

5/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 106/2003.....

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SECTION OFFICER (Judl.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH,

ORDER SHEET

Original Application No: 106/03

Misc Petition No: _____

Contempt Petition No: _____

Review Application No: _____

Applicants: - Nanesh Sarcar & Ors

Respondents: - M.O.P. & Ors.

Advocate for the Applicants: - Mr. S. Sarma, Mr. G. Das.

Advocate for the Respondents: - C.G.S.C.

Notes of the Registry	Date	Order of the Tribunal
This application is in form but not in time Contaminated file is filed for examination for examination vide H.O. No. 86490438 Dated 19.5.03.	27.5.2003	Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman. The Hon'ble Mr. S.K. Hajra, Administrative Member. Heard Mr. S. Sarma, learned counsel for the applicant. The application is admitted. Call for the records. Issue notice to show cause as to why interim order as prayed for shall not be granted. Returnable by three weeks. In the meantime, the respondents are directed not to oust the applicants till the returnable date. Pendency of this application shall not stand in the way of the respondents to consider the case of the applicants. List on 17.6.2003 for orders.
Steps taken along Encls:		<i>Signature</i> Member
Notice received & sent to A/s for being filed Complaint No. 1.6.3.6x Regd. A.D.		
Sl No 1089 to 1091 Dtd 29/5/03	mb	<i>Signature</i> Vice-Chairman

Notice return in D/o
respondent No. 1 & 2
due to incomplete
addresses. Dated 20/6/03

17.6.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. R.K.Upadhyaya Member (A).

Put up again on 30.7.2003 to enable the respondents to file reply.

In the meantime, interim order dated 27.5.2003 shall continue till the next date.

Pl. comply orders
dated 12-6-03.

ns
12/6/03

Order dtd. 17/6/03
communicated to the
Parties Comm.

18/6

mb

Member

Vice-Chairman

No. reply has
been filed.

20
29.8.03

Order dtd 30/7/03
communicated to the
Parties Comm.

31/7

mb

Member

Vice-Chairman

No. written statement
has been filed.

26.8.03

27.8.03

List on 20.10.03 for enable the
respondents to file written state-
ment.

AKB Bhalder
Member

Vice-Chairman

lm

20.11.2003

On the prayer made by Mr.A.K.Chaud-
hury, learned Addl.C.G.S.C. the case is
listed on 30.10.2003 for filing of wri-
ten statement.

No. w/s has been
filed.

29.10.03

bb

Vice-Chairman

Office Note

Date

Tribunal's Order

30.10.2003

Written statement has been filed. The application may now be posted for hearing on 14.12.2003. The applicant may file rejoinder, if any within two weeks from today.

30.10.03

W/S filed by
the Respondent Mrs.
L 2 and 3.

mb

26.12.03

Mr S. Sarma, learned counsel for the applicant submitted that he has very recently received the copy of the written statement. His client's shall file rejoinder. Rejoinder be filed within two weeks, failing which no such rejoinder be accepted thereafter.

The matter may appear before the next available Bench.

Mrs
23.2.04


Member


Vice-Chairman

pg

24.2.2004

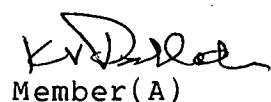
Present: Hon'ble Shir Shanker Raju, Judicial Member

Hon'ble Shri K.V. Prahладан, Administrative Member.

Heard the learned counsel for the parties. Hearing concluded. The O.A. is disposed of. Reasons to be recorded separately.

11.3.04
Copy of the Judgment
has been sent to the
Office for issuing
the same to the applicant
as well as to the Addl.
C.G.S.C. for the Respondent.

AS


Member (A)


Member (J)

nkm

Office Note	Date	Tribunal's Order

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.106 of 2003

Date of decision: This the 24th day of February 2004

The Hon'ble Shri Shanker Raju, Judicial Member

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

1. Shri Naresh Sarkar,
S/o Late G.C. Sarkar
Casual Worker in the
Office of the Anthropological Survey of India,
North Eastern Regional Centre,
Shillong, Meghalaya.
2. Shri Uma Nath Rai,
S/o of Sital Prasad Rai,
Casual Worker in the
Office of the Anthropological Survey of India,
North Eastern Regional Centre,
Shillong, Meghalaya.
3. Shri Sanjeet Kumar,
S/o Shri Jai Babu Rai,
Casual Worker in the
Office of the Anthropological Survey of India,
North Eastern Regional Centre,
Shillong, Meghalaya.

.....Applicants

By Advocates Mr S. Sarma, Mr U.K. Nair
and Ms U. Das.

- versus -

1. The Union of India,
represented by the Secretary to the
Government of India,
Ministry of Human Resources,
New Delhi.
2. The Director,
Anthropological Survey of India,
Kolkata.
3. The Deputy Director,
Anthropological Survey of India,
Shillong, Meghalaya.

.....Respondents

By Advocate Mr A.K. Chaudhuri, Addl. C.G.S.C.

.....

O R D E R (ORAL)

SHANKER RAJU, MEMBER(J)

The applicants who had been working on Group 'D' post on casual basis for the last more than ten years have sought regularisation to Group 'D' posts and other consequential benefits.

2. Heard Mr U.K. Nair, learned counsel for the applicants and Mr A.K. Chaudhuri, learned Addl. C.G.S.C.

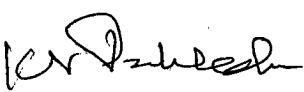
3. Relying upon the decision of the Apex Court in State of Haryana Vs. Pyara Singh, (1992) 3 SLJ 34 SCC, it is contended on behalf of the applicants that when a casual labourer works for longer period there is a presumption of vacancy against which he may be regularised. In this view of the matter it is stated that the applicants who are still working may be considered against other Group 'D' posts where vacancies are available.

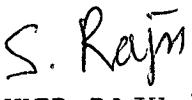
4. The respondents in their reply oppose the contention and stated that as no junior has been accorded regularisation for want of vacancies, the claim of the applicants cannot be acceded to.

