aforesaid Shri. Anil Srivastava

Railway Advocate, Lucknow

in pursuance of this authority.

IN WITNESS WHERE OF these presents are duly executed by me/us this

day of 14/8 1987

(A.C. Lathé)

(K.P. Singh)

Sr. Divl. Safety Officer  
NERly, Lucknow

Divisional Railway Manager  
N.E. Railway-Lucknow

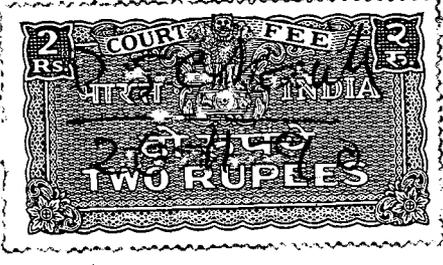
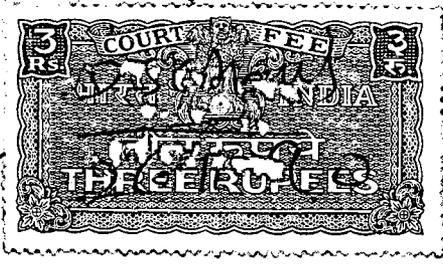
Accepted  
Anil Srivastava  
Adv

ब अदायत श्रीमान कै-प्रोप प्रशासनिक इन्फार्मेशन एंड एडवोकेट महोदय  
 [वादी] अपीलान्त  
 प्रतिवादी [रेस्पान्डेन्ट] श्री ए.पी. शिवारी का वकालतनामा

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ए.पी. शिवारी  
 वरून  
 मारुत तन्ना तथा  
 अन्य



बनाम प्रतिवादी (रेस्पान्डेन्ट)

मुकदमा नं. T.A. No 1046 सन 1987 पेशी की ता. 25-9-1990 ई०

उपर लिखे मुकदमा में अपनी ओर से श्री डॉ. सुक चव्हा

कै. श्री. श्यामल एवं ए.पी. शिवारी वकील महोदय एडवोकेट

नाम अदायत .....  
 मुकदमा नं० नाम .....  
 फरीकत .....  
 बुनाम .....

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ कि इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा उठावें या कोई रुपया जमा करें या हमारी या विपक्षी (फरीकासनी) को दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद लेवें या पंच नियुक्त करें-वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा छपर मुकदमा अदम पैरबी में एक तरफ मेरे खिलाफ फंसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर जाम आवे ।

Accepted  
D. Charbe  
 Advocate  
 25/9/90  
 Accepted  
Sharma  
 Advocate  
 25/9/90

हस्ताक्षर [Signature]  
 साक्षी (गवाह) [AP. Tewari]  
 14/9/90  
 दिनांक [Signature] महीना सन 19 90 ई०

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वकालतनामा

केन्द्रीय प्रशासनिक आधिकारण के समक्ष  
इलाहाबाद में  
दि 10/11/82 के न्यायालय में  
रिप्रेजेंटेशन नं 00193/82 उच्च न्यायालय इलाहाबाद, उत्तर प्रदेश, उत्तरांचल

वादी प्रतिवादी श्री प्रो पी. लिंगराज  
प्रतिवादी वादी भारत संघ एच. आर.  
दावेदार अपीलार्थी  
बनाम  
अर्जीदार प्रत्यार्थी

