

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

INDEX SHEET

CAUSE TITLE O.A.13.66. OF 88

NAME OF THE PARTIES...Shri...Ram...Tiwari

.....Applicant

Versus

.....Union of India.....Respondent

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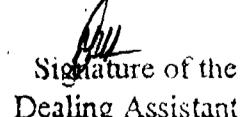
CERTIFICATE

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

Dated. 28/12/2011.

Counter Signed.....

Section Officer / In charge



Signature of the
Dealing Assistant

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, MOTI MAHAL, LUCKNOW.

DATED: 21/1/94
Title Q.A.Ho.1366 1988

Name of Parties.

Shri Ram Tewari - Applicant.

Chico ^{versus} of Ghelia - Respondents.

PART-A

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Certified that no further action is required. The case is fit for consignment to record room.

Section Officer

Court Officer

Incharge

10/1/94

Signature of Deali
Assistant.

(RN)

21/1/94

10/1 *Conformation Peninsular* ~~Peninsular~~ Scheme

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No. 1366/ of 1988

APPLICANT (s) *Smt. Ram Tewari*

RESPONDENT(s) *U.O.I. through Secy. Min. of Defence, New Delhi*

~~2 others~~

Particulars to be examined	Endorsement as to result of Examination
1. Is the appeal competent ?	Y
2. (a) Is the application in the prescribed form ?	Y according to old form
(b) Is the application in paper book form ?	Y
(c) Have six complete sets of the application been filed ?	5 sets filed.
3. (a) Is the appeal in time ?	Y
(b) If not, by how many days it is beyond time ?	-
(c) Has sufficient cause for not making the application in time, been filed ?	-
4. Has the document of authorisation, Vakalat-nama been filed ?	Y
5. Is the application accompanied by B.D./Postal-Order for Rs. 50/-	Y
6. Has the certified copy/copies of the order (s) against which the application is made been filed ?	Y
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?	Y
(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?	Y

Particulars to be ExaminedEndorsement as to result of Examination

§ (c) Are the documents referred to in (a) above neatly typed in double space ? *Photo copies* A/

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

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

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 ? *Two Cofn's In-qed*

12. Are extra copies of the application with Annexures filed ? *Ys*
 (a) Identical with the original ? *Ys*
 (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 ? *Ys*

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

16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ? *No*

17. Are the facts of the case mentioned in item No. 6 of the application ? *Ys*
 (a) Concise ? *Ys*
 (b) Under distinct heads ? *Ys*
 (c) Numbered consecutively ? *Ys*
 (d) Typed in double space on one side of the paper ? *Ys*

18. Have the particulars for interim order prayed for indicated with reasons ? *No*

19. Whether all the remedies have been exhausted. *Ys*
 If approved, the case may be listed on 10-12-1988. *S. H. Khan*

Submitted by
 Shandar
 7/12/88

ORDER SHEET

Registration No. 1366 of 1988

Appellant
Applicant

Ram Tevaria

Versus

Respondent

U.O.G. 80/8

Serial number of order and date	Brief Order, mentioning reference, if necessary	How complied with and date of compliance
16-1-89	<p><u>OIR.</u></p> <p>Today notices issued to all the Respondents fixing 10-2-89 for filing reply.</p> <p style="text-align: right;"><u>RSS</u> <u>16-1-89</u></p>	
20.2.89	<p><u>OIR</u></p> <p>On 16-1-89 file's Vikalatnama & comittel today. Respondent may be filed by 25-4-89</p> <p style="text-align: right;"><u>DR</u></p>	
25.4.89	<p><u>OIR</u></p> <p>On 16-1-89 report & may be filed by 25/7/89</p> <p style="text-align: right;"><u>DR</u></p>	
25.7.89	<p><u>Req</u></p> <p>of the Counsel for the applicant On Reverser, rejoinder may be filed by 26-8-89</p>	

W
Req 257

ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

OA NO. 1366 OF 1988

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Vs.

Sl.No.	Date	Office Report	Orders
	25-9-90		<p>DR Rejoinder filed on 21-8-89 by Dr. NK Nair Counsel for applicant. Reply filed on 28-2-89 by Dr. KC Sinha Counsel for respdt. Pleadings are complete. Keep in the fine dic. list.</p> <p>DR(7)</p>

CENTRAL ADMINISTRATIVE TRIBUNAL

A4

LUCKNOW BENCH

LUCKNOW

Original Application No. 1366/1988

Shri Ram Prasad Tewari

Applicant

versus

Union of India & others

Respondents.

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

This is ~~the~~ second innings by the applicant who has crossed the age of 70 years, for pension and pensionary benefits. The applicant ~~who~~ was in Army Service, from the year 1941 to 1952 and for 2 years he was boarded out on medical grounds from Jammu and Kashmir forward area and after being declared fit for service in 1954, he joined the Air Force, and ~~thus~~ ^{the State Service} the applicant remained in Force for about 37 years, of which he remained for about 24 years in the Indian Air Force. In the year 1971, he opted for I.U.F.W.P.F. scheme which was not on a prescribed form and was also not approved by the controller of Defence Accounts, and option on the prescribed form was taken by the applicant in the year 1960 when he was in Agra. The applicant was already declared Quasi Permanent but it appears that ^{Confirmation} the order of ~~appointment~~ was not passed for some reason or the other. On coming to learn that because of lapses on the part of the department, he had not been made

confirmed, and was on the verge of retirement, he made representations in this behalf. The applicant retired on 30.7.78 and got meager amount of Rs 8000/- towards his alleged option in 10 FWPF, he made representation regarding his outstanding service, that is why he was recipient of three medals, which was followed by other representations for pension and pensionary benefits. In this connection made reference to the certificate issued in his favour as an Ex-Serviceman when he was at Agra. Ultimately, after losing 7 years, when the applicant could not get relief, the applicant has approached this Tribunal.

2. According to the respondents, applicant's case for pension could not be considered only because a confirmed employee could be declared permanent entitled to pension and pensionary benefits. While deciding the representation the respondents should have been considered whether he was entitled for confirmation or not but this aspect was not taken into consideration. The direction given by this Tribunal for deciding his representation did not exclude this aspect rather it included the same in it. One more opportunity is given. The respondents are directed to consider that so long as the applicant was in service whether there was any vacancy, the applicant could have been confirmed in view of his placement. According to the respondents, regular vacancy was not available but it appears that they have not considered that if there would have been no delay or laches on their part, the question of confirmation of

the applicant could have arisen at much earlier stage or not. The respondents are directed to re-scrutinize the matter, if the vacancy could have been available and in case the vacancy could have been available, then he may be confirmed with effect from that date. In that event he is to be given pensionary benefits as/has completed 20 years of service. They would also keep in mind that the temporary employees are also entitled to the pensionary benefits to the extent permissible. Let a decision in this behalf be given and implemented within three months from the date of communication of this order. NO order as to costs.


Vice Chairman.

Shakoor/- Lucknow: Dated 22.1.93.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH
ALLAHABAD.

CLAIM PETITION NO. 1364 OF 1988.

between

Shri Ram Prasad Tewari Applicant.

//versus//

Union of India and others Respondents.

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*Filed &
Noted for
Record &
Copied
10-10-88
S. K. Tewari
1-1-89*

S. K. Tewari

AO
Administrative Tribunal
Central Bench At Allahabad
Date of filing..... 12-5-80
Date of receipt by Post
By Registrar 12-5-80

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNAL ACT, 1980

For use in Tribunal's office

Date of filing _____

Registration No. _____

Signature
Registrar.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH
ALLAHABAD

Between

Shri Ram Tewari aged about 70 years, son of Sri Ganga
Prasad, resident of 129-J, Bengali Colony, Harjinder Nagar,
Kanpur-7, Ex Electrician-II(A), Civilian Employee of No.4,
Base Repair Depo, Air Force, Chakeri, Kanpur.

..... Applicant.

And

- 1- Union of India Ministry of Defence,
through its Secretary, New Delhi.
- 2- Air Officer Commanding No.4 Wing,
Air Force Station Agra.
- 3- Officer Commanding No.4 Base Repair
Depo, Air Force Chakeri, Kanpur-8.

..... Respondents.

Rey
DETAILS OF APPLICATION.

1. Particulars of the applicant :

- (i) Name of the applicant: Shri Ram Tewari
- (ii) Name of Father : Sri Ganga Prasad

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(iii) Designation and office in which employed Ex- Electrician II(A)
Civilian Employee of
No.4, Base Repair Depo,
Air Force, Chakeri,
Kanpur.

(iv) Office address: -do-

(v) Address for service of all notices. Shri S.R. Tewari
R/o 129-J Bengali
Colony, Church road
Harjinder Nagar,
Kanpur-7.

2-Particulars of Respondents.

1. Union of India
Ministry of Defence
through its Secretary
New Delhi.

2. Air Officer Commanding
No.4 Wing, Air Force
Station Agra.

3. Officer Commanding
No.4 Base Repair
Depo, Air Force,
Chakeri, Kanpur-8.

(ii) Office address of the Respondents. As above.

(iii) Address for service of all notices. As above.

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

The communication dated 2nd July 1988 of H.K.Kureel C.G.O.L.A. civil Administration for Commanding Officer No.4 B.R.D. Air Force Chakeri, Kanpur-208008

S. Khan

AY

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rejecting
informing that the petitioner's claim that he
should be brought under the pension and scheme.

4- Jurisdiction of the Tribunal:

The applicant declares that the
subject matter of the communication against
which he wants rearessal is within the juris-
diction of the Hon'ble Tribunal.

5-Limitation:

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

6- Facts of the Case:

(i) That the applicant was appointed as
Electrician Group II(A) on 31.7.1954 in the I.A.F.
at A.F. station Agra.

(ii) That the applicant served the Army to join
E.A.E. Branch from 1941 to 1952 and was for 2 years
the applicant was boarded out on medical grounds
from Jammu and Kashmir forward area and later on
being declared fit for service in 1954 joined the
Air Force. This way the petitioner had served
the defence forces of pre independent and then
the independent India with excellent service
records from 1941 to 1978 i.e. about 37 years
out of which 24 years was spent in the service
of the Indian Air Force.

S. K. Lata

WY

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(iii) That after appointment the applicant served at Agra from 30-7-1954 to 14-9-1976 carrying on an unblemished record and good conduct.

(iv) That it was the sole interest of the service and the applicant was posted out from No.4 Wing Air Force Station Agra to No.4 BRD Air Force Station Chakeri, Kanpur against a regular vacancy in his holding trade and group vide Air Head Quarter Letter No. Mir H/23049/ 105/3 MC/PC-4 dated 24-8-1976 and letter dated 21st September, 1976. A photocopy of the letter dated 24-8-76 and 21-9-76 is annexed herewith and marked as Annexure No. 1 and 2 to this Claim petition.

(v) That in the year 1971 the petitioner opted for I.O.F.W.P.F. scheme which was not on a prescribed form and was also not approved by the controller of Defence Accounts. It may be pertinent to state that when I.O.F.W.P. is accepted.

S. K. Kumar
The C.D.A. sends back the duly approved second copy which is to be handed over to the individual (as it has to be done in duplicate) of the option in the form of a prescribed form, as was done in 1960 when the applicant was posted at Agra. A photostate copy of the aforesaid prescribed form is attached herewith as Annexure No. 3 to this Claim petition.

