

CENTRAL ADMINISTRATIVE TRIBUNAL
Circuit Bench, Lucknow
Opp. Residency, Gandhi Bhawan, Lucknow

INDEX SHEET

CAUSE TITLE 243/89 (D) of 19 89 (L)

NAME OF THE PARTIES _____

Shri Harisharan Saran Applicant

Versus

Union of India & Respondent

Part A, B & C

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C-1	three petition copy for opposite parties	

Certified that no further action is required to be taken and that the cause is fit for commitment to the second round (D).

2c. Cheekon
02/2/12
on

SO (J)

R/C

W/Prinist

26.7.91

24-6-2011

(A1/1)
5/9/89

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Registration No. 243 of 1989(2)

APPLICANT(S) Hari Har Soren & Others

RESPONDENT(S) Union of India & Mrs.

Particulars to be examined

Endorsement as to result of examination

1. Is the appeal competent ?
2. a) Is the application in the prescribed form ?
b) Is the application in paper book form ?
c) Have six complete sets of the application been filed ?
3. a) Is the appeal in time ?
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/ Vakalatnama been filed ?
5. Is the application accompanied by B.D./Postal Order for Rs.50/-
6. Has the certified copy/copies of the order(s) against which the application is made been filed?
7. a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?
c) Are the documents referred to in (a) above neatly typed in double space ?
8. Has the index of documents been filed and paging done properly ?
9. Have the chronological details of representation made and the outcome of such representation been indicated in the application?
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal?

yes

yes

yes

five sets filed

yes

yes

yes

yes

yes

yes

yes

yes

11/2

<u>Particulars to be Examined</u>	<u>Endorsement as to result of examination</u>
11. Are the application/duplicate copy/spare copies signed ?	yes
12. Are extra copies of the application with Annexures filed ?	yes
a) Identical with the Original ?	yes
b) Defective ?	—
c) Wanting in Annexures	—
Nos. _____ pages Nos _____ ?	
13. Have the file size envelopes bearing full addresses of the respondents been filed ?	—
14. Are the given address the registered address ?	yes
15. Do the names of the parties stated in the copies tally with those indicated in the application ?	yes
16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ?	—
17. Are the facts of the case mentioned in item no. 6 of the application ?	yes
a) Concise ?	yes
b) Under distinct heads ?	yes
c) Numbered consecutively ?	yes
d) Typed in double space on one side of the paper ?	yes
18. Have the particulars for interim order prayed for indicated with reasons ?	yes
19. Whether all the remedies have been exhausted.	yes

dinesh/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

REGISTRATION No. 243 of 1989 (U)

APPELLANT
APPLICANT

H-H. Saram

VERSUS

DEFENDANT
RESPONDENT

Union of India

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
<p>Receiving Copy of the Judgment dt. 01/9/09</p> <p><i>[Signature]</i> Circuit Bench 12/9/09</p>		

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Circuit Bench at Lucknow.

Registration O.A. No. 243 of 1989 (L)

Hari Har Saran & 4 Others Applicants

Versus

Union of India and Others Opposite Parties.

Hon. Justice K. Nath, V.C.

Hon. K.J. Raman, A.M.

(By Hon. Justice K. Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act XIII of 1985 is for issue of a direction to the opposite parties not to make any recovery from the applicants on the basis of the impugned order dated 5.7.89 contained in Annexure-1 of the application.

2. The applicants' case is that the amounts sought to be recovered from the applicants are only those amounts which had been earlier sanctioned to the applicants in consequence of settlement through the Permanent Negotiating Machinery Meeting as indicated by the Minutes dated 20/24.3.86 contained in Annexure-4. It is urged that the amount having been thus settled between the parties, it was not open to the opposite parties to say that the amount is not payable and on that basis to make a recovery thereof.

3. The impugned Annexure-1 mentions that the amounts in question were found to be excess payments^{on} account of wrong calculation/fixation of Pay & Allowances inadvertently.

gh


4. The learned counsel for the applicants admits that the applicants have not made any representation to the Department against the proposed recovery because, according to him, the opposite parties will make recoveries from the applicants' salaries/pension etc, one of whom having retired, during pendency of any representation. We are not very sure that if a fair case was put up in the representation, the Department would not have stayed its hands pending disposal thereof. Even so, there is something to be said in favour of the applicant if it is true that the amounts had been granted to the applicants by virtue of settlement arrived at the Permanent Negotiating Machinery Meeting.


5. We do not think it necessary to go into any further detail in the matter, because we think that the ends of justice would be served if the applicants are given an opportunity to make a representation and the proposed recoveries remain stayed till the representation is disposed of.

6. We direct that if the applicants make representations to the competent authority within a period of three weeks from today, the competent authority will ~~which~~ consider the representation and will take decisions thereon within a period of three months from the date of presentation of the representations and communicate the same to the applicant. In the meantime, no recovery will be made ^{till then} from the applicants on the basis of the impugned order dated 5.7.89 contained in Annexure.1

Q2

In case the applicants do not make any representation as aforesaid, the opposite parties will be at liberty to make recovery. This petition is disposed of in the above terms.


Member (A)


Vice Chairman

Dated the 8th Sept., 1989.

RKM



Deputy Registrar (J)
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

ORIGINAL AN. NO. 243 OF 1989(L)

Hari Har Saram and 4 others Applicants

VERSUS

Union of India and others Respondents

I N D E X

COMPLIATION NO. 1.

