

30/100

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

17

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No 386/02.....

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SECTION OFFICER (Judl.)

Kalide  
4/12/17

( SEE RULE - 4 )

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI

ORDER SHEET

Original Application No : 386 / 02  
Misc. Petition No. \_\_\_\_\_  
Contempt Petition No. \_\_\_\_\_  
Review Application No. \_\_\_\_\_

Applicant(s): Pritul Malakar

- Vs. -

Respondent(s): H.O.P. Pan

Advocate for the Applicant(s): M.K. Choudhury, N. Dutta

Advocate for the Respondent(s): CGSC. J.L. Sankar A. Barikatala

Notes of the Registry

Date

Order of the Tribunal

This application is in  
form but not in time  
C. order. It is  
filed / 11 C.F.  
for Rs. deposited  
vide H.P. / 374606556  
Dated 5.12.02

18.12.02

Stand out. List again on  
23.12.2002 for admission.

Vice-Chairman

23.12.02

Heard Mr. M.K. Choudhury,  
learned counsel for the applicant.  
The application is admitted.  
Call for the records. Returnable by  
four weeks.

List on 28.1.2003 for orders.

The appointment of respondent  
No.4 to the post of Law Assistant  
in the scale of Rs.5600-10500/- shall  
be subject to the outcome of this  
application.

Member

Vice-Chairman

mb

Dy. Registrar.

Notice not yet  
served

Steps taken. Notice prepared and  
sent to D/S. for issuing the  
respondent No.1 to 4 by  
Regd. AID.

DINo. 46 to 49 dtd 8/1/03

28.1.03 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.  
The Hon'ble Mr. S.K. Hajra, Administrative Member.

Mr. S.Sarma, learned counsel appearing on behalf of the Railway prayed for four weeks time to file written statement. Prayer is allowed. List again on 26.2.2003 for written statement.

No written statement has been filed

26  
26.2.03

Sun  
Member

[Signature]  
Vice-Chairman

mb

26.2.2003 Further four weeks time is allowed to the respondents to file written statement. List on 27.3.2003 for orders.

No written statement has been filed

26  
26.3.03

[Signature]  
Vice-Chairman

mb

27.3.2003 List the case on 1.5.2003 enabling the respondents to file written statement as prayed by Mr.J.L.Sarkar, learned counsel appearing for the respondents.

S.A  
Member

[Signature]  
Vice-Chairman

bb

1.5.2003 The respondents are yet to file written statement. Dr. M.C. Sarma, learned standing counsel for the railway stated that ~~he~~ the case is not entrusted by him and he under take further instructions on the matter. Accordingly prayed for time. Put up the matter on 30.5.2003 for written statement, if any.

No written statement has been filed

29  
29.5.03

[Signature]  
Vice-Chairman

mb

30.5.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.  
The Hon'ble Mr. S.K. Hajra, Member (A).

Put up again on 30.6.2003 to enable the respondents to file written statement.

Member

Vice-Chairman

mb

30.6.2003 No written statement so far filed by the Railway nor they filed any power. The Tribunal is yet <sup>to be made</sup> aware as to who infact will appear on behalf of the Railway. List the matter again on 25.7.2003 for written statement else the matter shall proceed ex-parte.

Vice-Chairman

mb

25.7.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.  
The Hon'ble Mr. N.D. Dayal, Member (A).

A memo of appearance has been filed on behalf of the railway. Mr. J.L.Sarkar, learned Standing counsel for the Railway stated that he has received instructions and he is filing written statement.

Put up again on 26.8.2003 to enable the respondents to file written statement.

Member

Vice-Chairman

mb

27/6/03

1) Appearance has been filed by the Standing Counsel.

2) Vakalatnama has been filed on behalf of the respondent No. 4.

3) NO written statement has been filed by the respondents.

NS  
27/6/03

No written statement has been filed.

By  
22.9.03

26.8.2003

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

The Hon'ble Mr. K.V. Prahaladan  
Administrative Member.

Order dtd. 26/8/03  
Commenced to  
Spec J.L. Sarkar. Adv.  
27/8/03.

The respondents are yet to file written statement though they were took number of time for filing written statement. Mr. S. Sarma, learned counsel appearing on behalf Mr. J.L. Sarkar, learned counsel for the respondents again prayed for time for filing written statement. Further four weeks time is allowed to the respondents for filing written statement subject to payment <sup>of</sup> cost of Rs. 50/-.

List on 23.9.2003 for written statement.

24.9.03

K.V. Prahaladan  
Member

Vice-Chairman

mb

W/s Submitted  
by the Respondent Nos.  
1 to 3.

23.9.2003

It has been stated that written statement is filed today. The case may now be listed for hearing. The applicant may file rejoinder, if any, within two weeks from today.

Mr. J.L. Sarkar, learned counsel for the respondents, stated that since learned counsel for the applicant is not present in the Court, he sought leave of the Court to file a copy of the written statement for the applicant in the Registry.

Prayer allowed. Respondents may file copy of the written statement to the Registry, which shall <sup>be</sup> serve on the learned counsel for the applicant in due course.

List the case on 10.11.2003 for further order.

K.V. Prahaladan  
Member

Vice-Chairman

bb

10.11.03 NO Bench today,

Adjourned to 21.11.03.

21.11.03. Leftover - put up 1870  
next 21.11.03

Office Note	Date	Tribunal's Order
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24.12.03

Written statement  
has been filed.

21.1.04

21.1.04

pg

Mr S.Sarma, learned counsel on behalf of Mr M.K.Choudhury, prays for adjournment as Mr Choudhury has some personal problem.

Let the matter appear before next available Bench.

Member

Vice-Chairman

22.1.2004

Present: Hon'ble Shri Bharat Bhusan, Member (J)  
Hon'ble Shri K.V. Prahladan, Member (A).

Heard the learned counsel for the parties. Hearing concluded. Order reserved.

Member (A)

Member (J)

nkm

23.1.2004

13.2.04

Copy of the Judgment has been sent to the office for perusal. The same to be applied as well as to the L/Adm for the Record.

Judgment pronounced. The application is dismissed as per order kept in separate sheets. No order as to costs.

Member (A)

Member (J)

nkm



CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A./~~XXX~~ No. 1111 386 of 2002

DATE OF DECISION 23.1.2004

Smt. Pitul Malakar

.....APPLICANT(S).

Mr M.K. Choudhury, Mr M. Dutta and  
Mr A. Barkataki

.....ADVOCATE FOR THE  
APPLICANT(S).

-VERSUS-

The Union of India and others

.....RESPONDENT(S)

Mr J.L. Sarkar, Railway Counsel  
Mr A. Chakraborty for respondent 4.

.....ADVOCATE FOR THE  
RESPONDENT(S).

THE HON'BLE MR. BHARAT BHUSAN, JUDICIAL MEMBER

THE HON'BLE MR K.V. PRAHLADAN, 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 Member (J)



A

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.386 of 2002

Date of decision: This the 23rd day of January 2004

The Hon'ble Shri Bharat Bhusan, Judicial Member

The Hon'ble Shri K.V. Prahladan, Administrative Member

Smt Putul Malakar  
Senior Clerk  
Office of the Chief Commercial Manager  
N.F. Railway  
Maligaon, Guwahati. ....Applicant  
By Advocates Mr M.K. Choudhury, Mr M. Dutta  
and Mr A. Barkataki.

