

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,BENCH

243 of 2090

Mehanam Bhattathiri P.....Applicant(S)

Versus

U.O.S..... Respondent(S)

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Certified that the file is complete in all respects
the record and desk copy

..... *John* *John* *John*

Signature of S.O.

Signature of Deal. Hand

CIRCUIT
CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW/BENCH.

...

Registration O.A. No. 243 of 1990

Mohanan Bhattachiri.P. Applicant.

Versus

Union of India
and others Respondents.

...

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

Hon'ble Mr. K. Obayya, Member (A)

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

The applicant was appointed in the office of the Accountant General-II, U.P. as Stenographer and he joined his duties on 17.6.1976. By means of this application, he has prayed that the respondents be directed to antedate his promotion w.e.f. 1.3.1984, the date since when the promotion of three stenographers as P.A. namely S/shri Dharam Dev, Jai Prakash and A.K. Ganguly has been antedated together with consequential reliefs including arrears of pay and allowances, seniority etc, and this he has prayed on the ground that the unit-wise seniority list of the employees of various cadres was not prepared separately on the establishment of A.G. (Audit) -II U.P. Lucknow and further the appointing authority acted arbitrarily and capriciously in promoting Shri A.K. Ganguly by ignoring the claim of the applicant.

2. The respondents have refuted the claim of the applicant and have stated that while preparing the panel for promotion of Stenographer-
Assistant during

- 2 -

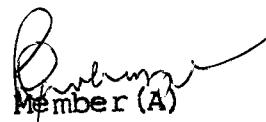
then existing vacancies (which were 3 at that time in Allahabad and 2 at Lucknow) and one more vacancy was expected to arise which, however, did not materialise as the sanctioned post of A.G. (Audit) III could not be operated. Willingness was called for from the stenographers for being posted at Lucknow . The applicant was at Sl. No. 4 in the seniority list of the stenographers and he had already been working at Lucknow gave his willingness for posting at Lucknow whereas his senior were not willing for posting at Lucknow. The D.P.C. while drawing up the panel decided to select the three persons i.e. Sri Dharan Deo, Jai Prakash and A.K.Ganguli on seniority-cum-fitness basis irrespective of their willingness or otherwise for their posting at Lucknow.

3. In view of the fact that the promotion of the said Ganguly was antedated but in the case of the applicant no antedated promotion has been done and as the applicant has given his willingness and he was the person who could have been promoted at Lucknow and after non-joining of the said Ganguly, the case of the applicant for antedating promotion like the said Ganguly and others should also have been considered but the respondents have not done so.

4. Accordingly, the respondents are directed to consider the case of the applicant also for antedating his promotion like ¹¹

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three persons mentioned above. Let this consideration be done within a period of 3 months from the date of receipt of the certified copy of this order and in case the applicant has been given antedated promotion, he will be given all the consequential benefits in another three months. The application is disposed of with the above terms. No order as to the costs.



Member (A)



Vice-Chairman

Dated: 30.3.1993

(n.u.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
 (CIRCUIT BENCH), L U C K N O W.

C.A. No. 243 of 1990 (C)

Abul Hasan Bhattathiri.P.

... Applicant

versus

The Union of India & others

... Respondents

FORM - 1

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

Title of the case: Ante-dating the promotion w.e.f. 1.3.1984

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Date: August 1, 1990
 Lucknow.

Signature of the Applicant

: 2 :

For use in Tribunal's office

Date of filing

OR

Date of receipt by post :

Registration No.

SIGNATURE
for REGISTRAR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL (CIRCUIT BENCH)

L U C K N O W .

Mohanan Bhattachari.P., aged about
 36 years, son of late Sri Parameswaran
 Bhattachirippad, resident of L/VL, 125
 sector 'L', Aliganj, Lucknow, .. applicant

Versus

1. Union of India through the
 Comptroller and Auditor General of
 India, 10, Bahadur Shah Zafar Marg,
 New Delhi.

2. The Accountant General (Audit)-I,
 U.P., Allahabad.

3. The Senior Deputy Accountant General
 (Admn.), Office of the Accountant
 General (Audit)-I & II, U.P.,
 Allahabad. .. Respondents

Details of application

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

Letter No.A.G.(A)/I/Admn./238 dated 26.9.1989,
 issued under the signature of the Assistant



Audit Officer (Admn.), Office of the A.G.(Audit)-I, U.P., Allahabad, intimating the applicant rejection of his representation made to the Comptroller & Auditor General of India, New Delhi.

2. Jurisdiction of the Tribunal :

The applicant declares that the subject matter of the order, against which he wants redressal, is within the jurisdiction of the Tribunal.

3. Limitation :

The applicant further declares that the application is within the limitation period, prescribed in Section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE :

4.1. That the applicant was appointed in the then Office of the Accountant General-II, U.P., as Stenographer and he joined his duties on 17.6.1976.

4.2. That the work and conduct of the Applicant were found excellent throughout his career and nothing adverse was ever communicated to him. In recognition of his good work, the applicant was also awarded an appreciation Letter on 2.2.1989 by the then Accountant General (Audit)-II, U.P., Lucknow. Taking into account his good work and conduct, and after perusing his Confidential Reports, the applicant was also recommended for posting to the overseas Audit Office i.e., London in 1989, by the then Accountant General (Audit)-II, U.P., Lucknow, to the Comptroller and Auditor General of India.

M. S. N. H.

4.3. That the applicant was promoted on the post of Personal Assistant w.e.f. 28.2.1989 vide Office Order No.AG(Audit)I/Admn.4-21(3) dated 27.2.1989, a copy of which is being filed as Annexure No.1 to this application.

4.4. That as per instructions, issued by the Comptroller and Auditor General of India in 1974, the prescribed service for Stenographers for promotion to the scale of Rs.425-700 (now revised to Rs.1400-2300) has been reduced to 3 years from 5 years and that the Stenographers in the then scale of Rs.425-700 (now redesignated as Personal Assistant from Selection Grade Stenographer) would continue to be attached to the Officers of the rank of Senior Deputy Accountant General level and to the Deputy Accountant General Incharge of Administration.

4.5. That the details of officers of the rank of senior Deputy Accountants General/Deputy Accountants General (Admn.), with whom the Stenographers in the pay scale of Rs.425-700 (now known as P.A.) could be attached, are given below :

(1) Sr. Dy. Accountant General (Admn.)	at Allahabad
(2) Sr. Dy. Accountant General (Inspection - Civil)	
(3) Sr. Dy. Accountant General (Revenue Audit - Central)	
(4) Sr. Dy. Accountant General (Revenue Audit - State)	
(5) Sr. Dy. Accountant General (Works Audit)	
(6) Sr. Dy. Accountant General (Company/ Corporations)	
(7) Sr. Dy. Accountant General (State Electricity Board)	

W.M.H.
The above detail is for the year 1985 (August)

4.6. That the principles of fairplay and equity demanded that consequent on establishment of Office of the Accountant General (Audit)-II at Lucknow in 1984, the seniority of the persons at various cadres, posted at Lucknow, should have been prepared separately to facilitate promotions on the posts which fell vacant at Lucknow. Since sanctions of various posts for A.G. (Audit)-II, Lucknow and A.G. (Audit)-I, Allahabad are being given separately, it was incumbent upon the Respondents to have prepared seniority lists separately so that promotions could be made as and when vacancy arises in the Lucknow Office. This was not done by the Respondents 2 and 3 simply because their powers regarding promotions etc. would be curtailed. This resulted in upper hand of the staff posted at Allahabad and denial of promotional channel and other privileges to the staff posted at Lucknow, as has been done in the case of the Applicant. Had the Respondents 2 and 3 taken timely action, this contingency would not have arisen. After fixing the seniority separately, the position as regards Lucknow office, the applicant would have been at the top and he would have easily been promoted against the vacancy of P.A. at Lucknow much earlier than claimed.

4.7. That the employees posted at Lucknow, after having given their willingness, remained in dark about their future promotions and other privileges as neither the details of their service conditions were decided nor they have still been decided. This has resulted in discrimination and prejudice to the interest of the staff posted at Lucknow. Since crystal-cut guidelines/conditions have not been prescribed and, as stated above, the staff posted at Lucknow remain in dark



about their future, it was necessary on the part of the Respondents to have prescribed clear cut conditions on future promotions, etc. of the staff posted at Lucknow. The present conditions of the staff posted at Lucknow indicate that they are in doldrums about their continuance at Lucknow and after establishment of their families at Lucknow, they can be transferred to Allahabad which is prejudicial to the interest ~~xx~~ of those employees who are posted at Lucknow. Apart from that the condition has so worsened that nobody opts for coming down to Lucknow office because of uncertainty of their stay at Lucknow, it may be shorter period or longer one is not known and ~~whichever~~ whatever vacancy/vacancies at Lucknow remain vacant and are filled up at Allahabad with the plea that they are seniors to the staff posted at Lucknow and as such the work at Lucknow also suffers.

4.8. That the above plea of the Applicant gets strength from the fact that some Auditors were promoted as Senior Auditors at Allahabad in 1989 subject to their joining at Lucknow, where the vacancies existed, but because of the conditions being uncertain, they have not joined at Lucknow and ultimately they were promoted at Allahabad itself against the vacancies at Lucknow.

4.9. That against the two vacancies at Lucknow and one at Allahabad, willingness was called for, for posting at Lucknow from 8 Stenographers including the applicant, vide letter No. Ma Le/Le A/Prathan/Prashash 4-21(3)/1054 & 6 dated 14.8.1985. This letter was issued by the Accountant General (Audit)-I, Allahabad (Respondent No.2), who was the controlling authority of the cadre of Stenographers. The first four names, senior-wise, from whom willingness was called for, were as under:

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1. Shri Dharam Deo
2. Shri Jai Prakash
3. Shri A.K. Ganguly
4. Shri Mohanan Bhattachariya, (Applicant)

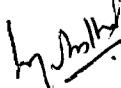
In this letter it was stated that promotions for posts of Personal Assistants were to be made in the scale of Rs.425-700. A copy of the said letter is being filed as Annexure No.2 to this application. A perusal of the said letter would reveal that the willingness for being ^{only} posted to Lucknow, after promotion, was called for vide the said letter.

4.10. That the Applicant submitted his willingness for posting on promotion to the post of P.A. at Lucknow, within the prescribed time limit i.e., 20.8.1985.

4.11. That in October 1985 three Stenographers were promoted to the post of P.A. and were posted at Allahabad. The persons so promoted were S/Shri Dharam Dev, Jai Prakash and Anil Kumar Ganguly. There were, as stated in para 4.5, two Senior Deputy Accountants General positioned at Lucknow and as such, in accordance with letter No.4532-NGE.I/60-74-1 dated 27/28.12.1974, there were two posts of Personal Assistants at Lucknow, but ignoring this fact all the promotions were made at Allahabad.

4.12. That it is further noteworthy that none of the above three persons, who were promoted to the post of P.A., were posted to Lucknow, though two posts were vacant at Lucknow.

4.13. That since none of the three persons, promoted had given their willingness to be posted at



Lucknow Office on promotion as P.A. and since there ~~were~~ were two vacancies at Lucknow, the Applicant, who was the only willing person for posting at Lucknow on promotion, should have been promoted against vacancies existing at Lucknow.

4.14. That by ignoring the claim of the Applicant for promotion as P.A. against the existing vacancies at Lucknow, the Respondents 2 and 3 had acted arbitrarily and had promoted Shri A.K. Ganguly, who had not given his willingness for posting at Lucknow, against the vacancy at Lucknow. He, after his promotion, was not posted to Lucknow with the result that the vacancy of Lucknow was adjusted at Allahabad. Thus the Senior Deputy Accountant General, Lucknow, who was in dire need of a P.A., had to work without P.A. all through.

4.15. That the Respondents 2 and 3 should have, in order to fill up the vacancy of two P.A. at Lucknow office, either posted two of the above persons at Lucknow Office or, since they were not willing to be posted to Lucknow on promotion, should have promoted the Applicant at Lucknow, against one of the vacancies existed at Lucknow particularly when the applicant had submitted his willingness for posting at Lucknow. The two persons who did not give their willingness should have been deemed to have foregone their promotions since two vacancies were existed at Lucknow and not at Allahabad.

4.16. That it would be clear from the above that the promotion of persons, against the vacancies of P.A. at Lucknow, were made arbitrarily and resulted in hostile discrimination against the Applicant.

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4.17. That it is further to be mentioned here that the promotion of Shri A.K. Ganguly at Allahabad, in the manner mentioned above, was made by the Respondents No.2 and 3 illegally and giving undue favour to him and with the sole intention to deprive the applicant from his valid, genuine and legal claim.

4.18. That not only this, the Respondents 2 and 3 have made the promotion of S/Shri Dharam Dev, Jai Prakash and Anil Kumar Ganguly, effective from 1st March 1984, on the basis of their representation.

4.19. That the Respondents 2 and 3, after giving due weightage that unwilling persons should not be promoted and posted to places outside Allahabad, had promoted Shri Raj Kumar Singh, P.A. to the post of Senior Personal Assistant on 28.5.1985. Shri Singh had given his willingness for posting at Lucknow (he was the only willing person for posting at Lucknow on promotion as Sr. P.A.) and his claim was considered and he was promoted as Senior Personal Assistant in preference to his three seniors (Shri Shaukat Ali, Shri K.K. Asthana and Shri Ramji Srivastava) because all the three senior persons to Shri R.K. Singh had not given their willingness for posting at Lucknow. Since applicant's case was on all fours with case of Shri R.K. Singh and three persons, who were senior to the applicant, had not given their willingness for posting at Lucknow, ignoring the applicant's case for promotion to the post of P.A. was, thus, arbitrary, against all canons of service jurisprudence and also against the principle of equity. The authorities concerned should have acted fairly and not to the

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prejudice of the interest of the Applicant. Showing favour to Shri Ganguly by promoting him to the post of P.A. and ignoring valid and just claim of the Applicant was wholly unjust and illegal and violated provisions of articles 14 and 16 of the Constitution of India.

4.20. That the Applicant's case further gets strength from the fact that Shri Anil Kumar Ganguly, who was transferred to Lucknow office only in July 1987, ^{Lucknow} did not join office till 14th March 1989 and he even filed an application in the noble Central Administrative Tribunal, Allahabad Bench, challenging his transfer order. This is a clear proof that Shri Ganguly was not willing for posting to Lucknow, even at the time of his promotion as P.A. and this also make clear the gross illegality and injustice committed by the Respondents in promoting Shri Ganguly at Allahabad, against the vacancy at Lucknow. This is also to be made clear that Shri Ganguly was posted to Lucknow in July 1987 - after about 21 months of his actual date of promotion - i.e., in October 1985, and promoting Shri Ganguly at Allahabad against the vacancy at Lucknow and not transferring him to Lucknow till ^{July} June 1987, clearly establishes that undue favour was shown to him by the Respondents 2 and 3. This also resulted in nugatory expenditure because the Senior Deputy Accountant General at Lucknow had to work without a P.A. and Shri Ganguly remained at Allahabad without vacancy.

4.21. That Shri A.K. Ganguly joined Lucknow office on 14th March 1989 (NN) on being informed by the Administration at Allahabad that his application for

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transfer back to Allahabad would be considered ~~as~~ only on joining at Lucknow Office and after the Applicant joined as P.A. after his promotion on 28.2.1989. At that time there was only one Sr. Dy. Accountant General at Lucknow, and as such Shri Ganguly was relieved for joining at Allahabad on his own request. A true copy of the letter (endorsement) NO.AG(Au)II/Admn./961 dated 8.3.1989, issued by the Administration at Allahabad to Shri Ganguly's residential address, is being filed as Annexure No.3 to this application.

4.22. That as stated above, Shri A.K. Ganguly was transferred to Lucknow in July 1987 by the Respondent No.3 and his LPC was also received in Lucknow office. Shri Ganguly had not joined the Lucknow office nor he submitted any application for leave to his place/office of posting. But the payment of salary for few months was made by the Respondent No.3 at Allahabad after getting back the LPC from Lucknow office, which was issued by the Office of the Respondent no.3 itself. Till date the revised LPC has not been received in the Lucknow Office. Even the payment of salary for the period Shri Ganguly remained in Lucknow office from 14.3.1989 was also made in Allahabad office on his joining back there in April 1989. These all go to show that the Respondents no.2 and 3 were favouring Shri Ganguly.

4.23. That the averment regarding giving undue favour to Shri A.K. Ganguly would be further clear from a perusal of Annexure no.3, wherein in the endorsement it has been mentioned that at present there is no P.A. at Allahabad and that Sr. Dy. Accountant General (Revenue Audit - Central) was without a P.A. This is a wrong and false statement as there were three Sr. Dy. Accountants

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General in the Office of the A.G.(Audit) at Allahabad and 3 personal Assistants i.e., Smt. S. Bhattacharya, PA, Shri Dharam Dev, PA and Shri Jai Prakash, PA.

4.24. That thus the Applicant became the victim of the malefide intentions and wrong decisions of the Respondents 2 and 3. Since Shri Ganguly was not willing to be posted at Lucknow, his promotion at Allahabad, against the vacancy existed at Lucknow was wholly irregular and illegal. His unwillingness for posting at Lucknow should have been deemed to be foregoing of promotion and the claim of the Applicant should have been considered and he should have been promoted in place of Shri Ganguly, who was next junior to Shri Ganguly and the only willing person for posting at Lucknow on promotion.

4.25. That after his promotion and subsequent joining as PA, the Applicant submitted a representation dated 12.4.1989, stating therein all the facts, mentioned above, and requesting the Respondent no.3 to make the promotion of the Applicant effective from 1.3.1984 - the date of promotion of persons at Allahabad, against the vacancies at Lucknow. A copy of this representation is being filed as Annexure No.4 to this application.

4.26. That the said representation of the Applicant was rejected vide letter No.AG(Audit)-I/Admn. 4-21(3)/217 dated 4.5.1989, a copy of which is being filed as Annexure No.5 to this application.

4.27. That it was mentioned in the rejection letter, contained in Annexure No.5, that the willingness

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of the Applicant for posting at Lucknow does not establish the claim for promotion to the post of P.A. unless his seniors had foregone the promotion. This plea of the Respondent No.3 is incorrect and has been made to cover up the mistake committed by him. It is submitted, in this connection, that the unwillingness of the seniors at Allahabad for posting to Lucknow on promotion as P.A. should have been deemed to be their foregoing of promotion since the post was at Lucknow. The Respondents 2 and 3 failed to consider this point at the time of promoting persons at Allahabad against the vacancy existing at Lucknow. The case of the applicant being in all fours with the case of Shri Raj Kumar Singh, who was the only person willing to be posted at Lucknow and was promoted by Respondents No.2 and 3, ignoring the claim of seniors who had not given willingness for posting at Lucknow, the applicant had his legal right for consideration for promotion by the Respondents 2 and 3. Ignoring the claim of promotion of the applicant, by Respondents 2 and 3, was thus wholly arbitrary and capricious and resulted in violation of Articles 14 and 16 of the Constitution of India.

4.28. That by aggrieved by the rejection of the representation, by the Respondent no.3, the applicant submitted another representation, stating all the facts, including those have been mentioned in the foregoing para, to the Respondent no.1. A copy of the said representation dated 31.5.1989 is being filed as Annexure no.6 to this application.

4.29. That vide letter No. AG(A)I/Admin./283 dated 26.9.1989, the Assistant Audit Officer (Admin.), Office of the Accountant General (Audit)-I, U.P.,

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Allahabad, informed the applicant that the Respondent no.1 has carefully considered the representation of the applicant and had rejected it. A copy of this rejection letter is being filed as Annexure no.7 to this application.

4.30. That the applicant is clearly entitled to be promoted to the post of P.A. with effect from 1.3.1984 (the date of promotion of persons at Allahabad against the vacancy existing at Lucknow).

4.31. That there is no justification for not antedating the promotion of the applicant with effect from 1.3.1984, taking into account the fact that he is clearly entitled to the same and the promotion of S/Shri Dham Dev, Jai Prakash and A.K. Ganguly was antedated on the basis of their representation.

4.32. That full facts regarding the two vacancies at Lucknow, the willingness of the applicant for being posted at Lucknow ~~XXX~~ after promotion and unwillingness of 3 persons promoted, etc. were not furnished to Departmental Promotion Committee in correct perspective with the result that they recommended the promotions of 3 persons who were senior to the applicant and ignored the claim of the applicant. On the recommendations of the DPC the three vacancies (1 at Allahabad and 2 at Lucknow) were filled up by promoting 3 persons at Allahabad and the Senior Deputy Accountant General at Lucknow office continued to be without P.A. till the applicant was promoted. The entire action of the DPC and acceptance of recommendations of DPC by Appointing Authority was thus arbitrary, contrary to legal provisions, suffered from vice of favouritism and was against accepted and

W.M.H.

well settled law of the service jurisprudence. The entire record of DPC when summoned by the Hon'ble Tribunal, will testify the above truth.

4.33. That the bias and prejudice of the Respondents ~~is~~ towards the applicant would be further clear from the fact that in the promotion order dated 27.2.89 (Annexure No.1) a condition of probation for two years has been prescribed whereas in the promotion order of Shri Raj Shekhar Sharma, who is a junior to the applicant and was promoted on July 10, 1989, this condition has not been prescribed, which also shows undue favour to the persons of liking of the Respondents. A photostat copy of the promotion order of Shri Raj Shekhar Sharma is being filed as Annexure No.8 to this application.

4.34. That the applicant has been advised to state that since the date of promotion of S/Shri Dharan Dev, Jai Prakash and A.K. Ganguly to the post of P.A. was made effective from 1.3.1984, on the basis of their representation, there is no point or justification in not antedating the promotion of the applicant and this action of the Respondents is a hostile discrimination and hits the provisions of Articles 14 and 16 to the Constitution of India.

4.35. That it is pertinent to point out here that if the applicant's promotion is made effective from 1.3.1984, none of the seniors to the applicant are going to be affected, as the applicant would remain junior to them. On the other hand, if his promotion is not made effective from 1.3.1984, his future career will be affected as the Respondent no.1 has fixed 5 years service as P.A. for promotion to the next higher post.

W.B.H.

4.36 That the cause of action ¹⁶ arose on 26.9.89 when final orders were passed by CAG rejecting the representation and intimated to applicant.

5. That aggrieved by the rejection of the representation by the Comptroller and Auditor General of India and intimated to the applicant vide orders dated 26.9.1989, the applicant was left with no other alternative except to invoke the jurisdiction of the Hon'ble Tribunal for speedy and efficacious remedy and the applicant is filing this application for redressal of his legitimate grievance, inter-alia, on the following grounds :

GROUNDS

- (a) Because the unit-wise seniority list of the employees of various cadres was not prepared separately on the establishment of A.G.(Audit)-II, U.P., Lucknow.
- (b) Because the full facts and information was not furnished to Departmental Promotion Committee.
- (c) Because the recommendations of the DPC were based on incomplete information.
- (d) Because the Appointing Authority acted arbitrarily and capriciously in promoting Shri A.K. Ganguly by ignoring the claim of the ~~gs~~ applicant.
- (e) Because filling up the post, existing at Lucknow, by promoting Shri Ganguly at Allahabad and thereby leaving the post at Lucknow unfilled, was against all canons of legality.
- (f) Because the said Shri A.K. Ganguly was not immediately posted at Lucknow office after his promotion.
- (g) Because Shri Ganguly had not given his willingness for posting at Lucknow after promotion.



(h) Because the Applicant had only given his willingness for posting at Lucknow on promotion as P.A.

(i) Because Shri Raj Kumar Singh, P.A. was promoted as Senior P.A. by passing over the claim of seniors as Shri Singh had given his willingness for posting at Lucknow whereas his seniors had not given their willingness for posting at Lucknow.

(j) Because the action of the Appointing Authority ~~xxxx~~ attracted the frown of Articles 14 and 16 of the Constitution of India.

6. Details of remedies exhausted

i) Representation was made to Senior Deputy Accountant General (Admn.), Office of the A.G.(Audit)-I, U.P., Allahabad on 12.4.1989 (Annexure No.4).

ii) The above representation was rejected vide letter No.AG(Audit)-I/Admn./4-21(3)/217 dated 4.5.1989 (Annexure no.5).

iii) Representation was also made to the Comptroller and Auditor General of India, New Delhi, vide letter dated 31.5.1989 (Annexure No.6).

iv) The above representation has been rejected by the Comptroller & Auditor General of India and the rejection was communicated to the Applicant vide letter No. A.G.(A)1/Admn./283 dated 26.9.1989 (Annexure no.7).

7. Matters not previously filed or pending with any Court.

The Applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application



has been made before any court or any other authority or any other bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Reliefs sought :

In view of the facts mentioned in para 4 of the application, the Hon'ble Tribunal may be pleased :

- (a) to direct the Respondents to antedate the promotion of the applicant with effect from 1.3.1984, the date since when the promotion of S the three Stenographers as P.A., S/Shri Dharam Dev, Jai Prakash and A.K. Ganguly, has been antedated, togetherwith consequential reliefs including arrears of pay and allowances, seniority, etc.
- (b) to allow other relief/reliefs as deemed just and proper in the circumstances of the case.
- (c) to allow the cost of this application.

9. Interim order, if any, prayed for :

No interim order is prayed for.

10. The application is not being sent by post, but is being submitted in the office of the Tribunal.

11. Particulars of Bank Draft/Postal Order, filed in respect of the Application Fee :

Postal Order No. 802 414738 for Rs 50/-
dated 30.7.90 issued from High Court Post Office
LUCKNOW

12. List of enclosures :

Postal Order as detailed in para 11 alongwith

W. Smith

- : 19 :

Documents as per index, Annexures 1 to 8 and Vakalatnama.

