

B-10  
89

ANNEXURE - A

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH LUCKNOW

INDEX SHEET

CAUSE TITLE O.A. 45/89(L) of 199

Name of the parties

Abdul Habib

Applicant.

Versus:

U. O. India & others

Respondents.

Part A.B.C.

Sl No.	Description of documents	Page
①	Order Sheet.	A1 - A6
②	Judgment Dt 16.8.90 CAT. Principal Bench	A7 - A17
③	Copy of Petition	A18 - A80
④	Power	A81
⑤	Counter Affidavit	A82 - A143
⑥	<u>Bench Copy</u>	B144 - B 270
⑦	<u>C. file</u>	C 271 - C 361

Certified that no further action is required and that  
the case is fit for closing and to be removed  
from (D)

check  
2/10/12

SO (J)

B. K.  
22-6-2011

Pran Prakash  
29/4/92

(AT)

Central Administrative Tribunal  
Principal Bench: New Delhi.

Regn.No.OA-45/89(L)

Date of Decision: \_\_\_\_\_

Abdul Habib

... Applicant.

Vs.

Union of India & Ors.

... Respondents.

For the applicant.

.... Shri R.C.Saxena, Advocate.

For the respondents

.... Shri A.Bhargava, Advocate.

CORAM: Hon'ble Shri P.C.Jain, Member(Admn.)  
Hon'ble Shri J.P.Sharma, Member(Judl.)

JUDGEMENT

(Delivered by Hon'ble Shri J.P.Sharma)

The applicant who was painter Grade-I, under District Controller of Stores Northern Railway, Charbagh, Lucknow, moved this application under Section 19 of the Administrative Tribunals' Act No.XIII of 1985, assailing the orders E/91 dated 9.4.1986 (Annexure A-1), 561 E/85 dated 5.8.1988 (Annexure A-2), and order No.E/163 dated 6.8.1988 (Annexure A-3) passed by the Deputy Controller of Stores (Respondent No.2) by which the promotion of the applicant which was made with effect from 1.8.1978 was held to be fortuitous and it was considered on a non-fortuitous upgraded post only with effect from 1.1.1984.

2. The applicant claimed the following reliefs:

"To quash the impugned order dated 9.4.1986, 5.8.88 and 6.8.1988 passed by respondent No.2 adversely affecting applicants seniority and promotion and allow the benefits of upgraded post of Painter Grade I in scale Rs.1320-2040 w.e.f. 1.1.1984 to the applicant treating him as senior to Shri S.K.Bajpai, respondent No.4 and Shri Ram Dularey, Painter Grade I retired from service in 1986, further directing the respondents to pay off the entire arrears of salary and allowances, thus found accrued."

3. The brief facts of the case are that the posts of Painter and Polisher belong to one group of artisan staff and promotion to grade II is made from Grade III of Painter and Polisher after passing a trade test. There were six

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posts of Painter and Polisher in Grade III i.e. four of Painter trade and two of Polisher trade. In 1978 there was 45% upgradation of posts in the artisan staff of stores depot. The administration, after considering the views of both the Unions of Railway Employees, it was agreed upon that the distribution of the higher grade posts to the different trades shall be by grouping these trades in six groups. ~~for the purpose of distribution of the higher grade posts.~~ Painters and Polishers constituted one group.

Before upgradation in 1978, there were one post of Painter in Grade II and one post of Polisher in Grade I. After the upgradation two posts of Painter Grade II and one post of Grade I became available for allowing benefit of upgradation to the incumbents in the group of Painter/Polisher having total strength of six posts of Painters/Polishers in Grade III.

4. The applicant joined the Railway as Khalasi in June, 1953 and he was promoted after passing trade-test as Painter Grade II with effect from 1.8.1978 by the order dated 18.7.1980 (Annexure-A-7). The respondent No.4, Shri S.K. Bajpai who belongs to Polisher trade, joined the Railway as Khalasi in December, 1953 i.e., after the applicant and he was promoted to the post of Polisher Grade II with effect from 1.4.1983 by the order dated 14.8.1984 (Annexure A-16). There was another Ram Dularey who also belonged to the Painter Trade and has since retired, joined Railway in 1949 as Khalasi, as such being senior to the applicant, was promoted to the grade of Painter Grade II with effect from 10.5.85 by the order dated 7.6.85 (Annexure-A-17), as he failed in the trade-test and become junior to the applicant.

5. The respondents published a seniority list on 1.1.85 showing the name of the applicant above the aforesaid

Ram Dularey of Painter trade and above the name of respondent No.4 Shri S.K. Bajpai of Polisher trade (Annexure-A-18).

6. The case of the applicant is that he was rightly given the benefit of upgradation on the upgraded post of Painter Grade II and in 1987 as Painter Grade I as he was the senior-most incumbent but respondent No.2 acted in a malafide manner and issued order dated 11.9.81 to the applicant to show cause why he be not reverted from Grade II post of Painter as the same is to be allowed to the Polisher trade. However, the matter was finally closed down in the meeting dated 5.3.1983 between the administration and the union representatives and the show cause notice was withdrawn. (Annexure A-20). The respondent No.2 also issued order dated 23.4.1983 withdrawing the show cause notice (Annexure A-21).

7. However, in spite of the above order respondent No.2 by the order dated 12.2.1986 <sup>(Annexure A-22)</sup> informed the applicant that the promotion of the applicant to Grade II would be with effect from 1.1.1984 instead of 1.8.1978. The respondent No.2 further filled the post of Grade II of the Polisher and Painter group by giving promotion to Grade II to the Polisher Trade holder Shri S.K. Bajpai respondent No.4. The benefit of upgraded post of Grade II was also given to Shri Ram Dularey with effect from 1.4.1984 of the Painter trade. Aggrieved by the aforesaid order dated 12.2.1986 the applicant moved an application under Section 19 of the Administrative Tribunals Act, 1985 before the Additional Bench of Allahabad and the <sup>of the C.A.T.</sup> said Bench quashed the said order with the direction that the applicant be heard and given an opportunity to explain and represent his case and after hearing him the order be passed. The administration issued a fresh show cause notice on 23.4.1988 on which an order was passed on 5/6th August, 1988

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holding that the promotion to Grade II of the applicant <sup>w.e.f.</sup> 1.8.1978 was fortuitous, which had been regularised as non-fortuitous from 1.1.1984 and aggrieved by the order, the present application has been filed.

8. The official respondents contested the application and stated that there was wrong implementation of the upgradation in the case of Polisher trade and wrongly these posts were given to the Painter trade which included in the post of Polisher trade of Grade II. It is stated that the upgradation of 45% posts was allowed from 1.8.78 in the artisan category and Painter and Polisher of different trades were included in one group. The seniority of both Painter and Polisher trade was maintained separately. Of the 45% upgradation, 25% were given to Grade II and 20% to Grade I in the whole group and as such Painter and Polisher Group were allotted one post in Grade I and the other in Grade II. The mistake has been committed by giving both the posts of Grade I and Grade II to the Painter trade and the Polisher trade was ignored. The post of Grade II was given <sup>to</sup> the applicant although the same was to be given <sup>who</sup> to the Polisher trade. One Ram Dularey was senior to the applicant in Painter trade was skipped over in the seniority as he failed in the trade test.

9. The respondent No. 4 Shri S.K. Bajpai <sup>who</sup> was the senior-most in the Polisher trade, made a representation regarding the upgradation of 45% posts and its incorrect implementation putting forward his claim for one of the Grade II post of the group of Painter and Polisher. A show cause notice was given <sup>to</sup> the applicant on 11.9.1981 but this was withdrawn as stated above after joint meeting of the Administration and the Union representatives. However, it is further contended that representations from the Polisher trade as well as N.R.M.U Stores branch were <sup>not</sup> received.

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against the filling of one Grade II post. in the category of Painter Trade ignoring the rightful claim of the Polisher trade by deviation from the fixed criteria and the rules. The Railway Headquarter had fixed J.C.M./many times but the same could not be held for one reason or the other and the headquarter, therefore, as well as C.O.S. authorised Deputy C.O.S. Alambagh to decide the issue at this level. Deputy C.O.S. Alambagh took the views of both the unions of Railway employees, N.R.M.U. and U.R.M.U. and both the unions were of the opinion that the third post which was given to the Painter Trade by deviation should be allowed to be filled in by the Polisher Trade and the promotion was set right by holding the promotion of the applicant as fortuitous from 1.8.1978 and as non-fortuitous from 1.1.1984. In these meetings the applicant, Abdul Habib as Branch President of N.R.M.U. was present and consented to the minutes of the meeting (Annexure CA-10). As a result of the above, the respondent Shri S.K. Bajpai of the Polisher trade was allowed upgradation in Grade II w.e.f. 1.12.78 and was given proforma fixation from that date when one Mangal of the same Trade retired. The promotion of the applicant was regularised as non-fortuitous w.e.f. 1.1.84 and he was not reverted. A show cause notice was issued to the applicant and after considering the representation the orders were passed on 6.8.1988 as said above. Shri S.K. Bajpai, respondent however, was actually paid for the up-graded Grade II post only from 1.4.1983 which <sup>post</sup> was sanctioned by PS-8488. Thus according to the respondents, the applicant has not suffered at all and his case has not gone by default or discrimination and in fact the orders <sup>were</sup> passed to correct the mistake which had crept in due to wrong implementation of upgradations in the group of Painter and Polisher. Shri S.K. Bajpai, respondent No.4 also filed a separate

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reply almost stating the same facts as given out in their reply by the official respondents. It is further stated that respondent No.4 made successive representations to the authorities as a result of which he has been given his dues factually from 1.4.1983 though the advantage of upgradation was given in proforma manner from 1.12.1978. The applicant, therefore, has no case.

10. We have heard the learned counsel for the parties at length and have gone through the records of the case. The main grievance of the applicant is that he being senior in the joint seniority of the Painter and Polisher of group artisan, his promotion to Grade II post w.e.f. 1.8.78 be made non-fortuitous. The learned counsel for the applicant based the arguments on the fact that the promotion which was effected in 1978 cannot be reopened after 10 years. It is further contended by the learned counsel that once a show cause notice given in 1981 was withdrawn then the matter cannot be reopened <sup>again</sup> to the disadvantage of the applicant by passing the impugned order. Both these contentions have been repelled by the learned counsel for the respondents successfully. From the perusal of the record it is clear that the position before upgradation was as below:

<u>Painter</u>	<u>Polisher</u>
1. Ramjan Ali	Ram Sagar
2. D.D.Rao	Mangal
3. Ram Dularey	S.K.Bajpai (Respdt.No.4)
4. Abdul Habib (applicant)	

It is evident from the record that Ramjan Ali, D.D.Rao and Abdul Habib, all the three in the Painter trade, were given the advantage of upgradation. Ramjan Ali was given a post in Grade I and D.D.Rao and Abdul Habib were given the posts in grade II. While no such post of Grade II

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had gone to the polisher trade. What the administration has now done is on retirement of Mangal on 1.12.1978, the advantage of upgradation was given to Shri S.K. Bajpai respondent No. 4 next senior in the polisher trade. The applicant, therefore, should have no grudge because it had already been decided in joint meeting of Union of Railway Employees and the applicant was himself the Branch President of one of the unions. What the administration has done is a correction of a mistake.

11. The Administration on receipt of scheme of 45% upgradation with effect from 1.8.1978 in the artisan category, <sup>divided</sup> ~~all~~ the 11 categories of artisan staff ~~were~~ <sup>divided</sup> in six groups and two posts of grade II were kept floating. While allotting the higher grade II post future criteria was laid down to give equal opportunity to all categories which were observed in a memo dated 6.4.1979 (Annexure AC-1). Accordingly, the group consisting of Painter and Polisher ~~was~~ <sup>to</sup> given two higher grades posts one in grade I and the other in Grade II. Both the posts were given to Painter trade, ~~grade I~~ <sup>to</sup> Ramjan Ali and Grade II to D.D. Rao. The applicant, Abdul Habib and respondent No. 4 Shri S.K. Bajpai gave a joint application <sup>to</sup> on 22.5.80 ~~/the~~ Deputy C.O.S. Alambagh, Lucknow Annexure A-II for correct implementation of 45% upgradation in category of Polisher and Painter. In consequence thereof, a J.C.M. was held between the administration and union representative <sup>that</sup> of the applicant and it was decided on June 10, 1980, ~~/the~~ <sup>post</sup> group of Polisher and Painter be given one ~~/of~~ Grade II (Annexure A-13). However, this post was given by mistake to the applicant, Abdul Habib who belongs to painter trade while it should have been gone to Shri S.K. Bajpai of the polisher trade and the order dated 13.7.1980 (Annexure A-7) was passed to give promotion to Grade II to the applicant, Abdul Habib w.e.f. 1.8.78. Thus, it is obviously <sup>wrong</sup> ~~/~~ implementation of the criteria



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fixed for upgradation in the order dated 6.4.1979 (Annexure AC-1, 12.) The administration and N.R.M.U. again held a meeting on 24.7.1981 and the point of distribution of posts of Grade I and Grade II amongst Painter and Polisher trade was taken up and it <sup>was</sup> decided in the meeting that junior-most be served with a show cause notice as to why he should not be reverted. (Annexure CA-3). It is in pursuance of this <sup>that was</sup> notice issued on 11.9.1981 to the applicant. However, this notice which was issued on 11.9.1981 became ineffective because of the decision of the Tribunal as the applicant was not heard on the show cause notice and the orders were passed by the administration without hearing the applicant in 1986. The Administration has only issued a fresh notice in compliance with the directions of the Tribunal on 23.4.1988 on which the impugned order has been passed. We find that the conclusion arrived at and the order passed by the Administration do not suffer from infirmity because the applicant had been wrongly allotted grade II post by the order of July, 1980 with effect from 1.8.1978 and it should have gone to the polisher trade. Ramjan Ali and D.D. Rao of the Painter trade already having two posts, the third post of polisher trade was wrongly allotted to the applicant. The contention of the learned counsel for the applicant that <sup>in the</sup> informal meeting of <sup>held</sup> the C.O.S. and U.R.M.U. on 5.3.1983, the show cause notice was withdrawn (Annexure A-20) will <sup>have</sup> no effect on the claims of respondent No. 4 Shri S.K. Bajpai. Shri S.K. Bajpai had made a representation on 16.8.1983 after the decision of the above meeting and sent reminders to the same effect on 13.9.1983, 25.10.1983, 5.10.1984, 3.12.1984 (Annexure CA-5 to 8). On the above representation the COS Headquarter had authorised Deputy COS Alambagh to dispose of the matter (Annexure CA-9). The respondents considered the matter after taking the views of both the unions N.R.M.U. and URMU and it was unanimously agreed that the third post of grade II which was given to the Painter trade by deviation should <sup>be</sup> allowed to be filled

in by the Polisher trade. Thus what has been done now is to set right the earlier mistake by giving the applicant fortuitous upgradation to Grade II with effect from 1.8.78 and regularising the same on non-fortuitous post from 1.1.1984. <sup>should</sup> The applicant <sup>has to be</sup> have no grudge as he was himself present and was the branch president of URMU and <sup>any</sup> bound by the decision taken jointly in the said meeting (Annexure CA-10). The case of the applicant, therefore, is devoid of <sup>any</sup> merit on facts.

13. The contention of the learned counsel for the applicant that once a matter <sup>which</sup> was decided and show cause notice in 1981 ~~was~~ withdrawn cannot be ~~reopened~~ has no basis because the applicant himself was a party to various agreements which took place in J.C.M. and administration and both the unions <sup>relevant</sup> and the applicant was branch president of N.R.M.U. at the <sup>State of</sup> time.

14. In the case of U.P. & Ors. Vs. Sanghar Singh, reported in 1974 SLJ 474, it has been held that the order of reversion does not attract Article 311 of the Constitution. If the order of reversion entails in penal consequences, only then the provisions are attracted.

15. Further reliance has been placed by the respondents on Ravinder Nath Tiwari Vs. Divisional Superintendent of Education and Another, reported in 1979 SLJ page 97, where the Hon'ble High Court of Madhya Pradesh held that even if ~~an~~ employee has been promoted on the basis of wrong seniority list, his subsequent reversion is not reduction in rank.

16. In Gulab Chand Vs. State of Rajasthan reported in 1979 SLJ page 163, Hon'ble High Court of Rajasthan held that if promotion in officiating capacity is made against the rule by mistake and subsequently the order of promotion was revoked after consideration of representation, there is no error of law and order of revocation of promotion is correct. The same view has been taken in the Employer Employees Law Reporter, 1989 Vol.I page 59, Sumant Lal Maena Vs. Union of India by the Allahabad Bench of the Central Administrative

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Tribunal.

17. The learned counsel for the applicant has also referred to certain case-laws but ~~they are~~ not relevant for the decision of the point ~~at~~ issue. The authorities cited by the learned counsel for the applicant are N.G. Prabhu and anr. Vs. Chief Justice and another, reported in 1973 Vol.II SLR 521, where Kerala High Court held that if some posts in a cadre are upgraded, senior officials in the cadre would automatically get higher scale of pay as it is not a case of promotion because the official continued to hold the same post. In the present case it is not disputed that respondent No.4 Shri S.K.Bajpai is the senior most in the Polisher trade and there is a separate seniority list of Painter trade as well as polisher trade though they constituted together one group for the purpose of upgradation. Another authority relied upon by the learned counsel for the applicant is P.S.Kapoor and Ors. Vs. Union of India, reported in 1979 Lucknow Law Journal at page 290. The authority is besides the point because in this cited case the post of Foreman Grade B was only redesignated and upgraded but the post itself was not changed and no selection <sup>was</sup> /to be held and the selection so made, therefore, was without authority of law, and struck down.

18. In view of the above discussion it is evident that the impugned order has been passed in accordance with law and the decision taken for correct implementation of the 45% upgradation of posts in the trade of Painter and Polisher under the Deputy C.O.S.Alambagh, Lucknow. The applicant has not at all been discriminated nor any injustice has been done to him and he has enjoyed the monetary benefits of promotion from 1.8.1978 till regularisation from 1.1.1984.

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He has also not been reverted. Shri S.K. Bajpai, respondent No. 4 a Polisher trade has rightly been given the Grade II post in Polisher Trade. The application is devoid of any merit and the same is hereby dismissed with costs on parties.

J.P. Sharma  
( J.P. Sharma )  
Member (judl.) 16.8.90

( P.C. Jain )  
Member (Admn.)

Proposed annexed by me.

J.P. Sharma  
J.M.

16.8.90.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH AT LUGANO.

\*\*\*\*

O.A./T.A. No. 45 1989(L)

Abdul Habib

Applicant(s)

Versus

U.O. 25 408

Respondent(s)

Sr. No.	Date	Orders
①	23/2/09	<p>Hon. D. S. Sharma, A.M. Hon. G. S. Sharma, J.M.</p> <p>Issue notice. To file reply within a month. Rejoinder may be filed within two weeks thereafter before the D.O. who will fix the date of after the counter &amp; exchanged.</p> <p>sd/ J.M.</p> <p>sd/ J.M.</p>
	28.2.09	<p><u>OR</u></p> <p>Notices issued to the reports through Regt. Post fixing 10.4.09 for final hearing.</p> <p>sd/ J.M.</p>
	3/4	<p><u>OR</u></p> <p>Notice of Report No 4 have been received with the postal remark.</p>
	6/4	<p><u>OR</u></p> <p>Neither reply nor rejoinder have been filed so far.</p>

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6/4

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Hon. Justice K. Nath, VC.  
Hon. K. D. Roman, Jm.

Last opportunity is being  
given to the learned counsel  
for the opposite parties to file  
counter within four weeks  
to which the applicant  
may file rejoinder within  
two weeks thereafter and  
list for final hearing on  
6/11/89.

KD  
Jm

VC

OR

In spite last opportunity  
given to reply for  
filing reply. The learned  
counsel failed to file  
same.  
Submitted for hearing

Hon. Mr. D.K. Agrawal, Jm.  
Hon. Mr. K. Chayya, Jm.

3/11/89

11/89

Shri R.C. Srivastava Counsel for the applicant as present.  
~~and~~ Shri Arjun Bhargava Counsel for  
the respondents files counter reply. Let rejoinder  
be filed by the applicant within 3 weeks.

List this case on 18-12-89 for hearing.

A.M.

Jm

(SNS)

OR  
A filed  
Rejoinder filed.  
duly served on  
the respondents.  
Case is ready  
for hearing  
Submitted for  
hearing on 11/11/89

(A6)

95/10/94

12-5-90

from D.K. Fitzgerald - Jm  
from Kobayashi - AM

Shir R.C. Seacoms for Applicant  
Jm A.P. Morgan for respondents / G.E.  
Shir R.B. Powder for respondent 4.

Wait for hearing on  
31-5-90 as requested.

Ref

AM.

J.M.

OR  
filed on behalf of 4.  
Case is submitted

31-5-90

Heble Mr. P.C. Join AM  
Heble Mr. J.P. Shoreline J.M.

for hearing  
29/5

Argument Concluded  
fulfillment

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AM

J.M.

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29/5/90

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL (CIRCUIT BENCH)  
LUCKNOW.

O.A. No. 45 1989 (L)

Abdul Habib ... Applicant.  
Versus.  
The Union of India and Others ... Respondents.

I N D E X

Sl. No.	Description of Documents relied upon	Page No.
1	2	3
1.	APPLICATION	1 - 24
2.	<u>Annexure No. A-1</u> Order No. E/91 dated 9.4.86	25 - -
3.	<u>Annexure No. A-2</u> Order No. 561E/85 dated 5.8.88	26 - -
4.	<u>Annexure No. A-3</u> Order No. E/163 dated 6.8.88	27 - -
5.	<u>Annexure No. A-4</u> Order No. E/398 dated 27.10.59	28 - -
6.	<u>Annexure No. A-5</u> Order No. E/158 dated 7.6.71	29 - -
7.	<u>Annexure No. A-6</u> Order No. E/271 dated 16.11.73	30 - -
8.	<u>Annexure No. A-7</u> Order No. E/268 dated 18.7.80	31 - -
9.	<u>Annexure No. A-8</u> Order No. E/97 dated 22.4.87	32 - -
10.	<u>Annexure No. A-9</u> Order No. E/364 dated 7.10.78	33 - -
11.	<u>Annexure No. A-10</u> Order No. E/300 dated 28.7.79	34 - -
12.	<u>Annexure No. A-11</u> Application dated 22.5.80	35 - -
13.	<u>Annexure No. A-12</u> Order No. 561A/85 dated 2.6.80	36 - -
14.	<u>Annexure No. A-13</u> Minutes of J.C.M. held on 5.6.80	37 - -

Filed today

22/2/89

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1	2	3
15.	<u>Annexure No. A-14</u> Order No. E/263 dated 15.7.80	38--
16.	<u>Annexure No. A-15</u> Order No. E-52 dated 7.2.81	39--
17.	<u>Annexure No. A-16</u> Order No. E/280 dated 14.8.84	40--
18.	<u>Annexure No. A-17</u> Order No. E/133 dated 7.6.85	41--
19.	<u>Annexure No. A-18</u> Seniority List as on 1.1.85	42-44
20.	<u>Annexure No. A-19</u> Order No. 561E/85 dated 11.9.81	45--
21.	<u>Annexure No. A-20</u> Minutes of meeting held at the Head Quarter with union on 5.3.83	46-47
22.	<u>Annexure No. A-21</u> Order No. 561E/85 dated 23.4.83	48--
23.	<u>Annexure No. A-22</u> Order No. E/50 dated 12.2.86	49--
24.	<u>Annexure No. A-23</u> Appeal dated 22.4.86	50-52
25.	<u>Annexure No. A-24</u> Judgement dated 12.2.88	53-55
26.	<u>Annexure No. A-25</u> Order No. 561E/85 dated 23.4.88	56-60
27.	<u>Annexure No. A-26</u> Reply dated 4.6.88	57-60
28.	<u>Annexure No. A-27</u> Representation dated 16.8.88	61-65

*A. K. Singh*

Signature of the  
Applicant.

For use in Tribunal office.

Date of filing  
OR

Signature for  
Registrar.

Date of receipt by post

Registration No.

*A. K. Singh*

AK9

2. PARTICULARS OF THE RESPONDENTS :

- (I) Name of the respondent - As given in the array of the parties.
- (II) Name of Father/Husband - Not known.
- (III) Age of the respondents - Impossible to be ascertained.
- (IV) Designation and particulars of office in which employed. - Already given in array of parties.
- (V) Office Address. - As given in array of parties.
- (VI) Address for service of notices. - As given in array of parties.

3. PARTICULARS OF THE ORDER AGAINST WHICH APPLICATION IS MADE.

The application is made against the following orders :-

- (I) Order No. - (i) E/91 with reference to Annexure No. 1.  
(ii) 561E/85 with reference to Annexure No. 2 and  
(iii) Order No. E/163 with reference to Annexure No. 3.
- (II) Date - (i) 9.4.86 with reference to Annexure No. 1.  
(ii) 5.8.88 with reference to Annexure No. 2.  
(iii) 6.8.88 with reference to Annexure No. 3.
- (III) Passed by - Deputy Controller of Stores, N.R. Alambagh, Lucknow. Respondent No. 2
- (IV) Subject in Brief - Promotion & Seniority.

4. JURISDICTION OF THE TRIBUNAL :

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

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(A16)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL (CIRCUIT BENCH),  
LUCKNOW.

O.A. No. 45 1989 (L)

B E T W E E N

ABDUL HABIB, aged about 55 years S/O Late Piroo, Ticket No. 254, Painter Grade I, under District Controller of Stores Northern Railway, Charbagh, Lucknow.

... Applicant.

A N D

1. Union of India, through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Deputy Controller of Stores, Northern Railway, Alambagh, Lucknow.
3. Controller of Stores, Northern Railway, Baroda House, New Delhi.
4. Sri Sheo Kishore Bajpai, aged about 56 years, S/O Sri Gaya Sahai, Ticket No. 375, Polisher Grade I, under Deputy Controller of Stores, Northern Railway, Alambagh, Lucknow.

... Respondents.

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DETAILS OF APPLICATION :

1. Particulars of the applicant :

- |       |  |   |
|-------|--|---|
| (I)   | Name of the applicant                                    | - Abdul Habib.  |
| (II)  | Name of Father   | - Late Sri Piroo.   |
| (III) | Age of the applicant                                     | - 55 years  |
| (IV)  | Designation and particulars of office in which employed. | - Painter Grade I under District Controller of Stores, N.R. Charbagh, Lucknow |
| (V)   | Office Address.  | - As stated in para 1 (IV) above.   |
| (VI)  | Address for service of notices.                          | - As stated in para 1 (IV) above.   |

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5. LIMITATION :

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

6. FACTS OF THE CASE :

(I) That the present application is directed against the order No. E/91 dated 9.4.1986 passed by respondent No. 2 appointing/promoting respondent No. 4 as Polisher Grade I in scale Rs. 1320-2040, w.e.f. 1.1.1984 and Sri Ram Dularey as Painter Grade-I (Retired from service) in scale Rs. 1320-2040, w.e.f. 1.9.1984 illegally and arbitrarily superseding and ignoring the legitimate claim of the applicant for his appointment/promotion against those up graded posts although he was senior in service to them, order No. 561E/85 dated 5.8.1988 and order No. E/163 dated 6.8.1988 passed by respondent No. 2 without properly considering the facts and pleas raised by the applicant in his reply dated 4.6.1988 submitted by him against the Show-Cause notice dated 23.4.1988 issued by respondent No. 2 to this application. A true copy of order dated 9.4.1986, 5.8.1988 and 6.8.1988 referred to above are filed herewith as Annexure No. A1, A2 and A3 respectively to this application.

