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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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Office not page 1

SECTION OFFICER (Judl.)

Sahil
17.11.17

FORM NO.4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWALI BENCH

ORDERSHEET

Original Application : 178/03

Misc Petition No. :

Contempt Petition No. :

Review Application No. :

Applicants:- Alokananda Sarkar

Respondents:- Ministry of India Son.

Advocate for the Applicants:- Mr. A. Chakrabarty

Advocate for the Respondents!- RJ S.C.

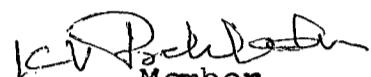
Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form of a notice.</p> <p>100-158633</p> <p>Dated 11-8-03</p> <p>By Register</p> <p>Slips taken</p> <p>Slips taken Notice Kept for Rent to Rs for one. the Respondent No 1 to 8 by Regd. Ad. DINo <u>179861801</u></p> <p>Dtd <u>21/8/03</u></p> <p>19/8</p>	12.8.2003	<p>Heard Mr. A. Chakrabarty, learned counsel for the applicant.</p> <p>Issue notice to show cause as to why the application shall not be admitted. Returnable by four weeks.</p> <p>List on 10.9.2003 for admission.</p> <p>Pendency of this application shall not preclude the respondents to consider the case of the applicant. Needless to state that any selection to the post of ACM Group 'B' on the basis of 30% limited departmental competitive examination held pursuant to the notification dated 09.06.2003 shall be subject to the outcome of the application.</p>
	mb	
		Vice-Chairman

Service report awaited.

✓ b/w
10/9/03

10.09.2003 Present : The Hon'ble Sri K.V. Prahaladan, Member (A).

On the prayer of Dr. M.C. Sarma, learned counsel for the Respondents further four weeks time is allowed to the Respondents to file reply. List on 27.10.2003 for admission.

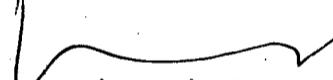

K.V. Prahaladan
Member

mb

27.10.2003 Dr. M.C. Sarma, learned counsel for the respondents, prays for some more time to file reply.

Prayer allowed. List the case on 28.11.2003 for reply.


K.V. Prahaladan
Member


Vice-Chairman

bb

24.12.2003 Present: The Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman.

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

Mr. A. Chakraborty, learned counsel appearing for the applicant, has submitted that since he has received the copy of the reply today in the Court, therefore he is not fully prepared and he shall file rejoinder to the said reply within a reasonable time. Let the matter appear before the next available Division Bench for hearing.

No further time for filing rejoinder shall be granted thereafter.


K.V. Prahaladan
Member


Vice-Chairman

bb

27.2.04 Present: Hon'ble Mr. Shanker Raju,
Judicial Member.
Hon'ble Mr. K. V. Prahala~~dan~~, Administra-
tive Member.

As the learned counsel for the appli-
cant is not available to-day.
List the case on 11.3.04 for hearing

KV Prahala~~dan~~
Member(A)

M
Member(J)

bb

11.3.2004 Heard Mr. A. Chakrabarty, learned
counsel for the applicant and also
Dr. M. C. Sarma, learned counsel for
the respondents.

The application is admitted.
List before the next Division Bench
for hearing.

My
16.4.04

KV Prahala~~dan~~
Member (A)

mb

19.5.04 Judgment delivered in open
Court. Kept in separate sheets.
Application is dismissed. No costs.

KV Prahala~~dan~~
Member(A)

SJ
Member(J)

bb

*Copy of the Judg~~st~~
as been sent to the
P.C. for its up-
to date to the
Applicant as well
as to the Rly. Advocate
in the Reqd. case.*

45

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

178 and 181
O.A. / R.A. No. of 2003.

DATE OF DECISION 14-5-2004

— VERSUS —

Union of India & Ors. RESPONDENT(S).

Dr. M.C.Sarma, Railway standing counsel. ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE SHRI MUKESH KUMAR GUPTA, JUDICIAL MEMBER
THE HON'BLE SHRI 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 Hobble Admin. Member.

ICR

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 178 of 2003.

& O.A. No. 181/2003.

Date of Order : This the 14th Day of May, 2004.

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member.

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

Shri Alokanda Sarkar, (O.A.178/2003)

Son of Sri Bhabananda Sarkar,

Qty. No. 1798, Arabinda Colony,

P.O. Alipurduar Junction,

Dist. Jalpaiguri,

Pin-736123

Shri Babul Ch. Brahma (O.A.181/2003)

Son of Late Saniram Brahma

C/O Station Superintendent,

P.O. Dikom, Dist. Dibrugarh,

Pin - 786101

... Applicants

By Advocate Shri A.Chakraborty.

- Versus -

1. Union of India,
represented by the General Manager,
N.F.Railway, Maligaon,
Guwahati-11.
2. The General Manager(P)
N.F.Railway, Maligaon,
Guwahati-11.
3. The Divisional Railway Manager(P)
N.F.Railway,
Alipurduar Junction.
4. Railway Board through the
Chairman, Railways Bhawan,
New Delhi.
5. The Chief Medical Director,
N.F.Railway, Maligaon,
Guwahati-11.
6. The Chief Medical Superintendent,
N.F.Railway,
Alipurduar Junction.
7. Sri Lakshman Ram,
Assistant Commercial Manager,
(Ticket Checking), N.F.Railway,
Maligaon, Guwahati-11.
8. Sri Khagendra Nath Boro,
Assistant Commercial Manager,
(Claims Prevention),
N.F.Railway, Maligaon,
Guwahati-11.
9. Sri Shashi Mohan Basumatary,
CCMI/New Bongaigaon, N.F.Railway.
10. Sri Jogendra Chandra Rabha,
Chief Goods Supervisor/II/TXOT
Tinsukia Division, N.F.Rly.

... Respondents

By Dr. M.C.Sarma, Railway Standing Counsel.

O R D E R

K.V.PRAHLADAN, ADMN.MEMBER,

The applicant joined as a Junior Clerk in the N.F. Railway on 10.7.1974. After that he was promoted as Senior Clerk, Head Clerk and Office Superintendent. Now the applicant

is working as Instructor Commercial at the Zonal Training Centre, N.F.Railway, Alipurduar Junction. The applicant appeared in the written examination for a Limited Departmental Competitive Examination (LDCE) on 15.2.2003 for the post of Assistant Commercial Manager and he qualified in the written examination and then he was examined for physical fitness before respondent No.6. The respondent No.6 issued a certificate dated 23.5.2003 saying that the applicant was unfit for promotion to Group 'B' service in Technical category (Commercial). The applicant appealed to the respondent No.6 on 16.6.2003 against the Medical Certificate dated 23.5.03/10.6.03. The applicant submitted that he was not given any copy of the Medical Certificate. He was rejected on account of colour blindness, which is an essential requirement for promotion to Assistant Commercial Manager Group 'B' Gazetted. The applicant claims that many employees were given certificates of fitness for Gazetted post under non technical category in the selection to the post of Assistant Commercial Manager. The applicant was not allowed to appear in the viva voce test on the ground of medical unfitness. The applicant claims that commercial service is of non technical nature and the job of Assistant Commercial Manager, Group 'B' Gazetted, has no connection with train running or use of trolley on open line. The applicant has quoted Rule 530(a) of Indian Railway Medical Manual by which transportation and commercial wing have been clubbed together under Traffic department. The applicant claims that Commercial staff has no operational job and their cadres and promotional avenues are different from operational staff. Clause 530(a) of the Indian Railway Medical Manual clubs together commercial and transportation. This has been done without application of mind. There is no nexus between the functions of commercial and transportation department.

2. The respondents in their written statement stated that the applicant was declared unfit by Senior Divisional Medical Officer, N.F.Railway, Alipurduar vide his letter No.H/219/1 (PME

ICWD

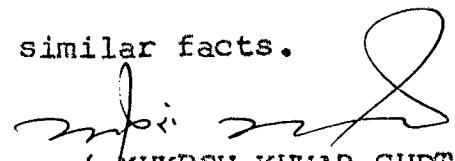
dated 10.6.2003. He was found unfit for promotion to Group 'B' (Technical category, Commercial). The Chief Medical Director, N.F.Railway, Maligaon conducted a Medical Board on 23.6.2003 and confirmed the findings of the Medical report dated 10.6.2003. The respondents further stated that the latest Indian Railway Medical Manual issued in 2000 divides all posts into two categories - (a) all posts in Mechanical, Electrical, Civil and Signal and Telecom Engineering and Traffic (Transportation and Commercial) Departments and (b) all posts in other departments which are not connected with train running or use of trolley in open line. Apart from this para 532 of IRMM prescribes that for category (a) posts colour perception "both ISHIHARA and E.G.L should be normal" i.e. for promotion from non gazetted to Group 'B' gazetted posts in Traffic (Transportation and Commercial) departments the candidates should be free from colour blindness. This is because a Group 'B' gazetted officer may be interchanged between the Transportation and Commercial departments from time to time. So the respondents say that colour vision qualification cannot be relaxed by any means. The applicant was found unfit by medical examination and later on medical Board also found him unfit for the same reason of colour blindness. The respondents also denied the allegations of the applicant that employees given certificate of fitness for gazetted post non technical services were called for viva voce test for selection to the post of Assistant Commercial Manager. For ensuring uniformity in the format for medical examination all the candidates were called for a medical examination in Maligaon Central Hospital. 12 candidates appeared for the LDCE were examined and 11 of them were declared fit. The applicant had failed both at the test conducted at Alipurduar Railway Hospital as well as Maligaon Central Hospital.

lcyw

3. We have heard Sri A.Chakraborty, learned counsel for the applicant, and Dr.M.C.Sharma, learned Railways Standing Counsel for the respondents at length. At page 63 of the "approved Modules for stagewise training of Group 'C' & 'D' staff of Traffic (Commercial) department" issued by the Ministry of Railways in March, 1998 includes, (a) Kinds of Signals - description & definition, (b) Min.equipment of Signals at each class of stations and (c) Defective Signals and authority to pass. The next promotion of Assistant Commercial Manager is to the Indian Railway Traffic Service Group 'A' which is a technical service concerned with the operations regarding movement of trains. Therefore, from the very junior level in the commercial department to the Indian Railway Traffic Group 'A', there is emphasis on the operation side of the running of trains. Taking all these facts into consideration the Railway Board has insisted on strict visual standard and colour perception for promotion to the post of Assistant Commercial Manager Group 'B' Gazetted. This standard is vital for the safety of running of trains. Therefore, the respondent is within its right to prescribe the medical standard as per para 530 and 532 of the Indian Railway Medical Manual. Therefore, the argument of the applicant that Commercial wing should be delinked from transportation does not take into consideration the vital importance of the smooth running of trains and unrestricted flow of traffic. In fact transportation and commercial aspect of the Railways are closely interlinked and hence they have been clubbed together under Traffic department. Taking all these facts into consideration the application is liable to be dismissed and accordingly the same is dismissed. No order as to costs.

O.A.181/2003 is also dismissed by this order as it involve common questions of law and similar facts.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER


(MUKESH KUMAR GUPTA)
JUDICIAL MEMBER

PUC → Memo No. HC. XXI. 24, 588-94/IRM. dated
25.7.07 received from The Asstt. Registrar(8)
of The Hon'ble Gauhati High Court. 10

The PUC may kindly be seen.