5. Having regard to the rival contentions we are of the considered view bearing support from the decision Apex Court in Pyara Singh (Supra) that the applicants who had already worked on casual basis for more than ten years are covered by the DOPT's Scheme of 1.9.1993. Having been in status on 1.9.1993 the respondents shall consider their cases. In so far as vacancies are concerned, we observe that instead of restricting reconsideration against the post of Chowkidar the applicants may be considered for

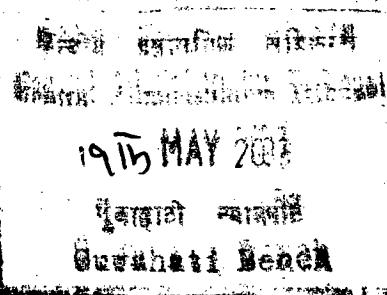
other Group 'D' posts as there is no nomenclature for a casual labourer and he can be adjusted in any Group 'D' post.

6. Having regard to the above the O.A. is disposed of with a direction to the respondents to consider the claim of the applicants for regularisation in the light of the Notification and Scheme promulgated by the Government. Till then they may not be discontinued from service.


(K. V. PRAHLADAN)
ADMINISTRATIVE MEMBER


(SHANKER RAJU)
JUDICIAL MEMBER

nkm



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

D.A. No. 106 of 2003

Naresh Sarker & Ors

-VS-

Union of India & Ors.

SYNOPSIS OF THE CASE

1. Annexure-1 Identical order dated 18.9.92 showing appointment of one of the applicant.
2. Annexure-1 Order dated 11.7.94 showing continuence of service of the applicant.
3. Annexure-2 Representation submitted by Applicant No.3.
4. Annexure-3 Representations submitted by the applicants praying for regularisation of their services.
5. Annexure-4 Judgement and order dated 21.4.95 by the Hon'ble Apex Court laying down the law relating to retrospective regularisation of Casual Workers.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case : D.A. No. 106 of 2002

BETWEEN

Shri Naresh Sarkar & ors. Applicants.

AND

Union of India & ors. Respondents.

I N D E X

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Filed by : Alsha Das

Regn. No. :

File No: NWS\NARESH

Date :

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

O.A.No. 106 of 2003

BETWEEN

1. Sri Naresh Sarkar
Son of Lt. G.C.Sarkar
Casual Worker in the
office of the Anthropological Survey of India,
North Eastern Regional Center,
Mowblei, Shillong-21,
Meghalaya.
2. Sri Uma Nath Rai
Son of Sital Prasad Rai
Casual Worker in the
office of the Anthropological Survey of India,
North Eastern Regional Center,
Mowblei, Shillong-21,
Meghalaya.
3. Sri Sanjeet Kumar
Son of Sri Jai Babu Rai
Casual Worker in the
office of the Anthropological Survey of India,
North Eastern Regional Center,
Mowblei, Shillong-21,
Meghalaya.

..... Applicants.

- AND -

1. The Union of India.
Represented by Secretary to the
Govt. of India,
Ministry of Human Resources,
New Delhi-1.
2. The Director,
Anthropological Survey of India,
27th Jawaharlal Nehru Marg,
KOLKATA-16.
3. The Dy. Director
Anthropological Survey of India,
Mowblei, Shillong-21.
Meghalaya.

..... Respondents.

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PARTICULARS OF THE APPLICATION

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

This application is not directed against any particular order but has been made against the action of the respondents in not regularizing the services of the applicants in the Group-D post which are presently lying vacant in the office of the respondents.

2. LIMITATION:

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

3. JURISDICTION:

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

4. FACTS OF THE CASE:

4.1. The present applicants are aggrieved by the action of the respondents in not regularizing the services of the applicants against the vacant posts under group-D category in the office of the respondents. The applicants have been working lost about 10 yrs. continuously as Casual Worker in the office of the respondents without any may of hope of regularisation. The respondents inspite of there being no of vacancies refused to regularise the services of the applicants. The respondents have acted contrary to the settled proposition of law and various guidelines formed for welfare of the Casual Workers working for fairly long term.

The respondents in fact have not made any attempt to regularise the services of the applicants although for the last about 10 yrs. they are utilising the services of the applicant in an exploitative term violating the constitutional mandates. It is not worthy to mention here that all the applicants prior to their engagement had to underwent the regular process of selection and for all practical purposes they are treated as a regular group-D employee. It is also pertinent to mention here that there is no intelligible difference of nature of work and responsibilities between the applicant and other regular Group-D employees working under the respondents but in respect of pay and allowances the applicants are in receipt of lesser pay than that of a regular Group-D employee working under the respondents. The applicants are illegible to be recruited in any Group-D post as they are in possession of all the requisite qualification required for such appointment. The applicants have made repeated request to the authority concern for redressel of the grievances but same yielded no result in positive. Having no other alternative the applicants have come under the protective hands of the Tribunal seeking redressel of their grievances. Hence this O.A.

4.2. That the applicants are citizens of India and as such they are entitled to all the rights, privileges and protection as guaranteed by the Constitution of India and laws framed thereunder.

4.3. That the applicant no.1 Sri Naresh Sarkar was initially got his appointment as Casual Worker on 7.12.92. His aforesaid Casual employment is continuing till date without any break against a Vacant post. Although his such

appointment was termed as Casual but for all practical purposes he can be termed as a regular Group D employee. Even in the case of applicant no.1 the respondents treating them at par with other regular Group-D employee allowed the bonus and on several occasions he received bonus. The said applicant no.1 is illegible to be appointed against any Group-D/Group-C post as he possesses all the requisite qualifications.

That the applicant no.2 got his initial appointment through a regular process of selection as Casual Worker on 18/9/92 although his aforesaid appointment was for a brief period but he has been continuing without any break till date. His aforesaid appointment was made against a clear Group-D vacancy of Chowkidar. The said applicant no.2 also received bonuses like the other regular Group-D employees but he is in receipt of lesser pay than that of regular Group-D employee. The applicant no.2 possesses all the requisite qualifications required for Group-D and Group-C post under the respondents.

