

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, Lachhrow BENCH

OA/TA/RA/CP/MA/PT 50/89 of 20.....

Muneshwar Dayal Mirra Applicant(S)

Versus

U.C.I. Ltd Respondent(S)

INDEX SHEET

Serial No.	DESCRIPTION OF DOCUMENTS	PAGE
1	Order sheets.	A1 to A16.
2	Judgement/order dt 24.12.90	A17 to A23.
3	Copy of petition/interim order.	A24 to A90.
4	Short Counter Reply	A91 to A97.
5	Process	A98 to A99.
6	Counter Reply	A100 to A125.
7	Rejoinder Reply	A126 to A134.
8	Suppl. C.A.	A135 to A165.
9	Suppl. P.A. Notice, No. 41169/93.	A166 to A178.
10	Notar. order copy with others. P. 1/82.	A179 to A182.

Certified that the file is complete in all respects.

*B/c. We are out / destroyed.*

Signature of S.O.

Signature of Deal. Hand

*24/8/12*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCULAR BENCH AT BANGALORE.

\*\*\*\*

O.A./T.A. No. 50 1989(C)

M. D. Mahig

Applicant(s)

Versus

U.O. 2/89

Respondent(s)

Sr. No.	Date	Orders
①	9.3.89	<p>Hon. Justice K. Nath, V.C. Hon. Mr. A. John, A.M.</p> <p>Admit. Issue notice to repdts. to file reply by 6/4/89 &amp; list for orders before the D.R. on that date.</p>
		<p>AM V.C.</p>
	13/3/89	<p><u>OR</u></p> <p>Notices issued to the repdts. through Repd. Post. fix 6/4/89 before DR (J).</p>
	5-4-89	<p><u>OR</u></p> <p>Neither reply nor any undelivered cover received back so far.</p>
②	6/4/89	<p>Hon. Justice K. Nath, V.C. Hon. D.S. Mishra, Jm.</p> <p>Secy Arjun Bhargava appears on behalf of all the opposite parties and requests for time to file counter affidavit. That may be done within four weeks to which the applicant may file rejoinder affidavit within one week and the case be listed for hearing on 15/5/89.</p>

Disch  
13/3

A.M.

V.C.

11/89

11-2-20

माननीय न्यायाधीश के नाथ, उपाध्यक्ष  
माननीय के. जे. रामन, सपक्ष

श्री उज्ज्वल भार्गव के हस्तक्षेप पर  
दो सदस्यों का समर्थन प्राप्त  
25-9-09  
~~25-9-09~~ को आदेशाथ  
समीक्षा हेतु।

*[Signature]*  
सपक्ष (50)

*[Signature]*  
उपाध्यक्ष

*[Signature]*  
N.P.G.

25/9/09

From Justice K. Nath, J.C.  
Hon. K. Obayya, Jm.

OR  
In compliance of  
Court's order dt. 11-4-  
no reply has been filed  
so far.  
Submitted for order  
h  
201

On the request of the  
learned counsel for both  
the parties put up for  
orders on 20-9-09.

*[Signature]*  
Jm.

*[Signature]*  
J.C.

OR  
No reply filed  
Submitted for order  
h  
27/9

102

Serial number of order and date

Brief Order, Mentioning Reference if necessary

A.M

How complied with and date of compliance

9/4/90

Hon. Mr. P.S. Habib Mohamed, A.M.  
Hon. Mr. J.P. Shanna, J.M

The prayer is made on behalf of both the parties for adjournment, list for orders on 11/4/90.

J.M

A.M

Sl.

11/4/90

Hon. Mr. P.S. Habib Mohammad, A.M.  
Hon. Mr. J.P. Shanna, J.M

put up, when the bench ~~of~~ <sup>with</sup> vice chairman is constituted.

Post on 3/5/90 for

learnings

J.M

A.M

Sl.

3/5/90

Hon. Justice K. Nalk Vc  
Hon. Mr. K. Obayya A.M

On the request of parties the case is adjourned to 11.9.90 for hearings

A.M

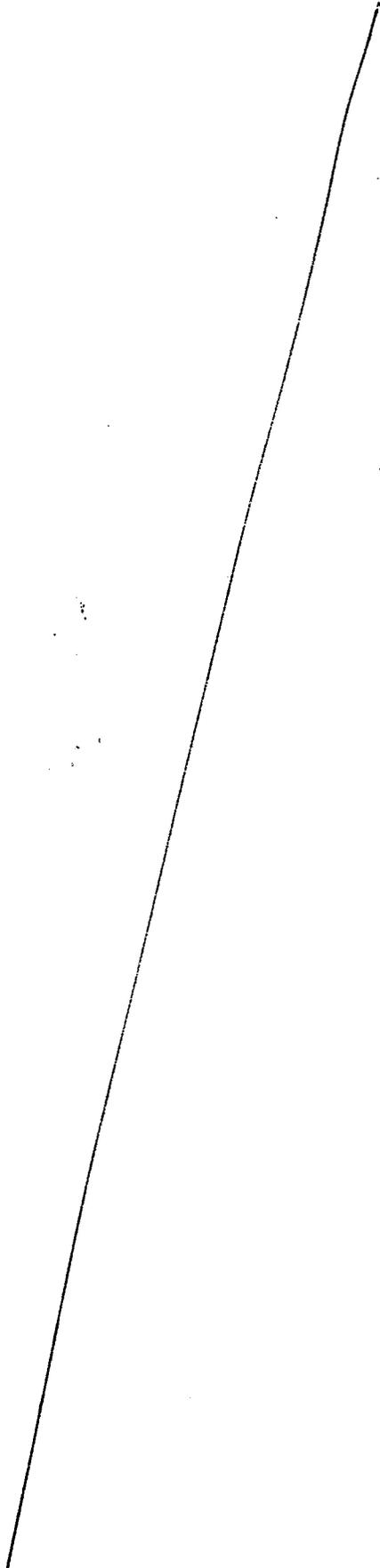
Vc

GA 50/89 L

27.8.91

No S. Tunggal - 20/20 3.9.91

A



D 13-7-92

A/S

Hon. Mr. Justice U.C. Jinnabhai, V.C.  
Hon. Mr. K. Obayya, A.M.

learned counsel for the respondents  
prays for three weeks' time to  
file reply. Allowed. Rejoinder,  
if any, may be filed within  
two weeks thereafter. List  
this case on 16-9-92 for hearing.  
The relevant record shall also  
be produced by the respondent  
on that date.

O.R.  
No Reply has  
been filed.  
S. + O.  
15/9/92 (Vg)

b  
A.M.

V  
V.C.

16-9-92 Hon Mr Justice U.C. Jinnabhai, V.C.  
Hon Mr K Obayya, A.M.

learned counsel for  
the respondents is directed  
to produce record  
on next date. List  
on 4-11-92 for hearing.

31/10/92  
A.M.

V  
V.C.

G

16

23.2.93

Hon'ble Mr. Justice U.C. Srivastava

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

Counter Affidavit filed today. The learned counsel for the applicant prays for one week time to file RA.

List this case on 30.3.93.

*[Signature]*  
A.M.

*[Signature]*  
V.C

(jlw)

OK  
CA/MS  
R. Prabhakar  
SFH  
d  
y/ple

30.3.93

Hon. Mr. Justice U.C. Srivastava, Jc  
Hon. Mr. K. Obayya, A.M

R-A filed today. List this case on ~~27~~ 27.4.93 for hearing.

*[Signature]*  
A.M.

*[Signature]*  
V.C.

(m)

27.4.93

No sitting of D.B. Case adjourned to 29.4.93.

OK  
CA/MS  
SFH  
d  
y/ple

29.4.93

Hon'ble Mr. K. Obayya, A.M.  
Hon'ble Mr. S.N. Prasad, J.M

The applicant in person states that his Counsel is not present today. He prays for short adjournment.

List this case on

28.5.93.

*[Signature]*

*[Signature]*  
J.M

*[Signature]*  
A.M.



28/5/93

Hon-Mr. Justice R.K. Verma, V.C.  
Hon-Mr. K. Ojaysa, A.M.

The applicant states that the brother of his counsel has expired. As such he requests for adjournment of the case. The case is adjourned to 23/9/93 as requested by the applicant.

*[Signature]*

A.M.

(Toll)

R.K. Verma

*[Handwritten notes: of, CALKA, CALRA, SFH, 22/9/93]*

23.7.93

Due to absence of lawyers  
Case adjourn to 15-9-93

*[Signature]*

27.9.1993.

Office has ~~put~~ placed this file today. Place before the Hon'ble Bench on 4.10.93 for orders.

*[Signature]*

D.R.

(A.K.)

*[Handwritten notes: of, in, 4.10.93]*

4.10.93

Due to Sad absence of N.P. Tripala Adv Case n. adj n 10.11.93

*[Signature]*

25/8/94

Hon. Mr. Justice B. C. Saksena, V.C.  
Hon. Mr. K. Mukherjee, A.M.

On the request on behalf  
of the learned counsel for  
the applicant the case is  
adjourned. List on  
8/9/94 for hearing.  
A.M.

Per  
V.C.

8.9.94

OR

Case and records referred to  
17.10.94  
A.M.

Pleadings have  
already been  
completed 17.10.94  
submitted  
to  
8/10/94.

Disc to Secy of Dist.  
Mr Justice M. P. Kumar  
Call n 24.11.94  
A.M.

24.11.94 Hon Mr. Justice B. C. Saksena, V.C.  
Hon Mr. V. K. Seth, A.M.

Supplementary Affidavit  
in support of Renew Application  
has been filed today. The  
learned counsel for the  
respondent prays for  
to be granted 2 weeks time  
to file reply, but on  
12-12-94.

No Reply has been  
filed  
9/12/94

A.M.  
Per  
A.M.

10295

EAT 1/83

Hon Mr S. Das Gupta A.M.  
Hon Mr D.C. Verma, J.M.

Now for the parties. It seems from the order sheet that there has been no appearance on behalf of respondents so far during the pendency of this application. O.A and L.A have been exchanged. Let notice be issued to the respondents fixing 15-2-95 as a date of hearing. In case none appears on their behalf on the next date, the case will proceed on the basis of averments.

Received today  
13/2/95

OR  
Notice issued  
on 14-2-95

J.M.

A.M.

15298

Shri Mr Justice B.C. Sengupta v  
Shri Mr V.K. Seth A.M.

Let the case on 29-3-95

for hearing

B.C.

J.M.

V.K.  
D.M.

29-3-95

Let sitting at 11.30 only  
10-4-95

5/2/95

18-9-95

Hon'ble Mr. V.K. Seth -A.M.

Hon'ble Mr. D.C. Varma -J.M.

On behalf of the applicant.-Sri L.K.Pathak,  
learned.

On behalf of the respondents-Sri A.K.  
Chaturvedi, learned counsel  
has prayed for adjournment on account of  
indisposition,

List for hearing on 25-9-95.

Henceforth the name of Sri L.K. Pathak,  
be shown in the Cause List as counsel for  
the applicant.

K.N.

J.M.

L K  
.A.M.

25-9-95

Hon'ble Mr. V.K. Seth - A.M.

Hon'ble Mr. D.C. Varma -J.M.

For applicant - Sri L.K. Pathak, learned  
counsel.

Sri A.K.Chaturvedi, learned counsel for the  
respondents is on leave.

List for hearing on 28-9-1995.

K.I.

J.M.

L K  
.A.M.

20.9.95

Disa h Sad demseni in B. Selenin adv.  
adjan w 16/10-95

Mae

7/10/95 date been  
discharged  
20/9/95

CA/PA move case  
served  
28/3/96

10-1-96

Hon. Mr. V.K. Seth, A.M.  
Hon. Mr. D.C. Verma, J.M.

None for parties.  
List on 01-3-96 for hearing

Amk

J.M.

V.K.  
A.M.

01-3-96

Hon. Mr. V.K. Seth, A.M.  
Hon. Mr. D.C. Verma, J.M.

None for parties.  
List on 26-3-96 for hearing.

J.M.

V.K.  
A.M.

26-3-96 - Ho sitting of PB adj to 10-4-96

10-4-96

No sitting of D.M. adj to  
22-5-96

Boe

CA/PA move  
28/5/96

22/5/96

Hon. Mr. V.K. Seth, A.M.  
Hon. Mr. D.C. Verma, J.M.

List for further hearing  
on 17/7/96.

J.M.

V.K.  
A.M.

22-5-96

No sitting of D.M. adj  
20-5-96

Boe

CA 50/85

11/8/86

A.M.

Hon. Mr. V.K. Seth, A.M.  
Hon. Mr. D.C. Verma, J.M.

Sh. C.K. Pathak, Counsel for  
the applicant prays & is  
allowed one week's time  
to file reply to Subj. CA.  
Sh. A.C. Chaturvedi is on  
leave.

list on 4/10/86.  
The CA shall not be treated  
as part heard of this Bench.

J.M.

L.K.  
A.M.

To Reply for an  
order of Subj. CA.  
27/9/86.  
or  
Subj. CA / Subj. CA  
Case file  
27/9/86.  
A

4.10.86

No sitting of D.M. court on  
08.11.86

A  
B.K.

8/11/86 Hon. Mr. V.K. Seth, A.M.  
Hon. Mr. D.C. Verma, J.M.

Sh. R.C. Singh appearing for  
applicant's counsel, for adjournment  
date on 20.12.86.

J.M.

L.K.  
A.M.

or  
meetings are  
complete  
27/12/86

20.12.86

No sitting of D.M. court on  
20.12.86

L  
B.K.

20.1.87

No sitting of D.M. court on  
06.3.87

A  
B.K.

SA 50/89

30/7/97

Hon. Mr. S. Das Gupta, Am.  
Hon. Mr. D.C. Verma, J.M.

The learned counsel for the respondents stated to have been busy in the High Court.

This is an old case. The learned counsel for applicant urges early disposal of the case.

List on 12/8/97 for hearing. No further adjournment will be allowed in this case.

J.M.

W  
Am.

2

12-8-97

Hon. Mr. Justice B.C. Saksena, KC.  
Hon. Mr. V.K. Seth AM.

For applicant: Applicant in person.  
For respondents: Sd/- Chaturvedi  
Applicant in person prays for adjournment on account of indisposition of his counsel.  
List on 21-8-97.

V.K.  
AM -

B.C.  
V.C.

21.8.97

Ex. wt. recd. app. l.  
23-8-97  
m

or  
Pleadings  
Complete  
4/8/97

or  
This file received  
me on 14-8-97.  
4/8/97

or  
7/10/97  
Sd/-  
(S.S.B.)

23-9-97

Hon. Mr. V.K. Seth, A.M.

Hon. Mr. D.C. Verma, J.M.

On the next date the learned counsel for respondents will submit the enclosures of the letter received from Employment-Exchange forwarding the names of the candidates as also the file relating for the selection. The learned counsel for applicant also produce result-cards or transfer ~~of~~ certificate in ~~with~~ respect of the class for which the same are available with him in original.

viz on 22-10-97 for further hearing.

Copy of the order be given to the learned Counsel for respondents as per rule.

  
J.M.

  
A.M.

CPA for more user exchanged  
1/10/97

Recd on 3/10/97  
A.M.



CM 52/89

20/1/80

Hon. Mr. V.K. Sethi, AM,  
Hon. Mr. D.C. Verma, JM.

Sh. L.K. Pathak for applicant.

List on 23/2/80 for  
hearing.

J.M.

LK  
AM.

or  
Bloodings are  
complete  
11/2/98

23-2-81

No sitting of D.B. Ady  
+ 17-3-88

h  
Boc

EP/PA were held  
QX changed  
2/6/98

17-3-78

D.B. is not available  
after lunch. case is adj to  
01-7-98.

B.O. Verma

01-7-78

No sitting of D.B. case is  
adj to 08-9-98 for hearing.

B.O. Verma

8998

No sitting of 2B - adj  
to 10-11-98

Boc

15-12-99

from Mr D C Verma, J.M.

from Mr A K Misra J.M.

Sri L.K. Pathak for applicant.

Sri A.K. Tripathi B.H. for

Sri A.K. Chatterjee for respondent

but for further hearing

on 16-12-99 as first case P.H.

*[Handwritten mark]*

*[Signature]*  
AM

*[Signature]*  
JM

16/12/99.

Honble Mr D. C. Verma - JM

Honble Mr A. K. Misra - JM

Sri L.K. Pathak counsel for applicant

Sri A.K. Chatterjee counsel for respondent

Record. order reserved.

*[Handwritten mark]*

*[Signature]*  
AM

*[Signature]*  
JM

24/12/99.

Honble Mr D. C. Verma - JM

Honble Mr A. K. Misra - JM

order pronounced in open court today.

*[Handwritten notes:]*  
order dt 24/12/99  
pronounced in  
open court  
20/12/99  
20/12/99

*[Signature]*  
AM

*[Signature]*  
JM

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

LUCKNOW BENCH, LUCKNOW.

6

Original Application No. 50/89 of 1998.

T.A.R.A./C.C.P.No.

of 1998.

Date of Decision: 24.12.99.

Muneshwar Dayal Misra Applicant  
Shri L.K. Pallick Advocate for applicant

Versus

....V.D.I.S. Oken Respondents  
....Shri A.K. Chaturvedi Advocate for Respondents

CORAM

HON'BLE MR. D.C. Verma, J.M.

HON'BLE MR. A.K. Misra, J.M.

1. Whether reporter of local papers may be allowed to see the judgment. ✓
2. To be referred to the reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the judgment? ✓
4. Whether to be circulated to other benches ? P

vice chairman/member

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

LUCKNOW

O.A. No. 50 of 1989

Lucknow this the 24<sup>th</sup> day of Dec., 99.

HON. MR. D.C. VERMA, MEMBER(J)

HON. MR. A.K. MISRA, MEMBER(A)

Muneshwar Dayal Misra aged about 35 years, son of late Ashwasthama, resident of Mohalla Chitta Khera, Aishbagh, Shastri Bhawan, Lucknow.

Applicant.

By Advocate Shri L.K. Pathak.

versus

1. Union of India through the General Manager, Northern Railway Headquarters office, Baroda House New Delhi.
2. The Chief Workshop Engineer, Headquarter Office Northern Railway Baroda House, New Delhi.
3. The Dy. Chief Mechanical Engineer, Northern Railway Carriage and wagon Shops, Alambagh, Lucknow.

Respondents.

By Advocate Shri A.K. Chaturvedi.

O R D E R

BY D.C. VERMA, MEMBER(J)

Vide this O.A., the applicant has challenged the order of removal from service passed on 12.5.88 by respondent No. 3 and the appellate order dated 19.9.88 passed by respondent No. 2. Consequential reliefs have also been claimed.

2. The brief facts of the case are that the applicant was working in the Canteen of Carriage and Wagon Workshop Northern Railway Lucknow. Subsequently, as the Canteen was a statutory canteen, the post for appointment of Manager was advertised and the applicant applied for the said post. The applicant claimed that he has passed Class 9 and was eligible for the post. With this



application (AnneuxreC-1) the applicant enclosed <sup>an</sup> ~~true~~ attested copy of educational certificate. The applicant was appointed as Canteen Manager and started working as such. The applicant was treated as railway employee w.e.f. 22nd October, 1980 in terms of Railway Board letter dated 22.5.81 because prior to 22.10.1980 all the staff of the Canteen were not railway employees and the salary of the staff was paid out of the canteen fund. In 1985, a complaint was received that the applicant has obtained employment as Canteen Manager by submitting false educational certificate. An enquiry was made and it was found that the copy of educational certificate attached by the applicant alleged to have been issued from D.A.V. Inter College, was not genuine. In the Schollar register at serial No. 9583, the name of one Mohd. Yahya son of Tafazzul Husain resident of Alambagh was found recorded instead of the applicant. Consequently, the copy of the certificate filed by the applicant was found as forged and false. The applicant was therefore, served with a major penalty charge sheet on 13.12.1985 (Anneuxre C-2 to the C.A.). The applicant submitted his explanation on 10.1.1986 (Anneuxre-2 to the O.A.) and therein he had stated that he did not submit the transfer certificate from the D.A.V. Inter College, Lucknow. With his explanation, the applicant submitted another transfer certificate from MKSD Inter College Paper Mill Colony, Nishtganj, Lucknow. Consequently the enquiry was made from MKSD Inter College. The Principal MKSD Inter College reported that Muneshwar Dayal son of Shri Ashwasthama never studied in his college and cancelled the said Transfer certificate alleged to have been issued on 4.1.1986 through letter dated 6.2.86. Thus, according to the respondents, even



subsequent certificate filed by the applicant from MKSD Inter College was found forged and false.

3. A charge sheet issued on 13.12.85 was withdrawn and ~~therefore~~<sup>fresh</sup> the charge sheet was issued on 22.10.86. The applicant was again given opportunity but as no reply was received, an enquiry officer was nominated by the disciplinary authority. A defence counsel was appointed and the enquiry proceeded. Meanwhile, the applicant filed a Civil Suit in the Civil Court against the Principal MKSD Inter College, Lucknow. The applicant informed the enquiry officer also on 2.6.87 (Anneuxre 11 to the O.A.) that the matter has become subjudice and so the enquiry be kept in abeyance till finalisation of the case by court of law. The enquiry officer however, proceeded with the enquiry and gave his finding on 27.1.88. By the impugned order, the applicant was removed from service but the applicant preferred an appeal. The same was dismissed by the other impugned order, hence this O.A.

4. The impugned orders have been challenged as being non-speaking and illegal as they have been passed without application of mind and without following due procedure prescribed in law. They have also been challenged on the ground that the copies of the documents were not supplied to the applicant, nor reasonable opportunity of being heard was provided. Various other grounds of challenge have been taken as detailed in the O.A.

5. We have heard the learned counsel for the parties at great length, and we are of the view that it is not at all necessary for this Tribunal to decide the correctness/genuineness of the certificate filed by the applicant either from the D.A.V. Inter College or FROM MKSD Inter College



Paper Mill Colony Lucknow. The Civil Suit is still pending. It will be for the Civil Court to make its own assessment and decide the issue. In the service matter, we are required to find out whether the procedure followed by the enquiry officer and the appellate authority is in accordance with the rules or not. If the enquiry officer has not followed the prescribed rules, the order of the disciplinary authority and also of the appellate authority would stand vitiated. From this angle, we have examined the enquiry report dated 27.1.88, which is attached with Annexure 14 to the O.A. The enquiry officer's report is in two pages only. It does not contain any details. Consequently, the learned counsel for the respondents was asked to produce the original records so that we may examine the <sup>procedure and</sup> evidence recorded by the enquiry officer and find out the substance which is <sup>based</sup> ~~recorded~~ in the report of the enquiry officer. The learned counsel for the respondents ~~has~~ showed his inability to produce the records and draw our attention towards para 15 of the Supplementary Counter reply where it has been specifically mentioned that the service record pertaining to the punishment order was sent to the then Railway Advocate, Shri Arjun Bhargava along with parawise reply for drafting reply. Later on Shri Arjun Bhargava was de-panelled from amongst the Railway Advocates, as such the case was allotted to the other counsel. The service records and the D.A.R. file could not be made available to the counsel appointed subsequently, as it was said to have been lost. The learned counsel has also drawn attention towards letters received in this respects. Thus, we have not been able to see what evidence was recorded, what procedure was followed. WE have, therefore, examined the contents of the



enquiry officer's report. As per rule 9(25) of the Railway Servants (Discipline and Appeal) Rules, 1968 (in Short Rules of 1968) after the conclusion of the enquiry, a report has to be prepared which shall contain the following:

- a) the articles of charge and the statement of misconduct or misbehaviour
- b) the defence of the Railway servant in respect of each article of charge.
- c) assessment of the evidence in respect of each article of charge;
- d) the findings on each article of charge and the reasons therefor.

6. On examining the enquiry officer's report, we find that none of the 4 requirements are fulfilled. The earlier charge sheet was withdrawn. <sup>5</sup> The present charge sheet was only in respect of educational certificate filed by the applicant from MKSD Inter College. The oral evidence recorded, the documentary evidence in respect of this charge are not clearly indicated in the enquiry officer's report, nor the assessment of evidence in respect of the articles of charges has been made. Except for one witness, we have not been able to find out <sup>if</sup> evidence of any other witness was recorded. Giving a finding, without assessment of the evidence on the article of charge alleged against the applicant, makes the enquiry officer's report invalid as it violates the provisions of Rule 9(25) (1) of the Rules, of 1968.

7. Similarly, we find that the appellate order Anneuxre 17 to the O.A. is a very cryptic order and it contains nothing. Though the applicant had submitted a detailed memo of appeal, copy of which has been annexed as Anneuxre -16 to the O.A. nothing has been considered by the appellate authority. ~~The~~ Rule 22 of Rules of 1968 provides the contents of appellate order. The appellate

<sup>Authority</sup>  
~~order~~ is required to examine whether the procedure laid down in the rules has been complied with and if not whether non compliance has resulted in violation of any provisions of constitution of India or in the failure of justice. The appellate authority is also required to examine whether the findings of the disciplinary authority are warranted by the evidence on record. The contents of the appellate order do not show that any attention was given to any of these requirements. Consequently, in our view the appellate order is also not valid.

9. In view of the discussions made above, both the impugned orders are not valid and are liable to be quashed. Accordingly, we quash the two impugned orders. We however, leave it open to the respondents to start fresh enquiry, if they deem it proper in the circumstances of the case, and also to pass necessary orders with regard to the period the applicant had been absent from service due to impugned orders.

10. The O.A. is decided accordingly. Costs easy.

  
MEMEBR (A)

  
MEMBER (J)

Lucknow; Dated: 24.12.99

jShakeel/

17/24

GA 50 / 09 (C)

Muneshwar Dayal Misra. .... Petitioner/Applicant

Vs.

Union of India and Others. .... Respondents

" Index "

<u>Sl.No.</u>	<u>Description of Documents</u>	<u>Annexure No.</u>	<u>Page No.</u>
1.	Petition / application	-	1 to 15
2.	List of Enclosures	1	16
3.	Photo Stat Copy of Letter dtd. 17/10/'85 from Sh.I.P.Batra to DY.CME.	1 A	17
4.	Photo Stat Copy of application of Shri Muneshwar Dayal Misra, Dtd. 10.1.'86.	II	18 to 20
5.	Photo Stat Copy of DY.C.M.E./C&W Shops, Alambagh, Letter No.725-E/DCME/MD dated: 1.2.'86.	III	21
6.	Photo Stat Copy of reply of Shri Muneshwar Dayal Misra, dated:2/6/'86 in reference to Letter No.725-E/DCME/MD(Muneshwar Dayal) dtd.30/5/'86	IV	22
7.	Photo Stat Copy of application dated: 2.6.'86 in reference to his application dated: 10.1.'86.	V	23
8.	Photo Stat Copy of DY.C.M.E./C&W - Shops), Alambagh - Letter No.725-E/DCME/MD (मुनेश्वर दयाल ) dated: 22-10-'86.	VI	24

*h*

Sl.No.	Description of Documents	Annexure No.	Page No.
9.	Photo State Copy of DY.CME, Letter VII No.725-E/DCME/MD(Muneshwar Dayal) Dated: 22-10-'86 and another Memorandum Dated: 22-10-'86.		25 to 36
10.	Photo Stat Copy of Letter No. 725-E/DCME/MD Dated: 3.12.'86	VIII	37
11.	Photo Stat Copy of application dtd. 11.3.1987 in two pages submitted by the Defence Counsel of Shri Muneshwar Dayal Misra.	IX	38
12.	Photo Stat Copy of AWM/NC/E.O Letter No.725-E/DCME/MD dated : 14.5.'87.	X	39
13.	Photo Stat Copy of application dated: 2.6.'87 of Shri Muneshwar Dayal Misra to Enquiry Officer, AWM (NC) C&W Shops, Alambagh.	XI	40
14.	Photo Stat Copy of Written Statement dated: 6.1.'89 to R.S.No.123 of 1987 in case Muneshwar Dayal Vs. Uma Shanker & another.	XII	42 to 44
15.	Photo Stat Copy of GM(P)/NDLS Lottor No.974-E/21/II Policy(EVI) dated: 3.7.1981.	XIII	45
16.	Photo Stat Copy of Punishment Order No.725-E/DCME/MD Dated: 12.5.'88 with enclosures.	XIV	46 to 50
17.	Photo Stat Copy of Letter Dated: 10.1.1986 from Asstt. Manager, MKSD Inter College, Lucknow, to the District Inspector of School, Lucknow.	XV	51 to 52

*Change sheet*

*Handwritten signature*

File

<u>Sl.No.</u>	<u>Description of Documents</u>	<u>Annexure No.</u>	<u>Page No</u>
18.	Photo Stat Copy of <u>appeal</u> dated 20.6.1988.	XVI	53 to 62
19.	Photo Stat Copy of Letter No.725-E/ CCME/MD Dated: 19.9.'88 (Appeal not Considered).	XVII	63
20.	Photo Stat Copy of appeal dated: 22.8.'88 in addition to previous appeal dated: 20.6.1988 submitted after receipt of relevant documents.	XVII	64 to 65

Dated: 23.2.1989



Signature of the  
Petitioner/Applicant.



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

SA. 50 of 019 (C)

Muneshwar Dayal Misra aged about 35 years S/o. Late Ashwasthana,  
resident of Mohalla Chitta Khera, Aishbagh, Shastri Bhawan,  
Lucknow.

Petitioner

V.S.

1. Union of India, through the General Manager,  
Northern Railway, Headquarters office, Baroda House,  
New Delhi.
2. The Chief Workshop Engineer, Headquarter office, Northern  
Railway, Baroda House, New Delhi.
3. The Dy. Chief Mechanical Engineer, Northern Railway,  
Carriage and wagon shops, Alambagh, Lucknow.

Respondants

Details of application

1. Particulars of the applicant:-

- |       |                                                |                                                                                               |
|-------|------------------------------------------------|-----------------------------------------------------------------------------------------------|
| (i)   | Name of the applicant :-                       | Shri Muneshwar Dayal Misra                                                                    |
| (ii)  | Name of father                                 | - Late Ashwasthana                                                                            |
| (iii) | Designation and Office -<br>in which employed. | Canteen Manager,<br>Carriage and wagon Work-<br>shops, Northern Railway,<br>Alambagh, Lucknow |
| (iv)  | Office Address                                 | - Carriage and wagon Work-<br>shops, Northern Railway,<br>Alambagh, Lucknow.                  |
| (v)   | Address for service of -<br>all notices.       | Shastri Bhawan, Mohalla-<br>Chitta Khera, Aishbagh,<br>Lucknow                                |

.....2

*Shri Muneshwar Dayal Misra*

- 2- Particulars of the respondents - Union of India,
- (a) (i) Name and/or designation of the respondents through General Manager, Northern Railway, Baroda House, New Delhi.
- (ii) Office address of the respondents.
- (iii) Address for service of all notices. - do -
- (b) (i) Name and/or Designation of the respondent - Chief Wprkshops, Engineer Northern Railway,
- (ii) Office address of respondents. - Headquarters office, Baroda House, New Delhi.
- (iii) Address for service of all notices. - do -
- (c) (i) Name and/or Designation of the respondent. - Deputy Chief Mechanical Engineer, Carriage and Wagon Workshop, Northern Railway, Alambagh, Lucknow.
- (ii) Office address of respondent.
- (iii) Address for service of all notices. - do -

3- Particulars of the order against which application is made.

The application is against the following orders :-

- (i) Order No. 725-E/DCME/MD and 725-E/DCME/MD
- (ii) Date 12.5.1988 and 19.9.1988
- (iii) Passed by Deputy Chief Mechanical Engineer, Carriage and Wagon Shops, Northern Railway, Alambagh, Lucknow. Chief Mechanical Engineer Headquarters office, Baroda House, New Delhi.
- (iv) Subject in brief - Removal from service.

- 4- Jurisdiction of the Tribunal : - The applicant declares the subject matter of the order against which he -

*Handwritten signature*

- wants redressal accrued at Lucknow as such it is within the jurisdiction of the Central Administration Tribunal, Allahabad, Circuit Bench at Lucknow.

5- Facts of the case:- The facts of the case are as under:-

- (a) That the applicant had applied for the post of Canteen Manager in Carriage and Wagon Workshop, Northern Railway, Alambagh-Lucknow in 1977. The selection of the said post was held in Jan., 1978.
- (b) That having been selected for the post of Canteen Manager, the applicant was appointed as Canteen Manager w.e.from 14.1.1978 in scale Rs.205-430.
- (c) That on completion of one year service as Manager, the Pay of the applicant was increased from Rs.205/- to 215/- in scale Rs.205-430/-. The grade of Canteen Manager revised to Rs.300-500 w.e.from 1.10.1979, thus the pay of the applicant was fixed as Rs.300/- per month w.e.from 1.10.1979 and on completion of one year service in scale Rs.300-500, the pay of the applicant was increased from Rs.300/- to Rs.310/- w.e.from 1.10.1980.
- (d) That in terms of Railway Board's Letter No.E(W)76-CIV-I-6 dated 22-5-1981 the canteen staff deemed to have been treated as Railway Employees with effect from 22.10.1980. The scale of canteen manager has again been revised from Rs.300-500 to Rs.330-480 w.e.from 22.10.1980.
- (e) That the applicant was so sincere in his work as Canteen Manager and he had not given any opportunity to make complaint against him. He always pleased to his superiors. Thus he always earned his annual increments upto 1.10.1986.

*[Handwritten signature]*

- (f) That the applicant was served with a memorandum No.725-E/  
/DCME/MD Dated 13.12.1985 (Major Penalty Charge sheet) on  
the ground that Transfer Certificate submitted at the time  
of submission of application for the post of canteen manager  
was false. The said memorandum was issued on the false report  
of Shri I.P. Batra, Secretary, Anti-corruption Cell -Congress  
(I), Mawaiya - Lucknow dated: 17.10.1985, (Photo Stat Copy  
is enclosed and marked as Annexure No.I) In spite of several  
requests. The Copy of the letter marked as Annexure No.I was  
not supplied prior to submission of explanation of the  
said memorandum.
- (g) That the applicant submitted his explanation to the said  
memorandum on 10.1.1986 (Photo Stat copy enclosed and is  
marked as Annexure No. II). The alleged allegations were  
replied suitably as the applicant actually never got his  
education in Daya Nand Anglo Vedic, College, Lucknow. The  
applicant was educated in M.K.S.D. Inter College, Paper  
Mill Colony, Nishat Ganj, Lucknow.
- (h) That the respondents were convinced with the explanation  
and issued directions to the applicant to submit the Transfer  
Certificate in original vide letter No.725-E|DCME|MD  
dated 1.2.86 (Photo Stat Copy enclosed and is marked as  
Annexure No. III).
- (i) That the applicant had submitted two applications on  
2.6.1986 to obtain the correct date of appointment as canteen  
manager, copy of the application submitted by the applicant  
for the appointment as canteen manager and the Transfer -  
Certificate of D.A.V. College - Lucknow for natural justice  
(Photo Stat Copy of the applications dated 2.6.1986 are  
enclosed and is marked as Annexure No.IV and V ).
- (j) That the respondents did not dispose of the applications  
but initiated to act a departmental enquiry in an arbitrary  
manner as the respondents were determined not to afford the  
opportunities to the applicant to defend his case.

- (k) That the respondents could not stand on their ~~fact~~ <sup>feet</sup> and cancelled the memorandum No.725-E/DCME/MD (Muneshwar Dayal) dated 13.12.1985 vide Letter No.725-E/DCME/MD dated: 22-10-1986 (Photo Stat Copy is enclosed and is marked as Annexure No.VI). In the said letter the cause of cancellation of the said memorandum was not incorporated, which is clear evidence that the alleged allegations were in correct, false, fabricated and without grounds.
- (l) That the respondent No.3 had again issued the memorandum No.755-E/DCME/MD/(Muneshwar Dayal) dated 22.10.1986, Photo Stat copy is enclosed and is marked Annexure No.VII, on the ground that the Transfer Certificate pertaining to M.K.S.D. Inter College, Paper Mill Colony, Nishatganj - Lucknow was wrongly issued by the Clerk thus the applicant has no requisite qualifications.
- (m) That the respondent No.3 has not enclosed a copy of the notice under which the applications were invited for the post of canteen manager hence the alleged allegations that the applicant has no requisite qualifications are baseless.
- (n) That the applicant had submitted an application on 26.11.1986 to inspect the relied upon documents with his defence Counsel but the respondent No.3 has not given any opportunity to inspect the relied upon documents to afford the natural justice. The respondent No.3 asked for to submit the three names of defence Counsel vide letter No.725-E/DCME/MD dated 3.12.1986 (Photo Stat copy is enclosed and is marked as Annexure No. (VIII))
- (o) That on 11.3.1987, the applicant had attended the enquiry with his defence Counsel and at the said moment the applicant demanded the documents pertaining to alleged

allegations and the reasons for the cancellation of the previous S.F 5 (Memorandum for major penalty Dated 13.12.1985) on the very same day the defence Counsel gave a note to the Enquiry Officer to supply the documents for natural justice (Photo Stat Copy is enclosed and is marked Annexure No. IX.

- (p) That the Enquiry Officer threatend to decide the case on Ex-parte, if the applicant would not attend the enquiry with his defence Counsel vide letter dated 19.3.1987. The applicant gave three names for his dofence Counsel thus any of the defence Counsel be called in case one Shri Shukla had not attended the enquiry. That the applicant and his defence helper were very much regular in attending the Enquiry except the days when any one was on sanctioned leave. It was not deliberately avoided to attend the enquiry.
- (q) That the respondent No. 3 had not supplied the following documents which were more essential for natural justice in a departmental enquiry proceedings:-
- i) Employment notice under which the applications wore invited for the post of Canteen Manager.
  - ii) Number of applications received.
  - iii) Call letters issued to the candidates for interview.
  - iv) Copy of Transfer Certificate submitted alongwith application.
  - v) Selection proceedings of recruitment Board.
  - vi) Copy of offer letter with acceptance by the applicant.
- (r) That the Enquiry Officer gave assurance that on the availability of the documents as demanded will be supplied but wore not supplied to defend his case but the applicant has been removed from service in a bias manner.

(s) That the respondent No.3 was not so much prompt to conduct the enquiry in a proper manner affording the opportunities to the applicant to defend his case properly for natural justice. It is evident from the letter No. 725-E/DCME/MD dated 14.5.1987. Photo Stat Copy is enclosed and is marked as Annexure No.X.

(t) That the applicant instituted <sup>a</sup> ~~as~~ case in the court of Law against the Principal, M.K.S.D. Inter College, Paper Mill Coloney, Nishatganj, Lucknow on the ground of his report dated 6.2.1986 wherein the Principal, M.K.S. D. Inter College stated that the Transfer Certificate has been issued wrongly by the Clerk thus the same be treated as cancelled. The applicant informed to the Enquiry Officer on 2.6.1987 (Photo Stat Copy is enclosed and is marked Annexure No.XI) that the case has now become subjudice. The Deputy Chief Mechanical Engineer, Carriage and Wagon Workshop, Northern Railway, Alambagh, Lucknow was also the party in the said case. The case was become subjudice and thus the enquiry kept in abeyance till finalization of the case by the Court of Law. The Enquiry Officer did not care of the Court Case and gave his enquiry findings on 27.1.1988. The enquiry findings are based <sup>u</sup> only on an Ex-parte on the ground that the applicant and his defence Counsel had not attended the enquiry on the dates fixed for the enquiry. The enquiry Officer himself postponed the enquiry and the next date fixed for the enquiry to harass the applicant and his defence Counsel.

(u) That the respondent No.3 acted in their <sup>u</sup> ~~the~~ violation of the learned Court of Law who have asked the Deputy Chief Mechanical Engineer, Carriage and Wagon Workshop Northern Railway Alambagh, Lucknow to file the entire documents including the letters, enquiry papers, replies of the applicant, in the Court of Law. The respondent No.3 was a party in this case and it was in his knowledge, that

*B. S. Singh*

the educational Certificate issued by the principal , M.K.S.D. Inter College - Lucknow was to be decided its genuineness by the Court of Law. The respondent No.3 sat as judge to declare the educational Certificate as false thus the respondent No.3 acted against the Principal of natural justice and judicial procedure.

- (v) That the copy of the Written Statement submitted by the Principal, M.K.S.D. Inter College, Lucknow is enclosed and is marked as Annexure No.XII. In the said written statement the principal, M.K.S.D. Inter College, Lucknow has admitted that all the papers drenched in a flood, only the Transfer Register was saved and is available thus the Transfer Certificate was issued.
- (w) That the Principal, M.K.S.D. Inter College, Lucknow admitted the genuineness of educational Transfer Certificate even then the respondent No.3 removed the applicant from service having malafide, intention and in an arbitrary manner only to harass the applicant, create mental torcher and put him at the stage of starvation during these hard days.
- (x) That the function of the Canteen of Carriage and Wagon workshops, Northern Railway, Alambagh, Lucknow managed by a Committee of elected members. The Deputy Chief Mechanical Engineer was acting as President of the said elected Committee. The applicant was appointed with the approval of President (Deputy Chief Mechanical Engineer). The Canteen staff <sup>was</sup> declared/treated as Railway Employees with effect from 22.10.1980 in terms of Railway Board's letter No.E(W)76 CIV-1-6 dated 22.5.1981 (Copy enclosed and is marked as Annexure No.XIII ) but it was not clarified who will be the appointing authority of the

staff appointed in canteen by the Committee with the approval of President without the power and jurisdiction the respondent No.3 removed the applicant from service in sheer violation of rules, regulations. The Respondent No.2 also acted beyond his power and jurisdiction to consider his appeal.

- (y) That the order of the disciplinary authority (Removing authority) as communicated vide No.725-E/DCME/MD dated 12.5.1988 does not <sup>seem</sup> to be the speaking order as the grounds have not been incorporated therein. (Photo Stat Copy is enclosed and is marked Annexure No.XIV).
- (z) That the principal, M.K.S.D. Inter College, Lucknow addressed an application to the District Inspector of Schools, Lucknow on 10.1.1986 ( Photo Stat Copy is enclosed and is marked Annexure No.XV) for the grant of additional relief to the College as due to flood, the record, furniture and other articles for amenities of the college have been ruined thus to continue the function of the college additional fund is most essential.
- (aa) That the applicant preferred <sup>an</sup> appeal to the Chief Workshops Engineer, Headquarters Office, Baroda House, New Delhi on 20.6.'88 (Photo Stat Copy is enclosed and is marked Annexure No.XVI ). The appeal did not base on all the relevant papers , thus the applicant submitted an application on 15.6.1988 to obtain some documents and on receipt of those documents the applicant preferred an additional appeal on 22.8.1988 but it is clear from the reply dated: 19.9.88 <sup>u</sup> that the additional appeal was not forwarded to the Chief Workshops Engineer. It is clear from the impugned order of Annexure XVII as

no reference of additional appeal is available thereon. The orders of the appellate authority are incomplete, illegal, non speaking and against the natural justice. The appellate authority has also not acceded the request of the applicant and has not granted the personal interview.

G R O U N D S

- A) Because the impugned order of removal from service dated: 12-5-1988 as well as the appellate order dated 19.9.1988 are illegal and non-speaking, in as much as they have been passed without any application of mind to the memorandum of charge, the reply of the applicant, other relevant evidence and documents and other attending facts and circumstances of the case.
- B) Because the impugned order of removal from service as well as the appellate order both are manifestly illegal and beyond jurisdiction as the applicant has not been given the proper and reasonable opportunity of being heard in the alleged disciplinary conducted in respect to the memorandum of charge.
- C) Because the respondent No. 2 & 3 both have committed the manifest error of Law and are not looking to the facts that the enquiry once started in a major penalty can not be cancelled the memorandum o to issue another major penalty charge sheet on the same allegations.
- D) Because the respondents No. 2 & 3 both have committed a manifest error of Law and are not appreciating the Law that if the removing authority was of the opinion that major penalty imposed upon the applicant is not in order thus cancelled the major penalty memorandum, then the issue of another major penalty charge sheet on the same allegations is not in order.

- E) Because manifestly no charge as contained in the memorandum of charge is made not against the applicant on the basis of evidence and the documents relied upon in support of such charge and contained in Annexure No. VII of such memorandum of charge.
- F) Because the respondents No. 2 & 3 both have committed a manifest error of Law and jurisdiction in not looking to the fact that if they decided to remove the petitioner (applicant) on the basis of evidence and documents other than those mentioned in support of the imputation contained in the memorandum of charge, then it was mandatory for them to supply all such relevant evidence and documents to the applicant and he should have been given all reasonable opportunities to defend himself against such allegations and evidence.
- G) Because the impugned order of removal from service as well as the appellate order both are totally illegal in as much as they do not contain any reasons what so ever to support the removal. Both the impugned orders are cryptic and non speaking and have been passed without containing any reasons. *In absence of the appointing authority respondent NO. 2 and 3 were acted beyond their jurisdiction to remove the applicant.*
- H) Because the respondents are acting arbitrary and illegally in discriminating the applicant in the matter of his retention in service as Annexure -II of the memorandum is a clear evidence that the respondents first obtained a letter dated 8.10.1985 from the Principal, D.A.V. College, Lucknow then from Mr. I.P. Batra, and thereafter again from the Principal, D.A.V. College, Lucknow 30.10.1985 but the copy of the Principal, D.A.V. College, Lucknow dated 8.10.1985 was not - supplied.

- I) Because the Deputy Chief Mechanical Engineer did not care the orders of the Hon'ble Court but acted in an arbitrary manner and removed the applicant from service only to put the applicant at the starvation stage and not continue to contest the case.
- J) Because the opportunity could not be provided to supply the documents for natural justice. All the relevant documents are self explanatory that respondents always acted in an arbitrary manner with a malafide intention and they were make a plan to remove the applicant.
- K) Because after a serving of about 10 years without any complaint, the respondents No.3 did not wait a little while to have the verdict from learned Civil Court, Lucknow and passed all the departmental rules, principle of natural justice and judicially proceedings and hurriedly removed the applicant.
- L) Because the enquiry Officer has errored and also failed to act with judicious eyes as he did not examine the complainant <sup>of</sup> Shri I.P. Batra, principal and Head Clerk of the M.K.S.D. Inter College. The applicant too was not given reasonable opportunity to cross examine them.

6- Reliefs Sought :-

In view of the facts mentioned in para above, the applicant prays for the following reliefs :-

- a) That after summoning the entire record of the disciplinary enquiry conducted against the applicant from the possession of the respondents, and after making a perusal of the same, the impugned order of removal from service dated 12.5.1988 passed by the respondent No.3 as well as

*Handwritten signature*

the appealate order dated 19.9.'88 passed by the respondent No.2 both be set aside and quashed.

- b) That by means of consequential reliefs, the respondents be further commended to treat the applicant to be entitled for re-instatement in service and the intervening period from the date of removal to instatement be treated as duty and the payment thereof be made.
- c) That any other appropriate order or directions to which the applicant is deemed to be entitled under the entire facts and circumstances of the case, may also be allowed.
- d) That the cost of the application be also awarded to the applicant.

8- Interin order, if prayed for :-

The applicant is also entitled for the following interin order during the pendency and decision of the instant application :-

That for the facts, circumstances, ground, and the reliefs claimed in this application and stated in para \_\_\_ and \_\_\_ above, the respondents be directed to take the applicant on duty in the capacity of Canteen Manager irrespective of the impugned order of removal from service on 12.5.1988 passed by the respondent No. 3 and not to create any hindrence or obstacle in the matter of taking the applicant on duty.

Such other orders or direction in the nature of interin relief to which the applicant is held entitled, be also passed in his favour.

*Handwritten signature*

1/10

\_\_\_ Details of remedies exhausted :-

The applicant declares that he has availed all the statutory departmental remedies available to him under the Railway Servants (Discipline and Appeal Rules, 1968. Under these rules he had preferred an appeal to the Chief Mechanical Engineer, Northern Railway, Headquarters Office, Baroda House, New Delhi, which was rejected by means of his order dated 19.9.1988. Thus, under the aforesaid service rules, no further appeal is provided to the applicant.

\_\_\_ Matter not pending with any other Court etc. :-  
-----

The applicant further declares that the matter regarding which this application has been made is not pending before any Court of Law or any other authority or any other Bench of the Tribunal.

\_\_\_ Particulars of Postal order in respect of the Application Fee.

1. Number of Indian Postal Order(s)  $\frac{DD}{5}$  067504
2. Name of the issuing Post Office. Alambagh - Lucknow
3. Date of issue of Postal Order(s) 23.1.1989
4. Post Office at which payable.

\_\_\_ Detail of Index :-

An index in duplicate containing the details of the documents, to be relied upon is enclosed.

\_\_\_ List of Enclosures:-

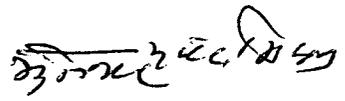
The list of the enclosure is attached and is marked Annexure No.1.

*Handwritten signature*

I, Muneshwar Dajal son of Late Ashwasthama aged about 35 years resident of Chitta Khera, Aishbagh, Lucknow do hereby verify that the contents from 1 to \_\_\_ are true to my personal knowledge and belief and that I have not suppressed any material facts.

Lucknow :

Date : 23.2.1989



Signature of the Applicant

उत्तर रेलवे NORTHERN RAILWAY

By. C.M.E.,  
(Canteen Officer),  
Carriage Shop,  
Alambagh, Lucknow.

D/Sir,

Shri Huzashw Dayal has obtained  
employment as Manager Canteen, under you  
by submitting a false educational Certifi-  
cate. He has studied in no School.

Kindly investigate and take nec-  
essary action.

Yours faithfully,

54 — 12.10.85

( I. P. Batra )  
Secretary  
Anti-corruption Cell  
Coag.(I), Meerut, LKO.

*(Handwritten signature)*

सेवा में

श्रीमान् कार्य प्रबन्धक (सी)  
उत्तरो रेलवे कैंज स्व वंगन शाप, आलमबाग,  
लखनऊ ।

विषय:- आरोप - विज्ञापन न० 725 ई/ही सी एम ई/एम ही  
(मुनेश्वर दयाल) दिनांक 13-12-85

महोदय,

उपरोक्त आरोप-पत्र के सम्बन्ध में मैं निम्नलिखित निवेदन  
करना चाहता हूँ :-

- 1- आरोप पत्र में उल्लिखित आरोप (अनुबन्ध-1) असत्य, निराधार  
स्वं सारहीन है क्योंकि आरोप-पत्र एक मनमहन्त तथ्यों से परे  
असत्य के आधार पर मुझे मानसिक कष्ट पहुंचाने हेतु लगाया गया ।
- 2- आरोप-पत्र में मेरी नियुक्ति का तारीख 22-10-1980 दर्शाया गया  
है जबकि सत्यता है कि कैंटोन मैनेजर के पद पर मेरी नियुक्ति  
16-1-1978 है और इस प्रकार आरोप-पत्र मूलतः पंगु हो जाता है।
- 3- त्याकथित शैक्षिक प्रमाण-पत्र होटलिंग इंटर कालेज, लखनऊ  
द्वारा टी०सी० फार्म न० 9583 दिनांक 13-8-1978 जो आरोप-पत्र  
में उल्लिखित है वह मेरे द्वारा कदापि प्रस्तुत नहीं किया गया था  
और मुझे इसके बारे में कोई जानकारी भी नहीं रही । मेरे शैक्षिक  
प्रमाण-पत्र को इस जाली प्रमाण-पत्र से बदला बदली करके मुझे  
फंसाने का कुचक्र किया गया है पर मुझे प्रसन्नता है कि ऐसा कुचक्र  
रचयिता अपने ही कुचक्र से इस आरोप-पत्र में ज्ञापन को हास्यास्पद  
बना दिया क्योंकि मेरी कैंटोन मैनेजर के पद पर नियुक्ति  
16-1-1978 को हुई और यह जाली शैक्षिक प्रमाण-पत्र जिससे  
हमारा कोई सम्बन्ध नहीं है तारीख 13-8-1978 को त्याकथित  
प्रधानाचार्य द्वारा जारी किया हुआ है इसका तात्पर्य स्पष्ट है  
कि मेरी नियुक्ति हो जाने के 7 माह 12 दिन के पश्चात् में  
शैक्षिक योग्यता का प्रमाण-पत्र 13-8-1978 को दिया जा  
असम्भव है । यह तो श्रीमान् जी स्वयं निस्संदेह सन्तुष्ट हो जायेंगे  
कि शैक्षिक योग्यता का प्रमाणपत्र मेरे प्रार्थना पत्र के साथ कैंटोन  
मैनेजर के पद पर नियुक्ति होने से पहले का हो सकता है न कि  
मेरी नियुक्ति के 7-8 महाने बाद ।

कृपया:--2

मुनेश्वर दयाल

10/1/86

- 4- उपरोक्त आरोप-पत्र में संलग्न मेरा प्रार्थना-पत्र कैंटीन मैनेजर के पद के लिये मूलतः स्पष्ट करता है कि मैं कैंटीन मैनेजर के पद के लिये प्रार्थना-पत्र एक अभ्यार्थी के रूप में प्रस्तुत करते हूँ अपनी शैक्षिक योग्यता कक्षा 9 उचीर्ण उल्लिखित किया है जो प्रत्येक दशा में मेरी नियुक्ति की तिथि से अर्थात् 16-1-1978 से पूर्व ही हो सकती है न कि उसके पश्चात् 7-8 महीने बाद ।
- 5- आरोप-पत्र का ज्ञापन और इससे सम्बन्धित जांच-पड़ताल और माग-बांछ में जितना समय कुछ कर्मचारियों का नष्ट हुआ उससे बचत हो सकती थी यदि मुझसे इस सम्बन्ध में तथाकथित श्री आर्डीसी० यतरा की शिकायत पर मुझसे स्पष्टीकरण मांग लिया गया होता पर खेद है कि ऐसा नहीं हुआ और इससे भी अधिक खेद इस बात का है कि अनायास माग-दर्द में कुछ कर्मचारियों का कष्ट उठाना पड़ा और अन्त में बाल बाल ही रह गया ।
- 6- मैनेजर कैंटीन के पद के लिये अपने प्रार्थना पत्र देने के समय मैंने अपना शैक्षिक प्रमाण-पत्र कक्षा 9 उचीर्ण होने का आपके कार्यालय में अग्रसारित कर दिया था । मेरे पास उसकी सत्यापित दूसरी नकल न होने के कारण अपने शिक्षा संस्थान से पुनः टी०सी० की नकल 4-1-1986 को निकलवानी पड़ी और उस प्रमाण-पत्र को आपके शत प्रतिशत सन्तुष्टि के लिये सह जिला विद्यालय निरीक्षक, लखनऊ से प्रतिहस्ताक्षरित सहित 6-1-1986 की तारीख में कराकर उसकी फोटोस्टेट कापी अपने उत्तर के साथ संलग्न कर रहा हूँ। जिसके अलाइन से ही सारी स्थिति स्पष्ट हो जायेगी कि मैं नितान्त निदोष हूँ और उपरोक्त सन्दर्भित आरोप-पत्र मेरे विरुद्ध असत्यता का केवल एक पुलिन्दा मात्र है ।
- 7- तथाकथित जाली शैक्षिक योग्यता का ही०ए०बी० कालेज का प्रमाण पत्र जिससे मेरा कोई सम्बन्ध नहीं है, मेरे द्वारा कैंटीन मैनेजर के पद के लिये प्रार्थना पत्र के समय प्रेषित शैक्षिक योग्यता का प्रमाण-पत्र की नकल करके जाली बनाया गया है। जिसके जन्म तिथि, कक्षाओं का वर्ष, मेरा, मेरे पिता का नाम तथा निवास स्थान का पता आदि सब कुछ मेरे प्रमाण-पत्र जैसा रहे पर कालेज का नाम टी०सी० नम्बर, प्रधानाचार्य आदि का हस्ताक्षर जाली बनाकर मुझे

उजेश्वर तामरकर

दण्डित किया जा सके और मेरे स्थान पर अपना मनचाहा व्यक्ति नियुक्त किया जा सके। इस जाल के परिप्रेक्ष्य में यही मूमिका स्पष्टतया प्रदर्शित होती है।

अतः आपसे उपरोक्त तथ्यों के आधार पर निवेदन है कि आरोप-पत्र का ज्ञापन समाप्त किया जाय और साथ ही ऐसे कुचक्र का पता लगाकर दण्डित किया जाय जिसने स्थानीय रेल प्रशासन तथा मेरे जैसे निदोष व्यक्ति को परेशान किया। अन्ततः यह भी स्पष्ट करना मैं आवश्यकता समझता हूँ कि उपरोक्त आरोप-पत्र के ज्ञापन का प्रगप्त करने के पश्चात् ही मैंने निवेदन किया था कि कृ तथाकथित श्री आई०पी० यतरा के शिकायत-पत्र की एक प्रतिलिपि मुझे आरोप-पत्र के संदर्भ में प्राप्त कराई जाय जो आज तक मुझे प्राप्त नहीं हुई मैंने उसको प्राप्त करने की प्रतिज्ञा और अधिक न कर आपको निजान्त सन्तुष्ट करने हेतु उपरोक्त सन्तोषजनक उच्च दे रहा हूँ।

प्रार्थी,

दिनांक: 10-1-1986

*मुनेश्वर दयाल*  
( मुनेश्वर दयाल )  
कैन्टीन मैनेजर

सी० एच० हब्लू० घाप आलमबाग  
लखनऊ ।

*मुनेश्वर दयाल*  
*सी० एच० हब्लू०*

*मुनेश्वर दयाल*



To

The Works Manager (C),  
N. Rly., Alambagh,  
Lucknow.

