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GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FORM NO.4
(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWHATI BENCH ::::: GUWAHATI

ORDER SHEET
Original APPLICATION NO 137 OF 2001

Applicant (s) Bipen ch. Das

Respondent(s) V. O. I. Tom

Advocate for Applicant(s) Mr. S. Sarma, Mr. V. Das

Advocate for Respondent(s) case.

Notes of the Registry	Date	Order of the Tribunal
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This application is in form
but not in the form of a
Petition. It is filed vide
M.P. No. 64792/75
for Rs. 50/-
IPO/BE
Dated 4.4.2001

11.4.01

Heard learned counsel for
the parties.

Application is admitted.
Called for records. Issue notice
on the respondents. Returnable
by 4 weeks. List on 21.5.01 for
for orders.

Vice-Chairman

1m

Service of Notice to
respondents issued
to the respondents
vide D. No. 1344 to 1346
dt. 18/4/01

21.5.01

Await Service Report. List
on 20.6.01 for orders.

Member

Vice-Chairman

1m

20.6.2001

① Service of Notices
received by hand
on R. No. 2 & 3.
Respondent No. 1
are still awaited.

Mr. J. L. Sarkar, learned Counsel for
Respondent Nos. 1 to 3. He prays for
and granted four weeks time to
file written statement. The applicant
will have two weeks time thereafter
to file rejoinder.

List this O.A. on 22-8-2001 for
further orders.

Member

Vice-Chairman

By
19.6.01

21
22.8.01

List on 25/9/01 to enable the respondents to file written statement.

No. w/s has been filed.

By
21.8.01

mb
25.9.01

IC Ushary
Member

Vice-Chairman

No written statement has been filed.

By
24.9.01

mb

13.11.01

No written statement so far been filed. Counsel for the respondents are again prayed for time to file written statement. Prayer is allowed. List on 13/11/01 for order.

IC Ushary
Member

Vice-Chairman

No written statement has so far been filed. List the case again on 1. 2001 enabling the respondents to file written statement as prayed for by Mr J.L.Sarkar.

IC Ushary
Member

Vice-Chairman

10.12.2001

w/s submitted by the respondents. 13.12.01

Written statement has been filed. The case may now be listed for hearing. List on 28.1.02 for hearing.

IC Ushary
Member

mb

28.1.02

Pass over for the day. List on 29.1.2002 for hearing.

w/s has been filed

IC Ushary
Member

Vice-Chairman

mb

By
14.2.02.

29.1.11 Heard in part. List on 15/2/2002 for further hearing.

By
A.K.S.
29.1.

O.A. No. 137 of 2001

Notes of the Registry	Date	Order of the Tribunal
Written statement has been filed. 13.3.02	15.2.02 mb	List on 14.3.2002 to enable the respondents to obtain necessary instructions. K. U. Sharma Member Vice-Chairman
	14.3.2002 bb	List again on 22.3.2002 for further hearing. K. U. Sharma Member Vice-Chairman
	22.3.02 mb	List again on 12.4.2002 for further hearing. By order
	12.4. 02 mb	List on 6/5/2002 in presence of Mr. U.K.Nair, learned counsel for the applicant and learned standing counsel for the Railway. K. U. Sharma Member Vice-Chairman
	6.5.	Heard Mr. U.K. Nair, learned counsel for the applicant & Mr. B.K. Sharma, learned senior counsel for the respondent. Hearing concluded, Judgment reserved. 6/5

Notes of the Registry

Date

Order of the Tribunal

13.5.02

Judgment delivered in open Court, kept in separate sheets. The application is dismissed in terms of the order. No order as to costs.

Member

Vice-Chairman.

mb

Received a copy of
Judgment on
behalf of Mr. B.K. Sharma,
Sr. Advocate, Standing
Counsel

Usha Das
Advocate
29/5/02

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 137 of 2001

Date of Decision..... 13.5.2002

Shri Dipen Ch. Das Petitioner(S)

Mr U.K. Nair and Ms U. Das Advocate for the
Petitioner(s)

-Versus-

The Union of India and others Respondent(s)



Mr B.K. Sharma, Railway Counsel Advocate for the
Respondent(s).

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 ?

Judgment delivered by Hon'ble : Vice-Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.137 of 2001

Date of decision: This the 13th day of May 2002

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

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

Shri Dipen Ch Das,
P.O. & Village - Borka,
District- Kamrup, Assam.

.....Applicant

By Advocates Mr U.K. Nair and Ms U. Das.

- versus -

1. The Union of India, represented by
The Secretary to the Government of India,
Ministry of Railways,
New Delhi.

2. The Chairman,
Railway Recruitment Board,
Station Road, Guwahati.

3. The General Manager,
N.F. Railway, Maligaon,
Guwahati.

.....Respondents

By Advocate Mr B.K. Sharma, Railway Counsel.

.....

O R D E R

CHOWDHURY.J. (V.C.)

The issue relates to recruitment process vis-à-vis cut off date for determination of eligibility.

2. By Employment Notice No.2/96 dated 1.10.1996 the Railway Recruitment Board (RRB for short), Guwahati invited applications for a number of posts under the N.F. Railway including the post of Apprentice Diesel Assistant Driver. The notice indicated 5.11.1996 as the closing date. The applicant applied for the post of Apprentice Diesel Assistant Driver. He was called for the written examination

that was held on 8.6.1997. By Call Letter/Admit Card dated 29.8.1997 he was called for the viva voce and psychological test which was held on 4.10.1997 at the RRB, Station Road, Guwahati. The applicant appeared accordingly. The final result was published on 9.1.1998. The Roll number of the applicant, namely 12410284 appeared in the final result against the unreserved quota. While things rested as such, by communication dated 10.3.1998 the applicant was informed that at the final scrutiny his name was cancelled from the panel of Apprentice Diesel Assistant Driver on the score that he did not possess the requisite qualification on the closing date of the Employment Notice, i.e. 5.11.1996 as it was found on final scrutiny that he had completed the trade test only in February 1997. The applicant submitted a representation against the cancellation. As it was not attended to the applicant moved this Bench by way of O.A.No.196 of 1998. By Judgment and Order dated 10.1.2000 this Bench disposed of the aforementioned O.A. directing the applicant to submit a fresh representation within the time specified. Consequently, the authority disposed of the representation submitted by the applicant by a reasoned order within the time specified. The authority turned down the representation of the applicant by a reasoned order dated 9.2.2000. The authority referred to the conditions of the advertisement and pointed out that only those candidates were eligible to apply against the posts contained in the notification who had already acquired the requisite qualification at the time of submission of application. Since the applicant did not pass the examination leading to the acquisition of requisite qualification at the time of submission of his application,

on detection of the fact his name was deleted from the list of selected candidates. The legitimacy of the action of the respondents is thus challenged in this application.