Similarly, the applicant no.3 got his initial appointment under the respondents as a chowkidar w.e.f. 22.12.94 against a vacant post of chowkidar. Ever since the date of entry the said applicant no.3 is continuing in the said employment till date without any break. His aforesaid appointment was through a regular process of selection. the applicant no.2 also received the bonus like the other applicants. The applicant no.3 has got an additional qualification of professional driving and during his service tenure he had the occasions to serve as a driver under the respondents.

Copies of some of the relevant documents regarding appointment of the applicants annexed herewith and marked as Annexure 1 and 2 respectively.

4.4. That the applicants in this Original Application seeking a relief towards regularisation of their services under the respondents against the vacant post in Group C and D cadre. The cause of action and the relief sought for by the applicants is similar and as such they pray before this Hon'ble Tribunal to allow them to join together in a single application invoking Rule 4(5) (a) of Central Administrative Tribunal Procedure Rules 1987, to minimise the number of litigation.

4.5. That the applicants states that the office of the respondent no.3 under which they are presently working was a newly set-up office and the office properly started working w.e.f. 1992. In the said office the respondents in requirement of their service appointed the applicants on Casual basis with an assurance that their services be regularised within a short span of time. But the assurances given to the applicant by the respondents is yet to be materialised. At that relevant point of time there were various policies in existence which has till holding the field in the matter of regular absorption of the casual workers. However the respondents at that relevant point of time never implementing those guidelines and kept the services of the applicants as Casual for all along. it is not worthy to mention here that adhering to those guidelines the respondents have regularised the no. of Group-D employees under the respondent no.2 and in zonal offices but

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in case of the present applicants no such favour has been shown by the respondents. The applicants are kept on pursuing the matter before the respondents but same availed no result in positive.

Copies of the some of the representations are annexed herewith and marked as Annexure-3 series.

4.6. That the applicants state that presently there are few numbers of casual workers under the respondents without regularisation. The respondents are now filling up those vacancies by fresh recruits without considering the cases of the present applicants. It is pertinent to mention here that the Govt of India, Ministry of Personnel and Training have issued number of office memorandums emphasizing the need of regularisation of Casual workers worked for fairly long time. In the instant case the applicants by now have completed almost 10 yrs. of continuous service and as such they are entitled for regularisation and other similar benefit.

4.7. That the applicants state that since their date of engagement and continuous service of the applicants are not in dispute their should not have been any difficulty to regularise the services of the applicants more so when there are vacancies available at present and similar relief has been granted to the persons who were recruited even in the yrs. 1996, 1997. Presently in the office of the respondents no.3 there are two vacant posts of peon (Group-D) are lying available. As stated above all the applicants are qualified to hold the said posts and as such the respondents may be directed to regularise the services of the applicants against those posts.

4.8. That the applicant no.3 during his service tenure applied for the post of driver in the regional center at Allahabad but his case was never considered although he possesses the requisite qualification to hold the said post of driver. It is therefore the applicant no.3 through this O.A. prays for consideration of his case against the post of driver.

The applicant no.3 in view of the above prays for a direction towards the respondents the respondents to produce all the relevant records regarding the vacancy position and regarding the selection held in Allahabad for the post of driver.

4.9. The applicants states that the respondents have acted in an unfair manner in discriminating the applicants in the matter of employment and subsequent regularisation. In this connection the applicants beg to point out the case of one Mr. Dasarath Barik. Said Mr. barik was recruited in the year 1995-96 in the same capacity of a Casual Worker but subsequently he got the benefit of regularisation against the vacant post of Group-D under the respondent no.2. As per the procedure prescribe the respondents aught to have maintain a master seniority of all the Casual Workers throughout the country and thereafter to regularise their service in order of seniority without discriminating or without any super session. But in the instant case admittedly persons junior to the applicants have been given appointment on regular basis. Similar controversy arose before the Hon'ble Apex Court Vide its judgment and order dated 21.4.95 laid down the law that in the matter of regularisation such type of direction have been issued to the authorities to regularise their service.

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with retrospective effect i.e. from the date when the services of the juniors were regularised.

A copy of the said judgment is annexed herewith and marked as Annexure-4.

4.10. That the applicants state that apart from the illegalities the respondents have denied the benefit of equal pay to equal work to the present applicants. The work performed by the applicants are similar to the work performed by the regular Group-D employees but those regular Group-D employees are in receipt of higher pay than that of the present applicants. On the other hand in some occasion the applicants had to work even for 16 hours continuously in a day without any break and needless to say here that the responsibilities of those works are higher than that of regular employees. The applicants through this application also prays for parity in employment and pay.

4.11. That the applicants state that in no. of occasions they have represented the matter before the concern authority but same yielded no result in positive. The respondents are now making a move to terminate/disengage the services of the applicants with a view to appoint some outsiders without following the due process of law and without taking into consideration various guidelines and as such the applicants through this application also prays for setting aside of any such orders which effects the applicants right for regularisation.

4.12. That the applicants state that as stated above the respondents are now making a move for filling up those vacant posts by outsiders without following a due process of law and as such the applicants are now apprehending

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V

termination/discontinuation of their services at any moment. In that view of the matter the applicants pray before this Hon'ble Tribunal to pass an appropriate interim order directing the respondents not to disengage the services of the applicants with a further direction to the said respondents not to fill up any vacant post in the Group-D category without first considering the cases of the applicants..

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

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the respondents have acted illegally in not regularising the services of the applicants and as such the Hon'ble Tribunal may be pleased to set aside and quash the aforesaid action.

5.2. For that the respondents have acted contrary to the settled proposition of law for regularisation of services of the applicants who have been working for long time without any ray of hope of regularisation and as such appropriate direction need as such appropriate direction need be issued to the respondents to regularise their services with retrospective effect i.e. from the date from which their respective immediate juniors got the benefit of regularisation.

5.3. For that the respondents have acted in an unfair manner in discriminating the applicants and providing similar benefit to the other employees.

5.4. For that the respondents have violated the settled law guiding the field and as such their such action is not sustainable and liable to be set aside and quashed.