Sl. No.	Description documents	Page No.
1.	Application	1 - 13
2.	Annexure - 1 Order dated 5.7.89 passed by the Respondent No.3 for recovery of amount from the Applicants' salary.	14 - 15
3.	Vakalatnama (Power)	16 - 00

Lucknow Dated:
August , 1989.

(O.P. SRI VASTH AN)
Signature of Applicants
Counsel

Filed today
Noted for 8/9/89
8/9/89

(243)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

ORIGINAL AN. NO. 243 OF 1989(L)

1. Hari Har Saran, aged about 54 years, son of late Radha Ram, resident of 228 Aryanagar, Lucknow, presently functioning as Chief Yard Master, N.Railway, Lucknow.
2. Rama Shanker Tewari, aged about 55 years, son of late S.S. Tewari, resident of C-96, Sector A, Mahanagar, Lucknow, presently working as Dy. Chief Controller, N. Railway, Lucknow.
3. Virendra Singh Srivastava, aged about 52 years, son of late Mukut Behari Srivastava, resident of New Ganeshganj, Lucknow, presently working as Chief Controller, N.Rly., Lucknow.
4. Radhey Shyam Pandey, aged about 51 years, son of Sri J.P. Pandey, resident of Railway Colony, Sultanpur, presently working as Traffic Inspector, N.Railway, Sultanpur.
5. Ved Prakash Trivedi, aged about 58 years, son of late K.P. Trivedi, resident of Railway Quarter No. II-39 F, Railway Colony, Charbagh, Lucknow, retired Senior Wagon Movement Inspector, N.Rly., Lucknow. Applicants

VERSUS

1. Union of India through Chairman Railway Board, Rail Bhawan, New Delhi.
2. The Divisional Railway Manager, N.Rly., Hazratganj, Lucknow. Respondents

3. Senior Divisional Personnel
Officer, N.Rly., Hazratganj
Lucknow.

..... Respondents.

DETAILS OF APPLICATION:

1. Particulars of the order against which the application is made:

The instant application is being filed challenging the order dated 5.7.1989 passed by the Respondent No.3 recovering the amount from the applicants' salary without any rhyme or reason. A true copy of this order dated 5.7.1989 is being filed herewith as Annexure-1 to this Application.

ANNEXURE-1

2. Jurisdiction of the Tribunal :

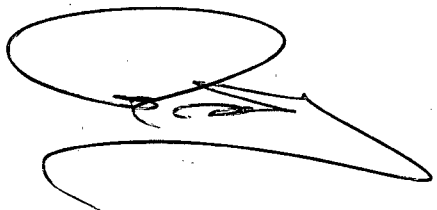
The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

3. Limitation :

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

4. Facts of the case :

- 4.1 That by way of the instant application the applicants seek to challenge the most illegal, arbitrary, unwarranted, malafide and without jurisdiction order of recovery dated 5.7.1989



10/11/79

passed by the Respondent No. 3, a true copy of which has already been filed as Annexure-1 to this Application.

4.2 That so far as the facts of the case are concerned the applicants along with others claimed for taking into consideration the running allowance as part of pay on stationary posts for the purpose of fixation of the salary sometimes in the year 1976.

4.3 That it is worthwhile to mention that prior to the year 1976 the various persons who were working on stationary posts had already claimed for the fixation of their salary by counting the running allowance which was not accepted by the department. Hence they filed several Writ Petitions before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow. These Writ Petitions were ultimately allowed vide order dated 12.3.1979 passed on special Appeal No. 9 of 1975.

4.4 That the applicants also filed Writ Petitions before the Hon'ble High Court at Lucknow ^{correct} claiming the benefit of the ~~grade~~ fixation of pay to the stationary posts in terms of Hon'ble High Court's order dated 12.3.1979 referred hereinabove. These Writ Petitions were also allowed by the Hon'ble High Court. A true copy



8/5

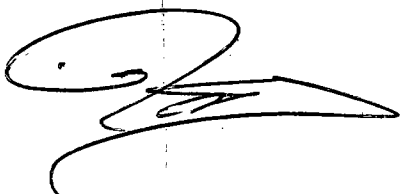
of the judgment and order dated 22.8.1984 passed in writ Petition No. 1724 of 1979 is being filed herewith as Annexure-2 to this Application. The applicants were allowed the benefit of the judgment dated 22.8.1984 vide order dated 22.8.1984 passed in writ Petition No. 3133 of 1979.

4.5 That although the Hon'ble High Court was pleased to order that the judgment dated 22nd August 1984 should be implemented within a period of three months, yet it could not be implemented within the stipulated time and hence the matter was agitated through Northern Railway Men's Union, a recognised Union, before the Respondents Nos. 2 and 3 vide letter No.

N.R.M.U 35/34 dated 27.11.84 requesting that whatever payment become due in pursuance of the aforesaid Hon'ble High Court's order be paid to the applicants. A true copy of the aforesaid letter dated 27.11.84 is being filed herewith as Annexure-3 to this application.

ANNEXURE-3

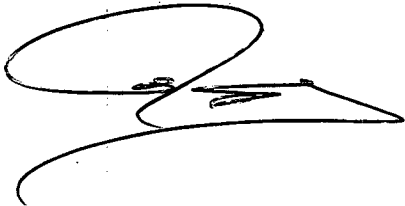
4.6 That thereafter the matter was discussed before the Permanent Negotiating Machinery meeting. The Respondents considered the matter in the light of the Railway Board's order dated



6.1.86, judgment of the Hon'ble High Court and the discussions made on behalf of the applicants and other Railway employees and consequently it was decided to fix the pay of the employees concerned in terms of the Hon'ble High Court's judgment referred herein above and whatever amount become due ~~to~~ be paid to all concerned. Accordingly it was decided that the matter should not be further agitated before the Hon'ble Supreme Court.