VERIFICATION

I, Mohanan Bhattathiri.P., aged about 36 years, son of late Shri Parameswaran Bhattathirippad, resident of L/V.L. 125, Sector L, Aliganj, do hereby verify that contents of paragraphs 1 to 12 except 4, 19, 4.27 & 5

are true to my personal knowledge and paragraphs are believed to be true on the basis of legal advice and that I have not suppressed any material fact.

Dated: August 1, 1990
Lucknow.

M. Bhattathiri
SIGNATURE OF THE APPLICANT
R. S. Srinivas
Through (R. S. Srinivas)
Counsel for Advocate
Applicant

(36) PTC

5. In the Central Administrative Tribunal, Circuit Bench Lucknow
O.A.N.O. - - - of 1990

Mohanan Bhattachiri Applicant

VS.

Union of India & others Respondents.

OFFICE OF THE ACCOUNTANT GENERAL (AUDIT)-I, UTTAR PRADESH
ALLAHABAD

No. A.G. (A) I/Admn./283

Dated: 26.9.89.

To:

Received
on 3/10/89
M2
3/10/89

Sri Mohanan Bhattachiri,
Personal Assistant
Office of A.G.U.P. (Audit) II u.p.,
14 Vikram Sabha Marg,
Lucknow.

With reference to his representation dated
31.5.1989 for antedating his promotion as personal
assistant, Sri Mohanan Bhattachiri is informed that his
case was referred to the Headquarter's office where it
was considered carefully and rejected by the Comptroller
and Auditor General of India.

True Copy
Attested
R. S. S. Montag

35 Sitaram
A. G. U. P.
14. Vikram
Sabha Marg,
Lucknow.

S. Montag 26.9
ASSTT. AUDIT OFFICER (ADMN.)

In the Central Administrative Tribunal, Circuit Bench Lucknow
OA NO. ... of 1990. Applicant
Mohanan Bhattathiri vs. Others Respondents
remon of India & Others
OFFICE OF THE ACCOUNTANT GENERAL (AUDIT)-I: UTTAR PRADESH

ALLAHABAD.

Amravati

No. A.G. (Audit)-I/Admn/4-21(3)/314

Dated: February 27, 1989.

(20)

(21)

Under the orders of Senior Deputy Accountant General (Admn) Sri Mohanan Bhattathiri, P., Ordinary grade Stenographer (Rs. 1200-2040) is promoted as Personal Assistant (Rs 1400-2300) on probation for a period of two years with immediate effect. In case the official is on leave, promotion will be effective from the date of his return from leave. He should exercise his option for fixation of pay in the higher grade within one month of the date of his promotion.

S. K. Maitri

(S. K. Maitri)

Audit Officer (Admn)

Personal No. 05/4-203

No. A.G. (Audit)-I/Admn/4-21(3)/314

o Date

Copy to:-

1. All Group Officers in the Office of the Accountant General (Audit)-I & II, U.P., Allahabad & Lucknow.
2. Secretary to Accountant General (Audit)-I & II
3. Audit Officer/Admn, o/o A.G. (Audit)-II, U.P. q. 14, Vidhan Sabha Marg, Lucknow.
4. Pay and Accounts Officer, o/o A.G. (A&E)-I, U.P., Allahabad.
5. Audit Officer/Admn & P.O., o/o A.G. (Audit)-I & II, U.P., Allahabad
6. All the Coordinating Sections in the o/o A.G. (Audit)-I & II Local.
7. Admn. Section (Posting, Transfer & Gradation List), o/o A.G. (Audit)-
8. All P.C. Sections of A.G. (Audit)-I & II, U.P., Allahabad.
9. C.R. Group, Senior Deputy Accountant General (Admn) Cell o/o A.G. (Audit)-I.
10. Secretary, Staff Cooperative Society, AGUP, Allahabad.
11. Personal files of the persons concerned.
12. Persons concerned.
13. Notice Board.

True copy

Attested

R. S. Silvastava

Advocate

High Court, Central
and State Services Legal Pals
4/53, Vikasnagar, Kali Road,
LUCKNOW.

S. K. Maitri

Audit Officer (Admn)

28/2/89

Mr. B. B. B.

In the Central Administrative Tribunal Circuit bench Lucknow
OA NO. - of 1990

Mohanan Bhattacharya - Applicant

versus

Respondents - Annexure 2

Union of India & others

छार्यालय महालेखाण्ड | लेखा परीक्षा | प्रथम, उत्तर प्रदेश, इलाहाबाद

प्रशास्त्र म.ले.प.। प्रथम/प्रशास्त्र/4-21/31X1054वे6। दिनांक 14.8.85

1. श्री विमल, लेखा, 04/3242 | पुराबा |, 05/4200 | बया |
उपमहालेखाण्ड, बिरीक्षा सिवित,
2. श्री जय प्रकाश, लेखा 04/4284 | पुराबा |, 05/4201 | बया |
वरिष्ठ उपमहालेखाण्ड | प्रशास्त्र | खेल
3. श्री अबिल कुमार गांगुली, लेखा 04/3693 | पुराबा |, 05/4202 | बया |
वरिष्ठ उपमहालेखाण्ड, राष्ट्रव्य | राज्य |,
ए०जी० | आडिटा |
4. श्री मोहनम श्रद्धाली पी. लेखा, 04/4397 | पुराबा |, 05/4203 | बया |
वरिष्ठ उपमहालेखाण्ड | राज्य विधुत परिषद |
5. श्री गिरीश कुमार राष्ट्रव्य, लेखा, 04/4397 | पुराबा |, 05/4204 | बया |
उपमहालेखाण्ड, बिरीक्षा सिवित |
6. श्री सुशील कुमार श्रीपालत्य, लेखा, 04/4405 | पुराबा |, 05/4205 | बया |
वरिष्ठ उपमहालेखाण्ड राष्ट्रव्य,
ए०जी० | आडिटा |
7. श्री राजेश शर्मा, लेखा, 04/4398 | पुराबा |, 05/4206 | बया |
प्रशास्त्र |
8. श्री रवि शंकर पाण्डेय, लेखा, 04/4403 | पुराबा |, 05/4207 | बया |
प्रशास्त्र |

महालेखाण्ड लेखा परीक्षा के प्रथम और द्वितीय के इलाहाबाद और
लखनऊ दिविति छार्यालयमें लिखी उपायके पर पर 1425-7001 खेत्रमाला
में छार्य करवे के लिए प्रोटोकलिंग मामला विचाराधीन है। आपसे अबुरोध
के लिए लखनऊ में अपवैधिकाती फी इच्छा दिनांक 20.8.85 तक प्रशास्त्र
अबुरोध ए०जी० | आडिटा प्रथम को उकरय के हैं।

Respectfully
R. O. Assistant
Court, Central
Services Tribunal

1. Court, Central
Services Tribunal
2. Karsi Kalyan

आ० क०. ५८८

1. आर०क० मेहरा |
लेखा परीक्षा अधिकारी | प्रशास्त्र |

Br3

(22)

In the Central Administrative Tribunal Circuit Bench (4)
CA No: Lucknow

Mohan Bhettathiril .. . Applicant

Almau of Lata & others .. . Respondents

Annexure 3

OFFICE OF THE ACCOUNTANT GENERAL (AUDIT)-II, U.P. ALLAHABAD.

No. A.G. (Au)II/Admin./

to

Dated: 8.3.89.

Shri A.K. Ganguly, (C5/4202),
Personal Assistant (on leave),
B-1037, G.T.B. Nagar,
ALLAHABAD - 211 016.

Hd: His application dated 8.3.89.

He is hereby directed to report for duty in Lucknow office (CAW) without any further delay. His request for posting at Allahabad will be considered only after he joins duty at Lucknow.

SO/1
(8)
Q/A/3

No. A.G. (Au)II/Admin./ 76/

6.11 -
AUDIT OFFICER/Admin.

of date

Copy forwarded to Audit Officer (Admn.), Commercial Audit Wing, office of the Accountant General (Audit)-II, 14, Vidhan Sabha Marg, Lucknow. After promotion of Shri M. Bhettathiril as P.A. there will be an excess of P.A.'s in Lucknow office as only Jr. Administrative Grade Officers are entitled to P.A.s.

Shri A.S. Sheikh, Steno has already been posted to Lucknow office.

It may also be mentioned that at present there is no P.A. at Allahabad. Consequently Sr.D.A.G(R.A.G) is without a P.A.

It is accordingly requested that either Shri Ganguly or Shri M. Bhettathiril may be transferred immediately to the Allahabad office after obtaining Accountant General's approval.

True copy -

R. Alsha
Resounding

R. S. Silvastava
Advocate

High Court, Central
and State Services Tribunals
4553, Vikasnagar, Karsi Road,
LUCKNOW.


AUDIT OFFICER/Admin.

B74
(23) 6

For the Central Administrative Tribunal
Circuit Bench, Lucknow

CA No. - - - of 1990

Mr. Mohanan Bhattathiri - - - - - Applicant

To

Government of India & Others ... Respondents

The Audit Officer (Admn.),
Office of the A.G.(Audit)-II, U.P.,
14, Vidhan Sabha Marg,
Lucknow.

Annexure 4

Subject: Promotion to the post of Personal Assistant
with effect from the date on which the said
post fell vacant in Lucknow office.

Sir,

I enclose two copies of my representation on
the subject mentioned above. I request you kindly to
forward the same to the Sr. Dy. Accountant General (Admn)
Office of the A.G.(Audit)-I, U.P., Allahabad, for consi-
deration and necessary action at his end.

Yours faithfully,

Date: April 12, 1989.

12/4/89
(MOHANAN BHATTATHIRI. P.)
Personal Assistant,
O/o the A.G.(Audit)-II,
U.P., Lucknow.

True copy
Attested
R. S. Silvastava
R. S. Silvastava
Advocate
High Court, Central
and State Services Tribunals
C/993, Vikasnagar, Kaisi Road,
LUCKNOW.

by Mohan Bhattathiri

To

The Senior Deputy Accountant General (Admn.),
Office of the Accountant General (Audit)-I,
Uttar Pradesh,
ALLAHABAD - 211001.

THROUGH PROPER CHANNEL.

Subject: Promotion to the post of Personal Assistant with effect from the date on which the said post fell vacant in Lucknow office.

Sir,

I am thankful for issuing my promotion orders to the post of Personal Assistant vide No. AG(Audit)-I/Admn./4-21(3)/314 dated 27.2.1989. In this connection, I submit the following few lines for your sympathetic consideration and kind orders :

1. That as per C&AG's Confidential letter No. 4532-NGE.I/60-74-1 dated 27/28.12.1974, the criteria for promotion of Stenographer to the post of P.A. was reduced from 5 years to 3 years, provided the said Stenographer was attached to Sr. Dy. Accountant General or to Deputy Accountant General, looking after Administration. As per the said orders I completed 3 years of service on 16.6.1979. However, till that period there was only one Sr. Dy. Accountant General, positioned at Lucknow and there was a P.A. attached to him. Subsequently, on 5.7.1982 one more Sr. Dy. Accountant General joined Lucknow office. I was attached to one of the Sr. Dy. Accountants General. I understand that at that stage, perhaps, there were people senior to me at Allahabad office who were waiting promotion and posting to Lucknow. However, the fact is that from 5.7.1982 I have been attached to a Sr.D.A.G.

2. That vide A.G.(Audit)-I/Admn./4-21(3)/1054 to 61 dated 14.8.1985, the Accountant General (Audit)-I, U.P., Allahabad had called for volunteers for considering them for promotion to the post of P.A. at Lucknow and Allahabad offices, as the promotion at both the offices (Lucknow and Allahabad) were under consideration. I had given my willingness, within the prescribed time limit, for being considered for promotion to the post of P.A. at

True Copy
R. Alashed
Response
S. D. S. S. S.
Allocate
High Court, Central
Water Services, Canals
Aligarh, Aligarh Road,
LUCKNOW.

W. A. H.

(25)

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: 2 :

Lucknow, though this matter should have been taken up in July 1982 when two Senior Deputy Accountants General were in position at Lucknow. Further on 19.3.1984 the A.G.(Audit)-II was positioned at Lucknow, meaning that there was one post of Sr.P.A. (with A.G.) and two posts of P.A. (with Sr.DAG) at Lucknow. Even after 3 years, in 1985, when the willingness for promotion ~~XX~~ and posting at Lucknow was called for, vide the aforesaid letter dated 14.8.1985, and subsequent promotions were made, there were two Sr. Dy. Accountants General positioned at Lucknow. The posts of two Sr.DAGs continued till November 1986, when one D.A.G. was posted in place of one Sr.DAG. In short, the posts of two P.As continued to exist at Lucknow office from July 1982 onwards and from March 1984 to November 1986 there were two posts of P.A. and one post of Sr.P.A. In May 1985, the P.A. who was attached to the Sr.DAG at Lucknow was promoted to the post of Sr.P.A. to A.G.(Audit)-II at Lucknow.

3. That I may further mention that when I gave my willingness for promotion and posting at Lucknow and since there were two vacancies of P.A. at Lucknow, under normal circumstances I should have been considered for the said promotion at Lucknow as nobody else was willing to be posted at Lucknow office on promotion. In October 1985, S/Shri Dharam Dev, Jai Prakash and Anil Kumar Ganguly were promoted to the post of P.A. and posted at Allahabad, ignoring the fact that there were two posts of P.A. in Lucknow office. As stated above, since none of the above persons were willing to be posted to Lucknow on promotion, since there were two vacancies of P.A. in Lucknow Office, I, being the only person for posting in Lucknow office on promotion, should have been considered for the promotion. The fact that I was the only candidate, willing to be posted to Lucknow office on promotion is further clear from the fact that nobody, on promotion to the post of P.A., was posted to Lucknow office. In this connection, it is also important to mention here that Shri Anil Kumar Ganguly, who was transferred to Lucknow office in July 1987, has not joined Lucknow office till 6th March 1989 and he has even filed a petition in the

True copy
Attached

Parbhoo

Court, Central
Services Tribunal
1st Road
LUCKNOW

My Amul

: 3 :

Hon'ble Central Administrative Tribunal, Allahabad Bench, against his transfer orders. In nutshell, the above persons were promoted and posted at Allahabad against the vacancies at Lucknow office also, which means the Administration failed to consider that there ~~was~~ were two vacancies at Lucknow office which also need to be filled up. It is further to be mentioned here that I understand the above 3 PAs, promoted and posted at Allahabad, including two against the vacancies at Lucknow, have been allowed the promotion with effect from March 1984, on the basis of their representation.

4. That I became a victim of the wrong decision taken by the Administration at Allahabad of promoting the above persons and posting them at Allahabad against the vacancies at Lucknow and failing to consider that I, being the only Stenographer, willing to be posted on promotion in Lucknow office, should be considered for promotion. Since none of the above 3 persons - S/Shri Dharam Dev, Jai Prakash and Anil Kumar Ganguly - were willing to be posted to Lucknow office on promotion, and since the vacancy was at Lucknow, I, being the only willing person, should have been considered for promotion and posting at Allahabad.

5. That my above contention will be clear from an identical case wherein the Administration at Allahabad took the decision and promoted a junior person and posted at Lucknow as no senior to him was willing to be posted to Lucknow on promotion, since the post was at Lucknow. Shri Raj Kumar Singh, who was working as P.A. to Sr.DAG in Lucknow office, was promoted as Sr.P.A. to A.G.(Audit)-II, U.P., Lucknow on 28.5.1985 and before this date S/Shri Shoukat Ali, Ramji Srivastava, P.P. Bhandari were senior to him. However, since they were not willing to be posted to Lucknow, Shri Raj Kumar Singh was promoted as Sr.P.A. to A.G.(Audit)-II at Lucknow.

6. That it would be clear from the above that I was entitled for promotion to the post of Personal Assistant at Lucknow office from 5.7.1982 or at least from the date the above persons - S/Shri Dharam Dev, Jai

True copy

Attested

Regarding

R.S. Srivastava

Advocate

High Court, Central
and State Services Tribunal,
4/SS3, Vikasnagar, Karsi Road,
LUCKNOW.

Handwritten signature

(27)

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: 4 :

Prakash and Anil Kumar Ganguly - were promoted to the said post, as I have been working with Sr. Dy. Accountant General continuously and there was vacancy at Lucknow and also that the above promotions include against the vacancies at Lucknow. Moreover, I was eligible for the said promotion.

7. I, therefore, humble request your honour to kindly examine my case de novo and in view of the circumstances and also the service rendered by me at Lucknow office, I may be considered for promotion to the post of P.A. from 5.7.1982 or at least from the date ~~my~~ the above persons - Shri Dharam Dev, Jai Prakash and Anil Kumar Ganguly - were promoted to the post of Personal Assistant, with all other consequential service benefits. I once again request your honour to kindly consider my case sympathetically so that full justice is given to me.

Thanking you,

True copy -
P. A. T. A.
Resent
S. S. S.
A. D.
High Court, Central
2nd State Services Tribunal
11553, Vikasnagar, Kasturba Marg,
LUCKNOW.

Lucknow,
Date: April 12, 1989.

Yours faithfully,

(MOHANAN BHATTATHIRI. P.)
Personal Assistant,
Office of the Accountant
General (Audit)-II,
Uttar Pradesh,
14, Vidhan Sabha Marg,
LUCKNOW - 226 001.

[Signature]

(2)

In the Central Administrative Tribunal, Circuit Bench,
OA No. --- of 1990 Lucknow

Mohamed Bhattathiri --- Applicant

Union of India & Others ... Respondents

Office of the Accountant General (Audit)-I,
U.P. Allahabad.

Annexure

No. A.G. (Audit)-I/Admn./4-21(3)/217

Dated: 4.5.89

Sri M. Bhattathiri P.
Personal Assistant,
Office of the Accountant General (Audit)-II, U.P.
14, Vidhan Sabha Marg,
Lucknow - 226001.

With reference to this representation dated 12.4.89
regarding his promotion to the post of Personal Assistant
w.e.f. the date on which the post fell vacant at Lucknow,
he is informed that his is willingness for posting in
Lucknow Office does not establish his claim for promotion
to the Post of personal Assistant unless his Senior had
forgone promotion. He is also informed that he has already
been promoted as P.A. in his turn and there is no question
of antedating his promotion as P.A.

True copy
R. S. Maitra

R. S. Maitra
Advocate

High Court, Central
and State Services Tribunals
4553, Vrastanagar, Kosi Road,
LUCKNO

S. K. Maitra
(S.K. Maitra)
Audit Officer(Admn)

45

(1) In the Central Administrative Services, Circuit House
On 20. 07. 1970 Lucknow
Mohanan Bhattachari - - - - - Applicant
Office of the Accountant General (Audit) II, U. P.
Sahakarita Bhawan 2nd floor
14, Vidhan Sabha Marg,
Lucknow
Representatives
Amritpal Singh
B30

No. CAW/Admin. 1/690-691

Dated 6/6/89

To,

The Administrative Officer,
CA - I Section,
O/O the Comptroller & Auditor
General of India,
10, Bahadur Shah Zafar Marg,
New Delhi-110002

Subject : Promotion of Sri Mohanan Bhattachari, to the post of personal Asstt. w.c.o.f., from the date from which the said post fell vacant in Lucknow.

Sir,

I am forwarding herewith with the application

Sri Mohanan Bhattachari in duplicate regarding his representation as for promotion as stated above, against which he is not satisfied with the decision taken by Allahabad office, for sympathetic consideration.

This issues with the approval of the Accountant General.

True copy -
Alfred General.

Reonday

R. S. Srivastava
Advocate

High Court, Central
and State Services Tribunals
4553, Vikasnagar, Kursi Road,
LUCKNOW.

6/6/89

6/6/89
Audit Officer

Handed

To

The Comptroller and Auditor General
of India,

10, Bahadur Shah Zafar Marg,
NEW DELHI - 110 002.

(Through PROPER CHANNEL)

Subject: Promotion to the post of Personal Assistant
with effect from the date on which the said
post fell vacant in Lucknow office.

Respected Sir,

I joined the Office of the Accountant General-II, U.P., Lucknow on 17.6.1976 as Stenographer. I have been promoted to the post of Personal Assistant vide Senior Deputy Accountant General (Admn.), Allahabad, order No. AG(Audit)-I/Admn./4-21(3)/314 dated 27.2.1989, and have joined the promoted post on 28.2.1989. In this connection, I submit the following few lines for your sympathetic consideration and kind orders :-

1. That as per Comptroller & Auditor General of India Confidential letter No. 4532-N.G.E.I/60-74-1 dated 27/28.12.1974, the criteria for promotion of stenographer to the post of Personal Assistant was reduced from 5 years to 3 years, provided the said stenographer was attached to Sr. Dy. Accountant General or Deputy Accountant General, looking after Administration.

2. I completed 3 years of service on 16.6.1979. However, till that date there was only one Sr. Dy. Accountant General, positioned at Lucknow and there was a P.A. attached to him. Later on one more Sr. Dy. Accountant General joined Lucknow office on 5.7.1982 and I was attached to one of the Sr. Dy. Accountants General.

3. I understand that at that stage, perhaps, there were stenographers senior to me at Allahabad office, who were waiting promotion and posting to Lucknow. However, the fact is that from 5.7.1982 I have been attached to a Senior Deputy Accountant General.

4. That vide Accountant General (Audit)-I/Admn. 4-21(3)/1054 to 61 dated 14.8.1985, the A.G. (Audit)-I, U.P., Allahabad had called for volunteers for

W.M.H.

considering them for promotion to the post of P.A. at Lucknow and Allahabad offices, as the promotion at both the offices (Lucknow and Allahabad) was under consideration. I had given my willingness, within the prescribed time limit, for being considered for promotion to the post of P.A. at Lucknow, though this matter should have been taken up when two Senior Deputy Accountants General were in position at Lucknow. Further, on 19.3.1984 the Accountant General (Audit)-II was positioned at Lucknow; hence there was one post of Sr.P.A. (with A.G.) and two posts of P.A. (with Sr.D.A.G.) at Lucknow. Even after 3 years in 1985, when the willingness for promotion and posting at Lucknow was called for, vide the aforesaid letter dated 14.8.1985, and subsequent promotions were made, there were two Sr. Dy. Accountants General positioned at Lucknow. The posts of two Sr. Dy. Accountants General continued till November 1986, when one Deputy Accountant General was posted in place of one Sr. Dy. Accountant General. In short, the posts of two PAs continued to exist at Lucknow office from July 1982 onwards and from March 1984 to November 1986 there were two posts of P.A. and one post of Sr. P.A. In May 1985, one P.A. who was attached to the Sr. Dy. Accountant General at Lucknow was promoted to the post of Sr.P.A. to Accountant General (Audit)-II at Lucknow.

True copy
Attested
R. S. Sontak

23. ~~Simla~~
Dharam Dev
High Court, Central
Law Courts Complex, Tribunal
Road, Varanasi, Kursi Road,
LUCKNOW.

3. That I may further mention that when I gave my willingness for promotion and posting at Lucknow, since there were two vacancies of P.A. at Lucknow, under normal circumstances I should have been considered for the said promotion at Lucknow, as nobody else was willing to be posted at Lucknow office on promotion. In October 1985, s/Shri Dharam Dev, Jai Prakash and Andi Kumar Ganguly, were promoted at Allahabad office, ignoring the fact that there were two posts of P.A. in Lucknow office. As stated above, since none of the above persons were willing to be posted at Lucknow on promotion, and since there were two vacancies of P.A. in Lucknow office, I, being the only person willing for posting in Lucknow office on promotion, should have

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been considered for promotion. The fact that none of the above persons, promoted to the post of P.A., was willing to be posted to Lucknow office, will be further clear that none of the above persons was posted to Lucknow office on their promotion, while the Administration was fully aware that there were two posts of P.A. vacant in Lucknow office. It is also important to mention here that Shri Anil Kumar Ganguly, who was transferred to Lucknow office in July 1987, did not join Lucknow office till 4th March 1989 and he has even filed a petition in the Hon'ble Central Administrative Tribunal, Allahabad Bench, against the transfer orders. It is also pertinent to mention here that Shri Ganguly joined Lucknow office on 6.3.1989 only after I was promoted to the post of P.A. and since there was only one post of P.A. in Lucknow office, he was relieved for Allahabad office. In nutshell, two Stenographers were promoted and posted at Allahabad against the vacancies existed in Lucknow office and two posts of P.A. remained unfilled in Lucknow office. It is further to be mentioned that I understand that the above 3 P.As, promoted and posted at Allahabad, including two against the vacancies at Lucknow, have been allowed the promotion with effect from March 1984, on the basis of their representation.

True copy
Attested
R. Sardar

LUCKNOW,

4. That I became victim of the wrong decision of Administration at Allahabad of promoting the above persons and posting them at Allahabad against the vacancies at Lucknow and failing to consider that I was the only Stenographer willing to be posted in Lucknow office on promotion. Since none of the above 3 persons - S/Shri Dharam Dev, Jai Prakash and Anil Kumar Ganguly - was willing to be posted at Lucknow on promotion, I, being the only willing person, should have been considered for promotion and posting at Lucknow office against the existing vacancies.

5. That my above contention will become more clear from an identical case of promotion wherein the Administration at Allahabad took the decision and promoted a junior person and posted at Lucknow as no other

Subhakar

senior person to him was willing to be posted at Lucknow on promotion, since the post existed at Lucknow. Shri Raj Kumar Singh, who was working as P.A. to Sr. Dy. Accountant General in Lucknow office, was promoted as Senior Personal Assistant to A.G. (Audit)-II, U.P., Lucknow on 28.5.1985 ignoring his seniors - s/shri Shoukat Ali and ... Ramji Srivastava - as they were not willing to be posted to Lucknow.