Annexure No. 3

OK

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(vi) That the applicant, a quasi-permanent employee, was made permanent against the existing regular-permanent vacancy and was confirmed accordingly in the pay scale of Rs.320-400 on the post of Electrician II(A) (Civilian) 4 B.R.D. Air Force Kanpur.

(vii) That the being a quasi-permanent employee on attaining the age of superannuation and after putting in 24 years of service the petitioner ^{was} eligible for pension and death cum-gratuity under central, civil services (Pension) Rules, 1972.

(viii) That the applicant on arriving at the verge of retirement, has requested to the working staff of Civil Administrative Section of No.4 BRD Air Force Station Chakeri, Kanpur about proper action on his preferred documents. The applicant was always assured that all the actions to enable the applicant to have his benefits arising out of services, will be made in his favour.

S. Bhunni

(ix) That the applicant before retirement learnt that he had not been made permanent (confirmed) in his trade and group and remained as quasi permanent only because of the lapses and failure of the administrative

AB

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machinery by way of not promulgating necessary occurrence of permanancy regarding applicant in the office order issued by Commanding Officer No.4 BRD Air Force Station Chakeri, Kanpur.

(x) That in July 1978, the applicant approached the then Officer Commanding in person and requested him severally for issuing the necessary orders making the applicant permanent servant of the Air Force and the Officer Commanding No.4 BRD Air Force Station Chakeri, Kanpur was pleased to assure the applicant to take up positive steps immediately but the applicant heard nothing till his retirement.

xi) That the applicant retired on 31-7-78 (A/D) after putting in 24 years and one day of dedicated service to the Nation and the Air Force in particular. The discharge certificate dated 31st August 1978 is attached herewith and marked as Annexure No. 4 to this petition.

Annex No. 4

S. K. Hussain
xii) That after putting in his entire life in the service of the Defence Forces all that the applicant got a miser amount of Rs. 8000/- towards his alleged option of IOFWPF to take care of him for the rest of his life.

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(xiii) That the applicant was absolutely astounded by this action of the authorities above, and made a representation dated 5th May 1979 before the C.D.A.(P) Dropadi Ghat, Allahabad. In the said representation he also mention about the 3 medals he got for distinguished services. A photo state of the medals and the true copy of the representation dated 5-5-1979 is attached herewith and marked as Annexure '5' and '6' to this Claim petition.

Annex. No. '5' &

'6'

(xiv) That again on hearing nothing from the authorities the petitioner made yet another representation dated 10-4-1981 to the C.D.A.(P) Allahabad with copy to Air HQ. MC, I.A.F. and others and Ministry of Defence.

(xv) That it may be pertinent to state at this stage the C.G.O. civil Administration, Agra wrote a letter no. 4W/2611/1/PC dated 31st October, 1973 to the Head Quarter Central Air Command I.A.F. New Delhi, from the said letter it is abundantly clear that the petitioner along with 3 others were adjusted against the vacancies of electrician Grade I(Airman) but were given the salary of Eloc Grade II(A). It is also seen made clear that the petitioner was strictly tested

S R Hawan

QJY

A 15

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and was declared successful and fit for grade I(A) services and pay scale. It is further made clear that the petitioner had been working in grade I(A) from the year 1967 to 1976 on the pay scale of grade II(A). The petitioner also retired on the same pay scale of Elect grade II(A). It is further stated that as a lapse and negligence on the part of the authorities the petitioner was given the grade II(A) pay scale although he had worked ~~grade (H)~~ on the ~~scale~~ for 10 years. A true copy of the said letter dated 31-10-1973 is attached herewith and marked as Annexure No. 7 to this petition.

Annex No. 7

(xvi) That the petitioner on his application for getting the pay scale of grade I(A), confirmation on the post, pension and gratuity was given a noting by one P. S. Sharma ~~711.17~~ that the petitioner should be made permanent and promotion be made. A photo state copy of said noting dated 27-3-1976 is attached herewith and marked as Annexure No. 8 to this claim petition.

Annex No. 8

S. R. Kumar

(xvii) That the Agra District Ex-Services League has issued a certificate in favour of the petitioner certifying that he has ^{been in} service for 35 years ~~and~~ 180 days and has good character and efficient service record. A photo copy of the said certificate dated 17-2-1979 is annexed herewith and marked as Annexure No. 9 to this claim petition.

Annex No. 9

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(xviii) That the applicant having no other way out left, served the Union of India through its Secretary, Officer Commanding, 4 BRD Air Force Station Chakeri, Kanpur and the AOC No. 4 Wing, Air Force Station Agra with the notice under section 80 of the Code of Civil Procedure on 30-1-1985 which was received in the office of the respondents on 31-1-1985, 31-1-1985 and 5-2-1985 respectively but the respondents failed to comply with the notice within the stipulated period of notice.

(xix) That after running from pillar to post for 6 to 7 years for getting his pension sanctioned the petitioner filed a claim petition No. 127 of 1986, ^{on 30/12/85} Sri Ram Tewari Vs. Union of India before this Hon'ble Tribunal.

(xx) That this Hon'ble Tribunal dismissed the aforesaid claim petition of the petitioner on the ground that it was time barred vide its judgement dated 13-4-1988. A photostate copy of the aforesaid judgement dated 13-4-1988 is attached herewith as Annex, No. 10 to this claim petition.

(xxi) That in the said judgement this Hon'ble Tribunal in para 5 while

S. Kumar

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directing the respondents to reconsider the applicants grievances made/sympathetic and favourable observations in favour of the applicant the extract of para 5 of the judgement of the Tribunal is quoted below:

"Be it as it may we feel that in terms of his representation made in 1979 and 1981, the respondents could reexamine his case and by exercising the powers available to them consider his case for confirmation or switching over from C.P.P to Pension in terms of the 1980 with necessary adjustments. After all pension is only a just allowance in consideration of past services and a great source of succour to the employee at the fall of his sojourn in this mortal world.

S. Kumar
(xxii) That in pursuance of the direction of the Hon'ble Tribunal the respondents wrote a letter to the applicant on 15-6-1988 that his case has been sent to the Higher Authorities for reconsideration.

(xxiii) That finally on 2nd July 1988 C.C.O(A) Civil Administration Kanpur informed the applicant that he cannot be

Q5/

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brought under the pension scheme therefore he cannot be considered for pension. A photo-state copy of the said letter ~~dated~~ of information dated 2-7-88 is attached herewith and marked as Annexure No. 11 to this Claim petition.

(xxiv) That it is stated that even the ~~observation~~ of this Hon'ble Tribunal is a direction to the respondents and further it is made clear that only on the lapse and negligence on the part of the respondents authorities the petitioner could not be made permanent even after 24 years of dedicated services.

(xxv) That also as per rules the respondents have acted illegally ~~is~~ in not confirming the applicant who retired as quasi permanent employee after putting in 24 years of services.

(xxvi) That the applicant has no other efficacious remedy left for his redressal except to file this petition before this Hon'ble Tribunal.

7- Relief(s) sought.

In view of the facts mentioned in para 6 above, the applicant prays for the

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the following reliefs:-

(a) That the Hon'ble Tribunal may be graciously pleased to declare the order of respondents thereby retiring the applicant unconfirmed and without making permanent, depriving him of the benefit of pension and gratuity at the age of superannuation, illegal, void, unlawful, in-valid and unenforceable against the applicant.

(b) The Hon'ble Tribunal be further pleased to quash and set aside the order of retirement of the applicant and to direct the respondent to make the applicant permanent in the cadre from which he was retired in July, 1978 with full benefit of the service i.e. pension and gratuity.

S. K. Varma

(c) The Hon'ble Tribunal may further be pleased to summon the records of the case.

(d) The records of claim petition no. 127 of 1986.

(e) Cost of the petition : and

A26

- 13 -

(f) Any other relief deemed just and proper in the circumstances of the case be also awarded to the applicant as against the respondents.

G_R_O_U_N_D_S

(a) Because the retirement of the applicant was malafide and was the result of the grudge and malice of the officials of the depo which resulted the retirement of the applicant without being confirmed and made permanent in the cadre he rendered the services.

(b) Because the order retiring the applicant at the age of superannuation without giving him benefits of the services rendered by him is illegal, unlawful and against the spirit of Article 311 of the Constitution of India.

(c) Because the order of retirement of the applicant in the capacity and status of quasi permanent is against the policy and against the Fundamental Rules and service condition of

S. Kumar

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the applicant.

(d) Because no opportunity of hearing the applicant was afforded before retiring him without allowing the applicant the pension and gratuity the real fruit of the service rendered by the applicant.

(e) Because the retirement of the applicant without being awarded and allowed the gratuity and pension is a major punishment which could not have been exacted without hearing the applicant or conducting a regular inquiry.

(f) Because the applicant was entitled and had right to his post on which he devoted diligently till unlawful retirement and the retirement of the applicant as such is illegal, unlawful, malafide, void and against the principles of natural justice and is liable to be quashed.

(g) Because the respondents did not keep in mind while reconsidering the case of the applicant, the observation made in favour of the applicant made by this Hon'ble Tribunal.

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(h) Because no reason was given to petitioner for rejecting his plea for reconsideration of his pension matter.

(i) Because the impugned order is unenforceable having not been followed by law and procedure prescribed therefor and in contravention of the rights guaranteed by the Constitution.

(j) Because the impugned order is against the principles of natural justice and the applicant could not have been denied the benefits of services & already accrued after arising at superannuation age in the service.

8- Interim order, if prayed for.

Now

S. R. Mehta

9. Details of the remedies exhausted:
That the cause of action
action accrued to the applicant against
the respondent for the first time on
arrival to no. 4 Base Repair Depot on
posting in September 1976, secondly
in July 1978 when the applicant was
retired without gratuity and pensionary

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benefits, thirdly when the representations were made but the same remained unheard and lastly on 2nd July 1988 when inspite of the observation made by this tribunal the respondents rejected the plea of the applicant.

10- Matter not pending with any other court: etc.

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

11. Particulars of Bank Draft/Postal order in respect of the application Fee:

1- Name of the bank on which drawn

2- Demand Draft No.

OR

S. R. Kumar

1. Number of Indian Postal Order DD 630078
2. Name of the issuing Post Office High Court Post office
3. Date of issue of Postal Order 6/12/88
4. Post office at which payable High Court Post office

12. Details of Index.

QMS

AR4

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

13- List of enclosures:

Already mentioned in the index.

Verification.

I, Shri Ram Tewari, the above named applicant hereby verify that the contents of paras 1 to 26 are true to my personal knowledge and the contents of paras including grounds are believed by me to be true and that I have not suppressed any material facts.

Allahabad, dated

December, 1988.

S. P. Tewari
Applicant.

To

The Registrar,
Central Administrative Tribunal,
Additional Bench, Allahabad.

S. P. Tewari

File:

10

625

acc to MFG NO. 1.

In the double Central Adelabu structure Iribuanzi,
Additional search, Alibhai.

Cina keti ti on no.

John R. Gandy, Jr. *Applicant*.

Verma's

Table of Table 4 others Respondents.

