

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE 9.A. 65 OF 2008

NAME OF THE PARTIES ... S. L. Srivastava Applicant

Versus

..... R.D. S. O. LK.O & others Respondent

Part A.

Sl.No.	Description of documents	Page
1	General Index	A 1 to 2
2	order sheet	A 3 to 4
3	Judgments. Dated 07-7-89	A 5 to 12
4	petition. copy	A 13 to 49
5	counter affidavit	A 50 to 64
6	Rejoinder. Affid.	A 65 to 99
7	counter in favour of the claim of	A 100 to 114
8	The Appl.	
9	Supp. counter in Reply to the Rejoinder App.	A 115 to 130
10	Supp Rejoinder App	A 131 to 139
11		
12		
13		
14		
15		
16		
17		
18		

CERTIFICATE

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

Dated .. 26/12/2011

Counter Signed.....



Section Officer/In charge

Signature of the
Dealing Assistant

ANNEXURE - A

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

O.A. 65/88 (L)

INDEX SHEET

CAUSE TITLE O.A. 65 of 1988

Name of the parties S. L. Srivastava

Applicant.

Versus.

R.D. S. O. Lko and others Respondents.

Part A.B.C.

Sl No.	Description of documents	Page
1	General Index	A1 - A2
2	Order Sheets	A3 - A4
3	Judgments Dt. 07-07-89	A5 - A 12
4	Petition	A 13 - A 49
5	Counter-Affidavit	A 50 - A 64
6	Rejoinder-Affidavit	A 65 - A 99
7	Counter in favour of the Claim of the Applicant	A 100 - A 114
8	Supplementary Counter in Reply to the Rejoinder-Affidavit	A 115 - A 130
9	Supplementary Rejoinder-Affidavit	A 131 - A 139

B. file

B-1 - B-93

C. file

C. N.R.

(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No. 65 of 198 0(1)

APPLICANT (s) S. L. Srivastava

RESPONDENT(s) R. D. S. C. LK 82 others.

Particulars to be examined

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 cause 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 ?

Endorsement as to result of Examination

ys

ys

ys

6 complete sets of the application have been filed.

ys

/

or
~~ys~~ No

DD 829754 D-10/7/1980

ys, but Annex 3 in 2nd copy
of the application is not attested.

ys

ys

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

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

Particulars to be ExaminedEndorsement as to result of Examination

- (c) Are the documents referred to in (a) above neatly typed in double space ? *yes*
8. Has the index of documents been filed and paging done properly ? *yes*
9. Have the chronological details of representation made and the outcome of such representations been indicated in the application ? *yes*
10. Is the matter raised in the application pending before any Court of law or any other Bench of Tribunal ? *no*
11. Are the application/duplicate copy/spare copies signed ? *I&R 2 Cpls are signed.*
12. Are extra copies of the application with Annexures filed ?
- (a) Identical with the original ? *yes*
- (b) Defective ? *—*
- (c) Wanting in Annexures *—*
- Nos...../Pages Nos.. ?
13. Have file size envelopes bearing full addresses, of the respondents been filed ? *yes without postage*
14. Are the given addresses, the registered addresses ? *yes*
15. Do the names of the parties stated in the copies tally with those indicated in the application ? *yes*
16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ? *N.A.*
17. Are the facts of the case mentioned in item No. 6 of the application ?
- (a) Concise ? *yes*
- (b) Under distinct heads ? *yes*
- (c) Numbered consecutively ? *yes*
- (d) Typed in double space on one side of the paper ? *yes*
18. Have the particulars for interim order prayed for indicated with reasons ? *yes*
19. Whether all the remedies have been exhausted. *yes*
- If agreed to, the case may be put up before the court on 28-07-2017.*

*On 19/7/2017**R.P. Shrivastava*

Central Administration Tribunal

O.A. No 65/00 (L)

S.L. Sircarana — vs — R.D.S.O. (Kos & Ors)

ORDER SHEET

20.9.00

Hon. Ajay John

Admit, Issue Notice.

One month for C.A & 15 days thereafter
for R.A.

Put up on 20.9.00 fiscal Hearing

fnsh
4/5

28.9.00

Notices issued to the Respondents
1 to 3 through Repd. Post

• Jish
29/9

20.9.00

D.R.

Applicant present in person. A. Bhargava,
Counsel for the respondent is also present. On
the request of counsel for respondent, he
is allowed to file reply by ~~29/9~~.
No more time will be allowed.

lndr.

Applicant present
Respondent Mr. Ajay Bhargava
present. On his request

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
SILECTED BENCH AT CALCUTTA.

O.A./T.A. No. 65 198 8(C)

S. C. Srivastava

Applicant(s)

Versus

0028

Respondent(s)

S.R. No.	Date	Orders
	<u>24.1.89</u>	<p>Applicant in person present for respondent Sri Amit Kumar Srivastava Advocate is present. He recd the copy of responder filed by applicant today.</p> <p>Fix : 30.3.89 p.m.</p> <p>Hearing Date 24.1.89</p>
	<u>30/3/89</u>	<p>Hon. Mr. D.S. Misra, A.M. Hon. Mr. D.K. Agrawal, J.M.</p> <p>The rejoinder filed by the applicant has not been verified. It may be returned to the applicant for its presentation in a proper form within a week. List the case on 10-5-89. The applicant is also directed to file an amendment application to amend the claim petition to implead the Union of India as an party within a week. List for further direction on 27-4-89.</p> <p>J.M.</p> <p>A.M.</p>

(sns)

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

....

June , 1989

Registration O.A. No. 65 of 1988 (L)

Sangam Lal Srivastava ... APPLICANT

Vs.

Union of India & ors ... RESPONDENTS

Hon' Mr. Justice Kamleshwar Nath, V.C.

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

(By Hon' Mr. K.J. Raman, A.M.)

This is an application filed by Shri S.L. Srivastava, Assistant, working in the Research, Designs & Standards Organisation (RDSO), Government of India (Ministry of Railways), Manak Nagar, Lucknow, under section 19 of the Administrative Tribunals Act, 1985, against the Union of India and three other official respondents. The prayer of the applicant is that the order No. 101 of 1987 dated 1-4-1987, issued by the respondents regularising the service of the applicant as Assistant with effect from 27-3-87, be quashed; and that the memorandum dated 12-1-88 issued to the applicant with reference to his application dated 5-10-87, stating that the applicant had been correctly regularised as Assistant w.e.f. 27-3-87, as communicated to him under a memorandum dated 9-12-85, be also quashed. Further, the applicant seeks to delete the words, "purely on ad-hoc arrangement", occurring in order No. 386 of 84 dated 21-9-84, by which he was originally promoted as Assistant. The

lpr

....2/-

:: 2 ::

applicant seeks regularisation on the post of Assistant from the date he was promoted to that grade originally i.e. 24-9-84.

2. The applicant has elaborately set out his case in the application and two rejoinders; in addition, he has also submitted a written argument. The respondents have also submitted two counter affidavits in reply. The applicant argued his case in person and the learned counsel for the respondents was also heard.

3. The substance of the case of the applicant is that even at the time of his original promotion by issue of order No. 386/84. promoting him as Assistant on an ad-hoc basis, he was eligible to be promoted on a regular basis, since he was found fit for promotion by a Deputy Director General in-accordance with the then Recruitment Rules. The applicant states that he has continuously worked on the post of Assistant from the date of his promotion in 1984 on an ad-hoc basis and he was not made regular in that post till 1987. His posting as Assistant has been regularised only w.e.f. 27-3-1987. According to the applicant this is a long delay in regularisation, without any justification. The applicant admits that the respondents had been making promotion of Departmental UDCs to the Grade of Assistant, up to the extent of 50% of vacancies of Assistants, and 10% through Limited Departmental Competitive Examination, and 40% through UPSC/Staff Selection Commission. The applicant claims that if suitable candidates are not found through the UPSC/SSC, the vacancies

100

...3/-

ought to be filled up by promotion, and the other quota through UPSC/SSC stands lapsed. In this connexion, he refers to para 302 of I.R.E.M. which according to the applicant, supports the arguments of the applicant as above. The extract quoted by the applicant, however, merely refers to the principle of fixation of seniority between promotees and direct recruits, when the date of entry is the same for both. According to the applicant, the quota rule has broken down in this case, since no candidates were available from the UPSC/SSC source, at the time of his ad-hoc promotion in 1984. On this basis, the applicant seeks to get the benefit of the decisions of Hon'ble Supreme Court dealing with the break-down of the quota rules. The applicant has cited a number of cases including S.C. Kacktwana & ors vs. Union of India & ors ATR 1987(2) CAT 22 (New Delhi) and R.K. Mallick Vs. Union of India & ors T.A. No. 259 of 1986 (OS No. 17 of 1985), CAT, Allahabad. The applicant states that he was actually promoted in 1984 in the place of Shri P.K. Dhar who was promoted in his turn on a regular basis. Thus, the vacancy in which he was promoted was a regular vacancy and not a fortuitous or stop-gap arrangement. Suitable persons from the UPSC/SSC or competitive examinations were not available at that time and, therefore, those vacancies were filled up by promoting the applicant and others. The applicant was found suitable for promotion according to the Recruitment rules and therefore, there was no question of his being continued on an ad-hoc basis after the expiry of a reasonable period of 3 months. The applicant also attributes bias and prejudice to the respondents, particularly Respondents No. 4, on the ground that the applicant

191

(At)

is a Trade Unionist. The applicant, however, does not give the basis on which he makes such allegation.

4. The respondents have contended that the application is barred by time. It is also further argued that the application suffers from non-joinder of necessary parties, since Union of India has not been made a party originally in the application. The applicant however, has amended the application since then, making Union of India as one of the respondents. According to the respondents, the applicant was promoted as Assistant with effect from 24/9/84 purely on an ad-hoc basis for a period not exceeding 3 months or till the posting of a regular incumbent which-ever was earlier. It is stated that this ad-hoc promotion was made, since the promotion was against a vacancy reserved for UPSC/SSC/LDCE quota. It has been emphasised that the applicant was regularised as Assistant w.e.f. 27-3-87 in his turn along with others, strictly according to the seniority and in accordance with the relevant Recruitment Rules prescribing the quota. It has been stated that it is not the case of the applicant that his juniors have been promoted over him. The respondents have denied the allegation of the applicant that the quota has lapsed and that the applicant has become entitled to regular promotion earlier. Originally in 1984, the applicant was promoted on an ad-hoc basis for a period of only 3 months. Since the candidates from UPSC/SSC were not available, the ad-hoc promotion period of the applicant was extended by further periods of 3 months several times. It has been explained by the respondents that recruitment through UPSC/SSC takes more than a year and the time taken in filling up the quota cannot be

Kan

(A9)

considered as unreasonable. The respondents aver that the applicant had no right to regular appointment or promotion from 1984. His turn came only in 1987 and he was duly regularised. In the supplementary counter affidavit filed by the respondents, the deponent of the counter has pointed out to the objectionable language used by the applicant in his rejoinder.

5. We have very carefully considered the pleadings and the arguments advanced from both the sides. As regards the question of limitation, the point of the respondents is that the grievance of the applicant is regarding the ad-hoc promotion order of 1984 and his representation for regular promotion was finally rejected by memorandum dated 9-12-1985 (Annexure-II) and the memorandum dated 12-1-1988 (Annexure-IV) on which the applicant relies for the purpose of limitation, is merely a reiteration of the decision of 1985. The order of regularisation is dated 1-4-87 and the application was filed on 19-7-88, i.e. after one year. It is, however, seen that the applicant has represented against the order of regularisation dated 1-4-87 in his representation dated 5-10-87. In that view of the matter, the memorandum dated 12-1-88 can be taken as an order rejecting the representation against the 1987 order. We, therefore, are inclined to deal with the matter on merits.

6. It is observed that in the order No. 386/84, it is clearly stated that the applicant along with two others, one of whom is admitted to be senior to the applicant, was promoted on a purely ad-hoc basis. It is clearly stated in the order that the ad-hoc promotion will be for a period of not exceeding 3 months or till the posting of a regular incumbent,

(A9)

whichever is earlier. The applicant also admits that his promotion in 1984 was on an ad-hoc basis. It is also admitted and not denied by the applicant that the ad-hoc promotion of the applicant and the other two persons was made against the vacancies reserved for UPSC/LDCE quota. The applicant has vigorously contended that because persons from UPSC or SSC and LDCE were not available at that time, he should have been promoted regularly at least after 3 months after his ad-hoc promotion. According to the applicant, because of this failure to fill up the direct recruitment quota from 1984 till 1987, the quota system has broken down; and applying ~~in~~ the ratio of the decisions cited by him as referred to earlier, he should be declared to have been regularly promoted from 21.9.84. The applicant also refers to para 302 of I.R.E.M. in support of his contention that the quota system had lapsed. He also seeks to draw support for his case from the fact that he was promoted vice one Shri P.K. Dhar who was regularly promoted leaving a clear and regular vacancy. This argument is clearly untenable. The eligibility of the applicant for promotion against a vacancy has to be decided in terms of the quota rules and the roster maintained and not merely with reference to whether the vacancy was regular. Similarly, para 302 of I.R.E.M. merely lays down the rule regarding the criterion for determination of seniority in the case of direct recruits and promotees. This is no authority to say that, when the direct recruit vacancy is not filled, the quota rules should be deemed as lapsed in all cases. In this case, it is admitted on all sides that the vacancy against which the applicant was promoted in 1984 was ear-marked for a direct recruit (SSC/LDCE)

KA

(AII)

and since the applicant was not really eligible for promotion against that vacancy, he was promoted on ad-hoc basis for presumably administrative reasons. He thus, had no right to hold the post. Initially the ad-hoc promotion was for 3 months, but, in view of the delay in getting direct recruits from the UPSC/SSC, the period of ad-hoc promotion of the applicant was extended for 3 months on a number of occasions. Ultimately in 1987 the vacancies were filled up as per the quota prescribed in the Recruitment Rules and the applicant was promoted on a regular basis in his turn. The argument of the applicant that in this situation, the quota rule had broken down, is clearly not acceptable. It is well known that recruitment through central agencies takes time; and if the vacancies cannot be filled for some time because of such delay in recruitment, and if in every such case the quota rule is deemed as broken down, then there will be hardly any quota rule operating anywhere at any time. There is no basis or authority for making such a wide and impracticable proposition. In the case decided by the Principal Bench at New Delhi and cited by the applicant, as well as in the ~~Supreme Court~~ Supreme Court cases mentioned therein, the factual position was entirely different from the present case. In those cases, vacancies had remained unfilled for 15 to 20 years or such long period. In the present case, there was a delay of less than 3 years so far as the applicant is concerned, and this cannot be considered as sufficient to cause the quota rule to break down. In the case of ⁱⁿ ~~Mallick~~ cited by the applicant, the question was of eligibility to appear in a departmental examination on the basis of qualifying service. In that case, the decision was to count the regular service of the applicant from the date ^{on which} ~~he~~ he was included in the panel ^{for} for regular promotion and not from the date of his promotion

AI2

:: 8 ::

on an ad-hoc basis. It is well established that ad-hoc promotees have no prescriptive right to the post occupied by them and unless they are qualified and eligible for a regular selection, they could not be promoted regularly (vide Ravish Gupta Vs. Secretary, Ministry of Personnel and Training, (Assistants in Secretariat) A.T.R. 1986 C.A.T. 22 (New Delhi)). In this case, the applicant got the benefit of pre-mature officiation on account of the delay in recruitment and he was duly promoted when the vacancy arose to which he was eligible for promotion. There is no allegation that his juniors have been regularly promoted earlier or any discrimination has been committed against him.

7. Considering all the circumstances, the application fails and is dismissed with no order as to cost.

HMCAw

MEMBER ADMINISTRATIVE

Sh

VICE CHAIRMAN

(sns)

July 7, 1989
h
Lucknow.

(A13)

INDEX OF DOCUMENTS ATTACHED WITH
THIS APPLICATION

S. No.	Authority and letter No. with date	Annexure No.	Pages
	Facts of Application -		1-10
1)	Sr. Dy. Director General RDSO/Lucknow's Letter No. SPO No. 386 of 1984 dated 21-9-1984	1	11
2)	Director General/RDSO Lucknow's Letter No. APC/166 dt. 9-12-1985.	2	12
3)	Sr. Deputy Director General RDSO/Lucknow's SPO No. 101 of 1987 dt. 1-4-1987	3	13
4)	Director General/RDSO Lucknow's Memorandum No. A/ES/Asstt. dt. 12-1-88.	4	14
5)	Applicant's Application dated 6-11-1985 to Director General/RDSO/LKO.	5	15
6)	-DO- dated 7-11-1985	6	16
7)	-DO- dated 1-12-1985	7	17
8)	-DO- dated 2-12-1985	8	18
9)	-DO- dated 15-1-1987	9	19
10)	-DO- dated 2-2-1987	10	20
11)	-DO- dated 15-5-1987	11	21
12)	-DO- dated 6-7-1987	12	22
13)	-DO- dated 10-8-1987	13	23
14)	-DO- dated 5-10-1987	14	24-25
15)	-DO- dated 23-11-1987	15	26
16)	-DO- dated 1-1-1988	16	27-28
17)	Railway Board's letter No. E(RB)1/69/RB3/9 dated 13-3-1979 addressed to the Director- General, RDSO/Lucknow	17	29
18)	Railway Board's letter No. E(NG)55 SR 6-7 dated 13-8-1959 addressed to General Manager, All Indian Railways & Others	18	30
19)	Copy of Judgement (Registration No. TA No. 259 of 1986) of Central Administrative Tribunal Allahabad decided on 22-6-1987 - R.K. Mallick vs. Union of India (Director General, RDSO/LKO.)	19	31-36


 19/5/88

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL. BENCH
LUCKNOW.

REGISTRATION NO.

OF 1988

Sangan Lal Srivastava
Assistant,
Research, Designs & Standards
Organisation(RDSO), Government
of India(Ministry of Railways),
Manak Nagar, Lucknow-226011. }
}Applicant.

versus

1. Union of India through Director General
R.D.S.O., Lucknow
2 1) The Director General, R.D.S.O.,
Manak Nagar, Lucknow-226011. }
3 2) The Senior Deputy Director-
General, R.D.S.O. Manak Nagar, } Respondents
Lucknow-226011. }
4 3) The Deputy Director(Estt.)-II,
R.D.S.O., Manak Nagar,
Lucknow-226011. }

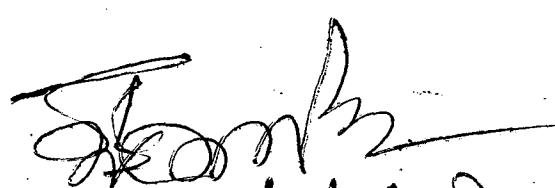
1. Details of Application

- (i) Name of the Applicant : Sangan Lal Srivastava
(ii) Name of Father : Shri Swami Dayal
(iii) Designation and
Office in which
employed. : Assistant,
Research, Designs & Standards
Organisation(RDSO), Manak-
Nagar, Lucknow-226011.
(iv) Office Address : Purchase Branch, R.D.S.O.
Manak Nagar, Lucknow-226011.

2. Particulars of the Respondents

- (i) Name and Designation of
Respondents. (1) Shri D.N.Singh,
} Director General.
} (2) Shri A.P.Agrawala,
Senior Deputy Director-
General.
(3) Shri P.N.Kapur,
Deputy Director(Estt.)-II.

.....2


(9/5/88)

(2) (A/B)
(ii) Official Address : Administrative Building
of Respondents Research, Designs & Standards
Organisation(RDSO), Government
of India(Ministry of Railways),
Manak Nagar, Lucknow-226011.

(iii) Address for service of all } : -do-
notices.

3- Particulars of the orders against which application is made:-

- (i) SPO NO.386 of 1984 dated 21-9-1984 - Annexure-1
 - (ii) Letter No.APC/166 dated 9-12-1985 - Annexure-2
 - (iii) SPO No.101 of 1987 dated 1-4-1988 - Annexure-3
 - (iv) Letter No.A/ES/Asstt dated 12-1-1988- Annexure-4
 - (v) Passed by the Senior Deputy Director General & Director General, Research, Designs & Standards Organisation (R.D.O.O.), Lucknow.
- (vi) Subject in brief:- Non-regularisation on the post of Assistant from 24-9-1984 (date of promotion).

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 this Hon'ble Tribunal.

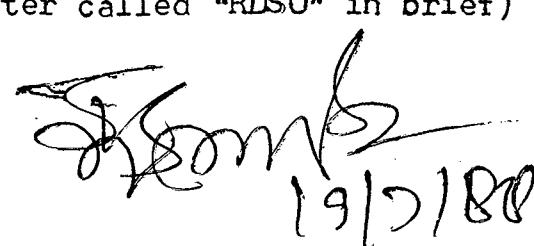
5- Limitation:-

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

6- FACTS OF THE CASE

(i) That the post of Assistant, Scale Rs.425-800(RS)/ Rs.1400-2600(RPS) in the Research, Designs & Standards Organisation(herein after called "RDSO" in brief) is a

.....3


19/12/88

(3)

"Non-selection" post in the Clerical cadre service of RDSO.

(ii) That the Applicant had been promoted to the post of Assistant, Scale Rs.425-800(RS)/Rs.1400-2600(RPS), w.e.f. 21-9-1984 vide SPO No.386 of 1984 dated 21-9-1984 vice Shri P.K.Dhar, who had been promoted as "Assistant-Incharge" with charge allowance in the Receipt & Despatch Section (a copy of the said order is annexed as Annexure-1 to the application.

(ii) That Shri P.K.Dhar had been promoted against the post according to his interse-seniority in the category of Assistant, Scale Rs.425-800(RS).

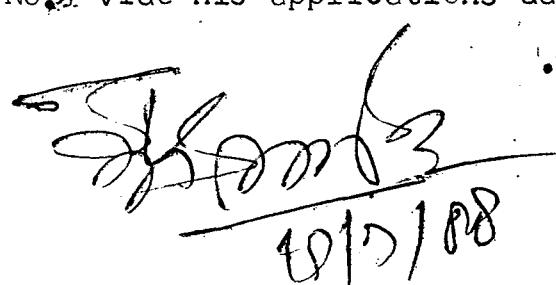
(iv) That the post of Assistant Incharge was a "Non-Selection" post and this post was subsequently upgraded as Section Officer (Class-II) , Scale Rs.2000-3500(RPS).

(v) That the Applicant had been promoted vide SPO aforesaid (Annexure-1) on adhoc basis after adjudgement of suitability by review of Service Records by the Senior Deputy Director General(Respondent No.2). The Applicant was declared suitable for promotion to the post of Assistant.

(vi) That as per extent rules, the procedure & process for suitability adjudgement for promotion to the post of Assistant on adhoc basis and / or on regular basis is one and the same.

(vii) That the Applicant had continuously worked on the post from the date of his promotion i.e. 21-9-1984 to 6-11-1985 on adhoc basis, but he was not made regular on the post he held for such long period . The Applicant had requested the Respondent No.2 vide his applications dated

.....4



8/15/88

6-11-1985, 7-11-1985, 1-12-1985, 2-12-1985, 15-1-1987,
 2/4-2-1987, 15-5-1987, 6-7-1987, 10-8-1987, 05-10-1987,
 23-11-1987 and 1-1-1988 for regularisation on the promoted
 post from the date of his adhoc promotion. A copy each of
 the aforesaid applications are attached herewith as
 Annexure- 5 to 16.

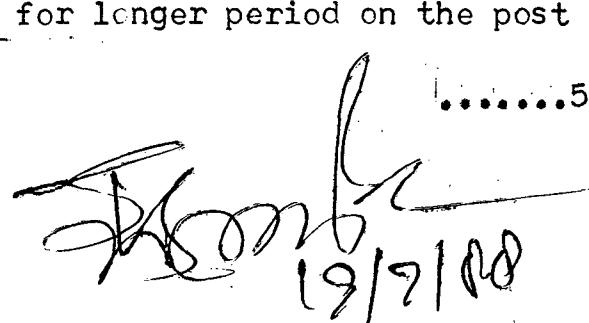
(viii) That as per extent rules, the Respondents have been making promotions of departmental Upper Division Clerks to the grade of Assistants to the extent of 50% vacancies of Assistants and 10% through Limited Departmental Competitive Examination and 40% from Staff Selection Commission, because Union Public Service Commission had refused to allot any Assistant for RDSO.

(ix) That as per extent rules, which is reproduced below, if suitable candidates are not found from the sources/quotas of appointments, the vacancies in the grade of Assistants are filled up by suitable departmental candidates and the quotas of other groups are ignored and stand lapsed.

"When the dates of entry into a grade of promoted Railway Servants and direct recruits are the same, they should be put in alternate positions the promotees being senior to the first direct recruits maintaining interse - seniority of each group."

(x) That the Hon'ble Supreme Court of India has since made the rule final that the adhoc promotees due to any reason where they continue for longer period on the post

.....5


 19/2/08

(A10)

on adhoc basis shall be entitled to all benefits including seniority and eligibility for promotion to the next higher grade in the channel of promotion.

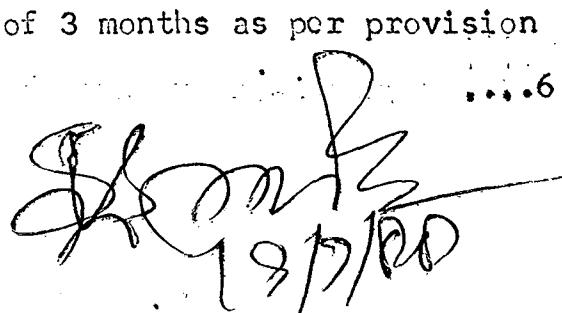
xii) That Respondents had in the past also regularised the adhoc promotees of the same nature, as they have categorically confessed in para-2 of their letter No. APC/166 dated 9-12-1985 (Annexure-2), with the approval of the Railway Board as contained in their letter No. E(RB)1/69/RB3/9 dated 13-3-1970 (Copy of which is attached herewith as Annexure-17).

xiii) That the Railway servant - Shri P.K.Dhar, vice whom the Applicant was promoted, had been made regular on his promoted posts and that was his regular promotion. Therefore, there was no question of the Applicant's promotion on adhoc basis against the resultant vacacy arisen as a result of Shri Dhar's regular promotion.

xiv) That this issue has already been made final by various judicial courts and now stood as binding on the Respondents for its honest implementation and execution. Any violation of those judicial decisions would tantamount to Contempt of Courts.

xv) That because the vacancy arisen vice Shri P.K.Dhar, being promoted on regular basis, and suitable persons from the respective quota of Union Public Service Commission or Departmental Competitive Examination at the relevant time having not been available, that vacany had been operated by the departmental candidate like the Applicant, and as such, there is no question of his being continued on adhoc after expiry of a reasonable period of 3 months as per provision

Date: 13/12/2000


Shri P.K. Dhar
13/12/2000

(A19)

(6)

of the Industrial Employment (Standing Order)-1946 and
Industrial Dispute Act-1947.

xvi) That in view of the positions explained above, the benefits of fixation of Seniority including regularisation on the post of Assistant, are tantamount to the Applicant from date of joining the grade against the regular vacancy arisen after promotion of Shri P.K.Dhar on regular basis. In this respect a copy of Railway Board's letter No.E(NG)/55/SR- 6-7 dated 13-8-1959 is attached herewith as Annexure-18 to this application.

xvii) That it is worth mentioning here that the Applicant had been the President of a Registered Trade Union of the Workmen of RDSO during the period 1970 to 1980 and the Respondents had been biased and prejudiced against the Applicant on that account. He has thus incurred invisible displeasures of the Respondents although participation in Trade Union activities is permissible under law.

xviii) That the Applicant had never acted against the rules, nor had he ever pressed for ingenuine demands of the Railway Workers employed in the RDSO. He always sought honest implementation of rules.

xix) That the Respondent No. 3, who is at the moment working as adhoc Deputy Director and is the Incharge of the Establishment Branch, is dealing with personnel matters of the Applicant. He also had earlier been in the same class of the Applicant and he attempted to exploit the Applicant and the Union for his personal profit in seeking his promotions to Class - II ignoring his Seniors' claim. The Applicant had refused to help him in securing illegal

.....7


18/10/88

(7)

benefit and thus he became prejudiced against the Applicant right from that time.

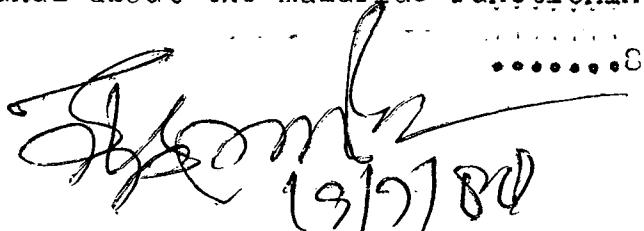
xx) That the Respondent No. 3 had been a Stenographer only and had secured his promotion to the grade of Section Officer (Classs II Gazetted post) and above in illegal manner, which matter is now pending before the High Court of Judicature at Allahabad, Lucknow Bench, and quite possible that those two cases have also been transferred to the Tribunal by this time for decision.

xxi) That the Applicant had sternly opposed his promotion to the post of Section Officer in chorus with other Clerical Cadre Staff and, therefore, the Applicant earned displeasure of the Respondent No. 3, and other Respondents are victims of his bad counsels.

xxii) That the Respondents No. 1 & 2 normally act and give their administrative approval to the proposals processed and submitted by the Respondent No. 3 whether right or wrong. The Respondent No. 3 had encashed these conditions of the poor Rly. Administration and the Applicant has become a victim of his ill-motives.

xxiii) That the Hon'ble Tribunal of Allahabad Bench has very kindly given justice to a victim of the similar unfair labour practice and prejudices of the same Respondent No. 3 in a case between Shri R.K. Mallick vs. Union of India (Director General, RDSO, Lucknow), consonance with the various decisions of the Hon'ble Supreme Court of India (SUPRA). A photo copy of the Judgement is enclosed as Annexure-19.

xxiv) That it is already in the knowledge and records of the Hon'ble Tribunal about the malafide functioning

.....

 (3/7) 84

(A2)

(8)

of the Respondents and xit is already now an admitted fact that the Respondents deal the cases of the individuals on the basis of "Show me the person, Show you the rule."

xxv) That it is also submitted here for consideration of the Hon'ble Tribunal that the Hon'ble Supreme Court had already decided the dispute involved in the Applicant's case in many a decisions. Those decisions have already been honoured by this Tribunal. In this respect the Chief Administrative Tribunal, New Delhi's very recent decision in a similar case is totally applicable in this case.

xxxvi) That the Applicant had sought a personal interview with the Respondent No.1 for enabling him to explain his claim to him personally and expose the illegal interpretation of the Respondent No.2. But the Applicant has not been granted the interview till date. A copy of his application in this respect dated 23-11-1987 is also attached herewith as Annexure-15 for kind perusal of this Hon'ble Tribunal.

Under the circumstance stated above, it is emphasised that no law of this land permits exploitation of the economically backward citizens of this Country. It is not permissible to continue a citizen on adhoc basis beyond a reasonable time in the garb of false interpretation of the rules against the Applicant. And, therefore, the Applicant is entitled ^{to} promotion i.e. from 24-9-1984 and the regularisation made from 27-3-1987 vide SPO No. 101 of 1987 and dated 1-4-1987 (Annexure-3) i.e. after 3 years, is not supported by principles of natural justice, nor has the sanction of any law. Rather their acts in this respect are totally contrary to the rules made by judiciary of this country. Accordingly their order is illegal and deserved to be quashed.

.....
Shome
19/10/80

The Applicant is, therefore, entitled to have a favourable order of this Hon'ble Tribunal for his regularisation for all purposes from the date of his joining the grade of Assistant i.e. 24-9-1984.

PRAYER

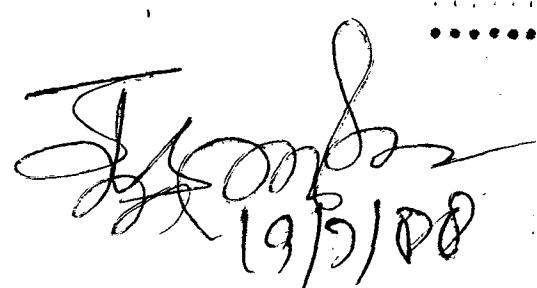
7- In view of the facts as mentioned in para-6 above, the Applicant prays for the following relief:-

- (a) the SPO No.101 of 1987 dated 1-4-1987(Annexure-3) may kindly be quashed.
- (b) Letters No.APC/166 dated 9-12-1985(Annexure-2) and A/ES/Asstt. dated 12-1-1988(Annexure-4) may kindly be quashed being illegal.
- (c) The Hon'ble Tribunal may kindly pass their orders to the Respondents to suitably amend the SPO No.386 of 1984, dated 21-9-1984 to remove the words "Purely on an adhoc arrangement" mentioned in para-2 of the Annexure-1.
- (d) A favourable order may kindly be passed in favour of the Applicant, against the Respondents, for regularisation of the Applicant from the date he joined the grade of Assistant i.e. 24-9-1984, in the light of judicial decisions and the extant rules.

8- Pending final decision on the application, the Applicant seeks issue of the following interim orders:-

- (a) The Respondents may kindly be directed to treat the Applicant as have been regularised from 24-9-1984 for all purposes and benefits.

.....10


19/9/00

(A24)

9- The Applicant declares that he has availed of all remedies available to him under the relevant service rules etc.

10- 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 Postal Order in respect of the application Fees:-

(i) Indian Postal Order No. ~~DD~~ 82978 Dt. 18-7-1988 Rs. 50/-

(ii) Name of the Issuing Post Office: Chander Nagar/Almagh, Lucknow

(iii) Post Office at which payable: P: G.P.O. ALLAHABAD.

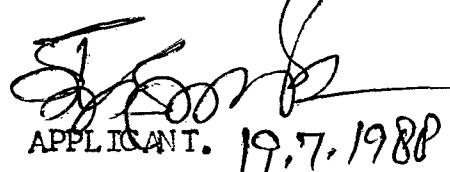
12- An Index in duplicate, containing the details of the documents to be relied upon, are enclosed.

13- Documents/Enclosures as indicated in the Index are attached herewith in duplicate.

