

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

0 A-140-76/1988

CAUSE TITLE OF

NAME OF THE PARTIES ... R. S. Yadav Applicant

Versus

..... P.O.E. Cor. Respondent

Part A:

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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)

Checked on Dated ... 19-9-11

Counter Signed.....

Section Officer/In charge

Signature of the
Dealing Assistant

D/B

Gradation list
Seniority.

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

A
1

Registration No.

of 198

APPLICANT

Br. of R.S. Yadav, Circle Secretary of U.P. Circle
(s) All India Telegraph Engrg. Employees Union
Class III, U.P. Circle for Lko

RESPONDENT(s)

U. of I. through the Secy. Minry. of
Telecommunication, New Delhi
& 2 others.

Particulars to be examined

Endorsement as to result of Examination

1. Is the appeal competent? No
2. (a) Is the application in the prescribed form? Yes
(b) Is the application in paper book form? Yes
(c) Have six complete sets of the application been filed? 5 Copies have been submitted
3. (a) Is the appeal in time? No
(b) If not, by how many days it is beyond time? more than one year
(c) Has sufficient case for not making the application in time, been filed? No
4. Has the document of authorisation/Vakalat-nama been filed? No
5. Is the application accompanied by B. D./Postal-Order for Rs. 50/- Yes, DP 018812 A-20/6/00
6. Has the certified copy/copies of the order (s) against which the application is made been filed? No, It has been attested by the Secretary & is applicant himself.
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed? Yes
(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly? No

O A. 76 of 1981 (1)

R. S. Yadav — vs. — D. O. & 2015.

ORDER SHEET

A
3

23.09.11

Hon. A. Jothi, A.M

Issue Notice to the respondents to show cause as to why this application be not admitted.
Notice is returnable by 22.9.11. List this case for admission on 22.9.11.

fnsh
29/10/11

28.09.11

R Sr. V. K. Choudhry Issues Notice for respondent.
~~Reply on~~ Put up on 22.9.11 for Admission.

fnsh
29/10/11

23.9.88

Hon. D. S. Mishra, Am
Hon. G. S. Sharma, JM

The case was called out on 22.9.88 as well as today. None is present to the parties.
The case is adjourned to ~~24.10.88~~ 5-10-80 for admission.

JM

23.9.88

unry

5.10.88. Put up for admission on 26/10/88.

fnsh
5/10

Bor

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW.

O.A./T.A. No. 76 1980 (C)

R.S. Yadav

Applicant(s)

Versus

U O K

Respondent(s)

Or. No.	Date	Orders
	20.11.80	<p><u>OR</u></p> <p>This case ^{was} for listed for admission on 26.10.80 & it was dismissed in default due to non appearance of the applicant. The applicant has moved an application on 24.11.80 for Restoration of his Case. This application is within time.</p> <p>Submitted for order</p>

For
20/11/80

Central Administrative Tribunal, Allahabad
Circuit Bench-Lucknow.

C.M(Restoration) Application No. 20 of 1988 (L)

R.S.Yadav

....

Applicant

Vs.

Union of India

....

Respondents.

Hon. D.S.Misra, AM

Hon. G.S.Sharma, JM

(By Hon. D.S.Misra, AM)

This is an application for restoration of O.A.No. 76 of 1988 (L), which was dismissed in default of the applicant by order dated 26.10.1988. This application was filed on 24.11.1988 and is, thus, well within time. The cause shown is sufficient and the case be restored to its original number.

MEMBER (J)

MEMBER (A)

Dated: 24.1.1989
kkb

D.R

The applicant is present in person. On the request of the learned counsel for the applicant, the case is fixed for order before court on 29.3.89.

D.R

29.3.89

D.R

On the request of counsel for applicant, he is allowed to file reply by 7.4.89.

D.R

7.4.89

D.R

Both the parties are present. Last opportunity for filing reply is granted by 7.5.89.

D.R

ORDER SHEET

$$\frac{A}{b}$$

R. S. Yadav

VERSUS

~~A. E. T. E. C. Class~~

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
13-11-97	Hon. Justice K. Nath, VC Hon. Mr. K.J. Raman, AM On the request of both the parties, the case is adjourned to 20.11.97 for hearing. AM VC	क. ज. वृ. अर्ग तर्क पर अर्ग तर्क पर आधारित नै स्वीकृति नहीं मिथा गया है। आपलप के आदेश- उक्त अर्ग तर्क- अंतर्गत नै अर्ग तर्क नै उचिततयपर नहीं दिया है रस्ता पर वाद रंजतर सुनवाई के लिए। अधिक एक टाका सुनवाई के लिए। एल/ए 12/5
20-11-97	No. Sitting Adj. to 24.2.90. Both the parties are present. L 20/11/97	एल Neither CA nor RA has been filed. Case is not submitted yet. but the Com. order dt 12.7.97 Case is submitted for ex parte hearing. L 23/12
26.2.90	Hon. Justice K. Nath, VC Hon. Mr. K.J. Raman, AM On the request of both the parties the case is adjourned to 3.5.90 for hearing. AM VC	एल 24/5
3.5.90	Case not reached adjourn to 7.8.90 P.C.	एल 23/8
7-8-90	No sitting adj. to 19.9.90 P.C.	

OA 76/88 L

24.9.

Honbl. Mr. Justice K. M. V.
Honbl. Mr. A. B. G. V. A.M.

A
F

On the request of both parties
Counsel case is adjourned to 27.6.91

d
A.M.

ve

2

No RA filed
in
Mk

27.6.91

D.R.

Both the parties
are present today.
In this case CA/RA
have been exchanged
hence, this case is
to be listed before
the Hon. Bench on
19/8/91 for final
hearing.

19.8.91

No sitting on 22.10.91

2

22.10.91

Mr. H. B. Panday Counsel for applicant.
Mr. V. K. Chaudhary Counsel for respondents.

On the request of learned
counsel of the
both parties, case is adjourned to
30.12.91 for hearing.

(S.N. Prasad)

Member. Sudh

(Kausal Kumar)

Vice Chairman

5/8

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH.

O.A.No.76 of 1988.

R.S.YadavApplicant.

Versus

Union of India & othersRespondents.

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

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

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

The applicant claiming himself to be the Secretary of U.P.Circle Branch of All India Telegraph Engineering Employees Union Class III has filed this application praying that the illegal revision of seniority-gradation of clerks of Sitapur Telegraph Engineering Division vide letter dated 5.2.83 of the Divisional Engineer Telegraphs, Sitapur be held to be void and be quashed and the seniority-gradation dated 11.2.80 operational for promotions ordered by the said authority's letter dated 23.9.86 be determined to be void and be quashed and the pay and allowances' acquittances based on his quashable letter dated 23.9.87 be recovered for the Government exchequer and andirectionmayalso be issued to the respondents that Rule No.254, Note 2, Post and Telegraph Manual Volume IV remains in force and governs seniority gradation of clerks under the respondents.

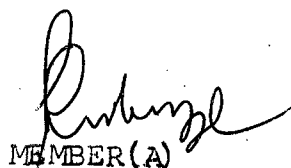
2. The respondents have denied that the junior persons are illegally enjoying promotions consequent upon wrong fixation of seniority of Telecom Office Assistants in Sitapur Telegraph Engineering Divisn. The seniority of Telecom Office Assistants of Sitapur Telegraph Engineering Divisn has been fixed strictly

✓

as per the existing provisions in rules which prescribe that the officials who pass the confirmation examination within three years in six chances will retain their due seniority whereas the others qualifying after availing more chances in 4th or subsequent years shall lose their seniority and rank junior to those recruited/promoted in that year. Thus, the seniority of TOAs so fixed is in no way contrary to any rule or provisions. The revised rules of the seniority have been issued by the Director General, P & T, New Delhi as a result of P. & T Departmental Council meeting and as such they have the statutory force and will prevail over the existing rules. The Director General, P & T, New Delhi had issued revised rules for determination of seniority of TOAs in the department on 21.6.73, 30.8.80 and 23.2.81 which stipulate that due seniority of the persons who pass the confirmation examination within three years in six chances will remain intact whereas the others qualifying thereafter shall lose their seniority. As a result of implementation of the revised rules of seniority in the department, the seniority-gradation of TOAs of Sitapur Telegraph Engineering Division was carried out and re-fixation was done.

3. On behalf of the applicant, it was contended that Rule 254, Note 2 of P & T Manual Volume IV which provides a particular mode of determination

of seniority will prevail but in view of the
so made,
amendment/referred to above, after the result of
the consultation which has got statutory force
obviously stand superseded. In view of the said
rule, the position as determined subsequently will
prevail and as the implementation of the same has
been made, the applicant cannot get seniority
or promotion which he could have claimed in case
no rule survives. Accordingly, we do not find any
force in the application and is dismissed. No
order as to costs.



MEMBER (A)



VICE CHAIRMAN.