Tele 20011/307 Il re d'internazionale Conrad, 11.2
W2DPE - 44000? 4 1977

Air Headquarters (1st A. G.)
100, Redhi.

Absorption of Civilian Infectious Agents by the Human Immune System in the Presence of Civilian Vaccines.

4. Referenc your letter M.R. II 4/20/43/20 3/10 4 dated
31 May 76 and this Headquarters letter of serial
number dated 10 Jun 76.

2. Since No. 4 QRP, will their letter do, ~~and~~ ^{and} copy?

2/76 dated 20 Jul 76 has considered the availability
of regular strength (4) held and not within vicinity
may please be issued by your M.R.P. posting him from
20.4 unit 16 to No. 4 BATT, AR on absorption against
the regular strength.

1. T/A 16
FOR AIR OFFICE OR COMM. 11-14-5

Copy to:

Wing Central Air Command, EAF
40.4 Bldg, Air Force,
40.4 Wing Air Force.

S. R. Hasan
Selected
Properties
of
Water.

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A 26

Enclosure No. 2

In the Hon'ble Central Vakalatnava Tribunal,

Additional Bench, Allahabad.

Claim Petition No.

Shri Ram Tiwari Applicant

versus

Union of India & others Respondents

C.I.No. 22

Page No. 01

Dated 21 Sept 76

Office Order Part II 'B'

Industrial Class III

Posting out

The u/m 10/11/76 that he was held against aircrew
vacancy post no. 410711 posted to No. 4 B.R.D. Air
Force on absorption against the regular vacancy as
Sectt. II (A) w.e.f 14 Sep 76 (F/A). He has been relieved
of his duties at this post w.e.f 4 Sep 76 (A/I) and
directed to report to No. 4 B.R.D. Air Force on 14 Sep
76 (F/A) after availing usual joining/journey
period from 5 Sep 76 to 13 Sep 76 (excluding
study on 5 Sep and 12 Sep 76). The position is in
public interest. A truck off strength of No. 4 B.R.D.
Air Force w.e.f 4 Sep 76 (A/I). Sealed to Draw 784
and CCA w.e.f 14 Sep 76 (F/A).

Shri Ram Tiwari Sectt. II (A) No. 13501

Auth: Air H. Letter No. AIR/42/2340/105/3/67/
PC-4 dated 24 Aug 76 and SCC No. 4.1.2
Air Force.

Ad:

(Mr. Ram Tiwari)

Officer, CDO (Admin)

O.I.C. Civil Admin.

for Air Officer Commanding

No. 4 B.R.D. AF.

True Copy

S. R. Tiwari

Applicant

S. R. Tiwari

Alleged
by post
Adt.

S. R. Newman

~~Amadeo
Lupi-Sillega
Roma~~

STATION: 497

Si è stata così svolta la battaglia.

Designs for the Head of the Office
and Despatch Office

convenience connected therewith.

卷之三

QUESTIONNAIRE

SOCIATION

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the Officer-in-charge
of Section 2, secret.

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1149 07 22

27
Bitterroot Mts. 15,000 ft. 1958

Enclosure No 2

2

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Enclosure No- 4

In the Honourable Central Administrative Tribunal

Addl. Bench - Allahabad

Claim Petition No.

Shri Ram Tewari Applicant

Versus

Union of India & Others Respondents

In H.C. of A.Y. 1924

SERVICE DISCHARGE CERTIFICATE -

(Civilian Employees)

No. 4 B.R.S. MARHAMAT DPO,
VAYU SENA, CHAKRI,
KANPUR - 208008.

This is to certify that Shri S. R. Tewari
whose description and details are reproduced on the reverse
hereof, held the appointment of ELECTRICIAN II (A)
on the rates of pay of Rs. 400/- in the scale of Rs.
Rs. 320-6-326-8-390-10-400

He was permitted to resign
his services were terminated due to retrenchment, w.e.f.
15.7.1941.

Mr. Tewari has been retired regularization on attaining
the importance of 1.w. 60 days after

Place : KANPUR

Date : 31 AUG, 1926

(S. R. Tewari)
Group Captain,
Officer Commanding
No. 4 B.R.D., A.Y.

(*) Designation of appointment.
(+) Grade whichever is not applicable.

N.B.: - 1) These certificates may only be signed by the
Officer Commanding Establishment.
2) Great care must be taken of this certificate.
If lost no duplicate can be supplied.

P.T.O.

S. R. Tewari

*Admitted
Apparatus
Advocates*

22
A 29

RECENT DISPLACEMENT CERTIFICATE

Name (Block) AKEL S. S. KUMAR P/A No. 15301

Date of birth 26-7-1918 Home Address No. 666 Gata, Mathura,

Mutt, Mathura

Present Name & Address Deoga Prasad, Purnia

as above Nationality Indian

Religion Hindu Caste Brahmin

Address/Diplomas None

First Appointment 30-7-34

In what branch/ of service Elect II (A) Post held
on termination of service Elect II (A)

Date of pay drawn on termination of service Rs. 400/- M. (Basic Pay)

Nature of work Elect. II (A)

Ability Above Average

Special qualifications None

Total Service :-
Non-war 24 Months 01 Days
War. 00

Whether eligible for service in other Government Service (if
not, state how not) :- No, the individual has been retired from service w.e.f.
31-7-78 (A/D) on attaining superannuation age i.e. 60 yrs of age.

Conduct & Character during service Very Good

Any special remarks :- A hard working technician who works to the
satisfaction of his superiors

Signature of individual

Place : Rs. 4 B.R.D., Air Force Station, Mathura

Date : 26-7-1978

(J. K. KAPUR)

Group Captain,

Officer Commanding

No. 4 Bell. C.

S. K. Kumar
AKEL S. S. KUMAR
Deoga Prasad
Purnia

23

30



Enclosure Nos

NUMBER & NAME
18.01 - S.R. -

Name & Initials

S. R. HUWAI

The aforesigned has been
authorised to wear the
award of the following
medals:
SANGRAM MEDAL / POKHRA-
KASHI PASCHIMI STAR /
25TH INDEPENDENCE
ANNIVERSARY MEDAL

Strike a line across
and immediately below
the last entry made
above.

Chak

CHAK
DIA MEDAL
With Garlands
Lion Commemoration
Signature of Vice Adm. B. S. R.

Date: 22.10.1963

Command: HQ. CAC

S. R. HUWAI is the name 13501

Service rendered in the
Air Force operation area

MEDAL Received 1961 1963 1967

(1) POKHRA KASHI STAR

472001 6212

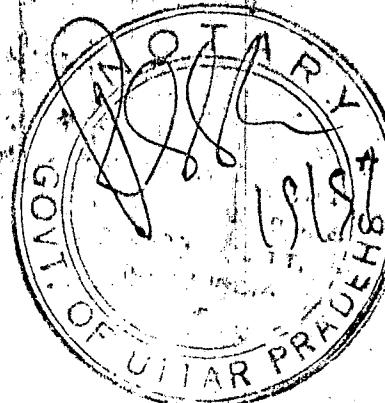
(2) PASHCHIMI STAR

472001 6212

(3) SANGRAM MEDAL

472001 6212

ATTESTED
TRUE COPY Command H.Q. CAC



S. R. HUWAI

S. R. HUWAI

Address
Aeroport
Almora

Ex-Service no. 6

131

In the Hon'ble Central Administrative Tribunal,
Vidhan Bhawan, Allahabad.

Claim Petition no.

Sri Ram Kumar Applicant.

Versus

Union of India & others Respondents.

To

The C.P.A.(P).
Proprietary Ghat, Allahabad.

Sub: Request to clear of my service gratuity
money and group I pay as I am retired on
31-7-1978 from No.4 B.R.C. Air Force.

Sir,

It is requested that my first appointment
was made on 30th July 54 as Electrician at 4
wing Air Force Yatra. I was retained from this date
to 14-7-1970 and then I was posted to No.4 B.R.C.
Kanpur. I got discharge on 31-7-73 from Kanpur on
attaining superannuation age of 60 years with very
good conduct.

But I was at Kanpur station, my discharge was not
properly to be completed 8 months before the
expiry date of service but it has been ignored
with the result I am suffering a great financial
loss as I am a poor boy service man and also served
the Air Force more than 24 years without any
complaint my case of my gratuity and group I pay
may be settled soon and arrange to pay me.

I was posted to Maintenance Command from
Central Command with the unit Commanders recommen-
dations so as I may be benefitted with my pension
and gratuity money and group I pay but all have
been ignored thinking I as a new men to No.4 B.R.C.
Kanpur.

S. R. Kumar

Abdul Aziz
Signature

The Afghanistan certificate was also sent to home address. It is not complete. My total service was not in Field but this is not mentioned in my Afghani certificate. The models of GS, GS and 71 have not been mentioned which I got from Head quarters Air Force. It seems that documents papers have been missing and incomplete have sent for audit.

I worked at no.4 unit from 1954 to 1970. I was made quasi permanent in September 1967. I was made Group I Electrician from vide AFPO Signal No. C/194 dated 23rd November 1967. In the year 1973 I was directed to appear in the trade test promotion examination from Civil Admin Office vi/o their letter No. 4/2011/140 dated 5th September 1973.

As per the above letter I was examined by Station Electrical Board of Officers in which I was declared as Passed. The result was submitted to Civil Admin Office on 11 October 73 vide service note from Engg. Electric Section dated 11 October 73 (test examined papers are still lying safe in no.4 unit electrical section wra).

One of the electrical Board test that officer was at urgent temporary duty, so the examination was conducted in September 73 instead of July 73. Recruitment Rule of 70 does not show that individual should be permanent before sitting for promotion test.

It is, therefore, requested that the orders may be made for my promotion to pay.

S.R. Khan

Abdul Qayyoom
Haji

from September 1973 to 31st July 1978. My service gratuity is to be calculated as I have rendered my services from 30-7-54 to 31-7-71.

No arrangement have been made for my pension too. I served the Army in this Branch from 41 to 52 and I was medically boarded out from J & K forward Area. After two years I got recovered, and with I.M. Delhi made me fit then I joined Air Force. In this way I am running the defence services from 1941 to 1978 without complaints. I served over seas from 1941 to June 1943. first front in Air Force, Middle East Air Force and got African stars (2) - ar Medal 1939-45 (3) Indian Independence medals. Air Force Medals I received :-

I.晕厥降下星 1961

II. Bochhami Star 1965

III. 勇氣獎章 1971.

In spite of all the hardship of hill areas no compensation is to be given to me for my old age. I am aware there is no difficulty of labour. Kindly my case may be handled sympathetically and I am waiting for reply with open mouth and oblige.

Dated 5-5-79

Yours faithfully,
S/ - Shri Ram Tejpal
Testimonia 1/17501, sheet
attached herewith. RT No. L110

Discharge from 4 BRD Kanpur
1. JHC Norton on 31-7-78
CC Section / MS 1949
2. Ks Bhig Group Captain
Station Commander Air Force Station Agra.

S. Bhawal

Alsace
Burgundy
Alsace

-4-

3. L.K. Mittre as an Ldr Station Electrical

Officer No. 4 I.M., 1962.

4. L.K. Desai as an Ldr Station Electrical

Officer No. 4 I.M., 1970.