6. I had submitted my representation, on 12.4.1989 to the Sr. Dy. Accountant General (Admn.), Allahabad for my promotion to the post of P.A. against the existing post of P.A. in Lucknow office from the date on which it fell vacant. My representation was, however, rejected by the Sr. Dy. Accountant General (Admn.) vide his letter No. NG(Audit)-I/Admn. 4-21(3) 217 dated 4.5.1989, the text of which is reproduced below :

"With reference to his representation dated 12.4.89 regarding his promotion to the post of Personal Assistant w.e.f. the date on which the post fell vacant at Lucknow, he is informed that his willingness for posting in Lucknow office does not establish his claim for promotion to the post of Personal Assistant unless his senior had forgone promotion. He is also informed that he has already been promoted as P.A. in his turn and there is no question of antedating his promotion as P.A."

7. That regarding the point, mentioned in Admn. letter cited above, that my willingness for posting at Lucknow office does not establish my claim for promotion to the post of P.A. unless senior to me had forgone the promotion, it is submitted that the Administration failed to consider the following points :-

- (i) I was the only person willing for posting at Lucknow on promotion.
- (ii) None of my seniors - s/shri Dharam Dev, Jai Prakash and A.K. Ganguly - were willing to be posted in Lucknow office on promotion.
- (iii) The posts of P.A. were in Lucknow office and since none of the above persons was willing to be posted on promotion in Lucknow office, a junior (myself in the instant case), who was willing for posting at Lucknow on promotion, should have been considered.

True copy
Alleged
R. S. Srivastava
Advocate
High Court, Central
and State Services Tribunals
Vidhan Bhawan, Kasturba Gandhi Marg,
LUCKNOW.

Whb

8. That in fact, the unwillingness of two of the above persons (s/Shri Dharam Dev, Jai Prakash and Anil Kumar Ganguly), for being posted to Lucknow on promotion as P.A., should have been taken as their foregoing promotion, as the posts existed at Lucknow. It would not be out of place to mention here that if the post of Sr.P.A. to A.G.(Audit)-II at Lucknow was filled up at Allahabad (as has been done in the instant case), none of the seniors to Shri Raj Kumar (presently working as Sr.P.A. to A.G.(Audit)-II, Lucknow), would have been unwilling for promotion. In fact in both the cases - in my case and in the case of Shri Raj Kumar Singh - seniors at Allahabad were not unwilling for the promotion, but were unwilling for transfer to Lucknow office on promotion. At no stage the Administration at Allahabad seems to have informed the above persons to give their willingness for posting to Lucknow on promotion since two vacancies of P.A. existed at Lucknow, hence their foregoing the promotion did not arise at all.

9. That it would be clear from the above that I was entitled for promotion to the post of Personal Assistant at Lucknow from 5.7.1982 or at least from the date on which the above persons - s/Shri Dharam Dev, Jai Prakash and Anil Kumar Ganguly - were promoted to the said post, as I have been working with Sr. Dy. Accountant General in Lucknow office continuously against the existing vacancy and also that two of the above three persons were promoted and posted at Allahabad, against the two existing vacancies at Lucknow. Besides, I was eligible for the said promotion in terms of C&AG's orders dated 27/28.12.1974.

10. Therefore, I humbly request your honour to kindly have the case examined de novo and in view of the circumstances and also the service rendered by me at Lucknow since 5.7.1982, I may be considered for promotion to the post of P.A. from 5.7.1982 or at least from the date the above persons (s/Shri Dharam Dev, Jai Prakash and Anil Kumar Ganguly) - including against two vacancies at Lucknow office - were promoted i.e., 1.3.1984.

True Copy
 Attest
 P. Ganguly
 R. S. Silvastava
 Advocate
 High Court, Central
 and State Services Tribunals
 (SSST), Vikasnagar, Kursi Road,
 LUCKNOW.

W.H.H.

(6)

35
B36

11. I once again request the Hon'ble Comptroller and Auditor General of India to consider my case sympathetically so that full justice is given to me.

yours faithfully,



(Mohanan Bhattachari, P.)
Personal Assistant to
Sr. Dy. Accountant General
(SEN)

P.No. 05/4203,
Office of the Accountant
General (Audit)-II, U.P.,
14, Vidhan Sabha Marg,
LUCKNOW - 226 001.

True copy Date: May 31, 1989.

Attested
R. S. Silvastava
Aeronet
High Court, Central
and State Services Tribunal
1st, Vithan Marg, Kaisi Road,
LUCKNOW.

(37)

(33)

No. A.G. (Audit)-I/Admn/3-27/New/112

Dated: July 10, 1989

In the Central Administrative Tribunal Circuit, Bench Lucknow
Mahanan Bhattacharya O.N.O. 08-1990
Union of India & Others v/s Appellant
Under the orders of Hon'ble Deputy Accountant Respondants

General (Admn) Shri Raj Shekhar Sharma (P.No.05/4206) *Annex 8*
Stenographer (1200-2040) is promoted as Personal Assistant
(Rs.1400-2300) with immediate effect. In case the official
is on leave the promotion will be effective from the date
of his return from leave. He should exercise his option
for fixation of pay in the higher grade within one month
of the date of his promotion.

True copy Alka

f. gomtay

SK Maitra
(S.K. MAITRA)
Audit Officer (Admn)

14, Vidhan
Marg, Lucknow

No. A.G. (Audit)-I/Admn/3-27/New/113

of date

Copy to:-

1. All Group Officers in the office of the Accountant General (Audit)-I & II at Allahabad & Lucknow.
2. Secretary to Accountant General (Audit)-I & II.
3. Audit Officer/Admn, c/o A.G. (Audit)-II, 14, Vidhan Sabha Marg, Lucknow.
4. Pay and Accounts Officer, c/o A.G. (A&E)-I, U.P., Allahabad
5. Audit Officer/Admn & P.C., c/o A.G. (Audit)-I & II, U.P., Allahabad.
6. All the Coordinating Sections in the c/o A.G. (Audit)-I & II Local
7. Admn. Section (Posting, Transfer & Gradation List) o/o the Accountant General (Audit)-I
8. All P.C. Sections of A.G. (Audit)-I & II, U.P., Allahabad
9. C.R. Group, Sr. Deputy Accountant General (Admn) Cell, c/o A.G. (Audit)-I
10. Secretary, Staff Cooperative Society, AGUP, Allahabad.
11. Personal files of the persons concerned.
12. Person concerned.
13. Notice Board.

SK Maitra
Audit Officer (Admn)

R*

p.32

THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

Misc. Application of 199 -

80

Counter Affidavit

On

behalf of Respondent No.....

In

O. A. No. 243 / 1997

Miharan Bhattacharjee Petitioner

Vs.

Union of India and Others Respondent

K. C. SINHA
Advocate

339

COUNTER AFFIDAVIT

IN

REGISTRATION O.A. NO. "243/90

MoharanBhattatirir P

...Petitioner

Versus

Union of India & Others Respondents.

AFFIDAVIT OF Smt. Mridula Kapoor

AGED ABOUT 36 YEARS

wife of SRI Pankaj Kapoor

AT PRESENT POSTED AS

Senior Deputy Accountant-General (Administration)
Office of Accountant-General (Andhra) I, U.P. Tribunal
(DEPARTMENT)

I, the deponent, name given above, do hereby
solemnly affirm and state on oath as under:

1. That the deponent is at present posted

as Senior Deputy Accountant-General (Administration)
Office of Accountant-General (Andhra) I, U.P. Tribunal
and has been authorised to file this counter
affidavit on behalf of respondents and as such he is
well acquainted with the facts of the case deposed
to below.

✓ Mridula Kapoor

2. That the deponent has read the application filed by Sri Mahanar Dattatriraj P. in this Hon'ble Tribunal as well as counter-plea filed in support hereof and has understood their contents.
3. That before giving parawise reply the following facts are being ~~stated~~ ^{stated} in order to facilities this Hon'ble Tribunal in administering justice.
4. That the petitioner joined the office of the Accountant General (Audit)-II Lucknow on 17.6.1976 as a Stenographer and was promoted as P.A. vide order dt. 27.2.1989. A photo stat copy of the same is being annexed herewith and is being marked as Annexure No. 1 to this counter affidavit.
5. That while preparing the panel for promotion of Stenographer as Personal Assistant during the panel year 1985 to fill in the then existing vacancies (which were 3 at that time - Allahabad and 2 at Lucknow) an extra vacancy

✓ *Mridula Singh*

-3-

was expected to arise which, however, did not materialise as the sanctioned post of A.G.(Audit) III could not be operated. Willingness was called for from the Stenographers for being posted at Lucknow. The petitioner was at serial no.4 in the seniority list of the stenographers and he had already been working at Lucknow gave his willingness for posting at Lucknow whereas his senior were not willing for posting at Lucknow.

6- That the Departmental Promotion Committee while drawing up the panel decided to select the three persons (viz., Sri Dharam Deo, Jai Prakash and A.K. Ganguly) on seniority-cum-fitness basis irrespective of their willingness or otherwise for their posting at Lucknow.

7- That for filling up the existing vacancy at Lucknow it was decided that the juniormost among the promotees would be posted at Lucknow.

✓ Meidula Saper

8. That Sri A.K. ^{Ganguly} was posted at Lucknow. Sri Ganguly did not join at Lucknow for quit some time. He proceeded on long leave and even contested his transfer to Lucknow in the Central Administrative Tribunal but on no occasion did he refuse promotion. He finally joined in March 1989 at Lucknow.

9. That promotions of all the above three persons were ante-dated to 1.6.1984 because the vacancies were existing on that date... .

10; That the petitioner is claiming his promotion as Personal Assistant i.e. 1.3.1984 pleading that he as a steno remained attached most of the time of his service with senior Dy. Accountants General stationed at Lucknow and he had also given his willingness for posting at Lucknow whereas Sri Ganguly and his other seniors had not given their willingness.

✓ Mridula Kapoor

-4-

11. That the petitioner had filed a representation to the respondent no. 1 who ~~was~~ rejected the representation on 15th September, 1989. A photo stat copy of the same is being annexed and is being filed as Annexure No. 2 to this counter affidavit.

12. That the contents of paragraphs 1, 2, 3 of the petition needs no comments.

13. That in reply to the contents of Paragraph 4(1) of the petition it is submitted that the petitioner joined the office of the Accountant General II at Lucknow on 17.6.76 as Stenographer whose cadre control was with the Accountant General -I, Uttar Pradesh at Allahabad.

14. That the contents of paragraphs nos. 4(2), (3), (4) of the petition needs no comments.

15. That in reply to the contents of
✓ *Mridula Kapoor*

paragraph 4(5) of the petition it is stated that in the month of August 1985, there were only 5 officers in the rank of Senior Deputy/ Accountant General/ Deputy Accountant General who were entitled to personal Assistants in the scale of Rs. 425-700 viz. (i) Senior Deputy Accountant (Administration), (ii) Senior Deputy Accountant General (Revenue Audit (Central), (iii) Senior Deputy Accountant General (Revenue Audit (States), (iv) Senior Deputy Accountant General (Companies and Corporations), (v) Senior Deputy Accountant General (State Electricity Board) and not 7 as mentioned by the petitioner.

16. . . . That is the reply to the contents of paragraph 4(6) of the petition it is stated that although the posts are sanctioned separately for Accountant General (Audit)-I and Accountant General (Audit)-II, all posts for purposes of recruitment/promotion constitute a common cadre which is controlled by Accountant

✓ Mridula Japen

6.

General (Audit)-I as per the provisions of para 2.6 of the Manual of Instructions for Restructuring of Cadres in Indian Audit and Accounts Department. Seniority in all cadres is also decided with reference to the date of entry of an official in the cadre as well as in accordance with the relevant instructions and rules. Promotion of the Lucknow based staff is also regulated in accordance with their position in the aforesaid common cadre without any discrimination as regards station of posting. No disadvantage accrues to the staff stationed at Lucknow or anywhere else in the matter of promotion and the plea of disregard of the principles of fair play and equity is totally untenable.

17. That the contents of paragraph 4(7) of the petition need no comments as a suitable reply has been given in foregoing paragraph and the same need not be repeated here again.

18. That the contents of paragraph 4(8) of the petition are admitted only to the extent

✓ Mridula Sajwan

that some Auditors were promoted as Senior Auditors in 1989 subject to their joining at Lucknow against the vacancies at Lucknow. However, they did not accept the promotions as they did not want their transfer from Allahabad to Lucknow on various personal grounds.

19. That in reply to the contents of paragraph 4(9) of the petition it is accepted that the letter asking for willingness was issued by the cadre controlling authority i.e. Accountant General (Audit)-I. The letter referred at Annexure-II simply stated that the matter of promotion as Personal Assistant was under consideration.

20. That the contents of paragraph 4(10) of the petition needs no comments.

21. That in reply to the contents of paragraph 4(11) of the petition it is stated that only 2 promotions, and not 3 as stated

✓ Meenakshi Saper

by the petitioner, were made to Personal Assistants posts in October 1985 strictly in accordance with the rules.

22. That the contents of paragraph 4(12) of the petition needs no comments.

23. That in reply to the contents of paragraph 4(13) of the petition it is stated that the promotions were made in a common cadre consisting of posts of both the offices of Accountant General (Audit) -I and Accountant General (Audit)-III, by the cadre controlling authority i.e. Accountant General (Audit)-I.

24. That the contents of paragraph 4(14) of the petition are admitted to the extent that Sri A.K.Ganguly was promoted but strictly in accordance with the relevant rules keeping in view his seniority as accepted by the petitioner in para 4(9).

✓ Meenakshi Sapse

Text

25. That the contents of paragraphs 4(15) and 4(16) of the petition needs no comments in view of the reply given in para 4(13) and 4(14) above.

26. That the contents of paragraph 4(17) as of the petition are not correct and /such/ are denied. The promotion of Sri A.K.Ganguly was valid as per relevant rules and was made without any favour.

27. That the contents of paragraph 4(18) of the petition are accepted to the extent that the promotions of S/Sri Dharam Deo, Jai Prakash and A.K.Ganguli were antedated to 1.6.84 and not 1.3.84 as mentioned by the petitioner.

28. That the contents of paragraph 4(19) of the petition have no relevance to the case as they relate to a separate cadre of Senior Personal Assistant. However, it may be mentioned that

✓ *Mridula Sayer*

- 10 -

only after ascertaining the non-acceptance of promotion by the seniors, the promotion of Sri R.K. Singhi was made.

29. That the contents of paragraph 4 (20)

of the petition are ^{not} correct and as such are denied.

It is submitted that Sri Ganguli was senior to the petitioner and his promotion was made on the recommendation of a duly constituted Departmental promotion committee. Sri Ganguli, no doubt, did not join his duties at Lucknow where he was posted after his promotion and where ^a vacancy in Personal Assistant cadre was existing, for quite a long time. But he had on no occasion refused his promotion. He proceeded on long leave and also contested his case in the Tribunal.

✓ Meenakshi Saper

- 11 -

30. That the contents of paragraph 4(21) of the petition needs no comments.

31. That the contents of paragraph 4(22) of the petition needs no comments, However, allegation made about favouring Sri Ganguli is fully denied.

32. That in reply to the contents of paragraph 4(23) of the petition it is stated that no undue favour has been shown to anybody and postings of personals were made in accordance with the administrative ~~excess~~ exigencies ~~excess~~ and needs.

33. That the contents of Paragraph 4(24) of the petition needs no comments in view of the reply against para 4.20.

34. That the contents of para 4.21

✓ Meenula Saper

- 12 -

4(25) and 4(26) of the petition needs no comments.

35. That the contents of paragraphs 4(27) of the petition needs no comments except that the case of Sri Raj Kumar Singh relating to his promotion as Senior Personal Assistant is altogether different and has no relevance with this case.

36. That the contents of paragraph 4(28) and 4(29) of the petition needs no comments.

37. That the contents of paragraph 4(30) of the petition are not correct and as such are denied in view of the replies against foregoing paras.

38. That that in reply to the contents of paragraph 4(31) of the petition it is stated that in view of replies against paras 4(20) and 4(30)

✓ Mridula Saper

13.

there is no case for considering any antedating of promotion.

39. That in reply to the contents of paragraph 4(32) of the petition it is stated that the recruitment rules for appointment to the Personal Assistants' cadre, which is done by promotion from Stenographers' grade, do not envisage calling for willingness or unwillingness from the eligible persons. The Departmental Promotion Committee was, however, supplied with all the relevant information including willingness/unwillingness of the officials for posting at Lucknow.

40. That in reply to the contents of paragraph 4(33) of the petition, it is stated that the charges made by the petitioner are denied. The condition of probation for two years has been prescribed in accordance with the provisions of the Recruitment Rules of Personal Assistant

✓ Mridula Saper

- 14 -

which fact had, however, inadvertently been omitted in the office order promoting Sri Raj Shekhar Sharma as Personal Assistant.

41. That in reply to the contents of paragraph 4(34) of the petition it is stated that there is no case for antedating promotion of the petitioner from 28.2.1989 to 1.3.1984.

42. That the contents of paragraph 4(35) of the petition needs no comments in view of the replies.

43. That the contents of paragraph 4(36) of the petition needs no comments.

44. That in reply to the contents of paragraph 5 of the petition it is submitted that none of the grounds taken by the petitioner/s are sustainable in the eye of law.

45. That the contents of paragraph 6 of

✓ Mridula Japra

15.

are not admitted, hence denied.

46. That the contents of paragraph 7 of the petition need no reply.

47. That in reply to the contents of paragraph 8 and 9 of the petition, it is submitted that in view of the facts and circumstances stated above, the petitioner is not entitled to any relief as prayed and as such application is liable to be dismissed.

48- That the contents of paragraphs 10, 11 and 12 of the petition need no reply.

That the contents of paragraphs 1 and 2 of this affidavit are true to my personal knowledge; those of paragraphs 3 to 43, 45, 46 and 48 of the petition are based on perusal of regards and those of paragraphs

✓ Mridula Sapem

paragraphs

of this affidavit are based on legal advice
and which all I believe to be true that no part of
it is false and nothing material has been concealed

SO HELP ME GOD.

✓ *Mrindula Jayaram*
.....

(Deponent)

I, D.S.Chaubey, Clerk, to Sri K.C.Sinha,
Additional Standing Counsel, Central Government
High Court Allahabad do hereby declare that the
persons making of this affidavit and alleging
himself to be the deponent is known to me from
the papers in his possession and I am satisfied that
he is the same person.

.....
Ch

Clerk

Solemnly affirmed before me on this ...

Mrindula Jayaram

- 17 -

Day of 1991 at am/pm by the deponent
who is identified by the aforesaid clerk.

I have satisfied myself by examining
the deponent that ~~xx~~ he understands the contents
of this affidavit which has been read over and
explained to him.

OATH COMMISSIONER.

✓ Meidula Saper

OFFICE OF THE ACCOUNTANT GENERAL (AUDIT)-I: UTTAR PRADESH

ALLAHABAD.

1989A

BS7

Ctj

No. A.G. (Audit)-I/Admn/4-21(3)/313 Dated; February 27, 1989.

Under the orders of Senior Deputy Accountant General (Admn) Sri Mohanan Bhattathiri.P., Ordinary grade Stenographer (Rs.1200-2040) is promoted as Personal Assistant (Rs1400-2300) on probation for a period of two years with immediate effect. In case the official is on leave, promotion will be effective from the date of his return from leave. He should exercise his option for fixation of pay in the higher grade within one month of the date of his promotion.

Skmaidre

(S.K. MAITRA)

Audit Officer (Admn)

**Personnel 05/4-23*

No. A.G. (Audit)-I/Admn/4-21(3)/314

o date

Copy to:-

1. All Group Officers in the Office of the Accountant General (Audit)-I & II, U.P., Allahabad & Lucknow.
2. Secretary to Accountant General (Audit)-I & II.
3. Audit Officer/Admn, c/o A.G. (Audit)-II, U.P. q 14, Vidhan Sabha Marg, Lucknow.
4. Pay and Accounts Officer, o/o A.G. (A&E)-I, U.P., Allahabad.
5. Audit Officer/Admn & P.C., o/o A.G. (Audit)-I & II, U.P., Allahabad
6. All the Coordinating Sections in the o/o A.G. (Audit)-I & II Local.
7. Admn. Section (Posting, Transfer & Gradation List), o/o A.G. (Audit)-I
8. All P.C. Sections of A.G. (Audit)-I & II, U.P., Allahabad.
9. C.R. Group, Senior Deputy Accountant General (Admn) Cell o/o A.G. (Audit)-I.
10. Secretary, Staff Cooperative Society, AGUP, Allahabad.
11. Personal files of the persons concerned.
12. Persons concerned.
13. Notice Board.

Skmaidre
Audit Officer (Admn)

✓ *Mridula Japer*

9

28/2/89

देशव्यवहार भारत के
महालेखापरीक्षक को
प्रियंका जाए।
Communications should be
addressed to the Comptroller
Auditor General of India.
का पता: आवेदन
Geographic Address: ARGEL

देशव्यवहार
FROM



No. 794-N.2/29-88-II.

भारत के नियन्त्रक-महालेखापरीक्षक का कार्यालय,
नई दिल्ली-110002

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

दिनांक

Dated

भारत के नियन्त्रक-महालेखापरीक्षक
नई दिल्ली-110002
THE COMPTROLLER AND AUDITOR GENERAL OF INDIA
NEW DELHI-110002

मेवा में
The

विषय:
Subject:

The Accountant General(Audit)-I,
Uttar Pradesh,
ALLAHABAD-211001.

Representation of Shri Mohanan Bhattathiri P. for antedating
his promotion as Personal Assistant.

Sir,

I am directed to refer to your office letter
No. AG(Audit)I/Admn/4-2(3)/626 dated 25.7.1989 on the
subject mentioned above and to state that the represen-
tation of Shri Mohanan Bhattathiri P. has been carefully
considered and rejected.

Up
18/9
A suitable reply may be given to him.

Yours faithfully,

(N. VISWANATHAN)
ADMINISTRATIVE OFFICER(N)

SA. D.G. Admin. S. 22

25/8/89

19/9/89

390

✓ Mridula Saper

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

M. P. No. 186/91 (L)

O.A. No. 243 of 1990 (L)

Mohanan Bhattathiri.P.

.. Applicant

Versus

Union of India & others

.. Respondents.

fixed for 8/9/91

APPLICATION FOR EX-PARTE HEARING.

The humble Applicant, abovenamed, most respectfully states as under :

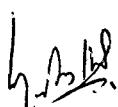
1. That the above application was filed on 1.8.1990 and was heard on 17.8.1990. The application was admitted on 17.8.1990 and 4 weeks time was allowed for counter-affidavit and 2 weeks time for rejoinder-affidavit and the date for final hearing was fixed 30.10.1990. It was listed on 21.11.1990 for admission, but since admission was already done, the above application was listed before the Deputy Registrar on 9.1.1991, and again on 7.2.1991.

2. That the application is listed on 8.4.1991 (today), but no counter-affidavit has been received, although nearly 8 months have passed.

3. That Dr. Dinesh Chandra, Additional Government Counsel, had taken the notices on behalf of the Respondent

P R A Y E R.

It is, therefore, most respectfully prayed that this application may be put up for orders before the



B60

(2)

Hon'ble Bench for ex-parte hearing.


Lucknow:

Date: April 08, 1991.


(R.S. Srivastava)
Advocate
Counsel for the Applicant.

B61

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL (CIRCUIT BENCH)

L U C K N O W.

Misc. Appln. No. of 1991.

Mohenan Bhattathiri.P. ..Applicant

In re:

C.A. No.243 of 1990(L)

Mohenan Bhattathiri.P. ..Applicant

Versus

Union of India & others .. Opp. partie/
Respondents.

Listed for 20.9.91.

MISCELLANEOUS APPLICATION FOR EX-PARTE HEARING.

The Applicant, abovenamed, most respectfully begs to submit as under :

1. That the above application was filed on 1.8.1990 and on 17.8.1990, while admitting the said application, this Hon'ble Tribunal was pleased to pass order to the effect that the counter-affidavit may be filed within one month and rejoinder-affidavit within two weeks thereafter and 30.10.1990 was fixed for final hearing.

2. That since then the counter-affidavit has yet not been filed by the Respondents. On 22.4.91 the Hon'ble Tribunal were pleased to pass orders that no further time would be allowed for filing the counter-affidavit, but this opportunity has not been availed by the Respondents though they were to submit the counter-affidavit on 18.7.1991.

3. That since the last occasion was given to the Respondents, which was not availed by them for filing

(2)

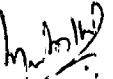
the counter-affidavit, the application may be allowed to be heard *ex-parte*.


Applicant

P R A Y E R.

WHEREFORE, it is respectfully prayed that the case may be put up for orders of the Tribunal as and when the Bench is available, so that orders may be passed for *ex-parte* hearing of the case.

Lucknow:

Date: September 3, 1991.  Applicant *Reema Singh*
through: Sri R.S. Srivastava
Advocate.
Counsel for the Applicant.

VERIFICATION.

I, Mohanan Shattathiri.P., aged about 37 years, son of late Shri Parameswaran Bhattathirippad, working as P.A. in the Office of the A.O.(Audit)-II, U.P., Lucknow, do hereby verify that the contents of paras 1 to 3 of this application are true to my personal knowledge and that I have not suppressed any material fact.

Lucknow:

Date: September 3, 1991.


Applicant.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL (CIRCUIT BENCH)

LUCKNOW.

Registration No. O.A.243 of 1990(L)

Mohanan Bhattathiri. P.

.. Applicant

versus

Union of India & others

.. & Respondents.

REJOINDER STATEMENT OF THE APPLICANT IN REPLY TO THE
COUNTER AFFIDAVIT FILED ON BEHALF OF THE RESPONDENTS.

