

Writ of habeas corpus ad subjiciendum

Science Fiction - 1970 - 0003

1940-1941. *Journal of the Royal Geographical Society*.

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Summary and Conclusions

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REFERENCES AND NOTES

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before DR(S) fixing a date
for hearing

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has been filed in the
record submitted
before DR(S) on 14.5.90
for further orders
4/5/90

14-5-90 DR

The case is adjourned to
17-9-90 before DR(S) for fixing
a date for hearing.

AC 14/5/90
DR(S)

17-9-90 DR

Rejoinder filed on 26.4.90 by Sri NK Nair
Counsel for applicant. Reply filed on 6-12-89
by Sri KCSinha Counsel for respn. Pleadings
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Report to 20.1.93

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

J.A. NO. 963 OF 1988 199 (L)

J.A. NO. 199 (TL)

Date of Detention: 29.1.93

Smt. H.I. Masih Petitioner.

Advocate for the Petitioner(s).

V E R S U S

Union of India & Others Respondent.

Advocate for the Respondents

CHORAN

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

Hon'ble Mr. K. Obayya, Member (A)

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

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Vice-Chairman / Member

ORDER SHEET

(A)

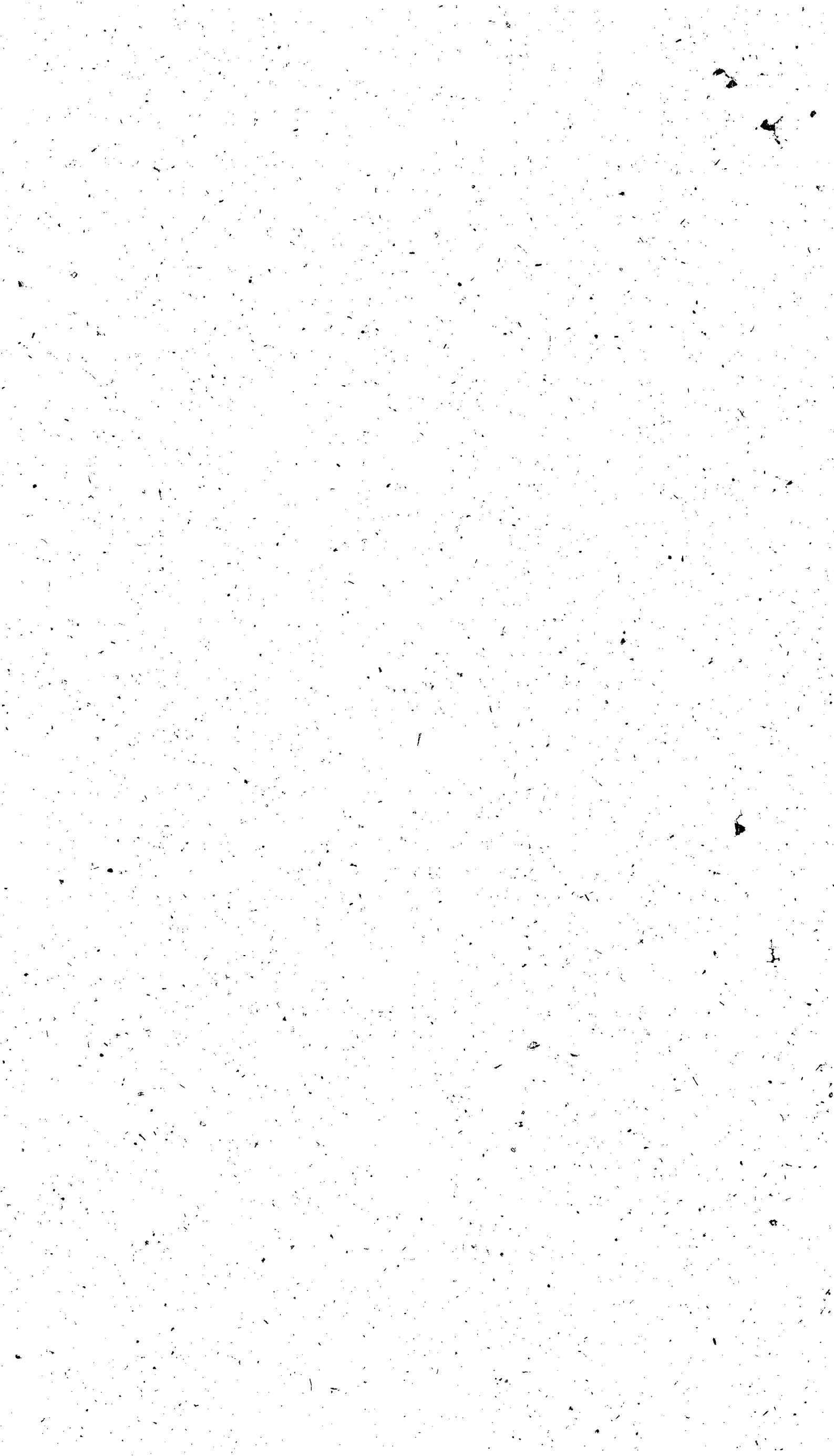
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

Reg. O. A. No. 963 of 1988

Vs.

Sl. No. of order	Date of order	ORDERS WITH SIGNATURE	Office Notes as to action (if any) taken on order
	13-9-88	<p><u>OIR.</u></p> <p>Sir, Received Notices with paper today. Notices for all Respondents books.</p> <p>R. P. S. M. Ad. for Sri N. B. S. A. Sr. S. C.</p> <p>14/9/88</p>	<p>Notices for all Respondents are issued for reply fixed 12/10/88. on 13/9/88.</p> <p><u>RSS</u> <u>13/9/88</u></p>
	9.12.88	<p><u>OK</u></p> <p>No one appears for reps. counter may be fixed by 21.2.88</p>	<p><u>OK</u></p>
	21.2.88	<p><u>OK</u></p> <p>On the request of reps. counter may be fixed by 17.4.88</p>	<p><u>OK</u></p>
	17.4.88	<p><u>OK</u></p> <p>On request, counter may be fixed by 03.7.88</p>	<p><u>OK</u></p>



(A2) 963/88

8.1.90 the case is adj to 14.5.90
before DR(S) fixing a date
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Counters and rejoinders
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4/5/90

14-5-90 DR

The case is adjourned to
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a date for hearing.

AC
14/5/90
DR(S)

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Rejoinder filed on 26-4-90 by Sri NK Nair
Counsel for applicant. Reply filed on 6-12-89
by Sri KCSinha Counsel for respn. Pleadings
are complete. Keep in the fine die last.

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CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 963 of 1988 (L)

Versus

Union of India & Others Respondents

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

Hon'ble Mr. K. Obayya, Member (A)

(By Hon'ble Mr. Mustice U.C.Srivastava, VC)

The applicant who is Female Attendant in the C.G.H.S. Dispensary, Gandhi Gram Kanpur, under the Chief Medical Officer, C.G.H.S., Kanpur, has approached this tribunal raising her voice against the seniority list which was prepared and has prayed that the respondents may be directed to restore her original seniority at serial no. 1 of the seniority list of Female Attendants, which was published on 5/7.9.1977 by amending the subsequent seniority list, served on the applicant on 15.5.1987 in which her name was placed at serial No. 10. A seniority list of employees in the grade of Female Attendant was prepared on 1.8.1977, in the said list the name of the applicant was shown at serial no. 1. According to the applicant, the said seniority list became final and it was correctly prepared in as much as she joined the said service earlier than any other Female Attendants. Subsequently, the seniority list was amended and her name was wrongly placed at serial no. 11 of the said seniority list i.e. below those who were below earlier to her in the said seniority list. Consequently, she made the representation. The only result of her representation was that her name was placed at serial No. 10 instead of No. 11 vide Order dated 23/28.6.1988 and feeling aggrieved

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against the same, she has approached the tribunal.

2. The respondents in the return have stated that the applicants' seniority has been correctly fixed. It has been stated that according to the instruction issued by the Ministry of Home Affairs vide memo dated 22.12.1959, the relative seniority of all direct recruits is to be determined by the order of merit in which they are selected on the recommendations of the U.P.S.C. or other selecting authority persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection. Where persons recruited initially on a temporary basis are confirmed subsequently in an order different from the orders of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit. Thus, according to the respondents it is because of the subsequent confirmation of the applicant, her seniority was changed. It has also been stated that the D.P.C. met and considered every case on merits and all others were recommended for confirmation w.e.f. 25.11.1981 except the applicant because of certain adverse remarks against her. She was confirmed w.e.f. 13.8.1985 and that's why her place in the seniority list has been lower down. The position thus, is clear that the applicant was senior to all these persons in the year 1977 and this position continued for about 9 to 10 years and the D.P.C. met for confirmation and the result of confirmation, the applicant's seniority was reversed and she was made junior to her junior. Thus, the seniority has been made dependent on their confirmation. No such rules have been pointed out from which it could be said that the seniority is dependent on confirmation only. The reference to O.M. No. 1959 in this behalf is not correct.

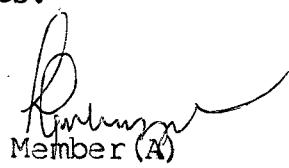
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as the O.M. itself does not state that the seniority is to be fixed in this manner. This O.M. was later on interpreted in the case of Union of India Vs. M. Ravi Verma 1972(1) SCC 379 relying on the said case the Supreme Court in the case of G.P. Sharma Vs. Union of India 1989(supplement) (1) SCC page 244 held that the seniority based on length of continuous service prevailing for long under the Government memorandum, but the subsequently, rules were changed and it was made dependent on confirmation. It was observed that the confirmation will be only prospective effect and not retrospective effect, meaning thereby that those who have already earned a particular seniority that the seniority will not be changed or reversed. In this connection, reference may also be made to the case of Shiv Kumar Sharma Vs. Haryana Electricity Board, A.I.R. 1958, Supreme Court page 1673, wherein the confirmation of the applicant was delayed because of infliction of the minor penalty of stoppage of increment without any future effect during probationary period, he was later on confirmed having completed the probation while juniors were confirmed earlier and the seniority list which was prepared, he was placed below those who were confirmed earlier. It was held that this was arbitrary ^{and} resulted in infliction of punishment and the seniority list was set aside and the fresh seniority list was prepared. The same thing appears here. Because of the ~~minor~~ penalty the applicant was not confirmed earlier. In the absence of any rules that the seniority position which stood for 9 or 10 years, it can be reversed because of a subsequent confirmation, the reversion of seniority, the applicant was not warranted by any law. Accordingly, this application is allowed and the respondents are directed to correct the seniority list and restore back the applicant

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to her original position of seniority i.e. after 1977
making her senior to her juniors and let it be done as
early as possible, latest within a period of two months
from the date of communication of this order. No order
as to costs.


Member (A)


Vice-Chairman

Lucknow Dated: 29.1.1993.

(RKA)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH.

Registration No. 963 of 1988.

Smt. H.I. Masih Applicant.

Versus

Union of India and Others Respondents.