Name Address :

Addressed to :

1. Aq Maintenance Command Air Force Haipur.

2. Air HQs New Delhi II

3. Station Commandant No. 4 B.R.D. Kaigar.

4. Copy to - C.D.P. Propnlti Ghat Allahabad.

5. " / CDA (A) Dehradun.

True Copy

S. R. Mehta
Applicant.

S. R. Mehta

Alka & Ge
Supp. By
P.C.U.

Enclosure No 7

28

7

A 38

Ref ID: 72511/231

REGISTERED

Air Force Station
AGRA - 282006

4/26/11/1/PG

31 Oct 73

Eqd. Control Air Command, IAF

FIXATION OF PAY OF CIVILIAN ELECTRICIANS
ONE II IN THE GRADE OF ELECTRICIANS I

The undermentioned Civilian Electricians grade II were absorbed and
adjusted against the vacancies of Elect. I (Airman) in the pay scale of
Electricians Gds II as advised by Air Headquarters, New Delhi vide their
particular No. Air HQ/23099/255/PG-4 dated 01 Jan 68 (copy enclosed).

Shri Haldip Singh PA No. 11619
Shri Dyal Prasad PA No. 11620
Shri Shanlal Lal PA No. 11621
Shri Siri Ram Ticari PA No. 13501

2. These Electricians are competent in the technical work as any other
of Electricians Gds I trade. As such they may be authorized to
draw the pay of Elect I trade. In order to absorb them in the pay scale
of Gds I (against airman vacancy), they have been tested strictly
in terms of AFQ 390/71 and found successful in the test. The result thereof
(ex form 790(7)) is forwarded herewith.

3. It is, therefore, requested that authority may please be obtained from
Air Headquarters to fix the pay of these Electricians in the grade of Electricians I (against airman vacancies).

Encl : As stated

Sd/- *.....*
(B N GUHA NEGOT)
0 0 0 (A)
0 1/c CIVIL ADMIN
COMMANDING OFFICER
J.P.W.

S. R. D. M.

*Also see
Report
R. J. S.*

Enclosure No 8

29

(15) A 39
P.A. NO. 13501
S.R. Tiwari
Electrician II
MTR & S Section
No. 4 Wing, A.F.

27 Mar 76

SUB : POSTING OF CIV. TECH. TO FILL UP
PERMANENT VACANCY

Sir,

With due respect I beg to submit that my attached application for may be forwarded for favourable consideration and necessary action.

Yours faithfully,

Sri Ramkrishna

Mr Officer Commanding
No. 4 Wing, Air Force

REMARKS BY SECTION COMMANDER

Sir S. R. Tiwari has been informed the contents of your note dated 26/3/76. He is only person willing to move out of Agra to get absorbed against permanent vacancy. His case may sympathetically considered and his promotion be effected after making him permanent.

Date : 8.4.76.

P.S. Sharmin A

FL LT

REMARKS BY CIVIL ADMIN

Date :

REMARKS BY AIR OFFICER COMMANDING

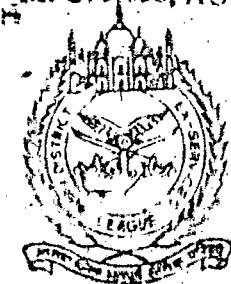
Date :

S. R. Tiwari

Enclosure No 9

30

A. 40



Services Deptt/- 17.8.1970

M. G. Road, AGR-202001

Agra Distt. Ex-Services League,
3, Swadhin Bhawan, Opp. M. G. Road, Agra-202001

M. G. Road, AGR-202001

Phone 6232

AGRA DISTRICT EX-SERVICES LEAGUE
AFFILIATED WITH UTTAR PRADESH EX-SERVICES LEAGUE

AND

Registered under the Societies Registration Act XXI of 1860

3, SWADHIN NIMA NAGAR, M. G. ROAD, AGRA-202001

Act. No. Agra/SL/Gen/1/70.

Dated 17.2.79.

11

Mr. S. P. Mehta, an ex-serviceman, who first served in the Army from 05.8.41 to 22.8.52 as a craftsman in R.M.F. and later in Air Force from 30.7.54 to 31.7.70 as Electrician II(A). His total service in the Defence Forces has been for 35 years and 180 days. His conduct and character during this period has been very good.

For Agra Dist. Ex-Services League

M. D. Patel

V. D. PATEL
Brigadier (retd.)
President

AGRA DIST. EX-SERVICES LEAGUE

S. P. Mehta

*Mehta
Signature
R. J. S.*



Enclosures 10 ✓

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No. CAT/Alld/29345

Dated Allahabad the

14.4.88

15.4.88

OFFICE MEMO

Registration No. O.A./I.A. 597 of 1988

Sri Ram Tripathi Applicant's

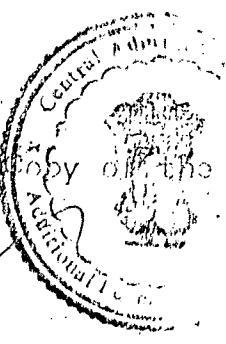
Versus

Union of India Respondent's

ATTESTED
TRUIT COPY

A copy of the Tribunal's Judgement dated 13.4.88

in the above noted case is forwarded for necessary


Deputy Registrar (J)

Copy of the Judgement dated 13.4.88

i. Sri Tunga Nath Mehta C/o Sri Ram Tripathi
10 Ganga Bari S/o 129 J. Bengal Colony
Koteshwar Nagar, Kanpur

ii. Sri K. C. Senha Ad. CAT Alld.

S. R. Bhawani

Pls. file
J. P. Singh

A. J. C.

32
A 42
RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 127 of 1986.

Shri Ram Tewari

Applicant.

Versus

Union of India & others

Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

This is an application received under Section 19 of the Administrative Tribunals Act XIII of 1985. The applicant was working as an Electrician in the No. 4 Base Repair Depot, IAF, Air Force, Chakrad. He retired from service in July, 1978 on attaining the age of 60 years as a quasi-permanent employee. The applicant's case is that he could not be confirmed in his employment because he could not meet the illegitimate demands of certain officials and, therefore, he has been denied the benefits of pension and gratuity. He was settled under the Provident Fund Scheme. He claims that he started his career at Agra in 1954 where he served upto September, 1976. He was thereafter posted to Chakrad against a regular vacancy of an Airman. Since his retirement he has been representing to the concerned officers but his grievance has not been settled and instead he has been threatened if he proceeded against the officials named by him in this application. He was not confirmed because of the grudge and malice of the officials. Thus he has been subjected to a punishment and that too without proper procedure having been followed. He has, therefore, by this application, prayed that his retirement without confirmation may be declared illegal and the order may be set aside, he may be made permanent and be given the pension and gratuity.

The facts of the case are not in dispute. The

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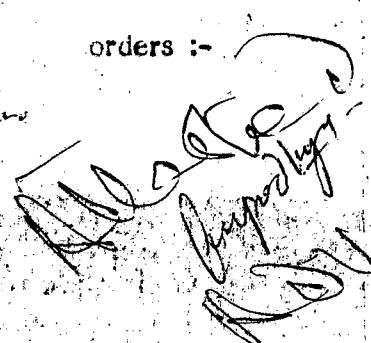
- 2 :-

respondents have said that the applicant had not been confirmed hence he was retired under the Provident Fund Scheme as per Order No. 442 of 1969 (Appendix IV to the reply). Since his appointment was against an Airman's vacancy he could not be made permanent. The regular vacancy against which he was posted was not declared permanent hence confirmation could not be made. The applicant had also opted for IOF PF Scheme and he had given a declaration on 18.11.1971 that he did not want to change to the Pensionary Benefit Scheme. The allegations made by the applicant are malafide and fabricated. The officers whom he has named were posted to the station only in 1983. His representations were replied in May and August, 1979.

3. We have heard the learned counsel for the parties. The learned counsel for the applicant's main contention was that since the applicant was posted to Chakeri against a regular vacancy he should have been considered confirmed against that vacancy and he did no more remain quasi permanent employee. He also contended that in terms of Rule 10(1)(b) and Rule 11(1)(b) of the C.G.S. (T.S) Rules, 1965 both temporary and quasi permanent employees are also eligible for gratuity if they have completed not less than 20 years service at the time of retirement if the service was satisfactory. He stated the claim of permanency of the applicant in view of the averments made by the respondents that the Air HQ letter was not available on record. The learned counsel for the respondents submitted that since the applicant was not confirmed and had opted for Provident Fund Scheme he was not entitled to the pension and gratuity. The question of limitation was not taken up by the learned counsel for the parties.

4. On 10.7.1986 this Tribunal had given the following orders :-

S.R. 1986



"Heard learned counsel for the petitioner. The petition apparently appears to be time barred. However, it may be helpful to hear the view-point of the other party on this question and as such a notice be issued to the respondents to show cause by 12.8.86 as to why the petition be not admitted and treated within time."

Since then after a number of adjournments this case was finally heard on 5.4.1988. We are not convinced that the applicant could have any reasonable and satisfactory explanation for not seeking legal remedy in time. Thus the application is to be rejected on this score.

5. A word on the merits of the application we are constrained to record that after posting against a regular vacancy the applicant could not be confirmed by the respondents and he retired as a quasi permanent employee. Vacancies may be regular or temporary. If there was a regular vacancy it was evidently not a short term vacancy. The applicant had been ordered to be transferred in public interest on this regular vacancy. The applicant had joined service in 1954 and he retired from service in July, 1978, i.e. after putting in nearly 24 years of service. He was absorbed in a regular pensionable establishment with effect from January, 1988 against the Airman's vacancy as per his Service Record. He became quasi permanent with effect from 1.11.1967. He was earlier governed by IOF WP fund but later in 1971 opted for the revised C.P. Fund Benefits. If he was absorbed in a Regular Pensionable Establishment the respondents should have pursued the case of his confirmation also. There are also certificates issued on 5.5.1975 and 10.12.1974 and other earlier dates that the applicant was contributing towards CPF and he has not opted for Pensionary Benefits. It has also been certified that he has completed 20 years of service. The averments made in the reply are that since the applicant was not confirmed he was not entitled to the pension. There is a Government of India

S. Bhawal

Deepak

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- 4 -

O.M. No. 38(16)-Pension Unit/80, dated 30.12.1980 that Industrial Workers who opt for pension in terms of O.M. dated 21.5.1971 as amended from time to time may be allowed the benefit of the orders issued under O.M. of 30.12.1980. In terms of this O.M. the applicant qualifies for being brought under the purview of the Pension Rules, 1972 because he had to his credit 20 years of qualifying service and the condition of holding a pensionable post in a substantive capacity stood dispensed with. The only thing against him remained the option to come over to the pension scheme. At enclosure 4 to his representation dated 5.5.1979 seeking benefits of pension gratuity and group I pay. He again represented on 16.4.1981 to the higher authorities. His prayers were rejected. Pension being a monthly payment to a person who retires at a certain age and they continue for the rest of the life and after his death the family is also looked after under certain conditions. It is an allowance for past services. In the modern welfare society the attempt of the Government is that persons get pension and not Provident Fund. Provident Fund is a static sum payment with no increases with passage of time and depreciates with the rise in inflation. Hence those retired on PF find themselves in straitened circumstances financially upon thereafter, unless they had made wise investments. The applicant's fault is that in terms of 1971 letter he did not opt for pension and the respondents say that he was not entitled to pension because he was not confirmed. We are not sure whether after confirmation also an option was necessary. Be it as it may we feel that in terms of his representations made in 1979 and 1981, the respondents may reexamine his case and by exercising the powers available to them consider his case for confirmation or switching over from CPF to Pension with necessary adjustments. After all pension is only a just allowance in consideration of past services and a great source of succour to the exemployee at the

S. R. Kumar

AHS

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A46

- 5 -

fall of his sojourn in this mortal world.