The Applicant most respectfully begs to state
as under :

1. That the Applicant is fully conversant with the facts deposed hereunder. He has gone through the contents of the counter affidavit, filed on behalf of the Respondents, and after understanding the same fully, he gives below the para-wise reply.
2. That the contents of para 1 need no reply.
3. That the contents of para 2 of the counter affidavit also need no reply.
4. That the contents of para 3 need no comments.
5. That the contents of para 4 need no reply.
6. That the contents of para 5 are not admitted as stated. Only this much is admitted that there were five vacancies for PAs (3 at Allahabad and 2 at Lucknow) for panel year 1985. Sixth vacancy which did not materialise is not of any relevance as Senior P.A. is posted with A.G.

My 20th

7. That in reply to the contents of para 6 it is stated that it was incumbent upon the Respondents to have considered the fact that since two Senior Deputy Accountants General were positioned at Lucknow, two P.A.s should be posted at Lucknow, which is in accordance with the instructions of the Comptroller & Auditor General of India, contained in letter No.4532-NGE-I/60-74-1 dated 27/28.12.1974. Since the posts were at Lucknow, keeping in mind that the Applicant was the only person willing for posting at Lucknow on promotion, his case should have been considered, taking that the unwillingness of persons at Allahabad for posting to Lucknow on promotion as their forgoing the promotion. The action of the Respondents of promoting, without considering that the posts at Lucknow should not be filled up by promoting and subsequently posting at Allahabad, has resulted in great inconvenience to the Sr. Dy. Accountants General, posted at Lucknow, who were denied the services of P.A. and also resulted in nugatory expenditure. The D.P.C. also erred in selecting only 3 persons against 5 vacancies which existed in 1985. The Applicant should have been selected if the selection would have been made for 5 vacancies. The action of D.P.C. was, thus, wholly arbitrary.

8. That in reply to the contents of para 7 it is submitted that the averments in the para under reply are the result of after-thought of the Respondents. The vacancies at Lucknow should have been ~~filled~~ filled up immediately on the promotion of S/Shri Dharam Dev, Jai Prakash and A.K. Ganguly, which was not done. It is important to mention here that had it been decided,

W. B. W.

as alleged in para under reply, to fill up the vacancies at Lucknow, then two P.As should have been posted to Lucknow, since there were two Sy. Dy. Accountants General, positioned at Lucknow in the year 1985, which is admitted by the Respondents in para 15 of the counter-affidavit.

9. That in reply to the contents of para 8 it is stated that Shri A.K. Ganguly (not Shri A.K. Gaur, as stated in the first line of the para under reply) was posted to Lucknow only in July 1987, while he was promoted to the post of P.A. against one of the vacancies at Lucknow, in October 1985. This clearly shows the intention of the Respondents and clearly indicates that the averments in para 7 of the counter affidavit are totally false. The Respondents were forced to post Shri A.K. Ganguly to Lucknow as in June 1987 the applicant was selected and was relieved to join the Central Administrative Tribunal, Patna, on deputation. The applicant has reasons to believe that had he not been relieved for joining the Central Administrative Tribunal, Patna Bench, on deputation, Shri A.K. Ganguly would not have been posted to Lucknow. The deponent could not join (Applicant) CAT, Patna, on account of some communication gap between the Office of the Comptroller & Auditor General of India and Central Administrative Tribunal, Patna, and it although he had not joined C.A.T., Patna, his journeys from Lucknow to Patna and back were treated as official. As stated in the para under reply by the Respondents, Shri Ganguly did not join Lucknow, which clearly indicates that he was not, rather never willing to join Lucknow. Hence his promotion, against one of the vacancies existed in Lucknow Office, was totally

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unjust and illegal. It is also important to mention that Shri Ganguly joined at Lucknow office in March 1989 (1989), after the promotion of the applicant, on getting an assurance from the Respondents that his case for transfer back to Allahabad would be considered on joining at Lucknow, which will be clear from Annexure-3 to the application.

10. That the contents of para 9 need no reply. However, it is stated that when the promotions of S/Shri Dheram Dev, Jeet Prakash and A.K. Ganguly, were ante-dated as the vacancies were existing on that date, there is no justification for not ante-dating the promotion of the applicant while the vacancy at Lucknow was existing even before that date. Hence the claim of the applicant for ante-dating his promotion with effect from 1.3.1984 is wholly justified.

11. That the contents of para 10 need no reply.

12. That the contents of paras 11, 12, 13 and 14 are not disputed.

13. That in reply to the contents of para 15 of it is submitted that the Respondents have admitted that there were two Sr. Dy. Accountants General i.e., Incharge of Companies/Corporations and UPSEB respectively. The said Sr. Dy. Accountants General were positioned at Lucknow. When two posts of P.A.s existed at Lucknow, the claim of the applicant for promotion and posting as P.A. at Lucknow, would not be questionable as the D.P.C. did not consider 5 persons against 5 vacancies.

14/11/14

14. That in reply to the contents of paras 16 and 17 of the counter affidavit the assertions made in paras 4.6 and 4.7 respectively of the application are reiterated to be true. It is further submitted that paras 2.5 and 3.3.6 of Manual of Instructions for Restructuring of Cadres in Indian Audit & Accounts Department are also relevant. The same are reproduced below :

2.5 DETERMINATION OF BRANCH OFFICES FOR ACCOUNTS & ENTITLEMENT AND AUDIT OFFICES ACCORDING TO STAFF AVAILABILITY :

Branch Offices for Accounts & Entitlement/Audit will be constituted at convenient places according to the staff availability, options, existing vacancies, etc. The object of the scheme is to avoid disturbance of any of the existing staff through transfers. Proposals regarding these may be sent by ASG(A&E) and ASG(Au) to Director (O&M) after action regarding calling for applications and allocation to Audit Offices is completed. These proposals should be accompanied by details of distribution and location of allottees at each level to Accounts & Entitlement Office/Audit Offices.

3.3.6. Wherever isolated posts of common services like gestetner operator, manager (typing), catastakers and welfare assistants etc. have been sanctioned, new posts will have to be sanctioned, new posts will have to be sanctioned *de novo* for the newly created Audit Offices as justified by the existing norms and practice. All existing posts, if there be more than one will be allocated equally between Accounts & Entitlement and Audit Offices all fractions remaining with the former; if only one exists it shall remain with the parent cadre of the Accountant

Wb/w

General for whom also sanction will have to be renewed in the new Accounts & Entitlement Offices.

Stenographers and personal assistants including senior personal assistants shall also be eligible to apply. wherever the posts are more than one, in each category they will be divided according to the numbers of posts of accounts officers/audit officers, group officers and accountants general in each office. Posts will be sanctioned for new group officers and heads of department as per existing norms and practice.

All staff cars, office machinery and equipment and other moveable assets shall be allocated on the same principles as applicable to isolated posts. Management of estates, residential colonies for bifurcated offices shall vest in the Accountant General (AG). "

It is clear from contents of above paras that -

- (i) The object of the scheme is to avoid disturbances of any of the existing staff through transfers;
- (ii) The Stenographers and Personal Assistants including Senior Personal Assistants shall also be eligible to apply. wherever the posts are more than one, in each category they will be divided according to the numbers of posts of accounts Officers/ Audit Officers, Group Officers and Accountants General in each office. Posts will be sanctioned for new group officers and heads of department as per existing norms and practice.

The promotion of Shri Ganguly at Allahabad against vacancy of Lucknow and also transferring him to Lucknow was against the spirit of the scheme. The applicant was, thus, fully entitled to have been promoted as P.A. at Lucknow against vacancy at Lucknow.

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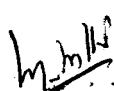
(87)

15. That in reply to the contents of paras 18, and (17 & 18 - repeated), it is stated that the assertions made in para 4.8 of the application are true and are reiterated. It is further submitted that the Respondents have admitted that the promotion order of some of the auditors to the post of Senior Auditors was made subject to their joining at Lucknow against the vacancies at Lucknow. The same procedure should have been followed/ adopted in the case of Shri A.K. Ganguly - i.e., his promotion should have been subject to joining at Lucknow, since the post of P.A. existed at Lucknow, which was not followed in order to give undue favour to Shri Ganguly and deny the benefit of promotion to the Applicant at Lucknow.

16. That in reply to the contents of para 19 it is submitted that if the Respondents had to fill up three vacancies of P.A. (including two at Lucknow) on the basis of seniority only, without considering that the posts are to be filled up where it existed, then there was no justification of calling for the willingness of persons for posting at Lucknow on promotion. Moreover, it has clearly been mentioned in the letter, contained in Annexure-2 to the application, that the promotion to the post of P.A. in Office of the A.G. (Audit), situated at Allahabad and Lucknow was to be made. Hence there was no justification in not filling up the vacancies at Lucknow by promoting willing person.

17. That the contents of para 20 need no reply.

18. That the contents of para 21 are denied and



the contents of para 4.11 of the application are reiterated to be true. Three persons - S/Shri Dharan Dev, Jai Prakash and A.K. Ganguly were promoted in October 1985, which is an admitted fact in para 6 of the counter-affidavit. It is vehemently denied that the promotions were in accordance with rules.

19. That the contents of para 22 call for no reply.

20. That the contents of para 23 are misconceived and misleading and hence are not acceptable.

21. That in reply to the contents of para 24 it is stated that only this much is admitted that Shri A.K. Ganguly was promoted, but it is emphatically denied that it was according to rules, as while doing so the Respondents failed to consider that he was promoted against one of the existing vacancies at Lucknow, and as such either he should have been transferred to Lucknow, immediately on his promotion or if he was unwilling to be posted, his immediate junior and willing person for posting at Lucknow on promotion (the Applicant) should have been promoted.

22. That in reply to the contents of para 25 the contents of paras 4.15 and 4.16 of the application are reiterated to be true. The Respondents have given evasive reply, as they have not given any specific reply as to why the posts of P.R. at Lucknow were not filled up.

23. That the contents of para 26 of the counter affidavit are totally denied and in reply the contents of para 4.17 of the original application are reiterated to be true.

M.M.H

24. That in reply to the contents of para 27 it is stated that in para 9 of the counter affidavit the Respondents have admitted that the promotion of S/Shri Dham Dev, Jai Prakash and A.K. Ganguly was ante-dated with effect from 1.6.1984 because the vacancies were existed on that date too. In this connection, it may be stated that if the same principles are followed in the case of the applicant, since two vacancies of P.A. were admittedly existing at Lucknow even before 1.3.1984, there will be no justification in not making the promotion of the deponent effective from 1.3.1984.

25. That the contents of para 20 of the counter affidavit are totally denied being misconceived and misleading. The case quoted by the applicant is relevant in the instant case. He also reiterates the contents of para 4.19 of the original application to be true. It is also pertinent to mention here that in the case of promotions to the post of P.A. also should have been made only after ascertaining the non-acceptance of promotion by seniors, which was not done by the Respondents. The following chart will make the position clear :

In the case of Shri R.K. Singh
Sr. P.A. to A.G.

Promotion was made after ascertaining the non-acceptance of promotion by seniors.

In the case of Applicant

Promotion was made without ascertaining the non-acceptance of promotion by seniors.

The Respondents should have either made the promotion order of Shri Ganguly subject to his joining at Lucknow or should have taken his unwillingness for posting to Lucknow on promotion as P.A., as his non-acceptance/

W.M.H.

foregoing of promotion, as post at Lucknow was existing. Moreover, the Respondents have not given any definite proof in order to show that both the cases of Shri R.K. Singh and that of the Applicant are different.

26. That the contents of para 29 of the Counter affidavit are misconceived and have been made in order to misguide this Hon'ble Tribunal; hence are emphatically denied and in reply the contents of para 2x 4.20 of the application are reiterated to be true. It may be made clear that Shri A.K. Ganguly was not posted to Lucknow for quite some time, after about 21 months he was posted to Lucknow, in July 1987 and he filed an application in the Hon'ble Central Administrative Tribunal, Allahabad, against his transfer order. He joined the Lucknow Office only in March 1989 on getting an assurance from the Respondents that his case for transfer back to Allahabad would be considered on joining at Lucknow and that too after the applicant was promoted as P.A. in February 1989. It is further submitted that on no occasion Shri A.K. Ganguly was asked to refuse or forego his ~~promition~~ promotion if he was unwilling to be posted to Lucknow on promotion nor his promotion was made subject to joining at Lucknow. Hence the stand taken by the Respondents that Shri Ganguly never refused his promotion, is not tenable in the eye of law. This is also a clear proof of the intentions of the Respondents to have given undue favour to Shri Ganguly.

27. That the contents of para 30 of the counter affidavit call for no reply.

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28. That in reply to the contents of para 31 the contents of para 4.22 of the application are reiterated to be true. It is stated that the averments made in the para under reply clearly indicate that the Respondents have given undue favour to Shri A.K. Ganguly. The Respondents should have posted Shri Ganguly to Lucknow in 1985, but they only posted him in July 1987, that too in the compelled circumstances, mentioned in para 9 of this rejoinder statement.

29. That the contents of para 32 of the counter affidavit are emphatically denied and the contents of para 4.23 of the application are reiterated to be true.

30. That the contents of para 33 are strongly denied and the contents of para 4.24 of the application are reiterated to be true.

31. That the contents of para 34 call for no reply.

32. That the contents of para 35 of the counter affidavit are vehemently denied and the contents of para 4.27 of the application are reiterated to be true. The case of Shri Raj Kumar Singh is very much relevant in the instant case as both the cases are of same nature and under the same cadre controlling authority. In the cases of Shri Raj Kumar Singh and that of the Applicant the Respondents have adopted different procedures. The chart given below will make the position further clear that the Respondents have been adopting the rules as per their sweet will, ignoring the existing rules of promotion and posting :

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(a) In para 18 of the counter affidavit the Respondents have admitted that the promotion of the auditors to the post of Senior Auditor was made subject to their joining at Lucknow, since vacancies existed at Lucknow.

(b) In para 28 of the counter affidavit the Respondents have admitted that the promotion of Shri Raj Kumar Singh was made to the post of Sr. P.A. (since seniors to him were unwilling to be posted to Lucknow on promotion) after ascertaining the non-acceptance of promotion by the seniors, since the post was at Lucknow.

(c) The Respondents have not adopted none of the above rules while promoting Shri A.K. Ganguly - neither non-acceptance was called for from unwilling seniors (since the post was at Lucknow) nor the promotion was made subject to his joining at Lucknow since the vacancy existed there. On the other hand his posting to Lucknow was made nearly after 21 months in July 1967, in a compelled circumstance, mentioned in para 9 of this rejoinder statement, as a result of continued requests of the then Lt. Dy. Accountant General (S&B) to post a P.A. since the applicant was relieved to join C.A.T., Patna on deputation.

All the above facts would go to show that the Respondents have adopted 3 different sets of rules in the ~~EDM~~ 3 cases, cited above, in the manner which suited them, ignoring the existing and prescribed rules.

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33. That the contents of para 36 call for no reply.

34. That the contents of para 37 are totally denied and the contents of para 4.30 of the application are reiterated to be true. The facts mentioned in the foregoing paras are relevant.

35. That the contents of para 38 of the counter affidavit are strongly denied and the contents of para 4.31 of the application are reiterated to be true. In view of the facts ^{mentioned} hereinabove, the promotion of the applicant deserve to be ante-dated.

36. That the contents of para 39 of the counter-affidavit are emphatically denied and in reply the contents of para 4.32 of the application are reiterated to be true. It is very strange to note that the Respondents have made the assertion that the promotion to the post of P.A. does not envisage calling for willingness or unwillingness from the eligible persons. If that was the case then there was no need of calling for volunteers for their willingness for posting at Lucknow on promotion (contained in Annexure-2 to the O.A.). Further had it been so, as alleged by the Respondents, why the non-acceptance of the seniors to Shri Raj Kumar Singh was ascertained, before he was promoted to the post of ~~xxxxx~~ Sr. P.A. from the post of P.A. Thus, it will be clear that the Respondents have made the statement, in the para under reply, which is absolutely incorrect and misleading. Regarding non-supply of relevant information including willingness/unwillingness would be clear from the D.P.C. proceedings, which this Hon'ble Tribunal may be pleased to summon and look into them.

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37. That the contents of para 40 are vehemently denied and the contents of para 4.33 of the application are reiterated to be true. It is submitted that the Respondents have neither mentioned whether the provision of probation period has been provided in the promotion order of Shri Raj Shekhar Sharma nor have produced/annexed a copy of the revised promotion order. It is further important to mention here that even though the probation period of two years, in respect of the applicant, expired in February 1991, neither orders regularising him nor extending his probation period has been issued by the Respondents. This shows that the Respondents do not act fairly, but acted with prejudice and bias against the applicant.

38. That the contents of para 41 of the counter affidavit are denied and in reply the contents of para 4.34 of the application are reiterated to be true. It is further submitted that since the promotion of S/Shri Dharan Dev, Jai Prakash and A.K. Ganguly was ante-dated with effect from 1.6.1984, since the posts were existing from that date, as clearly admitted by the Respondents, there is no reason why the promotion of the applicant be not antedated with effect from 1.3.1984, keeping in mind that the post of P.A. was vacant at Lucknow even prior to that date.

39. That in reply to the contents of para 42 of the counter affidavit, the contents of para 4.35 of the application are reiterated to be true.

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40. That the contents of para 43 call for no reply.

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41. That in reply to the contents of para 44, it is stated that all the grounds taken by the Applicant are genuine and are sustainable in the eye of law.

42. That the contents of para 45 are strongly denied and the contents of para 6 of the application are reiterated to be true. It is very strange that the Respondents have denied the para 6 (remedies exhausted) of the application, which have been proved by the Applicant by documentary evidence i.e., annexures 4, 5, 6 and 7 to the application.

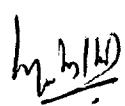
43. That the contents of para 46 need no reply.

44. That the contents of para 47 are denied and the contents of para 8 ~~and~~ and 9 of the application are reiterated to be true. In view of the position made clear in the instant rejoinder statement and also in the original application, the applicant is entitled to all the reliefs prayed for and the application deserves to be allowed with cost.

45. That the contents of paras 48 call for no reply.

Lucknow:

Date: February 21, 1992.


Applicant.

VERIFICATION.

I, Mohanan Bhattathiri P., aged about 37 years, son of late Shri Parameswaran Bhattathiripad, resident of ~~XX~~ Quarter No.36, Type-III, A.C. residential Colony, Sector 'C', Aliganj, Lucknow, do hereby verify that the contents of paras 1 to 9, 11 to 23, 26 to 31 and 33 to 45 of this rejoinder statement are true to my personal

(16)

knowledge and those of paras 10, 24, 25 and 32 are believed to be true on the basis of legal advice and that I have not suppressed any material fact.

Lucknow:

Signature of Applicant

Date: February 21, 1992. through, (R.S. Srivastava)

Counsel for Applicant.

Advocate.

B79

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

Misc. Appln. No. 519 of 1992.

Mohanan Bhattathiri.P. .. Applicant

In re:

O.A. No. 243/1990(L)

Mohanan Bhattathiri.P. .. Applicant

Versus

Union of India & others .. Respondents.

F.E. 8.7.1992.

APPLICATION FOR SUMMONING OF DOCUMENTS FROM THE RESPONDENTS

The humble Applicant, abovanemed, most respectfully
begs to submit as under :

1. That the above O.A. was filed with the prayer
that the Respondents may be directed to make the promo-
tion of the Applicant effective from 1.3.1984 and allow
him all the consequential service benefits.

2. That for proper ~~adjudication~~ adjudication of the
above O.A., it is necessary to summon the following docu-
ments from the Respondents, for perusal by this Hon'ble
Tribunal. It was mentioned in para 36 of the Rejoinder
statement that calling for D.P.C. Proceedings was nece-
ssary to ascertain the facts stated therein.

(i) The entire file in connection with D.P.C. proceed-
ings, in which decision regarding the promotion of
S/Shri Dharam Dev, Jai Prakash and A.K. Ganguly was

taken, including the information supplied to DPC in regard to their willingness/unwillingness for their posting at Lucknow on promotion.

(ii) Letter No. AG(Audit)I/Admn./4-2(3)/626 dated 25.7.1989, by which the clarification/remarks of the Respondent No.3 were sent to the Comptroller and Auditor General of India, on the representation of the Applicant. This is necessary to ascertain the grounds on which the representation was rejected. The clarifications/remarks given by Respondent No.3 on the representation of the Applicant must have been the basis for rejecting the representation.

P R A Y E R.

WHEREFORE, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to summon the above documents from the Respondents on the day when Final Hearing is done to enable the Hon'ble Tribunal to impart justice in the case of the Applicant.

Lucknow:

Date: May 29, 1992.

Applicant
Through (R.S. Srivastava)
Advocate.
Counsel for the Applicant.

Central Administrative Tribunal
(Circuit Bench) Lucknow

In the Central Administrative Tribunal Allahabad.

No. 243 of 1996 (L)

Moham Phattani - P.

Petitioners

Appellant

Applicant

VERSUS

Accountant General (Audit) of Central Government
& Comptroller-Auditor General of India
New Delhi

Respondent

Opposit Party

I, T. K. Sanyal in the above matter hereby appoint and retain
SHRI KRISHNA CHANDRA SINHA, Advocate High Court

to appear, act and plead for me/us in the above matter and to conduct/prosecute and defend the same in all interlocutory or miscellaneous proceedings connected with the same or with any decree or order passed therein, appeals and or other proceedings there from and also in proceedings for review of judgment and for leave to appeal to Supreme Court and to obtain return of any documents filed therein, or receive any money which may be payable to me/us.

2. I/We further authorise him to appoint and instruct any other legal practitioner authorising him to exercise the powers and authorities hereby conferred upon the Advocate whenever he may think fit to do so.

3. I/We hereby authorised him/them on my/our behalf to enter into a compromise in the above matter, to execute any decree order therein, to appeal from any decree/order therein and to appeal, to act, and to plead in such appeal or in any appeal preferred by any other party from any decree/order therein.

4. I/We agree that if/we fail to pay the fees agreed upon or to give due instruction at all stages he/they is are at liberty to retire from the case and recover all amounts due to him/them and retain all my/our monies till such are paid.

5. And I/we, the understand do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my own acts, as if done by me/us to all intents and purposes.

29-9
Executed by me/ us this 19th day of April 1996 at Allahabad

Signature

19.4.96

Executant/s are personally known to me he has/they

✓ Have signed before me

Satisfied as to the identity of executant/s signature/s. (ग्रामीण महानेताकार (लेख पत्र) ग्रन्थ एवं द्वितीय

(where the executant/s is/are illiterate blind or unacquainted with the language of
vakalat)

Certified that the content were explained to the executant/s in my presence
in the language known to him/them who appear/s perfectly to
understand the same and has/have signed in my presence.

Accepted

K. C. SINHA
Advocate

High Court, Allahabad
Counsel for Applicant/Respondents

No.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
(CIRCUIT BENCH), L U C K N O W.

O.A. NO. 243 of 1990 (2)

Mohanan Bhattathiri.P.

.. Applicant

versus

The Union of India & others

.. Respondents

FORM - I

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

Title of the case: Antedating the promotion w.e.f. 1.3.1984

<u>Sl. No.</u>	<u>Description of documents relief upon</u>	<u>Page Nos.</u>
1.	Application	1 to 19
2.	Annexure No.1: Promotion order of the Applicant dated 27.2.89	20
3.	Annexure No.2: Letter dated 14.8.1985 calling for option	21
4.	Annexure No.3: Letter dated 8.3.1989	22
5.	Annexure No.4: Representation dated 12.4.1989, submitted to Respondent no.3 alongwith request for sending the same	23 to 27
6.	Annexure No.5: Rejection letter dated 4.5.1989	28
7.	Annexure No.6: Representation dated 31.5.1989, submitted to Respondent no.1 & for- warded to him vide letter dated 6.6.1989	29 to 35
8.	Annexure No.7: Rejection letter dated 26.9.1989	36
9.	Annexure No.8: Promotion order of Sri Raj Shekhar Sharma.	37
10.	Vakalatnama (with original only)	38

Date: August 1, 1990

Lucknow.


Signature of the Applicant

0-2-Ao-243/90

25/2/93

Hon. Mrs. Justice U. E. Srivastava V.R.
Hon. Mr. K. Obayya A.M.

This case is adjourned
to 30/3/93

b
A.M.

V.R.

(cont)

Off
(A.M.)
exchanged
S.M.
22/3/93

Central Administrative Tribunal
Lucknow Bench, Lucknow.

.....
ORDER SHEET

Malek Chelawat - O.P. letter O.A./T.A. No. 241/10

Date / Office Report / Order

25/4/93

OR

SP/1

24/4/93

MANISH/-

26
A. 91
HON. JUSTICE U.C. SARKAR
BEN MR. A. B. GUTHRIE

AM

Shri R. S. Sivaram appears for
respondents. wants time to file
defender's counter. Allowed counter
may be filed within 3 weeks.
Rejoinder may be filed within
two weeks thereafter.

List for hearing according
to serial number.

1
AM

2
V.C.

28.10.91
D.R.

Sri R. S. Sivaram is
present for applicant
and Dr. D. Chandra
for the O.P. is present
O.P. to file counter
by 12/12/91.

12.12.91
D.R.

Both the parties are
present. counter has
been filed on 11.11.91.
Now applicant to file
Rejoinder by 24/12/92

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Registration No. _____ of 1989

11/3/90

APPLICANT(S) Shri Maham Bhattacharya

RESPONDENT(S) C.C.S.

ap
11/3

Particulars to be examined

Endorsement as to result of examination

1.	Is the appeal competent ?	yes
2.	a) Is the application in the prescribed form ?	yes
	b) Is the application in paper book form ?	yes
	c) Have six complete sets of the application been filed ?	yes
3.	a) Is the appeal in time ?	yes
	b) If not, by how many days it is beyond time ?	N.A.
	c) Has sufficient cause 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 Attested by Advocate
	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

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

dinesh/

Saf
1/8/98

243/906

17.09.90

Shri. P. Srinivasan, AM
Shri. S. P. Sharma, JM

See original
order
on main
petition

Admit.
Dr. D. Chander leaves notices on behalf of the respondent
may file their reply within one month from today. Applicant
may file the R.A., if any, within 2 months hereafter. call no 3629.