5.5. For that in any view of the matter the impugned action of the respondents are not sustainable in the eye of law and liable to be set aside and quashed.

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

6. DETAILS OF REMEDIES EXHAUSTED:

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

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

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

8. RELIEF SOUGHT FOR:

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

8.1. To direct the Respondents to regularise the services of the applicants in terms of the guidelines and taking into consideration the length of their service and

experience with retrospective effect i.e. from the date from which the services of their respective juniors were regularised.

8.2. To direct the respondents to provide similar employment as well as pay at par with the regular Group-D employees removing the parity of employment and pay.

8.3. Cost of the application.

8.4. Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of the application the applicants prayed for an interim order directing the respondents not to terminate their services and to allow them to continue in their respective employment with a further direction not to fill up any vacant post of Group-D category.

10.

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

1. I.P.O. No. : 86 490438

2. Date : 19/5/03

3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

✓

VERIFICATION

I, Sri Naresh Ch. Sarker, son of late Ganesh Ch. Sarker, aged about 29 years, Casual Worker in the Office of the Anthropological Survey of India, N.E. Regional Center, Mawblei, Shillong Meghalaya do hereby solemnly affirm and verify, that the statements made in paragraphs 1, 2, 3, 4, 1, 4, 2, 4, 4, 4, 6, 4, 7, 4, 8, 4, 10, 4, 13 & 5 to 12 are true to my knowledge and those made in paragraphs 4, 3, 4, 5, 4, 9, are also true to my legal advice and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the 8th day of May of 2003.

Signature.

Naresh Chander Sarker

No. 1-292/91/Ett.

ANTHROPOLOGICAL SURVEY OF INDIA
GOVERNMENT OF INDIA
NORTH EAST REGIONAL CENTRE
SHIV BHAWAN, UPPER LACHUMIREE
SHILLONG-793001.

Dated : 18th September, 92.

OFFICE ORDER

The following persons have been appointed for ~~Canal~~
Chowkidars on daily wage basis @ Rs. 32-00 per day
(Thirty two only) for a period of 89 days (Eighty nine)
from 18-9-1992 to 15.12.1992 and their duties will be
terminated automatically after the expiry of the said
period. They should note that the above temporary service
will not count for any regular appointment in this office.

(1) Shri Chinmoy Das
C/O Shri B N Dey
Upper Laban
Shillong-793004

(2) Shri Uma Nath Rai
C/O Shri B P Rai
Lalchand Basti
Shillong.

Sd/-

(SHIBANI ROY)
Head of Office

No. 1-292/91/Ett. / 287

Dated: 18th Sept. 92.

Copy to:

(1) Office Order file.
(2) Shri Chinmoy Das.
(3) Shri Uma Nath Rai.
(4) Accounts Section.
(5) Office copy.

Posted!
PZD
Bihar Inspector of Railways & Factories
Mogaibazar, Shillong

(SHIBANI ROY)
Head of Office

Amrit
Waran
Advocate

13-A

Annexure-1 Series

Anthropological Survey of India
North East Regional Centre
Shillong

No.1-292/91/Estt.

Dated 11.7.1994.

In continuation of this office letter of even number dated 6.7.94, the duty of Chowkidars since been modified and reallocated the duty at Museum building from 11.7.1994 will be as follows:

1. Shri Naresh Sarker,
Casual Labour - 10.0PM to 6.00AM

2. Shri Raren Barman,
Casual Labour. - 2.00PM to 10.00PM.

Deputy Director
&
Head of Office

No.1-292/91/Estt.

Dated 11.7.1994.

Copy forwarded for information and necessary action to:

1. Shri N.N. Sengupta, Assistant Keeper, Anth. Survey of India, Shillong. faxx

2. Accounts Section.

Par
Deputy Director
&
Head of Office

Attestation
For
Senior Inspector of Forests
Meghalaya, Shillong.

Warkale
67/196

Attested
Under
Advocate.

13-B
Anthropological Survey of India,
North East Regional Centre,
Mawblei Block-B, Madanrtting,
Shillong- 793 021.

Annexure-1 Series
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Dated : February 27, 2003.

OFFICE ORDER

In supersession of this office order of even number dated 30-01-03, the duties of Regular and Daily wages chowkidar for the month of March, 2003, as suggested will be as follows. The duties of Daily wages chowkidars will be on temporary basis and may be terminated automatically as and when required and they will be paid @ Rs. 127/- only per day i.e. no work no pay basis as per rules :-

<u>S.I. No.</u>	<u>Name of Chowkidars.</u>	<u>Times.</u>	<u>Days.</u>
1.	Shri. I. Sangma, Regular Chowkidar.	6.00 am to 2.00 pm. From 1st- 18th March, 2003. Weekly off : 1,8,15,22.	4/11/18/25
2.	Sri. G. Khongwir, (MUS - do - EUM)	9.00 am to 5.00 pm. From 1-31 st, March, 2003. Weekly off : 3,10,17,24,31.	
3.	Sri. Chinmoy Das, Daily wage chowkidar.	10.00 pm to 6.00 am. From 1-31st March, 2003. Weekly off : 7,14,21,28,	
4.	Sri. Uma Nath Rai, - do -	9.00 am to 5.00 pm. From 1-31st March, 2003. Weekly off : 2,9,16,23,30. Break on 5th March, 2003	
5.	Sri. Naresh Sarkar, - do -	10.00 pm to 6.00 am. From 1-31st March, 2003. Weekly off : 1,8,15,22,29.	
6.	Sri. K. Barman, - do -	2.00 pm to 10.00 pm. From 1-31st March, 2003. Weekly off : 5,12,19,26. 4/11/18/25	
7.	Sri. Sanjeet Kumar, - do - (Museum) (Library)	6.00 am to 2.00 pm - 1,8,15,22, March, 2003. 9.00 - 5.00 pm - 3,10,17,24,31, March, 2003. 10.00 - 6.00 am - 7,14,21,28, March, 2003. 9.00 am-5.00 pm - 2,9,16,23,30, March, 2003. 10.00 - 6.00 am - 1,8,15,22,29, March, 2003. 2.00 - 10.00 pm - 5,12,19,26, March, 2003. Weekly off :- 6,13,20,27, March, 2003. Break on 5th & 6th March, 2003	

Copy to :-

1) Sri. R.Th.Varte, Security officer, A.S.I., Shillong for information
2) A/C section,

- do - - do -

(B. Francis Kulirani)
Head of Office

Anthropological Survey of India
Government of India
North East Regional Centre
Shillong- 793 021

Attested
Advocate.

