FORM NO. 21

(*See* rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ...BENCH

~~OA~~/TA/~~RA/CP/MA~~/PT ....3.....of 1990

Jug Lal .....Applicant(S)

Versus

U.O.I. & Ors .....Respondent(S)

INDEX SHEET

Serial No.	DESCRIPTION OF DOCUMENTS	PAGE
	Order Sheet	1 & 2
	Judgment 15-11-90	3 to 5
	Petition	6 to 55
	Suppl. R.A.	56 to 66
	High Court order	67

Certified that the file is complete in all respects.

Signature of S.O. 15/11/21

Signature of Deal. Hand

ANNEXURE - A

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW.

INDEX SHEET

CAUSE TITLE _____ of 199

Name of the parties _____

_____ Applicant.

Versus.

_____ Respondents.

Part A.B.C.

Sl No.	Description of documents	Page

T.A. 3/90 (TC)
(W.P. No. 1632/99)

(A1)

2.9.90 No Sitting adjourned to 6.9.90

6.9.90. No sitting. Adj. to 11.9.90

OR

This file has been recd. from High Court 1.3.90

Case is admitted - CA/RA filed

Case is ready for hearing.

Notices were issued to both the parties -

Submitted for order

3/9/90

11-9-90 Hon'ble Justice K. Nath V.C.
Hon'ble Mr. M.M. Singh A.M.

The the said damage of Hon'ble Justice Kani case is adjourned to 12-9-90

A.M. V.C. B.O.C.

Later on the notices of O.P. no 3 notice has been return back with postal remark "लेने से इंकार"

S.F.O.

10/9

12.9.90 Hon'ble Justice K. Nath V.C.
" M.M. Singh A.M.

Counsel of the parties are present. CA/RA have been exchanged. The case may be listed for final hearing on 13.11.90.

(A.M.) (V.C.)

(A5)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH
LUCKNOW

T.A. No. 3 of 1990
(Writ Petition No. 1632 of 1979)

Jag Lal — Petitioner

versus

Union of India & Ors. — Respondents.

Hon. Mr. Justice K. Nath, Vice Chairman.
Hon. Mr. M.Y. Priolkar, Adm. Member.

(By Mr. M.Y. Priolkar, Adm.)

This is the Original Writ Petition No. 1632 of 1979, which on transfer to this Tribunal by the Lucknow Bench of the Allahabad High Court, was been renumbered as Transferred Application No. 3 of 1990. The grievance of the petitioner, who is a railway employee, is that he was dismissed from service in 1975 and after a suo moto review by the administration, he has been re-appointed on the same post on 24.7.78 but in the lowest pay in the scale instead of being reinstated with full benefits of past service, back wages, seniority etc. The petitioner, who had joined the North Eastern Railway on 17.3.[illegible] was dismissed from service while working [illegible] Lucknow by order dated 8.7.1975 of the Senior Divisional Mechanical Engineer, Lucknow under Rule 14(ii) of the Discipline and Appeal Rules, [illegible] Appeal [illegible] 28.7.1975 against the dismissal [illegible] by the Divisional Superintendent [illegible]

review petition dated 29.5.1976 was also rejected by the General Manager on 14.4.1977. On 12.7.1978, [illegible], the General Manager himself reviewed the petitioner's case and approved his appointment as fitter at the lowest pay in the grade. The petitioner claims that after joining his duties on 22.7.1978 he submitted a representation dated 23.5.1979 to General Manager requesting for reinstatement with full benefits instead of re-appointment at the lowest pay in the grade. The respondents in their counter-affidavit have, however, denied that any such representation was made by the petitioner.

3. In the present petition, the petitioner contends that the dismissal order dated 8.7.1975 is [illegible] also as per the law applicable to his case, his initial pay on re-appointment shall not be less than the pay drawn last and on any previous occasions. But he has not cited any authority or explained the grounds in support of these contentions. Even in his representation dated 23.5.1979 (Annexure No. 7) which he claims to have submitted to the General Manager, no plea is taken that the dismissal order is illegal or that the pay on re-appointment cannot be at the lowest stage in the grade. During the final hearing, the learned counsel for the petitioner relied on two judgments, one of the Allahabad High Court and the other of this Tribunal (Allahabad Bench), in support of his prayer for quashing the [illegible] order dated 8.7.1975 and for re-instatement with full benefits. In the Writ Petition No. 218 of 1977 decided by Allahabad High Court, Lucknow Bench on 28.4.1978 (Annexure-[illegible]), the impugned

A5

order of dismissal from service passed against the petitioner in that case had been quashed for the reason that no order of removal from service could be passed against a railway employee under Rule 14(ii) unless an opportunity of showing cause to the penalty proposed was given to the employee concerned. In our view, this judgment will not help the present petitioner, since as we have already stated above, he had not taken this plea of denial of opportunity any time earlier and it is now too late to raise this contention against a dismissal order of 1975.

4. In the second judgment filed by the petitioner, the Allahabad Bench of this Tribunal in T.A. No. 423 of 1987, (unreported) had quashed an order of premature retirement under Rule 2046 (h) of the Railway Code since the mandatory requirement of three months' notice or three months pay in lieu of notice had not been fulfilled in that case. This judgment is, therefore, of no relevance to the present case. One additional reason given in that judgment, namely that the petitioners in that case were not retained in public interest but for certain other considerations will also have applicability ~~[illegible]~~ only to the facts of that case. This judgment can also, therefore, be of little assistance to the present petitioner.

5. On the basis of the foregoing discussion, we see no merit in this petition, which is accordingly dismissed, with no order as to costs.

Adm. Member. 15-11-90

Vice Chairman.

Lucknow Dated: 15 November, 1990.

(A6) 1/1

CIVIL
SIDE
CRIMINAL

GENERAL INDEX

(*Chapter XLI, Rules* 2, 9 *and* 15)

Nature and number of case — Writ 1632 79

Name of parties — Jagdish v. Union of India

Date of institution — Date of decision —

File no.	Serial no. of paper	Description of paper	Number of sheets	Court-fee: Number of stamps	Court-fee: Value (Rs. P.)	Date of admission of paper to record	Condition of document	Remarks including date of destruction of paper, if any
1	2	3	4	5	6	7	8	9
	1	General Index	1	—	—			
	2	Cmdt. 17892 (w)-89	2	1	5.00			
	3.	Copy of petition Annexures & affidavit	36		—			
	4.	Cmdt. 17893 (w) of 89 with Registrar affidavit	6	2	7.00			
	5	Counsel Notice	1	—	—			
	6.	Application	3	1	5.00			
	7	Power	1	3	5.00			
	8.	Order Sheet	1	—	—			
	9.	Fresh Copy	1	—	—			

I have this day of 197 , examined the record and compared the entries on this sheet with the papers on the record. I have made all necessary corrections and certify that the paper correspond with the general index, that they bear court-fee stamps of the aggregate value of Rs. , that all orders have been carried out, and that the record is complete and in order up to the date of the certificate.