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(II) That the applicant is giving hereinbelow his own relevant particulars/details of appointment/promotion and confirmation in the Railway as well as the particulars of appointment/promotion etc. of respondent No. 4 and Sri Ram Dularey (Now retired

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from service) in order to establish that the applicant was senior in service to them.

✓✓ (a) DETAILS OF APPLICANT :

Date of appointment/ promotion.	Posts on which appointed/ promoted.
22.6.1953	Khalasi scale Rs. 30-35 under District Controller of Stores, N.R. A.M.V., Lucknow.
19.10.1959	Semi Skilled Painter-scale Rs. 35-60 under District Controller of Stores.
7.6.1971	Skilled Painter Grade III Scale Rs. 110-180 (Revised to Rs. 260-400) under District Controller of Stores N.R. AMV, Lucknow.
28.11.1971	Confirmed as Painter Grade II scale Rs. 110-180 (Revised to Rs. 260-400)
1.8.1978	Painter Grade III Scale Rs. 330-480.
15.7.1980	Declared successful in the Trade Test for Highly skilled Grade II Painter scale Rs. 330-480.
21.4.1987	Declared suitable in the Trade test for the post of Painter Grade I scale Rs. 1320-2040.
26.3.1987	Painter Grade I scale Rs. 1320-2040

✓✓ (b) DETAILS OF RESPONDENT NO. 4 :

Date of appointment/ promotion/confirmation.	Posts on which appointed/ promoted.
8.12.1953	Khalasi scale Rs. 30-35 under Distt. Controller of Stores, N.R. AMV, Lucknow.
27.11.1974	Semi Skilled painter Rs. 35-60 (Revised to Rs. 210-290) under Distt. Controller of Stores.

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7.10.1978	Skilled Polisher Grade III scale Rs. 260-400, under Deputy Controller of Stores, N.R. AMV, Lucknow.
7.2.1981	Declared suitable in Trade Test. Highly skilled Polisher Grade II scale Rs. 330-480.
1.4.1983	Highly skilled Polisher Grade II scale Rs. 330-480, under Deputy Controller of Stores, N.R. AMV, Lucknow.
1.1.1984	Polisher Grade I scale Rs. 1320-2040

(c) DETAILS OF RAM DULAREY.

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Date of appointment/ promotion/confirmation.	Posts on which appointed/ promoted.
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12.5.1949	Khalasi scale Rs. 30-35 under Distt. Controller of Stores, AMV, Lucknow.
26.11.1971	Skilled Painter Grade III Rs. 260-400. Revised scale under Distt. Controller of Stores, N.R.-AMV, Lucknow.
26.11.1971	Confirmed as Painter Grade III.
15.7.1980	Declared failed in the Trade test for the post of highly skilled Painter Grade II scale Rs. 330-480.
7.2.1981	Declared failed in the trade test for the post of highly skilled Painter Grade II.
1985	Passed trade test for the post of highly skilled Painter Grade II scale Rs. 330-480.
10.5.1985	Painter Grade II scale Rs. 330-480 under Deputy Controller of Stores, N.R.-AMV, Lucknow.
1.9.1984	Painter Grade I scale Rs. 1320-2040 under Deputy Controller of Stores, AMV, Lucknow.

A true copy order No. E/389 dated 27.10.59 promoting the applicant as semi skilled Painter w.e.f. 19.10.1959, order No. E/158 dated 7.6.1971 promoting applicant as Painter Grade III, scale

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Rs. 110-180 (Revised to Rs. 260-400), order No. E/271 dated 16.11.1973 confirming the applicant as Painter Grade III w.e.f. 28.11.1971, order No. E/268 dated 18.7.1980 promoting the applicant as Painter Highly Skilled Grade II scale Rs. 330-480 w.e.f. 1.8.1978 and order No. E/97 dated 22.4.1987 promoting the applicant as Painter Grade I in scale Rs. 1320-2040 are filed herewith as Annexure No. A-4, A-5, A-6, A-7 and A-8 respectively to this application in support of the above facts.

(III) That from the above it is clear that the applicant was promoted/appointed to the post of Painter Grade III in scale Rs. 110-180 (Revised to Rs. 260-400) vide office order No. E/158 dated 7.6.1971 contained in Annexure No. A-5 and Sri S.K.Bajpai, Respondent No. 4 was promoted/appointed from the post of Semi Skilled Painter (scale Rs. 210-290) to the post of Polisher Grade III, scale Rs. 260-400 w.e.f. 7.10.1978 and Sri Ram Dularey was promoted/appointed as Painter Grade III scale Rs. 110-180 (Revised to Rs. 260-400) w.e.f. 26.11.1971. A true copy of promotion order No. E-364 dated 7.10.1978 relating to Sri S.K.Bajpai is filed herewith as Annexure No. A-9 to this application.

(IV) That the posts of Painter and Polisher belongs to one Group and promotion from the post of Painter/Polisher Grade III in scale Rs. 260-400 to Painter/Polisher Grade II, scale Rs. 330-480 is made after passing the

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requisite Trade Test prescribed under Rules.

(V) That the fact that the posts of Painter/Polisher belongs to one Group of Artizon Staff proved from the fact that the General Manager (P) New Delhi, vide office order No. 561-E/P.S.-32-V (E II W) dated 4.9.1978 as contained in office order ~~for~~ No. E/300 dated 28.7.1979, provided for promotion from total 6 posts i.e. 4 Painter ~~2~~ Polishers, Grade III in scale Rs. 260-400, to 1 post of Painter Grade II, scale Rs. 330-480 and 1 post of Painter Grade I scale Rs. 380-560 for allowing the benefits of up-gradation. A true copy of order dated 28.7.79 containing G.M. (P)'s order dated 4.9.1978 is filed herewith as Annexure No. A-10 to this application.

(VI) That since 45% upgradation of posts was to be made in the cadre of Painter/Polisher belonging to one group but the same was not done vide orders contained in Annexure No. A-10, as such the applicant and respondent No. 4 represent to respondent No. 2 vide application dated 22.5.8. The respondent No. 2 vide order dated 2.6.1980 informed to the applicant that the matter in issue has been referred to the Head Quarter and will be discussed in J.C.M. Thereafter on 5.6.198 the issue in question was discussed by the department (Respondent No. 2) with the office bearers of both the unions and it was finally decided that 2 posts in the Group consisting of Painter/Polisher shall be allotted to Highly



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Skikked Grade II (scale Rs. 330-480) and finally closed the issue vide office order No. Dy.C.O.S/J.C./80 dated June 9/10, 1980. A true copy of application dated 22.5.1980, intimation letter dated 2.6.1980 and the order dated 9/10-6-1980 deciding the issue as stated above are filed herewith as Annexure No. A-11, A-12 and A-13 respectively to this application.

(VII) That in view of the above decision two posts of Painter (Highly Skilled) Grade II and one post of Painter, Grade I became available for allowing the benefits of upgradation to the incumbents of the cadre of Painter/Polisher having total strength of 6 posts of Painter/Polisher in Grade III.

(VIII) That since passing of trade test is the condition precedent for filling-up posts of Painter Grade II, a trade test was organised and held on 7.7.1980 and its result was published vide office order No. E/263 dated 15.7.1980. The applicant was declared successful whereas Sri Ram Dularey failed in the said Test. A true copy of the result declared vide order dated 15.7.1980 referred to above is filed herewith as Annexure No. A-14 to this application.

(IX) That after passing the prescribed Trade Test, the applicant was promoted to the post of Painter (Highly Skilled) Grade II in scale Rs. 330-480 w.e.f. 1.8.1978 and the promotion order dated 18.7.1980 issued of the

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applicant in this regard already forms part as Annexure No. A-7 to this application.

(X) That it is relevant to mention here that again a trade test was conducted in the year 1981 for Painter (Highly Skilled) Grade II wherein Respondent No. 4, Sri S.K. Bajpai passed and Sri Ram Dularey again failed. The result of this trade test was published vide office order No. E-52 dated 7.2.1981 issued on behalf of respondent No. 2. A true copy of office order dated 7.2.1981 referred to above is filed herewith as Annexure No. A-15 to this application.

(XI) That after passing the requisite trade test the respondent No. 4 Sri S.K. Bajpai was promoted to the post of Polisher (Highly Skilled) Grade II in scale Rs. 330-480 vide office order No. E/260 dated 14.8.1984 w.e.f. 1.4.1984. A true copy of promotion order of respondent No. 4 referred to above is filed herewith as Annexure No. A-16 to this application.

(XII) That Mr. Ram Dularey ultimately any how passed the requisite trade test in the year 1985 and was promoted to the post of Painter (Highly Skilled) Grade II, scale Rs. 330-480 vide office order No. E/133 dated 7.6.1985 and the promotion was allowed with effect from 1.4.1985. A true copy of promotion order referred to above is filed herewith as Annexure No. A-17 to this application.

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(XIII) That from the above it is fully established that the applicant entered in Grade II (Highly Skilled) Painter w.e.f. 1.8.1978 vide Annexure No. A-7, Respondent No. 4, Sri S.K. Bajpai as Polisher (Highly Skilled) Grade II w.e.f. 1.4.1983 vide Annexure No. A-16 and Sri Ram Dularey as Painter (Highly Skilled) Grade II, w.e.f. 10.5.1985 vide Annexure No. A-16.

(XIV) That since the applicant entered into Grade III scale Rs. 110-180 (Revised Rs. 260-400) of Painter earlier to respondent No. 4 and Sri Ram Dularey as stated in para 6-III and also in Grade II of Highly Skilled Painter in scale Rs. 330-480 as stated in para 6-XII above, he ranked senior to them in service.

(XV) That the respondent No. 2 published the seniority list of the post of Painter/Polishers as on 1.1.1985 showing the name of the applicant above the names of Sri Ram Dularey and Sri S.K. Bajpai, respondent No. 4. A true/copy of the said seniority test which was filed by the respondent No. 2 before this Tribunal in the case of the applicant earlier filed and numbered as O.A. No. 615-86 decided vide judgement and order dated 12.2.1988, is filed herewith as Annexure No. A-18 to this application.

(XVI) That upto the time the applicant, respondent No. 4 and Sri Ram Dularey reached to Grade II (Highly Skilled) Painter+Polisher, scale Rs. 330-480 everything remained all right but

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thereafter when benefits of upgradation on upgraded posts of Painter Grade I, were to be allowed to the senior most incumbent i.e. the applicant the respondent No. 2 with an oblique motive and sole intention to give undue favour to respondent No. 4 and Sri Ram Dularey started acting malafidely in various ways and means;

(XVII) That on a baseless ground that since all the 3 higher grade posts i.e. 2 Grade II and 1 Grade I are occupied by the painters and the polishers have been deprived of the same totally ignoring to take into account that the posts of Painter and Polisher were in one group and promotions were to be given to the in accordance with senior incumbents/the combined seniority maintained in the department and not treating Polisher as a separate group, the respondent No. 2 vide office order No. 561E/85 dated 11.9.1981 issued a Show-Cause notice to the applicant proposing as to why he should not be reverted from the post of Painter Grade II and why the post in question may not be allotted to right person in polisher trade ? A true copy of the Show-cause notice dated 11.9.1981 issued by respondent No. 2 proposing for reversion of the applicant for allotting his post to Polisher trade is filed herewith as Annexure No. A-19 to this application.

(XVIII) That at the instance of the applicant, however, the matter regarding reversion of the applicant for allotting the post of

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Painter Grade II, held by the applicant was referred to the Head Quarter and the same after discussion with the union was finally closed in the meeting held at Head Quarter on 5.3.1983 and the item regarding Show-cause mentioned at item No. 11 in the minutes of the said meeting was finally closed and the Show-cause notice dated 11.9.1981 contained in Annexure No. A-19 was withdrawn. A true copy of the minutes of the informal meeting held with U.R.M.U on 5.3.83 duly signed by G.M.(P) NDLS is filed herewith as Annexure No. A-20 to this application.

(XIX) That consequent to the above decision that the principle of combined seniority was rightly followed in giving promotion to the applicant, after withdrawal of the Show-Cause notice in the meeting held at the Head Quarter on 5.3.1983, the respondent No. 2 also issued order No. 561E/85 dated 23.4.1983 holding the promotion of the applicant as Painter Grade II as correct with drawing the Show-Cause notice dated 11.9.1981 contained in Annexure No. A-19. A true copy order dated 23.4.1983 referred to above is filed herewith as Annexure No. A-21 to this application.

(XX) That even whereafter the respondent No. 2 in utter violation of the decision of the Head Quarter dated 5.3.1983 and his own decision dated 23.4.1983 contained in Annexure No. A-20 and A-21, all of a sudden without any opportunity passed order No. E/50 dated 12.2.1986 up-sitting

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the promotion of the applicant on the post of Painter Grade II w.e.f. 1.8.1978 and considered it as fortuous and treated the same as regular w.e.f. 1.1.1984 instead of 1.8.1978. The respondent No. 2 by the same order illegally allowed proforma fixation for the post of Polisher Grade II w.e.f. 1.12.1978 in scale Rs. 330-480 to Sri S.K. Bajpai, respondent No. 4 and also allowed the arrears of pay w.e.f. 1.4.1984. The respondent No. 2 also allowed the benefits of proforma promotion against the upgraded post of Painter Grade II w.e.f. 1.4.1983 to Sri Ram Dularey totally ignoring to take into account that the respondent No. 4 and Sri Ram Dularey were junior to the applicant and could not have been promoted so arbitrarily reverting the applicant in effect and substance and sending him junior to them. A true copy of order dated 12.2.1986 passed after about 9 years upsetting applicant's promotion and rendering him junior to respondent No. 4 and Sri Ram Dularey is filed herewith as Annexure No. A-22 to this application.

(XXI) That the respondent No. 2 also passed one another similar order No. E/91 dated 9.4.1986 illegally allowing the benefits of promotion and seniority to respondent No. 4 and Sri Ram Dularey, a true copy of which forms part as Annexure No A-1 to this application.

(XXII) That the applicant filing aggrieved preferred appeal dated 22.4.1986 to the G.M. (P) Baroda House, New Delhi, submitting copy of the same to the respondent No. 3, challenging validity

of both the orders dated 12.2.1986 and 9.4.1986 contained in Annexure No. A-22 and A-1 to the application. A true copy of appeal dated 22.4.1986 referred to above is filed herewith as Annexure No. A-23 to this application.

(XXIII) That thereafter when nothing was done on the appeal of the applicant he preferred application before the Central Administrative Tribunal at Allahabad which was registered as C.A. No. 615 of 1986, challenging the validity of the order No. E/50 dated 12.2.1986 which was finally heard and decided vide judgement and order dated 12.2.1988. A true copy of judgement and order dated 12.2.1988 passed by this Hon'ble Tribunal is filed herewith as Annexure No. A-24 to this application.

(XXIV) That the Hon'ble Tribunal while deciding the application referred to in the preceding paragraph clearly held that the impugned order dated 12.2.1986 was passed without giving any opportunity to the applicant violating the principles of natural justice and fairplay and held it illegal and arbitrary and quashed the same. However, the Tribunal observed that the department will be at liberty to pass fresh order after giving a notice and hearing to the petitioner.

(XXV) That the respondent No. 2 without applying his mind to the fact that the matter issue was already decided and finalised treati

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the promotion of the applicant as correct by the Head Quarter and respondent No. 2 himself and the order No. E/50 dated 12.2.1986 was already quashed by the Hon'ble Tribunal, yet on a preconcieved motion in order to give undue favour to respondent No. 4 and Sri Ram Dularey, again issued Show-Cause notice vide office order No. 561E/85 dated 23.4.1988 requiring the applicant to Show-Cause against the proposed action i.e. as to why the promotion of the applicant to the post of Painter Grade II may not be treated w.e.f. 1.1.1984 instead of 1.1.1978. A true copy the said Show-Cause notice dated 23.4.1988 is filed herewith as Annexure No. A-25 to this application.

(XXVI) That the applicant submitted reply to the Show-Cause notice dated 23.4.1988 contained in Annexure No. A-25 on 4.6.1988 stating all necessary facts in support of his contention that the respondent No. 4 and Sri Ram Dularey being junior to him cannot be allowed benifit of upgradation/promotion from a date prior to the date of promotion of the applicant in Grade II of the Painter illegally treating his promotion as fortuous w.e.f. 1.8.1987 till 31.12.1983, specifically when it was already decided by the Head Quarter and respondent No. 2 on 5.3.1983 and 23.4.1983 respectively that the promotion of the applicant in Grade II on the post of Painter w.e.f. 1.8.1978 was correctly done following the principle of combined seniority. A true copy of the reply to the Show-Cause notice



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submitted on 4.6.1988 is filed herewith as  
Annexure No. A-26 to this application.

(XXVII) That the respondent No. 2 without considering the reply to the Show-Cause notice and without giving any hearing passed order No. 561 E/85 dated 5.8.1988 and order No. E/163 dated 6.8.1988 upholding illegal and arbitrary actions mentioned in order No. E/50 dated 12.1.1986 contained in Annexure No. A-22 already quashed by this Hon'ble Tribunal and order No. E/91 dated 9.4.1986 contained in Annexure No. A-1 to this application. A true copy of the impugned order dated 5.8.1988 and 6.8.1988 passed as a result of decision of the issue involved in the Show-Cause notice already forms part as Annexure No. A-2 and A-3 to this application.

(XXVIII) That the applicant feeling aggrieved with the impugned orders dated 9.4.1986, 5.8.1988 and 6.8.1988 contained in Annexure No. A-1, A-2 and A-3 preferred representation dated 16.8.1988 to the respondent No. 3 giving copy of the same to the G.M. requesting for redressal of his grievance for the facts and reasons stated by him in his representation dated 16.8.1988. A true copy of the said representation dated 16.8.1988 is filed herewith as Annexure No. A-27 to this application.

(XXIX) That the respondent No. 3 has failed to decide the representation dated 16.8.1988 contained in Annexure No. A-27 although more than

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6 months time has already passed and no orders on his representation has yet been communicated to the applicant entitling the applicant to seek redressal of his greivance from this Tribunal.

(XXX) That it is further important to state that the respondent No. 2 not only upset the promotion of the applicant in Grade II of the post of Painter i.e. it has been done with effect from 1.8.1984 instead of 1.8.1978 but he further acted dishonestly and malafidely in giving promotion on up-graded post of Painter/ Polisher Grade I to respondent No. 4 and Sri Ram Dularay w.e.f. 1.1.1984 and 1.9.1984 respectively totally ignoring the rellevant considerations legally required to be taken into consideration. The respondent No. 2 arbitrarily discriminated the applicant without any just and valid cause and allowed the benifit of promotion on up-graded post of Painter Grade I w.e.f. 26.3.1987 vide order No. E/97 dated 22.4.1987 forming part as Annexure No. A-8 to this application . The promotion of respondent No. 4 and Sri Ram Dularay w.e.f. 1.1.1984 and 1.9.1984 respectively, illegally superseding the applicant is wholly arbitrary and discriminatory hit by Article 14 and 16 of the constitution of India and are liable to be set-aside and consequently the applicant is entitled to be allowed the benifi of promotion on the post of Painter Grade I, scale Rs. 1320-2040 w.e.f. 1.1.1984 instead of 26.3.1987.

(XXXI) That in the up-gradation of posts since no element of promotion is involved, the senior most incumbent has to be allowed the benefit of being placed on the upgraded post.

7. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that he has availed all the remedies available to him under the relevant service Rules etc. He submitted representation dated 16.8.1988 to the Controller of Stores, N.R. Baroda House, New Delhi through proper channel representing against the impugned orders dated 9.4.1986, 5.8.1988 and 6.8.1988 contained in Annexure No. A-1, A-2 and A-3 and also sent the copy of the said representation to the General Manager but they have failed to redress the grievance of the applicant although more than 6 months time from the date of representation i.e. 16.8.1988 has already expired and the applicant has not been communicated with any orders on his representation.

8. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT.

The applicant had filed O.M. No. 615 of 1986 against order No. E/50 dated 12.2.1986 passed by respondent No. 2 where by promotion of the applicant w.e.f. 1.8.1978 as Painter Grade II in scale Rs. 330-480 was up-set after 10 years and considered w.e.f. 1.1.1984 that too without giving any opportunity. The application of the applicant was allowed by the Hon'ble Tribunal vide its judgement and order dated 12.2.1988 and the impugned order dated 12.2.1986 was

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(a) To quash the impugned order dated 9.4.1986, 5.8.1988 and 6.8.1988 passed by respondent No. 2 adversely, effecting applicants seniority and promotion and allow the benefits of upgraded post of Painter Grade I in scale Rs. 1320-2040 w.e.f. 1.1.1984 to the applicant treating him as senior to Sri S.K. Bajpai, respondent No. 4 and Sri Ram Dularey, Painter Grade I retired from service in 1986, further directing the respondents to pay off the entire arrears of salary and allowances, thus, found accrued.

GROUND FOR RELIEF :

(I) Because there is no element of promotion involved in up-gradation as such its benefits are to be allowed to the incumbent senior in service.

(II) Because the applicant was senior in service to respondent No. 4 as Painter Grade III and having earlier passed the requisite trade test was rightly promoted on upgraded post of Painter Grade II in preference to respondent No. 4 and Sri Ram Dularey following the principle of combined seniority maintained for the category of posts of Painter/Polishers forming one group at the relevant time.

(III) Because the longstanding promotion

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quashed. It was left open for the opposite parties to pass fresh order after giving opportunity to the applicant.

After the above decision by the Hon'ble Tribunal, the respondent No. 2 again issued Show-Cause notice dated 23.4.1988 to which the applicant submitted his detailed reply vide his letter dated 4.6.1988 but the respondent No. 2 without applying his mind to the facts and pleas raised by the applicant in his reply to Show-Cause notice, rejected the same and passed similar order dated 5.8.1988 and 6.8.1988 practically upholding the same decision which was taken by him vide his order No. E-50 dated 12.2.1986 impugned and quashed in the previous application O.A. No. 615 of 1986.

The applicant thereafter submitted representations dated 16.8.1988 against the orders dated 5.8.1988 and 6.8.1988 and order dated 9.4.1986 to the respondent No. 3 and also sent the copy of the said representation to the General Manager but no orders have yet been communicated to the applicant although more than 6 months time has already elapsed and the grievance of the applicant is still surviving for redressal by this Hon'ble Tribunal.

9. RELIEF SOUGHT :

In view of the facts mentioned in para 6 above the applicant prays for the following relief :-

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(a) To quash the impugned order dated 9.4.1986, 5.8.1988 and 6.8.1988 passed by respondent No. 2 adversely, effecting applicants seniority and promotion and allow the benefits of upgraded post of Painter Grade I in scale Rs. 1320-2040 w.e.f. 1.1.1984 to the applicant treating him as senior to Sri S.K. Bajpai, respondent No. 4 and Sri Ram Dularey, Painter Grade I retired from service in 1986, further directing the respondents to pay off the entire arrears of salary and allowances, thus, found accrued.

GROUND FOR RELIEF :

(I) Because there is no element of promotion involved in up-gradation as such its benefits are to be allowed to the incumbent senior in service.

(II) Because the applicant was senior in service to respondent No. 4 as Painter Grade III and having earlier passed the requisite trade test was rightly promoted on upgraded post of Painter Grade II in preference to respondent No. 4 and Sri Ram Dularey following the principle of combined seniority maintained for the category of posts of Painter/Polishers forming one group at the relevant time.

(III) Because the longstanding promotion

138

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of the applicant as Painter Grade II w.e.f. 1.8.1978 could not have been up-set in order to give undue favour to respondent No. 4 and Sri Ram Dularey who were junior to him and specifically when the issue <sup>was</sup> already finalised by the Head Quarter after discussion with the representatives of both the unions.

(IV) Because the respondent No. 2 after final decision of the matter relating to promotion of the applicant by the Head Quarter in consultation with the unions, was not competent to reopen the issue again by issuing Show-Cause notice to the applicant.

(V) Because the respondent No. 2 acted malafidely and in an arbitrary manner in allowing the benefits of promotion on the upgraded posts of Painter/Polisher with retrospective effect to respondent No. 4 and Sri Ram Dularey illegally considering the promotion of the applicant as fortuous though the same was rightly done in accordance with rules in the regular manner in clear vacancy.

(VI) Because the respondent No. 2 arbitrarily passed impugned orders contained in Annexure No. A-1, A-2 and A-3 without properly considering the reply of the Show-Cause notice submitted by the applicant.

(VII) Because the respondent No. 2 even did not allow the opportunity of hearing before passing the impugned orders contained in Annexure No. A-1,

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A-2 and A-3 although this Hon'ble Tribunal had specifically observed regarding the same in its judgement and order dated 12.2.1988 contained in Annexure No. 14-24.

(VIII) Because the applicant being senior in service to respondent No. 4 and, Sri Ram Dularey was legally entitled to be allowed the benefits of upgradation on the upgraded post of Painter Grade I w.e.f. 1.1.1984 and the respondent No. 2 committed illegality in passing the impugned orders allowing the said benefits to respondent No. 4 and Sri Ram Dularey illegally superseding the applicant.

(IX) Because the impugned orders are illegal and arbitrary and are hit by the provisions of Article 14 and 16 of the constitution of India.

10. INTERIM ORDER, IF ANY PRAYED :

No.

