

26
ANNEXURE

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

INDEX SHEET

CAUSE TITLE OF 0477/88

NAME OF THE PARTIES *Sh. Ar. Pradeep K. Verma* Applicant

Versus

..... *Com. of India & Anr.* Respondent

Part A, B & C

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CERTIFICATE

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

Dated *25/6/12*.

Counter Signed.....

Raj
Section Officer / In charge

m
Signature of the
Dealing Assistant

CENTRAL ADMINISTRATIVE TRIBUNAL

Circuit ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad 211001
Gandhi Bhawan, Lucknow

Registration No. 77 of 1980 (L)

APPLICANT (s) Mata Prasad Srivastava

RESPONDENT(s) Union of India & Ors.

Particulars to be examined

Endorsement as to result of Examination

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

Yes

Yes

(b) Is the application in paper book form ?

Yes

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

(2 Sets 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 ?

Yes

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

Yes

U.P.O. No. DD 067024

dt. 21-7-06

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

Yes

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

Yes

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 ?

Yes (By Advocate)

CA. 77/88

22.8.88.

Hon. D. John, A.M.

St. 1. Issue Notice.
Let before D.B. for
Detention Prayer.

A3

22.8.88

OR

Notice has been issued to the
respondent to file the counter
for reply and 26.8.88 for hearing.
Case is submitted for
hearing on detention Prayer as ordered
by Court.

Ans
26/8

② 25.8.88. Hon. A. John, A.M.

Hon. G. S. Sharma, J.M.

Hon. Sh. B. P. Srivastava,
Learned counsel for the applicants
The request for interim prayer
is rejected.

J. M.

A.M.

On behalf of
Respondent NO 6 Sh.
A. Mehta is present.
He requested for
time to file reply

by 21.12.88 for

Reply.

Ans
26/8/88

DR

30.8.89

Counsel for the respondent requests ~~time~~ for further time to file reply. He may file the same on 28/4/89.

AM

manohari
for DR

OR

Counsel for respondents has filed a reply so Case is set for order

(1)

28.4.89

Hon. D. S. Misra, A. M.

Hon. D. K. Agarwal, J. M.

Shri. V. D. Shukla on behalf of respondents No-6, ~~and~~ requests for one months time to file counter affidavit. No counter affidavit has been filed on behalf of other respondents and Shri. Arjun Bhargava requests for further time to file counter affidavit. In the interest of justice we allow one last opportunity to file reply, to respondent No. 1 to 5 within a month. The applicant may file rejoinder affidavit, within 10 days thereafter.

List this case for final hearing on 7th August, '89.

S. M.

A. M.

brc/

7.8.89

No Sitting Adj. to 13.10.89

h
B.O.C

13.8.89

No Sitting Adj. to 22.12.89
Both the parties are present.

OR
Reply filed on behalf of No. 6.
OR
Reply filed by the respondent No. 6. But no reply has been filed on behalf of other parties submitted for order

h
21/11

21/11

Hon' Justice U.C. Srivastava, V.C.
Hon' Mr A.B. Gorthi, A.M.

6/5/91

The applicant is present in person. He states that his counsel is ill. He also wants two weeks time to file reply to the application of respondent no.6 which has been moved today. List this case for hearing on 22-5-91.

d
A.M.

u
V.C.

(sns)

23-5-91

No Siting adj to 5-8-91
ji

5.6.91

Hon' Justice U.C.S, V.C
Hon' Mr A.B. Gorthi, A.M.

Sr O.P. Srivastava counsel
for applicant sought adjournment
of hearing. Case adj. to 10.6.91

AM

u
VC

18.6.91

No Siting adj to 20.12.91

20.12.91

No Siting adj 20.12.91

21.92

No Siting adj to 18.2.92

10.2.92

No Siting adj to 22.4.92

OA 77/82

22.6.92

No. 51/92 of D.B. only

AB

24.6.92

Hon'ble Mr. V.C. Giravslava - V.C.
Hon'ble Mr. K. Obayya - A.M.

M.P. 344/92
Searched for 10/92
not applicable
S.P.C.
D/204

24.6.92

This Misc petition will
be considered at the time of
final hearing of the case
itself with the main application
list this case on 14.9.92 for
hearing.

(DPS)

✓
V.C.

O.P.
case is

A.M

8
9/9/92

14.9.92

Hon'ble Mr. Justice V.C. Giravslava - V.C.
Hon'ble Mr. K. Obayya - A.M.

Appd. Cont. in person & Mr.
Arjun Bhagat & Mr. D. Shinde
Learned Counsel for respondent
present.

Dr. J. Anil Kumar, Indore
reopened.

✓
Dr. M.

✓
V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
(LUCKNOW BENCH)
LUCKNOW.

D.A. NO

77/88

199 (L)

T.A. NO

Date of Decision

M. P. Srivastava

Petitioner.

Applicant in person

Advocate for the
Petitioner(s)

VERSUS

Union of India

Respondent.

Shri D. B. Laggar

Advocate for the
Respondents

CORAM

The Hon'ble Mr. Justice V. C. Srivastava, V.C.
The Hon'ble Mr. K. Raygar, A.M.

1. Whether reporter of local papers may be allowed to see the Judgment ?
2. To be referred to the reporter or not ?
3. Whether to be circulated to other benches ?
4. Whether their Lordships wish to see the fair copy of the Judgment ?

VICE-CHAIRMAN/MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

LUCKNOW

O.A. No. 77/88

M.P. Srivastava,

Applicant

versus

Union of India & others

Respondents.

Applicant present in person.

Shri Arjun Bhargava, Counsel for Respondents.

Coram

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon. Mr. K. Obayya, Adm. Member.

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

The applicant who has retired during the pendency of this case, has challenged the order dated 20.5.86 passed by Senior Divisional Personnel Officer, Lucknow restoring the seniority of respondent No. 6 on the post of Head clerk ignoring the fact he has earlier refused the promotion and as such he is not entitled to get any promotion during 3 years and the order dated 7.4.88 rejecting the representation of the applicant has also been challenged. The next promotion of respondent No. 6 on the basis of restoration of his seniority vide order dated 20.5.88

has also been challenged alongwith the order dated 13.7.88 promoting the respondent No. 6 to the post of ~~Assistant~~ Superintendent(Establishment).

2. . The applicant and the respondent No. 6 were working as Head clerks when the name of the respondent No. 6 was above the name of Shri S.P.Lal. The applicant has

W

After the refusal of respondent No. 6 to the post of Headclerk, the applicant has averred that 11 vacancies of Headclerks arose on which persons from the post of Senior Clerk were given promotion in accordance with the seniority. All these persons were promoted in the substantive vacancy in the regular manner in the grade of Rs 425-700 and subsequently promoted to the post of Assistant Superintendent. The applicant was promoted as Assistant Superintendent vide order dated 15.9.82, meaning thereby that he was also among those 11 persons whose names have been detailed and that is why he was promoted as Assistant Superintendent in the grade of Rs 550-750 vide order dated 18.9.85 having been found eligible for the grade. When the facilities available on the post of Asstt. Welfare Officer were snatched, he made representation for determining his seniority while he was functioning as Senior Clerk. In P.N.M. meeting, in which the representation was considered, it was held that the respondent No. 6 be promoted after one year of his refusal which expired on 11.3.1983 and that is why he is entitled to fix his seniority above Shri J.P.Verma and below Shri J.N. Kapoor who were promoted as Head Clerk in the grade of Rs 425-700 in vacancy available after 11.3.1983. But this order was changed and another order was passed fixing the seniority of respondent No. 6 between Shri J.N.Kapoor and J.P.Verma. After 1½ years he again represented the matter which came up before the

alleged that the respondent No. 6, at the relevant point of time was working as Assistant Welfare Officer carrying more powers and more emoluments and as per his case regular vacancy for the post of Headclerk was created and he (respondent No. 6) refused to accept the said post of Headclerk. He having refused to accept the post, the post was given to next below person who was promoted to the post of Headclerk in the substantive capacity vide order dated 31.3.82. The said order indicates that on refusal of respondent No. 6 as promotion of Headclerk, he was debarred for further promotion as Headclerk for a period of one year and juniors were to be promoted and as such Shri S.P. Lall, Senior Clerk(E) was promoted to the post of Headclerk in the scale of Rs 425-700(Rs).

2. The respondent No. 6 in his refusal letter stated Inspector that at present he is working as Assistant Welfare/ and he may be allowed to work on the said post and is not willing to work as Headclerk on adhoc basis. The post was offered to the next below in view of General Manager letter dated 18.7.85 which clarified the position in this behalf, relevant contents of which, on which reliance has been placed are as follows:

"It is clarified that the above instructions to debar an employee for further promotion for one year in case he refuses promotion are also applicable if an employee refuses adhoc promotion. However, in such cases, the employee refusing promotion on adhoc basis may not be considered only for further adhoc promotions within the period of one year but may be considered for promotion on regular basis even within a period of one year from the refusal of promotion on adhoc basis, if he becomes eligible for that."

Senior Divisional Personnel Officer, who refused his earlier order assigning the respondent No. 6 his original seniority without disclosing any reasons for the same. The applicant filed representation against the same and after dismissal of the representation he approached the Tribunal.

4. Respondent No. 6 and official respondents have refuted the claim of the applicant. According to the respondent No. 6, he was promoted as Assistant Superintendent and he was restored rightly in his original seniority position vide order dated 7.4.88 and this order has not been superseded by any other order passed by the competent authority. The case of the respondent No. 6 is that he only refused adhoc promotion and not regular promotion. He had lien in his permanent post in his own channel and in case he comes back ~~here~~ he will be a loser.

5. Respondents 1 to 5 have also stated that as respondent No. 6 was posted back in the proper channel of clerks when post of WLIs were filled by regular incumbents and the respondent No. 6 had been assigned seniority below staff who had by then been promoted as Headclerk grade Rs 425-700. His seniority was restored vide order dated 22.5.86 which was declared to be correct by the General Manager vide his order dated 7.4.88 and the orders restoring his seniority is legal. The said Shri S.P. Lal

W

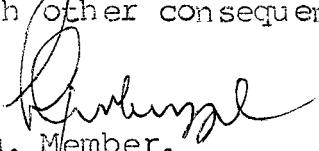
was promoted as Headclerk temporarily and there existed no vacancy of Headclerk at that time and accordingly the promotion of Shri S.P. Lal was not in a substantive capacity. Regarding the list of 11 persons it has been stated that this included the promotees against the short term vacancies of Headclerks. The applicant was temporarily appointed to officiate as Assistant Welfare Officer ~~as~~ against existing vacancy. It has also been stated that the respondent No. 6 was promoted vide Railway Board letter dated 16.11.84 while holding selection by modified selection on the basis of seniority and service record while the applicant was not promoted as he was junior to respondent No. 6 and was not within the field of eligibility of the candidates on percentage basis.

6. The facts are not clear. In view of the decision of the General Manager vide letter dated 18.7.85 even if for adhoc promotion if employee refuses the promotion, the employee will rank junior to those who have been promoted but the same will not apply to regular promotions. If according to the respondent the promotions made, were on adhoc basis and the applicant and others were promoted on adhoc basis there being no promotion within a period of one year the respondent No. 6 could not have been given promotion over and above those who had already been promoted on adhoc basis and that too after refusal of the respondent No. 6. The respondents have not placed

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any relevant document and there is no specific denial of the fact that the post against which 11 promotions were made, were regular vacancies but for the applicant none of them were reverted and was given benefit of that promotion. Even if that be so, the applicant is entitled to the benefit of the same. Earlier restoration of the respondent No. 6 who has refused promotion on the post of Headclerk is obviously not correct but the same cannot now be opposed. If it was adhoc promotion he would have gone below those who have been already promoted but if it was a regular promotion in the year 1983 and was to go down.

7. Accordingly the applicant was wrongly deprived of the said promotion alongwith others though he was entitled to the promotion post notwithstanding the restoration of the seniority if the respondent No. 6 which too was not correctly disclosed. Accordingly, the respondents are directed to consider the case of the applicant for the benefit of restructuring scheme within a period of three months of receipt of a copy of this judgment giving him notional promotion with effect from the date the same was given to others with other consequential benefits. No order as to costs.


Adm. Member.


Vice Chairman.

Shakeel/
Lucknow: Dated 22/10/92

P.B

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

LUCKNOW CIRCUIT BENCH, LUCKNOW

M. P. 344/92

22/4/92

O.A. Case No. 77/1988 (L)

Mata Prasad Srivastava

... Applicant

v/s

Union of India and others

... Respondents

Sir,

The respondent No.6 most respectfully begs to submit as under :-

- (1) That he has moved a miscellaneous application dated 6.5.91 alongwith the enclosures in the Hon'ble Tribunal after making over a copy of the same to the applicant as well as to the Counsel for the other respondents.
- (2) That the above mentioned case is fixed for hearing on 22.4.92.
- (3) That the enclosure filed alongwith the application dated 6.5.91 by the respondent No.6 fully falsifies the claim of the applicant.
- (4) That it will be in the interest of justice to dispose of this application prior to hearing of the above case on merits.

Filed today
22/4/92
It is, therefore, prayed that the Hon'ble Tribunal be graciously pleased to dispose of the application dated 6.5.91 first before hearing the above mentioned case fixed for 22.4.92 on merits.

Lucknow:

AC. M/s
Respondent No. (6)

Dated: 21.4.92

Islelo
21/4/92

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

LUCKNOW CIRCUIT BENCH, LUCKNOW

M. P. 344/92
O.A. Case No. 77/1988 (L)

Mata Prasad Srivastava

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v/s

Union of India and others

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Lucknow:

AC, MSS
Respondent No. (6)

Dated: 21.4.92

TC
Shah

RHS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
CIRCUIT BENCH, LUCKNOW

Mata Prasad Srivastava Applicant
Versus
Union of India and others Respondents.

I N D E X

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4.	Annexure - 3 Order dated 7.4. 1988	26 - 00
5.	Annexure - 4 Order dated 22.5.1986	27 - 00
6.	Annexure - 5 Extract of seniority position.	28 - 00
7.	Annexure - 6 Letter of promotion dated 31.3.1982	29 - 00
8.	Annexure - 7 Letter of promotion dated 15.9.1982.	30 - 00
9.	Annexure - 8 Letter of promotion dated 18.9.1985	31 - 00
10.	Annexure - 9 Decision taken in the PNM Meeting held on 29.11.1985	32 - 33
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Lucknow Dated.
July 22, 1988.

Signature
(O.P. SRIVASTAVA)
ADVOCATE
COUNSEL FOR THE APPLICANT.

Noted for 22/8/88
22/7/88

Copied today
22/7/88

R/6

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

BETWEEN

Mata Prasad Srivastava APPLICANT

AND

Union of India through General
Manager Head Office, Baroda House,
New Delhi and others. RESPONDENTS

DETAILS OF APPLICATION :

1. Particulars of the : (Mata Prasad Srivastava)
Applicant

- i) Name of the Applicant : Mata Prasad Srivastava
- ii) Name of Father : Late Shitla Bux
- iii) Age of the Applicant : 56 years
- iv) Designation and particulars of Office (name and station) in which employed or was last employed before ceasing to be in service. : Assistant Superintendent (Estt.), Divisional Railway Manager's Office Northern Railway, Lucknow.
- v) Office address : As above
- vi) Address for service of notices : As above.

2. Particulars of the respondents

- i) Name of the respondent : 1. Union of India through General Manager Head Office, Baroda House New Delhi
2. General Manager (P), Northern Railway, Baroda House New Delhi.
3. Divisional Railway Manager Northern Railway, Divisional Railway Manager Office Building, Hazratganj, Lucknow.
4. Senior Divisional Personnel Officer Northern Railway, Divl. Manager's Office, Hazratganj, Lucknow.
5. Divisional Personnel Officer, Northern Railway, Divl. Rly. Manager

Railway

2016-01-01 (A)

Office, Hazratganj, Lucknow.

6. Sri A.C. Misra, aged about 57½ Yrs.
) son of not known to the applicant
working as Asstt. Supdt. (Estt.),
Divl. Railway Manager's Office,
Northern Railway, Hazratganj,
Lucknow.

ii) Name of the Father/)
Husband.)
iii) Age of the Respon-)
dent.) As above.
iv) Designation and parti-)
culars of office in)
which employed.)
v) Office address)

3. Particulars of the
order against which
application is made.

The application is aga-
inst the following
order:-

vi) Order No. with Ref-)
erence to Annexure.)
ii) Date)
iii) Passed by)

a) 758-E/E-6/1 dated 13.7.1988
passed by Sr. Divisional Personnel
Officer, Lucknow. Annexure-1

a) 758/E/F-6/1 dated 20.5.88 passed
Senior Divisional Personnel
Officer, Lucknow. Annexure-2.
b) 754E/1905/EIID dated 7.4.88
passed by General Manager (P)-
Annexure-3.

c) 758E/6-1 dated 22.5.86 passed by
Senior Divil. Personnel Officer
Northern Railway, Lucknow -
Annexure-4.

iv) Subject in brief

SRI A.C. Misra, Respondent No. 6
refused his regular promotion to
the post of Head Clerk grade
425-700 (RS) vide his application
dated 12.3.1982 owing to some
domestic reasons while he was
functioning as Asstt. Welfare
Inspector in Divisional Railway
Manager's Office, Northern Railway.

Muz. S. N. S. (S. N. S.)

Lucknow which was duly accepted by the Respondent No. 13 vide letter dated 31.3.1982. The aforesaid vacancy was thus offered to the next below person sri S.P. Lal and consequently sri S.P. Lal was promoted in substantive capacity as Senior Clerk 'E' vide order dated 31.3.1982. Later on Respondent No. 6 made a representation that his services was under duress and ~~as said offer of promotion~~ his promotion was on ad hoc basis he chose to refused it although the Respondent No. 6 was duly informed that he was debarred for further promotion as Head Clerk for a period of one year as he had refused regular promotion vide order dated 31.3.1982. The aforesaid representation of the Respondent No. 6 was though rejected vide order dated 4.12.85 yet was subsequently accepted and consequently he was allowed original seniority on ^{the} post of Head Clerk treating him to have ^{already} been promoted with effect from the original date vide order dated 22.5.1986 - Annexure-4. The applicant represented against it which was ultimately rejected by the General Manager vide letter dated 7.4.1988 as contained in Annexure-3 and consequent upon it

Not Satisfied

the Respondent No. 6 has been given next promotion to the post of Asstt. supdt. (Estt.) vide order dated 20.5.1988 superseding

the applicant which followed the 2nd next promotion to the post of Supervisor II/Estt. vide order dated 13.7.1988 contained in Annexure - 1 to this application.

4. Jurisdiction of the Tribunal :

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

5. Limitation:

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

6. Facts of the case :-

The facts of the case are given below :-

6.1 That by way of the instant application the applicant seeks to challenge the most illegal and arbitrary order dated 22.5.1986 passed by the Respondent No. 4 awarding the Respondent No. 6 his original seniority on the post of Head Clerk ignoring the fact that the Respondent No. 6 had refused promotion. The applicant also challenges the order dated 7.4.1988 passed by the Respondent No. 2 rejecting the representation of the applicant challenging the validity of the aforesaid order dated 22.5.1986. On the basis of the original seniority the Respondent No. 6 has been given next promotion to the post of Asstt. supdt. (Estt.) vide order dated 20.5.1988 with effect from 1.1.1984.

This order is also being challenged by the applicant.

Similarly the order dated 13.7.88 promoting the respondent No. 6 to the post of supervisor II/Estt. is also being challenged.

A90

13.7.88

All the aforesaid impugned orders dated 20.5.88,
7.4.1988 and 22.5.1986 are being filed herewith
ANNEXURES-1, 2 and 4 as Annexures-1, 2, 3 and 4 to this Application
respectively.

6.2 That before reciting the facts of the case it is expedient to explain the seniority position of the persons working on the basis of Senior Clerk as was prevailing in the year 1982. In the year 1982 the names of the Respondent No. 6 appears below Sri S.P. Sibbal (now retired) and above S.P. Lal in the seniority list. Below Sri S.P. Lal the persons are Sarvasri Mangal Sen, S.D. Sharma, Mata Prasad Srivastava, G.S. Tripathi, N.K. Sharma, Mohd. Zubair etc.. As Sri S.P. Sibbal had already been promoted to the post of Head Clerk hence the Respondent No. 6 was due to be promoted to the post of Head Clerk being next junior to S.P. Sibbal in the year 1982. An extract copy of the seniority list showing the seniority position of the aforesaid persons and the Respondent No. 6 among other senior Clerks in the year 1982 is being filed

ANNEXURE-5 herewith as Annexure-5 to this Application.

6.3 That on availability of a regular vacancy on the post of Head Clerk the Respondent No. 6 was promoted in substantive capacity to the post of Head Clerk vide order dated 4.3.1982, but as the Respondent No. 6 was enjoying the benefit of the post of

misnomer

Assistant Welfare Labour Inspector (hereinafter referred to as AWLI); a higher post carrying more facilities and charm, the Respondent No. 6 refused to accept the promotion of the post of Head Clerk vide application dated 12.3.1982.

6.4 That the above noted refusal of the Respondent No. 6 refusing the ~~for being promoted~~ to the post of Head Clerk was duly accepted by the authority concerned and consequently the said vacancy became available to the next below person to the Respondent No. 6 who was Mr. S.P. Lall. As a sequel to which Mr. S.P. Lall, Senior Clerk (E) was promoted to the post of Head Clerk in the scale of Rs. 425-700 (RS) in substantive capacity vide order dated 31.3.82.

A true copy of the aforesaid letter of promotion of Sri S.P. Lal dated 31.3.1982 is being filed herewith as Annexure-6 to this Application.

ANNEXURE-6

6.5 That a perusal of the aforesaid order of promotion dated 31.3.1982 as contained in Annexure-6 to this application further reveals the reasons for promotion of Sri S.P. Lal who was next junior to the Respondent No. 6. It has clearly been stated in the aforesaid dated 31.3.1982 that as the Respondent No. 6 has refused the regular promotion hence he was debarred for further promotion as Head Clerk for a period of one year and junior to

MAT'S CHIEF STAFF

who ~~was to be~~
~~would be~~
to him ~~was~~ promoted during this period ~~the~~ ranked
senior to him. The Respondent No. 6 ~~did not~~
object ~~to~~ it.

6.6 That during the period of one year from the date of refusal of order of promotion (i.e. 31.3.1982) by the Respondent No. 6 to the post of Head Clerk as many as 11 regular vacancies of Head Clerk arose on which the persons from the post of senior Clerk to the Post of Head Clerk has been given promotion in accordance with the seniority. The details of the persons duly promoted to the post of Head Clerk during the period of one year are as under:-

<u>Name</u>	<u>Date of Promotion</u>
1. Mangal Sen	1.5.1982
2. S.D. Sharma	15.9.1982
3. M.P. Srivastava (The Applicant)	"
4. G.C. Tripathi.	"
5. N.K. Sharma	December 1982
6. Mohd. Zubair	17.2.1983
7. D.L. Shukla	"
8. H.P. Asthana	"
9. Ram Sukh	"
10. L.C. Joshi	"
11. J.N. Kapoor	"

6.7 That all the aforesaid persons were promoted in substantive capacity against the clear vacancy in the regular manner on the post of Head Clerk in

the pay scale of Rs. 425-700(Rs) and were also subsequently promoted to the next higher post of Assistant Superintendent where they are still continuing.

6.8. That the applicant was promoted to the post of Head Clerk in substantive capacity against a clear existing vacancy in regular manner vide the order dated 15th September 1982 and thereafter again promoted to the post of Assistant Superintendent grade Rs. 550-750 (Rs) vide order dated 18.9.1985 having been found fully eligible and meritorious in all respects. True copies of the aforesaid promotion orders of the applicant dated 15th September 1982 and 18.9.1985 are

ANNEXURES-6 and 7 ^{and 8} being filed herewith as Annexures-6 and 7 to this application.

6.9 That the Respondent No. 6 came back to his original post of Senior Clerk on 1.4.1985 after availability of the selected hands for the post of AWLI.

6.10 That as the facilities and charm which the Respondent No. 6 was enjoying on the post of AWLI were snatched and were not available to the post of Senior Clerk the Respondent No. 6 ~~thus~~ made a representation for getting his seniority determined sometime in the year 1985 while he was ⁱⁿ function as Senior Clerk.

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6.11 That the aforesaid representation of Respondent No. 6 was duly considered and decided by the Respondent No. 4 in the PNM meeting held on 29th November 1985. In this meeting the Respondent No. 4 clearly held that the Respondent No. 6 ought to have been promoted to the post of Head Clerk on the immediate available vacancy after expiry of one year's period from the date of his refusal for promotion ~~as~~ on the post of Head Clerk. The period of one year was expired on 11.3.1983. It was further held that the Respondent No. 6 ^{was} ~~is~~ entitled to get his seniority position fixed above Sri J.P. Verma ^{and} below J.N. Kapoor. However he is promoted to the post of Head Clerk in the grade of Rs. 425-700 on a vacancy immediately available after 11.3.1983. A true copy of the decision taken in the PNM meeting held on 29.11.85 in the matter of Respondent No. 6 is being filed herewith as Annexure-6 to this application.

ANNEXURE-6

6.12 That the representation of Respondent No. 6 was consequently disposed of vide order dated 4th December 1985 in view of the decision taken in the aforesaid PNM meeting held on 29.11.1985. Accordingly the Respondent No. 4 passed an order that the seniority of the Respondent No. 6 will be fixed below Sri J.N. Kapoor and above Sri J.P. ~~This order was changed and~~ Verma. But subsequently ~~other~~ order was passed in

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favour of the Respondent No. 6. A true copy of the aforesaid order dated 4.12.1985 fixing the seniority of the Respondent No.6 between sri J.N. Kapoor and J.P. Verma is being filed here-
ANNEXURE-9 ¹⁰ with as Annexure-9 to this Application.

6.13 That it appears that the Respondent No. 6 after a period of 1 $\frac{1}{2}$ years again represented on 16th April 1986 for getting his seniority re-fixed.

6.14 That further it appears that the matter again came up before the Respondent No. 4 who has already disposed of the matter after a long range discussion in the PNM meeting as contained in Annexure-⁹ to this Application.

6.15 That although the Respondent No. 4 was not competent to ~~refuse~~ ^{revise} his own order which he passed in the matter of seniority of Respondent No.6 vide order dated 4.12.1985 as contained in Annexure-⁹ ¹⁰ to this Application, yet to the utter consternation of the applicant the Respondent No. 4 passed an order dated 22.5.1986 assigning the Respondent No. 6 his original seniority below Sri S.P. Sibbal and above Sri S.P. Lal without disclosing any reason for the same. A true copy of the above noted order dated 22.5.1986 has already been filed as Annexure-⁹ ⁴ to this Application.

6.16 That the applicant being aggrieved of the afore-

Meht Smit S. Lal

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said order dated 22.5.1986 moved a representation dated 6.6.1986 before the Respondent No. 3 within the stipulated time. A true copy of the aforesaid representation dated 6.6.1986 is being filed herewith as Annexure-10 to this Application.

6.17 That thereafter the aforesaid matter raised by the applicant vide representation dated 6.6.1986 was placed in the PNM meeting held on 9/10.4.1987. It was wrongly raised by the Respondent No. 6 that the offer of promotion made to him for the post of Head Clerk was on ad hoc basis and therefore he did not like to accept it albit the fact was that the vacancy was regular and on that very vacancy, subsequent promotion was made on regular basis and there was no occasion for ad hoc promotion. Any way it was found proper in the meeting that a reference be made to Headquarters for making a clarification in the matter. A true copy of the aforesaid PNM item indicating the decision taken in the matter of Annexure-11 applicant is being filed herewith as Annexure-11 to this Application.