VERIFICATION

I, Sangam Lal Srivastava, S/o Sh. Swami Dayal aged 50 years working as Assistant in RDSO, Manak Nagar, Lucknow-226011, R/O Qr. No. A-18/1, Sector-A, Manak Nagar, Lucknow-226011, do hereby verify that the contents 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material facts.

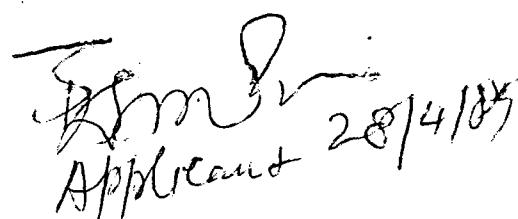
LUCKNOW Dated 19-7-1988


APPLICANT. 19.7.1988

To,

The Registrar,
Central Administrative Tribunal,
ALLAHABAD.

Amendments have been carried out
as allowed by the Hon'ble Tribunal ~~on date~~.


Applicant 28/4/89

True/
Copy/-

ANNEXURE-1

Research Designs & Standards Organisation

Manak Nagar,
Lucknow-226011.

SPO No.386 of 1984

Following promotions/postings are ordered
with immediate effect:-

- 1) Shri S.R.Verma, Senior Most UDC, working in E-IV Section is promoted to officiate as Asstt.in the Scale Rs.425-800(RS) and posted in MC&W Dte. against the vacancy vice Shri A.C.Dutta.
 - 2) Shri Bhoop Singh, UDC(S&T Dte), who belongs to SC Community, is promoted to officiate as Asstt. in the scale Rs.425-800(RS) against a reserved vacancy for SC, and posted in E-IV Section, against the vacancy vice Shri Mihi Lal, purely as an ad hoc arrangement.
 - 3) Shri S.L. Srivastava, next Sr. most UDC Research Dte. is promoted to officiate as Assistant in the Scale Rs.425-800(RS) and posted in Elect. Dte. vice Shri P.K.Dhar, Asstt.posted as Asstt. with C/Allowance in R&D Section.
2. Shri Verma, Bhoop Singh and Srivastava should note that their above mentioned offg. promotions are purely on an ad hoc arrangement for a period not exceeding 03 months or till the posting of a regular incumbent, whichever is earlier. They will be entitled to pay and allowances of the higher grade post of Asstt. on completion of minimum 22 days continuous offg. in that capacity. They should send their charge reports to E-II Section, through proper channel, for further necessary action.

Sd
(P.N.Kapur)

DA:Nil
File No.A/ES/Asstt.
Manak Nagar, Lucknow.
D/- 21.9.84.

Distribution: 1) SPA to Sr. Dy.DG 2) SO(E-III) 3)SO(Civil)
4) JDS(Elect.) 5) SO(R) 6) SO(R), 7) SO MC&W 8)SO(S&T)
9) AAO 10) Staff Concerned 11) E-2 (10).

*True copy
affixed
T.N. Kapur*



-12

(A25)

ANNEXURE- 2

तार : रेल मानक लखनऊ
Telegram : 'RAILMANAK' LUCKNOW

टेलीफोन } 50567 & 50017
Telephones }

"TRUE COPY"

भारत सरकार - रेल मंत्रालय

अनुसंधान अभिकल्प और भालक संगठन

Government of India — Ministry of Railways
RESEARCH DESIGNS & STANDARDS ORGANISATION

पत्र संख्या

APC-166

Our Reference.....

लखनऊ-226 011-दिनांक
LUCKNOW-226 011-Date..... 9.12.85

MEMORANDUM

With reference to his applications dated 6.11.85 & 7.11.85, Shri S.L. Srivastava is informed that he was promoted to officiate as Assistant w.e.f. 24.9.84, purely as an adhoc arrangement, against a vacany reserved for UPSC/LICE quota.

2. Shri Srivastava is further informed that the regularisation of departmentally promoted Assistants prior to 1978 was done with the approval of Railway Board, as this office was excluded by the UPSC from the purview of the combined competitive examination conducted by them.

3. His request for regularisation in the grade of Assistant will be considered only after eleven Assistants promoted earlier to him on adhoc basis are regularised.

DA: Nil.

Sd/- 9.12.85
(P.N.Kapoor)
for Director General

Shri S.L.Srivastava
Offg. Assistant,
SAMAWA Rly. Project IRAQ
C/o Indian Railway Construction Co. Ltd.,
Palika Bhavan, Sector -XIII,
R.K.Puram, New Delhi-110066.

True copy
affixed
T.M. Gupta

True Copy/-

ANNEXURE - 3

Government of India
Ministry of Railways
RESEARCH DESIGNS & STANDARDS ORGANISATION

STAFF POSTING ORDER No.101 of 1987

Following Upper Division Clerks, who were promoted to officiate as Assistant on adhoc basis in the scale Rs.1400-2600(RS), are regularised w.e.f. 27.3.1987 :-

Name of Assistant	Date from which promoted to officiate on adhoc basis.
1. Shri Amar Singh, Civil Dte.	22.8.84
2. " S.R.Verma, MC&W Dte.	24.10.84
3. " S.L.Srivastava, On deputation to IRCON	24.9.84
4. " G.S.Shukla, Estt. I	30.7.84
5. " Bhoop Singh, Estt.IV	22.9.84

Sd/-
(Basant Kumar)
DA: Nil. for Br. Dy. Director General.

File No. A/ES/Asstt.
Manak Nagar, Lucknow.
Dated 1.4.1987

Distribution

- 1) PA to Sr. Dy.DG 2) SO(Confidl.) 3) SO/E-III
4) A.A.O. 5) Staff Concerned 6) P/Files 7) SO(Civil)
8) SO(MC&W), 9) SO/E-I 10) SO/E-IV.

--

TRUE COPY/-

ANEXURE - 4

RESEARCH, DESIGNS AND STANDARDS ORGANISATION
MANAK NAGAR:LUCKNOW-11

No. A/ES/Asstt.

Dated: 12 -1-1988

MEMORANDUM

With reference to his application dated 5.10.87
Shri S.L.Srivastava Offg. Asstt. is informed that he had
been correctly regularised as Asstt. w.e.f. 27.3.87 and
there is no change in the position already advised to him
vide Memo No. APC-166 Dated 9.12.85.

Sd/- 11/1/88
(T.M.Murali)
for Director General

DA: Nil.

Shri S.L. Srivastava,
Offg. Asstt./ Purchase Section,
RDSO/Lucknow.

TRUE COPY/-

ANNEXURE ~ 5

To

The Director General
R.D.S.O. Manak Nagar,
LUCKNOW-226011

Attention of Shri T.S. Vardya, DG

R/Sir,

All records upto 1-11-1985 sent by your good office to IRCON/Palika Bhavan, New Delhi-110066 indicating me as Offg. Asstt. in the grade of Rs.425-800(RS). But on 30-10-85 your good office, vide their letter No.APC/166 has intimated to the Manager(Personnel)/IRCON/NDLS-110066 that Sangam Lal Srivastava is working as Asstt.(Adhoc) and regular basis as UDC in the grade 330-560(RS). Although I am working as Asstt since 24-9-1984 regularly in the grade of Rs.425-800(RS). If it is so any other place of the office record, it is requested that this may kindly be regularised as done in 1978 and before 1978 on the refusal of UPSC i.e. Assistants cannot be provided to RDSO. And further to this for the last 3 years UPSC used to refuse not to provide Asstts. to RDSO. The word 'ADHOC' if removed from the letter referred to the above, will avoid complications and save the undersigned from the monetary loss while abroad to IRAQ Project.

I shall ever remain grateful for this act of kindness.

Encl: Nil.

Dated: 6-11-1985.

Yours faithfully,

Sd/-
(Sangam Lal Srivastava)
Asstt/ RDSO/LKO - On
Deputation to IRAQ PROJECT
as Ward-keeper
Through IRCON/Palika Bhavan,
New Delhi-110066

Copy to the Manager(Personnel)/IRCON, Palika Bhavan, Sector -XIII, R.K.Puram, New Delhi-110066, for kind information please.

DATED: 6-11-1985.

Sd/-
(SANGAM LAL SRIVASTAVA)
Ward-Keeper/IRAQ Project

Left NDLS Airport
on 6-11-85 at about 16.10 hrs And arrived BAGHDAD(IRAQ)
at 21.30 hrs on
6.11.1985.

True copy
After read
T.M. Srivastava

16
SAMANA RLY Project.
BAGDAD: 7-11-85

1. Shop Enormous Loss/Monetary ~~in~~ while on deputation to IRAQ Project with the word "AD hoc" later communicated by Shri Basant Kumar, SO-E2 to IRCON Office/NDLS, which was known to me at the ~~time~~ ^{time} departure by Air India Flight of 6/11/1985.

2. A letter No. APC/166 dated 30-10-85 addressed to IRCON Office/NDLS received there on 31/10/85, wherein I have been shown that Sangam Lal Srivastva is working as AD HOC Asstt. Although in this connection, we had already represented as it was regular selection when you resumed a day ~~earlier~~ later (Nov., 1984 and Advance copy sent in Dec. 84 to you by name) indicating therein that as per the practice adopted to regularise Ad hoc Asstts in 1978 and before 1978 say about 1973, may kindly be adopted and regularised we the aggrieved Ad hoc Assistants, as the UPSC is continuously refusing for the last 3 to 4 years i.e. NOT TO PROVIDE ASSISTANTS even best efforts made by your staff Officers.

3. My Lord! I have been harassed and tortured enormously before forwarding my Bio-data to IRCON Office on their specific Demand for my best services etc. etc. for the IRAQ Project too and ALSO at the time of my release from RDSO. Due to Shri Basant Kumar, the learned SO/E-II's ~~that~~ cruel and poisonings attitude, I wept very much, and at time you had been on tour to Bombay for a week. But Dy.DG Shaeb being new Dy.DG helped me a lot in my ~~earliest~~ timely release. May GOD help him at every step.

4. My Lord! Through this letter of RDSO signed by Shri Basant Kumar SO/E-II, ~~his~~ perhaps, himself alone's views to put the ~~is~~ HUGE MONETORY LOSS while ~~in~~ my Abroad say ~~in~~ more than 4000/- (four thousand) every month, he did so. Thereby ~~now~~ my salary has been fixed here on my UDC grade i.e. 330-560(RS), due to the word "AD HOC" against my designation as indicated in SO/E-II's letter No. APC/166 dated 30-10-1985 and sent to IRCON Office received here on 05/11/85 on this basis my agreement of pay ~~xxxxxx~~ per month from 450 US \$ + 85 ID and deduction (Security Money) 70 US\$ reduced to 250 US \$ + 35 ID and deduction of Security Money 40 US \$. My Lord! You may better assess about this enormous monetory loss of no fault of ~~any~~ of your servant (Sangam Lal), and What I will earn during deputation to Abroad, now, you may also assess this.

5. My Lord! May I request your ~~as~~ kind command by enclosing an representation (also sent while at DELHI on 6-11-85 at 15.00 hrs) and request you kindly to exercise the power vested to you to regularise me (us) since the date of my promotion as Asstt. i.e. 24-9-85(FN) as per the PRACTICE ADOPTED IN 1978 and 1973 respectively so that huge monetory losses may be secured and save/recouped while Abroad.

6. My Lord! I am your plant and you have always maintained and watered and ~~I am~~ sure that you will never like to see that the ~~next~~ plant should be tried.

7. After my regularisation, if not really done, kindly arrange to advise to IRCON Office, NEW DELHI (Palika Bhawan) immediately reference to ~~RE~~ Shri Basant Kumar's letter No. APC/166 of 30-10-85 ~~in~~ which Sangam Lal Srivastva, may be treated as Offg. Asstt as ~~as~~ previously ~~in~~ RDSO letters No. APC/166 dated 30/21-9-85 and 1/11/85 ~~in~~ ~~in~~ dated 14/11/1985, respectively. ~~in~~ ~~in~~

On 6-11-85 I reached Bagdad at 21.00

Most Oily Yours,

*True copy
addressed
SANGAM LAL SRIVASTAVA
A.P. BAGDAD*

TRUE COPY/-

REMINDER-I

(ASO) ANNEXURE- 7

To

Shri T.S.VARDYA,
Director General,
RDSO(Min. of Transport) Deptt.of Railways,
Manak Nagar,
Lucknow-226011
INDIA

Sub: 40% less payment of my monthly salary while on deputation due to the word "ADHOC" against my designation intimated by SO(E-II) vide his letter No.APC/166 dated 30.11.1985 to the Manager(Personnel), IRCON, Palika Bhavan, New Delhi-110066.

R/Sir,

A copy of RDSO letter No.APC/166 dated 30-10-1985 is attached herewith, addressed to the Manager(personnel), IRCON, Palika Bhavan, New Delhi-110066, through which my monthly salary has been reduced to 40% per month and Agreement Revised due to the word " ADHOC " against my designation.

2. Sir, in my selection entire regular selection procedures have been followed but not like 3 months Adhoc procedure. A period of 15 months is likely to be passed in my regular working to Grade Rs.425-800(RS) as Assistant, but what a fateless incumbent am I, still being treated as ADHOC.

2.1 If any complication comes to ahead or involves, it is obsecrated that the decided cases of regularised Asstts (ADHOC) as finalised during the years 1973 and 1978 respectively may kindly be called for, the criteria/procedure adopted therein for their regularisation from back date, may kindly also please be adopted (if not yet followed) in my case too, and, as such, step-motherly injections may be avoided please.

DAKXXX. One(in ref. to para- above.

SAMAWA(IRAQ)

DATED: 01-12-1985.

Yours faithfully,

Sd/-
(SANGAM LAL SRIVASTAVA)
Asstt/RDSO on Deputation
to IRAQ PROJECT(SAMAWA)
as WARD-KEEPER

*True copy
attested
T.S.Vardya*

PS: My Lord! I am your low paid staff.
I must hope and request for help
even from your good Administration,
as JUSTICE makes man to go to the
High Peak for perfection. Thanks.

TRUE COPY

-18-

(A3)
ANNEXURE- 8

PERSONAL

My Most Respected Patron,

With kindest regards,

Sangam Lal Srivastava
Incharge Track Stores/Workshops
IRAQ PROJECT,
IRCON, SAMAWA, P.B.No.65,
(IRAQ): Dated 02-12-85

Sub:- Word "ADH-OC"

With apology for intrusion upon your precious time, I beg to attach herewith a spare copy of reminder of 1-12-85 to my earlier appeal dated 6.11.1985 addressed to you and sent the same while myself at IRCON, NDLS. And further one spare copy of which has been sent together with my PERSONAL LETTER to you from Baghdad on 7-11-85 for for your special attention on the monetory loss approximate to Rs.4,000/- per month on the word "ADH-OC" against my designation later communicated to IRCON/NDLS vide SO/E-II's letter No. APC/166 dated 30-10-1985(copy enclosed for ready reference with the reminder letter of 1-12-85).

2. Sir, I have nothing to add more because I am sure that your kind honour has assessed my anguish and monetory loss took place in ref. to the above, Sir unbearable pain - stone on heart even busy on work.

3. I am further sure that you have called for my Personal File No. APC/166 together with ADH-OC cases regularised by the RDSO Estt., during the years 1973 and 1978 respectively, from the back date i.e. since the date of their Offg. as Assistants. BUT WHY NOT MY CASE? You are only the authority to enquire from your learned Estt - Executive and Subordinates.

4. Sir, A period of 15months is likely to be passed of my regular working as Assistant to the Grade 425-800(RS) even then it has been mentioned in the aforesaid letter addressed to the Manager(P) IRCON/NDLS that "Shri S.L.Srivastava is regular UDC to the Grade 330-560(RS)." So I have been down graded & pay has been reduced to 40% and re-fixed by the IRCON and Agreement has again been changed.

5. MY REGULAR SELECTION: Sir, my selection is made on the basis of regular procedure. And your kind honour knows very well that ADH-OC arrangement always is made upto 3 months only.

6. AFTER MEETING WITH IRCON HOD - ASSURANCES GIVEN:

I also met with S/Shri J.P.Srivastava, Group General Manager and K.S.Sethi, Manager (Personnel)/IRCON/NDLS, who have mentioned that as soon as RDSO will be regularising me but before the date of my joining IRCON, and intimation received from RDSO, the Corporate-Office/NDLS will definitely award the high grade as already done of my deputation to IRAQ Project, before receipt of the letter No. APC/166 dated 30-10-1985. And I have been further assured by these officers that orders will also be passed on to my GM/SAMAWA, IRAQ for the payment of my arrears of the higher grade.

Lastly, I have full credence that your kind honour has done something in my favour. WITH EXCUSE FOR THE ABOVE INTRUSION. I am waiting.

With best regard to Madam,

To

Shri T.S.Vardya,
Director General, DG's Bunglow,
Manak Nagar(RDSO Colony)/Lucknow-226011(India)

Most Affly yours,

(SANGAM LAL SRIVASTAVA)
SAMAWA (IRAQ)

To
The Director General(Estt)
Manak Nagar, RDSO/Lucknow.

R/Sir,

Sub: Regularisation in the Grade of Asstt.

Before my transfer on deputation to IRCON w.e.f. 2-11-1985 (FN) I was working as Assistant on adh-oc basis w.e.f. 24-9-1984 (FN). I have made several representations DG/Dy.DG/DDE-II regarding my regularisation from the back date but unfortunately no action has been taken by the RDSO Administration.

2. My non-regularisation as Assistant has resulted in a considerable recurring financial loss as I have not been given a higher grade, the grade of Assistant while abroad in IRAQ PROJECT.

3. It is understood that number of vacancies of Assistants are available for regularisation of adh-oc Assts, and I could have been regularised from retrospective effect. My case is still under process and undue delay is being caused by the administrative querries.

I would, therefore, request you to kindly issue necessary orders of my regularisation as Assistant immediately. A copy of the same may kindly also be sent to me at my present address given as under:-

" Sangam Lal Srivastava
IRCON, SAMAWA, P.B.No. 65 (IRAQ)."

and a copy of which may also please be endorsed to the Senior Personnel Manager, IRCON, Palika Bhawan, Sector-XIII, R.K.Puram, New Delhi-110066.

Thanking you,

Yours faithfully,

LUCKNOW: DT. 15th Jan., 1987.

S
(SANGAM LAL SRIVASTAVA)
Asstt.
ON DEPUTATION TO IRAQ PROJECT
IRCON/SAMAWA, P.Box No.65
(IRAQ)

*True copy
attested
T.N.Gupta
1/1*

FROM:

- 20 -

ANNEXURE - 10

SANGAM LAL SRIVASTAVA
Asstt. on Deputation to IRCON (IRAQ PROJECT)
P.Box No.65, SAMAWA (IRAQ) : Dt. 2-2-1987.

To

The Director General
RDSO/Lucknow-226011.

Sub : Regularisation in the Grade of Asstt w.e.f.
Retrospective effect.

Ref : My earlier representation of 15-1-1987.

Sir,

My regularisation case was already processed through your good office File No. A/ES/Asstt., but the same is being delayed by your learned DDE-II, and while myself at RDSO LKO i.e. 20-1-1987, DDE-II had no time to examine his remarks when his remarks were already examined by the Section Officer-II, and the case had to go to Sr. Dy.DG/SO (Rectt) to do the needful.

You are, perhaps, fully aware that I am victim of un-expected monetary loss due to earlier non-regularisation of Adhoc Asstts.

May I request your goodself to kindly treat the case as test case and see the remarks of DDE-II on the aforesaid File A/ES/Asstt., you will however find nothing but simply harassment.

Further, May I request you to kindly instruct/ orders to your executive officer to communicate the regularisation orders to the following, immediately:-

- (1) To the undersigned (address given above)
- (2) To the Sr. Manager (Personnel) IRCON
Palika Bhavan, Sector XIII, R.K.Puram,
New Delhi-110066. &
- (3) To the Chief Project Manager, IRCON,
P.Box. No.65, SAMAWA (IRAQ)

DA: Photo copy of
Appl. as in ref.
column above.

Yours faithfully,

Thanking you, Sir,

SJ
(SANGAM LAL SRIVASTAVA)

SAMAWA (IRAQ)
Dt. 24-2-87.

*True copy
attested
THE GULATI*

Reminder

From: Sangam Lal Srivastava
Assistant on Deputation to
IRAQ Project/IRCON
Samawa (IRAQ)
Dated: 06-7-1987.

To
The Director General,
RDSO/Lucknow-226011.

Spl. Attn. of Shri V.C.N.Chenlu
Director General.

Dear Sir,

Sub: Date of Regularisation on promotion
of non-gazetted staff against non-selection
post.

Ref: (i) My Representation dt.15.5.1987
sent to DG/RDSO/LKO from IRAQ

(ii) Your office SPO No.101 of 1987
(File No.A/ES/Asstt.dt.1-4-1987)

Even after so many representations I have been
regularised w.e.f. 27-3-1987 instead of 24-9-1984,
by violation of Board's orders/instructions issued
time to time on the above ~~issue~~ subject.

Sir, it is logic to include that when an incumbent
is REGULARLY WORKING as Assistant w.e.f. 24-9-1984 without
any break - how can be he regularised w.e.f. 27.3.1987?

My Lord, this is nothing, but violation of Rly. Board's
orders/instructions issued ~~in~~ time to time, harrassment to
innocents, honest, sincere and hardworkers and, perhaps,
whims of learned Estt. Officers--

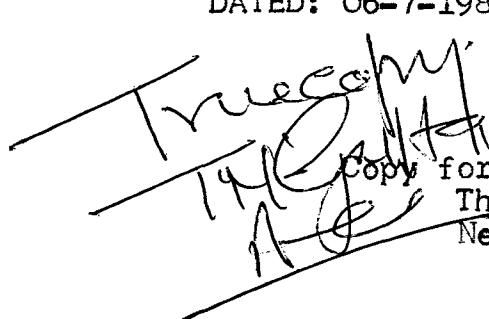
Even Honourable Courts are considering/following
Board's instructions/orders at the time of argument/
judgement.

PRAYER:- With full credence, I hope that your kind
honour will pass precious orders for my regularisation
w.e.f. 24-9-1984 i.e. date of my taking over as Asstt.,
by revising SPO No.101 of 1987 (File No. A/ES/Asstt.
dt. 1.4.1987) Although, I have been suffered unbearable
monetary loss while on deputation to IRAQ PROJECT/IRCON.

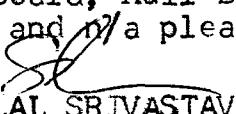
Thanking you, Sir,

SAMAWA (IRAQ)
DATED: 06-7-1987.

Yours faithfully,


(SANGAM LAL SRIVASTAVA)
Asstt. on Deputation
to IRAQ PROJECT/IRCON

Copy forwarded to:
The Secretary(Estt), Rly. Board, Rail Bhavan,
New Delhi, for information and n/a please.


(SANGAM LAL SRIVASTAVA)
ASSTT. on Deputation to IRAQ
IRAQ PROJECT (IRAQ)

(A36)

To
The Director General,
RDSO/Lucknow.

PERSONAL ATTENTION OF
SHRI V.C.V.N CHENULU, DG

Most Respected Sir,

Sub: Regularisation of Sangam Lal Srivastava
Applicant.-

Honourable Central Administrative-
Tribunal, Allahabad's decision thereon.

Most respectfully I beg to bring the following facts to your personal knowledge for favour of your fresh consideration on the matter of regularisation of the undersigned.

The applicant ~~had~~ been continuously working as Assistant on adhoc basis w.e.f. 24-9-1984 onw rds followed by my regularisation on the same post incontinuation of my adhoc basis without any break.

The undersigned had been working against an existing permanent vacancy of Assistant and the undersigned was due/ eligible for promotion to the said post of the Assistant that being my channel of promotion. IN ACCORDANCE with various Supreme Court's decisions viz;

the decision in the cases between:-

- 1) A.Janardon vs. Union of India (AIR 1983 SC 1597)
- 2) O.P.Singhal vs. " (AIR 1984 SC 1595)
- 3) G.S.Lamba vs. " (AIR 1985 SC 1019)
- 4) Narendra Chadda vs. " AND
- 5) A.N.Pathak vs. Secretary to the Govt. of India (AIR 1987 SC 716)

the rule on the subject has been made final that adhoc services in the channel of promotion of the Government servants moved by their regularisation without any break would constitute continuous service for all purposes including eligibility for promotions to the next higher grade in the channel.

It is, therefore, urged that the applicant is due to be deemed to be regular on the post of Assistant w.e.f. 24-9-1984, that post being non-selection one and obviously is reckonable from the date of occurrence of the permanent vacancy under normal wastage. Hence, I am due to be deemed to be regular from the aforesaid date i.e. 24-9-1984.

It is, perhaps, needless to say that in the very recent past similar case of Shri R.K. Mallick vs. Union of India (DG/RDSO), has been decided on 22-6-1987 in his favour by the Honourable Central Administrative Tribunal, Allahabad (REGISTRATION NO. 259 of 1986(T)).

It is as such very clear that my claim of regularisation from the date I joined (i.e. 24-9-1984) the grade of Assistant stand to be regular. Only issuance of a formal order declaring me regular from 24-9-1984 in accordance with the principles decided in the case of Shri R.K.Mallick, is required.

I, therefore, pray to your kind honour to kindly order for the relief prayed in the earlier paragraph i.e. about my regularisation from 24-9-1984.

Thanking you,
Dated: 10-8-1987.

Yours faithfully,

Se

(SANGAM LAL SRIVASTAVA)
ASSTT. RDSO/Lucknow.

T.M.C. S.L.S.

(A3Y)

To

The Director General,
RDSO (Min. of Rlys).,
Lucknow-226011

Sub: Regularisation of the applicant - Sangam Lal Srivastava in the grade of Asstt., from retrospective effect i.e. 24-9-1984 - decision thereof:-

(1) The Allahabad Bench of the Hon'ble Central-Administrative Tribunal's decision in case of Shri R.K.Mallick(RDSO) vs. Union of India(DG/RDSO)- ----

(2) The Delhi Bench of the Hon'ble Central-Administrative Tribunal - in case of CIS Officials - News Paper Cutting of 7th ~~Nov~~, 1987.

(3) Rly. Board's letter No.E(NG)55 S R 5-7 dated 13-8-1959 - my representation dated 15-5-1987 thereon - still un-replied.

Photo
copies
of each
are
enclosed
for
ready
reference

R-ref: My earlier representation dated 10-8-1987
NOT YET REPLIED BY YOUR GOOD OFFICE.

R/Sir,

It is very clear concept ~~km~~ of the ruling of the HON'BLE Supreme Court and principles of the Hon'ble Central Administrative Tribunals laid down for regularisation of the officials those who were continuously working on adhoc basis without break or reversion shall have to be regularised from the date of their initial promotion and they shall also be eligible for all the purposes/benefits viz; Seniority, promotion etc. etc.

2) Sir, I was declared fit after my seniority-cum-suitability test as adjudged by Sr. Dy.DG, the competent authority, I was promoted as Assistant(Adhoc) to the grade of Rs.425-800(R) on 21-9-1984 and I had joined w.e.f. 24-9-1984(FN). I am continuously working as Assistant since then. NO BREAK OR REVERSION at all.

2.1) Instead of regularising me w.e.f. 24-9-1984(FN), I have been regularised wef 27-3-1987 in reference to S-PO No.101 of 1987 in violation of the rulings of the Hon'ble Supreme Court and Hon'ble Central Administrative - Tribunals which have been laid down in both the above referred decisions. This violation has placed me to an unbearable monetary loss while myself on deputation to IRAQ PROJECT.

contd...2

(2)

3) In my earlier representation dated 15-5-1987, I have drawn your kind attention to the Rly. Board's letter(decision) No.E(NG) 55 S-R 6-7 dated 13-8-1959 (copy enclosed for ready reference) justifying my regularisation from the date of initial promotion order dated 21-9-1984 which still remains un-replied.

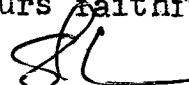
In the light of the above directives/principles of the Hon'ble Courts, I shall, therefore, request your kind honour that necessary orders/instructions may kindly be passed by your good office to follow the principles laid down by the judicial authorities for my regularisation wef 24-9-1984 by modifying the Staff Posting Order No.101 of 1987, immediately, and the undersigned must not be allowed to knock at the door of the Hon'ble Central Administrative Tribunal for implementation of directives/principles for regularisation. There will be wastage of time and public money un-necessarily.

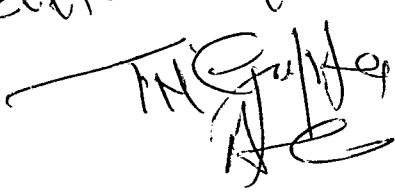
I shall ever remain grateful for this act of kindness.

DA:3 (as in subject
column above.)

Lucknow: Dt.05-10-1987.

Yours faithfully,


(SANGAM LAL SRIVASTAVA)
Assistant/Stores Purchase/
R.D.S.O./Lucknow-226011.

True copy
attest'd


To

The Director General,
RDSO/Lucknow.INTERVIEW WITH DG

Sub: Regularisation of the applicant -
 Sangam Lal Srivastava in the grade
 of Asstt. from retrospective effect
 i.e. 24-9-1984 continuously working
 without break and decession thereof.

- 1) The Allahabad Bench of the Honible Central-Administrative Tribunal's decision in case of Shri R.K.Mallik(RDSO) vs. Union of India(DG/RDSO). ---
- 2) The Delhi Bench of the Hon'ble Central Administrative Tribunal - in case of CIS Officials - Ref: 7th ~~Year~~, 1987 News-paper. ---
- 3) Rly. Board's letter No.E(NG)55 SR 6-7 dated 13-8-1959 - my representation dated 15-5-1987 thereon- still unrepplied. ----

Ref: My earlier representation dated 10-8-1987 and 05-10-1987.

- No reply received till date.

R/Sir,

With due respect, I beg to inform you that No REPLY has been given to representations regarding my regularisation by the RDSO Administration.

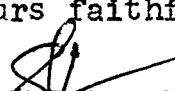
You being holding the higher chair and responsibility for RDSO, with due apology I am writing to you to draw your kind and special attention to my representations and request you to grant me an interview to enable me to explain my case. I am constrained to write to you, Sir, that without your kind intervention, I shall not be able to get justice as it is pending since long.

Hoping to get an interview to represent my case to you personally,

Thaking you,

Yours faithfully,

Dated: 23-11-1987.


(SANGAM LAL SRIVAS-TAVA)

DCOS Sd/-

JD(Stores) Sd/-

DDE-II


 True copy
 addressed
 T. H. Gupta
 M. J. M.

To

The Director General,
R.D.S.O., LUCKNOW.

Sub:- Regularisation of the applicant - Sangam Lal Srivastava, in the grade of Assistant from retrospective effect i.e. 24-9-1984 continuously working without break and decision thereof:-

- (1) The Allahabad Bench of the Hon'ble Central Administrative Tribunal's decision in case of Shri R.K.Mallick (RDSO) vs. Union of India(DG/RDSO), Registration No.TA.259 of 1986(O.S.No.17 of 1985)
- (2) The Delhi Bench of the Hon'ble Central Administrative Tribunal - in case of CIS Officials - Ref: 7th ~~May~~, 1987 Newspaper.
- (3) Rly. Board's letter No.E(NG)55 SR 6-7 dated 13-8-1959 my representation dated 15-5-1987 -thereon. UNREPLIED

Ref:- My earlier representation dated 10-8-1987 and 05-10-1987
-- Reply not yet communicated.

- (ii) Interview with DG - requested vide my application dated 23-11-1987 - No communication till date.

R/Sir,

SUMMARY

- (a) No regularisation from retrospective effect i.e. 24-9-1984 continuously working in the grade of Assistant,
- (b) No reply of my earlier representations dated 15-5-1987, 10-8-1987 and 05-10-1987,
- (c) Interview with DG - No communication received so far.

Inspite of my repeated written and verbal requests with the responsible and concerned authorities of your good office regarding necessary orders for my regularisation wef 24-9-84 (from retrospective effect) in the grade of Assistant, have ~~not been~~ issued so far. Though in the case of Shri R.K.Mallick quoted by me in my representations, he has been given benefits of regularisation from retrospective effect on the basis of the Hon'ble Tribunal orders. It is understood that my case is not being given proper consideration and is not being linked with the case of Shri Mallick. Perhaps, the administration is compelling me to seek recourse of legal proceedings as I have failed so far to get justice from your good office.

It may not be out of place to state that because of my non-regularisation from retrospective effect(24-9-1984) I have been made to suffer a huge financial loss while being on deputation to IRCON/IRAC PROJECT.

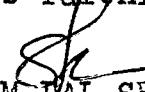
(2)

It is matter of great regret, shock and pain that inspite of a clear cut decision of the Central- and Allahabad Tribunals to give benefits of adhoc services for fixation of seniority and regularisation. I am made to suffer huge financial loss.

I would request your kind honour to kindly go through my case personally and take just decision early, as it has been unduly delayed.

Thanking you, Sir,

Yours faithfully,


(SANGAM LAL SRIVASTAVA)
Asstt(Stores Chasing)
Purchase Branch
R.D.S.O. Manak Nagar,
Lucknow-226011.

For Information and N/a please.

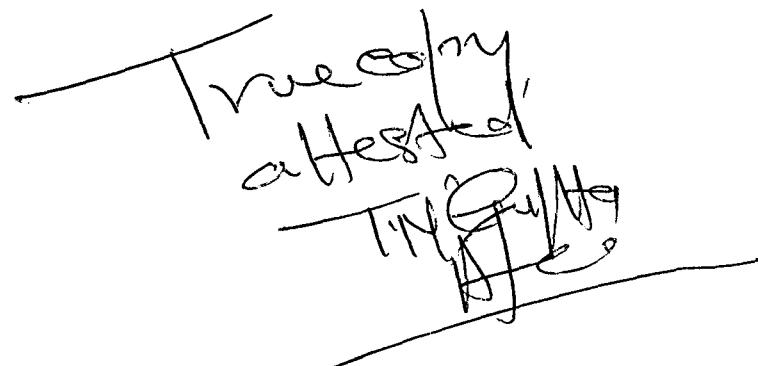
ADVANCE COPY TO:-

- 1) The Secretary(Estt) Railway Board, New Delhi-110001 together with my representation dated 05-10-1987 and its enclosures(DA: 4)
- 2) The Member(Engg), Rail Bhavan, Rly. Bd., New Delhi.

DA: Nil.