Munsarim.

Clerk.

Date —

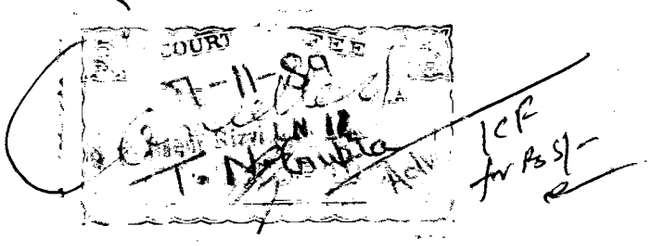
Next for 2/7/90

16/3/90

(A7) 2/1

To:

The Deputy Registrar ,
Hon'ble High Court of Judicature at Allahabad
Sitting at Lucknow .



In re : Writ Petition No. 1632 of 79

Jaglal Vs . Union of India .
& others .

As per your letter dated 26.10.89 in pursuance of order dated 13.9.89 passed by Senior Judge I have been directed to submit a copy of writ petition , Counter Affidavit , and Rejoinder Affidavit along with Court orders etc.

Hence I am submitting copy of writ petition, Counter Affidavit and Rejoinder Affidavit (two copies of each on Water Marked papers) duly verified by my signature.

The above noted writ petition was admitted on 10.7.1979 , by Hon'ble Justice Hariswaroop and Hon'ble Justice Mahabir Singh .

Therefore, it is most humbly requested that case record may be sent to Administrative tribunal sitting at Gandhi Bhawan , Lucknow ,

....2

In view of the Administrative Tribunal Act 1985 as early as possible to prevent further delay in disposing the case .

Lucknow

Dated 6 November, 1989.

(T.N.Gupta)
Advocate.
Counsel for the Petitioner.

S/B — (A9)

3

In the Hon'ble High Court of Judicature at Allahabad

(Lucknow Bench, Lucknow)

Writ Petition No. 1632 of 1990

(Under Article 226 of the Constitution of India)

Versus

Petitioner

Versus

Opposite party

INDEX

S.No.	Description of papers	Pages
1.	Writ petition	1 to 10
2.	Affidavit	10 to 11
3.	Annexure No.1	12 to 14
4.	Annexure No.2	15 to 18
5.	Annexure No.3	19 to 20
6.	Annexure No.4	21 to 22
7.	Annexure No.5	23 to 24
8.	Annexure No.6	25 to 26
9.	Annexure No.7	27 to 29
10.	Vakalatnama	30

Presented by:

T.N. Gupta

(Advocate)

Counsel for the Petitioner

Dated: Lucknow: 1.7.90

Verified as Correct

T.C.

In the Hon'ble High Court of Judicature at Allahabad,
Sitting at Lucknow.

Writ Petition No. [illegible] of [illegible]

Writ petition under Article 226 of the Constitution of India.

Jai Lal son of Gorin, Skilled Cutter, [illegible], Charbagh, Railway, [illegible] No. [illegible], Loco Colony, Railway, Lucknow.

...Petitioner.

Versus

1. Union of India, through the General Manager, Railway, Gorakhpur.
2. The Divisional Railway Manager, Railway, [illegible] (Formerly designated as Divisional Superintendent, Railway, Lucknow).
3. The Senior Divisional Mechanical Engineer, Loco, Railway, Lucknow.

...Opposite parties.

The Hon'ble the Chief Justice and
Hon'ble Justice Judges of the [illegible]
[illegible] Court, [illegible]

The [illegible] petitioner [illegible]

[illegible]

1. That the petitioner is the [illegible] of the [illegible] and was appointed on 19.[illegible] since then he is serving the Railway Administration but the petitioner was served with the notice and order under Rule 14(ii) of the Railway Servant and Railway and General Rules, 1968 issued by [illegible] Sr. Divisional Mechanical Engineer, Loco Shed, [illegible] dated 8.7.1975 alleging that the petitioner was inciting the local staff not to come to their [illegible] for duty and the petitioner was finally [illegible] from his service. The true copy of the order of removal issued by [illegible] Sr. Divisional Mechanical Engineer, [illegible] Railway, issued under Rule 14(ii) Railway Servant and Railway Rules, 1968 dated 8.7.1975 is filed herewith as Annexure No. 1 to this writ petition.

2. That on receipt of the said order of removal on 9.[illegible].1975 the petitioner preferred an appeal to the Divisional Superintendent against the removal order on 21.7.1975. The true copy of the said appeal preferred by the petitioner is filed herewith as Annexure No. 2 to the writ petition.

3. That the petitioner's said appeal was rejected by the Divisional Superintendent, [illegible] on 5.7.1975. The true copy of the order rejecting the said appeal of the petitioner is filed herewith as Annexure No. 3 to this writ petition.

A12

3/4

4. That the petitioner after dismissal of his [illegible] preferred the revision petition dated [illegible] to the General Manager, N.E. Railway. [illegible] true copy of the revision petition dated [illegible]1976 is filed herewith as ANNEXURE No.4 to this writ petition.

5. That the petitioner's revision petition was rejected on 12/14-4-1977 by the General Manager, N.E. Railway, Gorakhpur. The true copy of this order dated 12/14-4-1977 rejecting the revision petition is filed herewith as ANNEXURE No.5 to this writ petition.

6. That after the dismissal of the revision of the petitioner interview of many time to the General Manager, N.E. Railway, Gorakhpur who orally assured that in the similar circumstances of the petitioner on many writ petitions of the different Railway Employees have been allowed by the Hon'ble High Court and the impugned orders in connection of similar cases will be reviewed by the Railway administration itself in the light of the Court's judgments.

7. That the General Manager, N.E. Railway Gorakhpur itself reviewed the case of the petition on 12-7-1978 and [illegible] the petitioner's reinstatement as fitter at the [illegible] and this order dated 12-7-1978 [illegible] to the petitioner through the Divisional Superintendent's office dated 23-7-1978 and the petitioner [illegible] his duties on 27-7-1978. The true [illegible] statement of the petitioner [illegible]

[illegible] and [illegible] the writ petitioners

2. That the petitioners [illegible] the [illegible] of Germany and later on transferred to [illegible] concentration camps [illegible] the citizens of the [illegible] and [illegible] under said [illegible] of the Potsdam [illegible] reinstated on their respective [illegible] with all the benefits and accrued [illegible] on the citizens of Germany. [illegible] have been reinstated and their [illegible] have been fixed at higher rates than the citizens and [illegible] have denied the equality of [illegible] authority in matters relating to the public employment under the State.

3. That [illegible] by [illegible] representations [illegible] 27.6.1979 [illegible] for [illegible] to the Divisional Military Commander, Defence [illegible] on 24.6.1979 and a [illegible] of the same representation dated 23.8.1979 was forwarded to the Central Government, New Delhi. [illegible] the [illegible] of the representation [illegible] to the [illegible] the [illegible] to the [illegible] and [illegible] and moreover the [illegible] lost the hope of the [illegible] and [illegible] to the [illegible] justice.

