

Annexure - A
CAT- 82

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH, LUCKNOW

INDEX - SHEET

CAUSE TITLE Writ of Habeas Corpus OF 190

Name of the Parties Shri. B. K. Singh vs. State of U.P.

Versus

Shri. B. K. Singh

Part A, B and C

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File B/C needed out

(S)

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29/5/90

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Registration No. 190 of 1990 64

APPLICANT(S) R. M. Saxena

APPEAL NO. 002

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

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Particulars to be Examined

Endorsement as to result of examination

11. Are the application/duplicate copy/spare copies signed ?
12. Are extra copies of the application and annexes filed ?
13. Identical with the Original ?
14. Descriptive ?
15. Missing in annexures
Nos. _____ pages _____ ?
16. Are the file size envelopes bearing full addresses of the respondents attached ?
17. Are the full addresses the registered address ?
18. Are the names of the parties entered in the register tally with the indication in the application ?
19. Are the annexations certified by the Registrar supported by an affidavit affirming that they are true ?
20. Are the facts of the case mentioned in item no. 6 of the application ?
21. Correct ?
22. Clear and legible ?
23. Attached consecutively ?
24. Typed in double space on one side of the paper ?
25. Are the particulars for interim relief prayed for indicated with reference ?
26. Are all the remedies have been exhausted ?

Y/N

Y/A

No

Y/A

Y/N

Y/A

Y/N

Y/A

Y/A

Signature

0A/90/90(L)

Hon'ble P.C. Jain, A.M.
Hon'ble J.P. Sharma, J.M.

1-6/90

Heard Shri Shash Verman, learned Counsel
for the applicant. Order reserved.
To be pronounced in the afternoon.

Qm.
A.M.

J.M.

(SMB)

Photocopy filed
entered 04.6.90
Kalyan Chandra
4/6/90

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CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

....

JUNE 1, 1990

Registration O.A. No. 190/1990

Radhey Mohan Saxena ... Applicant

vs

Union of India and ors Respondents

Hon' Mr P.C. Jain, A.M.

Hon' Mr J.P. Sharma, J.M.

(By Hon' Mr P.C. Jain, A.M.)

The applicant who was working as Head Clerk, Time Office, Northern Railway, Locomotive Workshop, Charbag, Lucknow, was transferred vide order dated 5-1-90 and posted to the Production Section vide order dated 20-1-90. The applicant challenged the above two orders in O.A. No. 145/1990(L), which was decided vide orders dated 2-5-90. The grounds of the challenge were not up-held and the petition was disposed of with the observations that the applicant may make representation to the competent authority at the earliest and the competent authority shall dispose of the same within a period of one month from the date of receipt thereof (Annexure-A-1).

2. The applicant did not make any representation as directed in the above order, but addressed a letter dated 8/9-5-90 to the Senior Accounts Officer, Northern Railway, Locomotive Workshop, Charbag, Lucknow (Annexure A-2) in which he stated that subject matter of his transfer to Production Office from the Time Office, "is stayed, as a result of filing redressal through which the impugned order of transfer vide staff order No.10 dated 5-1-90 and

(1a)

partial modification dated 20-1-90 by S.O. No.26 has been opposed under reference in the C.A.T./ Additional Bench, Allahabad, sitting at Lucknow", and prayed that necessary instructions be issued to the O.S. (Time Office) to permit him to sign and work as usual in Time Office till the disposal of the representation against the transfer order which has to be submitted as earliest in view of the directions issued by the Central Administrative Tribunal and that he may please be allowed to resume in Time Office with immediate effect. This communication also shows that he has not made a representation against the transfer order in pursuance of the judgment in O.A. No. 145/90 (Supra).

3. This application has been filed against an alleged oral order dated 9-5-90 passed by the Office Superintendent, Time Office, Northern Railway, Locomotive Workshop, Lucknow, according to which respondent no.3 did not allow him to join the duty and ^{ed}ask him to go and take duty in the Production Section.

4. The applicant has prayed for a direction to the respondents to allow him to resume his duty as Head Clerk in the Time Office, and to treat him on duty in Time Office from 9-5-90 till he resumes his duty under the orders passed by the Tribunal. He has also prayed that the respondents be directed to pay the salary and other emoluments from 9-5-90 up to the date of resuming duty.

