

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,BENCH

OA/TA/RA/CP/MA/PT MA.390 of 20.1990

A.N. TripathiApplicant(S)

Versus

U.O.I.Respondent(S)

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Certified that the file is complete in all respects.

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Signature of S.O.

B-C. file weeded & destroy

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Signature of Deal. Hand

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Central Administrative Tribunal
Circuit Bench Lucknow
Date of Filing 3/12/90
Date of Receipt 3/12/90
Deputy Registrar

Registration No. 396 of 1989/90 (L, 3/12)

APPLICANT(S) Shri Anandhush Nair, Tr. Park

RESPONDENT(S) Deputy General Personnel Officer
v. Rly.

Particulars to be examined

Endorsement as to result of examination

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

Particulars to be Examined

Endorsement as to result of examination

1. the application/duplicate copy/spare copies signed? y s. k.
 2. Extra copies of the application and annexures filed? yes
 3. Identical with the Original? yes
 4. Defective? yes
 5. Missing in Annexures yes
 6. Annexures yes
 7. Are the file and envelopes bearing full addresses of the respondents sent filed? no
 14. Are the given address the registered address? yes
 15. Do the names of the parties stated in the copies tally with those indicated in the application? yes
 16. Are the translations certified to be true or supported by an Affidavit affirming that they are true? N.A.
 17. Are the facts of the case contained in item no. 6 of the application? yes
 18. a) Concise? yes
b) Under distinct heads? yes
c) Numbered consecutively? yes
d) Typed in double space on one side of the paper? no
 19. Are the particulars for interim order prayed for indicated with reasons? yes
 20. Whether all the remedies have been exhausted? yes
- ① Union of India is not party in this application yes
- ② Annexure is on both side of the paper yes

3.12.90
D.R.

Put up before the Hon. Bench,

on 11/12/90 for order

3/12/90

(1)

43

2.90

Hon. Mr. Justice K. Nath. v/c
Hon. Mr. K. Obayya. AM

On the request of counsel for
applicant case is adjourned
to 29.1.91 for admission

[Signature]
AM

[Signature]
v/c

(2)

29.1.91

No sitting adj. 7.2.91

7/2/91

Hon. Mr. Justice K. Nath. v/c
Hon. Mr. K. Obayya. AM

(3)

The applicant is present in person and
requests for adjournment on the ground
of his counsel's illness. Question
of limitation also arises inasmuch
as the appeal against judgment of the
Prescribed Authority under Payment of Wages
Act was decided on 12/7/88 whereas the
present application was filed on 3/12/90.
It seems that, in the meantime, the
applicant had filed a review application
against the appellate judgment which
was decided on 22/3/90. List for
admission on 12/3/91.

[Signature]
AM

[Signature]
v/c

[Signature]

(9)

28.9.91

(10)

28.10.91

(11)

18.11.91

(2)

04.390/91C

(14)

No Singing adj to 28.10.91

J

No Singing of D.B. adj to

18.11.91

J

No Singing adj to 9.12.91

J

R

4/c for the applicant
has not incorporated
amendment.

S.F. dk

4/h

In compliance order dated
5.8.91 amendment had been
incorporated by me.

Salvage
Advocate

(Counsel for the
applicant)

(12)

9.12.91

9.12.91

D.R.

counsel for the applicant
has incorporated the
amendment in petition
today. Hence, case is
listed for admission
on 20/1/92. before
the Hon Bench.

(15)

26.11.92

No Singing of D.B. adj to

29.1.92

5

Central Administrative Tribunal
Lucknow Bench, Lucknow.

CH 390/50C

.....

O R D E R SHEET

O.A./T.A. No.

Date / Office Report /

Order

24.8.92

Mr. M. S. Chandra 12 C. S. No. 12
Mr. M. S. Chandra 12 C. S. No. 12

on the report of learned
Counsel for applicant, Mr.
S. S. Chandra 12 C. S. No. 12

ad
SFO
25-8-92

al

for
Dut

for
Dut

MANISH/-

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

O.A. NO 390/ 1990 (L)

T.A. NO

Date of Decision 26/8/92

A.N. Tripathi

PETITIONER.

Advocate for the Petitioner(S)

V E R S U S

Union of India & Others

RESPONDENT.

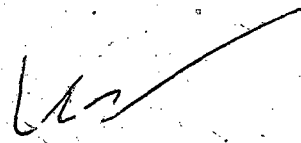
Advocate for the RESPONDENT(S)

CORAM

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

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

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


Vice-Chairman/Member

A-1

CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT BENCH,

LUCKNOW.

O.A. No. 390/90 (L)

A.N. Tripathi Applicant

Vs.

Union of India & Others Respondents.

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

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

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

After losing the appeal under section 17 of the payment of wages Act the applicant has approached this Tribunal praying that the order passed in Review Application and in the first appeal by Ind Additional District Judge, Sultanpur and the order/passed on 25-4-83 by Prescribed Authority, may be quashed. It has also been prayed that direction may be issued to the respondents to pay the wages demanded as suspension allowance between 6/8/69 to 21-10-69 and from 5-11-69 to 7-11-69 amounting to Rs.586.20 and wages demanded from 2-12-69 to 31-12-69 and from 11-12-69 to 21-12-69, from 30-12-69 to 31-12-69, from 1-1-70 to 4-1-70 and from 11-1-70 to 31-1-1970 amounting to Rs.384 and for 1-7-70 to 30-7-70 amounting to Rs.270/- may be paid and the wages claimed as annual increment for the period of 15-8-69 to 15-8-70 amounting to Rs.970/- and 10 times compensation amounting to Rs.67,954/- may also be paid. The applicant was office clerk in the Railway Training School and later on was appointed as Works Mistri: While working in the Lucknow division, the applicant was charge-sheeted in the month of January, 1964. The matter lingered on. His increment was also denied.....2

increments were with-held, though the notice was initially for dismissal from service. Ultimately he approached the Authority under the payment of wages Act, in respect of the amount which according to him was wrongly deducted. The Prescribed Authority rejected the claim of the applicant on the ground that the same was barred by limitation of time. The applicant filed an appeal which was also dismissed on the ground of limitation. As it was an exparte order the applicant filed a Review Application which was also dismissed^{and} after that he approached this Tribunal. During the pendency of this application the applicant moved an application for amendment which was allowed and the respondents have also filed the reply. According to the applicant the suspension order was without any condition. The applicant's claim was that he is entitled to salary for the entire period as the suspension order was not valid and without justification *as it was recalled* meaning thereby it never existed. As such the same tantamount to legal entitlement for wages for the entire period.

2. According to the respondents, the applicant was under suspension upto 5-8-69 and not up 8-11-69 and as such his claim was barred by limitation. The applicant was under suspension from 6-1-67 to 7-11-69. From the evidence it transpires that the applicant was also paid suspension allowance upto the month of November, 1969 and the definite averment of the applicant that the service of the order was effected only in the month of November 1969 also could not be controverted. From these facts it was evident that the applicant could learn of the revocation of the suspension order only on 8-11-69. The supplementary bill for suspension allowance was prepared from 15-8-69 to 14-9-69. Thus the applicant became

entitled to ~~to~~ salary upto 20-11-69 and the respondents ^{been} wrongly held that his suspension order having/recalled earlier he was not entitled to salary for this period. The applicant was entitled to salary for the period upto 7-11-69 as the suspension order itself was not legal and as such the deduction was covered by the payment of wages Act. So far as the other claims of the applicant that he was not allowed to sign in the register and ~~join~~ was not allowed to join the duty, there is dispute between the parties. According to the applicant, every time he went to sign in the register he was not allowed to do so and in some temporary register he has signed. The respondents refuted the same. But no evidence could be produced to prove that inspite of the applicant's sincere efforts to sign in the ~~register~~ register he was not allowed to do so. It is just possible that the applicant was attending the duty, but he did not make any serious efforts, may be under compulsion or pressure to show that in fact ^{duty} that he was ready to join/and was present for the same. As the applicant could not successfully establish this claim, he is not entitled for the salary for the said period as it will not be covered under the payment of wages Act, although he will be treated to be on duty during this period as there was no refusal on his part to join the duties and as per his allegation he did make efforts to sign in the register. and According to the applicant he was signing in the temporary register, which was not produced and according to the respondents no such register was being maintained and as such this claim was also not proved. Thus the applicant's claim for the period during which he was under suspension has been wrongly refused by these authorities and this application deserves to be allowed and the orders ^{are} ~~is~~ quashed to that extent. So far ~~xx~~

the period during which he was treated to be on unauthorised absence, the applicant failed to establish the same successfully. Accordingly the applicant is not entitled to ~~xxxxxxx~~ wages for that period, though he will be deemed to be continuing in service for all other purposes during this period. The respondents will pay the amounts to the applicant which are due to him within a period of two months from the date of receipt of this order. Refusal of wages to the applicant during the period of sick leave will tantamount to illegal deduction of wages. As such the applicant is entitled to get wages for the period during which he was on sick leave, which cannot be refused in any way. Accordingly the respondents are liable to pay wages for the period during which the applicant was on sick leave. As the applicant has succeeded partly he is entitled for 2 times compensation.


Member (A)


Vice-Chairman.

Dated: 26th August, 1992, Lucknow.

(tgk)

O.A.No.390/90(L)

26/8/92. Hon.Mr.Justice U.C.Srivastava,V.C.
Hon. Mr. K. Obayya, A.M.

Judgment has been dictated in the open
Court.


A.M.


V.C.

