

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

INDEX SHEET

CAUSE TITLE O.A. 309 OF 19

NAME OF THE PARTIES Banshu Das Applicant

Versus

..... Omnia of grde 9 Respondent

Part A.

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CERTIFICATE

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

Dated ..20-6-11

Counter Signed.....

Log No 101224
Log No 101224

Section Officer/In charge


Signature of the
Dealing Assistant

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
3/12/89 <i>See original order in green filebox</i>	<p>Hon Justice K. Nethi, I.C. <u>Hon Mr. K. P. Ramchand, A.M.</u></p> <p>Admit List this case for orders on 16/1/90</p>	
16/1/90	<p>A.M. V.C.</p> <p><u>Hon. J. P. Sharma, S.M.</u></p> <p>Sir R.S. Srivastav, I.C. for the applicant & Dr. D. Chandra, Counsel for the respondents. The present Respondents request requests for two weeks time to file reply. Allow. Let reply be filed within two weeks but this case for order on 13.3.90</p>	<p>No reply filed submitted for order L 15/1/90</p>
13.3.1990	<p><u>Hon. Mr. D.K. Agrawal, J.M.,</u> <u>Hon. Mr. K. Obayya, A.M.</u></p> <p>Shri R.N. Srivastav, for the applicant and Dr. Dinesh Chandra for the respondents are present. The learned counsel for the respondents stated that counter affidavit is in the process of being prepared. However, the power does not appear to be on record. Let the power be filed. Counter affidavit, if any, be filed with 6 weeks and rejoinder affidavit within 2 weeks. List it for hearing on 13.7.1990.</p>	<p>No reply filed S. Fo L 12/1</p>
	<p><i>R</i> A.M.</p> <p><i>De</i> J.M.</p> <p>sd.</p>	<p>CA filed today L 12/1</p>

13-7-90 No setting adj. to 13-3-90

RA filed

3/1/90

CA/RA have been exchanged

S.S.Y

L 11/9

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

CIRCUIT BENCH, LUCKNOW.

(P/X)

O.A. No. 309/89(L)

Banshu Das

Applicant.

versus

Union of India & ors.

Respondents.

Hon. Mr. Justice K. Nath, V.C.

Hon. Mr. K. Obayya, A.M.

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

This application under section 19 of the Administrative Tribunals Act, 1985 has been filed for issue of directions for confirmation of the applicant with effect from 1.8.1975 and for creating supernumerary post for the purpose and to grant him consequential benefits flowing from the confirmation from the due date.

2. Counter-Rejoinder have been exchanged and we have heard the learned counsel for both the parties. The material facts are no longer disputed. The applicant was appointed as U.D.C. on 7.2.73 and was admittedly due for confirmation on 1.8.75. However, he was not confirmed by the department in consequence of the D.P.C. on 17.7.76 on the ground that the C.R. was not available. He was not confirmed subsequently on the ground that there were adverse entries in his character roll for the period from August 76 to March 77. In

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course of time, however, he was ~~not~~ found fit and was confirmed with effect from 1.7.82. The applicant's case is that there were no adverse entries whatsoever in the applicant's service record prior to the due date i.e. 1.8.75 and that the D.P.C. fell into an error in denying confirmation with effect from the due date only on the basis of subsequent adverse entries. There is substance in this contention, as is apparent from the Accountant General (A.E-1), Allahabad respondent No. 2 letter dated 9.1.1985 referred to in para 4.13 of the application and produced before us today. It is clearly mentioned that on review it was detected that the applicant had not earned any adverse entry till the year 1975-76 and therefore overlooking for confirmation with effect from 1.8.1975 on the basis of adverse entries for subsequent years was not justified. In this very letter a request was made for creation of a supernumerary post of Auditor for the benefit of the applicant for the period from 1.8.1975 to 30.6.1982, when the applicant was ordered to be confirmed with effect from 1.7.1982. One of the prayers made in the application is that a DPC may be required to be held to consider the applicant's confirmation with effect from 1.8.75. We, in the facts and circumstances of the case do not think it necessary to call for DPC. We are of the opinion that the applicant must be confirmed with effect from 1.8.1975.

3. The learned counsel for the applicant has also requested for consequential benefits. The learned

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counsel for the respondents says that the claim is barred by limitation and that the grant of any consequential benefit will upset the seniority ~~by~~ of a number of persons. We do not think that the bar of limitation should stand in the way of the facts and circumstances of this case in as much as it is the admitted case of the parties that the applicant had been denied confirmation from the due date only on the basis of subsequent adverse entries which was not permissible in the eyes of law. Indeed, in the letter dated 9.1.85 of the department itself, it was stated that the applicant's withholding of confirmation as on due date was not justified. In this view of the matter, the claim of the applicant may not be rejected on account of delay or principle of limitation.

4. We do not think that any substantial change in the seniority may be involved by the consideration of the ~~and~~ solitary case of the applicant. However, it is premature for us to say what kind of consequential benefits the applicant may be entitled to because, the record will have to be examined by the competent authority for the period after 1.8.1975 in order to see what service benefits he was entitled to. We are not in a position to record any firm opinion upon how the applicant is to be dealt with in the matter of consequential benefits on account of confirmation with effect from 1.8.1975.

5. For the reasons indicated above the petition is partly allowed and we direct that the applicant

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shall be deemed to have been confirmed as Auditor with effect from 1.8.1975. We also direct the respondents to examine the case of the applicant for consequential benefits with effect from 1.8.1975 and to award him such benefits as he may be found to be entitled in accordance with the applicable rules within a period of six months from the date of receipt of copy of this judgment.

Adm. Member.

Vice Chairman.

Lucknow Dt. December 14, 90

Central Administrative Tribunals
Circuit
Date of Filing
Date of hearing

6-11-89

F O R M - I

✓ Deputy Registrar (S)

Application under Section 19 of the Administrative

TRIBUNALS ACT, 1985.

Title of the Case: Antedating of date of Confirmation
from due date.

I N D E X

<u>S. No.</u>	<u>Description of documents relied upon.</u>	<u>Page Nos.</u>
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1.	Application	1 to 17
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2.	Copy of impugned letter No.3 Araj./ 111/9-86, dated 25.1.1989 of CAG, rejecting representation.	
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Attached
after Application

LUCKNOW: DATED:
Nov. 6, 1989.

R.S. Srivastava

(R.S. SRIVASTAVA)

ADVOCATE

COUNSEL FOR THE APPLICANT.

filed today
by Noida
6/11/89
R.S. Srivastava
Advocate

FORM - I

Application under Section 19 of the Administrative
Tribunals Act, 1985.

Title of the case: Antedating of date of Confirmation
from due date.

I N D E X

Sl.No.	Description of documents relied upon.	Page No.
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1.	Application.	1 to 17
2.	Copy of letter dated 28.6.84 of applicant for antedating confirmation. - <u>Annexure A-1.</u>	18
3.	Copy of letter dated 29.5.86 of applicant for doing justice in the case. - <u>Annexure A-2.</u>	19
4.	Copy of letter dated 24.6.86 of the applicant for allocation to audit cadre of juniors. - <u>Ann. A-3.</u>	20
5.	Copy of letter dated 30.12.87 of applicant for option till decision of confirmation. - <u>Annexure A-4.</u>	21
6.	Copy of letter No. Admn.I/1-105/Vol. XVIII/KW/101 xxxxxxxxxx dated 4.6.84 regarding antedating to July 1, 1982. - <u>Annexure A-5.</u>	22
7.	Copy of letter No. Admn.I/1-105/Vol. XVIII/KW/1990 dated 25.8.88 for rejection of antedating. <u>Ann. A-6.</u>	23
8.	Copy of letter No. 639/PS/MI/88, dt. 18.11.1988 forwarding case to C.A.G. - <u>Annexure A-7.</u>	24 - 28
9.	Copy of letter No. 3 Araj./111/9-86 dt. 25.1.89 of CAG, rejecting representation. - <u>Annexure A-8.</u>	29
10.	Vakalatnama.	30

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SIGNATURE OF APPLICANT.

Date of filing

or

Date of receipt by post

Registration No. 309/0965

Signature.

For Registrar.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW.

Banshu Das, son of late Shri Baba,
residing at 5/163, Vikas Nagar,
Kursi Road, Lucknow, at present
on deputation with Government of
U.P. as Public Relation Officer,
to Hon'ble Minister of Revenue,
Lucknow (from A.G.U.P., A&E I, Allahabad).

...Applicant.

5/2/89

Versus

1. Union of India (through the
Comptroller and Auditor
General of India, New Delhi).

2. The Principal Accountant General
U.P. (Accountant General, Accounts
& Entitlement-I, Allahabad), Allahaba-
bad.

3. The Senior Deputy Accountant
General, Administration, Office
of Accountant General, A & E-I
Allahabad.

4. The Accountant General, U.P.
Accounts-II, Allahabad.

... Respondents.

Banshu Das

Details of Application:

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

D.O.Letter No. 3-Araj.111/9-86, dated 25.1.1989 written by Shri Roshan Lal Kapoor, Administrative Officer (Araj.III), Office of the Comptroller and Auditor General of India, New Delhi, addressed to Shri Chani Ram Arya, Personal Secretary to Hon'ble Revenue Minister, U.P. Government, Vidhan Bhawan, Lucknow, rejecting the representation of the applicant.

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 Tribunals Act, 1985.

4. Facts of the case:

4.1: That the applicant was appointed as U.D.C. on 7.2.1973 (as a Scheduled Caste Candidate) and at present posted at Lucknow as P.R.O. to Minister of Revenue U.P. Government Lucknow (on deputation from A.G. A & E I, Allahabad.)

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4.2: That the applicant worked with sincerity, devotion, Zeal and determination.

