

30/100

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

(DESTRUCTION OF RECORD RULES, 1990)

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O.A.T.A No. 155/02.....

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SECTION OFFICER (Judl.)

FROM No. 4  
(SEE RULE 42) ...

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 155/2002  
Misc Petition No. \_\_\_\_\_  
Contempt Petition No. \_\_\_\_\_  
Review Application No. \_\_\_\_\_

Applicants. S.K. Bhattacharyya

-Vs-

Respondant(s) H.O.I. Goms

Advocate for the Appellant(s) Mr. A.R. Barthakur  
Mr. Srinivasan

Advocate for the Respondant(s) Railway Counsel

Notes of the Registry

Date

Order of the Tribunal

16.5.02

None appears for the Applicant.  
Pass over for the day. List the matter  
on 17.5.2002 for admission.

Member

Vice-Chairman

mb

Later the Senior Counsel Mr.A.R.  
Barthakur for the applicant appeared  
and also asked for posting on 17th May  
Put on 17th May, 2002 accordingly

Member

Vice-Chairman

mb

Steps taken  
alongwith enclaves  
excess money deposited.

Notice prepared and  
Sent to Dls for filing  
the Respondent No  
1 W/O by Regd. AD.

2/15

D/N<sub>o</sub> 1534 1543

Dtd 28/5/02

① Service report are  
still awaited.

30  
14.6.02

No written statement  
has been filed.

30  
23.7.02

No W/S has been  
filed.

30  
8.8.02

17.5.02

Heard Mr. A.R. Barthakur,  
learned Sr. Advocate for the Applicant  
and also Mr. S. Sengupta, learned Railway  
Standing counsel for the Respondents.

The application is admitted. Call  
for the records.

It is made clear that any promo-  
tion <sup>made</sup> to the applicant shall be subject  
to the outcome of this application as  
ordered in O.A. No. 97/2002.

List on 17.6.2002 for orders.

IC Ushary  
Member

Vice-Chairman

mb

17.5.02

List again on 24.7.02 to enable the  
respondents to file written statement.

IC Ushary  
Member

Vice-Chairman

mb

24.7.2002

List the case again on 9.8.2002  
enabling the respondents for filing of  
written statement.

Vice-Chairman

bb

9.8.02

On the prayer of Mr. S. Sengupta,  
learned ~~xx~~ Railway counsel four weeks  
time is allowed as a last chance to file  
written statement. Mrs B. Acharjee, learned  
counsel for the applicant objected to it.  
List on 10.9.02 for order.

Member

Vice-Chairman

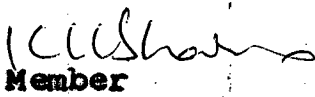



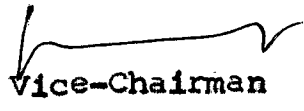
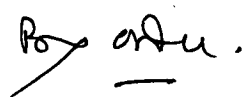

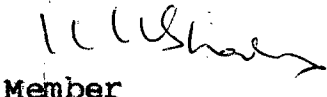

pg

10.9.02

On the prayer of Mr. S. Sengupta learned  
standing counsel two weeks time is allowed  
for filing of written statement.

List on 24.9.02 for orders.

Vice-Chairman

Notes of the Registry	Date	Order of the Tribunal
	24.9.02	<p>Heard Mrs.B.Achyara learned counsel for the applicant and also Mr.S.Sengupta learned counsel for the Railway.</p> <p>Written statement has already been filed. The case may now be listed for hearing on 7.11.02. In the meantime, the applicant may file rejoinder if any, within two weeks. List on 7.11.01 for hearing.</p> <p>   Member </p> <p>   Vice-Chairman </p>
<p>25.9.02</p> <p>Wfs submitted by the Respondents.</p> <p></p> <p>No rejoinder has been filed.</p> <p>30.11.02.</p>	<p>1m</p> <p>7.11.02</p> <p>1m</p> <p><del>7.11.02</del></p>	<p>As agreed by the learned counsel for the parties the matter may be posted for hearing on 2.12.2002. In the meantime the applicant may file rejoinder, if any.</p> <p>   Member </p> <p>   Vice-Chairman </p>
	2.12.02	<p>Hearing Concluded, Judgment reserved.</p> <p>  By order. </p>
<p>31.12.2002</p> <p>Copy of the Judgment has been sent to the Office for issuing the decree to the applicant as well as to the 2/Adv. for the Respondents.</p> <p></p>	<p>4.12.02</p> <p>bb</p>	<p>Judgment pronounced in open Court, kept in separate sheets.</p> <p>The application is dismissed in terms of the order. No order as to cost.</p> <p>   Member </p> <p>   Vice-Chairman </p>

2

Notes of the Registry	Date	Order of the Tribunal

6

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A./XXX.No.....97.....of 2002

With

O.A.No.155 of 2002

4th Dec. 2002  
DATE OF DECISION.....

Shri Sushil Kumar Bhattacharyya ..... APPLICANT(S)

Mr A.R. Barthakur, Dr (Mrs) B. Acharya  
and Mr T.N. Srinivasan

ADVOCATE FOR THE APPLICANT(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

rvu  
L

X

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.97 of 2002

With

Original Application No.155 of 2002

Date of decision: This the 4<sup>th</sup> day of December 2002

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

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

O.A.No.97/2002

Shri Sushil Kumar Bhattacharyya,  
S.S.E.(W)/East/PNU,  
N.F. Railway under Section DEN,  
Maligaon, Guwahati.

.....Applicant

By Advocates Mr A.R. Barthakur, Mrs B. Acharya  
and Mr T.N. Srinivasan.

- versus -

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

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

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

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

5. Shri Narayan Krishna Goswami,  
presently serving as SSE/W/FCW,  
Maligaon under SEN/ECW/Malligaon,  
Guwahati.

.....Respondents

By Advocate Mr S. Sengupta, Railway Counsel.

O.A.No.155/2002

Shri Sushil Kumar Bhattacharyya,  
Senior Section Engineer,  
N.F. Railway, Maligaon, Guwahati.

.....Applicant

By Advocates Mr A.R. Barthakur, Mrs B. Acharya  
and Mr T.N. Srinivasan.

- versus -

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

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

3. The General Manager (P),  
N.F. Railway, Maligaon, Guwahati.
4. The Chief Personnel Officer,  
N.F. Railway, Maligaon, Guwahati.
5. Shri Ashim Chakraborty,  
Asstt. Divisional Engineer,  
Office of the Divisional Railway Manager,  
N.F. Railway, Alipurduar.
6. Shri J.K. Sarma,  
Asstt. Executive Engineer,  
L/R, Office of the Chief Engineer,  
N.F. Railway, Maligaon, Guwahati.
7. Shri T.K. Bhowmik,  
Asstt. Executive Engineer/Special,  
Office of the Chief Engineer,  
N.F. Railway, Maligaon, Guwahati.
8. Shri T. Nanda,  
Asstt. Executive Engineer/Welding,  
Office of the Chief Engineer,  
N.F. Railway, Maligaon, Guwahati.
9. Shri S.S. Das,  
Asstt. Divisional Engineer/II,  
Office of the Divisional Railway Manager,  
N.F. Railway, Lumding.
10. Shri S. S. Sarkar,  
Asstt. Divisional Engineer,  
Office of the Asstt. Engineer,  
N.F. Railway, Dibrugarh.

.....Respondents

By Advocate Mr S. Sengupta, Railway Counsel

.....

O R D E R

CHOWDHURY. J. (V.C.)

O.A.No.97 of 2002 :

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant claimed for the following reliefs:

Quash the list dated 6.12.2001 prepared in accordance with seniority for selection for the post of AEN/Group-B against 70% vacancies in so far as the applicant's seniority vis-a-vis the Respondent No.5 is concerned, which has been fixed and determined unilaterally and incorrectly by the Respondent-authorities in the said list and earlier also.



Direct the Respondent authorities to forthwith correct the seniority of the applicant vis-a-vis that of the Respondent No.5 and restore the applicant's seniority over that of the said Respondent No.5 in terms of the direction contained in the Judgment and order dated 22.4.99 passed by this Hon'ble Tribunal in O.A.No.158/96.

Direct the Respondent authorities to hold an examination similar to the one held by the said authorities in the year 1992 for promotion to the post of Inspector of Works, Grade-I as directed by this Hon'ble Tribunal by its Order dated 22.4.99 in which examination the Respondent No.5 would be required to appear and emerge successful for him to be placed above the applicant for purposes of seniority.

Pass an order restraining the Respondent authorities from acting in any manner whatsoever on the written examination held on 16.2.2002 and 2.3.2002 for promotion to the posts of AEN/Group 'B' against 70% vacancies based on the faulty and incorrect seniority list dated 06.12.2001 and injunct the Respondent authorities from holding the viva-voce test following the Written Examination held as aforesaid on 16.2.2002 and 2.3.2002 and withhold declaration of results for filling up the said post of AEN/Group 'B' till restoration of the inter se seniority of the applicant over that of the Respondent No.5.

2. The applicant earlier moved the Tribunal assailing, amongst others, the order dated 4.12.1995 showing the respondent No.5, Shri Shri N.K. Goswami as senior to the applicant in the inter se seniority list. In O.A.No.158 of 1996 the Tribunal catalogued the facts. In the Judgment and Order of the Tribunal dated 22.4.1999 it was recorded that the applicant was senior to Shri N.K. Goswami (respondent No.5 in the present O.A.) in his initial entry to the service.....

