

501/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Franklin
01/11/17

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

ORDER SHEET

Original Application No. 61/05

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicants: B.C. Delta 2008

Respondents U.O.I. 2008

Mr K.N. Choudhury

G. Rahul & S. Das

Advocates for the Applicant Mr. I. Choudhury

Advocates of the Respondents

Railway Counsel - S. Sengupta

Notes of the Registry Date

3.3.05.

Order of the Tribunal

Present: Hon'ble Mr. Justice G. Siva-
rajan, Vice-Chairman.

Hon'ble Mr. K.V. Prahladan, Administra-
tive Member.

The learned counsel for the
Respondents seeks time for instruc-
tions. Post the case on 18.3.05
to get instructions.

Govardhan
Member

G. Raju
Vice-Chairman

18.03.2005

Present : The Hon'ble Mr. Justice
G. Sivaranjan,
Vice-Chairman.

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

Heard Mr. G. Rahul, learned
counsel for the applicants and
also Mr. S. Sengupta, learned
standing counsel for the Railways.
Learned standing counsel for the
Railways has placed before us
a communication dated 11.05.2004
and submitted that though the

Contd/-

Contd/ - 1

18.03.2005 applicants were found fit and eligible for alternative employment due to ban on employment in the said category they are have not been given employment. In the circumstances, we direct the respondents to show cause as to why the application shall not be admitted.

List on 12.4.2005. Reply, if any, in the meantime.

K. V. Prahledan
Member (A)

✓
Vice-Chairman

Notice & order
sent to D/section
for issuing to
resp. Nos. 1 to 4
by regd. A/D post.

✓
23/3/05

Notice duly served
on resp. No - 4.

12.4.2005 Present : The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.
The Hon'ble Mr. K. V. Prahledan
Administrative Member.

Heard Mr. G. Rahul, learned counsel for the applicant and also Mr. S. Sengupta learned counsel for the respondents.

Learned counsel for the respondents has produced certain communication. Learned counsel for the applicant submits that respondents may be directed to file written statement. Hence the application is admitted. The respondents are directed to file written statement within three weeks.

List on 10.5.2005.

K. V. Prahledan
Member (A)

✓
Vice-Chairman

10.5.2005 Mr. G. Rahul, learned counsel for the applicant is present. Mr. S. Sengupta, learned counsel for the Railways submits that some more time may be granted for filing written statement. Post on 1.6.2005.

K. V. Prahledan
Member

✓
Vice-Chairman

(3)

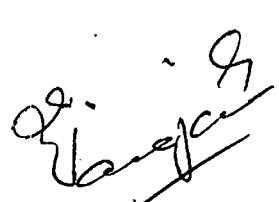
3

Office Notes	Date	Order of the Tribunal
No written statement filed by the respondents.	01.06.2005	Mr. G. Rahul, learned counsel for the applicant is present. Mr. S. Sengupta, learned counsel for the Railways submits that some more time is required for filing written statement. Post on 23.6.2005. No further time will be granted for written statement.
<u>26.6.05</u> Wts submitted by the Respondents.	26.6.05	K. D. Dandekar Member
<u>28.6.05</u>	23.6.2005	Mr. G. Rahul, learned counsel for the applicant is present. Mr. S. Sengupta, learned counsel for the Railways seeks adjournment. Post on 21.7.2005.
No. Rejoinder has been filed.	21.7.2005	Mr. G. Rahul, learned counsel for the applicant seeks time to file rejoinder. Already one month time is over since the filing of the written statement. Post for hearing on 11.08.2005. Rejoinder, if any, in the meantime.
<u>10.8.05</u>	11.08.05	K. D. Dandekar Member
① Wts has been filed. ② No Rejoinder has been filed.	4-10-05	This was a leave adj. by me on 27.8.05.
	9-10-05	

5.10.2005 Mr. G. Rahul, learned counsel for the applicants seeks for adjournment. Mr. S. Sengupta, learned counsel for the railways submits that he is ready to urge the matter. However, post on 23.11.2005.



