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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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Disposed Date-29/9/2000 INDEX

O.A/T.A No. 107/2000

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Disposed Date-12/9/2001

R.A/C.P No.

E.P/M.A No. 236/2000

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SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 107/2000

OF 199

Applicant(s) Smt. Nasade Bhar.

Respondent(s) Union of India and others.

Advocate for Applicant(s) Mr. M. Chanda.

Mrs. N.D. Goswami

Advocate for Respondent(s) Mr. G.N. Chakrabarty.

Ry. Advocate.

Notes of the Registry	Date	Order of the Tribunal
23.3.00 457069 2.3.2000 AN 22/3/2000 B. Sharma 22/3/2000	23.3.00	Present : Hon'ble Mr. G.L. Sanglyine Administrative Member. Application is admitted. Issue notice on the respondents by registered post. Written statement within four weeks. Notice returnable on 27.4.2000. List on 27.4.2000 for written statement and further orders.
24 3-2000 Service of notices prepared and sent to As. D. Section. for issuing of the same to the respondents through Regd. post with A/c Vide D/Nos. 901 to 903 Dtd. 27.3.2000.	27.4.00 MS 29/3/2000	Two weeks time allowed for submission of written statement on the prayer of Mr B.K. Sharma, learned Railway Counsel. List for written statement and further orders on 12.5.00.

Notes of the Registry	Date	Order of the Tribunal
<u>11-5-00</u> No W/S has been filed. 1m	12.5.00 pg	Mr. M. Chanda for the applicant. On the prayer of Mr. S. Sengupta, learned Railway counsel the case is adjourned to 7.6.2000 for filing written statement and further orders. JN Member (J)
	7.6.00	Present: Hon'ble Mr D.C. Verma, Judicial Member Learned counsel Ms N.D. Goswami for the applicant. Mr S. Sengupta, learned Railway Counsel, seeks three weeks time to file written statement. Time is granted. List the case on 28.6.00 for orders. A Member (J)
	28.6.00 nkm	There is no Bench today. Adjourned to 27.7.00. B70 ms.
	27.7.00	There is no Bench. Adjourned to 30.8.00. B70 ms.
<u>6.11.2000</u> No written statement has been filed by the respondents. B70	30.8.00	no bench. Adjourned to 7.11.00. B70 ms.
	7.11.00	On the prayer of Mr. S. Sengupta learned Standing Counsel for Railway four weeks time is allowed for filing of written statement. List on 6.12.00 for filing of written statement and further orders. Vice-Chairman
<u>5.12.2000</u> No W/S has been filed.	1m	

Notes of the Registry	Date	Order of the Tribunal
	6.12.00	List on 8.1.2001 to enable the respondents to file written statement and for further orders. Vice-Chairman
No. written statement has been filed.	mk	
	8.1.01	On the prayer of learned counsel for the respondents 3 weeks time is allowed for filing of written statement. List on 30.1.01 for orders. IC Usha Member Vice-Chairman
<u>29/1.2001</u>	lm	
No. written statement has been filed.	30.1.01	List on 16.2.01 to enable the respondents to file written statement. IC Usha Member Vice-Chairman
<u>15.2.01</u>	lm	
No. w/s has been filed.	16.2.01	List on 26.2.01 to enable the respondents to file written statement. IC Usha Member Vice-Chairman
<u>23/2/01</u>	lm	
No. w/s has been filed.	26.2.01	List on 8.3.2001 to enable the respondents to file written statement. IC Usha Member Vice-Chairman
No. w/s has been filed.	pg	
No. w/s has been filed.	8.3.01	Mr. S. Sengupta learned Standing counsel for Railway has submitted that the written statement is being filed. List on 23.3.01 for orders. IC Usha Member Vice-Chairman
	lm	

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Notes of the Registry	Date	Order of the Tribunal
<u>20.3.2001</u> w/s has been filed for and on behalf of the respondents.	23.3.01 pg	Written statement has already been filed. The applicant may file rejoinder if any, with 3 weeks from today. List on 27.4.01 for order. I C Usha Member
<u>No Rejoinder has been filed. Date</u> <u>26.4.01</u>	<u>27.4.2001</u> nkm	Two weeks time allowed to the applicant to file rejoinder, if any. List for orders on 16.5.01. I C Usha Member
	<u>16.5.01</u> bb	List is on 15.6.2001 for hearing. The applicant may file rejoinder, if any, within ten days. I C Usha Member
<u>5.6.2001</u> Rejoinder on behalf of the applicant against the w/s filed by the respondent has been submitted.	<u>15.6.2001</u> B/o	List for hearing on 26.6.2001. B/o
The case is ready for hearing. <u>14.6.01</u>		

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Notes of the Registry	Date	Order of the Tribunal
	26.6.01	<p>Learned counsel for the applicant has submitted that he has been served with a copy of the additional written statement today only and prays for and granted four weeks time to file additional rejoinder.</p> <p>List for hearing on 8.8.01.</p> <p><i>K C Sharma</i></p> <p>Member</p>
<u>28.6.2001</u> Reply to the rejoinder filed by applicant to the xv/s filed by respondents.	pg 8-8	<p>Heard Mr. B. Banerjee, learned Counsel for the applicant & Mr. S. Sengupta, learned Counsel for the Railway. Hearing concluded. Judgment reserved.</p> <p><i>MW Atty 8-8.</i></p>
<u>24.8.2001</u> Copy of the judgment has been read to the Office for issuing the same to the applicant as well as to the Adv. standing counsel for the respondents.	14.8.2001 nkm	<p>Judgment pronounced in open court. The application is dismissed. No order as to costs.</p> <p><i>K C Sharma</i></p> <p>Member</p> <p><i>Vice-Chairman</i></p>

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Notes of the Registry	Date	Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXX No. 107 of 2000

DATE OF DECISION

14.8.2001

Smt Nanda Dhar

APPLICANT(S)

Mr. M. Chanda, Mrs N.D. Goswami and
Mr G.N. Chakrabarty

ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

The Union of India and others

RESPONDENT(S)

Mr S. Sengupta, Railway Counsel

ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K.K. SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

X.

Judgment delivered by Hon'ble Vice-Chairman



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.107 of 2000

Date of decision: This the 14th day of August 2001

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Smt Nanda Dhar,
Office Superintendent (Officiating),
Office of the Chief Engineer,
N.F. Railway,
Maligaon, Guwahati.

.....Applicant

By Advocates Mr M. Chanda, Mrs N.D. Goswami and
Mr G.N. Chakrabarty.

- versus -

1. The Union of India, through the
General Manager,
N.F. Railway,
Maligaon, Guwahati.

2. The Chief Personnel Officer,
N.F. Railway,
Maligaon, Guwahati.

3. The Chief Engineer (Construction),
N.F. Railway,
Maligaon, Guwahati.

.....Respondents

By Advocate Mr S. Sengupta, Railway Counsel.

.....

O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

The legitimacy of the process of selection in filling up the post of Office Superintendent Grade II by the respondents is the subject matter of controversy in this proceeding.

2. The applicant is officiating in the post of Office Superintendent (OS for short) Grade II under the respondents in the N.F. Railway since February 1993. The Railway Authority took steps for filling up of twentyone vacancies of OS Grade II in the scale of pay of Rs.5500-9000/- by way of selection from among the Head Clerks. Fifteen posts were for unreserved category, four for SC category and two for ST

category. For this purpose a Memorandum dated 9.10.1998 was issued wherein names of fifty-nine eligible candidates for selection were cited and the concerned authorities were asked to advise the candidates to be in readiness to appear in the examination on short notice. The communication also informed that the selection would consist of both written test as well as viva-voce test. The applicant appeared in the written examination held on 5.12.1998 and according to her assessment she did well in the written examination. The result of the written test for the aforesaid posts was published on 17.1.2000 and the name of the qualified persons for the viva-voce test to be held on 24.1.2000 was mentioned in the list. In the said list the name of the applicant did not surface. The applicant being dissatisfied with the aforementioned result of the written test submitted numerous representations before the authority demanding justice. The applicant did not succeed in her move. Hence this application assailing the legitimacy of the process of selection.

3. The applicant, in her application, alleged about large scale irregularities in the process of selection, like manipulation in the process of evaluation of the answer scripts, allotment of marks etc. She also alleged inappropriety in the process of selection, but those allegations lack specification.

4. The reaspondents contested the claim of the applicant and denied the allegations. The respondents in their written statement stated that the performance of the applicant was not satisfactory. In the written statement it was also cited that the process of selection was done confidentially in a confidential file by the nominated officers and no officer and staff other than the panel approving authority and committee members had access to that confidential file. It was averred that the Railway Administration took all protections for avoiding irregularities and manipulations and for that purpose allotted coded roll number on the fly-leaves of each answer script and separated the fly leaves containing the original roll number as well as the coded number and

kept.....

kept all records under the custody of the cadre officer for which selection was held. It was also mentioned that there were fiftyeight candidates in the zone of consideration, out of which only thirtyseven appeared in the written test. In the written test the required number of candidates were not found suitable for viva-voce test. Accordingly, with the approval of the panel approving authority, the result of the OS Grade II had to be moderated by awarding grace marks to all the candidates. The applicant could not be declared suitable for viva-voce test even after giving the notional seniority marks and grace marks because of her poor performance in the selection.

5. We have heard Mr M. Chanda, learned counsel for the applicant at length and also Mr S. Sengupta, learned Railway Counsel. The applicant, no doubt, alleged malafide and impropriety in the process of selection, but the pleadings were devoid of material particulars and specifications. The charge of impropriety and malafide is required to be pleaded, proved and established. We have also perused the materials on record including the records produced by Mr Sengupta. The candidates who were selected for appointment secured better marks. No infirmity, as such, is discernible. Mr Chanda cited the decision in O.A.No.6 of 1999, Shri Krishna Chandra Das and 4 others Vs. Union of India and others, disposed of on 30.3.2001. The aforesaid case is distinguishable on facts. Mr Sengupta, in turn, referred to the decision in O.A.No.175 of 1999, Smt Prabhabati Boro Vs. Union of India and others, disposed of on 25.4.2001.

6. Considering all aspects of the matter we do not find any illegality or infirmity in the process of selection requiring interference by the Tribunal. Mr M. Chanda, however, submitted that the applicant is holding the post of Office Superintendent Grade II on ad hoc basis since long. Persons junior to her had already marched over her. Mr Chanda accordingly sought for a direction from the Tribunal on the respondents to regularise her as Office Superintendent Grade II on the basis of the length of her service in officiating capacity. We find it difficult to issue any direction to the respondents by exercising power

under Section 19 of the Administrative Tribunals Act, 1985. We, however, leave the matter to the Railway Administration to take care of the situation either by making some arrangement for improving the professional skills of the applicant or other like measure so that the applicant can also climb to the higher promotional laddar.

7. Subject to the observations made above the application stands dismissed. There shall, however, be no order as to costs.

K. K. Sharma

(K. K. SHARMA)
ADMINISTRATIVE MEMBER

D. N. Chowdhury

(D. N. CHOWDHURY)
VICE-CHAIRMAN

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241 21 MAR 2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Guwahati Bench

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the Case : O.A. No. 107 /2000

Smt. Nanda Dhar : Applicant

-versus-

Union of India & Ors. : Respondents

I N D E X

Sl.No.	Annexure-	Particulars	Page No.
1	-	Application	1-12
2	-	Verification	13
3	1	Notification dated 9.10.98	14- ¹⁵ ₁₇
4	2	Memorandum declaring the result dt. 17.1.2000	16-17 18-20
5	3	Representation dt. 20.1.2000	18-20 ²¹⁻²³
6	4	Representation dt. 14.2.2000	24-25 ²⁴⁻²⁸

Date : 6/3/2000Filed by
N.R. Goswami
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An Application under Section 19 of the Administrative
Tribunals Act, 1985).

Original Application No. 107/2000

BETWEEN

Smt. Nanda Dhar
Office Superintendent (Officiating)
Office of the Chief Engineer,
N.F.Railway,
Maligaon, Guwahati-781011

.... Applicant

199 (Adh.)
-AND-

1. The Union of India
(Through the General Manager,
N.F. Railway, Maligaon, Guwahati-11).
2. The Chief Personnel Officer
N.F. Railway,
Maligaon,
Guwahati-11.
3. The Chief Engineer (Construction)
N.F.Railway,
Maligaon,
Guwahati-11.

.... Respondents

Contd.....

Nanda Dhar

DETAILS OF APPLICATION

1. Particulars of order against which this application is made.

This application is made praying for setting aside the entire irregular selection proceeding held on 5.12.1998 for consideration of promotion to the cadre of Superintendent Grade II or for review of the result of the written examination declared by the Railway Authority vide Memorandum issued under letter No. E/254/55/Pt.II(E) dated 17.1.2000 and also praying for a direction to the respondents particularly to the General Manager(P) to issue necessary orders for allowing the applicant to appear in the viva voce test proposed to be held on 24.2.00.

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of the instant application is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation

The applicant further declares that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the case.

4.1 That the applicant is a citizen of India and as such entitled to all the rights and privileges guaranteed under the Constitution of India.

Contd.....

Nanda Ghar

4.2 That your applicant presently serving as Head Clerk in the office of the Chief Engineer (Construction), N.F. Railway, Maligaon, Guwahati. However she is now officiating in the post of Office Superintendent Grade II.

4.3 That your applicant appeared in the written examination in pursuance to the Notification issued under letter No. E/254/55 -Pt II(E) dated 9.10.98 issued by the General Manager (P), N.F.Railway, Maligaon for selection test for consideration of promotion to the post/cadre of Superintendent Grade II. In the said Notification it was stated that 21 vacancies would be filled up, out of which 15 vacancies were earmarked for unreserved candidates and 4 were for Scheduled Tribe candidates and 2 were for Scheduled Tribe candidates. The name of the eligible candidates were shown in the said notification and the name of the applicant was appeared at serial No.18 of the said Notification dated 9.10.1998.

