

**CENTRAL ADMINISTRATIVE TRIBUNAL**

AHMEDABAD BENCH.

O.A No. 570 of 1993.

DATE OF DECISION 31st March, 1994.Shri Mohmad Tosif N.Vohra PetitionerShri H .S.Shah Advocate for the Petitioner (s)

Versus

Union of India and ors. RespondentShri R.M.Vin. Advocate for the Respondent(s)

CORAM .

The Hon'ble Mr. N.B.Patel : Vice Chairman

The Hon'ble Mr. K.Ramamoorthy : Member (A)

**JUDGMENT**

: 2 :

Shri Mohmad Tosif N.Vohra,  
Bhatiyar Gali,  
Near Juma Masjid,  
Khambhat,  
Dist. Kheda.

...Applicant.

(Advocate : Mr.H.S.Shah)

Versus

1. Union of India  
notice to be served to the  
Secretary,  
Ministry of Home Affairs/Railway,  
Sansad Marg,  
New Delhi. - 1.
2. The General Manager,  
Western Railway Division,  
Churchgate,  
Bombay - 400 020.
3. The Chairman,  
Railway Recruitment Board,  
Office of the Railway Recruitment Board,  
1st Floor, Meter Guage,  
Railway Station,  
Ahmedabad - 380 002.
4. Divisional Manager,  
Western Railway Division Office,  
Bhavnagar Para.

...Respondents.

(Advocate : Mr.R.M.Vin)

ORAL JUDGMENT

O.A.NO. 570 OF 1993.

Dated: 31.03.1994.

Per : Hon'ble Mr.N.B.Patel : Vice Chairman

It is not clear from Annexure-A/4, which is a representation or appeal dated 6.5.1993, addressed by the applicant to the Chief Medical Officer, Churchgate, Railway Hospital, Bombay, as also from the order dated 06.07.1993, passed by the Chief Medical Officer on the said representation/appeal, as to whether the applicant had enclosed with his representation/appeal, the certificate


: 3 :


dated 06.04.1993, issued by Dr.Ravi M.Patel, (Annexure-A/3) and pointed out to the Chief Medical Officer, Churchgate, Railway Hospital, Bombay, that it was the Chief Medical Officer, Railway Hospital, Bhavnagar, who had referred him to Dr.Ravi M.Patel and that Dr.Ravi M.Patel's certificate shows that he is not unfit for the post for which appointment order was issued to him. We, therefore, direct the applicant to make a fresh appeal/representation to the Chief Medical Officer, Churchgate, Railway Hospital, Bombay, enclosing therewith Dr.Ravi M.Patel's certificate - Annexure-A/3, and <sup>stating</sup> ~~pointing out~~ in his representation that Dr.Ravi M.Patel, had examined him on the reference of Chief Medical Officer, Railway Hospital, and Dr.Ravi M.Patel's certificate shows that he is not unfit for the post. The applicant is directed to make such a fresh appeal/representation within a period of 20 days and he may also enclose with <sup>his</sup> appeal or representation any other documents which he considers necessary for the consideration of the Chief Medical Officer, Churchgate, Railway Hospital, Bombay. If the applicant makes such an appeal/representation, within <sup>the</sup> ~~a~~ stipulated period, the Chief Medical Officer, Head Quarter, Churchgate, Bombay, is

: 4 :

directed to take decision on the appeal/representation of the applicant within a period of 20 days from the date of the receipt of the appeal/representation by him and to communicate his decision to the applicant and to the concerned authorities within a period of seven days after taking the same.

In view of these directions, Mr.H.S.Shah, seeks permission to withdraw the O.A. Permission granted. O.A. stands disposed of as withdrawn. No order as to costs.

  
(K.Ramamoorthy)  
Member (A)

  
(N.B.Patel)  
Vice Chairman

ait.

③ copies

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6  
7/4

CENTRAL ADMINISTRATIVE TRIBUNAL  
Ahmedabad Bench

Application No. 0A/570/93 of 19

Transfer Application No. \_\_\_\_\_ Old W.Pett No.

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided)

Dated : 08/01/94

Countersigned :

Asif Khan  
Section Officer, Court officer

Asif Khan  
Signature of the Dealing  
Assistant



CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD

C.A.T./Judicial Section.

