

(See rule 114)

OA/~~TA/RA/CP/MA/PT~~ 249.....of 2090

*Versus*

# INDEX SHEET

Certified that the file is complete in all respects.

Signature of S.O.

Signature of Deal. Hand

(A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH, LUCKNOW

Registration No. 349 of 1989 90 (L,

APPLICANT(S) Shri M. P. Jain

RESPONDENT(S) Union of India & others

25/10/90

25/10

Particulars to be examined application 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? application yes
3. a) Is the ~~appeal~~ in time? yes Impugn Order,  
b) If not, by how many days it is beyond time? N.A. dated: 30/4/90  
c) Has sufficient case for not making the application in time, been filed? yes
4. Has the document of authorisation/ Vakalatnama been filed? yes
5. Is the application accompanied by B.D./Postal Order for Rs.50/- yes Postal Order 50/-
6. Has the certified copy/copies of the order(s) against which the application is made been filed? yes
7. a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed? yes  
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly? yes  
c) Are the documents referred to in (a) above neatly typed in double space? yes
8. Has the index of documents been filed and paging done properly? only in Petition not in Annexure
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

349/90②

(A3)

6.11.90

Hon'ble Mr. M.Y. Parolkar A.M.  
" " P.K. Agrawal J.M.

Due to resalcation of Bar  
Association, Case is Adjourned  
to 21.11.90.

21-11-90

Q B.O.C.

Hon'ble Mr. Justice K.Nath, V.C.  
Hon'ble Mr. M.M.Singh, A.M.

ADMIT.

Issue notice. Counter may be within  
4 weeks rejoinder within 2 weeks there-  
after. List before D.R. on 9.1.91 for  
fixing a date for final hearing if  
possible, after completion of record.

Sd/  
A.M.

Sd/  
V.C.

NOTICE ISSUED  
24-11-90

Sd/

9.1.91

D.R.

Applicant's side is  
present today. O.P.  
is absent. Respondent  
did not file  
Counter. He is  
ordered to file  
Counter by 15/2/91.

ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD/C.B. LUCKNOW

(94)

MA NO. 349 OF 1975  
Vs.

Sl.No.	Date	Office Report	Orders
		<p>CA filed along with application for condonation of delay but not duly served in the application.</p> <p>No RA filed S.F H/ex lark L 26</p>	<p>8.7.75 - 140 Mr Justice J.C. Saravastava - vs 140 Mr. A. B. Goshal</p> <p>Put up tomorrow for hearing.</p> <p>Am</p> <p>ve</p>
		<p>Disc on J. L. 12/1/75</p> <p>Recd Resmta Admstr</p> <p>P.L. Bhattacharya</p>	

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALL AHABAD

LUCKNOW CIRCUIT BENCH

Registration O.A.No.349 of 1990(L)

M.P. Jain ..... Applicant

Versus

Union of India & Others ..... Respondents

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

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

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

The applicant started his service career as per U.P.Civil Service (Executive Branch) (hereinafter referred to as PCS) with effect from July 15, 1961 on the result of the competitive examination and interview held by the U.P. Public Service Commission and was allotted 1960 as his year of allotment for purposes of seniority in the said service and was subsequently promoted in the IAS cadre after inclusion of his name in the select list. The applicant has prayed this Tribunal to direct the respondents 1 & 2 to allot the applicant 1981 as his year of allotment in the IAS and place his name in the current gradation list of IAS of UP Cadre(as on January 1, 1990) published by respondent No.2 below Shri K.L.Gupta(Sl.No.358) and above Shri B.B.Chaturvedi (Sl.No.359) and quash the Govt. of U.P. letter dt. 30.4.90 and the Govt. of India letter by which the applicant's representation dt.7.5.89 has been rejected by the Govt. of India for correct fixation of his seniority in the IAS after summoning the same from respondent No.1. It is further prayed that the Govt. of India letter dated 7.2.1990 so far as it relates to assignment of 1983 as the year of

Recd. copy  
Registration  
for R Raman  
Adv.  
20/5/92

AG

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allotment of the applicant in the IAS may also be declared illegal and inoperative.

2. The applicant who had already been promoted to a Senior scale was transferred from Ghaziabad to Basti as Managing Director, Spinning Mills in 1980. The applicant requested for his transfer to Western U.P. as his children were studying in Delhi and a change of University was involved. The Chief Executive Officer, Noida Ghaziabad requested the Chief Secretary who after appreciating the circumstances of the applicant diverted the applicant to Noida. According to the applicant, this led to start of the move for damaging the career and the vindictiveness found expression in initiating two enquiries in the year 1980-81. A pseudonymous complaint was received in the Appointment Department which after enquiry was rejected having found baseless. Even then Vigilance enquiry continued despite representation made by the applicant and the Vigilance Wing after enquiring the matter reported that the charge is baseless. But the time taken by the enquiry caused an irreparable loss to the career of the applicant. Another matter was also raked up. In 1978, the District Magistrate, Ghaziabad asked the applicant to enquire and report about the complaint made by certain farmers against the Special Land Acquisition Officer, Ghaziabad for withholding the payment of their compensation. The applicant after enquiring the matter submitted his report to the District Magistrate stating that the complainants were declared title-holders of the land way back in 1972 and that no appeal against the judgement/

(A7)

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decree had been filed so far though a period of six years had elapsed against the prescribed period of limitation of one month. This matter was also entrusted to the Vigilance Wing. The Vigilance Wing enquired the matter and reported to the Govt. that the applicant was not at all <sup>to be</sup> fault in any manner. <sup>2</sup> The applicant was completely exonerated in December, 1988 with the result the applicant who was selected for the PCS high scale Rs.2300-2700 on 17.8.87, his promotion was not released. He was selected in the IAS in 1984, 1985, 1987 and 1986 and his promotion to the IAS was released only on 13.3.89. The Selection Committee which met in the year 1987 for selection to higher scale post, the outstanding service record of the applicant was adjudged suitable for appointment to the higher post in the PCS cadre but not promoted due to pending disciplinary proceedings against him. The U.P. Administrative Tribunal before which the matter was referred, exonerated the applicant in the year 1988. It was thereafter the applicant was given notional promotion to the PCS cadre from 18.8.87 when his juniors were promoted in the higher scale. The applicant after this exoneration was promoted to the IAS on 13.3.89 as stated earlier. The plea on behalf of the applicant is that according to Rule 3(3)(ii) of the IAS (Regulation of Seniority) Rules, 1987 the Govt. of India have allotted him 1983 as his year of allotment for fixation of his seniority in the IAS in their letter dated 7.2.90 on the basis of inclusion of his name in the select list of IAS prepared in 1987. The ~~302~~ name of the applicant

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had been included in the select list of the IAS prepared in the years 1984, 1985 and 1986 but he was not appointed to the IAS on 17.10.86 due to the continuance of Vigilance inquiry/disciplinary proceedings against him with the result his junior Shri B.B.Chaturvedi was appointed to the IAS cadre. According to the applicant he was totally exonerated in the departmental proceedings on the completion of Vigilance inquiry, all the allegations against him were found to be baseless. The applicant was, therefore, entitled to be allotted 1981 as his year of allotment on the basis of inclusion of his name in the select list of the IAS drawn up in the year 1985 and his name should have been shown below Shri K.L.Gupta and above Shri Brij Bhushan Chaturvedi in the gradation list of IAS of the U.P. Cadre published on 1.1.1990, in accordance with the provisions of Rule 3(3) (ii) of the IAS (Regulations of Seniority) Rules, 1957. The applicant has also pleaded that it is provided in Section 2(b) of the All India Service (Conditions of Service Residuary matters) Rules, 1960 (hereinafter referred to as Residuary matter rules) that where the Central Govt. has not made regulations to regulate any matters relating to conditions of service of persons appointed to the All India Services such matters shall be regulated in accordance with the rules required and orders applicable to officers of State Civil Service Class I subject to such exceptions and modifications as the Central Govt. may by order in writing make. The State Govt. has introduced sealed cover procedure in the matter of promotion and the G.O. dt. 30.11.83

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provides that " after the conclusion of the Vigilance Inquiry/disciplinary/criminal proceedings if the concerned Govt. servant is totally exonerated and he has been found fit for promotion, he is made permanent on the post reserved for him. It is also provided that where no post has been reserved for such Govt. servant if he is totally exonerated after conclusion of disciplinary/criminal proceedings/Vigilance enquiry and he has been adjudged suitable for promotion by the Selection Committee he shall be given notional promotion from the date his junior has been promoted to higher post and his pay will be fixed as if he continued to hold the higher post from notional date of his promotion". The contention of the applicant is that in view of the sealed cover procedure the respondents should have reserved one post for him in the year 1985 but they did not do so. The applicant gave representation to this effect but he was informed that his representation has been rejected. Thereafter he approached this Tribunal. The applicant has made a reference to the law laid down by the Hon'ble Supreme Court in Civil Appeal No.4474-76 of 1989 in the case of C.O.Arunmugam and Others Vs. State of Tamil Nadu and others in which promotions of persons against whom charge-sheet has been framed in disciplinary proceedings or chargesheet has been filed in criminal case, to avoid arbitrariness the consideration of promotion may be deferred till proceedings are concluded. After exoneration the employee if found suitable be given promotion with retrospective effect from the date when his junior has been promoted. The respondents have contested

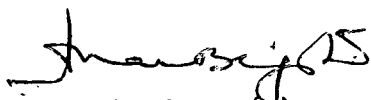
(A/c)

the case of the applicant. They have filed reply. His immediate junior in the select list was appointed in 1987 and one post was reserved for him and he could not have been appointed due to Vigilance Inquiry and the same position have in subsequent years and the applicant could not be appointed. He was only appointed after exoneration orders were issued. It is true that the IAS (Regulation of Seniority) Rules are silent on the point. The applicant was exonerated of all the charges and the proceedings against him ended in his favour and the complaints against him were found to be false. Since the applicant was exonerated of all the charges, it was the duty of the administration to promote the applicant from the date his junior has been promoted but he was deprived of the promotion because of the disciplinary proceedings which ultimately found to be untrue and without any basis. The applicant <sup>could</sup> ~~should~~ be deemed to have been promoted with effect from his junior was promoted and the notional promotion which consequently could be given and the same may also result in changing the year of allotment and seniority. So far as the plea of relaxation is concerned, it can undoubtedly be granted by the Central Govt. which alone has<sup>L</sup> the power for the same under All India Service (Conditions of Service Residuary matters) Rules, 1960 and it appears why the Central Govt. should not consider the same. Accordingly, we dispose of this petition directing the respondents to consider the case of notional promotion of the applicant after changing his date of seniority and place him in the seniority list from the date his junior has been promoted. This exercise will be done

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within a period of three months. It is expected that the Central Govt. will consider the question of relaxation in favour of the applicant who is without any fault and he has been involved unnecessarily<sup>ul 4</sup> in the circumstances mentioned above. The applicant should not be made to suffer for his no fault. The Govt. will consider and decide the question of relaxation within a period of three months from the date of the receipt of any such application by the applicant. There will be no order as to costs.