DATED: JULY 13, 1992

(ug)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH, ALLAHABAD AT LUCKNOW
CASE NO. of 1988

All India Telegraph Engineering Employees Union
Class III, U.P. Circle Branch, Lucknow

APPLICANT

Versus

Union of India and others

Respondents

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3. Memo no. E-72/87 dated 5.2.1983 being the irregularly revised seniority gradation of clerks by Divisional Engineer Telegraphs Sitapur	2	15 18
4. Order no. E-60/Ch I/92 dated 23.9.1986 issued by the Divisional Engineer Telegraphs Sitapur determining the promotive salary of erroneously promoted official	3	19
5. Monetary acquittances and approximate commutation of other acquittances consequent to erroneous promotion, in accordance with annexure no. 3	4	20
6. Bank draft		

Place : Lucknow

Dated : 18.2.1988

(R. S. Yadava)
for Applicant

List this case on 22.07.88

Noted Dcty
23/8/88
for Applicant

A. K. Singh
A.T.E. 579
19/7/88

18/8

Form I
Application under Sec.19 of the
Administrative Tribunal Act 1985

For use in the Tribunal
Office

Date of filing

Registration no.

Signature of Registrar

In the Central Administrative Tribunal, Bench Allahabad
at Lucknow

Between

R. S. Yadav, Circle Secretary of the U.P. Circle Branch of
All India Telegraph Engineering Employees Union Class I
registered office at 2/3, P&T Colony, Aishbagh, Lucknow

. . . . APPLICANT

and

1. Union of India, through the Secretary Ministry
of Telecommunications, Department of Telecommu-
nication, Government of India, Sanchar Bhawan,
New Delhi
2. General Manager Telecommunications, U.P. Circle,
Hazratganj, Lucknow
3. Divisional Engineer Telegraphs, Sitapur Telegraph
Engineering Division, Sitapur

. . . . Respondents

DETAILS OF APPLICATIONS

1. Particulars of applicant

i. Name of the applicant : R. S. Yadava, Circle Secret
of the All India Telegraph
Engineering Employees Uni
Class III, registered off
at 2/3 P&T Colony, Aishba
Lucknow

ii. Father's name

iii. Designation and office
in which employed

iv. Office address

v. Address for service of: R. S. Yadava, Circle Secret
All India Telegraph Engin
ing Employees Union, Clas
2/3 P&T Colony, Aishbagh,
Lucknow

... next page

A3
3

2. Particulars of the Respondents

i. Name and/or designation of the respondents

1. Union of India
2. General Manager Telecommunications, Lucknow
3. Divisional Engineer Telegraphs, Sitapur

ii. Office address of the respondents

1. Through the Secretary Ministry of Telecommunications, Department of Telecommunications, Government of India, Sanchar Bhawan, New Delhi
2. General Manager Telecommunications, Hazratganj, Lucknow
3. Divisional Engineer Telegraphs, Sitapur

iii Address for service of all notices

As in Col. 2.ii above

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

The application is against the following orders:

i. Orders no.

1. E-72/87 and continuations
2. Staff/M-11/25/84/JCM/5
3. E-60/Ch I/92

ii.2x Date

1. 5.2.1983
2. 25.6.1985
3. 23.9.86

iii.3x Passed by

1. Divisional Engineer Telegraphs, Sitapur
2. General Manager Telecommunications, Lucknow
3. Divisional Engineer Telegraphs, Sitapur

iv. Subject in brief: Revised Gradation List of Telecom Office Assistants of office establishment of Sitapur Telegraph Engineering Division

2. an order negating statutory rule that clerks failing to pass confirmation examination in first 4 chances lose seniority until the date of passing

3. the order authorising higher pay and allowances and other benefits to erroneous promotees

...next page

Alleged
True
Copy

25/9/87

25/9/87
महोदय
(नगर) लखनऊ-226001
दस्तावेज नं. 48799

A3
u

4. Jurisdiction of the Tribunal

The applicant approaches the Tribunal under article 226 of the Constitution.

5. Limitation

The applicant declares that the application is within limitation under Article 226 of the Constitution in as much as it is a case concerning subsisting statutory provision defaulted by respondents needing judicial certitude and command for giving effect as due.

6. Facts of the Case

The facts of the case are given as below:

- i. The applicant is the U.P. Branch of a federal type trade union named All India Telegraph Engineering Employees Union, Class III enrolling its members from amongst the Telegraph Engineering Branch employees who work indoors, of the Department of Telecommunications of Union of India, and both the said Union and the applicant are recognised by concerned authorities of the Department of Telecommunications.
2. That in consequence of recognition the applicant is a member of the U.P. Telecommunication Circle Joint Consultative Machinery styled as Regional Council the which effects agreements on matters of staff entitlements and needs of efficiency, between its 'Staff Side' and the 'official side'.
3. That in consequence of illegal revision of seniority and gradation of clerks of the Sitapur Telegraph Engi-

...next page

Plt. Secy. P. S. Chd.
R. S. Khan

19/10/88
उप मंडलीय अधिकारी देवाफोन
(बलर) बलनक-226001
देवाफोन नं. 42700

A3/5
A/5

neering Division on 5.2.1983, actual senior clerks of the office of the Divisional Engineer Telegraphs Sitapur, and those posted in offices subordinate to it have been subjected to deprivation of promotion and the juniors have continued to enjoy illegal promotions and other attendant financial gains. The representations of senior-aggrieved clerks by themselves and through the applicant were ineffective. Finally, as emanating from item 13 of the 31st Regional Council of the U.P. Telecommunications Circle the corrective order was passed by the respondent no. 2 as under:

"GMT UP Circle letter no. Staff/M-11/25/84/JCM/5 dated 11.6.85

"With regard to passing of confirmation examination by TOAs following three categories are established in rules :

"(a) Those who pass confirmation examination in first 4 chances which will fall in first 2 years of service of a TOA;

"(b) Those who pass in fifth and sixth chances occurring in third year of service of a TOA.

"(c) Those who pass in 7th, 8th or still later chances.

"It is clarified that seniority of category (a) will remain intact. In case of (b), the seniority of an official who passes examination in 5th or 6th chances will count from the date of his passing the examination. The category (c) will suffer two adverse consequences. Firstly their increment will remain stopped until passing of confirmation examination; secondly their seniority will be regulated in the same manner as that of the category (b).

"Since the foregoing is the codified position in rules wherever seniority is decided these rules have to be observed. Any variance from these rules has to be set right."

4. That in statutory support of the last para of the order reproduced in preceding para it is cited that the Note 2 below Rule 254(i) of the Post and Telegraph Manual Volume IV provides that "the seniority of an official who passes examination in 5th or 6th chance will count from the date of his passing the

Presented to
Copy
RST
महनीय अधिकारी
(उत्तर) लोकनज-32600
कर्मचारी 42890

(P3/6)

A/16

examination."

5. That the applicant states that reversals of seniority as said in paragraph 3 above, and wrongful promotions based thereupon were all along the motivated actions of concerned authorities, on behest of the vested interests. These vested interests again became active after issue of the order dated 11.6.85 as reproduced in para 3 above. Their efforts were crowned with success with the issuance of cancellation of order dated 11.6.85, verbatim of cancellation order being as under:

"GMT UP Circle no. Staff/M-11-25/84/JCM/5 dated 25.6.85

"Sub : Passing of confirmation examination by TOA

"The letter issued vide this office letter of even no. dated 11.6.85 on the abovenoted subject may kindly be treated as cancelled

"The receipt of this letter may be acknowledged immediately. Revised orders will follow shortly."

6. That although under the constitution of the Joint Consultative Machinery agreement once executed like one embodied in the letter dated 11.6.85 abovesaid can not be opted out by either party for a period of one year, and indeed the respondents are not empowered to so opt out in any case due to statutory position cited in para 4 above, yet not only they arbitrarily cancelled the order dated 11.6.85, they have also not kept their promise of issuing revised orders on the controversy.

7. That it is stated that the controversy revolves around the issue of letter dated 5.2.83 of the respondent no.3 in which an official passing confirmation examination in 5th chance, and earlier standing forfeited of seniority for the service in period between failure in 4th and success in 5th chance of his at confirmation examination

...next page

Office of the
Comptroller
General
of Accounts
(General)
New Delhi
110 054
13-22-85
13700

A3
A/18

a factual error and the Government servant concerned ... be brought to the position which he would have held but for incorrect order of promotion or appointment ... Service rendered in that post to which he was wrongly promoted/appointed as a result of error should not be reckoned for increments or any other purpose in that grade/post to which he would not normally be entitled but for the erroneous promotion/appointment ... The President is also pleased to direct that the cases of erroneous promotion/appointment ... be viewed with serious concern and suitable disciplinary action should be taken against the officers and staff responsible ..."

10. That the members of the applicant, the aggrieved officials, through representations on their own, and later through the applicant, despite diligence, have not succeeded in availing remedy from the malafide vested interest narrated above obliging the applicant to prefer this application.

