

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

O.F. No.109 of 88(L)

Madan Mohan Gupta ... Applicant

Versus

Accountant General-II, Uttar Pradesh, Allahabad and others ... Respondents.

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT No. 1.

....

I, Chandra Lal, aged about 41 years son of late Shri Mahabir Prasad at present posted as Deputy Accountant General (GEN & GE) in the office of the Accountant General (Acctt. & Fntt.)-2 U.P., Allahabad do hereby solemnly affirm and state as under:-

1. That the deponent is doing fairvi of all the Respondents and posted in the office of the Respondent No.1 and as such he is fully conversant with the facts of the case. The deponent has read and understood the contents of the application filed by the applicant as well as the facts deposed to herein under in reply thereof.

Chandra Lal

2. That the contents of para 1 to 5 and 6(i) of the application needs no comments.

3. That in reply to the contents of para 6(2) of the application it is submitted that the petitioner was appointed to the selection grade of I.A.S. on 1.1.86, he was not entitled to have his pay fixed under the pay fixation formula prescribed in revised rule 3(3) of the amended I.A.S. (Pay) Rules, 1987. He was to be allowed pay only in the revised selection grade of I.A.S. in accordance with the explanation 2 given below revised rule 3(i) of the Amended I.A.S. (Pay) Rules, 1987 (Annexure-IV enclosed). The pay of the petitioner fixed by this office in the revised selection grade of I.A.S. with reference to his pay in the revised senior scale of I.A.S. was totally correct and in accordance with the provisions of Amended I.A.S. (Pay) Rules, 1987 and instructions/clarifications issued by Govt. of India from time to time.

4. That the contention of the petitioner that his pay in the existing pre-revised selection grade (Rs.200-2250) ie. Rs.2125/- should have been the basis of fixation of his pay in the revised selection grade (4800-5700), is not correct, as it would be clearly contrary to the instructions/clarification issued by Govt. of India, Ministry of Personnel,

Handwritten signature

2/27

P.G. and Pension, Deptt. of Personnel and Training
vide their letter No.11030/95/87/AIS(II) dated 8.11.1988
(Annexure -I to this counter affidavit - being filed
herewith) read with Ministry of Finance, Department of
Expenditure Office Memorandum No.7(21)/E-III/88 dated
26.8.83(Annexure-II to this counter affidavit - being
filed herewith) . In the aforesaid orders it has been
stipulated thatin cases of Govt servants appointed/
promoted to another post including appointment in Selection
Grade exactly on 1.1.86, it is clarified that pay in
such cases should first be fixed in the revised scale
of pay of the post held on 1.1.86 with reference to the
pay in the pre-revised scale of that post and then fixed
in the promoted post under FR 22(c) with effect from
1.1.86 or FR 22(a)(ii) as the case may be. The petitioner
had represented his case of pay fixation also to the Govt.
of India on 1.7.1987 but Govt of India in their letter
No.11030/95/97-AIS(II) dated 8.11.88 and No.7(21)/E-III/
87 dated 26.8.88 have clarified that the petitioner was
entitled to draw his pay only in the revised scale of
selection grade.

Thus, pay fixation of the petitioner done by this
office is in accordance with the aforesaid orders and
therefore the question of any revision in pay of the
petitioner as fixed by this Office does not arise.

Chauhan

P/26

5. That in reply to the contents of para 6(3) & (4) of the application it is submitted that the term 'Existing scale' has not been clearly defined in the Amended I.P.S. (Pay) Rules, 1987. 'Existing scale' means the time scale applicable to the officer prior to the first day of January 1986 for the purpose of pay fixation under Rule 3(3) of the aforesaid rules, as may be confirmed from the clarification issued by Govt of India, Ministry of Personnel, P.G. and Pension, Deptt. of Personnel and Training vide their letter No.11030/95/87-AIS(II) dated 8.11.88 read with Ministry of Finance, Deptt. of Expenditure Office Memorandum No.7(21)E-III/87 dated 26.8.1988 and also explanation 2 below rule 5 of the gazette notification dated 13.9.1986 quoted by the petitioner in para 6(3) of the petition regarding definition of 'Existing scale'. The Explanation 2 below rule 5 of Gazette Notification dated 13.9.86 states as under: -

" The aforesaid option shall not be admissible to any person appointed to a post on or after the first day of January 1986, whether for the first time in Government service or by transfer or promotion from another post and he shall be allowed pay only in the revised scale". A photostat copy is being filed as Annexure III to this counter affidavit.

6. That the petitioner has been appointed in selection grade by promotion with effect from 1.1.86, he can be allowed pay only in the revised scale of selection grade and hence the pay drawn by him in the pre-revised selection grade cannot be treated as pay in the existing scale for the purpose of fixation of his pay in the revised scale of selection grade.

Chaudhary

7. That in reply to the contents of para 6(5) of the application it is submitted that before the introduction of new pay scales the pay of the petitioner was fixed, on his promotion to the selection grade of IAS; in the pre-revised scale of selection grade (2000-2250) .

As he had been drawing maximum of the senior scale ie. Rs.2000/- p.m. for more than two years. his pay was fixed at the next higher stage of the pre-revised selection grade ie. Rs.2125/- on 1.1.86 in terms of the rules of pay fixation then applicable in cases of promotion from senior scale to selection grade prior to the introduction of revised pay scales. The petitioner's contention that he had been allowed one increment on 1.1.86 in the pre-revised selection grade is not correct. In fact, he was allowed pay in the next higher stage of the selection grade. He was not entitled to any increment on 1.1.86 either in the pre-revised senior scale or in the pre-revised selection grade.

8. That ~~the~~ in reply to the contents of para 6(6) of the application it is submitted that the pay of the petitioner was correctly fixed in accordance with the provisions of Amended I.A.S. (Pay) Rules, 1987 as well as instructions/clarification issued by Government of India from time to time.

Chaudhary

9. That the contents of para 6(7) & 6(8) of the application needs no comments.

10. That in reply to the contents of para 6(9) of the application it is submitted that the pay of the petitioner in the revised selection grade with effect from 1.1.86 was fixed correctly in accordance with the I.A.S. (Pay) Second Amendment Rules, 1987 read with the instructions / clarifications issued by Government of India, from time to time. This position has already been explained in detail while replying to para 6(3 & 4) of the application as above.

11. That the reliefs sought by the applicant in his application are not tenable in the eyes of law.

12. In view of the facts and circumstances stated above, the application filed by the applicant is liable to be dismissed with costs to the Respondents.

Chaudhary
Deponent.

22/1/89
Lucknow,

Dated: 22/1/89 Jan. 1989.

(
Verification.

I, the above named deponent do hereby verify that the contents of paragraphs 1 to are

Chaudhary

13/2/89
true to my personal knowledge, those of paragraphs 2 to 10
are believed by me to be true on the basis of records

and information gathered and those of paragraphs

11 to 12 are also believed by me to be
true on the basis of legal advice. No part of this affidavit
is false and nothing material has been concealed.

Chaudhary
Deponent. 21/1/89

Lucknow,

Dated January 1989.

I identify the deponent who has signed before
me and is also personally known to me and signed

on at am/pm in the Court compound
at Lucknow.



(V.K. Chaudhary)

Counsel for the Respondents.

Lucknow,

Dated: 8 Jan. 1989.

31/1/89
21

See 60/89
K. K. Chaudhary
Counsel for the Respondents

8 Jan 1989

21/1/89

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

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_____ Applicant

Versus

_____ & _____ Respondent

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History of 200(1)

Madam Bench Subb - 15 - AG, D.P., All & Co.

ORDER

29.09

Itm D.S. Vohra, AM

In aid

Admit

Issue notice to respondents to file reply within a month.
Respondent can be filed within fifteen days thereafter before
the court who will fix the date of final hearing

sd/-

AM

msc

30.09

CR

Notice for respondents No 1 & 2 received by
Sri V.K. Chaudhary, counsel for the respondents. ~~2~~ 3 ~~up~~ fixed
on 21.11.09 for final hearing

msc

21.11.09

No sitting adjourned to 23.11.09
for filing reply, at the request of
counsel for respondents

msc

23.11.09

CR

No reply filed
filed by 21.2.09.

Reply can be

msc

21.12

D-12

No sitting. adjourned to
21.2.09

msc
21.12

27/3/89

D.R.

None is present before the Hon'ble Tribunal. The case is adjourned to 28/3/89.

D.R.

28/3/89

DK

As the presiding officer is not present, the case is adjourned to 24/4/89.

Brc
R

OR

Notice on behalf of respondents has been by Mr. V.K. Chaudhry has not filed any for.
Submitted for a

24/4/89

Hon. Mr. D.S. Mishra, A.M.
Hon. Mr. D.K. Agarwal, J.M.

For orders of Sec.
the orders of Bench of
date on file U.A No
110/00(L)

Sd/-
J.M.

Sd/-
A.M.

OR No rejoinder
filed
h
20/6

Hon' Mr. K.J. Raman, A.M.

29/6/89

For order see my orders dated 29/6/89 passed in the order sheet of O.A. No.109/88(L).

KJR
A.M.

(sns)

30/8/89

No sitting. Adj. to 26.8.89.

h
B.O.

Filed on 26/07
26/7

Before the Central Administrative Tribunal
Addl. Bench Lucknow
Application under sec 19 of the
Administration Tribunal Act
Madan Mohan Gupta

Vs.

(1) Accountant General-II, Uttar Pradesh Allahabad.

(2) Secretary, Deptt. of Personnel, Govt. of India, New Delhi.

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Noted for
20/9/88
26/8

A/C

Application Under Section 19 of the Administrative Tribunals Act, 1985.

For use in Tribunal's Office

DATE OF FILING
OR
DATE OF RECEIPT
BY POST
REGISTRATION NO.
Signature
Registrar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

*PRINCIPAL BENCH, NEW DELHI

*ADDITIONAL BENCH-Allahabad at Lucknow.

BETWEEN

Madan Mohan Gupta

APPLICANT

AND

(1) Accountant General, U.P., Allahabad.

RESPONDENT

(2) Secretary to Govt. of India, Deptt. of Personnel,
Ministry of Personnel, Public Grievances and
Pensions, New Delhi.

*Delete whichever is not applicable.

DETAILS OF APPLICATION

1. Particulars of the applicant:

- (i) Name of the applicant: Madan Mohan Gupta
(ii) Name of Father/Husband: Sri B.L.Gupta
(iii) Designation and office in which employed: Special Secretary, Planning Department, U.P.Lucknow.
(iv) Office address: -do-
(v) Address for Service of all notices: C-28, Butler Palace, Lucknow.

2. Particulars of the respondent:

- (i) Name and/or designation of the respondents: Respondent No.1 Accountant General II, Uttar Pradesh, Allahabad.
(ii) Office address of the respondent: Respondent No.2 Secretary to Govt. of India, Department of Personnel, Ministry of Personnel, Public Grievances and Pensions, New Delhi.

Recd. notices
C.T. No. 101/82
30.9.88

Contd....2/

(2)

3. Particulars of the order against which application is made

The application is against the following order:

Wrong Pay slip No. GE-6/I.A.S. (P)/3251-2/863 dated 20/5/87 issued by A.G.U.P. Allahabad and absence of any reply by A.G.U.P. and Govt. of India to Representation dated 1.7.1987.

- (i) Order No.
- (ii) Date
- (iii) Passed by
- (iv) Subject in brief:

Fixation of pay in the revised selection grade of Rs. 4800-150-5700 w.e.f. 1.1.1986 as per-revised I.A.S. Pay Rules, 1987.

4. Jurisdiction of the Tribunal :

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

5. Limitation :

The application further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunal Act, 1985.

6. Facts of the case :

(1) That the applicant was appointed to the Indian Administrative Service on promotion from the State Civil Service in the year 1980 and was allotted 1973 as his year of allotment in the IAS cadre and on the basis of his seniority, was appointed to the Selection Grade of the IAS (Rs. 2000-125-2250) w.e.f. 1.1.1986. As the applicant had been drawing pay at the maximum of the pre-revised senior scale of Rs. 1200-2000 i.e. Rs. 2000/-p.m. for more than two years, his pay in the selection Grade of Rs. 2000-125-2250 was fixed by the Accountant General, U.P. at the next stage of the selection grade i.e. Rs. 2125/- in accordance with Rule 3(2)(i) of the IAS (Pay) Rules 1954 as it stood prior to its second amendment in 1987, vide Pay slip issued by accountant General No. GE-6/IAS(P)/3251-2/3379 dated 20.1.87 (ANNEXURE A-1) The applicant actually drew pay at the above rate in the pre-revised selection grade upto the month of May, 1987 till his pay was refixed in the revised selection grade of the IAS i.e. Rs. 4800-150-5700 enforced vide I.A.S.(Pay) second Amendment Rules, 1987 with retrospective effect from 1.1.1986.

- (2) That the revised rule 3(3) of the amended IAS(Pay) Rules is reproduced below :-

"The initial pay of a member of the service who elects or deemed to have elected, in accordance with these rules, to be governed by the revised scale on and from the 1st day of January, 1986 or from a later date shall be refixed as from that date separately in respect of the pay drawn in a substantive or officiating capacity in the following manner :-

"(i) An amount representing 20% of the basic pay in the existing scale subject to a minimum of Rs. 75 shall be added to the "existing emoluments" of the member of the service.

"(ii) After the existing emoluments have been so increased the pay shall thereafter be fixed in the revised scale at the stage next above the amount thus computed :"

It is thus clear from the above that pay is to be fixed in the revised pay scale for substantive and officiating capacity separately according to the formula prescribed above and by no other method.

(3) That the term "existing emoluments" has been defined in the Explanation below the revised subrule 3(3) of the amended IAS(Pay) Rules as Under:-

"For the purposes of this sub-rule "existing emoluments" shall include-

(a) basic pay in the existing scale

(b) the dearness pay etc. ."

Now the question which arises for consideration in "What was the basic pay of the applicant in the existing scale?" The term "existing scale" has not been defined in the revised IAS(Pay) Rules. The said term has, however, been defined in rule 3(2) of the Central Civil Services (Revised Pay) Rules, 1986 issued vide Gazette Notification No.F-15(1)/IC/86 dated September 13, 1986 issued by the Government of India, Ministry of Finance (Deptt.of Expenditure) as under :-

"Existing scale" in relation to a Government servant means pay scale applicable to the post held by the government servant as on the first day of January, 1986 whether in a substantive or officiating capacity."

It is submitted that the Govt. of India released its resolution on the recommendations of the Fourth Central Pay Commission relating to structure of emoluments allowances and conditions of service in respect of Group "A" services/posts as also those in the All India Services-vide Ministry of Finance (Department of Expenditure) Notification No.14(2)/IC/86 dated 13.3.1987 in which it decided that the recommendations of the commission relating to fixation of pay, grant of allowances, date of effect be accepted broadly after "extending, wherever applicable, to Central Group 'A' services/posts and the All India Services, the improvements which have been accepted in regard to the employees of Group 'B', 'C', 'D'. A true copy of the relevant extract at the said Notification is annexed to this Application as to Annexure A-2.

In the absence of any definition of the term "Existing scale" in the revised I.A.S.(Pay) Rules, the definition of the said term in the Central Civil Services (Revised Pay) Rules, 1986, read with the above resolution would imply that the same definition applies to the I.A.S. also. That being so it is obvious that the 'existing scale' which is to be taken in to account in fixing the pay of the applicant in the revised selection Grade, is the scale held by him on January 1, 1986 viz Rs.2000-125-2250.

(4)

It is worth mentioning here that in the IAS (Pay) Rules, 1954, prior to its amendment by the Second Amendment Rules of 1987, "existing scale" was defined in Explanation 3 below rule 3 as follows :-

"Existing scale in relation to an officer means the time scale applicable to the officer or as the case may be, personal scale applicable to him immediately prior to the 1st day of January, 1973. whether is a substantive or officiating capacity.

The above explanation has been deleted in the revised I.A.S.(Pay) Rules, 1987, and it must therefore follow the GO 1 has deliberately deleted the above quoted definition of existing scale.*

(4) That is was a conscious decision of the Govt. of India to define "existing scale" to mean pay scale applicable to the post held by the Govt. Servant as on 1.1.86, unlike the earlier rule where under "existing scale" was defined as scale applicable to the officers immediately prior to 1.1.73. The change in the definition of "existing scale" as explained above proves beyond any shadow of doubt that the pay scale to be considered for conversion in the new scale is the pay scale held on the first day of January 1986 and not the pay scale held a day before that date. There can be no escape from the conclusion that the Govt. of India has deliberately deleted the above Explanation-3 below Rule 3 appearing in the IAS (Pay) Rules of 1954 in order to ensure that the term "existing scale" as defined in the Central Civil Services (Revised Pay) Rules 1986 could be applicable to IAS officers also.

(5) That as stated earlier in para 1, the applicant was allowed an increment in the pre-revised Selection Grade on the ground that he had been drawing pay at the maximum of the old (pre-revised) Senior Scale of IAS for more than two years. The Accountant General while fixing the applicant's pay in the revised Selection Grade of Rs. 4800-150-5700 has deprived him the advantage of the this increment and fixed his pay at Rs. 4800/-i.e. minimum of the revised selection grade, vide pay slip No.GE-6/I.A.S.(P)/3251-2/863 dated 20-5-1987. (Annexure A-3)

ANNEXURE A-3

(4) That the Govt. of India, Ministry of Finance, Department of Expenditure, vide office memo No. 7(21)-E-111/87, dated May 4, 1987 has issued certain clarifications in respect of such cases where increment falls due on January 1, 1986. Para 1 and point No. 1 together with the clarification issued in respect of the same are reproduced below:-

" The undersigned is directed to state that references are being received from Ministries/Departments seeking clarifications

regarding applications of certain provisions of C.C.S.(Revised Pay) Rules, 1986. Based on the issues raised, following clarifications are issued for the guidance of all concerned.

Sl.No.	Point raised	Clarification
1.	In case of a Government servant whose increment accrued in the pre-revised scale on 1.1.1986 whether the increment in the pre-revised scale is to be allowed first and pay fixed in the revised scale under CCS(RP)Rules, 1986 later or pay fixed in the revised scale first and increment allowed later in the revised scale.	Increment in the pre-revised scale is to be allowed first on 1.1.1986 and pay fixed in the revised scale thereafter.

The Applicant's contention is that in terms of the above clarification he should also be allowed an increment first in the pre-revised selection grade of Rs. 2000-125-2250 and then his pay should be fixed in the revised selection grade of Rs. 4800-5700. It is not disputed that the applicant's pay in the pre-revised selection Grade was Rs. 2125/- on 1.1.1986 which he actually drew, as already stated in para (1) above. His pay in the revised selection grade of Rs. 4800-150-5700 will therefore be fixed at Rs. 4950/- and not at the minimum of the revised selection grade viz. Rs. 4800/- as has been wrongly fixed by the Accountant General, U.P. Allahabad vide Annexure A-3.

(6) That the Applicant had submitted a representation dated 4-5-87 (Annexure A-4) to the Accountant General, U.P. Allahabad claiming and praying that his pay in the revised selection Grade of Rs. 4800-150-5700 should be fixed at Rs. 4950/- with effect from 1.1.1986. However the A.G. fixed my pay only at Rs. 4800/- which is against the rules.

(7) That the Applicant also submitted a representation (Annexure A-5) to the Govt. of India on 1-7-87 against wrong fixation of his pay in the revised selection Grade by the A.G.U.P. The said representation was forwarded to the Govt. of India by the Appointment Deptt. of U.P. Govt. vide their letter no. 6044/-1-4/1(83)/80 dated July 24, 1987 (Annexure A-6). Although more than a year has since elapsed, the Applicant has not received any reply there to even from the Government of India. Thus the departmental remedy did not elicit any response.