6.18 That in view of the reference made vide Annexure No. 12 to this Application the general comments were sent vide letter dated 16th June 1987 on behalf of the Respondent No. 3 to the Respondent No. 2. In these comments it has wrongly been

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stated that the Respondent No. 6 was offered promotion to the post of Head Clerk in the scale of Rs. 425-700 on ad hoc basis. While as a matter of fact the Respondent No. 6 was offered regular promotion to the post of Head Clerk which he deliberately refused with his open mind and consequent upon it the same vacancy was offered to his next junior Sri S.P. Lal who was then promoted to the post of Head Clerk on regular basis in substantive capacity. If the said vacancies would have been ad hoc, naturally Sri S.P. Lal and other juniors would have been promoted on ad hoc basis and not on regular basis. A true copy of the comments dated 16th June 1987 sent by the Respondent No. 3 to the Respondent No. 2 is being filed herewith as ANNEXURE-12 to this Application.

6.19 That thereafter a query was made on behalf of Respondent No. 2 from the Respondent No. 3 regarding nature of promotion offered to the the Respondent No. 6 to the post of Head Clerk and refusal submitted by him along with the dates from which juniors to the Respondent No. 6 were given promotion to the post of Head Clerk. It was also requested to furnish relevant record in this regard. A true copy of the aforesaid letter dated 15.7.1987 asking to furnish relevant

REPLYING LETTER

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record regarding the promotion of the Respondent

No. 6 to the post of Head Clerk and its refusal

ANNEXURE-13 ¹⁴ is being filed herewith as Annexure-14 to this

Application.

6.20 That thereafter a reply was furnished on behalf of the Respondent No. 3 to the request made vide Annexure-13 to this Application. In this reply dated 6.11.1987 it has been stated that the file containing the case of promotion of the Respondent No. 6 was not available with the department. It has been clearly stated that Sri S.P. Lal, next junior to Sri A.C. Misra, the Respondent no. 6, was given promotion on the post of Head Clerk on regular basis on the same vacancy with effect from 31.3.1982. It is pertinent to point out that in case the said vacancy was available for the ad hoc promotion how the next junior to the Respondent No. 6 was given promotion on regular basis. It is candidly clear as this juncture that the Respondent No. 6 was given promotion on regular basis to the post of Head Clerk which he refused. A true copy of the aforesaid reply dated 6.11.1987 furnished by the Respondent No. 3 to the Respondent No. 2 is being filed herewith as Annexure-14 to ¹⁵ this Application.

ANNEXURE-14 ¹⁵ filed herewith as Annexure-14 to ~~to~~ this Application.

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6.21 That thereafter the applicant fell into utter consternation when he came to know that vide order dated 7.4.1988 the Respondent No. 2 has allowed the benefit of seniority to the Respondent No. 6 on the ground that the Respondent No. 6 refused the ad hoc promotion on the post of Head Clerk for ~~as~~ which there is no material available on record. This order has been passed by the Respondent No. 2 arbitrarily and illegally which is not only perverse to the record but is also without any reasonable basis. A true copy of this order dated 7.4.1988 has already been filed as Annexure-2 to this Application.

6.22 That as the Respondent No. 6 has been assigned his original seniority and the application of the applicant against it has been turned down, and consequently the Respondent No. 6 has been promoted to the post of Assistant Superintendent (Estt) in the pay scale of Rs. 550-750(Rs) against the available vacancy with effect from 1.1.1984. A true copy of the said order dated 20.5.1988 has already been filed as Annexure-2 to this Application. The applicant met with the Additional Divisional Railway Manager, N.R. Railway, Lucknow along with his representations dated 11.5.1988 and 17.5.88 raising the question of seniority to be given to the Respondent No. 6 which was ultimately turned down and the aforesaid order contained in

2015/16/17/18/19/20/21/22/23/24/25/26/27/28/29/30/31/32/33/34/35/36/37/38/39/40/41/42/43/44/45/46/47/48/49/50/51/52/53/54/55/56/57/58/59/60/61/62/63/64/65/66/67/68/69/70/71/72/73/74/75/76/77/78/79/80/81/82/83/84/85/86/87/88/89/90/91/92/93/94/95/96/97/98/99/100/101/102/103/104/105/106/107/108/109/110/111/112/113/114/115/116/117/118/119/120/121/122/123/124/125/126/127/128/129/130/131/132/133/134/135/136/137/138/139/140/141/142/143/144/145/146/147/148/149/150/151/152/153/154/155/156/157/158/159/160/161/162/163/164/165/166/167/168/169/170/171/172/173/174/175/176/177/178/179/180/181/182/183/184/185/186/187/188/189/190/191/192/193/194/195/196/197/198/199/200/201/202/203/204/205/206/207/208/209/2010/2011/2012/2013/2014/2015/2016/2017/2018/2019/2020/2021/2022/2023/2024/2025/2026/2027/2028/2029/2030/2031/2032/2033/2034/2035/2036/2037/2038/2039/2040/2041/2042/2043/2044/2045/2046/2047/2048/2049/2050/2051/2052/2053/2054/2055/2056/2057/2058/2059/2060/2061/2062/2063/2064/2065/2066/2067/2068/2069/2070/2071/2072/2073/2074/2075/2076/2077/2078/2079/2080/2081/2082/2083/2084/2085/2086/2087/2088/2089/2090/2091/2092/2093/2094/2095/2096/2097/2098/2099/20100/20101/20102/20103/20104/20105/20106/20107/20108/20109/20110/20111/20112/20113/20114/20115/20116/20117/20118/20119/20120/20121/20122/20123/20124/20125/20126/20127/20128/20129/20130/20131/20132/20133/20134/20135/20136/20137/20138/20139/20140/20141/20142/20143/20144/20145/20146/20147/20148/20149/20150/20151/20152/20153/20154/20155/20156/20157/20158/20159/20160/20161/20162/20163/20164/20165/20166/20167/20168/20169/20170/20171/20172/20173/20174/20175/20176/20177/20178/20179/20180/20181/20182/20183/20184/20185/20186/20187/20188/20189/20190/20191/20192/20193/20194/20195/20196/20197/20198/20199/20100/20101/20102/20103/20104/20105/20106/20107/20108/20109/20110/20111/20112/20113/20114/20115/20116/20117/20118/20119/20120/20121/20122/20123/20124/20125/20126/20127/20128/20129/20130/20131/20132/20133/20134/20135/20136/20137/20138/20139/20140/20141/20142/20143/20144/20145/20146/20147/20148/20149/20150/20151/20152/20153/20154/20155/20156/20157/20158/20159/20160/20161/20162/20163/20164/20165/20166/20167/20168/20169/20170/20171/20172/20173/20174/20175/20176/20177/20178/20179/20180/20181/20182/20183/20184/20185/20186/20187/20188/20189/20190/20191/20192/20193/20194/20195/20196/20197/20198/20199/20100/20101/20102/20103/20104/20105/20106/20107/20108/20109/20110/20111/20112/20113/20114/20115/20116/20117/20118/20119/20120/20121/20122/20123/20124/20125/20126/20127/20128/20129/20130/20131/20132/20133/20134/20135/20136/20137/20138/20139/20140/20141/20142/20143/20144/20145/20146/20147/20148/20149/20150/20151/20152/20153/20154/20155/20156/20157/20158/20159/20160/20161/20162/20163/20164/20165/20166/20167/20168/20169/20170/20171/20172/20173/20174/20175/20176/20177/20178/20179/20180/20181/20182/20183/20184/20185/20186/20187/20188/20189/20190/20191/20192/20193/20194/20195/20196/20197/20198/20199/20100/20101/20102/20103/20104/20105/20106/20107/20108/20109/20110/20111/20112/20113/20114/20115/20116/20117/20118/20119/20120/20121/20122/20123/20124/20125/20126/20127/20128/20129/20130/20131/20132/20133/20134/20135/20136/20137/20138/20139/20140/20141/20142/20143/20144/20145/20146/20147/20148/20149/20150/20151/20152/20153/20154/20155/20156/20157/20158/20159/20160/20161/20162/20163/20164/20165/20166/20167/20168/20169/20170/20171/20172/20173/20174/20175/20176/20177/20178/20179/20180/20181/20182/20183/20184/20185/20186/20187/20188/20189/20190/20191/20192/20193/20194/20195/20196/20197/20198/20199/20100/20101/20102/20103/20104/20105/20106/20107/20108/20109/20110/20111/20112/20113/20114/20115/20116/20117/20118/20119/20120/20121/20122/20123/20124/20125/20126/20127/20128/20129/20130/20131/20132/20133/20134/20135/20136/20137/20138/20139/20140/20141/20142/20143/20144/20145/20146/20147/20148/20149/20150/20151/20152/20153/20154/20155/20156/20157/20158/20159/20160/20161/20162/20163/20164/20165/20166/20167/20168/20169/20170/20171/20172/20173/20174/20175/20176/20177/20178/20179/20180/20181/20182/20183/20184/20185/20186/20187/20188/20189/20190/20191/20192/20193/20194/20195/20196/20197/20198/20199/20100/20101/20102/20103/20104/20105/20106/20107/20108/20109/20110/20111/20112/20113/20114/20115/20116/20117/20118/20119/20120/20121/20122/20123/20124/20125/20126/20127/20128/20129/20130/20131/20132/20133/20134/20135/20136/20137/20138/20139/20140/20141/20142/20143/20144/20145/20146/20147/20148/20149/20150/20151/20152/20153/20154/20155/20156/20157/20158/20159/20160/20161/20162/20163/20164/20165/20166/20167/20168/20169/20170/20171/20172/20173/20174/20175/20176/20177/20178/20179/20180/20181/20182/20183/20184/20185/20186/20187/20188/20189/20190/20191/20192/20193/20194/20195/20196/20197/20198/20199/20100/20101/20102/20103/20104/20105/20106/20107/20108/20109/20110/20111/20112/20113/20114/20115/20116/20117/20118/20119/20120/20121/20122/20123/20124/20125/20126/20127/20128/20129/20130/20131/20132/20133/20134/20135/20136/20137/20138/20139/20140/20141/2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Annexure-2 was issued. This order was further followed by the order dated 13.7.1988 promulgating once again to the applicant respondent No. 6 to the post of Superintendent. That the Respondent No. 6 was promoted to the post of Head Clerk on regular basis in the year 1982 which he refused and as such he is not entitled to get the benefit of his own wrong, more particularly when the said refusal has duly been accepted by the competent authority.

6.24 That there is no ~~one~~ piece of material available on the record on the basis of which it could be inferred that the Respondent No. 6 was offered promotion to the post of Head Clerk only on ad hoc basis and thus the conclusion arrived at by the Respondent No. 2 to that effect while turning down the application/applications representation of the applicant vide order dated 7.4.88 as contained in Annexure-2 is baseless and purverse to the record. There is not even a single iota of the facts which corroborates the findings of that the Respondent No. 6 had refused the promotion on the post of Head Clerk in the year 1982 because it was on ad hoc basis.

6.25 That the Respondent No. 2 while passing the order dated 7.4.1988 did not record any finding and the reasons for arriving at that particular conclusion. No evidence has been discussed in support of the findings. The findings indeed

cannot be substantiated by any facts/documents/evidence available on record.

6.26 That it is well settled principle of law that once the Respondent No. 6 has refused promotion and the same has been accepted, the Respondent No. 6 cannot take the benefit of the refusal by giving it different colour. He cannot resile from his own statement and virtually he is estopped from saying anything against the refusal of promotion. He also did not raise any objection against the said refusal or the conditions laid upon him while accepting his refusal.

6.27 That the refusal of the Respondent No. 6 was accepted in the month of March 1982. Thereafter as many as 11 persons junior to the Respondent No. 6 were given promotion to the post of Head Clerk on different dates but the Respondent No. 6 never raised any objection against the same as he was well aware of the fact that he had already refused the promotion offered to him and was not entitled to be promoted to the post of Head Clerk for a period of one year from the date he refused.

6.28 That the Respondent No. 6 has wrongly been promoted to the post of ~~Station~~ ^{Assistant} Superintendent with effect from 1.1.1984. Virtually ~~vacancy~~ ^{this} should

be filled

have been created in favour of the applicant.
Similarly the respondent No 6 has wrongfully been
promoted to the post of Superintendent IESTS
vide order dated 13.7.1988.

7. Details of the remedies

Exhausted.

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

That being aggrieved of the illegal order of the Respondent No. 4 allowing the Respondent No. 6 the original seniority below Sri S.P. Sibbal and above Sri S.P. Lal, the applicant preferred a representation dated 22.5.1986 which was ultimately discussed before the higher authorities and turned down vide order dated 7.4.1988 as contained in Annexure- 2 to this Application and also the applicant's request was turned down on 17.5.1988 when the applicant sought a personal interview with the Additional Divisional Railway Manager, N.R. Lucknow.

8. Matters not previously filed or pending with any other court.

The applicant further desires that he had not previously filed any application, Writ Petition or suit regarding the matter in respect of which this application has been made, before any court of law or any other authority or any other Bench of the Tribunal, and nor any such application, Writ Petition or suit is pending before any of them.

9. Relief(s) sought.

In view of the facts mentioned in para 6 above the applicant prays for the following relief(s):-

That you be statuted

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i) This Hon'ble Tribunal may kindly be pleased
13.7.88
to quash the impugned orders dated 20.5.1988,
7.4.88 and 22.5.1986 as contained in
Annexures-1, 2, 3 and 4 respectively to this
Application to the extent it pertains to
respondent No 6.

ii) This Hon'ble Tribunal may further be pleased
to direct the Respondents Nos. 1 to 5 to
treat the Respondent No. 6 at the seniority
position as has been fixed by order dated
4.12.1985 below Sri J.N. Kapoor and above
Sri J.P. Verma as contained in Annexure-9 to
this Application.

iii) This Hon'ble Tribunal may kindly further
be pleased to issue appropriate orders/
directions to the Respondents Nos. 1 to 5
to treat the applicant senior to the Res-
pondent No.6 as the applicant was promoted
to the post of Head Clerk in substantive
capacity vide order dated 5.9.1982 while the
Respondent No. 6 was debarred from being
promoted to the post of Head Clerk upto 11th
March 1983 and till then the Respondent No.6
was never promoted to the post of Head Clerk.
The applicant be accordingly directed to be promoted
to the post of Superintendent (Establishment) 13/3/88

iv) This Hon'ble Tribunal may further be pleased
to issue appropriate directions to the
Respondent Nos. 1 to 5 to treat the appli-

MAIT YUNI 6/9/88

can be promoted to the post of Assistant Superintendent (Estt.) with effect from 1.1.1984 and also to issue appropriate direction to the Respondents Nos. 1 to 5 to consider the case of the applicant for the next promotion to the post of Assistant Superintendent in accordance with the seniority deeming the applicant to have been promotee to the post of Assistant Superintendent with effect from 1.1.1984.

- v) To pass any other order or direction which this Hon'ble Court/Tribunal deems just and proper in the circumstances of the case.
- vi) to allow the application with cost.

GROUND FOR RELIEFS

- a) Because the Respondent No. 6 is not entitled to ~~rightful~~ ^{original} get his ~~rightful~~ seniority restored on the post of Head Clerk once he refused to carry out the order of promotion to that post which was duly accepted by the competent authority.
- b) Because the applicant was promoted to the post of Head Clerk ~~against~~ and again to the post of Asstt. Superintendent (Estt) much before to the promotion of the Respondent No. 6 and as such the Respondent No. 6 cannot skip over to the applicant in the list of seniority in any manner whatsoever.

c) Because the Respondent No. 6 never raised any objection against the promotion of the persons juniors to him either to the post of Head Clerk or any higher post as he had himself refused the promotion to the post of Head Clerk ^{which} ~~and was~~ accepted ~~on the grounds~~ with the conditions that the Respondent No. 6 shall be debarred from being promoted for a period of one year from the date of his refusal.

d) Because the Respondent No. 6 never objected against the order debarring him from being promoted for a period of one year and the Respondent No. 6 has accepted it scrupulously and as such he is estopped from resiling the same.

e) Because the Respondent No. 6 has ~~accepted~~ the condition according to which he was debarred to be promoted to the post of Head Clerk for a period one year and as such he cannot prefer any claim against it and has virtually beenestopped under law.

f) Because the Respondent No. 6 was offered promotion to the post of Head Clerk against a regular vacancy in substantive capacity which he refused and as such he is not entitled to get his seniority fixed for the period he was not functioning on the post of Head Clerk and was not promoted to the said post.

g) Because the Respondent No. 6 had been functioning on the post of Assistant Welfare Labour Inspector which was attaching more benefits and prospects and as such he chose not to ask for anything up-to the year 1985 while he had refused promotion in the year 1982.

h) Because the Respondent No. 2 had wrongly stated that the Respondent No. 6 was offered promotion on ad hoc basis and as such he was entitled to certain benefits on account of it while as a matter of fact there is no such evidence available on record on the basis of which it could be presumed that the Respondent No. 6 was offered promotion on ad hoc basis.

i) Because the next junior to the Respondent No. 6 was offered the same vacancy of the Head Clerk which was offered to the Respondent No. 6 and as the next below to the Respondent No. 6 was promoted to the post of Head Clerk against the same vacancy on regular basis it cannot be imagined in any manner whatsoever that the vacancy which was offered to the Respondent No. 6 for being promoted to the post of Head Clerk was on ~~is~~ ad hoc basis.

j) Because the order passed by the Respondent No. 2 granting the original seniority to the Respondent No. 6 is perverse, illegal and discriminatory. It

A37

is violative of the provisions of Articles 14 and 16 of the Constitution of India.

k) Because the seniority is earned by an employee and it cannot be assigned by a higher authority. A person who has never been promoted/appointed to a grade at a particular time is never entitled to earn the benefit of seniority on the post or grade at that very time.

l) Because the conclusions arrived at by the Respondents Nos. 2 and 3 are entirely misconceived and against the settled canons of justice as well as in anti thesis of the statutory provisions.

m) Because a person who is entitled to be punished by the higher authorities for committing certain misconduct is not entitled to be rewarded for the same misconduct. The exercise of the Respondents Nos. 2 and 3 is entirely arbitrary and unwarranted.

n) Because the seniority of the applicant cannot be disturbed in the manner it has been disturbed by giving a push to the Respondent No. 6 for the reason best known to the Respondents No. 1 to 5.

o) Because once the representation of the Respondent No. 6 was duly considered and rejected by the Respondent No. 4, the same cannot be entertained again under the statutory provisions and as such

Amrit Singh (Signature)

the decision taken subsequent to it was null and void in the eyes of Law.

10. Interim order, if any prayed for. ~~and~~ Pending disposal of this application operation of order dated 13.7.88 ~~Annexure 1~~ be stayed for the grounds already stated in support of men relief.

11. In the event of application being sent by Registered post, it may be stated whether the applicant desires to have oral hearing at the admission stage and if so, he shall attach a self-addressed Post Card/Inland Letter, at which intimation regarding the date of hearing could be sent to him.

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

1. Number of Indian Postal Order(s) DD 067824

2. Name of the issuing Post Office. HIGH COURT BENCH, LUCKNOW

3. Date of Issue of Postal Order(s) 21-7-88

4. Post office at which payable - LUCKNOW.

13. List of enclosures - AS per order VERIFICATION

I, Mata Prasad Srivastava, son of late Shitla Bux, aged about 56 years, working as Assistant Superintendent(Estt) Divisional Railway Manager's Office, Northern Railway, Lucknow do hereby verify that the contents of paras are true to my personal knowledge and paras believed to be true on legal advice and that I have not suppressed any material fact.

Date:

Place:

MATA PRASAD SRIVASTAVA
signature of the Applicant.

Q39

NORTHERN RAILWAY

No.758-E/E-6/1

Divisional office
Lucknow
July 13, 1988

N_O_T_I_C_E

Consequent upon restoration of two posts of Superintendent/East in grade Rs.2000-3200(RPS), S/Shri A.C. Misra and S.D. Sharma, Asst Supdts in grade Rs.1600-2660(RPS) are temporarily appointed to officiate as Superintendents/East in grade Rs.2000-3200(RPS) with immediate effect.

Shri AC Misra is posted as SE/I and Shri SD Sharma, as SE/III.

Reh

Sr Divl Personnel Officer
Lucknow

Copy forwarded to :-

- 1- Supdt./Bills
- 2- Sr DAO/LKO
3. S/Shri AC Misra and SD Sharma, Asst. Supdts/E

not satisfied

....

*AC
Satisfied*

ACO

ANNEAURE - 2NORTHERN RAILWAYDivisional Office
Lucknow.

No. 758F/F-6/1

Dated 20-5-1988

Notice

Consequent on their empanelment through modified selection procedure for the post of Asstt. Supdt. (Establishment) in scale of Rs. 550-750 (RS)/Rs.1600-2660 (RP) against vacant post under restructuring effective from 1.1.84, S/shri A.C. Misra and shiv Dev Sharma, HCE in grade Rs.425-700(RS)/Rs.1400-2300 (RP), presently officiating as Asstt. supdt. (E) in grade Rs. 550-750 (RS)/Rs.1500-2660 (RP) on ad hoc basis have been allowed promotion as Asstt. supdt. (E) in grade Rs.550-750 (RS)/Rs.1600-2660(RP) with effect from 1.1.84 against upgraded posts.

sd/- Illegible

For Sr. Divisional Personnel
Officer, Lucknow.

Copy for information to :-

1. APO-I & APU(G)
2. Supdt. Bills/swli(C)
3. Sr. DAP/LKO
4. Shri A.C. Misra } In Office
5. Shri S.D. Sharma }
6. Divl. Secy. NRMU, Near Guard's Running Room,
Charbagh, Northern Railway, Lucknow in reference
to their PNM Item No. 333(4)/71st PNM.

TRUE COPY

2015-07-15 09:45:00

KAC
Dinesh Kumar

All

ANNEXURE - 3

Northern Railway

No. 754E/1905/ EiID

Headquarter's Office
Baroda House
N. Delhi.The Divisional Rly. Manager
Northern Railway
Lucknow.

Dated. 7.4.1988.

Subject . Seniority of A.C. Misra, Asstt supdt.
Grade 550-750 (Rs)Ref . Your office letter No. 758/E/6/1
dated 6.11.87.

The case of shri A.C. Misra was put up to competent authority, and it is observed that the action for assigning sh. Misra his original seniority in the clerical cadre is correct and his refusal on adhock basis has no bearing on his seniority on promotion on regular basis, as per the condition laid down in P.S. No. 8703 circulated vide this office letter No. 831-E/63/2XII (Eiv) dated 11.4.85.

This office may please be advised of the latest position and action taken.

sd/- Illegible
for General Manager 'P'

Copy forwarded to sPo/4 in reference to letter
No. 961E/108/20/8/NRMU/E Union dated 21.1.88.

manu 15/1/88

KTC
sent abtor

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ANNEXURE - 4

NORTHERN RAILWAY

DIVISIONAL OFFICE

No. 758E/6-1

LUCKNOW Dt. 22/5/86.

NOTICE

On the representation from Sh.A.C. Misra
Officiating Asstt. Supdt. Gr. Rs. 550-750 (RS) has been
assigned his original seniority and he has been placed
below Sh. S.P. Sibbal and above Sh. S.P. Lal. If any
one is having any representation against the above
orders, they should submit the same within one Month
from the date of issue of this letter.

This has the approval of ~~xxxxxDivxixxRexxanxxOffixxx~~
Sr. D.P.O./IPO

Sd/- Illegible

For Sr. Divl. Personnel Officer
Northern Railway Lucknow.

Copy to Sh. A.C. Misra

Sh. S.P. Lal

Supdt. (Pay-Bill).

TRUE COPY.

Not yet released

*KIC
BCT/2018*

A.Y.B

ANNEXURE - 5EXTRACT OF SENIORITY POSITION OF THE SR. CLERKS
AS IN VOUGE IN THE YEAR 1982.

1. Sri S.P. Sibbal
2. " A.C. Misra
3. " S.B. Lall
4. " Mangal Sen
5. " S.D. Sharma
6. " Mata Prasad Srivastava
7. " G.C. Tripathi
8. " N.K. Sharma
9. " Mohd. Zubair
10. " D.L. Shukla (Retd.)
11. " H.P. Asthana (Retd.)
12. " Ram Sukh
13. " L.C. Joshi
14. " J.N. Kapoor (Expiree)
15. " J. P. Verma

MANAGING STAFF

ANNEXURE - 6

A.Y.G

NORTHERN RAILWAYDivisional Office,
Lucknow : Dt. 31.3.82.

No. 758-E/E6/1(E&PB) Pt. III.

NOTICE

The following orders are hereby issued to have immediate effect:

The refusal of Shri A.C. Misra, Sr. Clerk 'E' for promotion as Head Clerk, Gr. Rs. 425-700 (RS) is hereby accepted. He is debarred for further promotion as Head Clerk for a period of one year and juniors to him so promoted during this period will rank senior to him.

2. Shri S.P. Lall, Sr. Clerk 'E' in scale Rs.330-560 (RS) is hereby appointed to officiate as Head Clerk in grade Rs. 425-700 (RS) and allowed to continue to work on the present seat.

sd/-

(S.N. Misra)

Divl. Personnel Office, LKO.

Copy to :-

1. The Supdt. 'E' & P/Bills.
2. The Sr. DAO/NR/Lucknow.

MINT 5/11/82/1982

True copy

KTC
S. N. Misra
✓

NORTHERN RAILWAY

NO. 941-E/E-6/1-Pt.II

Divl. Office
Lucknow Dt/15 Sept. 82.

NOTICE

The following transfer and posting orders are hereby issued with immediate effect:

1. Shri Mata Prasad Srivastava Sr. Clerk in scale of Rs.330-560(Rs) is Ty.appointed to officiate as Head Clerk grade Rs.425-700 and allowed to continue at his present seat.
2. Shri G.C. Tripathi Sr.Clerk P.Bill section is Ty. appointed to officiate as Head Clerk in grade Rs.425-700(Rs) and allowed to continue in P.B. section.
3. Shri S.D. Sharma Offg. AWLI is Ty.appointed to officiate as Head Clerk in grade Rs.425-700(Rs) and is posted vice Sri Autar Singh in mechanical group.

અનુભૂતિકાળનાં પ્રાણી જીવની જીવની

This issues with the approval of DPO-I & (P) II.

sd/- Illegible
Divl. Personnel Officer
Lucknow.

Copy to supdt. P.Bill.
supdt. G.

S.W.L.

met with best friend

Attested.

AC
F. S. Carter

(31)

AUG

ANNEXURE - 8

NORTHERN RAILWAY

No. 758-E/E-6/1

DIVISIONAL OFFICE
LUCKNOW. DT. 18.9.85

NOTICE

The undernoted Head Clerks grade Rs.425-700(Rs) are temporarily appointed to officiate as Asstt. supdt. Grade Rs. 550-750(Rs) on adhoc basis pending selection against existing vacancies with immediate effect :-

1. s/sri Sheo Deo Sharma	HC/E	Appointed to Officiate as	
		A.s./E.	
2. M.P. Srivastava	HC/E	-do-	-do-
3. G.C. Tripathi	HC/PB	-do-	As/PB
4. N.K. Sharma	"	"	"
5. Mohd. Zuber	HC/E	-do-	As/E
6. D.L. Shukla	"	-do-	-do-
7. H.P. Asthana	-do-	-do-	-do-
8. L.C. Joshi	HC/Confld		(Confld)
9. J.N. Kapoor	HC/PB	-do-	As/PB
10. J.P. Verma	HC/E	-do-	As/E
11. R.L. Arya		Already Officiating as	As/E
		against SC Quota.	
12. H.C. Verma	HC/PB	Posted as	As/E.
13. D.P. Shukla	HC/E	Posted as	As/E.
14. B.N. Srivastava	HC/E	Posted as	As/E.

Promotions of item 1 to 13 are against regular vacancies and that of item 14 against leave vacancy vice smt. Morry Haren Ekka on sick list since 6.5.85.

This issues with the approval of D.R.M.

sd/- Illegible
Sr. Divl. Personnel Officer
N. Rly/Lucknow.