7. Relief sought

In view of the facts mentioned in para 6.1 to 6.11 above the applicant prays for the following reliefs :

The illegal revision of ~~with~~ seniority-gradation of clerks of the Sitapur Telegraph Engineering Division through letter dated 5.2.1983 of the Divisional Engineer Telegraphs Sitapur be held to be void and hence quashed; to leave the same authority's seniority-gradation dated 11.2.1980 operational for promotions ordered by the said authority all this while; and consequently that

A3/9

of clerks under the respondents

Grounds for the relief and legal provisions relied:

- i) Because the changes effected in the seniority-gradation by the respondent no.3 on 5.2.1983 are in disregard and violation of Rule 254, Note² of the P&T Manual, Volume IV having the force of law, for which the said respondent is not competent.
 - ii) Because the violation of Rule 254 ibid by the respondents is mala fide, intended to help one set of clerks at the expense of another set lawfully entitled to seniority and promotion denied by the said violation..
 - iii) Because as an evidence of the mala fide, the respondents are accountable for their act of associating payment of diem allowance on outstation promotion to beneficiary of violation, without any authority whatsoever in regulations.
 - iv) Because the respondent no.2 in having failed to determine a question on agenda of the Joint Consultative Machinery (U.P. Telecom Circle Regional Council) instantly; and cancelling belated decision when issued; and the respondent no.1 in failing to answer in reference to feigned doubt about enforceability of Rule 254 ibid sent to him from the said Regional Council have acted in derogation of constitution of the Joint Consultative machinery which is the official body to advise the respondent no.1 on staff relations, and that these latches are not clean.
 - v) Because the applicant is entitled for obtainment of a state in services which accord^{with} provisions of laws; and it is in public weal that multiplicity of legal proceedings be avoided
- In the order prayed for : The erroneous promotions based on revised seniority-gradation dated 5.2.1983 be ordered to be immediately discontinued

Attested True
Copy

RS Yadav

8.07.83
13-07-83
4200

9. Details of Remedies Exhausted

The applicant declares that he has availed of all possible remedies under prescribed machinery of staff relations in Department of Telecommunications, Government of India.

- i) The affected member(s) of the applicant duly but unsuccessfully represented their grievance to all the authorities prescribed in rules for them before invoking the responsibility of the applicant to take up the grievance as a service case in general.
- ii) The applicant both communicated with his counterpart authority, namely the General Manager Telecom U.P. Circle Lucknow in capacity of union recognised for the level, orally and in writing; and later in capacity of a constituent of the Regional Council, U.P. Telecom Circle.
- iii) The applicant also caused its Central Headquarter recognised for communicating with the Director General of Department of Telecommunications, New Delhi to take up and pursue the grievance of its members, at which level, too, the efforts till so long have gone futile.
- iv) The applicant has, ever since, been reminding in Regional Council for the settlement of grievance.

10. Matter not Pending with Any Other Court etc.

The applicant declares that the matter in this application is not pending before any court of law, or any other authority, or any other Bench of the Tribunal.

11. Particulars of Bank Draft respecting Application Fee

- i. Name of Bank Postal order payable to
- ii. Demand Draft no. PA-111-DDS/0188 GPO Allahabad
- iii. Dated 20-6-88

Details of Index : An index of documents to be relied upon is furnished.

Attested True
Copy

RSY

13/08/88
22700
(3/8/88)
3-7/88

IN VERIFICATION

I, R. S. Yadava, Circle Secretary of U.P. Circle branch of the All India Telegraph Engineering Employees Union, Class III, office at 2/3, Post and Telegraph Colony, Malviyanagar, Aishbagh, Lucknow do hereby verify that contents of paragraphs 1 to 12 above are true to my personal knowledge and belief and that I have not suppressed any material facts.

Place : Lucknow

Dated : 1988

R. S. Yadava
(R. S. Yadava)
for Applicant

True copy attested
[Signature]
उप संजीव्य अधिकारी
(बतार) लखनऊ-226001
डेपु फोन नं. 42700

In the Central Administrative Tribunal
Additional Bench, Allahabad

13/12

6/2

All India Telegraph Engineering Empl
Union, Class III, U.P.Circle Branch,
and

Union of Indian and others

Annexure no.1

Being the seniority-gradation of clerical
Telegraph Engineering Division Sitapur
vide memo no. E-72/5 dated 11.2.1980
Divl Engr. Teleg. Sitapur, attached her

Attorney General

RSY

ARC

13/12/80

एप नॉडलीय अधिकारी के लिये
(वृत्तर) लखनऊ-226001
टेलीफोन नं० 42700

INDIAN POST AND TELEGRAPH DEPARTMENT

SECTION LIST OF THE GRAPHS ENGINEERING DIVISION STATION CORRECTED UP TO 31.1.80 BY THE LOCAL OFFICES

BOTH PERMANENT / TEMPORARY

Sl. No. Name Whether SC/ST.

Date of Birth.

Date of Entry in department.

Date of entry in the grade.

Station Remarks.

1	2	3	4	5	6	7	8
1.	Shri Mohd. Alam	-	11.11.29	31.12.40	23.3.57	1.11.61	Working at 20% Short in the grade.
2.	Noble Ram	-	9.11.30	7.9.52	7.9.52	1.3.56	Rule 38 STB/N-11/7/Lw Ch.-II/1 Dt 9.8.73
3.	Brikhsa Pd.	SC	10.5.50	4.3.72	4.3.72/2.9.73	1.3.75	Matual with Kuldren S
4.	Ram Harl	-	18.11.51	21.4.73	21.4.73/1.11.75	1.3.76	Q.P. 1.11.78 Batch No
5.	J.P. Jaiswal	-	28.2.55	1.11.73	1.11.75	1.3.76	Rule 38 STB/N-11/Lw
6.	R.P. Singh	-	28.7.51	23.7.75	23.7.75/27.12.76	1.3.76	/8 dated 8.11.76.
7.	S.P. Singh	-	20.12.46	12.9.67	12.9.67/16.5.77	1-3-69	STB/M-11-7/Lw. T. /74/8
8.	S.N. Shukla	-	2.12.42	7.7.65	9.8.71/25.4.77	1.3.76	Rule 38
9.	S.B. Singh	-	15.8.43	21.10.66	21.10.66/11.4.77	1.3.68	Rule 38
10.	S.M.S. Rezvi	-	10.6.52	15.7.75	15.7.75/5.3.77	1.3.76	Rule 38
11.	R.Y. TIWARY	-	5.7.49	12.10.71	12.10.71/25.7.77	1.3.76	Deptt.
12.	S.N. Singh	-	17.7.56	18.10.77	18.10.77	1.3.76	II half of 76
13.	Ganga Bahadur	-	4.2.45	7.5.66	7.5.66	1.3.76	Keptt. Confidate
14.	Ram Saiwan	-	10-12-53	1.11.75	1.11.75	1.3.76	Passed conf. Exam. in IV
15.	S.C. Yadav	-	4.11.55	16.8.78	16.8.78	1.3.76	Entered 77 (Bateh)

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1.	2.	3.	4.	5.	6.	7.	8.
16. Sri Shurendra Mohan.	12.1.46	1.8.67	17.1.78	16.8.78	21.10.78	21.10.78	21.10.78
17. Pooran Lal	SC.	2.4.55	16.8.78	21.10.78	21.10.78	21.10.78	21.10.78
18. Upendra Kumar	--	5.7.55	21.10.78	21.10.78	21.10.78	21.10.78	21.10.78
19. Ram Prasad	SC	20.7.58	21.10.78	21.10.78	21.10.78	21.10.78	21.10.78
20. Ram Autar. I	SC			/7.8.79	---	---	---
21. Jail. Singh	-	5.11.49	1.7.71	17.8.78	---	---	---
22. K.N. Shukla	-	29.7.52	7.2.73	7.2.73/6.9.78	1.3.75	---	---
23. K.K. Misra	-	12.12.50	1.11.75	1.11.75/13.9.78	---	---	---
24. Wannu Lal	SC	23.12.49	1.9.74	1.9.74/18.2.79	---	---	---
25. Mathu Lal	SC	2.12.56	5.6.79	5.6.79	---	---	---
26. Shukh Ram	SC	21.1.48	8.10.68	8.10.68/23.6.69	1.3.72	---	---
27. A.B. Prechata	SC	30.1.42	2.9.70	2.9.70/2.5.79	1.3.72	---	---
28. Raghunath Ram.	SC	1.1.50	20.10.73	20.10.73/11.7.79	1.3.72	---	---
29. Paltu Ram	-	1.12.49	7.8.73	7.8.73/1.5.79	1.3.74	---	---
30. R. Pathak	-	2.12.47	17.5.71	17.5.71/13.6.79	1.10.74	---	---
31. Chandra Deo	-	1.1.52	4.10.73	4.10.73/1.5.79	7.6.77	---	---
32. Shurya Mani	SC		22.3.77	22.3.77	---	---	---
33. V.K. Misra	-	14.7.53	6.8.76	6.8.76/21.2.79	---	---	---
34. Chedi Lal	SC	15.3.56	1.1.1.75	1.11.75/	---	---	---
35. K.M. Maurya	-	20.10.78	20.10.78	20.10.78/4.7.79	---	---	---

Passed Conf. exam. 29.8.79 after losing six chances.
Rule 38 metual with Sh. Sri. Krishna Ram who joined on 21.5.79.

30-11-78

Handwritten signature and stamp.

True Copy
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36.	Shriv Mani Ram Verma	SC	1.4.49	1.12.75	1.12.75	1.8.79	--	Rule 38	GMT staff	/M-11-7/SMP.T.
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38. " K.K. Yadata 10.4.53 17.1.78 17.1.78/2.7.79 -- Rule 38 ----- 25

39.	"	Phool Chanda	--	15.7.57	20.5./8	20.5./8/9.7./9	--	Kule	-----
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49.	ni	---	---	---
Desh Raj .	12.12.51	7.5.77	7.5.77/2.9.79	Rule 38-----60-----

41.	"	Pradeep kumar	---	25.8.56	18.10.77	18.10.77	---	Brahma ch 5	senes 02	com.	---
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ad. 18-2-80

1. The G.M.T. U.P. Circle. - unknown.

3. A. E. Co-Axial STP/STN.

4. U.P. Circle Secty./Divn1. Secry. and with s. are copies.

Note: 1. This seniority is provisional and subject to change on production of documentary evidence on seniority. It should be sent to the undersigned along with the documentary proof through proper channel and must reach this office latest by 16th April, 1980 failing which the same will be treated as final.