In the inter se seniority Grade II of Inspector of Works the applicant was placed above the respondent No.5. For the next promotion, i.e. Inspector of Works Grade I, written test and viva-voce test was held. The applicant appeared in the examination alongwith others that was held on 29.2.1992 and 21.3.1992. However, the applicant could not come out successful. The respondent No.5 was also eligible for the examination, but because of administrative error he was not intimated. As a result the respondent No.5 could not appear in the examination. A representation was submitted by the respondent No.5 before the authority. By order dated 30.7.1993 the respondent No.5 was informed that he would be provided with the benefit of seniority to the extent of his junior only if he passed the test prescribed and declared fit by the Departmental Promotion Committee. No such test was held for him. The case of respondent No.5 was considered in terms of a modified selection procedure in 1994. As per Railway Board's circular dated 27.1.1993 the applicant and the private respondent qualified in the selection and they were promoted. The respondent No.5 was not earlier called for the test due to the mistake on the part of the respondents. The applicant submitted his representation for assigning his seniority over the respondent No.5. His claim was rejected by order dated 4.12.1995 and accordingly the applicant knocked the door of the Tribunal by the aforementioned O.A. Considering the materials on record the Tribunal held that the seniority of the respondent No.5 above the applicant was not in accordance with the provisions of the rule, but for that matter the respondent No.5 was not to suffer. The administration was ordered to hold an examination in the same manner as was done in 1992 giving.....

giving notice to the respondent No.5 and if he qualified in the examination then he was to be placed above the applicant. the relevant observation of the Tribunal are reproduced below:

"On the rival contention of the parties it is now to be seen whether the authority was correct in giving the seniority to respondent No.4 above the applicant after coming to know about the administrative error. We have perused both rules cited by Mr Chanda and Mr Sarkar and also the decision of the Apex Court (Supra). Rule 316 of IREM says that in case of non-receipt of the intimation an employee should be given all the opportunities and if he is qualified on merit then he should be given due promotion. In 1992 when the selection was held the procedure of selection was by written and viva-voce examinations. In the written examination the applicant failed, the respondent No.4 was not called. Definitely respondent No.4 was entitled to be called and when the mistake was detected, he should have been treated in the same way as if examination was held on the date the applicant appeared in the examination but failed. In that examination the respondent No.4 might have come out successful. But in the subsequent year 1994 the procedure had been changed and the promotion was given to the respondent No.4 on the assessment of service records. We agree that there was totally a different type of examination. In order to supersede, the 4th respondent must have passed the examination which was held in 1992 after the detection. Unfortunately, this was not done. Therefore we find sufficient force in the submission of Mr Chanda. There is no dispute about the Rule 228. In the rule it is specifically stated that each case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned the correct seniority. In this case also promotion in the year 1992 ought to have been given on the basis of examination but the 4th respondent was not called due to administrative error. He ought to have been called immediately after the mistake was detected. He should have been given same type of test and if he had qualified in that case, definitely he would be deemed to have passed in that year in which the applicant failed and in that case 4th respondent would be placed above the applicant. Decision cited by Mr Sarkar also refers to the same view."

According to the applicant instead of taking action as per the direction of the Tribunal the authority in a most obdurate fashion proceeded to hold the written examination for the post of AEN/Group 'B' against the 70% vacancies in order of merit vide Annexure D dated 6.12.2001. The

legality.....

legality of the action of the respondents is the subject matter of challenge in this proceeding as arbitrary, discriminatory and violative of articles 14 and 16 of the Constitution.

3. The respondents contested the case and denied and disputed the claim of the applicant. In the written statement the respondents stated that the applicant failed to qualify in the 1992 selection and the respondent No.5 could not appear in the 1992 selection due to administrative mistake. The respondent No.5 was selected in the first chance, whereas the applicant failed to qualify in the selection test and as a result a higher seniority position was assigned to the respondent No.5 as per rule. The respondents also stated that as per direction of the Tribunal the administration held the examination in a similar manner as was done in 1992 by giving notice to the respondent No.5. The respondents also stated in the written statement that in terms of the Judgment and Order of the Tribunal, written examination and viva-voce test was held on 8.8.2002 and the viva-voce test was held on 20.8.2002 and the respondent No.5 who appeared in the test as directed by the Tribunal qualified for selection to the post of IOW/Grade I. Accordingly the name of respondent No.5 was interpolated in the earlier panel published under Memo dated 25.8.1992 retaining his seniority position. The copies of the Memo No.E/254/18/Pt-V(E) dated 10.7.2002 and the Memo dated 7.9.2002 were annexed as Annexure 'X-8' and Annexure 'X-9'. The respondents also stated that the applicant as well as respondent No.5 volunteered themselves for appearing in the selection test and accordingly list as mentioned in Annexure D was prepared. The posts were notified.....

notified inviting applications for submission of willingness by the concerned persons as far back as 4.10.2001. Call letters were issued on 6.12.2001 and written test was held on 16.2.2002 and for the absentees the test was held on 2.3.2002. Viva-voce test was held on 3.4.2002 and the panel was also formed on 3.4.2002.

4. We have heard Mr A.R. Barthakur, learned Sr. Counsel for the applicant and Advocate General, Nagaland, assisted by Dr (Mrs) B. Acharya at length and also Mr S. Sengupta, learned Railway Counsel. Mr A.R. Barthakur contended that the respondent authority could not have proceeded with the written examination for selection by the impugned Annexure A communication without fixing the inter se seniority of the applicant vis-a-vis respondent No.5 in terms of the Tribunal's order in O.A.No.158/1996. Admittedly, the written examination and viva-voce test was held after the process of selection was started for the post of AEN/Group 'B' for the 70% vacancies. The materials on record clearly indicated that the name of the respondent No.5 was interpolated in the selection panel published on 25.8.1992 retaining his seniority vide order dated 6.9.2002. But, that by itself will not invalidate the process. The Judgment and Order of the Tribunal did not hold the applicant to be senior to respondent No.5. In fact, the judgment of the Tribunal held that the respondent No.5 was not called for the test though it was incumbent on the part of the authority to call the respondent No.5 for the examination when the mistake was detected to give opportunity for appearing in the selection. As per Rule 228 of the Indian Railway Establishment Manual a member of the staff who had lost promotion on account of administrative error.....

error was, on promotion, to be assigned correct seniority vis-a-vis their juniors already promoted irrespective of the date of promotion. Though belatedly, the respondent authority acted upon in terms of the provisions mentioned in the IREM and direction issued by the Tribunal and interpolated his seniority. No infirmity, as such, is discernible in the action of the respondents. The authority its efforts to render justice within the parties. The impugned Annexure D Notification itself indicated the list of candidates willing and eligible to appear in the written examination for selection under 70% vacancies. It was open to the applicant to appear in the examination. It was stated by Mr. S. Sengupta that the respondent No.5 though appeared, failed in the written examination and the applicant did not appear. In the set of circumstances the <sup>action of the</sup> respondents cannot be faulted for taking steps for holding the selection test.

5. On overall consideration of the facts and circumstances of the case, we do not find any merit in the application. Accordingly the application stands dismissed.

O.A.No.155 of 2002 :

The applicant in this application assailed the Office Order dated 4.4.2002 posting eighteen officers including the respondent Nos.5 to 10 on being empanelled as Assistant Engineer Group 'B' on promotion. The applicant, inter alia, pleaded that the respondents fell into error by hastily proceeding with the promotion by selection process without following the direction of the Judgment and Order of the Tribunal in O.A.No.158 of 1996 dated 22.4.1999 and

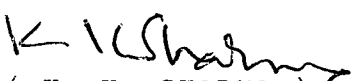
without.....

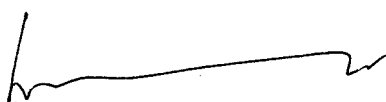
without correctly fixing the seniority of the applicant vis-a-vis the respondent No.5 giving a complete go-by to the directions of the Tribunal. According to the applicant out of the aforesaid eighteen employees promoted, six employees, namely respondent Nos.5 to 10 were obviously junior to the applicant. The applicant also pleaded that the respondents acted with impropriety in proceeding with the selection process when the O.A.No.97 of 2002 was subjudiced before the Tribunal.

2. We have heard Mr A.R. Barthakur, learned Sr. counsel for the applicant and Advocate General, Nagaland assisted by Dr (Mrs) B. Acharya at length. We have also heard Mr S. Sengupta, learned Railway Counsel. In O.A.No.97/2002 we have already indicated the facts in detail. Admittedly, the applicant gave his consent to appear in the written examination for selection to the post of AEN/Group 'B'. The post in question is a selection post. It was open to the applicant to appear in the written examination for selection. As a matter of fact respondent No.5 in O.A.No.97/2002 appeared and he failed. It was open for the applicant to appear in the examination and take the opportunity for selection. Since it was a selection post, seniority was not the determining factor. At any rate, the applicant who earlier expressed his willingness, for no good reason did not appear in the examination. There is no infirmity in the process of selection calling for interference by the Tribunal.

3. The application accordingly stands dismissed.

In the result both O.A.No.97 of 2002 and O.A.No.155 of 2002 stand dismissed. There shall, however, be no order as to costs.

  
( K. K. SHARMA )  
ADMINISTRATIVE MEMBER

  
( D. N. CHOWDHURY )  
VICE-CHAIRMAN

16  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH.

TITLE OF CASE : O.A. 155 /2002.

Shri S.K.Bhattacharyya ... APPLICANT.

- Versus -

Union of India and Others ... RESPONDENTS

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DATE OF FILING : 14/05/02

FILED BY :

*U. M. Das*  
ADVOCATE.



17

S. K. Bhattacharyya.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH  
AT GUWAHATI

O.A. NO. 155 /2002.

