

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH LUCKNOW

## INDEX SHEET

Cause Title of 199

4191 (1) - OA - 1285/90

Name of the parties

Applicant.

Muzul upate

Versus

Union of India

Respondents

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File No.

Description of documents

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Petition Copy

Rejoinder

Counter

Annexure

Muzul upate

File B part redundant / destroyed

28/9/12

S.O.(5) Dated

Olamism  
12/11/12

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH NEW DELHI.

ORIGINAL APPLICATION NO. 1285 1990;

Shri/Smt. Mukul Upadhyay Applicant

V. R. G. S.

..... RESPONDENT

This application has been submitted to the Tribunal by  
Shri Mukul Upadhyay under section 19 of the  
Administrative Tribunal amended Act, 1985 and the same has been  
scrutinised with reference to the points mentioned in the  
Administrative Tribunal Act, 1985 and procedural rules, 1987.

The applicant filed a P.P. also regarding jurisdiction.  
The application has been found in order and may be listed in  
Court no. 1 on 6/7/90 for admission/Order

S.O. (LIS/INS)

DEPUTY REGT TRAB (S)

26/6

6/7/90

(31)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : DELHI.  
\*\*\*\*\*

APPLICANT (S) Mukul Upadhyay

RESPONDENT(S) U.O.R.C.

PARTICULARS TO BE EXAMINEE Sub. Resignation - withdrawal of  
ENDORSEMENT AS TO RESULT  
OF EXAMINATION.

1. Is the application competent? Y

(a) Is the application is with in the jurisdiction of P.B. Y

(b) If not misc.petition U/S. 25 filed enclosing of the O.A. NA

2. If the application is filed by more than one applicant or by an association. NC

(a) Permission U/R 4(E) (a)/ 4(5) (b) has been sought for? NA

(b) Resolution of the association to file the application has been enclosed? NA

3. (a) Is the application in the prescribed form? Y

(b) Is the application in paper book form ? Y

(c) Have prescribed numbered complete sets of the application been filed ? Y

(d) Is the application on thick paper ? Y

4. Is the application in time ? If not, by how many days is it beyond time ? Y  
His sufficient cause for not making the application in time sated misc. petition for C.O.P. supported by affidavit. NA

5. Has the document of authorisation/Vakalatnama been filed with proper court fees? Y

6. Is the application accompanied by D.D./I.P.O. for Rs. 50/- ? Y

7. Has the copy/copies of order 9 against which the application is made been filed ? Y

8. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed ? Y

(b) Have the documents referred to in (a) above duly attested and numbered accordingly ? Y

(c) Are the documents referred to in (a) above neatly typed in doubled space ? NA

5.7.1990.

Mr. J. S. Singhvi, Counsel for the Plaintiff

and Mr. Babu Charan, S.C.

It is noticed that the application is for a writ of mandamus to the Court of Law to issue a copy of the letter of the Plaintiff to the respondent and may file rejoinder to the same on or before 10-9-90. The date of hearing is fixed on 20-9-90.

Deepti  
(Lawyer)  
17-8-90

Deepti  
(Lawyer)  
17-8-90

Service: complete

Given on 17-8-90.

17-8-90

Sh. J. S. Singhvi Counsel  
Present: ~~None~~ for the applicant.  
Sh. Babu Charan, S.C., for respondent.

Departmental official prays for four weeks time for filling counter affi-devit. Counter be filed on or before 14-9-90 with an advance copy to the applicant who may file rejoinder on or before

20-9-90. List on 3-10-90.

  
(DIWAKAR KUKRETI)  
Deputy Registrar

Chancery Office No. 18/7/90

Date	Office Report	Orders
		4-11-90
		Present: None for the applicant. Sh. Rajeev Sabhrwal Assitant for Reg. Officer.
		Let rejoin or be called on or before 10-12-90. List on 14-11-90.
		 DIWAKAR KUKRETI, Deputy Registrar
		14-11-90
		Present: None for the applicant. Sh. Rajeev Sabhrwal Assitant for Reg. Officer.
		Let rejoin or be called on or before 10-12-90. List on 13-12-90.
		 (DIWAKAR KUKRETI) Deputy Registrar
		17-12-90
		Present: None for the applicant. Sh. Rajeev Sabhrwal Assitant for Reg. Officer.
		Let rejoin or be called on or before 10-1-91. List on 14-12-90.
		 (DIWAKAR KUKRETI) Deputy Registrar

Date	Office Report	Orders
		<p>5.4.1991</p> <p>Present:</p> <p>None for the applicant.</p> <p>Shri Rajeev Sabharwal, Assistant on behalf of the respondents.</p> <p>As many as 6 opportunities have already been granted to the applicant for filing rejoinder right from 4th October, 1990 but the same has not been filed till today. On all these hearings, neither applicant nor his counsel has appeared, which shows that they are not interested to file rejoinder. Therefore, case shall be argued on the basis of pleadings available on record. Place on board.</p> <p></p> <p>(DIWAKAR KUKRETI) DEPUTY REGISTRAR</p>

SRU

3.5.1991.

OA. 1285/90

None for the applicant.

Shri P.P. Khurana, counsel for the respondents is present.

This Misc. Petition under Section 25 of the Act is for transfer of the O.A. pending before the Principal Bench to Lucknow Bench of the Tribunal. The applicant is residing at Lucknow and states that he is without job and is not able to pursue the matter before the Principal Bench. Notice was issued to the respondents. Shri P.P. Khurana appears for the respondents and has no objection to the transfer of the case.

In view of the above, the O.A. No. 1285/90 is ordered to be transferred to the Lucknow Bench of the Tribunal. M.P. for transfer of the O.A. is allowed. Record of the case shall be transmitted to the Lucknow Bench within a month from today. Parties to appear before the Lucknow Bench on 25.6.1991.

(AMITAV BANERJI)

CHAIRMAN

3.5.1991.

SKS

(659)

CR  
This file has been  
sent from CAT, P.B. N.Delhi  
on 16.5.91 at 4.30 PM

On this Case is admitted

CAT RA have not been exchanged

Submitted Date is fixed from CAT, N.Delhi on 25-6-91.

Submitted before S.R (T) 16/5/91

T.A. 4/91 (T.L.)

16.8.91

D.R.

Sri J.S. Singhal  
counsel for the  
applicant is present  
to file Rejoinder  
today. Hence, this  
case is listed  
before the Hon.

Bench on 10/9/91  
for final hearing.

SJK

10.9.91

No Sittings adj'd to 22.10.91

g

22.10.91.

Mr. J.S. Singhal - Counsel for the Applicant.  
Mr. A.K. Chaturvedi - Counsel for the Respondents.

Pleadings are complete in this  
case but the learned counsel for the  
respondent Shri Chaturvedi prays  
for adjournment &  
may be listed for hearing  
on 2/12/91.

h. kumar

(S.N. Prasad)  
Member (Judg.)

(Kanthal Kumar)  
Vice Chairman

2.12.91

No Sittings adj'd to 27.1.92

g

17.5.92

17.5.92

17.5.92 (S)

From Mr. Justice S. V. Venkateswaran.

Now or 8.6.92

Mr. J. B. Agarwal in application  
the respondents are directed to file  
various documents, mentioned therein  
ready for perusal by the Tribunal  
on the date of hearing. I enclose  
application for taking Supplementary  
Court reply as also a bond. The  
Supplementary court reply may be  
taken on 9.6.92. In the case for  
orders on 5.6.92 on which date  
the case may be disposed of finally.

or

S.C.A filed on  
27.1.92  
S  
3.3.92  
SPO

AM.

Lee

Y.C.

5.3.92

Dir. to Strike off Advocates  
Case adjourned to 5.5.92  
or  
Proc

5.5.92

Hon'ble Mr. Justice V. C. Divisekaran - V.C.

On the request of the counsel,  
left this case on 26.5.92 on  
which date the respondent will shall  
Produce the record. Lee

V.C.

23/5/26.5.92

Case adjourned off  
on 3.8.92

Proc

or  
S.C.A done over  
one adjourned for  
Sainath  
Sainath  
Sainath  
Sainath

(DPS)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH  
LUCKNOW

O.A. NO

1235/90

199

(L)

T.A. NO

Date of Decision 3.8.92

Palash Chatterji

PETITIONER

Palash Chatterji

Advocate for the Petitioner(s)

VERSUS

United印度 Workers

RESPONDENT

A.K.S. Gurwedi

Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. K. Chary, Adm. Member.

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

CENTRAL ARBITRATIVE TRIBUNAL

LUCKNOW BENCH

Case No. 1285/90

Kukul Upreti

Applicant

versus

Union of India

Respondents.

Shri J.S. Singhal

Counsel for Applicant.

Shri A.K. Chaturvedi

Counsel for Respondents.

COURT

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

Hon. Mr. K. Obayya, ~~Advocate Member~~,

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

The applicant was appointed on permanent post of Assistant, Govt. of India, Ministry of Defence, New Delhi on the basis of the result of the Assistants Grade examination 1983, held by the C.P.S.C. While in service, of the Govt. of India, the applicant applied to the National Airports Authority through Ministry of Defence for the post of Aerodrome Officer and he was selected on the post of Aerodrome Officer on the basis of a competitive examination. The selection was subject to passing of the prescribed training at Civil Aviation Training centre, Allahabad. He also applied for Indian Civil Services Examination 1987 which too was allowed. As the applicant's leave was not being sanctioned, according to him, he had no option but to tender the resignation from service. The resignation letter was in following words:

"I have applied for the post of Aerodrome Officer

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in National Airport Authority through proper channel. As I have been selected for the same, I hereby submit by resignation for your kind acceptance. I may kindly be relieved from the service w.e.f. September, 7th 1987."

It appears that the applicant was relieved on 9.9.87 (vide order dated 9.9.87). It appears that the applicant failed to show the satisfactory progress during the period of training and that is why the competent authority i.e. Airports Authority of India decided to terminate the training with effect from 30.9.89 in terms of para 2 of the offer of appointment. Thus, the applicant could not complete the training and his training came to an end with the result that the applicant ceased to be an Airports Authority employee of National/ of India. It appears that the applicant subsequently approached the Government his lien was still subsisting and he may be given appointment to the post of U.W.C. but the request was not heeded to. Thereafter the applicant approached the Tribunal.

2. The learned counsel for the applicant took certain pleas including that the applicant referred to certain provisions of Rules 26 C.R & I.P.R and R.R. 12 & 13, 14 & 14 A.

3. Needless to say that it is not necessary to refer the provisions of above provisions. The applicant moved application on 2nd September, 87 for withdrawal of resignation, it appears that before him joining the training which he joined, a few months thereafter, his application is not accepted. The file which has been produced in this case

shows that on 7.9.87 a note was put that as there was nothing against the applicant, his resignation may be accepted i.e. 7.9.87 and after that the order was issued. The result was that the applicant ceased to be Government servant, as well as the employee of Civil Aviation Deptt. i.e. Airports Authority of India. The learned counsel for the applicant contended that his lien was still subsisting and reference to certain fundamental rules has been made by him. In our opinion, once the resignation, rightly or wrongly has been accepted, the above rules will not apply. So far as the resignation is concerned, the resignation could take effect either on the date chosen by the person concerned or mentioned in the notice or on the expiry of the period prescribed for accepting the resignation. It is open for the employer to reduce the period of requirement of notice but not otherwise. It is open for the employee to withdraw the resignation letter if it has not been effective. Reference may be made to the case of "United National Bank vs. P. S. Pillai" (A.I.R. 1939, S.C. 1083) in which it has been held that "Resignation has to become effective on expiry of three months from the date of filing of notice or before it is accepted by the employer." The resignation of the applicant, in the instant case it has been accepted by the employer. Hence it will be operative with effect from the date he desired.

W/

In the resignation letter the applicant raised  
a question as to why he is signing and that is why  
he is signing the contract. The application was for an offer  
to the ministry of defence. In the resignation letter  
it is mentioned that he is applying through  
private channel and is issued for the post of management  
officer. He submitted his resignation. The resignation of  
the applicant as not complete till training is  
completed and the applicant could not complete training  
and before his actual appointment training came to an  
end and the result was that the applicant could not use  
the benefit of the training. The result of this was that  
the applicant, ~~without~~ with the consent of the Ministry  
of Defence joined the airports authority of India and  
became jobless. The withdrawal application was given  
by the applicant within the period. In case of normal  
resignation he would have given notice for resignation.  
In the circumstances, in the case in which request for  
getting back employment is made to the defence Ministry  
it is, and it could have been a considerate, leaving  
aside the technicalities. It should have been considered  
in this light. The applicant was made to be jobless  
and for a job offer prospect, with the consent of the  
Ministry of Defence, he went to the i.e.  
National airports authority of India. ~~xxxxxx~~ the  
airports authority of India is a govt. organization.

W

with the Ministry of Justice, nothing being effected  
it is an autonomous body in its legal administration  
of the case. It is strongly recommended that  
such an application should be submitted even  
if this does not seem to be required. The  
applicant's lawyer has certain rights of appeal and if this  
is given, safety during this period is a sympathetic  
consideration for the above mentioned that the case  
be wholly dismissed. In the event of action by the  
federal government, the demand of the receipt of copy  
of the complaint is recommended.

John B. Gandy

John B. Gandy  
vice Chairman.

Enclosed  
Lucky 1000000.00.

(S)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH,  
NEW DELHI.

Application No. 1255 of 1990

Mukul Upreti - - - - - Applicant

Vs.