2. Each information published here should be gone through carefully and mistake be intimated by above authority. No fact should be kept hidden to avoid mistakes.

D. E. TELEGRAPHS
SITAPUR.

90-11178
J.T.
[redacted] as

In the Central Administrative Tribunal,
Additional Bench, Allahabad

All India Telegraph - Engineering
Employees Union, Class III, U.P.
Circle Branch Lucknow

and

Union of India and others

Res

Annexure no.2

Being the seniority-gradation of clerks, rev
and issued vide memo no. E-72/87 dated 5.2.1
of the Divisional Engineer Telegraphs, Sitab
attached herewith.

Approved
19/8/88
R. V. S. N.

14 लक्ष्मीय अधिकारी टेलेग्राफ
(उत्तर) लखनऊ-226001
टेलीफोन नं. 42700

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In the Industrial Tribunal, Additional Bench,
Allahabad

All India Telegraph Engineering Employees
Union Class III, U.P. Circle Branch ... Applicant

and

Union of India and others ... Respondents

Annexure no. 3..

Department of Telecommunications

No. E 60/Ch I/92 dated 23.9.86

Office of the
D.E.T. Sitapur

Granted annual increment to Sri Surya Mani,
T.O.A., office of the S.D.O. Telegraphs, & Lakhipur
and pay raised as given below:

Date of A/I	Pay in substantive cadre	Pay in officiating cadre of L.S.G. (C)
1.2.84	Rs 316 p.m., not to be drawn	Rs 425 p.m., w.e.f. 13.4.83
1.2.85	Rs 324 p.m., not to be drawn	Rs 440 p.m., w.e.f. 1.4.84
1.2.86	Rs 332 p.m., not to be drawn	Rs 455 p.m., w.e.f. 1.4.85, reverted from the post of L.S.G. (C) w.e.f. 4.4.86

Copy to :

(K.K. Rastogi)
D.E.T. Sitapur

1. Pay
2. D.O.R.

Attested True copy
ATC
BY
[Signature]
[Stamp: 39/86]
[Stamp: 226001]
[Stamp: 42700]

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A/3)

In the Central Administrative Tribunal,
Additional Bench, Allahabad

All India Telegraph Engineering Employees
Union Class III, U.P. Circle branch Lucknow

... applicant

and

Union of India and others

... Respondents

Annexure no. *H*.

T.A. paid to Sri Suryamani on account of
promotion and deputation to a post of
L.S.G. (C) on officiating basis

April 83	Rs 417.85
May 83	696.90
June 83	224.70
July 83	424.05
August 83	325.50
September 83	370.70
November 83	403.75
January 84	358.00
February 84	198.30
March 84	199.70
April 84	526.05
May 84	709.80
June 84	644.70
July 84	398.90
August 84	620.10
Sept. 84	518.45
October 84	268.80
January 85	244.60
February 85	370.60
March 85	349.30
April 85	413.80
May 85	405.10
June 85	262.00
July 85	322.70
August 85	437.40
October 85	161.70
November 85	248.15
December 85	538.35
January 86	248.90
February 86	261.90
March 86	470.30
April 86	72.35
May 86	363.70
June 86	462.00
December 84, transfer TA	Rs 499.70
1982-85 block years LTC	Rs 7572
=====	
Total	Rs 21,843.10, continued payments till date, plus.

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Direct to me
Copy
ATC
RSK
19/8/83
(पु मंडलीय अधिकारी आकोर)
(बत्तर) लखनऊ-226001
संक्रमांक नं. 42700

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

~~XXXXXXXXXXXXXXXXXXXX~~

CIVIL MISC. APPLICATION NO.

OF 1991

in re: Original Application No. 76 of 1988(L)

RS Yadav

.. Applicant

-versus-

Union of India and others .. Respondents

CONDONATION OF DELAY IN FILING COUNTER AFFIDAVIT
ON BEHALF OF RESPONDENTS.

The Respondents begs to submit as under:-

1. That the aforesaid application was filed by the applicant challenging the orders dated 5.2.83, 25.6.85 and 23.9.1986 through which the seniority of Telecom Office Assistants of Sitapur Telegraph Engineering Division was determined.
2. That inadvertently the counter affidavit could not be filed before this Hon'ble Tribunal, as the aforesaid case escaped the notice of the Respondents and the file of the aforesaid case was mixed up with certain other papers and which could not be traced out earlier.
3. That the delay in filing of the counter affidavit was not deliberate but it was inadvertent

Filed today
24/9/91

and only by mistake.

4. That in view of not filing the counter affidavit, this Hon'ble Tribunal was pleased to pass an order for ex-parte hearing which will be taken up on 2.4.1991.

5. That the accompanying counter affidavit is being filed showing the hollowness of the petition.

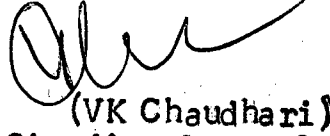
6. That it is expedient in the interest of justice that in view of the facts and circumstances stated above, this Hon'ble Tribunal may be pleased to recall the ex-parte hearing order passed in the aforesaid case and the case may be decided on merit after hearing both the parties, and the accompanying counter affidavit may kindly be accepted as part of the record of the cases otherwise the answering Respondents would suffer grave irreparable loss and injury.

P R A Y E R.

It is, therefore, most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to recall the ex-parte hearing order and decide the matter after hearing both the parties, and accompanying counter affidavit may be taken on record, otherwise the

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the applicants/Respondents shall suffer
grave irreparable loss, in the ends of justice.



(VK Chaudhari)
Addl. Standing Counsel for Central Govt
(Counsel for the Respondents)

Lucknow,

April 25 1991.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

O.A. No. 76 of 1988(L)

RS Yadav

.. Applicant

-versus-

Union of India and others .. Respondents

COUNTER AFFIDAVIT ON BEHALF OF OPPOSITE PARTIES.

I, *Ram Mohan Khare* aged *57*
about *57* years, son of *Late Shri Kamla Saran Khare*
at present posted as *Divisional Engineer (Legal Cell)*
in the Chief General Manager, Telecom Lucknow
do hereby solemnly affirm and state as under:

1. That the deponent is posted as *Divisional Engineer (Legal Cell)*
in the office of the Chief General Manager,
Telecom Lucknow and he has been authorised to
file this counter affidavit on behalf of all
the Respondents in the above case.
2. That the deponent has read and under-
stood the contents of the application filed by
the applicant and the facts deposed to herein
under in reply thereof.
3. That the deponent is fully conversant
with the facts of the case.

Khare

4. That the contents of para 1 & 2 of the application need no comments.

5. That in reply to the contents of para 3 of the application it is submitted that the seniority of time scale clerks now Telecom office Assistants in Sitapur Telegraph Engineering Division has been fixed correctly and in conformity with the rules enforced for determination of seniority of the persons working as Telecom Office Assistants and it carries no anomaly.

6. That the contents of para 4 of the application need no comments.

7. That in reply to the contents of para 5 of the application it is submitted that the declaration which has been furnished is not according to the provisions of Section 21 of the CAT's Act 1985 and as such the p application is time barred and is liable to be dismissed on this count alone.

8. That the contents of para 6(1) of the application need no comments.



9. That in reply to the contents of para 6(2) of the application it is submitted that there is not only a Regional Council which is functioning at U.P. Circle level but also a machinery higher to that known as departmental Council functioning at All India level at New Delhi which has larger scope and privilege to resolve the issues and effects agreements with the official side in the departmental Council (Joint Consultative Machinery) such an agreement prevails in the department as a guiding factor and act upon *rule in the matter of staff etc. whereas the Regional* as a statutory/council is not holding such a position and enjoying the privilege.

10. That the contents of para 6(3) of the application are not admitted as stated. It is incorrect to say that junior persons are illegally enjoying promotions consequent upon wrong fixation of seniority of Telecom Office Assistants in Sitapur Telegraph Engg. Division. It is submitted that the seniority of Telecomm Office Assistants hereinafter referred to as T.OAs of Sitapur Telegraph Engg Division has been fixed strictly as per the existing provisions in rules which prescribe that the officials who pass the confirmation examination within 3 years in six chances will retain their due seniority whereas the others qualifying

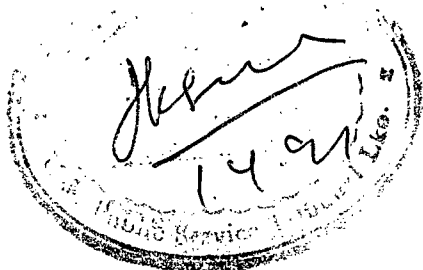


Reshwar

after availing more chances in 4th or subsequent years shall lose their seniority and rank junior to those recruited/promoted in that year, a photostat copy of the relevant rules dated 21.6.873, 30.8.1980 and 23.2.1981 is being annexed herewith as Annexure Nos. CA-I, CA-II & CA-III & xGA. The seniority of TOAs so fixed is in no way contrary to any rule or provisions. The order dated 11.6.85 ~~xx~~ as referred to in para was issued on wrong presumption and it has no validity as it is against the standing rules of the Department. Further, the aforesaid rules of seniority have been issued by the Director General, P&T, New Delhi as a ^{supreme} ~~supreme~~ machinery in the department and as such they have the statutory force and will prevail over the existing rule, and if the order dated 11.6.85 happened to be issued inadvertently against the spirit of the rules on the eve of discussion in the Regional Council meeting held at UP Circle level at Lucknow, shall have no legal validity as enumerated above.