BETWEEN -

Shri Sushil Kumar Bhattacharyya,  
presently serving in the capacity  
as Senior Section Engineer, N.F.  
Railway, Maligaon, Guwahati - 11,

... APPLICANT.

- AND -

1. The Union of India,  
presently represented by the Secretary,  
Ministry of Railways, Govt. of India,  
New Delhi - 110001.
2. The General Manager,  
N.F. Railway, Maligaon, Guwahati - 11.
3. The General Manager(P),  
N.F. Railway, Maligaon, Guwahati - 11.
4. The Chief Personnel Officer,  
N.F. Railway, Maligaon, Guwahati - 11.
5. Shri Ashim Chakraborty,  
presently working as Asstt. Divisional  
Engineer, Office of the Divisional  
Railway Manager, N.F. Railway,  
Alipurduar.

6. Shri ...

- 18  
Shri J.K. Sarma  
S. N.
6. Shri J.K. Sarma,  
presently working as Asstt. ~~Engineer~~,  
Executive Engineer, L/R, Office of  
the Chief Engineer, N.F. Railway,  
Maligaon, Guwahati - 11.
7. Shri T.K. Bhewmik,  
presently working as Asstt. Executive  
Engineer/Special, <sup>Office of the Chief Engineer</sup> N.F. Railway,  
Maligaon, Guwahati - 11.
8. Shri T. Nanda,  
presently working as Asstt. Executive  
Engineer/Welding, Office of the Chief  
Engineer, N.F. Railway, Maligaon,  
Guwahati - 11.
9. Shri S.S. Das,  
presently working as Asstt. Divisional  
Engineer/II, Office of the Divisional  
Railway Manager, N.F. Railway, Lumding.
10. Shri S.S. Sarkar,  
presently working as Asstt. Divisional  
Engineer, Office of the Asstt. Engineer,  
N.F. Railway, Dibrugarh.

... RESPONDENTS.

DETAILS OF THE APPLICATION

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

The application under section 19 of the Administrative Tribunals Act, 1985 is directed against :

- i) The arbitrary and illegal action of the Respondent authorities in holding written examination as well as viva-voce test for selection to the posts of in the cadre of Asstt. Engineer (A.E.N.) Group-B against 70% vacancies without correctly re-fixing the seniority of the applicant in compliance with the directions contained in judgment and order dated 22.4.1999 passed by this Hon'ble Tribunal.
- ii) The arbitrary action of the Respondent-authorities in hastily declaring the results of the written examination held for promotion to the cadre of Asstt. Engineer, Group-B when the earlier application being O.A.No.97/2002 was pending final consideration by this Hon'ble Tribunal and thereby circumventing the directions of this Hon'ble Tribunal contained in O.A.No.97/2002 filed earlier.
- iii) Illegal action of the Respondent-authorities in defying the directions contained in the aforesaid judgment and order in O.A.No.97/2002 and promoting juniors much below the applicant without complying with the directions of this Hon'ble Tribunal as contained in O.A.No.97/2002 thereby downgrading the position of the applicant pursuant to the test and viva-voce held on 3.4.2002 without awaiting the final outcome of the earlier O.A. No. 97/2002 filed by the applicant against the entire selection process against

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S.N. Bhattacharya

the post of a Asstt. Engineer (AE.N) sought to be filled up the Respondent authorities without complying with the directions of this Hon'ble Tribunal in the earlier O.A. filed by the applicant.

(iv) Action of the Respondent-authorities in promoting the private Respondents to the cadre of Assistant Engineer, thereby rendering the applicant junior to the said Respondents consequent to the hastily declared results of both the written examination as well as the viva-voce test held after the earlier O.A.No. 97/2002 had been filed by the applicant.

2. JURISDICTION OF THE TRIBUNAL :

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

3. LIMITATION :

The applicant declares that the instant application has been preferred within one year from the date of the Respondent-authorities when the impugned order No.E/283/3 Pt.XVIII(0) dated 4.4.2002 was passed by the General Manager, N.F.Railway.

4. FACTS OF THE CASE:

4.1 The applicant had earlier approached this Hon'ble Tribunal by way of O.A.No.97/2002 assailing the wholly illegal and arbitrary action of the Respondent-authorities in seeking to fill up posts in the cadre of Assistant Engineer (AEN/GROUP'B') against 70%

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S. K. Bhattacharya

vacancies earmarked for the purpose to be determined in order of seniority, without however complying and fulfilling the directions of this Hon'ble Tribunal contained in judgment and order dated 22.4.1999 passed in O.A.No.158/96 filed earlier by the applicant.

4.2 The applicant in O.A.No.97/2002 filed as aforesaid had also impugned the list of candidates as selected for the written examination for the said promotion to the post of AEN/Group 'B') on the basis of an incorrect seniority list, without in any way complying with the directions of this Hon'ble Court contained in the order dated 22.4.99 passed by this Hon'ble Tribunal in O.A.158/96 filed by the present applicant leading to an cumulative adverse effect on the service career of the applicant, leading to the filing of two successive applications O.A.No.97/2002, which has a significant bearing on this application as well as the present application, all centering around the incorrect fixation of seniority of the applicant and the consequent promotion of the private Respondents, all of whom are junior to the applicant, to the post of Assistant Engineer(AEN/Group 'B') by the impugned order No.10.2002/Engg under No.E/283/31 Pt.XVIII(0) dated 4.4.2002, without even awaiting the outcome of O.A.No. 97/2002 filed by the applicant.

4.3 That the applicant in the context of the present facts, states that this Hon'ble Court while allowing O.A.No.158/96, and holding that the seniority of the applicant shown below that of the 4th Respondent was

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not in accordance with the provisions of rule" directed the Respondent-authorities "may hold an examination in the similar manner as was done in 1992 giving sufficient notice to the 4th Respondent and if he qualifies in the examination than his position will be above the applicant".

Copy of the judgment and order dated 22.4.1999  
~~22.4.1999~~ Being part of the records, the same is not annexed herein.

4.4 That as stated the Respondent authorities remained in different to the directions of this Hon'ble Tribunal contained in O.A.158/96 inspite of the appeal dated 6.2.2002 preferred by the applicant to defer the examination till the directions of this Hon'ble Tribunal was not complied in full followed by a legal notice dated 13.2.2002 also demanding that the authorities refrain from holding the selection/examination for promotion to the post of Assistant Divisional Engineer against the 70% vacancies till the correct fixation of seniority of the applicant.

The appeal dated 6.2.2002 and the legal notice dated 13.2.2002 are already part of the records of O.A. No.97/2002 and are not annexed herein.

4.5 The applicant states that the Respondent-authorities however proceeded with the holding of the written examination against the 70% vacancies for promotion to the post of AEN/Group 'B' on 16.2.2002 and on 2.3.2002 without correctly determining the seniority of the applicant vis-a-vis the Respondent No.5( in O.A.158/96),

leaving the applicant with no other recourse than to approach this Hon'ble Tribunal by way of an application registered as O.A.No.97/2002 and this Hon'ble Tribunal by an order dated 8.4.2002 was pleased to admit the application and directed that any promotion made to the post of AEN/Group 'B' will be subject to the decision of the case.

Copy of the order dated 8.4.2002 passed by this Hon'ble Tribunal in O.A.No.97/2002 is annexed hereto and marked as ANNEXURE-I.

4.6 That the Respondent-authorities on coming to learn of the filing of O.A.No.97/2002, immediately and hastily conducted the viva-voce examination on 3.4.2002 pursuant to the written examination held on 16.2.2002 and 2.3.2002 and proceeded to issue the impugned order No.E/283/31 Pt.XVIII(0) dated 4.4.2002, promoting as many as 18(eighteen) employees to the post of AEN/Group 'B' of which 6(six) employees are junior to the applicant impleaded here as Respondents 5 to 10 thereby adding to the misery of the applicant and compounding his woes even further. The order dated 4.4.2002 passed by the Respondent No.2 seeks to circumvent the directions of this Hon'ble Tribunal.

Copy of the order dated 4.4.2002 under challenge is annexed hereto and marked as ANNEXURE-2.

4.7 That the Respondent-authorities while passing the impugned order dated 4.4.2002 did so without any application of mind and in the most arbitrary and illegal

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fashion without addressing and resolving the seniority question and thereby giving a complete go-by to the directions of this Hon'ble Tribunal which had come to the definite finding that the seniority of the applicant had been incorrectly fixed in its order dated 22.4.1999 in O.A.No.158/96, when the Respondent-authorities ought not to have conducted either the written examination for the said promotion on 16.2.2002 and 2.3.2002 or the viva-voce on 3.4.2002 after O.A.97/2002 was filed by the applicant challenging the holding of the examination itself, this action must be construed to be malicious, vindictive and sheer arrogance of the Respondent-authorities and merits interference by this Hon'ble Court.

4.8 That the applicant states that the entire sequence of events, right from the time O.A.No.158/96 was filed by the applicant and the subsequent O.A.97/2002 as well as the present application clearly shows how callously the Respondent-authorities have behaved and needlessly harassed the applicant no end and jeopardising as well as adversely affecting his entire service career for no fault of his and more significantly negating the findings and directions of this Hon'ble Court in O.A. No.158/96, compelling the applicant thereby to file this application forming the third in respect of the same issue.

4.9 That the applicant states that the action of the Respondent-authorities in conducting the viva-voce examination on 3.4.2002 and passing the impugned order on 4.4.2002 all after O.A.97/2002 was filed by the applicant, while giving rise to a fresh cause of action, both these applications he heard and decided together.

