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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

X

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 59/2003

R.A/C.P No.

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SECTION OFFICER (Judl.)

Kalish
75/11/17

(RULE - 4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No. 59/03

Misc. Petition No. /

Contempt Petition No. /

Review Application No. /

Applicant (s) Prabash Deb Nath

- Vs. -

Respondent (s) U.O.I Form

Advocate for the applicant (s) Mr. C. Phukan, Mr. R. Barpujari

Advocate for the respondent (s) Mr. S. Sengupta, Railway Counsel

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form but not in time. Condonation is filed / not for Rs. 50/- vide IPO/B No. 2667097 Dated 10.3.03.</p> <p><u>Dr. Registrar.</u></p> <p>Steps taken along with envelopes.</p> <p>Notice prepared and sent to BLS for filing the response - dent No. 1 to 4 by Regd. Hb.</p> <p>S/N No. 663 W 666. dtd 9/4/03.</p> <p>No. 1234 has been filed.</p> <p><u>2.5.03</u></p>	<p>2.4.2003</p> <p>mb</p> <p>5.5.2003</p> <p>bb</p>	<p>Heard Mr. C.C. Phukan, learned counsel for the applicant. Issue notice to show cause as to why the application shall not be admitted. Returnable by four weeks.</p> <p>List on 5.5.2003 for admission.</p> <p>Put up on 26.5.2003 for admission in presence of the learned counsel for the applicant.</p> <p><u>Member</u></p> <p><u>Vice-Chairman</u></p>

20

✓

No reply has
been filed.

26.5.2003

Put up again on 10.6.2003
for admission.

By
23.5.03

for
Member

Vice-Chairman

mb

[A long diagonal line is drawn across the page, possibly indicating a signature or a mark.]

Notes of the Registry	Date	Orders of the Tribunal
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10.6.2003

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

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

The application is mainly directed against the selection process that was initiated as far back as 20.4.1995. By notification cited in the annexure-1 the respondent authority invited applications for recruitment of sportsman against sports quota in group 'D' category. According to the applicant he applied for that but the result was not announced nor any appointments were made. Thereafter, another advertisement was issued for fresh selection. The applicant objected to it, but under protest he appeared in the selection test. The result was also announced but his name did not appear in the list of eligible candidates.

In the year 1999, the applicant preferred a writ petition before the Hon'ble High Court assailing the action of the respondents for not considering his case as per law. The High Court by judgment and order dated 11.12.2002 disposed the writ petition which was numbered as W.P.(C) No.66/99. The High Court dismissed the application for want of jurisdiction with liberty to the applicant to approach the Central Administrative Tribunal. Hence this application under section 19 of the Administrative Tribunals Act, 1985.

Mr. G.C. Phukan, learned counsel for the applicant stressed on the policy as introduced by the Railways for recruitment of sportsman. Learned

C. B. Phukan

Contd...2

Notes of the Registry

Date

Orders of the Tribunal

counsel for the applicant also referred to the advertisement which was meant to encourage the sports persons. Mr. Phukan, further submitted that the applicant represented the junior and senior level inter division met in Badminton and naturally he is entitled for consideration of his case for appointment.

We have heard Mr. S. Sengupta, learned counsel for the respondents. Admittely, the matter relates to recruitment that took place in the year 95 and the other was in 97. At such a long distance of time we are not inclined to accept this application on the ground of delay.

Mr. Phukan, learned counsel for the applicant argued on the delay. Referring to the averment made in the condonation application, learned counsel for the applicant submitted that the applicant should not be penalised. There was no laches on the part of the applicant, submitted Mr. Phukan, learned counsel for the applicant. At the available opportunity the applicant instituted writ petition which was finally dismissed on 11.12.2002. The time spent in the Court cannot defeat the claim of the applicant contended Mr. Phukan, the learned counsel for the applicant.

We have bestowed our anxious consideration on the subject. On consideration of all aspects of the matter we are not inclined to exercise our discretion for consideration of the

Contd...3

Notes of the Registry

Date _____

Orders of the Tribunal

delay on the ground that the matter pertains to recruitment in the year 95-97. No rationale is found to rake up a stale claim. It would not be appropriate for us to interfere with the recruitment process that took place in 95 & 97. "Vigilantibus non dormientibus leges subveniunt" - The vigilant, not the sleeping are aided by the laws.

In the circumstances, the application is dismissed. The dismissal of the application, however, shall not preclude the applicant to apply for any vacant posts under the respondents subject to fulfilling the eligibility criteria. If such application is made by the applicant the respondents shall consider such application of the applicant, as per law along with the persons similarly situated. No order as to costs.

16.6.2003

Copy of The order
has been sent to the
Office. for stamp
The same to the applicant
as well as to the Acting
Standing Counsel.

AL.

