

50/100
-f.n-
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No.....148/04.....

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet O.A. 148/2004..... Pg..... 1 to..... 9
2. Judgment/Order dtd. 12/07/2005..... Pg..... 1 to..... 4 Dismissed
3. Judgment & Order dtd..... Received from H.C/Supreme Court
4. O.A. 148/04..... Pg..... 1 to..... 15
5. E.P/M.P..... Pg..... to.....
6. R.A/C.P..... Pg..... to.....
7. W.S. ~~filed by the Respondents~~..... Pg..... 1 to..... 14
8. Rejoinder ~~submitted by the Applicant~~..... Pg..... 1 to..... 4
9. Reply..... Pg..... to.....
10. Any other Papers..... Pg..... to.....
11. ~~Memo of Appearance~~.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

FORM NO. 4
 (SEE RULE 12)
 CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH

ORDER SHEET

Org. App. / Misc Petn / Cont. Petn / Rev. Appl. 14.8.04

In O.A.

Name of the Applicant(s) Chandan Acharya

Name of the Respondent(s) M. C. Sharma

Advocate for the Applicant A. Ahmed and A. J. Alia

Counsel for the Railway / CGSC Railway Counsel

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

This application is in form 16.7.04
 is filed C.P. 16.7.04
 deposited vide P.C. 30
 No. 16.3.89.649

Dated 3.6.04

He Dy. Registrar
 21/2/04

Heard Mr A. Ahmed, learned counsel
 for the applicant and Dr M.C. Sharma,
 learned counsel for the respondents.

Application is admitted. Issue
 notice to the respondents. Call for
 the records.

List on 27.8.04 for written statement
 and further orders.


 Member (A)

Steps taken with
 envelops.

pg

27.8.2004

Present: Hon'ble Shri D.C. Verma,
 Vice-Chairman

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

Mr A. Ahmed, learned counsel for
 the applicant has filed a leave note.
 Mr S. Sengupta, learned Railway
 Counsel prays for four weeks time for
 filing reply. Time allowed. List the
 matter on 4.10.04 for orders.

Notice of Order
 dt. 16/7/04 sent
 to D/Section
 for issuing to
 resp. Nos. 1 to 4,
 by regd. with A/D
 post.


 Member

Notice duly served
 on resp. No. 3, 4, 5.

nkm


 Vice-Chairman

14/8/04.

26-8-04

W.L.S. for Sean. Bile.

04.10.2004 Present : The Hon'ble Mr. Justice R.K. Batta, Vice-Chairman.

The Hon'ble Mr. K.V.Prahlan, Member (A).

Power was been filed
by the fly counsel.

✓ 30/8/04

1/10/04

1) Notice duly Served on
R-3,4 & 5.

2) R-1 & 2 is awaited.

3) No reply has been
filed.

✓ 1/10/04

mb

23.11.2004

KV Prahlan
Member (A)

R
Vice-Chairman

22-11-04

No W.L.S. for Sean.

23/11/04

✓

10-1-05

1) Notice - duly Served.

0a- R- No 3,4,85

mb

20.1.05

Written statement has been filed.

Learned counsel for the applicant
seeks time to file rejoinder. Six
weeks time is granted. Rejoinder be
filed before next date of hearing
with advance copy to learned counsel
for the respondents.

The matter be listed for hearing
on 15.3.05.

KV Prahlan
Member

R
Vice-Chairman

pg

28-1-05

W.L.S. for Sean. Bile
by the respondents.

✓ 14-3-05
No rejoinder. No hearing date

Notes of the Registry | Date | Order of the Tribunal

15.3.05

Mr A. Ahmed, learned counsel for the applicant is absent. He has already informed this Registry that he will not be available till 18.3.05. In the circumstances we adjourn the case till 31.3.05.

K. P. Balasubramanian
Member

El. V. Jayaraj
Vice-Chairman

pg

31.3.2005

Mr. A. Ahmed, learned counsel for the applicant is absent. Mr. S. Sengupta, learned counsel for the Railways is present and ready. However, post on 6.5.2005.

El. V. Jayaraj
Vice-Chairman

mb

6.5.05

Mr A. Ahmed, learned counsel for the applicant seeks adjournment. Mr S. Sengupta learned Railway counsel submits that he is ready. However, post this case on 31.5.05 for hearing.

K. P. Balasubramanian
Member

El. V. Jayaraj
Vice-Chairman

pg

31.5.05.

At the request of Mr. S. Sengupta learned Railway counsel case is adjourned to 17.6.05.

K. P. Balasubramanian
Member

El. V. Jayaraj
Vice-Chairman

① W/S has been filed

② Rejoinder not yet filed.

1m
17.6.2005

Mr. A. Ahmed, learned counsel for the applicant ~~is~~ has submitted letter requesting adjournment. Mr. S. Sengupta, learned Railway counsel is present. However, post on 7.7.2005.

K. P. Balasubramanian
Member

El. V. Jayaraj
Vice-Chairman

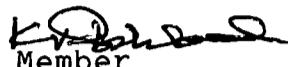
mb
7.7.05

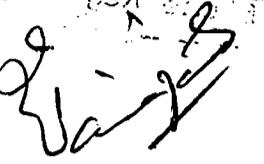
none on the parties. Ad's
affidavit dated 27.8.2005 B70

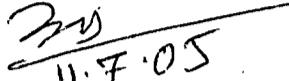
8.7.2005

Mr A. Ahmed, learned counsel for the applicant is present. Mr S. Sengupta, learned Railway counsel is absent. Post on 12.7.05.

① Wts has been filed.


Member

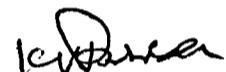

Vice-Chairman

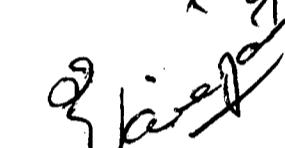

Member

nkm

12.07.2005

Heard learned counsel for the parties. Hearing concluded. Judgment delivered on open court, kept in separate sheets. The application is dismissed. No order as to costs.


Member


Vice-chairman

25.7.05
Copy of the order
has been sent to
the Office for issuing
the Rule to the applicant
as well as to the Rly.
Station concerned for
the record.

mb

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./P.A. No. 148 of 2004

DATE OF DECISION : 12.07.2005

Shri Chandan Acharjee

APPLICANT(S)

Mr. Adil Ahmed

ADVOCATE(S) FOR
THE APPLICANT(S)

- VERSUS -

Union of India & Ors.

RESPONDENT(S)

Mr S.Sengupta, Railway Counsel

ADVOCATE(S) FOR THE
RESPONDENT(S)

THE HON'BLE MR JUSTICE G. SIVARAJAN, VICE CHAIRMAN

THE HON'BLE MR K.V. PRAHLADAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.

2. Sengupta

X .

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 148/2004

Date of Order : This the 12th day of July, 2005.

The Hon'ble Sri G. Sivarajan, Vice-Chairman.

