

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, Lucknow BENCH

OA/TA/RA/CP/MA/PT 401 of 20.1990(U)

Shariful Haq,

Applicant(S)

Versus

Union of India & others


Respondent(S)

INDEX SHEET

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Certified that the file is complete in all respects.

B. G. beddout & distroy
Signature of S.O.


Signature of Deal. Hand

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Central Administrative Tribunal
Circuit Bench, Lucknow
Date of Filing: 11/12/90
Date of Receipt by Post: 11/12/90
Deputy Registrar (J) (AI)

Registration No. 401 of 1989-90 (C)

APPLICANT(S) Sharful Haq

RESPONDENT(S) Union of India (Income Tax)

Particulars to be examined

Endorsement as to result of examination

1. Is the appeal competent ? *application*
2. a) Is the application in the prescribed form ?
b) Is the application in paper book form ?
c) Have six complete sets of the application been filed ?
3. a) Is the appeal in time ? *application*
b) If not, by how many days it is beyond time ?
c) Has sufficient *cause* case for not making the application in time, been filed ?
4. Has the document of authorisation/ Vakalatnama been filed ?
5. Is the application accompanied by B.D./Postal Order for Rs.50/-
6. Has the certified copy/copies of the order(s) against which the application is made been filed ?
7. a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?
c) Are the documents referred to in (a) above neatly typed in double sapce ?
8. Has the index of documents been filed and paging done properly ?
9. Have the chronological details of representation made and the out come of such representation been indicated in the application?
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal?

No

yes

No

Dated 18.7.90

No

yes

yes

No

No

yes

No

yes

N.A.

No

(H)

Particulars to be Examined

Endorsement as to result of examination

11. Are the application/duplicate copy/spare copies signed?
12. Are extra copies of the application with Annexures filed?
 - a) Identical with the Original?
 - b) Defective?
 - c) Wanting in Annexures
13. Nos. 1 pages Nos. 1?
14. Have the file size envelopes bearing full addresses of the respondents been filed?
15. Are the given addresses the registered addresses?
16. Do the names of the parties stated in the copies tally with those indicated in the application?
17. Are the translations certified to be true or supported by an Affidavit affirming that they are true?
18. Are the facts of the case mentioned in item no. 6 of the application?
 - a) Concise?
 - b) Under distinct heads?
 - c) Numbered consecutively?
 - d) Typed in double space on one side of the paper?
19. Have the particulars for interim order prayed for indicated with reasons?
20. Whether all the remedies have been exhausted.

yes

yes

yes

Single space

N.A.

yes

yes

N.A.

after No. 7

No

No

yes

yes

dinesh

11.12.90

D.R.

Put up before the Hon. Bench,

on 28.1.91 for orders.

11.12-90

R
11/12

OR

No RA filed

H/c for the
applicant has filed
MP 232/915 for

SFO

L
8/5

9.5.91

(AS)

Re Mr Justice OCS, VC

Re Mr AD Gosthian

Council has been filed

today. adjourns if any
may be filed within
2 weeks thereafter. Not

for hearing on 24/6/91

Respondents are directed
to produce record for
the perusal of Tribunal
on the date of hearing

L

Q

Am

VC

No RA filed

L
14/6

24.6.91

Rejoinder has

been filed. It is

the direction of

the Honble Bench

to put up this case

for final hearing

today. Hence file

be sent to the

Honble Bench for

final hearing.

401/90C

(AM)

28.1.91

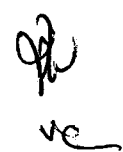
No sitting order to 7.3.91.

~~1.3.91~~ S.2.91

Hon. Mr. Justice K. Nath V.C.
Hon Mr K. Obayya A.M.

On the request of counsel
for applicant case is adjourned
to 7.2.91.


A.M.


V.C.

07.2.91

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

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

Admit. and connect with O.A.No. 348/90

Shri V.K. Chaudhary accept notice on behalf
of respondents. Notice meant for for respondents
may be delivered by the office to Shri Chaudhary.
Counter may be filed within ten days to which the
applicant may file rejoinder by 4.3.91. We do not
find any sufficient cause for granting any
interim relief at this stage.

See
original order
on
main Petition


on
reconsidered
26/2

Sd/

A.M.

Sd/

V.C.

 ~~Submissions were made~~
Sri V.K. Chaudhary accept
notice on behalf of respondents.
He did not reply nor any
counter or rejoinder. Accordingly
has been filed.
S.P.O.
27/2

24.6.91

Hon. Mr. Justice K. Nath, VC
 Hon. Mr. K. Chayya, AM

On the request of counsel
 for applicant case is adjourned
 to 25.6.91 for hearing

K
 AM

VC
 VC

25/6/91

Hon. Mr. Justice K. Nath, VC.
 Hon. Mr. K. Chayya, AM.

Sri S. M. Karim for the applicant &
 Sri V. K. Chaudhary for the respondents
 are present. Counter & Rejoinder have
 been exchanged. Sri Karim produces
 before us a copy of the judgement dated 9/5/91
 in O.A. No. 348/90 of the bench of this Tribunal
 consisting of Hon'ble ^{Justice} U. C. Srivastava, VC &
 Hon. Mr. A. B. Gosh, AM. That very bench
 will be sitting here in the next week.
 We direct this case to be listed for final
 hearing on 2/7/91 before the same
 Bench.

VC
 AM.

VC
 VC.

B

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW CIRCUIT BENCH

Registration O.A. No.401 of 1990

Sharful Haq Applicant

Versus

Union of India & Others Respondents

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

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

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

The applicant was appointed as direct recruit U.D.C. in the year 1970 under the age relaxation for ex-servicemen. He was promoted as Tax Assistant w.e.f. 31.7.78. The applicant has prayed that a writ of mandamus be issued to the Chief Commissioner of Income Tax in the case of the applicant and without giving further opportunity for filing counter affidavit. He has also prayed to promote him as Supervisor and Incometax Inspector had he been promoted as Head Clerk treating Tax Assistants senior to U.D.C.