Date of Judgement
20-8-92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
(Circuit Bench, Lucknow)

Order dated 19.11.1992

In

Review Application no.887 of 1992.

In

Original Application no.390 of 1990

Avadhesh Narain Applicant.

Vs,

The Divisional Personnel Officer,
Northern Railway, Lucknow,
and others Respondents.

APPLICATION FOR SUPPLYING COPY OF THE
JUDGEMENT DATED 20.08.1992 AFTER CORRECTION OF FIGURES AND SUBSTITUTION BY THE
FIGURES SHOWN IN THE AMENDMENT APPLICATION.

.....XX.....

The applicant above named humbly submits as
under:-

1. That the applicant prayed for review of the judgement dated 20.08.1992 and the Hon'ble Tribunal was pleased enough to order for correction of figures and substitution by the figures shown in the amendment application, in the judgement dated 20.08.1992.
2. That the applicant made application for supply of copy judgement dated 20.08.1992 after the same is corrected and substituted by the figures shown in the amendment application according to the order of the

: 2 :

Hon'ble Tribunal dated 19.11.1992 which has not been issued to the applicant as yet causing delay in taking further action.

3. That the corrected copy of the judgement as mentioned in above para, is most essentially required in the interest of justice.

P R A Y E R

Therefore, it is most respectfully prayed that the Hon'ble Tribunal be pleased to supply the copy of the judgement dated 26.08.1992 after the same is duly corrected and substituted by the figures shown in the amendment application as per order dated 19.11.1992.

Lucknow :
Dated :

APPLICANT
Through
Counsel.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH,
LUCKNOW

O.A. NO. 390 OF 1990 (4)

FORM I

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNALS ACT, 1936 :

Title of the case:

AVADHESH NARAYAN TRIPATHI ... APPLICANT

VERSUS

THE DIVISIONAL PERSONNEL OFFICER,

NORTHERN RAILWAY, LUCKNOW & OTHERS ... RESPONDENTS

I N D E X

| S.No. | Description of documents relied upon | Page No |
|-------|---|---------|
|-------|---|---------|

1. Application ...
2. Annexure No.A-1:- True copy of the
order dated 24.9.70 and 25.4.83
3. Annexure No.A-2:- True copy of
the order dated 12.7.88
4. Annexure No.A-3:- True copy of the order
dated 22.3.90
- ~~5. Annexure No.A-4:- True copy of the~~

6. Power ...

For use in Tribunal Office

Signature of applicant

Date of filing:

Date of receipt of post:

Registration No.

Signature
for Registrar

*Signature
for Registrar*

Signature

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH,
LUCKNOW

(APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNAL ACT, 1985):

O.A. NO.

OF 1990

AVADHESH NARAYAN TRIPATHI, aged about 54 years,
son of Late Sri Ram Sewak Tripathi, working as
Inspector of Works, Northern Railway, Sultanpur,
resident of Ward No.8, Town Area, Musafirkhana,
District Sultanpur.

... APPLICANT

VERSUS

1. THE DIVISIONAL PERSONNEL OFFICER,
Northern Railway, Lucknow;
2. THE GENERAL MANAGER, Northern Railway,
Baroda House, New Delhi;
3. THE DIVISIONAL SUPERINTENDENT, Northern
Railway, Hazratganj, Lucknow;
4. THE ASSISTANT ENGINEER, Northern Railway,
Sultanpur;
5. THE SUB-DIVISIONAL MAGISTRATE, Sadar,
Sultanpur;
6. THE ADDITIONAL DISTRICT JUDGE II, Sultanpur.

... RESPONDENTS

Contd...2

*Masaram
Adv.*

[Signature]

APPLICATION UNDER SECTION 19 OF THE
ADMINISTRATIVE TRIBUNALS ACT, 1985

I. DETAILS OF APPLICATION

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

(i) An order dated 25.4.1983 passed by Sub-Divisional Magistrate, Sultanpur in Case No. 2/8/725 in reference of the application dated 24.9.1970 under section 15 of the Payment of Wages Act (Annexure A-1).

(ii) A judgment and order dated 12.7.1988 passed by IInd Additional District Judge, Sultanpur in Misc. Civil Appeal No. 31 of 1983 under section 17 of the Payment of Wages Act arising out of the judgment and order dated 11.12.72/25.4.1983 passed by Sub-Divisional Magistrate, Sultanpur. (Annexure No.A-2).

(iii) A judgment and order dated 22.3.1990 passed by IInd Additional District Judge, Sultanpur in Misc. Case No. 21 of 1988 in reference of the application for review preferred against the judgment and decree dated 12.7.1988 passed in Misc. Civil Appeal No.31 of 1983. (Annexure No.A-3).

II. JURISDICTION OF THE TRIBUNAL

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of this Hon'ble Tribunal.

III. LIMITATION

The applicant further declares that the

Narain
ANW.

[Signature]

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application is within the limitation period prescribed in section 21 of the Administrative Tribunals Act, 1985, as the same is being filed within one year from the date of the order passed in review petition.

IV. FACTS OF THE CASE

(1) That the petitioner was initially appointed as an office clerk on 26.10.1954 in Railway Training School, Chandausi Northern Railway.

(2) That the petitioner was subsequently appointed as Works Mistri/Sub-overseer Mistri (S.O.M.) in May, 1958 (1958) by General Manager, Northern Railway, Baroda House, New Delhi and was posted at Haridwar under Inspector of Works giving continuity of his previous service with all benefits.

(3) That the petitioner, ultimately after working in several divisions, was transferred in Lucknow Division, Northern Railway and was posted under Inspector of Works, Sultanpur in the month of September, 1961.

(4) That the petitioner was working peacefully without any disturbance in his services since his appointment up to the year 1962 but in December, 1962 the petitioner was wrongly and unlawfully declared surplus retaining junior-most and unauthorised locally recruited persons, resulting physical and mental torture and financial hardship with delaying the payment of his wages for four to five months.

(5) That in January, 1964 the petitioner was

*Sanjay
AOW*

[Signature]

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wrongly and illegally served with a memorandum (charge-sheet) for removal and dismissal from services and without affording any opportunity for hearing and without making any proper enquiry was punished with penalty of with-holding of annual increments without any show cause notice and without any good and sufficient cause and also in violation of statutory rules and provisions.

(6) That thereafter a chain of harassment and victimization was started by the authorities by way of serving wrongly and illegally charge-sheets without any good and sufficient cause and without affording any opportunity for hearing inflicting punishment, wrongly and illegally deducting wages for several months repeatedly and ultimately the petitioner was suspended wrongly and illegally by the Assistant Engineer, Northern Railway, Sultanpur acting in arbitrary manner.

(7) That the petitioner made several representations and also approached personally to the proper and superior authorities but no consideration was made and no justice was given to the petitioner.

(8) That being aggrieved with the aforesaid harassment and victimisation specially due to wrong and illegal deduction of wages and apathetic attitude of the departmental authorities, the petitioner filed an application under section 15 of the Payment of Wages Act (hereinafter referred to as the 'Act') before the Prescribed Authority i.e. Sub-Divisional Magistrate, Sadar, Sultanpur on 24.9.1970 for recovery of his wrongly and illegally deducted wages amounting to Rs. 6,796.46

Contd...5

Sharanam
Adv.

[Signature]

along with compensation of Rs. 67,964.60 i.e. ten times of illegally deducted wages as provided in the Act; by way of issuing a direction under section 15(3) of the Act.

(9) That, however, the said direction was given on 25.4.1983 by the Prescribed Authority i.e. the Sub-Divisional Magistrate, Sadar, Sultanpur wrongly and illegally rejecting the following claims:-

(a) Wages demanded as suspension allowances for the period from 6.8.1969 to 21.10.1969 and from 6.11.1969 to 7.11.1969 amounting to Rs. 586.20 p. holding incorrectly as time-barred by miscalculating and misreading the legal provisions for the limitation period provided under sections 4 and 5 of the Act.

(b) Wages demanded for the period treating incorrectly the applicant as absent from 2.12.1969 to 3.12.1969, 11.12.1969 to 21.12.1969, 30.12.1969 to 31.12.1969, 1.1.1970 to 4.1.1970 and 11.1.1970 to 31.1.1970 amounting to Rs. 384.00 ignoring the facts that the applicant was remained present on duty and documentary evidence and other evidences.

(c) Wages claimed for leave period from 1.7.1970 to 30.7.1970 amounting to Rs. 270.00 on medical ground ignoring the facts, documentary and other evidences.

(d) Wages claimed as annual increments for the period from 15.8.1965 to 15.8.1970 amounting to Rs. 972.00.

(e) Compensation claimed i.e. ten times of

illegally deducted wages amounting to Rs. 67,964.60 ignoring the facts of the case and the legal provisions enshrined under the Act and documentary and other evidence

(10) That the applicant being aggrieved with the decision given by the Prescribed Authority i.e. Sub-Divisional Magistrate, Sadar, Sultanpur preferred an appeal before the District Judge, Sultanpur well within time (limitation period) provided in the Act. The District Judge, Sultanpur, after admitting the appeal transferred the same for hearing in the court of IInd Additional District Judge, Sultanpur.

(11) That the appeal was dismissed by the IInd Additional District Judge, Sultanpur on the ground of limitation with material procedural irregularities.

That the appeal was heard exparte on 4.7.1988 as nobody appeared from the respondent's side and the point of limitation was neither raised at the time of admission of the appeal which was considered well within the limitation period by the District Judge, Sultanpur nor at the time of exparte hearing followed by submission of written arguments by the counsel of appellant on 11.7.1988.