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

Shri Chandan Acharjee
Son of Late Nepal Acharjee
Ex. Shunter/Loco/Lumding
Office of the Divisional Mechanical Engineer (DME)
N.F. Railway, Lumding.
Resident of Upper Babu Patty,
Post Office - Lumding, Nagaon.
Assam, PIN - 782 447.

... Applicant

By Advocate Mr. Adil Ahmed.

- Versus -

1. The General Manager (P)
N.F. Railway, Maligaon,
Guwahati - 11.
2. The Divisional Railway Manager (P)
N.F. Railway, Lumding,
Post Office - Lumding, Nagaon,
Assam.
3. The Divisional Mechanical Engineer (DME)
N.F. Railway, Lumding
Post Office - Lumding, Nagaon, Assam.
4. The Chief Medical Director,
N.F. Railway, Maligaon,
Guwahati - 11.
5. The Chief Medical Superintendent,
N.F. Railway, Lumding,
Post Office - Lumding, Nagaon,
Assam.

... Respondents

By Mr. S. Sengupta, Railway Advocate.

ORDER (ORAL)SIVARAJAN. J. (V.C.)

The applicant, Sri Chandan Acharjee is the son of late Nepal Chandra Acharjee, Ex- Senior Shunter, Loco, Lumding, N. F. Railway. The applicant's father continued in service and had retired in the normal course on 28.02.2003. Later died on 24.11.2003. All the service benefits due to the applicant's father were also paid. The applicant has filed a representation seeking for compassionate appointment on the ground that the Medical Board, who examined his father late Nepal Chandra Acharjee, found him medically unfit for any employment under the Railway and therefore, he is entitled to get employment on compassionate grounds by virtue of the scheme annexure - E to the application. Since the respondents did not consider his application for compassionate appointment, he has filed the present Original Application.

2. A written statement is filed by the respondents. It is stated therein that late Nepal Chandra Acharjee, Ex Senior Shunter/Loco had left behind his wife and three children and the applicant is the 2nd son. No application for appointment of the applicant was submitted by the father of the applicant during his life time. It is also stated that the record reveals that late Nepal Chandra Acharjee did not die while he was in service and he was not declared by the Chief Medical Director of the N.F. Railway as medically unfit/invalidated. It is also stated that late Nepal Chandra Acharjee retired from service on 28.02.2003, died on 24.11.2003 and was also paid settlement dues vide annexure - I to the written statement. It is further stated that the circular dated 06.03.2002 produced by the applicant has no application in the present case.

9/1

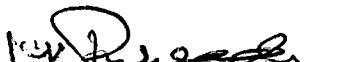
3. The applicant has filed a rejoinder reiterating the averments made in the application.

4. We have heard Mr. A. Ahmed, learned counsel for the applicant and Mr. S. Sengupta, learned counsel on behalf of the Railway. Mr. Ahmed, counsel for the applicant submitted that when the Medical Board found the applicant's father medically invalidated, no body else have got the right to reject the same. He further submitted that since the applicant's father was declared as medically unfit for any employment the circular dated 06.03.2002 (Annexure - E) issued by the Railway Board would attract and consequently, respondents are bound to give compassionate appointment to the applicant. Mr. S. Sengupta, appearing on behalf of the Railway, on the other hand, submitted that though the Medical Board had found the applicant's father unfit for any employment under the Railway, the final authority to decide the issue was the Chief Medical Director who did not declare the applicant's father as medically unfit. Counsel in support relied on the provisions of Rule 543 of Indian Railway Medical Manual Vol. I. Railway counsel further submitted that the applicant's father continued in employment till his retirement on superannuation and was paid all the service benefits. He further submitted that the circular dated 06.03.2002 produced by the applicant has no application in this case.

5. We have considered the rival submissions. Admittedly, the applicant's father late Nepal Chandra Acharjee retired from service on superannuation and not on the ground of medical unfitness. The respondents have also got a case that the applicant's father was never found to be medially unfit by the competent authority. Compassionate appointment is given under the Circular either when an employee dies

Spf

in harness to his legal heir or to the dependent of the employee who is medically incapacitated leading to loss of employment. It is well known that compassionate appointments are given either on account of loss of the bread earner or on account of loss of employment of the bread earner because of his medically disabilities, that too, for the immediate subsistence of the family. In the instant case no such situation happened and consequently there is no scope for compassionate appointment under the scheme annexure - E issued by the Railway Board. The Railway Board Circular dated 06.03.2002, it must be noted, applies only to the case of an employee who has been medically decategorised and who on the ground of medical unfitness, notwithstanding the provisions of "The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" which provides for keeping him on a superannuary post until absorption in a suitable post, gets voluntary retirement from service and not to a person who continued in service without any change and retired on superannuation. In the circumstance, we are of the view that this application is without any merit and the application is accordingly dismissed. In the circumstances no order as to costs.


 (K.V. PRAHLADAN)
 ADMINISTRATIVE MEMBER


 (G. SIVARAJAN)
 VICE CHAIRMAN

/mb/

28 JUN 2004

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI**

**(AN APPLICATION UNDER SECTION 19 OF THE CENTRAL
ADMINISTRATIVE TRIBUNAL ACT 1985)**

ORIGINAL APPLICATION NO. 148 OF 2004.

BETWEEN

Shri Chandan Acharjee

...Applicant

-Versus-

**The General Manager N.F. & Others
Railway**

...Respondents

LIST OF DATES AND SYNOPSIS

Annexure-A is the photocopy of Death Certificate of Late Nepal Acharjee.

Annexure-B is the photocopy of High School Leaving passed Certificate of the applicant in the year 1994.

Annexure-C is the photocopy of Medical Report of Late Nepal Acharjee.

Annexure-C1 is the Type copy of Medical Report of Late Nepal Acharjee.

Annexure-D is the photocopy of Pension Order of Late Nepal Acharjee issued by the Divisional Account Officer, N.F.Railway.

Annexure-E is the photocopy of letter No. E(NG)-II/2000/RC-1/Genl.17 dated 06-03-2002, New Delhi

This Original Application is made for seeking a direction from this Hon'ble Tribunal to the Respondents for appointment of the applicant on compassionate ground as per Railway Board Circular No.E(NG)-II/2000/RC-1/Genl.17 dated 06-03-2002, New Delhi.

12

RELIEF SOUGHT FOR:

That the Hon'ble Tribunal may be pleased to direct the Respondents to appoint the applicant in any post on compassionate ground as per Circular issued by the Railway Board regarding appointment of an eligible ward of Railway Employees who have declared medically invalidated/decategorised persons.

To Pass any other relief or relieves to which the applicant may be entitled and as may be deem fit and proper by the Hon'ble Tribunal.

To pay the cost of the application.