I N D E X

Sl. No.	Description of document relied upon	Date of document	Annexure No.	Page No.
1.	Application			1-20
2.	Call Letter dated 10.4.72 issued to the applicant for interview on 24.4.72.	10.4.72	A-1	21
3.	Letter dated 23.3.73, regarding appointment of the applicant as Female Attendant with effect from 14.6.72, issued on behalf of the Deputy Director, CGHS, New Delhi.	23.3.73	A-2	22
4.	Memorandum dated 5/7-9-77 issued by the CMU/CGHS, Kanpur, circulating the Final Seniority List of Female Attendants of the CGHS, Kanpur, showing the name of the applicant at Serial No. 1.	5/7-9-77	A-3	23-24
5.	Seniority List issued on 15.5.87, showing the name of the applicant at Serial No. 11.	15.5.87	A-4	25
6.	Representation of the applicant dt. 22.5.87, addressed to CMU, CGHS, Kanpur.	22.5.87	A-5	26-27

Smt. H. I. Masih

(ii)

Sl. No.	Description of document relied upon.	Date of Document	Annexure No.	Page No.
7.	Reminder Representation of the applicant, addressed to the CMU, CGHS, Kanpur.	25.6.87	A-6	28-29
8.	Reminder Representation of the applicant, addressed to the CMU, CGHS, Kanpur.	17.8.87	A-7	30-31
9.	Representation of the applicant dated 21.8.87, addressed to the Director, CGHS, New Delhi.	21.8.87	A-8	32
10.	Reminder Representation of the applicant dated 15.3.88, addressed to the Director, CGHS, New Delhi.	15.3.88	A-9	33
11.	Memorandum dated 25.4.88 issued by the CMU, CGHS, Kanpur.	25.4.88	A-10	34
12.	Memorandum of the CMU, CGHS, Kanpur dt. 28.6.88	28.6.88	A-11	35
13.	Vakalatnama			36
14.	Bank Draft			

Smt. H. I. Mouthy

SIGNATURE OF THE APPLICANT

N.K. NAIR,
Advocate

N.K. Nair
ADVOCATE,

KANPUR.

FOR USE IN TRIBUNAL'S OFFICE:

Date of Filing : 8-8-1988.

Registration No. :

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SIGNATURE
for REGISTRAR.

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Central Administrative Tribunal
Additional Bench at Allahabad
Date of Filing 12-5-89
Date of Receipt 12-5-89
by Post

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH

Registration No. of 1988.

BETWEEN

Smt. H.I. Masih. Applicant.

AND

Union of India and Others. Respondents.

DETAILS OF APPLICATION:

1- Particulars of the Applicant:

(i) Name of the Applicant : Mrs. H.I. Masih.
(ii) Name of the Husband : Inayat Masih.
(iii) Age of the Applicant : 44 years.
(iv) Designation and Particulars of Office in which employed. : Female Attendant, CGHS, Dispensary, Gandhi Gram, Kanpur.
(v) Office Address. : As in para 1(iv) above.
(vi) Address for Service of Notices. : Qr. No. 58/4, MES Colony, Behind DMSRDE, G.T. Road, Shujatganj, Kanpur.

2- Particulars of the Respondents:

Names, Designations and Particulars of Offices, Office Addresses and Addresses for service of Notices.

: (1) Union of India, Through the Secretary, Ministry of Health, Government of India, New Delhi.
(2) Director (CGHS), Directorate General of Health Services, Nirman Bhawan, New Delhi.

Smt. H. I. Masih

(contd....2)

(2)

(3) Chief Medical Officer,
CGHS,
117/617, Pandu Nagar,
Kanpur.

3- Particulars of the Order against which Application is Made:

The application is against the following Orders/in respect of the following matters:

A Seniority List of Employees in the Grade of Female Attendant under CGHS, Kanpur, as on 1.8.1977 was prepared and circulated among the employees, vide Memorandum No. 2-152/76-CGHS/KNP/4350-1158 dated 5th/7th September, 1977 was prepared and circulated among the employees, vide Memorandum No. 2-152/76-CGHS/KNP/4350-1158 dated 5th/7th September, 1977 (Annexure A-3), issued by the Chief Medical Officer, Central Government Health Scheme, Kanpur. It was mentioned that Representation/Objection, if any, regarding the seniority in respect of the individuals should be submitted within a fortnight, failing which, it was mentioned that the said Seniority List would be treated as final. The name of the applicant was placed at Serial No. 1 of the said Seniority List of Female Attendants, CGHS, Kanpur, reckoning the date of seniority of all the employees of the said Seniority List with effect from the respective dates of their initial appointment. The said Seniority List became final and the applicant was rightly placed at Serial No. 1, the applicant having been appointed earlier than the other incumbents of the Seniority List. Subsequently, however, another Seniority List of female Attendants under the CGHS, Kanpur,

Smt. H. I. Mani

(contd.....3)

(3)

purporting to have been up to March, 1987 and numbered as D-2-26/87-CGHS/KNP/374-86 (Annexure A-4) was circulated by the Chief Medical Officer, CGHS, Kanpur, in May, 1987 and the name of the applicant was illegally and wrongfully placed at Serial No.11 of the said Seniority List, with the names of all other persons, who were placed below the name of the applicant in the earlier Seniority List dated 1-8-1978, having been placed above the name of the applicant, with the names of persons appointed long after the appointment of the applicant also placed above the name of the applicant. The applicant made representations against the illegal and wrongful lowering of the seniority of the applicant and thereupon, by a Memorandum No. D-2-26/87-CGHS/KNP/35-H dated 19/25-4-1988, issued by the Chief Medical Officer, CGHS, Kanpur (Annexure A-10), issued by the Chief Medical Officer, CGHS, Kanpur, ^{was informed} informed the applicant that the matter had been put up before the DPC, which had subsequently recommended that the alleged date of confirmation of the applicant has been changed from 13.8.1985 to 25.11.1982 and thereby the Serial No. of the applicant in the Seniority List has been changed to 10 from 11. In response to the subsequent representation made by the applicant, the applicant has again been informed by a Memorandum No. 2-26/87/CGHS/KNP/1732 dated 23/28-6-88 (Annexure A-11), issued by the Chief Medical Officer, CGHS, Kanpur, that the name of the applicant in the Seniority List of the Female Attendants of the CGHS, Kanpur, will stand at Serial No. 10 only. Aggrieved by the said orders, this Application is being filed,

H. T. Mosh

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(4)

seeking a direction to the respondents for restoration of the Original Seniority of the applicant in the Seniority List of the Female Attendants in the CGHS, Kanpur.

4- Jurisdiction of the Tribunal:

The applicant declares that the subject matter in respect of which this application has been moved and the Orders against which the applicant 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 Tribunals Act, 1985.

6- FACTS OF THE CASE:

The facts of the case are given below:

(1) That the applicant is presently working as Female Attendant in the CGHS Dispensary, Gandhi Gram, Kanpur, under the Chief Medical Officer, CGHS, Kanpur.

H. I. Mahi

(contd....5)

(5)

(2) That the applicant had passed VIII Class (Middle School Examination) and was registered with the Employment Exchange, Kanpur, in the year 1972. The applicant was sponsored by the Employment Exchange, Kanpur, for appointment to the post of Female Attendant in the CGHS Scheme, Kanpur, in the then scale of pay of Rs. 80-1-85-2-95-C.B-3-110, with the usual allowances. By a Memorandum No. 2-70/71-CGHS.II dated 10.4.1972, issued for and on behalf of the Director (CGHS), New Delhi, the applicant was directed to present herself for an interview at the Office of the CGHS, Kanpur, on 24.4.1972, along with all certificates and testimonials in proof of age/date of birth, educational qualification and experience, together with the attested copies thereof. The true copy of the said Memorandum dated 10.4.1972 is annexed herewith as Annexure A-1.

(3) That the applicant was selected at the interview held on 24.4.1972 for the post of Female Attendant in the CGHS, Kanpur and was appointed as Family Attendant in the CGHS Dispensary, Juhu, Kanpur, with effect from the forenoon of 14.6.1972. The applicant accordingly joined duty as Female Attendant. The applicant was issued an Office Order No. 26, Pro: No. 3-13/72/CGHS/KNP/1196-1203 dated 23.3.1973, issued by the Deputy Assistant Director, Central Government Health Scheme, Kanpur, for and on behalf of the Deputy Director (ADMW II), CGHS, New Delhi, mentioning that the applicant had been appointed as Family Attendant at a pay of Rs. 80/-

H. T. Mahi

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(6)

per month in the scale of pay of Rs. 80-1-85-2-95-E.B.-3-110, in the Office of the Central Government Health Scheme, Kanpur, in temporary capacity with effect from the forenoon of 14.6.1972. The said Appointment Letter was shown to have been issued with reference to the Letter No. 2-20/72-CGHS-II, dated 11.9.72, issued by the Director, Central Government Health Scheme, Nirman Bhawan, New Delhi.

The true copy of the said Office Order is annexed herewith as Annexure A-2.

ANNEXURE A-2

(4) That the applicant continued to perform duty satisfactorily, without any complaint whatsoever. Under the provisions of the C.C.S. (Temporary Services) Rules, 1964, the respondents were required to declare the applicant quasi-permanent on completion of three years' satisfactory service and to intimate the applicant accordingly. The applicant was, however, not informed that she has not been declared Q.P.

(5) That among the 5 candidates, who were selected along with the applicant at the interview held on 24.4.1972, the applicant joined service on 14.6.1972 (forenoon) and all others joined subsequently on different dates. Thus, the applicant remained the Seniormost Female Attendant among the first Batch of Family Attendants selected for the CGHS, Kanpur, on 24.4.1972.

H. I. Maini

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(7)

(6) That vide a Memorandum No. 2-152/76-CGHS/KNP/4350-1158, dated 5th/7th September, 1977, issued by the Chief Medical Officer, CGHS, Kanpur, a Seniority List showing the position of seniority in respect of Class-III and Class-IV staff, working under the CGHS, Kanpur, including the Family Attendants in Class-IV, was circulated among the concerned staff for information. Representations, if any, regarding the seniority in respect of the individuals concerned were required to be submitted to the Chief Medical Officer, CGHS, Kanpur, within a fortnight of the publication of the Seniority List and it was mentioned that in the absence of such representations, the seniority list would be treated as final. The concerned individuals, including all the Family Attendants of the Seniority List, were duly notified about the Seniority List. The true copy of the said Memorandum containing the Seniority List, is annexed herewith as Annexure A-3. The applicant's name appeared at Serial No. 1 of the said Seniority List of the then existing seven Family Attendants of the CGHS, Kanpur and the seniority of all the candidates was reckoned with effect from the respective dates of initial appointments/joining duty, with the date of joining of the applicant having remained the earliest one, among all the Family Attendants.

H. T. Mohit

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(AIV)

(8)

(7) That the said Seniority List became final and the applicant remained the Seniormost among the Family Attendants of the CGHS, Kanpur. There was no cause or occasion for changing the seniority of the applicant and the applicant was never issued any Show Cause Notice to the effect that the Seniority of the applicant was to be changed, adversely affecting the seniority assigned to the applicant. The respondents were not entitled to effect any changes in the Seniority position of the applicant in the cadre of Family Attendant.

(8) That the applicant continued to remain the Seniormost Family Attendant of the CGHS, Kanpur.

(9) That the applicant was surprised to receive on 15.5.1987 a different Seniority List of the Family Attendants under the CGHS, Kanpur, purporting to have been prepared up to March, 1987, issued by the Chief Medical Officer, CGHS, Kanpur and bearing No. D-2-26/87/CGHS/KNP/374-86, wherein the applicant's name was shown at Serial No. 11, with 10 other Family Attendants, including those Family Attendants shown below the name of the applicant in the finalised Seniority List dated 1.8.1977 as well as 4 others, who were appointed subsequently, having been placed above the name of the applicant. The date from which the seniority was to be counted was not, however, changed and the same was shown as 14.6.1972 in the

H. I. Malik

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(9)

case of the applicant, with the dates of counting of seniority of the other incumbents, above the the name of the applicant in the said new Seniority List having been shown as dates later than the date of counting of the seniority of the applicant. There was no justification whatsoever for lowering the seniority of the applicant to the 11th position from the 1st position and the respondents have not issued any show cause notice to the applicant before altering the seniority of the applicant to the detriment of the applicant and placing the names of the juniors of the applicant in the Seniority List, above the name of the applicant. The respondents have illegally and wrongfully lowered the seniority of the applicant, which resulted in unwarranted adverse effect on the chances of promotion, Selection Grade etc., to the applicant. The true copy of the said Revised Seniority List is annexed herewith as Annexure A-4.