5. We have perused the material on record and have also heard the learned counsel for the applicant. After giving careful consideration to the contentions of the

(...)

applicant, we are of the view that the application is misconceived. The order of transfer, as well as, the order of posting were subject matter of the O.A. No. 145/90(L) which ^{was} disposed of on merits. The averments made in respect to these orders in this application were also made in that O.A. Therefore, to the extent this application challenges the transfer and posting orders, this is barred by the principle of res-judicata. As regards the plea that he has not been allowed to resume duty in the Time Office, it may be stated that the order transferring the applicant from the Time Office to the Production Section having not been quashed and set aside, the applicant has no right to resume duty in the Time Office. He should have complied with his transfer order and reported for duty to the Production Section. In Gujrat Electricity Board and ors vs. Atma Ram Sungomal Poshani, Judgments today 1989(3) S.C. 20, the Hon'ble Supreme Court observed that, "Whenever, a public servant is transferred, he must comply with the order but if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the transfer of order is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order, a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules. x x x "

(See)

6. The applicant in this case has neither complied with the transfer order nor has he made any representation to the competent authority in respect of the same as directed in the order in O.A. No. 145/90. He has also not filed a copy of any impugned order as is required under section 19 of the Administrative Tribunals' Act, 1985. His transfer has neither been quashed, nor modified nor stayed. His assertion in his communication dated 8/9-5-90 to the effect that the subject matter of his transfer to the Production Office is stayed is factually not correct and virtually amounts to a mis-representation. It is stated in the application that when any employee goes on leave, then he shall resume his duty at the place from where he went on leave. He has not cited any rule/instructions in support of this contention. Moreover, the applicant's transfer in this case is from one section to another section of the same Office at the same place. It has neither been found to be in violation of any statutory rules, nor malafide nor arbitrary.

7. In view of the above discussion, the application is devoid of any merit and is accordingly dismissed. Though it appears to be a fit case for awarding costs against the applicant, yet taking a lenient view, we direct the parties to bear their own costs.

J. M. ...
MEMBER (J)

Cec. 11/6/90
MEMBER (A)

(sns)

June 1, 1990

Lucknow.

28/5/90

In the Central Administrative Tribunal Allahabad,
Circuit Bench, Lucknow. ✓

Original Application No. 190 of 1990.

Radhey Mohan Saxena --- Applicant
Versus
Union of India and others --- Respondents.

I N D E X

S.No.	Descriptions of documents	Page Nos.
1.	Application	1 - 11
2.	Photocopy of the order of central Administrative Tribunal dated 2.5.90.	Annexure 1. 12 & 14
3.	Copy of application dated 9-5-90 addressed to SAO(W) Loco, Charbagh, Lucknow.	Annexure 2. 15 & 17
4.	Copy of the telegram dated 11.5.90.	Annexure 3. 18
5.	Vakalatnama	
6.	Postal Order No. 02 436 401	

For use in Tribunal's Office

Date of Filing
or

Date of receipt by post

Registration No.

Radhey Mohan Saxena
Applicant

For Registrar

P
f.t.
S.H.
29/5/90
Noted
8/6/90
Adv.
30/5/90

28/5/90

In the Central Administrative Tribunal, Allahabad,
Circuit Bench at Lucknow.

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1

Original Application No. 190 of 1990.

Radhey Mohan Saxena aged about 50 years son of Late
Sri Shyam Narain Saxena resident of house No. 149/209,
Hari Nagar, Dugawan, Lucknow. --- Applicant

Versus

1. Union of India through the Secretary, Ministry of
Railways, New Delhi.
 2. The Senior Accounts Officer (Works) Workshop
Accounts Office, Northern Railway, Locomotive Workshop,
Charbagh, Lucknow.
 3. The Office Superintendent, Time Office, Northern
Railway, Locomotive Workshop, Charbagh, Lucknow.
- Respondents.

APPLICATION UNDER SECTION 19 OF CENTRAL
ADMINISTRATIVE TRIBUNAL ACTS 1985.