Member



Vice-Chairman

mb

23.11.2005 This case, O.A. 1/2005 and O.A. 49/05 are connected matters. Mr. S. Sengupta, learned Railway counsel is present. Post on 10.1.2006.

9-1-06

① Writ has been filed.
② No Response has been filed.

bb

10.01.2006 Post before the next Division Bench.



Vice-Chairman



Vice-Chairman

mb

07.08.2006 Post on 09.08.2006 at the request of learned counsel for the applicant.



Member



Vice-Chairman

mb

9.8.2006

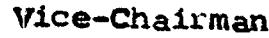
Heard learned counsel for the parties. Hearing concluded. Order passed kept in separate sheets.

The O.A. is disposed of in terms of the order. No costs.



Member (A)

bb



Vice-Chairman

17.8.06
C. Copy has been
collected by the L/AD
for the applicant

17
Received the copy
on behalf of RA
Sri S. Sengupta by
CIA (A.K.)
21-08-06

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No. 61 of 2005

DATE OF DECISION 09.08.2006

Sri B.C.Das & 2 Othrs

.....Applicant/s

Shri G.Rahul

.....Advocate for the
Applicant/s.

- Versus -

U.O.I. & Ors.

.....Respondent/s

Mr.S.Sengupta, Railway Counsel

.....Advocate for the
Respondents

CORAM

THE HON'BLE MR. K.V. SACHIDANANDAN, VICE CHAIRMAN

THE HON'BLE MR. GAUTAM RAY, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether to be forwarded for including in the Digest Being complied at Jodhpur Bench? Yes/No
4. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

Vice-Chairman/Member (A)

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 61 of 2005.

Date of Order: This, the 9th Day of August 2006.

THE HON'BLE SRI K.V. SACHIDANANDAN, VICE CHAIRMAN
THE HON'BLE SRI GAUTAM RAY, ADMINISTRATIVE MEMBER

1. Sri Bipin Chandra Deka
S/O Kabindra Deka
Resident of Sankarnagar, Noonmati
Guwahati-20.
2. Sri Pranabjyoti Khanikar
S/O Late Srikanta Khanikar
Resident of Khanikar Gaon
P.O: Sarupathár
Dist: Golaghat.
3. Sri Mukul Das
S/o Sri Mukula Das
Resident of Village: Chechamukh
P.O: Haibargaon, Dist: Nagaon
Assam.

Applicants

By Sr. Advocate S/Shri K.N.Choudhry & Advocates
I.Choudhury, G.Rahul & S.Das.

- Versus -

1. The Union of India.
Represented by the Ministry of Railways
Government of India.
2. General Manager (P)
N.F.Railway, Maligaon
Guwahati -11.
3. The Divisional Railway Manager (P)
N.F.Railway
Alipurduar.
4. Railway Recruitment Board
Represented by its Chairman
Station Road, Guwahati-01.

Respondents.

By Mr. S. Sengupta, Railway Counsel.

O R D E R

SACHIDANANDAN, K.V. (V.C.)

The applicants, three in numbers, originally applied for the post of Diesel Assistant Driver (DAD in short) in response to the Employment Notice dated 01.10.1996. They appeared in the written, psychological and viva-voce tests and have qualified in all except in medical test so conducted by the respondents. In the medical test it is stated that they are not qualified to the category for which advertisement were made. Thereafter, vide letters all dated 20.2.2003 at Annexure-C Series applicants were again asked to appear in the re-medical examination for assessing their fitness for alternative appointment. The applicant were re-examined medically and found medically fit for alternative appointment. But thereafter nothing was heard. Applicants contend that since they have already qualified in the tests held earlier also been found medically fit subsequently, they are entitled for grant of alternative appointment. Hence, this Original Application seeking for the following reliefs:-

8.1 Direct the respondent authorities to absorb/applicants in any other alternate posts to which they are found medically fit pursuant to their re-medical examination conducted in March 2003.

