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**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.

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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 Scharjee.....

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  
is filed C.F. No. 10  
deposited vide P.O. No. 116/389/649  
Dated 3.6.04

16.7.04  
16 Dy. Registrar  
21/7/04

Steps taken with  
enclosures.

pg

27.8.2004

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

3/8/04  
Notice duly served  
on resp. No. 3, 4, 5.

14/8/04

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)

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.

Member

Vice-Chairman

nk m

26-8-04  
No W/S has been filed.

04.10.2004 Present : The Hon'ble Mr. Justice  
R.K. Batta, Vice-Chairman.  
The Hon'ble Mr. K.V. Prahl-  
adan, Member (A).

Order has been filed  
by the Rly Counsel.  
30/8/04

None for the applicant. Learned  
Advocate for the respondents Mr. S.  
Sengupta says that he is yet to recei-  
ved papers from the department. Lear-  
ned Advocate for the applicant may,  
therefore, furnish a copy of the  
application to learned Advocate for  
the respondents in case the applicant  
is interested for early disposal of  
the matter. Stand over to 23.11.2004  
for filing written statement.

- 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

  
Member (A)

  
Vice-Chairman

22-11-04  
No W/S has been  
filed.

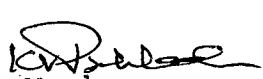
mb  
23.11.2004 On the plea of Mr. S. Sengupta,  
learned counsel for the respondents  
six weeks time is given to file written  
statement. List-on-14.1.2005 for order.

  
Member (A)

19-1-05  
" Notice - duly served.  
On R-No 3, 4, 8 & 5  
No W/S has been  
filed.

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.

  
Member

  
Vice-Chairman

28-1-05  
W/S has been filed  
by the respondents.

14-3-05  
No rejoinder has been filed.

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.

Member

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.

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.

Member

Vice-Chairman

pg

31.5.05.

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

Member

Vice-Chairman

17.6.2005

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

Member

Vice-Chairman

mb

7.7.05

none in the parties. adj. formed 27.8.2005 1870

30.3.05.

No rejoinder has been filed by the applicant

la

5.5.05

Wls has been filed. No rejoinder has been filed.

la

Wls has been filed.

16.6.05

Wls has been filed.


Rejoinder not yet filed.

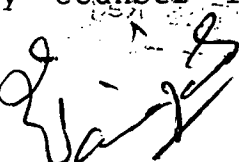
6.7.05

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 Wls has been filed.

  
Member

  
Vice-Chairman

25  
11.7.05

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. Standing Counsel for the Respondent.

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

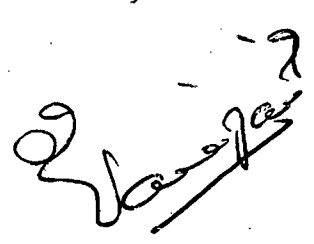
ADVOCATE(S) FOR THE  
RESPONDENT(S)

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.



X . .

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 148/2004

Date of Order : This the 12<sup>th</sup> 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. I. (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 2<sup>nd</sup> 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.





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

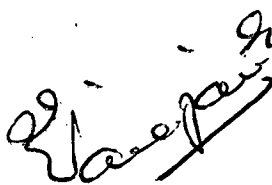
4. We have heard Mr. A. Ahmed, learned counsel for the applicant and Mr. S. Sengupta, learned counsel on behalf of the Railway. Mr. Ahmed, counsel for the applicant submitted that when the Medical Board found the applicant's father medically invalidated, no body else have got the right to reject the 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 medically unfit by the competent authority. Compassionate appointment is given under the Circular either when an employee dies

*[Signature]*

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.

**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)**

**ORIGINAL APPLICATION NO. 148 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.

Filed by  
Shri Chandan Acharjee Applicant  
through [Signature]  
(Advocate)  
Advocate

*Chandran*

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.

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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 Moonmoon 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-Guwahati 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

Change

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 decategorised 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/decategorised 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

Chandra



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 invalided/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

Chargor

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 of 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

*Chamre*

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. 119-389649  
Date of Issue 3-6-04  
Issued from Guwahati  
Payable at

**12) LIST OF ENCLOSURES:**

As stated above.

**Verification .....**

*Chang*

**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 28<sup>th</sup> day of June 2004  
at Guwahati.

Chandan Acharjee

Sl. No. 0118170



GOVERNMENT OF ASSAM  
(অসম চৰকাৰ)  
DIRECTORATE OF HEALTH SERVICES  
(স্বাস্থ্য সেৱা সঞ্চালকালয়)  
CERTIFICATE OF DEATH  
(মৃত্যুৰ প্রমাণ পত্ৰ)

ISSUED UNDER SECTION 111 of the Registration of Births and Deaths Act, 1969.  
(এই পত্ৰখন ১৯৬৯ চনৰ ১১/১১/৬৯ অৱশ্যত্ব (নিৰ্দেশনাক)ৰ অধীনত প্ৰস্তুত কৰা হৈছে।)