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Handwritten signature/initials



4.10 That being aggrieved by the order dated 4.4.02 (Annexure-2) promoting the Respondent Nos.5 to 10 without correctly fixing the seniority of the applicant, this application is filed bonafide and for the ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:

5.1 That the Respondent-authorities acted illegally and arbitrarily in finalising the list of candidates to appear in the written examination for the posts of AEN/ Group 'B' without resolving or deciding the question of seniority of the applicant in terms of the directions of this Hon'ble Tribunal contained in order dated 22.4.99 in O.A.158/96.

5.2 That the Respondent-authorities by holding the viva-voce test on 3.4.2002 after the application filed earlier (O.A.No.97/2002) by the applicant challenging the decision of the Respondent-authorities to hold the written examination for promotion to the post of AEN/Group 'B' without deciding the seniority of the applicant in terms of the findings of this Hon'ble Tribunal in O.A.158/96, betrays total non-application of mind and runs contrary to Articles 14,16, 19,21 of the Constitution of India and the extant rules governing the field and therefore merits interference.

5.3 That the very action of the Respondent-authorities in hastily holding the viva-voce on 3.4.2002 after the filing of O.A.97/2002 and issuing the impugned order on

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K. Bhattacharya

4.4.2002 promoting the private Respondents, who are ~~are~~ admittedly junior to the applicant betrays total non-application of mind and this action is clearly seen to be arbitrary, illegal capricious and runs counter to Articles 14,16, 19,21 as well as the provisions of the Indian Railway Establishment Mannual as relevant and merits interference by this Hon'ble Tribunal to quash the impugned order dated 4.4.2002 in so far as the private Respondents 5 to 10 are concerned.

5.4 That the Respondents-authorities committed grave error in law in not only holding the written test for promotions to the post of AEN/Group 'B' against the 70% vacancies earmarked but compounded the error in hastily holding the viva-voce test on 3.4.2002 and by the issuance of the impugned order on 4.4.2002 disregarding and flouting the directives of this Hon'ble Tribunal contained in order dated 22.4.99 in O.A.158/96 which renders the said impugned order liable to be quashed and set aside in so far as the private respondents ~~5~~ 5 to 10 are concerned.

5.5 That the Respondent-authorities clearly betrayed a total non-application of mind in issuing the impugned order dated 4.4.2002 without taking into account that as many as six employees junior to the applicant were promoted at the expense of the applicant and the failure on the part of the Respondent-authorities to appreciate the adverse consequences which would entail in so far as the service career of the applicant without the authorities leaving the basic issue of seniority unresolved and giving the directions of this Hon'ble Tribunal a complete go-by,

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thereby running counter to the provisions of Articles 14,16,21 as well as the extant rules in force and rendering the impugned order under challenge liable to be set aside and quashed.

5.6 That the action of the Respondent-authorities in repeatedly compelling the applicant to seek justice from this Hon'ble Tribunal by exhibiting an attitude of cellousness, ~~vindictive~~ indifference to the plight of the applicant, which smacks of a gross abuse of power and failure to act as a model employer enjoined by canons of public administration, leading thereby to a situation where the service career of the applicant has been needlessly jeopardised by the inaction of the Respondent-authorities and by the issuance of the impugned order under challenge which is liable to be quashed and set aside in the facts of this application.

5.7 That the sequence of facts detailed above as well as in O.A.97/2002 pending disposal, taken in its entirety, clearly reveals how the applicant has been made to suffer for no fault of his by the arbitrary, high-handed action of the Respondent-authorities since O.A.158/96 was filed, which action is not only violative of the principles of natural justice but also violative of the principles governing the doctrine of fairness in executive action, rendering the impugned order liable to be interfered with and quashed.

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S. V. Shrinani

5.8 That the failure on the part of the Respondent-authorities in complying with the directions of this Hon'ble Court contained in order dated 12.4.99 passed in O.A.158/96 and correctly fix the seniority of the applicant has had a cascading effect in the service career of the applicant and for which the Respondent-authorities are primarily responsible and it will be in the fitness of things if the applicant is also promoted to the post of AEN/Group 'B' at the same time and his seniority correctly determined.

5.9 That in any view of the matter the action of the Respondent-authorities in effecting promotions of the private Respondents who are admittedly junior to the applicant is bad in law as well as in facts and the impugned order dated 4.4.2002 is liable to be set aside in so far as the said Respondents are concerned.

6. DETAILS OF REMEDIES EXHAUSTED :

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

Appeal preferred on 6.1.2002 addressed to the General Manager(P) was not disposed and remains pending as also the legal notice dated 13.02.2002 addressed to the General Manager, N.F.Railway.

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

The applicant further declares that he has not previously filed any application, writ petition or writ

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regarding the grievances in respect of which this application is made before any court or any other Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT :

Under the facts and circumstances stated above, the applicant prays for the following reliefs :

8.1 Quash the impugned order No.E/283/31/Pt.XVIII(O) dated 4.4.2002 passed by the ~~learned~~ General Manager(P), N.F.Railway promoting private Respondents 5 to 10 to the post of AEN/GROUP 'B' against the 70% vacancies.

8.2 Direct the Respondent-authorities to promote the applicant to the post of AEN/GROUP 'B' on the same date the other employees were promoted to the said post with all consequential benefits.

8.3 Direct the Respondent-authorities to correctly determine the seniority of the applicant in terms of the Judgment and order dated 22.4.99 passed in O.A.158/96.

8.4 Pass such other or further order/orders as may be deemed fit and proper in the given facts and circumstances of the case to give full and complete relief/reliefs to the applicant.

9. INTERIM ORDER PRAYED :

Pending disposal of this application be pleased to stay/suspend the operation of the impugned order dated

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dated 4.4.2002 (Annexure- <sup>W</sup> 1 ) passed as aforesaid and/or pass such other order/orders as to protect the rights of the applicant.

10. The instant application is being filed through the Advocate of the applicant.

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

I.P.O. NO. : 76 57 4612

Dated : 14/05/02

For Rs.50/-(Rupees fifty) only.  
payable at Guwahati.

12. LIST OF ENCLOSURES :

As detailed in the index.

00  
S. K. Bhatnagar

FORM NO. 4

(See Rule 42)

CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH.  
GUWAHATI.

ORDER SHEET

Original No. 97/2002  
Misc. Petition No. /  
Contempt Petition No. /  
Review Application No. /

Applicant(s) S. K. Bhattacharyya

Respondent(s) H. O. T. 90ms

Advocate for Applicant(s) Mr. A. R. Borthakur, Mrs. B. Acharya  
Mr. T. N. Srinivasan

Advocate for Respondent(s) Railway Counsel

Notes of the Registry

Date

ORDER OF THE TRIBUNAL

8.4.2002

Heard Mr. A. R. Borthakur, Learned  
counsel for the applicant.

The application is admitted, call  
for the records. Any appointment on the  
basis of promotion of respondent No. 5  
shall be subject to the outcome of this  
application.

The case is listed for order on  
9.5.2002.



Certified to be true copy

प्रमाणित प्रतिलिपि

8/4/02

Section Officer (J)  
आपाधिक अधिकारी (न्यायिक शाखा)  
Central Administrative Tribunal  
केन्द्रीय प्रशासनिक अधिकरण  
Guwahati Bench, Guwahati-8  
गुवाहाटी न्यायकोष्ठ, गुवाहाटी-8

Member

Vice-Chairman

Certified to be true copy  
8/4/2002  
Adm. Secy.  
Adm. Secy.

16 ANNEXURE - 2

N.F. RAILWAY

OFFICE ORDER No. 10/2002(ENGG.)

Sub : Transfer /posting of officers

The following transfer/posting orders are issued with immediate effect :-

- (1) ✓ Shri Nannu Singh, SSE/Br/HQ/Maligaon, on being empanelled as AEN Group-B in the provisional panel of AEN(Group-B) against 70% selection, is promoted as AEN and posted under GM(Con).
- (2) ✓ Shri Utpal Roy, SSE(P.Way)/Safety/KIR, on being empanelled as AEN Group-B in the provisional panel of AEN(Group-B) against 70% selection, is promoted as AEN and posted under GM(Con).
- (3) ✓ Shri Sekhar Chakraborty, SSE/P.Way(MTS)/APDJ, on being empanelled as AEN Group-B in the provisional panel of AEN(Group-B) against 70% selection, is promoted as AEN and posted under GM(Con).
- (4) ✓ Shri T.N.Singh, SSE/P.Way/LFG, on being empanelled as AEN Group-B in the provisional panel of AEN(Group-B) against 70% selection, is promoted as AEN and posted as ADEN/NLP vice Shri K.Banerjee, under orders of transfer to Eastern Railway.
- (5) Shri K.Banerjee, on relief, is spared from NF Railway in terms of Rly. Board's order No. E(O)III-2001/AE/556(O), dtd.03-01-2002.
- (6) ✓ Shri A.A.Deka, SSE/P.Way/MG/RNY, on being empanelled as AEN Group-B in the provisional panel of AEN(Group-B) against 70% selection, is promoted as AEN and posted as AXEN/TT/Special/Maligaon against the existing vacancy.
- (7) ✓ Shri Ashim Chakraborty, SSE/Works/NMX, on being empanelled as AEN Group-B in the provisional panel of AEN(Group-B) against 70% selection, is promoted as AEN and posted as ADEN/Spl/APDJ vice Shri J.Chakraborty.
- (8) Shri Jnnendra Chakraborty, ADEN/Spl/APDJ, is transferred and posted as ADEN/MBZ vice Shri M.B.Dekate.
- (9) Shri M.B.Dekate, ADEN/MBZ, is transferred and posted as ADEN/BG/BOE vice Shri B.Mishra.
- (10) Shri B.Mishra (Item-8 above), who was temporarily posted as ADEN/BG/BOE, is now posted back as ADEN/HQ/KIR.
- (11) ✓ Shri J.K.Sharma, SSE/Drawing/KIR, on being empanelled as AEN Group-B in the provisional panel of AEN(Group-B) against 70% selection, is promoted as AEN and posted as AXEN/LR/Maligaon against the existing vacancy.
- (12) ✓ Shri T.K.Bhowmick, SSE/Drawing/KIR, on being empanelled as AEN Group-B in the provisional panel of AEN(Group-B) against 70% selection, is promoted as AEN and posted as AXEN/Spl/Maligaon against the vacant workcharged post.
- (13) ✓ Shri T.Nanda, SSE/P.Way/JID, on being empanelled as AEN Group-B in the provisional panel of AEN(Group-B) against 70% selection, is promoted as AEN and posted as AXEN/Welding/Maligaon vice Shri Jai Prakash.
- (14) Shri Jai Prakash, AXEN/Welding/Maligaon, is transferred and posted as ADEN/RPAN vice Shri S.L.Majumdar.