Lucknow:
Dated: 01-01-1988.


(SANGAM LAL SRIVASTAVA)
Asstt(Stores Chasing) Pur.Br.
R.D.S.O. Lucknow.


True copy
affixed
T.M. Gupte

Copy/-

ANNEXURE - 17

Government of India
Ministry of Railways
(Railway Board)

No.E(RB)1/69/RB3/9

New Delhi: 110001
Dated: 13.3.1979

The Director General
R.D.S.O. Lucknow.

Sub: Regularisation of adhoc Asstts
working in RDSO(MORlys.) Lucknow.

Ref: Your letter No.E/R/RT/MS dt. 20-2-1979.

The Ministry of Railways desire that Asstts promoted on adhoc basis between 1973 to 1978 may be regularised by a Committee of three officers after adjudging their suitability for regular promotion on the basis of their Confidential Reports.

23 Future appointment and promotion to the posts of Asstts occurring after 1-11-1978 should be made in accordance with the revised rules for this category.

Sd/- J.K.Razdan
Dy. Secretary Rly. Board.

True copy
affixed
T.N.Gupta

Copy/-

Government of India
Ministry of Railways
(Railway Board)

No. E(NG)55 SR 6-7

New Delhi, dated 13.8.1959

The General Managers, All Indian Railways and Others.

Sub: Fixation of seniority of non-gazetted
staff in non-selection posts.

The Board have had under consideration the question of laying down a uniform procedure for determination of seniority of staff who are promoted to non-selection posts after passing a departmental examination or trade test. After considering the procedure already being followed by the Railway Admns. the Board have decided that as a general rule the senior most candidate should be promoted to a higher non-selection post, subject to his suitability. Once promoted against a vacancy which is non-fortuitous, he should be considered as senior in the grade to all others who are subsequently promoted. The suitability of a candidate for promotion should be judged on the date of the vacancy in the higher grades or as close to it as possible.

Most Railways are already following the above principles. Where there is radical divergence, the Board desire you to alter the rules to conform broadly to the above principles.

True copy
attested
T. G. Gupta
Signature

Central Administrative Tribunal, Allahabad.

Registration T.A.No.259 of 1996 (O.S.No.17 of 1985)

R.K.Mallick Plaintiff

Vs.

Union of India and
3 others Respondents.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This original suit has been received by transfer from the Court of IV Addl.Munsif Lucknow under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff had joined the railway service as a Lower Division Clerk w.e.f. 22.9.1959 in the Research Designs and Standards Organization (for short RDSO) and was promoted as Upper Division Clerk on which post he worked upto 5.7.1978. The plaintiff was thereafter promoted as Assistant on ad-hoc basis w.e.f. 6.7.1978 in one of the three existing vacancies pending assessment of his suitability and finalization of the panel for the post. The plaintiff was empanelled for the post of Assistant and placed at sl.no.1 of the panel. The said panel was approved by the competent authority on 30.4.1979. It is alleged that as the plaintiff is a trade union activist, he incurred the displeasure of higher authorities of the RDSO for

AUG

his espousing the genuine cause of workers on account of which the authorities became vindictive and when the plaintiff wanted to compete in the Limited Departmental Competitive Examination (for short LDC) for class II-Group 'B'- gazetted post, they took the stand that he does not fulfil the requisite qualification of 5 years standing as Assistant. He accordingly filed the suit for permanent injunction to restrain the defendants from holding the LDC examination without giving the plaintiff a chance to appear in the same and for restoring his seniority on the post of Assistant from the date of his officiation on ad-hoc basis. During the pendency of the suit the LDC examination was held and the plaintiff was not allowed to appear in the same. He accordingly got his plaint amended and he now seeks the further declaration that the LDC examination held in January 1985 is in violation of rules on the subject and should not be given effect to.

In the two replies filed on behalf of the defendants before this Tribunal, it has been stated that the plaintiff was promoted as Assistant purely in an ad-hoc arrangement and he was empanelled for this post only on 30.4.1979 and as such, he could not be considered to be a regular incumbent of this post from 6.7.1978. For appearing in the LDC examination, the services rendered by the applicant as Assistant before regularization cannot be considered and as the plaintiff had not completed five years regular service as Assistant on the date of

AUG

notification for LDC examination, he was rightly disallowed from appearing in the said examination. During the period from Dec. 1977 to June 1978, the suitability of the plaintiff for long term promotion as Assistant was adjudged but he was found suitable for promotion as Assistant only on 30.4.1979 and as such, the services rendered by him as Assistant on ad-hoc basis prior to that could not be considered for determining his eligibility and he has no right to appear in the LDC examination or to get any relief in this connection.

4. In the two rejoinders filed by the plaintiff it has been stated by him that his promotion as Asstt. was not in fortuitous capacity and he continuously served as Assistant on his promotion w.e.f. 6.7.1978 and under the various rules of the Railway Department, which are fully applicable to the RDSO, he was eligible to appear in the LDC examination held in 1985 and his seniority on the post of Assistant has to be considered from the very beginning.

5. The plaintiff himself conducted his case and filed a number of documents. After hearing the plaintiff and the learned counsel for the defendant-respondents, we find ^{that} only a very simple question is involved in this case for determination and it is not necessary to go into the interpretation of various rules cited by the plaintiff in his pleadings.

According to the undisputed facts of this case, the plaintiff is continuously working as Assistant w.e.f. 6.7.1978. He was working on ad-hoc basis on this post till his regularization w.e.f. 10.9.1984. The defendants vide their notice dated 25.8.1984 had invited applications from such candidates, who fulfilled the conditions of eligibility and wished to compete in the LDC examination to fill up the vacancies in the cadre of Section Officer (Ministerial) (Class II-Gr. 'B' gazetted). The condition no.4 of eligibility as per recruitment and promotion rules for the said post is as follows :-

"4. Eligibility: Assistants/Stenographers of RDSO in scale of Rs.425-800/RS/Rs.650-960/RS, including Senior Personal Assistants in grade Rs.650-1040(RS) presently working on regular basis and who have completed 5 years service in this Organization as on 25.8.1984 in the grades of Assistants/Stenographers will be eligible to sit in the aforesaid Limited Departmental Competitive Examination."

6. The contention of the plaintiff is that after his ad-hoc promotion w.e.f. 6.7.1978, his suitability for this post was adjudged along with 5 other officials by the Dy. Director General of the RDSO and out of the 6 candidates, 4 including the plaintiff were found suitable for the same vide staff notice dated 30.4.1979, annexure 1 to the plaint. It has, therefore, been contended by the plaintiff that he became a regular incumbent of the post of Assistant w.e.f. 30.4.1979 after this notice and though he

continued to be treated as ad-hoc thereafter, he ~~but~~ was holding the post regularly within the meaning of condition 4 quoted above. In the seniority list of Assistants ^{10.9.1984} of 6.7.78 (Adhoc) appeared in ^{30.4.77} the column of date of appointment of the plaintiff in annexure 2 to the plaint. This supports the contention of the plaintiff that he was appointed as Assistant on adhoc basis on 6.7.1978 but became regular on this post on 30.4.1979. No doubt his appointment as Assistant was regularised much after ^{10.9.1984} 30.4.1979, we are unable to accept the contention of the respondents that even after ^{of Assistant} 30.4.1979, the plaintiff was holding the post on ad-hoc basis. Considering the regular appointment of the plaintiff as Assistant from 30.4.1979, he had already completed 5 years service on this post on 29.8.1984 and as such the plaintiff was eligible to appear in the LDC examination and the view taken by the defendants appears to be too technical and unreasonable.

7. The Hon'ble Supreme Court has repeatedly upheld the principle of giving due weightage to the continuous officiation on a post in considering the seniority and promotion of the Government employee. We may quote in this connection A.Janardhan Vs. Union of India (A.I.R.1983 SC-769) ; O.P.Singhal Vs. Union of India (AIR 1984 SC-1595) ; O.S.Lamba Vs. Union of India (AIR 1985 SC-1019) ; Karendra Chaddha Vs. Union of India and A.N.Pathak Vs. Secretary to the Government (AIR 1987 SC-716). We are, therefore, of the view



that for the purpose of considering the eligibility of the plaintiff to appear in the LDC examination held in January 1985, he should be treated as a regular incumbent on the post of Assistant w.e.f. 30.4.1979 and he was wrongly deprived of an opportunity to appear in the said examination.

3. As the LDC examination sought to be stalled by the plaintiff could not be stopped and did take place on the due dates (Jan. 11 to 13, 1985), and as a result has also been declared, if not, it should be declared now as it will be too hard for all those who appeared in the said examination if the relief sought by the plaintiff regarding the said examination is granted. The rights of the plaintiff can be safeguarded otherwise. We accordingly direct the respondents to arrange a special LDC examination for the plaintiff in case no such regular examination is going to be held within the next 6 months and if the plaintiff succeeds in the said examination, he shall be placed at the bottom of the panel prepared on the basis of the examination held in Jan. 1985. There will be no order as to costs.

**TRUE
COPY**

D. S. DUBEY
(D. S. DUBEY)
SECTION OFFICER
Central Administrative Tribunal
Allahabad.

Member (A)

Dated 22.6.1987
Hkb

8/1
Member (J)

True copy
affested
T. N. Dube

(A50) C.R.

Before the Central Administrative Tribunal
Circuit Bench, Lucknow

Written Statement on behalf of Respondents No. 1 to 3

IN

Registration No.O.A.No.65 of 1988 (L)

Sangan Lal Srivastava .. Applicant

Vs.

D.G./R.D.S.O. and others .. Respondents

I, S.Bhatia s/o late Sh.U.C.Bhatia aged about 54 years resident of C-77/2, Manaknagar, Lucknow do hereby solemnly affirm and most respectfully sheweth as under:

I. That the deponent is working as Dy.Director/Estt-I in the Research, Designs and Standards Organisation, Lucknow (hereinafter referred as R.D.S.O.) and as such he is fully competent to affirm the Affidavit on behalf of the Respondents No. 1, 2 & 3.

II. That the deponent has carefully gone through the relevant records relating to the instant case and has acquainted with the facts and circumstances of the case deposed below.

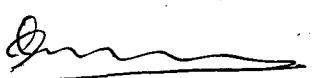
III. Before dealing with the para-wise reply the Respondent is placing the entire background of the instant case/or the brief history


Dy. Director Establishment,
R. D. S. O., Ministry of Railways
Alambagh, LUCKNOW-5

45

of the case herein below:-

III(a) That Sh. Sangan Lal Srivastava was originally appointed as Lower Division Clerk in scale Rs.110-180(AS) w.e.f. 8-5-62. He was promoted as Upper Division Clerk in scale Rs.330-560(RS) w.e.f. 20-1-78. Further he was promoted as Assistant in scale Rs.425-800/RS w.e.f. 24-9-84 purely on ad hoc basis till the posting of a regular incumbent whichever was earlier, vide Staff Posting Order No.386 of 1984 dt. 21-9-84 (Copy annexed as Annexure-1 of the Application). He was however, regularised as Assistant in scale Rs.425-800/RS w.e.f. 27-3-87 vide Staff Posting Order No.101 of 1987 (copy annexed at Annexure 3 of the application) in his turn along with others. Here it may again be clarified that he was regularised strictly as per his seniority and it is not the case of the applicant that his juniors have been promoted over him. As per the Recruitment and Promotion Rules in R.D.S.O. for the post of Assistant in scale Rs.425-800/RS as notified vide Notification dated 9-3-87 (copy at Annexure R-I), 50% of the vacancies are to be filled by Direct Recruitment through Assistants Grade Examination conducted by U.P.S.C. and the remaining 50% vacancies are required to be filled by promotion on the basis of Seniority-cum-fitness from amongst the eligible departmental candidates.


By. Director Establishment,
R. D. S. O., Ministry of Railways
Alambagh, LUCKNOW-5

Preliminary Objections

- (i) That before giving parawise reply to the allegations made in para 6 of the application, the answering respondent craves leave of this Hon'ble Tribunal to point out that the said application is not maintainable being time barred and prays that before taking up the case on merits the preliminary objection of limitation may be decided.
- (ii) That Union of India has not been made party in the present case hence the said application suffers from non-joinder of necessary parties and liable to be dismissed on this ground alone, and the respondent most humbly prays that this preliminary objection may also be decided before taking up the matter on merits.

PARA-WISE REPLY

Paras 1 & 2 : Do not call for a reply but however Union of India has not been made party.

Para 3 : That the details of order as contained in para 3(iii) is incorrect. A perusal of Annexure-3 would itself indicate that the correct date of the said order is 1-4-1987 and not 1-4-1988.

That in reply to para 3(iv) it is again clarified that the said Annexure-4 is only a

(A53)

communication and not an order.

Para 4 : That the contents of para 4 do not call for a reply.

Para 5 : That the contents of para 5 of this Application are categorically denied. A perusal of orders as mentioned in para 3 of this application as also the clarification of para 3 given in this counter reply would indicate that the application is not within the limitation prescribed in Section 21 of the Administrative Tribunal Act, 1985 and has become barred by time.

Para 6(i) : That the contents of para 6.1 are denied. The posts of Assistants in R.D.S.O. are both Non-Selection as well as Selection as will be seen from the Recruitment and Promotion Rules (copy at Annexure R-I) as 50% of the posts are to be filled by Direct Recruitment through Assistants Grade Examination conducted by the U.P.S.C. by a positive act of selection which is an open selection and 50% by promotion of departmental candidates based on the seniority-cum-fitness.

Para 6(ii) : That in reply to para 6(ii), it is submitted that the contents thereof are admitted to the extent that the applicant was promoted to the post of Assistant in scale Rs.425-800/RS w.e.f. 24-9-84 vide Staff Posting Order No.386 of 1984. He was promoted along with others purely on _____

By. Director Establishment,
R. D. S. O., Ministry of Railways
Alambagh, LUCKNOW-5

a &

ad hoc basis for a period of 3 months till the posting of a regular incumbent whichever was earlier.

Para 6(iii): That in reply to para 6(iii), it is submitted that at the time of making ad hoc promotion of Sh. Sangam Lal Srivastava and others vide Staff Posting Order No. 386/84 (copy at Annexure-1 of the Application), other promotions were also made simultaneously i.e. of S/Shri S.R. Verma and Bhoop Singh taking into consideration the 3 vacancies of Assistants which were available at that time and it was not necessary that any particular person was to be promoted against the vacancy of any particular individual.

Para 6(iv) : That in reply to para 6(iv), it has no relevance with the petitioner's grievance. As already stated above, 3 promotions were made against 3 available vacancies.

Para 6(v) | That in reply to para 6(v), the contents thereof are not denied.

Para 6(vi) | That in reply to para 6(vi), the same are denied to the extent that so far as selection on regular basis ^{is} concerned, as per the new Recruitment and Promotion Rules (as notified - copy at Annexure R-I) which have come into effect w.e.f. 28-3-87, there will be a Committee of 3 Junior Administrative grade

officers including one Joint Director/Administration to review and assess the suitability or otherwise of the departmental promotees for regular promotion, to the post of Assistant.

Para 6(vii)

That in reply to para 6(vii), it may be mentioned that the applicant was promoted on ad hoc basis w.e.f. 24-9-84 and he ~~subsequently~~ continued to work on ad hoc basis upto 26-3-87 till he was regularised w.e.f. 27-3-87. He was regularised along with others in their turn vide Staff Posting Order No. 101 of 1987 (copy at Annexure-3 of the application). He was informed on 9-12-85 that his regularisation in the grade of Assistant will be considered only after 11 Assistants senior to him who were promoted earlier on ad hoc basis were regularised. (Copy of the letter dt. 9-12-85 is annexed as Annexure-2 of the Application). Some of the representations contained in Annexures 7 to 13 and 15 and 16 to this application do not appear to have been received by the answering opposite party's office and the applicant is put to strict proof for the same. Replies were given to his representation vide Annexures 2 & 4 of the petition.

Para 6(viii)

That the contents of para 6(viii) are denied as stated. The extant rules are quite different (copy of which is placed at Annexure R.I.). In the case of non-availability of the candidates from the U.P.S.C., the posts were filled from amongst the departmental candidates purely on


Dy. Director Establishment,
G. D. S. O., Ministry of Railways
Alambagh, LUCKNOW-5

156

ad hoc basis subject to the availability of the selected candidates by the Commission.

Para 6(ix) : That the contents of para 6(ix) are absolutely denied. It is submitted that there is no such provision in the extant Recruitment and Promotion Rules as quoted by the applicant, as will be seen from the Recruitment and Promotion Rules.

Para 6(x) : That in reply to para 6(x), it is stated that the applicant has not given any citation/ruling in support of his contention made in the para under reply.

para 6(x1) That para 6(x1) is not appearing in the application

Para 6(xii) : That in reply to para 6(xii) it is submitted that with the approval of Railway Board which was communicated vide their letter No. E(RB)I/69/RB3/9
(Annexure 17 of the application)
dt. 13-3-79, the decision of the Ministry of Railways was communicated that Assistants promoted on adhoc basis between 1973 to 1978 may be regularised by a Committee of three officers after adjudging their suitability for regular promotion on the basis of their Confidential Reports and future appointment and promotion to the posts of Assistants occurring after 1-11-1978 should be made in accordance with the revised rules for this category. This was a one-time relaxation granted by the Ministry of Railways (Railway Board). It is needless to mention that the ad hoc promotion of the

Dy. Director Establishment,
R. D. S. O., Ministry of Railways
Alambagh, LUCKNOW-6

(A)

petitioner has also been made regular w.e.f. 27-3-87.

Para 6(xiii)

That in reply to para 6(xiii), it is submitted that the petitioner and other 2 were promoted on ad hoc basis against 3 vacancies and the petitioner was promoted in the chain arrangements of Sh.P.K.Dhar and as such he cannot compare his case with him as he was not exclusively considered against the post of Sh.P.K.Dhar.

Para 6(xiv)

In the absence of any specific orders of any Court on a particular subject, no comments can be offered on this para as no relevance with the present case has been shown.

Para 6(xv)

That in reply to para 6(xv), it is submitted that as already stated in the preceding paras, the petitioner along with other 2 were promoted against 3 available vacancies and he was posted in the chain arrangements of Sh.P.K.Dhar and as such he cannot exclusively claim the benefits against this particular post. He and other 2 were promoted on ad hoc basis for a period of 3 months against 3 available vacancies. The Industrial Disputes Act etc. are not applicable to R.D.S.O. being an Attached Office of the Ministry of Railways (Railway Board) as also his total salary is more than Rs.1600/- p.m.

Para 6(xvi)

That in reply to para 6(xvi), it is again reiterated that the petitioner was not exclusively promoted against the vacancy of Sh.P.K.Dhar. Three


By. Director Establishment,
R. D. S. O., Ministry of Railway
Alambagh, LUCKNOW-5

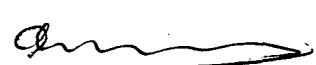
senior-most persons were considered against 3 vacancies of Assistants available at that time and as such he cannot exclusively claim the benefits against the post of Sh.P.K.Dhar. Moreover, there are different rules for the post of Section Officers against which Sh.P.K. Dhar was considered and different rules for the posts of Assistants against which the petitioner was promoted. Moreover, the Railway Board's letter dt. 13-8-59 is not applicable in the instant case as the vacancies in the category of Assistants were not purely Non-Selection as per rules whereas the letter deals with the fixation of seniority of non-gazetted staff to non-selection posts and the grounds of the petitioner are quite different i.e. for regular promotion to the post of Assistant.

Para 6(xvii) & (xviii)

That the contents of paras 6(xvii) and (xviii) are denied as the Respondent had no bias or prejudice against the Applicant on any account.

Paras 6(xix) (xx), (xxi)

That in reply to paras 6(ix), (xx) & (xxi), the same are baseless and emphatically denied. The applicant was never in line for promotion to the Gazetted post and as such had not competed along with Respondent No.3. The applicant be put to strict proof for the allegations made in the paras under reply.


Dy. Director Establishment,
R. D. S. O., Ministry of Railways
Alambagh, LUCKNOW-3

A 57

Para 6(xxii) That in reply to para 6(xxii), the same are baseless and are denied. The Respondents No. 1 & 2 are very Senior Officers and exercise their own jurisdiction in passing the orders. In a number of cases, they have disagreed with the proposals of Respondent No. 3 and as such the charges levelled are refuted.

Para 6(xxiii) That in reply to para 6(xxiii), the same are denied to the extent that it was not an individual role of respondent No. 3 but he had sought the orders of the higher officers while dealing with this particular case and more so the said judgement is not applicable in any way in the case of applicant.

Para 6(xxiv) That in reply to para 6(xxiv), the same are vague, baseless and are denied and the applicant is called upon to prove the same.

Para 6(xxv) That in reply to para 6(xxv), unless details of the cases are given, no comments can be given.

Para 6(xxvi) That in reply to para 6(xxvi), there is no record to show that the applicant sought a personal interview with the Respondent No. 1 as his application dt. 23-11-85 does not appear to have been received in Establishment Branch.

The concluding (last) para of para 6 is also denied as vague, baseless and irrelevant to the present case.

Dy. Director Establishment,
R. D. S. O., Ministry of Railways,
Alambagh, LUCKNOW-5

RC

~~RECORDED~~

Paras 7 & 8 : That in view of facts and reasons mentioned in reply to para 5 of this application as also stated just before giving the parawise reply of para 6 of this application, the claimant/applicant is not entitled to any relief prayed for.

Paras 9 to 13 : Do not call for a reply.

In view of the position explained in the preceding paragraphs, the petitioner was promoted on ad hoc basis and then his services were regularised along with others in 1987 in his turn and as such there is no force in the Application and it is liable to be dismissed with costs.


Deponent

Dated: 22-11-1988.
Dy. Director Establishment,
R. D. S. O., Ministry of Railway,
Alambagh, LUCKNOW-3

Verification

I, the deponent above named do hereby solemnly affirm and state that the contents of paras I and II are true to the best of my knowledge and belief and that of paras III, 1 to 6(i to xxvi), 7 to 13 are believed to be true on the basis of available office records and legal advice. Nothing material has been concealed and no information is false.


Deponent

Dated: 22-11-88
Dy. Director Establishment,
R. D. S. O., Ministry of Railways,
Alambagh, LUCKNOW-3

R.S.
Annexure R-1

Government of India
Ministry of Railways
Research Design and Standards Organisation
Manek Nagar, Lucknow-11
No. E/R/RT/MS Dated 9th March, 1987

NOTIFICATION

G.S.R. - In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules regulating the method of recruitment to the General Central Service Group 'B', Non-Gazetted posts in the Research Design and Standards Organisation of the Ministry of Railways, namely:-

1. Short title and commencement:

(1) These rules may be called the Research Design and Standards Organisation (Group 'B' posts) Recruitment Rules, 1987.

(2) These rules shall come into force on the date of their publication in the official Gazette.

2. Number of posts, classification and scale of pay:

The number of the said posts, their classification and the scales of pay attached thereto, shall be as specified in columns 2 to 4 of the Schedule annexed to these rules.

3. Method of recruitment, age-limit and other qualifications etc.

The method of recruitment, age limit, qualifications and other matters relating to the said posts, shall be as specified in columns 5 to 14 of the said Schedule.

4. Disqualification: No person-

(a) who has entered into or contracted a marriage with a person having a spouse living, or


Dy. Director Establishment,
R. D. S. O., Ministry of Railway,
Alambagh, LUCKNOW-5

462

-3-

No. E/R/RT/MS

Dated: -3-87

Copy forwarded for information to:

- 1) The Secretary, Railway Board, Rail Bhavan, New Delhi with reference to Board's letter No. ERBI/84/44/36 dt. 16.1.87 (3 copies).
- 2) The Secretary, Union Public Service Commission, Dholpur House, New Delhi with reference to letter No. F3/19(6)/85-RR dt. 28.11.86 (8 copies).

DA/As above

115
(V. Vasudeva) 3
for Director General

Dy. Director Establishment,
R. D. S. O., Ministry of Railways
Alambagh, LUCKNOW-5

Name of post. No. of
Class-Scan
ficat-
of
post.
ion.
pay

THE SCHEDULE			
Whether	Age	Whether	Educational Period
select- limit	for	benefit	and other er
ion	of added	of added	qualification age
post	direct	years	of pro
or non- recruits	of Servi	required	bation, or by
select-	ce admis	for	rect or by
ion post	ssible	direct	promotion
under	recruits	as and	if any.
		educa	promotion or
		tional	deputation
		qualifi	transfer &
		cations	grades from
			which promotion
			the vacancies to
			deputation/transfer

Circumstances
in which M.P.
S.C. is to
be consulted
in making
rect.

By Director Establishment,
R. D. S. O., Ministry of Railway,
Alambagh, LUCKNOW-5

9.	10.	11.	12.	13.	14.
No. 2	1) 50% by direct recruitment	50% by promotion	Gr:3 DPC	Consultation motion on the 3 JA Gr.	With the
assistant	through	basis of	of officers	Commission	
ml-	Assistants	seniority	including	necessary	
du-	Grade	Examination-fitness	one Jt.	while parking	
e	conducted from amongst	Director direct	by URGC.	by URGC.	
	UDCs/Recruit	ionist in RDS oration.			
	Administ.	Recruitment.			
11) 50% by promotion on	possessing	5 years regu-			
the basis		lar service			
of senior					

regular incumbents of Gr. 'C' posts of Asstt shall be deemed to have been appointed to Gr. 'B' posts of Assistants at the initial constitution.

Note:-The Proceedings of the DPC relating to confirmation shall be sent to the Commission for approval. If, however, these are not approved by the Commission a fresh meeting of the DPC to be presided over by the Chairman or a Member of the UPSG shall be held.

Central Admnistrative Tribunal
Sitting at Lucknow
बकालतनामा

हाईकोर्ट ऑफ जूडिकेचर एट इलाहाबाद
इलाहाबाद अरेनाली

रिट/अपील

नम्बर

निगरानी

65

सन् १९८८

जिला ल०१०४

वादी/प्रतिवादी

अपीलान्ट

वनाम

वादी/प्रतिवादी

रेस्पान्डेन्ट

मैं कि ... S. Bhakta ... By. Director Estt I. R.D.O.

हम

also on behalf of Dr. R.D.O. etc

उपरोक्त प्रकरण हम अपनी ओर के पक्ष समर्थन के हेतु

FF. 24- XI-88

S.N. 10.

Sri. Anil Srivastava

(ANIL SRIVASTAVA) एडवोकेट हाईकोर्ट

इलाहाबाद को कानूनी निश्चित शुल्क नियत करके अपना अभिभाषक नियुक्त करते हैं, और स्वीकार करते हैं कि उक्त सज्जन हमारी ओर से वाद-पत्र, प्रतिवाद-पत्र, वाद स्वीकार पत्र, विवाद-पत्र, पुनरवलोकन एवं पुनःनिर्णय प्रार्थना-पत्र शापथिक कथन प्रवर्तन-पत्र अपील, निगरानी इत्यादि हर प्रकार के अन्य प्रार्थना आदि एवं लेखादि की प्रतिलिपियाँ अपने हस्ताक्षर करके न्यायालय में प्रस्तुत करें अथवा किसी पत्र पर आवश्यकतानुसार शापथिक पुष्टीकरण करें, और आवश्यक सबाल जबाब करें और लेखादि की प्रतिलिपियाँ एवं हमारे प्राप्त धन को अपने हस्ताक्षरों द्वारा रसीद देकर प्राप्त करें, हमारी ओर से किसी मध्य पत्र तथा साक्षी माने और उससे सम्बन्धित प्रार्थना-पत्र प्रस्तुत करें तथा उसका समर्थन करें तथा तसदीक करें, वाद-पत्र उठावें छोड़ें अथवा समर्त्ता करें तथा सुलहनामा दाखिल करें तथा उसके सम्बन्ध में प्रार्थना-पत्र दाखिल करके उसका समर्थन करे अर्थात् प्रकरण से सम्बन्ध रखने वाली कुल कार्यवाही डिग्री भर पाई होने के समय तक स्वतः या संयुक्त करें आवश्यक होने पर किसी अन्य वकील महोदय को वकील करें।

उक्त सभी कार्यवाही जो उक्त सज्जन करेंगे प्रत्येक दशा में अपने किये की भाँति हमको सर्वथा स्वीकार होगी। अगर हम कानूनी/निश्चित शुल्क उक्त सज्जन को न दें तो उनको अधिकार होगा कि वह हमारी ओर से मुकदमा की पैरवी न करें। उपरोक्त दशा से उक्त सज्जन का कोई उत्तरदायित्व न रहेगा।

अतएव यह अभिभाषक पत्र प्रमाण रूप लिख दिया कि प्रमाण रूप से समय पर काम आये।

Accepted
Anil Srivastava
26-10-88

16
Recd for Respondent.
24/11/88

(A65)
414
filed today
to

BEFORE THE HON'BLE TRIBUNAL OF ALLAHABAD
LUCKNOW BENCH (LUCKNOW)

REGISTRATION No. OA 65/88(L)

Sangam Lal Srivastava
Assistant, R.D.S.O.,
Manak Nagar, Lucknow.

APPLICANT.

versus

The Director General & Others
R.D.S.O., Manak Nagar,
Lucknow.

Respondents.

REJOINDER AFFIDAVIT TO W.S.
OF THE RESPONDENTS 1, 2, & 3

Keep on record
May 14/88
The Applicant most respectfully begs to submit
the following:-

1- That one Shri S.Bhatia, said to be the Deputy
Director Estt.-I, has affirmed in para-1 of the W.S.
that he is competent to affirm that affidavit on
behalf of the Respondents 1, 2 & 3. This claim of
Shri Bhatia is subject to strict proof to be submitted
before the Hon'ble Tribunal for evidence by Sh. Bhatia.

In case of his failure to produce the proof
of his competence in respect of making any affidavit
on behalf of the Respondents 1-3, the W.S. filed by
Shri Bhatia under his signature may be treated as
non-existent and held that the Respondents have not
submitted any W.S. Accordingly the Applicant may
kindly be heard ex-parte, debarring the Respondents
from filing any fresh W.S. as a natural justice to the
Applicant, because the Respondents should be deemed

E.S. 03/4/88

.....2

(2)

756

to have not submitted any W.S. within the time prescribed by the Hon'ble Tribunal.

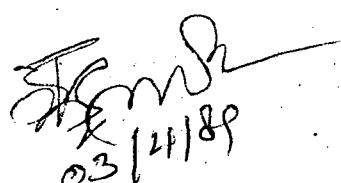
2- That the contentions of Shri Bhatia, for and on behalf of the Respondents, in para-2 of the W.S. are denied in full.

As regards to his statements of his having acquaintance with facts and circumstances of this instant case is totally false and mis-statement. It is submitted that Shri Bhatia is a Deputy Director, though designated as of Estt.I, of Legal Cell of the RDSO. He does not deal with the personnel matters of the employees in the R.D.S.O. He is engaged only to cook false stories and present false pictures to the Hon'ble Courts/Tribunals to foil the right claims of the employees when sought reliefs from Courts/Tribunals. As such his stories, presented in this case, are wholly a cooked one.

3- That the statements of Shri Bhatia in this para are denied to the extant as mentioned below:-

(i) His claim that the Applicant had been promoted as UDC from 20.1.78 is incorrect. The Applicant was promoted as Upper Division Clerk (UDC) from 31-1-1977 (not from 20-1-78) as claimed by Shri Bhatia. In support, a copy of the Seniority List of UDCs including the name of the Applicant circulated under Staff Notice No.A/ES/UDCs/SL dt. 28-10-86 is attached herewith as Annexure- 'RA-I'. This is the first evidence to prove the false statements of Shri Bhatia.

.....3


03/11/89

(3)

46

(ii) Shri Bhatia has claimed that the Applicant had been promoted vide Annexure-I of the application w.e.f. 24-9-1984 on adhoc basis for the period " till the posting of a regular incumbent whichever was earlier." In its support the relevant portion of the promotion order contained in para-2 of the Annexure-I is reproduced below for ready reference of the Hon'ble Tribunal. This order explicitly says that adhoc promotion was for a period not exceeding 03 months or till the posting of a regular incumbent within this 03 months whichever is earlier not that the Respondents could exploit the Applicant on adhoc basis for eternity or beyond 03 months without regularising his appointment on regular basis. This is the second proof of his false statements.

" S/Shri Verma, Bhoop Singh and Srivastava should note that their above mentioned Offg. promotions are purely on a adhoc arrangement for a period not exceeding 03 months or till the posting of a regular incumbent, whichever is earlier. They will be entitled to pay and allowances of the higher grade post of Asstt. on completion of minimum 22 days continuous offg. in that capacity. They should sent their charge reports to E-II Section, through proper channel, for further necessary action."

4- That the statements of Shri Bhatia regarding regularisation of the Applicant as Assistant from 27-3-87

SK
03/11/89

.....4

(4)

A63

vide Annexure-III of the application is illegal. The post of Assistant filled up by the departmental candidate is a "Non-selection" post, and thus those posts are required to be filled by the candidates determined by the Competent Authority to be suitable for promotion to the posts of Assistant from the dates of occurrence of the vacancies irrespective of the fact whether the regularisation order is made immediately at the time of promotion or after-wards. Accordingly the regularisation of the Applicant was required to be finalised within 03 months of the adhoc promotion.

In this instant case the Respondents had deliberately and prejudicially not regularised the Applicant as Assistant within 03 months period mentioned in para-2 of the Annexure-1. It is immaterial whether the Applicant is regularised according to his seniority or not, that being not a relevant point in this application.

Rest of the facts mentioned in para-3 of W.S. is irrelevant.

5- That the contentions of Shri Bhatia in para-1 under preliminary objections are denied in full. The point of limitation has already been considered by the Hon'ble Tribunal at the time of admission of the application, and, therefore, there is no question of raising this point by Shri Bhatia. His claim is base-less and warrant no consideration, being resjudicata.

6- That claim of Shri Bhatia in para(ii) are denied in full. He has forgotten that the application was filed under the Administrative Tribunal Act-1985,

SSC
03/11/89

.....5

NOT UNDER CPC. Accordingly there was no misjoinder of the Respondents and it is not necessary to make Union of India a party in the application under the Act aforesaid. His point is, therefore, baseless and needs no consideration of the Hon'ble Tribunal.

7- That statements of Shri Bhatia against the contentions of the Applicant in paras - 1 to 3 need no reply, except to his remarks about para-3(iv).