4.3: That the annual confidential reports of the applicant for 1973-74, 74-75 and 75-76 were upto the mark as no adverse entries for those years were ever communicated to the applicant.

4.4: That the confirmation of the applicant became due on 1.8.1975.

4.5: That the Departmental Promotion Committee which met on 17.7.1976 deferred the confirmation of the applicant because the A.C.R. for 1975-76 of the applicant was not made available to the Departmental Promotion Committee.

4.6: That a post was kept reserved for applicant for confirmation.

4.7: That merit as reflected in Annual confidential Reports is generally recognised as the main criterion for deciding the cases of promotion, confirmation and Efficiency bar cases. It is, therefore, of utmost importance, both in the interest of efficiency of services as well as also in the interest of employees, that A.C.Rs. are written on due dates, with greatest possible care so that the work, conduct, character and capabilities of employees reported upon can be accurately judged from the recorded opinion.

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The A.C.R. for a year has to be written within one month of the expiry of the report period.

The Union Public Service Commission have also laid emphasis on maintaining the A.C.R.s. in a systematic manner so that the Government Servants are not deprived of their legitimate claims.

That the A.C.R. for the year 1975-76 of the applicant was not written on due date and the same was not put up to Departmental Promotion Committee on 17.7.1976 which was convened for consideration of confirmation cases of other employees including the applicant. Thus Respondent No.2 was wholly responsible for this Administrative lapse which has resulted in the present grievance for which this application is being filed.

4.8: That subsequent D.P.Cs. which were convened did not clear the case of confirmation of the applicant because of adverse entries in A.C.R. for 1976-77. Thus the subsequent D.P.Cs. also seriously erred in considering the A.C.Rs. for the year subsequent to A.C.R. for 1975-76. The action of the D.P.C.s. was also thus illegal and their action while considering the confirmation case of the applicant on the basis of A.C.R. for 1976-77 was beyond jurisdiction.

4.9: That subsequent to year 1975-76, the A.C.R. of the applicant for the year 1976-77 became adverse. The applicant was also served with a charge sheet.

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containing the following charges:-

- (1) Difference of Rs. 20.00 in Accounts;
- (2) Irregular and not punctual;
- (3) Taking much leave;
- (4) Taking much casual leave.

The applicant replied to the above charges and an Enquiry Officer was also appointed in the case.

The Enquiry Officer submitted his report to the Sr. D.A.G. Administration (Disciplinary Authority) but the then Sr. D.A.G. took abnormal time (3 to 4 years approximately) in deciding the matter.

Though according to instructions of Government of India the report of the Enquiry Officer was to be finalised within three months by Disciplinary Authority. The Disciplinary Authority imposed one minor penalty of stoppage of one increment without cumulative effect. In the mean time the Efficiency Bar of the applicant also became due and that was not allowed.

The applicant thereafter, appealed to the Appellate Authority viz the A.G.U.P. A.E.I. Allahabad (Respondent No. 2) Shri A.N. Biswas who was pleased to exonerate the applicant from all the charges and the applicant was allowed to cross the efficiency bar vide O.O.No. Admn.I/Auditor/ also to Rev./Exmn./Aug 1977 dated 5.7.1983 and draw the all the arrears from due dates.

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4.10: That one post was reserved for the applicant after the D.P.C. which met on 17.7.1976 could not consider the confirmation of applicant due to non-availability of A.C.R. for the year 1975-76. This post was filled up after 1.7.1981 to the prejudice of the applicant.

That in confirming another candidate against the post which was reserved for the applicant, the Respondent No.2 did not act impartially and by filling that post after 1.7.1981 marred the future of the applicant.

4.11: That the confirmation of the applicant was made w.e.f. 1.7.1983 and on representation it was only antedated from 1.7.1982.

4.12: That as per instructions of the Government of India, included in the book viz. 'Seniority and promotion' by P. Muthuswamy page 102, 103, the review D.P.C. should have been convened as soon as the annual confidential report of the applicant was made available for the year 1975-76. It has been clearly laid down in the instructions that a review D.P.C. should be convened when eligible persons were omitted to be considered and the review D.P.C. should strict the scrutiny to the C.Rs. for the period relevant to the first D.P.C. The C.Rs. written for subsequent periods should not be considered. Had the review D.P.C.

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would have been convened by Respondent No.2 as
the case of the Applicant would not have been delayed
soon as the C.R. for the year was available but
since Respondent No.2 did not convene the review
D.P.C., the claim of applicant for confirmation
could not be considered by review D.P.C..

The action of Respondent No.2 was thus contrary
to instructions of Government of India and was
also arbitrary and discriminatory.

The Review D.P.C. was also not convened
when the applicant was exonerated of all the
charges by Appellate Authority and was allowed
to cross the Efficiency Barvide letter dated
5.7.1983. Thus the action of Respondents no.2
and 3 was contrary to instructions of Government
of India cited above and their lapse in convening
Review D.P.C.s. was against the interest of the
Applicant. The hostile discrimination in the case
of applicant thus resulted in irreparable loss
to the applicant.

4.13: That A.G.A.E-1, Allahabad (Respondent No.2)
in their letter No.DAG/(Admn.)/Cell/120 dated
9.1.1985 wrote to Compt roller & Auditor General
of India (Respondent No.1) that the D.P.C.
which met on 17.7.1976 deferred the case of the
Applicant for confirmation because A.C.R. for
1975-76 was not available. A post was reserved
for him till 1.7.81 but he was not found fit for
confirmation by successive D.P.C.s. and the post

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was filled by another candidate belonging to Scheduled Caste. The applicant later on was found fit and was confirmed w.e.f. 1.7.1982. They further wrote that on reviewing the case it was detected that he did not earn any adverse entry till 1975-76 and his being overlooked for confirmation on 1.8.1975 on the basis of adverse entries in subsequent years was not justified and requested that one supernumerary post be created for the period from 1.8.1975 to 30.6.8 for accommodating the lien of the Applicant.

The C.A.G. (Respondent No.1) created one supernumerary post vide their letter No. 3377 57-86 I, dated 12.8.1986.

The Respondent No.2 did not confirm the applicant even when the said post was created by Respondent No.1. The action of Respondent No.2 was thus wholly arbitrary, illegal and unjustified.

4.14: That Ministry of Government of India in O.M. No. 119/58-RPS dated 16.5.1959 laid down that the confirmation should be made strictly on basis of seniority subject to the rejection of unfit. It was further stated in the said O.M. that in considering cases of officers for confirmation the D.P.C. should not assess the relative merit of the candidate. Inspite of the clear instructions from Government of India that the

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confirmation should be made strictly on the basis of seniority, the Respondents have not followed them and have confirmed hundreds of persons who were junior to the applicant. The result was that all those who were juniors to the applicant were enjoying better scales and better status viz-a-vis the applicant. One Shri Jagdip Kumar who was much junior to the applicant is enjoying the status of **Supervisor of Accounts w.e.f. 1.3.1984** in the new scale Rs.1640-2900 (old Scale 500-900). This not only infringed the provisions of Articles 14 and 16 of the Constitution of India but has resulted into financial and irreparable loss and mental torture to the applicant.

4.15: That Miss Radha Rani Gupta and Kripa Shanker Misra, Auditors whose Annual Character Reports were adverse for subsequent years as compared to the years for which the A.C.R. were to be considered, were confirmed from due dates. Thus denying the benefit of confirmation from some other date rather than due date to the applicant, was wholly arbitrary, discriminatory and illegal on the part of Respondents and their actions in denying the benefit of confirmation from due date to the applicant as already allowed to Miss Radha Rani Gupta and Kripa Shanker Misra, Auditors was violative of provisions of Articles 14 and 16 of the Constitution of India.

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4.16: That the applicant had represented to the Accountant General, U.P.II Accounts, Allahabad vide his letter dated 28.6.1984 and had stated therein that the confirmation which was ante-dated w.e.f. 1.7.1982 should be antedated from the due date. A copy of the said representation is being filed as Annexure No.A-1.

4.17: That the applicant vide his letter dated 29.5.1986 wrote to the Principal Accountant General, Allahabad, Respondent No.2 and prayed that the applicant be allocated to Audit Wing as hundreds of junior Accountants were allocated to Audit Wing in the scheme viz 'Restructuring of cadres of IA & A.D.' whereas the applicant was denied that benefit. A copy of the said letter is being filed as Annexure A-2.

4.18: That on 24.6.1986 the applicant sent the reminder for his letter dated 29.5.1986 intimating that no action has since been taken in his case and requested for doing justice in the case. A copy of the said letter is being filed as Annexure No.A-3.

4.19: That on 30.12.87 the applicant wrote to the Senior Deputy Accountant General, A.G., A & E-I Allahabad that since antedating of confirmation was pending, he could not exercise option for

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Audit or Accounts Wing and further requested that the option be kept open till the finalisation of case of antedating of confirmation from due date. A copy of the letter is being filed as Annexure A-4.

4.20: That on my request the antedating was done from 1.7.1982 instead of 1.7.1983 done originally vide letter No. Admn.I/1-105/Vol.XVIII/KW/101 dated 4.6.1984. A copy of the said order is being filed as Annexure No.A-5.

4.21: That vide letter No. Admn.I/1-105/Vol.XVIII/KW/1990 dated 25.8.1988 the Respondent No.2 informed the applicant that the representation for antedating the confirmation was rejected by Head Quarter Office. A copy of the said letter is being filed as Annexure A-6.

4.22: That the applicant represented to the Comptroller and Auditor General of India on 18.11.1988 giving the entire details of his legitimate claim and requested him to antedate the confirmation from due date. A copy of the said representation for review of decision of Respondent No.1 which was taken by him after Respondent No.2 referred the case to him is being filed as Annexure No.A-7.