Union of India through the secretary  
to Govt. of India, Ministry of Defence. . . . Respondent.

Compilation-A

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Lucknow/

Dated: June 21, 1990.

(P.B.)  
FILED TODAY

1 JUN 1990

1290

MUKUL UPRETI

(MUKUL UPRETI)

Applicant

Mar 1990  
Recd on 20-07-1990  
Recd on 20-07-1990  
20-07-1990

2. O.R.

(R)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,

NEW DELHI.

Application No. 1985 of 1990

Mukul Upreti, aged 27 $\frac{1}{2}$  years

son of Shri Ramesh Chandra Upreti

Postal Address- C/O Shri G. Upreti,

Deputy Manager (materials)

Northern Coal Fields Ltd.

Quarter No C-10, NCL Colony

Singrauli,

P.O.- Singrauli Colliery,

District-SIDHI

.....Applicant.

Pin Code- 466889 (M.P.)

VERSUS

Union of India,

Through the Secretary to

the Government of India,

Ministry of Defence,

South Block, New Delhi-110011. ....Respondent.

1- PARTICULARS OF THE ORDER AGAINST WHICH APPLICATION IS MADE.

The application is against the following order:-

(i) Order No-394/89-D(EsttI/GpII)

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*Mukul Upreti*

(ii) Dated 07th May 1990.

(iii) Passed by Government of India, Ministry of Defence, communicated by Shri O.N. Chadha, under Secretary to the Government of India.

(iv) Subject in brief:-

"Rejection of request for permission to join his permanent post as an Assistant in the Ministry of defence <sup>on</sup> and submission of joining report after termination of training as Aerodrome officer (Trainee) by National Airports Authority New-Delhi."

2- Jurisdiction of Tribunal:

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

3- Limitation:-

The applicant further declares that the application is within the limitation prescribed under section 21 of the Administrative Tribunal Act 1985, since the applicant could not claim his lien over his permanent post of an Assistant in ~~Assistant in~~ government of India, Ministry of

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Mukul Upadhyay

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defence, New Delhi, before termination of his training as Aerodrome Officer (Trainee) by the National Airports authority, New Delhi to join which he had been relieved by the government of India, Ministry of Defence through their order No. 8930/87/D-(EsttI/GpII) dated 19th September 1987, The Training was terminated by the National Airports Authority, New Delhi, by their Order No. F.No. A12025/2/89-EA-1 dated 23rd February 1990 and on such termination of training, the applicant submitted his joining report to the Government of India, Ministry of defence, New Delhi and requested them for permission to join his permanent post but his request was not acceded to by Govt. of India through their impugned order dated 07th May 1990. The cause of action to file the present application arose on 7th May 1990 when the applicant was not allowed to join his permanent post on termination of his training as Aerodrome Officer (Trainee) by national airports authority, New Delhi.

It may however be stated that while in training as Aerodrome Officer (Trainee), the a

Muzal Upadhyay

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applicant had been requesting the Government ~~post~~ of India to maintain his lien over his permanent post but they were showing their unwillingness to do so in their letters dated 8th March 1988 and 21st April 1989 in violation of their own service rules including fundamental rules and earlier decisions. Being in training as Aerodrome Officer (Trained) under National Airports Authority at different places e.g. Allahabad and Bombay, the applicant could not make the application earlier to the Hon'ble Tribunal to seek redress and continued to make representations to the Government of India to maintain his lien over his permanent post of an Assistant as per their own service rules and earlier decisions.

The applicant thus had sufficient cause for not making the application earlier and his application may kindly be admitted at this stage of matter in the interest of justice so that he may not be unlawfully deprived of his lien over his permanent post of an Assistant and may not be left without his permanent job, in the circumstances of his not being absorbed as the Aerodrome officer by the National Airports Authority.

Mukul Upadhyay

4- Facts of the Case:-

The facts of the case are stated below:-

(a) The applicant was appointed over the permanent post of Assistant, Government of India, Ministry of Defence, New Delhi on the basis of the result of the Assistants grade examination 1983, held by the union Public Service Commission and he joined the said post in March 1985, ~~held by the Union Public Service commission and he joined the said post in March 1985, after undergoing the formalities of Medical examination and verification of Character etc.~~

(b) While in service of the Government of India, the applicant applied to the National Airports authority through Ministry of Defence, for the post of Aerodrome Officer and was selected for the Post of Aerodrome Officer on the basis of a competitive examination. The selection was however subject to the passing out of a prescribed training at Civil aviation Training centre, Allahabad.

(c) The petitioner had also applied to the Union Public Service commission for Indian Civil Services Examination 1987 through the ministry of Defence,

Mukund Upadhyay

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the Government of India and was successful at the preliminary examination. Hence he required leave for preparing for the Indian Civil Services final exam.

(d) The petitioner applied to the Ministry of Defence, Govt. of India for leave to prepare for the Indian Civil Services final Examination but neither the leave was refused nor sanction order passed and he was kept in a fix over the matter.

(e) On not getting the sanction order for leave, the applicant applied to the ministry of Defence for being relieved to join as Aerodrome officer under National Airports authority. In this regard also the necessary order to relieve the petitioner was not passed and he was unduely pressurised and coerced by immediate superiors to submit a resignation under CSR & LPR <sup>26</sup> ~~25~~ to get relieved. He there-upon submitted resignation dated 01-09-1989 under duress.

(f) That the resignation of the petitioner was not accepted by the appointing Authority <sup>which is</sup> ~~viz.~~ the president of India <sup>in the case of the applicant,</sup> since it should not have been

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Mukund Upadhyay

accepted by him in view of FR'S 12 to 14 A & earlier decisions of the Government of India thereunder.

(g) The resignation was also withdrawn subsequently through registered letter dated 25-09-1987 and could not be accepted thereafter as per established law.

(h) Since the resignation was not accepted and was also withdrawn within the time prescribed under CSR & LPR 26 and since the Petitioner was relieved by the ministry of defence, Government of India through their order No. 8930/87/D(EsttI/GpII) dated 09th September 1987 for joining as Aerodrome Officer under national Airports Authority, New Delhi, his lien over his permanent post of an assistant could not be lawfully terminated under FR's 12 to 14A and his name could not accordingly be lawfully struck off the strength of the ministry.

(i) Rule 26 of CSR & LPR (Civil Services Regulation and Liberalized pension Rules) deals with matters relating to the connting of or for-fiture of past services for purposes of determining pension, gratuity etc. It does not deal with the question of maintainence of lien. The Ministry of Defence

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erred in law by relying over the rule to strike off the name of the petitioner from it's strength.

(j) Since the application of the petitioner for the post of Aerodrome Officer was forwarded unconditionally by the Ministry of Defence, Government of India, the Ministry could not refuse the permission to the petitioner to join as Aerodrome Officer when selected for the post.

(k) The provisions of Rules 26 CSR & LPR can not over-ride the provisions of fundamental Rules 12A, 13, 14 & 14A.

(l) FR 14A provides as under :-

" Except as provided in clauses (c) & (d) of this rule & Rule 97, a Government Servant's lien over permanent post in no circumstances, be terminated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post."

(m) It is now a well settled law as per decisions of Supreme Court that a resignation can be withdrawn by person concerned before its acceptance and no permission for it's withdrawal is necessary.

Mukul Upadhyay

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(n) So the applicant had been persuading the Ministry of Defence, Government of India, to retain his lien over his permanent post as an Assistant in the Ministry & making representations in this behalf, while under training at civil aviation training centre, Allahabad & Bombay Airport as Aerodrome Officer (Trainee).

(o) The applicant tried his best to successfully complete his training as Aerodrome Officer (Trainee) at Civil Aviation Training Centre Allahabad, but due to the occupational hazards of the training the petitioner could not complete the training, by the time of <sup>its</sup> ~~his~~ termination by the competent Authority through their order dated 23rd February 1990.

(p) On the termination of the training as Aerodrome Officer (Trainee) the applicant had to fall back over his permanent post and submitted a joining report to the ministry of Defence, Government of India seeking their permission to Join the Post as an assistant in the Ministry.

(q) The Ministry of Defence, Government of India, on getting the joining report of the petitioner, re-  
mulan up

examined the matter and preferred to stick to their earlier decisions dated 8th March 1988 and 21st April 1989 and did not accede to the request of the petitioner to accord him permission to join his permanent post. The Government finally rejected the request of the petitioner by their order dated 07th May 1990.

(r) The final order of the Government of India dated 07th May 1990 has given cause of action to the petitioner to file this application before the Hon'ble Tribunal to seek redress against the impugned order.

5- GROUNDS OF RELIEF WITH LEGAL PROVISIONS:-

Having been aggrieved by the impugned order dated 07th May 1990 passed by the Ministry of Defence Government of India and having no other alternative efficacious remedy the applicant is filing this application before the Hon'ble Tribunal on the following grounds:-

(i) Because the impugned order dttd:07th May 1990 passed by the Ministry of Defence, Government of India is violative of the service Rules of FR's 12A, 13, 14, 14A.

Mulayupuri

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(R)  
2/11

(ii) Because the impugned order is not a speaking order in-as-much as it does not indicate why the lien over the permanent post could not be retained under FR 14A and why the resignation could not be withdrawn, specially when it was not even accepted by the appointing authority viz. the president of India.

(iii) Because the impugned order does not indicate the existing instructions on retention of lien and withdrawal of resignation which were relied on by the Ministry.

(iv) Because the impugned order is violative of the established law of the country as per decisions of the Supreme Court that resignation can be withdrawn by the person concerned before it's acceptance and no permission for its withdrawal necessary.

(v) Because the resignation was submitted by the applicant under duress in the circumstances stated above in para 4, and is not a resignation in law.

(vi) Because the resignation was withdrawn before it's acceptance by the appointing Authority and before the expiry of time prescribed under CSR & LPR 26 ibid.

Mukul Upadhyay

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Thus  
It ceased to be a resignation in law and could not  
be acted upon by the ministry of defence , Govt.  
of India, to deprive the applicant of his funda-  
mental right to join back his permanent post, when  
not absorbed as an Aerodrome officer by National  
Airports authority New Delhi.

(vii) Because FR 14A provides that a Government Servant's  
lien on a post may in no circumstances be terminated  
-d even with his consent if the result would be to  
leave him without a lien or suspended lien upon  
his permanent post. As provided in the rule and as  
per decisions of the Government of India under the  
rule even the resignation tendered can not deprive  
a permanent employee of his lien over his permanent  
post as in that case the result will be to leave  
him without a lien or a suspended lien upon the  
permanent post.

(viii) Because the impugned order is violative of the  
mandatory provisions of FR 14A.

(ix) Because the applicant being a brilliant and enter-  
prising person had been successful in various  
competitive examinations referred to above and he  
will suffer an irreparable loss if not allowed to  
join his permanent post and the loss can never be

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compensated with any amount of money.

(x) Because it is the declared policy of the Government of India to enshrine the right to job to every citizen of India as a fundamental right in the constitution of India. And so the Govt. of India should not discriminate against the petitioner by depriving him of his permanent job.

(xi) Because the impugned order and the connected orders referred to therein do not purport to have been issued ~~or by the order of~~ <sup>and</sup> caused by the appointing authority which is the President of India who was pleased to appoint the applicant as an assistant in the ministry of Defence of Government of India, through the appoint order issued.

(xii) Because the impugned order and other orders referred to therein are bad in law since they do not purport to have been passed by the appointing authority of the applicant.

(xiii) Because the impugned order amounts to the termination <sup>and</sup> of the permanent service of the applicant, is violative of article 311 of the constitution of India, since no authority below the appointing auth-  
.....14/  
Murali Varkey



ority was competent to remove the petitioner from his permanent service.

(xiv) Because the so called resignation of the petitioner obtained by ~~co~~rsion and under duress by his immediate superiors was neither accepted by the appointing authority nor its withdrawal by the petitioner refused by the appointing authority.

(xv) Because the order for not maintaining the lien of the applicant over his permanent post was not passed by the appointing authority of the applicant.

(xvi) Because the ~~order for not maintaining the lien of~~ impugned order and connected orders mentioned therein being bad in law are liable to be quashed.

(xvii) Because the applicant is entitled in law to claim back his lien over his permanent post and to rejoin the post when not absorbed as an Aerodrome officer by National Airports Authority, New Delhi.

(xviii) Because the Government of India can not deny the applicant equality before law or equal protection of the laws and can not deny equal opportunity in matters to employment or appointment at his permanent post under ministry of Defence.

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(xix) Because the impugned order and other orders mentioned therein are violative of article 14 & 16 of the constitution of India.

(xx) Because the Union public Service Commission was not consulted in the matter for removing the petitioner from his permanent post, and <sup>termination</sup> ~~termination~~ of his lien over the permanent post, etc.

#### 6- DETAILS OF REMEDIES EXHAUSTED:

The applicant declares that he has availed of all remedies under the relevant service rules by taking following steps:-

(i) He withdrew his resignation dated 1-9-87 submitted by him under duress <sup>a</sup> through letter dated 25-9-1987 to Ministry of Defence, Government of India sent by the registered A/D Post, requesting the government to maintain his lien over his permanent of an Assistant in the Ministry.

(ii) On receiving a reply letter No. 8930/87/D(EsttI, GpII) Dated 8th Jan. 1988 from the Ministry of Defence Government of India seeking a clarification as to why the resignation was being withdrawn the applicant sent the clarification sought through his letter dated 22nd Jan. 1988 by the registered A/D Post to the ~~Ministry~~

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Ministry of defence, Government of India.