Contd. to page- 2.



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(2)

- (14) Shri Jai Prakash, AXEN/Welding/Maligaon, is transferred and posted as ADEN/RPAN vice Shri S.L.Majumdar.
- (15) Shri S.L.Majumdar (Item-13 above), who was temporarily posted as ADEN/RPAN, is now posted back as AXEN/Planning/Maligaon.
- ✓ (16) Shri S.S.Das, SSE/P.Way/Hill/Lumding, on being empanelled as AEN Group-B in the provisional panel of AEN(Group-B) against 70% selection, is promoted as AEN and posted as ADEN/II/Lumding vice Shri S.K.Basak.
- (17) Shri S.K.Basak, (Item-16 above), who was temporarily posted as ADEN/II/LMG, is now posted back as AXEN/WS/Maligaon.
- ✓ (18) Shri S.S.Sarkar, SE/P.Way/NLP(West), on being empanelled as AEN Group-B in the provisional panel of AEN(Group-B) against 70% selection, is promoted as AEN and posted as ADEN/DBRT against an existing vacancy.

This issues with the approval of competent authority.

( P.K. Singh )  
DY.CPO(G)  
For GENERAL MANAGER(P)

No.E/283/31 Pt. XVIII(O).

Date. 04-04-2002

Copy for information and necessary action to :-

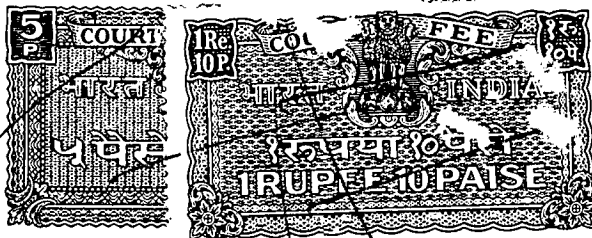
1. Secretary/Rly. Board/New Delhi
2. GM(P), CE, FA&CAO(EGA,PF)/E.Rly/Fairly Place /Kolkata
3. CE,CTE,CBE,CGE,CPDE,CVO, FA&CAO(EGA,PF)/MLG
4. DRM,DRM(P)/KIR,APDJ,LMG,TSK
5. Sr.DENs, DAOs/KIR,APDJ,LMG,TSK.
6. PS to GM/AGM, PA to CE/MLG.
7. OS/EO- Bill.
8. Officers concerned.

( P.K. Singh )  
DY.CPO(G)  
For GENERAL MANAGER(P)

SL. NO.

DIST:

4379



## VAKALATNAMA

## IN THE GAUHATI HIGH COURT

[THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,  
TRIPURA, MIZORAM AND ARUNACHAL PRADESH]

O. A - NO.....OF 2002

S.K. Bhattacharyya

Appellant  
Petitioner

Versus

Union of Indians

Respondent  
Opposite-party

Know all men by these presents that the above named.....Applicant.....  
do hereby nominate, constitute and appoint Sri/Smt. A.R. Baruah, T. D. Srima.....  
.....Advocate and such of the undermentioned Advocates as shall accept this  
Vakalatnama to be my/our true and lawful Advocates to appear and act for me/us in the matter  
noted above and in connection therewith and for that purpose to do all acts whatsoever in that connection  
including depositing or drawing money, filing in or taking out papers, deeds of composition etc. for me/  
us and on my/our behalf and I/We agree to ratify and confirm all acts to be done by the said  
Advocates as mine/ ours for all intents and purposes. In case of non-payment of the stipulated fee in  
full, no Advocate will be bound to appear and act on my/our behalf.

In Witness Whereof I/We hereunto set my/our hand on this.....8th.....day of May, 2002

N. M. LAHIRI (Sr. Adv)	K.R. PATHAK	D. C. MAHANTA (Sr. Adv)	MRS K. BHATTACHARYYA
T. N. PHUKAN (Sr. Adv)	BHUBANESWAR KALITA (I)	T.C. KHATRI	A.K. BARPUJARI
B.M. GOSWAMI (Sr. Adv)	B.R. DAS (Sr. Adv)	MS. BINOYA DUTTA	S. S. SHARMA
J.P. BHATTACHARJEE (Sr. Adv)	S.P. DEKA	B. BANERJEE	S.P. ROY
D. C. SHARMA	V.K. DEWAN (Sr. Adv)	R.K. JAIN	N.D. SARKAR
B.K. GOSWAMI (Sr. Adv)	D.R. GUHA	MRS. A. HAZARIKA	K.K. BHATRA
A. M. MAZUMDAR (Sr. Adv)	S.A. LASKAR	G.K. BHATTACHARYYA (Sr. Adv)	R.P. SHARMA
P.K. BARUA (Sr. Adv)	SAUKAT ALI (Sr. Adv)	P. PATHAK (Sr. Adv)	S.C. BISWAS
S.N. BHUYAN (Sr. Adv)	B.K. ACHARYYA	T.C. MAJUMDAR (Sr. Adv)	P.C. ROYMEDHI
J.K. BARUAH (Sr. Adv)	MRS. USHA BARUAH	DR HAREN DAS (Sr. Adv)	UTPAL DAS (I)
ANIL SARMA (Sr. Adv)	N.C. DAS (Sr. Adv)	B.K. SARMA (Sr. Adv)	DR. S.S. HARLALKA
B.K. DAS (Sr. Adv)	A.K. BHATTACHARYYA (Sr. Adv)	B.C. MALAKAR	D.R. GOGOI
M.A. LASKAR (Sr. Adv)	A.B. CHOUDHURY	SAMSUL HUDA	K. BASAR
S.N. CHETIA	R.K. AGARWALLA	BHADRESWAR TANTI	A.S. CHOUDHURY (Sr. Adv.)
A.S. BHATTACHARYYA (Sr. Adv)	T.S. DEKA (Sr. Adv)	N.N. SARMA	DINDAYAL AGARWALA
A.R. BANERJEE (Sr. Adv)	K.P. SARMA (Sr. Adv)	JANARDAN DAS	KAMAL AGARWAL
A.R. BARTHAHUR (Sr. Adv)	B.P. BORAH (Sr. Adv)	CHAITANYA BARUAH (Sr. Adv)	MD. SAMNUR ALI
D.K. HAZARIKA (Sr. Adv)	H.K. SARMA	A.C. SARMA	JOYDEV CH. DAS
N.N. SAIKIA (Sr. Adv)	PRABIN BARTHAHUR (Sr. Adv)	V.S. SINGHA	V.K. BHATRA
J.M. CHOUDHURY (Sr. Adv)	M.C. BARTHAHUR	N.Z. AHMED	A.C. BORBORA
P.K. GOSWAMI (Sr. Adv)	P.C. GAYAN	N.C. PHUKAN	P.K. KALITA
P.G. BARUAH (Sr. Adv)	C.K. SHARMA BARUA (Sr. Adv)	MUNIN (GAUTOM) SARMA	JASABANTA DEB
C.R. DE (Sr. Adv)	ANUP KR. DAS	FAIZNUR ALI	SAILIN MEDHI
D.K. BHATTACHARYYA (Sr. Adv)	DR Y.K. PHUKAN (Sr. Adv)	D.K. KAKATI	MRS. M.B. DUTTA CHOUDHURY
D.K. TALUKDAR (Sr. Adv)	DIBAKAR GOSWAMI	G.N. SAHEWALLA (Sr. Adv)	P.C. GOSWAMI
R.P. AGARWALA (Sr. Adv)	HIRENDRA NATH SARMA (Sr. Adv)	G.K. JOSHI (Sr. Adv)	APURBA SARMA (I)
D.P. CHALIHA (Sr. Adv)	BIJON CH. DAS	A.A. MIR	K.H. (SALIM) CHOUDHURY (Sr. Adv)
MRS K. DEKA	R. L. YADAV	MS. REKHA CHAKRABORTTY	A.K. PURKAYASTHA
BISHNU PRASHAD	PRAFULLA ROY	B.P. KATAKEY (Sr. Adv)	ASHIS DAS GUPTA
S.S. RAHMAN	A. C. BURAGOHAIN	MRS. JHARANA BORAH	L.P. SHARMA
GOLAP SARMA	B.L. SINGHA	S.N. SARMA (Sr. Adv)	VIJAY HANSARIA
S.R. BHATTACHARJEE (Sr. Adv)	P.K. MUSAHARY	MD. ABDUL MANNAN	B.N. SARMA
P.C. DEKA (Sr. Adv)	M. Z. AHMED	DILIP KR DAS (Sr. Adv)	J.L. SARKAR
BHARGAV CHOUDHURY	R. P. KAKOTI	PRADIP KHATANIAR	R.C. SANCHATI
P.K. DAS	G. GOPAL	N. CHAKRAVORTY (Sr. Adv)	J.P. BORA
A.K. CHAUDHURI	B.K. GHOSE (Sr. Adv)	MRS. K. YADAV	SISHIR DUTTA
B.R. DEY	S.K. BARKATAKI	AMITAV ROY (Sr. Adv)	C.R. BORAH
A.K. PHOOKAN (Sr. Adv)	DR N.K. SINGHA	DR B. P TODI (Sr. Adv)	P.K. GOSWAMI (I)