It is submitted that Shri Bhatia has no sense about "communication" and "order". Annexure-4 of the application is a letter communicating the order passed on his application mentioned therein. Shri Bhatia, as his usual habit, has also made this false statement.

8- That no comment is required on the statements against para-4 of the application.

9- That the contentions of the Respondents against para-5 of the application are denied in full and claims in para-5 of the application are reiterated. It is also submitted that any thing stated against the claims in para-5 of the application in para-3 of their W.S. are irrelevant on the point. This point has already been considered by the Hon'ble Tribunal and since admitted the application.

10- That contentions of the Respondents in the W.S. against the claim in para-6(i) of the application, are irrelevant and false in respect of the claim that 50% posts of Assistants are filled through UPSC.

It is submitted that as far as promotion of the Applicant to the post of Assistant in the clerical cadre service in RDSO from amongst the UDCs of RDSO is a "Non-selection" post. The claims of the Applicant are reiterated.

25/4/89
03

H/10

- 11- That the Respondents have admitted the claim of the Applicant in para-6(ii) of the application and, therefore, warrants no comment.
- 12- That the Respondents have admitted the claim of the Applicant in para-6(iii), not being controverted by them.
- 13- That the contentions of the Respondents against para-6(iv) of the application are denied in full. The claim of the Applicant in the aforesaid para is reiterated being relevant to the claim.
- 14- That the Respondents have admitted the claim of the Applicant in para-6(v) of the application, hence no comments.
- 15- That the contentions of the Respondents against para-6(vi) of the application are denied in full, being irrelevant to the point of his claim. The so called R & P Rules attached with the W.S., is not a material evidence in this case, nor is applicable to the Applicant's ~~present~~ case; because of the reason that the said order have effect from 28-3-1987 i.e. after his promotion and regularisation.
- 16- That the contentions of the Respondents against para-6(vii) of the application are denied in full. The claims of the Applicant in the aforesaid para are reiterated.

The statements of Shri Bhatia (on behalf of Respondents) in this respect are irrelevant to the point in the claim. They have not submitted any valid ground for not regularising the Applicant within 03 months of his adhoc promotion from 24-9-1984 and they have utterly

28/3/87
S. Bhatia

.....7

failed to show any ground and any valid rule in support of their not taking timely decision for regularisation.

17- That the contentions of the Respondents against para-6(viii) are denied in full being false statement; and so called rules of filling of 50% of the posts of Assistants having not come into operation at the relevant time. There is no provision for making short gap arrangement for filling up posts of 50% Quota of UPSC ~~xxxxxxxxxx~~ candidates by the departmental candidates on adhoc basis. In the case of non-availability of UPSC nominated candidates, posts/vacancies of UPSC Quota are operated by the departmental suitable candidates after their being determined suitable by the DPC. Hence, their claims are totally fictitious and concocted ~~xxxx~~ stories, the Quota-Rota System having been broken at the relevant time.

18- That the contentions of the Respondents against para-6(ix) of the application are denied in full and the claims of the Applicant in the aforesaid para are reiterated. The R & P Rules referred to by Respondents are irrelevant in this case.

19- That the contentions of the Respondents ~~xxxxxxxxxx~~ against para-6(x) are denied in full. The Respondents have not contradicted the claim of the Applicant in para-6(x) and, therefore, the same stands admitted in the absence of their denial.

20- That the contentions of the Respondents against para-6(xi) about its absence, it is submitted that it is an inadvertant typing mistake and also not material on the point of the claim.

3/30/89
3/31/89

RT2

(8)

21- That the contentions of the Respondents against claim of the Applicant in para-6(xxii) are denied in full and claims of the Applicant in the aforesaid para are reiterated. They Rly. Board's letter referred to in that statements about future appointments and promotions to the post of Assistants occurring after 1-11-1978 was only an administrative instruction, not a rule. Again, it is submitted that the administrative instruction given by the Railway Board was not given effect in RDSO. However, a copy of the R & P Rules applicable in the Applicant's case is attached herewith as Annexure-RA-II for ready reference of the Hon'ble Tribunal. As may be seen from the relevant R & P Rules applicable in this instant case of the Applicant, DPC consisted of only one Officer and Applicant's promotion to the post of Assistant on the basis of determination of his suitability was adjudged by the Competent DPC in this case, and this fact has been admitted by the Respondents as claimed in para-6(v) of the application. Therefore, the statements against the Applicant's claim for regularisation from the date of occurrence of the vacancy or from the date of the Applicant's promotion in the face of their admission has no leg to stand before the law.

22- That the contentions of the Respondents are denied to the extent that the Applicant was not exclusively promoted against the vacancy caused as a result of promotion of Shri P.K.Dhar. Their contentions stand automatically rejected by their own confession against para-6(xiii), relevant portion of their confession is reproduced below for handy and ready reference of the Hon'ble Tribunal.

"..... the petitioner was promoted in the chain arrangement of Sh. P.K.Dhar".....9

26/03/18
S. K. Dhar

- 23- That the contentions of the Respondents against para-6 (xiv) are denied and claims of the Applicant in the aforesaid para are reiterated. Relevent Judgements of the Courts will be referred to the Hon'ble Tribunal at the time of argument.
- 24- That the contentions of the Respondents against the claims of the Applicant in para-6 (xv) of the application are denied. The Respondents have confirmed that the Applicant's promotion was made in the chain of Shri P.K.Dhar's promotion as Assistant Incharge and other statements made in this para regarding benefits of 3 available vacancies have no relevency on the point of his claims.

That statements of the Respondents in respect of applicability of I.D.Act etc. on the RDSO is totally a mis-statement. The Hon'ble High Court of Allahabad had made the rules final in several cases regarding applicability of the I.D.Act etc on the R.D.S.O. in affirmative. The Hon'ble Supreme Court have also confirmed the rules made by the High Courts about applicability of I.D.Act on R.D.S.O. If required Judgements of the High Courts and the Supreme Court would be referred to the Hon'ble Tribunal at the time of argument.

It is also submitted for records of the Hon'ble Tribunal that the statements of the Respondents in respect of RDSO's being attached Office to Ministry of Railways is a total lie. Telling-a-lie before the Judicial Authorities is the normal practice for the RDSO and is going scot free every time without any punishment for mis- statements before the Lawful Authorities.

S. B. S. 31/89

.....10

874

The Respondents are liable to punishment for their false statements before the Hon'ble Tribunal, which is a Court of Law for the contempt of the Court under Section 2 of the Contempt of Court Act and also under Sections 167, 177, 182 and 199 of the I.P.C. It is prayed herein to the Hon'ble Tribunal for instituting a Contempt of Court Case, and also a proceeding against the Respondents under Sections 167, 177, 182 and 199 of the I.P.C. to cause restraints on the Respondents for their false statements before the Hon'ble Tribunal.

The statements of the Respondents, in respect of the Applicant's salary being more than Rs.1600/- per month for the purpose of application of I.D.Act etc., have no meaning or relevance on the applicability of the Law on the Workman under I.D.Act. Their statements ~~are~~ totally illegal.

25- That the contentions of the Respondents against the claims of the Applicant in para-6 (xvi) of the application are denied in full and the claims of the Applicant in the aforesaid para are reiterated.

Regarding the Applicant's promotion against the vacancy of Shri P.K.Dhar has no relevance with the promotion of other two co-workers against two other separate vacancies, as the Respondents have repeatedly tried to focus in their statements. The Applicant has already reiterated the benefits admissible to the Applicant on his being promoted vice Shri P.K.Dhar elsewhere in the fore-going paragraph.

The rules referred to by the Respondents in respect of Shri P.K.Dhar's promotion as Section Officer (Ministerial) has no relation on the promotion of the Applicant. The only point of the Applicant's promotion is

Subbanna
03/01/89

(11)

related to his promotion against a regular vacancy caused as a result of promotion of Shri Dhar as Section Officer (Ministerial).

The statements of the Respondents regarding applicability of Railway Board's letter dated 13-8-59 (Annexure-18 to the application) in the case of the Applicant, are mis-statements. The rules made by the Board as contained in their letter (Annexure-18 to the application) are certainly applicable on the Applicant in respect of his promotion against the post of Assistant filled by the Departmental Candidates being a "Non-selection" post. The Rules of the Board also regulate the fixation of seniority of the staff appointed by promotion against the "Non-selection" posts.

26- That the contentions of the Respondents against the Applicant's claims in para 6(xvii &xviii) are denied in full and the claims of the Applicant in the aforesaid paragraphs are reiterated.

27- That the contentions of the Respondents against the claims of the Applicant in para-6(xix)^{to}6(xxi) are denied in full and claims of the Applicant in the aforesaid paragraphs of his application are reiterated. It is also clarified that the Applicant was then Leader of the workers and was responsible for bringing out the irregularities, illegalities and favouritism ~~in~~ to any person, and it is not necessarily required to his being in line for promotion to any gazetted post.

28- That the contentions of the Respondents against the claims of the Applicant in para-6(xxii) of his application are denied in full and his claim in the aforesaid para is reiterated.

.....12



Signature: [unclear]
Date: 03/01/89

R76

- 29- That the contentions of the Respondents against the claims of the Applicant in para-6(xxiii) are denied in full. It is reiterated that the justice bestowed to Shri R.K.Mallick(Annexure-19 to the application) has application in the case of the Applicant as well, the principles in that case being analogous and similar in the case of the Applicant.
- 30- That the contentions of the Respondents against para-6(xxiv) of the application are denied in full and claims of the Applicant in the aforesaid para are reiterated.
- 31- That the contentions of the Respondents against the claims of the Applicant in para-6(xxv) are denied and the claims of the Applicant in the aforesaid para of the application are reiterated. The relevant decision of the Principal Bench of the Hon'ble Central Administrative Tribunal would be referred to the Hon'ble Tribunal at the time of argument.
- 32- That the contentions of the Respondents against the claim of the Applicant in para-6(xxvi) are denied in full and the claims of the Applicant in the aforesaid para of the application are reiterated.
- 33- That the contentions of the Respondents against claims of the Applicant in paras 7 and 8 are denied in full and the claims of the Applicant in the aforesaid paras of the application are reiterated.
- 34- That the contentions of the Respondents in the concluding paragraphs of their W.S. are denied in full, being wishful and illegal.

LuckNow
Dt. 03-4-89

S. S. 03/4/89
APPLICANT.....
Contd--13

(13)

PT

VERIFICATION

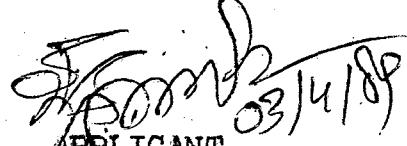
I, Sangam Lal Srivastava S/o Sh. Swami Dayal

aged 51 years working as Assistant in R.D.S.O., Manak Nagar, Lucknow-226011 and R/o Qr. No.A-18/1, Sector-A, Manak Nagar, Lucknow-226011, do hereby verify that the contents paras 1 to 34 are true to my knowledge and that I have not suppressed any material facts.

Signed and verified on 03-4-1989 at Lucknow as ordered by the Hon'ble Tribunal on 30-3-1989.

LUCKNOW:

Dated: 03-4-1989.


03/4/89
APPLICANT.

Annexure (A)
Ex-Reply to Application RA-I

GOVERNMENT OF INDIA-MINISTRY OF TRANSPORT
DEPARTMENT OF RAILWAYS
(R. D. S. O.)

No.A/ES/UDC/SL

Dated 20-10-1986.

STAFF NOTICE

Sub:-Seniority list of Class III Ministerial staff (Upper Division Clerk, scale Rs.330-560/RS) as on 1-4-1984.

The seniority list of UDC in the scale Rs.330-560(RS) of RDSO as on 1-4-1984 is enclosed for circulation amongst the staff concerned.

2. The staff may please be asked to note the entries against their names in token of their having seen the entries.
3. Representation, if any, received from the staff may please be forwarded through proper channel to SO/E-II latest by 30-11-1986.

DA:As above.

B.Kumar
(Basant Kumar)
for Director General.

DISTRIBUTION

1. Section Officers E-I, II, III, IV, V, VI, Admn, Pass, Rectt., Civil, Research, MP, ED, M&C, S&T, Confld., Hindi, MCW, Elect. and Arch.
2. DCOS, DD/Doc., JD/Pub, TEN.
3. The Secretary, Class III Staff Association, RDSO/Lucknow.
4. The Dy. Director Wagon (I&L) Cell, RDSO, Burnpur C/o Burn Standard Co. Ltd., Burnpur (West Bengal).

True copy
Attested
3/10/86
03/4/86
Applicant
B. N. Misra

Seniority List of U.D.C., Scale Rs. 330 - 560(3S) as on 1.4.84

Actual Name & C.	Qualification	Date of Birth.	Date of Appt. or Rly.	Date of Appt. 1st in RDSO	Date of Confirmation in the Govt. or Board	Date of Grade	Date of Apprt. to Govt.	Pay of Last Increment	Section	Remarks
2 S. S. SAXENA, B.A. Subs.	H	30.7.38	28.12.57	19.2.66	18.12.72	1.10.78	17.9.75	1.2.84	515/-	EIV Offg as Vishardd. Subs.
3 M.H.Zaidi, Inter Subs.	M	1.1.37	23.1.60	3.3.66	19.6.72	1.4.79	6.2.67	1.6.83	545/-	Recrt.
4 O.P.Kapoor, Matric.	H	4.10.42	15.3.61	15.3.61	23.11.72	21.4.79	6.2.67	1.11.83	530/-	E-II
5 S.U.Khan, Matric.	M	14.2.38	29.12.59	3.6.62	7.6.73	23.4.79	15.4.69	1.6.81	452/-	B&S
6 Y.K.Sethi, B.A.	H	15.9.46	5.10.66	5.10.66	6.1.73	23.4.79	21.2.78	1.1.84	464/-	TEN Offg. as AD&H.
7 Sein Singh, Matric	H	10.9.29	24.3.61	24.3.61	10.7.73	23.4.79	6.2.67	1.6.84	500/-	E-II
8 R.L.Rakesh, B.A. LIB.	SC	1.9.32	22.7.55	25.4.61	26.9.73	23.4.79	6.2.67	1.9.84	545/-	MCW
9 H.C.Srivastava, B.A	H	10.7.37	31.3.55	26.4.61	7.4.73	23.4.79	6.2.67	1.8.84	515/-	Recrt.
10 2 Jodh Singh, Matric Offg.	S	15.8.23	20.3.62	20.3.62	17.8.73			6.2.67	1.1.84	488/-
11 3 M.P.Jain, B.A Offg	H	1.7.31	21.9.55	5.6.61	21.11.73			6.2.67	1.11.84	515/-
12 4 Tara Chand, Matric	H	12.12.28	30.8.61	30.8.61	13.3.74			6.2.67	1.3.84	560/-
13 5 J.S.Rawat, Matric.	H	1.7.37	14.6.56	19.11.69	13.3.74			14.6.57	1.1.84	488/-
14 6 Amer Singh, Matric, Offg.	S	1.12.29	12.9.61	12.9.61	12.6.74			6.2.67	1.1.84	530/-
15 7 Panna Lal, Matric	SC	2.7.42	30.11.61	30.11.61	13.3.74			6.2.67	1.3.84	476/-
										Welf. Offg. as JWI.

JWI.

- 3 -

1 22 Smt. Renu Tudu, SE 15.92.41 22.6.66 22.6.66 25.7.78
Inter, offg.

1 23 Sh. Basant Prakash, 7.24.5 22.7.65 23.7.65 29.7.78 1.2.76 1.1.84 404/- E-III
Matric, Offg. H. 25.7.47 21.7.65 21.7.65 1.1.79 1.4.76 1.1.84 404/-
24 Kamal Ahmad H. BA, 2.22.8. 23.7.66 23.7.66 1.1.79 1.4.76 1.1.84 392/-
25 G.S. Negi, BA H. 6.7.46 23.7.66 23.7.66 1.1.79 1.4.76 1.1.84 392/-
Offg.
26 25-633 Tali, HS SC 5.5.46 7.10.66 7.10.66 29.7.78 1.4.76 1.3.84 404/-
Offg.
27 H.C. Sahai, BA H. 8.12.46 6.10.66 6.10.66 6.11.78 21.2.78 1.1.84 404/- Hindi, Offg. as Asstt,
Hindi
28 655 Rajpal, H. Con. & 17.8.47 24.12.66 24.12.66 1.1.79 21.2.78 1.1.84 392/- E-IV
H.I.B, Offg.
29 25-633. N. Bhawari, HS H. 5.7.47 27.1.67 22.5.78 (adhic) 21.2.78 1.1.84 404/- Purchase
25.7.78 (Reg.)
30 Smt. R.K. Dhir, H. 14.1.44 12.11.65 13.1.3.67 23.5.78 (adhic) 21.2.78 1.1.84 404/- M.P. Dte
BA, Offg.
31 J.K. Prasad, D.A.H. 1.1.47 24.4.57 24.4.57 1.1.4.78 21.2.78 1.1.83 404/- General
offg.
32 G.N. Govardhan, H. 26.7.46 2.7.66 2.7.66 24.4.79 1.4.75 1.1.84 404/- Pub.
Offg.
33 A.K. Singh, BA SC 3.12.48 15.5.68 15.5.68 19.5.79 21.2.78 1.1.83 370/- E-III
Offg.

Annexure
Reindeer Affidavit \Rightarrow Annexure-RA-1

RECRUITMENT NOTICES FOR THE POST OF ASSISTANTS, DCS, STENOGRAPHERS AND LDCS IN RESEARCH DESIGNS AND STANDARDS ORGANISATION (MINISTRY OF Rlys.)

RAO

BEFORE THE HON'BLE TRIBUNAL OF ALLAHABAD
LUCKNOW BENCH (LUCKNOW)

.....

Registration No. OA 65/88(L)

Sangam Lal Srivastava
Assistant, R.D.S.O. Lucknow } ... Applicant.

versus

The Director General & Others
R.D.S.O. Lucknow. } ... Respondents.

REJOINDER AFFIDAVIT TO THE W.S. OF
THE RESPONDENTS 1, 2 & 3.

The Applicant most respectfully beg to submit
the following:-

1- That one Shri S.Bhatia, said to be the Deputy
Director Estt.-I, has affirmed in para-1 of the W.S.
that he is competant to affirm that affidavit on
behalf of the Respondents 1, 2 & 3. This claim of
Shri Bhatia is subject to strict proof to be submitted
before the Hon'ble Tribunal for evidence by Sh. Bhatia.

In case of his failure to produce the proof
of his competence in respect of making any affidavit
on behalf of the Respondents 1-3, the W.S. filed by
Shri Bhatia under his signature may be treated as
non-existant and held that the Respondents have not
submitted any W.S. Accordingly the Applicant may,
kindly be heard ex-parte, debarring the Respondents
from filing any fresh W.S. as a natural justice to the
Applicant, Because the Respondents should be deemed

.....2



to have not submitted any W.S. within the time prescribed by the Hon'ble Tribunal.

2- That the contentions of Shri Bhatia, for and on behalf of the Respondents, in para - 2 of the W.S. are denied in full.

As regards to his statements of his having acquainttance with facts and circumstances of this instant case is totally false and mis-statement.

It is submitted that Shri Bhatia is a Deputy Director, though designated as of Estt-I, of Legal Cell of the RDSO. He does not deal with the personnel matters of the employees in the R.D.S.O. He is engaged only to cook false stories and present false pictures to the Hon'ble Courts/Tribunals to foil the right claims of the employees when sought reliefs from Courts/Tribunals. As such his stories, presented in this case, are wholly a cooked one.

3- That the statements of Shri Bhatia in this para are denied to the extent as mentioned below:-

(i) His claim that the Applicant had been promoted as UDC from 20.1.78 is incorrect. The Applicant was promoted as Upper Division Clerk (UDC) from 31-1-1977 (not from 20-1-78) as claimed by Shri Bhatia. In support, a copy of the Seniority List of UDCs including the name of the Applicant circulated under Staff Notice No.A/ES/UDCs/SL dt. 28-10-86 is attached herewith as Annexure-RA-I. This is the first evidence to prove the false statements of Shri Bhatia.

ADM

(ii) Shri Bhatia has claimed that the Applicant had been promoted vide Annexure-I of the application w.e.f. 24-9-1984 on adhoc basis for the period " till the posting of a regular incumbent whichever was earlier." In its support the relevant portion of the promotion order contained in para-2 of the Annexure-I is reproduced below for ready reference of the Hon'ble Tribunal. This order explicitly says that adhoc promotion was for a period not exceeding 03 months or till the posting of a regular incumbent within this 03months whichever is earlier not that the Respondents could exploit the Applicant on adhoc basis for eternity or beyond 3months without regularising his appointment on regular basis. This is the second proof of his false statements.

" S/Shri Verma, Bhoop Singh and Srivastava should note that their above mentioned offg. promotions are purely on an adhoc arrangement for a period not exceeding 03 months or till the posting of a regular incumbent, whichever is earlier. They will be entitled to pay and allowances of the higher grade post of Asstt. on completion of minimum 22 dyas continuous offg. in that capacity. They should send their charge reports to E-II Section, through proper channel, for further necessary action."

4- That the statements of Shri Bhatia regarding regularisation of the Applicant as Assistant from 27-3-87 vide Annexure-III of the application is illegal. The post of Assistant filled up by the departmental candidates



is a "Non-selection" post, and, thus those posts are required to be filled by the candidates determined by the Competent Authority to be suitable for promotion to the posts of Assistants from the dates of occurrence of the vacancies irrespective of the fact whether the regularisation order is made immediately at the time of promotion or afterwards. Accordingly the regularisation of the applicant was required to be finalised within 03 months of the adhoc promotion.

In this instant case the Respondents had deliberately and prejudicially not regularised the Applicant as Assistant within 03 months period mentioned in para-2 of the Annexure-1. It is immaterial whether the Applicant is regularised according to his seniority or not, that being not a relevant point in this application.

Rest of the facts mentioned in para-3 of W.S. is irrelevant.

5- That the contentions of Shri Bhatia in para-1 under preliminary objections are denied in full. The point of limitation has already been considered by the Hon'ble Tribunal at the time of admission of the application, and, therefore, there is no question of raising this point by Shri Bhatia. His claim is base-less and warrant no consideration, being resjudicata.

6- That claim of Shri Bhatia in para (ii) are denied in full. He has forgotten that the application was filed under the Administrative Tribunal Act-1985, NOT UNDER CPC. Accordingly there was no misjoinder of the Respondents and it is not necessary to make Union of India a party in the application under the Act aforesaid.



(A/B/C)

- 5 -

His point is, therefore, baseless and needs no consideration of the Hon'ble Tribunal.

7- That statements of Shri Bhatia against the contentions of the Applicant in paras-1 to 3 need no reply, except to his remarks about para-3(iv).

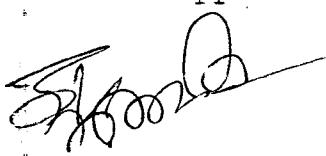
It is submitted that Shri Bhatia has no sense about "communication" and "order". Annexure-4 of the application is a letter communicating the order passed on his application mentioned therein. Shri Bhatia, as his usual habit, has also made this false statement.

8- That no comment is required on the statements against para-4 of the application.

9- That the contentions of the Respondents against para-5 of the application are denied in full and claims in para-5 of the application are reiterated. It is also submitted that any thing stated against the claims in para-5 of the application in para-3 of the ir W.S. are irrelevant on the point. This point has already been considered by the Hon'ble Tribunal and since admitted the application.

10- That contentions of the Respondents in the W.S. against the claim in para-6(i) of the application, are irrelevant and false in respect of the claim that 50% posts of Assistants are filled through UPSC. It is submitted that as far as promotion of the Applicant to the post of Assistant in the clerical cadre service in RDSO from amongst the UDCs of RDSO is a "NON-selection" post. The claims of the Applicant are reiterated.

11- That the Respondents have admitted the claim of the Applicant in para-6(ii) of the application and,



.....6

ABT

therefore, warrants no comment.

12- That the Respondents have admitted the claim of the applicant in para-6(iii), not being controverted by them.

13- That the contentions of the Respondents against para -6(iv) of the application are denied in full. The claim of the applicant in the aforesaid para is reiterated being relevant to the claim.

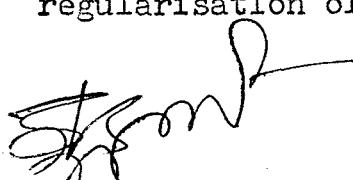
14- That the Respondents have admitted the claim of the Applicant in para-6(v) of the application, hence no comments.

15- That the contentions of the Respondents against para-6(vi) of the application are denied in full, being irrelevant to the point of his claim. The so called R & P Rules attached with the W.S., is not a material evidence in this case, nor is applicable to the Applicant's case; because of the reason that the said order have effect from 28-3-1987 i.e. after his promotion and regularisation.

16- That the contentions of the Respondents against para-6(vii) of the application are denied in full. The claims of the Applicant in the aforesaid para are reiterated.

The statements of Shri Bhatia(on behalf of Respondents) in this respect are irrelevant to the point in the claim. They have not submitted any valid ground for not regularising the applicant within 03 months of his adhoc promotion from 24-9-1984 and they have utterly failed to show any ground and any valid rule in support of their not taking timely decision for regularisation of the Applicant.

.....7



AOA

- 7 -

17- That the contentions of the Respondents against para-6(viii) are denied in full being false statement; and so called rules of filling of 50% of the posts of Assistants having not come into operation at the relevant time. There is no provision for making short gap arrangement for filling up posts of 50% Quota of UPSC candidates by the departmental candidates on adhoc basis. In the case of non-availability of UPSC nominated candidates, posts/vacancies of UPSC Quota are operated by departmental suitable candidates after their being determined suitable by the DPC. Hence, their claims are totally fictitious and concocted stories, the Quota-Rota System having been broken at the relevant time.

18- That the contentions of the Respondents against para-6(ix) of the application are denied in full and the claims of the applicant in the aforesaid para are reiterated. The R & P Rules referred to by Respondents are irrelevant in this case.

19- That the contentions of the Respondents against para-6(x) are denied in full. The Respondents have not contradicted the claim of the Applicant in para-6(x) and, therefore, the same stands admitted in the absence of their denial.

20- That the contentions of the Respondents against para-6(xi) about its absence, it is submitted that it is an inadvertant typing mistake and also not material on the point of the claim.

21- That the contentions of the Respondents against claim of the Applicant in para-6(xii) are denied in full and claims of the Applicant in the aforesaid para are reiterated. The Rly. Board's letter referred to in



.....8

that statements about future appointments and promotions to the post of Assistants occurring after 1-11-1978 was only an administrative instruction, not a rule. Again, it is submitted that the administrative instruction given by the Railway Board was not given effect in RDSO. However, a copy of the R & P Rules applicable in the Applicant's case is attached herewith as Annexure-RA-II for ready reference of the Hon'ble Tribunal. As may be seen from the relevant R & P Rules applicable in this instant case of the Applicant, DPC consisted of only one Officer and Applicant's promotion to the post of Assistant on the basis of determination of his suitability was adjudged by the Competent DPC in this case, and this fact has been admitted by the Respondents as claimed in para-6(v) of the application. Therefore, the statements against the Applicant's claim for regularisation from the date of occurrence of the vacancy or from the date of the Applicant's promotion in the face of their admission has no leg to stand before the law.

22- That the contentions of the Respondents are denied to the extent that the Applicant was not exclusively promoted against the vacany caused as a result of promotion of Shri P.K.Dhar. Their contentions stand automatically rejected by their own confession against para-6(xiii) relevant portion of their confession is reproduced below for handy and ready reference of the Hon'ble Tribunal:

"..... the petitioner was promoted
in the chain arrangement of Sh.P.K.Dhar "

23- That the contentions of the Respondents against para-6 (xiv) are denied and claims of the Applicant in the aforesaid para are reiterated. Relevent judgements of the Courts will be referred to the Hon'ble Tribunal at the time of argument



(R.D.O)

- 9 -

24- That the contentions of the Respondents against the claims of the Applicant in para-6 (xv) of the application are denied. The Respondents have confirmed that the Applicant's promotion was made in the chain of Shri P.K.Dhar's promotion as Assistant Incharge and other statements made in this para regarding benefits of 3 available vacancies have no relevency on the point of his claims.

The statements of the Respondents in respect of applicability of I.D.Act etc. on the RDSO is totally a mis-statement. The Hon'ble High Court of Allahabad had made the rules final in several cases regarding applicability of the I.D.Act etc on the R.D.S.O. in affirmative. The Hon'ble Supreme Court have also confirmed the rules made by the High Courts about applicability of I.D.Act on R.D.S.O. If required judgements of the High-Courts and the Supreme-Court would be referred to the Hon'ble Tribunal at the time of argument.

It is also submitted for records of the Hon'ble Tribunal that the statements of the Respondents in respect of RDSO's being attached Office to Ministry of Railways is a total lie. Telling-a-lie before the Judicial Authorities is the normal practice for the RDSO and is going scot free every time without any punishment for mis-statements before the Lawful Authorities.

The Respondents are liable to punishment for their false statements before the Hon'ble Tribunal, which is a Court of Law for the contempt of the Court under Section 2 of the Contempt of Court Act and also under Sections 167, 177, 182 and 199 of the I.P.C. It is prayed herein to the Hon'ble Tribunal for instituting a Contempt of Court Case, and also a proceeding against the Respondents under Sections 167, 177, 182 and 199 of the I.P.C., to cause restraints on the Respondents for

.....10



their false statements before the Hon'ble Tribunal.

The statements of the Respondents, in respect of the Applicant's salary being more than Rs.1600/- per month for the purpose of application of I.D.Act etc., have no meaning or relevance on the applicability of the Law on the Workman under I.D.Act. Their statements is totally illegal.

25- That the contentions of the Respondents against the claims of the Applicant in para-6 (xvi) of the application are denied in full and the claims of the Applicant in the aforesaid para are reiterated.

Regarding the Applicant's promotion against the vacancy of Shri P.K.Dhar has no relevance with the promotion of other two co-workers against two other separate vacancies, as the Respondents have repeatedly tried to focus in their statements. The Applicant has already reiterated the benefits admissible to the Applicant on his being promoted vice Shri P.K.Dhar elsewhere in the fore-going paragraph.

The rules referred to by the Respondents in respect of Shri P.K.Dhar's promotion as Section Officer (Ministerial) has no relation on the promotion of the Applicant. The only point of the Applicant's promotion is related to his promotion against a regular vacany caused as a result of promotion of Shri Dhar as Section Officer (Ministerial).

The statements of the Respondents regarding applicability of Railway Board's letter dated 13-8-59 (Annexure-18 to the application) in the case of the Applicant are mis-statements. The rules made by the Board as contained in their letter (Annexure-18 to the application)



AG2

are certainly applicable on the Applicant in respect of his promotion against the post of Assistant filled by the Departmental Candidates being a "Non-selection" post. The Rules of the Board also regulate the fixation of seniority of the Staff appointed by promotion against the "Non-selection" posts.

26- That the contentions of the Respondents against the Applicant's claims in para 6(xvii & xviii) are denied in full and the claims of the Applicant in the aforesaid paragraphs are reiterated.

27- That the contentions of the Respondents against the claims of the Applicant in para-6(xix) -6(xxi) are denied in full and claims of the Applicant in the aforesaid paragraphs of his application are reiterated. It is also clarified that the Applicant was then the Leader of the workers and was responsible for bringing out the irregularities, illegalities and favouritism to any person, and it is not necessarily required to his being in line for promotion to any gazetted post.

28- That the contentions of the Respondents against the claims of the Applicant in para-6(xxii) of his application are denied in full and his claim in the aforesaid para is reiterated.

29- That the contentions of the Respondents against the claims of the Applicant in para-6(xxiii) are denied in full. It is reiterated that the justice bestowed to Shri R.K.Mallick(Annexure-19 to the application) has application in the case of the Applicant as well, the principles in that case being analogous and similar in the case of the Applicant.

S B M 2

(Aq3)

- 30- That the contentions of the Respondents against para-6(xxiv) of the application are denied in full and claims of the Applicant in the aforesaid para are reiterated.
- 31- That the contentions of the Respondents against the claim of the Applicant in para-6(xxv) are denied and the claims of the Applicant in the aforesaid para of the application are reiterated. The relevant decision of the Principal Bench of the Hon'ble Central Administrative Tribunal would be referred to the Hon'ble Tribunal at the time of argument.
- 32- That the contentions of the Respondents against the claim of the Applicant in para-6(xxvi) are denied in full and the claims of the Applicant in the aforesaid para of the application are reiterated.
- 33- That the contentions of the Respondents against claims of the Applicant in paras 7 and 8 are denied in full and the claims of the Applicant in the aforesaid paras of the application are reiterated.
- 34- That the contentions of the Respondents in the concluding paragraphs of their W.S. are denied in full, being wishful and illegal.

Wherefore the Applicant prays that the application pending before the Hon'ble Tribunal are heard early and decided on merits on the basis of the judicial decisions already made final referred to in this Rejoinder Affidavit and the original application as for natural justice to the Applicant.

LUCKNOW:
DATED: 24th January, 1989.


APPLICANT

(P.D.)

GOVERNMENT OF INDIA-MINISTRY OF TRANSPORT
DEPARTMENT OF RAILWAYS
(R. D. S. O.)

No.A/ES/UDC/SL

Dated 28-10-1986.

STAFF NOTICE

Sub:-Seniority list of Class III Ministerial staff(Upper Division Clerk, scale Rs.330-560/RS) as on 1-4-1984.

The seniority list of UDC in the scale Rs.330-560(RS) of RDSO as on 1-4-1984 is enclosed for circulation amongst the staff concerned.

2. The staff may please be asked to note the entries against their names in token of their having seen the entries.
3. Representation, if any, received from the staff may please be forwarded through proper channel to SO/E-II latest by 30-11-1986.

DK/ANM/28.10.86
(Basant Kumar)

for Director General.

DISTRIBUTION

1. Section Officers E-I, II, III, IV, V, VI, Admn, Pass, Rectt., Civil, Research, MP, ED, M&C, S&T, Confld., Hindi, MCW, Elect. and Arch.
2. DCOS, DD/Doc., JD/Pub, TEN.
3. The Secretary, Class III Staff Association, RDSO/Lucknow.
4. The Dy.Director Wagon(I&L)Cell, RDSO, Burnpur C/o Burn Standard Co. Ltd., Burnpur(West Bengal).