Submitted :

Original Petition No 570  
of 1993

Miscellaneous Petition No \_\_\_\_\_  
of \_\_\_\_\_

Shri Mohamed Tasif M. Nohra Petitioner(s)  
versus  
CGO 19085 Respondent (s)

This application has been submitted to the Tribunal by  
Shri H.S. Shah

Under Section 19 of the Administrative Tribunal Act, 1985.  
It has been scrutinised with reference to the points mentioned in  
the check list in the light of the provisions contained in the  
Administrative Tribunal Act, 1985 and Central Administrative  
Tribunals (Procedure) Rules 1985.

The application has been found in order and may be given  
to concerned for fixation of date.

The application has not been found in order for the reasons  
indicated in the check list. The applicant advocate may be asked  
to rectify the same within 14 days/draft letter is placed below  
for signature. An urgent note has been filed by the learned  
Advocate to place the matter before Hon'ble Bench on 21/10/93.  
ASSTT. Disappointed that an nexus of Record Ser has not  
been attested, necessity of which may be seen.  
For orders please

S.O.(J)

CAC  
29/10/93.

D.R.(J)

Shah 29/10/93  
may be placed before Hon'ble Bench,  
Pratt  
30/10/93

Court-II

OA SF 544193

Filed by Mr. H.S. Shah  
Learned Advocate for Petitioners  
with second set & 4 copies  
copies copy served/not served to  
other side

*H.S. Shah*  
By Registrar C.A.T (I)  
29.9.93 Ahmedabad

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AHMEDABAD BENCH

AT AHMEDABAD.

ORIGINAL APPLICATION NO. 570 OF 1993.

Mohmed ~~Tosif~~ Tosif N. Vohra. Applicant.

Versus

Union of India and others. Opponents.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL BENCH AT  
AHMEDABAD.

ORIGINAL APPLICATION NO. of 1993.

Mohmad Tosif N. Vohra.

Bhatiyar Gali,

Near Juma Masjid, Khambhat, Dist. Kheda. Applicant.

Versus

1. Union of India  
notice to be served to the Secretary  
Ministry of Home Affairs/ Railway,  
Sahsad Marg, New Delhi.1.
2. The General Manager  
Western Railway Division  
Church Gate, Bombay -400020
3. The Chairman,  
Railway Recruitment Board  
Office of the Railway Recruitment Board,  
1st floor, Meter Gauge, Railway Station,  
Ahmedabad 380002.
4. Divisional Manager  
Western Railway Division Office  
Bhavnagar Pora. .. Opponents.

DETAILS OF THE APPLICATION

1. PARTICULARS OF THE APPLICANT

- (a) Name: Mohmed Tausif N. Vohra.
- (b) Name of father: Noormohmed Ibrahim Vohra.
- (c) Age of Applicant: 25 years.
- (d) Designation & particulars of office in which employed/or was last employed before ceasing to be in service. Seeking appointment,
- (e) Office address : ----
- (f) Address of service of notices. As above.

2. PARTICULARS OF THE RESPONDENT:

- (a) Name of the Respondent: As stated in the title.
- (b) Name of father/husband: --
- (c) Particulars of office: As stated in the title.
- (d) Office address: As per title.
- (e) Address for service of Notice: As stated in the title.

3. PARTICULARS OF THE ORDER AGAINST WHICH APPLICATION IS MADE:

- (a) Order No. ET/890/3/6/VI
- (b) Date: 16-3-1993.
- (c) Passed by: Divisional Railway Manager Western Railway, Bhavnagar para.
- (d) Subject in brief Appointment not been given after Medical examination.

4. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matters of the order against which he wants redressal is within the jurisdiction of the Tribunal under the Administrative Tribunal Act 1985.

5. LIMITATION:

The applicant further declares that the application is within the limitation prescribed in Sec.21 of the Administrative Tribunals Act 1985.

6. FACTS OF THE CASE:

That the applicant states that the applicant applied for emplyment to railway service class III service with the opponant and the applicant was informed by respondent no.3 that he was success in the written test vide their letter dt. 3.8.92. A copy of the said letter is enclosed here-with vide Annexure A-1. That thereafter the applicant informed vide letter dt.16.3.93 by respondent no.4 with regard to the medical examinations conducted by respondent no.3. Thereafter the applicant was given appointment order on 16.3.93 subject to certain terms and conditions. Copy of the ~~terms and conditions~~ appointment order is enclosed herewith and marked Annex. A-2. That thereafter the applicant has paid the medical examination fees of Rs.24/- for medical examination before the Civil Surgeon, Bhavnagar. The applicant states that ~~it~~ it appreas that on medical examination of the applicant at Bhavnagar which was held on 5-4-1993 it was found that he was having fever in the left lung and later on it was diognised by city radiologist &