(iii) Ministry of Defence, Government of India turned down the request of the applicant by their under Secretaries Memorandum No. 8930/87/D(EsttI/GpII) dated 8th March 1988.

(iv) Against the said order dated 8th March 1988 the applicant submitted a representative to the Secretary to the Govt. of India, Ministry of Defence through his letter sent in Nov. 1988 or on 12-1-1989 regarding maintainence of his lien over his permanent post.

(v) The representation dated 12-1-1989 was not considered as in the opinion of the officer concerned of the Ministry of Defence, Govt. of India nothing new had been added in the representation, with his reply No. 394/89/D(EsttI/GpII) dated 21st April 1989.

(vi) On the termination of petitioner's training as an Aerodrome officer (Trainee) by National Airports Authority, New Delhi by their order dated 23rd Feb. 1990, the applicant submitted a joining report to the Ministry of Defence through a registered A/D letter addressed to the secretary to the Govt. of India, Ministry of Defence, requesting him for permission to join his permanent post as an Assistant in the Ministry.

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(vii) The Ministry of Defence, Government of India again examined the matter and did not accede to the request of the applicant to join his permanent post in the Ministry on the basis of his lien over the post ~~post~~ on account of withdrawal of resignation,

(viii) The Ministry of Defence, Government of India ~~there~~ <sup>h</sup>

✓  
(viii) Passed the final impugned order dated 7th May 1990, depriving the petitioner of his permanent job giving rise to the cause of action to the applicant to file the present application to seek necessary relief before the Hon'ble Tribunal.

7- Matter not pending with any other court.

The applicant further declares that the matter - regarding which this application is being made is not pending before any court of law or any other authority or any other bench of the Tribunal.

8- RELIEFS SOUGHT:

In view of facts, circumstances and reasons mentioned in para 4 & 5 above the applicant prays that the Hon'ble Tribunal may graciously be pleased to summon the relevant record from the Ministry of Defence, Government of India in respect of the matter in issue for their kind perusal and to grant the following

Mukund Upadhyay

reliefs:-

(1) To issue a writ in the ~~value~~ <sup>nature</sup> of ~~cestiorari~~ or any other appropriate writ, direction or ~~order~~ <sup>quashing</sup> order ~~quashing~~ the impugned order of the Govt. in India, Ministry of Defence No. 394/89/D(

(Estt I/GpII) dated New Delhi, 7th May 1990 and other connected ~~xxx~~ orders referred to in the impugned order.

(2) To issue a writ or direction or order directing the Union of India to allow the petitioner to rejoin his permanent post as an Assistant in the Ministry of Defence ~~ref~~ <sup>with effect from</sup> the submission of Joining report by him through a registered A/D Post received by the Ministry of Defence and referred to in their order No. 394/89-D(EsttI/GpII) Dated 7th May 1990.

(3) To award consequential benefits of service e.g. salary & leave etc. for the intervening period.

(4) To issue any other order or direction as this Hon'ble Tribunal may deem just & Proper in the circumstances of the case,

AND.

(5) To award cost of the proceedings to the applicant.

9- Interim order, if prayed for-

No interim order is prayed for.

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

Not Applicable.

11- Particulars of the bank Draft/Postal order in respect of fee:

(i) Name of the Bank on which drawn- —

(ii) Demand draft No. —

Or

(i) No. of the Indian Postal Order- 02 468024

(ii) Name of issuing post office- GPO, LUCKNOW

(iii) Date of issue of postal order 21/06/1990

(iv) Post office at which payable- New Delhi-110001

12- List of enclosures:-

(i) Impugned order of Government of India, Ministry of Defence, New Delhi No. 394/89-D(EsttI/GpII) dated 7th May 1990.

(ii) Joining report by the petitioner sent by registered post dated 9th April 1990.

Mukul Upadhyay

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(iii) Order of National Airport Authority, New-

Delhi No. F.No. A 12025/2/89-EA-1 dated 23rd Feb.

1990, regarding termination of training as an Aerodrome officer (Trainee).

(iv) Representation dated November 1988/ 12-1-1989 sent to Government of India by the applicant.

(v) Bank Draft or Postal Order as above.

(vi) Power/Vakalatnama of the advocate.

#### VERIFICATION

I, Mukul Upreti, the above named applicant, s/o Shri Ramesh Chandra Upreti, aged 27 $\frac{1}{2}$  years, working at no post at present, a resident of Quarter No.C-10, NCL Colony, Singrauli, District Sidhi (M.P.) do hereby verify <sup>that</sup> <sub>the</sub> content of paragraph 1 to 12 above are true <sub>to</sub> my personal knowledge and belief and that I have not suppressed any material facts.

Signed and verified this day of 20<sup>th</sup> June 1990  
at Lucknow, U.P.

Lucknow/

Dated: 21/06/1990

MUKUL UPRETI

(MUKUL UPRETI)

SIGNATURE OF THE APPLICANT.

Printed  
21-6-90  
(J. SINGH)  
Advocate.

By Rec'd./AD

No. 594/89-D(Est. I/Gp. II)

Government of India,

Ministry of Defence,

New Delhi the 07th May, 1990.

(34)

OFFICE MEMORANDUM

Subject:- Request for permission to rejoin as Assistant in the Ministry of Defence.

The undersigned is directed to refer to application dated KIL, received from Shri Mukul Upadhyay, ex-Assistant of this Ministry and to say that his request for re-appointment as Assistant in Ministry of Defence has again been examined. However, as already intimated vide this Ministry's Office Memorandum No. 8930/87/D(Est. I/Gp. II) dated 8th March, 1988 and 104/89/D(Est. I/Gp. II) dated 21st April, 1989 his request is not covered under the existing instructions on retention of liaison and withdrawal of resignation. In view of this, it is regretted that his request cannot be acceded to. In the circumstances, no useful purpose will be served by making further representations on subject which will not be entertained.

— Under Secretary —

( O.N.CHADIL )

Under Secretary to the Govt. of India.

✓ Shri Mukul Upadhyay,  
C/o Shri S. Upadhyay,  
Bapuji No. C 10,  
I.C. Singhrauli Colliery,  
Distt: Jhansi  
HINDUSTAN - 486 309.

Mukul Upadhyay

True copy

Attest

DSM/BS  
21-6-90

Adviser

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH,  
NEW DELHI.

Application No. of 1990.

Mukul Upreti - - - - - Applicant

Vs.

Union of India through the Secretary  
to Govt. of India, Ministry of Defence. - - - Respondent.

COMPILATION-B

INDEX OF ENCLOSURES

Sr. No.	Documents	Pages
1-	Joinin Report of the application to the Govt. of India, Ministry of Defence, New Delhi, Dated- - - Sent by registered Post dated 9th April 1990.	23
2-	Order of the National Airport Authority New Delhi dated 23rd Feb. 1990 terminating the training of the applicant as Aerodrome Officer(Trainee)	24
3-	Representation of the applicant dated Nov. 1988/12-1-89 sent to Govt of India, Ministry of Defence through the Secretary To Govt.	25-31

MUKUL UPRETI  
(MUKUL UPRETI)

Lucknow/

Applicant.

Dated: 21.6.1990

REGISTERED WITH A/D

From: Mukul Upreti,  
C/o. Shri G. Upreti,  
Qtr. No. C 10,  
P.O. Singrauli Colliery,  
Distt: Sidhi (M.P.)  
Pin 486 889.

Dated 7<sup>th</sup> April 1990

To : The Secretary to the  
Government of India,  
Ministry of Defence,  
South Block, DHQ Post Office,  
New Delhi - 110 011

Sub: Joining Report as Assistant in the  
Ministry of Defence.

Ref: GOI, Ministry of Defence Letter No. 394/89/  
D(Estt. I/GP II) dated 21st April, 1989.

Dear Sir,

I beg to say that I was a permanent Assistant(1983 batch of Assistant Grade exam. conducted by UPSC) in the Ministry of Defence. Thereafter I was selected as Aerodrome Officer(Tr) in the National Airport Authority. I was relieved of my post of Assistant vide Office Memorandum No.8930/87/D(Estt I/GpII) dt. August, 1987, on my being selected as Aerodrome Officer (Trainee) in National Airport Authority.

I joined training as Aerodrome Officer(Trainee) in the National Airport Authority at CRTC Allahabad. Since I failed to show satisfactory progress of my training at CRTC, Allahabad, my training has been terminated by the Competent Authority of the National Airport Authority(copy of termination letter enclosed). As such, now I am without a job.

Since, I was a permanent Assistant in the Ministry of Defence, I hold a permanent lien over my post of Assistant in the Ministry of Defence under FR/4A. My earlier representation for maintaining my lien may please also be referred to.

In view of above, this letter may kindly be treated as joining report as Assistant in the Ministry of Defence. I will report for duty as soon as explicit permission is given by the Competent Authority of Ministry of Defence.

Thanking you, Sir,

Enclo: As above.

Yours faithfully,

( MUKUL UPRETI )

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Mailed  
Jabal  
21-6-90  
Adarsh

Mukul Upreti



24--

BY REGISTERED POST

राष्ट्रीय विमानपत्तन प्राधिकरण  
NATIONAL AIRPORTS AUTHORITY  
पूर्वी खण्ड II-III, रामकृष्ण पुरम,  
East Blocks II & III, R. K. Puram  
नई दिल्ली  
New Delhi-110066

F.N.O.A. 12025/2/89-EA-1

Dated, New Delhi the, 23rd Feb., 9

OFFICE ORDER

Subject:-TERMINATION OF TRAINING OF SHRI MUKUL UPRETI,  
AERODROME OFFICER (TRAINEE).

The undersigned is directed to say that as Shri Mukul Upreti, Aerodrome Officer (Trainee) has failed to show satisfactory progress during the period of his training, the competent authority has decided to terminate the training of Shri Mukul Upreti, with effect from 13.9.1989 in terms of clause mentioned in para 2(ii) of the offer of appointment issued vide O.M. No.A.12025/1/86-EA (A) dated 13.6.1987.

Biswas  
(N.C.BISWAS)  
Dy, Director of Personnel.

To

Sri Mukul Upreti,  
C/O Sri. G. Upreti,  
Qtr. No.C.10, NCL Colony,  
P.O. Singarauli Colliery,  
Distt. Sidhi (MP)-486889

Mukul Upreti

Term exp  
Allister  
Perry  
21-6-90  
Advocate

26  
  
REGISTERED A/D

From: Mukul Upreti

Dt: November 1988

12-1-1989

C/O J.S.SINGHAL

Retd. Judge/Advocate

23, B.N. Road,

Lal Bagh, Lucknow-226001.

To,

The Secretary to the Government of India,

Ministry of Defence

D(Estt.I/GpII),

New Delhi-110011.

Subject: Maintenance of lien on the permanent post till permanently absorbed by the National Air Port Authority of India- Resignation withdrawn, before its acceptance and before the expiry of time prescribed for withdrawal, can not be acted upon.

Sir,

I invite your kind attention to my representation dated 21-12-87 and 22-1-1988 on the above subject sent to the under secretary to the Govt. of India, Ministry of defence, D(EsttI/GpII), New Delhi, requesting him to maintain my lien over my permanent post of an Assistant in the ministry of Defence vide FR 12 A, 13, 14 & 14 A. I had withdrawn my resignation dated 1-9-1987 through my registered A/D letter Dtd:

Mukul Upreti

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25-9-1987 & the clarification sought by him under the registered A/D letter No.6930/87/D(Estt.I/GpII)

Dtd: 8th January 1988 was also sent to him under my registered A/D Letter Dated 22nd January 1988. In This respect it is respectfully submitted as under:-

- 1- That the resignation withdrawn before its acceptance before the expiry of time prescribed under S.S.R. & B.P.R. 26 can not be acted upon by the ministry of Defence.
- 2- That I am a permanent employee of the Govt. of India, Ministry of defence & held a permanent post of an Assistant. I was appointed over the Post on the basis of result of Assistant Grade Exam. 1983 & I joined the service in March 1985.
- 3- That subsequently I applied through ministry of defence for the examination for the post of Aerodrome officer under National Airport Authority of India & Indian civil Services Exam 1987.
- 4- That I was selected for the post of Aerodrome officer subject to passing out some prescribed training & I was also successful in the preliminary test of the Indian civil service Examination.

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5- That I applied for leave to prepare for the final examination of Indian Civil Services but the same was not allowed to my disadvantage.

6- That in order to get time to study for the final examination of Indian Civil Services, I applied to the ministry of defence to be relieved of my post to join the training for the post of Aerodrome officer but was required to submit a resignation under CSR & LPR 26 by my immediate superiors.

7- That being so compelled I submitted my resignation dated 01-09-1987 under duress.

8- That my resignation was not accepted since it should not have been accepted in view of Govt. of India's decisions in other cases & I was relieved <sup>w.e.f</sup> of my post on 09-09-1987 (A.M.) to join as an Aerodrome officer's training under National Airport Authority of India vide under secretary to the Govt. of India order No. 8930/87/D(EsttII/ GpII) Ministry of Defence dated 19th September 87. It was however stated in the relieving order that my name is accordingly struck off the strength of the ministry.

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9- That Rule 26 of CSR & LPR (Civil services Resignation & Liberalised Pension Rules) deals with matters relating to the counting of or forfeiture of past services for purposes of determining pension, Gratuity etc. It does not deal with question of maintenance of lien.