3. Mr U.K. Nair, learned counsel for the applicant, assailing the action of the respondents strenuously urged that the respondents unlawfully cancelled his name from the panel of Apprentice Diesel Assistant Driver. The learned counsel pointedly referred to the Employment Notice mentioning the educational qualification and submitted that the applicant fulfilled the eligibility criteria since he passed the matriculation examination as mentioned in the advertisement and he also completed the two years course in the trade of Turner in the Industrial Training Institute from August 1994 to July 1996 and to that effect a certificate was issued by the concerned authority. The learned counsel also submitted that the applicant completed the course of training long before in July 1996, i.e. prior to issuance of the advertisement dated 1.10.1996. The closing date was 5.11.1996. The prescribed test in the trade was, however, held in the month of February 1997 and he was awarded the certificate. Mr Nair submitted that as per the advertisement the requirement was that of passing of matriculation examination and completion of two years course in any of the trade. According to the learned counsel as per the requirement one was not to pass the test. He was only to have the ITI qualification. The learned counsel, in support of his contention, referred to Black's Law Dictionary and drew our attention to the expression 'qualification'. The learned counsel submitted that as per Black's Law Dictionary 'qualification' means the possession by an individual of the qualities, properties, or circumstances, natural or adventitious, which are inherently or legally necessary to render him

eligible to fill an office or to perform a public duty or function. According to the learned counsel since the applicant completed the two years course before the issuance of the advertisement, the respondents fell into error in cancelling his name from the panel of the Apprentice Diesel Assistant Driver.

4. Countering the submissions of the learned counsel for the applicant, Mr B.K. Sharma, learned Railway Counsel, referred to the terms and conditions of the advertisement and submitted that as per the advertisement and also under the norms of appointment, the candidate was required to possess the essential qualification as laid down in the advertisement at the time of submission of the application. The learned Railway Counsel submitted that the advertisement itself indicated that candidates who were to appear at the examination and whose results were withheld or not declared were not eligible to apply. The applicant knowing well the condition submitted his application which escaped the notice of the respondents at the first instance. On failure of the authority to detect on scrutiny of the application, he was called for the written examination and also inadvertently called for the viva-voce test. Later, when it came to the notice of the authority that the applicant did not fulfil the terms and conditions laid down in the advertisement his name was deleted.

5. We have heard the learned counsel for the parties at length. There is no dispute at the Bar that the qualifications which have to be considered are those as possessed on the last date of submission of applications. The law in this matter is consistently persistent. Subsequent attainment and gaining of qualification would be


of no consequence. (Ref. Ashok Kumar Sharma and others Vs. Chander Shekhar and another, reported in (1997) 4 SCC 18, State of Haryana and others Vs. A, Srivastava & Anr., reported in (1998) 8 SCC 399 and Bhupinderpal Singh and others Vs. State of Punjab and others, reported in (2000) 5 SCC 262). On the own showing of the applicant he passed the prescribed test in the trade of Turner held in the month of February 1997 and to that effect a certificate was issued on 2.9.1997. The applicant qualified as a Turner only after passing the prescribed trade test in the trade of Turner. As per the advertisement a candidate was to pass matriculation or its equivalent or Tenth class and in addition he must possess ITI (two years course) qualification in any of the trades, namely Fitter, Turner, Electrician etc.

6. Qualification relates to the fitness, capability, competence. It is directly attributable to the fitness and qualities legally required to render one eligible to fill the office or function. Merely passing of time in an institution by itself would not make one qualified or eligible. He/she must pass the test. The applicant in the case passed the prescribed test held in the month of February 1997 and the certificate was issued later in point of time. At any rate, in the instant case the trade test in question, so far as the applicant was concerned was held in February 1997, which was after the closing date, i.e. 5.11.1996. The respondent authority examined the case of the applicant and declined to review the decision of the authority for exclusion of his name from the provisional list of selected candidates for not possessing the required qualification at the time of submission of the application.

No infirmity as such is discernible requiring judicial review.

7. The application thus stand dismissed. There shall, however, be no order as to costs.


(K. K. SHARMA)
ADMINISTRATIVE MEMBER


(D. N. CHOWDHURY)
VICE-CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GAUHATI BENCH

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

Title of the Case :

O.A.No.....137..... of 2001.

BETWEEN

Shri Dipen Ch.Das Applicant.

VERSUS

Union of India & Ors. Respondents.

I N D E X

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Filed by :

Date of Filing:

U.K.Nair, Advocate.

Registration No.:

C:\WS7\DIPEN.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

(An application under section 19 of the Administrative tribunal
Act. 1985)

O.A.NO...137.....2001.

BETWEEN.

Sri Dipen Ch Das.
Son of Gurucharan Das.
P.O. & Vill. Borka.
Dist. Kamrup Assam. Applicant.

AND

1. The Union of India, represented by
the Secretary to the Govt of India,
Ministry of Railway.
Rail Bhawan, New Delhi.
2. The Chairman,
Railway Recruitment Board.
Station Road. Guwahati-1.
3. The General Manager,
N.F.Railway. Maligaon.
Guwahati.11. Respondents.

DETAILS OF THE APPLICATION.

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

This application has been against the orders dated
10.3.98 issued by the Chairman, Railway Recruitment Board,
Guwahati, canceling the name for the applicant from the panel of
Apprentice Diesel Assistant. Driver and order dated 9.2.2000
issued by the said authority disposing of the representation
filed by the applicant, pursuant to the judgment and order dated
10.1.2000, passed by the Hon'ble Tribunal in O.A No 196 of 1998.

2. LIMITATION.

That the applicant declares that the instant
application is well within the limitation period prescribed under

section 21 of the Administrative Tribunal Act, 1985. It is further stated that the impugned order dated 9.2.2000 has been received by the applicant in the month of April 2000.

3. JURISDICTION.

The applicant further submits that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

4. FACTS OF THE CASE.

BRIEF FACTS OF THE CASE.

That the applicant pursuant to an advertisement issued by the Respondent No 2, the Chairman Railway Recruitment Board Guwahati, applied for the post of Apprentice. Diesel Asstt. Driver. The applicant at that point of time has the requisite educational qualification. However, the result of the diploma course in Turner was awaited. The applicant was very much sure of his success in the said diploma course of Turner. The applicant submitted his application to the authority concerned giving all the relevant certificates including educational certificates, etc. The authority concerned acting on his such application issued call letter to him and accordingly he appeared in the said test and scored a very good mark. The respondents have also being satisfied with his performance selected him for the post of Apprentice. Diesel Asstt. Driver. Thereafter the applicant was asked to appear in a viva-voce test and accordingly he appeared in the said test and there also he did well and ultimately he found his name in the final select list of successful candidates for the said post.

The applicant suddenly received a letter issued by the

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Respondent No 2, intimating him that his name has been canceled from the panel of Appr. Diesel Asstt. Driver on the ground that at the time of issuance of the advertisement he was not in possession of Diploma in Turner Trade but he acquired the same during the process of selection, i.e. just after two months.

The applicant made several requests to the authority concerned to condone the delay in obtaining the said certificate of diploma, but no result in positive has been given to the applicant and the applicant having no other alternative had approached the Hon'ble Tribunal by way of filing O.A No 196 of 1998. The Hon'ble Tribunal after hearing the parties to the proceeding was pleased to dispose of the said O.A directing the respondents to dispose of the representation filed by the applicant.

The applicant thereafter preferred a representation date 2.2.2000 to the concerned authority praying for consideration of his case and the authority concerned on receipt of the said representation, rejected the claim of the applicant. Hence the present application.

FACTS IN DETAILS.

4.1. That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India and Laws framed there under.

4.2. That the applicant hails from a very poor family and in search of employment he applied for the post of Apprentice Diesel Asstt. Driver as per the advertisement issued by the Chairman Railway Recruitment Board Guwahati. The aforesaid advertisement was issued by the Chairman, Railway Recruitment Board, Guwahati vide Employment Notice No 2/96 dated 1.10.96. The said

advertisement was published on 6.10.96 in the Assamese Daily News Paper "Prati- Din".