4. That the [illegible] falsely [illegible] the [illegible] amount [illegible] to [illegible]

3/6

[illegible] power to be exercised as a charged under rule 14(ii) D.&R. and the said order [illegible] was passed by violating the principles of natural justice and hence the same was illegal and void in law.

11. That the petitioner was promoted to the post of fitter (skilled) in grade Rs.260-400 with effect from 14.11.71 and accordingly the petitioner's salary should have been fixed in the appropriate stage and the annual increments should also have been drawn every year effective from the date of the promotion whereas the annual increments had not been correctly drawn. The last increment was drawn on 1.7.1973 and the salary was fixed at the stage of Rs.266/- per month.

12. That the petitioner's due salary of those years i.e. the period of illegal removal has not been paid as a measure of punishment, unfair labour practice and malafide intent. Moreover, the petitioner was kept under suspension for 5 months from 10.8.1974 to 7.10.1974 arbitrarily and mala fide and consequently the two enquiries were related and the same are pending. But the pay of those days have yet not been paid to the petitioner inspite of repeated representations.

13. That the petitioner has always been [illegible] of trade union activities and struggle against the injustices meted out to the [illegible] employees and exposure of corruption which was [illegible] of the [illegible] by [illegible] times.

14. That the petitioner would have been reinstated in service with full benefits as the two forces which are responsible for the victimisation of the petitioner did not like indirectly wish to be reinstated.

15. That on the date of removal from service petitioner was getting in all about Rs. [illegible] per month but on reappointment on the lowest grade of Rs.260/- the petitioner is now [illegible] the loss of almost Rs. 50/- per month resulting on the basis pay alone plus other allowances accompanying with pay which is extremely heavy for the poor petitioner who is the only bread winner of his family.

16. That as per law applicable to the case petitioner's initial pay on reappointment should not be less than two pay drawn last and any previous service.

17. That the orders contained in Annexure Nos. 1, 3, 5 and 7 have been passed illegally by contravention of the provisions of law, arbitrarily and without proper application of mind which have resulted in substantial failure of justice and also injury of the substantial nature to the petitioner.

18. That so far as the removal order contained in Annexure 1 set in relation to many similar writ petitions, writ petition No. 218 of 1977 [illegible] Kerala Union of India, writ petition No. 2477 of 1977 [illegible] Kerala Union of India, writ petition No. 1135 of 1978 Samuel and others versus Union of India

[illegible]

1. [illegible]

2. [illegible]

[illegible]

I. [illegible]

II. [illegible]

III. [illegible]

VI. [illegible] the learned orders by [illegible] and authority to take away the constitutional rights and constitutional safeguards of the petitioner.

V. Because the [illegible] orders are illegal, wholly ultra vires, void and contrary to the provisions of the Constitution of India.

IV. Because the opposite parties arbitrarily [illegible] and chosen the petitioner for victimisation and have thereby arbitrarily violated, [illegible] and unjustly discriminated and denied him the equality of opportunity in matters of relation to the [illegible] and under the Constitution.

VII. Because the learned orders have been passed violating the relevant rules of the [illegible] Establishment Code.

VIII. Because the representation [illegible] ? [illegible] and have not been [illegible] off or [illegible] on account of [illegible] may be [illegible] and the opposite party [illegible] to consider the disposal of the said representations.

PRAYER

[illegible] the petitioner [illegible] [illegible] [illegible] from

A18

3/10

(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned orders contained in Annexure No. 1, 3, 5 and 6 to the writ petition.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the opposite party No. 2 to implement the representation contained in Annexure No. 7 and expeditiously according to the provisions of law.

(iii) Issue writ, order or direction that the petitioner's services may be regularised and re-instated with full benefits of back service, back salary, and seniority etc.

(iv) Any order, writ or direction appropriate which this Hon'ble Court may deem fit, fit and proper in the circumstances of the case be passed in favour of the petitioner.

(v) Award the cost of the writ petition to the petitioner.

(S. Dutta)
Advocate,
Counsel for the petitioner.

Lucknow, dated:
June 26, 1979.

The Hon'ble High Court of Judicature at Allahabad,
Sitting at Lucknow.

...

Writ - Petition No. of 1979.

Writ petition under Article 226 of the Constitution of India.

Jai Lal ... Petitioner.

Versus

State of Uttar Pradesh, etc. ... Opposite parties.

A F F I D A V I T.

I, Jai Lal, aged about years, son of [illegible], [illegible] Railway, Lucknow, resident of [illegible], [illegible], Lucknow, do hereby solemnly affirm and state on oath as under:

1. That the deponent is a petitioner in the above noted writ petition and is fully acquainted with the facts of the case deposed to herein.

2. That the deponent has been [illegible]

A20

3/12

petition and he has understood the same.

3. That the contents of paragraphs 1 to 18 of the accompanying writ petition are true to my own knowledge and those contents of paragraphs 16 to 18 are based on the legal advice tendered by the counsel based from the perusal of the record and are believed by me to be true.

4. That the deponent has got compared the Annexures 1 to 7 and certifies them to be true copies thereof.

Lucknow, dated:
June 20, 1990.

Deponent.

I, the above named deponent do hereby verify that the contents of paragraphs 1 to 4 of this affidavit are true to my own knowledge, no part of it is false and nothing material has been concealed so help me God.

Lucknow, dated:
June 20, 1990.

Deponent.

I identify the deponent who has signed before me.

(T.N. Singh)
Advocate.

Solemnly affirmed before me on
at
the deponent who is identified by
Sri
Clerk to Sri
Advocate, High Court, Allahabad.

I have satisfied myself by examining the deponent that he understands the contents of this affidavit which have been read over and explained by me.

A21

2/13

[illegible] Court of Judicature [illegible]

[illegible] at Lucknow

[illegible]

[illegible] Petition No. [illegible] of 1970.

Jai Lalo [illegible] Petitioner.

Versus

[illegible] Opposite party.

[illegible]

[illegible]

[illegible] 14(1) [illegible]

1949.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

I, the undersigned [illegible] authority [illegible] to direct you from service to disciplinary authority, am fully satisfied that for the reasons to be hereinafter recorded in writing, it is not reasonably practicable to hold an inquiry in the manner provided for the rules [illegible] in exercise of the power conferred by [illegible] authority under Rule 14(1) of the [illegible] Rules, 1965 read with provisions of [illegible] Rule [illegible](1) of Indian Railway Conference Association [illegible] [illegible] from service [illegible] of Rs. [illegible] in the scale of [illegible] [illegible] 2.2.95(1)

Under Rule 19 of Railway Service, 1968 [illegible] [illegible]

1/22

3/14

i) the [illegible] is submitted through proper [illegible] within 45 days from the date you receive the [illegible] and

ii) the appeal does not contain improper or disrespectful language.

Please acknowledge receipt of this letter.

[illegible]

Signature: Sd/-

(V.C.Gothi)

Name: [illegible] Engineer / [illegible]

Designation of the Disciplinary Authority.