R/Sir,

With ref. to the S.O.No. 725 R/DCMR/HD dt. 30-5-86  
I have to state as under :-

1) You will kindly appreciate to the point raised in my explanation dt. 10-1-86 pertain to the lapses and serious erruaring in my case by the personnel branch and enquiry officer deputed by you also belongs to the Personnel Branch. In the name of Principal of the Justice the appointment of the Enquiry Officer on the Personnel Branch side will not be fair and hence while demanding the natural justice in my case. I request that any official belonging to a non personnel side will surely rates out any possibility of partiality.

I, therefore request that my request may kindly be acceded to, depute an Official as you deem fit from the non-personnel branch so that it may apprently even look that natural justice and fairness will be observed during the course of enquiry in my case. In the connection I have to submit another application invite the sailient to be threst out before the department enquiry inniciated in my case.

Thanks,

Yours faithfully,

( MUNESHWAR DAYAL )  
MISRA  
Canteen Manager  
C&W Shops, Anw.,  
Lucknow.

Dated: 2-6-86

...

*Handwritten signature*

Ling

Ling

Ling

To

Annexure No. V

13/10

The Works Manager (C),  
N. Rly., Alambagh,  
Lucknow.

Page No. 23

R/Sir,

I invite your kind attention to the point raised in my explanation dt. 10-1-86 and request your honour to find out the following points which nullify the alleged charges against me completely and therefore, the memorandum is rendered meaning less.

- 1). My date of appointment is 14-1-78 whereas in the Memorandum it is 22-10-1980.
- 2). My application for ~~my~~ selection for the post of Canteen Manager ~~partains~~ pertains to the year 1977 where as, ~~as per~~ as per Memorandum. This application has been made for my appointment in Oct. 1980.
- 3). The alleged D.A.V. T/C form No. 9583 is dt. 13-8-1978 whereas my date of appointment is much before i.e. 14-1-1978 which make it ~~it~~ clear that the alleged T/C in question, made the basis of Memorandum, has been ~~is~~ substituted.

*official*

I, therefore, request that an ~~appeal~~ official from the non personnel branch may kindly be deputed to enquire into the above points which have led to make the Memorandum meaning less.

Yours faithfully,

*[Signature]*

Ramaswaraj Misra

Canteen Manager

Secy Shops A.M.

Lucknow

Dt 12-1-86

*[Signature]*

उत्तर एवं NORTHERN RAILWAY

34 ग्राम प्रतिकर (L) का 1000 रु. 37 अंश 10' 00"

एक अंश 10' 00" से 700 रु. 10' 00" (एन.सी. (उत्तर) (एन.सी.))

का. 22.10.86.

ए. प्रदीप कुमार मिश्र

मैत्री बरौदा, अंतर्गत अंतर्गत

अंतर्गत अंतर्गत

वै. 575 से 576 रु. 225 रु. 10' 00"

एन.सी. (उत्तर) (एन.सी.) का 13.12.85

आपका 34 ग्राम प्रतिकर अंतर्गत

योजना से अंतर्गत अंतर्गत

डी.डी. अंतर्गत  
(अंतर्गत अंतर्गत)

अंतर्गत अंतर्गत (L)

अंतर्गत अंतर्गत

नं० 19-ए/जनरल 99 कोटा

G.L. 19-A/Genl. 99 Small

Page 25

उत्तर रेलवे NORTHERN RAILWAY

आपका आग्रह (10/10) को, मैंने शिष्टाचारपूर्वक  
रूप में 22/10/26 को (10/10) को (10/10) को

दिनांक 22 10 26

एक मुद्रा 5000 रु. का, मैंने  
आपको भेजा है, मैंने शिष्टाचारपूर्वक  
रूप में 22/10/26 को (10/10) को (10/10) को  
(10/10) को (10/10) को 22 10 26

आपका आग्रह (10/10) को, मैंने शिष्टाचारपूर्वक  
रूप में 22/10/26 को (10/10) को (10/10) को  
दिनांक 22 10 26 (10/10) को (10/10) को  
10 10 26 को

A. A. ...  
(...)

...

...

STANDARD FORM OF CHARGESHEET

Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968

Standard Form No. 3

No. 123456789

Name of Railway Administration, Date 22/10/86

MEMORANDUM

The President/Railway Board/Undersigned propose (s) to hold an inquiry against Shri. ... under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968.

The substance of the imputation of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed Statement of articles of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure II).

1. Shri. ... is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure III) at any time during office hours within five days of receipt of this memorandum.

2. Shri. ... is informed that request for access to documents made at later stages of the inquiry will not be entertained unless sufficient cause is shown for the delay in making the request within the time limit specified above.

3. Shri. ... is further informed that he may, if he so desires, take the assistance of any other railway servant/an official of a Railway Trade Union (who satisfies the requirements of Rule 9 (9) of the Railway Servants (Discipline and Appeal) Rules, 1968 and Note 1 and/or Note 2 thereunder as the case may be for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an oral inquiry being held.

Handwritten signature at the bottom of the page.



श्री मुनेश्वर दयाल मिश्रा मैनेजर डेप्टीन कैरिज तथा वेमन शाप के विरुद्ध विरचित लाञ्छन के अनुच्छेदों का विवरण ।

चूंकि उक्त श्री मुनेश्वर दयाल मिश्रा जब कि वे कैरिज एण्ड वेमन शाप आत्मन्याग डेप्टीन में मैनेजर डेप्टीन के पद पर ग्रेड सं० 330-480 [पु०वे०] कार्यरत थे अपने कर्तव्यों के प्रति जिम्मेदार रहने में असमर्थ रहे इस संदर्भ में उन्होंने दिनांक 22.10.80 को इस वर्कशाप में अपनी नियुक्ति के अवसर पर अपने प्रार्थना पत्र में उल्लिखित वैदिक योग्यता के लिए जो डी०ए०वी० इंटर कालेज लखनऊ का स्कोर रजिस्टर तथा टी०सी० फार्म सं० 9583 दिनांक 13.8.78 प्रस्तुत किया था वह जारी पाया गया एवं उसकी पुष्टि हेतु प्रधानाचार्य डी० ए०वी० इंटर कालेज लखनऊ ने अपनी पत्र सं० कुछ नहीं दिनांक 30.10.85 के द्वारा सूचित किया कि छात्र स्कोरर पंजी सं० 9583 पर नयाय मुनेश्वर दयाल मिश्रा के श्री मोहम्मद यहिया आत्मज श्री तपस्वत दुसैन निवासी आत्मन्याग लखनऊ अंकित है एवं उसकी जन्मतिथि 1.1.45 है। अतः मुनेश्वर दयाल मिश्रा द्वारा प्रस्तुत टी०सी० मूलतः जारी है। इस टी० सी० फार्म के आधार पर उनके अपनी वैदिक योग्यता का इन्तज पान दिखाने के लिए मैनेजर डेप्टीन में जिम्मेदार पद पर दोबारा-वर्षी में नियुक्ति प्राप्त कर ली। इस दोबारा-वर्षी के लिए उन्हें एम०ए०-5 शाप संख्या 725ई/डी०सी०एमई/एमडी [मुनेश्वर दयाल] दिनांक 13.12.85 जारी किया गया जिसे अतिरिक्त कर दिया गया है। उपरोक्त शाप संख्या के अन्तर्गत में उनके अपने दिनांक 10.11.86 के स्पष्टीकरण में डी०ए०वी० इंटर कालेज लखनऊ के उपरोक्त स्कोरर रजिस्टर तथा टी०सी० फार्म सं० 9583 दिनांक 13.8.78 को अपनी वैदिक योग्यता के प्रमाण स्वरूप प्रस्तुत करने में ही इन्कार किया है एवं उसके स्थान पर उसके एम०के०एम०डी० इंटर कालेज, पेपर मिल कालोनी जिलात गंज लखनऊ का डुप्लीकेट स्कोरर रजिस्टर तथा ट्रान्सफर सर्टीफिकेट सं० 2493 दिनांक 4.11.86 एवं जिसे जिला विद्यालय त्रिरी लखनऊ ने 6.11.86 को प्रतिहस्ताक्षरित किया की फोटो स्टेट जारी प्रस्तुत की। इस सर्टीफिकेट की सत्यता की जांच हेतु जब प्रधानाचार्य एम०के०एम०डी० कालेज पेपरमिल कालोनी, विद्यालय लखनऊ से सम्पर्क किया गया तो उन्होंने अपने पत्र सं० कुछ नहीं दिनांक 6.2.86 के द्वारा लिखित रूप में इस कार्यालय को सूचित किया कि उनके विद्यालय के टी०सी० सं० 2493 जिसे श्री मुनेश्वर दयाल पुत्र श्री अमरवस्थाया जिलात खेड़ा लखनऊ के पत्र सं० 4.11.86 को जारी किया गया था उसे अतिरिक्त किया जाता है तथा उपरोक्त नाम का विद्यार्थी का कमी छात्र नहीं रहा है। इस प्रकार श्री मुनेश्वर दयाल मैनेजर डेप्टीन के अपनी वैदिक योग्यता के विषय में प्रधानाचार्य को दोबारा-वर्षी पर दोबारा देने का प्रयत्न किया तथा उन्होंने इस प्रकार रेलवे शाप संख्या 1966 के पैरा 3 [1] [1] का उल्लंघन किया।

Handwritten notes on the left margin, including a signature and some illegible text.

*[Handwritten Signature]*  
टी०सी० श्री वास्तव

कर्मशाखा प्रयन्धक [5870]

*[Handwritten Signature]*

उत्तर रेलवे NORTHERN RAILWAY

प्रसूचना - 11  
=====

श्री मुखेश्वर दयाल, मैनेजर कैंपटीन के विरुद्ध विरचित लाइट के समर्थन में कदाचार अथवा अवचार का वितरण :-

श्री आई०पी० बतरा, मेट्री एण्टी क्लरिफिकेशन सेल काँट्रोलिंग आई। मधैया लखनऊ ने अपनी पत्र सं० कुछ नहीं दिनांक 17.10.85 के द्वारा सूचित किया कि श्री मुखेश्वर दयाल ने बूटा शैक्षिक प्रमाण पत्र प्रस्तुत करके मैनेजर कैंपटीन के पद पर नौकरी प्राप्त की और जो कि उसने किसी भी स्कूल में शिक्षा नहीं प्राप्त की है। इस पर हित निरीक्षक कैरिज एड कैमल शाप आलमबाग ने प्रधानाचार्य से मिलकर तथ्यों का पता लगावे के बाद यह निर्धारित किया कि श्री मुखेश्वर दयाल मिश्रा द्वारा अपने मैनेजर कैंपटीन के पद पर नियुक्ति के समय प्रार्थना पत्र में उल्लिखित अपनी शैक्षिक योग्यता के पुष्टीकरण के लिए जो डी०ए०वी०एच इंटर कालेज लखनऊ का छात्र रजिस्टर एवं टी०सी० फॉर्म सं० 9583 प्रस्तुत किया है वह आती है जिसके समर्थन में प्रधानाचार्य डी०ए०वी० इंटर कालेज लखनऊ ने अपनी पत्र सं० कुछ नहीं दिनांक 8.10.85 के द्वारा यह सूचित किया कि यह स्कूल रजिस्टर एवं टी०सी० फॉर्म सं० 9583 सजाये मुखेश्वर दयाल मिश्रा के श्री मोहम्मद यहिया आत्मज श्री तफजुल हुसैन शिवाजी आलमबाग लखनऊ, जन्मतिथि 17.1.45 का है। इस घोषे वड़ी के लिए श्री मुखेश्वर दयाल को एक एस०एफ०-5 शाप सं० 725ई०/डी०सी०एमई/एमडी मुखेश्वर दयाल दिनांक 13.12.85 जिसे निरस्त किया जा चुका है जारी किया गया। इस शाप के उत्तर में उसके अपने दिनांक 10.1.86 के स्पष्टीकरण में डी०ए०वी० इंटर कालेज लखनऊ के उपरोक्त स्कूल रजिस्टर तथा टी०सी० फॉर्म सं० 9583 दिनांक 13.8.78 को अपनी शैक्षिक योग्यता के प्रमाण स्वयं प्रस्तुत करने से ही इंकार किया है एवं उसके स्थान पर उसके एच०के०एस०डी० इंटर कालेज, पेपरमिल कालोबी निशातमंज लखनऊ का डुप्लीकेट स्कूल रजिस्टर तथा ट्रान्सफर सर्टीफिकेट सं० 2493 दिनांक 04.11.86 एवं जिसे जिला विद्यालय निरीक्षक लखनऊ ने 06.11.86 को प्रतिहस्ताक्षरित किया की फोटोस्टेट कापी प्रस्तुत की। इस बात की पुष्टि मुखेश्वर दयाल मिश्रा ने पुनः अपने दिनांक 7.2.86 के स्पष्टीकरण में की है और यह भी कहा है कि टी०सी० सं० 2493 की मूल प्रति भी प्रस्तुत करने को तैयार है। इस टी०सी० की सत्यता के जांच के लिए श्री मोपीबाबू तिवारी हित निरीक्षक आलमबाग लखनऊ को नियुक्त किया गया। हित निरीक्षक ने अपने दिनांक 8.2.1986 के रिपोर्ट में उल्लेख किया कि उन्होंने एस०के०एस०डी० इंटर कालेज, पेपरमिल कालोबी निशातमंज लखनऊ से सम्पर्क करके पर प्रधानाचार्य ने अपने अभिलेखों का निरीक्षण करने के पश्चात अपने पत्र सं० कुछ नहीं दिनांक 6.2.86 में कहा कि श्री मुखेश्वर दयाल ने उसे सच गपठे रिपोर्ट उनके विद्यालय में कमी शिक्षा नहीं ग्रहण की तथा उनके द्वारा जारी किया गया टी०सी० निरस्त किया जाता है क्योंकि वह कार्यालय तिथिक की मूल से निर्गत किया गया है। क्योंकि वह कार्यालय तिथिक की मूल से निर्गत हो गया। अतः टी०सी० सं० 2493 दिनांक 04.11.86 भी जारी सिद्ध होता है। इस प्रकार श्री मुखेश्वर दयाल मिश्रा अपने शैक्षिक योग्यता के प्रमाण पत्र के बारे में इस कार्यालय को घोषे पर घोषा देते हुए निर्धारित शैक्षिक योग्यता न रखते हुए भी घोषे वड़ी से कैरिज तथा कैमल शाप आलमबाग में मैनेजर कैंपटीन जैसा जिम्मेदार पद प्राप्त कर लिया।

*(Handwritten signature)*

डी०सी० श्री वास्तव ।

कर्मशाला प्रबन्धक । 157001

*(Handwritten signature)*

उत्तर रेलवे NORTHERN RAILWAY

अनुबन्ध - III

=====

उक्त प्रलेखों की सूची निम्नके आधार पर श्री मुखेश्वर दयाल मिश्रा मैनेजर कैंपटीन के विरुद्ध विरचित लाठल के झुठठेवों को संगृहीत करने का प्रस्ताव है।

- 1- श्री आई० पी० बतरा सेक्रेटरी एन्टी करप्शन सेल काग्रेस। आई। मवेया लखनऊ का पत्र सं० नित दिनांक 17.10.85.
- 2- प्रधानाचार्य डी०ए०वी० कालेज लखनऊ के पत्र सं० नित दिनांक 30.10.85.
- 3- प्रधानाचार्य, डी०ए०वी० इण्टर कालेज लखनऊ द्वारा जारी रकातर रजिस्टर तथा टी०सी० फर्म सं० 9583 जिसमें बताया श्री मोहम्मद यहिया आत्मज तफजुल हुसैन के जाली रूप से श्री मुखेश्वर दयाल मिश्रा आत्मज अश्वस्थामा का नाम कर दिया गया है।
- 4- कर्मचारी का नियुक्ति के लिए प्रार्थना पत्र दिनांक नित
- 5- श्री जी० एन० तिवारी हित निरीक्षक के दिनांक 16.11.85 की रिपोर्ट।
- 6- प्रधानाचार्य, एम०के०एस०डी० इण्टर कालेज पपर नित कालोनी विधात मंत्र लखनऊ द्वारा जारी रकातर रजिस्टर तथा ट्रान्सफर कार्टीफिकेट सं० 2493 दिनांक 4.1.86 जिसे जिला विद्यालय निरीक्षक लखनऊ ने दिनांक 6.1.86 को प्रतिहरता-हरित किया है, की फोटो स्टेट कापी।
- 7- श्री मुखेश्वर दयाल, मैनेजर कैंपटीन का निरस्त किए गए एम०एफ०-5 मेमोरण्डम सं० 725ई/डीसीएमई/एमडी। मुखेश्वर दयाल। दिनांक 13.12.85 का दिनांक 10.1.86 का स्पष्टीकरण।
- 8- प्रधानाचार्य, एम०के०एस०डी० इण्टर कालेज पपर नित कालोनी विधातमंत्र लखनऊ का दिनांक 6.2.86 का पत्र।
- 9- श्री मुखेश्वर दयाल कैंपटीन मैनेजर का दिनांक 7.2.86 का स्पष्टीकरण।
- 10- श्री गोपी लाल तिवारी हित निरीक्षक, कैरिजकैमन शाप आलमखाम लखनऊ के दिनांक 8.2.86 की रिपोर्ट।

*(Signature)*  
 श्री वास्तव  
 आशाला प्रबन्धक। डबलू।  
 आलमखाम - लखनऊ।

*(Signature)*

उत्तर रेलवे NORTHERN RAILWAY

प्रसूचक - IV

=====

उक्त गवाहों की सूची जिसके आधार पर श्री श्रीधर दयाल मैनेजर कंपनी के विरुद्ध विरचित लॉअर के प्रसूचकों को संगृहीत करने का प्रस्ताव है।

---

- 1- श्री सी० एम० श्रीवास्तव, सर्विस रिकार्ड नंबर, डी०सी०एम०ई० अतिरिक्त आलमबाग लखनऊ।
- 2- श्री गोपी नाथ तिवारी, डित बिरीसक, कैरिज एण्ड वेमन आफ आलमबाग लखनऊ।

*दीदी श्रीवास्तव*  
 श्री सी० एम० श्रीवास्तव ।  
 कर्मशाला प्रबन्धक । डी०सी०एम०ई०  
 आलमबाग - लखनऊ ।

*श्रीधर दयाल*

उत्तर रेलवे NORTHERN RAILWAY

श्रीकम

दूरभाष : 49164

डी० ए० वी० इटर ठाणे, लखनऊ  
। कार्यसूचक लखनऊ द्वारा संवाचित ।

संवाचित :

दिनांक : 30/10/1985

सेवा में,

एए वकील अभियंता  
सवारी तथा मात डिप्टी कारवाला  
आल्लपाय, उत्तर रेलवे ।

महोदय,

आपके संवाचित डी० ए० वी० इटर ठाणे/लखनऊ/विविध दिनांक 30/10/85 के संदर्भ में, प्रमाणित किया जाता है कि एअर रजिस्टर संख्या 9583 पर प्रोत्साहन वकिया आत्मत श्री लखनऊ द्वारा विवाही आल्लपाय लखनऊ यम विधि 10/10/85 संचित है ।

अतः आप द्वारा वांछित सूचना प्रेषित कर प्रमाणित करता हूँ कि प्रामाण्यता यकी है ।

प्रणालाचार्य

ह०/एएवीस

। पत्र टैर मुक्त ।

मोहर -

प्रणालाचार्य

डी० ए० वी० इटर ठाणे

लखनऊ ।

*Handwritten signature*

D.A.V. COLLEGE, LUCKNOW.

S. Register No. ....

Scholar's Register & Transfer Certificate.

Admission File No. .... Withdrawal File No. .... T.G. File No. 7503

Name of the Scholar with Caste of Hindu, otherwise religion.		Name occupation and address of parent of guardian.		Date of birth	Private	
Muheswar Dayal Misra (Hindu)		S/O Aswasthana Chitta Khara, Aishbagh, Lucknow		11.8.53 Eleve to Aug. Ninteen fifty three		
Class	Date of Admission	Date of Promotion	Date of removal	Cause of removal i.e. Nonpayment of dues removal of family, expulsion, etc.	Year	Conduct and work.
6 VI	10.7.63	20.5.64			63-64	Good, Good, Passed.
7 VII	8.7.64	20.5.65			64-65	Good, Good. Passed.
8 VIII	1.7.65	20.5.66			65.66	Good, Good Passed
9 IX	1.7.66	20.5.67	30.6.67	Guardian's will	66.67	Good, Good. Passed.
10 X				Sd/- Illigible Principal DAV. Inter College LKO.		
11 XI				Sd/- Illigible 13.8.68 (76)		
12 XII						

Certified that above Scholar Register has been posted upto date scholars leaving as required by the Department Rules.

.....  
 Signature

उत्तर रेलवे/NORTHERN RAILWAY

To

The Dy. C. M. B. (H),  
C&W Shops, Adv.,  
Lucknow.

Sir,

I have come to know that you require a suitable candidate for manning the post of Canteen Manager. I offer myself for the same post.

My qualifications are as under :-

- (1) That I have passed Class IX and have knowledge of Hindi, English & Sanskrit.
- (2) I am conversant with the management and preparation of eatables.

I have never indulge myself in any activity & health.

Attested copy of educational ~~मकनिकरिडुनकडुन~~ certificate is enclosed.

I, therefore, request that I may kindly be given an ~~अपुनिक~~ opportunity to prove my work as Canteen Manager, N.Rly., Alambagh. I assure your honour I shall leave no stone unturned to prove worthy for the post with my hard labour and honesty.

Thanking you in anticipation.

Yours faithfully,

Sd/-  
(Maneshwar Dayal Misra)  
S/O Sh. Aswastham  
Chitta Khara, Aishbagh,  
Lucknow.

Dated:

.....

*Maneshwar Misra*

Admission File No. .... Withdrawal File No. .... Transfer Certificate File No. ....  
 2493  
 Scholar's Register .....

Scholar's Register & Transfer Certificate

Name of the Scholar with Cast or Hindu, otherwise religion.		Pure occupation and address of parent or guardian.		Date of birth.		
Muneshwar Dayal Mittal (Hindu)		S/O Aswasthana Chitta Khara, Aish Bagh, LKO.		11.8.33 Eleventh Aug. Nineteen Fifty Three.		
Class	Date of admission.	Date of Promotion.	Date of Removal	Cause of removal i.e. non-payment of dues, removal of family, expulsion, etc.	Year	Conduct and work.
6 VI	10.7.63	20.5.64			63-64	Good, Good Passed. Sd/-U.S.S.
7 VII	8.7.64	20.5.65			64-65	Good, Good. Passed Sd/-U.S.S.
8 VIII	<del>9.6.65</del> 1.7.65	20.5.66			65-66	Good, Passed Sd/-U.S.S.
9 IX	2.7.66	20.5.67	30.6.67	Guardians wish	66-67	Good, Passed Sd/-U.S.S.
10 X				TRUE COPY Sd/- 4.10.66 गुणवत् शिक्षण केन्द्र के द्वारा प्रमाणित किया गया है। दिनांक 4/10/66		
11 XI				गुणवत् शिक्षण केन्द्र के द्वारा प्रमाणित किया गया है। दिनांक 1/11/66		
12 XII				Sd/- 6.1.66 Sd/- 6.1.66		
Any other Class to be specified.						

गुणवत् शिक्षण केन्द्र

उत्तर रेलवे-NORTHERN RAILWAY

संविदा तमा माल-डिब्बा कारखाना, अखिलमवाग लखनऊ

नं० 725E/DEME/MD

दिनांक 3/12/1986

श्री मुनेश्वर मल्ल

सी० डेप्टी इंजीनियर  
सं० तमा माल-डिब्बा कारखाना,  
अखिलमवाग लखनऊ

विषय: मंगो नं० 725E/DEME/MD दि० 22/10/86  
के बारे में अनुपपत्र (जांच)

संदर्भ: आपका जवाब पत्र दि० 4/11/86 (प्राप्त दि०  
दि० 26/11/86)

आपका साक्ष्य किता जाता है कि निर्माण प्रकल्प (अनुपपत्र) मूलादम ने आपके स्कूल सर्टीफिकेट के बारे में नियंत्रण लिए आपका उपरोक्त विषयक अनुपपत्र देना जा चुका है लिखित जांच (अनुपपत्र) के आदेश प्राप्त कर दिए हैं और मूलादम (अनुपपत्र) को जांच-साक्ष्य निपुण किता है।

उपरोक्त: इस जांच को पूरा करने के लिए कृपया आप लिखित रूप से मूलादम अवगत करारें कि आप अपने इस कस से जांच-साक्ष्य प्राप्त करेंगे या किसी Defence Member (जांच-साक्ष्य) के माध्यम से? यदि आप किसी जांच-साक्ष्य की साक्षात्कार या जांच है तो कृपया 3 (तीन) तमों को छोड़कर साक्ष्य करें। यह भी ध्यान में रखा जाए कि तीनों जांच उधार रखने के तत्काल कर्मचारियों को से ही हैं और प्रत्येक कर्मचारी के पास आपका यह कस मिलाकर तीन कस से अधिक नहीं। यह अंत अवकाश प्राप्त कर्मचारी पर लागू नहीं होगा लेकिन उसे होना उत्तर रेलवे का ही प्राधिकरण।

गैर इस पत्र का उत्तर ~~आपको देना है।~~

3/12/86  
(एम चन्द)  
सी० नि० प्र० (सुपरी) सी०  
सं० तमा माल-डिब्बा कारखाना,  
अखिलमवाग लखनऊ

The Enquiry Officer  
(In the case of Shri Muneshwar Dayal)  
Canteen Manager,  
C&W Shops, Alambagh,  
Lucknow.

Sir,

Departmental Enquiry in the Case of Shri Muneshwar Dayal has been fixed for 10/2/87 but at the out-set of the proceedings it is requested that reasons on the basis of which the Memo No. 725-B/DCME/M.D. dated 13.12.1985 was cancelled by the Disciplinary Authority may kindly be conveyed to facilitate the defence before the Enquiry. The request is within the purview of natural justice because the same has also been made basis for levelling the alleged charges in the present Memo no. 725-B/DCME/M.D. dated 22/10/86 and thus it ultimately ridicules this memorandum as well. The request may kindly be ~~accorded~~ <sup>accorded</sup> to.

*Muneshwar Dayal*

Muneshwar Dayal

*(17/2/87)*  
Defence Counsel

The Enquiry Officer  
(In the Case of Shri Muneshwar Dayal)  
Canteen Manager,  
C&W Shops, Alambagh,  
Lucknow.

Sir,

The following documents are relevant for presenting the case for the defence. It is requested that copies of the following documents/details may please be supplied to me.

- 1- Employment notice in response to which Shri Muneshwar Dayal submitted his application for appointment.
- 2- No. of applications recovered.
- 3- Educational Certificates submitted alongwith the application of Shri Muneshwar Dayal.
- 4- Copy of Medical Memor
- 5- Copy of Medical fitness certificate issued by the Doctor.
- 6- Copy of offer of appointment.
- 7- Copy of Service Record, of ~~Muneshwar Dayal.~~

*Muneshwar Dayal*

*(17/2/87)*  
Defence Counsel

*Muneshwar Dayal*

सेवा में,

जांच अधिकारी | ए. डब्लू एम (एन सी) (मुनेश्वरदयाल के केस में) के रेज एवं वैजन शाप ग्वालमवाग

Page no. 40

लखनऊ

विषय :- श्री मुनेश्वरदयाल के केस में पत्र संख्या 725E/DCMR/MD दिनांक 28.5.87 द्वारा जांच के संबंध में

श्री मान जी,

उक्त संबंध में उल्लेखनीय है कि उपरोक्त विषय का मुकदमा प्रिन्सपल एग. के. एस. डी. डुण्टर कार्लेज (मुकदमा नं. 123 सन् 1987) के विरुद्ध आदरणीय सिविल जज मोहन-लाल गंज, लखनऊ के न्यायालय में विचाराधीन है। उपरोक्त प्रार्थना है कि जब तक न्यायालय द्वारा फैसला नहीं हो जाता है वैसागिक जांच स्थगित की जाय। दिनांक 26/5/87 को मुकदमा दाखल किया गया है।

26/5/87

भवदीय  
26/5/87

शुभ प्राप्त प्राप्त किया

Chandra  
02/6/87  
F.O.

मि. चंद्रशेखर

In the court of Additional Civil Judge, Lucknow.

R.D.No. 123 of 1987.

Fixed for 6.1.89.

Muneshwar Doyal

..... Plaintiff.

Versus

Sari Uma Shanker Chukla and one another.... Defendants.

WRITTEN STATEMENT ON BEHALF OF DEFENDANT NO.

1.

1. That the contents of para 1 are denied for want of knowledge except the facts that the answering defendant worked as a principal of the College w.e.f. 28.11.1965 to 30.6.1988. Please see additional pleas.
2. Denied for want of knowledge except the facts that from the college record which ever was available, it appears <sup>that</sup> there was one student <sup>known</sup> Muneshwar Doyal who was the student of the college for the period commencing from 10.7.63 to 20.5.67.
3. That the contents of para 3 are denied as it does not concern with the answering defendant but from the record available it appears that no.1.C. was issued except the impugned one.
4. That the contents of para 4 are denied for want of knowledge.
5. That the contents of para 5 are denied as it does

.....2  
मनश्वर दयल

not concern with the answering defendant but from the record available in the office of the principal that no referred T.C. was issued and as such the referred T.C. must have been forged one. Please see additional pleas.

A/C

- 6. That the contents of para 6 are denied for want of knowledge.
- 7. That the contents of para 7 are denied except the fact that ~~the~~ <sup>the</sup> referred T.C. was issued from the office. Please see additional pleas.
- 8. That the contents of para 8 are denied for want of knowledge.
- 9. That the contents of para 9 are denied for want of knowledge.
- 10. That the contents of para 10 are denied.
- 11. That the contents of para 11 are denied.
- 11A. That the contents of para 11 -A are denied.
- 12. That the contents of para 12 are false defamatory and as such are denied.
- 13. That the contents of para 13 are denied. No cause of action accrued against the answering defendant.
- 14. That the contents of para 14 are pertaining to valuation and court fee needs no reply except that it has been excessively valued and excess court fee has been paid.

*[Handwritten signature]*

3.

X

15. That the contents of para 15 are denied. Plaintiff's suit is liable to be dismissed as it has been filed on false, frivolous and vexatious facts.

ADDITIONAL PLEAS

16. That the petitioner was appointed as a Principal on 23.11.65 and retired on 30.6.88.

17. That the Principal and the Head Clerk working in the year 1963 to 67 have ~~resided~~ <sup>deceased</sup>.

18. That the college is situated on the north side of Gomti and due to flood in the year 1985 much of the record of the college was washed away by the then fluent waters of river Gomti.

19. That T.C. register was not washed away. On receiving the summons from the Hon'ble court the enquiry was held to find out the true facts regarding the alleged T.C. by a committee of three members from the management committee who conducted the enquiry in accordance with the rules and came to the conclusion that another paper was found <sup>in place</sup> instead of the original one. On that referred changed page, name of Muneshwar Dayal son of Shri <sup>was written</sup> ~~was written~~ resident of Chitto where Aishbagh <sup>was known</sup> ~~was known~~. On enquiry the dealing clerk stated that at the time of preparation the impugned T.C. he could not verify the <sup>correctness</sup> ~~correctness~~ of the page. On verification it appeared only one the T.C. was issued which is the impugned one.

*[Handwritten signature]*

1/69

20. That the answering defendant has never tried to forge I.C.

21. That the plaintiff has intentionally arrayed the answering defendant as a defendant with malefide intention.

22. That the facts of the case are of the service matter which can only be tried by Central Administrative Tribunal and as such the Hon'ble court has no jurisdiction to try the case.

23. That the suit is illegal and not maintainable on *majority of the parties as well*

24. That under the circumstances stated above the plaintiff's suit is liable to be dismissed with special costs as well.

Lucknow

Dated 6.1.89

*Signature of Usha Shukla*  
Defendant No. 1

Verification

I, Usha Shukla the defendant no. 1 do hereby verify that the contents of paras 1 to 12 & 16 to 22 are true to my knowledge and those of paras 13, 14, 15, 23 & 24 to are believed to be true.

Signed and verified today on the Sixth day of Jan. 1989 in Civil court compound at Lucknow.

Lucknow

Dated : 6.1.89

Defendant no. 1.

*Signature of Usha Shukla*







(1)

श्री मुनेश्वर दयाल (बैटन मैनेजर) के विरुद्ध D.M.R. Enquiry Case का प्रस्ताव ।

आदेशित विवरण :-

श्री मुनेश्वर दयाल (बै. मै.) को SF-5 पत्र संख्या 725E/DCME/MD दिनांक 22/10/86 (बै. सं. 69) को तम्र लाकृत दोषाज्ञापों के लिए दिया गया ।

श्री मुनेश्वर दयाल (बै. मै.) के पद पर आरम्भ के बाद उनके व्यक्तियों के प्रांत निष्ठावान रहने में असमर्थ रहे । इस संदर्भ में उन्होंने दिनांक 22.10.86 को डीएम कार्यालय में अपने निपुण के भ्रमर पर जो शैक्षणिक प्रमाण पत्र (D.H.V. Inter College/Lko) के T.C. No. 4583 दिनांक 13.8.78 (बै. सं. 25) को जमा किया था वह जाली प्रमाण पत्र । इसका पृष्ठ डीएम कार्यालय के प्रधानाचार्य ने अपने पत्र दिनांक 30.10.85 (बै. सं. 24) के द्वारा अंतरित किया । श्री मुं. द. ने जो दूसरा शैक्षणिक प्रमाण पत्र (M.K.S.D. Inter College / Paper Mill Colony/Lko) के S.R. No. 2493 दिनांक 4.1.86 (बै. सं. 33) को जमा किया वह भी जाली प्रमाण पत्र । उसका पृष्ठ भी डीएम कार्यालय के प्रधानाचार्य ने अपने पत्र दिनांक 6.2.86 (बै. सं. 34) के द्वारा अंतरित किया है ।

निर्माणित हमलाकारित पी. पां. 13 पर प्राप्त आदेश के द्वारा जांच अधिव्यारी निपुण किया गया ।

दिनांक 13.12.86 से जांच आरम्भ किया गया । दिनांक 23.4.87 को जब दोषी ने प्रश्न नं. 2 (पृष्ठ. 4) के उत्तर में अपने ऊपर लगाये गये दोष को माना तो जांच आगे चलाना गया और शर्तों के अन्तर्गत जांच की पृष्ठ 7 में प्रारम्भ हुआ । जांच निष्पत्ति अंतरित किया जाता रहा जो कुल मिलाकर 22 वर्षों तक निरन्तर किया गया । परन्तु श्री मुं. द. जांच के दौरान के प्रवर्तित लगातार अज्ञान रहे और विलम्ब करते रहे । वे भी वह उपस्थित हो जाते थे तो उनका बचाव महाफल नहीं होता था और जब उनका बचाव महाफल होता था तो वह स्वयं अनुपस्थित हो जाते थे । उनका ऊपर SF-5 के द्वारा जो दोषाज्ञाप लगाया गया है उसका वह अपनी प्रकृत (जो जांच के दौरान अमरा मावत करने के मामले को लेकर प्रसिद्ध डालन (Delaying tactics) को रोकना अपनाते रहे और मन्थना जा हिमान के लिए हर दृष्टिकोण अपनाते हुए बचाव देने में व्यस्त रहे । उन्होंने जांच के लिए जांच के अबाध के दौरान तीव्र (कुल मिला 90 दिन) के लिए Sick report भी किया जिसमें जांच टलता रहे और जांच को अन्तिम रूप न दिया जा सका । श्री मुं. द. दिनांक 20.1.87 को निरन्तर किया गया जांच निष्पत्ति अंतरित नहीं हुआ, दिनांक 25.3.87 जांच निष्पत्ति अंतरित नहीं हुआ और Sick पर चल गया । दिनांक 15.4.87 जांच निष्पत्ति अंतरित महाफल के न आवेष्ट दोषी ने बचाव देने में मना कर दिया । दिनांक 20.5.87 को भी दोषी उपस्थित नहीं हुआ । तथा दिनांक 15.6.87 जांच निष्पत्ति अंतरित नहीं हुआ और पुनः Sick report पर चला गया (दिनांक 15.6.87 से 2.8.87 तक) । इस प्रकार श्री मुं. द. वर्षों जांच के विषय में बचाव करते रहे ।

P.T.O

श्री मुनेश्वर दयाल

2

इन्का पत्र सं० 725E/DC ME/MD दिनांक 14.10.87 21.10.87 और 9.11.87  
के द्वारा यह सुनिश्चित किया गया था कि यदि वह जांच लिये अर्पित उपस्थित  
नहीं होगी तो उनका विरुद्ध स्वयं पक्षीय (Ex-parte) निर्णय लिया जा सकता है  
परन्तु फिर भी उनका ऊपर इस बात की कोई प्रभाव नहीं पड़ा और ऊपर लखनऊ  
निष्पत्तियों को वह जांच के लिये उपस्थित नहीं हुए। इन सभी बातों से यह मान्य  
होना चाहता है कि वह मरणात्कालीन रूपान्तरण के लिये जांच नहीं होने देना चाह  
ते हैं।

इन्हें अपने अंश में अन्ततः महापक्ष की मदद से अहम अर्पण के लिये पक्षीय  
मामला दूना हो, अनेकों अवसर दिए गये पर इन्हें इस बात की कोई चिन्ता नहीं  
है कि इन्हें, उनका ऊपर लगाया गया आरोप के लिये कानूनी दंड दिया जायेगा।  
वह अपने ऊपर लगाये गये दोष की पूर्ण सरलता से लगे हैं और अनुच्छेदों  
रूपान्तरण के लिये अपान देने में टर्न-मैट अप में इन्कार कर रहे हैं। इनका इस  
रूप में इनका दोषी जानकार (guilty conscious) होने की बात सिद्ध  
होती है और इसी लिये वह अपान देने के लिये तथा अहम अर्पण के लिये अपान  
नहीं आरंभ हैं तथा प्रशासन की रूढ़ पद्धति (Ex-parte) अक्षय लेने के लिये  
बोध्य कर दिया।

आपलप में उपलब्ध लेखा तथा गवाही के प्रश्नोत्तर के आधार पर इनका  
ऊपर लगाये गये आरोप सिद्ध होते हैं जो इस प्रकार हैं।

श्री मुनेश्वर दत्तल अपना निष्पत्तियों के अन्तर्गत जो पहला शोकात्मक प्रमाण पत्र आपलप  
में (सं० 25) पर जमा किया था वह उम्मेदवार के प्रधानाचार्य के पत्र (सं० 24)  
के द्वारा जली घोषित किया गया। उम्मेदवार के श्री. एम. ए. के प्रश्नोत्तर सं० 5  
(पृष्ठ-7) दिनांक 13.5.87 से होती है। इसपर श्री. मु. ट. 0 ने उम्मेदवार पत्र को  
अपनी तरफ से जमा किया हुआ नहीं माना (सं० 36) तथा उम्मेदवार के संसद  
नहीं गया। इसका प्रश्नोत्तर उन्होंने 4 तो दूसरे प्रमाण पत्र द्वारा अर्पण जमा किया  
(सं० 33) जिसमें उम्मेदवार के प्रधानाचार्य ने निराह्वय कर दिया (सं० 39) कि  
इसमें लिखा कि श्री. मु. ट. 0 नाम का छात्र उनका लखनऊ में श्री. ए. आर. नरसिंह  
शर्मा के श्री. श्री. मन. तिवारी के प्रश्नोत्तर 1, 2 (पृष्ठ-11) तथा 3 (पृष्ठ-12)  
दिनांक 21.1.88 के अनुसार अपनी कॉलेज (D.N.V. Inter College) और (M.K.S.D  
Inter College) के प्रधानाचार्यों ने लिखित रूप में दिया है (सं० 24 व 39) पर  
जिसके आधार पर दोनों शोकात्मक प्रमाण पत्र जमा हैं। उम्मेदवार के लिये  
लिखित रूप में श्री. मन. तिवारी गये थे। इस प्रकार श्री. मु. ट. 0 ने अपनी निष्पत्तियों  
के लिये जली शोकात्मक प्रमाण पत्र जमा करके प्रशासन की धारणा पर धारणा दिया और  
इस प्रकार यह शोकात्मक प्रमाण पत्र तथा जो दोषारोप SF-5 के द्वारा इनका ऊपर  
लगाया गया वह सिद्ध होता है।

Chandra  
27/1/88  
F.O. (AWM/NC)

अनुरोध/सि 3/

A/75

I have carefully gone through the entire case. From the records of the enquiry it appears that Sri Muneshwar Dayal, Canteen Manager of these shops was given ample opportunity for giving his evidence, but he always delayed the proceedings on one or the other pretext. He was intimated by the Enquiry Officer vide letters no.725E/DOME/14D dated 14.10.87, 21.10.87 and lastly dated 9.11.87 that if he (Sri Muneshwar Dayal) will fail to attend the enquiry proceedings alongwith Defence Helper, the case may proceed ex parte against him.

A perusal of the enquiry proceedings and the papers on record shows that Sri Muneshwar Dayal, Canteen Manager of C&W Shops, Alambagh, Lucknow is found guilty of the charges levelled against him vide Major penalty charge sheet no.725E/DOME/HD dated 22.10.86. Thus, he tried to deceive the administration by submitting forged educational certificate. I fully agree with the findings of the Enquiry Officer as well as the observations of W/O (H) at PP, 206.

Although it is fit case for dismissal from service, however, I am taking a lenient view and remove him from service.

Sd/- A.K. Rigam, 12/5/88  
Deputy Chief Mechl. Engr. (H)  
C&W Shops, Alambagh, Lucknow

Attested

सहायक प्रमुख कार्यकारी (सहायक)  
सहायक प्रमुख कार्यकारी (सहायक)  
एओ, आलम्बाग, लखनऊ

सहायक प्रमुख कार्यकारी (सहायक)



6- छेड़ :-

छेड़ का सामान भी काफी वादाद में नष्ट हो गया और प्रयोगों के योग्य नहीं है ।

7- पुस्तकालय :-

पहुँच सी छिटावें को 5 फिट की सीमा के नीचे की पुस्तकालय में सड़ गयी और ऊपर के छाने की छिटावें सीलन के कारण नष्ट हो गयी ।

8- कार्यालय :-

कार्यालय अभिलेख में पुराने रिपोर्ट जैसे पुरानी लेख बुकें, बैंक रजिस्टर, वाउचर, फीस के रिपोर्ट, छात्रों की छात्रवृत्ति का हिसाब, प्रवेश रजिस्टर, प्रवेश पत्र, परिचयपत्र, परीक्षा के पुराने परीक्षाफल और अनुपयुक्त लेखन सामग्री पूर्णतः नष्ट हो गयी और एक बाँग्य नहीं है कि उसमें कुछ पढ़ा-लिखा जा सके । परीक्षा की कॉपियाँ बाकी व अन्य सामग्री भी नष्ट हो गयी ।

एक सम्पत्त्य में फनीफिर, विज्ञान, टैल, पुस्तकालय, व मयन मरम्मत पर्यटन में लगभग 3 लाख रुपये की आवश्यकता है ।

अतः आपसे निवेदन है कि एक स्थिति में विद्यालय को सुचारु रूप से चलाने के लिये कम से कम तीन लाख रुपये की अतिरिक्त ग्रांट क्याशीयर स्वीकृत करने की कृपा करें ।

धन्यवाद -

भवदीय,

ए० अफ़्जनीय

असिस्टेंट मैनेजर,

एम० डे० एस० डी० एन्टर कालेज, लखनऊ ।

प्रतिलिपि -

- 1- शिक्षा निदेशक, उ० प्र० लखनऊ कैंप ऑफिस, लखनऊ ।
- 2- माननीय शिक्षा मंत्री, उत्तर प्रदेश शासन, लखनऊ ।

००

ए० प्रधानाचार्य,

एम० डे० एस० डी० एन्टर कालेज, लखनऊ ।

- 1- डी० आर्० आर्० एस०, लखनऊ ।
- 2- डी० डी० आ०, लखनऊ ।
- 3- डी० ए०, यू० पी०, लखनऊ ।
- 4- मुख्यमंत्री, उ० प्र०, लखनऊ ।

10-1-86

मि० अ० अ०

To,  
The Chief Workshop Engineer,  
N.Rly. Hd. Qtr. Office, Baroda House,  
New Delhi.

Through: The Dy. CME, C & H Shop, MV, Lucknow.  
Sir,

Re: Appeal against the orders of removal from service  
passed by the Dy. CME, C & H, Shop MV, Lucknow.

Re: 725E/DQMB/MD Dt. 12.5.88.

I respectfully bring about the following facts to bring  
the alleged charge contained in memo no. 725E/DQMB/MD Dt. 22.10.86  
for favour of your kind perusal in this appeal and quashing  
orders of removal treating the intervening period as on duty.

1. The alleged charge is reproduced is below:-

• श्री मुखेश्वर दयाल मिश्रा मैजर केंन्टिन डैरिज तथा वेगन शॉप के दिवस विरचित  
लाइन के अनुच्छेदों का विवरण:-

पूछे उक्त श्री मुखेश्वर दयाल मिश्रा ज्योति के डैरिज एण्ड वेगन शॉप आलमबाग  
केंन्टिन में मैजर केंन्टिन के पद पर ग्रेड स् 330-480 (पुणे 00) पार्यरत थे अपने कर्तव्यों  
के प्रति निष्ठावान रहने में असमर्थ रहे। इस सन्दर्भ में उन्होंने दिनांक 22.10.80  
को इस वर्षाव में अपनी नियुक्ति के अवसर पर अपने प्रार्थनापत्र में निम्नलिखित  
शैक्षिक योग्यता के लिये जो डीएसवीओइंटर कालेज लखनऊ का स्तर एजिक्टर  
तथा टीओसी फॉर्म नं 9583 दिनांक 13.8.78 प्रस्तुत किया था वह जाली पाया  
गया। एवं उसकी पुष्टि हेतु प्रधानाचार्य डीएसवीओइंटर कालेज लखनऊ ने अपनी पत्र  
सं 60 नही दि 30.10.85 के द्वारा सूचित किया कि छात्र स्कालर पंजी सं 9583  
पर बजाये मुखेश्वर दयाल मिश्रा के श्री ओ पीडिया आत्मज श्री लखनऊ हुसैन निवासी  
आलमबाग लखनऊ अंकित है। एवं उसकी जन्म तिथि 1.1.45 है। अतः मुखेश्वर दयाल  
मिश्रा द्वारा प्रस्तुत टीओसी फॉर्म जाली है इस टीओसी फॉर्म के आधार पर उसने  
अपनी शैक्षिक योग्यता नाइन्थ पाठ दिखलकर मैजर केंन्टिन के जिम्मेदार पद पर छोटे  
पंजी से नियुक्ति प्राप्त कर ली। इस छोटे पंजी के लिये उन्हें एक सत 050-5 हापन  
संख्या 725 ई /डीएसवीओइंटर/ समोडी मुखेश्वर दयाल दि 13.12.85 जारी किया  
गया 0 जिसे निरस्त कर दिया गया है। उपरोक्त हापन के उत्तर में उसने दि 10.1.86  
के स्फटीकरण में डीएसवीओइंटर कालेज लखनऊ के उपरोक्त स्कालर एजिक्टर  
तथा टीओसी फॉर्म संख्या 9583 दि 13.8.78 को अपनी शैक्षिक योग्यता के प्रमाण  
स्वरूप प्रस्तुत कर देने से ही इन्कार किया है। एवं उसके स्तर पर उसने समोडीओइंटर

2/24/88

....2/-



\* certificate dated 13.8.78 is misconceived totally concocted and as abortive attempt to makeout a case against me for my removal from service but it has happened with all judicious eye closed to snatch away my bread/living during these hard days simply because I could not reconcile myself to please the persons in the capacity of the Canteen Manager.

4. The alleged charge was amended as per works Managers letter dt. 22.10.86 in respect of date of appointment as explained in para 2 above but the enquiry officer based the allegation treating my date of appointment as 22.10.1980 and thus entire proceedings by the Enquiry officer have been rendered illegal against the facts and the principles of natural justice in as much as I was actually appointed on 14.1.1978 and not on 22.10.80.

5. The DOME while accepting the findings of the EO and removing me from service has grossly erred to rely upon the enquiry officer findings which is against the recorded proof of my date of appointment on 14.1.78 & admitted by the WM(W) as mentioned in para 2 above. The Coebellian story in respect of the alleged Educational Certificate dated 13.8.78 not only vanished but also left behind the disciplinary authority & Enquiry Officer to take the disciplinary action against me on the legles allegation and it did take place in my removal from service on 12.5.88. I had strongly resented while making my submission in my explanation dated 10.1.1986 against the transplanting of alleged educational certificate dated 13.8.1978 about which I had not the least knowledge. In fact my educational certificate submitted at the time of my appointment prior to 14.1.78 was got removed/taken away from the office records with an illmotivated effort to harm me for the reasons already mentioned above and when the falsihood surfaced to fail the desired attempt of my removal; I was pressed upon to submit duplicate copy of the educational

By M. J. J. J. J. J.

certificate submitted by me at the time of my appointment 1.0.16.1.1978. On the persistent demand by the local administration I had to submit duplicate educational certificate dated 4.1.83 from my educational Institution named M.K.S.D. Inter College Paper mill colony Bishat gram, Lucknow. This duplicate educational certificate was issued under the signature of the principal himself duly counter signed by the Inspector of School and the principal wrote in his own handwriting on the top of the certificate "Dup. " कइ जाई नई नगई गई "

*Letter dated 6.2.83  
quised to  
in the stamp  
signature*

7. The Secy. of the Comtee with his Assistant welfare Inspector went several times to the principal and got allegedly a letter dated 6.2.83 reported to be written by the principal that the aforesaid educational certificate dated 4.1.83 may be treated as cancelled as I was not a student of that institution.

However this allegedly purported letter in its last para made it clear that the facts about the educational certificate are being inquired into thereby rendering the first para ~~INCORRECT~~ completely redundant and thus the making of a case alleged in the memo was preconceived in a haste with out having the final words from the principal, if it was written by him. It is hight of injustice that the enquiry in the alleged letter could not be found out conclusive even today and I have been removed from service on this, so called letter before the principal could reach to the conclusion in his own institution.

8. The alleged allegation has already been falsified in the foregoing paras and the precipitate action in removing me from service believing the alleged letter purportedly written by the principal without finalizing the institutional enquiry was another gross error in my removal from service without calling for the principal or the Head Clerk of the educational institution to confront the departmental enquiry

*Handwritten signature*

Page No. 57

and to cross examination by me in order to establish the truth inspite of repeated requests to call for the signatory of the alleged letter or his any assistant to depose before the enquiry Committee as to him for the content of the alleged letter were true.

9. I always attended the enquiry if & when I was informed to do except on the dates on which my defence Counsel, being under the direct control of the Dy. CME AMV (the disciplinary authority) was not officially spared for the reasons best known to the local administration or dates on which I fell ill and the illness being beyond my control. I had submitted medical certificate which were accepted by the Dy. CME AMV and the period of illness was regularized as leave due. It is therefore established beyond doubt to your goodself that the departmental enquiry conducted while I was on sectioned leave on sicklist or my defence counsel on sectioned leave was against the principles of natural justice, a service lapse deliberately allowed to happen in interest and thus the way the enquiry was conducted ex parte without giving me the opportunity to attend the same alongwith my defence counsel will find no parallel example of injustice and with this haste I was removed from service giving golden opportunity to the persons opposed to me to misuse and play with the affairs of the cantonment sale purchase etc to their hearts content for a long period during which I shall knock the doors for justice.