  
Member (A)

  
Vice Chairman

Dated the 5 July, 1991.

RKM

COMPILATION I

Lucknow District

In the Central Administrative Tribunal  
Current Bench Lucknow

CA NO. - 349 1990(L)

Shri M.P. Jain Applicant  
Vs

Ministry of Industries Respondents

6.11.90 F.A.

A12

Application under Section 19 of the Administrative  
Tribunal's Act 1985.

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Title of the Case -- Allotment of 1981 as the  
year of allotment to the  
Applicant for determination  
of his Seniority in the IAS

I N D E X

<u>Sl.No.</u>	<u>Description of the documents relied upon</u>	<u>Pages.</u>
1.	Original application . . . . .	1-19
2.	Applicant's note dated 10.1.78 to D.M. Ghaziabad and orders of DM thereon Annexure.I. . . . .	20-22
3.	G.O.No.2102/II(2)-4/2(3)/89 dated 26.3.1990 notionally promoting the applicant on higher scale post in PCS cadre- Annexure.2 . . . . .	23-24
4.	Govt.of India Notification No. 14015/ 26/87AIS(I) dated 13.3.1989 appoint - ing the applicant to the IAS- Annexure-4. . . . .	25
5.	Copy of G.O.No.15/85/1983 Karmik-I dated Nov.30, 1983 regarding sealed cover procedure- Annexure.4 . . . . .	26-28
6.	Applicant's representation dated 3.5.89 to the Govt. of India for fixation of his seniority in IAS on the basis of inclusion of his name in Select List of IAS for the year 1984-Annexure.5 . . . . .	29-32
7.	Govt. of India letter No.443(1)49/1(103) /88 dt. 30.4.90 intimating that the repre- sentation of the applicant for fixation of his seniority in the IAS has been considered by the Central Govt.and the State Govt. and has been rejected. Annexure.6 . . . . .	33
8.	Govt. of India letter No.14014/11/90- AIS(1) dt. 7.2.1990 allotting to the applicant and others 1983 as his year of allotment in the IAS for determi- nation of his seniority- Annexure- 7- . . . . .	34-35

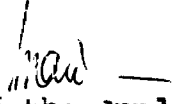
Contd. on next page.

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Page. 2.

9. Vakalatnama executed in  
favour of his counsel Sri Radhika  
Raman, Advocate, Sri R.S. Srivastava,  
Advocate.

36.

  
Signature of the Applicant

Lucknow:  
October 23, 1990

Signature of the Registrar

FOR USE IN TRIBUNAL'S OFFICE.

Date of filing or

Date of receipt by post .

Registration No.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH, LUCKNOW

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Original Application No. 349 of 1990 (L)

Shri M.P.Jain, aged about 55 years,  
son of Shri B.S. Jain  
presently working on the post of Joint  
Secretary to Government of U.P., Revenue  
Department Civil Secretariat, Lucknow

.. .. Applicant

Versus

1. Union of India through the Secretary  
to the Government of India, Ministry  
of Personnel P.G. and Pensions,  
Department of Personnel and Training,  
New Delhi.
2. State of U.P. through the Secretary to  
the Government of U.P. Appointment Deptt.  
Civil Secretariat, Lucknow.
3. Shri Braj Bhushan Chaturvedi, IAS  
Joint Secretary to the Government of U.P.  
Home Department, Civil Secretariat, Lucknow.
4. Sri Yashpal IAS , District Magistrate,  
Jaunpur.
5. Shri Sanjiv Nair, IAS Joint Secretary,  
District Magistrate, Hardoi .. .. RESPONDENTS.

*Filed today  
25/10/90  
Noted for  
6/11/90  
R Srinivas  
Advocate  
25/10*

*(AW)*  
Central Administrative Tribunal  
Lucknow  
25/10/90  
P  
25/10

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I- Particulars of orders against which application is made.

- (i) Government of U.P. letter No. 493 (1)-II-1-19/1(103) 88 dated 30.4.1990, intimating that the applicant's representation has been rejected after consideration by the Government of U.P. and the Government of India (Annexure -6).
- (ii) The Government of India letter in which the applicant's representation for fixation of his seniority has been rejected by them after summoning the same from O.P.No.1.
- (iii) The Government of India letter No.14014/11/90-AIS (1) dated Feb 7, 1990 so far as it relates to the assignment of applicant's year of allotment in the IAS and consequent fixation of his seniority.

2. JURISDICTION OF THE TRIBUNAL:

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

3. LIMITATION

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

4. FACTS OF THE CASE

4.1: That the applicant was appointed

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on probation for two years to U.P. Civil Service (Executive Branch) ( hereinafter referred to as PCS) with effect from July 15, 1961 on the result of the competitive Examination and interview held by the U.P. Public<sup>i</sup> Service Commission and was allotted 1960 as his year of allotment for purposes of seniority in the said service.

4.2: That on successful completion of two years' probation the applicant was confirmed in the PCS with effect from July 15, 1963.

4.3: That on being found suitable for promotion to the senior scale of the PCS on the criteria of seniority subject to the rejection of the unfit, the applicant was promoted to the said senior scale with effect from 27.12.1972.

4.4: That some posts above the senior scale posts in the PCS cadre known as special grade posts are filled up by promotion from amongst the holders of senior scale posts on the criteria of strict merit. The applicant's work and conduct right from the date of his entry in the PCS has remained of high order and of outstanding nature as well be borne out after perusal of his character roll. The applicant was selected for promotion to the special grade posts in the scale of Rs.1400-1800 ( now revised to Rs.4100-5300) on the criteria of strict merit on the basis of his service

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record of outstanding nature and he was appointed to the special grade post with effect from 5.3.1978.

4.5. (i) The applicant was transferred from Ghaziabad to Basti as Managing Director, Spinning Mills in 1980. As the children of the applicant were studying in Delhi and the change of University was involved, he requested the Government to post him in any western district of Uttar Pradesh. The Chief Executive Officer, NOIDA Ghaziabad, had also written to the Government to post the applicant in NOIDA. The then Chief Secretary appreciated the circumstances of the applicant and was pleased to divert the applicant to NOIDA. This decision of the then Chief Secy. enraged a certain high-up in Appointment Deptt. who took it as a personal affront and decided to damage the career of the applicant in one way or the other.

(ii) The process of damaging the career was initiated and the vindictiveness found expression in initiating two enquiries in the year 1980-81. It is no coincidence that in the 20 years of service of the applicant prior to 1980, there was no such enquiry.

4.6: A pseudonymous complaint was received in the Appointment department. This complaint was sent to the District Magistrate Ghaziabad for enquiry. District Magistrate Ghaziabad thoroughly enquired into

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the matter and reported to the Government vide his D.O. letter dated 24.4.1980 that the complaint was pseudonymous and the allegations made therein were baseless. The vindictiveness is evident from the fact that inspite of this inquiry report from the District Magistrate, they entrusted the enquiry to the Vigilance Wing. The applicant represented against this decision of the Government through proper channel viz. Chairman Noida stating that there was no prima-facie case against the applicant and his innocence in the matter was reported by the District Magistrate after a detailed enquiry. Inspite of this, the vigilance enquiry continued. The vigilance wing enquired into the case and reported the baselessness of the allegations but the time taken by the enquiry caused an irreparable loss to the career of the applicant and enormous mental torture to the applicant and his family.

4.7. Another matter ~~of~~ was also raked up. In 1978, District Magistrate, Ghaziabad had asked the applicant to enquire and report about the complaint made by certain farmers against the Special Land Acquisition Officer, Ghaziabad for with-holding the payment of their compensation. Their allegations were that they were the title-holders of the land; that their names figured in the record of title (khatauni); that their title over the land was decided by the competent authority-/court way back in 1972 and still their compensation was not being paid by the Special

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Land Acquisition Officer. The applicant enquired into the complaint. After due analysis and scrutiny of the documentary evidence on the file, the applicant submitted his report to the District Magistrate stating that the complainants were declared titleholders of the land way back in 1972 and that no appeal against the judgment/decreed had been filed so far though a period of 6 years had elapsed against the prescribed period of limitation of one month. The then District Magistrate agreed with the report and ordered the release of the compensation. The applicants' report and order of District Magistrate Ghaziabad in the matter is filed in Annexure.I. The appointment Deptt. in an extremely unusual move, chose to depute in 1981 an officer of the appointment Department to enquire into the facts. The deputed officer attributed the order of release of the compensation to the applicant and thereby paved the way for implicating the applicant. This was reckless on his part because he stated things contrary to the facts as in documents. It was not the applicant but District Magistrate Ghaziabad who had ordered the release of the compensation. On the basis of this, this enquiry was also entrusted to the Vigilance wing. The vigilance enquired into the matter and reported to the Government that the applicant was not at all at fault in any manner. The Government remanded the enquiry to the Vigilance Wing for 'closer' scrutiny.

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Vigilance wing got the clue and acted so as to rope in the applicant. The applicant made a detailed representation to the Chief Secretary against this. The representation ~~is Annexure-I.~~ It gives the full picture of the case and clearly brings out the innocence of the applicant. Still the matter was entrusted to the Administrative Tribunal for inquiry. The Administrative Tribunal after due enquiry clearly held that the applicant was totally innocent. They totally exonerated the applicant in December 1988. The enquiry and the disciplinary proceedings consumed several years. Thus the vindictiveness caused a tale of woe and suffering and torture to the applicant. He stood deprived of his promotions in the PCS/IAS for as many as 5 years. He was selected for the PCS higher scale Rs.2300-2700 on 17.8.87 but the promotion was not released. He was selected in the IAS in 1984, 1985, 1987 and 1986 and his promotion to the IAS was released only on 13.3.1989.