Subjection

Member

1

Vice-Chairman

mb

Notes of the Registry

Date

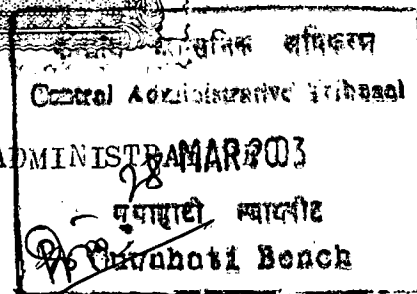
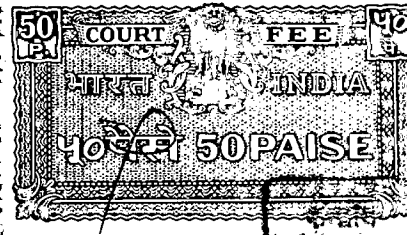
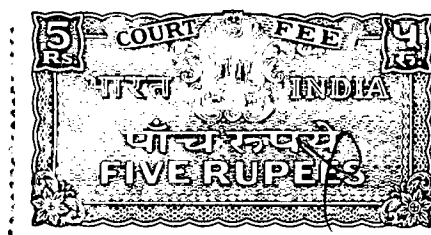
Orders of the Tribunal

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APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNAL ACT, 1985.

Title of the case.

O.A. No. 59. . /2003.

INDEX/Synopsis

Sl.No.	Description of documents relied upon.	Page No.
1.	Application.	1 - 9
2.	Copy of advertisement dated 20.4.95 (Annexure-1).	10 - 11
3.	Copy of call letter-Annexure-2.	12
4.	Copy of advertisement dated 14.3.97-Annexure-3.	13 - 14
5.	Copies of representation Annexed as Annexure-4-4(5),	15 - 21
6.	Certified copy of the judgment and order in WPC No.66/99. (Annexure-5)	22 - 28

For the use in Tribunal's Office.

Date of filing.

Prabash Deb Nath.
Signature of applicant.

Signature for Registrar.

In the Central Administrative Tribunal, Guwahati Bench.

- Between -

Sri Prabash Deb Nath, son of Sri Monoranjan Deb Nath, resident of Medical Colony. P.S. Landing, Dist. Nagaon Assam.

...Applicant.

Prabash debnath

Contd. page -2/-

Filed by Barpujari Advocate

- And -

1. Union of India, through the Secretary to the Govt. of India, Ministry of Railway, New Delhi.
2. N.F. Railway, represented by its General Manager, Maligaon, Guwahati-11.
3. President, Divisional Railway Sports Club, Lumding, N.F. Railway.
4. General Secretary, Divisional Railway Sports Club, Lumding, N.F. Railway.

... Respondents.

Details of application:-

1. Particulars of the applicant.

i) Name of the applicant. Sri Prabash Deb Nath

ii) Name of father. :- Sri Manoranjan Deb Nath.

iii) Age of the applicant. :- 29 years.

iv) Designation and particulars

of office (Name of station),

as which employed or was

Does not arise.

last employed before ceasing

to be a service.

v) Office address.

-do-

vi) Address for service of
Notices.

Medical colony, Lumding, P.O.
& P.S. Lumding, District
Nagaon, Assam.

Contd. page-3/-

Prabash Deb Nath

2. Particulars of the respondents:-

- a) Names of the respondents:- (a) Union of India through
the Secretary to the Govt.
of India, Ministry of Railway,
New Delhi.
- (b) N.F.Rly. represented by its
General Manager, Maligaon,
Guwahati.
- (c) President Divisional Rly.
Sports Club, Laming, N.F.
Railway.
- (d) General Secretary Divisional
Railway Sports Club, Laming,
N.F. Railway.

ii) Address for service of
Notices.

As shown above.

3. Particulars of the order
against which application
is made.

The application is against the following order:-

- | | |
|-----------------------|--|
| i) Order No. | Not against a specific order. |
| ii) Date. | Subject is advertisement for |
| iii) Passed by. | recruitment in group D category |
| iv) Subject in brief. | Sports quota service under the |
| | N.F.Rly. Interviewed held on |
| | 26.9.95 and 27 27.9.99 but no |
| | result announced and no appoi- |
| | ntment order issued. |

Prabash Deb Nath

4. Jurisdiction of the Tribunal:-

The applicant declares that the subject matter against which he wants redressal is within the jurisdiction of the Tribunal.

5. Limitation:-

The applicant further declares that the present application under Section 19 is not governed by Section 21 in-as-much as, the same is not against any order of the authority concerned but its inaction.

Nevertheless a separate petition is preferred showing how the applicant may not be held responsible for laches etc as he was seeking redress before the Hon'ble Gauhati High Court in W.P.(C)No.66/99 at the advice of his Lawyers. The said W.P.(C) was disposed of on 11.12.2002 which could be learned recently only. Even if for any reason the petition is held to be beyond time the delay may be condoned for the ends of justice and the application may be admitted.

6. Facts of the case:-

The facts of the case are given below:-

a) That in order to fill up the sports quota in Group-'D' category posts under N.F. Railway there was an advertisement on 20.4.95 by the General Secretary, Divisional Railway Sports Club, N.F. Railway, Lumding.

The copy of advertisement is annexed herewith as Annx.I.

b) That in response to the advertisement the applicant offered his candidature formally for the discipline of Badminton for which there were two posts and accordingly he was also called for selection trial to be held on 26.9.95 and 27.9.95.

