

5/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 35/2002

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SECTION OFFICER (Judl.)

Galita
22/10/17

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 35 of 2002 ~~GEN~~

Applicant(s) N. F. Rly. OBC Emp. Association

Respondent(s) U.O.I & OBC.

Advocate for Applicant(s) Mr. U.K. Nair, Miss U. Das

Advocate for Respondent(s) Rly. Counsel.

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form C.F. 1-2.50/1. d'ordre d'vice E/1. 6978&849 Dated 28.1.2002 T. D. D. ^{Interim} for Dy. Registrar 6/2/02</p> <p><u>No steps</u></p> <p>Notice along with order dated 6/2/02 is b/o respondent No. 1 to C. received by Mr. S. Sengupta, Rly. Adv. 26/6/02 to Section. 8/2/02</p> <p>DINo 4391-443 Dtd 13/2/02</p> <p>Copy to U.C. Received 12/1/2002 R.A.F.H.M.</p>	4.2.02	<p>Heard Mr. U.K. Nair, learned counsel for the applicant.</p> <p>The application is admitted. Call for the records.</p> <p>Issue notice as to why the direction contained in letter No. E/210/46 Pt.III(T) Commr.(Loose) dated 31.1.2002 for re-deployment against OBC DR Quota shall not be suspended. Returnable by three weeks.</p> <p>Mr. S. Sengupta, learned counsel accepts notice on behalf of the respondents.</p> <p>In the meantime, the direction contained in letter No. E/210/46 Pt.III(T) Commr.(Loose) dated 31.1.2002 for re-deployment of General category surplus against OBC DR Quota, shall remain suspended.</p> <p>List on 28.2.2002 for order.</p>

I C Usha

Member

Vice-Chairman

(B) d

Notes of the Registry	Date	Order of the Tribunal
Order dld 28/2/02 Communicated to the Parties Counsel. <u>4/3/02</u>	28.2.02	List on 26.3.2002 to enable the Respondents to file written statement. In the meantime, interim order dated 4.2.2002 shall continue. I C U Shetty Member
No. written statement has been filed. <u>28.2.02</u>	26.3.02	List on 30.4.2002 to enable the Respondents to file written statement. I C U Shetty Member
No. written statement has been filed. <u>29.4.02</u>	30.4.02	No written statement so far filed. The case may now be listed for hearing on 24.5.02. The applicant may file rejoinder if any, within two weeks. I C U Shetty Member
<u>30.4.2002</u> W/S submitted by the Respondents. <u>24.5.</u>	18.6.02	The case is adjourned to 24.6.02. I C U Shetty Member
No rejoinder has been filed. <u>23.5.02</u>	19.6.2002	On the prayer of learned counsel for the applicant case is adjourned to 24.6.02 for hearing. I C U Shetty Member
An affidavit in reply has been filed. <u>24.7.02</u>	24.7.02	Adjourned - List on 24.7.02. No Division Bench today. The matter may now be listed for By order

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O.A. 35/2002

Notes of the Registry

Date

Order of the Tribunal

24.7.2002

No Division Bench today. The matter may now be listed for hearing on 31.7.02

Vice-Chairman

25.7.02

bb

31.7.

Heard Mr. M.P. Kulkarni, learned Counsel for the applicant Mr. S. Sengupta, learned Counsel for the respondent (Railway).

Hearing concluded,
Judgment reserved.

PM
After Day
31.7.

Judgment delivered on 6/8/02
Communicated to the
Learned Counsel & the
Applicant

DR

6.8.02

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

LC (Signature)

Member

mb

Vice-Chairman

Notes of the Registry

Date

Order of the Tribunal

D.A .35/2002

Notes of the Registry Date Order of the Tribunal

24.7.2002

No Division Bench today. The matter may now be listed for hearing on 31.7.02

Vice-Chairman

bb

25.7.02

Counter-Reply
submitted by the
Respondent.

DR

31.7.

Hearing by Dr. P. Katala, Learned Counsel for the applicant & Mr. S. Segupta, Learned Counsel for the respondent.
Hearing Concluded.
Judgment reserved.

BCG
4th Aug
31.7.

6.8.02

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

Notes of the Registry

Date

Order of the Tribunal

for

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 35 of 2002

Date of Decision. 6-8-2002

The N.F. Railway OBC Employees Association
and two others

Petitioner(s)

Nr B.P. Katokey, Mr U.K. Nair and
Ms U. Das

Advocate for the
Petitioner(s)

versus-

The Union of India and others

Respondent(s)

Mr S. Sengupta, 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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.35 of 2002

Date of decision: This the 6th day of August 2002

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

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

1. The N.F. Railway O.B.C. Employees
Association, represented by its
Secretary, Shri Binod Chandra Kumar,
Maligaon, Guwahati.

2. Shri Anjay Kumar,
Trainee Commercial Clerk,
N.F. Railway, Lumding.

3. Shri Abahy Prasad,
Commercial Clerk,
New Bongaigaon, N.F. Railway,
Assam.

.....Applicants

By Advocates Mr B.P. Katokey, Mr U.K. Nair and
Ms U. Das.

- versus -

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

2. The Additional General Manager,
N.F. Railway,
Maligaon, Guwahati.

3. The Railway Board, represented by
The Secretary,
New Delhi.

4. The General Manager (P),
N.F. Railway,
Maligaon, Guwahati.

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

6. The Divisional Railway Manager,
N.F. Railway, Alipurduar Junction,
Alipurduar.

.....Respondents

By Advocate Mr S. Sengupta, Railway Counsel.

.....

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O R D E R

CHOWDHURY. J. (V.C.)

The legality and validity of the communication No.E/210/46 Pt.III(T)Comm. (Loose) dated 31.1.2002 is the subject matter of challenge in this application. By the said communication the authority clarified the position on the redeployment of surplus Coach Attendants, which reads as follows:

"Your attention is invited to this office letter of even number dated 26-07-2001 and 04-12-2001 wherein it was intimated that the exchange of roster point is not permissible in absence of adequate number of OBC candidates.

The above issue was further examined in reference to GS/NFREU/PNO & GS/NFRMU/PNO's letter under reference and it has been further decided by AGM/MLG as under :-

"Question of de-reserving does not arise but general category surplus staff may be re-deployed against OBC DR Quota and backlog through forward."

Necessary action may please be taken accordingly."

The applicant assailed the aforementioned action of the respondents as arbitrary and discriminatory seriously encroaching upon the rights of the employees belonging to the OBC community.

2. Mr B.P. Katokey, learned counsel for the applicants, assisted by Mr U.K.Nair and Ms U. Das, Advocates, contended that the aforementioned action of the respondents militated against the constitutional protection safeguarded by the Constitution, read with the reservation policy. The learned Sr. Counsel, referring to the Judgment of the Supreme Court in R.K. Sabharwal Vs. State of Punjab and others, submitted that the Supreme Court had already declared that reservation of jobs for backward classes (SC/ST/OBC) was to apply to posts and not to vacancies and stipulated that

vacancy based roster would be made to operate only till such time as the reservation of persons belonging to the reserved categories in a cadre reached the prescribed percentage of reservation. In terms of the decision of the Supreme Court, the Government of India issued instructions to replace the vacancy based roster with a post based roster system. The Ministry of Railways also in terms of the decision of the Supreme Court and in tune with the Government of India the vacancy based roster system was abolished and replaced it with the post based roster system. The impugned action of the respondents runs counter to the law laid down by the Supreme Court and the professed policy of the Railways. The learned Sr. Counsel also assailed the competence of the General Manager of N.F. Railway in issuing such instructions.

3. The Railway Authority opposed the plea of the applicants and submitted its written statement in support of its stand. Mr S. Sengupta, learned Railway Counsel, strenuously refuted the contention of Mr B.P. Katokey. Mr Sengupta also raised the preliminary objection as to the maintainability of the application. The learned counsel contended that the applicants are not the persons aggrieved. Refuting the contention of Mr Sengupta, Mr B.P. Katokey, the learned Sr. Counsel for the applicants, referred to the order passed in M.P.No.96 of 2002 allowing the implementation of applicant Nos.2 and 3. The learned Sr. Counsel for the applicants submitted that the applicant Nos.2 and 3 are the persons aggrieved and the Association is also espousing the cause of the members including the applicant Nos.2 and 3. The learned Sr. Counsel submitted that the present application is maintainable and is in conformity with Rule 4(5)(b) of the Central Administrative

Tribunal (Procedure) Rules, 1987. Since the applicant Nos.2 and 3 are the persons affected, the application is maintainable in law. Counteracting the submission of Mr B.P. Katokey, Mr S. Sengupta submitted that the applicant Nos.2 and 3 have already been appointed as Trainee Commercial Clerk in Grade 'C' and therefore, these two persons are not affected by the impugned action of the respondents. Mr B.P. Katokey did not dispute that the applicant Nos.2 and 3 are already appointed as Trainee Commercial Clerk, a Grade 'C' post. The impugned Notification pertains to redeployment of surplus Coach Attendants in Ticket Collector Category. There is no dispute that the Commercial Clerks are of the category of Ticket Collector. It is also a Group 'C' post. Seemingly, the notification did not impinge on the rights of the applicant Nos.2 and 3. Therefore, the applicant Nos.2 and 3 cannot be said to be persons aggrieved. A person aggrieved is that person who is obviously affected by the decision making process. The applicants are already redeployed as Commercial Clerk, a Group 'C' post. Naturally, these two persons cannot be said to be persons aggrieved. There is no cause of action against the respondents so far applicant Nos.2 and 3 are concerned. In the absence of any cause of action for applicant Nos.2 and 3 the applicant No.1 is not competent to pursue the matter under Section 19 of the Administrative Tribunals Act, 1985. The N.F. Railway OBC Employees Association is not a person aggrieved under Section 19 of the Act in the light of the decision rendered by this Tribunal in All India P&T Accounts and Finance Officers' Association Vs. Union of India and others, O.A.No.56 of 2002, disposed of on 18.7.2002. Situated thus, Mr B.P.

Katokey.....

Katokey contended that the impugned action of the respondents are wholly unlawful and unconstitutional and therefore, for ends of justice it is a fit case in which the Tribunal is required to invoke its jurisdiction to protect and preserve the public interest and to remove injustice.

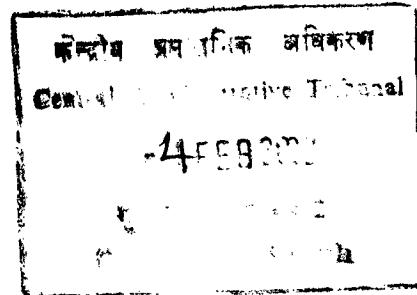
4. Needless to state that the Tribunal is a creature of the statute and it does not have any plenary jurisdiction and for that matter any plenary power. As per the statutory provisions the Tribunal is authorised to accord permission to an association provided that at least one affected person joins such an application. The two persons, namely Shri Anjay Kumar and Shri Abahy Prasad who joined with the applicant No.1 does not have any cause of action. "Quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud: When something is prohibited, all implied things are also prohibited."

5. For all the reasons stated above, we are constrained to dismiss the application on the preliminary ground alone as not maintainable.

6. The application is accordingly dismissed. There shall, however, be no order as to costs.

(C. K. Sharma)
(K. K. SHARMA)
ADMINISTRATIVE MEMBER

(D. N. Chowdhury)
(D. N. CHOWDHURY)
VICE-CHAIRMAN



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THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
GUWAHATI

D.A. No. 35 of 2002

NF Rly. OBC Employees Association

... Applicant

- Versus -

Union of India & Ors.

... Respondents

I N D E X

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Filed by : U.K. Nair

Advocate

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FILED BY:
Binod Chandra Kumar
Through; Krishnan Nair
Unni
Advocate

THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
GUWAHATI

(Application under Section 19 of the Central Administration Tribunal Act, 1985)

D.A. No. 35 of 2002

BETWEEN

N.F. Railway O.B.C. Employees Association, represented by its Secretary, Shri Binod Chandra Kumar, Maligaon, Guwahati-11.

... Applicant.

- AND -

1. Union of India, represented by the General Manager, N.F. Railways, Maligaon, Guwahati-11.

2. The Additional General Manager, NF Railways, Maligaon, Guwahati.

3. The Railway Board, represented by its Secretary, Rail Bhawan, New Delhi.

4. The General Manager (P), NF Railways, Maligaon, Guwahati.

5. The Chief Personnel Officer, NF Railways, Maligaon, Guwahati.

6. The Divisional Railway Manager, NF Railway, Alipurduar Junction, Alipurduar.

... Respondents

DETAILS OF APPLICATION

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

The present application is preferred against the arbitrary and illegal action on the part of the Respondents in deciding to fill up the posts meant for Other Backward Classes in the cadre of Ticket

Collectors, through general candidates, in clear violation of the instructions passed in this connection by the Railway Board and thereby depriving candidates belonging to the OBC communities of their legitimate dues.

This application is also directed against the issuance of the letter dated 31.12.2002 by which sanction has been accorded for re-deployment of unreserved category candidates against the posts meant for candidates of Other Backward Classes, by an authority not competent to do so.

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter in respect of which the application is made 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 association is an association recognised by the Respondent authorities and was set up by employees under the Respondents belonging to the OBC communities with a view to protect and advance the interest of the members of their community. The members of the Applicant association are citizens of India and as such are entitled to all the rights protections and

privileges as guaranteed by the constitution of india.

4.2 That the Applicant association has by way of this application raised a grievance against the arbitrary and illegal action on the part of the Respondents in deciding to fill up the direct recruitment quota available for OBC candidates in the cadre of Ticket Collector, by deploying general community candidates against the same. Consequent upon shrinking of posts in the cadre of Coach Attendants, the persons who had so become surplus were directed to be absorbed in the cadre of Ticket Collectors. A proposal was mooted to utilise 17 Direct Recruitment Quota posts lying vacant in the cadre of Ticket Collectors meant for OBC candidates, for absorbing the persons who had become surplus due to shrinking of posts in the cadre of Coach Attendants. In the Railways at present Post Based Roster System is being followed and the procedure followed is that, if for a post reserved for a particular community no suitable person is available, the post is left vacant and as such the above proposal was turned down by the competent authorities, holding that "Exchange of Roster point was not permissible." Poised thus pressure was brought upon the authorities from persons having vested interest, forcing the issuance of the impugned letter dated 31.01.2002 by which permission was granted for redeployment of General category surplus staff against OBC Direct Recruitment Quota. The said direction was issued with the stipulation that deservation is not permissible.

Pursuant to issuance of the said direction vide letter dated 31.1.2002 process is on to fill up the posts reserved for OBC candidates by redeploying general candidates against the same and in the event the same is allowed to materialise the persons belonging to the OBC communities would be deprived of their legitimate right for being considered against the said posts. As such this application has been filed seeking urgent and immediate relief.

4.3 That the Applicant states that the Apex Court in the case of R.K. Saharawal -vs- State of Punjab & Ors. held that reservation of jobs for the backward classes (SC/ST/OBC) should apply to posts and not vacancies and stipulated that vacancy based roster can be made to operate only till such time as the representation of persons belonging to the reserved categories, in a cadre reaches the prescribed percentage of reservation. With a view to bring the policy of reservation in line with the law laid down by the Supreme Court, it was decided by the Government of India in the Ministry of Personnel, Public Grievances and Personnel, to replace the existing vacancy based roster with a Post Based Roster system. The said proposal was circulated vide office Memorandum under No. 36012/2/96-Estt(Res) dated 2.7.97. The said proposal was also accepted by the Ministry of railways. Pursuant to the acceptance of the said proposal, in all cadres the vacancy based roster system has been abolished and the same has been replaced with a Post Based Roster System.

A copy of the said office Memorandum dated 2.7.97
is annexed as Annexure-1.

4.4 That the Applicant states that a decision was taken to reduce the number of posts in the cadre of Coach Attendant and to abolish the said cadre over a period of time. Due to the shrinkage of the said cadre a number of persons employed under the Respondent No. 6 had been rendered surplus. The procedure to be adopted for identification of surplus posts and the manner and method by which person declared surplus are to be redeployed are laid down in the Master Circular issued by the Railway Board vide letter No. E(NG)II/90/RE-1/Master Circular dated 27.3.91 and circulated by the N.F. Railways vide letter dated E./227/144-5(C) Pt.V dated 21.9.93/23.2.94.

The Applicant craves leave of this Hon'ble Tribunal to produce a copy of the said Master Circular, as and when required of it to do so.

4.5 That as per the provisions of the said master circular, as soon as posts are identified as surplus, a formal office order is required to be issued surrendering such surplus posts. In the case of shrinking effected in the cadre of "Coach Attendants" no such formal order has been issued till date, surrendering the post so declared to be surplus. The provisions of the said circular is applicable to posts rendered surplus, consequent on the change of traction

and full or partial closure of steam, loco sheds, marshaling yards, goods sheds and other redundant assets. In absence of any formal notification being issued by the competent authority, it is not known as to the reason existing for shrinkage effected in the cadre of Coach Attendants.

4.6 That the Applicant states that consequent upon shrinkage effected in the cadre of "Coach Attendants" a proposal was mooted to absorb the persons so rendered surplus against the posts available in the cadre of Ticket Collectors, under the Respondent No. 6. The vacancy position as available as on date in the cadre of Ticket Collectors under Alipurduar Division, after change over to the Post Based Roster system is as follows :

Unreserved	- 9
Scheduled Caste	- 6
Scheduled Tribe	- 1
Other Backward Classes	- 17
<hr/>	
Total	33

Be it stated here that the above vacancies are in relation to direct recruitment quota in the cadre of Ticket Collectors.

4.7 That the Applicant states that in connection with the redeployment of persons rendered surplus due to shrinkage effected in the cadre of Coach Attendants and their absorption against the vacancies available in the cadre of Ticket Collectors, the Respondent No. 6 raised a query before the Respondent No. 4 as to whether, while redeploying the persons rendered surplus, in the

cadre of Ticket Collectors the Post Based Roster is to be followed and as to whether the reserved posts can be filled up by general category candidates. The matter was examined in details and was replied to by the competent authority vide letter dated 26.7.2001 specifying that the Post Based Roster system is to be followed and general category candidates cannot be appointed/redeployed against posts meant for reserved categories.

