

## FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, .....BENCH

OA/TA/RA/CP/MA/PT 379/90 of 20.....

Prabhakar Singh.....Applicant(S)

Versus

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

## INDEX SHEET

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Certified that the file is complete in all respects.

B.C. file weeded &amp; destroy

Signature of S.O.

Signature of Deal. Hand

B.C.  
26/6/12

CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH, LUCKNOW

23/11/90

Registration No. 379 of 1990(4)

23/11/90

APPLICANT(S) Shri Prabhatkar Singh

yes

RESPONDENT(S) The Senior Divisional  
Mechanical Engineer.

23/11

Particulars to be examined

applicant

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 ? yes  
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  
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

Last representation  
dated 23/11/90

Particulars to be ExaminedEndorsement as to result of examination

11. Are the application/duplicate copy/spare copies signed ? *yes*

12. Are extra copies of the application with Annexures filed ? *yes*

a) Identical with the Original ? *yes*

b) Defective ? *no*

c) Wanting in Annexures *no*

Nos. \_\_\_\_\_ pages Nos. \_\_\_\_\_

13. Have the file size envelopes bearing full addresses of the respondents been filed ? *N.A. Only one respondent.*

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 ? *N.A.*

17. Are the facts of the case mentioned in item no. 6 of the application ? *After No. 6*

a) Concise ? *yes*

b) Under distinct heads ? *yes*

c) Numbered consecutively ? *yes*

d) Typed in double space on one side of the paper ? *yes*

18. Have the particulars for interim order prayed for indicated with reasons ? *yes*

19. Whether all the remedies have been exhausted. *yes*

dinesh/

① Union of India is not party in this application.

23.11.90

D.R.  
Put up before the Hon. Bench,  
on 27.11.90 for orders.

*Shri*  
23/11

*le*  
23.11.90

04379/90-1

A3

11.90.

Hon'ble Mr. Justice K.N. Nali v.  
Hon'ble Mr. M.M. Singh Am.

Now is present the applicant  
but can't be called on 22.1.91 for admission

9

M. H. J.  
Am

DR

22.1.91

9

No sitting adj to 20.2.91

20.2.91

9

No sitting adj to 19.3.91

19.3.91

No sitting adj to 11.4.91

11.4.91

No sitting adj to 9.5.91

9

9/5/91  
Hon'ble Justice V.G. Sridharan, M.  
Hon'ble A.B. Tewari, Am.

The learned Counsel for  
the applicant prays for  
two weeks time to amend  
the petition. Time prayed  
for is allowed. List for  
orders on 27/6/91.

Am

V.G.

27.6.91 Hon'ble K. Akhil, V.C.  
Hon'ble K. Bagga, Am.

MP 310/91 8/1/91

WMS

MP 310/91 filed  
by 4c for the applicant

S.R.O.

4/6

to

Am

Shri I.A. Siddiqui prays for adjournment  
on the ground of his being ill. C.M.A 310/91  
is for implementation of Union of India  
and his Foreman as Obs 282. The  
amendment is allowed. The applicant may  
incorporate the amendment within 2 days.  
List for admission on 3-7-91

DR  
DC

27.3.92

D.R.

A4

counsel for the applicant

is present. Rejoinder  
has not been filed  
by him. He is ordered  
to file it, by 6/7/92.

6.7.92

D.R.

Counsel for the  
applicant is present.  
He is ordered to file

Rejoinder by 3/9/92

3.9.92

D.R.

Counsel for the applicant  
is present. rejoinder has not  
been filed. Applicant to file  
the same by 3-11-92.

3-11-92

D.R.

Rejoinder has been filed  
to day. List for hearing  
on. 21-12-92 before the  
Hon. Bench

21.12.92 - No setting adj. to 22.2.93

BUCKNOW BENCH, LUCK NOWH  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL (XAMADAX BENCH) XAMADAX

O.A. No. 379/90 (L)

D.A. NO.

OF 199

T.A. NO.

Date of decision: 22/2/93

..... Prabhakar Singh ..... Petitioner

..... Shri A.K. Shukla ..... Advocate for the petitioner.

Versus

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

..... Shri K.K. Srivastava, ..... Advocates for the Respondent(s)

CORAM :-

The Hon'ble Mr. Justice U.C. Srivastava, V.C.

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

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether to be circulated to all other Benches ?

Signature

NAQVI

A5

CENTRAL ADMINISTRATIVE TRIBUNAL,  
LUCKNOW BENCH, LUCKNOW.