11. That in reply to the contents of para 6(4) of the application it is submitted that Rule 254(1)

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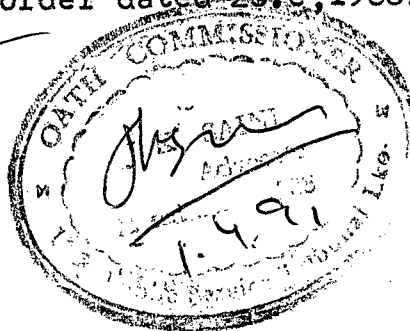


of P&T Mannual Volume IV is no more operative and stands modified by the latest rules issued by the

Director, General, P&T New Delhi regulating the method of determination of seniority of the persons working as TOAs in the department as enumerated in para 10 above. The said Rule 254(i) of P&T Mannual Volume IV as alleged has no validity to stand.

12. That the contents of para 6(5) of the application are not correct as stated, hence denied, and in reply it is submitted that the seniority of TOAs of Sitapur Telegraph Engg. Division has correctly been fixed as per the rules of seniority enforced in the department as enumerated in the preceding paragraphs. The promotion thus allowed on aforesaid seniority can not in any way be termed as or taken as wrongful promotion as contended. The allegation of motivated action is absolutely wrong and unfounded. As already stated above, the erroneous order dated 11.6.1985 happened to be issued inadvertently and as such it was rectified by cancelling the order dated 11.6.85 by an order dated 25.6.1985. If any order issued

Perkhare



erroneously against the spirit of rules and this fact is noticed subsequently, it comes the plain duty of the appropriate authority to rectify it immediately rather than to allow it to continue.

The action thus taken by the respondent to rectify the erroneous order dated 11.6.85 was perfectly correct and in conformity with the rules and regulations as well as Law & Justice.

13. That the contents of para 6(6) of the application are not correct as stated hence denied and in reply it is submitted that ~~ix~~ the p revised rules of seniority have been issued by the Director General, P&T New Delhi as a result of P&T Departmental Council meeting and as such they have the statutory force and will prevail over the existing rules. There can be no validity in the order dated 11.6.1985 which happened to be issued on wrong presumption and against the very principles of seniority promulgated by the department, The Regional Council is not enjoying ~~the~~ such a previlage to issue an order to amend or modify the standing rules but to ensure its functioning within the ambit of the existing rules and provisions. The fact that the order dated 11.6.85 do not acquire any legal validity, is manifestly true, The respondents have thus acted correctly to



Deekhare

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to rectify the erroneous order dated 11.6.85 by cancelling it by an order dated 25.6.1985, which is in no way arbitrary or contrary to any rule or provisions, as alleged.

7.14. That the contents of para 6(7) of the application are wrong and as such are denied. It is submitted that the Director General, P&T, New Delhi ~~has~~ had issued revised rules for determination of seniority of TOAs in the department on 21.6.73, 30.8.80 and 23.2.81 which stipulate that due seniority of the persons who pass the confirmation examination within 3 years in six chances will remain intact where- as the others qualifying thereafter shall lose their seniority as enumerated in the preceeding paragraphs. As a result of implementation of the revised rules of seniority in the department, the seniority -gradation of TOAs of Sitapur Telegraph Engg. Division already prepared and issued by the Divisional Engineer, Telegraph, Sitapur on the basis of old rules of seniority necessitated necessary revision which was carried out and after refixing the position of the officials as per the aforesaid provisions, the revised seniority-gradation of TOAs was issued for information of all concerned. The seniority/gradation of TOAs was ~~xxx~~ correctly revised and prepared in accordance with the latest rules of seniority framed and issued by the



Rushan

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Director General, P&T, New Delhi which acquire legal validity and will prevail over the existing rules already in force. Admittedly the provisions in Note-2 ~~in~~ below Rule 254 of P&T Manual Volume IV ~~dated~~ stand superseded by the latest rules of seniority issued by the DG P&T New Delhi regulating the method of determination of seniority of TOAs as already stated in the preceding paragraphs. The position has further been made clear by the Department of Telecommunication Government of India vide letter dated 16.2.90 which is quite clear and self explanatory on the subject, a photostat copy of letter is being annexed herewith as Annexure No.CA-IV. As earlier stated there is no illegality in promotion granted to the persons who happened to be senior and enjoying advantageous position in the revised seniority-gradation of TOAs of Sitapur Telegraph Engg. Division rather perfectly correct having full sanctity with the existing rules and provisions.

15. That the contents of para 6(8) of the application are not correct and as such are denied.

It is submitted that the promotion has been granted

only to the senior persons who were entitled for

Michael



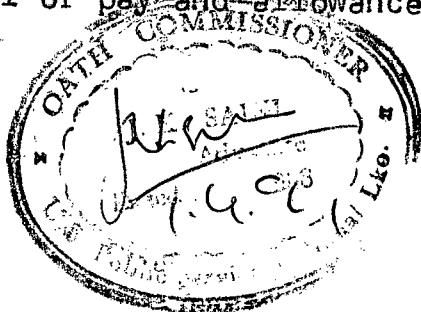
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promotion on the basis of seniority in the revised gradation list of TOAs as enumerated above.

Accordingly, Shri Surya Mani who happened to be senior person and a candidate of reserved community was granted promotion. No senior person as alleged has been deprived of the legitimate claim of his promotion. The allegation of financial loss thus made has no basis to stand.

16. That the contents of para 6(9) of the application are not correct and as such are denied. It is wrong to allege that Shri Surya Mani was an unentitled person for promotion whereas the fact remains that he was fully entitled for promotion being a senior person and happened to be promoted only by virtue of his seniority in the gradation list as stated above. The gradation list of TOAs of Sitapur Telegraph~~ic~~ Engg. Division, a copy ~~whk~~ of which has been annexed by the petitioner as Annexure no.2 to his application, is itself a valid proof which testifies the fact that Shri Surya Mani is a quite senior official and enjoying his position in seniority at serial no.5. Further, as a result of promotion of above official, the drawal of pay and allowances etc, at higher rate of

Subhash



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promoted cadre is but natural to which he is entitled to get as per rules.

17. That the contents of para 6(10) of the application are not correct as stated. A detailed reply has already been furnished in the foregoing paragraphs, hence need not to be repeated here again. It is further submitted that promotion has correctly been granted to the eligible person on the basis of seniority and it is in no way controversial as established from the facts. Hence, the question of cancellation of promotion as contended does not

arise.

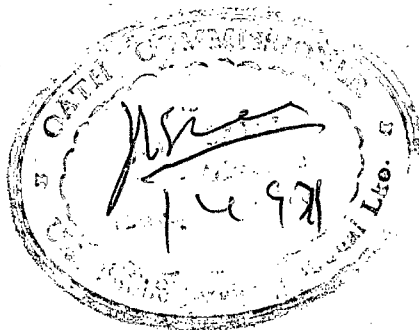
17. A. That in reply to the contents of para 6(11) of the application it is submitted that the contentions made therein are misconceived and are not sustainable in the eyes of law.

18. That in reply to the contents of para 7 of the application it is submitted that the contents are repetition of the application and none of the grounds mentioned therein are sustainable in the eyes of law.

The applicant is not entitled for any relief as prayed in para under reply. The application is devoid of merit and is liable to be dismissed with costs.

19. That in reply to the contents of para 8 of the application it is submitted that in view of the

Resubmitted



facts and circumstances stated above the applicant has failed to make out any prima facie case for interference of this Hon'ble Tribunal and as such the applicatt is not entitled for the interim relief as prayed in para under reply. The application is devoid of merit and is liable to be dismissed with costs.

20. That the contents of para 9, 10, 11 and 12 of the application need no comments.

21. That the grounds taken by the applicant are not tenable in the eyes of law.

22. That in view of the facts, reasons and circumstances stated in the foregoing paragraphs the application filed by the applicant is liable to be dismissed with costs.

Lucknow
Deponent.

Lucknow,

Dated: *1* Apr 1991

Verification.

I, the above named deponent do hereby verify that the contents of para 1 to 3 of the affidavit are true to my personal knowledge, those of paragraphs 4 to 20 are believed to be true on the basis of information gathered and records and those of paragraphs 21 & 22



Lucknow

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of the affidavit are based on the legal advice.

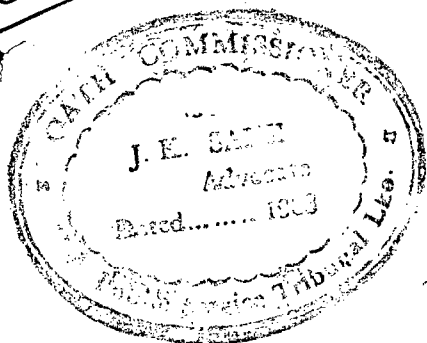
No part of this affidavit is false and nothing material fact has been concealed.

