

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FORM No. 4
(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No. 334/04

Misc. Petition No.

Interim Petition No.

Review Application No.

Applicants:- D.R. Chandhury

Respondents U.O.I. Govt.

Advocates for the Applicant Mr. U.K. Nair

Advocates of the Respondents Case

Notes of the Registry Date Order of the Tribunal

23.12.2004 present : The Hon'ble Mr. K.V. Prahlad-
an, Member (A).

Application is in form
is filed/C.F. for Rs. 50/-

Deposited vide P. BD

No. 206/1359/12

Dated 21-12-04

By Dy. Registrar
22/12/04

Steps taken.

Heard Mr. U.K. Nair, learned
counsel for the applicant and also Mr.
J.L. Sarkar, learned counsel for the
respondents.

The applicant was selected for
appointment in Group - D post as
Diesel Khalasi vide order dated
5.3.1998 at Annexure - 3. In the
medical examination conducted by the
Railway Doctor, he was declared unfit
for the post of Diesel Khalasi. The
applicant submitted representation
to appoint him against any Grade -IV
post according to his medical fit-
ness which is yet to be disposed of
by the respondents. Accordingly, the
respondents are directed to give
reply to the representation dated
9th March, 2002 submitted by the
applicant with utmost sympathy
within three months from the date
of receipt of this order. The
respondents may also adjust the

Contd/-

11.1.04

Copy of the order has
been sent to the Dy. Sec.
for issue of the order to the
applicant by post as well
as to the Dy. Sec. Comptroller
with a copy of the application
by hand.

HC

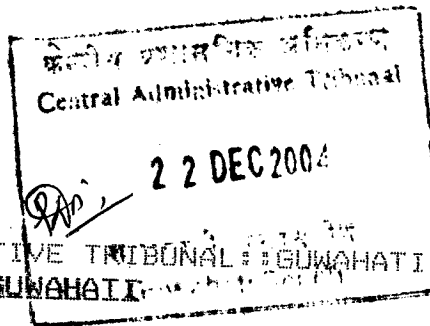
2
Contd/-

23.12.2004 applicant elsewhere in the
Railway, as per rules.

Accordingly, the O.A. stands
disposed of. No order as to costs.

KV Pashlekar
Member (A)

mb



THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
GUWAHATI

Q.A. No. 334 of 2004

Shri Debabrata Roy Choudhury

... Applicant

-VS-

The Union of India & Ors

....Respondents

SYNOPSIS

The Applicant who had completed the Apprenticeship Training in the Trade of Fitter, under the Respondents was selected for appointment as Diesel Khalasi under the Respondnet No.4. The applicant had appeared before the Railway Doctor for medical examination in connection with his said selection, but unfortunately he was declared to be medically unfit for the post of Diesel khalasi. For the post of Diesel Khalasi the prescribed medical Category is "B1", but the medical board which had re-examined the applicant found him fit only for post requiring medical category "B1(one) Below". The applicant accordingly requested the Respondents to appoint him against any Grade-IV post according to his medical fitness, the Respondent authorities also assured the applicant that his case would be considered for such appointment as an alternative to his appointment as Diesel Khalasi on the basis of his selection for the post of Diesel khalasi. The assurances as held out to the applicant having not materialised, the applicant has come under the protective hands of your lordships praying for redressal of his greivances.

THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH
GUWAHATI

O.A. No. 334 of 2004

Shri Debabrata Roy Choudhury

... Applicant

-VS-

The Union of India & Ors

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Filed by:

Anni Bora
(H.K. Nani)
Advocate.

THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH
GUWAHATI

O.A. No.

of 2004

Filed by
The Applicant
Through
Unni Krishnan
Advocate.

BETWEEN

Shri Debarata Roy Choudhury, son of
Late Sudip Kumar Roy Chowdhury,
resident of village Dangtala Bazar,
Bongaigaon, District-Bongaigaon,
Assam.

... Applicant

- AND -

1. The Union of India,

represented by the Secretary to the
Government of India, Ministry of
Railways, Rail Bhawan, New Delhi.

2. The General Manager, N. F.
Railways, Maligaon, Assam.

3. The General Manager(P), N. F.
Railways, Maligaon, Assam.

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

... Respondents

DETAILS OF APPLICATION

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

That this application has been preferred by the applicant assailing the arbitrary and illegal action on the part of the Respondent authorities in not considering his case for alternative appointment after his selection for appointment as Diesel Khalasi was cancelled on Medical grounds. The appeal as preferred by the applicant in this connection has also not been attended to by the authorities.