Yours Applicant is not possession of the copies of the said communications and as such craves the indulgence of this Hon'ble Tribunal for a direction to the Respondents to produce copies of the same for perusal by this Hon'ble Tribunal.

4.8 That the Applicant states that the Respondent No. 6 vide his letter dated 30.10.2001 requested for grant of permission for filling up the vacant posts meant for reserved categories in the cadre of Ticket Collectors from enlisted coach attendants belonging to general category candidates wherever candidates belonging to reserved community as per Post Based Roster is not available. The matter was examined and vide letter under Memo No. E/210/46/Pt.III (T) Commr.(Loose) dated 4.12.2001, it was clarified that it was not within the Rule to exchange the roster point and the same cannot be done at Zonal Level. Accordingly the permission sought for by the Respondent No. 5 to fill up the reserved category post, with general community

candidates, in the event candidates belonging to the reserved category was not available was rejected.

A copy of the letter dated 4.12.2001 is annexed as Annexure-2.

4.9 That the Applicant states that being highly aggrieved by the partisan attitude adopted by the Respondent No. 6 in connection with the issue of redeployment of surplus coach attendants against the quota reserved for OBC candidates in the cadre of Ticket Collectors, they took up the matter with the Respondent No. 4 on 24.12.2001 and discussed the matter thread bare. The members of the Applicant association were assured that no action would be taken in violation of the Rules and the quota prescribed for OBC candidates would not be filled up by deploying general category candidates against it.

4.10 That the Applicant states that pursuant to the clarification issued by the competent authority vide letters dated 26.7.2001 and 4.12.2001 (Annexure-2), the process of redeployment of surplus Coach Attendant in the cadre of Ticket Collectors was suspended by the Respondent No. 6 upon pressure being exerted by some vested interests. Taking recourse to para 8 of the Master Circular dated 27.3.91, which lays down that redeployment of surplus staff will have precedence over all other modes of recruitment, a plea was taken that for redeployment of surplus staff, the Post Based Roster is not required to be followed. On coming to

learn about the new plea being raised, the Secretary of the Applicant Association vide his letter dated 18.1.2002 drew the attention of the Respondent No. 4 to the provisions of the said Master Circular and giving reasons highlighted the fact that the provisions of the said Master Circular was not attracted to the case on hand. Further it was clarified that the Master Circular nowhere states for giving a go-bye to the provisions of reservation. As such it was prayed that necessary instructions be issued to the Respondent No. 6 to complete the process of absorption of surplus Coach Attendants following the instructions issued vide letter dated 4.12.2001.

A copy of the said letter dated 18.1.2002 is annexed as Annexure-3.

4.11 That the Petitioner states that the matter was again reconsidered and as gathered by members of the Applicant association, the Chief Personnel Officer (A), NF Railways vide his noting given in File No. E/210/46/Pt.III(T).Comml (Loose) interalia, stated that the Direct Recruitment Quota is to be maintained. It was also opined therein that the Railway Board Circular No. 95-E(SCT) 1/46/5(1) dated 21.8.97 prohibits de-reservation in direct recruitment category and also that exchange of OBC quota is also not permissible. This noting given by the Chief Personnel Officer (A) in the said file is in consonance with the prescription made in letters dated 26.7.2001 and 4.12.2001 (Annexure-2).

The Applicant craves leave the indulgence of this Hon'ble Tribunal for a direction to the Respondents to produce the file No. E/210/46/Pt.III(T) Comml.(Loose) wherein the said matter was processed.

4.12 That the Applicant states that poised thus, the members of the Applicant association was shocked and surprised to come across a letter issued under Memo No. E/210/46.Pt.III(T) Coml.(Loose) dated 31.1.2002, wherein it was interalia stated that the AGM/MLG upon examination of the matter was pleased to decide that question of deservation does not arise but general category surplus staff may be re-deployed against OBC direct recruitment quota and backlog through forward. Be it stated here that the authority specified in the said letter is not vested with the authority to take decisions in such matter. The competent authority in such matters, relating to policy is vested in the Railway Board. The Railway Board has not been consulted in the matter and the said decision was taken basing on extraneous consideration.

A copy of the said letter dated 31.1.2002 is annexed as Annexure-4.

4.13 That the Applicant states that the decision taken to permit re-deployment of excess staff in the cadre of Coach Attendants against the vacant posts meant for OBC's under direct recruitment quota in the cadre of

Ticket Collectors has been taken in clear violation of the standing instructions in the matter passed by the Railway Board and also the decision already arrived at by the N.F. Railway administration as expressed in the letters dated 26.7.2001 and 4.12.2001 (Annexure-2). The said decision as communicated vide the letter dated 31.1.2002 (Annexure-4) has been taken basing on extraneous considerations and is the result of the pressure exerted upon the Respondents by persons having vested interests.

4.14 That the Applicant states that the position clarified vide letters dated 26.7.2001 and 4.12.2001 has been reiterated in the impugned letter dated 31.1.2002. As such after reiteration of the position that deservation and/or exchange of roster points is not permissible, it is not understood as to how a decision could be arrived at to redeploy general category surplus staff against the vacant posts meant for OBC's under Direct Recruitment quota in the cadre of Ticket Collectors. As such it is abundantly clear that same is a mere eye wash and has been done only with a view to circumvent the directives issued in this direction by the Railway Board and thereby to favour the general category candidates.

4.15 That the Applicant states that after conversion to the Post Based Roster system, the total posts in a cadre have been earmarked for different communities. In the event a suitable candidate is not available against a particular Roster point meant for a particular

community, the same is to be left vacant to be filled up immediately upon the candidate of that particular community becoming available. In the case on hand in the event the posts meant for OBC's are filled up, there would be an imbalance and the general category candidates would be occupying posts in excess of the quota prescribed for them. The imbalance that would be so created cannot be rectified in the near future, inasmuch as there would be no posts available, for candidates belonging to the OBC communities.

4.16 That the Applicant states that amongst the staff rendered surplus due to shrinkage effected in the cadre of coach attendants, there are 4 personnel belonging to the OBC community, but surprisingly enough these cases are not being considered for absorption in the cadre of Ticket Collectors inspite of the fact that as per the Post Based Roster system, vacant posts exists for them. On being approached the members of the Applicant association were given to understand by the Respondent No. 6, that these persons would be absorbed in some other post as and when vacancies become available for their such absorption. This shows the deprivation being meted out to persons belonging to reserved category at the behest of some vested interests.

4.17 That assuming though not admitting the provisions of the said Master Circular issued by the railway Board on absorption and utilisation of surplus staff is applicable to the case on hand, then also the persons

rendered surplus would not be without any employment inasmuch as provision exists for creation of "special supernumerary posts" for accommodating such persons, till they are accommodated against suitable posts. As such the haste on the part of the authorities for filling up the Direct Recruitment quota prescribed for OBC candidates in the cadre of Ticket Collectors is not understood. It may be mentioned here that the persons rendered surplus are still un employment and are receiving all their due benefits including salaries regularly.

4.18 That the Applicant states that the status, responsibilities and duties attached to the posts of Coach Attendant and Ticket Collectors are not similar and the pay scale prescribed for the two cadres are not similar. The posts of "Coach Attendant" belong to Group-D whereas the post of "Ticket Collector" is a Group-C post. As such there being no similarity between the two posts, the action on the part of the authorities in proceeding to fill up the Direct Recruitment quota in the cadre of Ticket Collectors is illegal, arbitrary and discriminatory and the same is being done only to favour persons close to the powers that be.

4.19 That the Applicant states that candidates belonging to the OBC communities are awaiting their respective appointments, after duly completing the vocational course (VCRG) conducted by the Respondents. The cases of the said persons are kept pending due to

shortage of posts reserved for OBC community candidates. The said persons can easily be accommodated /appointed against the posts lying vacant under Direct Recruitment quota in the cadre of Ticket Collectors . At present there are about 9 candidates awaiting their respective appointments,after successful completion of the said vocational course. Be it stated here that the said persons fulfill all the eligibility criterias prescribed for the post of "Ticket Collectors" and are entitled to be considered for appointment as Ticket Collectors.

4.20 That the Applicant submits that in addition to the post lying vacant under Direct Recruitment Quota meant for OBC's in the cadre of Ticket Collectors, there are also at present number of posts meant for OBC candidates lying vacant under the Respondents. The repeated appeals made by the members of the applicant association to fill up these posts specially meant for OBC candidates, if required by organising a special drive, has failed to get the desired response from the respondent authorities.

4.21 That your Applicant states that the Railway Board has vide its orders specifically directed that posts reserved for SC/ST/OBC's should not be de-reserved and should be carried forward and that exchange of Roster Points between general and reserved category is not permitted. As such under no circumstances can the posts reserved for OBC's candidates be used for deploying general category candidates. In the event of dire

necessity to do so, prior permission of the competent authority i.e. the Railway Board must be obtained. In the case on hand the decision to deploy general category candidates against posts reserved for OBC's has been taken at the Zonal level without prior permission from the Railway Board and as such the decision communicated vide the impugned letter dated 31.1.2002 is liable to be set aside and quashed.

4.22 That the Applicant states that pursuant to issuance of the letter dated 31.1.2002, process is on to fill up the OBC Direct Recruitment quota in the cadre of Ticket Collector's and orders are expected to be issued in a day or two. As such it is prayed that Your Lordships would be pleased to pass an interim direction as has been prayed for, failing which the candidates belonging to the OBC communities would stand to suffer great loss and injury.

4.23 That the Applicant association being set up for advancing the interests of persons belonging to the OBC communities any action that may be taken by the Respondent authorities which has the effect of depriving persons belonging to the OBC communities must be taken after taking the Applicant association into confidence. In the instant case the decision to deploy general category candidates against the quota meant for OBC's has been taken overnight behind the back of the members of the Applicant association and at no point of time were the members of the applicant association

called for consultation. This action on the part of the authorities is per-se illegal and is in violation to the very objective for setting up the Applicant association.

4.24 That this application has been filed bonafide for securing the ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that prima facie the impugned action on the part of the Respondents is not legally sustainable and the Applicant is entitled to the reliefs sought for in this Original Application.

5.2 For that the decision to deploy general category candidates against the posts reserved for OBC candidates having been taken by an authority not vested with the authority to do so, the same is liable to be set aside and quashed.

5.3 For that the orders passed by the Railway Board having clearly barred de-reservation of posts and/or exchange of roster points, the action on the part of the Respondent authorities in proceeding to fill up the quota meant for OBC candidates by deploying general candidates against them is not sustainable and the same is liable to be set aside and quashed.

5.4 For that the impugned letter 31.1.2002 having reiterated the position stated in the letters dated 26.7.2001 and 4.12.2001, that de-reservation and/or exchange of roster point is not permissible, the

decision to deploy general category candidates against the direct recruitment quota meant for OBC candidates is not sustainable and liable to be set aside.

5.5 For that the decision to deploy general category candidates against the quota prescribed for OBC candidates having been taken behind the back of the members of the Applicant association and the applicant association being not consulted as regards this vital issue which has the effect of depriving candidates belonging to the OBC community, the decision communicated vide the letter dated 31.1.2002 is liable to be set aside and quashed.

5.6 For that in any view of the matter the impugned action on the part of the respondents in granting sanction for re-deployment of general category candidates against the direct recruitment quota earmarked for OBC candidates is not sustainable and the same is liable to be set aside and quashed.

The Applicant craves leave of this Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that he has no other alternative and efficacious remedy except by way of filing this application.

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

The applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

Under the facts and circumstances stated above, the applicant prays that this application be admitted, records be called for and notice be issued to the respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs :

8.1 To set aside and quash the decision taken by the Respondent No. 2 to deploy general category surplus staff against post reserved for OBC candidates under Direct Recruitment Quota in the cadre of Ticket Collectors, as communicated vide Annexure-4 letter dated 31.1.2002.

8.2 To direct the Respondents to desist from filling up the posts reserved for OBC's in the cadre of Ticket Collectors by appointing/adjusting persons belonging to other communities against the same.

8.3 To direct the Respondents to fill up the vacant posts available for OBC candidates in the cadre of Ticket Collector by candidates belonging to OBC communities, if required by conducting special

recruitment drive for the purpose of filling up the said vacant posts.

8.4 Cost of the application.

8.5 Any other relief/reliefs to which the Applicant is entitled to under the facts and circumstances of the case and/or as may deemed fit and proper considering the facts and circumstances of the case.

9. INTERIM ORDER PRAYED FOR :

Pending disposal of this application the Applicant prays that Your Lordships would be pleased to stay the effect and operation of the decision taken by the Respondent No. 2 as communicated vide letter dated 31.1.2002 and any steps taken in pursuance to the said decision with further direction to the Respondents not to fill up the posts reserved for OBC's in the cadre of Ticket Collectors by deploying general category surplus staff against the same.

10.

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

- i) I.P.O. No. : 64786849
- ii) Date : 28.11.01
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

VERIFICATION

I Shri Binod Chandra Kumar, aged about 47 years, son of Late K. Kumar, resident of Maligaon, Guwahati-11, do hereby solemnly affirm and verify that I am the Secretary of the Applicant association, I am fully conversant with the facts and circumstances of the case, the statements made in paragraphs 1 to 3, 4-1, 4-2, 4-3, 4-9, 4-10, 4-13 to 4-19, 4-21 to 4-23 and 5 to 12 are true to my knowledge ; those made in paragraphs 4-4, 4-5, 4-6, 4-7 4-8, 4-11 and 4-12 are true to my information derived from records and the rests are my humble submissions before this Hon'ble Tribunal. I have been duly authorised to swear this affidavit on behalf of the Applicant association and as such I am competent to do so.

And I sign this verification on this the 4th day of February, 2002.

Binod Ch. Kumar.
Applicant

ANNEXURE - 1

21

No. 36012/2/96-Estt. (Res)
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(DEPARTMENT OF PERSONNEL & TRAINING)

SN-1

North Block,
New Delhi, the 2nd July, 1997.

OFFICE MEMORANDUM

Subject: Reservation roster - Post-based
Implementation of the Supreme Court
Judgement in the case of R.K. Sabharwal Vs.
State of Punjab.

The undersigned is directed to say that under the existing instructions, vacancy-based rosters have been prescribed in order to implement the Government's policy relating to reservation of jobs for the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes. The application of reservation on the basis of these rosters was called into question, before Courts. The Constitution Bench of the Supreme Court, in the case of R.K. Sabharwal Vs. State of Punjab as well as J.C. Mallick Vs. Ministry of Railways has held that the reservation of jobs for the backward classes SC/ST/OBC should apply to posts and not to vacancies. The Court further held that the vacancy based rosters can operate only till such time as the representation of persons belonging to the reserved categories, in a cadre, reaches the prescribed percentages of reservation. Thereafter, the rosters cannot operate and vacancies released by retirement, resignation, promotion etc. of the persons belonging to the general and the reserved categories are to be filled by appointment of persons from the respective category so that the prescribed percentage of reservation is maintained.

2. The Court also held that persons belonging to the reserved categories, who are appointed on the basis of merit -- and not on account of reservation -- are not to be counted towards the quota meant for reservation.

3. With a view to bringing the policy of reservation in line with the law laid down by the Supreme Court, it has been decided that the existing 200-point, 40-point and 120-point vacancy-based rosters shall be replaced by post-based rosters. All Ministries/Departments and concerned Authorities are requested to prepare the respective rosters based on the principles elaborated in the Explanatory Notes given in Annexure-I to this O.M. and illustrated in the Model Rosters annexed to this O.M. as Annexure-II, III and IV. Similarly, the concerned authorities may prepare rosters to replace the existing 100-point rosters in respect of local recruitment to Group C & D posts on the basis of the same principles.

Attested
Anu. [Signature]
Advocate

4. The principles for preparing the rosters elaborated upon in the Explanatory Notes are briefly recapitulated below:

- a) Since reservation for OBCs does not apply in promotions, there shall be separate rosters for direct recruitment and for promotions;
- b) The number of points in the roster shall be equal to the number of posts in the cadre. In case there is any increase or decrease in the cadre strength in future, the rosters shall be expanded/contracted correspondingly;
- c) Cadre, for the purpose of a roster, shall mean a particular grade and shall comprise the number of posts to be filled by a particular mode of recruitment in terms of the applicable recruitment rules. Thus, in a cadre of, say, 200 posts, where the recruitment rules prescribe a ratio of 50:50 for direct recruitment and promotion, two rosters -- one for direct recruitment and one for promotion (when reservation in promotion applies) --- each comprising 100 points shall be drawn up on the lines of the respective model rosters;
- d) Since reservation does not apply to transfer on deputation/transfer, where the recruitment rules prescribe a percentage of posts to be filled by this method, such posts shall be excluded while preparing the rosters;
- e) In small cadres of upto 13 posts, the method prescribed for preparation of rosters does not permit reservation to be made for all the three categories. In such cases, the administrative Ministries/Departments may consider grouping of posts in different cadres as prescribed in this Department's O.M. No. 42/21/49-NGS dated 28.1.1952 and subsequent orders reproduced at pages 70 to 74 of the Brochure on Reservation for Scheduled Castes & Scheduled Tribes (Eighth Edition) and prepare common rosters for such groups. In the event it is not possible to resort to such grouping, the enclosed rosters (Appendices to Annexures-II, III & IV) for cadre strength upto 13 posts may be followed. The principles of operating these rosters are explained in the explanatory notes.

5. At the stage of initial operation of a roster, it will be necessary to adjust the existing appointments in the roster. This will also help in identifying the excesses/shortages, if any, in the respective categories in the cadre. This may be done starting from the earliest appointment and making an appropriate remark- "utilised by SC/ST/OBC/Gen.", as the case may be, against each point in the rosters as

- 3 :-

explained in the explanatory notes appended to the model rosters. In making these adjustments, appointments of candidates belonging to SCs/STs/OBCs which were made on merit (and not due to reservation) are not to be counted towards reservation so far as direct recruitment is concerned. In other words, they are to be treated as general category appointments.