8/27/2003

Anthropological Survey of India,
North East Regional Centre,
Mawblei Block-B, Nandanrting,
Shillong- 793 021.

Dated : January 30, 2003.

OFFICE ORDER

In supersession of this office order of even number dated 01-01, 2003, the duties of Regular and Daily wages Chowkidars for the month of February, 2003, as suggested will be as follows. The duties of Daily wages chowkidars will be on temporary basis and may be terminated automatically as and when required and they will be paid @ Rs. 127/- per day i.e. no pay work no pay basis as per rules :-

S1. Name of Chowkidars. No.	Times.	Days.
1. Shri I. Sangma, Regular Chowkider. (Library)	9.00 am to From 1-28th February, 2003. 5.00 pm. Weekly off: 4,11,18,25.	
2. Sri. G. Khongwir, -d o -	2.00 pm to From 1-28th February, 2003. 10.00 pm Weekly off : 3,10,17,24.	
3. Sri. Chinmoy Das, D/W. Chowkider.	6.00 am to From 1st to 28th February, 03. 2.00 pm. Weekly off: 7,14,21,28.	
4. Sri. Uma Nath Rai, - do -	10.00 pm to From 1st-28th February, 2003. 6.00 am. Weekly off: 2,9,16,23.	
5. Sri. Kulen Barman, - do - (Museum)	9.00 pm to From 1st-28th February, 2003. 5.00 pm. Weekly off : 5,12,19,26. Break on 11th & 12th February, 2003.	
6. Sri. Sanjeet Kumar, - do -	10.00 pm to From 1-28th February, 2003. 6.00 am. Weekly off: 6,13,20,27.	
7. Sri. Naresh Sarker, - do -	9.00 am to 5.00 pm on 4,11,18,25 (Library) 2.00 pm to 10.00 pm on 3,10,17,24. 6.00 pm to 2.00 pm on 7,14,21,28. 10.00 pm to 6.00 am on 2,9,16,23. 9.00 am to 5.00 pm on 5,12,19,26 (Museum) Weekly off : 1,8,15,22. 10.00pm to 6.00 am on 6,13,20,27.	

Copy to :- Sri. R. Sahani, Security officer, A.S.I. Shillong
1. for information and necessary action.
2. Account section, - do - - do -

(B.T. Kulirani)

Director of Census
Anthropological Survey of India
North East Region,
Upper Lachamliwa, Shillong-793 021

Ans.
W.M.
Ans.
Ans.

To

The Head of Office
 Anthropological Survey of India
 North East Regional Centre
Shillong.-1

Sub:-Application for the post of causal Chowkidar.

Sir,

I have the heneur to state that I am given to understand that you need one daily wage Chowkidar. I beg to offer myself as a candidate for the same. I am known to Shri R.S.Rai, Lab.Attendant, Anthropological Survey of India, Shillong, since childhood.

If you kindly consider me for that post. I will be highly obliged to you.

Thanking You

Yours faithfully

Sangit Kumar
 (Sangit Kumar)

Dated 22.12.94

Address :-

C/o Shri R.S.Rai, Lab.Attendant
 Anthropological Survey of India
Shillong.-1

Attest
 [Signature]
 Advocate

To
The Director,
Anthropological Survey of India,
27, Jawaharlal Nehru Marg,
Calcutta- 700016

✓

(Through Proper Channel)

Subject : Permanent post either in Peon or Chowkidar or
Temporary Status - request for.

Sir,

With reference to my earlier applications dated 1.11.2000, I have the honour to submit my humble request for your kind consideration.

That Sir, I am working as a daily wage Chowkidar in this North East Regional Centre, Anthropological Survey of India, Shillong since 7 Dec 1990 I am still working in this office as a daily wage Chowkidar. As I am working in this office for the last 11 years, I would like to request you kindly consider my case at the time of filling the permanent post of Peon or Chowkidar. If not possible presently at least give me the status temporary status.

Kindly consider my case favourably and do the needful in this regards.

Thanking you, with regards,

Yours faithfully,

3/10/02

(Shri NARESH SHARMA)

Chowkidar (daily wage)

Anthropological Survey of India,
North East Regional Centre,
Mawblei, Madanritting
Shillong- 793 021

Shillong
31.10.02.

W.D.

To
Head of Office
Anthropological Survey Of India
North Eastern Regional Centre
Mawblici, Madaniting

Sub:-Seniority for appointment as chowkidar

Sir,

With reference to the above subject, I have the honour to request you kindly to give due consideration with regards to my seniority for appointment of chowkidar in your office. In this connection, I would like to mention that though some of the aspirants for the post of chowkidar had been Engaged as chowkidar (work-charges basis) in your office prior to me, they worked only for sometime and thereafter there was extensive break in their services. Whereas, my date of joining as chowkidar (work-charge basis) was in December 1992 and till date I have been working in your office. I, therefore, do hereby make a fervent appeal to you to consider my case with due consideration and sympathy.

Thanking you
Yours faithfully

Copy to:

The Director
Anthropological Survey of India
27/Jawaharlal Nehru Road
Calcutta -700016

Name: NARESH

SARKAR

Designation

Advocate

15/01/2002

Adv.
Advocat

CIVIL APPELLATE JURISDICTION

20

CIVIL APPEAL NO. _____ OF 1995
(Arising out of S.L.P.(C) No.15619 of 1994)

Aryind Kumar & Ors.Appellants

Versus

U.O.I. & Ors.Respondents

CIVIL APPEAL NO. _____ OF 1995
(Arising out of S.L.P.(C) No.15048 of 1994)

Subhash Chand & Anr.Appellants

Versus

U.O.I. & Ors.Respondents

ORDER

C.A. & S.L.P.(C) No.15619/1994

Special leave granted.