4.8: That a high powered Selection Committee constituted in 1987 for making selection from amongst special grade PCS officers for promotion to higher scale posted in the PCS cadre in the scale of Rs.2300-2700 ( which has since been revised to Rs.4500 5700) on the criteria of strict merit. On the basis of outstanding service records the said Selection Committee adjudged the applicant suitable for appointment to the said higher scale post in the PCS cadre.

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The applicant was however, not promoted to the said higher scale post in 1987 due to continuance of Vigilance inquiry/disciplinary enquiry proceedings <sup>before the Vigilance authorities/</sup> against him. The U.P. Administrative Tribunal, After conclusion of the said disciplinary proceedings in December 1988, the applicant was totally exonerated by the U.P. Administrative Tribunal. The applicant was thereafter given notional ~~of~~ promotion to the said higher scale post in PCS cadre retrospectively from 18.8.198<sup>7</sup> when his junior had been promoted in that higher scale and orders to that effect ~~for~~ were issued in G.O.No. 2102/II(2)-4/2(3)89, dated March 26, 1990 a copy of which is being filed as Annexure.2.

4.9: That right from the date of entry in service the service record of the applicant has throughout been of outstanding nature on the basis of which his name was included in the select list of the IAS compiled in the year 1984, 1985, 1986 , ~~1987~~ 1987, and ~~1988~~. Though he was entitled to be appointed to the IAS by virtue of inclusion of his name in the select~~d~~ list of 1984 and 1985 but due to the continuance of Vigilance inquiry and disciplinary proceedings against him, his junior <sup>in</sup> the PCS cadre was appointed to the IAS with effect from 17.10.1986 and he was allotted <sup>1981</sup> ~~1987~~ as ~~his~~ his year of allotment for purposes of seniority in the IAS.

4.10: That after the close of Vigilance inquiry and the disciplinary proceedings the applicant having been totally exonerated by the Administrative

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Tribunal and Vigilance authorities, he was promoted and appointed to the IAS with effect from 13.3.89 on the basis of inclusion of his name in the Selection list of the IAS prepared in the year 198<sup>7</sup> vide Govt. of India Notification No.14015/26/87-AIS(1), dated March 13, 1989 a copy of which is being filed as Annexure.3.

4.11: That the applicant believes that according to Rule 3 (3) (ii) of the IAS (Regulation of seniority) Rules 1987 the Government of India have allotted to him 1983 as his year of allotment for fixation of his seniority in the IAS in their letter No.14014/II/90-AIS(I) dated Feb 7, 1990 on the basis of inclusion of his name in the select list of IAS prepared in 1987. The name of the ~~the~~ petitioner had been included in the Select list of the IAS prepared in the years 1984, 1985 and 1986 ~~and~~ also but he was not appointed to the IAS on 17.10.1986 on the basis of inclusion of his name in the Select~~x~~ list prepared in 1985 due to the continuance of a Vigilance inquiry/disciplinary proceedings against him with the result that his junior in PCS cadre Sri B.B. Chaturvedi was appointed to the IAS on 17.10.1986. The applicant was totally exonerated in the departmental proceedings on the completion of Vigilance inquiry, all the allegations against him were found to be baseless. The applicant was, therefore, entitled to be allotted 1981 as his year of allotment on the basis of inclusion of his name in the select~~x~~ list of the IAS drawn up in the year 1985 and his name should have been shown

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-10- Below

below Shri K.L. Gupta and above Shri Brij Bhushan Chaturvedi in the gradation list of IAS of the U.P. Cadre published by the State Government in Appointment Deptt. as on 1.1.1990.

4.12. That it is provided in Section 2 (b) of the All India Service ( Conditions of Service Residuary matters) Rules 1960 ( hereinafter referred to as Residuary matter rules ) that where the Central Govt. has not made regulations to regulate any matters relating to conditions of service of persons appointed to the All India Services under All India Services Act, 1951, such matters shall be regulated in case of persons serving in connection with the affairs of a State by the rules, regulations and orders applicable to officers of State Civil Services Class I subject to such exceptions and modifications as the Central Government may, after consultation with the State Government concerned by order in writing make. The State Government introduced the sealed cover procedure as far back as in June 1972. The said sealed cover procedure was last modified in G.O.No. 15/85/1983-Karmik-1, dated 30.11.1983 which is applicable to all employees of U.P. Government including State Civil Services Officer-s of Class I status. According to the said sealed cover procedure as laid down in the said G.O. the Selection Committee constituted for making selections for promotions to higher posts consider all such Government servants who come within the field of eligibility for promotion including such Government

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servants as are under suspension or against whom Vigilance Inquiry / Disciplinary proceedings/Criminal proceedings are pending and adjudge the suitability or otherwise of the Government servants concerned. The view of the Selection Committee regarding the suitability ~~of~~ or otherwise of such Government servant against whom Vigilance inquiry / disciplinary / criminal proceedings are pending are placed under sealed cover and one post reserved for him. This sealed cover procedure is followed in subsequent selections also.

✓ After the conclusion of the ~~Vigilance inquiry / disciplinary/Criminal proceedings~~ if the concerned Govt. servant is totally exonerated and he has been found fit for promotion, he is made permanent on the post reserved for him. It is also provided that where no post has been reserved for such Government servant if he is totally exonerated after conclusion of disciplinary/criminal proceedings/Vigilance enquiry and he has been <sup>adjudged</sup> ~~adjusted~~ suitable for promotion by the Selection Committee he shall be given notional promotion from the date his junior has been promoted to higher post and his pay will be fixed as if he continued to hold the higher post from notional date of his promotion. The said sealed cover procedure shall apply to the applicant according to the said Section 2 (b) of the Residuary matter Rules, 1960. A copy of the said G.O. dt. Nov. 30, 1983 is being filed as Annexure no.4.

4.13: That though a post in the senior scale of the IAS is understood to have been reserved for the

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applicant at the selections held in 1984 and 1985 and 1986 and no officer was appointed against that post in any of the years but in contravention of the said sealed cover procedure laid down in the G.O. dated 30.11.1983, which has a mandatory force in the absence of any Statutory rules on the subject the respondents <sup>Should have</sup> appointed him against the post reserved for him at the 198<sup>5</sup> selection.

4.14. The facts narrated in paras 4.11 and 4.12 and 4.13 clearly show that the applicant is legally entitled to be allotted 1981 as his year of allotment in the IAS and his name should figure below Shri <sup>K.L. Gupta</sup> ~~S.N. Dwivedi~~ and above Sri ~~B.C. Dwivedi~~ <sup>B.B. Chakravorty</sup> in the gradation list of IAS of U.P. Cadre published ~~in~~ by the State Government, Appointment Department as he would have been appointed to the IAS from 17.10.1986 in case the ~~Civ~~ Vigilance inquiry/disciplinary proceedings had not been going on against him on the said date and as such he cannot be made to suffer in the interest of ~~an~~ equity, fairness and justice.

4.15: That the applicant made a detailed representation dated 7.5.1989 to the respondent no.1 through respondent no. 2 containing full justification for fixation of his seniority in IAS on the basis of inclusion of his name in the selection list of the IAS prepared in 1984 and 1985 and praying for fixation of his seniority accordingly. A copy of the said representation is being filed here with as Annexure. 5.

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A26

4.16. That the applicant has been informed in Government of U.P. letter No. 493(1)19/1(103)/88 dated 30.4.1990 that his representation has been considered by the State Government as well as by the Central Govt. but it has not been found possible to accede to his request made therein. A copy of the said letter dated 30.4.1990 is being filed as Annexure.6.

4.17. That it is matter of regret that the Govt of India have not made any provision in the IAS (Appointment by promotion) Regulations, 1955 or in the IAS ( Regulation of Seniority ) Rules, 1954 to regulate the year of allotment and fixation of seniority of such officers who are continuously included in successive select list of the IAS and not appointed to the IAS due to continuance of disciplinary/criminal proceedings, ~~or~~ Vigilance Inquiry against them but they are totally exonerated after completion of inquiries/proceedings after four-five years and they are appointed to the IAS on the basis of the inclusion of their names in the last select list though in the interest of justice, equity and fairness they deserve to be given the year of allotment for purposes of fixation of seniority on the basis of inclusion of their names for the first <sup>time</sup> in the select ~~list~~ list by virtue of which their juniors were promoted and appointed to the IAS.

4.18. That the Govt. of India have arbitrarily and illegally assigned 1983 as the year of allotment of the applicant for fixation of his seniority in the

11/12/83

A27

IAS along with other in their letter no. 14014/11/90-AIS (1) dated Feb 7, 1990 a copy of which is being filed as annexure. no. 7 though he deserves to be allotted 1981 as his year of allotment in the IAS by virtue of inclusion of his name in the select list of IAS compiled in 1984/1985.

4.19. That according to the law laid down by the Hon'ble Supreme Court of India in Civil Appeal No. 4474-76 of 1989 in the case of C.O. Arunmugam and others versus state of Tamil Nadu and others, promotions of persons against whom charge sheet has been framed in disciplinary proceedings or charge-sheet has been filed in criminal case, to avoid arbitrariness the consideration of promotion may be deferred till proceedings are concluded. After exoneration the employee is found suitable be given promotion with retrospective effect from the date when his junior has been promoted. The facts and circumstances of that case are similar to the case of the applicant.

5. Grounds for relief with legal provision

(i) That the order contained in Govt. of U.P. letter dt. 30.4.90 as well as the order of the Govt. of India by which the applicant's representation dated 7.5.89 has been rejected is wholly arbitrary and illegal being against equity, fairness and justice and are liable to be declared null and void.

(ii) That lack of provision in the IAS

1/11/90

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(Appointment by Promotion) Regulation, 1955 and the IAS (Regulation of Seniority) Rules, 1954 cannot deprive the applicant of the benefit of inclusion of his name in the select list of the IAS Prepared in 1984/85 due to continuance of baseless Vigilance inquiry/disciplinary proceedings against him for about six years and ultimately he was totally exonerated while his junior in the PCS cadre Sri B.B. Chaturvedi was appointed to the IAS on 17.10.1986.