- versus -


1. Union of India through the  
General Manager,  
N.F. Railway,  
Maligaon, Guwahati.
2. The General Manager  
N.F. Railway  
Maligaon, Guwahati.
3. The Asstt. Personnel Officer (Traffic)  
N.F. Railway,  
Maligaon, Guwahati.
4. Shri Malay Kr Ray  
Law Assistant  
Office of the General Manager  
N.F. Railway,  
Maligaon, Guwahati. ....Respondents  
By Advocates Mr J.L. Sarkar, Railway Counsel  
and Mr A. Chakraborty for respondent 4.

.....

O R D E R


BHARAT BHUSAN, MEMBER (J)

The present application under Section 19 of the Administrative Tribunals Act, 1985 is directed against the order dated 25.2.2002 issued by the General Manager (P) by which the applicant was not selected for promotion to the post of Law Assistant (Annexure-G). Vide this



order four candidates had been found suitable for promotion to the post of Law Assistant in the scale of pay of Rs.6500-10500/-. Respondent 4, Shri Malay Kr Ray, in this case also happens to be one of the four selected candidates in the said list and his name is placed at serial 4, But the name of the applicant did not appear in the said list.

2. The case of the case of the applicant is, that, she was initially appointed as Office Clerk under the Northern Railways in the year 1976 and she had passed her LL.B. Examination from Gorakhpur University in the year 1984. In the year 1998 she was transferred to N.F. Railway, Maligaon and in May 1998 she joined in the Office of the Chief Commercial Manager, N.F. Railway, Maligaon. Since she was eligible in all respects she applied for the post of Law Assistant through proper channel since she came to know that a panel for the post of Law Assistant was being prepared. Regarding her experience in Law she mentioned ~~that~~ she had rendered service as Law Assistant (Ad hoc) under the Deputy Chief Commercial Manager, Varanasi, Northern Railway from 1986 to 1989. She also stated that she had come from Northern Railway on transfer from the post of Office Superintendent II to the post of Senior Clerk under the N.F. Railway accepting bottom seniority. The applicant had appeared in the written test which was held on 6.10.2001 and on qualifying in the written test she was called to appear for the viva voce test to be held on 5.11.2001. She appeared in the viva voce test as well and she stated that she had done exceedingly well and she was confident that she would be selected for the post of Law Assistant. But she stated that when the Office order dated.....



dated 25.2.2002 (Annexure-G) was published she was shocked to find that her name did not appear amongst the selected candidates. Feeling aggrieved by the order dated 25.2.2002 she preferred representation before the authorities for favourable consideration of her case, keeping in view the fact that she had experience, capability and eligibility to discharge duties as Law Assistant. But the said representation was also disposed of on 28.6.2002 which also stated that the applicant was not found suitable for the post and it was also mentioned in the said order that she was not considered as she had joined N.F. Railway after accepting the bottom seniority. Hence feeling aggrieved she has filed the present application and the reliefs calimed by her are as under:

- i) Quashing and setting aside of the order dated 25.2.2002 issued by the General Manager (P), N.F. Railway, Maligaon.
- ii) Setting aside and quashing of the order dated 28.6.2002 passed by the General Manager (P), N.F. Railway, Maligaon
- iii) To direct the authorities to promote the applicant as a Law Assistant pursuant to selection held in accordance with notification dated 27.6.2001
- iv) To pass such order/orders as the Tribunal may deem fit and proper.

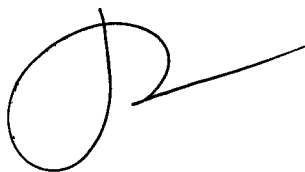
3. In the written statement filed by the respondents, on the aspect of her seniority they had taken the stand that since she had been transferred from Northern Railway on her own request to N.F. Railway and had accepted bottom seniority and as such joined in CCO's Office, Maligaon as Senior Clerk only on 5.5.1998, so now at this

stage.....



stage she cannot claim that on the basis of her previous seniority with respect to the service rendered at Northern Railway she should have been considered for the post. They have also stated tht her service as Law Assistant on ad hoc basis in Northern Railway also cannot be given weightage for the purpose of selection to the post of Law Assistant. However, their stand is that the post of Law Assistant is a selection post to be filled up by positive act of selection consisting of written test followed by viva voce test and since the applicant had secured less than 80% marks which was the requirement for being classed as outstanding for placing at the top of the panel in order of seniority, she was not found suitable to be placed in the panel of selected candidates for the purpose of Law Assistant.

4. Heard the learned counsel for the parties and have perused the record. The learned counsel for the applicant has submitted very vehemently that the applicant was a Law Graduate and had gained sufficient experience in the field of Law by rendering service as Law Assistant (ad hoc) under the Northern Railway for a period of three years from 1986 to 1989 and as such the respondents have acted in an illegal manner thereby causing prejudice and discrimination towards the applicant by not taking into consideration of her actual legal experience as compared to the other selected candidates. On the other hand, the learend counsel for the respondents including the learned counsel for respondent 4 have contended that this was a selection post wherein the applicant was not found suitable and hence not selected. The learned counsel for the official respondents have raised a preliminary objection to the effect that in the impugned order

(Annexure-G),,,,,,,  


(Annexure-G), as many as four candidates were found suitable for the promotion to the post of Law Assistant, but the applicant has chosen to implead only one of them, i.e. Shri Malay Kr Ray, respondent 4, as the party in the instant case ignoring the remaining three candidates. Hence his submission is that even otherwise the case is bad for non-joinder of necessary parties. Hence he seeks summary dismissal of the application on this ground only. However, on merits, the contention of the learned counsel for the respondents is that a candidate in order to appear in the final panel of Law Assistants has to secure a total of more than 80% marks to be classed as outstanding, but since the applicant has not secured such high marks so naturally she could not be placed on the panel. So his submission is that the promotion to the higher post to be made in the case was on the basis of merit and no officer can claim his promotion to the higher post as a matter of right by virtue of seniority alone.

5. There is no manner of doubt that the post of Law Assistant in the case in hand was a promotional post which was to be made on the basis of merit. And the law in the matter has been laid down by the Apex Court in State Bank of India v. Mohd. Mynuddin, AIR 1988 SC 1069 in the following terms:

"Whenever promotion to a higher post is to be made on the basis of merit, no officer can claim promotion to the higher post as a matter of right by virtue of seniority alone with effect from the date on which his juniors are promoted. It is not sufficient that in his confidential reports it is recorded that his services are satisfactory. An officer may be capable of discharging the duties of the post held by him satisfactorily but he may not be fit for the higher post. Before any such promotion can be effected it is the duty of the management to consider the case of the officer concerned on the basis of the relevant materials.

If.....



If promotion has been denied arbitrarily or without any reason ordinarily the Court can issue a direction to the management to consider the case of the officer concerned for promotion but it cannot issue a direction to promote the officer concerned to the higher post without giving an opportunity to the management to consider the question of promotion.

There is good reason for taking this view. The Court is not by its very nature competent to appreciate the abilities or attributes or attributes necessary for the task, office or duty of every kind of post in the modern world and it would be hazardous for it to undertake the responsibility of assessing whether a person is fit for being promoted to a higher post which is to be filled up by selection. The duties of such posts may need skills of different kinds - scientific, technical, financial, industrial, commercial, administrative, educational etc. The methods of evaluation of the abilities or the competence of persons to be selected for such posts have also become now-a-days very much refined and sophisticated and such evaluation should, therefore, in the public interest ordinarily be left to be done by the individual or a committee consisting of persons who have the knowledge of the requirements of a given post to be nominated by the employer. Of course, the process of selection is vitiated on the ground of bias, mala fides or any other similar vitiating circumstances other considerations will arise.

Where the State Government or a statutory authority is under an obligation to promote an employee, which has to be filled up by selection the State Government or the statutory authority alone should be directed to consider the question whether the employee is entitled to be so promoted and that the Court should not ordinarily issue a writ to the Government or the statutory authority to promote an officer straight way."