10- That the resignation was a technical formalities & should not have been demanded by my superiors to relieve me of my post, since my application for the posts had been forwarded unconditionally by the ministry.

11- That the provisions of Rule 26 ibid can not override the provisions of fundamental rules 12A, 13, 14 & 14 A.

12- That FR 14 A provides as under:-  
 "Except as provided in clauses (c) & (d) of this rule & rule 97, a government servants lien on a post, may, in no circumstances, be terminated, even with his consent, if the result will be to leave him without a lien or suspended lien upon a permanent post"

13- That it is now a well settled law as per decisions

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of the Supreme Court in several cases that a resignation can be withdrawn by the person concerned before its acceptance and no permission for its withdrawal necessary.

14- That it has also been held by Supreme Court that the title of the govt. servant to hold his lien on his permanent post can not be terminated by the government, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post.

15- That I have yet to complete my training as aerodrome officer and until my training is completed and I am appointed as an Aerodrome officer permanently, my lien acquired by me over the permanent post of an Assistant in the ministry of defence should be retained under FR 12 to 14 referred to above, so that I may not be out of my permanent job, if not absorbed or appointed on the permanent post of Aerodrome officer.

16- That I am finding it difficult to complete the training of Aerodrome officer. I could not complete the ab-initio course No.X of the training at Bombay Airport and have not therefore been accepted for further training of phase II.

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Since I could not complete the training at Bombay Airport I have been kept out of the ab-initio Course No. Xth.

17- That the Aerodrome officers training is quite tough and I may not be able to complete it even if I join the next ab-initio course No. XIth at Bombay wef. 1-5-89 as permitted by the principal, civil aviation training centre, Bamraulli, Allahabad vide his letter No. TRG/ATS/AO/Z/88/6363-69 dated 15th Nov. 1988, an electrostate copy of which is herewith ~~xxxxxxxxxx~~ enclosed for your kind perusal.

18- That I am at present without any job or training.

Wherefore it is respectfully prayed as under:-

(i) That the matter may kindly be considered in the light of facts & legal position stated above , and my lien over my post of an assistant in the ministry of defence may kindly be retained till I am appointed permanently as an Aerodrome officer on passing out prescribed training and.,

(ii) That since I am at present without a job or training I may kindly be allowed to join my permanent post as an Assistant in the ministry of defence. I may forgo the training of Aerodrome officer at Bombay wef. 1-5-1989.

.....

Munawar Ali

An early action and reply in the matter is solicited. The reply may kindly be sent to me at my present address so that it may reach me safely.

Your's faithfully,

(Mukul Upreti)

Copies forwarded for information & necessary action to:-

1- The under secretary to the Govt. of India, Ministry of defence, D(Estt.I/GpII) New Delhi-110011.

2- DOP & T (CS-II) Section, 7th floor, Nirwachan Bhawan.

*True copy  
Rakesh  
Fronted  
21-6-90  
Anandani*

*Mukul Upreti*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

APPLICATION NO. OA 1285 of 1990

Shri Makul Upreti ..... Applicant  
Versus

Union of India  
Through the Secretary to the  
Government of India, Ministry  
of Defence ..... Respondent

I N D E X

<u>S.No.</u>	<u>Particulars</u>	<u>Pages</u>	<u>C.Fees</u>
1.	Reply to the Petition of the Applicant on behalf of Respondent	1 - 15	
2.	Annexure 1 / <sup>1/3</sup> Intimation and Undertaking given by the applicant that he had applied for the post of Aerodrome Officer	16 - 17	
3.	Annexure 2 Copy of Resignation given by the applicant	18	
4.	Annexure 3 Copy of instructions issued by DOP&T vide their OM No. 28016/5/85-Fstt.(C),dt. 31.1.86.	19 - 22	
5.	Annexure 4 Ministry of Defence Order No.8930/87-D(Est.I/Gp.II) Dated 9.9.1987.	23	
6.	Annexure 5 Ministry of Defence O.M No.8930/87-D(Est.I/Gp.II) Dated 8.3.1988.	24	36/-
7.	Annexure 6 Acceptance given by JS(E), Ministry of Defence, the Competent Authority to the resignation submitted by the applicant.	25	

- : 2 :-

RESPONDENT

THROUGH:

( P.P. KHURANA )  
CENTRAL GOVT. ADDL. STANDING COUNSEL  
NEW DELHI

New Delhi :

Dated :

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

APPLICATION NO. CA 1285 of 1990

SHRI MUKUL UPRETI

VERSUS

.... APPLICANT

UNION OF INDIA THROUGH THE SECRETARY  
TO THE GOVT. OF INDIA, MINISTRY OF  
DEFENCE.

.... RESPONDENT

COUNTER REPLY OF THE RESPONDENT IN THE ABOVE  
CITED CASE.

The Respondent respectfully sheweth :-

Preliminary Objections :-

It is submitted that the Application is not maintainable in terms of Section 21(1)(a) of the Administrative Tribunal Act, 1985 as the case was finally decided in 1988 and the Present Application has been filed beyond the period of limitation prescribed under Section 21 of Administrative Tribunal Act. The successive representation can not extend the statutory limitation of time.

BRIEF FACTS :

The applicant was appointed as a direct recruit Assistant in the Ministry of Defence with effect from 11.3.85 on the basis of Assistants' Grade Examination, 1983. While in service in this Ministry, the applicant had applied for the post of Aerodrome Officer in the National Airports Authority of India. At the time of applying for this post, the applicant had given an undertaking <sup>\*</sup> to the effect that in the event of his selection for the said post for which

he has applied, he will have to proceed to the new assignment on immediate absorption basis and will be deemed to have proceeded on retirement from parent department from the date of appointment in the new assignment in terms of Rule 37 of CCS(Pension) Rules.

According to the undertaking it was further stated that he will not be able to revert to the parent department or hold lien of his substantive appointment in the department in the event of his appointment in \* the new assignment. The applicant vide his letter

\* Annexure 2 dated 1st September, 1987 had submitted his resignation from the post of Assistant in the Ministry of Defence. In his resignation letter the applicant had stated that he had been selected for the Post of Aerodrome Officer in the National Airports Authority of India and had requested that he may be relieved from the Ministry of Defence w.e.f. 1.9.87. Since the applicant had

applied for the post in the National Airports Authority of India which is a Central public enterprise, his case was processed in the light of the instructions issued by the Department of Personnel and Training

\* as contained in their O.M. No. 28016/5/85-Estt.(C)

dated 31.1.86. Paras 1 and 2 of the aforesaid O.M. state as under :-

(i) Release of the Government servants for  
appointment in the enterprises: A Government servant who has been selected for a post in

a Central public enterprise may be released only after obtaining and accepting his resignation from the Government service.

(ii) Retention of Lien/quasi-permanent status:

No lien/quasi-permanent status of the Government servant concerned will be retained in his parent cadre. All his connections with the Government will be severed on his release for appointment in an enterprise and he will not be allowed to revert to his parent cadre.

In the light of the above instructions, the resignation of the applicant was accepted by the competent authority \* and he was relieved from this Ministry w.e.f. 7.9.87.

Subsequent to his release from this Ministry, the applicant made a request for withdrawal of his resignation and retention of his lien to the permanent post of Assistant in the Ministry of Defence vide his letter dated 25.9.87. The representation of the applicant was examined in the light of the existing rules and instructions on the subject. However, since the request was not covered under the rules the same was rejected and the applicant was informed vide Ministry

\* Annexure 5 of Defence OM No. 3930/27/D(Stat.I/Gp.II) dated 8th March, 1988 that "his request for retention of lien and withdrawal of resignation cannot be accepted as he had resigned from the post of Assistant in the Ministry of Defence to join the National Airports Authority which is

a Central public enterprise". The applicant had again represented on similar lines and his representations received on 19.1.89 and 19.4.90 were replied to after reiterating the position already explained to him vide this Ministry's O.M. dated 8th March, 1988. In his last representation received on 19.4.90, the applicant had sought permission to join the Ministry as Assistant which could not be acceded to since he had already resigned from the post of Assistant and was not having any lien in this Ministry.

Reply on Merits :-

Paras 1 to 3 That in reply to paras 1, 2 and 3 it is denied that the cause of action arose by O.M. No. 394/89-D(Est.I/Gp.II) dated 7th May, 1990. It is observed therefrom that this O.M. refers to and reiterates the contents of O.M.No.8930/87/D(Est.I/Gp.II), dated 8th March, 1988 and of same number dated 21.4.89. Para 1(i) to (iii) is therefore mischievous and misleading. Mischievous and misleading intentions of the applicant are clear from his attempt in Para 3 to explain unsuccessfully the delay in approaching the Honourable Tribunal. Section 21(1) @ of Administrative Tribunal Act, 1985, stipulates that a Tribunal shall not

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admit an application in a case where the final order such as mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made within one year from the date on which such final order has been made. In this case, the Applicant had requested for withdrawal of his resignation and retention of his lien in this Ministry vide his representation dated 25.9.1987. The representation was examined in the light of the existing rules and instructions on the subject and the Applicant was informed vide Ministry of Defence O.M. No. 8930/87/D(Est.I/Gp.II) dated 8th March, 1988 that his request was not acceptable as it was not covered thereunder. The Provisions under which his representation was examined were also communicated to him. As indicated earlier the reply given by the Ministry of Defence to the Applicant vide O.M. No. 394/89/D(Est.I/Gp.II) dated 7th May, 1990 in response to his representation received on 16.4.1990 only reiterates the final decision already communicated to him vide O.M. No. 8930/87/D(Est.I/Gp.II) dated 8th March, 1988. It is well settled

that repeated representations do not afford a fresh cause of action. Since a final reply to the representation made by the Applicant was issued on 8th March, 1988 period of limitation would count from that date and not from 7.5.90 as the applicant contends. In the OA No.696/38-Satish Kumar Vs. Union of India etc., which was decided by Central Administrative Tribunal, Principal Bench, New Delhi on 26.7.1988, the applicant had filed application one year after his representation was rejected on merits. It was held by the Hon'ble Central Administrative Tribunal that the application suffered from the Bar of limitation. In OA No.184/89-R.S. Bhatotiya Vs. Union of India and others, which was decided by Central Administrative Tribunal, Principal Bench, New Delhi on 20.9.1988, the application was filed two years after the representation was finally rejected on merits. It was held by the Hon'ble Central Administrative Tribunal that the applicant had filed the application belatedly and the same was rejected at the admission stage itself under Section 21 of the Administrative Tribunals Act, 1985.

Para 4(a) It is a matter of record.

Para 4(b) The position stated by the applicant in the sub-para is not factually correct. The applicant while in service in the Ministry of Defence had sent his application direct to National Airports Authority for the post of Aerodrome Officer in September, 1986. The intimation in this regard was given by the applicant later on, in February, 1987. Nevertheless it was subsequently treated as though the applicant had forwarded his application as through proper channel. The applicant had also given a declaration to the effect, inter alia that he would proceed to the new assignment if selected on immediate absorption basis. He also indicated therein that he was aware that he will not be able to revert to the parent Deptt. or hold lien on his substantive appointment in the Ministry of Defence.

Para 4(c) The applicant had intimated to the Ministry of Defence that he had applied for the Civil Services Examination, 1987. However, he had not given any communication to the effect that he had qualified in the Preliminary Examination of Civil Services Examination, 1987.

Para 4(d) There is nothing in the record of Ministry of Defence to show that the applicant had applied for leave in order to prepare for final examination of Civil Services Examintion, 1987. So the question of sanctioning or otherwise of leave does not arise. In this regard, it may be mentioned that the applicant had availed 75 days Earned leave and 51 days Half pay leave and 4 days Extra Ordinary leave during the short spell of 2 & 1/2 years of his service in the Ministry of Defence and there was no leave at his credit when his resignation was accepted w.e.f. 7.9.1987. As such, his contention that leave was not sanctioned to him is not true.

Para 4(e)  
&(f) The applicant had submitted his resignation vide his letter dated 1.9.1987 indicating that he had been selected for the post of Aerodrome Officer in National Airport Authority and had requested that he may be relieved from the Ministry of Defence w.e.f. 7.9.1987. The contention that he was pressurised and coerced into doing this is baseless and is evidently an after thought. The resignation of the applicant was accepted by Joint Secretary(Estt) Ministry of Defence. The Power of appointment to the post of Assistant

\*Annexure 6

held by the applicant which is a Group 'B' non-gazetted post, is delegated to the said Joint Secy. Hence the contention raised by the applicant that his resignation was not accepted by the President of India, being the appointing authority, is baseless.

F.R. 14 I applies to a Government servant. Consequent on acceptance of his resignation for joining National Airport Authority the applicant ceased to be a Government servant and hence F.R. 14 A is not relevant.

Para 4(g) The resignation of the applicant was accepted by the Competent authority in the Ministry of Defence on 7.1.87 and accordingly his name was struck off the strength of the Ministry of Defence from the same date. The applicant had made request for withdrawal of his resignation vide his letter dated 25.9.87, after it was accepted by the competent authority and he was relieved from the Ministry of Defence. Therefore the contention of the applicant that he had withdrawn his resignation prior to its acceptance is wrong.

Para 4(h) As already mentioned, the resignation of the applicant was accepted by the competent authority prior to his release from the

Ministry of Defence. As per sub-rule(5) of Rule 26 of CCS(Pension) Rules, request for withdrawal of resignation cannot be accepted by the appointing authority where a government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a Corporation or Company wholly or substantially on or controlled by the Government or in or under body controlled or financed by the Government.