An extract of the said advertisement dated 6.10.96 is annexed herewith and marked as ANNEXURE - 1.

4.3. That as stated above, pursuant to the Annexure 1 advertisement dated 6.10.96, the applicant applied for the post of Apprentice Diesel Asstt. Driver. To that effect, the applicant submitted all his bio-data along with the attested copies of certificates, including educational certificates etc.

4.4. That after scrutinising all the relevant documents, the respondent No. 2, the Chairman Railway Recruitment Board issued Call Letter/Admit Card on 16.5.97 to the applicant for written examination, scheduled to held on 8.6.97. Accordingly the applicant appeared in the said written test and did well.

A copy of the said call letter/admit card dated 16.5.97 is annexed herewith and marked as ANNEXURE - 2.

4.5. That the applicant came out successful in the said written test and his name appeared in the list of successful candidates. Thereafter, the applicant was issued with another Call Letter cum Admit Card dated 29.8.97 by which he was asked to appear in a viva-voce and psychological test for the said post. This time also the applicant appeared in the said test and did well.

A copy of the said Call letter/Admit Card dated 29.8.97 is annexed herewith and marked as ANNEXURE - 3.

4.6. That thereafter the respondent No 2 published the final results for the said tests (Written and Viva-voce) on 9.1.98 which was published in the on 17.1.98. The Roll No.(12410284) of

the applicant appeared as a selected candidates under the category of "Diesel Asstt. Driver ".

A copy of the said final results dated 9.1.98

is annexed herewith and marked as ANNEXURE-4.

4.7. That the applicant was under the bonafide expectation that he will be called for the appointment process and training after some time. Thereafter the applicant was shocked to receive a letter dated 10.3.98 by which an intimation was given to the applicant that his name from the panel of Apprentice Diesel Asstt. Driver has been canceled. The said letter was issued by the Respondent No 2 vide his letter No RRB/G/CON/155/62 dated 10.3.98 without giving the applicant any opportunity of hearing. The only ground stated in the said letter is that the applicant was not qualified at the closing date of the said Employment Notice i.e. 5.11.96 but he has complied the said required qualification on February 1997, i.e. just after 2 months and during the selection process.

A copy of the said letter dated 10.3.98 is

annexed herewith and marked as ANNEXURE- 5.

4.8. That the applicant begs to state that he submitted all the documents at the time of making application to the said post of Appr. Diesel Asstt. Driver. and he was issued with the call letters after due scrutiny of his documents submitted along with the application. After that the applicant produced his certificates and documents in original at the time of viva-voce test held after the written test, but till then he was never asked regarding the eligibility and passing of his said trade test in question. It is also stated that the applicant passed the trade test for Turner on February 1997 much before the issuance of Call Letter/Admit Card for written test. However, the certificate was issued to him declaring pass in the said trade

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test of Turner was issued to him on 2.9.97.

A copy of the said certificate dated 2.9.97

is annexed herewith and marked as ANNEXURE-6.

4.9. That the applicant begs to state that at the time of making application for the said post the applicant filled up his form under para-14 B of the said application "Appeared in the trade test of Turner". The applicant made it known to the authority concerned at every stage of selection process but he was never apprised about the fact that his such selection may be canceled on the ground of obtaining the said diploma certificate during the selection process.

4.10. That the applicant after receipt of the said Annexure-5 letter dated 10.3.98 made several requests to the authority concerned but the same has yielded no result in positive. It is stated that just after two months the applicant has acquired the requisite qualification and the said facts was made it known to the authority concerned at the time of viva-voce. However, at the time of said viva-voce, respondents knowing fully well the fact that he was not qualified at the closing time of advertisement i.e. on 5.11.96, he was allowed to appear in the said test and where in the applicant did well and secured a good position.

4.11. That the applicant begs to state that the respondents have issued the Annexure-5. order dated 10.3.98 illegally, canceling the name of the applicant from the panel of Apprentice Diesel Asstt. Driver without giving him any opportunity of hearing. Admittedly the applicant has got requisite qualifications before the interview. Although, the applicant had no requisite diploma certificate on the date of application, he did acquire it before the date of interview and thereby he was fully qualified before the selection process. At any rate the applicant who secured a very good marks in the written as well as

viva-voce test, the respondents can not nullify the same on the technical plea of not acquiring the requisite qualification on the closing date of advertisement. The applicant acquired the said qualification i.e. the Diploma in trade of Turner just after two months from the closing date. The respondents knew the fact on the date of application that the applicant could not acquire the requisite qualification on the closing date of advertisement and on the other hand by allowing the same the respondents gave their tacit approval in the matter and hence the applicant was under the bonafide impression that the said delay of two months in acquiring the requisite qualification has been condoned/relaxed.

4.12. That the applicant begs to state that another candidate who also got his certificate at a later stage (during the selection process) has been allowed to appear in the written test as well as in the viva-voce test and in his case there has been no such plea by the respondents so far it relates to his educational qualification. It is pertinent to mention here that the aforesaid candidate in question belongs to Nogaon district and now he got his regular appointment letter issued by the respondents.

The applicant begs to state that the name of the aforesaid candidate is not known to him and therefore the applicant prays before the Hon'ble Tribunal for direction to the respondents to produce the records of the selection at the time of hearing of the case.

4.13. That the applicant begs to state that this Hon'ble Tribunal had occasions to deal with similar matter like that of the instant one (O.A. No 202 of 1993, Aroop Jyoti Deka -vs- Union of India and ors.), wherein also the applicant was not in possession of requisite qualification at the time of

advertisement but subsequently he gathered the same during the process of selection and on 15.6.94, this Hon'ble Tribunal was pleased to allow the same with a direction to the respondents thereof for appointment. The Hon'ble Tribunal while allowing the said O.A. mentioned various judgments of the Hon'ble Supreme Court and finally gave direction to the authority concerned to appoint him within 30 days .

A copy of the said judgment and order dated 15.6.94 is annexed herewith and marked as ANNEXURE -7.

4.14. That the applicant begs to state that he being aggrieved by the action of the respondents was constrained to move the Hon'ble Tribunal by way of filing O.A No 196 of 1998 before the Hon'ble Tribunal. The Hon'ble Tribunal after hearing the parties to the proceeding was pleased to dispose of the said O.A directing the respondents to dispose of representation filed by the applicant.

A copy of the said judgment dated 10.1.2000 is annexed herewith and marked as ANNEXURE-8.

4.15. That the applicant pursuant to the aforesaid Judgment dated 10.1.2000 preferred a detailed representation dated 2.2.2000 to the concerned authority for consideration of his case. The respondents on receipt of the said representation dated 2.2.2000 issued an order dated 9.2.2000 rejecting his such prayer. The applicant received the said copy of the order dated 9.2.2000 in the month of April 2000. The grounds stated in the said order dated 9.2.2000 are the reiteration of the earlier order of cancellation and the same has already been adjudicated by the Hon'ble Tribunal in its earlier judgment and order dated 10.1.2000.

A copy of the order dated 9.2.2000 is annexed

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herewith and marked as ANNEXURE-9.