10. I have not been treated absent or leave without pay even for a day since the institution of the departmental enquiry nor was my defence Counsel was treated as absent, or <sup>leave</sup> ~~absent~~ even for a day and even then the enquiry has been resorted to as ex parte enquiry and concluded without cross examining the principal MMSD Inter College, Lucknow. I.P. Bhatia, C.N. Tewari, Asstt. Welfare Inspector, S.M. Srivastava, Estt. Clerk, Shri Ramesh Chandra Srivastava, recruitment clerk, <sup>Shri</sup> Ram Akshaybar, Clerk Welfare Section & Shri S.P. Singh, Shri labour Inspector (Cantonment Secretary).

000006/0

*(Handwritten signature)*

11. The findings of the enquiry Committee do not contain the elaboration, the discussion of the examination and cross examination of witnesses and do not elaborate the facts which led to the conclusion except that it has been although widely explained that I was delaying the enquiry .

12. My attendance from the date of enquiry i.e. 13.12.1986 to the final date of enquiry i.e. 27.1.1988 will establish that I was all along on my duty & was present with in the premises of the workshop under the administration control of Dy CME MV except for a very few days due to my own sickness. Not even a single day I was absent from duty nor any period was treated as leave without pay . The enquiry was therefore allegedly conducted behind the curtain ~~and~~ of ~~hoax~~ <sup>hoax</sup> ~~redicating~~ the principles of natural justice, departmental rules of the legal aspects on the subject.

13. I have been removed from service so carelessly that it will not find a parallel to it even in case of a removal of a paid employee or a Badiya in an open market. He is also given full opportunity under the Shops & Commercial Acts but here all Acts Regularities, rules and principles of natural justice kept on niche.

14. The disciplinary authority ( The Dy.CME) /MV) has not applied his mind judiciously and in-dependently in arriving at the decision for removing me from service as he himself has mentioned in his order that the Works Manager (W) who had given his opinion on the precipage of the file has been ~~the~~ through by him and he has agreed with the WM(W, remarks as well . It means that there is an intermediary functionary <sup>he</sup> in between the enquiry office & the disciplinary authority which influenced the decision making disciplinary authority in my case and thus the order of removal from service is bias, illegal and against the principles of natural justice.

.....7/-

*Signature*

The copy of observations made the 1st (W) at Pp 20 of the case file has also not been supplied to me although the decision for removing me from service is also based on it.

15. The documents referred in annexure II attached to the memorandum have been totally relied upon by the disciplinary authority & the enquiry officer without getting its authenticity and credibility established by the persons concerned before the enquiry committee hence the process has played its role while relying upon it (documents) to form opinion both by enquiry officer and disciplinary authority. In spite of repeated request made both verbal and in writing to summon the Shri Batra, principal MKSD Inter College Nishat ganj, Lko, Principal DAV College, Lko., the appointment Clerk, welfare Clerk, in this connection the enquiry officer turned down the request.

16. It is very strange that the removal notice accompanied only a mere report of the enquiry officer without papers regarding statements of the witness etc. & the other documents.

17. It is reiterated that I was not given the least opportunity to examine & cross examine the witnesses & also I was deprived of the reasonable opportunity of producing my own witnesses to falsify the allegations to the satisfaction of the enquiry officer and thus on this fact alone the order for removal from service and the departmental enquiry are not free from biasness, illegality and the principles of the natural justice.

18. It is to my utter surprise to depose here that the enquiry officer AMH happened to meet me on his usual shop rounds every day and I wished him all the time but he did not give an air to me that he is holding separate enquiry against me. The tea stalls & sub canteens besides the main canteen are run & supervised by me every day in about 12 vendors are deputed in

*[Handwritten signature]*

both the shifts for supply of tea, Pakaura, Biscuits etc at the place of their work & I had naturally to have a close watch in supervising them <sup>in</sup> side the workshop and thus I had atleast 2 to 3 occasions to meet the A.M (Enquiry Officer) on the shop floor but he hid the ex parte action resorted to against me. I leave this point to your good self to judge from your judicious eye as to how far this poor employee has been deprived of the reasonable facilities. From the aforesaid facts it will appear to your good self it was more formality to be observed on papers, otherwise the persons working behind the scenes succeeded in getting me removed from service for their own interest and the disciplinary authority was kept in dark.

19.

Contempt of Court:

On my constant insistence, when the enquiry officer became unreasonable to summon the principal MKSD Inter College Nishat ganj Lucknow to establish the authenticity of educational certificate and the letter dated 6.2.86 & their credibility as well. I had no alternative, but to file a civil suit in the court of the Civil Judge, Mohanlalganj, Lko, against the principal MKSD Inter College, Lko & the Dy. QM MV was also made a party as defendant No. 2 and in this suit the main issue was as to whether the educational certificate signed & issued by the principal MKSD Inter College in my name was genuine or false. The Dy. QM MV was served with the notice accompanied with the copy of plaint through an advocate Commissioner and was asked by the Court to submit all the documents together with the papers of the enquiry C/sheet etc but the Dy. QM (W) did not file the <sup>entire case of file in hostile court</sup> ~~inspite~~ of my requests to him and while hiding the ex parte action against me every thing was cooked behind the curtain ignoring the orders of the Court where all the papers were submitted about four months ago, My defence counsel & I made verbal & written

.....9/e

*M. H. ...*

representation that all the relevant papers including the education certificate were summoned by the court and the matter was subjudice . The enquiry officer & the Dy. CME (W) (Defendant No 2 ) in the above case ignored the orders of the honourable Court and in most utter disregard in words & action both to the honourable court, they sat as a judge to declare the education certificate issued by the principal MKSD Inter College Nishatganj, Lko as false and thus the defendant No. 2 has acted to give his judgement overriding the much awaited judgement in the pending suit before the Civil Judge Mohanlal Ganj, Lko. For the hint for kind judicious decision is:-

(i) When the educational certificate was the subject matter of its declaration for its being genuine or false in the learned Court of Civil Judge Mohanlal Ganj, Lko, the Dy CME MV being a party in the same suit can declare the same certificate as false in utter disregard to the Court itself .

(ii) When all the papers & the case file were summoned by the Court to decide to genuineness of the educational certificate, the action by the Dy. CME MV ignoring the orders of the Court is incorrect & illegal.

(iii) When the Civil Judge Mohanlal Ganj, Lko, is yet to <sup>give</sup> ~~get~~ his verdict about the genuineness of the educational certificate in question the action of the Dy. CME MV being Ref. No. 2 to declare the certificate as false has apparently resulted in contempt of court itself .

20. The Dy. CME MV has power to remove me from service & he did so but he had no authority to declare the educational certificate in question as false when he was party to the declaratory suit in the Court of Civil Judge Mohanlal Ganj, Lko.

21. In absence of relevant papers, extract of case file, Proci

*[Handwritten signature]*

pages etc I was not given full opportunity to explain my innocence to your goodself, but I assert in the name of God that my educational certificate is genuine, authentic issued by me under the signature of the principal M.S.D. Inter College Mandgaon, Lko. duly counter signed by the Dy. Inspector of Schools Lko. and I am a victim of complete injustice. The memorandum in question is not based on the facts as mentioned in the order of my removal from service is illegal. There is a clear case of contempt in my case. The lapses as pointed out are established beyond doubt & will help your goodself to come to correct and legal judicious decision on my this appeal.

22. I request that I may kindly be granted personal hearing along with defence helper of my choice to explain the case personally to your goodself.

It is therefore prayed that my appeal may kindly be considered in the light of salient points, lapses, illegalities, & my assertion for the genuineness of the educational certificate as explained above by re-instating me in service and treating the intervening period as on duty for which act of kindness my family members and I shall be ever grateful to you.

Thanking You,

Yours faithfully,

*(Signature)*  
(Muneshwar Dayal )  
Ex-Canteen Manager,  
C.M. Canteen, N. P. S. H/Shop  
Mandgaon, Ludhiana.

Home Address: (Old 12a Dera, Mandgaon,  
Ludhiana.)

20-6-88

*(Signature)*

उत्तर रेलवे  
NORTHERN RAILWAY

Page No. 63  
Annexure No. XVII  
P. I. A. I. D.

कर्मचारी लघु अर्थी धारकों के अर्थी-धर  
सेवा के अर्थी-धर धारकों के अर्थी-धर

श्री. अर्थी-धर धारकों के अर्थी-धर  
धारकों के अर्थी-धर धारकों के अर्थी-धर

विषय: अर्थी-धर धारकों के अर्थी-धर  
जो सेवा से अर्थी-धर धारकों के अर्थी-धर  
में दी गई।

अर्थी-धर धारकों के अर्थी-धर  
के अर्थी-धर धारकों के अर्थी-धर  
कि न. नं. 1000 New Delhi  
से अर्थी-धर धारकों के अर्थी-धर

19-07  
कर्मचारी लघु अर्थी धारकों के अर्थी-धर

कर्मचारी लघु अर्थी धारकों के अर्थी-धर



9. That the genuineness of educational certificate was the subject matter of Civil Court proceedings against the educational institution concerned and the Dy.CME/AMV was also a party in that case and hence to declare the same educational certificate as false is a clear case of contempt of the court concerned. I am at a loss to know that before the court could give its verdict on the main issue, the educational certificate, the Dy.CME/AMV being a party in the case was advised to sit as a Judge to declare the educational certificate as false and that too on ex-parte proceedings without examining the principal of the institution concerned and knowing that the principal had been sued for his wrong statement in the court of law.

10. That I have elaborated all the salient points in my appeal dated 20.6.88, pleading my innocence, injustice to me, irregularly met out to me, and the legal aspects for your kind consideration.

*Fault of  
The Certificate*

11. That the points mentioned herein above together with points already mentioned in my appeal dated 20.6.88 may kindly be given due and sympathetic consideration as I have been subjected to unjust action for genuine, correct and authentic.

I, therefore, request your honour that my appeal may be kindly be considered sympathetically and I may kindly be put back to duty with the intervening period as on duty in the name of justice.

I also request that I may kindly be given personal hearing along with my defence helper to explain further my innocence to your entire satisfaction.

Thanking you,

Yours Faithfully,

*Runeshar Dayal*

(RUNESHAR DAYAL)

Ex-Canteen Renegero,  
C&W Canteen, N.Rly., Workshops,  
AMV/Lucknow.

Date: 22-8-88

Home address:

Chitta Khora,  
Aishbagh, Lucknow.

*Runeshar Dayal*

In the Central Administrative Tribunal Allahabad  
Circuit Bench Lucknow.

O.A.No. 50 of 1989

Muneeshwar Dayal Misra .... Applicant  
Versus  
Union of India and others .... Respondents.

Shorter Counter Reply.

It is submitted by the respondents as under:-

1. That the applicant has made the present application in the Hon'ble Tribunal seeking relief that the impugned order of removal from service dated 12.5.'88 passed by Respondent No.3 as well as the appellate Order dated 10.9.'88 passed by respondent No. 2 be set aside and quashed.
2. That the applicant in para 10 of the application, has stated that the matter regarding which this application has been made is not ~~pending~~ pending before any court of law. It is submitted that this fact is incorrect to the knowledge of the applicant, in view of he having admitted in para 5(t) of the application, that a case

was instituted in the Court of Law against the Principal M.K.S.D. Inter College, Paper Mill Colony, Nishatganj, Lucknow on the ground of his report dated 6.2.1985 wherein the Principal, M.K.S.D. Inter College stated that the Transfer Certificate has been issued wrongly by the clerk, thus the same be treated as cancelled. The ~~respondent~~ applicant in the said para has further admitted that Respondent No.3 viz. Deputy Chief Mechanical Engineer, Carriage and Wagon Workshop, Northern Railway Alambagh Lucknow was ~~him~~ also the party in the said case. The applicant in his application para No. 5(u) has admitted that the court of law was to decide the genuineness of the transfer certificate.

3. That the respondents state that the said case is still pending in the Court of IIND. Additional Civil Judge Lucknow, wherein the respondent no.3 has filed a written statement of defence.

4. That in view of what has been stated above, the present application before the Hon'ble Tribunal is not maintainable, and is liable to be dismissed.

*Amish*  
उत्पादन इंजीनियर

उ० र० सवारी ए० नाल डिब्बा कारखाना  
धालमबाग, लखनऊ

5. That the deponent is advised to state that in view of the circumstances stated above, detailed counter reply need not be filed to the application. The respondents state and crave leave of the Hon'ble Tribunal to allow filing of the detailed reply, after the ~~purpose of the application~~ same is ordered by the Hon'ble Tribunal.

6. That on the facts and circumstances stated above the application made by the applicant is liable to be dismissed with costs. The applicant is also not entitled any interim relief.

Lucknow

dated: 25.9.'89

*[Signature]*

Respondent

उत्पादन इंजीनियर

Uo २० सवारी ए. नाल डिब्बा कारखाना  
पालमबाग, लखनऊ

Verification.

I,

working as *Production Engineer*

in the Carriage and Work Shop Northern Railway Alambagh Lucknow and duly authorised and competent to sign and verify this reply, do hereby verify that the contents of paras 1 to 3 are based on informations derived from record which is believed to be true while those of paras 4 to 6 are based on legal advice which is believed to be true.

*[Signature]*

उत्पादन इंजीनियर

Uo २० सवारी ए. नाल डिब्बा कारखाना  
पालमबाग, लखनऊ

*[Signature]*

उत्पादन इंजीनियर

Uo २० सवारी ए. नाल डिब्बा कारखाना  
पालमबाग, लखनऊ

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

CIRCUIT BENCH AT LUCKNOW  
Re-Application IN WRIT PETITION NO. 50 OF 1989  
C.M. No. - 225/90 (L)

Muneshwar Dayal Misra ... Applicant  
Vs.  
Union of India & others ... Respondent

REJOINDER TO SHORT COUNTER REPLY  
DATED 25-9-1989 ON BEHALF OF THE  
OPPOSITE PARTIES  
===

I, Muneshwar Dayal Misra aged about 35 years, son of Late Ashwasthama, resident of Mohalla Chitta Khera, Aishbagh, Shastri Bhawan, Lucknow, the deponent do hereby solemnly affirm and state on oath as under. I, the above named petitioner, seek the leave of your honour to submit this re-application filed in reply to the written statement inter alia on the following grounds:

1. That the present claim petition has been filed before this Hon'ble Tribunal on 23/9/1989 being aggrieved by the order of the appellate authority removing the petitioner from service through the appellate order dated 10/9/1988. The limitation for filing the petition would have expired if the petition was not filed on the date specified above.

contd..2

2. That in the present petition the applicant has challenged the order of removal on so many grounds including the denial of opportunity and non-adoption of right procedure in the enquiry proceedings.

3. That the present petition arises out the dispute of service matter and the only forum available to the applicant is this Hon'ble Tribunal and no other court.

4. That in reply to para No.2 of the short counter it is submitted that the applicant has neither concealed the facts that a declaratory suit has been filed by him against the Principal, M.K.S.D. Inter College, Nishatganj, Paper Mill Coloney, Lucknow seeking declaration is that suit as under :-

i) For a declaratory decree to effect that the transfer certificate, a duplicate whereof was issued to the plaintiff vide No. 2493 under the signature of the defendant on 4-1-1986 is genuine and proper.

ii) For a decree for permanent injunction to restrain the defendant or any one else in his behalf from tampering with the school register and the relevant records relating to the studies of the plaintiff in the College of the defendant mentioned in para I above.

iiA) A decree for permanent injunction to restrain the defendant No.2 from carrying on with his enquiry to manipulate the tempering and removal of the College records of the plaintiff in collusion with the defendant No.1.

iii) Cost of the suit.

iv. Any other relief deemed fit and proper by this Hon'ble Court may also awarded.

5. That in the said Civil Suit there is no dispute about the service matter of the applicant. No doubt the respondent No.3 has been made a proforma defendant after the institution of the suit as the respondent has wrongly relied upon a show cause report of the Principal, M.K.S.D. Inter College, Paper Mill Coloney, Nishatgunj, Lucknow. No relief has been claimed against present respondent in that suit.

6. That in the said suit pending before IInd Additional Civil Judge, Lucknow, the Principal, M.K. S.D. Inter College, Nishatganj, Lucknow, has submitted his written statement and in para 2 of the said written statement, the Principal has himself conceded "Denied for want of knowledge except the fact that from the College record whichever was available, it appears that there was one student named Muneshwar Dayal who was the student of the College for the period commencing from 10-7-1963 to 20-5-67." The copy of the written statement has already been filed with claim petition at Annexure No.XII Page No.41.

7. That the applicant admits the contents of para 3 of the short counter reply by the respondent.

8. That in view of the circumstances stated in para No.1 to 6 above, it is submitted that the claim petition filed before the Hon'ble Tribunal challenging

14

A  
or

the order of removal and its appellate order based on the wrong, illegal, improper enquiry against the applicant, maintainable only before this Hon'ble Tribunal and not before any other court of law.

9. That the contention of the respondent as stated in para 5 of the short counter is wrong. The department has not come out with a clean hands and wants to delay and deny the justice by not submitting a proper counter of the claim petition but made a request for a second opportunity to file the counter before this Hon'ble Tribunal, so that at this stage ~~few~~ <sup>few</sup> facts may not be available to this Hon'ble Tribunal to adjudicate the matter according to law.

10. That the contents of para No.6 of the short counter are denied as they are baseless.

I, Muneshwar Dayal Misra, the deponent do hereby solemnly affirm and verify that the contents of paras 1 to 10 of this re-application are true to the best of my knowledge and belief. The facts stated above are based on the record available to the petitioner.

मुनेश्वर दयाल मिश्रा

(Muneshwar Dayal Misra)

S.P. Sinha

THROUGH S.P. SINHA  
Counsel for the applicant

ब अदालत श्रीमान्

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

[वादी अपीलान्त]

Muneshwar Dayal Misra का

वकालतनामा

प्रतिवादी [रेस्पॉण्डेंट]



वादी (अपीलान्त)

Muneshwar Dayal Misra

वनाश

प्रतिवादी (रेस्पॉण्डेंट)

Union of India and others

न० मुफद्दमा

सन्

पेशी की त्वा०

१६ ई०

ऊपर लिखे मुफद्दमा में अपनी ओर से थी

S. Senha, 537/25

On paper, Alambagh - Lucknow

वकील

महोदय

एडवोकेट

नाम अदालत  
मुफद्दमा नं०  
नाम फरीकत

जो अपना वकील नियुक्त करके प्रतिज्ञा ( इफरार ) करता हूं और लिखे देता हूं इस मुफद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोंत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से टिगरी जारी करावे और रुपया वसूल करें त्वा सुलहनामा व इकपाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करें मुफद्दमा उठावें या कोई रुपया जमा करें या हारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे त्वा पंच नियुक्त करें—वकील महोदय द्वारा जो गई व्ह सब कार्यवाही हलफो सर्वथा स्वीकार है और होगा मैं यह जो स्वीकार करता हूं जि में हर पेशी पर स्वयं या किसी अपने पैरोकार जो भेजता रहूंगा अगर मुफद्दमा अदम पैरवी 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 काज आवे।

हस्ताक्षर

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

23.2.1959

महीना

सन् १६

ई०

स्वीकृत

29-1-93

In the Hon'ble Central Administrative Tribunal, Circuit Bench,  
LUCKNOW

Before  
In the Court of

18/9

Registration No. 50 of 1989  
Fixed for 4-11-92

Plaintiff Muneswar Dayal  
Defendant

Claimant  
Appellant  
Petitioner

Versus

Defendant The Union of India  
Plaintiff and others.

Respondent

The President of India do hereby appoint and authorise Shri. Asit Kumar Chaturvedi,  
Rly. Advocate, LKO.

to appear, act, apply, plead in and prosecute the above described suit/appeal/proceedings on behalf of the Union of India to file and take back documents, to accept processes of the Court, to appoint and instruct Counsel, Advocate or Pleader, to withdraw and deposit moneys and generally to represent the Union of India in the above described suit/appeal/proceedings and to do all things incidental to such appearing, acting, applying Pleading and prosecuting for the Union of India SUBJECT NEVERTHELESS to the condition that unless express authority in that behalf has previously been obtained from the appropriate Officer of the Government of India, the said Counsel/Advocate/Pleader or any Council, Advocate or Pleader appointed by him shall not withdraw or withdraw from or abandon wholly or partly the suit/appeal/claim/defence/proceedings against all or any defendants/respondents/appellant/plaintiff/opposite parties or enter into any agreement, settlement, or Compromis where by the suit/appeal/proceeding is/are wholly or partly adjusted or refer all or any matter or matters arising or in dispute therein to arbitration PROVIDED THAT in exceptional circumstances when there is not sufficient time to consult such appropriate Officer of the Government of India and an omission to settle or compromise would be definitely prejudicial to the interest of the Government of India and said Pleader/Advocate of Counsel may enter into any agreement, settlement or compromise whereby the suit/appeal/proceeding is/are wholly or partly, adjust and in every such case the said Counsel/Advocate/Pleader shall record and communicate forthwith to the said officer the special reasons for entering into the agreement, settlement or compromise.

\* The President hereby agrees to ratify all acts done by the aforesaid Shri. Asit Kumar Chaturvedi,  
Rly. Advocate, LKO.  
in pursuance of this authority.

IN WITNESS WHEREOF these presents are duly executed for and on behalf of the President of Indian this the.....19

Accepted  
[Signature]

Dated.....198

[Signature]  
29/10  
Designation of the Executive Officer

(P. K. Agarwal)  
Dy. Chief Mech. Engineer (w)  
C & W Shops AMV LKO.

F.T.  
12-1-93  
139

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL,  
LUCKNOW BENCH, LUCKNOW.

M.P. No. OF 1993

UNION OF INDIA & OTHERS ... APPLICANTS/  
RESPONDENTS

In Re:  
ORIGINAL APPLICATION No. 50 OF 1989

MUNESHWAR DAYAL MISHRA ... APPLICANT  
VERSUS  
UNION OF INDIA & OTHERS ... RESPONDENTS

APPLICATION FOR  
EXEMPTION FROM PRODUCTION OF DOCUMENTS

The Applicants / Respondents most respectfully beg to submit as under :-

That the parawise comments and the history of the Case was prepared on the basis of the Discipline & Appeal Records and Service Records then available but thereafter the same was not traceable. Efforts are being made to trace the said records and if available then the same shall be produced before this Hon'ble Tribunal on the next date i.e. 23rd February 1993, otherwise the Respondents may be exempted from producing the records.

Therefore, it is most humbly prayed that in the circumstances narrated above, this Hon'ble Tribunal may be graciously pleased to exempt the Respondents from producing the on the next date i.e. 23rd February 1992 in the interest of justice.

*Asit Kumar Chaturvedi*  
(ASIT KUMAR CHATURVEDI)  
Advocate

Place : Lucknow

Dated : FEB 1993

COUNSEL FOR THE APPLICANTS/RESPONDENTS

A  
100

P 7  
J 2 7/2

A

101

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

M.P. No. of 1993

UNION OF INDIA & OTHERS ... APPLICANTS/  
RESPONDENTS

In Re:

ORIGINAL APPLICATION No. 50 OF 1987

MUNESHWAR DAYAL MISHRA ... APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ... RESPONDENTS

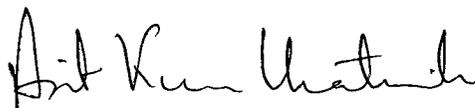
APPLICATION FOR  
CONDONATION OF DELAY  
IN FILING COUNTER REPLY

The Applicants / Respondents most respectfully beg to submit as under:-

That the parawise comments to the Original Application and the history of the Case was prepared on the basis of the Discipline and Appeal Records filed by the Applicant and his service records then available but later on the same was not traceable. As such, all efforts were being made to trace the said records to that the same may be produced before the Hon'ble Tribunal as well as the Counter Reply could be filed on the basis of the same. But at last the Counter Reply has been finalised on the basis of the parawise comments and the history of the Case available and the documents filed in the Court of the IInd Additional Civil Judge, Lucknow in the Regular Suit No. 123 of 1987.

The delay in filing the Counter Reply is not deliberate but due to reasons beyond the control of the Respondents. As such, the delay in filing the Counter Reply may be condoned and the Counter Reply may be taken on record of the Hon'ble Tribunal.

Therefore, it is most respectfully prayed that this Hon'ble Tribunal may be graciously pleased to condone the delay in filing the Counter Reply and take the Counter Reply on record of the Hon'ble Tribunal in the interest of justice.



Place : LUCKNOW.  
Dated : FEB 1993

(ASIT KUMAR CHATURVEDI)  
Advocate  
COUNSEL FOR THE APPLICANTS/RESPONDENTS

A  
103

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

M.P. No. \_\_\_\_\_ of 1993

UNION OF INDIA & OTHERS ... APPLICANTS  
RESPONDENTS

In Re:  
ORIGINAL APPLICATION 50 OF 1989

MUNESHWAR DAYAL MISHRA ... APPLICANTS  
VERSUS ... RESPONDENTS  
UNION OF INDIA & OTHERS ... RESPONDENTS

APPLICATION FOR  
DISMISSAL OF THE ORIGINAL APPLICATION

The Applicants / Respondents most respectfully beg to submit as under:-

That in view of the facts, reasons and circumstances stated in the Counter Reply, it is expedient in the interest of justice that the Original Application filed by the Applicant before this Hon'ble Tribunal may be dismissed.

Therefore, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to dismiss the Original Application filed by the Applicant in the interest of justice.

Place : Lucknow  
Dated : FEB 1993

  
(ASIT KUMAR CHATURVEDI)  
Advocate  
COUNSEL FOR APPLICANTS/RESPONDENTS

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL,  
LUCKNOW BENCH, LUCKNOW.

ORIGINAL APPLICATION No. 50 OF 1989

MUNESHWAR DAYAL MISHRA ... APPLICANTS  
VERSUS  
UNION OF INDIA & OTHERS ... RESPONDENTS

COUNTER REPLY  
ON BEHALF OF THE RESPONDENTS

I, P. K. Agarwal, aged about 36 years,  
S/o Sri K. K. Agarwal R/o E. A. V. N. Masg  
Banda via Bagh Lko.  
state as under:-

1. That the Deponent is presently working as Dy. Chief Mechanical Engineer (W), Carriage & Wagons Shops, Northern Railway, Alambagh, Lucknow, - Respondent No. 3 - and is competent to file Counter Reply on behalf of the Respondents and as such, is fully conversant with the facts and circumstances of the Case. The Deponent has read and understood the contents of the Original Application and states hereinafter.

  
Dy. Chief Mech. Engineer (w)  
C & W Shops AMV Lko.

16

2. That the contents of Paragraphs 1, 2, 3 & 4 of the Original Application need no comments.

3. That in reply to the contents of Paragraphs 5(a) & 5(b) of the Original Application it is stated that the Applicant submitted the Application dated nil disclosing therein his Bio-data and he declared in his Application that he has passed Class IX from the D.A.V. Inter College, Lucknow and has knowledge of Hindi, English and Sanskrit. The Applicant attached the Educational Certificate dated 13.08.1976 of Class IX passed, obtained from the D.A.V. Inter College, Lucknow with Scholar Register No. 9583. According to the Certificate the Applicant was shown as Class IX passed in the year 1966-67 and his date of birth was shown as 11th August 1953. The Applicant was engaged on the basis of his qualification contained in the Educational Transfer Certificate dated 13th August 1976 and the other criteria as Canteen Manager on a pay of Rs.205/= per month in the Grade of Rs.205 - 430 (RS) purely as an adhoc, interim measure w.e.f. 14th January 1978 through Appointment Order dated 13th January 1978. However, at that time the Staff of the Canteen were not treated as Railway employees. A copy of the Application submitted alongwith the Transfer

  
Dy. Chief Engineer (W)  
C & W Shops AMV Lko.

Certificate by the Applicant is being annexed as ANNEXURE No. C-1 to this Counter Reply.

4. That in reply to the contents of Paragraph 5(c) of the Original Application, it is stated that the Applicant's Grade of Rs.205 - 430 was revised to Rs.300 - 500 w.e.f. 01st October 1979.

5. That the contents of Paragraph 5(d) of the Original Application are denied. The Applicant engagement was made on 14th January 1978. However, the Applicant was treated as a Railway Employee w.e.f. 22nd October 1980 in terms of the Railway Board's letter dated 22nd May 1981 because prior to 22nd October 1990 all the staff of the Canteen were not Railway Employees and the salary of the staff was paid out of the Canteen Fund, which was later on reimbursed by the Railways. The Pay Scale of the Canteen Manager was further revised to Rs.330 - 480 in terms of the Railway Board's letter dated 11th March 1982.

6. That the contents of Paragraph 5(e) of the Original Application are denied. The Applicant was awarded so many punishments for non-

*P. Appand*  
17/2  
Dy. Chief Mech. Eng. (w)  
C & W Shops AMV Lko.

performing proper duties and also for disobeying the instructions of the Canteen Secretary.

7. That the contents of Paragraph 5(f) of the Original Application are denied. It is submitted that in the year <sup>1985,</sup> a letter / complaint was received in which it was mentioned that the Applicant has obtained the employment as Canteen Manager by submitting a false educational certificate as the Applicant has studied in no School. <sup>(Copy enclosed with O.A.)</sup> On receipt of the letter, the Labour Welfare Inspector was deputed to inquire in the matter and get the Certificate verified from the Principal, D.A.V. Inter College, Lucknow. The Principal, D.A.V. Inter College, Lucknow reiterated through letter dated 30th October 1985, that the Scholar Register No. 9583 alleged to be the Scholar Register No. of the Applicant's Certificate of his College has the name of Mohd. Yahiya S/o Tafazzul Husain R/o Alambagh, Lucknow and the Certificate of the Applicant is originally a forged one. Thus, the Certificate submitted by the Applicant was found to be false and a false one. The Applicant was served with a major penalty Charge Sheet dated 13th December 1985.

*P. Agrawal*  
15/11/85  
A copy of the Charge Sheet dated 13th December 1985, <sup>without its annexures</sup> is being annexed as ANNEXURE No. C-2 to  
Dy. Chief Mechanical Engineer (w)  
G & W Shops AMV Lko.

108

this Counter Reply.

8. That the contents of Paragraph 5(g) of the Original Application are denied. It is stated that the Applicant submitted his Explanation on 10th January 1986 (Annexure No. 2 to the Original Application) and alleged that he did not submit the Transfer Certificate dated 13th August 1976 of D.A.V. Inter College, Lucknow and submitted a photocopy of the another Transfer Certificate from M.K.S.D. Inter College, Paper Mill Colony, Nishatganj, Lucknow and stated that this second Certificate was the Certificate which was submitted by the Applicant at the time of his engagement. Keeping in view the Applicant's Reply, it was inquired and verified from M.K.S.D. Inter College, Paper Mill Colony, Nishatganj, Lucknow and the Principal reported that Shri Muneshwar Dayal S/o Shri Ashwasthama never studied in his College and cancelled the said Transfer Certificate alleged to be issued on 04th January 1986 through letter dated 06th February 1986. Thus on verification this second Transfer Certificate was also found to be false and forged one. A copy of the Principal, D.A.V. Inter College Lucknow letter dated 30th October 1985, M.K.S.D. Inter College, Paper Mill Colony, Nishatganj,

*P. Agrawal*  
15/2  
Dy. Chief Mech. Engineer (w)  
G & W Shops AMV Lko.

1/108

Lucknow Transfer Certificate dated 04th January 1986 and the Principal, M.K.S.D. Inter College, Lucknow letter dated 06th February 1986 are being enclosed as ANNEXURES Nos. C-3, C-4 & C-5 to this Counter Reply.

9. That the contents of Paragraph 5(h) of the Original Application are denied. It is stated that the Applicant was asked to produce the Original Transfer Certificate and other information as mentioned in the letter dated 01st February 1986 (Annexure No. 3 to the Original Application). Further, on verification it was found that the second Transfer Certificate of M.K.S.D. Inter College, Paper Mill Colony, Nishatganj, Lucknow is also a false and and forged one.

10. That the contents of Paragraph 5(i) of the Original Application are denied. The Applicant has not submitted any Application dated 02nd June 1986 (Annexure No. 4 & 5 to the Original Application). As such, the Applicant may be put to strict proof about the Application dated 02nd June 1986.

11. That the contents of Paragraph 5(j) of the Original Application are denied. It is stated  
*P. Prasad*  
*1/1/2*  
By. Chci Mech. Engineer (w)  
C & W Shops AMV Lko.

a fresh Charge Sheet dated 22nd October 1986 (Annexure No. 6 to the Original Application) was issued to the Applicant and the Departmental Proceedings were initiated against the Applicant under the Discipline and Appeals Rules.

12. That the contents of Paragraph 5(k) of the Original Application are denied. It is stated that the Charge Sheet dated 13th December 1985 (Annexure No. 2 to the ~~Original Application~~ Counter Reply) issued earlier was withdrawn in view of the Reply dated 10th January 1986 submitted by the Applicant and a fresh Charge Sheet was issued on 22nd October 1986 keeping in view the letter of the Principal, M.K.S.D. Inter College, Nishatganj, Lucknow dated 06th February 1986 (Annexure No. C-5 to this Counter Reply).

13. That the contents of Paragraphs 5(l) & 5(m) of the Original Application are denied.

14. That the contents of Paragraphs 5(n) & 5(o) of the Original Application are denied. It is stated that the Applicant failed to submit his Reply hence, an Inquiry Officer was nominated by the Disciplinary Authority. The Applicant gave a letter dated 12th December 1986 for giving the name of the Defence Counsel till

*Agarwal*  
Dy. Chief Mech. Engineer (w)  
G & W Shops AMV Lko.

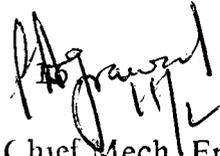
16th December 1986 and he again submitted a letter dated 24th December 1986 for submitting the proper authorisation, which was done by the Applicant on 06th January 1987. The Inquiry Officer issued the letter dated 12th January 1987 for fixing the date of the Inquiry on 20th January 1987 but nobody turned up. Hence, he again issued a letter dated 22nd January 1987 to the Applicant for attending the Inquiry at 11.30 hours on 28th January 1987 alongwith his Defence Counsel. The date of 28th January 1987 was further extended to 10th February 1987 vide letter dated 05th February 1987 and then to 11th March 1987 vide letter dated 04th March 1987. Another letter was issued for the Inquiry Proceedings on 18th March 1987 but on 18th March 1987 the Defence Counsel did not turn up. Hence, a date was again fixed for 19th March 1987 but on that date the Applicant only was present. In addition to these, several letters were also issued to the Applicant for attending the Inquiry, by the Inquiry Officer but the Applicant did not avail the same.

15. That the contents of Paragraph 5(p) of the Original Application are denied. It is stated that the Applicant only gave one name i.e. of Shri Karuna Shanker Shukla as his Defence

*P. Agrawal*  
 Dy. Chief Mech. Engineer (w)  
 C & W Shops AMV Lko.

A

Counsel through letter dated 16th December 1986. Since neither there was any consent of the Defence Counsel - Shri Shukla, nor the necessary declaration of the Defence Counsel, hence, the Applicant was advised to send the consent of the Defence Counsel and the declaration to this effect that Shri Shukla has not got more than three Cases including the Case of the Applicant - Mr. Muneshwar Dayal Mishra, in which he is acting as the Defence Helper / Counsel. the Applicant did not submit the required information. A notice was also issued by the Inquiry Officer to the Applicant on 24th December 1986, stating there that three letter have been given to him for arranging for the required information but he had not submitted the same. However, the Applicant on 06th January 1987 submitted the required information which was accepted by the Inquiry Office and the Inquiry Officer then allowed Shri Karuna Shanker Shukla to act as the Defence Helper/Counsel of the Applicant ~~on~~ and the next date was fixed for 20th January 1987. However, the Applicant and his Defence Helper were not regular in attending the Inquiry. The Applicant resorted to delaying tactics deliberately and also deliberately evaded from attending the Inquiry.

 That th contents of Paragraph 5(q) of the  
By. Chief Mech. Engineer (w)  
G & W Shops AMV Lko.

Original Application are denied. The Applicant never asked for documents/papers during the course of the Inquiry. The Applicant, for the first time, is alleging to have demanded documents in the para under reply. The charges levelled against the Applicant was for submission of forged / bogus Transfer Certificate at the time of his engagement and of submitting another false Transfer Certificate alongwith his reply / explanation dated 10th January 1986. An Employment Notice was issued to the Regional Employment Officer, Lucknow through letter dated 02nd June 1976 stating therein that the names of at least three candidates for selection, may be sent latest by the 30th June 1976 and they should at least be High School and should possess catering experience. However, only one candidate turned-up, who also later on declined to accept the job of Canteen Manager. As such, again a reference was made to the Regional Employment Officer, Lucknow through letter dated 05th October 1977 and later on a Reminder was also sent on 09th December 1977. The Regional Employment Officer, Lucknow again sent three names through letter dated 16th December 1977. One Application was directly received from the Applicant, Shri Muneshwar Dayal Mishra. As such, the three candidates sponsored by the

*P. Agrawal*  
 1/12  
 Dy. Chief Mech. Engineer (w)  
 G & W Shops AMV Lko.

Regional Employment Officer, Lucknow through letter dated 16th December 1977 and the Applicant was called for the selection on 02nd January 1978. The date of the selection was, however, extended to 03rd January 1978, and on the basis of the recommendation of the Members of the Managing Committee, out of the candidates, the Applicant was engaged as Canteen Manager. The Secretary of the Canteen was the Executive Officer and had full powers to make appointment in the Canteen and also to take disciplinary action, till the Canteen employees were not declared as employees of the Railways.

- 17. That the contents of Paragraph 5(r) of the Original Application are denied. The Applicant relied upon the documents which have already been supplied and has demanded no other documents. The Applicant had submitted his Transfer Certificate issued on 13th August 1976 by the Principal, D.A.V. Inter College, Lucknow alongwith the Application seeking employment for the post of Canteen Manager, which was found forged and false. The Memorandum of Charges was issued on 22nd October 1986 (Annexure No. 7 to the Original Application) on the falsehood of both the Transfer Certificates. Departmental Proceedings were initiated under the

*P. Agrawal*  
17/2  
Dy. Chief Mech. Engineer (w)  
G & W Shops AMV Lko.

Discipline & Appeals Rules, and after holding proper Inquiry, the Applicant was removed from Service w.e.f. 12th May 1988. The Applicant has filed a Regular Suit No. 123 of 1987 in the nature of a declaratory suit, which is pending in the Court of the IInd Additional Civil Judge, Lucknow against the Answering Respondent and the Principal, M.K.S.D. Inter College, Nishatganj, Lucknow. The Written Statement has been filed on 12th April 1989 rebutting the claim of the Applicant.

18. That the contents of Paragraph 5(s) of the Original Application are denied. It is stated that the Inquiry Officer offered full opportunity to the Applicant and provided all the facilities to the Applicant. The conduct of the Inquiry and the Inquiry Proceedings were delayed through dilatory tactics adopted by the Applicant. The Inquiry Officer has adjourned or postponed the Inquiry Proceedings on the request of the Applicant or his Defence Helper/Counsel on all other dates except on 14th May 1987.

19. That the contents of Paragraph 5(t) of the Original Application are denied. The Transfer Certificate issued by the Principal, M.K.S.D. Inter College, Nishatganj, Lucknow, is a forged document as such only the Applicant

*P. Agrawal*  
10/1/89  
Sd/-  
Chief Mech. Engineer (w)  
G & W Shops AMV Lko.

filed Regular Suit No. 123 of 1987 for declaratory decree that the said Certificate is genuine and proper. Till date no such declaration has been made by the Competent Court.

20. That the contents of Paragraph 5(u) of the Original Application are denied. It is stated that it was not at all necessary for the Disciplinary Authority to wait for the declaration from the Competent Court on the Transfer Certificate purported to be issued by the Principal, M.K.S.D. Inter College, Nishatganj, Lucknow.

21. That the contents of Paragraph 5(v) of the Original Application are denied. It is stated that the Principal, M.K.S.D. Inter College, Lucknow, on verification gave his Report that the Transfer Certificate was inadvertently issued as the Applicant had never studied in his College and cancelled the said Certificate through his letter dated 06th February 1986.

22. That the contents of Paragraph 5(w) of the Original Application are denied. It is stated that the Principal, M.K.S.D. Inter College, Lucknow never admitted the genuineness of the Transfer Certificate; but has only stated that the alleged Transfer Certificate was issued inadvertently. The Applicant was given fully

*M. J. J. J.*  
Jy. Chief Mech. Engineer (w)  
G & W Shops AMV Lko.

A  
116

opportunity to defend his Case during the Departmental Inquiry but he did not bother to defend himself and indulged in dilatory tactics and the Inquiry Officer had to finalise the Departmental Inquiry Ex-Parte. A very lenient view was taken against the Applicant and a criminal case was not initiated against the Applicant under Section 420 I.P.C. before the Competent Court of Law for submitting the forged Transfer Certificate at the time of his engagement as well as the second false Transfer Certificate alongwith his Reply dated 10th January 1986.

23. That the contents of Paragraph 5(x) of the Original Application are denied. It is stated that the Applicant's services were deemed to have been treated as under the Railways w.e.f. 22nd October 1980 and all the Canteen Staff have been treated as Railway Employees in terms of the Printed Serial No. 6519 of the Respondent No. 3 who has full powers to appoint all Class III and Class IV staff except in the Grades controlled by the Headquarter Office, subject to the terms and conditions prescribed from time to time. The Applicant preferred an Appeal to the Appellate Authority i.e. the Respondent No.2, and the Appellate Authority considered the Appeal of the Applicant and rejected it.

  
Uy. Chief Mech. Engneer (w)  
G & W Shops AMV Lko.

117

24. That the contents of Paragraphs 5(y) <sup>& 5(z)</sup> of the Original Application are denied. The Punishment Order dated 12th May 1988 is being misrepresented before this Hon'ble Court by the Applicant, so as to justify the false and bogus Transfer Certificates.

25. That the contents of Paragraph 5(aa) of the Original Application are denied. It is stated that the Applicants Appeal has been rejected by the Appellate Authority in the following manner :-

"a) The procedure laid in (D & A Rules 1968) has been complied with;

b) The findings of the disciplinary authority are warranted by the evidence on record;

c) The charge against Shri Muneshwar Dayal has been proved by the Enquiry Officer, who was not given co-operation by Shri M.D.Mishra. He has been correctly removed from service and there is no ground for cancellation or even reducing the punishment imposed by the Dy.C.M.E.(W)/Alambagh."

There is no provision for consideration of a second Appeal as <sup>such</sup> the Applicant's second Appeal was not forwarded to the Respondent No. 2.

26. That the grounds stated in paras A to L of the Original Application are not tenable in the eyes of law keeping in view the facts stated hereinabove.

Dy. Chief Mech. Enginecr (w)  
G & W Shops AMV Lko.

118

27. That the contents of Paragraph 6 of the Original Application are denied. The Applicant is not entitled for any relief. In the Original Application there is no Para No. 7.
28. That the contents of Paragraph 8 of the Original Application are denied. The Applicants are not entitled for any relief prayed in the para under reply.
29. That the contents of Paragraph 9 of the Original Application need no comments.
30. That the contents of Paragraph 10 of the Original Application are denied. It is stated that the Regular Suit No. 123 of 1987 is pending before the Competent Court of Law for declaration that the Transfer Certificate is genuine and proper. As such, it cannot be stated that no matter is pending in any other Court.
31. That the contents of Paragraphs 11, 12 & 13 of the Original Application need no comments.

Place : Lucknow

Dated : 15 FEB 1993



(DEPONENT)

Dy. Chief Mech. Engineer (w)  
G & W Shops AMV Lko.

V E R I F I C A T I O N

I, the Deponent above named, verify that the contents of Paragraphs 1 to 31 of above are true and correct to my knowledge derived from the parawise comments prepared earlier and the documents filed in the Court of the IInd Additional Civil Judge, Lucknow. The legal parts of the paras are based on legal advice received, which is believed by me to be true and correct.

Verified this, the 15<sup>th</sup> day of February, 1993 at Lucknow.

  
(DEPONENT)

Dy. Chief Mech. Engineer (w)  
C & W Shops AMV Lko.

6 20

1/20

To

The Dy. C.M.E. (w),  
C&W Shops, AMV, Lucknow.

Sir,

I have come to know that you require a suitable candidate for manning the post of Canteen Manager. I offer myself for the same post.

My qualifications are as under:

(1) That I have passed Class IX and have knowledge of Hindi, English & Sanskrit.

(2) I am conversant with the management and preparation of eatable.

I have never indulge myself in any activity & subversive of Law & order.

I am a young man of good physique and sound health.

Attested copy of educational certificate is enclosed.

I, therefore, request that I may kindly be given an opportunity to prove my work as Canteen Manager, N.Rly. Alambagh. I assure your honour I shall leave no stone unturned to prove worthy for the post with my hard labour and honesty.

Thanking you in anticipation.

Yours faithfully,

मुनेश्वर दयाल मिश्रा

(Muneshwar Dayal Misra)

S/O Sh. Aswasthama  
Chitta Khara, Aish Lgh,  
Lucknow.

Dated:

15/2

Dy Chief Mech. Engineer (w)  
C & W Shops AMV Lko.

D. A. V. COLLEGE, LUCKNOW

S. Register No. ....

स्कारलर रजिस्टर तथा टी० सी० फार्म  
Scholar's Register & Transfer Certificate

Scholar's Register: टी० सी० फार्म सं०

प्रवेश फाइल सं०

विद्युत् फाइल सं०

T. C. File No. 9583

Admission File No. ....

Withdrawal File No. ....

छात्र का नाम तथा धर्म Name of the Scholar with Caste if Hindu, otherwise religion		संरक्षक का नाम व्यवसाय तथा पता Name of occupation and address of parent or guardian		छात्र की जन्म तिथि Date of birth	अन्तिम संस्थान जहाँ कि विद्यार्थी ने इसके पहले शिक्षा पाई है। Private	
Muneshwar Dayal Misra (Hindu)		S/O Asvasthama Chitta Khera, Aish Bagh Lucknow.		11.8.53 Eleventh Ninteen	fifty three	
कक्षा	प्रवेश तिथि Date of Admission	उत्तीर्ण तिथि Date of Promotion	हटाय तिथि Date of Removal	अलग होने का कारण Cause of removal i. e. Nonpayment of dues removal of family, expulsion, etc.	वर्ष Year	चरित्र और कार्य Conduct and work
6 VI	10.7.63	20.5.64			63-64	Good, Good, Passed
7 VII	8.7.64	20.5.65			64.65	Good, Good, Passed
8 VIII	1.7.65	20.5.65			65.66	Good, Good, Passed
9 IX	1.7.66	20.5.67	30.6.67	Guardian's vill	66.67	Good, Good, Passed
10 X				sd/= illigible Principa D. A. V. Inter College LUCKNOW		
11 XI				sd/ illigible 13/8/78		
12 XII						

Dy. Chief Mch. Engineer (w)  
C & W Shops AMV Lko.

यह प्रमाणित किया जाता है कि उपरोक्त छात्र सेवा पत्रक शिवा विभाग के विद्यालयानुसार रवाना किया गया है।  
Certified that above Scholar's Register has been posted upto date scholars leaving as required by the Department Rules.

टिप्पणी : यदि छात्र कक्षा में प्रथम पांच छात्रों में जोयतानुसार हो तो कार्य कोष्ठ में विवरण दे देना चाहिए। कक्षा IX से कक्षा XII के बीच अगर विद्यार्थी संस्था छोड़ता है तो उसकी उपस्थिति भी इस आवेदन पत्र में अंकित कर देना चाहिए।

D. V. Educational Suppliers (Opp. Mchra Cinema) Aminsbad, Lucknow (Phone : 49829) Sd. M.S. Ghosh

उ०रे०/N.R

आरोप-पत्र का मानक फार्म

सामान्य 1.3/Genl. 188

STANDARD FORM OF CHARGESHEET

रेल सेवक (अनुशासन और अपील) नियम, 1968 का नियम 9
Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968

मानक फार्म सं० 5
Standard Form No. 5

सं०/No. 725... (30/12/68)

34... (रेल प्रशासन का नाम)
(Name of Railway Administration)
(निर्गम स्थान)
(Place of issue) dated 30/12/68

जापन
MEMORANDUM

राष्ट्रपति/रेलवे बोर्ड निम्नहस्ताक्षरी द्वारा रे०से० (अनु० और अ०) नियम, 1968 के नियम 9 के अंतर्गत श्री... के विरुद्ध जांच करने की प्रस्थापना की गई है।

The President/Railway Board/Undersigned propose(s) to hold an inquiry against Shri... under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The substance of the imputation of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed Statement of articles of charge (Annexure I).

2. श्री... को एलब द्वारा सूचित किया जाता है कि यदि वह चाहे तो इस जापन की प्राप्ति के पांच दिन के भीतर कार्यालय समय में किसी भी समय प्रलेख-सूची (अनुबंध 3) में बाणित प्रलेखों का निरीक्षण कर सकता है और इसके उद्धरण ले सकता है।

2. Shri... is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure III) at any time during office hours within five days of receipt of this memorandum.

3. श्री... को सूचित किया जाता है कि जांच के बाव में प्रश्नों में प्रलेखों को प्राप्त करने के लिये किया गया अनुरोध तब तक स्वीकार नहीं किया जायेगा जब तक उपर्युक्त विनिर्दिष्ट समय-सीमा के भीतर बिलम्ब से अनुरोध करने का पर्याप्त कारण न बताया जाय और उन परिस्थितियों से स्पष्ट रूप से वह प्रकट न हो जाये कि अनुरोध इसके पहले के प्रक्रम में नहीं किया जा सकता था।

3. Shri... is informed that request for access to documents made at later stages of the inquiry will not be entertained unless sufficient cause is shown for the delay in making the request within the time limit specified above and the circumstances shown clearly that the request could not have been made at an earlier stage.

4. श्री... को सूचित किया जाता है कि यदि वह चाहे तो शैक्षिक जांच होने की स्थिति में प्रलेखों का निरीक्षण करने तथा जांच अधिकारी के समक्ष अपना मामला प्रस्तुत करने में सहायता करने के लिए किसी अन्य रेल कर्मचारी, रेल व्यवसाय संघ के किसी पदाधिकारी (जो रेल सेवक (अनुशासन और अपील) नियम, 1968 के नियम 9 (9) और बर्ना-रिपोर्ट उनके टिप्पण 1 और/अथवा टिप्पण 2 को प्रपेक्षाओं को पूरा करते हैं) को तैयारता से सकता है।

4. Shri... is further informed that he may, if he so desires, take the assistance of any other railway servant/an official of a Railway Trade Union (who satisfies the requirements of Rule 9 (9) of the Railway Servants (Discipline and Appeal) Rules, 1968 and Note 1 and/or Note 2 thereunder as the case may be for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an oral inquiry being held.

Engineer (W)
C & W Shops AMV Lko.

ओ३म्

दूरमाष : १९१६४

# डी. ए. वी. इण्टर कालेज, लखनऊ

( आर्यसमाज लखनऊ द्वारा संचालित )

पत्रांक.....

दिनांक 30. 10. 1965

सेवा में,

उप यंत्रिक अधिपता

सवारो तथा मात लिब्बा कारखाना

आलमबाग, उत्तर रेल्वे ।

महोदय,

आपके पत्रके डी० सी०एम०ई/ ए०ओ० ए०एम०ई/ विभाग दिनांक 30-10-65 के संदर्भ में , प्रमाणित किया जाता है कि आप स्वतंत्र पंजीव संख्या 983 पर मोटरनद यानिया आलमबाग श्री तर्फदुक्त हुसैन निवासी, आलम बाग, लखनऊ जन्मतिथि 1-1-45 लीकत है।

अतः आप द्वारा यानिकत सूचना प्रेषित कर प्रमाणित करता हूँ कि मूलतः वाली है।

प्रमाणनामार्थ

*(Signature)*  
(मर्ता श शक्ति श्रुत)

प्रमाणपापार्य

डॉ. ए. पी. एल्लर जल्ले

*(Signature)*

*(Signature)*  
15/11  
Jy. Chief Mech. Engineer (w)  
C & W Shops AMV Lko.

Dub

7/2 नवीन नदी पत्रिका

एम. के. एस. डी. इण्टर कालेज, पपरमिल कालोनी, निशातगंज, लखनऊ

Annexure No. C-4

प्रवेशपत्र संख्या  
Admission File No.....

प्रत्याहरण संख्या  
Withdrawal File No.....

पर्याणपत्र संख्या  
Transfer Certificate File No.....

छात्र-लेखापत्रक-पर्याणपत्र

छात्र लेखा पंजिका संख्या 2493  
Scholar's Register.....

### Scholar's Register & Transfer Certificate

छात्र का नाम, जाति तथा धर्म <b>Muneshwar Dayal (Hindu)</b>	संरक्षक बयवा माता/पिता का नाम वृत्ति तथा पता <b>Sri Aswasthama Chittakhera Aishbagh Lucknow</b>	बन्तिम संख्या जिसमें पढ़ा हो <b>X</b>
छात्र की जन्म तिथि अंकों में <b>11-8-53</b> छात्र की जन्म तिथि शब्दों में <b>Eleventh Aug. Fifty, Three.</b>		

कक्षा Class	प्रवेश तिथि Date of Admission	कमोन्नति Date of Promotion	निष्कासन तिथि Date of Removal	निष्कासन का कारण जैसे शुल्क न देना, कुटुम्ब का स्थानान्तरण, निर्वासन इत्यादि Cause of removal e.g. non-payment of dues, removal of family, expulsion etc.	वर्ष Year	आचरण तथा कार्य Conduct and work
VI ६	१०-६-६४	२०-४-६४			६३-६४	Good, Passed S.I.V.S.S.
VII ७	२-६-६४	२०-४-६४			६४-६४	Good, Passed S.I.V.S.S.
VIII ८	१-६-६४	२०-४-६४			६४-६६	Good, Passed S.I.V.S.S.
IX ९	२-६-६४	२०-४-६४	१०-६-६४	Guardians with <b>TRUE COPY</b>	६६-६७	Good, Passed S.I.V.S.S.
X १०				<i>अज्ञान</i>		
XI ११				<i>वेपथु</i>		
XII १२				<i>अति हस्ताक्षर</i>		
Any other Class to be specified				<i>अज्ञान</i>		

यह प्रमाणित किया जाता है कि उपर्युक्त छात्र पत्रावली विभाग के नियमानुसार छात्र द्वारा संस्था त्याग के दिन तक के लिए अंकित है।  
Certified that the above Scholar's Register has been posted up to date of the Scholar's leaving as by the Departmental Rules.