भारत के राष्ट्रपति इसके द्वारा श्री प्रो पी. लिंगराज एच. आर. द्वारा

इलाहाबाद  
का उपर्युक्त वाद/अपील/कार्यवाही में भारत संघ की ओर से उपसंजात होने, कार्य करने, आवेदन करने, अभिवचन करने और  
आगे कार्यवाही करने के लिए दस्तावेज दाखिल करने और वापस लेने, न्यायालय की आदेशिका स्वीकार करने, काउन्सेल, अधिवक्ता  
या प्लीडर नियुक्त करने और उन्हें अनुदेश देने, रुपया वापस लेने और उसका निक्षेप करने तथा उपर्युक्त वाद/अपील/कार्यवाही में  
भारत सरकार का साधारण तिनधित्व करने और भारत संघ के लिए इस प्रकार उपसंजात होने, कार्य करने, आवेदन करने,  
अभिवचन करने और आगे कार्यवाही करने की अनुषांगिक सभी बातें करने के लिए नियुक्त और प्राधिकृत करते हैं। किन्तु यह  
इस शर्त के अधीन रहते हुए होगा कि जब तक भारत सरकार के समुचित प्राधिकारी से उस निमित्त पहले ही स्पष्ट प्राधिकार प्राप्त नहीं  
कर लिया गया है, तब तक उक्त काउन्सेल/अधिवक्ता/प्लीडर या उसके द्वारा नियुक्त काउन्सेल/अधिवक्ता/प्लीडर सभी या किसी  
प्रतिवादी/प्रत्यासी/अपीलार्थी/वादी/विरोधी पक्षकार के विरुद्ध उस वाद/अपील/दावा/प्रतिरक्षा/कार्यवाही को पूर्णतः या भागतः न तो  
वापस लेगा, न उसका अधिग्रहण करेगा, न ऐसा कोई करार करेगा या समझौता करेगा जिसके द्वारा वाद/अपील/कार्यवाही पूर्णतः  
या भागतः समायोजित की जाए और न उससे उद्भूत या उसमें विवादग्रस्त सभी या किसी विषय को मध्यस्थ को निर्देशित करेगा,  
परन्तु आपवादिक परिस्थितियों में जब भारत सरकार के समुचित प्राधिकारी से परामर्श करने के लिए पर्याप्त समय नहीं है और  
वाद में समझौता करने में लोप करना निश्चित रूप से भारत सरकार के हित के प्रतिकूल होगा तो उक्त प्लीडर/अधिवक्ता/काउन्सेल  
ऐसा कोई करार या समझौता कर सकेगा जिसके द्वारा उक्त वाद/अपील/कार्यवाही पूर्णतः या भागतः समायोजित हो जाय और  
ऐसे प्रत्येक मामले में काउन्सेल/अधिवक्ता/प्लीडर करार या समझौता करने के विशेष कारण बताते हुए उक्त अधिकारी को  
तत्काल संसूचित करेगा।

राष्ट्रपति इस प्राधिकार के अनुक्रम में श्री प्रो पी. लिंगराज एच. आर. द्वारा  
इलाहाबाद  
द्वारा किए गए सभी कार्यों का अनुसमर्थन करने को सहमत हैं।

इसके साक्ष्यस्वरूप भारत के राष्ट्रपति के लिए और उनकी ओर से इस विलेख को आज तारीख को  
सम्यक् रूप से निष्पादित किया जाता है।

तारीख 19

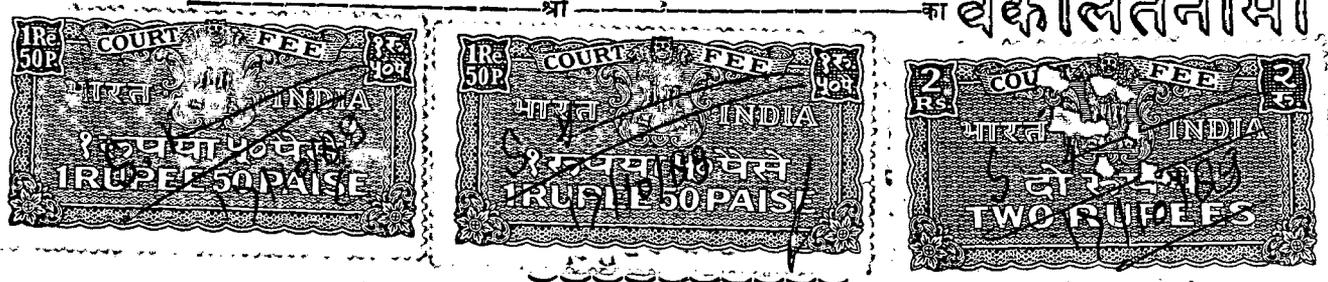
निष्पादन करने वाले अधिकारी का पदनाम  
उच्च न्यायालय के अधिकारी  
एच. आर. रेड्डी, उखनठ

(48)

व अबालत श्रीमान

महोदय

[वादी] अपीलान्त



Ajodhya Prasad Tewari

वनाम

प्रतिवादी (रेस्पॉण्डेंट)

Union of India and ors.