D.A. No. 379/90 (L)

Prabhakar Singh ::::::: Applicant

vs.

Sr. D.M.E., N.E.Rly., ::::::: Respondents.  
Lucknow.

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

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

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

The applicant was appointed by Loco Foreman, Northern Railway, on 1/1/79 as a casual labourer. His services were terminated on 4/9/81. Against this termination, he has filed application in the month of November, 1990 stating that he has been compelled to file this application as he has been making representation one after the other but no reply has been given. In view of the fact that the applicant has worked for several days, he has acquired a temporary status and as such his services should not have been terminated in this manner. One Shri Mata Prasad, who is junior to him, was considered for regularisation, whereas the applicant's name was not considered for regularisation.

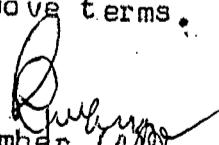
2. According to the respondents, Loco Shed Foreman has no authority to appoint a casual labourer and the applicant did not work under the loco foreman. The applicant was an employee in Railway and secured a pass fraudulently. A fraud was played against the Railway Administration and 2000 persons got their pass fraudulently sometimes back. When this fraud was noticed through vigilance, enquiry was held by the Head Quarters and 2000 persons were identified who have got their pass fraudulently in various subordinate offices in Railway Administration as Casual Labourer.

They were discharged from service on 4/10/81.

It was denied that the said Shri Mata Prasad was junior to the applicant. According to the respondents the applicant has also not completed 240 days of continuous service during any of the preceding Calendar years i.e. 1979, 1980 or 1981.

3. According to the applicant, he has worked for more than 240 days in one particular year which was not to be counted on the basis of Calendar year. He has worked for more than 240 days and even after completing 4 months' service he acquires a temporary status and he cannot be terminated in this manner. He was given appointment and he joined the service.

4. If anybody has committed a fraud, the applicant is not responsible for the same and the applicant cannot be thrown out of the service in this manner. In view of the fact that the applicant was not associated with any enquiry, the respondents are directed to consider the claim of the applicant for re-appointment as casual labour. In case any junior person to the applicant is retained and regularised, the case of the applicant shall also be considered for retention and regularisation. As the applicant has not committed any fraud there is no reason as to why he cannot be given reengagement or reappointment as the case may be. Let this be done within a period of three months from the date of communication of this order. The application stands disposed of in the above terms. No order as to the costs.

  
Member (A)

  
Vice-Chairman.

Dated: 22nd February, 1993, Lucknow.

(tgk)

O.A.No.379/90(L)

A7

22-2-93.

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

As the pleadings are complete, the  
case is disposed of after hearing the  
Counsel for the parties. Judgement  
has been dictated in the open Court.

(tgk)

  
A.M.

  
V.C.

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

Title of the case : Regularisation of service.

I N D E X

Sl.No.	Descriptions of documents relief upon	Page Nos.
1.	Application	1 to 8
2.	Annexure No.1: Travel permit	9
3.	Annexure No.2: Representation dt. 4.12.1981	10
4.	Annexure No.3: Last representation.	11
5.	Vakalatnama	12

*23-11-88*  
Signature of the Applicant

For use in Tribunal's Office

Date of filing *23-11-88*  
or

Date of receipt *xx*  
by post

Registration No. *Sh. 0081*

*Sh. 0081*  
Signature  
for Registrar.

A 8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL (CIRCUIT BENCH)  
LUCKNOW. Date of filing 23/11/90  
Date of Recd by Post 23/11/90

O.A. No. 379 (L)/1990

Prabhakar Singh, aged about 35

years, son of Shri Sarfaraz Singh  
resident of Village Deora, P.O.

Rajapur, Sariyan, District Faizabad. .. Applicant

Versus

1 The Senior M Divisional Mechanical  
Engineer, Northern Railway,

Hazratganj, Lucknow. .. Respondents

Union of India through its Secretary Ministry of Railway  
Rail Bhawan, Banda  
Loco foreman, locomotive shed Hazratganj Northern Railway  
Have New Delhi  
DETAILS OF APPLICATION : Lucknow  
1. Particulars of the order against which the applica-  
tion is made :

Order of termination, passed by the Respondent  
dated 4.9.1981, terminating the services of the  
Applicant.

23/11/90 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

( 2 )

application is within the limitation period prescribed in Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the case :

4.1. That the Applicant was appointed by the Loco Foreman, Northern Railway, Lucknow on 1st January 1979, as Casual Labour.