Copy forwarded for information and necessary action to:-

1. supdt. /E-6, E/1, E/II, R/5, Pay Bill, Coord.
2. AS/Confld/LKO
3. SWLI/C/CB/LKO.
4. Sr. DAO/Lucknow.

True copy.

True copy
18.9.85

Mat'ship letter

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ANNEXURE - 9

OS-36/64th PNM/NRMU
4PU (11)/S/71

Shri ON Aghihotri : He is due promotion as Asst Supdt in grade Rs.550-750/AS as his juniors have been promoted on ad hoc basis vide notice No.758/E/E-6/1 dt 18.9.85. Since an SF.5 is pending against him, he cannot be promoted as Asst Supdt till the case is finalised but he will be called for regular selection whenever it is arranged.

Shri SD Sharma : Shri SD Sharma is due promotion as Asst Supdt in scale Rs.550-750/AS under restructuring w.e.f. 1.1.84 against resultant vacancies as his junior, Shri MP Srivastava has been promoted as Asst. supdt on ad hoc basis pending selection through this office letter No.758 E/E-6/1 dt. 18.9.85. Accordingly, Shri Sharma has also been allowed to officiate as Asst. supdt. in the same letter.

Shri AC Misra : Shri AC Misra was promoted as Hd.Clerk grade Rs. 425-700/Rs vide notice No. 758E/E-6/1(P) dt. 4.3.88 but he refused his promotion through his application dated 12.8.82. His refusal was accepted through notice No. 752E/E-6/1 (e E&PB)/III dt. 31.3.82 with a clear stipulation that he will be debarred for promotion as Hd Clerk for one year from the date of his refusal and persons junior to him promoted during this period will rank senior to him. The refusal period of Shri AC Misra expired on 11.3.83. During his refusal period, six persons junior to him viz. S/Shri Mohd. Zuber, L Shukla, HP Asthana, Ram Sukh, LC Joshi and JN Kapoor were promoted as Hd. clerk through this office notice No. 752E/E-6/1(& PB) II dt. 17.2.83. As such, all these persons will rank senior to Shri AC Misra as Hd. Clerk in grade 425-700/Rs.

MANU SHRI LALIT HANDE

- 2 -

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That next promotion to the post of Head Clerk was issued through this office notice No. 752E/E-6/1(s&pb) III dated 29.4.83 in which S/Shri J.P. Verma and S/Shri Agnihotri were promoted as Head Clerks who were junior to Shri A.C. Misra. Shri AC Misra should have been promoted at this stage as Head Clerk in grade Rs.425-700/Rs as his refusal period expired on 11.3.1983.

Since he was ignored for the above promotion, he will reckon his seniority above Shri JP Verma and below Shri JN Kapoor as Hd Clerk in grade Rs.425-700/Rs. Based on the above seniority position, he is due promotion as Asstt Supdt in grade Rs.550-750/Rs on ad hoc basis along with Shri JN Kapoor and JP Verma who have been promoted as such through notice No. 758E/E-6/1 dt. 18.9.85. Shri AC Misra should therefore be promoted as Asst. Supdt in grade Rs.550-750/Rs on ad hoc basis with immediate effect and the seniority position should be corrected accordingly.

Sd/-

ASLAM MAHMUD
Sr. DPO
29.11.85.

MAY 5 1985

TRUE COPY

Aslam
Aslam

ANNEXURE - 10

A49

Northern Railway:

No. 758-B/C.1

Divisional Office
Lucknow Dt. 4/12/86N O T I C E

On the representation from Sri A.C. Misra, Head Clerk, P. Branch it has been decided by the Competent Authority to change the seniority position in the seniority list of Head Clerks in the Seniority list.

Sri A.C. Misra is placed below Sri J.N. Kapoor and above Sri J.P. Verma. This is provisional, staff, who have any complaint against his revision of seniority may submit his Written Representation within one month of issue this notice.

If no representation is received, it will be presumed that none have complaint and the change will be treated as final.

This has the approval of Sr. D.P.O./Lucknow.

Sd/- Illegible
Sr. Divisional Officer,
N.Rly., Lucknow.

Copy to :

- 1) Sri A.C. Misra
- 2) Sri J.P. Verma
- 3) Sri J.N. Kapoor.

m/s/ 14/12/86

TRUE COPY

Attested
Signature

Ambedkar - 11

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10,

The Divisional Railway Manager,
Northern Railway,
Lucknow.

Sir,

reg: Assignment of seniority to Shri A.C. Misra,
A.S. (I) in scale Rs. 550-750 (RS).

Ref: Your letter No. 758/6-1 dated 22.5.1986.

With due respect we the undersigned submit our objections against the provisional seniority assigned to Sh. A.C. Misra in gr. Rs. 550-750 (RS) vide your above quoted letter with the request that orders issued via said letter may kindly be quashed and cancelled on the grounds noted below, as these orders have been issued based on wrong footings illegally with malafide intention :-

1. That Shri A.C. Misra while working as AWLI in grade Rs. 425-640 (RS) submitted his refusal dated 12.3.82 for his promotion as Head Clerk in gr. Rs. 425-700 (RS) at his own instance under no duress from any corner being in fit state of mind holding a supervisory and responsible post of Welfare Inspector and warden of the subsidised Hostel, charge of handicraft centres and Mahila Samiti etc.

2. That the said refusal of Shri Misra was accepted via your office letter No. 752/6-1-(RFB) dated 31.3.82 by the competent authority and he was debarred for promotion for a period of one year as Head Clerk scale Rs. 425-700 (RS) because he did not want to leave the post of AWLI, on clear terms and conditions that all the juniors promoted as Head Clerk during the period of his refusal for which he was debarred would be senior to Shri Misra and his junior Shri S.P. Lal was promoted as H.C. in terms of para C of P.S. No. 2854, copy enclosed.

3. That Shri Misra accepted the terms and conditions of the said letter dated 31.3.82 in terms of para A of P.S. No. 2854 as Shri A.C. Misra did not file any objection against the terms and conditions laid down in the said letter dt. 31.3.82.

4. That Shri A.C. Misra did not object any thing against the conditions laid down in your letter dated 31.3.82 at the time of issue of the promotional orders as H.C. of Sri Mangal Sen and he also kept silent at the time of issue of promotional orders of the undersigned:-

1. S/Sri S. S. Sharma) vide letter no. 9478/II-6/1 Pt. II
2. M.P. Srivastava (dated 15.9.82)
3. C. C. Tripathi.)

5. That Shri A.C. Misra also did not represent any thing till 12.3.85, the date of issue of your letter No. 758/6-1 containing the promotion orders of 14 persons as Asstt. Supervisor on ad-hoc basis.

MAY 1986 (SAR)

contd... 2

SAR
12/6/86

AS/

-: (2):-

6. That during the duration of the period from 12.3.82 to 16.3.85 so many staff were promoted as Head Clerk, A.S. & supnts. but Shri A.C. Misra did never point out regarding his refusal if taken otherwise and the term and conditions as laid down in your letter dtd 31.3.82 because he was in know that the action taken by the administration was correct on his refusal submitted willingly on 12.3.82.

7. That at this juncture the statement of Sri Misra regarding his refusal taken by Shri S.N. Lal forcibly with the help of two unknown persons at his residence on 12.3.82 is not maintainable and believable because Shri S.N. Lal is working on a responsible place as supdt. (S) having many awards from administration for his loyal and faithful service nor Shri A.C. Misra holding the post of Welfare Inspector and the charge of Subsidised Hostel, Handicraft Centres, did never reported to the administration as well as the police authorities regarding the refusal taken by Shri S.N. Lal forcibly during the period of more than 3½ years.

8. The contention of Shri A.C. Misra regarding unwillingness of Shri S.D. Sharma then offtg. as WLI to the post of H.C. he never refused for his promotion as Head Clerk and ever tried to join his assignment as H.C. and requested so many times to the then WLI to spare him but he was not spared due to the acute shortage of WLIs and that is why he was never debarred for promotion. As regards the cancellation of the proceedings of the panel of WLI of 1984 it was cancelled by the administration itself as per letter No. 7521/11/1 dated 27-7-84 copy enclosed and not due to his write. As regards writ No. 1140 of 1985 it was filed by Sri A.C. Misra himself too.

9. That as regards the benefit of NBR and P.S. No. 5480, it is not at all applicable in this particular case because Shri A.C. Misra tendered his refusal at his own accord ~~feeling~~ in fit state of mind which was accepted along with the conditions as stated above and thus Sri Misra did never oppose till 16.9.85.

10. That after the issue of promotion of 14 persons as A.S. (S) on 18.9.85 Sri Misra manipulating the loss of all the original files with the connivance of the then supdt. (ordination) who unauthorisedly dealt with the case with malafide intention, claimed for the seniority which was considered by the competent authority i.e. S.P. D.P.O. and Shri Misra was assigned seniority below Sri J.N. Kapoor and above Sri J.P. Verma vide letter No. 7581/6-1 dt. 4.12.85 and the doors for representation for Sri Misra were closed and the staff other than Shri A.C. Misra were called for to submit representation, if any, within a period of one month but none came forward and the seniority assigned to Shri Misra on expiry of the period of one month i.e. on 3.1.86 became automatically finalised.

11. That after finalisation of seniority of Sri Misra he was too promoted as A.S. in scale Rs. 550-750(Ru.) with effect from

MATA SHRI LALITA

contd. ... 3

A52

-:(3):-

12. That the grounds ~~for representation~~ of Shri A.C.Misra for submitting his representation again on 16.4.86 after the finalisation of his seniority have no footings. The decision communicated vide your above letter dt. 22.5.1986 by the same authority i.e. Sr.D.P.O. is not maintainable in the eyes of justice.

13. We the undersigned still doubt that the true picture ~~was not put~~ before your honour if our case is routed or dealt with by Shri Sheo Pujan Pd. working as A.P.O. on ad-hoc basis.

PLAVERS

Therefore we the undersigned submit to your honour with the request as under :-

1. That orders communicated vide S.D.P.O.'s letter No. 756 E/6-1 dated 22.5.86 may be quashed as it is not maintainable.
2. That the decision communicated vide your letter No. 756 E/6-1 dated 4.12.85 may be up-held because the seniority assigned to Shri A.C.Misra has already been finalised and any appeal after expiry of one month i.e. after 3.1.86 is time barred and is not to be considered.
3. That since the doors for any representation of Shri A.C.Misra were already closed on 4.12.85 on the decision of his appeal, Shri A.C.Misra has got no right of claim for his seniority and entitlement for any fresh decision by the same competent authority.

Yours faithfully,

Dated: 06-6-86

1. Mangal Singh
2. S. S. S.

3. Mat Singh Bajwa
4. Mohammed Zubair
5. Dr. K. Sharma
6. P. C. Tripathi

T.C. Affected
Abto'
Abto'

Mat Singh Bajwa

Annexure-12

AS3

No. 961F/NRMU/72nd PNM/87-88/1
 Dated 30th April, 1987.

Divisional Office,
 Lucknow.

TARGET DATE 26-5-87

All Officers of Lucknow Division,
 All WLIs and PLIs,
 All Supdts., and Hd.Clerks in 'P' Branch,
 Supdt.(Works)with 10 copies for Civil Engg. Officers.

Subject:- Minutes of 72nd Divisional PNM meeting held with
 NRMU on 9/4 and 10/4/87.

1. The minutes of 72nd Divisional PNM meeting held with NRMU on 9/4 and 10/4/87, are sent herewith for information and necessary action along with "Opening Speech" items raised by NRMU in the opening session of the PNM Meeting.

2. It is stressed that the decisions as recorded against each item in the enclosed minutes of PNM meeting are to be implemented without loss of time.

3. In this PNM meeting many items have been treated as FINAL/IMPLEMENTATION and some items remained for discussion in the next PNM meeting.

4. Action on this items shown as 'FINAL or FINAL IMPLEMENTATION' in the enclosed minutes, may be taken as per decision recorded against such item and compliance report may be sent to the Union Cell so that action taken be advised to Union in time about implementation.

5. As regards items which have not yet been finalised, those should immediately be attended to and complete replies to the points raised by Union in those items may please be furnished by certain to the undersigned.

6. Past experience shows that the replies to PNM items are not timely sent despite issue of reminders and personal chasing. It is, therefore, requested that you may please especially ensure that replies to the items of minutes and opening speech are sent by the Target date viz certain.

Please acknowledge receipt.

Sharma
 (H.V. Sharma)

Sr.Divl. Personnel Officer,
 Northern Railway, Lucknow.

Copy to : 1. Divl.Secy., NRMU, near Guard's Running Room/CB/LKO.
 2. Divl.Secy., URMU, 1-10 Near Parcel Office/CB/LKO (with 20 copies).
 3. General Secretary, NRMU, 12 Chelmsford Road, NDLS.
 4. General Secretary, URMU, 166/2 Nly.Bungalow,
 Punchkuan Road, New Delhi.
 5. General Manager(P), Union Cell, HQ Office, N.Fly.,
 Baroda House, New Delhi.

....

Not yet sent

*R.C. A. 1/2/87
 12/5/87*

ASY

:69:

20. Item No.334(2) Contd.....

REPLY

Seniority list of TCs grade Rs.260-400 (RS) which was issued on 23.6.82, has been challenged in the court of law and is still subjudice. In compliance to Hon'ble High Court's order, the entire seniority list is under review. Individual decision cannot be taken in view of the above facts it is, however, pointed out that the facts put forth by the Union will also be kept in view during the course of review of the seniority list.

The case will be examined on merits but final orders will be issued only after disposal of court case.

Review

21. Item No.334(4) Seniority of Shri Mata Pd. Srivastava,
71st PNM AS/Estd. DRM office, Lucknow.
Dec '86APC-II
SE-V

Shri Mata Pd. Srivastava, Asst. Supdt. (E) has represented that Shri A.C. Misra, AS (E) has been assigned seniority above him and so other illegally, Shri Mishra has refused promotion for Hd. Clerk gr. 425-700 which was debarred for promotion for a period of one year and juniors to him so promoted would rank senior to him. Shri S.P. Lal next junior to him was promoted as Head Clerk vide the same above quoted letter. During the refusal period of Shri Misra s/shri Mangelsen, S.D. Sharma, Shri Mata Pd. Srivastava, Mohd. Juber, G.C. Tripathi and V.K. Sharma etc. were promoted as HCs.

merit basis

etc after

order

AS

70:

21- Item No.334(1) Contd.....

represented his original seniority which was finalized correctly vide notice No. 7582/6-1 dated 4.12.85 and he was ignored seniority below Shri J.N.Kapoor and above Shri P.K.Varma.

Again on representation of Shri A.G.Misra, the case has been dealt with unlawfully and ignoring the above mentioned facts Shri Misra has been assigned his original seniority below Shri S.P.Sibal and Shri S.P.Lal vide notice No.7582/6-1/ dated 22.5.86.

DRM may kindly call for all the files and review the case and Shri Misra may be given seniority as already decided vide notice dt. 4.12.85 and Sr.M.P.Srivastava is due to promotion as Asstt,Supdt. in scale 550-750(RS) by holding modified selection in terms of H.O.C. letter No. 561E/253/83/Genl/VC pt.IV dt. 24.11.85 against upgraded post as a result of cadre restructuring v.c.s. 1.1.84 which may be done without further delay.

REPLY

A.G.Misra, while working as Asstt. Welfare Inspector gr. Rs.425-640(RS) on ad hoc basis was promoted as Head Clerk grade Rs.425-640(RS) in his own channel and at the same station. As per record, Shri A.G.Misra, refused promotion statutorily stating that he was to continue as Asstt and he is not willing to work as Head Clerk on ad hoc basis. This refusal was accepted and Shri Misra was debarred for further promotion as Head Clerk for the period of one year and he was advised that juniors to him so promoted during this period will rank senior to him. Accordingly action was taken and juniors to Shri A.G.Misra were promoted as Head Clerk.

MAY 5 1986 (S)

T.C. 11/10/1986
Contd. 1
S. P. A. S.

AS6

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21. Item No.334(1) Contd.....

Later, Shri A.C.Misra, represented that he had written the refusal letter under duress and that he is being refused his seniority in his own channel. On consideration of the representation, it was revealed that the refusal in his own channel of promotion at the same station cannot be accepted vide PS 6211 and also no refusal was required as he was working as AWL.I only on ad hoc basis and as such he had claimed his promotion in his own channel.

In a similar case of Shri S.D.Sharma, the benefit of seniority in the original channel has been given. The seniority of Shri A.C.Misra in his own channel of Head Clerk.

It may also be pointed out that Shri A.C.Misra has refused promotion of the post of Head Clerk on ad hoc basis as per his refusal letter and this refusal will have no effect on the seniority of the employee.

The Union observed that as per PS 6211, if an employee refuses promotion he should be taken up under D&R but it does not mean that a competent authority cannot accept his refusal and debar his promotion. The competent authority has accepted refusal and debarred him for promotion and, therefore, any benefit PS No.6211 cannot be given. The item will be discussed with DPM.

A reference will be made to HQ and Union's viewpoint as mentioned in this item will be communicated to HQ for making a clarification. Till then no action on the present seniority can be taken.

Final Impl (Annex.A)

Monty WIG (Signature)

-P.C. (Signature)
-ASR (Signature)

42

Annexure-13

AS

Divisional Office
Lucknow
16 June, 1987

General Manager (P)
Northern Railway
Gardha House
NEW DELHI

7584/BS/1

Sub: Seniority of Shri AC Misra, Asst Supdt.,
grade R. 550-750(RS). Personnel branch.

The NRMU, vide their PNM Item no. 334(4)/71st PNM meeting held in December, 1986, contested the seniority assigned to Shri AC Misra, Asst Supdt, Establishment section. The position was explained to the Union and the Union demanded that a reference should be made to HQ indicating Union's viewpoint and clarification obtained. The details of the case are given here under :-

Shri AC Misra, while working as Senior Clerk in grade R. 330-550/Rs was promoted as Asst Welfare Inspector, in grade R. 425-640/Rs, an ex cadre post, on ad hoc basis. While he was working as ad hoc AWI in grade R. 425-640/Rs, he was promoted as Head Clerk, grade R. 425-700/Rs on ad hoc basis at Lucknow itself as per his seniority in his regular channel. As per record, Shri AC Misra, refused ad hoc promotion stating that he wanted to continue as AWI and was not willing to work as Head Clerk on ad hoc basis. This refusal was accepted and Shri Misra was debarred for further promotion as Head Clerk for a period of one year and he was advised that juniors to him so promoted during this period will rank senior to him. Accordingly action was taken and juniors to Shri Misra were promoted as Head Clerk.

Subsequently, Shri AC Misra was posted back in his proper channel of Clerk when posts of MLs were filled in by regular incumbents. Shri AC Misra was assigned seniority below staff who had by then been promoted as Head Clerk grade R. 425-700(RS).

Shri AC Misra, represented for his seniority on the plea that he had written the refusal letter under duress and that he is being refused his seniority in his own channel. On consideration of representation, it was revealed that :-

- 1) Shri AC Misra had refused promotion for the post of Head Clerk, grade R. 425-700(RS) on ad hoc basis and this should not have affected his promotion/seniority in his regular channel;
- 2) Refusal in his own channel of promotion at the same station can not be accepted vide PG 6211; and
- 3) No refusal was required as Shri AC Misra was working on an ex cadre post of AWI in grade R. 425-640/Rs.

In the light of above, it was seen that Shri AC Misra, had claimed for his seniority in his regular channel and his seniority was accordingly revised restoring

... R/

... R/

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- 2 -

his original seniority.

During discussion in the PRM meeting, the Union observed that as per PS 6211, if an employee refuses his promotion, he should be taken up under D&R but it does not mean that a competent authority cannot accept his refusal and debar his promotion. The competent authority has accepted refusal and debarred him from promotion and therefore, any benefit under PS 6211 cannot be given.

Necessary clarification in this regard may kindly be communicated early so that this Union item can be finalised.

Ward

(H.V. SHARMA)
for Divisional Railway Manager, H.Rly.,
Lucknow

C/- Divl Secretary, Northern Railwaymen's Union,
near Guards' Running Room, Charbagh, Lucknow.

MAY 1986

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T.C. Annexed

S. S. S. S. S.

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ASG

33

Head quarter office

Baroda House 83

New Delhi

$$2F = \frac{15-7}{14} \cdot 87$$

The Divl. Railway Manager
N: Railway Lucknow.

Sub:- Seniority of sh. A. C. mishra, A.S.
grads Rs. 550 - 750 (Rs) 'P' branch

Ref:- Your letter no - 758-E | 86 | dt 16-6-87 | 4

24.11.1960
Refer to your letter
dated above regarding seniority
of Sh. A. C. Mishra A.S. grades 550-
750 - (Rs) P Branch units

In this connection it is requested to please furnish the following information immediately.

(1) - willingness (Refusal or otherwise) expressed by Sh. Prakash at the time he was due promotion as H.D. Clerk on adhoc Regular basis respectively.

(2) The date from which his journey has been promoted as H.D. Clerk.

માત્ર સાધુભાઈનું

Annexure - B

15

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जनरल ९९/छा०।
Genl. ९९/Small

उत्तर रेलवे
NORTHERN RAILWAY

No. 958/6/611

Divil. offio

Lucknow (6.11.87)

मैथिल - 2

G. M (P).

9. H.Rly. Baroda House
New Delhi

Reg. Seniority of A.C. ^{the 1st} ~~Post~~ A.S. Grade

550 - 750 (RS) μ

Ref! - your's office letter NO 754 | 6/1905/EID

Det 15.7.87

① Relevant file dealing with the case of promotion of A.C. Misro as head clerk in grade Rs 425-700 (Rs) in the year 1982 has been taken away by the negligence organisation in connection with Sri S.S. Rayput ex-MLA's Case. In absence of this file, the information

② Son. S.P. Lal, junior to Son. A.C. Misra, was promoted as Head Clerk on regular basis on the same vacancy w.e.f. 31.3.82.

After some time
the debt showed
dealing me with the
same file. ~~for~~ ^{for} Dr. R. L. Manger
he now

মাতৃস্বাস্থ্যসংস্থক

T.C. Attested
for Pastor

Before Central Administrative Tribunal Allahabad
 व अदालत अमान चर्च एवं लक्ष्मण महोदय
 वादी वपीलान्ट वृप्तिकान्त

वकालतनामा

माता प्रसाद सेठाना — — — Applicant



ଶିଖା

બાબી (અષીલાણ્ટ)

१४ इनाम उत्तिवादी (रेस्पाउंट)

८० मुकहमा सन् पेशी की ता० १२ ई०

0. At No. - - - - - 1988

क्षपर लिखे मुकद्दमा में अपनी ओर से श्री आ० पा० श्राविस्तव एडवोकेट
 श्रीविना श्री ई० पा० श्रीविस्तव एडवोकेट
 द६७, पुरोना महानगर निकट फातिमा अस्पताल, लखनऊ-२२६००२ महोदय

— नाम अदाकर —
— मुकुदमा न० —
— नाम फोरेन — भवान

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

accepted

साक्षी (प्रवाह)

ବିଜ୍ଞାନ

हस्ताभार आता बाटु विवाह

साक्षी (गवाह)

संस्कृत

186 *Journal of Health Politics*

In the Central Adminstrative Tribunal Allahabad

Bench Lucknow.

O.A.No. 77 of 1988.

Mata Prasad Srivastava

A62
Applicant

Versus

Union of India and others

Respondents:

Reply on behalf of the Respondents No. 1 to 5

Para 1: Needs no reply.

Para 2: Needs no reply.

Para 3: Orders contained in Annexure No. 1 to 4
(i) to (vi) are not denied. It is submitted that the
orders passed are correct in all respect.

Para 3: (iv) That the contents of paragraph 3 (iv) of the
the application are denied as stated. The
Correct facts are:-

Respondent No. 6 ~~Asstt. Secy.~~ was promoted
on ad-hoc basis as AWLI Grade Rs. 425-640
(RS) maintaining his lien in the cadre of
Establishment clerks. While working as AWLI
on Adhoc Grade Rs. 425-640 (RS) the said
Shri A.C.Misra was promoted as Head Clerk
Grade Rs.425-700 (RS) on adhoc basis which he
refused and accepted by Respondent No. 3 vide
letter dated 31.3.1982 and Respondent No. 6
was debarred for further promotion as Head
Clerk for a period of one year and he was
advised that juniors to him so promoted
during this period will rank senior to him.

The aforesaid vacancy was thus offered to the
next below person Sri S.P.Lal and consequently
S.P.Lal was promoted as Head Clerk vide order
dated 31.3.1982.

Asstt. Personnel Officer
N. R. Lko.

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Subsequently Shri A.C.Misra was posted back in his proper channel of clerks when post of WLIs were filled in by regular encumbants. Sri A.C.Misra was assigned seniority below staff who had by then been promoted as Head Clerk Grade Rs. 425-700 (RS).

Sri A.C.Misra represented for his seniority on the plea that he is being refused his seniority in his own channel.

On consideration of representation, it was revealed that:-

- (i) Sri A.C.Misra had refused promotion for the post of Head Clerk Grade Rs. 425-700 (RS) on adhoc basis and this should not have effected his promotion /seniority in his regualr channel.
- (2) Refusal in his own channel of promotion at the same station ~~cannot~~ ^{can no} be accepted vide PS 6214.
- (3) No refusal was required as Sri A.C.Misra was working on an ex-cadre post of WLI in Grade Rs.425-640 (RS)

In light of the above, it was seen that sri A.C.Misra had claimed for his seniority in his regular channel and his seniority was accordingly revised restoring his original seniority vide order dated 22.5.'86 (Annexure No.4 to the application).

The action taken by the said order dated 22.5.86 was later on declared to be correct by the General Manager (P) New Delhi vide order dated 7.4.'88 (Annexure No. 3 to the application)

Ass'tt Personnel Officer
N. R. Lka.

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Vide order dated 20.5.'88 sri A.C.Misra and Sri Shiv Dev Sharma were allowed promotion to Asst. Supdt (E) in Grade Rs.550-750 (RS)/ Rs.1600-2600 (RP) W.ef. 1.1.'84.Sri A.C. Sharma was thereafter vide order dated 13.7.'88 was appointed to officiate as Supt(Estt.) in Grade Rs. 2000 -3200 (RPS).

Para 4: That in reply to the contents of paragraph 4 of the application it is submitted that there being no dispute which requires redressal from this Hon'ble Tribunal.

Para 5:That the contents of paragraph 5 of the application needs no reply.

Para 6:1:That in reply to the contents of paragraph 6.1 of the application, it is submitted that the order dated 22.5.1986 passed by the Respondent No. 4 restoring the original seniority in favour of respondent no. 6 is legal and does not suffer from arbitrariness.It is also submitted that the order dated 7.4.'88 passed by respondent no. 2 is legal and correct. It is submitted that the order dated 20.5.'88 is correct and legal in so far it promotes Respt. no. 6 as Asst . Supdt (Estt) and so is the order dated 13.7.'88 promoting the respondent no. 6 to the post of Supdt.(Estt.).Since all the aforesaid orders have been passed legally and they being correct cannot be challenged.

Asst. Personnel Officer

N. R. Lko.

Para 6.2 : That in reply to the contents of paragraph 6.2. of the application it is submitted that the seniority list filed by the applicant as Annexure No. 5 to the application is not disputed. Rest of the contents are ~~denied~~ verifiable from the list itself and the list may kindly be referred to.

Para 6.3 : That the contents of paragraph 6.3 of the application are denied in the way stated. It is submitted that there was no regular vacancy and respondent no. 6 was promoted on adhoc basis to the post of Head Clerk Grade RS. 425-700 vide order dated 4.3.'82. It is also not denied that the said offer was refused by respondent no. 6 , while he working on the post of AWLI on adhoc in Grade Rs.425 - 640. *A true copy of office order D/4-3.82 is annexed to this reply as Annexure No R/1*

Para 6.4 : That in reply to the contents of paragraph 6.4 of the application, it is not denied that the refusal by respondent no. 6 was accepted and consequently shri S.P.Lal was promoted as Head Clerk Grade Rs. 425/640 (RS) temporarily vide order dated 31.3.1982 as no regular vacancy of the post of Head Clerk existed at that time. It is therefore wrong to allege that the promotion of shri S.P.Lal was made in substantive capacity.