6. With the above observations we dismiss the application as being time barred. Parties will bear their own costs.

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MEMBER (J).

MEMBER (A).

Dated: April 18, 1988.

PC.

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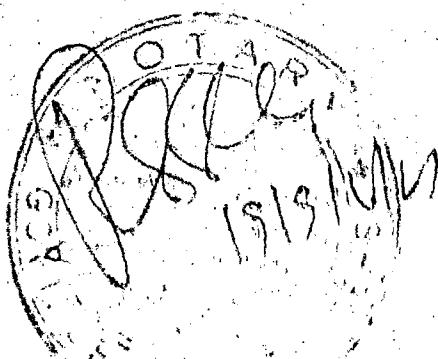


TRUE
COPY

R. N. Pan
14/4/88

(R. N. PAN)
Section Officer
Central Administrative Services
Allahabad.

ATTESTED
TRUE COPY



20th April 1988
Allahabad
18/4/88

S. R. Khan

Allahabad
Sup. Stamps
D. S. S.

37

Enclosure No 11
A/47

Tele : 44011/255

No. 4 B.R.D. A.F. Force
Chakrad, Kapur - 208001

4BRD/94/13501/T/PC

02 Jul 88

Shri S. R. Tiwari
R/O 129J Bengali Colony,
Church Road, Harjinder Nagar,
Kapur - 7.

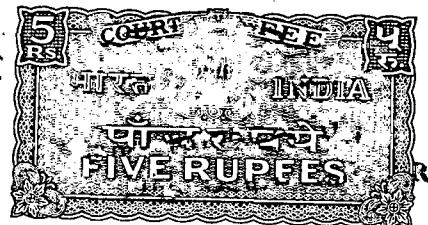
FORWARDING OF PHOTO ST & COPY OF
JUDGMENT RECEIVED FROM ADMINISTRATIVE
COURT ALLAHABAD : PENSION CASE

1. Reference is made to this Depot letter of even number dated 15 Jun 88.
2. It is intimated that case referred to higher authority has been examined in the light of the rule position on the subject. You could have been brought under pension scheme only if you would have been confirmed before your retirement. Besides you were enjoying the benefits under C.P.F. applicable to non-pensionable employees. So you cannot be considered for pension.
3. This is for your information.

(HK Kurool)
COO (A)
O/c Civil Admin
for Commanding Officer

S. R. Tiwari

Pass to
Supreme
Court
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38

A 40

अधिभाषक पत्र (वकालतनामा) *In the Central Administrative Tribunal Addl Ben ch*
हाई कोर्ट जमान जांजी बैठक से एट इलाहाबाद

Registration No

८१९८०

निरानी

वादी प्रतिवादी
अपीलान्ट

Sri Ram Tewari

बनाम

Union of India & others वादी-प्रतिवादी

रेस्पान्डेन्ट

मैं हम कि Sri Ram Tewari & Sri Gangapad Tewari
120/129-J Bengali Colony, Harijindernagar
Kampur - २४

उपरोक्त प्रकरण में मैं हम अपनी जोर के पक्ष समर्थन के हेतु श्री अभिनव उपाध्याय,
एडवोकेट, हाई कोर्ट, ४, जवाहर लाल नेहरू रोड,
इलाहाबाद

को कानूनी निश्चिन शुल्क (मेहनताना) नियत करके अपना अभिभाषक (वकील नियुक्त करता है) और यह स्वीकार करता है

करते हैं कि उक्त सज्जन हमारी ओर से बाद-पत्र (अर्जदावा), प्रतिवाद-पत्र (बयान रहरीरी), बाद स्वीकार पत्र, विवाद पत्र, पुनरावलोकन एवं पुनर्निर्णय प्रार्थना पत्र (दरखास्त), शापथिक कथन (हलफताना) प्रवर्तन पत्र, (दरखास्त इजराय), मुवात अपील, निगरानी इत्यादि हर प्रकार के अन्य प्रार्थना पत्र। एवम् लेखादि की प्रतिलिपिर्या अपने हस्ताक्षर करके न्यायालय से प्रस्तुत करें अथवा किसी पत्र पर आवश्यतानुसार शापथियक पुष्टीकरण करें और आवश्यक सवाल जवाब करें और लेखादि की प्रतिलिपिर्या एवम् हमारे प्राप्य धन को अपने हस्ताक्षरी पावती देकर प्राप्त करें, हमारी ओर से किसी को मध्य-पत्र तथा साक्षी (गवाह) माने और उससे सम्बन्धित प्रार्थना-पत्र प्रस्तुत करें तथा उसका समर्थन करें तथा सदीक करें, बाद-पत्र उठावें छोड़े अथवा समझौता करें तथा सुलहनामा दाखिल करें तथा उसके सम्बन्ध में प्रार्थना-पत्र दाखिल करके उसका समर्थन करें अर्थात् आवश्यकता होने पर किसी अन्व व शील महोदय को वकील करें।

उक्त सभी कार्यवाही जो उक्त सज्जन करेंगे प्रत्येक दशा में अपने किये की भाँति हमको सर्वथा स्वीकार

होगी। अगर मैं हम कानूनी निश्चिन शुल्क उक्त सज्जन को न दूँ तो उनको अधिकार होगा कि वह हमारी ओर मुकदमा की पैरवी न करें। उपरोक्त दशा में उक्त सज्जन का कोई उत्तरदायित्व न होगा।

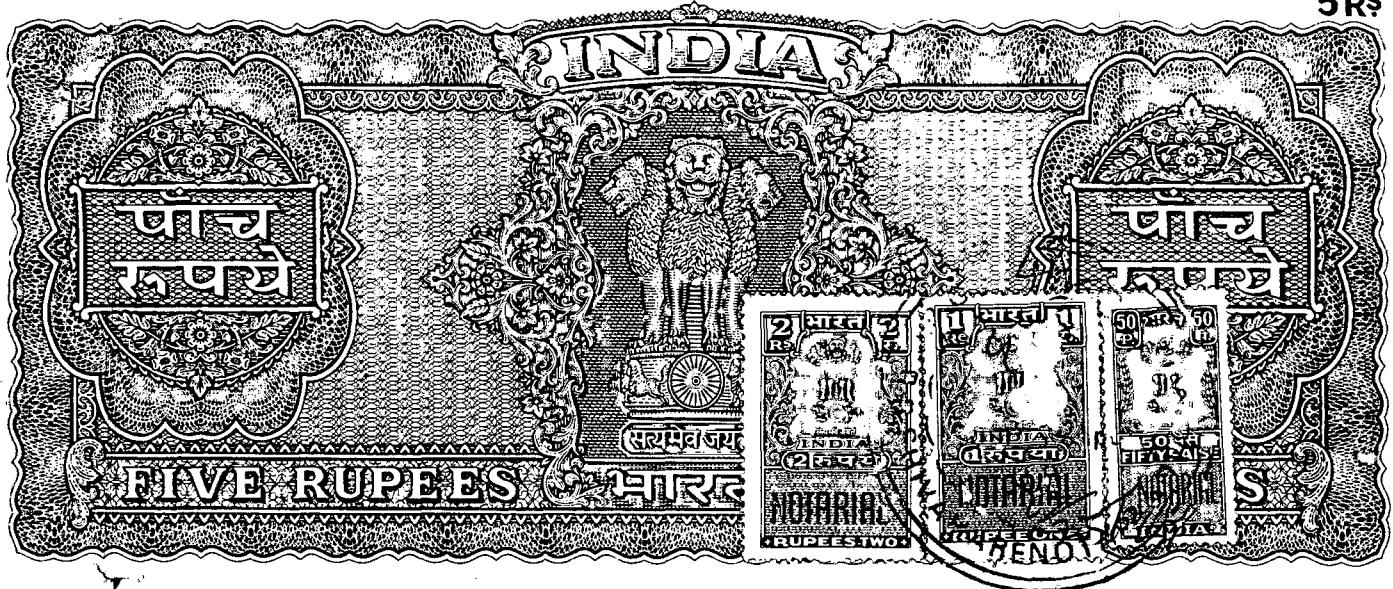
अतएव यह अभिभाषक पत्र लिख दिया कि प्रमाण इप से समय पर काम आये।

वकालतनामा मन्जूर है।

तिथि

मास

सं०



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

A 49

COUNTER AFFIDAVIT

ON BEHALF OF THE RESPONDENTS.

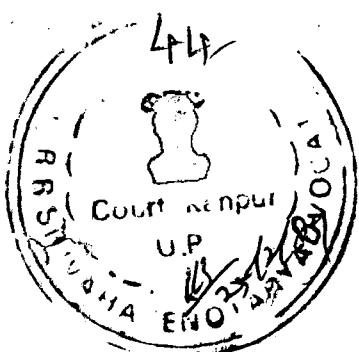
IN

REGISTRATION O.A.NO. 1366 of 1988/

Sri Ram Tiwari Applicant.

Versus.

Union of India & others. Respondents.



Affidavit of WG.CDR. A.C.Kumar

aged about 50 years son of Shri
J.D.Kumar posted as Commanding
Officer No. 4 Base Repair Depot

Air Force Kanpur-3

✓ NOTARY

(Deponent) NOTARY

विंग कमांडर कमान
Wing Commander Commanding
नं 4 वी रप डी. बी. एफ. कानपुर
No. 4 B. H. U. Air Force Kanpur

Ram Tiwari
R. Sheth & S.
Clark
Deputy
Adm
28/12/89

ASB
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LAKHABAD.

COUNTER AFFIDAVIT

ON BEHALF OF THE RESPONDENTS.

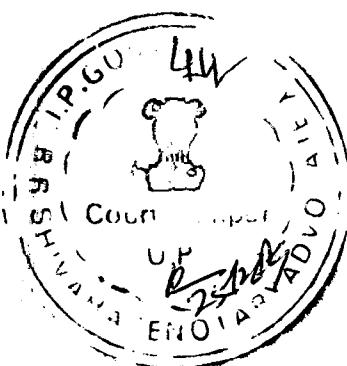
IN

REGISTRATION O. A. NO. 1366 of 1988/

Sri Ram Tiwari Applicant

Versus

Union of India & others Respondents.



Affidavit of WG CDR A.C. Kumar
aged about 50 years son of Smt

J.D. Kumar posted

as Commanding Officer No. 4 Base Repair Depot
Air Force Hospital, Kanpur

Amil
(Deponent)

विंग कमान्डर कमान
Wing Commander Commanding

I, the deponent, above named do hereby
solely affirm and state on oath as under:-

1. That the deponent is posted as Commanding Officer,

WG CDR

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AS/

-2-

NOTARY

No 4 BRD AF Kanpur and as such is fully acquainted with the facts of the case deposed to below.