4.23: That the C.A.G. (Respondent No.1) has rejected the representation vide his letter No. 3-Araj/111/9-86, dated 25.1.1989. The cause of action thus arose on 26.1.89. A copy of the same is being

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filed as Annexure No. A-8. The rejection of the representation by C.A.G. was contrary to rules and arbitrary as no review D.P.C. was ever convened by Respondent No.2 and when the C.A.G. Respondent No.1 had already created one supernumerary post of an Auditor vide his letter No. 3377 BRS 57-86-I, dated 12.8.1986, it was wholly unjustified and against the principle of Promissory Estoppel to have rejected the valid claim of the applicant.

4.24: That due to non-finalisation of claim of confirmation from due date w.e.f. 1.8.1975 the applicant could not opt either for Audit wing, or for Accounts wing, created under the scheme of Instructions for restructuring of cadres in Indian Audit and Accounts Department, which came into operation w.e.f. 1.3.1984 and had to suffer irreparable loss.

4.25: That the applicant is left with no other speedy and efficacious remedy except to invoke the jurisdiction of the Hon'ble Tribunal for enforcement of his legal and constitutional rights and the present application is being filed inter alia for redressal of the grievances of the applicant on the following grounds:

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS.

5.1: Because Instructions issued by the Government from time to time for constituting a Review

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D.P.C. were not adhered to. Had the review B.P.C. would have been called in time in the case of Applicant, he should have been declared confirmed from the due date i.e. from 1.8.1975.

5.2: Because the instructions contained in Ministry of Home Affairs OM No.1/9/58-RPS dated 16.5.59 to the effect that the confirmation should be made strictly on the basis of seniority subject to the rejection of unfit were not followed.

5.3: Because the D.P.Cs. which met subsequent to 17.7.76 (the date of meeting of D.P.C. which deferred the confirmation of applicant) seriously erred by examining the A.C.Rs. for years subsequent to 1975-76. As per the instructions given by Government from time to time, the C.Rs. for subsequent periods were not to be considered. This is also supported by Case law viz D.K. Sharma Vs. Delhi Admn. & others 1989(9)A.T.C. 479.

5.4: Because of lapse on the part of Respondent No.2 the applicant has become junior to several hundreds of persons.

5.5: Because fundamental rights enshrined in Article 14 and 16 have been infringed.

5.6: Because the applicant is suffering irreparable and recurring financial loss every year.

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5.7: Because he has also been denied the promotional chances and juniors to the applicant are holding higher posts at present.

5.8: Because the Disciplinary Authority took longer time to take decision in the case of Applicant in finalising the report of the Enquiry Officer.

5.9: Because when one post was reserved for the Applicant's confirmation, till 1.7.1981, confirming some one else against that post was wholly illegal and unjustified.

5.10: Because the C.A.G. had created a supernumerary post for the confirmation of the applicant but even then the Antedating of confirmation from due date was not done by Respondent No.2 resulting into absolute discrimination.

6. Details of the Remedies exhausted:-

The applicant declares that he has availed of all the remedies available to him under the relevant service rules:

1: Represented to Accountant General U.P.II Accounts, Allahabad on 28.6.84 for antedating confirmation from due date as it was antedated only from 1.7.1982 and not from due date.

2: Represented to Principle Accountant General, U.P., Allahabad (Respondent No.2) on 29.5.86

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reminding him of doing justice in the case of applicant as hundreds of junior Accountants were allocated to Audit Cadre.

3. Represented to C.A.G. on 18.11.1988 but this representation rejected by C.A.G. vide his letter dated 25.1.1989.

8. 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 and grounds mentioned and para 4 and 5 above, the Applicant prays for the following relief(s):-

(1): Directions may be issued to Respondent No.1 to create a supernumerary post for confirmation of applicant from due date;

(2): Directions may be issued by the Hon'ble Tribunal to Respondent No.2 to call for the Review D.P.C. for consideration of the Confirmation.

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tion of applicant from due dates 1.8.1975 on the basis of A.C.Rs. upto 1975-76 vis-a-vis the candidates due for confirmation on 1.8.1975.

3: Directions may be issued by the Hon'ble Tribunal to Respondent Nos. 1 and 2 to grant all consequential benefits flowing from antedating of confirmation from due date (1.8.75);

4: Directions may be issued to Respondents No. 1 and 2 to allow the applicant to elect either Audit or Accounts wing w.e.f. 1.3.84 on the basis of confirmation from due date (1.8.75);

5: Hon'ble Tribunal may allow such other relief/reliefs as deemed fit taking into consideration the circumstances of the case;

6: Hon'ble Tribunal may allow the cost of the petition.

9: Interim order if any prayed for pending final decision on the application, the applicant seeks the following Interim Relief:

The Respondent No.2 (The Principal Accountant General of U.P., Allahabad) who is the Controlling Authority of the Applicant may be directed to convene the Review D.P.C. immediately for consideration of confirmation of the applicant on the basis of C.R. for 1975-76 w.e.f. 1.8.75 by getting one supernumerary post created, so that the applicant may not suffer irreparable loss any more.

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10: The application is being submitted personally.

11: Particulars of the Postal order filed in respect of the application Fee:

Postal Order No. ^{DD} 6 839216 for Rs.50-00 dated

18.10.1989 issued from High Court, Post Office, Lucknow.

12: List of Enclosures:

As per Index and one Postal order for Rs.50/- and one Vakalatnama.

VERIFICATION

I, Banshu Das, son of late Shri Baba, aged about 43 years, residing at 5/163, Vikas Nagar, Kursi Road, Lucknow employed as Accountant in the office of A.G.U.P.I Accounts, Allahabad and at present on deputation as Public Relation Officer to Hon'ble Revenue Minister to Government of U.P. Lucknow do hereby verify that the contents of paras 1 to 12 ^{except 4.14, 4.15&5} are true to my personal knowledge and paras 4.14 to 4.15&5 believed to be true on legal advice and that I have not suppressed any material fact.

DATE: November 6, 1989

Place: Lucknow.

Banshu Das
SIGNATURE OF APPLICANT.

THROUGH: *R. S. Srivastava*

(R.S.SRI VASTAVA)
ADVOCATE

COUNSEL FOR THE APPLICANT.

Impugned order

In the Central Admin. Tribunal, Lucknow

Regn. No: - - - 41989

Banshu Das - - - Applicant

vs

पत्र सं०

No. 3-भराज 0111/9-86

Uttoriq India & others - - - Respondents. भारत से नियन्त्रक विभाग द्वारा दिल्ली-110002

Akhne

OFFICE OF THE COMPTROLLER
AND AUDITOR GENERAL OF INDIA,
(Bharat Ke Nyantrak-Mahalekha
Parikshak Ka Karyalaya),
NEW DELHI-110002

श्री रोशान लाल कपूर

प्रशासक अधिकारी, भराज 0111

दिनांक

Dated.....

प्रिय श्री आर्य.

फृप्ता अपने पत्र दिनांक 18.11.1988 जिसके साथ श्री ईश्वर
दास, लेखांकार 04/3213 के प्रत्यावेदन की अग्रिम प्रति इस कार्यालय को
मेंजी गई है, यह एवां अवलोकन करें।

श्री ईश्वर दास, लेखांकार के मामले पर सहानुभूति पूर्वक विद्यार
किया गया परन्तु उसके प्रत्यावेदन को नामंदूर कर दिया गया है।

मंवदीय

रोशान कपूर

24.1.86

रोशान लाल कपूर

Alleged

Responding

Advocate

श्री द्वंद्वी राम आर्य.

किसी संघिव.

मतो राजस्व मंत्री.

विधान मंत्री.

लेखांक

(S)

FORM - I

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNAL ACT, 1985.

Title of the case: Antedating of date of confirmation from due date.

LIST OF ENCLOSURES

Sl. No.	Description of documents relied upon.	Page No.
---------	---------------------------------------	----------

1.	Copy of letter dated 28.6.84 of applicant for antedating confirmation. - <u>Annexure A-1.</u>	18
2.	Copy of letter dated 29.5.86 of applicant for doing justice in the case. - <u>Annexure A-2.</u>	19
3.	Copy of letter dated 24.6.86 of the applicant for allocation to audit cadre of juniors. <u>Ann.A-3.</u>	20
4.	Copy of letter dated 30.12.87 of applicant for option till decision of confirmation. - <u>Annexure A-4.</u>	21
5.	Copy of letter No. Admn.I/1-105/Vol. XVIII/KW/101, dated 4.6.84 regarding antedating to July 1, 1982. <u>Ann.A-5.</u>	22
6.	Copy of letter No. Admn.I/1-105/Vol. XVIII/KW/1990 dated 25.8.88 for rejection of antedating. <u>Ann.A-6.</u>	23
7.	Copy of letter No. 639/PS/MI/88, dated 18.11.1988 forwarding case to CAG. <u>Ann.A-7.</u>	24-28
8.	Copy of letter No. 3 Araj./111/9-86 dt. 25.1.1989 of CAG, rejecting representation. - <u>Annexure A-8.</u>	29
9.	Vakalatnama.	30

LUCKNOW: DATED:
November 6, 1989.

R.S. Srivastava
(R.S. SRI VASTAVA)
ADVOCATE
COUNSEL FOR THE APPLICANT.

In the Central Admin. Tribunal, Lucknow
Registration No. 4/1989
Banshu Das ... Applicant
Union of India & others ... Respondents ^{Ammonia}
No. C.P.III/LKO Zone/15 dated 28.6.1984. A,
To

Shri S.C.Mukerjee,
Accountant General I (Accounts)
Uttar Pradesh,
ALLAHABAD.