(8) That the Applicant also understands that a representation made by another selection grade IAS officer Sri S.D. Tyagi, special Secretary, finance has been rejected by the Govt. of India on the ground that "Explanation 2 below sub-rule(1) of Rule 3 of the IAS (Pay) Rules makes it clear that the post to which he is appointed on 1.1.86, pay can be drawn in the revised scale only." The aforesaid Explanation 2 is reproduced below :-

"The aforesaid option shall not be admissible to any person appointed to the service on or after on or after the first day of January 1986 and he shall be allowed pay only in the revised scale."

The fact of the matter is that the above Explanation 2 is in relation to the option to retain the existing scale under the proviso to the said rule and not in relation to the fixation of pay in the revised scale of pay (revised selection Grade in the case of the Applicant).

The applicant had not exercised any option to retain the then existing Selection Grade. On the other hand he had opted for fixation of his pay in the revised selection grade of Rs. 4800-150-5700 w.e.f. 1.1.86. Moreover, the above Explanation-2 is applicable to only those persons who are appointed to the Service on or after 1st day of January, 1986. But the Applicant was appointed to the Service i.e. Indian Administrative Service in 1980, and therefore even otherwise the above Explanation is not applicable in his case.

(9) The only question for determination in the case of the Applicant was and is as to what was the existing (pre-revised) scale applicable to the Applicant on 1.1.86. Applicant's contention is that it could not be the pre-revised senior scale of Rs. 1200-2000/- in which he had drawn salary only upto 31.12.85. The Applicant emphatically asserts that the Applicant did not remain in the senior scale of the IAS and was appointed to and also drew pay @ Rs. 2125/- in the pre-revised Selection Grade of Rs. 2000-125-2250 on and after 1.1.1986, as is evident from Annexure A-1, and therefore, the said pay of Rs. 2125/- should have been and ought to be the basis of fixing his officiating pay in the revised selection grade of Rs. 4800-150-5700 w.e.f. 1.1.86.

7. Relief(s) sought

In view of the facts mentioned in the foregoing paragraphs, the applicant prays for the following relief :-

(1) The Accountant General, U.Ps. Pay slip No. GE-6/I.A.S.(P)/3251-2/863 dated 20-5-1987(Annexure A-3) fixing his salary in the revised selection grade of Rs. 4800-150-5700 at Rs. 4800/- be quashed and set aside.

(2) Applicant's pay in the revised selection grade of IAS be fixed at Rs. 4950/- w.e.f. 1.1.88, at Rs. 5100 w.e.f. 1.1.87 and at Rs. 5250/- w.e.f. 1.1.88 and the Accountant General, U.P. Allahabad be directed to issue pay slip accordingly.

(3) Accountant General, U.P. Allahabad be also directed to fix my pensionary benefits accordingly.

Any other relief that may be deemed necessary and proper in the interest of justice.

8. Interim order, if prayed for : Nil

9. Details of the remedies exhausted :

The applicant declares that he has availed of all the remedies available to him under the relevant service rules, etc.

(1) Representation dated 4.5.87 made to the Accountant General U.P. Allahabad (Annexure A-4) but pay has been wrongly fixed by him at Rs. 4800/-

(2) Representation dated 1.7.87 (Annexure A-5) made to the Government of India, Department of Personnel, Ministry of Personnel, Public Grievance and Pensions, New Delhi against wrong fixation of pay in the revised selection grade of IAS by Accountant General, Uttar Pradesh, but no reply received as yet.

(3) Government of India vide its letter No. 11030/65/87 AIS(II) dated 12.2.88 Addressed to Chief Secretary, Government of Uttar Pradesh, Lucknow, has rejected the representation of and declined to grant any relief in the matter to another IAS officer, Sri S.D. Tyagi, Special Secretary, Finance, U.P. Govt. in exactly similar situation.

10. Matter not pending with any other courts :

The applicant further declares that the matter regarding which this Application has been made is not pending before any court of law or any other authority or any other Bench of the Tribunal.

11. Particulars of Bank Draft/Postal Order in respect of the Application Fee:

1. Name of the Bank on which drawn	State Bank of India U.P. Civil Sectt. Branch, Lko.
2. Demand Draft No.	OT/A/135-032632 dated Aug. 13, 1988 for Rs. 50/-

12. Details of Index:

List of documents relied upon

An index in duplicate containing details of the documents to be relied upon is enclosed.

1. A.G's pay slip No. GE-6/IAS(P)/3251-2/3379 dated 20.1.87 fixing salary in pre-revised scale Rs. 2125/- p.m.
(Annexure A-1)

2. Central Civil Services (Revised Pay) Rules 1986 issued vide Gazette Notification No F-15(1)/IC/86 dated Sept. 13, 1986 issued by Ministry of Finance (extract reproduced on page 3 of the application)

3. Ministry of Finance (Deptt. of Expenditure) Notification No.14 (2)/IC/86 dated 13.3.87. Extract of the said notification is annexed at (Annexure A-2)
4. IAS Pay Rules as they stood prior to amendemnt of 1987 (Extract reproduced on page 4 of the application)
5. I.A.S. Revised pay rules 1987.
6. Ministry of Finance, Deptt. of Expenditure, Office Memo No. 7(21)-E-111/87 dated May 4, 1987, (Extract reproduced on page 5 of the application)

13. List of enclosures

in verification(enclosed)

1. S.B.I., Lucknow Bank Draft No. OT/A/135-032632 dated 13.8.88 for Rs. 50/-
2. A.G's pay slip No. GE-6/IAS(P)/3251-2/3379 dated 20.1.87 fixing salary in pre-revised scale Rs. 2125/-p.m. (Annexure A-1)
3. A.G's pay slip No. GE-6/IAS(P)/3251-2/863 dated 20.5.87 wrongly fixing pay @ Rs. 4800/-p.m. in the revised scale (Annexure A-3)
4. Ministry of Finance (Deptt. of Expenditure) Notification No. 14(2)/IC/86 dated 13.3.87 Extract of the said notification is annexed a (Annexure A-2)
5. Applicant's representation dated 4.5.87 addressed to A.G.U.P. requesting to fix pay at Rs. 4950/- (Annexure A-4)
6. Representation of the applicant dated 1.7.87 addressed to the Govt. of India, Ministry of Personnel requesting for fixation on pay @ Rs. 4950/- (Annexure A-5)
7. Letter No. 6044/1-4/1(83)/80 dated July 24, 1987 from Govt. of U.P., Apptt. Deptt. to Govt. of India, Deptt. of Personnel forwarding the above representation (Annexure A-6).

I Madan Mohan Gupta S/O Sri B.L. Gupta, age 57 years working as Special Secretary, Planning Deptt., U.P. resident of Lucknow do hereby verify that the contents of para 1 to 13 are true to my personal knowledge and belief and that I above not suppressed any material facts.

Place. Lucknow
Date.. 25/8.88

Signature of the applicant

- 9 -

87
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Before the Central ^{Administrative} Appellate Tribunal
Addl Bench Lucknow
Application under see 19 of the
Administration Tribunal Act
Madan Mohan Gupta
Vs.

(1) Accountant General-II Uttar Pradesh Allahabad.

(2) Secretary, Deptt. of Personnel, Govt. of India, New Delhi.

Annexure A-1

PAY/LEAVE SALARY SLIP

A.G.(A&E)II, U.P.
Allahabad-211001.

No.GE-6/IAS(P)/3251-2/3379 Dated: 20-1-87

श्री एम०एम०गुप्त, आई०एस०, विशेष सचिव, उ०प्र० शासन, नियोजन विभाग को सूचित किया जाता है कि वह आदेश संख्या.....तारीख...लखनऊ राजपत्र का पृष्ठ.....के अधीन दी गई तारीखों से निम्नलिखित मासिक दरों पर वेतन/छुट्टी वेतन और भत्ते लेने का हकदार है।

व्योरे	किस तारीख से	किस तारीख से	किस तारीख से
	1.5.85	1.1.86	Date of relief
स्थानाप्न वेतन	2000/-	2125/-	NIL
विशेष वेतन	300/-	300/-	/
Addl.D.A.	380/-	526/30	/
Dearness Allowance	1360/-	1450/-	/
I.R.	300/-	313/-	/
Total	4340/-	4714/30	NIL

TRUE EXTRACT

(जय) 25/8/88
(एम०एम०गुप्त)
विशेष सचिव,
उ०प्र० शासन,
लखनऊ

Before the Central ^{Administrative} Appellate Tribunal
Addl Bench Lucknow
Application under sec 19 of the
Administration Tribunal Act
Madan Mohan Gupta

Vs.

- (1) Accountant General-II Uttar Pradesh Allahabad.
(2) Secretary, Deptt. of Personnel, Govt. of India, New Delhi.
Annexure A-3
Office of the Accountant General(A&E)II U.P.Allahabad
Pay/Leave Salary Slip
Regd.

No. GE-6/IAS(P)/3251-2/863

Dated 20-5-1987

Sri M.M.Gupta, IAS, Special Secretary to U.P.Govt., Planning Department, Lucknow.

is entitled to draw pay/leave salary and allowances at the monthly rates shown below from the dates specified less the amounts already drawn by him and subject to usual deductions of Income Tax etc.

Details from	1.1.86	1.7.86	1.1.87	Date of relief	Leave for 15 days on 1.1.86	Encashment 1.1.87
Offg.Pay	4800/-	4800/-	4950/-			
Spl. Pay	500/-	500/-	500/-			
Leave Salary					2300/-	5300/-
C.C.Allow.				NIL		
D.A.		144/-	297/-		1450/-	288/-
Adhoc D.A.					410/-	
I.R.					300/-	
Total -	5300/-	5444/-	5747/-	NIL	4460/-	5588/-

True Extract of Pay slip.

(राजेन्द्र कुमार)
विशेष सचिव,
राजस्व विभाग
उत्तर प्रदेश सरकार

25/8/88

Before the Central ^{Administrative} Appellate Tribunal
Addl Bench Lucknow
Application under sec 19 of the
Administration Tribunal Act
Madan Mohan Gupta
Vs.

(1) Accountant General-II Uttar Pradesh Allahabad.

(2) Secretary, Deptt. of Personnel, Govt. of India, New Delhi.

Annexure A-2

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Expenditure)

NEW DELHI. the 13th March. 1987.

PHALGUNA 23, 1908 (SAKA)

RESOLUTION

No.F.14(2)/IC/86- The decisions of the Government of India on the recommendations of the Fourth Central Pay Commission relating to civilian employees of the Central Government in Groups 'B', 'C' and 'D' were notified in the Ministry of Finance Resolution No. 14(1)/IC/86 dated 13th September, 1986. Government have now given careful consideration to the recommendations of the Commission relating to structure of emoluments, allowances and conditions of service in respect of the Central Group 'A' services/posts, as also those in the All India Services, and have decided that the recommendations of the Commission in respect of these shall be accepted broadly, subject to the modifications mentioned below :

.....
III. RECOMMENDATIONS RELATING TO OTHER MATTERS :

- (I) It has been decided to extend the scheme of stagnation increment, recommended by the Commission, to Group 'A' officers maximum of whose pay scale does not exceed Rs. 6700 in the revised scale.
- (II) It has also been decided to set up an inter-departmental Committee to look into the structure of services and career progression of General Duty Doctors in CHS and Doctors in Railways and Central Police Organisations as such an examination has been suggested by the Commission.
- (III) The recommendations of the Commission relating to fixation of pay, grant of allowances, date of effect etc. shall be accepted broadly after extending, wherever applicable, to Central Group 'A' services/posts and the All India Services, the improvements which have been accepted in regard to the employees of Groups 'B', 'C' and 'D'.

TRUE EXTRACT

(12/25/88)
(राजेश कुमार)
रिपट

Before the Central ^{Administrative} Appellate Tribunal
Addl Bench Lucknow
Application under sec 19 of the
Administration Tribunal Act
Madan Mohan Gupta

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Vs.

(1) Accountant General, Uttar Pradesh Allahabad.

(2) Secretary, Deptt. of Personnel, Govt. of India, New Delhi.

Annexure A-4

सं० 2292 नि०स०/वि०स०/नियो०/87

प्रेषक,

श्री मदन मोहन गुप्ता,
विशेष सचिव,
नियोजन विभाग,
उत्तर प्रदेश शासन।

सेवा में,

श्री जी०जी० अग्रवाल, लेखाधिकारी,
कार्यालय महालेखाकार-द्वितीय,
लेखा व हकदारी,
उत्तर प्रदेश, इलाहाबाद।

लखनऊ: दिनांक 4 मई, 1987

महोदय,

नियुक्ति विभाग के आदेश सं० 2579/दो-1-19/1/22/87, दिनांक 6 अप्रैल, 1987 के अनुसार मैं भारतीय प्रशासकीय सेवा के नये वेतनमान हेतु अपना विकल्प संलग्न कर भेज रहा हूँ। भारतीय प्रशासकीय सेवा नियमावली के नियम 2/3 के अनुसार नये वेतनमानों में वेतन सब्सटेंटिव तथा आफिशिएटिंग दोनों के लिए अलग-अलग निर्धारित होना है। दिनांक 1 जनवरी, 1986 से मुझे भारतीय प्रशासनिक सेवा के सेलेक्शन ग्रेड 2000-125/2-2250 में वेतन मिल रहा है जिसमें 1 जनवरी, 1986 को मेरा वेतन आपके द्वारा 2125 पर निर्धारित किया गया है। तदनुसार नये वेतनमान के सेलेक्शन ग्रेड 4500-150-5700 में मेरा वेतन निर्धारण निम्न प्रकार से होगा :-

1 जनवरी, 1986 को कुल परिलब्धियाँ

मूल वेतन	₹ 2125=00
मंहगाई भत्ता एवं अतिमंहगाई भत्ता	₹ 1976=30
अन्तरिम सहायता	₹ 313=00
मूल वेतन का 20 प्रतिशत	₹ 425=00
योग-	₹ 4839=30

सेलेक्शन ग्रेड के नये वेतनमान 4800-150-5700 में
अगला स्तर 4950/-

1-1-1986 को निर्धारित वेतन ₹ 4950/-

1-1-1987 को निर्धारित वेतन ₹ 5100/-

(महोदय)
25/5/87

शासनादेश सं० 3455/दो-1-19/122-87, दिनांक 25 अप्रैल, 1987
प्रतिलिपि संलग्न के द्वारा विशेष सचिव के पद पर विशेष वेतन ₹0 300/- से
बढ़ाकर ₹0 500/- कर दिया गया है। अतः निवेदन है कि नये वेतनमानों के
अनुसार वेतन निर्धारित करते हुए नई वेतन पर्ची जारी करने का कष्ट करें।

इसके साथ यह भी निवेदन है कि मैने दिनांक 1 जनवरी, 1986 से
15 जनवरी, 1986 तक तथा 1 जनवरी, 1987 से 15 जनवरी, 1987 तक
जो नकदीकरण का अवकाश लिया था, उस अवधि की वेतनपर्ची भी उपरोक्त नये वेतनमानों
के अनुसार भेजने का कष्ट करें।

भवदीय,

ह0/

॥ मदन मोहन गुप्ता ॥

TRUE COPY

(11/1/88)
25/1/88

(फारिन गुप्ता)
वि.सि.स. सचिव,
राजस्थान विधान
सभा, जयपुर

mm7

Before the Central ^{Administrative} Appellate Tribunal
Addl Bench Lucknow
Application under sec 19 of the
Administration Tribunal Act
Madan Mohan Gupta

Vs.

- (1) Accountant General-II Uttar Pradesh Allahabad.
(2) Secretary, Deptt. of Personnel, Govt. of India, New Delhi.

Annexure A-5

To

The Secretary,
Department of Personnel,
Ministry of Personnel,
Public Grievances and Pension,
New Delhi.

Subject: Representation against wrong fixation of pay in the revised selection grade of I.A.S. by Accountant General, Uttar Pradesh.

Sir,

I was appointed to the selection grade of I.A.S. (2000-125-2250) w.e.f. 1.1.1986. As I had drawn pay at the maximum of the senior scale for more than two years, my pay in the selection grade was fixed at Rs. 2125/- in accordance with the then existing rules 3(2)(i) of I.A.S. Pay Rules.

That according to rule 3(3) of the revised Pay Rules "the initial pay of a member of the service who elects or deemed to have elected, in accordance with these rules, to be governed by the revised scale on and from the 1st day of January 1, 1986 or from a later date shall be re-fixed as from that date separately in respect of the pay drawn in a substantive or officiating capacity in the following manner:-

- (i) An amount representing 20% of the basic pay in the existing scale subject to a minimum of Rs. 75 shall be added to the "existing emoluments" of the member of the service.
- (ii) After the existing emoluments have been so increased the pay shall thereafter be fixed in the revised scale at the stage next above the amount thus computed."

It is thus clear from the above that pay is to be fixed separately in the revised pay scales both for substantive and officiating capacity separately according to the formula prescribed above and by no other method.

The term "existing scale" has not been defined in the IAS Pay Rules. We have, therefore, to refer to the Central Civil Service Pay Rules issued for B, C & D groups under Rule-3 of which existing scale has been defined as under :-

"Existing scale in relation to a government servant means pay scale applicable to the post held by the government servant as on the first day of January, 1986 whether in the substantive or officiating capacity."

It is thus clear from the above rule that the existing scale which is to be taken into account in fixing the salary in the revised

scale, is the scale held on January 1, 1986. This also finds support from the Statement of fixation of pay under C.S.S. (R.P.) Rules 1986 where in under column 5, the revised pay in the new scale is to be calculated on the basis of existing emoluments on January 1, 1986.

The only question to be decided is as to what was the existing scale applicable to me on 1.1.1986. Certainly it could not be the senior scale of Rs. 1200-2000 which I had drawn only upto 31.12.1985. My pay in the selection grade on 1.1.1986 could not be fixed on the basis on my substantive pay as according to rule 3(3), the pay in substantive and officiating capacity has to be fixed separately. In accordance with rule 3(3) above, pay in officiating scale will not be fixed on the basis of substantive pay on 1.1.1986 but will be fixed directly on the basis of officiating pay which one was drawing on 1.1.1986 or would have drawn on 1.1.1986 in the old scale.

Ministry of finance, Department of Expenditure vide G.O.No.7(21)-Sanstha-111/87, dated May 4, 1987 (copy enclosed) has issued certain clarifications, according to which in the case of a government servant whose increment falls due on 1.1.1986, the increment in the existing scale will be allowed first and pay fixed in revised scale thereafter. In My case also the pay increased to Rs. 2125/- from Rs. 2000/- w.e.f. 1.1.1986 in the existing (old scale) scale. On this analogy also my pay should have been fixed on the basis of increased salary of Rs. 2125/-. It may be noted that under the old unamended IAS Rules an officer who draws maximum of the senior scale, for more than two years get his pay fixed at the next higher stage of Rs.2125/- on promotion to the selection grade. If the pay in the new scale is not fixed on the basis of the increased pay as on January 1, 1986, the very purpose of allowing this additional increment in the old scale of Rs. 2000-125/2-2250 would be defeated.

It appears that there is some ^{confusion} ~~confusion~~ in Accountant General's Office regarding interpretation of explanation 2 of rule 2 of the amended IAS Pay Rules. Explanation 2 runs as under :-

"The aforesaid option shall not be admissible to any person appointed to the service on or after the first day of January 1986 and he shall be allowed pay only in the revised scale."

It is to be noted that words used are "appointed to the service on or after first day of January 1, 1986." Obviously I was not appointed to the IAS on or after January 1, 1986 and as such I have the right to get my revised pay fixed on the basis of my old pay scale as on January 1, 1986.