This is to Certify that the following information has been taken from the original record of Death which is in the register for.....227.2401.....  
Registration unit of Uperbelouppally, of District Nagaon, of the State of Assam.  
(এইটো প্ৰমাণ কৰিবলৈ হৈছে যে তলত দিয়া তথ্যসমূহ মৃত্যুৰ প্ৰমাণ পত্ৰৰ পৰা লোৱা হৈছে যিটো উপৰেলোপলী জিলা নাগাওঁ জিলাৰ ২২৭.২৪০১ নং পঞ্জীয়ন ইউনিটত আছে।)

Name of the deceased Nepal Chandra Acharyer  
(মৃত ব্যক্তিৰ নাম নেপাল চন্দ্ৰা অচাৰ্য্য)

Date of Death 24.11.03  
(মৃত্যুৰ তাৰিখ ২৪.১১.০৩)

Place of Death Uperbelouppally, Uperbelouppally, Assam  
(মৃত্যুৰ স্থান উপৰেলোপলী, উপৰেলোপলী, অসম)

Registration No. 227.2401  
(পঞ্জীয়ন নং ২২৭.২৪০১)

Date of Registration 29.11.03  
(পঞ্জীয়নৰ তাৰিখ ২৯.১১.০৩)

Name of Father/Mother Sojori Banta Acharyer  
(পিতৃ/মাতৃৰ নাম সোজৰী বন্তা অচাৰ্য্য)

Signature of Issuing Authority  
Designation  
Date  
Seal

Signature of Issuing Authority  
Designation  
Date  
Seal  
Director of Health Services  
Govt. of Assam

Attenti  
Jil  
Awa te

Board of Secondary Education  
Assam

ANNEXURE - B



High School Leaving Certificate

Examination 1994

Results announced on: 08.07.94

This is to certify that Chandan Acharjee

Roll N4-346 No. 171 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 056874 A

GUWAHATI  
ASSAM  
030303

REGISTRAR II

BALENDRA KUMAR DAS  
SECRETARY

Attended  
J. J. J.

Subj: Short Nepal Acharya, Shrinagar, Kashmir

As per this office letter No. HM/ML/32 (C) dt. 10/4/02, a mil. Bd. held at Lima Headquater on 13/5/02 in favour of Acharya's removal.

Now, Govt of India has sent the report of the Medical Bd. for consideration.

But Mr. Acharya has been accepted for

13/5/02

As per medical Bd. report, Acharya is not fit for service. He is suffering from a chronic disease which is likely to develop into a fatal one. He is also suffering from a mental defect which is likely to develop into a serious one. According to the report, there is no chance of his recovery. He is recommended for retirement. The Government of India has accepted the recommendation of the Medical Bd. and has ordered his retirement.

13/5/02

13/5/02

Attested  
Jil - About

13/5/02



-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  
Q.1  
B-6



PART I

\*\*\*\*\*

PARTICULARS OF THE PENSIONER / DECEASED RAILWAY SERVENT

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 : NG 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 : 33 Years (MAX 33 Years)

Last Pay Drawn : Rs. 6300/-

Average Emoluments For Pension : Rs. 9594.08/- 9659.08

Last Emoluments For Family Pension : Rs. 6300/-

Last Emoluments For DCRG : 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/  
TO BE PAID BY BANK

In Words : Rupees Two Lakhs Twenty Five Thousand Nine Hundred Five Only

Seven  
four hundred thirty nine only  
commutation value  
attested

Attested  
Jil  
Sant

Signature  
General Manager  
Railway Pension Office  
New Delhi

- 15 -

ANNEXURE - E

GOVERNMENT OF INDIA  
MINISTRY OF RAILWAYS  
(RAILWAY BOARD)

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

No. E(NG)-II/2000/RC-1/Genl17

The General Manager (P), /NF  
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 After 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.

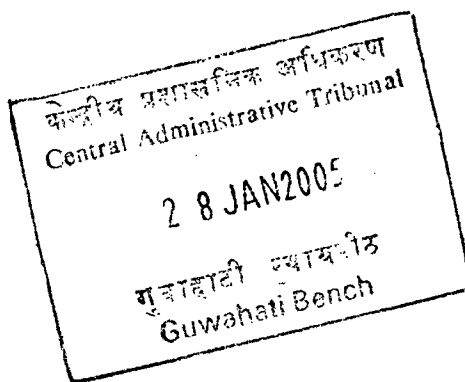
2. The matter has been further reviewed pursuant to a demand raised by the staff side in the DC/JCM and it has now been decided that compassionate ground appointment may also be considered in favour of wife/eligible wards of such of the employees as were medically decategorised between 29.4.99 and 18.1.2000 (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

१. नया विज्ञापन निदेशक/तफ्तीको एवं प्रचार  
२. Chief Mechanical Engineer/Tech & Adms  
३. सी० रेल. मालीगांव, गुवाहाटी-11  
४. Railway Maligaon Guwahati-11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,  
GUWAHATI.

IN THE MATTER OF :

O. A. No. 148 of 2004

Chandan Acharjee

... Applicant.

Vs.