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI**
**(AN APPLICATION UNDER SECTION 19 OF THE CENTRAL
ADMINISTRATIVE TRIBUNAL ACT 1985)**

148 ORIGINAL APPLICATION NO. OF 2004.

BETWEEN

Shri Chandan Acharjee
Son of Late Nepal Acharjee
Ex. Shunter/Loco/Lumding
Office of the Divisional
Mechanical Engineer (DME)
N.F.Railway, Lumding.
Resident of Upper Babu Patty,
Post Office-Lumding, Nagaon
Assam.
Pin- 782447

... Applicant

-AND-

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

2. The Divisional Railway Manager (P)
N.F.Railway, Lumding,
Post Office-Lumding, Nagaon
Assam.

3. The Divisional Mechanical Engineer (DME)
N.F.Railway, Lumding.
Post Office-Lumding, Nagaon
Assam.

Chinger

4. The Chief Medical Director,
N.F.Railway,
Maligaon, Guwahati-11.

5. The Chief Medical Superintendent,
N.F.Railway, Lumding.
Post Office-Lumding, Nagaon
Assam.

... Respondents

1) DETAILS OF THE APPLICATION PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

The Application is made for seeking a direction from this Hon'ble Tribunal to the Respondents for appointment of the applicant on compassionate ground as per circular issued by the Government of India, Ministry of Railways (Railway Board) vide No.E (NG)-II/2000/RC-1/Genl.17 New Delhi, dated 06.03.2002.

2) JURISDICTION OF THE TRIBUNAL

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

3) LIMITATION

The applicant further declares that the subject matter of the instant application is within the limitation prescribed under Section 21 of the Administrative Tribunal Act 1985.

4) FACTS OF THE CASE:

Facts of the case in brief are given below:

4.1) That your humble applicant is a citizen of India and as such he is entitled to all rights and privileges guaranteed under the Constitution of India.

Chander

4.2) That your applicant begs to state that he is the son of Late Nepal Chandra Acharjee, Ex. Senior Shunter, Loco running Staff, Lumding Division under the Office of the Divisional Mechanical Engineer (DME). Late Nepal Chandra Acharjee died on 24-11-2003 at Lumding. He left behind his wife Srimati Shefali Acharjee and his two sons including the instant applicant who is aged about 29 years and one unmarried daughter and other two children are namely Uttam Acharjee aged about 31 years and Srimati Moonnoon Acharjee (unmarried) aged about 27 years. The instant applicant passed his High School Leaving Certificate from Board of Secondary Education, Assam in the year 1994. It may be stated that, none of Late Nepal Chandra Acharjee's family members are employed in N.F.Railway or any other Central, State and Semi-Government organisation.

Annexure-A is the photocopy of Death Certificate of Late Nepal Acharjee.

Annexure-B is the photocopy of High School Leaving passed Certificate of the applicant in the year 1994.

4.3) That your applicant begs to state that Late Nepal Chandra Acharjee was also served as a Goods Driver under N.F.Railway. He was suddenly fallen sick on 10-9-2001 and after that he was diverted to the post of Senior Shunter due to his physical illness. He was examined by the Medical Board at Lumding Hospital on 03-03-2002. The Medical Board was on opinion that there is no chance of further recovery of Late Nepal Acharjee. They recommended him as unfit for all categories of Railway Service. The said opinion was forwarded by the Deputy Chief Medical Director N.F.Railway, Maligaon on 09-07-2002 to the Respondent No.4 i.e. the Chief Medical Director, Maligaon, N.F.Railway Head Quarter-Guwhati for acceptance of the Report. But surprisingly neither the said Medical Report nor any other Report regarding the physical fitness was issued by the authority. Since 10-9-2001 Late Nepal Acharjee was in bed-ridden condition and on the said condition he was retired on 28-02-2003 from service of N.F.Railway as Senior Shunter. It is worth to mention here that the Pension papers and

Changer

other relevant papers were signed by the Late Nepal Acharjee from his bed-ridden condition at home.

Annexure-C is the photocopy of Medical Report of Late Nepal Acharjee.

Annexure-C1 is the Type copy of Medical Report of Late Nepal Acharjee.

Annexure-D is the photocopy of Pension Order of Late Nepal Acharjee issued by the Divisional Account Officer, N.F.Railway.

4.4) That your applicant begs to state that there is a circular issued by the Government of India, Ministry of Railways (Railway Board) vide No.E(NG)-II/2000/RC-1/Genl.17 dated 06-03-2002, New Delhi regarding Absorption of medically declassified staff in alternative Employment- hardship caused consequent upon implementation of Railway Board's orders dated 29.04.1999. In the said circular it has been stated that an employee has been declared medically invalided/declassified employee then his wife/eligible wards of such employees are eligible for appointment on compassionate grounds.

Annexure-E is the photocopy of letter No. E(NG)-II/2000/RC-1/Genl.17 dated 06-03-2002, New Delhi

4.5) That your applicants begs to state that his father Late Nepal Chandra Acharjee was declared medically unfit for all categories of Railway Service as held by the Medical Board but the said report has not yet been officially declared by the Respondents reason best to known to them.

4.6) That your applicant begs to state that he is entitled for consideration on compassionate ground for appointment under the Respondents as per Railway Board Circular dated 06-03-2002(At Annexure-E). But the Respondents deliberately and intentionally did not issue the Medical Unfit Certificate of the applicant's father Late Nepal Chandra Acharjee only to deprive the applicant's family members for

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getting appointment under the Railway Board Circular dated 06-03-2002.

4.7) That your applicant begs to state that his father Late Nepal Chandra Acharjee rendered his service under the Respondents with sincerity and devotion to his duty.

4.8) That your applicant begs to state that in pursuance to the provisions of Compassionate appointment of N.F.Railway employee who had declared Medically invalidated/decategorised employees, the Respondents have already extended the above said benefits to other similarly situated persons namely Sri Uttam Singh, Steno, Office of the Divisional Mechanical Engineer, son of Sri Narayan Singh, Loco running driver who was declared Medically Unfit for all category of jobs under the Respondents. But in case of the applicant the Respondent authorities have adopted discriminatory policy.

4.9) That your applicant begs to state that he is suffering from frustration and anxiety due to non-appointment of the applicant by the Respondents in spite of clear cut policy adopted by the Railway Board. As such your applicant is compelled to approach this Hon'ble Tribunal for seeking justice in this matter.

4.10) That your applicant submits that non-appointment of the applicant on compassionate ground by the Respondents have deprived the applicant from his fundamental rights guaranteed under the Constitution of India. As such, the applicant is subjected to hostile discrimination in violation of Articles 14,16 and 21 of the Constitution of India.

4.11) That the applicant humbly submits that the applicant has right to live and right to work as well as to avail the benefit of compassionate appointment which has been taken away by the Respondents and have violated the rights of the applicant enshrined under the Constitution. Hence, the action of the Respondents is illegal, arbitrary, mala fide and also in colourable exercise of power to accommodate their interested

Acharjee

persons. As such, it is a fit case for immediate interference by this Hon'ble Court.

4.12) That in the instant case the Respondent authorities have deviated from the scope of benefit of compassionate appointment extended to the applicant as they have already appointed some candidates of their choice on compassionate ground.

4.13) That your applicant submits that he should be appointed immediately in a suitable post as per his qualification under the Respondents.

4.14) That the applicant demanded justice and the same has been denied to him.

4.15) That this application has been filed bona fide to secure the ends of justice.