2. JURISDICTION OF THE TRIBUNAL :

••• The Applicant declares that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :

The Applicant further declares that the application is filed within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges guaranteed under the constitution of India.

4.2 That your applicant states that in pursuance to a selection he was vide communication dated 10.5.88 selected for apprenticeship training in the trade of fitter, under the Respondent authorities and the same was for a period of 3 years w.e.f 31.3.88. The applicant on fulfilling the conditions as stipulated in the said communication dated 10.3.88 was allowed to undergo the said training. The applicant successfully completed the said training.

A copy of the communication dated 10.3.88 is annexed as Annexure - 1.

4.3 That your applicant states that pursuant to completion of the said training, he was on a look out for suitable engagement. The applicant was vide communication dated 10.2.98 directed to appear for an Interview for the purpose of recruitment to the post of Diesel Khalasi under the Senior DME (Diesel), Lunding. The applicant accordingly appeared in the said interview and was selected for appointment against the said post and his name appeared in the select list published in the connection .

A copy of the communication dated 10.2.98 is annexed as Annexure - 2

4.4 That on his selection for the said post of Diesel

Khalasi, the Respondent No. 4 vide his communication dated 5.3.98 communicated to the applicant his selection for appointment as Diesel Khalasi and advised him to report for Medical Examination and for scrutiny of his documents.

A copy of the communication dated 5.3.98 is annexed as Annexure - 3.

4.5 That the applicant states that he appeared before the medical Board as directed vide the Annexure - 3 communication dated 5.3.98. The applicant had also earlier undergone medical examination for the purpose of his selection for under going apprenticeship training and as such the applicant was confident of being cleared by the medical Board and of issuance of appointment orders appointing him as Diesel Khalasi.

4.6 That as the applicant was expecting his appointment order, he was shocked and surprised to receive a communication dated 13.5.98 issued by the Respondent No. 4 by which the applicant was intimated that he has been declared Medically unfit in the prescribed Medical category for the post of Diesel Khalasi and accordingly his name was deleted from the select list as published for the post in question.

A copy of the said communication dated 13.5.98 is annexed as Annexure - 4

4.7 That your applicant states that on receipt of the Annexure -4 communication dated 13.5.98, he preferred an appeal before the Chief Medical Director, N.F. Railways for his re-examination by a Medical Board. After lapse of considerable period of time the applicant was vide communication dated 22.6.99 directed to appear on 28.6.99 before the Medical Board constituted for the purpose of examining him. The applicant accordingly appeared before the said medical Board and he was again examined.

A copy of the communication dated
22.6.99 is annexed as Annexure - 5

4.8 That your applicant states that no certificate was issued to him by the said medical Board indicating the reasons for declaring him unfit for the post of Diesel Khalasi. After much persuasion, the applicant could come to learn that the said medical Board upon examining him had declared him unfit for 'B-1' category but had declared him fit for 'B1 (one) below' category. The medical category as prescribed for the post of Diesel Khalasi is B1 and for other Grade - IV posts is B1 (one) below, which the applicant possesses.

4.9 That when inspite of repeated persuasion, for his appointment as Diesel Khalasi failed to evoke any

response from the Respondent authorities, the applicant proceeded to request the authorities for his absorption against any Grade - IV category post considering his medical fitness, in lieu of his selection for the post of Diesel Khalasi which could not be materialised because of his medical unfitness for the same. The applicant in continuation of the appeals made by him in this direction, preferred an appeal dated 9.3.62 before the Respondent No 3 interalia stating therein that after being declared as unfit for the post of Diesel Khalasi, he has been forced to suffer and had not been considered for any alternative job. As such he prayed that he be appointed against any Grade - D post considering his Medical category.

A copy of the said appeal is annexed as Annexure - 4.

4.10 That your applicant states that as gathered by him, he had been declared as unfit for the post of Diesel Khalasi only on the ground that he had squint eyes and there existed no any other reason. As such the Respondent authorities were duty bound to consider the case of the applicant for alternative appointment against any other Grade -IV post. The failure on the part of the authorities in not taking prompt steps towards redressal of the grievances of the applicant has caused prejudice to him.

4.11 That the applicant states that he belongs to the most backward section of the society and has to shoulder the responsibilities of his family which includes his old and ailing mother and his unmarried sisters. The applicant does not have a regular source of income is forced to undertake menial works as and when such works become available and by the income as received he some how manages his family. The family of the applicant is below the poverty line and cannot manage even 2 square meals in a day.