4.2. That the work and conduct of the applicant have entirely been satisfactory and nothing adverse was ever communicated to him.

4.3. That the applicant continued to work peacefully under the supervision of the Loco Foreman and he acquired the status of temporary railway servant, which would be clear from the Travel permit No.698976 issued to him, by the Railway Authorities. It is pertinent to mention here that such permits are issued only to temporary/permanent Railway employees only and as such the case of the applicant gets further strength. A photostat copy of this permit is Annexure-1 to this application.

4.4. That all of a sudden the services of the Applicant was terminated, without giving any notice ~~xx~~ or affording any opportunity to the applicant to defend his case, on 4.9.1981.

4.5. That it may be mentioned here that the payment to the Applicant upto 3.9.1981 was made, but

for the reasons best known to the Respondents, the services of the applicant were terminated illegally.

4.6. That many juniors to the applicant have been retained in service while the services of the applicant were illegally and arbitrarily terminated, which is against all the canons of law.

4.7. That Shri Mata Prasad, who was junior to the applicant was regularised in service, without considering the applicant, which is clear cut & violation of Articles 14 and 16 to the Constitution of India.

4.8. That the applicant should not have been terminated in the manner it has been done particularly keeping in mind that he had already acquired the status of temporary Railway employee, as detailed in para 4.3 of this application and also that he had already completed more 240 days in a calendar year during the years 1979, 1980 and also 1981. The action of the Respondent of terminating the services of the applicant, without giving any notice or to afford any opportunity to defend his case, is illegal, arbitrary and against the principles of natural justice. This is the result of the malintentions of the Respondents to give undue favour of his liking.

4.9. That the action against the applicant by the Respondents also clearly shows the illegal pick and choose policy of the Respondent.

4.10. That the action of the Respondents is also in gross violation of rules of Indian Establishment Railway Manual.

4.11. That aggrieved by the termination order, the Applicant submitted a number of representations/ reminders ~~XXXXX~~, but all are still pending undisposed off. A photostat copy of the representation dated 4.12.1981 is being filed as Annexure-2 to this application. The subsequent representations/reminders are not being filed with this application in order to avoid volumeness of the instant application, but will be produced before this Hon'ble Tribunal when required.

4.12. That the applicant submitted his last representation dated 18-9-90, a photostat copy of which is being filed as Annexure No.3 to this application.

4.13. That the Applicant also personally met the Respondent and requested him to do justice with the Applicant, but although assurances were given to take necessary action to take back the applicant into service and to consider his case for regularisation, nothing has been done by the Respondents till date.

4.14. That the Applicant has lost the hope of getting justice from the department; hence the need of this application.

GRANTED

## 5. Grounds for relief with legal provisions :

- I. Because the termination of the applicant from the services is illegal, arbitrary and without any justification.
- II. Because the termination order was passed without affording any opportunity to the applicant to defend/clear his case; which is against the principles of natural justice.
- III. Because the applicant has acquired the status of temporary Govt./Railway servant, which would be clear from the Annexure No.1.
- IV. Because many juniors to the petitioner/applicant have been retained/regularised in service while the applicant was illegally terminated which is against the provisions contained in Articles 14 and 16 to the Constitution of India.
- V. Because the action of the Respondent/s is in gross violation of rules of Indian Railway Establishment Manual and is the result of illegal pick and choose policy to give undue favour of persons of his liking.
- VI. Because the post on which the applicant was working is still in existence and another person has been appointed in his place, which is clear cut unfair labour practice.

( 6 )

VII. Because action of the Respondents also is clear discrimination with the applicant.

VIII. Because the representations/reminders, submitted by the applicant against the illegal action of the Respondents in the case of the Applicant, are still pending undisposed off.

6. Details of remedies exhausted :

The Applicant declares that he has availed of all the remedies available to him under the relevant service rules, etc.

Submitted representations dated 4.12.1981 (Annexure No.2) followed by a number of reminders and the last one is dated 18-9-90 (Annexure No.3).

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

*YURATE*

8. Reliefs sought :

( 7 )

In view of the facts mentioned in para 4 above, the Applicant prays for the following reliefs :

- (a) to direct the Respondents to treat the applicant as continued in service without any effect to the termination order dated 4.9.1981, and to pay him all the dues on account of arrears of pay and allowances, to allow him other consequential service benefits like regularisation/confirmation, seniority etc. in service, *after quashing the L Termination order dt. 4-9-81 after summoning L the same from the Respondent.*
- (b) to pass any other orders/direction which this Hon'ble Tribunal may deem just and proper in the circumstances of the case in favour of the Applicant.
- (c) to allow the application with costs on the Respondents.