Michael
Deponent.

Lucknow,

Dated: 1st April 1991

Michael



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

[Signature]

(VK Chaudhari)

Addl Standing Counsel for Central Govt
(Counsel for Respondents)

solemnly affirmed before me in my office today on 1.4.91
at 3.30 PM, Smt Michael
who is identified by VK Chaudhari
Clerk of the Court

being the
of
and

[Signature]

Court Commissioner, Lucknow,
Date 1.4.91

CONFIRMATION EXAMINATION FOR TIME SCALE CLERK AND SORTERS ETC.

We are aware that direct recruits and departmental officials promoted under the incentive scheme are required to pass the confirmation examination in six chances within a period of four years and failure to pass the exam. results either in the official being reverted to offered a lower post or discharge from service if he does not accept a lower post. It was represented that discharge from service or reversion to a lower post after four years clerical service results in extreme hardship to the candidates in question and that some scheme should be found out by which the hardship is minimised. The matter was discussed in detail in the Departmental Council (J.C.M.) and a scheme in this regard was put forward by the staff side. After detailed discussion of the various aspects of the scheme, it has been decided as follows:-

- (I) - These candidates would be required to pass the confirmation examination within a period of Three years of their appointment during which period they will be able to avail of six chances. If they fail to pass the confirmation examination within three years, they would be allowed two chances to appear only in paper III of the departmental promotional examination to the clerical cadre. At present, only one departmental promotion examination is held in a year and the candidates can appear only once in a year, but a second test during the year will be held specially for those candidates who fail to pass in paper III of the departmental examination in the first chance.
- (II) - Such of the candidates as pass paper III of the examination of promotion to the clerical cadre within Two chances during Fourth year will continue as time scale clerk/sorters etc. and will be treated as departmental candidates of that year and would take their seniority below all the departmental candidates of the year in which they pass the paper III. They will be counted against the vacancies in the departmental quota of that year. If no vacancies in the departmental quota is available in that year, they will be absorbed in the vacancies in departmental quota of subsequent year.

- (III) The departmental incentive candidates who fail to pass paper III in the Two attempts in the Fourth years will be reverted to their parent cadre and the outside candidates who fail to pass will be offered an appointment in the lower cadre and if they do not accept will be discharge from service.

The concession referred to in para 1 above would be applicable to all candidates who have not completed Three years of service on the date of issue of this circular. Those who have completed Three years service and have not yet passed the confirmation examination will have to take the usual confirmation examination within the permissible number of chances in the fourth year he will be reverted to parent cadre/offered appointment in the lower cadre and if he does not accept will be discharge from service.

The responsibility of passing the examination within the prescribed no. of chances no doubt, rest with the official concerned. However, it is desirable to ensure that the departmental incentive candidates and direct recruit is retained in the clerical cadre for more than four years unless he has passed the confirmation examination/paper III of the departmental examination and that necessary action is taken for his reversion, offer of post in the lower cadre or discharge from service, immediately after the announcement of the result of paper III of the second departmental examination. in case fails. Therefore proper record should be maintained in respect of all candidates required to pass confirmation examination. In this connection attention is also invited to our circular letter NO.63/56/67-SPB-I, dtd 29-6-68 (copy attached).

- (IV) This circular letter issued in pursuance of the decision of the Departmental Council as recorded under item no.7 of the minutes of the meeting held on 27th & 28th April 1973.

Ad: Staff C/A-23/4/CH:II dtd at Lucknow on 6th July 1973:.....
Copy with its enclosure forwarded for information & immediate necessary action & guidance to:-

- 1- All SSPOs/SPDs. 2- All SSRMS. 3- All DESt/P. 4- All SMT. 5- S.I/CTOs. 6- All TIs I/C OTO's. 7- All A.O. ICD (SD). 8- The suptd. of Postal Stores Depot Lucknow. 9- Postmaster Lucknow/Kanpur. 10- Manager of M.O. Lucknow. 11- Suptd. Forms & Seals Aligarh. 12- All PDS. etc.

Noted and kept for copy

[Signature]
1-1-74

Am C-A 2

(3)

Copy of Communication no. 63/9/78-SPB.I dated 30.8.80 from D.G. P&T, New Delhi to All Heads of Circle.

Sub:- Passing of Confirmation Examination-Stopping of increment of the candidates on non-passing of the Exam. instead of their reversion.

...

Sir,

I am directed to refer to this office letter no. 63/25/72-SPB.I dated 21.6.73 wherein all the direct recruits and promoted to the clerical cadre under incentive scheme are required to pass the prescribed confirmation examination within 3 years and within permissible number of chances from the date of their appointment to the clerical cadre. It has also been stipulated that in case a candidate does not pass the same within 3 years, he is given 2 chances in Paper.III (Practical paper). Consequent upon his failure to pass the prescribed confirmation examination within 4 years (after availing 2 chances in paper.III in 4th year), a candidate is offered lower post and in case of his refusal to accept a lower post, such candidate is discharged from service.

2. The question was considered in the P&T Department Council meeting held during the month of March 1980 and it has been decided that henceforth the officials unable to pass the prescribed confirmation examination within 4 years (after availing 2 chances in paper.III in 4th year) should not be reverted to a lower post but their future increments will not be drawn until they pass the examination. A further communication may be awaited regarding subsequent release of increments refixation of seniority etc.

3. These instructions will be effective from the date of issue and the past cases need not be reopened.

Attested
B.M.

13/2/89

Attested by the undersigned
1.11.81

Am CA3 1025 for Conf
TELECOM DEPARTMENT

Copy of Comm. No.63/9/78-SPB. I Dated 23 February 1981.
From. D.G.P&T New Delhi . Add to All Heads of Circles.

Subject:- Passing of confirmation examination for Time Scale
Clerical and its allied cadres Clarification regarding.

Sir,

I am directed to refer to this letter of even number dated 25th Aug. 80. on the above mentioned subject and to say that various aspects such fixation of seniority, date of effect of stoppage of increments, release of increments have been examined carefully and it has been decided as follows.

(1) Fixation of seniority :- The seniority of the official who qualify in the 4th year or subsequent years may be fixed below all the departmental qualified officials of the year in which they pass the prescribed confirmation examination. They will be confirmed only after passing the confirmation examination and the confirmation will be made on their turn. In other words passing the confirmation examination will be a pre-condition for confirmation but will not entitle the officials for automatic confirmation. Confirmation will always be subject to the availability of vacancies.

(2) Date of effect of stoppage of increment :- In case of failure to pass the prescribed confirmation examination within 4th years, their increments is to be stopped. The date of stoppage of increment could be the date in which his 4th increment falls due.

(3) Release of increments :- The increment may be released on the date of holding the examination (if an examination is held for more than one day, the day of the examination) in which an official qualifies. The normal date of increment would however, remain the same. No arrears of increment will be paid to the officials and the officials may be allowed to get all the increments which might have been withheld for their failure to qualify in the test.

It has also been decided that the officials who fail to pass the prescribed confirmation examination within 4th years. (Including two chance in Paper-III in the 4th year) would have their increment stopped and they have to pass the confirmation examination in Paper-III only in 4th year and onward.

Yours faithfully,

Sd/-

(R.N. Koley)

Asstt. Director General (SPN)

No. Sta. ff. 27/2/Rlg/1/5 dated at A'bad-30 the 18-3-1981.
Copy forwarded for necessary action and report by return of post to
1. A-11 DET in Gujarat Circle (2) the Director Telecom. A'bad/Rajkot
3. The D.M.T Baroda/Rajkot/Surat. (4) The A.O. Telecom Accounts, AM-9
5. The A.O I/C I.II.III Ahmedabad (6) The A.E. Retal Telecom Stores
Depot AM.4(7) A.O.(Bgt) O.O.AM-30 (8) Staff clerk Staff Sn.O.O.AM.30
9. The Chief Accounts Officer, O/GMT AM-30 (10) All DAs in sta ff SnAM.30

For General Manager Telecom
Gyandut Cncet. AM.30

Attested to the true copy
[Signature]
14/01

सन् १६ ६५ ई.

In the Central Administrative Tribunal, Additional Bench,
Allahabad
Circuit Bench, Lucknow

R.S.Yadav

Applicant

Vs.

Union of India and others

Respondents

O.A.no.76 of 1988(I)
Date fixed 27.6.91

Rejoinder to Counter-Replication

I, R.S.Yadav, son of late Sri Babu Lal, aged 58 years, resident of 2/3, P&T Colony, Aishbagh, Lucknow do hereby solemnly affirm and state as under :-

1. That the deponent is the applicant in the above-noted suit and as such he is well conversant with the facts of the case and with those deposed hereunder.
2. That the deponent has read over and gone through the counter-affidavit dated 4.4.91 filed on behalf of the respondents and has fully understood the contents thereof.
3. That the deponent denies the contents of counter-affidavit so far as they are inconsistent with and contrary to the contents of the O.A. filed by the deponent under section 21 of the Administrative Tribunals Act, 1985 and reiterates the contents of paras 1 to 12 thereof.
4. That the contents of paras 1 to 4 of the counter-affidavit call for no comments.
5. That the contents of para 5 of the counter-affidavit are admitted to the extent of seniority of the Telecom Office Assistants of the Sitapur Division fixed in Divisional Gradation List dated 11.2.80, as per Annexure 1 of the O.A. but the rest of the contents are denied.
6. That the contents of para 6 of the counter-affidavit need no comment.
7. That the contents of para 7 of the counter-affidavit

...next page

R.S.Yadav

Filed today
25/6/91
4.

are not admitted. It is submitted that although in deference to Rule 4 of the Central Administrative Tribunals Rules 1985/^{The form be} had to adhered to, yet this application seeks to invoke the powers of the Hon'ble Tribunal under Article 226 of the Constitution. The subject-matter of the application is the realisation of an operative statute which the respondents are continuously nullifying, by claiming that the statute is repealed. In the sphere of the service law the issue raised by the application is a public cause.