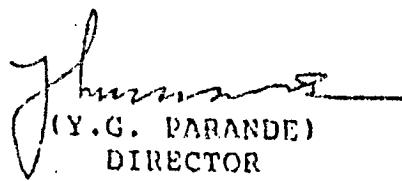
6. Excess, if any, would be adjusted through future appointments and the existing appointments would not be disturbed.

7. All Ministries/Departments are requested to initiate immediate action to prepare rosters and operate them according to these guidelines.

8. The existing orders on the subject are deemed to have been amended to the extent herein.

9. These orders shall take effect from the date of their issue. However, where selections have already been finalised they need not be disturbed and the necessary adjustments in such cases may be made in future. In other cases, recruitment may be withheld till the revised rosters are brought into operation and recruitment effected in accordance with these instructions.

(Hindi Version will follow).


(Y.G. PARANDE)
DIRECTOR

N. F. Railway.

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

....

No.E/210/46/Ft.III(T)Comm.(Loose) Dated 4 -12-2001.

To: DRM(P)/APDJ.

Sub:- Re-deployment of surplus CA.

Ref:- Your letter No.E/41/27(T)Comm.
AP-Ft.II dated 30.10.01.

...

Your request to give permission to filling all the vacancies from enlisted CA candidate of other communities wherever candidates of reserved communities as per PBR are not available has been examined by this office since it is not within the rule to exchange the roster ~~and~~ point and can not be done at Zonal Railway as such your above proposal can not agreed to by this office.

Action may please be taken in terms of this office letter of even number dated 26.7.01 accordingly. This has the approval of Competent Authority.

LB 4/12/01
(L. B. Singh.)
A.P.O.(T)

for General Manager(P)MLG.

ad/-3.12.2001

SL

Attested
Anu. Bodu
Advocate



ANNEXURE - 3

N.F. RAILWAY OTHER BACKWARD CLASSES EMPLOYEES' ASSOCIATION

Regd. No. RS/KAM/240/1/551
(RECOGNISED BY THE N.F. RLY. ADMINISTRATION)

CENTRAL OFFICE : 186/B, ADARSHA COLONY, MALIGAON, GUWAHATI- 781 011 (ASSAM)

Ref. No. N.F./OBC/ASSN/POI/2002.

Date : 18.1.2002..
21

To

The General Manager (P),
N F Railway,
Maligaon,
Guwahati - 781 011.

(For personal attention of Shri P.K. Sharma, CPO/NF Rly.)

Dear Sir,

Sub : Alternate utilisation of excess Coach Attendants by absorbing them in TC Category, thereby filling up of backlog quota reserved for OBC in the category of Ticket Collector.

....

Business form No. 1
Begur
Apropos of our discussion on 24.12.2001 this Association further begs to inform you the status causing delay in adhering to Head Quarters instruction on the subject item by APDJ Division.

That consequent upon shrinking of the posts of Coach Attendant 36 posts of Ticket Collector were made available from the vacancies of Direct Recruitment quota for absorbing the excess Coach Attendants of the Division.

While materializing it, policy to honour "Roster Point" was preferred by Hd. Qrs. on 26th July, 2001, specially when the posts pertain to vacancies of the D.R.Quota. Thereafter confusion raised by Division was also meticulously clarified by Hd. Qrs. on 4th December, 2001, by up-holding the rule in regard to "Not exchanging the roster point" even though required number of quota candidates were not available in C.A. category. Yet, process is being delayed, so far, to have a policy decision basing upon Master Circular - 22.

contd. ... 2

Attested
Anu. borth
Advocate



59
9 : 22845 (Rly)

- 26 -

N.F. RAILWAY OTHER BACKWARD CLASSES EMPLOYEES' ASSOCIATION

Regd. No. RS/KAM/240/1/551
(RECOGNISED BY THE N.F. RLY. ADMINISTRATION)

CENTRAL OFFICE : 186/B, ADARSHA COLONY, MALIGAON, GUWAHATI- 781 011 (ASSAM)

Ref. No. N.F./OBC/ASSN/

Date : 21-1-02

- 2 -

President :

Sri G. M. Taresh

Working President :

Sri P. K. Nath

Sri Naba Phukan

General Secretary :

Sri B. C. Kumar

Jt. General Secretary :

Sri Suresh Kumar

Sri Sunil Kr. Yadav

Sri Pradip Manjhi

Treasurer :

Sri A. C. Das

Office Secretary :

Sri Bijay Kr. Singh

In our considered opinion, in this particular case, it is not necessary to observe the policies laid down in Master Circular - 22 for following reasons :-

- (a) Master Circular - 22 is very much confined to absorption of surplus staff, arised on the change of traction, closure of steam Loco Sheds, Marshalling Yards, Goods Sheds etc.
- (b) Posts as such, identified as surplus, a formal Office Order have had been issued immediately surrendering such surplus posts notwithstanding to availability of "Live" posts in other category in which they would be absorbed.
- (c) Thus staff rendered surplus, posts of them must have had been surrendered, and the posts surrendered must have had been strucked off from the relevant cadre register, based on formal orders already issued.
- (d) Employees should be rendered surplus from Junior most, as per instruction laid down in para 4.5 in the Master Circulars - 22.

Whereas, in the case of solving excess operation of coach Attendant posts none of the above mentioned criterias is conforming to Master Circular - 22.

In view of the above it is appreciated as not to treat this issue at par surplus staff coming under the purview of Master Circular - 22. Ofcourse Master Circular-22 nowhere opposed to honour the Roster Point. Hence, it is requested to issue instruction to Division for absorbing the excess Coach Attendants in T.C. Category following instruction issued on 4th December, 2001.

Thanking you. With regards,

Yours faithfully,

21/1/02
(B.C.Kumar),
General Secretary.

N.E. RAILWAY

Office of the
General Manager(P)
Maligaon, Guwahati- 11

No.E/210/46 Pt.III (T) Commr. (Loose)

dated. 31 /01/02

To,
DRM(P) /APDJ

Sub : Re- deployment of surplus CA.

Ref: 1) GS/NFREU/PNO's letter No.EU/SR/APDJ dated 19-12-2001. ✓
2) GS/NFRMU/PNO's letter No. MU/C/5/02 dated 23-01-2002. ✓

Your attention is invited to this office letter of even number dated 26-07-2001 and 04-12-2001 wherein it was intimated that the exchange of roster point is not permissible in absence of adequate number of OBC candidates. ✓

The above issue was further examined in reference to GS/NFREU/PNO & GS/NFRMU/PNO's letter under reference and it has been further decided by AGM/MLG as under :-

"Question of de-reserving does not arise but general category surplus staff may be re-deployed against OBC DR Quota and backlog through forward."

Necessary action may please be taken accordingly.

17 Res for OBC

(L. B. SINGH)
APO/T

for General Manager(P)/MLG

Copy forwarded for information and necessary action to :-

- 1) DRM (P)/KIR, LMG, TSK.
- 2) The General Secretary/NFREU/PNO in reference to his letter No. EU/SR/APDJ dated 19-12-2001.
- 3) The General Secretary/NFRMU/PNO in reference to his letter No.MU/C/5/02 dated 23-01-02.

Almondani

for General Manager(P)/MLG.



Attested
Anu. Mohr
Advocate

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

IN THE MATTER OF :

O.A. No. 35 of 2002

H.F. Railway O.B.C. Employees
Association.

... Applicant

— Versus —

1. Union of India.
2. The Additional General Manager, N.F.Railway, Morigaon.
3. The Railway Board, Rail Bhawan, New Delhi.
4. The General Manager (P), N.F. Railway, Morigaon.
5. The Chief Personnel Officer, N.F.Railway, Morigaon, Guwahati.
6. The Divisional Railway Manager, N.F.Railway, Alipurduar Junction, Alipurduar.

... Respondents .

— AND —

IN THE MATTER OF :

Written Statement for and on behalf of the
respondents.

The answering respondents most respectfully beg to sheweth as under : _____

— 2 —

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.
3. That, the applicant has got no right for filing the application. There are two recognised Unions/Associations of Railway Employees which are affiliated bodies to the AIRF and NFIR (the recognised apex bodies) and actions of the Railway administrations have been taken as per consensus opinion/decision of those bodies forwarded to the Railway Administration.
4. That, the application is not maintainable in its present form and is fit one to be dismissed in limine.
5. That, save and except the statements of the applicants which are admitted specifically herein below or are borne on records, all other averments/allegations of the applicant are denied herewith and the applicant is put to strict proof thereof.
6. That, the case suffers from ~~C~~ mis-joinder of the parties i.e. the Railway Board. In this connection, it is submitted that so far as Group-C and D staff of Zonal Railways are concerned the appointing authority is the General Managers or the delegated Officers of the Zonal Railways. Sections 3 and 4 of the Railways Act also provides for the Constitution of the Zonal Railway and appointment of General Managers for each Zonal Railway. In terms of the Scheme of the Railways Act the General Manager is the In-charge of Railway Administration and, the Railway Board, as such, may exercise certain limited powers over the entire system of Indian Railways.

Contd....3

As the Railway Board has got little to do or interfere in this case, which is within the competence/jurisdiction of the individual Railway administration, this application is liable to be dismissed on the ground of mis-joinder of parties.

The provisions of the order of the 1st Schedule to the Civil Procedure Code and Section 80 CPC (Civil Procedure Code) are also pointer in this regard.

In view of above, the name of the Railway Board as a party in the case warrants deletion from the application.

7. That, the respondents have been advised to confine their statements only on those averments of the applicant in the application which are considered to be relevant for the purpose of decision in the case and as such meticulous denial of each and every statement in the application has been avoided without admitting correctness of all such statements which are not specifically denied.

8. That, with regard to averments at paragraph 4.1 of the application it is submitted that in view of what have been stated at paragraph 3 of the Written Statement, it is not agreed that the Association is the only body to protect the right of the O.B.C. Communities or the Association has got right to file the application on behalf of all the O.B.C. Community members.

It is to submit herein that the SC/ST and the OBC Association will confine to welfare activities only and not indulge in Trade Union Activities as per Bye laws of Association.

9. That, with regard to averments at paragraph 4.2 of the application it is to state that the contentions of the applicants are not correct and hence denied. It is, however, pertinent to mention herein that in Alipurduar Division of the

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N.F. Railway, 40 Nos. manned posts of Coach Attendants were declared as surplus due to shrinkage of work vide DRM(P)/Alipurduar Junction's Memorandum No.E/41/21(T)Comm/ AP Loose dated 11.6.2001 and as such staff could not be thrown out and the supernumerary posts of 40 Nos. had to be created at the heavy cost burden on the Railways for paying them money with no work. It was decided with consultation of both the recognised Trade Unions of the N.F. Railway, viz. N.F.Railway Employees' Union (affiliated to NFIR) and N.F. Railway Mazdoor Union (affiliated to AIRT) ~~for~~ re-deployment of such surplus Coach Attendants as Ticket Collector as per precedence of Northern Railway, giving one time exception in this case of re-deployment, specifying minimum educational qualification as Class VIII, ^{that} and their suitability to be adjudged/screened by mode of Viva-Voce test, against the Direct Recruitment vacancies (D.R. quota) of Ticket Collectors in Grade II.3050 - 4590/- vide GM(P)/MLA's letter No.E/201/46/Pt.III(T)Comm/ (Loose) dated 3/4.5.2001. There was no illegal action in it when the question of re-deployment is concerned. The supernumerary posts on which the surplus Coach Attendants were kept, are being paid salary without any work till they are absorbed. Thus, there is huge financial burden on the Railway's/Governments exchequer for continuance of the surplus Coach Attendants on supernumerary posts. So, D.R. (Direct Recruitment) quota vacancies were worked out upto 31.12.2003 period of which the Community vacancies were as under :

U.R. - 9

O.B.C. 17

S.C. - 86

S.A.T. = 01

Total : 33 (i.e. 33 vacancies were found as per P.B.R.)

Thus, 33 vacancies of Coach Attendants could be found available as per 'Post Based Roster', where as, the availability of Coach Attendants as per community-wise break up were as under :

U.R.	-	37
O.B.C.	-	Nil
S.C.	-	06
S.T.	-	05

Total : - 48 (i.e. Total strength of Alipurduar Division).

In view of above, the proposal for filling up O.B.C. vacancies by U.R. (Un-reserved) candidates came into consideration as there was no O.B.C. candidates available amongst the surplus Coach Attendants while issuing the impugned order.

It is also to mention herein that as there is no provision for de-reservation of reserved posts as per Post Based Roster system applicable from 10.2.1995, the matters regarding the 'exchange of the Roster point' as well as 'de-reservation' could not be agreed to initially under General Manager (P), N.F. Railway, Maligaon's letter No.E/210/46 P.III/Comnl.(Loose) dated 4.12.2001. However, in pursuance to the discussions held with both the recognised Associations (i.e. Railway Unions), The N.F. Railway Mazdoor Union and The N.F. Railway Employees Union) re-deployment of general category surplus staff against O.B.C. Direct Recruitment Quota was resorted to clearly mentioning that question of 'reservation' does not arise and the backlog be thrown forward only. Thus, it will be well evident that it was clearly stipulated that O.B.C. backlog may be filled up in future and this protective decision had to be taken for better utilization of existing surplus man power and avoiding loss to the exchequer.

It is denied that the letter dated 30.1.2002 for re-deployment of General category surplus staff against O.B.C. Direct Recruitment Quota was issued on the basis of pressure brought by vested interested personnels etc. as alleged. Rather, it is well evident that the decision is not illegal if the matter is considered in the widest perspective taking the factual aspects of cadre position as well as the financial/national perspective. Surplus staff/workers need to be utilized judiciously and promptly with a view to make the organization functional, particularly in Railways where social service with financial viability always matters. The idle surplus staff is an unwanted burden on the Government Organization/Railways and no Organization can remain a silent spectators to the huge drainage of Government money for no return in turn, especially when the work force and as well as place for their utilisation are available.

10. That, with regard to averments/contentions of the applicant at paragraph 4.3 of the application it is stated that from the General Manager (P), Maligaon's Order dated 31.1.2002 it will be quite evident that it was a clear message that the question of de-reservation did not arise but General category surplus staff may be re-deployed against O.B.C. Direct Recruit quota and the back-log of O.B.C. Direct Recruit quota should be only be thrown forward. Thus, the interest of O.B.C. Community does not hamper when provision has been made for protection of their interest. Question of deviating the Hon'ble Supreme Court's decision in R. K. Sabharwal Vs. State of Punjab etc. does not arise. Principle of post based roster system is well maintained and question of deviation from the circular dated 2.7.97 as mentioned by the applicant did not arise.

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11. That, with regard to averments at paragraphs 4.4 and 4.5 of the application it is submitted that the contentions of the applicant as expressed in these paragraphs are quite incorrect and hence denied. It is quite a wrong assertion that the reason for shrinkage effected in the cadre of Coach Attendants should be made known to the applicant. It is too much an expectation on the part of the applicant to aspire so when policy decision at administrative level are prompted and backed by national interest/consideration, more so, when financial aspect of the mother organisation (Railways)/Government are involved. In fact the surplus posts of Coach Attendants have been identified by the Railway Administration after detailed review of the working system, and the memorandum has been issued accordingly by the Railway Administration vide DRM(P)/Alipurduar Jn's Memorandum No.E/41/21(T) Coml/AP(Loose) dated 11.6.2001 declaring 40 occupied posts as surplus with simultaneous creation of 40 supernumerary post so that payment etc. of these 40 surplus staff may not be held back for want of posts and existing Railway staff on role do not suffer till the period of fixing them at least temporarily or so against any working post.

12. That, with regard to averments at paragraph 43 of the application it is reiterated that as already stated at foregoing paragraph 9 of this written statement, a policy decision was communicated vide General Manager(P), N.E. Railway, Maligaon's letter No.E/201/46/Pt.III(T)Loose dated 26.7.2001 to re-deploy those surplus Coach Attendants who possess the educational qualification up to Class VIII standard (i.e. Class VIII pass), to the post of Ticket Collector in Scale Rs.3050 - 4590/- against the Direct recruitment quota for O.B.C., maintaining post-based roster, after judging their suitability on the basis of Viva-Voce test etc.

It is also reiterate herein that the vacancy of D.R. Quota in Ticket Collector category against which redeployment of Coach Attendants was to be made was calculated upto 31.12.2003 period and the same is as under :

U.R.	-	09
S.C.	-	06
S.T.	-	01
O.B.C.	-	17
<hr/>		
Total : 33 posts		

and at that ~~present~~ moment, there was no eligible O.B.C. candidate in the Coach Attendants cadre to be posted against the Ticket Collectors post as mentioned in foregoing paragraphs of this Written Statement.

13. That, with regard to averments at paragraphs 4.7 and 4.8 of the application it is admitted that the General Manager (P), N.F.Railway, Maligaon vide his letter No.E/201/46/Pt.III(T)Coml(Loose) dated 26.7.2001 clarified that post based roster (P.B.R.) is to be maintained while filling up the vacancies of Ticket Collector's category against D.R. quota. The letter No.E/210/46/Pt.III(T)Coml(Loose) dated 4.12.2001 clearly stated/clarified the position regarding question of exchanging the roster point etc. as raised by the applicant and hence needs no further elaboration. All those are matters of record.

14. That, the averments/contentions made at paragraph 4.9 of the application is not wholly correct. No assurance whatsoever was given to the applicants as alleged. The letter of General Manager (P)'s No.E/210/46/Pt.II(T)Coml(Loose) dated 31.1.02 well clarifies the stand and requires no further elaboration.

15. That, with regard to averments at paragraph 4.10 of the application it is stated that while processing the cases of surplus Coach Attendants and their re-deployment to the posts of Ticket Collector against D.R. Quota it was observed that sufficient number of O.B.C. community staff are not available in the surplus Coach Attendants list for deployment against Post based community D.R. quota of Ticket Collector.