(ii) Cost of the application.

(iii) Any other relief(s) may be entitled to under the facts and circumstances of the case and/or as may deem fit and proper considering the facts and circumstances of the case."

2. The respondents have filed a detailed written statement contending that applicant that the privilege for extending the benefit of alternative appointment has been withdrawn in 2001. No appointment order was issued to the applicant so their claim that they are entitled to alternative appointment cannot be accepted. In terms of the previous letter dated 20.8.1999 issued by the Railway Board there was a provision for considering the cases of medically unfit DADs against alternative posts, in equivalent grade, provided they fulfill other requirements of the alternative posts and also vacancies exists and General Managers of the Zonal Railways could consider such appointments on consideration of each individual case records. As such, divisional authorities were required to keep all details/particulars ready for future use, if required. These Railway Board's letters do not give any guarantee for appointment to any post to the medically unfit persons. Therefore, in view of the Railway Board's policy decision of 2001 there is no scope

for engaging any medically unfit personal in other category posts on the basis of their selection in other posts like DADs etc. and candidates selected for the category of Assistant Driver will not be eligible for any alternative appointment if they fail in the final medical examination before appointment.

3. We have heard Mr. G. Rahul, learned counsel for the applicant and Mr. S. Sengupta, learned Railway counsel for the respondents. Counsel for the parties have taken our attention to various pleadings, evidence and materials placed on record and we have given due consideration to the same. Counsel for the applicants submits that since the applicants have passed in the written, psychological and viva-voce tests and also in the re-medical examination, they are entitled for alternative appointment. The Railway counsel, on the other hand, submits that since no such rule for alternative appointment is in existence now, therefore, their case could not be considered for alternative appointment.

4. It is borne out from the records that the advertisement was of 01.10.1996, result of the interview was published on 09.01.1998, the applicants were medically tested and was found unfit for DAD, subsequently they were again asked to appear for re-

medical examination for alternative appointment on 20.02.2003 in which they were found fit. Counsel for the applicants has drawn our attention to Annexure-I of the reply statement, a copy of the Railway Board letter dated 20.08.1999, wherein it was stated that the General Manager has the authority to consider the requests from the candidates empanelled by RRBs but failing on prescribed medical test for alternative appointment. The Railway counsel, on the other hand, took our attention to Annexure-II of their reply statement wherein it has been specifically clarified that selected candidates for Asstt. Driver/ ASM/Motorman, if fail in the final medical examination, will not be eligible for alternative appointment. For better appreciation, paragraphs 4 & 5 of the said letter is reproduced below:-

"4. Candidates selected for the category of Assistant Driver/ASM/Motorman will also not be eligible for any alternative appointment if they fail in the final medical examination conducted by the Railway before appointment, for any reason.

5. The fact that candidates who fail in the Medical examination for these categories will not be eligible for any alternative appointment on the Railways should be mentioned clearly in the employment notice so as to discourage those candidates who do not fulfill the medical requirements from applying.

5. Now, the issue centers round the question as to whether the applicants have got legal right for getting alternative appointment since they have been re-medically

examined and found fit for alternative appointment.

Referring Annexure-2 learned Railway counsel contends that as per policy decision of the Railways such alternative appointment has been stopped. It is apparent that the Annexure-2 letter is issued by the Railway Board, Ministry of Railways, way back on 04.09.2001 but the applicants have been called for re-medical examination on 20.02.2003. The Railway counsel submits that aforesaid letter was communicated to respondents' office only on 08.04.2003, and therefore, the applicants were re-medically examined inadvertently. Counsel for the applicant, on the other hand, submits that since the advertisement was issued in 1996 and selection was done in 1998, the 2001 circular is not applicable in the applicant's case as the same has no retrospective effect, and therefore, the case of the applicants should have been considered by the respondents for alternative appointment in terms of prevailing rules as on 1998 during which the General Manager had ample power to consider such appointment, which was not done in this case. Counsel further argued that re-medical examination of the applicants after issuance of Annexure-2 circular suggests that respondents are considering applicants' case with reference to old rules.