1. Particulars of the applicant :

- (i) Name of the applicant - Radhey Mohan Saxena
- (ii) Name of the father - Late Sri Shyam Narain
Saxena.
- (iii) Age of the applicant - About 50 years.
- (iv) Designation and particulars of office. - Head Clerk, Time Office,
Northern Railway, Locomotive Workshop,
Charbagh, Lucknow.

Radhey Mohan Saxena

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- (v) Office Address - Time Office, Northern Railway,
Locomotive Workshop, Charbagh,
Lucknow.
- (iv) Address for service - As stated above.
of notices.

2. Particulars of the respondents :

- (i)(a) Union of India through the Secretary, Ministry
of Railways, Rail Bhawan, New Delhi.
- (b) The Senior Accounts Officer (Works) Workshop
Accounts Office, Northern Railway, Locomotive
Workshop, Charbagh, Lucknow.
- (c) The Office Superintendent, Time Office, Northern
Railway, Locomotive Workshop, Charbagh, Lucknow.
- (d) The Chief Works Manager, Northern Railway,
Locomotive Workshop, Charbagh, Lucknow.
- (e) The Deputy Chief Mechanical Engineer (Works),
Northern Railway, Locomotive Workshop, Lucknow.
- (f) The Assistant Personnel Officer, Northern Railway,
Locomotive Workshop, Lucknow.

3. Particulars of the order against which the application
is made.

The application is against the following order :-

- (i) Order No. - x
- (ii) Date - 9-5-90 (Oral)
- (iii) Passed by - The Office Superintendent,
Time Office, Northern Railway,
Locomotive Workshop, Lucknow.
- (iv) Subject in brief - The applicant went to the
Time Office, Northern Railway, Locomotive
Workshop, Lucknow on 9.5.90 for joining the duty

Reddy Mohan Sankar

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alongwith his Railway Medical fitness certificate and also alongwith the photocopy of the Central Administrative Tribunal's Order dated 2.5.90 but the Office Superintendent - The respondent No.3 after perusing the order did not allow the applicant to join the duty and asked the applicant to go and take the duty in the Production Section, Northern Railway, Locomotive Workshop, Charbagh, Lucknow.

4. That the applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.
5. The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act 1985.
6. Facts of the Case :

(i) That the applicant is working on the post of Head Clerk in Time Office, Northern Railway, Locomotive Workshop, Charbagh, Lucknow and dealing the work of maintaining the time checking of workers. The applicant is working under Senior Accounts Officer (Works) - the respondent no. 2 .

(ii) That without showing any reason and cause the respondent no. on behalf of the respondent, Deputy Chief Mechanical Engineer (W) no. 1 passed the order dated 5.1.90 (Staff Order No. 10) through which the applicant (shown at serial no.5 in this order) was ordered to be transferred in the Production Section office without mentioning the post, grade and

Rashid M. M. M.

9-4/5

pay. It was also mentioned in the said order that the applicant will be replaced by Smt. R.R. Saxena - the senior clerk (Production). In the said order it is also noted that the approval from the Deputy Chief Mechanical Engineer - ~~the respondent no. 1~~ has also been taken. It is also important to mention here that in the said order it is specifically mentioned that no appeal, representations and the arguments shall be accepted against the orders. This is clear violation of Article 311(1) of Constitution of India. The ~~respondent~~ ^{Deputy -} Chief Mechanical Engineer (A) ~~and~~ acted in an arbitrary manner while passing the order dated 5.1.90 ~~that~~ ^{as} specifically it has been mentioned in the said order that no appeal, representation or arguments shall be entertained. By mentioning it the applicant was debarred from making the representation or filing the appeal which is against the imperatives of natural justice.

- (iii) That in the said order it has not been mentioned that in the production section on what post the applicant has been transferred and neither the pay and grade has been shown. It is pertinent to say that the order dated 25.1.90 ^{7.1.90} is not only a transfer order but it is sort of an order through which the rank of the applicant has been reduced which will be evident and clear from the staff order no. 138 dated 23.2.85. In the Time Office there are 18 existing posts of Head Clerk out of which 7 posts are lying vacant while in production section only 7 posts are

Reasoning "The order dated 25.1.90 is not only a transfer order but it is sort of an order through which the rank of the applicant has been reduced which will be evident and clear from the staff order no. 138 dated 23.2.85. In the Time Office there are 18 existing posts of Head Clerk out of which 7 posts are lying vacant while in production section only 7 posts are

Am
L

existing and all are full so the applicant can not said to be transferred on the same cadre and rank in the production section.