A copy of the Notification dated 9.10.1998 is annexed as Annexure-1.

4.4 That your applicant accordingly appeared in the written examination held on 5.12.1998 in pursuance to the Notification dated 9.10.1998 and did well in the said written examination. Although in terms of Railway Board's letter bearing No. E/254/0/Pt.II(C) dated 9.6.97 selection process should be completed in a span of 120 days but most surprisingly the said instruction of the Railway Board which is mandatory in nature has not been adhered

Contd...

Nanda Dhar

to by the Railway Authority in the instant case in the matter of publication of result of the written examination held on 5.12.1998. It is also stated that there are provision in the Railway Rule of absentee test but in the instant case the Railway Authority particularly the respondents has conducted absentee test in total violation of the Railway Board statutory instruction on two occasions in order to show some undue favour to some of the absentee candidates who could not appear in the written examination held on 5.12.1998. In this connection it is also relevant to mention here that such absentee test is required to be conducted after obtaining the approval of the General Manager as per the Railway Board Rule. But in the instant case no approval was obtained for conducting the 2nd absentee test in total violation of the statutory Railway Board Rule. It is further stated that altogether 59 candidates were called for in the written test and out of that many of them were not eligible as per the existing rule in force for appearing in the written test as they have not completed two years of regular service in the cadre of Head Clerk. But surprisingly those ineligible candidates were called for written examination without obtaining prior approval of the General Manager which also further smacks mala fide.

The impugned result of the aforesaid written test was published through memorandum bearing No. E/254/55/Pt II (E) dated 17.1.2000 would show that the vacancies notified for Scheduled Caste and Schedule Tribe candidates have been much excess than the vacancies earmarked in

Nanda Dhar

the notification dated 9.10.1998. Due to non selection of required number of general candidates for filling up of unreserved vacancies as was notified which is apparently in violation of Article 14 and 16 of the Constitution of India.

A copy of the memorandum declaring the result of the written test held on 5.12.98 published on 17.1.200 is annexed hereto and the same is marked as Annexure-2.

4.5 That your applicant begs to state that she came to learn from a reliable source that there are large number of irregularities occurred in the selection process as such manipulaton in the process of evaluation of answer scripts, allotment of markes and manipulation also in the process of allotment of marks in notional seniority have been occurred in total violation of Railway Board Circular No. E(NG) 1-B-EMI-65 (PNM)/NFIR dated 5.12.1984 in order to give undue favour to some of the Head clerks who also appeared before the written examination in pursuance of the notification dated 9.10.98. It is categorically stated that the answer script of the applicant was not properly evaluated as required under the rules and norms. It is also relevant to mention here that some of the Head Clerks who were called for written examination and appeared in the said examination even did not complete two years of regular service in the cadre of Head Clerk but they were allowed to appear in the written examination held on 5.12.1998 and some of them have been declared successful in the written examination in total violation of the Railway Board Circular

Nanda Ahar

NO. E(NG)-94 Pt.I/17 dated 11.11.1994. Moreover notional seniority marks was allotted on pick and choose policy basis without following the mandatory provisions laid down in the Railway Board Circular dated 5.12.1984 and thereby notional seniority marks was not allotted in the manner in the circular dated 5.12.1984. Although the benefit of notional seniority marks offered to the candidates whose names have been figured in the successful candidates in the written examination but the same has not been allotted to the applicant. As a result the application is meted out hostile discrimination in the process of allotment of marks in notional seniority as well as in the matter of evaluation of answer script.

It is ought to be mentioned here that the performance of the applicant in the written examination held on 5.12.1998 was extremely good. Therefore she is confident that if this Hon'ble Tribunal re-evaluates the answer scripts of the applicant and ~~xxxxx~~ if a comparison study is made with the answer scripts of the successful candidates it would definitely reveal that the performance of the applicant in the written examination was far better than many of the successful candidates appeared in the written examination. It would further be evident that a large scale manipulation have been committed in the process of selection i.e. allotment of marks, notional seniority marks etc. Therefore finding no other alternative the applicant submitted representation dated 20.1.2000 and there~~by~~ter another representation on 14.2.2000 praying interalia for review of the entire selection proceeding of the written examination held on 5.12.1998 in pursuance

Nanda Bhar

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to the notification dated 9.10.1998. But surprisingly no reply has been received till filing of this Original Application whereas the viva voce test is scheduled to be held on 24.2.2000. In the compelling circumstances the applicant finding no other alternative approaching this Hon'ble Tribunal praying for a direction to the respondents for review of the entire selection proceeding held on 5.12.1998 in pursuance to the notification dated 9.10.1998 for consideration of promotion to the post of Office Superintendent Grade II. It is relevant to mention here that the applicant drawn the attention of the respondents particularly the respondent No.2 regarding the large scale manipulation through her representations as stated above. But the respondents did not take any action so fare in the instant case of the applicant. In this connection it is also relevant to mention here that most of the selection process either for promotion or for initial recruitment there are large scale manipulation is being occurred in the interest of a vested circle working in Railways which would be evident from a series of cases pending before this Hon'ble Tribunal regarding recruitment and promotion and in many of the cases of recruitment Railway authority itself have taken the stand that process of the recruitment has been vitiated due to large scale manipulation. It is also relevant to mention here that in the last occasion when the similar examination was held in pursuance to Notification issued under letter No. OS/ dated GR II/ G ~~xxxxxxxx~~ 12.7.1997 and the examination was held on 25.10.1997 the applicant was the victim of manipula-

Nanda Dhar

tion, discrepancy and violation of statutory of Railway Board Circulars in the process of allotment of notional seniority marks in the answer scripts of the written examination and the applicant also submitted her representation but no action was initiated by the Railway Authority for review of the selection process. Therefore in the compelling circumstances the applicant urged before this Hon'ble Tribunal to call for the relevant records of the selection process held on 5.12.1998 and the records of the subsequent absentee tests including the answer script of the successful candidates as well as the answer script of the applicant for perusal of the Hon'ble Tribunal and further be pleased to direct the respondents to review the entire proceeding and re-evaluate the answer script including the allotment of marks granted as notional seniority and on the basis of the review the Hon'ble Tribunal further be pleased to direct the respondents to allow the applicant to appear before the viva voce test ~~scheduled~~ to be held on 24.2.2000 otherwise it will cause irreparable loss to the service prospects of the applicant.

4.6 That your applicant begs to state that even the notional seniority marks is awarded to the juniors of the applicant but the same was not given to the applicant otherwise the result of the applicant in the written examination would have been different. Therefore Hon'ble Tribunal be pleased to direct the respondents to produce the answer scripts of the applicant and answer scripts of the other candidated who are declared successful in

Nauda Ahar

the written examination. In this connection it is stated that the applicant came to know from a reliable source that notification has already been issued for holding viva voce test on 29.2.2000, therefore Hon'ble Tribunal be pleased to direct the respondents to stay the process of Viva-voce test till final disposal of this application otherwise it will cause irreparable loss to the applicant.

Under the facts and circumstances stated above, finding no other alternative the applicant approaching the Hon'ble Tribunal for infringement of her fundamental right and also for protection of rights and interests.

4.7 That this application is made bona fide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

5.1 For that process of selection and evaluation of answer scripts has been made in total violation of statutory rules laid down by the Railway Board and there are discrepancies in the matter of evaluation of answer scripts and allotment of marks. As such the review is warranted.

5.2 For that ineligible persons had been allowed in the written examination in total violation of the statutory Railway Board rules particularly without approval of the General Manager (P).

5.3 For that the absentee test on two occasions have been conducted also in violation of statutory rules of Railway Board and also without approval of the General Manager (P).

5.4 For that ineligible persons has been declared successful in the written examination by manipulating the answer scripts and in evaluating the answer scripts and allotment in marks.

5.5 For that procedure of the written examination has not been followed as well as for declaring the result of the written examination in the instant case the procedure has not been followed. As such the selection proceeding is liable to be set aside and quashed.

5.6 For that the entire selection proceeding is vitiated due to irregularities and manipulation and discrepancies in the matter of allotment of marks.

6. Details of remedies exhausted

That there is no other alternative and efficacious remedy available to the applicant except invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

7. Matters not previously filed or pending in any other Court.

That the applicant further declares that he had not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other Court, authority, nor any such application, writ petition or suit is pending before any of them.

8. Relief(s) Sought for :

Under the facts and circumstances stated above the applicant most respectfully prays that Your Lordship

Nanda Dhar

may be pleased to admit this petition and direct the respondents to give the following reliefs :

- 8.1 That the Hon'ble Tribunal be pleased to set aside the entire selection proceeding held on 5.12.1998 in pursuance of Notification dated 9.10.98; alternatively to direct the respondents to review the entire selection proceeding with immediate effect.
- 8.2 That the Hon'ble Tribunal be pleased to direct the respondents to call the applicant in the viva voce test on the basis of the review in terms of prayer no.1.
- 8.3 Costs of the Application
- 8.4 To pass any other order or orders as deemed fit and proper by the Hon'ble Tribunal.

9. Interim order prayer for :

Pending final decision of this application the applicant prays for the following reliefs :

- 9.1 That the Hon'ble Tribunal be pleased to stay the operation of the viva-voce test proposed to be held in pursuance of the result of the written examination which was held on 5.12.1998 in pursuance to the Notification dated 9.10.1998 for consideration of promotion to the grade of Superintendent Grade-II.

The above reliefs are prayed on the grounds explained in paragraph 5 of this application.

Nanda Dhar

10.

This application has been filed through Advocate.

11. Particulars of the I.P.O.

- i. I.P.O. No. : 06 457069
- ii. Date of Issue : 7-3-2000
- iii. Issued from : G.P.O., Guwahati.
- iv. Payable at : G.P.O., Guwahati.

12. List of enclosures

As stated in the Index.

..... Verification

Nanda Dhar

V E R I F I C A T I O N

I, Smt. Nanda Dhar, wife of Sri ~~Shib das~~ ~~Das~~ Dhar aged about 49 years, Head Clerk, at present officiating to the post of Office Superintendent in the office of the Chief Engineer, N.F. Railway, Maligaon, Guwahati do hereby verify that the statements made in paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the ~~6th~~ ^{March} day of February, 2000.

Nanda Dhar

Signature

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II. F. Notice.

Office of the
General Manager (P)
Naliganj: Gauhati-11.

No. E/254/55 PL. II (E)

Unted, the 09-10-1998

To
GM/C-n/MLG
Sacy. to C E/MLG.
Sr. EN/MLG.
OS/H/MLG.

✓ Post ✓ G II
✓ OS ✓ 15 → OR

Sub:- Selection for the post of HS/G. II
in scale Rs. 550-500/- of Civil
Engineering Department.

It has been decided to hold a selection for filling up
of 21 (twenty-one) vacancies under C E/MLG, GM/C-n/MLG's office
with break up, UR-15, SC-4, ST-2 of OS/G. II in scale Rs. 550-500/-.

The selection will consist of both written test as well as
Viva-Voce test. You are therefore, requested to advise the follow-
ing Hd. Clerks working under you to be in readiness to appear in
the written examination for the post of OS/G. II in scale Rs. 550-
500/- on short notice.

The date of written test will be follow:

SN	Name	Desin.	Whether UR, SC, ST.	Place of working.
1.	Sri R. Bhattachary.	✓	UR	GM/C-n/MLG.
2.	U. K. Das,	✓	UR	C E/MLG.
3.	Atul Ch. Das.	✓	UR	—
4.	Smt. Bina Panu Dangi.	✓	SC	—
5.	S. J. H. N. Derman.	✓	ST	—
6.	P. L. Datta.	✓	UR	—
7.	Dilabesh Ray.	✓	UR	—
8.	Smt. P. Datta.	✓	UR	—
9.	Sri Sukumar Dacy.	✓	ST	—
10.	Smt. Anjali Das.	✓	UR	GM/C-n/MLG.
11.	Kenan Dola Dey.	✓	ST	C E/MLG.
12.	Saraswati Choudhury	✓	SC	GM/C-n/MLG.
13.	Sri Niranjan Chakraborty.	✓	UR	C E/MLG.
14.	Subodh Ch. Das.	✓	UR	Sr. EN/MLG.
15.	Smt. Suprabha Chakraborty.	✓	UR	—
16.	Sri R. Choudhury	✓	UR	—
17.	Jobasish Chakraborty.	✓	UR	C E/MLG.
18.	Smt. Nandita Datta.	✓	UR	—
19.	Sri Swapan Kr. Choudhury.	✓	UR	GM/C-n/MLG.
20.	Sunil Kr. Datta.	✓	UR	Sr. EN/MLG.