11. APPLICATION IS BEING FILED PERSONALLY REPRESENTED THROUGH COUNSEL.

12. PARTICULARS OF THE BANK DRAFT/POSTAL ORDER IN RESPECT OF APPLICATION FEE.

- (I) No. of Indian Postal order (i) CC 399238  
(ii) P1 827377  
(II) Name of the issuing post office. civil Engineering School Lt  
(III) Date of issue of Postal order. 17.2.89  
(IV) Post Office at which payable. Allahabad

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13. LIST OF ENCLOSURES :

- |         |                   |   |
|---------|-------------------|---|
| (I)     | Annexure No. A-1  | Order No. E/91 dated 9.4.86.                                      |
| (II)    | Annexure No. A-2  | Order No. 561E/85 dated 5.8.88.                                   |
| (III)   | Annexure No. A-3  | Order No. E/133 dated 6.8.88                                      |
| (IV)    | Annexure No. A-4  | Order No. E/398 dated 27.10.59.                                   |
| (V)     | Annexure No. A-5  | Order No. E/158 dated 7.6.71                                      |
| (VI)    | Annexure No. A-6  | Order No. E/271 dated 16.11.73.                                   |
| (VII)   | Annexure No. A-7  | Order No. E/268 dated 18.7.80.                                    |
| (VIII)  | Annexure No. A-8  | Order No. E/97 dated 22.4.87                                      |
| (IX)    | Annexure No. A-9  | Order No. E/364 dated 7.10.78.                                    |
| (X)     | Annexure No. A-10 | Order No. E/300 dated 28.7.79.                                    |
| (XI)    | Annexure No. A-11 | Application dated 22.5.80.  |
| (XII)   | Annexure No. A-12 | Order No. 561E/85 dated 2.6.80.                                   |
| (XIII)  | Annexure No. A-13 | Minutes of J.C.M. held on 5.6.80.                                 |
| (XIV)   | Annexure No. A-14 | Order No. E/263 dated 15.7.80.                                    |
| (XV)    | Annexure No. A-15 | Order No. E-52 dated 7.2.81.                                      |
| (XVI)   | Annexure No. A-16 | Order No. E/260 dated 14.8.84.                                    |
| (XVII)  | Annexure No. A-17 | Order No. E/133 dated 7.6.85                                      |
| (XVIII) | Annexure No. A-18 | Seniority list as on 1.1.85.                                      |
| (XIX)   | Annexure No. A-19 | Order No. 561E/85 dated 11.9.81.                                  |
| (XX)    | Annexure No. A-20 | Minutes of meeting held at the Head Quarter with union on 5.3.83. |
| (XXI)   | Annexure No. A-21 | Order No. 561E/85 dated 23.4.83.                                  |
| (XXII)  | Annexure No. A-22 | Order No. E/50 dated 12.2.86                                      |
| (XXIII) | Annexure No. A-23 | Appeal dated 22.4.86.   |
| (XXIV)  | Annexure No. A-24 | Judgement dated 12.2.88.  |
| (XXV)   | Annexure No. A-25 | Order No. 561E/85 dated 23.4.88.                                  |

A-410 A I  
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NORTHERN RAILWAY

Office of the Dy. Controller of Stores, N.Rly., Alambagh, Lucknow.

Office Order No: E/91.

Dated 9.4.1986.

The Following promotions are ordered against re-classification orders received vide P.S. No: 8768 as vetted by S.A.O.(W), Alambagh, Lucknow.

1. Sri D.D.Rao, T.No.13 who was promoted as Gr.I Painter against vacancy caused due to retirement of Sri Ramzan Ali, is appointed to officiate as Gr.I Painter w.e.f. 1.1.84 on proforma and actual payment from 1.7.75 against an upgraded post from 1.1.84. His pay in scale Rs.380-560 (R.S.) is revised as under:-

Existing pay in  
Gr. 380-560(RS)

Rs. 380+ 12/- (O.P.)  
w.e.f. 17.10.84

Rs. 404/- w.e.f. 1.10.85.

Revised pay in scale  
Rs. 380-560 (R.S.)

Rs. 370/- + 22/- (O.P.) = 392/-  
w.e.f. 1.1.84.

Rs. 404/- w.e.f. 1.1.85.  
Rs. 416/- w.e.f. 1.1.86.

2. Sri Ram Dularey T.No. 11 Painter Gr.II is appointed to officiate as Gr. I w.e.f. 1.9.84 against resultant vacancy caused due to retirement of Sri Ramzan Ali, T.No. 15 on 31.8.84 A.N. His pay in grade Rs. 380/- - 560/- (R.S.) is fixed on proforma w.e.f. 1.9.84 and actual payment from 1.7.1985.

Pay Rs.362/- + Rs. 18/- (OP) w.e.f. 1.9.84  
Rs. 392/- w.e.f. 1.9.1985.

3. Sri Shiv Kishore Bajpai, T.No. 375 Polisher Gr.II is appointed as Polisher Gr.I on proforma basis from 1.1.84 and actual payment from 1.7.85. His pay in grade Rs. 380-560 (R.S.) is fixed as Under:-

Pay Rs. 370/- + Rs. 22/- (O.P.)	w.e.f. 1.1.84
Pay Rs. 404/-	.. w.e.f. 1.1.85
Pay Rs. 416/-	.. w.e.f. 1.1.86.

sd/- Illegible, (9.4.86)  
for Dy.C.O.S./N.Rly.,  
Alambagh, Lucknow.

Copy to the following for information and n/actions:-

1. SAO/(W)/N.Rly./AMV/LKO.
2. Sr. DSK/Genl. AMV, LKO.
3. H.C./Bills/AMV.
4. TTK: /Alambagh.
5. Parties concerned.

TRUE COPY  
ATTEST

\*\*\*\*\*

A Lal  
R.C. Sharma  
Manager, Dy. Cont.  
N.Rly., Alambagh, Lucknow

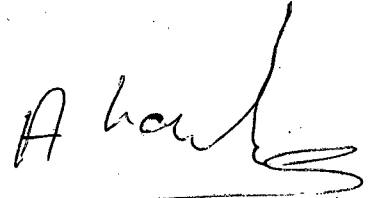
(XXVI) Annexure No. A-26 Reply dated 4.6.88.

(XXVII) Annexure No. A-27 Representation dated 16.8.88.

VERIFICATION

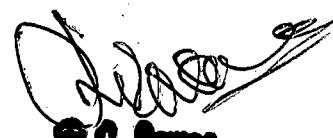
I, Abdul Habib S/O Late Piroo, Painter Grade I, under District Controller of Stores, N.R. Charbagh, Lucknow do hereby verify that the contents of para 1 to 3, 6, 7, 8, 11, 12 and 13 are true to my personal knowledge and those of para 4, 5, 9 and 10 are believed to be true on legal advice and that I have not suppressed any material fact.

Dated: Lucknow,  
February 22, 1989.

  
Signature of the applicant.

To,

The Registrar,

  
G.C. Sharma  
Joint Secy. Genl. Secy.  
E-3665, Rajajipuram, Lucknow

A-42 25

NORTHERN RAILWAY

Office of the Dy. Controller of Stores, N.Rly., Alambagh, Lucknow.

Office Order No: E/91.

Dated 9.4.1986.

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1. Sri D.D.Rao, T.No.13 who was promoted as Gr.I Painter against vacancy caused due to retirement of Sri Ramzan Ali, is appointed to officiate as Gr.I Painter w.e.f. 1.1.84 on proforma and actual payment from 1.7.75 against an upgraded post from 1.1.84. His pay in scale Rs.380-560 (R.S.) is revised as under:-

Esisting pay in  
Gr. 380-560(RS)

Revised pay in scale  
Rs. 380-560 (R.S.)

Rs. 380+ 12/- (O.P.)  
w.e.f. 17.10.84

Rs. 370/- + 22/- (O.P.) = 392/-  
w.e.f. 1.1.84.

Rs. 404/- w.e.f. 1.10.85.

Rs. 404/- w.e.f. 1.1.85.  
Rs. 416/- w.e.f. 1.1.86.

2. Sri Ram Dularey T.No. 11 Painter Gr.II is appointed to officiate as Gr. I w.e.f. 1.9.84 against resultant vacancy caused due to retirement of Sri Ramzan Ali, T.No. 15 on 31.8.84 A.N. His pay in grade Rs. 380/- - 560/- (R.S.) is fixed on proforma w.e.f. 1.9.84 and actual payment from 1.7.1985.

Pay Rs.362/- + Rs. 18/- (OP) w.e.f. 1.9.84  
Rs. 392/- w.e.f. 1.9.1985.

3. Sri Shiv Kishore Bajpai, T.No. 375 Polisher Gr.II is appointed as Polisher Gr.I on proforma basis from 1.1.84 and actual payment from 1.7.85. His pay in grade Rs. 380-560 (R.S.) is fixed as Under:-

Pay Rs. 370/- + Rs. 22/- (O.P.) w.e.f. 1.1.84  
Pay Rs. 404/- .. w.e.f. 1.1.85  
Pay Rs. 416/- .. w.e.f. 1.1.86.

sd/- Illegible, (9.4.86)  
for Dy.C.O.S./N.Rly.,  
Alambagh, Lucknow.


Copy to the following for information and n/actions:-

1. SAO/(W)/N.Rly./AMV/LKO.
2. Sr. DSK/Genl. AMV, LKO.
3. H.C./Bills/AMV.
4. TMK: /Alambagh.
5. Parties concerned.

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ATTEST..

\*\*\*\*\*

  
D.C. Sharma  
Alambagh, Lucknow  
S-1111, Alambagh, Lucknow

~~A No A2~~

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NORTHERN RAILWAY:

Office of the, Dy. Controller of Stores,  
N.Railway, Alambagh/Lucknow.

No.561E/85

Dated: 5-9-1988

Shri Abdul Habib,  
T.No: 254, Painter, Gr.I,  
Charbagh Stores Depot,  
Lucknow.

Sub :- Show Cause Notice to examine the Promotion  
as Painter Gr.II with effect from 01.8.1978.

Ref :- Your reply to Show Cause  
Dated: 04.6.'88.

Your reply to show cause notice No:561E/85 Dtd. 23.4.'88 has been examined at length and it is observed that your claim of seniority over Shri Shiv Kishore Bajpai T.No:375, and Sri Akhtar Husain T.No. 311 in the category of polisher is not correct as you belong to Painter category *and these staff belong to polisher category* as the seniority is category wise. The claim of Polisher on one upgraded post of Gr.II with effect from 1.8.'78 is considered genuine as polishers category remained deprived of 45% upgrading w.e.from 01.8.'78 due to deviation from fixed criteria for filling up the upgraded posts. Accordingly the one Gr.II/Post allotted to Polisher and Painter group is to be operated in the category of polisher w.e.from 1.8.'78.

Your promotion as Painter Gr. II with effect from 01.8.'78 as made vide Office Order No.2/268 Dated: 18.7.'80 is thus considered to be fortuitous. Your promotion against Non Fortuitous post as Gr.II Painter is considered to be from 01.1.'84 against an upgraded post available on that date.

H 1257-10  
Dy. Controller of Stores,  
N.Rly. Alambagh/Lucknow.

**TRUE COPY  
ATTESTED**

*A. Lal*

Raj.29/7

*[Signature]*  
A.C. Sena  
Asstt. Secy. Genl.  
6-2465, Rajajipuram, Lucknow

NORTHERN RAILWAYS

Office of the, Dy. C.O.S./N.Rly. Alambagh/Lucknow.

Office Order No. 18/163

Dated: 6-8-1988

After considering the reply of Sri Abdul Habib, T.No:254 to the show Cause Notice No:5612/85 Dtd. 23-4-'83, it is considered justified to set right the deviation from the fixed criteria made earlier and therefore one GR-II post is to be filled from the category of Polishers w.e.from 01.8.'78. Thus the promotion of Sri Abdul Habib T.No:254 as Painter GR-II w.e.from 01.8.'78 is fortuitous and accordingly the following promotions are ordered :-

1. Sri Shree Kishore Bajpai T.No:375 Polisher is appointed to officiate as Polisher GR-II in Scale of Rs.330-480(RS) w.e.from 01.12.'78 against one post of GR-II required to be filled from polisher w.e.from 01.8.'78. His pay in scale of Rs.330-480(RS) is fixed on proforma basis w.e.from 01.12.'78 and actual payment w.e.from 01.4.'84.

<u>Pay Fixed</u>	<u>Grade</u>	<u>Date</u>
Rs. 260/- + Rs.70/-(O.P)	Rs.330-480(RS)	01.12.'78
" 338/-	-do-	01.12.'79
" 346/-	-do-	01.12.'80
" 354/-	-do-	01.12.'81
" 362/-	-do-	01.12.'82
" 370/-	-do-	01.12.'83
" 380/-	-do-	01.12.'84
" 390/-	-do-	01.12.'85

2. Sri Ram Dularey T.No:11 Painter is allowed Proforma Promotion as Painter GR-II against an upgraded post w.e.from 01.4.'83. His pay in scale of Rs.330-480(RS) is fixed on Proforma basis w.e.from 01.4.'83 and actual payment w.e.from 01.4.'84.

<u>Pay Fixed</u>	<u>Grade</u>	<u>Date</u>
Rs. 342/- + Rs.12/-(O.P)	Rs.330-480(RS)	01.4.'83
Rs. 362/-	-do-	01.4.'84
Rs. 370/-	-do-	01.4.'85

3. Thus the promotion of Sri Abdul Habib, T.No:254 as Painter, GR-II w.e.from 01.8.'78 as made vide Office Order No.3/268 Dtd. 18.7.'80 was fortuitous. His promotion as Painter GR-II against a non-fortuitous upgraded post is considered w.e.from 01.1.'84 on the same pay to which he is receipt in scale of Rs.330-480(RS).

for Dy. Controller of Stores,  
N.Rly. Alambagh/Lucknow.

Copy to the following for information & N/A-action.

1. C.O.S./N.Rly. B/House, New Delhi.
2. S.A.O.(S) N.Rly. AMV & CB Lucknow.
3. D.C.O.S./N.Rly. CB/Lucknow.
4. H.O./Bills, AMV/CB, Lucknow.
5. T.E./AMV & CB Lucknow.
6. Parties Concerned.

TRUE COPY  
ATTESTED

for Dy. Controller of Stores, AMV.

Raj.30/7

R.C. Sena

Att. Supt. Gen.

3-311, Alambagh, Lucknow

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A45

NORTHERN RAILWAY

Office Order No. E/389

14. Oct., 1959

Shri Abdul Haseeb, T/80.254 Permanent Khallani  
for Rs. 32/- being Sr. Assistant on the Panel of Painter (S.S.)  
in Sr. 35-60 is promoted to officiate as such S.O.F. 19.10.59  
on pay Rs. 35/- P.M. in 35-60 in place of Shri H. Dyal Rao  
S/80. 13 transferred to TPL/rev vide O/O No. A/46 of 20.10.59.

Distt. Controller of stores,  
Allahabad, Lucknow.

Copy to the following for information and  
necessary action:-

1. Sd/rev. 2. Workshop & stores audit officer/rev.
3. Td/rev. 4. Sd/rev. 5. CIO/LL
6. Sd/Mills. 7. Parties concerned.

Distt. Controller of stores,  
Allahabad, Lucknow.

1/28/10

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ATTESTED

  
R.C. Sharma  
Asstt. Supt. Genl.  
E-3665, Rajajipuram, Lucknow

A-5

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446

7-6-71

210. 110. E/150

2102 7 June 1971.

1. On attaining the age of 50 years on 6.6.1971 A/c. Sri. ... 12, Painter ... 110/- ... 110-150 ... 7.4.1971 ... on superannuation.

2. Sri. Abdul ... 7.4.1971 ... 110-150 ... The promotion of Sri. Abdul ... is purely the carry over ... in future in preference to his seniors.

Confer upon him

sd

Distt. Controller of ...

...

- (1) ... (2) ... (3) ... (4) ... (5) ...

Sub ... Distt. Controller of ...

A. K. ...

TRUE COPY ATTESTED

[Signature]

P.C. ... 6-2011, Rajapuram, Lucknow



NORTHERN RAILWAY

OFFICE ORDER NO. E/271.  
Dated: 16.11.1973.

Shri Abdyl Habib T.No. 254, Alambagh Depot is provisionally confirmed as painter in grade Rs. 110-180(AS) w.e.f. 28.11.71.

Distt. Controller of Stores,  
N.Rly. Alambagh, Lucknow.

Copy forwarded to :-

- (1) SAO(W)/Alambagh.
- (2) DSK/Alambagh.
- (3) TK/Alambagh.
- (4) CIC<sup>4E</sup>/Bills.
- (5) Sri Abdul Habib T.No. 254, Alambagh.

Distt. Controller of Stores,  
N.Rly. Alambagh, Lucknow.

*A haul*  
**TRUE COPY  
ATTESTED**

\*\*\*\*\*

*[Signature]*  
**P.C. Sarma**  
Admin. Supt. Cont.  
S-2663, Rajajipuram, Lucknow

A-8      32

(A40)

NORTHERN RAILWAY

Office of the Dy. Controller of Stores, Alambagh, Lucknow.

Office order No. E/97.  
Dated: 22.4.87.

Shri Abdul Habib T.No. 254 who has passed the trade test of Painter Gr.I is appointed to officiate as such on pay Rs. 1350/-+Rs.60/-(O.P.)=Rs.1410/- inscale of Rs.1320-2040 w.e.f. 26.3.87 against an existing vacancy of Gr.I.

For Dy. Controller of Stores,  
N.Rly. Alambagh, Lucknow.

Copy to the following for information &/action please:

1. SAO(W)/N.Rly./Charbagh, Lucknow.
2. DCOS/N.Rly./Charbagh, Lucknow.
3. HC/Bills/CB/LKO.
4. TK/CB/LKO.
5. Shri Abdul Habib, T.No. 254/CB.

For Dy. Controller of Stores,  
N.Rly, Alambagh, Lucknow.

*A. Lamb*

**TRUE COPY  
ATTESTED**

\*\*\*\*\*

*[Signature]*

**R.C. Sharma**  
Admin. Supt. Officer  
S-222, Alambagh, Lucknow

(A-9)

Office of the Dy. Controller of Stores, N.Rly. Alambagh, LKO.

O/O.No. E/364

Dated: 7.10.1978.

The following arrangements are ordered with immediate effect:

1. Shri Shiv Kishore Bajpai, T.No. 375 semi SK Painter is promoted to officiate as skilled polisher on pay Rs. 242/- + 18/- P.M. in Gr. Rs. 260-400 (RS) against the vacancy caused due to retirement of Shri Ram Sagar, T.No. 217.
2. Shri Krishna Kumar, T.No. 761 semi SK Polisher is posted in his trade of S.S. Painter on the same pay and Gr. 210-290 (RS) vice No. 1 above.
3. The promotion of Shri Shiv Kishore Bajpai T.No. 375 as skilled Polisher is provisional and will not confer upon him any claim to continue as such and is liable to be released.

sd/-  
for Dy. Controller of Stores,  
Alambagh, Lucknow.

Copy to:

(1) Dy. CAO/W/AMV.

(2) Sr. DSK/Wards/AMV (3) DSK/Ward-c

(4) TK/AMV

(5) HC/Bill

(6) ~~DSK/Ward-c~~

(6) Parties concerned.

sd/- (J.N. Agarwal)  
for Dy. Controller of Stores,  
Alambagh, Lucknow.

A haul  
TRUE COPY  
ATTESTED

*[Signature]*

R.C. Sharma  
Alambagh, Lucknow

6-10-78, Alambagh, Lucknow

\*\*\*\*\*

NORTHERN RAILWAY

Office Order No. E/300

Dated 28.7.79.

In terms of G.M.(P) letter NO: 561-E/PS-32-V(EiiW) dt. 4.9.78  
30 posts of Artizen staff in grade Rs. 260-400 (RS) for promotion  
in HS Gr. II and HS Gr. I are divided in  
(330-480) (380-560)

6 groups as under : As vetted by Accounts there will be 8 posts  
in HS Gr. II (330-480) and 6 posts in HS Gr. I (380-560) w.e.f. 1.8.78.

Group Categories. No.	No. of posts in grade 260-400.	Combined strength.	No. of posts allotted in grades: 330-480)	(380-560)
1. Painter Polisher	4) 2)	6	1	1
2. Crane Driver DSL Crane Driver	4) 1)	5	1	1
3. Blacksmith Scale Fitter	3) 1)	4	1	1
4. Crane Gunner	5	5	1	1
5. Carpenter Tailor	3) 3)	6	1	1
6. Tinsmith Welder	3) 1)	4	1	1

The allotment of remaining two posts in grade 330-480 is under  
consideration and will follow.

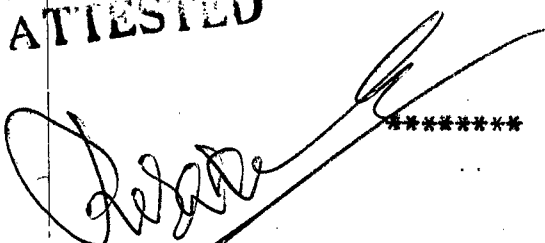
sd/-  
for Dy.COS/AMV/LKO.

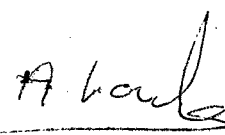
Copy to the following for information :-

1. Dy.C.A.O.(W)/AMV/LKO.
2. Branch Secy. NRMU/AMV.
3. Branch Secy. URMU/AMV.

sd/-  
for Dy.COS/AMV/LKO.

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ATTESTED

  
\*\*\*\*\*  
D.C. Sharma  
Asstt. Secy. Genl.  
E-3662, Rajajipuram, Lucknow



A-11

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22-5-80

Mr. Dy. C.O.S.  
N. Pky. Amv/Lko

Sir,

Respectfully I beg to submit that on the 45% up grading in the Artizen staff a great injustice has been done with me particularly the details of which are as under-

There are 30 posts of Artizens in all and thus 45% of 30 posts comes to 14 nos i.e. 8 grade II and 6 grade I

That on one side, the percentage was taken on the other side, the pin-pointing and distribution was done against the individual strength with the result in certain categories, to the extent of <sup>more than</sup> 50% promotion has been given while in group "A" (Painter+plaster) against a total strength of 6 person only 2 posts have been upgraded i.e. only 33% upgrading has been allowed against 45%.

It is therefore requested that justice be done at the earliest and 45% upgrading be given and oblige.

Thanking You.

Dated- 22-5-80

Yours Faithfully

A. H. A.

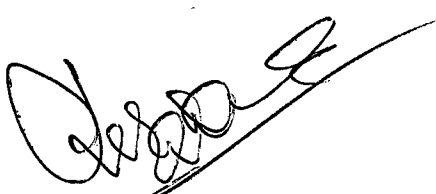
(Abdul Habib)

Printer W. No. 254

Rafiqul Karim  
11/5/80  
91A-378

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ATTESTED

A. H. A.



Q.C. Saxena  
Advocate, High Court  
E-3665, Rajajipuram, Lucknow

A-13  
5-6-80 (A55)

Office of the Dy. Controller of Stores, M. Rly/Amv/Lucknow.

No. Dy. COS/JC/80

dt/- June 9, 1980

Minutes of the Joint Council Meeting held on 5.6.80 in the room of the Dy. COS/Amv.

Present: Administration:

Union:

1. Sh. S. C. Goel, Dy. COS  
2. Sh. A. M. Lal, APO

1. Sh. J. L. Srivastava  
2. Sh. J. N. Srivastava  
3. Sh. S. K. Chatterji  
4. Sh. J. N. Tewari, T. No. 844  
5. Sh. S. A. Naseem  
6. Sh. A. Habib  
7. Sh. M. V. Dwivedi.

1. Upgrading of artizan staff:

The matter was discussed at length and ultimately, it was decided that the two floating posts of H/CR.Gr. II should be allotted to the groups where the number of staff is 6. These groups are of 'Painter & Polisher' and 'Tailor & Carpenter'.

Thus, this long disputed item stands now finalized & closed.

2. Transfer of staff from public dealing Sections:

The matter of transfer from Sensitive Section was discussed and it was advised by the Dy. COS that since this is a confidential matter, this should not be discussed in the Joint Council Meetings in future. Further, it was stated by Dy. COS that the rules regarding functioning of the Joint Council state that Joint Council Meetings were primarily meant for the Workshops, starting at the level of Shop Councils, where only problems concerning production etc. were to be discussed. Hence the subject of transfer of staff shall not be discussed in future.

Since both the Unions pointed out that our Stores depot is also in a sense of production Unit and governed under the Factories' Act, the Joint Council Meetings may continue and the problems regarding efficient working in the supply position of Stores from this depot may be discussed in these meetings, in future.

  
Dy. Controller of Stores  
M/Rly/Lko.

Copy to: 1. FRMU  
2. JRMU  
3. AS/Estt.  
for information andn/action.

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ATTESTED

A. Lal



Q. C. Saxena  
Advocate, High Court

E-3665, Rajajipuram, Lucknow

NORTHERN RAILWAY

No. 561E/85.  
Dated: 2.6.80.

From: Dy.COS/AMV/LKO.

To,

Shri Abdul Habib  
T.No. 254/AMV/LKO.

Sub:- Allotment of posts in Higher Grade.  
-----


Ref:- Your application dt. 22.5.80.  
-----

The issue is under reference with Hqs.  
office. Also this is to be discussed in the J.C.M.

Sd/-  
for Dy. Controller of Stores,  
N.Rly./AMV/LKO.

\*\*\*\*

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ATTESTED

  
P.C. Sharma  
Admn. High Const  
E-2655, Rajajipuram, Lucknow

A-13  
5-6-80 (A55)

Office of the Dy. Controller of Stores, M. Svy/Amv/Lucknow.

No. Dy. COS/JC/80

Dt/- June 9, 1980

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2. Sh. A. M. Lal, APO

1. Sh. J. L. Srivastava
2. Sh. J. N. Srivastava
3. Sh. S. K. Chatterji
4. Sh. J. N. Tewari, T. No. 844
5. Sh. S. A. Naseem
6. Sh. A. Habib
7. Sh. M. N. Dwivedi.

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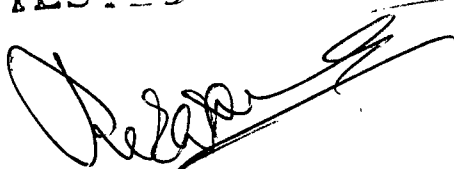
The matter of transfer from Sensitive Section was discussed and it was advised by the Dy. COS that since this is a confidential matter, this should not be discussed in the Joint Council Meetings in future. Further, it was stated by Dy. COS that the rules regarding functioning of the Joint Council state that Joint Council Meetings were primarily meant for the Workshops, starting at the level of Shop Councils, where only problems concerning production etc. were to be discussed. Hence the subject of transfer of staff shall not be discussed in future.

Since both the Unions pointed out that our Stores depot is also in a sense of production Unit and governed under the Factories' Act, the Joint Council Meetings may continue and the problems regarding efficient working in the supply position of Stores from this depot may be discussed in these meetings, in future.

  
Dy. Controller of Stores  
Mv/Lko.

Copy to: 1. NRMU  
2. URMU  
3. AS/Estt.  
for information andn/action.

TRUE COPY  
ATTESTED

  
R. C. Saxena

Advocate, High Court

E-3665, Rajajipuram, Lucknow



NORTHERN RAILWAY

Dy. Controller of Stores, Office, Alambagh, Lucknow.

Office Order No. E/263

Dated: 15.7.80.

The result of the following staff of the Trade test for the post of H.S. Gr.II Painter Scale Rs. 330/- - 480/-(RS) held on 7.7.80 is given against each :-

1. Shri Ram Dularey SK, Painter/CB-Failed.
2. Shri Abdul Habib Sk. Painter/AMV-Passed.

for Dy. Controller of Stores,  
Alambagh, Lucknow.

Copy to the following :-

1. The Dy. CAO(W)/N.Rly./AMV/LKO.
2. The ACOS/CB/LKO.
3. The parties concerned.

sd/  
for Dy. Controller of Stores,  
N.Rly. Alambagh, Lucknow.

TRUE COPY \*\*\*\*\*  
ATTESTED

*A Lamb*

*[Signature]*  
R.C. Sharma  
Asstt. Supt. Const  
S-2002, Rajapuram, Lucknow

Northern Railway  
Office order No. E 52

Dated: 7-2-81.

As a result of trade test the following person are declared suitable for promotion in grades noted against each:-

S. No.	Name	Tkt.No.	Trade	Grade.
1.	Sh. Sheo Kishore Bajpai	575	Polisher	330-480
2.	Sh. Abdul Majid	406	Tailor	-do-
3.	Sh. Raj Dayal Yadav	124	Carpenter	260-400

Shri Ram Dulary Tkt.No. 11 has failed to qualify in the trade test of Painter in grade Rs. 330-480.

