

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 612/12000

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI.5.

ORIGINAL APPLICATION NO. 412/2000

Smt. Swapna Chaudhury Applicant.

versus

Union of India & Ors Respondents.

For the Applicant(s) Mr. G.P. Bhattacharjee,
" A. Verma,
" S. Roy,

For the Respondents. C.G.S.

NOTES OF THE REGISTRAR

DATE

O.R.D.E.R.

This application is in form
but not in due coordination
Petition is filed vide
M.T. No. C.R. 1000
for Rs. 100/-
IFC/DR No. 7710/21
Dated 27/11/2000
Dy. Registrar

28.11.00 Present : The Hon'ble Mr Justice K
D.N.Chowdhury, Vice-
Chairman.

Heard Mr A.Verma, learned counsel
for the applicant and Mr J.L.Sarkar
learned Railway standing counsel
for the respondents.

Application is admitted. Issue
usual notice. Call for the records.

List on 2.1.2001 for written
statement and further orders.

Heard Mr Verma on the interim
order. Also heard Mr Sarkar, learned
Railway standing counsel.

Issue notice to show cause as
to why the interim order as prayed
for shall not be granted. Returnable
by 2.1.2001. Meanwhile, the respon-
dents shall allow the applicant
to run the tea stall at Tinsukia
Railway station as was done earlier.

Vice-Chairman

Notice prepared and sent to
D/S for serving the respondent
No. 1 to 5 by hand & by legal
A/D vide S/No. 2994 to 2998

Add. 5/12/2000

pg 4/2
28/11/00

1-1-2001

(1) Notice duly served
on R. No. 1 to 5 (by hand).
Other respond. are
still awaited.
(2) No. Show cause has
been filed.

(2)

O.A.No.412/2000

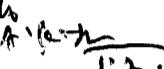
2.1.2001 List it on 1.2.01 to enable the respondents to file written statement and for further orders.


Vice-Chairman

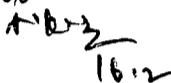
mk

No. written statement has been filed.

1.2. Circuit Bench at Mysore.
Adjourned to 16.2.2001.

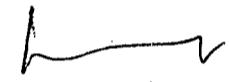

1.2.

16.2. M.S.B. Adjourned to 25.2.2001.


16.2

No. written statement has been filed.

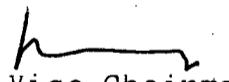
28.2.2001 Four weeks time allowed to the respondents to file written statement. List it on 4.4.01 for orders. The interim order shall continue.


Vice-Chairman

nkm

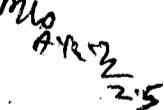

2/3/01

4.4.2001 Further four weeks time allowed to the respondents to file written statement. List for orders on 2.5.01.


Vice-Chairman

nkm

2.5 - follow up to 4.4.2001.


2.5

4.5.2001 Four weeks time allowed to the respondents to file written statement. List for orders on 8.6.01.


Vice-Chairman

nkm

(3)

97

Notes of the Registry	Date	Order of the Tribunal
No. written statement has been filed.	8.5.01	Mr. B.C.Pathak, Addl.C.G.S.C. asked for time to file written statement. List on 9-7-2001 for order. ICC Usha Member
	9.7. mb	Adjourned to 11.7.2001. By N.R.S. 9.7.
No. written statement has been filed.	11.7.01	List on 17.8.01 to enable the respondents to file written statement. Vice-Chairman
	1m	By Order 11.7.
No. wls has been filed.	17.8.01	Mr. J.L.Sarkar learned counsel appearing on behalf of the respondents prays for 4 weeks time to file written statement. Prayer is accepted. List on 19.9.01 for filing of written statement and further orders. ICC Usha Member
	1m 19.9.01	List again on 10/10/01 to enable the respondents to file written statement. Vice-Chairman
No. written statement has been filed.	9.10.01	