2. The applicant has placed reliance in the case of S.M.R.Kazmi and others Vs. Union of India and Others (O.A. No.348 of 1990) decided by this Bench on 9.5.91. The Bench observed as follows :


" We direct that the respondents shall give promotion to the applicants in accordance with rules alongwith as per the order of the Tribunal dated 26.8.88 referred to above notwithstanding the fact there was any failure on their part to formulate the scheme. In case the applicants are found entitled, their appointment will take effect from that date

(A7)

and not from the date they were subsequently promoted. Let compliance of this order be made within a period of two months and one week from today. As this order has been passed in the presence of the counsel and officials of the Income Tax Department, it is not necessary to say that the order is to be implemented from the date of receipt of copy of the same."

3. The case of the applicant and that of S.M.R.Kazmi and others is somewhat similar and accordingly this application is also allowed in the above very terms.


Member (A)


Vice Chairman

Dated the 3.7 July, 1991.

RKM

APPLICATION UNDER SECTION 19 OF ADMINISTRATIVE
TRIBUNAL ACT.1935.

Sharful huq	Vs.	Chief Commissioner of Income-tax, Lucknow and Union of India through Secretary of Finance. New Delhi
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Sl. No.	Description of documents Relied upon.	Page No.		Annexure No.
		From	To	
1.	Applivation	1	5	
2.	Postal Order No. 02466871 dated 4-12-1990			
3.	Representation	6	6	I
4.	Vakalatnama	7	7	II

(81)

C.A.T. (PROCEDURE) RULE 1985

FORM - 1

(SEE RULE - 4)

APPLICATION UNDER 19 OF THE ADMINISTRATIVE TRIBUNAL ACT - 1985
FOR USE IN TRIBUNAL'S OFFICE

DATE OF FILING

7-12-90

OR

DATE OF RECEIPT BY POST
REGISTRATION NO.

SIGNATURE
REGISTRAR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ADMINISTRATIVE BENCH, CIRCUIT BENCH
LUCKNOW.

Shri Sherful Haq

APPLICANT

1. Chief Commissioner of Income-tax,
Lucknow.

2. Union of India *Through Dy. Commissioner*

MINISTRY OF FINANCE RESPONDENTS

NEW DELHI

DETAILS OF APPLICATION

PARTICULARS OF THE APPLICATION OF APPLICANT :

Name of the applicant: Sherful Haq

Name of the father : Late Shri Hanid Hussain

Designation & Office : Tax Assistant in the office of the
in which employed Dy. Commissioner of Income-tax(Audit),
Lucknow.

Office address : As mentioned above

Address for service : -do-
of the notice

Conts.....2

(A12)

PARTICULARS OF THE RESPONDENT:

Name & Designation of the Respondent

UNION OF INDIA THROUGH SECRETARY
MINISTRY OF FINANCE NEW DELHI
1. Union of India. THROUGH SECRETARY
MINISTRY OF FINANCE NEW DELHI
2. Chief Commissioner of Income-tax.

Office address of the respondent.

Central Revenue Building,
Aayakar Bhawan, Ashok Marg,
Lucknow.

Address of Service of all notices.

-do-

1. PARTICULARS OF THE ORDER AGAINST WHICH APPLICATION IS MADE.**i) Order No.:**

- a) Min. of Finance letter F.No.C-18012/28/90-V&L addressed to the Chief Commissioner of Income-tax(Admn.), Ashok Marg, Lucknow(U.P.)
- b) Copy of Min. of Finance letter F.No.C-18012/28/90-V&L to the Chief Commissioner of Income-tax(Admn.), Ashok Marg, Lucknow(U.P.) addressed to the Under Secretary, Ad, VII, CDDT, New Delhi.

ii) Date:

- (a) 18-7-1990
- (b) 18-7-1990

iii) Passed by:

- (a) & (b) Govt. of India

iv) Subject in Brief:

- a) Implement of Tribunal's order dated 26-3-88 in the case of Syed.Mohd.Raza Kazmi under intimation to the Board.
- b) Implement the Tribunal's order dated 26-3-88 so as to amend promotion Rules for promotion to the post of Head Clerk treating Tax Assistant (T.A.) Senior to Upper Division Clerk (U.D.C.).

2. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter of the orders against which they want resress is within the jurisdiction of the Tribunal.

Contd.....3

Dep. Registrar (U)

fine 1112

Tribunal

2
Filed for
Sgt
11/12/19

- 242

(AM)

6. DETAILS OF THE REMEDIES EXHAUSTED:

Yes, all the remedies have been exhausted in the matter.

7. MATTER NOT PENDING WITH ANY OTHER COURT:

The applicant declares that a similar writ is pending in this Hon'ble Tribunal vide Misc. Application No.348 of 1990(L) and not in any other court.

8. RELIEF SOUGHT:

It is therefore humbly requested that a writ of mandamus be issued to the Chief Commissioner of Income-tax, Lucknow in the case of applicant, who has left only few years of his service -

- i) to promote him as H.C. treating Tax Assistants' senior to U.D.C.
- ii) to promote him as Supervisor and Income-tax Inspector had he been promoted as H.C. treating Tax Assistants' senior to U.D.Cs'.

9. INTERIM ORDER? IF PRAYED FOR PENDING FINAL DECISION OF THE APPLICANT? THE OFFICIAL SEEKS ISSUE OF THE FOLLOWING INTERIM ORDER:

Provisional promotion to higher grades with immediate effect which the petitioner would have been entitled if the T.As' are treated senior to U.D.Cs' for purpose of promotion to the post of H.C. till the pendency of this petition because he has left only few years of his service.