4.12 That the applicant by qualifying in selection held for the post of Diesel Khalasi had proved his merit and it was for reasons beyond his control that he came to be deprived of his appointment as Diesel Khalasi. As such it was a fit case wherein the applicant ought to have been engaged against any alternative Grade - IV post. Further, as a matter of practice being followed in the Railways a person in the event is found not suitable for appointment against a higher post for reasons like medical unfitness for the work involved in the post, is considered for a lower category post.

4.13 That the applicant states that he was all along assured that his case for appointment as a Grade-IV employee would be sympathetically considered as and when a vacancy arises and on receiving approval from the competent authority and basing on this repeated assurance as held out to him, the applicant on a

bonafide belief that he would be absorbed against a vacant Grade-IV post as and when the same becomes available and on receipt of necessary approval from the competent authority, did not contemplate filing applications before this Hon'ble Tribunal praying for redressal of his greivances. Now the assurances as held out to him having turned out to be hollow ones, he is forced to come under the protective hands of your lordships praying for redressal of his greivances and as such the instant application.

- 4.14 That the applicant submits that the impugned action on the part of the respondnets in denying to him his due appointment is arbitrary, illegal and • discriminatatory.

4.15 That this application has been made bonafide and to secure the ends of justice.

5. GROUNDS FOR BELIEE WITH LEGAL PROVISIONS :

5.1. For that the impugned action on the part of the Respondent authorities is not sustainable and liable to be set aside.

5.2 For that the applicant having qualified for appointment for the post of Diesel khalasi on merit and there having been no supression of any fact on his part, the Respondent authorities ought not to have left the applicant without any remedy after he was disqualified due to medical unfitness.

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5.3 For that the inaction on the part of the respondent authorities in not considering the case of the applicant for alternative appointment against any other Grade -IV post has caused great prejudice to the applicant and the same has caused miscarriage of justice and accordingly the applicant is entitled to the reliefs as prayed for by him.

5.4 For that as gathered by the applicant in situations similar to the one the applicant is in, the Railway authorities provide for alternative appointment against a post for which the person is medically fit, the applicant having not been considered for the said benefit has been discriminated against and such discrimination is not based on any reasonable criteria.

5.5 For that in any view of the matter the entire action of the respondent are liable to be set aside and quashed.

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

6. DETAILS OF REMEDIES EXHAUSTED :

The Applicant declares that he has no other alternative and efficacious remedy except by way of filing this application.

h

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

The Applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

Under the facts and circumstances stated above, the Applicant prays that this application be admitted, records be called for and notice be issued to the Respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs :

8.1 To direct the Respondent Authorities to appoint the applicant against any Grade -IV post for which he has been declared to be medically fit, in lieu of his selection for the post of Diesel Khalasi.

8.2 Cost of the application.

8.3 Any other relief/reliefs to which the Applicant is entitled to.

9. INTERIM ORDER PRAYED FOR :

Pending disposal of this application it is most respectfully prayed that your lordships would be pleased to direct the Respondent authorities to consider the applications as preferred by the applicant plying for appointment against any Grade-IV post for which he is medically fit.

10.

The application is filed through Advocate.

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

- i) I.P.O. No. :
- ii) Date :
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

Verification...

VERIFICATION

I, Shri Debarata Roy Choudhury, aged about 34 years, son of Late Sudip Kumar Roy Chowdhury, resident of village Dangtala Bazar, Bongaigaon, District- Bongaigaon, Assam, do hereby solemnly affirm and verify that the statements made in paragraphs 1, 2, 3, 4.1, 4.6, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.15 and 5 to 2 are true to my knowledge ; those made in paragraphs 4.2, 4.3, 4.4, 4.5 and 4.7 are true to my information derived from records and the rests are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the 8 th day of December, 2004.

Debabrata Roy Chowdhury.

Office of the
Dy. CME/C&W
New Bongaigaon

No. EM/APP/NBQS/87

Dated 10.3.1988

To:-

Shri Debabrata Ray choudhury
Dangtata (Gorai) (East)
P.O. Semalaguri
Sist. - Colerayhar (Bssam)

Sub:- Act apprentice Selection.

Ref:- Dy. CME/NBQS Notification No.
EM/APP/NBQS/87 dt. 31.12.87.

1. In reference to the written test held on 14.2.88 and the subsequent Viva-Voce test held on 1/2.3.88, we are pleased to inform you that the Recruitment Committee has selected you for training in the trade Fitter, under the Apprenticeship training scheme subject to you passing the medical examination by DMO/New Bongaigaon/N.F.Railway.