Para 6.5 : That the contents of paragraph 6.5 are verifiable from the Annexure No. 6 itself, hence need no reply. It is submitted that

Issue Personnel Officer
N. R. Lke.

in view of representation made by respondent no. 6 thereafter, it is deemed that he did not accept the position created by letter dated 31.3.1982.

Para 6.6 : That in reply to the contents of paragraph 6.6 of the application, it is submitted that employees shown to have been promoted during the period 1.5.'82 to 17.2.'83 include the promotees against short term vacancies of Head Clerk Grade Rs. 425-700 (RS).

Para 6.7 : That the contents of paragraph 6.7 of the application are denied with submissions that the employees mentioned in para 6.6 above were promoted temporarily in scale 425-700 ~~except~~ respondent no. 6.

Para 6.8 : That the contents of paragraph 6.8 of the application are denied as stated. It is submitted that a perusal of Annexure No. 7 annexed to the application, it would reveal that the applicant was vide order dated 15-0-1982 temporarily appointed to officiate as Head Clerk Grade, Rs.425-700 and allowed to continue at his present seat. It is also submitted that the applicant was again vide Annexure No. 8 to the application temporarily appointed to officiate as Asst. Supdt. Grade Rs.550-750 (RS) on adhoc basis pending selection, against existing vacancies. As such it is wrong for the applicant to allege that he was promoted

in substantive capacity against a clear vacancy as Head Clerk or promoted to Asst. Supdt. as having been found fully eligible and meritorious in all respects.

Para 6. 9: That the contents of paragraph 6.9 of the application are denied. It is submitted that the respondent no.6, on availability of the suitable hand for the post of AWLI, was posted as Head Clerk and not as Sr. Clerk vide letter No. 752/Ex 702E/1A/WLI dated 1.4.'85, a true copy whereof is annexed to this reply as ANNEXURE No. R/2.

Para 6.10: That in reply to the contents of paragraph 6.10 , only this much is not denied that the respondent no. 6 made a representation to the administration for his original seniority Rest is denied.

Para 6.11: That in reply to the contents of paragraph 6.11 of the application, only this much is not denied that a decision was taken in the P.N.M. meeting dated 29.11.'85. The facts extracted and placed in the para are verifiable from the proceedings of the meeting itself.

Para 6.12: That in reply to the contents of paragraph 6.12 of the application, it is not denied that the representation of respondent no.6 was disposed of by order dated 4.12.'85. It is also submitted that the decision taken

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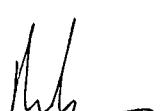
- 7 -

in the P.N.M. meeting dated 29.11.'85 be suspended and with the agreement of the Union the matter was referred to H.Qrs. Office for decision, a copy of the reference dated 16.6.'87 made to the H.Qrs. is annexed to this reply as ANNEXURE No. R/3

Para 6.13: That in reply to the contents of paragraph 6.13 of the application, it is not denied that the respondent no. 6 again made a representation dated 16.11.'86. The facts extracted are verifiable from the representation itself.

Para 6.14: That in reply to the contents of paragraph 6.14 of the application, it is submitted that on the request of the Union, the matter was referred to the H.Qrs, of which a true copy has been annexed to this reply as Annexure No. R/3

Para 6.15: That in reply to the contents of paragraph 6.13 of the application, only this much is not denied that the order dated 22.5.1986 was issued by respondent no.4 assiging the respondent no. 6 his original seniority beloe sri S.P. Sibbal and above sri S.P Lal. It is submitted that the action taken taken ^{not} by the respondent no. 4 was/on his own accord, but it was changed on the direction of the higher authority as per orders passed, a true copy of which is annexed to this reply as ANNEXURE No. R/4.


Ass't. Personnel Officer
N. R. Lko

R69

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Para 6.16: That the contents of paragraph 6.16 of the application, so far as submission of representation by the applicant is not denied.

Para 6.17: That in reply to the contents of paragraph 6.17 of the application the holding of P.N.M. meeting on 9/10.4.'87 is not denied. The discussion recorded in the meeting as contained in annexure to the application may be referred to. And in accordingly a reference was made to the H.Qrs., a copy of the letter/reference to the H.Qrs. dated 16.6.'87 is annexed to this reply as ANNEXURE NO. R/6.

Para 6.18: That in reply to the contents of paragraph 6.18 of the application, it is submitted that respondent no. 6 was not promoted on regular basis but he was promoted on adhoc basis and sri S.P.Lal. was promoted because sri Misra, respondent no. 6 was held on the post of WLI and was not relieved.

Para 6.19: That in reply to the contents of paragraph 6.19 of the application, only this much is not denied that letter dated 15.7.'87 was sent by H.Qrs. in reference to the letter dated 16.6.'87 seeking clarification. The facts disclosed as extract from the said letter may kindly be verified from the letter itself.

Para 6.20: That in reply to the contents of paragraph 6.20 of the application, it is not denied that the letter/communication dated 6.11.'87

Asstt. Personnel Officer
N R Lko

R70

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letter dated 5.7.'87 and for the facts extracted , the original letter may kindly be referred to .

Para 6.21: That in reply to the contents of paragraph 6.21 of the application, it is not denied that letter dated 7.4.'88 was issued by H.Qr . as contained in annexure No. 3 to the application. Rest of the contents are denied. It is submitted that the orders contained in letter dated 7.4.'88 are neither to be termed as arbitrary or perverse and they were in accordance to law.

Para 6.22: That in reply to the contents of paragraph 6.22. of the application, the issue of order dated 22.5.'88 as contained in annexure no. 2 to the application and order dated 13.7.88 as contained in annexure No . 1 to the application are not denied. It is submitted that respondent no. 6 was promoted against restructuring of the cadre of staff Grade 'C' in terms of railway board letter No. PC/II/84/UPS dated 16.11.'84, while holding selection by modified selection on the basis of seniority and service record of respondent no.6 , whereas the applicant was not promoted as he was junior to respondent no.6 and was not within the field of eligibility of the candidates on percentage basis.


Asslt. Personnel Officer
N. R. Lko

Para 6.23: That the contents of paragraph 6.23 of the application are denied. It is submitted that the respondent's No.6's refusal was for adhoc promotion, hence he would not loose his seniority and maintain his original seniority and was entitled to all the benefits.

Para 6.24: That the contents of paragraph 6.24 of the application are denied.

Para 6.25: That the contents of paragraph 6.25 of the application are incorrect. The respondent no. 6 was given seniority according to the rules.

Para 6.26: That the contents of paragraph 6.26 of the application are denied. As already submitted above the seniority of the respondent no.6 was restored after due consideration of all and every aspect of matter.

Para 6.27: That the contents of para 6.27 of the application are denied. It is submitted that the respondent no. 6 could not be relieved from the post of WLI till the availability of suitable hand for the post of WLI where the respondent no. 6 was being utilised. It is also submitted that after due consideration of all and every aspect of the matter, the respondent no. 6 was given seniority and promotions as permissible under rules.


Asstt. Personnel Officer
N R Lko

Para 6.28: That the contents of paragraph 6.28 of the application are denied. It is submitted that respondent no. 6 has been correctly promoted and in accordance to rules.

Para 7: That the contents of paragraph 7 of the application needs no reply. However it is submitted that the applicant was not entitled to any relief from the opposite parties.

Para 8: That the contents of paragraph 8 of the application needs no reply.

Para 9: That the contents of paragraph 9 of the application are denied. It is submitted that none of the grounds are tenable under law and the applicant is not entitled to any relief and the application is liable to be dismissed.

Para 10: That the contents of paragraph 10 of the application are denied. The applicant is not entitled to any interim relief.

Para 11: That the contents of paragraph 11 of the application needs no reply.

Para 12: That the contents of paragraph 12 of the application needs no reply.

13. That on the facts and circumstances the applicant is not entitled to any relief and the application is liable to be dismissed with costs.

W. R. Lke
Asst. Personnel Officer

Opp. Party

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Verification.

I, Ram Swarup working as Ass'tt Personnel officer
in the Northern Railway administration at D.R.R.'s Office
Lucknow do hereby verify that the contents of paragraph
1 to 13 of the reply are believed by me to be true and
correct on basis of the information derived from record
and the legal advice received.

Lucknow

dated: 19.6.89

Mal
Ass'tt. Personnel Officer
N. R. R. Lko.

ATY Annexure No R//

NORTHERN RAILWAY.

ED. 758-E/E-6/I (P)

+Divi. Office,
Lucknow Dt/ 4.3.1982.

NOTICE.

Five posts of AS(E) in grade Rs. 550-750(RS) are temporarily downgraded to the post of Hd. Clerk in 'E' in Grade Rs. 425-700(RS).

Consequent upon the above downgradation the undernot senior clerks in grade Rs. 330-560(RS) are hereby appointed to officiate as Head Clerk in Grade Rs. 425-700, and allowed to continue to work on the present seats.

1. Shri G. P. Gupta Sr. Clerk (PB).
2. " S. B. Dwari Sr. Clerk (PB).
3. " S. P. Ojha Sr. Clerk (E).
4. " A. C. Misra Sr. Clerk(E) (Off., as WLI on ad-hoc basis).

(S. N. Misra)
Divisional Personal Officer
N.Rly. Lucknow.

Copied to:-

1. Supat (B) & PB.
2. Sr. DAO/Lucknow.

Annexure No A/2

Ans

OPTIONAL FORM

No. 7597A/1971

OPTIONAL FORM
Lokayukta
Date 1st April 1985

RECORDED

As a result of selection held for the post of Welfare Inspector Gr. 425-640 (RS), the following persons have been placed on the panel:

✓ 1. Sh. Virendra Pratap Srivastava	Sr. Clerk/ACMO/LAO
✓ 2. Sh. Keti Lal (SC)	St. Clerk/CHC/SC
✓ 3. Sh. Sukhendra Pal Singh	St. Clerk/Dy. CM/SC/PMV
✓ 4. Sh. Ram Swami Bajpai	Ad-hoc ALI/ACMO/SC
✓ 5. Sh. Ram Pher	Ad. Clerk/Dy. CHC/PMV
✓ 6. Sh. Taj Bahadur Singh	St. Clerk/CSFO/BSB
✓ 7. Sh. Surendra Chandra Srivastava	St. Clerk/Dy. CHC/PMV
✓ 8. Sh. Basant Lal Shah (SP)	Ad-hoc PL/LSO.

Shri Sita Ram, a SC candidate for the above selection has also been approved for being promoted on ad-hoc basis as Welfare Inspector for six months in-service, pending finalisation of the revised roaster point for SC. Accordingly, the following posting orders are made for immediate compliance:

3. (1) Shri Virendra Pratap Srivastava is promoted and posted as Welfare Inspector Gr. 425-640 (RS) at Lucknow. He will look after the following sections: Loca Shod/LAO, CSM/LSO, ALI/PM/SC, PSM/LAO/PMV Secy., PSM/PL/LSO (Dy. Secy.) section.
- (2) Shri Keti Lal (SC) is promoted and posted as Welfare Inspector (Dy. Secy. to Secy. Handicrafts Centre). He will also look after the Local Handicraft Schools, Library, Museum and Handicrafts Centre (Training Wing) batch, ali-ka-falash. He will relieve Shri AG Misra, who is posted as St. Clerk Gr. 425-700 (RS) in Pay Bill section according to his seniority.
- (3) Shri Sukhendra Pal Singh is promoted and posted as Welfare Inspector in Gr. 425-640 (RS) in CSM Workshop/PMV reverting to initial arrangement.
- (4) Shri Ram Swami Bajpai working as ad-hoc ALI Grade 425-640 (SP) in CB Workshop is regularised on the same post.

Asstt. Personnel Officer
N. R. Lka

contd.

A76

Ex 3 2...

4. Promotions to Gr.550-750 (BS) & 700-900 (BS) against upgraded posts due to cadre re-structuring will be ordered separately.

5. Ministerial staff being relieved by the above promotions will also be promoted against the upgraded posts due to cadre restructuring according to their seniority separately which case is under process.

22-1-1985
DIVISIONAL PERSONNEL OFFICER (S)
LAW & HOME

Copy forwarded for information to:-

1. All Officers and Sr. Subordinates of Law Dept.
2. ADDL. C. M. D./CB/Lucknow
3. ADDL. C. M. D./Law Workshop/CB/Lucknow
4. Dr. C. M. D./SIV. Dept./Lambasingi/Lucknow
5. Dy. C. M. D./M.Y./Lucknow
6. Principal, System Technical School/CB/Lucknow
7. C. M. I./CB/Lucknow
8. Sr. Lect. Forever/Varanasi
9. C. P. I./Lucknow
10. Principal, JN RPF Trg. Centre/Taluktors/Lucknow
11. Sr. J. P. I./Co. Sdn/Aligarh & C. I. D.
12. Support Staff (Candy) & Bells in office
13. Ex. S. D. Officer, C. I. D.
14. Mr. A. P. Singh - Ex. 441

Wb
Asst. Personnel Officer
N. R. Lucknow

Annexeure N. R/4

A79

P. 22/5/86
R/4

NORTHERN RAILWAY

NATIONAL OFFICE
NEW DELHI, DT. 22/5/86.

Ac. 7583/6-1

MEMORANDUM

On the representation from Sh. J. Misra officiating asst. Superint. Mr. E. 550-750 (W) has been assigned his original seniority and he has been placed below Sh. S. P. Sibbal and above Sh. S. P. Lal. If any one is having any representation against the above orders, they should submit the same within one Month from the date of issue of this letter.

This has the approval of Mr. D. P. O. / H.O.

Re: 22/5/86

For Mr. Civil Personnel Officer,
Northern Railway : Lucknow.

Copy to Sh. K. O. Misra,
Sh. S. P. Lal
Superint (Copy-Bill)

W.L.
Ass't. Personnel Officer
N. R. Lk^o

758E/88/1

Divisional Office
Lucknow
16 June, 1987

The General Manager (P)
Northern Railway
Baroda House
NEW DELHI

(A)

Subject Seniority of Shri AC Misra, Asst Supdt.,
grade R. 550-750(RS).- Personnel branch.

The IRMU, vide their PNM Item no. 334(4)/71st PNM meeting held in December, 1986, contested the seniority assigned to Shri AC Misra, Asst Supdt, Establishment section. The position was explained to the Union and the Union demanded that a reference should be made to HQ indicating Union's viewpoint and clarification obtained. The details of the case are given here under :-

Shri AC Misra, while working as Senior Clerk in grade R. 330-550/Rs was promoted as Asst Welfare Inspector, in grade R. 425-640/Rs, an ex cadre post, on ad hoc basis. While he was working as ad hoc AWLI in grade R. 425-640/Rs, he was promoted as Head Clerk, grade R. 425-700/Rs ~~on ad hoc basis~~ at Lucknow itself as per his seniority in his regular channel. As per record, Shri AC Misra, refused ~~ad hoc promotion~~ stating that he wanted to continue as AWLI and was not willing to work as Head Clerk on ~~ad hoc basis~~. This refusal was accepted and Shri Misra was debarred for further promotion as Head Clerk for a period of one year and he was advised that juniors to him so promoted during this period will rank senior to him. Accordingly action was taken and juniors to Shri Misra were promoted as Head Clerk.

Subsequently, Shri AC Misra was posted back in his proper channel of Clerk when posts of W.L.I.s were filled in by regular incumbents. Shri AC Misra was assigned seniority below staff who had by then been promoted as Head Clerk, grade R. 425-700(RS).

Shri AC Misra, represented for his seniority on the plea that he had written the refusal letter under duress and that he is being refused his seniority in his own channel. On consideration of representation, it was revealed that :-

- 1) Shri AC Misra had refused promotion for the post of Head Clerk, grade R. 425-700(RS) ~~on ad hoc basis~~ and this should not have affected his promotion/seniority in his regular channel;
- 2) Refusal in his own channel of promotion at the same station can not be accepted vide PG 6211; and
- 3) No refusal was required as Shri AC Misra was working on an ex cadre post of AWLI in grade R. 425-640/Rs.

(Gmcty)

In the light of above, it was seen that Shri AC Misra, had claimed for his seniority in his regular channel and his seniority was accordingly revised restoring

... R/-

III
Assist. Personnel Officer
M. R. Lkth

Annexeure N.B/1

A7D

NORTHERN RAILWAY

NATIONAL OFFICE
MOFFOW, PG. 22/5/86.

Ac.7581/6-1

RE. B.O.T.I.C.O.

In the representation from Sh. J. Misra officiating asst. Supdt. Cr. D. 550-750 (H) has been assigned his original seniority and he has been placed below Sh. S.P. Dibbal and above Sh. S.P. Lal. If any one is having any representation against the above orders, they should submit the same within one Month from the date of issue of this letter.

This has the approval of Dr. D.O.O./LKO.

For Dr. D.O.O./Personnel Officer,
Northern Railway, Lucknow.

Copy to Sh. R.O. Misra,
Sh. S.P. Lal
Supdt (toy-bill)

Misra
Ass't. Personnel Officer
N. R. Lko

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW CIRCUIT BENCH, L_U_C_K_N_O_W

A79

O.A. Case No. 77/1988 (L)

Mata Pd. Srivastava

Applicant

Vs.

Union of India & Others

Respondents.

The respondents No. 6 most respectfully beg to submit :-

1) That the respondent No. 3 during the pendency of this case has passed an order (Change memo) dated 13.9.90 showing the appointment of the applicant as Head Clerk (E) ~~in scale~~ Rs. 425-700 (RS) with effect from 1.12.83, ^{but application} ~~of 22.7.88~~ in para 6.8 ther-eof, the applicant states that he was promoted in this scale of Rs. 425-700 (RS) w.e.f. 15.9.82, which one of the two dates of promotion is correct has to be made clear by the applicant. A true copy of the order (change memo) dated 13.9.90 is annexed as Annexure No. XVI.

Wherefore it is most humbly prayed ^{that} this application alongwith its annexure No. XVI be admitted and allowed to be placed on record and the respondent No. 3 be directed to make it clear which one of the two dates 15/9/82 or 1.12.83 is the date of promotion of the applicant in scale Rs. 425-700 (RS).

Respondent No. 6

Lucknow
6/5/91.

A. m/s

18/6/91
6/5/91
Court for the record-Rec'd.

A80

SUPDT PAY-BILL.

Dated:- 13.9.90

Shri Mata Pd.
Srivastava
Supdt.Estt.

Entries of pay increased w.e.f. 1.12.82 revised.
to admit benefits of refixation of pay in terms of
G.M.(P) P.S. No.9950 reconing Spl. pay of Rs. 35/-
P.Min scale of Rs. 330-560 (RS) for fixation of pay
on promotion of Hd.Clerk Gr. Rs. 425-700(RS) granted
Spl. pay Rs. 35/- w.e.f. 1.12.82 raising pay in scale
Rs. 330-560 (RS) from Rs. 476/-PM to Rs.476/-+ 35/- PM

Spl. pay.

Offtg. pay in Gr. Rs. 330-560 (RS) raised to Rs.488+
w.e.f.
Rs.35/-Spl. pay in Gr. Rs. 330-560 (RS) 1.12.83

Appointed to officiate as Hd.Clerk(E) Gr. Rs.425-700
(RS) w.e.f. 1.12.83 and Spl. pay granted under sub.
2108(FR-22) R-II Rs. 445/- PM w.e.f. 1.12.83 instead of
Rs. 500/-+ 11/- P.P. with reference to lower grade
pay Rs.488/-+35/- Spl. pay. Offtg pay in Gr. Rs.425-700
(RS) revised to Rs. 560/-instead of Rs.515/- w.e.f.
1.1.84.

Appointed to officiate as Asstt.Supdt Gr. Rs.550-750
(RS) w.e.f. 18.9.85 and Offtg pay fixed under rule 21-
08 BFR-22 R-II at the rate of Rs. 590/- PM instead
of Rs. 550/- PM w.e.f. 18.4.85 with reference to
lower Gr. pay Rs. 560/-in Gr. Rs. 425-700 (RS).

Arrears of revised pay admissible w.e.f. 1.9.85 in
terms of PS 9950 offtg pay in Gr. Rs. 550-750(RS)
as fixed is revised in scale Rs. 1600-2660(RPS)
w.e.f. 1.1.86 at the rate of Rs. 1750/-PM instead of
Rs. 1650/- (refixation statement attached).

Sd/-
for Divl.Rly.Manager/LKO.

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2nd Page.

Offtg pay in Gr. Rs.1600-2660 (RPS) raised to Rs. 1800/- instead of Rs.1750/- w.e.f. 1.9.86

Offtg. pay in Gr. Rs. 1600-2660 (RPS) raised to Rs. 1850- instead of Rs. 1750/- w.e.f. 1.9.87

Offtg. pay raised in Gr. Rs. 1600-2660 (RPS) to Rs. 1900/- instead of Rs. 1750- w.e.f. 1.9.88

~~After pay raised in Gr. Rs. 1600-2660 (RPS) to Rs. 1900/- instead of Rs. 1750- w.e.f. 1.9.88~~

After pay raised in Gr. Rs. 1600-2660 (RPS) to Rs. 1950/- instead of Rs. 1850/- w.e.f. 1.9.89.

Appointed to officiate as Supdt in Gr. Rs. 2000-3200 (RPS) w.e.f. 21.11.89 and after pay fixed at Rs. 2060/- instead of Rs. 2000/- w.e.f. 21.11.89.

Retired on superannuation on 31.7.90

Arrears of above revision drawn w.e.f. 1.9.85 to 31.7.90 as per PS No. 1990 through changememo dated Sept' 1990.

Sd/-
for Divl. Railway Manager.,
N . Rly/Lucknow.

Rs. 6484=35

A.B. No.4548ES/X dt. 17.10.90

C07 No.036708 dt. 3.12.90.

TC
(Shah)
(V.D. Shinde)
Counsel for the respondent No.6.

Registration No. 77/1988 (L)

M. B. Sivarama

Applicant

VS

Union of India
and others

Respondents

counter reply on behalf of
Respondent No. 6, against
the application dated 22-7-88.

Received Copy

3/10/91

at 9:30 AM

the Hon'ble Tribunal thereby.

(1) It is quite wrong and baseless that the respondent Annexure No. 6 ever refused ~~to~~ his regular promotion to the R/I post of Head Clerk, grade Rs. 425-700 (RS) vide his application dated 12.3.1982, annexed as annexure No. R/I to this counter reply. The respondent No. 6 is alleged to be promoted by an order No. 758-E/E-6/1(P) dated 4.3.82 annexed as annexure No. R/II) by the respondent No. 4 against one of the 5 posts of Asstt. Supdt (E) in scale Rs. 550-750 (RS) temporarily down-graded to the post of Head Clerk 'E' in grade Rs. 425-700 (RS) in which the respondent no. 6 whose name appears at S.No. 4 therein has been shown as Sr.Clerk 'E' (Officiating as ULI on adhoc basis). Neither the contents of the order dated 4.3.82 aforesaid were ever communicated to the respondent No. 6 nor a copy thereof was ever sent to him direct or by way of a substituted service. The respondent No. 6 never refused any regular promotion as alleged by the applicant. He simply expressed his unwillingness to work as Head Clerk on adhoc basis by annexure No. R/I on 12.3.82 This application dated 12.3.82 of the respondent No. 6 is self-explanatory that he had no prior knowledge of his alleged promotion *Accty*

on 4.3.82 . If at all there was an order for his regular promotion and his application for his unwillingness was for adhoc-promotion the facts ought to have been clearly verified and confirmed whether he was expressing his un-willingness for an adhoc promotion or for regular promotion also. This fact was never got established by the respondent No. 4 before taking his un-willingness!

✓ ~~was for adhoc promotion the facts ought to have been~~
✓ ~~clearly verified and confirmed whether he was expressing~~
✓ ~~his un-willingness for an adhoc promotion or for~~
✓ ~~regular promotion also, This fact was never got~~
✓ ~~established by the respondent No.4 before taking~~
✓ ~~the unwillingness to be a refusal for regular promotion.~~

(ii) It is also quite wrong that the respondent No. 3 ever accepted the so- called refusal of respondent No. 6 vide letter dated 31.3.82 , Copy annexed as ^{annexure} No. R/III alongwith this counter-reply.

(iii) No regular vacancy was ever created and Sri S.P. Lal Sr.Clerk 'E' was never promoted in a substantive capacity vide order dated 31.3.82 (Annexure No.R/III).

(iv) The respondent No. 6 was never informed that he was debarred for further promotion as Head Clerk for a

A84

Q85

period of one year as he had refused regular promotion vide order dated 31.3.82 . Thus the subject matter itself is not based on facts and it has been filled by the applicant by twisting the facts to his own advantage misleading the Hon'ble Tribunal thereby.

4. That the contents of para 4 of the application need no remarks.
5. That the contents of para 5 of the application are quite wrong and denied. The application is barred by limitation and is liable to be rejected outright on that ground.
6. That the contents of para 6.1 are quite wrong and denied .The order dated 22.5.1986 (Annexure No. 4 of the application) is quite valid and legal order passed by the respondent No. 4.The said order dated 22.5.1986 (annexure No. 4 of the application) challenged by the applicant are barred by limitation and the applicant has no right to seek a remedy against such an order. The applicant has illegally Challenged order dated 7.4.1988(Annexure No. 3 of the application) dated 20.5.88 (Annexure No. 2 of the application and the order dated 13.7.88 (annexure No. 1 of the application) These are quite valid and legal orders,.
- 6.2 That the contents of para 6.2 of the petition need no comments.
- 6.3 That the contents of para 6.3 of the application are quite wrong and denied. No regular vacancy for the post of Head Clerk scale Rs. 425-700(RS) was ever created.

Yerz

AS/6

Five posts of Asstt. Supdt (E) in grade Rs. 550-750(RS) were temporarily down graded to the post of Head.Clerk 'E' in grade Rs. 425-700 (RS) on account of non availability of the proper incumbants for posting in that scale and the respondent No. 6 was temporarily alleged to have been promoted to this scale Rs. 425-700 (RS) vide order No. 758-E/E-6/I(P) dated 4.3.1982 (copy enclosed as annexure No. R/II) to this counter. The contents of this letter are self- explanatory that the said 5 posts in scale Rs. 425-700 (RS) were created ^{temporarily} by/downgrading the posts of scale Rs. 550-750(RS) on account of the non- availability of the proper incumbents and the arrangements for promotion in the said order dated 4.3.1982 (Annexure No. R/II of this counter) were on adhoc basis as the personnel so promoted against this adhoc arrangement were likely to be reverted on availability of the proper incumbents of grade Rs. 550-750 (RS) at any moment and the posts would be upgraded . The promotion of the respondent No. 6 vide order dated 4.3.1982 (Annexure No.R/II) can never be said to be a promotion against a regular permanent vacancy. Moreoever the respondent No. 6 was neither advised of the contents of this letter dated 4.3.82 for his promotion nor a copy thereof was ever sent to him direct or through substituted ~~xx~~ service, so he had no knowledge of this alleged promotion. He came to know of this first of all

(P.8)

- 6 -

when S/Shri S.P. Lal and Sri Mangal Sen two junior
personnels were promoted as Asstt. Supdt with Shri
Fida Ali Sieequi on 31.7.84 vide an order No.

No. 941-E/E-6/I Pt.II dated 31.7.84, true copy is
enclosed as annexure No. R/IV to this counter reply.