9. Interim order, if any, prayed for :

Pending final decision on the application, the Applicant seeks the following interim relief :

The Respondent may be directed to pay the regular pay to the Applicant every month in time.

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

( 8 )

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

✓ Postal Order No. 62415949 dated 12-11-80  
for Rs.50/- of

12. List of enclosures :

- (1) Annexure No.1: Travel permit issued to the applicant.
- (2) Annexure No.2: Representation dated 4.12.1981.
- (3) Annexure No.3: Last representation.
- (4) Vakalatnama
- (5) Postal Order, mentioned in para 11 above.

VERIFICATION

I, Prabhakar Singh, son of Shri *Sarfaraz Singh*  
aged about 35 years, resident of Village Deora, P.O.  
Rajapur, Sariyan, Distt. Faizabad, do hereby verify  
that the contents of paras 1, 2, 3 partly, 4, 5, 7,  
11, 12, 13, 14 of Facts of the case are true to my  
personal knowledge and those of paras 3 partly, 6, 8,  
9, 10 are believed to be true on the basis legal advice  
and that I have not suppressed any material fact.

Date: 23-11-80

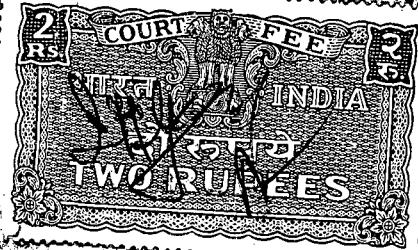
Place: Lucknow.

To

*Registrar*  
Signature of the  
Applicant

The Registrar,  
Central Administrative Tribunal,  
Allahabad Bench,  
(Circuit Bench), Lucknow.





प्रतिवादी (रेस्पोन्डेंट)

Prabhakar Singh

S. D. M. S.

मुकदमा नं०

सन्

बनाम

पेशी की ता०

१६ ई०

उपर लिखे मुकदमा में अपनी ओर से श्री

and S. A. J. Siddiqui Adv.

वकील  
महोदय  
एडवोकेट

(f) १० महोदय

## वकालतनामा

प्रतिवादी (अपीलान्ट)

J. H. Farooqui Advocate  
प्रतिवादी (रेस्पोन्डेंट)

नाम अदालत	मुकदमा नं० नाम	बनाम

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

प्रभान्करी  
हस्ताक्षर

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

दिनांक ..... २३ महीना ..... ११ सन् १९ ई०

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

**Title of the case : Regularisation of service.**

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5.	Vakalatnama	12

Signature of the applicant

For use in Tribunal's Office

**Date of filing**

**or**

**Date of receipt by  
post**

**Registration No.**

*Y. M. A. T. H.*  
Signature  
for Registrar.



in the Hague International CAT Law.

OAN

(L) 90

A 20

Prabhat Singh

Applicant

S. D. M.E

Respondent

## Annexure N 2

### Annexure N. 2

सेवा में,

श्रीमान् मण्डल यांत्रिक अभियन्ता,  
उत्तर रेलवे,  
लखनऊ ।

महोदय,

सविनय निवेदन है कि प्रार्थी लोको रनिंग सेल  
लखनऊ में काफी असे से कार्य कर रहा था। प्रार्थी को दिनांक  
4-9-81 को बिना कारण बताये नोकरी से निकाल दिया  
गया प्रार्थी बेकारी एवं भुगमरी के बगार पर छूटा है।

अतः आपसे सादर निवेदन है कि आप प्रार्थी को  
ठियूटी देकर कृतार्थ करें।

सधन्याद ।

आपका,

प्रद 4-12-81

प्रभाकर सिंह

All the true  
Advocates  
Gyan Singh

In the Hague CAT Lucknow

OAN.

(C) 90 A21

Prabharesh Singh

Applicant

Sr. D.M.E

VS

Respondent

Annexure N-3

सेवा में,

Annexure N-3

श्रीमान् नण्डन रेल प्रबन्धिका,  
उत्तर रेलवे,  
लखनऊ।

महोदय,

सादर निवेदन है कि प्रार्थी लोको रनिंग रोड लखनऊ  
में काफी अस्ते से कार्यरत था प्रार्थिको बिना कारण बताये  
दिनांक 4-9-81 को नौकरी से निकाल दिया गया प्रार्थी  
भुखमरी के कारण पर है।

अतः सादर निवेदन है कि प्रार्थी की दयनीय स्थिति  
को देखते हुए दिनांक 19-12-83 से वापस काम पर लेने का आदेश  
पारित करके हमें कृतार्थ करेंगे।

सध्यवाद।

अपका,

दिनांक 18. 9. 80

प्रभाकर सिंह

Attested by  
C.W.