ANNEXURE A-4
The Chief Medical Officer, CGHS, Kanpur, was not competent to down-grade the applicant in the Seniority List, in the manner in which it was done and the Seniority List in question was illegal, arbitrary, mala fide, unwarranted, untenable, null and void.

(11) That being aggrieved by the said illegal and wrongful action of the respondent No. 3, the applicant submitted a representation dated 22.5.1987, seeking rectification of the mistake committed in the Seniority List and

H. T. Motilal

(contd....10)

(10)

requesting to place the applicant at serial No. 1. The true copy of the said representation is annexed herewith as Annexure A-5. The said representation was followed by further representations dated 25.6.1987 and 17.8.1987, all addressed to the Chief Medical Officer, CGHS, Kanpur. The true copies of the said reminder representations are annexed herewith as Annexures A-6 and A-7 respectively.

ANNEXURES A-6
A-7

(12) That having received no reply to the said representations, the applicant submitted a representation, addressed to the Director, CGHS, New Delhi on 21.8.1987, followed by another reminder Representation dated 15.3.1988, addressed to the Director, CGHS, New Delhi. The true copies of the said representations are annexed herewith as Annexures A-8 and A-9 respectively.

ANNEXURES A-8
A-9

(13) That the applicant was in receipt of a Memorandum No. 2-26/87/CGHS/KNP/35-H, dated 19/25-4-1988, issued by the Chief Medical Officer, CGHS, Kanpur, purporting to have been in reply to the representation of the applicant dated 15.3.1988. It was informed that the Departmental Promotion Committee had allegedly prepared the Seniority List, wherein the name of the applicant was mentioned at Serial-11 and that the matter was placed before the DPC for reconsideration and the DPC had subsequently revised its recommendations and the name of the

H. L. Mah

(contd....11)

(11)

applicant had accordingly been placed at Serial No. 10 of the Seniority List, in place of Serial No. 11. The true copy of the said reply is annexed herewith as Annexure A-10.

ANNEXURE A-10

(14) That there was no question of the alleged Departmental Promotion Committee revising the Finalised Seniority List, published in the year 1977 and placing the name of the applicant below the juniors of the applicant in the so-called revised Seniority List. The DPC could not have changed the seniority position of the applicant in the manner in which it is purported to have done. In any case, before adversely affecting the seniority of the applicant, the respondents ought to have given opportunity to the applicant to contest and challenge such adverse action and in the absence of any show cause notice, the lowering of the Seniority of the applicant, which amounted to an illegal and wrongful punishment, adversely affecting the prospects of Selection Grade, Promotion etc., resulted in undue loss and harassment to the applicant and the same is illegal, mala fide, wrongful, without jurisdiction, null and void and not binding on the applicant.

(15) That the Chief Medical Officer or the so-called DPC, were not competent to decide the representation of the applicant dated 15.3.88, addressed to the Director, CGHS, New Delhi.

A. V. Morley

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(12)

The Director, CGHS, New Delhi, ought to have considered and decide the representation of the applicant and communicated his decision to the applicant.

(16) That being aggrieved by the said Memorandum dated 25.4.1988, issued by the Chief Medical Officer, CGHS, Kanpur, the applicant resubmitted the same representation dated 15.3.1988, addressed to the Director, CGHS, New Delhi.

(17) That the said representation was also illegally and wrongfully disposed off by the Chief Medical Officer, CGHS, Kanpur and the Director, CGHS, New Delhi, did not consider and pass any order on the representation, nor communicated any decision to the applicant. Again, by a Memorandum No. D-2-26/87/CGHS/KNP/1732 dated 23/28-6-1988, issued by the Chief Medical Officer, CGHS, Kanpur, the same contentions made in the earlier Memorandum dated 25.4.1988 were reiterated and communicated to the applicant. The said decision was also illegal, mala fide, wrongful, without jurisdiction and null and void. The true copy of the said Memorandum dated 28.6.1988 is annexed herewith as Annexure A-11.

(18) That the action of the respondents in changing the seniority position of the applicant among the Family Attendants of the

H. I. Mally

(contd.....13)

(13)

CGHS, Kanpur, from Serial No. 1, to Serial No. 10, is illegal, wrongful, mala fide, arbitrary and untenable, without jurisdiction, null and void and not binding on the applicant and the respondents are liable to be directed to restore the seniority of the applicant by placing the name of the applicant to the Original position at Serial No. 1 of the Seniority List of Female Attendants of the CGHS, Kanpur.

7- DETAILS OF THE REMEDIES EXHAUSTED:

The applicant declares that she has availed of all the remedies available to her under the relevant Service Rules etc.

Having been aggrieved by the illegal and wrongful lowering of the seniority position of the applicant in the Seniority List of the Female Attendants of the CGHS, Kanpur, as communicated vide Annexure A-4, by changing the seniority position of the applicant from Serial No. 1, as shown in Annexure A-3, the applicant submitted Representations, Annexures A-5, A-6, and A-7, addressed to the Chief Medical Officer, CGHS, Kanpur, on 22.5.1987, 25.6.1987 and 17.8.1987 respectively. Having received no reply, the applicant submitted another Representation dated 21.8.1987, addressed to the Director, CGHS (Annexure A-8), which was followed

H. T. Majid (contd...14)

by a Reminder dated 15.3.1988, addressed to the Director, CGHS, New Delhi (Annexure A-9). By the Memorandum dated 25.4.1988 (Annexure A-10), issued by the Chief Medical Officer, CGHS, Kanpur, the Representation addressed to the Director, CGHS, New Delhi was wrongfully disposed off by the Chief Medical Officer, CGHS, Kanpur and ~~thereby~~ thereupon the applicant resubmitted the Representation, addressed to the Director, CGHS, New Delhi again on 19.5.1988. By a reply dated 28.6.1988 (Annexure A-11), the said Representation of the applicant was also illegally and wrongfully disposed off by the Chief Medical Officer, ~~Kanpur~~, CGHS, Kanpur, without considering the genuine request made by the applicant in ~~the~~ her representations.

8- MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT:

The applicant further declares that she 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, nor any such application, writ petition or suit is pending before any of them.

9- RELIEFS SOUGHT:

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

H. I. Masih (contd....15)

(15)

The respondents be directed to restore the Original Seniority of the applicant at Serial No. 1 of the Seniority List of Female Attendants under the CGHS, Kanpur, published vide Memorandum No. 2-152/76-CGHS/KNP/4350-1158 dated 5/7-9-1977, by amending the subsequent Seniority List, served on the applicant on 15.5.1987, mentioning the name of the applicant at Serial No. 10, as communicated to the applicant vide Memoranda of the Chief Medical Officer, CGHS, Kanpur, dated 25.4.1988 and 28.6.1988 respectively, with entitlement to the applicant to all benefits arising therefrom, including Selection Grade, further promotion etc.

The Grounds for the relief and the legal provisions relied upon have already been mentioned in para 6 above.

10- INTERIM ORDER, IF ANY, PRAYED FOR:

Pending final decision of the application, the applicant seeks to issue of the following interim Order:

The respondents be restrained from giving the benefits of selection grade in the cadre of Female Attendants, or promotion to any higher cadre to any other Female Attendant under the CGHS, Kanpur, superseding the claim of the applicant to such benefits as the Seniormost Female Attendant of the CGHS, Kanpur.

H. I. Maiti (contd....16)

G R O U N D S

(i) Because the applicant was rightly adjudged the seniormost Female Attendant under the CGHS, Kanpur and her name was placed at Serial No. 1 of the Seniority List of Female Attendants of the CGHS, Kanpur, vide Memorandum No. 2-152/76/CGHS/KNP/4350-1158 dated 5/7-9-1977 and the Seniority List had become final.

(ii) Because the respondents could not have made any changes in the Finalised Seniority List and lowered the seniority position of the applicant, without issuing any Show Cause Notice to the applicant and without having afforded opportunity to the applicant to contest such adverse action.

(iii) Because the respondents have illegally and wrongfully lowered the seniority of the applicant in total disregard of actual seniority of the applicant, reckoned with reference to the date of joining and which was finalised several years ago, in 1977.

(iv) Because the Chief Medical Officer, CGHS, Kanpur, was not competent to disturb and alter the seniority of the applicant, to the detriment of the applicant.

14. 1. Masih (contd.....17)

(17)

(v) Because the Departmental Promotion Committee had no jurisdiction or authority to disturb the said seniority of the Female Attendants and to relegate the applicant, who was at Serial No. 1 of the Seniority List, to any lower position.

(vi) Because the alleged criteria adopted by the DPC was illegal and arbitrary and has got no sanction of any law or Rules.

(vii) Because by virtue of the earlier date of joining also, the applicant remained the seniormost Female Attendant under the CGHS, Kanpur, with all other Female Attendants having joined the posts later than the applicant.

(viii) Because the respondents who have reckoned/ counted the seniority of the Female Attendants with effect from the date of joining, could not have disturbed the seniority position of the applicant given by such reckoning at Serial No. 1.

(ix) Because the Representations of the applicant were not considered and disposed off by the competent authority.

(x) Because the applicant as the Seniormost Female Attendant of the CGHS, Kanpur,

H. I. Mohd. (contd.....18)

(19)

of granting Selection Grade, Promotions etc., ^{by granting the same} to the juniors of the applicant, the applicant will be put to suffer undue loss, harassment, humiliation and hardship, which cannot be compensated in terms of money alone.

(xv) Because the applicant has got no other efficacious remedy available to her, except to file the present application and to seek an urgent interim order.

(xvi) Because the respondents are threatening to grant the benefits of Selection Grade, Promotions etc., to the Juniors of the applicants and in that case the very purpose of filing the present case will be frustrated.

(xvii) Because the applicant has made out a very strong *prima-facie* case for grant of interim stay.

11- PARTICULARS OF BANK DRAFT IN RESPECT OF THE APPLICATION FEE :

(i) Name of the Bank : SBI J M S R D E Br.
on which drawn : Kampur

(ii) Demand Draft No. : A 1822-41 ac-4.8.88
25

H I.Mohd. (contd.....20)

(18)

remained entitled to Selection Grade and further promotions, in preference to all her juniors, who have joined the post after the the applicant and the respondents are not entitled to supersede the applicant in the matter of the benefits of Selection Grade, Promotion etc.

(xi) Because ^{after} ~~by~~ the correct seniority of the applicant ^{by} reckoning of the illegal, wrongful and arbitrary changes effected in the seniority position, the respondents are seeking to grant benefits of Selection Grade, further promotions etc., to the incumbents who are actually juniors to the applicants.

(xii) Because the illegal and mala fide action of the respondents amounts to punishment, which cannot be imposed on the applicant, without taking recourse to appropriate proceedings under the CCS (CC & A) Rules, 1965.

(xiii) Because the Director, CGHS, New Delhi, has not considered and passed any orders and communicated the same to the applicant on the various representations, submitted by the applicant.