(iii) That the applicant in the said circumstances is entitled to be assigned 1981 as his year of ~~promotion~~ allotment in the IAS for purposes of determination of his seniority and to be placed below Shri K.L. Gupta and above Shri B.B. Chaturvedi in the IAS gradation list of U.P. Cadre published by Govt. of U.P. Appointment Department as on 1.1.1990.

(iv) That it is fit case in which this Hon'ble Tribunal be pleased to direct respondent Nos. 1 and 2 to allot 1981 to the applicant for fixation of his seniority and to place his name <sup>below</sup> ~~above~~ Sri K.L. Gupta and <sup>above</sup> ~~below~~ Sri B.B. Chaturvedi ~~below Shri Yash Pal~~ in the current gradation list of U.P. Cadre as corrected 1.1.1990.

(v) That the allotment of 1983 as the year of allotment to the applicant for determination of his seniority in the IAS and placement of his name in gradation list of IAS cadre of U.P. on the basis of his appointment to the IAS from 13.3.1989 is wholly arbitrary and illegal.

(vi) That in view of the position stated in

A29

-16-

para 4.19 above it is a fit case in which O.Ps. 1 & 2 should be directed to allot 1981 as year of allotment to the applicant for purposes of fixation of his seniority in the IAS as prayed for.

(vii) That it is wrong in fact and law to assume that applicant's promotion to the IAS is mainly or solely on the basis of the Select List of 1987 and that it is not related to the 1984/1985 select list. Had it been solely on the basis of 1987 Select List, the applicant could not have been appointed to the IAS because he was more than 54 years of age on 13.3.1989.

(viii) That the post against which <sup>the applicant</sup> ~~it~~ was selected in 1984, continued to remain available to ~~the~~ <sup>him</sup> ~~applicant~~ during the years till his appointment to the IAS. This provision of reserving one post is with the sole purpose to meet the obligation of law and justice to ensure the non-denial of the seniority to the affected officer.

(ix) That the finding of exoneration cannot but imply and mean that at no point of time there stood anything adverse against the applicant. If his due place in the seniority is denied to him, it only means as infliction of punishment on innocence. No letter or spirit of law, justice or good faith can permit or bear it.

(x) That the applicant had already grievously suffered the following:

(xi) That denial of due promotion for 5 years

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and concomitant patent and latent<sup>e</sup> mental agony, torture and misery and if the applicant<sup>s</sup> was denied the seniority, the same would amount to pronouncing<sup>n</sup> a proved innocent person as guilty and inflicting substantive punishment on him in the form of denying him his most precious right of the seniority in service.

6. Details of remedies exhausted.

The applicant made a representation dated 7.5.89 to the Government of India through proper channel (Annexure.5) for correct fixation of his seniority in the IAS but his legitimate request has been rejected by the State Government as well as by the Central Govt. as would be evident from the letter dated 30.4.90 (Annexure.6) issued by respondent no.2.

7. Matters not previously filed or pending with any other court.

The applicant further declares that he has not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any court of law 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. Relief(s) sought:

This H<sub>o</sub>n'ble Tribunal be pleased to direct the respondents Nos. 1 & 2 to allot the applicant 1981 as his year of allotment in the IAS and place his name in the current gradation list of IAS of UP

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-18-

Cadre (as on January 1, 1990) published by Respondent no.2 below Shri K.L. Gupta (Sl. No. 358) and above Shri B.B. Chaturvedi (Sl. No. 359) and quash the Govt. of U.P. letter dated 30.4.1990 (Ann.6.) and the Government of India letter by which the applicant's representation dt. 7.5.89 has been rejected by the Government of India for correct fixation of his seniority in the IAS after summoning the same from respondent no.1.

This Hon'ble Tribunal be also pleased to declare illegal and inoperative the Govt. of India letter no.14014/II/ALS(I) dt. Feb. 7, 1990 so far as it relates to assignment of 1983 as the year of allotment of the applicant in the IAS.

9. Interim relief prayed for :

Nil

10. The application is being submitted personally and as such it is not necessary to attach a self-addressed card or inland letter for intimating the date of hearing.

11. Particulars of postal orders filed in respect of application fees:

1. Number of Indian Postal order: 802 466421 For Rs50/-
2. Name of Issuing Post Office: New Hyderabad P.O. Lucknow
3. Date of issue of Postal order: 25.10.90
4. Post office at which payable: Allahabad

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12. List of enclosures:


Annexure 1 to 7 as shown in the index and Vakalatnama and postal orders.


Verification

I, M.P. Jain, aged about 55 years, son of Shri B.S. Jain presently working on the post of Joint Secretary to U.P. Govt. in Revenue Department, do hereby verify that the contents of paragraphs 1 to 4 and 6 to 12 above are true to my personal knowledge and belief, and those of paragraph 5 are true on the basis of legal advice received and that I have not suppressed anything.

Lucknow:

October 23, 1990

  
Signature of the  
APPLICANT.

Through Shri Radhika Raman  
Advocate  


Radhika Raman  
Advocate, High Court and  
Services Tribunals,  
C - 4 Sector - A - 1,  
Mahanagar, LUCKNOW.



1117/2091 G/LR-  
No. 14014/ V /90- AIS(I)

भारत सरकार  
GOVERNMENT OF INDIA

कामिक, लोक शिकायत तथा पेंशन मंत्रालय  
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

कामिक और प्रशिक्षण विभाग  
DEPARTMENT OF PERSONNEL & TRAINING

नई दिल्ली  
NEW DELHI the

Annexure No.

The Chief Secretary,  
Government of Uttar Pradesh,  
Lucknow.

Subject: IAS - Uttar Pradesh Cadre - Fixation of seniority of  
SCS officers appointed to IAS by promotion in 1989.

Sir,

I am directed to say that the following State Civil Service officers of Uttar Pradesh were appointed to IAS by promotion in 1989, on the dates mentioned against their names:-

S. No.	Name	Dt. of appointment to IAS
1.	S/Shri Mahabir Prasad Jain	13.3.89
2.	Chhotey Lal Kuril	12.7.89
3.	Bhagwati Prasad Verma	
4.	Bharmendra Dev	
5.	Gyanendra Pal Varshney	
6.	Ganga Ram - II	
7.	Bhairo Prasad	
8.	Rajendra Nath Chaturvedi	1.8.89
9.	Manvendra Bahadur Singh	
10.	Kaushlendra Pratap <sup>s</sup>	
11.	Ved Prakash Sharma	
12.	Rajendra Pratap Singh	
13.	Gulbeer Singh	
14.	Romesh Kumar Sharma	
15.	Anil Kumar Singh Solanki	9.9.89
16.	Raj Kumar - I	
17.	Ranbir Singh	
18.	Rajendra Kumar Dube	
19.	Dharam Pal Singh	
20.	Pushker Kumar Sharma	
21.	Devendra Nath Roy	27.10.89
22.	Braj Mohan Joshi	
23.	Shyam Lal Kesarwani	1.12.89

2. The question of determination of their year of allotment in the IAS under Rule 3(3)(ii) of the IAS (Regulation of Seniority Rules, 1987, has been examined. It is noticed that officers a

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Sl. No. 1 and 2 had rendered more than 27 years of service before their appointment to IAS by promotion, thus, they are entitled to a maximum weightage of 9 years. The officers from Sl. No. 3 to 7 had rendered more than 24 years of State Civil Service, therefore, they are entitled to a weightage of 8 years. Since the officers appointed to IAS by promotion earlier than these officers have been assigned 1983 as the year of allotment, therefore, the year of allotment of the officers from Sl. No. 1 to 7 is restricted to 1983 under proviso to Rule 3(3)(ii) of the Seniority Rules. The officers from Sl. No. 8 to 13 had rendered more than 18 years of State Civil Service before their appointment to IAS by promotion. They are entitled to a weightage of 6 years and are also assigned 1983 as the year of allotment. So, the officers from Sl. 1 to 13 are assigned 1983 as the year of allotment in IAS and they shall be placed below Shri Direndra Dutt Bahuguna (SCS:83) in the gradation list of IAS officers borne on the cadre of Uttar Pradesh.

3. The officers from Sl. No. 14 to 18 had put in more than 15 years of State Civil Service before their appointment to IAS by promotion. They are entitled to a weightage of 5 years and are assigned 1984 as the year of allotment. For inter se seniority, they shall be placed below Shri Nepal Singh Ravi (RR:84) in the gradation list of IAS officers borne on the cadre of Uttar Pradesh.

4. The officers at Sl. 19 and 20 had put in more than 12 years of State Civil Service before their appointment to IAS by promotion. They are entitled to a weightage of 4 years and are assigned 1985 as the year of allotment. However, the officers from Sl. No. 22 to 23 had put in more than 21 years of State Civil Service before their appointment to IAS by promotion and are entitled to a weightage of 7 years. But their year of allotment is restricted to 1985 under proviso to Rule 3(3)(ii) of the Seniority Rules. Therefore, the officers from Sl. No. 19 to 23 are assigned 1985 as the year of allotment and for inter se seniority, they shall be placed below Shri Satyajit Thakur (RR:85) in the gradation list of IAS officers borne on the cadre of Uttar Pradesh.

Yours faithfully,

*M. S. Mathur*

( M.S. Mathur )  
Under Secretary to the Government of India

True copy

Attchd

Resubmission

Amended

High Court of Judicature, Allahabad  
Lucknow Bench, Lucknow  
&  
U.P. Public Service Tribunal, Lucknow

Register No ..... Case No ..... of 19 District.....

.....Appellants/Applicants

Counsel.....

Vs

.....Respondents/Opposite Party

Counsel.....

Date	Order Sheet	Date	Information

20

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District Magistrate

May kindly refer to his order dated 5-1-78 on

the application of Tika Ram and three others residents of village Chalera Bangar Pargana Dadri.

Their allegation is that the land has already been acquired for NOIDA but the compensation of the same has not been disbursed to them. This is causing great hardship and loss to them. Further, they have been declared sirdar in suit no. 17/1972 by the Assistant Collector I class Bulandshahr in a suit u/s 229B U.P.Z.A. & L.R. Act. In due course they have acquired Bhumidari rights.

A report from the Special Land Acquisition Officer was called for. It is flag 'A'. He states that the disbursement has been stayed by Collector Bulandshahr vide his order dated 21.7.76. The order was passed on a report from Tehsil Flag C portion B.

