

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

INDEX SHEET

Cause Title of 199

Name of the parties Shri N. M. Babithi

Applicant

Versus

Disciplinary Board and others

Respondent

Part A.B.C.

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Certified that no further is required to follow and that the case is fit for presentation to the second round (D).

Checked by
03/11/92
03/11/92

Sign
30/11

7/11/92

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Central Administrative Tribunal
Circuit Bench, Lucknow
Date of Filing 28/9/89
Date of Receipt by East.....

Registration No. 271 of 1989 (2)

Deputy Registrar(J)

APPLICANT(S) N. M. Tripathi
RESPONDENT(S) Union of India & others

Particulars to be examined

Endorsement as to result of examination

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? yes
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/ vakalatnama been filed? yes
5. Is the application accompanied by B.D./Postal Order for Rs.50/- yes
6. Has the certified copy/copies of the order(s) against which the application is made been filed? yes
7. a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed? yes
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly? -
c) Are the documents referred to in (a) above neatly typed in double space? yes
- Has the index of documents been filed and paging done properly? yes
- Have the chronological details of representation made and the out come of such representation been indicated in the application? yes
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal? -



Particulars to be Examined

Endorsement as to result of examination

- | | | |
|-----|---|-----|
| | 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 | - |
| | Missing _____ ? | - |
| 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 |

directly

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

REGISTRATION No. 27/1/89(14) of 198

APPELLANT
APPLICANT

N. B. Tripathi

VERSUS

DEFENDANT
RESPONDENT

U. D. D. 205

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
---------------------------------	--	--

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

18 $\frac{10}{89}$
Heard Shri M.P. Sharma Counsel for the applicant. Put up this case on 9-11-89 for admission as desired by the counsel for the applicant.

[Signature]
J.M.

(SNG)

[Signature]
J.M.

GR
Case is submitted for admission

or
Notice Issued
18/11/89

8/31

D

5/2/91

Counsel has not be
filed. O.P. is not-
present. Applicant-
side is present
O.P. to file could
by 4/3/91 R

4.3.91

D. R.

Counsel for the
applicant is present
I. Counsel for
the respondent
is absent today.
He did not file
counter yet. He
is directed to file
counter by 5/4/91

5.4.91

D. R.

Applicant's side is
present. O.P. is absent
Respondent to file
counter by 25.5.91.

27/5/91

D. R.

ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD/C.B. LUCKNOW

271

No.

271

OF 19

80

Vs.

Sl.No.	Date	Office Report	Orders
		<p>CA filed MP 771-914 for dismission S.FO h 12/14</p>	

13-12-91

Hon. Mr. Justice V.C. Sivaraj
V.C.

Learned Counsel for the
applicant prays for 2 weeks
time to file rejoinder.
Time is granted - list
this case on 13-3-92
for hearing

✓

V.C.

13.5.92 No filing of D.M. for
G.S. 92 ✓

6.5.92 No filing of D.M.
for 13.5.92 ✓

13.7.92

Put up documents

✓
Done

(15)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH
LUCKNOW

O.A.No. 271/1989(L)

N.M.Tripathi

Applicant

versus

Union of India & others

Respondents.

Shri M.P. Sharma

Counsel for applicant.

Shri K.D. Nag

Counsel for Respondents.

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

Hon. Mr. K. Obayya, Adm. Member.

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

The applicant was working as A.S.M./Daliganj and later on ASM Lucknow junction in grade of Rs 330-560. He was allowed by the Railway Administration to continue his studies and acquired the Degrees of LL.B and LL.M. The applicant was looking for the better prospects, he applied for his appointment as Lecturer in Harish Chandra Degree College, Varanasi and applied for leave to resume his duties as Lecturer in Law where he joined on 22.3.77 with due intimation to the Railway Administration. He requested for lien in the Railway Department. Later on he joined Jainarain Degree college, Lucknow. Before his joining the application of the applicant was sent and forwarded by the department. The applicant while joining the new assignment wrote the following letter to the Railway Administration:

W

"I hereby submit my understanding to you, so that I shall either resign or get back to my parent job after expiry of the terms of the two years of the retention of the lien as per Railway Board letter No. E/NG/1168/AP/6 dated 4.12.86."

The applicant joined the institution and continued to work. On 3.2.1977 the applicant stated that he was offered the post of Lecturer in Harish Chandra college, Varanasi and that he wished to join there for future prospects and he should be relieved. While joining the same institution the applicant sent a letter to the Divisional Superintendent in which he requested that he may be relieved initially for two years and arrangement for intimating ^{him} the amount of contribution payable from time to time during the period of deputation be made, for maintaining his lien in the Department. After expiry of two years on 1.9.79 he sent a letter stating that the period of two years has since expired and he has not been confirmed, he shall be much obliged, if the period of lien is extended for a period of one year. Thereafter no application was moved by the applicant and the applicant was absorbed in the Jain Narain Degree College, Lucknow. Thereafter he moved an application stating that he shall be grateful if his case for voluntary retirement is considered and pensionary benefits granted to him and the period from 22.3.77 till

*~~Exhibition~~. The Railway Administration gave reply the application

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3.

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applicant resigned from service and he was absorbed there

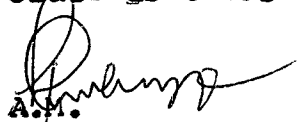
and when the absorption was taken up the Railway Administration also did not reply. In support of his contention the learned counsel for the applicant referred to a case of Allahabad High Court in V.N. Pandey vs. Union of India and another (AIR 1984, Allahabad 10) in which a similarly placed teacher in the very same college also moved the application claiming the same relief. The facts of the case are that the teacher resigned after completing about 20 years of service and an application was moved by him that he was appointed as Lecturer in Jai Narain Degree College and he was in service, he requested to the Divisional Superintendent(P), N.E. Railway, Lucknow to allow him to take up the job of Lecturer in law undertaking that he would fulfil all the conditions laid down by the Railway Board for officers going to deputation. The Divisional Superintendent Lucknow accepted the request of the petitioner to proceed on deputation as Lecturer in Law in Jai Narain Degree College for a period of two years. In this case there was no such order that the deputation has been allowed. It may ^{be} that by some implication the period could not be treated as on deputation although when the applicant sent the application with permission of department the period will be deemed to be the period of deputation. Thereafter the application for extension of lien was moved. That was not allowed. He gave the undertaking although he did not resign from the post. The applicant was treated as if he resigned from the post. The applicant sat over the matter and thus ceased to be employee of the Railway Administration. It will not be a case of abandonment as the applicant had gone to a degree college with the knowledge of the Railway Administration and was working. Instead of resigning which he was bound to do, in view of the undertaking given he preferred to move an application for extension and then kept quiet, he can't go against the undertaking.


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(11/11)

The applicant joined the services in the college which is governed by the Universities Act and it cannot be said that the University is controlled by the Govt. It is a Corporation. The mistake is there on the part of both the parties. As the applicant did not take any action for a long ^{time}, obviously the status of the applicant as government servant came to an end from the date of absorption. Accordingly, the applicant cannot claim pensionary benefits or other benefits but in view of the fact that the applicant served for 13 years, the Railway Administration is responsible for the mistake committed. It is expected that the Railway Administration will give to him the benefits, ^{at least 12 years and} whatsoever admissible to him for a period of 13 years, ^{as he was} who has not been removed or dismissed from Railway Service.

The application is disposed of as above with no order as to costs.


A.M.


V.C.

Shakeel/

Lucknow: Dated: 14.7.92

8/2

CENTRAL ADMINISTRATIVE TRIBUNAL

Deputy Registrar (J)
CIRCUIT BENCH, LUCKNOW.

O.A. No. 1989.

N.M. Tripathi, s/o
Sri Narbadeshwar Mani Tripathi,
R/o E-135, Kurmanchal Nagar, Lucknow.

Vs.

Railway Board & others.

I N D E X

1. Application		Page No. 1 to 6
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3. Annexure 2	Order No. E/227/T/Appeal/6/L Dated 15.3.88.	8
4. Annexure 3	Order No. E/207/Settle/IX/ N.M. Tripathi dated 28.2.89.	9

28.2.89

N.M. Tripathi
APPLICANT.

MD 28

Filed to the Notice on
18-10-89

28/9/89

For
M.P. Sharma
(Advocate)

(13)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH LUCKNOW

O.A.No. 1989

~~Noted on 27/7/89~~
~~REO~~
~~Summ 11/2~~
~~20/9~~

Narendra Mani Tripathi S/o
Sri Narbadeshwar Mani Tripathi,
R/o E-135, Kurmanchal Nagar, Lucknow.

Vs.

1. Railway Board, through Chairman, Baroda House,
New Delhi.
2. General Manager, N.E. Railway, Gorakhpur.
3. Chief Operating Superintendent, N.E. Railway, Gorakhpur.
4. Divisional Manager (P) N.E.R. Lucknow.