6. However, considering the entire aspects and upon hearing learned counsel for the parties, we are of

the opinion that applicants' case deserves sympathetic consideration. Therefore, we direct the applicants to make individual comprehensive representations pinpointing all these matters before the second respondent within one month from today and on receipt of such representations, the second respondent will consider the same or if he is not competent to consider such matters, will refer the same to the fourth respondent for taking a final decision passing appropriate orders communicating the same to the applicants within a time frame of three months thereafter.

The Original Application is disposed of as above. In the circumstances, no order as to costs.



(GAUTAM RAY)
ADMINISTRATIVE MEMBER



(K.V. SACHIDANANDAN)
VICE-CHAIRMAN

/bb/

Central Administrative Tribunal
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

3 MAR 2005
GUWAHATI BENCH, GUWAHATI

Guwahati Bench
ORIGINAL APPLICATION NO. 37 OF 2005

LIST OF DATES/SYSNOPSIS

0610.1996

The Respondent No. 4 i.e., the Railway Recruitment Board vide its Employment Notice dated 01.10.1996 invited applications from eligible candidates for the post of Diesel Assistant Driver.

The applicants applied for the same and were issued interview call letters/admit cards by the Respondent No. 4.

(Annexure - A Series, Page 9-12)

09.01.1998

The Respondent No. 4 published the results of the said interview.

06.02.1998

The Respondent No. 3 directed the applicants to appear for the medical tests.

(Annexure - B series, Page 13-16)

The applicants appeared in the medical test and were found to be unfit for the post of Diesel Assistant Driver.

20.02.2003

The Respondent No. 3 advised the applicants to appear for further medical test for assessing their fitness for alternative appointment.

(Annexure - C series, Page 17-19)

04.03.2003

The Respondent authorities took a policy decision to absorb the applicants in any other alternative jobs as per their medical fitness.

✓ The respondent No. 3 directed for re-medical examination of the applicants.

(Annexure - D, Page 20)

The applicants were re-examined by the respondent authorities and were found to be medically fit for alternative job.

(Annexure - E series, Page 21-23)

Pursuant to their re-medical examination conducted in the month of March, 2003 the Respondent authorities have not taken any positive steps for absorbing the applicants in alternative job.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No. 61 of 2005

Sri Bipin Chandra Deka & Ors.

-Versus-

The Union of India & Ors.

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Filed by
(Mr. Gautam Rahul)
Advocate

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH, GUWAHATI

(An Application Under Section 19 of the Administrative Tribunal Act, 1985)

Filed by
JAC Applicant
through
Mr. Gr. Rahul
Advocate
02/03/05

ORIGINAL APPLICATION NO. 61 OF 2005

BETWEEN

1. Sri Bipin Chandra Deka
Son of Kabindra Deka
Resident of Sankarnagar, Noonmati
Guwahati – 20
2. Sri Pranabjyoti Khanikar,
Son of Late Srikanta Khanikar
Resident of Khanikar Gaon,
P.O. Sarupathar,
District – Golaghat.
3. Sri Mukul Das
Son of Sri Mukula Das
Resident of Village – Chechamukh
P.O. – Haibargaon, District – Nagaon, Assam.

APPLICANTS.

-AND-

1. The Union of India,
Represented by the Ministry of Railways
Government of India.
2. General Manager (P),
N.F. Railway,
Maligaon, Guwahati – 11.
3. Divisional Railway Manager (P),
N.F. Railway,
Alipurduar.
4. Railway Recruitment Board, Guwahati
Represented by its Chairman
Station Road, Guwahati – 781 001

RESPONDENTS

Bipin Chandra Deka

DETAILS OF APPLICATION

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

The instant application is directed against the impugned action of the Respondent authorities in refusing to absorb the applicants in alternative jobs (Technical/Non-technical) as per their medical fitness in terms of the Order dated 04.03.2003 issued by the Respondent No. 3 herein.

