

Central Administrative Tribunal

Lucknow Bench

INDEX SHEET

Cause Title DA 187/89 of 1993

Name of the Parties B.C. Mukherjee Applicant

Versus

Union of India

Respondents.

Part A.E.C.

Sl. No.

Description of documents

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<u>File A</u>		
(1) Check list	A1 A2	✓
2. Bely sheet	A3 A7	✓
3. Judgment dt. 3/2/92	A8 A10	✓
4. M.P. NO. 58/91	A11 A13	✓
5. Deliberations with Mahan	A14 A15	✓
6. C.M.A. 60/89	A36 A37	✓
7. C.M.A. 92/89	A38	✓
8. Sublimity CoA.	A39 A40	✓
9. R.A.	A41 A43	✓
10. W/S	A44 A45	✓
11. R.A.	A63 A74	✓
12. Compliance report (Already longud.)	A75 A77	✓

File B B70 B142

File C C143 C153

File B/C removed out / destroyed.

So (5) ✓

23-1-14

(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No.

1877 of 1988(1)

APPLICANT (s)

B. C. Mukherjee

RESPONDENT(s)

State (R.D.S. Rly. Lucknow)

<u>Particulars to be examined</u>	<u>Endorsement as to result of Examination</u>
1. Is the appeal competent ?	yes
2. (a) Is the application in the prescribed form ?	yes
(b) Is the application in paper book form ?	yes
(c) Have six complete sets of the application been filed ?	only two sets
3. (a) Is the appeal in time ?	yes
(b) If not, by how many days it is beyond time ?	..
(c) Has sufficient case for not making the application in time, been filed ?	..
4. Has the document of authorisation, Vakalat-nama been filed ?	Yes In person
5. Is the application accompanied by B. D. /Postal-Order for Rs. 50/-	Yes 5 49.50 + 5 = 54.50
6. Has the certified copy/copies of the order (s) against which the application is made been filed ?	yes
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?	yes
(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?	only one copy attested

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUGANO.

O.A./T.A. No. 107 1988

B. C. Mucherjee Applicant(s)

Versus

C.C.T. Respondent(s)

Sr.No.	Date	Orders
	25/7/88	<p><u>Mem. X.S. Misra, AM.</u></p> <p>Heard the applicant in person. Prima facie the application appears to be time barred. Dis. this case before the Division Bench on 27-10-88.</p> <p>by <u>AM.</u></p>
	27-10-88	<p><u>Mem. O.S. Misra, AM.</u></p> <p><u>Mem. T.S. Sharma, J.M.</u></p> <p>Heard the applicants in person in person. Order reserved.</p> <p><u>IM.</u> <u>AM.</u></p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUGANO.

O.A./I.A. No. 107 1980(1)

B C Mackay

Applicant(s)

Versus

W O d

Respondent(s)

Order	Date	Orders
	14/11/64	<p><u>OK</u></p> <p>Notice issued to the respondents through Repd. Post</p>
	27/10/64	<p>Hon D S Minna, A.M.</p> <p>Hon G S Shannon, J.M.</p> <p>Admit</p> <p>Issue notices, one month for C.A. & if they then apply for R.A.</p> <p style="text-align: center;">-1/-</p> <p style="text-align: center;">J.M.</p> <p style="text-align: right;">Sd/- A.M.</p> <p style="text-align: right;">J.M.</p>
	17/1/65	<p><u>OK</u></p> <p>Notice, issued to the respondents No 122 S through Repd. Post from 21/12/64 to hand.</p> <p style="text-align: right;">J.M. 17/1/65</p>
	21/12	<p>No sitting adjourned to 25.1.65.</p> <p style="text-align: right;">h 21/12</p>
	25.1.65	<p><u>OK</u></p> <p>Applicant present in person. No one is present for the O.P. The case is adj. to 20.2.65. for reply.</p>

OK

~~*~*

198

VERSUS

Respondent(s)

Orders

8329 D.R

Vakalat nama Filed today.
The counsel for the respondent
Present. The case is adjourned
to file reply. on 28/3/89.

23/3/67 DK

An application for dismissal of the application has been filed today. As the presiding officer is not present, the case is adjourned to 13/4/84

1500

6.

CR

Two applications Numbered
C.M.M. No 4210 (U) & C.M.M. No
42309 (U) filed today by us
Learned Counsel for the applicant
to intervention of plaintiff & Implication
of Govt.
In application the submitted
for order before.

187/08(C)

17.7.89

No. Siting. Adj. to. 22.8.89,
for order.

(87) R.A. filed today
2. 19/8

h
B.C.C

of

The learned counsel
for the applicant has filed
a rejoinder affidavit in
reply to objection by the O.P.
The cases submitted
for order on C.M. No. 60/89
& C.M. No. 92/89
for dismissal & condem-
nation of delay.
Submitted for order.

L
2/1/89

Hon' Mr. D.K. Agrawal, J.M.

22/8/89

Shri R.B. Srivastava counsel for the applicant
and Shri Anil Srivastava counsel for respondents
are present.

This application was admitted by Division Bench by
an order dated 27/10/88. Therefore, the question
that the application is or is not, time barred,
is ^athe matter of adjudication and it will be taken
up at the time of final hearing.

Let the respondents file counter affidavit within
four weeks, to which the applicant may file rejoinder,
if any, within two weeks thereafter.

List this case for orders/hearing as the case may be
on 3/11/89.

Dec
J.M.

(sns)

OK
No CA has been
filed in compliance
with court's order
dt. 22/8/89.
Submitted for order
R
2/11/89

:: X ::

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
3/11/89	<p><u>Hon' Mr. D.K. Agrawal, J.M.</u></p> <p>The applicant is present. Shri Anil Srivastava counsel for the respondents is also present. The respondents files counter reply, although it is late, yet no reason has been explained for delay. Keep the counter reply on record. The applicant may file rejoinder, if any, within 2 weeks hereof. List this case on <u>22-1-90 for hearing.</u></p> <p style="text-align: right;">J.M.</p> <p>(sns)</p>	<p>02</p> <p>No RA filed submitted for hearing 2 21/1/90</p>
22-1-90	<p>No sitting adj. to 12.3.90.</p> <p>Shri R.B. Srivastava, 4c for the applicant & Shri A. Srivastava, 4c for the respdts. are present</p> <p style="text-align: right;">h 21/1/90</p>	<p>RA filed 10/1/90</p>
15.3.90	<p><u>Hon. K. O'Connell, AM</u></p> <p>On the report of both the parties, the case is adjourned to 20.7.90 for hearing.</p>	<p>02</p> <p>CA & RA has been exchanged case is s. F. H. 2 12/3</p>
20.7.90.	<p>No sitting adj. to 29.8.90</p> <p style="text-align: right;">20/9</p>	
29.10.90	<p>No sitting adj. to 5.12.90</p>	
5.12.90	<p>No sitting adj. to 15.2.91</p>	
15.2.91.	<p>No sitting adj. to 29.5.91</p>	

Dinosh

746

This case is now ready
for final hearing

AM.

la
v.c.

547

OL

MP 503-PIC
filed by 4c for the
application for documents
CA/RA have been
exchanged.

sf0/n

47

29.1.92

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

Hon. Mr. A.B. Gorla, A.M.

Heard Shri A.V. Srivastava learned
counsel for the respondents and
Shri ~~N.K. Nair~~ learned counsel
for the respondents

Judgment reserved

[Handwritten signature]

(S.M.)

[Handwritten signature]
A.M.

[Handwritten signature]

V.C.

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

O.A. No. 187/88

B.C. Mukherjee

Applicant

versus

Union of India & ors.

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon. Mr. A.B. Gorthi, Adm. Member.

(Hon. Mr. A.B. Gorthi, Adm. Member)

Applicant in this case, aggrieved by
denial of promotion to the selection grade post in
the scale of Rs 650-1040(RS) has prayed for the
following reliefs:

- i) Appointment/promotion to the grade of
Rs 650-1040(RS) with effect from 24.3.1982.
- ii) Fixation of pay in the above grade, and;
- iii) Payment of arrears due to him as a consequence
of the above mentioned reliefs.

2. The applicant was working in the Carriage
Directorate R.D.S.O Lucknow as Chief Inspector
from June 1970 in the grade of Rs 700-900. Selection
grade posts in the category of Chief Design Assistant/
Chief Inspector in the scale of Rs 650-1040 were
sanctioned with effect from 24.3.1982 and the applicant
being one of the senior most, was eligible for the
same. He was, however, not promoted to the selection
grade on the plea that a disciplinary enquiry was
contemplated against him. He was served with a charge

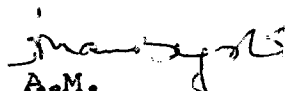
(M)

memo on 15.2.83. The disciplinary proceedings concluded with the award of the penalty of reduction to a lower stage in time scale for a period of one year without postponing future increments. The penalty ~~seniority~~ was to be effective from 1.5.86. The first contention of the applicant is that since he became eligible for grant of selection grade with effect from 24.3.82, i.e. the date when it was introduced, it could not have been denied to him, because on that date he was not served with any charge memo. His next contention is that the the penalty imposed upon him was improperly given effect to in denying him his due benefits.

3. The respondents, while not disputing the facts stated in the application, have taken the stand that "as per extant rules when a case under Discipline and Appeal Rules is contemplated or is pending against an employee, he would not be promoted/appointed," without adducing any evidence as to the so called extant rules, the respondents stated that the applicant was not appointed to the Selection grade in 1982, as at that time, an investigation by the C.B.I. was in progress against the conduct of the applicant. The respondents have further clarified that with the introduction of the new pay scales with effect from 1.1.86, there remained no selection grade. The applicant who opted for the new revised scale of pay, was accordingly given the grade of Rs 2000-3200 (RPS).

4. We have heard the learned counsel for both the parties. It is now, well settled that a departmental enquiry ~~shall~~ starts with the issuance of a charge sheet. Unless a charge sheet has been issued, it cannot be said that a departmental enquiry is pending against the employee. The employee's suitability for promotion should be adjudged at the time he becomes eligible for it and it cannot be denied or delayed on the ground that he is likely to face a departmental enquiry on a future date. As the applicant seems to have become otherwise eligible for the selection grade with effect from 24.3.82, he could not have been denied the same, as he was ^{then} served with no charge memo, which was given to him almost after one year from the date on which he became due for selection grade. We, therefore, direct the respondents to consider the case of the applicant for the grant of selection grade to him with effect from 24.3.1982, ignoring the fact that a C.B.I. enquiry into his conduct was in progress. On the grant of selection grade, the applicant will be entitled to all consequential benefits in the matter of fixation of his pay. The penalty of reduction to a lower stage in time scale for a period of one year should be applied to the applicant in the selection grade after the same is allowed.

5. The application is allowed in the above terms without any order as to costs.


A.M.


V.C.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW CIRCUIT BENCH LUCKNOW;

MISC. APPLICATION NO. 583 OF 1991 (L)

In re:

O.A. No. 187 of 1988

B.C. Mukherjee..... Applicant.

Versus

Union of India and others..... Respondents.

Applicants application for permission to file
one document.

The applicant begs to state as under :

That in a similar circumstances the ministry of
Railway on a ref. of D.G. P.D.S.O. Lucknow had advised its
letter dated 23.8.85 copy enclosed as follows:

" that when the penalty imposed is withholding of
increment and it becomes operative from a future date,
the employee can be promoted in his turn and the penalty
imposed in the promotion grade, for a period which should not
result in greater monetary loss."

The copy may kindly be ordered to be kept on
record for purposes of arguments.

Lucknow, dated: 18.9.91

B.C. Mukherjee.

Verification

I, E.C. Mukherjee applicant in the O.A. No. 187 of 1998
do hereby verify that the contents of the application are
true to my personal knowledge and belief.

Lucknow, dated:
18th September, 1991

E.C. Mukherjee
(E.C. Mukherjee)

P.P. Srivastava
(P.P. Srivastava)
Advocate,

Counsel for the Applicant.

(173)

/COPY/

Government of India/Bharat Sarkar
Ministry of Railways/Rail Mantralaya
(Railway Board)

No. E(Rep)I-85AE2-11/35

New Delhi, dt. 23-8-85.

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

Sub: Shri Chandra Prakash Verma, Tracer/
S&T, RDSO - regarding promotion as
D' Man 'B'.

.....

Reference you letter No.A/EP-3008 dated 1-9-84
on the above subject.

2. It is observed that Shri C.P. Verma was given a punishment of withholding of increment temporarily for two years by an order dated 5-11-1981. The next increment was due to him in August, 1982. In terms of Board's letter No. E(L&A) 58RG6-41 dated 29-4-60, 17-4-61 & 5-1-62, he should have been given the promotion when other persons on the panel were promoted in April, 1982 if he was otherwise fit for promotion in all respects. The reference to para-1 (iii) of the DOP's Office Memorandum No.22011/2/78-Estt(A) dated 16-2-79 is not relevant in his case. In fact it is mentioned in Board's letter No.E(L&A)/77RG6-20 dated 23-5-81 that this para -1(iii) is already covered in Railway Board's letter No. E(L&A)71RG6-23 dated 1-6-71 and 3-6-71 in which it is inter-alia provided that when the penalty imposed is withholding of increment and it becomes operative from a future date, the employee can be promoted in his turn and the penalty imposed in the promotion grade for a period which should not result in greater monetary loss.

In view of the above, Shri Verma's case may be reviewed and final position advised to this office within a fortnight.

DA: Nil.