4.7 That thereafter the payments were made to the applicants and other employees by the Railway Administration as per the calculations made by the Railway Administration itself and thus the judgment and order of the Hon'ble High Court was given effect to.

4.8 That thereafter the applicants further demanded through the Permanent Negotiating Machinery that the maximum of the grade in which they were absorbed are different from the amount for which they become entitled to ^{because of} the fixation of the salary hence the remaining amount should be given either as personal pay or by creating supernumerary posts. It was agreed in the meeting held on 23/24th March 1986 that the payment has already been ^{made} ~~paid~~ in accordance with the directions of the Railway Board up to



and the question of
balance payment
the maximum of the pay scale, called as
personal pay be referred to Headquarters for
appropriate orders. A true copy of the
Permanent Negotiating Machinery decision taken
in the meeting held on 23/24th March 1986 is
being filed herewith as Annexure-4 to this
Application.

ANNEXURE-4

- 4.9 That thereafter no orders were passed by the
Railway Board in this regard although the
Railway Board had allowed the payment upto the
maximum of the pay scale.
- 4.10 That thereafter suddenly an order dated 5th
July 1989 was passed by the Respondent No. 3
bearing the reference as recovery of excess
amount paid to the staff. A true copy of this
order dated 5.7.1989 has already been filed as
Annexure-1 to this Application.
- 4.11 That a perusal of the order dated 5.7.1989
contained as Annexure-1 to this Application
abundantly reveals that the same was passed
~~passed~~ by the Respondent No. 3. As a matter of
fact the Respondent No. 3 has got no jurisdic-
tion to pass such order which obviously amounts
to revision of the orders passed by the Railway
Board.
- 4.12 That a perusal of the impugned order dated
5.7.1989 makes overt that no reasons for recovery

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of the alleged excess amount has been ^{indicated.} ~~made~~. It is categorically stated that the applicants had never been paid any excess amount as alleged and the amount indicated in the impugned order is wholly baseless and arbitrary in as much as it does not indicate as how and when this excess amount has been ~~made~~. paid.

4.12 That there has never been any dispute regarding fixation of pay after the matter was finally settled and payment was made in pursuance of the orders of the Railway Board as has been discussed in the aforesaid Permanent Negotiating Machinery meeting and therefore the Respondent No. 3 is wholly incompetent to open the matter in any manner whatsoever.

4.13 That there is no statutory provisions under which such powers are vested ~~in~~ in Respondent No. 3 for recovering any amount from a Railway servant. No opportunity was ever afforded by the Respondent No. 3 before passing the impugned order and as such the applicants are unable to understand the real nature of recovery and the foundation of the orders passed by the Respondent No. 3.

4.14 That the impugned order dated 5.7.1989 has obviously got penal consequences as the applicants have been put to suffer loss without any fault

on their part. No recovery can be made in any manner whatsoever without affording reasonable and adequate opportunity to the employees concerned from whom such recovery is to be made. Applicant

4.15 That the Permanent Negotiating Machinery meeting decision is a bilateral agreement which cannot be ^{revised} ~~refused~~, altered or rescind by the Respondents in any manner whatsoever. No procedure as contemplated in the ^{Head Quarters} ~~Railway Board's~~ letter dated 4.8.86 has been followed by the Respondents before issuing the impugned order which has rendered the impugned order null and void in the eye of law. A true copy of the aforesaid Railway Board's letter is being filed herewith as Annexure-5 to this Application.

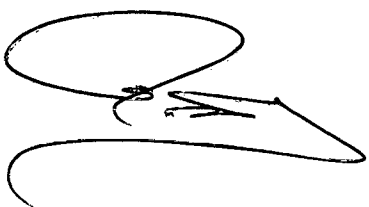
ANNEXURE-5

4.16 That it is also relevant to state that the amount indicated in the impugned order dated 5.7.1989 is the full amount which had been paid to the applicants and therefore the entire amount cannot be recovered in the name of excess amount. No specific calculations revealing the excess amount has been given and as such the impugned order has been passed without application of mind, arbitrarily and unwarrantorily.

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5. Grounds for relief with legal provisions:

- i) Because the impugned order is beyond jurisdiction.
- ii) Because the impugned order has been passed without affording any opportunity to the applicants hence it is violative of the principles of natural justice and is void ab initio.
- iii) Because the impugned order has been passed without any rhyme or reason and is wholly arbitrary and malafide in the eye of law.
- iv) Because the impugned order is nonest in the eye of law and has got no legal existence.
- v) Because the procedure contemplated to alter ^{ad hoc Head Quarters} the orders passed by the Railway Board/on decision taken in the Permanent Negotiating Machinery's meeting has not been followed which rendered the entire action illegal and invalid.
- vi) Because the payment was made to the Applicants under the orders of the Railway Board hence no one else below the authority of the Railway Board is competent to pass an order in the matter.
- vii) Because the Permanent Negotiating Machinery's meeting agreement is a bilateral agreement which cannot be revised, altered or rescind



unilaterally and the impugned order is in violation of the said decision which is no permissible in the eye of law.


viii) Because the Respondents have passed the impugned order to set the Hon'ble Court's order dated 22.8.1984 at naught and have therefore actively interfered into the fair administration and justice attracting the provisions of contempt of Court Act.

ix) Because the Respondents have committed the contempt of Hon'ble High Court by withdrawing the benefits given to the applicants in terms of the judgment and order passed by the Hon'ble Court through the impugned order.

x) Because the action of the Respondents is perverse to the facts and circumstances of the case and is in grave violation of the statutory provisions of Railway Board's letter along with the provisions contained in Part III of the Constitution of India.