Alakananda Sarkar The applicant
in OA 178/03 has filed the WP(c)
No. 8113 of 2004 against the common
judgment and order dated 14.5.2004
passed in OA No. 178 and 181 of 2003
which were dismissed by the Divisional
Bench of this Hon'ble Tribunal. But the
Hon'ble High Court has been pleased to
allow the above mentioned WP(c) on
5.6.2007 and setting aside the order
under challenge of this Hon'ble Tribunal.
Submitted for favour of kind
perusal.

8/16/8

(Signature)
S. C. 16/8/07

REGISTRAR

Y
23/8/07
Sarkar
16/8/07

16/8/07

Court of Appeal & Civil Side गृहीत अपेल एंड साइड	
80/	406 2007
Gauhati Bench. गृहीत बैच	

IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from

Civil Rule

WP (C) No 7113

in 2004

Sh Alokananda Sarkar

Appellant

Petitioner

Union of India vs.

Mr. N. Choudhury

Respondent

Mr. A. Chakrabarty

Opposite Party

Appellant
For
Petitioner

C.S. S.C. (Railway)

Respondent
For
Opposite Party

Noting by Officer or Advocate	Serial No.	Date	Officer notes report, orders or proceedings with signature
Put up FM	2	3	
G re 2/807			
SOJ			
28/8/07			

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

WP(C)7113/2004

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. J CHELAMESWAR
THE HON'BLE SMT. JUSTICE A HAZARIKA**

5-6-2007

(CHELAMESWAR, CJ)

Aggrieved by the decision of the Central Administrative Tribunal, Guwahati Bench in O.A. No. 178/2003 dated 14.5.2004 the unsuccessful applicant preferred the present writ petition. The basic facts are not in dispute. The petitioner is an employee of the Indian Railways. He was initially recruited as a junior clerk and now he is working as Instructor Commercial (Group-C) at Zonal Training Centre, N.F. Railway, Alipurduar. Admittedly the next higher post to which the petitioner can be promoted is the Assistant Commercial Manager which once again admittedly is a Group-B post. In the year 2003 a Limited Departmental Competitive Examination for selection of candidates for filling up the post of Assistant Commercial Manager was held. It may be mentioned here that the posts of Assistant Commercial Manager are required to be filled up partially by direct recruitment and partially by

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceeding with signature
1	2	3	4
			<p>promotion from Group-C category. The other details may not be necessary for the present case.</p>
			<p>The petitioner appeared in the above mentioned examination. It appears that he obtained 3rd rank in the written examination among the competing candidates. As per the procedure applicable for the promotion, the petitioner and other successful candidates in the written examination are required to be subjected to a viva voce examination which is preceded by a medical examination. In the medical examination it was found that the petitioner is colour blind. Therefore the petitioner was not called upon to participate in the viva voce examination.</p>
			<p>After exhausting all the departmental remedies the petitioner approached the Administrative Tribunal by way of the above mentioned Original Application.</p>
2			<p>The Administrative Tribunal declined to grant any relief in favour of the petitioner principally on the ground that the petitioner who commenced his career as a junior clerk and now working in the category of group-C and if promoted to Group-B post in which category the nature of the job involves the petitioner to be well equipped with the operational aspect of the</p>

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceeding with signature
1	2	3	4
			<p>railways and in due course he will be entitled to promotion in the next category i.e. group-A where once again he would be required to be associated with the operation of the railways and therefore in both these categories a person with defective vision is unsuited. Insofar as the requirement of normal vision for safe and successful discharge of duties in Group-B category for which the petitioner seeks promotion, the Tribunal did not record any definite finding but it is the case of the respondent as can be seen from the pleadings and also taken note of by the Tribunal in the order under challenge that the Group-B post of Assistant Commercial Manager is available both in transportation wing as well as the commercial wing of the railways and the post is interchangeable and in the event of the petitioner being promoted to the post of Assistant Commercial Manager there is a likelihood of his being posted to the operational wing where persons with defective vision are not suitable having regard to the safety requirements of the Indian Railways.</p>
			<p>The learned counsel for the petitioner submitted that the issue involved in the present writ petition is squarely covered by the decision of the Supreme Court in (2004) 6 SCC 708 Union</p>

Noting by Officer or Advocate	No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

of India vs. Sanjay Kumar Jain. The Supreme Court was dealing with an identical situation of promotion from Group-C to Group-B post where the railways sought to deny the promotion to the respondent before the Supreme Court on the ground that the respondent suffers from disability of vision. The Supreme Court concluded that the decision of the respondent railways was illegal and contrary to the provision of Section 47(2) of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

In the circumstances, we have no alternative but to allow the present writ petition.

The writ petition is allowed setting aside the order under challenge of the Central Administrative Tribunal. Consequently the petitioner is entitled to be considered for promotion to the post of Assistant Commercial Manager, if he is otherwise suitable for the same post in accordance with law.

Sd/- **A. Hagarika,**
JUDGE.

Sd/- **J. Chelameswar,**
CHIEF JUSTICE.

Contd...

URGENT

Memo No. HC. XXI. 24, 588 - 94 R.M. Dtd. 25/7/07

Copy forwarded for information and necessary action to:-

1. The Union of India represented by the General Manager, N.F. Railway, Maligaon, Guwahati-11.
2. The General Manager (P), N.F. Railway, Maligaon, Guwahati-11.
3. The Divisional Railway Manager (P), N.F. Railway, Alipurduar Junction.
4. The Railway Board through the Chairman, Rail Bhawan, New Delhi.
5. The Chief Medical Director, N.F. Railway, Maligaon, Guwahati-11.
6. The Chief Medical Superintendent, N.F. Railway, Alipurduar Junction.
7. The Central Administrative Tribunal, Guwahati Bench, Bhangagarh, Guwahati-5. Represented by the Deputy Registrar.

By order


Asstt. Registrar (B)
Guwahati High Court, Guwahati.

C.P.W.
23/7/07

11th - AUG 2003

Investigational Central Administrative Tribunal

THE BAPTIST BENCH

Guwahati Bench :: Guwahati.

O.A. No. 178 /2993

Sri Alokananda Sarker

..... V_0

Union of India & Ors

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

15.02.2003 Written Examination for LDCE held where the applicant appeared.

02.05.2003 The result of the said written examination published.

23.05.2003 Applicant appeared before the Medical Authority for obtaining Certificate of Fitness. Adverse Medical Report Given.

28.05.2003 The Divisional Railway Manager (P), Alipurduar Junction, requested the Senior Divisional Medical Officer, Alipurduar Junction to judge the physical fitness of the applicant in class C-1.

10.6.2003 ~~Underlined~~ Respondent No.6 forwarded the medical certificate to respondent No.3 for disposal at his end.

16.6.2003 Applicant preferred an appeal against the said adverse medical report and thereafter he was medically re-examined by the respondents.

19.6.2003 Applicant was spared to appear in the viva voce test to be held on 25.6.2003.

25.06.2003 Viva voce test was held but the applicant was not allowed to appear in the viva voce test allegedly on the ground of medical unfitness.

26.06.2003 The filed an appeal for consideration to appear in the viva voce test.

27.06.2003 The applicant was spared from Maligaon, Guwahati to report for his duty at Alipurduar junction.

04.07.2003 The applicant filed another appeal praying for consideration of his candidature in the viva voce test. The applicant has not received any to his both appeals.

The result of the LDCE is yet to be published.

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In The Central Administrative Tribunal

Guwahati Bench :: Guwahati.

O.A. No. 178 /2003

Sri Alokananda Sarkar Applicant

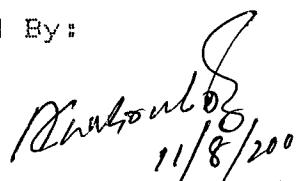
----- Versus -----

Union of India & Ors Respondents

I N D E X

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1.		Application	1 - 15
2.		Verification	16
3.	A	Letter dated 2.5.03	17
4.	B	Medical certificate dt.23.5.03	18
5.	C	Certificate No 158 & 159	19-20
6.	D	Letter dated 28.5.2003	21
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9.	G & H	Medical Certificates	25-26
10.	I	Letter dated 19.6.2003	27
11	IA	Letter dated 27.6.03	28
12	J	Page No.69 & 70 of IRMM	29-30
13	K	Appeal dated 26.6.03 & appeal dated 4.7.03	31-32

Filed By:


11/8/2003
(Anupam Chakraborty)
Advocate

11th AUG 2003

In The Central Administrative Tribunal

Guwahati Bench :: Guwahati.

O.A. No. 178 /2003

Shri Alokananda Sarkar

son of Sri Bhabananda Sarkar

Qtr No.179B, Arabinda Colony,

P.O. Alipurduar Junction,

Dist- Jalpaiguri,

Pin - 736123

.....Applicant

- Vs. -

1. Union of India represented
by the General Manager, N.F.
Railway, Maligaon, Guwahati-11.

2. The General Manager (P)
N.F. Railway, Maligaon,
Guwahati-781 011.

3. The Divisional Railway
Manager(P), N.F. Railway,
Alipurduar Junction.

4. Railway Board through the
Chairman, Rail Bhawan, New
Delhi.

5. The Chief Medical Director,
N.F. Railway, Maligaon.
Guwahati-781 011.

6. The Chief Medical
Superintendent, N.F. Railway,
Alipurduar Junction.

.....Respondents

20
Filed by the applicant
Shri Alokananda Sarkar
11th Aug 2003

7. Sri Lakshman Ram

Assistant Commercial Manager
(Ticket Checking), N.F. Rly,
Maligaon, Guwahati-11.

8. Sri Khagendra Nath Boro

Assistant Commercial Manager
(Claims Prevention), N.F.Rly,
Maligaon, Guwahati-11.

.....Proforma Respondents

Details of the Application :

1. Particulars of the order against which the application is made :

(i) The application is made against non consideration of the candidature of the applicant in the viva voce test and for promotion to the post of Assistant Commercial Manager (Group-B).

(ii) For modification of Rule 530(a) of the IRMM as sought for in the reliefs.

2. Jurisdiction:

The Applicant declares that the subject matter of the application is within the jurisdiction of the hon'ble tribunal.

3. Limitations:

The applicant declares that the application is within

the period of limitation under section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the case:

4.1 That the applicant is a citizen of India and as such is entitled to the rights and privileges guaranteed by the constitution of India.

4.2 That the applicant has no grievance against the proforma respondents and he claims no relief against them. They have been impleaded in the instant application to support the grounds of reliefs sought for by the applicant in this original application.

4.3 That the applicant was appointed as Junior Clerk in N.F.Railway w.e.f. 10.07.1974 and thereafter he was promoted as Senior Clerk, Head Clerk and Office Superintendent. The applicant has been selected through a selection test for Instructor Commercial and at present he is working as Instructor Commercial at Zonal Training Centre, N.F.Railway, Alipurduar Junction. The next promotional scope of the applicant is to the post of Assistant Commercial Manager (for short ACM) (Group-B) Gazetted post. The selection to the post of ACM Group-B is made by selection for 70% vacancies and through Limited Departmental Competitive Examination (for short LDCE) against 30% vacancies. This LDCE comprises of both written examination and viva-voce test. The candidates who qualify in the written examination become eligible for the viva voce test. The written examination is of rigorous nature.