Notes of the Registry

Date

Order of the Tribunal

10.10.01		List on 23.11.01 alongwith O.A. 403/2000. The respondents may file written statement within 3 weeks from today.
12.11.2001 i.e/s submitted by the respondents. R.D.	pg	Prayer has been made on behalf of Mr.J.L.Sarka learned Standing counsel for Railway for adjournment of the case. Prayer is allowed. List on 14.12.01 for orders hearing.
14.12.01	1m	The learned counsel for the applicant informs that the applicant has since been promoted and he has sought instructions from the applicant and he wants to short adjournment. List on 18.1.01 for disposal.
14.12.01	1m	At the request of learned counsel for the applicant case is adjourned to 19.12.01 for disposal.
19.12.2001	1m	Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is dismissed. No order as to costs.
	nkm	Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application 403 of 2000

With

Original Application No.404 of 2000

Original Application No.405 of 2000

and

Original Application No.412 of 2000

Date of decision: This the 19th day of December 2001

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

I. O.A.No.403/2000

Smt Sefali Mazumder,
Wife of Late Nanigopal Mazumder,
Barpathar, Missionpara,
Tinsukia, Assam.

II. O.A.No.404/2000

Sri Lakhindar Shah,
S/o Shri Munilal Shah,
New Court Road,
Tinsukia, Assam.

III. O.A.No.405/2000

Shri Ram Naresh Shah,
S/o Late Janak Shah,
Railway Colony,
Tinsukia, Assam.

IV. O.A.No.412/2000

Shri Swapan Chowdhury,
S/o Late Brajendra Lal Chowdhury,
Pachim Sripuria,
Tinsukia, Assam.

By Advocates Mr C.P. Bhowmik, Mr A. Verma,
Mr R. Hazarika and Mr S. Roy.

.....Applicants

- versus -

1. The Union of India, through the General Manager, N.F. Railway, Maligaon, Guwahati.
2. The Chief Commercial Manager, N.F. Railway, Maligaon, Guwahati.
3. The Divisional Railway Manager (C), N.F. Railway, Tinsukia.
4. The Divisional Commercial Superintendent, N.F. Railway, Tinsukia.
5. The Manager Catering, N.F. Railway, Tinsukia.

.....Respondents

By Advocates Mr J.L. Sarkar, Railway Counsel and Mr H. Chakraborty.

O R D E R (ORAL)

CHOWDHURY. J. (V.C.)

All these applications were taken up together since they involve common questions of law and similar facts.

2. The applicant in O.A.No.403/2000 is the wife and the applicants in the other O.A.s are the sons of Commissioned Vendors, since deceased, under the Railway Catering Unit. In these applications the applicants have sought for a direction on the respondents to engage them as Commissioned Vendors under the Railway Catering Unit on compassionate ground on the death of their husband and father respectively.

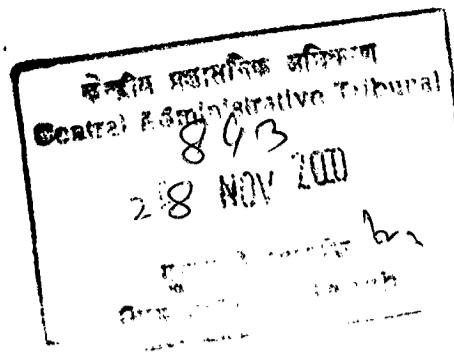
3. Mr A. Verma, learned counsel for the applicants, strenuously contended that the Railways being an authority is duty bound to consider the case of these applicants for engaging them as Commissioned Vendors.

4. Mr H. Chakraborty, learned Advocate appearing on behalf of Mr J.L. Sarkar, learned Railway Counsel, mainly questioned the maintainability of the applications apart from the other grounds raised in the applications. In my view the subject matter is beyond the jurisdiction of the Tribunal. The jurisdiction, power and authority of the Tribunal is delineated in the statute confining to the recruitment as well as service matters concerning the persons mentioned in Section 14 of the Administrative Tribunals Act, 1985. Service matters are defined in Clause (q) of Section 3 of the Act. Any other matter mentioned in Clause (q) is to be read ejus dem generis, i.e. and therefore, it must be analogous to any of the clauses mentioned under (i) to (v).

5. For the aforesaid reasons I accept the contention raised by Mr H. Chakraborty and this Tribunal has no jurisdiction to continue with the proceeding. The applications are thus dismissed, leaving it open to the applicants to take appropriate measure before the appropriate forum as per law. Considering the plight of the applicants, as a special case, the interim orders passed earlier shall continue for a month to enable them to take appropriate steps as per law.