4.16. That the applicant begs to state that the grounds stated by the respondents in the impugned order dated 9.2.2000 are per-se illegal and not sustainable. The respondents having allowed the applicant to appear in the selection even after knowing the fact that he was yet to acquire his educational qualification, now the respondent are debarred/estopped from raising the said plea. On this score alone the impugned order dated 9.2.2000 and 10.3.98 is liable to be set aside and quashed.

4.17. That this application has been filed bonafide and to secure ends of justice.

5. GROUND'S WITH LEGAL PROVISIONS:

5.1. For that the action on the part of the respondents in issuing the impugned orders dated 10.3.98 (Annexure-5) and 9.2.2000 (Annexure-9), is illegal, arbitrary and violative of principles of natural justice and hence the same is not sustainable in the eye of law and liable to be set aside and quashed.

5.2. For that the issuance of the impugned order without giving the applicant an opportunity of hearing is violative of principles of natural justice and hence the same is liable to be set aside and quashed.

5.3. For that it is an admitted position that the applicant acquired the requisite qualification just after two months from the closing date of advertisement, and respondents knowing fully well the facts have allowed the applicant to participate in the said selection process or by giving a tacit approval, can not now withhold their such approval by issuing the impugned orders which is illegal, arbitrary and violative of the principles of natural justice.

5.4. For that the respondents being a model employer could not have issued the aforesaid impugned order in total disregard to their approval and the qualification gathered by the applicant.

5.5. For that the respondents have acted contrary to the law in issuing the Annexure 5 and 9 impugned orders only for the applicant ignoring the case of others similarly situated candidates on pick and choose basis.

5.6. For that the respondents have acted illegally in issuing the impugned orders dated 10.3.98(Annexure-5) and 9.2.2000 (Annexure-9) without applying their mind and hence the same are liable to be set aside and quashed.

5.7. For that in any view of the matter the action/inaction of the respondents are not sustainable in the eye of law and hence liable to be set aside and quashed.

6. DETAILS OF REMEDIES EXHAUSTED:

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

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

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

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above the applicant most respectfully prayed that the instant application be admitted, records be called for an after hearing the parties on the cause or causes that may be shown and on perusal of the

records be grant the following reliefs to the applicant :-

- 8.1. To set aside and quash the impugned orders dated 10.3.98(Annexure-5) and 9.2.2000 (Annexure-9).
- 8.2. To direct the respondents to appoint the applicant to the post of Appr. Diesel Asstt. Driver and to allow him to participate in the appointment process, with retrospective effect and with all consequential service benefits.
- 8.3. Cost of the application.
- 8.4. Any other relief/reliefs to which the applicant is entitled to and as may be deemed fit and proper by the Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR:

The applicant prays for an interim order directing the respondents not to proceed further in the appointment process pending disposal of this application.

10.

11. PARTICULARS OF THE I.P.O:

1. I.P.O. No. : 6G 792175
2. Date : 4/4/2001
3. Payable at :

12. LIST OF ENCLOSURES:

As stated above.

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

I, Shri Dipen Ch.Das, S/O Shri Gurucharan Das, aged about 25, years, resident of Vill/P.O.-Borka, Dist-Kamrup (Assam), do hereby solemnly affirm and verify that the statements made in paragraphs 1,2,3,4,5,9-12,16 and 5 to 12..... are true to my knowledge and those made in the paragraphs Brief facts, 42-48 413-415 are matters of records which I believe to be true and the rests are my humble submission before this Hon'ble Tribunal and I have not suppressed any material facts of the case.

And I sign this verification on this the .31.31 day of March 2001.

APPLICANT

Dipen Ch Das.

FILED BY
U. K. Nair
Advocate.

Annexure-1

RAILWAY RECRUITMENT BOARD:: GUWAHATI
STATION ROAD, GUWAHATI-781001.
DATED-01-10-96

EMPLOYMENT NOTICE NO.2/96
CLOSING DATE :5-11-96

DATE OF PUBLICATION : 6.10.96.

Applications are invited in the prescribed form obtainable from any important Railway Station or in a proforma application given below (to be neatly typed in using one side only in a standard size thick paper) for the following temporary posts likely to be permanent in the Northeast Frontier Railway. Applications complete in all respects along with required enclosures should be sent to the ASSISTANT SECRETARY, RAILWAY RECRUITMENT BOARD: STATION ROAD, GUWAHATI-781001, ASSAM, under certificate of posting so as to reach the Board's office on or before 17-30 hrs of 5.11.96. The applications can also be dropped in the "Application Box" kept in the RRB office before 17:30 hrs of 5.11.96. EMPLOYMENT NOTICE NO. AND CATEGORY NO. AGAINST WHICH THE CANDIDATE APPLIES MUST CLEARLY BE WRITTEN ON THE _____ OF THE COVER ENVELOPES POSITIVELY.

Category No.	Name of the post	Scale of pay
1.	Appr. Diesel Asstt. Driver	950/- 2432/-
2.	Tr. Nurse	_____
3.	Assistant Station Master.	1200-2040/-

V A C A N C I E S

Stipend during Training	Total Emoluments	UR	SC	ST	OBC	TOTAL
900/-	2432/-	50	12	18	20	100
500/-	500/-	08	01	04	13	16

Attested
Mini hmb
Advocate.

PERIOD OF TRAINING	AGE AS ON 30-05-95.
12 months	18 to 25 years
36 months	17 to 25 years
9 months	18 to 25 years

N.B. : A GENERAL RELAXATION IN UPPER AGE LIMIT FOR ALL COMMUNITIES /CATEGORIES OF CANDIDATES HAVE BEEN GIVEN BY 5 YEARS BESIDES THE AGE RELAXATION GIVEN IN PARA- 2 .THIS RELAXATION IS APPLICABLE FOR TWO YEARS WITH EFFECT FROM 4/8/95.

N.B.:(ii) THE CANDIDATES MUST HAVE ACQUIRED THE ESSENTIAL QUALIFICATION AS LAID DOWN AT THE TIME OF SUBMISSION OF APPLICATION. CANDIDATES WHO HAVE YET TO APPEAR AT THE EXAMINATION AND WHOSE RESULTS ARE WITHHELD OR NOT DECLARED ARE NOT ELIGIBLE TO APPLY.

EDUCATIONAL QUALIFICATION

CATEGORY NO.1 :: Matriculation pass or its equivalent or Tenth class (Tenth standard)pass under the 10+2 system course.
plus(b) ITI qualification (Two years course in any of the following trades :- (i) Fitter (ii) Turner (iii) Machanist (iv) Electrician (v) Instrumental Mechanic (vi) Refs Air Conditioning Mechanic (vi) Mechanic (Radio/TV) (viii) Mill wright/Maintenance Mechanic (ix) Electronics Mechanic (x) Mechanic (Motor vehicle) and (xi) wireman Tractor Mechanic or Act apprenticeship pass under the apprenticeship Act/1961.

10

1/17/95

CATEGORY NO. 2 :: XII class passed. Preferably with science and Biology. Only unmarried girls and widows without children or without other incumbences are eligible to apply.

CATEGORY NO. 3 :: (i) A university degree or its equivalent from a recognised university, Diploma in Rail Transport and management from the Institute of Rail Transport will be an additional desirable qualification.

Sd/-illegible

(Bhubaneswar Kalita)

3.8.2K

3.8.2K

RAILWAY RECRUITMENT BOARD :: GUWAHATI

Station Road
Guwahati - 781 001

No RRB/G/41/

Date: 16/02/97

To

Sri/Smt.