Hafizan and Sanjana

Office of the Comptroller
of the Gram Vikas

4.4 That the respondent department invited application for LDCE for the post of Assistant Commercial Manager/ Group-'B' (for short ACM) against 30% vacancies for a panel of 5 post (UR-3, SC-1 and ST-1). The applicant in response to the above applied for the said examination. The respondent department announced the date of the written examination for LDCE to be held on 15.02.2003. The applicant appeared in the written examination for LDCE on 15.2.2003 and did very well. The result of the said written examination was published by letter dated 2.5.2003. It was learnt that his ^(merit) position in the ~~panel~~ of written test was at serial No.3.

Copy of the letter dated 2.5.2003
is enclosed as Annexure - A.

4.5 That it was directed to the applicant to report to the respondent No.6 for physical fitness certificate for holding the Group-'B' post in Commercial Department. The applicant accordingly appeared before the said respondent No.6. After the examination the respondent no.6 issued certificate dated 23.05.2003 as under :

"Unfit for promotion to Group 'B' service in
Technical Category (Commercial)."

Copy of the Certificate dated
23.5.2003 /10.6.2003 is enclosed as
Annexure-'B'.

✓ 4.6 That in this connection it is stated that in respect of other candidates the certificate of fitness issued were different and they have been declared fit in

class C/1 (CEE ONE) as the work of ACM is a non-technical service being sedentary nature and also not associated with train running. It is pertinent to mention that B-2, C-1 and C-2 classes do not require colour vision test, and the N.F. Railways also adopted the same and issued year after year C-1 certificates for promotion to the post of ACM Group-B (Gazetted). The applicant begs to mention that the certificates issued to the proforma respondents for their promotion to ACM Group B(Gazetted) post in the year 2002 were also in class C-1(CEE ONE). They were declared fit in class C-1 by the same respondent No.6 and issued certificates No. 158 and 159 dated 23.08.2002.

Copy of the Certificates No.158 and 159 dated 23.08.2002 are enclosed as Annexure-C.

4.7 That the respondent No.3 by letter dated 28.05.2003 addressed to the Senior Divisional Medical Officer, Alipurduar junction indicated the above facts of issuance of fitness certificate in class C-1 and requested to judge the physical fitness of the applicant in accordance with the earlier issued certificates (i.e. certificate No.158 and 159 dated 23.08.2002) for ACM (Group-B).

Copy of the letter dated 28.05.2003 is enclosed as Annexure-D.

4.8 That the respondent No.6 after receipt of the said letter did not issue any fresh certificate, but simply countersigned the earlier issued certificate dated 23.05.2003 and forwarded the same by letter dated 10.06.2003

to the respondent No.3 for disposal at his end.

Copy of the letter dated 10.06.2003
is enclosed as Annexure-E.

4.9 That thereafter, the applicant preferred an appeal dated 16.06.2003 before the respondent No.5 against the adverse medical certificate dated 23.05.2003/10.06.2003 and prayed for fresh fitness certificate for ACM/Group B. His said appeal was forwarded by the Principal, Zonal Training Centre, Alipuduar Junction by letter dated 16.6.2003 with a request to take a sympathetic view on the medical report of the applicant and to allow him to appear in the viva-voce test.

Copy of the letter dated 16.6.2003
with the appeal dated 16.6.2003 are
enclosed as Annexure- F.

4.10 That thereafter, the applicant was medically re-examined at Maligaon, Guwahati. The applicant was not given any copy of the medical certificate. It was learnt that the applicant in the medical report was declared fit for non-technical services and unfit for technical services due to colour blindness. It is re-iterated that ACM Group B post is a non-technical service and Railways all along has followed the standard as fitness certificate in class C-1 for promotion to ACM Group B post.

4.11 That in this connection it is stated that in respect of other candidates the certificate of fitness for gazetted railway service was given in a prescribed form and the reports were in different language as "he has been found

fit for gazetted post under Technical/Non Technical Service in C/1(Cee/One)."

The applicant begs to state that technical services in railway include those which are connected with operational functions of the railways such as mechanical, Electrical, Civil and Signal & Telecom Engineering and movement of trains(Traffic Transportation). Non-technical services in railways include sedentary nature of jobs such as personnel services, accounts services, commercial services, general management, stores etc.

The employees who were given certificate of fitness for gazetted post under non-technical service have been called for viva voce test for the above selection. But most unfortunately the fitness certificate of the applicant was communicated by the Medical Department by a different letter not in the form given to others as explained above. The Medical Certificate dated 23.05.2003 indicated that the applicant is "Unfit for promotion to Group 'B' service in Technical Category(Commercial)". But in the case of the other standard certificates there is simple indication of fitness for gazetted post under non-technical services.

Copies of the Certificate issued to other candidates are enclosed as Annexure - 'G' and 'H'.

4.12 That the applicant begs to state that by letter dated 19.06.2003 the applicant was spared for attending the viva voce test of the said LDCE to be held on 25.06.2003.

Accordingly he reported in the chamber of the Chief Commercial Manager, N.F. Railway, Maligaon on 25.06.2003 for the viva voce test, but most unfortunately he was not allowed to appear in the said viva voce test allegedly on the ground of Medical Unfitness and he was accordingly spared and re-directed to report for his duty at Alipurduar Junction by a letter dated 27.6.2003 issued from the Office of The General Manager (P), Maligaon.

Copy of the letter dated 19.6.2003 is enclosed as Annexure-I

Copy of the letter dated 27.6.2003
is enclosed as Annexure - 'IR'.

4.13 That the applicant begs to state that the post of ACM is a sedentary post and supervises the duties of the Commercial staff doing jobs of Goods Clerk, Coaching Clerk, Booking Clerk and works of the same nature relating to the commercial nature of railway services. In other words dealing with selling of railway services to passengers and for transportation of goods and collecting money in exchange. These have no connection with the functional moving of the railway and therefore, these services are of non-technical nature having closeness with the nature of accounts job. The promotional avenue to the post of ACM is also from non-technical staff such as Goods Supervisor like the applicant, and Law Assistants. It is also stated that the post of Law Officer (a gazetted post) is also filled up from ACM/ Senior Commercial Manager. The applicant begs to state these to demonstrate the non-technical nature of the gazetted commercial services.

Hukam Singh

4.14 That the applicant begs to state that he has been arbitrarily and without application of mind debarred from appearing in the viva voce examination. It is also stated that the job of the ACM has no connection with train working or use of trolley on open line.

4.15 That the Rule 530 of the IRMM reads as under:

"For the purpose of examination of visual acuity of Railway employees promoted from non-gazetted posts to gazetted posts, the gazetted posts should be divided into two categories as follows:-

(a) All posts in Mechanical, Electrical, Civil and S&T Engg. and Traffic(Transportation and Commercial) Department,

(b) All posts in other departments which are not connected with train working or use of trolley on open line."

Copy of the page 69 and 70 containing Rule 530 of IRMM is enclosed as Annexure "J".

4.16 That the Rule 530(a) includes posts in Mechanical, Electrical, Civil and Signal & Telecom Engineering and Traffic (transportation & Commercial) Department. It is stated that the Commercial Department has been bracketed with Transportation Department within the Traffic Department in the said Rule without application of mind and without any nexus with the duties and functioning to be achieved by the class of officers in that Group 530 (a). The Mechanical Department involves duties of running the Engines, both

Locomotive, Diesel & Electrical and Carriages and Wagons (passenger coaches & goods wagon). The Electrical Engineering Department involves technical works of Electrical installations and maintenance. Civil Engineering is concerned with the works of the Railway tracks, bridges and also construction of buildings. The Signal & Telecom Engineering involves the signaling system for Railway running and telecommunication system. The transportation is the operating wing of the Railway Department and is directly involved in the operational job of trains. The Station Masters, ASM, Guards are involved directly for the running of the trains. The Central Control Section is also under the Operation Department. The officers of the Operational Department are within the ambit of technical operational job. The commercial staff have no operational job. Their cadres and promotional avenues are different from operational staff. The cadres of Assistant Commercial Manager & Assistant Operational Manager are different. The inclusion of the words 'Commercial' in Clause 530 (a) is not correct in the context. This word deserves to be deleted from the Rule 530 (a) of IRMM.

4.17 That the respondents also for practical purposes and for purposes of promotion to Gazetted post of Commercial Department consider the cases as Non-technical nature. The Certificates issued as in Annexure 'G' & 'H' would clearly demonstrate the position and also show that the colour perception is not a factor for promotion to such posts. It is further stated that promotion to the post of ACM is made without relevance to colour perception and the medical fitness certificates are generally issued without colour

perception.

4.18 That the applicant has been victim of non application of mind and the certificate dated 23/05/2003 has been issued by the Respondent No. 6 without application of mind mentioned unfit for promotion in technical category(commercial) whereas the post of ACM Group B is a non-technical service and gave the certificate in a manner is not required or formal and which is generally given for technical services and which is also different from the standard certificates usually used for which the applicant has enclosed at least four exemplary certificates (Annexure 'C' 'G' & 'H'). This has resulted in differential treatment attracting Article 14 and 16 of the Constitution of India.

4.19 That the applicant filed an appeal dated 26.6.2003 for consideration to appear before the viva-voce test of ACM Group-B before the respondent No.2 wherein he has also mentioned that he has been informed by the Deputy Chief Personnel Officer/ Maligaon that he was not allowed to appear in the viva voce test because in Medical Report he has been declared as fit for non-technical and unfit for technical services due to colour blindness. He has also mentioned that the posts like ACM/Catering, ACM/Claims, ACM/PRS and ACM/Commercial Publicity Officer as all of these posts are non-technical/non-operational. It was also noted in the said appeal that Sri D.N. Baruah, ACM/Catering/Maligaon was promoted to the said post with the same medical problem. But no reply to the said appeal has been received by the applicant. Thereafter, the applicant by another appeal dated 4.7.2003 again prayed for consideration of his candidature

in the viva voce test of the said LDCE. It was mentioned in this appeal also that Sri A.K. Sinha, ACM/Katihar and Sri Dimbeswar Das, ACM/Tinsukia have been promoted to the post of ACM Group B after finding them fit for non-technical service only. It is humbly stated that the applicant has not received any communication from the respondents against his said appeals.

*copy of the appeals dated 26.6.03
and 4.7.03 are enclosed as Annexure-K.*

4.20 That the applicant humbly prays that Your Lordships be pleased to call for the complete records and verify the medical certificates issued and practices followed by the Railways for promotion to the post of ACM Group B in all the recent pasts.

4.21 That the applicant begs to submit that if he is not considered for viva voce test on the alleged ground of colour blindness his further promotional avenue to the higher post will be lost for ever.

5. **Ground for reliefs with legal provisions.**

5.1 For that respondents have taken different standard in issuing medical certificates to the similarly situated candidates like the applicant.