(xiv) Because, in case the respondents succeed in superseding the applicant in the matter

H. T. Mohi (contd....19)

(A25)

(19)

of granting Selection Grade, Promotions etc., ~~by granting the same~~ to the Juniors of the applicant, the applicant will be put to suffer undue loss, harassment, humiliation and hardship, which cannot be compensated in terms of money alone.

(xv) Because the applicant has got no other efficacious remedy available to her, except to file the present application and to seek an urgent interim order.

(xvi) Because the respondents are threatening to grant the benefits of Selection Grade, Promotions etc., to the Juniors of the applicants and in that case the very purpose of filing the present case will be frustrated.

(xvii) Because the applicant has made out a very strong *prima-facie* case for grant of interim stay.

11- PARTICULARS OF BANK DRAFT IN RESPECT OF THE APPLICATION FEE:

(i) Name of the Bank : S A S J M S R D E Bn.
on which drawn. Kanpur

(ii) Demand Draft No. : A 182241 dt-4.8.88
25

H. I. Mohit (contd. 20)

A2⁶

(20)

12- LIST OF ENCLOSURES:

A List of Enclosures, being the documents relied upon by the applicant have been mentioned at Serial Nos. 2 to 12 of the INDEX attached to this Application.

VERIFICATION.

I, Smt. H. I. Masih, wife of Shri Inayat Masih, aged 44 years, working as Female Attendant in the CGHS Dispensary, Kanpur, resident of Qr. No. 58/4, MES Colony, Shujatganj, G.T. Road, Kanpur, do hereby verify that the contents of paras 1, 2, 3, partly 4, partly 5, partly 6, partly 7, 8, 9, partly 10, 11 and 12 are true to my personal knowledge and those of paras partly 4, partly 5, partly 6, partly 7 and partly 10 are believed to be true on the legal advice and that I have not suppressed any material fact.

H. I. Masih

SIGNATURE OF THE APPLICANT.

Date : 5-8-1988

Place : Kanpur.

N.K. NAIR,
Advocate.

N.K. Nair
ADVOCATE,
KANPUR.

To

The Registrar,
Central Administrative Tribunal,
Allahabad Bench.

(21)

(A21)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH

Registration No. of 1988.

Smt. H. I. Masih Applicant.

Versus

Union of India and Others Respondents.

ANNEXURE A-1

By Registered Post.

No 2-70/71-CGHS.II
CENTRAL GOVERNMENT HEALTH SCHEME
NEW DELHI, THE 10th APRIL, 1972.

.....

MEMORANDUM

Smt. I. Masih whose name has been sponsored by the Employment Exchange for the post of Female Attendant in the C.G.H. Scheme, Kanpur in the scale of pay of Rs. 80-1-85-2-95-E8-3-110/- with usual allowances is hereby requested to present herself for an interview at 82, Juhi (House of Shri Mana Lal Tripathi Near Kakoni Mills, Kanpur) on the 24th April, 1972 at 3.00 P.M. sharp. She should bring with her all the certificates and testimonials, in original, in proof of her age/date of birth, educational qualification and experience together with attested copies thereof. She should also bring with her a 'No Objection' Certificate from her present employer if she is employed.

In case she belongs to the a Scheduled Caste/ Scheduled Tribe community, she should also bring with her the original Scheduled Caste/Tribe certificate issued by the District Magistrate, together with an attested copy of the same.

No travelling/daily allowance will be admissible for appearing at the written test.

Sd/- (B.S. SHARMA)
SECTION OFFICER
for DIRECTOR (CGHS)

To

Smt. I. Masih,
417, Meerpur Cantt.,
Kanpur.

True Copy
Attested
N.K. Nair
ADVOCATE,
MADRAS.

(A28)

(22)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH.

Registration No. of 1988.

Smt. H.I. Masih. Applicant.

Versus

Union of India and Others Respondents.

ANNEXURE A-2

CENTRAL GOVERNMENT HEALTH SCHEME
DIRECTORATE GENERAL OF HEALTH SERVICES
117/617, PANDU NAGAR, KANPUR

OFFICE ORDER No. 26

Shrimati Helen I Masih is hereby appointed as Female Attendant at a pay of Rs. 80/- P.M. in the scale of pay of Rs. 80-1-85-2-95-E8-3-110 in the Office of the Central Government Health Scheme, Kanpur on a purely temporary basis, with effect from the forenoon of the 14.6.72.

(Pro. No. 3-13/72 CGHS/K.N.P.) 1196-1203
Kanpur
Dated the 23/3/73)

Sd/-
DEPUTY ASSISTANT DIRECTOR
CENTRAL GOVERNMENT HEALTH SCHEME
KANPUR.

for DEPUTY DIRECTOR (ADMN II)
C.G.H.S., NEW DELHI.

To,

1. The Accountant General, U.P., Allahabad.
2. The Treasury Officer Kanpur.
3. Smt. Helen I Masih, Female Attendant
4. Accounts Section
5. Personal File
6. Office Order Registrar.
7. The Director, Central Government Health Scheme, Nirman Bhawan, New Delhi, with reference to his letter No. 2-20/72-CGHS-II dated 11.9.72.

Sd/-
DEPUTY ASSISTANT DIRECTOR
CENTRAL GOVERNMENT HEALTH SCHEME
KANPUR.
for DEPUTY DIRECTOR (ADMN II)
C.G.H.S. NEW DELHI.

*True copy
Notarized
N.K. Nair
ADVOCATE
KANPUR.*

H. I. Maini

(A29)

(23)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH.

Registration No. of 1988.

Smt. H.I. Masih. Applicant.

Versus

Union of India and Others. Respondents.

ANNEXURE A-3

No. 2-152/76-CGHS/KNP/4350-1158
BHARAT SARKAR
MENDRIYA SARKAR SWASTHYA JUDANA, 117/617, PANDUNAGAR, KANPUR.

Dated 5th
7th Sept., 1977.

MEMORANDUM

A seniority list as on 1.8.1977 in respect of all class I and IV staff working under C.G.H.S., Kanpur is enclosed herewith for circulation amongst all class III and IV staff for information. The representation if any regarding Seniority in respect of individuals concerned must be reached to the undersigned within a fortnight positively otherwise this list will be treated as final.

Sd/- illegible,
CHIEF MEDICAL OFFICER
CENTRAL GOVERNMENT HEALTH SCHEME
KANPUR.

To

All Individuals concerned working at CGHS, Kanpur.

Copy to:-

- 1- The All Medical Officer Incharges CGHS Dispensaries, Kanpur.
- 2- Shri O.P.Bali, Dy. Director, CGHS, Nirman Bhawan, New Delhi for information and necessary action please.
- 3- P.G. of all individuals.

True copy
Dated
Sd/- illegible,
Chief Medical Officer,
Central Government Health Scheme,
Kanpur.

N.K. Nair
ADVOCATE
KANPUR.

H.I. Masih

S. No.	Name	Date of Birth	Educational Qualification	Date of app't. under CGHS	Date from which seniority will count.
1.	2.	3.	4.	5.	6.
7.	8.	9.	10.	11.	12.
1. Smt. H. I. Massih		9.11.1943	VIII Pass	14.6.72 (F.N.)	14.6.72
2. Km. B. Frank		5.5.1946	VIII Pass	15.6.72 (F.N.)	15.6.72
3. Smt. P. Thomas		8.1.1950	VIII Pass	7.7.72 (F.N.)	7.7.72
4. Smt. H. B. George		22.8.1941	VIII Pass	16.11.72 (F.N.)	16.11.72
5. Smt. Sushila Devi		6.1.1953	VIII Pass	24.4.76 (F.N.)	24.4.76
6. Smt. Usha P. William		18.4.1953	VIII Pass	24.4.76 (F.N.)	24.4.76
7. Smt. Radha Devi Srivastava		20.8.1953	VIII Pass	24.4.76 (F.N.)	24.4.76

Seniority List of Officers in the grade of Subsupter under, CGHS, Kanpur
as on _____

1.	2.	3.	4.	5.	6.
1. Sh. Mool Chand		18.5.1951	NIL	15.6.72 (F.N.)	12.6.72
2. Sh. Ram Baboo		26.6.1952	NIL	13.6.72 (F.N.)	13.6.72
3. Sh. Ram Gopal		24.5.1953	NIL	13.6.72 (F.N.)	13.6.72
4. Sh. Moti Lal		5.2.1950	High School	14.6.72 (A.N.)	14.6.72
5. Sh. Prem Chand		14.6.1953	High School	14.6.72 (A.N.)	14.6.72
6. Sh. Dulrey		4.1.1951	IV Pass	15.6.72 (F.N.)	15.6.72
7. Sh. Chhedi Lal		14.1.1946	VIII Pass	22.6.72 (F.N.)	22.6.72
8. Sh. Kanhai Lal		15.8.1952	NIL	29.6.72 (F.N.)	29.6.72
9. Sh. Sakoor		10.1.1947	NIL	1.7.72 (F.N.)	1.7.72
10. Sh. Chhote Lal		1.7.1939	NIL	31.12.75 (F.N.)	31.12.75
11. Sh. Ram Khelavan		8.1.1954	VIII Pass	27.4.76 (F.N.)	27.4.76
12. Sh. Sital Prasad		7.2.1957	NIL	26.4.76 (F.N.)	26.4.76
13. Sh. Ashok Kumar		5.11.1955	Middle Pass	12.7.76 (F.N.)	12.7.76
14. Sh. Suhnari Lal		5.1.1941	NIL	19.2.77 (F.N.)	19.2.77

Sd/- illegible,
CHIEF MEDICAL OFFICER,
CENTRAL GOVERNMENT HEALTH SCHEME,
KANPUR.

Sh. M. K. Maji
ADVOCATE,
KANPUR.

T 1 Mainly

(A31)

(25)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH

Registration No. of 1988.

Smt. H.I. Masih Applicant.

Versus

Union of India and Others Respondents.

ANNEXURE A-4

No. D.2-26/87-CGHS/KNP/374-86

CENTRAL GOVT. HEALTH SCHEME KANPUR.

Seniority List of Female Attendant under C.G.H.S., Kanpur upto March, 1987.

Sr. No.	Name	Date of Birth.	Educational Qualification	Date of appointment CGHS, Kanpur.	Date from which Seniority will count.	Date from which confirmed	Remarks
1.	Smt. P.E. Thomas	08.1.50	VIIIth	7.7.72(FN)	7.7.72	25.11.81	-
2.	Km. B. Frank	05.5.46	-do-	15.6.72 "	15.6.72	25.11.81	-
3.	Smt. H.B. George	22.8.41	-do-	16.11.72 "	16.11.72	25.11.81	-
4.	Smt. Usha L.P. Willium.	18.4.53	-do-	24.4.76 "	24.4.76	25.11.81	-
5.	Smt. Sushila Devi (SC)	06.1.53	-do-	24.4.76 "	24.4.76	25.11.81	-
6.	Smt. Radha Devi	20.8.53	-do-	24.4.76 "	24.4.76	25.11.81	-
7.	Smt. Savitri Devi	07.6.54	-do-	27.9.77(FN)	27.9.77	25.11.81	-
8.	Smt. Rose Marry Sharma.	08.1.54	-do-	27.9.77(FN)	27.9.77	25.11.81	-
9.	Smt. Pushpa Devi	11.4.56	-do-	27.9.77(FN)	27.9.77	25.11.81	-
10.	Smt. Kusum Lata	01.1.49	-do-	2.2.81 "	02.2.81	2.2.83	-
11.	Smt. H.I. Masih	9.11.43	-do-	14.6.72 "	14.6.72	13.8.85	-
12.	Smt. Sona Devi	5.4.50	-do-	02.2.81 "	02.2.81	Q.P.	
13.	Smt. Sarla Devi	15.1.54	-do-	05.11.86 "	05.11.86	Temp.	