In the present instance the applicant had resigned from Ministry of Defence in order to take appointment under a Central Public Enterprise. In view of this, the request made by the applicant for withdrawal of his resignation after it was accepted was not permissible under the rules.

Para 4(i) The request made by the applicant for retention of his lien on the permanent post of Assistant in the Ministry of Defence was examined in light of the instructions issued by Department of Personnel & Training vide their O.M. No.28015/5/85-Estt.(C) dated 31.1.86. According to the instructions, a Government servant who has been selected for a post in a Central Public Enterprise

can be released only after obtaining and accepting his resignation from the Government service. The ~~lifelong~~/quasi-permanent status of the Government servant concerned will be retained in his parent cadre. All his connections with the Government will be severed on his release for appointment in an enterprise and he will not be allowed to revert to his parent cadre. While intimating to the Ministry that he had applied for a post in the National Airports Authority, the applicant had given a declaration that he was aware of these requirements. As indicated in the Comments on para 4(f) F.R. 14 A is not applicable to the case. The action taken by the Ministry was according to applicable rules and instructions. Rule 26 of the CCS(Tension) Rules is relevant in the context of the request of the applicant for withdrawal of his resignation. Reference to rule 26 of C.R & LPI is not understood.

Para 4(j) As indicated in the comments on para 4(b) even though the applicant had not forwarded his application for a post in the National Airports Authority through proper channel, no objection on this account was raised and the applicants resignation for joining

the post was accepted and he was relieved.

The contention in this paragraph is, therefore, totally baseless.

Para 4(k) Rule 26 of the CCS(Pension) Rules is relevant in the context of the request of the applicant to withdraw his resignation after its acceptance. Reference to rule 26 of CSR & LPR is not understood. On acceptance of resignation the applicant ceased to be a Government servant and hence he could not claim applicability of P.R.s 12 A, 13, 14 & 14A. Hence there is no question of one overriding the other.

Para 4(l) It is matter of record.

Para 4(m) In the instant case the applicant vide his letter dated 25.9.87 had made request for withdrawal of his resignation after it was accepted by the competent authority and he was released from the Ministry of Defence w.e.f. 7.9.1987. Hence the relevance of Supreme Court decisions is not understood.

Para 4(n) The requests made by the applicant for withdrawing his resignation were examined and found not acceptable as indicated in the comments on para 4(i). Hence the question of retention of lien did not arise.

Para 4(o) No comments.

Para 4(p&q) The applicant vide his letter dated nil (received on 19.4.90) reiterated his earlier stand that he held a lien on a permanent post of Assistant in Ministry of Defence and sought permission to join as Assistant in the Ministry of Defence. According to a copy of National Airports Authority's C.O. No. 12026/2/CP-H-A, dated 23.2.1990, forwarded by the applicant himself, his training was terminated on 13.9.89. He was not permitted to join for the reasons indicated earlier.

Para 4(r) The contention of the applicant is denied for the reasons set out in the comments on para 1 to 3.

Para 5(i) to (xx) In reply to grounds raised in paras 5(i) to (xx), it is submitted that these grounds are misconceived, wrong and denied. No discrimination has been caused to the applicant and Articles 14 and 16 of the Constitution have not been violated as alleged by him. The applicant's resignation from the post of Assistant was accepted by the competent authority and it is wrong on his part to

allege that he was removed from service without consulting UPSC as the consultation with the U.P.S.C. was not required. Lien on the permanent post of Assistant got automatically terminated on acceptance of his resignation.

Para 6 & 7

Being matters of record do not require any reply.

Para 8

In view of the facts and submissions made above it is submitted that the Hon'ble Tribunal may dismiss the present application with cost being devoid of any merit.

Paras 9,10  
& 11

Para 9-11 need no reply.

In view of the facts and submissions made above it is submitted that the present application being devoid of any merit may kindly be dismissed with costs.

Prayed accordingly.

On behalf of the Respondent

Through

(P.P. Khurana)  
Advocate

New Delhi  
Dated:

Verification

Verified at New Delhi on this day of  
14th Sept 1966, that the contents of this reply  
are true to the best of my knowledge and on the basis  
of information received from the official records  
believed to be true and that I have not suppressed any  
material fact.

*I.S. Parihar*

( I.S. PARIHAR )

For On behalf of the Union of India

-: 16 :-

Annexure 1A

To

The AFA(E)  
Min. of Def/Fin  
South Block,  
New Delhi.

Subject:- Application for the post of Aerodrome Officer.

.....  
Sir,

I beg to state that I have applied for the post of 'Aerodrome Officer' in National Airport Authority. This is for your kind information. Requisite undertaking is also attached herewith.

Thanking you sir,

Yours sincerely,

Sd/-  
(Mukul Upreti)  
Asstt.  
Def/Fin/69

Forwarded to AFA(Estt.)

Sd/-

Annexure

DECLARATION

I am aware that in the event of my selection for the post in Public Sector Enterprise/Corporation/ Autonomous Body, for which I have volunteered/applied with reference to press advertisement, I will have to proceed to the new assignment, if selected on immediate absorption basis and will be deemed to have proceeded on retirement from parent department from the date of appointment in the new assignment in terms of Rule 37 CCS(Pension) Rules, I am also aware that I will not be able to revert to the parent department or hold lien on my substantive appointment in the department in the event of my appointment in the new assignment and that I will be eligible for the terminal benefits to the extent contemplated under the relevant rules.

Station : Delhi

Date 2.2.87

Signature Sd/-

Name Mukul Upreti

Designation Asstt.

Account No. \_\_\_\_\_

67

To

The DFA(Estt.)  
MOD/Fin  
South Block,  
New Delhi.

Through Proper Channel.

....

Subject: Resignation from the post of Assistant.

.....

Sir,

I had applied for the post of Aerodrome Officer in National Airport Authority through proper channel. As I have been selected for the same, I hereby submit my resignation for your kind acceptance. I may kindly be relieved from the services w.e.f. September, 7th 1987.

Thanking you sir,

Sept. 1st, 1987

Yours faithfully,

Sd/-  
(Mukul Upreti)  
Asstt  
Def/Fin

Copy to: D(Estt.II) for similar action.

Ministry of Defence  
D(Est.I/Gp.I )

Subject : Appointment of Central Government Servants in the Central public enterprises on immediate absorption basis - terms and conditions of.

-.-

A copy of Ministry of Personnel, Public Grievances and Pensions (Dept. of Personnel & Training) O.M. No.28016/5/85-Estt.(C), dated 31-1-1986, on the above subject is forwarded herewith, for information/necessary action.

Sd/-  
( Prem Kumar Hans )  
Section Officer  
Tel : 3012200.

D(Air-I)/D(Apptts)/D(B&C)/D(Civ-I)/D(Civ-II)/D(Est.2/Cash)  
D(Est.2/Genl)/D(Est.I/Gp.II)/D(Fy-I)/D(Fy-II)/D(Insp)/D(JCM)/  
D(Mo:)/D(N-II)/D(Pay/Ser)/D(Prod)/D(R&D)/AO(DAD), Ministry  
of Defence (Civil), Sena Bhawan.

PSs to RRM(A)/RRM(S)

D(PS) - 10 copies

Hindi Cell - for Hindi version.

Ministry of Defence (Fin Div) - 10 copies  
CAO(Coord).

IF(Fys), Ministry of Defence, West Wing, 3rd Floor,  
10-A Auckland Road, Calcutta- 700 001.

Ordnance Factory Board, West Wing, 3rd Floor,  
10-A, Auckland Road, Calcutta - 700 001.

MoD ID No.A-52011/1/86/D(Est.I/Gp.I), dated 19-2-1986.

Copy to : All Sections/PSs/PAs in the Ministry of Defence  
Sectt. (including the Deptts. of Defence Production  
and Supplies, Defence R&D and Integrated Finance).

Copy also to : DG ATV Programme, Ministry of Defence,  
Room No. 142, 'B' Wing, Sena Bhawan.

-.-

Copy of OM No.28016/5/85-Estt.(C), dt. 31-1-1986, on the above subject, from Ministry of Personnel, Public Grievances and Pensions (Dept. of Personnel & Training) :-

The undersigned is directed to say that instructions were issued vide the Ministry of Finance (Bureau of Public Enterprises) O.M. No.5(25)/83-B.P.E.(PESE), dated 6.3.1985 to the effect that same in the exceptional cases mentioned therein, deputation of Central Government servants to the Central public enterprises would not be allowed and the officers could join the enterprises only on immediate absorption basis. The modalities of appointment of Government servants in the enterprises after the issue of these instructions, as also the question of granting terminal benefits to the Government servants going over to the enterprises on immediate absorption basis has been under consideration of the Central Government and it has been decided that the appointment of Government servants in the Central Public enterprises will be on the following terms and conditions :-

- (1) Release of the Government servants for appointment in the enterprises: A Government servant who has been selected for a post in a Central Public enterprise may be released only after obtaining and accepting his resignation from the Government service.
- (2) Retention of lien/quasi-permanent status : No lien/quasi permanent status of the Government concerned will be retained in his parent cadre. All his connections with the Government will be severed on his release for appointment in an enterprise and he will not be allowed to revert to his parent cadre.
- (3) Pay fixation : A Government servant selected for a post in a Central public enterprise will be free to negotiate his emoluments with the enterprise. On appointment to a post in a public sector enterprise on immediate absorption basis a Government servant will be at par with other employees of the enterprises and will be governed by the rules of the enterprise in all respects.
- (4) Pensionary benefits:
  - 1) Resignation from Government service with a view to secure employment in a Central public enterprise with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such cases, the Government servart shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all the retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organisation.

ii) The officer eligible for pension should exercise an option within 6 months of the date of his resignation for either of the following two alternatives :-

- (a) Pro-rata monthly pension and death-cum-retirement gratuity as admissible under the relevant rules.
- (b) Pro-rata gratuity and a lumpsum amount in lieu of pension worked out with reference to the commutation tables applicable on the date of resignation.

NOTE: Where no option is exercised within the prescribed time limit, the officer will be governed by alternative (a) above. Option once exercised shall be treated as final.

iii) Any further liberalisation of pension rules decided upon by Government after the date of resignation of a Central Government servant to join the public enterprise will not be extended to him.

iv) A Government servant who opts for pro-rata monthly pension on his resignation from Government service will not be entitled to relief on pension during his service in the public enterprise.

(5) Leave: A Government servant taking up an appointment in a Central public enterprise will be entitled to encashment of earned leave to his credit at the time of acceptance of his resignation from Government service, subject to a limit of 180 days. Half pay leave will stand forfeited.

(6) Family Pension: If there is no family pension scheme in a public enterprise, or if the officer does not become eligible to join family pension scheme in the enterprise, the family pension as admissible under the Central Government will be allowed to him.

2. For the purpose of these instructions immediate absorption means acceptance of resignation of an officer from Government service to enable him to take up an appointment in a Central Public enterprise, for which he had applied with proper permission.

3. Since the terminal benefits mentioned above are admissible only to those officers who leave Government service to secure employment in the enterprise, with proper permission, a case of grant of these benefits may be processed only after ascertaining from the enterprise concerned that the officer has actually joined them.

4. The stipulation of 'immediate absorption' will apply to all appointments of Central Government servants in the Central public enterprise, irrespective of the level of appointment, the mode of recruitment, and whether an appointment is in public interest or otherwise, but subject to the exceptions made in the O.M. dated 6.3.1985 referred to above.

5. For the purpose of these orders, a Central public enterprise is an undertaking wholly or substantially owned by the Government of India, and which is accepted as such by the Bureau of public Enterprises.

6. The terminal benefits etc. enumerated in para 1 above will be admissible to all Central Government servants, who secure appointments in Central public enterprises with proper permission. A Government servant selected for appointment in an enterprise on the basis of an application submitted by him before joining the Government service will be deemed to have applied with proper permission for the purpose of these orders.

7. All existing instructions on the subject will stand amended/superseded to the extent indicated in the preceding paragraphs. Formal amendments in the statutory rules, where considered necessary, will be carried out in due course.

8. All cases of grant of pensionary benefits etc. to Government servants, who are appointed in the Central public sector enterprises on immediate absorption basis, shall be decided by the administrative Ministries/Cadre Controlling Authorities/Authorities competent to accept resignation of a Government servant in accordance with provisions of this O.M. All other cases not covered under the provisions of this O.M. which require relaxation of any provision should continue to be referred to the Bureau of Public Enterprises with necessary service particulars. Cases of doubtful nature also should continue to be referred to the Bureau of Public Enterprises.

9. The Ministry of Home Affairs, etc. may please bring these orders to the notice of all concerned including the public enterprises under their administrative control.

10. So far as the officers serving in the Indian Audit and Accounts Department are concerned, these orders are being issued after consulting the Comptroller and Auditor General of India.

11. These orders take effect from 6.3.1985.

12. This issues with the concurrence of the Ministry of Finance (Department of Expenditure) and the Department of Public Enterprises.

Sd/- A. Jayaraman  
Director

No.8930/87/D(Est.I/Gp.II)  
Government of India  
Ministry of Defence

New Delhi, the 9th September,

O R D E R

On being selected for appointment to the post of 'Aerodrome Officer' in the National Airport Authority of India, Shri Mukul Upreti, a permanent Assistant of this Ministry is relieved of his duties in the Ministry of Defence with effect from 7.9.1987(AN). His name is accordingly struck off the strength of this Ministry from the same date.