<u>[illegible]</u>

<u>[illegible]</u>

Whereas, I, the undersigned, [illegible] the Authority competent to [illegible] [illegible] the orders of [illegible] and [illegible] that [illegible] for [illegible] [illegible] rightly [illegible] staff [illegible] to [illegible] for duty. [illegible] also been [illegible] out for duty [illegible] also been [illegible] constructive [illegible] the [illegible] of CS/ [illegible]

[illegible] the [illegible] is [illegible] the [illegible] [illegible] if an [illegible] is ordered, the [illegible]

A23 3/15

[illegible] Court of [illegible]
[illegible] at Lucknow

...

[illegible] 1990.

Jai Lal ... ... Petitioner.

Versus

Union of India and others ... Opposite Parties.

[illegible] No. 1.

[illegible]
[illegible] 14(ii) [illegible]
1968.

No. [illegible] Dated 8.7.93.

To

Sri [illegible] Lal
[illegible] Bridge.
[illegible]
[illegible]
Date of appointment 17.8.80.
Station [illegible] Scale of pay 260-400.

I, the undersigned [illegible] the authority empowered to [illegible] you from service on disciplinary [illegible], am [illegible] that for the reasons which have been recorded in writing, it is not reasonably practicable to hold an inquiry in the manner provided for in the rules [illegible] Disciplinary [illegible] Rules, [illegible] (b) [illegible] 311(2) of [illegible] the circumstances of [illegible] from [illegible] 1968 [illegible] 10.7.93,

[illegible] (..)

[illegible]

A24

3/16

fear of family danger to their persons may not be su a position to depose freely. In such it is not reasonably practicable to give him an opportunity of social representation under Article 311(1), Clause 2 of the Indian Constitution. Therefore, with the powers vested in me under Article 311(1), Clause 2 proviso (b) of the Indian Union I order the dismissal from service of Mr. Jagdeal with effect from 9.7.1975.

Sd/-

(B.D. Sethi)
Sr. Divl. Techl. Manager/Ldh.

True copy.

A25

3/17

A26

3/10

A27

19

T.M. Singh

1/2-8

3/20

1125 2/21

In the Hon'ble High Court of Judicature at Allahabad,
Sitting at Lucknow.

Writ Petition No. | of 1976.

Jag Lal ... | Petitioner.

Versus

Union of India and others ... Opposite parties.

ANNEXURE No. 3.

[illegible]

[illegible]

[illegible]

" I have carefully gone through the appeal of Shri Jag Lal ex-Fitter, who was discharged from service under orders of Sr. DME under Rule 14(ii) of R.S.(D&A)R.1968 read with proviso (b) of Article 311(2) of Indian Constitution and also the points raised by him during the personal hearing granted to him on 14.1.1976.

From the records it find that Shri Jag Lal has been prone to indiscipline including the disobedience and preventing other staff from doing their legitimate work and interfering in day to day working of the Shed.

A30

3/22

I am also satisfied that the conduct of the petitioner as a local fund _____ to be _____ corrupt and unscrupulous. It would not have been possible to elicit free evidence, on any inquiry under the normal disciplinary procedure would have been held.

I am also satisfied that the punishment proposed was adequate, either order to stand."

मण्डल अभियंता (वितु)।लखनऊ

सूचनार्थ प्रेषित है :-

१- श्री को फोरमैन - [illegible] ।

२-

ह0।-

मण्डल अभियंता (आर0)।लखनऊ ।

सत्य प्रतिलिपि

A31 3/23

In the [illegible] Court of Judicature at Allahabad.

Sitting at Lucknow.

Writ Petition No. of 1973.

[illegible] ... Petitioner

Versus

Union of India and others ... Respondents

Annexure No. 6.

To

The Divisional Supdt.,
North Railway, Lucknow

Respected Sir,

Subversive petition.

Refer your predecessor's orders on mentioned - vide your letter No.[illegible] dated [illegible].76 received on 26.7.1976.

Most respectfully I beg to state as under:

1. That I was dismissed from service under rule 14 (ii) vide Lucknow/JL dated 6.7.1976 alleging that I was threatening the loyal staff and instigating them not to come on duty after proclamation of Emergency.

2. That I preferred an appeal against the order of the [illegible]/Lucknow on 28.7.1976 relating the charges which happened to be false, malicious and motivated.

3. That it is unfortunate, that the Divisional Superintendent rejected my appeal [illegible] prejudicial view of the Fact[illegible], which was influenced by the Loco Foreman, Charbagh, who had resorted to victimisation for purely personal reasons and [illegible] with the official action.

4. That only few months before my [illegible] I have given cash award for participation [illegible] the strike as mentioned below for preventing [illegible] not unauthorised. A copy of the [illegible]

A32

2/24

in attached hereto.

5. That I could come to Goa back now as my wife is in a precarious condition and I cannot arrange for her medical aid for want of money. I am in great distress.

6. That I cause your honour of my legal and conscientious duties without having any cause of complaint.

I am, therefore, prayed that my file of papers may kindly be called for and the order of detention may be review and set aside for which act of kindness I shall be ever grateful to your honour.

Yours faithfully,

Sd/-
22.5.76.
(Jaisal)
Prisoner, Detained.

Dated:

Yours Guru.

T.N. Gupta

A33

2/25

A34

2/26

[illegible]

I have come to accept the case carefully and that there is justification to modify the action taken in this case.

[illegible]

[illegible]

A33

2/2

" I approve his reappointment as Officer at lowest pay."

[illegible]

[illegible]

[illegible]

1) [illegible]

2) [illegible] (1) [illegible]

3) [illegible]

4) [illegible]

5) [illegible]

[illegible]

A37

In the [illegible] Court of Judicature at Allahabad,
Lucknow.

2/29

Writ Petition No. [illegible] of 1979.

Jai Lal [illegible] Petitioner.

Versus

Union of India and others [illegible] Opposite parties.

[illegible] No. 9.

To

The Chief and Railway Manager,
Northern Railway, Lucknow.

(Through Proper Channel)

Subs representation against all irregularities and claim for taking back of all [illegible] cases.

Dear Sir,

I beg to state that I had been terminated vide your letter No. [illegible]/Con/S-[illegible]/76 dated 10.5.[illegible] and [illegible]/J½ dated 8.7.1975, on certain wrong grounds. However, I was re-instated to my service as Fitter (Skilled) in scale Rs.260-400 (RS) at the lowest stage of the grade (reference your letter No. [illegible]/C/Dev Lal [illegible] dated 20.7.1978).

I beg to draw your attention to the fact that I had been promoted to the post of Fitter (Skilled) in scale Rs.260-[illegible]/- w.e.f. 16.3.1971. Accordingly my pay would have been fixed in the appropriate stage and the annual increments would also have been drawn every year, effective from the date of my promotion. But my annual increments had not correctly been drawn by the department since my w.e.f. 8.7.1975 and fixed my pay at the stage of Rs.266/- pm.