in the said certificate issued by Consultant Radiologist and Sonologist Dr. Ravi M. Patel of Bhavnagar dt. 6.4.93 that there is no active lesion of Kocha's in his left lung and blood and ~~patum~~ spatum report was normal. Copy of the said certificate is annexed herewith and marked Annex.A.3. now In view of the said certificate the doctor has opined that there is no active lesion seen in the body of the applicant and in view of the said certificate the applicant is totally fit and should have been passed in the medical examination. But on the contrary, the opponent's Civil Surgeon has stated that the applicant is not medically fit. Hence the respondent no.4 has informed to the applicant that he is failed and will not be given any employment. That ~~after~~ thereafter the applicant has written a letter to the Chief Medical officer, Western Railway, Church Gate, Bombay for remedical examination on 6.5.93. Copy of the said letter is annexed herewith and marked Annex.A.4. That on the receipt of the aforesaid letter, respondent no.2 has written a letter on 6.7.93 stating that whatever the decision taken by the Medical Officer does not require to change of the opinion, hence representation made by the applicant before respondentno.2 has been rejected by the competent authority. A copy of the letter dt.6.7.93 written by respondent no.2 is annexed herewith and marked Annex.A.5. Thereafter again a letter issued by the Chief Medical Officer of Western Railway, Church Gate, Bombay has issued a letter dt.20.7.93 stating ~~that~~ the same reply which was stated in letter dt. 6.7.93.

7. DETAILS OF THE REMEDY EXHAUSTED:

Application for remedical examination which has been rejected, the applicant states that he has availed of the other remedies.

8. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT.

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 other application, writ petition or suit is pending before any of them.

9. RELIEF SOUGHT:

The applicant therefore prays that :

- (a) The Hon'ble Court be pleased to pass an appropriate order directing the respondents to give the appointment to the applicant after re-medical examination of the applicant being directed by the Hon'ble Tribunal; as per the order of appointment granted on 16.3.93 as per Annexure A-2 in the interest of justice;
- (b) be pleased to pass such other and further order/s as may be deemed fit and proper in the interest of justice;

LEGAL SUBMISSION:

- (a) The applicant submits that the action on the part of the opponents of rejecting the application for re-medical examination is totally illegal and arbitrary without any authority of law and therefore appropriate direction are required to be issued in the interest of justice.

(b) The applicant submits that the action and order on the part of the opponents is against the principle of equity and promissory estoppel and therefore, appropriate orders are required to be issued in the interest of justice.

(c) That in view of enclosure A-3 certificate issued by the Radiologist clearly states that the applicant has no disease and in view of the same the applicant-petitioner is fit for service.

(d) That the applicant is only bread earner of his family. Hence also in the interest of justice and equity the order for not appointing the applicant is without jurisdiction and bad in law and requires to be quashed and set aside.

(e) The applicant craves leave to add, alter, amend or rescind any of the grounds mentioned hereinabove at the time of hearing of this application.

10. INTERIM ORDER:

(a) That ~~pending~~ pending hearing and final disposal of this original application, the Hon'ble Court may be pleased to stay and direct the opponent-respondent to keep vacant one post.

(b) That under the facts and circumstances as stated hereinabove, the Hon'ble Court may be pleased to pass an appropriate order as may be deemed fit and proper in the interest of justice.

11. PARTICULARS OF POSTAL ORDER:

- (i) Number of Indian Postal Order: 8 01885877
- (ii) Name of the issuing Post office: District Court Post Office, A'bad.
- (iii) Date of issue of Postal Order: 22.9.1993.

(iv) Post Office at which payable: : AHMEDABAD.

(v) Amount of postal order: Rs.50/- .

12. LIST OF ENCLOSURES: As stated in Index.

VERIFICATION \* *Vohera Mohammad Tausif. N.*

I, Mohmad Tausif son of Noormohmad Vera, aged about 25 years, residing at Khambhat do hereby verify that the contents of para 1 to 12 are true to my personal knowledge and I believe the same to be true on legal advice and I have not suppressed any material fact.

AHMEDABAD,

DATE: 27-9 -1993.

Vohera Mohammad Tausif. N.  
APPLICANT.