Subject, Correction in the anti-dating of confirmation.
Sir,

In accordance with your office letter No. Min. I/1-105/
Vol. XVIII/KW/101 dated 4.6.1984 I am to state that my
confirmation has been anti-dated with effect from 1-7-1983
to 1-7-1982. In this respect I am to submit that my case
has for a good length of time remained under consideration
and all the charges which were framed against me and on
account of which my E.B. and confirmation was held up. Finally
I was exonerated from all the charges and all the penalties
which were wrongly imposed on me withdrawn as a result of
this all the benefits were restored like increments, pay and
allowances.

It is surprising that my confirmation which was originally
due with effect from 1-3-1975 has been anti-dated to 1-7-82.
It appears that some errors have taken place on account of
which the anti-dating of my confirmation has been done instead
of 1-3-75 to 1-7-82.

Most humbly I request that the necessary correction
in the office order referred above may kindly be made so as
to restore the benefits of from which I have been wrongly
deprived.

Thanking you in anticipation.

Attested

R. S Srivastava

Advocate

Yours faithfully,

B.D.
BANSHU DAS

Audi 704/3213
CP III/LKO Zone,
Lucknow.

In the Central Audit Tribunal, Lucknow
Regd. No. 14/1989

- 19 -

Banshu Das ... Applicant

To Union of India & others ... Respondents Answerer A₂
the Principal Accountant General
Uttar Pradesh Allahabad

8/9

Sub. Allocation to the Audit Cadre

Sir

With due respect I am to state
that I joined your office on 7.2.1973.
I could not be allocated to the audit
cadre while hundreds of junior
accountants are allocated to the audit
cadre. I am deprived of the benefits
of the pre structuring.

It is therefore requested that the
justice may kindly be done in my favor.
In case it is not done I may kindly
allow to get the shelter of human
high court.

9.5.86

Yours faithfully

Banshu Das

Accountant
Pension (Muc)
Section A.G.U.P.T.
Allahabad

Resonating
Received

1/2
1/2

In the Central Audit Tribunal, Lucknow

Regd. No: 14/1989

- 19 -

Banshu Das Applicant

To Union of India & Others ... Respondents Answerer A2
the Principal Accountant General
Uttar Pradesh Allahabad

(F/13)

Sub: Allocation to the Audit

Sir

With due respect I am to state
that I joined your office on 17.2.1973.
I could not be allocated to the audit
cadre while hundreds of junior
accountants are allocated to the audit
cadre. I am deprived of the benefits
of the pre structuring.

It is therefore requested that the
justice may kindly be done in my favor.
In case it is not done I may kindly
be allowed to get the shelter of honour
albeit high court.

Yours faithfully

Banshu Das

Accountant
Pension (Henc)
04/3213

Section A GULPIS
Allahabad

Attested

29.5.86

Resonitus

Advocate

~~Resonitus
Advocate~~

In the Central Admin. Tribunal, Lucknow
Reg. No. ... 14/1989

Banshu Das ... Applicant
To Shri. N. Srinivasarao ... Respondents

- 20 -

To the Principal Accountant General
Uttar Pradesh
Allahabad

Sub:- Allocation to the audit cadre.

Sir,

With reference to my letter dated 29.5.86 regarding allocation to the audit cadre I am to state that no action has been taken so far. While several junior accountants are allocated to the audit cadre I am deprived of the benefits of the restructuring of the offices.

Therefore I request you to kindly do the justice in case it is not done I shall move to honorable high court within 15 days of the receipt of this letter and it will be deemed as

permission.

24/6/86

Attested
R. Srinivasarao
Advocate

Yours faithfully

Banshu Das
04/3214C H-
ASUP II Allahabad

24/6/86

In the Central Admn. Tribunal Lucknow
Regd. No: 1/11989 - 21
Banshu Das Applicant
vs.

To Union of India & Others - Respondents Annexure A/4
the Senior Deputy Accountant General
A.G. (A&E) I U.P. Allahabad

Sir

With reference to O.D.M.O. Admin I
GRD 14-01/256 dated 11/12/07 I am to state
that my anti dating of confirmation case
is pending in admin section for the
last four years, I do not know where
I stand in gradation in this office.
In this circumstance, it is very difficult
to exercise final option unless my
case is decided

Therefore I request you to
kindly remain open my option till the
decision of my confirmation case.

I shall be highly obliged.

Yours faithfully

30/12/07

Attested
R.S. Soni
Advocate

Banshu Das
Act
09/3/13

2/1

In the Central Adm. Tribunal, Lucknow
Regd. No. 14/1989

Banshu Das ... Applicant
Union of India & Others ... Respondents
OFFICE OF THE ACCOUNTANT GENERAL (ACCOUNTS)

22

AP/6

U.P. PRadesh, ALLAHABAD.

For 305/10

No. Admn. I/1-105/Vol. XVIII/KW/1/4 Dated: 4.6.1984.

OFFICE ORDER

Annexure A-5

Accountant General (Accounts)-I, U.P.,
has been pleased to order ant-dating of
confirmation of Shri Banshu Das, ^{Indor known} Accountant
(P. No. 04/3213) with effect from 1.7.1983 to
1.7.1982.

R. Bhatia

(K. L. BHATIA)

SENIOR DY. ACCOUNTANT GENERAL (ADMN./A/Cs)

Copy forwarded for information to :

1. Secy. to Accountant General (Accounts)-I, U.P.
2. Secy. to Accountant General (Accounts)-II, U.P.
3. Accounts Officer (Coordination).
4. Accounts Officer (Administration).
5. Accounts Officer (Restructuring).
6. Personal File.
7. Shri Banshu Das, Accountant.
8. N.G.C.A. Brotherhood, A.G.U.P.

R. Bhatia
(K. L. BHATIA)

Senior Dy. Accountant General (Admn.)/A/Cs

Attested
R. S. S. S. S.
Advocate

In the Central Donw Tribunal, Lucknow
Regn. No: 4/1989 23
Banshu Das - Appellant
Union of India & others - Respondents Annexure A/
OFFICE OF THE ACCOUNTANT GENERAL (A&E)-I,
UTTAR PRADESH, ALLAHABAD.

No. Admn. I/1-105/Vol. XVIII/KW/1990 Dated: 25.8.1988

T.R. 1122

To,

Shri Banshu Das,
Accountant (04/3213), Pension Record.
P.A.(I) section,
O/o the A.G.(A&E)-II, U.P.,
ALLAHABAD.

Sub: Confirmation of self - on the post of Auditor
w.e.f. 1.8.1975 - representation regarding.

With reference to his representation on
the subject indicated above and in continuation of
this office letter dated 3.6.1986 he is hereby
informed that Headquarter office after due and
sympathetic consideration of his case ^{conveyed may if} has not
been possible to agree to his request regarding
antidating of his confirmation.

Altered

Resentus

Advocate

(A.K. AICH)
ACCOUNTS OFFICER (ADMN.)

In the Central Adm. Tribunal, Lucknow

Regn. No ... 4/1989

Banhu Das ... Applicant

639 ... REGD/1989

RTA

ममी राम आर्य,
निषी सचिव,
प्रा० राजस्व मंत्री, विधान सभा, नवानन्द
निषी तथा विधान सभा, नवानन्द
निषी तथा विधान सभा, नवानन्द

केन्द्रीय विधान सभा, नवानन्द

दिनांक : 18 नवम्बर 1988

Annexure A-7

प्रिय महोदय,

ममी बन्दा दात, नेहालार 04/3213 के प्रत्यावेदन
ममी अग्रिम प्रति आपको आवश्यक भार्याही के प्रा० राजस्व मंत्री दी
के निर्देशानुसार भौती जा रही है। ममी दात प्रा० राजस्व मंत्री दी
है जन सम्मुक्त अधिकारी है और उनके प्रत्यावेदन पर आवश्यक भार्याही
हरने का कष्ट करें।

संलग्न
उपरीक्तानुसार

माधवीय,

ममी राम आर्य।

Alka

Ramnath
Advocate

नियंत्रक,
महालैलोकाकार वर्दीदाक,
माला सरकार,
नई दिल्ली।

To

The Comptroller & Auditor General of India,
New Delhi.

25

24
25

Through: The Accountant General,
U.P.I Accounts,
Allahabad.

Sub:- Review of decision taken in respect of self
for antedating confirmation from 1.8.75 instead of
1.7.82.

Ref:- Accountant General (A&E) I/U.P. Allahabad No. Adm. I/
1-105/Vol xviii/KW/1990, dated 25.8.88.

Sir,

I am to invite a reference to above quoted
letter (under which it has been intimated that H.Q.
has rejected my case of antedating the confirmation)
and to state as under for your kind and sympathetic
reconsideration:-

1. That I was appointed as U.D.C. on 7.2.1973.
2. That I worked with sincerity, devotion, zeal and
determination.
3. That till the end of f.y. 1975-76 no adverse
entry was communicated to me.
4. That my confirmation became due on 1.8.75.
5. That the departmental promotion committee which
met on 17.7.1976 deferred my confirmation as the
C.R. for 75-76 was not available.
6. That I was not responsible for the non-availability
of C.R. for 75-76 and it was administrative lapse
for which D.P.C. deferred my confirmation.
7. That a post was kept reserved for me till 1.7.1981.
8. That successive D.P.C's which met did not consider
my case on the basis of C.R.'s till 75-76 but
took into consideration the C.R. for 76-77 also
which was adverse.

Attached
RSSoundar
Advocate

Contd....2

9. That the action of the D.P.C's in considering C.Rolles for subsequent years was not consonance of principle of Natural Justice. I would submit that the D.P.C.'s should have considered my C.R.'s only upto 75-76 as my confirmation was due on 1.8.75 and the 1st D.P.C. had met on 17.7.76.

10. That due to adverse entry in my C.R. for 76-77 the D.P.C's did not find me fit for confirmation and a post which ^{was} kept reserved for me till 1.7.81 was filled up by another candidate belonging to S.C.