प्रभाकर सिंह

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

Civil Misc. Application No. 318 of 1991

In re :

D.A. Case No. 379 of 1990 (L)

FF 27/6/91

Prabhakar Singh

.... Applicant

versus

Senior Divisional Mechanical  
Engineer, Northern Railway

.... Respondents.

APPLICATION FOR IMPLEADMENT OF TWO MORE  
RESPONDENTS.

The above named applicant most respectfully  
begs to state as under-

1. That owing to inadvertance at the time of filing of the application, the applicant did not make Union of India and his employer as a party which is neither intentional nor deliberate.
2. That the Hon'ble Tribunal be pleased to permit the applicant to implead the following as respondents No. 2 & 3.
  - (i) Union of India through its Secretary, Ministry of Railway, Rail Bhawan, Baroda House, New Delhi.
  - (ii) Loco Foreman, Loco running Shed, Alambagh, Northern Railway, Lucknow

Amrit Singh

Amrit Singh

- 2 -

WHEREFORE, the applicant respectfully  
prays that the applicant be permitted to bring above  
respondents in array of parties as respondents Nos.  
2 & 3 respectively in the ends of justice.

Lucknow-Dated,  
May 31<sup>st</sup> 1991

*Alchurke*  
Advocate,  
Counsel for the Applicant.

*Yours etc*

A 29

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

Civil Misc. Application No. 318 of 1991 (L)

Inte. t.

O. A. Case No. 379 of 1990 (L)

F. F. 27/6/91

Prabhakar Singh

\*\*\* Applicant

versus

Senior Divisional Mechanical  
Engineer, Northern Railway

\*\*\* Respondents.

APPLICATION FOR IMPLEADMENT OF TWO MORE  
RESPONDENTS.

The above named applicant most respectfully  
begs to state as under-

1. That owing to inadvertence at the time of filing of the application, the applicant did not make Union of India and his employer as a party which is neither intentional nor deliberate.
2. That the Hon'ble Tribunal be pleased to permit the applicant to implead the following as respondents No. 2 & 3.
  - (i) Union of India through its Secretary, Ministry of Railway, Rail Bhawan, Baroda House, New Delhi.
  - (ii) Loco Foreman, Loco running Shed, Alambagh, Northern Railway, Lucknow

gml 142/58

Abc

- 2 -

WHEREFORE, the applicant respectfully  
prays that the applicant be permitted to bring above  
respondents in array of parties as respondents Nos.  
2 & 3 respectively in the ends of justice.

Lucknow-Dated,  
May 31st, 1991

  
Advocate,  
Counsel for the Applicant.

Yours Atte

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

(CIRCUIT BENCH) LUCKNOW.

O.A.No.379 of 1990

Prabhakar Singh ..... Applicant.

versus

Senior Divisional Mechanical Engineer,

(Northern Railway) Lucknow ..... Respondent.

No Reply Adm  
Counter Affidavit On Behalf Of The  
Respondent.

I, N.K.Jain aged about 26 years S/O Sri  
R. C. Jain presently posted as Assistant  
Personnel Officer, Northern Railway, Hazratganj,  
Lucknow, do hereby solemnly affirm and state on  
oath as under : -

*Filed today  
copy  
20/1/92  
at 2.30 P.M.*

1. That the deponent is respondent in this case and as such he is fully conversant with the facts of the case deposed hereunder.

2. That the deponent had read and understood the petition filed by the applicant, and is in position to reply the same.
3. That the contents of para-1 of the petition do not call for reply.
4. That the contents of para-2 of the petition needs no reply.
5. That the contents of para-3 of the petition needs no reply.
6. That in reply to para-4.1 of the petition, it is MOST HUMBLY AND RESPECTFULLY submitted that the averments of the petitioner are not true, hence denied. The petitioner was never appointed as claimed. It is also pertinent to mention that the Loco Foreman has no authority or power to appoint any casual labour as claimed.
7. That the averments of para 4.2 of the petition are denied. The petitioner did not work under the Loco Foreman Lucknow. As such the claim of

*M/s/ 20/2/91*

the petitioner that his work and conduct

has been satisfactory is baseless and without  
any foundation.