By  
Sushil Kr. Bhattacharyya

N.S. DEKA  
M. SAHEWALLA  
H.A. SARKAR  
MRS. RUMA BORDOLOI  
B.K. JAIN  
NILOY DUTTA (Sr. Adv)  
CHINMOY CHOWDHURY  
S.C. SARMA  
SK. N. MOHAMMAD  
GIRISH MISHRA  
JOGINDER SINGH (Sr. Adv)  
ABU SHARIF  
R.N. BARTHAUR  
B.B. NARZARI  
MD. ABDUL WAHED  
NASIMUDDIN AHMED  
MANORANJAN DAS  
DR. GOBIND LAL  
B. C. PATHAK  
F. H. LASKAR  
MRS. M. HAZARIKA  
SAURAV KATAKI  
MD. ABDUL HAI  
GAUTAM UZIR  
H.R.A. CHOUDHURY  
MRS. MANJULA DAS  
BHABENDRA N. SARMA  
BENU DHAR DAS  
S. L. TULSHYAN  
N. N. KARMAKAR  
MRS. REETA BORBORA  
HRISHIKESH ROY  
PRADIP DAS  
MD. M. H. RAJBARBHUIYAN  
MRS. J. B. KHARBHISH  
D.N. CHOUDHURY  
S.S. GOSWAMI  
L.P. DUTTA  
K.K. MAHANTA  
JAGDISH SHARMA  
P.S. DEKA  
MONINDRA SINGH  
N.R. PHOOKAN  
K.P. PATHAK (Sr. Adv)  
ARUP KR. GOSWAMI  
S.S. DEY  
DIGANTA DAS  
MRS. B. ACHARYA  
DILIP CHOUDHURY  
LAKSHESWAR TALUKDAR  
S.P. MAHANTA  
SK. CH. MOHAMMAD  
HASIBUR RAHMAN  
MS. AJANTA DHAR  
B. IBOCHOWBA SARMA  
A.K. MAHESWARI  
P.N. SINGH  
NILAMONI GOSWAMI  
MS. BHARATI DEVI  
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 PARTHA CHOUDHURY  
 B.P. SINHA  
 ROFIQUDDIN AHMED  
 AISWARYYA SARMA  
 MS. A. BARUA  
 MD. NIZAMUDDIN SEIKH  
 DIGANTA GOGOI  
 SANJIB ROY  
 MS. KALPANA GOGOI (SARMAH)  
 ANIRBAN DAS  
 MRS. INDRANI CHOWDHURY  
 ANAN KR. BHUYAN  
 PALASH DAS  
 MS. BIPAACKHI BORTHAKUR  
 DIPAK KR. DEY  
 PARTHA P. BARUAH  
 AJIT KR. DUTTA  
 MD. BAHARUL ISLAM  
 MD. TARIQUL ISLAM  
 ABU SAYED  
 BHASKAR BARMAN  
 MS. BIJOYA BAIRAGI  
 PABITRA S. BHATTACHARYYA  
 SURAJIT BHARALI  
 MS. BABINA BEGUM  
 MS. NANDITA BHARALI  
 SUJIT KR. GHOSH  
 MISS. RIJPALIM DAS  
 MISS. CHAMPA BHATTACHARJEE  
 PRANAB SHARMA  
 MISS. M.M. BORAH  
 MS. BANTI BAISHYA  
 RADHA M. DAS  
 PADMESWAR DEKA  
 ANUPAM CHAKRABORTY  
 ANGSHUMAN BORA  
 RAJEEV DAS  
 BISWAMBHAR SHARMA  
 HARAGOBINDA BORUAH  
 MS. JITUMONI SHARMA  
 PUTUL CH. GOSWAMI  
 RANJAN GOGOI  
 MISS. LOLITA RENGMA  
 MISS. BASABI DAS  
 MS. RUPANJALI DAS  
 MANISH CHOWDHURY  
 MISS. MARAMEE GOGOI  
 NABIN DEBNATH

MRS. CHAYA DEVI  
MS. BASHARI SEAL  
MISS. DEBALINA CHOWDHURY  
MS. SMRITISHREE CHAKRAVARTY  
MISS. MAMANI BASAR  
MISS. SANCHITA ROY  
MISS. ANJALI DAS  
DIPAK KR. KALITA  
NURUL I. CHOWDHURY  
MD. A.K. HOSSAIN  
MS. KAVERI MEDHI  
KAUSHIK GOSWAMI  
ABDUR R. SHEIKH  
MS. TAPASI DAS  
HEMANTA KR. SARMA (II)  
MISS. DIPSHIKHA DAS  
RAJESH KR. BHATRA  
SAGAR RAVI G.  
PADMADHAR UPADHYAY  
MISS PEACE LAHKAR  
IKBAL H. SAIKIA  
DIBYAJYOTI BORAH

MISS. HASINA YESMIN  
MRS. JURI D. BARMAN  
MISS. ASMINA BEGUM  
MRS. RAKHEE B DEB  
MRINMOY DUTTA  
MISS. SANTANA SARMA  
BIMAL SARMAH  
AMBAR BARKATAKI  
MISS NIZIFA KHANAM  
MS. BARNALI MAHANTA  
MIZAZUR R. BARBHUIYA  
SANJAY ROY  
IMTI LONGJEM  
MISS. BIPASHA SARKAR  
MISS. RINI SHARMA  
SHAMIMA JAHAN  
NILOUTPAL RAJKBOWA  
R.K. DEV CHOUDHURY  
SONIT KR. SAIKIA  
MISS SEWALI KEOT  
MS. MITALI MAHANTA  
GAUTAM KR. SARMA

SHAHAB UD. MAZUMDAR  
ABDUL MANNAF  
RAGHUNATH PD. ROY  
NURMOHAMMOD SARKAR  
SANTOSH JAIN  
SUNIL KR. JAIN  
DIPENJYOTI DUTTA  
MRS. BANANI DAS  
RAJESH KR. CHAYENGIA  
MS. ASHA TEWARI  
MRS. R. BORO BORAH  
MISS. REKHA DEKA  
MS. N. MEDHI KALITA  
MANASH GARODIA  
JAKIRUL I. BORBHUIYA  
SUBIR BHATTACHARJEE  
MS. DIPIKA BORGHAIN  
MRINALENDU CHOUDHURY  
DHRUVAJYOTI PATHAK  
KAUSHIK HAZARIKA  
DILIP BARUAH (II)  
MD. ABDUL MATLIB

RAJIB HAZARIKA  
NABASHISH GOSWAMI  
DEBASHISH BHATTACHARYA  
KUMUD CH. BORO  
NARENDRA NATH JHA  
RANDEEP SHARMA  
MS. TAMANNA BORA  
MRS. FARIDA BEGUM  
NEELANJAN DEKA  
DEVASHIS BARUAH  
MS. MEETA DEY  
TUSHAR KT. RAJKUMAR  
MISS. S. MADHURI NEOG  
MRS. RUNUMI DAS  
MISS. B. MAYA CHHETRI  
MD. MASUD-UR-RAHMAN HAZARIKA  
TAPAN CH. DAS (III)  
SANJAY KR. CHAKRABORTY  
MRS. D. BAISHYA (GOGOI)  
MS. ANJU AHMED  
ROBIN KR. DUTTA.

Received from the executant,  
satisfied and accepted.

Mr/Ms. A.R. BARTHA KUR will lead  
me/us in the case.

And Accepted

Advocate

Advocate

Advocate

And Accepted

Advocate

And Accepted

Advocate

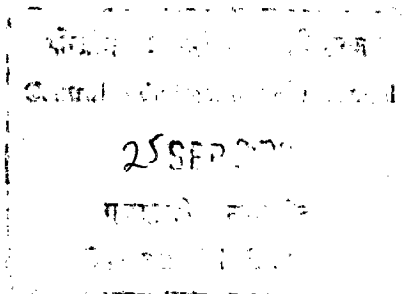
VERIFICATION

I, Shri S.K. Bhattacharyya, Son of Late Ratnadhhar Bhattacharyya, aged about 45 Years, at present working as Senior Section Engineer, N.F. Railway, Maligaon, Guwahati-11. do hereby Verify that the and those made in paragraphs No. 1 to 5.9 and 6 to 8.4 are true to my legal advice and have not suppressed any material facts of the case.

And I signed on this the Verification on this the 14th May 2002

Signature

S.K. Bhattacharyya.



*Pradip Kumar Singh*  
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BEFORE THE CENTRAL ADMINISTRATIVE  
TRIBUNAL, GUWAHATI BENCH  
GUWAHATI.

IN THE MATTER OF :

O.A. No. 155/2002.

Sri Sushil Kumar Bhattacharyya  
Senior Section Engineer,  
N.F.Rly, Maligaon, Guwahati-11.