No order as to costs.

Sd/ VICE CHAIRMAN



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENEATH

GUWAHATI.

(An application under Section 19 of the Central Administrative
Tribunal Act, 1985).

O.A. No. 412 OF 2000

Sri Swapna Chowdhury ... Applicant

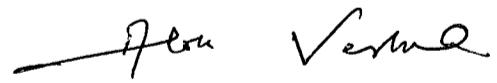
-Versus-

Union of India & ors... Respondents.

I N D E X

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Filed by :-


Advocate.

Swapna CHOWDHURY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH
GUWAHATI.

An application under section 19 of the Central Administrative
Tribunal Act, 1985).

O.A. NO. 412 OF 2000

B E T W E E N

Sri Swapan Chowdhury,
son of Late Brajendra Lal Chowdhury,
resident of Pachim Sripuria,
Vivekananda Road, P.O.P.S. & Dist. Tinsukia

... APPLICANT.

-Versus-

1. Union of India,
Through the General Manager,
N.F.Railway, Maligaon, Guwahati-11.
2. Chief Commercial Manager,
N.F.Railway, Maligaon, Guwahati- 11.
3. Divisional Railway Manager (C)
N.F.Railway, Tinsukia, P.O. Tinsukia.
4. Divisional Commercial Supdt.
N.F.Railway, Tinsukia, P.O. Tinsukia.
5. Manager Catering, Tinsukia Rly. Station.
N.F.Railway, P.O. Tinsukia.

.... RESPONDENTS.

PARTICULARS OF THE APPLICATION

Sapan Chowdhury

Contd. 2.....

Filed by :-
For Vakil
Adarsh
28/4/2000

PARTICULARS OF THE APPLICATION

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

This application is not directed against any particular order but has been made for a direction from Hon'ble Tribunal for appointing the applicant as commission Vendor Pan-Dalla under catering unit Tinsukia N.F.Railway and to give him all other benefits at par with other commission vendors.

2. LIMITATION

28 NOV 2010
The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribbybal Act, 1985.

3. JURISDICTION

The applicant further declares that the subject matter of the case is within the Jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE :-

4.1.

That the applicant is a citizen of India and as such he is entitled to the enforcement of his rights and privileges guaranteed under part-III of the Constitution of India and other law of the land.

4.2. That the applicant in this application assails the illegal and arbitrary action of the respondents in

Sapay Chowdhury

Contd. 3....

4.2 depriving the applicant from his genuine claim of Engagement ~~appointment~~ as a Commission Vendor(Tea Stall) under Catering unit at Tinsukia Railway Station.

4.3. That the applicant's ~~he~~ father Brajendra Lal Chowdhury (since deceased) was initially a licence of N.F.Railway with respect to a Tea stall at Tinsukia Railway Station Since many years prior to 1984. In the year 1984, the Tea-Stall was taken up by N.F.Railway to run departmentally by appointing commission Vendor under the Railway Catering Unit. In this new arrangement the vendor used to sell items provided by the catering Manager and they get commission on sell proceeding as per item wise scheduled rate. This new arrangement was made in terms of CCS/G/MLG's letter No.c/56/11/D/16/1 dated 7-10-83.

4.4. That after the new arrangement the applicant's father became commission vendor under the catering department, N.F.Railway, Tinsukia and got the commission Vendor licence. He was running the business to the full satisfaction of the Railway Authorities, Tinsukia and at no point of time he was disturbed by the Railway Authorities while renewal of his licence.

Copies of a few renewal orders regarding engagement of applicant's as commission vendor of Tea Stall are filed hereto and marked as Annexure 'A' Series.

4.5. That the father of the applicant died on 25-4-97 whose demise was a great blow to the applicant's family as he was the sole bread and butter earner. After his death the applicant started to run the business(Tea-Stall) to which the respondents never objected. It is pertinent

to mention here that the applicant was appointed by the respondents as helper to his father, which is evident from the certificate dated 21-2-2000. issued by the Medical Department, N.F.Railway, Tinsukia. He was also running the business well and in the meanwhile he applied for transfer of the licence of his deceased father in his name.