Sd/- (R.K. Karia)  
Under Secretary to the Govt. of India

- ✓ D(Est.I/Gp.I)
- D(Est.2/Cash)
- D(Est.2/Genl)
- DOP&T(CS.II)
- AO, DAD, Ministry of Defence
- ◀ Security Office
- Personal file
- Shri Mukul Upreti, Assistant, Defence(Finance) Division

No. 8930/87/D(Est. I/Gp. II)  
Government of India  
Ministry of Defence

New Delhi, the 8th March, 1988.

OFFICE MEMORANDUM

Subject :- Withdrawal of Resignation.

• • •

The undersigned is directed to refer to your letter dated 22.1.88, on the above subject and to say that your request for retention of lien and withdrawal of resignation has been carefully considered but the same cannot be accepted as you had resigned from the post of Assistant to join the National Airport Authority, which is a Central Public Enterprise. In this connection your attention is invited to Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) O.M. No. 28016/5/85-Estt.(C), dated 31.1.86 and Rule 26 of the CCS (Pension) Rules.

Sd/-

(R.K. Karia)

Under Secretary to the Govt. of India

To

Shri Mukul Upreti,  
C/o. Shri N.C. Joshi,  
A-124-B, Phase-II,  
Ashok Vihar,  
Delhi-52.

Ministry of Defence  
D(Est.I/Gp.II)

Receipt	-1-	Encl. 1-A
Receipt	-2-	Encl. 2-A
Receipt	-3-	Encl. 3-A
Receipt	-4-	Encl. 4-A
Receipt	-5-	Encl. 5-A
	-6-	

Reference encls. 1-A to 5-A.

2. Shri Mukul Upreti, a permanent Assistant of the Ministry of Defence (Finance) Division has submitted his resignation to take-up the appointment of 'Aerodrome Officer' in the National Airports Authority of India. He has requested to accept the same with effect from 7.9.87.

3. Defence Finance Division have forwarded the relevant documents confirming that no dues are outstanding against Shri Upreti and also there is no disciplinary case either pending or contemplated against him. They have also confirmed that Shri Upreti applied through proper channel. Since D(Est.I/Gp.II) is to pass the relevant relieving orders, JS(E), being the competent authority in respect of Group 'B' post is requested to accord kind approval to the relieving of Shri Mukul Upreti with effect from 7.9.1987 (AN).

4. Submitted for approval please.

Sd/-

US (Gp.II)

-7-

Since there is nothing adverse against Shri Upreti, his resignation may kindly be accepted with effect from 7.9.87(AN).

Dir (E)

Sd/-

JS (E)

Sd/- 7.9.87

Sd/- 7.9.87

*ZP*  
U.P.C

भारत सरकार सेवार्थ  
ON INDIA GOVT. SERVICE

from:- Shri T.S. Parikh.

Under Secretary, D(Est-I/402)

Ministry of Defence.

C II, Hartmanni, Dilkusha Road.

New Delhi -11

To :- Shri Mukul Upadhyay

c/o Shri G. Upadhyay

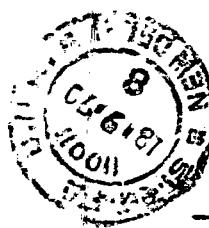
Deputy Manager (Molecule)

Northern Coal Fields.

Singrauli Colliery

Dantewada

Pin - 486 889 (M.P.)



Ministry of Defence  
रक्षा (सेवार्थ) / D(CR)  
नई दिल्ली-110011  
New Delhi-110011

Before the Central Administrative Tribunal,

Lucknow Bench, Lucknow.

Application No. O.I 1285 of 1990/(T.C.) 4/91 (TL)

Sri Mukul Upreti ..... Applicant.

Versus.

Union of India,  
Through the secretary to the Govt. of India,  
Ministry of Defence, New Delhi ..... Respondent.

REJOINDER OF THE APPLICANT TO THE  
COUNTER REPLY OF RESPONDENT.

The applicant above named respectfully sheweth  
as under :-

1. The Counter Reply of the respondent filed in the case has neither been signed nor verified by the respondent or by his delegate and the reply does not indicate the fact of delegation or authorisation, if any. It has been held in Ram Rakha V. Union of India, (1988) 8 A.T.C. 16, that the reply should be filed by the officer impleaded or by his delegate and in case of such delegation the reply should clearly indicate the fact of the delegation or

(Contd.-2)

Mukul Upreti

*Filed today  
S.M.  
16/8/91*

(P)  
1/1

(2).

authorisation. The officer concerned has wilfully refrained from filing the reply. An advocate cannot file the reply on his behalf and the reply filed by the advocate may be his argument but not the reply of the respondent. The verification of the reply has been signed by some person who has not disclosed his identity or authority to sign it on behalf of the respondent. In this view of the matter the counter reply filed in the case is not the reply or written statement of the respondent and may therefore be not taken notice of by the Hon'ble Tribunal.

2. The documents filed with the counter reply are neither certified true copies of their originals, nor their copies have been duly attested by some person. Date has been omitted over some documents, whereas on other documents there are over writings. Most relevant documents viz applicants letter dated 25.9.87 for withdrawal of his resignation, the letter No. 8930/87/D (EST -I/CP.II) dated 8th January 1988 from the Ministry of Defence Govt. of India asking the applicant to clarify the material change in the circumstances to

(Ans.(3)

Mujahid Uppal

(3).

warrant with-drawal of the resignation, reply thereto dated 22nd January, 1988 sent by the applicant, the Personal file of the applicant and his service book have been withheld to suppress material facts.

3. Facts stated in the application by the applicant are reiterated and not repeated herein to avoid repetition. Averments made to the contrary in the counter reply are denied. New facts stated or new pleas raised in the counter reply of the respondent are being replied herein-after.
4. The objection raised about limitation is untenable for facts, circumstances, and cause of action stated in his application by the applicant.
5. Annexure 1 B of the counter reply is the undertaking demanded by the department since the applicant was then on 2.2.1987 a temporary incumbent and it was to be operative on appointment in the new assignment but could not be operative before such appointment in the course of training for appointment as Aerodrome officer in National Airport Authority, hereinafter referred to as N.A.A. The applicant was made permanent subsequently. The undertaking was not to be furnished by a permanent incumbent. It was required for purposes of forwarding the application of the applicant to N.A.A. for appointment as Aerodrome officer,

(4).

or for giving ' NO OBJECTION' to the applicant for applying to N.A.A. for the new assignment as Aerodrome officer. The appointment to the post of Aerodrome officer was subject to the passing out of a training prescribed therefor and the Govt. of India was aware of the said training as it was the controlling authority of its public enterprise, N.A.A.

6. Annexure -2 of the counter reply is the resignation dated Sep. 1, 1987 addressed to the D.F.A. (Estt.), M.O.D./Fin, through proper Channel , since the applicant was then posted as an Assistant in Department of Finance ( Account ) of the Ministry of Defence. It was submitted under duress and Compulsion of the Officers of the department , as explained by the applicant in his application . It was not accepted by the competent officer. It became inoperative after September 7, 1987 and could not be accepted thereafter.

7. Annexure - 4 is the relieving order dated 9th Sept. 1987 and it does not indicate acceptance of the resignation by the competent authority , The omission is significant. The factum of acceptance of the resignation would have been mentioned in the order.

(5).

if the resignation had been accepted by the competent authority. A simpliciter order of relieving was passed without the acceptance of the resignation by the competent authority, since the applicant had become a permanent incumbent by that time and his LIEU over his permanent post could not be terminated under F.R. 14, & even with his consent through resignation.

Fundamental rule of service was not amended by the Govt. of India in conformity with the O.M. No. 28016/5/85-ESTT (C) dated 31.1.1986 referred to in the counterreply.

8. Annexure -3 of the counter reply is the office Memorandum No. 28016/5/85-Estt (c) dated 31.1.1986 mentioned above. It relates to the appointment of Central Govt. Servant in the Central Public enterprises on immediate absorption basis. Para 7 of the O.M. is very important. It ~~is~~ inter alia states specifically that formal amendments in the statutory rules will be carried out in due course. But the Govt. of India did not agree to amend the relevant fundamental rules, as the same have not been amended so far. Without amendment of F.R.S. 12A, 13, 14 and 14A the O.M. has no value in law and cannot override the ~~is~~ statutory Fundamental Rules of Service. It is an arbitrary office order violative of the statutory rules and

Contd.(6).

*Mubin w/sd*

(6).

cannot be relied upon to deprive the applicant of his legal right to maintain his LIEN over his permanent post in the Govt. of India till permanently absorbed in over another post. Besides the LIEN of the applicant over his permanent post could not be terminated by any authority except the president as indicated by F.R. 14 wherein even the power to suspend the LIEN rested with the President.

9. Admittedly the applicant withdrew his resignation through his letter dated 25th September 1987, i.e. within 16 days from 9th September 1987, the day when he was relieved of his duty under the Govt. to join a new assignment under N.A.A. a public enterprise of the Govt. of India itself. He had to withdraw the resignation since he was not by then allowed to join the new assignment by N.A.A. The material change in the circumstances was intimated to the Govt. of India by the applicant by his letter of withdrawal of resignation and subsequent letters. The Govt. of India could not lawfully disallow the applicant to withdraw his resignation for a cogent and compelling reason and could not thereby force the applicant to wait on to join the new assignment at a future date to his disadvantage.

Contd. (7)

Mukund Upadhyay

(7).

10. Rule 26 of central Civil Services Pension Rules was misapplied to the case of the applicant at the time of his request to withdraw his resignation on 25th Sept. 1987 since the applicant had not by then joined the new assignment under N.A.A., and only fifteen (15) days had passed by since the date of his being relieved ~~from~~ of his duty under ~~by~~ the Govt. Besides the Pension Rule could not be applied to deprive the applicant of his right to withdraw the resignation at the earliest date, especially when it was not formally accepted by the competent authority treating it (resignation) as a mere technical formality, and simply relieving the applicant of his duties to join the new assignment vide Govt. of India, Ministry of Finance, O.M. No. 3379-E, III(b)/65 dated 17th June, 1965 reproduced under the Rule 26 ibid in P. Muthu Swamy's Pension Compilation (Ninth Edition)

11. Rule 26 ibid is violative of F.R. 14A, and cannot override the statutory rules relating to LIEN over the permanent post of the applicant. Besides it is also arbitrary and discriminatory in nature, as it arbitrarily discriminates in between Govt. Service and service of the Public Enterprise wholly or substantially controlled or financed by the Govt. in respect of withdrawal of resignation.

Contd. (8).

Muthu Swamy

(8).

12. Annexure - 5 of the counter reply is Govt. of India reply letter No. 8930/87/D (Est. I/GP-II) dated 8th March 1988 regarding withdrawal of resignation. It related to the original letter dated 25.9.87 regarding withdrawal of resignation though it refers to a subsequent letter dated 22.1.88 which was sent in reply to the Govt. of India letter No. 8930/87/1988 D(Est.-I/GP-II) dated 8th January 1988 requiring the applicant to clarify the changed circumstances under which the resigartion was being withdrawn. The connected letters have been suppressed to conceal the truth of the matter. They may be perused by summoning the personal file of the applicant, and the relevant record .

13. Govt. of India took an unduly long time of more than five months in sending their reply to the applicant regarding his request to withdraw his resigartion. In the meantime N.A.A. called upon the applicant to join the training course as Aerodrome officer (Trainee ) and being out of job the applicant had no option but to join the training.

14. The applicant did his best to pass out the training but could not do so. Hence he was not appointed to the post of Aerodrome Officer by N.A.A.

15. On not being appointed to the Post of Aerodrome Officer the applicant reported to in the Govt. of India for

Contd.(9).

Mukund Upadhyay

(9).

permission to join his permanent post on the basis of his LIEN thereon under statutory Fundamental Rules of Service. He could not do so earlier, while under training for the post of Aerodrome Officer.

16. The cause of action to file the present application before the Hon'ble Tribunal arose on 7th May, 1990 when the applicant was not allowed to join his Permanent Post on his not getting appointment on the new assignment over the post of Aerodrome Officer <sup>in</sup> N.M.A. The applicant had sufficient cause for not making the application earlier while under Training for the post of Aerodrome Officer.

17. The averments made by the applicant in his application in respect of cause of action to file his application are just and proper. They have been wrongly and improperly described as mischievous and misleading in counter reply. Such a remark is unwarranted.

18. The application was filed within time and averments made to the contrary in the counter reply are denied.

19. Annexure -6 <sup>of</sup> ~~of~~ the counter reply, especially its paras 2,3, and 4, indicates that a simple request was made therein for a relieving order simpliciter by J.S.(E) and no request was made therein by the

Contd.(10).

Muzammil

(10).

initiating Officer for the ~~ex~~ acceptance of the resignation, resignation. J.S. (E) being competent authority to relieve was requested to accord kind approval to the relieving of Sri Mukul Upreti with effect from 7.9.1987 (A.N.). J.S(E) was not reported to be competent authority to accept the resignation. There is no endorsement regarding acceptance of the resignation by the competent authority. The office noting does not indicate who was the competent authority to accept the resignation, since the President of India was the appointing authority of applicant, he alone or his delegate could only accord acceptance of the resignation, but the papers do not seem to have been submitted to him for according ~~approval~~ for the acceptance of the resignation. The resignation was simply treated as a mere technical formality for relieving the applicant and was not submitted to the competent authority for according his acceptance there-on. No endorsement about acceptance of resgination is recorded over annexure -6. The date of the signature of JS(E) was first typed as 8.9.87 and later on tampered with a over-writing to appear as 9.9.1987. The relieving order - Annexure 4 of the counter reply is also dated

Contd. (11).