....5/-

Prabash Deb Nath

The copy of call letter is annexed herewith as Annexure-2.

c) That in the aforesaid trial play the applicant came out as champion with natural expectation that in due course the result would be announced facilitating his appointment to the post as early as possible .But to the utter surprise of the applicant neither the result was announced nor there was appointment to the applicant.

d) That without, however, doing anything as aforesaid the same authority again suddenly issued another advertisement dated 14.3.97 for fresh selection trial to which the applicant objected even though he again offered his candidature only to avoid the missing of chance for the post. Although the applicant again offered his candidature he never waived his right for the post for which he qualified himself in the earlier test. He always insisted that without declaring the result of previous test the other test could not be legally held. To this effect he made several representations. This time however, he was not even invited for test play to which also he formally objected without any fruitful result.

The copy of advertisement dated 14.3.97 along with the copies of representations is ~~as Annexure-8 and 4-4(5)~~ annexed herewith as Annexure-3 and 4-4(5) respectively.

e) That inspite of repeated representations and personal meeting of the appropriate authority there was no result and therefore he had sought legal redress before the Hon'ble Gauhati High Court in his W.P.(C)No.66/99 which has been disposed of on 11.12.2002 holding that over the subject matter

...6/-

Probasch det nat.

matter of the case only the Hon'ble Tribunal has got jurisdiction as a court of first instance. The Hon'ble High Court, however granted liberty to the applicant to seek appropriate relief before the Hon'ble Tribunal and hence this application.

The certified copy of the order is annexed herewith as Annexure-5.

f) That, the applicant begs to state that uptill now the post concerned is not filled up and therefore his claim for the same still ^{subsists} ~~subjects~~ on the basis of his test in 1995. The applicant further begs to state that without taking a final decision for the test in 1995 no subsequent test could be legally held. The department is liable for their own inaction.

7. Details of the remedies exhausted:-

The applicant begs to state that he being not an employee of the department no question of seeking any remedy under the Service Rules arises. He however submitted his representation as shown about but without any iota of result.

8. Matters not previously filed or pending with any other Court:-

The applicant further declares that he had not previously filed any application or suit but he preferred his W.P.(c) No.66/99 before the Hon'ble Gauhati High Court. In the W.P(C) concerned the Hon'ble Court was pleased to hold in its order dated 11.12.2002 that for the grievance the remedy lay with the Central Administrative Tribunal only within the meaning and purpose of ~~selection~~ section 14 of the Administrative Tribunal Act, 1985 and therefore the writ petition was disposed

...7/-

Prabash Deb Nath

disposed of on the preliminary point of maintainability. The Hon'ble Court, however, expressly granted liberty to the applicant to approach the Tribunal and hence the application.

9. Relief sought:-

In view of the facts mentioned in para 6 above the applicant prays for the following reliefs:-

- a) To direct the respondents concerned to formally declare the result of selection play of Badminton held on 26.9.95 and 27.9.95 in which the applicant ~~was~~ came out as Champion.
- b) To prohibit the respondents to act upon the result of any selection play held subsequent to above for the purpose of filling up the post in group 'D' category under the N.F. Railway without offering the appointment to the applicant first.
- c) To direct the respondents concerned to appoint the applicant to the post referred to above without further delay.
- d) To grant any other relief to the applicant that may be permissible under the circumstances of the case.

10) Interim order, if any prayed for:-

Pending final decision on the application the applicant seeks issue of the following interim order.

The applicant prays that an interim order may be issued against the respondents prohibiting them from filling up the claimed group-'D' category post in the meantime. The interim order is necessary for the reason that if the post is already filled up the applicant will not get the benefit even if his application may be allowed in his favour.

Prabash Deb Nath

....8/-

11. Does not arise.
12. Particulars of Bank Draft/Postal order in respect of the application fee:-
- 1) Name of the Bank on which draws.
 - 2) Demand Draft No.
 - 3) Number of Indian Postal order(s)....
 - 4) Name of the issuing post office
 5. Date of issue of postal order(s)...
 6. Post office at which payable...
13. List of enclosures-
1. Copy of the advertisement dated 20.4.95.
 2. Copy of the call letter.
 3. Copy of the advertisement dated 14.3.97.
 4. Copies of the representation.
 5. Certified copy of the judgement and order
 6. in WP(c) no. 66/99.
 - 7.
 - 8.
 - 9.
 - 10.
 - 11.
 - 12.
 - 13.
 - 14.

...9/-

Prabash Deb Nath.

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

I, Shri Prabash Deb Nath, son of Sri Monoranjan Deb Nath, aged about 27 years, resident of Medical Colony, Lunding, P.O. & P.S. Lunding, District-Nagaon (Assam), do hereby verify that the contents of paragraphs 1-3, 6, 7, 8 and 12 are true to my personal knowledge and paragraphs 4 and 5 believed to be true on legal advice and that I have not suppressed any material fact.

Prabash Deb Nath

Signature of the applicant.

Date-

Place-

To

The Registrar, Central Administrative Tribunal,
Guwahati Branch, Bhangagarh, Guwahati.

DIVISIONAL RAILWAY SPORTS CLUB, LUMDING, N.F.RLY.N O T I F I C A T I O N

Sub:- Recruitment of sportsman against sports quota in Group 'D' Category.

...