Annexure IV
The post of Asstt. Welfare Inspector is a post of
of scale Rs. 425-~~700~~ 640(RS) a lower grade post than
that in the one in scale Rs. 425-700(RS) and it is
quite wrong to assert that the respondent No. 6 was
enjoying a higher grade post with more facilities,
The respondent No. 6 actually had no knowledge of his
promotion to grade Rs. 425-700 (RS) as aforesaid nor
did he ever refuse his promotion against the
alleged regular vacancy. He simply expressed his
unwillingness for his promotion to any such
arrangement on adhoc basis and his application
dated 12.3.82 (annexure No. R/I) filed alongwith the
counter-~~refusal~~ ^{is simple} un-willingness regarding Adhoc
promotion as a Head clerk and he has also clearly
mentioned therein that he is not willing to work as
Head clerk on adhoc basis. Moreover this application
dated 12.3.82 is not in reference to the alleged
letter dated 4.3.82 of his promotion and this
further verifies that he had no knowledge of his
promotion vide letter dt. 4.3.82. When the so
called refusal for promotion vide an application
dated 12.3.82 ^{was} for adhoc vacancy and according
to the petitioner the respondent No. 6 was

A/C

was promoted by an order dated 4.3.82 (annexure No.R/II)

the order dated 31.3.82(annexure No. R/III) filed along-
with this counter reply is absolutely wrong and illegal.

// When the ~~the~~ unwillingness for promotion by the respondent
No. 6 was for adhoc vacancy and not for a regular vacancy
and according to the petitioner if the respondent No.6
was offered promotion against the regular permanent
vacancy it was absolutely necessary for respondent No. 1
to 5 to get this fact verified and confirmed from responde-
nt No. 6 whether he was refusing his promotion for
a regular permanent vacancy or only for an adhoc
vacancy and then and then only his application for the
so - called refusal should have been accepted and not
before that, this fact was never got confirmed by the
respondent No. 1 to 5

6.4 That the assertions made in para 6.4 of the appli-
cation are quite wrong and denied.

(i) As explained in detail in para 6.3 of this counter
there was no refusal of the respondent No. 6 for his
promotion to scale Rs. 425-700 (RS) against a regular
permanent vacancy the accepting of the said refusal
by the Divisional Personnel Officer, Northern Railway,
Lucknow is quite wrong, illegal, incompetent and
against the spirit of P.S. No. 2854 , Circular No. 940-E/

O-III (iv) dated 17.2.65 of the General Manager N.Rly

New-Delhi, the respondent No. 2 as the conditions laid down
in para 'A' thereof " The employee should give in writing
his refusal and accept that he would not be eligible
for promotion to the post for a period of one year" have

Aza

~~will not be eligible for promotion to the post for a period of one year~~ " have not been fulfilled. A true copy of the said circular dated 17.2.65 is enclosed as annexure No. R/V to this counter reply.

(ii) These orders dated 31.3.82 are also not in conformity with P.S. No. 8703 issued by the General Manager, Northern Railway, New-Delhi. docketted by the respondent No. 3 vide his letter No. 831E/63-2 Pt. IV/T-3-1/253A dated 18.7.85. A true copy of the said letter is annexed as annexure No.

Annexure R/VI to this counter.

(iii) This letter dated 31.3.82 was neither ever communicated to the respondent No. 6 nor was it ever served upon and acknowledged by him as required by circular dated 11/1/86.

Annexure R/VII A true copy of the said circular is enclosed as Annexure No. R/VII to this counter.

(iv) The order dated 31.3.82 are ~~appealable~~ orders and non communication and non ~~recognition~~ ^{recognition} of the said order upon the respondent No. 6 deprived him of the reasonable opportunity of the right of appeal against the said order, which was a very valuable right, to which the respondent No. 6 was deprived of.

(v) The alleged refusal by the respondent No. 6 in his own channel of promotion at the same station cannot be accepted in terms of General Manager, Northern Rly, New-Delhi's P.S. No. 6211 dated 14.10.74. A true copy of the circular dated 14.10.74 is enclosed as annexure No.

Annexure R/VIII R/VIII to this counter.

(vi) Virtually no refusal was required from the respdt 6

AC/3

APD

:- 9 :-

as he was working on an ex-cadre post as Asstt. Welfare Inspector in scale Rs. 425-640 (RS). Had he been selected as AWL I after passing the normal procedure of selection to the post of AWL I scale Rs. 425-640 (RS) the question of his consent to go to the parent cadre would have arisen and not before that. This further proves the illegality of the orders dated 31.3.82 (Annexure No. R/III) issued by the Divl. Personnel Officer, Northern Rly, Lucknow.

Annexure
R/IX

A true copy of the orders No. 758E/E-6/I dated 30.4.86
6.5.86 are annexed as Annexure No. R/IX to this counter.

6.5 That the ~~xxxxxxxxx~~ contents of para 6.5 of the petition are quite wrong and denied. In view of the detailed reply in para 6.3 and 6.4 of this counter the respondent No. 6 has to offer no further comments. He, however, emphatically denies that he ever accepted his illegal debarring of his further promotion for a period of one year and he did not make any objections against this. As soon as he came to know of this illegal order he made suitable representations to the competent authority and his case was favourably considered by them and he was also given the due benefits according to rules.

6.6 That the contents of para 6.6 of the application are quite wrong and denied. Firstly there was no refusal of the respondent No. 6 for his promotion to scale 425-700 (RS) Secondly it is quite wrong that 11 regular vacancies of Head clerk scale Rs. 425-700 (RS) accrued during the period of one year. The promotion of the applicant under item 3 of the para 6.6 of the application w.e.f. 15.9.82

ACW

:- 10 :-

is quite illegal, invalid and against the facts, rules and law applicable in the case.

6.7 That the contents of para 6.7 of the petition are quite wrong and denied. The 11 persons as detailed in para 6.6 of the application were never promoted in substantive capacity when the posts were not clear substantive posts in scale Rs. 425-700 (RS) how could they be promoted ~~as~~ ~~xxx~~ against those posts in a substantive ~~xxx~~ capacity. It is quite wrong that they ~~were~~ ~~ever~~ subsequently promoted against regular permanent vacancy.

6.8 That the assertion made in para 6.8 of the petition are wrong and denied. The applicant was appointed to officiate in scale Rs. 425-700 (RS) vide an order No. 941-E/E-6 1- Pt. II dated 15.5.82 (annexure No. 7 of the applicant) purely against a temporary arrangement and it is quite wrong that he was promoted to the post of Head clerk in a substantive capacity against a clear existing vacancy in regular manner. It is also quite wrong that the applicant was again promoted to the post of Asstt. Supdt scale Rs. 550-750 (RS) vide order dated 18.9.85 (Annexure No. 8 of the application) on grounds of eligibility and merit. He was only promoted on adhoc basis pending selection for the said posts.

6.9 That the contents of para 6.9 of the application and quite wrong incorrect and denied. The respdt No. 6 on availability of the suitable hand for the post of AWLI was posted as Head Clerk and not as Senior Clerk vide letter No. 752E/1A/SWLI dated 1.4.85. A true copy is enclosed as annexure No. R/X to this counter.

6.10 That the contents of para 6.10 are totally wrong and denied the respondent No. 6 was neither enjoying ~~any~~ and better facilities nor had he any charms for the post of AWLI. He was pretty sure that he was working as AWLI against an adhoc arrangement~~s~~ for non-availability of selected suitable hands for the post of AWLI in ^{the} interest of administration, ~~for non-~~ ~~availability of selected suitable hands for the post of~~ ~~AWLI in interest of administration but certainly~~ he had a lien on his parent cadre on ~~any~~ permanent post in his own channel, so in case he had to go back he would in ^{no} way be los~~er~~. The respdt No. 6 on return from the post of AWLI was posted as Head clerk and not as senior clerk. The respondent No. 6 has been representing for his original seniority since 1.8.1984 and not 1985 as ~~alleged~~. A true copy of the representation dated 1.9.1984 is annexed as Annexure No. R/XI to this counter.

Annexure
R/XI

6.11 That the contents of para 6.11 as asserted are wrong and denied. The respondent No. 6 aggrieved with the order dated 29.11.85 (annexure No. 9 of the applicant) passed by the respondent No. 4 again made a representation to the respondent No. 3 for assigning him his original seniority vide application dated 5.12.85. A true copy of the application dated 5.12.85 is annexed as annexure No. R/XII to this counter.

Annexure
R/XII

6.12 That the contents of para 6.12 of the petition as

Ans

stated therein are wrong and denied. The respondent

No. 6 made representations dated 13.2.86, 19.2.86, 12.

⑩ No. 4 without
retaining copies of
the same

4.86 and several others which ~~had been directed~~ were directly sent to respondent against the order dated 4.12.85 passed by the senior Divisional Personnel Officer, N.Rly. Luc, now (Annexure No. 10 of the applicant) and on the basis of these representations he was assigned his original seniority by an order dated 7.4.88 (Annexure No. 3), ~~the~~ respondent No. 2 passed by the respondent no. 2, a competent and higher authority than that of the respondent No. 4. The orders dated 4.12.1985 passed by the respondent No. 4 stands superseded by the later order dated 7.4.1988 passed by the General Manager N.Rly. New-Delhi, Respdnt. No. 2, an authority higher and competent, overruling the Annexure No. R/XIII previous order. The ^{true} copies of the representations dated & R/XIV. and ~~19.2.86~~ 19.2.86 and 12.4.86 are annexed as Annexures No. R/XIII and R/XIV and R/XV respectively.

6.13 That the contents of para 6.13 are quite wrong incorrect and denied. He has been making representation since 1.8.1984 and made several representations thereafter as detailed in para 6.10, 6.11 and 6.12 of the counter.

6.14 That the contents of para 6.14 are quite wrong and denied the respondent No. 6 made a representation to the respondent No. 3 for (Annexure No. R/XII) restoring and assigning him his original seniority which was not correctly disposed of earlier by the ACG

the respondent No. 4.

6.15 That contents of para 6.15 of the petition are quite wrong, incorrect and emphatically denied. The orders dated 22/5/86, (annexed as annexure No. 4 to the application) were passed by the respondent No. 4 after obtaining approval of the respondent No. 3, an authority higher and competent in rank than that of the respdt No. 4. A copy of the order No. 758E/E-6/1 dated 30.4.86 disclosing detailed reasons for the action is filed as annexure No. R/IX to this counter.

6.16 That the contents of para 6.16 as asserted by the petitioner are quite wrong, incorrect and denied. The orders dated 22.5.86 referred to in the para are the orders based on the ~~approved~~ by the respondent No. 3 as detailed in annexure No R/IX to this counter. The representation dated 6.6.1986 of the applicant does not lie to respondent No. 3. It is incompetent, with out jurisdiction and liable to be rejected on that score straight way. The applicant did not challenge the impugned orders dated 22.5.86, 7.4.88, 20.5.88 and 13.7.88 departmentally and has come to the Hon'ble Tribunal directly without exhausting all the remedies available to him. His application is, therefore, barred by the section 19 of the Administrative Tribunal act 1985.

6.17 That the contents of para 6.17 are wrong and dead. The promotion orders dated 4.3.82 alleged to be issued in favour of the respect No. 6 were decidedly for an adhoc vacancy as detailed in para 6.3 to this coun
key

It is however, admitted that it was decided in the PNM meeting held on 9.4.87 and 10.4.87 ~~on~~ (Annexure No.12) to the application) to refer the case of the respdt No.6 to respdt No. 2 . In the said annexure no. 12 of the application under item 21 of the PNM meeting it was resolved that ^{the} refusal of respdt No. 6 in his ^{own} channel of promotion at the same station cannot be accepted vide PS 6211 and also no refusal was required as he was working as AWLI only on the adhoc basis and as such he had a claim for his promotion in his own channel.

6.18 That the contents of para 6.18 as asserted are wrong and denied It is admitted that the case of the respdt No. 6 was referred to the general Manager N.Rly. New-Delhi, the respdt No. 2, on 16.6.1987 by the respondent No. 3 (annexure No. 13 of the application) It is quite wrong to assert that respdt No. 6 was ever offered regular promotion to the post of Head Clerk that scale Rs. 425-700 (RS). It was purely a promotion on adhoc basis, Sri S.P.Lall was promoted on adhoc basis as the respdt No. 6 was not relieved till the issue or an order dated 1.4.85, (a true copy enclosed as annexure No.R/X) ~~promised~~ and his juniors were also promoted on adhoc basis and not against regular vacancies. The orders dated 18.9.85 (annexure No. 8 of the applicant) are the orders of promotion on adhoc basis.

6.19 That the contents of para 6.19 are admitted The respdt No. 2 vide his letter No. 754-E/100-5/EiiD dated 15.7.87 (annexure No. 14 of the application) asked for certain information ~~from~~ the respdt No.3. *Ans*

6.20 That the contents of para 6.20 as alleged are not admitted. A reply dated 6.11.89 (Annexure No.15 of the application) was sent to respdt. No. 2. It is quite wrong to allege that Sri S.P. Lal was promoted as Head Clerk on regular basis. The respdt No. 6 was never offered a post of Head Clerk on regular basis and he never refused any promotion for ~~xx~~ a vacancy. Actually when the post against which the respdt No. 6 is alleged to have been promoted was created by down grading the five posts of scale Rs. 550-750 (RS) to Rs. 425-700 (RS) temporarily then ~~here~~ could ~~is~~ be a regular and substantive vacancy and consequently Shri S.P. Lal's promotion also against ~~this~~ vacancy ~~promotion~~ cannot be a promotion against a regular substantive permanent vacancy because it was the same vacancy which was created temporarily by downgrading the posts against short term measure.

6.21 That the contents of para 6.21 are admitted ~~only~~ to the ~~extent~~ ~~counter~~ that an order dated 7.4.1988 (annexure 3 of the application) ~~xx~~ was passed in favour of the respdt No. 6 by the respdt No. 2 allowing him the benefit of his original seniority. The contents of the rest of the para are quite wrong and denied. The orders dated 7.4.1988 passed by respdt No. 2 are quite valid.legal and reasonable orders. They are based on facts and records and are also supported by rules applicable in the case and with reasons thereof.

Ans

6.22 That the contents of para 6.22 are admitted to the extent that the respondent No. 6 was assigned his original seniority and was promoted to the post of Asstt. Supdt (E) in the pay scale of Rs. 550-750 (RS) w.e.f. 1.1.84 (annexure No. 2 of the application) against the vacancy created by re-structuring of the cadre of staff grade 'C' in terms of railway Board's letter PC/II/84 PG/9 dated 16.11.84. Whereas the applicant who was much junior to respdt No. 6 was not promoted as he was not within the ~~fixed~~ field of eligibility of the condition on percentage basis. It is denied that the applicant ever met with the Additional Divisional Railway Manager, N.Rly. Lucknow alongwith his representations dated 11.5.88 and 17.5.88 regarding seniority assigned to the respondent No. 6. It is, however, admitted that the respondent No. 6 was further promoted to the post of supdt in scale Rs. 2000-3200(RPS) vide an order dated 13.7.1988 (annexure No. 1 of the application).

6.23 That the assertion made in para 6.23 are quite wrong and denied. The respdt No. 6 was never promoted to the post of Head Clerk against a regular vacancy in the year 1982. He did not refuse his promotion against the regular vacancy. He simply expressed his un-willingness for his promotion against an ahhoc vacancy. He has not committed any wrong as alleged. The order dated 31.3.82 (annexure No.RIII to this counter) are quite wrong, baseless and incompetent as detailed in para 6.4 of this counter.

Ans

set aside on his representations to higher and competent authorities and the respdt No. 6 was given full benefits due to him. It is quite wrong and denied that the respdt No. 6 did not raise objections against this order. He made several representations against this as aforesaid.

6.28 That the contents of para 6.28 of the petition are quite wrong and denied. The respondent No. 6 was very correctly promoted as Asstt. Sundt 'E' with effect from 1.1.1984 and as Sundt (E) v.c.f. 13.7.88 vide annexure No. 6.2 and 1 respectively on the basis of the final order dated 7.4.1988 (annexure No. 3 of the applicant) passed by the General Manager ^{New} N.Rly. ~~Delhi~~, the respondent No. 2, an authority higher and competent to pass the said order which have neither been challenged by the applicant nor have ever been ~~re~~ ^{superseeded} by any higher competent authority. In view of the orders dated 7.4.1988 passed by the respondent No. 2 the respdt No. 6 was allowed to have his original seniority and on that basis the applicant who was much junior to him as per annexure No. 5, remained junior to him and it is quite wrong to claim that he is senior to him

F.W.F. 15-9-82

as he was promoted as Head Clerk as alleged by him and the respondent No. 6 was promoted later on.

7.4.88 (Annex. 3) *

The orders of respdt No. 2 superseeded the orders dated 4.12.85 (annexure No. 10) of the respdt No. 4 and these orders still hold good.

7. That the contents of para 7 of the application are quite wrong and denied. The applicant did not make representation dated 22.5.1986 as alleged. It is also

quite wrong and denied. The applicant did not make any representation dated 22.5.1986 as alleged. It is also quite wrong ~~xxx~~ and denied that the applicant ever made a ~~xxxx~~ request to the Additional Divl. Rly. Manager, N.Rly, Lucknow for a ^{personal} period/interview with him and it was turned down on 17.5.1988. His application is liable to be rejected on the ground that he failed to avail of all the departmental remedies available to him before filing this application before the Hon'ble Tribunal.

8. That the respdt No. 6 has to offer no comments for para 8 of the petition.

9. (1) That the relief prayed for vide para 9(i) of the petition is liable to be rejected.

(ii) That the relief prayed for under para 9(ii) is liable be rejected.

(iii) That the relief prayed for under para 9(iii), (vi) are liable to be rejected by the Hon'ble Tribunal. The applicant is not entitled to the relief claimed thereunder. The applicant is not entitled to any relief and the application deserves to be rejected.

G R O U N D S

(a) The respdt No. 6 never refused his promotion for the post of Head.Clerk against a regular vacancy.

The order of accepting of the so-called refusal was set aside by the higher competent authority and the respdt. No. 6 was assigned his original seniority to which he was found fully entitled.

ADS

A104

:- 23 :-

(11) That the para 11 of the applicant needs no remarks.

(12) That the ~~XXXXXX~~ contents of para 12 requires no comments.

Lucknow
31/7/89

RESPONDENT NO. 6

VERIFICATION

I, A.C. Misra respondent No. 6 above, do hereby verify that the contents of paras 1 to 3, 7 & 8, 11 to 12 are true to my own knowledge ^{and} those of paras 4 to 5 and 10 are believed by me to be true on legal advice and those of para 6 are true partly on personal knowledge and partly believed by me to be true on legal advice, whereas para 9 is the prayer for reliefs. I have not concealed any thing material. ~~signed and verified~~
Signed and verified
this 31 ~~31~~ day of July 1989 at Civil Court Compound at Lucknow.

Lucknow
Dt. 31/7/89.

RESPONDENT NO. 6

Shiv
Counsel for Respondent No. 6.

by the competent authority on examining his case in the right perspective from retrospective effect.

(1) The orders passed by the respdts No. 2 & 3 are perfectly according to rules and principles of law and natural justice.

(m) The orders of the respdt No. 2 & 3 are perfectly judicious and justified orders. There is nothing wrong in it. The respdt No. 6 committed no offence of any sort. It was with the connivance of the applicant and his other colleagues that the respdt No. 6 had to face so much trouble in achieving his legal and valid rights to which he was wrongly and illegally deprived of for a short time.

(n) The applicant has been assigned seniority according to departmental ~~rules~~ and law & the applicant ~~xxx~~ is estopped to assert that his seniority has been disturbed by the respdt No. 1 & 5. The applicant cannot claim the benefit of seniority and promotion to which he is not entitled to and for which he is ~~illegally~~ trying to snatch the same from the respdt no. 6 by misleading the Hon'ble Tribunal by putting wrong fact before it.

(o) The authorities higher and competent to the one who passed an order are always competent to revoke alter or modify the order passed by the authorities of lower rank under the powers vested in them.

(10) That the contents of para 10 need no comments as the Hon'ble Tribunal did not pass any orders staying the operation of order dated 13.7.88.

Aay

against a regular vacancy in the substantive capacity.

The question of affecting his original seniority therefore, does not arise so long he was not selected as AWLI by the duly constituted selection Board.

(g) The respondent No. 6 was not enjoying any better benefits. He was simply working against an Adhoc vacancy in the interest of administration retaining his lien against his permanent post in his own parent cadre.

(h) The respdt. No. 6 was correctly extended the benefits of his original seniority and promotion after thoroughly examining his case on facts and rules application in his case by the competent authority, ~~throughly examining~~ The burden lies on the applicant to prove that the respdt. No. 6 was offered promotion against a regular vacancy according to rules.

(i) The respdt. No. 6 was never offered a promotion as Head Clerk against a regular vacancy as no such regular vacancy in a substantive capacity fell vacant at that time. It was purely on adhoc vacancy and not a regular vacancy as asserted by the applicant.

(j) The orders passed by the respdt. No. 2 allowing the benefit of original seniority to the respdt. No. 6 are quite legal and valid orders and do not hit the article 14 and 16 of the constitution of India. They are quite valid, legal orders and perfectly in accordance with the constitution of India.

(k) If an employee is deprived of his due seniority and promotion illegally at the time he is found due he may be extended the benefits of his legal rights.

A.C.G.

A105

be disclosed by Manager

Mr. Aly

resigned

as my advice of sometimes it is best
Sirs,

respectfully I beg to state - that I have
come to know that I am being ~~prosecuted~~
a. itd. also on temporary advice basis.

In this connection I want to bring
to your kind notice that at present I am
working as ~~Adm~~ on ~~advice basis~~ basis.

I therefore, ~~respect~~ ~~regret~~ to ~~it~~ only
allow me to continue as ~~it~~ as I am
not willing to work as Ad. ~~also~~ on ~~advice~~
basis.

Thanking you

Yours faithfully

Accessories

Mr. Nand

Adm / Uc
Dt. 12.12.88

Pl. put up on ~~case~~

so. ~~as~~ ~~to~~ ~~read~~

True copy

12/3

ASC. ~~copy~~

dated 20/12/88
the file on table

20.12.88

Am
13.5.88

TRUE COPY
ATTESTED

V. D. SHUKLA

M. A. (L.L.B.), D.P.L.

AIA, A.T.E.

84/387, R. B. A. B. B. B. B.

LUCKNOW

Annexure No ^{PF} II

A106

NORTHERN RAILWAY.

Do. 758-E/E-6/I (P)

Divi. Office,
Lucknow Dt/ 4.2.1982.

NOTICE.

Five posts of AS(E) in grade Rs. 550-750(RS) are temporarily downgraded to the post of Hd.Clerk in 'E' in Grade Rs. 425-700(RS).

Consequent upon the above downgradation the undernot senior clerks in grade Rs. 330-560(RS) are hereb appointed to officiate as Head Clerk in Grade Rs. 425-700(and allowed to continue to work on the present seats.

1. Shri G. P. Gupta	Sr.Clerk (PB).
2. " S. B. Dwari	Sr. Clerk (PB).
3. " S. Padibai	Sr.Clerk (E).
4. " A. C. Misra	Sr.Clerk(E) (Offg. as WLI on ad-hoc basis).

(S.N. Misra)
Divisional Personnel Officer
N.R.L., Lucknow.

Copy to:-

1. Supdt 'B'. & PB.
2. Sr.DAO/Lucknow.

TRUE COPY
ATTESTED

Shukla
V. D. SHUKLA

M. A., B. B. L.P.A.,
ADVOCATE,
84/383, Kaliya Maqboolganj,
LUCKNOW.

Annexure - No. 2) iv A/88

NORTHERN RAILWAY

No. 941E/E-6/I Pt. II.
Dated:- 31. 7. 1984.

Divisional Office,
Lucknow.

N C T I C E

The following promotion orders are hereby issued to have immediate effect on ad- hoc basis:-

(a) The under noted Hd. Clerk Gr. Rs. 425-700 (RS) are temporarily appointed to officiate as Asstt. Supdt. Gr. Rs. 55(-750 (RS) on purely Ad-hoc basis.

1. S/ Shri	Fida Ali Siddiqui	against vacancy
2.	R. L. Arya S/C	- do -
3.	S. P. Sibbal	- do -
4.	S. P. Lal	- do -
5.	Mangal Sen	vice Mrs M. H. Ekka on long sickness.

(b) The under noted Sr.Clerk Gr.Rs.330-560(RS) are
temporarily appointed to officiate as Hd.Clerk Gr.Rs.425-700(RS)
on purely Ad-hoc basis.

1. S/ Shri Dev Anand Vice item no.1 (a) above
2. Kripa Shanker Vice item no.2 (a) above
3. Harish Chandra S/C Vice item no.3 (a) above

(c) The under noted Clerk Gr.Rs.260-400(RS) are temporarily appointed to officiate as Sr.Clerk Gr.Rs.330-560(RS) on purely Ad-hoc basis.

1. S/ Shri	Suresh Kumar	Vice item no.1(b) above
2.	R. K. Srivastava	Vice item no.2(b) above
3.	R. K. Singh	Vice item no.3(b) above
4.	Sant Ram S/C	Vice vacancy.

The above has the approval of ADRM
Lucknow.

Sr. Divl. Personnal Officer,
Lucknow.

Copy to:- 1. Supdt(E) / DRM Office, Lucknow.
2. Supdt(Pay-bill) - do -
3. Sr. D. A. O./ Lucknow.
4. As/Pass/DRM Office/Lucknow.

V.D. SCHAFFNER

A109
8/3
Annex No. R/V

Extract of P.S. No. 2854-Circular No. 940-S/O-III(IV)Dt. 17.2.

Sub:- Effect of refusal of promotion on transfer - Stoppage of promotion - Non-Gazetted Staff.

Copy of Railway Board letter No. E(NG) PMI-65, dated 21.1.65 from Assistant Director, Establishment, Railway Board, To the General Manager of All Indian Railways.

It has been brought to the notice of the Court that in case of Non-Gazetted Staff refusing to carry out transfers on promotion to other stations due to different reasons, Railway Administration have enforced varying conditions in respect of their further promotion. The Board have carefully examined the practice of obtaining on different Railways and have decided that the undermentioned practices governing such type of cases should be followed by the Railway Administration :-

A. The Employee should give in writing his refusal and ACCEPT THAT HE WOULD NOT BE ELECTIGLE FOR PROMOTION TO THE POST FOR A PERIOD OF ONE YEAR. This will apply in the case of all promotions whether to selection or non-selection posts. In both these cases an employee who refuses promotion for a year due to unavoidable domestic reason, should not be transferred for that year.

B. At the end of the period of one year if an employee again refuses promotion his name shall be removed from the panel in case of selection post and he will be required to appear for the selection to that post. In case of non-selection posts, he will again be debarred for a period of one year. If the employee refuses promotion second time to a selection or non-selection posts after the lapse of one year, it will open to the administration to transfer him in the same grade to another station, should the administration being it necessary to do so.

C. X X X

D. X X X

TRUE COPY
ATTESTED


V. D. SHUKLA

M. A., LL.B., D.P.L.
ADVOCATE,
84/383, Katra Maqboolganj,
LUCKNOW

True copy

Act. No. 2
20/12/46

A106

Annexure No. II

NORTHERN RAILWAY.

Ed. 758-E/E-6/I (P)

Divi. Office,
Lucknow Dt/ 4.2.1982.

NOTICE.

Five posts of AS(E) in grade Rs. 550-750(RS) are temporarily downgraded to the post of Hd. Clerk in 'E' in Grade Rs. 425-700(RS).

Consequent upon the above downgradation the undernot senior clerks in grade Rs. 330-560(RS) are hereby appointed to officiate as Head Clerk in Grade Rs. 425-700(and allowed to continue to work on the present seats.

1. Shri G. S. Gupta	Sr. Clerk (PB).
2. " S. B. Jhawari	Sr. Clerk (PB).
3. " S. P. Sibal	Sr. Clerk (E).
4. " A. C. Misra	Sr. Clerk(E) (Offg. as Hd. on ad-hoc basis).

(S.N. Misra)
Divisional Personnel Officer
N.Rly. Lucknow.