1. The General Manager (P)

N. F. Railway, Maligaon,  
Guwahati.

2. The Divisional Railway  
Manager (P),

N. F. Railway, Luning.

3. The Divisional Mechanical  
Engineer,

N. F. Railway, Luning.

4. The Chief Medical Director,

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

5. The Chief Medical Superintendent,

N. F. Railway, Luning.

... Respondents.

AND -

IN THE MATTER OF :

Written Statement for and on behalf of the  
respondents.

Filed by:  
Sankar Sen Gupta  
Railway Advocate, Guwahati  
20.1.2005



श्री सुब्रह्मण्यम् कुमार देव  
नियन्त्रक/तकमोको एवं प्रयाग  
१७. Chief Medical Director/Tech & Admin  
पू० सी० रेल, या.नि.पं.य, मुंबई-४००००१

-: 3 :-

✓ Late Nepal Chandra 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 Chandra 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 Chandra 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(MG)-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 <sup>not</sup> borne on records, are denied herewith and the applicant is put to strictest proof there-of.

Contd.....4

- 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 Uttam Acharjee (1st Son).
- 3) Sri Chandan Acharjee (2nd Son, the applicant).
- 4) Smt. Moonmoon 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 dependant Diabetes ~~Mis~~ 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.

✓  
Dr. K. P. Kumar Deka  
निदेशक/तकनीकी एवं प्रशासकीय  
Chief Medical Director/Tech & Admin  
पू० सी० रेल, मालीगाँव, गुवाहाटी  
Dr. K. P. Kumar Deka  
निदेशक/तकनीकी एवं प्रशासकीय  
Chief Medical Director/Tech & Admin  
पू० सी० रेल, मालीगाँव, गुवाहाटी

-: 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 Acharjee (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 Acharjee 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/5/10 dated 2.5.95 laying down the procedure etc. to be followed for invalidation of railways employees on medical grounds are furnished hereto as Annexure 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



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 Sat. Shesali Acharjee, elder brother Uttam Acharjee aged 31 years and unmarried sister Sat. Moonmoon 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.

8. 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

-: 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 does 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, Lunding, 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

Contd.....8

-25-  
34  
Sd/-  
Chief Medical Director/Tech & Admin  
N.F. Railway, Maligaon, Guwahati-781001

-: 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, mala fide actions and colourable exercise of power and also appointing/accommodating interested persons or differential treatment to applicant by the

Contd.....9

-26-

35  
✓  
Dr. Sanjay Kumar Datta  
मुख्य चिकित्सा निदेशक/तफनोका एवं प्रशासक  
Chief Medical Director/Tech & Admin  
पू. सी. रेल, बालीगोविंद, गुवाहाटी.  
15, Railway Station, Guwahati.

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.

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 mala fide actions etc. on the part of the respondents, or, there has been any violation of the principles of natural Justice etc. or any extant 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.

-28- 37  
Dr. Rajiv Kumar Sella  
मुख्य निदेशक/तम्बाको एवं प्रशासन  
Chief Medical Director/Tech & A.  
पू० सी० रेल, मालीगाँव, गुवाहाटी-  
781001, Assam

VERIFICATION

I, Dr. Sanjit Kumar Deka son of  
late Madhab Chandra Deka aged about 46 years, by  
occupation Railway Service, now working as *Deputy CMD/TA*  
*/ Maligaon* 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 18<sup>th</sup> of January,  
2005.

*Dr. Sanjit Kumar Deka*

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

मुख्य चिकित्सा निदेशक/तकनीकी इ. प्रशा.  
Chief Medical Director/Tech &  
पू. सी. रेल, मालीगाँव, गुवाहाटी-  
N.F. Railway, Maligaon, Guwahati.

**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.

173  
10/5

134

GOVERNMENT OF INDIA  
MINISTRY OF RAILWAYS  
(RAILWAY BOARD)

No. 95/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.

C.M.D.

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 CMD/H.  
10.5.95

By Med Sec  
18.5.95

Med  
Reply not necessary  
18.5.95



14

(7)

-: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.

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

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 & W&AP.
3. E(NG) II Branch Railway Board for their file No. E(NG) II-88/RC-1/1/Policy (with the spares).
4. Senior Professor (Medical), Railway Staff College, Vadodara.
5. The Director, Cancer Research Institute, Varanasi.

Mo. M/Medical Board/O(Policy)

Dated 19-5-95.

Copy forwarded to -

MD/CH/ILP;  
GAS/IR, APDJ, ING, DIRT  
MS/DO/SE, MBQ, RPAT, TDI, ...  
DAO/IC/TSR.

for information, guidance and necessary action please.

(Dr. D. L. Das)  
Dy. C. M. D./Health  
for Chief Medical Director,

1

**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  
through Shri L. L. Acharjee  
(Abil Acharjee)  
Advocate

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 come 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*

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**-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.

ANNEXURE - A45

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)



LUMDING MDG. <782447>  
Inl-SP EEB44837443IN  
PA : BIBH  
To: THE GM, N F RLY, MALIGAON  
GUWAHATI, PIN: 781001  
From: SHEFALI ACHARJEE, LUMDING  
Wt: 20grams Pre: 0.00  
Amt: 25.00, 24/11/2004, 14:16:01



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