~~for Dy. Controller of Stores,~~  
~~Alambagh, Lucknow.~~

for Dy. Controller of Stores,  
Alambagh, Lucknow.

Copy to the following for information & N/action:-

1. Dy. CAO(W)/AMV  
4. Party concerned.

2. ACOS/CE

3. DSK/I/AMV.

for Dy. Controller of Stores,  
Alambagh, Lucknow.

TR. COPY  
ATTESTED



P.C. Saxena

Advocate, High Court

E-3665, Rajajipuram, Lucknow

A-16

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A56

NORTHERN RAILWAY

O/O. No. E/260.  
Dated: 14.8.84,

In terms of G.M.(P) New Delhi letter No. 561E/85-32Vol-6/E dated 9.4.84 (PS) No. 8488 Shri Sheo Kishore Bajpai T.No. 375 skilled Polisher, who has passed the trade test of Hs. Gr.II Polisher is Promoted as suchw.e.f. 1.4.83 and pay is fixed as under Arrear is payable w.e.f. 1.4.84.

Pay as on 1.4.83  
in Gr. 260-400

Pay fixed as HS/Gr.II Polisher  
in Gr. 330-480 from 1.4.83  
Rs. 284/- + 46/- (OP)  
= Rs. 330/- from 1.4.83  
Rs. 340/- from 1.4.84.

Dy. Controller of Stores,  
~~North Eastern Railway~~, Alambagh, LKO.

Copy to the following for information & n/action to:

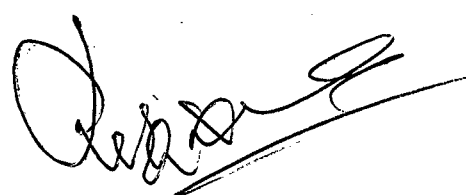
- (1) SAO(W) N.Rly. Alambagh, Lucknow.
- (2) HC/Bills. TK/AMV.
- (3) Sr. DSK/AMV.
- (4) Party concerned.

Dy. Controller of Stores,  
~~N.Rly.~~ Alambagh, Lucknow.

Ahalya

TRUE COPY  
ATTESTED

\*\*\*\*



P.C. Saxena  
Advocate, High Court  
E-3665, Rajajipuram, Lucknow

O/O No. E/133.  
Dated: 7.6.1985,

A-17  
41  
A56A

The following promotions are ordered : w.e.f. 10.5.85.

- (1) Shri Sukh Pal Singh T.No.405 Tinsmith/AMV is appointed to officiate as Tin Smith Gr.II on pay Rs.278/-+52/- (DP)= Rs. 330/- in scale of Rs.330-480/-(RS) against an existing vacancy at AMV due to retirement of Sri Khalloo Khan T.No. 339.
- (2) Sri Ram Dularey T.No. 11 Painter/CB is appointed to officiate as Painter Gr.II on pay Rs.358/-+12/-(OP) = Rs.370/- in scale of Rs. 330/-480/-(RS) and posted at AMV depot against an existing vacancy of Gr.II Painter of.

Sri Jamuna Pd. T.No.139 Skilled Painter/AMV pay Rs. 390/- is transferred to CB depot in the same capacity and grade vice item No.2 above.

Arrangement vice Sri Januna Pd. T.No.139 will be made afterwards.

Dy. Controller of Stores,  
N.Rly./Alambagh, Lucknow.

Copy to the following for information & n/action.

- (1) SAO(W)/NR/AMV & CB. (2) DCOS/CB/~~CB~~
- (3) Sr.DSK/AMV & CB. (4) HC/ Bills. AMV & CB.
- (5) TK/Leave & Pass, AMV & CB.
- (6) TK/AMV & CB (7) Parties concerned.

Dy. Controller of Stores,  
N.Rly. Alambagh, Lucknow.

A 601  
TRUE COPY  
ATTESTED

\*\*\*\*\*

*[Signature]*  
D.C. Sharma  
Admn. Sd. Cont  
E-2663, Rajajipuram, Lucknow





E-3665, 12/1/77

E-3667, 12/1/77

hy

सुख के वे आनन्दानन्द, अन्धकार

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(A60)

NORTHERN RAILWAY.

Dy. Controller of Store's Office,  
Alambagh- Lucknow.

No : 561E/85  
Dated : 11-9-1981

Shri Abdul Habib T.No. 254  
Painter Gr.II/Stores Depot,  
Alambagh  
Lucknow.

Ref :- Promotion as Gr.II Painter in Scale Rs.330-480(RS).

-.-.-.-.

You are hereby informed that in terms of Para- 2 of the decision taken on 30.3.79 regarding distribution of floating post, the criteria had to be kept in view that where the number of members in Trade is 3 or 4, not more than two higher Grade posts will go to that trade. Further as per joint decision in the meeting held on 5.6.80 for allotment of two floating posts of H.S.Gr.II, one floating post was allotted to group I, comprising of Painters/Polishers, against which you had been promoted as Gr.II Painter in Gr.Rs.330-480 (RS). In the present group of Painter/Polisher comprising of 6 posts of artizan staff (4 of Painters and 2 of Polishers), 3 Higher Grade posts (2 Gr. II & one Gr. I) are in operation. Thus all the 3 posts of higher grade are occupied by the Painters and Polishers have been deprived off the distribution as decided earlier.

It has therefore been provisionally decided, to revert you from the post of Gr.II Painter & this post allotted to right person in Polisher Trade.

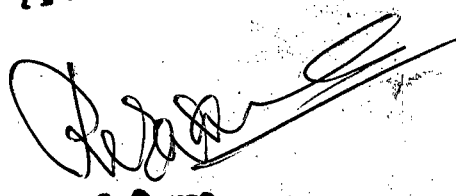
You, are hereby given an opportunity to make representation as to why you should not be reverted or as you may wish to make against the above. The representation if any should be submitted to this office within 15 days from the receipt of this letter. If you fail to submit your representation within the said period it will be deemed that you have nothing to say and further action will be taken on the basis of information available.

✓ Dy. Controller of Stores,  
N.Rly., Alambagh, Lucknow.

RK.8/9

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**TRUE COPY  
ATTESTED**

  
**R.C. Sanna**  
Admin. Supt. Cont  
E-3665, Rajajipuram, Lucknow



A-20  
46

Minutes of the informal meeting held with U.R.M.U. in COS's room on 5-3-83. (A51)

PRESENT

Administrations

- 1) Shri Shanji Singhal COS
- 2) Shri B.R. Nigam SPO(U)
- 3) Shri Ajit Singh APO(S&T)

Unions

1. Shri P.N.Sharma
2. Shri S.K.Pandey
3. Shri S.A.Naseem
4. Shri Abdul Habib
5. Shri S.P.Yadav
6. Shri B.L.Yadav.

Item No.13:

The Union pointed out that vacancies existing in AMV Workshops and Charbagh Workshops at LKO have been allowed to be filled in by the G.M. by means of recruitment. But no such orders have been issued to Dy.COS/AMV, LKO where there are a number of vacancies in the unskilled category. Dy.CME/AMV and ACME/CB have already ascertained from other Units that the staff with service prior to 1-8-78 are not available and they have made recruitment in both the Workshops. The Union requested that Dy.COS/AMV may kindly be authorised to make recruitment on the same basis.

This will be examined on receipt of justification for fresh recruitment from Dy.COS/AMV, indicating vacancies in Stores Depot, AMV/LKO.

Item No. 11:

While implementing the decision taken in JCM, it has been observed that in the group of Tinsmith and Welder, the senior most man was considered for trade test against one Highly skilled Grade II post and after having passed, he was also promoted in the trade of Welder. Similarly, in the group of painter and polisher, the senior most man was trade tested, on allotment of a floating post to this group, and he belonged to painter's trade. He, however, failed in the trade test. The next senior man in this group who also happened to be a painter he having passed was promoted. From this it is arrived that the principle of combined seniority has been followed in ordering promotions against upgraded posts in different groups. In view of this decision, the show Cause notice dated 14-9-81 stands withdrawn. Item final.

Item No. 7:

The Union was assured that the orders in this respect will be communicated on early date.

contd... 2/-

ATTESTED

R.C. Saxena

Admin. High Court

2-366, Rajpura, Lucknow

A62 47 68

As irregularities committed in all these three cases arise out of the action of one particular person in the Establishment Section, as indicated above, COS proposed let Dy.COS/AMV examine the possibilities to take disciplinary action against him including possibility of his transfer outside LKO.

Item No. 4:

In this case the Union further pointed out that in this particular case the written test and oral test were held and the Union produced the result of the test in the shape of photostat copies of both the persons involved in this case. Despite this the Union pointed out that a similar test was also held on 6/11/70 vide letter No.280-E/Pt.VII dated 15-10-70 and the promotion was made. At that time the question of type of trade test or suitability test was never raised. In view of these facts, the Union requested that the case may please be reviewed in the light of these facts and the results of the tests held in case of Shri Babu Lal, Om Parkash which are available on record and the photostat copies are available with the Union may also be examined, along with test held on 6/11/70 as referred to above. It was agreed that the case will be re-examined in the light of the above facts.

Item Nos. 9 & 10

Since no action whatsoever has been taken against the persons involved in these cases and the particular person has since retired and his settlement dues have already been paid, the items are dropped.

Dy.COS/AMV informed that a prime-facie enquiry was conducted to frame charges against the said employee. As no charges could be established, the case was dropped and CPO's office advised accordingly. (Final).

Item No. 12:

Discuss Final.

*B.R. Nigam*  
( B.R. Nigam )  
for General Manager (P).

No. 961E/101/Inf-Mtg./URM/E-Union Dated: 22-3-83.

Copy forwarded to:-

1. The General Secretary, URMU, 166/2, P. Kain Road/New Delhi.
2. The Dy.COS, M.R.AMV-KO.
3. Dy. COS, N.R. D.I. A.Po(S&T)
4. Dy.CPO(HQ) & SPO(PC)

T. L. S. Y.  
**ATTESTED**

ngp:ml  
22383\*

*A. K. S.*  
*Q.C. Saxena*  
Advocate, High Court  
B-208, Rajapouram, Lucknow

*A-21* *AGB* *48*  
*23-4-83*  
Northern Railway

Office of the,  
Dy. Controller of Stores,  
N.Rly. Alambagh Lucknow.

No. 561-E/85

Dated 23-4-83.

The Branch Secretary,  
Store Branch U.R.M.U.  
Alambagh Lucknow.

*12-8-81*  
As per decision taken on *32/3-79* in the FHM Meeting with the NRMU and Dy. COS/AMV/IR, it was decided to issue notice to Shri Abdul Habib in connection with his wrong promotion as P.O. Gr. II Painter in Scale Rs. 330-480.

In this connection a notice was issued vide this office letter of even No. dated 11-9-81. The issue was taken up by the representative of URMU at Hqs leave along with the other items. The matter was discussed in the chamber of COS/NDIS in the presence of SPO/IR and it was decided that the promotion of Shri Abdul Habib was correct as such the show cause notice dated 11-9-81 stand withdrawn.

*23.4*  
Dy. Controller of Stores  
N.Rly. Alambagh Lucknow.

Copy to:-

- (1) The General Secretary URMU, 166/2 Puch Kunia Road, New Delhi for information.
- (2) The Controller of Stores N.Rly. Baroda House New Delhi and SPO/IR, Baroda House New Delhi for information please.

Dy. Controller of Stores  
N.Rly. Alambagh Lucknow.

*A. K. S.*  
**TRUE COPY  
ATTESTED**

*Q.C. Sarana*  
Attest. Sign. Cont  
E-3665, Rajajipuram, Lucknow

Northern Railway

Office order No. E/ 50

Dated: 12-2-1986

In terms of COS/NDLS's letter No. 92-S/1/AMV/Staff/40/SSG dated 11.11.85, the case of promotion of Sri Shiv Kishore Bajpai, T.No. 375 as Polisher Gr.II against an upgraded post of 1.8.78 and that of Sri Abdul Habib, T.No. 254, Painter Gr-II has been examined in this office in detail keeping in view the rules and the views of the Unions. It is concluded that as per criteria fixed for distribution of higher grade posts to a category in a group not more than two higher grade posts would have gone to the category of Painter where the total posts were four, hence the IIIrd posts would have gone to the category of Polisher which was not done and the Polisher category remained deprived of the upgrading. This deviation from the laid down conditions is therefore set right and the following arrangements are made as a result thereof.

1. Sri Shiv Kishore Bajpai, T.No. 375, Polisher is allowed proforma fixation as Gr-II Polisher w.e.f. 1.12.78. His pay in grade 330-480(RS) is fixed as under on proforma basis.

Pay fixed	Grade	Date
260/-+70/-(OP)	330-480(RS)	1.12.78
338/-	"	1.12.79
346/-	"	1.12.80
354/-	"	1.12.81
362/-	"	1.12.82
370/-	"	1.12.83
380/-	"	1.12.84
390/-	"	1.12.85

The arrears are payable from 1.4.84.

2. Sri Ram Dularey, T.No. 11 Painter is allowed proforma promotion against an upgraded post of Gr.II Painter in Gr. 330-480(RS) w.e.f. 1.4.83 and pay fixed as under;

Pay fixed	Grade	Date
Rs. 312/-+12/-(OP)	330-480(RS)	1.4.83
362/-	"	1.4.84
370/-	"	1.4.85

The arrears are payable w.e.f. 1.4.84.

3. The promotion of Sri Abdul Habib, T.No. 254 as Gr.II Painter from 1.8.78 as made vide O/order No. E/ 268 dated 18.7.80 is fortuitious. His regular promotion against a non fortuitious post is considered against an upgraded post from 1.1.84.

for Dy. Controller of Stores,  
N.Rly., Alambagh, Lucknow.

Copy to:- 1. COS/NDLS with reference to his letter No. 92-S/1/AMV/Staff/40/SSG dated 11.11.85, 2. SAC(J)/AMV CB, 3. DSG/AMV CB, 4. Sr. DM/AMV CB, 5. AC/Bills AMV CB, 6. TCMV & CB, 7. Parties concerned.

for Dy. Controller of Stores,  
N.Rly., Alambagh, Lucknow.

TRUE  
ATTESTED

*[Signature]*

P.C. Saxena

Assistant, High Court

B-3022, Rajajipuram, Lucknow

To

The General Manager(P),  
Northern Railway,  
Baroda House,  
New Delhi.

( THROUGH PROPER CHANNEL )

Subject: Appeal against mental torture, harassment, altering my seniority, ignoring my promotion in HS Gr.I and putting financial loss to lacs of rupees.

Sri,

Most humbly and respectfully I beg to submit this appeal against office order No. E/50 dated 12.2.86 fixing Sri S.K. Bajpai T.No. 375 w.e.f. 1.12.78 and Sri Ram Dularey T.No. 11 w.e.f. 1.4.83 treating my promotion order No. E/268 dated 18.7.80 as forfeituous against a non forfeituous post and treating it w.e.f. 1.1.84 instead of 1.8.78.

Vide office order No. E/91 dated 9.4.86 promoting Sri D.D. Rao Painter, against Sri Ramjan Ali as Gr. I Painter w.e.f. 1.1.84 as well as appointing Sri Ram Dularey T.No. 11 as Gr. I w.e.f. 1.9.84 against resultant vacancy of same Sri Ramjan Ali T.No. 15 w.e.f. 1.9.84 while my promotion was due in Gr. I w.e.f. 1.1.84 against upgraded post interms of P.S. No. 8768.

In Office Order No. E/50 it has been mentioned that these promotion has been made keeping in the view the rules and views of the Unions for which I made a query vide my application dated 12.2.86 to intimate rules vide which as well as the views of the Unions expressed by them but the same has not yet been furnished to me.

The further facts in detailed are as under :-

1. That I was promoted after the due trade test as highly Skilled Gr. II in grade 330-480 (RS) w.e.f. 1.8.78 in terms of Railway Board's letter No. E(P&A)-1-78/RWCT/76-1, dated 27.8.78 by Dy.COS Alambagh vide office order No. E/268 dated 18.7.80.
2. That I was also allowed to officiate as HS Gr. I in Gr. 380-560 (RS) vide O.O. No. E/318, dated 7.8.80 being the senior.
3. That further the promotion in HS Gr. II I myself along with Sri Ram Dularey were called for the trade test for HS Gr. II Painter vide Office order No. 46-E/1 dated 30.6.80 the result of which was declared vide O.O. No. E/263, dt. 15.7.80 wherein I was declared passed and Sri Ram Dularey declared failed.

R.C. Sanyal

Advocate, High Court

E-3665, Rajajipuram, Madras

A Lambagh

Contd.....2

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- 2 -

4. Sri Ram Dularey after being declared fail represented several times but his representations were turned down. However he was given another chance of trade test after six months but he was again declared fail vide Office Order No. E/52 dated 7.2.81.

5. On being promoted in HS Gr.II I represented my case through Union about my confirmation vide letter No. URMU/STORES/81/24, dt. 28.3.81 but I was replied by Dy.COS Alambagh vide letter No. 561-E/85, dated 3.4.81 that my confirmation as Painter in HS Gr.II in Gr. 330-480 (RS) will be considered at appropriate time.

6. In the meantime the case of Sri Ram Dularey who failed twice in the trade test of HS Gr.II was taken up by the Branch Secy. NRMU in the PNM meeting. Accordingly the Dy.S.Os Alambagh has issued a notice vide No. 561-E/85 dt. 11.9.81 as to why I should not be reverted from the post of HS Gr.II.

7. Against Dy.COS Alambagh notice No. 561 E/85, datd. 11.9.81, an appeal was preferred and the case was taken up by the General Secy of URMU in the informal meeting at the level of C.O.S./NDLS. The meeting held on 5.3.83, after a long discussion C.O.S./NDLS had given a decision that the notice given to me (Abdul Habib) dated 11.9.81 should be withdrawn and accordingly the said notice was withdrawn vide No. 561-E/8-5, dt. 23.4.83.

7.(a) For the sake of promotion against upgrading, Dy.COS/AMV has first has given a suggestion or distribution vide No. 561-E/85 dt. 6.7.79 invit objections for further discussion. Branch Secy. submitted his objection vide No. URMU/Stores/79. 9.4.79. The issue after objections on the suggests. 6.4.79 was again taken up in the JCM at AMV level. As a result of discussion the as is quite clear processed and got vetted by W.79 and according to this distribution I was 8 dt. 18.7.80. of the incumbents vide 0.0.

7.(b) In the informal meeting with the notice dt. 11.9.81 issued to myself, 1, 2, & 3 was taken against Sri Jag one individual as Sr. Clerk giving some remedy should a particular date from P.Branch should be found out to get Lucknow including well as taken up to play hell possibility of h was complied with me.

T. Y  
A. LISTED

*[Signature]*  
Q.C. Savana  
Advocate, Lucknow  
Rajapuram, Lucknow

*A. Lamb*

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A-24      53  
(A68)

CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
23-A, Thirumall Road, Allahabad

No. CAT/Alld/

Dated Allahabad the 18-2-88

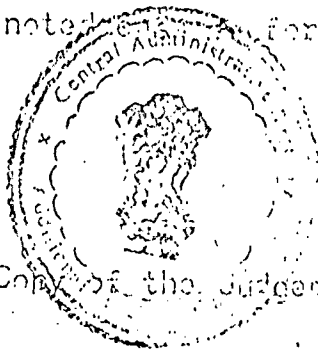
OFFICE MEMO

Registration No. O.A./T.A. 615 of 1986

Abdul Latif Applicant's

U. C. Singh Respondent's

A copy of the Tribunal's Judgment dated 12-2-88  
in the above noted case forwarded for necessary  
action.



J. D. Dube  
Deputy Registrar (J)

Enclosure : Copy of the Judgment dated 12/2/88

To

✓ To Sh. S. P. Keskarwari D.O.

✓ Sh. A. K. Gaur D.O.

dr

**TRUE COPY  
ATTESTED**

A. Vaid

Q. C. Sareen  
Advocate, High Court  
E-3665, Rajajipuram, Lucknow

(A67)

52

8. After withdrawal of notice I once again requested for confirmation as the confirmation of all the 13 artisen staff was made vide O/O No. E/422 dt. 30.10.80 and promoted at a time in one O/O has already been made depriving myself from the confirmation but all in vain.
9. Thus I deprived from my seniority which ought to be in terms of para 316 of Indian Railways Estt. Manual as well as my promotion in HS Gr. I in Gr. 380-560(RS) as per PS 8768, dt. 19.7.85.
10. However I may mention that the decision once taken by the higher authorities (GM/C.O.S./NDLS) that my promotion w.e.f. 1.8.78 was alright. The question of altering the decision by the lower authority vide No. vide E/50 dt. 12.2.86 does not arise.

It is worth mentioning that Sri Ram Dularey T.No. 11 who failed twice in the trade test was allowed a further trade test in 1985 and promoted as HS Gr II vide O/O No. E/133, dt. 7.6.85 but was assigned seniority and fixation was assigned to him w.e.f. 1.4.83 vide O/O No. E/50 dt. 12.2.86 while the second up-grading was w.e.f. 1.1.84.

Under the circumstances it is hereby requested

1. That I be assigned my seniority in terms of para 316 of Indian Railway Estt. Manual.
2. I should be confirmed in Gr. II w.e.f. 1.8.78.
3. I be promoted in HS Gr. I/ Painter w.e.f. 1.1.84 as per Revised percentage of artisen.
4. O/O. No. E/50 dated 12.2.86 may be withdrawn.

Thanking you,

Yours faithfully,

*Ah*  
(ABDUL HABEEB)

Painter T.No. 254,  
O/O D.C.O.S./N.Rly./C.B./LKO.

Dated: 22-4-86

Copy to: Controller of Stores, Baroda House, N. Delhi.  
for information and necessary action.

2. Dy. C.O.S. Alambagh, Lucknow, for information and necessary action.

*Ah*  
**TRUE COPY  
ATTESTED**

(ABDUL HABEEB)

*Q.C. Saran*  
Q.C. Saran  
S-2002, Rajajipuram, Lucknow



A-24 53  
(A68)

CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
23-A, Thompson Road, Allahabad

No. CAT/Alld/

Dated Allahabad the 18-2-88

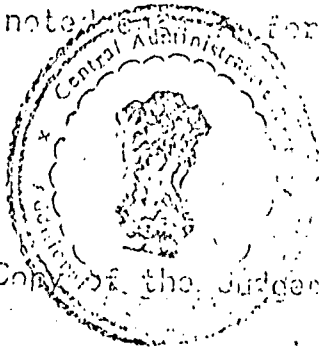
OFFICE MEMO

Registration No. O.A./T.A. 615 of 1986 ..

Abdul Jabbar Applicant's

G. C. Das Respondent's

A copy of the Tribunal's Judgement dated 12-2-88  
in the above noted case forwarded for necessary  
action.



J. D. Dube  
Deputy Registrar (J)

Enclosure : Copy of the Judgement dated 12/2/88

To

Shri S. P. Keskarwari D.O.

Shri A. K. Gaur D.O.

d;

TRUE COPY  
ATTESTED

A. K. Gaur

Q. C. Sarma  
Advocate, High Court  
E-3645, Rajajipuram, Lucknow

464  
54  
Court No.1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.615 of 1986.

Abdul Habib

....

Applicant

Versus

Union of India & Others. .... Respondents.

Hon.S.Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

(By Hon.S.Zaheer Hasan, V.C.)

This is an application under Section 19  
of the Administrative Tribunals Act XIII of 1985.

Y  
ATTESTED

2. On 7.6.1971 the petitioner was ordered  
to officiate as Painter skilled grade because his  
senior Ram Dularey was under suspension and the  
petitioner was told that it was a purely temporary  
order giving him no right over his senior and he  
could not claim his right for promotion in future.

  
Q.C. Saxena  
Advocate, High Court

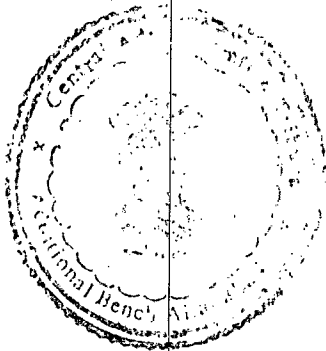
  
Allahabad, Rajajipuram, Lucknow

On 28.11.71 he was confirmed. In 1976 upgradation  
scheme came into force. On 13.7.1980 an order was  
issued promoting the applicant to highly skilled  
grade II post w.e.f. 1.8.1978. On 12.2.1986 the  
aforesaid order was corrected and the petitioner  
was given the promotion w.e.f. 1.1.1984 instead of  
1.8.1978. This order has been challenged by the  
petitioner. His contention is that he was not heard  
in this connection and the principles of natural  
justice and fair play were violated. Order in the



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year 1981 a show cause notice was issued to the petitioner but subsequently this was withdrawn in 1983. So before passing the order dated 12.2.1986 the Department should have issued a similar show cause notice and should have passed the impugned order after hearing the petitioner but it was not done. So principles of natural justice and fair play have been violated and therefore the order dated 12.2.1986 is set aside. The Department will be at liberty to pass fresh <sup>specific</sup> order after giving a notice and hearing the petitioner. Costs on parties.



Member (A)

Vice Chairman

Dated the 12th Feb., 1988.

RKN



*D.S. Dubey*  
13/2/88  
(D. S. DUBEY)  
SECTION OFFICER  
Central Administrative Tribunal  
Allahabad.

TRUE COPY  
ATTESTED

*A. K. Singh*

*R.C. Saxena*  
R.C. Saxena  
Advocate, High Court

E-3665, Rajajipuram, Lucknow

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ATTESTED

Northern Railway

No. 661 E/85

Dated 23-4-1988.

Shri Abdul Habib,  
T.No. 254,  
Painter Gr. I/Charbagh.

Sub :- Show Cause notice to examine the promotion as  
Painter Gr. II w.e.f. 1.8.78.

.....

You were appointed to officiate as Gr. II Painter w.e.f. 1.8.78 vide office order No. E/268 dated 18.7.80 against one of the floating post allotted to the group of Polishers and Painters provisionally in deviation of the criteria and rules fixed for promotion as a result of upgrading. According to laid down criteria and rules the post should have been given to the category of Polisher but by deviation, the category of Polishers remained deprived of the upgrading as prescribed by the Railway Board and all the three higher grade post were filled in Painter's category.

Representations from the Polishers who were ignored of the upgrading were being received and the N.R.M.U. Stores Branch Alambagh also did not agree with the minutes of the Informal Meeting dated 5.3.83 of the URMU and demanded J.C.M. on this issue. The COS office New Delhi where also representation were being received, issued instructions to this office repeatedly to decide the matter at this office level.

Keeping in view the above facts, it was decided to hold JCM in which Br. Secy of both the recognised Unions participated and it was jointly agreed that one Gr. II post which was wrongly filled in from the category of Painter as a result of deviation from the rules ignoring from right full claim of Polishers, should be given to the right incumbant of Polishers category as the deviation from the laid down criteria and Rly. Bds upgrading orders was not considered to be in order.