Col.No.1 Particulars of the Order against which application is made

- A. Order No. E/N/7/ASM/87 dated 21.3.86 passed by
opposite party No.III Communicated by Opposite
Party No.IV contained in Annexure No.1.
- B. Order No.E/227/T/Appeal/6/L dated 15.3.88 passed
by Opposite Party No.2 contain in Annexure No.2.
- C. Order No. E/207/Settle/IX/N.M.Tripathi
dated 28.2.89 passed by Opposite Party No.1
contained Annexure No.3.

Col.No.2 Jurisdiction of the Tribunal :

The applicant declares that the subject matter of the
order against which the applicant wants redressal within
the jurisdiction of this Hon'ble Tribunal.

Contd...2/-

N.M.Tripathi

Column No.3 Limitation :

The applicant further declares that the application is within time and under limitation prescribed under section 21 of the A.T. Act 1985 on the basis of order dated 28.2.89 contained in Annexure No.3.

Column No.4 Facts of the case :

- (a) Applicant was posted in Lucknow area of N.E. Railway as RG ASM/Daliganj and later on ASM Lucknow junction in grade Rs.330-560, at his own request to continue higher studies for which he will remain grateful to the administration.
- (b) Applicant was permitted by Railway Administration to continue the studies and did so. He acquired the Degree of LL.B. and LL.M.
- (c) Being ambitious he remained watchful for his better prospects and got a chance to apply for the post of Lecturer in Law. He applied through proper channel and his application was duly recommended and forwarded by Railway Administration, for appointment as Law Lecturer in Harish Chand Degree College, Varanasi.
- (d) That duly selected as Lecturer in Law by H.C. Degree College, Varanasi. He applied for leave to Railway Administration and proceeded to resume duty as Lecturer in Law where he joined on 22.3.77 with due intimation to Railway Administration. Applicant also requested to administration to extend and grant the leave.

Ram Mohan

Contd...3/-

- E. That under the policy and decision of Railway Board, the applicant requested for lien in the Railway Department as in the case of Sri V.N.Pandey who was Ticket Collector at N.E.Railway Lucknow passed LL.M. and applied for Lecturership in Law at Jai Narain Degree College Lucknow, His lien for his post of Ticket Collector was ordered to be maintained by Railway Administration of N.E. Railway. A true copy of the Circular No. 769-E/70(EW) Dated 24.8.73 issued by Railway Board is enclosed as Annexure No.4.
- F. Applicant was confirmed ASM in the scale of Rs.330 to Rs.560.
- G. However the applicant under the rules sought voluntary retirement on 8th April, 1985 from his post to D.R.M., N.E. Railway. A copy of his application for voluntary retirement is enclosed as Annexure No.5.
- H. That the applicant's voluntary retirement application was forwarded by Opposite Party No.4 vide his letter No. E/NM Tri./7/Station Master dt. ~~14.8.85~~ 6.11.85 for appropriate order by the Competent Authority.
- I. That for the 1st time on 21.8.86 decision of the Railway Administration was communicated to the applicant that w.e.f. 22.3.77 the applicant has deemed to have resigned from the service.

Nmhp/m:



- H. J. That the order dated 21.8.86 being an order of removal from the service of the applicant and, therefore, it was in violation of Article 311 of the Constitution of India. Moreover, the order was passed on 21.8.86 effecting it from 22.3.77 i.e. with retrospective effect, therefore, it is also illegal to this extent.
- K. That against the order dated 21.8.86 the applicant filed an appeal to the Opposite Party No.2 which was rejected as contained in Annexure No.2.
- L. That as the order contained in Annexure No.1 & II was totally illegal, void and against the principles of Natural Justice, the applicant filed a revision to the opposite party No.1 pointing out the illegality and discriminatory action but his revision application has been rejected by Opposite Party No.1 vide his order dated 28.2.89 as Annexure No.3 in a non-speaking way.
- M. That the rule if any deeming the applicant to have resigned from the service is unconstitutional, against the principle of natural justice as well as it entail civil consequences to the applicant.
- N. That impugned order contained in Annexure No.1, 2 & 3 are illegal, void, unconstitutional and against the principal of Natural Justice, therefore, it is liable to be quashed.
- O. That no opportunity before passing such orders as contained in Annexure 1 to 3 was given to the applicant, therefore, it is liable to be quashed.

Amrutha

5/17

Column No.5 Grounds of Reliefs :

- (A) Because the order dated 21.8.86 against which the applicant filed an appeal and revision to the Opposite Party No.2 & 3, which was rejected illegally as contained as Annexure No.2 & 3.
- (B) Because the rule if any deeming the applicant to have resigned from the service is unconstitutional against the principle of Natural Justice as well as entails civil consequences to the applicant.
- (C) Because that impugned order contained in annexures No.1,2 & 3 are illegal,void, unconstitutional and against the principle of Natural Justice, therefore, it is liable to be quashed.

Column No.6 Details of the remedy exhausted:

It is submitted that under the rules applicant had filed an appeal and revision to the Competent Authority but the same was rejected vide Annexure 2 & 3.

Column No.7 Matter previsouly filed and pending:

That the applicant submits that for the present dispute, the applicant has not filed any suit or proceeding in any court of law.

Column No.8 Reliefs sought for :

In view of the above facts and grounds it is respectfully prayed that this Hon'ble Tribunal be pleased to quash the impugned order contained in Annexures No.1,2 & 3 by holding that the applicant is entitled to pension,gratuity etc. amongst other benefits of his post.

Nm Malik

Column No.9 Intrim order

- NIL -

Column No.10 Not relivent.

Column No.11 Indian Postal Order No. DD 793011
Name of Post Office G.P.O. Lucknow
Payable Post Office at G.P.O. Allahabad.

Column No.12 No. of enclosures. 165

Annexures

1. Copy of order No. E/N/7/ASM/87 dt. 21.8.86.
2. Copy of order No. T/227/Appeal/E/L dt. 15.3.88.
3. Copy of order No. E/207/Settle/IX/N.M. Tripathi,
Dt. 28.2.1989.
4. Copy of ^{S/N 05961} Circular No. 769-E/90 (EW)
dt. 24-8.73 issued by Railway Board.
5. Copy of Application of Voluntary Retirement.

VERIFICATION

I, Narendra Mani Tripathi, S/o Naddeshwar
Mani Tripathi, R/o E-135, Kurmanchal Nagar,
Indira Nagar, Lucknow do hereby verify the
contents of column No.1 to column No.12 of this
application are true to my knowledge.

Signed and verified at this day of 27/9/89

Lucknow.

N.M. Tripathi
APPLICANT

Central Administrative Tribunal
Circuit Bench Lucknow

C.A. No. 1989

N.M. Tripathi
v/s.

Railway Board and others.

Recd 8/8

NORTH EASTERN RAILWAY

OFFICE ORDER.

In terms of GM(P)/GKP's letter No. E/227/T/
Appeal(VI)L dated 4.7.86 conveying the decesion of
COP's Shri Narendra Mani Tripathi, ASM(330-560)LJN
who was away from duty since 22.3.77, is deemed
to have resigned from service w.e.f. 22.3.77.

For Divl. Rly. Manager(P)
LUCKNOW.

No. E/N/7/ASM/87

Dt. 21.8.86

Copy forwarded for information and necessary
action to :-

1. G.M(P)/GKP.
2. SS/LJN.
3. Sr. DAO/LJN.
4. OS/Bill, Pass, Folder, Settlement in office.
5. Shri Narendra Mani Tripathi, ASM/LJN now Lecturer-
in Law, Jai Narain Degree College, Lucknow.

MMH/ath

For Divl. Railway Manager/
P

Lucknow.

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Railway Board and others.

See no 2

N. E.—G. 40
RB—GL. 19

प्रेषक (From)

सेवा में श्री जे. ए. माण त्रिपाठा

(भूतपूर्व स.टि.माह्य)

ला डिपार्टमेन्ट

श्री जय नारायण डिग्री कॉलेज

मदराज

दिनांक शून्य (अप्रैल ४७ में प्राप्त)

 X

Amphibian

143

बृहत् महा प्रवचन (की)

1911

Central Administrative Tribunal
Circuit Bench, Lucknow

O.A. No 1989

N.M. Tripathi
v/s.

Railway Board and others.

A3

9

NORTH EASTERN RAILWAY

OFFICE OF THE
GENERAL MANAGER(P)
GKP: DT. Feb. 28, 1989.

No.E/207/Settle/K/N.M.Tripathi.

Sri N.M.Tripathi,
Law Department,
J.N.D. College Lucknow,
(Ex.ASM/NER/Lucknow Jn.)

Sub: Your representation dated 16.7.88
addressed to the Deputy Minister of
Railways, Ministry of Railways,
New Delhi.

Your above representation was received in this
office through Railway Board and the points raised
therein have been examined.

Your request for voluntary retirement and grant
of pensionary benefit treating the period of your
unauthorised absence from duty as extra-ordinary leave
being not permissible deserves no further consideration.

The action already taken in the matter and
communicated to you vide DRM/LJN's office order
No.E/N/7/ASM/87 dated 21.8.86 still holds good.

N.M. Tripathi
for GENERAL MANAGER(P)

1989 FEB 28

Filed 14-12-91

Before the Central Administrative Tribunal,
Lucknow.