I had been due my pay at the following rates from the date of my promotion:

[illegible] = Rs. [illegible]
[illegible] = Rs. [illegible]

A38

2/3.P

w.e.f. 1.[illegible].77 – Rs. [illegible].00

w.e.f. 1.[illegible] – Rs. [illegible].00

w.e.f. 1.[illegible] – Rs. [illegible].00

w.e.f. 1.[illegible].77 – Rs. [illegible].00

w.e.f. 1.[illegible] – Rs. [illegible].00

Further, my [illegible] been [illegible] for [illegible] one only [illegible] for the year [illegible], my [illegible] would have been restored after that period but that has also not been [illegible] measure of unfair labour practice. I like to emphasise that the punishment was illegal and that [illegible] may kindly be regularised by lifting the effect of the punishment imposed forcibly on the undersigned workman.

I [illegible] been kept under suspension for 3 months from 1.[illegible].1976 to 7.10.1976 arbitrarily and subsequently the suspension was revoked and the case had been dropped. Accordingly I have accrued entitlement to the payment of full wages for the whole 3 months of suspension but the wages of three days have yet not been paid and thereby I have also accrued entitlement to the payment of compensation at the rate of ten times of the pay withheld by the employer.

[illegible] my juniors [illegible], [illegible] and [illegible] have been promoted and their pay have been fixed at higher rates than mine. [illegible] of the [illegible] a junior can be [illegible] more [illegible] than the senior.

I, therefore, request you to kindly [illegible] my [illegible] from above [illegible] to my [illegible] of my [illegible] illegally deducted/withheld, [illegible] never be [illegible] later than fifteen [illegible] of receipt of this [illegible]

T.K.

[illegible] from all [illegible] [illegible] of my [illegible] from [illegible] for [illegible]

Thanking you in anticipation.

Yours faithfully,

Sd/-

(Jai Lal)
Ex. Fitter/[illegible]
[illegible] Railway, [illegible]

[illegible] Date:
[illegible]

Copy for [illegible] to the General [illegible] [illegible] Railway, [illegible] He is requested to kindly [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Sd/-

(Jai Lal)
Ex. Fitter/[illegible]

[illegible]

Sri T. N. Gupta Advocate

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH) : LUCKNOW :

C.M. Application No. (W) of 1980

Union of India & Others. ... Applicants.

IN-RE:

W.P. No. of 1979.

Jag Lal ... Petitioner.

Versus

Union of India & Others. ... Opposite Parties.

APPLICATION FOR CONDONATION OF DELAY IN FILING THE COUNTER AFFIDAVIT

The applicants above named beg to state as under:-

1. That the counter-affidavit to the writ petition could not be filed within time due to certain unavoidable circumstances.

2. That the filing of the counter-affidavit is necessary for the just decision of the case.

3. That the counter-affidavit is being filed herewith.

WHEREFORE, the applicants respectfully pray that the delay in filing the counter-affidavit be condoned and the same be accepted and brought to the record of the case.

Lucknow:
Dated: July , 1980. Counsel for the Applicants.

A41

IN THE HONBLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH) : LUCKNOW :
W.P. No. of 1979.

2/33

Sri Jai [illegible] ... Petitioner.

Versus

Union of India & Others. ... Opposite Parties.

COUNTER AFFIDAVIT

I, aged about years S/o Assistant Personnel Officer, Office of the Divisional Railway Manager, North Eastern Railway, Lucknow, do hereby solemnly affirm and state as under:-

1. That the deponent is Asstt. Personnel Officer in the Office of the Divisional Railway Manager, North Eastern Railway, Lucknow and is fully conversant with the facts of the case.

2. That the deponent has read and understood the contents of the writ petition.

3. That the contents of paragraphs 1, 2, 3, 4 and 5 of the writ petition are admitted.

4. That the contents of paragraph 6 of the writ petition are not correct and are not admitted.

A42 2/34

5. That the contents of paragraph 5 of the writ petition are not correct and are not admitted.

6. That the contents of paragraph 8 of the writ petition are not correct and are not admitted. There is nothing on record to support that the petitioner approached any authority after his re-appointment against his removal etc., as alleged.

7. That the contents of paragraph 9 of the writ petition are not correct and are not admitted. There is no representations from the petitioner dated 23.5.79.

8. That the contents of paragraph 10 of the writ petition are not admitted. The petitioner was rightly taken up under rule 14(ii) of CCS-CCA and the reasons therefore are contained in Annexure 1 to the writ petition.

9. That the contents of paragraph 11 of the writ petition, as alleged, are not correct and the same are denied.

10. That in regard to the paragraph 12 of the writ petition it is denied that the petitioner's salary for 3 years was withheld as a measure of punishment etc. as alleged. The payment was not made as the petitioner was not in service for this period. The averments to the contrary are not correct and are not admitted.

11. That the contents of paragraphs 13 and 14 of the writ petition are not correct and are not admitted.

A43 2/35

12. That in regard to the contents of paragraphs 14 of the writ petition it is stated that the petitioner is getting correct pay on re-appointment according to rules.

13. That the contents of paragraphs 16 and 17 of the writ petition are not correct and are not contested.

14. That in regard to the contents of paragraphs 18 and 19 of the petition, it is stated that the petitioner has come very late to this Hon'ble Court and so such he cannot compare his case with others, as alleged.

15. That the contents of paragraph 20 of the writ petition are not correct and are not admitted.

Lucknow:

Dated: DEPONENT.

VERIFICATION

I, the deponent named above, do hereby verify that the contents of paragraphs 1

of this counter affidavit are true to my own knowledge, those of paragraphs

are true to my information derived from the records and those of paragraphs are based on legal advice.

A43
2/36

that no part of it is false and nothing material has been concealed, so help me God.

Lucknow
Dated

DEPONENT.

I identify the deponent who has affixed his signature before me.

ADVOCATE.

Solemnly affirmed before me on at
C.M.C./P.M. by Sri , the deponent,
who is identified by Sri , advocate,
High Court, Allahabad, Lucknow Bench, Lucknow.

I have satisfied myself by examining the deponent that he understands the contents of this counter affidavit which have been read out to him and explained by me.

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH) LUCKNOW...

C.M.An.No. _____(W) of 1989

In:

REJOINDER AFFIDAVIT

In Re; W.P.No. 1632 of 1979

Petitioner.

Jag Lal .....

Versus

Union of India and others .....Opp.Parties.

APPLICATION FOR CONDONATION OF DELAY

IN FILING THE REJOINDER AFFIDAVIT.

The applicant abovenamed begs to state as under:-

1. That the Rejoinder affidavit to the counter affidavit filed on behalf of the opp. parties could not be filed within time due to certain unavoidable circumstances.

2. That the filing of the rejoinder affidavit is very much necessary for the just decision in the case.

3. That the rejoinder affidavit is being filed herewith.

A46 4/2

PRAYER

Wherefore, it is most respectfully prayed that the delay in filing the rejoinder affidavit be condoned and the same be accepted and brought on record of the case for the ends of justice and equity.