After having the factual position and for the purpose of better utilisation of the surplus Coach Attendants, General Manager (P) again clarified its decision vide letter No.E/210/46/Pt.III(T)Coml(Loose) dated 31.1.2002 stating that the surplus staff may be re-deployed against the vacancies in the existing O.B.C. Direct Recruit quota and the back-log thrown forward as not to hamper the interest of future eligible O.B.C. candidates.

It is also to mention herein that the existing provisions of rules etc. were also kept in view while processing the cases of the surplus Railway staff (Coach Attendants). At para 6 of the Master Circular No.22 it has been laid down that "the Railway Board desire that the recognised Unions should also be advised in time, as far as possible, about the number of staff likely to be rendered surplus and the station where they are, and their views, as far as possible, may also be obtained regarding their re-deployment."

16. That, with regard to averments/allegations at paragraphs 4.11, ~~and~~ 4.12 and 4.13 of the application, it is to state that it is not expected that the applicant should have access to the official files or quote some noting of some official in those files, and, these are official secrets. However, it is to state that whatever actions have been taken in the case, have

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Plakshu Singh
R.R. Officer
Date 7-1-02
R.R. Officer
Date 7-1-02

have been taken after due consultation with the recognised Unions keeping in view of the Railway Board's Circulars etc. As stated in the foregoing paragraph of this written statement, in the Order dated 31.1.2002 it was clearly stipulated that the back-log of O.B.C. quota should be thrown forward. As such, question of hampering the interest of O.B.C. candidates does not arise especially when no O.B.C. candidates are available in the list of Coach Attendants rendered surplus.

It is also clarified herein that in obedience to Hon'ble Tribunal's Stay Order dated 4.2.02, no action has yet been taken based on General Manager(P), Maligaon's letter dated 31.1.2002.

Further, being head of the N.F. Railway Organisation, Additional General Manager on behalf of the General Manager can decide any issue related to Industrial Relation in consultation with the recognised Unions as per paragraph 6 of the Master Circular No.22. The allegations of illegality or of vested interest or extraneous consideration etc. as made by the applicant are all unfounded and unacceptable and hence are denied herewith. It is also quite evident that the decision of the Railway Administration was based on factual position and for better utilisation of surplus staff and there has been no violation of any standing instructions of the Railway Board.

17. That the allegations made at paragraph 4.14 of the application are denied herewith. It is to mention herein that General Manager (P), N.F. Railway, Maligaon's letter dated 31.1.2002 does not affect the interest of O.B.C. community since it has clearly been made clear and clarified by the competent authorities that the back-log D.R. Quota should be

(b) Pradeep Kumar Singh
Office: 11/11/1978
Date: 25/2/1982
R.C. No. 252

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thrown forward. Further, there is no O.B.C. candidate in Coach Attendants cadre whose promotion or prospect has been affected or who is eligible to be promoted. In fact, in the surplus list there is no O.B.C. candidate as reveals from records and 4 staff (Surplus CAs) have now produced records claiming as O.B.C.

18.(a) That, with regard to averments at paragraphs 4.15 and 4.16 of the application it is to submit that the contentions of the applicant as put forward through these paragraphs are not correct and hence denied. It is to submit herein that post-based resters have not been affected at all. But it cannot be accepted that if no suitable candidate is not available in the particular community then the posts should be kept unfilled/unmanned for any period of time till a particular community man is available. Such argument cannot be accepted.

(i) On work consideration when Railways work will suffer for keeping the posts unmanned.

(ii) When idle surplus suitable staff (Railway men) are awaiting to be put to work/engaged, and in default, these staff will have to be paid from Government/Railways revenue for no work.

(iii) Railway is not only a Government concern but also is to conform to Commercial requirements and its financial position cannot be ignored.

(iv) When clear provision have been made to the effect that D.R. quotes remaining unfilled for want of suitable hands should be thrown forward and thus the interest of future eligible hands of the particular community is protected etc.

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Madhu Bhattacharya
Office No. 101
CII, 7th Floor
Chhatrapati Shivaji Terminus
Mumbai - 400 001

18.(b) It is to reiterate herein that the office letter dated 31.1.2002 clearly showed that there is neither any question of de-reservation nor ignoring the O.B.C. community's interest, but it clearly indicated that the back-log D.R. quota of O.B.C. should be thrown forward. In such situation, in the particular case no question of imbalance, as alleged, arises as the said O.B.C. quota is meant for 'Direct Recruits' and these D.R. quota may be filled up in future against vacancies.

As regards the contention that there are 4 O.B.C. personnel amongst the surplus Coach Attendants, it is to state that these 4 personnel have now come up with their claim and no records showed that they were O.B.C. candidates. However, their cases are under examination, their claim being judged on verification of service records, documents/new certificates produced for O.B.C. ~~will be judged before embarkation~~ and their cases for suitability and absorption are under process ~~their claim as member of O.B.C. community~~. However, in no case, interest of O.B.C. candidates will be ever looked, if found eligible and suitable.

19. As no eligible O.B.C. candidates are awaiting for being posted as Ticket Collector, the assertion regarding conversation etc. in between such staff and respondent No.6 i.e. DRM/Alipurduar Jn. did not arise and same is not admitted. The allegations as regards vested interest is emphatically denied.

20. That, the contention of the applicant as made in paragraph 4.17 of the application is quite unacceptable and ^{Consonance} not in over-all national interest. The national Government cannot remain as an on-looker/spectator to any wasteful expenditure or drainage of Government money for unproductive purpose.

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Plaider Kuma Singh
S/o Shri Shambhu Singh
C/o Shri Shambhu Singh
11/10/2011

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to satisfy any particular person or community, where foremost consideration is 'Nation's interest'. The operation of 40 supernumerary posts only for those surplus staff without any work is a clear proof of national wastage and it is the duty of every citizen of the country to find some work place for productive use of these idle labour force especially when several vacancies are awaiting to be manned in the Railway organisation itself.

In this connection it is to mention here that practically there is no utilization of such surplus staff. They are paid in full without fruitful work which involve huge financial loss unless otherwise not deployed at the earliest against suitable posts.

The supernumerary posts were created in 2001 under Office Memorandum No.E/41/21(T)Coml-AP(Loose) dated 11.6.2001. This decision regarding putting these surplus Coach Attendants observing some procedures in the T.C. Category was taken for better utilisation of men power and also after having discussion with both the recognised Labour Unions of this Railway by the competent authority and on over all financial consideration of this Railway.

21. That, in regard to statements made at paragraph 4.18 of the application it is to state that the allegations of illegality, arbitrariness and discrimination or showing favour to persons close to ~~pmk~~ powers etc. are quite baseless allegations and hence emphatically denied herewith.

It is to submit herein that :

(a) Coach Attendants are Group-D category staff in scale Rs.2650 - 4000/- while Ticket Collectors are Group-C posts in scale Rs.3050 - 4590/-.

(b) C.A's are having avenue of promotion to the post of Ticket Collector.

Further, there is nothing illegality or arbitrariness etc. in managing the surplus idle workforce of the Railways fruitfully without depriving any one's interest especially when upto this date ^{of issuing the orders} no O.B.C. eligible candidate are on record.

22. That, with regard to averments made at paragraphs 4.19 and 4.20 of the application it is submitted ^{that} except those statements which are on record or are specifically admitted herein below all other allegation/averments of the applicants are denied herewith and the applicant is put to strictest proof thereof.

It is also to submit herein that :

- (a) Already 11 numbers of Vocational Course candidates have already been appointed as Commercial Clerk in Alipurduar Division in scale Rs.3200 - 4900/- which is higher than Ticket Collector's scale in Rs.3050 - 4590/-.
- (b) The Vocational Course candidates who are awaiting for appointment are meant for Lumber Division against the Divisional quota for such appointment.
- (c) The applicant has not specifically stated as to the particular number of posts and under whom such posts are lying vacant etc. Further no specific mention of other categories has been pointed out in the application as to conduct the special drive to fill up O.B.C. vacancies. As such the allegations have been made in vacuo and are unacceptable.

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23. That, in regard to averments/allegations at paragraphs 4.21, 4.22, 4.23 and 4.24 of the application, it is submitted that none of allegations are correct and hence denied. All actions have been taken in pursuance to extant rules and orders on the subject and as per consultations etc. with recognised service Unions and the orders so far issued on the subject will clearly exhibit that :

(a) interest of eligible O.B.C. candidates have been protected.

(b) competent authorities passed the order as per rules.

Further, in obedience to the Hon'ble Tribunal's Order, no steps for filling up the posts on or after passing of the orders have been taken, though the surplus idle workers borne against supernumerary posts are to be paid full pay etc. without any work.

24. That, with regard to the grounds cited and the relief sought for and legal provisions as mentioned at paragraphs 5 and 8 of the application it is submitted that in view of what have been stated/submitted in the foregoing paragraphs of this written statement, none of the grounds put forward by the applicants are sustainable under law and rules in vogue and in view of the nature and fact of the case and hence these are emphatically denied herewith.

Further, none of the relief claimed by the applicant at paragraph 8 of the application are admissible under rules, law and merit of the case and hence these are liable to be rejected.

For ready perusal the following remarks, in brief, are also submitted herein below on the points (grounds) raised against the paragraph 5 of the application :

(1) 40 nos. of Coach Attendants were declared as surplus due to shrinkage of work vide DRM(P)/ Alipurduar Jn's Memorandum No.E/41/21(T)Com1/AP(Loose) dated 11.6.2001 with simultaneous creation of 40 nos. supernumerary posts as to ensure these surplus Railway workers to draw full pay etc. without work till they are fruitfully engaged against any working posts.

(2) That, the following 'D.R.quota vacancies' and worked out upto 31.12.2003 are found to be available in the Ticket Collectors category and community-wise break up is as under :

U.R. - 09

O.B.C. - 17

S.C. - 06

S.F. - 01

Total : 33 as per P.B.R. (i.e. Post based Roster).

Whereas the availability of Coach Attendants as per community-wise break up are :

U.R. - 37

O.B.C. - Nil

S.C. - 06

S.T. - 05

Total : 48 in Alipurduar Division.

(3) There has been no deviation in rigidly observing the principle of P.B.R. as laid down in Sabharwal's case applicable from 10.2.95.

(4) The operation of supernumerary post has had been causing un-necessary huge drainage of money in the form of pay etc. for these 40 unemployed surplus Coach Attendants whereas a good number of vacancies are existing in APDJ Division against D.R. quota of Ticket Collectors.

(5) No eligible O.B.C. candidates were available to be posted against 17 vacancies of the D.R. quota Ticket Collectors Cadre and as such not only unnecessary expenditure is to be made by Government of India (Railways) but the idle surplus Coach Attendants are remaining un-employed/un-engaged, and work in Ticket Collectors Cadre is suffering for want of required staff.

(6) Administrative Orders were issued in pursuance to the provisions of rules, orders of the Railway Board, Master Circulars etc. and by the competent authorities like General Manager (P), Additional General Manager of the N.F. Railway and that too after due consultation with the recognised Unions of the employees of the N.F. Railway.

(7) The orders for re-deployment of surplus staff were passed with clear protection of the O.B.C. candidate like putting the clause "thrown forward of the back-legs of the O.B.C. in Ticket Collectors cadre" etc.

(8) The direct recruit quota of O.B.C. category does not affect the interest of any of the existing Coach Attendants in Alipurduar Jn. Division.

S.B

Pradeep Kumar Singh
S.R.I. (R.A.)
S.R.I. (S.C.)
S.R.I. (S.G.)
S.R.I. (S.W.)
S.R.I. (S.Y.)

-: 18 :-

(9) The next promotional prospect of Coach Attendants is Ticket Collector.

(10) Cases of 4 persons who now wants to say that they are O.B.C. Category, are under examination and action is being taken for necessary consideration of the cases, if they are found to be eligible / suitable.

(11) In obedience to the blanket Order of the Hon'ble Tribunal dated 4.2.02 re-deployment of all surplus Coach Attendants have been kept suspended especially when there was no eligible O.B.C. candidate in the list of surplus Coach Attendants to be posted as Ticket Collector.

(12) The surplus Coach Attendants are to be paid from Railway/Government revenues and huge amounts per month in the form of wages and other privileges etc. are to be paid to them for no work and as such over all public interest is suffering.

25. That, it is submitted that all the actions taken into the case by the respondents are quite legal, valid and proper and after due application of mind by the Competent authorities and that the present case of the applicants is based on wrong premises and suffers from mis-interpretation of rules and laws etc. on the subject.

26. That, the answering respondents crave leave of the Hon'ble Tribunal to permit them to file additional Written Statement in future, if found necessary after receipt of further informations/records etc. for ends of Justice.

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27. That, under the facts and circumstances of the case, as stated in the foregoing paragraphs of the Written Statement, the instant application is not maintainable and is liable to be dismissed.

VERIFICATION

I, PRADEEP KUMAR SINGH son of SHRI BHUP LAL SINGH aged about 35 years by occupation Railway service now working as DY CHIEF PERSONNEL OFFICER N.F. Railway Administration, Maligaon, Guwahati do hereby solemnly affirm and state that the statements made in paragraphs 1 and 7 are true to my knowledge and those made at paragraphs 8, 9, 10, 11, 12, 13, 15 and 16(b) are based on informations and records of the case which I believe to be true and the rest are my humble submission before the Hon'ble Tribunal and I sign this verification on this 26th day of April, 2002.

Pradeep Kumar Singh
NORTH EAST FRONTIER RAILWAY
MALIGAON :: GUWAHATI-11
FOR AND ON BEHALF OF
UNION OF INDIA.

प्रदीप कुमार सिंह (राय.)
Dy. Chf. Personnel Officer (D)
प्रदीप कुमार सिंह-781011
प्रदीप कुमार सिंह-781011

24.6.02

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Filed by
Abha Das
Advocate
18/6/02

THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH
GUWAHATI

D.A. No. 35 of 2002

N.F. Railway O.B.C. Association

- Vs -

Union of India & Ors.

IN THE MATTER OF :

An Affidavit-in-reply to the written statement filed by the Respondents :

AFFIDAVIT-IN-REPLY

I Shri Binod Chandra Kumar, aged about 47 years, son of Late K. Kumar, resident of Malligaon, Guwahati, do hereby solemnly affirm and state as follows :

1. That I am the Secretary of the Applicant association and as such I am fully conversant with the facts and circumstances of the case. I am authorised to take steps in the abovenoted application on behalf of the Applicant Association.
2. That a copy of the written statement filed by the Respondents, has been perused by me, and I fully understood the contents thereof. Save and accept the statements that I specifically admitted to herein

below, all the averments, made in the write statement shall be deemed to have been denied by the deponent. The deponent further does not admit anything contrary to the relevant records of the case.

3. That with regard to the statements made in paragraphs 2, 3 and 4 of the written statement, your deponent denies the same and states that the arbitrary and illegal action on the part of the authorities in deciding to fill up the post meant for OBC in the cadre of ticket collectors through general category candidates in clear violation of the extent instructions, has given rise to the cause of action leading to filing of the original application. The averments that the Applicant association is an unrecognised organisation clearly displays total non-application of mind in as much as the N/F Railway Administration vide letter dated 9.3.99 has granted recognition to the Applicant association in terms of the directives passed by Railway Board in this connection.

A copy of the letter dated 9.3.99 is annexed as
Annexure-A.

4. That with regard to the statements made in paragraph 6 of the written statement, your deponent denies the correctness of the same and state that the railway Board is a necessary party to the dispute raised in the original application, inasmuch as the same relates to policy decision. The Railway

Administration at the Zonal level is not empowered to take decisions as regards the disputes raised in the original application, inasmuch as no power has been delegated to relax, modify and alter the recruitment rules. Further the Zonal administration has got no compliance to deviate from the recruitment rules even if the same is for a temporary period.

5. That with regard to the statements made in paragraph 8 of the written statement, your deponent denies the same and states that the Applicant association was formed specifically with the objective of protection of the interest of the members of the OBC community. Further the Railway Board vide letter dated 28.8.97 has clearly specify that the Applicant association is entitled to raised matters regarding appointment/harassment/discrimination in providing reservation and other benefits including concessions/relaxation to the OBC employees.

A copy of the letter dated 28.8.97 is annexed as
Annexure-B

6. That the deponent denies the correctness of the statements made in paragraph 9 of the written statement and reiterate the statements made in 4.2 of the original application. The Respondents have admitted that the surplus coach attendants are being sought to be adjusted against the direct recruitment vacancies available in the cadre of "Ticket Collectors" including the 17 posts meant for OBC's. The said re-deployment

has been stated to have been done by giving one time exception and by relaxing the recruitment rules.

As can be inferred the said decision for redeployment of the surplus staff was taken at the Zonal level. The Zonal administration has not been delegated with the power for taking of such decision more particular in matter requiring deviation from the Recruitment Rules. As such the decisions as impugned in the original application is void ab-initio and cannot be acted upon. Only because in another Zonal Railway such action was taken, cannot be construed as legitimacy such illegal actions.

The Respondents having admitted that no de-reservation of the reserved post being permissible, the post meant for OBC's cannot be utilised for accommodating general category candidates. As per the averments made it is clear that such decision has been arrived by the Railway Administration due to the pressure mounted on by organisation mentioned in paragraphs under answer. In the event the decision is allowed to be implemented, OBC candidates would be deprived of their due and legitimate expectation of being appointed in the said post.

It is not denied that the railway Administration is entitled to utilise the staff in the manner as deemed fit and proper, but such utilization much confirm the rules and regulation holding the field.

7. That with regard to the statements made in

paragraph 10 of the written statement, your deponent denies the same and states that the authorities by the impugned action are trying to do something indirectly, which is not permissible directly. De-reservation not being permissible, the post meant for OBC candidates cannot be utilised for accommodating general category candidates that too, in clear violation of the rules holding the field. Even there are persons belonging to OBC community eligible for being appointed as ticket collectors but their cases have been ignored.