Heard learned counsel for the parties.

Admittedly, the employees concerned who are on daily wages are transferable from one job to another and also from one place to another in the country. Hence there has to be a common seniority list of all such employees

1

Reoted
W.S.
Advocate.

and the regularisation has to be made strictly according to such seniority list. The respondents are in fact maintaining what they call a master seniority list according to the dates of appointments of the employees concerned. It is not disputed before us that the appellants herein were engaged on different dates between March 1986 and September 1987. They have not yet been regularised while others about 15 in number whose names have been given by the appellants in their application before the Tribunal who were engaged between November 1987 and 1992, have been regularised. The only ground given for regularising the said 15 persons ignoring the claim of the appellants, is that the said 15 workers are working on the mining side while the appellants are working on the drilling side. It is not disputed that the appellants themselves were first working on the mining side and they were later assigned to the drilling side. Further, as stated above the jobs are transferable and there has to be a common seniority list. Hence the ground made out for discrimination is untenable in law. We, therefore, direct that the appellants shall also be regularised from the day their juniors in the common seniority list were regularised. The appeals are allowed accordingly with no order as to costs.

32

— 27 — 19

C.A. & S.L.P. (C) No. 15943/1994

Leave granted.

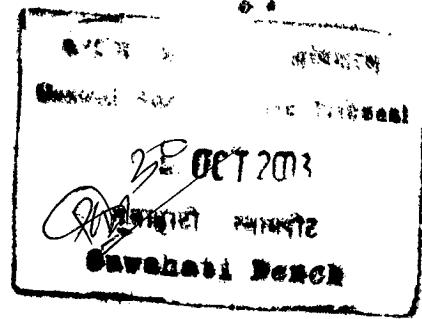
In view of our decision in the appeal arising out of S.L.P. (C) No. 15619 of 1994, this appeal stands allowed. The respondents will regularise the appellants herein from the date their juniors were regularised. Appeal allowed accordingly. No order as to costs.

.....
.....
(P. B. SAWANT)

.....
.....
(K. VENKATASHAMI)

New Delhi;
April 21, 1995

Attoste
W.S.
Advocate.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI

In the matter of OA No.106/03

Union of India & ors 23
strongly
Hony. Mr. Choudhury
3 Oct 03

Naresh Sarkar and others.....-Applicant

Vs

Union of India & Others.....-Respondents

Written statement for and on behalf of Respondent Nos.1, 2 and 3.

I, Dr. B. Francis Kulirani, Superintending Anthropologist, Head of office, Anthropological Survey of India, North East Regional Centre, Mawblei, Shillong, do hereby solemnly affirm and say as follows:

1. That I am fully acquainted with the facts and circumstances of the case, I have gone through a copy of the application served on me and have understood the contents thereof. Save and accept whatever is specifically admitted in this written statement, the other statements and contentions may be deemed to have been denied. I am authorized to file this written statement on behalf of all the Respondents.

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- 21 -
34

2. That the Respondents have no comments to the statements made in paragraphs 1, 2 and 3 of application.
3. That with regard to the statements made in paragraph 4.1 of the application the Respondents beg to state that the applicants are working as Daily Wage 'Chowkidar' in the office of the NERC of the Anthropological Survey of India on 'No work No pay Basis' for a prescribed period of a maximum of 89 days at a stretch.

It is not true that the applicants had undergone a regular process of selection. They were hired purely on day to day basis at various times after that they had willingly accepted those terms (Application of Applicant No 3. dated 22.12.94) As their engagement was purely contingent in nature, they do not qualify to be considered for regularization as per rule. All the applicants were engaged and reengaged as and when required.

The Applicants very cleverly have tried to mislead the Hon'ble CAT by saying that there are Group-D posts lying vacant. There are about 12 categories of Group-D staff. All are having different recruitment procedures. No Chowkidar post is lying vacant at NERC, Shillong. Most of them are promotional posts. The point of qualification as raised by the Applicants has no bearing in this context

4. That the Respondents have no comments to the statements made in paragraph 4.2 of the application.
5. That with regard to the statements made in paragraph 4.3 , Applicant No.1,Shri Naresh Sarkar has wrongfully mentioned that since 7.12.92 till date he is continuing to work without break. The Applicant was told in writing that the temporary service rendered by him will not count for any regular appointment in this office (Copy enclosed, Encl No.1).

The Applicants have contradicted themselves through the enclosures they themselves have supplied along with their application. The said Enclosure (No.12) of the Applicants clearly states that the applicant was given a re-allotment of duty.

So far as bonus is concerned , the President of India was pleased to grant the Non-Productivity Linked Bonus(Ad Hoc Bonus) equivalent to 30 days emoluments for the accounting year 2001-2002(Copy enclosed No 2) . In item (iii) of the office Memorandum there exists the provision to pay Non-PLB Bonus to casual labourers also but the amount of bonus for casual labourer should not exceed Rs.1184/- . The payment of bonus is no claim for a casual labour to be absorbed against a permanent post of Group- D staff.

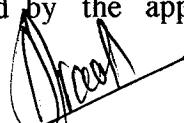
The plea of the applicants No 2&No3 that they were appointed through a regular process of selection is not true as already mentioned in paragraph 3 of this reply. The applicants have wrongly mentioned that they are continuing their duties in this office without break. In fact all the applicants were engaged and re-engaged at different times. Further the Respondents wish to state that the applicants were not appointed against any existing vacancy at Group D level, but only for requirement of temporary watch and ward duties.



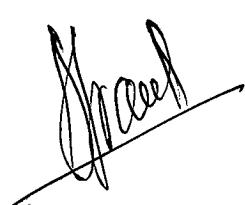
6. That the Respondents have no comments to the statements made in paragraph 4.4 of the application.
7. That with regard to the statements made in paragraph 4.5 it is stated that as such there is no Respondent No.3. The post of Deputy Director in this Regional Centre is lying vacant since May 2002 and as such the senior most officer is given the charge of Head of office from time to time. At no point of time the Respondents had given any assurance to the applicants regarding the regularisation.