Copy of the Medical certificate dated 21-2-2000 is filed hereto and marked as Annexure 'B'.

4.6. That your humble applicant made several applications through proper channel for his engagement as commission vendor in place of his father, but no action has yet been taken by the respondents. Mother of the applicant also made a representation on 28-7-97 soon after death of applicants father to accomodate her son.

4.7. That lastly on 2-9-2000 an application has been made to the General Manager, N.F.Railway jointly with a few other similarly placed person. but nothing has been communicated on behalf of the respondents.

4.8. That the applicant begs to state the respondents although did not consider the genuine grievance of the applicant but in the meantime engaged two widows namely Smti M.Mazumder and Smti Rekha Mazumder in place of their deceased husband.

4.9. That the applicant begs to state that the said tea-stall is the only source of livelihood and if the same is snatched away by the respondents the whole family of the applicant will starve to death.

Contd.5.....

Sapan CHOWDHURY

4.10. That very recently your humble applicant could learn that the respondents are going to issue licences to the fresh candidates depriving the applicant and on 29-10-2000 the respondents have verbally ordered to vacate the tea-stall.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION

5.1. For that inaction on the part of the respondents is not engaging the applicant as Commission Vendor (Tea Stall) is illegal and arbitrary.

5.2. For that the applicant deserves to be engaged as he is working since the year 1997.

5.3. For that the non-engagement is violative of Article 14, 19, & 21 of the Constitution of India being arbitrary and whimsical.

5.4. For that the applicant is entitled to the relief under the directive Principles of State Policy.

5.5. For that the applicant has served the respondents for long three (3) years in the hope of getting the licence of commission Vendor (Tea Stall) Hence any action of the Respondents to deprive the applicant will not be tenable in the eye of law.

5.6. For that inaction of the respondents have resulted in complete isolation of the constitutional mandate more particularly the Article 23 of the Constitution of India and laws frame there under.

5.7. For that action/in action on the part of the respondents have violated the various guide lines issued by the Govt of India.

5.8. For that in any view of the matter the action/inaction of the respondents are not sustainable in the eye of law and they be directed to engage the applicant as co commission Vendor.

5.9. For that the case of the applicant is a good example of arbitrary exercise of discretionary power.

5.10. For that the action of the respondents is violative of the Principle of reasonableness and equitable remedy.

6. DETAILS OF REMEDIES EXHAUSTED :-

That the applicant declares that he has exhausted all the remedies available to him and there is no alternative remedy available.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT

The applicant further declares that he has not previously filed by application, writ petition or suit regarding these grievances in respect of which this application is made before any other court or before any of the Bench of the Tribunal or any other Authority nor any such application, Writ petition or suit pending in any of them.

8. RELIEF SOUGHT FOR

Safayn CHOWDHURY

Contd.7....

8. RELIEF SOUGHT FOR

In view of the facts and circumstances mentioned above the applicant pressed for the following relief :-

8.1. The engagement of the applicant as commission vendor (Tea stall).

8.2. Costs of the application.

8.3. Any other reliefs the Hon'ble Tribunal may be pleased to grant.

9. INTERIM RELIEF PRAYED FOR

During the pendency of this application the applicant prays for the following interim relief :-

9.1. A direction may be given to the respondents to allow the applicant to run the tea-stall at Tinsukia Railway Station.

10. This application has been filed through Advocate.

11. PARTICULARS OF THE IPO.

1. I.P.O. NO. 6G 771031

2. DATE. 27.11.2010

3. PAYABLE AT. Guwahati

12. LIST OF ENCLOSURES

As stated in index.

Contd...

Safay CHAUDHURY

VERIFICATION

I Sri Swapna Choudhury, son of Late Brajendra Lal Choudhury aged about 26 years by religion Hindu by occupation Business resident of Tinsukia Town P.O. P.S. and Dist. Tinsukia Assam solemnly affirm declare dohere by solemnly declare that the statements made in paragraphs 1, 2, 3, 4.1. 4.2 to 4.7, 4.9 and 4.10, 10, 11 and 12 are true to my knowledge and those made in paragraphs 4.3, 4.8 are true to my information and the rest are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign this verification on this 28th day of Nov 2000 at Guwahati.