8. That in reply to averments made in para 4.3  
are denied. The grant of Railway Pass issued  
to the petitioner is no basis to support the  
claim. That the petitioner was an employee  
of the Railways as a matter of fact the petitioner  
secured the travel pass under reference  
~~fraudulently and it is~~<sup>dis</sup> honestly. It is not denied  
that the travel passes are issued to only  
temporary or permanent employees but the alleged  
workman/petitioner does not come under the  
definition of the same.

9. That in reply to the averments made in para 4.4  
of the petition it is submitted that the claim  
of the petitioner is false and mischievous,  
hence denied. As a matter of fact a big fraud  
was played against the Railway administration  
by means of which about 2000 people got their  
names enrolled fraudulently some times back.

Myers  
6/12/91

10. As soon as this fraud was noticed by administration, vigilence enquiry was instituted by the Northern Railway Head Quarters after a thorough investigation by the vigilence branch about 2000 such persons were identified who got their names enrolled fraudulently in various subordinate offices of the Railway administration as casual labours. As a result the orders were passed by the administration to discharge all such casual labours. The orders were to discharge them from 4-10-81 .

11. That the contents of para 4.5 of the petition are denied being false and baseless for the reasons already mentioned in the aforesaid paragraph .

12. That the contents of para 4.6 of the petition are denied being false. No junior to the petitioner has been retained in service. As a matter of fact the question of seniority does not arise in respect to the petitioner because petitioner never stood on the rolls of the

1/2/2012  
1/2/2012

administration because the petitioner had never been a bonafide employee. On the detection of the fraud played by the petitioner his services were dispensed with on 4-10-81

13. That the contents of para 4.7 of the petition

are false hence denied, It is wrong to suggest that Sri Mata Prasad was junior to the petitioner.

14. That in reply to para 4.8 of the petition it

is most respectfully submitted that the claims are false and baseless hence denied.

As has already been mentioned in para-9 of the counter affidavit referred to above. It is submitted that the petitioner never acquired

temporary status as claimed. The petitioner

also never ~~XXXXXX~~ completed 240 days of

continuous service in the preceeding year or

any of the calender year of 1979, 1980 or 1981.

As it is already mentioned that the very appointment of the petitioner was obtained by him fraudulently and mischeviously as such the

petitioner has no right what soever to hold the post and as such there was no illegality or arbitrariness or any violation of principles of natural justice in effecting discharge the petitioner under the circumstances the petitioner has no genuine grievance against the administration.

The petitioner has not come with clean hands as such the basic maxim of jurisprudence that " he who comes to equity must come with clean hands ". As per the computerised list the petitioner who fraudulently got his name in muster rolls was shown to have worked for 36 days only in the calendar year 1980 and 95 days only in the calendar year 1981 and nothing more.

15. That the contents of para 4.9 ~~are~~ denied of the petition are denied being baseless. No such policy of pick and choose as alleged has ever been practice by the answering deponent.

*Myers  
28/12/91*

16. That the contents of para 4.10 of the petition

are denied. There has been no violation of the Indian Railway establishment code/manual or any other law for the time being in force on the point.

17. That the contents of para 4-11 of the petition are emphatically denied. No representation whatsoever has sofar been received by the answering deponent or any other authority of the administration. The claim of the petitioner is concocted and manupulation with a view to gain undue favours from this Hon'ble Tribunal. The petitioner has not said by which means he sent the representation under reference to the Divisional Railway Manager (Northern Railway) Lucknow. If he had sent by registered mode then the postal receipt should have been annexed therein, or if he had given the aforesaid representation personally to the Divisional Railway Manager, then he should have mentioned the date, time and place when he met the Divisional Railway

*Abdullah  
20/12/91*

Manager. From the averments made in Para 4.11 it becomes evidently clear beyond any shadow of doubt that the plea of representation is false fabricated, concocted and after thought. The petitioner neither sent the representation by post nor through proper channel nor there is any iota of evidence that the petitioner presented the representation even personally to the Divisional Railway Manager.

18. That for the reasons already mentioned in the foregoing paragraph just preceding this paragraph regarding the representation, the averments made in para 4.12 of the petition are denied on the same grounds referred to above in the preceding paragraph.

19. That in reply to averments made in para 4.13 of the petition, the petitioner never met the answering deponent or any other authority of the administration, hence the averments made are denied.