It may also be added that the above explanation is to the proviso of Rule 2 wherein an officer has been given an option of adopting the new scale from a future date or from January 1, 1986.

In my case, I have already opted the new scale from 1.1.1986 and as such whether the aforesaid option of electing scales from future

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date is available to me or not hardly makes any difference. The only point to be considered is that my pay from 1.1.1986 in the new scale has to be fixed on the basis of my pay that I would have got in the old scale on 1.1.1986. The conversion of pay scales (officiating and substantive separately) has to be with the same date of reference i.e. 1.1.1986. In case it is argued that actually I did not get pay in the old scale on 1.1.1986, the ~~national~~ ^{my} pay that I would have drawn in the old scale on 1.1.1986 will be considered ~~xxxxxx with reference~~ for fixing pay in the new scale. The conversion has to be with reference to the same date. My pay on 1.1.1986 cannot be fixed with reference to the pay I was getting on December 31, 1985.

It is thus clear from the above that my pay on 1.1.1986 should be fixed at Rs. 4950/- as per calculation given below where as the Accountant General, U.P. has fixed it at Rs. 4800/-:

"Existing emoluments as on 1.1.1986".

Basic salary	Rs. 2125-00
D.A./A.D.A.	Rs. 1976-30
Interim Relief	Rs. 293-00
Add 20% of basic salary	Rs. 425-00
Total existing emoluments	Rs. 4819-00
Next stage	Rs. 4950-00

It is, therefore, requested that Accountant General, U.P. may be asked to fix my pay at Rs. 4950/- from 1.1.1986.

Yours sincerely,

(M.M.Gupta)
Special Secretary to U.P.Govt.,
Planning Department,
U.P.Civil Secretariat,Lucknow.

Copy of the above also to the Secretary to Government U.P., Appointment Department, Lucknow with the request to kindly recommend my case to the Government of India accordingly as above.

Yours sincerely,

(M.M.Gupta)
Special Secretary to U.P.Govt.,
Planning Department,
U.P.Civil Secretariat,Lucknow.

TRUE COPY

mmg

25/8/88.

(म.म. गुप्ता)
सि.स. विभाग,
रा.स. विभाग

Ministry of Finance, Department of Expenditure vide G.O.No. 7(21)-E-111/87, dated May 4, 1987 has issued certain clarifications in respect of such cases where increment falls due on January 1, 1986. Para 1 of the same is reproduced below:-

"The undersigned is directed to state that references are being received from Ministries/Departments seeking clarifications regarding applications of certain provisions of C.C.S.(R.P.)Rules, 1986. Based on the issues raised, following clarifications are issued for the guidance of all concerned.

Sl.	Point raised	Clarification
1.	In case of a Government servant whose increment accrued in the pre-revised scale on 1.1.1986, whether the increment in the pre-revised scale is to be allowed first and pay fixed in the revised scale under CCS(RP)Rules, 1986 later or pay fixed in the revised scale first and increment allowed later in the revised scale.	Increment in the pre-revised scale is to be allowed first on 1.1.1986 and pay fixed in the revised scale thereafter.

TRUE EXTRACT

11/4/88
23/8/88.
2000 (P.T.K.)
RCC 8/88
RCC 8/88
RCC 8/88
RCC 8/88

31

Administrative
Before the Central Appellate Tribunal
Addl Bench Lucknow
Application under sec 19 of the
Administration Tribunal Act
Madan Mohan Gupta

Vs.

(1) Accountant General-II Uttar Pradesh Allahabad.

(2) Secretary, Deptt. of Personnel, Govt. of India, New Delhi

Annexure A-6

सं०: 6044/दो-1-4/1838/80

प्रेषक,

श्री कृष्ण बिहारी टण्डन,
संयुक्त सचिव,
उत्तर प्रदेश शासन।

सेवा में,

सचिव,
भारत सरकार,
कार्मिक एवं प्रशिक्षण विभाग,
नार्थ ब्लॉक,
नई दिल्ली।

नियुक्ति अनुभाग-1

लखनऊ: दिनांक 24 जुलाई, 1987.

विषय: आई०ए०एस० के पुनरीक्षित सेलेक्शन ग्रेड वेतनमान में वेतन निर्धारण-प्रत्यावेदन।

महोदय,

सचिव, भारत सरकार, कार्मिक, लोक शिकायत एवं पेंशन मंत्रालय, नई दिल्ली को संबोधित श्री एम०एम०गुप्ता, आई०ए०एस० [एससीएस:73] के उपरोक्त विषयक प्रत्यावेदन दिनांक 1-7-87 की प्रति अग्रसारित करते हुए मुझे यह कहने का निदेश हुआ है कि श्री गुप्ता के प्रत्यावेदन पर भारत सरकार के निर्णय से राज्य सरकार/महालेखाकार [लेखा-2] उ०प्र०, जी०ई०-6 अनुभाग, इलाहाबाद को शीघ्र अवगत कराने का कष्ट करें ताकि महालेखाकार द्वारा तदनुसार कार्यवाही की जा सके।
संलग्नक: यथोक्त।

भवदीय,

[कृष्ण बिहारी टण्डन]
संयुक्त सचिव।

सं० 6044[1838/दो-1-87 तद् दिनांक।

प्रतिलिपि श्री एम०एम०गुप्ता, विशेष सचिव, उ०प्र० शासन, नियोजन विभाग को सूचनार्थ प्रेषित।

आज्ञा से,

ह०/

[कृष्ण बिहारी टण्डन]
संयुक्त सचिव।

TRUE COPY

[हस्ताक्षर]
25/8/88
(संयुक्त सचिव)
उत्तर प्रदेश शासन
लखनऊ

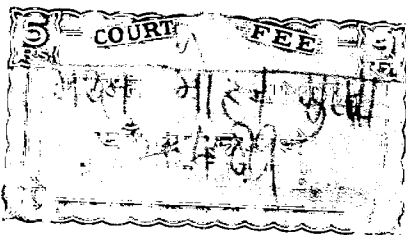
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[वादी] अपीलान्त

प्रतिवादी रैस्पान्डेंट

श्री

रै



वकालतनामा

री (अपीलान्त)

दनाम

महोदय

प्रतिवादी (रैस्पान्डेंट)

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अपर लिखे मुकद्दमा में अपनी ओर से श्री

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महोदय

नाम अवाक
मुकद्दमा नं०
नाम फरीकस

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पेंरवी व जबाब देही व प्रश्नोंत्तर करें या कोई कागज बाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया वसूल करें या मुलहनामा व इकबाल दावा तसा अपील निमरानी हमारी ओर से हमारी या अपने हस्ताक्षर से बाखिल करें और तसदीक करें मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी बिपक्षी (फरीकसानी) का बाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेबे 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 पेंरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पेंरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आबे।

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

सन् 18

ई०

New Delhi, the 8 NOV. 88

Govt. of all states

Subject: IAS/IPS/IFS(Pay) Rules- Clarification regarding fixation of pay on appointment/promotion taking place on 1.1.86.

Yours faithfully,

(K.B.L. SAXENA)
DESK OFFICER

Copy together with the enclosure, forwarded to:
All Ministries/Departments of the Govt. of India.

1. All A.G.'s of the States.
2. C&AG, New Delhi.
- 3.

one copy sent to
Camp office, Lucknow
vide M. G. E. & I. A. S.
3501 dated 29-11-88.

notes put up on p 23/N

Chaudhary

44/3

Answer II

No. 7(21)/E.III/87
Government of India
Ministry of Finance
Department of Expenditure

A/31
New Delhi, the 26th August, 1988

OFFICE MEMORANDUM

Subject:- Central Civil Services (Revised Pay) Rules,
1986-Clarification regarding fixation of pay
on appointment/promotion taking place on 1.1.86

The undersigned is directed to state that references have been received from various Ministries/Departments seeking clarification as to how to fix the pay under CCS(RP) Rules, 1986 in cases of Government servants appointed/promoted to another post including appointment in Selection Grade exactly on 1.1.86. It is clarified that pay in such cases should first be fixed in the revised scale of pay of the post held on 1.1.86 with reference to the pay in the pre-revised scale of that post and then fixed in the promoted post under FR.22(C) w.e.f. 1.1.86 or FR.22(a)(ii) as the case may be. The same procedure should be followed in cases where Government servant opts for revised scale of pay from the date of next or subsequent increment and appointment to another post also happens to be on the same date.

In so far as the persons serving in the Indian Audit and Accounts Department are concerned, these orders are issued in consultation with Comptroller and Auditor General of India.

Sd/-

(B. KUMAR)

UNDER SECRETARY TO THE GOVT. OF INDIA

To

All Ministries/Departments of Govt. of India
(As per standard list with usual number of spare copies).

Chaudhary

232
21/12/88

Amend. III

①

TO BE PUBLISHED IN PART 2, SECTION 3(i) OF THE GAZETTE OF INDIA (EXTRAORDINARY)

No.F.15(1)-IC/86
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF EXPENDITURE)

NOTIFICATION

New Delhi-110001 dated: September 13, 1986
22 Bhadra, 1983 (Saka)

G.S.R. 1080(E) In exercise of the powers conferred by the proviso to article 309, and clause (5) of article 143 of the constitution and after consultation with the Comptroller and Auditor-General in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules, namely:-

1. **Short title and commencement** - (1) These rules may be called the Central Civil Services (Revised Pay) Rules, 1986.

(2) They shall be deemed to have come into force on the 1st day of January, 1986.

2. **Categories of Government servants to whom the rules apply**:- (1) Save as otherwise provided by or under these rules, these rules shall apply to persons appointed to civil services and posts in connection with the affairs of the Union whose pay is debitable to the Civil Estimates as also to persons serving in the Indian Audit and Accounts Department.

(2) These rules shall not apply to -

- (a) Government servants in a Group 'A' service or holding a Group 'A' post; *omitted*
- (b) persons appointed to the Central Civil Services and posts in Groups 'B', 'C' and 'D' under the administrative control of the Administrator of the Union territory of Chandigarh;
- (c) permanent employees of former Indian States absorbed in Civil Services and posts in connection with the affairs of the Union, but governed by the pre-absorption conditions of service under the Central Civil Services (Part B States Transferred Employees) Rules, 1953;
- (d) persons locally recruited for service in Diplomatic, Consular or other Indian establishments in foreign countries;
- (e) persons not in whole-time employment;
- (f) persons paid out of contingencies;
- (g) persons paid otherwise than on a monthly basis including those paid only on a piece-rate basis;
- (h) persons employed on contract except where the contract provides otherwise;
- (i) persons re-employed in Government service after retirement;
- (j) any other class or category of persons whom the President may, by order, specifically exclude from the operation of all or any of the provisions contained in these rules.

3. **Definitions** - In these rules, unless the context otherwise requires -

- (1) "basic pay" means pay as defined in Fundamental Rule 9(21)(a)(i);
- (2) "existing scale" in relation to a Government servant means the present scale applicable to the post held by the Government servant (or, as the case may be, personal scale applicable to him) as on the 1st day of January, 1986 whether in a substantive or officiating capacity.

Explanation - In the case of a Government servant, who was on the 1st day of January, 1986 on deputation out of India or on leave or on foreign service, or who would have on that date officiated in one or more lower posts but for his officiating in a higher post, "existing scale" includes the scale applicable to the post which he would have held but for his being on deputation out of India or on leave or on foreign service or, as the case may be, but for his officiating in a higher post;

- (3) "present scale" in relation to any post specified in column 2 of the first schedule means the scale of pay specified against that post in column 3 thereof; *whether fixed or otherwise*
- (4) "revised emoluments" means the basic pay of a Government servant in the revised scale and includes the revised non-practising allowance, if any, admissible to him, in addition to the pay in the revised scale; *whether fixed or otherwise*
- (5) "revised scale" in relation to any post specified in column 2 of the First Schedule means the scale of pay specified against that post in column 4 thereof unless a different revised scale is notified separately for that post;
- (6) "Schedule" means a schedule annexed to these rules.

4. **Scale of pay of posts** - As from the date of commencement of these rules, the scale of pay of every post specified in column 2 of the First Schedule shall be as specified against it in column 4 thereof.

5. **Drawal of pay in the revised scales** - Save as otherwise provided in these rules, a Government servant shall draw pay in the revised scale applicable to the post to which he is appointed;

Chaudhary

2

Provided that a Government servant may elect to continue to draw pay in the existing scale until the date on which he vacates his post or ceases to draw pay in that scale.

Explanation 1. - The option to retain the existing scale under the proviso to this rule shall be admissible only in respect of one existing scale.

Explanation 2. - The aforesaid option shall not be admissible to any person appointed to a post on or after the 1st day of January, 1986, whether for the first time in Government service, or by transfer or promotion from another post and he shall be allowed pay only in the revised scale.

Explanation 3. - Where a Government servant exercises the option under the proviso to this rule to retain the existing scale in respect of a post held by him in an officiating capacity on a regular basis for the purpose of regulation of pay in that scale under Fundamental Rule 22 or Fundamental Rule 31, or any other rule or order applicable to that post, his substantive pay shall be the substantive pay which he would have drawn had he retained the existing scale in respect of the permanent post on which he holds a lien or would have held a lien had his lien not been suspended or the pay of the officiating post which he acquired the character of substantive pay in accordance with any order for the time being in force, whichever is higher.

6. Exercise of Option.

(i) The option under the proviso to rule 5 shall be exercised in writing in the form appended to the Second Schedule so as to reach the authority mentioned in sub rule (2) within three months of the date of publication of these rules or where an existing scale has been revised by ~~any order made subsequent to that date, within three months of the date of such order;~~ any amendment made to these rules within three months of the date of publication of such amendment.

Provided that -

- (i) in the case of a Government servant who is, on the date of such publication or, as the case may be, date of such order, out of India on leave or deputation or foreign service or active service, the said option shall be exercised in writing so as to reach the said authority within three months of the date of his taking charge of his post in India; and
- (ii) Where a Government servant is under suspension on the 1st day of January, 1986, the option may be exercised within three months of the date of his return to his duty if that date is later than the date prescribed in this sub-rule.
- (2) The option shall be intimated by the Government servant to the Head of his Office.
- (3) If the intimation regarding option is not received within the time mentioned in sub-rule (1), the Government servant shall be deemed to have elected to be governed by the revised scale of pay with effect on and from the 1st day of January, 1986.
- (4) The option once exercised shall be final.

Note 1. - Persons whose services were terminated on or after the 1st January, 1986 and who could not exercise the option within the prescribed time limit, on account of death, discharge on the expiry of the sanctioned posts, resignation, dismissal or discharge on disciplinary grounds, are entitled to the benefits of this rule.

Note 2. - Persons who have died on or after the 1st day of January, 1986 and could not exercise the option within the prescribed time limit be deemed to have opted for the revised scales on and from the 1st day of January, 1986 or such later date as is most beneficial to their dependents, if the revised scales are more favourable and in such cases, necessary action for payment of arrears should be taken by the Head of Office.

7. Fixation of initial pay in the revised scale:-

(1) The initial pay of a Government servant who elects, or is deemed to have elected under sub-rule (3) of rule 6 to be governed by the revised scale on and from the 1st day of January, 1986, shall, unless in any case the President by special order otherwise directs, be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien or would have held a lien if it had not been suspended, and in respect of his pay in the officiating post held by him, in the following manner, namely:-

(A) in the case of all employees, -

- (i) an amount representing 20 per cent of the basic pay in the existing scale, subject to a minimum of Rs.75, shall be added to the "existing emoluments" of the employee;
- (ii) after the existing emoluments have been so increased, the pay shall thereafter be fixed in the revised scale at the stage next above the amount thus computed:

Provided that -

- (a) if the minimum of the revised scale is more than the amount so arrived at, the pay shall be fixed at the minimum of the revised scale;
- (b) if the amount so arrived at is more than the minimum of the revised scale, the pay shall be fixed at the maximum of that scale.

Explanation - For the purpose of this clause "existing emoluments" shall include, -

- (a) the basic pay in the existing scale;
- (b) dearness pay, additional dearness allowance and ad hoc dearness allowance appropriate to the basic pay admissible; index average 608 (1960=100); and
- (c) the amounts of first and second instalments of interim relief admissible on the basic pay in the existing scale;

G. Anand

21.1.87

37^c
ANNEXURE IV

[PUBLISHED IN THE GAZETTE OF INDIA EXTRAORDINARY, PART II,
SECTION 3, SUB-SECTION (i) ON MARCH 13, 1987.]

No. 11030/7/87-AIS (II)

GOVERNMENT OF INDIA

MINISTRY OF PERSONNEL, P. G. AND PENSIONS

(DEPARTMENT OF PERSONNEL AND TRAINING)

New Delhi, the 13th March, 1987

NOTIFICATION

G.S.R. 284—In exercise of the powers conferred by sub-section (1) of section 3 of the All India Services Act, 1951 (61 of 1951), the Central Government after consultation with the Governments of the States concerned, hereby makes the following rules further to amend the Indian Administrative Service (Pay) Rules, 1954, namely :

1. (1) These rules may be called the Indian Administrative Service (Pay) Second Amendment Rules, 1987.

(2) They shall be deemed to have come into force on the 1st day of January, 1986.

2. In the Indian Administrative Service (Pay) Rules, 1954 (hereinafter referred to as the said rules)

(a) for sub-rule (1) in rule 3, the following shall be substituted, namely :

“(1) The scales of pay admissible to a Member of the Service and the dates with effect from which the said scales shall be deemed to have come into force, shall be as follows :

Junior Scale—Rs. 2200—75—2800—E.B.—100—4000 with effect from the 1st day of January, 1986.

Senior Scale—

(i) Time Scale—Rs. 3200—(5th year and 6th year)—100—3700—125—4700 with effect from the 1st day of January, 1986.

(ii) Junior Administrative Grade—Rs. 3950—125—4700—150—5000 (non-functional) with effect from the 1st day of January, 1986.

Provided that a member of the Service shall be appointed to the senior scale on his completing 4 years of service, subject to the provisions of sub-rule 2 of Rule 6-A of the Indian Administrative Service (Recruitment) Rules, 1954 and to the Junior Administrative Grade on completing 9 years of service.

[NOTE : The four years and nine years of service in this rule shall be calculated from the year of allotment assigned to him under Regulation 3 of the Indian Administrative Service (Regulation of Seniority) Rules, 1954]

(iii) Selection Grade : Rs. 4800—150—5700 with effect from the 1st day of January, 1986

Supertime Scale : Rs. 5900—200—6700 with effect from the 1st day of January, 1986.

Above supertime Scale.

(i) Rs. 7300—100—7600

(ii) Rs. 8000 (Fixed)

with effect from the 1st day of January, 1986.

Provided that a member of Service may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale. The option shall be exercised in accordance with such orders as may be issued by the Central Government in this behalf.

Explanation 1 :—The option to retain the existing scale under the proviso to this rule shall be admissible only in respect of one existing scale.

Explanation 2 :—The aforesaid option shall not be admissible to any person appointed to the service on or after the 1st day of January, 1986 and he shall be allowed pay only in the revised scale.

Chandrasekar

NOTE 2 :—Where the existing emoluments as calculate in accordance with this sub-rule and the revised emoluments in the case of any member of the service, the difference shall be allowed as personal pay to be absorbed in future increases in pay.