Mukul Upreti

9th September 1987. Even in the said Relieving Order the factum of acceptance of resignation was not mentioned. It was stated therein "On being selected for appointment to the post of 'Aerodrome Officer' in the National Airport Authority of India, Shri Mukul Upreti, a permanent Assistant of this Ministry is relieved of his duties in the Ministry of Defence with effect from 7.9.87 (AM)." The order nowhere states that the applicant was being relieved of his duties of his permanent post on the acceptance of his resignation. If the resignation had been formally accepted by the competent authority which could be The President of India or his delegate and none-else, the Relieving order would have been passed on the basis of acceptance of resignation and not the basis of selection for appointment to the post of 'Aerodrome Officer' in the National Airport Authority.

20. The acceptance of resignation by the competent authority was nowhere mentioned by Govt. of India in any of their letters or communications issued in the matter. The omission is significant and operates as a Promissory Estoppel against the Govt. of India. Since the Govt. of India at no stage of the matter intimated to the applicant that his resignation had been accepted, it is now estopped to assert that resignation had

(Contd. (12)).

MUKUL UPRETI

been accepted .

21. Since the resignation was not accepted , the applicant could lawfully withdraw it and the rulings cited in the application in support of the contention are applicable to the present case.

22. Relevant record of the department wherein the applicant was serving under the Govt. of India including his personal file and service Book will disclose to the Hon'ble Tribunal how the matter was processed in the department and who was the authority competent to appoint the applicant or dismiss him or to accept his resignation. The same may be summoned and perused in the interest of Justice.

Lucknow

Dated:- 15.8.91

*MUKUL UPRETI*

( MUKUL UPRETI )

Applicant.

VERIFICATION

I, Mukul Upreti, son of Sri Ramesh Chandra Upreti , aged about 28 $\frac{1}{2}$  years , without job, at present residing at - 23 B.N. Road, Lucknow do hereby verify that the contents of paras 1 to 22 of the Rejoinder are true to my personal knowledge and belief and that no material fact has been suppressed.

Signed this 15th day of August 1991 at

Lucknow.

*MUKUL UPRETI*

( MUKUL UPRETI )

Applicant.

*J.S. Singh*

*( J.S. SINGH )*  
Adviser

15  
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
CIRCUIT BENCH, LUCKNOW

M.P. No. 72 OF 1992(L)

In Re:

T.A. No. 4 OF 1991(T)

[O.A. No. 1285 OF 1990]

Union of India & Others ... Applicant/Respondent

In Re:

Mukul Upreti ... APPLICANT

Versus

Union of India & Others ... RESPONDENTS

APPLICATION FOR

TAKING THE SUPPLEMENTARY COUNTER REPLY OF THE RESPONDENTS

TO THE REJOINDER FILED BY THE APPLICANT

ON RECORD OF THE HON'BLE TRIBUNAL

*Filed today*  
*27/1/19*  
The Applicants / Respondents most respectfully submits as under:

1. That the Applicant has filed Rejoinder to the Counter Reply of the Respondents. Keeping in view the contents of the Rejoinder of the Applicant, it was necessary to file Supplementary Counter Reply of the Respondents to the Rejoinder filed by the Applicant.

*Hukum Chand*

...2.

2. That the Supplementary Counter Reply to the Rejoinder filed by the Applicant is ready and the Applicants / Respondents request this Hon'ble Tribunal to permit the Applicants to file the Supplementary Counter Reply and take the said Suplementary Counter Reply on record of the Hon'ble Tribunal.

Therefore, it is requested that for the reasons stated above, this Hon'ble Tribunal may be pleased to permit the Applicants to file the Supplementary Counter Reply and take the same on record of the Hon'ble Tribunal in the interest of justice.

Lucknow,

  
(ASIT KUMAR CHATURVEDI)

Dated :

Advocate

COUNSEL FOR THE APPLICANTS/RESPONDENTS

BEFORE THE C.E. ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

APPLICATION NO. O A 1285 of 1990/4/91(TL)

Shri Mukul Upreti .... Applicant

Versus

Union of India  
Through the Secretary to the  
Government of India, Ministry  
of Defence .... Respondent

I N D E X

<u>S.No.</u>	<u>Particulars</u>	<u>Pages</u>	<u>C.Fees</u>
1.	Supplementary/Counter reply to the rejoinder filed by the applicant	1 - 14	
2.	Annexure 7 Government of India Notification No. 351 dated 14.2.90	15 - 16	
3.	Annexure 8 Applicants letter dated 22.1.1988	17	
4.	Annexure 9 Ministry of Defence Order No. 15(30)79-D(Est.I/Gp.I) dated 6.3.1982.	18	

RESPONDENT

THROUGH:

Asit Kumar Chaturvedi  
(ASIT KUMAR CHATURVEDI)  
CENTRAL GOVT. ADDL. STANDING COUNSEL  
NEW DELHI

Lucknow

Dated:

Before the Central Administrative Tribunal

Lucknow Bench, Lucknow

Application No. O.A.1285 of 1990/4/91(TL)

Shri Mukul Upreti .... Applicant

versus

Union of India

Through the Secretary to the Govt. of India, Ministry of  
Defence, New Delhi .... Respondent

Supplementary/Counter reply of the respondent to the  
rejoinder filed by the applicant in the above cited case

The respondent respectfully showeth:

Reply on merits:

Para 1: The averments made in the said para are factually  
incorrect and denied. The counter reply filed by  
the respondent in the above cited case has been  
verified and signed by Shri I.S. Parihar, Under  
Secretary to the Government of India for and on  
behalf of the Union of India. As per the Govern-  
ment of India, Ministry of Law and Justice,  
Department of Legal Affairs notification No.  
S.R.O.351 dated 14th February, 1990 (Annexure  
No.7 to the Supplementary Counter Reply), the  
Under Secretary is one of the officers who have  
been authorised to sign plaints and written  
statements in suits in any Court of Civil  
jurisdiction or (in written proceedings) by or  
against the Central Government.

The counter reply so prepared on behalf of the Union of India was filed in the Central Administrative Tribunal, Principal Bench, New Delhi by Shri P.P.Khurana, Central Government Additional Standing Counsel. He was authorised to do so on behalf of the Union of India vide Vakalatnama dated 17th August, 1990.

As such, the counter reply filed in this case is the correct and authentic reply on behalf of the Respondent. The averments made in the rejoinder are mischievous and without any basis. Therefore, the Hon'ble Tribunal is requested not to take notice of them.

*Replying*

Para 2: In reply to this para it is submitted that the documents furnished along with the counter reply are the true copies and were annexed for the purpose of reference. If the certified copies or the originals are required for perusal then the same can be submitted as and when desired.

Para 3: No reply is required to this para.

Para 4: As already mentioned in the counter reply the application is not maintainable in terms of Section 21(1)(a) of the Administrative Tribunal Act. The case was finally decided in 1988 and the present application was filed beyond the period of limitation prescribed under Section 21 of the Administrative Tribunal Act. The successive representations cannot extend the statutory limit of time.

Para 5: The averments made by the applicant in the said para are wrong and denied. The statement of the applicant that the undertaking dated 2.2.1987 is required to be given only by a temporary Government servant is mischievous and misleading. It is misleading because of the facts that the Government servant irrespective of his status whether he is temporary or permanent is required to sever all his relations with the Government job for taking appointment in Central Public Enterprise. As per the instructions issued by the Department of Personnel and Training vide their O.M.No.28016/5/85-Estt(C) dated 31.1.86 a Government servant whether he is temporary or permanent who has been selected for a post in a Central Public Enterprise can be released only after obtaining and accepting his resignation from the Government service. Therefore as a matter of abundant precaution a undertaking is taken from the Government employee when their applications are forwarded for appointment in the Central Public Enterprise to the effect that in the event of his selection for the post in Public Sector Enterprise/Corporation/ Autonomous Body for which he has volunteered that he will proceed to the new assignment, if selected on immediate absorption basis and will be deemed to have proceeded on retirement from the present department. The declaration is also taken

- 4 -

(Signature)

to the effect that he will not be able to revert to the parent department and hold any lien.

Para 6: It is denied that he had submitted his resignation from the post of Assistant in the Ministry of Defence under duress and compulsion. In his resignation letter dated 1.9.87 he has clearly indicated that he has been selected for appointment as Aerodrome Officer in National Airports Authority, therefore his resignation may be accepted and he may be relieved from the services with effect from 7th September, 1987. The applicant had given very short notice i.e., only 7 days for the effective date from which he intended to resign from the Government service. However, it was expeditiously processed so that there may be no delay to him for taking up the new appointment.

*Bhargav*

Para 7: The relieving order dated 9.9.87 (Annex.No.4 to Counter Reply was issued on the acceptance of the resignation, submitted by the applicant. In the resignation letter it was indicated that he has been selected for appointment as Aerodrome Officer in National Airports Authority, therefore his resignation from the post of Assistant may be accepted and he may be relieved from the service with effect from 7.9.1987. Accordingly, in the relieving order dated 9.9.87 it was mentioned that he is



being relieved of his duties in the Ministry of Defence with effect from 7.9.87 (AN). Also that his name has accordingly been struck off the strength of the Ministry of Defence with effect from the same date. The relieving orders so issued on the acceptance of the resignation of the applicant, were therefore in order. Since it is specifically mentioned in the O.M. No.28016/5/85-Estt(C) dated 31.1.86 (Annexure 3 of Counter Reply) that no lien/quasi permanent status of the Government servant concerned will be retained in his parent cadre and all his connections with the Government will be severed on his release for appointment in an enterprise and he will not be allowed to revert to his parent cadre. Therefore, irrespective of the fact that the applicant was a permanent incumbent, it was not required to maintain his lien and he could not revert back. F.R.14 A applies to Government servant. Consequent on his resigning from Government service and consequently having been relieved. The applicant ceased to be a Government servant and hence F.R.14 A is not relevant.

Para 8: In reply to the averments made in this para it is mentioned that in para 7 of O.M.No.28016/5/85-Estt(C) dated 31.1.1986 (Annexure 3 of

Counter Reply) it is specifically mentioned that all existing instructions on the appointment of Central Government Servant in the Central Public Enterprise will stand amended/superseded. However no statutory rule exist on the appointment of Central Government Servant in the Central Public Enterprise as such the conditions have been prescribed under instruction only as such no formal amendments in the statutory rules, where considered necessary. Therefore, the applicant has misled by stating that in the para 7 of the said O.M. it has been mentioned that formal amendments in the statutory rules will be carried out in due course. Since on resigning from the Government job for taking assignment in Central Public Enterprise a person ceases to be a Government servant, therefore, Fundamental rules are not applicable to him. Nowhere the lien of the applicant has been suspended. Because of his resignation he was not entitled for any lien, otherwise resignation will have no meaning.

Para 9: In the said para the applicant has made wrong and misleading statement. The applicant in his applications for the withdrawal of his resignation had nowhere mentioned any material change of the circumstances.



In the application dated 22.1.1988 (Annexure No.8 to supplementary Counter Reply) for the withdrawal of resignation the applicant had stated that he was to join training as Aerodrome Officer on 26.10.87 but could not join the same as he had contracted 'infectious hepatitis'. However, the National Airport Authority had agreed to take him for training from 25th January, 1988 which the applicant preferred to join. It is therefore seen that the applicant did not join the National Airport Authority initially with effect from 26.10.87 only on personal grounds and preferred to join subsequently. Besides, in the letter of resignation the applicant had not specified any date from which he was required to join the new assignment. Therefore, the applicant has made a misleading statement that when he had initially submitted his application for the withdrawal of his resignation he was not allowed to join new assignment in National Airport Authority.

*Re Bewaji*

Para 10: The averment made by the applicant in this para that Rule 26 of Central Services Pension Rules was misapplied in his case is wrong and denied. The resignation of the applicant was accepted by the competent authority prior to his release from the

Ministry of Defence. Sub Rule (5) of Rule 26 of CCS (Pension) Rules, 1972 clearly states that a request for withdrawal of resignation cannot be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially controlled or financed by the Government. In the present instance the applicant had resigned from the Ministry of Defence in order to take appointment under a Central Public Enterprise. In view of this, the request made by the applicant for withdrawal of his resignation after it was accepted was not permissible under the rules. The Government of India, Ministry of Finance O.M.No.3379 E III(b)/65 dated 17th June, 1965 pertains to the Government servants who apply in the same or other Departments of Government of India. The reference to this O.M. in the said para is not understood as the same is not applicable in the instant case.

*W.Singh*

Para 11: The averment of the applicant in this para that Rule 26 of CCS (Pension) Rules is violative of F.R. 14 A is baseless and denied. On the acceptance of his resignation to take up assignment in Central Public Enterprise, the applicant ceased to be the Government servant. Therefore, FR 14 A is not applicable in his case.

-9-

Para 12: In reply to the averments made in this para it is stated that no material fact was suppressed in this Ministry's O.M.No.8930/87/D(Est.I/Gp.II) dated 8th March, 1988 (Annexure No.5 to Counter Reply). If required the relevant records can be submitted for the perusal of the Tribunal.