10. That the application is being filed through personal delivery in the office of the Registrar.

11. PARTICULARS OF POSTAL ORDER IN RESPECT OF THE APPLICATION:

- | | |
|---------------------------------------|----------------|
| i) Number of Indian postal order(s) | One |
| ii) Name of issuing post office | G.B.O. Lucknow |
| iii) Date of issue of postal order(s) | 4-12-1990 |
| iv) postal office at which payable | Lucknow |

12. Details of Index - As on attached separate sheet with the application.

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13. List of enclosures: a) Application
b) Postal Order I No:-02460871 dt.4-12-90
c) Details of Index III

VERIFICATION

I, Sharful Haq, S/o Late Shri Hanid Musain aged about 51 years do hereby verify, that the contents of paras of this application under section 19 of the Central Administrative Tribunal Act, 1985, are true to my personal knowledge and I have not suppressed any material fact.

Dated: 7-12-90

Place: LUCKNOW.

Sharful Haq
(SHARFUL HAQ)
APPLICANT

S. M. Khan

7/12/90
Adm. Secy.

The Chief Commissioner of Income-tax,
Lucknow.

Through proper channel

Sub: T.O. dated 26.8.88 in registration(O.A) No.125
of 1987 in the case of Syed Mohd.Raza Kazmi Vs.
Chairman Central Board of Direct Taxes & Chief
Commissioner(Admn.) U.P. & CIT Lucknow-
Implementation of directions/decision request
regarding-

Kindly refer to above.

According to this order such a scheme is to be
introduced which would give benefit to T.A. over U.D.C. in
the matter of further promotion. perhaps the only direction
is of quota system which could possibly be implemented. If
such a scheme had been implemented the applicant would have
been benefitted in the ensuing D.P.C. It is, therefore, requested
that ensuing D.P.C. is not convened unless a scheme
for further promotion of T.A. is introduced. If it is not
done it would badly damage the interest of the applicant.

Yours faithfully,

(SHARFUL HAQ) T.A.
O/o.of the Deputy Commissioner of
tax(Audit), Lucknow.

Copy to Chairman, Central Board of Direct Taxes,
New Delhi through Chief Commissioner of Income-tax, Lucknow
for favour of information & necessary action.

(SHARFUL HAQ) T.A.
O/o.of the Deputy Commissioner of Income
tax(Audit), Lucknow.

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ब अदालत श्रीमान ^{IN THE CENTRAL ADMINISTRATIVE TRIBUNAL} महोदय
^{At DELHI, INDIA}

(वादी) अपीलान्त

प्रतिवादी (रेस्पान्डेन्ट)

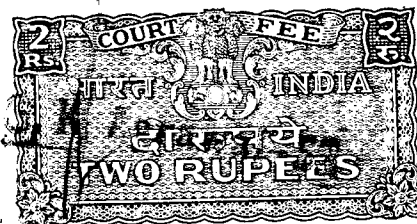
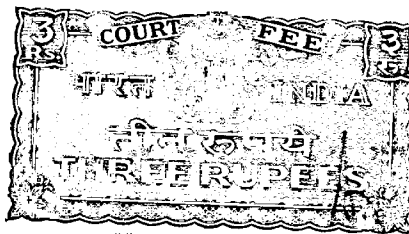
श्री.....का

वकालतनामा

Syed Zafar Mehdi Kazmi

M.A.L.L.B. Advocate (High Court, Sd-36)

Beta Sitara Begum, Mall Khan Sarai Crossing, L.A.



वादी (अपीलान्त)

बनाम

प्रतिवादी (रेस्पान्डेन्ट)

नं० मुकद्दमा

सन् १९

पेशी की तारीख

१९

ई०

Syed Zafar Mehdi Kazmi

ऊपर मुकद्दमा में अपनी ओर से श्री.....

M.A.L.L.B. Advocate (High Court, Sd-36)
Beta Sitara Begum, Mall Khan Sarai Crossing, L.A.

एडवोकेट/वकील

महोदय

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं कि इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जबाबदेही व प्रश्नोत्तर करे या कोई कागज दाखिल करे या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहानामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारे विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त कर वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर.....

(SHARFUL HAQ)

साक्षी गवाह

साक्षी [गवाह]

दिनांक

महीना

सन् १९८

ई०

(915)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

O.A NO.401 of 1990(L)

Sharful Haq/-xx-x

... Applicant

-versus-

Union of India and others

.. Opposite parties

APPLICATION FOR CONDONATION OF DELAY IN
FILING COUNTER AFFIDAVIT.

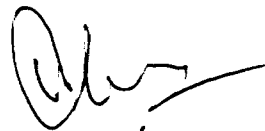
.....

The opposite parties begs to submit as under:-

1. That due to some unforeseen circumstances the counter affidavit could not be filed earlier and now the counter affidavit is ready for filing.

The counter affidavit is being filed herewith along with this application, which may kindly be taken on record after condoning the delay in the ends of justice.

Wherefore it is most humbly prayed that the accompanying counter affidavit may kindly be taken on record after condoning the delay in the interest of justice.



(VK Chaudhari)

Addl Standing Counsel for Central Govt
(Counsel for the Opp. parties)

lko
Dr. 9.5.91

(11/9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW.
C.A.No. 401 OF 1990 (L)

Sharful Haq

.... Applicant

Versus

Union of India and Others

.... Respondents

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS.