6. Details of the remedies exhausted:

That the applicants declare that they have got no statutory remedy against the impugned order which is nonest and void abinitio in the eye of Law. The respondents are proceed-



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ing to recover the amount from the applicants and as such it is very much expedient in the interest of justice to knock the doors of this Hon'ble Tribunal for redressal of grievances at this juncture.

7. Matters not previously filed or pending with any other court:

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

8. Reliefs sought:

In view of the facts mentioned in para 4 above the applicants pray for the following reliefs:-

- i) This Hon'ble Tribunal may kindly be pleased to quash/set aside the impugned order dated 5th July 1989 passed by the Respondent No.3 as contained in Annexure-1 to this application.
- ii) This Hon'ble Tribunal may kindly be pleased to direct the Respondents not to recover or withhold any amount from the applicants in any manner whatsoever in pursuance of the

impugned order dated 5.7.1989 contained in Annexure-1 to this Application.

iii) This Hon'ble Tribunal may further be pleased to pass such other orders which are found just and proper in the circumstances of the case.

iv) to allow the application with cost.

9. Interim order, if any prayed for :

Pending final decision on the application, the applicant seeks the following interim relief:-

a) This Hon'ble Tribunal may kindly be pleased to stay the operation of the impugned order of ~~dismissal~~^{recovery} dated 5.7.1989 as contained in Annexure-1 to this application during the pendency of the case and further the respondents may kindly be directed not to recover in any manner or withhold any amount/whatsoever from the applicants in pursuance of the impugned order dated 5.7.1989

b) This Hon'ble Tribunal may kindly be pleased to pass such other orders which are found just and proper in the circumstances of the case.

10. In the event of application being sent by registered post, it may be stated whether the applicant desires to have oral hearing at the admission stage and if he shall attach a self-addressed Post-Card or Envelope

1/2

Letter, at which intimation regarding the date of hearing could be sent to him.

11. Particulars of Bank Draft/Postal Order file in respect of the application fee:

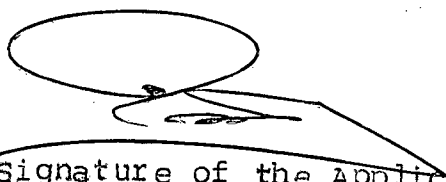
- (i) Number of Postal Order - DD 029068
- (ii) Name of Issuing post office - High Court, Lucknow
- (iii) Date of Issue of Postal Order - 29.8.89
- (iv) Post office at which Payable - Lucknow

12. List of enclosures : As per Index.

VERIFICATION

I, Hari Har Saxena, son of Late Radha Ram, aged about 54 years, working as Chief Yard Master, N.Railway, Lucknow, resident of 228 Aryanahar, Lucknow, being applicant No. 1 and Pairokar ofrest of the applicants do hereby verify that the contents of paras 1 to 12 are true to my personal knowledge and that I have not suppressed any material fact.

Dated : 1989.
Place : Lucknow.


(Signature of the Applicant.)

NORTHERN RAILWAY

No. R/Lit/WP/LKO-Fixation/Dup.

Divisional Office,
Lucknow Dated: 5/7/89.

Sub:- Recovery of excess amount paid to the staff indicated below towards fixation of pay and allowances at the time of their transfer from running to stationary posts.

It has been found that the following staff have been paid excess amount indicated against each on account of wrong calculations/fixation of pay and allowances inadvertently.

<u>Name</u>	<u>Amount</u>
1. Sri B.P. Srivastava JFI/LKO	7,537.80
2. Sri R.S. Tewari Dy. CHC/LKO	22,849.80
3. Sri V.P. Trivedi Sr. WMI/LKO	7,323.30
4. Sri R.S. Pandey TI/SLN	24,454.70
5. Sri V.S. Srivastava Dy. CHC/LKO	22,081.33
6. Sri H.N. Saran Dy. CYM/LKO	22,231.00
7. Sri S.P. Gupta Dy. CHC/LKO	16,821.10
8. Sri S.C. Agarwal Dy. CHC/LKO	4,075.40
9. Sri Omio Kumar Barat SIO/LKO	4,520.56
10. Sri S.N. Nigam SFI/LKO	3,897.40
11. Sri J.N. Gupta SLI/Steam/LKO	2,202.85
12. Sri R.S. Sharma JLI/PD	6,170.35
13. Sri M.U. Khan, JFI/LKO	6,503.80
14. Sri Ram Saran PRC/LKO	9,131.70
15. Sri Tilak Ray PRC	4,349.80

n.t.o.

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A-5
A/6

Please recover the amount indicated against each in
~~instalments~~ from their salary bills with immediate effect. The
amount is to be recovered in not more than 12 instalments.
Keeping in view the retirement of the employee concerned.
In case of early retirement, the number of instalments should
be accordingly reduced so that whole of the amount is recovered.