Similarly, in B.V. Sivaiah and Others etc. v. K. Addanki Babu and others etc., JT 1998 (5) SC 96, their Lordships

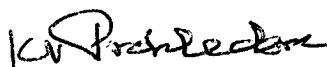
of the Supreme Court has held as under:

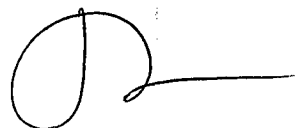
"The Principle of 'merit-cum-seniority' lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal. The two principles of seniority and merit, the criterion of 'seniority-cum-merit' lays greater emphasis on seniority.

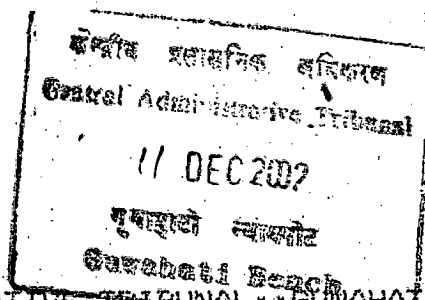
The criterion of 'seniority-cum-merit' in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit the competent.....

competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit."

6. The law laid down by the Hon'ble Supreme Court as referred to above is applicable squarely to the facts of the present case. Consequently, as the respondents found that the applicant was not suitable to be placed in the panel of selected candidates of Law Assistants, so, we do not find any infirmity in the impugned order passed by them. This being so, we find that the O.A. is devoid of any merit and the same is dismissed. *No Costs*

  
( K. V. PRAHLADAN )  
ADMINISTRATIVE MEMBER

  
( BHARAT BHUSAN )  
JUDICIAL MEMBER



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

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

Title of the Case : D.A. No. 386 of 2002

Smt. Putul Malakar .... Applicant

- Versus -

Union of India & Ors. .... Respondents

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For use in Tribunal's office :

Date of filing :

Registration No. :

REGISTRAR

Filed by:  
Ms. Inay Datta  
Advocate



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH

O.A. No. 386 of 2002

BETWEEN

Smt. Putul Malakar,  
Senior Clerk,  
Office of the Chief Commercial Manager,  
N.F. Railway,  
Maligaon, Guwahati.

.... Applicant

AND

1. Union of India through the General Manager, N.F. Railway, Maligaon, Guwahati-11.
2. The General Manager, N.F. Railway, Maligaon, Guwahati-11.
3. The Asstt. Personnel Officer (Traffic), N.F. Railway, Maligaon, Guwahati-11.
4. Shri Malay Kr. Ray, Law Assistant, O/O the General Manager, N.F. Railway, Maligaon, Guwahati.

.... Respondents

DETAILS OF APPLICATION

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

The instant application under Section 19 of the Administrative Tribunals Act, 1985 is directed against orders dated 25.2.2002 issued by the General Manager (P) by which the Applicant was not selected for promotion to the post of Law Assistant inspite of the fact that the Applicant had done exceedingly well in the selections and was eligible in all respect for promotion to the said post. This instant application also assails order dated 28.6.2002 of the same authority by which the representation filed by the Applicant against the non-selection was disallowed.

Filed by

17  
Nirmoy Dutta  
Advocate

Putul Malakar

2. JURISDICTION OF THE TRIBUNAL :

The applicant further declares that the subject matter of the instant application for which she wants redressal is well within the jurisdiction of the Hon'ble Tribunal.

3. LIMITATION :

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

4. FACTS OF THE CASE :

4.1 That the Applicant is a citizen of India. She is presently working as Senior Clerk in the office of the Chief Commercial Manager, Maligaon.

4.2 That the Applicant was initially appointed as Officer Clerk under the Northern Railways in the year 1976.

A copy of the order dated 27.1.76 selecting the Applicant is annexed as ANNEXURE-A.

4.3 That the Applicant passed the LL.B. Examination from the Gorakhpur University held in the year 1984.

A copy of the provisional certificate dated 29.8.86 is annexed as ANNEXURE-B.

4.4 That in the year 1998, the Applicant was transferred to the N.F. Railway, Maligaon. In the month of May 1998, the Applicant joined in the office of the Chief Commercial Manager, N.F. Railway, Maligaon. The

Priti Malhotra

Applicant was transferred and posted at N.F. Railway, Maligaon in the post of Senior Clerk. Prior to her transfer the Applicant was working as Office Superintendent-II under the Northern Railways.

4.5 That the Applicant being eligible in all respect applied for a post of Law Assistant, on knowing about the move to make a panel of Law Assistants. In the said application made through proper channel, the Applicant apart from furnishing other particulars mentioned the fact that the Applicant rendered service as Law Assistant (Ad-hoc) under the Deputy Chief Commercial Manager, Varanasi, Northern Railway from 1986 to 1989. The Applicant also mentioned the fact that she has come from the Northern Railway on transfer from the post of OS-II to the post of Sr. Clerk under the N.F. Railway, accepting bottom seniority.

A copy of the application dated 10.11.2000 is annexed as ANNEXURE-C and copies of appreciation letters in favour of the Applicant are annexed as ANNEXURES-C1 to C3.

4.6 That on 27.6.2001, a notification was made for selection of a panel of Law Assistants. By the said notification it was intimated that a selection in the form of written test followed by viva-voce test of those selected in the written test would be conducted and as such the said notification was to be publicised.

The applicant pursuant to the notification applied in the prescribed format.

Priti Malakar

A copy of the notification dated 27.6.2001 is annexed as ANNEXURE-D.

4.7 That the Applicant being found eligible was asked to appear in the written test which was to be held on 6.10.2001.

A copy of the said order dated 6.9.2001 is annexed as ANNEXURE-E.

4.8 That accordingly the Applicant appeared in the written test and did exceedingly well.

4.9 That by a W.T. message dated 16.10.2001, it was intimated that the Applicant was selected for the viva-voce test to be held on 5.11.2001.

A copy of the W.T. message dated 16.10.2001 is annexed as ANNEXURE-F.

4.10 That the Applicant appeared in the viva-voce test and did exceedingly well and was confident that she would be selected.

4.11 That to the shock and surprise of the Applicant, by an order dated 25.2.2002 whereby 4 persons were selected for promotion to the post of Law Assistant, the Applicant was however not selected.

A copy of the order dated 25.2.2002 is annexed as ANNEXURE-G.

4.12 That being aggrieved by the order dated 25.2.2002, the Applicant preferred a representation

Pritul Malakar

before the authorities for favourable consideration of her case in view of <sup>the fact</sup> that the Applicant had done well in the selection and also in view of the fact that she has the experience, the capability and eligibility to discharge duties as Law Assistant.

A copy of the representation is annexed as ANNEXURE-H.

4.13 That the representation of the Applicant was disposed of on 28.6.2002 by an order of the Respondent No.2. In the said impugned order, it was stated that the Applicant was not found suitable in the positive act of selection. Further it was held that she was not considered as she had joined N.F. Railway after accepting bottom seniority.

A copy of the order dated 28.6.2002 is annexed as ANNEXURE-I.

4.14 That being aggrieved by the orders dated 25.2.2002 and 28.6.2002, the Applicant has preferred this instant application seeking justice and redressal of the wrong meted out against the Applicant.