The judgment was pronounced on 12.7.1988 and after obtaining a copy of judgment dated 12.7.1988 it was learnt that while writing the judgment, the learned IInd Additional District Judge, Sultanpur heard the learned counsel for the respondents also but without giving any notice to the appellant or his counsel and thus failed to provide any opportunity to rebut the point raised by respondent's counsel.

Contd...7

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S. Narain
Adv.

[Signature]

(12) That the applicant being aggrieved with the decision of IInd Additional District Judge, Sultanpur filed a review petition for considering the appeal for taking correct view in proper prospective on facts and merits which was heard exparte followed by a submission of written argument but the IInd Additional District Judge, Sultanpur dismissed the same with material irregularity and ignoring the legal provisions provided in the Act in disposing of the review petition.

V. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS

(A) Because the superior authorities wrongly and unlawfully deducted a sum of Rs. 6,796.46 p. from the wages of the applicant.

(B) Because the applicant was unlawfully declared surplus in December, 1962 retaining junior-most and unauthorised locally recruited ones.

(C) Because the Assistant Engineer, Northern Railway, Sultanpur unlawfully served a charge-sheets for removal/dismissal upon the applicant, and the applicant was kept under suspension from 6.1.1967 to 7.11.1969 unlawfully without making any proper enquiry and without affording any opportunity of hearing to the applicant.

(D) Because the Prescribed Authority i.e. the Sub-Divisional Magistrate, Sadar, Sultanpur incorrectly calculated the period of limitation for filing the suit application by misinterpretating the provisions of the Act and also taken a wrong view regarding condonation of delay for the period of about four months by wrongly

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calculating as four years regarding claim of annual increments.

(E) Because the applicant has not been given the annual increments arbitrarily and unlawfully.

(F) Because the Prescribed Authority i.e. the Sub-Divisional Magistrate, Sadar, Sultanpur also erred in holding the suspension period prior to actual the service of the notice of revocation order ignoring the facts and material documentary and other evicences, such as attendance register and salary bill etc. produced by the respondents also.

(G) Because the learned IInd Additional District Judge, Sultanpur had taken a jaundice and perversive prejudicial view in wrongly and incorrectly calculating the limitation period for filing the appeal against the directions dated 25.4.1983 given by the Prescribed Authority i.e. the Sub-Divisional Magistrate in reference of the application dated 24.9.1970.

(H) Because the IInd Additional District Judge, Sultanpur committed gross illegality in deciding the review petition confirming the judgment dated 12.7.1983 given in the appeal.

(I) Because the claim filed by the applicant was not at all time-barred and even if the same was barred by time as per view taken by the courts below, the delay was liable to be condoned as the claim was filed under the statute of Labour Welfare because the learned courts below have taken a contrary view to the very essence of

Contd...9

the Labour Welfare Legislation and they have also not considered the well settled principles of law that the Government or authorities owned and controlled by the Government should not be allowed to take a plea like limitation etc. being technical one.

(J) Because the applicant is a poor lower grade employee and it is in the interest of equity, justice and good conscience that his monetary claim be allowed.

(K) Because the learned courts below have totally ignored the basic ground taken by the applicant i.e. the deduction was made without giving the applicant any opportunity of being heard which is against the principles of natural justice and on this score only the order regarding deduction of wages is illegal and liable to be quashed.

VI. DETAILS OF THE REMEDIES EXHAUSTED

The applicant made so many representations to the authorities but of no avail. Ultimately the applicant filed the claim application before the Prescribed Authority under section 15 of the Payment of Wages Act and against the direction of the Prescribed Authority filed an appeal and thereafter review application petition.

VII. 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.

VIII. RELIEF(S) SOUGHT

In view of the facts mentioned in para IV above, the applicant prays for the following relief(s):-

(a) That the order passed in review petition and in first appeal passed by IInd Additional District Judge, Sultanpur and the order and direction on the claim application passed on 24.9.1970 by the Prescribed Authority i.e. Sub-Divisional Magistrate, Sadar, Sultanpur may please be quashed, ^{and so for} which are contrary to the prayer made by the Applicant. ^{and}

(b) That the opposite parties Nos. 1 to 4 may please be directed to pay the entire amount claimed including the amount mentioned above, ^{and with} all benefits accordingly including regarding fixation of present salary etc. with retrospective effects, ^{and}

(i) Wages demanded as suspension allowances for the period from 6.8.1969 to 21.10.1969 and from 5.11.1969 to 7.11.1969 amounting to Rs. 586.20;

(ii) Wages demanded for the period from 2.12.1969 to 31.12.1969, 11.12.1969 to 21.12.1969, 30.12.1969 to 31.12.1969, 1.1.1970 to 4.1.1970 and 11.1.1970 to ~~31.1.1970~~ 31.1.1970 amounting to Rs. 384.00;

(iii) Wages claimed from 1.7.1970 to 30.7.1970 amounting to Rs. 270.00;

(iv) Wages claimed as annual increments for the

*for vacation
Adv.*

*for vacation
Adv.*

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..11.

period from 15.8.1969 to 15.8.1970 amounting to Rs. 972.00;

(v) Compensation claimed i.e. ten times of illegally deducted wages amounting to Rs. 67,964.60;

(vi) That any other relief that this Hon'ble Tribunal deemed fit be awarded to the applicant.

(vii) That the cost of these proceedings may also be awarded to the applicant.

IX. INTERIM ORDER. IF ANY. PRAYED FOR

That no any interim order is prayed.

X. In the event of application being sent by registered post, it may be stated whether the applicant desires to have oral hearing at the admission stage and, if so, he shall attach a self-addressed post-card or inland letter, at which intimation regarding the date of hearing could be sent to him.

XI. PARTICULARS OF BANK DRAFT/POSTAL ORDER FILED IN RESPECT OF THE APPLICATION FEE

- Explanatory Row.*
- (i) Postal Order No.:
 - (ii) Date of issuing:
 - (iii) issuing post Office:

XII. LIST OF ENCLOSURES:

- (1) Annexure NO. A-1 True copy of the order dated 24.9.70 and 25.4.83.
- (2) Annexure NO. A-2 True copy of the order dated 12.7.88
- (3) Annexure NO. A-3 True copy of the order dated 22.3.90

VERIFICATION

I, Avadhesh Narain Tripathi, aged about 54 years, son of Late Sri Ram Sewak Tripathi, working as Inspector of Works, Northern Railway, Sultanpur, resident of Ward No.8, Town Area, Musafirkhana, District Sultanpur, do hereby verify that the contents of paras 1 to are true to my personal knowledge and those of paras are based on legal advice which are believed by me to be true, and that I have not suppressed any material fact.

DATED

PLACE: LUCKNOW.

APPLICANT

Avadhesh Narain Tripathi

Avadhesh Narain
Achw.

Avadhesh Narain Tripathi

In the court of Sri M.M.Swarup, S.D.M. Sadar, Sultanpur.

Case No. 69 of 1972 under section 15 of the Wages Act.

A.N. Tripathi

Versus

D.P.O., N.R. & others

Judgment

Sri Avadhesh Narain Tripathi, an employee of the Northern Railway, has filed this suit under section 15 of the Payment of Wages Act alleging that a sum of Rs. 6796.46 p. has been unlawfully deducted from his wages one of Rs. 12141.82 p. being the amount of the wage period which ended on 14th of each month from August 1965 to August 1970, both inclusive as per details given in the application. He has further claimed a compensation of Rs. 67964.60 p. on deducted wages for the above period. He has further contended that he was unlawfully declared surplus in December 1962 retaining junior most and unauthorised locally recruited ones and he was kept in waiting for orders. However, he was paid the wages for that period afterwards. That in August 1965 he was served with a charge sheet for removal/dismissal by the A.E., Sultanpur and the enquiry was instituted after July 1966. That the applicant was again served with charge sheet and remained under suspension from 6.1.67 to 7.11.69 but the suspension order was revoked and revocation order was served on him on 8.11.69 forenoon. Thus the deduction of wages earned after revocation of suspension order and reinstatement for the period from 8.11.69 to 14.8.70 comes to Rs. 2372/- and the unlawful deduction of wages earned during the suspension period from 6.1.67 to 7.11.69 comes to Rs. 2837.29 p. That the applicant was punished without any fault on his part and without

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providing him all the reasonable and legitimate opportunity of self defence. He preferred appeals and representations and review petition against the unjustified orders well in time but they are still kept pending and it is lingering on unnecessarily with the authorities. Hence this suit with the prayer that his unlawful deducted wages be ordered to be paid to him along with the compensation admissible under law.

The opposite party has denied the allegations of the applicant and has stated that the applicant signed the attendance register from 8.11.69 to 15.11.69 forcibly and from 16.11.69 to 23.11.69 absented from duty and from 29.11.69 to 14.8.70 did not work and carry out orders. It is further alleged that the applicant remained under suspension which orders was revoked but he remained absent from duty upto 7.11.69. It has also been contended that the applicant was rightly suspended and the charges are still pending. That he was punished after proper enquiries with-holding the increment. That the claim is time barred and should be rejected.

On the pleadings of the parties the following issues were framed:-

- Enlarged
Act.*
1. Whether the amount of Rs. 6796.60 p. has been unlawfully deducted from the wages of the applicant from August 1965 to August 1970 as mentioned in para 3(1)(s) yo(d) of the application?
 2. Whether the applicant is entitled to Rs. 6796.60 p. as compensation as claimed in para & 3(2) (a) of application?