B. That with regard to the statements made in paragraph 11 of the written statement, your deponent denies that the correctness of the same and reiterates the statements made in paragraphs 4.4 and 4.5 of the original application. The possession of the Master Circular dated 27.3.91 has been violated in the case on hand. The declaration of persons as surplus and their re-deployment are two separate and distinct matters and both these matters are to be carried out by the authorities in strict adherence to the procedure prescribed. No deviation from the procedure prescribed is permissible.

9. That with regard to the statements made in paragraph 12 of the written statement, your deponent denies the same and reiterates the statement made in paragraph 4.6 of the original application. The decision for the re-deployment of the surplus coach attendants were taken the Zonal level. Further such re-deployments

was to be done by relaxing the qualifications prescribed for the post of ticket collectors in the recruitment Rules. The Zonal administration not been empowered to take decision on matter requiring relaxation of recruitment Rules, the decision taken for re-deployment of the surplus coach attendants against direct recruitment quota meant for OBC's in the cadre of Ticket Collectors is void ab-initio. It is also denied that there are no OBC candidates eligible for being considered for appointment against the quota meant for them in the cadre of Ticket Collectors.

10. That with regard to the statements made in paragraph 13 of the written statement, your deponent states that the Respondents have admitted the correctness of the statements made in paragraph 4.7 and 4.8 of the original application. The letters dated 26.7.2001 and 4.12.2001 (Annexure-2 to the OA) depict the correct procedure prescribed under the Rules and no deviation is permissible from the position clarified vide the said letters.

11. That with regard to the statements made in paragraph 14 of the written statement, your deponent denies the same and reiterates the statement made in paragraph 4.9 of the original application. The Respondents have vide letter dated 31.1.2002 (Annexure-4 of the OA) sought to circumbend the rules/instruction holding the field without any authority. The said letter dated 31.1.2002 is also in clear deviation from the position clarified in the letter dated 4.21.2001

and no reason has been set forth for such direction.

12. That with regard to the statements made in paragraph 15 of the written statement, your deponent denies the same and reiterates and reaffirms the statements made in the foregoing paragraph of the reply and in paragraph 4.10 of the original application. As stated earlier, the declaration of the persons as surplus and their re-deployments are two different and distinct matters and both these matters are to be done in strict adherence to the procedure prescribed. The Zonal administration not being delegated with the power to modify/alter/relax the provision of the Recruitment Rules. The decision taken at the Zonal level for the re-deployment of surplus coach attendants by accommodating General category candidates against the posts meant for OBC's by relaxing the Recruitment Rules is void ab initio. Further the Applicant association was never consulted in the matter. De-reservation not being permissible, the general category candidates cannot be accommodated against the direct recruitment quota meant for OBC's.

13. That with regard to the statements made in paragraph 16 of the written statement, your deponent denies the correctness of the same and reiterates and reaffirms the statements made hereinabove. The deponent states that the members of the Applicant association during the interactions they had with the authorities of the N.F. Railway Administration to come together

about opinion given by various authorities in connection with the matter raised in the original application. The Respondents have not denied the correctness of the statement made in paragraph 4.11 of the original application. The letter dated 31.1.2002 (Annexure-4 to the OA) has been issued in clear violation of the extent Rules/instructions and the same is the result of the pressure mounted on the authorities by the persons interested.

It is denied that the railway Administration at the Zonal level has the competence to take decisions on matters requiring relaxation of the recruitment Rules. The impugned decisions on the part of the Railway Administration as communicated vide letter dated 31.1.2002 is in clear violation of the extent rules and instruction issued by the railway Board.

14. That with regard to the statements made in paragraph 17 of the written statement, it is denied that the impugned decisions as communicated vide letter dated 31.1.2002 will not hamper the OBC community. As stated earlier the said decision is void ab-initio and the same cannot be allowed to be implemented. In addition to persons belonging to OBC community eligible for consideration for appointment as Ticket Collector being available in the feeder cadres. Many candidates belonging to OBC community, selected by the Railway Recruitment Board and who have completed post selection courses are awaiting appointment against post existing in the commercial department of the railways, which

includes the post of "Ticket Collectors". The said persons are not been considered by the Respondents for appointment against post reserved for them and the post reserved for them are being sought to usurped in the name of re-deployment. It is pertinent to mention here that no steps have been taken by the Railway Administration to identify OBC candidates eligible for being considered for appointment as Ticket Collector.

15. That with regard to the statements made in paragraph 18(a) of the written statement, the deponent denies the same and states that the impugned decision as communicated vide letter dated 31.1.2002 which is void ab-initio cannot be justified by any amount of reasoning . What is not permissible under the law cannot be justified by citing irrelevant reasons. It is always open to the Railway Administration to induct OBC candidates against the post reserved for them, if required by conducting special recruitment Drives.

16. That your deponent denies the statements made in paragraph 18(b) and 19 of the written statement, and states that once the post meant for OBC candidates is allowed to be used for the purpose of accommodating general category candidates, the OBC candidates would be deprived of their due appointments in the near future. Under the post Based Roster System, there is clear demarcation of the quota meant for different communities. Roster Points/Post not being allowed to be exchanged, the post meant for OBC candidates cannot be

utilised for accommodating general category candidates.

17. That with regard to the statements made in paragraph 20 of the written statement, your deponent denies the same and states that whatever be the pressing reasons re-deployment cannot be made contrary to the provisions of the Rules and the instructions issued by the railway Board. Any decision contrary to the Rules is liable to be set aside and quashed.

18. That with regard to the statements made in paragraph 21, 22 and 23 of the written statement, your deponent denies the same and reiterates the statement made in paragraph 4.18 to 4.24 of the original application. Further the deponent reiterates and reaffirms the statements made in the foregoing paragraphs of this reply. The decision as communicated vide letter dated 31.1.2002 being beyond the competence of the railway Administration at the Zonal level, the same is void ab-initio and liable to be set aside and quashed.

19. That with regard to the statements made in paragraph 24 of the written statement, the deponent denies the same and reiterates and reaffirms the statements made in the foregoing paragraph of this reply. In view of the facts and circumstances stated above in the original application and in this reply, it is the fit case wherein this Hon'ble Tribunal would be pleased to interfere in the matter and allow the original application by granting the reliefs prayed

for.

It is reiterated that the impugned action is in clear violation of the Rules and the instructions issued by the railway Board from time to time.

19. That with regard to the statements made in paragraphs 25 and 27 of the written statement, it is stated that the impugned action is arbitrarily, illegal and has been done in colourable exercise of power vested on the Respondents only with the view to favour persons close to the powers that be.

The deponent states that the prima facie case have been made up requiring interference of the Hon'ble Tribunal and the decision as communicated vide letter dated 31.1.2002 is liable to be set aside and the original application deserves to be allowed.

20. That the statements made in paragraphs 1,2,4,
6 to 19 are true to the best of knowledge those made in paragraphs 3,5, being matters of records are true to my information as derived therefrom and the rests are my humble submission before this Hon'ble Tribunal.

And I sign this affidavit on this the 18 th day of June, 2002.

Identified by

Prasad Ch. Keenan.

Deponent

Advocate

N. E. Railway

Office of the
General Manager(P)
Maligaon: Guwahati-11

No. E/227/Resv/QBC/Assn

Dated 09-03-99

To:

1. The Executive Director Estt. (Resv)
Railway Board, New Delhi
2. All HODs
3. All DRMs/Sr.DPOs/DPOs
4. All Dy./Distt/Asstt. Officer with independent charges
5. All SPOs & APOs of HQ.
6. Chairman/RRB/GHY
7. GS/NFRMU/PNO
8. GS/NFREU/PNO
9. GS/AISCTREA/MLG
10. GS/AIOBCREF New Delhi
11. GS/NF Rly. OBC Employees Assn., MLG

Sub:- Grant of facilities to All India OBCs Rly Employees Association.

Ref:- Rly. Board's letter No. 96-E(SCT)1/71/5 dated 28-08-97.

GM/NF Railway/MLG has granted the recognition to NF Railway OBC Employees Association/MLG in terms of Railway Board's directive vide letter No. 96-E(SCT)1/71/5 dated 28-08-97 circulated under GM(P)/MLG's No.E/227/Resv/QBC/Assn. dated 10-11-98.

Accordingly, a list of Office Bearers of the NF Rly OBC Employees Association for the year 1999-2000 and 2000-2001 as submitted by the General Secretary is attached herewith for information and guidance.

DA/1 (One)

SPO/RP
for GENERAL MANAGER(P)
NF Railway/Maligaon/Ghy-11

Attested
C. D. D.
Advocate

8/640
B/1
9/3

LIST OF THE OFFICE BEARERS OF NF RAILWAY
OTHER BACKWARD CLASSES EMPLOYEES ASSOCIATION
MALIGAON, GUWAHATI-11.

1. PRESIDENT	Sri S. K. Yadav	- ASM under DRM/KIR
2. WKG. PRESIDENT	Sri M. Singh Dhundla	- CTT/I/II under DCM/GIY
3. WKG. PRESIDENT	Sri C. M. Roy	- OS/II under Principal/Rly HS School/LMG
4. VICE-PRESIDENT	Sri J. N. Roy	- OS/I under Rajbhasha Adhikari/MLG
5. VICE-PRESIDENT	Sri D. N. Roy	- Asstt. Teacher under Principal/Rly HS School/LMG
6. VICE-PRESIDENT	Sri S. B. Paul	- Hd. Clerk under Sr. DPO/APDJ
7. GEN. SECRETARY	Sri B. C. Kumar	- OS/II under CPO/MLG
8. JT. GEN. SECY.	Sri S. Kumar	- Hd. Clerk under CCM/Rates/MLG
9. JT. GEN. SECY.	Sri V. N. Ram	- Sr. TC under DRM/KIR
10. ASSTT. GEN. SECY.	Sri M. Saikia	- Sr. TC under DRM/TSK
11. ORG. SECRETARY	Sri D. N. Bhuyan	- Hindi Asstt. under CVO/MLG
12. ORG. SECRETARY	Sri U. Talukdar	- Clerk under CPO/MLG
13. ORG. SECRETARY	Sri R. A. Singh	- Sr. Clerk under DRM/KIR
14. TREASURER	Sri R. P. Mahto	Sr. Clerk under CPO/MLG
15. OFFICE SECY.	Sri A. Kar	Sr. Clerk under CPO/MLG.

for CENEG
NF Railway, Maligaon/Guwa.

Advocate
Advocate

R.B.E. No. 116/97

No. 96-E(SCT)/1/71/5

New Delhi, dt. 28 8.97

The General Managers,

All Indian Railways/Production Units (including CLW, DLW, ICF, RCF & W&AP)/ MTP(Rlys.), Calcutta/CORE, Allahabad /GM(Const.), N.F.Rly.

OSDs: East Coast Zone, Bhubhaneshwar/North Central Zone, Allahabad /East Central Zone, Hazipur/North-Western Zone, Jaipur/ South-Western Zone, Bangalore/ West-Central Zone, Jabalpur.

The C.A.O.:DCW, Patiala.

The Director General, R.D.S.O., Lucknow, etc. (as per standard list)

Sub: Grant of facilities to All India OBCs Railway Employees Association.

Grant of facilities to Railway Employees Association representing OBC employees has been under consideration of the Ministry of Railways. It has been decided that one such Association in each Zonal Railway/Production Unit who fulfil the following conditions and who apply to the General Manager may be given the facilities as detailed in para 2.

- (i) The Association should be genuine representatives of a majority of Railway employees belonging to the OBC.
- (ii) The aims and objectives of the Association should clearly bring out that it is a welfare Association of genuine OBC Railway employees and the membership should be open to all categories of OBC Railway serving employees.
- (iii) The constitution/Bye-laws of the Association should provide for election by secret ballot of the office bearers at the Zonal level and the Divisional level.
- (iv) The Constitution/Bye-laws should provide that serving OBC Railway employees can only be office bearers of the Association.
- (v) It should be provided for in the bye-laws that Association will not indulge in trade union activities.
- (vi) The registered office of the Association should be at the headquarters of the Zonal Railway/Production Unit.

Attested
Wor
Advocate.

2. An Association satisfying the above conditions and who apply to the General Manager of the Zonal Railway/Production Unit may be given the following facilities:

- a) The office bearers of the Association can have interview with the Liaison Officer for mitigating the grievances of the OBC Railway employees in matters regarding appointment/harassment/discrimination in providing reservation and other benefits, including concessions/relaxations to the OBC employees.
- b) Acknowledgement of communication received from the said Association.
- c) Keeping the said Association advised about the Government's policy of reservation for OBCs.
- d) Supply of establishment policy circulars/letters on policy matters of interest to OBC railway employees.
- e) Holding of informal meetings with the representatives of the Association if so desired by them not more than twice in a year at the Zonal/Production Unit/Divisional levels.
- f) For attending such informal meetings, the representatives of the Association not more than 20 in number may be granted Special Casual Leave and journey passes.
- g) In the informal meetings, notes of discussions may be taken but formal minutes need not be issued. However, copy of the record note of discussions may be given to the Association. In the subsequent meeting when held, the action taken on the previous note of discussions may be apprised to the Association.
- h) Not more than 2 or 3 office bearers of the Association may be issued with the identity cards/gate passes where the entry is controlled by the gate pass system.

Kindly acknowledge receipt.

Ram Prakash
Executive Director Estt.(Res.)

Railway Board

28/8/77

Copy to CRB, FC, MM, MT, MS, ME, SECY., AM(S), AM(F), AM(MTP), AM(ELECT), DG(RHS), DG(RPF), AM(CE), AM(MEC), AM(PU), AM(S&T), AM(COMM), AM(SAFETY), AM(TRAFFIC), AM(STORES), EDPA, EDE(IR), EDE, EDPC, EDE(G), EDA, EDE(T&MPP), EDPA, EDE(N), DE(NG), DE(R), JDE(P&A), JDE(RRB), JDE(REP), DDE(REP)-I, II & JDE(R)I, JDE(D&A), E(REP)I, II, III, Sec.(E), Sec.(ABE), E(NG)I & II, E(LR)I, II, III, IV, E(W), E(SCT)II, E(RRB), E(RB)I, II & IV Branches of Railway Board.

Advocate
V. D. D.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,

GUWAHATI.

IN THE MATTER OF :

O.A. No. 35 of 2002

N.F. Railway O.B.C. Association ... Applicant.

Vs.

Union of India and Ors.

... Respondents.

- AND -

IN THE MATTER OF :

Counter-reply of the respondents to the affidavit-in-reply filed by the applicant against the Written Statement filed by the respondents.

The humble Written reply of the respondents to the affidavit-in-reply given by the applicants in the case, is submitted as under :

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

3. That, for the sake of brevity the respondents have refrained from repeating all the averments as made in the written statement already filed in the case which also contains answer to the allegations as put forward through the present affidavit-in-reply except those matters which are necessary to be referred to specifically for the purpose of proper decision in the case.

4. That, with regard to averments made at paragraph 3 and 5 of the affidavit-in-reply the respondent hereby reiterates their averments at paragraphs 2, 3, 4 and 8 of the Written Statement already submitted in the case. All the allegations as made by the applicant are hereby emphatically denied. It is completely a wrong allegation that, there has been any arbitrary and illegal action on the part of the Authorities in deciding to fill up the posts lying vacant or there has been any non-application of mind etc. as alleged. It is an undisputed fact that the Service Unions, All India Railwaymen's Federation and the National Federation of Indian Railways, are the two apex bodies at the National Level and the over-all interest of the Railwaymen as a whole composed of various communities etc. and the over-all interest of the Railwaymen comprising of all communities and various trades etc. are looked after by them, and, whenever considered necessary besides the above Service Unions, the discussions with the particular representatives of particular trade/community wise Organisations of the existing Railwaymen are held whenever existing employees interest are only affected. It is to mention herein that the national interest and the other organisation's (i.e. the Railway Organisation) interest is prime and these

cannot be sacrificed on the plea of any cadre-wise/community-wise basis especially when the interest of such employees are not going to be affected.

It is reiterated that there has not been any harassment or discrimination in appointment, reservation or other benefits etc. to the ~~existing~~ existing O.B.C. employees as will be well evident that when the impugned orders were passed there was no O.B.C. candidate in the surplus Coach Attendants list. Only 4 persons later on claimed and submitted O.B.C. certificate and on further examination their claim was admitted and these staff were admitted in the test for promotion to Ticket Collector etc. and thus the interest of the existing O.B.C. employees on the roll has not been hampered in any way.

As the surplus Coach Attendants are going to be posted against the vacancies of Ticket Collector in D.R. quota vacancies only and is not going to affect the promotional quota of the existing O.B.C. employees on roll, applicant has got no right to agitate at this stage. Further, it takes long time to complete all the recruitment formalities against the D.R. quota vacancies from open market and it will be quite against the national interest to compel the mother organisation i.e. Railway Administration, to pay salaries etc. to the 40 surplus staff with no work whom vacancies exists in the Railways to utilise them fruitfully and without hampering the promotional quota etc. of the serving O.B.C. employees and Railway Administration has categorically stated that the PBR will be maintained.

It is submitted that the contentions of the applicants put forward by the applicant are quite unjustified and illegal and quite against the over-all interest of the mother organisation as far as its financial aspect and smooth management etc. aspects are concerned and cannot be confined to class interest or for the quota which does not effect existing employees.

It is quite wrong to assert that the Association is the only body to protect the rights of the O.B.C. communities or the Association has got the right to file the application on behalf of all the O.B.C. community members serving in the Railways. It is submitted that there are clear cut demarcation in the sphere of their scope so far compared with the Service Associations affiliated to Apex bodies at national level in respect of various aspects like holding of RHM, PREM etc.