It is a great pleasure to inform you that the Indian Railways have given stress on the development of sports and games in the country and with this view the Railways have decided to recruit outstanding sportsman against sports quota.

At Divisional level this recruitment will be made in group - 'D' category in scale Rs.750-940/- (Basic pay) & other allowances Recruitment will be made for the following disciplines -

1. Football - 4 (Four) Stopper, Sideback, Linkman & left out.
2. Badminton- 2 (two).
3. Athletics- 2 (two) one sprinter-100 metre/200 metre.
one thrower- Discuss/Javeline/
Shot put.

Eligibility Critaria.

- 1) Sports persons should have represented District in Junior/Senior State Championship and obtained at least first three position either in individual or team event.
- 2) Sports persons concerned should have represented State Schools/University/State Junior or Senior team in the National Games/Inter-University championship/Junior or Senior National Championship. In such cases obtaining of a position need not be insisted upon.
- 3) Age: As on 01.01.1995, sportsman should have attained 18 yrs. of age and should not be more than 25 yrs. of age. School certificate as a proof of age should be attached.

Candidates who will fulfil the above terms and conditions are advised to submit application (Standard form) alongwith the copies testimonials on or before 30.05.1995 to the undersigned.

Application received after 30.05.1995 will not be considered.

Eligible candidates will have to attend selection trial. The date, time and venue of the Selection trial will be intimated lateron. Competitors will not be paid any TA/DA for attending the selection trial. They have to participate in the above selection trial on their own expenses.

Encls:- (One Standard form)

sd/-

(Capt. S. Srinivas)

Divisional Mechanical Engineer(Power)

N.F.Railway : Lumding.

General Secretary,

Divisional Railway Sports Club, N.F.Rly.

Lumding.

*Certified to be
true copy
by
Advocate*

19 11

Cont. Page No.2.

No.DSC/LMG/Rectt/5.

Dated, Lunding 20-4-1995.

Copy forwarded to -

- | | | |
|---|---|--------------------|
| 1. The Director of Sports and Youth Welfare
Govt. of Assam, Dispur, Guwahati-781007. |) | They are requested |
| 2. Govt. of Manipur, Imphal. |) | to give wide pub- |
| 3. Govt. of Mizoram, Aizawl, |) | lication amongst |
| 4. Govt. of Meghalaya, Shillong. |) | the Sport's Asso- |
| 5. Govt. of Nagaland - Kohima. |) | ciation under |
| 6. Govt. of Tripura - Agartala. |) | their control so |
| 7. District Sports Association, Silchar,
Karinganaj, N.C. Hillsm Karvi Anglong (Diphu),
Nagaon, Guwahati. |) | that eligible |
| |) | willing candidates |
| |) | can appear before |
| |) | the selection |
| |) | trial. |
| 8. Sr.DRO/LMG for information and necessary action for keeping
suitable vacancies except in Engg. and Medical Deptt. | | |

sd/-

(Capt. S. Srinivas)

Divisional Mechanical Engineer(Power)

N.F. Railway : Lunding.

General Secretary,

Divisional Railway Sports Club, N.F.Rly,
Lunding.

Annex 2

v (2)

NORTHEAST RAILWAY RAILWAY.

No./DSC/LMG/Recdt /5

Dated, Lumding 11-9-95.

To Shri Prabhat DebbarhG/O Shri Monrajai Debbarh
Medical Colony (Bamade 93)
Po. Lumding

(Assam)

Sub: Recruitment of Sportsman in group-'D' category against Sports quota.

Ref: This office Notification of even No. dtd 20.4.95.

:::

With reference to your application in connection with Notification under reference for recruitment of sports man against sports quota under Lumding Division of N.F. Ry, the selection trial is fixed to be held on 26.9.95 and 27.9.95 at Lumding Railway Sports ground for Football, Athletics and at Indoor stadium for Badminton.

You are advised to appear before the selection committee in the chamber of Divisional Mechanical Engineer(Power) at 9.00 hrs. on 26.9.95 with the following documents in ORIGINAL.

- 1) Academic certificate.
- 2) Age proof certificate.
- 3) Sports certificate indicating position in individual or team event.

Those who did not enclose any certificate in their application, they are advised to submit copies of requisite sports certificate as indicate above.

- 4) Pass port size photograph duly attested by the competent authority.

Those who fail to submit the above documents in original will not be allowed to participate in the selection trial.

No pass and travelling allowance is admissible.

Sd/-

General Secretary,
Divisional Ry. Sports Club/N.F. Ry,
Lumding.

'naha'
6995

Certified to be
true copy
by Advocate

DIVISIONAL RAIL SPORTS CLUB, N.F. RLY.
LUMDING.

N O T I F I C A T I O N

Sub: - Recruitment of Sportsman against Sports Quota
in Group 'D' category (Male only).

This is to inform you that Indian Rly. have given stress on the development of Sports and games in this Country and with view the Rlys have decided to recruit outstanding sports man against sports Quota.

Divisional level this recruitment will be made in Group 'D' category in scale Rs. 750-940/- (Rs) + other allowances. Sportsman concerned are requested to apply for recruitment against Sports Quota. Recruitment will be made for the following events.