2. JURISDICTION OF THE TRIBUNAL:

The Applicants declare that the subject matter in respect of which the application is made is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION:

The Applicants further declare that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE :

4.1 That the Applicants are citizens of India having their permanent residences within the State of Assam and are as such entitled to all the rights, privileges and protections guaranteed to the citizens of India under the Constitution of India and the laws framed thereunder. The applicants have a common and identical cause of action and as such have approached this Hon'ble Tribunal by filing a common Original Application.

4.2 That the Respondent No. 4 herein, i.e. the Railway Recruitment Board, Guwahati, vide its Employment Notice No. 2/96 dated 01.10.1996 published on 06.10.1996 invited applications from eligible candidates for the posts of Diesel Assistant Driver alongwith other posts. The applicants who were otherwise qualified for the said post individually applied for the same.

The applicants crave leave of this Hon'ble Court to refer to and rely upon the said Employment Notice

Bipin Debnath

No. 2/96 dated 01.10.1996 at the time of hearing of the instant case.

4.3 That in response to the aforesaid applications so submitted by the applicants herein the Respondent No. 4 issued the interview call letters alongwith admit cards etc. in favour of the applicants. Accordingly, the applicants appeared in the written, psychological and viva-voce tests so conducted by the Respondent No. 4

Copies of the interview call letters are annexed herewith and marked as ANNEXURE – A series.

4.4 That pursuant to the aforesaid tests, the Respondent No. 4 published the results of the same on 09.01.1998. All the applicants herein came out successfully in the said tests and were invited by the Respondent No. 3 vide letter dated 06.02.1998 to appear for the Medical Test. The said letter also categorically disclosed the fact that appointment letters for the post of Diesel Assistant Driver shall be issued upon successfully clearing the Medical Examination and in the meantime the candidates would be treated to be on probation for a period of 12 months.

Typed copies of the aforesaid letter dated 06.02.1998 are annexed herewith and marked as ANNEXURE – B series.

4.5 That the applicants had appeared in the Medical Examination conducted by the Respondent authorities and after undergoing all the tests they were found to be Medically unfit for the post of Diesel Assistant Driver.

4.6 That it is pertinent to state herein that although the applicants were found to be Medically unfit for the job of Diesel Assistant Driver, yet, they were otherwise fit for any other alternative appointment in the Railways. Considering this aspect the Respondent No. 3, vide letters dated 20.02.2003 advised the applicants to appear for further Medical Tests for assessing their fitness for alternative appointment.

Copies of the aforesaid letters dated 20.02.2003 are annexed herewith and marked as ANNEXURE – C series.

4.7 That thereafter the Respondent authorities took a policy decision to absorb the applicants in any other alternative jobs (Tech/Non-Tech.) as per their medical fitness. This is reflected by the letter under No. E/233/Mech./APTT/AP/DAD/Pt.I dated 04.03.2003 issued by the Respondent No. 3 herein to CMS/APDJ wherein the Respondent No. 3 directed the Re-medical Examination of the applicants alongwith 2 other candidates in order to absorb them in any other posts to which they would be found to be medically fit.

A copy of the aforesaid letter dated 04.03.2003 is annexed herewith and marked as ANNEXURE – D.

4.8 That thereafter the applicants were re-examined medically by the Respondent authorities and were found to be medically fit for alternative jobs.

Copies of the medical test certificates issued by the Respondents in favour of the applicants are annexed herewith and marked as ANNEXURE – E series.