2. For the medical examination, you may kindly report to Dy. CME/NBQS along with a Cash receipt for Rs. 12.00 (Rupees Twelve) towards the same from Chief Cashier, New Bongaigaon on or before 21st March '88 and collect the medical memo. This medical memo needs to be produced before DMO/IC/NBQS for medical examination.

3. In case you are declared medically passed, you may kindly report to PTS/NBQS wearing the uniform & industrial shoe on 31.3.88 alongwith - (blue shirt & blue Pant)

- the medical examination report of DMO/IC/NBQS
- original certificates of your qualification,
- original Caste certificate in case you belong to SC/ ST community.
- one set of spare blue uniform.

It may kindly be noted that unless you came along with all the above, you will not be admitted to the school.

p.t.o.

Attested
Advocate

4. Your training will be for a period of 3 years and it will commence from 31.3.88.
5. A contract of apprenticeship is to be executed by you / your guardian or parent (for a minor) under the apprenticeship Act, 1961. On 31.3.88 contract form would be supplied to you by PSTS/NBQ.
6. Failure to confirm the terms and conditions of the agreement by you will render the apprenticeship to be terminated and you will be liable to pay compensation as per terms and conditions of the agreement.
7. During your training you will be paid a monthly stipend which will be as under :-
 - a. First year of training Rs 290.00
 - b. Second year of training Rs 300.00
 - c. Third year of training Rs 380.00
8. It may kindly be noted that no hostel accommodation will be provided and you will have to make your own living arrangement.
9. On completion of training, you will be required to appear in a final test to be conducted by the National Council for training in Vocational Trade (NCVT) to determine proficiency. In case you are found successful you will be granted a Certificate by the Council (NCVT).
10. On completion of training, you will be discharged. There is no obligation on the part railway for offering you any appointment.

[Signature]
Dy. Chief Mech. Engineer
N.F. Railway - NBQS.

[Signature]
Attested
Advocate

N.F.Railway.

(Under Certificate of posting).

Order Certificate

Office of the
Divl. Rly. Manager (P),
Dt. 20/1/98, Luming.

No. E/227/1/IM/DSL(Rectt)

To Shri/Smt. Debabrata Roy Chowdhury (UR)S/O Late Sudhir K. Roy ChowdhuryDangtala Bazar - P.O. - SimlaguriDist - Bongaigaon Assam, Pin - 783381Sub:- Interview for recruitment of Diesel Khalasi
under Sr. DME(Diesel), Luming in scale
Rs. 2550-3200/-You are hereby advised to appear before the Recruitment Committee at Railway Institute, Luming, near Divl. Rly. Hospital, Luming on 10-02-98 at 9-00 hrs.

You should bring with you the original certificate/testimonials in support of your academic qualification, age, caste certificate, Employment Exchange card etc.

Please note that if you fail to attend on the date and time specified above for interview no further chance will be given to you.

It should also be noted that no Travelling allowance, charges for conveyance hire or any other expenses/charges in connection with the interview are admissible.

For SC/ST candidate only.

for Divl. Rly. Manager (P),
N.F. Rly. Luming.
For Divl. Rly. Manager (P)
N.F. Rly. Luming.

N:B- This will pass you from your nearest Rly. Station to Luming by any available train on date.

for Divl. Rly. Manager (P),
N.F. Rly. Luming.

T. Mistry.

Ann. Adv. 10/2/98

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Answer 3 21

By Regd. Post.

Divisional Railway Manager (P)
Lumding dtd, 5.3.98

To,
Shri Debabrata Roy Chowdhury (UR)
Dangtala Bazar P.O. Simlaguri.
Dist - Bongaigaon (Assam).

Sub:- Medical Examination in connection with apptt. In Group - D post as Diesel
Khalasi under Sr. DME/ Diesel/ Lumding in scale Rs. 2550-3200/-

As a result of selection held at Lumding on 10.2.98 and 11.2.98, you have
been selected for appointment in Group - D post as Diesel Khalasi in Scale Rs.
2550-3200/- plus other allowances as admissible from time to time.

You are hereby advised to report to this office immediately for medical
examination. You should bring your original testimonials regarding your age,
qualification, SC, ST, OBC certificate etc and also apprenticeship passed
certificate along with extra true copy of such certificate duly attached with. You
should also bring two character certificate from two Gazetted officers in the
prescribed Performa (enclosed) as Annexure - A and five copies of your pass port
size (black & white) recent photograph duly attached by any Gazetted officer in
the front side of the photograph.