- (1) Football = 2(one) Goal keeper & one striker).
- (2) Cricket = 2(two)(one Wicket keeper and one all Rounder).
- (3) Badminton = 2(two).
- (4) Volley ball = 1(one).

Sportsman of following standard eligible to apply.

1(a) Sports persons concerned should have represented a District in Junior/Senior State Championships and obtained at least first three position either in individual or team events.

O. R.

(b) Sports persons concerned should have represented State Schools/University/State Junior or Senior team in National School Games/Inter-University Championships/Junior or Senior National Championships.

In such cases obtaining of a position needs not be insisted upon.

2. Age: - As on 01.3.97 sportsman should have attained 18 years of age and should not be more than 25 yrs. of age. School certificate as a proof of age should be attached.

3. Educational qualification should be HSLC or equivalent examination passed.

4. Candidates who fulfill the above criterion will fill up an application (Standard form attached) addressed to General Secretary, Divisional Sports Club, N.F. Rly, Lumding. The application form must accompany all the attested copies of certificates in support of their eligibility. The candidates must come in person to drop the application form (which will be in a closed cover) in the nominated box by 16.00 hrs. of 28.3.97. The nominated box will be placed in the Security Control cell of DRM's office.

After scrutiny of the certificates list of eligible candidates will be displayed on 29.3.97 on the Notice Board of Personnel Branch. The eligible candidates will attend Vivekanda Railway stadium at 11.00 hrs. of 29.3.97 for trial along with all original certificates.

Contd. pag. No. 2.

*Certified file
true copy
in
Advocate*

Continued No.2.

Candidates must use their own sports gears.

Candidates will not be paid any TA/DA for attending the selection trial. They have to participate in the above selection trial on their own expenses.

All the sports Associations are requested to make wide publicity among the sports Association under their control so that eligible willing candidates can appear before the selection trial.

D4: - One Standard Form.

K. Chakraborty
(K. Chakraborty)

D. A. O./Lumding,
General Secretary,
Divisional Rly. Sports Club,
N. F. Railway : Lumding.

No. DRSC/LMG/Recd/5. Dtd, LMG 14/3/97.

Copy forwarded to:-

1. The Director of Sports and Youth Welfare.
Govt. of Assam, Guwahati - 7.
2. Govt. of Manipur - Imphal.
3. Govt. of Nagaland - Kohima.
4. Govt. of Meghalaya - Shillong.
5. Govt. of Mizoram - Aizawl.
6. Govt. of Tripura - Agartala.
7. District Sports Association - Silchar, Karimganj, N.C. Hills
(Haflong, Karbi Anglong (Dihou), Nagaon, Guwahati).
8. SS/IMV, DU, LMG, HUI, CKK, JID, CHY, LFG, BDB, KXJ, DMR, SCL for
display on the NOTICE BOARD.
9. D.O/Lumding for information and requested to keep:
7 (Seven) suitable vacancies in Ground D category
except Engg. and Medical Deptt.

K. Chakraborty
(K. Chakraborty)

D. A. O./Lumding.
General Secretary,
Divisional Rly. Sports Club,
N. F. Rly : Lumding.

(P/COPY)

Annexure -4

To,

The General Secretary,
Divisional Sports Club,
Lunding, N.F. Rly

Date : 29.3.97

Subj:- Condemnation for selection trial-game for
recruitment as a Badminton Player.

Ref :- Your Circular no. DRSC/LMG/Rectt/5
dt. 14.3.97

Sir,

with due respect I beg to inform you that, myself
applied for selection trial games against Sports Quota in
the event of Badminton vide your Circular No. DRSC/LMG/Rectt/
5 dt. 14.3.97 as a candidate.

But now I like to mention here that, I have represented
junior and senior Inter Divisional meet held at LMG & KIR in
the year 1993 & 95 and it has astonished me that, my name has
not been acceded to as a candidate to appear in the selection
trial games.

In this connection mention may be made that, I became
Champion in the last year selection trial game, but no result
has yet been announced in this event.

As such, I, once again invite your attention to look-
into the matter and make a proper justification in it to appear
me in the selection trial game in this year.

Thanking you,

Yours sincerely,

sd/- Prabash Debnath

Recd

sd/- illegible

dt. 29/3/97

*Certified to be
true copy
by Advocate*

To
The General Secretary,
Divisional Sports Club,
G.F. Railway - Lumding.

RECD A/D

Annexure - 2 40 6

27

Respected Sir,

Sub:- Selection trial game for recruitment
as Badminton player.

Ref:- Your circular No. DRAC/LMG/Recdt/5
dated 14.3.97.

.....

Your kind attention to my representation dated
29.3.97 is invited to which a reply is still awaited.

I once again beg to state that in terms of your
above cited circular, I submitted my candidature for
recruitment against Badminton player quota but to my
utter misfortune my name does not appear in the list
of candidates called for the trial. In this connection,
it will not be out of place to mention here that I have
represented Junior and Senior Inter-Divisional meet
held at Lumding and Katihar in the year 1993 and 1995
respectively. It is further mentioned that during the
last year's trial at Lumding, I was declared Champion
but the result is yet to be announced.