NOTE 3 :—Where in a fixation of pay under this sub-rule, the pay of members of the service drawing pay at more than five consecutive stages in an existing scale gets bunched, that is to say, gets fixed in the revised scale at the same stage, the pay in the revised scale of such of the member of the service who are drawing pay beyond the first five consecutive stages in the existing scale shall be stepped up to the stage where such bunching occurs, as under, by the grant of increment (s) in the revised scale in the following manner, namely :—

(a) for Member of service drawing pay from the 6th up to the 10th stage in the existing scale—By one increment ;

(b) for Member of service drawing pay from the 11th upto 15th stage in the existing scale if there is bunching beyond the 10th stage—By two increments ;

(c) for Members of service drawing pay from the 16th up to 20th stage in the existing scale, if there is bunching beyond the 15th stage—By three increments.

If by stopping up of the pay as above, the pay of a Member of the service gets fixed at a stage in the revised scale which is higher than the stage in the revised scale at which the pay of the member of the service who was drawing pay the next higher stage or stages in the same existing scale is fixed, the pay of the latter shall be stepped up only to the extent by which it falls short of that of the former.

NOTE 4 :—Where in the fixation of pay under this sub-rule the pay of a member of service who, in the existing scale was drawing immediately before the 1st day of January, 1986 more pay than another member of the service junior to him in the same cadre, gets fixed in the revised scale at a stage lower than that of such junior, his pay shall be stepped upto the same stage in the revised scale as that of the junior.

NOTE 5 :—Where a member of the service is in receipt of personal pay on the 1st day of January, 1986, which together with his existing emoluments as calculated in accordance with this sub-rule exceeds the revised emoluments, then, the difference representing such excess shall be allowed to such member of Service as personal pay to be absorbed in future increases in pay.

NOTE 6 :—In cases, where a senior member of the Service promoted to a higher post before the 1st day of January, 1986 draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January, 1986, the pay of the senior member of the Service should be stepped up to an amount equal to the pay as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior member of the Service subject to the fulfilment of the following conditions, namely :—

(a) both the junior and the senior member of the Service should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre ;

(b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical, and

(c) the anomaly should be directly as a result of the application of the provisions of this sub-rule. If even in the lowest post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer."

3. In Rule 4 of the said Rules,

(i) for sub-rule (2), the following shall be substituted, namely :—

"(2) The pay of a member of the Service in the junior scale shall, on appointment to a post on the senior time scale, be fixed at the stage next above the pay notionally arrived at by increasing his pay in the lower scale by one increment at the stage at which such pay accrued (or by an amount equal to the last increment in the lower scale if he was drawing pay at the maximum of the lower scale) or the minimum of the higher scale whichever is higher."

(ii) after sub-rule (6-A), the following sub-rules shall be inserted, namely :—

"(6-B) The pay of a member of the Service in the senior time scale shall, on appointment to the Junior Administrative Grade, be fixed (a) at the stage which is equal to his pay in the senior time scale or if there is no such stage, the stage next below that pay, plus personal pay equal to the difference to be absorbed in future increases in pay or (b) the minimum of the Junior Administrative Grade, whichever is higher."

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(iii) for the illustration in section 1, the following shall be *substituted*, namely :—

"The method to be followed in fixing the pay of a promoted officer under clause (1) of this section is indicated below :

The following data in respect of the promoted officers to be noted down :

- (a) Actual pay of the officer in the State Civil Service or, as the case may be, his assumed pay in that service ;
- (b) Completed years of Service in the State Civil Service, and
- (c) Number of increments in the senior time scale of the Indian Administrative Service calculated at the rate of one increment for every three years of service in the State Civil Service.

II. Tabulate the information as follows to arrive at the initial pay to be fixed in the senior time scale of Indian Administrative Service :

	1	2	3	4	5	6
(a) Pay in State Civil Service	2650	3500	3900	3250	3700	
(b) Completed year of Service in State Civil Service	7	6	18	17	3	
(c) Number of increments	2	2	6	5	1	
(d) Amount of increments	200	200	600	500	100	
(e) Pay arrived at by addition of (a) and (d)	2850	3700	4500	3750	3800	
(f) Stage at which pay should be fixed	3200	3700	4575	3875	3800	
(g) Resultant increase	550	200	675	635	100	
(h) Actual amount of increase subject to the minimum and maximum specified	200	200	300	300	200	
(i) Pay arrived at by addition of (a) and (h)	2850	3700	4200	3550	3900	
(j) Stage at which pay should be fixed in the senior time scale of Indian Administrative Service	3200	3700	4200	3600	3900	

- (A) is a case where the resultant increase exceeds the maximum increase of Rs. 300 and the pay in the State Civil Service plus Rs. 300 results in a figure below Rs. 3200. Hence pay is fixed as the minimum of the senior scale.
- (B) is a case where the resultant increase is Rs. 200 and the pay fixed corresponds with the stage in the senior time scale of the IAS and as such pay is to be fixed at that stage and not at the higher stage.
- (C) is a case where the resultant increase exceeds the maximum increase of Rs. 300, pay is to be fixed at the stage in the senior scale equal to the pay in the State Civil Service plus Rs. 300.
- (D) is a case where the resultant increase exceeds the maximum increase of Rs. 300 and pay in this case is to be fixed at the stage of the senior time scale next above the pay in the State Civil Service plus Rs. 300.
- (E) is a case where the resultant increase is less than the minimum increase of Rs. 200. In such a case pay is to be fixed in the senior time scale at the stage equal to the pay in the State Civil Service plus Rs. 200."

8. In Schedule III of the said rules, under the heading "A—posts carrying the pay above, the time scale in the Indian Administrative Service under the State Government", in column number (3),

for the figures "3500, 3000, 2500-125/2-2750", the figures "8,000, 7300—100—7600 and 5900—200—6700" respectively shall be *substituted*.

9. In Schedule III of the said rules, under the heading "B. Posts carrying pay in the senior time scale of the Indian Administrative Service under the State Governments including posts carrying special pay in addition to pay with the time scale",—for clause (3), the following shall be *substituted*, namely:—

"(3) The amount of any special pay which may be sanctioned by the State Governments under clause (2) shall be Rs. 200, Rs.300, Rs. 400, Rs. 450 or Rs.500, as may, from time to time, be determined by the State Government concerned;

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No. 11030/7/87-AIS (II)
GOVERNMENT OF INDIA

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS DEPARTMENT OF
PERSONNEL AND TRAINING

New Delhi, the 20th March, 1987

To,
THE CHIEF SECRETARIES TO THE
GOVERNMENT OF ALL STATES.

Subject : Revision of pay scales of All India Service officers on the recommendations of the Fourth Central Pay Commission—Amendment to the IAS/IPS/IFS (Pay) Rules—Exercise of option.

Sir,

I AM directed to say that the revised pay scales for the Indian Administrative Service/Indian Police Service/Indian Forest Service on the decisions taken in pursuance of the recommendations of the Fourth Central Pay Commission have been notified through this Department's notification no. 11030/7/87-AIS-II, 11030/16/87-AIS-II and 11030/17/87-AIS-II, dated 13-3-1987.

2. These rules provide *inter alia* that a member of the Service may like to draw pay in the existing scale of pay until the date on which he earns his next or any subsequent increment in the existing scale of pay or until he vacates his post or he ceases to draw pay in that scale and that the option shall not be admissible to any person appointed to the Service on or after 1-1-1986, who shall be allowed to draw pay only in the revised scales. It has also been provided therein that the option shall be exercised in accordance with such orders as may be issued by the Central Government in this behalf. In pursuance thereof it is stated that a member of the Service may exercise the aforesaid option in writing in the form appended to this letter within the three months of the date of publication of these rules, subject to the condition mentioned below :—

(a) (i) in the case of a member of the Service who is, on the date of such publication, out of India on leave or deputation or foreign service or active service, the said option shall be exercised in writing so as to reach the said authority within three months of the date of his taking charge of his post in India, and

(ii) where a member of the service is under suspension on the 1st day of January, 1986 the option may be exercised within three months of the date of his return to his duty.

(b) The option shall be intimated by the member of the Service serving in connection with the affairs of the State to the State Government and in the case of a member of the Service under the Centre, to the Ministries/Departments concerned and also to the State Government on whose cadre he is borne.

(c) If the intimation regarding option is not received within the time mentioned above, the Government servant shall be deemed to have elected to be governed by the revised scale of pay with effect on and from the 1st day of January, 1986

(d) The option once exercised shall be final.

NOTE 1 : Persons whose services were terminated on or after the 1st January, 1986 and who could not exercise the option within the prescribed time limit, on account of death, discharge on the expiry of the sanctioned posts, resignation, dismissal or discharge on disciplinary grounds are entitled to the benefits of this rule.

NOTE 2 : Persons who have died on or after the 1st day of January, 1986 and could not exercise the option within the prescribed time limit be deemed to have opted for the revised scales on and from the 1st day of January, 1986 or such later date as is most beneficial to their dependents, if the revised scales are more favourable in such cases.

NOTE 3 : All India Services pensioners who were in Service as on 1-1-1986 and retired subsequent to that date may also exercise the option referred to above.

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FORM OF OPTION

[See Rule 3(1) of IAS (Pay) Rules, 1954, IPS (Pay) Rules, 1954 and IFS (Pay) Rules, 1968]

(i) I _____ hereby elect the revised scale with effect from 1st January, 1986.

(ii) I _____ hereby elect to continue on the existing scale of pay of my substantive/officiating post mentioned below until :

the date of my next increment

the date of my subsequent increment

raising my pay to Rs. _____

I vacate or cease to draw pay in the existing scale

Existing scale _____

Signature _____

Name _____

Service _____

Cadre _____

Year of allotment _____

Designation _____

Office in which employed _____

Date :

Place :

Chaudhary

33/11/87

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,
CIRCUIT BENCH, LUCKNOW

REGN: NO. OA NO. 106 OF 1988

BETWEEN

M.M. GUPTAAPPLICANT

AND

(1) THE ACCOUNTANT GENERAL-II
UTTAR PRADESH, ALLAHABAD

(2) THE SECRETARY TO THE GOVT. OF INDIA,
DEPARTMENT OF PERSONNEL AND TRAINING,
NEW DELHIRESPONDENTS

REPLY OF RESPONDENT NO.2 - THE SECRETARY TO THE GOVT. OF INDIA
DEPARTMENT OF PERSONNEL AND TRAINING,
NEW DELHI

ADVOCATE FOR RESPONDENT: SRI V.K. CHAUDHARI

*Recd copy
Jpr - M. M.
24.4.89*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD CIRCUIT BENCH
LUCKNOW

REGISTRATION NO: OA NO.109 OF 1988

M.M. GUPTAPETITIONER

VERSUS

- (1) The Accountant General-II
Uttar Pradesh, Allahabad
- (2) The Secretary to the Govt. of India,
Deptt. of Personnel and Training,
New Delhi.RESPONDENTS

Counter Reply on behalf of Respondent No.2

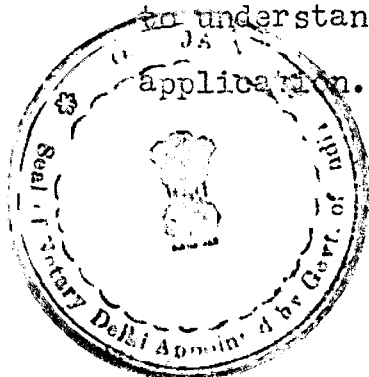
Affidavit of Shri Y.P.Dhingra, aged about 36 years,
son of late Shri Thakur Datt, Desk Officer, Government
of India, Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel and Training), New Delhi.

DEPONENT

I, the deponent above named do hereby solemnly affirm and
state as under:

1. That I have read the contents of the application moved
under section 19 of the Act by Shri M.M. Gupta before the
Hon'ble Administrative Tribunal and has fully understood the
same.
2. That before giving parawise reply to the application it is
necessary to give brief facts of the case which are relevant
to understand the controversy raised by means of the present
application.

...2/-



Background Facts.

The pay of the members of the Indian Administrative Service on appointment to different grade/posts is required to be regulated in accordance with the relevant provisions contained in the IAS(Pay) Rules, 1954.

2. The scales of pay applicable to the members of the IAS have been prescribed in sub-rule 1 of Rule 3 of the IAS(Pay) Rules, 1954. The old senior scale effective from 1.1.1973 is given below:

Senior Scale -----

- (a) Time scale - Rs.1200--(5th year or under)-50-1300-50-1600-E3-60-1900-100-2000.
- (b) Selection grade - Rs.2000-125/2-2250.

3. Consequent upon the implementation of the decisions of the Government of India on the recommendations made by the 4th Central Pay Commission relating to revision of scales of pay for the members of the IAS, necessary amendments were carried out to the IAS(Pay) Rules, 1954, vide this Department's Notification No.11030/7/07-AIS(II) dated 13th March, 1967. The revised scales of pay have come into force w.e.f. 1.1.1966. The revised senior scale effective from 1.1.1966 is as under:

Senior Scale ----

- (i) Time scale - Rs.3200-(5th year & 6th year)-100-3700-125-4700
- (ii) Junior Administrative Grade - Rs.3950-125-4700-150-5000(non-functional) ...3/-

Sub-rule 1 of Rule 3 of the IAS(Pay) Rules, 1954, as amended vide Notification dated 13th March, 1987, provides, inter alia, that a member of the service may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale. The option shall be exercised in accordance with such orders as may be issued by the Central Government in this behalf.

4. The members of the All India Services were requested to exercise their option to opt ^{for 2} revised scales of pay in the prescribed form within 3 months of the date of publication of the notification dated 13th March, 1987, vide this Department's letter No.11030/7/87-AIS(II) dated 20th March, 1987 - Annexure R-I.

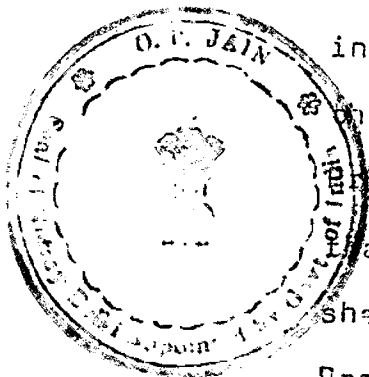
The members of the All India Services have been given another opportunity to opt to switch over to revised scales of pay from the date of their next increment or subsequent increment falling after 1.1.1986 but not later than 31.12.87, within a period of 3 months from the date of issue of letter No.11030/78/87-AIS(II) dated 8th November, 1988 - Annexure R-II.

5. It may be submitted that the term 'existing scale of pay' has not been specifically defined in the IAS(Pay) Rules. However, in view of the fact that the revised scales of pay on the recommendations of the 4th Central Pay Commission have been introduced w.e.f. 1.1.1986, the scales of pay which were in existence and applicable to the members of the

All India Services on 31.12.1985 are deemed to be the existing scales for the purpose of fixation of pay of the officers in the revised scales of pay in accordance with the principles of pay fixation laid down in the IAS(Pay) Rules, as amended vide notification dated 13th March, 1987. Clauses (i) and (ii) of Sub-rule (3) of Rule 3 of the IAS(Pay) Rules, 1954 as amended vide this Department's Notification dated 13.3.1987 are reproduced below:

"(3) The initial pay of a member of the service who elects or deemed to have elected, in accordance with these rules, to be governed by the revised scale, on and from the 1st January, 1986 or from a later date shall be refixed as from that date separately in respect of the pay drawn in a substantive or officiating capacity in the following manner:-

- (i) An amount representing 20% of the basic pay in the existing scale subject to a minimum of Rs.75/- shall be added to the "existing emoluments" of the member of the service.
- (ii) After the existing emoluments have been so increased, the pay shall thereafter be fixed in the revised scale at the stage next above the amount thus computed:
Provided that if the amount so computed is less than the minimum of the revised scale, the pay shall be fixed at the minimum of that scale:
Provided further that if the amount so computed is



more than the maximum of the revised scale, the pay shall be fixed at the maximum of that scale.

EXPLANATION: For the purpose of this sub-rule 'existing emoluments' shall include:-

- (a) the basic pay in the existing scale;
- (b) the dearness pay, additional dearness allowance and ad-hoc dearness allowance appropriate to the basic pay admissible at index average 600(1950-100); and
- (c) the amounts of first and second instalments of interim relief admissible on the basic pay in the existing scale."

The perusal of the above rule clearly shows that "existing scale of pay" for the purpose of regulation/ fixation of pay in the revised pay scales is the pay scale existing prior to 1.1.1986. In other words, the pay is required to be fixed in the revised pay scale on the basis of the emoluments so computed in the old pay scale. However, this principle is to be followed in the same scale of pay which was applicable to the member of service prior to 1.1.1986.

Rule 63 of the IAS(Pay) Rules, 1954 as amended vide Notification dated 13.3.1987, effective from 1.1.1986, reads as;

Rule (63): The pay of a member of the service in the senior time scale shall, on appointment to the

Junior Administrative Grade, be fixed (a) at the stage which is equal to his pay in the senior time scale or if there is no such stage, the stage next below that pay, plus personal pay equal to the difference to be absorbed in future increases in pay or (b) the minimum of the Junior Administrative Grade, whichever is higher."

Sub-Rule (2)(i) & (ii) of Rule 3 of the IAS(Pay) Rules as amended vide Notification dated 13.3.1987 effective from 1.1.1986 is reproduced below:

"(2)(i) A member of the service shall be entitled to draw pay in the selection grade only on appointment to that grade.

(ii) The pay of a member of the service in the Junior Administrative Grade shall, on appointment to the selection grade, be fixed (a) at the stage which is equal to his pay in the Junior Administrative Grade or if there is no such stage, the stage next below that pay, plus personal pay equal to the difference to be absorbed in future increases in pay or (b) the minimum of the selection grade, whichever is higher."

5. It has been clearly stipulated in Explanation 2 below the second proviso to sub-rule (1) of Rule 3 of the IAS(Pay) Rules, 1954, as amended vide Notification dated 13th March, 1987, that the option to retain the existing scale under the proviso to sub-rule (1) of

Rule 3 ibid shall not be admissible to any person appointed to the service on or after 1st day of January, 1986 and he shall be allowed pay in the revised scale. It follows from this that a member of the service promoted to the Selection Grade or any other grade on or after 1.1.1986 could be allowed to draw pay only in the revised scale and there is no question of fixing the pay of such an officer in the pre-revised scale of the selection grade or any other grade w.e.f. 1.1.1986 and then to ~~refix~~ fix the pay of the officer on that basis in the revised selection grade.

7. The cases of officers whose increments accrued in the pre-revised scale on 1.1.1986 are distinguishable from the cases of officers who are promoted to a higher grade on or after 1.1.1986, the date of introduction of the revised scales of pay. In the former case, the increment is to be allowed first on 1.1.1986 and pay fixed in the revised scale thereafter as clarified in the Ministry of Finance O.M.No.7(21)E.III/87 dated 4th May, 1987, in respect of the Central Civil Services.

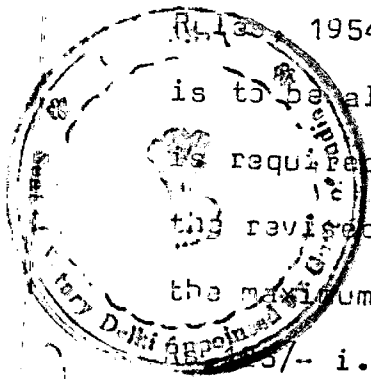
So far as fixation of pay of officers on appointment/
promotion taking place on 1.1.1986 is concerned, the position is different. According to the clarification contained in the Ministry of Finance O.M.No.7(21)-E.III/87 dated 26th August, 1988, the pay in such cases should first be fixed in the revised scale of pay of the post held on 1.1.1986 w.r.t. the pay in the pre-revised scale of that post and then to fix it in the higher post under F.R.22(C) or F.R.22(A)(ii), as the case may be.