11. That a Charge Sheet was issued to me on the basis of adverse remarks in my C.R. for 76-77.

12. That an Enquiry was also instituted against me for above and penalty imposed.

13. That my E.B. had also became due on 1.8.77 and the same was also withheld.

14. That I was confirmed w.e.f. 1.3.83 and my E.B. was allowed to be crossed w.e.f. 1.7.83.

15. That I represented to the then Accountant General and he was pleased to exonerate all the charges and allow me to cross the E.B. from due dated i.e. w.e.f. 1.8.77 and all the arrears were duly paid to me.

16. That the administration took abnormal time and delayed finalisation of my case for which I am suffering.

17. That when I represented for antedating my confirmation w.e.f. due dated i.e. 1.8.75, the Administration was kind enough to ante date my confirmation from 1.7.82.

18. That the Admin. also wrote to HQ CAG Office for creation of a supernumerary post for the period from 1.8.75 to 30.6.82.

Alshed
Rsmntng
Advocate

19. That the Hd. or Office (CAG) very kindly created a supernumerary post vide letter No. 3377 SR357-86 I. dt. 12.8.86.
20. That the AG UP-I did not confirm me inspite of the fact that post was created by C.A.G. as stated in para -20 above.
21. That I was informed vide letter no. Admn. I/1-105/ Vol. XVIII/KV/1990 dated 26.8.88 regarding rejection of my case of antedating of confirmation from 1.8.75.

GROUND FOR REVISION OF DECISION.

- (1) The Admn. was responsible for not keeping the C.R. upto date. This was definitely an administrative lapse.
- (2) My C.R. for 75-76 was not made available to D.P.C. when it first met on 17.7.76.
- (3) When a post was reserved for me, it was wholly unjustified and arbitrary to have confirmed another employee against it.
- (4) The D.P.C. which met after 17.7.76 definitely erred in my case because there was no ground for consideration of C.R.'s beyond 75-76 and the action of D.P.C. was definitely against principle of propriety.
- (5) The Admn. took abnormally longer time in deciding the charge sheet.
- (6) When I was exonerated of all the charges and my E.B. was also allowed to be crossed from the date, there was no justification in not allowing me to be confirmed from due date.
- (7) The C.A.G. while agreeing in principle for following my confirmation from due date, had accorded sanction for creation of a supernumerary post.

Asha
Ramanay
Advocate

(8) After creation of supernumerary post, the rejection of my claim for confirmation from due date i.e. 1.8.75, is wholly illegal, arbitrary unjustified and tinged with bias.

(9) Ministry of H.A. CM No. 1/9/58-RPS, dated 16th May, 1959 laid down that;

" confirmation should be made strictly on the basis of seniority subject to the rejection of unfit. In considering case of officers for confirmation, the D.P.C. should not assess the relative merit of the candidate".

In view of above, it is humbly requested that my confirmation may kindly be antedated w.e.f. 1.8.75 and my genuine claim may be reconsidered. The adverse decision has given me much mental torture and affliction and my juniors have become seniors to me.

It is further requested that the case may kindly be reviewed at the earliest and the decision taken may kindly be intimated to me.

Attested
R.S. Banerjee
Advocate

Yours faithfully,

Banerjee
(BANSHU DAS)

Accountant 04/3213

Present Address:

Public Relation Officer to
Revenue Minister, U.P.

LUCKNOW

In the Central Admn. Tribunal, Lucknow

Regd. No. 4/1989

Banshu Das ... Applicant

Annexure A8

VS.

No. 3-एस.आई.11/97-86

Uttoring India & Others ... Respondents, भारत के राज्यों द्वारा विधायिका द्वारा विधायिका द्वारा न हो दिली-110002

OFFICE OF THE COMPTROLLER
AND AUDITOR GENERAL OF INDIA,
(Bharat Ke Niyankar Mahalekha
Parikshak Ka Karyalaya),
NEW DELHI-110002

दिनांक

Dated.....

25

प्रिय श्री आर्य,

कृपया अपने पत्र दिनांक 18.11.1988 जिसके साथ श्री बैंकर
दास, लेहाकार 04/3213 के प्रत्यावेदन की अग्रिम प्रति इस फायलिय को
मेजी गई है, फायल अवलोकन करें।

श्री बैंकर दास, लेहाकार के मामले पर सहानुभूति पूर्वक विचार
किया गया परन्तु उनके प्रत्यावेदन को बामबुर कर दिया गया है।

शब्दार्थ

रामलक्ष्मी

24.1.89

रोशन लाल छपुरा

श्री द्वृष्टि राम आर्य,

क्रियी सचिव,

मा० राजस्व मंत्री,

विधायि मंत्री,

लक्ष्मण

Attala

Respondent

Advocate

In the Central Administrative Tribunal

वदाखत श्रीमान्

Circuit Bench Lucknow

महोदय

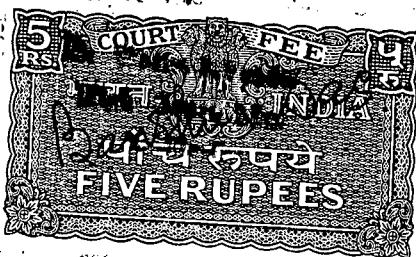
(वादो) अपीलान्ट

Regd. no. 4/1989

प्रतिवादी रेस्पान्ट

Shri Banshu Das ^{Applicant}

वकालतनामा

Union of India
& Others
Respondents

(अपीलान्ट)

(रेस्पान्ट)

न० मुकदमा

सन

पशी की ता०

१६

इ०

ऊपर लिखे मुकदमा में अपनी ओर से श्री

T. S. SRIVASTAVA वकील

4/553 Vikasnagar Kursi Road Lucknow

महोदय

को अपना वकील नियुक्ति करके प्रतिज्ञा इकार करता हूं और लिखे देता हूं
 इस मुकदमा में वकील महोदय स्वयं बथवा अन्य वकील द्वारा जो कुछ पैरवे
 व जबाब देही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावे या
 हमारी ओर से डिगरी जारी करावे और रूपया बसूल कर या सुलहनामा व
 इकवाल दाता तथा अपील नियरानी हमारी ओर से हमारी या अपने
 हस्ताक्षर से दाखिल करें और तसदीक करें मुकदमा उठावे या कोई रूपया
 जमा करें या हमारी विपक्षी (फरीकसानी) का दाखिल किया हृथा रूपया
 अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद लेवे या पंच नियुक्त करें
 वकील महोदय द्वारा की गई वह सब कार्यवाही हमकों सर्वथा स्वीकार है और
 होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने
 पैरोकार को भजता रहूगा अयर मुकदमा अदाम पैरवी में एक तरफ मेर
 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 Banshu Das

Accepted

Respondent

Advocate.

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

सन १६

इ०

In the Central Administrative Tribunal at Allahabad,
Circuit Bench, Lucknow.

Misc. Application No. _____ of 1990

on Behalf of Respondents.

In

Case No. 309 of 1990

Banerjee Applicant.

Versus.

Union of India & Others Respondents.

APPLICATION FOR CONDONATION OF DELAY

The respondents respectfully beg to submit as under :-

1. That the written reply on behalf of the respondents could not be filed within the time allotted by the Hon'ble Tribunal on account of the fact that after receipt of the permissive comments from the respondents, the draft-reply was sent to the department for vetting.
2. That the approved written reply has been received and is being filed without any further loss of time.
3. That the delay in filing the written reply is bonafide and not deliberate and is liable to be condoned.

WHEREFORE, it is prayed that the delay in filing the written reply may be condoned and the same may be brought on record for which the respondents shall ever remain grateful as in duty bound.

Lucknow ;

Dated : 16.6.92
6-7-92

(Dr. Dinesh Chandra)
Counsel for the Respondents.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD,
CIRCUIT BENCH, LUCKNOW.

Written Statement on behalf of Respondents.

In
Case No. 309 of 1989.

Bansu Das Applicant.

Versus.

Union of India & Others Respondents.

I, K.C. Agarwal, aged about 56 years son of late
Shri R.R. Agarwal, Dy. Accountant General (Admin.) in
the office of the Accountant General (Accounts & Entitlement)
U.P., Allahabad, do hereby solemnly affirm and state as
hereunder.

1. That the deponent is competent to file this Written Statement on behalf of all the respondents.
2. That the deponent has read the application filed by Shri Banshu Das and has understood the contents thereof.
3. That the deponent is well conversant with the facts of the case deposed hereinafter.

K. Agarwal

(Contd....2/-)

4.

That a brief history of the case is furnished
as hereunder :-

BRIEF HISTORY OF THE CASE

Shri Banshu Das was appointed as U.D.C. (now Accountant) on 07.02.1973 in the vacancy reserved for S.C. candidates. His confirmation in Auditor's cadre (previously U.D.C.) was first considered by Departmental Promotion Committee which met on 17.07.1976 to be effective from 01.08.1975 but he was not ~~xx~~ confirmed. His A.C.R. for the period 8/76 to 3/77 was commented adversely & the D.P.Cs. which met on later dates did not find him fit for confirmation.

Simultaneously he was involved in a disciplinary case also. He was issued a chargesheet for major penalty under Rule 14 of CCS (CCA) Rules 1965 vide order dated 17.02.1979. On conclusion of the disciplinary proceedings vide order dated 25.04.81. penalty of stoppage of one increment without commulative effect was imposed upon him vide order dated 25.04.81. In the mean time another S.C. candidate was confirmed during the panel year of 1981-82 on the post kept reserved for him. Thereafter Shri Banshu Das was first confirmed in the Auditor's cadre w.e.f. 01.7.83. Later on ~~on~~ his confirmation was antedated w.e.f. 1.7.82 on the

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recommendation of the review D.P.C. on the ground that a post for S.C. candidate was reserved w.e.f. 1.7.82. He was drawing pay of Rs.370/= w.e.f. 01.02.1977 in the scale of Rs.330-10-380-EB-12-500-EB-560. When he passed the Revenue Audit Exam. in Aug. 1977 he was entitled for two advance increments but he was given only one advance increment because by allowing him two increments he would have automatically crossed the E.B.