*Identified by*  
*H.S. Shah*  
*Advocate*  
*(H.S. Shah)*  
*A.S.*

रेल भर्ती बोर्ड RAILWAY RECRUITMENT BOARDअहमदाबाद AHMEDABAD-380 002.साक्षात्कार के लिए बुलावा पत्र/CALL LETTER FOR INTERVIEWरोजगार सूचना EMPLOYMENT NOTICE No. 1/91.92 कोटि Category No. \_\_\_\_\_पद का नाम NAME OF POST NTPCश्री/श्रीमति/कु Vohra Mahmud Taufiqरोल नं. Roll No. 4153426**3 AUG 1992**

उपयुक्त रोजगार सूचना से संदर्भित आपके आवेदन और उमके लिए ली गई लिखित परीक्षा में आपके निष्पादन के आधार पर आपको सूचित किया जाता है कि आप साक्षात्कार के लिए रेल भर्ती बोर्ड कार्यालय, इंदिरा माला, मीटर गेज रेलवे स्टेशन, अहमदाबाद में दि. **3 AUG 1992** का 9-00 बजे उपस्थित रहे।

With reference to your application in response to the Board's Employment Notice and on the basis of your performance in the Written Test held against the same, you are directed to present yourself for INTERVIEW at 9-00 hours on \_\_\_\_\_ at the



Office of the Railway Recruitment Board. 1st Floor, Metre Gauge Railway Station, AHMEDABAD-380 002.

2. यह बुलावा पत्र तभी वैध माना जाए जब उस पर इस कार्यालय की मुहर लगी हो।

This Call letter is valid only if SEAL of this office is affixed on it.

3. कृपया नीचे दी गई सूचनाएं सावधानी पूर्वक पढ़ें और उसका पूरा-पूरा पालन करें।

Please read carefully the instructions given below which must be strictly adhered to.

अध्यक्ष CHAIRMAN 1.7.92

रेल भर्ती बोर्ड

अहमदाबाद

आवश्यक सूचनाएं

1. उम्मीदवार यह बुलावा पत्र और लिखित परीक्षा का बुलावा पत्र अपने साथ अवश्य लाए और मागने पर उसे प्रस्तुत करें।

The Candidate must bring this Call Letter alongwith call letter of the Written Test and produce the same on demand.

2. उम्मीदवार अपने शैक्षणिक योग्यताएं, अनुभव एवं खेलकूद की गतिविधियों के सभी मूल प्रमाण पत्र और मार्कशीट अपने साथ लाएं। वे अपनी जन्म तारीख के प्रमाणमें मेट्रिक/हायर सेकण्डरी/एस. एस. सी. के परीक्षा बोर्ड द्वारा जारी मूल प्रमाण पत्र अवश्य लाएं।

The candidate is required to bring all his/her ORIGINAL CERTIFICATES Mark Sheet of academic qualifications, experience and activities in games and sports. He/She must bring his/her original Matriculation/Higher Secondary/SSC certificate in support of Date of Birth as issued by Examination Board.



WESTERN RAILWAY

Divisional Office,  
Bhavnagar Para,  
Dt/- 16/3/1992

BY REGD. A.D.

NO. ET/890/3/6 W.VI

TO: Shri Mahmad Tausif Nurmohammad VohraBhatir Gali, Near Juma Masjid,KHAMBHAT - 388620 DIST. KHEDA

Sub:- Employment to Railway Service Class III Service  
Tfc. Deptt - BVP Division.

You are hereby offered an appointment as Comm. CK in scale Rs. 925-1540 on pay Rs. 925/- per month plus other allowance as admissible under the rules in the Traffic deptt. on this division subject to the following conditions:-

- i) The appointment offered to you is in the temporary cadre and your services are liable to be terminated on the 14 days notice or pay in lieu thereof.
- ii) Your confirmation in the cadre will depend among other things conditions including occurrence of vacancies. This cannot be guaranteed.
2. The appointment is subject to your passing Medical Examination in category C-1 Medical memo is end used.
3. You have to pay Rs. <sup>24</sup>~~12~~/- as per recruitment Medical Examination fees. Therefore, remit Rs. <sup>24</sup>~~12~~/- to any of the nearest Railway station Master's office Khambhat credited to Railway Revenue (Abstract) and obtain receipt thereof. The said receipt should be attached to the Medical Memo sent alongwith this call letter. The Memo with the cash remittance slip be produced to the ~~DMG/ADMO concerned for Medical Examination.~~ This office with 2 passport size photographs for medical examination.  
A written declaration by you that you are not serving where, and if you are already employed, upon production of a letter from your employer that he has released you from service.
4. You will have to pay a Security deposit of Rs. \_\_\_\_\_ on successful completion of the job training as prescribed or at the time of appointment on the Railway whichever is earlier.
5. If you selected for the purpose you will have to serve Rly. Administration for a minimum period of 5 years, if required by the Administration.