8. That the contents of para 8 of the counter-affidavit need no comment.
9. That the contents of para of the counter-affidavit are not admitted. It is submitted that the decision taken in the Regional Council (JCM) is effective and the same can not be cancelled unilaterally, i.e. without making it agenda of the meeting of the Regional Council after one year.
10. That the contents of para 10 of the counter-affidavit are admitted to the extent that seniority of clerks of Sitapur Division was fixed correctly in the Divisional Gradation List dated 11.2.80 as per Annexure 1 of the O.A. and the rest of the contents of the said para are denied. It may be seen that seniority at serial 32 of Annexure 1 of the O.A. was fixed correctly with remarks that failure to pass confirmation examination in four chances needed exemption from confirmation examination. Since this exemption from confirmation examination was given on 27.5.79 the downgrading to serial 32 was done. But the respondent no.3 revised the seniority at serial 5 of the Annexure no.2 of the O.A. with remarks, 'Provisional,' subject to final decision from the respondent no. 2.

The controversy apparent from Annexure nos. 1

...next page

RS Yadav

and 2 of the O.A. is referable to Note 2 below Rule 254 of the P&T Manual Volume IV. The impugned Annexure no.2 of the O.A. claims that the statute Rule 254 *ibid* is repealed. Hence the upgrading of the official at serial 32 to serial 5 was made but this was provisional and this change was referred to the respondent no.2 by the respondent no. 3 for confirmation. 8/52

The respondent no. 2 did not confirm the change but the respondent no.3 presumed its confirmation and promoted juniors, putting seniors on one side. In this connection the respondent no. 2 had issued correct orders on 11.6.85 as under ;

"G.M.T., U.P. Circle letter no. Staff/M-11/25/84/
JOM/5 dated 11.6.85

"With regard to passing of confirmation examination by TOAs following three categories are established in rules:

"(a) Those who pass confirmation examination first four chances which fall in first two years of service of a TOA;

"(b) Those who pass in 5th and 6th chances occurring in third year of service of a TOA;

"(c) Those who pass in 7th, 8th or later chances.

"It is clarified that seniority of category (a) will remain intact. In the case of (b) the seniority of an official who passes examination in 5th or 6th chances will count from the date of his passing the examination. The category (c) will suffer two adverse consequences. Firstly, their increment will remain stopped until passing of the confirmation examination. Secondly their seniority will be regulated in the same manner as that of the category (b)

"Since the foregoing is the codified position in rules wherever seniority is decided these rules have to be ob-

RS Yadav

served. Any variance from these rules has to be set right."

But these orders were cancelled on 25.6.85 :

"G.M.T., U.P.Circle letter no.Staff/M-11/25/24/JCM/5

"dated 25.6.85

"Subject : Passing of confirmation examination by TOAs.

"The letter issued vide this office letter of even no. dated 11.6.85 on the above noted subject may be treated as cancelled. The receipt of this letter be acknowledged

Revised orders will follow shortly."

It may be seen that this cancellation of orders was not free from pressure as it is clear from the wording, "Revised orders will follow shortly."

It is also clear that undue pressure was brought on the respondent no.1 from whom the supersession of orders of the provision 2 in Note 2 below Rule 254 of the P&T Manual Volume IV were got issued under his no.201-10/89 STN dated 16.2.90 ^{order Annexure No. CA-1} against the CAT decision communicated earlier by the selfsame respondent no.1 under his no.23-35/82 SPB II ^{order Annexure No. CA-2} dated 20.5.87 to the effect that the provisions of Rule 254 Note 2 are over-riding despite simple criterion of length of service for seniority for the officials appointed before 21.12.59.

11. That the contents of para 11 of the counter-affidavit are not admitted specially as Rule 254(1) Note 2 ibid is still in force in view of the CAT decision mentioned in para 10 above. It is also submitted that the respondent no.1 has done a wrongful act under the STN Section issuing communication against the CAT decision circulated earlier from SPB II Section.
12. That the contents of para 12 of the counter-affidavit are not admitted. It is submitted that the seniority of the TOAs was provisional till final decision of the respondent no. 1 but the respondent no. 3 had already awarded promotion during past many years. Further, even after 16.2.90, the communication of the respondent no.1 being contrary to the decision of the CAT the promotion of the TOA continues to

R.Yada

...next page

be wrongful because the purported change of statute by the respondent no.1 decision dated 16.2.90 was not notified in Gazette as required under law. X/SM

13. That the contents of para 13 of the counter-affidavit are not admitted. It is submitted that the orders of the respondent no.2 dated 25.6.85 are against the decision of the JCM as well as the verdict of the CAT and do not have any legal validity.
14. That the contents of para 14 of the counter-affidavit are not admitted. It is submitted that in view of the CAT verdict incorporated in the respondent no. 1 instruction dated 20.5.87, their subsequent instruction issued on 16.2.90 has no legal value.
15. That the contents of para 15 of the counter affidavit are not admitted. It is submitted that the Respondent no. 3 has promoted juniors ignoring seniors and this is wrongful and illegal. This has caused irreparable loss to the seniors.
16. That the contents of para 16 of the counter affidavit are not admitted. It is submitted that the Respondent no. 3 has upgraded the official from serial 32 of the Annexure 1 to serial 5 of the Annexure 2 of the OA which is against the CAT, and Regional Council decisions. His position requires to be reverted to that of Annexure no.1 and recovery of financial gain from the wrongful and illegal promotion is due.
17. That the contents of para 17 of the counter affidavit are not admitted. It is submitted that the contents contents of paras 15 and 16 of this replication cover the points.
18. That the contents of para 18 of the counter affidavit are not admitted. It is submitted that erroneous promotion given by the Respondent no.3 attracts the liability of the Presidential instructions.
19. That the contents of para 19 of the counter affidavit are not admitted.

RS Yadav

...next page

20. That the contents of para 20 of the counter affidavit need no comments. A/5
21. That the counter affidavit under reply is absolutely wrong, false and conveys imaginary and baseless facts. It has no legs to stand on, not maintainable and is liable to be ignored.
22. Wherefore the applicant prays for the following reliefs
- (a) that by means of orders the Respondent no. 3 may be directed to maintain the seniority of the officials fixed on 11.2.80 as per Annexure 1 in stead of seniority as per Annexure 2 of the O.A.
- (b) that by means of orders the respondents may be directed to promote senior officials as per seniority fixed on 11.2.80 as per Annexure no.1 by reverting the officials whose seniority was wrongly fixed as per Annexure no.2 of the O.A.

Lucknow, dated 24 June 1991

RS Yadav
Deponent

Verifioation

I, the abovenamed deponent, do hereby verify that the contents of paras 1 to 20 are true to my personal knowledge and those of para 21 to 22 believed to be true on the basis of information gathered and records. No part of this affidavit is false and nothing material has been concealed.

Lucknow, dated 24 June 1991

RS Yadav
Deponent

I identify the depoent
who has signed before me

HB Pandey
Advocate
24.6.91

OTMB. 76 of 1988

Annexure No. CA-1

Government of India
Department of Telecommunications
STN Section

New Delhi

Dated 16.2.90

No. 201-10/89-STN

To

13/4/4
ADP/11/25/84/JCM/112
UPSTADEN-11
STN SECTION
AS WELL AS
AS OFFICER
Subject: STN

The Chief General Manager Telecom.,
U.P. Circle,
Lucknow.

Fixation of seniority in respect of TOA - reg.

...
Please refer to your office D.O. Letter No.
Staff/M-11/25/84/JCM/112 dt. 27.11.89 on the subject mentioned above.

It is hereby clarified that the officials who pass
the confirmation examination within 3 years (six chances) will
retain their due seniority. Others qualifying after availing more
chances in 4th or subsequent years shall rank junior to those
recruited promoted in that year. This is amply clear from this
office letters No. 63/9/78-SPD-I dt. 30.8.80 & subsequent dated
23.2.81 (copy already sent). The instructions contained in these
letters have been issued as a result of P&T Departmental Council
meeting held in March, 80 and superseded the provision in Note 2 below
Rule 254 of the P&T Manual Vol. IV.

Further necessary action may be taken accordingly.

(V. SRINIVASAN)
DIVISIONAL OFFICER ENGO. (STN)

Copy for information to -
1. DG (STN), Deptt. of Posts, New Delhi.

Ends No. Staff/M-11/25/84/JCM/112 dt. 16.2.90

Copy forwarded for information and file to -

(1) Shri Ram, Asst. P.O. C.O. Lucknow

TC
H.B. Pandey
Adv

24/6/91

OR No 7641980

Amendment No. CA-2

Fixation of seniority

DOP No. 23-35/82-SPB. II dt. 20-5-87.