O.A.No.271 of 1989 (L).

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Narendra Mani Tripathi. -----Applicant

Versus

Railway Board and others. -----Opp-parties

--

Counter Affid Reply on behalf of
Opposite parties.

I, S.M.N.Islam, aged about 34 years, son
of S.M.Owais, Senior Divisional Personnel Officer
in the Office of Divisional Railway Manager,
North Eastern Railway, Ashok Marg, Lucknow, do
hereby state as under :-

1. That the official above named is working
as Senior Divisional Personnel Officer in the
Office of the Divisional Railway Manager, North
Eastern Railway, Ashok Marg, Lucknow, as such he
is fully conversant with the applicant's case
and is competent to file this reply on behalf
of the opposite parties.

2. That Column No.1 of the Original Application
needs no comments.

Filed today
11/12/91

Smt. Z. Khan
प्रमुख मंडल कार्यालय अधिकारी
पूर्वोत्तर रेलवे, लखनऊ



3. That Column No.2 of the Original Application needs no comments.

4. That Column No.3 of the Original Application needs no comments.

5. That para 4(a) of the application needs no reply.

6. That para 4(b) of the application are not disputed, however applicant was allowed to attend his classes of law, provided it does not hamper official duties and obligations.

7. That contents of para 4(c) of the application as stated are not admitted. The applicant (Narendra Mani Tripathi) was informed at very out-set that he can join the post of Law Lecturer in Harish Chand Degree College, Varanasi only after renouncing the appointment of Railway by resignation or alternatively he shall be deemed ^{to have} resigned if he joins the post of Law Lecturer in the said college.

8. That contents of para 4(d) of the application are misleading and incorrect and as the same are not admitted. It is admitted that the applicant joined the post of Law Lecturer on 22.3.1977 and simultaneously he was deemed to have resigned from Railways and his resignation was accepted w.e.f.

Sm2hla
उत्तम मंडल कार्यालय अधिकारी
पूर्वोक्त देवदे गन्धर्व

24/4

22.3.1977. In such circumstances, there was no question of leave in any manner.

9. That contents of para 4(e) of the application are incomplete and misleading and as such the same are not admitted. The Circular dated 24.8.1973 contained in Annexure No.4 are not applicable in the instant case. It is clearly provided in the Circular that Railway employee can go on deputation in another Company or Corporation, which is owned and controlled by the Government only and that too in 'Public Interest' only.

In the instant case, applicant joined a private college and that too in his interest and as such he was deemed to have resigned from Railways w.e.f. 22.3.1977 i.e. the date of joining the post of Law Lecturer in the light of his application dated 8.2.1977. A photostat copy of which is being annexed as Annexure No.A-1.

10. That para 4(f) of the application needs no comments.

11. That contents of para 4(g) of the application as stated are not admitted. The alleged application for voluntary retirement was misconceived because he was already relieved from Railways by acceptance of his resignation w.e.f. 22.3.1977.

Smr 24/4
५१८ मंडल कार्यालय अधिकारी
पूर्वोक्त रेलवे, अयतनकु



12. That contents of para 4(h) of the application as stated are not admitted. The alleged application of applicant was misconceived and as such the same was not allowed as stated in para 11 of this counter reply.

13. That contents of para 4(i) of the application as stated are misconceived and as such the same are not admitted. As stated in para 7 of this counter reply, it was already informed to the applicant at very beginning in the year 1977 itself that he will be deemed to have resigned from Railways.

14. That contents of para 4(j) of the application as stated are misconceived and as such the same are not admitted and in reply earlier paras of this counter reply are reiterated as correct.

15. That para 4(k) of the application is not denied. However, it is stated that the alleged appeal was misconceived and as such the same was rejected.

16. That para 4(l) of the application as stated is not admitted except that the revision was rejected vide order dated 28.2.1989.

17. That para 4(m) of the application is not admitted.

Smt. Usha
प्रति मंडल कार्यकारी अधिकारी
पृष्ठ २ अक्षर



18. That para 4(n) of the application is not admitted.

19. That para 4(o) of the application is misconceived and as such the same are not admitted.

20. That grounds (A), (B) and (C) indicated in Column 5 of the application are untenable and the application is liable to be rejected with costs.

Additional Pleas.

21. That it is pertinent to mention specifically again that there is no provision in Railway Administration of sending or allowing an employee on deputation in any organisation other than Government Central Organisation. Moreover, there must be a 'public interest' even for sending a Railway employee in some other Government(Central) Organisation. As such applicant's claim for joining a privately managed college (Harish Chand Degree College, Varanasi) was beyond the scope of law and in the said circumstances after joining privately managed college, there was no deputation and no question of lien in any manner.

22. That the applicant submitted an application dated 8.2.1977 to the Department indicating therein his request of tendering resignation

Handwritten signature and text at the bottom right corner, including the word "जा" and some illegible text.



from Railways or to grant two year absence on maintaining lien in Railways. Because the second option i.e. two years absence from Railway service maintaining lien was not permissible in law and applicant joined his new appointment at Harish Chand Degree College, Varanasi, his first option of tendering resignation was accepted and his services came to an end on 22.3.1977.

23. That it is further pertinent to mention that the resignation submitted by a Railway servant can be accepted with immediate effect or with retrospective effect or from prospective date as per Railway Board's Circular No.E/NG/II-71/RG/1 dated 17.9.1971. A copy of the Circular dated 17.9.1971 is being annexed as Annexure No.A-2.

24. That after considering circumstances of Sri N.M.Tripathi's application dated 8.2.1977, his resignation was accepted by the Railway Administration w.e.f. 22.3.1977. The said decision was communicated to the applicant through proper channel.

25. That it is pertinent to mention that the applicant secured fresh appointment as Lecturer at Harish Chand Degree College, Varanasi, w.e.f. 22.3.1977 and never joined the Railways again. As such applicant could work in the Railways for very short period and as such he is not entitled for the relief claimed in the original application.

Sm2 Wle
उत्तर मंडल कार्मिक अधिकारी
पूर्वोत्तर रेलवे, लखनऊ




26. That for the facts and circumstances stated above, the Original Application is liable to be dismissed with costs.

27. That the contents of Column 6 and 7 need no comments.

28. That in reply to Column 8, it is submitted that the applicant is not entitled to any relief sought by him.

29. That the contents of Column 9 to 12 of the original application need no comments.


Lucknow, dated,
10.12.1991


Respondent.
प्रति मंडल कार्यकारी अधिकारी
पूर्वोक्त

Verification.

I, the official abovenamed do hereby verify that the contents of para 1 of the reply are true to my personal knowledge and those of paras 2 to 29 of this reply are believed to be true on the basis of records and legal advice.

Lucknow, dated,
10.12.1991


Respondent.
प्रति मंडल कार्यकारी अधिकारी
पूर्वोक्त

Before The Central Administrative Tribunal, Lucknow
O.A No 271 of 1989 (L)

Narendra Mani Tripathi — — — Applicant
Versus
Railway Board and others — — — Opp. Parties
Annexure No A-1

To
The Divisional Super (P) 353
N.E.R
Lucknow
8/2
Sir,

I hereby, submitting my
understanding to you, so that I shall
either resign or get back to
my parent job after expiry of-
the term of two years of
the retention of the Lien
as per Rly Board Letter
No. E/HG/1168/AP/6 dated
4.12.68.

Thanks.

Yours faithfully
Narendra Mani Tripathi
Aet / LJM
8/2/89

Swatula
प्रवर मंडल न्यायिक अधिकारी
पुणे

Before The Central Administrative Tribunal, Lucknow
O.A No 271 of 1989 (L)

Narendra Manu Tripathi — Appellant
Versus
Railway Board and others — Opp. Parties
Annexure No A-2

S.No. 2235 /

North Eastern Railway

OFFICE OF THE GENERAL MANAGER
GORAKHPUR DT.

No. E/233/2/IV

All Heads of Department,
All Divisional Superintendents,
All Personnel Officers,
All Extra Divisions,
North Eastern Railway.

Sub:- Resignation from Railway Servants procedure
regarding.

A copy of Railway Board's letter no. E(NG)II-71/RG/1 dated 17.9.71
is forwarded for information and guidance. This is in continuation of
this office circular no. E/IV/233/2 dated 3.12.66.
DA/-As above.

for General Manager(P)

Copy of Railway Board's letter no. E(NG)II-71/RG/1 dated 17.9.1971
addressed to the General Managers, All Indian Railways and others.

Sub:- Resignation from Railway Servants procedure
regarding.

Attention is invited to Railway Board's letter No. E(NG) 64/RB/36
dated 26.10.66 with which a copy of the Ministry of Home Affairs' O.M. No.
39/6/57-Ests(A) dated 6th May, 1953 was circulated. The orders contained
in paragraph 1(c), of the Ministry of Home Affairs' O.M. referred to
above, provide that it is open to the competent authority to decide
whether the resignation should become effective immediately or w.e.f.
some prospective date.