Lucknow, dated:
October 24, 1989.

Applicant.

A47 1/3

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH) LUCKNOW.

REJOINDER AFFIDAVIT

IN: W.P.No. 1632 of 1979

1989
AFFIDAVIT
21/2/89
HIGH COURT
ALLAHABAD

Jag Lal .....Petitioner.

Versus

Union of India & others .....Opp.Parties.

REJOINDER AFFIDAVIT ON BEHALF
OF PETITIONER TO THE COUNTER AFFIDAVIT
FILED ON BEHALF OF THE OPP. PARTY
NO. 1 to 3.

I, Jaglal, aged about 55 years, son of Sri Karia, resident of L-24B, Loco Coloney, N.E. Railway, Charbagh, Lucknow, skilled Fitter, Loco Shed, Charbagh, N.E.Rly, Lucknow, do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the petitioner himself in the above noted writ petition and as such he is fully conversant with the facts of the case deposed to herein.

2. That the deponent has been readover and explained the contents of the counter affidavit filed on behalf of the opposite parties and he has understood its contents and its parawise reply is as follows.

AWB 4/4

3. That ~~that~~ the contents of paras 1 to 3 of the counter affidavit are not disputed.

4. That the contents of para 4 of the counter affidavit are denied and the facts stated in para 6 of the writ petition are reiterated.

5. That the contents of para 5 of the counter affidavit are not disputed.

6. That the averments made in para 6 of the counter affidavit are specifically denied and the facts stated in para 8 of the writ petition are reiterated.

7. That the contents of para 7 of the counter affidavit are s-pecifically denied being wrong and incorrect and the facts stated in para 9 of the writ petition are reiterated

8. That the contents of paras 8 and 9 of the counter affidavit are denied being false and incorrect and the facts stated in paras 10 and 11 of th writ petition are reiterated.

9. That the contents of para 10 of the counter affidavit are specifically denied and the facts stated in para 12 of the writ petition are reiterated.

A4 4/5

10. That the contents of para 11 of the writ petition are denied and the facts stated in paras 13 and 14 of the writ petition are reiterated.

11. That the contents of para 12 of the counter affidavit are also denied and the averments made in para 15 of the writ petition are reiterated.

12. That the content-s of para ~~14~~ 13 of the counter affidavit are also denied being incorrect and wrong and the averments made in paras 16 and 17 of the writ petition are reiterated.

13. That the contents of para 14 and 15 of ~~the writ petition are also denied~~ counter affidavit are also denied and the contents and averments made in paras 18, 19 and 20 of the writ petition are reiterated.

14. That the deponent's salary for the 3 years has been illegally withheld by the opp. parties and his pay has also been reduced in a very arbitrary manner which is illegal, malafide and void as such the writ petition deserves to be allowed with costs to the answering deponent.

24/x/89

Lucknow,dated:

October 24,1989.

DEPONENT.

I, the abovenamed deponent do hereby

ASO 4/6

verify that the contents of paragraphs 1 to 13 are true to my own knowledge and those of paras 14 are based on legal advice, which are believed by me to be true. No part of it is false and nothing material has been concealed, so help me God. Signed and verified today the 24th day of October, 1989 in the High Court Compound, Lucknow.

~~Lucknow~~

DEPONENT

I identify the deponent who has signed this affidavit before me.

(T.N.GUPTA)
Advocate.

24/X/89

Solemnly affirmed before me on 24/X/89 at 10.15 A.M./~~P.M.~~ by Sri Jag Lal, the deponent, who is identified by Sri T.N.Gupta, Advocate, High Court, Lucknow Bench, Lucknow.

I have satisfied myself by examining the deponent that he understands the contents of this affidavit, which have been readover and explained to him by me.

B. N. Misra, Adv.

24/X/89
21/2/89

R. C. C. Form no. 38, Part I

Notice to Counsel of date fixed for hearing

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH), LUCKNOW.

WRIT PETITION No. 1632 OF 1979.

APP-

Jag Lal *Appellant,*

versus

Union of India and others *Respondent.*

Sri T.N. Gupta
Sarvsri } Counsel for Appellant.

Sri Umesh Chandra
Sarvsri } Counsel for Respondent.

Take notice that the Hon'ble the Senior Judge vide his Lordship's order dated 13.9.1989, has been pleased to order for reconstruction of the above named case; and you are requested to to submit the copy of writ petition with C.M. applications and Counter Affidavits, Rejoinder Affidavits along with Court's orders etc., if any, in duplicates on water-marked papers duly verified with your signatures on each papers within one month from the receipts of this notice.

Dated *Joint Registrar.*

Lucknow Dated:
26-10-1989.

DEPUTY REGISTRAR

Final copies for S/Sri T.N. Gupta & Umesh Chandra Advs. to H. Hearing Advs. 26.x.89

PSUP—A. P 6 Lib. Naya. 22-2-80—(3890)—1980—20,000 (E).

SERVICE BENCH

Before The Senior Judge, Hon'ble High Court of Judicature at Allahabad, sitting at Lucknow.

Writ Petition No.1632 of 1979.

Jag Lal ... Petitioner

versus

The Union of India and others... Opp.Parties.

Subject: Missing File of W.P No.1632 of 1979.

With Due Respect, the petitioner begs to submit as under :-

1. That the applicant filed the above mentioned writ petition before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow on 9-7-1979 against the order of his dismissal, passed by the Senior Mechanical Engineer, N.E.Rly., Lucknow.

2. That the said Writ Petition was registered as W.P No.1632/79 and was admitted on 10-7-1979.

3. That during the course of hearing, the said Writ Petition No.1632/79 was annexed with other Writ Petitions Nos. 310/79 and 350/80.

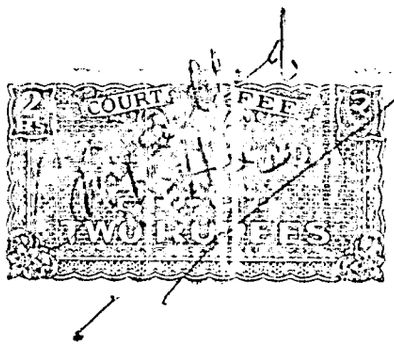
4. That on 30-4-87, this Hon'ble High Court transferred all the pending Writ Petitions of the Central Government employees, along with the connected W.P No.350/80 and 310/79 (enclosed at S.No.157) to the Central Administrative Tribunal, Allahabad.

SERVICE BENCH

A5M 6/2

In the State High Court of Judicature at Allahabad, Lucknow Bench, Lucknow.

WRIT PETITION No. 1632 of 1979



1 CP for Rs-2/-

PETITIONER

JAG LAL

VS.

UNION OF INDIA & OTHERS. OPP. PARTIES.

QUESTION	ANSWER.
1. WHETHER THE WRIT PETITION No. 1632 of 1979 INRE: JAG LAL VS UNION OF INDIA & OTHERS HAS BEEN TRANSFERRED TO THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD?	Entry of this case is not in my register. 21/7/89.
2. IF SO, THE DATE OF TRANSFER?	