T.A. No. मुकद्दमा नं० 1046 सन् 1987

पेशी की ता० 17-10-89 ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री

RAKESH KUMAR, SANJAY KUMAR

वकील

महोदय

एडवोकेट

नाम अबालत  
मुकद्दमा नं० नाम  
फरीकन

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ कि इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जबाबदेही व प्रश्नोत्तर करें या कोई फागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी या विपक्षी (फरीकासनी) फा दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (वस्सखती) रसीद लेवें या पंच नियुक्त करें-वकील महोदय द्वारा की गई यह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि हर पेशी पर स्पष्ट या जिली अपने पैरोकार जो मेजता रहूंगा ऊपर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो पाता है उसकी जिम्मेदारी मेरे एपील पर नहीं होगी इसलिए यह

Accepted

Accepted  
Sanjay Kumar  
Adv

17-10-89

हस्ताक्षर

साक्षी (गवाह)

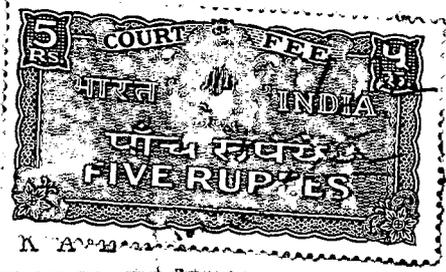
साक्षी (गवाह)

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V A K A...

Before IN THE HIGH COURT OF JUDICATURE AT ALIHAHAD  
in the court of (LUCKNOW BENCH) Lucknow.

W.P. No. 2193 of 1982.

Ayodhya Prasad Tiwari ..... Petitioner

VERSUS

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

I/We A. Ramarao, Divisional Railway Manager, North Eastern Railway, Lucknow who is ex-officio authorised to act for and on behalf of Union of India, &

G.A. Shukla, Divisional Security Officer, North Eastern Railway, Lucknow.

do hereby appoint and authorise Shri C.A. Basir, ..... Railway Advocate Lucknow. .... to appear, act, apply

and prosecute the above described Suit/Application/Case/Appwal/Writ/Civil Revision on ~~my/our~~ behalf of Union of India, ..... Divisional Railway Manager, and Divisional Security Officer.

to file and take back documents, to accept processes of the court, to deposit moneys and generally to represent ~~myself/ourselves~~ for and ..... on behalf of Union of India, Divisional Railway Manager, and Divisional Security Officer.

in the above proceeding and to do all things incidental to such appearing, acting, applying, pleading and prosecuting for and on ~~myself/ourselves~~ behalf of Union of India, Divisional Railway Manager & Divisional Security Officer.

We hereby agree to ratify all acts done by the aforesaid Shri C.A. Basir, Rly. Advocate Lucknow. in pursuance of this authority.

IN WITNESS WHEREOF these presents are duly executed

by me/us this day of October 1982.

A. Ramarao  
(A. RAMARAO)  
Divisional Railway Manager  
North Eastern Railway, Lucknow.

G.A. Shukla  
Divisional Security Officer,  
North Eastern Railway, Lucknow.

Accepted  
C. A. Basir



Emp No. 4782(C)/02

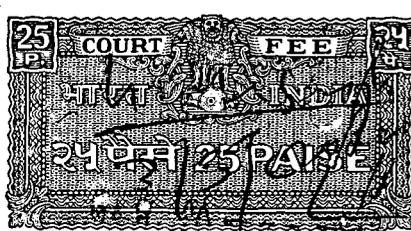
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IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD,

LUCKNOW BENCH, LUCKNOW.

Writ Petition

No. 2193 of 1982.



S2 B-S2  
A  
12/8/82

Ayodhya Pd. Tewari.....Petitioner.

Versus

Union Government and Others.....Opp. Parties.

APPLICATION FOR INTERIM RELIEF.

