

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

INDEX SHEET

Cause Title C.A. 187 of 1989 (L)Name of the parties Smt. Malti Singh

Applicant.

Versus

Union of India

Respondents.

Part A.B.C.

Sl No.

Description of documents

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Certified that no further action is required to be taken
and that the case file has been assigned to the record room (D).

File B/C destroyed on 09-5-12.

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CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Registration No. 187 of 1989(L)

APPLICANT(S) Smt. Mathi Singh

RESPONDENT(S) Union of India

<u>Particulars to be examined</u>		<u>Endorsement as to result of examination</u>
1.	Is the appeal competent ?	Yes
2.	a) Is the application in the prescribed form ?	Yes
	b) Is the application in paper book form ?	Yes
	c) Have six complete sets of the application been filed ?	Yes
3.	a) Is the appeal in time ?	Yes
	b) If not, by how many days it is beyond time?	No
	c) Has sufficient case for not making the application in time, been filed?	Yes
4.	Has the document of authorisation/ Vakalatnama been filed ?	Yes
5.	Is the application accompanied by B.D./Postal Order for Rs.50/-	Yes
6.	Has the certified copy/copies of the order(s) against which the application is made been filed?	Yes
7.	a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?	Yes
	b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?	Yes
	c) Are the documents referred to in (a) above neatly typed in double space ?	Yes
8.	Has the index of documents been filed and paging done properly ?	Yes
9.	Have the chronological details of representation made and the outcome of such representation been indicated in the application?	Yes
10.	Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal?	No

(A2)

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

dinesh/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

REGISTRATION No. 187 of 1989 (4)

APPELLANT
APPLICANT

Smt. Matli Suman,

VERSUS

DEFENDANT
RESPONDENT

Union of Indira

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
<u>8.9.89</u>	<p>Hon'ble Justice K. Nath, V.C.</p> <p><u>Hon'ble Mr. K.J. Raman, A.M.</u></p> <p>Issue notice to opposite parties why they should not pay half of the Provident Fund amount to the credit of deceased Kanhaiya Lal and the whole of the Railway Employees Insurance Scheme amount and leave encashment amount in terms of the order dated 17.7.85 of Civil Judge, Mohan Lal Ganj, Lucknow.</p> <p>The applicant will also implead Sudhir Kumar who is a party to the proceedings which led to the order dated 17.7.85 of the Civil Judge. List for admission.</p> <p>orders on 13-10-1989.</p> <p>A.M. V.C.</p> <p>rrm/</p> <p>No Sitting Adj. to 22.12.89. Counsel for applicant is present.</p>	<p>Notice given 12/10/89</p> <p>C.M. Am. filed too 10/15</p> <p>CR Notices were on 12.9.89. Need to reply to any unanswered Cover has been returned back. The life of the applicant has been in Am. for for amendment Submitted admission for</p>

13.X.89

13/10

(A4)

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
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4-4-90

Hon. K. Nark, V.C.
Hon. K. J. Ramani, A.M.

Shri N. S. Srinastava, Advocate files powers on behalf of CP No. 3 and requests for, is allowed 2 weeks time to file counter. The rest of the Ols have not filed counter. The case will proceed, ex parte against them. Applicant will file rejoinder by the date fixed. List for further orders on 27-6-90

Am

V.C.

27-6-90

Hon. Mr Justice K. Nark, V.C.
Hon. Mr K. Chagga, A.M.

The case called for. Name for the applicant. No reply has been filed on behalf of CP No. 3. Mr. Anil Srinastava appears for O.P. Nos 1 & 2. Short counter on behalf of respondents has been filed, to which rejoinder has not been filed.

List for final hearing

by 29-8-90

Dinesh

A.M.

V.C.

Heitor CA
behalf of CP No. 3
nor any RP
S.F.H.

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW CIRCUIT BENCH

Registration O.A. No.187 of 1989(L)

Smt. Malti Sinha Applicant

Versus

Union of India & Others Respondents

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

Hon.Mr.A.B.Gorthi, Member(A)

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

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant Smt. Malti Sinha has claimed payments of the Provident Fund amount, Insurance Money, Leave Encashment and gratuity admissible to Kanhiya Lal, an employee of the Chief Mechanical Engineer's office by reason of his death on 2.9.90. The amounts of Provident Fund and Insurance Money and the Leave Encashment are set out in para 6(1) of the application. The main contest came from respondent No.3 who was impleaded under the orders of this Tribunal and who claimed those amounts. It appears that cross cases under the Indian Succession Act were instituted by the applicant, as the daughter and heir of the deceased and by respondent No.3 Sudhir Kumar claiming to be adopted son of the deceased. The two cases were consolidated and heard and disposed of by the Civil Judge, Mohanlalgaonj, Lucknow by judgement dated 17.7.85 in Misc. Cases No.36/81 and 70/81. It

[Signature]

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- 2 -

was held that the present applicant was entitled to 1/2 of the Provident Fund amount and the whole of the Insurance claim and the leave encashment whereas Sudhir Kumar could be entitled to the remaining 1/2 amount of the Provident Fund. That order became final. The Railway Administration has no objection to the payment of these amounts in accordance with the orders of the Civil Judge in the case for Succession Certificate.

2. It appears that the present applicant also filed a Regular Civil Suit No.306/85 for declaration of the nomination in favour of Sudhir Kumar to be invalid in order to entitle him to receive 1/2 of the Provident Fund amount which was ordered to be paid to Sudhir Kumar by the Civil Judge. In para 6(4) of the application, it is stated that the Suit was dismissed against which an appeal was filed in the Court of District Judge. The counsel appearing on behalf Sudhir Kumar has filed a photo copy of the appellate order dated 5.1.91 by which the appeal was dismissed. The learned counsel for the applicant says that he intends to file a Second Appeal in the High Court. Be that as it may, so far as the record presently stands, Sudhir Kumar is entitled to receive 1/2 of the amount of the Provident Fund.

3. The only other subject matter of controversy is the amount of gratuity. No dispute in respect

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- 3 -

thereof is raised by Sudhir Kumar. It is admitted by the learned counsel for the applicant that even the gratuity amount was paid to the applicant by a cheque dated 5.3.90; the amount is stated to be Rs.10,928-24. The learned counsel for the applicant says that for reasons of delayed payment of the gratuity amount, the applicant ought to be awarded interest.

4. It is not quite clear on what date the applicant laid a claim for the amount of the gratuity. It is also not quite clear as to what are the rates of the interest payable on the gratuity amount. Even so we think that the interest may be awarded as permissible under the law from 1.9.81 which would have provided almost one year's time to the Department to settle the claim of the gratuity amount.

5. This petition is therefore disposed of with a direction that respondents 1 & 2 shall pay to the applicant the amounts payable to her on account of the Provident Fund, the Insurance claim and the leave encashment as determined in the judgement and order dated 17.7.85 of Civil Judge, Mohanlalganj, Lucknow mentioned above and shall further pay the interest to the applicant on the sum of Rs.10,928-24 with effect from 1.9.81 to 4.3.90 at such rates as may be admissible under the applicable statutory provisions.


Member (A)


Vice Chairman

Dated the 6th March, 1991.

RKM

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, U.P., ALLAHABAD.

BENCH AT LUCKNOW.

Deputy Registrar(J)

Case Application No. 187 of 1989.

Compilation No.1.

Smt. Malti Sinha Applicant.

Versus

The Deputy Chief Mechanical Engineer (W),

Carriage and Wagon Workshops (N.R.), Lucknow.. Respondent.

I N D E X

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2.	<u>Annexure No.1</u> Photostat letter dated 14.10.1988 from the applicant to the respondent requesting for payment.	7
3.	<u>Annexure no.2</u> photostat letter dated 15.5.1989 from the respondent to the applicant refusing the payment.	8
4.	Power	9

Lucknow:

Dated: August 4 , 1989.

Ramapali Ram

Advocate,

Counsel for the Applicant.

Filed today. noted by
Ramapali Ram 8/9/1989.
Adv.
4/8

(A91)

BEFORE THE CHAIRMAN, CENTRAL ADMINISTRATIVE TRIBUNAL,
U.P. ALLAHABAD, BENCH AT LUCKNOW.

Claim Petition No. 187 of 1989.
(Under Section 14 of the Central Administrative)
Tribunal Act, 1985.

(1) Particulars of Applicant

Smt. Malti Sinha, aged about 35 years, daughter
of late Sri Kanhiya Lal and wife of Sri Vinod
Kumar Sinha, resident of near S.D.M. Compound,
Sumba Bagh, Sandila, District Hardoi.

-- --- Applicant.

Versus

(2) Particulars of Respondents

1. The Deputy Chief Mechanical Engineer (W),
Carriage and Wagon Workshops (N.R.),
Alambagh, Lucknow.
2. The Union of India through the General Manager,
Northern Railway, Banmota, Lucknow. Respondent 2.
3. Sri Sudhir Kumar, Major, Son of Girdhar Lal Sinha, resident of 26/39, Birkanva, Lucknow. Respondent 3.
- (3) Particulars of Orders against which the application
is made.

Amended as
per order
dated 2.2.90.
Ranapati Ram
Advocate
7.2.90
Counsel for
the applicant.

The Order as contained in the letter
dated 15.5. 1989 of the respondent that till the
disposal of the appeal No.22 of 1988 (Smt. Malti
Sinha versus Sudhir Kumar which is with respect to
Rs. 7,893.50 being half of the amount of the Provident
Fund of Sri Kanhiya Lal deceased T. No. 254-C)
pending in the Court of XI Addl. District Judge,
Lucknow no payment of any dues of the deceased
Sri Kanhiya Lal would be paid to the applicant.

(4) Jurisdiction of the Tribunal

The applicant declares that the subject
matter of the impugned order against which the
present application is being filed relates to the

Ranapati Ram
Adv.

payment of the gratuity, amount of Employees Insurance Scheme, encashment of leave and half of Provident Fund of Sri Kanhiya Lal deceased of the said Workshop is within the jurisdiction of this Hon'ble Tribunal.

- (5) The applicant submits that the present application is against the order/letter dated 15.5.89 of the respondent and is within the limitation as laid down under Section 21 of the Central Administrative Tribunal Act, 1985.

(6) Facts of the case

The facts of the case are as under:-

1. That Sri Kanhiya Lal, T.No.254-C who was employed in the Workshop under the respondent while in service died on 2.9.1980 leaving behind him the applicant as his only heir. By his letter dated 11.3.1981 the respondent informed the applicant that the following dues of the deceased would be paid to the applicant on production of the Succession Certificate:

(a) Provident Fund ...	Rs. 15,787.00
(b) Amount of Insurance Scheme...	Rs. 5,000.00
(c) Encashment of 65 days unutilized leave ...	Rs. 1,879.15

Total ... Rs. 22,666.15

2. The applicant applied in the Court of Civil Judge, Mohanlalganj at Lucknow for grant of Succession Certificate which was registered as Misc. Case No.36 of 1981.