Copy to:-

1. Super 'E' & P.I.
2. Sr. DAO/Lucknow.

TRUE COPY
ATTESTED

Shukla
V. D. SHUKLA

M. A., LL.B., D.P.L.A.,
ADVOCATE,
84/383, Kalyan Maqboolganj,
LUCKNOW.

NORTHERN RAILWAY
Divisional Office,
Lucknow, Dt. 31.3.82.

Annexeure - (A10) No. Q/11

No. 752-R/B6/1(E&P B) Pt.III.

NOTICE

The following orders are hereby issued
to have immediate effect:

The refusal of Shri A.C. Misra, Sr.Clerk 'E'
for promotion as Head Clerk, Gr. Rs.425-700(RS) is
hereby accepted. He is debarred for further promotion
as Head Clerk for a period of one year and juniors to
him so promoted during this period will rank senior
to him.

2. Shri S.P. Lall, Sr.Clerk 'E' in scale Rs.330-580/-
RS is hereby appointed to officiate as Head Clerk
in grade Rs.425-700(RS) and allowed to continue to
work on the present stat.

(S.N. Misra)
Divl. Personnel Officer, LKO.

Copy to:-

1. The Supdt. 'E' & P/Bills.
2. The Sr.DAO/NR/Lucknow.

ATTACHED

Shw
J.D. SINGHLA
M.A., LL.B.,
ADVOCATE,
383, Kathi Laqbootganj,
LUCKNOW.

Neither a copy is send to Advocate
Shw. J.D. SINGHLA
nor the said working copy
is sent, nor communicated.

True copy

Kewat
21-12-88

A109
Annex - A (No. Q) 1/2
3

Extract of P.S. No. 2854-Circular No. 940-S/O-III(IV)Dt. 17.2.

Sub:- Effect of refusal of promotion on transfer - Stoppage of promotion - Non-Gazetted Staff.

Copy of Railway Board letter No. E(NG) PMI-66, dated 21.1.65 from Assistant Director, Establishment, Railway Board, To the General Manager of All Indian Railways.

It has been brought to the notice of the Court that in case of Non-Gazetted Staff refusing to carry out transfers on promotion to other stations due to different reasons, Railway Administration have enforced varying conditions in respect of these further promotion. The Board have carefully examined the practice of obtaining on different Railways and have decided that the undermentioned practices governing such type of cases should be followed by the Railway Administration :-

A. The Employee should give in writing his refusal and 'ACCEPT THAT HE WOULD NOT BE ELECTABLE FOR PROMOTION TO THE POST FOR A PERIOD OF ONE YEAR.' This will apply in the case of all promotions whether to selection or non-selection posts. In both these cases an employee who refuses promotion for a year due to unavoidable domestic reason, should not be transferred for that year.

B. At the end of the period of one year if an employee again refuses promotion his name shall be removed from the panel in case of selection post and he will be required to appear for the selection to that post. In case of non-selection posts, he will again be debarred for a period of one year. If the employee refuses promotion second time to a selection or non-selection posts after the lapse of one year, it will open to the administration to transfer him in the same grade to another station, should the administration being it necessary to do so.

C. X X X

D. XXX.

True copy

AC. NO. 2
20/12/65

TRUE COPY
ATTESTED


V.D. SHUKLA

M. A., LL.B., D.P.A.,
ADVOCATE,
84/333, Katra Maqboolganj,
LUCKNOW

Annexure - No. Q/14 A108

NORTHERN RAILWAY

No. 941E/E-6/I Pt. II.
Dated:- 31.7.1984.

Divisional Office,
Lucknow.

NOTICE

The following promotion orders are hereby issued to have immediate effect on ad-hoc basis:-

(a) The under noted Hd. Clerk Gr. Rs. 425-700 (RS) are temporarily appointed to officiate as Asstt. Supdt. Gr. Rs. 550-750 (RS) on purely Ad-hoc basis.

1. S/ Shri	Fida Ali Siddiqui	against vacancy
2.	R. L. Arya S/C	- do -
3.	S. P. Sibbal	- do -
4.	S. P. Lal	- do -
5.	Mangal Sen	vice Mrs. M. H. Ekka on long sickness.

(b) The under noted Sr. Clerk Gr. Rs. 330-560 (RS) are temporarily appointed to officiate as Hd. Clerk Gr. Rs. 425-700 (RS) on purely Ad-hoc basis.

1. S/ Shri	Dev Anand	Vice item no. 1 (a) above
2.	Kripa Shanker	Vice item no. 2 (a) above
3.	Harish Chandra S/C	Vice item no. 3 (a) above

(c) The under noted Clerk Gr. Rs. 260-400 (RS) are temporarily appointed to officiate as Sr. Clerk Gr. Rs. 330-560 (RS) on purely Ad-hoc basis.

1. S/ Shri	Suresh Kumar	Vice item no. 1 (b) above
2.	R. K. Srivastava	Vice item no. 2 (b) above
3.	R. K. Singh	Vice item no. 3 (b) above
4.	Sant Ram S/C	Vice vacancy.

The above has the approval of aDRM
Lucknow.

1/7/1984
Sr. Divl. Personnel Officer,
Lucknow.

Copy to:- 1. Supdt(E) / DRM Office, Lucknow.
2. Supdt(Pay-bill) - do -
3. Sr. D. A. O./ Lucknow.
4. As/Pass/DRM Office/Lucknow.

ATTESTED

V. D. SHRESTHA

M. A. (L)

ADV.

84/333, Katra Maganpur
LUCKNOW

Ph.

A110

Annexe No. 2/iv

Northern Railway

Divisional Office,
Lucknow.

Dated: 18-7-1985.

No: 831-E/63-2 Pt. IV/E3-1/253A.

प्रधानमंत्री

सरकारी

दिनांक - 18.7.85

प्रमाण - 831-E/63-2471IV

/ 83-1/253A

To,

All Officers on Lucknow Division.

All Concerned-'P' Branch-Personnel.

Divisional Secretary/NRMU-Near Guard Running Room/CB/LKO
Divisional Secretary/URMUL-T-10-CR/Lucknow.

प्रमाण - 8703
प्रमाण - 8703

Sub: Effect of refusal of promotion.

Copy of General Manager(P), N.Railway, Hd.Qrs. Office, Baroda House, New Delhi's letter No.831-E/63/2-XII(EIV) dated 12.4.85 (PS No. 8703) together with the enclosure/s is forwarded here with for information and necessary action.

सूचना संगत-
for Divisional Personnel Officer,
Northern Railway, Lucknow.

Copy of letter No.831E/63/2-XII(EIV), dated 12.4.85 from G.M.(P), Hd.Qrs. Office, Baroda House, New Delhi to All Sivl. Rly. Managers & others.

Sub: As above.

A clarification has been asked whether the instructions for barring an employee from further promotion for one year if he refused promotion issued as per Railway Board's instructions in PS 2854, 6211 are also applicable for adhoc promotion.

It is clarified that the above instructions to debar an employee for further promotion for one year in case he refuse promotion are also applicable if an employee refuses adhoc promotion. However, in such cases, the employee refusing promotion on adhoc basis may not be considered only for further adhoc promotions within the period of one year but may be considered for promotion on regular basis even within a period of one year from the refusal of promotion on adhoc basis, if he becomes for that.

D/*

RECORDED
17/7/85

V. D. SINGH

18/7/85

Northern Railway
Divisional Office
Lucknow.

No. 331F/63-2/F3-1/Pt. IV/253A

Dated: 11-1-1988

All Officers of Lucknow Division,
All Supdts. & Dealing Clerks in 'F' Section,
Divi. Secy./URMU & NRMU.

Subject:- Refusal of staff to go on
promotion.

A case has occurred on this division wherein a person, who was promoted to a higher grade in the normal channel on his turn, had refused promotion through unequivocal representation. On completion of one year period, from the date of refusal, the same employee had submitted another unequivocal refusal even before the actual promotion order could be issued. In other words, the same fellow had refused promotion in anticipation. In this case, the office had not put up the refusal to the competent authority and removed the name of the person, in question, from promotion list on its own without getting it duly accepted by the competent authority and as such no notice was issued regarding loss of seniority during the refusal period.

The aforementioned lapse on the part of the office had created a lot of complication and as such the following guidelines are issued to be followed scrupulously:-

- i) All the refusals received in response to promotional notice should be put up to the Branch officer concerned within one week of the receipt of such refusals.
- ii) If the refusal is given at the same station the same should be put up to the Branch officer in the manner indicated in para (i) above attracting the attention of the Branch officer concerned towards the provision of P.S. No. 6211 (copy endorsed for ready reference).

Contd... 2/-

AI12

:2:

iii) After the acceptance of the refusal by the competent authority, the establishment clerk concerned would issue a notification conveying the acceptance and indicating the warning about the loss of seniority etc.

iv) Situation may arise that the staff may anticipate his promotion and tender his refusal before the issue of proper promotion orders. In such cases, refusals submitted by the staff should not be given cognizance and the employee should be informed in black and white that he should tender refusal only after issue of the proper promotion order.

v) Another situation may arise where willingness of staff is called for by the Branch officer concerned, in order to augment, the process of filling up of the vacancies, in such type of cases, the refusals may be given and accepted even before the issue of promotion orders. But the notification of acceptance of refusal as well as warning regarding loss of seniority must be issued invariably.

The aforementioned instructions should be followed rigidly and any laxity shall be viewed seriously.

DA/PS.6211

214.8m

Sr. Divisional Personnel Officer,
Northern Railway, Lucknow.

TYPE COPY
TESTED

(Sd/-)

V. D. SHUKLA

M. A., LL.B., D.P.A.,
ADVOCATE,

84/333, Kali Bagan Colony
LUCKNOW.

Annexure No. VIII R

AI

- 3 -

Serial No. 6211 circular No. 940-E/O-JTJ (EJV) dated 14.10.74.

Sub: EFFECTS OF REFUSAL ON PROMOTION.

A copy of Railway Board's letter No. E(NG) 7-73PMT/120 dated 2.2.74 is forwarded for information and guidance. The Board's letter No. E(NG) 64PMT/66 dated 21.1.65 referred to there in was circulated under this office letter of even number dated 17.2.65 (PS No. 2854).

Copy of Riy. Bd.'s letter No. E(NG) 7-74PMT/120 dated 2.2.74.

Sub: As above.

Reference Board's letter "down the principles governing cases where staff refuse to carry out transfer on promotion to other stations due to different reasons. The Board desire to clarify that these instructions are applicable only in cases where promotion of staff involves transfer from one station to another station and should not be applied to cases where there is no change of station.

2. Staff promoted at the same station can not decline such promotion whether against selection or non-selection posts. The Board have decided that refusal to officiate in the higher grade in such case should be treated as refusal of duty and action should be taken against the staff under Discipline and Appeal rules.

TRUE COPY
ATTESTED


V. D. SHUKLA

M. A., LL.B., I.P.C.,
ADVOCATE,
84/333, Kazi Aqboolganj,
LUCKNOW.

Prm. Reit. No. R/IX

AM (4)

उत्तर रेल्वे NORTHERN RAILWAY

1986 10 05 1986
O.C. 17 Beni 68 Large

No 7582/26/1

Shri AC Misra, Asst Supdt, was promoted purely on ad hoc basis as AWLI, grade Rs. 425-640 (RS) and as such he was maintaining his lien in the parent cadre of Establishment Clerks. Accordingly, he was due all promotions in his parent cadre on the basis of his seniority position. At the time of his promotion as Head Clerk, grade Rs. 425-700 (RS), the question of offering any refusal to go to the parent cadre does not arise because Shri Misra was only working as AWLI on ad hoc basis. Had he been selected as AWLI, after passing the normal procedure of selection to the post of AWLI, grade Rs. 425-640 (RS), the question of his consent to go to the parent cadre would have arisen.

In a similar case of Shri SD Sharma, who was also working as AWLI, grade Rs. 425-640/RS purely on ad hoc basis, the benefit of seniority has been given to him on the basis of his seniority position in the parent cadre of Establishment clerks and he was eventually given the benefit of proforma promotion as Asst Supdt, grade Rs. 550-750/RS against a restructured post w.e.f. 1.1.84.

The case of Shri AC Misra is also to be dealt with like that of Shri SD Sharma and he is entitled to get the benefit of his original seniority in the parent cadre.

This should be done.

DRM may kindly see

DRM

9/2/86

Spec.

Accepted
ASLAM MAHMUD
Sr DPO
30.4.86.

To see early

AC

21/12/86

V. D. SHUKLA
M. A., LL.B., M.A.
81/25, 10th Main, 2nd
LUCKNOW.

81/25, 10th Main, 2nd
LUCKNOW.

AIS

NORTHERN RAILWAY

Divisional Office
Lucknow
Dt. 1st April' 85

No. 752E/IA/WLIs

NOTICE

As a result of selection held for the post of Welfare Inspectors Gr. 425-640 (RS), the following persons have been placed on the panel -

1. Sh. Virendra Pratap Srivastava	Sr. Clerk/ACMO/LKO
2. Sh. Ketti Lal (SC)	Sr. Clerk/CHI/CB
3. Sh. Sukhendra Pal Singh	Hd. Clerk/Dy. CME/W/AMV
4. Sh. Sewak Bajpal	Ad-hoc WLII/ACME/CB
5. Sh. Ram Pher	Hd. Clerk/Dy. CME/AMV
6. Sh. Tej Bahadur Singh	Sr. Clerk/SEFO/BSB
7. Sh. Suresh Chandra Srivastava	Hd. Clerk/Dy. CME/AMV
8. Sh. Easart Lal Shah (ST)	Ad-hoc PI/LKO.

2. Shri Sita Ram, a SC candidate for the above selection has also been approved for being promoted on ad-hoc basis as Welfare Inspector for six months in-service training against the reserved roaster point for SC. Accordingly, the following posting orders are made for immediate compliance -

- 3- (1) Shri Virendra Pratap Srivastava is promoted and posted as Welfare Inspector Gr.425-640 (RS) at Lucknow. He will look after the following staff-Loco Shed/LKO, C&W LKO, RBL PSH Sec., PSH-PRG/PYG Sec., PSH-CLM (Excl.) Section.
- ✓(2) Shri Ketti Lal (SC) is promoted and posted as Welfare Inspector (Hostel Warden & Secy. Handicrafts Centre). He will also look after the local Railway Schools, Literacy Centre, and Handicrafts Centre (Training Wing) Fatah-ali-ka-Talab. He will relieve Shri AC Misra, who is posted as Hd. Clerk Gr.425-700 (RS) in Pay Bill Section according to his seniority.
- (3) Shri Sukhendra Pal Singh is promoted and posted as Welfare Inspector in Gr.425-640 (RS) in C&W Shop/AMV reversing local arrangement.
- (4) Shri Ram Sewak Bajpal working as ad-hoc WLII Grade 425-640 (RS) in CB Workshop is regularised on the same post.

contd.... 2/-

AI/6

(5) Shri Ram Pher is promoted and posted as W.L.I. in Gr. 425-640 (RS). He will look after the following staff - Civil Engg., S&T Staff, DRM office, Relieving staff, LKO (Excl.)-CPB, CPB-PFM(excl.), UCR-RBL(exc.), UCR-RBL(excl.), DMW-RBL(excl.).

He will relieve Shri SD Sharma who is posted as Hd.Clerk/Litigation Cell. He will be especially Incharge for dealing with the Labour Tribunal cases. He will also deal with the cases of conciliation with ALC/LEOs under I.D. Act.

(6) Shri Tej Bahadur Singh is promoted and posted as Welfare Inspector Gr. 425-640 (RS) with HQ at BSB. He will look after Diesel Shed/MGS and staff of the Sections VYN-PBH (excluding PBH & BSB Area).

(7) Shri Suresh Chandra Srivastava is promoted and posted as Welfare Inspector in Gr. 425-640 (RS) in Dy.COS's office reversing local arrangement.

(8) Shri Basant Lal Shah (ST) is posted as Welfare Inspector Gr. 425-640 (RS). He will look after the Medical/Sanitation and Electrical staff posted at LKO and staff of the Section LBA-SHG (Excl.) and FD-SLN(Excl.).

(9) Shri Sita Ram (SC) is promoted on ad-hoc basis for six months in service training as Welfare Inspector Gr. 425-640 (RS) and is posted under Dy.C.M.I./C.O.Lucknow reversing local arrangement of Shri Kuldai Ram.

3. Existing Sr.W.L.I.s namely, S/Shri ML Gupta, M.P. Nigam and S.K Gupta will henceforth perform the following duties -

1. Shri ML Gupta, SWLI in Gr. 700-900 (RS) with HQ at BSB will look after the staff of BSB Area and staff of the sections SOP-SHG and JNU-JNH(excl.). He will also supervise the working of WLI/BSB, Shri TB Singh, newly promoted.
2. Shri MP Nigam, SWLI Gr. 550-750 (RS)/HQ/LKO. He will be the Coordinating SWLI. He will deal with the Cooperative Stores, supervise the working of Welfare Sec., look after the functioning of Institutes and Recreation Clubs apart from working as Secretary/ Staff Benefit Fund. He will also coordinate in non-payment meetings.
3. Shri S.K. Gupta, SWLI in Gr. 550-750 (RS) - He will look after the Transportation & Comml. staff posted at LKO (Station, Yard and Goods Shed/City Booking offices) and staff of LKO-Alamnagar, LKO-ZBD(excl.) and UTR-RBL(Excl.) sections.

AIJ

4. Promotions to Gr. 550-750 (RS) & 700-900 (RS) against upgraded posts due to cadre re-structuring will be ordered separately.

5. Ministerial staff being relieved by the above promotions will also be promoted against the upgraded posts due to cadre restructuring according to their seniority separately which case is under process.

D. Deo
14/85
DIVISIONAL PERSONNEL OFFICER(S)
LUCKNOW.

Copy forwarded for information to:-

1. All Officers and Sr. Subordinates on LKO Divn.
2. Addl. C. M. O./CB/Lucknow
3. Addl. C. M. E./Loco Workshop/CR/Lucknow
4. Dy. C. M. E./C&W Shops/Alambagh/Lucknow
5. Dy. C. O. S./AMV/Lucknow
6. Principal, System Technical School/CB/Lucknow
7. C. H. I./CB/Lucknow.
8. Sr. Elect. Foreman/Varanasi.
9. C. P. I./Lucknow.
10. Principal, JR RPF Trg. Centre/Tal. Katora/Lucknow.
11. S. D. Ao (Lko. Sh./AMV & CB/Lko)
12. Supdt. E/ (Card) & Bills in office
13. Sh. S. D. Sharma: Offg WLI
14. Sh. A. Chaitanya: Offg WLI

TRUE COPY
ATTESTED

Shukla

V. D. SHUKLA
M. A., LL.B., D.P.A.,
ADVOCATE,
84/335, Katra Nagh, Nizamuddin,
LUCKNOW.

To

The Divl. Asst. Manager
N. Rly.
Lucknow.

AIO

Re: Promotion as A.S. (550-750 RS)

Sri.

Respectfully I have to request that my name in the seniority list is above shri S. P. Lal and below shri S. P. Sibal.

It is a matter of great pain to me that I have been ignored in the recent adhoc promotion of under-mentioned fellow workers as Ass't. Compt. with notice no. A.I.E/5/61/PL dated 31.7.83.

1. Shri F. A. Goldiappa
2. " S. P. Sibal
3. " S. P. Lal
4. " Mongal etc.
5. " R. L. Ray

Kindly consider my case and promote me as A.S. on adhoc basis on my seniority position is above shri S. P. Lal and others.

Thanking you. Sri.

Yours faithfully

A. C. Misra
(A. C. misra)

WFO (ad hoc)
welfare Fund

Date 1.8.84

forwarded
sd - Compt. etc

TRUE COPY
ATTESTED



V. D. SHUKLA

M. A., LL.B., I.P.,
ADVOCATE,

81/1A, Kira Maghoolay, Lucknow.

UNION MEMBER

To

~~Annexure No. VIII~~

AII

The Divisional Railway Manager,
Northern Railway, Lucknow.

Re: Promotion as Assistant Superintendent and seniority

Ref: (1) Your notice no. 941/E-6/1 Pt-II dated 31.7.84
(2) Your notice no. 758-E/E6/1, dated 18.9.85
(3) My applications dated 11.8.84, 28.11.84 and
23.9.85 and 26.9.85.
(4) Your notice No. 758-E/6-1, dated 4.12.85.

Sir,

I am much thankful to my respectable and kind hearted senior D.P.O., who took pain to promote me as Assistant Superintendent for which I have been requesting since 01.8.84. But at the same time I am surprised that my seniority has been assigned incorrect and I have been promoted with immediate effect instead of from 1.1.84, though four junior ~~persons~~ persons are going to be promoted from 1.1.84. Perhaps in the absence of relevant papers the question of seniority could not be considered by my learned senior D.P.O.

I, therefore, request your goodself to kindly reconsider my case and before passing promotion orders of Sri S.D. Sharma etc., from 1.1.84 my name may kindly be included in the same promotion order according to my original seniority (i.e. above Sri S.P. Lal).

In this connection I want to bring to your kind notice the following few lines for perusal and consideration.

- (1) That I was working as W.L.I. from 2.4.81. on the persuasion of Sri S.P. Lal, I gave a conditional unwillingness to work as Head Clerk.
- (2) That my above unwillingness was wrongly treated refusal and I was debarred for one year for further promotion and Sri S.P. Lal was promoted as Head Clerk.

(2) A/20

(3) It is said that my language of application dated 12.3.82 was such that it debarred me from my promotion Sir, nobody would expect that using of polite language would harm him.

(4) Your goodself is well aware of Bd's letter No. E(NG) 64-PMI-66, dated 21.1.65 P.S. No. 2854 which provides that while refusing to move on promotion the employee must mention the grave and domestic reasons due to which he is refusing promotion. He should also accept that he would not be eligible for promotion for one year. There was no such stipulation in my application that I would be debarred for promotion for one year and staff promoted during that period would rank senior to me.

(5) That Railway Board vide his letter No. E(NG)I-73 PM I/120, dated 2.2.74 Sl.No. 6211 have clarified that above instructions are applicable where promotion involves transfer. Staff promotion at the same station cannot decline such promotion. Thus the question of my refusal and debarring me from promotion does not at all arise. It was manipulated to benefit other persons.

Under above circumstances your goodself have been fully aware that I have never meant that I may be debarred from promotion by helping some of my colligues, thus I was mis-represented and disceaved though I helped others.

Kindly have pity on me and do not disturb my original seniority by promoting from 1.1.84 and thus I shall be saved from recurring loss during my three years remaining in service, as I did not commit any mistake and had always been obedient, loyal and sincere to my superiors and duties

Thanking you,

Yours faithfully,

A. S. P. B.

22.5.12.85

Annexure No R/XIII

A121

P/2

To,
The general manager,
Northern Railway,
headquarters office,
Paroda House,
New Delhi.

Thru. Postage Channel.

Respected Sir,

Sub:- Infringement of right of promotion
as Supdt. gr. 700-900 (RS).

Shri A.C. Misra, Asst. Supdt. 'P'
Branch DR's office/N.Rly./LKO.

With profound regard the under signed beg to lay down a following few facts for your kind honour's consideration and it is hope that a conclusive decision will flow from a single stroke of your worthy pen on the following grounds:-

1. While I was working as AMM gr. 425-640 (RS) since 2.4.81 on ad hoc basis and promoted as Hd. Clerk on ad hoc basis on 4.3.89, as told by my junior Sr. Clerk Shri S.P. Lal, was promoted as P/C gr. 425-700 (RS). The administration had treated my unwillingness to work as Head Clerk on ad hoc basis as ~~for the~~ promotion as U/C and I was debarred for a period of one year. As a matter of fact the promotion of U/C was also on ad hoc basis and as such I gave in writing that I may be allowed to continue as AMM. In view of the circumstance the action taken by the administration was solely arbitrating and against the rules framed for the purpose of seniority.
2. Being ~~agreed~~ represented by the decision taken as referred above in represented against this and consequently I was assigned correct/original seniority below Shri S.P. Sibal and above Shri S.P. Lal vide notice No. 758R/6-1 dt. 22.5.86.
3. Shri S.P. Lal who is junior to me and Shri Mangal Sen who is also junior had already been promoted as Supdt. gr. 700-900 w.e.f. July 85.
4. In terms of P.S. No. 2700 this is a clear case of administrative errors and I am due promotion from the date my juniors have been promoted as Supdt. gr. 700-900 (RS) against the existing norm.
5. A period of more than one year is likely to lapse but administration has failed to promote me as Supdt. As a result of which I am facing a pecuniary loss.

In view of the facts as furnished above, it is requested that my request may please be considered on top priority basis and official notice for my promotion may please be issued at early date for which I shall pray for your rare prosperity, Sir.

With regards,

Yours faithfully,

A. C. Misra

(A.C. Misra) Asst. Supdt.

DR's office/N.Rly./LKO.

Copy to:- DR's/NR/LKO.

(2) The Genl. manager (P) for consideration in advance, please.

18/2/86

DR's office/NR/LKO

DR's office/NR/LKO

Annexe No. 1/22

To

The Divisional Railway Manager
Northern Railway, Lucknow.

Subject: Promotion as Supdt. (E).

Ref: (1) Your Notice No. 758-E-6-1 dated 4.12.1985

(2) My applications dated 7.8., 28.11.1984,
13.3., 17.9., 23.9., 21.11., 12.12.,
25.12.1985, 2.1., 13.1., 16.1., 28.1., and
10.2.1986.

Sir,

I am much thankful to my respected Senior D.P.O. for my promotion as Assistant Superintendent on 4.12.85 vide (1) above but much pain for being deprived of the original seniority and consequential promotion as Superintendent vice Sri R.K. Batra sick and retiring on 30.4.86.

It is to bring to your kind notice that I was working as W.L.I. on ad-hoc basis since 2.4.81 and was afterwards promoted as Head Clerk in the equivalent grade but the letter was not communicated to me.

I am senior to Sri S.P. Lal. (copy of seniority list attached).

That on being verbally asked I showed my unwillingness to ~~concede~~ to work as Head Clerk ~~as I was~~ working as W.L.I. since 2.4.81, till its selection was not finalised and gave in writing on 12.3.82 my unwillingness to work as Head Clerk on ~~ad-hoc basis~~.

As per P.S. No. 8703 there are two P.S.s to govern the procedure of refusal of promotion. As per P.S. No. 2854, copy attached, employee who refuses promotion should accept in his application that he would not be eligible for that post for one year. This rule is applicable only in cases where staff is promoted and posted to another station.

As per P.S. No. 6211 (copy attached) the employee promoted at the same station cannot decline promotion but will be taken up under D & A R, which was not done in my case. Thus it clearly shows that my ~~stark~~ socalled un-willingness was not treated as refusal.

The administration has not communicated me any thing regarding my acceptance and debarring me from promotion for one year which has to be done by the employer to the employee. Under above circumstances it is clear Sir that the question of refusal of promotion to work as Head Clerk does not arise at all and my letter dated 12.3.82 may kindly be treated as null and void for debarring me. modified selection of my junior may please be stopped.

I, therefore, request your good self to please look into the matter and save me from heavy financial loss by restoring me to my original seniority and promoting me as Superintendent vice Sri R.K. Batra retiring from 30.4.86 and no other staff may be promoted against the above vacancy till decision of my case.

Thanking you, Sir.

TRUE COPY Yours faithfully,

A.C. Misra

(A.C. Misra)

V.D.C. K.L.A. S.A.T. subdt. P.I.

M.A., I.R., D.P.O.,
ADM. DEPT.

Dated: 19.2.86.

(2)

That Shri S.D.Sharma appeared for supplementary written test of WLI on 15.2.84, its result was announced on 19.4.84 and Shri S.D.Sharma was failed. He moved to High Court for its cancellation through Uttar Railway Karamchari Union and succeeded to get the result cancelled on 22.8.84 vide your letter No.752 E/1 A-Sel dated 22.8.84 (copy attached).