4.15 That in the instant application, only the selected candidate whose name appears at Sl. No. 4 has only been made a party inasmuch as in the event the Applicant is held to be entitled to be selected, the last of the selected candidates will have to make way for the Applicant. However, if this Hon'ble Tribunal deems it necessary that other selected candidates have to be impleaded, the Applicant in such an event craves

Pritul Malakar

the leave of this Hon'ble Court to implead the other selected candidates in the instant application.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 That the Applicant has been denied her promotion in the most arbitrary and capricious manner. The post to which the Applicant has been seeking promotion is governed by para 219(i) of the Indian Railways Establishment Manual (IREM for short) Vol. I, 1989 revised edition inasmuch as the said post of Law Assistant is a general post being outside the normal channel of promotion for which candidates were called from different categories whether from the same department or different departments. Such posts are to be filled up through selection and merit is the criteria for such selection and promotion. The panel for such posts is drawn up on the basis of the marks in the written and the viva-voce test. In the instant case, the Applicant performed exceedingly well in the selection and the selection i.e. both in the written test as well as in the viva voce. But inspite of the Applicant having done exceedingly well, the Applicant has been denied her promotion by invoking para 219(j) of the IREM which is not applicable in the instant case. The authorities by invoking the para 219(j) of the IREM in the instant case have not only misinterpreted the provisions laid down for filling up of posts like the one in the instant case and have also caused discrimination against the Applicant and as such, the same merits the interference of this Hon'ble Tribunal.

Putul Malakar

5.2 That the Applicant being eligible in all respects was called for the selections and the Applicant did exceedingly well in the written test as well as viva voce and the Petitioner was confident of being selected and therefore, there was no question of the authorities not finding the Applicant to be suitable in the positive act of selection. The plea taken by the authorities that the Applicant was not found suitable in the positive act of selection is arbitrary and requires interference by this Hon'ble Tribunal. Further, merit being the only criterion for selection in the instant case, the fact that the Applicant got herself transferred to the N.F. Railway from the Northern Railway by accepting the bottom seniority cannot be a ground of depriving the Applicant of the promotion. In the instant case, the Applicant has been serving under the Indian Railways since 1976. The Applicant joined the Northern Railway in the year 1976 and thereafter she was transferred to the N.F. Railway in the year 1998. While rendering service under the Northern Railways, the Applicant had also rendered service as Law Assistant (ad hoc) under the Deputy Chief Commercial Manager, Varanasi, Northern Railways for a period of three years from 1986 to 1989 and in the instant case, the authorities by ignoring these facts have caused serious prejudice and discrimination against the Applicant and for which the impugned orders are liable to be set aside and a direction has to be issued to the authorities to promote the Applicant to the post of Law Assistant.

Purush Malakar

5.3 That the fact that the Applicant was transferred to the N.F. Railway and during such transfer, the Petitioner agreed to accept bottom seniority has no bearing in the instant case as the Applicant's service in Northern Railway cannot be ignored for the purpose of assessing her eligibility and her seniority in N.F. Railway has no relevance for such eligibility. The acceptance of said bottom seniority by the Applicant might have affected her seniority in her cadre, but so far as the instant promotion is concerned, the promotion is outside the normal channel of promotion and the candidates for such promotions are called from different categories and the selections are made on the basis of merit alone subject to eligibility and as such, the Applicant is entitled to be promoted to the post of Law Assistant and the impugned order dated 25.2.2002 is liable to be modified showing the name of the Applicant as being one of the selected candidate and the order dated 28.6.2002 is liable to be set aside and quashed.

6. DETAILS OF REMEDIES EXHAUSTED :

That the Applicant states that she has no other alternative, efficacious remedy except by way of approaching this Hon'ble Tribunal.

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

Puteri Malakar



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 :

On the facts, circumstances and premises aforesaid, the Applicant prays for the following reliefs :

- 8.1 Quashing and setting aside of the order dated 25.2.2002 (Annexure-G) issued by the General Manager (P), N.F. Railway, Maligaon.
- 8.2 Setting aside and quashing of the order dated 28.6.2002 passed by the General Manager (P), N.F. Railway, Maligaon (Annexure-H).
- 8.3 Direct the authorities to promote the Applicant as a Law Assistant pursuant to selection held in accordance with notification dated 27.6.2001.
- 8.4 Pass such other order/orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and as may be deemed fit and proper by this Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR :

Pending disposal of the application, Your Lordships may be pleased to direct that pendency of the application shall not be a bar to promote the Applicant to the post of Law Assistant pursuant to the selection held as per notification dated 27.6.2001.

10. ....

The Application is filed through Advocate

Pulul Malakar

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

- (i) I.P.O. No. : 79606556  
(ii) Date : 3.12.2002  
(iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

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

I, Smt. Putul Malakar, Senior Clerk, Office of the Chief Commercial Manager, N.F. Railway, Maligaon, Guwahati-11, do hereby solemnly affirm and verify that the statements made in the accompanying application in paragraphs 1 to 4.1, 4.3 to 4.5, 4.8, 4.10, 4.12 and 4.14 to

7 are true to my knowledge ; those made in paragraphs 4.2, 4.6, 4.7, 4.9 & 4.11 (24) being matters of records are true to my information derived therefrom and the rest, are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this the 9th day of November 2002 at Guwahati.

Putul Malakar

ANNEXURE-A

Northern Railway,  
Head Quarter Officer,  
Baroda House, New Delhi

Ms. Putul Dey,  
d/o \_\_\_\_\_ Chandra,  
N.E. Rly. Colony,  
Dr. No. L/22 :F;  
Alaipur, Varanasi (U.P.)

No. 220-II/1138/XXX/LOR/

Subject : Appointment of Office Clerk Rs.260.00

You have been selected for the post of Office Clerk subject to your passing the medical test.

2. For medical examination you should report at the office of the Divisional Medical Officer, \_\_\_\_\_ Northern Railway not later than \_\_\_\_\_. A medical memo in your favour is enclosed.

3. As the identification marks given by you in the application are not complete, you should report at this office immediately for obtaining the medical memo. III class pass for your journey to Delhi is enclosed.

4. On your passing the medical examination you should call at this office immediately for obtaining appointment letter authorising you to report to the office of your posting.

5. IIIrd class pass for your journey is enclosed if you are declared fit, a free pass for your journey to Delhi will be issued by the Divisional Medical Officer concerned.

PLEASE BRING THE FOLLOWING :

1. Original Matriculation/Higher Secondary certificate.
2. Two recent character certificates issued by the different persons (M.Ps. or MLA's or Magistrate or Gazetted Officers) under their proper deals.
3. All original certificates showing educational qualification.
4. Proper S/Caste certificate from a Distt. Magistrate concerned in case of S/caste.
5. Relieving certificate from the present employer, if any.
6. Ex. serviceman certificate in the case of ex-service employee.

If you do not turn upto the above noted period this office without any further notice to you will stand cancelled.

DA/as above.

Sd/-

For Senior Personnel Officer (R)

21.1.76

Attested

M  
Mr. M. V. Dutta  
Advocate

6. Incomplete application and applications without certificate by the Controlling officer/Establishment Officer will be straightway rejected without any further communication.

7. The candidature of the volunteers will be liable to be cancelled at any stage during finalisation of the said selection in case the service particulars furnished by them are found to be not in order or if he/she is otherwise not eligible to appear in the above mentioned selection.

8. the syllabus for the selection of Law Asstt. against 66 2/3% D.P. quota is given as under :

- i) Indian Contract Act.
- ii) Partnership Act.
- iii) Arbitration Act.
- iv) Indian Railway Act.
- v) Constitution of India.
- vi) Sales Tax Act.
- vii) P.W. Act.
- viii) M.C. Act.
- ix) Industrial Disputes Act & Labour Laws.
- x) Limitation Act.
- xi) Code of Civil Procedure.
- xii) Transfer of Property Act.
- xiii) Sale of Goods Act.
- xiv) Public Premises Eviction Act.
- xv) Land Acquisition Rules.
- xvi) Any other legal matters.