....

Seniority List of U.D.C. Scale Rs. 330 - 560 (RS) as on 1.4.84

No.	Actual Name & Comm.	Date of Birth.	Date of Apptt. or Rly. present	Date of Birth in RDSO in the Govt. Service	Date of Confir. or Rly. present	Date of Apptt. or Rly. present	Pay Scale	Section	Remainder
1	S. S. Saxena, B.A.	H 30.7.38	28.12.57	19.2.66	18.12.72	1.10.78	17.9.75	1.2.84	515/- EIV Off G as
2	M.H.Zaidi, Inter Subs.	M 1.1.37	23.1.60	3.3.66	19.6.72	1.4.79	6.2.67	1.6.83	545/- Rectt.
3	O.P.Kapoor, Matric.	H 4.10.42	15.3.61	15.3.61	23.11.72	21.4.79	6.2.67	1.11.83	530/- E-III
4	S.U.Khan, Matric	M 14.2.38	29.12.59	3.6.62	7.6.73	23.4.79	15.4.69	1.6.81	452/- B&S
5	Y.K.Sethi, B.A.	H 15.9.46	5.10.66	5.10.66	6.1.73	23.4.79	21.2.78	1.1.84	464/- TEN Offg. as ADSA
6	Sain Singh, Matric	H 10.9.29	24.3.61	24.3.61	10.7.73	23.4.79	6.2.67	1.6.84	500/- E-II
7	R.L.Rakesh, B.A. LIB	SC 1.9.32	22.7.55	25.4.61	26.9.73	23.4.79	6.2.67	1.9.84	545/- MCW
8	H.C.Srivastava, B.A	H 10.7.37	31.3.55	26.4.61	7.4.73	23.4.79	6.2.67	1.8.84	515/- Rectt
9	Jodh Singh, Matric	S 15.8.82	20.3.62	20.3.62	7.8.73		6.2.67	1.1.84	488/- EII
10	M.P.Jain, B.A. Offg.	H 1.7.31	21.9.55	5.6.61	21.11.73		6.2.67	1.11.84	515/- M&C
11	Tara Chand, Matric	H 12.12.28	30.8.61	30.8.61	13.3.74		6.2.67	1.3.84	560/- Regt
12	J.S.Rawat, Matric.	H 1.7.37	14.6.56	19.11.69	13.3.74		14.6.57	1.1.84	488/- Offg. as E/S
13	Amar Singh, Matric, Offg.	S 1.12.29	12.9.61	12.9.61	12.6.74		6.2.67	1.1.84	530/- Civil
14	Panna Lal, Matric	SC 2.7.42	30.11.61	30.11.61	13.3.74		6.2.67	1.3.84	476/- Welf. Offg.

✓/ are as J.W.I.

15	P.K.Saxena, Matric	H	5.4.50	25.3.70	25.3.70	11.4.77		21.2.78	1.12.83	404/-	Wsl- Offg.
16	S.R.Verma,MA,LLB.	H	16.12.33	8.5.62	8.5.62	12.10.76		15.3.67	1.10.83	433/-	Fare J.WI
17	S.L.Srivastava,BA Offg.	H	25.7.37	8.5.62	8.5.62	31.1.77		15.3.67	1.1.84	464/-	Res
18	K.C.Verma,Offg.	ST	6.6.41	13.1.65	13.1.65	31.1.77		21.3.75	1.1.84	416/-	Elec.
19	G.S.Shukla,BA,Offg.	H	1.2.31	1.5.57	18.4.67	19.12.77		19.8.73	1.12.83	476/-	E-III
20	10 Bhoop Singh,Matric	SC	1.12.48	28.5.69	28.5.69	20.4.79		21.2.78	1.12.83	404/-	S&T
21	11 R.S.Dohre,Matric	SC	10.8.41	7.10.83	8.1.79	21.11.74		7.10.63	1.11.83	428/-	E-III
22	12 S.P.Bindra,Matric	H	12.3.39	31.3.64	21.3.64	19.11.77		31.12.74	1.11.83	428/-	Stores
23	13 S.K.Adhikary,Matric	SC	1.3.35	23.3.55	23.3.55	15.12.77		31.12.74	1.2.84	416/-	Pub.
24	14 Har Narain,Matric	H	27.6.44	9.6.64	9.6.64	2.1.78		31.12.74	1.1.84	428/-	E-III
15	15 Jaya Singh,BA,Offg.	H	11.3.46	10.8.64	10.8.64	2.1.78		31.12.74	1.1.84	428/-	Sr.Dy.DG
26	16 Swaroop Singh, Matric,Offg.	H	17.9.32	27.10.52	27.10.52	2.1.78		31.12.74	1.1.84	404/-	M.P.Dtē.
27	17 Smt.K.D.Vig,H.S. Offg.	H	15.3.33	16.2.65	10.2.65	1.2.78		21.3.75	1.2.84	416/-	E-III
28	18 R.G.Scni,Matric, Offg.	H	10.7.42	29.8.64	29.8.64	11.1.78		21.3.75	1.1.84	428/-	E-IV
29	19 Harish Chandra,BA Offg.	SC	1.1.43	28.7.66	28.7.66	4.1.78		1.4.76	1.1.84	416/-	S&T
30	20 G.Arakiaswamy,B.A. Offg.	Ch.	1.7.35	5.4.57	10.8.62	12.9.78		1.7.69	1.8.84	433/-	Arch.Dtē.
31	21 B.D.Kaka,Offg.	H	2.6.46	9.2.66	9.2.66	1.7.78		21.3.75	1.1.84	404/-	M&C

三

1 - 2 - - - - 3 - - - - 4 - - - - 5 - - - - 6 - - - - 7 - - - - 8 - - - - 9 - - - - 10 - - - - 11 - - - - 12 - - - - 13 - - - - 14

2 22 Sat. Renu Tirth, 8th 15.22.41 22.6.56 22.6.66 25.7.78 17.9.75 1.3.84 452/- Lib.
Inter, offe.

23 5h. Basan + Prakash,
Matrix Offg. 4

24 Animal Life

25. H. G. S. Negi, 21
Oct.

25-1153-281, TES

7 27-11 H.C.Sahai, RA 8.12.46 6.10.66 6.10.56' 6.11.78 21.2.78 1.1.84 404/- Hindi, Offg. as Asstt, Hindi.

4

28.1.5. *Shrawan, HS* H. 5.7.17 27.1.67 22.5.70 (adhoc) 21.2.78 1.3.84 404/- Purchase
LTT, OFIG.

25 Sat. R.K.Dhir, 11 - 14.1.44 12.11.55 13. 3.67 23.5.78 (abnormal) 21.2.78 1.3.84 404/- M.P.Dte

30 J.K.Prasad, B.A.H 1.1.47 24.4.57 21.1.57 1.4.78
102.7.78

31 Taishi Rari, Native, in Office.

32 G.V. ~~REVISOR~~, ^{INTERIM} 26.7.46 2.7.55 2.7.55 24.4.75
O. 226.

1.4.75 1.4.84 1.4.11 - pub.

5.83 370/- ~~5-III~~
Contra - - - 4/-

Szechuan, 34. SC 3.12.48 15.5.68 15.5.68 19.5.79

S./Sh.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
15. S. Sridhar, Offg., BA, H	30.12.48	14.5.68	14.5.68	24.5.80							1.8.80	350/-	Dep. to	TRCOI	
16. 34 A.K. Dhanul, BA, Offg. SC	17.11.42	11.11.68	11.11.68	24.6.80							1.5.83	370/-	E-I		
17. 35 S.N. Panday, HS, Offg. H	30.6.42	25.8.61	25.8.61	14.7.80						21.2.73	1.10.83	352/-	Record		
18. 36 Surinder Kumar, BA, H	1.1.47	14.5.68	14.5.68	14.7.80						21.2.78	1.6.83	380/-	Pass		
19. 37 G.R. Bhardwaj, BA, Offg. H	7.3.47	1.3.69	1.3.69	14.7.80						27.3.80	1.7.83	380/-	Pass		
20. 38 R.N. Prasad, M. Com. Offg. H	20.8.50	10.10.72	10.10.72	2.12.81						21.2.78	1.12.83	380/-	E-I		
21. 39 M.S. Chauhan, Inter, offg. H	25.12.47	22.5.68	22.5.68	6.1.82						1.12.83	380/-	Recd.			
		27.5.73	27.5.73							21.2.78			Off. to 07/2013		
22. 40 M.L. Upal, M. Com. Offg. H	2.2.49	1.3.69	1.3.69	10.3.81											
23. 40 Vijay Singh, BA, Offg. SC	15.12.48	24.7.70	24.7.70	6.8.80						30.5.80	1.6.83	370/-	Engg.		
24. 41 K.J. John, BA, Offg. Ch.	8.11.37	2.6.66	2.6.66	1.2.82						21.2.78	1.9.83	382/-	Confal.		
25. 42 D.R. Chatterjee, MA, Offg. H	19.8.49	25.10.68	25.10.68	31.12.81						1.12.83	380/-	E-IV			
		27.6.73	27.6.73												
26. 43 J.C. Soren, Inter, Offg. SC	5.1.55	13.4.76	13.4.76	25.10.81						1.10.83	350/-	Engg.			
27. 44 D.S. Negi, BA, Offg. H	7.3.48	27.6.58	27.6.58	21.5.82						21.2.73	1.9.83	380/-	J-IV		
28. 45 C.T. Bhatti, BA, Offg. SC	7.2.50	11.8.70	11.8.70	27.7.82						21.2.78	1.6.83	370/-	Pub.		

RECRUITMENT ROUNDS FOR THE POST OF ASSISTANTS, UDCS, STENOGRAPHERS AND LDCS IN RESEARCH DESIGNS AND STANDARDS ORGANISATION (Ministry of Rlys.)

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,
(LUCKNOW BENCH) LUCKNOW.

CASE No. OA 65/88(L)

WRITTEN ARGUMENTS IN FAVOUR OF THE CLAIM OF THE APPLICANT

Sangam Lal Srivastava,
Assistant, R.D.S.O.,
Lucknow.

..... Applicant.

2

versus

The Union of India &
The Director General & Others
R.D.S.O., Lucknow.

.... Respondents.

The Applicant most respectfully submit his argument
in favour of his claims in writing, which are as follows:-

The issues involved in the claims are
as under:-

- 1) Whether the Applicant has been assessed suitable
before his promotion to the post of Assistant by
Competent Authority ? If so, its effect ?
 - 2) Whether the Applicant is entitled to his
regularisation against the vacancies of " NON-
SELECTION" post as per extant rules ? If so, from
which date ?
 - 3) Whether the Applicant is entitled to have the
reliefs prayed for in his prayers of the application
with all attendant benefits, consequent upon a
decision in affirmative on the above two issues
from the date of his promotion i.e. 24-9-1984(FN) ?
- Recd duplicate
and correct now*
*26/6/89
3.10 pm*

Regarding Issue No.1

As per Annexure-1 of the application, the
Applicant had been promoted to the post of Assistant
in the Electrical Directorate against a regular
vacancy of Assistant arisen as a result of posting
of the then incumbent of the post (Shri P.K.Dhar) on
promotion in R&D Section. This promotion was condi-
-tional according to para-2 of Annexure-1 that the
Applicant's promotion was only for 3 months or till

.....2

Sangam Lal Srivastava

RJD

the posting of a regular incumbent, whichever is earlier. This order of promotion explicitly includes the issue of his having been determined suitable for the post in accordance with the extent rule embodied in para-212 of Indian Railway Establishment Manual (in brief hereafter called as " IREM ").

It is pertinent to mention that as per extent rules contained in Railway Board's letter No.E(NG) 170 PM-I/61 dated 6-1-1971, the suitability of the Applicant was determined by perusal of record of service, the main idea of such test is ^{to} judge the employees' knowledge in his work that he is correctly doing and his capability to-do the work of the post for which he is being considered in the test.

In accordance with the extent rules contained in Railway Board's letter No.E(NG) I-81-PM-I-221 dated 28-6-1982, the Board decided that the suitability for promotion of an employee for officiating in a higher grade post should be determined within the minimum possible period.

In the cases of "Selection post" , the Board decided that ~~where~~ ⁶ where the posts are filled by an employee not on the panel, due to the absence of a panel or any other cause, the wages of the incumbent so promoted should not be drawn without General Manager's specific sanction beyond 3 months. In case any delay is anticipated, the General Manager can issue only provisional sanction for a period not exceeding 6 months. It is, therefore, submitted that there is no question of continuing any candidate already determined "suitable" on adhoc basis against the "Non-selection" post beyond 6 months, the candidates for "Non-selection" posts requiring lesser merits compared to those to be posted

S. S. D. N. H.

.....3

A/102

against "Selection posts",

In accordance with the Board's orders for "Non-selection" posts, they had decided an uniform procedure for determination of seniority of staff who were promoted after their passing a Departmental-Examination or after being determined as "Suitable" for promotion against "Non-selection" posts . Annexure-18 to the Application, is relevant in this respect.

In the circumstances of fact brought out above , it has clearly been established that the Applicant had been determined "Suitable", for "Non-selection" post in his channel, for promotion to the grade of Assistant on regular basis. Rules for determining the suitability of candidates for promotion against "Non-selection" posts irrespective of the facts whether the candidates are promoted on adhoc basis or on regular basis are one and the same.

Regarding Issue No.2

It is submitted that in terms of Annexure-1 of the application, the Applicant had been adjudged suitable for his promotion against a vacancy of "Non-selection" post of Assistant. This promotion was ordered maximum for a period of 3 months on adhoc basis or till the posting of a regular incumbent ^{which ever was earlier.} There was no mention in the promotion order(Annexure-1 to the Application) that the Applicant had been promoted against a vacancy reserved for UPSC or LDCE Quota as claimed now by the Respondent No.3 for and on behalf of Respondent No.1 (Annexure-2) of the application). The claims of Respondents in Annexure-2 are prejudicial and after thought. It is worthwhile to mention that there is no quota reserved for UPSC or LDCE.



(4)

It is clarified that the quota for UPSC or LDCE are filled up subject to availability of suitable candidates. In cases where suitable candidates are not available for posting against 40% vacancies and 10% vacancies earmarked for UPSC/SSC and departmental graduate candidates on year to year basis, the Vacancies are filled up by suitable departmental candidates on the basis of seniority-cum-suitability. The vacancies earmarked for UPSC etc., i.e. for candidates other than departmental candidates on seniority-cum-suitability basis, if are filled up by suitable senior most departmental candidates on seniority-cum-suitability, the quota of UPSC etc., stands lapsed. Thereafter whenever candidates from UPSC etc., are appointed, subsequent to the appointment of the senior most departmental candidates, they stand junior to the senior most departmental candidates promoted earlier to the date of appointment of candidates from UPSC etc., in accordance with the rules contained in para-302 of IREM. The relevant portion of the rules is reproduced below for ready reference of the Hon'ble Tribunal.

" In categories of posts partially filled by direct recruitment and partially by promotion, criterion for determination of seniority should be the date of promotion in the case of promotees and date of joining the working post in the case of a direct recruit, subject to maintenance of inter-se-seniority of promotees and direct recruits among themselves."

AOY

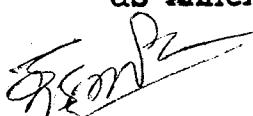
(5)

In the circumstances, even if the candidates of UPSC, etc., as alleged by the Respondents, are appointed after the appointment of the Applicant, they ~~will~~ will be junior and stand as junior, and the Applicant would continue remaining senior to the direct recruits. Hence there is no question of not regularising the Applicant from the date of his promotion i.e. 24-9-1984. Therefore, regularisation from 27-3-1987 (Annexure-3 of the application) is illegal in the face of the rules cited above and Annexure-18 of the application.

It is further stated that in accordance with statutory rules made by the Railway Board under Section-2(b) of the Railway Board Act, 1905 for common application on all Railway servants, which has the force of law, the Applicant had been promoted to a higher "Non-selection" post subsequent to his being determined "suitable" against the non-~~fortuitous~~ vacancy, the suitability for the promotion having been judged on the date of the vacancy in the higher grade or as closed to it as possible, there is no question of his being regularised from a later date to the whims of the Respondents.

The Applicant is entitled to his regularisation against the non-~~fortuitous~~ vacancy of higher "Non-selection" post from the date of his promotion/suitability. The regularisation made from later date i.e. 27-3-1987 (Annexure-3 of the application) is illegal and unsustainable and deserves to be quashed.

It is also mentioned that as per then R&P Rules for the post of Assistants (applicable to the Applicant), copy of which is annexed with the Rejoinder Affidavit as Annexure-RA-II for kind perusal and ready reference,



.....6

(6)

AOV

out of the vacancies arisen from time to time, 50% of the vacancies have been declared as "Non-selection" whereas 10% for Departmental graduate clerks and 40% from Degree holders recruited from open market have been declared as "selection posts." According to column 12 of the R&P Rules in the cases of promotion of Departmental Permanent Clerks, ⁱⁿ ~~there~~ their suitability is determined by a Departmental Promotion-Committee (DPC) consisting of one Officer i.e. Dy. Director General (Dy.DG), whereas DPCs consist of 3 Officers for recruitments to the grade of Assistants for 10% and 40% vacancies through Competitive Selection. The case of the Applicant relates to the promotion of Departmental Candidates of the Year-1984. The suitability of the Applicant according to seniority was correctly determined by the DPC i.e. Dy.DG (which post has now been upgraded and redesignated as Sr.Dy.DG and all powers delegated to then Dy.DG were automatically stood delegated to the present Sr.Dy.DG in the Year-1984).

According to the extent rules of ~~xxx~~ recruitment/promotion, there was Quota-Rota System in filling up of vacancies in the grade of Assistants and this Quota-Rota System had broken down and the Quota - Rota System was not followed. The DPC did not regularly meet for recruitment of 10% and 40% vacancies. As a result the Departmental candidates, including the Applicant, were promoted to the next higher grade in his channel of promotion after regular vacancies accrued and the Applicant had continued on adhoc basis even long after the regular vacancies had arisen. The adhoc officiating in the higher grade rendered by the Applicant without any break or reversion and continued

(7)

A/06

officiating to earn regular annual increments.

The Principal Bench of the Hon'ble Central-Administrative Tribunal, New Delhi, in the case of S.C.Kacktwana vs. Union of India (decided on 6-3-1987), Registration No.T-1250 of 1985 (Judgement copy of which is attached herewith as Annexure-WA-I) AND the Allahabad Bench of Hon'ble Central Administrative Tribunal in the case of Shri R.K.Mallick vs. DG/RDSO and Others (decided on 22-6-1987), Registration No.T.A. 259 of 1986 (Judgement copy of which is annexed as Annexure-19 of the Application), had already ~~been~~ ^{SG} decided the same point involved in this instant case of the Applicant about entitlement of regularisation from the date of his promotion (i.e. 24-9-1984) against "Non-selection" post, where Quota-Rota System had failed and the date of effect of his seniority etc. In addition, the Hon'ble Supreme Court has also set at rest the same point involved in this case by a number of rulings culminating in the case of Narendra Chadha vs. Union of India (AIR 1986 SC 638), K.N.Mishra vs. Union of India (AIR 1986 272 Supra), G.S.Lamba vs. Union of India (AIR 1985 SC 1019), O.P. Singhla vs. Union of India (AIR 1984 SC 1595), A.Janardan vs. Union of India (AIR 1983 SC 769).

Regarding Issue No.3

Mentioned above, the Applicant is entitled to have all the reliefs prayed for in his application with all ^{attendant} ~~contended~~ benefits like seniority, Pay fixation etc., from the date of his promotion to the ~~1st~~ grade of Assistant i.e. 24-9-1984.

4107

(8)

Wherefore, it is prayed that the Hon'ble Central Administrative Tribunal may kindly be pleased to pass a favourable order in favour of the Applicant, against the Respondents. The Respondents may kindly be ordered to give effect of the C.A.T's decision within a period of one month from the date of judgement for which act of justice the Applicant shall remain ever indebted to the Hon'ble Tribunal.

LUCKNOW 26.6.1989
DATED: ~~30.3.1989~~


APPLICANT.

(AOB)

A.T.R. 1987(2) C.A.T. 22

**CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

*Hon'ble Shri S.P. Mukerji, A.M.
and*

Hon'ble Shri H.P. Bagchi, J.M.

Regn. No. T-1250 of 1985

(C.W. 2588 of 1985)

Decided on 6.3.1987

Shri S.C. Kacktwana & Ors. — Petitioners
versus

Union of India & Ors. — Respondents

**Central information Service Rules
1959—Seniority—Inter se—Seniority between the promotees and direct recruits where rota quota system has failed — How to be determined.**

Held:

This controversy has been set at rest by a number of rulings of the Supreme Court of India culminating in the case of *Narendra Chudhia v. Union of India* reported in A.I.R. 1986 S.C. 638. These rulings have been adopted in *K.N. Misra v. Union of India* reported in A.T.R. 1986(2) 270. It has now been firmly established that where quota rota system has failed the inter-se seniority between the promotees and direct recruits should be determined on the basis of the length of officiation and officiation even in an ad hoc or temporary capacity also has to be counted.

The petition was allowed with a direction that the seniority of the petitioners should be revised within a period of four months by taking into account their entire period of continuous ad hoc officiation preceding their regular appointment to that grade for the purpose of seniority. They should also be given all consequential benefits of promotion, arrears of pay and allowance and increased retirement benefits on the basis of revised seniority with reference to the pay and post held by those who would be immediately junior in the repetitive grades in accordance with the revised seniority list.

For the Petitioners — Shri B.S. Charya, Advocate.

For the Respondents — Shri M.L. Verma, Advocate.

JUDGMENT

Shri S.P. Mukerji, A.M.—Shri Kacktwana and 26 other petitioners, who were working in the Junior Administrative Grade and Grade I of the Central Information Service (CIS) moved the High Court of Delhi through a writ petition dated 27.9.85 under Article 226 of the Constitution praying that their officiating *ad hoc* period of service in Grade III, Grade II and Grade I of the CIS should be treated as regular and they should be given the benefit of seniority in these grades from the date of their appointment in respective grades vis-a-vis the direct recruits. They have also prayed that the concerned seniority lists should be revised and the petitioners should be given arrears of pay, allowances and retirement benefits etc. as also promotions based on the revised seniority. The petition stood transferred to the Tribunal under Section 29 of the Administrative Tribunals Act.

2. The brief material facts of the case can be narrated as follows. The Central Information Service Rules 1959 were notified on 16.2.59 constituting the Central Information Service and laying down the methods of appointment to the various grades of the Service. The vacancies in Grade III were to be filled by promotion on the recommendation of the DPC, from Grade IV. 50% of permanent vacancies in Grade II are to be filled up by appointment of temporary Grade II Officers in the order of seniority and temporary vacancies in Grade II are to be filled up by selection of officers in Grade III. All vacancies in Grade I are to be filled up by promotion on the basis of seniority in Grade II of the officers and all the vacancies in the Junior Administrative Grade are to be filled by selection of Grade I Officers through DPC. The petitioners' grievance is that after the initial constitution of the Service even though they were qualified to be promoted to the next higher grade, they were denied regular promotion to the higher grades, but were continued in *ad hoc* promotion long after the regular vacancies had accrued. According to them,

A/09

the *ad hoc* officiation in the higher grades rendered by them was without any break or reversion and they had continued to earn regular increments, crossed the efficiency bar during the *ad hoc* period and subsequently regularised in these grades. The DPC did not meet regularly and direct recruits who joined the grade later were placed above in the seniority list of that grade. They have adverted to a number of rulings given by the Supreme Court of India, according to which, it has been repeatedly held that where direct recruits and promotees have not been appointed regularly, systematically and on a year to year basis and quota-rota system has failed, *inter se* seniority between promotees and direct recruits should be based on the length of officiating service. The respondents have argued that some of the promotees had to be accommodated against vacancies which were in excess of their quota and therefore could be appointed only on *ad hoc* basis and the service rendered by them in excess of promotion quota could not be taken into account for seniority.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The question involved in this case is the principle to be followed in determination of the *inter se* seniority between the promotees and direct recruits where *rota-quota* system has failed. This controversy has been set at rest by a number of rulings of the Supreme Court of India culminating in the case of *Narender Chadha v. Union of India* : reported in A.I.R. 1986 S.C. 638. These rulings have been adopted in *K.N. Misra v. Union of India* reported in A.T.K. 1986(2) 270. It has now been firmly established that where *quota rota* system has failed the *inter se* seniority between the promotees and direct recruits should be determined on the basis of the length of officiation and officiation even in an *ad hoc* or temporary capacity also has to be counted. We can do no better than to give the following quotations from the lucid and learned judgment of the Hon'ble Shri K. Madhava Reddy, Chairman of the Central Administrative Tribunal in *K.N. Misra's* case (supra). In this judgment the various rulings of the Supreme Court were analysed threadbare to conclude that once the *quota-rota* system has broken down, there is no

escape from the application of well-settled principle of computing the period of continuous officiation for determining the seniority. The quotations, relevant for the purposes of this case, read as under :—

“The case of *O.P. Singla v. Union of India*, (supra) and *G.S. Lamba v. A. Janardhana* thus place promotees appointed to post in the service whether such appointment is to temporary post or of a substantive vacancy in the temporary on par with those appointed regularly to the extent of their quota. If the quota and rota rule is not followed and it has broken down, their seniority is counted on the basis of their continuous officiation against posts irrespective of whether their appointment to the temporary posts or permanent posts or substantive posts in temporary capacity.

“In a more recent case *Narender Chadha v. Union of India* even persons promoted in violation of rules and working for more than 15 years, the entire period of officiation was directed to be counted for the purpose of seniority vis-a-vis the direct recruits. The Supreme Court observed :

“...We are faced in this case with the problem of resolving conflicts which have arisen on account of a violent departure made by the Government from the Rules of Recruitment by allowing those who were appointed contrary to the Rules to hold the posts continuously over a long period of time. The question is whether after such a long period it is open to the Government to place them in seniority at a place lower than the place held by persons who were directly recruited after they had been promoted, and whether it would not violate articles 14 and 16 of the Constitution if the Government is allowed to do so. Promotions of officers have been made in this case deliberately and in vacancies which have lasted for a long time...”

“Taking that fact into consideration, even while declaring :

ADM

"...it is not our view that whenever a person is appointed in a post without following the Rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. But in a case of the kind before us where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the service at all, particularly where the Government is endowed with the power to relax the Rules to avoid unjust results."

"As referred to in the several decisions of the Supreme Court, the Supreme Court directed that all persons who are promoted to the several posts contrary to the rules, as having been regularly appointed to the said posts and they be assigned their seniority in the cadre "with effect from the dates from which they were continuously officiating in the said post."

xx xx xx xx

"In sum, the benefit of this long period of service would accrue to all promotees, who have continuously officiated against long term vacancies and long term vacancies would be those that "are not for a few days or a few months or are other adventitious". Irrespective of whether the posts were temporary or permanent, so long as the promotion was against long term or substantive vacancies and not against short term or fortuitous vacancies the period of continuous officiation would have to be reckoned for determining seniority. Whether the vacancies occurred due to long term deputation or long leave due to death, retirement, resignation, dismissal or removal, or due to promotion regular, *ad hoc*, officiating or otherwise, and whether the deputationists or promotees hold a lien or not, the benefit of con-

tinuous officiation would accrue to promotees against such vacancies."

xx xx xx xx

"When the quota and rota rule has broken down, as laid down by the Supreme Court, the appointment of promotees in excess of the quota, such appointment would be valid and the principle of continuous officiation would have to be given effect to. No doubt vacancies arise each year and recruitment has to be made year after year. Only because that was not done, the quota and rota rule had broken down, not just in an year or two, but for over a decade and officiating promotions from out of a select list on long term basis had to be made. There is no reason to ignore the continuous officiation of such promotees in the matter of reckoning their seniority. No judgment of the Supreme Court has been brought to our notice which so directs. By applying this principle of continuous officiation, while the direct recruits get the benefit of the total length of their service from the date of their continuous officiating appointment, none of them will steal a march over the promotees who were already appointed to the service. Not every promotee but only those who have been promoted on an officiating basis against long term vacancies, (not against leave or fortuitous vacancies) and who have continued as such without reversion, would get the benefit of this rule."

4. In the facts and circumstances given above, we have no doubt in our mind that *ad hoc* officiation of the petitioners in the various grades followed by regular appointment to that grade cannot be taken to be either irregular or fortuitous since there was no reversion, and it was followed by regular appointment to that grade. In view of the rulings of the Supreme Court and of the Principal Bench of the Tribunal, the petition has to be allowed with this direction that the seniority of the petitioners should be revised within a period of next four months by taking into account their

entire period of continuous *ad hoc* officiation preceding their regular appointment to that grade for the purpose of seniority. They should also be given all consequential benefits of promotion, arrears of pay and allowances and increased retirement benefits on the basis of their revised seniority with reference to the pay and post held by those who would be immediately junior in the respective grades in accordance with the revised seniority list. There will be no order as to costs.

when all the posts in question form part of one cadre or sub cadre of the Central Health Service. Such a contention could be valid only if the posts are isolated and selections are made against specific posts.

Even though the vacancies for the post of Professor of Medicine, JIPMER, Pondicherry and the posts of Professor of Medicine at Delhi arose at different times, the D.P.C. considered all the three vacancies at the meeting held in February, 1986 and recommended three names. While the rules relied upon by the learned counsel for the applicant do provide that the selections shall be made yearwise in accordance with occurrence of the vacancies and also that the promotions will be made in order of names mentioned in the panel, it is nowhere provided that the posting or promotions from the panel shall be in the order in which the vacancies arise. It is quite possible that if the vacancy relating to the post of Professor of Medicine, JIPMER, Pondicherry had in the first instance been considered by the D.P.C. and only one name would have been recommended, the person so recommended would have been promoted against the said post. But when selections are made for a number of posts at the same time even though vacancies might have arisen at different times and a consolidated panel is drawn up, it is certainly the prerogative of the appointing authority to promote person from the said panel in the order in which the names are mentioned in the panel to any vacancies that may be available at the time of the posting irrespective of the dates when the vacancies arose.

For the Applicant — Shri E.X. Joseph, Advocate.

For the Respondents — Shri M. L. Verma, Advocate.

JUDGMENT

Shri Kaushal Kumar, M.—The applicant, holding the post of Associate Professor of Medicine, Maulana Azad Medical College and Physician in the Lok Nayak Jayaprakash Hospital and G.B. Pant Hospital, New Delhi, which is a Specialist Grade II post in the Teaching Specialists Sub-cadre of the Central Health Service, has through this application

A.T.R. 1987(2) C.A.T. 25
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

Hon'ble Shri K. Madhava Reddy, Chairman

and

Hon'ble Shri Kaushal Kumar, M.A.

O.A. No. 668 of 1986

Decided on 26.3.1987

M.P. Shrivastava

—Applicant

versus

Union of India & Ors.

—Respondents

Principle for promotion—

Instructions issued by the Govt. of India Deptt. Personnel & Adm. Reforms Office memorandum No. 22011/3/76—Estt. (D) dated 24.12.80—Principle for promotion to 'Selection'.

Three post of Professor of Medicine falling vacant at different times—Post at Pondicherry falling vacant in 1981 and two posts at New Delhi in 1985—D.P.C. recommended three names for those posts—Applicant's name was at S. No. 3—Applicant if has any right for promotion and posting against a particular post when all the three posts form part of one Cadre.

Held:

The applicant has no legal right for promotion and posting against a particular post

filed today

A/2

4/4

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD, LUCKNOW BENCH (LUCKNOW)

CM A/2 No 59/09/4

REGISTRATION NO. OA 65/88(L)

Fixed for 27-4-1989

Sangam Lal Srivastava,
Assistant, R.D.S.O.,
Manak Nagar, Lucknow.

..... Applicant.

versus

The Director General & Others
R.D.S.O., Manak Nagar,
Lucknow.

Respondents.

Sub: Application for amendment in
original application ordered
by the Hon'ble Tribunal on 30-3-1989.

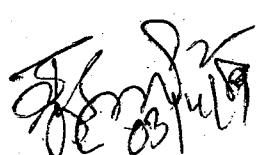
May
1/4
P.S.

The Applicant most respectfully prays to bring the following facts for allowing the following amendment in the original application (Registration No.OA 65/88(L):-

1- That as ordered by the Hon'ble Central Administrative Tribunal on 30-3-1989, I beg to amend the original application aforesaid by adding the UNION OF INDIA, through Director-General, R.D.S.O., Manak Nagar, Lucknow as the Respondent No.1 and also propose to amend the Serial Number of the present Respondents No. 1, 2 and 3 as Respondents No. 2, 3 & 4 respectively.

2- That as it has now been ordered by the Hon'ble Tribunal in the above mentioned case on 30-3-1989, to implead UNION OF INDIA ALSO as a necessary party, the Applicant feels most obliged to beg to the Hon'ble Tribunal to allow the Applicant to make amendments in the original application " 1. The Union of India may be allowed to be added as Respondent No.1 " and as prayed in paras 3 and 4 below:-

.....2



(2)

3- That " 1. The Union of India as Respondent No.1 and the final positions of the Respondents would thus stand as under:-

- (1) The Union of India through Director General, RDSO, Manak Nagar, Lucknow.
- (2) The Director General, R.D.S.O., Manak Nagar, Lucknow.
- (3) Then Senior Deputy Director General, R.D.S.O., Manak Nagar, Lucknow.
- (4) The Deputy Director(Estt.)-II, R.D.S.O., Manak Nagar, Lucknow.