+ 20.1.90

(iv) That the order dated 5.1.90^h was never served on the applicant though the applicant regularly worked till 28.1.1990 and thereafter from 31.1.1990 the applicant is lying ill and is on medical leave. The applicant availed the rest leave on 29 and 30.1.90. Thereafter the applicant felt ill and went on medical leave from 31.1.90 by sending the application.

(v) That on 20.1.90 through the staff order no. 26 passed by the Chief Works Manager, Northern Railway, Locoshops Charbagh, Lucknow through the Assistant Personnel Officer (Works) the applicant (shown at serial no.7) has been transferred to Production Section without mentioning the post, cadre, rank, designation, pay and grade. As stated above this order is also not a transfer order but an order through which the rank and the grade has been reduced which the authorities are not empowered to do, and moreover without explaining any reason and cause and without giving any opportunity to the applicant the said order can not be passed which shows the malafide intention and arbitrariness of the ^{Chief Works Manager} ~~respondent nos.~~ and .

(vi) That the applicant preferred the application under Section 19 of the Administrative Tribunal Act for quashing the order dated 20.1.90 (O.A.

Rajney Mohan Sharma

no. 145 of 1990(L)) before the Central Administrative Tribunal.

(vii) That the application under Section 19 was heard by the bench comprising of Hon'ble Mr. Justice Kamleshwar Nath and Hon'ble Mr. K. Obayya and the said bench decided the application on 2.5.90 directing the applicant to make his representation in the light of the observation made in the order before the Competent Authority who passed the order dated 20.1.90 or else to the next authority at earliest and the competent authority shall dispose off the same within a period of one month from the date of receipt thereof the copy of the order dated 2-5-90 passed by the Tribunal is filed as Annexure no. 1 to that application.

(viii) That the applicant went on medical leave from Time Office, Northern Railway, Locomotive Workshop, Charbagh, Lucknow on 31.1.90. Till then the transfer order dated 20.1.90 was not served on the applicant and neither the applicant was spared from Time Office.

(ix) That it is very pertinent to mention here that for the period of the medical leave from 31.1.90 to 30.4.90 the salary has been paid to the applicant from Time Office bill unit no. 433 through manual salary bills duly signed by the Office Superintendent Time Office and pay bill A.P.C. Charbagh and S.A.O. (II) Charbagh. The said medical leave was granted by the S.A.O. (II).

Relief from Service

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- (x) That the applicant who went on medical leave from Time Office, when became fit went to the Time Office for resuming his duty. But the applicant was not allowed to resume his duty in the Time Office. The applicant gave an application in writing to the Senior Accounts Officer - the respondent no.2 under whose subordination the entire time office staff works, on 9.5.90 alongwith Fitness memo and photocopy of the order dated 2.5.90 passed by the Central Administrative Tribunal, Allahabad Circuit Bench, Lucknow. The copy of the application dated 9.5.90 given to the S.A.O.(W) through O.S. Time Office is filed as Annexure no.2.
- (xi) That thereafter the applicant went daily to the Time Office, Northery Railway, Loco Workshop, Charbagh but ⁱⁿ vain. Then the applicant sent a copy of the application dated 9.5.90 alongwith the copy of the order to the Chief Works Manager and Assistant Personnel Officer through registered post on 9.5.90 and next day on 10.5.90 sent an application to the S.A.O.(W) Charbagh by Regd. post. On 11.5.90 the applicant sent the telegrams to Hon'ble Railway Minister, Govt. of India, General Manager (P) Northern Railway, Head Quarter Office, Baroda House, New Delhi. The copy of the telegram dated 11.5.90 is filed as Annexure no.3 to this application. On 14.5.90 the applicant sent the application alongwith the CAT's order to the S.A.O. and the General Manager, Northern Railway, Baroda House,