5/2/9

(Contd. 2/-)

SN'	Name	Desig.	Whether M, SC, ST.	Place of work.
21.	Sri Ramilash.	III.Clerk	IR	CE/MLG.
22.	" Anil Kr. Bhattacharya	III	IR	Sr. EN/MLG.
23.	" A.M.Kalita.	III	IR	CE/MLG.
24.	" S.K.Sengupta.	III	IR	CE/MLG.
25.	Smt.Gauri Ghosh.	III	IR	CE/MLG.
26.	Sri Jayanta Kr.Dutta.	III	ST	CE/MLG.
27.	" S.I.Dasgupta.	III	ST	GM/Cen/MLG.
28.	" H.N.Dutta.	III	ST	CE/MLG.
29.	Smt.Labanya Choudhury.	III	IR	CE/MLG.
30.	Sri Suman Kr.Sab.	III	IR	CE/MLG.
31.	" Subhash Mitra.	III	IR	CE/MLG.
32.	" Payalbari Deka.	III	IR	CE/MLG.
33.	Smt.Aranti Savi.	III	IR	CE/MLG.
34.	Sri Gautam Deka.	III	IR	CE/MLG.
35.	" Amal Ch. Das.	III	IR	CE/MLG.
36.	" J.N.Kakati.	III	IR	CE/MLG.
37.	Dipak Kr.Bhattacharya.	III	IR	GM/Cen/MLG.
38.	Smt.Sibani Patra.	III	IR	CE/MLG.
39.	Sri Dasanta Kr.Dutta.	III	ST	CE/MLG.
40.	" Gajon Medhi.	III	SC	CE/MLG.
41.	" Ranjan Chakrabarty.	III	IR	CE/MLG.
42.	" Debraj Kant Ray.	III	IR	CE/MLG.
43.	Smt.Usha Dutta.	III	IR	CE/MLG.
44.	Sri Umesh Saikia.	III	IR	CE/MLG.
45.	" Bhutan Ch. Das.	III	SC	CE/MLG.
46.	Smt.Usha Rani Daimary.	III	ST	CE/MLG.
47.	" Bindu Dala Dasbari.	III	ST	CE/MLG.
48.	Sri Urmil Ch. Nath.	III	IR	CE/MLG.
49.	" S.K.Mazarika.	III	SC	CE/MLG.
50.	" Bhanu Deka.	III	IR	CE/MLG.
51.	" T.N.Sarma.	III	IR	CE/MLG.
52.	Smt.Kalpana Datta.	III	IR	CE/MLG.
53.	" Snehalata Dattan.	III	IR	CE/MLG.
54.	Sri Puran Daha.	III	SC	CE/MLG.
55.	" Md. Ilyas Ali.	III	IR	CE/MLG.
56.	" Rameswar Saha.	III	ST	CE/MLG.
57.	Smt.Jyotima Das.	III	IR	CE/MLG.
58.	Sri S.K.Mandal.	III	SC	CE/MLG.
59.	" Nara Datalum.	III	SC	CE/MLG.

Concerning Convelling Officers and Supervisors at present please confirm eligible candidates enlisted above are given information of the selection in time. Copy of syllabus enclosed.

For General Manager (C):MLG

Copy forwarded. For information and necessary action :-

1. Staff concerned the high Cen/MLG.

For General Manager (C):MLG

ad/-/10-10-10

II, F, Railway

Memorandum.

Sub: Result of the written Selection for the post of OS/II (Rs.5500-900/-) of CE's office Unit/Maligaon

In the written test of above selection held in CE's office, Maligaon on 5.12.98, 11.10.99 (Suppl. written) and 31.12.99 (second suppl. written) the following candidates have qualified for viva-voce test to be held on 24.1.2000 at 10.00 hours in CE's office, Maligaon.

1.	Smt. Anjali Das (ST)	HC under CE/Maligaon	Qualified with notional seniority marks.
2.	" Kanan Bala Biswas (SC)	HC under GM/Cen/MLG	Qualified in relaxed standard.
3.	Sri Subodh Ch. Das	HC under Sr. P.D.N/MLG	Qualified with notional seniority marks.
4.	" A.H. Kalita	HC under Sr. P.D.H/MLG	Qualified.
5.	" J.K. Barua (ST)	HC under CE/MLG	Qualified.
6.	" S.P. Basumatary (ST)	-do-	Qualified in relaxed standard.
7.	" Subhas Modak	-do-	Qualified.
8.	" B.K. Borah (SC)	HC under GM/Cen/MLG	Qualified in relaxed standard.
9.	" Gajen Medhi (SC)	-do-	Qualified. -do-
10.	" Dhiren Ch. Das (SC)	HC under CE/MLG	Qualified
11.	Smt. Usha Rani Daimari (ST)	-do-	Qualified in relaxed standard.
12.	" Bindu Bala Boro (ST)	-do-	-do-
13.	Sri Uren Ch. Nath	-do-	Qualified.
14.	" S.K. Hazarika (SC)	-do-	Qualified
15.	" Rousan Ali	-do-	Qualified
16.	" Ratneswar Swargiary (SP)	-do-	Qualified in relaxed standard.
17.	" S.K. Haudal (SC)	HC under GM/Cen/MLG	-do-

(S. R. Nandy)

ADM/E

for General Manager (P)/MLG

(Continued Page-2)

*Attestd
S.R.Nandy
ADM/E*

No. E/254/55/Pt.11(E)

Dated 17.1.2000

Copy forwarded for information and necessary action to :-

1. GM/CUN/Maligaon } They are requested to advise the
2. Secy. to CE/MLG } above candidate to appear in the
3. F DEN/Maligaon } viva-voce test to be held on
4. OS/W/Maligaon } 24.1.2000 in CE's office/MLG at
5. PA to CE/Maligaon. } 10.00 hrs.
He is requested to connect the
last three years ACRs of the
above named staff.

A. M. 17.1.2000
for General Manager (P).
I.I.F. Railway, Maligaon

*in
17.1.2000.*

To

The Chief Engineer,
N.F. Railway,
Maligaon,
Sukhahati-II.

Through Proper Channel.

Sub:- Selection of OS/Gr.II in the scale
of pay of Rs.5500-9000/- p.m. in
CE/Maligaon's Office.

Sir,

With profound respect and humble
submission, I beg to lay before you a few lines
for your kind sympathetic consideration and
redressal action please.

That Sir, I have been working as OS/Gr.II
on ad-hoc basis since February, 1993 under GM/COM/
Maligaon uninterrupted and discharging my duties
with utmost sincerity to the satisfaction of my
superiors.

O M dft
9.10.98
f
Sew

That Sir, the Office of the General
Manager (P), Maligaon issued a communication on
9.10.98 to all its Subdivisional Officers informing
that the selection for the post of OS/Gr.II in the
scale of pay of Rs.5500-9000/- p.m. would be held
for filling up 21 (twenty-one) vacancies under
CE/Maligaon, GM/COM/Maligaon's office, with break
up as UR-15, SC-4 and ST-2. In the said communication
the names of the candidates eligible for selection
has been shown wherein my name appears at Sl. No.19.

5.12.98
Wmti 723

That Sir, the written test was held on
5.12.98 and I appeared in the said test and was
expecting to get a call for the Viva Voce test.

That Sir, the result of the said written

test held on 5.12.98 was not announced due to
reasons best known to the authorities, though there
is a stipulation in the Railway Board's Guidelines
vide GM(P), Maligaon's letter No.E/254/0/Pt. XII(c)
dated 2.6.97 that the selection should be completed
in a span ranging from 90 days to 120 days. The
said Guidelines of the Railway Board has not been
adhered to by the authorities, which smacks mala
fides.

17.1.2000

That Sir, a Memorandum has been issued
on 17.1.2000 by APO/E announcing the result of
the written test, wherein my name did not find place.
The successful candidates have been directed to
appear in Viva Voce test scheduled to be held on
24.1.2000.

That Sir, a plain reading of the said
Office Memorandum would reveal that the following
irregularities and illegalities have been committed
by the authorities, which is arbitrary, mala fide
and in violation of existing Rules under the law
and requires interference in order to subserve
the cause of justice.

(a) That the Office communication dated
9.10.98 whereby it was informed to all concerned
that the selection would be held on the basis of
vacancies shown in the said communication, which
reads as follows :-

- (a) UR - 15.
- (b) SC - 4
- (c) ST - 2.

But the Office Memorandum dated 17.1.2000
whereby the result of the written test has been
declared would show that the vacancies fixed for
SC and ST candidates have been much in excess of

the vacancies fixed earlier, namely, SC-4 and ST-2, resulting in non-selection of sufficient number of General category candidates for filling up the UR-15 vacancies, fixed for them, which is apparently in violation of the provisions of Articles 14 and 16 of the Constitution of India.

That Sir, the Office Memorandum dated 17.1.2000 would further reveal that initially the written test was scheduled to be held on 5.12.98; ~~hence~~ & in fact, the said written test was held, as scheduled; but subsequently, Supplementary Written Test and Second Supplementary Written Test were also held on 11.12.99 and 31.12.99, respectively, which is contrary to the Rules providing for selection of candidates; and on this score alone the result of the test announced on 17.1.2000 is liable to be declared as void ab initio. In these circumstances, the Viva Voce Test scheduled to be held on 24.1.2000 may kindly be stayed till the entire selection process is thoroughly reviewed including the excess number of reserved category ^{Selecte} candidates belonging to SC and ST, ~~ignoring~~ ignoring the candidates of General category.

In the above circumstances, I would most humbly and fervently request and appeal before your honour to kindly intervene in the matter and review my result, keeping in view the facts envisaged above, for redressal of my grievances, and oblige.

With regards,

Yours faithfully,

Nanda Dhar

(Mrs. Nanda Dhar)

Office Supdt./Gr.II/G (Adhoc)
under GM/CON/Maligaon.

Dated, 20/1-2000

Copy to Chief Engineer/Con-III, NER, Maligaon.

(Mrs. Nanda Dhar)
Office Supdt./Gr.II/G (Adhoc)
under GM/CON/Maligaon.

23/2/22 Annexure-4

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To

The Chief Personnel Officer
N.F. Railway,
Maligaon,
Guwahati-781011

(Through Proper Channel)

Sub : Prayer for review of the entire selection
procedure of Office Superintendent Grade II
held on 5.12.1998.

Ref : My Appeal dated 20.1.2000.

Sir,

Most humbly and respectfully I like to draw
your kind attention on the subject cited above in conti-
nuation of my appeal dated 20.1.2000 and further begs to
state that I am working as Head Clerk, presently officia-
ting to the post of Office Superintendent Grade II on
ad hoc basis in the office of the Chief Engineer, General
Manager (Construction), N.F. Railway, Maligaon.

That Sir I have appeared in the written test
held on 5.12.1998 for consideration of promotion to the
post of Office Superintendent Grade II on regular basis.
I did well in the said examination and was expecting to a
call for the viva voce test. The said selection test was
conducted in pursuance of the Notification issued under
letter No. E/254/55 Ft II (E) dated 9.10.98, in the said
notification it was stated that 21 vacancies would be
filled up, out of which 15 vacancies were earmarked for
Unreserved candidates and four were for Scheduled Caste and
2 were for Scheduled Tribe candidates. The name of the
eligible candidates were shown in the Notification and my
name appeared at Serial No. 18 of the said Notification.
In this connection it is stated that although the written

Contd....

-2-

test was held on 5.12.98 but the result of the said written examination was not published in spite there is a stipulation in the Railway Board's letter No. E/254/0/Ft.II (C) dated 9.6.97 that the selection should be completed in a span of range of 90-120 days. But the said instructions of the Railway Board has not been adhered to by the Railway Authority. It is also stated that absentee test has been taken in total violation of the Railway Board statutory instructions on two occasions showing some undue favour to some absentee candidates and so far my knowledge goes the same has been conducted without approval of the General Manager which is required under the rule. It is also stated that 59 candidates were called for for the written test and out of that many of them were not eligible as per the existing rule in force for appearing in the written test as they have not completed two years of regular service in the cadre of Head Clerk. But even then they had been called for written examination without obtaining prior approval of the General Manager which also further smacks male fide. It is relevant to mention here that absentee test could be conducted by the Railway Authority only on one occasion but if the same is required to be conducted for a second occasion, approval of the General Manager is required for conducting the absentee test. But surprisingly in the instant case the authority took absentee test on two occasions in total violation of the relevant rules and statutory instructions of the Railway Board. The result of the written test was published through memorandum bearing No. E/254/55/Ft. II (E) dated 17.1.2000 whereby the result

Contd.....

-25- 26 24

9

-3-

of the written test has been declared and would show that the vacancies notified for Scheduled Caste and Scheduled Tribe candidates have been much in excess than the vacancies earmarked in the notification dated 9.10.98 due to non-selection of sufficient number of general candidates for filling up of unreserved vacancies as was notified is apparently in violation of Article 14 and 16 of the Constitution of India.

That Sir I came to learn that there are large number of irregularities in the selection process such as manipulation in the process of evaluation of answer sheets, allotment of marks and also in the process of allotment of national seniority marks in total violation of statutory Railway Board Circular No. E(NG)1-B-PMI-65/(INM)/ NFIR dated 5.12.1994 would show undue favour to some of the head clerks and also I came to know that my answer scripts was not properly evaluated as required under the rules and norms. It is relevant to mention here that some of the Head Clerks were called for written test and appeared in the same who even did not complete two years of regular service in the cadre of Head Clerk in the written examination held on 5.12.1998 who did not complete two years of regular service in the cadre of Head Clerk, therefore the same is in total violation of the Railway Board Circular No. E(NG)-94 Pt.I/17 dated 11.11.94. Moreover national seniority marks has been allotted on pick and choose policy basis without following the mandatory provision of Railway Board's circular dated 5.12.88 and thereby national seniority marks was not allotted in the manner indicated in the circular dated

26-27/25

98
7

-4-

5.12.94 although the benefit of notional seniority marks offered to the candidates whose name has been figured in the list of successful candidates in the written examination thereby the undersigned is meted out with hostile discrimination in the process of allotment of notional seniority marks as well as in the matter of evaluation of answer script. It is ought to be mentioned here that my performance in the written examination held on 5.12.98 was extremely good therefore I am over confident that if your honour be pleased to re-evaluate the answer script of the undersigned and if a comparative study is made with the answer sheet of the successful candidates it will definitely reveal that the performance of my written exation is much far better than many of the successful candidates in the written examination. It would further be evident that a large scale manipulation have been committed in the process of selection i.e. allotment of marks, notional seniority marks etc. I therefore, most humbly and respectfully request you to make an arrangement for review of the entire selection proceeding including answer script of the written examination in the light of the statement made above by an independent authority and further be pleased to reconsider my case for consideration of promotion to the post of Office Superintendent Grade II as per the report of the Review Committee. It is also relevant to mention here that the Viva voce test is scheduled to be held on 24.1.2000. Therefore I request you the process of review should be completed before holding the viva voce test under intimation to the undersigned.