Sd/-
(B. K. Bhatia)
Dy. Director, Establishment
Railway Board

25/7

In the Central Administrative Tribunal
Circuit Bench, Lucknow

Reg. No. OA 182 of 1988 (L)

B. C. Mukherji
Chief Inspector (Carriage)
RDSO. (Ministry of Railways)
Manak Nagar, Lucknow-226011 Applicant

VERSUS

1. Dealing Assistant, Establishment Section, E-I
RDSO. (Ministry of Railways)
Manak Nagar, Lucknow-226011

2. Section Officer, Establishment Section - E-I
RDSO. (Ministry of Railways)
Manak Nagar, Lucknow-226011

3. Director General, RDSO
(Ministry of Railways)
Manak Nagar, Lucknow-226011 Respondent

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COVER PAGE

In the Central Administrative Tribunal
Circuit Branch, Lucknow.

B.C. Mukherji,
Chief Inspector (Carriage),
R.D.S.O. (Ministry of Railways),
Manak Nagar, Lucknow-226 011. Applicant.

(1. Pending Disputes) Versus

1. Dealing Assistant, Establishment Section E-I,
R.D.S.O. (Ministry of Railways),
Manak Nagar, Lucknow- 226 011
2. Section Officer, Establishment Section E-I,
R.D.S.O. (Ministry of Railways),
Manak Nagar, Lucknow-226 011.
3. Director General, R.D.S.O.,
Ministry of Railways, Manak Nagar,
Lucknow-226 011. Respondents.

B. Mukherji

In the Central Administrative Tribunal
Circuit Branch, Lucknow.

Between

B.C. Mukherji,
Chief Carriage Inspector, R.D.S.O., Lucknow
.. Applicant

Versus

Dealing Assistant, Establishment Section E-I
R.D.S.O., Lucknow and others.

.. Respondent.

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Note - No reply received of my
representation at Annexure-XI.

Attesting

(16)

In the Central Administrative Tribunal
Circuit Branch, Lucknow.

Between

B.C. Mukherji, Chief Inspector(Carriage),
R.D.S.O., Lucknow ..Applicant

and
Union of India
Dealing Assistant, Establishment Section E-I
R.D.S.O., Lucknow and others. .. Respondents.

Details of Application

1. Particulars of the Applicant :-

- i) Name - B.C. MUKHERJI
- ii) Name of father - Late Sri Dasarathi Mukherji
- iii) Designation & Office - Chief Inspector(Carriage),
in which employed Carriage Directorate,
R.D.S.O., Lucknow.
- iv) Office Address - B.C. Mukherji,
Chief Inspector (Carriage),
Carriage Directorate,
R.D.S.O., Lucknow.
- v) Address for serving : B.C. Mukherji,
notices Qrs.No.C-115/3,
Manak Nagar, Lucknow
PIN - 226011.

2. Particulars of the respondents:-

- Amended*
Memorandum
Writ Petition
24.5.87
Director
- i) *Dealing Assistant, Establishment Section E-I, R.D.S.O., Manak Nagar, Lucknow.*
- ii) *Section Officer, Establishment Section E-I, R.D.S.O., Manak Nagar, Lucknow.*
- iii) *Director General, R.D.S.O., Lucknow-226011*

3. Particulars of the Order against which application is made :-

- i) Memorandum No.A/EP-2333 dt.24.9.1987
- ii) Memorandum No.A/EP-2333 dt.12.5.87

(Orders passed by Director General, RDSO, Lucknow)

(A12)

Subject in brief : Appointment in Grade Rs.650-
1040(RS) w.e.f. 24.3.1982 and
fixation of pay accordingly.

4. Jurisdiction of the Tribunal

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

5. Limitation

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

6. Facts of the Case

6.1 The facts of the case are given below :

6.2 I am working in the Carriage Directorate, RDSO, Manak Nagar, Lucknow as Chief Inspector (Carriage) from June 1970 in the grade of Rs.700-900(RS).

6.3 Consequent upon creation of Selection Grade posts in the category of Chief Design Assistant/ Chief Inspector(Mech.) both in the scale of Rs.650-1040(RS) w.e.f. 24.3.82 for Mechanical Engineering Department of RDSO, I was due for appointment in the scale mentioned above from 24.3.1982 as per Railway Board's letter No.PC III/81/SG/3 dt. 24.3.1982, being one of the senior-most Inspector in the Mechanical Directorate (Copy of Railway Board's letter available with Establishment Section E-I, RDSO, Manak Nagar, Lucknow. However, there is no dispute regarding my eligibility as is

(A/S)

clear from Memo No.E-1/4/SG/Res.Mech. dt.15.2.83, copy attached as Annexure-I.

6.4 But my appointment/promotion in Grade Rs.650-1040 (RS) was not considered on the plea that issue of charge sheet has been initiated against me vide DG/RDSO's Memorandum No.E-1/4/SG/Res.Mech dt.15.2.83. (Copy attached as Annexure-I).

6.5 It may kindly be seen that I was due for appointment/promotion in the grade of Rs.650-1040(RS) w.e.f. 24.3.1982 and memorandum to hold an inquiry was issued on 15.2.1983 (Copy of Memorandum No.A/EP-2333 Pt.II dt.15.2.83 attached as Annexure-II).

It is absolutely clear that 11 months before issue of order for inquiry, I was due for promotion in the Grade Rs.650-1040(RS). Hence for such a long period, it was not justified to withhold my appointment/promotion on the plea that issue of charge-sheet has been initiated against me.

Copy of Clause 4.2(X) of D&A Rule 1968 issued by Ministry of Railways (Railway Board) is attached as Annexure-III in this connection.

6.6 Further the above mentioned grade of Rs.650-1040(RS) was created to give monetary relief to those seniors who were stagnating in their respective grades for a long time. It cannot be termed as a promotional grade, because the nature of work, the responsibilities and also the designation remained the same as

Blindly

before. There was no change in duties or post as such. In fact the creation of the grade was to give relief to senior-most persons, blocked in the maximum of their respective scales of pay for a considerable amount of period.

Therefore, withholding my appointment /promotion (which is in real sense extension of grade) in the Grade of Rs.650-1040(RS) was same as withholding my further increments. I was already stagnating in the Grade Rs.700-900(RS) in the maximum of scale at Rs.900/- as on 24.3.82, for a pretty long time. There is no such rule to stop future increments when some investigations or inquiry is going on, or likely to be initiated. Hence increments due to me w.e.f. 24.3.82 should have been given to me till the finalisation of the disciplinary proceedings and thereafter as per recommendation of the disciplinary authority action should have been taken against me. This has not been done in my case.

6.7 Further since the disciplinary proceedings have been finalised and penalty of reduction to a lower stage in time scale for a period of one year without postponing future increments has been imposed on me w.e.f. 1.5.86 (Copy of Memorandum No.A/EP-2333 dt.10/31-7-86 attached as Annexure IV). My pay should have been fixed

at Rs.2975/- in the present scale of Rs.2000-3200(RSP) on 1-1-1986; date of implementation of 4th Pay Commission scales taking into consideration the increments due to me from 24.3.82 to 1-1-86 in grade Rs.650-1040(RS).

Clause 4.2(vi) Para 2 of Railway Servants Discipline & Appeal Rules, 1968 (copy of relevant portion attached as Annexure-V) states that pay on promotion should be fixed under the normal rules.

6.8 Since Clause 4.2(X) and Clause 4.2(VI) Para 2 of Railway Servants Discipline & Appeal Rules, 1968(Issued by Railway Board) vide Annexures III and V have been ignored by the Establishment Section E-I, and Director General, RDSO, Lucknow, I have been denied justice. At present I have been fixed at much lower stage in time scale of pay at Rs.2600/- on 1-5-1986, denying me incremental benefits of scale of Rs.650-1040 (RS). As a result many of my juniors are drawing more pay than me and although the penalty imposed on me is reduction of one stage in the time scale of pay for a period of one year, only, without postponing future increments, at present I am suffering a loss of reduction of 6 stages in the time scale of pay with recurring loss in future.

6.9 Also there has been a considerable delay in finalisation of the case. This case for which a penalty has been imposed on me dates back to

(21)

the year 1979. (Vide extracts of finding of Inquiry Officer attached as Annexure VI). Had the disciplinary proceedings been completed on or before 24-3-1982, my office could not have made me a victim, to suffer the additional loss, which now I am made to suffer.

There may be considerable delay in finalisation of the case, even more than what has happened in my case. But my point is the severity of punishment cannot and should not get enhanced due to the delay which has happened in my case.

7.0

Relief Sought

In view of the facts mentioned in Para 6 above, I pray for the following reliefs:-

- i) Appointment/promotion in the Grade of Rs.650-1040(RS) w.e.f. 24.3.1982 as per Railway Board's letter No.PCIII/8/SG/3 dt.24.3.1982.
- ii) Fixation of my pay in the above mentioned grade accordingly.
- iii) Pay all my arrears due to me from the date of my appointment/promotion in the Grade Rs.650-1040(RS) as mentioned in 7(i) above.

8. Interim Order Prayed for -

Respondents be ordered to fix my pay at Rs.3050 (taking into account increments from 24.3.82 to 1.1.88) as on 1.1.88 in the 4th Pay Commission scale of Rs.2000-3200(RSP) immediately since I am facing monetary loss on account of Travelling Allowance also at present.

...7

9. Details of the remedies exhausted:

(i) (a) Representation to Director Standards
(Carriage), RDSO, Manak Nagar Lucknow
dt.23.9.1986 (attached as Annexure-VII).

(b) Reply to the representation-No.A/EP-2333
dt. 12.5.87 (attached as Annexure-VIII).

(ii) (a) Representation to Director General,
RDSO, Manak Nagar, Lucknow dt.19-5-1987
(attached as Annexure-IX).

(b) Reply to the representation - Memo
No.A/EP-2333 dt.24.9.87 (attached as
Annexure-X).

(iii) (a) Representation to the Chairman, Railway
Board, Rail Bhavan, New Delhi dt.15.10.
1987 (attached as Annexure-XI).

(b) No reply received from Chairman, Railway
Board till date.

10. Matter not pending with any other Court.

I further declare that matter regarding
which this application has been made is not
pending before any Court of Law or any other
authority or any other branch of the Tribunal.

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

Postal Order for Rs.50/- (Rs. fifty only)
to be paid to the Registrar, Central Administrative
Tribunal, Branch - Allahabad - No. 495368
dated 11th Oct 1988 is attached herewith.

12. Details of the Index - An index in duplicate containing the details of the documents to be relied upon is enclosed.
13. List of enclosures - Annexure-I to Annexure-Xias shown in the Index.
14. Verification :

I, Balai Charan Mukherji aged about 53 years S/o Late Shri Dasrthi Mukherji working as Chief Inspector (Carriage), Carriage Director, RDSO, Manak Nagar, Lucknow do hereby verify that the contents from Para 1 to 13 are true to my personal knowledge and that I have not suppressed any material facts.

Verified this eleventh day of October 1988 at Lucknow.

Balai Charan Mukherji
Signature of Applicant
11/10/88

Memo of Personal Appearance

I have not engaged any legal practitioner as a defence Council for my case. I will appear in person for presenting and pleading the case.

Balai Charan Mukherji
Signature of Applicant.
11/10/88

B.C. Mukherji
Chief Inspector (Carriage)
RDSO Manak Nagar, Lucknow

...

Applicants.

Versus
M. Dealing Assistant Establishment
Section, E-I RDSO Manak Nagar,
Lucknow & others.

Respondents.

Annexure No. I

RESEARCH DESIGNS AND STANDARDS ORGANIZATION LUCKNOW.

LD-1/4/SQ/Res.Mech.

Dated: 12.2.83.

MEMORANDUM

With reference to his representation dated 12.1.83 and interview with Director General on grievance day on 31.1.83 for promotion/appointment in the selection grade Rs.650-1040(RS) Shri B.C. Mukherjee Sr. Inspector (CI), Wagon Wing of C&W Directorate is informed that his request for promotion/appointment in the grade Rs.650-1040(RS) in C&W Dtes. has not been agreed to as the issue of a charge sheet for major penalty under D & AR Rules has been initiated against him.

LD-111.

Shri B.C. Mukherjee,
Sr. Inspector (CI),
Wagon Wing C&W Dtes.
RDSO/Lucknow-11

(K.K. Sani)
for Director General.

Chhankhi

D. Rengarajan

(Manager, C&W) (RDSO Lucknow)

Section, E-I RDSO Manak Nagar, Lucknow

Phone No. 226011

Asstt. Engineer
R.D.S.O. of Railways
Manak Nagar, Lucknow

- 10 -

In the Central Administrative Tribunal, Circuit Branch, Lucknow.

B.C. Mukherji
Chief Inspector (Carriage)
RDSO Manak Nagar, Lucknow ... Applicant.

Versus

4. Dealing Assistant Establishment
Section, E-I RDSO Manak Nagar,
Lucknow & others. ... Respondents.

Annexure No. II

(Rule 9 of the Railway Servants (Discipline & Appeal Rules).

Government of India - Ministry of Railways
Research Designs & Standards Organisation

Manaknagar/Lucknow-11

Dated: 18. 11. 70

No. 11-333(I) 11

Memorandum

The undersigned propose(s) to hold an inquiry against Shri B. C. Mukherji under Rule 9 of the Railway Servants (Discipline and Appeal Rules, 1968. The substance of the imputations of misconduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of the imputation of misconduct or mis-behaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexures III & IV). Further, copies of documents mentioned in the list of documents, as per Annexure III are enclosed.

2. Shri B. C. Mukherji is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure III) at any time during office hours within ten days of receipt of this Memorandum. For this purpose he should contact immediately on receipt of this memorandum.