- नोट-१ यदि छात्र कक्षा के प्रथम पांच छात्रों में बायताक्रम में हो तो यह बात "आचरण तथा कार्य" शीर्षक में लिखी जानी चाहिए।  
If the Scholar has been among the first five in the class, this fact should be mentioned in the column of "Conduct and work"
- २ जो छात्र कक्षा ६ से १२ में किसी कक्षा से संस्था त्याग कर रहे हैं तो उनकी उपस्थिति अर्थात् कक्षात्र अथवा स्कूल में कितनी मीटिंग हुई तथा कितनी में वह उपस्थिति पा/यो। इस पर्याण-पत्र में अंकित होनी चाहिए।  
In the case of Scholar's leaving any of the classes IX to XII, the attendance (total number of meetings and the number of meetings at which present) should be entered on the back of this form.

*[Signature]*  
Dy. Chief Mech. Engineer (W)  
C & W Shops AMV Ltd

दिनांक..... संस्थाध्यक्ष.....

श्री भाग

डिप्टी सी. एम. ई. (w)

सी. डब्लू शाप आलमवाड़ा

लखनऊ

A/195

विषय :- श्री मुनेश्वर पपाल पुग श्री अरवस्थाभा निवासी भिगा खेडा लखनऊ की टी. सी. सं. 2873 के विषय में।

महोदय,

उक्त टी. सी. संख्या आपकी फाइल नं.

725 ई/डी. सी. एम. ई. सं. 31-1-86

के विषय में शीघ्रतः पत्राचार है कि उक्त टी. सी. सं.

आर. सं. श्री मुनेश्वर पपाल पुग श्री अरवस्थाभा

निवासी खेडा लखनऊ के पत्र नं. दिनांक 4-1-86

को विद्यालय व्यापारालय लिपिक श्री सत्य प्रकाश

अवस्था द्वारा मूल रूप में बनायी गयी है जिसपर

श्री सत्य प्रकाश अवस्था द्वारा बनायी टी. सी. सं.

उक्त तला में इस्ताफर है यह टी. सी. लिपिक

श्री अवस्था के व्यवधानुसार रजिस्टर में लागे

गलत परिपत्र को जल्दी में न समझें जाने के

कारण बन गयी है। इसे गिरस्त किया जाता है उक्त

पत्राचार के इस विद्यालय में अभी शिक्षा नहीं पाई है।

आपको टी. सी. उक्त लिपिक ने बनाई है अभी नहीं

मिला है। परिपत्र के कारणों को जिनके आपका टी

टी. सी. बन गयी है उनके कारणों का पता लगाया जा

रहा है।

श्री मुनेश्वर

[Signature]

Jy. Chief Mech. Engineer (w) C & W Shops AMV Ltd.

उपरोक्त पत्राचार  
प्रमाणित किया गया  
यम सं. एम. ई. सं. 31-1-86  
केपर भिगा काशी, निवासी  
श्री मुनेश्वर

A  
126

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

ORIGINAL APPLICATION NO. 50 OF 1989

MUNESHWAR DAYAL MISHRA ... APPLICANT  
VERSUS  
UNION OF INDIA & OTHERS ... RESPONDENTS

REJOINDER REPLY TO THE COUNTER REPLY,  
FILED ON BEHALF OF THE RESPONDENTS

AT  
23/1/89

I, Muneshwar Dayal Mishra, aged about 39 years, son of Late Ashwasthama, resident of Mohalla Chittakhera, Aishbagh, Lucknow, do hereby state as under:-

1. That the deponent is applicant/petitioner himself in the above-noted case. He has <sup>been</sup> read over the contents of the counter reply, filed by the respondents and has been fully explained by his counsel, who has understood the same and in reply thereto, he deposes as under:-

2. That the contents of paras 1 and 2 of the counter reply need no comments.

3. That the contents of para 3 of the counter reply are denied as being incorrect and in reply thereto it is humbly stated that so far as an application of

Contd...2

.2.

the petitioner is concerned, it is true but the connected transfer certificate is not correct, because the petitioner has neither got his education in D.A.V. College nor he has submitted transfer certificate, which is annexed with the application. A bare perusal of the application, annexed with the counter reply as Annexure No.1, will also make it clear that it is nowhere mentioned in the application that he was a student of D.A.V.College. In this regard, it is also to be noted that the petitioner was appointed on 14th January, 1978, which will borne out by the Annexure No.VI to the original application and which was duly accepted by the respondents. It is further to be noted that the date, mentioned in the counter reply as 13.08.1976 is also not correct, because the date, mentioned in the attached educational certificate, is 13.08.1978, meaning thereby that it is after eight months of the appointment and at this stage, it cannot be accepted that the petitioner has submitted his educational certificate after eight months of his appointment.

4. That the contents of para 4 of the counter reply do not ask for any comments.

5. That the contents of para 5 of the counter reply are not corrected, as stated, hence denied and in reply thereto the contents of para 5(d) of the original application are reiterated as true and correct statement of facts.

गौरव तारा शर्मा

TC  
A

By  
T/S

3.

<sup>a</sup> Para <sup>n</sup>

6. That the contents of <sup>a</sup> 6 of the counter reply are not correct, as stated, hence denied and in reply thereto the contents of para 5(e) of the original application are reiterated as true and correct. It is further to submit that before issuing the charge-sheet dated 22.10.1986, the petitioner has never been informed or communicated even a single adverse remark as well as adverse entry. Apart from this, his performance was always appreciated.

7. That the contents of para 7 of the counter reply are also not correct, as stated and, as such, are denied. In reply thereto, the contents of para 5(F) of the original application are correct and are being reaffirmed. It is further to submit that the charge-sheet dated 13.12.1985 was cancelled by the respondents itself and he has issued another charge-sheet on 22.10.1986. So far as explanation of Principal of D.A.V. College is concerned that is also needless to reply because the petitioner has never got education in the D.A.V. College, hence the correctness of the certificate does not arise. It was the game of some annoyed persons, who do not want to see the petitioner as Canteen Manager and on the basis of which, they were succeeded in their game and the petitioner issued suffering from pillar to post in no fault on his own part.

ॐ नमो भगवते वासुदेवाय

TC  
[Signature]

8. That the contents of para 8 of the counter reply are not corrected, as stated and, as such, are denied. In reply thereto the contents of para 5(g) of the original application are correct and are being reiterated. It is further to submit that which certificate has been

1/2/77

submitted by the petitioner was issued by the Principal, M.K.S.D. Inter College was a genuine one, but when he has sent contrary explanation, then the petitioner has filed Regular Suit No. 123 of 1987- Muneshwar Dayal Versus Shri Uma Shanker Shukla and others before the Civil Judge, Lucknow for declaration of the genuineness of the certificate, issued by the Principal, M.K.S.D. Inter College, Paper Mill Colony, Nishatganj, Lucknow, which is pending till date. In that case the Principal, M.K.S.D. Inter College has filed his written statement, in which in para 2 he has accepted that there was one student namely Muneshwar Dayal, which could be examined by the Annexure No.XII of the original application itself. It is further submitted that once the suit has been filed and the matter is pending for adjudication, then on what basis the petitioner's services have been terminated without the verdict of the court as well as without providing an opportunity of hearing to the petitioner.

9. That the contents of para 9 of the counter reply are also not correct, as stated, and, as such, are denied and in reply thereto the contents of para 5(H) of the original application are reiterated as true and correct statement of facts and it may be deemed as reply on the basis of preceeding paragraphs.

अनुसूचित जाति

TC

10. That the contents of para 10 of the counter reply are incorrect, as stated and hence denied and in reply thereto, the contents of para 5(I) of the

.5.

original application are reiterated as true and correct statement of facts. So far as the strict proof of Annexure Nos. 4 and 5 are concerned, there is no need, because, it is duly accepted by the Respondent and in response thereto, he has clarified that his order dated 22.10.1986, which has already been annexed with the original application as Annexure No. VI.

4

11. That the contents of paras 11 and 12 of the counter reply are incorrect, as stated, and, as such, are vehemently denied and in reply thereto the contents of paras 5(J) (K) are reiterated as true and correct. Rest of the contents of para under reply have been already replied in the preceeding paragraphs hereof.

12. That the contents of para 13 of the counter reply are denied in in reply thereto, the contents of paras 5(L) & (M) of the original application are reiterated.

4

13, That the contents of para 14 of the counter reply are not correct as stated and hence denied and in reply thereto the contents of paras 5(N) and 5(O) of the original application are reiterated as true and correct statement of facts. It is further to submit that after filing the regular suit for declaration of genuineness of the certificate and getting the interim order, it was incumbent upon the respondent to stay the proceeding till the disposal of the dispute but without awaiting the verdict of the court and without affording any proper opportunity and supplying of the papers, which are mentioned in the charge-sheet,

30/10/86

TC

1987

the respondent has passed order of termination of the petitioner from service, though it was requested by the petitioner to stay the departmental enquiry till the decision of the case, vide his application dated 2.6.1987, already annexed with the original application as Annexure No.11.

11

14. That the contents of para 15 of the counter reply are incorrect as stated, hence denied and in reply thereto the contents of para 5(P) of the original application are reiterated as true and correct statement of facts. It is also deemed to have been replied on the basis of the preceeding paragraphs hereof.

15. That the contents of para 16 of the counter reply are incorrect, as stated, as such, are denied and in reply thereto the contents of paragraph No. 5(Q) of the original application are reiterated as true and correct statement of facts. It is also deemed to have been replied on the basis of the preceeding paragraphs hereof. So far as the employment notice is concerned, it has not been filed with this counter reply.

11

16. That the contents of para 17 of the counter reply are incorrect and hence denied and ~~in~~ in reply thereto, the contents of para 5(R) of the original application are reiterated as true and correct. Rest of the contents of para, under reply, may be deemed to have been replied on the basis of the foregoing paras hereof.

जागरूकता

TC  
[Signature]

17. That the contents of para 18 of the counter reply are incorrect, as stated and hence denied and reply thereto the contents of para 5(S) of the original application are reiterated as true and correct statement of facts.

□

18. That the contents of para 19 of the counter reply are also incorrect, as stated, hence denied and in reply thereto the contents of para 5(T) of the original application are reaffirmed as true and correct. It is further submitted that when the regular suit is pending for declaration of the correctness of the documents before the competent court of law, it was incumbent upon the respondent to with-hold the departmental enquiry till the disposal of the suit.

□

19. That the contents of paras 20, 21 and 22 of the counter reply are also incorrect, as stated, hence denied and in reply thereto the contents of para 5(U), (V), and (W) of the original application are correct and are reiterated as true and correct. It is also deemed to have been replied on the basis of the foregoing paragraphs hereof. It is also to be noted that what has been done in the case of the petitioner, it was totally arbitrary, illegal and also against the constitutional mandate and also against the principles of natural justice and also against the law, declared by the Hon'ble Supreme Court, reported in (1988) 4 SCC page 319 (Kusheshwar Dubey Versus Bharat Cooking Coal Ltd.).

गणेश गणेश गणेश

TC

X/23

20. That the contents of paras 23 and 24 of the counter reply are incorrect, as stated, hence denied and in reply thereto the contents of para 5(X), (Y) and (Z) of the original application are reiterated as true and correct statement of facts.

D

21. That the contents of para 25 of the counter reply are incorrect, as stated, hence denied and in reply thereto the contents of para 5 (AA) of the original application are reiterated as true and correct statement of facts. It is also submitted that the appellate order, which has been passed by the respondent has also been challenged in the original application, which could be bitterly required during the course of argument.

22. That the contents of paras 26, 27, 28, 29, 30 and 31 of the counter reply are also incorrect and devoid even an iota of truth and, as such, are emphatically denied in toto. In reply thereto, the contents of paras 6 to 13 of the original application are reiterated as true and correct.

D

The grounds, taken by the petitioner in the original application, are also tenable in the eye of law and the relief, sought for, by the petitioner, is also genuine and sustainable. The original application deserves to be allowed with costs with consequential benefits.

ATC

LUCKNOW

DATED: 30.3.93

श्री २५ (१११) ११११

PETITIONER

Contd...9

A/134

VERIFICATION

□

I, the above-named deponent, do hereby verify that the contents of paras 1 to 22 of this rejoinder reply are true to my own knowledge, The legal parts of the paras are based on legal advice received, which are believed by me to be true and correct.

Verified and signed this 30 day of March, 1993 within the Collectorate compound at Lucknow.

Lucknow

Dated: 30.3.93

जयदेव झा  
PETITIONER

जयदेव झा

Tom C...  
A. K. ...

□

Lucknow Bench  
Date of Filing 11/9/96  
Date of Receipt by Post  
Dr. Dattatraya (P)

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

MISC. PETITION NO. 1918 OF 1996

UNION OF INDIA & ORS. .... APPLICANT/RESPONDENTS

IN RE:

ORIGINAL APPLICATION NO. 50 of 1989

MUNESHWER DAYAL MISHRA .... APPLICANT

VS.

UNION OF INDIA & ORS. .... RESPONDENTS

--:0:--

APPLICATION FOR TAKING SUPPLEMENTARY COUNTER REPLY  
ON RECORD OF THE HON'BLE TRIBUNAL

The Applicant/Respondents most respectfully  
states as under:

1. That in view of the facts and submissions stated in the Supplementary Rejoinder Affidavit, it is essential in the interest of justice to file Supplementary Counter Reply stating correct facts before this Hon'ble court. As such Supplementary Counter Reply has been prepared and is being filed herewith.
2. Therefore, it is most humbly prayed that this Hon'ble Court may be graciously pleased to take Supplementary Counter Reply on record of the Hon'ble Tribunal in the interest of justice.

*Asit Kumar Chaturvedi*

(ASIT KUMAR CHATURVEDI)

COUNSEL FOR THE APPLICANT/RESPONDENTS

Place : Lucknow

Date : *11-9-96*

*AF-119/96  
at 2-30 PM  
Sonia 11*

11-9-96  
Date of Receipt by  
Dr. Registrar

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW

MISC. PETITION NO. 1918 OF 1996

UNION OF INDIA & ORS. .... APPLICANTS/RESPONDENT

IN RE:

ORIGINAL APPLICATION NO. 50 OF 1989

MUNESHWER DAYAL MISHRA .... APPLICANT

VS.

UNION OF INDIA & ORS. .... RESPONDENTS

-:0:-

SUPPLEMENTARY COUNTER REPLY ON BEHALF OF THE RESPONDENTS

I, ASHOK KUMAR SINGH aged about 39 years, S/O Shri Teerath Raj Singh R/O V-1/A, old R.D.S.O. Colony, Manak Nagar, Lucknow states as under:

1. That the deponent is presently working as Deputy Chief Mechanical Engineer, Carriage & Wagon Shops, Northern Railway, Alambagh, Lucknow, Respondent No. 3 and is competent to file Supplementary Counter Reply on behalf of the respondents and as such is fully conversant

*[Signature]*  
13/8/96

Dr. Chief Exec. Officer (C.A.T.)  
Lucknow

136

::2::

Dr. D. D. D. D.

with the facts and circumstances of the case and states hereinafter.

2. That in the meeting of the Carriage & Wagon Canteen Committee held on 26th May, 1976, it was decided that the selection for the post of Canteen Manager should be made. A copy of the Minutes of the meeting dated 26th May, 1976 is being annexed as Annexure No. SR-1 to this Supplementary Counter Reply.
3. That through letter dated 2nd June, 1976, names were called from Employment Officer, Lucknow for the post of Canteen Manager in grade Rs. 205-420 of those candidates who are atleast High School and should possess catering experience. A copy of letter dated 2nd June, 1976 is being annexed as Annexure No. SR-2 to this Supplementary Counter Reply.
4. That through letter dated 23rd June, 1976, Regional Employment Officer, Lucknow sponsored



By. Chief Mech. Engineer (W)  
& W Shops AMV

::3::

Cy. Registrar (D)

names of three candidates S/Shri Kalyan Keshwerwani, Yogesh Malviya and Vishnu Dayal. A copy of letter dated 23rd June, 1976 along with the list is being annexed as Annexure No. SR-3 to this Supplementary Counter Reply. It is here pertinent to point out that Shri B.D.Saxena was then working as Canteen Manager and for regular selection, his name was sponsored by the Employment Exchange, Lucknow.

5. That in addition to the three candidates sponsored by the Employment Exchange Lucknow three more candidates applied directly i.e. S/Shri Ram Pragat Dubey, Prayag Narain Mishra and the applicant.
6. That through letter dated 5th February, 1977 five candidates were called for interview to be held on 21st February, 1977 including the applicant. Shri B.D.Saxena was not called for the interview since his age was at that time about 65 years. A copy

  
Sd/-  
Chief Mech. Engineer (w)  
C & W Shops AMV I

::4::

Cy. Register (1)

of the call letter sent to the applicant dated 5th February, 1977 is being annexed as Annexure No. SR-4 to this Supplementary Counter Reply. Similar letters were sent to other eligible candidates.

7. That on 21st February, 1977, the selection was postponed on account of non-availability of Shri V.B.Tewari and Shri Raja Ram and the next date fixed was 23rd February, 1977. A copy of letter dated 21st February, 1977 is being annexed as Annexure No. SR-5 to this Supplementary Counter Reply.

8. That despite selection, no appointment could be made and as such, again three more candidates were called from Employment Exchange, Lucknow through letter dated 5th October, 1977. A copy of letter dated 5th October, 1977 is being annexed as Annexure No. SR-6 to this Supplementary Counter Reply.

  
By. Chief Mech. Engineer (w)  
C & W Shops A.M.

A  
139

::5::

Dr. Registrar ( )

9. That no names were sponsored by the Employment Exchange Lucknow and as such reminder was sent to Employment Officer, Lucknow on 9th December, 1977. A copy of the letter dated 9th December, 1977 is being annexed as Annexure No. SR-8 to this Supplementary Counter Reply.
  
10. That through letter dated 16th December, 1977 candidates names of ~~xxxxxxxxxx~~ three more/were sponsored by the Employment Exchange, Lucknow for the post of Canteen Manager. A copy of letter dated 16th December, 1977 is being annexed as Annexure NO. SR-8 to this Supplementary Counter Reply.
  
11. That three candidates were called for interview to be held on 2nd January, 1978 through letter dated 29th December, 1977 including the applicant and Shri Om Prakash Nigam and Shri Dilip Kumar Shukla. A copy of letter dated 29th December, 1977 is being

  
13/12/77

Chief Mech. Engineer (w)  
& W Shops

A  
14/10

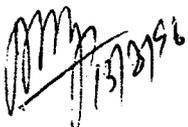
::6::

Dr. Registrar (D)

annexed as Annexure No. SR-9 to this  
Supplementary Counter Reply.

12. That on 22nd January, 1978 interview could not be held and the interview was scheduled to be fixed on 2nd January, 1978. A copy of letter dated 2nd January, 1978 is being annexed as Annexure No. SR-10 to this Supplementary Counter Reply. It is here pertinent to point out that Shri B.D.Saxena the then Manager resigned w.e.f. 2nd January, 1978 and the said resignation was accepted by the Canteen Committee in its meeting held on 3rd January, 1978. A copy of the Minutes dated 3rd January, 1978 is being annexed as Annexure No. SR-11 to this Supplementary Counter Reply.

13. That on 3rd January, 1978, the Members of the Managing Committee selected the applicant. A copy of the selection proceedings dated 3rd January, 1978 is being annexed as Annexure No. SR-12 to this



Chief Mech. Engineer (W)  
& W Shop

....7/-

::7::

Supplementary Counter Reply.

14. That the applicant thereafter, was appointed through appointment order dated 13th January, 1978.

15. That the service record and file No. 725 E/DCME/MD pertaining to the punishment order was sent to Shri Arjun Bhargwa, Railway Advocate along with the parawise comments for drafting of the Counter Reply. Later on Shri Arjun Bhargwa was depanelled from among the Railway Advocates and as such the case is allocated to Shri Asit Kumar Chaturvedi, Advocate. Accordingly, through letter dated 29th January, 1992, certain documents were sent to Shri Asit Kumar Chaturvedi and also a letter was written to Shri Arjun Bhargwa on 31st October, 1992 and 16th November, 1992 for service record and D&AR File. Service Record and D&AR File has not been available till date and it is said to be lost. A copy

 3/1/96

v. Chief Exec. Magistrate (W)  
B. W. Shepp...

::8::

Dy. Registrar (P)

of letter dated 29th January, 1992,  
31st October, 1992 and 16th November, 1992  
is being annexed as Annexure No. SR-13,  
SR-14 and SR-15 to this Supplementary  
Counter Reply.

16. That through printed SN. 7849, the employees  
of all statutory canteens were declared to  
be deemed to be Railway servant w.e.f.  
22nd October, 1980. A copy of the printed  
S.No. 7849 is being annexed as Annexure No.  
SR-16 to this Supplementary Counter Reply.
17. That the Rules were framed for the employees  
of the statutory canteens and circulated  
through letter dated 27th May, 1992 which  
includes the post of Manager Gr-III, Gr-II,  
Gr-I and Senior Manager. A copy of letter  
dated 27th May, 1992 is being annexed as  
Annexure No. SR-17 to this Supplementary  
Counter Reply.

  
13/8/92

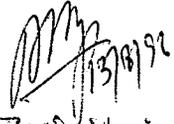
W. Chief Exec. Engineer (W)  
C & W Shops

File

::9::

No. Page(s) ( 1 )

18. That the qualification for the post of Manager Gr-III, grade Rs. 975-1540 is Matriculation or its equivalent and Diploma in Catering preferably. The applicant was initially appointed in the grade of Rs. 205-430 which was later on revised to Rs. 332-480 and thereafter to Rs. 1200-1900/-.



Mr. Chief Tech. Inspector (A)  
DEPONENT

Place : Lucknow

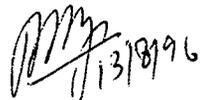
Date : 13-8-96

V E R I F I C A T I O N

I, the deponent above named do verify that the contents of paragraphs 1 to 18 made above are true and correct to my knowledge derived from information and records. The legal parts of the paras are based on legal advice received which is believed to be true and correct. No part of it is false and nothing material has been concealed in it.

Verified this 13-8-96 the \_\_\_\_\_ day of

\_\_\_\_\_, 1996 at Lucknow.



Mr. Chief Tech. Inspector (A)  
DEPONENT

OFFICE OF THE WORKS MANAGER/CEN SHOPS/AL... C.R.N.O.W.

MINUTES OF THE MEETING OF CEN CANTEN COMMITTEE HELD ON 26.5.1976 IN A.P.O. (W)'s ROOM.

Present:-

- |                        |     |                              |
|------------------------|-----|------------------------------|
| 1. Sri K.B. Srivastava | ... | P.E. (for Dy. CME (W)        |
| 2. " Harbans Singh     | ... | A.P.O. (W) - Vice President. |
| 3. " V.B. Trivedi      | ... | Clerk(A/Cs) - Member.        |
| 4. " Munshi Lal        | ... | T. No. 80E - Member.         |
| 5. " Ram Chandra       | ... | T. No. 833A - Member.        |
| 6. " Raja Ram.         | ... | T. No. 528C - Member.        |
| 7. " L.N. Bajpai       | ... | SWLI/AMV - Secretary.        |

*Laer*  
*3/5/76*  
*Sum*

ABSENT:

- |                    |     |                       |
|--------------------|-----|-----------------------|
| 1. Sri C.M. Bajpai | ... | T. No. 224B - Member. |
|--------------------|-----|-----------------------|

1) It was decided to appoint a qualified Manager as the present supervision of the Manager is not considered efficient and adequate. It was decided that the Employment Exchange may be approached to recommend the names of at least three men out of which selection will be made. There will be no age limit for the job and the Committee has agreed to pay in Scale Rs. 205-430 plus D.A. Rs. 50/-

2. There is a complaint regarding short supply of snacks. Dy. C.M.E. (W) has sanctioned four additional posts of Vendors and one post of Halwai. These posts may be operated. The Committee will fix a date and select men so that the efficient service is introduced. The Selection Committee will consider the appointments and this work must be completed within 10 days. The Canteen Committee will be the sole selection body.

2.1 On appointment of additional staff, it should be possible to arrange adequate supply of snacks and the quota for individual sub-shops must reach those shops and should not be sold out on way. It was also agreed to start 'Tray Service' and its cost will be 25 Paise for Single Tray and 50 Paise for Double Tray. This facility will be available only in Office Canteen on experimental basis and if went on satisfactorily, it will be made permanent. The Tray will be issued on a signed slip of Office Staff, SS/ASS or Canteen Committee Members who will send their own men to bring the tray. The slip will be surrendered on receipt back of the tray, etc., in case of any shortage, the same will be directly recovered from the signatories. The tray will consist of 2 cups, 1 tea-pot, Sugar Pot, Milk pot and one tea spoon for single and for double it will consist of 4 cups, 1 tea-pot, milk pot, Sugar pot and one tea spoon. The Secretary will arrange necessary equipments so that this service is introduced from 25th June, 1976.

3. There has been a complaint that the Vendors smoke while on duty. They should be warned that they should not smoke

*13/6/76*

Dy. Chief Clerk, Engineer (W)  
 G & V Shops AMV Eke.

Office of Wm CWS Shops Amv. Lko.

164

No DOME/1066/PT (1)

Date 2/11/76

Central Administrative Services  
Date of Receipt No. 8R-2

The employment officer, Annexure No. 2  
Lucknow.

Sub:- vacancy of Canteen Manager <sup>in</sup> Grade  
Rs. 205-10-255-EB. 12-50-280-15-420  
plus D.A. Rs. 50/-

There is a vacancy of Manager in above  
mentioned grade in the statutory canteen  
in CWS Shops Alambagh, Lucknow.

As regards educational qualifications,  
he should be at least high school and  
should possess catering experience. There  
is no age limit of the candidate.

you are requested to send at least  
three candidates for selection latest by  
30-6-76.

  
for Works Manager  
CWS Shops Amv.  
Lucknow.  
2/11/76

  
13/11/76  
by Chief Mech. Engineer (W)  
CWS Shops AMV Lko.

There has been a complaint that the Vendors smoke while  
They should be warned that they should not smoke

.....2





Administrative Tribunal  
Lucknow Bench  
Date of Filing  
Act of Receipt by Post

Annexure No. SR-5 232

No. Register 000

M.P.-1718/17 Jan. 1975 23000 P.

Form No. 10 of 1974  
Part 19 of 1974, Cont. 29, 30, 31

NORTHERN RAILWAY

No. DM/1500 dt. 21/12 1974.

From DM, Lucknow dt. 21/12 1974 To S/O, Lucknow

Subject: Selection of Candidates

Reference: Selection of Candidates

The above case has been  
given on 21/12/74 has been  
post posed for 23/12/74 due to  
absence of Mr. B. ... and  
in Royal Decree No 500E.

Please direct him  
to attend this office on 23/12/74  
at 11-00 to conduct the  
said selection.

AD  
Y. P. ...  
...  
...

MM  
13/1/75

...

3-76-1976 L. 19.  
Form 22, 1974 Genl. 22-Large  
Administrative Tribunal  
Locking Bench  
Date of Filing: \_\_\_\_\_  
Date of Receipt by Post: \_\_\_\_\_

उत्तर रेलवे/NORTHERN RAILWAY

उप मुख्य यांत्रिक इंजीनियर(कर्मन्नाला), कैरेज और वेमंड शापस, आलमबाग, लखनऊ

सं0डीसीएमई/1040/भाग-9

दिनांक: अक्टूबर 5 '77

देशीय बियोजन अधिकारी,  
आलमबाग, लखनऊ।

विषय: क्वॉटिंग मैकेजर की नियुक्ति।

संदर्भ: इस कार्यालय का समसंख्यक पत्र दिनांक 2-6-76।

इस कार्यालय के उपरोक्त पत्र के संदर्भ में आपके अपने कार्यालय के पत्र संख्या सी/343/76 दिनांक 23-6-76 द्वारा उ प्रत्याशियों के काम भेजे थे जिनमें से एक प्रत्यागी कार्यरत है। परन्तु उसकी सेवाएं असंतोषजनक हैं। श्रेण 2 प्रत्याशियों में से एक को इस पद पर आने की अपनी अक्षमता प्रकट की है तथा तीसरा उपस्थित नहीं हुआ।

उपरोक्त स्थिति को ध्यान में रखते हुए आप से पुनः अनुरोध किया जाता है कि कम से कम उ प्रत्याशियों के और काम शीघ्र ही इस कार्यालय को भेज दिए जाए।

उप मुख्य यांत्रिक इंजीनियर(कर्मन्नाला),  
आलमबाग, लखनऊ।

*[Handwritten signature]*

*[Handwritten signature]*  
13/10/76

Secy. (Chief Clerk), Engineer (W)  
Alam Bagh, Lucknow

उत्तर रेलवे  
Northern Railway

Central Administrative Tribunal,

कार्यालय उप मुख्य यांत्रिक इंजीनियर(कर्म०) आ लमबा म. लडा बऊ।  
पत्र सं० डी सी एमई/1066/भा। म-8

विभा. क्र: विद्युत: 216-76  
Date of Filing 77  
Date of Receipt by Post

इंजीनियरिंग विभाग अधिकारी,  
आ लमबा म. लडा बऊ।

विषय: डीटीए मेशेजर की विद्युतित।  
888

संदर्भ: इस कार्यालय का पत्र सं० डी सी एमई/1066/भा। म-8 दिनांक 216-76 और  
डी सी एमई/1040/भा। म-9 दिनांक 5-10-77।  
888

महोदय,

आपका 2 या 3 उपरोक्त पत्रों की ओर दिताया जाता है जिसमें आपसे अग्रोधा  
किया गया था कि डीटीए मेशेजर एक हेतु कम से कम उ प्रत्याशियों के हा म इस  
कार्यालय को पौड। ही प्रोजे का कट करें परंतु अभी तक किसी भी प्रत्याशी  
का नाम इस कार्यालय को प्राप्त नहीं हो सका है।

अतः आप से पुनः अग्रोधा किया जाता है कि पौड। तिथी का कम से कम उ  
प्रत्याशियों का नाम इस कार्यालय को प्रोजे का कट करें। इसे अति आवश्यक  
समझें।

आपकी व.

उप मुख्य यांत्रिक इंजीनियर(कर्मशा। ता.)  
आ लमबा म. लडा बऊ।

AC 2137  
7/12/77

By. Chief Mech. Engineer (wp)  
C & W Sheers AMV

उत्तर प्रदेश सरकार

प्रोवीडेंट सेवायोजना विभाग, 3050  
पुस्तक भवन

306  
286

21/12  
1068

General Administration Cell  
Lucknow Bench

क्रमांक - 50988

सेवायोजना

Date of Filing

Date of Receipt

21/12/68  
21/12/68  
प्रोवीडेंट सेवायोजना विभाग  
पुस्तक भवन  
लखनऊ

उपरोक्त कार्य संबंधी

(कमजोदा) आलम वरमा

परिचय

दिनांक 16-12-77

महोदय

SN 383

कृपया नमूने पर उरिया सी.सी. 2003/77 का कार्यालय नमूने  
1068/77-6 दिनांक 16-12-77 का कार्यालय नमूने  
परिचय दाना नमूने नमूने नमूने नमूने नमूने नमूने नमूने  
अभ्यायियों की सेवायोजना की है और साथ-  
ही आगे यह भी सूचित किया है कि आपकी  
पत्र संख्या सी.सी. 1068/77-6 दिनांक-  
2-6-76 को सी.सी. 1068/77-6 दिनांक-  
5-10-77 पर जोड़ना चाहिए नहीं  
है।

इस संदर्भ में कहा है कि आपकी  
पत्र-दिनांक 2-6-76 को संदर्भ में इस  
कार्यालय द्वारा उ अभ्यायियों को विवरण आपकी  
दिनांक 23-6-76 को मिलेगा यह और आपका  
पत्र दिनांक 5-10-77 इस कार्यालय में प्राप्त  
होना चाहिए।

By: Chief Secy. (Admin)  
G.S. Shops AMV Ltd.

प्रोवीडेंट सेवायोजना विभाग  
पुस्तक भवन  
लखनऊ  
संलग्न - सूची

आयुक्त उप मुख्य यंत्रिक इंजीनियर (अभियंता) आ (अभियंता) 1973  
Central Administration Cell  
Acknow Bench  
Date of Filing  
Date of Receipt by Post

सी.डी. सी.ई.ई./1088/आय.स

दिनांक: दिनांक 29 77

वि. सु. नं. 1088/आय.स/1973 पु. भ. 312-11-111

विषय: सनातन चंम गन्धर्व आदर्श नगर आश्रम नगर अजमेर

विषय: शिफ्टी गेजिंग का वषण।

आप उपरोक्त पत्र के वषण से सु. नं. 1088 के अन्तर्गत 1973 में प्रेषित की। इस वषण से आप वषण काय वि. नं. 1088 प्रेषित कर (सु. नं. 1088-)

- 1) शिफ्टी व. वषणी
- 2) इस कार्य के प्रवृत्त के व. वषण से।
- 3) प्रारण व. वषणी
- 4) आप के व. वषण से।

मु. नं. 1088/आय.स/1973 पु. भ. 312-11-111  
 उप मुख्य यंत्रिक इंजीनियर (अभियंता).  
 अजमेर. अजमेर.  
 29/7/77

31/8/96  
 Dy. Chief Mech. Engineer (A)  
 C & W Shops AMV I

Annexure No. SR-10

उत्तर रेलवे/NORTHERN RAILWAY  
कार्यालय उप मुख्य यंत्रणिक इंजीनियर आलम बाग  
लखनऊ

पं.सं. डी री एमडी/1066/काग-6

Date of Filing 2/1/78

Date of Receipt by Post

① श्री दिलीप कुमार शक्ल  
निवासी 125, नया हंसबाद, लखनऊ-226007

(2) श्री पुनश्चर दयालु मिश्र निवासी सतारवा  
मन्दिर आदिवासी नगर लखनऊ

विषय: कंटीन मंत्रालय का पत्र

आपको सूचित किया जाता है कि  
उक्त पत्र के पत्र हेतु 9/1/78 के स्थान  
पर कक्षा दिनांक 3/1/78 को 14 वजे  
उपरिष्ठित होगा है। आपके साथ में  
कह सूची प्रस्ताव पत्र साथ में लगे  
हैं जो इस कार्यालय के सम सार्वक  
पत्र दिनांक 29/12/77 में दशा में  
गये थे।

*[Handwritten signature]*

*[Handwritten signature]*  
उप मुख्य यंत्रणिक इंजीनियर  
आलम बाग  
लखनऊ

*[Handwritten signature]*  
13/1/78

By Chief Mech. Engineer (w)  
& W Sheps AMV

154

NORTHERN RAILWAY  
DY. C.M.E. (W)'S OFFICE  
CARRIAGE & COACHWORKERS  
ALAMBAGH, Lucknow Bench  
Dated 3.1.1978 of Filing  
Date of Receipt by Post

DCME/1066 B/12-1977

Minutes of the meeting of the Canteen Committee  
held in Dy. C.M.E. (W)'s Office, CEM Camps Alambagh,  
Lucknow on 20.12.1977.

Dy. Secy

Present:

1. Shri O.P. Gupta, Dy. CME(W) Ex Officio President.
2. Shri Mithal Lal, APO(W) Ex Officio Vice Presid.
3. Shri L.N. Baipal, SWI Ex Officio Secretary.
4. Shri Ramavadh Singh, 411 Member
5. Shri Raja Ram 5480 Member
6. Shri S.P. Singh Clerk Member
7. Shri Jeet Singh 2958 Member
8. Shri Raisul Hasan 5738 Member
9. Shri Sarjeet Singh (S) 28 Member.

Absent:

1. Shri K.P. Singh transferred to CB class.

The members of the Canteen Committee were introduced to the President. The undernoted items were discussed.

2. Appointment of Manager and Secretary.

The Manager Shri H.S. Saxena's resignation with effect from 1.1.78 was considered by the Committee and accepted unanimously. As regards the present Secretary Shri L.N. Baipal, it was decided that he should continue for the present in view of acceptance of Manager's resignation by the Committee. The new Manager should be recruited before 3.1.1978.

3. Purchase:

In order to ensure good quality of material being purchased for the Canteen, the President proposed that purchase should be made from the open market. The Committee welcomed this suggestion.

APC should contact the manager of the Super Market and find out if it was possible to get material in bulk quantities at lower rate. The procurement of the material should be arranged accordingly.

The President decided to write to District Supply Officer, Lucknow for the supply of Sugar, Taida etc. from Fair Price Shop.

Till such time the procurement arrangements from

*[Signature]*  
13/1/1978

398  
295

... ..  
... ..  
... ..  
... ..  
... ..

Super Market/Fair Price Shops is done, the purchases should be made twice a week by the Secretary i.e. once every Wednesday & Sunday. One of the member of the Purchase Committee should be associated by the Secretary in purchasing material for the Canteen.

4. Utensils:

It was brought to the notice of the President that the utensils of the Canteen are very old and worn out. It was pointed out by the Secretary that indents have already been sent to the ... .. vide No. CME's D.O. letter No. ICME/1006/P.D. dated 11.3.77. followed by reminders, but no supply has yet been received. The President desired that the ... .. papers should be put up to him, to chase supplies from Stores.

5. Kachcha Khana:

The members represented that there is a demand for supply of 'Kachcha Khana' during the meal hour and it should be introduced as early as possible. The Secretary pointed out that a budget demand for the provision of Rs. 5,000/- has been made for arranging supply of utensils required for the service of Kachcha Khana. The Budget allotment is expected to be received in the next month.

It was decided that Secretary should follow up and in the ... .. anticipated demand for Kachcha Khana should be assessed and proposals for extra staff required should be worked out. The staff ... .. should also be arranged and an ad hoc demand for Rs. 5,000/- be made.

6. Supply of enamelled Mugs to staff.

It was pointed out by the members that enamelled Mugs are being supplied at Jandhari. This should be ascertained and supply arranged in similar manner.

7. Inadequate number of glasses:

It was decided that adequate number of glasses should be arranged. ICW/Alamghar be asked to keep the running water available in Canteen throughout the working hours.

8. Repair of Phatti:

It was decided that one additional Phatti should be constructed by I.O.W. and he should get the broken Phatti repaired expeditiously.

... ..

*[Signature]*  
11/3/78/196

... ..  
... ..

395/1

Know Bench  
Date of Billing  
Date of Payment

9. Absorption of Canteen Staff in Workshop:

It was decided that the Canteen staff may be considered for appointment in terms of G.M.(P)'s letter No. 220-B/190-X(Eiv) dated 17.9.77.

The meeting adjourned with a vote of thanks to the chair.

*[Signature]*  
SECRETARY

Copy to all concerned.

*[Signature]*  
13/10/96

13/10/96  
13/10/96

Annexure No. SR-12

How Bench  
Date of Filing 29/7  
Date of Receipt by 29/7

हम मनेजिंग कमिटी के सदस्यों को राय है कि केंचरीन  
सेनेजर के पद हेतु श्री सुनशर दयाल का चयन किया  
जाये। इनको आयु २५ वर्ष है से ऊपर है और वह  
हवायी रूप से काम करेगा। हम मनेजी मॉति जानते  
हैं कि वह इमानदार पुराव है और केंचरीन के लिये  
अवका उपयुक्त है।

- (1) राजभवन  
द. नं 528/
- (2) राम प्रवध लिटि नं 499A
- (3) जाल सिव 2/2

*[Signature]*  
13/8/96

By. Chief Mech. Engineer (W)  
S & W Shops AMV Lke.

Central Administrative Tribunal,  
Lucknow Bench  
Date of Filing  
Date of Receipt by Post

उत्तर रेलवे  
NORTHERN RAILWAY

Office of the Dy C.M.E (W) / C.M.E. Shere/Amy/LKO

No. 30-E/DCME/Amy/CAT/Lil

Dated:- 27-1-92

Sri Asit Kumar Chaturvedi,  
Rty Advocate, Bashir Building,  
Pau Dariba, Lko.

Dear Sir,

Sub:- Reg. No. 50 of 1989(L) - Pending before C.A.T/LKO -  
Shri Muneshwar Dayal Vs. The Union of India & others.

As you are aware with this fact that this case was previously being contested by Sri Arjun Bhargava, ex R.A. and the D.A.R case with other files were given to him and the same are not traceable with him. However, some of the documents (photocopies) were filed in the case pending in the Court of ~~Chief~~ J. Addl. Civil Judge, Lko - R.S. No. 123 of 1987 - Sri Muneshwar Dayal Vs. Uma Shankar & Dy C.M.E (W). Now in order to file in the Honble C.A.T/LKO, 3 copies are sent herewith per bearing. Sri Anand Kumar, Deputy Assistant of this Office.

1. Application for appointment of Sri Muneshwar Dayal dt.
2. S.R.A.T.C. of D.A.V. College, Lko. dt. "
3. Letter of Mr. I. P. Bhatnagar dt. 17-8-85
4. Report of W.L.I. dt. 16-11-85.
5. Letter of Sri Ganesh Shankar Shukla, Principal, D.A.V. College, Lko. dt. 30-10-85.
6. S.F.S form No. 725E/DCME/MD dt. 13-12-85.
7. Explanation of Sri Muneshwar Dayal dt. 10-1-86
8. S.R.A.T.C. of M.K.S.D. Inter College, Paper M.U. Colony Nishatganj, Lko.
9. Representation of Sri Muneshwar Dayal Muzr dt. 22-86.
10. Report of Labour Welfare Inspector dt. 8-2-86
11. Reply/Letter dt. 6-2-86 of Principal, M.K.S.D. Inter College, Lko
12. S.F.S No. 725E/DCME/MD dt. 22-10-86 along with its Annexures

D A = As above.

Yours sincerely,

 13/1/92

Dy. Chief Mech. Engineer (W)  
C.M.E. Shere

To Dy. C.M.E (W) / Amy  
LKO

20/1/92

उत्तर रेलवे  
NORTHERN RAILWAY

Administrative  
Know Bench  
Date of Filing  
Date of Receipt

Office of the Dy. C.M.E (w)/C & W Sheps/AMV/

Dated :- 31-X-92

No. 30-E/DCME/Amv/CAT/Git

MOST URGENT

Shri Asit Kumar Chattervedi,  
Rly. Advocate, Basir Building,  
Jan Damba, Lucknow.

11  
F.F. 4/92

Dear Sir,

Sub:- O.A. No. 50 of 1989 - pending before the Central Govt.  
~~Industrial Tribunal~~ Administrative Tribunal,  
Lko. Shri Muneshwar Dayal Vs. The Union of  
India & others.

The above noted case was being contested by the  
ex R. A, Shri Arjun Bhargava, in the Court. Now he has  
showed his inability to conduct this case further,  
therefore, it is being entrusted to you to undertake  
the defence of the case on behalf of the Rly. Adminis-  
tration and for this purpose, a Power of Attorney duly  
signed by the Dy. C.M.E (w) of these works is sent  
herewith for filing before the Court. This case is now  
fixed for hearing on 4-11-92.

The ex R. A, Shri Arjun Bhargava is being asked to  
return the brief of the case either to this office or to  
you. you are also requested to kindly arrange to  
receive the brief alongwith S.R. & D.A. files from Shri  
Arjun Bhargava for drafting the detailed written  
reply.

This may kindly be treated as TOP MOST URGENT.  
Yours sincerely,  
D. A. As above

  
Dy. C.M.E (w) Amv

Copy to Shri Arjun Bhargava, ex Rly Advocate, 223/1, Faizabad  
Road, Nislatganj, Lko. for information with the request  
to kindly arrange to handover the brief of the case  
alongwith Service Record & D.A. files of the ex employees,  
Shri Muneshwar Dayal to Shri Asit Kumar Chattervedi  
much prior to the date fixed for hearing, so that the  
further action may kindly be taken in the administrative  
interest.

Chief Mech. Engineer (w)  
& W Sheps Lko

to Dy. C.M.E (w) Amv  
Lko

12332

Locknow Dept

Date of Filing

Date of Receipt

S.No. 143

उत्तर रेलवे

NORTHERN RAILWAY

Office of the Dy. C.M.E (w) | C & W Shops | Amv | LK

No. 30-E | DCME | Amv | CAT | Lt

Dated: -16-11-92

Sri Arjun Bahargawa, Advocate, 223/1, Faizabad Road, LUCKNOW.

MOST-URGENT COURT-CASE

Dear Sir,

Sub: - O.A. No. 50 of 1989 - Pending before the C.A.T./Lko. Muneshwar Dayal VS. The Union of Indicators

In continuation to this office letter of even no. dated 31-X-92, it is requested that the Service Record and DAAR files of the above-named Applicant may be handed over either to Sri Asit Kumar Chaturvedi, Rly. Advocate, or the Staff of these works, so that Office record may be maintained and the same may be produced before the Honorable Court on demand or as per requirements of the case. you are, therefore, requested to kindly look into the matter and do the needful in the administrative interest. With kind regards,

Yours Sincerely,

13/11/92

Dy. Chief Mech. Engineer (w) C & W Shops

(R.C. Sinastara) 16/11/92  
for Dy. C.M.E (w) Amv

Copy to Sri Asit Kumar Chaturvedi, Rly. Advocate, Baskin Building, Lau Dariba, Lko., with the request to kindly draft the counter affidavit on the basis of history of the case and parwise remarks as prepared vide this office letter No. PC/Munshwar dated 1-8-89.

3. In so far as the persons serving in the Indian Audit, and Accounts Department are concerned these orders have been issued after consultation with the Comptroller and Auditor General of India.

Date of Filing

P. S. No. 7849 No. 974-E/21-II Policy (EVI) Dated 25-6-1981

Sub.—Treatment of employees of Statutory Canteens as Railway servants.

A copy of Railway Board's letter No. E(W) 76CNI-6 dt 8-6-81 together with a copy of Rly. Board's letter No. E(W) 76 CNI-6 dt. 22-5-81 referred to therein is sent herewith for information/guidance and necessary action.

Copy of Railway Board's letter No. E(W)-76 CNI-6 dated 8-6-1981.

Sub.—Treatment of employees of statutory canteens as railway servants.

Consequent upon the judgement delivered by the Supreme Court on 22-10-1980 in Civil Appeal No. 368 of 1978 Union of India and others Vs. Jagra Rao and others and Civil Appeal No. of 1980 arising out of SLP No. 4132 of 1980 in the case of Railway Canteen Karamchari Association and others Vs. General Manager, Northern Railway and others-instructions were issued vide this office letter of even number dated 22-5-81 addressed to General Manager, S. E. Railway (copy enclosed) that employees of Kharagpur workshop statutory canteen of S E. Railway should be deemed to be Railway servants w.e.f. 22-10-80.

2. The Ministry of Railway have considered the matter further in the light of Supreme Court judgement, as referred to above, and it has been decided that employees of all other statutory canteens on the Railways irrespective of the type and management of the canteen should also be deemed to be railway servants w.e.f. 22-10-80. It has also been decided that till Government decides otherwise, the staff of these statutory canteens will continue to be governed by the conditions of service and emoluments as existed on 21-10-80.

3. Necessary action in this regard may be taken urgently.

4. Para 2 above has the sanction of the President and this issues with the concurrence of the Finance Directorate of the Ministry of Railways.

P. S. No. 7849, No. 974E/21/II Policy (EVI) Dated 3-7-1981.

Sub.—Treatment of employees of statutory canteens as Railway servants.

Further to this office letter of even No. dated 25-6-81, a copy of Rly. Board's letter No. F(W) 75 CN 1-6 dated 22-5-81 referred to therein is sent herewith for information guidance and necessary action.

By. Chief Secy. (W)

Copy of Railway Board's letter as referred to above.

Sub.—As Above.

Consequent upon the judgement delivered by the Supreme Court 22-10-80 in Civil Appeal No. 368 of 1978 and Union of India and others v. Jaggarao and others and Civil Appeal No. of 1980 arising out of SLP(C) 4132 of 1980 in the case of Railway Canteen Karamchhari Association v. others V/s General Manager, Northern Railway and others, the Ministry has decided that the employees of Kharagpur Workshop Statutory Canteen should be deemed to be railway servants with effect from 22-10-80. Government decides otherwise the staff of Kharagpur Workshop Statutory Canteen will continue to be governed by the conditions of service and emoluments as existed on 21-10-80.

2. Necessary action in this regard may be taken urgently.

3. Para 1 above has the sanction of the President and this issues with concurrence of the Finance Directorate of the Ministry of Railways.

4. The receipt of this letter may be acknowledged.

क्रम सं० 7850 सं० 220 ई/190-XII (ई-4). दिनांक 30-6-81.

विषय :—नैमित्तिक श्रमिक।

रेल मंत्रालय के पत्रांक ई(एन जी)II-77/सी एल/46 दिनांक 8-6-81 की प्रतिलिपि मार्ग दर्शन एवं आवश्यक कार्रवाई हेतु प्रेषित की जा रही है।

Copy of Railway Board's letter No. E(NG) II-77/CL/46 dated 8-6-1981

### SUB : CASUAL LABOUR

Various instructions have been issued from time to time regulating service conditions of casual labour. It was found necessary to consolidate various instructions issued by Board from time to time. The engagement of Casual Labour on the Railways, their absorption in regular Class IV posts, the entitlement and privileges admissible to them will be regulated as under.

#### A. Definition of Casual Labour

(A) Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is not recruited from the nearest available source. They are not ordinarily liable for transfer and the conditions applicable to permanent and temporary staff do not apply to casual labour.

(B) The casual labour on Railways should be employed only in the following types of cases :—

(i) Staff paid from months continuously : Staff for which they were engaged days without a break within days continuous employment days continuous service minimum of the appropriate giving regular scale of pay. Allowance on completion of case may be, a preliminary requisite number of days Officer.

(ii) Labour on projects other temporary or permanent required for new projects who have worked on the

(iii) Seasonal labour duration. : If such labour (e.g. relaying) and the total than 180 days duration, not 120 days continuous employment

Note (1) : The projects bridges, restoration of dis works like doubling, widening definite time limit. The consultation with the FA & C a "Project" or not. If the lighter Section of Rails by provision of additional de leading to an improvement irrespective of any financial renewals' or other "Through in the carrying capacity of Non of 'Project'.

Note (2) : Once any conditions indicated in continuous employment referred by the administrative temporary status.

Note (3) : Labour employed temporary shall not be employed for out of a regular nature.

COPY

RBE NO. 88 OF 1992

GOVERNMENT OF INDIA  
MINISTRY OF RAILWAYS  
(RAILWAY BOARD)

162

No. B(NG)II/90/RR-1/12

New Delhi, dt. 27.5.92

The General Managers (P),  
All Zonal Railways including  
CLW, DLW, ICF, W&AP,  
Metro Railway, Calcutta, RCF, Kapurthala,  
DG/RDSO, Lucknow,  
Principal, IRIS ET, Secunderabad  
CAO(R), DCW/Patiala  
Chairman, All Railway Recruitment Boards,

Encl. 1  
Date of Filing  
Date of Receipt by Post

CC, Registrar (D)

Sub:- Formation of recruitment rules for canteen employees (Statutory and Non-Statutory (Recognised) canteens on Railways/Production Units, etc.

.....

In Railway Board's letter No.E(W)/90/CN1-7(I) and (II) dated 18.5.1990 instructions were conveyed for treating as railway servants, the employees of statutory and Non-statutory canteen on various railways/Production units. These instructions had been issued pursuant to the judgement of the Supreme Court dated 27.2.90.

2. The question of formation of rules governing recruitment and promotions/in respect of various categories of canteen employees on the railways (statutory/non-statutory) is under consideration of the Ministry of Railways for sometime past. After taking all relevant factors into consideration, Ministry of Railways have decided that the above canteen employees, treated as railway servants, are to be governed by the following rules:-

- i) there should be common seniority for statutory and non-statutory (recognised) canteen employees taking each Production Unit as one unit.
- ii) In respect of Zonal Railways, a Division/Workshops should be taken as a unit of seniority for regulating recruitment/promotions of canteen employees.
- iii) the canteen employees as a whole, should be divided into 4 distinct groups keeping in view the identical nature of work being performed by them as detailed in Annexure-I.
- iv) AVC in respect of staff belonging to these 4 groups may be finalised by concerned Zonal Railway Administration/production Units in consultation with recognised unions.
- v) In future, direct recruitment shall be made only in respect of the following categories through Railway Recruitment Board as per percentage prescribed and indicated against each:

*[Handwritten Signature]*

.....2/-

(vi) With in each of the four groups detailed in <sup>Central Administrative Tribunal</sup> railway administration may merge the categories in the <sup>acknow. Bench</sup> a view to avoid proliferation of designation as <sup>date of RRBs</sup> to achieve uniformity/simplification while deciding AVC. <sup>date of Recd.</sup>

3. It is requested that detailed instructions may be issued immediately to all concerned in the light of Board's directives indicated above.

4. Kindly acknowledge receipt and ensure compliance.

Hindi version will follow.

Sd/-

(K.B. LALLI)  
Joint Director Estt.(N)  
Railway Board.

No. E(NG)II/90/RR-1/12 New Delhi Dated: 27.5.92.

Copy to : (with 35 spares ).

1. The General Secy., NFIR, 3 Chelmsford Road, New Delhi.
2. The General Secy. AIRF, 4 State Entry Road, New Delhi.
3. All Members of the National Council, Departmental Council and Secretary, Staff Side, National Council, 13-B Ferozeshah Road, New Delhi.

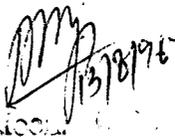
Sd/-

for Secretary.  
Railway Board.

Copy to :-

ESs to CRB, FC, MS, ME, MM, MT, ML, Adv. (Staff),  
Adv.(Fin), Adv.(MS), Adv (Vig), DG/RPF, EDE(Res), EDE,  
ESPA, EDV, EDE(NG), EDE(IR), EDE(G), EDE(C), EDPC-I, II,  
EDV(R), EDV(A), DE(W), DE(RRB), JUDE (P&A), JDE(NG) JDE(D&A),  
JDE(R)I, II, JDE(Rep.), JDE(G), JUDE(Gaz), JUDE(R) I, II, III,  
E(SCT) I, II, E(NG)I? Sec. (E), E(IR)II, E(D&A), E(W),  
E(LL) and E(IR) I / II, III.

REC/9.7.92.