Contd....

-27- 28 26

-5-

In the above circumstances I would most humbly and fervently request and appeal before your honour to kindly intervene in the matter and review my case keeping in view the facts stated above for redressal of my grievance and oblige.

Thanking you,

DA- 1 Copy Appeal
dt 20.1.2000

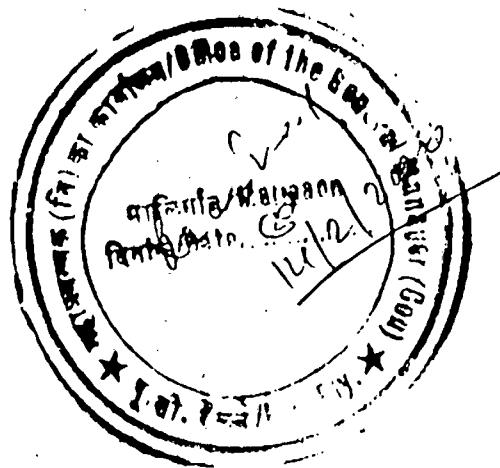
Yours faithfully,

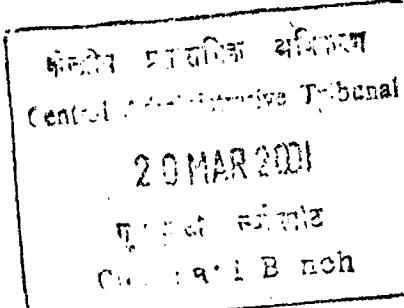
Date : 14.2.2000

Nanda Dhar.

(Smt. Nanda Dhar)
Office Superintendent (Official
basis) Office of the
Chief Engineer, N.F.Railway,
Maligaon-11

o/c





BEFORE THE CENTRAL ADMINISTRATIVE
TRIBUNAL AT GUWAHATI
GUWAHATI BENCH
GUWAHATI

IN THE MATTER OF :

O.A. No.107 of 2000

Smt. Nanda Dhar ...

Applicant.

- VS -

1. Union of India

2. The Chief Personnel Officer,

N.F.Railway, Maligaon.

3. The Chief Engineer(Construction)

N.F.Railway/ Maligaon.

Respondents.

- A N D -

IN THE MATTER OF :

Written statement for and on behalf of the
respondents.

1. That, the answering respondents have gone through the copy of the application filed by the applicant and have understood the contents thereof.
2. That, the application suffers for want of valid cause of action for filing the application.
3. That, the application is not maintainable in its present form and is fit one to be dismissed in limine.

Guwahati Personal Office
C.I. Bldg., Maligaon
Guwahati-781009

4. That, the case suffers from misconception and misinterpretation of extant rules on the subject and is a vexatious one and is not maintainable either on fact or on law.

5. That, for the sake of brevity, the respondents do hereby abstain from resorting to specific and meticulous denial of each and every statements in each paragraph of the application.

6. That, save and except those statements of the applicant which are either borne on records or are specifically admitted hereunder, all other averments/allegations of the applicant are emphatically denied herewith and the applicant is put to strictest proof of same.

7. That, all the actions taken in the case are quite in consonance to the extant rules and procedures on the subject and all actions are quite valid, legal and proper and have been taken by the Railway Authorities after due application of mind and investigation into the case and also as the merit and fact of the case demanded and there has been no irregularity, illegality, discrepancy or arbitrariness in the case as alleged.

8. That, with regard to the submissions of the applicant at paragraph 1 of the application it is stated that the word "Irregular selection" as used in this paragraph is quite wrong and hence denied

emphatically. In fact the selection was held following the existing rules and norms for holding the selection and there was no scope to allow the applicant to appear in the Viva-voce test as she was not found suitable in the Written test even after adding grace marks (moderation) and notional seniority marks.

9.(A) That, with regard to averments at paragraphs 4.1 to 4.4 of the application it is submitted that the respondents admit those statements which are only borne on records and the applicant is put to strictest proof of the rest. It is correct that the applicant appeared in the written test held on 5-12-1998 in pursuance to the notification dated 9-10-1998 for selection of Office Superintendent Grade-II. But as she could not qualify in the Written Test, she was not eligible to appear in the Viva-voce test and hence could not be allowed to appear in Viva-voce test. ~~and hence could~~ No such letter of the Railway Board bearing No.E/254/0/Pt.II(C) dated 9-6-97 as stated by the applicant appears to have been issued by the Board or are on record. Further, the applicant has not annexed any copy of the letter.

It is emphatically denied that any of the mandatory instructions of the Railway Board was violated.

Regarding holding of supplementary selection it is to state that there is no violation of the Rule in holding the Supplementary selection. Rule 223 of the Indian Railway Establishment Manual Volume I (1989) lays down as under :

4/27/2010 10:45 AM
Personnel Action
HIV / STI Testing
Outcomes

"I.(i) - A Supplementary selection may be held in the following types of cases :

(a) Summons for interview being received too late by the candidates making it difficult for him to reach the place of interview;

(b) Administration's failure to relieve him
in time for interview.

(c) Sickness of the candidate or other reason over which the employee has no control. Un-avoidable absence will not however, include absence will not however, absence to attend a wedding or similar function or absence over which he has control. Sickness should be covered by a specific service from the Railway Medical Officer.

III. Not more than one supplementary selection should normally be held to cater^{1/2} the needs of the absentee^s due to sickness, non-intimation/ late intimation of dates of test, etc.

The second supplementary selection should be held rarely with personal approval of C.P.O. (Chief Personnel Officer) based on merit of each case.

In the instant case the supplementary selection was held on 10-11-99 and 31-12-99 with the prior approval of C.P.O. and the question of taking approval of the General Manager does not arise.

G.M. P. 2002
Circumstances
44

As such it is quite evident that supplementary selections were held properly and as per rules.

A photostat copy of the Rule 223 IREM is annexed hereto as Annexure 'A' for ready perusal.

(B) That, as regards the allegation of calling ineligible candidates in the selection, it is to state that there is no objection in calling employees even with less than 2 years of service for selection and keeping them on the panel. Orders of promotion should be issued only on the date on which the candidate completed 2 years of service. The only point to be seen is that the candidates to be considered for selection, should have put in at least 1 year of service (Reference Railway Board's letter No. E(NG) I-94/PMI/17 dated 1-11-94).

Hence, the allegations regarding holding of selection without obtaining competent authority's approval eg. of G.M. or calling of ineligible candidates with less than 2 years service as Head Clerk, are denied.

A photocopy of the aforesaid letter dated 1-11-94 is annexed hereto as Annexure 'B' for ready perusal.

(C) That, as regard the allegation of violating Articles 14 and 16 of the Constitution of India by showing the vacancies notified for selection for

Scheduled Caste and Scheduled Tribe candidates in excess of the vacancies earmarked for them, it is beyond intelligence as to how the applicant has drawn such conclusion. In this connection it is to submit that :

(i) The number of candidates called for reserved vacancies of Office Superintendent (i.e. OS/ ID) in scale Rs.5500-9000/- has been assessed as under :-

S.C. - 4 X 3 = 12

S.T. - 2 X 3 = 06

Total = 18

As per reservation rule and selection procedure, the number of staff to be called for selection is 1:3 formulae. Hence 18 reserved candidates i.e. (SC & ST) were to be called in the selection. Since adequate number of eligible candidates were not available in the reserved communities, only 17 candidates could be called.

Hence, allegation of calling excess number of reserved candidates or alleged violation of the constitutional provisions in Articles 14 and 16 are completely incorrect and hence denied emphatically.

10.A) That, all the allegations as have been made at paragraph 4.5 of the application are baseless, vague

and appears to have been made on surmise etc. and are denied herewith. It is to mention herein that -

(a) she has been complaining after the result is out and never lodged any complaint of alleged irregularity immediately after selection was over.

(b) Being a Government servant and responsible citizen she should not have put cast on the integrity of the responsible railway officials/selection personals without any base and this reflects only unsavoury taste.

(c) She could not pin point any particular official or give the particulars of so alleged irregularities or manipulations in the process of allotment of marks in notional seniority or the names of personals(Head Clerks) who were favoured illegally to appear in the selection or who have been declared successful in the selection ignoring her claim or as how she arrived at the conclusion that the notional seniority marks was allotted on pick and choose policy etc. and also what provisions of the Railway Boards circular dated 5-12-84 were violated or as to how she could allege about the hostile discrimination

against her. Assertions about her good performance in the examination is her own assessment only and such guessing cannot be accepted.

(d) It also appears that such wild allegations have either been made purposely to mislead the Hon'ble Tribunal and or out of frustration.

(e) It is also denied that any valid representations were ever submitted by her which remained unattended to or she was illegally debarred from appearing in the viva-voce test or she would suffer any irreparable loss for losing the chance of appearing in the viva-voce test.

10.(B) However, for the sake of transparency in the case the following facts are also submitted :

(i) From evaluation chart it reveals that the applicant's performance in the selection was very poor.

(ii) The process of selection are done confidentially in a confidential file by the nominated officers. No officer and staff other than panel approving authority and committee members have access to that confidential file.

The Railway Administration has also evolved the unique process of evaluation of answer scripts to avoid irregularities and manipulation by allotting coded roll number on the fly. ^{way} leaves of each answer scripts and separating the fly leaves containing original roll number as well as the coded number and keeping all records under custody of cadre officer for which selection is held. The answer sheets sent to the evaluating officer bear the coded roll number without their names so that the evaluating officer does not know the identity of the candidates. After evaluating the answer books, the evaluating officers tabulates the marks obtained by various candidates in a separate sheet duly initialled by him and submit same to the committee in a cover. The committee ~~now~~ decodes the mark sheet and records the names of the candidates against the code numbers.

From the above process, it would be evident that there is no scope for manipulation since the evaluating officer does not know the identity of the candidates and all such allegations of the applicant are unwarranted and appears to have been made only to derive illegal gain and get the selection in question nullified.

The above selection process was also adopted in the instant case also.

(iii) It is also to state herein that there were

58 number of candidates in the zone of consideration for promotion, out of which only 37 appeared in the Written test. In the Written test required number of candidates were not found suitable for viva-voce test. As such, with the approval of the panel approving authority, the result of the OS/II (Rs.5500-9000/-) has been moderated by awarding grace marks to all candidates. The applicant could not be declared suitable for viva-voce test (even after giving the notional seniority marks and grace marks) because of her poor performance in the selection.

In this connection it is further submitted that in order to qualify for viva-voce test one has to secure minimum 21 marks in the Written test (out of 35 marks). Otherwise one has to secure 30 marks after adding notional seniority marks. Thus in any case, one has to secure 60% marks in the professional ability (Written 35 + viva 15 i.e. 30 out of 50) and also to secure 60 marks in aggregate. But in this instant case, Mrs. Nanda Dhar neither secured 21 marks nor she secured 30 marks after adding notional seniority marks. So she could not qualify for viva-voce test. In the selection out of 37 candidates 17 candidates could qualify for appearing in the viva-voce test i.e. serial numbers 3, 4, 6, 12, 14, 15, 17, 22, 23, 27, 28, 29, 30, 31, 34, 35 and 36 of the list (Annexure C)

Tabulation of marks in the Writtest test (after awarding grace marks) are annexed hereto as Annexure for ready perusal for the Hon'ble Tribunal.

From the said annexure it would be quite evident that she secured only 8.75 plus 5 marks (as grace marks) out of 35 marks. Thereafter, adding 12.11 marks as Notional Seniority marks the Grand Total comes as 25.86 marks i.e. less than 30 marks. So she was not qualified to appear for viva-voce test.

The applicant has also tactfully evaded to cite any proof relating to her baseless allegations. Her following statements/allegations at pages 7 and 8 of the application of "most of the selection process either for promotion or for initial recruitment, there are large scale manipulation is being occurred in the interest of a vested circle working in Railways" and "the examination was held on 25-10-1997, the applicant was the victim of manipulation discrepancy and violation of statutory railway Board's circulars in the process of allotment of notional marks in the answer script" are not backed by any evidences and supporting documents as to how such allegations can be fitted in her case and hence are unwarranted and undesirable.

The applicant is also put to strictest proof of all such wild allegations and the application is liable to be dismissed on ground of malafideness etc. if the applicant fails to establish her allegations.

11. That, the allegations as made at paragraph 4.6 of the application are not correct and hence emphatically denied herewith. The applicant is also put to strictest proof of all these allegations. It is denied that notional seniority marks were not awarded to her. In fact, notional seniority marks were given to all the candidates who appeared in the test, following the existing norms of the selection. Further, there is no scope to doubt regarding the fairness of the selection process or infringement of rules.

A copy of the marks obtained by the 37 candidates (under different heads) who appeared in the Written test is annexed hereto as Annexure-C for ready perusal.

12. That, with regard to averment at paragraph 4.7 of the application it is submitted that it is not correct that the application is bonafide one.

13. That, with regard to ground as stated at paragraph 5, 8 and 9 of the application, it is submitted that in view of what have been submitted in the foregoing paragraphs of the Written Statement, none of the grounds as put forward by the applicant are sustainable. The relief as prayed for in paragraph 8 and 9 of the application are also not admissible in view of the fact of the case. It is reiterated that -

(a) There is no ground of discrepancy or unfairness.

(b) Candidates were called as per rules, and,

(c) No illegality occurred in holding the supplementary selections,

(d) Eligible candidates were only empanelled after due observance of all extant rules on the subject. Even persons who completed one years service in immediate lower grade for which selection is held is eligible for appearing in the selection.

(e) The selection of OS/II was held for forming a panel of 21 candidates. Since the selection was held strictly in accordance with the rules, only 10(ten) candidates could be empanelled for promotion i.e. serial Nos. 4, 12, 14, 17, 23, 27, 28, 30, ~~and~~ 31 and 34 out of 17 candidates appeared in viva-voce test.