The petitioner most humbly submits as under :-

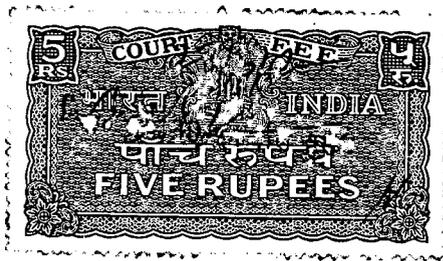
1. That for the facts and grounds disclosed in the accompanying writ petition supported writ and prayed affidavit, it is most humbly/that this Humble court may graciously be pleased to stay the execution and operation of the impugned order (Annexure No.2) for the ends of justice.

Kamla Kant Singh  
Counsel for the petitioner.

Lucknow; Dt..22-8-82.

Ajaya Singh

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



C.M. Appln. No. 11367 (w) of 1982.

Inre:

Writ petition No. 2193 of 1982.

Ayodhya Prasad Tewari. --- -- Petitioner-Applicant.

Versus

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

Application for amendment of  
the writ petition.

The petitioner abovenamed begs to state as under:-

That for the facts stated and the reasons disclosed in the accompanying affidavit, it is respectfully prayed that the petitioner be permitted to amend the writ petition in the manner submitted in the said affidavit.

Lucknow Dated  
Oct. 19, 1982.

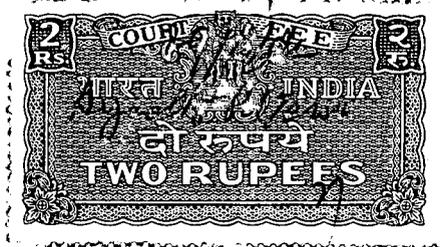
*Bijesh Kumar*  
*Roshan*  
Counsel for the petitioner.

*Prasad*

AW  
5/2

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

\*\*\*



Application for amendment

of

Writ Petition No. 2193 of 1982

Ayodhya Prasad Tewari. --- -- Petitioner  
Applicant.

Versus

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

AFFIDAVIT.

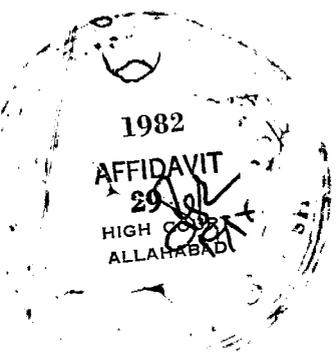
I, Ayodhya Prasad Tewari, aged about 52 years,  
son of Sri Triloki Nath Tewari, resident of 66 Makratha  
Ganj, Gonda, do hereby solemnly affirm and state as  
under:-

1. That the deponent is petitioner in the  
above noted writ petition and is fully conversant  
with the facts deposed to hereunder:

2. That the deponent was placed under suspension  
by order dated 6.10.1980 and is still continuing under  
suspension.

3. That a case under section 3 of Railway Property  
(Unlawful Possession) Act was registered against the  
deponent on the ground that some Railway locks and  
printed ~~dh~~ dhoties were recovered from the possession  
of the deponent on 13.8.1980.

4. That the case under the Railway Property



*[Handwritten signature]*

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(Unlawful Possession) Act is pending in the Court of Munsif Magistrate No.9, at Gonda. The prosecution evidence has not started so far. Certain dates were fixed but the case had been got adjourned by the prosecution.

5. That now more than two years have passed that the applicant is under suspension. There are even cases where the suspension order has been revoked during the pendency of the proceedings under section 3 of the Railway Property (unlawful Possession) Act but the order of suspension against the petitioner has not been revoked. The deponent has been able to gather relevant information which is necessary to be incorporated in the writ petition, hence following paragraphs may be permitted to be added after para 21 of the writ petition:-

" 21-A. That Sri V.S. Pandey, Assistant Guard and Sri S.Z. Rahman, Guard were ~~are~~ suspended on registration of a case under section 3 of the Railway Property (Unlawful Possession) Act and the case had also proceeded against them being case No. 471/1976 in the Court of Railway Judicial Magistrate, Gorakhpur. They were suspended on 26.11.75 and their suspension was revoked on 4.3.76. Again they were suspended on 29.11.76 and their suspension was again revoked on 3.12.77 during the pendency of the criminal case. The case was decided on 21.2.79.