• JM

AM

30.10.90

We direct ACM to 21.11.90

21.11.90

Hon. Mr. Justice L. Nath, VC.

Hon. Mr. M. M. Singh, AM

This case is wrongly
listed as it was admitted on
17-8-90. Counter may be filed
within 2 weeks. First before
O.R. on 9-11-91 for fixing
a date, if possible after
completion of record.

OR

DR. D. Chander
leaves notices on
behalf of respondent
but no counter
S.F.O.

294

H. H.

OR

AM

VC

✓

22.4.91 Hon. Mr. D K Dgrawal JM.

Hon. Mr. K. Obazga, AM

9.1.91

D. R.

Audited, A.Gs, V.P. appears on behalf
of opposite parties 2 & 3. It has
been stated that Shri K.C. Sarker
has been engaged and counter
affidavit is under preparation.
Let Counter be filed within 6 weeks,
regarding within 2 weeks thereafter.
First before O.R. on 18-7-91 for
completion of pleadings.

Since the opps do not
file counter within stipulated
time they will forfeit
their right to file the
same.

Both the parties
are present.

Dr. D. Chandra
for the respondents
did not file counter.

He is directed
to file counter
by 7/2/91.

Dee

JM

7/2/91

Both the parties
are present
but counter has
not been filed. Per
up on 8/4/91 for counter
reply.

For use in Tribunal's office

Date of filing

or

Date of receipt by post :

Registration No.

Central Administrative Tribunal

Circuit Bench, Lucknow

Date of Filing .. 11.8.90

Date of Rec'd .. Past .. -

71

Deputy Registrar(J)

CSW
11/81ac

SIGNATURE
for REGISTRAR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL (CIRCUIT BENCH)

L U C K N O W

Mohanan Bhattathiri.P., aged about

36 years, son of late Sri Parameswaran
Bhattathirippad, resident of L/VL, 125
sector 'L', Aliganj, Lucknow. applicant

Notified
17/8/90

versus

Rs. 80/-
Advocacy

1. Union of India through the
Comptroller and Auditor General of
India, 10, Bahadur Shah Zafar Marg,
New Delhi.

2. The Accountant General (Audit)-I,
U.P., Allahabad.

3. The Senior Deputy Accountant General
(Admn.), Office of the Accountant
General (Audit)-I & II, U.P.,
Allahabad. respondents

Details of application

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

Letter No.A.G.(A)/I/Admn./238 dated 26.9.1989,
issued under the signature of the Assistant

Myself

Audit Officer (Admn.), Office of the A.G.(Audit)-II, U.P., Allahabad, intimating the applicant rejection of his representation made to the Comptroller & Auditor General of India, New Delhi.

2. Jurisdiction of the Tribunal :

The applicant declares that the subject matter of the order, against which he wants redressal, is within the jurisdiction of the Tribunal.

3. Limitation :

The Applicant further declares that the application is within the limitation period, prescribed in Section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE :

4.1. That the applicant was appointed in the then Office of the Accountant General-II, U.P., as Stenographer and he joined his duties on 17.6.1976.

4.2. That the work and conduct of the Applicant were found excellent throughout his career and nothing adverse was ever communicated to him. In recognition of his good work, the Applicant was also awarded an Appreciation Letter on 2.2.1989 by the then Accountant General (Audit)-II, U.P., Lucknow. Taking into account his good work and conduct, and after perusing his Confidential Reports, the Applicant was also recommended for posting to the overseas Audit Office i.e., London in 1989, by the then Accountant General (Audit)-II, U.P., Lucknow, to the Comptroller and Auditor General of India.

W.H.H.

4.3. That the Applicant was promoted on the post of Personal Assistant w.e.f. 28.2.1989 vide Office Order No. AG(Audit)I/Admn.4-21(3) dated 27.2.1989, a copy of which is being filed as Annexure No.1 to this application.

4.4. That as per instructions, issued by the Comptroller and Auditor General of India in 1974, the prescribed service for Stenographers for promotion to the scale of Rs.425-700 (now revised to Rs.1400-2300) has been reduced to 3 years from 5 years and that the Stenographers in then the scale of Rs.425-700 (now redesignated as Personal Assistant from Selection Grade Stenographer) would continue to be attached to the Officers of the rank of Senior Deputy Accountant General level and to the Deputy Accountant General Incharge of Administration.

4.5. That the details of officers of the rank of Senior Deputy Accountants General/Deputy Accountants General (Admn.), with whom the Stenographers in the pay scale of Rs.425-700 (now known as P.A.) could be attached, are given below :

- (1) Sr. Dy. Accountant General (Admn.)
- (2) Sr. Dy. Accountant General (Inspection - Civil)
- (3) Sr. Dy. Accountant General (Revenue Audit - Central)
- (4) Sr. Dy. Accountant General (Revenue Audit - State)
- (5) Sr. Dy. Accountant General (Works Audit)
- (6) Sr. Dy. Accountant General (Company/ Corporations) at Lucknow.
- (7) Sr. Dy. Accountant General (State Electricity Board)

M. A. H.
The above detail is for the year 1985 (August).

4.6. That the principles of fairplay and equity demanded that consequent on establishment of Office of the Accountant General (Audit)-II at Lucknow in 1974, the seniority of the persons at various cadres, posted at Lucknow, should have been prepared separately to facilitate promotions on the posts which fell vacant at Lucknow. Since sanctions of various posts for A.G. (Audit)-II, Lucknow and A.G. (Audit)-I, Allahabad are being given separately, it was incumbent upon the Respondents to have prepared seniority lists separately so that promotions could be made as and when vacancy arises in the Lucknow Office. This was not done by the Respondents 2 and 3 simply because their powers regarding promotions etc. would be curtailed. This resulted in upper hand of the staff posted at Allahabad and denial of promotional channel and other privileges to the staff posted at Lucknow, as has been done in the case of the Applicant. Had the Respondents 2 and 3 taken timely action, this contingency would not have arisen. After fixing the seniority separately, the position as regards Lucknow office, the Applicant would have been at the top and he would have easily been promoted against the vacancy of P.A. at Lucknow much earlier than claimed.

4.7. That the employees posted at Lucknow, after having given their willingness, remained in dark about their future promotions and other privileges as neither the details of their service conditions were decided nor they have still been decided. This has resulted in discrimination and prejudice to the interest of the staff posted at Lucknow. Since crystal-cut guidelines/conditions have not been prescribed and, as stated above, the staff posted at Lucknow remain in dark

W.M.H.

about their future, it was necessary on the part of the Respondents to have prescribed clear cut conditions on future promotions, etc. of the staff posted at Lucknow. The present conditions of the staff posted at Lucknow indicate that they are in doldrums about their continuance at Lucknow and after establishment of their families at Lucknow, they can be transferred to Allahabad which is prejudicial to the interest ~~xx~~ of those employees who are posted at Lucknow. Apart from that the condition has so worsened that nobody opts for coming down to Lucknow office because of uncertainty of their stay at Lucknow, it may be shorter period or longer one is not known and ~~xx~~ whatever vacancy/vacancies at Lucknow remain vacant and are filled up at Allahabad with the plea that they are seniors to the staff posted at Lucknow and as such the work at Lucknow also suffers.

4.8. That the above plea of the Applicant gets strength from the fact that some Auditors were promoted as Senior Auditors at Allahabad in 1989 subject to their joining at Lucknow, where the vacancies existed, but because of the conditions being uncertain, they have not joined at Lucknow and ultimately they were promoted at Allahabad itself against the vacancies at Lucknow.

4.9. That against the two vacancies at Lucknow and one at Allahabad, willingness was called for, for posting at Lucknow from 8 Stenographers including the Applicant, vide letter No. Ma Le/Le A/Prathan/Prashashan/ 4-21(3)/1054 & 6 dated 14.8.1985. This letter was issued by the Accountant General (Audit)-I, Allahabad (Respondent No.2), who was the controlling authority of the cadre of Stenographers. The first four names, seniority-wise, from whom willingness was called for, were as under :



1. Shri Dharam Deo
2. Shri Jai Prakash
3. Shri A.K. Ganguly
4. Shri Mohanan Bhattathiri.P. (Applicant)

In this letter it was stated that promotions for posts of Personal Assistants were to be made in the scale of Rs.425-700. A copy of the said letter is being filed as Annexure No.2 to this application. A perusal of the said letter would reveal that the willingness for being posted to Lucknow, after promotion, was/called for ^{only} vide the said letter.

4.10. That the Applicant submitted his willingness for posting on promotion to the post of P.A. at Lucknow, within the prescribed time limit i.e., 20.8.1985.

4.11. That in October 1985 three Stenographers were promoted to the post of P.A. and were posted at Allahabad. The persons so promoted were S/Shri Dharam Dev, Jai Prakash and Anil Kumar Ganguly. There were, as stated in para 4.5, two Senior Deputy Accountants General positioned at Lucknow and as such, in accordance with letter No.4532-NGE.I/60-74-1 dated 27/28.12.1974, there were two posts of Personal Assistants at Lucknow, but ignoring this fact all the promotions were made at Allahabad.

4.12. That it is further noteworthy that none of the above three persons, who were promoted to the post of P.A., were posted to Lucknow, though two posts were vacant at Lucknow.

4.13. That since none of the three persons, promoted had given their willingness to be posted at

W. A. B.

Lucknow Office on promotion as P.A. and since there were two vacancies at Lucknow, the Applicant, who was the only willing person for posting at Lucknow on promotion, should have been promoted against vacancies existing at Lucknow.

4.14. That by ignoring the claim of the Applicant for promotion as P.A. against the existing vacancies at Lucknow, the Respondents 2 and 3 had acted arbitrarily and had promoted Shri A.K. Ganguly, who had not given his willingness for posting at Lucknow, against the vacancy at Lucknow. He, after his promotion, was not posted to Lucknow with the result that the vacancy of Lucknow was adjusted at Allahabad. Thus the Senior Deputy Accountant General, Lucknow, who was in dire need of a P.A., had to work without P.A. all through.

4.15. That the Respondents 2 and 3 should have, in order to fill up the vacancy of two P.A. at Lucknow office, either posted two of the above persons at Lucknow Office or, since they were not willing to be posted to Lucknow on promotion, should have promoted the Applicant at Lucknow, against one of the vacancies existed at Lucknow particularly when the applicant had submitted his willingness for posting at Lucknow. The two persons who did not give their willingness should have been deemed to have foregone their promotions since two vacancies were existed at Lucknow and not at Allahabad.

4.16. That it would be clear from the above that the promotion of persons, against the vacancies of P.A. at Lucknow, were made arbitrarily and resulted in hostile discrimination against the Applicant.

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4.17. That it is further to be mentioned here that the promotion of Shri A.K. Ganguly at Allahabad, in the manner mentioned above, was made by the Respondents No.2 and 3 illegally and giving undue favour to him and with the sole intention to deprive the Applicant from his valid, genuine and legal claim.

4.18. That not only this, the Respondents 2 and 3 have made the promotion of S/Shri Dharam Dev, Jai Prakash and Anil Kumar Ganguly, effective from 1st March 1984, on the basis of their representation.

4.19. That the Respondents 2 and 3, after giving due weightage that unwilling persons should not be promoted and posted to places outside Allahabad, had promoted Shri Raj Kumar Singh, P.A. to the post of Senior Personal Assistant on 28.5.1985. Shri Singh had given his willingness for posting at Lucknow (he was the only willing person for posting at Lucknow on promotion as Sr. P.A.) and his claim was considered and he was promoted as Senior Personal Assistant in preference to his three seniors (Shri Shaukat Ali, Shri K.K. Asthana and Shri Ramji Srivastava) because all the three senior persons to Shri R.K. Singh had not given their willingness for posting at Lucknow. Since Applicant's case was on all fours with case of Shri R.K. Singh and three persons, who were senior to the Applicant, had not given their willingness for posting at Lucknow, ignoring the applicant's case for promotion to the post of P.A. was, thus, arbitrary, against all canons of service jurisprudence and also against the principle of equity. The authorities concerned should have acted fairly and not to the

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prejudice of the interest of the Applicant. Showing favour to Shri Ganguly by promoting him to the post of P.A. and ignoring valid and just claim of the Applicant was wholly unjust and illegal and violated provisions of Articles 14 and 16 of the Constitution of India.

4.20. That the Applicant's case further gets strength from the fact that Shri Anil Kumar Ganguly, who was transferred to Lucknow office only in July 1987, Lucknow did not join office till 14th March 1989 and he even filed an application in the Hon'ble Central Administrative Tribunal, Allahabad Bench, challenging his transfer order. This is a clear proof that Shri Ganguly was not willing for posting to Lucknow, even at the time of his promotion as P.A. and this also make clear the gross illegality and injustice committed by the Respondents in promoting Shri Ganguly at Allahabad, against the vacancy at Lucknow. This is also to be made clear that Shri Ganguly was posted to Lucknow in July 1977 - after about 21 months of his actual date of promotion - i.e., in October 1985, and promoting Shri Ganguly at Allahabad against the vacancy at Lucknow and not transferring him to Lucknow till ^{July} June 1987, clearly establishes that undue favour was shown to him by the Respondents 2 and 3. This also resulted in nugatory expenditure because the Senior Deputy Accountant General at Lucknow had to work without a P.A. and Shri Ganguly remained at Allahabad without vacancy.

4.21. That Shri A.K. Ganguly joined Lucknow office on 14th March 1989 (FN) on being informed by the Administration at Allahabad that his application for

W.B.

transfer back to Allahabad would be considered only on joining at Lucknow Office and after the applicant joined as P.A. after his promotion on 28.2.1989. At that time there was only one Sr. Dy. Accountant General at Lucknow, and as such Shri Ganguly was relieved for joining at Allahabad on his own request. A true copy of the letter (endorsement) No.AG(Au)II/Admn./961 dated 8.3.1989, issued by the Administration at Allahabad to Shri Ganguly's residential address, is being filed as Annexure No.3 to this application.

4.22. That as stated above, Shri A.K. Ganguly was transferred to Lucknow in July 1987 by the Respondent No.3 and his LPC was also received in Lucknow office. Shri Ganguly had not joined the Lucknow office nor he submitted any application for leave to his place/ office of posting. But the payment of salary for few months was made by the Respondent No.3 at Allahabad after getting back the LPC from Lucknow office, which was issued by the Office of the Respondent no.3 itself. Till date the revised LPC has not been received in the Lucknow Office. Even the payment of salary for the period Shri Ganguly remained in Lucknow office from 14.3.1989 was also made in Allahabad office on his joining back there in April 1989. These all go to show that the Respondents no.2 and 3 were favouring Shri Ganguly.

4.23. That the averment regarding giving undue favour to Shri A.K. Ganguly would be further clear from a perusal of Annexure no.3, wherein in the endorsement it has been mentioned that at present there is no P.A. at Allahabad and that Sr. Dy. Accountant General (Revenue Audit - Central) was without a P.A. This is a wrong and false statement as there were three Sr. Dy. Accountants



General in the Office of the A.G.(Audit) at Allahabad and 3 personal Assistants i.e., Smt. S. Bhattacharya, PA, Shri Dharam Dev, PA and Shri Jai Prakash, PA.

4.24. That thus the Applicant became the victim of the malafide intentions and wrong decisions of the Respondents 2 and 3. Since Shri Ganguly was not willing to be posted at Lucknow, his promotion at Allahabad, against the vacancy existed at Lucknow was wholly irregular and illegal. His unwillingness for posting at Lucknow should have been deemed to be foregoing of promotion and the claim of the Applicant should have been considered and he should have been promoted in place of Shri Ganguly, who was next junior to Shri Ganguly and the only willing person for posting at Lucknow on promotion.

4.25. That after his promotion and subsequent joining as PA, the Applicant submitted a representation dated 12.4.1989, stating therein all the facts, mentioned above, and requesting the Respondent no.3 to make the promotion of the Applicant effective from 1.3.1984 - the date of promotion of persons at Allahabad, against the vacancies at Lucknow. A copy of this representation is being filed as Annexure No.4 to this application.

4.26. That the said representation of the Applicant was rejected vide letter No.AG(Audit)-I/Admn. 4-21(3)/217 dated 4.5.1989, a copy of which is being filed as Annexure No.5 to this application.

4.27. That it was mentioned in the rejection letter, contained in Annexure No.5, that the willingness

of the applicant for posting at Lucknow does not establish the claim for promotion to the post of P.A. unless his seniors had foregone the promotion. This plea of the Respondent No.3 is incorrect and has been made to cover up the mistake committed by him. It is submitted, in this connection, that the unwillingness of the seniors at Allahabad for posting to Lucknow on promotion as P.A. should have been deemed to be their foregoing of promotion since the post was at Lucknow. The Respondents 2 and 3 failed to consider this point at the time of promoting persons at Allahabad against the vacancy existing at Lucknow. The case of the applicant being in all fours with the case of Shri Raj Kumar Singh, who was the only person willing to be posted at Lucknow and was promoted by Respondents No.2 and 3, ignoring the claim of seniors who had not given willingness for posting at Lucknow, the applicant had his legal right for consideration for promotion by the Respondents 2 and 3. Ignoring the claim of promotion of the applicant, by Respondents 2 and 3, was thus wholly arbitrary and capricious and resulted in violation of Articles 14 and 16 of the Constitution of India.

4.28. That by aggrieved by the rejection of the representation, by the Respondent no.3, the applicant submitted another representation, stating all the facts, including those have been mentioned in the foregoing para, to the Respondent no.1. A copy of the said representation dated 31.5.1989 is being filed as Annexure no.6 to this application.

4.29. That vide letter No. AG(A)I/Admn./283 dated 26.9.1989, the Assistant Audit Officer (Admn.), Office of the Accountant General (Audit)-I, U.P..

Allahabad, informed the applicant that the Respondent no.1 has carefully considered the representation of the Applicant and had rejected it. A copy of this rejection letter is being filed as Annexure no.7 to this application.

4.30. That the applicant is clearly entitled to be promoted to the post of P.A. with effect from 1.3.1984 (the date of promotion of persons at Allahabad against the vacancy existing at Lucknow).

4.31. That there is no justification for not antedating the promotion of the Applicant with effect from 1.3.1984, taking into account the fact that he is clearly entitled to the same and the promotion of S/Shri Dharam Dev, Jai Prakash and A.K. Ganguly was antedated on the basis of their representation.

4.32. That full facts regarding the two vacancies at Lucknow, the willingness of the applicant for being posted at Lucknow ~~XXX~~ after promotion and unwillingness of 3 persons promoted, etc. were not furnished to Departmental Promotion Committee in correct perspective with the result that they recommended the promotions of 3 persons who were senior to the applicant and ignored the claim of the applicant. On the recommendations of the DPC the three vacancies (1 at Allahabad and 2 at Lucknow) were filled up by promoting 3 persons at Allahabad and the Senior Deputy Accountant General at Lucknow office continued to be without P.A. till the applicant was promoted. The entire action of the DPC and acceptance of recommendations of DPC by Appointing Authority was thus arbitrary, contrary to legal provisions, suffered from vice of favouritism and was against accepted and

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well settled law of the service jurisprudence. The entire record of DPC when summoned by the Hon'ble Tribunal, will testify the above truth.

4.33. That the bias and prejudice of the Respondents ~~knowing~~ towards the applicant would be further clear from the fact that in the promotion order dated 27.2.89 (Annexure No.1) a condition of probation for two years has been prescribed whereas in the promotion order of Shri Raj Shekhar Sharma, who is a junior to the applicant and was promoted on July 10, 1989, this condition has not been prescribed, which also shows undue favour to the persons of liking of the Respondents. A photostat copy of the promotion order of Shri Raj Shekhar Sharma is being filed as Annexure No.8 to this application.

4.34. That the applicant has been advised to state that since the date of promotion of S/Shri Dharam Dev, Jai Prakash and A.K. Ganguly to the post of P.A. was made effective from 1.3.1984, on the basis of their representation, there is no point or justification in not antedating the promotion of the Applicant and this action of the Respondents is a hostile discrimination and hits the provisions of Articles 14 and 16 to the Constitution of India.

4.35. That it is pertinent to point out here that if the applicant's promotion is made effective from 1.3.1984, none of the seniors to the applicant are going to be affected, as the applicant would remain junior to them. On the other hand, if his promotion is not made effective from 1.3.1984, his future career will be affected as the Respondent no.1 has fixed 5 years service as P.A. for promotion to the next higher post.

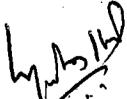
W.M.H.

4.36 That the cause of action arose on 26.9.89 when final orders were passed by CAG rejecting the representation and intimated to applicant.

5. That aggrieved by the rejection of the representation by the Comptroller and Auditor General of India and intimated to the applicant vide orders dated 26.9.1989, the applicant was left with no other alternative except to invoke the jurisdiction of the Hon'ble Tribunal for speedy and efficacious remedy and the applicant is filing this application for redressal of his legitimate grievance, inter-alia, on the following grounds :

GROUNDS

- (a) Because the unit-wise seniority list of the employees of various cadres was not prepared separately on the establishment of A.C. (Audit)-II, U.P., Lucknow.
- (b) Because the full facts and information was not furnished to Departmental Promotion Committee.
- (c) Because the recommendations of the DPC were based on incomplete information.
- (d) Because the Appointing Authority acted arbitrarily and capriciously in promoting Shri A.K. Ganguly by ignoring the claim of the applicant.
- (e) Because filling up the post, existing at Lucknow, by promoting Shri Ganguly at Allahabad and thereby leaving the post at Lucknow unfilled, was against all canons of legality.
- (f) Because the said Shri A.K. Ganguly was not immediately posted at Lucknow office after his promotion.
- (g) Because Shri Ganguly had not given his willingness for posting at Lucknow after promotion.



(h) Because the Applicant had only given his willingness for posting at Lucknow on promotion as P.A.

(i) Because Shri Raj Kumar Singh, P.A. was promoted as Senior P.A. by passing over the claim of seniors as Shri Singh had given his willingness for posting at Lucknow whereas his seniors had not given their willingness for posting at Lucknow.

(j) Because the action of the Appointing Authority ~~xxx~~ attracted the frown of Articles 14 and 16 of the Constitution of India.

6. Details of remedies exhausted

i) Representation was made to Senior Deputy Accountant General (Admn.), Office of the A.G.(Audit)-I, U.P., Allahabad on 12.4.1989 (Annexure No.4).

ii) The above representation was rejected vide letter No.AG(Audit)-I/Admn./4-21(3)/217 dated 4.5.1989 (Annexure no.5).

iii) Representation was also made to the Comptroller and Auditor General of India, New Delhi, vide letter dated 31.5.1989 (Annexure No.6).

iv) The above representation has been rejected by the Comptroller & Auditor General of India and the rejection was communicated to the Applicant vide letter No. A.G.(A)I/Admn./283 dated 26.9.1989 (Annexure no.7).

7. Matters not previously filed or pending with any Court.

The Applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application

has been made before any Court or any other authority or any other bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Reliefs sought :

In view of the facts mentioned in para 4 of the application, the Hon'ble Tribunal may be pleased :

- (a) to direct the Respondents to antedate the promotion of the Applicant with effect from 1.3.1984, the date since when the promotion of 3 the three Stenographers as P.A., S/Shri Dharam Dev, Jai Prakash and A.K. Ganguly, has been antedated, togetherwith consequential reliefs including arrears of pay and allowances, seniority, etc.
- (b) to allow other relief/reliefs as deemed just and proper in the circumstances of the case.
- (c) to allow the cost of this application.

9. Interim order, if any, prayed for :

No interim order is prayed for.

10. The application is not being sent by post, but is being submitted in the office of the Tribunal.

11. Particulars of Bank Draft/Postal Order, filed in respect of the application fee :

Postal Order No. 8 02 414738 for Rs 50/-
dated 30.7.90 issued from High Court Post Office
LUCKNOW

12. List of enclosures :

Postal Order as detailed in para 11 alongwith

documents as per index, Annexures 1 to 8 and Vakalatnama.

VERIFICATION

I, Mohanan Bhattathiri.P., aged about 36 years, son of late Shri Parameswaran Bhattathirippad, resident of L/VL, 125, Sector L, Aliganj, do hereby verify that contents of paragraphs 1 to 12 except 4, 19, 4.27 & 5

are true to my personal knowledge and paragraphs

are believed to be true on the basis of legal advice and that I have not suppressed any material fact.

Dated: August 1, 1990
Lucknow.

SIGNATURE OF THE APPLICANT

Through R.S. Srivastava
(R.S. Srivastava)
Advocate

Counsel for the Applicant

R. S. Srivastava
Advocate
High Court, Central
and State Services Tribunals
4/553, Vikasnagar, Kursi Road,
LUCKNOW.

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For the Central Administrative Tribunal, Lucknow
OANDI - - - of 1990

Mohanan Bhattachiri Applicant

VS.

Union of India & Others - - - Respondents

OFFICE OF THE ACCOUNTANT GENERAL (AUDIT)-I, UTTAR PRADESH
ALLAHABAD

No. A.G. (A) I/Admn./283

Dated: 26.9.89.

To

Sri Mohanan Bhattachiri,
Personal Assistant
Office of A.G.U.P. (Audit) II U.P.
14 Vikhan Sahba Marg,
Lucknow.

With reference to his representation dated
31.5.1989 for antedating his promotion as personal
assistant, Sri Mohanan Bhattachiri is informed that his
case was referred to the Headquarter's office where it
was considered carefully and rejected by the Comptroller
and Auditor General of India.

True Copy

Attested

Respectfully

R. S. Silvastav

Advocate

High Court, Central
and State Services Tribunals
6/53, Vikramgar, Kursi Road,
LUCKNOW.