Sd/-
(Dr. A.K. Roy Choudhury)
Chief Medical Officer,
CGHS
Kanpur.

True Copy
Attested
N.K. Nair
ADVOCATE,
KANPUR.

H.I. Masih

(A32)

(26)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH.

Registration No. of 1988.

Smt. H.I. Masih. Applicant.

Versus

Union of India and Others Respondents.

ANNEXURE A-5.

To

The Chief Medical Officer (CGHS)
117/617, Pandu Nagar
KANPUR

THROUGH PROPER CHANNEL.

Sub: SENIORITY LIST OF FEMALE ATTENDANT UNDER
CGHS AT KANPUR.

Sir,

With reference to your Memo No. D-2-26/CGHS/
KNP/374-86 dated 20.4.87 for subject seniority roll
published in March 87, I want to draw your kind attention
towards the following facts:-

- i) that in the seniority roll of March 87, my
name is at serial 11, whereas in the seniority
roll published on 1.8.77, my name was at
Serial No. 1.
- ii) that in both seniority roll i.e. of March 87
and Aug 77 the date from which seniority will
count has been shown as 14.6.72*.
- iii) that in seniority roll of March 87, the individuals,
whose date from which seniority will count is much
below to me has been shown senior to myself*.

(contd...)

H.I. Masih

(27)

(A 37)

- iv) that all the individuals junior to me in the seniority list of 1977 including few more have been shown senior to myself in March 87 without giving any reason and against rule.
- v) that my date of confirmation has been shown as 13.8.85 after completion of thirteen years of service, whereas others have been confirmed only after two years as per rules. The step-motherly treatment had been done with me.

In view of the above mentioned, I request you to please correct the seniority roll of March 87 by placing me at a serial No. 1. The date of my confirmation in the service may please also be suitably amended. Photo state copy of both the seniority roll is attached herewith for your reference.

Thanking you,

Enclos: 2

Yours faithfully,

Sd/- Mrs. H.I. MASSIH.

KANPUR the 22 May 1987

Copy to:

The Joint Secretary
All India CGHS Emp Assocn.
Kanpur Branch
KANPUR

True (COPY)

Attested

N.K. Nair

ADVOCATE,
KANPUR.

4/1 March

(A34)

(28)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH.

Registration No. of 1988.

Smt. H.I. Masih Applicant.

Versus

Union of India and Others Respondents.

ANNEXURE A-6

To

The Chief Medical Officer (CGHS)
117/617, Pandu Nagar,
KANPUR

THROUGH PROPER CHANNEL

Sub: SENIORITY LIST OF FEMALE ATTENDANT
UNDER CGHS AT KANPUR.

Sir,

With reference to your Memo No. D-2-26/CGHS/
KNP/374-86 dated 30.4.87 for subject seniority roll
published in March 87. I want to draw your kind attention
towards the following facts:-

- i) that in the seniority roll of March 87,
my name is at serial 11, whereas in the
seniority Roll published on 1.8.77 my
name was at serial No. 1.
- ii) that in both seniority roll i.e. of
March 87 and Aug 77 the date from which
seniority will count has been shown as
14-6-72'.
- iii) that in seniority roll of March 87, the
the individuals, whose date from which
seniority will count 'is much below to
me has been shown senior to myself.'

(contd.....)

H I. Masi

(A35)

(29)

- iv) that all the individuals junior to me in the seniority list of 1977 including few more have been shown senior to myself in March 87 without giving any reason and against rule.
- v) that my date of confirmation has been shown as 13.8.85 after completion of thirteen years of service, whereas others have been confirmed only after two years as per rules. The step-motherly treatment had been done with me.

In view of the above mentioned, I request you to please correct the seniority roll of March 87 by placing me at serial No. 1. The date of my confirmation in the service may please also be suitably amended. Photo state copy of both the seniority roll is attached herewith for your reference.

Thanking you,

Encls: 2

Yours faithfully,

Sd/-
(Mrs. H.I. MASIH)

KANPUR the 25 JUN 1987

True copy
Attested
[Signature]
N.K. Nair
ADVOCATE,
KANPUR.

H. I. mainly

(30)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH.

Registration No. of 1988.

Mrs. H.I. Masih Applicant.

Versus

Union of India and Others Respondents.

ANNEXURE A-7

To

The Chief Medical Officer (CGHS)
117/617, Pandu Nagar,
KANPUR.

THROUGH PROPER CHANNEL.

Sub: SENIORITY LIST OF FEMALE ATTENDANT
UNDER CGHS AT KANPUR

Sir,

With reference to your Memo No. D-2-26/
87-CGHS/KNP/374-86 dated 20.4.87 for subject seniority
roll published in March 87. I want to draw your kind
attention towards the following facts:

- i) that in the seniority roll of March 87,
my name is at serial 11, whereas in the
seniority roll published on 1.8.77, my
name was at Serial No. 1.
- ii) that in both seniority roll i.e. of
March 87 and Aug 77 the date from which
seniority will count has been shown as
14.6.72'.

(contd....2)

At 1 March

(A 37)

(31)

- iii) that in seniority roll of March 87, the individuals, whose date from which seniority will count is much below to me has been shown senior to myself.
- iv) that all the individuals junior to me in the seniority list of 1977 including few more have been shown senior to myself in March 87 without giving any reason and against rule.
- v) that my date of confirmation has been shown as 13.8.85 after completion of thirteen years of service, whereas others have been confirmed ~~as well~~ only after two years as per rules. The step-motherly treatment had been done with me.

In view of the above mentioned, I request you to please correct the seniority roll of March 87 by placing me at a Serial No. 1. The date of my confirmation in the service may please also be suitably amended. Photocopy of both the seniority roll is attached herewith for your reference.

Thanking you,

Encls: 2

Yours faithfully,

KANPUR the 17th Aug 1987

Sd/-
(Mrs. H.I. MASSIH)

Copy to :

The Joint Secretary
All India CGHS Emp Assn.
Kanpur Branch
KANPUR

True copy
Attested

N. K. Mair
ADVOCATE
KANPUR

H. I. Massih

(A38)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH.

Registration No. of 1988.

Mrs. H.I. Masih Applicant.

Versus

Union of India and Others Respondents.

ANNEXURE A-8

To

The Director
Central Government Health Scheme (Nirman Bhawan)
NEW DELHI.

Through: Chief Medical Officer, CGHS, Kanpur.

AN ADVANCE COPY OF THIS LETTER ALREADY
FORWARDED

Sub: SENIORITY LIST OF FEMALE ATTENDANT UNDER CGHS
AT KANPUR.

Sir,

I want to draw your kind attention CMO, CGHS Memo No. D-2-26/87-CGHS/KNP/374-86 dated 20.4.87, wherein my seniority has erroneously been shown. I tried to get it corrected from CMO, CGHS Kanpur vide my letter dated 25.5.87 and subsequent reminders dated 25.6.87 and 17.8.87 for ready reference (copy enclosed) but all in vain. Hence I am compelled to write to you to kindly set it all right at once as the wrong seniority roll may affect my carrier.

Thanking you,

Enclos:

Yours faithfully,

Sd/-

(Mrs. H.I. MASSIH)

Copy to:

1- Chief Medical Officer CGHS
117/617, Pandu Nagar, KANPUR
kindly refer to my letter dated and subsequent
reminders dated , ,
Enclo

2- The Joint Secretary
All India CGHS Emp Assn KANPUR Branch
KANPUR (UP)
Kindly refer to my letter dated and subsequent
reminders dated , ,
enclo:

True Copy
Attested
R.K. Nair
ADVOCATE,
KANPUR.

H. I. Massih

A39

(33)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH

Registration No. of 1988.

Mrs. H.I. Masih Applicant.

Versus

Union of India and others Respondents.

ANNEXURE A-9

ADVANCE COPY

REMINDER

To

The Director
CGHS, Nirman Bhawan
NEW DELHI

THROUGH CMO, CGHS, KANPUR

Sub SENIORITY LIST OF FEMALE ATTENDANT UNDER
CGHS KANPUR - CORRECTION OR

Reference My application dt 21.8.87 on the above
subject

Sir,

Through my application quoted under reference above, I had drawn your kind attention for correction of my position in the seniority list published vide their Memo D-3-26/CGHS/374-86 dt 20.4.87. My efforts to get it corrected from CMO, CGHS, Kanpur vide my applications dated 22.5.87, 25.6.87 and 17.8.87, could bring no fruit, who did not care even to reply my application. I could not receive any reply from your honour also as yet. I once again request you to kindly get the seniority roll in question corrected by CMO, CGHS as the wrong seniority rolls affecting my carrier.

Thanking you,

Yours faithfully,

Sd/- (H.I. Masih)
Female Attendant
CGHS Disy Khapra Mohal
KANPUR.

Date 15/3/88

Copy to : 1- CMO, CGHS,
117/617, Pandu Nagar,
KANPUR

2- The Secretary,
AICGHS Emp Assoc
KANPUR BRANCH

*True copy
Attested
M.K. Nair
Advocate
KANPUR.*

H. I. Marly

A no

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH

Registration No. of 1988.

Smt. H.I. Masih Applicant.

Versus

Union of India and Others Respondents.

ANNEXURE A-10

संख्या डी-२६। द७ के० स० स्वा० यो० कानपुर। ३५ स्व

केन्द्रीय सरकार स्वास्थ्य योजना

११७।६।७, पाण्डु नगर, कानपुर

दिनांक : १६ अप्रैल १९८८

जापन

— — —

मुख्य चिकित्सा अधिकारी, के० स० स्वा० यो० कानपुर को पृष्ठांकित श्रीमती स्व० आ० मसीह फिमेल स्टेन्डेन्ट के० स० स्वा० यो० गांधीग्राम औषधालय, कानपुर के फिमेल स्टेन्डेन्ट के वरिष्ठता सूची विषयक आवेदन। अनुस्मारक दिनांक १५-३-८८ के सन्दर्भ में सूचित किया जाता है कि सभी संवर्गों की वरिष्ठता सूची प्रकारण सूची में दर्शायी गयी योग्यता तथा विमागीय पदोन्नति समिति द्वारा विचारित पुष्टिकरण (कलफरमेशन) के आधार पर बनाई गई है। इसी आधार पर फिमेल स्टेन्डेन्ट की भी वरिष्ठता सूची बनायी गयी है तथा तदानुसार श्रीमती मसीह, फिमेल स्टेन्डेन्ट का नाम वरिष्ठता सूची में ब्रम संख्या ११ पर दर्शाया गया। तथापि, श्रीमती स्व० आ० मसीह का पहले की द्वारा रिक्से से पुष्टिकरण का मामला पुनः विमागीय पदोन्नति समिति के समक्ष प्रस्तुत किया गया तथा विमागीय पदोन्नति समिति की दूसरी सिफारिशों के अनुसार उनका पुष्टिकरण (कलफरमेशन) दिनांक २५-६-८८ से किया गया है। इसी के अनुल्प फिमेल स्टेन्डेन्ट की वरिष्ठता सूची में उनका नाम ब्रम संख्या ११ (ग्यारह) के स्थान पर ब्रम संख्या १० (इस) पर रखा जाता है।

हस्ताः अपठनीय,
मुख्य चिकित्सा अधिकारी
के० स० स्वा० यो० कानपुर।

सेवा में

श्रीमती स्व० आ० मसीह, फिमेल अटेन्डेन्ट
द्वारा प्रमारी चिकित्सा अधिकारी
के० स० स्व० यो०, गांधी ग्राम औषधालय,
कानपुर

श्रीमती स्व० आ० मसीह को
राज गुप्ता
२८-४-८८

True copy
Subscribed
N. K. Nair
ADVOCATE.
KANPUR.
H. I. Magistrate
N. K. Nair
ADVOCATE.
KANPUR.