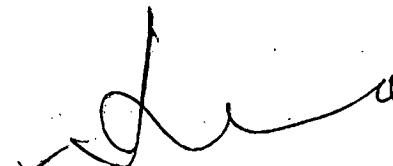
(f) Since the applicant was not found qualified in the Written test, there was no scope to allow her to appear in the viva-voce test.

14. That, the answering respondents crave leave of the Hon'ble Tribunal to permit it to file additional Written statement in future, in case the same is found to be necessary for the ends of justice.

15. That, under the facts and circumstances of the case as stated above, the instant application is not maintainable, and, is also liable to be dismissed.

VERIFICATION.

I, Sri A. K. Nigam s/o Late
S. P. Gaurha aged about 18 years, by occupation
service, at present working as C P.O/A
of the N.F. Railway Administration, do hereby solemnly
affirm and state that the statements made at paragraphs
1 and 5 are true to my knowledge and those made at
paragraphs 8, 9, 10B, 11 are true to my information
as gathered from records which I believe to be true
and the rest are my humble submissions before the
Hon'ble Tribunal.


Chief Personnel Officer (A)

N.F. Railway, Maligaon
for and on behalf of the
Answering respondents.

Chief Personnel Officer (A)
1. 1. 1. 1. 1. 1. 1. 1.
Cur. Date: 11.

Rajib/

Supplementary Selection/Suitability Test

(i) A supplementary selection may be held in following types of cases:—

- (a) summons for interview being received too late by the candidates making it difficult for him to reach the place of interview;
- (b) Administration's failure to relieve him in time for interview;
- (c) Sickness of the candidate or other reason over which the employee has no control. Unavoidable absence will not however, include absence to attend a wedding or similar function or absence over which he has controlled. Sickness should be covered by a specific service from the Railway Medical Officer.
- (ii) The supplementary meeting of the Selection Board should as far as possible be attended by the Officers who were present at the first Selection Board and held within one month of the first selection. If the return to duty of the employee concerned provides that the employee returned to duty not later than three months after the holding of the first selection. In case the return of the employee is delayed beyond three months, the result of the selection need not be deferred, the name of the employee being incorporated as if he had appeared at the selection first held. The employee will not be eligible to be considered if he returns to duty more than six months after the date of the first selection.
- (iii) Not more than one supplementary selection should normally be held to cater to the needs of an employee due to sickness, non-intimation/late intimation of dates of tests etc. The second supplementary selection should be held rarely and with the personal approval of Chief Personnel Officer based on merits of each case.

(NG) I-80/PM 1/188 dt. 31-12-80

For non-selection post, if an employee is unable to appear in a suitability test within a period of six months due to reasons beyond his control, such as prolonged illness, he should be subjected to supplementary suitability test within a reasonable period of return to duty and being found suitable for

promotion, he should be assigned proforma seniority position vis-a-vis his juniors promoted earlier.

E(NG) I-73/PM 1-214 dt. 8-11-73

224. Refusal of Promotion

I. Selection Posts

(i) The employee refusing promotion expressly or otherwise (i.e. that he does not give in writing his refusal but also does not join the post for which he has been selected,) is debarred for future promotion for one year but he is allowed to be retained at the same station in the same post. Promotion after one year will be subject to continued validity of the panel in which he is, borne otherwise he will have to appear again in the selection.

E(NG) I-64-PM 1-66 dt. 21-1-65 & E(NG) I-71 PM 1-106 dt. 15-12-71

(ii) at the end of one year if the employee again refuses promotion at the outstation, his name may be deleted from the panel, deletion being automatic requiring no approval from any authority and the administration may transfer him to out-station in the same grade. He will also have to appear again in the selection notwithstanding the fact that he in the meantime, has officiated non-fortuitously against short term vacancy based on his panel position.

(iii) Seniority will be as from the date of effect of promotion and he will be junior to all the persons promoted earlier than him from the same panel irrespective of his panel position. He will not, however, lose seniority to another employee promoted to the same promotion category during the one year period of penalty as a result of a fresh selection subsequently held.

E(NG) I-66 SR-6/41 dt. 14-10-66

II. Non-selection Posts

(i) Such an employee should be debarred for future promotion for one year but not be transferred away from that station for one year if unavoidable domestic reasons exists. He should again be debarred for promotion for one year in case he refuses promotion again after the first year of debarment or refusal of promotion for second time, the Administration can however transfer him to out-station in the same grade and the employee has again to appear for a suitability test when his turn for promotion comes.

H. F. RAILAY.

Office of the
CHIEF MINISTER
Kali-aon, Guwahati-11

Printed 21 -10-1994.

Ms. E. 1. S. - 379.
E/254/9-H-11(1).

To,
All HQCs.
All DACs, WACs/HQ & DFWS.
All Controlling Officers of the
Non-Divisionalised Offices,
R. F. Railway.

The General Secy. NFREU/FNC - with 50 spare copies.
The General Secy. NFRMU/FNC - with 40 spare copies.
The General Secy. ALSCTREA/MLG - with 20 spare copies.

Sub:- Relaxation of 2 years rule for promotion - delegation of power to the General Managers.

A copy of Fly. Board's letter No. E(NC)I-9/DM/17 dated 11-11-94 regarding the above/guidance. Board's earlier letter as referred to in their present letter was circulated under CPM's circular No. EFS-315 dt. 10-03-94.

DA/AS ab 1986.

For CHIEF PERSONNEL OFFICER / ALG.

(Copy of Rly. Board's letter No. 10011972/170011-1-12-9).

Sub.- Relaxation of 2 years rule for promotion-delegation of power to the General Managers.

Pursuant to the recommendation of the Rly. Board's reference Committee, instructions were issued under this Ministry's letter No. I/85/PM/12 (RRC) dt. 19-02-87 providing for 2 years' service in the immediate lower grade for all promotions within Group 'C'. The 2 years' rule also provides that if persons with 2 years' service in the immediate lower grade are not available, the post should be operated in a lower grade. However, it has been noticed that in a number of cases persons with 2 years' service in the lower grade are not readily available for filling up vacancies in the higher grade; it is sometimes not practicable to operate the posts in the lower grade. In such cases the Railways have been approaching the Board for relaxation of the 2 years' rules in the interest of administration.

The matter has been considerdd by the Board, and it has been decided except in the case of running categories the 2 years service condition may be relaxed by the Railways with the personal approval of the General Manager whenever such relaxation is found unavoidable in the interest of administration, subject to the conditions of minimum qualifying service of one years in the immediate lower grade.

↳ is forwarded there with for information and

Order of merit for awarding grace marks of 5 | N.S. = Natural Selection (2.1)

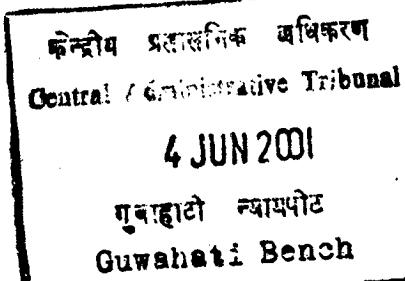
Rank	Name, Design & Office	Mark out of 35	Grace marks +5	Total	Natural Selection marks	Total	Remarks (marks)
1	S. Sri / Smt.						
1	Atul Ch. Das, HC/CE	9.15	5	14.45	14.66	29.11	Failed.
2	Bhuvanesh Ray, HC/CE	0.00	5	5	13.98	18.78	Failed
3	Angshu Das (ST), HC/CE	11.55	5	16.65	13.47	30.02	Qualified in N.S. marks
4	Samanta Pratim (SS) HC/CON	11.55	5	16.55	13.30	29.85	Qualified in relaxed standard
5	Niranjan Chatterjee HC/SDEN	0.35	5	5.35	12.96	18.31	Failed.
6	Sudesh Ch. Das, HC/SDEN	12.95	5	17.95	12.79	30.74	Qualified in N.S. marks
7	Suprava Chatterjee, HC/SDEN	6.30	5	11.30	12.62	23.92	Failed.
8	Debasis Chatterjee, HC/CE	11.37	5	16.37	12.28	28.65	Failed.
9	Nanda Bhattacharya, HC/CON	8.45	5	13.75	12.11	25.86	Failed
10	Sunit Kr. Dutta, HC/SDEN	0.00	5	5	11.77	16.77	Failed
11	Pram Bilas, HC/CE	11.37	5	16.37	11.60	27.97	Failed
12	A.M. Kalita, HC/SDEN	18.20	5	23.20	11.26	—	Qualified
13	S.K. Sengupta, HC/SDEN	6.30	5	11.30	11.09	22.39	Failed
14	D.K. Banerjee (ST), HC/CE	18.55	5	23.55	10.75	—	Qualified
15	S.S.P. Basumatary (ST), HC/CON	8.92	5	13.92	10.58	24.5	Qualified in relaxed standard
16	S.K. Deb, HC/CE	13.55	5	18.55	10.24	28.79	Failed
17	Sudesh Mitra, HC/CE	21.35	5	26.35	10.07	—	Qualified
18	Goutam Deka, HC/CE	15.22	5	20.22	9.56	29.78	Failed
19	Amal Ch. Das, HC/CE	13.30	5	18.30	9.39	27.69	Failed
20	D.R. Bhattacharya, HC/CON	12.25	5	17.25	9.05	26.3	Failed.
21	Sibani Patiha, HC/CON	9.80	5	14.80	8.88	23.68	Failed
22	B.K. Borthakur (SC), HC/CON	8.40	5	13.40	8.71	22.11	Qualified in relaxed standard
23	Grajan Mehta (SS), HC/CON	12.60	5	17.60	8.54	26.14	Qualified in relaxed standard
24	Ranjan Chatterjee HC/CON	15.40	5	20.40	8.37	28.77	Failed.
25	Pratap Kanti Ray, HC/CE	13.65	5	18.65	8.20	26.85	Failed.
26	Dinesh Saitwa, HC/CE	14.70	5	19.70	7.86	27.56	Failed.
27	Dinesh Ch. Deka (SC), HC/CE	18.90	5	23.90	7.69	—	Qualified
28	Mosti Komi Patnay (ST), HC/CE	14.35	5	19.35	7.52	26.87	Qualified in relaxed standard
29	Biswajit Bala Ray (ST), HC/CE	12.25	5	17.25	7.38	24.63	Qualified in relaxed standard
30	Uman Ch. Nath, HC/CE	21.00	5	26.00	7.18	—	Qualified
31	SK Sitasankar (SC), HC/CON	14.50	5	22.50	7.05	—	Qualified
32	Kalpana Bera, HC/CE	14.70	5	19.70	6.50	26.20	Failed
33	Snehalata Barman, HC/CE	11.20	5	16.20	6.33	22.53	Failed
34	Ramnath Das, HC/CE	14.15	5	22.15	5.99	—	Qualified
35	Parthasarathy Ganguly (ST), HC/CE	13.40	5	20.40	5.89	26.29	Qualified in relaxed standard
36	S.S. Nandita (SC), HC/CON	12.61	5	17.61	5.45	23.06	Qualified in relaxed standard
37	Mara Balaram (SC), HC/CE	3.15	5	8.15	5	13.15	Failed

(A. SAWADA) 20

(By C.G.P.)

(D/C/32) 18/11/2002

11/11/2002



District - Kamrup.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Filed by the applicant
through advocate
G. K. Chakravarti
4-6-2001

IN THE MATTER OF -

O.A. No. 107 of 2000.

Smti. Nanda Dhar.

..... Applicant.

-Versus-

Union of India & others.

..... Respondents.

-And-

IN THE MATTER OF -

Rejoinder on behalf of the Applicant
against the Written Statement filed by the
Respondents.

1. That, a copy of the written statement filed by the Respondents has been served upon my counsel and on receipt of the aforesaid information I met my local counsel. I have gone through the written statement and understood the contents thereof and filed this rejoinder being acquainted with the facts and circumstances of the case.

2.....

2. That save and except what is specifically admitted in this rejoinder and the statements which are contrary to the records of the case shall be deemed to have been denied.

3. That with regard to the statements made in paragraphs 7, 8, 9(A), (B) and (C) of the written statement, the applicant disputes the correctness of the same and reiterates the statements made in paragraphs 4.1 to 4.4 of the appeal petition and states that the mandatory Rule has been violated in regard to the notified vacancies and the selection subsequent thereto and the number of candidates called for in the written test. The post of O.S. Grade-II is a selection Grade post. The notified candidates in the notification dated 9.10.98 would show that the Respondents authority had not taken into consideration the existing vacancies plus those anticipated during the course of next 15 months. The post of O.S. Grade II for which written test had been held belongs to construction organisation. The concept of anticipated vacancies should be deemed to connote the following types of vacancies viz ;

(i) Vacancies on account of normal wastage viz ; retirement, superannuation ;

(ii)

(ii) Vacancies likely to be caused as a result of staff having given notice for voluntary retirement provided the same are likely to be accepted ;

(iii) Vacancies in higher grade in the ~~channel~~ the filling up of which will result in the need to make consequent appointments from the proposed panel ;

(iv) Vacancies likely to be caused due to staff approved to go on deputation to other units ;

(v) Number of staff already empanelled for ex-cadre posting ;

(vi) Vacancies likely to arise due to creation of additional posts in higher grades and also in the same grade. This may include only those proposals which have been concurred in by Accounts and approved by the competent authority and ;

(vii) The vacancies arising out of the cases where staff are likely to go out on transfer to other Railways/Divisions during the period under consideration.

It is.....