S. Chaturvedi 26.9
ASSTT. AUDIT OFFICER (ADMN.)

Handwritten signature

In the Central Administrative Tribunal, Circuit Bench
Lucknow

ब अदालत श्रीमान

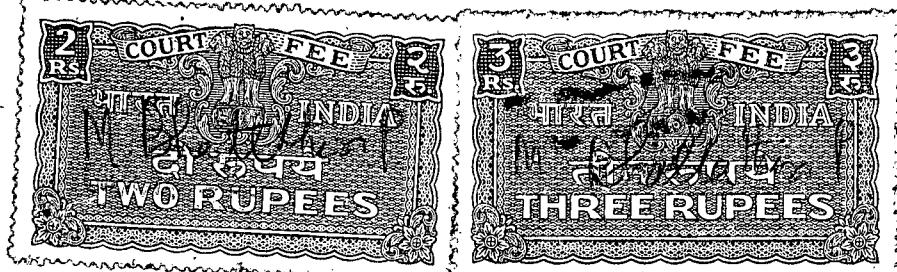
(बादी अपीलान्ट)

श्री.....

प्रतिवादी [रेस्पाउंट] Mohan Bhattathiri, P. का वकालतनामा

महोदय

Applicant



बादी (अपीलान्ट)

नं० मुकदमा बनाम (प्रतिवादी रेस्पाउंट) नं० १६ ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री R.S. Sonawane, Advocate

वकील
4/553 Vikasnagar, Kursi Road
महोदय
Lucknow एडवोकेट

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटाव या हमारी ओर से डिगरी जारी करावें और रूपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी था अपने हस्ताक्षर से दाखिल करें और तसदीक करे मुकदमा उठावे या कोई रूपया जमा करें या हारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रूपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करे—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकदमा अदाम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रसाण रहे और इसमें पर काम आवे ।

Accepted

R.Sonawane Advocate

साक्षी (गवाह)

दिनांक महीना सन् १६ ई०

हस्ताक्षर

स्वीकृत

ब अदालत श्रीमान

महोदय

[वादी] अपीलान्ट

प्रतिवादी [रेस्पाइक्टर]

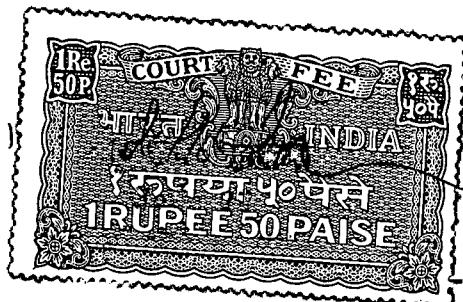
— ४१ —

का वकालतनामा

0-A-N 0243/90 (L)

वादी (अपीलान्ट)

MOHANAN BHATTATHIRI



UNION OF INDIA & OTHERS

ब्रह्मास

प्रतिवादी (रेस्पान्डेन्ट)

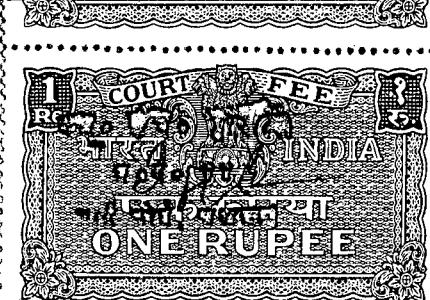
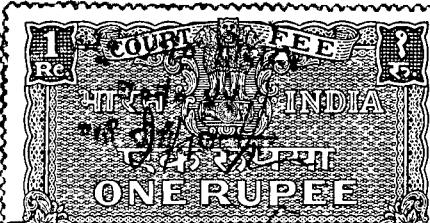
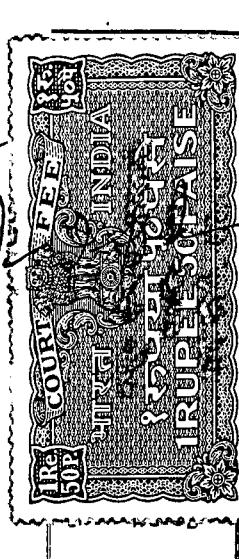
मुकदमा नं० ० A. N. O. २४३ | १०(L) सन्

पेशी की ता०

१८ ५०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री *J. M. Farwani Advocate*

..... and Sri..... Kapil.... Dev.... Advocate, A.V.S. वकील
एडवोकेट



हस्ताक्षर (MOHANAN BHATTATHIRI, p.)

साक्षी (गवाह) साक्षी (गवाह)

दिनांक.....४५..... महीना२..... सन १९५३ई०

Accepted
Brinley

In the Central Administrative Tribunal Circuit Bench Lucknow
DA NO. ... of 1990 Applicant
Mr. Mohanan Bhattathiri vs. Respondents
Union of India & Others
OFFICE OF THE ACCOUNTANT GENERAL (AUDIT)-I: UTTAR PRADESH
ALLAHABAD.

20

Amendments

No. A.G. (Audit)-I/Admn/4-21(3)/314 Dated; February 27, 1989.

Under the orders of Senior Deputy Accountant General (Admn) Sri Mohanan Bhattathiri, P. Ordinary grade Stenographer (Rs. 1200-2040) is promoted as Personal Assistant (Rs 1400-2300) on probation for a period of two years with immediate effect. In case the official is on leave, promotion will be effective from the date of his return from leave. He should exercise his option for fixation of pay in the higher grade within one month of the date of his promotion.

S. K. Mitra

(S.K. MITRA)
Audit Officer (Admn)

Ex: Personal No. 65/4-203

No. A.G. (Audit)-I/Admn/4-21(3)/314 o date

Copy to:-

1. All Group Officers in the Office of the Accountant General (Audit)-I & II, U.P., Allahabad & Lucknow.
2. Secretary to Accountant General (Audit)-I & II
3. Audit Officer/Admn, o/o A.G. (Audit)-II, U.P. & 14, Vidhan Sabha Marg, Lucknow.
4. Pay and Accounts Officer, o/o A.G. (A&E)-I, U.P., Allahabad.
5. Audit Officer/Admn & P.C., o/o A.G. (Audit)-I & II, U.P., Allahabad
6. All the Coordinating Sections in the o/o A.G. (Audit)-I & II Local
7. Admn. Section (Posting, Transfer & Gradation List), o/o A.G. (Audit)-
8. All P.C. Sections of A.G. (Audit)-I & II, U.P., Allahabad.
9. C.R. Group, Senior Deputy Accountant General (Admn) Cell o/o A.G. (Audit)-I.
10. Secretary, Staff Cooperative Society, AGUP, Allahabad.
11. Personal files of the persons concerned.
12. Persons concerned.
13. Notice Board.

True copy S. K. Mitra
Attested Audit Officer (Admn)

K. S. Mitra

R. S. Srivastava

Advocate

High Court, Central
and State Services Tribunals
4/553, Vikas Nagar, Kursi Road,

LUCKNOW.

M. Bhattathiri

28/2/89

In the Central Administrative Tribunal Circuit bench Lucknow

OA NO: - - - of 1990

Mohanan Bhattacharji . . .

Applicant

versus
Union of India & others

Respondents - Annexure 2

कार्यात्मक महालेखाकार । लेखा परीक्षा । प्रथम, उत्तर प्रदेश, इताहाबाद

पत्रांड म.ले.। ले.प.। प्रथम/प्रकाशक/4-21। 3। x। 1054 से 6। दिनांक । 14.8.85

1. श्री दमदेव, हटेको, 04/3242। पुराबा।, 05/4200। बया। उपमहालेखाणार, बिरीष्मणि सिविल,

2. श्री जय प्रकाश, हटेको, 04/4284। पुराबा।, 05/4201। बया। वरिष्ठ उपमहालेखाणार। प्रशासन। सर्व।

3. श्री अबिल लुमार गांगेली, हटेको, 04/3693। पुराबा।, 05/4202। बया। वरिष्ठ उपमहालेखाणार, राष्ट्रव्यवस्था। राज्य।, ८०३०। आडिट। ।।

4. श्री मोहब्द श्रद्धार्थी पी. हटेको, 04/4397। पुराबा।, 05/4203। बया। वरिष्ठ उपमहालेखाणार। राज्य विवृत परिवर्तन।

5. श्री गिरीष लुमार राष्ट्र, हटेको, 04/4397। पुराबा।, 05/4204। बया। उपमहालेखाणार, बिरीष्मणि सिविल।

6. श्री सुशीत लुमार श्रीवाहतव, हटेको, 04/4405। पुराबा।, 05/4205। बया। वरिष्ठ उपमहालेखाणार वापिष्य, ८०३०। आडिट। ।।

7. श्री राजेश्वर लमा, हटेको, 04/4398। पुराबा।, 05/4206। बया। प्रशासन।

8. श्री रवि शंखर वाण्डुव, हटेको, 04/4403। पुराबा।, 05/4207। बया। प्रशासन।

ਮਹਾਲੇਝਾਫਾਰ ਲੇਝਾ ਪਦੀਝਾ ਲੇ ਪ੍ਰਥਮ ਗੈਰ ਦ੍ਰਿਤੀਧ ਲੇ ਇਲਾਹਾਬਾਦ ਗੈਰ
ਲਖ਼ਬਕ ਦਿਵਤਿ 'ਭਾਗ ਲਿਖੋ' ਮੈਂ ਕਿਵੀ ਦਿਵਾਧਕ ਲੇ ਪਦ ਪਰ | 425-700। ਪੇਤਰ ਸਾਬ
ਮੈਂ 'ਭਾਗ' ਕਰਕੇ ਲੇ ਕਿਏ ਪ੍ਰੋਕਕਤਿ ਭਾ ਸਾਮਲਾ ਪਿਵਾਰਾਥੀਕ ਹੈ। ਆ ਪਥੇ ਤੁਕੁਰੋਕ
ਹੈ ਕਿ ਲਖ਼ਬਕ ਮੈਂ ਬਾਪੁ ਸੰਭਾਤੀ ਫੀ ਇਛਾ ਪਿਕਾਂ 20.8.85 ਤਕ ਪ੍ਰਣਾਸ਼ਬ
ਤੁਕੁਰਾਗ ਏਂਡੀ । ਆ ਤਿਟਾ ਪ੍ਰਥਮ ਕੋ ਅਵਧ ਲੇ ਕੇ ।

371.45.1234

। आर०५० मेहरा ।
लेखा परीहा बृहिकारी । प्रसादबा।

In the: Central Administrative Tribunal Circuit Bench (A)
Lucknow

CA No: of 1990
Mohan Bhattachari Applicant

Union of India & Others vs

Respondents.

Annexure 3

OFFICE OF THE ACCOUNTANT GENERAL (AUDIT) - II, U.P. ALLAHABAD.

No. A.G. (Au) II/Admn./

No

Dated: 8.3.89.

Shri A.K. Ganguly, (05/4202),
Personal Assistant (on leave),
B-1037, G.T.B. Nagar,
ALLAHABAD - 211 016.

Re: His application dated 8.3.89.

He is hereby directed to report for duty in Lucknow office (CAW) without any further delay. His request for posting at Allahabad will be considered only after he joins duty at Lucknow.

S.O/A

(B)
R/S/ (S)

No. A.G. (Au) II/Admn./ 76/

S.I. -
AUDIT OFFICER/Admn.

of date

Copy forwarded to Audit Officer (Admn.), Commercial Audit Wing, office of the Accountant General (Audit) - II, 14, Vidhan Sabha Marg, Lucknow. After promotion of Shri M. Bhattachari as P.A. there will be an excess of P.A.'s in Lucknow office as only Jr. Administrative Grade Officers are entitled to P.A.s.

Shri A.S. Sheikh, Steno has already been posted to Lucknow office.

It may also be mentioned that at present there is no P.A. at Allahabad. Consequently Sr.D.A.G(R.A.G) is without a P.A.

It is accordingly requested that either Shri Ganguly or Shri M. Bhattachari may be transferred immediately to the Allahabad office after obtaining Accountant General's approval.

True Copy

P. Kishan

Residing

R. S. Srivastava

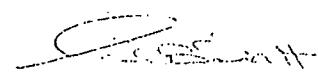
Advocate

High Court, Central

and State Services Tribunals

4/553, Vikasnagar, Kursi Road

LUCKNOW.


AUDIT OFFICER/Admn.

For the Central Administrative Tribunal
Circuit Bench, Lucknow

23

CA No. of 1990

Mohanan Bhattathiri Applicant

To

Union of India & Others ... Respondents

The Audit Officer (Admn.),
Office of the A.G.(Audit)-II, U.P.,
14, Vidhan Sabha Marg,
Lucknow.

Annexure 4

Subject: Promotion to the post of Personal Assistant
with effect from the date on which the said
post fell vacant in Lucknow office.

Sir,

I enclose two copies of my representation on
the subject mentioned above. I request you kindly to
forward the same to the Sr. Dy. Accountant General (Admn.)
Office of the A.G.(Audit)-I, U.P., Allahabad, for considera-
tion and necessary action at his end.

Yours faithfully,

Date: April 12, 1989.

12/4/89

(MOHANAN BHATTATHIRI. P.)
Personal Assistant,
O/o the A.G.(Audit)-II,
U.P., Lucknow.

True copy
R. S. Silvastava
Advocate

High Court, Central
and State Services Tribunals
4/553, Vikasnagar, Kursi Road,
LUCKNOW.

W.M.B.

To

The Senior Deputy Accountant General (Admn.),
Office of the Accountant General (Audit)-I,
Uttar Pradesh,
ALLAHABAD - 211001.

THROUGH PROPER CHANNEL.

Subject: Promotion to the post of Personal Assistant
with effect from the date on which the said
post fell vacant in Lucknow office.

Sir,

I am thankful for issuing my promotion orders
to the post of Personal Assistant vide No.AG(Audit)-I/
Admn./4-21(3)/314 dated 27.2.1989. In this connection,
I submit the following few lines for your sympathetic
consideration and kind orders :

1. That as per C&AG's Confidential letter No.
4532-NGE.I/60-74-1 dated 27/28.12.1974, the criteria
for promotion of Stenographer to the post of P.A. was
reduced from 5 years to 3 years, provided the said Steno-
grapher was attached to Sr. Dy. Accountant General or to
Deputy Accountant General, looking after Administration.
As per the said orders I completed 3 years of service on
16.6.1979. However, till that period there was only one
Sr. Dy. Accountant General, positioned at Lucknow and
there was a P.A. attached to him. Subsequently, on
5.7.1982 one more Sr. Dy. Accountant General joined
Lucknow office. I was attached to one of the Sr. Dy.
Accountants General. I understand that at that stage,
perhaps, there were people senior to me at Allahabad
office who were waiting promotion and posting to Lucknow.
However, the fact is that from 5.7.1982 I have been
attached to a Sr.D.A.G.

*True copy
Allahabad
R. S. Srivastava
Advocate
High Court, Central
and State Service Tribunals
4/553, Vikas Nagar, Kali Road
LUCKNOW.*

2. That vide A.G.(Audit)-I/Admn./4-21(3)/1054
to 61 dated 14.8.1985, the Accountant General (Audit)-I,
U.P., Allahabad had called for volunteers for considering
them for promotion to the post of P.A. at Lucknow and
Allahabad offices, as the promotion at both the offices
(Lucknow and Allahabad) were under consideration. I had
given my willingness, within the prescribed time limit,
for being considered for promotion to the post of P.A. at

: 2 :

Lucknow, though this matter should have been taken up in July 1982 when two Senior Deputy Accountants General were in position at Lucknow. Further on 19.3.1984 the A.G.(Audit)-II was positioned at Lucknow, meaning that there was one post of Sr.P.A. (with A.G.) and two posts of P.A. (with Sr.DAGs) at Lucknow. Even after 3 years, in 1985, when the willingness for promotion ~~was~~ and posting at Lucknow was called for, vide the aforesaid letter dated 14.8.1985, and subsequent promotions were made, there were two Sr. Dy. Accountants General positioned at Lucknow. The posts of two Sr.DAGs continued till November 1986, when one D.A.G. was posted in place of one Sr.DAG. In short, the posts of two P.As continued to exist at Lucknow office from July 1982 onwards and from March 1984 to November 1986 there were two posts of P.A. and one post of Sr.P.A. In May 1985, the P.A. who was attached to the Sr.DAG at Lucknow was promoted to the post of Sr.P.A. to A.G.(Audit)-II at Lucknow.

3. That I may further mention that when I gave my willingness for promotion and posting at Lucknow and since there were two vacancies of P.A. at Lucknow, under normal circumstances I should have been considered for the said promotion at Lucknow as nobody else was willing to be posted at Lucknow office on promotion. In October 1985, S/Shri Dharam Dev, Jai Prakash and Anil Kumar Ganguly were promoted to the post of P.A. and posted at Allahabad, ignoring the fact that there were two posts of P.A. in Lucknow office. As stated above, since none of the above persons were willing to be posted to Lucknow on promotion, since there were two vacancies of P.A. in Lucknow Office, I, being the only person ^{willing} for posting in Lucknow office on promotion, should have been considered for the promotion. The fact that I was the only candidate, willing to be posted to Lucknow office on promotion is further clear from the fact that nobody, on promotion to the post of P.A., was posted to Lucknow office. In this connection, it is also important to mention here that Shri Anil Kumar Ganguly, who was transferred to Lucknow office in July 1987, has not joined Lucknow office till 6th March 1989 and he has even filed a petition in the

*True copy
Attached
R. S. Srivastava
A. I. Advocate
High Court Central
and State Service
4/553, Vikas Nagar,
LUCKNOW.*

W. M. B.

: 3 :

Hon'ble Central Administrative Tribunal, Allahabad Bench, against his transfer orders. In nutshell, the above persons were promoted and posted at Allahabad against the vacancies at Lucknow office also, which means the Administration failed to consider that there ~~was~~ were two vacancies at Lucknow office which also need to be filled up. It is further to be mentioned here that I understand the above 3 PAs, promoted and posted at Allahabad, including two against the vacancies at Lucknow, have been allowed the promotion with effect from March 1984, on the basis of their representation.

4. That I became a victim of the wrong decision taken by the Administration at Allahabad of promoting the above persons and posting them at Allahabad against the vacancies at Lucknow and failing to consider that I, being the only Stenographer, willing to be posted on promotion in Lucknow office, should be considered for promotion. Since none of the above 3 persons - S/Shri Dharam Dev, Jai Prakash and Anil Kumar Ganguly - were willing to be posted to Lucknow office on promotion, and since the vacancy was at Lucknow, I, being the only willing person, should have been considered for promotion and posting at Allahabad.

5. That my above contention will be clear from an identical case wherein the Administration at Allahabad took the decision and promoted a junior person and posted at Lucknow as no senior to him was willing to be posted to Lucknow on promotion, since the post was at Lucknow. Shri Raj Kumar Singh, who was working as P.A. to Sr.DAG in Lucknow office, was promoted as Sr.P.A. to A.G.(Audit)-II, U.P., Lucknow on 28.5.1985 and before this date S/Shri Shoukat Ali, Ramji Srivastava, P.P. Bhandari were senior to him. However, since they were not willing to be posted to Lucknow, Shri Raj Kumar Singh was promoted as Sr.P.A. to A.G.(Audit)-II at Lucknow.

6. That it would be clear from the above that I was entitled for promotion to the post of Personal Assistant at Lucknow office from 5.7.1982 or at least from the date the above persons - S/Shri Dharam Dev, Jai

*True copy
Attest*

R. S. Srivastava
Advocate
High Cou 1. Central
and State Service Tribunals
4/553, Vikas Nagar, Kaisi Road,
LUCKNOW.

M. M. H.

: 4 :

Prakash and Anil Kumar Ganguly - were promoted to the said post, as I have been working with Sr. Dy. Accountant General continuously and there was vacancy at Lucknow and also that the above promotions include against the vacancies at Lucknow. Moreover, I was eligible for the said promotion.

7. I, therefore, humble request your honour to kindly examine my case de novo and in view of the circumstances and also the service rendered by me at Lucknow office, I may be considered for promotion to the post of P.A. from 5.7.1982 or at least from the date ~~my~~ the above persons - Shri Dharam Dev, Jai Prakash and Anil Kumar Ganguly - were promoted to the post of Personal Assistant, with all other consequential service benefits. I once again request your honour to kindly consider my case sympathetically so that full justice is given to me.

Thanking you,

Yours faithfully,

Lucknow,

Date: April 12, 1989.

MOHAN BHATTATHIRI. P.)
Personal Assistant,
Office of the Accountant
General (Audit)-II,
Uttar Pradesh,
14, Vidhan Sabha Marg,
LUCKNOW - 226 001.

True Copy
Attested
R. S. Roy
Advocate
High Court, Central
and State Services Tribunals
4/553, Vikas Nagar, Kursi Road,
LUCKNOW.

In the Central Administrative Tribunal, Circuit Bench,
OA No. --- of 1990 Lucknow

Mohanar Bhattathiri --- Applicant
Union of India & Others vs Respondents
Office of the Accountant General (Audit)-I,
U.P. Allahabad.

Anupam

No. A.G. (Audit)-I/Admn./4-21(3)/217 Dated: 4.5.89

Sri M. Bhattathiri P.
Personal Assistant,
Office of the Accountant General (Audit)-II, U.P.
14, Vidhan Sabha Marg,
Lucknow. - 226001.

With reference to this representation dated 12.4.89
regarding his promotion to the post of Personal Assistant
w.e.f. the date on which the post fell vacant at Lucknow,
he is informed that his willingness for posting in
Lucknow Office does not establish his claim for promotion
to the Post of personal Assistant unless his Senior had
forgone promotion. He is also informed that he has already
been promoted as P.A. in his turn and there is no question
of antedating his promotion as P.A.

True copy
R. S. Silvan
R. S. Silvan
R. S. Silvan

R. S. Silvan
Advocate
High Court, Central
and State Services Tribunals
4/553, Vikasnagar, Kursi Road,
LUCKNOW.

S. K. Maitra
(S.K. Maitra)
Audit Officer(Admn)

18
4/5

W.H.H.

(1) In the Central Administrative Tribunal, Circuit Bench
SA ND. of 1940 Lucknow
Mohanan Bhattacharii ----- Applicant
Union of India & others ----- Respondents
Office of the Accountant General (Audit) II, U. P.
Sahakarita Bhawan IIInd floor
14, Vidhan Sabha Marg,
Lucknow
Amritsar

No. CAW/Admn. / 690-691

Dated 6/6/89

To,

The Administrative Officer,
CA - I Section,
O/O the Comptroller & Auditor
General of India,
10, Bahadur Shah Zafar Marg,
New Delhi-110002

Subject : Promotion of Sri Mohanan Bhattacharii P. to the
post of personal Asstt. w.e.f., from the date on
which the said post fell vacant in Lucknow office

Sir,

I am forwarding herewith with the application
Sri Mohanan Bhattacharii in duplicate regarding his
representation as for promotion as stated above against
which he is not satisfied with the decision taken by
Allahabad office, for sympathetic consideration.

This issues with the approval of the Accountant
General.

True copy

Attached

Reontra

R. S. Silasaria
Advocate
High Court, Central
and State Services Tribunals
4/553, Vikasnagar, Kursi Road
LUCKNOW.

6/6/89
Audit Officer/Admn.

To
 The Comptroller and Auditor General
 of India,
 10, Bahadur Shah Zafar Marg,
 NEW DELHI - 110 002.
 (Through PROPER CHANNEL)

Subject: Promotion to the post of Personal Assistant
 with effect from the date on which the said
 post fell vacant in Lucknow office.

Respected Sir,

I joined the Office of the Accountant General-II, U.P., Lucknow on 17.6.1976 as Stenographer. I have been promoted to the post of Personal Assistant vide Senior Deputy Accountant General (Admn.), Allahabad, order No. AG(Audit)-I/Admn./4-21(3)/314 dated 27.2.1989, and have joined the promoted post on 28.2.1989. In this connection, I submit the following few lines for your sympathetic consideration and kind orders :-

Explain that as per Comptroller & Auditor General of India Confidential letter No. 4532-NGE.I/60-74-1 dated 27/28.12.1974, the criteria for promotion of stenographer to the post of Personal Assistant was reduced from 5 years to 3 years, provided the said Stenographer was attached to Sr. Dy. Accountant General or Deputy Accountant General, looking after Administration. I completed 3 years of service on 16.6.1979. However, till that date there was only one Sr. Dy. Accountant General, positioned at Lucknow and there was a P.A. attached to him. Later on one more Sr. Dy. Accountant General joined Lucknow office on 5.7.1982 and I was attached to one of the Sr. Dy. Accountants General. I understand that at that stage, perhaps, there were stenographers senior to me at Allahabad office, who were waiting promotion and posting to Lucknow. However, the fact is that from 5.7.1982 I have been attached to a Senior Deputy Accountant General.

2. That vide Accountant General (Audit)-I/Admn. 4-21(3)/1054 to 61 dated 14.8.1985, the A.G. (Audit)-I, U.P., Allahabad had called for volunteers for

The Extra Land Collector

R. S. Srivastava

Advocate

High Court, Central
 and State Services Tribunals
 4/553, Vasant Kunj, New Delhi Road,
 LUCKNOW.

(3)

considering them for promotion to the post of P.A. at Lucknow and Allahabad offices, as the promotion at both the offices (Lucknow and Allahabad) was under consideration. I had given my willingness, within the prescribed time limit, for being considered for promotion to the post of P.A. at Lucknow, though this matter should have been taken up when two Senior Deputy Accountants General were in position at Lucknow. Further, on 19.3.1984 the Accountant General (Audit)-II was positioned at Lucknow; hence there was one post of Sr.P.A. (with A.G.) and two posts of P.A. (with Sr.D.A.G.) at Lucknow. Even after 3 years in 1985, when the willingness for promotion and posting at Lucknow was called for, vide the aforesaid letter dated 14.8.1985, and subsequent promotions were made, there were two Sr. Dy. Accountants General positioned at Lucknow. The posts of two Sr. Dy. Accountants General continued till November 1986, when one Deputy Accountant General was posted in place of one Sr. Dy. Accountant General. In short, the posts of two PAs continued to exist at Lucknow office from July 1982 onwards and from March 1984 to November 1986 there were two posts of P.A. and one post of Sr. P.A. In May 1985, one P.A. who was attached to the Sr. Dy. Accountant General at Lucknow was promoted to the post of Sr.P.A. to Accountant General (Audit)-II at Lucknow.