5. That, with regard to averments at paragraph 4 of the affidavit-in-reply, it is submitted that the contentions of the applicant is quite wrong and is based on misconception and mis-interpretation of rules and as such are not accepted as correct. The respondents beg to re-state and re-affirm the their statements made at paragraphs 6 of the Written Statement. It appears, the applicant has quite overlooked the following provisions of rules/laws also :

Sections

- i) Provisions of 3 and 4 of the Indian Railways Act and the Railway Board's subsequent directions to the Railways to approach the Hon'ble Court/Tribunals etc. to delete their

names where Railway Board has got little to do and also matters which can be settled and decided by the Railway administration themselves at Zonal level and also where law/rules permits for such action.

ii) Rule 114 of the Indian Railways Establishment Manual, 1989, Vol-I, which provides as under :

"Rule 114 - Power to relax or modify rules - The General Manager or the Chief Administrative Officer may in special circumstances, and for reasons to be recorded in writing, relax or modify these rules in specific individual cases.

They can also issue orders for deviations from these rules in respect of certain categories or on certain occasions provided such relaxations are purely on a temporary basis.

Railway Board's prior approval is however, required for long term or permanent alteration of the rules.

This power should be exercised by the General Manager or his Chief Personnel Officer personally; but it shall not be otherwise re-delegated."



iii) Sub-Section-III - Recruitment and Training under Chapter I of the Indian Railway Establishment Manual 1989 which also lays as under :

"Rule 117 - The position indicated regarding normal channels of promotion in the following paragraphs in Sub-section are illustrative and not exhaustive and they should not be taken to exclude classes not specifically mentioned which it, may be the recognised practice for a particular administration to admit to any of the groups shown.

It shall, never, be open to the administration to transfer staff from one group to another for which they may be fully qualified but care must be taken to avoid hardship to staff already in the latter group."

iv) Provisions of Master Circular No. 22 - regarding Absorption and utilisation of surplus staff on the Railways, which lays down rules inter-alia as under:

"Para 6 - The Railway Board desire that all the recognised Unions should also be advised in time, as far as possible, about the number of staff likely to be rendered surplus and the stations where they are.

Their views as far as, possible, may also be obtained regarding their re-deployment."

Further at paras 8 and 9 of the said circular it has been laid inter alia as under :

Para 8 - "Utilisation and re-deployment of surplus staff should be given the highest priority and their absorption will have precedence over all other modes of recruitment including screening of casual labour and direct recruitment for filling up the vacancies so that the surplus staff can be first utilised

Para 9 - "There shall be no recruitment in which pests are likely to be rendered surplus and the categories in which surplus staff are likely to be re-deployed. Surplus staff can be absorbed in the existing vacancies against new pests

iv) Creation of special supernumerary pests :

Para 10 - "..... 'Special Supernumerary' pests in the same grade should be created to accommodate the staff rendered surplus..... and should be credited to the "Bank of surplus pests" and maintained in the respective billing Units."

Para 12 - "The incumbents borne against such special "Supernumerary" pests should be re-deployed quickly against other pests by retaining, if necessary."

6. That, with regard to averments at paragraphs 6 and 7 of the affidavit-in-reply it is to state that none of the applicant's contentions and allegations are correct and based on records and hence these are denied herewith. The respondents hereby reiterate their statements made at paragraphs 9 and 10 of the Written Statement submitted in the case. It is quite incorrect to say that the Zenal Railway administration is not competent to take decisions in the matter of re-deployment of surplus staff etc. As has been submitted in

^{4 and 5} foregoing paragraphs 4 and 5 of this reply, by virtue of the provisions made in rules and the various directions of the Railway Board, it was incumbent on the Zenal Railways to take necessary steps for re-deployment of such surplus staff and relieve the Railways/Central Government finance/budget from heavy financial burden caused by creation of 40 supernumerary posts and continue these posts especially in the face when good number of D.R. Quota vacancies are available to adjust such surplus staff subject to maintenance of the post based Roster (P.B.R.) intact for O.B.C. community and keeping provision for filling up these vacancies on thrown forward basis on completion the Direct recruitment process for these vacancies in future.

Further no promotional quota of these ^{existing} staff have been affected and no interest and prospect of the O.B.C. employees on roll in the cadre have been affected.

It is submitted that raising such objection is nothing but is in the nature of putting a leg/halt in the smooth functioning of this organisation and putting more financial burden on the Government exchequer. The ~~coincide~~ legal terminology 'Void Cab-initie' as used in the different paragraphs of this affidavit-in-reply is not at all applicable in this case. Every action have been taken in consequence to extant rules and guidelines prescribed by Railway Board.

It is emphatically denied that there has been any violation of rules or there are eligible persons belonging to O.B.C. community whose appointment as Ticket Collectors have been ignored. As submitted here-in-above, in the surplus list of Coach Attendants only 4 persons have now been found to be of O.B.C. community and their cases have been considered after receipt of O.B.C. certificate ^{etc} from then and out of 4 surplus O.B.C. candidates 3 have already qualified in the Test and they will be absorbed against the O.B.C.'s reserved vacancies in the D.R. quota in the manner discussed in foregoing paragraphs after the stay order of the Hon'ble Tribunal is vacated.

7. That, with regard to averments at paragraph 8 of the affidavit-in-reply it is to state that the allegations of the applicant as made in this paragraph are not correct and hence denied. The averments made at paragraph 11 of the Written Statement is re-iterated. It is quite wrong to say that any provision of the Master Circular has been violated and that the declaration of persons as surplus and their re-deployment are separate etc. The relevant rules etc. have already been submitted in the foregoing paragraphs of this reply and it has been clearly submitted that provisions of Master Circular No. 22 have been faithfully observed and that declaration of surplus must be followed by re-deployment in the manner prescribed by the Railway Board etc. and in the instant case, the respondents had to follow the guidelines prescribed.

8. That, with regard to averments at paragraph 9 of the affidavit-in-reply it is to state that all allegations of the applicant regarding violation of rules etc. are unfounded and hence denied herewith. As have been submitted in the foregoing paragraph 3 of this reply, the extant rules already permits the Zenal Railway Administration :

"for deviation from the rules in respect of certain occasions, provided such relaxations are purely on a temporary basis."

The extant rules also provides that :

"the Railway Board's prior approval, is however, required for long term or permanent alteration of rules."

This power should be exercised by the General Manager or his Chief Personnel Officer personally, but it shall not be otherwise re-delegated."

It is re-iterated that there has not been any illegality in the matter of re-deployment of surplus Coach Attendants to the post of Ticket Collector against the Direct Recruitment quota (especially/the promotional quota) ^{when} has not been affected) and in relaxing the qualifications standard.

It is to mention herein that even in promotional quota the candidates possessing Class VIII standard qualification are eligible to get promotion from 'D' grade category to 'C' grade category. The minimus educational qualification for appointment in group 'D' post is Class VIII.

9. That, with regard to averments/allegation of the applicant at paragraphs 10, 11, 12, 13 and 14 of the affidavit-in-reply, it is submitted that the allegations are quite baseless and have no roots etc. and all these are denied herewith. In this connection the respondents reiterate their submissions made in paragraphs 13, 14, 15, 16 and 17 of their Written Statement already submitted in the case. The allegations regarding violation of rules/instructions without authority etc. as alleged at paragraph 11 of the affidavit-in-reply, ^{that} the Zenal Railway administration are not competent to modify/alter/relax the provisions of the Recruitment Rules ^{that} Rules or, there has been any de-reservation of the O.B.C. quota etc. as alleged at paragraph 12 of the affidavit-in-reply, or the allegations of pressure mounted on the authorities by the persons interested ^{that} there has been violation of Rules and instructions issued by the Railway Board etc. as alleged at paragraph 13 of the affidavit-in-reply, or the allegations that the reserved posts are sought to be usurped in the name of re-deployment or that the eligible candidates have been omitted etc. as alleged at paragraph 14 of the affidavit-in-reply are all denied herewith. The detailed position and supporting rules and also the reasons as to why the Zenal Railway Administration had to take this temporary measure/ steps to re-deploy these huge number of surplus staff who are eating away the huge Government fund each month for no-work/return have already been elaborated/explained in the foregoing paragraphs of this reply, and for sake of brevity these have not been repeated.

10. That, with regard to averments/allegations made at paragraph 15 of the affidavit-in-reply it is to state that the contentions of the applicant are not correct and hence

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denied herewith. In this connection the submissions made by the respondents at paragraph 18(a) of their Written Statement are re-iterated and re-affirmed. It appears that the applicant has failed to realise the 'ground realities' and also 'to appreciate the urgency of re-deployment of all the surplus/ idle hands' who are outside the Coach Attendant's cadre now, and are compelled to be borne against the newly created temporary supernumerary posts for the purpose of making payment of salaries etc. to them without realisation/getting any work from them. Further, as has been submitted in the foregoing paragraph 5 of this reply clear rules/directions have been laid down by the Railway Board which carries with it both directive and mandatory force, some of which are also mentioned herein below for ready perusal :

From paragraphs 8 and 9 of the Master Circular.

Para 8 - "Utilization and re-deployment of surplus staff should be given the highest priority and their absorption will have precedence over all other modes of recruitment including direct recruitment for filling up the vacancies so that the surplus staff can be first utilised"

Para 9 - "There shall be no recruitment in these categories in which surplus staff are likely to be re-deployed."

The allegations/inputation of the applicant about citing of "irrelevant reasons" by the respondents are quite incorrect and are emphatically denied herewith. It is

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Personnel
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Date

submitted that in view of the extant rules/direction for re-deployment of all the surplus staff, the contention of the applicant for holding the special recruitment drive for D.R. quota is also not feasible not only on above grounds but also on consideration of practicability, as processing and finalisation of each recruitment drive in public appointments requires considerable time and the Railway Administration cannot be asked to bear the unnecessary financial burden of these idle surplus Coach Attendants when vacancies in the Ticket Collectors post for their re-deployment is already available at hand and no ~~excess~~ ~~or~~ direct recruits for O.B.C. quota are in hand and especially when re-deployment of Surplus Staff will precede any direct recruitment).

11. That, with regard to the allegations/fears/doubts expressed by the applicant at paragraph 16 of the affidavit-in-reply it is to submit that the applicant has only been sustaining un-necessary fear and doubts which are quite unfounded and unrealistic and hence all such allegations etc. as made in this paragraph are denied herewith. It is to submit that the normal promotional quota and prospects of the applicants (existing employees) have not been affected at all by the impugned orders and the 'post based roster' as prescribed/made mandatory by the Hon'ble Supreme Court in Sabharwal's case will also be maintained and the question of deprivation of these quota is quite unfounded. It is also a wrong representation that the O.B.C. quota as prescribed by Hon'ble Supreme Court is going to be utilised for accomodating General Category candidates.

It is to mention herein that the impugned order is quite clear on the point in which it was clearly stipulated as under :

"Question of de-reserving does not arise but general category surplus staff may be re-deployed against O.B.C. D.R. quota and backlog thrown forward."

In view of such clear elaboration, it is not understood as to what the applicant wants to derive more when alleged impugned orders does not say for utilisation of the promotional quota of the existing employees as per the A.V.C. laid down for promotedees, and the P.B.R. is not going to be affected, and these vacancies in quota will be thrown forward only for being filled up by future Direct recruits ^{after re-deployment of Surplus staff} and the extant rules/directions of the Railway Board etc. clearly provides for re-deployment of surplus staff immediately giving priority on any other mode of recruitment including the Direct recruitment for D.R. quota and the ground situation demands for immediate deployment of those surplus hands on consideration of the Central Government exchequer also.

The respondents also re-iterate and re-affirm their submissions made at paragraphs 18(b) and 19 of their Written Statements with additional submission that the certificates produced lately by the max 4 O.B.C. Coach Attendants borne on surplus Coach Attendant's list, have been found to be in order and out of 4 O.B.C. Coach Attendant's 3 have qualified in the test for being posted as Ticket Collector. The details have been furnished in the annexures as mentioned in paragraph 15 hereafter in this Counter-reply.

12. That the allegations made at paragraphs 17 and 18 of the affidavit-in-reply are quite incorrect and hence denied. The respondents re-iterate and re-affirm their submissions made at paragraphs 20, 21, 22 and 23 of the Written Statement submitted in the case. It is denied that the impugned orders are beyond the competence of the Zonal Railway and contravenes

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Chief Personnel Officer
S. F. R. N. - Malabar
Guwahati

the extant rules or orders etc. of the Railway Board etc. ~~that the impugned orders are~~
~~it is~~ void ab-initio or it is liable to be set aside and quashed.

13. That, with regard to averments made at paragraph 19 of the affidavit-in-reply, the contentions of the applicant as put forward in this paragraph are not correct and hence are denied herewith. The respondents re-iterate and re-affirm their statements made at paragraph 24 of the Written Statement submitted in the case.

It is denied that there has been any violation of extant rules etc. as alleged.

14. That, with regard to the statements made at paragraph 19 of the affidavit-in-reply it is emphatically denied that the impugned action is arbitrary, illegal and has been done in colourable exercise of power with a view to faveur the persons close to the powers. The respondents reaffirm and re-iterate their submissions made at paragraphs 25 and 27 of their Written Statement submitted in the case. It is/submitted that the above allegations are unfounded and have been made only to mislead the Hon'ble Tribunal in order to derive the illegal gain/benefit and still the valid and legal order of the respondents in this case and thus to embarrass the Government and which may lead to mere financial loss to Government's exchequer for no valid cause.

15. That the copy of the following documents are also annexed hereto together with summarised position of staff for ready perusal :

I.

Annexure
No.

Letter/Memorandum No. date

Description

A

Copy of Memorandum No.E/41/21(T)/
Coml/AP/Leese dated 11.6.2001.Shows 40 posts of Coach
Attendants declared
surplus due to shrinkage
in work etc.
&

B

Copy of letter No.E/41/21(T)/
Coml/AP/Leese dated 11.6.2001.Shows creation of 40
superannary posts for
the purpose of payment
of salaries etc. to these
40 surplus idle Coach
Attendants.

C

Copy of letter No.E/201/46/Pt.III
(T)Coml(Leese) dated 26.7.2001 of
GM(P)/N.F.Railway, Maligaon.Shows GM(P)/N.F.Railway
Maligaon's clarification
that post based roster
(P.B.R.) shall be main-
tained and also as to
how the calculation of
anticipated vacancies
for D.R. quota made for
Ticket Collector's cadre.

D

Copy of letter No.758E/6-VIII/
E 1 B/Duplicate dated 13/14.10.99
of General Manager(P), Northern
Railway, New Delhi.Shows re-deployment of
surplus Coach Attendants
and Assistant Guards in
alternative categories
by N. Railway, New Delhi
as Ticket Collectors in
scale Rs.3950 - 4590/-
and Goods Guards respec-
tively. Letter also shows
the policy on the Northern
Railway to abso-
rb the surplus Coach
Attendants etc. in scale
Rs.2550 - 3540/- & Rs.
2650 - 4000/- against
the D.R.(Direct Recruit-
ment)quota vacancies of
Ticket Collector grade
Rs.3050 - 4590/-.

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Annexure No.	Letter/Memorandum No. & date	Description
E	Letter No.E/210/46/Pt.III(T)(Leese) dated 31.1.2002 of GM(P), N. F. Railway, Maligaon.	Shows decision of Railway Administration as under : "Question of de-reservation does not arise but general category surplus staff may be re-deployed against O.B.C. D.R. quota and backlog through forward."
F	Letter No.E/201/4/Pt.III(T)Coml/Leese dated 3/4.5.2001 of GM(P)/N.F. Railway.	Shows the discussion on the re-deployment issue with recognised Unions(N.F. Railway Employees Union and N.F. Railway Mazdeer Union) and policy decision taken to absorb surplus Coach Attendants against D.R. quota of Ticket Collector and minimum educational qualification fixed as Class VIII standard.
G	DRM(P)/N.F.Railway/Alipuduar Jn's letter No.E/41/27(T).	Shows 47 Nos. of Coach Attendants are on roll at Alipuduar Jn. and also shows that 33 vacancies are found out in D.R. quota of T.C. in scale Rs.3050 - 4590/- for purpose of deployment of surplus Coach Attendants with break up as under :

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Officer Personnel Office
G. F. R. I. M. Mission
P. O. Box 111

Annexure No.	Letter No./Memorandum No. & Date.	Description
		U.R. - 9
		S.C. - 6
		S.T. - 1
		O.B.C. - 17

and fixation of date for holding Suitability Test on 19.4.2002.

H DR(M)(P)/APD(J)'s Memorandum
No.E/41/27(T)/Coml/AP-Pt.II
dated 20.5.2002.

Shows names of 17 persons
 (Surplus Ceash Attendants)
 who have passed the Sui-
 tability Test ^{for Ticket Collector} held on
 19.4.2002 and 22.4.2002
 against 17 D.R. quota
 (O.P.C. vacancies) with
 break up as under :

O.P.C.	-	3
S.C.	-	4
S.T.	-	1
U.R.	-	9

Total: 17 Nos.

and keeping these pesty vacancies unfilled till vacation of the Stay Order by the Hon'ble Tribunal.

II.

Additional information.

D.R. quota (for T.C. cadre)
vacancies worked out = 33
posts.

Availability of
surplus CAs. on
the date of passing
the impugned Order.
and at present'

Surplus posts of C.A.

U.R.	-	9
O.B.C.	-	17
S.C.	-	6
S.T.	-	1

37 40 Posts.

Total : 33 as per
P.S.R.

Total: 40 (Surplus
CAs available).

16. That, it is submitted that all the actions taken in the case are quite in consonance to rules and procedures in vogue and the present affidavit-in-reply suffers from misconception and mis-interpretation of rules, vagueness and incorrect submissions etc. and as such is liable to rejection.

17. That, it is prayed that in view of what have been submitted in foregoing paragraphs of this affidavit-in-reply and also in the Written Statement of the respondents already submitted in the case the Stay Order may kindly be vacated and the O.A. be dismissed.

VERIFICATION

I, A. K. NIGAM son of
Late S.P. Gausha aged about 47 years,
at present working as Chief Personnel Officer (A)
in N.F. Railway do hereby solemnly affirm and state that
the statements made at paragraphs 1, 2 and 3 are
true to my knowledge and those made at paragraphs 4,
5, 6 and 8,15 are true to my informations and
based on record which I believe to be true and the rest
are my humble submissions before the Hon'ble Tribunal.