Dated, Lucknow,
July 11, 1989.

W. H. Haidari
(WASIUL HASAN HAIDRI)
COUNSEL FOR THE PETITIONER

बअदालत श्रीमान _____ महोदय

वादी (मुद्दई) ... का

वकालतनामा

बनाम प्रतिवादी (रेस्पान्डेन्ट)

सन पेशी की ता० १९ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री _____

W. H. Haidari वकील

एडवोकेट महोदय

C. 1807 Rajeev Pam Lucknow

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

बअदालत ..... नं० मुकद्दमा ..... नाम फरीकैन .....

हस्ताक्षर

साक्षी (गवाह) _____ साक्षी (गवाह) _____

दिनांक _____ महीना _____ सन् १९ ई०

W. H. Haidari Advocate 1/11/89

A5K

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCLE BENCH, LUCKNOW.

Registration Transfer application No. 2/90
in (C.M. Writ petition no. 1632 of 79)

Jag Lal .. Petitioner

Versus

Union of India & others .. Opp.parties.

SUPPLEMENTARY REJOINDER AFFIDAVIT

I, Jag Lal aged about 56 years son of Sri KARIA resident of L-24-B, Loco Colony, N.E. Rly, Charbagh, presently working as skilled fitter, Loco Running shed Charbagh, N.E. Rly, do hereby solemnly affirm on oath as under:-

1. That on the last date of hearing the deponent was directed by this Hon'ble Tribunal, to file the copy of the judgment passed by the Tribunal at Allahabad in Registration T.A. No. 423 of 1987 (C.M. W.P. No. 31 of 79) Abdul Khalil Versus Union of India and others connected with Registration T.A. No. 424 of 87 (C.M. W.P. No. 350 of 80) and in compliance with the said order the copy of the judgment is annexed forming part of this supplementary rejoinder affidavit as Annexure no. SRA-1.

2. That during the course of hearing this W.P.No. 1632 of 79 filed by this petitioner was annexed with the above two writ petitions no. 310 of 79 and 350 of 80 as common question of facts and law i.e. dismissal and

A.57

reinstatement during emergency on so called alleged allegation in public interest and thereafter reappointment in initial grade so motive by the C.M. N.E. Rly. Gorakhpur and the relief solicited are the same, in all the three writ peitions.

4. That the writ petition no. 1632 of 79 filed by the petitioner was misplaced in the service Bench of Hon'ble High Court at Allahabad, Lucknow Bench and the file has been reconstructed vide Hon'ble Sr. Judge orde dated 13.9.89 and transfer to this Hon'ble Court.

Lucknow: dated
13.11.90

Deponent

Verification

I, the abovenamed deponent do hereby verify that the contents of paras 1 to 4 are true to my own knowledge.

Signed and verified this 13th day of November 1990 at Lucknow.

Deponent

I, identify the deponent
who has signed before me.

Advocate

Serial No. 39...

A58

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
23-A Thornhill Road, Allahabad

No.CAT/Alld/Copying/ Dated : 8-2-89

Registration No.TA/OA 423 of 198 7 (T)

Abdul Khalid Applicant(s)

Versus

UOI Respondent(s)

A copy of the Tribunal's order dated 31-1-89 in the abovenoted case is forwarded for necessary action.

For DEPUTY REGISTRAR

Encl : Copy of Order Dated 31/1/89

To

(1) Sri G.C. Gehrana Ad CAT Alld.
(2) Sri G.P. Agrawal Ad CAT Alld.

dinesh/

A8

Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.423 of 1987 (C.M.Writ Petition No.310 of 1979)

Abdul Khalil ... Petitioner

Vs.

Union of India and 4 others ... Respondents.

Connected with

Registration T.A.No.424 of 1987 (C.M.Writ Petition No.356 of 1980)

Ahmad Ali ... Petitioner

Vs.

Union of India & 3 others ... Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon'ble Sri G.S.Sharma, JM)

These two writ petitions under Article 226 of the Constitution of India have been received from the Lucknow Bench of the High Court of Judicature at Allahabad under section 29 of the Administrative Tribunals Act, XIII of 1985 and as common questions of facts and law arise in these cases, they are being disposed of by this single order.

2. The petitioner Abdul Khalil while working as Fitter in the Locoshed of the N.E.Railway at Sitapur was discharged by the Chief Power Controller w.e.f. 27.12.1975 as informed by the Shed Incharge Sitapur on 29.12.1975. The petitioner was later on served with another notice dated 6.1.1976 issued by the Sr.Divisional Mechanical Engineer Lucknow purporting to compulsorily retire him under rule 2046 of the Railway Establishment Code Vol.II (hereinafter referred to as the Railway Code) w.e.f the forenoon of 6.1.76 on his completing the age of 30 years on 12.12.75.

The petitioner sought personal interview and also filed an appeal on 30.1.1976 against the said notice besides making a representation to the Minister for Railways on 23.1.1978. His case was then reviewed and he was reappointed on the lowest of his grade vide order dated 15.2.1976. The petitioner represented even against this order of reappointment to the higher authorities but when after reminders no heed was paid, he filed this petition on 29.1.1979 for quashing the impugned orders dated 29.12.1975, 6.1.1976 and 15.2.1976 with the allegations that he could not be retired compulsorily without serving him with a 3 months' notice under the law and the order of his reappointment at the lowest grade caused him substantial financial loss without his any fault and the impugned orders are against the principles of natural justice and they caused undue discrimination and hardship and are otherwise malafide and violative of the principles of natural justice. The allegations of the petitioner is that he was picked up for this harsh treatment on account of his union activities during the days of emergency.

3. The facts of the other case are almost similar. The petitioner Ahmad Ali while serving as turner (Machinist) in the N.E.Railway was served with notice dated 24.12.1975 purporting to be under rule 2046 of the Railway Code to compulsorily retire him from the forenoon of 5.1.1976 on his completing 30 years of service

A61

on 20.6.1975. On his representations and appeal, his case was also reviewed and vide order dated 16.2.1978, he was also reappointed on the lowest of his grade. He too represented against this order but when no heed was paid he filed the writ petition on 29.1.1980 for quashing the orders/notice dated 24.12.1975 and 16.2.1978 aforesaid. Both the petitioners have further prayed that their services be regularised and they be reinstat-ed from the date of their earlier discharge with all consequential benefits.

4. Both the petitions have been contested on behalf of the respondents and they have stated in their counter affidavits that the petitioners were retired compulsorily in accordance with law after due notice and on reviewing their cases on compassionate ground, they were given reappoint-ment and there is no force in these writ petitions.

5. In the registration T.A.No.423 of 1987, it has been stated in para 8 of the counter affidavit filed by the A.P.O. N.E.Railway Lucknow that arrangement for payment of 3 month's pay of Rs.1548 in lieu of notice in accordance with rules was made but the petitioner did not receive the same and it remained unpaid. It has also been stated that the petitioner was retired in public interest and not on account of his participation in the trade union activities and the decision taken for his reappointment by the com-petent authority is final and not justiciable.