The allocation to Audit wing under the scheme 'Restructuring of cadres in I.A.& A.D.' from the waiting list is made only on the basis of seniority. His name figured in the waiting list and he has been () allocated to the Audit Office on his turn on 3.4.90. It is not possible to accede to the request to antedate his seniority because the case has become about 15 years old. The principle of quietus is ~~xxx~~ also applicable in his case because it has become more than a decade old. Moreover, the department has been bifurcated into two cadres i.e. Audit & Accounts w.e.f. 1.3.84 and any change in seniority prior to 1.3.84 will adversely affect the whole set up of the department.

5. That the contents of para 1 of the application are not admitted.

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However, it is submitted that representation of the applicant regarding his confirmation was considered by the Comptroller and Auditor General of India in August 1988 and the applicant was informed accordingly vide Account General (A&E)-I/I.P. No. Admin.I/1-105/Vol.xviii/KW/1990 dated 25.8.88 (copy enclosed as Annexure R-1). There is no provision for any review of the order passed by the Comptroller & Auditor General of India.

6. That the contents of para 2 need no comments.
7. That in reply to para 3 of the application it is stated that the present application is barred by limitation under Section 21 of the Administrative Tribunal Act. The cause for action arose in July 1976 when he was not confirmed by the D.P.C. which met in July 1976 for the purpose and again in July 1983 when he was confirmed for the first time and again in June, 1984 when confirmation was antedated w.e.f. 1.7.82 vide letter dated 4.6.1984. His representation against the said order of 4th June, 1984, was received in the deponent's office on 28.6.84. His subsequent representation after a lapse of four years submitted in 1988 is not to be taken into account while computing the period of limitation prescribed in Section 21 of the Administrative Tribunal Act. The Law on the subject has been laid down by the Hon'ble Supreme Court in the case of

b. a/c for w/c

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Shri S.S. Rathore Vs. State of M.P. 1990(1)SLJ-98.

8. That the contents of para 4.1 are admitted to the extent that the applicant was appointed as U.D.C. (as a Schedule Caste candidate) on 7.2.1973. The rest of the contents are not admitted, as the applicant has been relieved from the post of P.R.O. to the Minister of Revenue, U.P. Govt. w.e.f. 5.12.89 vide U.P. Govt. Secretariat Administration (Estt.) Section-I No.7488/V.S.E.I-89-509 (3)/88 dated 15.12.1989 but joined this office on 12.2.1990.

9. That in reply to para 4.2 & 4.3 it is stated that the A.C.Rs. (Annual confidential Report) of the applicant had been good/Average except for the period 8/76 to 3/77 which contained adverse remarks.

10. That in reply to para 4.4. it is stated that the applicant was considered for confirmation for the first time w.e.f. 1.8.75 when the DPC met on 17.7.76.

11. That in reply to para 4.5 it is stated that the minutes of the DPC which met on 17.7.76 and all the relevant records are not available and in the absence of these documents the Deponent is not in a position to offer any further comments in this regard.

12. That the contents of para 4.6 are admitted.

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13. That in reply to the contents of paras 4.7 and 4.8 it is stated that the applicant was considered for confirmation in the UD.Cs. cadre w.e.f. 1.8.75 by the DPC which met on 17.7.76 but he was not declared fit. In this connection it is submitted that the applicant was issued a charge sheet under Rule 14 of the CCS(GCA) Rule 1965 on 17.2.79 and on conclusion of the disciplinary proceedings he was imposed the penalty of stoppage of one increment without cumulative effect vide order dated 25.4.81. In the meantime the post kept reserved for the applicant was utilised for confirmation of another Schedule Caste U.D.C in the panel year 1981-82. The applicant was, however, first confirmed in the Auditor's cadre(U.D.C w.e.f. 1.7.83).

14. That in reply to para 4.9 it is submitted that the Disciplinary Authority imposed penalty of stoppage of one increment without cumulative effect on 25.4.81. In August 1977 the applicant passed the Revenue Audit Examination on account of which he was entitled to two advance increments w.e.f. 25.8.77. The applicant was drawing pay of Rs.370/- at that stage in pay scale of Rs.330-10-380-EB-12-500-EB-560. By allowing him his increment of Rs.10/-

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and Rs.12/- when his pay was Rs.370/-, his pay would have come to Rs.392/=(Rs.370 + 10 + 12). His pay could not have been fixed at Rs.392/- because of E.B. at Rs.380/- Hence his pay was fixed at Rs.380/- and the second advance increment was withheld. His case was, however, reconsidered and he was allowed to cross the E.B. from due date.

15. That in reply to para 4.10 it is submitted that the applicant's confirmation was ante-dated w.e.f. 1.7.82 when the period of his punishment was over in April 1982. He was confirmed on the post kept reserved for Schedule Caste condidate.

16. That in reply to para 4.11 it is stated that anti-dating of confirmation of the applicant was due to the fact that one post was reserved for S.C. candidate w.e.f. 1.7.82 and the applicant was confirmed from the said date.

17. That in reply to the contents of para 4.12 it is stated that the case being old for more than a decade and the relevant records being not available at this stage it is not possible to ascertain why he was not considered fit for confirmation in 1976 by D.P.C.. However, it is seen that he was commented adversely by the reporting

Officer in his C.R. for the period 8/76 to 3/77. The remarks of reporting officer were confirmed by the next higher authorities. Thereafter he was involved in a disciplinary case, on conclusion of which penalty of stoppage of one increment was imposed upon him.

It is wrong to say that the applicant was exonerated of all charges by appellate authority and was allowed to cross E.B. from 25.8.77. In fact he was awarded penalty of stoppage of one increment vide order dated 25.4.81.

He was allowed to cross E.B. as evaluation of service records and C.Rs. are not as strict in E.B. case as in confirmation and promotion.

18. That in reply to the contents of para 4.13 it is stated that the Comptroller & Auditor General accorded approval to create a supernumerary post but the same was subsequently withdrawn as the proposal was withdrawn by the office of the Replying Respondent.

19. That in reply to para 4.14 it is stated that the applicant was considered for confirmation but he was not considered fit for confirmation. Case of Shri Jagdip Kumar and the applicant is different. Jagdip Kumar being senior was promoted to Supervisor cadre w.e.f. 16.9.87 and not w.e.f.

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1.3.84 as mentioned. Both were subsequently promoted on 12/87 as Senior Accountant from retrospective date 1.4.87 but the applicant did not accept promotion and remained in waiting list of Accountants for transfer to Audit Office as Auditor.

20. That in reply to para 4.15 it is stated that the adverse entries of the ACRS. of Miss Radha Rani Gupta and the Kripa Shanker Misra were expunged whereas in the case of the applicant it was otherwise. The applicant cannot claim benefit on this basis.

21. That the receipt of the representation dated 28.6.84 mentioned in para 4.16 is acknowledged.

22. That the contents of para 4.17 and 4.18 are admitted. However, it is clarified that the allocation to Audit wing in the scheme 'Restructuring of cadres in I.A.&A.D.' from the waiting list is made on the basis of seniority only. He was at Sl.No. 397A of waiting list and he could not be transferred to Audit Office superseding the claims of 397 Accountants. He has been transferred to the Audit wing in his turn vide office order No. Admn.I/AG(A&E)I/Gr.III/Acctt Transfer/18-4/239 dated 27.3.90 and has been relieved to join office of A.G.(Audit)-I, U.P., Allahabad on 3.4.90.

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23. That in reply to para 4.19 and 4.20 it is stated that the orders for ante-dating the confirmation from 1.7.83 to 1.7.82 were issued on 4.6.84 and copy of the same was endorsed to the applicant.

24. That the contents of para 4.21 are admitted. It is, however, clarified that the applicant had represented against the ante-dating of his confirmation from 1.7.83 to 1.7.82 as long back as on 28.6.1984 (Annexure A-1 of the application) which was considered and decided. After 28.6.84 the applicant submitted a representation dated 18.11.88 to review the decision regarding his confirmation an advance copy of which was forwarded to the Comptroller & Auditor General by Shri Chani Ram Arya, Private Secretary to Hon'ble Rajaswa Minister, U.P. Govt. Lucknow.

25. That in reply to the contents of para 4.22 it is clarified that the representation dated 18.11.88 for reviewing the decision to the C.A.G. was made solely with a purpose to circumvent the provisions of limitation contained in Section 21 of the Admininstrative Tribunal Act. The applicant did not approach the C.A.G. for relief when his representation dated 28.6.84 was not disposed of by the Accountant General-II (Accounts) U.P., Allahabad within a reasonable time. The applicant could have sought

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relief from the Hon'ble High Court or from this Hon'ble Tribunal on its establishment at Allahabad.

26. That the contents of para 4.24 are not admitted, hence denied. The applicant opted for Audit and he has been transferred to Audit Office in his turn.
27. That in reply to para 4.25 it is submitted that the applicant has raised the issued of confirmation and seniority after a lapse of about 15 years. The representation was made after an unreasonable long delay that based on the principle of quietus and had to be rejected. In the last 15 years considerable changes have occurred including bifurcation of the Department into two separate cadres w.e.f. 1.3.84. Any change at this stage will adversely affect the whole set up of the office and numerous related problems may arise.
28. That the grounds mentioned in para 5 of the application have been dealt with at length in the submissions made in the above paragraphs.
29. That the contents of para 6 & 7 need no comments.
30. That in view of the submissions made in the foregoing paragraphs the relief sought for in para 8 and Interim relief prayed for in para 9 are not admissible.