4.9 That the applicants herein were all along made to believe that they would be absorbed in any alternative jobs by the Respondent authorities pursuant to their Re-medical Examination conducted in the month of March 2003. But till this date the Respondents have most deliberately and willfully refused to absorb the applicants.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

5.1 For that the Respondent authorities have acted in a manner contrary to their own decision by not considering the cases of these applicants herein for appointment to alternative posts till this date. The communication dated 04.03.2003 (Annexure – E) itself is self-explanatory in this regard. The respondents have themselves considered the applicants to be fit for other jobs apart from the job of Diesel Assistant Driver and as such had directed for their re-medical examination.

5.2 For that the Respondent authorities had on their own behalf directed the applicants to appear in the re-medical examination and had intimated them that they would be absorbed in alternative jobs. The applicants upon the

bonafide belief and faith had appeared in the same and were duly declared to be fit for alternative posts. As such, upon such legitimate expectation of being appointed by the Respondent authorities, the applicants have not applied for any other job till this date and have forgone several other employment opportunities.

5.3 For that the Respondent authorities have acted in an illegal, arbitrary, malafide and unreasonable manner in refusing to appoint the applicants till this date in terms of their policy decision. Such refusal on the part of the Respondents have highly prejudiced the applicants, as they have been kept in the dark since March, 2003.

5.4 For that the actions of the Respondents apart from being illegal, arbitrary and malafide are violative of the applicants' fundamental rights as guaranteed under Articles 14, 16 and 21 of the Constitution of India.

5.5 For that as has already been mentioned hereinabove the respondents have already conducted written psychological and viva-voce tests upon the applicants and have found them to be eligible for jobs in the Railways. As such, when the applicants were found to be unfit in the medical test conducted for the post Diesel Assistant Driver the applicants were re-examined medically in order to absorb them in alternate posts. Such action on the part of the Respondents have led to bonafide and legitimate having accrued in favour of the applicants.

5.6 For that the very fact that the applicants were subjected to further medical test for assessing their fitness for alternative appointment and the issuance of the letter dated 04.03.2003 clearly goes to show that there existed and still exist certain vacancies in posts against which the applicants can be accommodated. It was in the backdrop of these facts and circumstances that a decision was taken to absorb/appoint the Applicants in posts for which they are found medically fit. As such, the action of the Respondents in failing to appoint the applicants in posts commensurating with their qualification and medical fitness is ex-facie illegal, arbitrary, malafide, unfair, unreasonable and capricious. The applicants have been discriminated against without any reasonable basis or justification. There has apparently been a mechanical approach to the issue at hand in total disregard to the rights guaranteed to the applicants under Articles 14 and 16 of the Constitution of India.

Bipin Chakraborty

5.7 For that by subjecting the applicants to further medical tests for assessing their fitness for alternative appointment coupled with the issuance of the letter dated 04.03.2003, the Respondents held out a clear and unequivocal promise to the applicants. On such promise being held out, the applicants have been made to believe that appointment orders/letters would be issued shortly in their favour. On such belief, the applicants have forgone several employment opportunities that arose since March 2003 and as such have altered their position. Under these circumstances the Respondents are estopped from taking a different stand and/or to refuse to appoint the applicants in posts commensurating with their qualifications and medical fitness in the light of the settled principle of promissory Estoppel.

5.8 For that the actions taken by the respondents to re-examine the applicants medically have been so resorted to in view of some existing vacancies in the alternate posts. As such, the applicants have got a *prima facie* case in their favour. The applicants shall suffer irreparable loss and injury if the posts in which the applicants were supposed to be appointed are filled up by any other persons. The balance of convenience is strongly in favour of the applicants herein and thus it a fit case where this Hon'ble Tribunal may be pleased to grant appropriate interim reliefs to the applicants.

5.9 For that this application is filed bonafide and in the interest of justice.

6. DETAILS OF REMEDIES EXHAUSTED :

The Applicants declare that they have no other alternative and efficacious remedy available to them except by way of this instant application.

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

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

8. RELIEF SOUGHT FOR :

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

- 8.1 Direct the respondent authorities to absorb/appoint the applicants in any other alternate posts to which they are found medically fit pursuant to their re-medical examination conducted in March 2003.
- 8.2 Cost of the application.
- 8.3 Any other relief(s) that the applicants may be entitled to under the facts and circumstances of the case and/or as may deem fit and proper considering the facts and circumstances of the case.