3. Shri B. C. Mukherji is further informed that he may, if he so desires, take the assistance of ~~any other railway servant~~ an official of Railway Trade Union (who satisfies the requirements of rule 9(13) of the Railway Servants (Discipline and Appeal) Rules, 1968 and Note 1 and/or Note 2 thereunder as the case may be for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an oral inquiry being held. For this purpose, he should nominate one of more persons in order of preference. Before nominating the assisting railway servant(s) or Railway Trade Union Official(s), Shri B. C. Mukherji should obtain an undertaking from the nominee(s) that he (they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other cases, if any, in which the nominee(s) had already undertaken to assist and the undertaking should be furnished to the undersigned along with the nomination.

4. Shri B. C. Mukherji is hereby directed to submit to the undersigned a written statement of his defence (which should reach the undersigned) within ten days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of his defence, and within ten days after completion of inspection of documents if he desires to inspect documents, and also

- (a) to state whether he wishes to be heard in person and
- (b) to furnish the names and addresses of the witnesses if any, whom he wishes to call in support of defence.

5. Shri B. C. Mukherji is further informed that an inquiry will be held only in respect of those articles of charge(s) as not admitted. He should, therefore, specifically admit or/deny each article of charge.

In the Central Administrative Tribunal, Circuit Bench, Lucknow.

C. M. Khori
Chief Inspector (Carriage)
DSO Kanak Nagar, Lucknow ... Applicants.

Versus

Dealing Assistant Establishment
Section, E-I RDSO Kanak Nagar,
Lucknow & others. .. Respondents.

Annexure No. III

15

(b) For computing vacancies for holding the next written/merit/suitability test, the vacancies reserved for persons referred to in item (a) (a) above, and whose cases have not been finalised, should not be taken into account.

(x) The cases of persons falling under item (i) above, should also be dealt with after finalisation of the disciplinary proceedings against them, keeping in view the principles laid down in paragraph (v) and (vi) above. Where the person concerned is considered unsuitable for promotion, consequent on consideration by the competent authority of the result of the disciplinary proceedings, his name should be removed from the list. This should be done by the authority next above that which initially approved the list, after giving the person concerned an opportunity to explain his case against the proposed action.

Note:— If a person becomes due for promotion after the finalisation of the disciplinary proceedings and the penalty imposed is one of the following, he should be promoted only after the expiry of the penalty:—

- (1) Withholding of promotion;
- (2) Withholding of increment;
- (3) Reduction to a lower stage in time scale; and
- (4) Reduction to a lower time scale, grade or post.

Provided that where the penalty imposed is 'withholding of increment' and it becomes operative from a future date, the person concerned should be promoted in his turn and the penalty imposed in the promotion grade for a period which would not result in greater monetary loss.

If the penalty imposed is 'censure', 'recovery from pay', or 'withholding of Passes and/or P. T. Os.', he may be promoted when due.

(x) The mere fact that complaints have been received against a Railway servant and some inquiries are being made against him departmentally or by S. P. E., should not stand in the way of his promotion, if he is otherwise eligible for promotion. The intention is that promotion should not be accorded to a person who is under suspension or against whom disciplinary proceedings for the imposition of a major penalty, have been initiated or are proposed to be initiated, or the initiation of the proceedings against him; this should be resorted to only in those cases where the disciplinary authority comes to the conclusion that a *prima facie* case has been established against a Railway servant as a result of fact finding inquiry or otherwise and he has either been placed under suspension or departmental proceedings for the imposition of a major penalty have been initiated or are proposed to be initiated against him. In cases, where a preliminary report is received from the S. P. E. or Vigilance, the disciplinary authority should take a decision expeditiously whether or not to initiate disciplinary proceedings against the Railway servant concerned.

Chandrabh

Handwritten signature
2-11-84

D. Rengarajan

उद्धारक अभिकल्प समिती (सं. ११)

अध्यक्ष, रेल-सं. १)

-226011

Asstt. Secy. to Govt. of India,

R.D.S. Kanak Nagar,

Manuk. Nagar, Lucknow.

12 -

In the Central Administrative Tribunal, Circuit Branch, Lucknow.

B.C. Mukherji
Chief Inspector (Carriage)
RDSO Manak Nagar, Lucknow

Applicant's.

Versus

4. Dealing Assistant Establishment
Section, E-I RDSO Manak Nagar,
Lucknow & others.

Respondents.

Annexure No. IV

Government of India
Ministry of Transport, Deptt. of Railways
Research Designs & Standards Organisation
Manak Nagar
Lucknow- 22

No: A/EP-2333

Dt. 10/8/1986

MEMORANDUM

Shri B.C. Mukherjee, Senior Inspector/Wagon, RDSO, Lucknow, is informed that the Inquiry Officer, who was appointed to inquire into the charges framed against him has submitted his report to the undersigned. A copy of the Inquiry report is enclosed herewith.

2. On a careful consideration of the Inquiry Report aforesaid, the undersigned agrees with the findings of the Inquiry Officer.


3. Now, therefore, in exercise of the powers conferred by sub-rule (2) of Rule 7 of Railway Servants (D&A) Rules, 1968, the undersigned has come to the conclusion that the penalty of reduction to the lower stage @ Rs. 865/- in the time scale of pay of Rs. 700-900/RS may be imposed upon him for a period of one year. This shall have no effect of postponing his future increments. The order shall come into effect w.e.f. 1/5/86.

4. Any appeal made by Shri B.C. Mukherjee against the above penalty will be considered by the Director Stn. Carriage, RDSO, Lucknow. Such an appeal, if any, should be submitted to the Appellate Authority within 45 days from the receipt of this Memorandum.

The receipt of the Memorandum should be acknowledged.

DA: One report.

Shri B.C. Mukherjee,
Sr. Inspector (Carriage),
Carriage, Dto.,
RDSO/Lucknow.


(J.S. Marwaha)
JDSC - I
Disciplinary Authority

Copy forwarded for information to :-

1. DSCarn 2. JDSC-I 3. JDF/RDSO/LKO 4. DDE-I 5. DD/Admn. 6. SO/E-III
7. SO/Confdl. 8. SO/Pass 9. The Secretary (Vig.) (P), Rly. Board,
Rail Bhavan, New Delhi with reference to their no. V3/82/SE/11
(SPE) dated 10/6/1986.

D. Rengarajan

RECEIVED
10/10/86

Asstt. Secy. to Govt.
R.D.E.
Manak Nagar

Recd on 31/7/86

In the Central Administrative Tribunal, Circuit Bench, Lucknow. (27)

B.C. Mukherji
Chief Inspector (Carriage)
RDSO Manak Nagar, Lucknow

... Applicants.

Versus

4. Dealing Assistant Establishment
Section, E-I RDSO Manak Nagar,
Lucknow & others.

.. Respondents.

Annexure No. V

14

(vi) If, after finalisation of the disciplinary proceedings against the person under suspension etc., for whom a vacancy has been reserved, he is held guilty but awarded only a minor penalty, he should automatically be assigned his due position in the list and his enlistment announced and he may be promoted in his turn. If his junior has already been promoted before interpolation of his name in the list, he should be promoted, reverting the junior most person, if necessary and his pay or promotion should be fixed under the normal rules.

If such a person is held guilty and awarded a major penalty other than 'dismissal', 'removal' or 'compulsory retirement', viz. (1) reduction to a lower time scale of pay, grade etc., or (2) reduction to a lower stage in the time scale of pay, his case should be referred to the authority which approved the original list for consideration whether he is suitable for promotion in spite of the penalty imposed on him. If he is considered suitable for promotion, his case for promotion and fixation of pay etc. should be dealt with in the same manner as that of a person who is awarded a minor penalty as indicated above.

If, on the other hand, the person concerned is considered unsuitable for promotion, his case should be referred to the authority next above that which approved the original list and that authority should take a final decision regarding the suitability or otherwise for promotion of such a person. If he is considered suitable for promotion by that authority, his case should be dealt with in the same manner as that of a person who is awarded a minor penalty; if, on the other hand, he is considered unsuitable for promotion by that authority, he should not be promoted on the basis of earlier decision regarding his suitability and the vacancy reserved for him should be carried forward for inclusion in the number of vacancies for formation of the next list.

While reviewing the cases of staff under suspension etc., on finalisation of the disciplinary proceedings against them, the competent authority may take an overall decision, having regard to the facts of the case, whether the person concerned, is suitable for promotion even after the conclusion of the disciplinary proceedings.

(vii) The provisional list should be finalised, after finalisation of the disciplinary cases against all the staff, for whom vacancies have been reserved, by interpolation of the names of such of them who are suitable, at the appropriate places. The list has to be kept as provisional till the finalisation of the last pending disciplinary case.

(viii) If before finalisation of the original list, it becomes necessary to form a next list, fresh list may be formed in accordance with the prescribed procedure, subject to the following conditions:—

(a) The persons who were found suitable by the competent authority earlier but were not placed on the list due to their suspension etc., vide item (ii) (a) above, should not be called to appear for the next written, trade, suitability test.

D. Rengarajan

Asst. Secy. to Min. of Railways (R.D.)

Manak Nagar (R.D.)

-226011

Asst. Secy. to Engineer (R.D.),

R.D. Min. of Railways

Manak Nagar, Lucknow-226011

Handwritten signature

In the Central Administrative Tribunal, Circuit Bench, Lucknow.

B.C. Mukherjee
Chief Inspector (Carriage)
RDSO Manak Nagar, Lucknow ... Applicants.

Versus

4. Dealing Assistant Establishment
Section, E-I RDSO Manak Nagar,
Lucknow & others. ... Respondents.

Annexure No. VI

CONFIDENTIAL

No. 94/AN/119-21
Government of India
Central Vigilance Commission
...

Subj: D.O. against Sri B.C. Mukherjee, Asstt. Inspecting
Engineer, Rail India Technical and Economic
Services Ltd. (RITES), Calcutta.

R E P O R T

In accordance with the Order No. A/EP-2333 dated
30.3.84 of Ministry of Railway, Research Design & Standards
Organisation, Lucknow, I was appointed as an Inquiring
Authority to enquire into the charges against the above officer.

Brief History

2. Preliminary hearing was held by my predecessor on
14.5.84 when the CO was present but not the PO, Sri Sumit
Chakrabarty, Inspector, CBI. I held brief hearing on 13.10.84
when PO, CO and defence asstt. were present. Regular hearing
was held on 2nd and 3rd January, 1985 at New Delhi. As a
prosecution witnesses were absent, I agreed for adjournment
of the case. It was held at Calcutta on 24th and 25th Jan. 85.

Nature of charges

3. That said Sri B.C. Mukherjee while functioning as
Asstt. Inspecting Engineer, RITES, Chander House,
8, Netaji Subhas Road, Calcutta-1 during 1979
committed gross misconduct and failed to maintain
devotion to duty and acted in a manner unbecoming of an
officer of his status in as much as:

D. Rengarajan

Deputy Commissioner (RITES) (RITES-11)

2nd Floor (RITES-11)

226011

Deputy Engineer C-11,

RITES, Min. of Railway

Calcutta-226011

Blumby

In the Central Administrative Tribunal, Circuit Branch, Lucknow.

B.C. Mukherji

Chief Inspector (Carriage)

RDSO Manak Nagar, Lucknow

Applicants.

Versus

4. Dealing Assistant Establishment
Section, E-I RDSO Manak Nagar,
Lucknow & others.

Respondents.

Annexure No. VII

Director Standard Carriage,
R.D.S.O., Manak Nagar,
LUCKNOW

Sub: Appointment in Grade Rs. 650-1040 w.e.f. 24.3.82.

Sir,

Consequent upon creation of Selection Grade posts in the category of CDA/CI (Mech.) both in scale Rs. 650-30-740-35-880-40-1040 (RS), w.e.f. 24.3.1982 for Mech. Eng. Dept. of RDSO vide Railway Board's letter No. PC.III/81/SG/3 dt. 24.3.82, I was due for appointment in the scale mentioned above from 24.3.82 being one of the Senior most Inspector in the Mechanical Directorate.

1.1 Since I was not promoted, I made representation, dt. 12.1.83 for appointment in the selection grade Rs. 650-1040-(RS). But my representation was wrongly tuned down stating that as the issue of a charge sheet for Major penalty under D&A rules has been initiated against me, my request for promotion/appointment in Grade Rs. 650-1040(Rs.) in C&W Directorate has not been agreed to.

1.2 It may be kindly noted that, I was due for appointment in Grade 650-1040(Rs.) on 24.3.82.

1.3 At that time neither I was under Suspension, nor issued with any charge-sheet. The statement that charge sheet for major penalty has been initiated, as stated by Establishment Section in very vague and without any genuine ground. Memo No. JLSW/BG (Conf.) dt. 12.1.82 only had instructions for me to attend some investigation. Clause 4.2 (X) of D&A rules 1968 clearly stated that "The mere fact that complaints have been received against a railway Servant and some inquiries are being made against him Departmentally or by S P E should not stand in the way of his promotion, if he is otherwise eligible for promotion."

1.4 Hence I request for redressal of the injustice done to me by promoting me in Grade Rs. 650-1040 w.e.f. from 24.3.82. and oblige.

2. Further since the disciplinary proceedings are finalised and JLSW-1 has recommended penalty of reduction to a lower stage in time scale w/o. affecting future increments I earnestly request you to consider clause 4.2 (VI) para 2 of D&A rules 1968, which reads thus.

Clause 4.2- The following procedure should be followed in the matter of promotion within class IV, from Class IV to Class III and within class III of railway Servants, who are under suspension or against whom departmental proceedings have been initiated, or are proposed to be initiated, to non-Selection posts:-

Clause 4.2 (VI)-Para-2" If after finalisation of the disciplinary proceeding against the person under suspension etc. for whom a vacancy has been reserved, is held guilty and awarded a major penalty other than, 'dismissal' removal or 'compulsory retirement' viz (1) reduction to a lower time scale of pay, grade etc. or (2) reduction to a lower stage in the time scale of pay etc., case should be referred to the authority which approved the original list of consideration whether he is suitable for promotion his case for promotion and fixation of pay etc. should be dealt with in the same manner as that of a person who is awarded a minor penalty as indicated above."