Again Shri S.D.Sharma filed writ petition No.1230 of 1985 for his regularisation as WLI, but was ~~unsuccessful~~ unsuccessful.

His above actions clearly shows that he refused to work as Head Clerk upto 1.4.85 when he was ordered to work as Head Clerk and even after it. But he is being regularised through modified selection w.e.f. 1.1.84 and I am being given stepmotherly treatment, it is not understood.

In fact my juniors S.Shri S.P.Lal, S.D.Sharma & Mata Prasad etc., who have been working in E Section since long are trying to lower my seniority for their benifit by turning my unwillingness into a valid refusal to debarred me for one year.

Under above mentioned circumstances I request your goodself to reconsider my case for my promotion as Superintendent E vice Shri R.K. Batra w.e.f. 1.5.86 and include my name for modified selection as Assistant Superintendent w.e.f. 1.1.84 and oblige.

In case my request is not heard I shall never be promoted as Superintendent and retired on 30.11.88, kindly save me from such a heavy loss during service and even after retirement.

Thanking you,

Yours faithfully,

(A.C. MISHRA)
Asstt. Superintendent,
(P.B.)

Dated :-

TRUE COPY
ATTESTED


V. D. SHUKLA

M. A., M. Sc., P. P.
A.P.A.C.O. A.T.P.
84/375, Kali Bazar, 022
LUCKNOW.

To,

The Divisional Railway Manager,
Northern Railway,
Lucknow.

Re :- Promotion as Superintendent (E).

Ref :- (1) Your letter No. ~~758~~ 758-E/6-7 dt. 4.12.

(2) My so many representations.

Sir,

Respectfully I beg to draw your kind attention to the following few lines regarding my promotion as Supdt. (E) vice Shri R.K. Batra, Sick and going to retire on 30.4.86.

That Shri S.D.Sharma etc. who are junior to me are being regularised as Asstt. Supdt. through the modified selection w.e.f. 7.7.84 but I am being ignored.

That being senior most Senior clerk, I was orinted as WLI on adhoc basis on 2.4.81.

That Shri S.P.Lal told me that I have been promotion as Head Clerk on 4.3.82 on adhoc basis. But neither the promotion notice was given to me nor I was relieved from the post of WLI to work as Head Clerk. I could not know if I was promoted on adhoc basis or on regular basis. Shri S.P. Lal who is juniors to me persuaded me very much to give refusal to work as Head Clerk, so that he may be promoted.

That I did not acceed to his requests he came to my residence with 2 unknown persons and took my refusal by force on 12.3.1982. He did not give me time even to get the application forwarded by S.W.L.I. It is learnt that ~~now~~ he took its photostate copy also.

That the administration did not ask me to give refusal and I was also not relieved from WLI to work as Head Clerk, therefore the question of refusal of promotion & debaring me for one year does not arise.

That so long I was not selected as WLI in an ex-cadre post my lien can not be terminated from Office clerk.

That neither Shri S.P.Lal nor the administration communicated to me or to my incharge SWLI that my unwillingness dated 12.3.82 has been treated as refusal & I have been debarred for one year, otherwise I would have objected to it. Moreover as per P.S No.2854 & 6211 (copy attached) my unwillingness can not treated as refusal to debar me for one year.

That on the other hand Shri S.D. Sharma, who is also junior to me, promoted as WLI on adhoc basis on 11.6.81, promoted as Head Clerk on 15.9.82 after my promotion, is being promoted as A.S.w.e.f. 1.1.84 through modified selection & I am not.

(2)

That Shri S.D.Sharma appeared for supplementary written test of WLI on 15.2.84, its result was announced on 19.4.84 and Shri S.D.Sharma was failed. He moved to High Court for its cancellation through Uttar Railway Karamchari Union and succeeded to get the result cancelled on 22.8.84 vide your letter No.752 E/1 A-Sel dated 22.8.84 (copy attached).

Again Shri S.D.Sharma filed writ petition No.1290 of 1985 for his regularisation as WLI, but was unsuccessful.

His above actions clearly shows that he refused to work as Head Clerk upto 1.4.85 when he was ordered to work as Head Clerk and even after it. But he is being regularised through modified selection w.e.f. 1.1.84 and I am being given stepmotherly treatment, it is not understood.

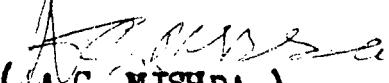
In fact my juniors S.Shri S.P.Lal, S.D.Sharma & Mata Prasad etc., who have been working in E Section since long are trying to lower my seniority for their benefit by turning my unwillingness into a valid refusal to debarred me for one year.

Under above mentioned circumstances I request your goodself to reconsider my case for my promotion as Superintendent E vice Shri R.K. Batra w.e.f. 1.5.86 and include my name for modified selection as Assistant Superintendent w.e.f. 1.1.84 and oblige.

In case my request is not heard I shall never be promoted as Superintendent and retired on 30.11.88, kindly save me from such a heavy loss during service and even after retirement.

Thanking you,

Yours faithfully,


(A.C. MISHRA)
Asstt. Superintendent,
(P.B.)

Dated :-

TRUE COPY
ATTTESTED


V. D. SRIVASTAVA

M. A., LL.B.
ADVOCATE,
84/313, Kalyan Nagar
LUCKNOW.

THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

O.A. No. 77 OF 1988(L)

A/25

Mata Prasad Srivastava Applicant

VERSUS

Union of India and others Respondents.

REJOINDER REPLY TO THE COUNTER REPLY OF
RESPONDENTS NOS. 1 TO 5.

1. That the contents of paras 1 and 2 of the Counter reply need no comments.
2. That the contents of para 3 of the Counter Reply are denied while those contents of para 3 of the application are reiterated as correct.
3. That the contents of para 3(iv) of the Counter Reply are denied to the extent they are contrary to the contents of para 3(iv) of the application which are reiterated as correct.

It is further stated that on refusal or ad hoc promotion the promotee is not debarred for further promotion but in the instant case the Respondent No. 6 was debarred for further promotion as has been stated by the answering Respondents. It is overt that the Respondent No. 6 was virtually promoted on regular basis and not on ad hoc basis as alleged. A suitable reply

MATA SRISWATI SRIVASTAVA

A126

to the other contents of the para under reply pertaining to representation made by the Respondent No. 6 and its consideration and ^{the relevant} facts shall be furnished while dealing with the facts in para 6 of the application.

4. That the contents or paras 4 and 5 of the Counter Reply are denied to the extent they are contrary to the contents of paras 4 and 5 of the application which are reiterated as correct.

5. That the contents of para 6.1 of the Counter Reply are denied as incorrect while those contents of para 6.1 of the application are reiterated as correct. It is further stated that the impugned orders are illegal and arbitrary in as much as the Respondent No. 6 has been favoured by the answering respondents without any valid justification. The opportunity of promotion should have been given to the applicant which has been diverted to the Respondent No. 6 illegally.

6. That the contents of para 6.2 of the Counter Reply are denied to the extent they are contrary to the contents or para 6.2 of the application which are reiterated as correct.

7. That the contents of para 6.3 of the Counter Reply are incorrect to the extent they are contrary to the contents of para 6.3 of the application

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A127

while those contents of para 6.3 of the application are reiterated as correct. It is further stated that the said 5 posts which were down graded vide order dated 4.3.1982 as contained in Annexure-R1 to the Counter Reply were regular and permanent and consequently the down gradation of these posts will not change their nature. The posts of Head Clerk in the scale of Rs.425-700 were regular and ~~per~~ permanent against which 4 regular promotions were made. It has nowhere been indicated in the order dated 4.3.1982, contained in Annexure-R1 to the Counter Reply that either the said 5 posts were temporary or those 4 persons working as Senior Clerks were promoted to the posts of Head Clerks on ad hoc basis. It is very much evident that the nature of all the said 5 posts are alike. It is amazing as to how the permanent promotion of the Respondent No.6 being alone is treated on ad hoc basis while the other Senior Clerks who were simultaneously promoted against the posts of Head Clerks are being treated as regular promotees. If the Respondent No. 6 was promoted on ad hoc basis then all the similar promotions must have been made on ad hoc basis. But contrary to it all the other persons promoted along with the Respondent No.6 on the down graded

MANSHU SINGH

posts have been treated as regularly promoted persons and even all promotions subsequently made to the posts of Head Clerks have also been treated as regular. It is not possible rather inconsistant to the service jurisprudence that a senior person is promoted on ad hoc basis while junior persons are promoted and treated as regular promotees. As promotions of the other persons promoted along with Respondent No. 6 was not on ad hoc basis hence they have neither been regularised nor there is any question of their regularisation. Their service record amply reveals about the nature of their promotion to the post of Head Clerk. The applicant is filing herewith one of the documents relating to Sri O.P. Gupta to indicate that he was not promoted on ad hoc basis is being filed herewith as Annexure-RA1 to this Rejoinder Affidavit. Sarvashri O.P. Gupta, S.B. Tewari and S.B. Sibai are still being treated as regularly promoted Head Clerks hence the Respondent No. 6 along cannot be treated as promoted on ad hoc basis by any stretch of imagination.

8. That the contents of para 6.4 of the Counter
Reply are not denied to the extent they are in
consonance with the contents of para 6.4 of the
application while rest contents of para 6.4 of
the application are reiterated as correct. It

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A129

is further stated that the order of promotion of Sri S.P. Lal is itself an evidence indicating the nature of promotion. A bare perusal of order or promotion of Sri S.P. Lal as contained in Annexure-R6 to the application palpably reveals that the word 'ad hoc' has not been used at any place hence no sentence can be construed to read it as ad hoc. Sri S.P. Lal has been promoted against the same vacancy which was offered to the Respondent No.6.

9. That the contents of para 6.5 of the Counter Reply are denied to the extent they are contrary to the contents of para 6.5 of the application. The contents of para 6.5 of the application are reiterated as correct. It is further stated that the Respondent No. 6 was well aware of the order dated 31st of March, 1982 by dint of which he was superseded and against which he has never raised any claim. Now he cannot resile from his own averment by virtue of principles of acquiescence. The doctrine of estoppel comes in the way of the Respondent No. 6 and prevents him from retrieving acceptance of his own averments.

10. That the contents of para 6.6 of the Counter Reply are denied to the extent they are contrary to the contents of para 6.6 of the Application.

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which are reiterated as correct. It is further stated that the answering respondent has not clarified as how the promotions referred in para 6.6. of the application were made against short term vacancies of Head Clerks grade Rs.425-700 (R.S.). As a matter of fact all these promotions were made on regular basis for indefinite period and are still continuing as such without any interruption or hinderence and all the promotees are enjoying the status of a regular Head Clerk for all the practical purposes.

11. That the contents of para 6.7 of the Counter Reply are denied to the extent they are contrary to the contents of para 6.7 of the application which are reiterated as correct. It is further stated that the answering respondent has furnished a stammering reply as sometimes it has been stated that the said promotions were made on ad hoc basis while in para under reply it has been said that these promotions were on temporary basis. There is a great difference between an ad hoc promotion and temporary promotion because temporary promotion is made after following the procedure established under law which is regular in

mark's with stamp of

A131

nature while ad hoc promotions are made to meet the administrative exigencies without following the due procedure of law.

12. That the contents of para 6.8 of the Counter Reply are denied as incorrect to the extent they are contrary to the contents of para 6.8 of the application which are reiterated as correct. It is further stated that the answering Respondents have made an abortive attempt to mislead this Hon'ble C.S. Tribunal by saying that the applicant was not properly promoted on regular basis. It is well settled principles of law that two ad hoc promotions cannot be given to an employee. As the applicant was promoted on regular basis in the year 1982 hence he was given another promotion on adhoc basis in the grade of Rs.550-750 (R.S.). If the applicant would have been promoted to the post of Head Clerk on ad hoc basis then he could not have been promoted again on ad hoc basis to the next higher post of Assistant Superintendent in the grade of Rs. 550-750. More over the two orders of promotions issued to the applicant very clearly delineated different pictures. In the last promotion the word 'Ad hoc' has been

noting

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used while this word has not been used in the earlier promotions. Once the applicant was promoted to a regular post on regular basis, senior to him cannot be treated to have been promoted on ~~regular~~^{ad hoc} basis. As Sri A.C. Misra, Respondent No.6 was obviously senior to the applicant hence the offer of promotion made to him for the post of Head Clerk can also not be treated as ad hoc and therefore the vacancy given to the next junior person to the Respondent No. 6 i.e. Sri S.P. Lal was also filled by way of regular promotion.

13. That the contents of para 6.9 of the Counter Reply are denied as incorrect while the contents of para 6.9 of the application are reiterated as correct. It is further stated that the Respondent No.6 had refused his promotion to the post of Head Clerk offered to him in the year 1982 and thereafter no promotion order was issued in favour of Respondent No.6 promoting him to the post of Head Clerk. Hence there was no occasion to post Respondent No.6 on the post of Head Clerk without issuing an order of promotion in his favour. It appears that some bungling has been made at this stage and on account of this the Respondent No. 6 manipulated his reversion on the promoted post

Mr. S. N. Gopal

A/3

of Head Clerk and not on the substantive post from where he was sent to join the post of A.W.L.I. Unless an order of promotion is specifically passed by a competent authority in favour of an employee, the employee cannot be deemed to have been promoted automatically by an order of posting.

14. That the contents of para 6.10 of the Counter Reply are denied to the extent they are contrary to the contents of para 6.10 of the application which are reiterated as correct. It is further stated that the answering Respondent has not filed the copy of the representation made by the Respondent No.6 to mislead this Hon'ble Tribunal. When the Respondent No.6 was not promoted to the post of Head Clerk there was no question for determination of his seniority on the post of Head Clerk. It is settled principles of law that a person is entitled for seniority on a post to which he has been substantively appointed/promoted. No order of promotion promoting the Respondent No. 6 to the post of Head Clerk has been filed by the answering Respondents and the question of seniority has wrongly been raised.

15. That the contents of para 6.11 of the

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Counter Reply are denied to the extent they are contrary to the contents of para 6.11 of the application which are reiterated as correct. It is further stated that when the matter of promotion of the Respondent No.6 to the post of Head Clerk was under consideration in the year 1985 how the Respondent No. 6 was posted on the post of Head Clerk before it, and how the Respondent No. 6 made a representation for determination of his seniority on the post of Head Clerk. All the facts are paradoxical to each other. As a matter of fact the Respondent No. 6 was not promoted upto 29th November 1985 when the said P.N.M. was held in which it was discussed that the Respondent No. 6 ought to have been promoted earlier. No promotion order was issued in favour of Respondent No. 6 by any competent authority at any point of time promoting him to the post of Head Clerk after he refused his promotion offered to him in the year 1982.

16. That the contents of para 6.12 of the Counter Reply are denied to the extent they are contrary to the contents of para 6.12 of the application which are reiterated as correct. It is further stated that the matter was finally settled in the P.N.M. Meeting but it was ~~re-adjudicated~~ ^{resubmitted} on wrong facts which was not permissible in

not subscripted

A125

law. Yet from any corner of imagination it cannot be said that that the Respondent No. 6 stood automatically promoted without any positive order to that effect issued by any competent authority. Ofcourse the Respondent No. 6 could have been promoted with effect from a back date but unless an order of promotion is positively passed in favour of the Respondent No.6, he cannot be treated to have been promoted and as such the question of determining the seniority of the Respondent No. 6 on the higher post was absolutely wrong and illegal.

17. That the contents of para 6.13 of the Counter Reply are denied to the extent they are contrary to the contents of para 6.13 of the application which are reiterated as correct. The Respondent No. 6 made another representation on 16th April, 1986 which was after thought based on manipulations made by him during this period.

18. That the contents of para 6.14 ofthe Counter Reply are denied to the extent they are contrary to the contents of para 6.14 of the application which are reiterated as correct. As a matter of fact his earlier representation was not considered and a decision was taken in the year 1987 allowing the benefit of supersession by the Respondent

not satisfied

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No. 6 beyond a period of one year from the date when the Respondent No. 6 was offered promotion to the post of Head Clerk. But at no point of time any order or promotion was issued in favour of Respondent No. 6 on the basis of any decision taken by any competent authority. All the decisions taken by the higher authorities are clearly indicating that it was found that the Respondent No. 6 should have been promoted after a lapse of one year from the date when he refused to accept the offer of promotion to but amazingly the nature of promotion which was offered to him as back as in the year 1987 was subsequently changed without any substance or the material on record in the letter dated 16th June 1987 as contained in Annexure-R3 to the Counter Reply in which the promotion of the Respondent No. 6 which was offered to him in the year 1982 has been treated to be on ad hoc basis. The subsequent promotions were not taken into account and an isolated decision was taken in favour of Respondent No. 6 which is altogether contrary to the provisions of law and is void. The letter dated 16th June 1987 has already been filed by the applicant as Annexure-13 to the application. A bare perusal of which will clarify the entire

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matter provided the earlier facts are also taken into account.

19. That the contents of para 6.15 of the

Counter Reply are denied to the extent they are contrary to the contents of para 6.15 of the application which are reiterated as correct.

It is further stated that the decision already

taken by the higher authorities could not have been revised. But any way it has nowhere been said or discussed that as to when the Respondent

No. 6 was promoted to the post of Head Clerk

and what was the nature of the promotion of the other persons who were simultaneously promoted

to the post of Head Clerk and an isolated

decision was taken in favour of the Respondent

No. 6 which was wholly perverse to the material

available on record. The determination of the

seniority of Respondent No. 6 was wholly

misconceived and wrong as the Respondent No. 6

was never promoted either to the post of ^{Head} ~~Senior~~ Clerk

or to the post of Assistant Superintendent.

20. That the contents of para 6.16 of the

Counter Reply need no comments to the extent

the contents of para 6.16 of the application have

been admitted. The contents of para 6.16 of

the application are reiterated as correct denying

Mat Smt Ghanim

the contrary averments made in para under reply.

20. That the contents of para 6.17 of the Counter Reply are denied to the extent they are contrary to the contents of para 6.17 of the application which are reiterated as correct. It is further stated that the nature of promotion offered to the Respondent No. 6 has wrongly been twisted as ad hoc while indeed the word 'ad hoc' was never used before. It is for the first time that the word ad hoc has been used and taken into consideration which is after thought.

21. That the contents of para 6.18 of the Counter Reply are denied as incorrect to the extent they are contrary to the contents of para 6.18 of the application. The answering Respondents have very wisely kept silent ~~regarding~~ the nature of promotion of Sri S.P. Lal which was indeed regular. The answering Respondents cannot say that the subsequent promotions made were ad hoc as in fact the promotions were not ad hoc and were regular. The nature of promotion offered to the Respondent No. 6 cannot be considered ^{in isolation} ~~isolated~~ and is liable to be considered in the same sequence in which the other promo-

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tions have been made because the other promotions are the only best eviaence indicating the nature of promotions offered to the Respondent No. 6.

23. That the contents of para 6.19 of the Counter Reply are denied as incorrect to the extent they are contrary to the contents of para 6.19 of the application which are reiterated as correct. As no specific reply has been furnished by the answering Respondents to the contents of para 6.19 of the application hence it is not possible to furnish the other details.

24. That the contents of para 6.20 of the Counter Reply are vague and evassive in as much as no reply has been furnished to the questions raised in para 6.20 of the application which are reiterated as correct. and any averment contrary to it are denied as incorrect.

25. That the contents of para 6.21 of the Counter Reply are denied to the extent they are contrary to the contents of para 6.21 of the application which are reiterated as correct.

26. That the contents of para 6.22 of the Counter Reply are denied to the extent they are contrary to the contents of para 6.22 of the application which are reiterated as correct. It is further stated that the Respondent No. 6 was

not being spared

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never promoted to the post of Head Clerk by any competent authority and he has wrongly been treated as senior to the applicant. As a matter of fact the Respondent No. 6 has been allowed to take the benefit of his own wrong which is not permissible in the eye of law. Once the Respondent No. 6 refused to accept the promotion he cannot be given the benefit of that at any occasion in as much as the Respondent No. 6 also cannot resile from his own statement. As a matter of fact the applicant ought to have been considered and promoted to the next higher post in place of Respondent No. 6.

27. That the contents of para 6.23 of the Counter Reply are denied while those contents of para 6.23 of the application are reiterated as correct.

28. That the contents of para 6.24 of the Counter Reply are denied to the extent of para 6.24 of the application which are reiterated as correct.

29. That the contents of para 6.25 of the Counter Reply are denied to the extent of para 6.25 of the application which are reiterated as correct.

30. That the contents of para 6.26 of the

not being certified

Counter Reply are denied to the extent of para 6.26 of the application which are reiterated as correct.

39. That the contents of para 6.27 of the ^{in contrary to} Counter Reply are denied to the extent of para 6.27 of the application which are reiterated as correct. It is further stated that the Respondent No. 6 was sent to work as A.W.L.I. from the post of Senior Clerk and still he was functioning as A.W.L.I. He was offered promotion to the post of Head Clerk in the year 1982 which he refused and thereafter no promotion was made promoting him to the post of Head Clerk. Hence on availability of suitable hands the Respondent No. 6 could have been reverted to his substantive post of Head Clerk. It appears that by way of manipulation while reverting the Respondent No. 6 ^{in place of Senior Clerk} he was posted as Head Clerk which is wholly illegal and arbitrary. The Respondent No. 6 cannot claim any benefit on account of it.

6.28
39. That the contents of para 28 of the Counter Reply are denied as incorrect to the extent they are contrary to the contents of para 6.28 of the Application which are reiterated as correct.

40. That the contents of para 7 of the Counter

not sent straight

A142.

Reply need no comments to the extent they are in consonance with the contents of para 7 of the application. The rest of the contents of para under reply are denied. The application deserves merit to be allowed with cost.

34. That the contents of para 8 of the Counter Reply need no comments.

35. That the contents of para 9 of the Counter Reply are denied, while those contents of para 9 of the application are reiterated as correct.

36. That the contents of para 10 of the Counter Reply are denied to the extent they are contrary to the contents of para 10 of the application which are reiterated as correct.

37. That the contents of para 12 of the Counter Reply need no reply.

38. That the contents of para 13 of the Counter Reply are denied as incorrect and misconceived. The application deserves merit to be allowed with cost.

39. That it is worthwhile to state that one Sri Bhagwati Daya senior to Sri S.P.Sibal was also empanelled to the post of Assistant Supdt. (Estt.) in the grade of Rs. 550-750 (R.S.) vide order dated 30.4.1985 but as he fell ill and

REASING (Signature)

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proceeded on medical leave with effect from 7.11.1983 and later on expired on 25.1.1985.

The said post of Assistant Superintendent could not be operated and remained vacant. Now all the persons senior to the applicant have been promoted hence this post can be very easily offered to the applicant without raising any dispute. This adjustment will solve the purpose of all the contesting persons. It may be the pleasure of this Hon'ble Tribunal to consider this aspect of the matter also and may also pass appropriate orders in favour of the applicant.

A true copy of the aforesaid letter dated 30.4.85 indicating the ~~decision~~ position of Sri Bhagwati Daya along with relevant document indicating his leave position is being filed herewith as Annexure-RA2 to this Rejoinder Reply.

ANEXURE-RA2

Annexure-RA2 to this Rejoinder Reply.

Mriti Singh Rathor

VERIFICATION

I, the applicant above named do hereby verify that the contents of paras 1 to 37 of this Rejoinder Reply are true to my knowledge. No material has been suppressed and no part of it is false.

Lucknow Dated:
1989.

Mriti Singh Rathor
APPLICANT.

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ANNEXURE - RA-1

Shri O. P. Gupta

AI 44

Pay raised to Rs 466/- w.e.f 1-2-80
Pay raised to Rs 476/- w.e.f 1-2-81 Abo

Sanctioned Spl Pay of Rs 35/- in
terms of P.S. No. 16042 (28)

Pay fixed Rs 476/- + 35 with effect
from 18-3-81.

Pay with increments to 300/- + 35/- per day
w.e.f 1-2-82

He will retire from Service
w.e.f 31-3-82 (under age limit)

Pay raised to Rs 488/- + 35/- per day
from 1-2-82.

Temp Promoted as Hd Clerk or 485-700/-
@ Rs 51578/- net 4-3-82 v.l. NO. 2500/E-6/18. 1/182

dt - 4-3-82. He will retire from Service from 31-3-82.
earlier age limit Abo

Service confined from 30-7-1947 to 31-3-66 from
Leave as a candidate of Service Period and the same
will qualify for pension except ~~1947 to 1966~~.

Following period has been notified from leave
of (and) SR and the same will qualify for pension i.e.,

From 1-4-66 to 31-3-67	Form 1-4-74 to 31-3-75
" 1-4-67 " 31-3-68	" 1-4-75 " 31-3-76
" 1-4-68 " 31-3-69	" 1-4-76 " 31-3-77
" 1-4-69 " 31-3-70	" 1-4-77 " 31-3-78
" 1-4-70 " 31-3-71	" 1-4-78 " 31-3-79
" 1-4-71 " 31-3-72	" 1-4-79 " 31-3-80
" 1-4-72 " 31-3-73	" 1-4-80 " 31-3-81
" 1-4-73 " 31-3-74	" 1-4-81 " 31-3-82

Pension benefits revised as per

Rly Bd's letter No. PC/111/82/DP/5 dt 20-4-82

ad his option attached

that his pension and DRs

recalculated after taking into

account the element of learners pay.

1-3-83 17/3/82 9/3/83
DRM Lucknow 17/3/82 9/3/83
DRM Lucknow 17/3/82 9/3/83

DRM Lucknow 17/3/82 9/3/83
DRM Lucknow 17/3/82 9/3/83

20-4-82
17/3/82

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, PUCKNOW

P.A. CASE NO. 77, 1989 (L)

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Maya Prasad Srivastava Applicant

VERSUS

Union of India and others Respondents

REJOINDER REPLY TO THE COUNTER REPLY OF

RESPONDENT NO. 6.

1. That the contents of para 1 of the Counter Reply need no comments.
2. That the contents of para 2 of the Counter Reply need no comments.
3. That the contents of para 3 of the Counter Reply are wholly misconceived hence denied emphatically while those contents of para 3 of the application are reiterated as correct.
4. That the contents of para 3(i) of the Counter Reply are emphatically denied as incorrect and misleading. It is further stated that the answering respondent had refused his regular promotion to the post of Head Clerk and consequently after his refusal the regular promotion was made in his place. If the offer made would have been

Mr. S. N. G. Gaurav

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ad hoc, naturally after the refusal of the answering respondent the promotion also would have made on ad hoc basis in his place. The Annexure No. R-I filed with the Counter ~~xx~~ Reply appears to be concocted and manufactured document. If this application was submitted by the answering Respondent then how he is having the same. Further document filed as Annexure-RI does not bear any signature ~~on~~ of receipt rather it has been marked as true copy under the signatures of the answering respondent himself.

The document filed as Annexure-RII to the Counter Reply clearly states that the answering respondent was promoted on regular basis because all the five posts of Assistant Superintendents were substantive and regular in nature which were down graded in the same capacity against which the promotions were made. Consequently all the promotions made against all these posts were regular and are also being treated as regular till now. It is wholly incorrect that the answering respondent was not in the knowledge of the contents of the order dated 4.3.1982 as alleged. If the answering respondent was not aware of the contents of the order dated 4.3.82 then how he made refusal vide Annexure-RI to the

Mr. Singh (S. Singh)

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ANNEXURE - 2. A.M.S.

NORTHERN RAILWAY

No. 758-E/E-3/1

Divisional Office,
Lucknow: Dt. 30.4.85.

NOTICE

Sub:- Selection for the post of Asstt. Supdt. 'E'
Grade Rs.550-750(RS) against cadre re-
structuring.

.....

As a result of restructuring of Ministerial
Cadre, selection for the post of Asstt. Supdt. 'E'
Gr. Rs.550-750(RS) was held as per modified procedure
of selection.