(35)

(A.M)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH.

Registration No. of 1988.

Smt. H.I. Masih Applicant.

Versus

Union of India and Others Respondents.

ANNEXURE A-11

संख्या डी०२-२६(पृष्ठ के० स० स्वा० यो० कानपुर। १४/३२

केन्द्रीय सरकार स्वास्थ्य योजना

११७१६१७, पाण्डनगर, कानपुर

जापन

दिनांक: २३।२८-६-८८

श्रीमती स्व०आ० मसीह फिमेल अटेंडेण्ट, के० स० स्वा० यो० औषधालय गांधीग्राम, कानपुर को फिमेल अटेंडेण्ट के वरिष्ठता सूची विषयक आवेदन दिनांक १६ मई ८८ के सन्दर्भ में स्तदद्वारा पुनः सूचित किया जाता है कि सभी संवगों की वरिष्ठता सूची प्रकारण सूची में निर्दिष्ट योग्यता तथा विभागीय पदोन्नति समिति द्वारा विचारित पुष्टकरण (कनफरमेशन) के आधार पर बनाई गई है। हसी आधार पर फिमेल अटेंडेन्ट की भी वरिष्ठता सूची में क्रम संख्या ११ पर दर्शाया गया है। तथापि श्रीमती मसीह का पहले की तारीख से पुष्टकरण का मामला पुनः विभागीय पदोन्नति समिति के समझ प्रस्तुत किया गया, तथा विभागीय पदोन्नति समिति की दूसरी सिफारिशों के अनुसार उनका पुष्टकरण (कनफरमेशन) दिनांक २५-११-८८ से किया गया है। हसी के अनुलेपि फिमेल अटेंडेन्ट की वरिष्ठता सूची में उनका नाम क्रम संख्या ११ (ग्यारह) के स्थान पर क्रम संख्या १० (दस) पर रखा जाता है।

हस्ताः अपटनीय

मुख्य चिकित्सा अधिकारी

के० स० स्वा० यो० कानपुर

सेवा में,

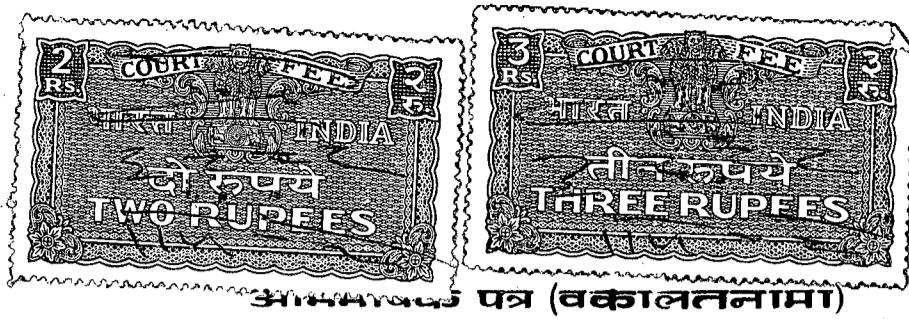
श्री स्व०आ० मसीह, फिमेल अटेंडेन्ट
द्वारा प्रमारी चिकित्सा अधिकारी
के० स० स्वा० यो० गांधी ग्राम औषधालय
कानपुर

True Copy

Attested

H.I. Masih

N.K. Nair
ADVOCATE,
KANPUR.



36

A.M.

स्वतान्त्र्य
प्रतिवाद

समक्ष न्यायलय : केन्द्रीय प्रशासनिक अधिकरण अतिरिक्त बैच इलाहाबाद

रजिस्ट्रेशन/वाद संख्या

सन् १९६८ ई.

Smt. H. I. Masih

वादी/प्रतिवादी

अपीलान्ट

बनाम

Union of India & Others

वादी/प्रतिवादी

रेस्पान्डेंट

Smt. H. I. Masih v/o Dr. Imayat Masih
मै/हस्त
58/4, M.E.S Colony, G.T. Road, Sejalgaon, Khar-

उपरोक्त प्रकरण में हम अपनी ओर के पक्ष समर्थन हेतु

N. K. Nair, Advocate

112/274A Swaroop Nagar, Kanpur

&

Sharda Prasad Kesarwani, Advocate

25, Sammelan Marg, Allahabad.

को निश्चित शुल्क (मेहनताना) नियत करके अपना अभिभाषक-एवं (वकील) नियुक्त करते हैं और यह स्वीकार करते हैं कि उक्त सज्जन हमारी ओर से वाद-पत्र (अर्जीदावा), प्रतिबन्ध-पत्र (बयान तहरीरी), वाद स्वीकार पत्र, विवाद पत्र, पुनरीक्षण एवं परिशोधन प्रार्थना-पत्र (रिव्यु/रिवीजन) शापथिक कथन (हलफनामा), प्रवर्तन पत्र (दरखास्त इजराय), मूजवात अपील निगरानी इत्यादि हर प्रकार के अन्य प्रार्थना पत्रादि, लेखादि की प्रतिलिपियां अपने हस्ताक्षर करके न्यायालय में प्रस्तुत करें अथवा किसी पत्र पर आवश्यकतानुसार शापथिक प्रृष्ठिकरण करें और आवश्यक सवाल जवाब करें और लेखादि की प्रतिलिपियां एवं हमारे प्राप्य धन को अपनी हस्ताक्षरी पावती देकर प्राप्त करें, हमारी ओर से किसी को मध्यस्थ तथा साक्षी (गवाह) माने और उससे सम्बन्धित प्रार्थना-पत्र प्रस्तुत करे तथा उसका समर्थन करे तथा तासदीकरण करे, वाद-पत्र उठावें छोड़ें अथवा समझीता करें तथा सुलहानामा दाखिल करे तथा उसके सम्बन्ध में प्रार्थना-पत्र दाखिल करके उसका समर्थन करे अर्थात प्रकरण से सम्बन्ध रखने वाली कुल कार्यवाही डिशी के भर पाई होने के समय तक स्वतः अथवा सयुक्त करे। आवश्यकता होने पर किसी अन्य वकील महोदय को वकील कर।

उक्त सभी कार्यवाही जो उक्त सज्जन करेंगे प्रत्येक दशा में अपने किये की भाँति हमको सर्वथा स्वीकार होगी। अगर निश्चित शुल्क अथवा किसी अन्य रकम का कोई भी अंश किसी समय भी हमारी ओर पावना रहे, तो उन्हें अधिकार होगा कि वह हमें कोई नोटिस दिये बिना ही हमारी ओर से मुकदमें की की पैरवी न करें। वैसी दशा में उनका हमारे प्रति कोई उत्तरदायित्व न होगा। यदि वे किसी अन्य कार्य में व्यस्त रहने के कारण मेरे मुकदमें की समय पर पैरवी न कर सकें और मुकदमा एकतरफा हो जाय तो भी उनका उत्तरदायित्व न होगा। उक्त सज्जन को जब और जितनी फीस अदा करूँगा/करेंगे उसकी पक्की रसीद प्राप्त कर लेंगे और पक्की रसीद के अभाव में उक्त सज्जन की फीस की कोई अदायगी न समझी जायगी।

अतएव यह अभिभाषक-पत्र लिख दिया और अपने पास इसकी एक प्रति रख लिया जिससे कि समय पर काम आये।

स्वीकृत

Accepted
N.K. Nair
ADVOCATE,
KANPUR.

दिनांक

मास 5 - 8. सन् 1988

स्वीकृत

Accepted
General Lawyer
Advocate

स्वीकृत

A 43

50 (5)
Keep on file
Put up on date fixed
Regd
6/12/82

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

CIVIL MISC. APPLICATION NO. 563 /of 1989

On behalf of the respondents.

Subroto
N.D.
Anil K.
S.M.S

....

IN

REGISTRATION O.A. NO. 963 of 1988/

Smt. H.I. Masih Petitioner

Versus

Union of India & others Respondents.

To

The Hon'ble the Vice-Chairman and his
other companion Members of the aforesaid Hon'ble
Tribunal.

The humble application on behalf
of the respondents Most Respectfully Showeth
as under:-

1. That the ~~know~~ full facts and circumstances

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-2-

have been stated in the accompanying counter-affidavit.

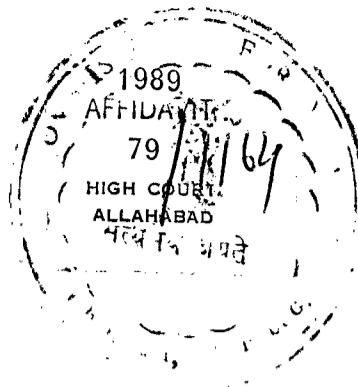
2. That for the reasons disclosed in the accompanying counter-affidavit, it is expedient in the interest of justice that this Hon'ble Tribunal may kindly be pleased to dismiss the petition with costs.

P R A Y E R

It is, therefore, most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to admit the accompanying counter-affidavit and dismiss the petition with costs.

(K.C. SINHA)
(K.C. SINHA)
ADDL. STANDING COUNSEL
CENTRAL GOVT.
COUNSEL FOR THE RESPONDENTS.

Dt/ 5/11/81



Ans

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

C O U N T E R - A F F I D A V I T

On behalf of the Respondents.

.....

IN

REGISTRATION O.A. NO. / of 1989

Smt. H.I.Masih Petitioner.

Versus

Union of India & others..... Respondents.

Exe

Affidavit of B.D. Gupta aged about 40 years son of Sri C.B.Gupta, posted as Senior Medical Officer, C.G.H.S. Kanpur.

↖ (Deponent) ↗

I, the deponent abovenamed do hereby solemnly affirm and state on oath as under:-

T. D. P. M.

Ay

-2-

1. That the deponent is posted as Senior - Medical Officer, Central Government Health Scheme, Kanpur and as such is fully acquainted with the facts of the case deposed to below.
2. That the contents of para-1 and 2 of the petition needs no comments, being the matters of record.
3. That in reply to the contents of para-3 of the petition, it is submitted the reply given against para-6 of the petition may be kindly be referred. However, the contents raised in para under reply are not correct as stated, hence denied.
4. That the contents of para-4 of the petition are the matters of record, hence need no comments.
5. That in reply to the contents of para-5 of the petition, it is submitted that since the seniority list was published in the year 1977 and as such, the declaration which has been made in para under reply is absolutely wrong as the petition



16/8/87

AMT

-3-

is badly time barred. It is well settled law that by making repeated representations will not extend the period of limitation. In fact, the petition is liable to be dismissed on this count alone.

6. That the contents of para-6(1) to (3) of the petition are the matters of record, hence need no comments.

7. That in reply to the contents of para-6(4) of the petition, it is submitted that since no order was passed in favour of the petitioner declaring the petitioner quasi-permanent and as such, he cannot be treated as quasi-permanent prior to 7th September, 1981, when he was declared quasi-permanent and information was given vide order dated 16.9.1981 to the petitioner to that effect.

8. That the contents of para-6(5) of the petition are not correct as stated, hence denied. It is further submitted that according to the instructions issued by the Ministry of Home Affairs

-4-

vide memo dated 22.12.1959, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment on the recommendations of the U.P.S.C. or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection. Where persons recruited initially on a temporary basis are confirmed subsequently in an order different from the orders of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit.