3. That the deceased Sri Kanhaiya Lal on

Ramapali Ravi
Adv.

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22.6.1977 had filled his Provident Fund Nomination Form in which he had nominated one Sudhir Kumar for half of the amount of Provident Fund describing him as his son while he had no other issue. On the basis of that nomination Sudhir Kumar, son of Girdhari Lal (son of the maternal uncle of the applicant) also applied for grant of a Succession Certificate with respect to the said entire amount of Rs.22,666.15 with the allegation that he was the adopted son of the deceased. His application was registered in the same Court of Civil Judge, Mohan-lalganj at Lucknow as Misc. Case No.70 of 1981.

4. That both the cases were consolidated. The learned Civil Judge decided both the cases after recording evidence by his order dated 17.7.1985 and held that Sudhir Kumar was not the adopted son of the deceased; but granted the Succession ^{certificate} for half of the amount of Provident Fund to Sudhir Kumar i.e. for Rs.7,893.50 and for half of the amount of Provident Fund, amount of Group Insurance- and Leave Encashment i.e for Rs.14,772.65 to the applicant. No appeal was filed by any one. The applicant ,however, filed R.S. No.306 of 1985 against Sri Sudhir Kumar, son of Sri ^{Girdhari} ~~Kanhiya~~ Lal for declaration that the said nomination was not in favour of Sudhir Kumar , son of Girdhari Lal and as such the applicant is entitled for the said half amount of Rs.7,893.50 of the Provident Fund also. The said Suit was dismissed by the learned V Addl. Civil Judge, Lucknow and so the applicant filed the Civil Appeal No.228 of 1988

Rameshpati Ram
Adv

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Smt. Malti Sinha ^S ~~Vand~~ Sudhir Kumar, and the learned XI Addl. District Judge issued a temporary injunction restraining the said Sri ^S Sudhir Kumar from realising the said amount of Rs.7,893.50 from the respondent on the basis of the Succession Certificate granted to him.

5. That the applicant on receipt of the Succession Certificate applied to the respondent that the said amount of Rs.14,772.65 with interest as well as the amount of gratuity for which no succession certificate was required ^{be paid to her} but no payment has been made to the applicant.

6. That the applicant's husband's sisters ^{and} marriage has been settled, was to be performed in May, 1989. So the applicant made an application dated 14.10.1988 to the respondent to release the payment so that her husband be relieved of some financial arrangement for the expenses of the said marriage which is a costly affair. But the respondent by his letter dated 15.5.1989 refused to make payment till the said appeal No.22 of 1989 is not finally disposed of. For want of funds the marriage had to be postponed for the first week of November 1989 with the promise that certain ceremonies would be performed in the Second Week of September, 1989.

7. That the amount of Rs.14,772.65 for which a separate succession certificate has been granted and given to the respondent is not in dispute and there is no justification for withholding payment

Ramapati Raw
Adv

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of the same alongwith the amount of gratuity which has nothing to do with the amount for which succession certificate was granted to Sudhir Kumar son of Sri Girdhari Lal.

8. That the applicant is very much aggrieved by the illegal detention of the said amounts and finally by the flat refusal of the respondent as communicated by his letter dated 15.5.1989 and as she is in dire urgent need of money for the said marriage, and there is no other alternative but to approach this Hon'ble Tribunal for a direction to the respondent that the said amount of Rs.14,772.65 as well as the amount of gratuity and any other amount payable to the applicant as the legal heir of Sri Kanhiya Lal, deceased, be paid to her within three weeks with interest.

(7) Relief sought

In view of the facts and circumstances mentioned herein before the applicant prays that this Hon'ble ~~Court~~ ^{Tribunal} may be pleased to direct the respondent to pay the applicant the said amount of Rs.14,772.65 for which the Succession Certificate has been given to her³ as required, and also the amount of gratuity ^{is} ~~with~~ upto date interest within three weeks.

(8) Interim Order

The applicant prays that the respondent be directed to make payments in question within three weeks.

(9) Details of remedies exhausted

The applicant declares that she did not
Ranapati Ram Adv.

AM

avail any other remedy except applications and approaches to the respondent.

(10) Matter not pending in any other Court.

The applicant also declares that the amounts for which this application is being made is not pending before any court of law, or any other authority, or Bench of the Tribunal.

(11) Particulars of the Postal Order in respect of application fee.

1. Number of Indian Postal Order- ^{DD} 029631
2. Name of issuing Post Office- Aminabad Park Lucknow
3. Date of Issue of Postal Order- 8-89
4. Post Office at which payable- Allahabad

(12) Details of Index

An Index containing the details of the documents has already been attached to this application.

(13) List of enclosures

As per documents given in the Index.

VERIFICATION

Malti Sinha

I, Smt. Malti Sinha, wife of Sri Vinod Kumar Sinha, residing near S.D.M. Compound, Sumba Bagh, Sandila, District Hardoi (U.P.) do hereby verify that the contents of paragraphs (1) to (13) are true to my personal knowledge and belief and that I have not suppressed any material facts.

Place: Lucknow

Dated: ^{Aug} July 4, 1989

Malti Sinha
Signature of the Applicant

To,

The Registrar,
Hon'ble Central Administrative Tribunal, U.P.,
Allahabad, Bench at Lucknow.

Ramapati Raw
Adv. 4/8/89

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Annexure-1

दिनांक 14-10-88

सेवा में

श्री मान उप मुख्या यंत्रिका अभियन्ता
सवारी स्कू माल डिब्बा कारखाना
उत्तर बेलवे, आलम बाग,
लखनऊ (उ० प्र०)

विषय :- स्कू श्री कन्हैयालाल टिन-
254C के निपटान वन का मुगलान

महोदय,

प्रार्थनी के पत्र दिनांक 29-8-88 का
अवगतान करते हुए प्रार्थनी के स्वर्गीय
पिता के निपटान वन की शक्ति का मुगलान
इसको जीय निश्चित कराने की कृपा करे
क्या कि उसको अपनी नुस्खा का बिक्री
सापन्न कराना है जिसकी तिथि 12-12-88
निश्चित हो गयी है प्रार्थनी की सत्य हो जान
के कारण यह कार्य पूर्ण अपेक्षा प्रार्थनी स्व
उसके पति पर ही साधिका रूप से सापेक्षित
है अतः आप से विनम्र निवेदन है कि
माननीय अधिकारी को क्या न से रहते हुए
उपराक्त वन का मुगलान क्या जीय
कराने की कृपा करे।
आ प्रार्थनी यह आशा है कि आप का

प्रार्थनी

Malti Sinha

(श्री मती महन्ती सिन्हा)
पुत्री श्री कन्हैयालाल टिन-254C
H.O. श्री लखनऊ (सिन्हा)
रस० ओ० शम० कामपानु के पास
सुम्बा बाग, सन्तली
हरदोई (उ० प्र०)

Malti Sinha

Annexure-2

उत्तर रेलवे
NORTHERN RAILWAY

काशीलाल उपमुख्य भौतिकी अधीक्षक आलमबाग-लखनऊ
पत्रांक 254सी / चं.क्र. 10-80 दिनांक 15-5-88

श्रीमती मालती सिंह

पुत्री स्व. कन्हैया लाल शूतपूर सिंह नं. 254सी

पत्नी श्री विनोद कुमार सिंह

स्थान. डी. एम. बंगला 303 के पास

सबका नाम - सांडीला - 32303 (उपग्रह)

विषय:- स्व. श्री कन्हैया लाल शूतपूर सिंह नं. 254सी
के निधन - उनके पुत्र का भुगतान।

उक्त निधनक आगे के प्रयत्न पर दिनांक 14-10-88
क्रम में सूचित किया जाता है कि आज्ञाकार याचक की वास्तु
मीबिल अर्थात् सं. 22/1988 जो कि अडी/सूचना डीएम अका
मरनक के अंगभूत हैं चले रही है के निधन
होने तक आगे की किसी भी निधन के भुगतान नहीं
किया जा सकता है।

13/5/88
प्रति एवं मुख्यालय (पुत्री)
सहाय एवं मुख्यालय निधन निधन
ए. 10 आलमबाग, लखनऊ

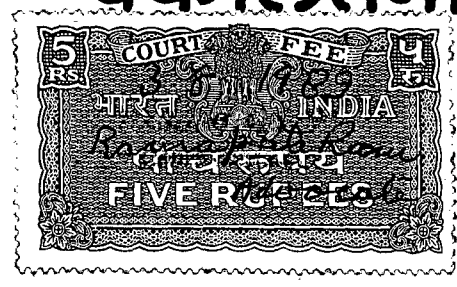
प्रतिभागी श्री सुधीर कुमार पुत्र एवं संरक्षक श्री गिरधारी लाल
मठ नं. 26/30 निरहता - लखनऊ को भी यह बात सूचना
प्राप्त है।

Malti Sinha

बअदालत श्रीमान *The Central Administrative Tribunal, LLP Allahabad*
Bench at Lucknow **महोदय**

Applicant: Smt. Malti Sinha
वादी (मुद्दे) का
~~मुद्दे (मुद्दे)~~

वकालतनामा



बनाम प्रतिवादी (रेस्पॉन्डेंट)

नं० मुकद्दमा सन् 1989 पेशी की ता० 4.8.1989 ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री *Ramapati Ram Advocate*

Gaura House, 56-A Gwynne Road, Lucknow बकील
एडवोकेट महोदय

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

नाम अदालत
नं० मुकद्दमा
नाम फरीकन

Accepted
Ramapati Ram Advocate
4/8/89
साक्षी (गवाह)

Malti Sinha
हस्ताक्षर

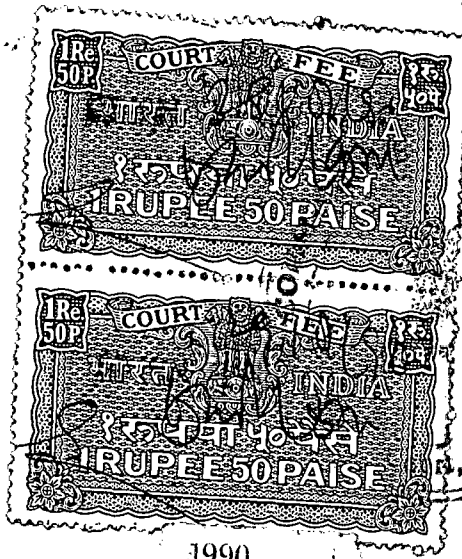
साक्षी (गवाह)