After examining all the relevant papers in the light of the above, it is considered that not more than two higher grade posts would have gone to the category of Painters where total number of posts were 4 and the IIIrd. higher grade post of Gr. II against which you were promoted w.e.f. 1.8.78 would have gone to the Category of Polishers where the total post were two which was not done with the result the category of Polishers remained deprived of the upgrading, hence the deviation from the fixed criteria and rules for up grading from 1.8.78 is therefore to be set right by allotting the post to the category of Polishers. Thus your promotion as Gr. II Painter w.e.f. 1.8.78 is considered as fortuitous and your regular promotions as Gr. II Painter against non-fortuitous vacancy comes from 1.1.84 against a subsequent upgraded post.

You are hereby given an opportunity to submit your representation if any against the above proposed action with ~~the~~ in 10 days from the date of receipt of this letter failing which it will be deemed that you have no representation to make against above proposed and the case will be decided as proposed above.

23/4/88 A. Kaul

for Dy. Controller of Stores/AMV/LKO

A 26 (A72) S

To,

The Deputy Controller of Stores,  
Northern Railway, Alambagh,  
L u c k n o w.

Sir,

Reg:- Promotion as Painter Grade-I Scale Rs. 380-560 (RS)

Ref:- Your letter No. 561-E/85 dated 23.5.1988. 561-E/85 dated  
23.4.1983 correct decision of higher authority.


With due respect and humbly submission I beg to submit few lines  
for your perusal, kind consideration and sympathetic orders please.

1. That the applicant appointed in Railway Service as Khallasi on 22.6.1953 under the control of Distt. Controller of Stores, N.R.W. Alambagh, Lucknow, the designation of Distt. Controller of Stores, now changed as Dy. Controller of Stores,
2. That as per channel of promotion the applicant applied for the post of Semi-skilled Painter Grade Rs. 35-60 (CPC). The applicant was trade tested and declared suitable for the post of semi-skilled painter and subsequently promoted as such.
3. That again the applicant was trade tested for the post of skilled painter Grade Rs. 110-180 (AS) in the year 1971 and subsequently promoted as skilled painter w.e.f. 7.6.71 and confirmed in the said. gradew.e.f. 28.11.74 vide office order No. E/271, dated 16.11.73 (copy enclosed as Annexure I).
4. That Shri Shiv Kishore Bajpai T.No. 375 was appointed in Railway service on 8.12.1953 and trade tested for the post of semi-skilled painter in the yr. 1974 and declared suitable for the same vide office order No. E/311 dated 26.11.1974, S/Shri Shiv Kishore Bajpai T.No. 375, and Akhtar Husain T.No. 311 were promoted as semi skilled Painter w.e.f. 27.11.1974 vide office order No. E/311 dtd. 26.11.74 (copy enclosed as Annexure No. II)
- X In this manner S/Shri Shiv Kishore Bajpai and Akhtar Husain were Junior to the applicant by virtue of appointment and promotion in semi skilled grade.
5. That as per channel of promotion the semi skilled Painter promoted as skilled painter and skilled polisher. A Post of skilled polisher became vacant due to retirement of Shri Ram Sagar T.No. 217. Shri Shiv Kishore Bajpai being the senior most semi skilled Painter trade tested for the post of polisher and having been declared successful promoted as such w.e.f. 7.10.1978 vide office order No. E/364, dated 7.10.1978 (copy enclosed as Annexure No. III)

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D.C. Suman  
Admin. Staff Cont  
B-2665, Rajajipuram, Lucknow

58 (A13)

6. That S/Shri Shiv Kishore Bajpai, Akhtar Hussain holding the lien in the category of semi skilled Painter whereas the applicant confirmed in the higher grade as skilled Painter w.e.f. 28.11.78 and holding the lien in Higher grade. In this respect the applicant is senior than S/Shri Shiv Kishore Bajpai and Akhtar Hussain, It is also clear from a representation made by S/Shri Abdul Babib and Shiv Kishore Bajpai on 22.5.1980 (copy enclosed as Annexure IV).
7. That in terms of the representation dated 22.5.80 your honour replied vide letter no. 561-E/85 dated 2.6.80 (copy enclosed as annexure No.5) that the issue is under reference with Headquarter office. This has to be discussed in the J.C.M. also. In this connection the J.C.M. was conducted on 5.6.80 in the chamber of Dy. Controller of Stores, Northern Railway, Alambagh, Lucknow and it was decided that the two floating posts of Highly skilled grade II should be allotted to the groups where the number of staff is 6. These groups are of 'Painter and Polisher' and Tailor and Carpenter". The item stands now finalised and closed) (Minutes of J.C.M. are enclosed as Annexure No. 6).
8. That on the basis of decision in JCM the applicant and Shri Ram Dularey T.No.11 were directed to appear in the Trade test of Highly skilled grade II Painter. The trade test was conducted on 7.7.80 wherein the applicant was declared, passed and Shri Ram Dularey declared failed vide office order No. E/263 dated 15.7.80 (Copy is enclosed as annexure No. 7).
9. That having been declared successful in the trade test of Highly Skilled grade II Painter, the applicant was promoted as such vide office order No. E/268 dated 18.7.1980 (copy enclosed as annexure no.8)
10. That after a lapse of 6 months S/Shri Ram Dularey T.No. 11 and Shiv Kishore Bajpai were sent for the trade test of Highly Skilled grade II but again Shri Ram Dularey declared failed vide office order No. E/52, dated 7.2.1981 (copy enclosed as annexure no.9). Now the seniority of Painter and Polisher group is as under :-

1. Sri D.D.Rao.T.No. 13 Highly skilled grade I Painter.
2. Sri Abdul Babib, T.No. 254 -do- Grade II Painter.
3. Sri Shiv Kishore Bajpai, T.No. 375, Polisher II
4. Sri Ram Dularey T.No.11 Skilled Painter
5. Sri Akhtar Hussain, T.No. 311 -do- Polisher
6. Sri Krishna Kumar. T.No. 761 -do- Painter.
7. Sri Jamuna Pd. T.No. 139 -do- Painter.
8. Sri Kali Charan T.No. 17 -do- -do-
9. Sri Baba Din. T.No. 849 -do- -do-

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*[Signature]*  
Sd/-  
Joint Secy  
G-3643, Rajajipuram, Lucknow

Shri D.D? Rao, T.No. 13 now promoted in Higher grade in year 1986.

10. That the Northern Railway Men's Union represented the matter in PNM

*A. K. Singh*

meeting about the wrong promotion of the applicant and a show cause notice was issued to the applicant on 11.9.1981 (copy enclosed as annexure no. 10). Shri D.D. Rao grade III Painter reported sick from 20.9.82 and against the resultant vacancy Shri Shiv Kishore Bajpai promoted as Highly skilled grade II Polisher and retain in Alambagh Depott vide office order no. E/282 dated 19.11.82 (copy enclosed as Annexure 11).

11. That in terms of show cause notice the matter was brought in the knowledge of Controller of Stores, Headquarter Office, Baroda House New Delhi and it was decided that the issue is to be discussed in an informal meeting in the presence of COS and GM(P) NDLS. In this connection an informal meeting was conducted on 5.3.83 in the Chamber of Controller of Stores, New Delhi in presence of GM(P) NDLS and the representatives of URMU (the minutes are enclosed as annexure no. 12). On the basis of the decision show cause notice was correctly withdrawn vide letter no. 561-E/85, dated 23.4.83 (copy enclosed as Annexure 13) and all the concerning authorities were informed. In view of the said decision I should have been confirmed w.e.f. 1.8.78 i.e. from the date of my promotion as Highly skilled grade II painter Your letter No. 561-E/85 dated 23.5.83 under reference self explanatory that this has been drafted after to put me in financial loss.

Financial loss  
thought

12. That Shri Shiv Kishore Bajpai T.No. 375 promoted as Highly skilled grade II Painter w.e.f. 1.4.83 on the basis of combined seniority of Painter and polisher vide office order No. E/260 dt. 14.4.84 (copy enclosed as Annexure 14) and his pay was fixed from 1.4.83 and the arrears paid thereof.

13. That Sri Ramzan Ali T No. 15 Highly skilled grade I Painter retired from service on 31.8.84 A.N. but Shri D.D. Rao promoted as Highly skilled grade I Painter w.e.f. 17.10.84 vide office order No. E/348 dt. 18.10.84 (copy enclosed as 15). The post of Highly skilled grade I Painter kept vacant from 1.9.84 to 16.10.84 whereas Sri Shiv Kishore Bajpai, given promotion as Highly skilled grade II Polisher from the retrospective effect.

14. That Sri Ram Dularey T.No. 11 again trade tested for the post of Highly skilled grade II Painter and on being declared pass he was promoted as Highly skilled grade II Painter w.e.f. 10.5.85 vide office order no. E/133, dated 7.6.85 (copy enclosed as Annexure 16). In this respect the seniority in a group of Painter and Polisher is the same as shown in para 9 of the said application.

15. That the promotion of applicant shown as for-tutuins w.e.f. 1.8.78 and the said promotion considered as non-fortutions w.e.f. 1.1.84 vide office order no. E/50 dated 12.2.86 (copy enclosed as annexure no. 17) wherein it has been mentioned as under:-

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"In terms of COS/NDL'S letter No. 92-S/1/AMV/Staff/40SSG dt. 11.11.85 the case of promotion of Shri Shiv Kishore Bajpai T.No. 375 as polisher grade II against an upgraded post of 1.8.78 and that of Sh. Abdul Habib T.No. 254, Painter grade II has been examined in this office in detail keeping in view the rules and the views of the Union, the Union."

S/Shri Shiv Kishore Bajpai T.No. 375 and Ram Dularey T.No. 11 given fixation from 1.12.78 and 1.4.83 respectively in the category of Highly skilled grade II Polisher and Painter the said order does not have any authenticity and on this basis the same has been quashed by

R. C. Sharma  
Advocate, High Court  
Rajajipuram, Lucknow

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the Hon'ble Central Administrative Tribunal, Allahabad, (copy of the Judgement) enclosed as Annexure no. 18). All the action in this respect are very clear that the Administration have malafide intention and acting in an arbitrary manner to give under advantage to Shri Shiv-Kishor Bajpai as all the rules about the seniority have been ignored. The Dy. Controller of Stores, AMV, distributed the posts of Highly Skilled grade I, II and skilled in AMV and CB depot wide office order no. E/59 dated 28.2.86 (copy enclosed as annexure 19) but the said order has not been given effect in respect of applicant only.)

17. That Shri Ram Dularey T.No. 11 promoted as Highly skilled grade I Painter w.e.f. 1.9.1984 vice Shri Ramzan Ali T.No.15, vide office order no. E/91 dated 9.4.1986 (copy enclosed as annexure no. 20). The said order still establish that all the rules and regulations have been ignored as Sri D.D. Rao T.No. 43 entitled for his promotion from 1.9.84 being the senior most and I have also been ignored though I was senior than Sri Ram Dularey T.No.11 as per seniority list, submitted in the Hon'ble Central Administrative Tribunal, Allahabad, vide letter no. 67-1/E, dated 12.2.1985.
18. That I submitted several appeals and representations in respect of my confirmation and promotion as Highly skilled grade I Painter but all have been treated as was to paper and no reply is being given to me only to conceal the irregularities committed by the concerning officers and staffs. The combination of group should have been done in a cognate trades but the trade of Polisher have been combined with the trade of pumpman which is against the rules laid down by the Railway Board vide Printed serial no. 8203 (para 6)(6) (copy enclosed as annexure 21). In spite of this the channel of promotion of polisher is from the category of semi-skilled Painter. In view of the reclassification from semi-skilled to skilled Sri Shiv Kishore Bajpai given proforma ~~from semi-skilled to~~ and promotion from 1.8.78 as skilled painter therefore, he is entitled only to get his promotion in a group of polisher, and painter on the basis of seniority in skilled grade.
19. That my representation dated 22.2.1988, 4.4.1988 and 13.4.1988 have not been replied so far, I shall be highly obliged if you will intimate the authority to whom now I should represent my case.

In view of the facts stated above it is requested for the ~~relief~~ relief as under:-

- i) That the show cause notice no. 561-E/85 dated 23.4.1988 be withdrawn as it is not within the jurisdiction of the Dy. Controller of Stores, Alambagh, Lucknow as the said authority has already intimated that the promotion of the applicant was correct vide letter No. 561-E/85 dt. 23.4.83 in face of the minutes of the meeting dated 5.3.1983 and the judgement awarded by the Hon'ble Tribunal, Allahabad.
- ii) That the representation submitted earlier may also be replied.
- iii) That I may be promoted as Highly skilled grade I Painter w.e.f. 1.1.84

11-6-88  
A. K. Singh  
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ATTESTED

Yours faithfully,

(Abdul Habib) T.No. 254,  
Store Depot/Charbagh/Lucknow.

R.C. Sharma

Asstt. Dy. Cont.

6-3002, Rajapuram, Lucknow



To,

The Controller of Stores,  
Northern Railway,  
Baroda House,  
New Delhi.

Through : P R O P E R C H A N N E L

Sir,

Subject:- Representation on behalf of Abdul Habib Painter Grade I T.No. 254, Stores, Charbagh, against the order No. 561-E/85 dated 5.8.88 passed by the Deputy Controller of Stores, N.Rly., AMV, Lucknow. rejecting reply dt. 4.6.88 submitted by the representationist in response to show cause notice dt. 23.4.88 and order no. E/163 passed by the Deputy Controller of Stores, N.R. AMV, Lucknow, giving illegal benefits of promotion to Sri S.K. Bajpai, T.No. 375, (Plosher) and Ram Dularey T.No. 11 (Painter) from different dates arbitrary and illegelly superseeding the legimate and and preferential claim of the representationist affirming the office order no. E/50 dated 12.2.86 and office order no. E/91 dated 9.4.86 on the following facts and grounds:

F A C T S

1. That from the facts given in reply to show cause notice dated 4.6.88, it is abundantly clear that the representationist is senior to Sri S.K. Bajpai and Ram Dularey and was rightly given promotion on the post of Painter grade II w.e.f. 1.8.78 by the Deputy Controller of Stores, NR/AMV, Lucknow vide office order no. E-268 dated 18.7.80 and there is no mention in the said order that the promotion of the representationist was against fortuous post.
2. That it is also not disputed that the promotion of the representationist was made on the post of Painter grade II when Sri Ram Dularey appeared in the trade test alongwith the representationist and failed as is evident from office order no. E/263 dated 15.7.80 and further failed as established from office order no. E/52 dated 7.2.81.
3. That in the seniority list of Artizan staff published as on 1.1.85 the name of the representationist appears at serial no. 2 where as Mr. Ram Dularey has been shown at serial no. 3 below the representationist as ell as Mr. S.K. Bajpai has also been shown below the representationist in the category of Polishers.

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*[Signature]*  
Q.C. Sarana  
Admn. Supt. Cont.  
E-3665, Rajajipuram, Lucknow

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 P.C. Sankar  
 Admstr. High Court  
 5-3465, Rajajipuram, Lucknow

4. That the matter regarding promotion of representationist was put in the J.C.M. and in its meeting dated 5.6.1980, it was decided that the <sup>Two</sup> ~~low~~ floating posts of H.S.K. Grade II should be allotted to the groups where the number of staff is 6. These groups are of "Painter and Polisher" and Tailor and Carpenter". Since in the group of "Painter and Polisher" the number of staff was 6, one post H.S.K. Grade II was allotted to this group and the item put before the J.C.M. was finalised and closed.
5. That despite clear cut aforesaid decision, the Deputy Controller of Stores, vide office order no. 561-E/85 dt. 11.9.81 illegally issued show cause notice posing for revision of the representationist from the post of painter Grade II and for allotment of the said post to polisher's trade which did not exist at all and regarding which the matter was finally decided in J.C.M. meeting on 5.6.1980 as stated in para 4 above.
6. That on objection, however, the matter was referred to the Head Quarter and in the informal meeting held on 5.3.83 in presence of Controller of Stores, S.P.O. Union, A.P.O. (S&T) And in presence of the representationist of the URMU, the decision was taken regarding item no. 11 and the promotion of the representationist was found to be just and proper holding that the principle of combined seniority was followed and since the senior man Sri Ram Dularey failed in the trade test, the next senior man, the representationist who passed in the trade test was rightly promoted as Painter H.S.K. Grade II w.e.f. 1.8.78 and the show cause notice dt. 11.9.81 was withdrawn and the item was, thus, finalised.
7. That after the decision of the Head Quarter that representationist was rightly given promotion w.e.f. 1.8.78 as H.S.K. Painter Grade II in supersession to Sri Ram Dularey who failed in the ~~trade~~ trade test, the Deputy Controller of Stores also issued office order no. E 561-E/85 dt. 23.4.83 intimation that the show cause notice dated 11.9.81 stands withdrawn and accordingly intimated to the Head Qrs. as well as to the General Secretary URMU, New Delhi.
8. That the Deputy Controller of Stores, despite the fact that the matter regarding the promotion of the representationist w.e.f. 1.8.78 as painter Grade II was finally held to be legal and proper even by the Head Quarter, reopened the settled issue for extraneous consideration and issued office order no. E/50 dt. 12.2.86 by which he treated the promotion

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R.C. Saxena  
Admin. Supt. Const.  
Bajajpuram, Lucknow

6-8-88  
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of the representationist as fertuous w.e.f. 1.1.84 and not only this vide office order no. E/91 dt. 9.4.86 he illegally promoted Sri S.K. Bajpai as polisher Grade II w.e.f. 1.12.78 though he was junior to the representationist and Sri Ram Dularey as Painter Grade II w.e.f. 1.4.83 totally ignroing that Sri Ram Dularey passed in the trade test only on 7.6.85 for Grade II vide office order no. E/133 dt. 7.6.85.

9. That the Deputy Controller of Stores Further acted illegal for extraneuous considerations and issued office order no. E/91 dt. 9.4.86 whereby he further promoted Sri Ram Dularey as Painter Grade I w.e.f. 1.9.84, after the retirement of Sri Ramjan Ali, T.No. 15 w.e.f. 31.8.84 and Sri S.K. Bajpai as polisher Grade I w.e.f. 1.1.84 totally by passing the legitimate and prefarential claim for the promotion of the representationist
10. That the representationist submitted representation against aferesaid order no. E/50 dt. 12.2.86 and no. E/91 dt. 9.4.86 to the GM(P) NDLS on 22.4.86 giving copies to the Controller of Stores, NDLS and Deputy Controller of Stores, N.R. AMV, Lucknow, but neither the wrong done was undone nor any decision was taken in the matter.
11. That the representationist feeling aggrevie failed case no. 615-86 before the Central Administrative Trubunal at Allahabad against authorities concerned. The case was finally decided vide judgement and order dt. 12.2.88 and the impugned order no. E/50 dated 12.2.86 adversely effecting the representationist was quashed and the Trubunal observed that there has not been fair play in the action of the departmental authorities in passing the impugned order and they also vialated principles of natural justice.
12. That even after the decision of the Central Advinistrative Tribunal the Deputy Controller of Stores for extraneuous considerations without waiting for decision of previous representation dated 22.4.86 made by the representationist to G.M.(P) NDLS pending with his desposal referred to ~~th~~ in para 10 above, again issued a fresh show cause notice no. 561-E/85 dated 23.4.88 for treating the promotion of the representationst as Painter Grade II w.e.f. 1.1.84 as non-fertuous and 1.8.78 as fortuous.
13. That the representationist submitted a detailed representation reply against the aferesaid show cause notice dated 23.4.88 and specifically pointed out that keeping in view the facts of the case and the fact that

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P.C. Saxena  
Advocate, High Court  
F-3655, Rajajipuram, Lucknow

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the Deputy Controller of Stores has no power and authority to reopen the already settled issue by the Head Quarter again and again in order to give undue favour to Sri Ram Dularey and S.K. Bajpai who are not otherwise entitled to be promoted in Higher Grade posts in preference to the representationist.

14. That, however, without applying his mind at all to the facts and place raised by the representationist in his reply to show cause notice, he arbitrary in mechanical manner passed to totally non speaking order no. 561 E/85 dt. 5.8.88 and order no. E/163 dated 6.8.88 affirming earlier illegal orders dated 12.2.86 and 9.4.86 impugned in the present representation.

15. That the impugned orders dated 5.8.88 and 6.8.88 passed by the Dy. Controller of Stores, N.Rly/AMV, Lucknow are wholly illegal and arbitrary on the following amongst the other:-

G R O U N D S

(i) Because the impugned orders are wholly arbitrary and have been passed without taking into account the facts and the please raised by the representationist in his reply to show cause notice dated 4.6.88 and hit by Article 14 of the Constitution of India.

(ii) Because the Deputy Controller of Stores has no power and competence to sit over the decisions of the Hqrs. finalised in the meeting held in persuance of the representationist of the union in order to give undue favour to individuals for extraneous considerations.

(iii) Because even otherwise too an merits of the case the impugne orders are not justifiable by the Deputy Controller of Stores and his decision is wholly wrong against the representationist.

(iv) Because the promotion of the representationist pertion to

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the year 1978, and the same is not liable to be altered changed after along time of 10 years in view of the numerous Supreme Court of India's decision on the point specifically when the matter was never represented against by the individual concerned to the notice of the representationist.

(v) Because the impugned orders have the penal ~~affix~~ effect of reducing the representationist in rank, the same could not have been passed without complying the mandatory provisions of of Article 311 (2) of the Constitution of India.

Vi) Because in view of Railway Board's orders, the representationist will be deemed to have been confirmed as Painter Grade II w.e.f. 1.8.78 after rendering the more than requisite meritorious service the impugned orders adversely affecting him could not have been passed by the Deputy Controller of Stores in the manner the same have been passed.

Wherefore, it is most respectfully prayed that the impugned orders dated 5.8.88 and 6.8.88 passed by the Deputy Controller of Stores may be set aside and the representationist's promotion w.e.f. 1.8.78 as Painter Grade II may be held to be legal and proper and he may be allowed the benefit of promotion as Painter Grade II w.e.f. 1.1.84 instead of 26.3.87 in preference of his junior Sri S.K. Bajpai and allow this representation.

Thanking you.

*Alau*

(ABDUL HABIB)

T.No. 254

Painter, Stores Charbagh,  
Lucknow.

Lucknow.

Dated: 16-8-88

Copy to:- 1. G.M.Northern Railway, Baroda House, New Delhi.  
2. Deputy Controller of Stores, Alambagh, Lucknow.

Registered A.D. Advance Copy to :-

1. Controller of Stores, N.Railway, Baroda House, New Delhi.
2. G.M. ( ), Baroda House, New Delhi.

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*Alau*

*Q.C. Sarma*

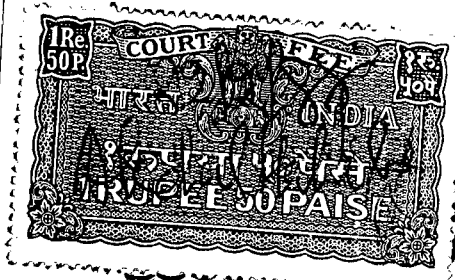
Q.C. Sarma  
Assistant, High Court

E-3665, Rajapuram, Lucknow

(A.B.)

Before the Central Administrative Tribunal  
ब अवसित श्रीमान (Court Ben), Lucknow. महोदय

[वादी] अपीलान्त श्री Abdul Malik का वकालतनामा  
प्रतिवादी [रेस्पान्डेंट]



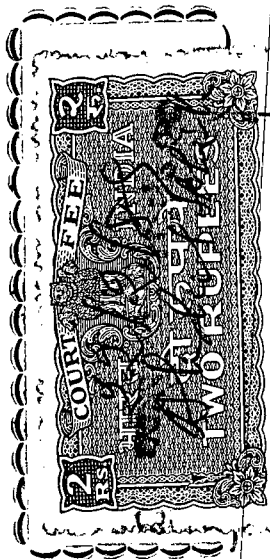
Abdul Malik

Applicant मुकदमा नं० NO Union of India & others  
सन 89 पेशी की ता० 22-2-1989 ई०  
R.C. Saxena

ऊपर लिखे मुकदमा में अपनी ओर से श्री

Advocate High Court,

F-2665, Rajarajpuram, K.O. एडवोकेट



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

Accepted

Signature of Advocate

हस्ताक्षर  
ABDUL MALIK

साक्षी (गवाह)

साक्षी (गवाह)

R.C. Saxena  
Advocate, High Court  
F-2665, Rajarajpuram, Lucknow

दिनांक

22

महीना

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सन् 1989 ई०

(A82)

In the Central Administrative Tribunal Allahabad  
Circuit Bench Lucknow.

O.A. 45 of 1989

Abdul Habib ... Applicant.  
Versus  
Union of India and others ... Respondents.

Reply on behalf of Respondents No. 1 to 3.

Before giving para wise reply, it is necessary to narrate the facts in sequence prior to and after the upgrading of 45% was allowed from 1.8.'78 in Artisan category:

1. That the position prior to upgrading w. ef. 1.8. 1978 in regard to trade of painter and polisher was as under:-

Painter:

- a. Ramzan Ali (tkt no.15)
- b. D.D.Rao (tkt no.13)
- c. Ram Dulare (tkt no.11)
- d. Abdul Habib (tkt.no.254)

Polisher:

- a. Ram Sagar (retired on 31.12.'77) Tkt.No. 217
- b. Mangal (retired on 30.11.'78) Tkt.No. 246
- c. Sheo Kishore Bajpai  
(appointed on 7.10.'78 as polisher) Tkt.No. 375
- d. Akhtar Hussain  
(appointed on 1.2.'80 as polisher) Tkt. No. 311

*Received  
Duplicate  
6/11/89  
Consent for  
Applicant*


*[Signature]*  
Asst Personnel Officer  
Genl. Stores Depot, N. Rly  
Alambagh, Lucknow

(A03)

- 2 -

The seniority of each trade was maintained separately.

2. From 1.8.'78 45% upgrading was allowed on:-  
Skilled Grade at the rate of 20% Grade I.  
and at the rate of 25% Grade II.
3. On the receipt of 45% upgrading wef 1.8.'78 in Artisan Category, it was decided in consultation with both the recognised unions to form groups of categories, where there are less number of posts with a view to provide equal opportunity of promotion to higher grade posts to all categories of staff.  
  
Accordingly all the 11 categories of Artisan staff were divided in 6 groups and an office order No. E/300 dated 28.7.'79 was issued and two posts of Grade II were kept floating. Copy of the said Office order is Annexure No. A-10 to the application.
4. While allotting higher grade posts to these groups, it was also kept in view that all the higher grade posts should not be operated in one category in the particular group and accordingly few criteria were laid down to give equal opportunity to all the categories vide office letter No. 561E/83 dated 6.4.'79. A true copy of the said office letter No. 561E/85 dated 6.4.'79 is annexed to this reply as Annexure No. CA-1

  
Asstt Personnel Officer  
Genl. Stores Depot, N. R.  
Alambagh, Lucknow



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- 3 -

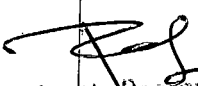
5. Accordingly the Group consisting of Painter and Polisher became entitled to 2 higher grade posts, one in Grade I and the other in Grade II. Consequently the two post were allotted to the following persons:-

- a. Ramzan Ali Tkt No. 15- Grade I.
- b. D.D.Rao Tkt No. 13- Grade II.