I am directed to invite a reference to this office circular letter No. 45-1/74-SPB. II dated 12-4-78 which lays down the principles to be adopted for preparation of C.G.L. of officials belonging to the cadres of clerks etc. in the operative offices and appointed during the period from 22-6-49 to 21-12-59.

As per para of 2 (b) of the said letter the principle of fixing of seniority on the basis of length of continuous service in respect of officials appointed during the period 22-6-49 to 21-12-59 shall not be applicable to those officials who failed to pass the confirmation examination within the period and changes prescribed in the rules. As per the said letter, seniority of such persons is required to be fixed from the date of their passing the confirmation examination in the special chance or from the date of their being exempted from passing the confirmation examination as per note 2 below rule 254 of P&T Manual Vol. IV.

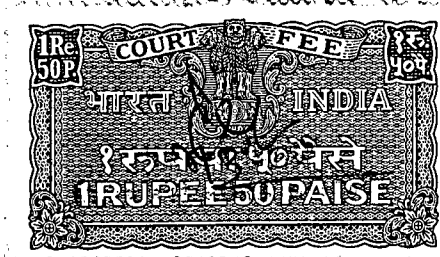
The above principle for fixation of seniority was challenged by one Shri Dev Dutt Sharma, Clerk, Delhi Circle before the C.A.T., New Delhi. The CAT gave the verdict that the seniority of the official should be fixed on the basis of length of service. In execution of the judgement of C.A.T. para 2 (b) and 2 (2) of letter No. 45-1/74-SPB. II dated 12-4-78 stand deleted and as such the general principle of fixing seniority on the basis of length of service, for persons appointed during the period 22-6-49 to 21-12-59 will also be applicable to person who failed to pass the confirmation within the period and chances prescribed in the rules.

The cases of the officials covered by this change may be reviewed expeditiously and their seniority refixed.

TC
H B Pandey
Adv.

24/6/91

ब अदालत श्रीमान सेन्ट्रल रेडीमिनिस्ट्रिव ट्रिब्युनल में दायर
[वादी अपीलान्ट] श्री का **वकालतनामा**
प्रतिवादी [रेस्पॉण्डेंट]



वादी (अपीलान्ट)

श्री अरवि कुमार शर्मा निवासी दिल्ली द्वारा आ. ए. ए. यादव निवासी दिल्ली के खिलाफ दायर मुकदमा नं० 76 सन् 1988 (एल) पेशी की ता० 19-9-1990 ई०

नं० मुकदमा आ. ए. 76 सन् 1988 (एल) पेशी की ता० 19-9-1990 ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री अरवि कुमार शर्मा के द्वारा

वकील महोदय एडवोकेट

नाम अदालत
मुकदमा नं०
नाम फरीकन
THE COURT OF APPEALS

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

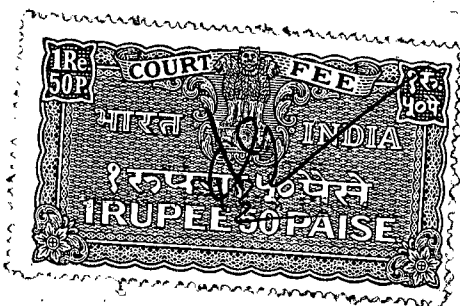
Accepted by
(अपीलान्ट)
14/9

हस्ताक्षर
स. स. यादव

साक्षी (गवाह) साक्षी (गवाह)

दिनांक महीना सन् १९ ई०
स्वीकृत

Before the Hon'ble Central Administrative Tribunal
Additional Bench Allahabad,
Circuit Bench, Lucknow.



F. A. 19-9

M. P. No. 594/90 R.

Original Application No. 76 of 1988 (L).

All India Telegraph Engineering
Employees Union Class III Applicant.

Versus

Union of India & others Opp. parties.


Application for inspection

On behalf of the applicant it is respectfully
submitted as under :-

1. That the applicant has engaged Sri H. B. Pandey Adv.
as its counsel to conduct the case before the
hon'ble Tribunal who needs to inspect the file
of the case for its preparation.
2. That to meet the ends of justice it is necessary
that the counsel so engaged is permitted to
inspect the relevant record.

Wherefore, it is most respectfully
prayed that the Hon'ble Tribunal may graciously
be pleased to allow the counsel for the applicant
to inspect the entire record relating to the
above noted case. For which act of kindness the
applicant shall ever pray.

Lucknow, dated;
September 14, 1990.


Counsel for
the applicant

Filed today
5/11/90
14/9/90

Before the
Central Administrative Tribunal
Cm Am. 30/000 (C)
Circuit Bench, Lucknow
Registration no. O.A. 76 of 1988(L)

1/60

All India Telegraph Engineering
Employees Union, Class III, U.P.
Circle Branch, Lucknow

Applicant

Vs

Union of India and others

Opposite Parties

Application for restoration after dismissal
in default of appearance

The applicant respectfully shows :

1. That the above-noted case was fixed for admission on 23.10.1988 when the same was dismissed in default of appearance by the applicant.
2. That the abovesaid date was not pre-fixed and the applicant was required to find out from the cause-list of the day about possible hearing. The applicant scanned the causelist for 21st and 22nd of October 1988 on which days the hearing had not been fixed.
3. That unfortunately for the applicant the next date i.e. 23.10.1988 was a pre-fixed date of union conference at Rishikesh wherein he was obliged to attend and for this reason the applicant was unable to appear in case before the Hon'ble Tribunal.
4. That in the circumstances narrated above the applicant could not appear when the case was called out on 23.10.1988 for admission.
5. That from the above it is evident that default in appearance was not intentional but due to circumstances above-said and it is desirable that the case be restored at its original place and number.

A
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Before the Central Administrative Tribunal (Circuit Branch)
Lucknow

○ A No 76/88(L)
All India Telegraph Engineering
Employees Union, Class III

Applicant

Vs

Union of India ~~or~~ and others

Opposite Parties

Application for restoration after dismissal in default

The applicant respectfully shows:

- Filed to day
4/11/88
24/11/88*
- 1.. That the above noted case was fixed for admission on 23.10.1988 when the same was dismissed in default of appearance by the applicant.
 2. That the abovesaid date was not pre-fixed and the applicant was required to find out from the causes list of the about possible hearing. The applicant scanned the cause list on 21st and 22nd of ~~November~~ October 1988, the days on which hearing was not fixed.
 3. Unfortunately for the applicant, the next date, i.e. 23rd of ~~November~~ October 1988 was the date of Union Conference at Rishikesh where it is obligatory for him to attend. For this reason he was disable from appearing in service of the case being at Rishikesh.
 4. That in the circumstances narrated above the applicant could not appear before the Hon'ble Tribunal when the case was called out on 23rd October 1988 for admission.
 5. That from the ~~ab~~ above it is evident that the default in appearance was ~~not~~ intentional but due to circumstances narrated above and it is desirable that the case be restored at its original place and number.

Prayer

Wherefore it is respectfully prayed that the case may be restored at its original place and number and any date may be fixed for its admission.

Lucknow 24.11.1988

RS Yadav
Applicant
All India Telegraph Engineering Employees
Union Class III through its Circle Secretary
2/3 P&T Colony Aishbagh, Lucknow

A
62

Before the Central Administrative Tribunal (Circuit Branch)
Lucknow

OA No 76/882
All India Telegraph Engineering
Employees Union, Class III

Applicant

Vs

Union of India and others

Opposite Parties

Application for restoration after dismissal in default

The applicant respectfully shows:

1. That the above noted case was fixed for admission on 23.10.1988 when the same was dismissed in default of appearance by the applicant.
2. That the abovesaid date was not pre-fixed and the applicant was required to find out from the causes list of the about possible hearing. The applicant scanned the cause list on 21st and 22nd of November October 1988, the days on which hearing was not fixed.
3. Unfortunately for the applicant, the next date, i.e. 23rd of November October 1988 was the date of Union Conference at Rishikesh where it is obligatory for him to attend. For this reason he was disable from appearing in service of the case being at Rishikesh.
4. That in the circumstances narrated above the applicant could not appear before the Hon'ble Tribunal when the case was called out on 23rd October 1988 for admission.
5. That from the above it is evident that the default in appearance was not intentional but due to circumstances narrated above and it is desirable that the case be restored at its original place and number.

Prayer

Wherefore it is respectfully prayed that the case may be restored at its original place and number and any date may be fixed for its admission.

Lucknow 24.11.1988

[Signature]
Applicant

All India Telegraph Engineering Employees
Union Class III through its Circle Secretary
2/3 P&T Colony Aishbagh, Lucknow

Prayer

Wherefore it is respectfully prayed
that the case may be restored at its original
place and number and any date may be fixed for
its admission

RS Yadav
Applicant

Verification

I, Ram Sanehi Yadav, Circle Secretary
of the All India Telegraph Engineering Employees
Union, Class III office at 2/3 Post and Telegraph
Colony, Aishbagh, Lucknow do hereby verify that
contents of paragraphs 1 to 5 are true to my per-
sonal knowledge and belief and that I have not
suppressed any material facts.

RS Yadav
Applicant,

through Circle Secretary of the
U.P. Circle Branch of the All
India Telegraph Engineering
Employees Union, Class III,
Lucknow

Lucknow

Dated November
1988

*Use this Restoration note
officer before Hble
Back for 24/1/89*

Delu

23/1/88