दिनांक 2-8-1989

महीना सन् 99 ई०

AB

समक्ष:- सेन्ट्रल एडमिनिस्ट्रेटिव दबिनल उत्तर प्रदेश इलाहाबाद ,
लखनऊ बेंच, लखनऊ ।



क्लेम पिटीशन नं-187/89

पेशी- 29-8-90

श्रीमती मालती सिन्हा ----- प्राथी ।

बनाम्

दि डिप्टी चोफ मैकिन्कल इन्जीनियर आदि ----- विपक्षीगणा ।

प्रति शपथ- पत्र मिनजानिब विपक्षी नं 3

मै सुधीर कुमार आयु लगभग 21 साल पुत्र श्री गिरधारी लाल
निवासी- म0नं- 269/39 बिरहाना लखनऊ का हूँ, शपथ पूर्वी निम्न
ब्यान करता हूँ :-

1- यह कि याचिका को धारा 3 के संकेत में यह कहना है कि अपील
नं 22 सन् 1988 अतिरिक्त जिला जज के आयालय में विचारधीन
है इस कारण विपक्षी नं 1 ने स्वगीय मिस्रमसे लाल के देयों का
भुगतान नहीं किया जब तक भुगतान किए जाने वाले धन से सम्बन्धित
विवाद समाप्त नहीं हो जाता , भुगतान न करने का आदेश अपनी जगह
क्लिकुल उचित है ।

2- यह कि याचिका को धारा 4 व 5 क्षेत्राधिकार से संबंधित है इसके
संकेत में विपक्षी को कुछ नहीं कहना है ।

3- यह कि याचिका का पैरा 6 ॥ 1॥ के सम्बन्ध में स्वगीय कन्हैया लाल
का प्राथिनी एकमात्र वारिस है को छोड़कर शेष स्वीकार है ।

4- यह कि याचिका के पैरा 6॥2॥ से 6॥4॥ के संकेत में कुछ नहीं कहना
है ।

5- यह कि याचिका के पैरा 6॥5॥ के संकेत में शपथी को कोई जानकारी
नहीं है ।

6- यह कि याचिका के पैरा 6॥6॥ में उल्लिखित तथ्य गलत व झूठ है याचिकाकर्ता के पति को जून का विवाह जनवरी 1990 को दिल्ली से हो चुका है ।

7- यह कि याचिका के पैरा 7 झूठ है जब प्राविडन्ट फंड को धनराशि विवादित है तो उसका भुगतान विपक्षी न० । द्वारा न किया जाना उचित ही है ।

8- यह कि याचिका के पैरा 6॥8॥ गलत व झूठ है । अपील माननीय जिला जज के न्यायालय में विवाराधीन है जब तक उसका निगम नहीं हो जाता किसी भी धनराशि का भुगतान नहीं किया जा सकता है ।

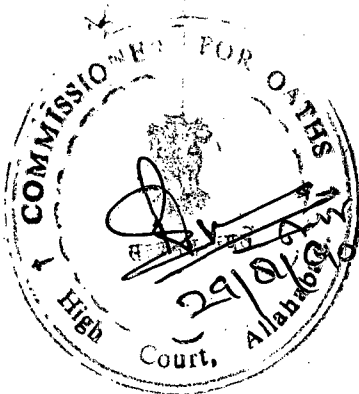
9- यह कि याचिका का पैरा 7 में मांगी गए अनुतोष पाने का हकदार याचिकाकर्ता नहीं है जब तक जिला जज के न्यायालय में विवाराधीन अपील का निगम नहीं हो जाता तब तक किसी भी धनराशि का भुगतान नहीं किया जाना चाहिए ।

10- यह कि याचिका का पैरा 8 झूठ है । प्राथी/याचिकाकर्ता को कोई ऐसी आवश्यकता नहीं है और न ही किसी तरह से हानि का अंश है अतः याचिका के निगम के दौरान कोई भी अंतिम आदेश नहीं देना चाहिए ।

11- यह कि याचिका का पैरा 9 व 10 में जैसा याचिका कर्ता ने कहा है उसका पालन नहीं कर रहा है जिला जज के न्यायालय में अपील विवाराधीन है अतः उसका कथन असत्य हो जाता है ।

12- यह कि याचिका के पैरा 11, 12 व 13 के विषय में कुछ नहीं कहना है ।

13- यह कि स्वर्गीय कन्हैया लाल ने शपथी को विधिवत गौद ले लिया था और पुत्र को भर्ति रहता था उनकी मृत्यु के बाद शपथी ने भी उत्तराधिकार प्रमाण पत्र के लिए सिविल जज के न्यायालय में प्रार्थनापत्र दिया था । न्यायालय ने प्राथी को दत्तक पुत्र नहीं माना लेकिन प्राविडन्ट फंड में श्रीमती मालती सिन्हा व शपथी दोनों का नामित



सुचरिता

होने के कारण प्रोविडन्ड फण्ड का आधी-आधी धनराशि का दोनों का उत्तराधिकार प्रमाण- पत्र प्रदान कर दिया था । शपथी ने स्व० श्री कन्हैया लाल की लड़की से मुकदमा लड़ना उचित न समझा अतः उसने माननीय सिविल जज के निर्णय के विरुद्ध अपील, निगरानी अथवा कोई अन्य वाद दाखिल नहीं किया । याचिका कर्ता ने घोषणा-आत्मक वाद दाखिल किया वह भी स्वीकार नहीं किया गया और शपथी को प्रोविडन्ड फण्ड के 1/2 भाग को पाने का हकदार माना गया ।

14- यह कि याचिकाकर्ता ने जिला जज लखनऊ के न्यायालय में अपील संख्या 22 वगै० 88 विवा राधोन है जिससे पेसी 28-9-90 नियत है जब तक अपील की निर्णय न हो जाय धनराशि का भुगतान नहीं होना चाहिए ।

15- यह कि याचिकाकर्ता ने अपनी याचिका में भुगतान पाने हेतु अपने पति के बहन की विवाह की बात कही है लेकिन उसकी बहन का विवाह जनवरी 1990 में हो चुका है अतः कोई urgency नहीं है ।

16- यह कि याचिका कर्ता की याचिका गलत आधारों व गलत तथ्यों पर है अतः निरस्त होने योग्य है ।

लखनऊ ।

दिनांक:- 29-8-90

(Signature)

विपक्षी नं०- 3

प्रमाणिकरण

मैं शपथी सुधीर कुमार पुत्र श्री गिरधारी लाल श्रीवास्तव प्रमाणित करता हूँ कि प्रति शपथ- पत्रकी धारा 1 से 6 के 11 से 13 व मेरे निजी ज्ञान से सत्य व सही है तथा धारा 7, 8, 9, 10 तथा 12, 14 के सत्य होने में विश्वास करता हूँ ।

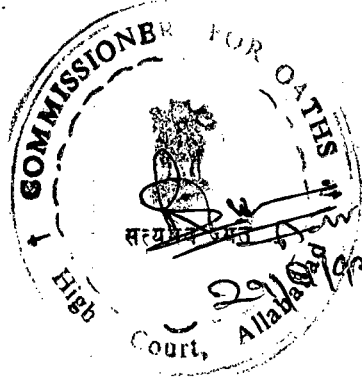
122
121

आज दिनांक 29-8-90 को अपने हस्ताक्षर बनाकर आवाता
कवेहरी लखनऊ में प्रमाणित किया ।

लखनऊ ।

विपक्षी नं- 3

दिनांक:- 29-8-90



मैं शपथी को जानता हूँ जिसने हमारे

सामने अपने हस्ताक्षर बनाए ।

N. S. Jaiswal
29.8.90

अधिवक्ता

मेरे समक्ष शपथ पूर्ण किया गया --- *शुद्धि लखनऊ* ---

दिनांक --- 27/8/90 --- समय --- 10:30 --- ए०एम०/प्र०एम० शपथी

द्वारा,

किस अधिवक्ता द्वारा शिनाख्त किया गया --- *नरेश चंद्र आनंद* ---

हाई कोर्ट लखनऊ, छापपोठ, लखनऊ ।

मेरे द्वारा शपथी का परीक्षण करने पर मैं संतुष्ट हूँ और मैं सहमत हूँ कि उसने शपथ पत्र में वर्णित तथ्यों को सुन व समझ लिया है जिसको मैंने पढ़कर सुना दिया एवं समझा दिया है ।

[Signature]

Sath Commissioner High Court
Lucknow Bench

Copied No. 22/1279 Date 29/8/90

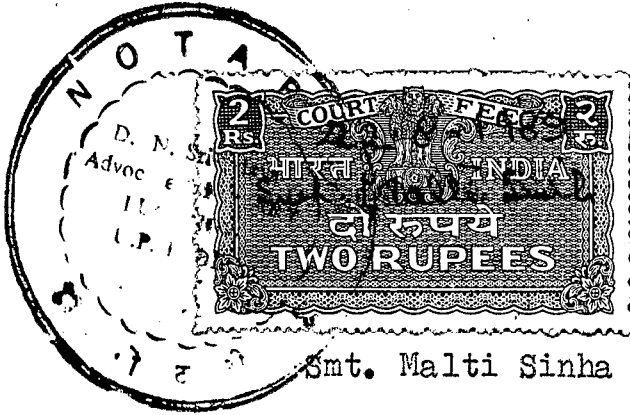
122

B E F O R E T H E C E N T R A L A D M I N I S T R A T I V E T R I B U N A L , U . P . ,
A L L A H A B A D , B E N C H A T L U C K N O W .

A F F I D A V I T

I N

C L A I M P E T I T I O N N O . O F 1 9 8 9 .



Smt. Malti Sinha A p p l i c a n t

V e r s u s

The Deputy Chief Mechanical Engineer, (N.R.)

Alambagh, Lucknow R e s p o n d e n t .

I, Smt. Malti Sinha, aged about 35 years,
wife of Sri Vinod Kumar Sinha, near S.D.M. Compound,
Sumba Bagh, Sandala, District Hardoi hereby solemnly
affirm and state on oath as follows:-

1. That the deponent is the applicant in the
above noted claim petition and she is fully conversant
with the facts of the case.
2. That the deponent is the claimant for the
entire amount of Employees Insurance Scheme, encashment
of leave, Gratuity and Half of the amount of the Provident
Fund of Sri Kanhaiya Lal deceased T.No. 254-C who died
on 2.9.1980 while in the service of Northern Railway
under the Deputy Chief Mechanical Engineer (W), Carriage
and Wagon Workshop, Alambagh, Lucknow.

3. That after the death of her father ,Sri
Kanhaiya Lal , the deponent applied to the learned
Civil Judge , Mohanlalganj at Lucknow for grant of
Succession Certificate with respect to the Provident

Filed to day
0/9/89
Durgesh Narain Srivastava
Advocate & NOTARY
In front of Samadhi Mandir
Tilak Nagar, Aish Bagh, Lucknow.