5) GROUNDS FOR RELIEF WITH LEGAL PROVISION:

- 5.1) For that, due to the above reasons narrated in detail the action of the Respondents is in *prima facie* illegal, *mala fide*, arbitrary and without jurisdiction.
- 5.2) For that, the action of the Respondents in *prima facie* is *mala fide*, illegal and with a motive behind. As such, the action of the Respondents is illegal, arbitrary and also violative of the natural justice.
- 5.3) For that, rejection of applicant's appointment on compassionate ground is hostile discrimination and violative of Articles 14&16 of the Constitution of India.
- 5.4) For that, it is not just and fair to deprive the applicant from getting appointment on compassionate ground by the Respondents.

Change

5.5) For that the Central Government being a model employer cannot be allowed to adopt a differential treatment to the applicant.

5.6) For that, similarly situated persons has already got the benefits of appointment on compassionate ground. As such the case of the applicant should also be considered by the Respondents.

5.7) For that, the action of the Respondents is not maintainable in the eye of Law. The applicant craves leave of this Hon'ble Tribunal to advance further grounds at the time of hearing of the instant application.

6) DETAILS OF REMEDIES EXHAUSTED:

That there is no other alternative and efficacious and remedy available to the applicant except the invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

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

That the applicant further declares that he has not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, 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 Your Lordship may be pleased to admit this application, call for the records of the case, issue notices to the Respondents as to why the relief and relieves sought for the applicant may not be granted and after hearing the parties may be

Chancery

pleased to direct the Respondents to give the following relieves.

- 8.1) That the Hon'ble Tribunal may be pleased to direct the Respondents to appoint the applicant in any post on compassionate ground as per Circular issued by the Railway Board regarding appointment of an eligible ward of Railway Employees who have declared medically invalidated/decategorised persons.
- 8.2) To Pass any other relief or relieves to which the applicant may be entitled and as may be deem fit and proper by the Hon'ble Tribunal.
- 8.3) To pay the cost of the application.

9) INTERIM ORDER PRAYED FOR:

At this stage applicant does not seek any interim relief but if the Hon'ble Tribunal may deem fit and proper may pass any order/orders.

10) Application is filed through Advocate.

11) Particulars of I.P.O.:

I.P.O. No. 11G - 389649
 Date of Issue 3-6-04
 Issued from Guwahati
 Payable at

12) LIST OF ENCLOSURES:

As stated above.

Verification

Abangie

VERIFICATION

I, Shri Chandan Acharjee, Son of Late Nepal Acharjee, Ex.Shunter/Loco/Lumding ,Office of the Divisional, Mechanical Engineer (DME) ,N.F.Railway, Lumding. Resident of Upper Babu Patty, Post Office-Lumding, Nagaon, Assam. Pin- 782447 do hereby solemnly verify that the statements made in paragraph nos. 4.1, 4.6, 4.7, 4.8, 4.9 —
— are true to my knowledge, those made in paragraph nos. 4.2, 4.3, 4.4, 4.5 — are being matters of records are true to my information derived there from which I believe to be true and those made in paragraph 5 are true to my legal advice and rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 28th day of June 2004
at Guwahati.

Chandan Acharjee

Sl. No. 0118170 ✓
Date in

GOVERNMENT OF ASSAM
DIRECTORATE OF HEALTH SERVICES
সর্বসেবা সংস্থা সেবাপ্রতিষ্ঠা
CERTIFICATE OF DEATH
১৯৬৯ সনের মধ্যে

ISSUED UNDER SECTION 13(1) of the Registration of Births and Deaths Act, 1969.
কোম্পানি প্রতিষ্ঠা সংস্থা সেবা সেবাপ্রতিষ্ঠা

This is to Certify that the following information has been taken from the original record of Death which is in the register for No. 227/2003, Registration unit of the representative of District Administration, of the State of Assam, on 11th January 2003, before 10:00 AM, at the office of the District Administration, Dibrugarh, Assam.

Place of Death: Dibrugarh, Assam.

Date of Death: 11.1.2003

Place of Death: Dibrugarh, Upper Dibang Valley, Assam.

Registration No. reg. No. 227/2003

Date of Registration: 11.1.2003

Place of Registration: Dibrugarh, Assam.

Signature of issuing authority
Designation: _____
Date: _____
Name: _____

Office of the District Administration
Dibrugarh, Assam

It is to be made of particular regarding the correctness of the information contained in the certificate.

Attest
Jit
Parate



High School Leaving Certificate

Examination 1994.

Results announced on - 08.07.94

This is to certify that Chandan Acharjee

Roll N4346 No. 177 has duly passed the High
 School Leaving Certificate Examination, 1994 of this Board
 and is placed in the Third Division.

His/Her date of birth is 18.01.77

S 058743 A

B. Das

GUWAHATI
ASSAM
030303

REGISTRAR II

BALENDRA KUMAR DAS
SECRETARY

25

Subject: Search Medical Agency, Shriners, Kansas City

Address: Office, 11th & Main, Kansas City, Mo.
Date: 10/1/52, on M.R. 120, held at Lima Hospital, Ohio

10/13/52: An inventory of obscene material was made.

Mr. Gandy, Lima, has sent the records of the

seizure of obscene material.

Medical Agency, Des Moines, has kindly supplied

10/13/52.

Mr. Hallway, Des Moines, Iowa, has furnished

the following information concerning the

seizure of obscene material. According

to Mr. Hallway, the material seized was

obtained from a local newspaper, the

Des Moines Register and Tribune, and

was distributed to the public through

the Des Moines Public Library. The

material seized was not distributed

to the public through the Des Moines

Public Library, but was distributed

to the public through the Des Moines

Public Library, but was distributed

to the public through the Des Moines

Public Library, but was distributed

After C
File Annex

N. P. Hallway, Des Moines

-Type Copy-**PP-1**

Sub: - Shri Nepal Acharjee, Shunter/Loco/LMG

As per this Office letter No.HM/Med, Bo (O) dt 10/4/02, a Med, Bd. held at LMG Hospital on 3/3/02 in favour of above named staff.

Nong CMS/LMG has sent the report of the Med. Bd. for CMD's acceptance.

Putting to CMD for her kind acceptance pl.

Sd/-

Illegible

8/7/2002

Dy. CMD/M.S.

As per Medical Board opinion it is a Case of NIDDU with HPY developed Rt. Side hamparesis with multiple cransal nassu pasy leading to mobility to walk and perform his day-to-day activities. There is also endonce of gross intellectual impairment. According to the Board there is no chance of further recovery. They therefore recommended for unfit for all categories of Railway services. If agreed to CMD may kindly accept.

Sd/-

Illegible

O/o Director(Medical)

N.F.Railway,

Maligoan

Guwahati-11

Sd/-

Illegible

Deputy Chief Medical

N.F.Railway, Maligaon,

Guwahti-11.