In case you fail to serve the Admn. for a minimum period of 5 years as stated above or if you wish to withdraw from training for any reason which are not beyond self, or adopting any other unfair practice, you will liable to refund the whole cost of your training as well as any other moneys paid to you during the period of training by way of stipend/pay etc.

10

The cost of training, being understood to the 12% of the pay and allowance of excluding T.A. & LA) drawn by you. Before imparting you the training you shall have to execute produce an indemnity Bond, affidavit on stamp paper of proper value also character certificate as per specimen enclosed binding your foregoing to satisfy the condition stipulated in the foregoing para cost of training and all money paid to you in the manner detailed above.

i) You have to produce original S.S.C. Certificate or equivalent certificate.

ii) Production of original SC/ST certificate on the Government Form specimen enclosed) in case of SC/ST.

7. Your training is liable to be terminated for any act of indiscipline, misconduct etc. or poor progress shown in training giving you 24 hours written notice.

8. During the training period you will be paid stipend \_\_\_\_\_ p.m. and dearness allowance as admissible under the rules.

9. You will have to confirm to all rules and regulations applicable to Government Servants and Before taking up the appointment you will have to take another make solemn affirmation on of giance to India and to the constitution of India.

10. You are liable to be posted at any station on this Railway and no guarantee can be given that you will be posted in part Division or in particular area.

11. You have to go under theoretical training at P.S.T.S-UD prescribed for the category as also practical training as per the terms and conditions laid down from time to time, when plan in future.

12. You shall, if so required be liable for Military service the Rly. Engg. Units for the Territorial Army for a period of 7 years in the T.A. service and 7 years for such period as may be laid down in this behalf, from time to time.

13. If you are prepared to accept this offer on passing the requisite medical examination please attend this office alongwith all the documents duly complete said in earlier paras within 10 days otherwise the offer will be treated as cancelled. II Class journey pass No. \_\_\_\_\_ ex. \_\_\_\_\_ to BVP is enclosed (To be used in of your passing medical examination and acceptance of offer otherwise returned to this office without used)

14. Change of category is not permissible and therefore, no correspondance will be entertained in this connection.

Encl: Medical Memo (2) Specimen of affidavit

(3) Specimen of Identity Bond (4) Specimen of SC/ST certificate in Government Form.

(5) Free pass (6) Attestation Form

(7) Character Certificate.

for Divisional Rly. Manager,  
W.Rly. Bhavnagar Para.

C/-ENIG/ADMO \_\_\_\_\_ for Med.Exam.

Medical Certificate should be given to candidate if found fit. If not found fit the same may be sent to this office alongwith the original. The same from candidate who is failed in

TRUE COPY

ADVOCATE

Ann. A/B

A/3



Dr. Ravi M. Patel M.D.  
Consultant Radiologist & Sonologist

29, Madhavdeep, Kalanala,  
Bhavnagar-364 002. © CI.21986, R.23997 //

Time : 9 am-2 pm, 5 pm-8 pm

Date 06.04.93

Name Mohmad Tausif

Ref. by Dr. CMO, Railway Hospital,

X-RAY CHEST PA VIEW

There are thin-walled cavities seen in lt. upper and midzone, one big and other smaller in size suggestive of emphysematous bullae. There is no consolidation or Koch's lesion seen in remaining lung field. There is no pleural effusion seen. The heart is normal in shape, size and contour. There is no shift of mediastinum seen. There is no skeletal or diaphragmatic abnormality seen.

COMMENTS -

The findings are suggestive of emphysematous bullae in lt. upper and midzone.  
No active lesion seen.

THANKS.

Dr. Ravi M. Patel

210 2101 21021-2 210215  
RAVI SONO-X-RAY CLINIC

TRUE COPY

ADVOCATE

FROM :  
M.N. VAHORA  
OPP. JUMMA MASJID  
BHATIYAR GALI  
AT & PO KHAMBHAT  
DIST KAIRA

To,  
CHIEF MEDICAL OFFICER,  
CHURCH GATE, RAILWAY HOSPITAL  
BOMBAY

DATE : 6 /5/1993

SUB : REQUEST FOR REMEDICAL EXAMINATION ON

Respected sir,

I would like to encroach upon your valuable time. I was asked to present in Railway Hospital, Bhavanagar. Para for Medical Examination on dated 5th April to 8th April 1993 for first under category Commercial Clerk. I have paid Medical Ex. fees at Cambay Railway Station on dated 30th March 1993. It receipt No X 878567 for Rs 24/--.