- : 12 :-

31. That the contents of para 10 to 12 need no comments.

Lucknow:

Date :

K. C. Agarwal
Deponent.

VERIFICATION

I, K.C. Agarwal, son of Shri R. R. Agrawal
Dy. Accountant General (Admn.) in the office of the Accountant
General (Accounts & Entitlements)-I, U.P., Allahabad, do hereby
solemnly affirm and verify that the contents of para 1 to 2 to
are true to my personal knowledge and paras 3 to 31
are based on records and on legal advise which I believe to be
true, and that I have not suppressed any material fact.

K. C. Agarwal
Deponent.

Through :-

D. Chandra
(Dr. Dinesh Chandra)
Advocate.
Counsel for the Respondents.

ANNEXURE- R-1

OFFICE OF THE ACCOUNTANT GENERAL (A&E)-I,
UTTAR PRADESH, ALLAHABAD.

No. Admn.I/1-105/Vol.XVIII/KW/1990

Dated: 25.08.1988

To

Shri Banshu Das,
Accountant (04/3213),
P.A.(I) Section,
Office of the A.G.(A&E)-II, U.P.,
Allahabad.

Sub: Confirmation of self on the post of Auditor w.e.f.
01.08.1975 - representation regarding.

=====

With reference to his representation on subject indicated above and in continuation of this office letter dated 03.06.1988 he is hereby informed that Headquarter office after due and sympathetic consideration of his case, conveyed that it has not been possible to agree to his request regarding antedating of his confirmation.

Sd/-

ACCOUNTS OFFICER/ADMIN.

Fixed date
13.9.89

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL CIRCUIT BENCH
LUCKNOW.

**

O.A. No. 309 of 1989 (L)

**

Banshu Das --- -- Applicant

Versus

Union of India and others --- -- -- Respondents

**

Rejoinder of the applicant in
reply to the written statement filed on behalf of
Respondents Nos. 1 to 4.

**

The applicant above named most respectfully
states as under:-

1. That the applicant has read and understood the contents of written statement filed on behalf of respondents 1 to 4 and is well acquainted with the facts and circumstances of the case and replies given hereinafter.

2. That paras 1 to 3 of the written statement need no comments.

3. That in reply of the averments made in para 4 of the written statement it is stated that the D.P.C. which met on 17.7.76 did not consider the case of the applicant because the ACR for 1975-76 which was relevant, was not available. The case of confirmation was to be examined by a review committee as soon as the ACR for 1975-76 was made available. The action of the Respondents in not calling for the Review D.P.C. was thus contrary to instructions of Government of India. The D.P.C.s. which met later on and did not find the applicant fit for confirmation had no jurisdiction to examine the case of confirmation.

Banshu Das

of the applicant. If the respondents would not have disregarded the instructions given by the Government the confirmation of the applicant would not have been delayed. Though the respondents had kept a post reserved for the applicant, it was wholly unjustified and unfair to confirm another S.C. candidate during the period /panel year 1981-82 on the post reserved for the applicant. This action was prejudicial to the interest of the applicant. The involvement of the applicant subsequently in a disciplinary case was not relevant to the confirmation because subsequent events were not to be considered by D.P.Cs. The law to this extent has been laid down in Devendra Kumar Sharma Vs. Delhi Administration and others 1989 (9) NTC 479 decided by Hon'ble Tribunal New Delhi. It has been stated in para 16 that confirmation has to be done with reference to ACRs anterior to that date and available on the date when the officer qualified for confirmation. Subsequent records cannot be made the ground for refusing confirmation on the date when it was due.

It is true that allocation to audit wing under the scheme - Restructuring of Cadres in IA&AD is made only on the basis of seniority. The applicant has been allocated to Audit Office on 3.4.90 because he was not confirmed on due date and his seniority therefore was adversely affected for which respondents were directly responsible. The allocation to audit would have been done much earlier to 3.4.90 i.e. on 1.3.84 had the case of confirmation would have been decided on merits timely. The plea taken by Respondents that the case has become too old (15 years) and it is not possible to accede to the request of the applicant to antedate his seniority, is wholly illusory, intenable and misleading. The applicant has been pursuing the case since very beginning and had met the higher authorities several times. The then Accountant General have been kind enough to ensure that the case of the applicant would be decided sympathetically. It was on this account that the applicant did not enter into irrelevant correspondence. The principle of *Quietus* is not at all applicable in the case of the applicant

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because he has been vigorously following up his case with the Respondents and who were kind enough to antedate the confirmation from 1.7.83 to 1.7.1982 vide letter No. Admn. I/1-105/vol. XVIII/KW/101 dated 4.6.84 filed as Annexure-A.5 in the O.A. Thereupon the applicant addressed his letter dated 28.6.84 filed as Annexure A.I of O.A. to Shri S.C. Mukherjee, Accountant General II (Accounts) Allahabad representing that his disciplinary case was under consideration for a good length of time and since all the charges were exonerated and all benefits of pay and allowances and increments were restored, the confirmation should also be restored w.e.f. due date. As a matter of fact this representation was to be considered by the Accountant General-II Accounts Allahabad but after a lapse of more than four years the applicant was informed vide letter dated 25.8.1988 that the Headquarter office did not agree for antedating the confirmation. Since the representation was addressed to Accountant General II Accounts Allahabad, the same was required to be accepted/rejected by the Accountant General-II, Accounts, Allahabad and not by Headquarter office viz. C. & A. G. Rejecting the representation by C. A. G. which was addressed to Accountant General-II Accounts Allahabad did not at all extinguish the right of applicant of making the representation to the highest authority viz. C. & A. G. New Delhi under the relevant rules. Accordingly the representation dated 18.11.1988 was addressed to the Comptroller and Auditor General of India New Delhi through the Accountant General-I, Accounts Allahabad. In this representation full facts were mentioned and it was prayed that the confirmation be antedated from due date. The copy of the representation was filed as Annexure A-7 to the O.A. This was the representation to the highest authority and it was mentioned in the subject as review of decision by C. & A. G. because the representation to Accountant General-II Accounts Allahabad was rejected by Headquarters office as intimated on 25.8.88. The C. & A. G. has also taken it to be representation (PRATYAVEDAN)

as mentioned in the letter dated 25th January 1989 filed as Annexure-A.8 of O.A. This representation was thus also rejected vide letter dated 25.1.1989 by C. & A.G. The principle of Quietus is not applicable in the case of applicant but it is applicable on respondents who have taken more than 2 years in finalising the disciplinary proceedings and more than four years in finalising the representation addressed to Accountant General-II, Accounts, Allahabad. It has further been contended by respondents that since the department was bifurcated into two cadres w.e.f. 1.3.1984 Audit and Accounts, any change in seniority will adversely affect the whole set up of the department. The plea taken by respondents is wholly incorrect and misconceived. The situation can very well be mended by creating supernumerary posts as and when necessary. The bifurcation of department will in no case is going to prove an obstacle because when approached by D.A.G. Adminis. in their letter No. DAG(Admin.)Cell/120 dated 9 Jan 1985 for creation of supernumerary post for the period from 1.8.1985 to 30.6.1982 to accommodate the applicant, the C. & A.G. was pleased to create a supernumerary post vide letter no. 3377 BRS 57-86/I dated 12.8.1986. This post was created after 1.3.1984 the date on which the department was bifurcated. The plea of respondents is thus completely demolished and can not stand at all.

4. That in reply to para 5 it is stated that the representation by the applicant was made for the first time to the C. & A.G. on 18.11.1988. The C. & A.G. has also treated it as representation and rejected vide letter dated 25.1.1989. The circumstances under which it was mentioned in this application to be review of decision have been fully explained in para 3 above. The representation to C. & A.G by the applicant is covered by Government of India decision No. (2) under authority of Ministry of Home Affairs Memo No. 118/52 Ests dated 30.4.1982 Appendix-3 of vol.III of CSR (Appendices).

5. That the contents of para 6 need no comments.

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6. The in reply to para 7 it is stated that the application is not barred by limitation under Section 21 of A.T. Act. The representation of the applicant dated 18th Nov. 1988 was rejected by C.&A.G. on 25.1.1989 on merits. The application has been filed within a year counting from 25.1.1989 and is, therefore, within limitation. Under Section 21 of A.T. Act 1985. The case of S.S. Rathore as referred to by Respondents has not laid down any new legal point but the Hon'ble Supreme Court have reiterated the limitation as laid down in Section 21 of A.T. Act, 1985. Had any new legal point would have been decided by Hon'ble Supreme Court, Section 21 of A.T. Act 1985 would have been amended by Government of India. The law of S.S. Rathore case is rather favourable in applicant's case. Since the representation to C.&A.G. was rejected on 25.1.1989 and this representation was under rules, the cause of action will arise on 25.1.1989, the date when final orders were passed by C.&A.G. The representation to C.A.G. was necessary to exhaust the Departmental remedies. It has been held in Sua Lal Yadav case by Hon'ble Supreme Supreme Court that since the review application was not dismissed on grounds of laches but was dismissed on merits and it was not open to the High Court to resurrect the ground of delay in the review application at a remote stage and make it a ground for dismissing the writ petition. In B. Kumar Vs. Union of India and others Principal Bench, New Delhi ART 1988 (1) the Hon'ble Tribunal have held as under in para 12 of the judgment.

" In regard to second part of Shri Gupta's argument regarding limitation while it is true that limitation is to run from the date of rejection of a representation, the same will not hold good where the department concerned chooses to entertain a further representation and considers the same on merits before disposing of the same. Since it is in any case open to the Department concerned to

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consider the matter at any stage and redress the grievance or grant the relief, even though earlier representations have been rejected, it would be inequitable and unfair to dismiss an application on grounds of limitation with reference to the date of earlier rejection where the concerned department has itself chosen may be at a higher level to entertain and examine the matter afresh on merits and rejected it. Thus the plea of limitation of respondents is wholly vague and baseless. It has no legal basis.