Para 13: The applicant was asked vide this Ministry's O.M.No.8930/87/38-D(Est.I/Gp.II) dated 8th January, 1988 to clarify the reason leading to his not joining the office of the National Airport Authority. The representations of the applicant were carefully examined and since his request was not covered under the rules and instructions, he was accordingly informed vide this Ministry's O.M.No.8930/87/D(Est.I/Gp.II) dated 8th March, 1988 that his request for retention of lien and withdrawal of resignation could not be accepted as he had resigned from the post of Assistant in the Ministry of Defence in order to join the National Airport Authority which is a Central Public Enterprise. In the reply his attention was also invited to Department of Personnel & Training's O.M.No.28016/5/85-Estt(C), dated 31.1.86 and Rule 26 of the CCS (Pension) Rules in the light of which his request was examined and rejected. The applicant on his own violation had not joined the assignment in National Airport Authority with effect from

*BBBings*

26.10.1987. As mentioned by him in his representation dated 22.1.1988 he did not join the National Airport Authority in time on personal grounds and he had preferred to join the same with effect from 25.1.1988. The applicant had himself preferred to resign from the Government service to take up the assignment in the National Airport Authority and he was relieved from the Ministry of Defence on the date specified by him. Therefore, the Government was not liable if there is any delay on the part of the applicant to take up the new assignment in time.

*Ansufi*  
Para 14: The Government is not liable if the applicant could not pass out the training for appointment in National Airport Authority. It is the applicant who was required to make his best efforts to qualify the same since he had taken the said assignment with his own consent and wishes. In this regard it may be pointed out that the applicant has not indicated the reasons why he was unable to qualify the training.

Para 15 & 16: As already mentioned the applicant had requested for withdrawal of his resignation and retention of his lien in this Ministry vide his representation dated 25.9.87. The representation was examined in the light of the existing rules and instructions on the subject and the applicant was informed vide this Ministry's O.M.

(X)  
AC

No.8930/87/D(Est.I/Gp.II) dated 8th March, 1988 (Annexure No.5 to Counter Reply) that his request was not acceptable as it was not covered thereunder. The provisions under which his representation was examined was also communicated to him. In the reply given by the Ministry of Defence to the applicant vide O.M.No.394/89-D(Est.I/Gp.II) dated 7th May, 1990 (Annexure to original Application) in response to his representation received on 16.4.1990 only reiterates the final decision already communicated to him vide this Ministry's O.M.No.8930/87-D(Est.I/Gp.II) dated 8th March, 1988. It is well settled that repeated representations do not afford a fresh cause of action. Since a final reply to the representation made by the applicant was issued on 8th March, 1988 period of limitation would count from that date and not from 7.5.90 as the applicant contends. The applicant in these paras has made misleading and mischievous statements just to cover up the delay and lapse on his part for not filing the application in the Tribunal in time.

*Ansug*  
—

Para 17: In reply to this para it is stated that it is only the after thought and matter of opinion of the applicant.

Para 18: In view of the facts stated above in reply to paras 15 & 16 it is mentioned that application suffered from Bar of limitation.

(K)  
(A)

Para 19: In para 2 of Annexure 6 of the counter reply it has been clearly mentioned that the applicant has submitted his resignation and had requested to accept the same with effect from 7.9.87. The resignation was submitted for the approval of Joint Secretary (Establishment), Ministry of Defence. The power of appointment to the post of Assistant held by the applicant which is a Group 'B' non-gazetted post is delegated to the said Joint Secretary, as evident from Order No.15(30)79-D(Est.I/Gp.I) dated 6.3.82 (Annexure No.9 to Supplementary Counter Reply). The resignation was accepted by him and accordingly the orders of relieving of the applicant with effect from 7.9.87 were issued. In the orders it was clearly mentioned that his name has been struck off the strength of the Ministry of Defence with effect from 7.9.87. The orders were in tune of the resignation letter dated 1.9.87 submitted by the applicant that on his selection for appointment to the post of Aerodrome Officer in National Airport Authority he intended to resign from the service and he may be relieved with effect from 7.9.87.

Para 20: It is only an after thought of the applicant that his resignation was not accepted by the competent authority. The resignation of the applicant was accepted by the Joint Secretary

(Establishment) Ministry of Defence. The authority had been conferred to the said Joint Secretary vide Ministry of Defence Order No.15(30)79-D(Est.I/Gp.I) dated 6.3.1982 (Annexure No.9 to the Supplementary Counter Reply). In the said order it has been clearly mentioned that with the approval of Raksha Mantri that with immediate effect, all cases relating to appointment, confirmation etc. (excluding disciplinary) in relation to Group 'B' posts (Gazetted and Non-gazetted) in the Ministry of Defence Secretariat will be disposed off with the approval of Joint Secretary (Establishment). The applicant held the Group 'B' Non-gazetted post of Assistant in the Ministry of Defence and the authority competent to appoint in respect of the service or post is the authority competent to accept the resignation of the Government servant. As such the resignation of the applicant was accepted by the Competent Authority to do so. It is baseless that the applicant was not informed that his resignation was not accepted by the Competent Authority.

*Bhasin*

Para 21: As already mentioned in reply to the paras 19 & 20 of the rejoinder, the resignation of the applicant was accepted by the Joint Secretary (Establishment) Ministry of Defence who has been empowered to do so, therefore, the question of withdrawing of the resignation by the applicant

on the ground that it was not accepted by the Competent Authority is misleading.

Para 22: The relevant records as and when desired can be produced for the perusal of the Tribunal.

In view of the facts and submissions already made in the counter reply and in the above para it is submitted that the present application being devoid of any merit may kindly be dismissed with costs.

Prayed accordingly,

On behalf of the Respondent

Through

*Asit Kumar Chaturvedi*  
(ASIT KUMAR CHATURVEDI).

#### VERIFICATION

Verified at New Delhi on this day of  
20th Jan, 1992 that the contents of this  
reply are true to the best of my knowledge and on the  
basis of information received from the official  
records believed to be true and that I have not  
supressed any material fact.

Date: 20.1.92

*B.P.Singh*  
(B.P.SINGH)  
on behalf of Union of India

TO BE PUBLISHED IN THE GAZETTE OF INDIA PART II SECTION 3  
SUB SECTION (1) SIMULTANEOUSLY WITH HINDI VERSION

Government of India  
(Bharat Sarkar)  
Ministry of Law and Justice  
(Vidhi Aur Nyaya Mantralaya)  
Department of Legal Affairs  
(Vidhi Karya Vibhag)  
\*\*\*

New Delhi, the 14th February, 1990

NOTIFICATION

S.R.O. 351 In exercise of the powers conferred by rule 1 of order XXVII of the First Schedule to the Code of Civil Procedure 1908 (5 of 1908) and in supersession of the notification of the Government of India in the Ministry of Law No. SRO 351 dated 25.1.1958 and 165 dated the 1st September, 1953, the Central Government hereby appoints:-

- (i) The officers specified in the schedule annexed hereto as persons by whom plaints and written statements in suits in any court of civil jurisdiction or (in writ proceeding) by or against the Central Government shall be signed;
- (ii) Those of the officers referred to in sub-clause (i) who are acquainted with the facts of the case, as persons by whom such plaints and written statements shall be verified.

SCHEDULE

I. GENERAL

Any Secretary, Additional Secretary, Special Secretary, Joint Secretary, Director, Deputy Secretary, Under Secretary to the Government of India or Dusk Officer/Section Officer.

BDSingh

.....2/-

G. Office of the Chief Administrative Officer.

Chief Administrative Officer

Deputy Chief Administrative Officer

Senior Administrative Officers

H. Canteen Stores Department

General Manager, Canteen Stores Department

Joint General Manager, Canteen Stores Department

Regional Manager, Canteen Stores Department

Depot Managers, Canteen Stores Department

I. Defence Accounts Department

Assistant/Deputy/Additional Controller

General of Defence Accounts

Controller/Joint Controllers/Deputy Controllers/  
Assistant Controllers of Defence Accounts.

Accounts Officers.

J. Defence Lands and Cantonment Organisation.

Director General, Defence Lands and Cantonments.

Deputy Director General, Defence Lands and Cantonments

Assistant Director General, Defence Lands and  
Cantonments

Director, Defence Lands and Cantonments

Deputy Director, Defence Lands and Cantonments

Defence Estate Officer

Special Defence Estate Officer

Assistant Defence Estates Officer.

*B. B. Singh*

From:

- 17 -



Annexure D

Q  
Reh

Mukul Upadhyay,  
C/O Sh. N.C. Joshi,  
A-124-B, Phase II,  
Ashok Vihar,  
DELHI - 110052

To

The Joint Secretary, (E)  
Ministry of Defence,  
South Block,  
New Delhi

Sub: Clarification regarding withdrawal of resignation  
against permanent post of Assistant

Sir,

In continuation of my letter dated 2nd December, 1987, which remains unfeplied and is reported to be under processing, I am to clarify that I had initially withdrawn my resignation, vide my Regd.A.D. letter dated 25th Sep.1987 addressed to the Under Secretary, Ministry of Defence, D(Estt.I/Gp II) ( a photostat copy enclosed for ready reference), if my lien over permanent post of Assistant was not to be retained. The said letter dt. 25th Sep.1987 was received in the office of the Under Secretary D(Estt.I/Gp II) on 29th Sep.1987 vide Postal Acknowledgement receipt.

Since my letter dt. 25th Sep.1987 has not been replied and I have finally decided to resume my duty on the permanent post of Assistant and presented the application dt. 2-12-1987, it may also be mentioned that my resignation over the permanent post was submitted under duress and mental oppression caused by the refusal of leave needed to appear at the final competitive examination of Indian Civil Services and on account of my selection for appointment to the post of Aerodrome Officer in the National Airport Authority.

I therefore request you to keep in view the above stated relevant facts in passing the necessary order on my application for withdrawal of my resignation.

It is also requested that suitable order may kindly be passed soon to enable me to join my permanent post of Assistant at the earliest so that I may not remain without permanent job.

An early reply is solicited.

Yours faithfully,  
Mukul Upadhyay  
(MUKUL UPRETI).

Copy to:- Department of Personnel and Training(CS II).

*Contd*

*P.B.Singh*

*In  
Shri (H.M.)  
M. A. T. S.*

*Din (H)*

No.15(30)/79/D(Est.I/Gp.I)  
Government of India  
Ministry of Defence,

New Delhi, the 6th March, 1982



O R D E R

It has been decided with the approval of Raksha Mantri that with immediate effect, all cases relating to appointments, confirmation, etc. (excluding disciplinary) in relation to Group 'B' posts (Gazetted and Non-gazetted) in the Ministry of Defence Secretariat will be disposed of with the approval of JS(E).

2. Similar cases relating to Under Secretaries and equivalent will be disposed of with the approval of Additional Secretary/Defence Secretary.
3. Cases relating to appointments, etc., of Deputy Secretaries and above will continue to be submitted for approval of R.M..

Sd/- C.F. Kapoor  
Deputy Secy. to the Govt. of India

Copy to:-

xx

xx

xx

P.Singh

Aggarwal/

(S.C.)

IN THE CENTRAL ADMINISTRATION TRIBUNAL,

BENCH AT LUCKNOW.

M.P. No. 13/92 (L)

Application No. 4/91 (TL) OA 1285/1990.

Mukul Upreti - - - - - Applicant

Versus

Union of India - - - - - Respondent.

F.F.: 27-1-92

APPLICATION TO REQUISITION CERTIFIED  
RECORD FROM THE CUSTODY OF UNION OF  
INDIA, MINISTRY OF DEFENCE UNDER RULE  
29-(ix) OF C.A.T. PROCEDURE RULES.

In the above mentioned case the following

documents will be required for the perusal of the  
Hon'ble Bench in the course of hearing to ascertain  
the truth of the matter:-

*Fixed today*  
*S.M.*  
8/1/92

1- Personal file of Mukul Upreti, a permanent  
Assistant of the Ministry of Defence (Finance Division)  
New Delhi.

2- Service Book of the said Mukul Upreti.

3- Resignation of Mukul Upreti dated 01-09-1987.

*W.M.*

...

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4- Order of acceptance, if any, by the competent authority of Govt. of India in respect of the resignation of Mukul Upreti.

5- Letter of the said Mukul Upreti dt. 25-9-87 to withdraw his resignation.

6- Letter of Government of India, Ministry of Defence No. 8930/87/D (ESTD I/GP II) dated 8th Jan, 1988 to Mukul Upreti.

7- Reply letter of Mukul Upreti dt. Jan. 22, 1988 Govt. of India, Ministry of Defence.

8- Order, if any, of the competent authority of India, Ministry of defence allowing Mukul Upreti to withdraw his resignation.

9- Representation of Mukul Upreti to the Govt. of India, Ministry of defence through the secretary dt. Nov. 1988 or 12-1-1989 regarding maintenance of his lien over his permanent post of an Assistant.

10- Order of the competent authority of Govt. of India, Ministry of defence, if any, regarding termination of lien of Mukul Upreti over his permanent post of an Assistant.

11- Letter of Govt. of India, Ministry of Defence No. 394/89/D (ESTD I/GP II) dated 21st April 1989.

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P R A Y E R

WHEREFORE, it is most respectfully prayed  
that the above mentioned documents may kindly be  
requisitioned from the Government of India, Ministry  
of defence for the perusal of the Hon'ble <sup>Bench</sup> ~~Beck~~ for  
just decision of the matter in issue.

Lucknow/

8-1-1992.

J.S. Singh  
08-1-1992

( J.S. SINGH )

Advocate,

Counsel for the applicant