Malti Sinha

NOTARY

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Fund, amount of Employees Insurance Scheme and encashment of leave as per direction of the respondent. One Sudhir Kumar also applied for grant of Succession Certificate with respect to the same amounts. The learned Civil Judge as per his order dated 17.7.1985 passed in Civil Misc. Case No. 36 of 1981- Smt. Malti Sinha versus Estate of Kanhaiya Lal deceased and Misc. Case No.70 of 1981- Sudhir Kumar versus Estate of Kanhaiya Lal deceased granted the Succession Certificate of Rs.7,893.50 being half of the amount of Provident Fund to Sudhir Kumar and the deponent was granted the succession certificate for Rs.7,893.50 as half of the amount of the Provident Fund, Rs.5,000/- of the amount of Employees Insurance Scheme and Rs. 1,889.15 on account of encashment of leave, total Rs. 14,772.65. The deponent produced the succession certificate in the office of the respondent and requested that the said amount as well as the amount of Gratuity be paid to her with upto date interest.



4. That the deponent was ^{agreed} by the grant of succession certificate to Sudhir Kumar for Rs.7,893.50 on account of half of the Provident Fund amount of the deceased Kanhaiya Lal and so she filed a Regular Suit No. 306 of 1985- Smt. Malti Sinha versus Sudhir Kumar for declaration in the court of Munsif North, Lucknow that the nomination of half of the amount of the Provident Fund in favour one Sudhir Kumar, was void as Sri Kanhaiya Lal deceased had no son and that Sudhir Kumar was not entitled for the half of the amount of Provident Fund and that the deponent was entitled to that half also. The said suit was dismissed by the learned V Addl. Civil Judge, Lucknow on 10.12.1987. The deponent against the judgment and decree ~~for~~ passed in the said suit filed

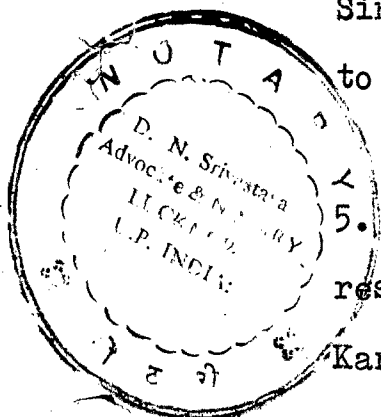
Durgesh Narain Srivastava
Advocate & NOTARY
In Court of Samadhi Mandir
Atak Nagar, Aish Bagh, Lucknow-4

Malti Sinha

A24

Regular Civil Appeal No. 22 of 1988 in the court of District Judge, Lucknow which has been transferred to the court of XI Addl. District Judge, Lucknow- Smt. Malti Sinha versus Sudhir Kumar, son of Girdhari Lal.

True copies of the judgment and order dated 17.7.85 passed in Misc. Case No.36 of 1981-Smt. Malti Sinha versus Estate of Kanhaiya Lal deceased and Misc. Case No.70 of 1981 Sudhir Kumar versus Kanhaiya Lal deceased passed by the learned Civil Judge, Mohanlalganj Lucknow is being filed as Annexure No.A-1 and a true copy of the Memo of Appeal No.22 of 1988- Smt. Malti Sinha versus Sudhir Kumar is being filed as Annexure-A-2 to this affidavit.



5. That the amounts payable to the deponent by the respondent on account of the dues of her father, Sri. Kanhaiya Lal deceased, ^{for which she has been granted the Succession Certificate} are not in dispute in any court ^{NOTARY}

or before any authority but the respondent has not been paying the same to the deponent on the pretext that so long the said appeal no.22 of 1988 in which the amount of Rs.7,893.50 of half of the amount of Provident Fund is involved on account of the grant of Succession Certificate to Sudhir Kumar, ^{NOTARY} ~~cannot~~ ^{NOTHING WILL} be paid to the deponent ^{NOTARY}

22/01/89
Burgesh Narain Srivastava
Advocate & Notary
In front of Samadhi Mandir
Vilak Nagar, Aish Bagh, Lucknow-4

6. That the deponent urgently requires the payments of the dues of her deceased father for which she has been granted the succession certificate and the amount of Gratuity for which there is no dispute because marriage of the sister of the husband of the deponent has been settled and certain ceremonies in connection with that are to be performed in the 1st half of September, 1989. There is no dispute with respect to those amounts and the respondent is illegally withholding payments of the same.

Malti Sinha

A25

-4-

same. In case the said payments are not made to the deponent immediately the deponent and her husband will suffer an irreparable loss as well as mental torture. The marriage of a girl is a costly affair.

7. That the deponent again declares that there is no dispute for the amount for which the succession certificate has been granted to her and the amount of Gratuity and that she being the only heir of Sri Kanhaiya Lal deceased as his daughter, ~~she~~ is entitled to received the payments.

Malti Sinha

Deponent.

Lucknow:

Dated: Aug. 22, 1989.

VERIFICATION

I, the above named deponent do hereby verify that the contents of paras 1 to 7 of this affidavit are true to my personal knowledge, and that the Annexures no. A-1 and A-2 to this affidavit are true copies of their respective originals.

Signed and verified on this 22nd day of August, 1989 at Lucknow.

Sworn and Verified
before me.

[Signature]
Durgesh Narain Srivastava
Advocate & NOTARY
In front of Samadhi Mandir
Tilak Nagar, Aish Bagh, Lucknow-4

Malti Sinha

Deponent.

I identify the deponent who is personally known to me and who has signed before me.

[Signature]
Ramapati Ram
Advocate.

Malti Sinha

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न्यायालय सिविल जज, मोहन लाल सैज, लखनऊ

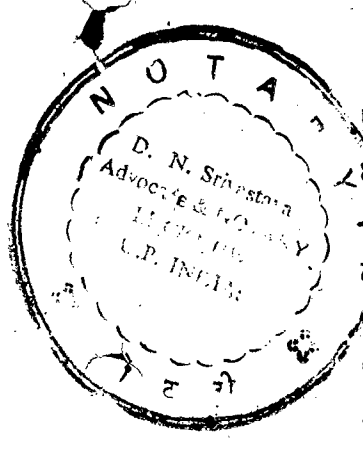
उपस्थित : श्री जितेन्द्र श्रीवास्तव ... सिविल जज
प्रकीर्ण वाद सं० : 36/1981

श्री मालती सिन्हा ... प्रार्थिनी
बनाम

जा० कन्हैया लाल ... विपक्षी
प्रकीर्ण वाद सं० : 70 / 1981

सुधीर कुमार ... प्रार्थी
बनाम
जायदाद क० कन्हैया लाल ... विपक्षी

नकल निर्णय



प्रकीर्ण वाद सं० 36 / 81 में श्री मालती सिन्हा तथा प्रकीर्ण वाद सं० 70 / 81 में सुधीर कुमार ने अपने संरक्षक श्री गिर-धारी लाल के जरिये भारतीय उत्तराधिकार अधि नियम की धारा -372 के अर्न्तगत अपने - अपने मृतक कन्हैया लाल पुत्र स्वर्गीय वासुदेव के नाम जमा रू० 22,666.15 के संबंध में उत्तराधिकार प्रमाण पत्र जारी करने हेतु दावे प्रस्तुत किये हैं। ये दोनों प्रार्थना पत्र एक ही विषय - वस्तु व सम्पत्ति के संबंध में हैं अतः न्यायालय के आदेश दि० 3.3.82 द्वारा दोनों मुकदमें समक्षित कर दिये गये हैं और उनका निस्तारण इस निर्णय के तहत एक साथ किया जा रहा है।

प्रार्थिनी श्रीमती मालती सिन्हा का कहना है कि वह मृतक कन्हैया लाल की एक मात्र संतान है और इस तरह मृतक कन्हैया लाल के नाम जमा रूपों के संबंध में उत्तराधिकार प्रमाण पत्र पाने की अधिकारिणी है। उसके प्रार्थना - पत्र पर मृतक कन्हैया लाल के नजदीकी रिस्तेदारों जिनका उल्लेख उसने अपने प्रार्थना पत्र के पैरा-4 में किया है, ने श्री मती मालती सिन्हा के नाम उत्तराधिकार प्रमाण पत्र जारी करने के संबंध में कोई आपत्ति प्रस्तुत नहीं की है बल्कि अपने पृथक शपथ-पत्रों द्वारा प्रार्थिनी श्री मती मालती सिन्हा के नाम उत्तराधिकार प्रमाण - पत्र बनाये जाने की सहमति प्रदान की है।

प्रकीर्ण वाद सं० 70 / 81 में प्रार्थी सुधीर कुमार का कहना है कि वह मृतक कन्हैया लाल का गोद बिया हुआ लड़का है और मृतक कन्हैया लाल ने उसे अपना विधिक उत्तराधिकारी बना लिया था।

Durgesh Narain Srivastava
Advocate & Notary
In front of Samadhi Mandir
Tilak Nagar, Aish Bagh, Lucknow

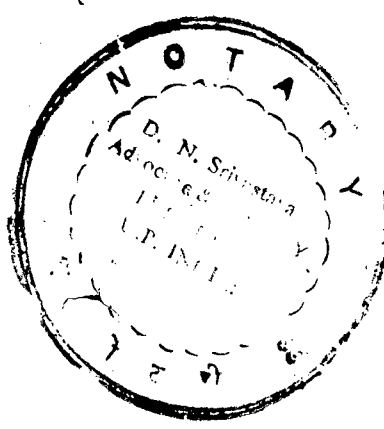
Malti Singh-C.A.
Malti Singh

A 254

प्रकीर्ण वाद सं० 36 / 1981 में सुधीर कुमार की ओर से पी० डब्लू० - 1 एस० बी० सिन्हा व पी० डब्लू० - 2 श्रीमती प्रेमा देवी को पेश किया गया है।

श्रीमती मालती सिन्हा की ओर से डी० डब्लू० - 1 वी० पी० बर्मा व डी० डब्लू० - 2 स्वयं श्रीमती मालती सिन्हा को पेश किया गया है।