DIPEN CHANDRA DAS

Your ROLL NUMBER is

12410284

Enclose your CALL LETTER/ADMIT CARD

For the written examination for the post of

APPR. DIESEL ASSTT

BASICAL Fof Rs.

950-1500

under Employment

Notice No.

2/96

CATEGORY No.

01

on the NORTHEAST FRONTIER RAILWAY.

PROGRAMME OF WRITTEN EXAMINATION IS AS GIVEN BELOW:-

DATE	DAY	TIME	VENUE
08/06/97	SUNDAY	10:00-12:30 HRS	Panbazar Girls' H.S. School, Panbazar, Guwahati - 1.

The following terms and conditions must be noted for strict compliance.

1. You will not be admitted to this written examination without this CALL LETTER/ADMIT CARD and does not itself give any entitlement for selection.
2. Your candidature has been accepted provisionally and is subject to check and fulfillment of all conditions laid down in the said Employment Notice.
3. If you do not fulfill the conditions as laid down in the said Employment Notice, please ignore this CALL LETTER/ADMIT CARD and do not appear.
4. Only the successful candidates in the written examination will be called for the VIVA-VOCE TEST.
5. You are to defray your own travelling expenses (for UR/OBC candidates).
6. Approaching the Chairman, RRB, GHY and other officials of RRB/Guwahati directly or indirectly by a candidate or anybody on his behalf requesting under consideration for the recruitment will render a candidate liable for disqualification.
7. Only the candidates and the persons engaged in conducting the examination will be allowed into the examination premises. Strict discipline and silence must be maintained in the examination/Hall Rooms. Appropriate action will be taken in case of those adopting unfair means in the examination hall, etc.
8. **FOR SC/ST CANDIDATES ONLY:** ON PRODUCTION OF THIS CARD YOU ARE ENTITLED TO TRAVEL FREE BY RAILWAY IN SECOND CLASS FROM

BACK. THIS PASS IS VALID UP TO

XXXXXXXXXX

(STN.) TO GUWAHATI (STN.)

XXXXXXXXXX

400269

(Authority Rly Bd's L/No. (NG) II-84/RCC/122 dt. 23.11.84)

Attested
Alsha Das,
Advocate
31/4/2001

ITC

For CHAIRMAN
RAILWAY RECRUITMENT BOARD: GUWAHATI.

Mahanta pass
Apprentice Diesel Ass't

रेल भर्ती बोर्ड, गुवाहाटी
RAILWAY RECRUITMENT BOARD, GUWAHATIस्टेशन मार्ग,
गुवाहाटी-1

STATION ROAD.

GUWAHATI - I.

दिनांक: 29/08/97

Date: _____

To, सेवा में,

DIPEN CHANDRA DAS

C/O-GURUCHARAN DAS

P/O & VILL-BORKA

DIST-KAMRUP, ASSAM.

PIN-781 101

Photograph

अनुक्रमिक

Roll Number

12410284

CALL LETTER cum ADMIT CARD for VIVA-VOCE & PSYCHOLOGICAL TEST

X लिखित परीक्षा के लिये बुलाया जा रहा है X

X ~~CALL LETTER cum ADMIT CARD for VIVA-VOCE & PSYCHOLOGICAL TEST~~ Xकोटी
CATEGORY

APPR. DIESEL ASSTT. DRIVER

वेतन-मान
PAY SCALE

रु १५० - १५००

नियोजन ज्ञापन सं.
Employment Notice No.

2/96

कोटी सं.
Catg. No.

01

लिखित परीक्षा का कार्यक्रम
PROGRAMME OF WRITTEN TEST

दिनांक DATE	दिनांक X DAYX	रिपोर्ट करने का समय REPORTING TIME	परीक्षा केन्द्र EXAMINATION VENUE
04/10/97	PSYCHOLOGICAL TEST	9:00 HRS	THE INSTITUTE OF ENGINEERS (I) PANBAZAR, GUWAHATI-1
04/10/97	VIVA-VOCE TEST	13:00 HRS	RAILWAY RECRUITMENT BOARD STATION ROAD, GUWAHATI-1

सिर्फ अनुसूचित जाति/अनुसूचित जनजाति के लिए: यह पत्र प्रस्तुत करने पर आप
FOR SC/ST CANDIDATES ONLY: On production of this letter you are entitled to free travel by rail-way in second class only from XXXXXXXXXXXX स्टेशन से XXXXXXXXXXXX स्टेशन तक तथा
stn. to stn. and back.

वापसी के लिए रेल द्वारा केवल द्वितीय श्रेणी में निशुल्क यात्रा करने के हकदार हैं।

यह पास दिनांक XXXXXXXXXXXX तक ही उपलब्ध है।

This pass is available upto

(प्राधिकार: रेलवे बोर्ड पत्र सं० ड (एन जी) 11-84/आर एम जी/122, दिनांक 23-11-84)

(Authority: Rly. Bds. L/No. E(NG) 84/RSC/122 dtd 23-11-84)

400269/rdad-030

Attested
Alsha Das
Advocate
31/4/2001for CHAIRMAN,
RRB/Guwahati

- 16 -

RAILWAY RECRUITMENT BOARD
GUWAHATI

FINAL RESULTS

Date: 9-1-98

17/1/98

The candidates with the following roll numbers have been recommended on the basis of their performance in the written, psychological and viva-voce tests. Their final appointment on the N.E. Railway is however, subject to their fulfilment of all conditions of eligibility and verification of certificates, documents, antecedents, etc.

Diesel Assistant Driver (Rs. 950-1500 pre-revised)

UR (for 90 posts)

12110041	12111123	12111193	12410221	12410558	12210843	12111063 -
12411002	12411080	12310156	12110779	12110071	12111286	12410561 -
12110432	12410302	12411006	12410224	12410647	12410375	12310075 -
12310111	12410551	12410137	12410315	12410514	12310061	12111029 -
12210919	12110166	12210928	12110872	12410639	12110067	12110764 -
12110119	12310179	12111271	12410284 X	12111268	12410864	12111250
12110450	12110737	12111264	12110232	12110300	12410216	12110882
12310916	12111263	12310824	12110465	12110735	12310671	12410984
12310877	12210479	12110758	12310449	12110213	12110716	12110205
12410815	12110004	12410715	12111031	12411075	12111202	12310140
12110808	12310409	12410309	12110992	12110233	12110533	12110940
12110964	12310567	12410103	12410842	12111127	12310592	12410022
12110826	12410942	12410727	12411079	12310137	12310280	

SC (for 22 posts)

12210564	12210926	12210120	12210259	12210839	12210831	12210316
12210219	12210037	12210294	12210531	12210694	12210539	12210920
12210634	12210166	12210916	12210224	12210170	12210918	12210481
12210422						

ST (for 32 posts)

12310397	12310908	12310492	12310154	12310009	12310333	12310153
12310348	12310245	12310718	12310920	12310609	12310448	12310805
12310708	12310640	12310289	12310646	12310330	12310535	12310059
12310571	12310643	12310910	12310030	12310522	12310313	12310369
12310258	12310540	12310461	12310760			

OBC (for 36 posts)

12411070	12410468	12410746	12411110	12410143	12410751	12411114
12410127	12410478	12410843	12410605	12411105	12410852	12410787
12411084	12410584	12410398	12410325	12411070	12411097	12410034
12410859	12410833	12410285	12410404	12410471	12410069	12410668
12410792	12410560	12411055	12410130	12410072	12410491	12410861
12410700						

(Amiyo Kr. Borah)
Chairman

Attested
Anita Das,
Advocate
3/4/2001

- 17 -
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ANNEXURE- 5

RAILWAY RECRUITMENT BOARD

STATION ROAD,
GUWAHATI-781001

Date: 10.3.98

No. RUB/G/CON/155/62

To

Shri Dipen Ch. Das,
C/o. Guru Charan Das,
Vill. Borka,
P.O. Borka,
Dist. Kamrup,
ASSAM, PIN - 781101.