Hence my pay in Grade Rs. 650-1040 hs. be fixed as per normal rules and penalty of reduction of one stage lower in time scale i.e. reducing my pay from Rs. 1040/- to Rs. 1000/- be implemented for a period of one year as recommended.

Had I been due for any promotion, I would have been penalised by reduction of one increment for a period of one year i.e. incurring a loss of Rs. 35 X 12 = 420/- as per the penalty imposed on me. Now since I am senior most and due for promotion in Grade 650-1040 (Rs.) w.e.f. March 1982. Should I be so heavily punished? This will be real mockery of natural justice. I earnestly request you to render natural justice to me.

Thanking you in anticipation.

Yours faithfully.

B.C. Mukherji
(B.C. Mukherji)
Chief Inspector/Careless,
R.S.O./Lucknow.

23/9/86

D. Rengarajan
D. Rengarajan
23-10-86
अधिकृत अभिकल्प अभियंता (सवारी डिब्बा-11)
अवध-मंडल (रेल-मंडल)
मंडल-226011
Asstt. Engr. Engineer C-11,
R.D.S.O. Min. of Railways
Manaknagar. Phone-226011

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7/2

In the Central Administrative Tribunal, Circuit Branch, Lucknow.

B.C. Mukherji
Chief Inspector (Carriage)
RDSO Manak Nagar, Lucknow

... Applicants.

Versus
4. Dealing Assistant Establishment
Section, E-I RDSO Manak Nagar,
Lucknow & others.

.. Respondents.

Annexure No. VIII

पता : रेलमानक-लखनऊ
RAILMANAK-LUCKNOW



टेलीफोन [50567 & 50568]
रेलमनक

भारत सरकार-रेल मंत्रालय

अनुसंधान अभिकल्प और मानक संगठन

GOVERNMENT OF INDIA-MINISTRY OF RAILWAYS
RESEARCH DESIGNS & STANDARDS ORGANISATION

पत्र संख्या
A/EP-2333

लखनऊ-२२६०११ दिनांक 15/87
LUCKNOW-226011 Date

MEMORANDUM

With reference to his application dated 11/9/86, 23/9/86 for promotion/ appointment in selection grade B.650-1040(RS) he is advised that his request has been considered carefully but it is regretted that the same can not be agreed to as the same is not admissible under the extant rules.

DA:Nil

(N.N. Sehgal) 11/5/87
For Director General 37

Shri B.C. Mukherjee,
Sr. Inspector/Carriage,
Wing of C&W Dtes.,
RDSO/Lucknow.

D. Rengarajan
अध्यक्ष अभिकल्प अभियंता (संरचना-11)
खण्ड-1, रेल-मंत्रालय,
लखनऊ-226011

Asstt. Secy. to Govt. of India,
R.D.S.O. Ministry of Railways
Manaknagar, Lucknow-226011

In the Central Administrative Tribunal, Circuit Branch., Lucknow.

B.C. Mukherji
Chief Inspector (Carriage)
RDSO Manak Nagar, Lucknow

Applicants.

Versus

4. Dealing Assistant Establishment
Section, E-I RDSO Manak Nagar,
Lucknow & others.

Respondents.

Annexure No. VX

LUCKNOW
Dt. 12.5.87

To

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

For kind personal attention of D.G.

Respected Sir,

Subj:- Application for promotion in Grade E-I, R.D.S.O. (117)
W.E.D. 24.3.87

Ref. (i) My application dated 23.9.86 to D.G. (Carriage)
R.D.S.O. Lucknow.

(ii) Your Office Memorandum No. A/ED.1333 dated
12.5.87.

Call writing

I am very much grieved to bring to your kind notice,
that reply given by the Establishment Section of your Office
vide Memorandum under reference, in reply to my application
dated 23.9.86, Copy attached for ready reference, is not
specific and do not give me any opportunity to understand,
under what rules, my legitimate promotion due to me, is
not admissible.

I have quoted in my application, clauses of Discipline
and Appeal Rules, 1968 (Vide Para 1, 3 and 2 of my application
under reference) which in clear terms are favourable for my
due promotion. To the best of my knowledge, Director Standard
Carriage, R.D.S.O., has also given favourable remarks for giving
me my due promotion in Od. 2650-1040 (117) W.E.D. 24.3.87 in
connection with my application under reference. In spite of
that Establishment Section has withheld my due promotion.

In this regard, I emphatically request your kindness
to consider the most vital point of the subject, which is

(R3)

I have been recommended penalty of reduction to a lower stage in time scale for a period of one year without affecting future increments, by Joint Director Carriage (Disciplinary Authority). This punishment is much lower than with-holding of promotion. Hence my promotion in Gd. 650-1040 (RS), which is due to me w.e.f. 24.3.82 as per Railway Boards letter No. PC III/81/SG/3 dated 24.3.82 and which is denied to me upto now, should be given back to me and my pay should be fixed accordingly.

When the punishment recommended is much lower why such a severe punishment has been imposed on me by the Establishment Section of your office, by denying me my due promotion in Gd. 650-1040 (RS) w.e.f. 24.3.82; thereby thrusting upon me loss of approx. Rs. 00/- per month till the date of my retirement and thereafter loss of half of the amount till my death ?

Bhambhani

My salary has been fixed much lower to my juniors (I am the Seniormost Inspector in the Mechanical Directorate), although according to the punishment, only for one year my pay should be reduced to a lower stage in time scale without affecting future increments. The Establishment Section has deliberately dis-regarded the rules of Discipline and Appeal Rules -1968 and has thrusting upon me such a severe punishment which is gross injustice to me.

Hence I request you to kindly permit me to see you in person to enable me to explain the extent of damage caused to me by the Establishment Section and request you for its redressal and to

render me justice.

Thanking you in anticipation.

Yours faithfully,

Bhambhani 19/5/87
(B. C. Mukherji),
Chief Inspector (Carriage),
R.D.S.O. Lucknow

Encl. 1

~~Copy to Mr. D. R. for his kind perusal~~

D. Rengarajan

Bhambhani
Chief Inspector (Carriage)
R.D.S.O. Lucknow

सूचक प्रमाणित करने के लिए (दस्तावेज)

प्रमाणित करने के लिए (दस्तावेज)

60-11-226011

Asstt. Dir. of Engng.

R.D.S.O. (Min. of Railways)

Manaknagar, Lucknow-226011

B. C. MUKHERJI Chief Inspector (Carriage)

Verisus RDSO, Manik Nagar, Lucknow Applicant

Dealing Assistant Establishment

Section E-I, RDSO Lucknow, 15.10.1987

Lucknow and others - Respondents

Page-21

To

The Chairman,
Railway Board,
Rail Bhavan,
New Delhi-110001.

Annexure No: XI

(THROUGH PROPER CHANNEL)

Respected Sir,

Sub: Appointment in Grade Rs.650-1040 (RS) w.e.f.
24.3.1982 and fixation of pay accordingly

Ref: DG/RDSO's Memorandum No.A/EP-2333 dt. 24.9.1987.

Consequent upon creation of Selection Grade posts in the category of CDA/CI(Mech.) both, in scale Rs.650-1040(RS) w.e.f. 24.3.1982 for Mechanical Engineering Department of RDSO, vide your letter No.PC.III/81/SG/3 dated 24.3.1982, I was due for promotion in the scale mentioned above from 24.3.1982, being one of the senior most Inspector in the Mechanical Directorate.

2. I was denied promotion on the false plea that issue of a charge sheet for major penalty has been initiated against me.

3. It may be kindly seen that I was due for promotion in Grade Rs.650-1040(RS) w.e.f. 24.3.1982 and a memorandum to hold an inquiry was issued to me on 15.2.1983, i.e., after a period of eleven months.

3.1 It is evident that I should have been promoted 11 months before, issue of orders for inquiry.

4. Clause 4.2(x) of Discipline and Appeal Rules, 1968, issued by your office clearly states that:

"The mere fact that complaints have been received against a Railway Servant and some inquiries are being made against him departmentally or by SPE, should not stand in the way of his promotion, if he is otherwise eligible for promotion."

Hence a great injustice has been done to me by denying promotion in Grade Rs.650-1040(RS) w.e.f. 24.3.1982.

5. Further, since the Disciplinary Proceedings are finalised and reduction to a lower stage in time scale for a period of one year, without postponing future increments has been imposed on me, w.e.f. 1.5.1986, my pay should have been fixed at Rs.3050/- on 1.1.1986 in the new scale of Rs.2000-3200(RPS), as per clause 4.2(vi), Para 2 of D&A Rules.

14

C. M. No 607 29/4

2

GA 187- 28 14

Filed on
28.3.89

M36

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT BENCH, LUCKNOW

C.M. An. 60/89 (1)
On

Regn. No. 187 of 1988 (L)

B.C. Mukherjee

.. Applicant

Vs.

Dealing Assistant, Establishment-I,
R.D.S.O. & Others

.. Respondents

Fixed for: 28-3-1989.

Application for Dismissal of the Application
as Not Maintainable.

I, S. Bhatia, aged about 54 years working as
Deputy Director Establishment-I, R.D.S.O., Manak
Nagar, Lucknow do hereby solemnly affirm and state
as under:-

1. That the Deponent above named is well conversant
with the facts of the case and has read this claim
application and understood its contents and has been
authorised by the respondents to file this applica-
tion on their behalf.
2. That this application is being filed for
dismissal of the claim application as not maintainable
but however the answering respondents reserve their
right to file detailed para-wise counter reply if
that will be so required.
3. That the answering respondents crave leave
of this Hon'ble Tribunal to raise the following

28/3/89

By _____
D. S. O., Manak Nagar,
Lucknow

legal preliminary objections which may be disposed off before taking up the case on merits:

- i) Whether the application is barred by time as neither the cause of delay has anywhere been explained in the body of claim application nor any application for condonation of delay has been moved?
- ii) Whether the application suffers from non-joinder of necessary parties as Union of India has not been made a party.

4. That if any of the aforesaid legal preliminary objections is decided in affirmative, the claim application may be dismissed as not maintainable.

Lucknow

Dated: 28/7/83

(S. Bhatia)
Deponent

Director Establishment
C. S. O., Ministry of R & L
Lucknow, LUCKNOW

VERIFICATION

I, the above named deponent do hereby verify that the contents of para 1 of this application is true to my personal knowledge and those of paras 2 to 4 are believed by me to be true on the basis of legal advice and I have not expressed any material facts.

Lucknow

Dated: 28/7/83

(S. Bhatia)
Deponent.

A

In the Central Administrative Tribunal Allahabad
Lucknow Bench - Lucknow

CM Application No. 92 of 1989 (L)

OA No. 187 of 1988 (L)

B C Mukherji - - - - - Applicant
Versus

Dealing Assistant RDSO

& others - - - - - Respondents

Sub - Application for condonation of delay.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
LUCKNOW BENCH - LUCKNOW

C.M. APPLICATION NO. 92 of 1989 (L) ↗

In
D.A. No.187 of 1988 (L)

B.C. Mukerjee .. Applicant
Versus
Dealing Assistant,
RDSO & others. .. Respondents.

Application under section 21(3) of Act No.13 of 1985 for condonation of delay against the Union of India sought to be impleaded.

The above-mentioned applicant begs to state as under:

That the applicant filed the above O.A. No.187 of 1988 (L) dt. 25.10.88 which was admitted on 27.10.88.

The applicant had preferred an appeal to the Railway Board against the order of D.G., RDSO/Lucknow dated 24.9.87 on 15.10.87 which remained unreplied.

Thus the application was moved within six months after waiting for one year for disposal of the appeal & it was on that account that the application was admitted on 27.10.88.

The objection raised by the opposite party on this account is liable to be rejected.

However, if on any account the court considers this application to be time barred against the Union of India, the same may kindly be condoned and the application admitted against the newly impleaded party.

VERIFICATION

I, B.C. Mukerjee s/o late Dasarathi Mukerjee aged approx. 53 years, applicant in the above case verify that the contents of the application are true to my knowledge & no material has been suppressed.

B.C. Mukerjee
Applicant.

Keep in record
13/4
D. B. Singh
13.4.89

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Filed today
29/5/89

In

O.A.No.187 of 1988(L)

B.C.Mukherjee

Applicant.

Vs.

Union of India and others.

Respondents.

Objection to the application for condonation of delay

Filed today
29/5

I, S.Bhatia, aged about 54 years working as Deputy Director/Estt-I, Research Designs and Standards Organisation, Lucknow do hereby solemnly affirm and state as under:-

1. That the deponent above named is well conversant with the facts of the case and has read this Application under Sec.21(3) of Act No.13 of 1985 and has been authorised by the Respondents to file this objection.
2. That the contents of the application for condonation of delay is not admitted as stated.
3. That as per applicant's own admission the cause of action accrued to the applicant on 24.3.82 against which he preferred his first representation dated 12.1.83 which was turned down by the respondents vide letter dated 15.2.83 as contained in Annexure No.1 to the application.
4. That thereafter applicant preferred his second and third representations dated 11.9.86 and 23.9.86 respectively ~~xxxxxxx~~ which were again rejected by the competent authority vide order dated 11.5.87 as contained in Annexures No.VIII to application.

25/5/89

By, Director Establishment,
D. S. O., Ministry of Railway,
Jambagh, LUCKNOW.

Recd copy
29.5.89


5. That thereafter the applicant again moved his fourth representation (appeal) dated 19-5-87 which was again duly rejected by the competent authority vide order dated 24-9-87 as contained in Annexure No.X to application, against which the applicant has moved yet another fifth representation dated 15-10-87.