It may be noted that both the above persons belonged to painter trade.

6. Vide joint application dated 22.5.'80 by the applicant (painter trade) and Shri Sheo Kishore Bajpai (polisher trade) , it was urged for the implementation of 45% upgrading in the category of polisher and painter. A true copy of the said joint letter dated 22.5.'80 has been made Annexure No.. A-11 to the application.

7. Later on the two floating posts to be finally allotted to group where number of staff was 6 i.e. painter and polisher group and the other Tailor and Carpenter group. This decision was taken in the J.C.M. held on 5.6.'80. Copy of the office order No. E/300 dated 28.7.'89 is already annexed to the application as Annexure No. A-10 and copy of minutes of J.C.M. held on 5.6. 80 has also been annexed by the applicant as Annexure No. A-13 to his application.

  
Asstt. Personnel Officer  
Genl. Stores Depot, N. E.  
Alambagh, Lucknow


A85

- 4 -

Consequently after decision of J.C.M. the group Painter and Polisher became entitled to one post of Grade II , which was given over to Shri Abdul Habib (Painter) instead of polisher ignoring the criteria fixed for filling the higher grade posts (as contained in Annexure No.A-10 to the application) by deviation. A true copy of the note dated 8.7.'80 submitted by the office together with recommendation of A.P.O. and orders dated 14.7.'80 by the then Dy.C.O.S. are annexed to this Reply as Annexure No. CA-2. It is also submitted that shri Ram Dulare who was senior to the applicant Abdul Habib was skipped over as he failed in the trade test.

8. Due to the wrong implementation of criteris fixed in the Office Order dated 6.4.'79 (Annexure no. CA-1 to this reply), NRMU sent an agenda on the subject to the Dy. C.O.S. for being placed in the P.N.M.Meeting. The agenda and reply was placed in P.N.M. meeting dated 24.7.'81. A true copy of minutes circulated vide No. 961E/NRMU/ PNM dated 12.8.'81 is annexed to this reply as ANNEXURE NO. CA- 3.

9. Accordingly a notice No. 561 E/85 dated 11.9.'81 was issued to the applicant to show cause as to why he should not be reverted from the post of Grade II and the post allotted to right person in polisher trade. A true copy of the said notice No. 561E/85 dated 11.9.'81 has been annexed as ANNEXURE NO. A-19 to the application.

  
Asstt Personnel Officer  
Genl. Stores Depot, N. F.  
Alambagh, Lucknow.

A86

- 5 -

10. Since the matter of upgradation and incorrect implementation as raked out by the BRMU and pending in P.N.M. was not decided finally, the senior most in the polisher trade Shri Sheo Kishore Bajpai made a reminder representation dated 26.7.'83 to the administration, of which a true copy is annexed to the reply as ANNEXURE NO. CA-4. A reminder was sent by the said Sheo Kishore Bajpai through a letter dated 16.8.'83, of which a true copy is annexed to this reply as ANNEXURE NO. CA-5 followed by further reminders dated 13.9.'83, 25.10.83, 10.'84 and 3.12.'84 of which true copies are annexed to this reply as ANNEXURES NO. CA-5 to CA-8.

11. Against the above show cause notice dated 11.9.'81 (Annexure No. A-19 to the application), URMU another union took up the matter at Head Quarter level and minutes of the informal meeting held with URMU by Controller of Stores dated 5.3.'83 were circulated as contained in ANNEXURE No. A-20 to the application, wherein a decision was taken to withdraw the show cause notice dated 11.9.'81, on the basis of combined seniority, but this combined seniority was applied to polisher and painter group only instead of to all the groups.

12. Although show cause notice was withdrawn, but representation from the polisher as well as NRMU stores branch were being received against

Asstt Personnel Officer

Genl. Stores Depot, N. Ry the filling of one grade II post in the category Alambagh, Lucknow

487

- 6 -

of painter, ignoring the rightful claim of the polisher by deviation from the fixed criteria and rules. NRMU stores branch Alambagh was not convinced with the decision of the Head Quarter taken in an informal meeting with URMU dated 5.3.'83 and demanded J.C.M. on this issue. Head Quarter's Office had fixed J.C.M. many times, but the same could not be held for one reason or the other and at last Head Quarter had advised the office of Dy. C.O.S. to decide the issue at his level vide letter No. 92-S/1/Alambagh /Staff /40/SSG dated 15.10.'84 a true copy which is annexed to this reply as ANNEXURE NO. CA- 9. Inspite of the office of Dy. C.O.S. bringing it to the attention of the Head Quarter that the matter is fixed for J.C.M., the Head Quarter decided that the matter be finalised at the instance of Dy. C.O.S. Alambagh Lucknow.

13. Thereafter views were taken from both the unions i.e. NRMU and URMU and they were also of the opinion that the third post which was given to the painter trade by deviation should be allowed to be filled in the polisher trade and thus the deviation was set right treating the promotion of Shri Abdul Habib as fortituous vide officer Order No. E/50 dated 12.2.86 of which a copy has been annexed as ANNEXURE No. A-22 to the application.

Asstt Personnel Officer  
Genl. Stores Depot, N. F. URMU were taken, the applicant himself was the  
Alambagh, Lucknow Branch President of URMU.

A58

- 7 -

A true copy of the views of the NRMU and URMU Stores Branch Alambagh Lucknow on item No. II of the joint meeting held at Hd. Quarter Office on 20.2.1985 duly signed by Shri S.P. Yadav and Shri R.K. Singh is annexed to this reply as ANNEXURE NO. CA -10.


14.

The result was that Shri Sheo Kishore Bajpai was allowed upgradation in Grade II w.e.f. 1.12.78 and given proforma fixation w.e.f. 1.12.1978 the date after retirement of Shri Mangal, while the applicant was treated as holding fortuitous promotion as GRADE II and was later on regularised as GRADE II against non fortuitous post w.e.f. 1.1.84 on account of third upgradation sanctioned vide P.S. No. 8768.

The applicant thereafter challenged the aforesaid order dated 12.2.86 before the Central Administrative Tribunal in O.A. No. 615 of 1986 and the same was decided vide judgement dated 12.2.88 wherein the administration was directed to give the applicant a notice and after hearing him to pass any specific order.

14.

Thereafter a show cause notice dated 23.4.88 as contained in Annexure No. A-25 to the application was issued to the applicant and the applicant submitted his reply dated 4.6.88 as contained in ANNEXURE NO. A-26 to the application to the show cause notice, after his request for supply of additional information which was met with by the administration vide their letter dated

  
Asstt. Personnel Officer  
Genl. Stores Depot, N. F.  
Alambagh, Lucknow

4009

- 8 -

23.6.'88.

15. After receiving the reply to the show cause notice the administration served the applicant of the views of the administration vide letter NO.561 E/85 dated 5.8.'88. True Copies of show cause notice dated 23.4.'88 has been annexed as ANNEXURE No. A-25 to the application, while true copy of the applicant's reply dated 4.6.'88 has been made as Annexure No. A-26 to the application, while the copy of reply dated 5.8.'88 sent by the administration to the applicant has been annexed to the application as ANNEXURE NO. A-2.
16. The administration decided the show cause notice after taking into consideration the reply submitted by the applicant vide order No, E/163 dated 6.8.'88, a true copy of which has been annexed as Annexure No. A- 3 to the application.
17. The result was that the applicant was treated as having been promoted w.ef. 1.8.'78 as fortitious and later on regularised w.ef. 1.1.'84 on the availability of upgraded post in Grade II sanctioned vide P.S. No. 8768. On the other hand shri Sheo Kishore Bajpai ~~was promoted~~ promotion was regularised w.ef. 1.12.'78 upon retirement of Mangal and allowed proforma fixation from that date till 1.4.84 from which date he had actually been paid in Grade II against upgrading from 1.4.'83 which post was sanctioned under P.S. 8438.

*[Signature]*  
Asstt. Personnel Officer  
Genl. Stores Depot, N. E. post  
Alambagh, Lucknow

A90

- 9 -

18. That on the aforesaid facts and circumstances no injustice has been meted out to the applicant. Rather he has been benefited by the decisions taken by the administration in treating his promotion as Fortitious instead of he being reverted due to wrong promotion under upgradation. The application is thus liable to be dismissed with costs.

PARAWISE REPLY.

Para1: Needs no reply.


Para2: Needs no reply.

Para3: Needs no reply.

Para4: Needs no reply.

Para5: Needs no reply.

Para 6(I) Only the issue of Order No. E/91 dated 9.4.'86, order No. 561/E/85 dated 5.8.1988 and No.E/163 dated 6.8.1988 passed by respondent No.3 as contained in Annexure No.A1, A2 and A3 to the application are not denied. Rest of the contents ~~are denied. However they~~ are verifiable from the orders themselves. It is submitted that every order was passed after considering the subject matter in detail and according to rules. The reply of the applicant dated 4.6.88 was also considered before the passing of relevant order.

  
Asstt Personnel Officer  
Genl. Stores Depot, N. P.  
Alambagh, Lucknow


- 10 -

Para 6(ii) Service records of each of the employee mentioned in the para under reply would be produced at the time of argument. Annexure No. A-4, A-5, A-6, A-7 and A-8 annexed to the application are not denied. It is however submitted that the seniority of Polisher and Painter is separate having their avenue of promotion in their own category as Grade II and Grade I. Shri Ram Dulare T.N. 11 belonging to the same category (Painter) was senior to the applicant.

Para 6(iii) Denied. Shri Abdul Habib, applicant was promoted as skilled painter w.e.f. 7.6.'71 on purely temporary arrangement with clear understanding that this will not confer upon him any claim for promotion in future in preference to his seniors. Shri Ram Dulare who was senior to the applicant was under suspension at that time, was also promoted w.e.f. 26.11.'71 treating his suspension as duty.

Issue of Annexure No. 9 is not denied. Rest of the contents are verifiable from respective annexures.

Para 6(iv) Denied. Both the categories i.e Polisher and Painter are separate having higher grade post of Grade II and Grade I in their own category.

  
Asstt Personnel Officer  
Genl. Stores Depot, N. E.  
Alambagh, Lucknow



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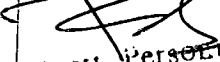
- 11 -

Para 6(v) Issue of order dated 28.2.79 as contained in annexure No. A-10 is not denied. Rest is denied. The idea behind combination of category was to provide higher grade posts to the categories where number of staff in a category were not sufficient for distribution of higher grade post of Grade II and Grade I according to the percentage prescribed. Where higher grade posts were available in their own category as per prescribed percentage, the combination of categories was not allowed to accrue undue advantage to any particular category beyond the prescribed percentage.

Para 6(vi) Submission of representation as contained in annexure No. A-14 by the applicant and respondent no.4 is not denied. Issue of letter dated 2.6.1980 and the order dated 2/10.6.'80 as contained in annexure No. A-12 and A-13 are not denied. Rest of the facts are verifiable from the annexures themselves.

Para 6(vii) Not denied.

Para 6(viii) Not denied. It is submitted that the trade test for the post of painter Gr.II in which Shri Ram Dulare T.No.11 and the applicant were called arose out of deviation. Had there been no deviation from the criteria and

  
Asstt Personnel Officer  
Genl. Stores Depot, N. R.  
Alambagh, Lucknow

- 12 -

rules , the post would have gone to the category of Polisher and seniority of Sri Ram Dularey over Sri Abdul Habib as skilled Painter remained undamaged.

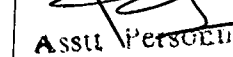
Para 6(ix) Not denied. However it is submitted that the promotion of the applicant was the result of deviation from fixed criteria and rules. The post should have gone to the category of the polisher who remained deprived of upgrading.

Para 6(x) Not denied.

Para 6(xi) Not denied.

Para 6(xii) Not denied. However it is submitted that Shri Ram Dulare was promoted as Painter Grade II w.ef. 10.5.85 against existing vacancy after passing the trade test.

Para 6(xiii) In reply to the contents of paragraph 6(xiii) it is submitted that the post of Grade II against which shri Abdul Habib , the applicant was trade tested and promoted w.ef. 1.8.'78 was the result of deviation. Had there been no deviation from the fixed criteria and rules, the post of Grade II would have gone and filled in the category of Polisher. The trade test and promotion of shri Abdul Habib w.e.f 1.8.'78 was fortuitous which carry no seniority over his seniors.

  
Asstt Personnel Officer  
Genl. Stores Depot, N. R.  
Alambagh, Lucknow

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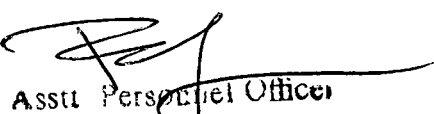
- 13 -

Para 6(xiv) In reply it is submitted that Shri Ram Dularey was senior to applicant as may be seen from the date of confirmation of the two employees. The promotion of applicant against temporary and local arrangement in skilled grade from an earlier date to his senior does not confer upon him any seniority, Shri Ram Dulare senior to the applicant happened to be under suspension at that time. So far as Respondent no. 4 is concerned, he is in the category of polisher, therefore the position of seniority can not be compared inter se with him and the respondent no.4.

Para 6(xv) Shri Abdul Habib, applicant has been shown above Shri Ram Dulare in the seniority list of Artisan Category, because he was working in Grade II. The promotion of the applicant has since been considered to be fortuitous on allowing one post of Grade II to the category of polisher w.e.f 1.8.79 which was filled in category of painter as a result of deviation. Fortuitous promotion of the applicant does not confer upon him any seniority over his seniors.

Para 6(xvi) Denied. The applicant was not the senior most in the category of painter. Shri Ram

.. 14

  
Asstt Personnel Officer  
Genl. Stores Depot, N. R.  
Alambagh, Lucknow


A-95

- 14 -

who was senior to the applicant remained senior because promotion of the applicant was fortintuous. The post of Gr. II which was filled in the catagory of painter by deviation should have been filled in the catagory of poilsher and on allowing the one post of Grade II in polisher catagory, the promotion of applicant in Grade II was treated as fortituous which carrye no seniority.

Para 6(xvii) Issue of Office Order No.561E/85 dated 11.9.

1981 by respondent no.2 to the applicant to show cause as to why he should not be reverted is not denied. It is submitted that while implementing upgrading w.ef. 1.8.'78 few criteria and rules were framed with a view to give benefit of upgrading to each catagory of artisen staff and accordingly only two higher grade posts were to be filled in the catagory of Painter and Polisher which were allotted to the Painter catagory. The third post which was allotted in Grade II out of floating posts against which shri Abdul Habib was promoted by deviation should have gone to the catagory of polisher, but this was not done and all the three posts as a result of upgradation were filled from the catagory of painter. The combined group was considered allotment of Grade II and Grade I posts and not for filling the post in order of seniority. The criteria and rules for

  
Asstt Personnel Officer  
Genl. Stores Depot, N. R.  
Alambagh, Lucknow

- 15 -

allotment of posts in a group and categories was to provide benefit of upgrading to each category of artisan staff. However in the case of group of Painter and Polisher, the benefit of upgradation was extended to the painter category only by deviation thus depriving the category of polisher altogether, which was subsequently set right.

Para 6(xviii) Not denied. However, inspite of the fact to that the show cause notice was withdrawn but (XXI) representation from the category of ~~polisher~~ polisher as well as from NRMU /Stores Branch were being received against filling of the one grade II post in the category of painter ignoring the rightful claim of the category of polisher.

NRMU(Stores) Branch Alambagh was not convinced with the decision of Head Quarter Office taken in an informal Meeting with URMU dated 5.3.'83 and demanded J.C.M. on this issue. Head quarter Office had fixed JCM many times but the same could not be held for one reason or the other and at alst Hd. Qr. Office had advised this office to decide the issue at the office of Dy. C.O.S. level vide letter No. 92-8/1/AMV/Staff/40/SSG dated 15.10.'84, 2.2.'85, 5.9.'85 and 11.11.'85.

Asstt Personnel Officer  
Genl. Stores Depot, N. R.  
Alambagh, Lucknow

This office had taken the view of both the recognized Unions i.e. NRMU and URMU and the

- 16 -


deviation from the fixed rules and criteria made earlier has been set right and one post of Grade II which was earlier in the category of Painter ignoring the Polishers has been allowed to be filled in the category of Polisher who were deprived of the upgrading. The promotion of the applicant as Painter Grade II w.e.f. 1.8.'78 was treated as fortuitous and would not confer any claim for such promotion in future over his seniors.

Shri Ram Dulare T.NO. 11 who was senior to Shri Abdul Habib (applicant) as semi skilled painter and skilled painter has been considered for promotion as Painter Gr. II w.e.f. 1.4.'83 on his due turn against available post of Gr. II as a result of upgrading and Painter Gr. 1 against vacancy caused due to retirement of Sri Ramzan Ali T.No. 15 on 31.8.'84. Fortuitous promotion of the applicant does not confer on him the seniority for such promotion over his seniors.

Para 6(xxii) Filing of appeal as contained in annexure no. A-23 is not denied.

Para 6(xxiii) Needs no reply.

Para 6(xxiv) Needs no reply.

  
Asstt Personnel Officer  
Genl. Stores Depot, N. R.  
Alambagh, Lucknow

... 17

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Para 6(xxv) Issue of show cause notice as contained in annexure no. A-25 to the application is not denied. Rest of the facts as alleged are denied. The show cause notice was issued after the Hon'ble Cat had decided and observed that the department will be at liberty to pass fresh order after giving a notice and hearing ~~hearing~~ to the ~~xxxx~~ applicant. Contents of the para under reply are verifiable from the notice itself.

Para 6(xxvi) Submission of reply <sup>to show cause</sup> dated 23.4.'88 as contained in Annexure No. A-26 is not denied. Facts extracted and put in the para under reply are verifiable from the reply itself.

Para 6(xxvii) Issue of Orders dated 5.8.1988 and 6.8.'88 by respondent no. 2 are not denied. The order has been passed after giving due consideration to the reply submitted and the order does not suffer from illegality or arbitrariness.

Para 6(xxviii) Receipt of representation dated 16.8.'88 from ~~by~~ the applicant to G.M. is not denied.

Para 6(xxix) Since the applicant has filed this petition ~~xxxxxx~~ it becomes irrelevant ~~xxxxxx~~ for the applicant to find out as to whether a decision has been arrived at.

  
Asstt Personnel Officer  
Genl. Stores Depot, N. R.  
Alambagh, Lucknow

Also

- 19 -

Para 6(xxxi) In reply it is submitted that the upgradation posts have filled strictly in accordance with and on basis of seniority after observing the relevant rules. Shri Ram Dularey who was senior most in skilled painter has been given promotion as Gr. II Painter w.ef.1.4. 83 against 1st. available upgraded post.

para 7: Needs no reply.

Para 8: Needs no reply.


Para 9:- Denied. The ~~plaintiff~~ applicant is not entitled to any relief claimed. None of the ground is tenable under law. The application is liable to be dismissed with costs.

Para 10: Needs no reply.

Para 11: Needs no reply.

Para 12: Needs no reply.

13. That in any view of the matter no relief can be granted, even if the same is proved by the applicant in absence of the employee Ram Dularey.

  
Asstt Personnel Officer  
Genl. Stores Depot, N. F.  
Alambagh, Lucknow

14. That on the facts and circumstances stated




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- 20 -

above, the application is liable to be dismissed with costs.


Lucknow

dated. 06-11-89

  
Asstt. Personnel Officer  
Respondents no. 1 to 3  
Genl. Stores Depot, N. Rly  
Alambagh, Lucknow

Verification.

I, R. C. Srivastava working as APOCD  
in the Office of Dy. C.O.S. Lucknow and duly authorised  
to sign and verify this reply on behalf of the respondents  
do hereby verify that the contents of paras 1 to 14 of  
this reply are true to my belief based on information  
derived from record and legal advise received.

  
Asstt. Personnel Officer  
Genl. Stores Depot, N. Rly  
Alambagh, Lucknow

C-4-1  
A102  
257

**Suggestion for distribution of Higher Grade Posts among 30 Artizans of Stores depots AMV & CB.**

....

After considering the views of both the Unions, the administration have come to the following agreed distribution of the higher grade posts to the different trades: 10 Trades working in this depot have been grouped in six groups for the purpose of distribution of the higher grade posts:

Category	Group No.	Saned. strth	Combined strength	Allotment of grades		
				Grade II Permanent	Floating	Grade I Permanent.
Painter		4)				1
Polisher (1)		2)	6	1		
Tr. Driver (2)		5	5	1	2 Posts	1
including DS. Cr Driver						
B/Smith S/fitter (3)		3 1	4	1		1
Gunner (4)		5	5	1		1
Carpenter		3	6	1		1
Tailer (5)		3				
T/Smith (6)		3				
Welder		1	4	1		1

While distributing the floating posts, the following criteria will be kept in view:-

1. Where the number of members in a particular trade is 2, not more than one higher grade will go to that trade,
2. Where the number of members in a trade is 3, or 4, not more than 2 higher grade posts will go to that trade and
3. Where the number of members in a trade is 5, not more than 3 higher grade posts will go that trade.

If the members of one trade are not found suitable in a trade test the post will operate in the lower grade, till a suitable man passing the trade test becomes available in that group.

Higher grade floating posts will be distributed on the basis of over all seniority after considering the above points in future.

*sd/-*  
Dy. Controller of Stores/  
Alambagh, Lucknow.  
No. 561B/85

Dated: 6-4-79.

Copy to: 1. The Br. Secy. URMU-AMV Br. Branch LKO. ) They are requested to give their objection any, within 7 days from the receipt of the letter, after which it will be implemented without any further delay as a delay has already occurred in making ref. and obtaining view of both Unions

*notes are PP 40041.*  
Dy. Controller of Stores/  
Alambagh, Lucknow.

Making ref. and obtaining view of both Unions

A103

4

-2-

At this stage Shri Abdul Habib, T.No. 254 becomes due promotion as Gr.II Painter and therefore be regularised as Painter Gr.II from 01.1.84. His previous service as Gr.II is to be treated for tuitions.

The administration is requested to take action accordingly at a very early date.

*S.P. Yadav*  
( S.P. YADAV )

*R.K. Singh*  
( R.K. SINGH )  
29/1/86

Re: SL. no. 332

(1) SL. no. 332 is a letter from A.R.M.U. asking this office to conduct the Trade test of Carpenter H2fr II. The Category of Carpenter has been combined with the Tailor and named as Group 5. One floating post has been allotted to this group.

(2) The other floating post has been allotted to Group 1 Company of Painter & Plaster. Two posts are already occupied by Painter and for the third (floating) the test has been conducted & the result is yet to be published.

(3) In this connection attention is invited to PP. 41 of the case. Prior to final allotment of 2 floating posts in Job 33-480 a note as at PP. 41 was prepared regarding allotment of posts in different trades on the basis of no. of posts in one trade.

(4) This was objected to by U.R.M.U. and stated to be superfluous in per remarks at SC no 258. U.R.M.U. however did not show any resentment.

(5) Now in view of the fact that the two floating posts have been allotted each to Group 1 & 5 it has to be decided whether the note at PP. 41 will still hold good or not. ~~However~~ In case this note is allowed then as per para 2 of note the third post (Job 33-480) for which painter has been tested will become null & void.

The test of this Ram Pds for which Union has asked can be conducted only after deciding the issue of para 5.

For info & sample.

A.E. (E) 2/1/60

Amul  
107

A.P.O. 107

8/17

(A105)

11.69

प्री० एल० 19/GJ.15.  
कमल 99-वडा/Goul. 88-Large

~~प्री० एल० 19/GJ.15.~~ प्री० एल० 19/GJ.15.  
कमल 99-वडा/Goul. 88-Large

The decision re. allotment of floating posts  
had been taken in ~~for~~ ~~com~~ g.c.m. by  
both the union and the same should be  
adhered to. Hence Dy cos may  
take the decision re. para (V) quoted on  
PP - A) of the case and the pension  
on painter trade passing the Trade Test  
must be promoted.

~~Dy cos~~

Amul  
11.7

- 1) Painter trade test has already been done on 7.7.80  
and results declared. Therefore let this be a deviation.
- 2) In other trades this rule should be adhered
- 3) Trade test of Carpenter for HS/II may be held  
by AOS/I

14/7

C 4-3

Minutes of the PNM Meeting held with the representatives of PNM on 24.7.81 in the Room of Dy. COS/N.Rly Alambagh Lucknow.

Present

Agmt.

944E/17R MUP/NM

Union

8/24/81

376

1. Shri S.C.Goel, Dy.COS.
2. Shri S.K.Agarwal, O/Pstt.
3. Shri K.K. Misra, DM/AM.
4. Shri Hasnain FC/TPP.
5. Shri M. Nigam M. Clerk.

- 1) Shri Putti Lal Yadav, President.
- 2) Shri R.B.Singh, Asstt.Secy.
- 3) Shri Raja Ram V/President.
- 4) Shri B. Upadhyaya "
- 5) Shri Rajeshwar Singh "
- 6) Shri Inder Bahadur "
- 7) Shri MML Sahni, Secy "
- 8) Shri SK Vidyarthi Asstt.Secy.
- 9) Shri Bharat Singh "
- 10) Shri JN Tewari, Treasurer.
- 11) Shri RK Singh Asstt.Divl.Secy.
- 12) Shri Jagjiwan Narain Rep.
- 13) Shri Desh Bandhu "
- 14) Shri Ganga Charan "
- 15) Shri Sidh Nath, Clerk "
- 16) Shri Raksha Ram Clerk "
- 17) Shri DN Tandon 828 "
- 18) Shri Mohan Lal 956 "
- 19) Shri Radhey Shyam Clerk "

After welcoming the NRMU office bearers & delegates to this PNM the Dy.COS wanted to take up the agenda straight away item by item but the Br.Secy/NPMU suggested that he has gone through the comments by the administration on the agenda submitted by the Union, and only those items be discussed at the meeting which the Union points out accordingly only those items were taken up for discussion, which were pointed out by the Union.

Item No. 6 Rules for recruitment of Cl. IV staff in TPP as per Rly.Bd. letter.

Rule

Rly. Khallasies of requisite standard be taken from Stores as per Railway Boards instructions laid down in the letter No. E/NG/11-80/RC/158 of 9.3.61 and those already taken and working as such in TPP should be screened to ensure the application of the standard prescribed. And 50% vacancies should be filled in from outsiders preferably from those who were tested in 1977.

GM (P) instructions contained in the letter No. 846-E/4401 (ED-IV) dt. 30.5.81 have since been received & further action will be taken.

Filling up the vacancies of Khallasies in TPP action will be taken in terms of Rly.Bd's letter with immediate effect. As per letter the persons having requisite qualifications and aptitude of the Printing Press will also be inducted from outside.

NEW ITEM

Item No. (I) Channel of promotion of Ticket Counters/Packers/TPP.

This case was discussed at length & it was noticed from the Booklet (Annexure-1) that the

(ccc2ccc)

(1107)

promotions to Ticket Counters. Gr. 260-400 are from Packer Gr. I Ticket Despatcher & to these posts the promotions are from Jr. Ticket Counters/Packers Gr. II. Since in the past many Jr. Counters have straight away been promoted to Ticket Counters Gr. B 260-400 by passing packer Gr. I/Ticket D Despatcher, this has to be examined as to how this has not been followed in the recent past. This may be due to some amendments to by the Board or may be due to some local difficulties. Since this will take some time in complete examination, selection to one post of T. Counter may be kept pending till decision is arrived at...