In case, any employee has retired, the information may
be sent to legal cell under clear acknowledgement.

Action taken in the matter may be advised to the legal
cell. APO/Pay bill will keep a watch on regular recoveries.

This is MOST URGENT.

APO/Pay Bill
Supdt./Pay Bill

ST. DPO/LKO

for
dist. sh

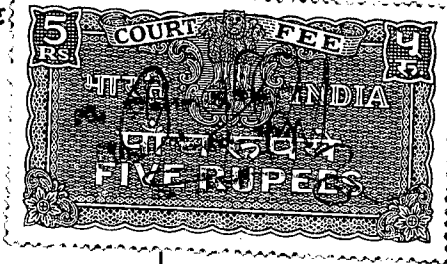
In The Central Administrative Tribunal, Allahabad
ब अवालत श्रीमान् Circuit Bench, Lucknow महोदय

(वादी) अपीलान्त

प्रतिवादी (रिस्पॉन्डेंट)

Sri Hari Har Saran Dethers

वकालतनामा



C.A. No. --- 1989(2)

दादी (अपीलान्त)

Hari Har Saran Dethers

Applicants.

Union of India Dethers

प्रतिवादी (रिस्पॉन्डेंट)

नं० मुकद्दमा

सन्

पेशी की ता०

12 ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री ओ० पी० श्रीवास्तव एडवोकेट
स्वयं श्री डी० पी० श्रीवास्तव एडवोकेट
नं० ६७, पुराना महानगर निकट कातिमा अस्पताल, लखनऊ-२२६००२ महोदय

नाम अदालत	नाम फोरकिन
मुकद्दमा नं०	

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

हस्ताक्षर

1) R S Tewari

2) R Saran

साक्षी (गवाह)

(iv) R. Saran

(v) V. B. Srivastava

साक्षी (गवाह)

(iii)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

ORIGINAL AN. NO. _____ OF 1989(L)

Hari Har Saran and 4 others Applicants

Versus

Union of India and others Respondents

I N D E X

COMPLIATION NO. 2.

Sl. No.	Description of documents relied upon	Page No.
1.	Annexure - 2 Judgment and order dated 22.8.1984.	1 - 8
2.	Annexure - 3 Letter dated 27-11-84	9 - 00
3.	Annexure - 4 P.N.M. decision taken in the meeting held on 23/24th March 1986.	10 - 12
4.	Annexure - 5 Head Quarters Railway Board's Letter dt. 4-8-1986	13 - 00

(Signature)
(O.B. SRIVASTAVA)
Signature of the Applicants
counsel

ANNEXURE - 2

AP/2

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD (LUCKNOW BENCH)

L.U. 324/1979

Writ Petition No. 3131 of 1979.

1. P.S. Pandey son of J.P. Pandey
 2. P.S. Tiwari son of S.S. Tiwari
 3. S.P. Gupta son of late Sri Durga Prasad Gupta
 4. V.S. Srivastava son of Sri Mahesh Prasad Srivastava
 5. H.H. Soren son of late Sri Hriday Soren
- ... Petitioners

Verous

Union of India, through the General Manager,
Northern Railway, Baroda House, New Delhi
and 4 others.

Opposite-Parties.

Writ Petition U/A. 226 of the
Constitution of India.

Lucknow Dated: 22.8.84
Hon'ble K.H. Coyal, J.
Hon'ble S.C. Mathur, J.

For judgment see our judgment of date delivered

In writ petition no. 1724 of 1979.

Sd. K.H. Coyal.
Sd. S.C. Mathur.
22.8.84

TRUE COPY

Section Officer

Copying Department.

(High Court, Lucknow Bench)

LUCKNOW.

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CONFIDENTIAL.

IN THE HIGH COURT OF JUDICATURE AT AL LAHABAD (LUCKNOW BENCH)

L_U_C_K_N_O_W

Writ Petition No. 1724 of 1979

1. Trevor Oscar Halpin son of late Sri Edward
Oscar Halpin, resident of 4-Pana Pratap Marg,
Lucknow.
2. Mirza Mubashir Husain, son of late Sri Mirza Yusuf
Husain, resident of 400-Zard Kothi, Old Haiderganj,
Lucknow.
3. Sayed Mohd. Ali Rizvi, son of late Sri Sayeed
Wilayat Ali, resident of No.1, Shariyati Chowk,
Lucknow.
4. K.M. Srivastava son of late Sri Lalji Sahai,
Srivastava, resident of Jada Chatterjee Lane,
Haibat Poda, Lucknow.
5. Sidney Herbert Shepherd, son of late Sri H.L.
Shepherd, resident of Room No. 227 Carlton Hotel,
Lucknow.


.... Petitioners

Versus

1. Union of India, through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. Chairman, Railway Board, Railway Bhawan, New Delhi.
3. P.O. and Chief Accounts Officer, Northern Railway,
Baroda House, New Delhi.

Opposite-Parties

Writ Petition Under Article 226 of the
Constitution of India.



Counsel for Petitioners: Mr. (Dr) L.P.Misra.
Counsel for Opp.Parties: Sri. G.A.Basir.

Conncoctod writ petitions

Writ Petition No.1726 of 1979

R.K.Sen and another Versus Union of India and others.

Nos(6)

Writ petition No. 1729 of 1979

Sushil Chandra Agarwal Versus Union of India and others.