6. The applicant's appeal dated 19-5-87 has already been rejected by the order dated 24-9-87.

7. That delay in filing the claim application has nowhere been explained because against the cause of action accrued on 24-3-82, the claim application, as per applicant's own admission has been filed on 25-10-88, whereas his first representation dated 12-1-83 was turned down on 15-2-83 and appeal was rejected on 24-9-87 by the appellate authority.

8. That the Hon'ble Tribunal was pleased to admit the application on 27-10-88 but the delay in filing the application has not been condoned so far by the Hon'ble Tribunal rather it has been admitted on the facts of the case only.


Lucknow
Dated: 25-5-89

 25/5/89
Deponent
Dy. Director Establishment
D. S. O., Ministry of Railways
Alambagh, LUCKNOW-5

VERIFICATION

I, the above named deponent do hereby verify that the contents of para 1 of this application is true to my personal knowledge and those of paras 2 to 6 are believed by me to be based on available office records and paras 7 and 8 are true/on the basis of legal advice and I have not suppressed any material facts.

Lucknow
Dated: 25-5-89

 25/5/89
Deponent
Dy. Director Establishment
D. S. O., Ministry of Railways
Alambagh, LUCKNOW-5

are
believed
to be true

7-8
AM

Before the Central Administrative Tribunal, Allahabad
Circuit Bench - Lucknow.

In re

O.A. No.187 of 1988 (L)

B.C. Mukherji

Versus

Union of India and others

....

Applicant

....

Respondents.

Rejoinder to the respondents objection to the
application for condonation of delay.

Before replying parawise to the objection raised by
the opposite party/Respondents, the applicant begs to state as
follows for clarification of his view point :-

Union of India is sought to be impleaded as a party
as Central Administrative Tribunal has jurisdiction over service
matters of persons in connection with the affairs of Union of
India i.e. Government of India.

The applicant had impleaded D.G., R.D.S.O. which is
a Wing of the Ministry of Railways under Government of India/
Union Government and thus the Union of India was represented,
but simply by way of abundant caution, the application has been
made to implead Union of India, separately.

The opposite party has viewed the case, as if applicant
has filed this case against some order passed against him, and
the limitation starts running from that date i.e. 24.3.82.

Railway Board issued letter dated 24.3.82, creating
selection grade posts in the cadre in which petitioner was
working and stagnating on the maximum of scale Rs.700-900,
giving that post, scale Rs.650-1040 (as a result of long stag-
nation)

Applicant immediately applied for being given that
grade on 12.1.83, but the same was turned down on the ground
that chargesheet for major penalty has been initiated against

him (memorandum of inquiry was initiated on 15.2.83 vide Annexure II of the main petition)

The applicant waited and after being given a penalty of reduction of one stage lower in the time scale of pay for a period of one year without postponing future increments, again applied for the said grade in Sept., 1986 vide Annexure VII of the main petition which was again rejected on 11.5.87 vide Annexure VIII of the petition.

Against that he represented to D.G., RDSO vide Annexure IX who also rejected his request on 24-9-87 vide Annexure X

Ultimately as the order of creation of grade Rs. 650 - 1040 was issued by the Railway Board for the benefit of persons stagnating in that grade on maximum of scale of Rs.900/- (Rs. 960 in case of CDAs and CTAs), the applicant made a representation to the Board on 15.10.87 and on not getting a reply has come to the Central Administrative Tribunal within limitations laid down in Section 21(G).

Parawise reply to the objection is as follows :

1. Para 1 & 2 needs no reply.
2. Contents of para 3 is not admitted as alleged. Dates of representation and their reply are admitted.
3. Contents of para 4 are admitted.
4. Contents of para 5 are admitted.
5. Contents of para 6 & 7 are not admitted as alleged.
6. Contents of para 8 is not disputed.

Lucknow
Dated:

...3

143

VERIFICATION

I, Balai Charan Mukherji s/o late Dasarathi Mukherji applicant for the above rejoinder, do hereby verify that the contents of the rejoinder as mentioned above are true to my personal knowledge and that I have not suppressed any material fact.

Lucknow
Dated:

Balai Charan Mukherji
Signature of Applicant

21 Copy

Central Administrative Tribunal
Civilian Bench 200

Regn no 187 of 1988 (L)

B.C. Prickett vs. Union of India & others

Writs Prickett vs. Residence

Received on 3-11-89 (3rd of November 1989)
B.C. Prickett
3/11/89

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

WRITTEN REPLY ON BEHALF OF RESPONDENTS 1 to 3

IN

Registration No. 187 of 1988(L)

B.C. Mukherji

.. Applicant


Vs.

Union of India and others

.. Respondents

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

1. That the deponent is working as Dy. Director/ Estt-I in Research, Designs and Standards Organisation (hereinafter called RDSO) Lucknow and as such he is fully competent to sign and verify the ~~extent~~ instant Written Reply on behalf of the Respondents.
2. That the deponent has carefully gone through the relevant records relating to the instant case kept in the official custody of the answering Respondents and is thus fully acquainted with the facts and circumstances of the case deposed below.
3. That before dealing with the facts of the case, the answering respondents crave the leave of this Court to place certain facts which are necessary and essential in appreciating the



(S. BHATIA)
Dy. Director (Estt - I)
R. D. S. O. (Min. of Rlys)
Manak Nagar, Lucknow-226011

MS

controversy involved in the instant petition. They are as under:

(A) Shri B.C.Mukherji, the applicant was appointed as Apprentice TXR @ Rs.55/- PM w.e.f. 15-6-53 in Central Railway and posted at Nagpur. On completion of 4 years apprenticeship from 15-6-53 to 14-6-57 he was appointed as Temporary TXR in grade Rs.100-185(PS) w.e.f. 15-6-57. On transfer from Central Railway he was appointed in RDSO as Carriage and Wagon Inspector in scale Rs.370-475(AS) w.e.f. 2-12-67(FN). Subsequently he was promoted as Senior Inspector(C&W) in scale Rs.450-575(AS) w.e.f. 19-6-70. While working as Sr. Inspector in scale Rs.450-575(AS)/700-900(RS) he went on deputation to ~~Rail India~~ Rail India Technical & Economic Services, a Government of India Enterprise, w.e.f. 31-5-78 and he was sent back by RITES office to RDSO w.e.f. 5-6-81.


(B) In terms of Railway Board's letter No.PC-III/81/SG/3 dt. 24-3-82 two selection grade posts were created in scale Rs.650-1040(RS) in Mechanical Department of RDSO w.e.f. 24-3-82. The Fourth Pay Commission introduced Revised pay scales w.e.f. 1-1-86 and the Applicant opted for the new Revised pay scales w.e.f. 1-1-86. With the introduction of Revised pay scales, the then existing scales of Rs.650-960, Rs.700-900 and 650-1040(RS) were allotted the new Revised scale of Rs.2000-3200(RPS) and the Applicant was allotted the scale of Rs.2000-3200 w.e.f. 1-1-86.


(S. BHATIA)
Dy. Director (Estt - I)
R. D. S. O. (Mechanical Dept)
223011

07/6

(C) While the Applicant was working as Asstt. Inspecting Engineer in RITES office, on detection of serious lapses a case No. RC/36/81-Cal was registered against him by the Special Police Establishment Central Bureau of Investigation, Calcutta under sections 120B, 420, 467, 468, 471 of IPC and section 5(2) r(W). Sec.5(1)(d) of P.C. Act, 1947 and the Superintendent of Police, Central Bureau of Investigation while submitting his report No.17/82 dt. 24-4-82 recommended for issue of Major penalty to be initiated against Sh.B.C. Mukherji, Asstt. Inspecting Engineer of RITES office and also black-listed^{ing} the concerned firm. The Govt. accepted the recommendations of the Central Bureau of Investigation and Ministry of Railways (Railway Board) in consultation with the Central Vigilance Commission agreed to initiate Major Penalty proceedings against Sh.B.C. Mukherji and others and accordingly a Major Penalty charge-sheet dated 16-2-83 was issued against the applicant.

(D) As per extant orders, when a case under Discipline & Appeal Rules is contemplated or is pending against the employee, he would not be promoted/appointed. Accordingly, the Applicant could not be appointed in Selection Grade post in the year 1982 as at that time he was not free and on the investigation of the Central Bureau of Investigation a prima facie case was established


(S. BHATIA)
Dy. Director (P.S. - I)
R. D. S. O. (P.S. - I)
Manak Nagar, Lucknow-226011

18/11/79

against him and on its basis the entire matter was under process for issuance of a Major Penalty charge-sheet. It is relevant to point out here that facts on the basis of which the Major Penalty charge-sheet was issued were of serious nature as will be evident from the main charge framed by GBI is as under:

"It is alleged that M/s. Makali Iron Works 24F, Brindaban Base lane, Calcutta-6, in collusion with Sri B.C. Mukherji, Asstt. Inspecting Engineer, RITES (SI) and officers of S.E. Railway managed to get a sum of Rs.1,57,169.58 being 90% of cost of goods 'Shackle Spring Suspension' for the Box Wagons supplied to the consignee i.e. DCOS(QASS)/SER/Raipur/dt. 5.4.79 fraudulantly by producing forged Inspection Certificate and the goods were ultimately rejected by the consignee as being not according to the drawing and thereby the Railway was cheated."

In 1979
against
purchase order
No. S/3878/
0173/2/0251/
000070

On issue of the Charge-sheet and after the enquiry being conducted by the Commissioner for Departmental Enquiry, Central Vigilance Commission vide his Inquiry report the main charge as extracted above has been proved against the applicant, and a penalty was imposed on him by the Disciplinary Authority of reduction to the lower stage @ Rs.865/- in the time scale for a period of one year which should not have the effect of postponing his future increments. In this connection, it may be stated that the petitioner has only furnished first page of the report of the Inquiry Officer vide Annexure VI

(S. BHATIA)
Dy. Director (Part - I)
R. D. S. O. (In-charge of Rlys)
Manak Nagar, Lucknow-226011


18/18

of the petition though the same contains 13 pages.

(A full report is enclosed as Annexure R-1).

(E) The order effecting the penalty was given effect from 1-5-86. The effect of the penalty was over on 30-4-87. As a result of the introduction of new scales of pay wherein the grade of 650-1040 had been merged with the normal grades of Rs.700-900 and ~~Rs.900-1040~~ 650-960 and all the three grades were allotted the grade of Rs.2000-3200(RPS) and there remained no Selection Grade w.e.f. 1-1-86. As such as soon as the effect of the penalty was over w.e.f. 1-5-87, the Selection Grade and the other normal grades were merged into Rs.2000-3200(RPS) and his pay was already fixed in the new scale of Rs.2000-3200 w.e.f. 1-1-86 as a result of his option for the new scales.

(F) After imposition of the penalty, the applicant represented for the grant of selection grade on 11-9-86. Since as a result of introduction of new Revised pay scales wherein the selection grade has been merged with ordinary grades and allotted the higher grade of Rs.2000-3200, the request of the Applicant could not be agreed to as there was no selection grade in existence. As such he was informed vide Memo. No.A/EP-2333 dt. 11-5-87 (copy at Annexure VIII of the petition) that his request could not be agreed to.


(S. B. P. T. A.)
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11/19


4. That the contents of paras 1 to 4 of the petition being matter of record ~~are~~^{call} for no comments.

5. That in reply to the contents of para 5 of the petition, it is stated that as per reliefs claimed the instant petition is not within the period of limitation as prescribed under section 21 of Act No. 13 of 1985 and the same is liable to be rejected on that score alone.

6. That the contents of para 6.1 of the petition being matter of records need no comments.

7. That in reply to the contents of para 6.2 of the application it is stated that the petitioner has been working as Senior Inspector (Chief Inspector provisional) in scale Rs.700-900(RS)/Rs.2000-3200(RPS) w.e.f. 19-6-70.

8. That in reply to the contents of para 6.3 of the application, the contents of para 3 of the instant reply are reiterated and any allegations to the contrary are denied. It is stated that two selection grade posts ~~are~~ in scale Rs.650-1040(RS)/2000-3200(RPS) were created in the Mechanical Department of RDSO w.e.f. 24-3-82 vide Railway Board's letter No.PC-III/81/SG/3 dated 24-3-82. The applicant Shri B.C.Mukherji could not be granted the selection grade due to the fact that a case No.36/81 under Sections 120 B/420/467/468/471/IPC and Section 5(2) r/w 5(1)(d) of P.C.Act of 1947 was registered by SPE/CBI/Calcutta vide Superintendent of Police, CBI/SPE/Calcutta's



S. BHATIA)
Dy. Director (Estt - I)
R.D.S.O. of Rlys.
Calcutta

MS

letter No.65/30/3/81-GW,III/Cal. dt. 4-1-82. It may also be stated that the Applicant was informed vide RDSO's Memo. No.EI/4/SG/Res.mech. dt. 15-2-83 (Annexure I of the Petition) that since action under D&AR was to be taken against him, his request for appointment in Selection grade could not be considered and as the applicant did not challenge the said decision, the instant petition is not legally maintainable and is liable to be rejected.

9. That in reply to the contents of para 6.4 of the petition, the contents of para 3 and 8 of the instant reply are reiterated and any allegations to the contrary are denied.