Dear Sir,

Sub: Cancellation of your name from
the panel of Appr. Diesel Asstt.
Driver in scale Rs. 950-1500/-

You were provisionally selected as Appr.
Diesel Asstt. Driver in scale Rs. 950-1500/- under
Emp. Notice No. 2/96.

However, at the final scrutiny it has been
found that you did not possess the requisite
qualification on the closing date of the above
Employment Notice, i.e. on 5.11.96, as you had
completed the Trade test only in Feb/97 as reveals
by your certificate.

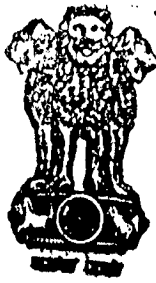
It is for the above reason your name has
been cancelled from the panel of Appr. Diesel Asstt.
Driver.

We deeply regret for the inconvenience.

Yours faithfully,

Attested
Alaka Das.
Advocate
3/4/2001

(A.K. BORAH)
CHAIRMAN
RAILWAY RECRUITMENT BOARD,
GUWAHATI.



Serial No. RA-000007

GOVERNMENT OF ASSAM
DIRECTORATE OF EMPLOYMENT AND CRAFTSMEN TRAINING
PROVISIONAL NATIONAL TRADE CERTIFICATE

Shri/Shrimati/Kumari

Dipen Chandra Das

Roll No. TRR-2

Son/Wife/Daughter of Shri

Guru Charan Das

having completed the course of training at INDUSTRIAL TRAINING INSTITUTE

Guwahati

and passed the prescribed Trade Test in the Trade of

Turner

held in the month of Feb. '97 199

One thousand nine hundred ninety seven is awarded this Certificate provisionally.

The National Trade Certificate will be issued by the National Council for Vocational Training.

Period of Training: - From August '94 to July '96

CHARACTER *good*

TRADE TEST MARKS

SUBJECT	MAX. MARKS:	MARKS OBTAINED:
1) Practical (Including Sessional)	400	288
2) Trade Theory	120	64
3) Workshop Calculation & Science	60	27
4) Engineering Drawing	70	39
5) Social Studies	50	32
TOTAL	700	450

Date of birth as recorded in the School Certificate

1-4-75

Full Signature of certificate holder

Sri Dipen chandra Das.

Date

Prepared by

Checked by

Signature of the

Head of the Institute

Principal

over

Attested
Usha Das,
Advocate
3/4/2001

Seal

Secretary

State Council for Vocational Training
Assam, Guwahati

ANNEXURE-7.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No 202 of 1993.

Date of decision : this the 15 th day of June 1994.

The Hon'ble Justice Shri S.Haque, Vice Chairman.

The Hon'ble Shri G.L.Sanglyine, Member (Administrative.)

Shri Aroop Jyoti Deka

Hatigaon Bhetapara,

Guwahati-6.

..... Applicant.

By Advocate Shri B.K.Sharma.

-versus -

1. The Union of India represented
by the Secretary to the Government
of India, Ministry of Agriculture,
New Delhi.
2. The Director General, Indian Council
of Agricultural Research.
New Delhi.
3. The Director ICAR Research Complex.
for NEH Region, Barapani, Meghalaya. Respondents.

By Advocate Shri S.Ali Sr.C.G.S.C.

O R D E R.

S. HAQUE.

The applicant Sri Arup Jyoti Deka has filed the application under section 19 of the Administrative Tribunal Act, 1985, praying for direction on the respondents to appoint him to the post of Technical assistant (T-II-3) in the ICAR Research Complex for NEH Region, Barapani, Meghalaya under respondent No.3.

Attested
Alaka Das
Advocate
3/4/2001

2. The applicant is a diploma holder in Agricultural Engineering since 1998. He has applied for the post of Technical Assistant (T-II-3) in the ICAR pursuant to the advertisement No.13 of 1990 issued by the central Employment Exchange in the Employment News dated 31.3.1990. The applicant had appeared in the interview dated 18.6.1992 at the ICAR Research Complex, Barapani. He produced all certificates including qualification, experience, etc. Out of the two candidates the applicant was selected for the solitary post. He was not appointed on the ground that he had no requisite experience on the date of filling the application for the post. It is stated that the applicant acquired requisite experience qualification prior to the date of interview by serving, (a) as Technical Assistant under the Assam Agro Industries Development Corporation, (b) in the office of the Sub-Divisional Agricultural Engineer, Nalbari, (c) as Contingency Overseer under the Executive Engineer (Agril), Nalbari and (d) as Junior Engineer under the Assistant Executive Engineer (Agril), Nalbari for the periods from 10.1.1989 to 9.1.1990, 14.2.1990 to 14.2.1991, 3.1.1991 to 31.8.1991 and 1.12.1991 to 31.5.1992 respectively. He claims to have acquired requisite experience qualification prior to the date of interview. The Annexures 1 to 5 are the certificates of experiences. It is also submitted that other formalities for appointment, namely filling up of verification roll forms, Police verification were also completed after the interview. Hence this application.

3. The respondents contested the case on the ground that the applicant had no requisite experience as per advertisement on the date of application and acquiring experience qualification on the date of interview or prior thereto would not qualified him for appointment to the post. However, the respondents stated in paragraph 7 of the written statement that as a matter of fact the case of the applicant was under close scrutiny since the time of taking interview on 18.6.1992 even though he had acquired experience in the relevant field. THE respondents denied the allegation of foul play in his appointment.

4. Admittedly, the applicant was a Diploma holder in Agricultural Engineering in 1988 and requisite educational qualification for the post advertised. His application was accepted and interview was taken. Learned Counsel Mr B.K.Sharma submit that although the applicant had no requisite experience on the date of application, but he did acquire it before the date of interview and there by he became fully qualified / eligible for the post and he was also selected. But non-appointment was injustice to him. In support of submissions, Mr B.K.Sharma refers to the decision reported in 1993 (1) SLR (SC)379, Ashok Kumar Sharma and another -versus- Chander Sekhar. Whereas, learned Sr.C.G.S.C Mr.S.Ali made submissions in conformity with the pleas raised in the written statement.