2. A doubt has been raised whether acceptance of resignation is
always obligatory with immediate effect/prospective date or it is also
open to the competent authority to accept resignation with retrospective
effect under certain circumstances, e.g. when the resignation is submitted
on, say, 1.1.71 but the request is considered by the competent authority
only on 20.1.71 or when a railway servant remains absent from duty, say
from 1.3.70 but subsequently submits resignation on 1.4.71 with a request
for retrospective acceptance from 1.3.70 (or any later date falling
before 1.4.71).

3. The Board have considered the matter in consultation with the
Department of Personnel and it is clarified that the intention is that
a resignation should not be accepted from a date earlier than the date
on which the letter of resignation is submitted. Accordingly, in the first
and the second example, the competent authority may accept the resignation
from 1.1.71 and 1.4.71 respectively or from a later date if any,
specifically indicated by a railway servant but in no case earlier than
from the date of the letter of resignation.

(This disposes of G.M., Western Rly's letter No. EP.944/0 dt. 19.6.71)

DA/-N11.

प्रव. संवल कार्यालय अधिकारी

प्रो. संवल कार्यालय अधिकारी

वकालतनामा

Central Administrative Tribunal Bench Lucknow

के समक्ष

OA 271/89 (L)

के न्यायालय में

वादी प्रतिवादी	N M hipathi	दावेदार अपीलाधी
प्रतिवादी वादी	Union of India & others Kuldeep Nag Rly Adroali Lucknow	अर्जीदार प्रत्यार्थी

भारत के राष्ट्रपति इसके द्वारा श्री

को उपर्युक्त वाद/अपील/कार्यवाही में भारत संघ की ओर से उपसंज्ञात होने, कार्य करने, आवेदन करने, अभिवदन करने और आगे कार्यवाही करने के लिए दस्तावेज दाखिल करने और वापस लेने, न्यायालय की आदेशिका स्वीकार करने, काउन्सेल, अधिवक्ता या प्लीडर नियुक्त करने और उन्हें अनुदेश देने, रुपया वापस लेने और उसका निक्षेप करने तथा उपर्युक्त वाद/अपील/कार्यवाही में भारत सरकार का साधारण प्रतिनिधित्व करने और भारत संघ के लिए इस प्रकार उपसंज्ञात होने, कार्य करने, आवेदन करने, अभिवदन करने और आगे कार्यवाही करने की अनुषांगिक सभी बातें करने के लिए नियुक्त और प्राधिकृत करते हैं। किन्तु यह इच्छा के अधीन रहते हुए होगा कि जब तक भारत सरकार के समुचित प्राधिकारी से उस निमित्त पहले ही स्पष्ट प्राधिकार प्राप्त नहीं कर लिया गया है, तब तक उक्त काउन्सेल/अधिवक्ता/प्लीडर या उसके द्वारा नियुक्त काउन्सेल/अधिवक्ता/प्लीडर सभी या किसी प्रतिवादी/प्रत्यार्थी/अपीलार्थी/वादी/विरोधी पक्षकार के विरुद्ध उस वाद/अपील/दावा/प्रतिरक्षा/कार्यवाही को पूर्णतः या भागतः न तो वापस लेगा, न उसका अधिव्यजन करेगा, न ऐसा कोई करार करेगा या समझौता करेगा जिसके द्वारा वाद/अपील/कार्यवाही पूर्णतः या भागतः समायोजित की जाए और न उससे उद्भूत या उसमें विवादग्रस्त सभी या किसी विषय को मध्यस्थ को निर्देशित करेगा, किन्तु आपवादिक परिस्थितियों में जब भारत सरकार के समुचित प्राधिकारी से परामर्श करने के लिए पर्याप्त समय नहीं है और वाद में समझौता करने में लोप करना निश्चित रूप से भारत सरकार के हित के प्रतिकूल होगा तो उक्त प्लीडर/अधिवक्ता/काउन्सेल ऐसा कोई करार या समझौता कर सकेगा जिसके द्वारा उक्त वाद/अपील/कार्यवाही पूर्णतः या भागतः समायोजित हो जाय और ऐसे प्रत्येक मामले में काउन्सेल/अधिवक्ता/प्लीडर करार या समझौता करने के विशेष कारण बताते हुए उक्त अधिकारी को तत्काल संसूचित करेगा।

राष्ट्रपति इस प्राधिकार के अनुक्रम में श्री

Kuldeep Nag Rly Adroali
Lucknow

द्वारा किए गए सभी कार्यों का अनुसमर्थन करने को सहमत हैं।

इसके साक्ष्यस्वरूप भारत के राष्ट्रपति के लिए और उनकी ओर से इस विलेख को आज तारीख.....की सम्यक् रूप से निष्पादित किया जाता है।

तारीख 11-12-1991 19

Swir Khan
(S M N Islam)
निष्पादन करने वाले अधिकारी का पदनाम

प्रति भण्डल कार्यालय अधिकारी
पूर्वोत्तर रेलवे, रायबरेल
for Union of India

Before the Central Administrative Tribunal, Lucknow

O.A. No. 271 of 1989(L)

Narendra Mani Tripathi

....Applicant.

Versus

Railway Board & Others

..Opposite Parties.

Rejoinder on behalf of Applicant.

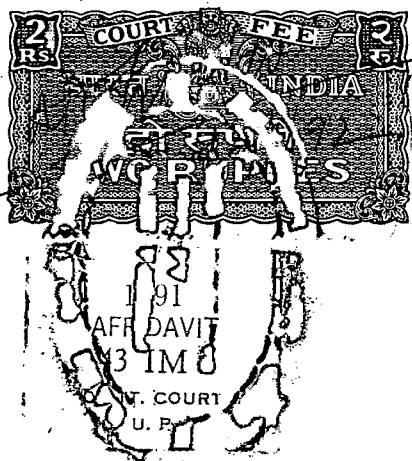
Rejoinder Affidavit of N.M. Tripathi, aged about 48 years S/O Shri Narbeshwar Mani Tripathi R/O 135, Gurmanchal Nagar, Lucknow, do hereby state on oath as under :-

k. That the deponent is applicant in above noted case and well acquainted with the aforesaid case he has perused the contents contained in the Counter Affidavit and understand the same. He is making parawise reply as under :-

1. That para No. 1 to 6 of the Counter Affidavit need no comments. That the contents of para No. 7 are incorrect and denied. The deponent was never informed that the department will not allow the deponent if he is join the post of Law Lecturer in Harish Chandra Post Graduate College or any other college only after renouncing the service of Railway by resignation or alternatively the Railway Administration shall deem the deponent resigned if the applicant join the post of Law Lecturer.

2. In reply to para No. 8 it is submitted that there is neither any agreement between the applicant and the Railway Department to the effect that the deponent would be deemed resigned as soon as he join the post of Law Lecturer.

contd....2



Filed today
20/1/92



N.M. Tripathi

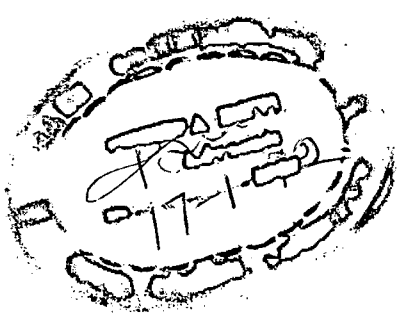
1/33

3. In reply to para No. 9 it is submitted that the Annexure No. 4 of the application is totally applicable in case of deponent as the deponent was taking the job of Law Lecturer in Harish Chandra P.G. College, Varanasi where he remain holding the post of Law Lecturer in between 22. 3.77 to 22.9.77 and then as a law lecturer Jai Narain Degree College, Lucknow from 23.9.77 to till date of ~~fixing~~ filing the rejoinder. It is further submitted that these colleges are affiliated under U.P. Universities Act 1973 which come within the difinition of Corporation controlled by the U.P. Government and therefore the Railway Board's order contained Annexure 4 to the application will apply in case of applicant in full ~~force~~ force.

(i) It is further submitted that whether the Degree Colleges are come within the difinition of Corporation the said matter has been settled by the Hon'ble High Court 1984 AIR Allahabad V.N. Pandey Vs. Union of India. In which the department was impleaded as respondent.

(ii) It is specifically submitted that as appeared from Annexure No. 1 of the Counter Affidavit the same is not resignation letter as claimed by the department and it furhter appears that the Annexure No. 1 the applicant has never tendered his resignation, Contrary to this the ~~applicant~~ Applicant has requested the Railway Authorities to extend the leave as without pay in the fundamantal rule on the ground that still applicant was not absorbed as regular Law Leoturer in the

contd.....3

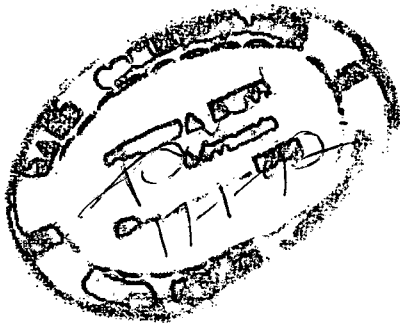


College where he has engaged as such and all the application in which the leave were prayed have been entertained and acknowledged by the Railway Administration and the same were never rejected. However, after the regular absorption as Law Lecturer in Jai Narain Degree College, Lucknow, the applicant in terms of the Railway Board's Circular applied for his voluntary retirement vide his application dated 8th April, 1985 and in response to the applicant's letter the Railway Administration vide his letter dated 1.5.1987 written to the Principal, Jai Narain Degree College, Lucknow although writing there in that the applicant has submitted the application for regarding his voluntary retirement but incorrectly writing therein the resignation was accepted retrospective w.e.f. 22.3.77. It was further mentioned in that letter that the said Principal may supply the following informations:-

(a) The date of appointment of NM. Tripathi as a Law Lecturer in your College.