9. PROFDMA

1. Name in full (in block letter) :
2. Designation :
- 3) Place of posting :
- 4) Working under :
- 5) Date of birth :
- 6) Date of Apptt. :

Attested

M  
Mr. V. Dutta  
Advocate

- 7) Qualification :
- 8) Officiating :
- (a) Post :
- (b) Scale :
- (c) Date of promotion :
9. Whether SC/ST/UR :
10. Whether undergoing punishment if so, details :
11. Declaration to be furnished by the candidate.

I do hereby certify that the above mentioned particulars furnished by me are true to the best of my knowledge and belief and in the event of any entry is found incorrect or not in order my candidature shall be liable to be cancelled at any stage during finalisation of the above selection.

Date :

Signature of the candidate

Sd/-  
20.6.01  
(L.B. Singh )  
A.P.O. (T)  
For General Manager (P) MLG

Attested

(M)  
Mr. Manoj Dutta  
Advocate

- 14 -

ANNEXURE - B

90

# UNIVERSITY OF GORAKHPUR

13512



Roll Number 302896

Enrolment No. ST 2444

## PROVISINAL CERTIFICATE

This is to certify that Sri / . Kmtl Smt.

Patal Day

passed h/s her

L.L.B.

examination from this University

held in the month of

April / May

1987

and that he / she was placed in

the

Second

division

Dated 29.8.86

R. Upadhyaya  
REGISTRAR

du

M  
Y. M. C. A. tta

To,

The General Manager (P)  
N.F. Railway,  
Headquarter's Office,  
Maligaon, Ghy-11.

(Through Proper Channel)

Sub :- Application for the post of Law Asstt. in  
Scale Rs. 6500/- - 10,500/-.

Sir,

It has come to know from some reliable sources that  
CE/Works/Maligaon is going to create a post of law Asstt. I am  
also willing to work as Law Asstt. My Biodata is given below :-

- |                           |   |  |
|---------------------------|---|--|
| 1. Name                   | : | SMT PUTUL MALAKAR  |
| 2. Husband's Name         | : | Sri Biman Malakar,   |
| 3. Date of Birth          | : | 07-03-1954   |
| 4. Date of Appointment    | : | 29-07-1976   |
| 5. Designation            | : | Sr. Clerk working under CCO/MLG,<br>N.F.Rly.   |
| 6. Present Pay            | : | Rs. 6375/- in Scale : 4500 - 7000/-  |
| 7. Academic Qualification | : | M.A., LL.B., B.Ed.   |
| 8. Length of Service      | : | 24 years experience gained.  |
| 9. Experience             | : | I have rendered my services as<br>Law Asstt. (Ad-hoc) under Dy. CCM/C,<br>Varanasi, Northern Railway from<br>1986 to 1989. |

Further to inform you that I have come from Northern  
Railway on transfer from the post of OS/II to the post of Sr.  
Clerk accepting bottom seniority and joined under CCO/MLG, N.F.  
Railway.

Sir If I will be given a chance to hold the post of  
Law Asstt., I assure you that I will render my services to the  
satisfaction of my superiors.

Thanking you,

Yours faithfully,

*Putul Malakar*

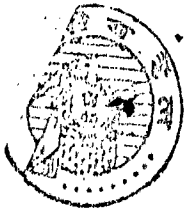
( Putul Malakar )  
Sr. Clerk.

Date : 10/11/2000.

M

112

उत्तर रेलवे  
NORTHERN RAILWAY



Name: Smt Putul Malakar

Design: Head Clerk

Grade: Rs 1400-2300/- (RPS)

C I T A T I O N

Smt Putul Malakar, Hd. Clerk 'D' section is dealing with heavy claims cases of LKO division efficiently. She has a good ~~knowledge~~ knowledge of commercial working. She is very much sincere, hardworking and disciplined worker.

In recognition of her sincere and good services a cash award of Rs 100/- is hereby sanctioned with a letter of citation for ~~placing~~ placing in her service record.

Dated: 31/7/86

(Mr. A. K. MANOCHA)  
Dy. Chief Comm. Manager/Claims  
N.Rly/BSB

*Attended*

*M*

Advocate

Advocate





कार्यालय  
मुख्य वाणिज्य अधीक्षक  
उत्तर रेलवे स्टेशन भवन  
वाराणसी-221002

OFFICE OF THE  
CHIEF COMMERCIAL SUPERINTENDENT  
NORTHERN RAILWAY  
STN. BUILDING  
VARANASI-221002

Dated: 17.4.90

Km. Putul Dey is working in this office as Head Clerk. She is dealing all the cases pertaining to DPG, Railway Board and important letters received from Headquarters. She is well conversant with claims rules. She disposes of the important references of Rly Board and Hd.Qrs. Office quickly. She is hard working and reliable.

In consideration of his meritorious services rendered by her, this commendation letter is issued to her.

A copy of this letter is being kept in her service record.

(Jagat Pal)

Dy. Chief Commr. Supt. (C)  
NORTHERN RAILWAY, VARANASI

ANNEXURE 63



कार्यालय  
मुख्य वाणिज्य अधीक्षक  
उत्तर रेलवे स्टेशन भवन  
वाराणसी-221002

OFFICE OF THE  
CHIEF COMMERCIAL SUPERINTENDENT  
NORTHERN RAILWAY  
STN. BUILDING  
VARANASI-221002

Dated: 17.4.90

Km. Putul Dey is working in this office as Head Clerk. She is dealing all the cases pertaining to DPC, Railway Board and important letters received from Headquarters. She is well conversant with claims rules. She disposes of the important references of Rly Board and Hd.Qrs. Office quickly. She is hard working and reliable.

In consideration of his meritorious services rendered by her, this commendation letter is issued to her.

A copy of this letter is being kept in her service record.

(Jagat Pal)

Dy. Chief Commr. Supt. (C)  
NORTHERN RAILWAY, VARANASI

Attested

M. C. Dutta  
Advocate

ANNEXURE-D

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

No. E/254/99/Pt.V(T)

Dated, the 27.6.2001.

To  
All Heads of Departments,  
All DRMs, All DPOs.  
Dy.CMEs/NB & DRWs  
All DADs, WADs/NBO & DRWs  
All Controlling Officers of  
Non-Divisionalised Offices  
All Cadre SPOs/APOs of Hd. Qrs.  
The General Secy./NFREU/PND with 10 spare copies  
The " " /NFRMU/PND with 10 spare copies  
The " " /AISCTREA/MLGN with 10 spare copies  
The " " /NFRDBCEA/MLG with 10 spare copies

Sub : Notification for selection of Law Assistant in  
Scale Rs.6500-10500/- (RPS) against 66 2/3%  
Departmental quota.

1. It has been decided to hold a selection for forming a panel of 5 (five) posts (UR-4, SC-1, ST-Nil) of Law Asstt. in scale Rs.6500-10500/- (RPS) against 66 2/3% Departmental quota by serving Railway employees in grades lower than the grade Rs.6500-10500/- having 5 (five) years regular service in Group "C" as on 1.7.2001 and possessing a Degree in Law irrespective of the Department in which they are working.

2. It is clearly stated that formation of the panel of Law Asstt. against the 66 2/3% (Departmental) will be based on the grade subject to inter-se seniority of candidates.

3. The selection will be held in the form of a written test followed by a viva-voce test with those candidates only who will qualify themselves in the written test.

4. You are, therefore, requested to give wide publicity of the above amongst the staff working under you and forward their applications along with their service particulars of those who volunteer for being consideration the above mentioned selection in the proforma given below so as to reach this office by 31.7.2001 positively. Application received after the target date will not be entertained in any circumstances.