Rasim Monan Bhat

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On 15.5.90 again the applicant sent telegram to Chief Mechanical Engineer, Northern Railway, Headquarter Office, Baroda House, New Delhi. On 16.5.90 the telegram was sent by applicant to Chief Workshop Engineer, Baroda House, New Delhi. On 17.5.90 another telegram was sent to F.A. and Chief Accounts Officer, Northern Railway, Baroda House, New Delhi. On 19.5.90 the telegram was sent to the Chief Works Manager, Northern Railway, Loco Workshop, Charbagh, Lucknow. On 21.5.90 the applicant sent another application to the Chief Works Manager, Northern Railway, Locomworkshop, Charbagh, Lucknow through proper channel through registered post. On 25.5.90 the applicant sent another application to the Deputy Director, (Establishment), Ministry of Railways, Rail Bhawan, New Delhi through regd. post.

- (xii) That without giving any thing in writing the opposite parties are not allowing the applicant to resume his duty in the Time Office particularly in the situation when the applicant went on leave from the Time Office and no transfer order has been served. The applicant further states that the Railway Fitness memo has been accepted by the Office Superintendent, Senior Accounts Officer (Works). It is further submitted that when an employee submits the Railway Fitness Certificate ~~then~~ for resuming the duty an employee is not required at all to obtain any order.

Rajendra Prasad

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(xiii) That it is very clear ~~then~~ when any employee go on the leave then the employee shall resume the duty from where the employee went on leave. While in the present case the applicant went on leave from the time office and on 9.5.90 the applicant after submitting his Railway Medical Certificate in the Time Office went to resume his duty in the Time Office, Northern Railway, Charbagh, Lucknow. The applicant was not allowed to join the duty in the Time Office.

(xiv) That the opposite parties have no right to cease the valuable right of an employee to resume his duty after furnishing the Railway Medical Certificate.

(xv) That the opposite parties in not allowing the applicant to resume his duty in the Time Office, Northern Railway, Locoworkshop, Charbagh, Lucknow are acting against the provisions of the Railway Service Rules. The act of the opposite parties are unconstitutional and against the provisions of law.

7. That the applicant has not been allowed by the opposite parties to resume his duty in the Time Office.

8. That the applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any Court of law or any other authority or any other bench of the Tribunal and nor any such other application,

Rajendra Kumar Singh

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writ petition or or suit is pending before any of them.

9. Reliefs Sought :

The applicant claims for the following reliefs :-

- (i) That an order be passed in favour of the applicant directing the opposite parties to allow the applicant to resume his duty as Head Clerk in the Time Office, Northern Railway, Locoworkshop (Charbagh), Lucknow as the applicant has submitted his Railway Medical Certificate before the opposite parties who accepted it but illegally not allowing the applicant to resume his duty in Time Office.
- (ii) That the opposite parties be directed to treat the applicant on duty in Time Office from 9.5.90 to the date on which by the order of this Tribunal, the applicant resumes his duty.
- (iii) That the opposite parties are also directed to pay the salary and other emoluments from 9-5-90 to the date of resuming the duty.
- (iv) That the costs of this application be also awarded to the applicant.
- (v) That any other relief which this Hon'ble Tribunal deems fit and proper, be also awarded to the applicant.

~~(vii)~~

10. Interim Relief : Pending final disposal on the application the applicant respectfully prays that the applicant be allowed to resume his

Rashid Khan Singh

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duty as Head Clerk in the Time Office.

11. The applicant is filing the application in person.

12. Particulars of Postal Orders :-

- (1) No. of Indian Postal Order: 02 436491
- (ii) Name of the issuing Post Office - Aminabada Post Office, Lucknow.
- (iii) Date of Issue of Postal Order - 28.5.1990
- (iv) Post Office at which payable -

13. List of Enclosures -

- (1) Annexure 1 Photocopy of Order of Central Administrative Tribunal dated 2.5.90
- (ii) Annexure 2 Copy of - Application dated 09.5.90 submitted to SAO (W) Lucknow
- (iii) Annexure 3 Copy of - Telegram dated 11.5.90 addressed to Genl Manager (P) Railway Baroda House New Delhi
- (iv) Annexure 4

V e r i f i c a t i o n

I, Radhey Mohan Saxena son of Late Sri Shyam Narain Saxena aged about 50 years working as Head Clerk in the Time Office, Northern Railway, Locoworkshop, Charbagh, Lucknow, resident of house no. 149/209, Hari Nagar, Dugawan, Lucknow do hereby verify that the contents of paras 1 to 3 G.O. (XII) 18/are true to my personal knowledge and those of paras 4, 5, 6 (XII) 18/are believed to be true by me on the legal advice and that I have not suppressed any material fact.