No traveling allowance, train fare, pass is admissible in this connection.
You are further advised that you have to deposit an amount of Rs. 16/- (Rupees
Sixteen) only as Pre-recruitment medical examination fee.

DA/ As above.

For Divil Rly Manager (P)
N.F. Rly Lumding

For. SC/ ST candidate only.

N.B - This will pass you from your nearest Rly. Station to lumding by any
available train on date.

For Divil Rly Manager (P)
N.F. Rly Lumding

*Attested
Lumi bar
Advocate*

By Regd. Post.

N.F. Railway.

Office of the
Divl. Rly. Manager (P),

No. E/227/1/LN/DGL (Rectt) 6

Landing, dtd: 13/5/98.

To
Shri Debabrata Roy Chowdhury,
S/O Lt. Sudhir K. Roy Chowdhury,
Vill- Dangatala Bazar, P.O. Simlaguri
Dist: Bongaigaon (Assam.)

Sub:- Deletion of name from the select list
of Diesel Khalasi selected for Diesel Shed
Landing as published under this office
Notice of even No. dtd: 17/2/98.

Since you have been declared medically unfit
in the prescribed medical category for the post of Diesel
Khalasi as per DMO/OPD/IMG's certificate No. 406/98 dtd:
23/24-03-98, your appointments as Diesel Khalasi for which
you were selected can not be considered.

Accordingly, your name has been deleted from
the select list as published under this office notice of
even No. dtd: 17/2/98.

This issues with the approval of the
competent authority.

for DRM(P)/Landing
N.F.Rly.

Copy to:- 1) GM(P)/MLG for information in reference to his
his letter No. E/227/52/2(M) Policy-Con dtd:
3/4/98.

2) DRM(P)/KIR for information. This is in continu-
ation to this office letter of even No. dtd:
21/4/98.

for DRM(P)/Landing
N.F.Rly.

Attested
[Signature]
[Signature]
[Signature]

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N.F. RAILWAY

No. H/174/LM.

Office of the
Chief Medical Supdt.
Lumding. dt. 22.6.99.

To

Sri Debabrata Roy Choudhury.
S/O. Late Sudhir Kr. Roy Choudhury,
Vill - Dangtala Bazar.
Po : Siliguri.
Dist. Bongaigaon, Assam.

Dear Sir,

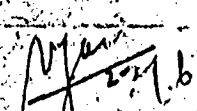
Sub:- Medical Board on 28.6.99.

Ref:- MD/MLG's letter No. E/219/3/M/E dt. 16.6.99.

It is inform you that a Medical Board is fixed on
28.6.99 at 10.00 A.M. at Central Hospital, Maligaon.

You are requested to attend the said Board with all
your relevent papers and documents positively.

Yours faithfully.


Chief Medical Supdt.
N.F. Rly./Lumding.

Copy to :- DRM(P)/Lumding. for information. He is not medically
fit for appointment as Diesel Khalasi.

Chief Medical Supdt
N.F. Rly./Lumding.

Attended
Anil Kumar
Advocate

To

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

Sub : Prayer for appointment to the post of Peon or any other job of Group - D Category.

Respected Sir,

With due respect and humble submission, I beg to state that I am Shri Debabrata Roy Chowdhury, Act Apprentice/88/B-56 was selected to the post of Diesel Khalasi at Lumding in 1996 where selection conducted by DRM(P)/LMG. Accordingly I had to go to medical examination under the care of CMS/LMG/N.F.Rly. where I have been declared unfit in B-1 category but as well as fit in B-1(One) below category.

That Sir, after declared unfit in B-1 category my name have been deleted from the list of Diesel Khalasi vide DRM(P)/LMG L/No.E/227/1/LM/DSL(Recd.) dated 13.5.98 and till now I have been suffering and not considered further to any other alternative job.

So, I request you kindly absorb me as peon or any other job of Group-'D' category considering my medical fitness.

Hope, you would be kind enough considering my case absorbing in any eligible post and I will be ever grateful to you.

I remain Sir,

Dated : New Bongaigaon
The 9th March/2002.

Address :

Shri Debabrata Roy Chowdhury
S/O. Late Sudhir Kr. Roy Chowdhury
Vill : Dantala Bazar,
P.O. : Simlaguri
Dist : Bongaigaon (Assam).

Yours faithfully,

Debabrata Roy Chowdhury.
Act/APP/88/B-56.

(Debabrata Roy Chowdhury)
Act Apprentice/88/B-56.

Attested
Advocate