*Filed by :  
Sukomal San Gupha  
Railway Advocate  
Guwahati  
24.9.2002*

.....Applicant

-VERSUS-

1. Union of India
2. The GM, N.F.Railway, Maligaon.
3. General Manager (Personnel)  
N.F.Railway, Maligaon.
4. Chief Personnel Officer,  
N.F.Railway, Maligaon.
5. Shri Asim Chakraborty  
Presently working as Asstt.Divl.Engineer,  
Alipurduar, N.F.Railway.
6. Sri J.K. Sarma  
AEN, Chief Engineers Office,  
Maligaon.
7. Sri T.K. Bhowmick,  
Asstt. Executive Engineer,  
C.E.'s Office, Maligaon.
8. Sri T. Nonda,  
Asstt.Executive Engineer,  
N.F.Railway, Maligaon.

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9. Sri S.S. Das,  
Asstt. Divl. Engineer,  
N.F.Railway, Maligaon.

10. Sri S.S. Sarkar,  
Asstt. Divl. Engineer,  
N.F.Rly. Dibrugarh.

.....Respondent.

- AND -

IN THE MATTER OF :

Written Statement for and  
on behalf of the Respondents.

The answering respondents Nos. 1 to 4 most respectfully  
beg to submit as under :

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. The present case relates to selection for the post of AEN, Group 'B' (Gazetted category) which is quite different from the selection for promotion within the Group 'C' posts (Non-Gazetted). His attempt to raise the seniority issue etc. in this selection after a long period and especially when the selection was already under process and was at its end stage and <sup>more so</sup> after he himself clearly expressed his willingness to participate in this Gazetted officers selection, is quite untenable and can give him no valid cause of action to frustrate the valid selection for which notification was already issued by the Railway Administration much in advance i.e. as far back as on 4-10-2001 and in response to that notification

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Pradeep Kumar Singh

he already volunteered for participating in the selection and the Railway Administration also proceeded in good faith for conducting and completing the selection for Engineers who are urgently required for proper maintenance and upkeep of this life line in this strategic portion of India.

3. That, the application is not maintainable in its present form and is fit one to be dismissed in limine.

4. That, the application suffers from defects of misconception and mis-representation of Rules and laws and is not maintainable either on fact of the case or on law.

5. That, for the sake of brevity, the respondents do hereby obtain from resorting to specific and meticulous denial of each and every statements as made in each individual paragraphs of this application. Except those statements/averments in the application which are either borne on records or <sup>are</sup> ~~are~~ specifically admitted here-under, all other averments in this application are denied herewith and the applicant is put to strictest proof thereof.

6. That, the present case is the outcome of the applicants after-thought. He already volunteered to participate in the selection by submitting written application and his adducing ~~pleas~~ now about the seniority aspects etc. are quite untenable and not proper when the written examination (including absentee selection <sup>(test)</sup> of all the volunteers for the selection were already over and the viva-voce test of the successful candidates (in written test) was being held.

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7. That, the applicant has no right for filing the present application, which is nothing but a vexatious one. It appears that the entire aim is to frustrate the valid selection of AEN/Grade 'B' in Gazetted Cadre already held in the case.

8. That the application is barred on the principles of estoppel and acquiescence. The applicant is estopped from agitating the issue of holding the selection when he himself submitted his willingness unconditionally to participate in the said selection.

9. That, with regard to contentions/allegations made in paragraph 1 of the application it is submitted that the allegations are incorrect and hence denied herewith.

It is denied that there has been any

arbitrary or illegal action on the part of the respondent authorities in holding the selection for the post of Asstt. Engineer Group 'B' against 10% vacancies or in the declaration of the result of the written test or

2) there is any deliberate action for circumventing the directions of the Hon'ble Tribunal contained in OA. 97/2002 and any defiance of the Hon'ble Tribunal's order contained in OA. 97/2002 filed by the applicant or any down grading the position of the applicant or residering the applicant Junior to the private respondents Nos. 5 to 10 pursuant to the written test and Viva-voce test held and declaration of result of selection etc. without waiting for the final out-come of the OA.97/2002 filed by the applicant..

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In this connection the order passed by the Hon'ble Tribunal in O.A. No. 97 of 2002 on 8-4-2002 is reproduced here in below for ready perusal.

" 8.4.2002 - Heard Mr. A.R. Barthakur learned counsel for the applicant. The application is admitted, Call for the records. Any appointment on the basis of promotion of respondent No.5, shall be subject to the out come of this application.

The case is listed for orders on 9.5.2002....."

It is submitted that from above it will quite reveal that there has not been any, defiance of the Hon'ble Tribunal's order and the allegations are quite baseless.

The argument/plea of refixation of seniority of the applicant vis-a-vis Sri N.K. Goswami, Sectional Engineer as one of the cause are not acceptable as the Railway Administration never intimated to him that the Hon'ble Tribunal's order would not be complied with. There were certain hurdles in the way and this have been sorted out/solved and order of the Hon'ble Tribunals has been complied with and there has been no changes in his seniority position of the applicant Vis-a-Vis Sri N.K. Goswami. (Respondent No.4 in D.A. 158/98).

It is submitted that the applicant has himself avoided the examination/selection after expressing his willingness to participate in the selection and as such there is no force in his argument which are outcome of his after-thought.

10. That, with regard to averments at paragraphs 4.1 and 4.2 of the application, it is submitted that the applicants' allegations as put forward in these paragraphs are not admitted

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and hence are denied herewith. It is quite a distortion of fact that the AEN Group 'B' selection (Gazetted Cadre) against 70% vacancies was earmarked for the purpose to be determined in order of seniority etc. as alleged. It is submitted that the procedure of selection for promotion to Group 'B' posts differs from those held for promotion within the Group 'C' Cadre posts and while submitting his willingness to participate in the selection the applicant never raised the question of seniority etc.

It is also wrong to say that the names of the candidates as figured in the impugned list in O.A. 97/2002 were selected by the Railway Administration on the basis of an incorrect seniority list or the fixation of seniority had significant bearing in the case and consequent promotion of the private respondents Nos. 5 to 10 in the O.A. No.155 of 2002 or that the selection completed without even awaiting for the outcome of the O.A. No.97/2002 filed by the applicant etc. as alleged.

As submitted herein above the names of those eligible candidates only figured in the list who volunteered/consented in writing to appear/participate in the said officers selection (AEN/Group 'B') and in that list name of the applicant was also included for the said selection and same notified.....

As the Applicant and respondent No.4 in the O.A. No. 158/96 (Sri N.K. Goswami) and all the respondent Nos.5 to 10 in the O.A. No.155/2002 were the eligible candidates to appear in the AEN Group 'B' selection, hence they were called to appear in the written and Viva-Voce test after they submitted their willingness to appear in the selection. It is also to mention herein that prior to holding the selection, seniority list of

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Senior Section Engineer (Works) in Scale Rs.7450/- - 11,500/- as on 1.4.2001 of Civil Engineering Department, bearing No. E/255/24/Pt.IV(E) dated 11-5-2001 was also issued by the GM(P) N.F.Railway, Maligaon, for information and necessary action of all concerned with following clear stipulations as under :

"Any representation of which the staff desires to make regarding their relative position in the seniority list should be submitted to this office within one month from the date of issue of seniority test, no action will be taken on representation, if any submit after expiry of the target."

In the said seniority list the respective position of the applicant Sri S.K. Bhattacharyya and that of the respondent No.4 in O.A. 158/96 were shown as under :

<u>S/No.</u>	<u>Name</u>
10.	Sri Narayan Goswami, SSE(W)/FCW/MLG
24.	Sri S.K. Bhattacharyya, SSE/W/Sr.DEN/Maligaon.

The applicant never preferred any representation/appeal against this seniority list. Rather, knowing all these the applicant volunteered to participate in the AEN/Group 'B' selection by submitting his written consent without any reservation.

All the allegations as made in this application are thus the outcome of his after-thought and he can not reside from his own commitment especially when the selection process (in which he expressed his willingness to participate) were already at its end stage and it was very necessary for public interest to fill up such posts/vacancies without any delay.

Further, the applicant can not show any order of the Hon'ble Tribunal by which the said selection was to be stayed or deferred. Rather the Hon'ble Tribunal also gave clear order to the following affect even on 17-5-2002 in OA 155/2002.

"It is made clear that any promotion made shall be subject to the out come of this application as ordered in OA 97/2002".

It is also denied that the following six persons who have been selected/empanelled and also promoted as AEN/Group B and made private respondent Nos.5 to 10 in this application are Junior to him.

11. That, with regard to averments at paragraph 4.3 of the application it is submitted after selection of both Sri N.K. Goswami (No.4 Respondent in O.A. 158/96) and Sri Bhattacharyya for the same post of IOW/Gr.I (now designated as SSE), the matter of their promotion for IOW/Gr.I lost any significance, as regards their promotion. However, the Hon'ble Tribunal ordered inter alia at page 6 of the Judgement in O.A. 158 of 1996 to the following effects :

"for that matter the 4th respondent should not suffer. The administration may hold an examination in the semilar manner as was done in 1992 giving sufficient notice to the 4th respondent and if he qualifies in the examination, then his position will be above the applicant....."

The above direction of the Hon'ble <sup>Tribunal</sup> clearly shows that the Hon'ble Tribunal already considered/appreciated the whole matter, and, desired that on examination in the manner which were in vogue in 1992 may be held only for purpose of seniority.

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By Chief Personnel Officer (P.O.)