10. That in reply to the contents of para 6.5, it is stated that even though the orders of Railway Board for introduction of selection grade were issued on 24-3-82, the implementation of the same actually took some time due to the processing of the case at various stages. At the time the Applicant's case for grant of selection grade was considered along with other eligible staff, it was revealed that there were prima-facie charges against the Applicant and the Superintendent of Police/CBI/SPE/Calcutta in January, 1982 registered a case No.36/81 against the Applicant on account of serious charges to which a major penalty charge-sheet was to be issued to him. As a result of thorough enquiry and investigation by Superintendent of Police/CBI/Calcutta vide his


(S. BHATIA)
Dy. Director (Estt - I)
R. D. S. C. (In. of Mys)
Manak Nagar, Lucknow-226011

report dated 24-4-82 he came to a conclusion that a major penalty charge-sheet be issued to Sh.B.C. Mukherji, the applicant and others under D&A Rules and the concerned Firm be black-listed for its future dealings with Railways. The Ministry of Railways (Railway Board) accepted the views of SPE/CBI/Calcutta and the Central Vigilance Commission also recommended that a Major Penalty proceedings against the applicant and others should be initiated and for this purpose the Commissioner for Departmental Inquiry, Central Vigilance Commission was appointed to conduct an enquiry. In the Charge-sheet issued for a Major penalty there were the following charges:

" That said Sh.B.C.Mukherji while functioning as Assistant Inspecting Engineer, RITES, Gillander House, 8, Netaji Subhas Road, Calcutta-1 during 1979 committed gross misconduct and failed to maintain devotion to duty and acted in a manner unbecoming of an officer of his status in as much as:

1. He signed blank inspection certificates with regard to 11th and 12th instalment of materials supplied by M/s. Makali Iron Works, Howrah to the consignee without physically inspecting the materials at the premises of M/s. Makali Iron Works, Brindavan Bose Road Lane, Calcutta and delivered the same to the Firm which were filled in and utilised by the Firm in Question as if they were issued by him and on the ... (contd. on next page)


S. B. C. Mukherji
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basis of the 2nd and 5th copy of inspection certificates which were found to be forged, claimed payment from FA & CAO, S.E. Railway, Garden Reach, Calcutta 90% of the billed amount which was paid to them on that basis, although the materials supplied were not according to IRS Drg. No. W/SN-4740A Lt. and as such the firm was not entitled for their payment.


2. He did not maintain the purchase order records of RITES in violation of terms of the rule 5.4 of the Inspection Manual of RITES.

3. The purchase order file of this case which was in his custody was found missing and not available during enquiries.

And he thereby contravened the relevant conduct Rules of the RITES and rule 5.4 of the Inspection Manual of RITES.

As per findings of the Inquiry Officer (Copy annexed at Annexure R-I), Charge No.1 which is a main charge has been substantiated against the Applicant and the remaining two charges have not been substantiated.

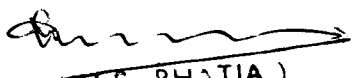
11. That as regards para 6.6, it is not denied that the selection grade was introduced to remove stagnation but it is denied that it is not a promotional grade, as while considering the cases of all eligible staff, their confidential ~~exp~~ records and Service records etc. are reviewed and only those


(S. BHATIA)
By (S. BHATIA) (S. BHATIA)
R.D.S. Officer (S. BHATIA)
Manak Nagar, Lucknow-226011

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who are found fit are given selection grade. Since there was Prima facie case against the applicant, he was not given Selection Grade.


12. That in reply to the contents of paras 6.7 and 6.8 of the application, it is stated that a charge-sheet for Major penalty was issued to the petitioner and after an enquiry conducted by the Commissioner for Departmental Inquiry, Central Vigilance Commission, a penalty of with-holding/ reduction to the lower stage @ Rs.865/- in the time scale of pay of Rs.700-900(RS) was imposed upon him for a period of one year. The order was to come with effect from 1-5-86. On expiry of the penalty period, his pay in scale Rs.700-900/RS (Rs.2000-3200/RPS) was fixed @ Rs.2600/- w.e.f. 1-1-86 and Rs.2600 minus 75/- = Rs.2525/- w.e.f. 1-5-86 to 30-4-87. From 1-5-87, his pay has been raised from Rs.2525/- to Rs.2600/- due to annual increment. From 1-1-86 New pay scales came into force for which the Applicant opted and since he was not placed in the selection grade he was not entitled for higher fixation of pay and his pay has been correctly fixed taking into account the reduction in lower stage in time scale as per order dated 10-7-86 (copy at Annexure IV of the petition). As such, the Applicant cannot compare his pay with the pay of his juniors nor claim his pay at higher rate in view of the penalty imposed on him.


(S. BHATIA)
Dy. Director (Estt - I)
R D S O (In-charge of Rlys)
Manak Nagar, Lucknow-22601

13. That in reply to the contents of para 6.9 of the application it may be mentioned that the SPE/GBI/Calcutta had first in April 1982 proposed the charge sheet to be issued to the petitioner and others and since the case was to be processed through various stages i.e. Railway Board, Central Vigilance Commission for departmental inquiry and it was a case of Major Penalty charge-sheet, it could be finalised only in 1986. Since the main charge in the Charge-sheet which is of a serious nature reflecting directly on the working of the petitioner has been proved and he had been punished, he could not get the Selection grade and any allegations to the contrary are denied.

14. That the contents of para 7 of the petition are emphatically denied. In reply thereof it is stated that there had been no illegality or violation of any Rules or any principles of Natural Justice committed by the answering Respondents. The grounds put forth are not only devoid of any merits but also not sustainable in law and as such the petitioner is not legally entitled for any relief claimed and the instant petition is liable to be dismissed with costs.


15. That the contents of para 8 of the petition are denied. In reply thereof it is stated that neither any valid or cogent ground taken by the


(S. BHATIA)
Dy. Director (Estt - I)
Ministry of Rlys
Manak Nagar, Lucknow-226013

petitioner nor any legal infirmity has been pointed out for grant of any interim relief. This apart the balance of convenience also does not lie in favour of the petitioner for grant of any interim relief and the prayer for the same is liable to be rejected.

16. That the contents of paras 9, 10, 11, 12 and 13 of the petition being matter of records need no comments.


Lucknow
Dated 1-11-88


(S. BHATIA)
Dy. Director (Estt. - I)
R. D. S. O. (Min. of Rlys)
Manak Nagar, Lucknow-226011

VERIFICATION

I, S. Bhatia do hereby verify that the contents of paras 1 and 2 of this reply are true to my personal knowledge and belief and the contents of paras 3 to 16 of the instant reply are true to my knowledge derived from the perusal of the available official records pertaining to the instant case kept in the official custody of the answering respondents. No part of this reply is false and nothing material has been concealed.

Lucknow
Dated: 1.11.88


(S. BHATIA)
Dy. Director (Estt. - I)
R. D. S. O. (Min. of Rlys)
Manak Nagar, Lucknow-

Annexure R1

CONFIDENTIAL

No. 94/AGG/119-21
Government of India
CENTRAL VIGILANCE COMMISSION

...

Sub: D.E. against Sri B.C. Mukherjee, Asstt. Inspecting Engineer, Rail India Technical and Economic Services Ltd. (RITES), Calcutta.

R E P O R T

In accordance with the Order No. A/EP-2333 dated 30.8.84 of Ministry of Railway, Research Design & Standards Organisation, Lucknow, I was appointed as an Inquiring Authority to enquire into the charges against the above officer.

Brief History

2. Preliminary hearing was held by my predecessor on 14.5.84 when the CO was present but not the PO, Sri Sunit Choudhary, Inspector, CBI. I held brief hearing on 18.10.84 when PO, CO and defence asstt. were present. Regular hearing was held on 2nd and 3rd January, 1985 at New Delhi. As 4 for prosecution witnesses were absent, I agreed ~~an~~ adjournment of the case. It was held at Calcutta on 24th and 25th Jan. 85.

3. Nature of charges

"That said Sri B.C. Mukherjee while functioning as Asstt. Inspecting Engineer, RITES, Gillender House, 8, Netaji Subhas Road, Calcutta-1 during 1979 committed gross misconduct and failed to maintain devotion to duty and acted in a manner unbecoming of an officer of his status in as much as:

1. He signed blank inspection certificates with regard to 11th and 12th instalment of materials supplied by M/s Makali Iron Works, Howrah to the consignee without physically inspecting the materials at the premises of M/s Makali Iron Works, Brindavan Bose Lane, Calcutta and delivered the same to the firm which were filled in and utilised by the firm in question as if they were issued by him and on the basis of 2nd and 5th copy of inspection certificates which were found to be forged, claimed payment from FA&CAO, S.E. Rly. Garden Reach,

(S. BHATIA)
Dy. Director (Estt. - I)
R. D. S. O. (Min. of Rly.)
Fazal Nagar, Lucknow-226001

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are not the subject matter of charge in this case. SWLO has also said that gri BC Mukherjee who succeeded him inspected materials against purchase order for the 9th and 10th instalments. There is no controversy about these two instalments either. The charge is in respect of ICS issued in respect of 11th and 12th instalments.

5. Sri B. Kumar of RITES(SW2) stated in his statement at Ex.525 that a complete set of printed inspection certificate book containing 50 sets is supplied to Asstt. Inspecting Engineer for issue of ICS ~~from~~ for inspection of railway materials before they are actually despatched to different Rly. consignees. Each set of the inspection certificate book contains 8 pages - that is to say there are 8 copies of I.C. in one set. According to printed instructions on the back of the ICS(which are in Ex.51 on top) these 8 copies are to be given to the different functionaries as under:

- 1) The ORIGINAL, FIRST & FIFTH copies are to be given by RITES to the contractor. The payment against proof of inspection and despatch shall be claimed by the contractor from the paying authority with the original copy of the IC. The contractor shall invariably send the first copy with the chalan to the consignee. The fifth copy is to be retained by him as the office copy.
- 2) The SECOND copy has to be forwarded to the purchasing authority.
- 3) The THIRD copy has to be retained as office copy.
- 4) The FOURTH copy is to be sent to payee FA & CAO with inspection bill.
- 5) The SIXTH copy is to be sent as an advance copy to the consignee.
- 6) The SEVENTH copy is to be sent as an advance copy to the COS of the consignee railway wherever he is different from the purchasing authority.

6. It would thus be seen that according to these instructions, the contractor can get payment from paying

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D. S. BHATT
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the basis of 2nd and 5th copy of the I.C. respectively which was not in order and it should have been claimed on the basis of the original copy of the I.C. The other point is that CO signed blank ICS for these two instalments without physically inspecting the materials. The second copy of IC dt.16.10.79 is at pages 73 and 74 of Ex.S1 and the 5th copy dt.16.11.79 at pages 86 and 87 of Ex.S1. The 2nd and 5th copies are about 11th and 12th instalments relatable to the bills at S1.1 and 2 in para 6 above respectively. Sri A.L.Das(Sw10) of RITES who had done inspection of the first 8 instalments deposed with ref. to ICS at pages 73 and 74(2nd copy) of Ex.S1 that these are with regard to the 11th instalment of supply. Further that as stated on the ICS, these certificates were issued from book No.1065 but the set numbers are 42 and 45, whereas it should have been issued on the same set. Both these are "2nd copy". He also deposed that with ref. to ICS at pages 86 and 87 of Ex.S1(which are with regard to 12th instalment of supply and are 5th copy") these were issued from book No.1095 but the set numbers are 33 and 38, whereas they should have been issued on the same set. Both these certificates have been signed by Sri BC Mukherjee. Apart from the above discrepancies, the witness stated that in the consignee's column, some words are scored out between 'S' and 'E' in set 38 whereas such change is not found in set 33. This shows that sets 33 and 38 about 12th instalment were not typed together. He also stated that he finds philer impression of RITES on set 45 of book 1065 and set 38 of book 1095 on pages 74 and 86 of Ex.S1. He also stated that

Blank Negative
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advance payment to the firms concerned, the FA&CAO used to send the original to the consignee. He also stated that the 2 "second copies" regarding 1150 Nos. and one 5th copy about 7115 Nos. were received in his office. (as per printed instructions and other evidence, the consignee is to receive original copy after 90% payment as also 1st and 6th copies). In this case, consignee received 2nd and 5th copies. While this was irregular, the point as to why the responsibility at the consignee's end was not investigated needs to be looked into. There is a possibility that the original copies were not submitted either because the contents in the original copy were different from the remaining copies or because Sri B.C. Mukherjee had filled in the original copies and had only signed the remaining blank copies which may have been filled in by the firm. I would clarify this in the next para.

9. Now it is necessary to see as to how the contractor would have played mischief and to what extent the CO was a party to that. Sri S.R.Saha(SW1) who was Dy.Regional Manager, RITES, stated in his cross-exmn. that in regard to issue of blank sets of ICS forms to the representatives of the suppliers, there are no written instructions but as there was shortage of typist in RITES office, it was a usual practice for the Asstt. Inspecting Engineer to hand over blank inspection certificates forms to the suppliers for typing, once the AIE had satisfied himself about acceptance of materials. SW2 also confirmed this practice in his cross-exmn. DWI Dy. RMI, RITES also stated that due to non-availability of typist in office, ICS were

Dr. D. K. S. O. (in. M)
Manak Nigam, Lucknow

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Dr. D. S. ...
Dr. D. S. ...
Dr. D. S. ...

and

11. Sri Mukherjee, CO has not denied his signature on 2nd and 5th copies. His defence is that 11th and 12th instalments were not inspected at all and hence no inspection certificates were issued to the firm. If he had not inspected them, then his signatures on these copies would signify that the CO signed the blank ICS which he

firm received original ICS and these instalments were also rejected as per Ex.833. However, it would be seen that original ICS were there with the firm in these instalments. Further CO's point is that as stated by SW10 in cross-exmn. all the instalments of materials were mixed up together with loose stitches, big knots with improper seals, torn bags etc. CO states that this proves that the bags containing the materials were tampered and inspected material was replaced with substandard material after inspection of 5th to 10th instalments and so the firm was indulging in cheating. I am unable to appreciate the conclusion of CO which is not based on any facts or figures or evidence. Moreover, the subject matter of the charge is 11th and 12th instalments and not 5th to 10th instalments.