Similar procedure is to be followed in cases where a member of service opts for revised scale of pay from the date of next or subsequent increment or appointment to another post in a higher scale of pay. These instructions have been extended to the members of the All India Services vide letter No. 11032/95/87-AIS(II) dated 8th November, 1988 ~ Annexure R-III.

8. It would thus emerge from the above quoted rules that the pay of a member of the service who is promoted to the selection grade of IAS with effect from 1.1.1986 is first required to be fixed in the Junior Administrative grade on the basis of the emoluments computed in the revised senior time scale and thereafter, in the selection grade on the basis of the pay so fixed in the Junior Administrative Grade.

9. The applicant was drawing maximum of the pre-revised senior time scale of IAS for more than one year on 1.1.1986. His pay is, therefore, required to be regulated first in the revised senior time scale (Rs.3200-4700) on 1.1.1986. Under 3rd proviso to sub-rule (3A) of Rule 5 of the IAS (Pay) Rules, 1954, one increment in the revised senior time scale is to be allowed to him on 1.1.1986. Accordingly, his pay is required to be regulated at the stage of Rs.4575/- in the revised senior time scale which corresponds to Rs.2000/-, the maximum of the pre-revised senior time scale. By adding Rs.2575/- i.e. the amount of one increment in the revised

...9/-



senior time scale (Rs.3200-4700), the pay comes to Rs.4700/- (Rs.4575 + 125) the maximum of the senior time scale on 1.1.1986. Under sub-rule (6B) of Rule 4 of the IAS(Pay) Rules, 1954, the pay of the applicant in the Junior Administrative Grade is to be fixed at Rs.4700/- which is the stage in the Junior Administrative Grade equal to the pay of the applicant in the senior time scale. Under sub-rule (2)(ii) of Rule 3 of the IAS(Pay) Rules, 1954, the pay of the applicant has been fixed in the Selection Grade (Rs.4800-5700) on the basis of his pay of Rs.4700/- in the Junior Administrative Grade with effect from 1.1.1986. Since the minimum of the Selection Grade which is Rs.4800/- is higher than his pay of Rs.4700/- in the Junior Administrative Grade, the applicant has been allowed pay of Rs.4800/- with effect from 1.1.1986, the date of his appointment to the Selection Grade. Thus the pay of the applicant has been fixed correctly at Rs.4800/- p.m. in the revised selection grade of Rs.4800-5700 with effect from 1.1.1986.



10. Parawise comments:

Paras 1-5:

No comments

11. Para 6(i):

The IAS(Pay) Rules, 1954 have been amended retrospectively with effect from 1.1.1986 consequent on the decisions taken by the government on the recommendations of the IVth Central Pay Commission. The pay of all the members of the service has, therefore, to be regulated in accordance with the revised provisions of the IAS(Pay) Rules with effect from 1.1.1986. The pay of the applicant has been re-fixed correctly.

12. Para 6(2): No comments. The applicant has reproduced the provisions of the Pay Rules.

13. Para 6(3) & 6(4) Though the term "existing scale" has not been specifically defined in the definition contained in Rule 2 of the IAS(Pay) Rules, 1954 as amended with effect from 1.1.1986, the inference can be drawn from the other provisions of the amended Pay Rules that the term "existing scale" refers to the pay scale applicable to the member of the service as on 31.12.1985(AN) i.e. the date prior to the introduction of the revised pay scales. In the instant case the pay scale applicable to the applicant was the senior time scale (Rs.1200-2000) as on 31.12.1985(AN) when he was yet to be promoted to the selection grade Rs.2000-125/2-2250/-. This ceased to exist on 1.1.1986. Hence the contention of the applicant that he was in the old scale of selection grade (Rs.2000-125/2-2250) as on 1.1.1986 is untenable.

14. Para 6(5) & 6(4): As already stated in para 9 above, the pay is first required to be fixed in the J.A.G. as on 1.1.1986 on the basis of the pay computed under sub-rule(3) of Rule 3 read with 3rd proviso below sub-rule(3A) of the IAS(Pay)Rules, 1954 as amended from 1.1.1986 and thereafter in the revised selection grade of Rs.4800-150-5700.

The benefit of stagnation increment is however required to be extended in the J.A.G.. In other words the next increment in the J.A.G. is to be allowed on 1.1.1986 itself and the pay is to be fixed in the revised selection grade(Rs.4800-150-5700) under sub-rule 2(ii) of Rule 3 of IAS(Pay)Rules, 1954 as amended from 1.1.1986.

The normal date of increment of the applicant was not 1.1.1986. The applicant was already drawing pay at the maximum of the senior time scale as on 31.12.1985 i.e. prior to 1.1.1986. The clarification quoted in para 6(4) after para 6(5) of the application is not relevant to the applicant. Hence the contention of the applicant is untenable.

15. Para 6(6): The submissions made by Respondent No.1 may please be seen. The submissions made by this Respondent in para 9 above may also please be seen.

0.16.14. Para 6(7): The representation of the applicant was considered and the State Government were informed in February, 1988 that Explanation 2 below sub-rule(1) of Rule 3 of the IAS(Pay)Rules makes it clear that in the post to which the applicant is appointed on 1.1.1986, pay can be drawn in the

revised scale only. The state Govt. were requested to inform the applicant suitably with reference to his representation. Hence the contention of the applicant is untenable.

17. Para 6(8): This respondent craves leave to refer to the submissions made in para 12 in reply to para 6(9) of the Application. The pay of the applicant has been fixed correctly first in the JAG and thereafter in the selection grade on 1.1.1986. Since the applicant was first due for promotion to J.A.G. and thereafter to selection grade by virtue of his seniority and was adjudged suitable for such promotion with effect from 1.1.1986, he has been promoted and his pay fixed accordingly. Therefore the question for exercising his option to retain the old scale which ceased to exist on 1.1.1986 does not arise. The contention of the applicant is untenable.

18. Para 6(9): The pay scale of the old selection grade of Rs.2000-125/2-2250 ceased to exist on 1.1.1986. A new pay scale of J.A.G. of Rs.3950-125-4700-150-5000 came into being above senior time scale but below selection grade with effect from 1.1.1986. The senior time scale officer is thus first to be promoted to J.A.G. on 1.1.1986. Thus the old senior time scale pay as regulated in the revised senior time scale is to be the basis for fixation of pay in the J.A.G. The pay so fixed in the JAG of Rs.3950-125-4700-150-5000 is then to be the basis for fixation of pay in the revised pay scale of selection grade (Rs.4800-150-5700). Hence the contention of the applicant that the pay in the old selection grade Rs.2000-125/2-2250/- should be the basis for fixation of pay in the revised selection grade (Rs.4800-150-5700) is not

correct and, therefore, untenable.

19. Para 7: In view of what has been stated above it is respectfully submitted that for the reasons stated above and having regard to the considerations mentioned, the applicant is not entitled to the reliefs sought by him. The application is devoid of any merits and, therefore, it is prayed that Hon'ble Tribunal be pleased to dismiss the application with costs.

Delhi

Dated: 19-4-1989

Respondent
(यशपाल इंगरा)
P. DHINGRA
Through Counsel
डेस्क ऑफिसर
Desk Officer

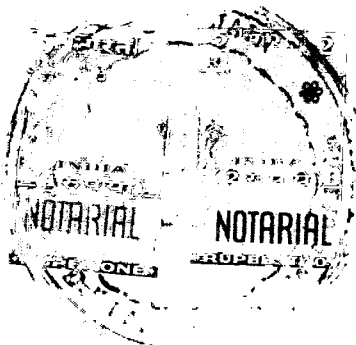
VERIFICATION
I, Y.P. DHINGRA, S/o late Shri Thakur Datt at present

working as Desk Officer in the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training do hereby state that what is stated above is true as per information derived from official records. Verified at Delhi this 19/4 day of April 1989

DEPONENT

ATTESTED
NOTARY, DELHI

13 APR 1989



135/85
19/4/89

ANNEXURE - RI

No. 11030/7/87-AIS(II)
Government of India
Ministry of Personnel, P.G. & Pensions
Department of Personnel & Training

New Delhi, the 20th March 1987

To

The Chief Secretaries to the
Government of All States.

Subject: Revision of pay scales of All India Service Officers
on the recommendations of the Fourth Central Pay
Commission - Amendment to the IAS/IPS/IFS(Pay) -
Rules- Exercise of option.

Sir,

I am directed to say that the revised pay scales for
the Indian Administrative Service/Indian Police Service/Indian
Forest Service on the decisions taken in pursuance of the
recommendations of the Fourth Central Pay Commission have
been notified through this Department's notification No.
11030/7/87-AIS.II, 11030/16/87-AIS.II and 11030/17/87-AIS.II
dated 13.3.1987

2. These rules provide ~~inter-alia~~ that a member of the
Service may like to draw pay in the existing scale of pay
until the date on which he earns his next or any subsequent
increment in the existing scale of pay or until he vacates
his post or he ceases to draw pay in that scale and that the
option shall not be admissible to any person appointed to the
Service on or after 1.1.1986, who shall be allowed to draw
pay only in the revised scales. It has also been provided
therein that the option shall be exercised in accordance
with such orders as may be issued by the Central Government
in this behalf. In pursuance thereof it is stated that a

Member of the Service may exercise the aforesaid option in writing in the form appended to this letter within the three months of the date of publication of these rules, subject to the conditions mentioned below:-

- (a) i) in the case of a member of the service who is, on the date of such publication, out of India on leave or deputation or foreign service or active service, the said option shall be exercised in writing so as to reach the said authority within three months of the date of his taking charge of his post in India; and
- ii) where a member of the service is under suspension on the 1st day of January, 1936 the option may be exercised within three months of the date of his return to his duty.

(b) The option shall be intimated by the member of the Service serving in connection with the affairs of the State to the State Government and in the case of a member of the Service under the Centre, to the Ministries/Departments concerned and also to the State Government on whose cadre he is borne.

(c) If the intimation regarding option is not received within the time mentioned above, the Government servant shall be deemed to have elected to be governed by the revised scale of pay with effect on and from the 1st day of January, 1936.

(d) The option once exercised shall be final.

Note 1: Persons whose services were terminated on or after the 1st January, 1986 and who could not exercise the option within the prescribed time limit, on account of death, discharge on the expiry of the sanctioned posts, resignation, dismissal or discharge on disciplinary grounds are entitled to the benefits of this rule.

Note 2: Persons who have died on or after the 1st day of January, 1986 and could not exercise the option within the prescribed time limit be deemed to have opted for the revised scales on and from the 1st day of January, 1986 or such later date as is most beneficial to their dependents, if the revised scales are more favourable in such cases.

Note 3: All India Services pensioners who were in service as on 1.1.1986 and retired subsequent to that date may also exercise the option referred to above.

3. It is requested that the contents of this letter may be brought to the notice of the members of All India Services serving in the States and their options be obtained for the purpose of regulation of pay.

Hindi version will follow.

Sd/-
(V.R. SRINIVASAN)
DEPUTY SECRETARY TO THE GOVT. OF INDIA

-1-

No. 11030/7/87-MS(M)

New Delhi, the 20th March, 1987

Copy for information and similar action to:-

1. All Ministries/Departments of the Govt of India.
2. IPS Section, Ministry of Home Affairs.
3. UP Section, Ministry of Home Affairs.
4. Department of Environment, Forests and Wild Life,
New Delhi.

Sd/-

(V.R. SRINIVASAN)
DEPUTY SECRETARY TO THE GOVT. OF INDIA

Copy to:-

EO(SI) Section, EO(CC) Section.

FORM OF OPTION

(See Rule 3(1) of IAS (Pay) Rules, 1954, IPS (Pay) Rules 1954 and IPS(Pay) Rules, 1968)

(i) I hereby elect the revised scale with effect from 1st January, 1986.

(ii) I hereby elect to continue on the existing scale of pay of my substantive/officiating post mentioned below until:

the date of my next increment

the date of my subsequent increment

raising my pay to Rs.

I vacate or cease to draw pay in the existing scale

Existing scale

Signature

Name

Service

Cadre

Year of allotment

Designation

Office in which employed

Date:

Place:

No.11030/78/87-AIS(II)
Government of India
Ministry of Personnel, P.G. & Pensions
(Department of Personnel & Training)

.....

New Delhi, the 8-11-88

To

The Chief Secretaries to the
Govt. of All States/Union Territories

Sub: Revision of pay scales of All India Service
officers on the recommendations of the Fourth
Central Pay Commission - Amendment to the IAS/
IPS/IFS(Pay)Rules - Exercise of option.

Sir,

I am directed to say that the revised scales
for the IAS/IPS/IFS were introduced w.e.f. 1.1.86 vide
this Department's notification No.11030/7/87-AIS(II),
11030/16/87-AIS(II) and 11030/17/87-AIS(II) dated the 13th
March, 1987. The members of the All India Services were
requested to exercise their option to opt for the revised
scales of pay in the prescribed form within 3 months of the
date of publication of the said notifications dated 13th
March, 1987 vide this Deptt's letter No.11030/7/87-AIS(II)
dated the 20th March, 1987.

2. The question whether the members of the All India
Services should be given a fresh opportunity to opt for
the revised scales of pay has been considered in the light
of the orders issued by the Central Government in respect
of the Central Government officers vide Ministry of Finance
OM No.7(52)-E.III/86 dated 27th May, 1988. It has been
decided that the members of the All India Services who
wish to opt to switch over to revised scale of pay from
the date of their next increment or subsequent increment
falling after 1.1.86 but not later than 31.12.87 may
exercise fresh option, in the form enclosed within a

-2-

period of 3 months from the date of issue of this letter .

3. It is requested that the contents of this letter may be brought to the notice of the members of the All India Services serving in the States and their options be obtained for the purpose of regulation of pay.

Yours faithfully,
Sd/-

(N. SANYAL)
~~DEPUTY~~ SECRETARY TO THE GOVT. OF INDIA.

Copy for information and similar action to:-

1. All Ministries/Departments of the Govt. of India. etc.etc.
2. IPS Section, Ministry of Home Affairs, New Delhi.
3. UTS Section, Ministry of Home Affairs, New Delhi.
4. Deptt. of Environment, Forests & Wild Life, New Delhi.

Sd/-
(N. Sanyal)
Deputy Secretary to the Govt. of India

FORM OF OFFICE

(See rule 3(1) of IAS(Pay) Rules, 1954, IPS(Pay) Rules 1954 and IFS(Pay) rules, 1968)

(i) I _____ hereby elect the revised scale with effect from 1st January, 1986.

(ii) I _____ hereby elect to continue on the existing scale of pay of my substantive/officiating post mentioned below until:

the date of my next increment

the date of my subsequent increment

raising my pay to Rs. _____

I vacate or cease to draw pay in the existing scale

Existing scale _____

Signature _____

Name _____

Service _____

Grade _____

Year of allotment _____

Designation _____

Office in which employed _____

Date:

Place:

No.11030/95/87-AIS(II)
Government of India
Ministry of Personnel, P.S. & Pensions
(Department of Personnel & Training)

.....

New Delhi, the 8 Nov, 88

To

The Chief Secretaries to the
Govt. of all States

Subject: IAS/IPS/IFS(pay) Rules - Clarification regarding
fixation of pay on appointment/promotion taking
place on 1.1.86.

Sir,

I am directed to say that the question regarding
fixation of Pay of the members of the IAS/IPS/IFS promoted
to higher posts including selection grade exactly on 1.1.86
who opt for the revised scales of pay introduced w.e.f.
1.1.86 vide this department's notification No.11030/7/87-
AIS(II), No.11030/16/87-AIS(II) and No.11030/17/87-AIS-(II)
dated the 13.3.87 has been considered and it has been
decided that the orders contained in the Ministry of Finance
O.M.No.7(21)/E.III/87 dated 26.8.88 (copy enclosed) shall
be applicable to the members of IAS/IPS/IFS mutatis
mutandis.

Yours faithfully,

Sd/-
(K.B.L. SAXENA)
DESK OFFICER

Copy together with the enclosure, forwarded to:

1. All Ministries/Department of the Govt. of India, etc.etc.
2. All A.G.'s of the States.
3. C&AG, New Delhi.

No.7(21)/E.III/87
Government of India
Ministry of Finance/Vith Mantralaya
Department of Expenditure

.....

New Delhi, the 26th August, 88

OFFICE MEMORANDUM

Subject: Central Civil Services (Revised Pay) Rules,
1986-Clarification regarding fixation of pay
on appointment/promotion taking place on
1.1.86

The undersigned is directed to state that references have been received from various Ministries/Departments seeking clarification as to how to fix the pay under CCS (RP) Rules, 1986 in cases of Government servants appointed/promoted to another post including appointment in Selection Grade exactly on 1.1.86. It is clarified that pay in such cases should first be fixed in the revised scale of pay of the post held on 1.1.86 with reference to the pay in the pre-revised scale of that post and then fixed in the promoted post under FR.22(C) w.e.f. 1.1.86 or FR.22(a)(ii) as the case may be. The same procedure should be followed in cases where a Government servant opts for revised scale of pay from the date of next or subsequent increment and appointment to another post also happens to be on the same date.

In so far as the persons serving in the Indian Audit and Accounts Department are concerned, these orders are issued in consultation with Comptroller and Auditor General of India.

Sd/-

(B. KUMAR)

UNDER SECRETARY TO THE GOVT. OF INDIA.

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

INDEX SHEET

CAUSE TITLE _____ of 19 ____

NAME OF THE PARTIES _____

Applicant

Versus

& RespondentPart A, B & C

Sl. No.	Description of documents	PAGE
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		10 30 B 3
		10 30 B 11
		10 30 B 27
		10 30 B 28
		10 30 B 37
		10 30 B 42
		10 30 B 48

check

10/11/11

h/for needed
lgw

Dis. Hemant

Filed in Court
(A)

CENTRAL ADMINISTRATIVE TRIBUNAL

in - **ADDITIONAL BENCH,**

23-A, Thornhill Road, Allahabad-211001

Registration No.

Sunder Prasad, Member I
98 of 198 Sg

APPLICANT (s)

S. B. Singh

RESPONDENT(s)

I O & Co.

Particulars to be examined

Endorsement as to result of Examination

1. Is the appeal competent ?
2. (a) Is the application in the prescribed form ?
(b) Is the application in paper book form ?
(c) Have six complete sets of the application been filed ?
3. (a) Is the appeal in time ?
(b) If not, by how many days it is beyond time ?
(c) Has sufficient case for not making the application in time, been filed ?
4. Has the document of authorisation, Vakalat-nama been filed ?
5. Is the application accompanied by B. D /Postal-Order for Rs. 50/-
6. Has the certified copy/copies of the order (s) against which the application is made been filed ?
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?

Yes

Yes

Yes

2 Sets filed

Yes

Yes

Verified by
1/1/83

597066
at. registration
20.50/-

Yes

Yes

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

Yes (By Advocate)

57-48100 (1)

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... adjourned to 20.3.89.
... hearing ... filed
...

48/12

Supplementary counter affidavit
... on behalf of ...

28/3/89

His Honour R. D. ...
...
...

Due to illness of the learned
counsel for the applicant
... the case be
listed for hearing on 28.3.89.

3/
Hon.

The
V.C.

...
...

She ... learned counsel for the applicant
... learned counsel for ...
... present on the request
... the case is adjourned to
2.5.89 + 2.6.89

A.M.

...
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...

...
...
...