Lucknow, Dated:

May, 28, 1990.

Radhey Mohan Saxena
Applicant

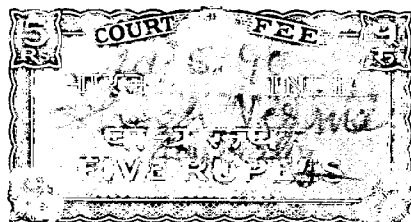
Sheesh Kumar
Advocate

• महोदय

10.8.1942 - 1942

श्री का

वकालतनामा



वादी (अपीलान्ट)

Rafael Nelson Rivera

बनास

प्रतिवादी रेस्पॉन्डेंट

Union of India + others

नं० मुकदमा?

सन् १९५५

पेशी की ला०

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ऊपर लिखे मुकदमा में अपनी ओर से

SHESH VERMA ADVOCATE

वकील

53 - Fusion Reactor Generating Electricity

महोदय

एडवोकेट

को अपना वकील नियुक्ति करके प्रतिज्ञा इकरार करता हूं और लिखे देता हूं इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर करें या कोई कागज दाखिल कर या लौटावे या हमारी ओर से डिगरी जारी करावे और रूपया वसूल कर या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और और तसदीक करें मुकदमा उठावे या कोई रूपया जमा करें या हमारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रूपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद लेवे या पंच नियुक्त करें—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकदमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी। इसलिए यह वकालत नामा लिख दिया प्रमाण रहे और समय पर कम्पिआवे।

Ranjay Mohan Saxena
हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महिला

सन १९६०

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In the Central Administrative Tribunal Allahabad,
Circuit ~~Lucknow~~ Bench, at Lucknow.

Original Appln. No. 196 of 1990. (2)

Radhey Mohan Saxena --- Applicant
Versus
Union of India and others --- Respondents

INDEX OF THE DOCUMENTS

S.No.	Description of document relied upon	Page Nos.
1.	Photocopy of the order of Central Administrative Tribunal - Annexure 1. dated 2-5-90.	12 to 14
2.	Copy of the application dated 9.5.90 addressed to SAO(W)Loco, Charbagh, Lucknow. - Annexure 2.	15 to 17
3.	Copy of the telegram dated 11.5.90. - Annexure 3.	8

Radhey Mohan Saxena
Applicant

Annexure 1

(12)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, MAHARASHTRA
CIRCUIT BENCH AT LUCKNOW

O.A. NO. 145/90 (L)

Radhey Mohan Saxena Applicant.
Versus
Union of India & Others Opp. Parties.

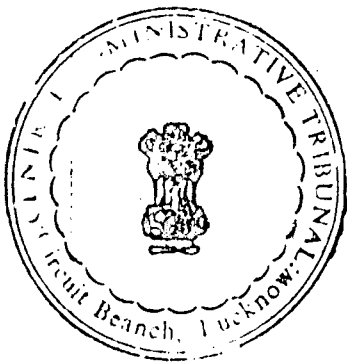
Hon. Justice Mr. K. Nath, V.C.
Hon. Mr. K. Chavva, A.M.,

(By Hon. Justice Mr. K. Nath, V.C.)

This application under Section 19 of Administrative Tribunals Act, 1985 is for quashing the order dated 20.1.1990 contained in Annexure-A6, whereby, the applicant was posted in consequence of transfer order (Annexure-A4) dated 5.1.1990. There is also a prayer for a direction to the opposite parties to allow the applicant to work on the post of Head Clerk in the Time Office.

We have heard the learned counsel for the applicant. Annexure-A4 is a transfer order dated 5.1.1990 which says that the applicant, Head Clerk in the Time Office, is transferred to the Production Section. Annexure-A6 is the impugned order dated 20.1.1990 which mentions that the applicant, Head Clerk in Time Office, will join in the Production Section.