1991
AFFIDAVIT
78 M
DIST. COURT
U.P.

I, Praveen Kumar aged about 30 years, son of Shri Vanivallal at present posted as Assistant Commissioner of Income-tax, Headquarters, in the Office of the Chief Commissioner of Income-tax, Ashok Marg, Lucknow do hereby solemnly affirm and state as under:-

1. That the deponent is posted as Assistant Commissioner of Income-tax (Headquarters) in the Office of the Chief Commissioner of Income-tax, Ashok Marg, Lucknow and he has been authorised to file this affidavit on behalf of all other Respondents.
2. That the deponent has read and understood the contents of application moved by the applicant as well as the facts deposed to him and reply thereto. The deponent is also well aware of the facts of the case and he has also gone through the informations and instructions received by the office of the respondents.
3. That the contents of para 1 to 3 of the application need no comments except that both the letters mentioned in this case relate to departmental correspondence, the letter dated 12.7.1990 was sent by the Under Secretary, Central Board of Direct Taxes to the Chief Commissioner of Income-tax, Lucknow and the other letter dated 18.7.1990 was sent by the said Under Secretary to the Under Secretary, Ad.V-2, Central Board of Direct Taxes, New Delhi and only forwarded to the Chief Commissioner of Income-tax, Lucknow.

A20

4. That in reply to the contents of para 4 of the application, the following facts are submitted.

(a) That after decision of the CA No.125 of 1987 S.M.K.Karri Vs. Central Board of Direct Taxes and others) on 26.8.1988, the Government has considered the matter very thoroughly.

(b) That Govt. have carefully examined the various alternative contained in the directions dated 26.8.89 of CBT and have come to the conclusion that the existing system regarding promotion of Tax Assistants to the grade of Head Clerk is in the best interest of the Department and all federal categories of employees and no change is contemplated in the existing arrangement. The statement made in para 4(V) of the application - that the Tribunal's judgement has been accepted by the Union of India is not factually correct.

(c) That according to the Recruitment Rules, 1989 as amended in 1990 for the posts of the Head Clerk, only Upper Division Clerks are eligible for promotion to the grade of Head Clerks. Tax Assistant is not a federal category for promotion to the post of Head Clerk. The Tax Assistants are not eligible for promotion to the post of Head Clerk, as per the Statutory Recruitment Rules, 1989 for Group 'C' posts.

However, since the posts of Tax Assistants have been created for a specific purpose to deal with technical and complicated nature of work in the companies and investigation circles etc., and since the Upper Division Clerks are eligible for appointment as Tax Assistants, Department of Revenue issued executive orders making the Tax Assistants eligible for promotion as Head Clerk on the basis of their seniority as Head Clerk. The Tax Assistants are thus, eligible for promotion to Head Clerk as a result of concession by the Department of Revenue and they do not have a statutory right for such promotion.

(d) That the posts of Upper Division Clerks in the department are ministerial posts in the secretariat type of work. The normal line of promotion of Tax Assistants is to the executive cadre of the department.

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- (f) That it would not be feasible to evolve a quota system for promotion to the post of Head Clerk as this would create **certain** administrative problems. Fixation of quota may lead to denial of promotion to some Tax Assistants who otherwise may be senior to the combined list of UDCs. ~~Moreover~~ since T.A.s are not in the feeder cadre as a matter of right, the quota cannot be fixed. It is also not feasible to give an option to Tax Assistants to choose either the Executive Cadre of Income-tax Inspector or to continue to remain in the ministerial cadre. The Tax Assistants and Junior Divisional Clerks who pass the departmental examination of Income-tax Inspectors should be considered ^{initially} for the executive cadre of Income-tax Inspector as well. ^{Those} who do not finally succeed in becoming Income-tax Inspectors for various reasons could be considered for further promotion in the ministerial cadre.
- (g) That the third alternative that the post of Head Clerk should be filled up by open competition from honest Tax Assistants and Junior Divisional Clerks is also not considered practical as the post of Head Clerk is a supervisory post and no open competition is held for such posts.
- (h) That in the light of the above position, the Government do not propose to make any change in the existing policy for promotion of the Tax Assistants to the grade of Head Clerks as this has stood the test of time and has been accepted by the Staff Associations/Unions.

5. That it is also pertinent to mention that Shri [Name] (the applicant No. 1) has been referred to by the applicant had further filed a revised application after the decision dated 26.3.88 i.e. 1.1.1989 before this Hon'ble Tribunal but the same was rejected on 28.4.1989.

6. That in the circumstances mentioned above, the applicant is not entitled to the reliefs claimed as

.....4

24/4/91

the records taken by him are not tenable in the eyes of law as such the application is liable to be dismissed with costs.

[Signature]
Deponent

Deponent

Dated 24/ April, 1991.

VERIFICATION

I, the above named deponent do hereby verify that the contents of para 1 & 2 are true to my personal knowledge and those of para 3 to 5 are believed to be true on the basis of official records and information gathered and those of para 6 are believed to be true on the basis of legal advice.

Signed and verified this on 24th day of April, 1991 in the court compound at Lucknow.

[Signature]
Deponent.

Deponent

Dated: 24/ April, 1991.

I identify the deponent whose name is written above and he is also personally known to me.

[Signature]

(V. V. Chandra Reddy)
2001, Standing Counsel for Government, Lucknow.
(Counsel for the Government).

affix stamp

Solely ~~affirmed~~ ^{affirmed} before me by the deponent this day of April, 1991 at 5.30 PM. *24th* *Prasen Kumar*
who has been identified by Sri V. V. C. Reddy, Advocate, High Court, Lucknow.

I have satisfied myself as to the identity of the deponent and he has stated that the contents of this affidavit are true to the best of his knowledge and belief.

[Signature]
Notary Public for Lucknow.

24/4/91

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Before the Central Administrative Tribunal,
Lucknow Bench, Lucknow.

M. P. No. 96/91 (2,

Hon'ble Sir,

In re of O.A. No. 401 of 1990.

Shariful Haq

....Applicant.

Versus

Chief Commissioner of Income Tax

and others.

...Respondents.

Most respectfully it is submitted on
behalf of the applicant :-

1. That the opposite party had submitted before this Hon'ble Tribunal on 7.2.91 that the instructions had been received and he would file ~~the~~ the counter affidavit within ten days.