I have looked into the file. Naib Tehsildar concerned stated in his report at flag 'C' portion 'A' that certain enquiries are being made and hence the compensation be not disbursed to the concerned farmers. This report was routed through Tehsildar to the D.M. The D.M. passed the following order on 21-7-76 " Compensation to these persons may be withheld till final decision in them made Flag 'C' portion B. The list referred to had 25 cases only. These 25 cases show that the pattas were involved in the enquiry.

The case of the complainants does not figure in this list, as such it can't be said that the D.M. Bulandshahr had ordered the with-holding of the disbursement of the compensation. Additionally the complainants have filed the copy of judgment in case no 17/1972 in the court of Asstt. Collector I st class Bulandshahr. The

True copy  
Attd  
R. S. S. S.  
A. S. S. S.

judgment shows that the state Govt. had contested the suit and had adduced evidence. On the basis of the entries in the C.H.2-A (महक ५६ पृष्ठ ६१) and reliable oral testimony, the learned Court had found the possession of the plaintiffs (now complainants) of long standing and declared them the sirdars. The copy of decree has also been filed, Flag 'D'.

Thus it is clear that the complaints were declared sirdars on 18.9.72 by a competent court. The 1st appeal against this judgment could be filed within 30 days. Over 5 years have passed and no appeal was filed. The judgment and decree are conclusive. No administrative enquiry can be made into the judgment and decree.

In the circumstances there is no good reason to withhold the disbursement of compensation. As a matter of fact there is a legal obligation to disburse the same without any delay whatsoever.

May kindly order the disbursement.

sd/-

(M.P. Jain)

Addl. District Magistrate  
Ghaziabad.

समस्त हेतु पर्यवेक्षण का दिनांक... राजकीय कार्य हेतु  
समस्त हेतु पर्यवेक्षण का दिनांक...  
समस्त हेतु पर्यवेक्षण का दिनांक... 2/82  
समस्त हेतु पर्यवेक्षण का दिनांक... 2/82  
समस्त हेतु पर्यवेक्षण का दिनांक...

निकाल करती...

मुलना करती...

True copy

attested

Resonant

Acce

नियम प्रणाली

नियमित जिला मजिस्ट्रेट  
(विशेष एवं राजस्व)  
(राजधानी)

haid

ANSWER 8  
 (A38) 22

Thanks, I agree, Also kindly ensure that other persons too get compensation, if it is borne out that allotments in their case were in accordance with law. The fact that the Collector Bulandshahr has stayed payment of compensation should not mean that the matter should not be finalised by us without any more delay

Sd. ~~Collector~~ N. S. Ansari  
 10.1.73

नमून हेतु प्रत्येक एक [राजकीय कार्य हेतु]  
 नमून हेतु [टिकट का प्रत्येक एक] नमून फटाई.....  
 नमून तैय्यार किया जाने का दि. 26/2/72 तुलना कताई.....  
 नमून दिने जाने का दि. 26/2/72 तुलना कताई.....  
 नमून नमून नमून.....

नमून प्रती लाई

True copy  
 Attested  
 Resurinder  
 Adwadi

प्रतिारक्त जिमा मजिस्ट्रेट  
 (विस्त एवं राजस्व)  
 गांधियाबाद

here



श्री राजीव कुमार,  
सहायक सचिव,  
उत्तर प्रदेश सरकार।

सेवा में,

परिष्कार विभागाधीन/उप सचिव,  
पेंशन ब्योर्स प्रो००,  
उ०प्र० शासन अर्थी वेतन अनुभाग,  
उ०प्र० सी०पी०,०,  
लखनऊ।

In the Office of the Administrative Officer,

Office of the Administrative Officer,

O.A. No. 101-2-4/2-3

कृपाशीलता से प्रेषित

Versus

कृपाशीलता से प्रेषित

Annexure No. 2

नियुक्ति 121 अनुभाग

मामलः दिनांकः 25 मार्च 1990

विषयः-- श्री महावीर प्रसाद जैन की पदोन्नति के उच्च वेतनमान 50 150 5700 में प्रोन्नति तथा वेतन निर्धारण का हल प्रदान करना।

महोदय,

सूचित यह रहने की अपेक्षा की गई है कि उत्तर प्रदेश सरकार के द्वारा सेवा के उच्च वेतनमान 50 4500-5700 में प्रोन्नति हेतु गठित वयन समिति के दिनांक 30 जून, 1987 में श्री महावीर प्रसाद जैन, पदोन्नति 1960 के विचार किया गया था। वयन समिति द्वारा उन्हें प्रोन्नत हेतु उपयुक्त माना, उनके विरुद्ध विभागीय कार्यवाही का सूचना मिलने पर शासन द्वारा उनके वेतनमान में प्रोन्नत करने के आदेश जारी नहीं किये जा रहे। अब श्री जैन के विभागीय कार्यवाही का प्रकरण समाप्त हो गया है, जिसमें यह निर्णय कि और दिनांक 14 मार्च, 1989 को उन्हें आ०००००० में नियुक्ति का दावा शासन ने यह निर्णय लिया है कि श्री जैन को दिनांक 30 जून, 1987 को वयन द्वारा पदोन्नति के उच्च वेतनमान में प्रोन्नत हेतु अनुमानित उनके कार्यवाही अधिकारी की पदोन्नति की तिथि से 50 4500-5700 के वेतनमान में प्रोन्नत वेतन निर्धारण का लाभ दे दिया जाय।

2-- वयन समिति दिनांक 30 जून, 1987 के द्वारा श्री जैन को पदोन्नति की पुष्टि कि वे 1962 के पदोन्नति के उच्च वेतनमान 50 150 में प्रोन्नति हेतु अनुमानित किया गया था कि उन्होंने दिनांक 18-8-87 को गृहण किया। तदनुसार राज्यपाल प्रो०००००० के उच्च वेतनमान 50 2300-2700 14500-5700 में उनके कार्यवाही अधिकारी श्री जैन को प्रोन्नति की तिथि दिनांक 18-8-1987 से वयन की प्रोन्नति की तिथि से 1 दिवस है। इस प्रकार श्री जैन को दिनांक 19-8-87 से उच्च वेतनमान में प्रोन्नत माना जायेगा।

True copy  
Attested  
R. S. Saini  
K. W. S. S.

11/11/90

3- मुझे यह भी ज्ञात है कि यदि श्री जैन पदोन्नति से संबंधित न हुए होते तो दिनांक 18-8-87 को उक्त वेतनमान ₹0 2300-2700/4500-5700 में पदोन्नति पाने की स्थिति में ₹0 4850/- स्वार हप्ता आठ लाख पचास हजार प्राप्त करते और दिनांक 14-3-89 को आर्टोएरोसो कंपनी में प्रोन्नति होने से दिनांक 1-8-88 को यह ₹0 5,000/- का पंच हजार प्राप्त करते । यह प्रमाणित किया जाता है कि यदि श्री जैन की नियुक्ति दिनांक 14-3-89 में आर्टोएरोसो में न की गई होती तो यह दिनांक 18-8-87 से स्थापनापन्न स्तर पर कार्य करते रहते । इस सम्बन्ध में यह स्पष्ट किया जाता है कि श्री जैन को दिनांक 18-8-87 से ₹0 2300-2700/4500-5700 में नौकरी प्रोन्नति का लाभ उनके आर्टोएरोसो के वेतनमान में वेतन निर्धारण के सम्बन्ध में दिया है, परन्तु श्री जैन को 18-8-87 से 14-3-89 की अवधि का कोई अग्रिम वेतन प्राप्त न होगा ।

भवदीय,

राजीव कुमार  
संयुक्त सचिव ।

संख्या- 2102 111/टी-121-4/2131/89.

प्रतिलिपि निम्नलिखित को सुचनाएं एवं आवश्यक कार्यवाही हेतु भेजी जायेगी-

- 1- सचिव, उ०प्र०, राजस्व परिवर्तन, लखनऊ ।
- 2- श्री महाश्वर प्रताप जैन, संयुक्त सचिव, राजस्व विभाग ।
- 3- वित्त सामान्य अनुभाग-2
- 4- झरना बैंक अनुभाग, उ०प्र० शासन, लखनऊ ।

True copy  
Attested  
Signature  
Advocate

अध्यापक,  
राजीव कुमार  
संयुक्त सचिव ।

*[Handwritten signature]*

Annexure No. 2

(TO BE PUBLISHED IN THE GAZETTE OF INDIA IN PART I SECTION 2)

NO.F. 14015/26/87-AIS(I)  
Government of India  
Ministry of Personnel, P.G. & Pensions.  
Deptt. of Personnel & Training

New Delhi, the 13 March, 1989.

NOTIFICATION

In exercise of the powers conferred by sub-rule(1) of rule 8 of the Indian Administrative Service(Recruitment)Rules, 1954 read with sub-regulation (1) of regulation 9 of the Indian Administrative Service(Appointment by Promotion)Regulations, 1955, the President is pleased to appoint Shri Mahabir Prasad Jain, a member of the State Civil Service of Uttar Pradesh to the Indian Administrative Service on probation and to allocate him to the cadre of Uttar Pradesh under sub-rule(1) of rule 5 of the Indian Administrative Service (Cadre)Rules, 1954. This appointment will be subject to result of the petition No. 928 of 1988 filed by Shri A.C. Pandey and others in the Central Administrative Tribunal, Allahabad Bench.

( M.S. MATHUR )  
DESK OFFICER

The copy  
Attchd  
R. S. Mathur  
Advocate

TO  
The Manager,  
Government of India Press,  
Faridabad(Haryana).

No.F.14015/26/87-AIS(I) New Delhi, the March, 1989.

- A copy is forwarded for information to the following:-
1. The Chief Secretary to the Government of Uttar Pradesh, Lucknow(with 1 spare copy for onward transmission to the officer).
  2. Accountant General, Uttar Pradesh, Lucknow.
  3. Secretary, Union Public Service Commission, New Delhi.
  4. E.O. to the Government of India, New Delhi.

INTERNAL DISTRIBUTION

D.O.(S) AIS(I) SECTION  
RESEARCH OFFICER(CM)  
E.O.(PR) SECTION  
AIS(III)SECTION FOR CIVIL LIST  
TRAINING DIVISION.  
10 SPARE COPIES.