The following 13 persons, having been found
suitable are hereby placed on the Panel of Asstt.
Supdt. 'Establishment' Gr. Rs.550-750(RS):

1)	Sarl Saurabh Chaudhary	Offtg. AS 'E'
2)	" K.N. Verma	-do-
3)	" R.D. Bajpai	-do-
4)	" O.P. Sharma	-do-
5)	" R.K. Batra	-do-
6)	" Oukar Singh	-do- →
7)	R.C. Srivastava	-do-
8)	F.A. Siddiqui	-do-
9)	Sh. Bhagwati Dayal	H.C.
10)	" S.P. Sibal	Offtg. AS 'E'
11)	" S.P. Lal	-do-
12)	" Mangal Sen	-do-
13)	Mrs. Mery Helen Ekkar	-do- (ST).

The above panel is provisional.

Yashpal
30.4.85
for Divl. Personnel Officer,
Lucknow.

Parul

Ministry of Railways

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Counter Reply.

It is very much interesting to draw the attention of this Hon'ble Tribunal towards the contents of Annexure-RXV of the Counter Reply in which the answering respondent has stated that he was not aware of the fact that the promotion offered to him was whether ad hoc or regular. The answering Respondent has further stated that he has sent his refusal of promotion under the threat of his junior, Sri S.P. Lal who was promoted in place of the answering respondent after the acceptance of the refusal of the Respondent No.6. If the refusal was submitted by the answering respondent under certain threat, the answering respondent must had taken the appropriate legal action, but he did not bring this fact to the knowledge of the authorities concerned. This story also appears to be concocted and is not worthy of credence. All these representations have been made by the answering respondent after he was removed ^{from} the post of A.W.L.I. in the month of April 1985 where he was enjoying much more to the promotional post which was offered to him. As a matter of fact the Respondent No.6 was looking for better

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prospects in the cadre of A.W.L.I. where he made efforts for getting his confirmation and selection but when he failed in his efforts he tried to get the benefits in the ministerial cadre by twisting the facts, which is not acceptable.

The answering respondent cannot be allowed to get any benefit of controversial and paradoxical facts as on the one hand he states that he did not submit his refusal and whatever refusal he submitted was under the threat of one Sri S.P. Lal while on the other hand he wants to take advantage of the contents of his refusal, a copy of which has been claimed to be filed as Annexure-RI to the Counter Reply. The answering respondent has never challenged the acceptance of refusal and the regular promotion of his junior Sri S.P. Lal and others who were promoted against the said down graded post on regular basis and as such the Respondent No.6 is not entitled to any benefit on the ground that he considered the promotion offered to him to be ad hoc.

5. That the contents of para 3(ii) of the Counter Reply are denied as incorrect. It is further stated that the documents filed as

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Annexure-RIII to the Counter Reply itself makes it overt that the refusal submitted by the answering respondent was accepted and accordingly the Respondent No.6 was debarred from further promotion for a period of one year. During this period juniors to the respondent No.6 were also promoted on regular basis, the validity of which has never been challenged by the answering Respondent No.6.

It is worthwhile to state that the answering Respondent also raised this question to Permanent Negotiating Machinery through the Northern Railwaymen's Union in which it was found that the answering respondent was entitled for seniority after the persons who have been promoted during the period of one year in terms of the order dated 31.3.1982 contained in Annexure-RIII to the Counter Reply and Annexure-6 to the application. A true relevant copy of the decision dated 29.11.1985 taken in the said PNM meeting is being filed herewith as Annexure-D1 to this Rejoinder Reply.

6. That the contents of para 3(iii) of the Counter Reply are vehemently denied as incorrect, false and misleading. The answering respondent was very well aware of the fact that he was debarred from further promotion for a period of

mitts with regards

A151

one year and consequently juniors to the answering respondent were promoted during this period, not the validity of which has been challenged by the answering respondent at any occasion. If the answering respondent was not aware of the fact that he was debarred for further promotion for a period of one year he must have raised objections against the promotion of his juniors. The Railway Administration have always considered the matter by accepting the refusal of the Respondent No.6 which the Respondent No.6 ^{has} never disputed.

7. That the contents of para 4 of the Counter ~~Reply~~ need no comments.

8. That the contents of para 5 of the Counter Reply are denied as incorrect while those contents of para 5 of the application are reiterated as correct. The claim of the applicant is well within limitation.

9. That the contents of para 6.1 of the Counter Reply are denied as incorrect to the extent they are contrary to the contents of para 6.1 of the application which are reiterated as correct. The letter dated 22.5.1986 was issued inviting objections which was later on confirmed vide order dated 7.4.1988 Annexure-3 to

manuscript page 10

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the application and as such the application is well within the limitation. The Annexure-1 to the application gives benefits to the answering respondent on the basis of his seniority position determined vide letter dated 7.4.1988, Annexure-3 to the application and as such the challenge of this order is also within time.

10. That the contents of para 6.2 of the Counter Reply need no comments as the contents of para 6.2 of the application have not been disputed.

11. That the contents of para 6.3 of the Counter Reply are emphatically denied as incorrect and misleading. The answering respondent has not filed any document indicating that the said five posts were temporary before down grading or were made temporary after down grading. All these posts were regular and confirmed posts before and after down grading and consequently regular promotions have been made against these posts which are still continuing as such. None of the persons promoted against these posts have been treated to be ad hoc and hence there is no occasion to treat only one post as ad hoc against which juniors to Respondent No.6 have been promoted on regular basis after submission of refusal

With sincere regards

by the Respondent No. 6. The answering respondent has not challenged the validity of the promotion of his junior Sri S.P. Lal who was given regular promotion. If the ad hoc promotion would have been offered to the Respondent No. 6, Sri S.P. Lal would also have been promoted on ad hoc basis.

The answering respondent has wrongly stated that he was not aware of the contents of letter dated 4.3.1982. If it is true then how he submitted his refusal vide letter dated 12.3.1982 i.e. merely after a week vide document contained in Annexure-RI to the Counter Reply. The answering respondent has however narrated a fantastic story in his representation contained in Annexure-R.XV to the Counter Reply in which even refusal has been shown to be under threat. The Respondent No. 6 has made an abortive attempt to raise irrelevant facts just to mislead this Hon'ble Tribunal to defeat the interest of justice and as he has not come before the Tribunal with clean hands he is not entitled to be heard. Even the Railway Administration has also always treated all the promotions to be regular and it has very clearly been stated in the P.N.M. meeting that the promotion offered to the Respondent No. 6 was regular in nature which he had refused. A copy

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of the decision taken in the P.N.M. meeting has already been filed as Annexure-D1 to this Rejoinder Reply. The contents of the order dated A 31.7.1984 contained in Annexure-R.IV avowedly shows that all the persons including Sri S.P.Lal were promoted to the post of Head Clerk in regular capacity and hence they were promoted on ad hoc basis to the ^{new} ~~higher~~ post of Assistant Superintendent vide order dated 31.7.1984. The answering respondent has not challenged the validity of this order also and now it does not lie in the mouth of Respondent No. 6 to speak against the established facts.

12. That the contents of para 6.4 of the
Counter ~~xxxi~~ Reply are denied as incorrect while
those contents of para 6.4 of the application
are reiterated as correct.

13. That the contents of para 6.4(i) of the Counter Reply are wholly incorrect, baseless and misleading hence denied. It is further stated that a regular promotion was offered to the answering Respondent to the post of Head Clerk which he refused and was debarred for further promotion for a period of one year which he never disputed. The juniors promoted during this period of one year were also never disputed

Classification of

by the answering respondent. The document filed as Annexure-RV clearly shows that the employee who refuses promotion can be debarred from further promotion for a period of one year as has been indicated in the letter dated 31.3.1982 contained in Annexure-R.III to the Counter Reply and Annexure-6 to the application. The answering Respondent had refused his promotion accepting to be debarred from being promoted for a period of one year.

14. That the contents of para 6.4(ii) of the Counter Reply are wholly misconceived and incorrect hence denied. It is further stated that the order dated 31.3.1982 clearly states that the answering respondent has been debarred for a period of one year as he has refused promotion and in his place one Sri S.P. Lal has been promoted in regular capacity. The Annexure-R.VI to the Counter Reply is not applicable to the facts and circumstances of the instant case as this letter was issued on 18.7.1985 while the answering respondent refused promotion in the year 1982.

15. That the contents of para 6.4(iii) of the Counter Reply are incorrect and misleading hence denied. The answering Respondent was replied

vide letter dated 31.3.1982 in pursuance of his refusal letter dated 12.3.1982 contained in Annexure-RI to the Counter Reply and consequently Junior to the Respondent No.6 Sri S.P. Lal was promoted. The answering Respondent was well aware of all these facts and as such he neither disputed the promotion of his junior Sri S.P.Lal nor any other junior persons who were promoted during the period of ~~one~~ one year. If the answering Respondent was not aware of all these facts then he must have challenged his supersession by so many juniors. The Respondent No. 6 has himself waived of his right and is therefore barred by the principles of estoppel to raise the same question. The Annexure-R.VII to the Counter Reply has got no application to the facts of the instant case. These instructions were issued on 11.1.1988 while the answering Respondent refused his promotion in the year 1982.

16. That the contents of para 6.4(iv) of the Counter Reply are incorrect and misleading hence denied. As the answering Repondent was enjoying much more higher benefits to the benefits available on the post offered to him for promotion, the Respondent No.6 not only refused to accept his promotion but also did not challenge the

validity of the order dated 31.3.1982 and his supersession by several juniors. The Respondent No. 6 cannot raise this question at this stage as it is barred by the principles of of ~~accusation~~.

17. That the contents of para 6.4(v) of the Counter Reply are denied as stated. It is further stated that the contents of Annexure-R-III of the Counter Reply does not indicate that the refusal cannot be accepted by the competent authority. However, it has been provided that after accepting such refusal, the employee should be punished in accordance with the discipline and appeal rules treating his refusal to be refusal of duty. Accordingly the refusal of the Respondent No. 6 has been accepted and the action against the Respondent No. 6 must have been taken under the Discipline and Appeal Rules. Obviously the Respondent No. 6 is not a fit man to be promoted and to be shouldered with the higher responsibilities and is also not entitled to get any benefit of seniority as he is a man who did not care for duty and is responsible for ~~dis~~electing from duty in terms of the aforesaid letter, which is contradictory in nature.

18. That the contents of para 6.4(vi) of the Counter Reply are denied as incorrect, misleading

intentional

and misconceived. It is further stated that the answering respondent was still maintaining his lien in the parent cadre and as per the settled principles of law ^{and} whenever any promotion is to be made in the parent cadre all the persons who are having lien and are within the zone of eligibility to be considered are entitled to be considered and accordingly the name of the Respondent No. 6 was also considered and he was offered promotion to the post of Head Clerk which he refused. If the Respondent No. 6 would have been interested in ~~xxx~~ promotion he would have requested for repatriation. But as the Respondent No. 6 was not inclind to go back to the parent cadre and was endeavouring to be absorbed in the excadre hence he did not care for promotion in the parent cadre and waived off his right of promotion by refusing the offer of promotion.

Now the answering Respondent cannot take the advantage of his own wrong by misleading the facts. Annexure R.IX to the Counter Reply does not help the case of the answering Respondent in any manner whatsoever.

19. That the contents of para 6.5 of the Counter Reply are denied as incorrect to the extent they are contrary to the contents of para

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6.5 or the Application. A suitable reply has already been furnished while reply the contents of para 6.3 and 6.4 of the Counter Reply. Any way the answering respondent is making vigorous efforts to mislead this Hon'ble Tribunal by harping the same stringe that neither he submitted his willingness on his own nor he accepted the contents of order dated 31.3.1982, yet the answering respondent did not challenge the validity of promotion of his juniors. The answering respondent succeeded in circumventing the situation in the Railway Administration and thereby the words 'ad hoc' were brought into record for the first time in the year 1986-87. However, the Railway Administration failed to appreciate and consider the facts that all the promotions which were made against the said down graded post were 'ad hoc' regular in nature and all those persons who were so promoted are not only being treated as regularly promoted to but are also being given promotions to the post on this very basis. If the promotion offered to the Respondent No. 6 was ad hoc then the juniors to the Respondent No. 6 i.e. S.P.Lal should have also been promoted on ad hoc basis in place of the Respondent No. 6 after the refusal of the promotion by the Respondent No. 6.

20. That the contents of para 6.6 of the Counter Reply are denied as incorrect while those contents of para 6.6 of the Application are reiterated as correct.

21. That the contents of para 6.7 of the Counter Reply are denied as incorrect while those contents of para 6.7 of the application are reiterated as correct. It is further stated that the answering Respondent has not indicated as how the said vacancies were substantive in nature and who was holding lien against them. As a matter of fact all these promotions were regular in nature and the vacancies were regular permanent vacancies. On this very basis these persons have been given next promotion to the post of Assistant Superintendent. None of the persons so promoted to have neither been regularised or reverted which amply indicate that ~~now~~ there was no such requirement in as much as the said promotions were already regular in nature made in accordance with law.

22. That the contents of para 6.8 of the Counter Reply are denied to the extent they are contrary to the contents of para 6.8 of the Application which are reiterated as correct. It is further stated that the applicant was promoted to the
notis 5/6/1969

post of Head Clerk in regular capacity and only thereafter he was promoted to ad hoc post to the next higher post of Assistant Superintendent.

If the applicant would have been appointed on the post of Head Clerk on ad hoc basis there was no occasion to again promote him on ad hoc basis.

But as the petitioner was treated to be regular on the post of Head Clerk hence he was given promotion to the next post of Assistant Superintendent on ad hoc basis having been found eligible and meritorious.

23. That the contents of para 6.9 of the Counter Reply are emphatically denied as wrong and fabricated while those contents of para 6.9 of the application are reiterated as correct.

It is further stated that while working as senior clerk the Respondent No.6 was sent to work on ex-cadre post of A.W.L.I. while the Respondent No. 6 was working as A.W.L.I. in the year 1982 he was offered promotion to the post of Head Clerk which he refused. After this refusal no orders of promotion were ever passed in favour of the Respondent No.6 promoting him from the post of Senior Clerk to the Head Clerk and hence the answering Respondent was bound to be repatriated/

reverted to his substantive post of Senior Clerk.

It appears that the Respondent No. 6 has manipulated and succeeded in getting his posting orders on the post of Head Clerk consequent upon his repatriation /reversion from the post of A.W.L.I. which is wholly illegal and arbitrary. No competent authority has ever promoted the Respondent No. 6 hence there was absolutely no question to post him as Head Clerk. It is well settled principle of law that unless a person is promoted to a post he cannot be posted against the same. The answering Respondent may be directed to file the copy of the order of promotion by dint of which he has been promoted from the post of Senior Clerk to the post of Head Clerk. Annexure-R-X filed along with the Counter Reply of the Respondent No. 6 does not indicate the promotion of the Respondent No. 6 from the post of Senior Clerk to the post of Head Clerk.

24. That the contents of para 6.10 of the Counter Reply are denied as incorrect and misleading while those contents of para 6.10 of the Application are reiterated as correct. It is further stated that the answering Respondent No. 6 was never promoted from the post of Senior Clerk to the post of Head Clerk hence there was no

misunderstanding

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occasion to make any representation for determining his seniority position on the post of Head Clerk.

It appears that the answering Respondent has manipulated in the office of the Railway Administration and thereby raised a question of determination of his seniority on the post of Head Clerk and as the correct facts were never brought before the competent authority the answering Respondent is enjoying the benefit of the higher post without being duly promoted under the orders of any competent authority. The document filed as Annexure No. R.XI to the Counter Reply is appearing to be forged and concocted as how the Respondent No.6 made representation for determining his seniority on the post of Head Clerk while he was working as A.W.L.I.. It is further clarified that the Respondent No. 6 was debarred from promotion for a period of one year on 31.3.1982. Consequently there was no question of promoting the Respondent No.6 on 30.3.1983. Naturally the Respondent No.6 could have been promoted to the post of Head Clerk after 30.3.1983 on availability of the vacancies but he was not promoted and the Respondent No. 6 also did not request for his promotion as he was enjoying higher benefits on the post of AWLI. It was natural only in the year 1985

Ans. Shri G. S. Gaurav

when the Respondent No. 6 came back to his parent cadre on the post of Senior Clerk he started raising vital controversies. It was also discussed and decided by the Senior D.P.O. on 29.11.85 that by then the Respondent No. 6 could not be promoted to the post of Head Clerk. Even thereafter no orders of promotion were issued in favour of Respondent No. 6 promoting him to the post of Head Clerk. But surprisingly the Respondent No. 6 has not only enjoying the benefit of the post of Head Clerk but has also been promoted to the next higher post of Assistant Superintendent.

The copy of the decision dated 29.11.1985 has already been filed as Annexure-D1 to this Rejoinder Reply.

25. That the contents of para 6.11 of the Counter Reply are denied to the extent they are contrary to the contents of para 6.11 of the application which are reiterated as correct.

It is eventually clear from the order dated 29th November 1985, which has been admitted by the Respondent No. 6 that the orders of promotion were issued in favour of Respondent No. 6 promoting him to the post of Head Clerk by 29th November, 1985 hence when the order of promotion was passed in favour of the Respondent No. 6. Unless the

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Respondent No. 6 is promoted to the post of Head Clerk neither any question or determination of his seniority to the post of Head Clerk will arise nor there will be any question to consider his name for the next promotion to the post of Assistant Superintendent.

26. That reply to the contents of para 6.12 of the Counter Reply are denied to the extent they are contrary to the contents of para 6.12 of the application which are reiterated as correct.

27. That the contents of para 6.13 of the Counter Reply are denied as incorrect, false and misleading while those contents of para 6.13 of the application are reiterated as correct.

28. That the contents of para 6.14 of the Counter Reply are denied as incorrect while those contents of para 6.14 of the application are reiterated as correct.

29. That the contents of para 6.15 of the Counter Reply are denied as to the extent they are contrary to the contents of para 6.15 of the application. It is further stated that the Respondent No. 6 4 was not competent to take decision as the Respondent No. 4 had himself taken the decision in the matter. There is no

misunderstanding

provision under which the Respondent No. 4 was competent to pass any order on behalf of the higher authorities ~~in the name of seeking~~ truth. The orders must have been passed by the competent authority himself because the orders are ultimate decisions of the mind of the higher authorities. Of course the Respondent No. 4 could have submitted his comments regarding the facts to the Respondent No. 3 but in other case the orders must have been passed by the Respondent No. 3 himself which could have been communicated by any authority. The order dated 22.5.1986 contained in Annexure-4 to the application is without jurisdiction and null and void.

30. That the contents of para 6.16 of the Counter Affidavit are denied as incorrect while those contents of para 6.16 of the application are reiterated as correct. The applicant represented against the order contained in Annexure-4 to the application which was not accede to and subsequent orders were passed in favour of Respondent No. 6 against which the applicant is filed the instant application in accordance with law.

31. That the contents of para 6.17 of the Counter Reply are denied as incorrect while those content

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34. That the contents of para 6.20 of the Counter Reply are denied as incorrect while those contents of para 6.20 of the application are reiterated as correct. It is further stated that the said posts which were down grade were originally regular and permanent in nature and hence after being down graded their nature remain unchanged. Also against these posts the promotions were made on regular basis which are continuing as yet. On the basis of these regular promotions further promotions were also made to the post of Assistant Superintendent and therefore only in case of the Respondent No. 6 it cannot be presumed that he was offered an ad hoc promotion which he refused. It is further clarified that even regular promotion can be made against the temporary vacancies as has been well settled by the catena of decisions of the Hon'ble Supreme Court.

35. That the contents of para 6.21 of the Counter Reply are denied to the extent they are contrary to the contents of para 6.21 of the application which are reiterated as correct. It is further stated that the orders dated 7.4.1988 was wholly illegal, null and void in the eye of law and hence no right accrue to any one on

more than 100 words

while those contents of para 6.17 of the application are reiterated as correct. It has already been asserted that all promotions against the said posts were made on regular basis and they are still continuing. On the basis of these regular promotions the incumbents were further promoted to the next higher post. Only for the sake of Respondent No. 6 the promotion offered cannot be treated to be ad hoc.

32. That the contents of para 6.18 of the Counter Reply are denied as incorrect while those contents of para 6.18 of the application are reiterated as correct. Sri S.P. Lal junior to the Respondent No. 6 refused to accept the promotion and as such it cannot be presumed by any stretch of imagination that the offer of promotion made to the Respondent No. 6 was ad hoc. The Respondent No. 6 is not entitled to any benefit and it is barred by the law of estoppel and acquiescence.

33. That the contents of para 6.19 of the Counter Reply need no comments to the extent they are in consonance with the contents of para 6.19 of the application which have been admitted while rest of the contents of para under reply are denied as incorrect.

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34. That the contents of para 6.20 of the Counter Reply are denied as incorrect while those contents of para 6.20 of the application are reiterated as correct. It is further stated that the said posts which were ~~down~~ down grade were originally regular and permanent in nature and hence after being down graded their nature remain unchanged. Also against these posts the promotions were made on regular basis which are continuing as yet. On the basis of these regular promotions further promotions were also made to the post of Assistant Superintendent and therefore only in case of the Respondent No. 6 it cannot be presumed that he was offered an ad hoc promotion which he refused. It is further clarified that even regular promotion can be made against the temporary vacancies as has been well settled by the catena of decisions of the Hon'ble Supreme Court.

35. That the contents of para 6.21 of the Counter Reply are denied to the extent they are contrary to the contents of para 6.21 of the application which are reiterated as correct. It is further stated that the order dated 7.4.1988 was wholly illegal, null and void in the eye of law and hence no right accrue to any one on

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account of it.

36. That the contents of para 6.22 of the Counter Reply are denied to the extent they are contrary to the contents of para 6.22 of the application which are reiterated as correct.

The Respondent No. 6 was wrongly assigned seniority to a post to which he has never been promoted. The respondent No. 6 has not filed any order of promotion promoting him to the post of Head Clerk. When the Respondent No. 6 has not been promoted to the post of Head Clerk neither any question of promoting him further to the post of Assistant Superintendent will arise nor there will be any occasion to determine his seniority on the higher post.

37. That the contents of para 6.23 of the Counter Reply are denied as incorrect while those contents of para 6.23 of the application are reiterated as correct. A detailed description of facts have already been given in the earlier paragraphs of this Rejoinder Reply.

38. That the contents of para 6.24 of the Counter Reply are denied as incorrect while those contents of para 6.24 of the application are reiterated as correct. The impugned orders are wholly null and void as all the factual positions

have not been correctly discussed. It appears that the impugned orders have been passed as a result of manipulation of the Respondent No. 6 who successfully surmounted his refusal of promotion and has enjoyed the benefit of the post of AWLI on the one hand and got further benefits of the posts of Head Clerk and Assistant Superintendent on the other hand. The restoration of Respondent No. 6 seniority would mean to nullify the order dated 31.5.1982 which cannot be made in the eye of law.

39. That the contents of para 6.25 of the Counter Reply are denied as incorrect while those contents of para 6.27 of the application are reiterated as correct.

40. That the contents of para 6.26 of the Counter Reply are denied as incorrect while those contents of para 6.26 of the application are reiterated as correct.

41. That the contents of para 6.27 of the Counter Reply are denied as incorrect while those contents of para 6.27 of the application are reiterated as correct. The Respondent No. 6 is not entitled to the facts benefits of seniority on the post of Head Clerk and Assistant Superintendent, as he has not been promoted to the post

of Head Clerk after the year 1982 when he had refused his promotion.

42. That the contents of para 6.28 of the Counter Reply are denied as incorrect while those contents of para 6.28 of the application are reiterated as correct. It is further stated that the Respondent No. 6 has been wrongly assigned seniority on the post of Head Clerk as well as on the post of Assistant Superintendent for which he is not entitled to. The orders/passed contrary to the material available on record on presumption basis which is nothing but a sheer manipulation of Respondent No. 6.

43. That the contents of para 7 of the Counter Reply are denied as incorrect while those contents of para 7 of the application are reiterated as correct. Detailed statement of facts have already been made in para 7 of the application.

44. That the contents of para 8 of the Counter Reply need no comments.

45. That the contents of para 9 of the Counter Reply are denied as incorrect while those contents of para 9 of the application are reiterated as correct. The relief sought by the applicant should be given to him for which he virtually deserves. The grounds urged by the applicant

not satisfied

afe well ~~tenable~~ tenable in the eye of law
and the reply submitted ^{by} answering Respondent
are denied as incorrect to the extent they are
contrary to the grounds raised by the applicant.

46. That the contents of para 11 of the Counter
Reply need no comments.

47. That the contents of para 12 of the Counter
Reply need no comments.

VERIFICATION

I, Mata Prasad Srivastava, aged about 57
years, son of late Shitla Prasad - working as
Asstt. Superintendent (Estt) in the Divisional
Railway Manager's office, Northern Railway,
Lucknow, resident of T-3-D, Railway Colony, ^{Alam Nagar} Lucknow
do hereby verify that the contents of paras 1
to 47 of this Rejoinder Reply are true to my
personal knowledge and that I have not suppressed
any material fact.

Dated Lucknow
January 1990.

Mata Prasad Srivastava
Applicant.

Prakash
ADVOCATE.

ANNEXURE - D-1

OS 36/64th PNM / NRMU
APO (11) / S/VI

Shri OM Panthari : He is due promotion as Asst Supdt in Grade R. 550-750/AS as his juniors have been promoted on ad hoc basis vide notice No. 753/E-6/1 dt 18.9.85. Since an SF.5 is pending against him, he cannot be promoted as Asst Supdt till the case is finalised but he will be called for regular selection whenever it is arranged.

Shri SD Sharma : Shri S. Sharma is due promotion as Asst Supdt in scale R. 550-750/AS under restructuring w.e.f. 1.1.84 against resultant vacancies as his junior, Shri MP Srivastava has been promoted as Asst Supdt on ad hoc basis pending selection through this office letter No. 758/E-6/1 dt 18.9.85. Accordingly, Shri Sharma has also been allowed to officiate as Asst Supdt in the same letter.

Shri AC Misra : Shri AC Misra was promoted as Hd. Clerk grade R. 425-700/RS vide notice no. 753/E-6/1(r) dt 4.3.82 but he refused his promotion through his application dated 12.3.82. His refusal was accepted through notice no. 752/E-6/1(M&P)/III dt 31.3.82 with a clear stipulation that he will be debarred for promotion as Hd. Clerk for one year from the date of his refusal and persons junior to him promoted during this period will rank senior to him. The refusal period of Shri AC Misra expired on 11.3.83. During his refusal period, six persons junior to him viz. S/ Shri Mohd. Zuber, S/ Shrikha, S/ P. Sthana, S/ Ram Sukh, LC Joshi and U/ Kapoor were promoted as Hd. Clerk through this office notice No. 752/E-6/1(M&P) II dt. 17.2.83. As such, all these persons will rank senior to Shri AC Misra as Hd. Clerk in grade R. 425-700/RS.

(29)
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The next promotion to the post of Head Clerk was issued through this office notice No. 7520/4-6/1 (MPB) III dated 29.4.83 in which Shri JP Verma and Shri Ignihotri were promoted as Head Clerks who were junior to Shri AC Misra. Shri AC Misra should have been promoted at this stage as Head Clerk in grade R. 425-700/RS as his refusal period expired on 11.3.83.

Since he was ignored for the above promotion, he will reckon his seniority above Shri JP Verma and below Shri JM Kapoor as Head Clerk in grade R. 425-700/RS. Based on the above seniority position, he is due promotion as Asstt. Supdt in grade R. 650-750/RS on ad hoc basis along with Shri JM Kapoor and JP Verma who have been promoted as such through notice No. 7582/4-6/1 dt 18.9.85. Shri AC Misra ^{should} therefore be promoted as Asst Supdt in grade R. 650-750/RS on ad hoc basis with immediate effect and the seniority position ^{should} ~~will~~ be corrected accordingly.

Qillaband
ASLAM 'MAHMUD
Sr DPO
29.11.85

SE/VI

Shri Ignihotri
29.11.85

Shri Ignihotri