It is to mention herein that -

- i) Question of recasting of Seniority would depend on holding of the another selection in the manner held in 1992.
- ii) The applicant kept mum all these years, even after the time the seniority list dated 11.5.2001 was published and applicants seniority position was shown below Sri N.K. Goswami.
- iii) He never raised this question of seniority even when the notification for selecting AEN/Group 'B' was issued as far back on 4-10-2001.
- iv) He did not raise the issue while submitting his un-qualified willingness to participate in the selection of the AEN Group 'B' in response to notification dated 4-10-2001.

It appears that OA 97/2002 was moved before the Hon'ble Tribunal on 1-4-2002 or so.

And

OA No. 155/2002 was filed before the Hon'ble Tribunal on a about 14-5-2002, and there is no satisfactory explanation from side of the applicant for filing the cases at such distant date out when a Gazetted Officers' selection has been called and the selection was at its end stage.



12. That, with regard to averments / allegations made at paragraphs 4.4, 4.5, 4.6, 4.7, 4.8 and 4.9 of the application it is submitted that nothing are accepted as correct except those which are either borne on records or are specifically admitted here-under . It is quite a wrong statement that the respondent authorities remained indifferent to the directions of this Hon'ble Tribunal contained in O.A. No. 158/96 or that the applicant preferred any appeals etc. and which remains without any action .

It is also to mention herein that the selection about which the applicant has been referring relates to the year 1992 .It is also to mention herein that there have had been many changes in the office since 1992/1999 period and various old connected records had to be collected for finalisation of the case and for proper compliance of the Hon'ble Tribunal's orders . The present examination held in the manner of 1992 selection could be conducted only when all relevent papers ( including the selection paper of 1992 and 1994 modified selection etc. ) could be procured and gone through and there had been no intentional or avoidable delays in the matter of holding the written examination of Sri Goswami in terms of the orders passed in 1999 by the Hon'ble Tribunal in O.A. no 158 of 1996 . It is also to mention herein that in the written examination of IOW /grade I held in the manner hold in the year 1992 , the respondent No 4 Sri N.K. Goswami (respondent no 4 in O.A. 158 of 1996 ) has already qualified and his name has already been interpolated in the earlier selection panel published under General Manager (p) N. F. Railway , Maligaon's memorendum No , E/ 254/18/Pt v (B) dated 25.8.1992 and thus Sri Goswami retained his seniority above the applicant Sri S.K. Bhattacharyya , SSE / Works.

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In this connection the General Manager (P) N.F. Railway's letter No. E/254/18/Pt v (E) dated 10.7.2002 and office Memorandum No. E/ 254 /18/Pt v (E) dated 3.9.02 have already been annexed in the W.S. submitted in O.A. No 97/2002 as Annexers X<sub>8</sub> and X<sub>9</sub> respectively for ready perusal.

It is submitted that there had been no intentional delay etc. on the part of the respondents in obeying / compliance of the Hon'ble Tribunal's directions dated 22.4.99 . The respondents offer unqualified apology and beg to be pardoned , in case in the opinion of the Hon'ble Tribunal there has been any failure or delay / lapses on the part of the respondents for implementation of the same .

The respondents emphatically denies that the viva-voce test was hastily conducted on 3.4.2002 or promotion orders were issued on 4.4.2002 in favour of 18 staff ( including 6 staff i.e. respondents nos 5 to 10 whom he claims to be junior to him ) without application of mind in an arbitrary manner circumventing the directions of the Hon'ble Tribunal etc. as alleged . It is emphatically denied that there has been any malicious , vindictive , illegal action or harassment done to the applicant by the respondent authority which may be construed as sheer arrogance etc. as alleged . It is submitted that , it appears that the applicant has avoided this selection deliberately on an after-thought in order to frustrate this officer's selection and thus to derive undue benefit and that for the alleged so mentioned miseries/owes he is to blame himself . It is also denied that the applicant's service career was jeopardised

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or he was forced to file the present O .A . No 155/2002 before the Hon'ble Tribunal , or that ,the action of the respondents in conducting the viva-voce examination on 3.4.2002 etc. gave rise to a fresh cause of action as alleged .

Further the Hon'ble Tribunal already passed order/ direction for hearing both the cases ( O.A. 97/2002 and O.A. 155/2002 ) together , when the matters appeared before the Hon'ble Tribunal on earlier occasions . It is to submit here in that holding of the present selection for AEN(B)s post which was urgently required to be filled up in consideration of administrative necessities has not created any difficulties for him and that though the applicant was also afforded the due chance to appear in the said selection he did not appear in the selection ( in written test also ). Again the respondent no 5 in O.A. No. 97/2002 (Sri Narayan Goswami) who appeared in the written test could not qualify in the written test of AEN (B)s selection ..

Thus raising the issue of non-holding of the fresh selection for N.K. Goswami for IOW/Grade I is quite uncalled for and could have little effect on the present selection and this cannot be the valid ground for nullifying the duly held selection for Gazetted posts ( i.e AEN / Group B) where many other eligible persons including those who were already selected in 1992 selection ( for IOW/Grade I post ) and in 1994 (model selection for the post of IOW/ Grade I) also participated.

13. That , with regard to allegations at paragraph 4.10 of the application , it is submitted that the O.A. No 97/2002 and O.A. 155/2002 filed by the applicants for holding the selection of AEN / Group 'B' etc. are quite untenable and unacceptable and that the applications are vexatious in nature and are thus liable to be dismissed. All the allegation has made in this para are also denied herewith.

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Praduman Singh

14. That ,with regard to grounds as stated at paragraph 5 and relief sought at paragraph 8 of the application,it is submitted that in view of what have been submitted in the foregoing paragraphs of this written statement , none of the grounds as put forward by the applicant are sustainable and hence these denied herewith. The relief as prayed for by the applicant in paragraph 8 of the application are also not admissible in view of the fact of the case.

Further the following submissions will also show that the applicants allegations / contentions are not tenable :

- (i) There has had been no adverse effect on the service career of the applicant so long and all such allegations are imaginary. He could not qualify in 1992 selection and hence his position went down below all those who qualified in the 1992 selection .
- (ii) He never submitted representation against seniority list published on 11.5.2001 and rather forwarded his willingness in writing to participate in the AEN/ Group'B' selection without any protest etc.
- (iii) It is quite incorrect that the selection of AEN/Group'B' was held hastily and without application of mind or there has been any harassment to the applicant as alleged .

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Pradeep Kumar Singh  
Sd/-  
Officer  
Railway  
Board  
New Delhi

- (iv) After expressing his willingness to participate in the selection his back tracking without showing any cause, is not justified one .
- (v) He cannot have seniority over those who were already senior to him by virtue of passing in 1992 selection or earlier selection.
- (vi) Sri N.K. Goswami has already failed in the AEN/Group 'B' selection and as such it could not affect the Gazetted officers selection.
- (vii) The higher seniority of Sri N.K. Goswami over the applicant has again been established in the written test held by the Railway Administration for the post of IOW/ Grade I in compliance to the Hon'ble Tribunal's order dated 22.4.99 and Sri Goswami ( respondent no 5 in O.A. No 97/2002 ) has qualified in the examination . Thus Sri Goswami could retain his original seniority position above the applicant as was assigned to him after the completion of the modified selection held in 1994 for same post i.e. IOW/Grade I.

In this connection the necessary letter dated 18.7.2002 and the office memorendum dated 6.9.92 have been annexed as annexure X<sub>8</sub> and X<sub>9</sub> to W.S. of O.A. 97 of 2002

- (viii) That , the seniority aspects has got little relevance in the Gazetted officers selection where mode of test are completely different from that of the selection held for promotion to non- Gazetted post (i.e.

within Group 'C' category) especially when no marks for seniority specifically allotted for securing qualifying marks in written and viva-voce test. Contd....15

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11/10/02

(ix) That , there are many procedural methods for ventilating the grievances by the aggrieved serving railway employees and the railway administration always endeavours to meet the genuine grievances of its employees . But from the fact of the case it will quite transpire that the applicant never wanted to avail of that procedure and took his own decision for not appearing in the written test (selection) and instead filed the O.A.s. Further he kept complete mum even after the issue of the list of

(x) seniority dated 11.5.2001 ( annexed as Annexure 'A' to W.S. in O.A. No. 97/2002 ) ,and, after issue of letters much in advance by the Railway Administration calling for names of volunteers for appearing in this Gazetted officer's post in response to which the applicant expressed his consent to participate in the selection ,and ,also even after he was duly intimated about the dates of holding the written tests etc. by the administration .

(xi) That, the applications filed by him just at the nick of the moment when the selection

was already in progress and was at its end stage ,( when part of the selection was already over ) are not maintainable and is premature and are not maintainable under law and fact of the case .

(xii) The chronological development of the cases ( O.A. 97/2001 and O.A. 155/2002) have been furnished at page 19 of the W.S. filed

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(xiii) by the respondents in O.A. 97/2002 and hence not repeated here for sake of brevity .

15. That , all the actions taken in the case are quite legal , valid and proper .
16. That, the answering respondents crave leave of the Hon'ble Tribunal to permit them to file additional written statement in future , in case , the same is found to be necessary for the ends of justice .
17. That, under the facts and circumstances of the case as stated above the instant application is not maintainable and is also liable to be dismissed .

VERIFICATION

I ..Pradiup...kumar...Singh..... son of ..Bhup...lal...Singh..... aged 35..years, at present working as .....Dy. Insp./4....., N.F.Railway Maligaon do hereby solemnly affirm and state that the statements made at paragraphs ..(and 5..... are true to my knowledge and that those made at paragraphs .....10....., .....11 and 12..... are true to my information as gathered from office records which I believe to be true and that the rest are my humble submissions before the Hon'ble Tribunal .

pradiup kumar singh

For and on behalf of Union of India

N.F. Railway Maligaon , Guwahati-11

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