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3. Whether the plff. is entitled to put his claim for the period 1965 to 1967 which he had claimed in his previous suit?
4. Whether the applicant is entitled to claim his dues for suspension period from 18.12.66 to 19/30.11.69 about which enquiry is still pending?
5. Whether the application is within limitation?
6. Whether the application is barred by principle of resjudicata?
7. Whether the application is barred u/s 7(2) (h) of the Payment Wages Act?
8. Whether the claim of the applicant is maintainable u/s 15 of the Payment of Wages Act?
9. To what relief, if any, is the applicant entitled?

Findings

Issue Nos. 3 to 8:- The point of limitation, maintainability etc. involved in these issues shall be considered while considering the respective claim in the issued concerned.

Issue Nos. 1 and 2:- For the convenience of discussion the claims have been divided in different parts and each part shall be discussed separately.

The applicant has not been able to give the date and number of order by which his increments have been with-held. However, since the claim made by him pertains from the year 1965 to 1967 and has been claimed

*S. Narayan
Adv.*

[Signature]

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in the year 1970 i.e. after 3 to 5 years, the claim is apparently time barred. The applicant has not been able to show any good reason for having preferred the claim after a period of 3 to 5 years. The condonation of delay of such a long period needs a very very convincing explanation which is lacking. If he wanted to await the result of representations and appeals then he should have waited till its disposal and if he without waiting for the result of the reported representations or appeals, wanted to seek remedy in a court of law as he has now done he should have done it within the period allowed under the law. This claim of Rs. 972.00 for the period 15.8.65 to 14.8.67 on account of stoppage of increment, as a result of departmental proceedings, is time-barred and cannot be considered.

As for the claim for the suspension period from 15.8.69 to 14.11.69, the applicant has alleged that he was suspended under orders of Divisional Personnel Officer dated 19.7.69 and this order of suspension was revoked unconditionally vide order dated 19/30.7.69. The applicant has alleged that order of revocation of suspension was received by him on 8.11.69 vide copy of revocation order exhibited as K-18. A perusal of this document shows that applicant has noted in his handwriting that he received the order on 8.11.69. But this does not appear to be so. The O.P. has filed a copy of representation made by the applicant Sri A.B.Tripathi on the receipt of this order reinstating him which has been marked as a-7 & a23 and this shows that it was on 5.8.69 when he represented against his ~~an~~ transfer order to Lucknow Division.

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The applicant did not comply with the transfer order and as it transpires from the representation dated 5.8.69 he insisted upon remaining Sultanpur itself. There was no post allotted to him at Sultanpur since he was required to report for duty to D.P.O. at Lucknow. The applicant instead of proceeding as directed by his officers disobeyed the order and made a representation. This representation was also rejected, as is evident from paper no.A 13. The applicant even then did not comply with the orders and sent his application for leave from 22.10.69 to 4.11.69. No orders were, it appears passed on this application and applicant went to Civil Court for issue of an injunction against his transfer order which was granted on 30.10.69. Thus the claim from 15.8.69 (He has claimed from only 15.8.69 instead of 5.8.69) to 23.9.69 (a year before the application for claim) becomes time barred. The applicant's claim for deduction of pay etc. during the period 15.8.69 to 21.10.69 cannot be considered since it was at his own risk that he did not comply with the orders of transfer and indulged in representations etc. As far the claim for the period from 22.10.69 to 4.11.69 when his application for leave on medical grounds was moved it appears that this application of leave was not disposed by the authorities concerned and, naturally, he cannot be denied his pay for this period since if the leave application is not disposed off he is not at fault. He is, therefore, entitled for his pay from 22.10.69 to 4.11.69, the period of his leave. As for the remaining period from 5.11.69 to 18.11.69 this shall be discussed later on.

Now, the applicant has claimed his wages all the periods from 15.11.69 to 14.8.70. The claim for this

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period is within time the claim has been claimed on 24.9.70. The point of resjudicata or non-maintainability of suit does also not apply to this claim. It may here be recalled that Sri A.N.Tripathi has been disallowed pay upto 21.10.69 and allowed from 22.10.69 to 4.11.69. Though this issue is concerned for period from 14.8.69 to 15.11.69 yet as stated in the last paragraph the period from 5.11.69 yet as stated in the last paragraph the period from 5.11.69 to 14.11.69 is also to be considered along with this claim.

It may be pointed out that though Sri Tripathi has applied for leave upto 4.11.69 yet he went to court against his transfer order and obtained temporary injunction on 30.10.69. The authorities were bound to obey the injunction and stay his transfer orders as desired by court in its order dated 30.10.69 and to give him work at Sultanpur itself. It appears from the letter of A.En. dated 7.11.69 addressed to D.P.O., Lucknow which has been marked as A-12 that A.En. had referred the matter to DPO for his posting order keeping in view the injunction granted by the court as early as 4.11.69 and some work was allotted to Sri Tripathi as will be seen from the letters dated 29.11.69 (Ext.Ka-22), 1.1.70 (Ext.Ka-40) and 2.3.70 (Ext.Ka-58). A perusal of these letters will show that vide letter dated 29.11.69 Sri Tripathi was directed by the L.O.W. to work under him (IOW) and prepare rent roll. But Sri Tripathi vide his letter of same date (Ext. Ka-33) reported for duty but also demanded copies of certain orders before performing the duty allotted to him. Then again the IOW vide his letter dated 1.12.69 (Ext.Ka-34) directed Sri Tripathi to attend A.En.Office to work on rent roll under S.D.C.Sri Tripathi again

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*Salvatore
S.D.C.*

[Signature]

moved an application on 3.12.69 (Ext.Ka-35) for supply of certain documents. Sri Tripathi vide his letter dated 18.12.69 (Ext.Ka-43) informed the IOW that preparation of rent roll was a clerical job, and cannot be assigned to a technical hand like sub-overseer Mistri Grade I. This was followed by a series of correspondence between IOW and Sri Tripathi in which the former pressed the latter, it appears, the work for preparation of rent roll and the latter avoided it on one pretext or the other. Thereafter vide IOW's letter dated 2.3.70 (Ext. Ka-58) Sri Tripathi was required to prepare Land Boundary Register. Sri Tripathi vide his letter dated 10.3.70 (Ext. Ka-61) informed the IOW that he may be acquainted with the procedure and methods for doing this work. There are several other letters from Sri Tripathi in which he has asked for sitting facility, supply of stationery etc.etc.

From the above discussion it is clear that Sri Tripathi was allotted work by the department and it is also clear that he was allotted such works which were not meant for a technical hand. On the other hand Sri Tripathi knowing well that he will not be able to discharge the duty and satisfy the authorities as desired by himself which may again result in departmental action against him avoided doing this non-technical/clerical job. The O.Ps. have taken the plea that Sri Tripathi did not work during this period and is not entitled for pay. Such period of dispute when Sri Tripathi is alleged not to have worked is not a day or two but about a year. If Sri Tripathi did not work for a long period like a year he should naturally have been proceeded against departmentally and placed under suspension and or charge-sheeted. But there is nothing on file to show

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that any action was taken against Sri Tripathi. There is also nothing on file to show the particular of work required to be done by Sri Tripathi during the long period of one year and which he did not do. It was proper for the department to show that Sri Tripathi did not prepare the rent roll and land boundary register during the period under dispute and this work was done by somebody else. Nothing like this has been shown. Sri Tripathi, therefore, cannot be said not to have worked during this period. Moreover the attendance registers for this period have been caused to be filed by the applicant from the possession of O.Ps. which show that he had been attending the office and signing the registers

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A reference to the attendance registers made available by the O.P. indicates that Sri Tripathi has signed the register in the month of November from 8.11.69 to 15.11.69 but the name of Sri Tripathi is not available in this register from 16.11.69 to 30.11.69. The O.Ps have not been able to give any reasons for omitting the name of Sri Tripathi from attendance register during the second fortnight of November 1969. Naturally, therefore, when his name was not available in register, he could not have signed the register from 8.11.69 to 15.11.69 forcibly it is not apparently believable since a glance at the attendance register for the period shows that Sri Tripathi had signed the register and word 'A' was placed above his signatures later on. He is, therefore, entitled for payment from 8.11.69 to 30.11.69.

*S. Narayan
A.O.*

The O.Ps. have made available attendance register for the month of December 69, January, March and April to August, 1970. The attendance register for

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the month of February 1970 is not available. During the month of December, 1969 Sri Tripathi has not signed on 2nd, 3rd, 11th to 21st and 30th and 31st. For the rest of the period he has been shown as on casual leave. This goes to show that except for the days when he was on casual leave during the month of December 1969 he was absent on the remaining days and he has failed to show as to why he did not sign the attendance register during the period of absence as shown in the attendance register during December 1969 and why he did not attend office during office hours. Thus, during December, 1969 he is entitled for pay for 1st and 4th to 10th and 22nd to 29th only.

During the month of January 1970 he has been shown on casual leave on 5th and Sri Tripathi has signed the register from 7th to 10th. Here again he is to be taken as absent from 1st to 4th and 11th to 31st for which period he is not entitled for any pay. During the months of March to June 1970 Sri Tripathi has either signed the register or has been shown on casual leave or sick on IAP. He will, therefore, be allowed pay for all these months. In the whole month of July he has been shown as absent upto 30th and his signature finds place on 31st July only and in remarks column it is mentioned that "resumed duty by Sri A.B.Tripathi S.O.M.Gr. I on 30.7.70 afternoon on obtaining fit certificate from A.M.O./SLN and refused to accept spare memo of Chandausi Training School". He is, therefore, entitled pay for only 31st July, 1970. In August, 1970 he was on LAP on 13th and 31st and N.Holiday and rest on 15, 16 and 30. For the remaining dates Sri Tripathi has signed the register. He will, therefore, get pay for full month of August, 1970 also.