मैंने उभय - पक्ष के विद्वान अधिवक्ताओं की बहस सुनी तथा पत्रावली का भली - भाँति अवलोकन किया । इस तथ्य पर विवाद नहीं है कि श्रीमती मालती सिन्हा मृतक कन्हैया लाल की एक मात्र जीवित संतान है। अतः कानूनी रूप से वही मृतक कन्हैया लाल की वारिस हो सकती है। लेकिन सुधीर कुमार का कहना है कि वह मृतक कन्हैया लाल का दत्तक पुत्र है। लेकिन इस संबंध में पत्रावली पर उपलब्ध साक्ष्य विरोधाभासी एवं प्रत्याप्य नहीं है। कन्हैया लाल द्वारा सुधीर कुमार को गोद लेने और सुधीर कुमार के माता पिता द्वारा गोद देने की कार्यवाही के संबंध में भी पत्रावली पर कोई विश्वसनीय साक्ष्य नहीं आया है। पत्रावली पर दाखिल अभिलेखीय साक्ष्य के आधार पर भी यह निश्चित रूप से नहीं कहा जा सकता है कि मृतक कन्हैया लाल ने सुधीर कुमार को विधिवत गोद लिया था। अतः सुधीर कुमार के दत्तक पुत्र होने का तथ्य सही प्रमाणात् नहीं होता है। सुधीर कुमार की ओर से रेलवे विभाग से मृतक कन्हैया लाल का भविष्य निधि - नामांकन फार्म तलब करवाया गया है, जिसे पी० डब्लू० - 1 एस.पी. सिन्हा लेकर आये हैं और उन्होंने इसे साबित किया है। भविष्य निधि नामांकन फार्म कागज नं० सी-24 है। इसके अवलोकन से स्पष्ट होता है कि मृतक कन्हैया लाल ने अपनी भविष्य निधि के संबंध में अपनी लड़की श्रीमती मालती देवी व सुधीर कुमार को बराबर बराबर के हिस्सेदार के रूप में नामित किया था। इस नामांकन - पत्र की वैधता पर कोई प्रश्न चिन्ह नहीं लगाया जा सकता है। प्रोविडेंट फण्ड एक्ट 1925 की धारा - 4 के अन्तर्गत नामांकन - पत्र में नामित व्यक्ति न्यायालय से वैध उत्तराधिकार प्रमाण पत्र प्राप्त करके प्रस्तुत करने पर मृतक के भविष्य निधिकी रकम उठा सकता है। मालती सिन्हा का विवाह हो चुका है, अतः उसे उक्त अधिनियम की धारा - 2(सी) के अन्तर्गत आश्रित व्यक्ति की परिभाषा में नहीं रखा जा सकता है। उक्त परिस्थितियों में भविष्य निधि नामांकन फार्म के आधार पर श्रीमती मालती सिन्हा एवं सुधीर कुमार मृतक कन्हैया लाल के भविष्य खाते में जमा रकम मु० रू० 15187/- के संबंध में समान रूप से आधे - आधे हिस्से के बावत उत्तराधिकार प्रमाण पत्र पाने के अधिकारी साबित होते हैं। जहाँ तक रेलवे इम्पलाईज इन्श्योरेंस स्कीम तथा अप्रयुक्त अवकाश के नगदीकरण की राशि क्रमशः रू० 5000/- व रू० 1879.15 के संबंध में उत्तराधिकार प्रमाण



Durgesh Narain Srivastava
Advocate & NOTARY
In front of Samadhi Mandir
Tilak Nagar, Aish Bagh, Lucknow-4

Malti Sinha

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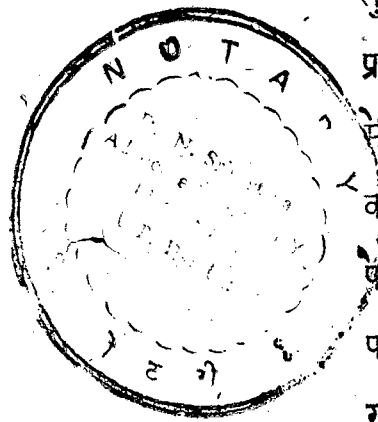
- 3 -

मालती
पत्र जारी करने का प्रश्न है, उसके संबंध में केवल श्रीमती/सिन्हा का हक बनता है, क्योंकि मृतक कन्हैया लाल से नामानकन केवल भविष्य निधि खाते के संबंध में किया था। इन राशियों के संबंध में इस्टेट ड्यूटी क्लियरेंस स्टैम्पिफिकेट दाखिल किया गया है।

तदनुसार मालती सिन्हा व सुधीर कुमार द्वारा दिये गये प्रार्थना पत्र निस्तारित होने योग्य है।

आदेश

मृतक कन्हैया लाल के प्रविडेंट फण्ड में जमा ₹ 15,787/- पन्द्रह हजार सात सौ सत्तासी रुपये के संबंध में आधे आधे हिस्से के बावत श्रीमती मालती सिन्हा पत्नी श्री विनोद कुमार सिन्हा तथा सुधीर कुमार पुत्र गिरधारी लाल के नाम नियमानुसार उत्तराधिकार - प्रमाण - पत्र जारी किया जावे ॥ रेलवे इम्प्लूयाइज इन्श्योरेंस स्कीम में जमा ₹ 5000/- पांच हजार रुपया तथा अप्रयुक्त अवकाश के नगदी करण की रकम ₹ 1879.15 एक हजार आठ सौ उन्यासी रुपये पन्द्रह पैसे के संबंध में केवल श्रीमती मालती सिन्हा के नाम उत्तराधिकार प्रमाण पत्र जारी किया जावे इस निर्णय की एक एक प्रति दोनों पत्रावलियों में रखी जावे।



Durgesh Narain Srivastava
Advocate & NOTARY
In front of Samadhi Mandir
Tilak Nagar, Aish Bagh, Lucknow-4

यह निर्णय आज मेरे द्वारा खुले न्यायालय में हस्ताक्षरित एवं दिनांकित करके सुनया गया।
दि 17-7-1985

Sd. -
जितेन्द्र श्री वास्तव
सिविल जज, मोहन लाल गंज,
लखनऊ दि 17-7-85

Sd. -
(जितेन्द्र श्री वास्तव)
सिविल जज, मोहनलाल गंज-
लखनऊ।
Dated 17-7-85

Malti Sinha

सत्य प्रतिलिपि
दि 26.8.85

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IN THE COURT OF DISTRICT JUDGE, LUCKNOW.

Regular Civil Appeal No. 22 of 1988.

Smt. Malti Sinha, aged about 33 years,
wife of Sri Vinod Kumar Sinha, residing
in Sandila near Railway Crossing, Tahsil
Sandila, District, Hardoi ... Plaintiff-Appellant

Versus

Sudhir Kumar, aged about 18 1/2 years,
son of Girdhari Lal, resident of 269/39
Birhana, Lucknow ... Defendant-Respondent.

Appeal under Section 96 C.P.C. against the
judgment and decree dated 10.12.1987 passed
by Sri Jitendra Singh, V Addl. Civil Judge,
Lucknow in R.S. No.306 of 1985-Smt. Malti
Sinha versus Sudhir Kumar-dismissing the
suit for declaration with costs.

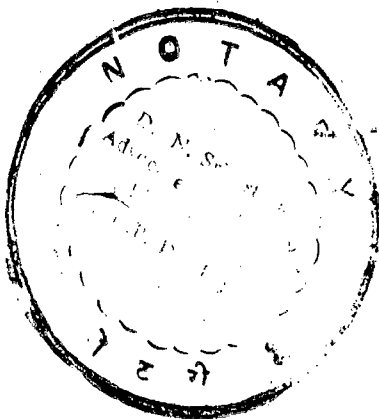
Nature of suit - Declaratory.

Valuation of suit- Rs.7,893.50

Court fee paid - 100.00

Valuation of appeal- Rs.7,893.50

Court fee being paid-Rs. 100.00



24/8/88
Durgesh Narain Srivastava
Advocate & NOTARY
In front of Samadhi Mandir
Tilak Nagar, Aish Bagh, Lucknow-4

Facts in brief.

Sri Kanhaiya Lal, father of the plaintiff was
residing in house No.269/39, Birhana half of which
was owned by him and half by Sri Girdhari Lal maternal
uncle of the plaintiff. Plaintiff-appellant mother
died when she was 10 years old. Plaintiff-appellant
is the only issue of her parents.

Malti Sinha

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2. Sri Kanhaiya Lal was in the employment of the Carriage and Wagon Workshops, Northern Railway, Alambagh, Lucknow. He died on 2.9.1980 leaving the plaintiff-appellant as his only heir. She applied in the court of Civil Judge, Mohanlalganj for grant of succession certificate in respect of the dues of her deceased father. Sudhir Kumar, son of Sri Girdhari Lal also applied for grant of succession certificate in his name alleging himself to be the adopted son of Sri Kanhaiya Lal deceased and also on the basis of nomination made by Sri Kanhaiya Lal for his Provident Fund in the Provident Fund Nomination Form. The relevant entries in the said nomination form are as under:-

Col.1	2	3	4
Name and address of nominees	Nominees relationship if any	Age of nominee	Shares
1. Mrs. Malti Devi	Daughter	24 years	Equal amount for both.
2. Sudhir Kumar	son	10 years	

3. The learned Civil Judge, Mohanlalganj granted succession certificate for half of the amount of Provident Fund in favour of the defendant-respondent. So the plaintiff-appellant filed Regular Suit No.306 of 1985 against the defendant respondent for declaration that the plaintiff was entitled for that half share also of the Provident Fund of her father. In para 12 of the plaint she had specifically pleaded that the said nomination was illegal and void. The learned V Addl. Civil Judge dismissed the suit and hence the appeal on the following amongst other grounds:

G R O U N D S

A. Because the learned court below has erred in holding that the defendant-respondent is entitled for



Durgesh Narain
Advocate & NOTARY
In front of Samadhi Mandir
Fikak Nagar, Aish Bagh, Lucknow

Malti Sinha

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half of the amount of Provident Fund of Sri Kanhaiya Lal deceased on the basis of the Provident Fund Nomination Form-Paper No. C-49.

B. Because Provident Fund Nomination Form C-49 as filled up by Sri Kanhaiya Lal deceased is nul and void on account of mention of a non-existant person ' Sudhir Kumar ' as ' son ' when admittedly he had no son.

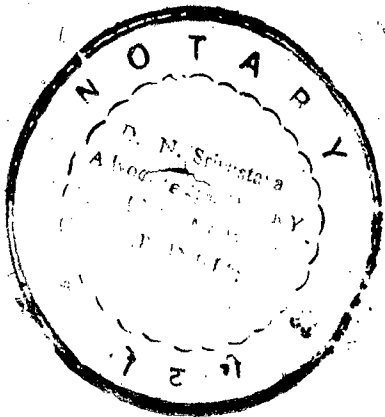
C. Because the learned court below has erred in observing that paper No.C-49 is not in dispute while in para 12 of the plaint it has specifically been pleaded that the said paper is wholly illegal and void.

D. Because the finding of the learned court below that Sudhir Kumar mentioned in paper No.C-49 by Sri Kanhaiya Lal deceased as his son is the defendant-respondent based on untrustworthy and oral evidence of DW 1 to DW-3 is wholly illegal and cannot sustain.

E. Because the learned lower court has erred in relying on unreliable oral evidence of D.W. 1 to D.W. 3 given to explain the intention or interpret the contents of C-49 to which they were no parties or witnesses.

F. Because the learned court below has acted illegally in interpreting Paper No.C-49 with the help of inadmissible and oral evidence of D.W. 1 to D.W.3.

G. Because the learned court below has erred in not framing an issue on voidability of paperNo.C-49 and allow the application for amendment of para 18 of relief.