Swapna Choudhury

DECLARANT.

Swapna Choudhury

-9

ANNEXURE A SERIES

N.F. Aly

गोपनीय प्रमुख
Departmental Catering
गोपनीय रेस्टर, फिल्हाल
M.P. Aly, Tinakli

NO. DC/TSK/venda/92

Dated: The

Month 01-4-92

To

Sri - B. L. Choudhary.

Commission Vendor / Tea- Stall
Dept. Catering / TSK

Sub:- Renewal of engagement of Commission Vendor
at TSK Station under Dept. Catering
arrangement.

In terms of Ccs/Catg/N.F.Aly/M.P.Aly's 4/No. C/56 meeting
- CAIRS/89 dt. 30.3.92, your engagement as Commission
Vendor / Tea-Stall under Dept. Catering is renewed
for a period of 5 (five) months ref. 1/1/92 to 31/5/92

You should note that if you fail to maintain
the target dates, your licence will be canceled
without any further reference.

N.F. Aly
01/4/92
Asst. Manager,
Departmental Catering
M. P. Aly & Co.

Attested:

Sonjoy

roy.

Advocate

28.11.2000.

No. DC/TSK/Vendors

ANNEXURE - A SERIES

A

To
Sri/Smt. B. h. choudhury
Commission Vendor, T/St. II/Panduilla.
Dept. Catering
N.F. Rly/TSK

Dated, Tinsukia
The 6.4.97

Sub : RENEWAL OF ENGAGEMENT LICENCE OF COMMISSION VENDORS UNDER DEPT.
CATERING UNIT/TSK.

Ref : CCM/MIG'S L/No. C/56/D/16/1/PT II dt. 14-3-97

In reference to above, your licence for engagement of Com. Vendor,
T/still/Pan-Darfa under Dept. Catering/TSK is renewed for a period of
6 (SIX) months w.e.f. 01.01.97
(ei) 01.01.97 to 30-6-97).

This issues with the post-facto approval of competent authority.

R.S. Ram

6-4-97 MANAGER
Dept. Catering N.F. RLY/TSK

Asst Manager
Departmental Catering
N. F. Railway
Tinsukia

Copy :-

CCM/G/MLC & FA & CAO/MLG for information please.

Attested:
Sonjoy Roy
Advocate
28.11.2000

ANNEXURE A - SERIES

-11-

(8)

19

License No. 99-2000 granted on 1-4-99 to
 Smt. Depth Tea Stall Q for manufacture/Sale/Stock/
 distribution/Exhibit, for sale of the following food stuff on the pro-
 misos. Situated at 184 B.I.Y. Station Rly station is here by road -
 and for the period from 1-4-99 to 31-3-2000 Subject to
 the condition specified in the provision of the P.F.A. act 1954, and
 rules thereunder and also subject to the condition specified below.
 Particulars Tea Stall.

Date:- 1-4-99
 Place :- Dibrugarh.

Licensing Authority
 Local Health Authority
 CMS/DBRT

CONDITION.

- This license shall be displayed in a permanent place in the premises duly framed.
- In a case of Vendors/Hawker the license shall be carried with them.
- The licensee shall be allowed any food Inspector/Local Health Authority to enter into any premises, where food is manufactured, stored or exhibited for sale or an adulterant is stored of where food is carried on and to inspect the premises record etc any time.
- The licensee shall maintain such submit as may be prescribed by the local health authority and shall submit such periodical return to the food inspector as may be directed.
- The licensee shall maintain proper sanitation and hygienic condition within the inspector as may be directed.
- The licensee shall cause the flooring and every drain of such room or place and every counter, shelf, bench or any other article or which the vessels containing the contents are kept to be thoroughly cleaned and washed daily.
- The licensee shall cause every vessels, umbrellas, cup, saucer, spoons, thallios etc after cleaning thoroughly be stored in boiling water before use. or polysan solution.
- The licensee shall provide all his employees with match heads and they should always wear them.
- The licensee shall comply with the provision of the provation of food adulteration act, and rules thereunder.
- The licensee shall whom desires to use any kind accommodation shall obtain prior permission of the license sign authority.
- The licensee shall also supply to food Inspector/Local health Authority such information of the said rules and the condition of licensee are being complied with.