2. That the counter affidavit has not been filed in this case whereas the same has been filed in O.A. No. 348 of 1990 while the similar issues are involved in both the cases.

3. That the ~~counter~~ counter affidavit has been filed deliberately to delay the decision.

4. That the Chief Commissioner of Income Tax has not supplied the copies of two letters dated 18.7.90 received to him and also the copy of letter dated 7.3.90 written by him to Under Secretary Ad.VII of Central Board of Direct Taxes, New Delhi which were very relevant to proceed with this case. (Encls.1)

contd....2

P
filed today
B
4/3/91

5. That the instructions received to the Chief Commissioner of Income Tax, Lucknow from the competent Authority, through letter dated 18.7.90 are very clear and are issued after full application of mind, which provides that the Tax Assistants are senior to U.D.Cs for purpose of promotion to the post of H.C., provides sufficient reason for this Hon'ble Tribunal to issue writ of mandamus as prayed in the application.

6. That any follow up reply in the counter affidavit will simply a deviation from the decision already taken and just to cover up the negligence done by the Chief Commissioner of Income Tax, Lucknow and other administrative authorities in not implementing the directions already received.

P r a y e r

Wherefore, it is prayed that this Hon'ble Tribunal be pleased to issue writ of mandamus as prayed in the application and also direct respondents for payment of cost as the applicant has very few years of service at his hand.

Lucknow:

Dated: 1.8.91

Counsel for Applicant.

(P. K. M. K. Singh)

To,

The Chief Commissioner
of Income Tax, Lucknow.

Subject: Case No. O.A No. 401 of 1990 in
case of Sri Sharfulhaq v/s Union
of India & others.

Sir,

I am to state that the said case has been
Registered in Central Administrative Tribunal Lucknow
Bench viz case No. O-A No. 401 of 1990 and copy of the
same has been served upon you through your standing
counsil Sri. V.K.Chowdhry.

To Proceed with the case I shall be required
certified copy of letter No. C-18012/28/90- V & L Date
18.7.90 addressed to under Secretary Ad. VII of CBDT,
New Delhi and copy to you, another letter of same no
and date addressed to you and letter dated 7.3.90 sent
by you to under Secretary Ad.- VII of CBDT, New Delhi
you are therefore requested to supply me certified copy
of the said letters at the earliest.

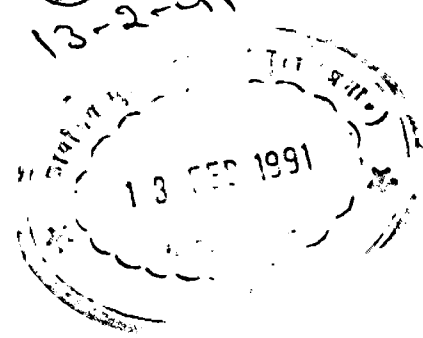
Thanking you in anticipation

Counsel for the Applicant

(Syed Zafar Mehdi Kazmi
Advocate
31/365, Hata Sitara B
Hardoi Road, Lucknow.

Lucknow
Dt. 13.2.91

Recd
13-2-91



(A210)

In the Central Administrative Tribunal,
Circuit Bench, Lucknow.

Rejoinder in case C.A.No.401 of 1990
Sharful Haq -- Applicant

Vs.

Chief Commissioner of Income-tax,
Ashok Narg, Lucknow, & Union of India ... Respondents.

.....

The counsel for the applicant begs to submit on behalf of the applicant, as under :- In reply to the counter-affidavit filed by the respondent in the said case.

1. That the contents of paragraph 1 and 2 of the counter-affidavit relate to statement of fact and need no comments.

2. That in reply to para-3, of the counter-affidavit it is mentioned that the two letters dated 18-7-90 accepted on behalf of the respondents to have been sent to Under Secretary Ad.VII, Central Board of Direct-Taxes, New Delhi & the Chief Commissioner of Income-tax Lucknow, are the essence of this mandamus application. It has been mentioned that these two letters relate to Departmental Correspondence, which ought to be so because the matter of promotion of employees is also Departmental and not personal. These ~~xxx~~ letters are relevant in as much as that they show that the Union of India has complied with the operative part of the Hon'ble Tribunal's order dated 26-8-1988, which says " we direct to the respondent to evolve a scheme to ~~the~~ remove the anomalous situation whereby the incumbent of promotional post(Tax Assistant) which are in-intermediary cadres are clubbed for their seniority with the persons in lower grade(Upper Division Clerk) for consideration for promotion to the post of Head Clerk and which has been accepted by the Govt.of India, by directing the Under Secretary Ad.VII, Central Board of Direct-Taxes New Delhi, that the Tax Assistants are to be considered senior to Upper Division Clerks for purpose of promotion to the post of Head Clerk by stating as under " he filed a petition before the CAT, Lucknow Bench, praying that the Tax Assistant should be considered senior to the Upper Division Clerk and the seniority of Shri S.L.R.Kazmi, be fixed accordingly for purpose of consideration for promotion to the post of Head Clerk and he should be promoted with effect from 7.3.1984, 12

Sd/-

(Contd...2)

Filed today

Sd/-
24/6/91

—

It is also pertinent to mention here that the statement in sub para 4(c) that the post of Tax Assistant is not a feeder cadre for the post of Head Clerk and in sub para 4(e) that the ^{normal} line of promotion of a Tax Assistant is to the Executive Cadre of Income-tax Inspector, has been given just to mislead the Hon'ble Tribunal and contrary to the fact because the CAT's order dated 26-8-1988, has decided the fact that the post of Tax Assistant should also be the feeder cadre for promotion of Head Clerk and is a promotional post from Upper Division Clerk's Cadre and comes in the line of promotion for the post of Head Clerk. It may also be submitted that all the Tax Assistants are not entitled to promotion to the post of Income-tax Inspector unless they pass Departmental Examination of Income-tax Inspector and unqualified Tax Assistants are entitled only for promotion to the post of Head Clerk. Moreover, the statement that Govt. of India do not propose to ~~change~~ make any change in the existing policy for promotion of a Tax Assistant to the grade of a Head Clerk is contrary to the direction given in the letter dated 18.7.1990 and it is not clear as if it is the statement of Govt. of India or the statement of deponent arbitrarily because no letter of Govt. of India is annexed with the counter-affidavit ~~are~~ placed this Hon'ble Tribunal in support of the statement.