It is also a mandatory duty of the Selection Board to call the eligible staff for written and/or viva-voce test upto three times the number of existing my anticipated vacancies. Similarly the number of S.C./S.T. candidates to be considered for selection should be determined in the same lines in relation to the number of posts reserved for such candidates.

for
It may be pertinent to mention that the candidates in the zone of consideration had been informed individually of the proposed selection and instructed to give in writing their willingness/unwillingness to participate in the proposed selection. If a candidate who neither appear in the written examination scheduled to be held nor indicate their unwillingness shall be treated as having availed of an opportunity. Moreover, the employees who have expressed their unwillingness to appear and also those who do not fulfil the eligibility conditions should not be revoked for determining the field which should consist of persons willing and eligible to the extent of three times the vacancies.

In the instant case advance intimation had been given to all candidates in regard to holding the written test and therefore holding on one supplementary test for absentee does not arise. The N.P. Railway vide circular

Dated.....

dated 12.6.89 had clarified the procedure for maintenance of calendar for selection in various grades in pursuance to the Board's letter of even number dated 22.7.88, wherein the date of supplementary examination had been specified. In view of the Board's letter dated 22.7.88 which has been implemented by the Railway Administration, the delegation of power of holding second supplementary test has been withdrawn and time having been given for notifying the supplementary examination, the supplementary first and second test held on 11.10.99 and 31.12.99 are illegal, arbitrary, without jurisdiction mala fide and the result on the above test announced should be declared as a nullity in the facts and circumstances of the case.

It may further be mentioned that all eligible candidates who were remained absent in a selection test due to sickness may however be considered by a supplementary Selection Board provided the plea of sickness are supported by a certificate issued by a Railway Medical authority and this is applicable only to the initial selection and not to the supplementary selection (vide R.B.No. E(NG)1-87/PM 1-18(AIRF) of 27.6.98. Moreover, where 1:3 ratio is not applied for the written test, the benefit of supplementary examination.....

6 ✓

examination is not applicable. In the instant case 1:3 ratio had not been applied for calling the candidates in the written test and hence the benefit of supplementary examination to the absence in the original written test is illegal, arbitrary and without jurisdiction and smacks mala fide, more so, when favouritism has been shown to the candidates ~~in~~ without any valid reason. The indifferent attitude in the matter of selection of absence violates Article 14 and 16 of the Constitution of India.

In regard to delay in holding the test, the Railway Board vide R.B.No. E(NG)1-96/CR/8 dated 9.1.97 had specified that in order to ensure expeditious finalization of the selection, the dates of written test, supplementary test and viva-voce should be indicated in the notification issued for selection. These dates should be so fixed that the entire selection process including notification of panel is completed within a period of 90 days to 120 days depending on the number of staff involved and whether not supplementary test is held. The Railway Board have further decided the calendar of selection may contain the following items for expeditious finalization of panels viz ;

- (1) Category and grade ;
- (2) Date of issuing the notification ;
- (3)

- (3) Date of calling for service record;
- (4) Date of holding the written examination;
- (5) Date of holding interviews;
- (6) Date of submission of panel for approval and
- (7) Date of notification of panel.

It has further been laid down where the concerned officers take more than 2 months for finalising the evaluation of written examination papers, the same should be brought to the personal notice of D.R.M, P.H.D. D. and in case where the delay exceeds 3 months, it should be brought to the notice of General Manager (vide R.B.No. E (NG. I-87-PM I-14) (A.R.E) of 22.7.88.

In the instant case the above mentioned procedure has not been followed resulting in manipulation of marks in the written test and the candidates belonging to Construction Department being involved, the Principal Head of the Department is overall in charge of the examination and the C.P.O. is not the competent authority in the matter of selection of candidates belonging to Construction Department and as such alleged approval by the C.P.O. is without jurisdiction in the matter of holding the second supplementary test and as such the result so declared is liable to be set aside and quashed.

In regard.....

In regard to allocation of marks the Selection Board should allot the marks to the eligible candidates taking the following factors into account :

(i)	Professional ability.	-	50.
(ii)	Personality, address, leadership, and academic/technical	-	20.
(iii)	Record of service.	-	15.
(iv)	Seniority - maximum marks.	-	15.

The assessment under the heading personality, address, leadership, and Academic/technical qualifications should be based on the assessment already available in the confidential Reports of the concerned, as reflected by entries against various columns of the format of the confidential report (R.B.No. E(NG)1/97/PM.1/27 dated 4.3.98).

The above guidelines having not been followed the evaluation entire evaluation of marks in the written test should be declared as illegal and void ab-initio, more so when the applicant is holding the post of C.S. Grade-II, for the last 10 years, she cannot get 8.75 in the written test and the Hon'ble Tribunal may be pleased to call for the answer script in order to determine the real controversy in issue in order of subserve the cause of just justice.

Moreover,.....

Moreover, the general Manager has not relaxed the rule as alleged in the matter of calling ineligible candidates for appearing in the written test. The basis of qualification is in relax standard without following the rule cannot be allowed to operate in the field of public employment.

The applicant craves leave of the Hon'ble Tribunal to direct the Respondents to produce the records of particulars of absentee, the grounds of absentism in the written test held on 5.12.98 and 11.10.99 and 31.12.99 and the answer scripts of the written test in the interest of just justice.

A copy of the circular dated 12.6.89 is annexed hereto as Annexure - 5 to this rejoinder.

4. That with regard to the statements made in paragraphs 10, 11 and 12 of the written statement, the applicant disputes the correctness of the same and reiterates the statements made in paragraphs 4.5, 4.6 and 4.7 of the appeal petition and states that she had made a representation on 20.1.2000 against the publication of final panel notification dated 17.1.2000 which has not yet been disposed of, though a mandatory duty is cast on the Respondents to review the entire selection which eliminates in preferring the appeal.

The....

6

The Respondents have admitted that 17 candidates were called for viva-voce test and out of 17 candidates 10 candidates were found eligible for promotion and only 10 candidates were promoted to the post of O.S. Grade-II. This fact implies that the notified vacancies in respect of S.C. and S.T. have been fulfilled and only 4 candidates in the unreserved category have been promoted and by another notification dated 12.9.2000, 33 candidates have been called for written test wherein 11 vacancies have been shown to be filled up by promotion and the vacancies have been notified for unreserved candidates, whereas the communication dated 7.3.2001 would show that only 24 candidates from the unreserved category have been informed to appear in the written test scheduled to be held on ~~9.4.2001~~ 9.4.2001 and 8 candidates belonging to S.T. and 1 candidate belonging to S.C. have been informed about the said selection. In the aforesaid communication the ratio 1:3 has not been maintained in respect of unreserved category and there being no notified vacancy in respect of S.C. and S.T. candidates calling for S.C. and S.T. candidates stands on a side. Moreover no decision has been taken in regard to candidates belonging to S.C. and S.T. who had qualified in the written and viva voce test held on 5.12.98, 11.10.99 and 31.12.99 and calling for written

test....

test against vacancies not notified would show the mala fide exercise of power in the facts and circumstances of the case.

Copies of communication dated 12.9.2000 and 7.3.2001 are annexed hereto as Annexures 6 and 7 respectively to this Rejoinder.

5. That the applicant submits that the statements made in the rejoinder would show that she has made out a case for interference in the matter of selection and promotion which has been made without following the mandatory rule as laid down by the Railway Board and the Hon'ble Tribunal would be pleased to direct the Respondents to produce the Records/documents including the answer scripts of the applicant vis a vis the other candidates in order to finally determine the real controversy in issue in the appeal case by setting aside the selection and promotion in the public interest.

VERIFICATION.

I, Smti. Nanda Dhar, wife of Shri Subdas Dhar, aged about 50 years, Head Clerk at present officiating to the post of Office Superintendent in the Office of Chief Engineer, N.E. Railway, Maligaon, Guwahati, do hereby verify that the statements made in paragraphs 1, 2, 4 and 5 are true to my knowledge and those made in paragraphs 3 are true to my legal advice and I have not suppressed any material facts.

And I sign this verification on this the ^{25th} day of June, 2001.

Nanda Dhar
Signature.

Annexure - 5.

Office of the
Chief Personnel Officer.

NORTHEAST FRONTIER RAILWAY.

EPS-336.

No. E/254/0-Pt.10 (C) /Workshop. Maligaon, dated 12/6/89.

To

All Heads of Department,
All DRMs, DAOs & WAOs/NBQs & DBWS,
All Distt. & Asstt. Officers of
Non-divisionalised Officers.

The General Secretary/NFREU/MLG with 40 spare copies.

The General Secretary/NERMU/MLG with 40 spare copies.

Sub :- Maintenance of calendar for selection
in various grades.

.....

A copy of Railway Board's letter No. E(NG) I/87/PMI/14/AIRF dated 10.5.89 on the above subject together with a copy of their earlier letter No. E(NG) I/87/PMI/14(AIRF) dated 22.7.88 (not circulated earlier) is forwarded for information and necessary action. In this connection your attention is drawn to the instructions contained in this office circular letter No. EPS-329 (E/254) -Pt. XI (C) dated 27.7.88.

DA/As above.

Sd/- Illegible.
9.6.89.
for CHIEF PERSONNEL OFFICER.

.....

(Copy.....)

(Copy of Ry. Board's letter No. E(NGI/87/PM 1/14/AIRF dated 10.5.89).

Sub:- Maintenance of calendar for selection in various grades.

.....

Attention of the Railway Administrations is invited to Board's letter of even number dated 22.7.88, regarding maintenance of calendar for selection in various grades. It was indicated therein that the delay in holding supplementary selection should be eliminated. With this end in view, the date on which supplementary selection is to be held should normally be notified and such selections should be held within four weeks time from the date of the screened selection. It was further indicated that the date for supplementary examination (with a gap of 3 to 4 weeks' time) may also be announced even at the time of notifying the date for the main selection.

2. In the PNM meeting between the Board and the AIRF held on 3/4.11.88 the Federation expressed the view that there need not be a second supplementary test if such be the intention of the Administration. They, however, desired that any orders precluding a second supplementary selection would be given effect to only after the instructions contained in Board's letter of even number dated 22.7.88 cited above are fully implemented. They further requested that

the.....

the instructions in question should be given wide publicity on the Railways.

3. The matter has been considered further by the Board in the light of the above. It has been decided that the instructions contained in Board's letter of 22.7.88 cited above should be implemented by the Railway Administrations. Once this has been done, the second supplementary test should not be allowed.

4. The Board also desire that the instructions contained in the said letter of 22.7.88 should be given wide publicity by the Railway Administrations.

Please acknowledge receipt.

....

(Copy of Rly. Board's letter No. E(NG) I-87-PM I-14 (AIRF) dated 22.7.1988).

Sub:- Maintenance of Calendar for selections in various grades.

....

In terms of the Railway Board's letter No. E(NG) I-87-PM I-4 dated 18.8.1987, Railways are required to draw up a calendar for conducting selections in various grades to help the, plan various activities in this regard and to ensure compliance with Board's orders to the effect that selection should be held at regular intervals.

In

Annex. 5.

In a PNM meeting held between the Board and AIRF, the Federation urged that steps should be taken to avoid irregularities in selections. Pursuant to deliberations in the PNM meeting, the need to adhere to existing instructions governing selections was stressed in Board's letter of even number dated 19.2.88.

The subject figured again in the PNM meeting held on 9/10.3.88 wherein it was stressed by AIRF that selections continue to be delayed on Railways for one reason or the other, and that a calendar of selections with target ~~xxxxxx~~ ~~xxxxxx~~ dates for completion of various stages should be drawn up and implemented. In this context, Board desire that the calendar of selections should cover the various steps in a selection procedure with an indication of the date(s) by which the various steps are to be finalised so that an effective watch could be kept over the progress in the implementation of the time schedule. This calendar should be notified in advance preferably around July of the proceeding year. The calendar may contain the following items :-

- i) Category and grade ;
- ii) date of issuing the notification ;
- iii) date of calling for service records ;
- iv) date(s) of holding written examination (s)
(where written examination is part of selection) ;
- v)

Annex. 5.

- v) date (s) of holding interview(s) ;
- vi) date of submission of panel for competent authority's approval ;
- vii) date of notification of panel.

It is hoped that with the preparation of a calendar as suggested above, it will be possible to effectively monitor the selections in all cadres and grades and this will pave the way to obviate complaints of not holding selections in time.

At the same time, a close watch should be kept on the utilisation of the panel so that when due to normal wastage the panel is expected to be exhausted within 4 to 6 months, the process for the next selection be started counting the vacancies from the date the panel is expected to be exhausted.

Board would also like Railway Administrations to consider adopting the following guidelines as a means of ensuring that finalisation of selections do not get delayed.

When the concerned officers take more than two months for finalising the evaluation of written examination paper, the same should be brought to the personal notice of DRM/ PHOD. When the delay exceeds three months, it should be brought to the notice of GM and such cases discussed selectively

in Principal.....

Annex. 5.

In Principal Officers' Meeting also to find out the reasons for such delays with a view to eliminate them. Further the delay in holding supplementary selections should be eliminated as they should normally be notified and held within about four weeks from the date of main selection. It may be even worthwhile to consider announcing the date for supplementary examination (with a gap of 3 or 4 weeks), while notifying the date for main selection.

Please acknowledge receipt.

.....

Annexure - 6.

N. E. RAILWAY.

Office of the
GENERAL MANAGER (P),
Gauhati-L.I.I.

No. E/254/55 P.II (E).

Dated 12.9.2000.

To
The Secy. to CE/MLG,
SR. DEN/MLG,
GM(CON)/MLG,
OS(W)/MLG.

Sub:- Selection for the post of OS/II in scale
Rs. 5500-9000/- (₹ RF) of Civil Engg. Deptt.

It has been decided to hold a subection for filling up of 11 (eleven) vacancies under CE/MLG's office with break up (UR-II, SC-NIL, ST-NIL) of OS/Gr.II in scale Rs.5500-9000/-.