In view of the above circumstances, I would fervently
pray and request your kind honour to look into the matter
sympathetically and take a judicious decision so that I
am not deprived from my legitimate position and for which
act of your kindness I shall ever remain grateful to you.

Yours faithfully,

Prabhash Debnath

Dated: Lumding,
The 9th April/1997.

(Prabhash Debnath)
C/O. Sri Monoranjan Debnath,
Private House, Medical Colony,
P.O. Lumding, Dt. Nagaon (Assam)
PIN - 782447.

Copy to - President, Divisional Sports Club/Lumding
for kind information and necessary action please.

(Prabhash Debnath)

....

Certified to be
true copy
Advocate

9/4

Annexure - 4(2)

To
The General Secretary (DAO/Lumding).
Divisional Rly. Sports Club.
N.F. Railway, Lumding.

Respected Sir,

Sub : Reminder letter regarding selection trial
game for recruitment as badminton player.

Ref : Your Circular No. DRSC/LMG/Recdt/5 Dtd.
14.3.97 and my representation and appeal
dtd. 29-3-97 and 9-4-97.

In view of the letter referred to above I further draw
attention that, no reply has been received from your end which
is regretted as such this reminder letter bears once again my
benign appeal towards your goodself, please to look into the
matter considering my legitimate claim in this respect.

Hope, I shall receive a suitable reply to this effect
will come at an early date.

Thanking you

Yours Faithfully,

Prabhash Debnath

(Prabhash Debnath)

C/o, Sri Monoranjan Debnath,
Private House, Medical Colony,
P.O. Lumding, Dt. Nagaon (Assam)
PIN - 782447

Dated/Lumding
23th April-1997

Copy to :- President (DRM/LMG) Divisional Rly. Sports Club,
Lumding for kind information and necessary action
please.

(PRABHASH DEBNATH)

*certified to be
true copy
by
Advocate*

Annexure - 4 (3)

To
The General Secretary (DAO/Lumding)
Divisional Railway Sports Club,
N.F. Railway, Lumding.

Respected Sir,

Sub : Reminder letter regarding selection trial
game for recruitment as Badminton player.

Ref : Your Circular No. DSRC/LMG/Recit/5 dtd.
14-3-97 and my representation and appeal
dtd. 29-3-97, 7-4-97 and reminder on 23-4-97.

In view of the letters referred to above I further draw
your attention that no reply has yet been received from your
and which is regretted as this reminder letter bears once
again my benign appeal towards your goodself, please look into
the matter considering my legitimate claim in this respect.

Again hope I shall receive a suitable reply to this
effect will come at an early date.

Thanking you.

Yours faithfully,
Prabhash Debnath

Dated/Lumding
8th May 1997.

(Prabhash Debnath)
C/o, Sri Monoranjan Debnath,
Private House, Medical Colony,
P.O. Lumding, Dt. Nagaon (Assam)
PIN - 782447

Copy to :- President (DRM/LMG), Divisional Railway Sports
Club/Lumding for kind information and necessary
action please.

Prabhash Debnath,
Private house, Medical Colony
Lumding.

*Certified to be
true copy
Advocate*

To
The General Secretary (DAO/LMG)
Divisional Rly. Sports Club,
N.F. Railway, Lumding.

Respected Sir,

Sub : Reminder letter regarding selection on trial
game for recruitment as Badminton player.

Ref : Your circular No. DRSC/LMG/RECTT/5 dtd.
14-3-97 and my representation and appeal dtd.
23-4-97 and 8-5-97.

In view of the letter referred to above since being
several correspondences no response has yet been received from
your end. Therefore, the result of the selection trial games
for recruitment as Badminton player still unknown to me for
the year 1995 as I become champion (No.- 01 position) in that
event.

For which again hope I shall receive a suitable reply to
this effect will come at early date.

Thanking you,

Yours Faithfully,

Prabhash Debnath

Dated/Lumding
23rd May' 1997

(Prabhash Debnath)
C/o, Sri Monoranjan Debnath,
Private House, Medical Colony,
P.O. Lumding, Dt. Nagaon(Assam)
PIN - 782447

Copy to :- President (DRM/LMG), Divisional Rly. Sports Club,
Lumding for kind information and necessary action
please.

(Prabhash Debnath)
C/o, Sri Monoranjan Debnath,
Private House, Medical Colony,
P.O. Lumding, Dt. Nagaon(Assam)
PIN - 782447

*certified to be
true copy
by
Advocate*

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To
The President,
D. R. S. C. /Landing,
N. P. Railway.

Sub :- Representation against holding selection trial game for appointment under Sports quota(Badminton) for the year 1996-97 concealing the results of the selection for the year 1996-98 held on 26-9-96 and 27-9-96.

Ref :- D. R. S. C. /DMG's circular No. DRSC/DMG/Inett/5 dated 14-3-97.

Sir,

.....

With profound respect I beg to represent the following facts for your perusal and to draw your kind attention and necessary action please.

That Sir, I represented myself in the Badminton Players' selection trial game held on 26-9-96 and 27-9-96 in the Indoor Stadium, Jawling vide DRSC/DMG's circular No. DRSC/DMG/Inett/5 dttd. 20-4-96 and I became champion and naturally I expected to be selected for appointment under Sports quota for 1996-98.