4. That in reply to para 5th of the counter affidavit it is submitted that the applicant has nothing to do with the review filed by Shri S.M.R. Kazmi, but pertinent is that CAT's order dated 26-8-1988, which provides for evolving a scheme for promotion to the post of Head clerk, so as to keep the Tax Assistant senior to Upper Division Clerk has been accepted by the Govt. of India.

5. That in addition to above submission it is submitted that the post of Tax Assistant is a promotional post from the post of a Upper Division Clerk as accepted by the respondent and by the Hon'ble Tribunal vide order dated 26-8-1988, it would be just and equitable to keep them senior for the purpose of all future promotions.

Byd Latur
H.A.U.S. A-1
Sd/- M. S. Begum, (Contd...)

6. That it may be submitted further that a similar writ of mandamus was filed in this tribunal as C.A.No. 348(L) of 1990 by four other applicants and has been decided by this Tribunal in favour of applicants directing the respondents to implement the same within two months one week time from 9.5.91.

7. That the foregoing statements are based on the facts supplied by the applicants.

Dated: Lucknow
the 5th June, 1991.

Counsel for the applicants.


Syed Zahid Ali Khan

B.A.L.L.B. Advocate with Court, J.P.

Case No. 348(L) of 1990, C.A. No. 348(L) of 1990

H30

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH: LUCKNOW.

Misc. Appeal No. ^{M. P. No. 232/91} of 1991. 

In reference of : case No. OA No. 401(1) of 1990
and O.A. No. 92 of 1991 in cases of S/Sri
Sharful Haq and R.D. Shukla Vs. Chief
Commissioner of Income-tax, Lucknow and
Union of India.

The counsel for the above named applicants
begs to submit as under:-

- (1) That the said cases have been filed and admitted
by this Hon'ble tribunal basing on the copy of
letter No. C-18012/28/90-V&L dated 18.7.90 to
the Chief Commissioner of Income-tax, Lucknow
and which is addressed to Under Secretary, Ad. VII
of Central Board of Direct Taxes.
- (2) That therefore it was requested from the Chief
Commissioner of Income-tax, Lucknow to provide
the certified copy of said letter vide letter
annexed herewith but the Chief Commissioner of
Income-tax, Lucknow did not supply the same so
far.
- (3) That in absence of the said letter it would be
difficult to justify the claims of the applicants
before this Hon'ble Tribunal and it might be
possible that few important points could not be
highlighted before this Hon'ble Tribunal in O.A.
No. 348(L) of 1990 in which this letter has been
included as annexure.
- (4) That the Chief Commissioner of Income-tax, Lucknow
is deliberately avoiding the supply of the
letter to the counsel of the applicants.

Filed today

23/4/91

P R A Y E R

Wherefore it is prayed to require the Chief
Commissioner of Income-tax, Lucknow u/s 91 of G.P.C. to
produce it to the counsel of the applicants before the
next appointed date i.e. 9-5-91 for the sake of justice

Dated for hearing is fixed for 9-5-91

Place: Lucknow

Dated April, 16, 1991

Counsel for the
applicants.

Byed Zafar Ali Kazmi

M.A.L.L. to H.g. 36

Room Sitara Begum, Mali Khan Sarai Crossing, Lko.

To,

The Chief Commissioner
of Income Tax, Lucknow.

Subject: Case No. O.A No. 401 of 1990 in
case of Sri Shanfulhaq v/s Union
of India & others.

Sir,

I am to state that the said case has been
Registered in Central Administrative Tribunal Lucknow
Bench viz case No. O-A No. 401 of 1990 and copy of the
same has been served upon you through your standing
counsel Sri. V.K.Chowdhry.

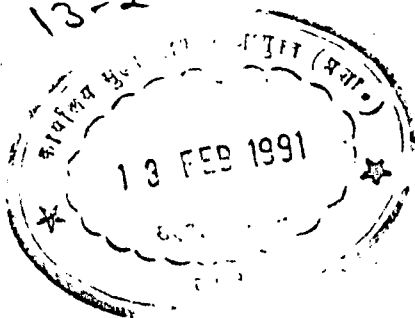
To Proceed with the case I shall be required
certified copy of letter No. C-18012/28/90- V & L Date
18.7.90 addressed to under Secretary Ad. VII of CBDT,
New Delhi and copy to you, another letter of same no
and date addressed to you and letter dated 7.3.90 sent
by you to under Secretary Ad.- VII of CBDT, New Delhi
you are therefore requested to supply me certified copy
of the said letters at the earliest.

Thanking you in anticipation

Counsel for the Applicant

Lucknow
Dt. 13.2.91

(Syed Zafar Mehdi Kazim
Advocate
31/365, Hata Sitara B.
Hardoi Road, Lucknow.



A32

In The Central Administrative Tribunal, Administrative Br.

Alad at Lucknow Bench.

Ref: Cas401 of 1990 Dt.7-12-1990

Fixed Faission on 7-3-1991.

Expedition.