( M.S. MATHUR )  
DESK OFFICER

विषय:-राज्याधीन सरकारी सेवा में सेवारत कामिकों की प्रोन्नतियों के लिए होने वाले चुनावों में कामिकों को प्रथमस्थान पर लाने, बन्ध लिकाफ की कार्यवाही का प्रयोग करने आदि की प्रक्रिया का निर्धारण।

उपरोक्त विषय पर समय-समय पर निर्गत पार्ष्णीकृत शासनदेशों में सन्निहित व्यवस्थाओं के सम्बन्ध में शासन द्वारा

संख्या-41/3-70-नियुक्ति-3, दिनांक 29 जून, 1972
संख्या-41/3-70-कामिक-1, दिनांक 13 सितम्बर, 1977
संख्या-19/30-77-कामिक-1, दिनांक 24 सितम्बर, 1977
संख्या-41/3-70-कामिक-1, दिनांक 12 जून, 1978
संख्या-41/3-70-कामिक-1, दिनांक 27 जुलाई, 1978
संख्या-18/9-1979-कामिक-1, दिनांक 3 जुलाई, 1979

पुनर्विचार किया गया है तथा कामिकों के हितों को दृष्टिगत रखते हुए मल्लोपाति विचारो-परांत अथ निम्नलिखित प्रक्रिया निर्धारित की गई है:-

(1) प्रोन्नति हेतु पठित चयन समिति द्वारा उन सभी कामिकों की प्रोन्नति के संबंध में विचार किया जायेगा जो नियमानुसार विचारार्थ पात्रतासूची में आते हैं और किसी भी कामिक को चयन समिति द्वारा विचार करने से केवल इस बात पर नहीं छोड़ा जायेगा कि उसके विरुद्ध किसी प्रकार की जांच (प्रकीर्ण जांच, विभागीय प्रारम्भिक जांच, सतर्कता जांच, प्रशासनाधिकरण द्वारा की जा रही जांच)/विभागीय कार्यवाही/प्रभियोजन विचाराधीन/लम्बित है। चयन समिति द्वारा ऐसे लम्बित/विचाराधीन मामलों को छोड़ते हुए कामिकों के अन्य समस्त बरिष्ठ/सेवा अभि-लेखों के आधार पर प्रोन्नति हेतु उनकी उपयुक्तता पर विचार कर संस्तुति अंकित की जाएगी।

(2) उपरोक्तानुसार चयन समिति द्वारा की गयी संस्तुति को निम्नलिखित परिस्थितियों को छोड़ते हुए अन्य दशाओं में उसी प्रकार क्रियान्वित कर दिया जायेगा जिस प्रकार अन्य सामान्य मामलों में किया जाता है तथा निम्नलिखित परिस्थितियों में (चाहे चयन समिति द्वारा कामिक को प्रोन्नति के लिये उपयुक्त पाया गया हो अथवा अनुपयुक्त-दोनों दशाओं में) चयन समिति की संस्तुति को मोहर बन्ध लिकाफ में रखा जायेगा और लिकाफ के ऊपर यह अंकित कर दिया जायेगा कि अग्रे कामिक की प्रोन्नति के विषय में चयन समिति की सिफारिश रखी गयी है तथा इस लिकाफ को तब खोला जायेगा जब इस प्रकार का जिसका आधार पर मोहरबन्ध लिकाफ की प्रक्रिया अपनाई गई है, अन्तिम परिणाम प्राप्त हो जायेगा:-

(क) यदि कामिक निलम्बित चल रहा है।

(ख) यदि अग्रम दृष्ट्या मामला बन जाने के बाद प्रशासनाधिकरण को सौंपने का निर्णय लिया जा चुका है।

(ग) यदि सतर्कता अधिष्ठान की छली जांच/अन्य प्रकार की प्रारम्भिक जांच के आधार पर निर्णय लिया जा चुका है कि उपलब्ध साक्ष्य के आधार पर आरोपित कामिक को विरुद्ध होशीहोने का प्रथम दृष्ट्या मामला बनता है जिसके आधार पर आरोप-पत्र जारी किया जा सकता है या यथास्थिति उन तथ्यों पर मुकदमे चलाने की स्वीकृति प्रदान की जा सकती है।

(घ) यदि कामिक ठेप की कार्यवाही में पकड़ा जाता है और इस संबंध में प्रभियोजन चलाने या न-चलाने के बारे में निर्णय विचाराधीन है।

(ङ) यदि नैतिक-यत्न या संविध्य सत्यनिष्ठा के बावत किसी न्यायालय में अभि-योजन की कार्यवाही चल रही है।

नोट:- उपरोक्तानुसार चयन समिति द्वारा बन्ध लिकाफ की प्रक्रिया अपनाते समय कामिक की प्रोन्नति हेतु उपयुक्त अथवा अनुपयुक्त पाये जाने के अलावा कोई और विकल्प नहीं होगा।

True copy  
Attested  
R. Jaiswal  
Active

17

Handwritten musical score for the song 'The Rose Tree'. The score is written on a single page of aged, yellowed paper. It features two staves of music. The first staff begins with a treble clef and a key signature of one sharp (F#). The melody is written in a cursive, handwritten style. The second staff continues the melody. The lyrics 'The Rose Tree' are written in a cursive hand below the first staff. The paper shows signs of age, including creases and discoloration.

11

SECRETARY,  
DEPARTMENT OF PERSONNEL & TRAINING,  
GOVERNMENT OF INDIA,  
NEW DELHI.

Annexure No. 5

AMU 29  
Annexure 5

THROUGH, SECRETARY, APPOINTMENT, GOVERNMENT OF U.P.

Sir,

I may be permitted to make the following submissions regarding the fixation of my seniority in the I.A.S. for your kind consideration. Government of India, Ministry of Personnel, P.G. & Pensions, Deptt. of Personnel and Training vide their Notification No. F-14015/26/87-AIS(1) dated March 13, 1989 have appointed me to the I.A.S.

2. I was included in the Select List 1984 for the first time and continued to be included in the lists of 1985, 1986 and 1987. Understandably, I was not appointed to the I.A.S. because of the pendency of a disciplinary proceeding against me. The subject matter of the disciplinary proceeding was: "As Additional Collector, my enquiry report to the Collector Ghaziabad dated January 10, 1988 recommending the release of the compensation to the farmers who were recorded as Bhumi-dhars in the record of title (khatauni) and who were the decree-holders of the acquired land since 1972 and my view therein that a miscellaneous enquiry could not upset or undo a judgment and decree of a competent court"-(Annex-1) The Collector Ghaziabad accepted the recommendation. His detailed order is Annex-II. Through numerous applications I represented to my Government against the initiation/continuance of this disciplinary proceeding. One such application to my Government is Annex-III. The proceeding was, however, held and in the said proceeding I have been held to be totally innocent.

3. Per the I.A.S. (Appointment by Promotion) Regulations, the appointment of a Select List Officer can be withheld only in two situations as stipulated in (i) the second proviso to sub-regulation-4 of Regulation-7 viz-grave lapse in the conduct or performance of duty on the part of the officer so as to warrant the removal of his name from the select list or (ii) sub-regulation-2 of Regulation-9 viz occurrence of such deterioration in the work of the officer as to render him unsuitable for the appointment to the I.A.S. Neither of the two situations ever arose or existed in my case. My service record of this period holds cogent and eloquent testimony to it.

True copy  
Attested  
Personnel  
Approved

(145)

4. Regulation No. 9(1) mandatorily requires "the appointment to the service (I.A.S.) shall be made in the order in which the names of the members of the State Civil Service appear in the select list." Thus without any warrant in the Regulations which constitute the law on the point, I remained deprived of the appointment to the I.A.S. till March 13, 1988. What the Regulations granted to me, to my woeful sorrow and agony did not reach me for as long a period as 5 years which is more than 50% of the period I was to work in the I.A.S. The grievous injuries in the form of painful humiliation, career-loss, mental afflictions as suffered by me and my family can be easily imagined and appreciated.

In the event of false, frivolous or vexatious proceeding being proved so, the law of the land and tenets of natural justice provide for compensation. I crave for the same. The admissibility of the compensation stands laid down in the judgment of the full bench of the Central Administrative Tribunal in "K. Ch. Venkat Reddy & others Vs. Union of India and others 1987 (2) SLJ (C.A.T) 115 (Full Bench).

5. Understandably the withholding of my appointment to the I.A.S. till 13-3-89 was based on the procedure identical to the one of the 'sealed cover' though as submitted earlier there is no sanction for the same in the Regulations governing the appointment to the I.A.S. Government of India, Deptt. of Personnel and Training by their O.M.No.22011/2-86-VSTT(A) dated 12th Jan. 1988 in deference to the judgment of the Supreme Court in Civil Appeal No.2964/1986 "Union of India and others Vs. Tajender Singh" and by superseding all the earlier instructions on the subject have laid down the procedure and guidelines to be followed in determining the seniority of the Government servant affected by the sealed cover procedure or the like of it and found innocent in the enquiry against him.

"On the conclusion of the disciplinary case/criminal Prosecution or an investigation which results in dropping of allegations or complaints against the Government servant, the sealed cover/covers shall be opened. In case the Government

True copy  
Attached  
Signature  
A. V. R. S.

6

servant is completely exonerated, due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The government servants may be promoted, if necessary, by reverting the junior most officiating person. He may be promoted notinally with reference to the date of promotion of his junior but he will not be allowed any arrears of pay for the period preceding the date of actual promotion."

6. Further I may be permitted to submit that the normal safeguard so as to keep the delay in the release of the promotion to the barest minimum and in no case beyond two years was not taken in my case and the same has caused an irreparable prejudice and loss to my career.

7. It is further submitted that the I.A.S. (Regulation of Seniority) First Amendment rules 1988 do not stand in the way of granting me my due in the seniority. The Proviso to these Regulations reads "provided, that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that Select List or appointed to the service on the basis of an earlier Select List." It is mentioned here that I am not seeking a year of allotment earlier to an officer senior to me in the Select List, 1984. nor to an officer appointed to the service on the basis of an earlier Select List viz. list prior to 1984. In my humble view, it will be wrong in fact and law to assume that my promotion to the I.A.S. is mainly or solely based on the Select List of 1987 and that it is not related to the Select Lists of 1984. It is submitted that my promotion to the I.A.S. will be construed <sup>to be</sup> like on the basis of my inclusion in the Select List of 1984. As is on record, my promotion in the I.A.S. came into being on the basis of the Select List of 1984. Further the post against which I was selected in 1984, continued to remain available to me all these years. Per mandatory provision a post is kept vacant for an officer whose selection for promotion stands made but the release thereof is withheld. This

True copy

Attested

[Signature]

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provision exists so as to meet the obligation of law and justice to ensure the non-denial of the due seniority to the affected officer. The finding of exoneration <sup>can</sup> not but imply and mean that at no point of time there stood anything against the officer. If his due in seniority is denied to him, it means and amounts to an infliction of punishment on innocence. No letter or spirit of law, Justice or good faith can permit or bear it.