True Copy
Attested
R. S. Bhatia

1. I am a member of
State Services (I) in
1353, Vikas Nagar, Kursi Road,
LUCKNOW.

3. That I may further mention that when I gave my willingness for promotion and posting at Lucknow, since there were two vacancies of P.A. at Lucknow, under normal circumstances I should have been considered for the said promotion at Lucknow, as nobody else was willing to be posted at Lucknow office on promotion. In October 1985, S/Shri Dharam Dev, Jai Prakash and Ramlal Kumar Ganguly, were promoted at Allahabad office, ignoring the fact that there were two posts of P.A. in Lucknow office. As stated above, since none of the above persons were willing to be posted at Lucknow on promotion, and since there were two vacancies of P.A. in Lucknow office, I, being the only person willing for posting in Lucknow office on promotion, should have

W. M. Bhatia

32

been considered for promotion. The fact that none of the above persons, promoted to the post of P.A., was willing to be posted to Lucknow office, will be further clear that none of the above persons was posted to Lucknow office on their promotion, while the Administration was fully aware that there were two posts of P.A. vacant in Lucknow office. It is also important to mention here that Shri Anil Kumar Ganguly, who was transferred to Lucknow office in July 1987, did not join Lucknow office till 4th March 1989 and he has even filed a petition in the Hon'ble Central Administrative Tribunal, Allahabad Bench, against the transfer orders. It is also pertinent to mention here that Shri Ganguly joined Lucknow office on 6.3.1989 only after I was promoted to the post of P.A. and since there was only one post of P.A. in Lucknow office, he was relieved for Allahabad office. In nutshell, two Stenographers were promoted and posted at Allahabad against the vacancies existed in Lucknow office and two posts of P.A. remained unfilled in Lucknow office. It is further to be mentioned that I understand that the above 3 P.As, promoted and posted at Allahabad, including two against the vacancies at Lucknow, have been allowed the promotion with effect from March 1984, on the basis of their representation.

True Copy.
Anil Kumar Ganguly
R. S. Srivastava
Advocate
High Court, Central and State Services Tribunals
4/553, Vikasnagar, Kursi Road, Lucknow
LUCKNOW.

4. That I became victim of the wrong decision of Administration at Allahabad of promoting the above persons and posting them at Allahabad against the vacancies at Lucknow and failing to consider that I was the only stenographer willing to be posted in Lucknow office on promotion. Since none of the above persons - S/Shri Dharam Dev, Jai Prakash and Anil Kumar Ganguly - was willing to be posted at Lucknow on promotion, I, being the only willing person, should have been considered for promotion and posting at Lucknow office against the existing vacancies.

5. That my above contention will become more clear from an identical case of promotion wherein the Administration at Allahabad took the decision and promoted a junior person and posted at Lucknow as no other

Anil Kumar Ganguly

senior person to him was willing to be posted at Lucknow on promotion, since the post existed at Lucknow. Shri Raj Kumar Singh, who was working as P.A. to Sr. Dy. Accountant General in Lucknow office, was promoted as Senior Personal Assistant to A.G. (Audit)-II, U.P., Lucknow on 28.5.1985 ignoring his seniors - S/shri Shoukat Ali and ... Ramji Srivastava as they were not willing to be posted to Lucknow.

6. I had submitted my representation on 12.4.1989 to the Sr. Dy. Accountant General (Admn.), Allahabad for my promotion to the post of P.A. against the existing post of P.A. in Lucknow office from the date on which it fell vacant. My representation was, however, rejected by the Sr. Dy. Accountant General (Admn.) vide his letter No. NG(Audit)-I/Admn. 4-21(3) 217 dated 4.5.1989, the text of which is reproduced below :

"With reference to his representation dated 12.4.89 regarding his promotion to the post of Personal Assistant w.e.f. the date on which the post fell vacant at Lucknow, he is informed that his willingness for posting in Lucknow office does not establish his claim for promotion to the post of Personal Assistant unless his senior had forgone promotion. He is also informed that he has already been promoted as P.A. in his turn and there is no question of antedating his promotion as P.A."

7. That regarding the point, mentioned in Admn. letter cited above, that my willingness for posting at Lucknow office does not establish my claim for promotion to the post of P.A. unless senior to me had forgone the promotion, it is submitted that the Administration failed to consider the following points :-

*True copy
Allahabad
Romias*

*R. S. Srivastava
Advocate*

High Court, Central (i)
and State Services Tribunal
4/553, Vikasnagar, Kursi Road, (i)
LUCKNOW.

I was the only person willing for posting at Lucknow on promotion.

None of my seniors - S/shri Dharam Dev, Jai Prakash and A.K. Ganguly - were willing to be posted in Lucknow office on promotion.

(ii) The posts of P.A. were in Lucknow office and since none of the above persons was willing to be posted on promotion in Lucknow office, a junior (myself in the instant case), who was willing for posting at Lucknow on promotion, should have been considered.

W.M.D.

8. That in fact, the unwillingness of two of the above persons (S/Shri Dharam Dev, Jai Prakash and Anil Kumar Ganguly), for being posted to Lucknow on promotion as P.A., should have been taken as their foregoing promotion, as the posts existed at Lucknow. It would not be out of place to mention here that if the post of Sr.P.A. to A.G.(Audit)-II at Lucknow was filled up at Allahabad (as has been done in the instant case), none of the seniors to Shri Raj Kumar (presently working as Sr.P.A. to A.G.(Audit)-II, Lucknow), would have been unwilling for promotion. In fact in both the cases - in my case and in the case of Shri Raj Kumar Singh - seniors at Allahabad were not unwilling for the promotion, but were unwilling for transfer to Lucknow office on promotion. At no stage the Administration at Allahabad seems to have informed the above persons to give their willingness for posting to Lucknow on promotion since two vacancies of P.A. existed at Lucknow; hence their foregoing the promotion did not arise at all.

9. That it would be clear from the above that I was entitled for promotion to the post of Personal Assistant at Lucknow from 5.7.1982 or at least from the date on which the above persons - S/Shri. Dharam Dev, Jai Prakash and Anil Kumar Ganguly - were promoted to the said post, as I have been working with Sr. Dy.

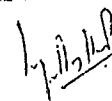
*True copy
R. S. Stewart
Advoc*
R. S. Stewart
Advoc
High Court, Central
and State Services Tribunal
4/553, Vikasnagar, Kursi Road,
LUCKNOW.

10. Therefore, I humbly request your honour to kindly have the case examined de novo and in view of the circumstances and also the service rendered by me at Lucknow since 5.7.1982, I may be considered, for promotion to the post of P.A. from 5.7.1982 or at least from the date the above persons (S/Shri Dharam Dev, Jai Prakash and Anil Kumar Ganguly) - including against two vacancies at Lucknow office - were promoted i.e., 1.3.1984.

(6)

11. I once again request the Hon'ble Comptroller and Auditor General of India to consider my case sympathetically so that full justice is given to me.

yours faithfully,


(Mohanan Bhattachari, P.)
Personal Assistant to
Sr. Dy. Accountant General
(SEN)

Date: May 31, 1989.

P.No.05/4203,
Office of the Accountant
General (Audit)-II, U.P.,
14, Vidhan Sabha Marg,
LUCKNOW - 226 001.

*True Copy
Attached
R. S. Srivastava
R. S. Srivastava
Advocate
High Court, Central
and State Services Tribunals
4/553, Vikasnagar, Kursi Road.
LUCKNOW.*

by R. S. Srivastava

No. A.G. (Audit)-I/Admn/3-27/New/112 Dated: July 10, 1989.

In the Central Administrative Tribunal Circuit, Bench Lucknow
Mohanan Bhattacharya .. O.A.N.O. 18-1990
Union of India & Other Appellants
Under the orders of Hon'ble Deputy Accountant Respondents.

General (Admn) Shri Raj Shekhar Sharma (P.No.05/4206) Annexure 8
Stenographer (1200-2040) is promoted as Personal Assistant
(Rs.1400-2300) with immediate effect. In case the official
is on leave the promotion will be effective from the date
of his return from leave. He should exercise his option
for fixation of pay in the higher grade within one month
of the date of his promotion.

*The copy is attached
Ranjan*

S. K. Maitra
(S.K. MAITRA)
Audit Officer (Admn)

No. A.G. (Audit)-I/Admn/3-27/New/113

of date

Copy to:-

1. All Group Officers in the office of the Accountant General (Audit)-I & II at Allahabad & Lucknow.
2. Secretary to Accountant General (Audit)-I & II.
3. Audit Officer/Admn, o/o A.G. (Audit)-II, 14, Vidhan Sabha Marg, Lucknow.
4. Pay and Accounts Officer, o/o A.G. (A&E)-I, U.P., Allahabad
5. Audit Officer/Admn & P.C., o/o A.G. (Audit)-I & II, U.P., Allahabad.
6. All the Coordinating Sections in the o/o A.G. (Audit)-I & II Local
7. Admn. Section (Posting, Transfer & Gradation List) o/o the Accountant General (Audit)-I
8. All P.C. Sections of A.G. (Audit)-I & II, U.P., Allahabad
9. C.R. Group, Sr. Deputy Accountant General (Admn) Cell, c/o A.G. (Audit)-I
10. Secretary, Staff Cooperative Society, AGUP, Allahabad.
11. Personal files of the persons concerned.
12. Person concerned.
13. Notice Board.

S. K. Maitra
Audit Officer (Admn)

167
THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD *Circuit Bench At Lucknow*

Misc. Application of 100

&

Counter Affidavit
On
behalf of Respondent No.....

In

O. A. No. 243 / 1990

Mohanam Bhattatirip Petitioner

Vs.

Union of India and Others Respondent

*Pla & day
11.11.91*

K. C. SINHA
K. C. SINHA
Advocate



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW CIRCUIT BENCH, LUCKNOW
ALLAHABAD BENCH ALLAHABAD

COUNTER AFFIDAVIT

IN

REGISTRATION O.A. NO. "243/90

MohananBhattatirir P ... Petitioner

Versus

Union of India & Others ... Respondents.

AFFIDAVIT OF Smt. Meenakshi Kapoor

AGED ABOUT 36 YEARS

wife OF SRI Pankaj Kapoor

AT PRESENT POSTED AS

Senior Deputy Accountant General (Administration)
Office of Accountant General (Adm.) I, C.P. Allahabad
(DEPONENT)



I, the deponent, named above do hereby
solemnly affirm and state on oath as under:

1. That the deponent is at present posted

as Senior Deputy Accountant General (Administration) in
Office of Accountant General (Adm.) I, C.P. Allahabad
and has been authorised to file this counter
affidavit on behalf of respondents and as such he is
well acquainted with the facts of the case deposed
to below.

✓ Meenakshi Kapoor

2. That the deponent has read the application filed by Sri Mehanan Elattatriri P in this Hon'ble Tribunal as well as annexures filed in support hereof and has understood their contents.

3. That before giving parawise reply the following facts ~~are~~ being stated ~~asserted~~ in order to facilities this Hon'ble Tribunal in administering justice.

4. That the petitioner joined the office of the Accountant General (Audit)-II Lucknow on 17.6.1976 as a Stenographer and was promoted as P.A. vide order dt. 27.2.1989. A photo stat copy of the same is being annexed herewith and is being marked as Annexure No. 1 to this counter affidavit.

5. That while preparing the panel for promotion of Stenographer as Personal Assistant during the panel year 1985 to fill in the then existing vacancies (which were 3 at that time- Allahabad and 2 at Lucknow) and one more vacancy



✓ Meenula Saper

was expected to arise which, however, did not materialise as the sanctioned post of A.G.(Audit) III could not be operated. Willingness was called for from the Stenographers for being posted at Lucknow. The petitioner was at serial no.4 in the seniority list of the stenographers and he had already been working at Lucknow gave his willingness for posting at Lucknow whereas his senior were not willing for posting at Lucknow.

6- That the Departmental Promotion Committee while drawing up the panel decided to select the three persons (viz., Sri Dharam Deo, Jai Prakash and A.K. Ganguly) on seniority-cum-fitness basis irrespective of their willingness or otherwise for their posting at Lucknow.

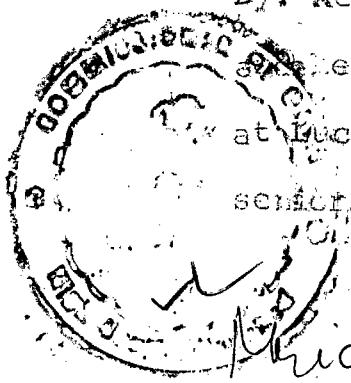
7- That for filling up the existing vacancy at Lucknow it was decided that the juniormost among the promotees would be posted at Lucknow.

✓ Meidula Saper

Ganguly
8. That Sri A.K. ~~Ganguly~~ was posted at Lucknow. Sri Ganguly did not join at Lucknow for quit some time. He proceeded on long leave and even contested his transfer to Lucknow in the Central Administrative Tribunal but on no occasion did he refuse promotion. He finally joined in March 1989 at Lucknow.

9. That promotions of all the above three persons were ante-dated to 1.6.1984 because the vacancies were existing on that date, too.

10. That the petitioner is claiming his promotion as Personal Assistant w.e.f. 1.3.1984 pleading that he as a senior remained attached most of the time of his service with senior Dy. Accountants General stationed at Lucknow. He had also given his willingness for posting at Lucknow whereas Sri Ganguly and his other seniors had not given their willingness.



Chidula Jayaram

11. That the petitioner had filed a representation to the respondent no. 1 who ~~xxx~~ rejected the representation on 15th September, 1989. A photo stat copy of the same is being annexed and is being filed as Annexure No. 2 to this counter affidavit.

12. That the contents of paragraphs 1, 2, 3 of the petition needs no comments.

13. That ~~xxx~~ in reply to the contents of paragraph 4(1) of the petition it is submitted that the petitioner joined the office of the Accountant General II at Lucknow on 17.6.76 as Stereographer whose cadre control was with the Accountant General -I, Uttar Pradesh at Allahabad.



That the contents of paragraphs nos. 4(2), (3), (4) of the petition needs no comments.

15. That in reply to the contents of

Mrinali Japra

paragraph 4(5) of the petition it is stated that in the month of August 1985, there were only 5 officers in the rank of Senior Deputy Accountant General/ Deputy Accountant General who were entitled to personal Assistants in the scale of Rs. 425-700 viz. (i) Senior Deputy Accountant (Administration), (ii) Senior Deputy Accountant General (Revenue Audit (Central), (iii) Senior Deputy Accountant General (Revenue Audit (States), (iv) Senior Deputy Accountant General (Companies and Corporations), (v) Senior Deputy Accountant General (State Electricity Board) and not 7 as mentioned by the petitioner.

16. That is the reply to the contents of paragraph 4(6) of the petition it is stated that although the posts are sanctioned separately for Accountant General (Audit)-I and Accountant General (Audit)-II, all posts for purposes of recruitment/promotion constitute a common cadre which is controlled by Accountant



Meendum paper

6.

General(Audit)-I as per the provisions of para 2.6 of the Manual of Instructions for Restructuring of Cadres in Indian Audit and Accounts Department. Seniority in all cadres is also decided with reference to the date of entry of an official in the cadre as well as in accordance with the relevant instructions and rules. Promotion of the Lucknow based staff is also regulated in accordance with their position in the aforesaid common cadre without any discrimination as regards station of posting. No disadvantage accrues to the staff stationed at Lucknow or anywhere else in the matter of promotion and the plea of disregard of the principles of fair play and equity is totally untenable.



That the contents of paragraph 4(7) of the petition need no comments as a suitable reply has been given in foregoing paragraph and the same need not be repeated here again.

18. That the contents of paragraph 4(8) of the petition are admitted only to the extent

✓ *Mrinal Kumar*

that some Auditors were promoted as Senior Auditors in 1989 subject to their joining at Lucknow against the vacancies at Lucknow. However, they did not accept the promotions as they did not want their transfer from Allahabad to Lucknow on various personal grounds.

19. That in reply to the contents of paragraph 4(9) of the petition it is accepted that the letter asking for willingness was issued by the cadre controlling authority i.e. Accountant General (Audit)-I. The letter referred at Annexure-II simply stated that the matter of promotion as Personal Assistant was under consideration.

20. That the contents of paragraph 4(10) of the petition needs no comments.

21. That in reply to the contents of paragraph 4(11) of the petition it is stated that only 2 promotions, and not 3 as stated

Pradula Sarker

by the petitioner, were made to Personal Assistants posts in October 1985 strictly in accordance with the rules.

22. That the contents of paragraph 4(12) of the petition needs no comments.

23. That in reply to the contents of paragraph 4(13) of the petition it is stated that the promotions were made in a common cadre consisting of posts of both the offices of Accountant General (Audit) -I and Accountant General (Audit)-III, by the cadre controlling authority i.e. Accountant General (Audit)-I.

24. That the contents of paragraph 4(14) of the petition are admitted to the extent that Sri A.K.Ganguly was promoted but strictly in accordance with the relevant rules keeping in view his seniority as accepted by the petitioner in para 4(9).

✓ Mridula Saper

~~SECRET~~

25. That the contents of paragraphs 4(15) and 4(16) of the petition needs no comments in view of the reply given in para 4(13) and 4(14) above.

26. That the contents of paragraph 4(17) as of the petition are not correct and /such are denied . The promotion of Sri A.K.Ganguly was valid as per relevant rules and was made without any favour.

27. That the contents of paragraph 4(18) of the petition are accepted to the extent that the promotions of S/Sri Dharam Deo, Jai Prakash and A.K.Ganguli were antedated to 1.6.84 and not 1.3.84 as mentioned by the petitioner.

28. That the contents of paragraph 4(19) of the petition have no relevance to the case as they relate to a separate cadre of Senior Personal Assistant. However, it may be mentioned that

✓ Meidula Jayan



only after ascertaining the non-acceptance of promotion by the seniors, the promotion of Sri R.K. Singi was made.

29. That the contents of paragraph 4(20)

of the petition are correct and as such are denied.

It is submitted that Sri Ganguli was senior to the petitioner and his promotion was made on the recommendation of a duly constituted Departmental promotion committee. Sri Ganguli, no doubt, did not join his duties at Lucknow where he was posted after his promotion and where a vacancy in Personal Assistant cadre was existing, for quite a long time. But he had on no occasion refused his promotion. He proceeded on long leave and also contested his case in the Tribunal.

✓ Mridula Japen



30. That the contents of paragraph 4(21) of the petition needs no comments.

31. That the contents of paragraph 4(22) of the petition needs no comments. However, allegation made about favouring Sri Ganguli is fully denied.

32. That in reply to the contents of paragraph 4(23) of the petition it is stated that no undue favour has been shown to anybody and postings of personals were made in accordance with the administrative ~~existing~~ exigencies ~~existing~~ and needs.

33. That the contents of paragraph 4(24) of the petition needs no comments in view of the reply against para 4.20.

34. That the contents of paragraphs

✓ *Mridula Saper*

4(25) and 4(26) of the petition needs no comments.

35. That the contents of paragraphs 4(27) of the petition needs no comments except that the case of Sri Raj Kumar Singhi relating to his promotion as Senior Personal Assistant is altogether different and has no relevance with this case.

36. That the contents of paragraph 4(28) and 4(29) of the petition needs no comments.

37. That the contents of paragraph 4(30) of the petition are not correct and as such are denied in view of the replies against foregoing.

That that in reply to the contents of paragraph 4(31) of the petition it is stated that in view of replies against paras 4(20) and 4(31)

✓ Meenula Saper

13.

there is no case for considering any antedating of promotion.

39. That in reply to the contents of paragraph 4(32) of the petition it is stated that the recruitment rules for appointment to the Personal Assistants' cadre, which is done by promotion from Stenographers' grade, do not envisage calling for willingness or unwillingness from the eligible persons. The Departmental Promotion Committee was, however, supplied with all the relevant information including willingness/unwillingness of the officials for posting at Lucknow.

40. That in reply to the contents of paragraph 4(33) of the petition, it is stated that the charges made by the petitioner are denied. The condition of probation for two years has been prescribed in accordance with the provision of the Recruitment Rules of Personal Assistant

✓ Meenakshi Sopan

which fact had, however, inadvertently been omitted in the office order promoting Sri Raj Shekhar Sharma as Personal Assistant.

41. That in reply to the contents of paragraph 4(34) of the petition it is stated that there is no case for antedating promotion of the petitioner from 28.2.1989 to 1.3.1984.

42. That the contents of paragraph 4(35) of the petition needs no comments in view of the replies.

43. That the contents of paragraph 4(36) of the petition needs no comments.

44. That in reply to the contents of paragraph 5 of the petition it is submitted that none of the grounds taken by the petitioner/s are sustainable in the eye of law.

45. That the contents of paragraph 6 of

✓ *Mridula Sapru*

15.

are not admitted, hence denied.

46. That the contents of paragraph 7 of the petition need no reply.

47. That in reply to the contents of paragraph 8 and 9 of the petition, it is submitted that in view of the facts and circumstances stated above, the petitioner is not entitled to any relief as prayed and as such application is liable to be dismissed.

48- That the contents of paragraphs 10, 11 and 12 of the petition need no reply.

That the contents of paragraphs 1 and 2 of this affidavit are true to my personal knowledge; those of paragraphs 3 to 43, 45, 46 and 48 of the petition are based on perusal of records and those of paragraphs

✓ Meenakshi Saper



paragraphs

of this affidavit are based on legal advice
and which all I believe to be true that no part of
it is false and nothing material has been concealed

SO HELP ME GOD.

Mrindula Saper

(Deponent)

I, D.S. Choubey, Clerk, to Sri K.C. Sinha,
Additional Standing Counsel, Central Government,
High Court Allahabad do hereby declare that the
persons making of this affidavit and alleging
himself to be the deponent is known to me from
the papers in his possession and I am satisfied that
he is the same person.



Choubey

Clerk

Solemnly affirmed before me on this 21/11

Mrindula Saper

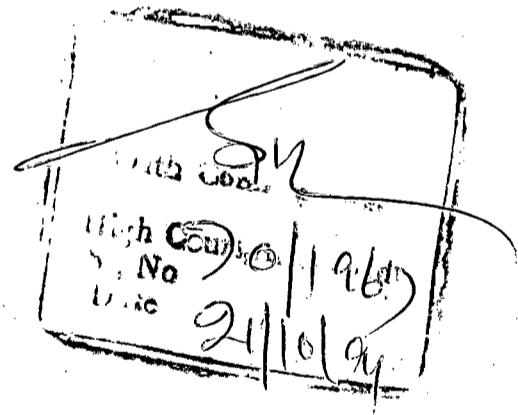
Day of ~~Oct~~ ~~1991~~ at ~~10.55 am~~ pm by the deponent

who is identified by the aforesaid clerk.

I have satisfied myself by examining
the deponent that he understands the contents
of this affidavit which has been read over and
explained to him.

✓ Meidula Saper

OATH COMMISSIONER.



OFFICE OF THE ACCOUNTANT GENERAL (AUDIT)-I: UTTAR PRADESH
ALLAHABAD.

190A

ANNEXURE I.C.

No. A.G. (Audit)-I/Admn/4-21(3)/313

Dated: February 27, 1989.

Under the orders of Senior Deputy Accountant General (Admn) Sri Mohanan Bhattachari P., Ordinary grade Stenographer (Rs.1200-2040) is promoted as Personal Assistant (Rs 1400-2300) on probation for a period of two years with immediate effect. In case the official is on leave, promotion will be effective from the date of his return from leave. He should exercise his option for fixation of pay in the higher grade within one month of the date of his promotion.

S.K. Mitra

(S.K. MITRA)

Audit Officer (Admn)

✓ Person A.G. 05/4-203

No. A.G. (Audit)-I/Admn/4-21(3)/314

o date

Copy to:-

1. All Group Officers in the Office of the Accountant General (Audit)-I & II, U.P., Allahabad & Lucknow.
2. Secretary to Accountant General (Audit)-I & II.
3. Audit Officer/Admn, o/o A.G. (Audit)-II, U.P. & 14, Vidhan Sabha Marg, Lucknow.
4. Pay and Accounts Officer, o/o A.G. (A&E)-I, U.P., Allahabad.
5. Audit Officer/Admn & P.C., o/o A.G. (Audit)-I & II, U.P., Allahabad.
6. All the Coordinating Sections in the o/o A.G. (Audit)-I & II Local.
7. Admin. Section (Posting, Transfer & Gradation List), o/o A.G. (Audit)-I.
8. All P.C. Sections of A.G. (Audit)-I & II, U.P., Allahabad.
9. C.R. Group, Senior Deputy Accountant General (Admn) Cell o/o A.G. (Audit)-I.
10. Secretary, Staff Cooperative Society, AGUP, Allahabad.
11. Personal files of the persons concerned.
12. Persons concerned.
13. Notice Board.

S.K. Mitra

Audit Officer (Admn)

Office Copy

High

SO/1989

28/2/89

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28/2/89

विवरण द्वारा भारत के
अधिकारीक्षक को
संचार कराया जाए।
Communications should be
addressed to the Comptroller
Auditor General of India.
का पता : आजल
Geographic Address : ARGEL

पत्र नं० 794-N. 2/29-88-I.I.