21-B. That Sri V.N. Chaubey, Guard and Debi Prasad fitter were proceeded against under section

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3 of the Railway Property (Unlawful Possession) Act in case no.483/80. Sri V.N.Chaubey was suspended on 24.9.79 and his order of suspension was revoked on 15.9.80. Debi Prasad was suspended on 21.9.79 and his suspension had also been revoked on 15.9.80. The proceedings in the criminal court under section 3 of the Railway Property (unlawful possession) Act are still pending against them.

21-C. That Sri U.R.Singh, Assistant Guard - another Railway employee Sri Rashid are being prosecuted under section 3 of the ~~U.P.~~ Railway Property (Unlawful Possession) Act under case no.465/80. Sri U.R.Singh was suspended on 5.7.79 and his suspension order has been revoked on 28.11.79. Rashid was suspended on 5.7.79 and his order of suspension has been revoked on 14.9.80. The case as against them is still pending.

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21-D. That the case against the petitioner is false and concocted. The allegation is that the petitioner had some Railway locks and some dhoties. The petitioner is differently being treated from others whose orders of suspension have been revoked although the case is still pending against them.

21-E. That rule 11 of the Railway Servants Discipline & Appeal Rules, 1968 reads as follows:-

"11. Subsistence allowance and other allowances -  
A Railway servant under suspension or deemed to have been placed under suspension shall draw subsistence allowance and other allowances in terms of Rule 2043-R 11 during the period of suspension.

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(i) The amount of subsistence allowance may be increased by a suitable amount not exceeding 50 percent of the subsistence allowance admissible during the period of the first six months if in the opinion of the said Authority the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Railway servant.

(II) the amount of subsistence allowance may be reduced by a suitable amount, ~~not~~ exceeding 50 percent of the subsistence allowance admissible during the period of the first six months if in the opinion of the said Authority, the period of suspension has been prolonged due to reasons, to be recorded in ~~writing~~ writing directly attributable to the Railway servant."

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19/1/82

According to the above rule suspension allowance of the petitioner should have been enhanced to 75% of his pay but it has not been so done although six months have expired in April 1981. The reason of prolonged suspension is not ~~there~~ attributable to the petitioner.

21-F. That the petitioner has applied for payment of enhanced subsistence allowance but no orders have so far been passed, lastly being on 28.9.82 a true copy of which application is filed herewith as Annexure 3 to this application.

21-G. That sub rule (5)(b) of rule 5 of the Railway Servants Discipline and Appeal Rules, 1968 reads as follows:-

"Where as railway servant is suspended or

By order of

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is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the railway servant shall continue to be under suspension until the termination of all or any of such proceedings."

No order has been passed by the competent authority for continuance of the suspension order until termination of the proceedings pending against the petitioner.

6. That in the grounds the following grounds may be added after ground no.(viii):

"(ix) Because the opposite parties should have enhanced the suspension allowance of the petitioner, on the expiry of six months in terms of rule 11 of the Railway Servants Discipline and Appeal Rules, 1968.

(x) Because no order for continuance of the suspension order has been passed by the Competent Authority as provided for under sub-rule(5)(b) of rule 5 of the Railway Servants Discipline and Appeal Rules, 1968. "

7. That in the relief clause relief 'A-1' may be added after relief (A) as under:

"(A-1) to issue a writ of mandamus commanding

*For 1971/102*

*For 1971/102*

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the opposite parties to pay the increased subsistence allowance to the extent of 75% of the pay with effect from 6.4.81."

Lucknow Dated  
October 19, 1982.

Deponent. *[Signature]*

I, the abovenamed deponent, do hereby verify that the contents of paragraphs 1 to 5 of this affidavit are true to my own knowledge and those of paras 6 and 7 are based on legal advice. No part of it is false and nothing material has been concealed, so help me God.

*[Handwritten signature]*  
19/10/82  
COURT OF SESSIONS  
LUCKNOW  
U.P.

Lucknow Dated  
Oct. 19, 1982.

Deponent. *[Signature]*

I identify the deponent who has signed before me.

*[Signature]*  
Vishnu Dayal

Clerk of Sri Brijesh Kumar.

**OATH COMMISSIONED**  
High Court Allahabad  
Lucknow Bench

Solemnly affirmed before me on 19.10.82 at 6.15 a.m./p.m. by *[Signature]* the deponent who is identified by *[Signature]* Clerk of Sri Brijesh Kumar, Advocate, Lucknow.