A62

6. The validity of the impugned notices of compulsory retirement of the petitioners has been challenged in both these petitions. Clause (h) of rule 2046 (F.R.56) of the Railway Code provides that a class I or Class II railway employee can be retired from service after his attaining the age of 50 years and other employees can be retired on their attaining the age of 55 years. The petitioners were, however, retired under clause (k) of this rule which runs as follows :-

> "(k) Notwithstanding anything contained in clause (h) that appointing authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire a railway servant in class III service or post who is not governed by any pension rules after he has completed thirty years' service by giving him notice of 'not less than three months in writing or three months' pay and allowances in lieu of such notice." (emphasis supplied).

According to this clause, it is, therefore, mandatory that either the administration should give three months' notice in writing or three months' pay in lieu of notice for taking action under this clause. This does not seem to have been done in the case of the petitioners. The first notice dated 29.12.1975 copy annexure 1 to registration T.A.No.425 of 1987 informing the petitioner regarding his discharge does not give any reason or provision of law or rule under which he was discharged. The other notice copy annexure 2, purporting to have been issued under rule 2046 clause (k) is conspicuously silent regarding the period of notice or payment of pay in lieu of notice and it straightaway retired the petitioner from the forenoon of 6.1.1976. The notice does not bear any other date and it seems to have been served on the petitioner on that very date.

As pointed out above, the respondents have contended that the pay in lieu of 3 months' notice was tendered to the petitioner but he did not receive the same and as such, it remained unpaid. It is not alleged on which date the pay of 3 months was tendered to the petitioner. The only evidence furnished by the respondents in support of this contention is an extract to the following effect:-

" Sri Abdul Khalil Fitter/Charbagh Shed

Bill No.25/3108/1/Supp. dt.24.1.76

Rs.1598-00

Unpaid L/173 dated 27.4.76

PMR No. 961 dated 23.3.76

AB No.1511 /R/SS dt. 16.2.76.

Sd/Illegible
Seal "

It appears from this extract that the bill for drawing the amount of Rs.1548 representing 3 months' pay of the petitioner was prepared on 24.1.1976 and it was reported to be unpaid on 27.4.1976. In any case, it does not follow from this document that the payment could be or was actually tendered to the petitioner Abdul Khalil before 24.1.1976. In this way, on the date of the notice, neither he was given 3 months' time nor pay in lieu of 3 months' notice.

7. The copy of the notice purporting to be under rule 2046 clause (k) of the Railway Code served on the other petitioner Ahmad Ali is available as annexure 1 to his writ petition. The notice is dated 24.12.(75) requiring the petitioner to retire from the forenoon of 5.1.76. In this way, 3 months' notice was not given even to this petitioner. There is an endorsement at the bottom of this notice requiring the Bill Clerk MNL/Shed to arrange payment of 3 months' pay in lieu of notice atonce. There

A64

is, however, nothing on record or in the pleadings to indicate that the compliance of this endorsement was made by the Bill Clerk and the amount representing 3 months' pay was tendered ~~before~~ the petitioner at once, as required. In this way, even in the case of Ahmad Ali, neither 3 months' notice was given nor pay in lieu of notice was paid or tendered to him.

6. The wordings of clause (k) quoted above are mandatory and unless the notice is given in accordance with the provisions of this clause, it cannot be said to be a valid notice and the petitioners, therefore, cannot be deemed to have been retired compulsorily in accordance with law under the notices served on them. In Y.Ganga Raju Vs. Railway Board (1983 (1) S.L.J-45) a Division Bench of the Andhra Pradesh High Court had held that the payment of 3 months' pay has to be made simultaneously with the notice of compulsory retirement and the Railway Board in its letter dated 24.12.1976 addressed to the General Managers had clearly directed that the payment of pay and allowances in lieu of notice should be made simultaneously with the order of retirement and it was also mentioned that the above direction had the approval of President of India. In that case the salary was paid and received by the retired employee afterwards and ~~for~~ the contention raised on behalf of the railway administration that the compliance was made, the High Court had held that this does not affect the right of the petitioners to question the order of compulsory retirement as it is well settled that there is no estoppel against

A65

a statute. In view of this decision, the tendering of the pay to one of the petitioners subsequently, if at all, would not validate the notice of retirement as the payment should have been made simultaneously. Rajasthan High Court has held in Punam Chand Joshi Vs. Union of India (A.I.R. 1971 Rajasthan-12) that notice of retirement which is insufficient is prejudicial and invalid.

9. Madras Bench of the Central Administrative Tribunal has held that making of arrangement for payment of pay in lieu of notice is not payment itself (see A.Muthuswamy Vs. Divisional Personnel Officer S.Railway (1987 (1) MSLR-541). In view of this position of law, we have no hesitation in our mind that the notices of retirement given to the petitioners in both the cases are not in accordance with the provisions of clause (k) of rule 2046 of the Railway Code and they are invalid and are liable to be ignored.

10. Regarding the public interest too, in view of which the petitioners are alleged to have been retired compulsorily, we are of the view that they were not retired in public interest but for certain other consideration. Had it been so, they could not be given reappointment at the lowest grade subsequently on reviewing their cases by the competent authorities. Once it is found in public interest that an employee is unfit to hold the post anylonger, it is difficult to believe that the same person is found fit after sometime to hold the same post at the lowest of his grade. On this ground as well, we are unable to uphold the orders of compulsory retirement of the petitioners.

11. Both the petitions are accordingly allow-ed and the impugned orders of their respective cases are hereby quashed and it is held that the petitioners shall be deemed to have been continued in service with all consequential benefits. The parties are, however, directed to bear their own costs.

Sd/-
MEMBER (J)

Sd/-
MEMBER(A)

Dated: 31st January,1989
kkt

TRUE COPY

(R. N. PANDEY)
Section Officer
Central Administrative Tribunal
Allahabad.

File reconstructed with per the S.T. order dt 13-9-89

A(7)

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

WP No. 1632 of 1989

Jiya Lal vs. Union of India & ors

	Date	Note of progress of proceedings and routine orders	Date of which case is adjourned
	1	2	3
		Admitted on 10-7-89 by Hon Hari Swarup J & Hon Mahbir Singh, J according to counsel for the petitioner, the statement made in CMWP No. 17892(W)-89 dt 6-11-89.	
	18.12.89	Fixed in CMWP No. 17893(W) 89 & - 17892(W) 89, for orders.	Bench
		Hon S.C.M.J. & Hon M.L. Misra J. The learned counsel for the petitioner Sri G.H. Gupta states that the matter involved in this petition is cognizable by the Central Administrative Tribunal and therefore the paper book may be sent to the Tribunal. Let the paper book be sent, as prayed, to the Central Administrative Tribunal Lucknow. Dt 18.12.89 Kk.	