The selection will consist of both written test as well as Viva-Voce test. You are therefore requested to advise the following Head Clerks working under you to be in readiness to appear in the written examination for the post of OS/Gr.II on short notice. The date of written test will notified ~~later on.~~

The name of eligible candidates are shown as under :-

<u>Sl. Name in order of seniority.</u>	<u>Whether UR/SC/ST.</u>	<u>Designation.</u>	<u>Place of working.</u>
1. Sri R. R. Bhownick.	UR	Hd. Clerk.	GM/Con/MLG.
2. Sri B. K. Das.	UR	-do-	CE-MLG
3. Smt. Binapani Banik.	SC	-do-	-do-

Annex. 6.

<u>SN.</u>	<u>Name in order of seniority.</u>	<u>Whether UR/SC/ST.</u>	<u>Designa- tion.</u>	<u>Place of working.</u>
4.	Sri B.N. Barman.	UR	- DO -	- DO -
5.	Sri P.L. Barua.	UR	- DO -	- DO -
6.	Sri Bhabesh Roy.	UR	- DO -	- DO -
7.	Sri P. Boro.	ST	- DO -	- DO -
8.	Sri Sukumar Dev.	UR	- DO -	GM/CON/MLG.
9.	Smt. Anjali Das.	ST	- DO -	CE/MLG.
10.	Smt. Saraswati Choudhury.	UR	- DO -	- DO -
11.	Sri Niranjan Chakraborty.	UR	- DO -	Sr. DEN/MLG.
12.	Sri Subodh Ch. Das.	UR	- DO -	- DO -
13.	Smt. Suprabha Chakraborty.	UR	- DO -	- DO -
14.	Sri Debagish Chakraborty.	UR	- DO -	CE/MLG.
15.	Smt. Nanda Dhar.	UR	- DO -	GM/CON/MLG.
16.	Sri Swapna Kr. Choudhury.	UR	- DO -	CE/MLG.
17.	Sri Susil Kr. Dutta.	UR	- DO -	Sr. DEN/MLG.
18.	Sri Ram Bilas.	UR	- DO -	CE/MLG.
19.	Smt. Anil Kumar Bhattacherjee.	UR	- DO -	Sr. DEN/MLG.
20.	Sri S.K. Sengupta.	UR	- DO -	CE/MLG.
21.	Smt. Gauri Ghosh.	UR	- DO -	- DO -
22.	Sri SP Basumatary.	ST	- DO -	GM/CON/MLG.
23.	Smt. Lebanya Choudhury.	UR	- DO -	CE/MLG.
24.	Sri Swapna Kr. Deb.	UR	- DO -	- DO -
25.	Sri Prayadhar Deka.	UR	- DO -	- DO -
26.	Smt. Arati Devi.	UR	- DO -	- DO -
27.	Sri Goutam Deka.	UR	- DO -	- DO -
28.	Sri Amal Ch. Das.	UR	- DO -	-- DO -

Annex. 6.

<u>SN.</u>	<u>Name in order of seniority.</u>	<u>Whether UR/SC/ST.</u>	<u>Designation.</u>	<u>Place of posting.</u>
29.	Sri I.M. Kakati.	UR	Hd. Clerk.	CE/MLG.
30.	Sri Dipak Rn. Bhownick.	UR	-do-	GM/CON/MLG.
31.	Smt. Sibani Patya.	UR	-do-	-do-
32.	Sri Prasanta Kr. Banish.	ST	-do-	-do-
33.	Sri Ranjan Kr. Chakraborty.	UR	-do-	-do-

Concurring Controlling Officers and supervisors are to please confirm eligible candidates on listed above are given information of the selection in time.

If any staff on leave or any sick may be advised at his leave address given in the application or address recorded in the service book to join in service in time. Syllabus for the selection of OS/II is also enclosed.

If any one not willing to appear in the test, he may be asked to submit a written declaration regarding his unwillingness and send the same to the undersigned well in advance. No absentee test will be held further.

This has the approval of competent authority.

DA : One.

SD/-
for GENERAL MANAGER (P) /MLG.

Copy for information and necessary action to :-

1. SPO/RP, 2. GM(Con) /MLG . 3. Sr. DEN/MLG.
4. CA to CE. He will put up for CRS. for last three years of the abovenamed staff to the selection Committee well in advance. He will also put DAR/Vig/SP's clearance after obtaining the same to the Selection Committee in time.
5. OS/W. He is requested to arrange sitting accommodation of the candidates during the time of examination.

SD/- Illegible.
Asstt. Personnel Officer/Engy.
for GENERAL MANAGER (P) /MLG.

Annexure - 7.

N. F. Riy.

Office of the
General Manager (P),
Malgach, Guwahati-II.

No. E/254/55 Pt-II(E).

Dated - 7.3.2001.

To
Secy. to CE/Malgach,
Sr. DEN/MLG,
GM(CON)/MLG,
OS/W/MLG.

Sub:- Selection for the post of OS/II in scale
Rs. 5500-9000/- of Civil Engg. Deptt.

In continuation of this office letter of even number
dated 12.9.2000 on the above subject, the written examination
for the selection of OS/Gr-II in scale Rs. 5500-9000/- is
fixed to be held on 2.4.2001 in CE's office at 10,000 Hrs.
supplementary selection (written) on 9.4.2001 and viva voce
on 27.4.2001.

The name of eligible candidates are shown as under
and they may be directed to appear in the above test. If any
staff is on (RMC) sick list leave etc. may be informed well in
advance. Staff on leave may be called back to appear in the
selection (Written) to be held on 9.4.2001.

The date for supplementary (2nd written) is fixed on
9.4.2001 for the staff who will not be able to appear in the
(1st written) test with valid reason and they may be appear
in the viva voce test to be held on 27.4.2001 in CE's Office/
Malgach at 10.00 hrs.

SN. Name.....

<u>SN.</u>	<u>Name.</u>	<u>Designa- tion.</u>	<u>Community.</u>	<u>Place of Working.</u>
1.	Sri R. R. Bhowmick.	Hd. Clerk.	UR	GM/CON/Maligaon.
2.	Sri B. K. Das.	-do-	UR	CE/Maligaon.
3.	Smt. Binapani Barua.	-do-	SC	-do-
4.	Sri Bhabesh ROY.	-do-	UR	-do-
5.	Smt. P. Baru.	-do-	ST	-do-
6.	Sri Sakumar Dey.	-do-	UR	GM/CON/MLG.
7.	Smt. Anjali Das.	-do-	ST	CE/Maligaon.
8.	Smt. Saraswati Chakraborty.	-do-	UR	-do-
9.	Smt. Niranjan Chakraborty.	-do-	UR	Sr. DE/Maligaon.
10.	Sri Subodh Ch. Das.	-do-	UR	-do-
11.	Sri Debasish Chakraborty.	-do-	UR	CE/Maligaon.
12.	Smt. Nanda Dhat.	-do-	UR	GM/CON/Maligaon.
13.	Sri Swapnil Kumar Choudhary.	-do-	UR	CE/Maligaon.
14.	Sri Sudh Kr. Dutta.	-do-	UR	Sr. DEN/Maligaon.
15.	Sri Ram Bihari.	-do-	UR	CE/Maligaon.
16.	Sri Anil Kr. Bhattacharjee.	-do-	UR	Sr. DEN/Maligaon.
17.	Sri S. K. Sengupta.	Hd. Clerk.	UR	CE/Maligaon.
18.	Smt. Gouri Ghosh.	-do-	UR	Sr. DEN/MLG.
19.	Sri. S. P. Bagumatary.	-do-	UR	GM/CON/Maligaon.
20.	Smt. Labanya Choudhury.	-do-	UR	CE/Maligaon.
21.	Sri Swapnil Kr. Deb.	-do-	UR	-do-
22.	Sri Prayadhar Deka.	-do-	UR	-do-
23.	Smt. Arati Devi.	-do-	UR	-do-
24.	Sri Gautam Deka.	-do-	UR	-do-

<u>SN.</u>	<u>Name.</u>	<u>Desig- nation.</u>	<u>Community.</u>	<u>Place of working.</u>
25.	Sri Amal Ch. Das.	-do-	UR	-do-
26.	Sri I. M. Kakati.	-do-	UR	-do-
27.	Sri Dipak Kr. Bhownick.	-do-	UR	GM/CON/Maligaon.
28.	Smt. Sibani Patya.	-do-	UR	-do-
29.	Sri Prasanta Kr. Banush.	-do-	UR ST	-do-
30.	Sri Ranjan Kr. Chakraborty.	-do-	ST	-do-
31.	Sri Biraj Kanti Roy.	-do-	ST	CE/Maligaon.
32.	Smt. Usha Dutta.	-do-		-do-
33.	Sri Dinesh Saikia.	-do-		-do-

sd/- Illegible.
for General Manager (P) Maligaon.

No. E/2546/55/Pt.-II(E). Maligaon, dated 7.03.2001.

Copy to -

1. OS/W/MLG. He will please arrange handing over ~~copy~~ of the advice letter to all eligible staff with acknowledgement and spare and direct to all the above named staff on 2.3.2001 positively.
2. Secy. to CE. He is requested to keep ready the last 2 3 (three) years ACR of the above named Head Clerk of Civil Engg. Department.

sd/- Illegible.
for General Manager (P) MLG.

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

26 JUN 2001

गुवाहाटी न्यायपोट

Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE

Tribunal at Guwahati

Guwahati Bench

Guwahati.

Filed by
Sukhomal Choudhury
Railway Advocate
Guwahati
25.6.2001

IN THE MATTER OF :

O.A. No. 107/2000

Smti Nanda Dhar Applicant

- VS -

Union of India & Others Respondents

- A N D -

IN THE MATTER OF :

Reply to the rejoinder filed by

applicant to the respondents

Written statement :

The respondents most respectfully beg to state as
under :

1. That, the answering respondents have gone through the copy of aforesaid rejoinder filed by the applicant and have ~~not~~ understood the contents thereof.
2. That save and except those averments made in the rejoinder which are admitted hereunder or borne on records all other averments made in the rejoinder are to be regarded as not being admitted by the respondents.

Contd....2

3. That, for the sake of brevity, the respondents have refrained from repeating all the averments made in the written statement already filed in the case, which also contains the answer to the allegations as put forward through the present rejoinder.

4. That, with regard to paragraph 3 of the rejoinder, the averments made in paragraphs 7,8,9(A),9(B) and 9(c) of the written statements are ~~not~~ hereby reiterated. It is also denied that the respondents had not taken into consideration the existing vacancies plus the anticipated vacancies as required under rules or that the post of OS Grade-II for which written test had been held belongs to construction organisation or that supplementary first and second test held on 11-10-1999 and 31-12-99 are illegal, arbitrary, without Jurisdiction, malafide or that the result of the above test should be declared as a nullity or that in the instant case 1:3 ratio had not been applied for calling the candidates in the written test or any favoritism has been shown to the candidates or there had been any exhibition of indifferent attitudes or violation of Articles 14 and 16 of the Constitution of India or there has been any manipulation of marks in the written test or that the C.P.O. is not the competent authority in the matter of the selection of candidates or approval by the CPO is without jurisdiction or the result declared is liable to be set aside and quashed or that the guidelines for holding the selection or allotment of marks under different heads as alleged were not followed or that any ineligible candidate was called for appearing in the written test.

It is submitted that all the allegations as brought in this paragraph of the rejoinder are nothing but mentioning about some procedural aspect in holding the selection i.e. date of holding the selection, calender of selection or obtaining approval of General Manager etc. which have got no relevency in the instant selection where the applicant who knowing all aspects mentioned in this paragraph already appeared in the selection and could not qualify in the written test as well and never raised any objection prior to taking part/ appearing in the selection so called.

She is thus estopped from agitating on the issue as per law after submitting herself for the purpose of selection and taking part in the selection and more so when no irregularities, as pointed out by her now, were committed by the respondent while conducting the selection.

The reply to the allegations have been brought now could be found out from the submissions ~~made~~ of the respondents in their written statement submitted in the case.

However, the following are also submitted herein below for information and ready perusal of the Hon'ble Tribunal.

a) The extant rules regarding assessment of number of vacancies as required under paragraph 215(F) of Indian Railway Establishment Manuel, Volume-I (1989 Edition) has been rigidly followed while assessing the number of vacancies. The vacancies so assessed are 21 in numbers and the break up ^{are} as under :-

i)	Existing vacancies	- 9
ii)	Worked charged post	- 6
iii)	Against vacancies in higher grade post.	- 6

Total = - 21		

As regards the other points all the procedures/points required to be observed while computing the vacancies were duly taken into account and no vacancy appears to occur on those accounts during the next 15 months.

From above, it is thus clear that there had been no violation of any mandatory rules, as alleged.

b) It is agreed that in the written examination/selection 1 : 3 formula is to be followed while calling the candidates for appearing in written test and according to this formula 63 candidates were due to get call for such written test/selection. Instead 59 candidates could only be called as because there was no further candidate available within the zone of consideration.

c) The allegation of the applicant that since advance intimation was issued no supplementary test should have been held, are not correct and hence denied.

As per rule 223(i) of IREM volume-I (Revised edition 1989) a supplementary selection may be held in the following types of cases :

i) Summons for interview has been received too late for which it would be difficult for the candidate to reach the place of interview;

ii) Administrations failure to relieve the staff in time for interview;

iii) Sickness of the candidate or other reasons over which the employee has no control. Unavoidable absence, will not however, include absence to attend a wedding or similar function or absence over which he has control.

Sickness should be covered by a specific service from the Railway Medical Officer.

In the selection held on 5-12-98 followed by first supplementary selection on 11-10-99, it was observed that 2 candidates received their call letters for interview (Written test) in late for which they could not appear.

As per rule 223(i) (iii) of IREM Volume-I 1989 Edition, not more than one supplementary selection should normally be held to cater to the needs of the candidates who were debarred from appearing in the test due to late receipt/non-receipt of intimation, sickness etc.

The second supplementary selection should be held rarely and with the personnel approval of C.P.O. (Chief Personnel Officer) based on the merit of such cases. Accordingly, with the approval of the C.P.O. the second supplementary selection was held.