The applicant has two grievance. In the first place it is pointed out that the post to which he has been transferred in the Production Section is not indicated in the transfer order. The statement in Para-4(113) of the application is that while there are 18 posts of Head Clerk in Time Office of which 7 posts are lying vacant, in the Production Section there are only 7 posts of Head Clerk which are all full and therefore, it could be stated that the applicant was transferred on the same grade and rank

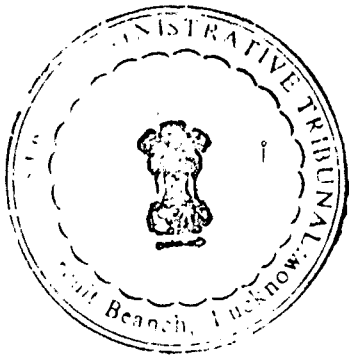


Radhey Mohan Saxena

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in the Production Section which he had held in
The second grievance is that in original transfer order
A4) dated 5.1.1990 the concerned authority has recorded that
all the concerned officials must be relieved from the respect-
ive posts without any delay and in that connection no appeal
or argument would be entertained.

The learned counsel for the applicant says that in
this manner not only the transfer order constitutes the applic-
ants reduction in rank, but he has also been prevented from
making any representation against the transfer. In our opinion
both the contentions are mis-conceived. The applicant, having
been holding the post of Head Clerk in the Time Office is presumed
to be posted ~~there~~ on an equivalent post in the Production
Section in the absence of any indication that he is appointed
to the same or some other post. The fact that all the 7 posts
of Head Clerk in the Production Section are already full
does not necessarily stand in the way of the applicant's being
posted as Head Clerk because on the applicant's own statement
there are 7 vacant posts of Head Clerk in the Time Office and
nothing could prevent the competent authorities to transfer
one of those posts to the Production Section.



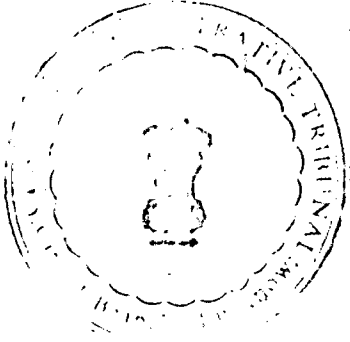
The embargo on the lodging of any appeal or submitting
any argument, strictly speaking, relates to the official being
relieved. It does not extend to the order of the transfer
itself. More over, it is not open to any authority to shut out
any representation or appeal as permissible under the rules.
We are not satisfied, therefore, that the remark contained in
Annexure-A4 prevents the applicant from making any representa-
tion against his transfer from Time Office to the Production
Section and to point out that all the posts of Head Clerk in
the Production Section are already full and therefore, he is
not in a position to appreciate on what post he has to join.

Ranjay Mohan Sonu

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We are of the opinion that the applicant can make representations on these grievances to the competent authorities which passed the order contained in Annexure-A4 & A5 or else to the next higher authority.

This petition is disposed of with the observation that the applicant may make a representation to the competent authority in the light of the above at the earliest and the competent authorities shall dispose of the same within the period of one month from the ~~fix~~ date of receipt, thereof.



— —
ALM. MEMBER.

— —
VICE CHAIRMAN.

Dated: 2.5.1990

sd.

T.V.
ALM
ALSTIO
Deputy Registrar
Central Administrative Tribunal
Lucknow Bench,
Lucknow

Attested
Sheshi Gama
Advocate

Rajiv Malhotra Saran

No. RMS/H.C./(T.O.)/May-90/

Date: 08/09.05.1990.

From: Radhey Mohan Saxena
Head Clerk, 'Time Office'
Northern Railway,
Loco Shop, Charbagh,
LUCKNOW.

To,

The Senior Accounts Officer,
Northern Railway,
Loco Shop, Charbagh,
LUCKNOW

Sub: TO RESUME DUTY IN TIME OFFICE

Ref: ORDER DATED 02.05.90 PASSED IN PETITION NO.145
IN RE. RADHEY MOHAN SAXENA VS. UNION OF INDIA
AND ANOTHER.