NOTARY

2. That before giving a parawise reply, the following facts are being asserted in order to facilitate this Hon'ble Tribunal in administering justice.

NOTARY

3. That the petitioner was appointed as Electrician II(A) against Airmen vacancy in I.A.F. at No. 4 Wing, Air Force, Agra on 30th July, 1954 and not on 31st July, 1954 as mentioned by the petitioner.

4. That the petitioner applies for posting at 4-BRD Air Force Kanpur and as such, he was transferred from 4-Wing Air Force Agra to 4 BRD Kanpur against regular vacancy vide order dated 17.8.1976 and 4.9.1979. A photo stat copies of the aforesaid orders are being filed herewith and marked as Annexure-CA-I and CA-II to this affidavit.

NOTARY

NOTARY

5. That the petitioner reported at Kanpur on 14.9.1976. That it is also pertinent to mention here that the petitioner's status was in the capacity of quasi-permanent employee as per CCS.(Temporary) Rules, 1965 and the petitioner retired on the age of 60

R WG CDR

NOTARY

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-3-

years as a regular/unconfirmed and quasi-permanent employee on 31.7.1978 and all eligible dues were accordingly paid to the petitioner. *NOTARY*

NOTARY

6. That the petitioner rendered Certificate of option for opting IOWFP Scheme to pensionary benefits scheme. A photo stat copy of the option is being filed herewith and marked as Annexure-C-A-III to this affidavit. *NOTARY* *NOTARY*

7. That as per the procedure laid down in Ministry of Defence circular letter dated 14.2.62 which has been reproduced as Appendix-B to AFO 442 of 1969, a confirmed employee only can be brought to the pensionary benefits and not the quasi permanent employee. A photo stat copy of the aforesaid circular is being filed herewith and marked as Annexure-C-A-IV to this affidavit. Since the petitioner opted for IOWFP Scheme and remained as quasi-permanent employee, he could not be brought to the pensionary scheme. *NOTARY*

8. That the petitioner filed an application under section 19 of the Administrative Tribunals Act, 1985 before this Hon'ble Tribunal which was registered as O-A. No. 127/86 which was dismissed as having been

W.C.D.R.

NOTARY

time barred. However, in view of the observations made in para-5 of the said judgment, the case of the petitioner was sympathetically considered and has been forwarded to the higher authorities. ✓

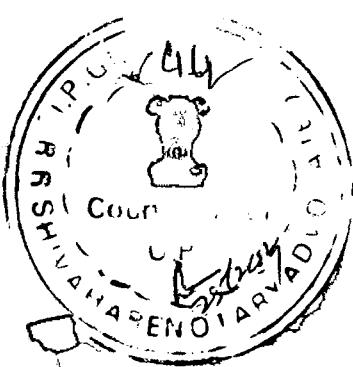
NOTARY

9. That the case of the petitioner was examined in the light of the provisions of O.M.No.30(16) Pension Unit/80 dated 30th December, 1980 as quoted in para-5 in the judgment, does not cover the Industrial employees. They come under the purview of CCS(Pension) Rules, 1972 only after confirmation as envisaged in Ministry of Defence O.M.No.5574/D(Civ-II) dated 30th July, 1981. A photo stat copy of the aforesaid O.M. is being filed herewith and marked as Annexure-C-1-V to this affidavit. ✓

NOTARY

10. That the petitioner could not have been brought under the pension scheme. He could have been brought under the pension scheme, if he would have been confirmed before his retirement. But since the petitioner is enjoying the contributory funds applicable to him as such, the petitioner cannot avail both facilities. In this connection on 2.7.83, the petitioner was informed. ✓

NOTARY ✓ NO. 08



11. That the contents of para-1 to 5 of the petition are the matters of record, hence need no comments. ✓**NOTARY**

12. That the contents of para-6(i) of the petition are not correct as stated, hence denied. It is further submitted that the petitioner was appointed as Electrician-II(A) on 30th July, 1954 at No.4 Wing A.F. Station Agra and not on 31.7.54. ✓**NOTARY**

13. That in reply to the contents of para-6(ii) of the petition, it is submitted that the petitioner served the Air Force Organisation for 24 years. Rest of the contents are not material. ✓**NOTARY**

14. That the contents of para-6(iii) of the petition are not correct as stated, hence denied. It is further submitted that the petitioner remained in 4-Wing A.F. from 30th July, 1954 to 4th September, 1976 against Mirnan vacancy as quasi-permanent. ✓**NOTARY**

15. That the contents of para-6(iv) of the petition are not correct as stated, hence denied. It is further submitted that the petitioner requested for transfer against Civilian regular vacancy for Kanpur. ✓**NOTARY**

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-6-

Since Technical trades are locally controlled cadre and not transferred generally from one unit to another. The petitioner was posted in public interest in order to give him benefits vide order dated 17th August, 1976 and 4 Wing order dated 4th September, 1976 as stated earlier. The petitioner reported on 14.9.76 to 3 BRD A.F. as Electrician II(A) in scale of Rs. 260-400 against regular vacancy vide letter dated 17.9.1976. A photo stat copy of the said letter is being filed herewith and marked as Annexure-CA-VI to this affidavit. As regards Annexure-1 to the application is concerned, in view of the letter dated 17.9.76, it proves that the said letter is wrong. As regards Annexure-2 of the application, it is simply office order and not letter promulgating the casualty of posting of the petitioner to no.4 BRD A.F. The letter dated 24.8.76 quoted as an authority appears to be misquoted. NOTAR

16. That the contents of para-6(v) of the petition are not correct as stated, hence denied. It is further submitted that the petitioner extended certificate of option to IOFNP scheme in 1960 and also on 18.11.71, hence he should not be allowed any benefits for non filing in prescribed manner as stated earlier as per CCS(T) rules, 1965, irrespective of

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whether against airmen vacancy or in temporary capacity of Civilian employees will be declared quasi-permanent only. Employees of regular civilian vacancy can be brought to confirmed/permanent post when any confirmed employees retired or any new post is sanctioned by the government of India to that Unit. Confirmed/permanent employees only can be brought to pensionary scheme as given in Ministry of Defence letter dated 14.2.1962. In this connection Annexure-III is also a documentary evidence that he was admitted to ICMPF fund with A/C. No. 110653.

NOTARY

17. That the contents of para-6(vi) of the petition are not correct as stated. It is further submitted that the petitioner was posted to No. 4 BRD Air ~~Station~~ ^{ATL} for regular vacancy as Electrician-II(A) in the pay scale of Rs. 260-400 4BRD temporarily and likely to become permanent as and when government sanction obtained. NOTARY

18. That the contents of para-6(vii) of the petition are not correct as stated, hence denied. It is further submitted that declaring government servant permanent/confirmed is not automatic as given in earlier paragraphs and only permanent employees are eligible for pensionary scheme as given in Annexure-IV. NOTARY

W.C.O.R.

19. That the contents of para-6(viii) of the petition are not correct as stated, hence denied. It is further submitted that no assurance was given to the petitioner for awarding permanent status and consequential pensionary benefits. **NOTARY**

20. That the contents of para-6(ix) of the petition are not correct as stated, hence denied. It is further submitted that ~~no~~ failure of the administration, there was no permanent sanction post by government available at No.4 BRD A.F. ~~at that time~~ **NOTARY**

21. That the contents of para-6(x) of the petition are not correct as stated, hence denied. A detailed reply has already been furnished in foregoing paragraphs. **NOTARY**

22. That the contents of para-6(xi) of the petition are not correct as stated, hence denied. It is further submitted that the petitioner rendered 24 years of service in Indian Air Force as a whole out of it 22 years he served no.4 Wing A.F. against Air-Man vacancy and for about 2 years at no.4 BRD A.F as Electrician-II(A) as regular quasi-permanent. **NOTARY**

23. That in reply to the contents of para 6-(xii) of the petition, it is submitted that the petitioner was given all dues under IOFJP Fund scheme

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24. That the contents of para-3(xiii) of the petition are not correct as stated, hence denied. It is further submitted that the petitioner was fully aware to be regular and quasi-permanent till his supernnuation. The representation dated 5.5.79 was 25xxxxxx That replied by the respondents. ✓
NOTARY

✓ NOTARY

25. That the contents of para-6(xiv) of the petition are not correct as stated, hence denied. It is further submitted that record does not show any copy of representation dated 10.4.81 to CDA(P) Allahabad. ✓
NOTARY

26. That the contents of para-6(xv) of the petition are not correct as stated, hence denied. It is further submitted that the applicant might have been trade tested by No. 4 Wing AF for Elect. I but was not accepted by the HQ. CAF.
NOTARY

NOTARY

27. That the contents of para-6(xvi) of the petition are not correct as stated, hence denied. It is further submitted that the applicant could not be made permanent in absence of government sanction. and due to his appointment against Airman Vacancy in No. 4 Wing AF
NOTARY

28. That the contents of para-6(xvii) of the

W.C. CDR

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-10-

petition needs no comments. ✓ **NOTARY**

29. That in reply to the contents of para-6(xviii) of the petition, it is submitted that since there is no government sanctioned post available, nothing favourable can be done to applicant at that time. ✓ **NOTARY**

30. That the contents of para-6(xix) and (xx) of the petition are the matters of record, hence need no comments. ✓ **NOTARY**

31. That in reply to the contents of para-6(xxi) of the petition, it is submitted that on receipt of copy of the judgment, the matter was referred to the higher authorities stating the observations made in para-5 of the orders of this Hon'ble Tribunal but as the petitioner was not confirmed in Trade grade at the time of superannuation and no sanction of the government, as such the petitioner could not be confirmed. ✓ **NOTARY**

32. That the contents of para-6(xxii)(xxiii) and (xxiv) of the petition are the matters of record. ✓ **NOTARY**

33. That the contents of para-6(xxv) and (xxvi) of the petition need no comments. ✓ **NOTARY**

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34. That in reply to the contents of para-7 of the petition, it is submitted that in view of the facts and circumstances stated above, the petitioner is not entitled to any reliefs as claimed in para under reply. None of the grounds taken are sustainable in the eye of law. The petitioner is devoid of merits.

35. That the contents of para-8 of the petition needs no comments.

36. That the contents of para-9,10,11,12 and 13 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 ~~1 & 2~~ NOTARY of this affidavit are true to my personal knowledge those of paras 3 & 33, 35 & 36 ~~3 & 33, 35 & 36~~ NOTARY are based on record and those of paras 34 ~~34~~ NOTARY 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.


Deponent

Wing Commr. Wing Commr. Wing Commr. Wing Commr.
NOTARY NOTARY NOTARY NOTARY

I, D.C. Chaubey, Clerk to Shri K.C. Mishra, Advocate, High Court, Allahabad do hereby declare that the person making this affidavit and alleging himself

NOTARY

-12-

NOTARY

to be the same is known to me from the perusal
of papers.