*Altered
J.D. Bw-G*



ANNEXURE - D

PART I

PARTICULARS OF THE PENSIONER / DECEASED RAILWAY SERVENT

(1) 2000X1000

Name of the Railway Servent : SRI NEPAL CHANDRA ACHARJEE
PF No. : 01654160
Designation (Substantive) : SRSR
Department : MECHANICAL
Scale of Pay : Rs. 4000/- - 6000/-
Unit Office : ENGINE STAFF OF BU - 00009
Date of birth : 01/03/1943
Date of Appointment : 08/09/1963
Date of Retirement/Death : 28/02/2003
Total Service : 39 Years 5 Months 19 Days
Add Weightage : 0 Years 0 Months 0 Days
Less Non Qualifying Service : 0 Years 3 Months 20 Days
Qualifying Service : 39 Years (MAX 33 Years)
Last Pay Drawn : Rs. 6300/-
Average Emoluments For Pension : Rs. 9594.00/- 9659.08
Last Emoluments For Family Pension : Rs. 6300/-
Last Emoluments For D.C.R.G : Rs. 10559/-
Amount of D.C.R.G : Rs. 231393/- NOT TO BE PAID BY BANK
In Words : Rupees Two Lakhs Thirty One Thousand Three Hundred Ninety Three Only
Amount of Commutation Value : Rs. 225905/- NOT TO BE PAID BY BANK
In Words : Rupees Two Lakhs Twenty Five Thousand Nine Hundred Fifty Only
Commutation Value
altested
Signature
Date
Affixed

2000X1000
2000X1000
2000X1000
2000X1000

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

1147
13/3
No. E(NG)-II/2000/RC-1/Genl.17

RBE No. 31/2002
SC No. 51 to MC No. 16
New Delhi, dt. 06.03.2002.

The General Manager (P), /N/P
All Zonal Railways/Production Units.

Sub:- Absorption of medically decategorised staff in alternative Employment — hardship caused consequent upon implementation of Railway Board's orders dated 29.04.1999.

Pursuant to the notification of "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995," instructions were issued vide this Ministry's letter No. E(NG)I/96/RE-3/9(2) dated 29.4.99, laying down inter-alia that, in cases where an employee has been medically invalidated/decategorised he may be kept on a supernumerary post in the grade in which he was working on regular basis, till such time he is absorbed in a suitable post or till his retirement, whichever is earlier. As these instructions provided for continuation in service of a medically invalidated/decategorised employee, there would be no occasion for an employee to be retired from service on medical ground after 29.4.99. Therefore, in such cases, the occasion to consider a request for appointment on compassionate ground of an eligible ward would not arise.

1.1 However, on review of the matter instructions were issued vide this Ministry's letter No. E(NG)II/95/RC-1/94 dated 18.01.2000 that in cases where an employee has been declared totally incapacitated for further service and he opts for retirement, request for appointment on Compassionate ground of an eligible ward may be considered.

1.2 It was subsequently clarified vide this Ministry's letter of same number dated 10.11.2000 that in cases where a medically decategorised employee before issue of this Ministry's letter dated 29.4.99 had taken Voluntary retirement and he had neither been absorbed in an alternative employment nor adjusted against a supernumerary post after the issue of this Ministry's letter dated 29.4.99, the facility of allowing appointment on compassionate ground of one ward may be extended.

1.3 Later vide this Ministry's letter of same No. 11.4.2001, the facility of appointment on compassionate ground was also extended to an eligible spouse/ward of totally incapacitated employees who were declared so after the issue of this Ministry's letter dt. 29.4.99 and prior to issue of their letter dated 18.1.2000 and were also allowed to retire.

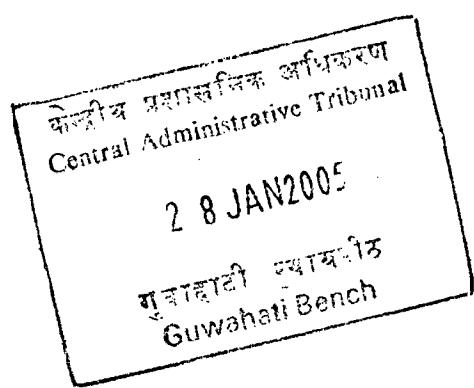
2. The matter has been further reviewed pursuant to a demand raised by the staff side in the DC/JCM and it has now been decided that compassionate ground appointment may also be considered in favour of wife/eligible wards of such of the employees as were medically decategorised between 29.4.99 and 18.1.2000 (both days inclusive) and declared unfit to continue in the posts they were holding but fit to hold posts with lower medical classification, subject to the conditions that:-

- (i) the employees concerned have retired voluntarily between 29.4.99 and 18.1.2000 (both days inclusive) on medical decategorisation during this period; and
- (ii) such cases are personally considered and decided by the General Manager on individual merit of each case.

Please acknowledge receipt.

Anand Mathur
(Anand Mathur)

Executive Director Establishment (N)
(Railway Board)



- 19 -

28
केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal
गुवाहाटी बचायनी
Guwahati Bench & Admin
रम. १० रोल, यालीगाँव, गुवाहाटी-१
N.F. Railway Maligaon, Guwahati-781011
•. Railway Maligaon Guwahati-781011

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

IN THE MATTER OF :

O. A. No. 148 of 2004

Chandan Acharyya ... Applicant.

Vs.

1. The General Manager (P)

N. F. Railway, Maligaon,
Guwahati.

2. The Divisional Railway

Manager (P),
N. F. Railway, Lumding.

3. The Divisional Mechanical

Engineer,

N. F. Railway, Lumding.

4. The Chief Medical Director,

N. F. Railway, Maligaon,
Guwahati-11.

5. The Chief Medical Superintendent,

N. F. Railway, Lumding.

... Respondents.

AND -

IN THE MATTER OF :

Written Statement for and on behalf of the
respondents.

-: 2 :-

The answering respondents most respectfully beg to sheweth as under :

1. That, the answering respondents have gone through the copy of the application filed by the applicant and have understood the contents thereof.
2. That, the application suffers for want of valid cause of action.
3. That, the applicant has got no right or title for filing the present application for appointment on compassionate ground as per extent law and rules on the subject. It appears from enquiry that Sri Chandan Acharjee (applicant) is the 2nd son of the Late Nepal Chandra Acharjee, Ex-Senior Shunter/Loco of Mechanical Department, Lumding, N.F. Railway who died after his retirement from Railway Service and that the family members of late Nepal Chandra Acharjee consisted of following persons :

1. Smt. Shefali Acharjee (Widow).
2. Sri Uttam Acharjee (1st Son)
3. Sri Chandan Acharjee (2nd Son, the applicant)
4. Smt. Moonnoon Acharjee (daughter)

Besides the present applicant, there appears to be no representation either from the Widow of the deceased employee Late Nepal Chandra Acharjee or from the 1st son of

-: 3 :-

Late Nepal Chandre Acharjee for appointment of the applicant on compassionate ground on the Railway. No application for appointment of the applicant was also submitted by the father of the applicant during his life time. Records also reveals that Late Nepal Chandre Acharjee did not die while he was in service and he was not declared by Chief Medical Director of the N. F. Railway as medically unfit/invalidated and Late Nepal Chandre Acharjee retired from service on 28.2.03 and died on 24.11.03 and also paid the settlement dues (copy attached as Annexure-I to the W.S.).