5.2 For that the non-application of mind in issuing the impugned medical certificate dated 23.05.2003 is patent.

5.3 For that the actions of the respondents offends Article 14, 16 and 21 of the Constitution of India.

5.4 For that the Rule 530(a) of the IRMM is violative

of Article 14 of the Constitution of India.

5.5 For that the Commercial Department has been bracketed with Transportation Department within the Traffic Department in the Rule 530(a) of the IRMM without application of mind and without any nexus with the duties and functioning to be achieved by the class of officers in that Group 530(a).

5.6 For that the respondents have issued certificate of fitness to the candidates in class C-1 in pasts and also to the other candidates of the LDCE in question but followed a different standard in the case of the applicant including some others.

5.7 For that in view of the matter the applicant is entitled to the reliefs sought for.

6. **Details of the remedies exhausted**

The applicant declares that he has preferred appeals dated 26.6.2003 and 4.7.2003 without any result and there is no other efficacious remedies under any Rule and this Hon'ble Tribunal is the only forum to adjudicate the subject matter.

7. **Matters not previously file or pending with any other court**

The applicant declares that he has not filed any case on the subject matter before any court, forum or any other institution. However, he has preferred an appeal

8. Reliefs sought for

Under the above facts and circumstances the applicant prays for the following reliefs :

8.1 The Medical certificate dated 23.5.2003 be set aside and quashed.

8.2 The Rule 530(a) of the IRMM be modified to the extent the word 'Commercial' may be deleted from "Traffic (transportation & commercial) Department".

8.3 The applicant be called for viva voce test and he may be considered for promotion to the post of ACM Group-B Gazetted.

8.4 Any other relief or reliefs as the Hon'ble Tribunal deem fit and proper.

The above reliefs are prayed for on the ground stated in para 5 above.

9. Interim Relief

During the pendency of this application the applicant prays for the following interim reliefs:

9.1 The publication of the result of the LDCE may be stayed.

9.2 The viva voce test of the applicant be taken provisionally.

9.3 Any other relief or reliefs as the Hon'ble

H. G. and Son Ltd.

Tribunal deem fit and proper so as to give adequate interim relief to the applicant.

The above reliefs are prayed for on the ground stated in para 5 above.

10. This application is filed through the Advocate.

11. **Particulars of Postal Orders:**

i) IPO No : 96-158633
ii) Date of Issue : 11-8-2003
iii) Issued from : Gwalior.
iv) Payable at : Gp 0

12. **List of Enclosures**

As per Index.

..... **Verification**

35

** 16 **

Verification

I, Alokananda Sarkar, son of Sri Bhabananda Sarkar, aged about 47 years, working as Instructor Commercial, Zonal Training Centre, Alipurduar junction in N.F.Railway do hereby verify that the statements made in the paragraphs 1,4,6 to 12 are true to my knowledge and statements in para 2,3 and 5 are true to my legal advice and that I have not suppressed any material fact.

And I, sign this verification on this ^{7/8} ~~11th~~ day of August, 2003.

Alokananda Sarkar
7.8.
03

SIGNATURE.

Office of the
General Manager(P)
Maligaon, Guwahati-11

Dated: 02.05.2003

No.E/254/11/COM-I/PLIV(O)

To,
CCM, CCM(PM), CCO/MLG,
DRM(P)s/KIR, APDJ, RNY & TSK ;
SR.DCMs/KIR, APDJ ;
DY.CCM/Claims/HQ, DY.CCM(PM) & DY.CCM/FM/MLG,
DCMs/RNY & TSK, PRINCIPAL/ZTC/APDJ, Area Manager/NBQ,
Law Officer/MLG, APO/T/MLG.

Sub:- Limited Departmental Competitive Examination for the post
of ACM/Group-'B' against 30% vacancies.

Ref.: This office letter of even number dated 13.12.2003.

The following candidates under your control have qualified in the written
examination of above mentioned LDCE held on 15.02.2003 :-

- 1) Shri Dinesh Singh, CLA/KIR
- 2) Shri Nirendra Nath Barman (SC), CRS/HQ
- 3) Shri Pradipt Tiwari, CRJ/II/HQ
- 4) Shri Birendra Kumar Mishra, CLA/CCO/MLG
- 5) Shri Tapash Chandra Paul, Hd.GC/NBQ at BRPL
- 6) Shri Dilip Kumar Das, CII now as Commr. Controller/CCO/MLG
- 7) Shri Pawan Kumar (SC), CGSV/II/KIR
- 8) Shri Dandeswar Thakuria, CLA/GM(Law)/MLG,
- 9) Shri Sudhendu Sengupta, CIIQ under CCM/MLG
- 10) Shri Alokandana Sarkar, Instructor/Commr./ZTC/APDJ

The following ST candidates have qualified on Relaxed standard as against one ST
vacancy, as none of the ST candidates could obtain qualifying marks prescribed for general
candidates:-

1. Shri Babul Chandra Brahma(ST), CGS/II/DKM
2. Shri Jogendra Chandra Rabha (ST), CGST/TXQT
3. Shri Shashi Mohan Basumatary(ST) , CCMI/NBQ

You are, therefore, requested to direct the candidates concerned to their respective
Medical Authorities to obtain their Physical Fitness certificates for holding the Group-'B' post in
Commercial Department, before they appear in the Viva-voce test to be held at short notice.
Physical Fitness certificates obtained by them should be submitted to this office on or before
commencement of Viva-voce test when it will be fixed.

Candidate's concerned should be advised to keep themselves in readiness to appear
in the Viva-voce of above LDCE at short notice.

Please acknowledge receipt.

Vvg
2/5/03
(P.K.SINGH)
DY.CPO/GAZ.
For GENERAL MANAGER(P)

affected
PK
Dok

No. 158

पू० सी० रेलवे/N. F. Railway
ए०-एम डी एन/A-MD-31

सेवावधि में पुनर्परीक्षण होने के समय इस्तेमाल किये जाने के प्रमाण-पत्र का फार्म

Form of Certificate to be used when an employee is re-examined during Service

(प्रमाण-पत्र /Certificate)

मिल्हाल/Hospital / P.P.D.S

योग्यता/Fitness

पू० सी० रेलवे/N. F. Railway

प्राप्तिकारी का नाम जैसा ही कि मैंने (काम करने का स्थान)

..... राजा/विभाग भवन/..... ब्रेणी में (जन्माय) पर जाय
न्तरे याते एक कर्मचारी/विसर्ग (नाम) (आयु) है उसी में यात्न

गतिविधियों के लिए इसीसे उसा भी उसकी जांच किया है -

I hereby certify that I have examined (Name) Lakshman Ram, C.S/TEC Br. 1/2/8..... an employee serving as (designation) Revt. I.A.P.D.J. CS/TEC Br. 1/2/8in the Class 52 Branch/Department at (place-where employed) Revt. I.A.P.D.J.who presented himself before me on 23/10/1981 to A.C.M. Br. 1/2/8आवधि पुनर्परीक्षण/Periodical re-examination. Br. 1/2/8

(पदनाम) पर

Re-examination prior to promotion to class to (Designation) Br. 1/2/8विशेष पुनर्परीक्षण/Special re-examination. Br. 1/2/8

प्रियते राजा रिपोर्ट पर पुनर्विचार के लिए पुनर्परीक्षण/Re-examination for reconsideration of previous adverse report.

यह विवरण उसका या अंगुठे का विशाग में उपस्थिति में निर्दिष्ट गया है ।

and whose signature and thumb impression has been appended below in my Presence

मैंने ब्रेणी में सेवा करने के लिए के समझता है ।

consider him fit for service in class Br. 1/2/8 Br. 1/2/8 C.P. CEE CNE

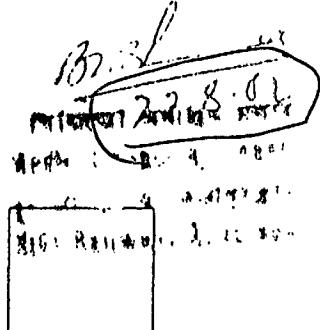
सरो राज्यी परीक्षक का उत्तराधि/Signature of Railway Medical Examiner

मार्गिक Date 23/10/1981 पदनाम/Designation Br. 1/2/8

यो लागू न हो गया / Strike out where Inapplicable

Br. 1/2/8

पदनाम/Designation

कर्मचारी के गाये अंगुठे का विशाग
L. T. I. of Employee

Lakshman Ram

C.S/TEC/Eng

कर्मचारी का हस्ताक्षर

Signature of Employee

सं/No.

159

सेवावधि में पुनर्परीक्षण होने के समय इसलिए माल किये जाने के प्रमाण-पत्र का प्रार्थी
Form of Certificate to be used when an employee is re-examined during Service
(प्रमाण-पत्र / Certificate)

(अस्पताल/Hospital / APPD)
दवाखाना/Dispensary

पू. सौ. रेलवे/N. E. Railway

मेरे द्वारा पुनर्परीक्षण कराया गया है कि मैंने
..... शाखा/विभाग में शेषी में (काम करने का समय)
काम करने वाले एक कर्मचारी, जिसका (नाम) (प्राप्ति) पा. वा. वा.
निम्नलिखित के लिए उपस्थित हुआ और उसकी जांच किया है -
(अध्यु) (अध्यु) (अध्यु) (अध्यु) (अध्यु) (अध्यु)

I do hereby certify that I have examined (Name) Shrikant Lagantra Naik
D.O.B. 01-12-56 an employee serving as (designation) CEM/APPD CSIC
in the Central Branch/Department at (place where employed)
who presented himself before me for On 10th January 1980
*आवधिक पुनर्परीक्षण/Periodical re-examination.

..... (प्राप्ति) पा. शेषी में प्रतिकृति की जाएगी।
Re-examination prior to promotion to class to (Designation)
*विशेष पुनर्परीक्षण/Special re-examination.

*पिछली खात्र रिपोर्ट पर पुनर्परीक्षण/Re-examination for reconsideration of previous adverse report
और जिसका रद्द गया था अंगुठे का निशान मेरे आसिफ़ी में दिया गया है।

and whose signature and thumb's impression has been appended below in my presence
मैं उसको शेषी में सेवा करने वाले योग्य के समझता हूँ।

consider him fit for service in class# C/1 C.E. ONE
रेलवे डाक्टरी परीक्षक का हस्ताक्षर/Signature of Railway Medical Examiner.

तारीख Date 23/01/80
जो लागू न हो उसका है / *Strike out where inapplicable

पदानाम/Designation.....

8268
23.1.80
रेलवे डाक्टरी परीक्षक

8268
23.1.80
रेलवे डाक्टरी परीक्षक

कर्मचारी के बायें अंगुठे का निशान

L. T. I. of Employee

कर्मचारी का हस्ताक्षर
Signature of Employee

- 21 -

Bonaire - D
10

N.E.Railway

Office of the
Divl. Mngt.(P)
Alipurduar Junction.

NO.E/41/15/1(T)AP-Comd.

Dated:-28.05.2003.

To,
The Sr.DMO/ADMN/APDJ.

Sub:-Sri Alokananda Sarkar, Instructor/
ZTC/APDJ.

Ref:-Earlier issued certificates No.
158 & 159 dated 23.08.2003 in fav-
our of Shri L.Ram & K.N.Boro, both
CS/RNY respectively.