One interview of Chowkidar was held during 29th-30th April 1998 and all the three Applicants were candidates for filling two vacant posts of Chowkidar (one open and other reserved for S.T). But they failed to be selected. (Annexure-1: Minutes of the meeting of the Selection committee).

8. That with regard to the statements made in paragraph 4.6 line No.4 the Applicants have incorrectly mentioned and tried to mislead the Hon'ble CAT by mentioning that the Respondents are now filling up the vacancies without considering the Applicants. It is totally false as the Respondents have not made any move to fill up any such post in the near future. The statement in Line No.10 that since the last 10 years the Applicants had continuous service is also false, the Applicants were re-engaged only after mandatory break (Enclosure mentioned in para 5).
9. That with regard to the statements made in paragraph 4.7 the Respondents are aware of the casual labour status of the Applicants. As regards filling up of vacancies the respondents are guided by the recruitment rules and since the Applicants were not initially appointed through the employment exchange considering them against any future vacancies does not arise.
10. That with regard to the statements made in paragraph 4.8 the Respondents are unaware and there is no establishment of their organization at the said place.
11. That with regard to the statements made in paragraph 4.9 the Respondents have acted as law abiding. The Applicants pointed out that one Mr. Dasarath Baraik who was recruited in the year 1995-96 in the same capacity of Casual worker but subsequently he got the benefit of regularization against the vacant post of Group-D. This statement is totally false and self-willed. One Mr. Dasarath Baraik had been working as Casual Worker since 1989 and he was recruited as casual worker from local Employment Exchange on September, 1993. So the question of Junior was given the benefit of regularization does not arise. The supporting documents will be submitted if the Hon'ble CAT asks for.
12. That with regard to the statements made in paragraph 4.10 the Respondents wish to state that the disparity in status is inbuilt and perhaps not at par.
13. That with regard to the statements made in paragraph 4.11 the Respondents are not in a position to do anything for filling up any post of Group-D as there is no instruction from competent authority due to the austerity measures and there is no such move as alleged by the applicants.



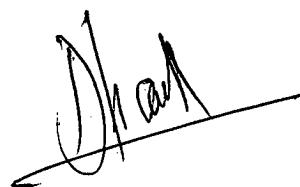
14. That with regard to the statements made in paragraph 4.12 the reply is given in para 13 above.
15. That the Respondents have no comments to the statements made in paragraph 4.13 of the application.
16. That with regard to the GROUNDS FOR RELIEF WITH LEGAL PROVISIONS as sought by the applicants the Respondents wish to state that the point raised by the applicants in 5.1 the reply has already been given in paragraph No. 3 above.
17. That with regard to the statements made in paragraph 5.2 the Respondents have never acted, as mentioned, 'contrary to the settled proposition of law.' In fact; the regularization could not be done as there are no directives for doing so. Secondly, during the interview held in 29th and 30th April, 1998 one of the posts was reserved for ST candidate had to be considered. The other post was also filled up by a ST candidate belonging to the State of Meghalaya. Applicants No.1, No 2 and No.3 were also candidates but somehow, they were not considered by the selection Committee (Please see Annexure-I).
18. That with regard to the statements made in paragraph 5.3 the Respondents have not, thus, acted in any unfair manner and it can be confirmed from para 17 above.
19. That with regard to the statements made in paragraph 5.4 the Respondents have not been vindictive and have been law abiding.
20. That with regard to the statements made in paragraph 5.5 the first line 'any view of the matter the impugned action of the Respondent are not sustainable in the eye of the law' is totally incorrect and imaginative only. The last part of the sentence 'liable to be set aside and quashed' is totally harsh and uncalled for.
21. That the Respondents have no comments to the statements made in paragraph 6,7and 8 of the application.
22. That with regard to the statements made in paragraph 8.1 the Respondents wish to state that the duties of casual labourers on 'No work No pay basis' cannot be considered as service. Thus, the length of service and giving effect does not arise.
23. That with regard to the statements made in paragraph 8.2 the Respondents wish to state that they will be considered if selected against regular posts.
24. That with regard to the statements made in paragraph 9 the Respondents wish to state that they are bound by the austerity measures of the Govt. of India in this regard.



VERIFICATION

I, B.Francis Kulirani, Superintending Anthropologist(C) and also presently holding charge of Head of Office, Anthropological Survey of India, North East Regional Centre, Shillong – 21, being duly authorized and competent to sign this verification, do hereby solemnly affirm and state that the statements made in paragraphs 2 - 22 being matters of record are true to my knowledge and belief and those made in paragraphs 23 - 27 being my humble submission before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this 20th day of October, 2003, at Shillong.



(Deponent)

भारतीय अध्ययन
Head of Office
भारतीय मानवशिक्षान वर्धकाल
Anthropological Survey of India
भारत सरकार
Government of India
उत्तर-पूर्व शैक्षीक केन्द्र
North East Regional Centre
शिलांग - 733021
Shillong - 793021

ANTHROPOLOGICAL SURVEY OF
INDIA
NORTH EAST REGIONAL CENTRE
SHILLONG 793001

Encl No 1

④

Anthropological Survey of India
North East Regional Centre
Shillong

No. 1-202/91/Estd.

Dated 1-3-1994.

As per the approval of the Head of Office at note Sheet page 23, dated 1.3.1994 Shri Naresh Sarkar C/o. Shri P. Das, Rishnupur, Shillong-4 has been engaged for 85 days, 8.3.94 to 31.5.1994 as casual labour. His duty will be terminated automatically after 31.5.94 and he should not be allowed for any double duty. He will be paid wages @Rs.49 (Rupees Forty nine only) per day i.e. no work no pay basis. His duty will be 2.00 p.m. to 10.00p.m. at main building.

B. G. Dube
Deputy Director
Head of Office

Copy to Accounts Section.