As such, the application suffers on ground of want of sufficient/valid cause of action.

The Circular No. E(NG)-II/2000/RC-1/Genl. 17

✓ New Delhi, dated 6.3.2002 as quoted by the applicant at paragraph No. 1 of the application, has no application in the case.

4. That, for the sake of brevity, the respondents have been advised to confine their replies only on those averments in the application which are relevant and material for a proper decision in the case. All other allegations made in the application which are either specifically not admitted as correct here-under in this Written Statement or are ^{not} borne on records, are denied herewith and the applicant is put to strictest proof there-of.

- 3 4 :-

5. That, with regard to averments at paragraph 4.2 of the application it is submitted that only the statements of the applicant which are borne on records are admitted. From own statement of the applicant, it is seen that family of the Late Nepal Chandra Acharjee consists of the following members :

1. Smt. Shefali Acharjee (Widow).
2. Sri Utta Acharjee (1st Son).
- 3) Sri Chandan Acharjee (2nd Son, the applicant).
- 4) Smt. Moonnoon Acharjee (daughter).

6. That, with regard to averments at paragraph 4.3 and 4.7 of the application it is submitted that nothing are admitted as correct except those which are admitted here-under as correct or are borne on records.

It is to submit here-in that Late Nepal Chandra Acharjee was in the sick list with effect from 22.9.01. It was a case of "non-insulin dependent Diabetes Mellitus with Hypertension developed right sided hemiparesis following Cerebro Vascular Accident". It is a fact that Medical Board was held on 3.5.02 and the Board was of the opinion that Late Nepal Chandra Acharjee was unfit for all categories of Railway Service and this opinion of the Medical Board was forwarded to the Chief Medical Director, N.F. Railway, Maligaon (in brief CMD/N.F. Rly., Maligaon) as the CMD/N.F. Railway/ Maligaon is the final medical authority to accept or reject the recommendation of the Medical Board and or to pass orders expressing his views.

-: 5 :-

Chief Medical Director (C.M.D.) went through the case and passed the Order on 15.7.02 that the employee (Late Nepal Chandra Acharya (i.e. the father of the applicant) would retire on 28.2.03 and he can continue treatment. It is also to mention here-in that Chief Medical Director is the final Medical Authority to decide whether to declare a patient unfit or to continue treatment further.

Medical Board's report is the opinion of the Medical Board and Chief Medical Director being the highest medical authority is under no obligation to accept it. He is to consider the case and apply his own judgement on consideration of the case records and merit etc. Moreover, mere sending a report by the Medical Board does not mean its automatic acceptance by the higher authority.

It is to submit here-in that from above, it is also well transparent that the death of Sri Nepal Chandra Acharya is not a case of death while in service.

In this connection, the photo-copies of Rule 1, Part 543 contained in Indian Railways' Medical Manual and the Railway Board's Circular letter No. 85/H/5, dated 2-5-95 laying down the procedure to be followed for invalidation of railway employee on medical ground etc. are furnished hereto as Annexures I and II respectively for ready perusal.

7. That, with regard to averments at paragraph 4.4 of the application it is submitted that the contentions of the applicant as made in this paragraph are not correct and hence cannot be accepted. In this connection it is to state herein that the father of the applicant was not medically invalidated as stated here-in before and as such Railway Board's Circular dated 6.3.02 as mentioned by the applicant

:- 6 :-

can have no application in the case. It is also to mention here-in that as per declaration of the applicant at paragraph 4.2 of the application, the applicant is the 2nd son of Late Nepal Chandra Acharjee and besides him the family consisted of widow mother Smt. Shefali Acharjee, elder brother Uttam Acharjee aged 31 years and unmarried sister Smt. Moonsoon Acharjee (aged 27 years). The other members of the family and the widow wife of Late Nepal Chandra Acharjee who is at present the Guardian of the family, are silent over the issue for appointment on compassionate ground. There had neither been any request either from the father of the applicant for appointment of his ward nor is there any request from the mother of the applicant for appointment of the applicant (who is 2nd son of Late Nepal Chandra Acharjee) in Railway Service.

In view of the above facts (i.e. not being medically invalidated while in service and the applicant being second son of the late Nepal Chandra Acharjee and there being no request from the widow of the ex-employee etc for his employment) question of appointment of the applicant in Railways on compassionate ground does not arise. Further, signing of Pension papers etc. at home cannot be the ground for appointment of the applicant on compassionate ground.

3. That, with regard to averments at paragraphs 4.5 and 4.6 of the application it is to submit here-in that the Medical Board's report is subject to acceptance of same by the Chief Medical Director, N.F. Railway, Maligaon and in

Contd. 7

Lok Kumar Deka
राष्ट्रीय निवेशक/रक्षणाकृष्ण राज
Chief Medical Director/Tech A Army
मो. ८० रो. ८० लोक निवेशक, राष्ट्रीय निवेशक/रक्षणाकृष्ण राज

-: 7 :-

the instant case, Chief Medical Director, N.F. Railway after due consideration of the Medical Board's report on merit did not accept the same for purpose of declaring him medically invalid as stated in foregoing paragraph 6 of the Written Statement. Further, the medical reports and Medical Board's such observations are internal matters and are treated as confidential and as such the question of officially declaring the same did not arise.

Further, as stated herein before (i.e. W.S.), the issue involved in the case ~~do~~ not attract the provisions of Railway Board's Circular dated 6.3.2002 and question of appointing the applicant in Railways on compassionate ground does not arise and allegations about deprivation of the applicant's family members etc. made by the applicant are not sustainable.

9. That, with regard to averments at paragraph 4.8 of the application it is to submit here-in that the allegations about adoption of discriminatory policy brought by the applicant is quite wrong and baseless and hence denied emphatically. In this connection it is to submit here-in that Sri Narayan Singh, Driver, Lundia, N.F. Railway was declared medically unfit by Chief Medical Director, Maligaon on 10.12.2001 due to age related muscular degeneration of both eyes with permanent loss of vision and hence question of discrimination etc. does not arise.

10. That, with regard to averments at paragraph 4.9, 4.10, 4.11 and 4.12 of the application, it is to submit here-in that

-26-

-: 8 :-

all the contentions and allegations as alleged by the applicant in the above paragraphs of application are incorrect and hence denied herewith. It is submitted that :

- (i) there has been no deviation or violation of Railway Board's letter/direction etc. in the case, and,
- (ii) no injustice has been done to the applicant which may cause frustration and anxiety to him, and,
- (iii) there has been no deprivation to the applicant of the fundamental rights guaranteed under the Constitution of India by violation of Article 14, 16 and 21 to the Constitution of India as alleged have been made and no hostile discrimination is there, and,
- (iv) No right to live and right to work as alleged in paragraph 4.11 of the application has been violated. Further, no right to be appointed in Railway service on compassionate ground has accrued to the applicant under the fact of the case, and,
- (v) the allegations of illegal, arbitrary, malefide actions and colourable exercise of power and also appointing/accommodating interested persons or differential treatment to applicant by the

Contd.....9

35
Dr. Sanjib Kumar Datta
Chief Medical Director/Tech & Admin.
W. S. S. R. L. Hospital, Purulia
15. Balasore

:- 9 :-

respondents are quite baseless and are malicious imputations and hence denied herewith.