24/10/09
Dargesh Narain Srivastava
Advocate & NOTARY
In front of Samadhi Mandir
Tikka Nagar, Aish Bagh, Lucknow-4

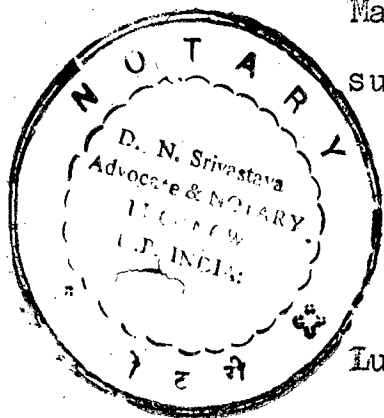
Malti Sinha

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H. Because the nomination paper No.C-49 is also against the provisions of the Provident Fund Act and the plaintiff is entitled for the same under the said Act as dependent of her deceased father.

I. Because in any view of the matter the findings of the learned court below on issues No.2,3 and 4 are against facts and law and are liable to be set aside.

It is, therefore, respectfully prayed that the appeal be allowed and judgment and decree dated 10.12.1987 passed by the learned V Addl. Civil Judge, Lucknow in original Regular Suit No.306 of 1985-Smt. Malti Sinha versus Sudhir Kumar- be set aside and the suit be decreed with costs throughout.



Lucknow:

Dated: Jan. 29.1988.

Sd/-

(Ramapati Ram)
Advocate,
Counsel for the appellant.

N.B. My power is on the file of original suit.

[Signature]
Durgesh Narain Srivastava
Advocate & NOTARY
In front of Samadhi Mandir
Tilak Nagar, Aish Bagh, Lucknow-4

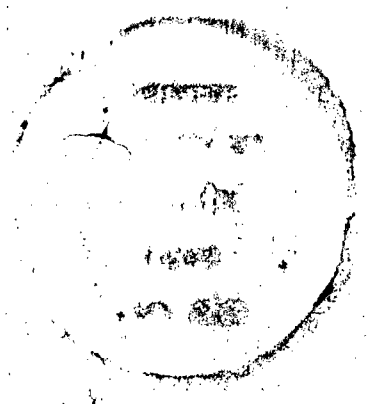
Malti Sinha

A33 A33

अर्ज-10
29.1.1981
W.P. 1000
श्री. गिरधारी लाल

व्यापारिक एकादेश अति. पिता जी. लखनऊ।
उपस्थित: श्री. एन. जी. खान --- एच. जी. एस
आप. सी. ए. - 22/88

श्रीमती मालती सिन्हा --- अपीलकर्ता
वनाम
सुधीर कुमार --- रिपॉन्डेंट



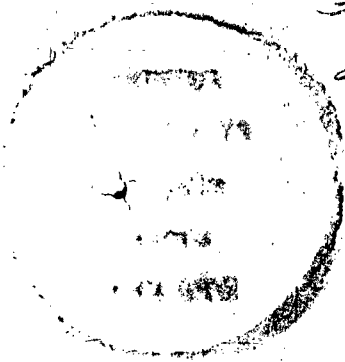
नकल निवेदन

यह अपील विभाग जंघम सी.एस.एस. सिविल
जि. लखनऊ के निर्वाच एवं आदेश दिनांक 10.12.87
अमुकामा नं. 306/85 श्रीमती मालती सिन्हा वनाम सुधीर
कुमार के विरुद्ध प्रेषित की गई है।

संक्षेप में अपील के लक्ष्य इस प्रकार हैं। अपील-
कर्ता श्रीमती मालती सिन्हा के पिता स्व. कर्दयालाल
अपीलकर्ता के भाजा गिरधारी लाल के साथ 264/39
बिरहना रोड पर निवास करते थे। अपीलकर्ता की माता
अपीलकर्ता की उपस्थिति में ही मृतक हो गई तथा
अपीलकर्ता ही श्री स्व. कर्दयालाल की एक मात्र संतान

उक्त नामित किया था और शेष आधी धनराशि 324
 अपीलकर्ता के नाम में नामित किया था। विद्वान सिविल
 68 मोहम्मद गंग ने प्राविडेंट फंड धनराशि के अर्ध
 भाग का सम्भरन सापेक्षिक सुधीर कुमार के नाम
 में जारी किया जिसमें सुधीर कुमार अपीलकर्ता ने मूल
 नं. 306/85 निरुद्ध सुधीर कुमार साक्षी साक्षी
 में संविष्टत किया। विद्वान अधीनस्थ साक्षी ने
 उक्त निरुद्ध कर दिया जिसमें सुधीर कुमार यह भी
 संविष्टत करी गई है।

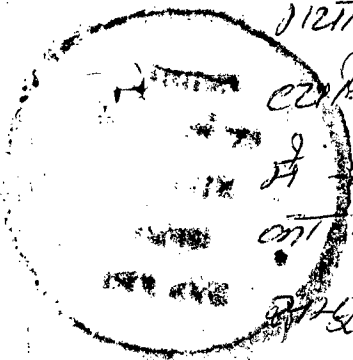
मैंने दोनो पक्षों के विद्वान अधीनस्थों को
 को विविक्त सुना एवं पत्रावली पर उपलब्ध साक्ष्य का
 अवलोकन किया जिसमें अपील को निर्णीय किन्तु यह है
 कि क्या द्वितीय पक्ष सुधीर कुमार प्राविडेंट फंड की आधी
 धनराशि प्राप्त का अधिकारी है? प्राविडेंट फंड संबंधी
 आतिथ्य ग-419 पत्रावली पर उपलब्ध है जिसमें
 अवलोकन से विद्वान को है कि प्राविडेंट फंड
 ने प्राविडेंट फंड नामिनेशन कार्ड में पक्ष नंबर पर
 मावली देवी पुत्री को तथा दूसरे नं. पर सुधीर कुमार
 पुत्र को प्राविडेंट फंड का वरकर वरकर भाग में नामित
 नामित किया है। पक्षों के बीच इस विषय पर कोई
 विवाद नहीं है कि प्राविडेंट फंड नामिनेशन कार्ड में
 नामित व्यक्ति ही प्राविडेंट फंड की धनराशि प्राप्त
 के अधिकारी है। अपीलकर्ता की ओर से मुख्य आरोप
 यह उठाई गई कि प्राविडेंट फंड नामिनेशन कार्ड में सुधीर
 कुमार को पुत्र प्रवेशित किया गया है। किन्तु कड़ेवास्तव
 मूल्य का कोई पुत्र नहीं था अतः वह व्यक्ति जिसका
 पक्ष में नामिनेशन किया गया था वह व्यक्ति सुधीर
 कुमार पुत्र विरधारी लाल मस्तुत तकरवा का द्वितीय
 पक्ष नहीं हो सकता और इसी आधार पर अपीलकर्ता



के विद्वान् अधिकृत का लक्ष्य है कि विद्वान् अधीनस्थ न्यायालय ने वैधानिक रूप से परिपूर्ण अधिकार प्राप्त किया जिसके द्वारा उनका मूलवाद निरस्त कर दिया गया।

जैसा विद्वान् अधीनस्थ न्यायालय का निर्णय पत्र का अवलोकन किया। विद्वान् अधीनस्थ न्यायालय ने कुल 4 वाद बिन्दु निमित्त निर्णय दिये। निम्न 2 वाद मूलपात्र से संबंधित हैं जिसके विषय में पक्षों के बीच कोई विवाद नहीं है। दूसरे वाद बिन्दु इस आदेश का निमित्त किया गया है "क्या वारिन्टी अपने पिता स्व. कर्तृपाल सिंह की संपूर्ण धनराशि तथा हाबिडेंट फंड की उमा धनराशि प्र. 15787/- पान की अधिकारिणी है। एक वाद बिन्दु सं. 3 "क्या हरिवोदी सुधीर कुमार स्व. कर्तृपाल सिंह द्वारा हाबिडेंट फंड के लिए निर्णय प्राप्त नामनिर्देशन दिनांक 22.6.77 के आधार पर अधीनस्थ निधि का 1/2 भाग पान की अधिकारी है? उपरोक्त दोनों वाद बिन्दु के अतिरिक्त तीसरा वाद बिन्दु अधुनीष का है।

विद्वान् अधीनस्थ न्यायालय ने वाद बिन्दु सं. 2 व 3 का आदेशों से विधिकर विश्लेषणात्मक निष्कर्ष दिया है और उनके द्वारा इस संबंध में दिया गया निष्कर्ष हाबिडेंट फंड नामनिर्देशन फार्म में लिखित व्यक्त ही हस्तगत हस्ताक्षरों का द्वितीय पत्र है। मेरी मता में यथोचित एवं विचारमत्त है। यह दायित्व वारिन्टी का है कि वह सिद्ध करती कि कर्तृपाल सिंह की संपूर्ण हाबिडेंट फंड की धनराशि के पान की वह एक भाग अधिकारिणी है। वारिन्टी की ओर से ऐसा कोई आदेश नहीं आया है कि स्व. कर्तृपाल सिंह द्वारा किया गया नामनिर्देशन विधि विरुद्ध है अथवा दलकपट द्वारा प्राप्त किया गया है अथवा वास्तव में ऐसा



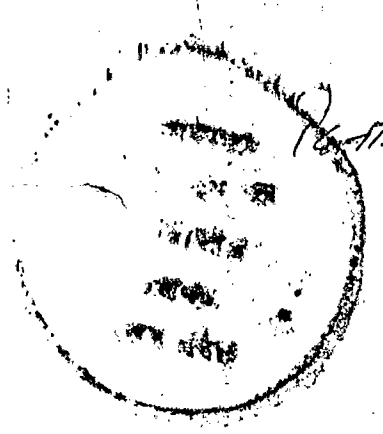
कोई नामांकन नहीं हुआ। उन्होंने (हरेकंदी को) साक्ष्य नहीं दिया है। इसके विपरीत श्रीवादी की ओर से 3 गवाहों परीक्षित किशंगार्ज सिन्हा श्रीवादी के वचन का समर्थन किया है कि मूलक कन्हैयालाल ने सुधीर कुमार पुत्र गिरधारीलाल के पक्ष में ही साक्षि डेट फोंड की दानशाली का नामांकन किया था। अतः इस आधार पर नामांकन पत्र में उल्लिखित वादिनी एवं श्रीवादी का बराबर उक्त स्वयंसेव द्वितीय पक्ष सुधीर कुमार को साक्षि डेट फोंड के आधी भाग की दानशाली पाने का अधिकारी बना दिया है।

आपिलवार्ता के विद्वान अधिकारों की ओर से यह तर्क प्रस्तुत किया गया कि सुधीर कुमार का नाम बतौर पुत्र नामांकन पत्र में अंकित किया गया है जो कि कन्हैयालाल का पुत्र नहीं था। तब ऐसी दशा में द्वितीय पक्ष सुधीर कुमार जो कि कन्हैयालाल का पुत्र नहीं है उसे नामांकन पत्र में नामांकित नहीं हो सकता। मैं इसके इस तर्क से असमर्थ नहीं हूँ। नामांकन पत्र में जिस व्यक्ति के पक्ष में नामांकन किया गया है उसकी पहचान स्पष्ट होनी चाहिए क्योंकि पुत्र अर्थात् मूल में व्यवहारिक रूप से कोई अंतर नहीं है। जबकी कन्हैयालाल के पुत्र नहीं था। सुधीर कुमार निर्विवाद रूप से कन्हैयालाल का मालीका है। इस आधार की परीक्षा साक्ष्य पनावली पर उपलब्ध है कि इसी सुधीर कुमार का नाम कन्हैयालाल ने नामांकन पत्र में नामित किया था। अतः नामांकन पत्र में मात्र पुत्र लिख देने से नामांकन पत्र पर कोई परिवर्तन प्रभाव नहीं पड़ेगा। नामांकन पत्र की मंजूर दी यह थी कि वह अपने साक्षि डेट फोंड की आधी दानशाली अपनी पुत्री गिरधारीलाल व शेष आधी दानशाली अपने मालीके सुधीर कुमार को देना चाहता था।