...   
Chief Secy.  
of & W Shops

- (1) Managers
- (a) Senior Manager  
425-640/1400-2300
- (b) Manager Gr. I.  
330-560/1200-2040
- (c) Manager Gr. II.  
330-482/1200-1800
- (d) Manager Gr. III  
260-430/975-1540
- (e) Asstt. Manager Gr. I.  
260-400/950-1500
- (f) Asstt. Manager Gr. II.  
225-308/825-1200
- (3) Cooks/Halwai
- (a) Cook Gr. I.  
260-400/950-1500
- (b) Cook Gr. II.  
225-308/825-1200
- (c) Asstt. Cook Gr. I.  
210-270/800-1150
- (d) Asstt. Cook Gr. II  
200-240/775-1025
- (e) Asstt. Cook Gr. III  
196-232/750-940
- (f) Halwai Gr. I.  
260-430/975-1540
- (g) Halwai Gr. II.  
260.400/950-1500
- (h) Asstt. Halwai Gr. I  
225-308/825-1200
- (i) Asstt. Halwai Gr. II.  
200-240/775-1025

- (2) Clerks/Cashier/Accountant/Storekeepers
- (a) Clerk  
250-400/950-1500
- (b) Cashier  
260-400/950-1500
- (c) Junior Clerk  
225-308/825-1200
- (d) Accountant  
260-430/975-1540
- (e) Storekeeper Gr. I.  
260.430/975-1540
- (f) Storekeeper Gr. II  
225-308/825-1200
- (4) Vendors, Bearers, Salesman etc. (Group D categories)
- (a) Vendor Gr. I.  
210-270/800-1150
- (b) Vendor Gr. II  
200-240/775-1025
- (c) Vendor Gr. III,  
196-232/750-940
- (d) Bearer Gr. II  
200-240/775-1025
- (e) Bearer Gr. III  
196-232/750-940
- (f) Salesman/Vendor Gr. II  
200-240/775-1025
- (g) Salesman Gr. II.  
225-308/825-1200
- (h) Kitchen Asstt. Gr. I.  
200-240/775-1025
- (i) Kitchen Asstt. Gr. II  
196-232/750-940
- (j) Safaiwala/Cleaner/Washboy  
196-232/750-940
- (k) Coffee/Tea Maker/Tea boy  
196-232/750-940
- (1) Watchman  
196-232/750-940.

Know Bench  
Date of Filing  
Date of Receipt

By Registrar (D)

RPC/9.7.92

By Chief Clerk  
G & V Shop

13/8/96



166

Central Administrative Tribunal  
Lucknow Bench  
Date of Filing  
Date of Receipt by Post

30/9/96

for. Dr. ...

2154

Before the Hon'ble Central Administrative Tribunal,  
Lucknow Bench Lucknow

Misc. Application No. 2077 of 1996

In re

Original Application No. 50 of 1989

Muneshwar Dayal Mishra ... Applicant

Versus

Union of India and others ... Respondents

Application for Taking Supplementary Rejoinder

Reply on record of the Hon'ble Tribunal.

The applicant most respectfully begs to submit as under-

1. That in view of the facts and reasons stated in the accompanying supplementary rejoinder ~~rejoinder~~ reply it would be appropriate in the interest of justice that this ~~rejoinder~~ Supplementary Rejoinder Reply may be taken on record. Applicant is filing the same.

Wherefore, it is most respectfully prayed before the Hon'ble Court may be pleased to pass an order that the same may be taken on record.

Lucknow dated  
30.9.1996

*L.K. Pathak*

( L.K. Pathak )  
Advocate

Counsel for the Applicant

Before the Hon'ble Central Administrative Tribunal  
U.P. Lucknow Bench Lucknow

Original Application No. 50 of 1989

Muneshwar Dayal Mishra ... Applicant

Versus

Union of India and others ... Respondents

Supplementary Rejoinder Reply to the Supplementary  
Counter Reply filed on behalf of the Respondents

I, Muneshwar Dayal Mishra aged about  
41 years s/o Ashurasthama r/o Chitta Khera  
Aishbagh, Lucknow do hereby solemnly affirm and state  
on oath as under-

1. That the deponent is the applicant in the  
above noted case and as such he is fully conversant  
with the facts of the case deposes to hereunder-

2. That the deponent has read the  
supplementary counter reply filed by the Respondents  
and also explained through his counsel in  
simple Hindi and being fully conversant with the  
facts of the case filing this supplementary  
Rejoinder Reply, as under-

*Muneshwar Dayal Mishra*

14  
148

(b)(7)(D)

2.

Date of Birth in Part.....

3. That the contents of paras-1, and 2 of the supplementary counter reply needs no comments.

4. That the contents of paras nos. 3 and 4 of the supplementary counter reply are also need\$ no comments.

5. That the contents of paras 5 and 6 of the supplementary counter reply are also do not call for any reply.

6. That the contents of paragraphs nos. 7,8,9 and 10 of the supplementary counter reply do not call for any reply.

7. That the contents of paragraph-11 of the supplementary counter reply is also does not call for any reply.

8. That the contents of paragraph-12 of supplementary counter reply is not correct so far as date mentioned in the para i.e., 22.1.1978 is not correct. because in para-11 it is mentioned that the date for Interview was fixed as 2.1.1978 and on that date Interview was held and applicant was selected as Canteen Manager . Rest contents of the para does not call for any reply.

*Discontinue 1941*

3.

Exhibits

9. That the contents of para-13 of the supplementary counter reply is also does not call for any reply.

10. That the contents of para-14 of the supplementary counter reply is also admitted.

11. That the contents of para-15 of the supplementary counter reply is not within the knowledge of the applicant so he have no knowledge for the same., so far as the Annexures mentioned in the para i.e. also not relates with the applicant. It was written between the counsels of the Union of India Applicant has no knowledge for the same.

12. That the contents of paras nos. 16, 17 and 18 of the supplementary counter reply are also not call for any reply but it is

~~crystal clear that from these facts it is crystal clear that~~

to be noted that from these facts it is crystal clear <sup>and</sup> that which was admitted by the Respondents

that the applicant was appointed vide appointment order dated 13.1.1978 and on that date

he has submitted his educational qualifications as well as other qualifications which was

demandd by the adgertisement and after due <sup>selection</sup> satisfaction applicant has been appointed.

There was nothing between the applicant and Respondents but when all the employees of the

30/04/2014

170

... 000

4.

Statutory ~~countries~~ <sup>Canteens</sup> were declared as the Railway servant, thereafter the some interested persons who were in favour of their own man they have misplaced the original Records of the applicant and they have succeeded in keeping a forged certificates in the name of the applicant in the departmental file and thereafter by one

Mr. I.P. Batra <sup>been</sup> has complained against the applicant - that he has submitted forged certificate at the time of appointment - on the basis of which the departmental proceedings has been started against the applicant and without giving him reasonable opportunity & as well as without waiting the verdict of the civil court for declaration of the genuineness of the certificate of the petitioner. The opposite parties/Respondents removed the petitioner far from service without taking into consideration of the documents which were on record and also without examining the complainant Sr I.P. Batra without informing the applicant for the enquiry because in his written application dated 2.6.1987 Applicant has stated that he has filed a Civil Suit before the Civil Judge, Mohahlalganj, Luck now for declaration of the genuiness of the certificates and he has also requested to the enquiry officer that till the disposal of the suit the Departmental enquiry should be stayed this application was duly received by the Enquiry officer on the same date i.e. 2.6.1987 but no order has been passed on the application though the applicant was always on his duty till 12.5.1988 and for the same he has been paid his salary.

30/04/2001

5.

1000 (100)

13. That it is also to be noted that in his detailed appeal applicant has stated all the irregularities committed by the Enquiry officer but the same has not been decided vide a speaking order and also without giving any opportunity of being heard. The applicant was informed vide Annexure nos. 14 dated 19.9.1988 that the appeal of the applicant is rejected by C.W.E. New-Delhi neither reason for rejection of the appeal has been stated nor the order of the C.W.E. has been provided to the applicant.

14. That it is also to be noted that in his written statement the Defendant Sri Uma Shanker Shukla in para-2 of the written statement has stated that there was one student namely Muneshwar Dayal was the student of the college for the period commencing from 10.7.63 to 20.5.67. Here it is also noteworthy to mention that once the principal of the college vide his order dated 6.2.1996 written to the Deputy C.M.E. that the issued certificate was not correct and he is searching for the reason on what basis this certificate has been issued and on the other side <sup>in</sup> his written statement he is saying that there was a student namely Muneshwar Dayal so <sup>the</sup> both version of the principal could not be accepted and it ~~is~~ would be decided by the competent court of law but the Enquiry officer as well as the Respondents are in hurry and initiated a shame

3/17/1988



Lucknow  
Oct: 1996  
by Post

1996

7.

By, Registrar

necessarily employed and obligation to hear before deciding, that the audi alterm partem Rule could be ~~imparted~~ imparted....".

That in these circumstances the supplementary counter reply filed by the Respondents deserves to be rejected and the original application of the applicant is liable to be allowed and the applicant is entitled for his service and also other emoluments which was due to him while he was on his duty.

Lucknow dated  
30.9, 1996

*[Signature]*  
Deponent

Verification

I, the deponent named above do hereby verify that the contents of paras nos. 1 to 14 are true to my ownknowledge while paras nos. are believed to be true as perlegal advice received. No part of it is false and nothing material has been concealed. So help me God.

Lucknow dated  
30-9, 1996

*[Signature]*  
Deponent

I identify the deponent who has signed this affidavit before me.

*[Signature]*  
Advocate



F. F. 27-10-97

100

125

Central Administrative Tribunal  
Lucknow Bench  
Date of Filing 17/10/97  
Date of Receipt

In the Hon'ble Central Administrative Tribunal,  
Lucknow Bench, Lucknow.

M.P. No. 2164 of 1997.

In re:

Original Application No. 50 of 1989.

4115

M.D. Mishra. .... Applicant.

Versus.

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

Application for taking Supplementary affidavit  
on record.

For the facts, reasons and circumstances mentioned in the supplementary affidavit, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to take the supplementary affidavit on record in the interest of justice.

Lucknow.

Dated. 17-10-97

(L.K. Pathak)  
Advocate,

Counsel for Applicant.



-2-

C. Deponent of P.

which applicant has search out but no result card is available with the applicant for submitting the same before this Hon'ble Tribunal.

3. That it is specifically made clear that the there in issue is that whether the enquiry officer has conducted enquiry properly or not ? Whether applicant has committed any wrong during the performance of the duties ? Whether the appellate authority has applied his mind for deciding the appeal and pass the speaking orders ? Whether the applicant has not submitted any his certificate at the time of appointment ?

4. That as stated herein before these all are the precise question which to be decided in this case but the enquiry officer neither examine any witnesses nor examine the complainant and itself, neither in-form the applicant for the last date fixed for enquiry and similarly the punishment authority, after receiving the enquiry report neither issued any show cause notice nor applied his own mind at the time of passing the aforesaid removal order.

Lucknow.

Dated.

17-10-97

Deponent.

17/10/97

17/10/97

17/10/97



CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH

O.A.NO. 50/89

Munashwar Dayal Mishra ..... Applicant  
-Vs-  
Union Of India and others ..... Respondents.

23.9.97

Hon'ble Mr. V.K. Seth -J.M.  
Hon'ble Mr. D.C. Varma -J.M.

On the next date the learned counsel for respondents will submit the enclosures of the letter received from Employment Exchange forwarding the names of the candidates as also the file relating for the selection. The learned counsel for applicant also produced result cards or transfer certificate in respect of the class for which the same are available with him in original.

List on 22. 10.97 for further hearing.

Copy of the order be given to the learned counsel for two sides as per rules.

sd/  
J.M.

sd/  
A.M.

Certified Copy  
Judicial Officer  
C. A. T.  
LUCKNOW

31/10/97



Checked

30

179

Registered

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

\*\*\*

Nb. CAT/CB/LKO 999 to 999 Dated : 10.2.1988

Registration No. 50 of 198 001

~~Director Royal Arms~~ Applicant

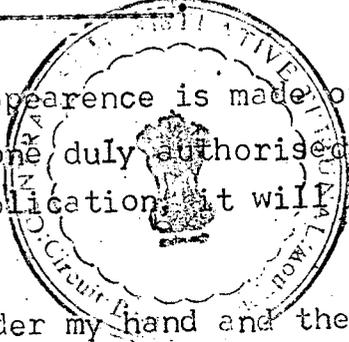
Versus

~~Union of India and others~~ Respondent's

- TO
1. Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
  2. Chief Workshop, Engineer, Northern Railway, Headquarters of Railway House, New Delhi.
  3. The Dy. Chief Mechanical Engineer, Northern Railway, Corstange and Mason Street, Alambagh, Lucknow.

Please take notice that the applicant above named has presented an application a copy whereof is enclosed herewith which has been registered in this Tribunal and the Tribunal has fixed 08th day of 03 1988 for ~~and list for orders before Deputy Registrars at that date.~~

If no, appearance is made on your behalf, your pleader or by some one duly authorised to Act and plead on your in the said application, it will be heard and decided in your absence.



Given under my hand and the seal of the Tribunal this 8th day of 03 1988

dinesh/

[Signature]  
For DEPUTY REGISTRAR  
Deputy Registrar  
Central Administrative Tribunal  
Lucknow B  
Lucknow

A/180

SPECIAL POWER OF ATTORNEY

In the court of Central Administrative Tribunal Lucknow

No. 50 of 1989

Plaintiff/Appellant/Petitioner.

Versus

Defendant/Respondant/Opp. Party.

Know all Men by these presents that I T. S. B. Verma Chief Work Shop Engineer, Northern Railway, New Delhi do hereby appoint and authorise ~~Sr~~ Sri Arijun Bhargava

to appear, plead and act for me jointly or severally in the above noted case and to take such steps and proceedings as may be necessary for the prosecution or defence of the said matter as the case may be and for the purpose to make sign, verify and present all necessary plaints, petitions, written statements and other documents to compromise the suit, admit the claims and to lodge and deposit money in court and to receive payment from the court of money deposited and to file and withdraw documents from court and GENERALLY to act in the premises and in all proceedings arising thereof whether by way of execution appeal or otherwise or in any manner connected there with as effectually to all intents and purpose as I could act if personally present. I hereby agree to ratify and confirm whatever shall be lawfully done by virtue of these presents,

IN WITNESS whereof I hereunto set my hand this  
31st day of March 1989.

*T.S.B. Verma*

( T. S. B. Verma )

Chief workshop Engineer  
Northern Railway  
New Delhi.

*Accepted*

*[Signature]*

...

*Chief Workshop Engineer*  
*[Signature]*

filed today  
24/89

**SPECIAL POWER OF ATTORNEY**

Before the Honble Central Administrative Tribunal  
In the.....Court of.....Circuit Bench, LUCKNOW

(11)

1/81

Registration No. 50 of 1989 (L)

Muneshwar Dayal Misra

Plaintiff  
Appellant  
Petitioner

VERSUS

The Union of India and others.

Defendan  
Respondan  
Opposite Part

KNOW ALL MEN by these present that I, SHAKEEL AHMED, Dy. C.M.E.  
Lucknow  
Northern Railway, ~~New Delhi~~ do hereby appoint and authorise Shri. Arjun Bhatnagar  
Presenting Officer, Lucknow.....to appear, plead, and act for me jointly  
severally in the above noted case and to take such steps and proceedings as may be necessary for  
the prosecution or defence of the said matter, as the case may be and for the purpose to make  
sign, verify and present all necessary plaints, petitions, written statements and other documents  
to compromise the suit, admit the claims and to lodge and deposit money in court and to  
receive payment from the court of money deposited and to file and withdraw documents from  
court and GENERALLY to set in the premises and in all proceedings arising thereout whether  
by way of execution, appeal or otherwise or in any manner connected there with as effectually  
to all intents and purposes as I could act if personally present. I hereby agree to ratify and  
confirm whatever shall be lawfully done by virtue of these presents.

IN WITNESS whereof I hereinto set my hand this.....  
day of.....19 .

For x on behalf of the U.O.I.

(SHAKEEL AHMED)

Northern Railway

एव मुख्य यान्त्रिक अभियन्ता /  
जवारी एवं मांढ डिब्बा कर्मशा  
६० रो, आलमबाग, लखनऊ

Accepted  
24/89

ब अदालत श्रीमान

Circuit Bench at Lucknow

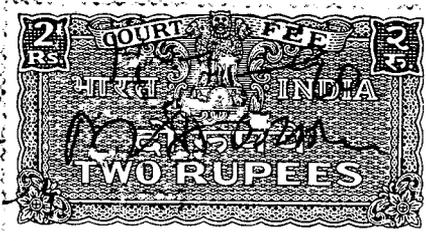
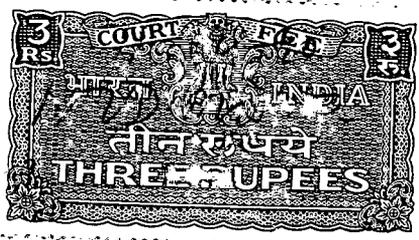
महोदय

[पाठ्य अपीलान्त]

M. D. Mishra

का बकालतनामा

प्रतिवादी [रेस्पाडेन्ट]



पीलान्त)

M. D. Mishra

बनाम

प्रतिवादी (रेस्पाडेन्ट)

Union of India and others

नं० मुकद्दमा

सन

६

पेशी की ता०

१६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर श्री

M. P. Sharma, Advocate, Behind

ODHAN CINEMA - Lucknow

T. N. Tiwari, Advocate

वकील

महोदय

एडवोकेट

नाम अदालत  
मुकद्दमा नं०  
नाम फरीकन

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

हस्ताक्षर M. P. Sharma

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

सन १९९० ई०

स्वीकृत

(T.N. Tiwari)

Accepted

01-30/09

ATIV Removal order 12.5.88 page 6  
Appellate order 19.9.88

ambien employee

on 3-7-81 Statutory context

1A1 Complaint on 17.10.85 page 17

Page 25 - Applicant was manager between  
w.s. of 14.1.78

Page 24 - first C.S. cancelled by ATVI

Page 26 - 11<sup>th</sup> C.S. submitted on 22.10.86  
ATVII

ATXI Page 40 - Applicant informed about  
filing of complaint

ATXII See page 41 - w.s. of principal - complaint

Page 48 - 22.10.86 on 17.10.85 - how can  
it be if applicant had been appointed  
on an earlier date 14.1.78 (see page 25)

Enquiry report is no report. - no witness, no  
document mentioned -  
only conclusions given - basis of conclusions  
not discussed

1974 (1) SLR 67  
Attendant vs Khan  
CUI  
Para 7,

- on explicit enquiry

- copy of documents not given

1993 LCD 611  
Amal K. Singh vs State of P  
para 24, 25  
Rao vs Math Director  
1986 SC 2118  
para 10, 11,  
AIR

1993 LCD 495  
Uneshankar vs State / Rule of natural  
justice if no notice  
after ATXI

SA 000 50/89

M. D. Misra B.V.O.L.

Ann XIV Removal order dt 12.5.88 Page 46

Ann XVII Appellate order dt. 19.9.88 - Page 63

Ann Enggng report Page 48

1st charge memo dt 13.12.85 - A/C-2.   
 date of appointment corrected vide A/ Page 25

Reply to C-2 in A/II dt 10.1.86 Page-18.

Thereafter 1st charge memo cancelled vide A/VI Page 24

still pending => Applicant file suit no 123/87 before court Judge with relief at page 2 of PA before CA. Certificate of Principal C-5 to CA challenged by A/XI dt 2.6.87 prayer for stay of Enggng proceedings (page 40)

(Enggng initiated on A/IA page 17)

2nd charge memo A/VII Page 26.

Applicant vide Ann IX-A Page 38 - claimed documents (denied by Resp in para 11 of GA) - no receipt - not mentioned in grounds of appeal that documents demanded

Amalgamation SR-2 - High School (Applicant is only IX)

1975 (15CC 155) -  
State of Jharkhand vs Bihar

AIR 1976 SC 1173  
Bihar Chamber vs B.O.L.  
Para 25.

Personal hearing at the / No ground in GA.  
this appeal ✓

12/16/97

Sushil C.A. Page 7 Para 15  
documents kept.

order  
date 23.9.97

Amalgamated order - A/ XVII  
- Page 50

Sub 9(23) full full in

- 1- 1993 (4) SCC 727  
B. Karmacharya  
Para 30, 31,

Principle of natural  
justice  
- back wages

2.

An unincorporated - NO. violator in of which

but : ) PNJ

b7 of CA - (t) Admits next

date fixed - para 19 of CA.

Start CA

26/11/97

CA 50/89

No notice

No witnesses examined (report 48-0)

Claims to be present till 12:51  
but not served with intimations

Orders (appeal) not appearing - 1/6)

never called - 1/6 2-6-87/1, 1

- AIR 1986 SC 1073 (para 2) 118

Room number VUOJ

- personal hearing

ATR 1988 p 621 - Full Bench

show cause notice necessary

1993 (1) SC 78 (5 judge)

GB Gauthan v UOJ

(show when no provision in statute)

(No intimations with the application)

No records with respondents

para 15 with subp CA

1989 (1) SC 764, 1 para 11, 12, 1

HAL Trehan

Order for + post decision - 1

being denied

1957

Khanna Chand

1951 (2) SC 404

certificates  
p 32, 36  
C-107 CA

Ajay Arora

BEFORE: THE HON'BLE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MOTI MAHAL, LUCKNOW.

ORIGINAL APPLICATION NO. 50 OF 1989.

Muneshwar Dayal Mishra ..... Applicant ;

Versus.

Union of India & others ..... Respondents.

CITATION OF THE CASES SUBMITTED BY THE  
COUNSEL FOR APPLICANT.

1. 1974 (1) S.L.R. Page no. 67 "Abdul Aziz Khan Vs. Union of India".  
relevant para 11.
2. 1975 (1) S.C.C. Page no. 155 "The State of Punjab Vs. Bhagat Ram".  
relevant para-7 & 8.
3. 1977 (1) S.C.C. (Labour & Services) Page 532 "Naya Garh Co-operative Central Bank Ltd. Vs. Narain Rath",  
relevant para- 4.
4. 1982 A.I.R. S.C. Page 937 "State of U.P. Vs. Mohd. Shareef",  
relevant para- 4.
5. 1983 L.C.D. page 146 "Smt. Madhur Lata Bhatnagar Vs. D.D.R.E."  
relevant para- 3.
6. 1986 A.I.R. S.C. Page 2118 "Kashi Nath Dixit Vs. Union of India"  
relevant para- 9 & 10.
7. 1986 A.I.R. S.C. Page 1173 "Ram Chandar Vs. Union of India"  
relevant para- 24.
8. 1993 L.C.D. Page 495 "Uma Shankar Yadav Vs. Registrar Co-operative Societies".  
relevant para-6 & 7.
9. 1993 L.C.D. 611 "Anil Kumar Singh Vs. State of U.P.",  
relevant para ~~24, 25 & 31.~~ 24, 25 & 31.
10. 1994 S.C. (L & R) Page 1349 "Km. Madhuri Patil Vs. Addl. Commissioner Tribal Development & others".  
relevant para- 13.

11. 1994 L.C.D. page no. 696 "Mahendra Kumar Jain Vs.  
relevant para- 10, 11, Prescribed Authority  
& 12.

12. 1995 (2) U.P.L.B.E.C. Page no. 735 "U.P.S.F.T.C. Kanpur  
Vs. Sarfraj Husain"  
relevant para- 4.

13. 1993 (3) U.P.L.B.E.C. Page no. 1980 "Ashok Kumar Gaur  
Vs. U.P.F.C. & others.  
relevant para- 3, 4 & 5.

14. 1999 L.C.D. Page no. 24 "P.N. Srivatava Vs. State  
of U.P. & others".  
relevant para- 10.



LUCKNOW: DATED:

(L.K. PATHAK)

16.12.1999

Advocate,

Counsel for the Applicant.

And ourselves bound by the Supreme Court judgment above and have to hold that the observations in *Harinder Singh's Case* (2) do not lay down the correct legal position and have thus to be ignored altogether.

11. As both the contentions raised on behalf of the petitioner fail, this writ petition has consequently to be dismissed. We, however, do not make any order as to costs.

Prem Chand Jain, J.—I agree.

*Petition dismissed.*

ALLAHABAD HIGH COURT

Before:—K.B. Asthana, J.  
Second Appeal No. 2965 of 1971  
Decided on 22-2-1973.

Abdul Aziz Khan

(Appellant)

vs.

The Union of India

(Respondent)

For the Appellant:—V.N. Pd. Srivastava and B.P. Srivastava.  
For the Respondent:—K.C. Agarwal.

- A. Constitution of India, Article 311 (2)—Government servant getting employment by deceitful means—He is not guilty of misconduct as deceitful act was not done during the course of performance of his duties.
- Enquiry.

The plaintiff was accused of having committed gross misconduct and of failing to maintain absolute integrity and devotion to duty inasmuch as he secured appointment as cleaner in Loco Department by deceitful means. Further he was accused of having continued in the Railway service without disclosing true facts to the Administration. If anything the charge so framed is not only vague to a great extent but also is defective. Securing appointment as Loco cleaner by deceitful means could not be in the course of performance of his duty as a Railway servant by the plaintiff. It is, therefore, not easily understandable how the alleged appointment of the plaintiff as a cleaner in Loco Department would amount to gross misconduct and will show lack of maintenance of absolute integrity and devotion to duty.

(Para 11)

- B. Constitution of India, Article 311 (2)—Enquiry Committee refusing to examine witnesses nominated by delinquent official as it thought that their evidence would be irrelevant—It establishes the denial of reasonable opportunity—Delinquent official need not prove showing what the prejudice was.

If in the guise of regulating the proceedings the Committee altogether refused to examine witnesses nominated by the plaintiff the prejudice caused to the plaintiff becomes self-evident and he need not in the suit adduce evidence showing what the prejudice was and the denial of reasonable opportunity to the plaintiff by the Enquiry Committee would be established. In my judgment it is always open to a dismissed Government servant to question the legality and propriety of the order passed by the enquiring authority in a departmental trial on the grounds of refusal to examine witnesses nominated by him and refusal to supply copies of material documents and other evidence forming the basis of the charge.

(Para 7)

- C. Contract Act, (1972), S. 19—Contract of service—Government servant procuring appointment by deceitful means—The contract between Government servant and Government would be voidable and not void. (Para 13)

*Cases referred.*

1. Budh Singh v. State of U.P., AIR 1958 All. 607.
2. Subodh Ranjan v. N.A.O. Callaghan, AIR 1953 Cal. 319.

**JUDGMENT**

Asthana, J.—This is a plaintiff's appeal from a decree of dismissal of his suit for a declaration that his removal from service in the Northern Railway being illegal he continued in service and for recovery of his pay. The suit was decreed by the court of first instance but that decree was reversed by the lower appellate court.

2. The plaintiff, Abdul Aziz Khan, in November 1958, received an intimation from the office of the Divisional Superintendent, Northern Railway, Allahabad Division, offering him a temporary appointment as cleaner in Loco provided he was found medically fit. The plaintiff then on the basis of the memo issued by the Assistant Personnel Officer appeared before the Assistant Medical Officer. The plaintiff was then appointed and started working from 8-12-1958 as Loco cleaner. In 1961 the plaintiff was declared unfit for working as Loco cleaner, a job of class AI but was found fit for working in a job in class B, whereupon the plaintiff was given an alternative job of an Electric Khalasi. It appears that on some reports an investigation was held and old records checked when it was discovered that some of the appointments of Loco cleaners including that of the plaintiff were irregular and fraudulent. It was then proposed to hold a departmental enquiry. By an order dated 3-8-1963 the plaintiff was suspended pending enquiry. The plaintiff was charged with the following offence :—

“You, in the year 1958, committed gross misconduct and failed to maintain absolute integrity and devotion to duty inasmuch as you secured appointment as cleaner in Loco Department by deceitful means and continued in the Railway service without disclosing true facts to the Administration.”

3. The statement of allegations appended to the charge-sheet was as follows :—

“You never appeared before any Selection Board of this office for the post of Loco Cleaners and were never selected for the same. By fraudulent means you managed to get yourself medically examined by the Railway Doctor, where you were declared unfit. Even after having been declared medically unfit for the post, you managed to secure appointment as Cleaner on the Railway and concealed the facts of obtaining appointment by deceitful means.”

4. The plaintiff was called upon to show cause why he be not dismissed from service or punished with any of the lesser penalties specified in Rule 1707 of the Indian Railway Establishment Code (Vol. I). He was given seven days to submit his explanation. The plaintiff then made various applications for being supplied with copies of the documents and other evidence on the basis of which he was charged. There was somewhat lengthy correspondence on this demand of the plaintiff. Eventually an enquiry Committee was appointed who enquired into the case of the plaintiff along with

in case of others accused of the offence of the same nature and found the charge established. The plaintiff and others were then removed from service by the General Manager of Northern Railway by order dated 28-3-1966. The plaintiff thereupon served a notice under section 80 of the C. P. Code on the Union of India through the General Manager, Northern Railway, and brought the suit giving rise to this appeal.

The validity of his removal order from service as a measure of punishment was attacked by the plaintiff mainly on the ground that he was not afforded a reasonable opportunity by the Enquiry Committee to defend himself inasmuch as the Enquiry Committee did not supply any copy of the documents pertaining to the charge and refused to examine the persons nominated by him as witnesses. The suit was defended by the Union of India on the plea that the enquiry was held against the plaintiff in accordance with the rules and the plaintiff was afforded all reasonable opportunity by the Enquiry Committee but he non-co-operated and did not care to produce his defence. Certain technical pleas were also raised that the suit was barred by Sections 15 and 22 of the Payment of Wages Act, the notice under Section 80 C. P. Code was invalid and the court had no jurisdiction to try the suit.

The learned Civil Judge who tried the suit on the evidence on record and the circumstances of the case held that the order of removal of the plaintiff from service was illegal and void as he was not afforded a reasonable opportunity to defend himself and the Enquiry Committee unjustifiably declined to examine the witnesses nominated by the plaintiff. The learned Civil Judge also repelled the technical pleas of the suit being barred, the court having no jurisdiction and the notice under Section 80, Civil P. C. being bad. The suit of the plaintiff was decreed. On appeal by the Union of India the learned Additional District Judge reversed the decree and dismissed the plaintiff's suit. He held that the reasons given by the Enquiry Committee in refusing to examine the witnesses nominated by the plaintiff were justified and he further held that the civil court had no jurisdiction to go into that question as the Enquiry Committee was within its right to refuse to examine any witnesses. The view which the learned Judge of the lower appellate Court seems to have taken was that the plaintiff not having established the facts by evidence how he was prejudiced on the refusal of the Enquiry Committee to examine witnesses nominated by him, was not entitled to any decree.

Learned counsel for the plaintiff appellant assailed the decree of the lower appellate court on the ground that the lower appellate Court fell into grave legal error in holding that it was not open to the plaintiff in the suit to question the propriety and legality of the refusal by the Enquiry Committee to examine witnesses nominated by the plaintiff in support of his defence. I think the learned counsel is right in contending that the Court below took an erroneous view. No doubt it was within the power of the Enquiry Committee to supervise and control the proceedings before it and the Committee was not bound to examine all the witnesses nominated by the plaintiff, but if in the guise of regulating the proceedings the Committee together refused to examine witnesses nominated by the plaintiff, the prejudice caused to the plaintiff becomes self-evident and he need not in the suit adduce evidence showing what the prejudice was and the denial of reasonable opportunity to the plaintiff by the Enquiry Committee would be established. In my judgment it is always open to a dismissed Government

servant to question the legality and propriety of the order passed by the enquiring authority in a departmental trial on the grounds of refusal to examine witnesses nominated by him and refusal to supply copies of material documents and other evidence forming the basis of the charge. The learned Judge of the lower appellate court fell into a legal error in holding that the civil Court could not be invited by the plaintiff to question the legality and propriety of the order of the Enquiry Committee refusing to examine witnesses nominated by the plaintiff. The question still remains whether the reasons which led the Enquiry Committee to refuse examination of the witnesses nominated by the plaintiff were justified and the plaintiff cannot, therefore, complain of denial of reasonable opportunity.

8. It would be seen that the Enquiry Committee altogether refused examination of the witnesses nominated by the plaintiff. The plaintiff wanted to examine Sri C.D. Dahiya, Assistant Personnel Officer, who is said to have checked the records and discovered irregularities in the matter of appointment of Loco cleaners in the year 1958 and arrived at a tentative finding that the plaintiff and others had obtained the letters of appointments by deceitful means concealing the fact that they were found unfit by the medical officer. The Enquiry Committee in refusing to summon Sri Dahiya for examination reasoned that the plaintiff must first adduce affirmative evidence concerning the alleged alteration and interpolation of the medical records by Sri Dahiya when reconstructing the record and then the question would arise of the examination of Sri Dahiya. I do not think this could be a justifiable or proper reason. Admittedly Sri Dahiya had reconstructed the old service record of the plaintiff and others and discovered irregularity of a serious nature amounting to fraud. It was on the basis of the report of Sri Dahiya that the plaintiff was charged. It will hardly matter that the subject-matter of the charge was founded on incidents which took place prior to the appointment of Sri Dahiya as Assistant Personnel Officer in Northern Railway, Allahabad, Division. This circumstance seems to have impressed the Enquiry Committee. What the plaintiff could have established on questioning Sri Dahiya was not for the Enquiry Committee to speculate. Suffice it to say that in the circumstances of the case and the nature of the charge levelled against the plaintiff the evidence which Sri Dahiya would have furnished could not be said by any stretch of imagination as irrelevant. Sri Dahiya was a necessary witness. In fact he ought to have been summoned by the Enquiry Committee even without any request of the plaintiff.

9. The plaintiff also wanted to cross-examine the handwriting expert to whom the signatures of the then Assistant Personnel Officer who had made the appointments in 1958 were sent for comparison. Since the handwriting expert had not given any definite opinion in his report on the genuineness of the signatures, finding that the data sent to him was too insufficient for comparison, the refusal by the Enquiry Committee to summon the handwriting expert cannot, in the circumstances, be said to be improper. The plaintiff had also sought to examine four other colleagues of his who also had been appointed as Loco cleaners in 1958. The Enquiry Committee refused to summon them as it thought that their evidence would be irrelevant. It may be mentioned here that these four Loco cleaners were also removed from service on a charge of similar nature but they succeeded in getting the orders of their removal from service quashed by the High Court on a writ petition under Article 226 of the Constitution. Here again the Enquiry Committee speculated and thought that none of these witnesses would be

able to throw any light on the controversy arising on the charge against the plaintiff. The Enquiry Committee could have refused to summon all the four of them and should have left it to the plaintiff to produce one or two of them to avoid repetition. See *Budha Singh v. State of Uttar Pradesh* (AIR 1958 All. 607).

10. Learned counsel for the plaintiff appellant further contended that there was no evidence in support of the charge and the plaintiff has wrongly been punished by removal from service. In paragraph 12 of the plaintiff pleaded that the prosecution witnesses failed to establish any charge, rather their statements established that the plaintiff's appointment was perfectly valid. It cannot, therefore, be said that the plaintiff did not plead that the order of removal was not vitiated because the charge brought against him was not supported by any legal evidence. At the trial and as well as in appeal before the lower appellate court, the case of the plaintiff was not considered and examined on the basis of such plea. Since purely a question of law arises I allowed learned counsel for the plaintiff appellant to address the Court in support of this plea.

11. An analysis of the charge will show that the plaintiff was accused of having committed gross misconduct and of failing to maintain absolute integrity and devotion to duty inasmuch as he secured appointment as cleaner in Loco Department by deceitful means. Further he was accused of having continued in the Railway service without disclosing true facts to the Administration. If anything the charge so framed is not only vague to a great extent but also is defective. Securing appointment as Loco cleaner by deceitful means could not be in the course of performance of his duty as a Railway servant by the plaintiff. It is, therefore, not easily understandable how the alleged appointment of the plaintiff as a cleaner in Loco Department would amount to gross misconduct and will show lack of maintenance of absolute integrity and devotion to duty. Assuming that the plaintiff did procure an appointment as Loco cleaner by resorting to deceitful means no question of his disclosure arises to the Administration. It would be for the Administration to discover the fraud which it alleges to have discovered when Sri Dahiya, the Assistant Personnel Officer examined the matter of appointment while reconstructing the records. The whole upshot of the charge is that the appointment of the plaintiff as cleaner in Loco Department was procured by him by deceitful means. The statement of allegations to the charge-sheet made against the plaintiff shows that: (1) he never appeared before a Selection Board; (2) he was never selected by any Selection Board; (3) he got himself medically examined by the Railway Doctor by fraudulent means; (4) the Railway Doctor declared him unfit; (5) he managed to secure appointment as cleaner and (6) concealed the fact of obtaining appointment by fraudulent means. I have perused the findings of the Enquiry Committee and I do not find the Committee having recorded specific findings on the above allegations against the plaintiff. The Committee seems to have inferred that the plaintiff never appeared before Selection Board and was never selected by it from a reconstructed panel of names of selected candidates. But Sri S. Diash, who was posted as Assistant Personnel Officer in 1958 in the Allahabad Division and who was examined as a prosecution witness before the Enquiry Committee, said that there was no panel of Loco cleaners maintained in the office from June 1958 to June 1961 when he left the Allahabad Division. When asked why he thought that the appointment of the plaintiff and others was fraudulent he stated that as he

was not shown any notes having been put up before him in the office for obtaining his orders, hence he thought that all the appointments were made without his knowledge and therefore fraudulent. It was elicited from this witness that senior subordinates were engaging men and the dealing clerks and the Record clerks also misused their powers by taking undue advantage of the panel not being available which was not finalised even by the time the witness left Allahabad Division and he understood that this kind of hanky-panky continued even after he had left. It is clear therefore from the statement of Sri Diesh that no panel of names was prepared in the year 1958 when the plaintiff was offered the job of cleaner in the Loco Department and appointed as such in December, 1958. The panel seems to have been prepared by reconstruction for the first time by Sri Dahiya who succeeded Sri Diesh as Assistant Personnel Officer, Northern Railway, Allahabad Division, in the year 1961. To clear this matter I think it was necessary for the Enquiry Committee to have summoned Sri Dahiya. Assuming that the plaintiff's name was not on the panel that circumstance would not necessarily lead to the conclusion that he did not appear before the Selection Board for a person who is not selected by the Selection Board after he had been interviewed by that Board would not find his name on the panel. It is only the names of the selected candidates which came on the panel. Absence of a name, therefore, from the panel would not be evidence of the fact that the candidate did not appear before the Selection Board. There was, therefore, no evidence before the Enquiry Committee in support of the allegation that the plaintiff never appeared before a Selection Board. Again the inference of the Enquiry Committee that the plaintiff was never selected for the post of Loco cleaner is based on inference from three circumstances: (1) his name was not on the Panel; (2) the plaintiff by fraudulent means managed to get himself medically examined and (3) he was declared unfit by the Railway Doctor. The fact that his name was not on the panel is not established as Sri Diesh stated before the Enquiry Committee that no panel was maintained in 1958. The question, therefore, did not arise. It is Sri Dahiya who seems to have prepared a panel otherwise by reconstituting the records. No evidentiary value can be attached to a panel which was prepared later excluding the names of the plaintiff and others. As to the second fact that the plaintiff managed to get himself medically examined by fraudulent means, it appears from the documents produced before the Enquiry Committee that the plaintiff in November, when offered an appointment as Loco cleaner was asked to get himself medically examined before the appointment could be given. The offer sent to the plaintiff under the signature of A. P. O. was not said to be a forged or made up communication before the Enquiry Committee. Then there is a medical memo on record directing the Medical Officer to examine the plaintiff. Sri Diesh stated that he was not sure whether it bore his initials. He admitted that he often initialled such memos. There was no evidence before the Enquiry Committee that the initials of Sri Diesh on the medical memo, were forged. The Enquiry Committee has not recorded any specific findings. It is clear, therefore, that the documentary evidence supported the plaintiff's case that he was sent up for medical examination by the A. P. O. It is difficult to find any fraud having been committed by the plaintiff in appearing before the Medical Officer for his examination. Coming to the allegation that he was declared unfit, it appears that a counterfoil kept in the office of the Medical Officer was produced. The foil which is the primary document under the rules was not produced before the Enquiry Committee, though

It was admitted that under the office procedure that must have been sent to the A.P.O. by the Medical Officer. Dr. Bishwanath Pushkar, Assistant Medical Officer was examined as a witness by the Enquiry Committee. He proved the contents of the counterfoil and stated that the plaintiff was declared unfit. Against item No. 39 "Remarks by Medical Examiner" there is an entry. "Unfit A 1". Dr. Pushkar stated in his evidence that the plaintiff was found unfit to hold a post in class A. 1 which includes the post of Loco cleaner. Chapter X contained in the Indian Railway Establishment Manual. II Edition in its Section D classifies the staff into different classes in respect of the vision tests. The post of the cleaner in Loco Department falls in class A1. Annexure 3 to Ch. X prescribes for class A1 the distant vision should be 6 x 6 without glasses. A perusal of the said counter foil shows that at item No. 37 dealing with acuity of vision of the distant vision of the plaintiff of the right eye was 6 x 6 and of the left eye was also 6 x 6. This is what is recorded under the column 'naked eye' in the said counter-foil. How then the plaintiff was declared unfit for class A 1 post is difficult to understand. It is unfortunate that Dr. Pushkar was not specifically cross-examined on the circumstance before the Enquiry Committee on behalf of the plaintiff. How then the plaintiff could be declared unfit for class A 1 post when the acuity of vision of both of his eyes without glasses was of the prescribed standard? It has come in evidence on the record of the suit that it was in the year 1961 that the plaintiff when he went for re-examination as required by the rules that acuity of vision in both of his eyes was found below standard and that is why he was given an alternative post of an Electric Khalasi falling in class B 1. Had the Enquiry Committee carefully scrutinised the evidence before it furnished by the documents and the statement of Dr. Pushkar, it would have found that there was no evidence before it of the plaintiff being medically disqualified for the post he was appointed to in the year 1958.

12. The allegations of fact do not contain any specification as to how the plaintiff managed to secure appointment as it has not been alleged that the plaintiff obtained a forged letter of appointment. That is not the subject-matter of the charge either. That being the position the Enquiry Committee in investigating into the genuineness of the appointment letter seems to have exceeded its jurisdiction. No charge was framed against the plaintiff nor any allegation made against him that he procured and forged letter of appointment. I think the Enquiry Committee was not competent to take into consideration the letter of appointment and holding it to be forged. Moreover, the handwriting expert examined by it did not give any opinion that the signatures or initials of the A. P. O. on the letter of appointment were forged. Sri Diesh, the then A. P. O. also did not say that the letter of appointment bore forged initials. It was elicited from Sri Diesh that the initials on the letter of appointment bore great resemblance with his genuine initials. Though Sri Diesh did state that he never signed any appointment order but he further admitted that in the rush of work some Assistant might have got his initials on the letter of appointment. Assuming that Sri Diesh was made to sign or initial the letter of appointment of the plaintiff and he was not conscious of the fact that he was signing a letter of appointment, there was no evidence before the Enquiry Committee that the plaintiff was in conspiracy with the clerks in the office and was instrumental in procuring the letter of appointment. The plaintiff may himself have been a victim of the fraud going on in the office of Sri Diesh and he may never have known that his appointment order was irregularly

signed. No question, therefore, would arise of his concealing the fact of obtaining appointment by deceitful means. The plaintiff admittedly was given an alternative job of class B 1 by an order dated 29-3-1962. He was absorbed as an Electric Khalasi. It is not the case of the Railway Administration against the plaintiff that he secured the appointment of Electric Khalasi by deceitful means. The plaintiff was holding the post of Electric Khalasi having been duly appointed on that post. This aspect of the matter has been entirely missed by the Railway Administration when removing him from service.

13. It was, however, urged by the learned standing Counsel that the plaintiff was not entitled to a decree as his appointment itself being void he was not a Railway servant and not entitled to enforce the rules of procedure prescribed by the Railway Establishment Code and Article 311 (2) of the Constitution. Reliance was placed on a learned Single Judge's decision of the Calcutta High Court in *Subodh Ranjan v. Major A. O. Callaghan* (AIR 1953 Cal 319). I do not find any tenability whatsoever in this contention raised by the learned Standing Counsel in support of the decree of dismissal of suit. In the Calcutta case cited the decision turned on the fact that no valid contract of service came into being between the petitioner and the Government as no agreement was executed complying with the requirement of Article 299 of the Constitution. Here in the instant case the rules of recruitment and appointment to class IV servants of the Indian Railways do not require any agreement to be executed complying with the provisions of Article 299 of the Constitution. Assuming that the plaintiff procured his appointment as Loco cleaner by deceitful means the contract between him and the Railways would at best be voidable but not void under Section 19 of the Contract Act.

14. It was then urged that the Railway Administration having removed the plaintiff from service and he being no longer in the service the contract would be deemed to have been avoided and the plaintiff is not entitled to any declaration or decree since he was guilty of fraud and for the same reason he cannot plead estoppel against the Railway Administration as his conduct was fraudulent and on that conduct no estoppel would arise. The arguments so raised by the learned standing Counsel will appear to be tenable if of course it were found that the plaintiff's conduct in obtaining his appointment as Loco cleaner was deceitful and fraudulent but there is no such finding.

15. It was strenuously urged by the learned standing Counsel that the civil Court cannot go into the question of the correctness of the finding recorded by the Enquiry Committee. I have held above that the plaintiff succeeded in demonstrating that there was no legal evidence before the Enquiry Committee in support of the charge. It is not disputed by the learned standing Counsel that the civil Court has jurisdiction and power to strike down an order of punishment of a Government servant if it were found that there was no legal evidence in support of the charge of misconduct and thereby the verdict of the departmental trial will be vitiated. I need not, therefore, further consider the legal argument so raised by the learned Standing Counsel as I do not find any factual basis for the same.

16. Lastly it was urged, by the learned Standing Counsel that the plaintiff having not co-operated with the Enquiry Committee and having refused to participate in its proceedings would not be entitled to a decree of declaration from the civil Court. I am not aware of any such proposition of law. No

provision of the law or any precedent has been shown to me that merely because a charged Government servant is non-co-operated with the departmental enquiry or does not participate in the proceedings of the departmental enquiry he will be out of Court for assailing the final verdict of penalty on any of the grounds which have been recognised as available to him before the civil Courts. The observations of the Supreme Court in an unreported decision in Civil Appeal No. 322 of 1957, *Ratzada Trilok Singh v. Union of India*, decided on 1-11-1960, to which my attention was drawn by the learned counsel for the plaintiff appellant militate against this argument. In fact the plaintiff had co-operated with the Enquiry Committee and participated in its proceedings upto a certain stage. It was only when he found that the Enquiry Committee was bent upon refusing his applications for supply of copies of material documents and for summoning of defence witnesses that he thought that his future participation would be of no use and benefit that he did not appear in further proceedings.

17. As a result of the discussion above, I allow this appeal, set aside the judgment and decree of the lower appellate Court and restore that of the court of first instance with costs throughout.

*Appeal allowed.*

### PUNJAB AND HARYANA HIGH COURT

Before :—M. R. Sharma, J.

Civil Writ No. 1807 of 1973

Decided on 14-9-1973.

Dalip Singh, Advocate

(Petitioner)

vs.

State of Haryana and ors.

(Respondents)

For the Petitioner :—Mr. C. L. Lakhanpal, Advocate with Mr. Paramjit Singh, Advocate.

For the Respondents :—Mr. H. N. Mehtani, Assistant Advocate General, Haryana. Mr. S. B. Lal, Advocate for Respondent No. 2.

Punjab Agricultural Produce Marketing Act, S. 14—'Appointment'—The word 'appointment' means the date on which the member of a Committee is allowed to function as such for the first time. (Para 2)

Cases referred.

1. Chandu Lal v. Ram Dass and anr. 1969 S. L. R. 475.

#### JUDGMENT

M.R. Sharma, J.—This petition has been filed by Dalip Singh, Advocate, member Market Committee, Karnal, with the allegations that he and other members of the Market Committee started functioning for the first time on February 1, 1971, and under section 14 of the Punjab Agricultural Produce Marketing Act (hereinafter called the Act), he and his colleagues were entitled to hold office for a period of three years. According to respondent No. 1, the term of office of the petitioner and his colleagues expired on June 10, 1973, and that respondent No. 1 was entitled to nominate new members to act as the Market Committee. The petitioner has come with a prayer that a suitable writ be issued directing the respondents to treat him as a member of the Market Committee upto January 31, 1974.

(1975) 1 Supreme Court Cases 155

(Before A. N. Ray, C.J. and K. K. Mathew and A. Alagiriswami, JJ.)

THE STATE OF PUNJAB

Appellant;

Versus

BHAGAT RAM

Respondent.

Civil Appeal No. 4 of 1970†, decided on October 9, 1974

Constitution of India — Article 311(2) — Departmental enquiry — Refusal to supply statements of witnesses recorded by Vigilance Department — Supply of synopsis if satisfies the constitutional requirement — Government servants

The respondent was dismissed as a result of departmental enquiry and he filed a suit for declaration that his dismissal was illegal on the ground that copies of the statements recorded by the Vigilance Department during preliminary enquiry were not supplied. The dismissal was set aside by the trial Court and the decision was upheld by the Court. Thereafter, the State filed appeal by certificate.

HELD:

Unless the previous statements of witnesses are supplied the dismissed person will not be able to have an effective and useful cross-examination and therefore, it is unfair to deny the Government servant copies of the earlier statements of witnesses. Synopsis of the statements will not satisfy the requirements of reasonable opportunity to show cause against the action proposed to be taken. (Paras 7 and 8)

Appeal dismissed

G-M/2168/CL

Advocates who appeared in this case:

O. P. Sharma, Advocate, for Appellant;

Hardayal Hardy, Senior Advocate (P. P. Junsja, Advocate, with him), for Respondent.

The Judgment of the Court was delivered by

RAY, C.J.—This appeal by certificate turns on the question as to whether the State gave the respondent a reasonable opportunity as contemplated by Article 311 of the Constitution.

2. The respondent was a Sub Division Officer. The State ordered a departmental enquiry against the respondent.

3. The respondent filed a suit for a declaration that the dismissal of the respondent was illegal. One of the grounds challenging the order of dismissal was that copies of the statements recorded by the police in the course of investigation of the witnesses proposed to be examined at the departmental enquiry were not supplied by the State to the respondent in spite of the request in that behalf.

4. The trial Court found that copies of the statements of the witnesses as recorded by the Vigilance Department during the preliminary enquiry were not supplied to the respondent but only the synopsis was given. The trial Court, therefore, held that no reasonable opportunity was given to the respondent.

† Appeal from the Judgment and Decree, dated November 14, 1968, of the Punjab and Haryana High Court in R. F. A. Nos. 154 and 186 of 1964.

Page 7 m 8

5. The High Court upheld the decision.

6. The State contended that the respondent was not given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. The synopsis was adequate to acquaint the respondent with the gist of the evidence.

7. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is afforded a reasonable opportunity to that the Government servant and himself against charges against him. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the Government servant will be able to refer to the previous statements of the witnesses against the Government servant. Unless statements are given to the Government servant he will not be able to have an effective and useful cross-examination.

8. It is unjust and unfair to deny the Government servant copies of statements of witnesses examined during investigation and produced against the Government servant. A synopsis does not satisfy the requirements of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken.

9. For these reasons the appeal is dismissed. The State will pay costs to the respondent.

(1975) 1 Supreme Court Cases

(Before P. Jaganmohan Reddy and S. Dwivedi, JJ.)

SMT. HARDEEP KAUR AND ANOTHER

Versus

STATE OF PUNJAB AND ANOTHER

Civil Appeal No. 1126 of 1970, decided on March 21, 1974.

Tort — Damage — Quantum of — Calculus of negligence — High Court committing factual error awarded by the Motor Accidents Claim Tribunal restored.

Appeal allowed.

The Judgment of the Court was delivered by

JAGANMOHAN REDDY, J.—This is an appeal against the judgment of the Punjab and Haryana High Court which interfered

with the judgment of the High Court. The respondent was not entitled to get copies of statements of witnesses examined during investigation and produced against the Government servant.

The State contended that the respondent was not given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. The synopsis was adequate to acquaint the respondent with the gist of the evidence.

It is contended that the respondent was not given the opportunity of showing cause against the action proposed to be taken.

The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is afforded a reasonable opportunity to that the Government servant and himself against charges against him. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the Government servant will be able to refer to the previous statements of the witnesses against the Government servant. Unless statements are given to the Government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the Government servant copies of statements of witnesses examined during investigation and produced against the Government servant. A synopsis does not satisfy the requirements of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken.

For these reasons the appeal is dismissed. The State will pay costs to the respondent.

appeal must therefore be limited to what directly concerns the appellant in the impugned judgment. The Judicial Commissioner has held that this was a case of termination of service under Rule 74(2) which does not require a regular enquiry as in a case to which Rule 74(3) is applicable. In spite of this finding, the judgment contains some remarks like "the behaviour of the fifth respondent was immodest and immoral" and that though an opportunity was given to him to answer the charges levelled against him, he did not avail of that opportunity. There has been no proper enquiry to find out the truth of the allegations against the appellant; indeed, there was no occasion for any such enquiry as the appellant's services were terminated by applying Rule 74(2) of the grant-in-aid code. We hold that these remarks on the conduct of the appellant are unjustified and should not have been made. Subject to this, the appeal is dismissed. We express no opinion as to whether on the facts of the case the appellant has any legal claim against the management of the school; if he has, he is free to enforce it in an appropriate forum. In the circumstances of the case we make no order as to costs.

— — —

**1977 Supreme Court Cases (L & S) 532**

(BEFORE Y. V. CHANDRACHUD AND P. N. SHINGHAL, JJ.)

**THE NAYAGARH CO-OPERATIVE CENTRAL  
BANK LTD. AND ANOTHER**

.. Appellants;

*Versus*

**NARAYAN RATH AND ANOTHER**

.. Respondents.

Civil Appeal No. 126 of 1971, decided on April 27, 1976

**A. Constitution of India — Article 226 — Writ petition — Maintainability of against a cooperative society — Question not decided — However High Court's observation and its decision that such a writ petition is maintainable, held, not strictly in accordance with the decisions of the Supreme Court — High Court to reconsider the question and decide as and when it arises — Judgment under appeal reported at ILR 1970 Cut 437 not to be treated as a precedent (Paras 5 to 7)**

**B. Constitution of India — Article 226 — Writ petition can be against the order of the person acting as a statutory authority in the purported exercise of powers conferred on him by the statute — Writ against order of the Registrar of Cooperative Societies maintainable — Cooperative Societies (Para 5)**

**C. Cooperative Societies — Secretary working for 13 years cannot suddenly be subjected to termination on ground that the appointment was without the approval of the Registrar — Doctrine of acquiescence**

Respondent 1 was working as Secretary of the appellant Cooperative Bank from May 25, 1955 till May 13, 1968. On August 21, 1968, the Registrar passed an order disapproving respondent 1's appointment. On August 21, 1968 the President terminated his services which was ratified by the Board of Management of the Bank. The High Court allowed the writ petition filed by the respondent. Hence the appeal.