Sharful Haq, Assistant, C.C.I.T Dept., Lucknow

... Petitioner

versus

1. Union of India Chief Commissioner, Income Tax,
Lucknow ... Respondants

Hon'ble Sir,

The counseapplicant begs to submit for kind
perusal as under

1. That the app filed a Writ Petition in this Hon'ble Tribunal on 7-12-1990 with prayer that a writ of mandamus issued to the Chief Commissioner, Income Tax, W, to implement the directions of The Central Taxes, New Delhi, with reference to orders passed by the Tribunal in O.N No.125 of 1987 in case of Sri Nazmi, Tax Assistant are to be treated as Senior to for the purpose of his promotion to the post of clerk.
2. That such application O.A No.348 of 1990 has been admitted on the ground in this Tribunal in the last week of Nov 1990.
3. That the facts of the applicant are similar, but unfortunately the present application could not be admitted, as the Bench did not sit on the earlier scheduled date 8-1-1991.
4. That the material admission is only involved at this state. Therefore Dy.Registrar is not justified to fix such a date i.e 7-3-1991, while a similar

application has already been admitted.

5. That the applicant has only six or seven years to serve in the department.

P R A Y E R:

WHEREFORE, it is most respectfully prayed that the case may be admitted on this very date i.e 4-2-1991 and an interim order be kindly passed in view of the facts and circumstances stated in the foregoing paras, in the interest of justice.

Lucknow:

Dated : 4-2-1991

(SYED ZAFAR MEHNDI KAZMI)

M.A.L.L.B

Advocate

31/365 Hata Sitara Begum

Hardoi Road,

Lucknow.

7341

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

C.A. NO. 401 of 1990 (Decided on 2.7.91)

Sharful Haq ;... Applicant

-versus-

Union of India and others ... Respondents

APPLICATION FOR TAKING ON RECORD OF
DECISION OF HON'BLE SUPREME COURT.

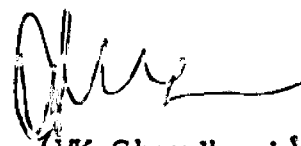
The above named Respondents begs to submit
as under:-

1. That the Department has held a review DFC on 16.8.1991 reviewing the DFCs of Head Clerks held subsequent to 26.8.1988 in the first order in the case of the applicants. Two DFCs for promotion to Head Clerks were held on 7.11.1988 and on 20/21.3.1990 (after the order of the Hon'ble CAT dated 26.8.1988).
2. That in pursuance of the Hon'ble CAT's order the review DFC has promoted Shri Sharful Haq, Tax Assistant as Head Clerk by giving him seniority as per the directives of the Hon'ble Tribunal.
3. That the inter-se seniority of Shri Kazmi and 4 others, applicants who were promoted between 20.11.88 to 3.8.90 has been revised by the Department vide order No.26 dated 16.8.1991. The seniority is purely provisional and subject to the outcome of the S.L.P and the stay application filed by the Department of Revenue before the Hon'ble Supreme Court of India against the directions of the CAT's order dated 9.5.1991 in C.A No.348 of 1990 (Shri SMR Kazmi and others -vs- Union of India and others). A photo-stat copy of the order No.25 is being annexed herewith

28/12/91
F.T.
28/12
28/12

as Annexure no.1 to this application. Thus the Department has already complied with the decision of the Hon'ble CAT, Lucknow.

4. That the Department has already filed an SLP before the Hon'ble Supreme Court in O.A No.348 of 1990 within the stipulated time as such no further decision may kindly be taken against the Department pending final decision of the Hon'ble Supreme Court in the matter.



(VK Chaudhari)
Addl. Standing Counsel for Central Govt.
(Counsel for the Respondents)

Lucknow,

Dated: 28 Aug. 1991.

Annexure 1

(A36)

Govt. of India
Office of the Chief Commissioner of Incometax,
Lucknow.

O R D E R

Dated: 16.08.1991

No. 25 In pursuance of Central Administrative Tribunal's, Lucknow Bench, Lucknow order dated 3.7.1991 in O.A. No. 401 of 1990 dated 3.7.1991 refereing to their earlier decision dated 9.5.1991 in O.A. no. 348 of 1990 (In the case of Sri S.M.R.Kazmi & Others Vs. Union of India & Others) in the case of Shri Sharful Haq Vs. Union of India & others, Shri Sharful Haq, T.A. (Lucknow Charge) is hereby deemed to have been promoted and appointed as Head Clerk in the Scale of Rs. 1400-2300 with effect from 05.04.1990..

2. Shri Sharful Haq will not be entilted to any arrear of pay etc.

3. On promotion, Shri Sharful Haq's services are placed at the disposal of Commissioner of Incometax, Lucknow, who shall pass the necessary promotion order. Shri Sharful Haq shall be on probation for two years.

4. This promotion is purely provisional and subject to the outcome of the S.L.P. and stay application if any, filed by the Deptt. before the Hon'ble Supreme Court against the CAT, Lucknow Bench, Lucknow Order dated 3.7.1991 in O.A.No. 401 of 1990 and also the outcome of the S.L.P./stay application filed by the Deptt. against the CAT, Lucknow Bench, Lucknow Order dated 9.5.1991 in the case of Shri S.M.R.Kazmi & Others Vs. Union of India & Others (O.A.No. 348 of 1990)

In the event of stay application/S.L.P. being decided in favour of the Deptt. by the Hoh'ble Supreme Court, status quo-ante would be restored and Shri Sharful Haq shall be reverted back to the post of T.A..

5. This Order is further subject to the final decision in the Writ petition No. 2504/1982 in the case of Shri B.N. Gupta ^{& Others} Vs. Union of India & Others and Writ petition no. 12484/1984 in the case of Shri R.K. Srivastava Vs. Union of India & Others.

Sd/-
(A.C. MATHUR)
Chief Commissioner of Incometax,
Lucknow.

Contd.....2/-....

[Signature]

Administrative Commission for the delivery of
C.O. 401, in accordance with the order of the
Hon'ble Justice Mr. J.C. Prasad, J.C.