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Sri Krishna
24/8/70

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-compliance of certain orders. The charges are not such so as to warrant denial of pay for the period of suspension while it is still open to the department to award him any punishment in any form and manner permissible by rules. There is no reason, therefore, why Sri Tripathi should not be allowed pay for the period of suspension especially when suspension order has been revoked unconditionally.

But it may here be noted that Sri Tripathi has alleged that the order of revocation was served on him on 8.11.69 which is not correct. Copy of his own application dated 5.8.69 goes to show that he had come to know about revocation order as early as 5.8.69 and if he did not report for duty after such knowledge or information and did not comply with orders given to him regarding his posting it is his own responsibility as to why he did not comply with the orders given to him for reporting for duty to DPO Lucknow vide order dated 6.8.69 (A-2). It was only on 30.10.69 that the order was stayed and Sri Tripathi cannot be given the benefit of this stay order for the period preceding this stay order when he did not comply with the order and also did not report for duty. The period from 5.8.69 to 21.10.69 (the period from 22.10.69 onward has already been discussed in preceding paragraphs) will be taken to be as his absence from duty and he is not entitled for pay for this period of absence. "The claim for the period 6.1.67 to 4.8.69 has been claimed on 24.10.70. Though apparently it is time barred yet it is not so since the revocation of suspension order was passed only on 30.8.69 and Sri Tripathi came to know of it only on 5.8.69. He had, therefore, no opportunity to approach the court

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Sri Tripathi is certainly entitled for ~~an~~ pay on the dates on which he has signed the attendance register and not for the remaining period. The dates on which he has been shown on LAP he will be entitled for a pay subject to availability and admissibility of the leave. The question of February, 1970 still remains to be decided. Since the O.Ps. have failed to produce the attendance register for the said month which is expected to be in their custody it cannot be taken to be the fault of the applicant and presumption cannot be taken against him. Sri Tripathi will be taken to be present during February, 1970 also and paid accordingly.

Sri Tripathi has also claimed wages for the period of his suspension from 6.1.67 to 7.11.69. The period from 22.10.69 to 4.11.69 has already been discussed in page 4 of this judgment wherein he has been allowed pay since he was on leave.

It appears from the records on file that Sri Tripathi was reinstated and suspension order was revoked unconditionally on 30.7.69 vide Ext.K-18. This order of reinstatement and revocation of suspension is an unconditional one and it does not say that Sri Tripathi will not get pay for the period he remained under suspension from which the only idea that can be inferred is that he was intended to be paid for the period of suspension also.

*S. Narasimhan
ACW*

Moreover a perusal of memorandum accompanied by statement of charges (Ext.Ka-118) goes to show that charges against him are not that he did not work during this period but are only about disobedience and non-

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-compliance of certain orders. The charges are not such so as to warrant denial of pay for the period of suspension while it is still open to the department to award him any punishment in any form and manner permissible by rules. There is no reason, therefore, why Sri Tripathi should not be allowed pay for the period of suspension especially when suspension order has been revoked unconditionally.

But it may here be noted that Sri Tripathi has alleged that the order of revocation was served on him on 8.11.69 which is not correct. Copy of his own application dated 5.8.69 goes to show that he had come to know about revocation order as early as 5.8.69 and if he did not report for duty after such knowledge or information and did not comply with orders given to him regarding his posting it is his own responsibility as to why he did not comply with the orders given to him for reporting for duty to DPO Lucknow vide order dated 6.8.69 (A-9). It was only on 30.10.69 that the order was stayed and Sri Tripathi cannot be given the benefit of this stay order for the period preceding this stay order when he did not comply with the order and also did not report for duty. The period from 5.8.69 to 21.10.69 (the period from 22.10.69 onward has already been discussed in preceding paragraphs) will be taken to be as his absence from duty and he is not entitled for pay for this period of absence. "The claim for the period 6.1.67 to 4.8.69 has been claimed on 24.10.70. Though apparently it is time barred yet it is not so since the revocation of suspension order was passed only on 30.8.69 and Sri Tripathi came to know of it only on 5.8.69. He had, therefore, no opportunity to approach the court

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before 5.8.69. Thus the wages for the suspension period from 6.1.67 to 5.8.69 became due for payment only on 5.8.69 and not earlier. The payment if so thought by the department could have been made by 14.9.69 and not earlier when the pay is drawn and disbursed. The delay of 10 days, therefore, in pressing the claim on the part of Sri Tripathi is condonable and is hereby condoned under the provisions of second paragraph of sub-section (2) of section 15 of the Payment of Wages Act. Sri Tripathi therefore, get full pay, dearness allowance for the period of suspension minus the amount that he might have drawn in the form of subsistence allowance etc. Both the issues are decided accordingly.

Issue No.7:- The O.Ps have failed to establish either orally or through any document that the application is barred by section 7(2)(h) of the Act. They have also failed to show that the deductions were made by an order of any court or an authority competent to pass such orders. As the application is not barred by section 8(2)(h) of the Act, the issue is decided accordingly.

Issue No.8:- As per discussions in detail in issue No.1 and 2, the claim of the applicant is maintainable u/s 15 of the Payment of Wages Act to the extent to which he has been allowed pay and dearness allowances etc. The issue is decided accordingly.

Issue No.9:- The applicant is entitled to the relief as granted to him in issues 1 and 2 discussed above.

Order

The applicant Sri A.N.Tripathi is, therefore, allowed pay from 22.10.69 to 4.11.69, 8.11.69 to 30.11.69,

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in December for 1, 4 to 10 and 22 to 29, in January 1970 from 5th to 10th, February to June, 1970, in July for only 31st and full month of August, 1970 and also for the period of suspension from 6.1.67 to 5.8.69. But these payments shall be made to him minus the amount that might have been paid to him as subsistence allowance etc.

Sd/-Illegible
11.12
(M.M.Swarup)
S.D.M. Sadar,
Sultanpur.

Spare copies

(SEAL)

::TRUE COPY::

T. C.

Narain
Ahr.

Handwritten signature

RECEIPT FOR PAYMENT TO GOVERNMENT

(Form No. 1, Chapter III, Paragraph 26, Financial Handbook, Volume V, Part I)

28 (P)

Receipt No. 31-87

Place _____ Date 31-87

Department and office _____

Received from श्री ठापा

the sum of Rupees 2-00 के के पचास

on account of नाथ

Signature of Government Servant granting the receipt. निरम

Cashier or Accountant. _____ Designation _____

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नकल आदेश दिनांक 18-10-82 मसमले मिलिल मुकदमा नम्बर 2/8/72
अन्तर्गत धारा धेमेन्ट आफ बेजेज रक्ट अबधोश नारायण त्रिवाठी बनाम
उत्तरो रेलवे तथा अन्य न्यायालय नरगनामजिस्ट्रेट सदर सुलतानपुर। आदेश
दिनांक 18-10-82

न्यायालय नरगनामजिस्ट्रेट सदर सुलतानपुर
बाद संख्या 2/8/765
धारा धेमेन्ट आफ बेजेज
थाना कोतवाली सुलतानपुर
अबधोश नारायण त्रिवाठी बनाम - उत्तरो रेलवे तथा अन्य
आदेश

मेरे पूर्वाधिकारी के आदेश दिनांक 11-12-72 के द्वारा श्री अबधोश
नारायण त्रिवाठी रेलवे कर्मचारी को मुकदमा संख्या 69 सन् 1972 श्री 80एन
त्रिवाठी बनाम उत्तरो रेलवे अगुदि में दिनांक 22-10-69 से 4-11-69
8-11-69 से 30-11-69 एवं दिसम्बर 1969 में दिनांक 1, 4 से 10 और 22
से 29, एवं जनवरी 1970 में से 10, फरवरी 70 से जून 1970 तथा जुलाई
31, 1970 तथा अगस्त 1970 बुरा महोना और दिनांक 6-1-67 से 5-8-69
तक जब तक यह निलम्बित रहे का बेतन देने का आदेश दिया है। उन्होंने
भी आदेश दिया कि जो धनराशि इन्हें निर्वाह भात्ता के रख में दी
चुकी है वह काट ली जायगी।

मेने रेलवे के बकील तथा श्री 80न0 त्रिवाठी को आज गुनः सुना है।
श्री 80एन0 त्रिवाठी का कहना यह है कि उक्त तिथियों में उन्हें दे
इन्किमेन्ट भी मिलना चाहिये तथा इसी प्रकार समय समय पर जो महंगाई
भात्ते में बढ़ोत्तरी हुई है वह भी मिलनी चाहिये। रेलवे के बकील का यह
कहना है कि इन्हें बढ़ोत्तरी एवं महंगाई भात्ता उसी रेट पर मिलना चाहिये
जिस रेट पर यह दिनांक 6-1-67 को बा. रहे थे। उन्होंने इस प्रकार बिल
बनाकर दिया। इसके बिबरोत श्री त्रिवाठी ने दूसरा बिल बनाकर दिया है
रेलवे के बकील के बिल तथा उनके द्वारा की गई बहत से सहमत नहीं हूँ। मेरे
पूर्वाधिकारी के आदेश में जहाँ बेतन दिया गया है उसका अर्धा बुरा बेतन
और महंगाई भात्ता से हैनकि उस दिनांक से जबकि वह निलम्बित हुये थे।

रेलवे के बकील के इस तर्क से मैं सहमत नहीं हूँ कि प्राबोडेन्ट फंड, इलेक्ट्रिक
चार्ज डाट इडबांस होलो इडबांस भी काटा जाय दिनांक 11-9-80 को जो
बिल उत्तर रेलवे द्वारा दिया गया है उसमें निम्नलिखित कमियाँ हैं:-



Moraiam
Adv.