4- That

- (a) At page-3 in para 6(v) in line 4 in bracket after the word Respondent Number the digit '2' may be allowed to strike off and in its place digit '3' be allowed to be written,
- (b) At page 3 in para 6(vii) in line 5 after the word Respondent Number the digit '1' may be allowed to strike off and in its place digit '2' be allowed to be written,
- (c) At page 6 in para(xix) in line 1 after the word Respondent Number the digit '3' may be allowed to strike off and in its place digit '4' be allowed to be written,
- (d) At page 7 in para 6(xx) in line 1 after the word Respondent Number the digit '3' may be allowed to strike off and in its place digit '4' be allowed to be written,
- (e) At page 7 in para 6(xxi) in line 4 after the word Respondent Number the digit '3' may be allowed to strike off and in its place digit '4' be allowed to be written,
- (f) ~~At~~ At page 7 in para 6 (xxii) in line 1 after the word Respondents Number the digits ' 1 & 2' may be allowed to strike off and in its place digits ' 2 & 3' and ALSO

.....3

Govt of India

(3)

All

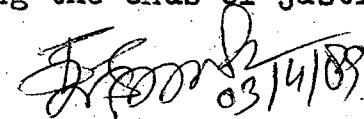
at the same page and same para line 3 after the word Respondent Number the digit '3' to strike off and in its place digit '4' and in line 4 after the word Respondent Number the digit '3' may be allowed to strike off and in its place digit '4' may be allowed to be written,

- (g) At page 7 para 6(xxiii) in lines 3/4 after the word Respondent Number the digit '3' may be allowed to strike off and in its place digit '4' be allowed to be written
AND
- (h) At page 8 para 6 (xxvi) in line 2 after the word Respondent Number the digit '1' may be allowed to strike off and in its place digit '2' and also at the same page and para in line 4 after the word Respondent Number the digit '3' may be allowed to strike off and in its place digit '4' be allowed to be written.

WHEREFORE, the Applicant most respectfully prays the Hon'ble Tribunal will be pleased to allow the amendment application and impleadment along with consequential amendments for seeking the ends of justice and equity.

LUCKNOW:

Dated: 03-4-1989.


03/4/89

APPLICANT.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH LUCKNOW

S.C.P

Supplementary Counter in reply to the Rejoinder affidavit
filed by Shri Sangam Lal Srivastava.

IN

Registration No. O.A. No. 65 of 1988 (L)

Sangam Lal Srivastava Applicant
Vs.
Union of India and others Respondents.

That the Respondents most respectfully beg to submit the following:

I. That before giving parawise reply to the Rejoinder filed by the applicant, the answering respondents with the leave of this Hon'ble Tribunal seriously object to the language used by the applicant in his rejoinder affidavit which is unparliamentary and highly objectionable. The Hon'ble Tribunal may kindly take notice of the same and take appropriate action for the same against the applicant.

II Parawise comments on the rejoinder affidavit are submitted as under:

Para 1-: Vide Notification No. E(G)82LL2-2 dated 21.2.83, issued by the Railway Board (Copy at Annexure S-1) in the Research Desgns and Standards Organisation Deputy Director Estt. has been authorised by the Central Government to act on behalf of the Central Government in respect of any judicial proceedings relating to Railway Administration, and as such the Written Statement filed by the Dy. Director/Estt-I on behalf of Respondents is perfectly in order, and the allegation made by the Petitioner is baseless.

Para-2 : As regards para 2, it may be mentioned that Affidavits are filed by the Authorised Officers after getting the relevant material from the respective Personnel Branches and, therefore the Deponent is fully authorised to file the Affidavit on behalf of the Respondents. The language used by the Petitioner

By. Director Establishment,
R. D. S. O., Ministry of Railways
Alambagh, LUCKNOW-5

Reed w/
Comptt.
S. S. 27/4/89

(A/C)

is most objectionable and Hon'ble Tribunal can take note of the same.

Para 3(i) As regards para 3(i), it may be mentioned that Sh. Sangam Lal Srivastava was first promoted w.e.f. 20.1.78 in terms of Staff Posting Order No. 28 of 1978 dt. 19.1.78 (~~copy sent~~ ~~sent~~ ~~sent~~ ~~sent~~), but subsequently on reconsider^{er} his representation ^{that} it was found he is to be given proforma position w.e.f. 31.1.77. Unfortunately, no entry to this effect has been made in his Service Records due to oversight and as such while giving the brief history of the case in the written statement it was indicated that he was promoted as Upper Division Clerk w.e.f. 20.1.78 as the proforma position in UDC's grade was given to him subsequently. However, the date of his promotion as UDC from 1977 or 1978 is irrelevant in the instant case as it has no bearing on his grievance.

Para 3(ii) As regards para 3(ii), it is submitted that the contention of the Petitioner is entirely wrong and misleading. As will be seen from the Staff Posting Order No. 386 of 1984, he along with others was promoted as Assistant purely on ad-hoc arrangement for a period not exceeding 3 months or till the regular incumbent was posted, whichever was earlier. As it was not possible to get the regular incumbents during that period, his ad-hoc promotion was further extended from time to time vide Staff Posting Orders No. 386 of 1984, 4 of 1985, 125 of 1985 279 of 1985 and 460 of 1985 (copies at Annexures S-2, S-3, S-4, S-5, S-6). In the meantime, the Petitioner was relieved of his duties on 1.11.85 (AN) to proceed on deputation to Iraq through IRCON. The Petitioner maintained his position as Assistant on ad-hoc basis till such time he was not regularised. This was further confirmed vide this Office letter No. APC-166 dated 17/18.6.86 (copy at Annexure S-7) addressed to the

By. Director Establishment,
R. D. S. O., Ministry of Railway,
Alambagh, LUCKNOW-5

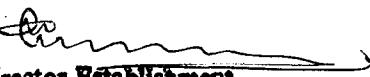


Manager(P), IRCON/New Delhi. He was, however, regularised as Assistant w.e.f. 27.3.87 along with other eligible staff in his turn vide Staff Posting Order No.101/87. Therefore, the Petitioner cannot claim that he should have been regularised within a period of 3 months of his first ad-hoc promotion because his first ad-hoc promotion for a period of 3 months was subsequently extended at least 4 times by notifying various Staff Posting Orders as quoted above.

Para 4 : 'As regards para 4, it may be mentioned that the same are not admitted as framed. The position stated in para 6(vii) of the Written Statement is reiterated. The Petitioner was considered for regularisation alongwith others in their turn as and when the vacancies for regularisation against the departmental quota were available and his turn came. The vacancies against which the Petitioner and others were initially promoted were intended to be filled through Staff Selection Commission, candidates were not available, Ad-hoc arrangements were made from amongst the Departmental candidates which continued till 1987.

Para 5: That the contents of para 5 of rejoinder affidavit are categorically denied. The preliminary objections are legal in nature and can be raised at any stage of proceedings.

Para 6: That the contents of para 6 of rejoinder affidavit are categorically denied. It is very much surprising that even when the Hon'ble Tribunal taking note of the second preliminary objection directed the Applicant to implead Union of India as a party even after that this para has been drafted challenging the direction of this Hon'ble Tribunal on one side and filing an amendment application impleading Union of India as a party on the other side. The Hon'ble Tribunal may kindly take a special note of this point.


Dy. Director Establishment,
R. D. S. O., Ministry of Railways,
Alambagh, LUCKNOW-5

(A/C)

Para 7: As regards para 7, it may be mentioned that the Hon'ble Tribunal may kindly refer to the particular Memo at Annexure-4 of the petition which is a communication addressed to Sh. Sangam Lal Srivastava and the language used by him in para 7 of his rejoinder affidavit.

Para 8: As regards para 8, it needs no comments.

Para 9: That the contents of para 9 of Rejoinder Affidavit are categorically denied and that of para 5 of Written Statement is reiterated as correct.

Para 10: As regards para 10, the comments given against para 6(i) of the Written Statement are reiterated. The method of recruitment has been indicated in the Recruitment and Promotion Rules as per Annexure R-I of the Written Statement.

Para 11: As regards para 11, the same needs no comments.

Para 12: As regards para 12, it is wrong to say that the Respondents have admitted the claim of the Petitioner. Rather clear-cut position has been given against para 6(iii) of the Written Statement.

Para 13: As regards para 13, it may be mentioned that the remarks given in the Written Statement against para 6(iii) has been accepted by the Petitioner himself vide para 12 of his reply.

Para 14: As regards para 14, the same needs no comments.

Para 15: That the contents of para 15 of Rejoinder Affidavit are denied while that of para 6(vi) of Written statement is reiterated as correct as the Petitioner is talking about the Extant R&P Rules.

Para 16: As regards para 16, it may be mentioned that the Petitioner was promoted first w.e.f. 24.9.84 purely on Ad-hoc basis as Assistant for a period of 3 months which was extended at the intervals of 3 months from time to time as stated in para 3(ii) above. The vacancy against which the Petitioner was

ATA

working has to be filled through Staff Selection Commission candidates and Limited Departmental ^{Competitive} Candidates Examination candidates and till such time the candidates from both the sources were ^{not} available to RDSO, ad-hoc arrangements were made from amongst the departmental candidates. The Petitioner was regularised in his turn against the quota of departmental candidates as and when the vacancy fell in the departmental share. Moreover, the Petitioner can not expect that the ad-hoc promotions made, will be regularised within a short period of 3 months to suit his convenience. Therefore, the contention of the petitioner against this para is irrelevant and baseless.

Para 17: As regards para 17, the remarks given against para 6(viii) of the Written Statement are reiterated. It may be mentioned that Union Public Service Commission/Staff Selection Commission ~~and also~~ make only one selection for Assistant grade in a Year and the process of making requisition for the post of Assistant to UPSC/Staff Selection Commission and also finally getting the candidates nominated through these agencies atleast take one and half years and in the meantime the vacancies are filled from amongst departmental candidates on ad-hoc basis so that the Government work does not suffer.

Para 18: As regards para 18, it is mentioned that the position given in para 18 are denied and the contents given against para 6(ix) of the Written Statement are reiterated. There is no such provision in the Extant R&P Rules as indicated by the Petitioner in para 6(ix) of the Petition.

Para 19: As regards para 19, the remarks given in para 6(x) of the Written Statement are reiterated.

Para 20: As regards para 20 the same calls for no comments.

Para 21: As regards para 21, the remarks given in para 6(xii) of the Written Statement are reiterated. The Railway Board

By Director Establishment
R. D. S. O.,
Amarsh, LUCKNOW.

120

vide their letter No. E(RB) I/69/RB3/9 dated 13.3.79 (copy at Annexure 17 of the Petition) gave only one time relaxation and future appointments and promotions, the Railway Board had said in para 2 of their letter that these should be made according to the Revised R&P Rules. As such the case of the Petitioner was considered for regularisation in his turn.

Para 22: As regards para 22, the remarks given against para 6(xiii) of the Written Statement are reiterated.

Para 23: That para 23 of the Rejoinder Affidavit does not call for a reply.

Para 24: As regards para 24, the remarks in para 6(xv) of the Written Statement are reiterated. In ~~enc of the~~ sub para 24(ii) the Petitioner has stated that the statement made by Respondents that RDSO being an Attached office of Ministry of Railways is a total lie, shows complete ignorance on the part of the Petitioner. In this connection kind attention of the Hon'ble Tribunal is drawn to para 213 of Indian Railways Administration and Finance Published by Ministry of Railways wherein it is clearly stated that RDSO is an Attached office of Ministry of Railways (Railway Board). As such it is for the Hon'ble Tribunal to decide the proper course of action against the Petitioner.

Para 25: As regards para 25, the remarks against para 6(xvi) of the Written Statement are reiterated. As already stated in para 3(ii) above, 3 persons were promoted against 3 vacancies on ad-hoc basis and it was not necessary that any person was to be promoted against a particular vacancy.

Para 26: As regards para 26, that the comments given in para 6(xvi) of the Written statement are reiterated.

Para 27: As regards para 27, that the remarks given in paras ~~6(xvii)~~ 6(xix) to 6(XXI) are reiterated.

Para 28: As regards para 28, that the remarks given in para


By: D. S. Chaturvedi
R.D.C. (S)

4/24

para 6(xxii) of the Written statement are reiterated.

Para 29: As regards para 29, that the remarks given in para 6(xxiii) of the Written statement are reiterated.

Para 30: As regards para 30, that the remarks given in para 6(xxiv) of the Written statement are reiterated.

Para 31: As regards para 31, that the remarks given in para 6(xxv) of the Written statement are reiterated.

Para 32: As regards para 32, that the remarks given in para 6(xxvi) of the Written statement are reiterated.

Para 33: As regards para 33, that the remarks given in paras 7&8 of the Written Statement are reiterated.

Para 34: As regards para 34, that the remarks given in concluding para of the Written statement are reiterated.

In view of the foregoing Petitioner is not entitled for the relief and the Petition is liable to be dismissed.

Lucknow

Dated: 27. 4.89


Deponent, Establishment,
R. D. S. O., Ministry of Railways

VERIFICATION
S. Bhatia, Deputy Director/Estt-1/RDSO, Lucknow
I, the Deponent do hereby solemnly affirm and state
that the contents of paras I & II (1 to 34) are believed to be
true on the basis of available office records and legal advice.
Nothing material has been concealed and no information is false.

Lucknow

Dt. 27.4.89


Deponent.

By. Director Establishment,
R. D. S. O., Ministry of Railways,
Alambagh, LUCKNOW-5

(2) (A) 2
Annexus 5-1

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
RESEARCH DESIGNS AND STANDARDS ORGANISATION, LUCKNOW

A copy of the Railway Board's New Delhi letter No. E(G) 82LL2-2 dated 21.2.83 addressed to DG, RDSO, Lucknow and others.

NOTIFICATION

GSR In pursuance of the provisions of rule 2 of order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) and in supersession of the notification of the Government of India in the Ministry of Railway (Railway Board) No. GSR308 dated 5th August, 1981, the Central Government hereby authorises the officers specified in the Schedule below to act for and on behalf of the Central Government in respect of any judicial proceeding relating to a Railway Administration.

SCHEDULE

MINISTRY OF RAILWAY (RAILWAY BOARD)

- (i) Secretary
- (ii) Joint Secretary
- (iii) Deputy Secretary
- (iv) Under Secretary
- (v) Director
- (vi) Additional Director
- (vii) Joint Director

2. All Railways including Metro Railways, Chittaranjan Locomotive Works, Diesel Locomotive Works, Integral Coach Factory, Whool & Axle Plant, Diesel Component Works, Metropolitan Transport Project, Railway Electrification and Central Organisation for Modernisation of workshops.

- (i) General Manager
- (ii) Chief Administrative Officer
- (iii) Additional General Manager
- (iv) Senior Deputy General Manager
- (v) Additional Chief Vigilance Officer
- (vi) Deputy General Manager
- (vii) Chief Planning Officer
- (viii) Chief Project Officer
- (ix) Deputy Chief Planning Officer
- (x) Chief Public Relations Officer
- (xi) Divisional Railway Manager
- (xii) Additional Divisional Railway Manager
- (xiii) Chief Personnel Officer
- (xiv) Additional Chief Personnel Officer
- (xv) Deputy Chief Personnel Officer
- (xvi) Officer on Special Duty (Industrial Relations)
- (xvii) Senior Divisional Personnel Officer
- (xviii) Chief Security Officer
- (xix) Deputy Chief Security Officer
- (xx) Chief Engineer
- (xxi) Chief Bridge Engineer

Contd..2..

Research Design & Standards Organisation

Manak Nagar

Lucknow-22-6011

SPO No. 386 of 1984

Following promotions / postings are ordered
with immediate effect:- *Colonel*

- 1) Shri S.N. Verma, senior most UDC, working in E-IV Section is promoted to officiate as Asstt. in the Scale Rs.425-800 (RS) and posted in MC&W Dte. against the vacancy vice Shri A.C. Putta.

2) Shri Bhoop Singh, UDC/ S&T Dte., who belongs to SC Community, is promoted to officiate as Asstt. in the scale Rs. 425-800 (RS) against a reserved vacancy for SC, and posted in E-IV section, against the vacancy vice Shri Mihi Lal, purely as an ad hoc arrangement.

3) Shri S.L. Srivastava, next Sr. most UDC Research-Dte. is promoted to officiate as Assistant and posted in Elect. Dte. vice Shri P.K. Dhai. Asstt. posted as Asstt. with C/Allowance in R&D Section.

S/Shri Verma, Bhoop Singh and Srivastava should note that their above mentioned offc. promotions are purely on an ad hoc arrangement for a period not exceeding 03 months or till the posting of a regular incumbent, whichever is earlier. They will be entitled to pay and allowances of the higher grade post of Asstt. on completion of minimum 22 days continuous offc. in that capacity. They should send their charge reports to E-II section, through proper channel, for further necessary action.

1) Shri Blec, B.Sc., M.Sc., M.Tech., M.Phil., Ph.D.,
Guru Nanak Dev Engineering College, Amritsar (P.N. Kapur),
DAV Nil 1/1, D-24400 (A) & For Sr. Dy. Director Genl.

File No. A/E/S/Asstt.

File No. A/ES/Asstt. 683
Manik Nagar, Lucknow. 1933

D/- 21.9.84.

Distribution 1) SPA to Sr. Dy. DG 2) SO(E-III) 3) SO(Civil)

4) JDS(Elect.) 5) SO(R) 6) SO(R), 7) SO MC&W 8) SO(S&T)

9) EAO 10) Staff concerned 11) E-2(10)

Dy. Director Establishment,
R. D. S. O., Ministry of Railways
Almora, LUCKNOW-3

Pl
29/1/85

29/1

Annexe 5-3

En 95

RESEARCH DESIGNS AND STANDARDS ORGANISATION
MANAK NAGAR & LUCKNOW.

STAFF POSTING ORDER NO. 4 OF 1985.

In continuation of SPO No. 386 of 1984, Shri S.L. Srivastava, UDC who was last promoted to officiate as Asstt. from 24.9.84 to 23.12.84, is allowed to continue to officiate in the same capacity for a further period not exceeding 03 months w.e.f. 24.12.84 or till the posting of a regular incumbent, whichever is earlier, purely on adhoc arrangement.

DA: Nil

File No. APC/166,
Manak Nagar, Lko.

Dated. 16.1.1985.

Dear Sir
(P.N. Kapoor)

for Dy. Director General/RDSO.

Distribution.

3/1/85

SPO to Dy.DG, JDS/Elect. IV, SO/E-III, AAO, SO/Confld.;
Staff concerned.

.....

अनुसंधान अधिकारी और मानक संगठन

लखनऊ

1985 का कर्मचारी नियुक्ति आदेश संख्या-4

1984 का कर्मो निर्माण आयोजना संख्या 386 के ग्रम में श्री सप्तरसलालीवास्तव, उमेशलिलो, जिनको 24.08.84 से 23.12.84 तक सहायक के रूप में पदोन्नत किया गया था, 24.12.84 से अगले तीन माह से अधिक न होने वाली अवधि अथवा नियमित पदधारी की तैनाती तक इन दोनों दशाओं में जो पहले घटित हो, तब तक के लिए नियात ही तदर्थ व्यवस्था पाए उसी रूप में पदोन्नत बने रहने हेतु अनुमति किया जाता है।

संलग्न: चुद लही ।
फाईल संख्या 166
मानक नगर, लखनऊ
दिन 16.01.85

प्रोग्राम कार्यक्रम
(पी०स्न०क्ष्या०)
कृते उप महा निदेशक

वितरण
राज सम्बन्धित की।

16/1/85

(श्री)

Dy. Director of Establishment,
R. D. S. O., Ministry of Railways,
Alambagh, LUCKNOW-3

Pl. 1111
9/11/85

issues
by

12

2125

SNO - 96

Annexure S-4

अनुसंधान अधिकृत्य और मानक संगठन

ਲਖਨਤੁ

1985 का कर्मचारी नियुक्ति आदेश। सौ 125

Sept 6th, 102

5
610 94

1985 का कर्मचारी नियुक्ति आदेश संख्या- 4 के क्रम में श्री सस०स्त्र०श्रीवास्त्रव, प्रवार श्रेणी लिपिक, जिनको 24. 12. 84 से 23. 03. 85 तक सहायक के रूप में पदोन्नत बने रहने हेतु अनुमति किया गया था, दिनांक 24. 03. 85 से अगले तीन माह से अधिक न होने वाली अवधि अधूरा नियमित पदधारी की तैनाती तक इन दोनों दशाओं में जो पहले घटित हो, तब तक के लिए नितान्त ही तर्द्य व्यवस्था पर उसी रूप में पदोन्नत बने रहने हेतु अनुमति किया जाता है।

संलग्नः कुछ नहीं ।

फॉर्म नं. १०८. पी. सी/१६६

ਮਜ਼ਾਨ ਨਗਰ, ਲੰਘਨਾਂ

प्रेस बांध कापूर
(पी०स्न०कपूर) १५
कृते निदेशक मानक(विद्युत)

३. वितरण :-

~~11141~~ 85

यदा अंग्रेजी भाग में अंकित ।

RESEARCH DESIGNS & STANDARDS ORGANISATION
LUCKNOW.

STAFF POSTING ORDER NO.125 OF 1985.

In continuation of SPO No. 4 of 1985, Shri S.L.Srivastava, UDC, who was last allowed to continue, to officiate as Asstt. from 24.12.84 to 23.03.85, is allowed to continue to officiate in the same capacity for a further period not exceeding 03 months wef 24.03.85 or till the posting of a regular incumbent, whichever is earlier, purely as an adhoc arrangement.

Da-Ni4.
File No.APC/166
Manak Nagar,
Lucknow-
Dated: 11.04.85.

(P.N.Kapoor)
for Director Stds./Elect.

Distribution

SP4 to DS/Elec., PA to JDS/E-IV, AAO, SO/Confld., SO/E-III,
Staff Concerned, E-II/7 & 10

Dy. Director Education
R. D. S. O. Library, 2nd Flr.,
Almabadi, A. J. K. N. G. - 4

क्रमांक २१२५
15/7/85 - १८८५
15/7/85

13

4126

Annexure 5-5

5m102

अनुसंधान अधिकारी और मानक संगठन
मानक नगर: लखनऊ

1985 का कर्मचारी नियुक्ति आदेश सं0 २७९

1985 का कर्मचारी नियुक्ति आदेश संख्या-125 के क्रम में
श्री सस०स्त्रीवास्तव, उच्च श्रेणी लिपिक/विद्युत निदेशालय, जिनको
24.03.85 से 23.06.85 तक सहायक के रूप में पदोन्नत किया
गया था, दिनांक 24.06.85 से अगले तीव्र माह से अधिक न होने
वाली अवधि अधवा नियमित पदधारी की तैनाती तक इन दोनों
दराजों में जो पहले घटित हो, तब तक के लिए क्षितान्त ही तर्द्ध
व्यवस्था पर उसी सम में पदोन्नत बने रहने हेतु अनुमति प्रदान की
जाती है।

संलग्न/कुछ नहीं।
फर्जील सं0एपीसी-166
मानक नगर,
लखनऊ - 11
दिनांक 16.07.85

(राजन शुभा)

(कृते निदेशक मानक/विद्युत
16.7.85)

वितरण

निदेशक मानक/विद्युत, सं0निदेशमानक/वि०-४, सहायक लेखा अधिकारी,
लखनऊ/गोपनीय, अज/स्था-111, श्री सस०स्त्रीवास्तव, सहायक/वि०निदेश,
स्था-11/7 व 10

(श्री)

कृष्ण जाति को Annexure 5-6
संक्षि
कृती ॥ १॥

Issued
N.B. 24/1
R.I. 27

No 126

14

अनुसंधान अधिकारी और मानक संगठन

1985 का कर्मचारी नियुक्ति आदेश संख्या 460

102

1985 का कर्मचारी नियुक्ति आदेश संख्या-279 के क्रम में
श्री सस०स्त०श्रीवास्तव, उच्च श्रेणी लिपिक/ विद्युत निदेशालय, जिनको दि०
24. 06. 85 से 23. 09. 85 तक सहायक के रूप में पदोन्नत बने रहने हेतु
अनुमति दी गई थी दिनांक 24. 09. 85 से 01. 11. 85 (इरकानि में -
प्रतिनियुक्ति पर जाने) तक उसी रूप में पदोन्नत बने रहने हेतु अनुमति
प्रदान की जाती है।

संलग्न/कुछ नहीं।

फाईल सं०स्पीसी-166
मानक नगर,
लखनऊ - 11
दिनांक 15. 11. 85

ब्रूफ़ क्रमांक ।

(बसन्त कुमार) । । । ।
कृते निदेश के मानक (विद्युत)

संक्षि
कृती ॥ १॥

वितरण

निदेश के मानक (विद्युत), संयुक्त निदेश के मानक (विद्युत-4), सहायक लेडा अधिकारी,
अनुभाग अधिकारी/गोपनीय, अनुभाग अधिकारी/स्थापना-।।।, संस्कृति कर्मचारी,
स्था-।।।/7

(श्री)

Dy. Director Establishment,
R. D. S. O., Ministry of Railways,
Alambagh, LUCKNOW-६

Annexure S-7 (128)

17/6/87
15

13/6
15

Divt. 43
Transport

Department of Railways

APC-166

17.6.86

The Manager (P),
IRCON, Palika Bhawan,
Sector XIII RK Puram,
New Delhi-110066.

Sub: Selection of Staff for foreign projects
Sh. Sangam Lal Srivastava, effg. Asstt/RDSO
Lucknow.

Ref: Your office letter No. IRCON/IRAQ/FF/1553/
1803 dt. 29.5.86.

D/Sir,

Terms and conditions of deputation (duly amended) in respect of Sh. SL Srivastava working as Ward Keeper in your Organisation are enclosed. You are requested to kindly communicate your approval to these at an early date.

2. In this connection, it is clarified that Sh. S.L Srivastava is a regular UDC in grade Rs. 330-560 (RS) in this office & at the time of his release on deputation to IRCON on 1.11.85AN, he was working as Asstt. in scale Rs. 425-800 (RS) purely on the adhoc basis.

3. The scale of pay indicated as Rs. 650-960 in the earlier terms and conditions of deputation of Sh. SL Srivastava was an error. The mistake is regretted.

Yours faithfully,

BK

DA/As above

(Basant Kumar)
for Director General

Dy. Director Establishment,
2. D. S. O., Ministry of Railway
Alambagh, LUCKNOW-4

GOVERNMENT OF INDIA: MINISTRY OF TRANSPORT
DEPARTMENT OF RAILWAY
RESEARCH DESIGNS AND STANDARDS ORGANISATION

1/29
S. 1437

To the 11th conditions of deputation of Shri S. L. Srivastava
0285. AGM. (Athee), RDSO, Lucknow to Indian Railways Construction
Company Ltd., New Delhi.

1- Posting: For a period not exceeding 20 months from the date of his Falcon 1.0. 1.17.85 (AN).

2- Post & Ward Keeper on consolidated salary of Rs 1250 + 75
scale of Ircon Pay.

3- Pay: He will draw his pay in the scale of the new post or fixed under the normal rules or his pay in the office Grade Rs. 425-500 (RS) (either) / Rs. 350-550 (RS) regular plus deputation allowance of 10% of basic pay subject to a minimum of Rs. 100/- if the transfer is within the same station and 20% of his basic pay subject to a maximum of Rs. 250/-PM in all other cases and the conditions that the pay & allowance does not exceed the maximum of the scale of the pay of the post held on deputation.

4- Allowances:

a) Depraces: At the rates of the company or at the Rly. rates according as the officer opts to draw pay in the Rly. Scale or in the scale of the Company.

b) CCA & ERA: At the rates as admissible to the employees of his station in the Company or at railway rates according as officer opts to draw pay in the railway scale or in the scale of the Company.

c) Conveyance: At the rates asmissible to the employee of his allowance status in the Company.

5- Joining Time: Joining time pay when proceeding on and returning from deputation will be regulated under the rules of the IRCON Ltd., New Delhi. The joining time pay both ways shall be payable by IRCON Ltd., New Delhi.

6- Travelling allowances: Travelling allowance will be regulated under 24 rules during joining time (both ways) and by the rules of IRCON Ltd., for any journey during deputation in connection with the work of the Company. The IRCON Company Ltd., New Delhi will credit to the RDSO an amount equal to transfer/travelling allowance permissible under the rules of the IRCON Ltd., New Delhi, the excess over which under the rules of RDSO will be borne by RDSO. My Passes on transfer account for Shri Srivastava and family and also transporting his kit will be issued by RDSO.

7- Leave Rules : He will be governed by the leave rules applicable to him in RDSO.

8- Medical Facilities: As applicable to the employee of his status under the medical attendance rules of the IRCON Ltd., New Delhi. The Company may, however, allow the employee at his option to enjoy railway medical facilities provided a contribution to the Rly. revenues to be credited to the FA & CAO of the concerned Rly. is made by the Company or by the employee as may be mutually agreed upon between them, at the rates of recovery prescribed from time to time for officers of his status in CGHS.

9- Privilege Passes/PTOs : He will be entitled to the benefits of the ~~unlimited~~ privilege Passes & PTOs in terms of Rly. Board's letter No. E(TRG)2/66 PS-5/P5/2 dt. 11.10.66. He will not be eligible to the benefit of "Leave Travel Concession" in any form, if in existence in the Company for the employees.

10- Leave & retirement benefits : He will continue to be governed by the leave and retirement benefit rules applicable to him as a railway servant. The IRCON Ltd., will pay to RDSO the usual service contribution as laid down under railway rules which will be intimated by JDE/RDSP/LKO, who will make arrangement to effect recoveries regularly. The Company will be liable to pay leave salary and allowances in respect of special disability leave, if any, granted to the employees on account of any disability occurred in and through service under the Company even if such disability manifests itself after termination of service with Company.

11- Reimbursement of tuition fees : He will be entitled to claim reimbursement of tuition fees in respect of his Children in terms of Rly. Board's letter No. E(W)63EDI-62 dt. 4.8.64, as amended from time to time.

12- Residential accommodation : He will be entitled to residential accommodation according to the rules of the IRCON Ltd.

13- Rly. Employees Insurance Scheme : The Contribution at the following rates will be deducted from the pay of the employee on deputation w.e.f. 2-11-85 onwards in terms of Rly. Board's letter No. PO-III/10/GIS dt. 21.11.80 and credited to the JDF, RDSO, Lucknow, under major head 088-SS & W.

Group 'C' Class III Staff @ Rs.20/-pm

Group 'B' Class II including Assistants & Stenographers @ Rs.40/-pm.

Before the Hon'ble Central Administrative Tribunal
(Lucknow Bench) LUCKNOW)

AI 31

S. P. A.

Registration No. OA 65/88(L)

Sangam Lal Srivastava
Assistant, RDSO/Lucknow.

Applicant.

versus

Union of India & Others.

Respondents.

SUPPLEMENTARY REJOINDER AFFIDAVIT TO THE
SUPPLEMENTARY COUNTER OF THE RESPONDENTS FILED
ON 27.4.89.

The Applicant most respectfully beg to submit as under:-

1- That before giving any comment on the statements of the Respondents in their supplementary counter, the Applicant crave for permitting him to bring the following few points for their judicious consideration:-

(a) That Shri S. Bhatia, said to be Dy. Director E-I of RDSO, has submitted the impugned supplementary counter on behalf of all the Respondents mentioned in the Applicant's application and the amendment application dated 3-4-89. Shri Bhatia is not authorised to file such supplementary counter on behalf of the Respondents who has not ~~been~~ ^{him} expressly authorised. Accordingly the Supplementary counter submitted by Shri Bhatia may kindly be treated as non-existent and the claim of the Applicant may kindly be heard and decided ~~ex-parte~~ on the merits of the claim.

(b) That as per extant provision of Administrative Tribunals Act-1985, there is no provision for supplementary counter to the REJOINDER AFFIDAVIT of the Applicant. Accordingly the supplementary counter submitted by Sh. Bhatia may kindly be rejected out right.

.....2

S. P. A.
28/4/89

A/132

(c) That Shri Bhatia, according to the documents submitted by him at Annexure S-1 of his supplementary counter, has been authorised by the Ministry of Railways to act for and on behalf of the Central Government in respect of any judicial proceeding relating to Railway Administration which expressly proved that he has only been authorised for acting on behalf of the Union of India, not on behalf of the Respondents 2 to 4 i.e. Director General, Sr.Dy.Director General & Dy.Director Estt-II, RDSO. It is also submitted in this respect that Union of India is only a proforma party. This party is only impleaded in the proceedings to draw the attentions of the Central Government about the irregularities committed by the subordinate authorities and giving directions to admit the claims of the claimants where admissible as per extant rules made by the Union of India and avoid unnecessary litigations and thereby save dranage of public resources. In fact Union of India has no role to play in the Court of Law.

2- That Reg: Para-1 of the supplementary counter, the claims of Sh. Bhatia, are denied in full. He has not been authorised by the Central Government, but by the Railway Ministry. Had he been authorised by the Central Govt., the authorisation letter would have been issued by the Ministry of Home Affairs being responsible for defending Central Govt. Hence, the W.S. submitted by Shri Bhatia, is not maintainable and may kindly be treated as non-existent and Applicant's claims in para-1 of his Rejoinder Affidavit are reiterated.

3- Reg.Para-3 of the supplementary counter of Shri Bhatia are denied in full and the claims of the Applicant in ^{Para 2} ~~Para 2~~ of his Rejoinder Affidavit, are reiterated. It is pointed out that Shri Bhatia has

.....3

3/Encl 4/89

admitted categorically in para-2 of his supplementary counter that he is ignorant of the facts of the case of the Applicant and he acted on false information given by the Personnel Branches. Therefore, after admission of Shri Bhatia there remains nothing to be established and the claim of the Applicant stands proved.

4- Reg: Para 3 (i) of Shri Bhatia's supplementary counter, his contentions in the aforesaid para, are denied in full and claims of the Applicant in para 3(i) of his Rejoinder Affidavit, are reiterated. He has categorically admitted his commission of error. Had the Applicant not established his claims through documentary evidence, he had succeeded in misleading the Hon'ble Tribunal for a favourable judgement. This is an admitted proof of the truth of the false statements of Shri Bhatia.

5- Reg. Para 3(ii) of Shri Bhatia's Supplementary Counter, the contentions of Shri Bhatia are denied in full and claims of the Applicant are reiterated. It is well admitted fact in claims of the Applicant also that the Applicant was promoted initially on adhoc basis for 03 months or till the posting of a regular incumbent within the stipulated period of 03 months, not beyond 03 months. As these 03 months period were permitted for arranging selection of the persons eligible or a regular person is posted against the said vacancy. In case of failure in posting of a regular person against the vacancy which was held by the Applicant, the Quota Rota System contained in the rule stood failed.

Accordingly as per Hon'ble Supreme Court's decision (SUPRA) The Applicant stood confirmed on the post which he held for 04 months continuously without any break as per extant rules. The adhoc arrangement made stands automatically

ALC 281 u/8P

R/34

lapsed after 04 months and stood converted into regular arrangement as per rules. The claims of Shri Bhatia, are un-sustainable.