Writ Petition No.2111 of 1979

N.S.Bedi and another Versus The Union of India and others.

ACS

Writ Petition No.3131 of 1979

V.P.Triwedi Versus Union of India and others.

Writ Petition No.3132 of 1979

Ashiq Ali Versus Union of India and others.

Writ Petition No.3133 of 1979

R.S.Pandey and others Versus Union of India. and others.

Writ Petition No.3134 of 1979

R.K.Tripathi Versus Union of India and others.

Writ Petition No.536 of 1980

A.N.Srivastava Versus Union of India and others.

DCS

Writ Petition No.548 of 1980

K.K.Saxena and others Versus Union of India and others.

Writ Petition No.1251 of 1980

K.K.Singh and others Versus Union of India and others.

Writ Petition No.1258 of 1980

S.D.H.Cowasji and others Versus The Union of India & others.

Writ Petition No.1259 of 1980

Shri Phar Sharma & others Versus The Union of India & others.

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Writ petition No.2514 of 1980

Ram Siron and others Versus Union of India & others.

Writ Petition No.2589 of 1980

R.D.Sinha and others Versus Union of India and others.

Writ Petition No.5447 of 1981

D.N.Khanna and others Versus Union of India & others.

Writ Petition No.5448 of 1981.

S.K.Nigam and others Versus Union of India & others.

Lucknow Dated: 22.8.1984
Hon'ble K.N. Goyal, J.
Hon'ble S.C. Mathur, J.

(Delivered by Hon'ble K.N. Goyal, J.)

In this bunch of writ petitions the petitioners were railway servants. They were originally in the running cadre posts in the railways consisting of Guards, Drivers etc. Thereafter they were appointed by promotion to stationary cadre posts. Under various rules of the Indian Railway Establishment Code there is a formula for fixation of pay on promotion. Fixation under that formula is made on the basis of the pay the railway servants were receiving immediately before their promotion. The grievance of the petitioners is that while fixing their pay only their substantive pay has been taken into account and not the running allowance which they were earning while serving as running staff. The petitions have been contested on behalf of the Union of India through the railway administration. We find that a counter affidavit has been filed in writ petition No.2589 of 1980, but not in other cases. Sri Bashir made a request at the

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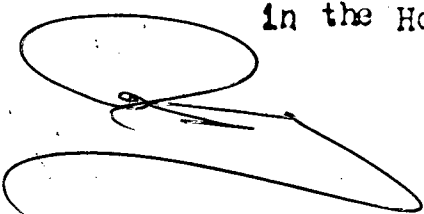
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outset for further time to file counter affidavit in other cases in which he is appearing as counsel. The cases have, however, been pending for quite a long time and most of the petitioners have even retired from service. It will not be fair to ~~pre~~ postpone the hearing any further, particularly in view of the fact that counter affidavit has already been filed in one of the cases and the same can be taken into account in all the cases falling in this bunch of petitions. Accordingly the request of Sri Basir cannot be acceded to.

We have heard learned counsel for the parties.

It appears that the question is concluded by the judgment of a Division Bench of this Court in Special Appeals Nos. 9, 10, 11, 12 and 13 of 1975, Union of India and others Versus Smt. Afsar Jahan Begum and others, Union of India and others Versus Bhagwati Prasad Pandey, Union of India and others Versus Ram Kumar Dubey, Bhagwati Prasad Pandey Versus Union of India and others, Ram Kumar Dubey Versus Union of India and others, ~~namely~~ connected with seven writ petitions No. 396, 1045, 1065, 1067, 1080, 1817 and 1820 of 1975 decided on 12th March, 1979. In writ petition No. 536 of 1980 which is one of the petitions before us the petitioner has filed a letter of the General Manager, Northern Railway dated 20th August, 1979 which is Annexure 5-A to the affidavit dated 30th March, 1981 filed by the petitioner alongwith an application for amendment of the writ petition. This letter dated 20th August, 1979 shows that the question of filing an appeal in the Hon'ble Supreme Court against the decision of this



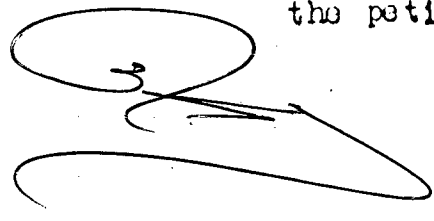
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Court in the aforementioned cases dated 12th March, 1979 was considered by the Railway Board and the Railway Board by its letter dated 24th July, 1979 decided that the matter was not ^{to} be further agitated in the Supreme Court and that the decision should be implemented in respect of the petitioners of those cases.

Thus two things emerge. Firstly, that the Judgment of this Court dated 12th March, 1979 has become final, which is accordingly binding on this Bench. Secondly, that the Railway Board itself has directed implementation of the judgment in relation to the petitioners of those cases. In this view of the matter there seems to be no justification for not following the judgment in respect of other persons similarly situated.

The main contention of the learned counsel for the Railways Sri Bashir is that these petitions are highly belated and are barred by laches. A perusal of the judgment dated 12th March, 1979 aforesaid shows that in those cases also the plea of laches was taken by the learned counsel for the railways as the first plea and it was dealt with at some length. Some of the petitioners in those cases had ~~filed~~ filed the petition after more than 11 years. After a review of various decisions of the Hon'ble Supreme Court and of this Court it was held that the principle of refusing relief on the ground of laches and delay is that the rights which have accrued to others by reason of the delay in filing of the petition should not be allowed to be disturbed.