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

*[Signature]*

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

Writ petition No. 2193 of 1982.

Ayodhya Prarass Tewari. ----- Petitioner.

Versus

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

Annexure No. 3.

The Divisional Railway Manager,  
North Eastern Railway,  
Lucknow.

A.P. Tewari Vrs. Union of India.

Petition for reinstatement of service  
from suspension.-----

Sir,

The humble petitioner respectfully submits as under:-

1. That he was assistant Guard in the N.E. Railway posted at Gonda junction.
2. That he is running under suspension since 1.9.80 in connection with a case going on before the Additional Munsif Magistrate IX Gonda, by the suspension letter dated 6.10.80 as per no. DSO/SS, RPF/13/80 from the office of Divisional Railway Lucknow.
3. That the suspension letter discloses neither any allegation nor any charge specifically, nor any departmental proceeding against the petitioner.
4. That no charge sheet has till today been issued to the petitioner in connection with his suspension since 1.9.80.

Handwritten signature and date 19/10/82

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5. That as per Railway employees "Discipline and Appeal Rules, 1968 the suspension above six months is illegal and is liable to revocation.

6. That the salary and allowances paid to the petitioner monthly is only 50% whereas 'the Railway Employees' Discipline and Appeal Rules, 1968' provided that it must be 75% in total of the salary and allowances.

7. That the case in connection with which the petitioner was suspended <sup>is</sup> in very slow speed. Two years elapsed and nothing happened. Not even the statement of the petitioner is recorded and no charge has yet been framed against him.

8. That according to the fundamental principles of jurisprudence' a person is presumed to be innocent unless he is proved guilty in connection with a case before court or departmental proceedings.

9. That as per "Railway (Employees) Discipline and Appeal rules 1968" that suspension is illegal if the employee is detained in custody for a period not exceeding 48 hours where as in the present case the detention was for 16 hours only.

10. That if the suspension of a Railway employee prolongs unnecessarily after 90 days, as per 'Railway Employees Discipline and Appeal Rules, 1968 it is illegal.

11. That in the present days of dearness the petitioner is unable to afford his family in such a low income paid to him monthly.

12. That it is against the principles of natural justice to put the petitioner in such a hard situation to suffer and starve illegally.

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In the salary of the above facts the suspension of the petitioner is quite illegal and it is, therefore, humbly prayed by the petitioner :

(a) That the suspension may kindly be quashed and he be reinstated on duty very soon.

(b) alternatively, his salary and allowances may kindly be increased from 50% to 75% of the total.

Petitioner:

Shri Ayodhya Prasad Tewari

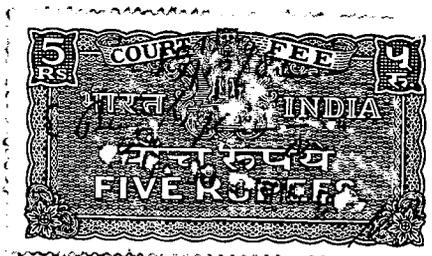
Asstt Guard

N.R.Railway, Gonda.

Dated 28.9.82.

Handwritten signature and date: 19/10/82

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



C. M. Appln. No; 11366 (W) of 1982.

Inre:

Writ Petition No. 2193 of 1982.

Ayodhya Prasad Tewari. --- --- Petitioner-Applicant.

Versus

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

Second Application for Interim Relief.

The petitioner begs to state as follows:-

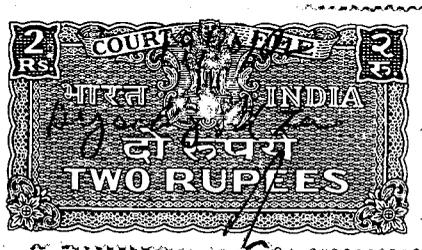
That for the facts stated and the reasons disclosed in the accompanying affidavit, it is respectfully prayed that this Hon'ble Court may be pleased to stay operation of the suspension order dated 6.10.80 and may further be pleased to direct the opposite parties to pay subsistence allowance to the petitioner @ 75% of his pay w.e.f. 6.4.1981.