12. The second charge against the CO is that he did not maintain the purchase order records of RITES in violation of rule 5.4 of the Inspection Manual of RITES. As per para 5.4 of inspection Manual at Ex.819, the Inspecting Officer is required to enter the particulars of the calls attended in a register ("Calls attended" means intimations/offers received from the supplier that goods are ready for inspection at their premises and that they should be inspected within a specified period). The particulars required to be entered in the register as per para 5.4 are, date of inspection, date of offer, File number, name of contractor, remarks. Rule 5.4.1 requires that the register should be submitted by the inspecting officer to RMI/Dy.RMI/ARMI at regular intervals. SW1 has said in his statement at Ex.824 that the CO did not make

3. 5. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

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file was in the custody of CO and it was missing from his custody. SW1 in his statement at Ex.S24 stated that "the purchase order file of this case could not be traced out in office". This does not implicate the CO. SW1 deposed that inspection case file could ~~not~~ neither be produced by the section nor by the AIE, Sri BC Mukherjee. This does not mean that it was lost by the CO. In his statement at Ex.g31, SW3 has said that this file together with ~~some~~ some other documents could not be traced out in office. He has not stated that CO has lost it. Moreover, as SW3 was a PA and not concerned with such operational matters, he has no locus standi to depose about such matters. For want of any evidence and also for the reason that whatever evidence as stated in this para does not stand, this charge fails.

FINDINGS

14. Charge 1 The charge stands substantiated. However as stated in this report, there is no evidence of any collusion of CO with the firm nor can an inference about collusion be drawn for the reasons already recorded.


Charges 2&3: Do not stand substantiated.


(A.K. GARDE)

INQUIRY OFFICER

Commissioner for Deptl. Inquiries.

NEW DELHI, THE
19TH APRIL, 1985.


R.D.S. CHANDRA
Manak Nagari

Before the Central Administrative Tribunal, Allahabad
Circuit Bench, Lucknow

IN

CA No. 187 of 1988 (L)

B C Mukherji - - - - - Applicant
Versus

Union of India & others - - - - - Respondents

Rejoinder to the counter reply filed by the respondents.

De3

Before the Central Administrative Tribunal, Allahabad
Circuit Branch - Lucknow.

In
O.A. No.187 of 1988 (L)

B.C. Mukerjee

....

Applicant

Versus

Union of India & others

....

Respondents

Rejoinder to the counter reply filed by the respondents.

Before giving parawise reply, the applicant begs to highlight the following facts of the case :

A. The applicant was due for the Non-functional selections grade of Rs.650-1040 (RS) w.e.f. 24.3.82 in terms of Railway Board's letter No.PCIII/81/SG/3 dt. 24.3.82 (Attached as Annexure - A-1^(to A-4)), whereas the initiation of D&A proceedings was made on 15.2.83 (vide Annexure- II of original application); i.e. after 11 months from the date I was due for the above-mentioned grade. Hence the claim of the respondents for the pendency of D&A proceedings on 24.3.82 is incorrect. The respondents themselves have admitted that report from CBI was submitted dated 24.4.82 (letter No.17/82 dt.24.4.82 mentioned at Para 3B of Counter affidavit.) Further, neither I was suspended nor I was informed about any report against me till 15.2.83 (vide Annexure-I of original application).

Parawise reply is as given below :

(1) Para 1 & 2 of the counter is not disputed.

(2) In reply to para 3A of the counter, it is pointed out that the applicant was appointed as Apprentice Train Examiner in Central Railway w.e.f. 15.6.53 ^{and getting stipend} ~~in scale~~ of Rs.105-~~135~~ and not @ Rs.55/- as alleged.

(3) Further averments of para 3B of the counter are not disputed except that in view of the Railway Board letter quoted therein the increment of selection grade so created

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was to commence from 24.3.82 and my option for 4th Pay Commission scale of Rs.2000-3200 (RPS) was only to get fixation of my pay in that scale after adding all increments of grade Rs.650-1040 (RS) due to me from 24.3.82 to 1.1.86.

Reg: Para 3C - Also the averments of para 3C, only this much is admitted that for certain lapses of the applicant's working as Asstt. Inspecting Engineer in RITES/Calcutta during 1979 (vide Annexure-VI) a major penalty charge sheet was served on the applicant dated 16.2.83 and had no knowledge about reports of CBI etc. till then.

Reg: Para 3D - Averments of para 3D of the counter are not admitted as alleged, rather averments of para 6.8 of the original application are reiterated.

The contemplation to run-down the applicant for a major penalty could not have been in 1982, else he would have been suspended right then or even before since the lapses was during 1979. The contemplation was on 16.2.83 when a charge sheet was given to the applicant and inquiry was proposed (vide Annexure-II) or just before.

Reg: Para 3E - It is not disputed that the punishment was given effect from 1.5.86 and the effect of penalty was over on 30.4.87. The punishment was reduction to the lower stage in the time scale for a period of one year, which should not have the effect of postponing future increments (vide Annexure-IV of original application).

The petitioner was due for appointment in grade Rs.650-1040 w.e.f. 24.3.82, It is admitted by the respondents in para 11 of the counter affidavit. Hence withholding of increments from 24.3.82 to 1.5.86 amounted to a recurring loss for about 4 years which was never the intention of the punishing authority.

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- 3 -

Reg: Para e3F - That the averments of para 3F of the counter is not admitted as alleged. Even if applicant's further increments were withheld, on charge for major penalty was under enquiry and even if the punishing authority indicated that the pay be reduced to Rs.865/- (since Rs.900/- was the maximum of the scale), this was simply illustrative and not having the effect of annulment of Railway Board's order dated 24.3.82 which was to give relief to persons stagnating in the maximum of the scale.

4. that Para 4 of the counter is not disputed.
5. The relief is for implementation of Railway Board's letter No.PCIII/81/SG/3 dated 24.3.82 which was not implemented after first representation dated 12.1.83 on the plea that charge sheet for major penalty has been initiated.

The petitioner submitted to it: and after the punishment order dated 10.7.86 /31.7.86, again made representation to Director, Director General and finally to Railway Board on 15.10.87 to implement the Railway Board's letter dated 24.3.82 but the same was never replied. The present application is within limitations of one year from 15.10.87 having being filed on 11.10.88.

6. That para 6 of the counter is not disputed and para 6.1 of the original application is reiterated.
7. That para 7 of the counter too is not disputed.
8. The averments of para 8 of the counter is not admitted as alleged and para 6.3 of the original application is reiterated. There is no question of running of limitation for implementation of Railway Board's letter by order of Director General/RDSO and the Supreme authority in that regard was the Railway Board itself to whom last representation made on 15.10.87.
9. That para 9 of the counter is not admitted and the averments of para 6.4 of the original application is reiterated.

The petitioner did not challenge the punishment order and submitted to it - as the penalty was reduction of one stage in time scale for one year, without postponing future increments from the stage @ Rs.865 in scale Rs.700-900 (RS).

The enquiry officer submitted his report dated 19.4.85 (Annexure R1) of the counter) and consequently the Disciplinary Authority in the punishment order dated 10.7.86 (Annexure IV) mentioned that order shall come into effect on 1.5.86. This simply meant that orders fixing pay has to be passed w.e.f. 1.5.86 and not that effect to Railway Board's letter dated 24.3.82 referred above should not be given effect to. Thus it is quite evident after disciplinary proceedings have concluded and the petitioner is either exonerated or given a lesser punishment in that case in view of Railway Board's letter E(D&A)71 RG6-23 dated 1.6.71 and 10th January 1974 quoted in para VI of Annexure V, the applicant is entitled for promotion from 24.3.83 after undergoing punishment of reduction in pay to Rs.865/- on 24.3.82 for one year as no adverse entry was ever communicated to him vide law laid down in

Vijaikumar Vs State of Maharashtra

1989 S.C.C.(L&S)42

particularly in view of the admission of the opposite parties in para 11 of the counter that selection grade was introduced to remove stagnation and while considering the cases of all eligible staff their confidential records and service records are reviewed and only those who are found fit are given selection grade. In the alternative, if increments cannot be given from 24.3.83 after effecting reduction of one increment from 24.3.82, then in that case

the applicant should be allowed ~~functional~~ benefit from 24.3.82 as he had no adverse entry in the character roll and his one increment in scale Rs.650-1040 (RS) from 1.5.86 should be reduced for one year i.e. till 30.4.87 where from, his normal increments would be given.

10. That in reply to para 10 of the counter paras ^{1-4 and 2} 2, 13, of the ~~Annexure V~~ original application and para ^{A2} 9 above of this rejoinder are reiterated.
11. That para 11 of the counter is admitted except that Railway Board's letter dated 24.3.82 was promotional grade, rather it is a non-functional selection grade (Annexure A1, ^{is A4} attached).
12. That averments of para 12 of the counter is not admitted as alleged and the method of fixation adopted is wrong. In view of Railway Board's letter referred to above, fixation of pay etc. should have been done in the same manner as that of a person who is awarded a minor penalty vide Annexure-V.
13. That averments of para 13 are not admitted ~~as~~ as alleged and averments of para 6-9 of the original application and para 12 of the rejoinder above are reiterated.
14. That averments of para 14 are not admitted and averments of ^{6, 15, 6-9 and} para 7 of the original application is reiterated.
15. That ~~averments~~ ^{denied} of para 15 are ~~admitted~~ and the averment of ^(Para 6-15 6-9) para 6 of the original application and para A & 9 of this rejoinder are reiterated.
16. That averments of para 16 are not disputed.

B. C. Mukerjee
DEPONENT

VERIFICATION

I, B.C. Mukerjee, above-named deponent do hereby testify on oath that averments of para 1 to 8 are true to my personal knowledge and para 9 to 16 are true on the advice given by the counsel.

B. C. Mukerjee
DEPONENT

The deponent is known to me and has signed the rejoinder before me.

Advocate

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(COPY)

GOVERNMENT OF INDIA (BRILLIANT RAIL)
 MINISTRY OF RAILWAYS (RAIL MINISTRY)
 (RAILWAY BOARD)

No. PCIII/81/CG/3

New Delhi, dt. 24.3.1982.

The Director General,
 RDSO, Lucknow.

Sub: Introduction of Selection Grades for the categories
 of staff working in the Research Designs & Standards
 Organisation.

The Ministry of Railways in consultation with the Ministry of
 Finance have decided to introduce Selection Grades as under:-

| Designation
and Scale. | No. of
posts. | Percentage
of selec-
tion grades | No. of selec-
tion grade
posts. | Selection Gr.
to be intro-
duced (G.) |
|--|------------------|--|---------------------------------------|---|
| MECH. Chief Research
ENGINEER Assistant.
B. 650-960. | 16 | 15% | 2 (Two) | 650-1040 |
| Senior Design
Assistant.
B. 650-960. | 52 | 15% | 2 (Eight) | 650-1040 |
| Chief Technical
Assistant.
B. 650-960 | 11 | 15% | 2 (Two) | 650-1040 |
| Senior Inspector
B. 700-900. | 14 | 15% | 2 (Two) | 650-1040 |
| CIVIL Chief Research
ENGINEER Assistant.
B. 650-960 | 26 | 15% | 4 (Four) | 650-1040 |
| Chief Technical
Assistant
B. 650-960. | 11 | 15% | 2 (Two) | 650-1040 |
| Senior Design
Assistant.
B. 650-960. | 30 | 15% | 5 (Five) | 650-1040 |
| Senior Inspector
(Civil) B. 700-900. | 7 | 15% | 1 (One) | 650-1040 |
| SIGNAL Chief Research
& TELE. Assistant. B. 650-960. | 23 | 20% | 5 (Five) | 650-1040 |
| COMMUNICATION Senior Design
DEPT. Assistant. B. 650-960 | 12 | 20% | 2 (Two) | 650-1040 |
| Chief Technical
Assistant. B. 650-960. | 7 | 20% | 1 (One) | 650-1040 |
| Signal Inspector
B. 700-900. | 9 | 20% | 2 (Two) | 650-1040 |

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| | | | | | |
|-----------------------------------|-------------------------------------|----|-----|---------|----------|
| <u>ELECT-
RICAL
ENGG.</u> | Senior Design Asstt.
B. 650-960. | 19 | 10% | 2 (two) | 650-1040 |
| <u>DEPTT.</u> | Senior Inspector
B. 700-900. | 16 | 10% | 2 (Two) | 650-1040 |
| <u>GENERAL
CATEGORY</u> | Roneo Operator
B. 260-350 | 6 | - | 1 (One) | 320-400 |

2. No Selection Grade for the following categories can be provided as the number of posts in each of these categories is less than 5 (Five).

| | <u>No. of posts.</u> |
|--------------------------------------|----------------------|
| a) Inspector of Works B. 700-900 | 4 |
| b) Chief Signal Inspector B. 700-900 | 3 |
| c) Chief Telecom Inspector -do- | 1 |
| d) Telecom. Inspector B. 700-900 | 3 |

3. The conditions laid down in paragraphs 1(iv), 1(v), 1(vii) and 1(viii) as well as paragraph 4 of this Ministry's letter No. PC-III/74/MS/16 dated 12.4.1977 will be applicable in regard to the above selection grades.

4. These orders take effect from the date of issue of this letter and have the sanction of the President.

Sd/-
(K. Venkatesan)
Jt. Director Establishment (P)
Railway Board.

No. PC-III/81/SG/3

New Delhi, dt. 24.3.1982.

Copy forwarded to the A.D.I (Railways) (with 25 copies).

Sd/-
for Financial Commissioner Railways.

Copy of Board's letter No. PCIII/74/IS/15 dt. 12.4.77 addressed to this office and others and copy to others.

Sub:- Selection Grades in Groups 'C' and 'D' Cadres - implementation of the recommendations of the Third Pay Commission.