In reference to your letter No.H/219/1(PME)
dated 26.05.03, it is mentioned here that, Shri L.Ram &
Shri K.N.Boro both CS/RNY were directed to you for obt-
aining their fitness certificate for holding the post
of ACM/Group-B and as per the certificates under refe-
rence they have been declared fit in C/1(one) and as the
post of ACM belongs to Group-B category it is not as-
sociated with train running.

You are therefore, requested to judge the fit-
ness of the above mentioned staff in accordance with
the earlier issued certificates under reference for
ACM(Group-B).

for Divl. Mngt.(P)
Alipurduar Junction.

Copy to:- Principal/ZTC/APDJ for Information please.

Salum
26/5/03

for Divl. Mngt.(P)
Alipurduar Junction.

*Officer
PK*

December 8

J. F. Lativaw

No.H/219/1(PME)

Office of the
Chief Medical Superintendent
N.F. Really - Light Blue Ink
Date: 11/16/13

To
DRM(P)/Comm/APD/J

Sub: Medical Examination of Sri Alakananda Ji
In Case of LTC/APD.J.

The above named employee appeared this office for promotion to Crown "B" (technical category) on 23-6-67. On examination it is seen that the employee is qualified for promotion to Grade "B" service (technical) category (Column 2,2).

Unit/certificate No.65 at 13/10-05-06-03 duly counter signed by CMS/PPDI is sent here with for your disposal please.

DAVOR

Sr. Div. Med. 11/1/2008
NPR: Alipurduar, West Bengal
Date: 11/1/2008
Time: 11:00 AM
N.S. Reasons: As per doctor's

Officer 2
Officer 3
Officer 4

Answare - F

— 33 —

3V

N.F.RAILWAY

Office of the Principal
Zonal Training Centre
Alipunduar Jn.
Date: 16.6.2003

O GLORIOUS YEARS

No. - Z/E/A-Pr.vII/c & O/AP.

To
The Chief Medical Director,
N.F. Railway,
Maligaon

Subject: Formal forwarding of an appeal for reconsideration of adverse medical report of
Shri A. Sarkar, (Instructor/ Commercial/ ZTC/ APDJ)

Ref.: Section-B of Ch.V of IRMM (as amended under board's letter no. 69/H/3/11 of
6.12.74, sl. No. ER 8478/NR 6250 & no. 78/H/5/25 of 23.8.79, sl. No.
ER178/81/NR7766

With reference to the above I am hereby forwarding an appeal for reconsideration
of adverse medical report issued by CMS/ APDJ, after medical examination of
Shri A. Sarkar, Instructor/ Commercial/ ZTC/ APDJ, in connection with selection for the
post of ACM (Group-B).

It is, therefore, requested that a sympathetic view may kindly be taken on the
said medical report so that said Shri A. Sarkar, may be allowed to appear in the viva-voce test.

With kind regards,

Enclo. A copy of the medical certificate.

16.6.2003
(P. Dutta)
Principal, Zonal Training Centre,
N.F.Railway,
Alipunduar Jn

Copy to:-
GM (P)/ Gaz/ MLG, for kind information &
necessary action.

(P. Dutta)
Principal, Zonal Training Centre,
N.F.Railway,
Alipunduar Jn

affixed
PS
pw

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

Through:- Proper Channel.

Sir,

Appeal for
Sub:- Reconsideration & fresh Fitness certificate for ACM/Group 'B'.

With profound respect & humble submision I like to lay with the following facts.

That sir, I have been qualified in the written test of the selection for ACM/Group 'B' against 30% vacancies according to GM(P)/ Maligaon's letter No. 254/II/Com-I/Pt.IV(0), Dt. 02/05/03 & I was directed to CMS/N.F.Railway/APDJ to obtain Physical Fitness certificate.

That sir, it is to mention, in this regard that all the previous candidates of ACM/Group 'B' were examined as per C-I standard according to which the certificates were issued from the Railway Hospital, N.F.Railway, Alipurduar Junction. But my Physical Fitness examination at APDJ's Railway Hospital has been a question & yet to be satisfied, though, as I have come to Know, a medical certificate with adverse report has been sent in recent past against which I prefer this appeal.

So, I pray your good self to take positive step to reconsider my medical report by CMS/ Divisional Railway Hospital, APDJ so that I can get fresh Physical Fitness certificate from your Institution.

I hope your judicious self would realize & grant my above prayer for which act of kindness I shall remain ever grateful to your magnanimous self.

Date:- 16.6.03
Place:- ZTC/APDJ

Copy to:-

GM(P)/ Gazetted/ Maligaon
(Thru. Principal/ZTC/APDJ) for
Information please.

Yours faithfully

Alakananda Sarkar
(Alakananda Sarkar)
Inst.(Comml)/ZTC/APDJ.

Alakananda Sarkar
(Alakananda Sarkar) 16.6.
Inst.(Comml)/ZTC/APDJ. 17

Alakananda Sarkar
APDJ

N.F.Rly.

Office of the
Medical Supdt.
N.F. Rly., New Bongaigaon
Date:-22.5.03

CERTIFICATN OF FITNESS FOR GAZETTED RLY. SERVICE.

Certified that shri Tapash ch. paul, Design.Hd.GC/NBQ at BRPL stn BRPL whose signature is furnished below has been examined by me on date and he has been found fit for gazetted post under ~~Technical~~/Non -Technical service in C1,(Cee/One)

Tapash ch. Paul.

Signature Of the Doctor
S.N.Brahma,22.05.'03

Signature Of the Employee

Signature Of the examining
Medical Authority

No.H/219/Gaz/NBQ/55, Dtd....

Copy to:-

- 1) DCM/RNY for information & necessary action please.
- 2) CPO/MLG for information please.

Sd/-

Signature Of Examining
Medical Authority

*Signature of
the candidate
as a token of receipt*

*Tapash
ch. paul.*

Opposite - H

— 26 —

N.F.Rly

Office of the
Medical Supdt.
N.F. Rly., New Bongaigaon
Date:-22.5.03

CERTIFICATN OF FITNESS FOR GAZETTED RLY. SERVICE.

Certified that Sri Shashi Mohan Basumatary Designation CCMI Stn. NBO whose signature is furnished below has been examined by me on date, and he has been found fit for gazetted post under Technical/Non Technical service in C/1(Cee/One).

Shashi Mohan Basumatary

Sd/-

Signature Of The Employee

Signature Of examining
Medical Authority.

No. H/219/Gaz/NBO/55 Date:- 22.05.'03

Copy to:-

- 1) DCM/RNY for information and necessary action please.
- 2) CPO/MLG:-for information please.

Signature of
the Commandant
as a token of
receipt.

Sd/-

Signature of the Examining Authority

Attested
R.P.
R.P.

N.F.Railway.

Office of the
Principal/ZTC/APDJ.

No. 2/E/4-PT.VII CRO/APDJ.

Dated:- 19.06.2003.

To
Sri. A.N.Sarkar,
Inst.Comml/ZTC/APDJ.Sub:- Sparring for attending Viva-Voce test of the selection
for the post of ACM/Gr-B against 30% LDCE.

Ref:- GM(P)/MLG's L/No. E/254/11/Com-Ipt.IV(O) dt. 09.06.2003.

In terms of GM(P)/MLG's above quoted above letter you are hereby spared on 23.06.2003 (AN) and directed to report GM(P)/MLG's Office for attending Viva-Voce test for the above mentioned post which will be held on 23.06.2003 from 10.00 hrs. in the chamber of CCO/NRKK N.F.Rly/MLG.

Please note that you will be allowed to appear in the Viva-Voce test on 25.06.2003, subject to submission of your Physical fitness certificate and there will be NO ABSENTEE VIVA-VOCE TEST under any circumstances.

Necessary 1st class suty pass to cover your journey from NDQ to GMV and back is enclosed.

Further as per DPO/EE's telephonic advice your Medical Examination will be held on 21.06.2003 at GM/MLG at 8.00 hrs. Please appear for your M.E for which you are spared from date (EN).

(S.C.Banerjee)
APD/ ZTC

for Principal/ZTC/APDJ.

Copy to:- 1. GM(P)/MLG for information please in reference to his L/No.cited above. It is informed that the final physical fitness certificate of staff concerned is pending with CMD/MLG which may please be had from CMD/MLG.

Reftd?
By
Adv.

2. CI/ZTC/APDJ.
3. Pass section of this Office.

Revy W 19.6.03
(S.C.Banerjee)
APD/ ZTC
for Principal/ZTC/APDJ.

N.F.RAILWAY

Office of the
General Manager (P).
Maligaon, Guwahati -11.

No. E/254/11/COM-I/Pt.IV(O)

Dated: 27-06-2003

To
Principal,
Zonal Training Centre,
Alipurduar Jn.

Sub: Sparing.

Ref: Your letter No.Z/E/4-Pt.VII C&O/APDJ dated 19.06.2003.

As directed vide your letter quoted under reference, Shri Alakananda Sarkar, Instructor(Commercial)/ZTC/APDJ had reported to this office to appear in Viva-voce test of ACM/Group-'B' selection against 30% LDCE on 25.06.2003(FN).

However, he was not allowed to appear in the said Viva-voce test due to Medical Unfitness for the Group-'B' post of Commercial Department as per certificate issued by his respective Medical Authority. He is hereby re-directed to report you for his further duty in the afternoon on 27.06.2003.

(S.K.Chowdhury)
APO/Gaz.
For General Manager (P).

Copy to:-

✓ Shri Alakananda Sarkar, Instructor(Comm'l.)/ZTC/APDJ for information.

06-0
27/6/03
For General Manager (P).

Alkananda
SK
sdr

नाय पीडित
रा संगठन

36. Women candidates who are pregnant:- A female candidate who, as result of tests, is found to be pregnant need not be declared temporary unfit, unless the nature of her job involves elaborate training or the post carries hazardous nature of duties like in police organisations etc.,

(Rly. Bd.'s letter No.96/E(GR)11/9/14 dt. 22/07/1996)

37. Foot plate staff who had suffered Head Injuries:- See Para 511 Sub-para(6)

38. Grant of leave to Railway employee who is unlikely to be fit to return to duty:-

then a medical authority has reported that there is no reasonable prospect that a particular Railway employee will ever be able to return to duty, leave should not necessarily be refused to such a Railway employee. It may be granted, if due, by a competent authority.

है, तो ऐसी

Section C:- Medical examination of Railway employees on promotion from non-Gazetted to Gazetted posts

19. Introduction:-

- (i) If an employee at the time of promotion to a Gazetted post falling under category (b) of para 530 below is on sick leave, both general physical examination and vision tests will be required. If, however, the employee, at the time of promotion, is not on sick leave and is on duty, only vision tests will be required.
- (ii) Those employees who are being promoted from non-gazetted to gazetted posts falling under category(a) of para 530 below will be subjected to medical examination for evidence of any chronic/acute illness which can interfere with the efficient performance of their duties after promotion, irrespective of the fact whether they were on duty or on sick list prior to their promotion.