The applicant has not clarified and specifically named such persons who according to the applicant is similarly situated like him and as to the base for bringing such unwarranted and uncalled for allegations against the respondents, and, he is put to strict proof for such allegations.

11. That, with regard to the averments at paragraphs 4.13, 4.14 and 4.15 of the application it is submitted that the contentions of the applicant for appointing him on the Railways on compassionate ground is not covered by extant rules and fact of the case, and, hence his assertions for appointing him on the Railways are not tenable and same cannot be acceded to. It is also a wrong statement that the applicant demanded Justice and same denied to him, or the application has been filed bonafide to secure ends as Justice.

12. That, in view of what have been submitted in the foregoing paragraphs of the Written Statement, none of the grounds for relief as mentioned in paragraphs 5 of the application and the relief as sought for under paragraphs 8 and 9 of the application are sustainable under law and fact of the case and the applicant's prayers are liable to be rejected.

Kumar Deba
प्रधान परिवहन निदेशक/तकनीकी दल, रेल.
W. Chief Medical Director/Tech & Admin.
१० श्री रेल. मालगाँव, गुवाहाटी-
१७. Railways, Malgam, Guwahati.

:- 10 :-

It is completely denied that there has been any violation of law and rules or the terms and conditions of the Railway Board's Circulars and guide lines as alleged, or that, the applicant has acquired any legal right for appointment. It is also denied that there has been any illegal, arbitrary, discriminatory or malafide actions etc. on the part of the respondents, or, there has been any violation of the principles of natural Justice etc. or any extent statutory rules or procedure or constitutional provisions etc. as alleged.

13. That, it is submitted that all actions taken in the case by the respondents are quite legal, valid and proper and have been taken by competent authorities with proper Jurisdiction after due application of mind, and that, the present case of the applicant is based on wrong premises and suffers from misconceptions and mis-representation of rules and laws on the subject.

14. That, necessary enquiries are still under progress and the answering respondents crave leave of the Hon'ble Tribunal to file an additional written statement, if found necessary after enquiries for ends of Justice.

15. That, under the facts and circumstances of the case as stated in the foregoing paragraphs of the written statement, the instant application is not maintainable under law and fact of the case and is liable to be dismissed.

..... Verification.

राज्य विधायकी निवास/तमाजा द्वारा
 व. Chief Medical Director/Tech & A.
 श. श्री रू. मलिगांव, गुवाहाटी-
 78
 मेलिगांव, गुवाहाटी-
 78
 अ. 20

-: 11 :-

VERIFICATION

I, Dr. Sanjib Kumar Deka son of
late Madhab Chandra Deka aged about 46 years, by
occupation Railway Service, now working as Deputy C.M.D / T.A
/ Malligaon of the N. F. Railway
do hereby solemnly affirm and state that the statements
made at paragraphs 1 and 4 are true to my knowledge and
those made at paragraphs 5, 6, 7 and 9 are based on
records of the case file which I believe to be true and
the rest are my humble submissions before the Hon'ble
Tribunal and I sign this verification on 18th January,
2005.

Dr. Sanjib Kumar Deka

NORTHEAST FRONTIER RAILWAY
FOR AND ON BEHALF OF
UNION OF INDIA.

ন.ফ. চিকিৎসা নির্দেশক/তকনাপা রূপ প্রসাদ
W. Chief Medical Director/Tech & ...

পু. সী. রেল. মালীগাঁও, গুৱাহাটী-
C.M. Railway, Malligaon, Guwahati

12

543. Invalidation Certificate:-

- (1) For the invalidation of a non-gazetted railway employee, a medical board is necessary. This medical board should be headed by the CMS/MS of the division. The recommendations of the medical board will be forwarded to the Chief Medical Director who is the competent authority for acceptance.
- (2) When a Railway employee appears before a competent Railway doctor to obtain a certificate under this section or presents a certificate from a non-Railway registered medical practitioner and in the opinion of the Railway Medical Officer, there is no reasonable prospects that the Railway employee will be fit to resume the duties of his post, the case should be referred to the CMS/MS in-charge of the division, who will decide about the examination of the case by a Medical Board.

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GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No.85/H/5/10

New Delhi, dt. 2-5-95

The General Managers,
All Indian Railways including
CLW, ILW, ICF, W&AP, RE/Ald,
Metro Railway/Calcutta,
RCF/Kapurthala, CAO(R)/DCW, Patiala.
Principal/RSC/Vadodra,
DG(RDSO)/Lucknow.

CMD

Sub: Invalidation of Railway Employees
on medical grounds.

Please refer to this office letter of even number dated 27.6.90 on the above subject wherein detailed procedure for dealing with the cases of railway employees for medical invalidation specifically for those cases where the date of certification falls in the last one year of service, was circulated. It has been brought to the notice of this Ministry that genuine difficulties are being experienced in deciding cases of invalidation during the last year of service in view of the conditions laid down in para 3 of the aforesaid letter and requests have been made for its reconsideration.

After careful consideration of the matter the Ministry of Railways, in supersession of their previous letter of even number dated 27.6.90, have decided as under:

1. Invalidation on medical grounds should continue to be done by a medical Board of 3 medical officers.
2. The report of the medical Board should continue to be submitted to CMDs for acceptance and the date of the acceptance of report by the CMD will be the date of certification.
3. The cases of invalidation where the date of medical certification falls in the last year of service should continue to be dealt with by a medical Board headed by a SAG officer.
4. The grounds for invalidation during the last year of service will remain the same i.e. terminal stages of fatal illness or massive injury with recent loss of both lower/upper limbs.

Contd.. 2/-

By C.M.D.
10.5.91

By M.D. for
B.M.D.
18.5.91

Med
Reply not necessary
1995

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R

--2:-

5. General Managers would be the competent authority to accept invalidation after the age of 57 years acting on the advice of the CMDs.

6. All other cases falling outside the purview of the conditions as mentioned in para 4 above may be granted leave as per terms and conditions mentioned in para 529 of IRMM-81. However, if the General Manager on the advice of CMD is personally satisfied that any particular case is not covered under para 4 above, but merits special consideration for invalidation, the same may be referred to Railway Board with full justification.

... The procedure enumerated above may be strictly adhered to in all cases of medical invalidation specifically of those where the date of invalidation falls in the last year of service.

7.4.95
A

(Dr. A. P. Arora)
Exec. Director/Health
Railway Board.

Copy for information and necessary action to:

Copy for information and necessary action to:

1. The Chief Personnel Officers/All Indian Railways including CLW, DLW, RCF, ICF & W&AP.

2. The Chief Medical Directors/Chief Medical Supdts/All Indian Railways including CLW, DLW, RCF, ICF & WAP.

3. E(NG) III Branch Railway Board for their file No. E(NG) III-88/RC-1/1/Policy (with the spares).

4. Senior Professor (Medical), Railway Staff College, Vadodara.

5. The Director, Cancer Research Institute, Varanasi.

....