अपने विवेचना एवं विवेचना के आधार पर मैं इस बात का हूँ कि सुधीर कुमार द्विवेदी पर ही वह सुधीर कुमार है जो नामों के पाठ ग-प-प में नामित व्यक्ति है और इस प्रकार वह साबित होकर आधे भाग की धनराशि प्राप्त का अधिकारी है। अपीलकर्ता उस आधे भाग की धनराशि प्राप्त की इकाई नहीं है। विद्यमान अधिनियम न्यायालय द्वारा विवेचित निर्णय में मैं मूल में इसका कोई आवश्यकता नहीं है।

आदेश

आपल अपील-ट सवाय निरस्त की जाती है। निर्णय व आदेश दिनांकित 10-12-87 पुरा किया जाता है।



दिनांक: 5-1-01

स्व -
(एन. जे. खान)

एकादेश अग्र विभा 66,
लखनऊ ।

निर्णय व आदेश सुधीर न्यायालय में मेरे द्वारा दस्तावेजित दिनांकित करके उद्धरीष्ट किया जाता है।

दिनांक: 5-1-01

स्व -
(एन. जे. खान)

एकादेश अग्र विभा 66,
लखनऊ ।

नय प्रतिनिधि
समाचार 5/1/01

मान प्रतिनिधि
समाचार 5/1/01

Copied by - Faruk
Compared by - [Signature]

(A38)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT BENCH, LUCKNOW.

Registration (O.A.) No. 187 of 1989(L)

BETWEEN

Smt. Malti Sinha Applicant.

versus

Union of India and others ... Respondents.

Fixed For : 22.12.89

SHORT COUNTER REPLY ON THE BEHALF
OF THE RESPONDENTS

I, *Rajiv Chandra* — Working as *Dy. C.M.E (W)*
— in the office of Deputy Chief Machanical
Engineer (W), C and W shops, Northern Railway,
Alambagh, Lucknow do hereby solemnly affirm
and state as under :-

1. That the official abovenamed is working under the respondents and is fully conversant with the facts and circumstances of the applicant's case and has been authorised by the respondents to file this short counter reply on the their behalf.
2. That the answering respondents crave leave of this Hon'ble Tribunal to raise the preliminary objections.

१५ मुख्य यान्त्रिक अभियन्ता (कर्म०)
सवारी एवं माल डिब्बा कर्मशाला
४० रे०, आलमबाग, लखनऊ

.....2

PRELIMINARY OBJECTIONS

"Whether this claim petition is maintainable without impleading Union of India as a party"

3. That since the Union of India has not been made party in this case hence this case is not maintainable and is fit to be dismissed for non-impleadment of necessary party.
4. That in compliance with the show cause notice dated 8.9.89 issued by this Hon'ble Tribunal, the answering respondents are arranging to pay to the applicant the half of the provident fund amount whole of Railway employees insurance scheme amount and leave encashment amount of the deceased Kanhaiya Lal in terms of order dated 17.7.85 passed by Civil Judge, MohanLal Ganj, Lucknow.
5. That due to pendency of the Civil Appeal No.22 of 1988, pending before the learned XI Additional District Judge, which was filed by the applicant herself and just to avoid the multiplicity of the litigation the aforesaid amount was not paid to the applicant.


उप मुख्य यान्त्रिक अभियन्ता (कर्म०)
सवारी एवं माल डिब्बा कर्मचारी,
६० रे०, आलमबाग, लखनऊ

Amo

6. That the payment of the aforesaid amount is already under process.

Lucknow :

Dated :



एव मुख्य यांत्रिक अभियन्ता (कर्म०)
सवारी एवं माल दिव्या कर्मशाला,
ब० रे०, बालमवाग, लखनऊ

VERIFICATION

I, the official abovenamed do hereby verify that the contents of para 1 of this reply is true to my personal knowledge and those of paras 2 to 6 of this reply are believed by me to be true on the basis of records and legal advice.

Lucknow :

Dated :


एव मुख्य यांत्रिक अभियन्ता (कर्म०)
सवारी एवं माल दिव्या कर्मशाला,
ब० रे०, बालमवाग, लखनऊ

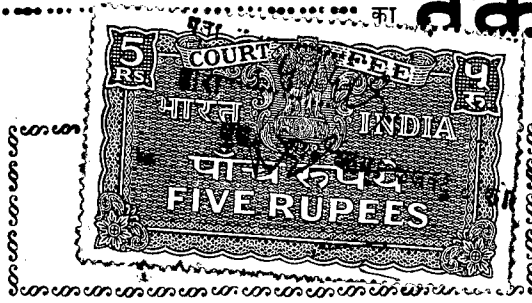
ब अवॉलत श्रीमान..... Central Administrative Tribunal of Allahabad महोदय
Bench at Lucknow

[वादी] अपीलान्त

प्रतिवादी [रेस्पाडेंट]

श्री.....

का वकालतनामा



वादी (अपीलान्त)

Smt Malti Singh बनाम

प्रतिवादी (रेस्पाडेंट)

नं० मुकद्दमा

The Deputy Chief Engg mechanical engineer this
सन् पेशी की ता०

१९ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री

Naresh Shanker Srivastava

Advocate, Bikaner, Lucknow

वकील

महोदय

एडवोकेट

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

नाम अदालत	मुकद्दमा नं०	नाम फरीकैन
..... बनाम

PT
L
24/4/90

Accepted
M.S. Kumar
4/4/90

हस्ताक्षर.....

.....

साक्षी (गवाह).....

साक्षी (गवाह).....

दिनांक.....

.....

महीना.....

.....

सन् १९७० ई०

स्वीकृत

CO

N.R.

VAKALATNAMA

G.V.3

Before the Central Administrative Tribunal, Allahabad.
Sitting at Lucknow

Before
In the Court of

Registration No. 187 of 1989 (4)
Fixed for 13-10-89

Plaintiff
Defendant

Smt. Malti Sinha

Claimant
Appellant
Petitioner ✓

Versus

Defendant
Plaintiff

The Union of India and
Others.

Respondents ✓

The President of India do hereby appoint and authorise Shri... Anil Srivastava, Presenting
Officer, Lucknow.

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 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 Compromise 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 adjusted 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... Anil Srivastava, Presenting
Officer, Lucknow.
in pursuance of this authority.

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

Dated..... 198 ..

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

N.R.P/R.Rd. (Pb. Bg.), Delhi-35 -11,110/11-8-1986-1000 F.

एन नृस्य यात्रिक अभियन्ता (कर्म०)
सवारी एवं माल डिब्बा कर्मशाला,
६० रे०, आसमबाग, लखनऊ

Designation of the Executive Officer

(A.K. Verma)
एन नृस्य यात्रिक अभियन्ता (कर्म०)
सवारी एवं माल डिब्बा कर्मशाला,
६० रे०, आसमबाग, लखनऊ

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

INDEX SHEET

CAUSE TITLE Review 179 of 1991 (L)

Name of the parties

OA. 187/89

Smt. Malti Sinha

Applicant.

Versus.

Union of India

Respondents.

Part A.B.C.

Sl No.	Description of documents	Page
1	Order Sheet	A1
2	Judgment (68-5-91)	A2 - A3
3	Review Petition	A4 - A8
4	Annexures	A9 - A12
	Bench Copy	B1 - B2

Certified that no further action is required to be taken and that the case is fit for consideration to the Hon'ble members (2)

[Signature]
24/11/11

(A2)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW CIRCUIT BENCH

Review Appln.No.179 of 1991(L)

In

Registration O.A.No.187/1989 (L)

Smt. Malti Sinha Applicant

Versus

Union of India & Others..... Respondents

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

Hon.Mr. A.B.Gorthi, Member(A)

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

This is an application under Rule 17 of the Administrative Tribunal (Procedure) Rules, 1987 for a partial review of our judgement dated 6.3.91 in O.A. No.187 of 1989.

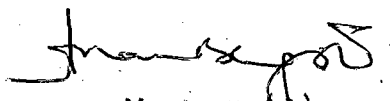
2. The Review Application is confined to a claim of interest on unpaid amount of Provident Fund (half), Insurance Money and Leave Encashment amount totalling Rs. 14,772-65.

3. The O.A. No.187/89 was filed in respect of the claims for the above amount as also for gratuity. Our judgement would show that the Railway Administrator has no objection to the payment of the amounts in accordance with the orders of the Civil Judge in a Succession Certificate^{case} which arose on account of contest put up by respondent No.3, Sudhir Kumar claiming to be adopted son of the deceased employee. While disposing of the Original Application we directed the interest to be paid on the gratuity amount but not in respect of the remaining items. The submission

AB

- 2 -

made in this Review Application is that there is no reason why the Railway Administration should also not pay interest on amounts other than the gratuity amount. We do not think that this kind of grievance can be subject matter of a Review Application because a discretion having been exercised by the Tribunal, it cannot be interfered with unless it is found to be erroneous on the record. As already mentioned the Railway Administration had already mentioned that the impediment to the payment of the amount arose on account of the contest put up by Sudhir Kumar while the Railway Administration had no objection to the payment of the amount in accordance with the orders of the Civil Judge in the case for Succession Certificate. So far as the gratuity is concerned, the Railway Administration had no such stand. The distinct stands in respect of these distinct claims persuaded us to award interest on the gratuity amount and not on the remaining amount. In this situation, we see no error apparent on the face of the record calling for interference in review. The Review Application is dismissed.


Member (A)


Vice Chairman

Dated the 8th May, 1991.

RKM

Review An. No. 179/91(L)

in

(M)

O.A. 187/89 (L)

O.R.:

A. (M. P.) Review An. No. 179/91(L)
has been filed in O.A. 187/89 (L)
by Shri Ramapati Ram Id.

counsel for the applicant today.

This case was decided by
the Hon. Bench of the Hon. Mr.
Justice K. Nath, V. C. and
Hon. Mr. A. B. Gorthi, A. M. on
6.3.91. Author of the judgement
is Hon. Mr. Justice K. Nath,
V. C.

S. f. o.

By Post

6/6/91

SRP
5.4.91

(41)

Before the Central Administrative Tribunal, U.P., Allahabad
Circuit Bench, Lucknow.