Lucknow Dated  
Oct. 19, 1982.

*Bijesh Kumar*  
*Rakesh Kumar*  
Counsel for the petitioner.

*Joseph A*

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



2nd Application for interim relief.

Inre:

Writ Petition No.2193 of 1982.

Ayodhya Prasad Tewari

---  
Petitioner  
Applicant.

Versus

Union of India and others.

---  
Opp. Parties.

AFFIDAVIT.

I, Ayodhya Prasad Tewari, aged about 52 years, son of Sri Triloki Nath Tewari, resident of 66 Makratha ganj, Gonda, do hereby solemnly affirm and state as under:-

1. That the deponent is petitioner in the above noted writ petition and is fully conversant with the facts deposed to hereunder:-

2. That the deponent was suspended by order dated 6.10.80 a true copy of which is Annexure 2 to the writ petition.

3. That the deponent filed a writ petition (Writ petition No.2193 of 1982) in this Hon'ble Court on 28.4.1982 which is pending in this Hon'ble Court.

*Ayodhya Prasad Tewari*

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Along with the writ petition application for interim relief was also filed on which time was granted to the counsel for the opposite parties on 17.5.1982 for obtaining instructions. The said application has not been listed for orders after 27.5.82, hence no orders could be passed on the said application for interim relief.

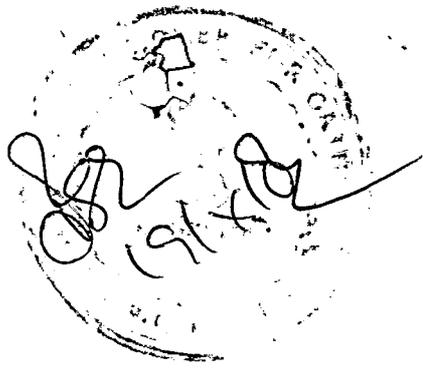
4. That a case under section 3 of the Railway Property (Unlawful Possession) Act has been registered against the deponent. The proceedings in that case are pending in the Court of Munsif Magistrate No.9, Gonda. The case was fixed on several dates but on all those dates the prosecution got adjournments on one or the other grounds.

5. That absolutely a false case has been concocted against the deponent.

6. That the aforesaid case was registered against the deponent on the ground that some Railway locks and printed dhoties were recovered from the possession of the deponent on 13.8.1980.

7. That the case under the Railway Property (Unlawful Possession) Act is pending in the Court of Munsif Magistrate No.9, Gonda. The prosecution evidence has not started so far. Certain dates were fixed but the case had been got adjourned by the prosecution.

8. That now more than two years have passed that the applicant is under suspension. There are even cases where the suspension order has been revoked during



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the pendency of the proceedings under section 3 of the Railway Property (Unlawful Possession) Act but the order of suspension against the petitioner has not been revoked. The deponent has been able to gather relevant information which is necessary to be <sup>placed</sup> ~~mentioned~~ before this Hon'ble Court.

9. That Sri V.S. Pandey, Assistant Guard and Sri S.Z. Rahman, Guard were suspended on registration of a case under section 3 of the Railway Property (Unlawful Possession) Act and the case had also proceeded against them being case Cr. 471/1976 in the Court of Railway Judicial Magistrate, Gorakhpur. They were suspended on 26.11.75 and their suspension was revoked on 4.3.76. Again they were suspended on 29.11.76 and their suspension was again revoked on 3.12.77 during the pendency of the criminal case. The case was decided on 21.2.79.

10. That Sri V.N. Chaubey, Guard and Debi Prasad fitter were proceeded against under section 3 of the Railway Property (Unlawful Possession) Act in case no. 483/80. Sri V.N. Chaubey was suspended on 24.9.79 and his order of suspension was revoked on 15.9.80. Debi Prasad was suspended on 21.9.79 and his suspension had also been revoked on 15.9.80. The proceedings in the criminal court under section 3 of the Railway Property (Unlawful Possession) Act are still pending against them.

11. That Sri U.R. Singh, Assistant Guard and another Railway employee Sri Rashid are being prosecuted under section 3 of the Railway Property (Unlawful Possession) Act under case no. 465/80. Sri U.R. Singh

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