**Held:**

It was not open to the Registrar to set aside respondent 1's appointment as

a secretary after having acquiesced in it and after having, for all practical purposes, accepted the appointment as valid. It is undesirable that appointments should be invalidated in this manner after a lapse of several years. (Para 4)

Appeal dismissed

M/3353/SL

The Judgment of the Court was delivered by

CHANDRACHUD, J.—This is an appeal by special leave against the judgment dated February 9, 1970 of the High Court of Orissa, setting aside the order dated August 21, 1968 passed by the Registrar of Co-operative Societies and the Order dated August 26, 1968 passed by the President of the Nayagarh Co-operative Central Bank Ltd. The Bank is the first appellant while its President is the second appellant in this appeal. Respondent 1, Narayan Rath, has filed the writ petition in the High Court asking that the aforesaid orders removing him from service should be set aside. Respondent 2 is the Registrar of Co-operative Societies, Bhubaneshwar, Orissa.

2. Respondent 1 was functioning as a Secretary of the Nayagarh Co-operative Central Bank from May 25, 1955 till May 13, 1968. On August 21, 1968, the Registrar passed an order disapproving the appointment of respondent 1 as secretary of the Bank on the ground that he was functioning as a secretary without his approval and that he was not qualified to hold the post of a secretary. On August 26, 1968, the President of the Bank issued an order terminating the services of respondent 1 and that order was ratified by the Board of Management of the Bank on September 4, 1968. On August 28, 1968, the respondent filed a writ petition (O.J.C. 863 of 1968) challenging the order whereby his services were terminated. The High Court having allowed that writ petition, the appellants have filed this appeal by special leave of this Court.

3. The learned Advocate-General appearing on behalf of the appellants contends that the High Court was in error in taking the view that a writ application under Article 226 of the Constitution can lie against a Co-operative Society registered under the Co-operative Societies Act. This is a question of far-reaching importance, but in view of the facts of this case we do not think that it is necessary to decide it. As stated above, respondent 1 was appointed as a secretary of the Bank on May 25, 1955 and the appointment was made in a meeting over which the Registrar of Co-operative Societies had himself presided. Beyond informing the Bank from time to time that appropriate steps may be taken to terminate respondent 1's services, nothing at all was done by the Registrar either for regularising the appointment of respondent 1 or for removing him from service. It was thirteen long years after the date of appointment that on August 21, 1968 the Registrar issued an order disapproving the appointment of respondent 1 as secretary of the Bank. It was in pursuance of that order that the President issued an order five days later terminating the services of respondent 1. The President's order was ratified by the Board of Management on September 4, 1968.

4. The writ petition filed by respondent 1 could succeed, in our opinion, on the narrow ground that he had been permitted to function for over thirteen years as secretary of the Bank and that his appointment as Secretary was decided upon in a meeting over which the Registrar of Co-operative Societies had himself presided. The writ petition in substance is directed not against any order passed by the Co-operative Bank but against the order passed by the Registrar disapproving the appointment of respondent 1 as secretary of the Bank. It was not open to the Registrar, in our opinion, to set aside respondent 1's appointment as a secretary after having acquiesced in it and after having for all practical purposes, accepted the appointment as valid. It is undesirable that appointments should be invalidated in this manner after a lapse of several years.

5. The High Court has dealt with the question whether a writ petition can be maintained against a co-operative society, but we are inclined to the view that the observations made by the High Court and its decision that such a writ petition is maintainable are not strictly in accordance with the decisions of this Court. We would have liked to go into the question for ourselves, but it is unnecessary to do so as respondent 1 by his writ petition, was asking for relief not really against a co-operative society but in regard to the order which was passed by the Registrar, who was acting as a statutory authority in the purported exercise of powers conferred on him by the Co-operative Societies Act. The writ petition was in that view maintainable.

6. We would like to observe that the judgment of the High Court should not be treated as an authority for the proposition that a writ petition is maintainable against a co-operative society. That question shall have to be decided by the High Court as and when it arises in the light of the decisions of this Court.

7. The learned Advocate-General made a statement at the Bar that respondent 1 has been removed from service after a disciplinary enquiry but that he has challenged that order by filing a writ petition in the High Court of Orissa. If that be so, the question as to whether a writ application can be maintained against a co-operative society can very appropriately be decided in the proceeding which is pending before the High Court. We will only repeat that the High Court will not treat its judgment of February 9, 1970 as a precedent on that question.

8. With these observations, we uphold the ultimate decision of the High Court, though for different reasons, and dismiss this appeal. Appellant 1 will pay respondent 1 the costs of this appeal.

posts of Lecturers in Forensic Medicine advertised by the Commission on November 16, 1972, and that the Commission acted illegally in treating the appellant as not being possessed of the requisite academic qualification and excluding him from consideration on the said ground.

14. Accordingly, we allow this appeal, set aside the judgment of the Division Bench of the High Court and restore the judgment of the learned single Judge, subject to the modification that in carrying out the directions contained in the judgment of the learned single Judge, the Commission should treat the appellant as a fully qualified candidate in the light of the finding recorded by us that at the relevant time the appellant possessed not merely the prescribed academic qualification but also the requisite experience of two years' Medico-legal work. The appellant will get his costs throughout from respondents 1 and 2 in equal shares.

Appeal allowed.

**AIR 1982 SUPREME COURT 937**

(From : Allahabad)\*

**V. D. TULZAPURKAR AND  
AMARENDRA NATH SEN. JJ.**

Civil Appeal No. 1603 of 1970, D/- 13-1-1982.

State of Uttar Pradesh, Appellant v. Mohd. Sharif (dead) through L. Rs., Respondent.

Police Act (5 of 1861), S. 7 — Departmental inquiry against Head Constable — Charge-sheet not furnishing necessary particulars — Statements of witnesses recorded during preliminary inquiry also not furnished — Held, delinquent was denied reasonable opportunity to defend himself at disciplinary inquiry — Dismissal order illegal. (Constitution of India, Arts. 226, 311).

Where in a departmental inquiry against Head Constable of police for his alleged misconduct of hunting a bull in Government forest by taking advantage of his office and rank, the charge-sheet served on the delinquent did not mention the date and time of his alleged misconduct, even the location

\* Second Appeal No. 2226 of 1969, D/- 25-11-1969 (All).

CZ/CZ/A878/82/IVCD/LGC-H

of the incident in the vast forest was not indicated with sufficient particularity, the copies of statements of witnesses recorded during preliminary inquiry were also not furnished to the delinquent at the time of disciplinary inquiry it was held that in the absence of these particulars and statements of witnesses the delinquent was prejudiced in the matter of his defence and was thus denied reasonable opportunity to defend himself at the disciplinary inquiry. The order of his dismissal was, therefore, illegal. (Para 3)

**JUDGMENT:**— There is no substance in this appeal which has been preferred by the State of U. P. against the judgment and decree dated 25th Nov., 1969 of the High Court of Allahabad in Second Appeal No. 2226 of 1969.

2. The plaintiff Mohd. Sharif (since deceased) was working as a Head Constable of the Dakshin Guard at P. S. Kakwan District Kanpur. On 22nd Jan., 1955 he was served with a charge-sheet under S. 7 of the Police Act calling upon him to submit his explanation thereto: he submitted the explanation on the following day. After holding the department disciplinary inquiry against him the inquiry officer submitted his report which was accepted and ultimately he was dismissed from service by an order dated 3rd June, 1955. After departmental appeal and revision to higher authorities failed, the plaintiff filed a suit challenging his dismissal on the ground that the said order was illegal and void as no proper inquiry was held against him and no reasonable opportunity was given to him to defend himself against the charges framed against him and for recovery of arrears of salary. The trial Court dismissed the suit. In Civil Appeal No. 478 of 1962 preferred by him the learned Second Addl. Civil Judge, Kanpur, reversed the trial Court's findings and decreed his suit holding that the charge-sheet framed against him was vague, that the plaintiff was prejudiced in his defence and was not given a reasonable opportunity to defend himself during the inquiry. The appeal Court set aside the dismissal by declaring the same to be illegal and void but the matter was remanded back in respect of the relief pertaining to salary etc. The State preferred a second appeal and the High Court has confirmed the decree passed by the appeal Court and dismissed the second appeal. The State of U. P. has come up in appeal to this Court.

3. After hearing counsel appearing for the State, we are satisfied that both the appeal

Court and the High Court were right in holding that the plaintiff had no reasonable opportunity of defending himself against the charges levelled against him and he was prejudiced in the matter of his defence. Only two aspects need be mentioned in this connection. Admittedly, in the charge-sheet that was framed and served upon the plaintiff no particulars with regard to the date and time of his alleged misconduct of having entered Government Forest situated in P. C. Thatia District Farrukhabad and hunting a bull in that forest and thereby having injured the feeling of one community by taking advantage of his service and rank, were not mentioned. Not only were these particulars with regard to date and time of the incident not given but even the location of the incident in the vast forest was not indicated with sufficient particularity. In the absence of these plaintiff was obviously prejudiced in the matter of his defence at the inquiry. Secondly, it was not disputed before us that a preliminary inquiry had preceded the disciplinary inquiry and during the preliminary inquiry statements of witnesses were recorded but copies of these statements were not furnished to him at the time of the disciplinary inquiry. Even the request of the plaintiff to inspect the file pertaining to preliminary inquiry was also rejected. In the face of these facts which are not disputed it seems to us very clear that both the first appeal Court and the High Court were right in coming to the conclusion that the plaintiff was denied reasonable opportunity to defend himself at the disciplinary inquiry; it cannot be gainsaid that in the absence of necessary particulars and statements of witnesses he was prejudiced in the matter of his defence. Having regard to the aforesaid admitted position it is difficult to accept the contention urged by the counsel for the appellant that the view taken by the trial Court should be accepted by us. We are satisfied that the dismissal order has been rightly held to be illegal, void and inoperative. Since the plaintiff has died during the pendency of the proceedings the only relief that would be available to the legal heirs of the deceased is the payment of arrears of salary and other emoluments payable to the deceased.

4. The appeal is dismissed with costs.

Appeal dismissed.

AIR 1982 SUPREME COURT 938

P. N. BHAGWATI AND  
E. S. VENKATARAMIAH, JJ.

Criminal Appeal No. 7 of 1982, D/- 4-1-1982.

Madhu Bala, Appellant v. Narender Kumar and others. Respondents.

Constitution of India, Arts. 226, 136 — Penal Code (1860), S. 340 — Habeas corpus — Petition by husband for production and release of his wife — High Court allowing petition — Appeal by special leave by wife — Appellant not detained against her will and without her consent by her parents — Appellant completing 21 years of age during pendency of appeal before Supreme Court — Petition for writ of habeas corpus, not maintainable. Decision of High Court, Reversed. (Para 2)

BHAGWATI, J.:— Special leave granted.

2. The appellant appeared before us in chamber and we questioned her in order to find out whether she is being detained by her parents against her wish and she is being prevented from going to the first respondent. The appellant stated clearly and unequivocally before us that she is not being detained by her parents against her will and she does not want to go to the first respondent. We asked the appellant her age and she stated that she has just completed 21 years in the month of Mar. 1981. She also appears to be of 21 years age. We have satisfied ourselves that the appellant is not being detained against her will and without her consent. The application for a writ of habeas corpus for her production and release must therefore fail. Neither the dismissal of this application for a writ of habeas corpus nor anything we have said in this order will stand in the way of the first respondent agitating, if he so wishes, the factum of marriage or any other civil or matrimonial rights which he may have against the appellant and it will be for the appropriate Court in which such question is raised to decide it on the evidence which may be led before it. Appeal is disposed of in the light of the above observations.

Order accordingly.

BZ/CZ/A830/82/VNP/DVT-H

party against whom it was made. None of these conditions was fulfilled in the present case and, accordingly, interference, in revision, was not permissible. The powers of every court to set aside its own interlocutory ex-parte orders are very wide and they are freely exercisable in the interest of justice, after allowing costs to compensate the other party. It was, therefore, not in the interest of justice either to interfere with the reasonable order of the learned Munsif.

3. In the result, the writ petition is allowed and the order of the learned District Judge, dated 9.12.80, Annexure-2 to the writ petition, is hereby quashed. No order is made as to costs.

*(Petition allowed)*

## ALLAHABAD HIGH COURT

Hon'ble S. K. Dhaon, J.

(Writ Petition No. 3516 of 1974)

*Decided on February 18, 1983*

SMT. MADHURLATA BHATNAGAR

Petitioner

*Versus*

DEPUTY DIRECTOR OF EDUCATION (WOMEN),  
ALLAHABAD AND OTHERS

Respondents

### EDUCATION—

- (a) U. P. Intermediate Education Act, 1921, Section 15-G (3) (c)—  
Appeal against the order of Inspector of schools—Appellate authority is a final forum on facts and law both—Has a statutory duty of giving finding on points urged, along with reasons—Even while passing order of affirmance. (Para 3)
- (b) Speaking orders—Duty of giving reasons for the conclusions reached—It is well known that reasons are the vehicle of the bridge between the material on record and the conclusions arrived at—Reasons constitute the nexus between the material and the conclusion. (Para 3)

Hon'ble S. K. Dhaon, J.—This writ petition is directed against the order passed by the Deputy Director of Education (women), Allahabad, dismissing

the appeal preferred by the petitioner, against the order passed by the Regional Inspectress of Girls Schools, Bareilly, approving the decision of the Managing Committee of the Kaushalya Kanya Inter College, to remove the petitioner from service.

2. The petitioner was employed as a Music Teacher in the Kaushalya Kanya Inter College. Certain charges were levelled against her by the Committee of Management of the College. The usual enquiry was held and the committee of Management sought the approval of the Regional Inspectress of Girls Schools, for removing the petitioner from service. The Regional Inspectress of Girls Schools accorded her approval. The petitioner preferred an unsuccessful appeal before the Deputy Director of Education (women).

3. Section 16-G (3) of the U. P. Intermediate Education Act, 1921, confers right of an appeal, upon any party, against the order of the Inspector, approving or disapproving, or reducing or enhancing the punishment, or approving or disapproving the notice for termination of service, proposed by the management. Apparently, the petitioner took recourse to the right of appeal conferred upon her by the statute. She filed a detailed memorandum of appeal, dividing her arguments under several sub-heads. The sum and substance of the order of the appellate authority is that she perused the record, found that the procedure had been duly adopted, and the charges against the petitioner stood proved. No reason, whatsoever, has been given by the appellate authority to indicate as to how and in what manner she came to the conclusion that the charges against the petitioner stood proved. In the order we merely find her conclusion that the charges stood proved. It is well known that reasons are the vehicle or the bridge, between the material on record, and the conclusions arrived at. Reasons constitute the nexus between the material and the conclusion. Having gone through the order of the appellate authority more than once, I am convinced that she failed to assign any reason, whatsoever, in support of her conclusion. It is true that the order of the appellate authority is one of affirmance. Nevertheless, that factor did not absolve the appellate authority from performing its statutory duty of giving a finding on the various points urged before her, along with reasons, although in brief. It has not to be forgotten that under the scheme of the Act, the appellate authority has been constituted as a final forum on facts and law, both. I am of the view that the order of the appellate authority cannot be sustained.

4. As a result of the foregoing discussion, this writ petition succeeds. It is allowed, and the order dated 19.2.1974 passed by the Deputy Director of Education (women), Allahabad, is quashed. The Deputy Director of

Education is directed to re-hear the appeal preferred by the petitioner, in the light of the observations made above, and dispose of the same on merits, in accordance with law, expeditiously. Under the circumstances, there shall be no order as to costs.

*(Petition allowed)*

## ALLAHABAD HIGH COURT

Hon'ble B. D. Agarwal, J.

(Civil Misc. Writ Petition No. 10471 of 1979)

*Decided on January 27, 1983*

SHRI SWETAMBER STHANAKWARI JAIN SANGH  
(REGD.). THROUGH ITS PRESIDENT

Petitioner

*Versus*

A.R.O. (RENT CONTROL), AGRA AND ANOTHER

Respondents

- (a) **U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), Section 9-A—Providing for revision of rent of commercial buildings, let out by Public Religious Institutions—Provision introduced in the parent Act by U. P. Act No. 28 of 1976—Deleted by U. P. Ordinance No. 11 of 1977—Ordinance not replaced by an Act and was subsequently withdrawn—Withdrawal had the effect of reviving the provision in Section 9-A.**

**By the Court**—Shree Swetamber Sthanakwari Jain Sangh, petitioner, is a public charitable and religious institution. An application was made under section 9-A of the U. P. Urban Buildings (Regulation of letting, Rent and Eviction) Act, 1972, by the petitioner in May, 1979, for revision of rent in respect of commercial building specified therein, of which Ganga Prasad, respondent No. 2, has been the tenant. This application was rejected by the Rent Control Officer, Agra, under the impugned order passed on 25th September, 1979, observing that section 9-A of U. P. Act XIII of 1972, having been deleted by the U. P. Ordinance No. 11 of 1977, it did not revive, despite the said ordinance having been withdrawn with effect from 7th May, 1977. Aggrieved, the petitioner-landlord filed this petition, seeking the relief of certiorari by the order impugned, dated 25th September, 1979, being quashed.

proceedings and to pass an order of punishment. We are of the view that in the absence of such a provision which entitled the State Government to revoke an order of retirement on medical grounds which had become effective and final, the order dated October 5, 1963 passed by the State Government revoking the order of retirement should be held as having been passed without the authority of law and is liable to be set aside. It, therefore, follows that the order of dismissal passed thereafter was also a nullity.

7. We, therefore, allow this appeal, set aside the judgment of the High Court and quash the order of the State Government dated October 5, 1963 revoking the order of retirement of the appellant and the order of dismissal dated November 1, 1963 passed by the Excise Commissioner.

8. We are informed by the learned counsel for the appellant that the appellant had died on December 28, 1984 during the pendency of this appeal. We, therefore, direct the State Government to pay to the legal representatives of the appellant all the arrears of pension due to the appellant from November 1, 1963 up to the date of his death. The State Government shall also pay the costs of this appeal to the legal representatives of the appellant.

Appeal allowed.

**AIR 1986 SUPREME COURT 2118**

(From : Allahabad)

R. S. PATHAK AND M. P. THAKKAR, JJ.

Civil Appeal No. 2571 of 1977, D/- 15-5-1986.

Kashinath Dikshita, Appellant v. Union of India and others, Respondents.

**Constitution of India, Art. 311(2) — Disciplinary enquiry — Dismissal — Non-supply of copies of statements of witnesses and copies of documents relied upon by disciplinary authority — Govt. failed to show that no prejudice occasioned to employee — Order of dismissal held was violative of Art. 311(2). Decision of Allahabad High Court, Reversed.**

ID/1D/E639/86/VNP

Where the Govt. refused to its employ who was dismissed, the copies of statements of the witnesses examined at stage of preliminary inquiry preceding commencement of the inquiry and copies of the documents said to have been relied upon by the disciplinary authority in order to establish the charges against the employee and even in this connection the reasonable request of the employee to have the relevant portions of the documents extracted with help of his stenographer was refused and was told to himself make such notes as he could, and the Govt. failed to show that prejudice was occasioned to the employee on account of non-supply of copies of documents, the order of dismissal rendered by the disciplinary authority against the employee was violative of Art. 311 inasmuch as the employee has been denied a reasonable opportunity of defending himself. Decision of Allahabad High Court Reversed.

(Paras 10, 11)

**Cases Referred : Chronological**

AIR 1982 SC 937 : (1982) 2 Lab LJ 180  
Lab IC 1234 : 1982 All LJ 452  
AIR 1974 SC 2335 : (1975) 2 SCR 370  
Lab IC 1442  
1967 Serv LR 759 (SC)

**THAKKAR, J. :—** Validity of impugned order of dismissal is in issue.

2. The scope of the inquiry whether impugned order of dismissal dated June 1969 is null and void is restricted to two facets. Whether the principles of Natural Justice were violated by the Respondent in refusing to supply to the appellant (1) copies of the statements of the witnesses examined at the stage of preliminary inquiry preceding the commencement of the inquiry and copies of the documents said to have been relied upon by the disciplinary authority in order to establish the charges against the appellant who was holding the post of Superintendent of Police, Bijnor, U.P. Pradesh. Such is the position having regard to the fact that this Court per Bhagwati (as he then was) and Kailasam, J. as per their judgment dated October 25, 1977 whilst granting special leave, has so restricted the scope of the enquiry in the following terms :—

“Special leave granted limited only to the question whether there was any violation

*P. Anand*

Article 311 of the Constitution in regard to documents and the statement of witnesses referred to in the affidavit of the petitioner dated 12-2-1977."

As many as 8 charges, charges of serious nature, were levelled against the appellant who was at the material time holding the post of Superintendent of Police. The appellant was exonerated of all the charges except and related to charges 1 and 2 and charge 8 partly. The particulars of the charges were set out in the charge-sheet dated April 3, 1962. The appellant challenged the impugned order of dismissal from service in the High Court on a number of grounds. The High Court repelled the contentions and dismissed the Writ Petition. It is not necessary to advert to these contentions inasmuch as the controversy has been narrowed down to one central issue whether there has been violation of principles of natural justice by reason of :

(1) failure to supply copies of the statements of witnesses recorded ex parte at the pre-enquiry stage; and

(2) the failure to supply copies of the documents on which reliance was placed by the Department to establish the charges before the enquiry commenced.

The following facts are not in dispute :

(1) The appellant had requested for the supply of the copies of all the statements made by the witnesses at a pre-enquiry stage and also for copies of the documents on which reliance was placed in support of the charges levelled against him, as per his letter dated 14-4-1962 Annexure XI of the Writ Petition addressed to the Chief Secretary.

(2) The request made by the appellant was in terms turned down by the Disciplinary Authority as per his letter dated 25-7-62 Annexure XIX of the Writ Petition.

(3) The Disciplinary Authority granted permission to the appellant to inspect the copies of the statements and documents in question, if he so desired.

(4) The request made by the appellant for inspection accompanied by his Stenographer to whom he could dictate notes based on his inspection was in terms turned down by the

Disciplinary Authority, though the appellant was told that he himself could make such notes as he desired on the basis of the inspection made by him.

(5) The aforesaid copies of the statements of the witnesses and the copies of the documents have not been supplied to the appellant till the conclusion of the departmental proceedings.

(6) In all as many as 38 witnesses were examined in the course of the departmental proceeding and as many as 112 documents were produced to substantiate the 8 charges levelled against the appellant.

Preliminary objection :

4. The learned counsel for the respondents have raised a preliminary objection. It has been contended that no point was made before the High Court that the enquiry was vitiated by reason of the failure to supply the statements made by the witnesses at the pre-inquiry stage and the failure to make available the copies of the documents sought to be used against the appellant in order to establish the charges. It is no doubt true that this point has not been discussed in the judgment rendered by the High Court. Even so the preliminary objection must be overruled for two good reasons. Firstly, as will be presently shown the averment made on behalf of the petitioner that the point was in fact argued before the High Court has not been specifically controverted. And secondly, after taking into account the respective affidavits, this Court has granted special leave permitting the appellant to raise this point (in fact the special leave is restricted only to this point).

What transpired at the stage of special leave :

5. Way back in 1977 a notice was issued by this Court to the respondents to show cause as to why special leave to appeal should not be granted to the appellant when the matter came up before this Court for grant of special leave. In response to the said notice, the respondents have filed their counter-affidavits. The relevant portions of the affidavits extracted hereunder show that while the appellant has categorically asserted that the point was raised in the Court, the

respondents have not been able to controvert the said statement in the affidavit in reply and deny the said allegation :

The appellant had stated in his affidavit dated 27-10-1975 sworn by the appellant as under :—

“That the High Court has also omitted to consider the contention urged on behalf of the petitioner that there has been violation of the principles of natural justice inasmuch as the Board of Inquiry has placed reliance on certain documents which had not been disclosed to the petitioner during the course of enquiry.”

In the counter-affidavit dated September, 1976 sworn by Shri Subodh Nath Jha, Deputy Secretary to Government of Uttar Pradesh the respondents have not been able to specifically controvert the averments made in the affidavit, as will be seen from the following passage :—

“That regarding the contents of paragraph 20, the deponent has to say that the Division Bench of the High Court considered every aspect of the matter and observed ‘A perusal of the report of the Board of Enquiry revealed that it has taken great pains to discuss the entire prosecution and defence version and given detailed reasons for arriving at the conclusion. The Order of dismissal passed by the Government of India is also a well considered order. We are satisfied that the petitioner was afforded a reasonable opportunity to substantiate his case and got a fair hearing. The contention, that there has been a violation of Article 311 of the Constitution, has as such to be rejected’.”

6. The appellant in his affidavit dated 8-11-1976 sworn by the appellant has stated as under :—

“I was present in the Court at the time of the hearing of the writ petition before the Division Bench of the High Court and my counsel, Shri Shanti Bhushan had argued that there was denial of reasonable opportunity to the petitioner as a result of denial of copies of the documents and statements referred to in the Memo of Charges.”

7. In the counter-affidavit dated 29-11-1976 sworn by Shri Ravi Shankar, UDC, Appointment Section-3, U.P. Civil Secretariat,

Lucknow the respondents have not been able to specifically controvert the aforesaid averment made in the affidavit, as would be seen from the following passage :—

“That regarding the contents of paragraph 4, the deponent has to submit as under :—

X X X X X X X

(e) That in reply to this sub-para it is stated that the Hon'ble High Court has discussed at length the various pleas and arguments placed on behalf of the petitioner and after due consideration, dismissed the Writ Petition filed by the petitioner.”

It is thus abundantly clear that the point was raised in the High Court, but the High Court has failed to deal with the question. As discussed earlier, apart from the position which emerges from the affidavits, the fact remains that this Court has permitted the appellant to raise this point when the special leave was granted. (In fact this is the only point on which leave has been granted). It is therefore futile to contend that the appellant is not entitled to urge this point in support of his appeal. The preliminary objection must therefore fail.

Was there refusal to supply copies?

8. An examination of the record clearly shows that even though the appellant had in terms demanded copies of the documents and statements in question the disciplinary authority had turned down the request. On December 3, 1963, the appellant had moved the Board for copies of documents and statements in question. In the application made by the appellant, he has made the request in this behalf in the following terms :—

“1. That he has not so far been supplied with copies of the documents cited in evidence and of the statements made by persons named as witnesses on the eight charges framed against me by the first party vide annexures I and II to G.O. No. CR.70/II-A-1962, dated 3-4-1962 from Mukhya Sachiva, Uttar Pradesh.”

2. That to prepare himself for cross examination of the witnesses for rebuttal of prosecution evidence and for adduction of evidence in my defence, the applicant has to make a careful and detailed study of the said documents and statements.

that it is only after such a careful study of documents and statements that the appellant shall be able to decide on the names of witnesses to be examined in my defence and the nature of documentary evidence adduced in defence.

x        x        x        x

1) That true copies of all the documents cited in evidence on the eight charges against the applicant be kindly furnished to him as early as possible.

That in the case of each statement the date and time of the recording of statement and the name, designation and rank of the officer recording statement be clearly indicated.

x        x        x        x

This application was unceremoniously refused by the Board on December 20, 1963.\* It is clear that the appellant's request for copies of relevant documents and statements of witnesses has been refused in clear terms. We do not consider it fair to burden the records by quoting extracts from the letters addressed by the appellant and the reply sent to him.

Extracts quoted hereinabove leave no doubt that the disciplinary authority failed to furnish to the appellant copies of documents and copies of statements. When a government servant is facing a disciplinary proceedings, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can fairly meet the charges unless the copies of relevant statements and documents to be used against him are made available to

139 of the SLP Paperbook :

Please refer to your application No. ND/BI-2, dated December 13, 1963 regarding copies of documents and statement of evidence.

Board of Inquiry regrets that it is not possible for them to accede to your request as you have already been allowed by the Board to obtain an access to the relevant official records for the purpose of preparing your statement as provided under sub-rule 5 of the All India Services (General Conditions of Service and Appeal) Rules, 1955."

him. In the absence of such copies, how can the concerned employee prepare his defense, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question : "What is the harm in making available the material?" and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the Courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it. It is not even the case of the respondent that there was involved any consideration of security of State or privilege. No doubt the disciplinary authority gave an opportunity to the appellant to inspect the documents and take notes as mentioned earlier. But even in this connection the reasonable request of the appellant to have the relevant portions of the documents extracted with the help of his stenographer was refused. He was told to himself make such notes as he could. This is evident from the following passage extracted from communication dated 25-7-1962 from the disciplinary authority to the appellant :—

"The Government has been pleased to allow you to inspect all the documents mentioned in Annexure II to the charge-sheet given to you. While inspecting the documents, you are also allowed to take notes or even prepare copies, if you so like, but you will not be permitted to take a stenographer or any other person to assist you. In case you want copies of any specific documents, from out of those inspected by you, the request will be considered on merits in each case by the Government. In case you want to inspect any

document, other than those mentioned in Annexure II, you may make a request accordingly, briefly indicating its relevancy to the charge against you, so that orders of the Government could be obtained for the same. ~~xxxxx~~ As pointed out above, if you wish to have copies of any specific documents, from those inspected by you, you should make a request in writing accordingly, mentioning their relevancy to the charge, so that orders of Government could be obtained.

Government, however, maintains that you are not entitled to ask for copies of documents as a condition precedent to your inspection of the same. I am further to add that in case you do not inspect the documents on the date fixed, you will do so at your own risk."

10. And such a stance was adopted in relation to an inquiry whereat as many as 38 witnesses were examined, and 112 documents running into hundreds of pages were produced to substantiate the charges. In the facts and circumstances of the case we find it impossible to hold that the appellant was afforded reasonable opportunity to meet the charges levelled against him. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental inquiry depends on the facts of each case. We are not prepared to accede to the submission urged on behalf of the respondents that there was no prejudice caused to the appellant, in the facts and circumstances of this case. The appellant in his affidavit page 309 of the SLP Paper book has set out in a tabular form running into twelve pages as to how he has been prejudiced in regard to his defence on account of the non-supply of the copies of the documents. We do not consider it necessary to burden the record by reproducing the said statement. The respondents have not been able to satisfy us that no prejudice was occasioned to the appellant.

11. Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the

charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself. We do not consider it necessary to quote extensively from the authorities cited on behalf of the parties, beyond making passing reference to some of the citations, for, whether or not there has been a denial to afford a reasonable opportunity in the backdrop of this case may substantially depend upon the facts pertaining to this matter.

12. The appellant relied on *Tirlok N. v. Union of India* 1967 Serv LR 759 (SC) in support of the proposition that if a public servant facing an inquiry is not supplied copies of documents, it would amount to denial of reasonable opportunity. It has been held in this case :

"Had he decided to do so, the documents would have been useful to the appellant in cross-examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, well have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish to the appellant with copies of documents such as the FIR and statements recorded at Shidhipura house and during investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry."

Reliance has also been placed on *State of Punjab v. Bhagat Ram* (1975) 2 SCR 177 (AIR 1974 SC 2335) and *State of Uttar Pradesh v. Mohd. Sharif (dead) through LRs.* (1982) Lab LJ 180 : (AIR 1982 SC 937) in support of the proposition that copies of statements of witnesses must be supplied to the Government servant facing a departmental inquiry. It has been emphatically stated in *State of Punjab v. Bhagat Ram* by this Court as under

State contended that the respondent is entitled to get copies of statements. The reasoning of the State was that the respondent was given an opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with statements. It is contended that the opportunity was adequate to acquaint the respondent with the gist of the evidence.

The meaning of a reasonable opportunity in a disciplinary proceeding is that the Government servant is given a reasonable opportunity to defend himself against the charges on which inquiry is made. The Government servant should be given an opportunity to deny his guilt and to establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying copies of statements is that the Government servant should be able to refer to the previous statements of the witnesses proposed to be examined against the Government servant. Unless the copies are given to the Government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the Government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the Government servant. A synopsis does not satisfy the requirements of giving the Government servant a reasonable opportunity of showing his innocence against the action proposed to be taken.

13. In view of the pronouncements of the Court it is impossible to take any other view. As discussed earlier the facts and circumstances of this case also impel us to the conclusion that the appellant has been denied reasonable opportunity to defend himself. In the result, we are of the opinion that the impugned order of dismissal rendered by the disciplinary authority is violative of Article 311(2) of the Constitution of India inasmuch as the appellant has been denied a reasonable opportunity of defending himself and is on that account null and void. We accordingly allow the appeal. The judgment

of the High court is set aside. The impugned order of dismissal dated 10-11-1967 passed against the appellant is quashed and set aside. We further declare that the impugned order of dismissal is a nullity and non-existent in the eye of law and the appellant must be treated as having continued in service till the date of his superannuation on January 31, 1983. Taking into account the facts and circumstances of this case and the time which has elapsed we are of the opinion that the State Government should not be permitted to hold a fresh inquiry against the appellant on the charges in question. We therefore direct the State Government not to do so.

14. The appeal is allowed accordingly with costs throughout.

Appeal allowed.

**AIR 1986 SUPREME COURT 2123**

**O. CHINNAPPA REDDY AND  
K. N. SINGH, JJ.**

Writ Petn. No. 12591 of 1983, D/- 7-5-1986.

Bira Kishore Naik, Petitioner v. Coal India Ltd. and others, Respondents.

**Coal Mines (Nationalisation) Act (26 of 1973), Ss. 2(b), 3(2) and 14 – Coal Mines (Taking Over of Management) Act (15 of 1973), S. 3(2) and (3) – Nationalisation of coal mines – Private colliery not included in Schedules – Coal mine not proved to be existing on appointed day – Its management and ownership do not vest in Central Govt. – Mandamus cannot be issued to Govt. to work colliery – Workmen employed in such colliery cannot get any relief. (Constitution of India, Art. 32).**

The Natundihi Pahariabera Colliery was not a coal mine on the appointed day and neither its management nor its ownership ever vested in the Central Government. The petitioner and other workmen are therefore not entitled to the protection of sec. 14 of the Nationalisation Act and no mandamus as claimed by the petitioner directing the Central Government to treat the petitioner and other employees as employees of the Central Government can be issued. The Central

ID/ID/E613/86/MVJ

## 1986 Supreme Court Cases (L &amp; S) 383

(1986) 3 SCC 103

(BEFORE A.P. SEN AND B.C. RAY, JJ.)

RAM CHANDER

Appellant ;

*Versus*

UNION OF INDIA AND OTHERS

Respondents.

Civil Appeal No. 1621 of 1986†,  
decided on May 2, 1986

**Labour and Services — Railway Servants (Discipline and Appeal) Rules, 1968 — Rules 22(2) and 18(ii) — Appeal against punishment — Appellate authority must afford opportunity of hearing and pass a reasoned order — ‘Consider’ — Meaning of — Held on facts, Railway Board’s order summarily dismissing employee’s appeal against his removal after a long period of service on a single charge of misconduct vitiated by non-application of mind — Constitution of India, Article 311(2) first proviso — Words and Phrases**

The appellant preferred an appeal under Rule 18(ii) of the Railway Servants (Discipline and Appeal) Rules, against order of removal passed against him. The Railway Board rejected the appeal by the impugned order stating that the findings of the disciplinary authority were warranted by the evidence on record and that the penalty of removal was merited.

Held :

The impugned order of the Railway Board was just a mechanical reproduction of the phraseology of Rule 22(2) of the Railway Servants Rules without any attempt on the part of the Board either to marshal the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication that the Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service, may not deserve such a harsh punishment. There being non-compliance with the requirements of Rule 22(2), the impugned order passed by the Board was liable to be set aside. (Para 5)

R.P. Bhatt v. Union of India, (1986) 2 SCC 651, followed

The right to make a representation on the proposed penalty which was to be found in Article 311(2) having been taken away by the Forty-Second Amendment, there is no provision of law under which a government servant can claim this right. The only stage at which a government servant gets “a reasonable opportunity of showing cause against the action proposed to be taken in regard to him” i.e. an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have

†From the Judgment and Order dated February 15, 1984 of the Delhi High Court in L.P.A. No. 178 of 1983

been sufficient in his case, is at the stage of hearing of a departmental appeal. That being so, the Appellate Authority must not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. Although in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance, Rule 22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The word 'consider' has different shades of meaning and must in Rule 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision. Reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given. (Paras 9, 14 and 25)

*Union of India v. Tulsiram Patel*, (1985) 3 SCC 398 : 1985 SCC (L&S) 672 ; *Secretary, Central Board of Excise & Customs v. K.S. Mahalingam*, (1986) 3 SCC 35 and *Satyavir Singh v. Union of India*, (1985) 4 SCC 252 : 1986 SCC (L&S) 1, relied on

*Som Datt Datta v. Union of India*, (1969) 2 SCR 177 : AIR 1969 SC 414 ; *Tara Chand Khatri v. Municipal Corpn. of Delhi*, (1977) 1 SCC 472 : 1977 SCC (L&S) 151 : (1977) 2 SCR 198 : AIR 1977 SC 567 ; *M.P. Industries Ltd. v. Union of India*, (1966) 1 SCR 466 : AIR 1966 SC 671 ; *High Commissioner for India v. I.M. Lall*, (1947-48) 75 IA 225 : AIR 1948 PC 121 ; *Khem Chand v. Union of India*, 1958 SCR 1080 : AIR 1958 SC 300 : (1959) 1 Lab LJ 167 and *Swadeshi Cotton Mills v. Union of India*, (1981) 1 SCC 664 : (1981) 2 SCR 533 : AIR 1981 SC 818, referred to

The Court directed the Railway Board to hear and dispose of the appeal after affording a personal hearing to the appellant on merits by a reasoned order in conformity with the requirements of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, as expeditiously as possible, and in any event, not later than four months. (Para 26)

R-M/7363/CLA

Advocates who appeared in this case :

M.K. Ramamurthi, Senior Advocate (M.A. Krishnamoorthy and Mrs Chandan, Advocates, with him), for the Appellant ;  
O.P. Sharma, P.P. Singh and C.V. Subba Rao, Advocates, for the Respondents.

The Judgment of the Court was delivered by

A.P. SEN, J.--The central question in this appeal is whether the impugned order passed by the Railway Board dated March 11, 1972 dismissing the appeal preferred by the appellant, was not in conformity with the requirements of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968. At the hearing on February 13,

1986, learned counsel for the Union of India took time to enable the Railway Board to reconsider its decision as to the quantum of punishment. At the resumed hearing on March 13, 1986 we were informed by the learned counsel that there was no question of the Railway Board reconsidering its decision. Arguments were accordingly heard on the question as to whether the impugned order of the Railway Board was sustainable in law. We heard the parties and allowed the appeal by order dated March 13, 1986 directing the Railway Board to hear and decide the appeal afresh on merits in accordance with law in conformity with the requirements of Rule 22(2) of the Rules. We now proceed to give reasons therefor.

2. **The Facts.** The appellant Ram Chander, Shunter, Grade B at Loco Shed Ghaziabad was inflicted the penalty of removal from service under Rule 6(viii) of the Railway Servants (Discipline and Appeal) Rules, 1968 by order of the General Manager, Northern Railway dated August 24, 1971. The gravamen of the charge was that the appellant was guilty of misconduct in that he had on October 1, 1969 at 7.30 p.m. assaulted his immediate superior Banarsi Das, Assistant Loco Foreman while he was returning after performing his duties. The immediate cause for the assault was that the appellant had on September 30, 1969 applied for medical leave for one day i.e. for October 1, 1969. On that day, there was a shortage of Shunters, he accordingly asked Banarsi Das to resume his duties but Banarsi Das refused to cancel the leave already granted and therefore the appellant nursed a grouse against him because he was already deprived of the benefit of one days' additional wages for October 2, 1969 which was a national holiday. Apparently Banarsi Das lodged a report with the police but no action was taken thereon. More than a month later i.e. on November 17, 1969 Banarsi Das made a complaint against the appellant to his superior officers and this gave rise to a departmental proceeding. The Enquiry Officer fixed the date of enquiry on May 11, 1970 at Ghaziabad. The enquiry could not be held on that date due to some administrative reasons and was then fixed for July 11, 1970. The appellant was duly informed of the date but he did not appear at the enquiry. The Enquiry Officer accordingly proceeded ex parte and examined witnesses. By his report dated May 26, 1971, the Enquiry Officer found the charge proved. The General Manager, Northern Railway agreed with the report of the Enquiry Officer and came to the provisional conclusion that the penalty of removal from service should be inflicted and issued a show cause notice dated May 26, 1971. In compliance the appellant showed cause but his explanation was not accepted by the General Manager who by his order dated August 24, 1971 imposed on the appellant the penalty of removal from service. The appellant preferred an appeal

before the Railway Board under Rule 18(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968 but the Railway Board by the impugned order dated March 11, 1972 dismissed the appeal. Thereafter, the appellant moved the High Court by a petition under Article 226 of the Constitution. A learned Single Judge by his order dated August 16, 1983 dismissed the writ petition holding that since the Railway Board agreed with the findings of the General Manager there was no duty cast on the Railway Board to record reasons for its decision. The appellant therefore preferred a letters patent appeal, but a Division Bench by its order dated February 15, 1984 dismissed the appeal in limine.

3. Rule 22(2) of the Railway Servants Rules provided as follows :

22(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider—

- (a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice ;
- (b) whether the findings of the disciplinary authority are warranted by the evidence on the record ; and
- (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe ;

and pass orders—

- (i) confirming, enhancing, reducing or setting aside the penalty ; or
- (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case :

4. The duty to give reasons is an incident of the judicial process. So, in *R.P. Bhatt v. Union of India*<sup>1</sup>, this Court, in somewhat similar circumstances, interpreting Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which provision is in *pari materia* with Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, observed : (SCC p. 654, para 4)

It is clear upon the terms of Rule 27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the rules has been complied with ; and if not, whether

1. (1986) 2 SCC 651

such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in failure of justice: (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or remit back the case to the authority which imposed the same.

It was held that the word 'consider' in Rule 27(2) of the Rules implied 'due application of mind'. The court emphasized that the Appellate Authority discharging quasi-judicial functions in accordance with natural justice must give reasons for its decision. There was in this case, as here, no indication in the impugned order that the Director-General, Border Road Organisation, New Delhi was satisfied as to the aforesaid requirements. The Court observed that he had not recorded any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. In the present case, the impugned order of the Railway Board is in these terms:

(1) In terms of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, the Railway Board have carefully considered your appeal against the orders of the General Manager, Northern Railway, New Delhi imposing on you the penalty of removal from service and have observed as under:

- (a) by the evidence on record, the findings of the disciplinary authority are warranted; and
- (b) the penalty of removal from service imposed on you is merited.

(2) The Railway Board have therefore rejected the appeal preferred by you.

5. To say the least, this is just a mechanical reproduction of the phraseology of Rule 22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshal the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service, may not deserve such a harsh punishment. There being non-compliance with

the requirements of Rule 22(2) of the Railway Servants Rules, the impugned order passed by the Railway Board is liable to be set aside.

6. It was not the requirement of Article 311(2) of the Constitution prior to the Constitution (Forty-Second Amendment) Act, 1976 or of the rules of natural justice, that in every case the appellate authority should in its order state its reasons except where the appellate authority disagreed with the findings of the disciplinary authority. In *State of Madras v. A.R. Srinivasan*<sup>2</sup>, a Constitution Bench of this Court while repelling the contention that the impugned order by the State Government accepting the findings being in the nature of quasi-judicial proceedings was bad as it did not give reasons for accepting the findings of the Tribunal, observed as follows :

In dealing with the question as to whether it is obligatory on the State Government to give reasons in support of the order imposing a penalty on the delinquent officer, we cannot overlook the fact that the disciplinary proceedings against such a delinquent officer begin with an enquiry conducted by an officer appointed in that behalf. That enquiry is followed by report and the Public Service Commission is consulted where necessary. Having regard to the material which is thus made available to the State Government and which is made available to the delinquent officer also, it seems to us somewhat unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal. It is conceivable that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons why it differs from the conclusion of the Tribunal, though even in such a case, it is not necessary that the reasons should be detailed or elaborate. But where the State Government agrees with the findings of the Tribunal which are against the delinquent officer, we do not think as a matter of law, it could be said that the State Government cannot impose the penalty against the delinquent officer in accordance with the findings of the Tribunal unless it gives reasons to show why the said findings were accepted by it. The proceedings are, no doubt, quasi-judicial ; but having regard to the manner in which these enquiries are conducted, we do not think an obligation can be imposed on the State Government to record reasons in every case.

7. Again, in *Som Datt Datta v. Union of India*<sup>3</sup>, a Constitution Bench of this Court rejected the contention that the order of the Chief

2. AIR 1966 SC 1827, 1831-32

3. (1969) 2 SCR 177 : AIR 1969 SC 414

of the Army Staff confirming the proceedings of the General Court Martial under Section 164 of the Army Act, 1950 and the order of the Central Government dismissing the appeal of the delinquent officer under Section 165 of the Act were illegal and ultra vires as they did not give reasons in support of the orders, and summed up the legal position in these words :

Apart from any requirement imposed by the statute or statutory rule either expressly or by necessary implication, there is no legal obligation that the statutory tribunal should give reasons for its decision. There is also no general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision.

8. So also in *Tara Chand Khatri v. Municipal Corpn. of Delhi*<sup>4</sup>, this Court observed that there was a vital difference between an order of reversal by the appellate authority and an order of affirmance and the omission to give reasons for the decision may not by itself be a sufficient ground for passing such order, relying on the test laid down by Subba Rao, J. in *M.P. Industries Ltd. v. Union of India*<sup>5</sup> :

Ordinarily, the appellate or revisional authority shall give its own reasons succinctly : but in a case of affirmance where the original tribunal gives adequate reasons, the appellate tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons.

9. These authorities proceed upon the principle that in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. Here, Rule 22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Rule 22(2) provides that in the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall 'consider' as to the matters indicated therein. The word 'consider' has different shades of meaning and must in Rule 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision.

10. After the amendment of clause (2) of Article 311 of the

4. (1977) 2 SCR 198 : (1977) 1 SCC 472 : 1977 SCC (L&S) 151 : AIR 1977 SC 567
5. (1966) 1 SCR 466 : AIR 1966 SC 671

Constitution by the Constitution (Forty-Second Amendment) Act, 1976 and the consequential change brought about in Rule 10(5) of the Railway Servants (Discipline and Appeal) Rules, 1968, substituted by the Railway Servants (Discipline and Appeal) (Third Amendment) Rules, 1978, it is no longer necessary to afford a second opportunity to the delinquent servant to show cause against the punishment. The Forty-Second Amendment has deleted from clause (2) of Article 311 the requirement of a reasonable opportunity of making representation on the proposed penalty and, further, it has been expressly provided inter alia in the first proviso to clause (2) that :

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed.

11. After the amendment, the requirement of clause (2) will be satisfied by holding an inquiry in which the government servant has been informed of the charges against him and given a reasonable opportunity of being heard. But the essential safeguard of showing his innocence at the second stage i.e. after the disciplinary authority has come to a tentative conclusion of guilt upon a perusal of the findings reached by the Inquiry Officer on the basis of the evidence adduced, as also against the proposed punishment, has been removed to the detriment of the delinquent officer. In view of the said amendment of Article 311(2) of the Constitution, Rule 10(5) of the Railway Servants Rules has been substituted to bring it in conformity with clause (2), of Article 311, as amended. Rule 10(5), as substituted, provides as follows :

10(5) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 6 should be imposed on the railway servant, it shall make an order imposing such penalty and it shall not be necessary to give the railway servant any opportunity of making representation on the penalty proposed to be imposed :

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the railway servant.

12. We may here mention that a corresponding change in the Central Civil Services (Classification, Control and Appeal) Rules, 1965

has been brought by substituting Rule 15(4) taking away the procedural safeguard of making a representation at the second stage i.e. before imposing punishment on the basis of the evidence at the inquiry.

13. In *Union of India v. Tulsiram Patel*<sup>6</sup>, a five-Judge Bench by a majority of 4 : 1 held that where a departmental inquiry was wholly dispensed with in the three situations under the second proviso to Article 311(2), the only right to make a representation on the proposed penalty which was to be found in clause (2) of Article 311 of the Constitution prior to its amendment having been taken away by the Constitution (Forty-Second Amendment) Act, 1976, there is no provision of law under which a government servant can claim this right. This Court last week in the *Secretary, Central Board of Excise and Customs v. K.S. Mahalingam*<sup>7</sup> after referring to the constitutional changes brought about observed : (SCC p. 37, para 6)

After the amendment, the requirement of clause (2) will be satisfied by holding an inquiry in which the government servant has been informed of the charges against him and given a reasonable opportunity of being heard.

14. After the majority decision in *Tulsiram Patel case*<sup>8</sup>, it can no longer be disputed that the right to make a representation on the proposed penalty which was to be found in clause (2) of Article 311 of the Constitution having been taken away by the Forty-Second Amendment, there is no provision of law under which a government servant can claim this right.

15. It seems to be purely academic to refer to the vintage decisions of the Privy Council in *High Commissioner for India v. I.M. Lall*<sup>9</sup> and that of this Court in *Khem Chand v. Union of India*<sup>9</sup> following it or the plethora of decisions thereafter which have now become otiose after the Forty-Second Amendment by which the words 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' were deleted at the end of clause (2) of Article 311 and proviso to clause (2) substituted, with the object of doing away with the second opportunity of making representation at the stage of imposing penalty i.e. at the conclusion of the inquiry. It is however necessary to refer to these two decisions briefly with the object of showing the prejudicial effect on such delinquent government servants. More so, because the majority decision in *Tulsiram Patel case*<sup>6</sup> seeks to justify the amendment effected by the Forty-Second Amendment

6. (1985) 3 SCC 398 : 1985 SCC (L&S) 672

7. (1986) 3 SCC 35

8. (1947-48) 75 IA 225 : AIR 1948 PC 121

9. 1958 SCR 1080 : AIR 1958 SC 300 : (1959) 1 Lab LJ 167

of clause (2) of Article 311 by observing that "clause (2) of Article 311 as originally enacted and the legislative history of that clause wholly rule out the giving of any opportunity" (SCC p. 455, para 65). We have our own reservations about the correctness of this proposition. It is not quite accurate to suggest that the opportunity of showing cause before a government servant was dismissed, removed or reduced in rank was not contemplated by law nor justified by the legislative history.

16. In *I.M. Lal case*<sup>8</sup>, Lord Thankerton while interpreting the words 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' in sub-section (3) of Section 240 of the Government of India Act, 1935 speaking for the Judicial Committee of the Privy Council, observed :

*In the opinion of their Lordships, no action is proposed within the meaning of the sub-section until a definite conclusion has been come to on the charges, and the actual punishment to follow is provisionally determined on. Before that stage, the charges are unproved and the suggested punishments are merely hypothetical.* (emphasis supplied)

That very distinguished Judge went on to say :

*It is on that stage being reached that the statute gives the civil servant the opportunity for which sub-section (3) makes provision.*

And then added :

*Their Lordships would only add that they see no difficulty in the statutory opportunity being reasonably afforded at more than one stage. If the civil servant has been through an enquiry under Rule 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out but that would not exhaust his statutory right, and he would still be entitled to represent against the punishment proposed as the result of the findings of the inquiry.* (emphasis supplied)

17. The phrase 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' appearing in sub-section (3) of Section 240 of the Government of India Act, 1935 was reproduced in clause (2) of Article 311 of the Constitution as originally enacted i.e. prior to its amendment by the Constitution (Fifteenth Amendment) Act, 1963. It would appear that in the original Article 311(2) as it stood before the Fifteenth Amendment, the obligation to afford an opportunity at two stages, namely, at the stage of inquiry into the charges and, again, at the stage of awarding punishment, was not explicitly stated in the article itself. It merely required that opportunity must be given to show cause against the

'action proposed'. As already stated, the obligation to offer such opportunity at two stages was however deduced judicially by the Privy Council in *I.M. Lall case*<sup>8</sup>.

18. In *Khem Chand case*<sup>9</sup>, the court following the judgment of the Privy Council in *I.M. Lall case*<sup>8</sup> came to the same conclusion from the word 'reasonable'. The government servant must not only be given an opportunity but such opportunity must be a *reasonable* one. In order that the opportunity to show cause against the proposed action may be regarded as a reasonable one, it is quite necessary that the government servant should have the opportunity, to say, if that be his case, that he has not been guilty of any misconduct to merit any punishment at all *and also* that the particular punishment proposed to be given is much more drastic and severe than he deserves. It referred to the above passages from the judgment of the Privy Council in *I.M. Lall case*<sup>8</sup>, and observed :

Further opportunity is to be given to the government servant after the charges have been established against him and a particular punishment is proposed to be meted out to him.

In short, the substance of the protection provided by Rules, like Rule 55 referred to above, was bodily lifted out of the rules and together with an additional opportunity embodied in Section 240(3) of the Government of India Act, 1935 so as to give a statutory protection to the government servants and had now been incorporated in Article 311(2) so as to convert the protection into a constitutional safeguard. The legal consequence therefore was that :

At the second stage, the delinquent government servant was therefore entitled to contend—

- (a) That the inquiry at which the findings were arrived at was vitiated by a breach of the principles of natural justice.
- (b) That the findings were not supported by the evidence in the proceedings, or that the evidence against him was not worthy of credence or that he was not guilty of any misconduct to merit any punishment at all.
- (c) That the punishment proposed could not be properly awarded on the findings arrived at, that is to say, the charges proved did not require the particular punishment proposed to be awarded.

19. After Parliament frustrated the attempt of the government to delete the constitutional safeguard as evolved by this Court in *Khem Chand case*<sup>9</sup> following the principles laid down in the Privy Council

decision in *I.M. Lall case*<sup>8</sup> by deletion of the words 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' by the Constitution (Fifteenth Amendment) Act, 1963, it seems somewhat strange that after more than a decade the government of the day thought it fit to remove this valuable safeguard by the Forty-Second Amendment. It is particularly important to notice how closely Members of Parliament scrutinised the motives of the government while discussing the Fifteenth Amendment Bill and it is profitable to read the debates leading to the passing of the Fifteenth Amendment. There could scarcely be a better example of the principle that the constituent powers to amend the Constitution, however permissible, must be used with scrupulous attention to their true purpose and for reasons that are relevant and proper. A determined attempt on the part of the government to unsettle the law as laid down by this Court was successfully frustrated on that occasion. Although the clause as originally drafted in the Amendment Bill was deficient insofar as it conferred no express protection as regards the second stage i.e. the stage of punishment, but the Fifteenth Amendment Act as passed, introduced the requirement of giving a reasonable opportunity on the penalty proposed, after the conclusion of the inquiry into the charges and after a penalty had been provisionally determined. After considerable debate in Parliament, Shri Asoke Sen, Law Minister, intervened, in deference to the concern expressed by members representing all sections of the House over the Amendment Bill by which the government was seeking to remove the opportunity at the second stage, and gave an assurance that he would move an amendment, making it clear that the second opportunity in regard to the punishment proposed would be retained, but such opportunity shall be only on the basis of the evidence adduced during the inquiry. The government accordingly moved the following amendment :

And where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry.