That Sir, regretfully it is to state that I have not been ultimately selected nor the result of the same was announced.

That Sir, as per DRSC/DMG's circular referred to above applications were invited from the intending competitors for appointment under Sports quota(Badminton) and I applied for again.

That Sir, this representation is made as to point out the fact, that concealing the result of the previous selection a further selection for the next session has been held because of the reason which is best known to the organiser itself but astonishing everybody.

That Sir, in the further selection also I turned up in the ground. But to my utter surprise I found that my name has been deleted from the list of competitors due to the reason which is not known to me.

That Sir, to draw the kind attention of DRSC/DMG I prayed severally before him. Copy attached as annexure 1 to 5 but no reply is received from his end as yet.

After getting totally disappointed this appeal is submitted before your goodself in the hope of getting a judicious decision to get rid of anxiety.

Contd. to P/N. (2)

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- 2 -

Submission to the honourable DIM/IMG :-

- 1) In the selection held on 26-9-95 and 27-9-95 I became Champion but not selected for appointment - Why ?
- 2) Result of the selection held on 26-9-95 and 27-9-95 has been held up despite of suitability test which is confusing and controversial too.
- 3) Further selection called for without announcing result of previous selection is confusing.
- 4) Deletion name as a candidate for selection without showing reason is illegal.

Therefore, it is requested for your proper justification and early decision please.

Dated, Lunding
The 20th June, 1997.

Yours faithfully,

Prabash Debnath

(Prabhash Debnath)
C/O. Sri Monoranjan Debnath
Private House, Medical Colony,
P.O. Lunding, Dist. Nagaon.
ASSAM . PIN- 782447.

दिनांक के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की तिथि Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदन को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
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IN THE GAUHATI HIGH COURT
(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura
Mizoram and Arunachal Pradesh)
WP(C) No. 66 of 1999

Sri Prabhash Dev Nath ... Petitioner
Private House, Medical Colony
P.O. Lumding, Dt. Nagaon, Assam
782447.

Vs

Union of India ... Respondents.
represented by the General Manager
N.F Railway Maligaon, Guwahati-11
Secretary, Ministry of Railway
New Delhi.

Chief General Manager,
N.F. Railway, Maligaon
Guwahati.

President
Divisional Railway Sports Club
Lumding, N.F. Railway.

General Secretary,
Divisional Railway Sports Club
Lumding, N.F. Railway.

P R E S E N T

HON'BLE MR JUSTICE N. SURJAMANI SINGH

For the petitioner ... Mr M.A. Seikh
Mrs A. Begum, Advocates.

For the Opp. Party ... Mr. B.K.Sarma,
Mr. D.K.Sarma, Advocates.

Date of hearing & Judgment 11.12.2002.

JUDGMENT AND ORDER (ORAL)

Heard Mr M.A Seikh learned counsel for the
petitioner and Mr B.K.Sarma learned Sr counsel assisted
by Mr D.K.Sarma learned counsel for the Respondents.
In this writ petition the petitioner namely Prabhash Dev
Nath sought for a direction to the Respondents to
declare the result of the Selection test for recruitment
of Sports man against Sports quota in group 'D'
category which was held on 11.12.2002.

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Advocate

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27th September, 1995 by contending inter alia, that the writ petitioner along with others participated in the test in terms of the related notification which was issued by the Respondent Authority on 20.4.95 and the said test was held on the above mentioned dates but the Authority concerned did not declare the result of such Selection test as on today without assigning any reason. The petitioner herein also sought for a direction to the Respondents to keep one post in Group 'D' category (Badminton) vacant pending final disposal of this writ petition.

At the hearing Mr B.K. Sarma learned counsel for the Railway, Respondent raised a preliminary issue pertaining to the maintainability of this writ petition. Supporting his submission Mr B.K. Sarma learned Sr. counsel has drawn my attention to the relevant provisions of Section 3(q) (v), Section 14 read with Section 19 of the Administrative Tribunals Act 1985 for short the Act of 1985 and contended that if the petitioner is really aggrieved in the related process of recruitment of Sports Man against the Sports Quota under N.F Railway in terms of the related notification dated 20.4.1995 as in Annexure 'C' and another Notification dated 14th March 1997 as in Annexure 'E' to the writ petition, the writ petitioner ought to have approached the proper forum that is, the Central Administrative Tribunal, as the matter falls within the jurisdiction of the Central Administrative Tribunal not with this court. Further,

W. J. G. S.

strengthening the submission, Mr B.K.Sarma, learned Sr. counsel relied upon the the Full Bench decision of the Apex Court rendered in L. Chandra Kumar appellant Vs Union of India reported in 1997 (1) GLT (S.C.)1 and argued that in such a case jurisdiction vests upon the Central Administrative Tribunal concerned and the Tribunal is the First Court which has power and jurisdiction to try and deal with the present matter within the purview of Article 226/227 of the Constitution of India and the decision of this Tribunal will, however be subject to scrutiny before the Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. Now this court is to see and examine whether the preliminary issue raised by Mr B.K.Sarma learner Sr. counsel can be entertained/accepted or not.