8. I have already suffered (i) the denial of due promotion for 5 years (ii) procedural punishment, both latent and patent, for the duration of the proceeding and (iii) humiliation, mental agony and acute tension for 5 years. If my seniority per my position in the Select List of 1984 is denied to me, it will amount to pronouncing a proved innocent person as guilty and inflicting substantive punishment on him in the <sup>of</sup> from of denying him his most precious due in his seniority.

Accordingly it is requested that my seniority may please be fixed in terms of my position in the Select List of 1984 and if it needs the relaxation of the rule, the same may kindly be granted in view of the harsh hardship likely to be caused to me.

Thanking you,

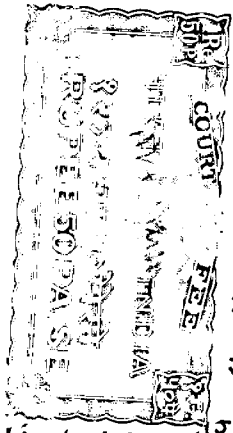
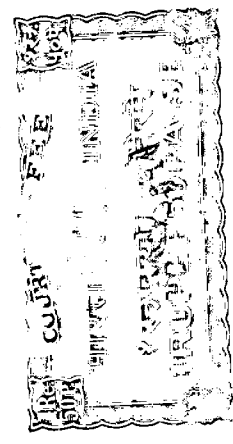
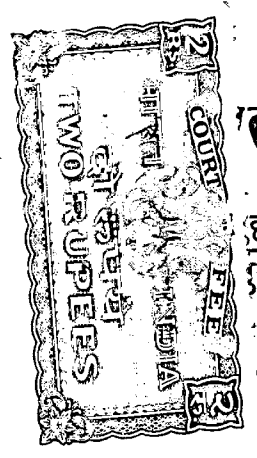
Yours faithfully,

the copy -  
Atkha  
R. S. J. S.  
M. P. Jain 7.5.89  
Joint Secretary,  
Sachivalaya, Lucknow.

li

In the Central Administrative Tribunal  
Circuit Bench, Lucknow

44836



नाम अदालत	नाम मुकद्दमा	नाम फरीकन
.....	.....	.....

श्रीमान OA NO. - - - 1990(L) महोदय

द्वि (दालेह)

का

वकालतनामा

M. P. Jain - - - Applicant

Union of India & - - - Respondents

बनाम

प्रतिवादी (रेस्पान्डेन्ट)

सन पेशी की ता० १९ ई०

कदमा में अपनी ओर से श्री Radhika Raman Advocate  
C-4 Sec A Mahanagar Luck  
S. Srivastava Advocate वकील

4/53 Vikas Nagar एडवोकेट महोदय  
Kunni Road Luck

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

प्रमाण रहे और समय पर काम आवे।

Radhika Raman  
Advocate High Court and  
Sec. Tribunal  
C-4 Sec A Mahanagar, Lucknow

Accepted  
Respondents  
Advocate

हस्ताक्षर

(Aug)

In the Hon'ble Central Administrative Tribunal,

Circuit Bench, Lucknow,

O.A. No. 349 of 1990 (L) <sup>M.P. No 191/91 (2)</sup>

Sri M.P. Jain

... Applicant

Vs.

The Union of India & others

... Opp. Parties

Application for issue of notices to the respondents to submit their counter affidavit within three weeks otherwise the case will be decided ex parte and ~~exparte~~ application for early hearing.

F.F. 3.7.91

The applicant, most respectfully, states as under : -

1. That the above noted original application was filed on 25th October, 1990, praying that on the basis of the inclusion of the applicant's name in the select list of the IAS compiled in the year 1985, respondents nos. 1 and 2 be directed to allot him 1981 as his year of allotment in the IAS and for fixation of his seniority accordingly as he was not appointed to the IAS on the inclusion of the said select list of 1985 due to continuance of the disciplinary proceedings for five years and ultimately he was totally exonerated of the fake charges levelled against him after conclusion of the enquiry in the year 1988 though on the basis of outstanding service records, his name was included in all subsequent select lists of

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Filed today  
2  
10/4/91

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1986, 1987, and 1988 and he was appointed to the IAS on the select list of 1987 vide Government of India Notification dated March 13, 1989, (Annexure-3).

2. That this application was admitted on November 21, 1990 and the opposite parties were allowed time up upto 15-2-1991 to file counter affidavit. But so far none of the opposite parties have filed their counter affidavit and 4-4-1991 has been fixed by the Deputy Registrar for filing counter affidavit by opposite parties and rejoinder affidavit by the applicant.

3. That the applicant is due to retire from the IAS w.e.f. 31-1-1993 after attaining the age of superannuation and if this case is not decided early, he will remain deprived of the benefits of promotion to the selection grade of the IAS and other service benefits.

4. That even after the decision on this original application by the Hon'ble Tribunal, it will take substantial time by the respondents to complete the formality in implementing the judgment and order of this Hon'ble Tribunal and as such the applicant will remain deprived of the service benefits which may accrue to him as a result of the decision in this case.

man

5. That it is, therefore, in the interest of justice that only three weeks' time at the utmost is allowed to the opposite parties for filing their counter affidavit and one week to the applicant for filing rejoinder affidavit and in case no counter affidavit is filed, by the opposite parties within three weeks, the case may kindly be decided ex parte.

P R A Y E R

It is, most respectfully prayed that this Hon'ble Tribunal be pleased to direct the opposite parties to file their counter affidavit within three weeks of the receipt of the notice in this regard failing which the case be decided ex parte.

Dated : Lucknow

April  
March , 1991

Applicant

20.3.91

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

MISC. APPLICATION NO. \_\_\_\_\_ OF 1991.

M.P. No. 209/91 CL  
On behalf Respondents.

In

Case No. 0 A 349 of 1990.

M.P. Jam .....Applicant.

Versus

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

\*\*\*\*\*

APPLICATION FOR CONDONATION OF DELAY

The respondents respectfully beg to submit as under :-

1. That the Counter-affidavit on behalf of the respondents could not be filed within the time allotted by the Hon'ble Tribunal on account of the fact that after receipt of the parawise comments from the respondents, the draft-reply was sent to the department for vetting.

2. That the approved Counter-affidavit has been received and is being filed without any further loss of time.

3. That the delay in filing the Counter-affidavit is bonafide and not deliberate and is liable to be condoned.

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

Lucknow.

Dated:

) (hand)  
(DR. DINESH CHANDRA),

Counsel for the Respondents.

Filed today  
R  
16/4/91

(H53)

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

COUNTER-REPLY ON BEHALF OF RESPONDENT NO.1.

In

O.A.No.349 of 1990(L)

M.P.Jain.....Applicant.

Versus

Union of India & Others.....Respondent.

\*\*\*\*\*

I, M.S.Mathur, aged about <sup>48</sup>..... years, son of .....

<sup>h</sup> Late Sh. D.P. Mathur....., Under Secretary

to the Govt. of India, Department of Personnel and Training

do hereby solemnly affirm and state as under :-

1. That the deponent has read the application filed by Shri M.P.Jain and has understood the contents thereof. He is well conversant with the facts of the case deposed hereinafter and is filing this counter-reply on behalf of respondent No.1.

2. That in order that the Hon'ble Tribunal may appreciate the submissions made by the deponent in reply to averments made by the applicant it will be worth while to give a brief note of the case as under :-

BACKGROUND NOTE:-

The members of State Civil Service are appointed to

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the I.A.S. by promotion in accordance with the rule 4(1)(b) and 8(1) of the I.A.S.(Recruitment) Rules, 1954 read with provisions contained in the I.A.S. (Appointment by Promotion) Regulations, 1955 (in short Promotion Regulations). A Selection Committee headed by Chairman/Members of U.P.S.C. consisting of Chief Secretary of the State Government concerned and other senior I.A.S. Officers including representatives of the Government of India, is constituted every year, under Regulation 3 of the Promotion Regulations. The Committee prepares a list of suitable State Civil Service Officers after making an over-all assessment of their service records under regulation 5 of these regulations. This list when approved by the Commission under regulation 7 becomes the Select List and appointment to the I.A.S. are made therefrom on occurrence of the vacancies. The Committee considers the service records of the eligible officers falling within the zone of consideration. However, if there is any enquiry pending or contemplated against an officer or the State Govt. has withheld the integrity certificate then if the name of that officer is included in the list drawn by the Selection Committee on the basis of the over-all assessment of service records, then his name is included provisionally subject to clearance in the enquiries or grant of integrity certificate, as the case may be. If the turn of the officer comes for appointment within the life of the Select List and

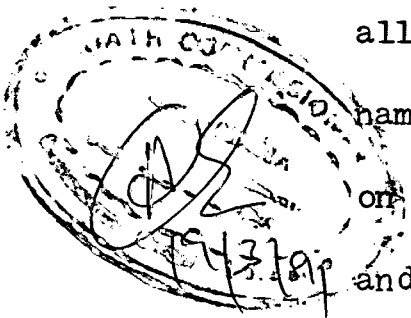


if the condition attached to inclusion of his name in the Select List is not satisfied then he is not appointed to I.A.S. at that point of time and his junior is appointed after keeping a vacancy reserved for him. In the event of the condition being fulfilled during the life of that Select List, the U.P.S.C. makes inclusion of his name in the Select List as unconditional and only thereafter he is appointed to the I.A.S. by promotion with immediate effect. However, if the conditions attached to inclusion of his name in the Select List is not fulfilled during the life of that Select List then he ceases to have any claim for appointment to I.A.S. on the basis of that Select List. His name is, however, considered afresh by the next Selection Committee and depending upon whether he has been cleared in the enquiry or the integrity certificate has been granted or not, his name is either included unconditionally or conditionally as the case may be provided he is otherwise found suitable for inclusion in the Select List on the basis of assessment of his service records. It may so happen that his name is included in the Select List provisionally for a number of years, but he might not have been appointed because of non clearance in the enquiries etc. In that case also, he is considered for appointment to I.A.S. by promotion from the latest Select List after he is cleared of all the charges. His appointment is with effect from the date the notification is issued by

the U.O.I. under regulation 9 of the Promotion Regulations. No provision has been made in the Promotion Regulations for giving retrospective effect to the appointment of such an officer because it is felt that the appointment to I.A.S. should take place only after the officer is exonerated of all the charges. The sealed cover procedure referred to by the applicant is not applicable in the case of appointment of State Service Officers to the three All India Services namely, I.A.S./I.P.S./I.F.S., by promotion.