On the request
of the learned counsel for the
applicant, adjourned to 2.6.89
for hearing

A.M.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

REGISTERED No. 42 of 1988(4)

APPELLANT
APPLICANT

S. B. Singh

VERSUS

DEFENDANT
RESPONDENT

Union of India

Sl. No.	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
1689	No sitting. The case is adjourned to 4-8-89 for hearing.	
313	<p style="text-align: right;">+ Boc</p> <p><u>Mr. Justice K. Datta, VC.</u></p> <p>On the request of the learned counsel for the applicant the case is adjourned to 9-10-89 for final hearing.</p> <p style="text-align: right;">VC.</p>	<p>or Case is submitted for hearing L 3/9</p> <p>or Case is submitted for hearing L 7/10/89</p>
219	<p>H. N. D. K. Ag. Trial JM from Mr. K. George, AM</p> <p>On the request of both the counsel the case is adjourned to 12-12-89 for hearing.</p> <p style="text-align: center;">AM JM</p> <p>27-12-89 The case is adjourned to 10-1-90</p>	

(A)
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31/10/89

Shen Bhan Singh

ED Branch Post Master P.O Nankapur Pratapgarh.

3/2/85 (now) came with 2000/- for repair by affl for delivery to

Smt Rajdee wife Bunderhail of V. Chaudhary
P.O Nankapur.

- Lady arrived to enquire about it - Affl asked her to bring 'mishra' or 'Scribe' for delivery under rule. She could not answer asked affl to deliver it to her under.
- 5 PM - The affl delivered it to the lady after taking Scribe & Thomas.
- Affl off left, lady opened the parcel case, only 5 notes of 100/- each were found.

Affl 5 days = Lady Enquiry -
16/3/85 - Affl put off -
- Disciplinary Enquiry was set up under Rule 8 of EOA (amended) 1964 for forgery etc.

6/5/85 - C/S Enquiry started

3-3-87 - Rpt

27-7-87 - Remand order commuted on 20/8/87

14-9-87 - Affl filed to Director of District Prison.

19-7-88 - Affl order passed: Case remanded to CO to be

Am 4

trial de novo for the steps of Chappath v. C/S v. B. V. P.

Q - Affl order could not be passed without passing the order under the provisions of the Act, as the affl is not a judge. - Rule 15 (ii) -

Proviso to rule 15 (ii) is distinct from proviso to rule 15 (i)

Q = Put off order is invalid because Enquiry enquiry was

total

"not pending" under Rule 9

"Put off order"

cannot be for more than 4 months - vide Instruction -

cannot be passed on in contemplation of Enquiry (Vid. Sec 23/3/78)

As soon as C/S is started, the enquiry is started.

Q = Chappath v. P. - have no proceeding can be passed

There is no provision for continuation of enquiry -

as C/S is to be given immediately on receipt of the order.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI

O.A.NO. 98

1938

E.A.NO.

DATE OF DECISION

Shri. S. S. D. D. D. PETITIONER

Shri. S. S. D. D. D. Advocate for the
Petitioner(s)

VERSUS

Shri. S. S. D. D. D. RESPONDENT

Shri. S. S. D. D. D. Advocate for the
Respondent(s)

COMES :
The Hon'ble Mr. Justice K. R. S. S. S.

The Hon'ble Mr. Justice K. R. S. S. S.

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

Dinesh/

(A)
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RECEIVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
LUCKNOW CIRCUIT BENCH
Registration No. 11,000 of 1988(L)

Shew Behar Singh Applicant

Versus

Union of India & Others Respondent

Man. Mr. Justice K. Math, V.C.
Man. Mr. K. Chavva, Member (A)

(By Man. Mr. Justice K. Math, V.C.)

This application under Section 12 of the Administrative Tribunal Act, 1985 is for quashing an order dated 12.7.86 issued by the Director of Postal Services with a further direction to reinstate the applicant as Extra Departmental Postmaster (for short EDBPM) at Sub Post Office Mathanpur, District Pratapgarh with full back wages. There is also a prayer to quash the punishment order dated 27.7.87 passed by the Senior Supt. of Post Offices, respondent No.2 and the applicant has asked to have continued in service from the date of his being put off duty i.e. 16.3.85.

2. The applicant was working as EDBPM as referred when an insured letter dated 13.2.85 for Rs.2000/- addressed to one Smt. Rajni Devi was received by him at the Post Office on 16.2.85. The letter was delivered by the applicant after taking a receipt from the lady on the receipt. The check deposited in the lady's account by another lady Smt. S. S. Devi, resident of the same village. According to the applicant he delivered the letter to the lady on 16.2.85, but according to the District Magistrate, it was delivered on 17.2.85.

28

3. It is however said that when Smt. Rajni Devi opened the insured letter she found only five currency notes of Rs.100/- each instead of Rs.2000/-, and 11 pieces of departmental papers and some personal letters.

According to the applicant, the insured letter must have been opened by the lady when he was not there; according to the Department, it was opened in the presence of the applicant himself and in the above condition of the contents was found.

4. On 22.2.65 Smt. Rajni Devi made a complaint in this matter.

5. After a preliminary enquiry the applicant was put off duty on 16.3.65 and served with a charge-sheet under Rule 8 of the E.S.A. (Conduct and Service) Rules, 1964 on 1.5.65. He denied all the charges in his reply dated 13.5.65. Consequently, an Inquiry Officer was appointed who completed the inquiry on 3.3.67 and found the charges proved. The applicant was then removed from service by order dated 27.7.67.

6. The applicant challenged the order of removal by means of a petition to respondent No.2. On 10.7.68 the appellate authority passed an order dismissing the case for de novo proceedings. It is at this stage of the proceedings when the applicant filed the application for the relief claimed above.

7. The grievance of the applicant is that although the appellate authority found the charges to be vague and unsustainable he did not quash the removal order.

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- 3 -

and only 'directed' to have processing. He has claimed reinstatement for that reason.

The learned counsel for the respondents refers to Rule 15 of the Posts & Telegraphs Extra Departmental Agent (Conduct and Services) Rules, 1964 and points out that under Sub Clause (ii) and clause (c) of Rule 15 it is open to the appellate authority to remit the case without interfering with penalty and therefore the appellate authority or the disciplinary authority were not bound to reinstate the applicant. The contention of the learned counsel for the respondents is not without substance.

2. Rule 15 lays down the action which the appellate authority may take in an appeal. Under Clause (a) it has to see whether the procedure prescribed in the Rules have been complied with. Under Clause (b) he is to consider whether the findings are justified and under Clause (c) he is to consider the quantum of the penalty and has the option of passing orders of two types. According to Sub Clause (i) he may order setting aside, reducing confirmation or enhancing penalty. This Sub Clause would include the power to reinstate in case the appellate authority sets aside or reduces the penalty. If the disciplinary authority does not pass any order of the nature stated in Sub Clause (i), he is competent under Sub Clause (ii) to remit the case to the authority which imposed the penalty with such direction as it may deem fit in the circumstances of the case. The order contemplated in Clause (ii) does not visualize an order for setting aside or reducing

Q/

17/10

the penalty already given. In other words, when an order is passed under Sub Clause (ii) remitting the case to the disciplinary authority, it does not imply an automatic revocation of the punishment order. Unless the punishment order is set aside by the appellate authority, the disciplinary authority has no inherent power to reinstate the employee simply because he holds the enquiry de novo. It is not possible therefore to direct reinstatement of the applicant pending completion of the de novo enquiry.

9. It is next urged by the learned counsel for the applicant that a put off order under Rule 9 cannot continue for more than 120 days. This contention is based upon certain guidelines issued by the Director General of Posts & Telegraphs by letter dated 25.8.81 published at page 41 and 42 of Swamy's Compilation of Service Rules of Extra Departmental Staff in Postal Department, 1987 Edn. The instruction, however, is not mandatory and runs in the following language :-

" It is also necessary that disciplinary authority makes every effort to finalise disciplinary proceedings and pass final orders so that an Extra Departmental Agent may not remain put off duty for a period exceeding 120 days."

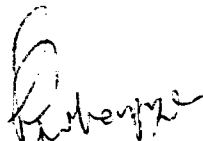
On its plain language, the instruction is directive. It cannot be said therefore that the applicant is entitled to be put to duty again or to be paid any allowances for not putting him on duty after expiry of 120 days.


10. The result of the finding is that the reliefs claimed by the applicant cannot be granted, but at the same time the enquiry must be completed expeditiously.

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- 5 -

11. We therefore dispose of this petition with the direction to respondent No.2 to conclude the enquiry against the applicant as promptly as possible and in any case within three months from the date of receipt of a copy of this judgement and thereafter pass final orders in the matter of the applicant's service. Parties shall bear their costs of this petition.


Member (A)


Vice Chairman

Dated the 9th Aug., 1990.

AKM

Due to non-availability of a Bench with one of us as the Member at Lucknow Circuit Bench for quite some time, this judgement is being delivered at Allahabad. Office will issue copies to the parties immediately and will despatch the record alongwith copy of the covering letter to the Lucknow Circuit Bench.


9.8.90.
Vice Chairman

FILED ON 23/1/08

14
12

CIRCUIT DESIGN, INCORPORATION.

APPLICATION NO. 98 OF 1933 (L)

Between:

Sher Bahadur Singh Applicant.

25.

Union of India & two others. Respondents.

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6.	Power	16	

Bmishra

(2.2. LIGRA)

ADVOCATE,
COUNSEL FOR THE APPLICANT.

Dated: 23.8.1988

Sickno.

2011.
21/9/88
noted for 21/9/88.
Spawning
Apr.
23/9/88

23.0.00
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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW.
CIRCUIT BENCH, LUCKNOW.

SA 90/00(5)

Between:

Sher Bahadur Singh ... Applicant.

AND,

Union of India, through the Secretary, Telecommunication
(Postal), Parliament Street, New Delhi & 2 Others.

... Respondents.

APPLICATION U/S 19, OF THE ADMINISTRATIVE
TRIBUNALS ACT, 1985.

1. Particulars of the applicant :-

- (i) Sher Bahadur Singh.
- (ii) S/o Shri Satya Dux Singh,
- (iii) Extra departmental Branch Postmaster at Narharpur,
B.O. District- Pratapgarh.
- (iv) Office Address: Lastly on the post E.D., Branch Post-
master, Narharpur E.O. District- Pratapgarh.
- (v) Resident of Village - P.O. Narharpur, Pargana & Tehsil-
Patti, District Pratapgarh.

2. Particulars of the respondents.

- (i) Union of India, through the Secretary, Telecommunication
(Postal), Parliament Street, New Delhi.
- (ii) Senior Superintendent of Post Offices, Pratapgarh
Division, Pratapgarh.
- (iii) Director of Postal Services, Allahabad Region, Allahabad

3. The application is against the following orders:-

- (i) Order vide Memo. No. vlg./APP-ED/87 dated: Allahabad,
the 19th July, 1988 passed by the respondent No.3 in
appeal on 19.7.1988 remitting the case back for de novo
proceedings from the stage of issuing charge-sheet.

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This appeal had been preferred against the order No. FB/34-35/DP dated 27.7.1937 but delivered as on 20.8.1937, passed by the respondent No.3 as Disciplinary Authority, inflicting the major punishment of removal from service in a Disciplinary proceeding against the applicant under rule 97 of the Branch Post Office Rules and Section 17 of the Service rules for P.O. Staff, 1964.

- (iv) Subject in brief: The applicant is making this application for quashing the order of the Appellate Authority dated 19.7.1938 remitting the case back for de novo proceedings from the stage of issuing charge-sheet on the ground that this order is wholly erroneous and invalid due to the reason that the case could be remitted or sent back to the Original forum, only after the appeal had been allowed by the respondent No.3 and the order dated 27.7.1937 passed by the respondent No.2, appealed against, had been quashed or set aside. Since this was not done, the order is invalid.

The order passed by the D.A. namely, the respondent No. 2 on 27.7.37, was invalid on many grounds that had been taken up in the appeal.

4.

The applicant declares that the subject matter of the order against which he wants redressal, having accrued at Pratapgarh Avadh, is within the jurisdiction of this Tribunal.

5.

The applicant further declares that the application is within the limitation prescribed under the Administrative Tribunals Act, 1935.

SPM

Contd.....3.

श्रीर वहादुर सिंह

(A)³
15

6. The facts of the case are given below:-

- (i) That while the applicant was working as T.O. Branch Postmaster at Branch P.O., Warharpur, District - Pratepgarh an insured letter No. 319 dated 13.2.1985 from Chinchbandar (Bombay) for Rs. 2,000/- addressed to one Smt. Raj Dei, W/o, Bindeshwari Prasad, R/o, Chandipur, P.O. Warharpur, District- Pratepgarh was received by the applicant at the Warharpur L.O. on 16.2.1985 through the Khandaur Account Office. The above said insured cover was delivered to the addressee under clear receipt on the very date that is, 16.2.1985 in the presence of the ~~xxx~~ scribe of the thumb impression of the addressee and a respectable witness.
- (ii) That it may be noted in this connection that on that very day, that is, on 16.2.1985, the addressee herself had called on the above said L.O. to enquire about her insured cover and when the applicant told her that it had just been received and that she should bring a scribe and a respectable witness so that the cover in question could be delivered to her.
- (iii) That when the addressee expressed her incapability to bring two persons as above said and requested the Branch Postmaster- the applicant to visit her house where she could provide the two witnesses, the applicant, on that very day went to her village and delivered the article in sound condition to her after getting her thumb impression attested by one Smt. Jarawati Devi (daughter-in-law of the addressee) as scribe and ~~xxx~~ one Kanta Prasad Misra as a witness at about 17.00 hours on that very day.

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- (iv) That the addressee later lodged a complaint at Kandheer P.O. on 21.2.1935 alleging that on opening the insured article under reference she had found only Rs. 500/- inside in place of Rs. 2,000/-.
- (v) That a preliminary enquiry was made into the matter upon which the applicant was on 16.2.1935 put off duty with immediate effect. This put off was prolonged and continued beyond a period of 120 days.
- (vi) That the Disciplinary Authority (D.A.) initiated the proceedings on 6.5.1935 and the Enquiry Officer submitted his Enquiry Report on 3.3.1937 and the D.A. (Respondent No.2) passed the impugned order of removal from service after about four months on 27.7.1937.
- (vii) That the order of removal dated 27.7.1937 was challenged in appeal before the respondent No.3 who vide his order dated 19.7.1938 passed the order remitting the case back for de novo proceedings from the stage of issuing charge sheet.
- (viii) That the above appellate order being wholly erroneous and invalid as also the order of punishment dated 27.7.1937 which is also invalid, the applicant has filed this application before this Tribunal, on the following amongst other grounds:-

:: GROUND S ::

(a) श्री महाकुमार

Because the respondent No. 3 agreed with the grounds taken up in appeal before him and found the charges to be vague and unsustainable but still he did not quash the removal order which could not be based on a bad and defective charge-sheet. This goes against the authority laid down in A.I.R. 1957 S.C. Page- 7.

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- (b) Because the respondent No.3 also found the punishment order, that is, the order of removal from service to be a non speaking order, still it was not quashed in view of the authority laid down by Hon'ble Supreme Court in R. Abdul Wahab Vs. Union of India (1976' 2 ALL 92.
- (c) Because the case could be remitted for de novo trial only after the appeal had been allowed, the judgment and order of punishment by way of removal from service was quashed and the reinstatement of the applicant to his post with full back wages had been ordered. Without doing these positive acts, the case could not have been remitted.
- (d) Because a fresh trial now will be had in law for the reason that as already deprived of his wages during all this period by virtue of the invalid order in appeal as above said, the applicant shall again further have to go without bread for at least 2-3 yyears more, during which a de novo trial might come to an end.
- (e) Because the appellate order passed by the respondent No.3 is also bad in law being not self explanatory.
- (f) Because the disciplinary proceedings should have been ~~fix~~ finalized within 120 days as per rules under the D.G., P.I order in the E.D.A. conduct rules, which has not been done in the instant case rendering the disciplinary proceedings as also the order passed on it, wholly invalid.
- Because the charge-sheet was issued on 6.5.1935 and the enquiry report was submitted on 3.5.1937 (received on 24.5.1937) after a gap of about 2 years, which renders the inquiry malafide and invalid.

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- (h) Because the charges framed against the applicant were ambiguous and neither precise nor specific. This vitiates the inquiry completely in view of the authority laid down in A.I.R. 1971, 732.
- (i) Because the Disciplinary Authority's order passed on 27.7.1937 was beyond three months of the receipt of the inquiry report, which goes against the service conduct rules.
- (j) Because the facts narrated in Annexures 1 and 2 of the charge-sheet are not co-relative to each other.
- (k) Because the inquiry was vitiated on many grounds including the undue and invalid interference in the proceedings by himself cross examining the state witnesses and then not allowing any opportunity to the applicant to cross examine the witnesses.
- (l) Because the witnesses were pressurised in giving false statements at the inquiry.
- (m) Because it was proved beyond doubt that the insured article in question was intact and in sound condition and was delivered to the addressee on 16.2.1935 against a clear receipt and discharge in the presence of a scribe and a respectable person.
- (n) Because it has been proved as admitted by the sender of the insured article in question, that the mischief in sending a lesser amount in the cover by Rs. 1,500/- was committed by his own man at the time of putting the currency notes inside the cover at the booking post office.

श्री १६५३/१५

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(o) because the inquiry was conducted against the principles of natural justice and fair play and is vitiated.

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

I. The order dated 19.7.1933 passed by the respondent No.3 in appeal be set aside in toto.

II. The applicant be ordered immediate reinstatement on his post of S.D. Branch Postmaster at S.O. Nannampur, District- Pratapgarh and be paid his full back wages uptill the time he is reinstated.

III. The order of punishment dated 27.7.1937 passed by the respondent No.2 be also quashed and the applicant be deemed to have been in continuous service of the department ever since the day he was put off duty, that is, 16.3.1935.

IV. Costs of these proceedings be allowed to the applicant against the respondents.

8. No interim order is prayed for at the present in this proceeding.

9. The applicant declares that he has availed of all the remedies available to him under the relevant service rules by filing an appeal before the respondent No.3 against the order of punishment by way of removal from service passed by the respondent No.2 on 27.7.1937. After the decision of the appeal on 9.7.1938, this application is being filed.

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The applicant further declares that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of this Tribunal.

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11. The application fee of Rs. 50/- is being paid through a postal order No. DD/3 597000 issued by the Pratapgarh P.O. on 20.7.1983 and payable at the C.P.O., Lucknow.
 12. An index in duplicate containing the details of the documents to be relied upon is enclosed herewith.
 13. (i) Memo No. F.8/34-35, dated Pratapgarh 15.3.35, passed by the respondent No.2 putting the applicant off duty.
(ii) Charge-sheet vide Memo No. F-3/34-35 dated Pratapgarh, 6.5.1935 containing three pages.
(iii) Order of Punishment vide Memo. No. F-1/34-35/37 dated Pratapgarh, 27.7.37 passed by the respondent No.2 in two pages.
(iv) Order vide Memo No. Vig./100-FD/B7 dated Allahabad, the 19.7.1937, passed by the respondent No.3 in appeal communicated to the applicant on 12.3.1988.

In verification:

I, Sher Bahadur Singh, S/o Shri Satya Ram Singh, aged about 46 years, lastly working as French Postmaster, C.P.O., Warhampur, District- Pratapgarh and resident of village P.O. Warhampur, Pargana - Tehsil- Patti, District- Pratapgarh, do hereby verify that the contents from paragraphs 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Dated: 23.8.1988

Lucknow:

(SHER BAHADUR SINGH)

APPLICANT.

23/8/88
Counsel for the Applicant
23/8/88

Annexure - I

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INDIAN POSTS AND TELEGRAPHS DEPARTMENT

OFFICE OF THE SR. SUPDT. OF POST OFFICES
PRATAPGARH DIVISION-230001.

Memo.No. F.8/84-85. Dated at Pratapgarh, the 16-3-85.