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unless there was reasonable explanation for the delay. Applying this principle in service matters it was held that in matters of seniority and promotion the principle of laches would be more clearly attracted than in cases of fixation or re-fixation of salary because in the latter case of rights of others are not affected. In view of this authority on the specific point raised before us, the case being identical, we overrule this plea in the instant cases also.

Learned counsel for the Railway Shri Bashir has also invited our attention to the counter affidavit filed in writ petition no.2589 of 1980 in which it was pointed out that the earlier decision dated 12th March, 1979 of this Court did not take into account the certain subsequent Circulars of the Railway Board which provided that instead of 50 per cent of the average of the running allowance only 30 per cent of the average running allowance should be taken into account for the purposes of fixation of pay on stationary posts. This circular which is referred to in para 24 of that counter affidavit would be effective from 1.4.76. In the cases before us the learned counsel for the various petitioners have pointed out that the petitioners were all absorbed in the stationary posts much before 1.4.76. However that may be, we would like to make it clear that if there be any cases in which the circular letter of the Railway Board dated 22.3.76 is attracted, then the re-fixation of pay in such cases would be governed by the decision dated 12th March, 1979 as modified in terms of the said circular.

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In the result, these writ petitions are allowed to the extent that the benefit of the judgment of this Court in Union of India Versus Smt. Afsar Jahan Begum and others, Special Appeal no.9 of 1975 and connected cases, dated 12th March, 1979, which have been referred to in the letter dated 20th August, 1979 of General Manager, Northern Railway, Annexure-5-A to the amendment application in writ petition no. 536 of 1980, shall be given to the petitioners as well in the matter of fixation of pay, subject to the circular dated 22.3.76 referred to above if the same be applicable to any particular case. We further direct that re-fixation of the pay of the petitioners shall be made in accordance with the directions hereinabove within three months from today. A writ in the nature of mandamus is issued accordingly. No order as to costs.

TRUE COPY

[Signature]

Secretary, High Court, Lucknow Bench, 27/8/84

Copy to the Hon'ble Judge, High Court, Lucknow Bench,

LUCKNOW.

Sl. K.N. Goyal.
Sl. S.C. Mathur.
22. 8. 1984.

[Signature]
20/9/84

Northern Railwaymen's Union

Registered & Recognised - AFFILIATED TO THE ALL INDIA RAILWAYMEN'S FEDERATION & HIND MAZDOOR SABHA

Office-Near Guard's Running Room

Charbagh, Lucknow.

Ref. NRMU / 35/34

Dated 27.11.84

The Divisional Railway Manager,
Northern Railway,
Lucknow.

Dear Sir,

Reg: Implementation of Writ Petition
No. 1729, 3132, 3133 & 1259 of
1979.

It has been represented to this union that orders issued by Hon'ble High Court, Lucknow Bench in above Writ Petitions have not yet been implemented despite several discussions with you.

The union would like to mention that what-so-ever fixation/re-fixation and payment as a result of the same is considered due by the Divisional Railway administration based on instructions from Railway Board may kindly be done without further delay to avoid contempt of court as you failed to implement Hon'ble High Court's decision within three months as ordered.

Yours faithfully,

(A.P. Irivedi)
Divisional Secretary

ANNEXURE - 469. Item No.4.

Payment to Running staff (Gd) appointed on stationary duty as a result of Hon'ble High Courts decision.

In two writs of S/Shri V.P.Trivedi, H.H.Saran, S.P.Gupta V.S.Srivastva, R.S.Panday, R.S.Tewari, Hon'ble High Court has allowed fixation of pay on stationary job. The copies of order and representations were made over to DPO (C) but no payment on the basis of revised fixation has yet been done.

Reply:

The case is under reference with Hd.Qrs. and last letter was written to CPO under DPM D.O.letter No.

The Union pointed out that the payment to these candidates atleast be made on the pattern of Shri RC Ahuja in a similar case.

The case was referred to HQ and now a reply has been received vide HQs Letter No.758E/6 VIII-49(E1b) dated 30.5.85 with a directive to deal with the case of running staff who have been absorbed in the stationery categories in terms of Rly. Board's letter No.E(P&R)II/79/RS Pt.dated 30.11.82. Copy of this letter was given to the Union.

Payment will be arranged shortly.

(Review).

+Contd.....

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72. Item No. 143/62nd

APC-II

SR(V)

Payment of Running staff(Gd) appointed on stationary duty as a result of Hon'ble High Court decision.

In two writs of S/Shri V.P.Trivedi, H.H.Saran.S.P. Gupta V.S.Srivastava, R.S.Pandey, R.S.Tewari Hon'ble High Court has allowed fixation of pay on stationary job. The copies of order and representations were made over to DPO(C) but no payment on the basis of revised fixation has not been done.

The case is under reference with J.Qrs. and last letter was written to CPO under DRM D.O. letter No. The Union pointed out that the payment of these candidates atleast be made on the pattern of Shri K.L.Ahuja in a similar case.

The case was referred to Hd.Qrs. and now a reply has been received vide Hd.Qr. letter No. 7984/S-III-49(Eib) dated 30.5.85 with a directive to deal with the case of remaining staff who have been absorbed in the stationary categories in terms of my Board's letter No. E(P&R)II/79/85 pt. dated 30.1.82. Copy of this letter was given to the Union.

Payment will be arranged shortly.

RMV GSW.