The licensee is liable to be suspended or cancelled for any breach of any of the conditions.

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Attested
 Sonjoy Roy
 Advocate
 28.11.2000

ANNEXURE B

-12-



ANNEXURE-IV

FORM OF CERTIFICATE FOR FOOD HANDLING STAFF
AT RLY. STATIONS EXAMINED ON FIRST EMPLOYMENT
AND ON RE-EXAMINATION DURING PAYMENT.

N. F. Railway.

Medical Department

No. 24

Date: 21/2/20

I do hereby certify that I have
examined Sri Sri Swapan Kumar Chawdhury
employed as (Desig.) Helper of Duty Caterer
Name of licensee State of Catering Ltd
whose signature/thumb impression has been
appended in my presence.

I consider him fit for such employment.

Signature Swapan Kumar Chawdhury

Designation Helper of Duty Caterer

Date: 21/2/2000

Place State of Catering Ltd

SWAPAN KUMAR CHAWDHURY

Signature/Thumb impression
of employee.

* Score out whichever is not applicable.

Identification mark One colour on R

Screening done at TSK on 13/2/2000.

Attested.

Sonjoy Ray
Advocate

28.11.2000

12 NOV 2001

गुवाहाटी बाबपुराट

In The Central Administrative Tribunal

Guwahati Bench :: Guwahati.

Leena Sarma

ले. लीना सर्मा प्रबंधक (शास्त्रार्थ)
Dr. Chief Commr. Manager/Com
पू. श्री. लीना सर्मा, फलीगाँव
P. B. Railway, Morigaon

Guwahati-781040

22/11/2001

O.A. NO. 412/2000

Sri S. C. Choudhury

- vs. -

Union Of India & Ors.

In the matter of :-

Written Statement on behalf of
the respondents.

The respondents in the above case most respectfully beg to state as under :-

1. That the respondents have gone through the original application and have understood the contents thereof.

2. That the respondents do not admit any statement except those which are specifically admitted in this written statement. Statements not admitted are denied.

3. That the respondents begs to state that the subject matter of the application is not within the jurisdiction of this Hon'ble Tribunal.

4. That in reply to the statements in para 4.2 to 4.6 it is stated that the applicant never applied for his engagement as commission vendor in place of deceased Brajendra Lal Chowdhury, ex-commission vendor, New Tinsukia.

Filed by the respondent
Choudhury S. C. Chakraborty
22/11/2001

Leena Sarma

১৪
২/১
১. মুসল বাণিজ্য প্রস্তুতি (সং। ১২৫)
২. Chief Comm'l. Manager/Gen
৩. সু. সী. রেলওয়ে, মালিগাঁও^১
৪. R. Railway, Maligaon
৫. Guwahati-781013

After the death of Brajendra Lal Chowdhury neither the licence was renewed nor the applicant was allowed to run the Tea Stall. It is mentioned that the wife of the deceased Smt Bakul Bala Chowdhury applied for her engagement as commission vendor in place of her deceased husband.

5. That in reply to the statements in para 4.7 it is stated that no such application has been received by the respondents.

6. That in reply to the statements in para 4.9 it is stated that Smt. Rekha Mazumder and Smt. M. Mazumder were engaged as commission vendor in place of their deceased husband after being satisfied with the legal documents viz. legal heir certificate etc. submitted by them.

7. That the respondents denied the statement made in para 4.10.

8. That in the facts and circumstances of the case the application deserves to be dismissed with cost.

Verification

Leena Sarma

I, Leena Sarma, working
as Dy. Chief Commercial Manager, N.F.Rly, Maligaon, do
hereby verify that, the statements made in the paragraphs 1
to 8 are true to my knowledge.

Guwahati

/2001

Leena Sarma

১. মুসল বাণিজ্য প্রস্তুতি (সং। ১২৫)
২. Chief Comm'l. Manager/Gen
৩. সু. সী. রেলওয়ে, মালিগাঁও^১
৪. R. Railway, Maligaon
৫. Guwahati-781013