5. We have pursued the decisions reported in 1993(1) SLR 379. It was held by the Supreme Court that although the primary qualification (B.E degree) required for submitting application was short on the date of filing application, but it was acquired on publication of the B.E Examination result prior to the date of interview and thereby the applicant of that case became eligible for selection. In that view the Supreme Court directed for appointment of Ashok Kumar Sarma and Another. The facts of the instant case are much stronger than that case. The applicant had primary educational qualification (Diploma) from before submission of application, but he had only shortage of experience period

Attested
Alpha Das.
Advocate
3/4/2001

and which he did complete before holding interview. His application was accepted and interview was taken and did fulfill the experience deficiency before the interview. The certificates, Annexure- 1-5 are proof of acquiring requisite experiences. Although the respondents stated in the written statement that the certificates could not be considered as genuine, but Mr. Ali could not assign any reason or ground as to why these can be ignored as not genuine. We have also pursued the original certificates produced at the hearing. There is no ground to suspect these certificates issued by Government Officers bearing official seals. The supreme Court's decision is aptly applicable in favour of the applicant. The applicant was eligible for selection. He was selected as solitary candidate for a solitary post. Refusal to appoint was injustice to him. He was entitled to appointment. The post is kept vacant vide our interim order dated 5.10.93. All formalities required prior to appointment had been completed.

6. In the result, this application is allowed. The respondents, particularly respondent No.3, the Director, ICAR, Research Complex for NEH Region, Barapani, Meghalaya are directed to appoint the applicant, Shri Aroop Jyoti Deka to the post of Technical Asstt.(T-II-3) in the ICAR Research Complex for NEH Region, Barapani, Meghalaya, within a period of 30 (thirty) days from the date of receipt of the judgement/order.

7. No order as to costs.

Sd/- S.HAQUE (VICE CHAIRMAN)

Sd/- G.L.SANGLYINE (MEMBER, ADMN)

*Attested
Alaka Das
Advocate
3/4/2001*

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 196 of 1998.

Date of decision : This the 10th day of January, 2000

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

Hon'ble Mr. G.L. Sanglyine, Administrative Member.

Sri Dipen Chandra Das,
Son of Gurucharan Das,
P.O. & Village - Borka
District - Kamrup,
Assam

..Applicant

By Advocate Mr. S. Sarma.

-versus-

1. The Union of India,
represented by the Secretary
to the Government of India,
Ministry of Railway,
Railway Bhawan, New Delhi.
2. The Chairman,
Railway Recruitment Board,
Station Road,
Guwahati-1.
3. The General Manager,
N.F. Railway, Maligaon,
Guwahati-11.

...Respondents

By Advocate Mr. S. Sengupta, Railway Standing Counsel.

O R D E R

BARUAH J. (V.C.).

This application has been filed by the applicant seeking certain direction from this Tribunal. The applicant pursuant to Annexure-1 Advertisement dated 6.10.96 applied for the post of Apprentice Diesel Assistant Driver. The applicant submitted his application alongwith other candidates. The written test was held on 8.6.1997. The applicant came out successful in the said written test. Thereafter call letter was issued for viva-voce test. He appeared in the viva-voce test and came out successful. The

Attested
Alaka Das,
Advocate
31/4/2001

provisional select list was also published, in which his name appeared. However by Annexure-5 order dated 10.3.98 his provisional selection was cancelled saying inter alia that he was not qualified at the time of submission of his application. This order was passed without giving any notice. The applicant states that he submitted representation. The said representation has not been disposed of. Feeling aggrieved the applicant has approached this Tribunal by way of filing the Original Application.

2. In due course the respondents have entered appearance and filed written statement. In the written statement the respondents have denied receipt of any such representation.

3. We have heard both sides.

4. On hearing the counsel for the parties we feel that the matter requires to be scrutinised by the respondents. Accordingly the applicant may file a fresh representation within a period of 30 days from today. If such representation is filed the authority shall dispose of the said representation by a reasoned order within a period of two months thereafter.

5. With the above directions the application is disposed of.

6. Considering the facts and circumstances of the case, we however make no order as to costs.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (Adm)

Attested
Asha Das
Advocate
3/4/2001

No. HRB/G/OA-196/1998

dtd. 9.2.2000

To
 Shri Dipen Ch. Das,
 C/O Shri Gurucharan Das,
 Vill. & P.O. Berka,
 Dist. Kamrup (Assam),
 Pin-781 101.

Sub: Your application dtd. 2.2.2000.

Your above application has carefully been examined alongwith all concerned papers and documents in the light of Hon'ble CAT/GHY's Judgement dtd. 10th January, 2000. The advertisement regarding Appr. Diesel Asstt. Driver was published vide Employment Notice No. 2/96 on 6.10.96. It is seen from above notification that following conditions were incorporated for candidates applying against different posts of said notification.

" The candidates must have acquired the essential qualifications as laid down at the time of submission of application. Candidates who have yet to appear at the examination and whose results are withheld or not declared are not eligible to apply."

It is clear from above that only those candidates were eligible to apply against the posts contained in the notification who had already acquired the requisite qualification at the time of submission of application. It is seen from the case that you had not passed the examination leading to the acquiring the requisite qualification at the time of submission of application. However, this aspect was not detected during scrutiny of application and you were called for written test as well as viva-voce test for the post applied. Your name was included in the provisionally selected list of candidates also. Subsequently, the fact of your not having the requisite qualification at the time of submission of application was detected then your name was deleted from the list of selected candidates and also advised the same accordingly.

As the condition of having acquired the requisite qualification at the time of submission of application was specifically indicated in the notification for the post, many persons who were appearing in the requisite examination or whose result of the examination was yet to be declared would not have applied for the post. If your argument that you had acquired the requisite qualification before appearing in the viva-voce test is accepted, it will be injustice to those persons similarly placed to you but who did not apply due to express provision in the notification.

Contd...2...

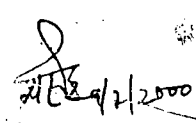
Attested
 Aloha Das
 Advocate
 3/4/2001

: 2 :

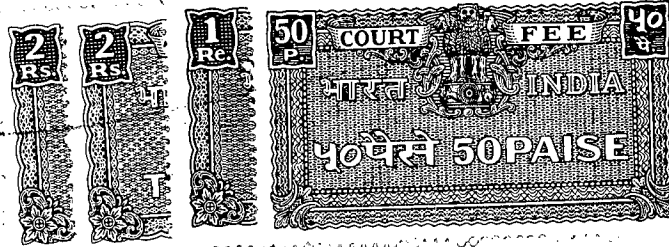
40
Your contention is that one candidate from Nagaon District under similar situation was allowed is vague in nature. In the absence of the name and Roll No. it is not possible to verify your claim.

In view of above, the decision to exclude your name from the provisional list of selected candidates on the basis of not having acquired the requisite qualification at the time of submission of application is considered to be in order. Hence, there is no necessity of making any amendments to the above order.

Attested
Alaka Das
Advocate
3/4/2001


(S.S. Singh)
Chairman,
RRB/Guwahati.

Dist.



VAKALATNAMA

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA,
MIZORAM AND ARUNACHAL PRADESH)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

IN THE COURT OF AT GUWAHATI

At No. 137/2001 OF

Sri Dipen Ch. Das.

Appellant

Plaintiff/ Petitioner

VERSUS

Union of India & Ors.

Respondent

Defendant / Opposite Party

Know all men by these presents that the above named applicant

do hereby nominate, constitute and appoint Sri U. K. Nair
& Miss U. Das.

Advocate and such of the undermentioned Advocates as shall accept this Vakalatnama to be my/ our true and lawful Advocate to appear and act for me/ us in the matter noted above and in connection there with and for that purpose to do all acts whatsoever in that connection including depositing or drawing money, filling in or taking out papers, deeds of composition, etc. for me/ us and my/our behalf and I/We agree to ratify and confirm all acts so done by the said advocates as mine/ ours to all intents and purposes. In case of non-payment of the stipulated fee in full, no Advocate will be bound to appear or act on my/ our behalf.