Clark

✓
NOTARY

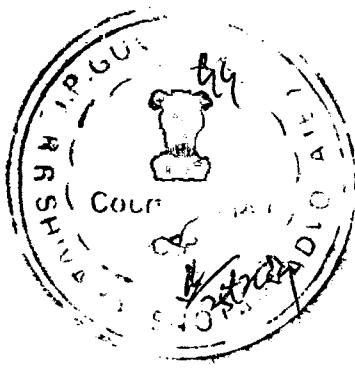
Solely affirmed before me on
this 25th day of February, 1989 at 11

by the deponent who has been identified by the

~~aforsaid Clerk.~~ Sgt M.LAL V~~INOMA~~

Identified by

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



NOTARY / COMMISSIONER
Examination before me on 25/2/89 at 11 AM
by Sri/Smt. Parvati K. C. Karwal
Contents _____ planned
and re _____
by Sri S. G. M. Patel - P. S. Patel
Parvati Karwal
vahara 25/2/89
Notary
Kanpur Nagar, Kanpur (U.P.)

Tele : 370231/203

CA
ADV-1
17 Aug 76 62

MAILED BY AIR MAIL
DHQ POST OFFICE
NEW DELHI - 110011

AIR HQ/23749/268/PG4

Headquarters Maintenance Command, I.A.F.

ABSORPTION OF CIVILIAN TECHNICIANS EMPLOYED
AGAINST AIRMEN VACANCIES AGAINST REGULAR
CIVILIAN VACANCIES

1. Reference is made to your letter No. MC/5906/13/PC, dated 6 Aug 76.

2. The undermentioned individual employed against airmen vacancy is posted from and to the units stated against his name, on absorption against regular civilian vacancy of his trade.

Name	Trade	From	To
Shri S. R. Tiwari P/A No. 13501	Elect II(A)	4 Wing	4 BRD

3. The posting is in public interest.

4. The individual may be relieved of his duties immediately and directed to revert to his new unit.

Sd- XXXX
(Randhir Singh)
CSO
ADPC
For Air Officer i/c Administration

Copy to :-

HQ Central Air Command, I.A.F.
No. 4 Wing, AF
No. 4 BRD, AF



विमान कमान दल
विमान कमान दल
नं 4 वां विमान कमान दल
No. 4 Wing, I.A.F.

EA

ANNEXURE III

Durbhash : 72511/259

No. 4 Wing Vayu Sena
Marfat 56 A P O

4W/2603/2/PC

4 Sep 76

No. 4 B.R.D., Air Force

ABSORPTION OF CIVILIAN TECHNICIANS EMPLOYED
AGAINST AIRMEN VACANCIES AGAINST REGULAR
CIVILIAN VACANCIES

1. Reference is made to Vayu Sena Mukhya'aya letter No. Air HQ/23049/263/PC+ dated 17 Aug 76.
2. The undermentioned individual is relieved of his duties wef 04 Sep 76 (A/D) and directed to report t-o your unit on posting against regular civilian vacancy wef 14 Sep 76(F/N) after availin joining time/journey period wef 5 Sep to 13 Sep 76(excluding Sundays on 5 Sep and 12 Sep 76). SOS of this Wing wef 04 Sep 76 (A/D). The posting is in public interest.
3. His pay and leave entitlement as on 04 Sep 76 are shown as under :-

(a) Basic Pay	= Rs. 390/- wef 1.1.76
(b) L.F.P. Leave	= 12 days
(c) S.L.F.P.	= 10 days Subject to audit.
(d) H.P.L.	= 10 days
4. Service documents duly audited will be forwarded to your unit in due course.
5. Please confirm his arrival.

Sd/-x x x x x
(RM Mammen)
Offg CGA(Admin)
O.I/C Civil Administration
for Air Officer Commanding

Copy to :

Headquarters Central Air Command IAF
Headquarters Maintenance Command IAF
Air Headquarters New Delhi. 11(PC-4)
Air Force Central Account-s Office New Delhi - 10
Shri S. R. Tiwari - Elect. for compliance

INTERNAL : S.A.O.



Wing Leader
Wing Leader
No. 4
1976

Atg

ANNEXURE V

- COPY -

CERTIFICATE

I.P.A. No. 13501 Name S. R. Tiwari Trade Elect II hereby certified that I do not want to change my existing I.O.F.W.P. Fund to Pensionary Benefits Scheme (i.e. G.P. Fund)

18-11-71
(Date)

Sd/x x x x x x x x
(S. E. T. W. A. H.) Elect
(Signature of individual)

COIN FEE ST. GENE

Sd/- x x x x x
(B.N. GUHAN HOGLI) CGO
Officer i/c Civil Admin
HQ No. 4 Wing, AF Agra

ANN-IV
h

Copy of Ministry of Defence O.M. No. 5574/D (Civ-II) dated 30 Jul 81.

@@@@@

A 66

Subject E- Grant of Pensionary benefits to temporary Government servants retiring on superannuation on completion of 20 years of service

The undersigned is directed to say that a point has been raised whether the Government of India, Ministry of Home Affairs, Department of Personnel & A.R. O.M. No. 38(16)- Pension Unit/81 dated the 30th December, 1980 on the above subject circulated under this Ministry's O.M. No. 17(2)/81/D (Est.I/Ch.II) dated 28th January, 1981 is equally applicable to Industrial employees retiring on superannuation on completion of 20 years temporary service. It has been clarified by the Deptt. of Personnel & A.R. that in view of the provisions under Ministry of Finance O.M. No. 17(5)-IV(A)/60 dated 18th Nov 1960, that Deptt's O.M. NO. 30(16) dated 18th Nov 1960, that Deptt's O.M. NO. 30(16) dated 30th December, 1980 does not cover the industrial employees as they come under the purview of the CCS (Pension) Rules only after their confirmation.

2. This is brought to the notice of the AG's Branch etc., for information/guidance.

Sd/- x x x x x x
(D.P. Bhargava)

Under Secretary to the Government of India



✓

विद्या कमानडा कमान
Vidya Kamandan, Corresponding
म. 4 वी. रा. ए. अंग्रेजी एवं
No. 4 B. E. A. English & Hindi
Kanpur

~~RESTRICTED~~

No. 4 BES MARAMMAT DEPO, AIR FORCE

H. Qrs. MAINTENANCE COMMAND, I. A.F.

CA
ANN-VI

SL. NO. 81 B/76
PAGE NO. 3
DATE : 17.9.1976

A EXTRACT OF OFFICE ORDER PT. II(B) CLASS III CIV. INDUSTRIALS

2. POSTING IN :- Posted to this depot from No. 4 Wing Vayu Sena w.e.f. 14th Sept 76 and taken on the strength of this Depot with effect from the same date. Relieved of his duties at No. 4 Wing on 4th Sept, 76 (A/D) and reported to this Depot on 14th Sep 76 (F/N) after availing usual journey/joining time.

<u>Pass No.</u>	<u>P/A No.</u>	<u>Name</u>	<u>Trade</u>
RT/1110	13501	Shri S. R. Tiwari	Elect. II

Authy : AIR HQ. letter No. AIR HQ/23049/268/PC4
dated 17th August, 76 and O.C. Depot.

3. PAY AND ALLOWANCES : The undementioned individual is authorised to draw pay and allowances as stated below :-

<u>Pass No.</u>	<u>P/A NO.</u>	<u>Name</u>	<u>Trade</u>	<u>Basic Pay</u>	<u>CCA</u>	<u>HRA</u>
RT/1110	13501	S. R. Tiwari	Elect. II	390/-	17.55	58.50

CERTIFICATE :

- Certified that he has not been provided with the Government accommodation and no one accommodation being shared by him.
- He is residing within in Corporation Cantonmen limits of Kanpur.

Sd/-
(ML SHARMA)
CCG
01/c Civil Admin
for Officer Commanding

~~RESTRICTED~~



विमान क्रमागान
Wing Commander (A/C)
4 (4) (A) 11. P.D.
P.D. - B



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

ALLAHABAD BENCH.

Registration No. O.A. No. 1366 of 1988.

Shri Ram Tewari Applicant.

Versus

Union of India and others Respondents.

AFFIDAVIT OF SHRI RAM TEWARI, AGED ABOUT 71 YEARS, SON OF LATE GANGA PRASAD TEWARI, RESIDENT OF 129-H, BENGALI COLONY, HARJINDER NAGAR, KANPUR, FORMERLY EMPLOYED AS ELECTRICIAN-II(A) IN THE 4.BRD AIR FORCE STATION, CHAKERI, KANPUR. ... (DEONENT)

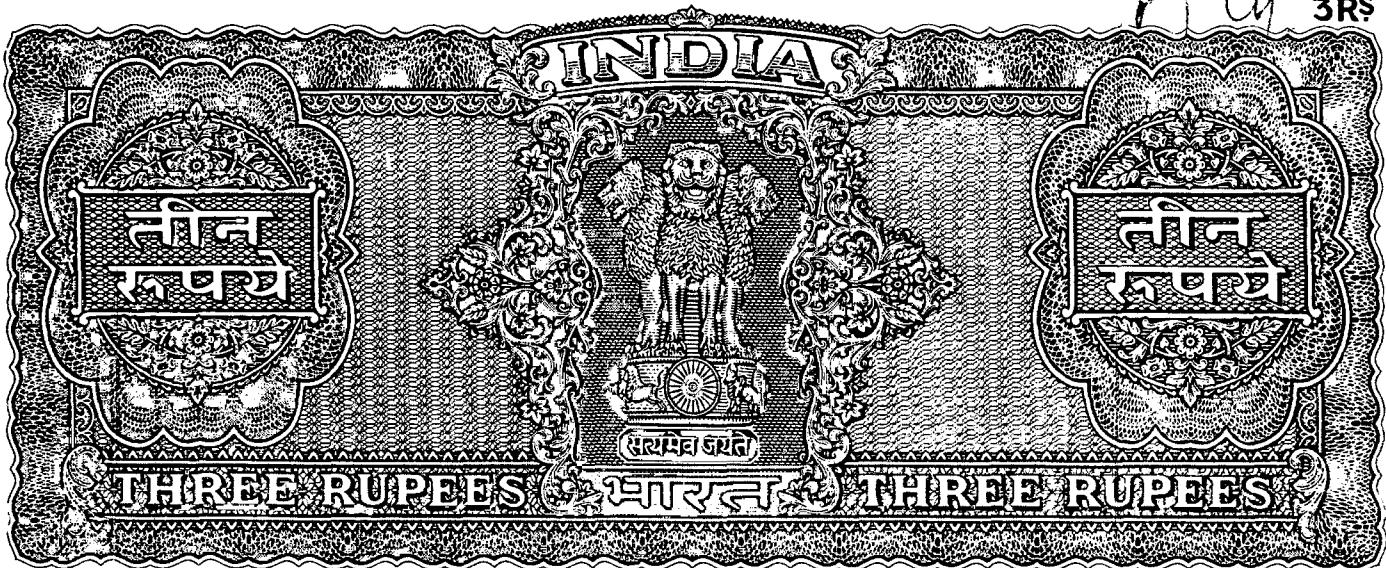
I, the deponent abovenamed, do hereby solemnly affirm and state on oath as under:

Received (Signature)
R.D.
Chand K.L. 9/18/88

(1) That the deponent is the applicant in the above case and as such is fully conversant with the facts of the case deposed to below. The

(Signature)

(contd.....2)



(2)

deponent has read and understood the contents of the Counter Affidavit of Wing Commander A.C. Kumar, filed in the above case on behalf of the respondents. *l*