(b) Whether he is eligible for retirement benefit or not.

(11) The applicant submitted that he had already in his letter dated 8.4.85 informed the Railway Administration that in between 22.3.77 to 22.9.77 he worked as a Law Lecturer at Harish Chandra College, Varanasi and since 23.9.77 he is working



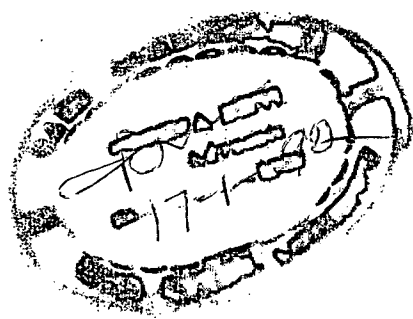
NM Tripathi

A
3

as a Law Lecturer at Jai Narain Degree College, Lucknow. With regard to point No. (2) the deponent submitted that regarding ligibility of retirement benefits like pension, gratuity etc. the applicant is entitled as per provisions of the rules of the Railway department as his date of birth falls on 1.1.1943 and has completed more than 20 years service as he joined the Railway on 1.1.1965 on the post of A2 Signalar beside this he went under training before his posting in between March, 1964 to January, 1965 as per record of Railway Administration read with Annexure No. 4 of the application.

Therefore the Principal of Jai Narain Degree College was not required to submit to the Question No. 2 raised in letter dated 1.5.1987 of the Railway Administration and it was the duty of Railway Administration to decide the retirement benefit available to the applicant.

It is further submitted that the application of the deponent for his voluntary retirement dated 8.4.1985 has still not been accepted by the Railway Administration and the alleged resignation which has not ever been given by the applicant has illegally deem accepted. In absence of valid and formal given resignation there was no question to accept the same with retrospective effect as per impugned orders annexed with application. A photostat copy of the application dated 8.4.85 and Railway Administration letter dated 1.5.87



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11/36

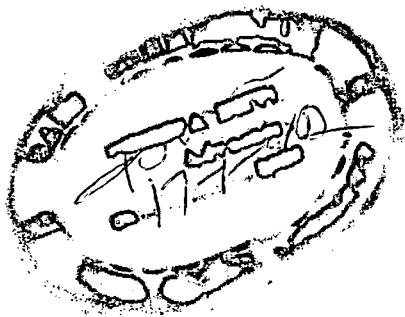
are enclosed herewith as Annexure No. 1 and 2 alongwith rejoinder and the application for leave applied for is enclosed herewith as Annexure No. 3, 4 and 5.

4. That para No. 10, 11 and 12 need no comment

5. That in reply to para No. 13, 14, 15, 16 and 17, it is submitted that nor in year 1977 nor till this date the Railway Administration has informed the deponent that the Railway Administration will deem the deponent as resigned from his post.

(a) The deponent reiterates the contents of para (iv) (i) to para (iv) (o) of the application.

6. That in reply to Para No. 21 to 29 the entire proper reply to these paras have been given by the deponent in the supra paras which may kindly be perused for the purposes of the full reply to para 21 to 29 of the Counter Affidavit. It is further submitted that the Railway Board's Circular contained as Annexure No. 1 of the counter affidavit are not applicable. In the interest of the deponent and the ~~reliance~~ reliance placed by the railway department on Annexure No. 2 of the counter affidavit are mis-conceived. That the rule for voluntary retirement and counting of service ^{of} ~~for~~ training period for purpose of calculating qualifying service for



MM Math

pension is enclosed herewith as Annexure No. 687

~~Deponent~~

~~Deponent~~

~~Dated~~

7. That the application of the applicant is liable to be allowed with full costs.

Lucknow:

N.M. Tripathi
Deponent

Dated: 16/1/92
17-1-92

Verification

I, Narendra Mani Tripathi do hereby verify that the contents of para 1 to 5 of the rejoinder are true to my personal knowledge and those of para 2 to 6 of this counter reply are believed to be true on the basis of legal advice

Signed and verified this day 16-1-92 of 17th Jan, 1992, 1992. at Lucknow. 17-1-92

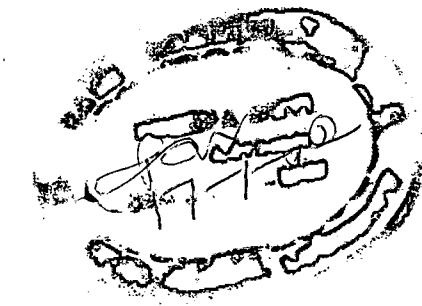
Lucknow:

N.M. Tripathi
Deponent

Dated: 16.1.92
17-1-92

I know the deponent who has signed in my presence

re 2
16.1.92



C.V. No. 120 of 1991
N.M. Tripathi
Advocate
I have satisfied myself by examining the contents of this affidavit which has been read and explained by me to the deponent.

17-1-92
JUSHA A. DUTTA
District Judge, Lucknow

The General Manager (P)
North Eastern Railway
Gorakhpur

Ann. 1

(A)
39

Respected Sir,

Through proper channel.

Ann no 2

Sub: Voluntary retirement and payment of
retirement benefits.

With due respect I beg to submit that I had applied for the post of Lecturer in Law in Harish Chandra Degree College, Varanasi through proper channel vide my application dated 5.10.75 forwarded to your office by the then D.S. under his No. E/SM/Luck/76 dated 13.12.1976. I joined the post of Lecturer at Varanasi on 22.3.77 and subsequently I came to Lucknow and joined there as a Lecturer in Law in Jai Narain Degree College, Lucknow on 23.9.77.

It is further added that I have since been absorbed against a post of Lecturer in the permanent cadre. I shall be highly grateful if you kindly accept my voluntary retirement from the post of Asstt. Station Master in scale Rs. 330-560 waiving off the requisite notice period of three months. The intervening period from 22.3.77 till date of retirement may kindly be treated as extra-ordinary leave with all the retirement benefits. I would further request your honour to kindly arrange early payment of my retirement benefits.

For this act of kindness I shall ever remain grateful to you.

Yours faithfully,

NIM J. Pathi

(NARENDRA MANI TRIPATHI)

Ex. ASM/LJN

Now Lecturer-in-law, Jain
Narain Degree College
Lucknow

Dated: April 8th, 1985

414
4/8/85
11/8/85

NIM J. Pathi



K No. 504

Annex 2

कार्यालय महाप्रबन्धक
पूर्वाञ्चल रेलवे, गोरखपुर
OFFICE OF THE GENERAL MANAGER (P)
NORTH EASTERN RAILWAY
GORAKHPUR

A
38

No.E/227/T/A.P.L./VI/L

Dated: 1 -5-1987.

To,

The Principal,
Jai Narain Degree College,
Lucknow.

Recd 102

Dear Sir,

Subject: Payment of retirement benefits to Shri
Narendra Nani Tripathi, ex. A.S.M.,
N.E.Railway (now Lecturer in Law, Jai
Narain Degree College, Lucknow).

Shri Narendra Nani Tripathi was appointed on
this Railway on 19.1.65.

On being offered the post of Lecturer (Law) in
Harishchandra Post Graduate College, Varanasi, he left
the Railway Service and joined the post of Lecturer
with effect from 22.3.77. He submitted formal
application regarding voluntary retirement and
acceptance of his resignation from railway service
on 8.4.85. This resignation was accepted retrospectively
with effect from 22.3.77.

Shri Tripathi has represented that the period
from 22.3.77 to 1.5.85 should be treated as Extra-
Ordinary leave and the same may be counted for
retirement benefits.

His representation has already been considered
and his request has not been found to be covered by
the extant rules. However, since Shri Tripathi is
continuously persisting with his claim, you may kindly
arrange to send the following information for
disposal of the case:-

- (i) Date of appointment of Shri N.M. Tripathi
as lecturer in your college.
- (ii) Whether, he is eligible for retirement
benefits, or not.

You are requested to send a reply in the matter
early.

Yours faithfully,

(Narsingh Prasad)
APO(T)

for GENERAL MANAGER (P)

N.M. Tripathi

To

The Divl. Mgr Manager
M.E. Railway
Leith

Ana No. 3

(A)
1/2

Sir,

Sub: Extension of Lion-period for one year

With due respect I would submit that the period of two years' lion has since expired.

Considering the fact that I have not yet been confirmed in the J.N.D.C., I shall feel much obliged if you kindly extend the period of retention of lion for a further period of one year as per extant rules.