मसमले (M)

ANNEXURE NO.

In the court of the Sub-Divisional Magistrate, Sadar,
Sultanpur

A.N.Tripathi

... Applicant

Vs.

D.P.O., N.Rly. & Others

... Opposite Parties

Case No. 2/8/725 : U/S 15 of
of 1979 Payment of Wages
Act.

FORM FRecord of order or Direction

1) Serial No.

2) Date of application : 24.9.1970

3) Name or names, parentage, address of the applicant belonging to the same unpaid group: Sri Avadhesh Narain Tripathi-Sub-Overseer Mistri, Grade I, Northern Railway, Sultanpur.

3) Name & address of the employer: Divisional Personnel Officer, Northern Railway, Hazratganj, Lucknow.

5) Amount claimed: Rs. x
a) as delayed wages Rs. x
b) as deducted from wages Rs. 6,796.46
As compensation Rs. 67,964.60

6) Plea of the employer and his examination (if any)

7) Finding, and a brief statement of the reasons therefor

8) Amount awarded:

a) Delayed wages NIL

b) Deducted wages

आदेश दिनांक 11.12.72 के
सन्दर्भ में आदेश दिनांक- 18.10.82
के आधार पर श्री एन.एन. त्रिपाठी
द्वारा दाखिल उनके हिसाब से उन्हें
₹0-5,227.60 मिलना चाहिये। उनका
यह क्लेम उपरोक्त आधार पर सही
प्रतीत होता है। इसमें से श्री त्रिपाठी
को ₹0-2,188.21 पैसे मिल चुके हैं।
अतः उन्हें शेष ₹3,039.39 पैसे मिलना
चाहिये।

Rs. 5,227.60 - Rs. 2,188.21
(Already paid) = Rs. 3,039.39

9) Compensation awarded: NIL

10) Penalty imposed: NIL

Narain
pdw.

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11) Cost awarded to :

i) Court fee charges Rs. 1.50

ii) Pleader's fee Rs. 450.00

iii) Witnesses' expenses Rs. 0.00

iv) Cost awarded Rs. 95.00 23.12.71 Rs. 30/-

20.6.80 Rs. 10/-

26.12.81 Rs. 15/-

26.5.82 Rs. 15/-

17.7.82 Rs. 10/-

23.5.82 Rs. 15/-

Rs. 95/-

12) Date by which the amounts

awarded shall be paid : 10.5.1983.

Notes: In case where an appeal lies, attach on a
separate sheet the substance of the evidence.

Total amount:- 1. Deducted wages Rs. 3,039.39

2. Cost awarded Rs. 95.00

3. Court fee charges Rs. 1.50

4. Pleaders fee Rs. 50.00

Total Rs. 3,185.89

Rs. Three thousands one hundred eighty five and paise
eighty nine only.

Dated 25.4.83.

:SEAL:

Sd/-Illegible
S.D.M. Sadar,
Sultanpur
25.4.83.

::TRUE COPY::

T.C.
ANVARAIDU
Sd/-

(Signature)

In the court of II-Addl. District Judge, Sultanpur.

Present Sri A.C.Lal, II Addl. District Judge.

Misc. Civil Appeal No. 31 of 1983

Avadhesh Narain Tripathi ... Appellant

Vs.

Divisional Personnel Officer & others ... Respondents

Judgment

This is plaintiff's appeal under section 17 of the payment of Wages Act against the judgment and order dated 11.12.72/25.4.1983 passed by Sri M.M.Swarup/Sri R.P. Singh Chauhan, SDM, Sadar, Sultanpur in Avadhesh Narain Tripathi Vs. Divisional Personnel Officer, Northern Railway, Lucknow and others in case no. 765 of 1970/67 of 1972/2/8/725 under section 15 of the payment of Wages Act, P.S. Kotwali, district Sultanpur, whereby the learned Magistrate had dismissed partly the appellant's claim. Major portion of the appellant's claim was allowed. But the learned Magistrate had dismissed some part of the claim and the plaintiff has come against the aforesaid order, dismissing that part of the claim.

I have heard the learned counsel for the appellant and the respondent's counsel also.

Avadhesh Narain A.C.L.
Appellant Avadhesh Narain was an employee of the Northern Railway. He had filed a suit under section 15, Payment of Wages Act alleging that a sum of Rs. 6796.46 has been unlawfully deducted from his wages from the period ending on 14th of each month from August 1965 to August 1970. The appellant has claimed a further amount of Rs. 67,964.60 as compensation on the deducted amount for

Respondent's counsel

the aforesaid period. He had contended that he was unlawfully declared surplus in December, 1962 retaining the junior-most and unauthorised locally recruited ones. It is alleged that he was, however, paid the wages for that period afterwards. It is alleged by the plaintiff that in August, 1965 he was served with a charge-sheet. Enquiry was instituted against him in July 1966. The appellant again remained under suspension from 6.1.67 to 7.11.69 but the suspension order was revoked and the revocation order was served on him on 8.11.69. It is alleged that the deduction of wages after revocation of suspension order from 8.11.69 to 14.8.77 amounting to Rs. 2372/- is paid and the unlawful deduction of wages from 6.1.67 to 7.11.69 of suspension period comes to Rs. 2837.29 p. It is alleged that the appellant was punished without any fault and he had made appeal and representations but they are still pending and it is lingering unnecessarily hence the aforesaid suit was filed.

The defendants partly denied the allegations of the appellant, a detailed written statement has been filed and it was contended that plaintiff was rightly suspended and the charges are still pending against him. It is again stated that plaintiff was punished after proper enquiries with-holding the increment and that claim is time barred and should be rejected.

Learned SDM framed number of issues in the matter and he also considered the evidence led by the parties and then the learned Magistrate by order dated 11.12.72 passed an order by which he had allowed almost all the claims of the plaintiff. The aforesaid order now cannot be challenged after eleven years. The appellant,

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in order to avoid the period of limitation filed petition No.2/3/725. It is very strange as to how the aforesaid application was entertained after a lapse of such a long time. The learned Magistrate Sri R.P.Singh Chauhan SDM, Sadar by order dated 18th October 1982 had further allowed the bill presented by the appellant and he has held that appellant has to receive Rs. 3039.30 P.

After looking into the entire records of the case, it is apparent that the appellant has filed this appeal against order dated 11.12.72 and it is not an appeal against order dated 18th October, 1982. The appellant has not explained any reason as to why he has filed the appeal in 1983 against the order dated 11.12.72.

Section 17 of the Payment of Wages Act, as it stood on the date of the impugned order, provides a period of limitation for filing an appeal against any order passed under section 15 sub-sections (2) (3) and (4). The period of limitation according to the aforesaid sub-section (2) of section 17 of the aforesaid Act runs as follows:-

"(2) Save as provided in sub-section (1), any order dismissing either wholly or in part an application made under sub-section (3) or sub-section (4) of that section shall be final."

Therefore, if no appeal is filed within thirty days of the order, the order in question shall become final.

Record shows that appellant could not file

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Adv.

Sanjay Kumar Singh

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any appeal against the impugned order dated 11.12.72. He was pursuing the higher courts in respect of order dated 127.82 which was passed on appellant's application dated 24.5.67. Present proceedings were initiated on appellant's application dated 24.9.70. In pursuance of the order dated 11.12.72, appellant prepared a bill and it was submitted in the office. The railways put certain objections to the bill and then the matter was ultimately decided by the S.D.M. Sader on 18.10.82 in which S.D.M. concerned has upheld the bill submitted by appellant Avadhesh Narain Tripathi. Therefore, the appellant is not aggrieved against the order dated 18th October 1982. He has taken a chance in this court by preferring an appeal against the original order dated 11.12.72 on the pretext of preferring the appeal against the order dated 11.12.72. The appeal is, therefore, clearly time barred. Appellant has not shown any justification in order to explain the delay in filing the appeal. Therefore I have no option except to dismiss the appeal as time barred.

The appeal is, therefore, dismissed.

Order

The appeal is, accordingly, dismissed. Costs on parties.

Sd/- Illegible
12/7/1988
(A.G.Lal)

II-Addl. District Judge,
12.7.1988

Signed, dated and pronounced in open court.

Sd/-illegible
12.7.1988
(A.G.Lal)
II-Addl. District Judge,
Sultanpur
12.7.1988.

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ANNEXURE NO.

In the Court of the II-Addl. Distt. Judge, Sultanpur.

Present: Sri Aziz Aziz-ur-Rahman, HJS.

.....

Misc. Case Number-21 of 1988

Awadhesh Narayan Tripathi ... Applicant

Vs.

Divisional Personnel Officer, N.Rly.,

LKO and 3 others ... O.Ps.

Judgment

This is an application for review against the judgment and decree dated 21.8.88 passed in Misc. Civil Appeal No. 31 of 1983 Awadhesh Narayan Tripathi Vs. Divisional Personnel Officer and others. The then IIInd Additional District Judge dismissed the appeal.