The recommendations of the Third Pay Commission on the subject mentioned above contained in paragraphs 51-53 of Chapter 8 of their Report were accepted by Government in principle vide item 9 of the Annexure to the Resolution No. 70(34)/73-Impl. Cell dated 1.11.1973 issued by the Ministry of Finance (Department of Expenditure) and circulated to the Railways vide this Ministry's letter No. PCIII(73)IS/Imp/4 dated 30.11.1973. These recommendations were discussed by the Anomalies Committee of the National Council (J.C.M.) and the report of the said Committee was adopted by the National Council at its meeting held on 30th July, 1976. After further consideration of the matter, the President is pleased to sanction the introduction of Selection Grades in Groups 'C' and 'D' cadres with effect from the 1st August, 1976, subject to the following conditions:

- (i) Posts which are filled up by direct recruitment to an extent of not less than 75% would alone qualify for Selection Grade. In cases where the posts are filled partly through a limited competitive examination which is not confined only to the employees serving in the immediately lower grade, but open to several other categories also, the filling up of such vacancies may be treated as cases of direct recruitment against the stipulated percentage. This does not, however, preclude consideration of other cases where the aforesaid condition of eligibility is not satisfied if it is established that there is acute stagnation.
- (ii) The number of higher posts to which the employee in a cadre can seek promotion should not be more than 50% of the strength of that cadre. For reckoning promotional prospects -
 - (a) The sanctioned cadre strength at higher level alone should be taken into account and not the physical vacancies;
 - (b) only the immediately two higher levels available for promotion should be taken into account and
 - (c) the higher levels need not necessarily be in the direct line of promotion; where the rule specifically provide for promotions in a different line and where such promotion is confined to the relevant lower level and is not open to other categories also, the posts in such different levels should also be taken into account.

- 2 -

(iii) The number of Selection Grade posts will be determined on the following basis:

- (a) Where promotion prospects are more than 50 per cent. ... No Sale
- (b) Where promotional prospects are 50 per cent or less but more than 35 per cent. ... 10 percent
- (c) Where the promotional prospects are 35 per cent or less but more than 25 per cent. ... 15 percent
- (d) Where the promotional prospects are 25 per cent or less. ... 20 percent

(iv) For the purpose of calculating Selection Grade posts, the posts which have been in existence for three years should be taken into account irrespective of whether they were permanent or temporary.

(v) For becoming eligible to be considered for appointment to the Selection Grade, an employee should have rendered such length of service which would have brought him to the stage represented by $\frac{3}{4}$ th of the span of the revised scale of the Ordinary Grade inclusive of the service rendered in the pre-revised scale that Grade subject to a minimum of 14 years of service. This will not, however, have the effect of deliberating the criteria which might be applicable in respect of Selection Grades already in vogue.

(vi) The time-scales for the Selection Grades should start near-about the $\frac{3}{4}$ th span of the ordinary grade and should end short of the maximum of the scale of pay of the next promotional post.

(vii) The pay on appointment to the Selection Grade shall be fixed at the same stage, at which the pay is drawn in the ordinary grade, if there is such a stage in the scale of pay of the Selection Grade, or at the next higher stage, if there is no such stage. If the pay in the Selection Grade is fixed at the same stage, the next increment should be granted from the same date on which it would have accrued in the ordinary grade. If, however, the pay is fixed at the next higher stage, the next increment should be granted after completion of normal incremental period of twelve months in the Selection Grade.

(viii) The number of Selection Grade posts as also the need for their continuance in a particular cadre should be reviewed every three years, and the Selection Grade posts varied or discontinued,

- ✓ (ix) Instructions regarding the procedure to be followed for making appointments to the Selection Grade posts will be issued separately.
- (x) The question of seniority of staff appointed to the Selection Grade for purposes of promotion to higher posts is under consideration and orders will be issued separately.

3. The time-scales of pay for the Selection Grades will be sanctioned by this Ministry. While orders in this regard will be issued separately, the Railway Ministry desire that proposals may be furnished to them, in consultation with your P&CAO, indicating categories which merit creation of Selection Grade posts, number of Selection Grade posts and the scales of pay that should be applicable to the Selection Grade posts in Group 'C' and 'D' cadres so that these can also be taken into consideration.

3.

These orders do not apply in cases -

- (a) where Selection Grades have already been sanctioned on terms more liberal than those contained herein; and
- (b) cases where it has already been decided not to have a Selection Grade; and
- (c) where the categories of posts in Group 'C' and 'D' cadres have already been covered by the recent restructuring of these cadres.

4. The scheme of reservations for candidates belonging to Scheduled Castes and Scheduled Tribes will apply in making appointments to the Selection Grades as enunciated above. The percentage of reservation and other principles to be followed will be the same as applicable to cases of promotion by Selection to Groups 'C' and 'D' posts.

5. The Ministry of Railways further desire that relevant records may be kept ready so that as soon as the orders regarding the Selection Grade posts are issued by the Ministry further action in regard to the appointment of staff can be initiated without avoidable loss of time.

Yg/-

Copy of Railway Board's letter No. PC-IV/86/Imp/42 dated 20th Sept., 1988, addressed to DG/RDSO/LKO. and others.

Subject:- Fixation of pay of persons holding pre-revised non-functional Selection Grade/Corresponding revised scale on personal basis.

The Non-functional Selection Grade in case of certain Groups 'C' & 'D' categories of posts were created vide this Ministry's letter No. PC-III/74/MS/16 dated 12.4.1977. Based on the recommendations of the Fourth Central Pay Commission these non-functional selection grades have since been abolished. However, as per 'Instruction (2)' below the First Schedule to the Railway Services (Revised Pay) Rules, 1986, the existing incumbents in non-functional selection grade have been allowed suitable revised scales of pay corresponding to the pre-revised non-functional selection grade scales as personal to them. In some cases the corresponding revised scale for the pre-revised non-functional selection grade has become identical to the revised scale of pay for the next promotional post. A doubt has been raised as to how to fix the pay of a Railway servant in such revised personal scale of pay when appointed to a post in identical scale of pay after observing due process of rules relating to promotion and the appointment to the promotional post involved assumption of higher duties and responsibilities.

2. - It is clarified that in such cases whenever appointment to higher post involves assumption of higher duties and responsibilities and the personal scale of pay and the scale of pay of the higher post is identical, the pay may be fixed under Rule 2018-B/FR 22 (C)/R.II.

(M. SEETHARAM)
Executive Director, Pay Commission-I
Railway Board.

Copy of Railway Board's letter No. PCJIII/74/MS/16 dated 7.1.1978 addressed to GM's All Indian Railways and copy to DG/ROSO/Jucknow others.

Sub:-Introduction of Selection Grade in Group C and D cadres-whether the appointments should be made on the basis of merit or on the basis of seniority-cum-fir

In supersession of paragraph 1(ix) and 1(x) of Ministry Railways letter of even number dated 12.4.1977, it has been decided by the Ministry of Railways that the principle of seniority subject to rejection of unfit should be strictly applied for the appointment Selection Grade in all Groups C and D Cadres. This has the sanction of the President.

The Ministry of Railways desire that urgent steps may now be taken to make appointments of staff against Selection Grades in cadres (including Drivers 'C) where orders for the introduction of Selection Grades have already been issued by them.

27/11/78

A23

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDL. BENCH, LUCKNOW.

Civil Misc. Petition No. _____ of 1992.

IN Re:

Regn. O.A. 187 of 1988 (L)

B.C. MUKHERJEE APPLICANT.

VERSUS

UNION OF INDIA & ORS. Respondents.

COMPLIANCE REPORT


Place before
the Hon'ble
J. T. &
the clerk
21/2
17/7/92

It is most respectfully submitted on behalf
of Respondents :-

1. That this Hon'ble Tribunal vide their Order
dated 03.02.1992 in the above case had issued the
following direction to the Respondents:

"We, therefore, direct the respondents to
consider the case of the applicant for the grant of
selection grade to him with effect from 24.03.1982,
ignoring the fact that a C.B.I. enquiry into his conduct
was in progress. On the grant of selection grade,
the applicant will be entitled to all consequential
benefits in the matter of fixation of his pay. The
penalty of reduction to a lower stage in time scale

...2


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17/7/92

J. T.
om
17/7/92

for a period of one year should be applied to the applicant in the selection grade after the same is allowed."

2. In compliance with the above Order of the Hon'ble Tribunal, Shri B.C. Mukherjee presently working as Senior Inspector/Carriage, scale Rs.2000 - 3200 (RPS) has been appointed as Senior Inspector/Carriage in the non-functional selection grade Rs. 650-1040(RS)/ Rs. 2000 - 3200 (RPS) w.e.f. 24.3.82 against an existing vacancy in the Carriage Directorate and the Posting Order No.136 of 1992 has been issued, a copy of which is annexed as Annexure No. C-1.

Annexure
C-1.

3. The fixation of the pay in the above grade is being worked out separately and will be advised to the Petitioner shortly.

Place : Lucknow.

Dated : 7 - 07 - 1992.

(S.Bhatia)
RESPONDENT.

7/7/92
Signature of Respondent
226011

ANNEXURE C

HKT

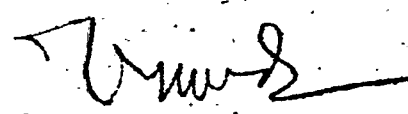
Government of India
Ministry of Railways
Research Designs and Standards Organisation
Manak Nagar, Lucknow.

STAFF POSTING ORDER NO. 136 OF 1992

The CAT Addl. Bench, Lucknow in their judgement dated 3.2.1992 in the case No. 187/88 of Shri B.C. Mukherjee Vs. UOI respondents have held that Shri B.C. Mukherjee, the applicant should be granted selection grade w.e.f. 24.3.82 with all consequential benefits in the matter of fixation of his pay. The penalty of reduction to lower stage in time scale for a period of one year should be applied to the applicant in the selection grade after the same is allowed.

2. In compliance with the above orders of CAT, Shri B.C. Mukherjee, presently working as Sr. Inspector/Carriage, scale Rs.2000-3200 (RPS) is appointed as Sr. Inspector/Carriage in the non-functional selection grade Rs.650-1040 (RS)/Rs.2000-3200 (RPS) w.e.f. 24.3.82 against an existing vacancy in the Carriage Directorate.

3. The fixation of pay in the above concerned grades in terms of above Court's orders is being done separately.


(T.M. Murali)
for Director Stds./Carriage

DA: NIL.

File No. A/EP-2333


Lucknow-81.

Dated: 23.6.92.

Distribution

PS to DS/Carriage JDSC-I, JDA-III, DDE-I (with 4 spare copies), SO/E-III, SO/Carriage, SO/Confidential, AAO, LO(R),

Staff Concerned, CTSA, Notice Board, Personnel File.



उप निदेशक स्थापना - 1
पुनर्स्थापन अधिकार्य और मानक संगठन
रेल मंत्रालय, लखनऊ - 226011

वकीलत श्रीमान

वादी (मुद्दई)
मुद्दई (मुद्दालेह)

B. M. Meekorjee

नं० मुद्दमा OA 187/88(L)

बनाम
पेशी की ता०

ऊपर लिखे मुद्दमा में अपनी ओर से श्री R. B. Shrivastava

वकील

एडवोकेट महोदय

महोदय
गमा

को अपना वकील नियुक्त करके (इकरार) करता हूँ और लिखे देता हूँ इस मुद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें या और तस्दीक करें या मुद्दमा उठावें या कोई रुपया जमा करें या हमारी या विपक्ष (फरीकसानी) का दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करें वकील महोदय द्वारा की गई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी। मैं यह भी स्वीकार करता हूँ कि मैं हर पेशी स्वयं या किसी अपने पैरोकार को भेजता रहूंगा। अगर मुद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर न होगी। इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

नाम अशालन
नं० मुद्दमा
नाम फरीकन

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और लिखे देता वकील द्वारा जो कोई कागज जारी करावें और

तथा अपील व से दाखिल करें पया जमा करें या रुपया अपने या पंच नियुक्त करें को सर्वथा स्वीकार है कि मैं हर पेशी स्वयं अगर मुद्दमा अदम जाता है उसकी जिम्मेदारी वकालतनामा लिख दिया कि

साक्षी (गवाह)

हस्ताक्षर

साक्षी (गवाह)

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साक्षी (गवाह)

महीना

सन् १९ ई०

साक्षी (गवाह)

दिनांक

२०-२-८९

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Keep in record
13/4/89

Accepted
13/4/89

Director Establish
D. S. O., Ministry
Mumbach, LUCK

(149)

वकालत श्रीमान लेखनीय प्रशासनिक अधिकरण **महोदय**
आर्किट बच्च नारायण
 का **वकालतनामा**

वादी (मुद्दे)
 मुद्दे (मुद्दालेह)

बी. सी. मुखर्जी बनाम भारत सरकार प्रतिवादी (रेस्पॉन्डेंट)
 नं० मुकद्दमा — 187 सन 88 (पेशी की ता० 20-2-99 ई०)
 ऊपर लिखे मुकद्दमा में अपनी ओर से श्री अनिल श्रीवास्तव एडवोकेट
 वकील

एडवोकेट महोदय

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

नाम अदालत

नं० मुकद्दमा

नाम फरीकान

हस्ताक्षर

(S. BHATIA)
 Dy. Director Establishment,
 B. D. S. O., Ministry of Railway
 Nambagh, LUCKNOW-5

साक्षी (गवाह)

साक्षी (गवाह)

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08/3/89

Registered

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD
CIRCUIT BENCH, GANDHI BHAWAN
LUCKNOW

No. CAT/CB/LKO/ 227 to 423

Dated : _____

Registration No. _____ of 1938.

Applicant

Versus

Respondent's

To

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 _____ day of _____ 1938 for

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 _____ day of _____ 1938.

For DEPUTY REGISTRAR

dinesh/