On Examination it was found that I am having a fever in left lung and later it was diagnosed by City Radiologist that there is no active lesion of Koch's in my left lung my Blood and sputum report is normal.

I request your honour I may kindly examined by you at your convenience time before the expiry of my name.

Thanking you in anticipation.

Yours sincerely,

*Vahora* M.N.  
( M. N. VAHORA )

TRUE CPOY  
*[Signature]*  
ADVOCATE

...HEADQUARTER... कार्यालय OFFICE  
...CHURCHGATE BOMBAY-400 020.

No.MD.216/3/8.

तारीख Dated... 6<sup>th</sup> July, '93... 1993

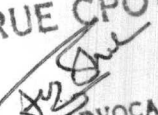
Shri M.N. Vahora,  
Opp: Jumma Masjid,  
Bhatiyar Gali,  
P.O. Khambhat, Distt: Kaiya.

Reg : Request for Re-medical  
Examination.

Ref : Your appeal dated 6.5.93.

It is seen from the findings recorded bet  
5th to 8th April '93, that decision taken by the M  
Examiner warrants no change of opinion hence your  
representation has been rejected by Competent Authority.

  
5.7.93  
for Chief Medical Officer

TRUE COPY  
  
ADVOCATE

✓  
Reply/Response written submitted  
filed by Mr. R.M. V.M.  
learned advocate for petitioner!  
Respectfully with second set.  
Copy served to served & other side

15

Obhagan  
10-12-93

In the Central Administrative Tribunal at Ahmedabad

O.A. 570/93

Mehmed Torif N. Vohra, ... Applicant

v/s

Union of India & others ... Respondents

The Respondents herein representing the Railway Administration file the following Written Statement in reply to the applicant's application.

1. The applicant's application is not according to law, misconceived and otherwise not tenable.

2. The Respondents do not accept the truth or correctness of any statement, averment, allegation or contention unless the truth or correctness of anyone of them is expressly and specifically admitted herein.

3. Regarding the contents of para 6, it is submitted that the contentions are not correct, therefore not accepted, in that the letter dated 16-3-93 which is quoted as appointment order is really not an appointment order but is an offer of an appointment subject to passing Medical examination. The candidate who is so offered the appointment to Rly. service is required to pass the prescribed medical examination as per rule 105 of sub-section of section B of Chapter 1 to read with rule 1019 of Chapter 10. In the case of appointment the applicant is declared unfit by Sr. Divisional Medical Officer, Western Railway, Bhavnagar Para

Copy of this  
will be  
served  
on the  
his advocate  
R.M. V.M.  
10-12-93

in Class C1 category for appointment as Commercial Clerk as per Certificate No.245579 of 5/8-4-93

"R"

Annexed hereto and marked Annex. R is a true copy of the Certificate. The applicant has been advised of the same by this office letter No.

"R/1"

EC/890/376 <sup>Annexed hereto and marked Annex. R/1</sup> vol.VI of 8-10-93 <sup>R1</sup>. It appears <sup>copy of the letter.</sup> from the application that the applicant had preferred an appeal to the Chief Medical Officer, Western Railway, Churchgate, Bombay as per Annexure A-4 of the application. The same has been disposed off as per Annexure A-5 of the application.

It is further submitted that even according to A2 the appointment would be made only subject to the applicant passing the C1 medical category. This is required as per the extant Rule 105 read with Rule 1019 of Chapter 10 of Indian Railway Establishment Manual. Annexed hereto and <sup>R/2 & R/3</sup> respectively marked Annex. R2 and R3 are the true copies of Rule 105 and Rule 1019 aforesaid. Except the Railway Doctor, the certificate of other doctors are not accepted for consideration of appointment to posts. The applicant therefore, cannot confront an adverse medical report by a Certificate of a non-railway doctor.

4. Till a regular appointment order after satisfying all the conditions is issued, the applicant does not get any right to be appointed on a post in Railway Administration.

5. In view of the above, the applicant is not entitled to any relief and his application be dismissed with costs.

On & behalf of Union of India,

Bhavnagar,

Date: -12-93.