5. While forwarding the application a certificate should be furnished to the effect that all the application of the eligible candidate have been received within the target date and forwarded duly verified. It should also be certified that no more application are left over.

*Attested*

M  
Mrinmay Dutta  
Advocate

ANNEXURE-E

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

No. E/254/99/Pt.VI(T)

Dated the 6.9.2001.

To

FA & CAD (CCW)/MLB, CDM/C/MLB, CDD/MLB, CME/MLB,  
CCS/MLB, DRM(P)/KIR, APDJ, LMG, TSK, Sr.EDPN/MLB,  
DRM/Rajbhasha/KIR, Sr.DDM/KIR, Sr.DIE/SBUJ,  
Sr.DGN/LMG, Sr.SE(W)/KME, AEI/SBUJ.

Sub : Selection for the post of Law Asstt. in scale  
Rs.6500-10500/- against 66 E/3% D.P. quota.

Ref : This office letter No. E/254/99/Pt.VI(T) dated  
27.6.2001.

The following staff who have volunteered in  
response to this office notification quoted above are  
found eligible to appear in the above selection and  
they should be asked to keep themselves in readiness to  
appear in the written test as scheduled here under and  
they should be directed to appear in the written  
examination to this office accordingly without fail. No  
absentee test will be held under any circumstances  
since the post would be filled up by calling  
applications from the volunteers.

P R O F O R M A

1. DATE OF WRITTEN TEST : 6.10.2001 AT 10.00 HRS.
2. DATE OF VIVA-VOCE TEST : 5.11.2001 AT 10.00 HRS.

Sl. No.	Name and community	Designation and Working place of posting under
1.	Sri S. Salam (UR)	Hd.Clerk/KIR DCM/KIR
2.	Sri S.B.Prasad(UR)	Steno/KIR Sr.DPD/KIR
3.	Sri M.N.Sah (UR)	Hd.CC/KIR DCM/KIR
4.	Sri B.K.Basak(UR)	Sr. C.C./KIR DCM/KIR
5.	Sri S.N.Sarma(UR)	Carpenter Bd.I.KVE Sr.SC(W)/MLB
6.	Sri D.K.Sah (UR)	Sr.T.C./KIR DCM/KIR
7.	Sri Ajit Kr.Das(UR)	ASM/KTHR Sr.DCM/KIR
8.	Sri Anil Kumar (UR)	Sr.Clerk/KIR Sr.DME/KIR
9.	Sri K.N.Mishra (UR)	Rajbhasha Asstt/KIR DRM/Rajbhasha/KIR
10.	Sri Malay Kr.Roy(UR)	Sr.Clerk/SGMJ AEN/SGMJ
11.	Sri A.K.Singh(UR)	Sr.Clerk/KIR Sr.APO/KIR
12.	Sri B.K.Thakur(UR)	Sr.Clerk/KIR -do-
13.	Sri N.Rahman (UR)	Hd.Clerk/KIR -do-
14.	Sri Naiyar Alam(UR)	Sr.Clerk/KIR -do-
15.	Sri Chandra Sekhar(UR)	Rajbhasha Asstt. DRM/Rajbhasha KIR KIR
16.	Sri Debashish Chaki(UR)	Sr.Clerk/SBUJ Sr.DRM/SBUJ
17.	Sri C.R.Deka(UR)	AA/MLB FA & CAD/CCM/MLB
18.	Sri RD Dutta Sarma(UR)	CC/TT/MLB Sr.ARM/LMG
19.	Sri A.K.Sinha (UR)	Sr.Clerk/MLB CME/MLB

Attested

M

Mrinmoy Dutta  
Advocate

20. Sri R.J. Nag (UR)	SM/DOE, now at Cash Office/MLB	CCM/B/MLB
21. Sri Mustak Ahmed (UR)	DEO/MLB	Sr. EDM/MLB
22. Sri Jogendra Daimari (ST)	Hd. Clerk/MLB	CDS/MLB
23. Smt. Putul Malakar (UR)	Sr. Clerk/MLB	CCO/MLB
24. Sri Hari Ram Das (UR)	CTRC/MLB	DCM/AFDJ

This may clearly be intimated that in case the service particulars furnished by the above volunteers are found to be not in order, their candidature will be liable to be cancelled at any stage during the finalisation of the selection.

The candidature of S.B. Prasad, Steno under Sr. DPO/KIR (Sl. No. 2) R.K. Thakur, Sr. Clerk/KIR under DPO/KIR, (Sl. No. 12), H. Rahman, TI Gr. III/DOE (Sl. No. 13), Chandra Sekhar, Rajbhasa Asstt./KIR under DRM/Rajbhasa/KIR (Sl. No. 15), R.J. Nag, ASM/DOE under CCM/B/MLB (Sl. No. 20) and Jogendra Daimari, Hd. Clerk/MLB under CDS/MLB (Sl. No. 22) are considered provisionally subject to the production of LL.B. passed certificate before written examination. Otherwise they will not be allowed to sit in the written examination.

The following staff who have also volunteered in response to this office notification quoted above are not found eligible to appear in the above selection since they have not fulfilled the condition as stipulated in the notification dated 27.6.2001.

Sl. No.	Name and community	Designation and place of posting	Working under
1.	Sri K.P. Singh (UR)	Pharmacist/KIR	DCM/KIR
2.	Sri Birenda Singh (UR)	ACF/Gr. III/KIR	Sr. SE (AC/TL/KIR
3.	Sri Kabin Saikia (UR)	ASM/DSR	Sr. DDM/LMB
4.	Sri Pradip Kr. Dey (UR)	P/man/FHD	-do-
5.	Smt. Manjushree Nanda (UR)	PGT/LMB	Principal, Rly. HS School
6.	Sri D.C. Barman (UR)	CI/CPI Gr. II/MLB	CCO/MLB

Attested

M

Mriunoy Datta  
Advocate

ANNEXURE-F

EXR

16/10/2001

DRM(P)/KIR, APDJ, LMG & MLG  
DCM/KIR APD/SSUJ  
Dy.CCM/G/MLG : BY HAND.  
DY.CCM/CLAIMS/MLG :

NO.F/254/99 PT.VI(T) (.) FSAFY OF IVSE NUMBER DATED  
06.09.2001 REGARDING SELECTION OF LAW ASSTT. IN SCALE  
RS.6,500-10,500/- AGAINST 66 2/3% D.P. DUDTA (.) THE  
FOLLOWING CANDIDATES HAVE COME OUT SUCCESSFUL IN THE  
WRITTEN TEST HELD ON 06.10.2001 (.)

- (1) MALAY KR. ROY (UR) SR. CLERK/B UNDER APD/SSUJ
- (2) SASHI BHUSAN PRASAD (UR) STENO/II SR.APD/KIR
- (3) SMT.PUTUL MALAKAR (UR) SR. CLERK CCS/MLG
- (4) KANU GOPAL NAG (UR) ASM/CCS IDM CASH OFFICE/MLG  
UNDER CCM/G
- (5) ANJALI SINGH (UR) SR. CLERK/ILLEGIBLE/MLG
- (6) MD. SHAHID SALAM (UR) HD. CLERK UNDER DCM/KIR
- (\*) THEY MAY BE SPARED AND DIRECTED TO REPORT TO THIS  
OFFICE FOR VIVA-VOCE TO BE HELD ON 05.11.2001 AT 10.00  
HRS WITHOUT FAIL (.) THE LAST FOUR (4) YEARS ACR OF THE  
ABOVE CANDIDATES TO APD(T).MLG BEFORE HOLDING THE VIVA-  
VOCE TEST IMMEDIATELY (.) ILLEGIBLE (.)