In terms of the Notification dated 20th April/95 as in Annexure 'C' to the Writ petition, applications are invited in the standard form from the intending candidates for recruitment of Sports-man against sports quota ~~AA~~ in Group 'D' category under the Respondent, Railway and the petitioner was also one of the candidates who applied to it and participated /in the test along with others and the result of the selection/ test was not announced as on today instead, the Railway Respondent Authority issued subsequent notification dated 14th March/97 for recruitment of Sports person against Sports Quota in the same Group 'D' category as seen in the document marked Annexure 'E' to the petition.

11/3/97

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It is not disputed that ^{there were} recruitment ^{processes} of the Sportsman against Sports Quota in terms of the related notification as discussed above, ^{and} such posts are Civil posts under the Union of India and as such in my considered view, it is the Central Administrative Tribunal concerned to decide the matter. ^{Performing} such recruitment, as the post advertised falls ⁱⁿ within the purview of Civil post under the Union of India in terms of the related provisions of Section 3 read with Section 14 of the Act of 1985. For better appreciation in the matter Section 3 (q) and Section 14 of the Act of 1985 are quoted below :

Section 3(q) : "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or any local or other authority within the territory of India or under the control of the Government of India or, as the case may be, of any corporation or society owned or controlled by the Government, as respects -

- (i) remuneration (including allowances), pension and other retirement benefits.
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation.
- (iii) leave of any kind.
- (iv) disciplinary matters or
- (v) any other matter whatsoever."

Section 14 " Jurisdiction, powers and authority of the Central Administrative Tribunal -

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court** in relation to -

(a) recruitment and matter concerning recruitment to any All India Service or to any Civil Service of the Union or a civil post under the Union or to a post connected with

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defence or in the defence services, being in either case, a post filled by a civilian.

- (b) all service matters concerning
- (i) a member of any All India Service, or
 - (ii) a person (not being a member of an All India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union or
 - (iii) a civilian (not) being a member of an All India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence.

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the ~~area~~ territory of India or under the Control of the Government of India or of any corporation (or society) owned or controlled by the Government.

- (c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b) being a person whose services have been placed by a State Government or any local or other authority or any corporation (or society) or other body, at the disposal of the Central Government for such appointment. "

In *L. Chandra Kumar* appellant Vs Union of India
(Supra)
Respondent, the Apex Court held that Tribunal may perform a Supplementary role in deciding the powers conferred by Article 226/227 of the Constitution of India. However, the decision of this Tribunal will however be subject to scrutiny before the Division Bench of the High Court within whose jurisdiction the concerned Tribunals falls and those Tribunals will nevertheless continue to act like Courts of First Instance in respect of the

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areas of law for which they have been constituted and it will not therefore, be opened for litigants to directly approach the High Court even in cases where they question the vires of statutory legislation (except where the legislation which creates the particular Tribunal is challenged). This relevant observation of the Apex Court finds its place in Paragraph 99 of the related Judgment and the same is quoted below :

"99. In view of the reasoning adopted by ~~them~~ us we hold that Clause 2(d) or Article 323 (A) and clause 3(d) or Article 323 B to the extent they exclude the jurisdiction of the High Court and the Supreme Court under Article 226/227 and 32 of the Constitution are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislation enacted under the aegis of Article 323 and 323 B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Article 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our constitution. While the jurisdiction cannot be ousted, other courts and tribunals may perform a supplemental role in discharging the powers conferred by Article 226/227 and 32 of the Constitution. The Tribunal created under Article 323 A and Article 323 B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these tribunals will however be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunals falls. The Tribunals will nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not therefore, be opened for litigants to directly approach the High Court even in cases where they questioned

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the vires of statutory legislations (except where the legislation which creates particular Tribunal is challenged), by overlooking the jurisdiction of the concerned Tribunal Section 5 (6) of the Act is valid and Constitutional and is to be interpreted in the manner we have indicated."

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In the instant case, the present petitioner ^{Sought for} a relief for — declaration of the result /test in terms of the related advertisement pertaining to the recruitment of sports person against Sports quota in Group 'D' category, ^a civil post under the Union of India. According to me, the case of the petitioner is governed by the Provisions of law laid down under Section 14 of the Act of 1985 and as such the petitioner ought to have approached — the Central Administrative Tribunal concerned as the Central Administrative Tribunal concerned is the Courts of ^{fact like} first instance and, it will not be opened for him (P.K.K. v. UOI) to directly approach this court with the present writ petition. I made this observation, keeping in view of the related provisions of law laid down under Section 3, 14 and 19 of the Act of 1987 and decision of the Apex Court rendered in L. Chandra Kumar Vs Union of India Respondent (supra). Accordingly, I do hereby accept the preliminary issue raised by the Respondents pertaining to the maintainability of this writ petition. However, it is made clear that liberty is granted to the writ petitioner to approach the Central Administrative Tribunal concerned for this purpose, if so advised. This writ petition is dismissed with the above observation. No order as to costs.

Sd.

Sd/ N.S. Singh

22/3/03

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20/3/03

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Date	21/3/03
Supervised by	(Signature)
Controlled by	(Signature)
Checked by	(Signature)

21/3/03