*SM*  
8/12/93  
Sr. Divisional Personnel Officer,  
Western Railway,  
Bhavnagar Para.

VERIFICATION

I, G.L.Meena, Senior

Divisional Personnel Officer, Western Railway, Bhavnagar Division do state on verification that, I am conversant to this matter and competent to sign this reply and say that contents of para 1 to 8 are gathered from the official records to which I am conversant and I believe the same to be true to the best of my knowledge and belief.

Bhavnagar Para,

Dt/- -12-93

*SM*  
8/12/93  
Sr. Divisional Personnel Officer,  
Western Railway,  
Bhavnagar Para.

...

30.0.13. 3.6.66

पश्चिम रेलवे WESTERN RAILWAY पृष्ठ 2 श्री M 2 B

पृष्ठ No. 245579



(जब रेलवे में नियुक्ति के लिए उम्मीदवार के स्वास्थ्य की परीक्षा की जाये, तब इस प्रमाण-पत्र का इस्तेमाल किया जाये)

(Certificate to be used when a candidate is medically examined for fitness for appointment to the Railway)

प्रस्तावना/श्रीपथालय Hospital/Dispensary. 13.1.19  
प्रमाणित करता हूँ कि मैंने (नाम) ... को ... सं. No. 24579 ...

जाया/विभाग में ... श्रेणी के ... पर पर नियुक्ति के लिए उम्मीदवार है के स्वास्थ्य की परीक्षा की है।

I do hereby certify that I have examined (Name) ... (Class) ... in the ... a candidate for appointment as (designation) ... in the ... branch / department, whose signature / thumb impression has been appended below in my presence.

मैं उक्त पत्र पर नियुक्ति के लिए उन्हें ... I consider him / her fit for such appointment.

UNFIT

Signature of Railway Medical Examiner. W. N. Y. EMBABHAGAR SINGH

कार्यालय की मुहर Office Seal

तारीख Date: 5.1.1933  
+ Signature/Thumb Impression of Candidate

Answer 12

30.0.13. 3.6.66

पश्चिम रेलवे WESTERN RAILWAY पृष्ठ 2 श्री M 2 B

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(Certificate to be used when a candidate is medically examined for fitness for appointment to the Railway)

प्रस्तावना/श्रीपथालय Hospital/Dispensary. 13.1.19  
प्रमाणित करता हूँ कि मैंने (नाम) ... को ... सं. No. 24579 ...

जाया/विभाग में ... श्रेणी के ... पर पर नियुक्ति के लिए उम्मीदवार है के स्वास्थ्य की परीक्षा की है।

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मैं उक्त पत्र पर नियुक्ति के लिए उन्हें ... I consider him / her fit for such appointment.

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Signature of Railway Medical Examiner. W. N. Y. EMBABHAGAR SINGH

कार्यालय की मुहर Office Seal

तारीख Date: 5.1.1933  
+ Signature/Thumb Impression of Candidate

(316)

Ammap R/1 (19)

WESTERN RAILWAY

DRM's Office,  
Bhavnagar Para,  
Dt/- 8-10-93.

No. EC/890/3/6 vol. VI.

To:  
Shri Mahmad Tausif Noormohamad ~~Vohra~~ Vohra  
Bhater Gali, near Juma Masjid, Khambhat, 386620. 388020  
Dist: Kheda.

Sub: Recruitment in Group 'C' Staff - Tec. Deptt.  
Commercial Clerk scale ~~Rs. 950-1540~~ 975-1540  
in Medical category C/1 in case of shri  
Mohmad Tausif, s/o shri Noormohamad Vohra.

Ref: This office letter No. EC/890/3/6 vol. VI  
of 16-3-93.

In connection with the above subject, it is advised <sup>245574</sup>  
that as per MS. BVP's Certificate No. ~~245539~~ of 5/3-4-93  
you have been declared failed in prescribed medical examination  
for appointment as Commercial Clerk.

This is for your information.

*[Signature]*  
For DRM (S) BVP.

CF- M. S. BVP.

*[Handwritten initials]*  
11/10/93

Annex R/2

Extract of Para 105 of I.R.E.M? is reproduced below.

20

105. Health Certificates. - No person may be appointed to Railway service or sent to training school without the production of health certificate. The rules for medical examination of candidate for employment and the periodical medical examination of Railway servants are prescribed in Chapter X.