A
NORTHEAST FRONTIER RAILWAY
MALIGAON : GUWAHATI-11
FOR AND ON BEHALF OF
UNION OF INDIA.

Chief Personnel Officer
N.F.Rly. / Maligon
Guwahati-11

ANNEXURE - A

ENRICA DUM

CHIEFLY OF
DISEASES OF
MAN

ANSWER TO THE CHIEF QUESTIONS

In Case No. 02/2001, decided on 20.6.2001/AB/PL/PC, dated 6.6.2001, the following powers under Constitution, Section 143 APDJP Division, are hereby declared as 'Superseded' in so far as they are superseded at the Divisional level with simultaneous creation of superseding entry just as shown below:

The surrendered posts are deleted from the B.O.S. of Comm. Dept. with immediate effect and maintained S.N. posts separately.

1. C.R. 2650--1000/- 40 \times 40

Divl. Accou. & Officer,
N.F.Rly./A.I. Bureau, Inc. Dr. Divl. Accou. & Officer,
N.F.Rly./A.I. Bureau, Inc. Divl. Comit. Mana-
ger,
N.F.Railway/AFDU.

No. 2/41/23 (1) Compt/23 (10000). Dated 11/16/2001.

Copy furnished for the action & preliminary notice to:

for DIVL. RIV. RAILROAD,
ALLEGRA, N. Y.

(un/11601.)

(40) "Tribunal" means the Railway Rates Tribunal constituted under section 33;

(41) "wharfage" means the charge levied on goods for not removing them from the railway after the expiry of the free time for such removal;

(42) "Zonal Railway" means a Zonal Railway constituted under section 3.

COMMENTS

(i) Railway stations and railway carriages may be public place but not public property; *Railway Board v. Observer Publications*, AIR 1972 SC 1792.

(ii) The definition of 'railway administration' does not make the railway administration or its manager a legal entity or judicial person; *State of Kerala v. G.H.S.Rly.*, AIR 1976 SC 2538.

(iii) Duty pass is a special kind of pass issued by the railway to enable its employee to travel in the train while they are on duty, without payment of the usual fare; *Mariaggi v. Union of India*, AIR 1971 Mad 488.

(iv) The term "railway" is wide enough to include any office or other works constructed for the purpose of, or in connection with, the railway; *Samuel Tippy v. State*, AIR 1963 Ori 20.

(v) The term "railway" includes all stations, offices, warehouses, etc. constructed for the purpose or in connection with a railway company; *East India Railway Co. v. Moti Sagar*, 116 PLR 1911.

(vi) A carrier who carries goods through a backwater to railway stations under a contract will not be deemed to be part of a railway; *Madira Co. Ltd. v. Xavier*, AIR 1931 Mad 115.

(vii) A railway line will be a "railway" only if it is meant for the purpose of public carriage of goods, etc., *Sai Chandra Traders v. Union of India*, AIR 1976 All 230.

(viii) A suit against the railway administration must be instituted against the Union of India; *State of Kerala v. General Manager, Southern Railway*, AIR 1965 Ker 277.

(ix) The Station Master of a railway station and the General Manager of a railway are not competent railway administration; *State of Assam v. Union of India*, AIR 1975 Gau 74.

CHAPTER II
RAILWAY ADMINISTRATIONS

3. Zonal Railways.—(1) The Central Government may, for the purpose of the efficient administration of the Government railways, by notification, constitute such railways into as many Zonal Railways as it may deem fit and specify in such notification the names and headquarters of such Zonal Railways and the areas in respect of which they shall exercise jurisdiction.

(2) The Zonal Railway existing immediately before the commencement of this Act shall be deemed to be Zonal Railways constituted under sub-section (1).

(3) The Central Government may, by notification, declare any unit of the railways engaged in research, development, designing, construction or production of rolling stock, its parts or other equipment used on a railway, to be a Zonal Railway.

(4) The Central Government may, by notification, abolish any Zonal Railway or constitute any new Zonal Railway out of any existing Zonal Railway or Zonal Railways, change the name or headquarters of any Zonal Railway or determine the areas in respect of which a Zonal Railway shall exercise jurisdiction.

4. Appointment of General Manager.—(1) The Central Government shall, by notification, appoint a person to be the General Manager of a Zonal Railway.

(2) The General superintendence and control of a Zonal Railway shall vest in the General Manager.

5. Appointment
Railway Safety.—T
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Commissioners of R

6. Duties of Com

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thereon as th

(c) make an inq

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Parliament.

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11. Power of railway a
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the provisions of this Act and

ABSORPTION AND UTILISATION OF SURPLUS STAFF ON THE RAILWAYS

- (b) Illiterate or Semi-literate staff should first be given a special course (say for 3 months or so) to bring them to a minimum acceptance level of literacy. This opportunity need be given only once.
- (c) The staff should give an undertaking before being nominated for conversion training that they may be transferred to other stations within the division.
- (d) The concerned staff should not be given more than three chances to pass the conversion training.

[No. E(G) 66 EC2/7 dated 23.11.1966, No. E(NG)II/81/RE 1/5 dated 15.1.1982, No. E(NG)II/84/RE 1/10 dated 9.4.1985, No. E(G)66/ EC 2-7 dated 11.4.1967, No. E(NG)II/67/RE 1/47 dated 22.5.1968, No. E(NG)II/88/PM 7-48 dated 15.3.1990]

3. No new activity should be started at the location where staff are likely to be rendered surplus merely for accommodating them at the same place without the prior approval/sanction of the Railway Board. Where special circumstance warrant the same, suitable proposals should be sent well in time to the Railway Board with the personal approval of the GM. The Railway Board expect that such cases are few and far between. *In no case, Board's approval should be presumed.*

[No. E(NG)II/84/RE 1/10 dated 21.4.1989]

4. The surrendered posts should be struck off from the relevant cadre registers, scale check registers and other records based on the formal orders issued:

[No. E(NG)II/81/RE 1/5 dated 16.1.1982; E(NG)II/84/RE 1/10 dated 21.4.1989]

5. Normally, the junior-most of the employees should be rendered surplus, irrespective of the manner in which they had been recruited/entered to the post/Grade. However, where staff give their willingness to go on bottom seniority in recruitment grades to other depots, such volunteers should be given preference depending upon the availability of vacancies in the other cadre and their suitability, including medical fitness.

The above do not, however, apply to SC/ST in respect of whom separate orders already exist.

[No. E(NG)I/67/RE-1/49 dated 28.10.1968; E(NG)II/81/RE-1/5 dated 15.1.1982; E(NG)II/84/RE-1/10 dated 21.4.1989]

6. The Railway Board desire that the recognised unions should

also be advised in time, as far as possible, about the number of staff likely to be rendered surplus and the station where they are. Their views, as far as possible, may also be obtained regarding their re-deployment.

[No. E(NG)II/84/RE-1/10 dated 21.4.1989]

II. Bank of Surplus Posts :

7. To keep a proper account of surplus posts and their utilisation, the Railway Board have decided that a "Bank of surplus posts" should be maintained by each Railway as under :—

- (a) The bank of surplus posts will be operative from 1.4.1987 and earlier bank net credit may be added as an opening balance of the new account as on that date;
- (b) All posts (excluding posts which were/are created for specific short term purpose e.g. those created for summer rush) identified as surplus and surrendered on or after 1.4.1987 will be credited to this Bank;
- (c) Matching surrender already reckoned for creation of posts after 1.4.1987 (including opening balance from the previous balance) and surrenders to be made in future, will be debited to the balance in the bank;
- (d) The account in this bank will be maintained department-wise and grade-wise, though for matching surrender posts can be drawn from this bank irrespective of the department to which they pertain; and
- (e) The account of the bank will be maintained by the CPLO or CPO (as per practice on the individual Railway) under the overall supervision of the Addl. G.M. (Exp. Control).

Note : In every proposal for the creation of posts, the CPLO/CPO will indicate the availability of surplus posts in the Bank.

[No. E(NG)II/84/RE-1/10 dated 26.10.1984; E(NG)II/84/RE-1/10 dated 31.3.1987]

III. Utilisation/Redeployment of Surplus Staff :

8. When doing the advance planning for identifying the surplus posts referred to in para 2 above, appropriate scheme for providing training, wherever found necessary, in alternative jobs for staff rendered surplus should also be planned and developed. Utilisation and re-deployment of surplus staff should be given the highest priority and their absorption will have precedence over all other modes of recruitment including screening of

22.4

ABSORPTION AND UTILISATION OF SURPLUS STAFF ON THE RAILWAYS

casual labour and direct recruitment for filling up the vacancies so that the surplus staff can be first utilised at suitable locations including places where additional posts are created for operation/maintenance of additional/new assets.

[No. E(NG)II/81/RE-1/15 dated 15.1.1982;
E(NG)II/84/RE-1/10 dated 26.10.1984;
E(NG)II/84/RE-1/10 dated 9.4.1985;
E(NG)II/84/RE-1/10 dated 21.4.1989;
E(NG)II/68/RE-1/47 dated 31.7.1968/1.8.1968]

9. There shall be no recruitment in those categories in which posts are likely to be rendered surplus and the categories in which surplus staff are likely to be redeployed. Surplus staff can be absorbed in the existing vacancies against new posts which are duly.

IV. Creation of "Special Supernumerary" Posts:

10. When the posts were not vacant and staff are working against them, "Special Supernumerary" posts in the same grade should be created to accommodate the staff rendered surplus. Simultaneously the "Special Supernumerary" posts should be credited to the "Bank of surplus posts" and maintained in the respective billing units.

[No. E(NG)II/81/RE-1/5 dated 15.1.1982;
E(NG)II/84/RE-1/10 dated 21.4.1989]

11. Where the surplus staff are transferred and posted against the vacancies in the same or other departments, the question of creation of "Special Supernumerary" posts does not arise. Such posts will be directly credited as vacancies to the "Bank of surplus posts".

12. The incumbents borne against such "Special Supernumerary" posts should be re-deployed quickly against other posts by re-training if necessary.

13. The "Special Supernumerary" posts shall be personal to each incumbent and are to be surrendered as soon as the incumbent is absorbed in some other duly sanctioned posts or retires or vacates it for any other reason.

14. When these "Special Supernumerary" posts are surrendered, they should be credited as vacancies to the "Bank of surplus posts" and can be utilised as matching surrenders for creation of additional posts for maintenance and operation of additional/new assets.

15. The staff, who cannot be immediately absorbed even after training against other duly sanctioned posts, should be allowed to continue

MASTER CIRCULAR NO. 22

22.5

against "Special Supernumerary" posts in the same grade in which the incumbents were working. They will continue to have their lien in their old cadre posts so as to keep their promotional prospects in tact.

16. The Railways should set up suitable machinery to review the utilisation/re-deployment of staff being borne against "Special Supernumerary" posts".

V. Seniority of Staff rendered surplus on deployment :

17. When re-deploying the surplus staff to other Units/Departments, which constitute a different seniority unit, the following methods could be adopted :

- (i) If only a small number of staff are being rendered surplus and they have to be transferred to various Units of other departments against vacancies of duly sanctioned posts, they can be suitably adjusted in these units with their full seniority and merging their seniority in the respective units;
- (ii) When a large number of staff are being transferred to *new units* that are being set up, they should be given their full seniority. No minimum educational qualifications should be prescribed. It should be sufficient if they pass the re-training/conversion training tests at the end of their training, subject to course their medical fitness.
- (iii) Whenever a large number of staff have to be transferred to *existing units* against vacancies or additional sanctioned posts, the views of the Unions may be taken as to whether the seniority of the staff being shifted should be kept separate against the "Special Supernumerary" posts, so that their promotional prospects are kept separate and identical to what they would have achieved in the old Unit and it does not jeopardise the promotional prospects of the staff in the Units in which they are being inducted. In such cases, the application of percentage distribution of posts would be separate for the existing cadre posts and the surplus staff who have been brought into the cadre, the latter being controlled by the percentage as applicable to their previous cadre. However, as and when there is wastage through retirement, promotion etc. in the seniority unit of shifted staff charged against "Special Supernumerary" posts in the direct recruitment grades, the direct recruitment quota of the same should be merged

ANNEXURE — *3 Series*
JAN, 1989 Edition (Rules 114 and 117)

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considered necessary and which may be of help in conducting the interviews, should be sent to non-Officials whenever co-opted as members of the Interview Board.

113. The names of successful candidates who are recommended by the Railway Recruitment Boards or selected by the Railway Admin. themselves for appointment on Indian Railways will be exhibited on notice boards, in the Recruitment Board's office, Employment Exchange concerned and published as "news item" in the newspapers free of cost as also by the Railway Administrations in their Divisional and Headquarters offices. Selection of a candidate by a Board or a Railway administration is, however, no guarantee of employment on the railway which is subject to his qualifying in the prescribed medical examination and to his being otherwise suitable for service under Government.

114. Power to relax or modify rules.—The General Manager or the Chief Administrative Officer, may, in special circumstances and for reasons to be recorded in writing, relax or modify these rules in specific individual cases. They can also issue orders for deviations from these rules in respect of certain categories or on certain occasions provided such relaxations are purely on a temporary basis. Railway Board's prior approval is however, required to long term or permanent alteration of the rules.

This power should be exercised by the General Manager or his Chief Personnel Officer, or the Chief Administrative Officer personally; but it shall not be otherwise redelegated.

115. Relaxation of the age limit.—The following relaxations of age limit are permissible :—

- (i) By five years in the case of Scheduled Castes and Scheduled Tribes.
- (ii) Upto three years (including apprentice categories) in respect of serving Railway employees applying for direct recruitment to initial categories and upto five years for posts in the intermediate categories.
- (iii) Group 'D' employees applying for recruitment to Group 'C' posts or as apprentices being allowed relaxation to the extent of service in Group 'D' but in any case not

exceeding 10 years and also subject to a ceiling limit of 30 years for apprentice categories.

- (iv) For direct recruitment to all Group 'C' and Group 'D' vacancies, serving employees who have put in three years continuous service on the Railways will be given age relaxation to the extent of service put in, subject to upper age limit of 35 years not being exceeded, Similar age concession will be applicable to such of the casual labour/ substitutes as have put in three years continuous or in broken spells.
- (v) Upto 45 years in respect of displaced persons who migrated to India from East Pakistan (now Bangladesh) on or after 1st January 1964 for Group 'C' and Group 'D' posts and upto 30 years for apprentice categories. The above age limits are further relaxable by five years in respect of such displaced persons belonging to Scheduled Castes and Scheduled Tribes.
- (vi) Existing age concessions allowed by specific instructions of the Railway Board for specified category/categories of posts will continue to apply.
- (vii) A candidate who is within the minimum and maximum age limits on a particular date mentioned in the employment notice issued by a Railway Recruitment Board may be treated as eligible for appointment against a post on the Railway concerned even though the person concerned may have exceeded the maximum age limit on the date of actually joining an appointment.

116. Employment of physically handicapped persons.—Recruitment of physically handicapped persons in identified Group 'C' and Group 'D' posts will be regulated in terms of separate instructions issued by the Railway Board from time to time. There will be a reservation of vacancies @ 3% (1% each for the Blind, the Deaf and the Orthopaedically handicapped) for recruitment of physically handicapped persons the actual employment of selected candidates being in identified Group 'C' and Group 'D' posts in the Railway services.

Sub-Section III—Recruitment and Training

117. The position indicated regarding normal channels of promotion in the following paragraphs in

this sub-section are illustrative and not exhaustive and they should not be taken to exclude classes not specifically mentioned which it may be the recognised practice for a particular administration to admit to any of the Groups shown. It shall, moreover, be open to the administration to transfer staff from one group to another for which they may be fully qualified, but care must be taken to avoid hardship to staff already in the latter group.

118. Refresher and promotion courses.—

- (a) Periodical refresher courses at stated intervals and promotion courses as necessary may be prescribed by the General Manager according to the need of each case, taking into account the guidelines and orders, issued from time to time by the Board.
- (b) Procedure for Trade Tests—An employee failing in a trade test should be allowed to re-appear for further trade tests after an interval of six months with the provision that no relaxation in the standard of trade test is to be allowed.

119. Security deposits by Apprentices/Trainees.— Persons recruited as Apprentices or Trainees shall be required to make security deposits during their period of training/apprenticeship as required by the individual railway administrations.

Conditions applicable to Apprentices other than those governed by Apprentices Act, 1961

120. Stipend.—

- (i) The rates of stipend are indicated against the various categories. Free medical aid is admissible. The rate of stipend in all cases will be fixed by the Railway Board.
- (ii) Medical Examination.—An apprentice will be required to pass such medical examination as regards his physical fitness as may be prescribed by the General Manager.
- (iii) Agreement.—He will have to enter into an agreement which should inter alia embody the following important conditions. The parent or guardian of the candidate should also be one of the parties to the agreement.
 - (a) The period of apprenticeship.

- (b) The amount of the security deposit, if any.
- (c) The trade or trades in which he will be required to undergo training.
- (d) Circumstances in which agreement can be terminated by the administration, e.g., physical unsuitability, misconduct or failure to qualify in any prescribed test, etc.
- (e) The forfeiture of the security deposit, if any, and recovery of the cost of training at the discretion of the administration in the event of violation of the terms of the agreement by the apprentice.
- (f) No guarantee or promise of employment on completion of apprenticeship.
- (iv) Trade Apprentices in designated trades appointed in Railway workshops will be governed by the provisions of Apprentices Act, 1961 and Rules and administrative instructions issued thereunder from time to time.

121. Recognised Educational and other Qualifications for technical and non-technical categories are indicated against each category.

I. *TRANSPORTATION (TRAFFIC) DEPARTMENT*

(i) *STATION MASTERS*

122. (1) The vacancies in the category of Assistant Station Master in scale Rs. 1200—2040 will be filled as under :—

- (i) 50% by direct recruitment through the Railway Recruitment Boards;
- (ii) 25% by promotion through selection from amongst signallers;
- (iii) 25% by promotion through selection from amongst Switchmen failing which by Levermen, Cabinmen only against the first 10% of the vacancies; shortfall, if any, against the remaining 15% vacancies to be added to direct recruitment vacancies.