Sri Awadhesh Narayan Tripathi has moved this application on the ground that his wages were unlawfully deducted. The order dated 11.12.1972 was not final and required record of order or direction in form No. VI was not completed, signed and dated at the passing of the said order as per Rule 9 of Payment of Wages Rules, 1937. Under Rule 9, the authority shall in all cases enter the particulars in form F and at the same time of passing orders shall sign and date the form. The said record of order was prepared on 25.4.1983 by the O.Ps. only then the applicant applied for copy and after obtaining the copy, he preferred that appeal which was admitted for hearing. The point of limitation was not in issue. The appeal was heard exparte followed by submission of a written argument from the side of the applicant. Later on the respondent also argued in his absence and he had

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no opportunity to rebut the argument on the point of limitation, hence the application for review of the order.

I have heard the learned counsel for the parties and perused the material on record. The argument advanced by the applicant is available in the miscellaneous appeal i.e. 15/A-1. The judgment of the then appellate court is also available on record. The finding shows that the appeal, was preferred after eleven years of the passing of the order. According to him, the present appeal was not against the order dated 18.10.1982. The limitation under section 17 of the Payment of Wages Act has been prescribed and the appeal should have been filed within thirty days of the order, failing which the order in question shall become final.

Written argument has also been filed by Awadhesh Narayan Tripathi before me. He has again stressed that he had preferred the appeal only when the form F was signed and dated by the Prescribed Authority. Rule 19 is material in this respect. The rules contain form F. It has given as much as eleven columns. All these columns contain the particulars of the case, parties, amounts claimed, amount awarded, compensation, penalty, costs if awarded. This is a rule prescribed to which the Prescribed Authority has to follow, but the Rule is not mandatory. The object of such a Rule is only to append all the requirements in the judgments even if it is not on Form No.F. If any finding is not recorded in form F it shall be a mere irregularity and it cannot be termed to be illegality. The applicant could not show any law, enactment or statutory rule

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that if the order is not passed in the said proforma, the judgment shall be non est. I have after a considerable scrutiny found an authority Hindustan Journals Ltd. Vs. Govind Ram 1962 LLJ. 242 referred in the payment of wages Act by B.K. Mukherji Edition 1966 of Eastern Law House Pvt. Ltd., Calcutta. It has been pointed out that "a form has been prescribed in the Payment of Wages Rules for Application under section 50. There is no enactment or statutory law that an application not made in a particular form should be dismissed. All that it means is that the details given in the form should be given in every Application. If the applicant omits any particular detail, the employer may draw attention of the authority". The similar principle applies to form no. F and in the circumstances, I am also of the view that the cause of action started from the date of the order passed by Prescribed Authority on 11.12.1972 and the appeal was rightly held to be barred by time and it is under the circumstances not proper to enter into the merits of the case as my predecessor has ~~it~~ rightly done so. Therefore, there is no merit in the review application and it is liable to be dismissed.

Order

Review application filed by Awadhesh Narayan Tripathi against the Divisional Personnel Officer, N.Rly. LKO and others is dismissed. The parties to bear their own costs.

Sd/-Illegible
(A. Rahman)
II-Addl. Distt. Judge,
Sultanpur.
22.3.1990.

Signed, dated and pronounced in open court today.

Sd/-Illegible
(A. Rahman)
II-Addl. Distt. Judge, Sultanpur
22.3.1990

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Awadhesh Narayan
ASH

Awadhesh Narayan
ASH

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW.

O.A.No.390 of 1990(L)

Sri A.N Tripathi

... Applicant

Versus

Union of India and others

.... Respondents

REPLY ON BEHALF OF RESPONDENTS No.1 TO 5

I, *Rajiv Kishore*, presently posted as *Asstt Personnel Officer* in the Office of the Divisional Railway Manager, Northern Railway, Lucknow hereby solemnly state as under:-

1. That the undersigned is presently posted as *Asstt. Personnel Officer* in the Office of the Divisional Railway Manager Northern Railway, Lucknow and is competent to file the present reply on their behalf. The undersigned has read and understood the contents of the application moved by the applicant under Section 19 of the Administrative Tribunal Act, 1985 (hereinafter referred as 'application' and is well conversant with the facts stated hereunder.
2. That the contents of paragraph 1 of the application need no comment from the answering respondents as it refers to the orders passed by the various Prescribed/Judicial Authorities which are sought to be challenged by the applicant.
3. That the contents of paragraph 2 of the application need no comment from the respondents.
4. That the contents of paragraph 3 of the application are strongly denied. It is specifically denied that the subject matter of the order against which the applicant wants redressal, and the present

Rajiv Kishore

application in respect thereof is certainly beyond the period of limitation prescribed in Section 21 of the Administrative Tribunal Act, 1985 (Act No.13 of 1985). It is noteworthy that the Case No.69 of 1972 was filed by the applicant under the provisions of Section 15 of the Payment of Wages Act, 1936, which was decided by the Court of Sri M.M.Swarup, S.D.M.Sadar, Sultanpur on 11.12.1972, in pursuance of which the applicant Sri A.N.Tripathi submitted his bill and the Railways preferred certain objections against it, and the matter (i.e. in respect of bills only) was ultimately decided by the Sri R.P.Singh Chauhan the then S.D.M.Sadar, Sultanpur on 18.10.1982 in Case No.2/8/725 in which the S.D.M.Sadar, Sultanpur had upheld the bill submitted by the applicant Sri A.N.Tripathi. Thereafter, the applicant preferred appeal under Section 17 of the Payment of Wages Act, 1936 before the learned Second Additional District Judge, Sultanpur challenging the order dated 11.12.1972/18.10.1983. The said appeal was registered as Misc.Civil Appeal No.31 of 1983, which was decided on 12.7.1988. From the perusal of the judgment of this appeal it is evident that the learned Second Additional District Judge, Sultanpur had held the said appeal to be time barred. Against the judgment of the Civil Misc Appeal No.31 of 1983, the applicant did not approach this Hon'ble Tribunal, or any other forum, and only in order to artificially create limitation under Section 21 of the Administrative Tribunal Act, 1985, the applicant preferred review application, numbered as Misc.Case No.21 of 1988, which too was dismissed, and it was held that the Civil Misc.Appeal No.31 of 1983 was rightly held to be barred by time. It is worth mentioning that there is no provision of Review under the Payment of Wages Act, 1936, and the review preferred by the applicant can not be used as a subterfuge to create limitation under Section 21 of the Administrative Tribunal Act, 1985. Hence, the present application is liable to be dismissed on the ground of being barred by limitation.

5. That the contents of paragraphs 4.1, 4.2 and 4.3

of the application need no comment from the answering Respondents as the paragraphs under reply relate to the record, and the same can be verified therefrom.

6. That the contents of paragraphs 4.4, 4.5, 4.6 and 4.7 of the application, as stated, are denied. It is denied that the applicant was wrongfully and unlawfully declared surplus retaining his juniors resulting in physical and mental torture and financial hardship. It is also denied that the applicant was illegally charge sheeted and penalty of with-holding of increments was imposed upon him without any good and sufficient cause and in violation of statutory rules and provisions, and/or was subjected to any harassment or victimization by the authorities concerned.

7. That the contents of paragraph 4.8 of application are admitted only to the extent that the applicant filed an application under Section 15 of the Payment of Wages Act, 1936 for seeking direction under Section 15(3) of the said Act for the alleged wrong and illegal 'deductions' before the Prescribed Authority, i.e. S.D.M. Sadar, Sultanpur for the period and amount mentioned in the paragraph under reply. It is most respectfully submitted that the said application under Section 15 of the Payment of Wages Act, 1936 was numbered as Case No.69 of 1972.

9. That the contents of paragraph 9 and its sub-paragraphs 9(a), 9(b), 9(c), 9(d) and 9(e) are denied. It is most respectfully submitted that as the judgment of S.D.M. Sadar, Sultanpur passed in Case No.69 of 1972 dated 11.12.1972 contained as Annexure No.A-1 to this application would show, the claim of the applicant mentioned in paragraph 9 sub-paragraphs (a), (b), (c), (d) and (e) was rightly and lawfully rejected by him.

10. That the contents of paragraph 4.10 of application are not disputed.

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11. That the contents of paragraph 4.11 of application are admitted only to the extent that the appeal preferred by the applicant under Section 17 of the Payment of Wages Act, 1936 which was numbered as Misc. Civil Appeal No.31 of 1983 was dismissed by the learned Second Additional District Judge, Sultanpur by his judgment dated 12.7.1988.

It is, however, denied that the learned Second Additional District Judge, Sultanpur, while deciding Misc.Civil Appeal No.31 of 1983 committed material procedural irregularity, or had acted in violation of law or the principles of natural justice. The undersigned, on the basis of legal advice, most respectfully submits that the judgment of Misc.Civil Appeal No.31 of 1983 dated 12.7.1988 can not be assailed at this belated stage for the facts and reasons mentioned in the preceeding paragraph 4 of this reply.

12. That the contents of paragraph 4.12 of the application are admitted only to the extent that the Review preferred by the applicant against the judgment of the learned Second Additional District Judge in Misc. Civil Appeal No.31 of 1983 dated 12.7.1988, which was numbered as Misc.Case No.21 of 1988 was dismissed by the learned Second Additional District Judge, Sultanpur vide his judgment dated 22.3.1990. The rest of the contents of paragraph under reply, being incorrect, are denied.

13. That the undersigned on the basis of legal advice, most respectfully submits that the grounds enumerated as 5(A), 5(B), 5(C), 5(D), 5(E), 5(F), 5(G), 5(H), 5(I), 5(J) and 5(K) of paragraph 5 of the application are not tenable in the eye of law.