9. That in reply to the contents of para-6(6) of the petition, it is submitted that merit list referred ~~underxxx~~ in para under reply was prepared initially according to the select list where, the petition was shown at serial no.1.

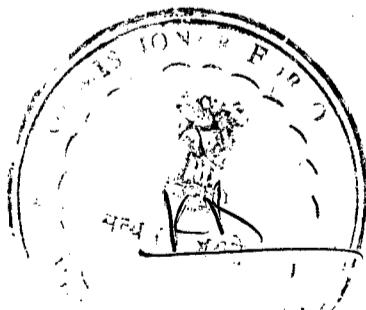
10. That in reply to the contents of para-6

-5-

of the petition, it is submitted that the seniority position can be changed if the order of confirmation is different from the order of merit indicated at the time of appointment.

11. That the contents of para-6(8) of the petition are not correct are stated, hence denied.

12. That in reply to the contents of para-6(ix) of the petition, it is submitted that confirmation cases of Female Attendants including the applicant were ^{placed} before the duly constituted D.P.C. The D.P.C. considered each case on merits and recommended all except the petitioner for confirmation w.e.f. 25.11.81. The petitioner was not found fit by the D.P.C. for confirmation w.e.f. 25.11.81 due to adverse remarks in her Confidential Report. She was however, confirmed w.e.f. 13.8.85. Since the petitioner was confirmed from 13.8.85, the other Female Attendants who were confirmed w.e.f. 25.11.81 were placed senior to the petitioner in the subsequent seniority lists. This has been done as per rules and orders of the government and no injustice has been done to the petitioner.



T. S. Rao

ASO

-6-

13. That in reply to the contents of para-6(11)(12)&(13) of the petition, it is submitted that the representations of the applicant referred to in the paras under reply were considered sympathetically and accordingly her case was put up to the D.P.C. for reconsideration. After reconsideration, the D.P.C. recommended her for confirmation w.e.f. 25.11.1982 instead of 13.8.1985. With the change in date of confirmation as such, the seniority position of the petitioner was also changed and accordingly she was placed at serial no.10 instead of serial no.11.

14. That the contents of para-6(14) of the petition are not correct as stated, hence denied. It is further submitted that the D.P. C. has not revised the seniority list. The D.P.C. has simply considered the fitness of the cases for confirmation for which it is fully competent. As already stated the applicant was not found fit by the D.P.C. for confirmation due to adverse remarks in her C.R. There adverse remarks were duly communicated to the petitioner and she was given due opportunity to improve. Since there was



TG/MS

no improvement in her performance, the adverse remarks were allowed to continue. Thus the applicant was fully aware of these adverse remarks may come in the way of her service benefits. Therefore, the petitioner does not deserve any further opportunity or any show cause notice. The contention of the petitioner is this misleading and misconceived.

15. That in reply to the contents of para-6(15)(16) and (17) of the petitioner, it is submitted that as stated earlier the representation of the petitioner was examined by the competent authority and as per decision taken thereon, the D.P.C. reviewed its earlier recommendation and awarded confirmation w.e.f. 25.11.1982 instead of 13.8.1985.

16. That in reply to the contents of para-6(18) of the petition, it is submitted that maximum opportunity and service benefits was permissible under rules has been given to the petitioner. Therefore, it is not possible to revise

the seniority position further as it will adversely affect other Female Attendants who are having a brilliant and spotless service career.

17. That the contents of para-7 of the petition, are the matters of record, hence need no comments.

18. That the contents of para-8 of the petition are the matters of record, hence need no comments.

19. That in reply to the contents of para-9 of the petition, it is submitted that in view of the facts and circumstances stated the petitioner is not entitled to any of the reliefs as referred to in para under reply. The petition is devoid of merits, hence liable to be dismissed with costs.

20. That in reply to the contents of para-10 of the petition, it is submitted that as the petitioner has not been able to make any

(AS3)

-9-

prima-facie case in his favour and as such he is not entitled to any of the interim reliefs. None of the grounds taken by the petitioner are sustainable in the eye of law. The petition is devoid of merits, hence liable to be dismissed with costs.

21. That the contents of para-11 and 12 of the petition are the matters of record, hence need no comments.

I, the deponent abovenamed do hereby verify that the contents of paras 1, 2 and 3 are true to my personal knowledge; those of paras 4 to 21 are based on record, those of paras 22 to 24 are based on legal advice to which I believe to be true; that no part of it is false and nothing material has been concealed. So help me God.


T. S. Chauhan
T. S. Chauhan Deponent

I, D.S. Chauhan, Clerk to Shri K.C. Sinha, Advocate, High Court, Allahabad do hereby declare that the person making this affidavit and alleging himself to be the same is known to me from the perusal of papers.


D.S. Chauhan
D.S. Chauhan Clerk

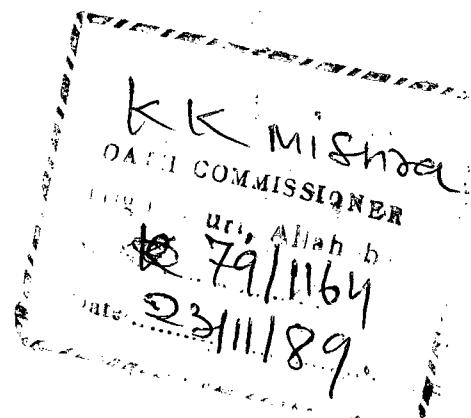
AS4

-10-

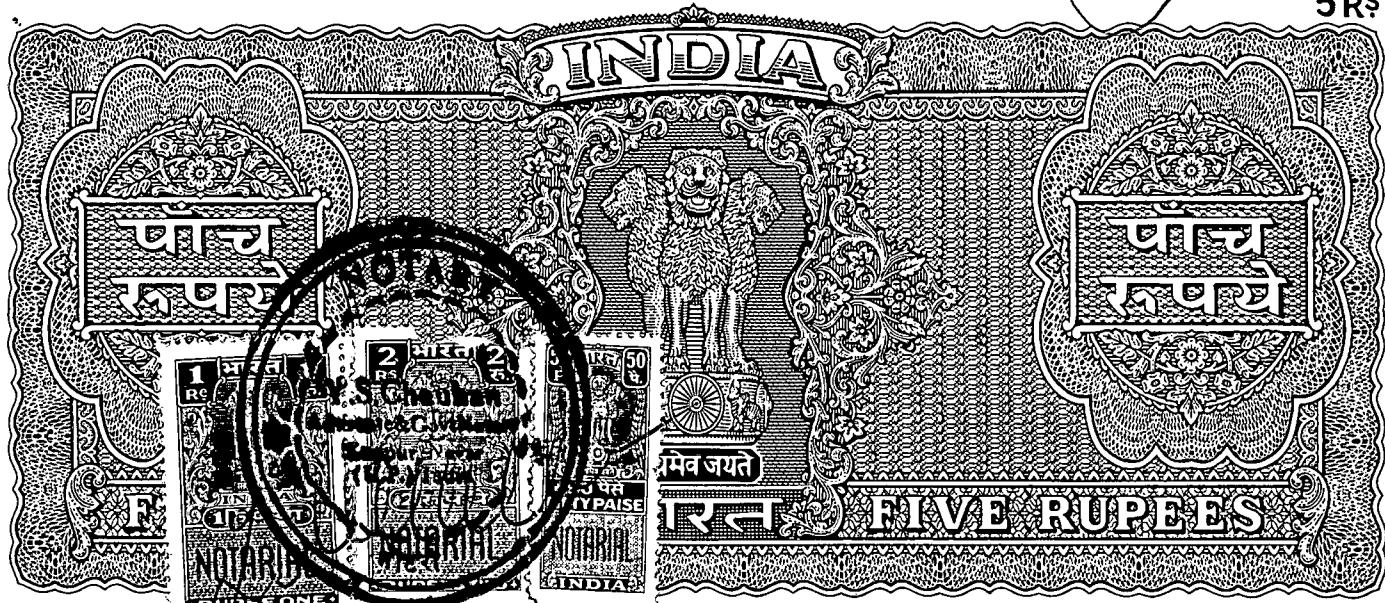
Solemnly affirmed before me on this 23 ~~nd~~
day of November, 1989 at 11:35 ~~am~~ ~~pm~~ by the
deponent who has been identified by the aforesaid
Clerk.

I have satisfied myself by examining the
deponent who has been identified by the aforesaid
clerk that he has understood the contents of
this affidavit which have been read over and
explained to him by me.

KK Mishra
OATH COMMISSIONER



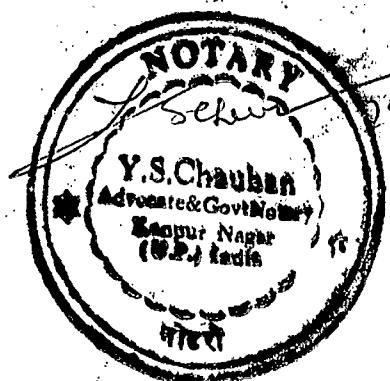
(Ass)



25/4/90

In the Central Administrative Tribunal
 filed today Allahabad Bench
 Rejoinder Affidavit
 Registration No 963 of 1988
 H. I. Masih — Applicant
 versus
 Union of India & others — Respondents

Received on
 25/4/90
 Affidavit of H. I. Masih



SO(J)
 Keep a record
 if permissible

Beni 26/4/90

DR(J)

H. I. Masih

(ASG)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH.

REJOINDER AFFIDAVIT

IN

Registration O.A. No. 963 of 1988.

Smt. H.I. Masih Applicant.

Versus

Union of India and Others Respondents.

AFFIDAVIT OF SMT. H.I. MASIH, AGED

ABOUT 45 YEARS, WIFE OF SHRI INAYAT

MASIH, RESIDENT OF QR. NO. 68/4, MES

COLONY, BEHIND DMSRDE, G.T. ROAD,

SHUJATGANJ, KANPUR. ... (DEPONENT)

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

(1) That the deponent is the applicant

in the above case and as such is fully conversant
with the facts deposed to below. The deponent
has been read over and explained the contents
of the Civil Miscellaneous Application and

(contd....2)



H. I. Masih

(ASJ)

(2)

the Counter Affidavit of Shri B.D. Gupta,
Senior Medical Officer, CGHS, Kanpur, filed
on behalf of the respondents.

(2) That the contents of paragraphs 1
and 2 of the Counter Affidavit need no comments.

(3) That the contents of paragraph 3
of the Counter Affidavit are not admitted, as
alleged. The averments contained in paragraph-3
of the Application under Section 19 of the
Administrative Tribunals Act, 1985, hereinafter
referred to as 'the application', are correct
and are re-iterated.

(4) That the contents of paragraph 4
of the Counter Affidavit need no comments.

(5) That the contents of paragraph 5
of the Counter Affidavit are not admitted. The
averments contained in paragraph 5 of the
application are correct and are re-iterated.