*Abc  
20/12/91*

20. That the contents of para 4.14 of the petition are denied being false and baseless.

Additional Statements

21. That since the petitioner had never been a bonafide employee of the administration and because the petitioner has not completed 240 days in any calender year, as such the provisions of Section 25 N of the Industrial Dispute Act are not applicable, as such the petitioner is not entitled for the protection provided to a workman under Section 25 N of the aforesaid Act.

22. That in reply to the grounds mentioned in the petition, it is MOST HUMBLY AND RESPECTFULLY prayed that none of the grounds enumerated in the petition is tenable in law.

23. That the averments made in para 6 of the petition are emphatically and categorically denied being false and fabricated.

*Myers  
20/12/91*

24. That the averments made in para-7 of the petition needs no comments from the answering deponent.

25. That none of the reliefs sought in para-8 of the petition is tenable, as such it does not bear any merit and all the reliefs prayed for, are liable to be dismissed with cost.

26. That the interim relief claimed in para-9 of the petition does not deserve merit. As such the prayer is liable to be rejected.

27. That the averments made in para-10 of the petition does not require any comment from the answering deponent.

28. That the contents of para-11 of the petition needs no reply being the matters of record.

29. That the contents of para-12 of the petition needs no reply from the answering deponent.

30. That the petition is misconceived ill

Myers  
20/2/91

advised and devoid of merit, hence liable to be dismissed with cost.

Dated: Lucknow  
the 20<sup>th</sup> day of December 1991.

*Manik Sinha*  
20/12/91  
Deponent

#### VERIFICATION

Verified that the contents of para 1 to ~~24, 28 & 29~~ are based on the basis of records and that of ~~of this affidavit are true to my personal~~ ~~paras 25, 26, 27 and 30 on legal advice tendered.~~ ~~knowledge and belief~~ and that no part of it is false and nothing material has been concealed.

SO HELP ME GOD.

Dated: Lucknow  
the 20<sup>th</sup> day of December 1991.

*Manik Sinha*  
20/12/91  
Deponent

I, Manik Sinha, Advocate, High Court, Lucknow Bench Lucknow, do hereby declare that the person making this affidavit and alleging himself to be Sri N.K. Jain is known to me from the perusal of the papers which he has produced in this case. On that basis I can say that he is the same person and is personally known to me.

*Manik Sinha*  
(Manik Sinha)  
Advocate  
High Court

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL (LUCKNOW BENCH)  
LUCKNOW.

O.A. No.379 of 1990 (L)

XXXXX

Prabhakar Singh

.. . Applicant

## Versus

Sr. Divisional Mechanical Engineer,  
N.R., Lucknow & others

.. Respondents.

REJOINDER REPLY.

I, Prabhakar Singh, aged about 35 years, son of Shri Sarfaraz Singh, resident of Village Deora, P.O. Rajapur, Sariyan, District Faizabad, do hereby solemnly affirm and state on oath as under :

1. That the deponent is the applicant in the above O.A. and is fully conversant with the facts deposed hereunder. The ~~deponentxxxxxxdeponentxxxxxx~~ contents of the counter reply have been read over and explained to the deponent and after understanding the same, he gives below the para-wise reply.

2. That the contents of paras 1 to 5 of the counter reply call for no reply.

3. That the contents of para 6 of the counter reply are denied and in reply the contents of para 4.1. of the original application are reiterated to be true. The averments of the Respondent in the para under reply are incorrect, false and have been made in order to misguide this Hon'ble Tribunal. The fact is that the

deponent was appointed and worked as Casual Labour. It may be submitted that the deponent has produced evidence to the effect that the deponent has worked and now it is for the Respondents to produce evidence in support of their allegations. The points will be suitably argued.

4. That the contents of para 7 of the counter reply are denied and in reply the contents of para 4.2 of the O.A. are reiterated to be true. The averments under reply of the Respondent are false and totally incorrect.

5. That the contents of para 8 of the counter reply are emphatically denied, being incorrect and misconceived, and in reply the contents of para 4.3 of the O.A. are reiterated to be true. It is totally denied that the deponent obtained the pass fraudulently. It is pertinent to mention that the ~~Respondent xxxxxx~~ Respondents have mentioned that 'it is honestly' i.e., obtaining of pass. The Section (5) of the Conditions of Service of Casual Labour clearly makes that Casual labour is not entitled for passes and P.T.Os, but shall be entitled to rights and privileges admissible under various Acts such as compensation under Workmen's Compensation Act, overtime allowances, periodic rest (with pay) etc. The Section (6) further makes clear that Casual labour other than that employes projects, shall be considered to have acquired temporary status on completion of four month's continuous service either in the same work or any other work of the same type, to which they may be shifted.