(Bd.'s No 92/H/5/4/ dt. 21/08/1996)

(b) The details of these examinations are given below:

30. Classification of gazetted posts for the purpose:- For the purpose of examination of visual acuity of Railway employees promoted from non-gazetted to gazetted posts, the gazetted posts should be divided into two categories as follows:-

(i) All posts in Mechanical, Electrical, Civil and S&T Engg. and Traffic (Transportation and Commercial) Department.
 (ii) All posts in other departments which are not connected with train working or use of trolley on open line.

81. General physical examination:- The standards of general physical examination, when done, will be the same as prescribed for the candidates for appointment to gazetted Railway service.

iii. Vision tests:- (1) For category (a) mentioned in para 530 above, the following visual acuity standards should apply:-

Distant vision 6/12, 6/18 with or without glasses

Near vision Sn.0.6, 0.6 with or without glasses

Night vision should be normal

Colour perception Both Ishihara and

Field of vision Should be normal

Binocular vision Should be normal

Note: (i) The difference between the power of lenses in each eye shall not exceed 4.00 D

- (ii) The power of lenses shall not exceed 6.00 Diopters.
- (iii) Color perception will be tested with E.G.L at a distance of 4.9 Meters with an aperture diameter of 1.3 mm and time of exposure will be 5 seconds. Ishihara also will be tested.
- (iv) Defective Binocular Vision will be considered a disqualification.
- (v) Posterior chamber I.O.L (Intra ocular lens) is permitted subject to following conditions:
 - a) In case of freshly operated IOL of less than 6 weeks duration, employee may be declared fit for Gazetted technical post provided his visual acuity is stable for 2 consecutive check-ups at an interval of 2 weeks.
 - b) All cases declared fit with IOL, in gazetted technical posts should report to the ophthalmologists for periodical check-up up to one year, at intervals of 6 months, from the date of fitness or at any time whenever they notice diminution of vision or any other problem in the operated eye.

(Railway Bd.'s letters No. 92/H/S/4 dt. 11/08/1992, No. 88/H/S/3 dt. 15/10/1992, No. 92/H/S/4 dt. 09/11/1992 and No. 99/H/S/3 dt. 21-05-1999)

For category (b) mentioned above in para 530, the following standards will be applicable:-

Distant vision 6/18 in one eye regardless of vision in the other eye, with or without glasses
 Near vision Sn 0.6 in one eye, regardless of vision in the other eye, with or without glasses
 (i) Total amount of Myopia shall not exceed 8.00 Diopters in the corrected eye.
 (ii) Officers of the Railway Protection Force and the medical department should, in addition, have normal colour perception and night vision.
 (iii) Any organic disease which is likely to result in lowering of the visual acuity should be considered as a disqualification.
 All employees promoted to gazetted cadre from non-gazetted cadre will be examined for visual acuity and colour vision as per standards mentioned above irrespective of their medical category in the non-gazetted cadre.

(Bd.'s No 92/H/5/4 dt. 21/08/1996)

8. Examiners :- The competent authority to conduct the medical examination of non-gazetted employees for promotion to gazetted posts is the CMS/MS in-charge of the division.

W.O.R's letter No.E57/MB1/17 /Medical dt. 26/06/1957 and No.72/H/5/22 dt. 27/10/1972)

II. MEDICAL EXAMINATION OF EX-SERVICEMEN WHO HAVE BEEN RE-APPOINTED IN RAILWAYS AFTER RENDERING SERVICE IN ARMED FORCES

i) General Physical Examination: On the same standards as applicable to new recruits.

ii) Vision tests: Acuity of vision as per the following table:

<i>Class</i>	<i>Distant vision</i>	<i>Near vision</i>
A-1	6/9, 6/9 or 6/6, 6/12 with or without glasses. Naked eye vision not below 6/60 and power of lens not to exceed 4 D.	The combined near vision with or without glasses should be the ability to read ordinary print. Where reading or close work is required, combined near vision with or without glasses should be Sn. 0.6. As above
A-2	6/12, 6/12 or 6/9, 6/18 with or without glasses. Naked eye vision not less than 6/60. Power of lens not to exceed 6 D.	
A-3	6/12, 6/18 with or without glasses. Naked eye vision not below 6/60 and power of lens not to exceed 8 D. The candidate should not be colour blind when tested with EGL lamp(1.3mm aperture) and Ishihara plate for A-1, A-2 and A-3 categories.	As above
B-1	6/12, 6/24 with or without glasses. Power of lens not to exceed 8 D. The colour vision should be normal with EGL lamp. No Ishihara test.	As above
B-2	As above Colour vision not required for Bee -two and below	As above
C-1	6/18, Nil or combined 6/18 with or without glasses.	Sn. 0.6 with or without glasses where reading or close work is required.
C-2	6/24, Nil or 6/24 combined with or without glasses.	As above

The difference of power of glasses between two eyes should not be more than +4D

GAZETTED POSTS: Standards should be the same as prescribed for serving Railway employees promoted to Group 'B' gazetted posts.

Note: (1) All other parameters as applicable to serving employees in different categories regarding the use of I.O.L, Keratotomy, squint, binocular vision, aphakia, etc. will be applicable as per their categories.
 (2) There will be no relaxation of visual acuity for categories A-1, A-2 & A-3 if the age of the recruit is below 35 years. They may be examined as per the standards laid down for new recruits.

(Bd.'s No.94/H/5/9 dt. 29/12/1994)

III. MEDICAL EXAMINATION OF MEMBERS OF RAILWAY CLAIMS TRIBUNALS

For members of Railway Claims Tribunals who may be appointed at a very late age, medical examination will have to be conducted primarily with a view that the officer being examined is not suffering from any acute or chronic ailment which

The General Manager,
N.F. Railway, Maligaon,
Guwahati-781 011.

Sir,

Sub:- Appeal for consideration to appear
before the Viva-voce Test of "ACM
Group 'B' 30% vacancy and consideration
for the post itself.

With profound respect, I like to lay with the
following submissions to you:

That Sir, I was selected and called for Viva-
voce Test for ACM Group 'B' against 30% vacancy held on
25.06.03 vide GM(P)/MLG's letter No.E254/II/Com-I Pt.IV(O)
dated 9.6.03, but I was not given chance to appear before
the test though it was empanelled and subsequently it was
informed by Dy.CPO(Gaz.)/Maligaon that I was not appear
because in Medical Report it has been given as "Fit for
non-technical & unfit for technical due to colour blindness".

That Sir, I have no problem in respect of colour
in day to day life, and so, I may be considered for Viva-voce
Test as another candidate named Shri Babul Ch. Brahma, CGS/II/
Dikam under TSK Division having the same medical problem
was considered for the said Viva-voce on 25.06.03.

That Sir, I may be considered, after being selected,
for the post like ACM/Catering, ACM/Claims, ACM/PRS, and
ACM/Commercial Publicity officer as non-technical/non-operational post
considering it as per group 'B' (the Gazetted I & II which
are not connected with operation and use of trolley).

That Sir, it is not out of place to mention that
having the same medical problem and remark in Medical
Report i.e. "Fit for Non-technical & Unfit for Technical"
like me, Shri D.N. Baruah, ACM/Catering, Maligaon was
considered and put to ACM/Alipurduar Jn. being considered
as Non-technical.

That Sir, I have full faith in you that you would
consider my case on the above light and pray your judicious
self to extend your positive hand so that I can be saved
from the catastrophe and for which act of kindness I shall
be evergrateful to your magnanimous self.

Yours faithfully,

Alakananda Sarkar
(Alakananda Sarkar)
Instructor (Commercial)
ZTC/NF Railway,
Alipurduar Jn.

Dated 26.06.03.

Copy to - 1. CPO/NF Rly./Maligaon. It is for his information
with appeal and necessary action please on the
above light so that I am not deprived of & thus
saved.

2. CCM/NF Rly/Maligaon. It is for his information
with appeal and necessary action please on the
above light so that I can be considered

Alakananda Sarkar
Instructor (Commercial)
ZTC/NF Railway,
Alipurduar Jn.

To,
The General Manager,
N. F. Rly., Maligaon,
Guwahati - 781011

Sir,

Sub :- Appeal for consideration to appear before the Viva - Voce Test of ACM Group 'B' - 30% vacancy and consideration for the post itself.

Ref :- My earlier appeal dated 26 - 06 - 2003 against Viva Voce Test held on 25 - 06 - 2003 vide GM(P) / MLG's letter No. E 254 / II / Com - I - Pt - IV (O) dtd. 09 - 06 - 2003.

With profound regard I like to lay further the Viva - Voce Test of Sri Tapash Ch. Paul, Hd. GC / NBQ at BRPI, and Sri Sashi Mohan Basumatary, CCMI / NBQ were taken though their Medical Certificates bearing No. II / 219 / Gaz / NBQ / 55 dtd 22 - 05 - 2003 respectively issued from the Rly. Hospital / NBQ as Non - Technical as per C1 (Cee One) standard, the exact version - copy of which are attached herewith. Moreover almost all other medical certificates of other candidates have also been issued as per Non - Technical, if it be carefully observed.

That Sir, it is learnt that having the same medical problem like me Sri A. K. Sinha, ACM / KIR and Dimbeswar Das, ACM / TSK had been put to the post of ACM being considered as Non - Technical.

So, I pray your judicious self that as they have been considered for Viva - Voce Test inspite of having Medical Certificate as per Non - Technical, like wise I may also be considered eligible for the post after being taken Viva - Voce Test.

I hope, again, your honour would consider my candidature in accordance with the above and earlier prayer realizing the state thereby saving me from permanent banishment into the realm of stalemate for which act of kindness I shall remain ever grateful to your magnanimous self.

Enclo :- 3 (Three)

Date :- 04- 07 - 2003

Copy to :-

- 1) CPO / N. F. Rly. / MLG. It is, with respect for his kind information and positive extension please.
- 2) CCM / N. F. Rly. / MLG. It is, with regard, for his kind information and necessary action please.

Yours faithfully,

Alakananda Sarkar

Alakananda Sarkar
Instructor Commercial
ZTC / N. F. Rly. / APDJ

Yours faithfully,

Alakananda Sarkar

Alakananda Sarkar
Instructor Commercial
ZTC / N. F. Rly. / APDJ

Alakananda Sarkar
7/7/03

Alakananda Sarkar
7/7/03

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL;
GUWAHATI BENCH, GUWAHATI

1 DEC 2003

महाराष्ट्र राज्य न्यायालय

दस्तावेज़ नं ११०४

Filed by
Mr. M. C. Chaitanya 9/12/03
Advocate
Pradeep Kumar Singh

Central Personnel Office (CPO)
C.P. Mr. 1/2003
Guwahati

IN THE MATTER OF:-

O. A. 178/2003

Sri Alokananda Sarkar.

... Applicant

-Versus-

Union of India, represented by
the General Manager,
N.F. Railway & others

... Respondents

-AND-

IN THE MATTER OF:-

Written Statement for and on behalf of the
Respondents.