**20.** We may recall the words of the Law Minister on that occasion while intervening in the debate on the original draft :

Now, Sir, as I explained, when the motion was first before the House and before it went to the Joint Committee it was never the intention of the government to vary Rule 25 of the civil service rules which provided for representation by the civil servant against the penalty proposed. The point taken was that in future some irresponsible government might do away with Rule 25 ignoring the assurance given to Parliament. Well, then, I told

the representatives of the civil servants and other representatives of the INTUC who had come to see me to give me a draft which would make it quite clear that the representation against the penalty proposed would not include any right to insist on further hearing and further evidence being given. They gave me that draft which I have accepted with a slight modification.

I, therefore, dispel any idea, if there is any, that there has been any deviation from the ideals of democracy and preservation of the vital rights not only of civil servants but of the citizens. I hope we shall never deviate from that course because it is our great strength and it is through the processes of democracy that we are functioning, not through the processes of fear or force.\*\*

21. The Fifteenth Amendment, in fact, clarified the legal position under the existing law by requiring that opportunity must be given to the delinquent government servant not only at the first stage to be heard in respect of the charges but also at the second stage i.e. after the disciplinary authority had come to a tentative conclusion of guilt at the conclusion of the inquiry and had decided upon the punishment proposed to be inflicted. It was a necessary and sufficient safeguard against arbitrary and excessive executive action written into the Constitution. Unfortunately, now the Forty-Second Amendment has achieved what the Fifteenth Amendment could not. By the constitutional amendment, the government has taken away the essential constitutional safeguard.

22. It is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case. Both the Privy Council as well as this Court have in a series of cases required strict adherence to the rules of natural justice where a public authority or body has to deal with rights. Unfortunately the first proviso to clause (2) of Article 311 has eliminated the rule *audi alteram partem* at the second stage i.e. observance of the rules of natural justice and the requirement of a reasonable opportunity of making representation on the proposed action. The question still remains as to the stage when the delinquent government servant would get the opportunity of showing cause against the action taken against him. Where does he get an opportunity to exonerate himself from the charge unless he is allowed to show that the evidence adduced at the inquiry is not worthy of credence or consideration? Does he ever get a right to show that he has not been guilty of any misconduct so as to deserve any punishment, or that the charges proved against him are not of such a character as to

\*\*Lok Sabha Debates, 3rd Series, Vol. XVIII, 1963, 4th Session, pp. 13152-54

merit the extreme penalty of dismissal or even of removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case? But we are bound by the majority decision in *Tulsiram Patel case*<sup>6</sup>.

23. After the constitutional change brought about it seems that the only stage at which now a civil servant can exercise this valuable right is by enforcing his remedy by way of a departmental appeal or revision, or by way of judicial review. In *Tulsiram Patel case*<sup>6</sup>, the majority decision has pointed out that even after the Forty-Second Amendment, the inquiry required by clause (2) of Article 311 would be the same except that it would not be necessary to give to a civil servant an opportunity to make representation with respect to the penalty proposed to be imposed on him. In such a case, a civil servant who has been dismissed, removed or reduced in rank by applying to his case one of the clauses of the second proviso to Article 311(2) or the analogous service rule has two remedies available to him. These remedies are: (i) the appropriate departmental appeal provided for in the relevant Service Rules, and (ii) if still dissatisfied, invoking the court's power of judicial review. In *Satyavir Singh v. Union of India*<sup>10</sup>, there is an attempt made to analyse the *rationes decidendi* of the majority decision in *Tulsiram Patel case*<sup>6</sup> and the nature of the remedies left to the civil servant at pp. 276-281 of the report. If that be so, in a case governed by one of the clauses of the second proviso to Article 311(2) or an analogous service rule, there is still all the more reason that in cases not governed by the second proviso, a civil servant subjected to disciplinary punishment of dismissal, removal or reduction in rank under clause (2) of Article 311 would have these remedies left to him. Virtually this is tantamount to a post-decisional hearing.

24. There has been considerable fluctuation of judicial opinion in England as to whether a right of appeal is really a substitute for the insistence upon the requirement of a fair hearing or the observance of natural justice which implies 'the duty to act judicially'. Natural justice does not require that there should be a right of appeal from any decision. This is an inevitable corollary of the fact that there is no right of appeal against a statutory authority unless the statute so provides. Professor H.W.R. Wade in his *Administrative Law*, 5th edn., at p. 487 observes:

Whether a hearing given on appeal is an acceptable substitute for a hearing not given, or not properly given, before the initial decision is in some cases an arguable question. In principle there ought to be an observance of natural justice equally at both

stages. . . . If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing : instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial.

After referring to Megarry, J.'s *dictum* in a trade union expulsion case holding that, as a general rule, a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in the appellate body, the learned author observes :

Nevertheless it is always possible that some statutory scheme may imply that the 'appeal' is to be the only hearing necessary.

25. Professor de Smith at pp. 242-43 refers to the recent greater readiness of the courts to find a breach of natural justice 'cured' by a subsequent hearing before an appellate tribunal. In *Swadeshi Cotton Mills v. Union of India*<sup>11</sup> although the majority held that the expression 'that immediate action is necessary' in Section 18-AA(1)(a) of the Industrial Undertakings (Development and Regulation) Act, 1951, does not exclude absolutely, by necessary implication, the application of the *audi alteram partem* rule, Chinnappa Reddy, J. dissented with the view and expressed that the expression 'immediate action' may in certain situations mean exclusion of the application of the rules of natural justice and a post-decisional hearing provided by the statute itself may be a sufficient substitute. It is not necessary for our purposes to go into the vexed question whether a post-decisional hearing is a substitute of the denial of a right of hearing at the initial stage or the observance of the rules of natural justice since the majority in *Tulsiram Patel case*<sup>6</sup> unequivocally lays down that the only stage at which a government servant gets 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' i.e. an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in *Tulsiram Patel case*<sup>6</sup> that the Appellate Authority must not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent

11. (1981) 2 SCR 533 : (1981) 1 SCC 664 : AIR 1981 SC 818

servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given.

26. In the result, the appeal must succeed and is allowed. The judgment and order of a learned Single Judge of the Delhi High Court dated August 16, 1983 and that of the Division Bench dismissing the letters patent appeal filed by the appellant in limine by its order dated February 15, 1984 are both set aside, so also the impugned order of the Railway Board dated March 11, 1972. We direct the Railway Board to hear and dispose of the appeal after affording a personal hearing to the appellant on merits by a reasoned order in conformity with the requirements of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, as expeditiously as possible, and in any event, not later than four months from today.

1986 Supreme Court Cases (L & S) 398

(1986) 3 SCC 118

(BEFORE P.N. BHAGWATI, C.J. AND R.S. PATHAK, J.)

Civil Appeal No. 2072 of 1985†

OM PRAKASH RANA .. Appellant ;

*Versus*

SWARUP SINGH TOMAR AND OTHERS .. Respondents.

With

Civil Appeals Nos. 2628, 2696 of 1985‡

UDAY PARTAP SINGH .. Appellant ;

*Versus*

SUBEDAR SINGH CHAUHAN AND OTHERS .. Respondents.

With

Civil Appeals Nos. 4091-92 of 1985‡

DISTRICT INSPECTOR OF SCHOOLS .. Appellant ;

*Versus*

RAGHUNANDAN PRASAD BHATNAGAR  
AND OTHERS .. Respondents.

With

Special Leave Petition (Civil) No. 9542 of 1985‡

SHASHI PAL SINGH .. Petitioner ;

*Versus*

STATE OF U.P. AND OTHERS .. Respondents.

†From the Judgment and Order dated April 9, 1985 of the Allahabad High Court in C.M.W.P Nos. 10301 and 2263 of 1983

‡From the Judgment and Order dated April 30, 1985 of the Allahabad High Court in C.M.W.P. Nos. 17669, 11027 and 10675 of 1983

ALLAHABAD HIGH COURT

Hon'ble M. Katju, J.—UMA SHANKER YADAV Versus REGIS-  
TRAR COOPERATIVE SOCIETIES, LUCKNOW and others—CM Writ  
No. 2391 of 1990, Decided on May 11, 1992.

Services—Disciplinary proceedings—Dismissal—Even if charge sheeted  
employee does not send reply to charge sheet—Enquiry officer is not  
absolved from his duty to send notice informing about the date, time  
and place of enquiry, (Paras 6 and 7)

Services—Principles of Natural Justice—Dismissal—Disciplinary procee-  
dings—Dismissal order passed without sending the notice of enquiry to  
the charged employee—Order held to be illegal, being violative of  
Principles of Natural Justice. (Paras 6 to 8)

Sri Kripa Shanker, Advocate, for Petitioner. SC for Respondents.

By the Court—In this case on 13-12-1990 this Court granted three  
weeks to the Standing Counsel to file counter affidavit. Thereafter  
on 23-1-1991 one month's time was again granted to file counter affidavit.  
No. counter affidavit was filed despite these orders, and on 6-4-1992, I  
directed the petitioner to serve respondent Nos. 1 and 2 personally. The  
petitioner has filed his affidavit of service showing service on these respon-  
dents. No counter affidavit has been filed even to-day. I am not inclined  
to grant any further time to file counter affidavit as time has been granted  
repeatedly since 13-12-90. It seems that the orders of this Court are not  
taken seriously by the Standing Counsel and despite several opportunities  
counter affidavits are not filed for the reasons best known to the State.

2. In the circumstances, I am treating the allegations in the petition  
to be correct, & I am proceeding to dispose of this petition finally.

3. The petitioner was appointed as Co-operative Inspector Group II  
by the order dated 11-2-1980 (annexure-1 to the writ petition). Subseque-

*Sana-bad*

ntly, he was transferred as Managing Director, Meerut Farmers Services Co-operative Society, Meerut by the order dated 24-7-1981 (annexure-2 to the writ petition). The petitioner was charge-sheeted by charge-sheet dated 26-5-1988 (annexure-7 to the writ petition). He sent a reply dated 5-9-1988 (annexure-8 to the writ petition). It is alleged in paragraph 13 of the writ petition that thereafter no enquiry was held and the petitioner was dismissed from service by the order dated 15-9-1989 (annexure-12 to the writ petition). Aggrieved the petitioner has filed this writ petition).

4. As already stated above, in this case time to file counter affidavit had been granted repeatedly but no counter affidavit has been filed. Accordingly, it has to be held that the allegation in paragraph 13 of the writ petition that no enquiry was held against the petitioner must be taken to be correct.

5. I have perused the impugned order dated 15-9-1989 (annexure-12 to the writ petition). In this order it is stated that vide letter dated 26-5-1988 the charge-sheet was sent to the petitioner's address, and he was asked to give his explanation, but he did not submit any explanation. Thereafter the charge-sheet was published in the Hindi Newspaper 'Dainik Jagran' on 17-9-1988 and the petitioner was asked to submit his reply within 15 days but again he did not submit his reply.

6. The impugned order states that the enquiry report was sent by the Enquiry Officer by his letter dated 16-1-1989 which was received in the office of the Deputy Registrar on 21-1-1989. It is not clear whether this enquiry was a regular enquiry or a preliminary enquiry. Even assuming that it was a regular enquiry, it was necessary that the notice of the enquiry should have been sent to the petitioner. In my opinion, even if the accused employee does not send his reply to the charge-sheet, the Enquiry Officer is not absolved from his duty to send a notice to the accused informing him about the date, time and place of the enquiry. In paragraph 12 of the writ petition there is a clear averment that the petitioner was not informed about any date of holding of the enquiry. In paragraph 13 it is stated that without holding any enquiry, or providing any opportunity of being heard, the petitioner was dismissed.

7. It appears that the respondents were under a misconception about the law that if an accused employee does not reply to the charge-sheet then he need not be given opportunity of hearing in the enquiry. In my opinion, even if it is correct that the petitioner did not submit any reply to the charge-sheet, it was incumbent on the Enquiry Officer to have sent a notice to the petitioner informing him about the date, time and place of the enquiry, so that the petitioner could produce his witnesses, and cross examine the witnesses against him. Since this was not done, the Rules of natural justice have been violated.

8. In this circumstances, the impugned order dated 15-9-1989 (annexure-12 to the petition) is illegal and is herewith quashed. However, it is open to the respondents to take fresh proceedings against the petitioner and after holding an enquiry, of which the petitioner is informed well in advance, and in which the petitioner is given full opportunity of presenting his witnesses and cross-examining the witnesses against him, a fresh order can be passed in accordance with law.

9. The writ petition is allowed and the impugned order dated 15-9-1989 (annexure-12 to the writ petition) is hereby quashed. No order as to costs.

*(Petition allowed.)*

motion on the part of Assistant Tax Superintendent/Assistant Property Officer, within fifteen days from the date of production of a copy of this order by the petitioner on the opposite parties, in the light of observations made in the body of judgment, is issued. No order is made as to costs.

(Petition allowed.)

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

Hon'ble J. K. Mathur, J.—ANIL KUMAR SINGH Versus STATE OF U. P. and others—Writ Petition No. 5349 of 1990 (M/B), Decided on March 12, 1991

(a) Services—Disciplinary proceedings—Dismissal—Bias—Person conducting inquiry, himself a witness—Inquiry conducted by him—Not fair and is not sustainable in law—On this ground alone the inquiry conducted against Petitioner stands vitiated AIR 1958 SC 86 rel. on. (Paras 8 to 10)

(b) Services—Disciplinary proceedings—Dismissal—Bias—Charge-sheeted employee having made complaints against the person conducting inquiry—Held to be an additional factor showing bias against Petitioner. (Paras 11 to 13)

(c) Services—Disciplinary proceedings—Inquiry—Constitution of India, Article 311(2)—Civil Services Classification (Control and Appeal) Rules, Rule 55(1)—Rule requires sufficient record of evidence and statement of findings and the grounds thereto. (Para 16)

Para 24  
25  
31

- (d) **Services—Disciplinary proceedings—Punishment—**There must be specific finding about the truth of allegations made against delinquent officer before action taken against him. 1984(2) SLR 446 and AIR 1966 SC 1827 (1832) ref. to. (Paras 17 and 18)
- (e) **Services—Disciplinary proceedings—Punishment—Inquiry held ex parte—Dismissal passed—**Only ground stated that Petitioner having not filed explanation, he has accepted charges—Held, not tenable—In ex parte proceedings there should be some material and clear finding based on them. (Paras 19 to 21 and 25)
- (f) **Services—Constitution of India, Article 226—Scope—**High Court has jurisdiction to interfere where conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. AIR 1964 SC 364 ref. to. (Para 22)

Sri D. P. Singh, Advocate, for Petitioner. CSC for Opp. Party.

Hon'ble J. K. Mathur, J.—By this writ petition the petitioner has challenged the order of dismissal passed against him on 28-4-1990.

2. The petitioner was working as driver in the office of Land Acquisition Officer, Bahraich. He alleges that the conduct of respondent no. 3 was not desirable and certain complaints were filed against him by the petitioner. A charge-sheet dated 10-4-90 was served on the petitioner containing eleven charges. In some of those charges the petitioner had cited himself as witness. The opposite party no. 3 himself started conducting enquiry. A letter was sent by the petitioner on 26-4-90 saying that he should not conduct the enquiry and that it should be conducted by some other officer. According to the petitioner he went to opposite party no. 3 with a reply to the charge-sheet on 28-4-90 but it was not accepted. The petitioner thereupon sent the reply by post to opposite party no. 2 with copies to the District Magistrate and the Chief Revenue Officer. On 5-5-1990 the petitioner was served with an order fixed at his door dismissing him.

3. This order has been challenged firstly on the ground that opposite party no. 2 was the complainant and a witness himself and could not have acted as an inquiry officer, which he did inspite of representation made by the petitioner, that the order has been passed mala-fidely and arbitrarily in violation of principles of natural justice. No documents were furnished and no oral evidence was recorded. The impugned order is a non-speaking one passed without application of mind. The inquiry report was not served on the petitioner.

4. Parties having exchanged affidavits, the petition was heard at the stage of admission finally and is being disposed of. The impugned order runs as follows :—

“ श्री अनिल कुमार सिंह, जीप चालक, के विरुद्ध मेरे आदेश दिनांक 19-3-90 के अन्तर्गत विभागीय कार्यवाही प्रारम्भ की गयी। श्री अनिल कुमार सिंह, जीप चालक को दिनांक 10-4-90 को आरोप पत्र दिया गया जिसे उन्होंने दिनांक 11-4-90 को प्राप्त किया। प्रश्नगत आरोप पत्र की प्रमाणित छाया प्रति संलग्न है।

आरोप पत्र का उत्तर देने के लिये श्री अनिल कुमार सिंह, जीप चालक को एक पक्ष का समय दिया गया था जो दिनांक 25-4-90 को समाप्त हो गया। आज तक श्री अनिल कुमार सिंह जीप चालक से आरोप पत्र का उत्तर नहीं दिया जिससे स्पष्ट है कि उन्हें सभी आरोप स्वीकार हैं। दिनांक 25-4-90 को श्री अनिल कुमार सिंह जीप चालक ने अपने व्यक्तिगत पत्रावली आदि का निरीक्षण भी कर लिया है।

उपरोक्त परिस्थितियों में श्री अनिल कुमार सिंह, जीप चालक की सेवाएँ समाप्त की जाती हैं। उन्हें कोई वेतन आदि देय न होगा। आदेश को प्रतिलिपि श्री अनिल कुमार सिंह को प्राप्त करायी जाय।” दिनांक अप्रैल 28, 1990

5. It may also be pointed out at the very outset, that annexure 5 is a charge sheet served on the petitioner on 10-4-1990 by the opposite party no. 3 J. P. Gupta. In this charge no. 5 relates to the absence of petitioner on 8-2-1990 on which date he was required to come for going to Lucknow but he did not and instead moved an application which was not granted. In this the opposite party no. 3 has himself cited as a witness. Similarly in charge no. 7 relating to tools from the jeep having been stolen by the petitioner and in charge no. 8 alleging that the petitioner was used to drinking and misbehaving while being drunk, the opposite party no. 3 has cited himself as the witness without there being any other material to support these charges.

6. The main grounds on which the impugned order has been challenged is firstly that the petitioner was biased because the petitioner had complained against him and also because he himself was a witness in at least three of the charges. The second ground on which the petitioner has challenged the order is that no finding of misconduct was recorded by opposite party no. 3 and lastly it is alleged to be bad for reason that no notice was given before awarding the punishment.

7. A perusal of charge-sheet, copy of which is annexure-5 to the petitioner's affidavit, itself shows that it was served by opposite party no. 3 Sri J. P. Gupta and that in respect of charges mentioned at nos. 5, 7 and 8, he had mentioned that he himself was a witness for those facts. The opposite party no. 3 wanted the reply to be given to him. He did not appoint any other person as inquiry officer. Ultimately the order was also passed by him.

8. One of the grounds which vitiate any such administrative action is bias. In an inquiry if the person who conducts the inquiry is himself a witness, he is necessarily biased in favour of his own testimony and cannot objectively conduct the inquiry. He being so biased, the inquiry conducted by him is not a fair one and is not sustainable in law.

9. In the case of *State of U. P. v. Mohd Nooh* (AIR 1958 SC 86) the Deputy Superintendent of Police who conducted the inquiry was also a

witness in the inquiry. This was found to be a grievous violation of principles of natural justice. As such the inquiry was found to be unacceptable. This case has been followed in number of subsequent cases.

10. On this ground alone the inquiry conducted against the petitioner stands vitiated and the consequent order liable to be quashed.

11. The petitioner also appears to have made number of complaints against opposite party no. 3, the copies of which are contained in Annexures 1, 2 and 3.

12. In respect of first two complaints the opposite party has stated that he did not have any knowledge of these. However, knowledge of complaint annexure 3 has not been specifically denied.

13. This would be an additional factor showing bias of opposite party no. 3 against the petitioner.

14. The order passed by opp. party no. 3 shows that the charges were delivered to the petitioner on 11-4-1990 and he was given a fortnight's time to file a reply. Admittedly no reply was given till 28-4-1990 on which date this order was passed.

15. According to the petitioner he had tendered the reply on 28-4-90 but it was not accepted.

16. Even if the reply was not received by opposite party no. 3, the punishment could be inflicted upon the petitioner only when the opposite party no. 3 was satisfied about the truth of the charges levelled against the petitioner. The inquiry to be conducted under Rule 55(1) of the Civil Services Classification (Control and Appeal) Rules requires "a sufficient record of evidence and statement of findings and the grounds thereto." An enquiry is essential before dismissal under Art 311(2) of the Constitution. The proceeding of an inquiry has two stages. The first is coming to a conclusion on the evidence and the second is the action taken.

“There is just one continuous proceeding though there are two stages in it. The first is coming to a conclusion on the evidence as to whether the charges alleged against the Government servant are established or not and the second is reached only if it is found that they are so established. That stage deals with the action to be taken against the Government servant concerned.”

It has been so held in the case of *Bachhittar Singh v. State of Punjab* [AIR 1963 SC 395 (at page 397)]

17. There must be a finding about the truth of the allegations made against the delinquent officer necessarily before any action can be taken against him. This view was also taken in the case of *A. L. Kalra v. Project and Equipment Corp. of India Ltd* [1984 (2) SLR 546].

18. In the case of *State of Madras v. A. R. Srinivasan* [AIR 1966 SC 1827 (at page 1832)] it was held :—

“It may be that in disciplinary proceedings taken against public servants, the technicalities of criminal law cannot be invoked, and the strict mode of proof prescribed by the Evidence Act may not be applied with equal rigour; but even in disciplinary proceedings, the charge framed against the public servant must be held to be proved before any punishment can be imposed on him.”

Under the aforesaid disciplinary rules, a punishment can be inflicted only for good and sufficient reasons. Unless there is a specific finding that the delinquent officer has been guilty of a specific misconduct, no punishment can be awarded.

19. In the present case, there is no finding at all in respect of any of the charges mentioned in the charge-sheet. The only ground mentioned is that the petitioner having not filed an explanation, he has accepted the charges. This proposition is not tenable. If the delinquent officer has

not filed a reply to charge sheet even then the principle that the punishment may be inflicted only when the authority concerned is satisfied about the truth of the charges would stand. In the present case, the charge itself stated that in case the explanation was not given the proceedings would be conducted ex-parte.

20. The ex-parte proceedings are different from the regular proceedings only to the extent that they can be conducted in absence of delinquent officer, yet there should be some material and clear findings based on them.

21. There is no material which was considered & no specific finding recorded.

22. A Court can always see the basis for the finding in exercising its jurisdiction under Article 226 of the Constitution against such orders, as has been held in the case of *Union of India v. H. C. Goel* (AIR 1964 SC 364). In dealing with writ petitions filed by public servants who have been dismissed or otherwise dealt with so as to attract Article 311(2), the High Court under Article 226 has jurisdiction to interfere where the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all.

23. This order is entirely based upon the default of the petitioner in filing his explanation. It does not rest on any evidence or material at all nor is there any specific finding that the petitioner had in fact been guilty of any of the misconducts allegations of which were contained in the charge sheet served upon him.

24. Even in an ex-parte inquiry the disciplinary authority is bound to confirm with essential requirements of the proceedings as contained in the aforesaid rules. As quoted above, the disciplinary authority has to record his finding with reasons and also have been evidence on record. There being no enquiry held, finding recorded, much less any ground given, the order passed by disciplinary authority is in clear violation of the basic requirements of the aforesaid rules and the Constitution.

25. Even in absence of the delinquent officer, the disciplinary authority has to satisfy himself about the truth of the allegations. It is only when he is so satisfied, that he would be able to inflict punishment. Merely a default in filing the explanation cannot itself be a reason to be visited with punishment of dismissal.
26. I, therefore, find that the order itself suffers from serious infirmity, being not based on any material at all and not containing any specific finding. In view of this the consequent order of dismissal lacks any basis and is bad on that score.
27. The last point raised on behalf of the petitioner was that no notice had been given to him before the award of punishment. For this, reliance has been placed by him upon the case of *Union of India v. Mohd. R. Khan* reported in Judgment Today 1990(4) SC 456.
28. Before considering this case, it may be pointed out that earlier sub-Article (2) of Article 311 after it was amended in 1963 provided that no person shall be dismissed or removed or reduced in rank except after an inquiry and also after having been given a reasonable opportunity of making representation on the penalty proposed after the inquiry. This provision was deleted subsequently.
29. In this case it was held that where the disciplinary authority is not the inquiring officer, the report submitted by him has to be given to the delinquent officer before the punishment can be inflicted. He has also to be heard. This, however, would not apply where the inquiry has been conducted by the disciplinary authority itself. This decision will not, therefore, help the petitioner in the present case where the disciplinary authority himself conducted the inquiry.
30. Still another reason for not being able to get support from this case is the specific direction of the Supreme Court contained in the judgment itself that this judgment shall have only prospective application and no punishment already imposed shall be open to challenge on this ground.

✓31. However, in view of the fact that the disciplinary authority was manifestly biased in this case and also because it has not complied with the basic requirements of conduct of an inquiry in not considering any material and recording any findings, the consequent order of dismissal is patently (illegal) and cannot be sustained.

32. As a result, the writ petition is allowed. The order passed on 28/30-4-1990 contained in Annexure 8 to the writ petition is hereby quashed. The petitioner shall be entitled to be reinstated and get all the wages due.

(Petition allowed.)

### ALLAHABAD HIGH COURT (LUCKNOW BENCH)

Hon'ble Hari Nath Tilhari, J.-ABDUL AZIZ *Versus* COMMISSIONER, FAIZABAD DIVISION and others--Writ Petition No. 257 of 1993 (M/S);  
Decided on January 28, 1993.

(a) Arms Act, 1959, Section 17(3) - Suspension of Licence - Period for which licence suspended, not indicated in the order - Order held to be illegal and quashed.  
(Para 4)

Sri Hasib Ullah Khan, Advocate, for Petitioner.

Hon'ble Hari Nath Tilhari J. - Notice of this petition on behalf of opposite-parties has been accepted by the learned Chief Standing Counsel. Learned Standing Counsel agrees that as a short question of law is involved the writ petition may be finally disposed of at this stage.

will operate prospectively only but will be subject to orders of the Tribunal from the date it makes a fresh award. The equities, if any, will be adjusted by the Tribunal. Since those who may become entitled to stagnation allowance hereafter will have to wait till the Tribunal makes its fresh award we do hope that the Tribunal will abide by the time-limit.

34. Having regard to the extent of success and failure, we make no order as to costs in all the aforesaid appeals.

### 1994 Supreme Court Cases (L&S) 1349

(BEFORE K. RAMASWAMY AND N. VENKATACHALA, JJ.)

KUMARI MADHURI PATIL AND ANOTHER .. Appellants;

*Versus*

ADDL. COMMISSIONER, TRIBAL DEVELOPMENT AND OTHERS .. Respondents.

Civil Appeal No. 5854 of 1994<sup>†</sup>, decided on September 2, 1994

A. Universities — Admission — Medical college — Reservation — ST certificate fraudulently obtained though by approaching proper authority having jurisdiction and admission secured on that basis — Scrutiny Committee delaying in giving its finding — Right of appeal provided thereafter compounding further delay — Meanwhile the candidate completing her course of study and seeking permission to appear in the final examination — In the peculiar facts and circumstances, Principal of the college directed to allow her to appear in the examination as a special case without making it a precedent — But her younger sister who secured admission by approaching an authority having no jurisdiction and on the basis of order issued by High Court in favour of her elder sister and is in midway of her study, held, cannot be allowed to take advantage of ST status and her further continuance must be determined as a general candidate — Constitution of India, Arts. 226, 136, 366(25), 342

B. Constitution of India — Arts. 366(25) and 342 — Constitution (Scheduled Tribes) Order, 1950 — Mahadeo Koli — 'Kolis' of Maharashtra — Held, belong to 'other backward classes' (OBC) and not to Mahadeo Koli category of ST

C. Constitution of India — Arts. 366(25) and 342 — Categories of persons declared as SCs/STs under Constitution (SC/ST) Order, as amended by SCs/STs Amendment Act, 1976 — Addition or alteration therein while issuing social status certificate not permissible

D. Constitution of India — Arts. 366(25) and 342 — Constitution (SC/ST) Order — Issuance of social status certificate — Evidence regarding affinity to any tribe or caste status of a person — Caste is determined on the basis of his/her parents as caste is acquired by birth — Entries in school register showing his/her father's caste, particularly of pre-Constitution period, is of great evidentiary value — Anthropological and ethnological perspective relevant for determining caste of the person

E. Constitution of India — Arts. 366(25) & 342, 341 and 226 & 136 — Constitution (SC/ST) Order, 1950 — Social status certificate — Findings of Verification Committee based on evidence — Court's interference with — Not

<sup>†</sup> From the Judgment and Order dated 17-8-1993 of the Bombay High Court in W.P. No. 1849 of 1993

open unless findings vitiated by error of law or non-application of mind to relevant facts or material — High Court under Art. 226 not a court of appeal to appreciate evidence

F. Constitution of India — Arts. 366(25), 341, 342, 136 and 226 — Constitution (SC/ST) Order, 1950 — Social status certificates — Procedure for issuance of and early scrutiny and approval thereof laid down by Supreme Court

G. Constitution of India — Arts. 136, 226, 366(25), 341 and 342 — Equity and promissory estoppel — Applicability — Not applicable where social status certificate (showing a person belonging to SC/ST) obtained by a person fraudulently to secure admission to educational institution (medical college in this case) or employment — Administrative Law — Equity

The appellants *S* and *M* are two daughters of *L* who was a 'Hindu Koli' by caste, as shown in his school admission register of 1943 and his school and college certificates. They were residing in Muland area of Bombay, Maharashtra. *S* applied through her father to the Tahsildar, Andheri Bombay on 30-11-1989 for issuance of caste certificate as Mahadeo Koli. Prior to independence, the Maharashtra Government had declared Mahadeo Koli to be criminal tribe. In 1942 Resolution in Serial No. 15 in Schedule B of the Bombay resolution Mahadeo Koli tribe was notified as a Scheduled Tribe. It was later amended as Serial No. 13. In the Presidential Scheduled Castes/Scheduled Tribes Order, 1950, it was reiterated. A slight modification was made in that behalf by the Presidential Notification dated 29-10-1956. In 1976 Amendment Act, there was no substantial change except removing the area restriction. Thus Mahadeo Koli, a Scheduled Tribe continued to be a Scheduled Tribe even after independence. The Presidential Notification, 1950 also recognised by public notification of their status as Scheduled Tribes. The Sub-Divisional Officer, Bombay Suburban District by his proceeding dated 22-6-1989 refused to issue caste certificate to *S* and informed her that she was not a Scheduled Tribe "Mahadeo Koli". She filed an appeal before the Additional Commissioner, Konkan Division, Bombay. As she had applied for admission into the MBBS course and the time for her admission was running out, she filed a writ petition in the High Court to direct the Additional Commissioner to dispose of her appeal and to further direct the Dean of the Medical College to permit her to appear for interview and admit her in the college if she was found fit. She filed a copy of the judgment in *Subhash Ganpatrao Kabade v. State of Maharashtra*, wherein 'Koli' was held to be 'Mahadeo Koli', before the Additional Commissioner and also in the High Court. Because of the directions of the High Court she was admitted in the MBBS course and she is continuing her studies. The Additional Commissioner directed the Tahsildar to issue the certificate and accordingly issued to *S* the certificate of Scheduled Tribe. *S* then applied to the Verification Committee for confirmation of her status as Scheduled Tribe. *M* applied for the issuance of Scheduled Tribe certificate before the Divisional Executive Magistrate, Greater Bombay, enclosing the order passed by the High Court in Writ Petition in favour of her sister, which was issued on 23-8-1990 declaring her status to be "Mahadeo Koli" and then she got the admission into BDS in the year 1992. Thereafter, she applied to the Verification Committee for confirmation. The proceeding by the Verification Committee was jointly conducted into the claims of the appellants, initiated on 8-12-1989; the father of the appellants was called upon to furnish in the prescribed form the detailed information regarding his family background, ancestry, and anthropology of "Mahadeo Koli", Scheduled Tribe, to verify the veracity of his claim of status as ST. *L* submitted the particulars along with his

a

b

c

d

e

f

g

h

a school and college certificates, junior college certificate and school certificates of the appellants, the certificates of his sister and appellants' maternal aunt, and maternal uncle and a statement by Caste Association. The Committee in their order dated 26-6-1992 considered the entire evidence placed before them and after hearing their counsel, found that the appellants were 'Koli' by caste which is recognised as Other Backward Class, i.e., OBC in the State and that they are not 'Mahadeo Koli', the Scheduled Tribe and their claim for that social status was accordingly declared untenable. The certificates issued by the respective Executive Magistrates were cancelled and confiscated. Their appeal provided under the Rules b too was heard by the Additional Commissioner in Caste Appeal who by an elaborate order dated 30-4-1993 found that the certificate issued in favour of maternal uncle, was from a Magistrate, Greater Bombay, who had no jurisdiction and the social status certificate was issued without proper scrutiny, the certificate issued to maternal aunt by the Judicial Magistrate was on the basis of the school leaving certificate, ration card etc. and that, therefore, it did not provide any probative value to their status as Scheduled Tribe as the entries in school and c college certificates of the appellants were not conclusive. A Division Bench of the High Court dismissed the appellants' writ petition. Dismissing the appeal

*Held :*

d Despite the cultural advancement, the genetic traits pass on from generation to generation and no one could escape or forget or get them over. The tribal customs are peculiar to each tribe or tribal communities and are still being maintained and preserved. Their cultural advancement to some extent may have modernised and progressed but they would not be oblivious to or ignorant of their customary and cultural past to establish their affinity to the membership of a particular tribe. The Mahadeo Koli a Scheduled Tribe declared in the Presidential Notification 1950, itself is a tribe and is not a sub-caste. It is a hill tribe, may be like 'Koya' in Andhra Pradesh. Kolis, a backward class, are fishermen by caste and profession and reside e mostly in Maharashtra coastal area. Kolis have different sub-castes. Mahadeo Kolis reside in hill regions; agriculture, agricultural labour and gathering of minor forest produce and sale thereof is their avocation. Therefore, the cancellation of the social certificate issued by the Executive Magistrates concerned by the Scrutiny Committee was legal.

(Para 5)

f Presidential declaration, subject to amendment by Parliament being conclusive, no addition to it or declaration of castes/tribes or sub-castes/parts of or groups of tribes or tribal communities is permissible. The entries in the school register preceding the Constitution do furnish great probative value to the declaration of the status of a caste. Hierarchical caste stratification of Hindu social order has its reflection in all entries in the public records. What would, therefore, depict the caste status of the people inclusive of the school or college records, as the then census rules insisted upon. Undoubtedly, Hindu social order is based on g hierarchy and caste was one of the predominant factors during pre-Constitution period. Caste is reflected in relevant entries in the public records or school or college admission register at the relevant time and the certificates are issued on its basis. The father of the appellants admittedly described himself in 1943 and thereafter as a Hindu Koli. In other words his status was declared a Koli by caste and Hindu by religion. Kolis are admittedly OBCs. His feigned ignorance of the ancestry is too hard to believe. The averment in the affidavit that the entries were h mistakenly made as Hindu Koli is an obvious afterthought. The anthropological moorings and ethnological kinship affinity gets genetically ingrained in the blood

and no one would shake off from past, in particular, when one is conscious of the need of preserving its relevance to seek the status of Scheduled Tribe or Scheduled Caste recognised by the Constitution for their upliftment in the society. The ingrained tribal traits peculiar to each tribe and anthropological features all the more become relevant when the social status is in acute controversy and needs a decision. The correct projectives furnished in pro forma and the material would lend credence and give an assurance to properly consider the claims of the social status and the officer or authority concerned would get an opportunity to test the claim for social status of particular caste or tribe or tribal community or group or part of such caste, tribe or tribal community. It or he would reach a satisfactory conclusion on the claimed social status. The father of the appellant has failed to satisfy the crucial affinity test which is relevant and germane one. On the other hand the entries in his school and college registers as Hindu Koli positively belies the claim of his social status as Scheduled Tribe. Other documents furnished by the candidates are those manipulated and fabricated with to knock of the seats in educational institutions defrauding the true Scheduled Tribes to their detriment and deprivation. As the school record of the candidate's father shows his caste as 'Koli', the caste certificates which have been issued to the appellants and their relatives by the Executive Magistrate, Greater Bombay are without proper enquiry and investigation, besides being without jurisdiction. Its reiteration in service record would not carry any credibility or a ground to accept the caste as Scheduled Tribe. The caste certificate issued by Samaj being self-serving and subject to scrutiny, they cannot be held to be conclusive proof to determine the caste claim. The finding recorded by the Committee is based on consideration of the entire material together with sociological, anthropological and ethnological perspectives which Mahadeo Kolis enjoy and of the OBC castes and sub-caste of the Kolis. The Additional Commissioner as well, has minutely gone into all the material details and found that when a section of the society have started asserting themselves as tribes and try to earn the concession and facilities reserved for the Scheduled Tribes, the tricks are common and that, therefore, must be judged on legal and ethnological basis. Spurious tribes have become a threat to the genuine tribals and the present case is a typical example of reservation of benefits given to the genuine claimants have been snatched away by spurious tribes. (Paras 9, 10 and 11)

*Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College*, (1990) 3 SCC 130 : (1990) 14 ATC 671; *Action Committee on issue of Caste Certificate to SCs and STs in the State of Maharashtra v. Union of India*, (1994) 5 SCC 244, *relied on* *Subhash Ganpatrao Kabade v. State of Maharashtra*, WP No. 438 of 1985, *overruled*

The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Caste or Scheduled Tribe or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the

procedure for the issuance of social status certificates, their scrutiny and their approval. [The Supreme Court laid down detailed procedure in para 13.] (Para 13)

a High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the committee ultimately recorded the finding. Each case must be considered in the backdrop of its own facts. (Para 15)

c Often the plea of equities or promissory estoppel would be put forth for continuance and completion of further course of studies and usually would be found favour with the courts. The courts have constitutional duty and responsibility, in exercise of the power of its judicial review, to see that constitutional goals set down in the Preamble, the Fundamental Rights and the Directive Principles of the Constitution, are achieved. A party that seeks equity, must come with clean hands. He who comes to the court with false claim, cannot plead equity nor the court would be justified to exercise equity jurisdiction in his favour. There is no estoppel as no promise of the social status is made by the State when a false plea was put forth for the social status recognised and declared by the Presidential Order under the Constitution as amended by the SC & ST Amendment Act, 1976, which is later found to be false. Therefore, the plea of promissory estoppel or equity have no application. When it is found to be a case of fraud played by the person concerned, no sympathy and equitable considerations can come to his rescue. Nor the plea of estoppel is germane to the beneficial constitutional concessions and opportunities given to the genuine tribes or castes. Courts would be circumspect and vary in considering such cases. (Para 16)

f S rightly made an application before the competent officer within whose jurisdiction her father lives in Muland and when he refused to give the certificate, she filed an appeal; approached the High Court and obtained direction and gained admission. The Additional Commissioner was delaying it; he did not decide as directed by the High Court, instead directed the Tahsildar to issue the certificate. Thus she secured a false social status certificate and orders of the court were used to gain admission. The judicial process is made use of to secure admission. She continued her studies thereafter pending scrutiny of her status certificate. No doubt there was a delay on the part of the Scrutiny Committee in the disposal of the claims. Her parents have put her under a cloud as to her social status. A course of conduct was adopted by her parents to gain admission on the claim which is now found to be false. Parents' misconduct visits the children also many a times. g However, she has now completed the course of study except to appear for the final year as contended for her and nothing more is to be done in the situation for her to complete her course of study. The Principal of the College is therefore directed to permit her to sit for the final year examination, if she has completed the course of study as represented herein but not with the social status as a Scheduled Tribe which was claimed fraudulently and made her admission with the aid of the court's order and continue her studies. The delay in disposal facilitated her continuance in h study of MBBS course. The delay in the process is inevitable but that factor should neither be considered to be relevant nor be an aid to complete the course of study.

But for the fact that she has completed the entire course except to appear for the final examination, the Court would have directed to debar her from prosecuting the studies and appearing in the examination. In this factual situation no useful purpose would be served to debar her from appearing for the examination of final year MBBS. Therefore, the cancellation of the social status as Mahadeo Koli fraudulently obtained by *S* is upheld but she be allowed to appear for the final year examination of MBBS course. She will not, however be entitled in future for any benefits on the basis of the fraudulent social status as Mahadeo Koli. However, this direction should not be treated and used as a precedent in future cases to give any similar directions since the same defeats constitutional goals. (Paras 17 and 18)

However, *M* did not approach the competent officer. She had wrongly gone to an officer who had no jurisdiction and by showing the order issued by the High Court in favour of her sister *S*, she secured the certificate and got the admission. Though she is in midway of her study in BDS in the end of second year, she cannot continue her studies with her social status as Mahadeo Koli, a Scheduled Tribe and the concessions which she might have got on that account. If she was eligible for obtaining admission as a general candidate she may continue her studies. Therefore, the cancellation and confiscation of her and of *S* of social status as Mahadeo Koli ordered by Scrutiny Committee and affirmed by the order of Appellate Authority and that of the High Court in that behalf are upheld. (Para 19)

R-M/T/13479/CLA

Advocates who appeared in this case :

*S. Ganesh, Zaki Ahmed Khan and Ashok Kumar Gupta, Advocates, for the Appellants;*

*K. Madhava Reddy, Senior Advocate (A.S. Bhasme and Ms D. Bharathi Reddy, Advocates, with him) for the Respondents.*

The Judgment of the Court was delivered by

**K. RAMASWAMY, J.—** Leave granted.

2. The appellants are Suchita and Madhuri, daughters of Laxman Pandurang Patil. Their grandfather was Panduranga Patil. Laxman Patil was admitted in the school in the year 1943. In his school admission register and his school and college certificates his caste was shown as 'Hindu Koli'. Suchita had applied through her father, Laxman Patil to the Tahsildar, Andheri on 30-11-1989 for issuance of caste certificate as 'Mahadeo Koli' a Scheduled Tribe. The Sub-Divisional Officer, Bombay Suburban District by his proceeding dated 22-6-1989 refused to issue caste certificate sought for by Ms Suchita and informed her that she was not a Scheduled Tribe 'Mahadeo Koli'. She filed an appeal before the Additional Commissioner, Konkan Division, Bombay. As she had applied for admission into the MBBS course and the time for her admission was running out, she filed Writ Petition No. 3516 of 1990 in the High Court to direct the Additional Commissioner to dispose of her appeal and to further direct to the Dean of D.Y.C. Naik Medical College to permit her to appear for interview and admit her in the college if she was found fit. It is not in dispute that she filed a copy of the judgment in *Subhash Ganpatrao Kabade v. State of Maharashtra*<sup>1</sup>, wherein 'Koli' was held to be 'Mahadeo Koli', before the Additional Commissioner and also in the High Court. Because of the directions

of the High Court she was admitted in the MBBS course and she is continuing her studies. The Additional Commissioner directed the Tahsildar to issue the certificate and accordingly issued to Miss Suchita the certificate as Scheduled Tribe. Miss Suchita applied to the Verification Committee for confirmation of her status as Scheduled Tribe. Madhuri applied for the issuance of Scheduled Tribe certificate before the Divisional Executive Magistrate, Greater Bombay, enclosing the order passed by the High Court in Writ Petition No. 3516 of 1990, dated 4-12-1990, in favour of her sister Suchita, which was issued on 23-8-1990 declaring her status to be 'Mahadeo Koli' and then she got the admission into BDS in the year 1992. Thereafter, she applied to the Verification Committee for confirmation. The proceeding by the Verification Committee was jointly conducted into the claims of the appellants, initiated on 8-12-1989, the father of the appellants was called upon to furnish in the prescribed form the detailed information regarding his family background, ancestry; and anthropology of 'Mahadeo Koli', Scheduled Tribe, to verify the veracity of his claim of status as ST.

3. 'Mahadeo Koli' was declared to be a Scheduled Tribe by Bombay Province as early as 1933 and the President of India declared in 1950 under Article 342, in consultation with the Government of Bombay (Maharashtra) and as amended from time to time. Laxman submitted the particulars along with his school and college certificates, junior college certificate and school certificates of the appellants, the certificates of his sister and appellants' maternal aunt, Jyotsana Pandurang Patil dated 3-3-1978 and maternal uncle Balakrishna Pandurang Naik dated 22-10-1954 and a statement by the Caste Association. The Committee in their order dated 26-6-1992 considered the entire evidence placed before them, the particulars furnished by their father in the pro forma on their ancestry and other anthropological particulars and after hearing their counsel, found that the appellants are 'Koli' by caste which is recognised as Other Backward Class, i.e., OBC in the State and that they are not 'Mahadeo Koli', the Scheduled Tribe and their claim for that social status was accordingly declared untenable. The certificates issued by the respective Executive Magistrates were cancelled and confiscated. Their appeal provided under the Rules too was heard by the Additional Commissioner in Caste Appeal No. 11 of 1992 who by an elaborate order dated 30-4-1993 found that the certificate issued in favour of Balakrishna Pandurang Naik, maternal uncle, was from a Magistrate, Greater Bombay, who had no jurisdiction and was issued social status certificate without proper scrutiny. The certificate issued to Jyotsana by the Judicial Magistrate was on the basis of the school leaving certificate, ration card etc. and that, therefore, it does not provide any probative value to their status as Scheduled Tribe, the entries in school and college certificates of the appellants are not conclusive.

4. It is obvious that Judicial Magistrate has no jurisdiction to issue caste certificate and it is a void certificate. The entries in the school certificate of the father of the appellants, Laxman Patil, being pre-independence period, it bears "great probative value" wherein he declared himself to be 'Hindu Koli' which is now recognised as a backward class. The caste affirmation certificate issued by the Samaj "Caste Association" consists of these very communities who seek to get the status as Scheduled Tribes. It also does not, therefore, bear any

probative value. School certificates and college certificates in favour of the appellants are the subject of enquiry, therefore, do not bear any value and independently their status is to be considered.

5. The Committee as well as the Additional Commissioner relied upon a report of expert committee which had gone into the sociology, anthropology and ethnology of the Scheduled Tribes including 'Mahadeo Koli' which formed the basis for the pro forma questionnaire prepared by the Government and as given to and answered by the father of the appellants. On the basis of the information furnished by the father of the appellants and the anthropological and ethnological findings in that behalf, the Additional Commissioner, in our view rightly, held that an argument of social mobility and modernisation often alluringly put forth to obviate the need to pass the affinity test is only a convenient plea to get over the crux of the question. Despite the cultural advancement, the genetic traits pass on from generation to generation and no one could escape or forget or get them over. The tribal customs are peculiar to each tribe or tribal communities and are still being maintained and preserved. Their cultural advancement to some extent may have modernised and progressed but they would not be oblivious to or ignorant of their customary and cultural past to establish their affinity to the membership of a particular tribe. The Mahadeo Koli, a Scheduled Tribe declared in the Presidential Notification, 1950, itself is a tribe and is not a sub-caste. It is a hill tribe, may be like 'Koya' in Andhra Pradesh. Kolis, a backward class, are fishermen by caste and profession and reside mostly in Maharashtra coastal area. Kolis have different sub-castes. Mahadeo Kolis reside in hill regions, agriculture, agricultural labour and gathering of minor forest produce and sale thereof is their avocation. Therefore, the cancellation of the social certificate issued by the Executive Magistrates concerned by the Scrutiny Committee was legal.

6. The appellants' Writ Petition No. 1849 of 1993 was dismissed by the Division Bench by its order dated 17-8-1993 with brief reasons. Shri Ganesh, the learned counsel for the appellants contended that in the affidavit filed by the appellant's father before the Verification Committee he has explained the circumstances in which he came to be described as Hindu Koli. Prior to 1950, there was no necessity to describe sub-caste. For the first time in 1976 under the Scheduled Castes Scheduled Tribes (Amendment) Act, 1976, Mahadeo Koli was introduced as a Scheduled Tribe in the State of Maharashtra. The certificates issued to the maternal uncle Balakrishna Naik as Mahadeo Koli in the year 1954 and entries in his service record and to maternal aunt, Jyotsana in the year 1979 probalilise the omission to describe Laxman Patil as Mahadeo Koli, though they, as a fact, belong to Scheduled Tribe. In the school registers the appellants had enjoyed the status as Scheduled Tribe which provides probative value. The Committee, the Additional Commissioner and the High Court had not appreciated the evidence in proper perspective before declining to confirm the social status of the appellants as Scheduled Tribes and the High Court ought to have gone into these aspects as was done in *Subhash Ganpatrao Kabade case*<sup>1</sup>. It is further contended that Suchita has completed her final year course of study. Madhuri is in midway and that, therefore, justice demands that their education should not be dislocated with the denial of the social status as Scheduled Tribes. The sheet-anchor for the counsel's argument is the judgment

of the Division Bench of the Bombay High Court in *Subhash Ganpatrao Kabade case*<sup>1</sup>. We find no force in the contentions.

a 7. From the counter-affidavit filed by the State which has not been disputed  
 by filing any rejoinder and as is borne out from the public notification issued by  
 the President in the year 1950 in exercise of the power under Article 342 read  
 with Article 366(25) of the Constitution that Mahadeo Koli is declared as a  
 Scheduled Tribe. Article 366(25) defines Scheduled Tribes, as meaning such  
 b tribes or tribal communities or parts of or groups within such tribes or tribal  
 communities as are declared under Article 342 to be Scheduled Tribes for the  
 purposes of the Constitution. Article 342 gives power to the President to specify  
 the tribe with respect to any State or Union Territory, after consultation with the  
 Governor where it is a State, by public notification, specify the tribes or tribal  
 communities or parts of or groups within tribes or tribal communities which  
 shall, for the purposes of the Constitution, be deemed to be Scheduled Tribes in  
 relation to that State or Union Territory, as the case may be.

c 8. In *Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College*<sup>2</sup>, this  
 Court declared that subject to the law made by Parliament under sub-section (2)  
 of Section 342, the tribes or tribal communities or parts of or groups within  
 tribes or tribal communities specified by the President by a public notification  
 shall be final for the purpose of the Constitution. They are the tribes in relation  
 d to that State or Union Territory and that any tribe or tribes or tribal communities  
 or parts of or groups within such tribe or tribal communities, not specified  
 therein in relation to that State, shall not be Scheduled Tribes for the purpose of  
 the Constitution. The father of one Chandra Shekhar Rao who hailed from  
 Tenali in Guntur District of Andhra Pradesh is a Settibalija by caste which is  
 recognised as a backward class. His father obtained a certificate from the  
 Tahsildar, Tenali that he belonged to Scheduled Tribe and had got an  
 e appointment in a public undertaking of Bombay. On the basis of social status  
 certificate obtained by his father and entries in service record of his father, he  
 applied for admission into medical college as Scheduled Tribe. When he was  
 not admitted, he filed the writ petition in this Court under Article 32 seeking a  
 declaration that Settibalija though was not declared to be Scheduled Tribe in  
 Maharashtra it was a Scheduled Tribe for the purpose of the Constitution and  
 f that he was entitled to the admission into the medical college on the basis of his  
 social status as a Scheduled Tribe. This Court did not uphold the contention.  
 This Court held that the declaration by the President by a public notification in  
 relation to a State in consultation with the Governor of that State is conclusive  
 and court cannot give such a declaration. The same view was reiterated by  
 another Constitution Bench in *Action Committee on issue of Caste Certificate to  
 SCs and STs in the State of Maharashtra v. Union of India*<sup>3</sup>.

g 9. The Preamble to the Constitution promises to secure to every citizen  
 social and economic justice, equality of status and of opportunity assuring the  
 dignity of the individual. The Scheduled Tribes are inhabitants of intractable  
 terrain regions of the country kept away from the mainstream of national life  
 and with their traditional moorings and customary beliefs and practices, they are

h 2 (1990) 3 SCC 130 : (1990) 14 ATC 671

3 (1994) 5 SCC 244

largely governed by their own customary code of conduct regulated from time to time with their own rich cultural heritage, mode of worship and cultural ethos. The Constitution guarantees to them, who are also Indian citizens, equality before law and the equal protection of law. Though Articles 14 and 15(1) prohibit discrimination among citizens on certain grounds, Article 15(4) empowers the State to make special provisions for advancement of Scheduled Castes and Scheduled Tribes. Article 16(1) requires equality of opportunity to all citizens in matters of appointments to an office or a post under the Union or a State Government or public undertakings etc. But Article 16(4) empowers the State to make provision for reservation of appointments or posts in favour of classes of citizens not adequately represented in the services under the State. Article 46 enjoins the State by mandatory language employed therein, to promote with special care the educational or economic interest of the Scheduled Tribes and Scheduled Castes and to protect them from "social injustice" and "all forms of exploitation". Article 51-A(h) enjoins every citizen to develop scientific temper, humanism and the spirit of inquiry and reform. Again Article 51-A(h) requires every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. It is, therefore, a fundamental duty of every citizen to develop scientific temper and humanism and spirit of inquiry to reform himself in his onward thrust or strive to achieve excellence in all spheres of individual and collective activity. Since the Scheduled Tribes are a nomadic class of citizens whose habitat being generally hilly regions or forests, results in their staying away from the mainstream of the national life. Therefore, the State is enjoined under our Constitution to provide facilities and opportunities for development of their scientific temper, educational advancement and economic improvement so that they may achieve excellence, equality of status and live with dignity. Reservation in admission to educational institutions and employment are major State policies to accord to the tribes, social and economic justice apart from other economic measures. Hence, the tribes, by reason of State's policy of reservation, have been given the exclusive right to admission into educational institutions or exclusive right to employment to an office or post under the State etc. to the earmarked quota. For availment of such exclusive rights by citizens belonging to tribes, the President by a notification specified the Scheduled Tribes or tribal communities or parts of or groups of tribes or tribal communities so as to entitle them to avail of such exclusive rights. The Union of India and the State Governments have prescribed the procedure and have entrusted duty and responsibility to Revenue Officers of gazetted cadre to issue social status certificate, after due verification. It is common knowledge that endeavour of States to fulfil constitutional mandate of upliftment of Scheduled Castes and Scheduled Tribes by providing for reservation of seats in educational institutions and for reservation of posts and appointments, are sought to be denied to them by unscrupulous persons who come forward to obtain the benefit of such reservations posing themselves as persons entitled to such status while in fact disentitled to such status. The case in hand is a clear instance of such pseudo-status. Kolis have been declared to be OBC in the State of Maharashtra being fishermen, in that their avocation is fishing and they live mainly in the coastal region of Maharashtra. Mahadeo

a

b

c

d

e

f

g

h

a Kolis are hill tribes and it is not a sub-caste. Even prior to independence, the Maharashtra Government declared Mahadeo Koli to be criminal tribe as early as 29-5-1933 in Serial No. 15 in List II thereof. In 1942 Resolution in Serial No. 15 in Schedule B of the Bombay resolution Mahadeo Koli tribe was notified as a Scheduled Tribe. It was later amended as Serial No. 13. In the Presidential Scheduled Castes/Scheduled Tribes Order, 1950, it was reiterated. A slight modification was made in that behalf by the Presidential Notification dated 29-10-1956. In the 1976 Amendment Act, there is no substantial change except removing the area restriction. Thus Mahadeo Koli, a Scheduled Tribe continued to be a Scheduled Tribe even after independence. The Presidential Notification, 1950 also does recognise by public notification of their status as Scheduled Tribes. The assumption of the Division Bench of the Bombay High Court in *Subhash Ganpatrao Kabade case*<sup>1</sup>, that Mahadeo Koli was recognised for the first time in 1976 under Amendment Act, 1976, as Scheduled Tribe is not relatable to reality and an erroneous assumption made without any attempt to investigate the truth in that behalf. Presidential declaration, subject to amendment by Parliament being conclusive, no addition to it or declaration of castes/tribes or sub-castes/parts of or groups of tribes or tribal communities is permissible.

d 10. The entries in the school register preceding the Constitution do furnish great probative value to the declaration of the status of a caste. Hierarchical caste stratification of Hindu social order has its reflection in all entries in the public records. What would, therefore, depict the caste status of the people inclusive of the school or college records, as the then census rules insisted upon. Undoubtedly, Hindu social order is based on hierarchy and caste was one of the predominant factors during pre-Constitution period. Unfortunately instead of dissipating its incursion it is being needlessly accentuated, perpetrated and stratification is given legitimacy for selfish ends instead of being discouraged and put an end to by all measures, including administrative and legislative. Be it as it may, people are identified by their castes for one or the other is a reality. Therefore, it is no wonder that caste is reflected in relevant entries in the public records or school or college admission register at the relevant time and the certificates are issued on its basis. The father of the appellants admittedly described himself in 1943 and thereafter as a Hindu Koli. In other words his status was declared a Koli by caste and Hindu by religion. Kolis are admittedly OBCs. His feigned ignorance of the ancestry is too hard to believe. The averment in the affidavit that the entries were mistakenly made as Hindu Koli is an obvious afterthought. The anthropological moorings and ethnological kinship affinity (*sic*) gets genetically ingrained in the blood and no one would shake off from past, in particular, when one is conscious of the need of preserving its relevance to seek the status of Scheduled Tribe or Scheduled Caste recognised by the Constitution for their upliftment in the society. The ingrained tribal traits peculiar to each tribe and anthropological features all the more become relevant when the social status is in acute controversy and needs a decision. The correct projectives furnished in pro forma and the material would lend credence and give an assurance to properly consider the claims of the social status and the officer or authority concerned would get an opportunity to test the claim for social status of particular caste or tribe or tribal community or group or part of

such caste, tribe or tribal community. It or he would reach a satisfactory conclusion on the claimed social status. The father of the appellant has failed to satisfy the crucial affinity test which is relevant and germane one. On the other hand the entries in his school and college registers as Hindu Koli positively belies the claim of his social status as Scheduled Tribe.