1.0. Re/Medical Board/O(Policy)

Dated 19-5-95.

Copy forwarded to - MD/CH/MLT,
CNS/CH/IR, AFDJ, IIG, DIRT
RS/IC/IRF, NBQ, RPA, TII, MII, and
D.O/IC/TSR

for information, guidance and necessary action please.

Ans 19-5-95.
(Dr. J. I. Das)
Dy. C. M. D./Health
for Chief Medical Director.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

O.A.No.148 of 2004

Shri Chandan Acharjee

...Applicant

-Versus-

The General Manager (P), N.F.Railway & Others

...Respondents

-AND-

IN THE MATTER OF

Rejoinder Submitted by the Applicant in the above said Original Application against the Written statement filed by the Respondents.

The humble Applicants submit this Rejoinder as follows:

1. That with regard to statement made in paragraph 1 of the Written Statement filed by the Respondents of the above said Original Application, the Applicant have no comments and beyond records nothing is admitted.
2. That with regard to statement made in Paragraphs 2 to 15 of the Written Statement filed by the Respondents of the above said Original Application, the Applicant begs to state that the same are not true and also misleading to this Hon'ble Tribunal. The Applicant begs to state that other family members of Late Nepal Chandra Acharjee including his wife Smti Sefali Acharjee, his first son Uttam Acharjee and Smti Moonmoon Acharjee, his daughter has no objection in case of appointment of Shri Chandan Acharjee i.e. the instant Applicant in any Group-D post on Compassionate Ground in N.F.Railway. In this regard other family members of Late Nepal Chandra Acharjee have filed an Representation on 24-11-2004 before the Respondent, No.2 regarding appointment of Shri Chandan Acharjee, second son of Late Nepal

Filed by 42
Shri Chandan Acharjee
• Applicant
through Advocate
(Abil Acharjee)

Chandan Acharjee

Acharjee on Compassionate Ground. The father of the Applicant during the month of September 2001 he suddenly fell seriously ill and on the same condition without any improvement he died on 24-11-2003. As such he could not file any application for appointment of his son on Compassionate Ground. The opinion of Medical Board on Late Nepal Chandra Acharjee, Ex.Senior Shunter N.F.Railway declaring him medically invalidated / decategorised was forwarded to Chief Medical Director, N.F.Railway on 09-07-2002 and the Chief Medical Director, N.F.Railway rejected the same on 15-07-2002 which has been came to the knowledge of the Applicant through the Written statement submitted by the Respondents against this instant O.A.No.148 of 2004. The Chief Medical Director, N.F.Railway i.e. the Respondent, No.4 suppressed his rejection order dated 15-07-2002 on the Medical Board opinion of Late Nepal Chandra Acharjee by not informing the Applicant's Late father Nepal Chandra Acharjee who died on 24-11-2003. Moreover the Chief Medical Director, N.F.Railway should have forwarded his opinion of rejection order dated 15-07-2002 before the General Manager, N.F.Railway or Railway Board who are the only Competent Authority to decide the matter. In the Written statement the Respondents, have stated that Medical Reports and Medical Board's observations are internal matters and are treated as confidential. As such the question of officially declaring the same did not arise. Hence the Hon'ble Tribunal may be pleased to direct the Respondents to produce all the Medical Reports, Medical Board observation and all other related documents regarding treatment of the Late Nepal Chandra Acharjee, Ex.Shunter, N.F.Railway, Lumding.

Annexure-X is the photocopy of representation dated 24-11-2004 submitted by the family members of Late Nepal Chandra Acharjee.

From the above, the Written Statement submitted by the Respondents are wholly bereft of substance and no credence ought to be given to it. Thus, in view of the abject failure of Respondents to refute the contentions, averments, questions of law and grounds made by the Applicant in the Original Application filed by the Applicant deserve to be allowed by this Hon'ble Tribunal.

Chandra Acharjee

VERIFICATION

I, Shri Chandan Acharjee, Son of Late Nepal Acharjee, Ex.Shunter/Loco/Lumding ,Office of the Divisional Mechanical Engineer (DME) ,N.F.Railway, Lumding. Resident of Upper Babu Patty, Post Office-Lumding, Nagaon, Assam. Pin- 782447 do hereby solemnly verify that the statements made in paragraph nos. 1, _____ are true to my knowledge, those made in paragraph nos. 2, _____

are being matters of records are true to my information derived there from which I believe to be true and rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 12 day of July 2005 at Guwahati.

Chandan Acharjee

To

The Divisional Railway Manager (P)
N.F. Railway, Lumding.

- 6 -

ANNEXURE - A

Sub:- Application for appointment on compassionate ground to my son Sri Chandan Acharjee as per Govt. of India, Ministry of Railways (Railway Board) vide No. E(NG)-11/2000/ RC-1/Genl. 17, New Delhi dated 06.03.2002.

Sir,

With due respect I beg to state that my husband Lt. N.C. Acharjee, died on 24.11.03. Who was working as a Sr. Shunter, Loco running staff, Lumding Division under the office of the Divisional Mechanical Engineer (DME) and was medically declared unfit for all categories job under N.F. Rly. as per Medical Board Examination at Lumding Hospital on 03.03.2002.

The said opinion was forwarded by the Deputy Chief Medical Director (DCMD) to the Chief Medical Director (C.M.D.) Maligaon, but the said report was not received by us. It may be state that I have file an original application No. 148/2004 before the Hon'ble Central Administrative Tribunal, ACT 1985 (CAT) for seeking justice in this matter. The said case is pending before the Hon'ble Central Administrative Tribunal (CAT).

My son Sri Chandan Acharjee who has passed H.S.L.C. in the year 1994 may be appointed in any post under N.F. Railway as per his qualification.

I Smt. Shefali Acharjee and my other two child namely Sri Uttam Acharjee and Miss Moonmoon Acharjee (unmarried) have no objection if Chandan Acharjee is appoint in any post under N.F. Rly. under compassionate ground appointment.

Under the above circumstances I would like to request you kindly appoint my son Sri Chandan Acharjee, aged above 27 years and whose educational qualification is H.S.L.C. passed, in any group-D post on compassionate ground.

In this connection I do hereby declare that none of my family member is serving any Govt./Semi Govt./public concern.

Thanking you,

Yours sincerely

- i) (Smt. Shefali Acharjee (mother))
- ii) Uttam Acharjee (son)
- iii) Miss Moonmoon Acharjee (unmarried daughter)

Add:-

List of documents attached :-

1. Attested copy of death certificate.
2. Attested copy of Age proof certificate.
3. Attested copy of educational qualification certificate.
4. Attested copy of Caste certificate.
5. One joint P.P. size photograph.

Date: 24.11.2004

Place:

Copy to:-

- i) G.M. (Maligaon)
- ii)

Attestd
JL *Attestd*
JL

LUMDING MDG. (782447)
RL 202

PA : BIBH
To:THE DRM[P],
LUMDING, PIN:

Wt:20grams
PS:22.00,Amt:0.00,24/11/2004,14:16:56

भारतीय टाका
INDIA POST