7/20/1978  
S. J. S.

From the above it is clear that since the deponent has worked for more than 4 months and since he was issued the travel pass validly, the deponent acquired the status of a temporary railway employee. The points will be suitably argued.

6. That the averments in para 9 of the counter reply are totally false and misconceived and as such are denied and in reply the contents of para 4.4. of the O.A. are reiterated to be true. The fact is that the deponent worked, having been appointed, validly and was paid for the period he worked. The deponent has not played any fraud play.

7. That the contents of para 10 of the counter reply are not in the knowledge of the deponent. It is categorically stated that the deponent has not obtained the employment by any fraudulent manner.

8. That the contents of para 11 of the counter reply are denied, being false, and in reply thereto the contents of para 4.5. of the O.A. are reiterated to be true.

9. That the contents of para 12 of the counter reply are denied and in reply the contents of para 4.6 of the O.A. are reiterated to be true. It is stated that Shri Mata Prasad Yadav, who is junior to the deponent, has been regularised. The matter will be suitably argued.

*29/12/2012*

10. That the contents of para 13 of the counter reply, in view of the reply given hereinabove, are denied and in reply the contents of para 4.7 of the O.A. ~~are~~ are reiterated to be true.

11. That the contents of para 14 of the counter reply, being false, incorrect and misconceived, are denied and in reply the contents of para 4.8 of the O.A. are reiterated to be true. It is emphatically denied that the deponent obtained appointment letter/appointment in fraudulent and mischievous way. Moreover, the Respondents have not produced any evidence in support of their allegations. The points are argumentative.

12. That the contents of para 15 of the counter reply, being misconceived, are denied and in reply the contents of para 4.9 of the O.A. are reiterated to be true.

13. That the contents of para 16 of the counter reply are denied and in reply the contents of para 4.10 of the O.A. are ~~are~~ reiterated to be true.

14. That the contents of para 17 of the counter reply are denied and in reply the contents of para 4.11 of the O.A. are reiterated to be true. The reply given in the rejoinder reply hereinabove may kindly be perused.

15. That the contents of para 18 of the counter

reply being incorrect are denied and in reply the contents of para 4.12 of the O.A. are reiterated to be true.

16. That the contents of para 19 of ~~the~~ the counter reply are emphatically denied and in reply the contents of para 4.13 of the O.A. are reiterated to be true.

17. That the contents of para 20 of the counter reply are ~~xxx~~ denied and in reply the contents of para 4.14 of the ~~same~~ O.A. are reiterated to be true.

18. That the contents of para 21 of the counter reply, being totally misconceived and misguiding, are denied. The matter will be suitably argued.

19. That the contents of para 22 of the counter reply are denied and in reply the grounds of the O.A. are reiterated to be true. It is stated that all the grounds taken by ~~xxx~~ the deponent are tenable in the eye of law.

20. That the contents of para 23 of the counter reply are denied and in reply the contents of para 6 of the O.A. are reiterated to be true.

21. That the contents of para 24 of the counter reply call for no reply.

22. That the contents of para 25 of the counter

reply are emphatically denied and in reply the contents of para 8 of the O.A. are reiterated to be true. It is stated that the deponent is entitled to all the reliefs prayed for and as such the reliefs prayed for are deserve to be allowed with costs.

23. That the contents of para 26 of the counter reply are denied and in reply the contents of para 9 of the O.A. are reiterated to be true.

24. That the contents of paras 27, 28 and 29 of the counter reply call for no reply.

25. That the contents of para 30 of the counter reply are strongly denied. The O.A. is full of merit. The only intention of the Respondents is to deny the legitimate claim to the deponent. They have not come forward ~~xx~~ with clean hands. Moreover, they have not produced any documentary evidence in support of their allegations. The counter reply, therefore, is liable to be rejected and the O.A. deserves to be allowed in toto with special costs.

*Gyan Singh*

Lucknow:

Date: 3/9/ 1992.

*Gyan Singh*

Deponent.

VERIFICATION.

I, the abovenamed deponent, do hereby verify that the contents of paras 1 to 25 of this rejoinder

reply are true to my personal knowledge. Nothing material has been concealed and no part of it is false. So help me God.

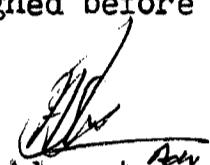
Lucknow:

Date: 3/9/ 1992.

9/9/1992

Deponent.

I identify the deponent who has signed before me.



Advocate.