Review Application No. 179 of 1991 (L)

Smt. Malti Sinha

...

Applicant

Vs.

The Dy. Chief Mechanical Engineer(W),
Carriage and Wagon Workshops (N.R.)
Alambagh, Lucknow and others.

...

Opposite Parties.

I N D E X

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3.	Photo stat of the judgement and order dated 6.3.1991 of the Hon'ble Bench passed in Registration Claim Application No.187 of 1989 (L)	6 to 8

Lucknow :

Dated : April 5, 1991.

Ramapati Ram

Advocate,
Counsel for the Applicant.

Filed today
5/4/91

AS

Before the Central Administrative Tribunal, U.P., Allahabad,
Circuit Bench, Lucknow.

Review Application No. 179 of 1991 (L)
(Under section 22 (3) (f) of the Central Administrative
Tribunal Act, 1985)

Smt. Malti Sinha wife of Sri Vinod Kumar Sinha residing in
Mohalla- Sumaa Bagh, near S.D.M. Compound,
Sandila, District- Hardoi. ...Applicant

Vs.

1. The Deputy Chief Mechanical Engineer (W),
Carriage and Wagon Workshops (N.R.), Alambagh, Lucknow.
2. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.

...Respondents 1&2 Opp.
Parties

I N

Registration Claim Application No. 187 of 1989 (L)

Smt. Malti SinhaApplicant

Vs.

The Dy. Chief Mechanical Engineer (W)
and others Respondents

Decided on 6.3.1991

This review application is against the judgement
and order dated 6.3.1991 passed by the Hon'ble Circuit Bench
consisting of the Hon'ble Mr. Justice Kamleshwar Nath, Vice
Chairman and the Hon'ble Mr. A.S. Gorathi, Administrative
member in as much as the said Hon'ble Bench failed to consider
and allow the claim for interest also on the amounts of
Rs. 7,8,93.50 of (General) provident fund, Rs. 5,000/- of
Insurance Scheme and Rs. 1,879.15 of encashment of unutilised
leave of Sri Kanhai Lal deceased, Mistri T.No. 254-C of the
Carriage and Wagon Workshops (N.R.) Alambagh, Lucknow from

Contd...2/-

(A6)

General Administrative Tribunal
Circuit Bench, Lucknow
Date of Filing 5/4/91
Date of Receipt by Post
Deputy Registrar (U)

the date of his death on 2.9.1980.

2. By letter No. 254 C/Pen/10-80 dated 11.3.1981 of the respondent No.1 the applicant was informed that Rs. 15,787.00 on account of (General) Provident Fund, Rs. 5,000/- on account of Insurance Scheme and Rs. 1,879.15 on account of encashment of unutilized leave, total Rs. 22,666.15 as the dues of her late father Sri Kanhailal on his death on 2.9.1980 would be paid to her on production of the Succession Certificate. A photo stat of the said letter dated 11.3.1981 of the respondent No.1 is being filed as Annexure No. R-1 to this review Application.

3. The applicant filed the succession certificate in October, 1985 for payment of Rs. 7,893.50 as half of the amount of Provident Fund, Rs. 5,000.00 of insurance scheme and Rs. 1,879.15 on account of encashment of unutilized leave, total Rs. 14,772.65 but the respondent No.1 refused to make payment several times, and hence the claim application was filed. As per paras 6 (8) and 7 of the claim application besides the amount of gratuity the applicant claimed the payment of Rs. 14,772.65 with up-to-date interest.

4. The applicant had also claimed interim relief as per para 8 of the claim application. In reply to the notice to the respondent No.'1' as to why he has not paid the amount of Rs. 14,772.65 for which succession certificate was filed the Dy. Chief Mechanical Engineer filed his Affidavit on 2.2.90 in which he in para 4 stated that he was arranging to make payment of the amount in question but no payment made.

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5. Non of the respondents contested the claims of the applicant and the Hon'ble Bench on 6.3.1991 was pleased to allow the claim petition. But a erroneously failed to consider the claim of the petitioner for interest on the items of the said amount of Rs. 14,772.65 payment of which was deliberatry withheld by the respondents No. '1' & '2';- hence this review application on the following amongst other grounds:-

GROUNDS

- A. Because the amount of Provident Fund is made up of monthly deductions from the salary of an employee on which compound interest is paid. There is no reason why the interest should be allowed on the amount of the Provident Fund in question till the date of its payment to the heir of the employee after his death.
- B- Because the interest on the amount of Provident Fund is paid by the employer as the same is utilized by him.
- C. Because in any case with-holding of Rs. 14,772.65 by respondents No. 1 & 2 after receipt of the Succession Certificate in October, 1985 was wholly illegal and mala-fide and the applicant is entitled to the interest there on on the rate admissible on the amount of Provident Fund, in justice and equity.
- D. Because non-consideration of interest on the items

AD

- 4 -

of Rs. 14,772.65 is an error apparent on the face of record and is liable to be corrected.

P R A Y E R

It is, therefore, most respectfully prayed that this review application may kindly be allowed and the respondents No. 1 & 2 may kindly be directed to pay interest on the items of the said amount of Rs. 14,772.65 at the rate at which the interest is paid on the amounts of Provident Fund till the date of final payment.

It is also prayed that a time limit may also be kindly fixed for payment of the claims of the applicant so that the respondents No. 1 & 2 may not further harass the applicant.

Lucknow:

Dated : April 5, 1991

Ramapati Ram
(Ramapati Ram)
Advocate
Counsel for the applicant
---APPLICANT---

(Am)

Annexure No. 1

NORTHERN RAILWAY
Office of the Dy.C.M.E.(W), C&W Shops, Alambagh, Lucknow.
No. 254C/Pen/10-80 Dated: // .3.1981.

Smt. Malti Sinha,
daughter of Late Kanhiya Lal,
ex.T.No. 254/C
C/o Shri Vinod Kumar Sinha,
P.C.C. Technician,
Govt. T.B. Clinic,
HANDOL.

Sub:- Payment of Final Sett. dues of Late Kanhiya Lal
ex.T.No. 254/C.

Ref:- Your application dt. nil.
....

The Payment of the following final Sett. dues in the above case will be made on production of succession certificate from the competent Court of Law. Accordingly you are advised to obtain the above document from the Court and submit the same to this office for further necessary action. The action taken for procuring the document may please be intimated to this office early.

- (1) P.F. assets including Rs. 15787-00 ~~interest~~ *Subst.*
- (2) Amount Payable under Rly. Employees Insurance Scheme Rs. 5000-00 Scheme.
- (3) Encashment of unutilised leave Rs. 1879-15 (LAP = 65 days).

Family pension is not payable under Family pension rules 1964. However, the case regarding payment of DCRG is being examined separately.

for Dy.C.M.E.(W)/MIV-LKO.

C/- to: Shri Sudhir Kumar, C/o Sri Girdhari Lal, R/o H.No. 269/39, Birhana, Lucknow for information and similars action. He is however further informed that

the payment of above Sett. dues will only be made on production succession and Guardianship certificates from the Court, as his identity as the son of Late Kanhiya Lal ex.T.No. 254/C has been challenged by Smt. Malti Sinha, daughter of the deceased.

for Dy.C.M.E.(W)/MIV-LKO.

True photo stat attached.
Ramapati Raut
Adls.
8/4

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(A10)

Copy of Judgement

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUGATION OF CIVIL BENCH

Registration C.A. No.187 of 1989(L)

Smt. Malti Sinha Applicant

Versus

Union of India & Others Respondents

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

Hon. Mr. A. B. Gorthi, Member (a)

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

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant Smt. Malti Sinha has claimed payments of the Provident Fund amount, Insurance Money, Leave Encashment and gratuity admissible to Kanhiya Lal, an employee of the Chief Mechanical Engineer's office by reason of his death on 2.9.90. The amounts of Provident Fund and Insurance Money and the Leave Encashment are set out in para (1) of the application. The main contest came from respondent No.3 who was impleaded under the orders of this Tribunal and who claimed those amounts. It appears that cross cases under the Indian Succession Act were instituted by the applicant, as the daughter and heir of the deceased and by respondent No.3 Sudhir Kumar claiming to be adopted son of the deceased. The two cases were consolidated and heard and disposed of by the Civil Judge, Mohanlalganj, Lucknow by judgement dated 17.7.85 in Misc. Cases No.36/81 and 70/81. It

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was held that the present applicant was entitled to 1/2 of the Provident Fund amount and the whole of the Insurance claim and the leave encashment whereas Sudhir Kumar could be entitled to the remaining 1/2 amount of the Provident Fund. That order became final. The Railway Administration has no objection to the payment of these amounts in accordance with the orders of the Civil Judge in the case for Succession Certificate.

2. It appears that the present applicant also filed a Regular Civil Suit No.306/85 for declaration of the nomination in favour of Sudhir Kumar to be invalid in order to entitle him to receive 1/2 of the Provident Fund amount which was ordered to be paid to Sudhir Kumar by the Civil Judge. In para 6(4) of the application, it is stated that the Suit was dismissed against which an appeal was filed in the Court of District Judge. The counsel appearing on behalf Sudhir Kumar has filed a photo copy of the appellate order dated 5.1.91 by which the appeal was dismissed. The learned counsel for the applicant says that he intends to file a Second Appeal in the High Court. Be that as it may, so far as the record presently stands, Sudhir Kumar is entitled to receive 1/2 of the amount of the Provident Fund.

3. The only other subject matter of controversy is the amount of gratuity. No dispute in respect

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thereof is raised by Sudhir Kumar. It is admitted by the learned counsel for the applicant that even the gratuity amount was paid to the applicant by a cheque dated 5.3.90; the amount is stated to be Rs.10,928-24. The learned counsel for the applicant says that for reason of delayed payment of the gratuity amount, the applicant ought to be awarded interest.

4. It is not quite clear on what date the applicant laid a claim for the amount of the gratuity. It is also not quite clear as to what are the rates of the interest payable on the gratuity amount. Even so we think that the interest may be awarded as permissible under the law from 1.9.81 which would have provided almost one year's time to the Department to settle the claim of the gratuity amount.

5. This petition is therefore disposed of with a direction that respondents 1 & 2 shall pay to the applicant the amounts payable to her on account of the Provident Fund, the Insurance claim and the leave encashment as determined in the judgement and order dated 17.7.85 of Civil Judge, Mohanlalganj, Lucknow mentioned above and shall further pay the interest to the applicant on the sum of Rs.10,928-24 with effect from 1.9.81 to 4.3.90 at such rates as may be admissible under the applicable statutory provisions.

Member (A)

Vice Chairman

Dated the 6th March, 1991.

RKM

Attested

True copy

AKS

7/3/91

Section Officer (Admin.)
Central Administrative Tribunal
Circuit Bench

Lucknow

7/3/91

True Photo Not Attested

Ramapati Rana
Associate

5/4/91

C.T. C.