7. That the contents of para 8 need no comments.

8. That in reply to para 9 of the written statement it is stated that entries for the period 8/76 to 3/77 which are stated to be adverse could not have any bearing for confirmation to be done with effect from 1.8.1975 and the D.P.C. held ~~on~~ on 17th July 1976 could examine the ACRs only upto 1975-76 only. Chargesheet was issued to the applicant on basis of ACR for August 1976 to March 1977. After the proceedings which ended and after representation by the applicant, those entries were also expunged as the applicant was wholly exonerated of all the charges. The case of Shri Devendra Kumar Sharma cited in para 3 of this rejoinder is very clear on the point and is referred to.

9. That the contents of para 10 of the written statement need no comments.

10. That in reply to contents of para 11 of the written statement, it is stated that the reply of the respondents is evasive. It may be that the relevant records may not be available but the letter dated 9th Jan. 1985 quoted in para 4.13 of O.A. must be available in the concerned file.

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The same may be summoned by the Hon'ble Tribunal. It has been clearly mentioned in the said letter that the D.P.C. which met on 17.7.76 had deferred the confirmation of applicant because A.C.R. for 1975-76 was not made available to D.P.C.

11. That the contents of para 12 of the written statement need no comments.

12. That in reply to the contents of para 13 it is submitted that the replies are not to the point and are irrelevant. The facts mentioned in para 4.7 and 4.8 of O.A. are reiterated.

13. That the contents of paras 14, 15 and 16 of the written statement need no comments.

14. That in reply to the contents of para 17 of the written statement, it is stated that the whole reply given by respondents is evasive and not to the point. The observations made in para 4.12 of O.A. are reiterated and it is emphasised that the respondents were responsible for not calling the Review Committee when ACR for 1975-76 was made available. The case of D.K. Sharma cited in para 3 above clearly lays down the law that subsequent records cannot be made the ground for refusing confirmation on the date when it was due.

15. That in reply to the contents of para 18 of the written statement, it is submitted that the confirmation of the applicant should have been ante-dated when the C.A.G. had created a supernumerary post for the purpose. No reasons have been assigned as to why the said post was withdrawn by replying respondent. Unless cogent reasons are given for withdrawal of supernumerary post, it will be nothing but misuse of power by the respondents. The withdrawal of the post was prejudicial to the interest of the applicant and the action on the part

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of respondents was capricious, illegal and discriminatory.

16. That the contents of para 19 of the written statement are wholly misconceived and misleading. It has been stated by respondents that the case of the applicant was considered for confirmation but he was not considered fit for promotion. In this connection reference may be made to para 4.13 of the original application. In the letter dated 9.1.85 written to the C.A.G. it has been clearly mentioned that the case of the applicant was deferred because of non-availability of ACR for the year 1975-76. In para 4.6 of the application it was mentioned that one post was reserved for him. The respondents have admitted this in their written statement vide para 12, when the applicant was not found fit for confirmation, how one post could be reserved for him. The replies given by respondents is thus contrary to facts and is wholly false. Since Jagdip Kumar was confirmed earlier than applicant though he was much junior and the case of applicant was kept pending and not finalised for seniority, Shri Jagdip Kumar got promotion because of his becoming senior to the applicant. The example of Jagdip Kumar was cited only as a reference to establish that in case the respondents would have taken timely action to convene the Review Committee and finalised the case of confirmation of applicant, some other position would have emerged and the applicant would not have been deprived of his ~~legitimate~~ legitimate rights.

17. That in reply to para 20 of the written statement it is stated that the case of applicant is on a better footing as compared to those of Miss Radha Rani Gupta and Shri Kripa Shanker ^{By} Mis. As stated by respondents that the ACRs of above two persons were adverse and the same were expunged whereas ACR of the applicant was not adverse and as such if

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the above two persons were confirmed from due dates, the applicant should also have been confirmed with effect from 1.8.1975 the due date of confirmation. This was the need of principle of fair play and equity.

18. That the contents of para 21 of the written statement need no comments.

19. That in reply to the contents of para 22 of the written statement it is stated that if timely action should have been taken by Respondents and the Review Committee would have been convened by respondents to consider the ante-dating of confirmation of the applicant, he would have been confirmed from due date 1.8.75 and would have been allocated to Audit Wing much earlier.

20. That the contents of para 23 of the written statement need no comments.

21. That the contents of para 24 of the written statement need no comments except that the applicant had represented on 28.6.1984 against the ante-dating of confirmation not from 1.7.1983 to 1.7.1982 but from 1.7.1982 to due date. This representation was decided on 25.8.1988 i.e. after more than 4 years. It is admitted that later on a representation was made to C.A.G. on 18.11.1988.

22. That the averments made in para 25 of the written statement are denied. The representation to CAG was made on 18.11.1988 because the representation dated 28.6.1984 which was addressed to Accountant General-II Accounts Allahabad/^{was} disposed of by headquarters office viz. C.A.G. but this did not extinguish the right of the applicant to make representation to the highest authority viz C.A.G. It is wholly wrong to state that representation was made with the purpose to circumvent the provisions of limitation contained in Sec. 21 of A.T. Act 1985 but it was made by the applicant with a view to exercise his right and this right was available as per instructions contained in Government of India decision No. (2) under authority of Ministry of Home Affairs Memo No. 118/52 Ests. dated 30.4.1952. The need for approaching to C.A.G. was not

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was not considered by the applicant because he had been meeting the then Accountant Generals who were pleased to give assurance to the applicant and the case was being processed. This reason also refrained the applicant from going to High Court or to the C.A.T. after its establishment at Allahabad. It was only on account of sympathetic attitude of the then Accountant Generals who were kind enough and because of their sincere efforts, it would not have been possible to get one supernumerary post created for the purpose of accommodating the applicant.

23. That in reply to para 26 of the written statement it is stated that due to non-finalisation of the confirmation of the applicant from due date by respondents, he was handicapped and was deprived of his legitimate rights with the result that many juniors were appointed as Senior Auditors w.e.f. 1.3.1984 (the date of bifurcation of Audit and Accounts) whereas the applicant was transferred to Audit Wing on 6.4.90 only in the capacity as Auditor. In case respondents would have taken timely action by convening the Review Committee, the position would have been different. One example of Shri Tribeni Lal Auditor who was junior to the applicant is indicative of the fact that if the respondents would have taken timely action, ~~promoted~~ the applicant too would have been as senior auditor w.e.f. 1.3.1984 the date on which Shri Tribeni Lal much junior to applicant, was promoted as Senior Auditor and allocated to audit wing.

24. That the replies given in para 3 above cover the replies of the contents of para 27 of written statement.

25. That contents of para 28 and 29 of written statement need no comments.

26. That in reply to para 30 of the written statement it is stated that all the reliefs claimed by the applicant are admissible, on the basis of facts and circumstances stated above and legal decisions cited in the foregoing paragraphs.

27. That the contents of para 31 of the written statement need no comments.

Lucknow:
Dated: July 1990.


Signature of the Applicant

Verification

I, Banshu Das son of late Shri Baba aged about 43 years resident of 5/163, Vikas Nagar, Kursi Road, Lucknow do hereby verify that the contents of paragraphs 1, 2, 4, 5, 7, 9, 11, 13, 16, 18 to 21 and 24 to 27 are true to my personal knowledge and those of paras Nos. 3, 6, 8, 10, 12, 14, 15, 17, 22 and 23 are based on legal advice received and are believed to be true by me and that I have not suppressed any material fact.

Banshu Das

Lucknow: Sig. of the Applicant
Dated July 1990.

R.S. Srivastava THROUGH
R.S. SRIVASTAVA, ADVOCATE
Counsel for the Applicant.
Address: 4/553 Vikas Ngar, Kursi Road,
Lucknow:

OFFICE OF THE ACCOUNTANT GENERAL(A&E)-I

UTTAR PRADESH, ALLAHABAD.

No. DAG(Admn.)/Cell/120

Dated: 09.01.1985.

To

The Comptroller & Auditor General of India,
10-Bahadur Shah Zafar Marg,
New Delhi- 110 002.

Subject: Confirmation of Sri Bansu Das on the post of
Auditor w.e.f. 01.08.1975.

Sir,

The confirmation of Shri Banshu Das, Auditor which was due w.e.f. 1.8.75 was deferred by the Departmental Promotion Committee which met on 17.7.76 because C.R. for the year 1975-76 was not available. Later on, the Committee did not consider him fit as the C.R. for the period August,76 to March,77 was adverse. A post was kept reserved for him till 1.7.81 but he was not found fit for confirmation by successive D.P.C.s. and the post was filled up by another candidate belonging to S.C. category. Later on, on being found fit, Shri Banshu Das has been confirmed w.e.f. 1.7.82. In this connection, on reviewing the case, it is seen that Shri Banshu Das did not earn any adverse entry till 75-76. Hence his being overlooked for confirmation on 1.8.75 on the basis of adverse C.R. entries earned by him during period subsequent 1.8.75 is not wholly justified. Recently in accordance with the instructions circulated by the Headquarters office under letter no. 29014/384-Eatt.(A) dated 4th September, 1984 while considering E.B. cases only C.R. relevant to the date from which the E.B. is to be crossed are to be taken into account. Similar treatment would be justified in the case of confirmation.

It is, therefore, requested that this proposal of ante-dating the confirmation of Shri Banshu Das to 1.8.75 may kindly be approved and a supernumerary post of auditor may be created for the period from 1.8.75 to 30.6.82 to accommodate the lien of Shri Banshu Das. This issues with the approval of the Accountant General.

Yours faithfully,

Sd/-

(Y.S. JOGLEKAR)

DEPUTY ACCOUNTANT GENERAL(ADMN.)