Thanking you,

Yours faithfully,
H. M. M. M.

Dated _____

1. 9. 79

Recd
1/9/79

Ann 4

(B)
W

Recd 10/4

To

The Divisional Railway Manager
North Eastern Railway
Loughborough

Sir,

Sub: Payment of F.S.C. during the period of lien-
retention.

Vide my application dated 3.2.77 I had requested for the retention of my lion on the Railway Department for a period of two years. To all intents and purposes the lion period has since expired, yet the amount of F.S.C. payable each month has not been paid to me.

As depositing of the accumulated amount in lump-sum would constitute great difficulty, I shall be highly grateful if you kindly intimate me the monthly amount as well as the total amount along with head of allocation so that necessary action may be taken without any further delay.

Tom M. M. M.
Yours faithfully,

Date: 1.9.79

Sd/- 12/9

1.9.79

Tom M. M. M.

To

The Divl Railway Manager (P)
North Eastern Railway
Lucknow

(A)
Here no 5

Sir,

With reference to your letter No.E/HNT/ASM/78 dated 12/10.1.78, I beg to submit that I have not received your letter of even number dated 22.11.78 alleged to have been sent to me. It is, therefore, requested that a copy of the said letter may please be sent to me to enable me to submit the factual position.

Also my application addressed to G.M.(P)/GKP for the grant of Lion to me was duly recommended and forwarded by you. I felt assured of its sanction and in the absence of any communication to the contrary, I joined the Sri Krishna Degree College, Lucknow as a Lecturer in Law.

The house rent of railway quarter No.T/3/B at Railway Colony, Daliganj which was allotted to me could not be deducted as I have not been drawing any salary from the Railway. I shall be much thankful if you kindly indicate the head of allocation and the authority with whom the amount of house rent including the arrears rent is to be deposited so that the entire amount may be paid.

Thanking you,

Yours faithfully,

Dated: 4.3.1979

(N.M. TRIPATHI)
Ex. ASM / LUN
Lecturer in Law
T/3/D Railway Colony
Daliganj

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After for m/s / m/s
9/3/79

Copy to DS(0)/LUN. He is requested to kindly advise me as to how and where I should deposit the arrears as well as current house rent for railway quarter No.T/3/B at Daliganj.

(N.M. TRIPATHI)

N.M. Tripathi

9/3/79

N.M. Tripathi

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Other Conditions of Service

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(23) Petitioners' services reviewed almost 3 to 4 years after attaining the age of 50 years—Adverse entries made after 50 years taken into consideration—Rules provide review to be done 6 months before 50 years of age is reached—Government of India instructions mandatory—could not be flouted. Order of review could not be sustained.

Petitioner promoted in recent past—The ground of ineffectiveness could not be upheld.

Review Committee not recording any reasons while recommending compulsory retirement—Not possible to find what weighed with them in arriving at the decision—The order could not be sustained. 1988 (1) S.L.J. (CAT), 713.

(24) There are no powers with the Government to revoke the earlier orders of compulsory retirement and pass subsequent order of dismissal. 1987 (2) A.T.L.T. (S.C.) S.No. 60.

(25) If on a perusal of the material on the record and having regard to the entries in the personal file and the character roll of the Applicant, it is not possible reasonably to come to the conclusion that the compulsory retirement of the Applicant was called for, the order cannot be sustained. 1988 (1) A.T.L.T. (CAT) S.No. 20.

(26) Principles of law governing compulsory retirement being (i) Order must be bonafide; (ii) It must not be tainted; (iii) It should be in public interest State entries in the Confidential rolls relating to remote period cannot be depended upon for compulsory retirement, particularly when promotion has been given subsequently. A.T.R. 1988 (2) C.A.T. 593.

(27) The order of compulsory retirement based on departmental enquiry and pendency of a criminal case on which no final decision has yet been reached—Order of compulsory retirement cannot be sustained. (A.T.R. 1988 (1) C.A.T. p. 55).

(28) Finding of the Review Committee without reference to actual performance of individuals in their official career—Order of compulsory retirement bad. (A.T.R. 1982 (2), C.A.T. p. 465).

(29) Where order of compulsory retirement was passed in cases where employees went on mass sick leave, it was held that the power was exercised in deliquit and not bonafide purpose. (A.T.R. 1986 (2) C.A.T. p. 464).

(30) When Review Committee took into account extraneous and collateral matters, the Review Committee recommendations vitiated—Compulsory retirement not valid. (A. T. R. 1987 (2) 148).

Scheme of Voluntary Retirement

In pursuance of the recommendations of the Administrative Reforms Commission, the Ministry of Railways has decided that

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the Railway servants may be allowed to retire voluntarily after 20 yrs. of service on proportionate pension and gratuity or S.C. to P.F., as the case may be, with a weightage of upto 5 years towards qualifying service, subject to certain conditions, as given below :—

(1) The Railway servants who have put in not less than 20 years qualifying service may, by giving 3 months notice in writing to the appointing authority, retire from service voluntary. The initiative rests with the Railway servant himself. The notice is to be given to the Ministry of Railways in respect of Group A employees and to the General Manager in respect of Group B, C & D employees.

(2) The Government does not leave the reciprocal right to retire Railway servants on its own, under this scheme.

(3) The benefits of retiring pension proportionate S.C. to P.F. will be admissible to Railway servants retiring under this scheme.

(4) A notice of less than 3 months may also be accepted by the appointing authority in deserving cases with the approval of Railway Ministry.

The Railway Board have decided to delegate the powers in this regard to the General Managers to be exercised by them in consultation with their associated finance (R.B's. No. E (P&A) 1-77/RT/46 dt. 19-6-79) (N.R., S.No. 7343)

Powers have been further delegated to accept the notice of less than 3 months for voluntary retirement in case of Group C & D staff to Head of the Deptt. to be exercised by them personally in consultation with their associate Finance in deserving cases. These powers will not be delegated further to lower authorities. This is subject to the condition that DAR/Vigilance case is pending against such staff. [R.B's. No. E(P & A) 1/77 RT/46 dated 10/2/81] (N.R., S.No. 7764)

If notice in these cases is also to be accepted, the approval of the G.M. in case of Group 'A' and 'B' and that of D.R.M. in case of Group 'C' & 'D' employees is necessary, subject to there being no D.A.R./Vigilance case against them. In case of Group 'A' employees Railway Board should be approached for advice indicating whether departmental/vigilance/C.B.I. investigation or consequential disciplinary proceedings are pending or are contemplated against the employees concerned for the imposition of a major penalty and whether the penalty of removal or dismissal from service would be warranted in the case. [R.B's. No. E(P&A) 1-77/RT/46 of 12-9-80 & 19-1-80] (N.R., S.N. 7659 & 7726.)

Group 'A' officers (Senior Scale/Junior Scale) may serve a notice of voluntary retirement to the General Manager who may

Handwritten signature

provide other suitable jobs of more or less equal status and emoluments.

(b) **Invalid Pension** :—This is granted to those employees who are found unfit for further service on account of some physical or mental infirmity. If however the unfitness is directly due to the irregular or intemperate habits, no pension will be granted.

(c) **Superannuation Pension** :—This is granted to the employees when they attain the age of superannuation i.e. the age of retirement.

(d) **Retiring Pension** :—This is granted to the employees who retire on completion of 30 years of satisfactory service either at their own option or on the orders of administration. Three month's notice for such retirement is necessary.

(II) **Extra ordinary Pension** :—This pension is granted to an employee who is injured and to his family when he is killed or succumbs to the injuries sustained while in the proper execution of his duty.

Ordinary Pension

✓ (1) **Eligibility** :—Pension Scheme was introduced on the Railways with effect from 1-4-57 and every employee on that date was given an option to come under this Scheme. This option could be exercised within the prescribed time which was extended from time to time. The option to come under pension scheme is allowed by the Railway Board from time to time and the employees can give their options to come over to pension scheme during the period allowed for the purpose. Permission to come over to the pension scheme cannot be given to retired employees. [R.B's. No. PC IV/78/PN/Pt. I of 27-12-78] (N.R., S.No. 7182)

All new entrants into the service from 16-11-57 came under the scheme automatically.

All the employees who retire before putting in at least 10 years' service are not eligible for pension. They are however eligible for service gratuity.

The employees who resign without completing 20 years of qualifying service, are not entitled to pension.

Class I or II Railway servants who are made to retire or themselves retire after attaining the age of 50 years, will be entitled to pensionary benefits proportionate to the length of qualifying service rendered by such Railway servants at the time of retirement. [R.B's. No. F (E) III-70 PN-1/1 of 9-4-70] (N.R., S. No. 4994). They are also entitled to the pension if they retire under the scheme of voluntary retirement after rendering 20 years qualifying service.

Pension or Gratuity is not payable to a dismissed employee or to one who has been removed from service for serious misconduct.

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(2) Contribution to P.F. :—Under the Pension Scheme, the employee also contributes, to the General Provident Fund Scheme and is eligible to gratuity.

Government contribution to provident fund (Bonus) will not be paid to the employees governed under pension scheme, as it will be set aside towards pension account.