11. It is seen that admittedly the appellants reside in Muland area. In the first instance Suchita rightly approached the Tahsildar having jurisdiction over the area concerned who refused to give her social status certificate as Mahadeo Koli, she filed an appeal and the High Court directed the Deputy Commissioner to dispose of the appeal who in turn without deciding the facts, directed the Tahsildar to issue the certificate. In the meanwhile she had, by orders of the court, got admission into the college and pursued her study. The Caste Certificate Scrutiny Committee, consists of the Secretary as Chairman and two members, and a Research Officer-cum-Director who have intimate knowledge in the identification of the specified tribes, considered the entire material. The Committee has stated and as is seen that the appellant's father clearly accepted that his caste is recorded in the college as well as secondary school and college records as Hindu Koli only. This fact is strengthened by the candidate's father's school record (document at Serial No. 1). In the new English School locality at Thane, the name of the candidate's father appeared in the admission register at Serial No. 3733, and the caste clearly shown there was as H. Koli. This school record, comparatively, is not only oldest but it being the record pertaining to candidate's father's admission to school prior to independence, it carries greatest probative evidentiary value. The caste of the person, as stated earlier, is determined on the basis of the caste of their parents, basically for the reasons that the caste is acquired by birth. When the school record of the candidate's father shows his caste as Koli, the documents which the candidates have produced (documents quoted at Serial Nos. 3, 5 to 8, 11, 13 to 16) showing their caste as Mahadeo Koli cannot be relied upon. All these documents furnished by the candidates are those manipulated and fabricated with to knock of the seats in educational institutions defrauding the true Scheduled Tribes to their detriment and deprivation. As the school record of the candidate's father shows his caste as 'Koli', the caste certificates which have been issued to the appellants and their relatives by the Executive Magistrate, Greater Bombay (documents at Serial Nos. 9, 10, 12, 17 to 19) are without proper enquiry and investigation, besides being without jurisdiction. Its reiteration in service record would not carry any credibility or a ground to accept the caste as Scheduled Tribe. The caste certificate issued by Samaj being self-serving and subject to scrutiny, they cannot be held to be conclusive proof to determine the caste claim. The finding recorded by the Committee is based on consideration of the entire material together with sociological, anthropological and ethnological perspectives which Mahadeo Kolis enjoy and of the OBC castes and sub-caste of the Kolis. The Additional Commissioner as well, has minutely gone into all the material details and found that when a section of the society have started asserting themselves as tribes and try to earn the concession and facilities reserved for the Scheduled Tribes, the tricks are common and that, therefore, must be judged on legal and ethnological basis. Spurious tribes have become a threat to the genuine tribals and the present case is a typical example of reservation of benefits given to the

a genuine claimants being snatched away by spurious tribes. On consideration of the evidence, as stated earlier, both the Committee and the appellate authority found as a fact that the appellants are not tribe 'Mahadeo Koli' entitled to the constitutional benefits. In *Subhash Ganpatrao Kabade case*<sup>1</sup>, the approach of the Division Bench of the High Court appears to be legalistic in the traditional mould totally oblivious of the anthropological and ethnological perspectives and recorded their findings with unwarranted strictures on the approach rightly adopted by the Scrutiny Committee and the Additional Commissioner to be 'funny' "obviously incorrect" and "queer reasoning". Admittedly the b petitioner therein, in days preceding the Constitution, described himself in the service book as well as school leaving certificate as a Hindu Koli. The High Court also found that they were backward class but proceeded on the erroneous footing that Mahadeo Koli was introduced for the first time through 1976 Amendment Act and that, therefore, they were the genuine Scheduled Tribes entitled to the benefits. In view of the above, we cannot help holding that the c reasoning of the High Court is wholly perverse and untenable.

12. We have seen that Scrutiny Committee proceedings although started on 8-12-1989 were prolonged till 26-6-1992. We do not have record to scan the reasons for the delay. It would appear that the constitution of a Committee with large number of members and Secretary as Chairman must have greatly contributed for the delay in deciding the claims for the social status. A right of d appeal provided thereafter compounded further delay though the Additional Commissioner on the facts of this case has disposed of the appeal very expeditiously. However, all of them are the contributory factors for the delay.

13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined e in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational f institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which g may be the following:

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file h an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from

which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer high-er in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes

a High Court, instead directed the Tahsildar to issue the certificate. Thus she secured a false social status certificate and orders of the court were used to gain admission. The judicial process is made use of to secure admission. She continued her studies thereafter pending scrutiny of her status certificate. No doubt there was a delay on the part of the Scrutiny Committee in the disposal of the claims and we do not find any record to scan the reasons for the delay. Suffice to state that her parents have put her under a cloud as to her social status. But as seen from the facts a course of conduct was adopted by her parents to gain admission on the claim which is now found to be false. Parents' misconduct visits the children also many a times. However, she has now completed the course of study except to appear for the final year as contended for her and nothing more is to be done in the situation for her to complete her course of study. We direct the Principal to permit her to sit for the final year examination, if she has completed the course of study as represented to us but not with the social status as a Scheduled Tribe which was claimed fraudulently and made her admission with the aid of the court's order and continue her studies. The delay in disposal facilitated her continuance in study of MBBS course.

b  
c  
d  
e 18. The delay in the process is inevitable but that factor should neither be considered to be relevant nor be an aid to complete the course of study. But for the fact that she has completed the entire course except to appear for the final examination, we would have directed to debar her from prosecuting the studies and appearing in the examination. In this factual situation no useful purpose would be served to debar her from appearing for the examination of final year MBBS. Therefore, we uphold the cancellation of the social status as Mahadeo Koli fraudulently obtained by Km Suchita Laxman Patil, but she be allowed to appear for the final year examination of MBBS course. She will not, however be entitled in future for any benefits on the basis of the fraudulent social status as Mahadeo Koli. However, this direction should not be treated and used as a precedent in future cases to give any similar directions since the same defeats constitutional goals.

f  
g 19. In the case of Madhuri Laxman Patil, she did not approach the competent officer. She appears to have wrongly gone to an officer who had no jurisdiction, obviously she has shown the order issued by the High Court in favour of her sister Suchita and secured the certificate and got the admission. Though she is in midway of her study in BDS in the end of second year, she cannot continue her studies with her social status as Mahadeo Koli, a Scheduled Tribe and the concessions which she might have got on that account. If she was eligible for obtaining admission as a general candidate she may continue her studies. Therefore, we uphold the cancellation and confiscation of her and of Suchita of social status as Mahadeo Koli ordered by Scrutiny Committee and affirmed by the order of Appellate Authority and that of the High Court in that behalf. Subject to the above modifications, the appeal is dismissed but without costs.

evidence in rebuttal, if any is required to be produced or desired to be produced by the tenant.

21. The learned Counsel for the petitioner failed to show any malafide on the part of the Court which passed the order.

22. In this view of the matter, the writ petition, is hereby dismissed with costs.

*(Petition dismissed.)*

### ALLAHABAD HIGH COURT (LUCKNOW BENCH)

Hon'ble H. N. Tilhari, J.—MAHENDRA KUMAR JAIN *Versus* PRESCRIBED AUTHORITY (RENT CONTROL)/MUNSIFF SITAPUR and others—Writ Petition No. 4681 of 1986, *Decided on November 3, 1993.*

- (a) Speaking orders—Judicial Authority while passing order involving civil consequences or having tendency to deprive party of opportunity of producing evidence—Expected to pass reasoned order after having applied mind to the allegations made in the application. (Paras 10 and 11)
- (b) Technicalities—Are not to be allowed to create obstructions in the course of justice. (Para 12)

Sri Ratan Kant Sharma, Advocate, for Petitioners. Sri Hari Shanker Sahai, Advocate, for Opp. Parties.

Hon'ble Hari Nath Tilhari, J.—By this petition, the petitioner has challenged the order dated 24-5-1986, passed by Shri S. K. Tripathi, Prescribed Authority (Rent Control), Munsif, Sitapur, whereby the Prescribed

1994(12)

L.C.D.

Mahendra Kumar Jain v. Prescribed Authority,

697

desired to be

show any mala-

herby dismissed

it: on dismissed.)

ENCHI)

JAIN Versus  
SITAPUR  
number 3, 1993.

er involving civil  
portunity of pro  
er having applied  
Paras 10 and 11)

structions in the  
(Para 12)

r: Hari Shanker

he petitioner has  
ipathi, Pres  
y the Prescribed

Authority has rejected the petitioner's application for substitution, namely, application No. 48 Ga and 61 Ka and allowed the substitution of the names of opposite parties 3 and 4 in place of Smt. Jamuna Devi (deceased.)

2. Brief facts of the case are that one Smt. Jamuna Devi had moved an application under Section 21(1)(a), U. P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act (U. P. Act No. XIII of 1972) hereinafter called as the Act. The application for release was pending and during the pendency of the application, Smt. Jamuna Devi, had died. On account of death of Smt. Jamuna Devi, the application for substitution had to be moved. An application 48 Ka had been moved by one Jayanti Prasad i. e. opposite party No. 2 to the writ petition claiming himself to be the heir of Smt. Jamuna Devi on the basis of a will alleged to have been executed by Smt. Jamuna Devi in his favour. The second application i. e. application 53 Ka had been moved by opposite parties 3 and 4 to the present writ petition who asserted that they were the heirs of Smt. Jamuna Devi being the sons of the brother of the husband of Smt. Jamuna Devi, as has already been mentioned in the pedigree, as mentioned in the application and referred to in the judgment of the Prescribed Authority.

3. Opposite parties 3 and 4 further claimed themselves to be entitled to the property left by Smt. Jamuna Devi as well as to be substituted in place of Smt. Jamuna Devi on the basis of a registered will that opposite parties 3 and 4 alleged, to have been executed in their favour by Smt. Jamuna Devi. The third application for substitution 61 Ka had been moved by the present petitioner Mahendra Kumar Jain who had also claimed himself to be entitled to succeed the property of Smt. Jamuna Devi on the basis of certain will which is alleged to have been executed by Smt. Jamuna Devi in his favour.

4. On 16-5-1986, the case was listed for proceeding and orders on application of substitution and the Prescribed Authority i. e. opposite party No. 1 passed an order to the effect that case having been called out for several times but learned Counsel for the parties every moment prays for time being granted. Sufficient time has already been granted and that

the application for substitution is pending since long but no evidence has been produced. The opportunity of production for oral evidence is closed. The application for substitution shall be decided on the basis of the affidavit filed alongwith the substitution application and fixed May 21, 1986 for orders.

5. On 16-5-1986, the present petitioner made an application to the effect that when the case was called up for producing the evidence, he alongwith witnesses was present. He also mentioned that the written evidence is already on record. It was further mentioned therein that other objectors (Apattikartagan) Smt. Jayanti Prasad and Chandra Bhal were not present nor was any evidence available on their behalf but the applicant i. e. the present petitioner was present with his evidence for being produced. Applicant Mahendra Kumar has further asserted that on account of some confusion alongwith other absent objectors, the applicant i. e. present petitioner's evidence had also been closed though the witnesses were present and if he is not allowed to produce his evidence he will not be able to prove his right and will suffer irreparably. Therefore he prayed that the order dated 16-5-1986 may be modified to this extent that the applicant Mahendra Kumar (present petitioner) be allowed to produce his evidence or examine his evidence alongwith his application. He had also attached a medical certificate dated 4th June, 1984 issued by Dr. S. Kumar to Sri Mahendra Kumar Jain and mentioned in the application that delay in producing that certificate may be condoned. It appears that on some earlier date, the petitioner Mahendra Kumar Jain was required to produce some medical certificate which he could not produce in time and which he was producing alongwith his application, so prayed for condonation of delay but the Prescribed Authority as mentioned in para 16 of the writ petition rejected the application of the petitioner - applicant for being allowed to produce his evidence on 16-5-1986 by a very short order which has been quoted in paragraph 16 and which reads as under :—

“No sufficient ground. Rejected.”

6. Thereafter by order dated 24-5-1986, the Prescribed Authority (Munsif, Sitapur), ordered for substitution of the names of opposi-

L.C. O.

parties  
of the  
petition  
tion of),  
filed.A,  
and sh  
real9,  
ved of  
sion ca  
the Co  
deno c  
Shr Si  
deno l  
tioner  
not acc  
is 2 m  
quoted10  
rejecte11  
al sh  
of he  
Prescri  
peti o  
produc

parties 3 and 4 in place of Smt. Jamuna Devi in that case, under Section 21 of the Act, and feeling aggrieved from this order dated 24-5-1986, the petitioner filed the instant writ petition under Article 226 of the Constitution of India.

7. The Counter affidavit as well as rejoinder-affidavit have been filed.

3. I have heard Sri Ratan Kant Sharma on behalf of the petitioner and Shri Hari Shanker Sahai on behalf of the opposite parties who had really contested the matter.

9.—Shri Ratan Kant Sharma submitted that the petitioner was deprived of opportunity of producing the evidence simply on account of confusion caused due to absence of the parties, except that of the petitioner and the Court instead of closing the evidence of other parties closed the evidence of the petitioner witnesses and passed the order for substitution. Shri Sharma submitted that on 16-5-1986 when order for closure of evidence having been passed the petitioner's counsel made request that petitioner be allowed to produce the evidence but when the oral request was not accepted then a written application on that very day was moved which is Annexure No. 2 to the writ petition and the contents of which has been quoted earlier by me.

10. The application i.e. application as per allegations has been rejected by a Stereo-type order :

“No sufficient cause shown. Rejected.”

11. The order as quoted in paragraph 16, which has not been denied, also shows that it has been passed without applying mind to the contents of the application which was rejected by the Prescribed Authority. The Prescribed Authority has not said in its order that the allegation of the petitioner in the application that he was present for oral evidence to be produced was wrong or incorrect when it had passed the order of closure

1994(12)

vidence has  
is closed.  
of the affi-  
y 21, 1986

tion to the  
e along-  
evidence  
er objectors  
no present  
ant i. e. the  
g produced.  
ur of some  
i. present  
ses were pre-  
l not be able  
ayed that the  
he applicant  
his evidence  
also attached  
Kumar to Sri  
that delay in  
that on some  
re no produce  
and which he  
one onation of  
16 of the writ  
icant for being  
ort order which

ribed Authority  
mes of opposit

of evidence. The Judicial Authority while passing order involving civil consequences or having tendency to deprive a party of opportunity of producing the evidence or rejecting the application for permission to produce evidence are expected to pass reasoned order after having applied mind to the allegations made in the application, whether those allegations are correct or not that has also got to be considered. The order does not indicate that the allegations made in the application were denied by opposite parties so those allegations have to be taken to be correct as has been asserted by the applicant that applicant was present with his evidence but for some confusion of the like alongwith other his evidence was also closed, and thereafter without giving any opportunity of producing any evidence to the petitioner which the petitioner wanted to produce the Prescribed Authority had passed the order rejecting his application.

12. The Prescribed Authority should have considered one aspect that if it would have modified that order and allowed to produce evidence on 16-5-1986 or on some other date before 21-5-86 heaven would not have fallen instead the delay in disposal of the release application could have been avoided. It indicates a lack of sense of comprehension. Anyway, rule of technicality or technicalities are not to be allowed to create obstructions in the course of justice. Considering this aspect of the matter when I find that the allegation of paragraph 16 of the writ petition about the nature of the order and the order passed on application dated 16-5-86 have not been controverted, I take that the order that was passed on 16-5-86 was only rejection of application in stereo type manner such order is liable to be quashed to set aside thereof only the purpose is not going to be served until the order of substitution which has been passed without giving any opportunity of producing the evidence is quashed. As mentioned earlier, as the order of substitution has been passed after having deprived the petitioner of proper opportunity of producing the evidence irrespective of the fact that he was present alongwith his evidence but for some confusion of the Court arising from absence of other parties or their Counsel, keeping the trite principle of law that no party should suffer for making any fault or confusion of the Court or its staff, in view, I hold that order contained

in Annex  
of law ap

13.

issuing a  
which the  
on applic  
Order de  
as a con  
of certio  
and, as s  
rity i. e.  
tion appl  
the parti  
appear b  
ber, 199  
some de  
parties 3  
parties 3  
as none  
petition

14.

Prescribe  
period o

[(1995) 2 UPLBEC 735]

C. A. RAHIM, J.

Civil Misc. Writ Petition No. 14905 of 1990,  
decided on December 20, 1994U. P. State Road Transport Corporation, Kanpur and another Petitioners*Versus*Sarfraz Hussain and others Respondents

(A) Service—Domestic enquiry—Evidence Act, 1872, Section 101—Burden of proof to establish that enquiry was properly conducted—Lies on employer—Employee who was dismissed on basis of such enquiry—Cannot be expected to prove a negative fact.

In the domestic enquiry it was the duty of the employer to prove the charge against the delinquent. It was also the duty of the said employer to establish before the Tribunal or labour Court that the enquiry was properly held, particularly when there is allegation that the said enquiry was defective. In the instant case no evidence was adduced by the employer after several adjournments were granted. The burden of proof that there was no enquiry or a defective enquiry was never on a person who denies it. Section 101 of the Evidence Act comes into play when the burden of proof was on the employer that the delinquent was guilty in the domestic enquiry, the said employer is also liable to prove before the labour court that the domestic enquiry was properly held. There can be no burden on a person to prove the negative to establish that there was no domestic enquiry. It does not rest on a person who denied the fact.

[Para 4]

(B) Service—Dismissal order—Appeal against—Also dismissed—Question of merger of order of dismissal in appeal—Does not arise because no relief was granted by appellate court.

[Para 7]

Case-law.—(1993) 1 UPLBEC 532—Distinguished.

COUNSEL.—Vijay Manohar Sahai, for petitioners, S.C., for respondents.

**JUDGMENT**

C. A. Rahim, J.—Respondent No. 1 was appointed on 7-7-1959 as driver in the petitioners' Company. On 21-2-1974 a charge-sheet was submitted against him and an enquiry was started by one Sri D. R. Singh. A petition was filed by respondent No. 1 for changing Inquiry Officer but no order was passed. The said enquiry was purported to have been completed and the respondent No. 1 was dismissed from service. An appeal was preferred before the Assistant Regional Manager, which was dismissed. Against that order another appeal was preferred to the General Manager of U. P. Road Transport Corporation but no decision was arrived at for long. The Union therefore took up the matter to the Government of U. P. and a reference was made to the Labour Court for a decision whether the dismissal of the respondent No. 1 on 20-3-1977 was legal and proper.

2. The allegation of the respondent No. 1 before the Labour Court was that the said enquiry was not properly held. Since the examination

in Annexure Nos. 1 and 3 are illegal and bad in law and suffer from error of law apparent on the face of record as well as of jurisdiction.

13. Thus having considered, I hereby allow the writ petition, by issuing a writ of certiorari, quashing the order dated 16-5-1986 i. e. by which the oral evidence of the parties had been closed. The order passed on application Annexure No. 2 and quoted in paragraph 16 is also quashed. Order dated 19-6-1986 passed by the opposite party No. 1 and dated 24-5-86 as a consequence of my above observation is also being quashed, by a writ of certiorari. The application for substitution shall be considered afresh and, as such, a further direction is being issued to the Prescribed Authority i. e. opposite party No. 1 to consider and dispose of all the substitution applications simultaneously after having recorded the oral evidence of the parties who have moved an application for substitution. Let the parties appear before the Prescribed Authority (Munsif Sitapur) on 10th December, 1993 for attendance and on that date, the Munsif Sitapur shall fix some date for production of evidence by the applicant as well as opposite parties 3 to 5. The Munsif shall issue a notice of the date to opposite parties 3 to 5 if they are not present before him on 10th December, 1993 as none has put in appearance on their behalf in this Court. Thus the writ petition is allowed with costs.

14. It is expected, with the active cooperation of the parties, the Prescribed Authority shall dispose of application for substitution within a period of not more than six months.

(Petition allowed.)

in-chief two witnesses, who alleged to have been deposed during the enquiry was done in the absence of the respondent No. 1 and that the Inquiring Officer wrongly found that the allegation was true and consequently he was dismissed.

3. Labour Court initiated proceeding and framed an issue whether the order of dismissal dated 20-3-1977 was proper and according to law if not what relief the petitioner (respondent No. 1 before me) was entitled. Before the Labour Court the respondent No. 1 adduced his evidence but the Transport Corporation obtained 20-25 adjournments but did not produce any evidence. The Labour Court, therefore, found that the said order of dismissal was illegal. He also found that as during the pendency of the appeal before the General Manager of the Corporation he was reinstated, the same should continue and he should be paid all arrears, salary and with all benefits expeditiously. Against that order of the Labour Court this writ petition has been filed alleging that the said order was illegal and bad in law.

4. Learned counsel for the petitioner has submitted that the domestic enquiry was properly held. The allegation of the respondent No. 1 before the Labour Court that it was not properly held or that it was a defective enquiry should have been established by him as burden of proof lies on him. The Labour Court held that it was on the Corporation to establish that the domestic enquiry was properly held. In case of *M/s. Fire Stones Tyre and Rubber Company* reported in AIR 1973 SC page 1227 it was held that even if no enquiry was held by the employer or if the enquiry was found to be defective the Tribunal in order to satisfy itself about the legality and validity of the order has to give an opportunity to the employer and employee to adduce evidence before it. In case of *Co-operative Engineering Limited*, AIR 1975 SC 900 it was held that when the matter is in controversy between the parties that question must be decided as a preliminary issue it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence it will not be thereafter permissible in any proceeding to raise the issue. In view of these decisions contention of the learned counsel for the petitioner this respect does not seem to be correct. In the domestic enquiry it was the duty of the employer to prove the charge against the delinquent. It was also the duty of the said employer to establish before the Tribunal or Labour Court that the enquiry was properly held, particularly when there is allegation that the said enquiry was defective. In the instant case no evidence was adduced by the employer after several adjournments were granted. The burden of proof that there was no enquiry or a defective enquiry was never on a person who denies it. Section 101 of the Evidence Act comes into play when the burden of proof was on the employer that the delinquent was guilty in the domestic enquiry, the said employer is also liable to prove before the labour court that the domestic enquiry was properly held. There can be no burden on a person to prove the negative to establish that there was no domestic enquiry. It does not rest on a person who denied the fact. I do not find any illegality in the order and the contention of the learned counsel for the petitioners fails.

5. Learned counsel for the petitioners has submitted that the order of dismissal dated 20-3-1977 stood merged in the order of the appellate court. It has been submitted that by an order of the appellate court

respondent No. 1 was allowed to join and it tantamounts that the dismissal order was substituted by the said order and hence due to merger the Labour Court has no jurisdiction to entertain the reference and the same is bad in law. In this connection learned counsel for the petitioners has referred the case of *M/s. Sahkari Ganna Vikas Samiti Limited* reported in (1993) 1 U. P. Local Bodies and Educational Cases page 532. In that case respondent No. 4 was dismissed but the appeal preferred by the workmen was allowed and the appellate authority administered warning to the respondent No. 2 and directed this reinstatement against the post to be fallen vacant in future. It was also ordered that the respondent No. 4 would not be entitled to any salary for the period he remained out of employment.

6. Learned Counsel for the respondent No. 1 has submitted that in the instant case doctrine of merger is not applicable as no relief was given to the petitioner on adjudication of the appeal filed by the respondent No. 1.

7. I agree with the learned advocate for the respondent No. 1 as the instant case stands on a different footing. Here the order of termination was challenged in appeal and it was dismissed. The respondent No. 1 then preferred another appeal to the General Manager which was not disposed of for long 12 years and without deciding the said appeal an order was passed allowing the respondent No. 1 to join the service. As the appeal was not disposed of by the General Manager it was not held that termination was illegal. There was also finding that he would not be entitled to any salary for the period he remained out of employment. There is no averments in the writ petition on this point. It was also not taken before the labour court that the reference was bad due to the merger. Considering all these aspects I find no merit in the submission of the learned advocate and it fails.

8. The writ petition is, therefore, dismissed with costs of Rs. 5,000 to be paid to the respondent No. 1. The respondent No. 1 is entitled to all the arrears, salary and benefits which he would have been entitled had he been in service since 20-3-1977. Any amount paid in the meantime shall be adjusted.

*Petition dismissed.*

[(1995) 2 UPLBEC 737]

**B. P. JEEVAN REDDY AND MRS. SUJATA V. MANOHAR, JJ.**

Civil Appeal No. 8918 of 1994, decided on December 7, 1994

State of U. P.

**Appellant**

*Versus*

**Vijai Kumar Tripathi and another**

**Respondents**

Service—Penalty of Censure—U. P. Civil Services (Classification Control and Appeal) Rules, 1930, Rules 55-B (a) and 49—Imposition of penalty of censure under Rule 49—Without giving opportunity of hearing to employee concerned—Violative of principles of National Justice—Rule 55-B(a)

[(1998) 3 UPLBEC 1980]

**R.R.K. TRIVEDI AND R.K. MAHAJAN, JJ.**

Civil Misc. Writ Petition No. 33053 of 1995, decided on March 4, 1996

**Ashok Kumar Gaur****Pe****Vs.****Uttar Pradesh Financial Corporation and others****Respondents**

**Service—Dismissal from service—On ground that appointment was obtained by forged certificate showing appointee to be a Scheduled Caste—Writ Petition challenging dismissal—High Court suggested petitioner-appointee to file application before appropriate authority for making inquiry into controversy regarding genuineness of certificate in accordance with guidelines laid down by Supreme Court in the case of Madhuri Patil v. Additional Commissioner, reported in (1994) 6 SCC 241, within time frame fixed in that case—Order of dismissal shall be subject to result of inquiry. (Paras 4 & 5)**

**Case law—(1994) 6 SCC 241—Relied on.**

**Counsel—A.N. Srivastava, P.K. Srivastava, Advocates, for the petitioner; C. Prakash, V.B. Singh, Advocates, for the respondents.**

**JUDGMENT**

**R.R.K. Trivedi and R.K. Mahajan, JJ.**—Heard learned Counsel for petitioner and Shri V.B. Singh, learned Counsel for respondent Nos. 1 to 3.

2. Facts giving rise to this petition are that petitioner was appointed as Manger (Finance) in U.P. Financial Corporation by order dated 5.12.1986 on the basis of certificate dated 20.2.1985 showing him as belonging to Scheduled Caste category. This certificate was issued by Tahsildar, Duddhi, District Mirzapur. Subsequently, it was found that the certificate submitted by the petitioner was not correct and he got employment on the basis of a forged certificate. Consequently, by the impugned order dated 6.11.1995, petitioner was dismissed from service, aggrieved by which this petition has been filed. It has also come on record that petitioner filed Civil Suit No. 1822 of 1995 for declaration that he belongs to Scheduled Caste (Gond) category. The suit, as stated by the learned Counsel for the petitioner, is still pending. However, an application has been filed by petitioner to withdraw the suit.

3. From the facts narrated above it is clear that the question in dispute is as to whether petitioner belongs to caste Gond which is mentioned as a caste in the Schedule. Hon'ble Supreme Court in case of *Madhuri Patil v. Additional Commissioner*, reported in 1994 (6) SCC 241, has laid down the procedure for issuance of social status certificate, their scrutiny and their approval. The procedure laid down is as under:—

"13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts

under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of Social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the officer, Taluk or Mandal level.
2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent Gazetted Officer or Non-Gazetted Officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.
3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.
4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.
5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate his parent or guardian, as the case may be. He should also examine the School records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their cast etc. or such other persons, who have knowledge of the social status of the candidate and

- then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.
6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledge due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the Committee and the Joint/Additional Secretary as Chairperson who shall give a reasonable opportunity to the candidates/ parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.
  7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.
  8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the committee with all evidence in his or their support of the claim for the social status certificates.
  9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.
  10. In case of any delay in finalising the proceedings, and in the mean while the last date for admission into an educational institution or

appointment to an officer post, is getting expired, the candidate be admitted by the principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.
12. No suit or other proceedings before any other authority should lie.
13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.
14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.
15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgment due with a request to cancel the admission or the appointment. The principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post."
4. In our opinion, to resolve the question as to whether the certificate dated 20-2-1985 submitted by the petitioner before the respondents to secure employment was genuine or not, an inquiry has to be held in accordance with the procedure provided by Hon'ble Supreme Court in the above judgment, and the order of dismissal passed against the petitioner should be subject to the result of the said inquiry.
5. For the reasons stated above this petition is disposed of finally with liberty to the petitioner to make an application before the appropriate authority which shall ensure an inquiry in terms of the directions given by Hon'ble Supreme Court. Such inquiry must be completed within the time frame fixed by Hon'ble Supreme Court. The order of dismissal dated 6.11.1995 shall be subject to the result of the inquiry. If the certificate is found genuine, the petitioner shall be entitled to be reinstated on the post.

*Petition decided accordingly..*

dated 21.7.98 suspending the management of the college and appointment of Authorised Controller, is issued. The respondents are directed to hand over the possession of the Management of the Institution to the petitioner forthwith.

(Petition allowed)

\*\*\*\*\*

[1999 (17) LCD-24]

**ALLAHABAD HIGH COURT (Lucknow Bench)**

**Hon'ble Amarbir Singh Gill, J. and Hon'ble R.P. Nigam, J.**

--- P.N. SRIVASTAVA *Versus* STATE OF U.P. AND OTHERS --- Writ Petition No. 1242 (S/B) of 1997. *Decided on December 7, 1998.*

(a) Pleadings --- Admission of plea --- Held, where a plea is not controverted in reply, it amounts to admission of the plea. AIR 1993 SC 2592 ref.to. (Para 8)

(b) Services --- Disciplinary proceedings --- Principles of natural justice, requirement of --- Held, the principle requires that delinquent official is furnished with copies of documents relied upon against him and he should be given full opportunity to cross examine the witness and to produce his own defence --- Enquiry officer cannot collect evidence behind delinquent official. AIR 1988 SC 117, 1997 ALJ 2158, 1997 ALJ 1501 ref.to. (Para 10)

(c) Services --- Disciplinary proceedings --- Launching of, after the time fixed by the statutory rules, or by the Supreme Court or High Court, held to be illegal. (1996) 9 SCC 395, (1996) 3 SCC 507, 1988 (Supp) SCC 472, (1991) 1 SCC 605 and (1997) 4 SCC 430 ref. to. (Paras 12 and 13)

(d) Services --- Constitution of India, Article 226 --- Disciplinary proceedings --- Dismissal --- Order passed in violation of the directions of High Court, without holding enquiry and without affording opportunity to cross examine witnesses --- Held to be illegal and quashed. (Para 16)

Sri S.C. Misra, Advocate, for Petitioner. Sri Shafiq Mirza, Advocate, for Respondents.

Delivered by Hon'ble Amarbir Singh Gill, J. --- By means of this writ petition the petitioner challenges the order of his reversion dated 18-10-1997 (Annexure 1-A) and consequential posting order dated 20-10-1997 (Annexure 1-B) on the reverted post. The case of the petitioner is that he joined the service with the opposite parties as Garden Superintendent in the year 1963. He was promoted as Executive Officer of Class II Municipal

Board with effect from 1-12-1964 and thereafter he was promoted to the post of Sahayak Nagar Adhikari with effect from 1-7-1979. In the year 1989 he was superseded. He filed a writ petition challenging his supersession and on 29-1-1991 this court directed the opposite parties to decide the representation of the petitioner. However, the opposite parties passed an order stating that since earlier promotion of the petitioner on the post of Sahayak Nagar Adhikari was on ad hoc basis, the petitioner cannot be promoted to the next higher post of Up Nagar Adhikari. The petitioner challenged the said decision by means of Writ Petition No. 4203 of 1991. This court passed an interim order directing the opposite parties to consider the case of the petitioner for promotion not treating him as adhoc promotee and thereafter on 15-10-1992 this court directed the opposite parties to promote the petitioner forthwith on the post of Up Nagar Adhikari provisionally or on adhoc basis and to hold regular selection in two months in which the case of the petitioner shall also be considered. This order was further clarified directing the opposite parties to promote the petitioner within a week's time. This order was challenged by the opposite parties before the apex court. However, the order of this court was not stayed. Instead of complying with the order of this court, the opposite parties suspended the petitioner and served a charge sheet on him on 17-11-1992. The petitioner filed petition under the Contempt of Courts Act against the opposite parties for non-compliance of the order dated 30-10-1992 passed by this court by which the opposite parties were directed to promote the petitioner on the post of Up Nagar Adhikari. Thereafter the opposite parties referred the case of the petitioner for consideration to the Departmental Promotion Committee and consequently the petitioner was promoted on regular basis by order dated 17.12.1992 as Up Nagar Adhikari. Since the petitioner was promoted, the contempt petition was finally disposed of on 24.2.1993. The opposite parties on the heels of the aforesaid order of this court passed an order dated 26-12-1993 reverting the petitioner to the post of Sahayak Nagar Adhikari stating that the petitioner was not found fit for promotion by the Departmental Promotion Committee. This order of reversion was challenged by the petitioner in Writ Petition No. 1975(SB) of 1993 and his reversion was stayed by an interim order dated 15-3-1993. The opposite parties summoned the petitioner by registered post on 29-4-1993 to appear before the enquiry officer on 30-4-1993. The petitioner was suspended again on 28-5-1994. The petitioner again approached this court by another writ petition (Writ Petition No. 610(SB) of 1994) and by order dated 3-6-1994 operation of the suspension order dated 28-5-1994 was stayed.

2. All the aforesaid facts pleaded in paras 4 to 17 of the writ petition have not been refuted by opposite parties 1 and 2 in their counter affidavit. In para 7 of their counter affidavit it was stated that paras 4 to 17 of the writ petition need no comments, since the contents are contrary to the subject matter.

3. The petitioner thereafter was dismissed from service vide order dated 6.10.1996. The petitioner filed Writ Petition No. 182(SB) of 1996 impugning the dismissal order and this writ petition was allowed by this

court by order dated 27-8-1996, copy of which is Annexure-12. While allowing the writ petition, this court directed the opposite parties to hold and complete the revived enquiry within a period of four months from the date of submission of a certified copy and pay the petitioner his regular salary alongwith arrears of salary. The petitioner served a copy of the judgment of this Court on the opposite parties on 5-9-1996. The opposite parties vide order dated 7-10-1996 (Annexure-38) reinstated the petitioner in service but however posted him on a lower post of Sahayak Nagar Adhikari, Nagar Nigam, Agra. However, this order was served on the petitioner on 1-11-1996. The petitioner immediately submitted representation on 2-11-1996 requesting the opposite parties to correct and modify the order dated 7-10-1996 which was against the spirit of the order of this court allowing his writ petition against the dismissal order and he was required to be posted as Up Nagar Adhikari. The petitioner also indicated that he is awaiting corrigendum of the order dated 7-10-1996 and till that time he will not be joining at Agra. The opposite parties neither issued any corrigendum nor complied with the order of this court in respect of payment of salary and arrears of salary to the petitioner. The petitioner had no alternative but to file a contempt petition (Crl. Misc. Case No. 19(C) of 1997) before this court. This court took cognizance and issued show cause notice on 14-1-1997, copy of which is Annexure-16. It was thereafter that the opposite parties issued order dated 7-2-1997 (Annexure-17) by which the earlier order of his reinstatement was modified and the petitioner was directed to be reinstated and posted as Up Nagar Adhikari at Agra. The modified posting order dated 7-2-1997 was served on the petitioner on 12-2-1997 and he joined at Agra on 13-2-1997 and he was also paid his 35 months salary. The opposite parties thereafter transferred the petitioner by order dated 26-2-1997 contained in Annexure 8-A i.e. soon after his joining at Agra and he was attached with the Directorate of Local Bodies at Lucknow. The petitioner joined at Lucknow on 3-3-1997. He submitted replies to the charge sheet on 4th and 6th March, 1997 respectively vide Annexures 20-B and 21. He also protested the continuance of enquiry after expiry of four months as stipulated in the order of the High Court dated 27-8-1996. On the contrary, opposite parties enquired from the petitioner vide letter dated 11-3-1997 if any subsequent order was passed by the High Court to that effect. The petitioner specifically indicated in his reply that the opposite parties would be committing contempt of court without obtaining extension of time for completion of the enquiry. The petitioner was summoned to appear before the enquiry officer on 17-3-1997 by means of a letter served upon him on the same day i.e. 17-3-1997 without affording any opportunity to prepare his case. However, on that date no evidence was adduced nor any witness was examined and no papers were shown neither any enquiry was held. The enquiry officer without holding any regular or oral enquiry submitted the report on 19-4-1997 on the basis of which the petitioner was served with a show cause notice on 2-7-1997 asking him to show cause why an order of major punishment be not passed against him.

4. The petitioner filed a contempt petition (Crl. Misc. Case No. 633(C)

of 1997) on the ground that opposite parties have committed grave contempt of the court by enlarging the scope of enquiry beyond the stipulated period of four months. The court issued notice against opposite parties 3 and 4 by an order, copy of which is Annexure-27. The opposite parties, however, did not care for the notice issued from this court and directed for petitioner to appear before the enquiry officer for personal hearing. The petitioner submitted request, copies of which are Annexures 33, 34-A and 34-B on the record, praying the opposite parties to withhold the passing of the final order till the outcome of the contempt proceedings or seek further instructions from this court. In the meantime, on 18-9-1997 the Governor was pleased to rescind the order of attachment of the petitioner with the Directorate of Local Bodies and allotted work and post to him. A copy of the order is Annexure-33 on the record. Opposite party no. 3 appeared before this court in the contempt matter and made statement that the order of this court has been complied with and that the notice deserved to be discharged. The matter was taken up on 26-9-1997 in court but no final order was passed. The opposite parties hurriedly passed the impugned order of reversion from the post of Up Nagar Adhikari to Sahayak Nagar Adhikari on 18-10-1997 even without obtaining approval of Public Service Commission as required under Rule 37 of U.P. Palika (Centralised Service) Rules, 1966. The petitioner assails/impugns the order of reversion as against the spirit of the order of this court dated 28-7-1996 so also that it is passed without holding any enquiry and affording opportunity to the petitioner to defend himself.

5. Opposite parties 1 and 2 filed separate counter affidavit while opposite party no.3 adopted the pleas of opposite parties 1 and 2 in his separate affidavit. The case of the opposite parties mainly hinges on the plea that the petitioner himself did not cooperate in the enquiry and the impugned order has been passed in accordance with law and in accordance with the directions contained in the order dated 28-7-1996 of this court. According to the opposite parties after the decision dated 27-8-1996 of this court, enquiry against the petitioner was revived on 7-10-1996 and on 13-12-1996 copies of the documents and notice was sent to the petitioner through special messenger but the same were not received. Thereafter he was directed to appear in the office on 18-12-1996 but he did not comply. Thereafter on 16-12-1996 notice was sent through speed post at the place of posting and on 23-12-1996 notice was sent through speed post at his residential address and on 24-12-1996 notice was published in the newspaper. By an order dated 10-2-1997 the enquiry officer was directed to proceed with the enquiry after affording opportunity to the petitioner. The petitioner received the relevant documents on 4-3-1997 and appeared before the enquiry officer on 17-3-1997. On 2-7-1997 a copy of the report was sent to the petitioner and explanation was called for. Again he was summoned for personal appearance on 9-9-1997 and after making every effort and affording opportunity to the petitioner, the impugned order has been passed.

6. Heard Sri S.C Misra, learned counsel for the petitioner and learned Standing Counsel for the opposite parties.

7. It is not disputed that while allowing the writ petition against the order of dismissal of the petitioner, this court permitted the opposite parties to hold the enquiry within four months of the receipt of a copy of that order. It will be useful to reproduce the order of this court dated 27-8-1996 :

"In view of what has been indicated hereinabove, writ petition succeeds. A writ in the nature of certiorari is issued quashing the impugned order of dismissal dated 6.2.1996 contained in Annexure-1 to the writ petition, Respondents are directed to again hold and conclude the enquiry from the stage of furnishing the copies of the documents to the petitioner and after giving him an opportunity to file an explanation (if he so chooses within the specified period) within a period of four months from the date of production of a certified copy of this order, either by the petitioner or by the learned Standing Counsel, whichever is earlier. As the petitioner was not suspended and was paid full salary during the course of the enquiry, he will be entitled for the full salary during the course of the revived enquiry. However, it will be open for the respondents either to take work from the petitioner or not. The respondents will also pay to the petitioner the arrears of salary, if any, due to him in accordance with rules."

8. As indicated earlier, the impugned order of reversion was passed on 18-10-1997 and admittedly completion of enquiry took more than four months from the date of service of a copy of the order dated 27-8-96 by the petitioner on the opposite parties i.e. 5-9-1996. The main thrust of the argument of the learned counsel for the petitioner is that opposite parties could not extend the limit of four months by itself to complete the enquiry and they were required if at all to seek permission of the court for extension of time for completion of the enquiry. Before appreciating the contention, it would be useful to refer to certain dates which may refer to the steps taken by the opposite parties to initiate and complete the revived enquiry against the petitioner. According to the opposite parties, the enquiry was revived again by order dated 7-10-1996, which is on record as Annexure-38. A perusal of the same would indicate that there is no mention of revival of enquiry in this order rather it pertains to the reinstatement of the petitioner on the basis of the order dated 27-8-1996 of this court and further directing the petitioner to be posted as Sahayak Nagar Adhikari (on a lower rank) at Agra. Besides, the order dated 7-10-1996 do not refer to payment of any outstanding salary to the petitioner in compliance of the order of this court dated 27-8-1996. The order dated 7-10-1996 was served on the petitioner on 1-11-1996 through registered post and on the very next day he submitted representation, copy of which is Annexure-14, intimating the opposite parties and requesting them to modify, rectify and clarify the order dated 7-10-1996, as the order dated 7-10-1996 amounts to his reversion from the post of Up Nagar Adhikari which is required to be modified and also asked for issuance of a corrigendum for his posting as Up Nagar Adhikari. besides intimating that he would be waiting for the modified order and would not be joining as Sahayak Nagar Adhikari at

Agra. The modified order was issued only on 7-2-1997 (Annexure-17) i.e. after five months of the order dated 27-8-1996. By means of this order, the earlier order dated 7-10-1996 was modified and he was posted as Up Nagar Adhikari at Agra. The petitioner joined on the post on 13-2-1997. This would mean that opposite parties very well knew on receipt of his representation, copy of which is annexure-14, against the order dated 7-10-1996 that he has not joined at Agra. There was thus no necessity of sending any notice or copies of documents to him at Agra when to the knowledge of the opposite parties he was not working there. By another order dated 10-2-1997 Nagar Nigam, Agra was directed to pay the petitioner's salary as well as arrears of salary. Admittedly, the petitioner joined at Agra on 13-2-1997 and efforts of the opposite parties to serve him notice and copies of the documents thereafter on 22nd, 23rd and 25th February, 1997 at his residence at Lucknow are of no consequence when the opposite parties knew that the petitioner is not available at that place. According to the case of the opposite parties itself the petitioner received notice and copies on 1-3-1997 and had submitted interim reply on 4-3-1997 itself and there thus was no reason for the opposite parties to issue press note in the newspaper on 4-3-1997. In response to the rest of the pleas of the petitioner raised in the writ petition the counter affidavit simply denied his allegations without raising any specific plea in rebuttal. It would be useful to mention here that in para 31 of the writ petition, the petitioner made a categorical assertion that when he appeared before the enquiry officer on 17-3-1997 no witness was examined, no papers were shown to the petitioner and he was not put any question nor any reply was sought and as a matter of fact no proceeding was conducted on 17-3-1997. He further claims that he had submitted a list of 19 persons for examining as witness in the enquiry. However, the enquiry officer did not summon the witnesses rather the petitioner was asked as to the probable question he wants to put to the witnesses. Even two witnesses, Gur Prasad and Chhabi Nath, out of 19 persons, were examined by the enquiry officer on 20-3-1997 behind the back of the petitioner, as is mentioned in the impugned order dated 18-10-1997 that these two witnesses were examined by the enquiry officer and their statements were relied upon for proving the charge without subjecting the witnesses to his cross-examination. Strangely enough, the opposite parties in their counter affidavit have not touched para 31 of the writ petition muchless have replied the same in any manner and the assertions of the petitioner thereby stands impliedly conceded that the enquiry report is based on no evidence and no enquiry was conducted at all. The case of the opposite parties that every effort was made to persuade the petitioner to cooperate in the enquiry in the circumstances and the facts on record remain an allegation only. In Naseem Bano v. State of U.P. and others, AIR 1993 SC 2592 the Supreme Court has laid down the law that where a plea taken is not controverted in reply, it amounts to admission of the plea.

9. The facts of this case reveal that after the order of this court dated 27-8-1996 setting aside the order of dismissal against the petitioner alongwith the direction to revive the enquiry at the stage of furnishing

copies of documents and complete the enquiry within four months from the receipt of the copy of the judgment has not been complied with in respect of completion of enquiry against the petitioner. After 27-8-1996 the petitioner was reinstated only as Up Nagar Adhikari on 7-2-1997 vide Annexure A-17. The reinstatement admittedly was beyond the stipulated period of four months. The claim of the opposite parties that enquiry was revived by order dated 7-10-96 (annexure-38), as already indicated above, is wrong on the face of it because by this order the petitioner was reinstated and posted on a lower rank which was against the law. Even the salary of the petitioner as per direction of the court vide order dated 27-8-1996 was paid to the petitioner only on 10-2-1997 vide Annexure-39. Supply of copies of documents to the petitioner and payment of his salary and arrears of salary was the condition precedent for revival of the enquiry against the petitioner which was to be completed within four months. The petitioner had joined at Lucknow on 3-3-1997 and has received the copies of the documents and submitted his reply on 4-3-1997 and 6-3-1997 vide Annexures 20-B and A-21. The facts thus disclose that the opposite parties did not even proceed to revive the enquiry within four months from the receipt of the copy of the judgment dated 27.8.1996. Thus there was no question of completion of enquiry within the stipulated period of four months from the date of receipt of copy of the judgment of this court.

10. In the matter of disciplinary enquiries against delinquent employees, the authorities are required to act fairly, as the enquiries are of quasi judicial nature and principles of natural justice have to be kept in mind. The delinquent official is required to be afforded reasonable opportunity to cross-examine the witness and produce the witness in his defence. This is the minimum requirement of principle of natural justice. An enquiry officer is not entitled to collect the material against the delinquent official at his back. In Chandrama Tewari v. Union of India, AIR 1988 SC 117 the apex court has ruled that the principle of natural justice require that the delinquent official is furnished with the copies of the documents relied upon against him and he should be given full opportunity to cross-examine the witnesses and to produce his own defence. Besides, the enquiry officer cannot collect evidence behind the delinquent official and in case the enquiry officer relies upon such evidence, the enquiry stands vitiated and is ab initio void and liable to be set aside. Admittedly, in this case the petitioner gave names of 19 persons to be examined in the enquiry but none of them was summoned by the enquiry officer on 17-10-1997 when the petitioner was summoned to appear in the enquiry before him. In Shyam Swarup Gangwar v. U.P. Cooperative Institutional Service Board, Lucknow, 1997 ALJ 2158 it is held that if the delinquent official wants to adduce evidence, the disciplinary authority has no alternative but to allow him to adduce evidence. In Mahesh Kumar Pandey v. Upper Pradhan Prabandhak, U.P. S.R.T.C. 1997 ALJ 1501 it has been observed :

"Right of defence which is guaranteed to a government servant under Article 311 of the Constitution and to other citizens under Article 14 and 21 as also by the rules of natural justice is a substantive right which has to be full and complete. Mere

opportunity to admit or deny a particular factual allegation amounting to a charge of misconduct alone is not the defence which is envisaged by the Constitution and rules of the natural justice."

11. The impugned order dated 18-10-1997 (Annexure 1-A) nowhere mentions if on the application of the petitioner, the enquiry officer summoned any witness or examined any witness in his presence which amounts to denial of the right of opportunity to the petitioner to defend himself in the enquiry against the charge sheet.

12. The other submission of the learned counsel for the petitioner is that the revival of the enquiry after expiry of stipulated period of four months by opposite parties was grave contempt of the court's direction. The concession of the revival of the enquiry was extended on the condition that it will be completed within four months on receipt of the copy of the judgment. However, the opposite parties even did not move in the matter of enquiry earlier to expiry of four months and it is contended that after expiry of this period, the opposite parties could not have revived the enquiry and if at all, they were required to approach the court and seek permission and extension of the period to hold enquiry thereafter. In State of U.P. v. Sri Krishna Pandey, (1996) 9 SCC 395 it was laid down that no lawful proceedings can be launched or trial can commence after the time fixed by the statutory rules. In this case the rules required that the departmental proceedings must be instituted before the lapse of four years from the date the event of misconduct has taken place. The event of embezzlement which caused pecuniary loss to the State took place prior to four years of the retirement of the delinquent officer. In these circumstances, it was held that the State has disabled itself by their deliberate omissions to take appropriate action against the respondent. In Major Radha Krishna v. Union of India (1996) 3 SCC 507 it has been observed by the Supreme Court that any trial commenced after the period of limitation shall be patently illegal. Such a provision of limitation prescribed under the Act cannot be overridden or circumvented by an administrative act done in the exercise of powers conferred under the Rules. The direction issued by the High Court or Supreme Court in its decision carry equal importance as that of a Statute or Rules and since the directions are required to be complied with and disobedience amounts to contempt, as such the decision of the court partakes the position of statutory rule. The Supreme Court in A.I.R. Karamchari Sangh v. A.I.R. Ltd. 1988 (Supp) SCC 472 observed :

"The decisions of the Supreme Court and of the High Courts are almost as important as statutes, rules and regulations passed by the competent legislatures and other bodies since they affect the public generally."

13. In view of the nature of the decision of this court dated 27.8.1996, the opposite parties had no option but to complete the enquiry within four months. It further implies that in case the opposite parties were unable to do so, they could approach the court and seek further extension

of time. In M.L. Sachdev v. Union of India and another, (1991) 1 SCC 605 the apex court held that the government was under duty to comply with the order within time set by the court and in any case if it was not possible to comply within time for whatsoever reason, then the only course open was to seek extension of time or further instructions. (also see State of Bihar and others v. Subhash Singh, (1997) 4 SCC 430).

14. It is thus clear that opposite parties instead of approaching the court for seeking extension of time for completion of enquiry deliberately proceeded to complete the enquiry and passed the impugned order after expiry of stipulated period of four months.

15. Lastly, it would be seen that opposite parties passed the impugned order during the pendency of the contempt petition filed by the petitioner wherein show cause notice was issued to the opposite parties. This petition was filed by the petitioner after the show cause notice was issued to him and ignoring the notice the impugned order was passed hastily even without complying the statutory obligations of seeking approval of the proposed punishment from the Public Service Commission, as required under Rule 37 of the U.P. Palka (Centralised Service) Rules, 1966, as the petitioner has been awarded major penalty of reversion. The impugned order dated 18-10-1997 does not indicate anywhere if the order has been passed in consultation with the Public Service Commission which is mandatory under the Rules aforesaid.

16. In view of what has been discussed above, the impugned order dated 18-10-1997 as contained in Annexure 1-A suffer from legal infirmities. The opposite parties have failed to comply with the directions of this court as contained in the order dated 27-8-1996 in letter and spirit. No enquiry worth the name was conducted. No evidence was recorded or produced in the presence of the petitioner. He was not afforded opportunity to cross-examine the witnesses, witnesses named by him were not examined in the enquiry and opposite parties failed to extend the benefit of reasonable opportunity as envisaged under Article 311 of the Constitution to the petitioner. The enquiry in the circumstances stands vitiated and the impugned order passed on the findings of the enquiry officer cannot stand.

17. In view of what has been discussed above, this petition is allowed and the order dated 18-10-1997 as contained in Annexure 1-A is quashed. The order dated 20-10-1997 as contained in Annexure 1-B posting the petitioner on the post of Sahayak Nagar Adhikari is also quashed. The petitioner shall be reinstated forthwith on the post of Up Nagar Adhikari with all consequential benefits.

*(Petition allowed)*

\*\*\*\*\*