The seniority list published in the year 1977-78

(Annexure A-3 of the Application), was correct
and the deponent was placed at Serial No. 1 of
the said Seniority List of Female Attendants

(contd.....3)

H. I. Masih



AS8

(3)

of the CGHS, Kanpur. The deponent is not challenging the said seniority list of 1977-78 in the present application. The deponent has challenged only the subsequent seniority list, circulated towards the middle of May, 1987 (Annexure A-4 of the application), purporting to be the seniority list of Female Attendants under the CGHS, Kanpur, up to March, 1987, wherein the name of the deponent was illegally and wrongfully shown at serial No. 11 in place of serial No. 1, with the names of the other persons who were earlier placed below the name of the deponent in the earlier seniority list dated 1.8.1978 having been wrongly placed above the name of the deponent, the names of persons appointed long after the appointment of the deponent also, having been placed above the name of the deponent. The deponent made representations against the said wrong seniority list circulated in May, 1987, challenging the wrongful lowering the seniority position of the deponent and thereby, by a Memorandum

dated 19/25-4-1988, issued by the Chief Medical Officer, CGHS, Kanpur (Annexure A-10 of the application), the deponent was informed that

(contd....4)

H. I. Maenil



(A61)

(6)

after the deponent from the first batch, and those who were appointed in the subsequent batches, above the name of the deponent in the seniority list. The respondents had correctly published the seniority list of Female Attendants in the year 1977, showing the name of the deponent at Serial No. 1, with the names of others who joined subsequently, below the name of the deponent. The lapses on the part of the respondents in having allegedly issued Confirmation Order belately, cannot deprive the deponent of her legitimate entitlements in regard to seniority. The deponent having been appointed earlier, having joined earlier and having been placed above those who joined later than the deponent in the seniority list published in 1977, against which objections were also invited from the incumbents and the list was accordingly finalised, there did not arise any question of effecting any arbitrary change in the seniority position, after about 10 years, as was done in publishing a wrongful seniority list in the year 1987. Such wrongful action

(contd.....7)

H. I. Mawh



(7)

of the respondents involving evil consequences to the deponent, jeopardising the time-honoured and finalised seniority of the deponent, is not sustainable in the eye of law. The Ministry of Home Affairs Instruction quoted by the respondents have become redundant and are not applicable to the instant case.

(9) That the contents of paragraph 9 of the Counter Affidavit need no comments.

In any case, the very admission of the respondents renders the subsequent wrongful stand taken by the respondents in regard to seniority, null and void.

(10) That the contents of paragraph 10

of the Counter Affidavit are not admitted and are denied. There is no justification for changing the seniority position from the finalised seniority, as it existed for more than 15 years. By the very admission of the respondents, those who were appointed in subsequent batches, could not have been placed senior to the deponent who was selected in the first batch and was assigned seniority

(contd.....6)



(A63)

(8)

NOTARY

position at Serial No. 1 on the basis of merit
NOTARY *selection under hir*
and also on the basis of the earlier date of
joining.

(11) That the contents of paragraph 11
of the Counter Affidavit are not admitted. The
averments contained in paragraph 6(8) of the
application, are correct and are reiterated.

(12) That the contents of paragraph 12
of the Counter Affidavit are not admitted. The
averments contained in paragraph 6(8) of the
application are correct and are re-iterated.

The action of the respondents in lowering the
seniority position of the applicant arbitrarily
from Sl. No. 1 to Sl. No. 11 and subsequently
to Sl. No. 10, is illegal, mala fide, arbitrary,
untenable and the same was done without affording
any opportunity to the deponent to challenge
the same. The respondents could not have
jeopardised the time-honoured seniority of
the deponent in the arbitrary manner in which
they have done. The ground taken by the respon-
dents is misconceived and is untenable in
view of the various decisions of the various
High Courts and the Supreme Court in the matter



H. J. Mahesh

(contd....9)

A69

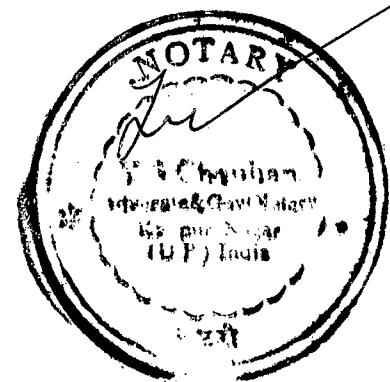
(9)

of seniority.

(13) That regarding the contents of paragraph 13 of the Counter Affidavit, it is submitted that the representations of the deponent were not properly considered and there was no question ~~for~~ placing the name of the deponent at Serial No. 11, which ought to have been ~~NOTARY~~ ~~maintained~~ given at Serial No. 1.

(14) That the contents of paragraph 14 of the Counter Affidavit are not admitted. The averments contained in paragraph 6(14) of the application are correct and are re-iterated. The respondents have themselves admitted in Annexures A-10 and A-11 of the Application that it was on the recommendation of the DPC that the seniority list was recast, lowering the earlier finalised seniority position of the deponent, from serial No. 1 to serial No. 10.

The respondents are estopped from resiling from the stand. The lowering of the seniority position of the deponent, amounted to illegal and wrongful punishment inflicted on the deponent, without having afforded any opportunity and the same is untenable.



(contd.....10)

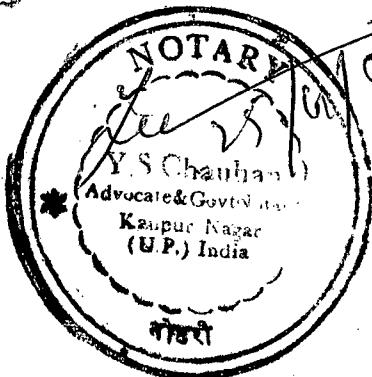
H. I. Manohar

(A 65)

(10)

(15) That the contents of paragraph 15 of the Counter Affidavit are not admitted. The averments contained in paragraphs 6(15) and 6(17) of the application are correct and are reiterated. The representations of the deponent were not properly considered and the alleged decision taken therein by D.P.C., were misconceived.

(16) That the contents of paragraph 16 of the Counter Affidavit are not admitted. The averments contained in paragraph 6(18) of the application are correct and are re-iterated. It is misconceived averment that the maximum opportunities and service benefits, as permissible under Rules, had been given to the deponent. In fact, the deponent has been illegally and wrongfully penalised by jeopardising her time-honoured and finalised seniority by arbitrarily lowering the same after a lapse of about 10 years and that too without having afforded any opportunity to the deponent to challenge the same. The respondents cannot take the plea that after having jeopardised the seniority of the deponent after a lapse of 10 years, by reversing the wrongful action of the respondents, any adverse effect would be caused on the juniors.



H. I. Mehta

(contd....11)

AGG

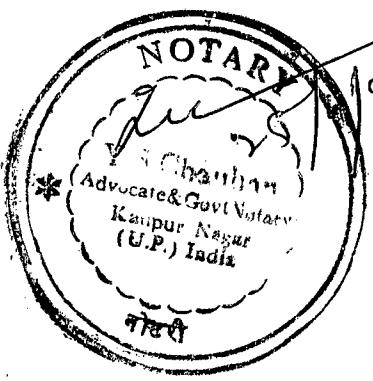
(11)

(17) That the contents of paragraphs 17 and 18 of the Counter Affidavit need no comments.

(18) That the contents of paragraph 19 of the Counter Affidavit are not admitted. The relief claimed in paragraph 9 of the application, is correct and is liable to be granted as prayed, after rejecting the false and frivolous pleas raised in the Counter Affidavit. The application is liable to be allowed as prayed.

(19) That the contents of paragraph 20 of the Counter Affidavit are not admitted and are denied. The deponent has made out a very strong case for interim ~~NOTARY~~ also. The grounds taken in the present application are well founded and are sustainable in the eye of law. All averments made in the Counter Affidavit, ~~xxx~~ contrary to what have been stated in the application as well as in this Rejoinder Affidavit, are devoid of merits and are liable to be rejected.

(20) That the contents of paragraph 21



H. T. Marik

(contd....12)

(AGY)

(12)

of the Counter Affidavit need no comments.

H. I. Masih

DEPONENT.

VERIFICATION:

I, H. I. Masih, do hereby verify
that the contents of paras 1, 2, 3, 4, partly 5, 6, 7,
partly 8, 9, 10, 11, partly 12, 13, partly 14,
15, partly 16, 17, 18, 19 and 20, are
NOTARY **NOTARY**

true to my personal knowledge and those of
NOTARY **NOTARY**
paras partly 5, partly 8, partly 12,
partly 14 and partly 16, are
NOTARY **NOTARY**

true on the basis of legal advice received

from my counsel, which I verily believe to be

true. Nothing contained herein is false, nor

has anything material been concealed, so help

me God.

NOTARY

Verified on the 25th day of April,

1990 at Kanpur.

H. I. Masih

DEPONENT.

Born to this 25 Day of April
19... before me by the
deponent who is duly identified

Yashpal
25/4/90

Identified by
B. K. Nair
ADVOCATE
KANPUR.

deponent
Advocate

Seniority

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH,
23-A, Thornhill Road, Allahabad-211001

Registration No. 963 of 1988

APPLICANT (s) Mrs. H. I. Masil

RESPONDENT(s) U.O.G & others

Particulars to be examined

Endorsement as to result of Examination

1. Is the appeal competent ?
2. (a) Is the application in the prescribed form ?
3. (a) Is the appeal in time ?
4. Has the document of authorisation/Vakalat-nama been filed ?
5. Is the application accompanied by B. D./Postal-Order for Rs. 50/-
6. Has the certified copy/copies of the order (s) against which the application is made been filed ?
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?

yes

yes

yes

Five Sets only.

yes

—

—

yes

*S.B.S. Kanchan B.D.no. A 18224/atk.48
25*

yes

yes

yes by the advocate.

Particulars to be ExaminedEndorsement as to result of Examination

(c) Are the documents referred to in (a) above neatly typed in double space ? *yes*

8. Has the index of documents been filed and paging done properly ? *yes*

9. Have the chronological details of representation made and the outcome of such representations been indicated in the application ? *yes*

10. Is the matter raised in the application pending before any Court of law or any other Bench of Tribunal ? *No.*

11. Are the application/duplicate copy/spare copies signed ? *yes*

12. Are extra copies of the application with Annexures filed ? *yes*

(a) Identical with the original ? *yes*

(b) Defective ? *—*

(c) Wanting in Annexures *—*

Nos...../Pages Nos. ? *—*

13. Have file size envelopes bearing full addresses, of the respondents been filed ? *No.*

14. Are the given addresses, the registered addresses ? *yes*

15. Do the names of the parties stated in the copies tally with those indicated in the application ? *yes*

16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ? *—*

17. Are the facts of the case mentioned in item No. 6 of the application ? *yes*

(a) Concise ? *yes*

(b) Under distinct heads ? *yes*

(c) Numbered consecutively ? *yes*

(d) Typed in double space on one side of the paper ? *yes*

18. Have the particulars for interim order prayed for indicated with reasons ? *yes*

19. Whether all the remedies have been exhausted. *yes*

If approved may be listed before

Count on 17-5-88

Deo
Registration No.

Registered

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

23-A Thornhill Road
Allahabad - 211 001
Allahabad - 211 001

Registration No. 963 of 1938

OK
To

No. CAT/Alld/Jud/ Dated :

Smt. H. I. Masih vs. U. O. J. & Ors.

① U.O.J. thru. the Sec. M/o Health,
Court of India, New Delhi.

② Director (C.G.H.S.), Directorate
G. of Health Services, N.B., New Delhi.

Please take notice that the applicant above named
has presented an application a copy whereof is enclosed herewith
which has been registered in this Tribunal and the Tribunal
has fixed 12th day of October 1938. For Reply.

If no, appearance is made on your behalf, your
pleader or by some one duly authorised to Act and plead
on your in the said application, it will be heard and decided
in your absence.

Given under my hand and the seal of the Tribunal
this 13th day of Sept. 1938.

For DEPUTY REGISTRAR (Judicial)



C.M.O., C.G.H.S.
117/617, Pandu Nagar,

Kanpur,