In witnesses whereof I/ We hereunto set my/ our hand this day of

- (1) Mr. P. K. Goswami
- (2) Mr. P. C. Deka
- (3) Mr. J. M. Choudhury
- (4) Mr. A. K. Bhattacharyya
- (5) Mr. B. K. Sharma
- (6) Mr. L. Talukdar
- (7) Mr. P. K. Tiwari
- (8) Mr. T. N. Srinivasan

- (9) Mr. M. K. Choudhury
- (10) Mr. B. M. Sarma
- (11) Mr. G. K. Thakuria
- (12) Mr. M. Chanda
- (13) Mr. B. K. Baishya
- (14) Mr. D. S. Bhattacharyya
- (15) Mrs. S. D. Baruah
- (16) Mr. Siddhartha Sarma

- (17) Mr. P. C. Kalita
- (18) Mr. K. Paul
- (19) Mr. U. K. Nair
- (20) Mr. D. K. Sarmah
- (21) Mrs. N. S. Thakuria
- (22) Mr. U. K. Goswami
- (23) Mr. A. Rahman
- (24) Mr. M. Dutta

Sri Senior Advocate, leads me/ us in this case.

Received from the executant,
satisfied and accepted.

Usha Das

Advocate

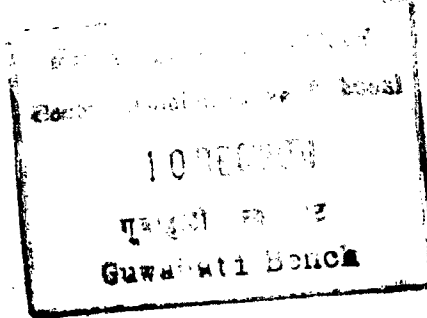
Accepted

Advocate

Accepted

Advocate

Sri Dipen Ch Das.



Filed by
Advocate
For: B. K. Sharma
S. C. Railway
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

O.A No. 137/2001

Shri Dipen Ch. Das

...Applicant

versus

Union of India & Ors.

...Respondents

Written statement on behalf of Respondents

The answering Respondents beg to state as follows:

1. That the answering Respondents have gone through the copy of the OA as served and they have understood the contents thereof. Save and except the statements which are specifically admitted hereinbelow, other statements made in the OA are categorically denied. Further the statements which are not born on records are also denied.

Brief History of the case :

The Applicant was a candidate for the post of apprentice DAD under category No. 01 of Employment Notice No. 2/96. At the time of submission of his application, the Applicant had only appeared in the two years ITI course examination and was not a ITI course examination passed candidate. Thus on the last date of submission of the application, which was the crucial date for determining eligibility of a candidate, the Applicant did not have the requisite qualification in

terms of the Employment Notice. However, such ineligibility of the Applicant escaped notice of the authority and he was wrongly empaneled. When the error was detected, his name was deleted from the panel. Being aggrieved, the Applicant filed OA No. 196/98 before this Hon'ble Tribunal and the same was disposed of by an order dated 10.1.2000 directing the Respondents to dispose of the appeal preferred by the Applicant. Accordingly his appeal was disposed of and communicated vide office letter No. RRB/G/OA-196/1998 dated 9.2.2000. Now the Applicant has filed the present OA.

Parawise reply :

2. That with regard to the statements made in paragraphs 4.1 and 4.2 of the OA, the answering Respondents do not admit anything contrary to the relevant records.

3. That with regard to the statements made in paragraphs 4.3 to 4.6 of the OA, it is stated that the Applicant by his application dated 29.6.96 offered his candidature for the aforesaid post at the time of submission of the application, he had only appeared in the ITI examination, but the results thereof were not submitted as the same was not declared. The fact of the Applicant not possessing the requisite qualification at the time of submission of the application could not be detected on scrutiny of the application as a consequence of which, the Applicant was called for the written examination inadvertantly. Call letter for viva

voce was issued on the basis of the results of the written examination. The Roll Nos. of the candidates who came up successful in the selection appeared in the final results.

4. That with regard to the statements made in paragraph 4.7 of the OA, it is stated that the name of the Applicant was deleted from the panel as it was found that he did not fullfil the terms and conditions as laid down in the Employment Notice that " The candidate must have acquired the essential qualification as laid down at the time of submission of application. Candidates who have yet to appear in the examination and whose results are withheld or not declared are not eligible to apply". As the Applicant did not fullfil the condition laid down in the Employment Notice, his name was deleted.

5. That with regard to the statements made in paragraphs 4.8 to 4.11 of the OA, while denying the contentions raised therein, the answering Respondents reiterate and reaffirm the statements made hereinabove. The Applicant by his application dated 29.10.97 stated that he had appeared in the ITI examination 1996. The certificate was issued after the closing date of application i.e. 5.11.96. The name of the Applicant was deleted from the panel on the ground that he did not possess the requisite qualification at the time of submission of the application. There is no question of giving any tacit approval. Relaxation of qualification cannot be done by any such so called tacit approval.

Relaxation must be in accordance with rules. In the instant case no such relaxation was granted and it was by a mistake that the Applicant was allowed to appear in the selection and on detection on the same, the impugned action was taken.

6. That the answering Respondents categorically deny the averments made in the paragraph 4.12 of the OA. It is stated that the averments made are vague and indefinite. Even assuming, but not admitting that the averments made are correct, same was per-se illegal and the Applicant cannot asked for such illegality to be continued.

7. That with regard to the statements made in paragraph 4.13 of the OA, the answering Respondents beg to state that the case cited by the Applicant is not all applicable to the facts and circumstances of the instant case. It is further stated that the judgment in the said case was delivered on the basis of an Apex Court judgment which has since been reviewed. Further the case relied upon by the Applicant was in respect of experience and not in respect of educational qualification. As regards the question of having the requisite education qualification at the time of submission of application, the law has been crystallised by the Apex Court and the Respondents crave leave of the Hon'ble Tribunal to refer and rely upon the case laws holding the field.

8. That with regard to the statements made in paragraphs 4.14 to 4.17 of the OA, the answering

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Respondents while denying the contentions raised therein reiterate and reaffirm the statements made hereinabove.

9. That the answering Respondents submit that the instant OA is hit by the principles of waiver, estoppel and acquiescence and also bad for non-joinder of necessary parties. None of the grounds urged by the Applicant is sustainable and the Applicant is not entitled to any relief.

10. That under the facts and circumstances stated above the instant OA is not maintainable and liable to be dismissed with cost.

Verification


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VERIFICATION

I, Shri O.P. AGRAWAL, aged about 43 years, son of Sh. M.L. AGRAWAL, resident of Maligaon, Guwahati-11, presently working as Chairman / R.S. / G.H., N.F. Railway do hereby verify and state that the statement made in paragraphs 2-4 and 6 to 10 are true to my knowledge and those made in paragraph 1 and 5 being matters of records are true to my information derived therefrom, which I believe to be true and the rest of my humble submissions before this Hon'ble Tribunal. I am also authorised to competent to sign this verification on behalf of all the Respondents.

And I sign this verification on this 27th day of November 2001.


अध्यक्ष 27/11/01
रेल प्रती बोर्ड
Railway Recruitment Board
गुवाहाटी
Guwahati 781 011