[E(NG)I-74/PMI-15 dated 20-1-1975].

(2) Qualifications etc. for direct recruitment are as under :—

- (i) *Educational* : A University degree or its equivalent. Diploma in Rail Transport and Management from the Institute of Rail Transport will be an additional desirable qualification.

Date 9.7.2002 -26-

ANNEXURE - C ✓ KIRAN (K) NTPY

NORTHEAST FRONTIER RAILWAY:

100

OFFICE OF THE
GENERAL MANAGER (P)
MALIGAON:GUWAHATI-11.

NOTE: E/201/46/Pt-111(T)Commr. (Loose) Dated: 26-07-2001

TO

DRM(P) ~~████████~~, APDJ.

Sub:- Redeployment of Coach Attendant SDC

Ref:- DRM(P)APDJ's letter No. E/41/27 (T)Commr/ AP-Pt-11 dated 27-6-2001.

It was decided vide this office letter of even number dated 3/4/5-2001 that the surplus coach attendant may be absorbed in TC categories after judging the suitability test on the basis of viva-voce where minimum Educational qualification is Class-VIII against the direct recruitment of TC in scale Rs. 3540-4590/- as one time exception.

DRM(P)APDJ vide their letter number under reference has sought the following clarification.

- (1) Whether PBR is to be maintained while absorbing the surplus CAs against the vacancies of DR quota in TC cadre.
- (2) Whether anticipated vacancies in TC cadre will be taken into accounts if so as to what extent.

It is clarified that:- Post b/w. Res

- (1) PBR is required to be maintained in terms of item No.11 of Railway Board's letter No. 95E (SCT)1/49/5(2) dated 21-8-97 (initial introduction of PBR).
- (2) Yes, anticipated vacancies to be taken while calculating the vacancies as per rule as it is followed for DR quota.

Necessary action may please be taken accordingly and a compliance report sent to the Hd. Qrs. Office at the earliest.

(P. K. Singh)
Dy. Chief Personnel Officer (HQ)
for General Manager (P)MLG

Copy to:-

DRM(P)/KIR, LMG, TSK.

for General Manager (P)MLG.

NORTHERN RAILWAY

Head Quarters Office
Baroda House, New Delhi.

No. 758E/6- VM/EPB/S /Duplicate

Date: 13/14-10-99

To

All DRMs, N.Rly, LKO, ALD,
Delhi etc.

Sub:- Re-Deployment of Coach Attendants and Asstt.
Guards as TC & Goods Guards respectively.

This issue of re-deployment of surplus Coach Attendants and Asstt. Guards was raised by NRM vide Agenda Item No.42/99 & it was discussed in the P.N.M. held on 14.9.99. The Union suggested that the surplus Coach Attendants and Asstt. Guards should be re-deployed as T.C. and Goods Guards against the direct recruitment quota in these categories as One Time Exemption.

After detailed discussions, it was decided that the surplus Coach attendants and Asstt. Guards may be absorbed in alternative categories as given below. This is in addition to the present action already resorted to by the Division for absorbing surplus Coach Attendant and Asstt. Guards and is permitted as only one time exemption after adjudging suitability on the basis of a Written Examination.

(a) Coach Attendants Gr. Rs.2550-3540 (RSRP) &
Coach Attendant Gr. Rs.2650-4000 (RSRP)

may be absorbed against the direct recruitment quota vacancies of Ticket Collector Grade Rs.3050-4590 (RSRP).

(b) Asstt: Guard Rs. 3050-4090 (RSRP) &
Asstt: Guard Rs. 4000-6000 (RSRP).

may be absorbed against direct recruitment quota vacancies of Guard (Goods) Grade Rs.4500-7000 (RSRP).

As requested that action be taken by the Divn. accordingly and compliance Report sent to the Hd.Qrs. Office the earliest.

Copy for information & N/action to.
CCM, COM, CPTN. II, CCM(G)
Genl. Secy. URMU & NMU.

Sd/-Sharda Mathur
for General Manager(P)
13.10.1999.

U. R. M. U.
UTTARIYA RAILWAY MAZDOOR UNION
166/2 PANCHI IN ROAD,
NEW DELHI.

No. URML/134/90/325

Dated/1.10.99

1. Copy of the above is forwarded to :-
 - 1) All the Central Office Bearers, U.R.M.U.
 - 2) All the Branch Secretaries, URMU.
 - 3) All the Divisional Secretaries, URMU.

Sd/-
(P.N. SHARMA)
GENERAL SECRETARY.

Resv-7
NO. E/231/Resv/Assn/Pt-VI

OFFICE OF THE
GENERAL MANAGER (P)
MALIGAON
date: 18/99

TO

All Head of the Departments,
All DRMs, Sr.DPO's, DPO's, DAO's
Dy. CME(C&W) DEW's, NEQ
GS/NFRMU, NFREU, AISCTREA
NFRBCEA/MLG

3-11-99

Sub: All India SC/ST Railway Employees
Association and All India OBC Railway
Employees Federation/Association
Jurisdiction of their activities .

.....
A copy of Railway Board's letter No. 97-E(SCT)/
1/22/12 dated 11/8/99 on the above mentioned subject is
forwarded herewith for information guidance and necessary action
please. Copy of Board's letter No. 96-E(SCT) I/71/5 dated 28/8/97
as referred to in their present letter was enclosed with this
office letter No. E/227/Resv/OBC/Assn dtd. 10/11/98.

for GENERAL MANAGER (P)

(Copy of Board's letter No. 97-E(SCT)/I/22/12 dated 11/8/99)

Sub: As above

During the tenth meeting of 'Participation of Railway
Employees in Management (PREM) group at apex level on 8/6/1999
in Rail Bhavan, one of the members stated as under:

OBC and SC/ST Associations being welfare Associations
should confine themselves to the welfare activities and not
over-step to trade union activities. Necessary clarification
is needed to be issued".

In this connection, attention is drawn to para 1(v)
of Board's letter No. 96-E(SCT) I/71/5 dated 28/8/97, which
specifically lays down that the byelaws of OBC Association will
not allow its office-bearers to indulge in Trade Union Activities.
The same principle is already applicable to SC/ST Associations.
It is herewith reiterated that the office-bearers of All India
SC/ST Railway Employees Associations and All India OBC Railway
Employees Federation/Associations should confine themselves
to welfare activities only and not indulge in Trade Union
activities. The appropriate implementation of these instructions
may please be ensured.

.....
Sd/- Ram Prakash
Executive Director, E&TS,
(Resv)

ANNEXURE - E

103

N.F. RAILWAY

Office of the
General Manager(P)
Maligaon, Guwahati- 11

No.E/210/46 Pt.III (T) Comml (Loose)

dated 31/01/02

To,
DRM(P) /APDJ

Sub : Re-deployment of surplus CA

Ref: 1) GS/NFREU/PNO's letter No.EU/SR/APDJ dated 19-12-2001
2) GS/NFRMU/PNO's letter No. MU/C/S/02 dated 23-01-2002

Your attention is invited to this office letter of even number dated 26/07/2001 and 04-12-2001 wherein it was intimated that the exchange of roster point is not permissible in absence of adequate number of OBC candidates.

The above issue was further examined in reference to GS/NFREU/PNO & GS/NFRMU/PNO's letter under reference and it has been further decided by AGM/MLU as under :-

Question of de-rostering does not arise but general category surplus staff may be re-deployed against OBC DR Quota and backlog through forward.

Necessary action may please be taken accordingly.

in Commer

(L. B. SINGH)
APOM

for General Manager(P)MLG

Copy forwarded 3d for information and necessary action to :-

- 1) DRM (P)/KIR, LMG, T&K
- 2) The General Secretary/NFREU/PNO in reference to his letter No. EU/SR/APDJ dated 19-12-2001.
- 3) The General Secretary/NFRMU/PNO in reference to his letter No. MU/C/S/02 dated 23-01-02.

for General Manager(P)MLG



35/2001
104
Below Det. Ref.
Div. Secy/12/4/HPD.

29- Annexure - F - Document 7

G.S./N.F.R.E.U./PNO.

N.F.RAILWAY.

No. E/201/46/PL/III(T) Commr.(Loose).

Office of the
General Manager (P),
Maligaon, dt. 3.5.2001.

To
DRMs/KIR, APDJ, LMG & TSK.

Sub: Redeployment of Coach Attendant SDC.

The issue of redeployment of surplus Coach Attendant was raised by N.F.R.M.U. & N.F.R.E.U. vide item No. 79/14(MU) & 84/14(EU) respectively. The Union suggested that surplus Coach Attendant should be redeployed as TC against direct recruitment quota in the category of TC as one time exception. After detailed discussion and after the approval of CCM it has been decided that the surplus Coach Attendant may be absorbed in TC categories. This is in addition to the present action already resorted to by the Division for absorbing surplus Coach Attendant as a normal redeployment policy. The suitability of surplus Coach Attendant is permitted only once after adjudging their suitability on the basis of viva-voce. All the surplus Coach Attendant with minimum educational qualification of Class-VIII(Eight) may be absorbed against the direct recruitment vacancies of TC in grade Rs. 3540-4590/- accordingly.

It is requested that action to be taken by Division accordingly and compliance report sent to the HQ's office at the earliest.

(P.K.Singh)
Dy.chief Personnel Officer/HQ
for General Manager (P).

Copy to : 1. CCM/MLG.
2. COM/MLG.
3. G.S./N.F.R.M.U./PNO.
4. G.S./N.F.R.E.U./PNO/
5. Sr.DPO/KIR,APDJ,LMG.
6. DPO/TSK

V.K.S.
3/5/2001
for General Manager (P).

To, Convener
NFRMU/APD of

23-1-2002-19

105

OFFICE OF THE
DIVL.RLY.MANAGER[P]
N.E.R/ALIPURDWAR JNL

No. E/41/27(T)/Commr/AP-Pt.II

Dated: 02.04.2002.

To,
CTT/IC/APDJ.

Sub:- Re-deployment of surplus coach attendants.

In terms of GM(P)/MLG's Letter No. F/201/45/Pt.III(T)/Commr(Loose) dt. 3/4.05.2001, it has been decided to hold a suitability test for the purpose of re-deployment of surplus CAs having minimum educational qualification of Class-VIII (Eight) in the category of Ticket Collector in scale Rs.3050-1500/- as one time exception against the DR quota vacancies maintaining PBR also.

Accordingly 33 (Thirty three) posts are found available taking into account the existing 2 anticipated vacancies in the T.C category in scale Rs.3050-4590/- against DR quota for the purpose of re-deployment of surplus CA.

The communal break up of these 33 posts (DR quota) are UR= 09, SC= 06, ST= 01 & OBC = 17 ; Total = 33

It is however, made clear that after judging the suitability of only 4 (Four) available O.B.C st if at present amongst the CA category, the actual shortfall of O.B.C quota in T.C category (DR quota) will be filled up only after disposal of the pending case before the Hon'ble CAT/Guwahati Bench in O.A No. 35 of 2002 [The NEROBCEA vs. others].

The suitability test will be in the form of viva-voce test only & the date is fixed on 19.04.2002 in the DRM(P)/APD's office at 10.00 hrs.

All the Coach Attendants [names are shown in Annexure I] should be spared & directed to report to this office on the fixed date & time without fail.

They should also be advised to bring their original educational certificate (minimum class VIII passed) for verification & those who fail to produce the certificate (Class VIII passed) will not be allowed to appear in the suitability test under any circumstances.

NO ABSENTEE TEST WILL BE HELD.

This issues with the approval of the competent authority.

19.04.02
A.K.C/IIAPOLIA

APD/1/APDJ
For Divl.Rly.Manger[P],
Alipurduar Junction.

Copy forwarded for information to:-

1. GM(P)/MLG.
2. DCM/APDJ.
3. Divl.Secretary/NFREU/APD.
- 4) Convener/NFRMU/APDJ.
- 5) Divl.Secy/AISCTREA/APDJ
- 6) Divl.Secy/NEROBCEA/APDJ.
- 7) CA to Sr.DPO/APDJ.

SN	NAME (S/Shri)	DESIGNATION & STATION	ASIGNMENT		REMARKS
			UR/SC/	ST/OPC	
1. x	Suresh Ch.Saha	CA/APD1	UR		
2. x	Subratj Sarkar	CA/APD1	OPC	CA/OPC	
3. x	Rahilj Kr.Brahma	CA/APD1	UR		
4. x	S.N. Chatterjee	CA/APD1	UR		
5. x	S.C. Biswas(II)	CA/APD1	UR		(SUBSIDIARY)
6. x	J.C. Mandal	CA/APD1	SC		
7. x	P.K. Chatterjee	CA/APD1	UR		
8. x	Brahmabanda Sarkhel	CA/APD1	UR		
9. x	J.N. Das	CA/APD1	SG		
10. x	Sai Ram Goyary	CA/APD1	ST		
11. x	M.K. Gope	CA/APD1	UR		
12. x	C.K. Das	CA/APD1	UR		
13. x	J.L. Kanjilal	CA/APD1	UR		
14. x	S.C. Modak	CA/APD1	UR		
15. x	Subodh Ch.Chakraborty	CA/APD1	GR		
16. x	N.K. Barman	CA/APD1	SC		
17. x	Rajendra Paswan	CA/APD1	SC		
18. x	H.C. Sutradhar	CA/APD1	UR		
19. x	Ajoy Kr.Duttah	CA/APD1	UR		
20. x	Swapan Kr.Chakraborty(II)	CA/APD1	UR		
21. x	Pradip Kr.Dey(II)	CA/APD1	UR		
22. x	Kartick Ch.Dey	CA/APD1	UR		
23. x	Parimal Ch.Dutta(II)	CA/APD1	UR		
24. x	Debasish Hore	CA/APD1	SGC		
25. x	Utpal Dey	CA/APD1	SC		
26. x	Ram Sumner Singh	CA/APD1	SGC		
27. x	Barun Ch. Saha	CA/APD1	SC		
28. x	Madan Ch. Boro	CA/APD1	ST		
29. x	Amir Singh Kherketary	CA/APD1	ST		
30. x	Sulit Kr.Nandi	CA/APD1	UR		
31. x	Sajalr Majumder	CA/APD1	UR		
32. x	Gobal Ch. Talukdar	CA/APD1	UR		
33. x	U. Roy	CA/APD1	SC		
34. x	Kuiklay Daimary	CA/APD1	ST		
35. x	S.K. Bhownick	CA/APD1	UR		
36. x	B.B. Dubey	CA/APD1	UR		
37. x	T.K. Chakraborty	CA/APD1	UR		
38. x	Ganesh Darjee	CA/APD1	UR		
39. x	A.S.Bhattacherjee	CA/APD1	UR		
40. x	Hiren Saikia	CA/APD1	SC		
41. x	Swapan Chakraborty(II)	CA/APD1	UR		
42. x	P.C. Dey Sarkar	CA/APD1	UR		
43. x	T.K.Pramanik	CA/APD1	UR		
44. x	Madan Gopal Saha	CA/APD1	UR		
45. x	Ratul Kr.Bhanja	CA/APD1	UR		
46. x	Prabir Kr. Paul	CA/APD1	OPC		
47. x	Pradip Kr. Bhattacherjee	CA/APD1	UR		

(Forty Seven Only)

MEMORANDUM

DATED: 20.05.2002.

The provisional result of the suitability test for absorption of surplus CAs to the post of Ticket Collectors in scale Rs.3050-4590/- against DR quota held on 19.04.2002 & 22.04.2002, is hereby published as under:-

The names of the successful candidates are given below as per seniority.

SL. NO.	NAME	Desig & station	Com m- unity	Result
1	Subrata Sarkar	CA/APDJ	OBC	Passed
2	Ranjit Kr. Brahma	CA/APDJ	UR	Passed
3	J.C. Mandal	CA/APDJ	SC	Passed
4	Brahmananda Sarkhel	CA/APDJ	UR	Passed
5	J.N. Das	CA/APDJ	SC	Passed
6	Sani Ram Goyary	CA/APDJ	ST	Passed
7	J.L. Kanjilal	CA/APDJ	UR	Passed
8	Subodh Ch. Chakraborty	CA/APDJ	UR	Passed
9	H.C. Sutradhar	CA/APDJ	UR	Passed
10	Ajoy Kr. Dutta	CA/APDJ	UR	Passed
11	Swapan Kr. Chakraborty(I)	CA/APDJ	UR	Passed
12	Pradip Kr. Dey(I)	CA/APDJ	UR	Passed
13	Kartick Ch. Dey	CA/APDJ	UR	Passed
14	Ram Sumer Singh	CA/APDJ	OBC	Passed
15	Barun Ch. Saha	CA/APDJ	SC	Passed
16	Rajen Roy	CA/APDJ	SC	Passed
17	Prabir Kr. Paul	CA/APDJ	OBC	Passed

The result has been approved by ADRM/APDJ on 18-05-2002

The remaining vacancies of OBCs are kept unfilled due to non-finalization of petition filed before the Hon'ble CAT/GHY case No.35 of 2002.

(A)
20/05/02
For Divl. Rly. Manager(P),
Alipurduar Junction.

No.E/41/27(I)/Coml/AP-Pt.II

Dated: 20.05.2002.

Copy forwarded for information and necessary action to:-

- 1) GM(P)/MLG → in reference to his letter no.E/201/46/Pt.III(I) Commr(Loose) dt.3/4.05.2001, 01.02.2002 & 06.02.2002. He is intimated that out of the 33 posts (against DR quota) taken into account for suitability test for absorption of surplus CAs to the post of Ticket Collector, but result of only 17 post could be published keeping 14 OBC post (DR quota) unfilled subject to the finalization of petition filed before the Hon'ble CAT/GHY case no. 35 of 2002 and also 02 posts of SC community are kept unfilled in view of prolonged sickness under Rly. Doctor.
- 2) DCM/APDJ
- 3) CTII/IC/APDJ
- 4) Staff concerned
- 5) P/Case.

(R)
20/05/02
For Divl. Rly. Manager(P),
Alipurduar Junction.