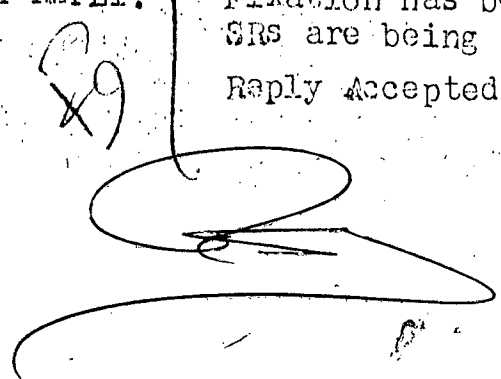
FRESH REPLY:

Fixation has been done in all the six cases and SRS are being submitted to A/cs for vetting.

Reply Accepted.

FINAL IMPL.

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Item No. CS-15
66th PM
727(G)/CLA

Less payment in writ petition Nos. 1729,
3133, 3132 and 1259 of 1979.

The Union stated that this is an implementation item and the Union is thankful that the payment has been arranged to implement the item. However the following points were raised which are to be examined and implemented where necessary:-

a) The payment which has been arranged is too little and has not been made in accordance with the orders of the Hon'ble High Court;

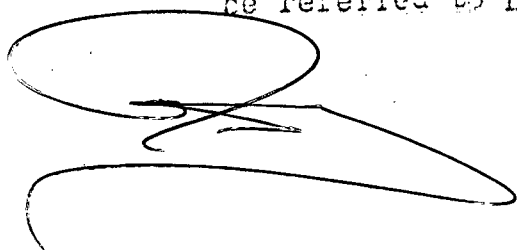
b) The payment which has been made on the basis of Railway Board's letter dated 6.1.86 has not been done in the correct spirit as the said letter states that the benefit will be personal to the petitioners. In this connection, the Union pointed out that the case of Shri V.P.Trivedi and others who had been given the maximum of the grade in which they were absorbed but the remaining amount which they were absorbed but the remaining amount which should have been given as per personal pay or by creating supernumerary posts had not been done. The Union further pointed out that Shri V.P.Trivedi who was absorbed as WMT in grade Rs.425-640(RS) had been fixed on Rs.780/- but had been paid only on Rs.640/- PM.

c) The application of law of limitation has caused inconvenience to the staff and should be reviewed so that discretion could be used in favour of the employees who have already suffered financially and mentally for the last 10 years or so.

REPLY:-

The payment has been made in accordance with the directions of Railway Board in the matter in which HQ has been associated. The law of limitation has been invoked in accordance with the standing instructions.

The case is already pending in Court of Law. The fixation has been done according to Railway Board's instructions. Regarding personal pay the issue will be referred to HQ.



ANNEXURE - 5

Northern Railway

Headquarters Office,
Karnal House,
New Delhi,

M. 9515/65-XI-E. Union

Dated 4-8-1964

Divl. Ry. Managers,
Northern Railway,
ALD DLI F2R MS JU BKN & WKO.

Sub: Union matter.

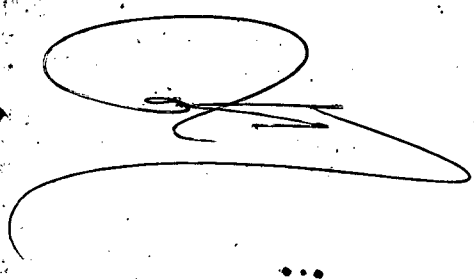
An extract of the Minutes of the meeting of Sr. DPM/POs, AAAs held with CPO in Headquarters Office on 18.6.64 and 19.6.64 is reproduced below for information and guidance.


Item No. 1.1

G.M. decided regular PNM Meeting to be held in which only limited number of cases be discussed and decisions once taken be implemented forthwith. He further desired that decision once taken in PNMs should under no circumstances be changed.

Item No. 4.

A question was put up that when a Branch Officer gives a decision which is not acceptable to Union, what action should be taken? It was decided that if Union does not agree then the case should be referred to the officer of the Branch concerned for opinion and if necessary to G.M.




for General Manager (P).

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW.

MISC. AN. NO. _____ OF 1989

In re:

CRIMINAL AN. NO. _____ OF 1989 (L)

Hari Har Saxena and 4 others Applicants

VERSUS

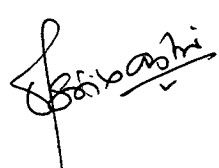
Union of India and others Respondents.

APPLICATION FOR ORDER TO ALLOW TO FILE
JOINT APPLICATION.

The applicants named above most respectfully
submit as under:-

1. That the applicants have filed the above noted application challenging the validity of the common order of recovery dated 5.7.1989 contained in Annexure-1 to this Application.
2. That the recovery has been ordered from the applicatⁿs by one and the same order dated 5.7.1989 which has been challenged in the above noted application.
3. That the cause of action arose out of one and the same impugned order passed on the same

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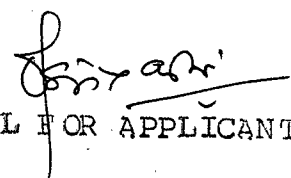
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facts and circumstances. It is expedient in the interest of justice to allow the applicants to file a joint application for proper adjudication of the case.

P R A Y E R

WHEREFORE it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to allow the applicants to file a joint application for redressal of their grievances for the sake of ends of justice.

Lucknow Dated:
August , 1989.


COUNSEL FOR APPLICANTS.