THE ANSWERING RESPONDENTS MOST RESPECTFULLY SHEWETH
AS UNDER:-

1. That, the answering respondents have gone through a copy of the applications filed and have understood the contents thereof. Save and except those statements which are specifically admitted herein below or those which are borne on records all other averments/allegations as made in the application are emphatically hereby denied and the applicant is put to the strictest proof thereof.
2. That, for the sake of brevity meticulous denied of each and every allegation/statement made in the application has been avoided. However, the answering respondents have confined their replies to those points/

allegations/averments of the applicant which are found relevant for enabling a proper decision on the matter.

3. That, the application suffers from want of a valid cause of action as will be clear from the submission made at relevant paragraphs below.

4. That, the application suffers from wrong representation and lack of understanding of the circumstances and facts relating to the matter on hand as will be clear from the submissions made

Parawise Submissions:

5. 5.1. That as regards para 4.1, the answering respondents have no comments except to state that the applicant is put to strict proof from records.

5.2. That, as regards para 4.2, the answering respondents have no comments to offer.

5.3. That, in regards to para 4.3, the answering respondents state that the procedure for selection of ACM (Group B) both against 70% vacancies as well as for 30% limited departmental examination (LDCE) as laid down ~~as~~ on all-India basis by the Railway Board. The examination is no doubt competitive and all candidates are given fair opportunity.

5.4. That, in regard to para 4.4, it is stated that as per record the applicant qualified in the written examination as claimed. However, as per procedure laid down by the Railway Board candidates for Group B selection have to get medical fitness certificate from the authorised medical authority before appearing in the viva-voce test. Vide letter No.E(GP)80/2/80 dated 31-10-91 Railway Board instructed that "only

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those who qualify in the medical examination of prescribed standard should be called for viva-voice."

A copy of this letter dated 31-10-91 is enclosed as
ANNEXURE - 'A'.

5.5. That, in regard to para 4.5, the answering respondents have to add that apart from the "unfit" certificate enclosed by the applicant as annexure 'B', the Senior Divisional Medical Officer, N.E. Railway, Alipurduar confirmed vide his letter No.H/219/1 (PME) dated 10-06-2003 that the applicant was unfit for promotion to Group-B (technical) category (Commercial), as per copy enclosed by the applicant.

5.6. That as regards para 4.6, the answering respondents state that the statement of the applicant that the work of Assistant Commercial Manager (ACM) is a non-technical service due to the job being of a sedentary nature and also not being connected with train running is not correct.

In this connection it is clarified that medical examination of Railway employees on promotion from non-gazetted to gazetted posts is governed by the Indian Railway Medical Manual. The latest Manual issued in 2000 (IRMM-2000 Ed.) provides that for promotion from non-gazetted to gazetted cadre posts have been divided into two categories (para 530 of IRMM) namely - (a) all posts in Mechanical, Electrical, Civil and Signal and Telecom Engineering and Traffic (Transportation and Commercial) Departments and (b) all posts in other Departments which are not connected with train running or use of trolley in open line. Apart from this, para 532 of IRMM prescribes that for category (a) posts colour

Contd..

Pradeep Kumar Singh
Assistant personnel m/o
By R. V. P.N. Mallick

✓
Pradeep Kumar Singh
Examiner (Medical)
Central Railway
Mumbai

perception "both ISHIHARA and E.G.L. should be normal." In other words for promotion from non-gazetted to gazetted posts in Traffic (Transportation and Commercial) Departments the candidate should be free from colour blindness. The logic behind this prescription is that in the Traffic Department of Railways a gazetted officer may be interchanged between the Transportation and Commercial Departments from time to time. Also quite often a commercial officer is required to go on footplate of engines and in trolleys and conduct such other safety duties related with running of trains. An individual who is colour blind will not be able to distinguish red from green and will be a serious safety hazard. The prescribed vision test related with colour vision qualification therefore, cannot be relaxed at any cost.

As regards medical fitness of proforma defendant Nos. 7 and 8 it is submitted that they were declared fit by the authorised medical authority for promotion to the post of ACM (Group-B). In their case they were declared fit after acuity/colour perception tests as per prescribed provisions of the IRMM.

5.7. As regards paras 4.7, 4.8 and 4.9, the answering respondents state that these describe the various stages through which the applicant went in course of his medical examination. These facts do not have any bearing as his unfitness on account of colour blindness.

5.8. As regards the statement made in para 4.10, it is stated that as per the applicant's appeal dated 16-06-03 the Chief Medical Director, N.E. Railway, Maligaon conducted a medical Board on 23-06-03 at Maligaon Central Hospital for reconsideration of the adverse medical report on the applicant. Unfortunately, the medical Board also found the

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applicant unfit. The applicant's statement that he was declared "fit for non-technical services" but "unfit for technical services" is not correct.

The medical Board re-examined the applicant keeping in view the provision of para 532 of IRMM according to which the colour perception of the candidate should be normal through both Ishiara and E.G.L. After the examination the report of the Medical examination at Alipurduar was reviewed and the Board concurred with the Alipurduar report and declared the applicant unfit for the same reason of colour blindness.

It is submitted in this connection that the contention of the applicant that the post of ACM (Group-B) is of non-technical nature is not acceptable as officers of both Transportation and Commercial Departments of Railways have been clubbed with departments such as Mechanical, Civil Engineering, Electrical and Signal Departments as per classification of para 532 of IRMM and in all these departments the colour perception of Group-B officers should be normal (i.e., free from colour blindness).

It is also submitted at this stage that in the Traffic Department of Railways, the seniority of Transportation and Commercial Group-B officers is COMBINED. Officers are interchangeable from one posting to the other. Thus an Assistant Commercial Manager may at certain times be required to perform the duties of an Assistant Transportation officer and vice-versa. Similarly, in the next higher grade (senior scale posting) an ACM may get promoted as Senior Transportation Officer and an ATM may be promoted as Senior Commercial Officer in the interest of work and of the officers of the cadre.

5.9. As regards the statements made in para 4.11, it is submitted that respondent No.6 had issued medical examination report on the

Contd..

President Unnati Singh
S/o. P. R. / Mangal
Dated: 11-12-2011

applicant in both standard form as also through a letter. It was subsequently found that medical examination reports on other candidates for the same examination were not of uniform format. For ensuring uniformity in the matter all the candidates were called for a medical examination in Maligaon Central Hospital and Medical Certificates duly issued. It is mentioned here that in this medical examination 12 candidates appearing for the LDCE examination for which the applicant appeared were examined on 31-07-2003 and 11 of them were declared fit and one candidate was declared unfit on account of colour blindness. Thus it is that both the applicant and the other colour blind candidate, namely one Shri Babul Chandra Brahma were not allowed to appear in the viva-voice test, strictly on authorised medical ground.

5.10. As regards para 4.12, it is submitted that the applicant was not allowed to appear in the viva-voice test as he failed in the medical tests conducted both at Alipurduar Railway Hospital as well as in Maligaon Central Hospital. This was in compliance with the instructions issued by the Railway Board as an All-India basis.

5.11. As regards the statement made in para 4.13 it is reiterated that medical examination of candidates for promotion from non-gazetted to gazetted service of Traffic (Transportation and Commercial) Department is guided by para 530 (a) of IRMM (2000 Edition). Para 532 of IRMM (2000 Edition) clearly prescribes that for Traffic (Transportation and Commercial) Department colour perception should be "Both ISHIHARA and E.G.L. should be normal". Satisfactory colour vision constitutes ability to recognise with ease, and without hesitation, signal red, signal green and signal yellow etc. Both ISHIHARA's PLATES

Contd..

and EDRIDGE's lantern shall be used for testing colour vision, as per prescribed procedure. It is submitted that there was no flaw in the medical examination procedure at the two centres.

5.12. As regards the allegation made in paragraph 4.14, the answering respondents state that the allegation of arbitrariness has no basis as the applicant was not allowed to appear in the viva-voice test as he failed in the medical test as per procedure prescribed by the Railway Board.

5.13. As regards para 4.15, the answering respondents have no remarks to offer.

5.14. As regards para 4.16, it is submitted that, for reasons indicated in remarks at paras 5.6 and 5.8 above the provisions of para 530 (a) of IRMM are very appropriate to ensure that colour blind individuals in non-gazetted cadre of the Transportation and Commercial Departments of Railway do not get promoted as Group-B Officers as that may affect safety in train running with serious implications on public safety. There should, therefore, be no question of meddling with this provision of IRMM.

5.15. As regards para 4.17, it is reiterated that medical examination for the post of ACM (Group-B) is guided by the statutory provisions of IRMM (2000 Edition) according to which visual acuity test and colour perception tests are compulsory for medical fitness.

Contd..

✓
Madup Kaur Singh (623)
Parvinder Singh (623)
Dr. B.R.V. / Maligaa

5g

Pradeep Kumar Singh
 Dy. Commr. Personnel Admin. (Army)
 A. D. M. R. / Maligaon
 Q. M. B.

5.16. As regards para 4.18, it is submitted that while issuing the relevant medical certificates declaring the applicant as unfit, the statutory provisions of IRMM (2000 Edition) were strictly followed. There is, therefore, no question about non-application of mind as alleged. There was also no question of discrimination of the applicant in issue of the medical unfitness certificate as the reasons were sound and in conformity with the codal provisions on the matter, equally applicable to one and all.

5.17. As regards para 4.19, it is submitted that a reply to the appeal submitted by the applicant was sent to the applicant vide General Manager (P), N. E. Railway, Maligaon letter No.E/254/11/COM-I Pt-IV(O) dated 19-08-2003.

A copy of this letter is submitted as ANNEXURE - 'B'.

It is certified that the letter gave reasons for not allowing the applicant to appear in the viva-voice test.

5.18. As regards paras 4.20 and 4.21, the answering respondents have no submission to make.

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VERIFICATION

I, Sri Pradeep Kumar Singh, aged about 36 years, son of B. H. Singh, at present working as Dy. Engg., N. E. Railway, do hereby solemnly affirm that the statements made in paragraphs are true to my knowledge and those made in paragraphs being matters of record are true to my information derived therefrom which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the day of November, 2003.

✓
Pradeep Kumar Singh
Designation.

By: Dy. Chief Personnel Officer (Class)
C. D. Rly. / J. G. G.
Dwarka-10

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

10. ANNEXURE A (S)

10.

No. E(GP)80/2/8

New Delhi, dt. 31-10-91

3

Pls
The General Managers,
All Indian Railways including
Production Units/Projects.

42

61

Sub: Appointment to Group 'B' post - Medical
Examination - relaxation in prescribed
standard.

Ref: This office letter of even number
dated 16.12.1983.

By C.R. (S)

The Board have been according approval to the ad hoc promotion of Group 'C' employees empanelled for Group 'B' posts & who do not pass prescribed medical examination, in a few cases recommended by the GMs, in terms of the instructions/procedure contained in their letter referred to above. The matter has been reconsidered in the light of the need to maintain a high standard of efficiency and fitness of the officers at gazetted levels. In supersession of the instructions contained in their letter dated 16.12.1983, the Board have decided that the Group 'C' employees qualifying in the selections for promotion to Group 'B' posts but not passing the prescribed medical standard should not be promoted to Group 'B' even on ad hoc basis. Accordingly, the proposals for such ad hoc promotions need not be sent to this office henceforth.

2. It has also been decided that the names of the candidates who do not pass the prescribed medical standard should not be included in the panel. Accordingly, only those who qualify in the medical examination of prescribed standard should be called for viva-voce.