### Item No. 13. Out turn of Painters.

No specific job has been given to a particular painter who has just been trade tested. Why can't he be posted in some section and wards where he can be obliged to do some work in the interest of the nation as he is in the painters shop for the past over a decade.

The work of Painters has been distributed as under :-

- 1) Shri Ramzan Ali : Overall in charge to perform the work of complicated and highly skilled nature and also to supervise the work of other artizans.
- 2) Shri Abdul Habib : Work of GD and Sales Section.
- 3) Shri K. Kumar : To work under W/D, E, Custody and F. Ward.
- 4) Shri Jamuna Pd. : SS Painter is looking after the work of Log Yd.

However, further, it was agreed that every DSK I/C should keep a job Register wherein they will record the jobs assigned and performed by each artizan staff.

### SUPPLEMENTARY AGENDA :-

#### Item No. 4: Distribution of Gr. I & II posts amongst Tailor Carpenter Group and Painter/Polisher Group.

While care has been taken to stick to rules in not allowing more than 50% posts in one category in the carpenter/Tailor Group, no care has been taken in the case of Painter Polisher Group where all the posts 100% have gone to Painter, ignoring the polisher. This may kindly be looked into, which is against rule.

The original decision arrived by the Admn. with both the Unions in connection with implementation of upgradation of the artizan staff was got through and it was noticed some clubbing has been done form group of two or three categories of employees for

implementing the same so that fractions are avoided. According to joint decision arrived at not more than 50% of the posts should go to one category in the sub. groups in the higher grade posts. Further criteria has been laid down as per remarks reproduced below.

- (i) Where the numbers in a particular trade is 2, not more than one higher grade post will go to that trade
- (ii) Where the number of members in a trade is 3, or 4, not more than 2 higher grade will go to that trade.
- (iii) Where the number of members in a trade is 5, not more than 3 higher grade posts will go to that trade.

In this group of painters/Polishers comprising 6 posts of artizan staff, 4 of painters and 2 of Polishers, 3 higher grade posts viz. 2 grade II and one grade I have been allotted to this group. In this case all the three posts of higher grade are at present occupied by the Painters and the Polishers have not got any share in upgradation. The notice should be served on the Jr. Most of Gr. II Painter as to why he should not be reverted in view of Joint decision & post offered to the right candidate.

Item No. 5. Option of Estt. Section staff to General branch

Some staff of the Estt. Section wants to switch over to General Section on the Stores Side. Since in some of the cases the clear option to Estt. Sec. is not available and in a few cases the employees were not aware of the repercussions to their future prospects, they may, please be allowed to opt for non-Estt.

It has been represented by the Union that the staff of the Estt. Section has represented that the promises made by the Admn. have not been kept and now they desire that either the staff of Estt. Section should be permitted to opt out to general side or in the alternative the Estt. Section should be merged with the general branch side of the depot as is the situation in the N.Rly. depots namely JU & S.B. The views of the sister Union should also be obtained. Dy. CO desires that CS/Estt. should refer the matter to GM (P) after verifying the facts for doing the needful.

(.....)



Item No. 9- Clearance of dues of the outgoing Secy, Stores & Stores  
A/C Sports club

It is more than a year that the audited accounts were hand-over and over Rs 900.00 are due to the Ex-Secretary which should be cleared.

The care taker Secy. of the Club who took over charge from the Ex Secy. may be asked to adjust the outstanding dues of the Ex-Secy. towards shortage of books etc. Further, the care taker Secy, may please give the item of charge which he thinks have not been handedover to him yet by the Ex. Secy. so that the Ex.Secy.may be asked to comply with.

Item No. 11. Action against staff directly involved in the delivery of auctioned scrap on 4.2.81 and 27.3.81.

The Union records its deep concern that the Dy.COS/AMV should take a partisan attitude to shield his own henchmen. Instead of bringing the guilty persons to book, he is constantly shielding the guilty staff and making scape goat of others.

This has resulted in demoralisation in the rank and files of the Depot.

*This discussion was held in the meeting and will be taken for full discussion in the next P.M. meeting*

Item No. 7 : Filling up the posts of Readers & Channel of Promotion of Compositors.

In order to fill up the posts of Readers & to discuss the channel of promotion of compositors it was decided that the subject will be discussed in a joint meeting with both the Union's representatives (3 from each Union) on 5th. Aug. 81 to arrive at the workable solution and to adopt reasonable policy so that there is no case of any grievances to any side and till then no change should be affected.

The trade Test of Highly skilled Gr.II compositors has been fixed to be held on 7.8.81. this connection Union pointed out that Shri M.M. Mathur has represented regarding his channel of promotion. It is understood that the same has been received & forwarded to Hd.Qrs. The papers may be linked and put up for pursuing the case with Hd.Qrs.

Dy. Controller of Stores, 12/8  
Alambagh/Lucknow

*12/10*

407 C.A-4 (A110)

The Dy. Controller of Stores  
N.Rly/Amv/Lucknow.

Sir,  
Sub: Artisan staff classification & recommendations of Rly.  
workers classifications Tribunal 1976.

I would like to invite your kind attention to Rly. Bd. letter No. E(B&A)/278/RWCT-76/1 dt. 24.8.78 under which the Rly. Board has accorded sanction to the distribution of skilled posts of artisan in H.S.K. Gr. I Gr. II & skilled grade at the ratio of 20:25:55 respectively.

Your honour had made some groups with a view to accord the justice to distribute the posts amongst all but it is a very shameful matter that the views had not been implemented in toto. It is clear from the distribution as under and according to this distribution 3 upgraded posts should have not gone to Painter Trade:

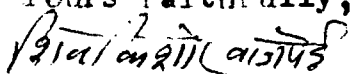
1. Where the no. of members in a particular trade is 2, not more than one higher grade will go to that trade.
2. Where the no. of members in a trade is 3 or 4, not more than 2 higher grade posts will go to that trade and;
3. Where the number of members in a trade is 5, not more than 3 higher grade posts will go to that trade.

The strength in the Polisher trade is 2 and Painter trade is 4 as such not more than 1 and not more than 2 Hr. grade posts should have gone in the trade of Polisher and Painter respectively.

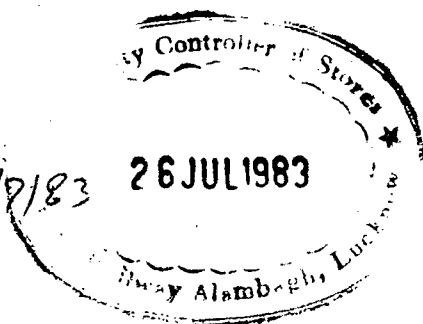
In this connection, I have submitted so many applications but the administration is mum. It is presumed that 3rd higher gr. post has been given to Painter group ignoring the criteria laid down by the then Dy. COS in regard to distribution of hr. grade posts. I am facing financial loss approx. Rs. 140/- p.m. which reflects on my health as well as to my family members.

It is stated that the distribution of hr. grade posts in the Polisher trade as per criteria held by the Admn. has not been made. The case has been put up several times but no decision has been taken up till now, resulting in irreparable loss to me. It is therefore, requested that hr. grade posts in scale Rs. 330-480 may be allotted to Polisher trade and promotion may be made early, as this issue is being delayed for one reason or the other.

Under the circumstances stated above, it is requested that the mistake done by the administration may be set right to avoid financial loss otherwise I shall be permitted to move the case to the Commissioner, Workmen Compensation, Lucknow.

Yours faithfully,  
  
(Shiv Kishore Bajpai)  
Polisher T. No. 375  
Amv/Depot.

E  
247  
Dated: 26/7/83 26 JUL 1983



408  
The Dy. Controller of Stores,  
Northern railway, Alambagh,  
Lucknow :



Sir,

Sub : Artizen Staff Classification & Recommendations  
of Rly. Worker Tribunal 1976.

Will you please refer to my applications latest  
Dat-ed: 26.7.1983 in which full facts were given by me  
but I am sorry to say that no reply has been given to  
to me so far which indicate that no action has been  
taken in this case.

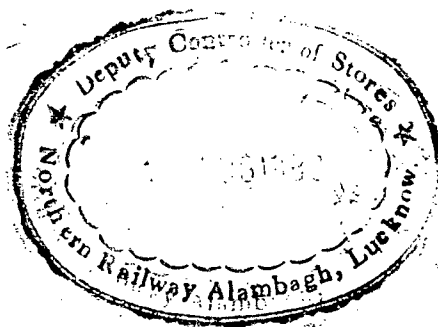
You are therefore requested to look into the matter  
immediately and arrange my early promotion in H.Sk. Gr.II  
as per percentage fixed by Rly. Board.

Thanking you,

Dated: 16th Aug.'83

Yours faithfully,

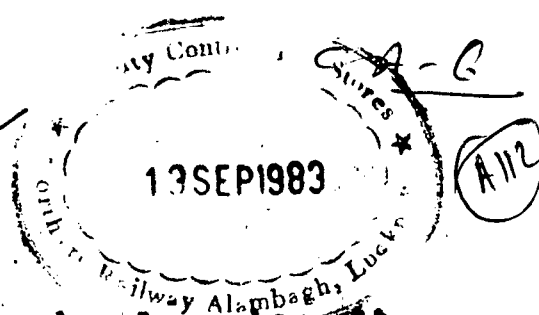
01/01/2011 01/01/2011  
( Shiv Kishore Bajpai )  
Polisher, T.No:375  
Stores Depot, Alambagh, LKO.



For and by  
Shiv Kishore Bajpai  
16/8/83

5/2/83  
409  
To  
The Controller of Stores,  
Northern Railway, Baroda House  
New Delhi.

(Through proper channel)



Sir,

Sub:- Artisan staff Classification & recommendation of  
Northern Railway Workers Classification Tribunal-1976

Very humbly and respectfully I beg to lay the following few lines  
for your sympathetic consideration please:-

- (1) That Railway Board vide their letter no B(DAA)-476/AMCT-76/I dated 24.8.78 has accorded sanction to the distribution of Sk. posts of Artisan in Mr. Gr-I, Gr-II and Sk grade at the ratio of 20:25:55 respectively.
- (2) That By COS/Amv/Lko has made some groups with a view to accord justice to distribute the posts amongst all, but the views of Rly. Board has not been implemented in toto, and injustice has been done with Polisher trade by allotting 3 higher posts to Painter trade.
- (3) That the distribution of upgraded posts was to be made as under
  - (a) Where the number of members in a particular trade is 2, not more than one higher grade will go that trade.
  - (b) where the number of members in a trade is 3 or 4, not more than 2 higher grade posts will go to that trade and
  - (c) where the number of members in a trade is 5, not more than 3 higher grade posts will go to that trade.
- (4) That the strength in the Polisher trade is 2 and painter trade is 4, as such not more than 1 and not more than 2 Mr grade posts should have gone in the trade of polisher and painter respectively.
- (5) That in this connection I have submitted so many applications to the Dy COS/NR/Amv/Lucknow but the administration is mum on this issue.
- (6) That 3rd higher grade post in grade Rs. 330-480(RS) has also been given to painter trade, snatching the share of polisher trade, ignoring the criteria laid down by the then Dy COS/Amv and the very spirit of Rly's order has been violated.
- (7) That if that 3rd higher grade post in grade Rs. 330-480(RS) was allotted to polisher trade, I should have been promoted as H.Sk. Gr-II in grade Rs. 330-480(RS) and in this way I am facing loss of Rs. 140.00 p.m. which reflects my health and family members.  
Mr.
- (8) That the distribution of the grade post in Polisher trade as per criteria held by the administration has not been kept in view.

I therefore request your honour to very kindly look into the matter sympathetically and accord justice to the polisher trade under Dy. COS/Amv/Lko and allot one higher grade of Rs. 330-480(RS) in polisher trade so that I may not suffer, further irreparable loss of Rs. 140.00

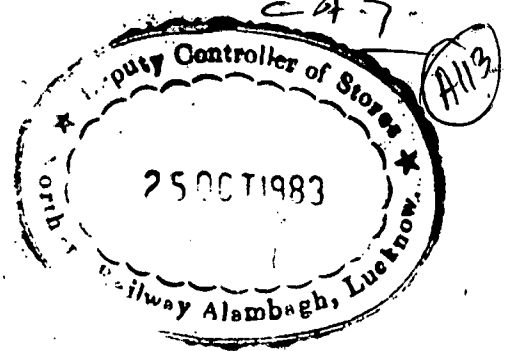
Hoping for favourable consideration please.

Yours Faithfully,  
(Signature)  
(Shiv Kishore Bajpai)  
Polisher TN 375/Amv/P

Copy in advance to COS/NR/Baroda  
New Delhi, for necessary action.

13.9.83

424  
To  
The Controller of Stores,  
Northern Railway, Baroda House,  
New Delhi.



Sir,

( Through proper channel )

Sub:- Artisan staff classification and recommendation of  
Northern Railway Workers Classification Tribunal-197

Ref:- My application dated 13.9.83.

Very humbly and respectfully I beg to submit as under:-

- (1) That I have submitted several application to your honour regarding award of justice to me in connection with correct implementation of above recommendation of classification tribunal-1976, *but no reply received so far.*
- (2) That the criteria laid down by the Dy COS/Amv/Lucknow in connection with implementation of recommendation is not justified.
- (3) That the distribution of higher grade posts have not been given to the trades equally.

I therefore request your honour to very kindly call for my previous applications and issue necessary orders for correct implementation of above recommendation in view of Railway Board Orders which have not been ~~not~~ implemented in toto.

Yours Faithfully,

*शिव/केशव बाजपेय*

( Shiv Kishore Bajpai )

Polisher TN 375  
Under Dy Controller of Stores,  
Alambagh, Lucknow.

25/10/83

Copy in advance to

CC

To

The Dy. Controller of Stores,  
Northern Railway, Alambagh,  
LUCKNOW:

Sir,

Subject:- Artizan Staff classification & Recommendation  
of N.Rly. Workers Classification Tribunal, 1976.

With due respect, I have to state that as per your office Order No:E/260 Dated: 14.8.'84 I have been allowed promotion as H.S.Gr.II Polisher w.e.from 1.4.'83 which is incorrect. In this connection, I request you to please refer to my several representations made to you earlier and also to Controller of Stores, Baroda House, New Delhi, but nothing has been done uptill now. It is again humbly pointed out that the Rly. Board vide their letter No.E/(D&A) 78/R.C.T-76/I Dated: 24.8.'78 have accorded sanction to the distribution of Sk. Posts of Artizan in H.S.Gr.I, II & Sk-Grade at the ratio of 20 : 25 : 55 respectively. Your honour had made some groups with a view to accord justice to distribute the posts amongst all but the views of Rly. Board has not been implemented in toto and justice has not been given to Polisher Trade by allotting 3 higher grade posts to Painter trade.

I, therefore, request you, kindly to look into this case, personally and allow my promotion in the category of H.S. Gr.II Polisher from retrospective date, so as to save me from the financial loss and do the justice as I have been deprived with my due promotion.

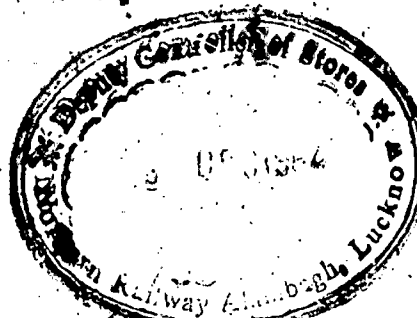
20/10/84  
23/10/84  
Dated: 5/10/1984

Yours faithfully,

*(Signature)*  
( S.K. Bajpai )  
Polisher H.S.Gr.  
AMV, Lucknow.

TIN 375

The Controller of Stores,  
Northern Railway,  
Baroda House, New Delhi.



558

(A115)

(Through proper channel.)

Sir, Sub:- Artisan staff Classification and recommendation of N. Ry. Workers classification Tribunal-1976.

Most humbly and respectfully I beg to lay the following facts for your kind consideration and favourable orders.

That the Ry. Board vide their letter No E(DSA)78/RCT-76/I dated 24.2.78, recorded sanction to the distribution of the posts of Artizan in HS Gr.I, II and skilled grade at the ratio of 20:25:55 respectively.

The Dy COS/Amv/Lko had made some groups with a view to accord justice to distribute the posts amongst all, but the views of Ry Board has not been implemented in toto and justice has not been given to polisher trade by allotting 3 higher grade posts to Painter Trade.

That Dy COS/Amv/Lko fixed the criteria for distribution of higher grade posts in different groups as per Board's order, but the same was not implemented as per criteria fixed and one higher grade post was allotted to painter trade making a deviation and thereby depriving the promotion to the applicant.

That several representations have been made to your honour but nothing has been done as yet to set right the wrong done by Dy COS/Amv/Lko. It is learnt that your honour had called for certain informations from Dy COS/Amv and this is admitted by the administration that one higher grade post (HS.Gr.II) has wrongly been given to Painter trade violating Board's order, but no orders have been passed by Dy COS/Amv as yet to allow me promotion as HS Gr.II from 1.2.78.

That on a reference made by G.N.(P)NDLS under his letter No 45-E/C/GM/CPO/Misc/SSB dated 4.8.84 the Dy COS/Amv has allowed promotion as HS Gr.II Polisher wef 1.4.83 vide office order No E/260 dated 14.8.84 but promotion has not been allowed from 1-2-78 and thus I have been denied justice causing a great financial loss.

Further Dy COS/Amv vide his letter No 561-E/85 dated 23.11.84 has informed me that a JCM has been fixed at COS level on 7.12.84 on the above subject and final action will be taken on receipt of decision from COS/NDLS.

It is the refore humbly prayed that your honour may please look into the matter and allow my promotion in the category of HS-Gr.II Polisher from 1.2.78 so as to save me from irreparable financial loss and do justice as I have been deprived of my due promotion.

Yours Faithfully,  
(Shiv Mishra Baispai)  
Polisher

Dated 30.12.84  
3/12/84

Under Dy COS/IR/Amv/Lucknow

Copy in advance to COS/NDLS for necessary action please.

उत्तर रेलवे/NORTHERN RAILWAY

प्रधान कार्यालय  
बहा 141 813 रु.  
नई दिल्ली 1

फाइल नं. 92 (अ. 11/प्रालम्भवाग) / फाइल / 40/1500 रु. 1

14 नवंबर 15-10-1987

उप मंडल निदेशक,  
उत्तर रेलवे, प्रालम्भवाग,  
मथुरा नगर।

विषय - श्रीमती शिव देवी बाजपेयी पालन  
श्री उत्तर रेलवे बाजपेयी, पोलिशर प्रालम्भवाग  
का प्राथमिक पत्र।

SN-58

सन्दर्भ - प्रालम्भवाग दिनांक 6-8-87 का उप. नि. पत्र नं.  
561 E/85।

कृपया उपरोक्त विषय को उपर्युक्त  
प्रकार स्तर पर ही निर्यात करें।

आगे दिनांक 20  
को मंडल निदेशक

उपरोक्त की प्राप्ति वारंठ कार्यालय प्राधिकारी (जी.आर.)  
उ. रेलवे बहा 141 813 रु. नई दिल्ली को उसी कार्यालय नं.  
145 E/C/42900/L-51005/123/85 के सन्दर्भ में  
रिचार्ज भेजी जाती है।

आगे मंडल निदेशक



2-A-10

AM

9

APD  
in case

R.K. SINGH  
Br. Secy.  
N.R.M.U./AMB

S.P. Yadav,  
Br. Secretary,  
U.R.M.U./AMV

Am  
W.P.R.

To, The Dy. Controller of Stores,  
N.Hy., Alambagh, Lucknow.

Dear Sir,

URMU

Reg:- Views of NRMU/Stores Branch, Alambagh, Lucknow  
on item No. 11 of the joint meeting held at  
Ms. Rs. office on 20.2.1985.

...

We have examined the case of promotion of Shri Abdul Habib  
T.No. 254 as Gr. II Painter and have come to the conclusion  
that the Gr.II floating post which was allotted to the group  
of Painter & Polisher as per decision of local JCM was wrongly  
allowed to Painter's category by deviating the conditions.  
This deprived the category of Polishers from the benefit of  
up-grading and on the other hand the category of Painter availed  
much more than the prescribed percentage of upgrading.

In view of the above the category of Polisher be given the  
Gr.II floating post upgraded from 1.8.78 for fixation on  
proforma basis.

The next upgrading including Semi-skilled posts converted into  
skilled was given effect from 1.4.83 ~~xxxxxx~~ and the higher  
grade posts for each category were allocated separately. According  
to this distribution of post the posts in Painter and Polishers  
category have been given as under:-

	<u>Gr.I</u>	<u>Gr.II</u>	<u>Skilled</u>	<u>Total</u>
1.4.83 Polisher		01	01	02
Painter	01	02	03	06

At this stage Shri Abdul Habib, T.No. 254 who was wrongly promoted  
as Gr.II Painter can not be regularised as his senior Shri Ram  
Dularey, T.No. 11, who had failed earlier in trade test in  
1981 becomes due for promotion without trade test being one  
time exemption from 01.4.83. He also belongs to S/C community.

The revised percentage of highly skilled posts came into effect  
from 01.1.84 and the posts in Painter & Polisher category were  
distributed in different grades as under:-

	<u>Gr.I</u>	<u>Gr.II</u>	<u>Skilled</u>	<u>Total</u>
01.1.84 Polisher	01		01	02
Painter	02	02	02	06

Contd..2

Main copy.

(A118)

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH AT LUCKNOW

Original Appln. No. 45 of 1989(L)

Abdul Habib

... Applicant

Versus

Union of India & others

... Respondents

Reply on behalf of Respondent No. 4  
to the Application.

1. That before giving parawise reply on behalf of respondent no. 4 certain preliminary objections are being raised for showing the contents that the application of the applicant is not maintainable and liable to be rejected as it does not base on any legal and factual position.

2. That the position of upgrading previously with effect from 1.8.78 as narrated by the respondents no. 1 to 3 in his reply that is to be reiterated also in support of respondent no. 4. Regarding the factual position the question of upgrading w.e.f. 1.8.78 as allowed in Artisan category it is necessary to make it clear that both the categories i.e. Poliger and Painter are separate groups in the department and on the basis of initial seniority of the painter category the applicant has no right to claim over the right of respondent no. 4.

3. That in regards the actual facts as fully narrated by the reply furnished on behalf of the respondent no. 1 to 3 as narrated in the counter.

KT  
6/2/90

Recd copy for R.C. Saxena  
17.1.90

Abdul Habib

For A118  
Jme

A119

(2)

under para 1 to 18 i.e. exactly reiterated by the answering respondent no. 4. and those of reply furnished by the said respondent may be treated as reply on behalf of answering respondent also.

4. That this material factual position in the interest of justice is very necessary to narrate that in view of the decision by the Railway Board on dated 30.1.1978 upgradation was made in view of the recommendation of Railway workers classification tribunal 1976 in which the decision took place by mutual agreement by bipartite settlement between both the workers' unions and resulted that the answering respondent no. 4 being senior in Poliger trade was validly allowed upgradation with effect from 1.12.1978 while ~~dxr~~ prior to that date the senior poliger Mangal was retired on 30.11.78. As such the answering respondent in view of the decision was rightly allowed upgradation in grade II w.e.f. 1.12.1978.

5. That in view of the above said letter issued by the Railway Board, the action was taken vide order dated 6.2.79, the letter issued by the headquarter N.R.(Baroda House, New Delhi). A copy of the letter dated 6.2.79 accompanied with the letter dated 30.1.78 is annexed herewith as ANNEXURE No. C-1 to this reply.

6. That as already narrated in above paras of ~~this~~ reply that the applicant in view of Annexure No. A-13 filed along with the application has no legal right to prefer his case before the court of law as

*Dr. J. S. Chavhan*  
*Sd/-*  
*Sd/-*

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it is barred by theory of estoppel. In this regard it would very necessary to clarify that in view of the Railway Board's decision also the letter dated 28.7.7 (Annexure No. A-10 to the application) all the trades in Artisan group have been grouped into 6 groups for the purposes of distribution of the higher grade post. The present case based on the group of Painter /Polisher in which total strength of 6 candidates was included. It has been decided by the mutual consent that <sup>where the</sup> ~~one~~ member of members in a particular trade is two not more than one higher grade post will get that trade. By virtue of the decision it is clear that the applicant being most junior in Painter category illegally occupied the post of Senior Polisher. As such the department legally acted and the answering respondent being senior polisher provided upgradation in grade II with effect from 1.12.1978. Thus the applicant has no claim over respondent no. 4. The answering respondent being a senior person in polisher trade was allowed upgradation in grade II on the basis of various authorities and mutual agreement made time to time. The applicant in view of Annexure No. A-13 was himself a candidate participated in execution of consent. As such he has no legal right to go behind the mutual agreement or bipartite settlement. The applicant is one of the persons who also put his signature, as such the theory of estoppel making stop not to proceed further.

7. That for obtaining the original rightful claim the answering respondent time to time made repeated request which resulted that the matter has been decided by the consent of both parties.

Answered with

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Railway Board authority. As such the upgradation made in favour of the answering respondent is legal and unchallengable. The applicant in his application has not narrated the specific facts and taken only the point of his seniority in painter group is not material for the purposes of upgradation. Thus the application deserves to be dismissed as not maintainable, and also barred by the theory of estoppel. With these primary objections the factual position prior to stating the parawise reply filed on behalf of respondents 1 to 3 may be considered equally for the answering respondent i.e. respondent no. 4.

8. That in view of the earlier decision by the Hon'ble Central Administrative Tribunal on dated 12.2.88, the maximum relief has been adjudicated, as such the application is also barred by resjudicata on same issue. It is also stated that in view of the decision given by this Hon'ble tribunal in O.A.No. 615 of 1986 dated 12.2.88, the action was taken by the authorities, as such there is no illegality on the part of the respondents in which the upgradation of answering respondent was made being senior policeman.

9. That in fact there is no dispute arises for the applicant against the claim of answering respondent as in very proof this matter of upgradation does not base in same cadre on the basis of seniority or suitability etc but in very normal sense the applicant is most junior painter while the answering respondent is a most senior policeman who upgraded in view of the decision of rule making power w.e.f.

*Sup. Anon*  
*DB*  
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1.12.78 is a valid decision in which the applicant has no legal right to move the application or any claim over the answering respondent. It is also stated that a number less requests have been furnished by the answering respondent dated 26.7.86, 16.8.83, 13.9.83, 25.10.83, 5.10.84, 13.12.84, and on this basis what ever the decision took place even when the consent of applicant also cannot be subjected to challenge by the applicant and the answering respondent was regularised w.e.f. 1.12.78 upon the retirement of one Sri Mangal and allowed the proforma fixation. The arrears from 1.8.78 was given to the applicant unnecessarily for the post on which he has no legal right to retain. As such the arrears w.e.f. 1.8.78 what ever allowed to the applicant be recovered and to pay the same to the answering respondent. The applicant is also not presented this application with clean hands. As such with these objections the application deserves to be rejected.