(3) Benefits under Pension Scheme :—Various benefits under the Pension Scheme are :—(a) Monthly Pension/Ordinary Gratuity, as the case may be, (b) Family Pension, (c) Death-cum-retirement Gratuity. The quantum of these benefits depends upon length of qualifying service and emoluments.

(4) Qualifying service :—Qualifying service is the number of completed six monthly periods of service upon which depends the amount of pensionary benefits. The qualifying service consists of temporary or officiating service under the Government of India, followed without interruption by confirmation in the same or any other post. All periods of leave during which leave salary is drawn shall count as service. The period of suspension shall not count as qualifying service unless it has been treated as duty or leave with pay. The period of apprenticeship whether of direct recruits or of serving employees will not count as qualifying service. [Rly. Bd's. No. F (P) 59 CSR 1/1 of 26-11-63].

While calculating the length of qualifying service for the purpose of pension a fraction of a year equal to 3 months and above shall be treated as a completed one half year period and reckoned as qualifying service for determining the amount of pension.

[R.B's. No. F(E) III 79 PM 1/10 dated 25.8.83] (N.R., S.No. 8415)

The period spent under training immediately before appointment to service will count as qualifying service for the purpose of pension and gratuity. [R.B's. No. E (MG) 1-81 PII-76 dt. 25-4-81] (N.R., S.No. 7836) F(E) III-79 PN 1/20 Dt. 17-4-84 (N.R., S.No. 8511)

The benefit of the aforesaid orders will be available to all those group C & D employees who retire on or after 22-12-83. The benefit will also be available to such of the group C & D staff who had undergone training before regular appointment and were subsequently promoted to the Gazetted cadre and retired on or after 22-12-1983 subject to the fulfilment of all other terms and conditions as mentioned above. [R.B's. No. F (E) III/79/PN-1/20, dated 9-8-1988 & 14-9-1988] (N.R., S.No. 9663 & 9703)

Extra Ordinary leave granted on medical certificate shall count as qualifying service for pensionary benefits in all cases. [R.B's. No. F(E) III 73 PN 1/19 of 24-5-74] (N.R., S.N. 6153)

When a decategorised Railway servant resumes duty in some alternative appointment or does not return to duty for want of an

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(A/5)

Before the Central Administrative Tribunal, Lucknow.

O.A.No.271 of 1989 (L).

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Narendra Mani Tripathi. -----Applicant

Versus

Railway Board and others. -----Respondents

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Reply on behalf of opposite parties
to the Rejoinder of Application.

B-T
2/13/15

I, S.M.N.Islam, aged about 34 years, son
of S.M.Owais, Senior Divisional Personnel Officer
in the Office of Divisional Railway Manager,
North Eastern Railway, Ashok Marg, Lucknow,
do hereby state as under :-

1. That the official above named is working
as Senior Divisional Personnel Officer in the
Office of the Divisional Railway Manager, North
Eastern Railway, Ashok Marg, Lucknow, as such he
is fully conversant with the applicant's case
and is competent to file this reply to the Rejoinder
on behalf of the opposite parties.

2. That I have read and fully understood the

S.M.N.Islam
10/11/89
Sr. Divisional Personnel Officer,
N.E. Railway, Lucknow

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contents of the rejoinder filed by applicant (under reply. It is necessary to submit following reply in the interest of justice.

3. That contents of para 1 of Rejoinder as stated are not admitted and in reply contents of para 7 of the Counter are reiterated as correct.

It is pertinent to mention that the applicant (N.M.Tripathi) was informed vide letter dated 22.3.1977 through SS/LJN that there is no such provision under Rule to send a Railway employee on deputation for joining the post of Lecturer in a Private Institution. In the said letter, it was also clarified to him that he may join the post of Lecturer in the College on resignation from the Railway. A true copy of the letter dated 22.3.1977 is being filed as Annexure No. A-3 to this reply. Ultimately the competent authority had taken the decision on the application dated 8.2.1977 (Annexure A-1) and accepted resignation of N.M.Tripathi and the same was communicated to him vide letter dated 21.8.1986, impugned in O.A.

4. That contents of para 2 of the Rejoinder as stated are not admitted and in reply contents of para 8 of the Counter are reiterated as correct.

5. That contents of para 3 of the Rejoinder as stated are vehemently denied. The Colleges in which applicant remain working are Private College and the same are having different Committee of Management.

Sub-para (i) and (ii) of para 3 of Rejoinder are argumentative and the same are not admitted. After termination (by resignation) of services, applicant cannot ask for retirement because the same is misconceived.

It is pertinent to mention that as per record, applicant never moved an application for leave in the year 1977 and remain absent in view of his full time employment as Lecturer. However, at a belated stage in the year 1985, he made a request in his letter dated 8.4.1985 (Annexure No.1 to Rejoinder) for his voluntary retirement and further asked to treat his period of absence w.e.f. 22.3.1977 as extra ordinary leave uptill alleged voluntary retirement.

It is further pertinent to mention that grant of leave of any kind is absolute discretion of competent authority and the same cannot be claimed as a matter of right. In the instant case, no leave was granted to the applicant after 22.3.1977.

Besides the above noted factual position, it is important to state that even extra ordinary leave including all kinds of leave cannot be granted for more than five years in one spell. The alleged voluntary retirement can only be accepted when the Railway employee has completed 20 years qualifying service. The applicant (N.M.Tripathi) had not completed 20 years qualified service hence he cannot avail voluntary retirement.

As admitted by the applicant in his Rejoinder that he joined services of Railway on 1.1.1965 and left the Railways w.e.f. 22.3.1977. He could work for about twelve years only.

The applicant is not entitled for post-retirement benefit on the basis of 12 years qualifying services because he is short of 8 years qualifying service. The period of leave without pay even if granted will not be reckoned as qualifying services.

6. That contents of para 4 of Rejoinder as stated are not admitted except that the applicant joined his service in Railways w.e.f. 1.1.1965.

7. That next para wrongly numbered as para 4, need no comment.

8. That next para wrongly numbered as para 5 as stated is not admitted. The applicant was informed about acceptance of his resignation through the impugned letter dated 21.8.1986.

9. That contents of next para of Rejoinder wrongly numbered as para 6 are not admitted and in reply contents of paras 21 to 29 of the Counter reply are admitted as correct.

10. That the applicant ~~has~~ has filed the above noted case with a sole relief to secure post-retirement benefit i.e. Pension, Gratuity etc., from Railway Administration.

Shu 4/10/87
[Signature]

However with no stretch of imagination, applicant can be deemed to have completed 20 years qualifying services in Railways and as such relief claimed is beyond the scope of service conditions given in Railway Establishment Code. As such the Original Application is liable to be rejected with costs.

Lucknow, dated,
10.4.1992

Smt. W. J. Singh
Opposite Party.
Senior Divisional Personnel Officer,
North Eastern Railway, Lucknow.

Verification.

I, S.M.N. Islam, aged about 34 years, son of Sri S.M. Owais, Senior Divisional Personnel Officer in the Office of Divisional Railway Manager, North Eastern Railway, Ashok Marg, Lucknow, do hereby verify that the contents of paras 1 and 2 _____ are true to my own knowledge, contents of paras 3 to 9 _____ are based on records and contents of paras 10 _____ are believed by me to be true on legal advice and no part of it is false.

Signed and verified this 10th day of April, 1992 at Lucknow.

Smt. W. J. Singh
Opposite Party.
Senior Divisional Personnel Officer,
North Eastern Railway, Lucknow.

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सूचीत रिले

कार्यालय

महल अधीन (का०)

कानून

दि० 22-3-77

सं०-४/न०५०३/सस्टेना/ 77

स्टेशन अधीन

कानून ।

विषय :- नरिंद मणि त्रिपाठी सस्टेना (330-550) कानून दं
का आवेदन केबल पर हेतु ।

संदर्भ :- महाप्रबन्धक (का०) /गोहापुर का पत्रांक-४/227/टा/
कानून (३) दिनांक 15-3-77

मुख्यालय ने उपरोक्त पत्र के द्वारा सूचित किया है कि त्रिपाठी
की इच्छा है, पब्लिक ट्रेडर का जेब वारायशा में केबल पर पर टेपुलान
पर भेजने का कोई प्राविधान नहीं है, क्योंकि वह एक निवा (प्राइवेट) स्थिति
में आता है । अतः उसने डिपुलान वी० ३ पत्रांक ४/ (एनजी) ।। वा ८ ए०५/३
दिनांक ४-2-७७ के अनुसार मान्य नहीं है । फिर भी रेल परामर्श से इसका
संश्लेषण किया जा रहा है । इस नथ, अगर भी त्रिपाठी वहाँ जाना चाहते हैं
तो त्याग पत्र के बिना उन्हें उपरोक्त पद के लिए कार्यभार भुक्त किया जा सके,
उनकी त्याग पत्र स्वीकृत करने पर निहाल (टेनटेडिबली) त्यागपत्र स्वीकार
कर लिया जाएगा ।

उपरोक्त कर्मचारी की सूचित किया जाये । यह उनके पत्र दिनांक
3-2-77 एवं 8-2-77 के संदर्भ में है ।

सत्यापित प्रतिलिपि

हस्ता०

वृत्ति महल रेल प्रबन्धक (का०)

कानून

सत्यापित प्रतिलिपि

हते महल रेल प्रबन्धक (कानून)

दिनांक २२-३-७७

(13)

Annexure

To

The Divisional Supdt.(P)
N.E.Railway, Lucknow.