2. Spare copy.

Appealed
By Col. G. P.
Shandar Chatterjee

NO.14(4)-E.Cood.1/2002
 Government of India
 Ministry of Finance & Company Affairs
 Department of Revenue
 59

Dtd: the 7th October, 2002

OFFICE MEMORANDUM

Subject: Grant of Non-Productivity Linked Bonus (Ad-Hoc bonus) to the Central Government Employees for the year 2001-2002.

The undersigned is directed to convey the sanction of the President to the grant of Non-Productivity Linked Bonus (Ad-Hoc Bonus) equivalent to 30 days emoluments for the accounting year 2001-2002 to the Central Government employees in Group C and D and all non-gazetted employees in Group B, who are not covered by any Productivity Linked Bonus Scheme. The calculation ceiling of Rs.2500/- will remain unchanged. The payment will also be admissible to the Central Police and Para-military Personnel and personnel of Armed Forces. The orders will be deemed to be extended to the employees of Union Territory Administration, which will follow the Central Government pattern of emoluments and are not covered by any other bonus or arrearance scheme.

2. The benefit will be admissible subject to the following terms and conditions:-

- (i) Only those employees who were in service on 31.3.2002 and have rendered at least six months of continuous service during the year 2001-2002 will be eligible for payment under these orders. Pro-rata payment will be admissible to the eligible employees for period of continuous service during the year from six months to a full year, the eligibility period being taken in terms of number of months of service (rounded to the nearest number of months).
- (ii) The quantum of Non-PLB (ad-hoc bonus) will be worked out on the basis of average emoluments/calculation ceiling whichever is lower. To calculate Non-PLB (Ad-hoc bonus) for one day, the average emoluments in a year will be divided by 30.4 (number of days in a month). This will thereafter be multiplied by the number of days of bonus granted. To illustrate, taking the calculation ceiling of Rs.2500 (where actual average emoluments exceed Rs.2500), Non-PLB (Ad-hoc bonus) for thirty days would work out to $Rs.2500 \times 30 / 30.4 = Rs.2467.10$ (rounded off to Rs.2467/-).
- (iii) The casual labour who have worked in offices following 6 day week for at least 240 days for each year for 3 years or more (206 days in each year for 3 years or more in the case of offices observing 5 day week), will be eligible for this Non-PLB (Ad-hoc Bonus) payment. The amount of non-PLB (ad-hoc bonus) payable will be $(Rs.1200 \times 30 / 30.4)$ i.e. Rs.1184.21 (rounded off to Rs.1184/-). In cases where the actual emoluments fall below Rs.1200/- p.m., the amount will be calculated on actual monthly emoluments.
- (iv) All payments under these orders will be rounded off to the nearest rupee.
- (v) The clarificatory orders issued vide this Ministry's OM No.P.14(10)-E.Cood/88 dated 4.10.1988, as amended from time to time, would hold good.

3. The payment under these orders will be chargeable to the sub-head 'Salaries' in the relevant demand for grant of the organization concerned.

— Contd.

*Attended
Officer*

8 *Exhibit 3*
ANNEXURE

Minutes of the meeting of Selection Committee for two posts of Chowkidar in the pay scale of Rs. 2550-55-2660-60-3200 at North East Regional Centre, Shillong, one reserved for ST and the other for General.

In compliance of letter No. 24-55/89/Estt dated 1st April, 1998 the Selection Committee met on 29th and 30th of April, 1998 in the chamber of Deputy Director, Anthropological Survey of India, North East Regional Centre, Shillong at 11A.M.

The following member were present :

1. Dr. B. R. Rizvi Chairman
Deputy Director
Anthropological Survey of India
North East Regional Centre
Shillong.
2. Shri D. T. Syiemlich Member
Senior Administrative Officer
Geological Survey of India
North East Region
Shillong.
3. Shri P. J. Kyngdong Member
Office Superintendent
Anthropological Survey of India
North East Regional Centre
Shillong.
4. Dr. G. C. Ghosh Member
Head of Office
Anthropological Survey of India
27, Jawaharlal Nehru Road
Calcutta.

Altogether 48 applications were received, out of which 37 applications had been forwarded to this office by Employment office and 11 applications were received through notification.

All candidates were called for interview vide this office letter No. 71-33/97/Estt. 453-497 dated 13/4/98.

30/4/98
30/4/98

D. T. Syiemlich
D. T. Syiemlich
30/4/98

9

2. 80/28

Out of 48 candidates the list of 38 candidates who attended the interview is enclosed herewith. 10 Candidates did not attend the interview.

The Selection Committee took the interview of all the 38 candidates. One post was general and another post was reserved for Scheduled Tribe. As such all relevant records including Scheduled Tribe certificate, Birth certificate etc, were checked and found to be correct.

On the basis of personal interview and performances the Selection Committee has unanimously selected the following candidates in order of merit.

Reserved Post for Scheduled Tribe

1. Gladstone Khongwir
C/o Rilly Khongwir
Mawlai Nongpdeng
Shillong - 8.
2. Bablu Nongrum
Lawsohtun, Block-III
Shillong - 4.
3. Phrangshai Nongrum
C/o R.A. Lyngdoh (MDC)
Khasi Hills Council
Near Jeep Stand
Shillong - 2.

Reserved Post for General Candidates

1. Iterson Sangma
C/o Dr. S. Das, MBBS
Bishnupur
Shillong - 1.
2. Bikram Singh
C.T.O. Compound
P.O. Shillong - 1.
3. Sharailang Wankhar
C/o Arming Lyngdoh
Dong iwe, Mawphlang
Shillong - 21.

30.4.98

30/4/98

D.E.C. 1998

Lexelle
30/4/98

29-
10
21/4/98 (29) 30/4/98
(DR. B. R. RIZVI)

CHAIRMAN

SHRI D. T. SYAMMEH
MEMBER

30/4/98

21/4/98 (29) 30/4/98
(SHRI P. RYNGDONG)

MEMBER

(DR. G. C. GHOSH)
MEMBER

30.4.98

Plated
PPMC
Copper
Copper
Copper
Copper

DR. B. R. RIZVI