Hon'ble Mr. J.C. Prasad, Administrative Member,
owing to non-receipt of seal cover from Allahabad
in name of J.C. Prasad on July 15th 1991, in
Lucknow.

To,
The Hon'ble Vice Chairman
Central Administrative Tribunal,
Lucknow bench, Lucknow.

Subj:- Loss of implementation of order dated- 3.7.91
up to July, 15th 1991, by Chief Commissioner
(J.L.M. No.) of Income tax Lucknow, Lucknow.

Most humbly it is submitted that on 3rd day of July
1991, in case of C.A.T. No. 401, of 1990 (Harful Haq Vs.
Chief Commissioner, Lucknow and Union of India) read as
under:-

The applicant has joined the Income tax department
as direct recruit U.D. in the year 1970 and was promoted
as Tax Assistant w.e.f. 3.7.78 the applicant has prayed
that a writ of mandamus be issued to the Chief
Commissioner of Income in the case of the applicant
and without giving further opportunity for filing counter
affidavit. He has also prayed to promote him as super-
visor and Income tax Inspector had he been promoted as
J.C. the Income Tax Assistant order to C.A.T.

Submitted for perusal and order in the case of
C.A.T. No. 401, of 1990 (Harful Haq Vs. Chief Commissioner, Lucknow and Union of India) dated-2

- 2 -

C.A.T. No. 401, of 1990 (Harful Haq Vs. Chief Commissioner, Lucknow and Union of India) dated-2
3.7.91 (Harful Haq Vs. Chief Commissioner, Lucknow and Union of India) dated-2
observed as follows:-

1. To direct that the respondents shall give promotion
to the applicants in accordance with rules alongwith as per
the order of the Tribunal dated- 26.8.88, referred to above
notwithstanding the fact that there is any failure on their part
to formulate the scheme. In case the applicants are found
entitled, their appointment will take effect from that date
and not from the date they are subsequently promoted.

2. Let compliance of this order be made within a period
of two months and one week from today. As this order has been
passed in the presence of the counsel and officials of the
Income tax department, it is not necessary to say that the
order is to be implemented from the date of receipt of copy
of the same.

3. The case of the applicant and that of C.A.T. No. 401, of 1990 (Harful Haq Vs. Chief Commissioner, Lucknow and Union of India) dated-2
others is somewhat similar and accordingly this application
is also allowed in the above very terms.

Member ()

Sec.
Vice Chairman

Dated the 1.7. July, 1991

Attested

True copy.

That the order in the said case has not been delivered
till this date while the last date of compliance of order
for the opposite party-the Chief Commissioner of Income
tax Lucknow, was 15th July, 1991 and has not been complied
with in absence of signature of Administrative Member from
3-7-91, till setting of the bench, at Lucknow. However the
office of the Chief Commissioner had obtained signature of
the said member and the said order had received in name
of the under seal cover of Hon'ble Mr. J.C. Prasad, J.C.

Contd-3

(139)

- 3 -

M.H. Lucknow has broken his ⁱⁿ ability to open the envelope
 by breaking the seal and recently the counsel ^{for applicant} file
 giving reply in C.O. No. 22/91, (2) M.H. Shukla versus
 Union of India & others for grant of further ex ^{extension}
 of the months time for purposes of implementation of the
 C.A.'s dated- 3.7.91, ^{order} to Chief Commissioner, Lucknow for
 the months dated- 19.7.91 before Hon'ble Mr. J. Kumar
 J.C. and Hon'ble Mr. L.K. Jaiswal Judicial Member, counsel
 also prayed for breaking seal and supplying the applicant's
 order copy dated- 3.7.91, the same was not favoured for
 supplying the said order copy with a direction to implement
 the applicant's order or his promotion similarly as in case
 of Mr. S. Shukla, as dismissing the Chief Commissioner
 Lucknow's Counsel Mr. L.K. Chaubary dated- 27.7.91, on ^{Prayer}
 19.7.91. So that the delay of promotion of applicant
 may be ^{Safe guarded and} avoided in lack of availability of the order ^{also} favour
 in case of applicant. But it is ^{receve favour on} informed of the petitioner
 that he could not get ^{order} in favour of revision bench's
 order on date- 11.7.91, and thus further submitted
 this request for kind perusal of your lordship for favour
 of supply of the order with directions to the Chief
 Commissioner, Lucknow to implement 3.7.91, order similarly
 as implemented in case of ^{Said order} ~~order~~ and ¹⁵ failure of ~~order~~ ^{the}
~~order may proceed further~~ ^{contempt} ~~Proceedings against~~ ^{of} ~~of~~

It would be relevant to mention here that I have
 been told that the order has sent from Allahabad to this
 bench under an sealed cover in the name of Hon'ble Justice Mr.
 U.C. Srivastava, then ^{as} acting as J.C. of this bench, since
 the delay in delivery of order is causing damage to the
 interest of the applicant it is requested to get the
 order served immediately and oblige.

It may also be noted that the applicant could not appear in the departmental income tax officer's examination of 1991, which is being held from 17.7.91, due to non-compliance of the said order and the applicant is also receiving very soon after attaining the age of his superannuation, as well as bearing irreparable loss due to lack of compliance of order dated- 3.7.91, up to this date in favour of applicant.

Therefore it is prayed that your Lordship
viewed sympathetically and issue direction for supply of
a 10 order copy at once, with direction to the opposite
party to ^{file} ~~submit~~ ^{implement} the order along with other relevant
saving the ~~cost~~ ^{cost} of C.A.N.'s order dated- 3.7.91.

Counsel for the Defendant

(2.4.1.1.2.1)

Luckner.

Dated: 22.7.91

ALL (VOC to.

31/365, nato citato. Legato
Narodi Nono, Lucina.