(2) That the contents of paragraphs 1 and 2 of the Counter Affidavit need no comments. However, it is submitted that all those averments contained in the Counter Affidavit, contrary to what have been stated in the application under Section 19 of the Administrative Tribunals Act, 1985, hereinafter referred to as 'the application' as well as in this Rejoinder Affidavit, are not admitted and are denied. *l*



(3) That the contents of paragraph 3 of the Counter Affidavit need no reply. The inadvertent typing mistake, occasioned in the date of appointment of the deponent in the Air Force as 30th July, 1954, instead of 31st July 1954, is regretted. *l*

S. P. Yuvan

(contd....3)

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(B)

(4) That the contents of paragraph 4 of the Counter Affidavit are not admitted, as alleged. As contained in Annexures 1 and 2 of the application and Annexure CA-1 and CA-2 of the Counter Affidavit, the deponent was transferred from the 4-Wing Air Force, Agra, to the No. 4 BRD, Air Force Station, Kanpur, against a regular and permanent vacancy of Electrician-II(A). The deponent agreed for such posting in the No. 4 BRD, Air Force Station, Kanpur, in the hope that the deponent would be ^{and promoted} made permanent as promised. He joined the ~~4-Wing~~ No. 4 BRD, Air Force Station, Kanpur, availing the benefits of transfer and posting in Public Interest. It may be mentioned that the deponent was the only person out of the four persons who were asked option to move out of Agra to get absorbed against ~~the~~ permanent vacancy at Kanpur. Annexure-8 of the application proves the contention of the deponent ^{regarding} ~~for~~ such posting to ~~4-Wing~~ No. 4 BRD, Kanpur. The deponent agreed to move out of Agra to get absorbed against permanent vacancy and the deponent was also promised that he would be considered for promotion, after making him permanent.

(5) That regarding the contents of paragraph 5 of the Counter Affidavit, it is *S. R. Grewal*

submitted that the deponent ought to have been made permanent in due course on his absorption against a regular and permanent vacancy of Electrician-II(A) in the No. 4 BRD, Air Force Station, Chakeri, Kanpur and there was no justification for not making the deponent permanent and keeping him permanently as quasi-permanent employee only. The deponent cannot be made to suffer on account of the lapses on the part of the respondents in the matter of permanency and for all intents and purposes, the deponent ought to be treated as permanent employee and the respondents are liable to be directed to grant the benefit of permanency to the deponent. It is not disputed that the deponent was retired on superannuation on attaining the age of 60 years. It is not admitted that the deponent was paid all eligible dues on retirement. In fact, the deponent has not been paid retirement Gratuity or Pension, as was required.

(6) That the contents of paragraph 6 of the Counter Affidavit are not admitted, as alleged. The deponent was never informed that he would be deprived off pensionary benefits and Retirement Gratuity. The alleged unsigned certificate, Annexure CA-3, is not

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admitted. The deponent did not sign on any such certificate or the proper proforma of option. There was no approval by the C.D.A. of the alleged option and the deponent was not informed anything in the matter. There was no question of the deponent being deprived of pensionary benefits and other retirement benefits on the lame excuse taken by the respondents.

(7) That the contents of paragraph 7 of the Counter Affidavit are not admitted, as alleged. The reference to the M.O.D. Ministry of Defence Circular letter dated 14.2.1962 is redundant. The said letter has become obsolete and several other Instructions and Circulars have been issued in regard to temporary employees as well as employees who have rendered long service. It is not admitted that the deponent can not be granted pensionary benefits on the grounds mentioned by the respondents. In terms of the Government of India's Instructions, Government servants with not less than ^{20 years of} ~~temporary~~ service of even ^{nature like} temporary are eligible for pension, death-cum-retirement gratuity etc., under the C.C.S. (Pension) Rules, 1972 and it has been decided that a Government servant,

S. R. Gaurav

who on his retirement from service on attaining the age of superannuation, after he has rendered temporary service including quasi permanent service of not less than 20 years shall be brought within the purview of the C.C.S. (Pension) Rules, 1972 and the condition of holding a pensionable post in a substantive capacity shall be dispensed with in his case and that consequently such a Government servant will be eligible for the grant of superannuation pension, death-cum-retirement gratuity and Family Pension in accordance with the provisions of the C.C.S. (Pension) Rules, 1972. It has also been decided that for computing temporary service for such purpose, the spells of service which are treated ^{as nonqualifying under the CCS} ~~for any qualifying (pension)~~ Rules, 1972, shall be ignored. Even otherwise, the respondents were required to grant permanency to the deponent on his transfer to a permanent and regular vacancy and the respondents cannot deprive of the benefits of pension etc. to the deponent simply because of the omission on the part of the respondents in the matter. The alleged plea of option is misconceived and the contention of the respondents that the deponent remained

S. R. Munian

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only as a quasi permanent employee and hence could not be brought to the Pensionary Scheme, is misconceived and is untenable.

(8) That regarding the contents of paragraph 8 of the Counter Affidavit, it is submitted that in the judgment of this Honourable Tribunal in the earlier O.A.No. 126/86, the Honourable Tribunal had made relevant observations and accordingly, the deponent requested the respondents to do the needful but the respondents illegally and wrongfully rejected the request of the deponent on totally illegal and untenable grounds, as is evident from Annexure-11 of the application. The ~~the~~ cause of action for the deponent revived thereby and being aggrieved by the said decision of the respondents, communicated vide No. 4 BRD Air Force Chakeri, Kanpur, letter No. 4 BRD/94/13501/T/PC dated 2.7.88, the deponent was constrained to file the present case.

(9) That the contents of paragraph 9 of the Counter Affidavit are not admitted, as alleged. It is not admitted that Civilian Employees of Defence Establishments, as the deponent, are not covered under the Government Instructions referred in para-9

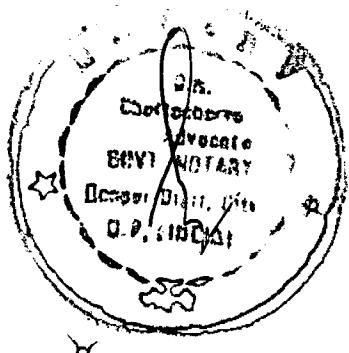
S. R. Jaiswal

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(8)

of the Counter Affidavit. In any case, the deponent is entitled to have been declared permanent and to be granted pensionary benefits, accordingly. The alleged clarification of the Department of Personnel & A.R. and the alleged provisions under the Ministry of Finance O.M. dated 18.11.1960, are discriminatory, illegal and untenable. In any case, the deponent cannot be treated to be an unconfirmed employee, simply because of the deliberate omissions on the part of the respondents in the matter of confirmation. ✓



(10) That the contents of paragraph 10 of the Counter Affidavit are not admitted. The deponent ought to be considered as a confirmed employee and granted all pensionary benefits. Due to failure on the part of the respondents to pass necessary orders regarding confirmation, the deponent cannot be deprived of his legitimate benefits, after the deponent had rendered more than 24 years continuous service as a Civilian employee. The decision communicated by letter dated 2.7.1988, was misconceived and was untenable. In the O.M. of the Government of India, Department of Personnel & Administrative Reforms No. 38(16)-Pension-Unit/80 dated 30.12.1980 also,

S. R. Illawar

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there is no distinction given in respect of Industrial Employees and Non-Industrial Employees. Every Government Servant retiring after 20 years of temporary service has been made eligible for retirement pension, gratuity etc. ✓

(11) That the contents of paragraph 11 of the Counter Affidavit need no comments. ✓

(12) That the contents of paragraph 12 of the Counter Affidavit are not admitted and are denied. However, it is not disputed that the deponent was appointed on 31.7.1954. ✓

(13) That regarding the contents of paragraph 13 of the Counter Affidavit, it is submitted that the whole of the averments contained in paragraph 6(ii) of the application, are correct and are re-iterated. ✓

(14) That the contents of paragraph 14 of the Counter Affidavit are not admitted. The averments contained in paragraph 6(iii) of the application are correct and are re-iterated. ✓

(15) That the contents of paragraph 15 of the Counter Affidavit are not admitted. The averments contained in paragraph 6(iv) ✓

S. R. Guwai

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of the application are correct and are reiterated. The transfer was made in Public Interest, after the deponent agreed to go on transfer, as suggested by the respondents themselves. As mentioned in Annexure-8 of the application, the respondents have themselves admitted that the deponent was the only person out of the four employees who were asked willingness to move out of Agra to get absorbed against permanent vacancy and the deponent was also promised confirmation, promotion etc. The failure on the part of the respondents to do the needful in the matter cannot deprive the deponent of the legitimate benefits due to the deponent. It is not admitted that the letter dated 17.9.1976, Annexure-1 of the Application, is wrong. There is no question of any misquoting of any authority, as alleged. The respondents are bound by their own letters and promises and they cannot be allowed to wriggle out of their responsibilities and liabilities on such lame excuses.

(16) That the contents of paragraph 16 of the Counter Affidavit are not admitted. The averments contained in paragraph 6(v) of the application are correct and are reiterated. It is not admitted that the deponent extended any certificate of option, as alleged

S. Chaturvedi

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or undertook to forego death-cum-retirement gratuity or superannuation pension, in preference to the IOFWP Scheme. There arose no question of the deponent voluntarily agreeing to forego pension and gratuity. In any case, the deponent was never informed that he would be liable to forego the claims for gratuity, pension etc. The deponent was not asked to file ~~anywhere~~ in any prescribed manner as per the C.C.S. (T.S.) Rules, 1965 any form and hence, the respondents cannot take advantage of their own omission. It is not admitted that the deponent ~~was not~~ could be kept only in a temporary capacity ~~as~~, as a Civilian employee or could only be declared ~~as~~ quasi permanent and could not be confirmed, as alleged. In fact, under the C.C.S. (T.S.) Rules, 1965, the deponent remained entitled to have been declared permanent. In fact, the deponent was transferred to Kanpur and posted against a permanent vacancy, as admitted by the respondents themselves. It is emphatically denied that the deponent cannot be brought to Pensionary Scheme. The deponent never agreed to forego the benefits of Pension, gratuity etc. As eligible to him on retirement after continuous service of more than 24 years.

(17) That the contents of paragraph 17 of the Counter Affidavit are not admitted. The

S. P. Chauhan

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averments contained in paragraph 6(vi) of the application are correct and are re-iterated. The respondents ought to have made the deponent permanent and treated the deponent as a permanent employee. In any case, on account of the lapses on the part of the respondents, the deponent cannot be denied the due benefits of Pension, Gratuity etc., on retirement after 24 years of service. ✓

(18) That the contents of paragraph 18 of the Counter Affidavit are not admitted. The averments contained in paragraph 6(vii) of the application are correct and are re-iterated. There was no bar or justified reason for not granting permanency to the deponent. It is not admitted that only permanent employees are eligible for Pension Scheme and that quasi permanent employees are not eligible for Pension, Gratuity etc., even after completing more than 24 years of service. In any case, the deponent remained entitled for being declared as a permanent employee and to be granted all benefits arising therefrom. ✓

(19) That the contents of paragraph 19 of the Counter Affidavit are not admitted. The averments contained in paragraph 6(viii) of the application are correct and are re-iterated. As

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