GM(P)/MLG

Not to be telegraphed  
Confirmed

Sd/-

( Y.L. SINGH )

For GENERAL MANAGER (P)

Attested

Mri  
Advocate

ANNEXURE-B

NORTHEAST FRONTIER RAILWAY

OFFICE ORDER

The following candidates who have been found suitable for promotion to the post of Law Asstt. in scale Rs. 6500-10,500/- against 66/2/3% DR quota vide this office memorandum No. E/254/99 Pt. VI(T) dated 21.02.2002 are hereby temporarily appointed to officiate as Law Asstt. in scale 6500-10,500/- and posted as under against the existing vacancies with immediate effect, subject to the condition that they are free from DAR, STE, VIG cases.

SN	Name	Community	Designation and working under	Posted under
(1)	Shri K.G.Nag	UR	ASM/GOE now at Cash Office Maligaon	CCD/Court/ APDJ
(2)	Shri S. Salam	UR	Hd. Clerk DCM/KIR	-do-
(3)	Shri S.B.Prasad	UR	Steno Sr.APD/KIR	-do-
(4)	Shri Malay Kr. Roy	UR	Sr.Clerk(E)	GM/Law/MLB

The above mentioned staff may exercise their option for fixation of their pay from the date of next increment in their substantive grade within the month from the date of issue of this order. Option received beyond that shall not be entertained.

This issues with the approval of the Competent Authority.

Sd/-  
25.2.02  
( L.B. SINGH )  
APQ/P

For GENERAL MANAGER (P)/MLB

No. E/254/02 Pt.VI (P) Maligaon dated 25.02.2002

- 1) FA & CAO/MLB (2) SRJM/MLB (3) CCA/LM/MLB  
4) CCS/MLB (5) LD/MLB (6) DRM(P)/KIR,APDJ  
7) Sr.ADRD/KIR,APDJ (8) APD/NJP (9) Sr.DER/SBUJ  
10) Sr.DCM/APDJ (11) Sr.DCM/KIR (12) DAO/KIR,APDJ  
13) AAO/NJP (14) ACM/Court/ 14(a) APD/A/MLB  
MLB  
15) Staff concerned through their respective controller  
16) APQ/Bill (17) OS/Bill  
18) S.Bayan, Hd. Clerk, 4 copies for P/case.

Sd/- Illegible  
25.2.02

Attested

B  
Mrinmay Datta  
Advocate

ANNEXURE-H

To

The General Manager (P)  
N.E. Railway, Maligaon,  
Guwahati-11

Date : 25.4.2002

Through proper channel

Sub : An appeal against the selection for the post of  
Law Asstt. in scale of Rs.6500-10,500/- against  
66-2/3% D.P. Quota.

Ref : Your Office letter No. E/254/99 Pt.V(T) dated  
27.6.2001 and written test call letter No.  
E/254/99 Pt. VI(T) dated 6.9.2001.

Sir,

With profound respect and humble submission, I  
would like to invite your kind attention to the  
following few lines for your kind perusal and prudence  
decision please :

1. That I was a candidate of the above post and  
fulfilled all the conditions as stipulated in the  
notification dated 27.6.2001.

2. That I qualified in the written test and called for  
to appear in VIVA-VOCE test on 5.11.2001 having the  
mentioned-status as 3rd position out of 6 candidate  
qualified. (Copy enclosed).

3. That this is the open selection according to the  
merit list based on the seniority channel as per  
notification. It is very much to my confidence and also  
known by the reliable source that I got very fair  
position out of 6 candidates in the written as well in  
viva. But on declaration of the final result of that  
post on 22.2.2001, I found missed my name from the  
selected list and I was told verbally that I could not  
get the post due to seniority ground.

4. That about the seniority position (Seniority ground)  
I would like to say that I have come from Northern  
Railway on transfer from the post of DS II to the post  
of Sr. Clerk accepting bottom seniority, and joined  
under CDD/MLB, N.F. Railway on May 1998, after loss of  
my seniority of 22 years.

5. That being this is a selection of merit channel from  
open field not based on seniority channel, I appeared  
in the competition after loss my seniority of 22+3 = 25  
years on 6.10.2001 and 5.11.2001 respectively.

My question arise here - "If a candidate has lost his  
seniority of 22 years at Northern Railway and joined  
N.F. Railway after loss of original seniority, can  
he/she fulfill his/her seniority at N.F. Railway at all  
? He/she always remain junior among all divisions, then  
as ineligible his/her name as declared in the selection

**Attested**

*M*  
**Mrinmoy Datta**  
**Advocate**



list with the name of 6 person in the letter of even No. dated 6.9.2001 (Copy enclosed)."

6. That being a lady candidate and only one lady appear in the mentioned competition and got good position with good marks having her name as merit list stood in 3rd position, she should get a soft corner and sympathy by the selection committee. It should be the consideration by the selection committee to select her because rare ladies come out in front line like this post.

7. I have already officiated under Northern Railway for 3 years as mentioned in my C.R. as well as application too.

8. That lastly, I was always ready to hold post and responsibility and tried time to time through proper channel regularly. A copy of the application to that effect is attached herewith with full bio-data.

In view of the above, I would request you honour, kindly to examine my case prudently. So that I should not be debarred from justice which was an achievement and shocked me badly due to non-selection in the final succeed list.

Thanking you,

Yours faithfully,

Sd/- Putul Malakar  
CCD's office, N.F. Rly.  
MLG, Ghy-11.

Attested

M.  
Mrinmoy Dutta  
Advocate

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ANNEXURE-I

N.F. RAILWAY

No. E/254/99/Pt.VI(T)

Office of the  
General Manager (P),  
Maligaon, dated 28.6.2002

To  
Smt. Puful Malakar,  
Sr. Clerk under CCO/MLB

(Through : DY. CCM (Claims) MLB)

Sub : Appeal against the selection for the post of L.A.  
in scale Rs. 6,500-10,500/- against 66 2/3% D.P. quota.

Your representation dated 20.4.2002 has been carefully  
examined and is not found feasible to consider your  
case because you are not found suitable in the positive  
act of selection. Moreover, you have come to this  
Railway non-accepting bottom seniority and names are  
arranged in order of seniority in terms of para 219(J)  
of IREM Vol. I (1989 Revised Edition).

Sd/-

( L.D. SINGH )

APD/T

For GENERAL MANAGER (P) MLB

Copy forwarded for information and necessary action to :

1) DY. CCM(Claims) MLB.

For GENERAL MANAGER (P) MLB

*Attested*

17  
Mrijoy Dutta  
Advocate

(27)

23 SEP 2013  
In The Central Administrative Tribunal  
Guwahati Bench :: Guwahati.

Filed by Respondent  
Nos. 1, 2, & 3  
J.L. Sankar  
23/9/2013  
V. Nyl  
Chief Personnel Officer (1R) &  
M. P. R. &  
Guwahati-11

O.A. NO. 386/2002

Smt. P. Malakar

Vs.

Union Of India & Ors.

In the matter of :

Written Statement on behalf of  
the respondent No.1 to 3

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

1. That the respondents have gone through the original application and have understood the contents thereof.
2. That the respondents do not admit any statement except those which are specifically admitted in this written statement. Statements not admitted are denied.
3. That in reply to statements in paragraph 4.1 to 4.3 it is stated that the answering respondents do not admit those which are not borne by records.
4. That in reply to statements in paragraph 4.4 it is stated that the applicant was transferred from Northern Railway on her own request to this Railway after accepting bottom seniority and joined in CCO's Office, Maligaon as Senior Clerk on 5.5.1998.