2. In the instant case also, the name of the applicant appeared in the Select List prepared in 1984 onwards but the inclusion of his name was provisional because of pending enquiries against him. His immediate junior in the Select List was appointed to the I.A.S. in 1986 and a post was kept reserved for him. However, since he was not cleared in the charges during that year, therefore, he could not be appointed to I.A.S. in 1986. Likewise, since inclusion of his name in the Select List continued to remain provisional, therefore his juniors were given appointment to I.A.S. by keeping a post reserved for him. Ultimately, when he was cleared of all the charges, the U.P.S.C. converted inclusion of his name in the live Select List from conditional to unconditional on the recommendations of the Government of Uttar Pradesh and consequently, he was appointed to the I.A.S. by promotion vide this respondent's notification No.14015/26/87-AIS(I) dt.

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13-3-1989. Thus, he becomes a member of Indian Administrative Service on ~~the~~ 13-3-1989 and in accordance with the provisions of Rule 3(3)(ii) of the I.A.S. (Regulation of Seniority) Rules, 1987, in force on the date of his appointment to the service, he was assigned 1983 as the year of allotment. Thus, the appointment to the I.A.S. and also fixation of seniority has been done strictly in accordance with the provisions of Statutory Rules.

PRELIMINARY OBJECTIONS :-

The applicant has been assigned 1983 as the year of allotment in I.A.S. whereas his prayer before the Tribunal is for assigning 1981 as the year of allotment. Thus, he has claimed seniority above several officers belonging to the 1982 and 1983 batches of the Indian Administrative Service. Since he has not impleaded all those officers as respondents in the present application, the application deserves to be dismissed on account of non-joinder of necessary parties, because those officers will be adversely affected if the prayer made by the applicant is granted by the Tribunal.

PARAWISE COMMENTS :-

3. That the contents of paras 1 to 3 of the application need no comments.

4. That the contents of paras 4.1 to 4.9 relate to the Govt. of Uttar Pradesh which may make necessary submissions in this regard.

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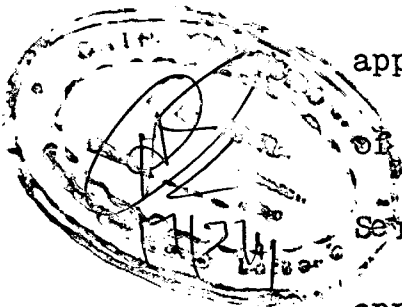
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5. That the contents of para 4.10 are admitted.

6. That in reply to para 4.11 it is stated that since the applicant could be appointed to the I.A.S. by promotion only after he was ex<sup>or</sup>em<sup>or</sup>ted of all the charges, therefore, the notification appointing him to the I.A.S. with immediate effect was issued on 13-3-1989. He was assigned 1983 as the year of allotment in I.A.S. under rule 3(3)(2) of the I.A.S. (Regulation of Seniority) Rules, 1987 by taking into account the date of appointment to the service as 13-3-1989. Since Shri B.<sup>B</sup>.V. Chaturvedi was appointed to the I.A.S. on 17-10-86 i.e. much before the appointment of the applicant, therefore, he was assigned 198<sup>7</sup> as the year of allotment whereas the applicant could be assigned only 1983 ~~only~~ because <sup>of</sup> his appointment to I.A.S. in 1989.

7. That in reply to paras 4.12 to 4.14 it is stated that there was no case for invocation of powers available in the All India Service (Conditions of Service. Resideary Matters) Rules, 1960 in the case of the applicant because his appointment to the I.A.S. as well as his seniority have been fixed strictly in accordance with the provisions of the Statutory Rules. It is not correct to say that there are no regulations applicable to the applicant for determining either his date of appointment or his seniority in the Indian Administrative Service. The sealed cover procedure referred to by the applicant in this paragraph, which is said to have been

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introduced by the State Government, is not applicable in the case of members of State Civil Service for their appointment to I.A.S. In fact, this procedure is not applicable in the matter of appointment by promotion in any of the three All India Services i.e. IAS/IPS/IFS. It is true that a post was kept reserved for the applicant when his immediate junior was appointed to the I.A.S. by promotion but the reservation of such a post lasts only during the life of that particular Select List. Since the Select List becomes inoperative on the date <sup>when</sup> ~~of~~ the next Selection Committee meets to prepare a fresh Select List, therefore, there is no question of appointment of the applicant to I.A.S. on the basis of inclusion of his name in an earlier Select List which had already been superseded by a number of Select Lists. He was, therefore, correctly appointed to I.A.S. from the Select List in force on the date he was cleared of all the charges. In view of this, the applicant has no case either for appointment to I.A.S. from retrospective date or revision of his year of allotment from 1983 to 1981.

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8. That in reply to paras 4.15 and 4.16 it is stated that the representation submitted by the applicant was duly examined by this respondent but it was rejected as it was found devoid of merit.

9. That in reply to para 4.17 it is stated that there is no need for making a separate provision either in the Promotion Regulations or in the Seniority Rules to deal with the case

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of the kind of the applicant because the existing rules and regulations take adequate care of the case of the applicant.

10. That in reply to para 4.18 it is stated that the applicant has been assigned 1983 as the year of allotment strictly in accordance with the provisions of the Statutory Rules and he has no case for revision of year of allotment from 1983 to 1981.

11. That in reply to para 4.19 it is stated that the deponent has been advised to <sup>State</sup> date that the judgement of the Hon. Supreme Court referred to in the answering paragraph is not applicable in the matter of appointment of State Civil Service Officers to I.A.S. by promotion.

12. That comments on various sub. paras of para 5 are furnished below :-

GROUNDS :-

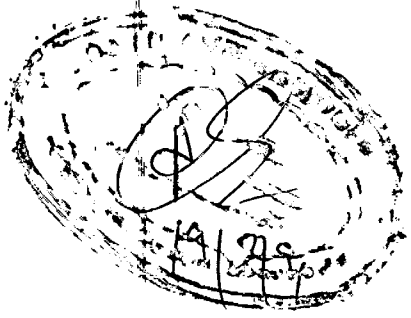
5(i):- Contents denied.

5(ii):- It is denied that there is no provision in either in the Promotion Regulations or in Seniority Rules to deal with the case of the applicant. His date of appointment and seniority in IAS has been fixed strictly as per the provisions of the rules.

5(iii) to 5(vi):- The applicant has no case for revision of year of allotment from 1983 to 1981

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and consequent benefits.

5(vii):- The applicant has been appointed to the I.A.S. on the basis of the Select List which was in force on the date he was exonerated of all the charges. Hence, he has no case for appointment to I.A.S. from a select List prepared in 1984 or 1985.

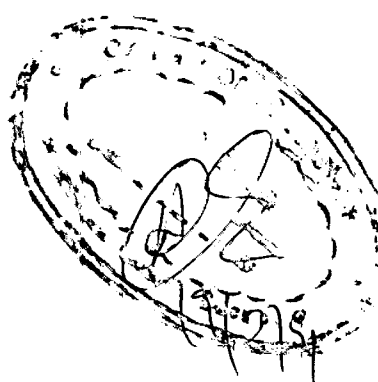
5(viii):- A post was kept reserved for the applicant when his juniors in the Select List were appointed to the I.A.S. However, such reservation of one post was only during the life time of a particular Select List and, therefore, the exercise was repeated in the subsequent Select Lists also.

5(ix):- The applicant has been appointed to I.A.S. prospectively on his exoneration of the charges and he has been assigned seniority according to that.

5(x) & 5(xi):- Need no comments.

13. That the contents of para 6 are admitted.
14. That the contents of para 7 need no comments.
15. That in view of the submissions made in the above paragraphs, the reliefs sought for in para 8 of the application are not admissible. The application lacks merit and is liable to be dismissed with costs.

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16. That the contents of paras 9 to 12 need no comments.

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For Respondent No.1.

-: VERIFICATION :-

I, M.S.Mathur, aged about <sup>48</sup> years, son of <sup>late D.P.Mathur</sup> Shri.....

..... Under Secretary to the  
Govt. of India, Department of Personnel and Training do hereby  
verify that the contents of paras 9 to 12 are true to  
my personal knowledge and are based on records and para  
believed to be true on legal advise and that I have not  
suppressed any material fact.

x *doty*

Signature of Respondent No.1.

*CMD*  
*H.S.R.*  
*R.M.S. Mathur*  
*D. Chelun*  
*19/3/9*

*J. G. S.*  
*Joint Secretary to the Government of India*



व अदालत श्रीमान

महोदय

(बादी अपीलान्ट)

प्रतिवादी [रेस्पाडेन्ट]

श्री Central Administration Trust  
का Co. Sec. Bench, 2nd floor

वकालतनामा

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बादी (अपीलान्ट)

M. P. Jan 1997 बनाम Central Administration Trust (प्रतिवादी रेस्पाडेन्ट)

नं० मुकद्दमा ४३५७ सन् १९९७ पेशी की ता०

१६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री D. D. Singh

व Adv. An. Singh, Saini, Lucknow वकील  
महोदय  
एडवोकेट

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं वथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करे या लौटाव या हमारी ओर से डिमरी जारी करावे और रुपया वसूल करे या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तत्सर्विक करे मुकद्दमा उठावे या कोई रुपया जमा करें या हमारी विपक्षी (फरोकसानो) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (वस्तुवती) रसीद से लेवे या पंच नियुक्त करे—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होया मैं यह भी स्वीकार करता हूं कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसको जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे ।

नाम अदालत  
मुकद्दमा नं०  
नाम तकरीकन

हस्ताक्षर.....

साक्षी (गवाह) ..... साक्षी (गवाह) .....

दिनांक ..... महीना ..... सन् १९ ई०

स्वीकृत