Further submitted that Shri Bhatia has admitted that the Applicant had proceeded on deputation to IRCON while working as Assistant in Scale Rs.425-800(RS). In this respect para 3 of the terms and conditions of deputation of the Applicant furnished by Shri Bhatia, is a documentary evidence in support of the claim of the Applicant. As per rule, the Applicant maintained his lien and his proforma position in the category of Assistant of RDSO during the deputation period of 20 months w.e.f. 1-11-1985(AN). Thus the Applicant held the post of Assistant continuously for 18 months without any break.

Thereby ~~he~~ he has automatically attained his confirmation on the post of Assistant. The Hon'ble Supreme Court has already made this rule final by rejecting the S.L.P. against the decisions of the various High Courts of India on the same issue. Therefore under all circumstances the Applicant stands confirmed on the present post.

Further submitted that the post of Assistant for departmental candidates (UDCs) is a "NON-selection" post and in cases where Quota-Rota System failed and the vacancies of Assistant were filled up by the Departmental Candidates after determining their suitability for ^{such} promotion to the post of Assistant, they are ~~not~~ ^{as} to be regularised from the date of promotion against "Non-selection" ^{or} post, ^{or} from the date of occurrence of the vacancy as closed ^{for Seniority etc.} to it as possible. Therefore, the Applicant's regularisation from a subsequent date as claimed by Shri Bhatia, is totally irregular, malafide and illegal.

SPC 28/1/89

.....5

A/35

- 6- Reg Para-4 of Shri Bhatia's Supplementary counter, the contentions of Shri Bhatia are denied in full and the claims of the Applicant in para 4 of his Rejoinder Affidavit are reiterated. Any other things mentioned in this para are wishful, misleading, malafide and irrelevant. There was no question of any intention or the Quota mentioned in the R&P Rules of the relevant time when Quota Rota System had failed.
- 7- Reg: Para 5 of Shri Bhatia's subolementary counter, the contentions of Shri Bhatia are denied in full and the claims of the Applicant, in para 5 of his Rejoinder Affidavit, are reiterated.
- 8- Reg: para 6 of Shri Bhatia's supplementary counter, the contentions of Shri Bhatia are denied in full and the claims of the Applicant, in para 6 of his Rejoinder Affidavit, are reiterated. However, it is submitted that the orders of the Hon'ble Tribunal in respect of impleading Union of India has been complied with.
- 9- Reg: Paras 7,8 & 9 of Shri Bhatia's supplementary Counter, the contentions of Shri Bhatia are denied in full and claims of the Applicant are reiterated.
- 10- Reg: Para 10 of Shri Bhatia's supplementary Counter, the contentions of Shri Bhatia are denied in full and claims of the Applicant are reiterated. It is submitted that the R&P Rules referred to by Shri Bhatia, said to have been submitted as Annexure R-1 of his W.S., is inapplicable in this present case.
- 11- Reg: Paras 11 to 15 of Shri Bhatia's supplementary Counter, the contentions of Shri Bhatia are denied in full and claims of the Applicant are reiterated.

S. C. 28/189

(6)

12- Reg:Para 16 of Shri Bhatia's supplementary counter, the contentions of Shri Bhatia are denied in full and claims of the Applicant are reiterated. As per extant rules made by the Railway Board in exercise of the powers vested in them vide Section 2 (b) of the Railway Board Act-1905 extension of adhoc arrangement beyond 04 months is unauthorised and illegal. Hence the claim of Shri Bhatia has no leg to stand before law.

13- Reg:Para-17 of Shri Bhatia's supplementary counter, his statements are denied in full and the claims of the Applicant in para 17 of his Rejoinder Affidavit are ~~denied~~ reiterated. His intentions are totally baseless, failure of efficiency of the management to foresee the anticipated vacancies and planning for manning the posts within the permissible period as contained in the prescribed rules. All other things said in para-17 of Shri Bhatia's supplementary counter, are lame excuses.

14- Reg:Para 18 of Shri Bhatia 's supplementary Counter, THE contentions of Shri Bhatia are denied in full and claims of the Applicant are reiterated. SPECIAL attention of the Hon'ble Tribunal is again drawn to the fact that ignorance of law has been exposed in his statement about knowledge of the extant rules as claimed by Shri Bhatia . Shri Bhatia's statement is either deliberate OR intended to mislead the Hon'ble Tribunal for achieving an undue judgement in favour of the wrong doers.

15- Reg: 19 & 20 Paras of Shri Bhatia's supplementary counter, the contentions of Shri Bhatia are denied in full and the claims of the Applicant in paras 19 & 20 of his Rejoinder Affidavit, are reiterated.

S. K. 28/10/85

.....7

16- Reg: Para 21 of Shri Bhatia's supplementary counter, the contentions of Shri Bhatia are denied in full and the claims of the Applicant in para 21 of his Rejoinder Affidavit, are reiterated. Regarding Board's letter of ~~13.3.1979~~ referred ~~xxx~~ to in his statement has no sanction of law, nor is that within the competenace of the Railway Board to enforce such special condition only in the case of Assistants of RDSO . The Board is void of powers to make such rules being inconsistant and repugnant to the provisions of the Laws. The Railway Board are only authorised to make general rules for common application on all Railway servants all over India. The impugned letter of the Railway Board of 13.3.1979(Annexure-17 of the Application) may, therefore, kindly be quashed and any subsequent change made in the rules on that basis,if any, may also kindly be quashed.

17- Reg: Paras 22 & 23 of Shri Bhatia's supplementary counter , the contentions of Shri Bhatia are denied in full and claims of the Applicant are reiterated.

18- Reg: Para 24: of Shri Bhatia 's supplementary counter, THE CONTENTIONS OF Shri Bhatia, are denied in full and claims of the Applicant in para 24 of his Rejoinder Affidavit, are reiterated. The statement of Shri Bhatia regarding RDSO being an attached office of the Ministry of Railways OR not, is irrelevent in this instant case. However, Shri Bhatia has made a desparate attempt to make believe the Hon'ble Tribunal that he has much knowledgeable about the Railway rules. In this case the proverb, "Empty vessels sound much" is applicable in full. Para-213 of the Indian Railways Administration & Finance referred to by Shri Bhatia, is not a code, but only a compilation and has no status before the LAW. Further any distorted

S. C. 23/7/89

ABC

compilation not based on any law of this land is merely a waste paper before LAW. Further according to the document filed by Shri Bhatia himself at Annexure-S-1 of his supplementary counter itself is the documentary evidence that the RDSO is an Independent Railway Administration OR Railway Establishment under the Administrative control of the Railway Board, which is a statutory body, like any other Railway Administration. Had the RDSO been an office attached to the Railway Ministry, there would have been no separate mention in the aforesaid document. Further more, it has already been made final by the Hon'ble Supreme Court that the Ministry of Railways is a department of the Central Government whereas the Railway Board is an enterprise/undertaking under the Railway Department of the Central Government. The statements of Shri Bhatia, have unambiguously made him naked before the Hon'ble Tribunal about his knowledge of rules.

19- Reg: Paras 25 to 34 of Shri Bhatia's supplementary COUNTER, the contentions of Shri Bhatia, are denied in full and claims of the Applicant, are reiterated.

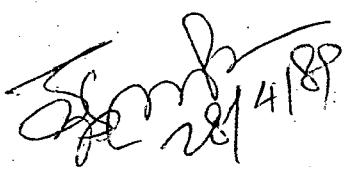
Under the circumstances explained and facts brought out in the foregoing paragraphs, the Applicant most respectfully prays that his case be listed and decided on merits early for natural justice to the Applicant on his claims.

Lucknow:
Dated: 28th April, 1989.


28/4/89
APPLICANT.

VERIFICATION

I, Sangam Lal Srivastava, Assistant, RDSO, Lucknow, deponent do hereby solemnly verify that contents of paras 2 to 19 are true to ^{the} best of knowledge and belief; and the facts


Sangam Lal Srivastava
28/4/89

.....9

(9)

4139

stated in para 1 are believed to be true on the basis of legal advice. No material has been concealed.

Signed on the 28th day of April, 1989 at the
Tribunal Compound.

LUCKNOW

DEPONENT.

DATED: 28th April, 1989.

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE C.M.: Revision...App.: 219...OF ...89
in O A 68/88

NAME OF THE PARTIES S.L.: Sri V.K. Tewari Applicant

Versus

..... Union of India Respondent

Part A.

Sl.No.	Description of documents	Page
1	Order Sheet	A - 1
2	Judgment	A 2 to 4
3	Review petition with annexes	A 5 to 38
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		

CERTIFICATE

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

Dated ..26/12/2011

Counter Signed.....


Signature of the
Dealing Assistant

Section Officer/In charge

ANNEXURE - A

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

INDEX SHEET

C.M. Review Appl. No. 210/89 (L)

CAUSE TITLE in OF 199
CA. 65/88 (L)

Name of the parties Sangam Lal Srivastava
Applicant.

Versus.

Union of India Respondents.

Part A.B.C.

S1 No.	Description of documents	Page
(1)	order sheet	A1 to A3
(2)	Judgment	A2 - A4
(3)	Review Petition with Annexure.	A5 - A30

B. file — B1 - B35

C. file — C1 - C35

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

C.M (Review) An. No. 210/1996
REGISTRATION NO. 65 of 1980(L)

APPELLANT
APPLICANT

Sangam Lal

VERSUS

DEFENDANT
RESPONDENT

U.O.L

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
Rec'd copy 12/5/88	A.C.M.(P) An. No 210 has been OA No 65 on 11-8-88 The case no 65/1996 decided by the of Hon'ble Justice K. Nambiar, V.C. and Hon. Mr. K. J. Ray A.M on dt. 7-7 the author of the Judgment Hon'ble K. J. Ray A.M Submitted for order	OR A.C.M.(P) An. No 210 has been OA No 65 on 11-8-88 The case no 65/1996 decided by the of Hon'ble Justice K. Nambiar, V.C. and Hon. Mr. K. J. Ray A.M on dt. 7-7 the author of the Judgment Hon'ble K. J. Ray A.M Submitted for order 11/8/88

(P2)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH AT 'LUCKNOW.'

Review Application No. 210 of 1989 (L)

On behalf of

Sangam Lal Srivastava Applicant.

IN

Registration (O.A.) No. 65 of 1988 (L).

Sangam Lal Srivastava Applicant.

Versus

Union of India & others Respondents.

Hon'ble Justice Kamleshwar Nath, V.C.
Hon'ble K.J. Raman, A.M.

(By Hon. K.J. Raman, A.M.)

This is an application for review under Section 22(3)(f) of the Administrative Tribunals Act, 1985 in respect of the orders of this Tribunal dated 7.7.1989 in O.A. No. 65 of 1988 (L).

2. In the long review application, the applicant has given parawise comments on the order dated 7.7.1989 passed in the original application, contesting various statements and conclusions contained in the said order. It seems unnecessary to detail each comment or criticism of the applicant. To mention a few : the applicant has stated that the Tribunal "had erred to mention RDSO as Ministry of Railways in the absence of any authority before them" in para 1 of the order dated 7.7.1989. There is no such statement in para 1 of the order dated 7.7.89. This para is an introductory one, mentioning only facts, like the name of the applicant and the designation and office address as given by the applicant himself in his

(KJRC)

original application. He has given his own identification as "Assistant, RDSO, Govt. of India (Ministry of Railways), Manak Nagar, Lucknow-226 011".

3. According to the applicant, his case is fully supported by para 302 of the IREM and since the impugned order held otherwise, the said order should be reviewed. In para 5 of the review application, it is stated that this Tribunal in its impugned order dated 7.7.1989 has contended in para 4 of their judgment that there was a non-joinder of necessary parties like Union of India. The impugned order has done nothing of this kind. In para 4 of the order, the contention of the respondents has been stated regarding non-joinder of parties. The applicant himself had also amended the application to implead the Union of India. In para 12 of the review application it is stated that in the impugned judgment, it has been wrongly contended that the applicant had admitted and not denied that he was promoted against the vacancies reserved for UPSC/LDCE candidates. This contention in the review application is totally against para 6(xv) of the application in OA No. 65 of 1988, which reads as under :

"That because the vacancy arisen vice Shri P.K. Dhar, being promoted on regular basis and suitable persons from the respective quota of Union Public Service Commission or Departmental Competitive Examination at the relevant time having not been available, that vacancy had been operated by the departmental candidate like the Applicant."

4. A number of other similar contentions have been made in the review application. All these contentions

(P.M)

Hy

-: 3 :-

are such that they are more appropriately made in an appeal. These are not such as would justify a review of the judgment in question. No error apparent on the face of the record, justifying such review, has been pointed out. In the circumstances, there is no merit in the review application. It is accordingly rejected.

John Rawal

MEMBER (A).

Re

VICE-CHAIRMAN.

Dated: September 7, 1989.

PG.

A5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW BENCH, LUCKNOW
C.M. (Review) An. 210/69(C)
Registration OA No.65 of 1988(L)

SANGAM LAL SRIVASTAVA : APPLICANT.

versus

UNION OF INDIA & OTHERS : RESPONDENTS

APPLICATION FOR REVIEW UNDER SECTION
19, read with Section 22(3)(f) OF
ADMINISTRATIVE TRIBUNALS ACT- 1985

The Applicant had prayed in his application/ Registration OA No. 65 of 1988 (L) that he should be declared to be regularly appointed to the post of Assistant from 24-9-1984, interalia on the ground that the Respondents had no authority to continue the Applicant in excess of 6 months from the date of occurrence of the vacancy or from the date of promotion on adhoc basis. Besides the above, the Applicant sought some other reliefs also connected with his promotion. In support of the claim, all documentary authorities have been submitted before the Hon'ble Central Administrative Tribunal. The Hon'ble C.A.T. appears to have inadvertently missed to take note of the salient law point into consideration while declaring the judgement on behalf of the Hon'ble C.A.T. by Hon'ble K.J.Raman, A.M. However, this case deserves a review and the Applicant, therefore, prays for a review of the case of the Applicant on the law points brought out in the following paras as to meet with the requirement of natural justice.

1- That in the first para of the judgement, the

.....2



Hon'ble C.A.T. had erred to mention RDSO as Ministry of Railways in the absence of any authority before them. It is submitted for information of the Hon'ble C.A.T. that the Hon'ble High Court of Allahabad and the Hon'ble Supreme Court of India have already made this point final in the case of Shri R.K.Mallick vs Union of India on the basis of law/order of the Competent Authority. RDSO is an attached office of the Railway Board, not an Office of Ministry of Railways. It has further been decided in a separate case (SUPRA) by the Hon'ble Supreme Court of India that Ministry of Railways and Railway Board are two different entities. Further added that the Railway Board was created by an Act of Parliament and is, therefore, ~~as~~ a Government under taking. This fact also is supported by the Railway Codes.

- 2- That in para-2 of the judgement, the Hon'ble C.A.T. had discussed the points brought out by the Applicant in different documents. No further comments to the same.

3- ~~XX~~ That in para-3 (page-3) of the judgement, the Hon'ble C.A.T. as contended that para-302 of the I.R.E.M merely referred to the principle of fixation of seniority between promotees and direct recruits when their date of entry in the grade is same for both. But this satisfaction of the Hon'ble C.A.T. is repugnant to the statutory Rules contained in para-302 of the IREM. The extract of the complete para-302 is again reproduced for ready reference :

.....3.

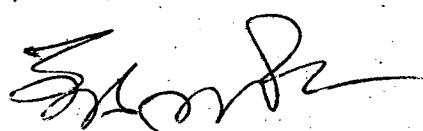
John B. St. John

CHAPTER III

RULES REGULATING SENIORITY OF NON-GAZETTED
RAILWAY SERVANTS" Seniority in initial recruitment grades.

Para-302 . Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those ~~xxxxxx~~ who are already appointed against regular posts. In categories of posts partially filled by direct ~~xxx~~ recruitment and partially by promotion, criterion for determination of seniority should be the date of promotion in the case of a promotee and date of joining the working post in the case of a direct recruit subject to maintenance of inter-se seniority of promotees and direct recruits among themselves. Then the dates of entry into a grade of promoted railway servants and direct recruits are the same, they should be put in alternate positions, the promotees being senior to the first direct recruits maintaining inter-se seniority of each group.

It may kindly be seen from the first sentence of that para ^{which has} very categorically made the ~~xxx~~ point final that seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. This provision explicitly makes the point clear that the date of entry in the grade is main factor for deciding the point of determining the seniority in the grade.

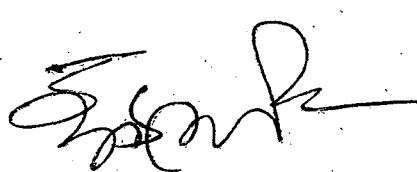


AO

Therefore, the Applicant stands senior to all of them who have joined the grade after the date of the Applicant's joining. Accordingly the direct recruits like: Shri C.P. Nirmal who had joined the grade after the date of joining the date of the Applicant must stand junior to the Applicant.

In cases where the date of joining is the same both for promotees and direct recruits, the promotees are to be assigned seniority over the direct recruits. But the Applicant's case was not the same as contended by the Hon'ble C.A.T. Therefore, the whole decision needs to be reviewed and the Statutory Rules made by the Railway Board under Section 2(b) of the Railway Board Act-1905 is ought to be maintained and the ^{far as} Applicant is entitled for justice as per seniority is concerned.

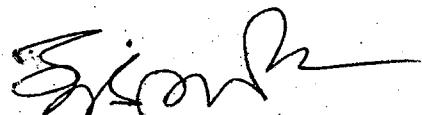
4. That the Hon'ble C.A.T. as admitted that for the vacancy against which the Applicant was promoted there was no UPSC qualified candidate available for appointment (in para-3 (page No.3) of their judgement). The Hon'ble C.A.T have also contended that the Applicant did not give the basis on which he made the allegation of the Respondent No.4's being prejudiced and biased against the Applicant. The contention of the Hon'ble C.A.T. in this respect is totally opposed to the fact deposed in para-6(xix) of the application. The Applicant has mentioned the grounds of the Respondent No.4's becoming biased against the Applicant what the Hon'ble C.A.T. has missed to take note which has lead to a wrong judgement, and ^{as} a result, the Applicant has suffered from injustice. This case as such deserves review.



A.S.

5- That the Hon'ble C.A.T. has contended in para-4 of their judgement ^{that} there was a non-joinder of necessary parties like Union of India. With humble submission the Applicant wants to point out that there is no such direction or provision in the Administrative Tribunal Act-1985 like CPC that Union of India is a necessary parties. In this respect Form No.1 to Central Administrative Tribunal(Procedure) Rules 1985 may kindly be seen. This Form has been prescribed by the Competent Authority under the powers vested in the Central Government under Section 35 of Administrative Tribunal Act-1985. Therefore, there ^{no} was/non-joinder of necessary parties. However, the Applicant complied with the orders of the Hon'ble C.A.T. in making Union of India also a exparty although it was not necessary ^{that} Union of India is a necessary party in the cases instituted under any provision of C.P.C. ^{Union of India is a must as a party.} It is, therefore, prayed that ^{this} may kindly be reviewed by the Hon'ble C.A.T. to set the rules in order for future compliance by the Applicants under the provision of Administrative Tribunal Act-1985. If necessary in this respect, ^{this aspect point} may kindly be referred to a Bigger Bench for a decision to help the employees - Applicants ^{from} _{of} suffering delays in the catering of justice to them.

6- That the Hon'ble C.A.T. has admitted in para-4 of their judgement, on the basis of the document adduced with his application, that the Applicant was promoted as Assistant with effect from 24-9-84 for 3months on adhoc basis , with the further provision that the promotion of the Applicant could be curtailed with the posting of a regular incumbent earlier than 3 months. The Rule making authority vide their letter No.E 55PMI/ 19/3 dated 11-6-55(enclosed as Appendix-1) has empowered

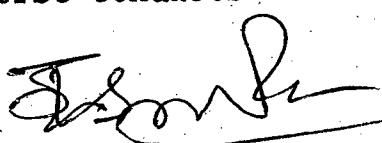


.....6

the Director General (Respondent No:2) to make adhoc promotion only upto 6 months continuation grant 6months Obviously should have the sanction of the Rly. Board. In this particular case, there is no sanction of Respondent No.2 beyond 3 months, nor has the same sanction of the Railway Board beyond six months. Therefore, continuation of adhoc promotion of the Applicant beyond 6 months automatically is deemed to be treated as regular.

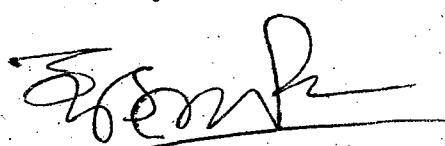
- 7- That in para-4 of the judgement, the Hon'ble C.A.T. has discussed that the Respondents had pleaded that the post against which the Applicant was promoted, was reserved for UPSC/SSC/LDCE Quota. In this connection it is humbly submitted that one vacancy cannot be reserved for 3 Quotas i.e. UPSC Quota, SSC Quota, LDCE Quota. Further added that the Hon'ble C.A.T. did not have documentary evidence before them to make believe that the vacancy was reserved for 3 Quotas - the vacancy should have been reserved only for one Quota i.e. either UPSC, or SSC or LDCE or Departmental. Again it is pointed out that the Respondents did not submit any documentary evidence before the Hon'ble C.A.T. to the best ^{of} knowledge of the Applicant that the vacancy was reserved for other than Departmental Quota. In ~~this~~ the absence of documentary evidence to establish the Respondents claim, the Hon'ble C.A.T. has committed a mistake in accepting their claim about the vacancy being reserved for UPSC etc. Therefore, the whole case deserve a review from a fresh look for natural justice to the Applicant.

It is again ~~empathetically~~ pointed out that the UPSC conducts the selection for the posts of Assistants



for such of the offices which come under the Central Secretariat Scheme. As RDSO does not come under the Central Secretariat Scheme, the UPSC had already refused to make any selection for the posts of Assistants for RDSO. This facts stand admitted in para-2 of the Respondents letter Dt. 20-2-1979 to Railway Board (enclosed as Appendix-2) Therefore, there was no question of any UPSC candidates being available for appointment ~~being available for~~ ^{for} appointment ~~with~~ in the grade of Assistants. Therefore, the contention of the Respondents were a total lie. In the absence of the UPSC qualified candidates, ~~appointments~~ ^{of} to the posts ~~of~~ Assistants were made ~~maxim~~ 100 % from Departmental candidates.

- 8- It is also submitted that during the period from 24-9-84 to 27-3-87 no SSC candidate was appointed in RDSO, except only one i.e. Shri C.P.Nirmal. Therefore, the vacancies continuously operated on adhoc basis is totally illegal. And the Departmental candidate could not be kept hanging for regularisation for years together after the result of Selection conducted by the SSC for the posts of Assistants notified by SSC.
- 9- That during the period from 24-9-84 to 27.3.87 the Departmental Assistants already promoted could not be denied ^{of} the regularisation after the result of the ~~SSC~~ ^s Selection was notified.
- 10- That as no SSC candidate, except one aforesaid, joined RDSO after notification of the result of SSC, the Quota Rota System had already been broken.
- 11- That there is no "CARRY FORWARD RULE" made by the ^{and that is not} Competent Authority, applicable in the Quotas aforesaid. Therefore, once the results of Assistants Examination conducted by SSC is notified, the Quota for any Group



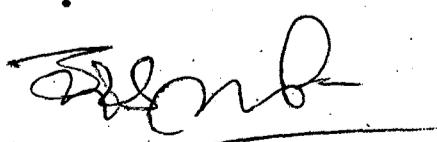
An

whether for SSC or not automatically stand lapsed.

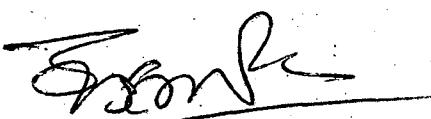
The Hon'ble C.A.T. has also admitted in para-4 there was ^{no} SSC candidate was available for appointment against ~~the~~ so called vacancies ~~x~~ reserved for SSC candidate and the adhoc promotion period was extended several times.

12- ^{C.A.T} That the Hon'ble in para-6(page-6) of the judgement has contended that the Applicant had admitted and not denied that, the Applicant, being concerned with his own case only - not of any other person, was ~~made~~ promoted against the vacancies reserved for UPSC/LDCE. This contention of the Hon'ble C.A.T. is denied in full. It is categorically stated here again that the Applicant was not promoted against any vacancy reserved for SSC or LDCE. In this respect contention of the Applicant against ISSUE NO.2 AT PAGE-3 of the WRITTEN ARGUMENT referred to by the Hon'ble C.A.T. in the judgement that he was not appointed against any vacancy of reserved quota for UPSC & OR LDCE. Again their (C.A.T) attention is invited to Annexure No.1 of the application that there was no mention at all that the Applicant was appointed against a vacancy reserved for a candidate of UPSC/LDCE. The claim of the Respondents in this respect is after thought. Further, acceptance of this pleading of the Respondents by the Hon'ble C.A.T. in the absence of any documentary evidence before them is totally illegal. Therefore the decision of the Hon'ble C.A.T. that the claim of the Applicant was untenable is illegal. The decision of the Hon'ble C.A.T. deserves a review for natural justice to the Applicant and also for upholding the Statutory Rules made by the Competent Authority and the case laws made by the Hon'ble Supreme Court for maintenance of Law & Order of the Country.

.....9.



- 13- That the Hon'ble C.A.T. has satisfied in their judgement in para-6 that the eligibility of the Applicant ~~was~~ for promotion was dependent on the Quota Rules in terms of the Roster maintained. In this respect the Applicant respectfully submits that Quota Rule is subject to the Rule made final by the Hon'ble Supreme Court and Statutory Rules made by the Competent Authority. The Rule ~~was~~ made by the Hon'ble Supreme Court of India that where Quota Rota System had failed, the Departmental promotees ought to be made regular. Therefore, anything pleaded by the Respondents and stand taken by the Hon'ble C.A.T., are illegal and, therefore, this case deserves a review.
- 14- The Hon'ble C.A.T. has at their own contended that the Applicant was promoted against a vacancy reserved for Direct Recrtt., i.e. SSC and LDCE. IN THIS connection it is respectfully submitted that the Applicant has never accepted these conditions that he was promoted in 1984 against the vacancy reserved for Direct Recrtt.
- * It is further submitted that SSC Quota is the Direct Recruitment Quota, whereas LDCE Quota was not a Direct Recruitment Quota. Therefore, the Hon'ble C.A.T. had erred to contend that SSC Quota and LDCE Quota, both are the Direct Recrtment Quota. Therefore, their decision is based on misconception.
- That the Hon'ble C.A.T. has also presumed a reason which is not permissible before the eyes of the Law. The Hon'ble C.A.T. has presumed that the Applicant was promoted on adhoc basis for Administrative Reason. They have not discussed whether presumption of the Hon'ble C.A.T. was based on any documentary evidence before ~~them~~ them or any other source of information. Therefore, the whole judgement is based on presumption and one sided. Therefore, the judgement of the Hon'ble C.A.T. deserves a review.

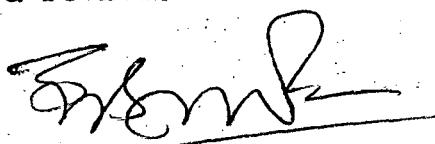


A.Y.

15- That the Hon'ble C.A.T. has satisfied in their judgement that the so called vacancies reserved for Direct Recruitment Quota, were filled in 1987. This position is also a wrong and incorrect presumption of the Hon'ble C.A.T. In disproving the contention of the Hon'ble C.A. T. in their judgement a latest Seniority-List of all the Assistants as on 1-4-1988 is submitted (Appendix-3) as a token of proof ^{that} till ~~XXXX~~ 19-1-1989 no SSC candidate has been appointed ^{against} any vacancy of Direct Recrt. Quota ~~has been filled up~~. Therefore, the entire judgement based on presumption has caused a suffering and injustice to the Applicant. Therefore, the whole judgement deserves a review. Accordingly the contention of the Hon'ble C.A.T. that the Quota Rule was not broken is also based on PRESUMPTION.

The Hon'ble C.A.T. ~~contented~~ in thier judgement that filling the vacancies through a Central Agency takes time and the vacacies could not be filled up because of delay in holding Rectts, could not be accepted by them as a reason for breaking down the Quota Rule. This contention of the Hon'ble C.A.T. ~~is~~ repugnant to the decision of the Hon'ble Supreme Court and ^{not} in consonance with principles enunciated by the Hon'ble Supreme Court because the so called Central Agency hold the Rectts every year and, therefore, once the Agency failed to ~~provide~~ candidates for appoitment against the Quota reserved for Direct Recruitment is a clear break down ^{of} a Quota Rule. Therefore the Hon'ble C.A.T.'s contention has caused a supersession of the Hon'ble Supreme Court judgement in this respect, which is illegal. Therefore, the whole case deserves a review.

.....11

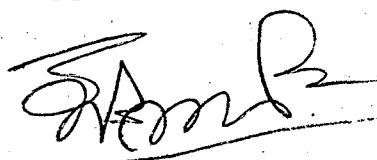


That the Hon'ble C.A.T's contention that the decision of their Principal Bench at New Delhi as well as the decision of the Hon'ble Supreme Court in the cases mentioned by Applicant were opposit to claim of the Applicant, is incorrect. It is prayed that the decision mentioned by the Applicant may kindly be reviewed again. It is not the case that those cases pended for 15 to 20 years as contended by the Hon'ble C.A.T.

- 16- That the contention of the Hon'ble C.A.T. about the points involved in the case of Shri R.K.Mallick, is totally wrong, for EXAMPLE;

Shri R.K.Mallick was only declared suitable for his promotion by the Competent Authority in accordance with R&P Rules then in vogue. But despite the declaration of his suitability, he was continued on adhoc on the same basis as had been done in the present case of the Applicant. Accordingly he had to come to the Hon'ble C.A.T. for justice. In addition, Shri Mallick was also declared suitable for promotion on regular basis w.e.f. 6-7-1978 to the post of Assistant by a Committee consisting 3 officers, inaccordance with Rly. Board's letter dated 13-3-1979 referred to in the W.S. of the Respondents in the present case of the Applicant. Despite this fact, Shri Mallick was not regularised w.e.f. 6-7-1978 arbitrarily. A copy of the Selection Result dated 1-9-1980 is submitted herewith as Appendix-4 as a token of proof that the Respondents always cooked the facts in total defiance of rules made by the Railway Board under Section 2(b) of the Rly. Board Act-1905. However, it is pointed out that Railway Ministry Letter dated 13-3-1979 has not been implemented in RDSO except in few cases where the Respondents wanted to cause suffering to the candidates like the Applicant. Further the case of Shri Mallick was

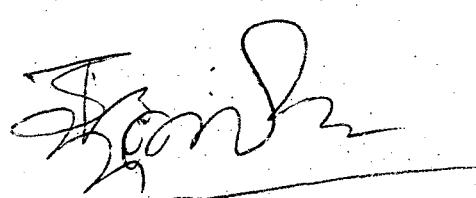
.....12



not only for eligibility to appear in the Departmental Examination, but also for regularisation on the post of Assistant against his being treated as on adhoc. The Hon'ble C.A.T. has committed an error in correctly appreciating the case of Shri Mallick, perhaps, to draw a negative conclusion which is bad in law and illegal. Further the Hon'ble C.A.T. has committed an error to contend that the decision was only to count the regular services of Shri Mallick from the date, he was included in the panel. There was also similar situation that he was not promoted on regular basis but promoted on adhoc basis as in the case of the Applicant. Again there was also no mention about his promotion against any Quota.

The Hon'ble C.A.T. had committed a patent error in taking notice that Shri Mallick had also sought justice from the Hon'ble C.A.T. for treating his promotion as regular from the date of occurrence of the vacancy or from a date close to it as possible. In that case the Hon'ble C.A.T. had kindly given him justice and had upheld the Statutory Rules made by the Competent Authority. In this present case of the Applicant, the Hon'ble C.A.T. has not given justice to the Applicant and the present decision of the Hon'ble C.A.T. is contrary to the earlier one.

That further more, it is brought out here for record and taking notice of the fact that Shri Mallick had been empanelled twice for regular promotion from the retrospective date and in that case also the Respondents had taken similar stand and they utterly failed to produce any authority in their support and the Hon'ble C.A.T. had rejected their all pleas and catered justice to the aggrieved Applicant. As there are two different decisions





from the same Hon'ble C.A.T. on the same point, this present decision in the case of the Applicant deserves a review.

- 17- That the Hon'ble C.A.T. had imported incorrectly in this present case of the Applicant to justify their illegal decision on the following logic:-

" ad-hoc promotees have no prescriptive right to the post occupied by them and unless they are qualified and eligible for a regular selection, they could not be promoted regularly"

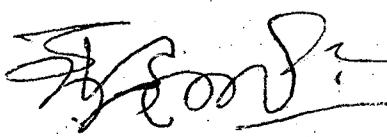
- The Hon'ble C.A.T. had committed a patent mistake in making a conclusion as above. They have not correctly appreciated the claim of the Applicant, but they have gone to the wrong point for reaching to the present illegal decision. The Applicant humbly points out that the Hon'ble C.A.T. itself has explicitly ~~has~~ accepted and admitted in the above citation that the ad-hoc promotees, unless they are qualified and eligible for a regular selection, the Applicant ad-hoc promotee has no right to occupy the post. The Hon'ble C.A.T. has committed an error, perhaps, on presumption that the Applicant was not eligible for regular selection which is totally wrong from the facts of Annexure-1 of the application which has also been a record before the Hon'ble Tribunal. HAD the Applicant not been eligible for a regular selection for a post of Assistant in his channel as per THEN R&P RULES in vogue, the Applicant would have not been or could have not been promoted at all as Assistant either on adhoc or regular basis. Therefore, the Hon'ble C.A.T's decision in this respect, is totally illegal and therefore, deserves a thorough review.



The Hon'ble C.A.T. has also committed a patent mistake in the case of the Applicant to presume that the Applicant did not qualify in the Selection. This fact stands negatived by the document already before the Hon'ble Tribunal like ANNEXURE-1 of the Application. The aforesaid document, is an explicit proof that the Applicant had qualified in the selection and, therefore, there was no question of his not being promoted regularly. The entire decision and conclusion of the Hon'ble C.A.T. in this regard, is a PRESUMPTION AND ILLEGAL. The citation of a judgement in their support has no application in the present case of the Applicant. The decision, therefore, deserves a review.