PARAWISE REPLY

10. That the contents of paragraphs 1 to 3 of the application need no reply.

11. That in reply to the contents of paragraph-4 of the application it is stated that the applicant has no legal right to challenge the action of the authorities as it has been adjudicated by the court of law and also in view of their own agreement.

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[Signature]

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12. That the contents of paragraph 5 of the application as alleged are wrong hence denied and the relief sought by the applicant is barred by time.

13. That in reply to the contents of paragraph 6i to 6iii of the application, what ever reply furnished by respondent no. 1 to 3 may be treated as reply of answering respondent also.

14. That the contents of paragraph 6iv of the application are wrong and vehemently denied. It is further stated that the polisher and painter are separate group in artisan trade. The answering respondent is most senior in the polisher group and, in view of the rightful decision allowed the upgradation in grade II w.e.f. 1.12.78 is just and proper.

15. That in reply to the contents of paragraphs 6v and 6vi of the application, what ever reply furnished by the administration i.e. on behalf of respondents 1 to 3 may be treated as reply on behalf of answering respondent also.

16. That the contents of paragraph 6vii of the application are not denied. It is also necessary to clarify that the decision was taken rightly vide J.C. M. in which the applicant was also appeared as a member on behalf of union i.e. Annexure No. A-13 of the application in view of this the application is barred by the theory of estoppel.

17. That the contents of paragraph 6viii and 6ix of the application, the reply furnished by the

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respondents 1 to 3 may be treated the reply of the answering respondent also. It is further stated that the answering respondent qualified the test. Regarding Sri Ram Deularey who failed in the test has no concerned with the answering respondent as the Ram Dubarey was also belong to painter group.

18. in reply to That the contents of paragraphs 6x, 6xi, 6xii of the application, the reply of respondents 1 to 3 may be treated as a reply of answering respondent also. The answering respondent was allowed upgradation as a senior and suitable candidate in painter group. It cannot be disputed by the applicant as a very junior in painter group.

19. That in reply to the contents of paragraphs 6xiii, 6xiv, 6xv, 6xvi, 6xvii, 6xviii, 6xix, the reply furnished by the respondents 1 to 3 may be treated as reply of answering respondent i.e. respondent no. 4.

20. That in reply to the contents of paragraph 6xx of the application, it is stated that the applicant in view of the previous action has filed the original application before the Hon'ble Central Administrative Tribunal which has been decided by the Hon'ble Tribunal vide its judgment dated 12.2.88 and further action was taken in accordance with the decision of this Hon'ble tribunal in O.A.No. 615 of 1986 which is proper and legal and justified as the post in question for upgradation in view of the decision came in favour of the answering respondent and the applicant has no

Substantive

Dep. Secy. to Govt.  
2/10/88



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22. That in reply to the contents of paragraph 6xxii of the application it is here to be stated that the order dated 9.4.86 passed in favour of the answering respondent is a legal one. In view of the applicant narrated above on the basis of many material furnished and regarding the appeal and representation of the applicant, the answering respondent neither have any concerned nor knowledge.

23. That in reply to the contents of paragraph 6xxiii, 6xxiv of the application it is stated that the same matter has been preferred by the applicant in O.A.No. 615 of 1986, which has been decided on 12.2.86 and many reliefs were sought but the direction has given by the Hon'ble court was followed properly and the relief untouched in the judgment shall be treated as <sup>dismissed</sup> ~~engagement~~. Thus the matter in fact has already been adjudicated and the application is barred by resjudicata.

24. That the contents of paragraphs 6xxv, 6xxvi, 6xxvii, 6xxviii, 6xxx, 6xxx and 6xxxi of the application the reply furnished by the respondent no. 1 to 3 shall be treated as reply of answering respondent.

25. That the contents of paragraphs 7&8 of the application need no reply.

26. That the contents of paragraph 9 of the application as alleged are wrong hence denied. The applicant is not entitled to any relief asclaimed.

None of the ground is tenable. The application is

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*Separate*  
*Ans*

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legal right to challenge the same. The answering respondent was allowed proforma fixation in grade II w.e.f. 1.12.78 as Senior Policar inspite of 1.8.78 wh while in fact prior to this date known as 1.12.78 one senior policar namely Mangal was serving who retired on 30.11.78 and then the answering respondent as a matter of right allowed the same for which the applicant has no legal right to interfere.

21. That in reply to the contents of paragraph 6xxi of the application it is not denied that the answering respondent was promoted in view of the order dated 9.4.86 but the other contents as alleged are denied. It is further stated that in view of supporting documents vide various decisions the upgradation was allowed in favour of the answering respondent being a senior incumbent in policar group. The applicant after entering himself in mutual agreement has no legal right to challenge the validity of their own decision. The applicant being a junior incumbent in painter group had illegally occupied against the legal right of the answering respondent and also obtained the arrears w.e.f. 1.8.78 which is liable to be recovered and to be paid to the answering respondent. The promotion, upgradation of the answering respondent w.e.f. 1.12.78 is justified legal and cannot be challenged. The different trades which have been grouped as common for the purposes of upgrading and according to the decision the answering respondent was allowed the benefit as a matter of right, according to the ratio and quota given by the Rule making power (Railway Board) .

Pratibha Singh  
Secy  
22/11/86

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barred by resjudicata and full of estoppel, legally deserves to be dismissed with cost in favour of the answering respondent also who has been arrayed as a unnecessary party in view of harassment by applicant.

27. That the contents of paragraphs 10, 11 and 12 of the application need no reply.

VERIFICATION

I, Shiv Kumar Bajpai, Aged about 57 years, Son of Sri Gaya Sahai Bajpai, T.No. 375, working as policer Grade II under the Dy. Controller of Stores, Alambagh, Lucknow do hereby verify that the contents of paragraphs 1 to 27 of this affidavit are true to my personal knowledge except the legal averments, which are believed to be true.

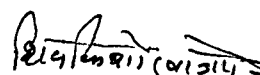
Nothing material has been concealed and no part of it is false, so help me God.

Signed and verified on this 15<sup>th</sup> day of Jan. 1990 at Lucknow.

Place: Lucknow

Dated:

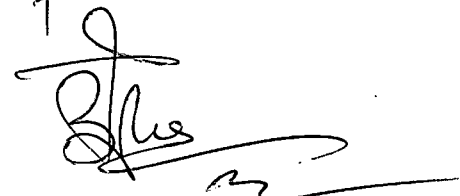
15/1/90

  
Respondent No. 4



( E.B. Pandey )  
Advocate,

Counsel for the applicant  
respondent no. 4

Signature of Respondent  


A/28

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH AT LUCKNOW

Original Appln. No.45 of 1989(L)

Abdul Habib

... Applicant

Versus

Union of India & others

... Opp. Parties

Annexure No. 44 C-1

NORTHERN RAILWAY

Headquarter Office Baroda  
House New Dahi.

Dated 6.2.79

No. 561-E/85-283-I/EIIA

The Divisional Supdt, Northern Railway,

DLI, JU, LKO, BKN, FZE, ALD and MB.

The Dy. CME(W) JUDW, ASR, CB, LKO, AMV, LKO, and JU

The Dy. CEE(W)/LKO. The WM/BKN Dy. COS/SSB

DCOS/Lko and JU. Dy. CE/Bridges HO Office.

Subject:- Artisan staff classification of recommendations  
of the Railway workers' Classification Tribunal  
1976.

In continuation to this office D.O. letter  
of Even number dated 7.9.78, a copy of Railway Board's  
letter No. E(P&A) ~~xxxxx 7x9x78x xxxxxxxx~~ -78/RWGT-76/  
dated 30.1.79, is sent herewith for information,  
guidance and prompt action.

Please complete the implementation of  
revised percentage distribution of skilled post of  
artisans in the highly skilled grade I and highly  
skilled grade II and the skilled grade in the ratio  
of 20:25:55 respectively and advise promptly action  
taken thereon, so that the position on may be  
apprised to the Board.

(This disposes of APO/BKN's D.O. letter No. 561-E/3/Vol.  
1 dated 21.10.78).

DA as above

Hindi version will follow

Sd/- B.R. Nigam  
for General Manager(P)

*Handwritten signature and initials*

A129

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Copy forwarded for information and necessary action to:-

1. CEE/B. House, 2HCEI IW and HCEI IC
2. SPO(M) and SPO(PC). SPO HO for similar action.

May be noted by the staff of esttection for information and guidance

Sd/- 28.2.78

Sd/- 26.2.79

Copy of letter No. E(P&A)I-78/RWOT-76/1 dated 30.1.78 from the joint Director, Establishment (P&A), Ministry of Railway, Railway Board, New Delhi to all general Manager and others.

...

Subj:- Artisan staff-classification of -recommenda-  
tion of the Railway wokars' Classification  
Tribunal 1976.

In terms of this Ministry's letter of even number dated 24.8.78, the skilled posts of aritisans in all establishments empying such staff are required to be distributed in Highly skilled grade I, highly skilled grade II and skilled grade in the ration 20:25:55 in this context doubts have been raised whe-  
ther:-

- (a) The revised percentage apply equally to temporary posts in existence, and
- (b) the leave reserve posts are also to be count for working out the higher grade posts as per above percentages

2. Regarding(i) above, it is clarified that the temporary posts as on 1st August 1978 should be taken account for distribution of posts in various grades on analogy of the instructions contained in this Ministry letter No. E(P&A)I-70/JCM/DC-24 dated 24.5.74.

*Handwritten notes and signatures:*  
12/11/78  
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3. As regards(ii) above also it is clarified that leave reserve posts as on 1st August 1978 should be tally into account for working out highest gradeposting however the leave reserve posts in existence as per extant orders would continue to be provided in the skilled grade of Rs 260-400(RS)/only.

4. This issues with the concurrence of the Finance Directorate of the Ministry of Railways and also has sanction of the president.

5. Hindi version will follow;  
(This disposes of Northern Railway's letter No. 561E/85 383-I/EI14 dated 1.11.78 and south Eastern Railway's letter No. PB/E-NG/S&T/Upgr.Artisian dated 20.12.78.)

--- --

प्रमाणित किया

Signature  
Date

A131

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
(LUCKNOW BENCH), LUCKNOW.

O.A.No. 45 of 1989 (L)

Abdul Habib	...	Applicant
	Versus	
Union of India and others.	...	Respondents.

REJOINDER REPLY

I, Abdul Habib, aged about 56 years, S/O Late Piroo, Ticket No. 254, Painter Grade-I, under District Controller of Stores, Northern Railway, Charbagh, Luoknow, do hereby state as under :-

1- That the deponent is the applicant in the above noted case and he is well conversant with the facts deposed to hereunder.

2- That with regard to the contents of para 1 of reply it is stated that Sri S.K. Bajpai was semi-skilled Painter Grade 210-290 and was promoted as Polisher Grade 260-400 vide order No. E/364 dated 7.10.1978 contained in Enclosure No. A-9 to the application. It is further stated that it is wrong to state that the seniority of each trade was maintained seperately. Painter and Polisher were in one trade and group and their seniority was conjoined. Contrary to this is wrong and emphatically denied.

3- That the contents of para 2 of the reply

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are wrong and denied. As a result of 45% upgrading, 1 post of Painter Grade-I and 2 posts of Painter Grade-II were upgraded. Initially vide Enclosure No. A-10 to the application, 1 post of H.S. Grade-II scale Rs. 330-480 and 1 post of H.S. Grade-I scale Rs. 380-560 were allotted to the Group of Painter and Polisher out of 30 posts of Artizen staff. Subsequently after the decision of the J.C.M. in consultation with both the Unions i.e. N.R.M.U. and U.R.M.U vide Enclosure No. A-13, out of two floating posts of H.S. Grade-II scale Rs. 330-480, One post ~~of~~ was allotted to "Painter and Polishers" group and the other post was given to the group of "Tailor and Carpenter". Thus, in the group of Painter and Polishers one post of H.S. Grade-I (Rs. 380-560) and 2 posts of H.S. Grade-II (Rs. 330-480) were upgraded w.e.f. 1.8.1978. It is further submitted that as a result of above upgrading one post of H.S. Grade-I (Scale Rs. 380-560) was given to Sri Ramjan Ali w.e.f. 1.8.1978 and out of 2 upgraded posts of H.S. Grade-II (Scale Rs. 330-480) one post was given to Sri D.D. Rao, the next junior person and since Sri Ram-

Dularey failed in the trade



which  
J.C.M. to the  
post against  
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which the applicant was promoted was a clear vacant post and his promotion against that post w.e.f. 1.8.1978 cannot be categorised as Fortuous after about 9 years i.e. when order No. E/50 dated 12.2.1986 contained in Enclosure No. A-22 was illegally passed by respondent No. 2 in order to give undue benefit to Sri S.K. Bajpai respondent No. 4 and Sri Ram Dularey who twiced failed in the trade test on 15.7.1980 and 7.2.1981 vide Enclosure No. A-14 and A-15 to the application.

4- That the contents of para 3 to 6 of the reply are not disputed.

5- That with regard to the contents of para 7 of the reply it is stated that one post of H.S. Grade-II (Scale Rs. 330-480) was rightly given to the applicant as Sri Ram Dularey failed in the trade test and there was no question of ignoring polishers as alledged as Polishers were included in the group of "Painter and Polishers" and there was no seperate group of the "Polishers". So far as the note contained in Enclosure No. C A-2 is concerned that is the internal matter of the department and no decision contrary to the decision already taken in J.C.M. as contained in Enclosure No. A-13 could be taken or sustainable.

6- That with regard to the contents of para 8 to 18 of the reply it is respectfully submitted that the promotion of the applicant against a clear vacant post of H.S. Grade-II post (Scale Rs. 330-480) vide order dated 18.7.1980 contained in Enclosure

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A 133

No. A-7 cannot be termed as "Fortuous" after about 9 years that too contrary to the decision of J.C.M. dated 5.6.1980 contained in Enclosure No. A-13 and the decision of the Head Quarter dated 5.3.1983 contained in Enclosure No. A-20 and also contrary to the own order dated 5.3.1983 issued by the respondent No. 2 contained in Enclosure No. A-21 to the application. The "Painter and Polishers" were in one group. Their seniority was combined Mr. S.K. Bajpai was promoted from the post of Semi Skilled Painter Grade 210-290 to the post of Skilled Polisher Grade Rs. 260-400 vide order No. E/364 dated 7.10.1978 contained in Enclosure No. A-9 and was junior to the applicant. There existed no order or decision at all to give, the post of H.S. Grade-II (Scale Rs. 330-480) upgraded as a result of 45% upgrading w.e.f. 1.8.1978 to the polisher category. The order No. E/94 dated 9.4.1986 was illegally passed by responder No. 2 in order to given undue benifit of promoti to Sri SS.K. Bajpai, respondent No. 4 and Sri Ram Dularey w.e.f. 1.9.1984 although the matter regarding promotion of the applicant against the upgraded post w.e.f. 1.8.1978 was already finalised and closed by the Head Quarter vide order dated 5.3.1983 contained in Enclosure No. A-20. The said decision reveals that the seniority in question was combined and the applicant being senior was rightly promoted. It is further stated that after the decision of the Head Quarter contained in Enclosure No. A-

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the respondent had no power and authority to issue order dated 9.4.1986 contained in Enclosure No. A-1, order dated 5.8.1988 contained in Enclosure No. A-2 and order dated 6.8.1988 contained in Enclosure No. A-3 to the application. Sri S.K. Bajpai was impleaded as respondent No. 4 to the application but despite notice to him, he could not dare to contest the case and did not file any reply to the application. The case has been ordered to proceed ex-parte against him. Thus, the position is that there is nothing on record to support the illegal promotion of Sri S.K. Bajpai and Ram Dularey given vide order dated 9.4.1986 (Enclosure No. A-1). The well settled law relating to the benefit of upgradation is that the same should be allowed to the senior most incumbent. The applicant was senior to Sri S.K. Bajpai as is evident from the seniority list contained in Enclosure No. A-18, he was rightly given the benefit of upgradation w.e.f. 1.8.1978 in preference to Sri S.K. Bajpai and Ram Dularey who failed twice in the trade test. As already submitted the applicant's promotion against the upgraded post of H.S. Grade-II w.e.f. 1.8.1978 cannot be considered as fortuous in as much as the said promotion was given against the clear vacant post and it continued without any break for about 9 years when the impugned order dated 9.4.1986 was passed. The fortuous promotions are those which are made for a short term as stop gap arrangement not exceeding to six months in any case. The opposite party No. 2 committed illegality apparent on the face of record in treating the promotion of the

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applicant as fortuous in order to give undue benifit of upgradation to ~~xxx~~ respondent No. 4 and Sri Ram-Dularey who were otherwise not legally entitled for the same. Thus, the impugned orders contained in Enclosure No. A-1, A-2 and A-3 are not sustainable in law and deserves to be set-aside. The contrary contention of the opposite parties is baseless and denied. It is further stated that the applicant cannot be subjected to reversion in view of Railway Board's order dated 5.2.1972 circulated vide letter dated 3.3.1972 a photo stat copy of which is filed as Annexure No. R-I to this application.

7- That with reference to the contents of para 6(1) of the reply it is stated that the impugned orders contained in Annexure No. A-1, A-2 and A-3 are wholly illegal and unsustainable in law. The reply of the applicant was not considered as alledged. If the reply to Show-Cause dated 4.6.1988 contained in Annexure No. A-26 would have been considered, there would have been no occasion to pass the impugned orders.

8- That the contents of para 6(ii) of the reply are denied to the extent that the seniority of Painter's and Polishers was being maintained seperately. It is wrong and denied that Sri Ram-Dularey was senior to the applicant. When Ram Dularey failed 2 times in the trade test in 1980 and 1981 the applicant who passed in the trade test on 15.7.1980 was promoted H.S. Painter Grade Rs. 330-480 vide order dated 18.7.1980 contained in Annexure No. A-7 and subsequently when Ram Dularey passed

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the trade test in 1985, he was promoted H.S. Painter Grade-II vide order dated 7.6.1985 contained in Annexure No. 17. Thus, Sri Ram Dularey selected and promoted much after the selection and promotion of the applicant as H.S. Painter Grade-II, cannot be said to be senior to the applicant. His name in the seniority list contained in Annexure No. 18 is also below the name of the applicant. The avenue of promotion of Painter and Polishers group is the same. S.K. Bajpai was Semi Skilled Painter and he was promoted as Polisher Grade-II vide Annexure No.9 dated 7.10.1978. Thus, the applicant was senior to S.K. Bajpai and Ram Dularey both.

9- That the contents of para 6(iii) of the reply are not correct as stated and are denied and in reply the contents of para 6(iii) of the application are reaffirmed as correct. The applicant is senior to S.K. Bajpai and Ram Dularey and the portion stated in para 6(iii) of the application cannot be disputed.

10- That the contents of para 6(IV) of the reply are denied and the contents of para 6(IV) of the application are reaffirmed as correct.

11- That the contents of para 6(V) and 6(VI) of the reply are in so far as they are contrary to the contents of para 6(V) and 6(VI) of the application, are wrong and denied. The contents of para 6(V), 6(VI) and 6(VII) are reaffirmed as correct.

12- That the contents of para 6(VIII) and 6(IX) of the reply in so far as they are contrary

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to the contents of para 6(VIII) and 6(IX) of the application, are wrong and denied. The contents of para 6(VIII) and 6(IX) of the application are reaffirmed as correct.

13- That the contents of para 6(XIII) of the reply wrong and denied and in reply the contents of para 6 (XIII) of the application are reaffirmed as correct. There has been no diviation of any kind as alledged. The promotion of the applicant against an upgraded post w.e.f. 1.8.1978 after passing requisite trade test cannot be ~~an~~ considered as fortuous. The Railway department perhaps does not under stand the meaning of word "Fortuous".

14- That the contents of para 6(XIV) of the reply are misconcieved and denied. In view of para of the Indian Railway Establishment Manual the applicant having been earlier selected/promoted as H.S. Painter Grade-II w.e.f. 1.8.1978 vide Annexure No. A-7 would be senior to Sri Ram Dularey who failed in the trade test twice and could be successful in 1985 and promoted w.e.f. 10.5.1985 vide order dated 7.6.1988 contained in Annexure No. A-17. Date of confirmation of the lower post i.e. Painter Grade-III (Rs. 260-400) alone is not material. In that grade too the applicant was promoted on 1.6.1971 while Sri Ram Dularey on 26.11.1971 . The applicant was confirmed w.e.f. 27.11.1971 while Ram Dularey w.e.f. 26.11.1971, day before.

A. K. S.

15- That with reference to the contents of para 6(XV) of the reply are wrong and denied and

A139

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it is further submitted that the promotion of the applicant was illegally considered as fortuous that too after about 9 years. Since the promotion of the applicant cannot be termed as fortuous he will carry his seniority w.e.f. the date of his promotion. The decision to give one post of Grade-II to Polisher w.e.f. 1.8.1978 contained in Annexure No. A-2 and A-3 is wrong and illegal in view of Head Quarters decision dated 5.3.1983 contained Annexure No. A-20.

16- That the contents of para 6(XVI) of the reply are denied and those of para 6(XVI) of the application are reaffirmed as correct. The allotment of post to the category of polisher w.e.f. 1.8.1978 and consequent benefit of upgradation given to Sri S.K. Bajpai is illegal and contrary to the decision dated 5.3.1983 contained in Annexure No. A-20 and also against the aim and object of Annexure No. A-21 dated 23.4.1983 which is the decision of D.C.O.S/A.M.V./LKO.

17- That with regard to the contents of para 6 (XVII) of the reply it is stated that the allotment of upgraded posts of Grade-II and I was rightly made and since the Category of Polisher was included in the group of "Painter and Polishers", there was no question of giving separate post to Polishers category. The decision of J.C.M. dated 5.6.1980 vide Annexure No. A-13 and the decision of the Head Quarter dated 5.3.83 vide Annexure A-20 are binding against the applicant and opposite parties and the D.C.O.S/

A140

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A.M.V./LKO committed illegality in violating the same. The impugned orders are wholly illegal and arbitrary.

18- That the respondents have not denied the contents of para 6 (XVIII) to 6 (XXI) of the application which are correct yet they have submitted that since representations were received from the Polisher category and unions as such in order to satisfy them they passed the impugned orders. The applicant is unable to understand that after finalisation of the issue which was finally closed, how the Dy C.O.S./A.M.V./LKO re-opened the same issue and passed the impugned orders contained in Annexure No. A-1, A-2 and A-3 causing great injustice to the applicant. The applicant is advised to state that the Dy. Controller of Stores, A.M.V., LKO being authority subordinate to those of Head Quarter, was not competent to pass the impugned orders. Even otherwise also the benefit of upgradation is to be given to the senior incumbent. Since the Painter and Polishers were in one group the upgraded post cannot be allotted to the polishers category illegally treating the same as separate group. It is also stated that it is not the sweet will of the opposite parties to treat the applicant's promotion as fortuous after 9 years. This action of opposite parties is also illegal and untenable.

19- That the contents of para 6 (XXV) of the application relate to the seniority list contained in Annexure No. A-18 which shows the applicant

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A/141

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as senior to opposite party No. 4 and Ram Dularey and the opposite parties have commented about the Show-Cause notice and its reply which is not the matter in issue. The reply of para 6 (XXV) of the application is misconceived and denied. The contents of para 6 (XXV) of the application are reaffirmed as correct.

20- That the contents of para 6 (XXVI) of the reply are not disputed except that the applicant stated the same facts in para 6 (XXVI) of the application which he stated in the reply to the Show-Cause notice.

21- That with regard to the contents of para 6 (XXVII) of the reply it is stated that the contents of para 6 (XXVII) of the application are correct. The opposite party No. 2 illegally passed the impugned orders without at all applying his mind to the facts stated by the applicant in his reply to the Show-Cause notice contained in Annexure No. A-26 .

22- That with regard to the contents of para 6 (XXIX) of the reply, it is stated that the opposite parties failed to decide the representation of the applicant within the maximum period provided in the Administrative Tribunals Act 1985 which goes to show their attitude. The applicant is entitled for heavy compensation in the form of cost from the respondents who unnecessarily compelled him to approach this Hon'ble Tribunal for redressal of the grievance which could have been redressed if they would have not acted dishonestly.

A142

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23- That the contents of para 6 (XXX) of the reply is the repetition of the same facts which have already been replied by the applicant. However, they are again denied and it is affirmed that the orders passed by opposite party No. 2 contained in Annexure No. A-1, A-2 and A-3 are wholly illegal and arbitrary and deserves to be set-aside with all consequential benefits to the applicant.

24- That the contents of para 6 (XXXI) of the reply are denied and those of para 6 (XXXI) of the application are reaffirmed as correct.

25- That the contents of para 9, 13, 14 of the reply are denied and it is stated that all the grounds taken by the applicant are tenable in law and the application is liable to be allowed with heavy cost against the opposite parties. The application is with in time and he is entitled to the relief claimed.

Lucknow: Dated,  
November 27, 1989.

  
Applicant

VERIFICATION

I, the applicant named above do hereby verify that the contents of para 1 to 25 of the rejoinder reply are true to his own knowledge.

Signed and verified this            day of  
November, 1989.

Lucknow: Dated,  
November 27, 1989.

  
Applicant.

Headquarters Office,  
Baroda House,  
New Delhi.

No. 831-E/25-IV(EIV).

Dated: 3-3-72.

All Divisional Superintendents and  
Extra Divisional Officers,  
Northern Railway.

FA & CAO(C)  
Chief Auditor.

Baroda House, New Delhi.

Copy to SPO(HQ).

Serial No. 5586.

Sub : Confirmation of staff officiating in higher grades.

A copy of Railway Board's letter No.E(NG)I-69CN5/31 dated 5.2.72 is forwarded for information and necessary action. The Board's letter dated 12.8.71 referred to therein was circulated vide this office letter No.831-E/25-IV(EIV) dated 20.9.71 (SL.No.5433).

DA:As above.

(Rajesh Bahadur)  
for General Manager (P).

- Copy to :
1. General Secretary, URMU  
166-1 Railway Bungalow, Panchsukian Road, New Delhi.
  2. The General Secretary, NRMU,  
115-E Babar Road, New Delhi.
  3. Shri Ganashi Lal Sharma  
Asstt. Genl. Secy. URMU Railway Qrt. T-35A  
Bouth Colony, Moradabad.
  4. Shri J.P. Chambey  
President NRMU, Building 25-26 Naka Hindola  
Aya Ganj/Lucknow.

Copy of Rly.Bd's letter No.E(NG)I-69CN5/31 dtd.5.2.72 from Shri Dwarka Dass Asstt. Director, Estt. Rly. Board to The General Managers, All Indian Rlys. & others.

Sub : Confirmation of staff officiating in higher grades.

In continuation of the instructions contained in letter of even no. dt. 12.8.71 the Board desire that the cases of staff who have been promoted on regular basis should be reviewed after completion of one year's continuous offg. service, even if a permanent vacancy does not exist, with a view to determining their suitability for retention in the grade. The review should be completed early and a decision to continue the employee in the offg. post or revert him, taken and implemented within a period of 18 months of offg. service. Having followed this procedure, there should be no question of denying the benefits of confirmation to an employee on completion of 2 yrs. offg. service in a clear permanent vacancy for the reason that he is not fit for confirmation.

Please acknowledge receipt.

A. K. Singh