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5. That in reply to statements in paragraph 4.5 it is stated that weightage on applicant's service as Law Assistant on adhoc basis in Northern Railways cant be given for purpose of selection in question under any Rule.

6. That in reply to statements in paragraph 4.6 it is stated that in Para 2. of the Notification No.E/254/99/Pt.V(T) for selection of Law Assistant dated 27.6.2001 it is stipulated that the panel of Law assistant against 66 2/3% (Departmental) will be based on the grade subject to interse seniority of candidates.

7. That in reply to statements in paragraph 4.8 to 4.10 it is stated that the applicant obtained qualified marks in the written test and hence she was called for viva voce test.

8. That in reply to statements in paragraphs 4.11 to 4.15 it is stated that the post of Law Assistant is a selection post filled up by positive act of selection consisting of written test followed by viva voce test. Since the petitioner was not found suitable in the positive act of selection as such she was replied by office letter No.E/254/99 Pt.VI(T) dated 28.6.2002. It is also stated that the applicant secured less than 80% marks in aggregate.

It is further stated that Para 219(j) of IREM stipulates that for general posts like Law Assistants the final panel should be drawn up in order of seniority from amongst those who secure a maximum of 60% marks in the professional ability and 60% marks in the aggregate; provided

:: 3 ::

that those securing a total of more than 80% marks will be classed as outstanding and placed at the top of the panel in order of seniority. Moreover, Railway Board by letter No. E(NG) I-96/PM4/14 dated 17.4.1997 clarified that "since transfer of a Railway servant on request on bottom seniority takes place against direct recruitment quota, he should be treated as a direct recruit in the new seniority unit/cadre for the purpose of seniority and therefore the service rendered in the absorbing unit alone will count for eligibility wherever a minimum length of service is specified as a condition for consideration for promotion including promotion to general selection posts".

It is mentioned that the respondent No. 4 is senior to the applicant in the unit (in N.F. Railways) and hence he has been promoted rightly following the Rules.

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

Verification

I, Jai Shankar Prasad Singh....., working as Chief Personnel Officer/IR....., N.F.Rly, Maligaon, do hereby verify that, the statements made in the paragraphs 1 to 9 are true to my knowledge.

Guwahati

/ /2003

Signature

✓ WNL  
Chief Personnel Officer (IR)  
N. F. Rly, / Maligaon  
Guwahati-00.

46  
In The Central Administrative Tribunal  
Guwahati Bench :: Guwahati.

O.A. NO. 386/2002

Smt Putul Malakar

- Vs. -

Union Of India & Ors.

In the matter of :

Written Statement on behalf of  
the respondent No.4.

The respondent No.4 in the above case most respectfully beg to state as under :

1. That the respondent has gone through the original application and have understood the contents thereof.
2. That the respondent does not admit any statement except those which are specifically admitted in this written statement. Statements not admitted are denied.
3. That in reply to the statements in para 4.1 to 4.4 the respondent does not admit anything which are not borne on records.
4. That in reply to the statements in para 4.5 it is stated that the notification for selection of Law Assistant was published by the General Manager(P)/ Maligaon on 27.06.2001 and hence her application dated 10.11.2000 has no relevancy in the instant case, nor has any relevancy with the instant selection. It is also stated that her previous

Filed by the respondent No.4  
Malay Kumar Dey  
through A. Chakrabarti

service in Northern Railway has no bearing in the instant selection.

5. That in reply to the statements in para 4.6 it is stated that in the 2nd para of the Notification (Annexure-D to OA) it is clearly mentioned that formation of the Panel of Law Assistant against the 66 2/3 % (Departmental) will be based on the Grade subject to inter-se-seniority of the candidates. It is also stated that the respondent No.4 is senior to the applicant, which is an admitted position.

6. That in reply to the statements in para 4.7 to 4.10 it is stated that the respondent No.4 was selected among others including the applicant for viva voce test and his name appears in the 1st place of the select list (Annexure-F). The respondent No.4 appeared in the viva voce test and was declared successful.

7. That in reply to the statements in para 4.11 to 4.12 it is stated that the respondent No.4 was selected by a positive act of selection and he was found suitable for promotion by the Selection Board. The applicant's contention in her representation that she has secured 3rd position in the written test is misconceived as the name of the candidates called for viva voce test was not arranged in order of merit and/or in order of seniority. In this context it is stated that the name of Respondent No.4 appears at serial No.1 in the said select list (Annexure-F).

Malay Kumar Dey

8. That in reply to the statements in para 4.13 to 4.15 it is stated that Para 219(j) of IREM, 1989 revised edition, provides, "The name of the selected candidates should be arranged in order of seniority but those securing a total of more than 80% marks will be classed as outstanding and placed in the Panel appropriately in order of their seniority allowing them to supersede not more than 50% of the total field of eligibility."

It is further stated that the Railway Board vide letter No.E(NG)1-98/PMI/11 dated 16.11.1998 (circulated under General Manager(P)/Maligaon's Circular No.EPS-406 dated 9.2.1999) has clarified that the final panel of a general selection post will be drawn up from amongst those securing 60% marks in the professional ability and 60% marks in the aggregate, in order of seniority, provided that those securing a total of more than 80% marks will be classed as outstanding and placed on the top of the panel in order of seniority.

It is pertinent to mention that the respondent No.4 has joined in the post of Senior Clerk in N.F. Railways w.e.f. 28.02.1998 and the applicant has joined in the N.F. Rly in the post of Senior Clerk in May/1998 accepting bottom seniority. The respondent No.4 is, therefore, senior to the applicant.

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

*Malay Kumar Ray*



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:: 4 ::

Verification

I, Sri Malay Kr. Roy, working as Law Assistant in N.F.Rly, Maligaon, do hereby verify that, the statements made in the paragraphs 1 to 9 are true to my knowledge and that I have not suppressed any material fact.

*Malay Kumar Roy*  
Signature

Guwahati

/2004

ANNEXURE - F

NORTHEAST FRONTIER RAILWAY.

LR. 397.

L. 17/230/57/FA (C)

Maligaon, dated : 8-05-1997.

To :  
All Heads of departments,  
All DMS, DAOs/HQ & DMS,  
All Controlling Officers of  
Non-divisionalised Offices,  
The General Secretary/HFRMU/PIO,  
The General Secretary/HFRW/PIO,  
The General Secretary/AISCTRA/Maligaon.

Sub: Counting of service rendered in the old unit  
on 'own request transfer'.

A copy of Railway Board's letter No. E (NG) I-96/PM4/14 dated 17-4-97, on the above mentioned subject is forwarded herewith for information and guidance.

for CHIEF PERSONNEL OFFICER.

(Copy of Board's letter No. E (NG) I-96/PM4/22 dated 17-4-1997)

Sub: Counting of service rendered in the old unit  
on 'own request transfer'.

The question whether a Railway servant who joins another seniority unit on transfer on request on bottom seniority loses only his seniority or also service rendered in the previous unit for the purpose of eligibility for consideration for promotion in the new seniority unit, wherever a minimum service condition is specified, has been considered by the Board in the light of a clarification sought for in this regard by one of the Railway Administrations.

2. It has been decided that since transfer of a Railway servant on request on bottom seniority takes place against direct recruitment quota, he should be treated as a direct recruit in the new seniority unit/cadre for the purpose of seniority and therefore the service rendered in the absorbing unit alone will count for eligibility wherever a minimum length of service is specified as a condition for consideration for promotion including promotion to general selection posts.

3. Past cases decided otherwise need not be re-opened.

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