भारत के नियंत्रक-महालेष्ट्रपरीक्षक का कार्यालय,
नई दिल्ली-110002

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

दिनांक

Dated,

प्रिपक
FROM

आरत के नियंत्रक-महालेखापरीक्षक

नई दिल्ली-110002

नई दिल्ली-110002
THE COMPTROLLER AND AUDITOR GENERAL OF INDIA
NEW DELHI-110002

मेवा मे
The

The Accountant General (Audit)-I,
Uttar Pradesh,
ALLAHABAD-211001.

विषयः
Subject :

Representation of Shri Mohanan Bhattathiri P. for antedating his promotion as Personnel Assistant.

Sir,

I am directed to refer to your office letter No, AG(Audit)I/Admn/4-2(3)/626 dated 25.7.1989 on the subject mentioned above and to state that the representation of Shri Mohanan Bhattathiri P. has been carefully considered and rejected.

A suitable reply may be given to him.

Yours faithfully,

(N. VISUANATHAN)
ADMINISTRATIVE OFFICER (N)

~~Se. DAG (Adm.) C. M.
Penal/SC. C. M. C. M.~~
Date: 19/9/89

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✓ Meiduna Lopen

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

Misc. Appln. No. 519 of 1992.

Mohanan Bhattathiri.P. .. Applicant

In re:

O.A. No. 243/1990(L)

Mohanan Bhattathiri.P. .. Applicant

Versus

Union of India & others .. Respondents.

F.F. 8.7.1992.

APPLICATION FOR SUMMONING OF DOCUMENTS FROM THE RESPONDENTS

The humble Applicant, abovanemed, most respectfull
begs to submit as under :

1. That the above O.A. was filed with the prayer
that the Respondents may be directed to make the promo-
tion of the Applicant effective from 1.3.1984 and allow
him all the consequential service benefits.

*Filed today
copy
22/6/92*

2. That for proper ~~adjudication~~ adjudication of the
above O.A., it is necessary to summon the following docu-
ments from the Respondents, for perusal by this Hon'ble
Tribunal. It was mentioned in para 36 of the Rejoinder
statement that calling for D.P.C. Proceedings was nece-
ssary to ascertain the facts stated therein.

(i) The entire file in connection with D.P.C. proceed-
ings, in which decision regarding the promotion of
S/Shri Dharam Dev, Jai Prakash and A.K. Ganguly was

M. M. B.

taken, including the information supplied to DPC in regard to their willingness/unwillingness for their posting at Lucknow on promotion.

(ii) Letter No. AG(Audit)I/Admn./4-2(3)/626 dated 25.7.1989, by which the clarification/remarks of the Respondent No.3 were sent to the Comptroller and Auditor General of India, on the representation of the Applicant. This is necessary to ascertain the grounds on which the representation was rejected. The clarifications/remarks given by Respondent No.3 on the representation of the Applicant must have been the basis for rejecting the representation.

P R A Y E R.

WHEREFORE, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to summon the above documents from the Respondents on the day when Final Hearing is done to enable the Hon'ble Tribunal to impart justice in the case of the Applicant.

Lucknow:

Date: May 29, 1992.

Applicant
Through (R.S. Srivastav
Advocate.
Counsel for the Applicant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL (CIRCUIT BENCH)

LUCKNOW.

Registration No. O.A.243 of 1990(L)

Mohanan Bhattathiri. P.

.. Applicant

versus

Union of India & others

.. Respondents.

REJOINDER STATEMENT OF THE APPLICANT IN REPLY TO THE
COUNTER AFFIDAVIT FILED ON BEHALF OF THE RESPONDENTS.

The Applicant most respectfully begs to state
as under :

1. That the Applicant is fully conversant with the facts deposed hereunder. He has gone through the contents of the counter affidavit, filed on behalf of the Respondents, and after understanding the same fully, he gives below the para-wise reply.
2. That the contents of para 1 need no reply.
3. That the contents of para 2 of the counter affidavit also need no reply.
4. That the contents of para 3 need no comments.
5. That the contents of para 4 need no reply.
6. That the contents of para 5 are not admitted as stated. Only this much is admitted that there were five vacancies for PAs (3 at Allahabad and 2 at Lucknow) for panel year 1985. Sixth vacancy which did not materialise is not of any relevance as Senior P.A. is posted with A.G.

*Filed today
SJM
24/2/92*

7. That in reply to the contents of para 6 it is stated that it was incumbent upon the Respondents to have considered the fact that since two Senior Deputy Accountants General were positioned at Lucknow, two P.As should be posted at Lucknow, which is in accordance with the instructions of the Comptroller & Auditor General of India, contained in letter No.4532-NGE-I/60-74-1 dated 27/28.12.1974. Since the posts were at Lucknow, keeping in mind that the Applicant was the only person willing for posting at Lucknow on promotion, his case should have been considered, taking that the unwillingness of persons at Allahabad for posting to Lucknow on promotion as their forgoing the promotion. The action of the Respondents of promoting, without considering that the posts at Lucknow should not be filled up by promoting and subsequently posting at Allahabad, has resulted in great inconvenience to the Sr. Dy. Accountants General, posted at Lucknow, who were denied the services of P.A. and also resulted in nugatory expenditure. The D.P.C. also erred in selecting only 3 persons against 5 vacancies which existed in 1985. The Applicant should have been selected if the selection would have been made for 5 vacancies. The action of D.P.C. was, thus, wholly arbitrary.

8. That in reply to the contents of para 7 it is submitted that the averments in the para under reply are the result of after-thought of the Respondents. The vacancies at Lucknow should have been ~~fixed~~ filled up immediately on the promotion of S/Shri Dharam Dev, Jai Prakash and A.K. Ganguly, which was not done. It is important to mention here that had it been decided,



as alleged in para under reply, to fill up the vacancies at Lucknow, then two P.A.s should have been posted to Lucknow, since there were two Sy. Dy. Accountants General, positioned at Lucknow in the year 1985, which is admitted by the Respondents in para 15 of the counter-affidavit.

9. That in reply to the contents of para 8 it is stated that Shri A.K. Ganguly (not Shri A.K. Gaur, as stated in the first line of the para under reply) was posted to Lucknow only in July 1987, while he was promoted to the post of P.A. against one of the vacancies at Lucknow, in October 1985. This clearly shows the intention of the Respondents and clearly indicates that the averments in para 7 of the counter affidavit are totally false. The Respondents were forced to post Shri A.K. Ganguly to Lucknow as in June 1987 the Applicant was selected and was relieved to join the Central Administrative Tribunal, Patna, on deputation. The Applicant has reasons to believe that had he not been relieved for joining the Central Administrative Tribunal, Patna Bench, on deputation, Shri A.K. Ganguly would not have been posted to Lucknow. The deponent could not join (Applicant) CAT, Patna, on account of some communication gap between the Office of the Comptroller & Auditor General of India and Central Administrative Tribunal, Patna, and although he had not joined C.A.T., Patna, his journeys from Lucknow to Patna and back were treated as official. As stated in the para under reply by the Respondents, Shri Ganguly did not join Lucknow, which clearly indicates that he was not, rather never willing to join Lucknow. Hence his promotion, against one of the vacancies existed in Lucknow Office, was totally

hphb

unjust and illegal. It is also important to mention that Shri Ganguly joined at Lucknow office in March 1989 (1989), after the promotion of the Applicant, on getting an assurance from the Respondents that his case for transfer back to Allahabad would be considered on joining at Lucknow, which will be clear from Annexure-3 to the application.

10. That the contents of para 9 need no reply. However, it is stated that when the promotions of S/Shri Dharam Dev, Jai Prakash and A.K. Ganguly, were ante-dated as the vacancies were existing on that date, there is no justification for not ante-dating the promotion of the Applicant while the vacancy at Lucknow was existing even before that date. Hence the claim of the Applicant for ante-dating his promotion with effect from 1.3.1984 is wholly justified.

11. That the contents of para 10 need no reply.

12. That the contents of paras 11, 12, 13 and 14 are not disputed.

13. That in reply to the contents of para 15 ~~xx~~ it is submitted that the Respondents have admitted that there were two Sr. Dy. Accountants General i.e., Incharge of Companies/Corporations and UPSEB respectively. The said Sr. Dy. Accountants General were positioned at Lucknow. When two posts of P.A.s existed at Lucknow, the claim of the Applicant for promotion and posting as P.A. at Lucknow, would not be questionable as the D.P.C. did not consider 5 persons against 5 vacancies.

W.M.H.

14. That in reply to the contents of paras 16 and 17 of the counter affidavit the assertions made in paras 4.6 and 4.7 respectively of the application are reiterated to be true. It is further submitted that paras 2.5 and 3.3.6 of Manual of Instructions for Restructuring of Cadres in Indian Audit & Accounts Department are also relevant. The same are reproduced below :

2.5 DETERMINATION OF BRANCH OFFICES FOR ACCOUNTS & ENTITLEMENT AND AUDIT OFFICES ACCORDING TO STAFF AVAILABILITY :

Branch Offices for Accounts & Entitlement/Audit will be constituted at convenient places according to the staff availability, options, existing vacancies, etc. The object of the scheme is to avoid disturbance of any of the existing staff through transfers. Proposals regarding these may be sent by AsG(A&E) and AsG(Au) to Director (O&M) after action regarding calling for applications and allocation to Audit Offices is completed. These proposals should be accompanied by details of distribution and location of allottees at each level to Accounts & Entitlement Office/Audit Offices.

W.M.B.

3.3.6. wherever isolated posts of common services like gestetner operator, manage (typing), catatakers and welfare assistants etc. have been sanctioned, new posts will have to be sanctioned, new posts will have to be sanctioned de novo for the newly created Audit Offices as justified by the existing norms and practice. All existing posts, if there be more than one will be allocated equally between Accounts & Entitlement and Audit Offices all fractions remaining with the former; if only one exists it shall remain with the parent cadre of the Accountant

General for whom also sanction will have to be renewed in the new Accounts & Entitlement Offices.

Stenographers and personal assistants including senior personal assistants shall also be eligible to apply. Wherever the posts are more than one, in each category they will be divided according to the numbers of posts of accounts officers/audit officers, group officers and accountants general in each office. Posts will be sanctioned for new group officers and heads of department as per existing norms and practice.

All staff cars, office machinery and equipment and other moveable assets shall be allocated on the same principles as applicable to isolated posts. Management of estates, residential colonies for bifurcated offices shall vest in the Accountant General (A&E). "

It is clear from contents of above paras that -

- (i) The object of the scheme is to avoid disturbances of any of the existing staff through transfers;
- (ii) The Stenographers and Personal Assistants including Senior Personal Assistants shall also be eligible to apply. Wherever the posts are more than one, in each category they will be divided according to the numbers of posts of accounts Officers/ Audit Officers, Group Officers and Accountants General in each office. Posts will be sanctioned for new group officers and heads of department as per existing norms and practice.

The promotion of Shri Ganguly at Allahabad against vacancy of Lucknow and also transferring him to Lucknow was against the spirit of the scheme. The applicant was, thus, fully entitled to have been promoted as P.A. at Lucknow against vacancy at Lucknow.

W.M.B.

15. That in reply to the contents of paras 18, and (17 & 18 - repeated), it is stated that the assertions made in para 4.8 of the application are true and are reiterated. It is further submitted that the Respondents have admitted that the promotion order of some of the Auditors to the post of Senior Auditors was made subject to their joining at Lucknow against the vacancies at Lucknow. The same procedure should have been followed/ adopted in the case of Shri A.K. Ganguly - i.e., his promotion should have been subject to joining at Lucknow, since the post of P.A. existed at Lucknow, which was not followed in order to give undue favour to Shri Ganguly and deny the benefit of promotion to the Applicant at Lucknow.

16. That in reply to the contents of para 19 it is submitted that if the Respondents had to fill up three vacancies of P.A. (including two at Lucknow) on the basis of seniority only, without considering that the posts are to be filled up where it existed, then there was no justification of calling for the willingness of persons for posting at Lucknow on promotion. Moreover, it has clearly been mentioned in the letter, contained in Annexure-2 to the application, that the promotion to the post of P.A. in Office of the A.G. (Audit), situated at Allahabad and Lucknow was to be made. Hence there was no justification in not filling up the vacancies at Lucknow by promoting willing person.

17. That the contents of para 20 need no reply.

18. That the contents of para 21 are denied and

W.M.W.

the contents of para 4.11 of the application are reiterated to be true. Three persons - S/Shri Dharam Dev, Jai Prakash and A.K. Ganguly were promoted in October 1985, which is an admitted fact in para 6 of the counter-affidavit. It is vehemently denied that the promotions were in accordance with rules.

19. That the contents of para 22 call for no reply.

20. That the contents of para 23 are misconceived and misleading and hence are not acceptable.

21. That in reply to the contents of para 24 it is stated that only this much is admitted that Shri A.K. Ganguly was promoted, but it is emphatically denied that it was according to rules, as while doing so the Respondents failed to consider that he was promoted against one of the existing vacancies at Lucknow, and as such either he should have been transferred to Lucknow, immediately on his promotion or if he was unwilling to be posted, his immediate junior and willing person for posting at Lucknow on promotion (the Applicant) should have been promoted.

22. That in reply to the contents of para 25 the contents of paras 4.15 and 4.16 of the application are reiterated to be true. The Respondents have given evasive reply, as they have not given any specific reply as to why the posts of P.A. at Lucknow were not filled up.

23. That the contents of para 26 of the counter affidavit are totally denied and in reply the contents of para 4.17 of the original application are reiterated to be true.

W.B.W.

24. That in reply to the contents of para 27 it is stated that in para 9 of the counter affidavit the Respondents have admitted that the promotion of S/Shri Dharam Dev, Jai Prakash and A.K. Ganguly was ante-dated with effect from 1.6.1984 because the vacancies were existed on that date too. In this connection, it may be stated that if the same principles are followed in the case of the applicant, since two vacancies of P.A. were ~~wax~~ admittedly existing at Lucknow even before 1.3.1984, there will be no justification in not making the promotion of the deponent effective from 1.3.1984.

25. That the contents of para 28 of the counter affidavit are totally denied being misconceived and misleading. The case quoted by the applicant is relevant in the instant case. He also reiterates the contents of para 4.19 of the original application to be true. It is also pertinent to mention here that in the case of promotions to the post of P.A. also should have been made only after ascertaining the non-acceptance of promotion by seniors, which was not done by the respondents. The following chart will make the position clear :

In the case of Shri R.K. Singh
Sr. P.A. to A.G.

Promotion was made after ascertaining the non-acceptance of promotion by seniors.

In the case of Applicant

Promotion was made without ascertaining the non-acceptance of promotion by seniors.

The Respondents should have either made the promotion order of Shri Ganguly subject to his joining at Lucknow or should have taken his unwillingness for posting to Lucknow on promotion as P.A., as his non-acceptance/

Wb14

foregoing of promotion, as post at Lucknow was existing. Moreover, the Respondents have not given any definite proof in order to show that both the cases of Shri R.K. Singh and that of the Applicant are different.

26. That the contents of para 29 of the counter affidavit are misconceived and have been made in order to misguide this Hon'ble Tribunal; hence are emphatically denied and in reply the contents of para 2x 4.20 of the application are reiterated to be true. It may be made clear that Shri A.K. Ganguly was not posted to Lucknow for quite some time, after about 21 months he was posted to Lucknow, in July 1987 and he filed an application in the Hon'ble Central Administrative Tribunal, Allahabad, against his transfer order. He joined the Lucknow Office only in March 1989 on getting an assurance from the Respondents that his case for transfer back to Allahabad would be considered on joining at Lucknow and that too after the applicant was promoted as P.A. in February 1989. It is further submitted that on no occasion Shri A.K. Ganguly was asked to refuse or forego his ~~promotion~~ promotion if he was unwilling to be posted to Lucknow on promotion nor his promotion was made subject to joining at Lucknow. Hence the stand taken by the Respondents that Shri Ganguly never refused his promotion, is not tenable in the eye of law. This is also a clear proof of the intentions of the Respondents to have given undue favour to Shri Ganguly.

27. That the contents of para 30 of the counter affidavit call for no reply.

W.B. 10

28. That in reply to the contents of para 31 the contents of para 4.22 of the application are reiterated to be true. It is stated that the averments made in the para under reply clearly indicate that the Respondents have given undue favour to Shri A.K. Ganguly. The Respondents should have posted Shri Ganguly to Lucknow in 1985, but they only posted him in July 1987, that too in the compelled circumstances, mentioned in para 9 of this rejoinder statement.

29. That the contents of para 32 of the counter affidavit are emphatically denied and the contents of para 4.23 of the application are reiterated to be true.

30. That the contents of para 33 are strongly denied and the contents of para 4.24 of the application are reiterated to be true.

31. That the contents of para 34 call for no reply.

32. That the contents of para 35 of the counter affidavit are vehemently denied and the contents of para 4.27 of the application are reiterated to be true. The case of Shri Raj Kumar Singh is very much relevant in the instant case as both the cases are of same nature and under the same cadre controlling authority. In the cases of Shri Raj Kumar Singh and that of the Applicant the Respondents have adopted different procedures. The chart given below will make the position further clear that the Respondents have been adopting the rules as per their sweet will, ignoring the existing rules of promotion and posting :

W.M.B.

(a) In para 18 of the counter affidavit the Respondents have admitted that the promotion of the Auditors to the post of Senior Auditor was made subject to their joining at Lucknow, since vacancies existed at Lucknow.

(b) In para 28 of the counter affidavit the Respondents have admitted that the promotion of Shri Raj Kumar Singh was made to the post of Sr. P.A. (since seniors to him were unwilling to be posted to Lucknow on promotion) after ascertaining the non-acceptance of promotion by the seniors, since the post was at Lucknow.

(c) The Respondents have not adopted none of the above rules while promoting Shri A.K. Ganguly - neither non-acceptance was called for from unwilling seniors (since the post was at Lucknow) nor the promotion was made subject to his joining at Lucknow since the vacancy existed there. On the other hand his posting to Lucknow was made nearly after 21 months in July 1987, in a compelled circumstance, mentioned in para 9 of this rejoinder statement, as a result of continued requests of the then Sr. Dy. Accountant General (SEB) to post a P.A. since the Applicant was relieved to join C.A.T., Patna on deputation.

All the above facts would go to show that the Respondents have adopted 3 different sets of rules in the ~~xxx~~ 3 cases, cited above, in the manner which suited them, ignoring the existing and prescribed rules.



33. That the contents of para 36 call for no reply.

34. That the contents of para 37 are totally denied and the contents of para 4.30 of the application are reiterated to be true. The facts mentioned in the foregoing paras are relevant.

35. That the contents of para 38 of the counter affidavit are strongly denied and the contents of para 4.31 of the application are reiterated to be true. In view of the facts ^{mentioned} hereinabove, the promotion of the applicant deserve to be ante-dated.

36. That the contents of para 39 of the counter-affidavit are emphatically denied and in reply the contents of para 4.32 of the application are reiterated to be true. It is very strange to note that the Respondents have made the assertion that the promotion to the post of P.A. does not envisage calling for willingness or unwillingness from the eligible persons. If that was the case then there was no need of calling for volunteers for their willingness for posting at Lucknow on promotion (contained in Annexure-2 to the O.A.). Further had it been so, as alleged by the Respondents, why the non-acceptance of the seniors to Shri Raj Kumar Singh was ascertained, before he was promoted to the post of ~~xxxxxx~~ Sr. P.A. from the post of P.A. Thus, it will be clear that the Respondents have made the statement, in the para under reply, which is absolutely incorrect and misleading. Regarding non-supply of relevant information including willingness/unwillingness would be clear from the D.P.C. proceedings, which this Hon'ble Tribunal may be pleased to summon and look into them.

W.M.D.

37. That the contents of para 40 are vehemently denied and the contents of para 4.33 of the application are reiterated to be true. It is submitted that the Respondents have neither mentioned whether the provision of probation period has been provided in the promotion order of Shri Raj Shekhar Sharma nor have produced/annexed a copy of the revised promotion order. It is further important to mention here that even though the probation period of two years, in respect of the applicant, expired in February 1991, neither orders regularising him nor extending his probation period has been issued by the Respondents. This shows that the Respondents do not act fairly, but acted with prejudice and bias against the applicant.

38. That the contents of para 41 of the counter affidavit are denied and in reply the contents of para 4.34 of the application are reiterated to be true. It is further submitted that since the promotion of S/Shri Dharam Dev, Jai Prakash and A.K. Ganguly was ante-dated with effect from 1.6.1984, since the posts were existing from that date, as clearly admitted by the Respondents, there is no reason why the promotion of the applicant be not antedated with effect from 1.3.1984, keeping in mind that the post of P.A. was vacant at Lucknow even prior to that date.

39. That in reply to the contents of para 42 of the counter affidavit, the contents of para 4.35 of the application are reiterated to be true.

40. That the contents of para 43 call for no reply.

41. That in reply to the contents of para 44, it is stated that all the grounds taken by the Applicant are genuine and are sustainable in the eye of law.

42. That the contents of para 45 are strongly denied and the contents of para 6 of the application are reiterated to be true. It is very strange that the Respondents have denied the para 6 (remedies exhausted) of the application, which have been proved by the Applicant by documentary evidence i.e., Annexures 4, 5, 6 and 7 to the application.

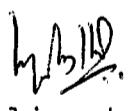
43. That the contents of para 46 need no reply.

44. That the contents of para 47 are denied and the contents of para 8 ~~xx~~ and 9 of the application are reiterated to be true. In view of the position made clear in the instant rejoinder statement and also in the original application, the applicant is entitled to all the reliefs prayed for and the application deserves to be allowed with cost.

45. That the contents of paras 48 call for no reply.

Lucknow:

Date: February 21, 1992.


Applicant.

VERIFICATION.

I, Mohanan Bhattathiri.P., aged about 37 years, son of late Shri Parameswaran Bhattathirippad, resident of ~~xx~~ Quarter No.36, Type-III, A.G. residential Colony, Sector 'O', Aliganj, Lucknow, do hereby verify that the contents of paras 1 to 9, 11 to 23, 26 to 31 and 33 to 45 of this rejoinder statement are true to my personal

knowledge and those of paras 10, 24, 25 and 32 are believed to be true on the basis of legal advice and that I have not suppressed any material fact.

Lucknow:


Signature of Applicant

Date: February 21, 1992. through: (R.S. Srivastava)
Counsel for Applicant.


R.S. Srivastava
Advocate.

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

M. P. No. 186/91/2,
O.A. No. 243 of 1990 (L)

Mohanan Bhattathiri.P.

.. Applicant

versus

Union of India & others

.. Respondents.

Fixed for 8⁴/₉,

APPLICATION FOR EX-PARTE HEARING.

The humble Applicant, abovenamed, most respectfully states as under :

1. That the above application was filed on 1.8.1990 and was heard on 17.8.1990. The application was admitted on 17.8.1990 and 4 weeks time was allowed for counter-affidavit and 2 weeks time for rejoinder-affidavit and the date for final hearing was fixed 30.10.1990. It was listed on 21.11.1990 for admission, but since admission was already done, the above application was listed before the Deputy Registrar on 9.1.1991, and again on 7.2.1991.

*Filed today
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8/4/91*

2. That the application is listed on 8.4.1991 (today), but no counter-affidavit has been received, although nearly 8 months have passed.

3. That Dr. Dinesh Chandra, Additional Government Counsel, had taken the notices on behalf of the Respondent

P R A Y E R.

It is, therefore, most respectfully prayed that this application may be put up for orders before the

(2)

Hon'ble Bench for ex-parte hearing.

Lucknow:

Date: April 08, 1991.

R.S. Srivastava

(R.S. Srivastava)
Advocate

Counsel for the Applicant.

W.B.H.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL (CIRCUIT BENCH)

LUCKNOW.

Misc. Appln. No. of 1991.

Mohanan Bhattathiri.P. ... Applicant

In re:

O.A. No.243 of 1990(L)

Mohanan Bhattathiri.P. ... Applicant

Versus

Union of India & others ... Opp. parties/
Respondents.

Listed for 20.9.91.

MISCELLANEOUS APPLICATION FOR EX-PARTE HEARING.

The Applicant, abovenamed, most respectfully begs to submit as under :

1. That the above application was filed on 1.8.1990 and on 17.8.1990, while admitting the said application, this Hon'ble Tribunal was pleased to pass order to the effect that the counter-affidavit may be filed within one month and rejoinder-affidavit within two weeks thereafter and 30.10.1990 was fixed for final hearing.

2. That since then the counter-affidavit has yet not been filed by the Respondents. On 22.4.91 the Hon'ble Tribunal were pleased to pass orders that no further time would be allowed for filing the counter-affidavit, but this opportunity has not been availed by the Respondents though they were to submit the counter-affidavit on 18.7.1991.

3. That since the last occasion was given to the Respondents, which was not availed by them for filing

Filed today
S/ B
31/7/91

W.H.B.

(2)

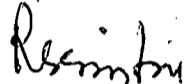
the counter-affidavit, the application may be allowed to be heard ex-parte.


Applicant

P R A Y E R.

WHEREFORE, it is respectfully prayed that the case may be put up for orders of the Tribunal as and when the Bench is available, so that orders may be passed for ex-parte hearing of the case.

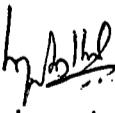
Lucknow:

Date: September 3, 1991. 
Applicant 
through: Sri R.S. Srivastava
Advocate.
Counsel for the Applicant.

VERIFICATION.

I, Mohanan Bhattathiri.P., aged about 37 years, son of late Shri Parameswaran Bhattathirippad, working as P.A. in the Office of the A.G.(Audit)-II, U.P., Lucknow, do hereby verify that the contents of paras 1 to 3 of this application are true to my personal knowledge and that I have not suppressed any material fact.

Lucknow:

Date: September 3, 1991. 
Applicant.