Madam,

The undersigned applicant declares that the subject matter of the transfer in Production Office from the working place i.e. Time Office is stayed as a result of filing redressal through which the impugned order of transfer vide staff order No. 10 dated 05.0190 and partial modification dated 20.01.90 vide S.O. No.26 has been opposed under reference in the Central Administration Tribunal/Additional Bench of Allahabad, sitting at Lucknow.

1. That the applicant submits that both the transfer order contained as Annexures in the referred petition are without jurisdiction and bad in the eyes of law, consequently the directions are laid down in the order dt. 2.5.90 (Copy attached). Being opposite party no.4 in aforesaid petition.
2. That the applicant wants to invite your kind attention towards the above noted subject on the basis of my

Radhey Mohan Saxena

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previous applications even number dated 13.3.90 and 05.04.90 vide Regd. postal receipt No. 237 of 14.03.90 and No. 0564 dt. 6.4.90 received by the O.S. (T.O.) respectively through which all the factual positions have been communicated to your honour.

3. That further in continuation of the above under reference please find herewith (attached) original FIT certificate issued by the D.H.O./N.Rly., Loco Health Unit, Charbagh Lucknow as Annexure No. 1 and also a photostat copy of the order dated 02.05.1990 as Annexure No. A-2.
4. That the orders for the transfer from Time Office to the Production Section are not served to the applicant upto the last day of working in time office and as such w.e.f. 29.01.90 the applicant is an authorised leave till today. Instead of this fact further it is to inform you that the payment of the sickness period upto the 30.04.90 has been prepared and released against the Time Office Bill Unit No. 433 and the said Manual salary bills are duly signed by O.S.(T.O.) O.S. (Paybill), A.P.O./CB/ and by your honour also.
5. That as per extent rules, without putting the order of transfer before your honour the spare memo of the applicant can not be issued by the O.S. (T.O.) and till the proper orders are received the applicant is authorised to ~~work~~ work under your kind control. Inspite of this procdure one thing to more which relates with the transfer fules that the cause and reason for the transfer is not given in the said

Recd by Mahan Sarma

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staff orders and illegally restrained from the constitutional rights. The contents of both the orders shows malafide intention by using of Pick and Choose policy.

6. That the applicant's rights are reserved as per order dt. 02.05.90 passed by Hon'ble Justice Mr. K. Nath Vice Chairman of the Central Administrative Tribunal, Lucknow Bench. After resuming my duty in Time Office the applicant may be able to avail the opportunity of submitting the representation to the next competent authority through proper channel against the transfer order. Because both the order dated 05.01.90 and partial modification dated 20.01.90 is approved by the Dy. C.M.E. (W) first and then the Chief Works Manager respectively without the consent of your honour as provided in the procedure order issued by the General Manager (M) N.R. Baroda House, New Delhi vide letter No. 1075M/605/Lgase.Dev.Mech. dt. 18th Oct. 67 in which the instructions of the Railway Boards' are laid down.

It is most respectfully prayed that your honour may please issue the necessary instructions to the O.S.(T.O.) in the light of the above facts and the applicant be also permitted to sign and work as usual in Time Office till the disposal of the representation against the transfer order which has to be submitted at the earliest according the petition and also in view of the directions issued by the C.A.T./Lucknow Bench the applicant may please be allowed to resume in Time Office with immediate effect.

Thanking you,

Rajesh Kumar Singh

Encl: as above.

Yours faithfully,
Sd/-
(R.M. SAXENA)
Head Clerk
Time Office

*Attested
Shish Verma
Advocate*

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G.M. (P),
N.R., BARODA HOUSE,
NDLS.

CAT ORDER SERVED RMC FITNESS SUBMITTED INSTEAD OF
OS(T.O.), SAO(W) LOCOSHOP-CB-LKO JOINING NOT ALLOWED.
NEITHER ANY ORDER NOR SPARE LETTER RECEIVED PRIOR
SICKNESS TILL TODAY ORDERS AWAITED.

R.M. SAXENA

H.C.(T.O.).

Radhey Mohan Saxena

Address :-

Radhey Mohan Saxena,
Head Clerk, Time Office,
N.Rly. Locoshop, CB, LKO.

Attested
Shesh Verma
Advocate.