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TRUE - COPY

*H. A. B. Dabhatta*

पश्चिम रेलवे, भावनगर परा.  
Asst. Personnel Officer,  
V. Div. - Bhavnagar Pa-



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
AHMEDABAD BENCH, AT AHMEDABAD.

Original Application No.570 of 1993

MOHMAD TOSIF N. VORA. . . Applicant

Versus

Union of India & others. . . Opponents.

AFFIDAVIT IN REJOINDER

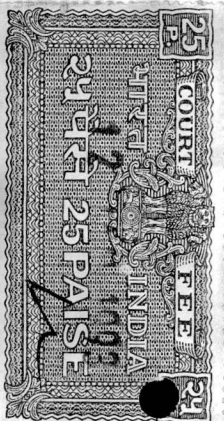
I Mohmad Tosif son of Noormohmad Vora, Muslim adult, residing at Khambhat, do hereby solemnly swear this affidavit in rejoinder and submit as under :

1. That I have read the affidavit in reply filed by the respondent - railway administration and I am filing the rejoinder against the averments, statements and contentions made by the respondent.

2. I reiterate and reaffirm what is stated in my original application and I deny all the contentions, averments and statements made in the affidavit filed on behalf of respondents.

3. With reference to paras 1 and 2, the contents thereof are not true and not admitted. It is not true that application is not according to law mis-conceived and not tenable in law as alleged.

4. With reference to para 3, the contentions thereof are not true and not admitted. I reiterate and reaffirm



Presented by the  
Applicant's Adv.  
A. H. S. Shah  
to Secy 02-3-94  
before the court.  
02-3-94

- 2 -

what is stated in my application. That the medical certificate produced by the respondents at Annexure 'R' is not true and the same is not admitted. However that the certificate annexed with the application at Annexure A-3 which was referred by C.M.O. of Railway Hospital wherein it was stated that no active lesion has been seen, wherein the certificate issued by the Railway Department and supplied the same to the applicant does not say anything with regard to the same. Hence contentions, averments and statements with regard to the applicant ~~is~~ is unfit for the post offered by the Railway Department is not true and not admitted. Here it is pertinent to note that Annexure R-1 is not served upon the applicant and the contention that it was informed by the Railway department to the applicant on 8.10.93 is not true and not admitted. However in view of the Railway Rules the ~~respondent~~ <sup>applicant</sup> has filed an appeal by way of representation before the Chief Medical Officer on 6-5-93 for reconsidering the decision of the Medical Officer of Bhavnagar after quoting the certificate of Dr. Ravi Patel and the same was disposed of by the Chief Medical Officer without giving any opportunity of being heard. Hence the decision taken by the respondent-

- 3 -

authority is ex-facie arbitrary. The statement with regard to the Railway Rules which was annexed to the affidavit in reply by the respondent at Annexure R-2 and R-3, I submit that myself is examined by Dr. Ravi Patel and the reference was made by Dr. Ravi Patel by C.M.O. Railway Hospital, and there are two contradictions in the reasonings given by the Medical Officer of Bhavnagar and the opinion given by Dr. Ravi Patel. It is true that except the railway doctor, the certificate of other doctors are not accepted for consideration of the appointment of post. But it is pertinent to note that the railway officer has referred to Dr. Ravi Patel and hence Dr. Ravi Patel has given the certificate of medical examination and the question of confronting an adverse medical report by certificate of a non-railway doctor does not arise because medical officer of Bhavnagar has referred the applicant for examining and hence the applicant has present himself for the medical report before Dr. Ravi Patel and Dr. Ravi Patel has given the clear opinion for the fitness of the applicant. Here in this petition also the applicant has prayed for considering the case for remedical examination in light of the contradiction in two medical reports and it is equitable to pass necessary orders with regard to considering the case of the applicant for remedical examination and hence it is prayed that Hon'ble Tribunal

may direct the respondents for remedical examination of the applicant and after obtaining a necessary certificate, the case of the applicant may please be considered.

What is stated above is true to the best of my knowledge and belief.

Date: 25<sup>th</sup> February, 1994,  
Ahmedabad.


Ucheer M.N.

(Ucheer Mahmud Tausif, N.)

I know the  
Signatory.

M.N. Ucheer  
Adv.

Solemnly affirmed before me  
by (Mahmud Tausif Mahmud)  
who is identified before me by  
Shri. M.N. Ucheer Adv.  
whom I personally know This  
25<sup>th</sup> day of Feb. 1994

  
Clerk of the Court,  
Civil Court, Khambhat