Shri Sher Bahadur Singh, ED.BPM. Narharpur, Pratapgarh is hereby ordered to be put off duty with immediate effect.

He will not be entitled for any allowances during the period, he shall remain under put off duty.

Charge report should be submitted.

[Signature]
Sr.Suptd. of Post Offices,
Pratapgarh Dn.230001.

Copy to:-

- ✓ 1- Shri Sher Bahadur Singh, B.P.M. Narharpur, Pratapgarh for information.
- 2- The Postmaster, Pratapgarh for information and necessary action.
- 3- The S.D.I. (N), Pratapgarh alongwith copy of the B.P.M. for delivery to him under receipt. He will please arrange transfer of charge of B.O. at once and have the past work of the B.P.M. verified for a period of 6 months within a month positively.
- 4- The Mail Overseer, North Pratapgarh.
- 5- A Branch D.O. Pratapgarh for information and necessary action.
- 6- O/C
- 7-8. Spares.

T-C - [Signature]
Smr. [Signature]

*B.LAL/

Annexure II

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साक्षितया अभिरोपित करने के लिए आदेश के ज्ञापन का मापक प्रत्यक्ष अन्तर्गत नियम के अतिरिक्त विभाग-य रजिस्ट्रार (आचरण तथा सेवा) नियम सन् १९६४ ।

ज्ञापन

ज्ञापन संख्या : २५५-४/१५१६ दिनांक प्रतापगढ़ , २३००१ , म. ६ ६ १५

श्री रामकृष्णसिंह (पदाध्यापक) सरलाहाट्टी (कायस्थ)

(कायस्थालय जिसमें कायस्थों का रहना है) कायस्थालय में रहने वाले कायस्थों की संख्या का मतलब होता है कि उनमें विरह अतिरिक्त विभाग-य रजिस्ट्रार (आचरण) तथा सेवा) नियम १९६४ के आदेशों का पालना करने के प्रस्तावना के गये हैं । अतः यह प्रस्तावना के बिना ही नहीं पाये जा सकते हैं । अतः प्रस्तावित है कि उनका प्रमाण पत्र प्रमाणित किया जा रहा है ।

२- श्री रामकृष्णसिंह सरलाहाट्टी को ऐसा अधिवदन करने का प्रमाण प्रस्तावना दिया जाता है कि वह इस प्रस्तावना के विरुद्ध करना नहीं ।

३- श्री रामकृष्णसिंह सरलाहाट्टी यदि इस ज्ञापन को प्राप्त के १० दिन के भीतर अपने अधिवदन विवेचित करने में असफल रहता है तो यह उपस्थानित किया जायेगा कि उसे कोई अधिवदन करना है और श्री रामकृष्णसिंह सरलाहाट्टी के प्रति किया जा सकेगा ।

को जानने चाहिए ।

रावता प्रमुख (त)

हस्ताक्षर अधिकार
महामन्त्रि-अधिवक्ता
११६-११५ और पदाध्यापन

श्री रामकृष्णसिंह सरलाहाट्टी (कायस्थ)
१५६२ ५१५१६
श्री रामकृष्णसिंह सरलाहाट्टी

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परिशिष्ट-1

श्री शेर बहादुर सिंह शाखा पोस्टमास्टर नरहरपुर प्रतापगढ़ के निरुद्ध अभिलेखित शास्त्रियों की धारायें।

आरोप-1

श्री शेर बहादुर सिंह दिनांक 16-2-85 एवं 17-2-85 को शाखा-आकपाल नरहरपुर के पद पर कार्य करते हुए चिंचबन्धर "बम्बई" बीमापत्र सं० 319 दिनांक 13-2-85 कीमती 2000/- के वितरण में जाल-साजी करके शाखा आकषर नियमावली के नियम 97 एवं अतिरिक्त विभागीय कर्मचारी "आचरण एवं सेवा" नियम 1964 की धारा 17 का उल्लंघन किए।

परिशिष्ट-2

श्री शेर बहादुर सिंह शाखा पोस्टमास्टर नरहरपुर प्रतापगढ़ के निरुद्ध अभिलेखित अवधार अथवा कदाचार की शास्त्रियों का ज्ञापन:-

चिंचबन्धर "बम्बई" बीमा पत्र सं०-319 दिनांक 13-2-85 कीमती 2000/- प्राप्त श्री मती राजदेई देवी तनी श्री चिंचबन्धरी प्रसाद ग्राम चन्दीपुर पोस्ट नरहरपुर प्रतापगढ़ "कोहंडौर" सेवा कार्यालय से दिनांक 16-2-85 को शाखा आकषर पत्र पर आकर नरहरपुर शाखा आकषर को वितरण हेतु भेजा गया। श्री शेर बहादुर सिंह शाखा आकपाल नरहरपुर ने उक्त बीमे की प्राप्ति की प्रवृष्टि शाखा आकषर रोज़नामके में उसी दिन किया। परन्तु उन्होंने बीमा प्राप्ति की नोटिस प्राप्त को रीडीडिए के माध्यम से वितरण हेतु भेजा। उक्त श्री शेर बहादुर सिंह ने उपरोक्त बीमे का वितरण प्राप्तकर्ता श्रीमती राजदेई का निशानी अंगूठा लगाकर तथा श्रीमती जरावती देवी सा० चन्दीपुर से उनका निशानी अंगूठा लिखाकर दिनांक 17-2-85 दिन रविवार को श्री कमता प्रसाद मिश्र ग्राम पूरे चन्दी पोस्ट नरहरपुर जिला-प्रतापगढ़ को गवाही लेकर उनके घर पर किया। प्राप्तकर्ता ने उक्त बीमे को खोला 11 विभागीय कार्या के दृढ़ तथ्य एक पत्र निकला था शेर बहादुर सिंह संदर्भित बीमे का वितरण दिनांक 16-2-85 में किया हुआ सिद्धाया तथा प्राप्तकर्ता रसीद पर भी दिनांक 16-2-85 ही की तारीख प्राप्त से लिखवाई। श्रीमती राजदेई ने उक्त तथ्य की सूचना अपने शिकायती पत्र दिनांक 20-2-85 द्वारा इस कार्यालय को भेजी। बीमा सुलने के समय श्री शेर बहादुर सिंह शाखा आकपाल एवं कामता प्रसाद मिश्र गवाह उपस्थित थे। परन्तु शेर बहादुर सिंह ने बीमा बाँटने के बाद वहाँ पर अपनी अनुपस्थिति बताई जबकि श्री कामता प्रसाद मिश्र ने बीमा खोलते समय शेर बहादुर सिंह को उपस्थित रहता अपने बयान दिनांक 22-2-85 में स्वीकार किया है। श्री शेर बहादुर सिंह ने बीमे का बाँटने दि० 17-2-85 श्री शेर बहादुर सिंह ने संदर्भित बीमे का सही दशा में शाखा आकषर में प्राप्त होना तथा उसका वजन 32 ग्राम पाना बताया है। जबकि बीमे की सीलें टूटी हुई हैं। सीलों पर पुनः सील लगाई गई है। तथा उसका वजन भी बीमे में नहीं है। समस्त दस्तावेजों से सिद्ध केवल 25 ग्राम पाना गया है। अतएव यह आरोपित है कि श्री शेर बहादुर सिंह ने संदर्भित बीमे का वितरण बिना नोटिस जारी किए हुए प्राप्त के घर पर ले जाकर दिनांक 17-2-85 को किया तथा प्राप्त रसीद पर 16-2-85 की वितरण की तारीख

मंलया रसीद पर
तारीख 16-2-85
का डालवाना
अपने बयान
दि० 21-2-85 में
स्वीकार किया है।

T.C

उलावार्ड तथा बी.में बी.सी.ल आदि का सही रूपा से परीक्षण नहीं किया जा
उन्हे गलत उद्देश्य का परिचायक है। श्री शेर बहादुर सिंह ने रंदिर्भित बी.में
के वितरण में उपरोक्त जालसाजी करके विभाग को 1500/-की क्षति पहुंचाए।

परिशिष्ट -3

श्री शेर बहादुर सिंह शाखा पोस्टमास्टर नरहरपुर के विरुद्ध
लगाये गए आरोपों को सिद्ध करने वाले अभिलेखों की सूची :-

- 1- नरहरपुर शाखा डाकघर पर्ची दिनांक 16-2-85
- 2- नरहरपुर शाखा डाकघर रोजनामचा दिनांक 16-2-85
- 3- बीमा ~~नं. 319~~ दिनांक 13-2-85 कीमती 2000/- के वितरण की
प्राप्तकर्ता रसीद।
- 4- श्री मती राजदेई पत्नी विन्देशवरी प्रसाद ग्राम चन्दीपुर प्रखंड नरहरपुर,
प्रतापगढ़ का शिकायतीपत्र दि०-20-2-85
- 5- श्रीमती राजदेई प्रापक का बयान दि०-23-2-85
- 6- श्री कामता प्रसाद मिश्र ग्राम पूरेचन्दी पो० नरहरपुर, प्रतापगढ़ का बयान
दिनांक 22-2-85
- 7- श्री शेर बहादुर सिंह शाखा पोस्टमास्टर नरहरपुर का बयान दि०-21-2-85
- 8- बीमा कवर बीमा संख्या 319 दि०-13-2-85 कीमती 2000/- तथा 11
पि.मागीयेबाग के टुकड़े तथा 100/- मूल्य वर्ग के 5 नेट।
- 9- श्री राज कुमार शुक्ला उपडाकपाल कोहंडौर, प्रतापगढ़ का बयान दि०-21-2-85
- 10- श्रीमती ~~जरावती~~ जरावती देवी ग्राम चन्दीपुर पो०-नरहरपुर दि०-23-3-85
का बयान।

परिशिष्ट-4

श्री शेर बहादुर सिंह शाखा पोस्टमास्टर नरहरपुर के विरुद्ध लगाए
गए आरोपों को सिद्ध करने वाले गवाहों की सूची।

- 1- श्रीमती राजदेई पत्नी विन्देशवरी प्रसाद ग्राम पोस्ट चन्दीपुर, नरहरपुर
प्रतापगढ़।
- 2- श्री कामता प्रसाद मिश्र सा० पूरे चन्दी पोस्ट नरहरपुर जिला प्रतापगढ़।
- 3- श्री गोपाल रॉ श्रीवास्तव निरीक्षक डाकघर उत्तरी, प्रतापगढ़।
- 4- श्रीमती जरावती देवी ग्राम चन्दीपुर पो०-नरहरपुर प्रतापगढ़।
- 5- श्री राज कुमार शुक्ला उपडाकपाल कोहंडौर प्रतापगढ़।

प्रवर धीरेश्वर डाकघर
प्रतापगढ़, मण्डल-230001

1-5

20.8.87

Annexure III

(31)
95/13

भारत-सरकार

डाक विभाग

कार्यालय प्रवर अधीक्षक डाकघर

प्रतापगढ़ मण्डल-230001

ज्ञापन सं०:-स्प-8/84-85/डीपी दिनांक प्रतापगढ़, 27-7-1987

श्री शेर बहादुर सिंह शाखा डाकपाल नरहरपुर [कार्य-पूरा] को इस कार्यालय के ज्ञापन संख्या दिनांक 6-5-85 द्वारा अतिरिक्त एजेंट [आचरण] नियमावली 1964 के धारा 8 के अन्तर्गत कार्यवाही की सूचना दी गई थी। इनके विरुद्ध आरोप तथा उसका विवरण, अभिलेखों एवं गवाहों की सूची जिसके आधार पर आरोप किए जाने थे। उक्त ज्ञापन के साथ भेजा गया था जो उन्हें दिनांक 8-5-85 प्रेषित किया गया था। को प्राप्त हो गया। बवाब में इन्होंने पत्र दिनांक 13-5-85 प्रेषित किया जो इस कार्यालय में दिनांक 15-5-85 को प्राप्त हुआ जिसमें इन्होंने समस्त आरोपों को अस्वीकार किया।

2-उक्त मामले में श्री बेनराम कार्यवाहक सहायक अधीक्षक डाकघर मण्डलीय कार्यालय, प्रतापगढ़ को जांच अधिकारी तथा श्री राम आसरे पाण्डेय [कार्यवाहक] परिवाद विपरीत मण्डलीय कार्यालय को प्रस्तुतकर्ता अधिकारी की नियुक्ति इस कार्यालय के समक्ष ज्ञापन दिनांक 18-5-85 द्वारा की गई। श्री बेनराम जांच अधिकारी ने मामले को जांच करके अपनी आख्या दिनांक 3-3-87 को प्रेषित किया जो इस कार्यालय में दिनांक 24-3-87 को प्राप्त हुआ।

3-मैंने जांच अधिकारी के जांच आख्या तथा समस्त संबंधित अभिलेखों का विस्तृत अध्ययन किया। मैं जांच अधिकारी के जांच के तथ्यों से पूर्णतया सहमत हूँ कि चिन्मयबंदर बम्बई बीमा पत्र सं० 319 दिनांक 13-2-85 की मती 2000/- आपक श्रीमती राजदेई देवी पत्नी श्री विन्देश्वरी प्रसाद ग्राम चन्दीपुर पोस्ट नरहरपुर, प्रतापगढ़ कोहंडौर लेवा कार्यालय से दिनांक 16-2-85 को शाखा डाकघर नरहरपुर को प्रेषित सील मुहर दुरुस्त भेजा गया जो शाखा डाकघर नरहरपुर में सही हाथ एवं सील मुहर दुरुस्त प्राप्त हुआ। श्री शेर बहादुर सिंह शाखा डाकपाल ने उक्त बीमा पत्र को उसी दिन अपने रोज नामचे में दर्ज किया परन्तु बीमा प्राप्त करने की कोई नोटिस ईडीडीए के माध्यम से प्राप्तकर्ता को नहीं दी गई जबकि अन्य बीमा पत्रों को नोटिस ईडीडीए के माध्यम से दी गई है। इसके बावजूद यदि प्राप्तकर्ता डाकघर में आयी तो भी उसके बीमे का विवरण नहीं किया गया जबकि श्री शेर बहादुर सिंह प्राप्तकर्ता को भली-भांति जानते पहचानते थे। तथ्य यह है कि उक्त बीमा पत्र श्री शेर बहादुर सिंह शाखा डाकपाल नरहरपुर को दिनांक 16-2-85 को प्राप्त हुआ और उसे दिनांक 17-2-85 दिन रविवार को प्राप्तकर्ता के घर जाकर वितरित किया। बीमा पत्र का विवरण श्री कामता प्रसाद मिश्र गवाह एवं श्रीमती जड़ावती देवी कांतिब के समक्ष किया गया किन्तु रसीद पर दिनांक 16-2-85 लिखवाया गया क्योंकि दिनांक 17-2-85 को रविवार था और दिनांक 16-2-85 को डाक जो लेवा कार्यालय में नहीं भेजा गया थी। उक्त संबंधित बीमा पत्र श्री शेर बहादुर सिंह ने स्वयं वितरित किया। प्राप्तकर्ता ने अपने गवाह कांतिब तथा श्री शेर बहादुर सिंह शाखा डाकपाल के समक्ष बीमा पत्र के डबल सील एवं टटी सील के विषय में शाखा डाकपाल से नरहरपुर से बताया और शाखा डाकपाल को प्राप्त कर्ता उक्त बीमा पत्र को वापस कर रही थी लेकिन श्री शेर बहादुर सिंह बीमा पत्र वापस नहीं किया और कहा कि इसे खोलकर देखो। बीमा खोलने पर बीमा कवर से 100/- रुपये की पांच नोटें तथा 11 तादे कागज तथा एक पत्र

T. S.

निकला। बीमा पत्र से निकले सभी 11 कागज डाक्टर के ही थे। ताकि बाद में त्रुटि दिनांक कुछ कहे या राय परामर्श किये वहाँ से चल दिये। क्योंकि वितरण स्थान पर पूरा कार्यवाही हो चुकी थी। श्री शेर बहादुर सिंह शाखा डाकपाल उक्त बीमा को सहा हात्ता में डाक्टर में प्राप्त होना तथा उसका वजन 32 ग्राम पाया जाता था क्योंकि बीमा की सील टूटी हुई है सील पर उबल मुहर लगाया गया है तथा इसका वजन सतत वस्तुओं सील केवल 25 ग्राम पाया गया है। जितने श्री शेर बहादुर सिंह शाखा डाकपाल स्वीकार करते हुये उसपर कोई ध्यान नहीं देने की बात कही है। श्री शेर बहादुर सिंह शाखा डाकपाल ने सील आदि का सही परीक्षण नहीं किया जो इसके गलत उद्देश्य का परिचायक है। इस प्रकार श्री शेर बहादुर सिंह शाखा डाकपाल उपरोक्त बीमा पत्र के वितरण में उपरोक्त जालसाजी करके विभाग को 1500/= की क्षति पहुंचायी है।

4-श्री शेर बहादुर सिंह शाखा डाकपाल अपने बयान में यह तर्क प्रस्तुत किया कि नरहरपुर शाखा डाक्टर एक सचल डाक्टर है और जब वह दिनांक 16-2-85 को गश्त पर चलने की तैयारी कर रहे थे तो इसी बीच श्रीमती राजदेई देवी डाक्टर आयी और उक्त बीमा बांटने को कहा तो उन्होंने श्री सिंह प्राप्तकर्ता से गवाह लाने की बात कही। इस पर प्राप्तकर्ता श्रीमती राजदेई देवी अपने घर चली गईं तो उन्होंने श्री सिंह दिनांक 16-2-85 को श्रीमती राजदेई देवी के घर जाकर उनके बीमा पत्र का वितरण अंगूठा निशानों लेकर किया परन्तु श्री राजदेई देवी प्राप्त ने अपने बयान में कहीं भी इसका उल्लेख नहीं किया कि वह बीमा पत्र लेने डाक्टर गई थी। जांच दौरान श्री शेर बहादुर सिंह शाखा डाकपाल नरहरपुर ने आगे यह बताया कि डाक्टर नरहरपुर के अन्तर्गत दो काउन्टर सुविधा उपलब्ध गांव पूरे चन्दौपुर एवं परब पदटी है किन्तु इन गांवों में गश्त करने का क्या कार्यक्रम है इन्हें धाद नहीं है। जब वे जानबूझ कर उक्त बीमा पत्र लेकर प्राप्त के घर गये तो इन्हें बी०ओ० जनरल विन्डो डिप्लोमरी रीजिस्टर में लेकर जाना चाहिए था परन्तु इन्होंने ऐसा नहीं किया। श्री शेर बहादुर सिंह ने पुनः तर्क प्रस्तुत किया कि निरीक्षक डाक्टर उत्तरो ने दिनांक 21-2-85 को मुझे जबरन व धमकी देकर उक्त बीमा पत्र का वितरण तिथि 17-2-85 लिखाया। इसके पीछे श्री सिंह शाखा डाकपाल नरहरपुर कोई ठोस प्रमाण नहीं प्रस्तुत कर सके। वह सभी बातें केवल कन गद्यन्त है। इस प्रकार श्री शेर बहादुर सिंह शाखा डाकपाल नरहरपुर ने सत्य निष्ठा से कार्य न करते हुये शाखा डाक्टर नियमावली के नियम 97 तथा अतिरिक्त एडजेण्ट आचरिंग सेवा नियम 1964 की धारा 17 का स्वच्छ उल्लंघन किया है। अतः इनके विरुद्ध लगाये गये आरोप पूर्णतया सिद्ध होता है।

अतएव मैं तुपैल अहमद, प्रवर अधीक्षक डाक्टर, प्रतापगढ़ मण्डल स्तर द्वारा श्री शेर बहादुर सिंह को शाखा डाकपाल के पद पर रखे जाने योग्य न पाकर उक्त पद से "निष्काशन" और मूबल का आदेश देता हूँ।

pravar
प्रवर अधीक्षक डाक्टर
प्रतापगढ़ मण्डल-230001

प्रतिपत्ति:-

1-श्री शेर बहादुर सिंह शाखा डाकपाल नरहरपुर कार्य-पृथक जांच की एक प्रति संलग्न है।

2-वीरगठ पोस्टमास्टर, प्रतापगढ़।

3-डाक निरीक्षक उत्तरो, प्रतापगढ़।

4-व्यक्तिगत पत्रावली

5-शाखा डाकपाल नरहरपुर, प्रतापगढ़

6- अतिरिक्त।

T.C.