- 18- That contention of the Hon'ble C.A.T. that the Applicant got the benefit of premature officiation for delay in the Recruitment, is incorrect. It is affirmed that the Applicant was not given prematurated Officiating for which an exemption from the Competent Authority was a must. From the facts of Annexure-1 of the Application it is crystal clear that there was no mention in that order that any exemption of any kind was granted to the Applicant. Further the Respondents had no where pleaded in this respect in the documents before the Hon'ble Tribunal. The conclusion of the Hon'ble C.A.T. is totally a presumption and, therefore, is illegal. The judgement in the present case of the Applicant, therefore deserves a thorough review for natural justice to the Applicant.

It is reiterated that the post of Assistant is a " NON-SELECTION POST " for the Applicant and the suitability of the Applicant was liable to be determined on the basis of Seniority-cum-suitability based on service records of the Applicant. There is no question of his being subjected to any "Selection" as contended by the Hon'ble C.A.T. as mentioned in the earlier para. It is re-affirmed



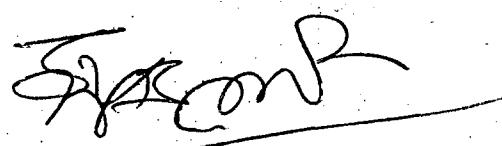
that the determination of the Applicant's suitability and his promotion against a vacancy in the cadre had correctly been done as per R&P Rules. He was not promoted against any post reserved for other Quota then due to him as per extent rules and precedence. It is also added that the Respondents have also admitted in their W.S. that the Applicant was promoted as per R&P Rules. Besides all the Hon'ble C.A.T. Itself has admitted in their judgement that the Applicant was promoted when the vacancy arose to which he was eligible for promotion. Therefore, the ~~earlier~~ conclusion of the Hon'ble C.A.T. were all based on PRESUMPTION, and, therefore, the whole judgement deserves a review.

- 19- That the Applicant's grievance was that he was appointed by promotion against "NON SELECTION POST" after his being determined suitable for promotion to the grade of Assis tant by the DPC, against a vacancy caused by one's Shri P.K.Dhar, Assistant to his next higher grade in his channel with the condition that the Applicant's promotion was on adhoc basis for a minimum period of 3 months or till the posting of a regular incumbent whichever was earlier. His aforesaid adhoc promotion was not subject to extension, although he was qualified to be promoted, he was denied regular promotion to the higher grade but were continued on adhoc basis without break or reversion for long period/although the regular vacancy had accrued .

That the Applicant had prayed for treating him regular in the grade of Assistant from the date of his appointment to the grade on an officiating basis against long term vacancy(not ~~on~~ against leave or fortuitous vacancy) and continued without break or reversion.



- (16)
- 20- In compliance with column 10 of the schedule to then R&P Rules, there ought to be a 100 point Roster of vacancies as per observation of the percentage of these quotas which ~~ought~~ to have been submitted by the Respondents as to establish their claim that the Applicant was appointed against the Quota reserved for the candidates to be nominated by S.S.C. It was categorically denied that the Applicant had been promoted against a vacancy reserved for UPSC/LDCE Quota. It was further stated that there was no quota for UPSC/XXXX as the Quota Rota System had already failed a long before of the relevant time of Applicant's promotion.
- 21- That Respondents did not produce any evidence of any pending Indent on SSC AND NUMBER OF THEN existing vacancies, nor did they produce any authority having delegated competency or the administration for carry forward the vacancy arisen at the ~~in~~ relevant time to any number of year to their whims.
- 22- That the Quota if any existed at the relevant time, if not filled up by the candidates of Select List formed in the selection held by the Recruiting Agency, it is the established law that these quota lapsed automatically as "NO CARRY FORWARD RULES is applicable in Quota System. The respondents totally failed to produce any authority in support of their contention about the "Carry Forward Rules" of the so called Quota till eternity.
- 23- A copy of the result of the LDCE Quota held in the year -1987 is attached herewith as Appendix-5. The ~~XXXX~~ evidence categorically proved in opposition of the contention of the Hon'ble C.A.T. that there was no quota reserved for LDCE at the relevant time of the Applicant's promotion.

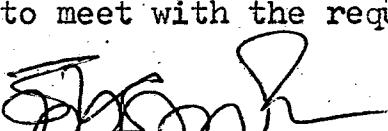


(A2)

- 24- That the principles ^h enunciated by the Hon'ble Supreme Court in the cases of S.C.Kacktwana, R.K.Mallick Narendra Chadda more similar and analogous and apply in the case of the Applicant.
- 25- That the order of the Hon'ble C.A.T. passed on 7-7-1989 ^b thus illegal and deserves favourable review.

PRAYER

That the Applicant prays for upholding the prayers in the original Application/petition of the Applicant and grant relief as prayed for therein as to meet with the requirements of natural justice.



APPLICANT.
VERIFICATION

I, Sangam Lal Srivastava S/o Sh. Swami Dayal aged 51 years working as Assistant in RDSO, Manak Nagar, Lucknow-226011, R/o Qr.No.A-18/1, Sector-A, Manak Nagar, Lucknow-226011, do hereby verify that the contents 1 to 25 are true to my personal knowledge and belief and that I have not suppressed any material facts.

LUCKNOW

DATED: 08-8-1989.



APPLICANT.

1211

in Extracts from Railway Board's letter Nos E55/CM/1/3 dated 5th October 1955. Measures for securing increased representation of Scheduled Castes and Scheduled Tribes in the Central Services. The Railway Board's letter No. E50/CM/1/7/3 dated 18th June 1953 forwarding a copy of the Ministry of Home Affairs Office Memorandum

Sub : Procedure for promotion to Selection posts—continuance of unselected persons against the Selection Posts

The Board have been receiving a number of representations on behalf of Railway employees who were put to officiate temporarily against higher grade posts for a considerable time and were subsequently reverted on the basis of their non-inclusion in the panels drawn up by the Selection Boards set up for the purpose. The Board consider that in such cases extreme hardship is involved and the position of promotion of an employee officiating in a higher grade post should be determined within the minimum possible period. The Board desire that in the event of a selection post having to be filled by an employee not on the panel due to the absence of a panel or for any other cause, the following action should be taken:

(a) the notification of promotion should specifically include a reference to the effect that the person concerned has not been selected for promotion, that his temporary promotion gives him no right for regular promotion and that his promotion is to be treated as for the purpose of drawing his pay.

(b) the Financial Adviser and Chief Accounts Officer should not draw the pay of such provisionally promoted employee for more than three months without the General Manager's specific sanction. It will be incumbent on the officer ordering the promotion to apply for such sanction in time if he is aware that a panel will take more than three months to be ready and to satisfy the General Manager that he has valid reasons for the expected delay. The General Manager should not issue provisional sanction for a period exceeding six months at a time. The power to issue such sanctions should be exercised by the General Manager personally or by his Senior Deputy General Manager.

(c) any delay exceeding six months in the holding of a selection should be taken up by the General Manager with the officer concerned. It is presumed that all the Railway Administrations have laid down subsidiary rules for the periodic convening of Selection Boards and of the preparation of panels of names for the guidance of the officers dealing with the promotion of staff to Selection Posts. The Board desire to have a copy of the set of such upto-date rules framed by the Railways so that the question of laying down uniform rules applicable over all the Railways is considered further.

* Services such as railway posts are not included in this post as they are not covered by the old categories. The number of services such as railway posts

Railway Board's letter Nos E55/CM/1/3 dated 5th October 1955. See P. 132, 125, 149,

Sub : Measures for securing increased representation of Scheduled Castes and Scheduled Tribes in the Central Services. P. 133

I. Reference Railway Board's letter No. E50/CM/1/7/3, dated 18th June 1953 forwarding a copy of the Ministry of Home Affairs Office Memorandum

Sgt
new
9/8

କାନ୍ତାରୀ ରେ କାନ୍ତାରୀ ରେ କାନ୍ତାରୀ ରେ କାନ୍ତାରୀ

1995.1.23.2017

1878-1880.

4.14. Regulation of Other Institutions Working in KED (Category of Railways), Isfahan.

Enclosed - 1) Railway Board's Letter No. 5/105/69/123/3
G. 21.50.76.

44) The office notifications of even number
st. 15/20.11.75.

卷之三

The revised Recruitment & Promotion Rules for the
S.I. (XII) Editorial staff working in this office have been
published in this office notification quoted above. These
rules have come into effect 3.6.1978.

2. Prior to 1.11.76 this office had made applications to the posts of Assistants from the Departmental UGC as this office was excluded from the purview of the combined competitive examination for the posts of Assistants held by UGC from 1973 onwards. As no UGC qualified Assistants were available for posting in this office between 1973 to 1976, all the promotions made to the posts of Assistants were on adhoc basis.

3. As the above promoted Assistants have been continuing to hold the posts till date, it is requested that the Board may kindly communicate their approval for regularization of these Assistants, after adjudging their suitability for regular promotion on the basis of their confidential reports.

4. The appointment & Promotions to the posts of
Aide-de-Camp occurring after 1.11. 70, will be made as per
provisions in the revised R&R Rules for this category.

349 311.

Alcock

28/-
(Jagjit Singh)
for Inspector General.

महाराष्ट्र विद्यालय नोट ॥
अनुसंधान वाचन
(रेख मालव) मानक नोट ॥

S. O. J. No. 1
9/81

APPENDIX-3

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RDSO).

STAFF NOTICE

Sub: Seniority List of Ministerial Staff - Assistants
as on 1.4.1988

The Seniority List of Assistants, scale Rs.1400-2600(RPS) of RDSO as on 1.4.1988 is enclosed for circulation amongst the staff concerned.

2. The staff concerned may please be asked to note the entries against their names in token of their having seen the entries. Representations, if any, may please be sent to Establishment-VI through their Controlling Officers within a month from the date of issue of the Seniority List. If no representation is received within the said period, all the entries would be treated as final and no representation would be entertained in future.

DA: One List

M. Lal 19/11/89
(M. Lal)
Section Officer/Estt.VI

File No.A/ES/ISL

Manak Nagar,

Lucknow.

Dt. 19.1.1989

DISTRIBUTION

1. SPA to Addl D.G.
2. PA to JDA-II
3. PA to JDA-III, DDE-I, DDE-II
4. PA to JDA-I, 5. SO/E-I, II, III, IV, V & VI
6. SO/Rectt., R&D, Admn.I & II, Hindi, Civil, MP, ED, Track, Carriage, Wagon, Res. Mech. & Civil M&C, S&T, Confldl., Pass, B&S, Elect., ADOP, TI Dte. TEN, JDW(I&L)/RDSO-3 Koilaghat Street, Calcutta.
- JDW(I&L)/RDSO, Room No.501 A, Rail Bhawan, New Delhi. *Not. Board*

The Managing Director, RITES, New Delhi House,
27-Balaramia Road, New Delhi-110001.

*S. Gho.
P.C.W.
9/8*

Seniority list of Assistants as on 1.4.1988

S.No.	Ac- tive s.	Name	Co- mm- uni- ty	Date of birth	Date of appt. first	Date of appt.	Date of appt. in RDSO	Date of conf. in the pre- sent grade.	Date of appt. to Pt.	Section/ Dte.	Remarks		
					4.	5.	6.	7.	8.	9.	10.	11.	12.
<u>S/Sharl</u>													
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.		
1.	-	J.J. Hare, Matric	H	13.4.33	20.7.50	20.7.50	14.1.57	27.5.62	1.6.56	Offg. as SO/Conf.			
2.	-	R.N. Dixit, MA	H	7.9.31	17.9.54	17.9.54	15.3.58	14.9.66	1.9.59	Offg. as SO/MP			
3.	-	Brahm Dev. BA	H	2.6.33	23.1.51	16.4.57	26.6.61	6.2.67	1.8.56	Offg. as SO/Admn.			
4.	-	M.M. Mathur, MA	H	10.4.30	25.8.47	16.7.62	16.7.62	6.2.67	1.1.56	Offg. as SO/Carr.			
5.	-	L.Kandolna, Mat.	ST	4.4.30	20.2.54	20.2.54	4.8.62	6.2.67	1.4.58	Offg. as SO/Recrt.			
6.	-	Jagdish Dhandra"	H	7.5.32	30.6.52	29.6.54	6.8.62	6.2.67	1.4.58	Offg. as SO/R&D			
7.	-	R.N. Verma, Mat.	H	24.7.34	4.10.54	4.10.54	6.8.62	6.2.67	1.4.58	Offg. as SO/RM			
8.	-	S.V. Kannike- swaran.	H	8.1.31	10.4.54	9.8.63	9.8.63	6.2.67	31.3.56	Offg. as SO/Wagon.			
9.	-	V.K. Raju, BA, LLB	H	20.6.30	23.6.54	9.8.63	9.8.63	6.2.67	1.3.56	Transferred to Brahmputra Bridge Project	✓ 25		
10.	-	Shyam Ehatia BA	H	26.2.35	1.9.53	1.9.53	1.9.61	9.9.63	6.2.67	Offg. as DDE I			

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.
33.	17	S.N. Dutta,SSLC	H	10.1.37	11.5.56	11.5.56	20.8.73	23.4.79	11.5.64	E-I	
34.	18	R.L. Pharma,Mat.	H	15.1.2.36	29.5.53	30.6.56	21.8.73	23.4.79	30.6.59	Carr. Dte.	
35.	19	H.K. Paul,Mat.	H	1.3.31	14.7.56	14.7.56	1.4.76	23.4.79		M&C Dte.	
36.	20	J.D. Srivastava,BA H	H	13.5.32	9.5.56	9.5.56	1.7.77	1.4.80	6.2.67	E I	
37.	21	B.M. Khanna,BA	H	1.11.38	1.11.56	1.11.56	20.4.77	24.5.80	1.11.59	M.P.Dte.	
38.	22	R.K. Agarwal,Mat.	H	20.1.1.36	21.4.56	1.11.56	16.11.77	1.8.80	4.11.59	Reott.	
39.	23	K.B. Kohli,Mat.	H	15.4.37	26.12.56	26.12.56	19.11.77	1.9.81	1.10.63	E-I	
40.	-	N.A. Waghela,SSLC	SC	27.5.35	1.2.57	1.2.57	30.11.77	1.1.82	1.4.64	Offg. as SO/E-III	
41.	-	K.Soren,SSLC	ST	23.1.32	22.12.56	22.12.56	16.11.70	1.2.82	2.9.63	Offg. as SO/ED	
42.	24	T.V. Jayaraman	H	14.3.34	16.10.58	16.10.57	16.11.77	1.3.82	14.9.66	Confld.	
43.	25	B.R. Khurana,Mat	H	8.2.35	17.10.57	17.10.57	1.12.77	1.6.82	14.9.66	TI	
44.	26	Chhotey Lal,BA	SC	17.3.31	24.10.57	24.10.57	13.1.78	23.9.82	23.1.67	S&T	
45.	27	PK Sarkar,B.Com.	H	27.1.2.35	5.41.57	5.11.57	13.1.78	10.9.82	6.2.67	RDSO/Calcutta in W/I&I	
46.	28	SN Ganguli,Mat.	H	26.1.37	5.11.57	5.11.57	4.12.77	10.9.82	6.2.67	MP Dte.	
47.	29	KC Saxena,Mat.	H	5.8.31	13.1.56	11.1.91	1.4.78	10.9.82	1.5.68	Stores	
48.	30	RL Ahluwalia,Mat.	H	15.2.37.	15.4.61	15.4.61	30.6.78	10.9.82	1.8.77	E-IV	
49.	31	TP. Singh,Mat.	H	20.1.35	14.6.56	2.6.75	22.6.78	40.9.82	1.8.77	Pass	
50.	32	M.K. Mukherjee,Mat	H	6.1.37	10.3.58	10.3.58	22.6.78	10.9.82	1.8.77	Admn. Sec.	
51.	33	T.Lakra,Mat.	ST	13.8.31	26.3.58	26.3.58	22.6.78	10.9.82	1.12.77	Stores	
52.	34	S.R. Bauri,SSLC	SC	11.6.35	25.6.58	25.6.58	23.6.78	10.9.82	23.12.77	Traffic Dte.	
53.	35	Jatinder Nath,Mat.	H	20.9.32	23.7.58	1.10.68	26.6.78	10.9.82	23.12.77	Admn.	
54.	36	A.K. Chakraborty	H	1.3.38	28.8.59	28.8.59	23.6.78	10.9.82	23.12.77	M.P.Dte.	

426

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.
75.	56	Y.K. Sethi, BA	H	15.9.46	5.10.66	5.10.66	18.10.84	-	23.4.79	TEN's Office	
76.	57	Sardar Singh, Mat.	SC	19.10.38	3.1.59	3.1.59	16.2.85	-	22.12.77	ED Dte.	
77.	58	R.L. Rakesh, BA, LLB	SC	1.9.32	22.7.55	25.4.61	13.9.83*	-	6.2.67	Wagon Dte.	
78.	59	H.C. Srivastava	H	10.7.37	31.3.55	26.4.61	13.3.84*	-	6.2.67	Reott. Sed.	
79.	60	B.A. Visharad									
		Jodh Singh, Mat.	S	15.8.33	20.3.62	20.3.62	10.8.84*	-	6.2.67	F-VI Sec.	
80.	61	M.P. Jain, BA	H	1.7.31	21.9.55	5.6.61	1.9.84*	-	6.2.67	E-I	
81.	62	K.C. Verma, Mat.	ST	6.6.41	13.1.65	13.1.65	13.9.83*	-	21.3.75	Admn.	
82.	63	S.R. Verma, MA, LLB	H	16.12.33	8.5.62	8.5.62	30.7.84*	-	15.3.67	Wagon Dte.	
83.	64	S.I. Srivastava, BA	H	25.7.37	8.5.62	8.5.62	24.9.84*	-	15.3.67	Purchase Sec.	
84.	65	G.S. Shukla, BA	H	1.2.31	1.5.57	18.4.67	28.9.84*	-	19.8.73	E-I	
85.	66	Bhoop Singh, Mat.	SC	1.12.48	28.5.69	29.5.69	27.3.87	-	21.2.78	E-IV	
86.	67	Kamal Ahmad, BA	M	27.4.47	21.7.66	21.7.66	18.8.87	-	1.4.76	E-IV	
87.	68	M.L. Uppal, MA	H	2.2.49	1.3.69	1.3.69	20.5.88	-	21.2.78	E-VI	

* Adhoc promotion as Assistant.

(A-27)

- 7 -

S/Shri

Ministerial Staff Class III(Hindi) Section
Asstt. Scale Rs.1600-2600(RPS) Permanent four, Temp-One.

3.	4.	5.	6.	7.	8.	9.	10.	11.	12.
----	----	----	----	----	----	----	-----	-----	-----

C.S. Dixit, MA	H	2.6.32	26.11.56	26.11.56	18.1.70 14.8.70	15.10.74	13.10.62	Offg. as Sr. Hindi Officer	
G.P. Shukla, MA	H	15.5.34	10.9.56	3.9.62	7.12.71	13.3.75	8.5.73	Offg. as SO/Hindi Officer	
1 R.L. Arya, MA	H	4.8.35	15.1.57	24.9.62	30.8.72	21.10.75	8.5.72	Hindi Sec.	
2 P.N. Saxena, MA	H	4.1.45	18.10.64	18.10.64	28.11.74	21.2.73	31.3.75	Hindi Sec.	
3 H.C. Sahai, BA	H	8.12.46	6.10.66	6.10.66	28.1.82	-	21.2.78	Hindi Sec.	
4 K.N. Dhawan, MA	H	11.1.37	17.10.61	17.10.61	27.11.81	-	6.2.67	Hindi Sec.	
5 Vinay Kr. Singh, MA	SC	29.9.50	13.7.73	29.7.80	28.6.84	-	-	Hindi Sec.	

Translator-oum-Vettor (Scale Rs.1640-2900)
Post-One/Ty.

1 G.P. Shukla, MA	H	15.5.34	10.9.56	3.9.62	1.3.82	13.3.75	1.3.83	Offg. as SO/Hindi (Adhoc)	
-------------------	---	---------	---------	--------	--------	---------	--------	------------------------------	--

728

The Committee have reviewed the CRs of S/Shri G.R.Gauniyal, R.K.Mallick, Sardar Singh, GC Adia and Shiva Dayal for considering their regularisation for promotion as Assistant under Board's directive contained in their letter No.ERBI/69/RB3/9 dated 13.3.1979

2. The Committee notes that there were 4 vacancies available prior to 31.10.1978, and the incumbents against those posts could not be regularised then.

3. The Committee reviewed the case of Shri G.R.Gauniyal, who was promoted as Assistant on adhoc basis. The Committee did not recommend for his regularisation previously, as a chargesheet for imposition of major penalty under D&A rules was pending against him. It has been observed by the Committee that the finalisation of the D&A case against Shri Gauniyal will take long time. Therefore, Shri G.R.Gauniyal can be regularised from the date he has been continuously working as Assistant, i.e. W.e.f.16.11.1977. It has been considered necessary so as to arrive at the number of resultant vacancies for notification to the UPSC.

4. After perusing the CRs, the Committee is of the opinion that Shri R.K.Mallick was promoted to work as Assistant w.e.f. 6.7.1978 i.e. prior to 1.11.1978, and had continued to work as Assistant against the clear vacancy, and he has earned continuous good reports. The Committee could not regularise him earlier for the reason that his CRs for the period from 1973 to 1976 were not available as per entry in his CR folder, and only one CR was available on record at that time. The committee recommends that Shri R.K.Mallick should be regularised as Assistant w.e.f 6.7.1978.

5. Shri Sardar Singh is not considered fit for regularisation as Assistant prior to 31.10.1978, i.e. for the available vacancy prior to 31.10.1978.

6. DTR may kindly see for approval.

*S. G. J.
R.D.W.
9/8*

APPENDIX-5

10% LDC QUOTA

No provision in
New R&P Rules

(A20)

GOVERNMENT OF INDIA-MINISTRY OF RAILWAYS RESEARCH DESIGNS & STANDARDS ORGANISATION

NOTICE

As a result of Limited Departmental Competitive Selection for the post of Assistant, scale Rs.1400-2600(RPS) from amongst the Graduate Clerks and Receptionists of R.D.S.O. against 10% quota held on 17-12-87 & 18-12-1987, Shri M.L.Uppal S/o Shri G.R.Uppal has been found suitable for the post of Assistant, scale Rs.1400-2600 (RPS).

2. This has the approval of Senior Deputy Director General.
3. The above panel will remain current upto 09-3-1990.

DA: Ml.

Lucknow-226011.

Dated: 18-3-1988.

(File No. Rectt/Asstt/Comp/87).

Sd/- 18/3/88
(R.K.Mallik)
Section Officer(Rectt)

DISTRIBUTION

1. DE E)-II.

2. NOTICE BOARD.

/True copy/

S. Ghu
Adm
9/8

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

June , 1989

Registration O.A. No. 65 of 1988(L)

Sangam Lal Srivastava ... APPLICANT

vs.

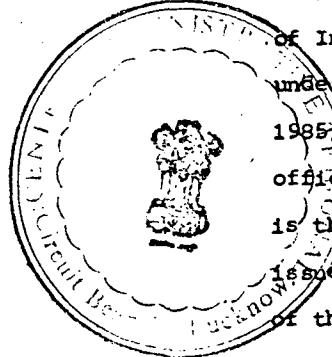
Union of India & ors ... RESPONDENTS

Hon' Mr. Justice Kamleshwar Nath, V.C.

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

(By Hon' Mr. K.J. Raman, A.M.)

This is an application filed by Shri S.L. Srivastava, Assistant, working in the Research, Designs & Standards Organisation (RDSO), Government of India (Ministry of Railways), Manak Nagar, Lucknow, under section 19 of the Administrative Tribunals Act, 1985, against the Union of India and three other official respondents. The prayer of the applicant is that the order No. 101 of 1987 dated 1-4-1987, issued by the respondents regularising the service of the applicant as Assistant with effect from 27-3-87, be quashed; and that the memorandum dated 12-1-88 issued to the applicant with reference to his application dated 5-10-87, stating that the applicant had been correctly regularised as Assistant w.e.f. 27-3-87, as communicated to him under a memorandum dated 9-12-85, be also quashed. Further, the applicant seeks to delete the words, "purely on ad-hoc arrangement", occurring in order No. 386 of 84 dated 21-9-84, by which he was originally promoted as Assistant. The



632

applicant seeks regularisation on the post of Assistant from the date he was promoted to that grade originally i.e. 24-9-84.

2. The applicant has elaborately set out his case in the application and two rejoinders; in addition, he has also submitted a written argument. The respondents have also submitted two counter affidavits in reply. The applicant argued his case in person and the learned counsel for the respondents was also heard.

3. The substance of the case of the applicant is that even at the time of his original promotion by issue of order No. 386/84 promoting him as Assistant on an ad-hoc basis, he was eligible to be promoted on a regular basis, since he was found fit for promotion by a Deputy Director General in accordance with the then Recruitment Rules. The applicant states that he has continuously worked on the post of Assistant from the date of his promotion in 1984 on an ad-hoc basis and he was not made regular in that post till 1987. His posting as Assistant has been regularised only w.e.f. 27-3-1987. According to the applicant this is a long delay in regularisation, without any justification. The applicant admits that the respondents had been making promotion of Departmental UDCs to the Grade of Assistant, up to the extent of 50% of vacancies of Assistants, and 10% through Limited Departmental Competitive Examination, and 40% through UPSC/Staff Selection Commission. The applicant claims that if suitable candidates are not found through the UPSC/SSC, the vacancies

102

...3/-

ought to be filled up by promotion, and the other quota through UPSC/SSC stands lapsed. In this connexion, he refers to para 302 of I.R.E.M. which according to the applicant, supports the arguments of the applicant as above. The extract quoted by the applicant, however, merely refers to the principle of fixation of seniority between promotees and direct recruits, when the date of entry is the same for both. According to the applicant, the quota rule has broken down in this case, since no candidates were available from the UPSC/SSC source, at the time of his ad-hoc promotion in 1984. On this basis, the applicant seeks to get the benefit of the decisions of Hon'ble Supreme Court dealing with the break-down of the quota rules. The applicant has cited a number of cases including S.C. Kacktwana & ors vs. Union of India & ors ATR 1987(2) CAT 22 (New Delhi) and R.K. Mallick Vs. Union of India & ors T.A. No. 259 of 1986 (OS No. 17 of 1985), CAT, Allahabad. The applicant states that he was actually promoted in 1984 in the place of Shri P.K. Dhar who was promoted in his turn on a regular basis. Thus, the vacancy in which he was promoted was a regular vacancy and not a fortuitous or stop-gap arrangement. Suitable persons from the UPSC/SSC or competitive examinations were not available at that time and, therefore, those vacancies were filled up by promoting the applicant and others. The applicant was found suitable for promotion according to the Recruitment Rules and therefore, there was no question of his being continued on an ad-hoc basis after the expiry of a reasonable period of 3 months. The applicant also attributes bias and prejudice to the respondents, particularly Respondents No. 4, on the ground that the applicant

1971

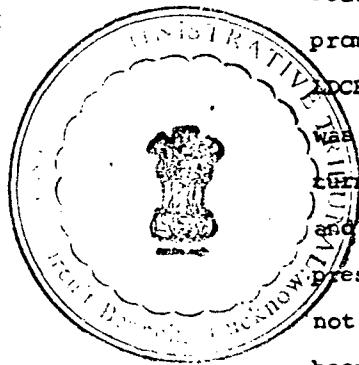
1234

is a Trade Unionist. The applicant, however, does not give the basis on which he makes such allegation.

4. The respondents have contended that the application is barred by time. It is also further argued that the application suffers from non-joinder of necessary parties, since Union of India has not been made a party originally in the application. The applicant however, has amended the application since then, making Union of India as one of the respondents. According to the respondents, the applicant was promoted as Assistant with effect from 24/9/84 purely on an ad-hoc basis for a period not exceeding 3 months or till the posting of a regular incumbent which-ever was earlier. It is stated that this ad-hoc promotion was made, since the promotion was against a vacancy reserved for UPSC/SSC/ LDCE quota. It has been emphasised that the applicant was regularised as Assistant w.e.f. 27-3-87 in his turn alongwith others, strictly according to the seniority and in accordance with the relevant Recruitment Rules prescribing the quota. It has been stated that it is not the case of the applicant that his juniors have been promoted over him. The respondents have denied the allegation of the applicant that the quota has lapsed and that the applicant has become entitled to regular promotion earlier. Originally in 1984, the applicant was promoted on an ad-hoc basis for a period of only 3 months. Since the candidates from UPSC/SSC were not available, the ad-hoc promotion period of the applicant was extended by further periods of 3 months several times. It has been explained by the respondents that recruitment through UPSC/SSC takes more than a year and the time taken in filling up the quota cannot be

10

....5/-



considered as unreasonable. The respondents aver that the applicant had no right to regular appointment or promotion from 1984. His turn came only in 1987 and he was duly regularised. In the supplementary counter affidavit filed by the respondents, the deponent of the counter has pointed out to the objectionable language used by the applicant in his rejoinder.

5. We have very carefully considered the pleadings and the arguments advanced from both the sides. As regards the question of limitation, the point of the respondents is that the grievance of the applicant is regarding the ad-hoc promotion order of 1984 and his representation for regular promotion was finally rejected by memorandum dated 9-12-1985 (Annexure-II) and the memorandum dated 12-1-1988 (Annexure-IV) on which the applicant relies for the purpose of limitation, is merely a reiteration of the decision of 1985. The order of regularisation is dated 1-4-87 and the application was filed on 19-7-88, i.e. after one year. It is, however, seen that the applicant has represented against the order of regularisation dated 1-4-87 in his representation dated 5-10-87. In that view of the matter, the memorandum dated 12-1-88 can be taken as an order rejecting the representation against the 1987 order. We, therefore, are inclined to deal with the matter on merits.

6. It is observed that in the order No. 386/84, it is clearly stated that the applicant along with two others, one of whom is admitted to be senior to the applicant, was promoted on a purely ad-hoc basis. It is clearly stated in the order that the ad-hoc promotion will be for a period of not exceeding 3 months or till the posting of a regular incumbent.

APB

whichever is earlier. The applicant also admits that his promotion in 1984 was on an ad-hoc basis. It is also admitted and not denied by the applicant that the ad-hoc promotion of the applicant and the other two persons was made against the vacancies reserved for UPSC/LDCE quota. The applicant has vigorously contended that because persons from UPSC or SSC and LDCE were not available at that time, he should have been promoted regularly at least after 3 months after his ad-hoc promotion. According to the applicant, because of this failure to fill up the direct recruitment quota from 1984 till 1987, the quota system has broken down; and applying ~~is~~ the ratio of the decisions cited by him as referred to earlier, he should be declared to have been regularly promoted from 21.9.84. The applicant also refers to para 302 of I.R.E.M. in support of his contention that the quota system had lapsed. He also seeks to draw support for his case from the fact that he was promoted vice one Shri P.K. Dhar who was regularly promoted leaving a clear and regular vacancy. This argument is clearly untenable. The eligibility of the applicant for promotion against a vacancy has to be decided in terms of the quota rules and the roster maintained and not merely with reference to whether the vacancy was regular. Similarly, para 302 of I.R.E.M. merely lays down the rule regarding the criterion for determination of seniority in the case of direct recruits and promotees. This is no authority to say that, when the direct recruit vacancy is not filled, the quota rules should be deemed as lapsed in all cases. In this case, it is admitted on all sides that the vacancy against which the applicant was promoted in 1984 was ear-marked for a direct recruit (SSC/LDCE)

LDA -

.....7/-



and since the applicant was not really eligible for promotion against that vacancy, he was promoted on ad-hoc basis for presumably administrative reasons. He thus, had no right to hold the post. Initially the ad-hoc promotion was for 3 months, but, in view of the delay in getting direct recruits from the UPSC/SSC, the period of ad-hoc promotion of the applicant was extended for 3 months on a number of occasions.

Ultimately in 1987 the vacancies were filled up as per the quota prescribed in the Recruitment Rules and the applicant was promoted on a regular basis in his turn. The argument of the applicant that in this situation, the quota rule had broken down, is clearly not acceptable. It is well known that recruitment through central agencies takes time; and if the vacancies cannot be filled for some time because of such delay in recruitment, and if in every such case the quota rule is deemed as broken down, then there will be hardly any quota rule operating anywhere at any time. There is no basis or authority for making such a wide and impracticable proposition. In the case decided by the Principal Bench at New Delhi and cited by the applicant, as well as in the ~~Supreme~~ ¹⁹⁸⁷ Supreme Court cases mentioned therein, the factual position was entirely different from the present case. In those cases, vacancies had remained unfilled for 15 to 20 years or such long period. In the present case, there was a delay of less than 3 years so far as the applicant is concerned, and this cannot be considered as sufficient to cause the quota rule to break down. In the case of ¹⁹⁸⁷ ~~Mallik~~ cited by the applicant, the question was of eligibility to appear in a departmental examination on the basis of qualifying service. In that case, the decision was to count the regular service of the applicant from the date ^{on which} ~~he~~ he was included in the panel for regular promotion and not from the date of his promotion



(A.R.)

on an ad-hoc basis. It is well established that ad-hoc promotees have no prescriptive right to the post occupied by them and unless they are qualified and eligible for a regular selection, they could not be promoted regularly (vide Ravish Gupta Vs. Secretary, Ministry of Personnel and Training, (Assistants in Secretariat) A.T.R. 1986 C.A.T. 22 (New Delhi)). In this case, the applicant got the benefit of pre-mature officiation on account of the delay in recruitment and he was duly promoted when the vacancy arose to which he was eligible for promotion. There is no allegation that his juniors ^{act of} have been regularly promoted earlier or any discrimination ^{act} has been committed against him.

7. Considering all the circumstances, the application fails and is dismissed with no order as to cost.

~~MEMBER ADMINISTRATIVE~~ VICE CHAIRMAN.

(sns)

July ~~1989~~ 7, 1989

Lucknow.

Certified True Copy
D.S. Dabir

Deputy Registrar 11/1/89
Central Administrative Tribunal
Lucknow Bldg.
Lucknow