14. That the contents of paragraph 6 of the application need no comment.

15. That the contents of paragraph 7 of application need no comment from the answering Respondents.

R. K. Choudhary

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16. That in reply to the contents of paragraph 8 of the application, the undersigned is advised to state that in view of the submissions made in this reply, the applicant is not entitled for any relief mentioned in sub-paragraphs (a), (b), (c), (i), (ii), (iii), (iv), (v), (vi) and (vii) of paragraph 8 of the application.

17. That the contents of paragraphs 9, 10, 11 and 12 of the application need no comment.

Lucknow, Dated:
April 30/4/1992.

x *R. Kishore*
General Manager
Lucknow

VERIFICATION

I, *Rajiv Kishore*, presently posted as ASST Personal *affairs* in the Office of the Divisional Railway Manager, Northern Railway, Lucknow hereby verify that the contents of paragraph 1 of this reply are true to my personal knowledge and those of paragraphs 2, 3, part of para 4, 5, 6, 7, 9, 10, part of para 11, 12, 14, 15 and 17 are based on record and the same are believed to be true. The contents of paragraphs part of para 4, part of para 11, 13 and 16 are based on legal advice and the same are believed to be true.

Lucknow, Dated:
April 30/4/1992.

x *R. Kishore*
General Manager
Lucknow

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW .

O.A. No.390 of 1990(L)

Sri A.N. Tripathi

... Applicant.

Versus

Union of India and others

... Respondents.

REJOINDER REPLY ON BEHALF OF THE APPLICANT

TO THE COUNTER REPLY ON BEHALF OF THE

RESPONDENTS NO. 1 TO 5 .

I, Avadhesh Narayan Tripathi, son of Shri Ram Sevak Tripathi, aged about 56 years resident of Ward No. 8, Town Area, Musafirkhana, District Sultanpur, do hereby state as under:-

1. That the contents of the paragraph 1 of the counter reply are not correct as stated. It is further stated that Sri Rajiv Kishore, Asstt. Personnel Officer, Northern Railway, Lucknow neither is a party nor he has mentioned submitting any lawful authority authorising him to reply the application specially on behalf of the Opposite Party no. 5 i.e. the Sub Divisional Magistrate, Sadar Sultanpur.
2. That in reply to the paragraph 2 of the counter reply the contents of the paragraph 2 and 3 of the original application are reiterated.
3. That the contents of the paragraph 4 of the counter reply are incorrect hence specifically denied. The application is well within the limitation prescribed under Sec...21. of the Administrative Tribunal Act, 1985 and accordingly the

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application was admitted by the Hon'ble Tribunal after providing sufficient time and opportunity to the respondents to raise objection, if any, but the respondents have failed and rather avoided to say anything with respect of limitation at the stage of admission. The original application was filed before the Prescribed Authority in September, 1970 seeking direction for refund of illegally deducted wages alongwith compensation under Section 15(3) and a case was registered as Case No. 765 of 1970 but it is pertinent to mention that subsequently by the Prescribed Authority the same original Case no. 765 of 1970 was changed and numbered as 69 of 1972 and again as 2/8/725 of 1978 on the same original application filed in September, 1970 seeking direction, instead of continuing the same original case no. 765 of 1970 till the time when finally the direction was issued on 25.4.1983. In the meantime an order dated 11.2.72 was also passed by the Prescribed Authority but without mentioning the correct and specific amount awarded which is main item of the direction sought for by filing the original application dated 24.9.1970 and without proper direction mentioning correct amount the appeal can not be preferred in accordance with the provision of the Act. However, the said direction was issued by the Prescribed Authority on 25.4.83 against which the applicant preferred an appeal well within the time limit prescribed by the Act in the Court of the District Judge, Sultanpur which was correctly considered at the time of admission and then the same was admitted by the District Judge, Sultanpur but the said appeal was subsequently transferred to the court of the IInd Additional District Judge, Sultanpur for hearing. The learned IInd Additional District Judge, Sultanpur wrongly and illegally dismissed the appeal as time barred totally mistaking and omitting the date of the

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direction given on 25.4.1983 for counting the limitation as was rightly and legally done by the learned District Judge while admitting the appeal when the same was filed as already stated above. Consequently the applicant (appellant) had to file a review application and the same ^{was} correctly admitted for hearing in accordance with law and in the interest of justice. The respondents also appeared but did not plead anything against the provision of review in the Reviewing Court. However, the said review application was dismissed on 22.3.90. Thereafter the applicant had filed this application on 3.12.90 before this Hon'ble Tribunal which was registered and notices were issued to respondents on 11.7.91, to show cause as to why the petition be not admitted listing on 5.8.91 for admission but the respondents again have failed and have avoided to raise any objection against admission till 29.1.92 when the Hon'ble Tribunal admitted the application on the same day granting four weeks' time for filing the counter reply and two weeks' time for rejoinder reply fixing next date i.e. 20.4.92 for orders, but the respondents have willfully and purposely again avoided and failed to file the counter reply even on 20.04.92 and the next date was fixed for 30.4.92. As the respondents neither pleaded anything against the provisions of review in the Reviewing Court nor in this Hon'ble Tribunal at the time of admission on 29.01.92 when this application was admitted as stated above. Now the pleading of respondents at this stage against the provisions of review and limitation point is unwarranted, wrong, illegal with illwill and malafide and is also against the aims, objects, spirit and scope of law. There is no law that the review is barred ^{in such cases and} by time. The respondents have also wrongly stated that appeal was preferred against the order dated

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11.12.1972/ 18.10.1983 concealing the material fact that the appeal was preferred against the direction dated 25.4.83 along with order dated 11.12.1972.

4. That in reply to the contents of paragraph 5 of the counter reply the contents of paragraphs IV(1, 2 & 3) of the original application are reiterated.

5. That the contents of paragraph 6 of the counter reply are incorrect and hence denied, and in reply the contents of paragraph IV (4, 5, 6 and 7) of the original application are reiterated.

6. That in reply to the contents of paragraph 7 of the counter reply, the contents of paragraph IV (8) of the original application are reiterated and it is further stated that the original application was filed on 24.9.1970 under Section 15(3) of the Payment of Wages Act and accordingly the original case ~~was~~ no. was 765 of 1970 which was subsequently being changed as 69 of 1972 and 2/8/725 of 1978 instead of continuing the original number 765 of 1970 as already stated in paragraph 3 of this rejoinder reply. The respondents have purposely avoided to mention the date of original application which is 24.09.1970 and as such, the respondents have concealed the material facts regarding original case no. 765 of 1970 to create confusion and misleading.

7. That as para 8 in counter reply is missing and omitted it needs no reply.

8. That the contents of paragraph 9 of the counter reply are incorrect hence denied and further the contents of paragraph IV(9) A to F of the original application are ..5..

11.12.1972/ 18.10.1983 concealing the material fact that the appeal was preferred against the direction dated 25.4.83 along with order dated 11.12.1972.

4. That in reply to the contents of paragraph 5 of the counter reply the contents of paragraphs IV(1, 2 & 3) of the original application are reiterated.

5. That the contents of paragraph 6 of the counter reply are incorrect and hence denied, and in reply the contents of paragraph IV (4, 5, 6 and 7) of the original application are reiterated.

6. That in reply to the contents of paragraph 7 of the counter reply, the contents of paragraph IV (8) of the original application are reiterated and it is further stated that the original application was filed on 24.9.1970 under Section 15(3) of the Payment of Wages Act and accordingly the original case ~~was~~ no. was 765 of 1970 which was subsequently being changed as 69 of 1972 and 2/8/725 of 1978 instead of continuing the original number 765 of 1970 as already stated in paragraph 3 of this rejoinder reply. The respondents have purposely avoided to mention the date of original application which is 24.09.1970 and as such, the respondents have concealed the material facts regarding original case no. 765 of 1970 to create confusion and misloading.

7. That as para 8 in counter reply is missing and omitted it needs no reply.

8. That the contents of paragraph 9 of the counter reply are incorrect hence denied and further the contents of paragraph IV(9) A to F of the original application are

reiterated.

9. That in reply to the paragraph 10 to the counter reply, the contents of paragraph IV(10) of original application are reiterated.

10. That in reply to the contents of paragraph 11 of the counter reply, the contents of paragraph IV(11) of the original application and paragraph 3 of this rejoinder reply are reiterated.

11. That in reply to the contents of paragraph 12 of the counter reply, the contents of paragraph IV(12) of the original application are reiterated.

12. That the contents of paragraph 13 of the counter reply are incorrect and hence denied and further the contents of paragraph V of the original application are reiterated.

13. That in reply to the paragraphs 14 and 15 of the counter reply, the contents of paragraphs VI and VII of original application are reiterated.

14. That the contents of paragraph 16 of the counter reply are incorrect and hence denied and further the contents of paragraph VIII(a), (b), (c) and (d) of the original application are reiterated.

15. That in reply to paragraph 17 of the counter reply, the contents of the paragraphs IX, X, XI and XII are reiterated.

Lucknow:

Dated: 06/5/1952

Applicant.

[Signature]
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Verification

I, Avadhesh Narayan Tripathi, aged about 56 years, son of late Sri Ram Sewak Tripathi, resident of Ward no.8, Town Area, Musafirkhana, District Sultanpur, do hereby verify that the contents of paragraphs 1 to 15 are true to my personal knowledge ^{and some portion believed to be true on} and that I have not suppressed any material fact.

* legal advice

Lucknow:

Dated: 06/5/1992

Applicant.