Govt. of India

Ministry of communication

Department of Posts

Office of the Director Postal Services Allahabad

No: Vig/APP-FD- /37

Dated at Allahabad the, 19.7.88.

Appellate Order

1. This is in context of appeal dt. 14.9.87 preferred by Shri Bahadur Singh Ex-EDA Narharpur (Pratapgarh) against the penalty of 'removal from service' inflicted vide SPOs Pratapgarh memo No. F-8/84-85/EP dated 27.7.87.

2. The ^{appellant} appeal was proceeded against under Rule 8 of EDA (conduct) Rules 1964, for committing forgery in connection with delivery of Chinch Bundar Baidary Ins letter No. 319 Dt. 13.2.85 for Rs. 2000/-, thereby contravening the provisions of Rule 97 of R.O. Rules and 17 of EDAs (Conduct & Service) Rules 1964. On conclusion of enquiry proceedings the penalty appealed against was imposed.

3. A thorough examination and critical appreciation of the concerned documents/records of the case it is found that the chargesheet has not been drawn properly and charge not framed correctly. The appellant is alleged to have committed forgery in delivering the Insured letter, but, it has not been elaborated as to how did he commit the forgery in delivering the article. He has been charged of contravention of the provisions of rule 97 of RO rules, which does not deal with cases of forgery. Moreover Rule 97 contains five sub paras laying down different procedural matters concerning receipt and delivery of Insured articles. It has not been specified as to which particular sub para of Rule 97 has been infringed. Therefore, the charge is vague. The punishment is not speaking order in as much as it is devoid of discussion on the forgery part of the charge.

I, therefore, remit the case back for de novo proceedings from the stage of issuing chargesheet.


(P. D. KUMAR)

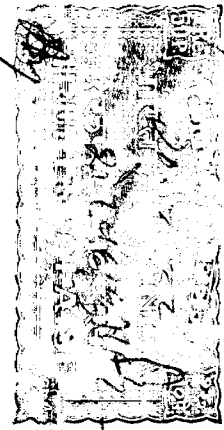
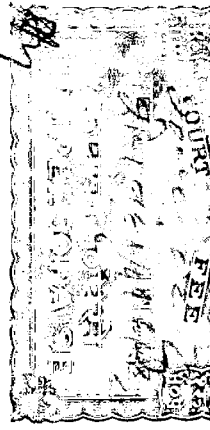
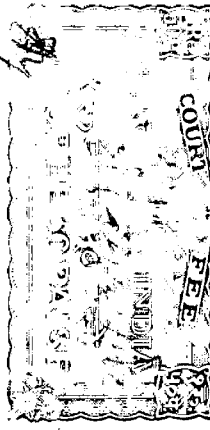
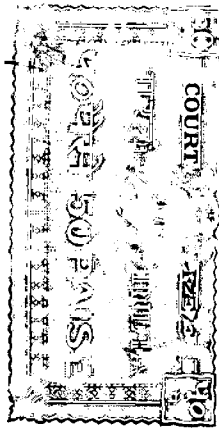
DIRECTOR POSTAL SERVICES

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वञ्चदालत

Central Administrative Tribunal Allahabad
Civil Bench, Agra.

Shree Bahadur Singh

पृष्ठ

Union of India & others
बाबा बतसरोह

भुद्दालह

क्षया वतक्षरीह

मनकि

चूंकि मिमुकिर ने वास्ते सवाल व जवाब मुकदमा मजकूर के वकील हाई कोर्ट को बइतरार अशय पेइननामा व नफसिया खुदहा वकील अपना मुकरर किवा लिहाजा इकरार करते हैं कि वकील साहब मौसूफ जो कुछ पैरवी कोशिश सवाल व जवाब व तहरीर करें दस्तावेजात दाखिल करें व सालिस मुकरर करें व फंसला सालिसी में उजरत दाखिल करें व वापस लेवें या इकरारनामा सालिस दाखिल करें व मुकदमा मजकूरा वाला में सुलहनामा दाखिल करें ख्वाह सुलह करें वशतें शुदुर डगरी जारी करावें बादह जर डिगरी व खर्चा व उजरत कुर्की व उजरत नीलाम व दीगर रकम याफ्तानी हमारी वसूल करें या कोर्ट फीस दाखिल करें ख्वाह सवाल या रसीद वसूलयाबी दाखिल कर व तसदीक करें व दरख्वास्त नकल देवें, नकल हाजिल करें व दरख्वास्त मुआइना मिसिल देवें या मिसिल का सुआइना करें व कोई दरख्वास्त मुतल्लिक मुकदमा गुजरा नै या बवक्त जरूरत कोई दूसरा वकील मुकरर करें या चैक लेवें या उसका रुपया वसूल करें अर्जी दावा व बयान तहरीरी व अपील दाखिल करें व सब साख्ता व परदाख्ता वकील मौसूफ का मिसल कर्दा जात खाम अपने के कबूल व मन्जूर है लिहाजा यह चन्द कलमा बतौर वकालतनामा के लिख दिया कि सनद रहे और वक्त पर काम आवे।

अलम कर

23rd माह

August

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वकालतनामा मन्जूर है।

23/5/88
 S. M. ...
 23/5/88

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

Circuit Bench, Lucknow

O.A. No. 97 of 1988(L)

(A)
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Sher Bahadur Singh

... Petitioner

Versus

Union of India & others

.. Opp. parties.

COUNTER AFFIDAVIT ON BEHALF OF THE OPP. PARTIES.

I, Tuffail Ahmed, aged about 58 years

son of ^{late} Shri Aliy Muhammad

at present posted as Superintendent of Post Offices,
Katapgarh do hereby solemnly affirm and state as
under:

1. That the deponent is the opposite party No.2
and is well conversant with the facts of the case and
he is filing this counter affidavit on behalf of the
opposite parties.
2. The deponent has read and understood the contents
of application filed by the petitioner before the Hon'ble
Central Administrative Tribunal as well as the facts
deposed herein in reply thereof:
3. Before giving the parawise comments on the
application it is expedient in the interest of
justice to submit the following few facts in brief
which are as follows:

(a) That the applicant while working as ED BP

Narharpur Katapgarh received Chinch Bunder (Bombay)

1988
AFFIDAVIT
90 DEC
DIST. COURT
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Ins. Letter No.391 dated 13.2.86 for Rs.2000/- (Rs. Two thousand only) A/T Smt Rajdei Devi w/o. Shri Bindeshwari Masad village Chandipur Post Narharpur Pratapgarh for delivery on 16.2.85 duly entered in the B.O. Slip from Kohandaur S.O. In sound condition. The entry of above Ins. letter was made in the B.O. Journal by the applicant on the same day, but no notice was issued to the addressee through EDDA Narharpur. Thus the u/r. Ins. letter was delivered to the addressee by the applicant on 17.2.85(Sunday) after taking T.I. of Smt. Rajdai Devi on the addressee's receipt. The T.I. of Smt Rajdei Devi was scribed by Smt Jarawati Devi R/o. village Chandipur post Narharpur Pratapgarh. The u/r. Ins. letter was delivered at the house of the addressees on 17.2.85 (Sunday).

(b) That the u/r. Ins. Letter was opened by the addressee Smt Rajdai Devi in the presence of the ED BPM after taking out the contents and five currency notes of the hundred rupees and eleven pieces of departmental papers and one personal letter were found inside the above Ins. letter cover.

(c) That the applicant has shown the delivery of the Ins. Letter on 16.2.85 in ~~in~~ his relevant records and he had also insisted to note the date of delivery as 16.2.85 instead of 17.2.85 from the addressees at the time of delivery, and this fact was also narrated by the

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addressee in her complaint dated 20.2.85. The applicant and the witness Shri Kanta Prasad Mishra were present on the spot at the time of opening of Ins. letter by the addressee which is evident from the statement of Shri Kanta Prasad Mishra but the applicant has denied his presence on the spot, Shri Sher Bahadur Singh has however accepted in his statement the receipt of the Ins. Letter U/r. in sound condition with correct weight ie. 32 grams. But at the time of weight test during course of enquiry this weight was found only 25 grams. and the entire seals were broken and resealed and inspite of this the same was delivered at the house of the addressee at Chandipur (ie. the village other than PO on 17.2.85 (Sunday). But Shri Sher Bahadur Singh, the applicant insisted to the addressee and witness to note the date of delivery 16.2.85 and however managed to get the date of delivery 16.2.85 noted on the addressee's receipt, which creates doubts upon the conduct of the applicant. ~~xxxx~~ The applicant was found guilty for his grave misconduct and was placed under put off duty on 16.3.85 and charge sheet under rule 8 of FDA's Conduct & Service Rules, 1964 was served on him on 8.5.85. The applicant had denied all the charges levelled against him vide his application dated 13.5. 85. Therefore the E.O. & P.O. were appointed in this case on 18.5.85 to enquire into the charges against the applicant. The enquiry was completed on 3.2.87 by the E.O. The E.O. has proved all the charges against the applicant

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after going through the enquiry report and relevant documents etc. on records. The applicant ED BH Warharpur was removed from service vide office Memo No.F.8/84-85/DP dated 27.7.87. The applicant filed an appeal against removal on 14.9.87 which was received on 15.9.87 in the office of the opp. party no.2 and same was forwarded with brief history of the case and parawise comments alongwith relevant exhibits of the case to the appellate authority. The case was remitted back for denovo proceedings.

(d) From the stage of issuing charge sheet by the appellate authority on 18.7.88 the case was remitted back for denovo proceedings. On receipt of the directions of the DPS Allahabad further action in the case was under process, but meanwhile the applicant has moved an application at the Central Administrative Tribunal, Lucknow against the order of DPS Allahabad for denovo proceedings against removal & of service.

4. That the contents of paragraphs 1 to 5 of the application, needs no comments.

5. That the contents of para 6(a) of the application are not admitted and in reply it is stated that the applicant has not exhausted all the departmental channels because further action is under process as directed by the appellate authority.

6. That the contents of para 6(b) of the application are not admitted and in reply it is stated that the punishment order was quite in speaking order and from the enquiry report the F.O. in which

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all the charges were fully proved and was also to the applicant alongwith the punishment order.

7. That the contents of para 6(c), 6(d) and 6(e) of the application are wrong, hence denied.

8. That the contents of para 6(f) ^{& 6(g)} of the application are not admitted. The applicant and his defence Assistant failed to attend the enquiry on several occasions on some pretext or the other which resulted delay in completion of the enquiry by the E.O.

9. That the contents of para 6(h) of the application are not admitted.

10. That the contents of para 6(i) of the application are not admitted because it needs time for examination of the case thoroughly before passing final orders.

11. That the contents of para 6(j) of the application are not admitted because the charges has been proved on facts in accordance with departmental rules and procedures.

12. That the contents of para 6(k) of the application are not admitted because the applicant was given full opportunity during the course of enquiry by the E.O.

13. That the contents of para 6(l) of the application are wrong, and hence denied.

14. That the contents of para 6(m) of the

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application are not admitted because the applicant has in fact delivered the Ins. letter u/r. on 17.2.85 to the addressee at her home but the applicant however managed to get the date of delivery noted as 16.2.85 instead 17.2.85 from the addressee at the time of delivery on his instigation the above was narrated by the addressee in her complaint dated 20.2.85 and also during the course of enquiry of the E.O. The brief history of the case may also be seen in the preceeding paragraphs. ~~A true copy of the enquiry report is being filed as Annexure C.1 to this affidavit for perusal, from which it would be seen that~~ *will be shown at the time of hearing* more clear that all the aspects of the matter has been considered.

15. That the contents of para 6(n) of the application are not admitted because the sender of the Ins. letter has stated that a sum of Rs.2000/- only was correctly sent to the addressee through Ins. letter. The applicant however, submitted two affidavit from the sides of the sender and addressees which were fully proved false during the course of enquiry. The claim of the sender of remaining Rs.1500/- has been settled by the D.P.S. Bombay Region on 23.5.88 in favour of the sender.

16. That the contents of para 6(o) of the application are not admitted.

17. That the contents of para 7 of the application are not admitted. The action is under process as per direction of the Appellate Authority.

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18. That the contents of para 7(ii) of the application are not admitted because this is not feasible in view of the gravity of the case.

19. That the contents of para 7(iii) of the application ~~are~~ needs no comments, which relates to Court concerned.

20. That the contents of para 7(iv) of the application needs no comments.

21. That the contents of paragraph 8 of the application needs no comments.

22. That the contents of paragraph 9 of the application are not admitted because the applicant has not exhausted all the departmental channels so his application is not tenable and liable to be rejected.

23. That the contents of para 10 of the application are not admitted because the case was remitted back for de novo proceedings by the appellate authority and the action is under process.

24. That the contents of para 11, 12 and 13 of the application needs no comments.

24. a That the application moved by the applicant is pre-mature as at this moment the order of the punishment order dated 27.7.87 is not in existence as the same has been set aside by the appellate authority vide order dated 19.7.88 and who remitted back the case for fresh enquiry after

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issuing proper charge sheet.

25. That no subsistence allowance is paid to the petitioner during the period of putting him off from duty as the Extra Departmental Agents are treated as only part time employee having other source of livelihood also. There is no question of giving him back wages as the enquiry is still pending against him and in case it is established that the applicant is innocent, the authority will consider this question at the time of passing final orders in the disciplinary proceedings.

26. That as such the application filed by the applicant is liable to be dismissed as pre-mature and non-maintainable at this stage.

Harish
Deponent.

Lucknow,

Dated: 16th Sept. 1988.

Verification.

I, the deponent above-named do hereby verify that the contents of paragraphs 1 to 2 are true to my personal knowledge, those of paragraphs


3 to 24 are also believed to be true by me on the basis of legal advice. 26 are believed to be true on the basis of legal advice. No part of this affidavit is false and nothing


material has been concealed. So help me God.

Harish
Deponent.

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I identify the deponent who has signed before
me and is personally known to me.


(VK Chaudhari)
Advocate.

Solemnly affirmed before me on
at 10:00 am/pm by the deponent who is identified
by  Shri VK Chaudhari, Advocate, High Court.

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


Oath Commissioner. 2







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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, MUMBAI.

C.A. NO. 98/88 (L)

In re: Sher Bahadur Singh Applicant.

Versus,

Union of India & Ors. ... Respondents.

REJOINDER AFFIDAVIT OF THE APPLICANT

I, Sher Bahadur Singh, aged about 46 years, S/o Shri Saty- Suk Singh, A/o Village and P.O. Lohargarh, Margana & Tehsil- Patti, District- Pratapgarh, do hereby solemnly affirm and state as under:-

1. That the deponent who is the applicant above named has read over and understood the contents of the Counter Affidavit filed on behalf of the respondents in the above case and is in a position to submit that the allegations made therein, so far as they are contrary to or inconsistent with those made in the application are hereby denied as false and incorrect and those made in the application are reiterated as true and correct.
2. That the contents of para-3 of the Counter Affidavit are false and denied. The fact is that the first writ petition was received on 16.2.85 and was delivered to the addressee on the same date, that is, 16.2.85. The deponent was authorised to make the delivery of the writ petition personally in the two villages of Purnea District. Purnea District as his office was a no file post office and an amount of Rs. 10/- per month was paid to the deponent.

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allowance for performance of this delivery work, door-to-door. As such, the question of giving any notice or intimation did not arise. The delivery was made under a clean receipt after attestation of the truth impression of the addressee by two respectable witnesses as provided under the rules.

3. That further, the insurance letter in question was not opened in the presence of the deponent as it is already has been admitted by the witness Anita Prasad.
4. That para-3(c) of the Counter Affidavit is denied. The addressee made a complaint on 20.2.1985 only, that is, after a delay of five days which was reliable, because the insurance letter was delivered with its seals quite intact and in a sound condition.
5. That the contents of para-3(d) of the Counter Affidavit are denied being false. The appellate authority, namely, the respondent No.3 while passing orders in the appeal did not issue any charge sheet on 19.7.88 for a de novo proceeding. The proper course for the respondent No.3 namely, the appellate authority was to have allowed the appeal, set aside the order of removal of the deponent from service and then could have ordered a de novo trial but that hardly was justified in the circumstances of the present case in which the charge-sheet was wholly incorrect and vitiated.
6. That the contents of para-6 of the Counter Affidavit are false and denied. Neither the order of withdrawal was a speaking order nor the inquiry report was true.

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properly by law. This is a case of wrongful and arbitrary punishment based on an invalid inquiry.

(Signature)
(SHER BAHADUR SINGH)
CHARTERED.

Dated 3.10.1988

~~XXXXXX~~
Lucknow.

I, the Deponent above named do hereby verify that the contents of paras 1 to 6 of this Rejoinder Affidavit are true to my own knowledge.

Signed and verified this the 3rd day of October, 1988 at Lucknow.

(Signature)
(SHER BAHADUR SINGH)
CHARTERED.

I identify the Deponent who has signed this Rejoinder Affidavit before me.

(Signature)
(SHARAD K. SINGH)
Advocate 3/10/88

Solemnly affirmed before me on 3.10.1988 at _____ a.m./p.m. by Shri Shri Bahadur Singh the Deponent who is identified by Shri Shri Bahadur Singh, Advocate, Lucknow.

I have fully satisfied myself by examining the Deponent that he understands the contents of this Rejoinder Affidavit which have been read over and explained to him by me.

(Signature)
CHARTERED.

(Signature)

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In the Hon'ble Central Administrative Tribunal,

Bench Allahabad,

(Circuit Bench) Lucknow.

O.A.No.95 of 1988 (L)

Sher Bahadur Singh Vs. Union of India and others.

Supplementary Counter Affidavit of Opp. Parties.

C-2-04
13/12

I, Tufail Ahmad, son of Late Shri Alley Mohammad, aged about 58 years, presently posted as Senior Superintendent of Post Office, Pratapgarh, Postal Division, Pratapgarh, do hereby solemnly affirm and state on oath as under:-

1. That the deponent is opposite party no. in the above noted application and as such he is fully conversant with the facts deposed to hereinbelow.

2. That the applicant has not impleaded the person presently working as Extra Departmental Branch Post Master, Post Office Barhampur, District Pratapgarh after his removal from the said post and in case this application is allowed the affected party presently working in his place shall have no opportunity to represent before this Hon'ble Tribunal and this may cause

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unwarranted further litigations.

3. That it is very much expedient in the interest of justice that the application may be dismissed for the defect i.e. Non-Joiner of necessary party as respondent.

Lucknow; Dated
18/12, 1988.

~~Signature~~
~~Deponent.~~

Verification.

I, above named deponent do hereby verify that the contents of paras 1 and 2 of this affidavit are true to my personal knowledge and those of para 3 are the legal advice. No part of it is false and Nothing material has been concealed. So help me God.

Verified this 18... day of Dec, 1988
at Lucknow.

Lucknow; Dated

18/12, 1988.

~~Signature~~
~~Deponent.~~

18/12/88
Tajendra Kumar Choudhary
V. K. Choudhary
Kishore Kumar
18/12/88