Sir,

I hereby, submit my understanding to you
So that ^{9.8.200} either resign or get back to my parent Job
after expiry of the terms of two years of the retention
of the lien as per Railway Board letter No. E/NG/1168/
AP/6 dated 4.12.68.

Thanks

Yours faithfully,

Sd/-

Narendra Mani Tripathi

A.S.M./ L.J.N

Dated: 8.2.77

साध्याना डीत

दी

मने मण्डल रेल प्रबन्धक (कापिक)

पूर्वोत्तर रेलवे, लखनऊ

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Extra Ordinary Leave :- This leave may be granted in special circumstances. When no other leave is by rule admissible, or when other leave being admissible a railway servant applies in writing for the grant of extra ordinary leave. Such leave is not benefit to the leave account. No leave salary is admissible during such leave. The authority which has the power to sanction leave may grant extra ordinary leave in continuation of or in combination with any other leave that is admissible (except casual leave) and may commute retrospectively, Periods of absence without leave into extra ordinary leave. The power of converting period of absence retrospectively into extra ordinary leave is absolute and is not dependent as to whether the employee applied for such conversion or not.

In case of permanent staff extra ordinary leave may be granted upto 5 years at a time. This 5 years' limit will be inclusive of other leave if any.

सत्यमेव जयते

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हते मण्डल रेल प्रवक्ता (कानिक)
पूर्वोत्तर रेलवे, लखनऊ

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

O.A. NO. 271/1989 M.P. 425/92

N.N. Tripathi --- Applicant

Vs.

Railway Board --- Opp.party.

APPLICATION FOR FIXING AN EARLY DATE FOR
FINAL HEARING

The applicant submits as under :-

1. That against the illegal removal order the applicant has filed the aforesaid application and now the date is fixed on 13.7.1992.
2. That in the aforesaid application, Counter rejoinder has been exchanged and the case is ripe for final hearing.
3. That the applicant is suffering a lot due to not disposal of the aforesaid application as an early date and therefore, it would be in the interest of justice to fix the date of final hearing in the week commencing 25th May 1992 by altering the date fixed.

WHEREFORE, it is prayed that this Hon'ble Tribunal may be pleased to fix the date of final hearing in the week commencing 25th May 1992 instead the date already fixed.

LUCKNOW:

DATED: 18.5.1992

(M.P. SHARMA)
ADVOCATE

COUNSEL FOR THE APPLICANT

FF. 137/92 for PH.

Filed today
18/5/92

Last week of
May 1992

(P. 26)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

O.A. NO.

M. P. 425/92
271/1989

N.N. Tripathi

Applicant

Vs.

Railway Board

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WHEREFORE, it is prayed that this Hon'ble Tribunal may be pleased to fix the date of final hearing in the week commencing 25th May 1992 instead the date already fixed.

LUCKNOW:

(M.P. SHARMA)

DATED: 18.5.1992

ADVOCATE

COUNSEL FOR THE APPLICANT

Before the Central Administrative Tribunal Chief Bench
Lucknow

To

~~The Dy. Registrar,~~
~~C.A.T. Lucknow Branch, Lucknow.~~

M. P. No. 738/91 (2)

O.A. No. 271/88 L

N. M. Tripathi Vs: Union of India.

Sir,

In the above noted case the department has taken a number of times to file counter affidavit but till today the department of/ O.P. has not filed their Counter affidavit.

Under the aforesaid circumstances I request that the aforesaid case may kindly be listed for ex-parte hearing before the learned bench in the week commencing 9th Dec. 1991.

Yours faithfully,

(M.P. Sharma)

Advocate.

Counsel for the applicant.

Dated: 2-12-91

Put up before
the Honble Bench
for orders on
13-12-91

21/12/91
2-12-91

Noted
day 13-12-91
M.P. Sharma

Filed for - 13-12-91 (A/S)

Before the Central Administrative Tribunal,
Lucknow.

M. P. No. 777/91(L)

O.A.No.271 of 1989 (L).

--

Narendra Mani Tripathi. -----Applicant

Versus

Railway Board and others. -----Opp-parties

--

Application for dismissing the
Original Application.

I, S.M.N.Islam, aged about 34 years, son
of S.M.Owais, Senior Divisional Personnel Officer
in the Office of Divisional Railway Manager,
North Eastern Railway, Ashok Marg, Lucknow, do
hereby state as under :-

1. That the official above named is working
as Senior Divisional Personnel Officer in the
Office of the Divisional Railway Manager, North
Eastern Railway, Ashok Marg, Lucknow, as such he
is fully conversant with the applicant's case
and is competent to file this application on behalf
of the opposite parties.

2. That it is pertinent to mention specifically
again that there is no provision in Railway
Administration of sending or allowing an employee

Filed today
11/12/91

Suzulian
You are free to A

on deputation in any organisation other than Government Central Organisation. Moreover, there must be a 'public interest' even for sending a Railway employee in some other Government Central Organisation. As such applicant's claim for joining a privately managed college (Harish Chand Degree College, Varanasi) was beyond the scope of law and in the said circumstances after joining privately managed college, there was no deputation and no question of lien in any manner.

3. That the applicant submitted an application dated 8.2.1977 to the Department indicating therein his request of tendering resignation from Railways or to grant two years absence on maintaining lien in Railways. Because the second option i.e. two years absence from Railway service maintaining lien was not permissible in law and applicant joined his new appointment at Harish Chand Degree College, Varanasi, his first option of tendering resignation was accepted and his services came to an end on 22.3.1977.

4. That it is further pertinent to mention that the resignation submitted by a Railway servant can be accepted with immediate effect or with retrospective effect or from prospective date as per Railway Board's Circular No.E/NG/II-71/RG/1 dated 17.9.1971.

5. That after considering circumstances of Sri N.M.Tripathi's application dated 8.2.1977,

Shri N.M. Tripathi
Sd/-
[Signature]

his resignation was accepted by the Railway Administration w.e.f. 22.3.1977. The said decision was communicated to the applicant through proper channel.

6. That it is pertinent to mention that the applicant secured fresh appointment as Lecturer at Harish Chand Degree College, Varanasi, w.e.f. 22.3.1977 and never joined the Railways again. As such applicant could work in the Railways for very short period and as such he is not entitled for the relief claimed in the original application.

7. That for the facts and circumstances stated above, the Original Application is liable to be dismissed with costs.

Wherefore, it is most respectfully prayed that the abovenoted case i.e. O.A.No.271 of 1989 (L) may kindly be dismissed in the interest of justice.

Lucknow, dated,
10.12.1991

Smt. Usha
Respondent/Applicant.

श्री कृष्ण चरण शर्मा
अधिवक्ता

Kuldeep Singh

(K.D.Nag)
Advocate.
Counsel for the Railways.

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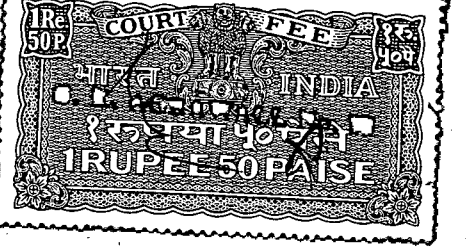
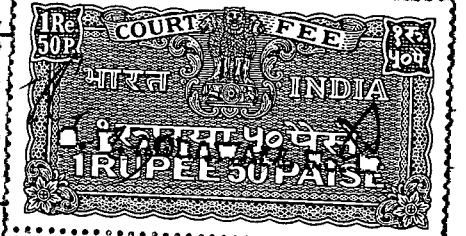
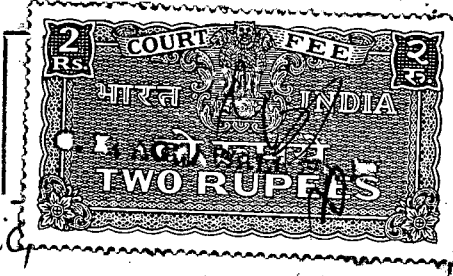
व अदालत श्रीमान् Central Administrative Tribunal महोदय

[वादी] अपीलान्त

श्री Narendran Nani Tripathi

प्रतिपादी [रेस्पॉण्डेंट]

वकालतनामा



Union of India

नं० मुकद्दमा

सन्

पेशी की

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री

M. P. Sharma, Premod Sharma

वकील

महोदय

एडवोकेट

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर 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 करे मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी विपक्षी (फरीफसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखली) रसीद से लेवें या पंच नियुक्त करें--वकील महोदय द्वारा की गई वह सब कार्यबाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर तहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

नाम अदालत
मुकद्दमा नं०
नाम फरीफेन

हस्ताक्षर

M. P. Sharma

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

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स्वीकृत