Hence, there is no violation of any rules, as alleged.

d) All other allegations have already been replied in the proceeding paragraphs and also in the written statement submitted in the case and hence same are not agreed to.

e) As regards the calender of selection etc. as alleged it is to submit that the calender of selection is maintained by every selection conducting unit and this is prepared and notified in advance preferably in the month of July of the proceeding year. The calender is prepared and circulated mainly for the Guidelines of the officials/officers as an advance intimation etc. so as to conduct and finalise the selections expeditiously in a systematic and chronological way etc. These are the internal procedural aspects having little bearing or effects on the actual performance of the candidates in the selection/written test held in a particular selection when convened.

f) In the instant case, the rules and norms of selection was followed rigidly. Since the officer concerned nominated for evaluation had been availing leave followed by extension of leave, the selection process could not be finalised expeditiously and these did never effect the actual performance of the applicant in the written test etc. Her real performance in the written test has been well reflected in the marks obtained by her in the test in which she failed to secure the minimum pass/qualifying marks.

All allegations of the applicant contrary to above are emphatically denied herewith.

g) When a selection post is to be filled up, the Head of the Department Concern and Head of the Department from Personnel branch of the Railways are empowered jointly to constitute a selection board and shall direct to the Board to assemble and make recommendation. This is as per rule 219 of the Indian Railway Establishment Manual Vol.I of 1989 Edition.

In the instant case, though the applicant is presently working in the construction wing the N.F.Railway ~~maximises~~ her lien and promotional prospects are linked with open line organisation.

g) As regards the allocation of marks etc. it is ^{submissible} ~~selected~~ that the marks shown by the applicant under different heads are substantially correct and these are to be followed at the time of the Viva-Voce test. But in the instant case, the applicant was not found qualified for appearing in the Viva-Voce test. As such, the allocation of marks as contended by the applicant has got no application in the case of the applicant. But these have been strictly followed in the cases of those who appeared in the viva-Voce test after being declared qualified in the written test. Hence the allegations brought against the respondents is not accepted.

It is also to mention herein that it is very unfortunate aspect that the applicant has cast doubt on the integrity of the Railway officers stating that ^she can not get 8.75 marks in the written test as she has been working for considerable years as O.S. Grade-II. The evaluation of marks are

based on the actual performance of the candidates in the examination and not based merely on working experience. In the instant case, the written test was held for 100 marks which has been computed out of 35 marks. The break up of the professional ability marks are as under :

i) Written test - 35
ii) Viva-voce test - 15

The applicant could secure only 8.75 marks out of 35 marks allotted for written test. Candidates securing 21 marks i.e. 60% marks out of 35 marks straight away qualifies for Viva-voce test. But the applicant failed to secure the qualifying marks and as such she could not be called for Viva-Voce test. As such no injustice has been done to her. Again as per rule 219 (d) of IREM, moderation of results by way of awarding grace marks are not resorted to ordinarily without the authority of the selection Board or the authority competent to accept the recommendation of the selection Board and no grace marks are allowed in individual cases. This provision of rule has also been observed in the present case and there is no violation of laid down selection rules.

h) As regards selection of non-Gazetted Group-C post, Head of the Department is empowered to constitute the selection Board and C.P.O. is the competent Authority to allow the second supplementary selection and there is no reason for approaching the General Manager for such purpose.

5. That with regard to the allegations made at paragraph 4 of the rejoinder, it is submitted that none of the allegations are sustainable and hence these are denied herewith. The respondents do hereby re-state and re-affirm the statements made at paragraphs 10, 11 and 12 of the written statement already submitted in the case.

As per the applicants own statements at paragraph 3.5 of the application, the applicant lodged her complaint only on 20-1-2000 against the selection procedure etc. As the resulting selection was published on 17-1-2000, it is thus evident that she filed her complaint/allegations only when she found that she did not qualify in the test and as such the allegations brought by her about the irregularities in the selection are the outcome of her after thought. Further, the complaint is vague, baseless and not reliable. Had there been any irregularity, she would have pointed out immediately before or after the test was over i.e. prior to the result was out.

It is also denied that the ratio of 1:3 has not been maintained in respect of unreserved category as alleged or there has been any malafide actions.

In this connection the following submissions are also made which will show that all her allegations are incorrect and unfounded.

- a) The selection notification was issued on 9-10-98 for filling up 21 vacancies and as a result of selection only 10 candidates could be selected and promoted. Thus, there is a

short fall of 11 U.R. (Un-reserved community) Candidates. Accordingly, notification calling 33 candidates on the basis of 1:3 formula had been issued wherein 9 reserved candidates could find place within the zone of eligibility for consideration ~~as per rule by virtue of their normal seniority position in the cadre and this~~ as per rule by virtue of their normal seniority position in the cadre and this ~~selection~~ selection is still under process. She has already taken part in this selection and appeared in the written test on 31-3-2001.

It is however to mention herein that the present application, has been filed by the applicant against the impugned selection held on 5-12-1998 result of which selection (written test) was declared vide memorandum issued dated 17-1-2000. In this rejoinder the applicant has also challenged the Vires of the notification issued for another selection proposed to be held under letter No. E/254/55/Pt.II(E) dated 12-9-2000 and E/254/55/Pt.II(E) dated 7-3-2001 without amending the pleadings and cause of action etc. of the ^{*Original} Application filed by her on or about 23-3-2000.

As the inclusion of the present pleading in the rejoinder tantamount to colourable attempt to change the nature and cause of action in original application without amending the pleadings in the original application, the applicant is debarred from challenging the viability of the procedure etc. as adopted for the new selection convened under above said letter dated 12-9-2000 in this present original application and hence the present plea of the applicant in the rejoinder warrants rejection outright on this ground also.

b) In accordance with the notification issued as on 9-10-98 and selection held on different dates, reserved community candidates who were found suitable in the written and Viva-voce test have been promoted to the post of office Superintendent Grade-II in scale Rs.5500 - 9000/- vide General Manager(P) N.F.Railway, Maligaon's Office Order No.E/254/55/Pt.II(E) dated 16-3-2000.

6. That, with regard to averments at paragraph 5 of the application it is submitted that all the allegations as made in the rejoinder are quite incorrect and not based on records and hence denied. It is also denied that the selection was held without following the mandatory rule or any irregularity or illegality was crept in the selection or any valid controversy in issue has arisen in the case which might call for setting aside the selection or any public interest is involved. Rather, public interest will suffer if the selection which has been held quite in conformity to rules and with great care is frustrated or set aside, or the persons duly selected and validly promoted are disturbed.

7. That, it is submitted that all the actions taken in the case are quite in consonance to rules and procedure in vague and the rejoinder/application suffers from wrong cause of action/jurisdiction, misconception and mis-interpretation of rules, vagueness and incorrect submissions etc. and as such is liable to rejection.

VERIFICATION

I, Shri A.K. Nigam, S/O. Late S.P. Gaurha, aged about 48 years, by occupation service at present working as C.P.O./A of the N.F.Railway do hereby solemnly affirm and state that the statements made at paragraphs 1 and 3 are true to my knowledge and those made at paragraphs 4 and 5 are based on informations derived from official records which, I believe to be true, and the rest are my submissions before the Hon'ble Tribunal.


Shri A.K. Nigam
Chief Personnel Officer (A)
N.F. Railway, Maligaon
for and on behalf of
the Answering Respondents.

92
 Filed by the Com
 of the applicant
 12/18/01 (Order)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHTI BENCH**

In the matter of :

O.A. No. 107 of 2000

Smt. Nanda Dhar

-versus-

Union of India & Others

-And-

In the matter of :

Submission of documents in support of
the contention raised by the applicant
in O.A. No. 107/2000.

The applicant above named most humbly and respectfully begs to state
as follows :

1. That your applicant filed the aforesaid Original application under Section 19 of the Administrative Tribunals Act, 1985 praying inter alia for a direction upon the respondents to review the result of the written examination declared by the Railway Authority under Memorandum dated 17.1.2000 and also for a direction upon the respondents to allow the applicant to appear before the viva-voce test. The said O.A. is finally heard and the case is kept adjourned for verdict. However, the Hon'ble Tribunal granted liberty to submit documents if any and relevant judgment in support of the contentions raised by the applicant in the Original Application. Accordingly the applicant begs to submit the following Office Orders in support of her contention raised in the Original Application.

(ii). Office Order No. 31/93 dated 16.2.1993 issued by the General Manager (Con), Maligaon;

(ii). Office order No. 02/98 issued by the General Manager (Con), Maligaon, Guwahati under letter dated 15.1.1998 for perusal of the Hon'ble Tribunal.

2. That your applicant relies upon the following Judgment and orders in support of her contention.

(i) 1999 (2) SLJ (CAT) 185 (Sri Kamal Kumar Vs. Union of India & Others)

(ii) 1992 (2) ATR 371

(ii) 1992 (4) SCC 118 (State of Haryana & Ors. Vs. Piara Singh & Ors.)

(iv) 1992 (2) SLJ 21 (Bachan Kr. Sahu Vs. Orissa Housing Board)

VERIFICATION

I, Smt. Nanda Dhar, applicant in the above original application, Head Clerk, at present officiating to the post of Office Superintendent in the office of the Chief Engineer, N.F. Railway, Maligaon, Guwahati, do hereby verify that the statements made above in paragraphs 1 & 2 are the matter of records which I believe to be true and I have not suppressed any material fact.

sign this verification on this the 13th day of August, 2001.

Nanda Dhar.

NORTHEAST FRONTIER RAILWAY

SN. 267
OFFICE OF THE
GENERAL MANAGER (CON)
MALIGAON

OFFICE ORDER NO. 31 OF 1993

The following promotion and posting orders are issued to take immediate effect.

1. Shri K.P. Roy, Hd. Clerk(G) in scale Rs. 1400-2300/- on pay Rs. 1680/- under GM/Con/MLG is hereby promoted as OS(G) Gr.II (Con) in scale Rs. 1600-2660/- purely on ad-hoc basis and posted under GM(Con)MLG against existing vacancy. His pay as OS/G Gr.II(Con) in scale Rs. 1600-2660/- is fixed at Rs. 1750/- with effect from the date of assuming higher charges.
2. Shri Barun Dasgupta, Hd. Clerk(G) in scale Rs. 1400-2300/- on pay Rs. 1600/- under GM/Con/MLG is hereby promoted as OS(G) Gr.II (Con) in scale Rs. 1600-2660/- purely on ad-hoc basis and posted under GM/Con/MLG against existing vacancy. His pay as OS(G) Gr.II (Con) in scale Rs. 1600-2660/- is fixed at Rs. 1650/- with effect from the date of assuming higher charges.
3. Shri Brihaspati Boro, Hd.Clerk(G) in scale Rs. 1400-2300/- on pay Rs. 1560/- under GM/Con/MLG is hereby promoted as OS/G Gr.II(Con) in scale Rs. 1600-2660/- purely on ad-hoc basis and posted under GM/Con/MLG against existing vacancy. His pay as OS/G Gr.II(Con) in scale Rs. 1600-2660/- is fixed at Rs. 1650/- with effect from the date of assuming higher charges.
4. Smt Nanda Dhar, Hd.Clerk(G) in scale Rs. 1400-2300/- on pay Rs. 1640/- is hereby promoted as OS/G/Gr. II(Con) in scale Rs. 1600-2660/- purely on ad-hoc basis and posted under GM/Con/MLG against existing vacancy. Her pay as OS/G/Gr.II(Con) in scale Rs. 1600-2660/- is fixed at 1700/- with effect from the date of assuming higher charges.
5. Shri R.K. Nandy, Hd.Clerk(G) in scale Rs. 1400-2300/- on pay Rs. 1600/- is hereby promoted as OS/G/Gr.II(Con) in scale Rs. 1600-2660/- purely on ad-hoc basis and posted under GM/C/MLG against existing vacancy. His pay as OS/G/Gr.II(Con) in scale Rs. 1600-2660/- is fixed at Rs. 1650/- with effect from the date of assuming higher charges.
6. Shri P.N. Roy, Hd. Clerk(G) in scale Rs. 1400-2300/- under Dy. CE/BG/Con/MLG is hereby promoted as OS/G/Gr.II(Con) in scale Rs. 1600-2660/- His promotion will be effected from the date of creation/Sanction of the post. of OS/G/Gr.II(Con) under Dy.CE/C/BG/MLG.

The above promotion orders are issued purely on ad-hoc basis and these will not confer upon them any right of seniority over those who already senior to them or continuation in the grade etc.

This issues with the approval of CE/C/I/MLG.

16.2.93
(D.K. Das)
SPO/CON
for General Manager/C
Maligaon.

Contd...
16/2/93

N. P. Railway

Office of the
General Manager/Con.
Maligaon, Guwahati-781011

OFFICE ORDER NO. 02/98

Shri S.Acharjee, OS/II/Con in scale Rs.1600/-
2660/Rs.5500-9000(RS) is hereby promoted as OS/Gr.I in
Scale Rs.2000-3200/Rs.6500-10,500/- (RS) in GM(CON)MLG's
office on adhoc basis.

Since the promotion has been ordered as adhoc measure, this will not confer upon him any right for retention in the grade or seniority over those who are already senior to him etc.

This has the approval of CB/Con/11/MG.

100 100
(S.K.Bose) 15/1/98
A.P.O.(CON)
For General Manager/Con.

No.E/283/Conv/NG/Pt.XVIV(Loos) Mogaon, dt. 15.1.98

Copy forwarded for information and necessary action to:

1. FA&CAO (C) 1-15
2. CE/C/L, I, II, III, IV, V
3. Dy. CE/C/G
4. OS/C/G
5. Staff concerned
6. OS/C/P, I, II
7. Spare copy for P/Case.

(S.K.Bose)
APO(CON).