Please acknowledge receipt.

Kohli

(R.R.Kohli)
Director, Establishment (Gen. P.)
Railway Board.

CC/FO
by off

Baker B7
SP/
12/11
Copy to: The General Secretary, AIRF, 4, State Entry Road,
New Delhi (with 35 copies).
The General Secretary, NFIR, 3-Chelmsford Road,
New Delhi (with 35 copies).

Shri K. Hasan, General Secretary, Indian Railway
Class. II Promotee Officers Federation, 715-A,
Railway Stadium Colony, Gorakhpur. 273 012.

N.F.RAILWAY

43
9/8
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Office of the
General Manager (P),
Maligaon, Guwahati -11.

No. E/254/11/COM-I Pt.IV(O)

Dated: 11.08.2003

To
Shri Alakananda Sarkar,
Instructor/Commercial/ZTC,
N.F.Railway, Alipurduar Jn.

(Through: Principal ZTC/APDJ)

Sub: Appeal for consideration to appear before the viva-voce test of
ACM Group-'B' 30% vacancy and consideration for the post itself.

Ref: Your appeal-dated 04.07.2003.

In the viva-voce test for the post of ACM (Group-'B') against 30% LDCE held on 25.06.2003, all the 13 candidates were advised to attend for the same, with clear advice that they will be allowed to appear in the viva-voce test, subject to submission of their Physical Fitness certificate.

2. Since you were found 'UNFIT' for promotion to the Group-'B' service in Technical Category in Commercial Department, with **Colour Blindness** by the Divisional Medical Authority and on appeal to CMD for Special Medical Examination, you were found 'UNFIT' again for Technical Category of Group-'B' post, through a Special Medical Examination by a Medical Board at Central Hospital, Maligaon on 23.06.2003, vide CMD/MLG's confidential letter No. H/SS/82 dated 24.06.03, you were not allowed to appear in the viva-voce test held on 25.06.2003, in terms of Railway Board's instructions contained in their letter No. E(GP)80/2/8 dated 31.10.91. Accordingly, you were directed to report to your Controlling Officer vide this office letter of even number dated 27.06.2003.

3. However, in the context of your appeal dated 04.07.2003 the cases of S/Shri Tapash Ch. Paul, Hd.GC/NBQ at BRPL and Shashi Mohan Basumatary, CCM/ NBQ, who were allowed to appear in the viva-voce test held on 25.06.2003, were further reviewed by the administration, subjecting them to appear before a Special Medical Examination by a Medical Board at Central Hospital, Maligaon on 31.07.2003, to have an uniformity of Medical Fitness in prescribed standard in terms of provision of Para - 530 of Indian Railway Medical Manual, 2000 Edition (which is in modification of earlier IRMM of 1981 Second Edition), before being finally empanelling the qualified candidates in the viva-voce test held on 25.06.2003, for the post of ACM/Group-'B'.

4. Since you were found 'UNFIT' for Technical Category of Group-'B' post by the respective medical authorities, as mentioned above the administrative action of NOT ALLOWING you in the viva-voce test held on 25.06.2003 in terms of Railway Board's letter dated 31.10.91, was in order.

5. This disposes your appeal-dated 04.07.2003.

V.K.Singh
11/8/03
(P.K.SINGH)
Dy.CPO/Gaz.
For General Manager (P).

3rd. Oct.

In The Central Administrative Tribunal

Guwahati Bench at Guwahati.

O.A. No. 178/2003

Sri Alokananda Sarkar

Vs.

U.O.I. & Ors

In the matter of :

Rejoinder in reply to the Written Statement

The humble applicant most respectfully beg to state as under :

1. That the applicant has gone through the Written Statement filed by the respondents and understood the contents thereof.
2. That in reply to the statements in Written Statement the applicant reiterates the statement in the O.A. and does not admit any statement which are not supported by records.
3. That in reply to the statements in para 5.4 it is stated that the stand of the respondents on the circular dated 30.10.1991 is not tenable in as much as it violates the mandatory provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (herein after referred to as the ACT of 1995) and also the specific provisions of the Indian Railway Establishment Rules (for short IREM). The said letter is mere an administrative instruction and has no overriding effect on the mandatory provisions of the aforesaid ACT and Rules. The said letter dated 31.10.1991 is also very vague, abstract and cryptic.

Filed by the applicant
through S. Chakraborty
3/2/2004

4. That in reply to the statements in paragraph 5.5 it is stated that the applicant was declared unfit for promotion to Group-B services in technical categories only. The medical certificate (Annexure-B to OA) does not debar the applicant for promotion to the Group-B services in Commercial Department which are termed as non-technical services. The employees of Commercial Department in Railways do not fall under the safety category nor their services are of technical in nature.

5. That in reply to the statement in paragraph 5.6 it is reiterated that the post of Assistant Commercial Manager is non-technical service and they perform jobs of sedentary nature and their services are not connected with train running. The applicant denies the correctness of the statement that the candidate should be free from colour blindness and the commercial officer is required to go on foot plate of engines and in trolleys and conduct such other safety duties. In this context the applicant begs to state that the operating and safety staff under the Traffic Department are altogether different from the commercial staff under the same department. The goals, functions, trainings and standard of medical examinations of the operating and safety staffs are different from the commercial staffs. The commercial staffs have no duty with the running of train or trolley and hence stands of Railways on the ground of safety is not tenable. The applicant begs to cite an example to support the above statement. For instance, the Railway Wagons are operated by the operating department but it is the duty of the commercial staff to

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look after whether the wagons are loaded and sealed properly and evenly. Safety as to this aspect only is on the commercial department. It is further denied the correctness of the statement that commercial officers are required to go on foot plate of engines and in trolleys. In actual practice also the Railways do not follow this. It is stated that under the Rules foot plate inspection official are defined and the ACMS are not included therein. The training of signaling are only given to the operating staffs and not to the commercial staffs.

The applicant denies the submission of the respondents that proforma respondent No.7 and 8 were declared fit by the medical authority after acuity/colour perception test. The applicant humbly prays that the Hon'ble Tribunal be pleased to call for the medical record which will speak the truth.

6. That in reply to the statements in para 5.8 it is stated that the respondents have acted with a close mind against the applicant. It is reiterated that the medical test through Ishara and EGL is not required, and the colour perception test has been dispensed with by the respondents in all occasions in the matter of promotion to Group-B posts of ACM even after publication of IRMM in 2000 and officers were/are declared fit in class C/1.

The applicant denies the correctness of the statement that an ACM may be required to perform the duties of an ATM. The Railways also do not adopt such practice since such a practice shall endanger the safety of Railways. It is stated that ACMS are not trained like ATMs and they

have no academic knowledge nor they have any practical training regarding works with the running of trains. There is also no such provisions of providing training to the ACMs. It is further stated that the selections for ACMs and AOM/ATMs are held separately and hence there is no nexus of maintaining combined seniority of Transportation and Commercial Group-B officers with the selection of ACMs.

7. That in reply to the statements in para 5.9 it is stated that the respondents have admitted in the said para that they have allowed other candidates in the viva voce test with medical fitness certificates in class C/1 (which do not require colour perception test) except the applicant and one Sri B.C. Brahma. The other candidates were medically re-examined after holding the viva voce test.

8. That in reply to the statements in para 5.10 it is denied that the applicant failed in the medical test. It is reiterated that the Medical Authority declared the applicant unfit for promotion to Group-B service in TECHNICAL CATEGORIES ONLY. It is submitted that the services of ACM is a non-technical Class-II services which are not connected with the train working or use of trolleys.

9. That in reply to the statements in para 5.11 it is stated that the respondents have misconceived the provisions of IRMM. It is denied that colour perception should be "Both ISHIHARA and EGL should be normal". In fact the colour perception test is not required in class B/2, C/1 and C/2. It is also stated that the work of ACMs do not

require to read signals nor they are give any training for the same.

7. That in reply to the statements in para 5.14 the applicant denies the correctness of the statements made in the said para. The applicant begs to state the following for appraisal of the Hon'ble Tribunal which shall make it clear that the post of ACMs is a non-technical services.

Commercial Department is responsible for the sale of transportation provided by Railways; for creating & developing transportation, securing and maintaining friendly relation with traveling and trading public; for efficient working of the catering; for settlement and prevention of claims; for fixing rates, fares etc., and for maintaining and smooth functioning of computer reservation system. The principal head of the department is the Chief Commercial Manager who is a co-ordinating officer in all commercial matter and is responsible to the General Manager for commercial policy, for efficient working of commercial department of the Railways. He is assisted by the following officers :

1. **CCM/General & Passenger Service :** He is responsible for sale of transport and proper accountal and remittance of earnings and dealing with general matter such as passenger ticket, ticket less traveling, enquiry officer, reservation, booking of luggage & parcel, contract etc.

2. **CCM/Freight and Marketing :** His functions are to have close liaison with marketing, research, competition by the road transportation, creating and developing transportation

& securing and maintaining friendly relation with traveling and trading public.

3. CCM/Rates & Planing : His main function is fixing rates, fares, refunds and other charges.

4. CCM/Catering : He is responsible for efficient working of departmental catering, catering arranged by contract, station vending etc.

5. Chief Claims Officer : He is responsible for settlement and prevention of claims.

6. CCM/ Computer Reservation : He is responsible for managing the affairs of the computer reservation systems in the Railways.

Apart from the above, Officers in Junior Administrative Grade, Senior scale and Assistant Commercial Manager (ACM) are attached to the commercial department to carry out its functions. The following are the ACMs who are attached to the commercial department to assist the above said top officers :

- 1) ACM/General : He assists in the functions of CCM/General & Passenger Service & CCM/Rates & Planning
- 2) ACM/Public Officer: He Assists in the functions of CCM/Freight & Marketing
- 3) ACM/Catering : He Assists in the functions of CCM/Catering

4) ACM/Claims :: He Assists in the functions of Chief Claims Officer.

5) ACM/PRS(Passenger Reservation System):: He Assists in the functions of CCM/Computer Reservation.

8. That in reply to the statements in para 5.15 to 5.17 it is stated that the respondent Railway authorities have acted against the applicant with a close mind and discriminated the applicant with others. The Railway authorities have also violated the Rules of IRMM and IREM and the specific provision of the Act of 1995. They have disposed of the appeal of the applicant without considering the actual points raised thereon and have passed the non-speaking order dated 14.8.2003 in a sloth shod manner and without application of mind.

Verification.....

Verification

I, Alokananda Sarkar, son of Sri Bhabananda Sarkar, aged about 47 years, resident of Alipuduar Junction, do hereby verify that the statements made in the above rejoinder are true to my knowledge and belief.

And I, sign this verification on this 10th day of January, 2004.

Alokananda Sarkar

Date 3/2/04
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From
A. Chakrabarty
Advocate

To
Mr. M.C. Somra
By Advocate

Sub: Rejoined in OA no. 178/2003

Dear Sir,
Please receive copy of the Rejoined
in OA no. 178/2003 for your own use.

Yours sincerely

A. Chakrabarty
Advocate

I undertake to
serve copy upon
the counsel of the respondent.

A. Chakrabarty