9. INTERIM ORDER PRAYED FOR :

Pending final decision on the application, the applicants seek the following interim relief:

Not to fill up those posts which the respondents had decided to fill up with the applicants if they were found to be medically fit for the same, without the applicants herein.

The application is filed through Advocate.

10. PARTICULARS OF THE I.P.O :

- (i) I.P.O No. : 20GJJ64JJ
- (ii) Date : 28.02.2005
- (iii) Payable at : Guwahati.

11. LIST OF ENCLOSURES:

As stated in the index.

VERIFICATION

I, Sri Bipin Chandra Deka, aged about 34 years, Son of Sri Kabindra Deka, Resident of Sankar Nagar, Noonmati, Guwahati - 20, do hereby solemnly affirm and verify that I am the Applicant No. 1 in the instant application and as such, I am fully conversant with the facts and circumstances of the case. The statements made in paragraphs 1 to 3, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.8 and 4.9 are true to my knowledge and those made in paragraphs 4.7

— are true to my information derived from records, 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 2nd day of March, 2005 at Guwahati.

Bipin Ch. Deka.
SIGNATURE OF THE APPLICANT.

RAILWAY RECRUITMENT BOARD :: GUWAHATI

UNDER CERTIFICATE OF POSTING/1997

Station Road
Guwahati - 781001

Date: 16/02/97

No. RRB/G/41/

- 9 -

ANNEXURE - A Series

To,

Shri/Smt.

BIPIN CHANDRA DEKA

Your ROLL NUMBER is **12110213**



This is your CALL LETTER/ADMIT CARD.

Chairman
Guwahati
Railway Recruitment Board
Guwahati - 781001

For the written examination for the post of

APPR. DIESEL ASBTT. DRIVER

IN SCALE of Rs. **950-1500** under Employment

NOTICE No. **2/96** CATEGORY No. **01** on the NORTHEAST FRONTIER RAILWAY.

PROGRAMME OF WRITTEN EXAMINATION IS AS GIVEN BELOW:-

DATE	DAY	TIME	VENUE
08/06/97	SUNDAY	10:00-12:30 HRS	Buwahati Refinery High School Noonmati, Guwahati - 20.

The following terms and conditions must be noted for strict compliance.

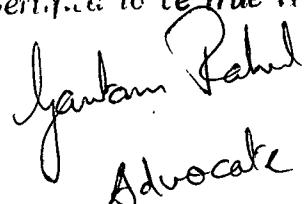
1. You will not be admitted to this written examination without this CALL LETTER/ADMIT CARD and does not itself give any entitlement for selection.
2. Your candidature has been accepted provisionally and is subject to check and fulfillment of all conditions laid down in the said Employment Notice.
3. If you do not fulfill the conditions as laid down in the said Employment Notice, please ignore this CALL LETTER/ADMIT CARD and do not appear.
4. Only the successful candidates in the written examination will be called for the VIVA-VOCE TEST.
5. You are to defray your own travelling expense (for UR/OBC candidates).
6. Approaching the Chairman, RRB, GHY and other officials of RRB/Guwahati directly or indirectly by a candidate or anybody on his self requesting under consideration for the recruitment will render a candidate liable for disqualification.
7. Only the candidates and the persons engaged in conducting the examination will be allowed into the examination premises. Strict discipline and silence must be maintained in the examination/Hall Rooms. Appropriate action will be taken in case of those adopting unfair means in the examination hall, etc.
8. **FOR SC/ST CANDIDATES ONLY:** ON PRODUCTION OF THIS CARD YOU ARE ENTITLED TO TRAVEL FREE BY RAILWAY IN SECOND CLASS FROM **XXXXXXXXXX** (STN.) TO GUWAHATI (STN.) & BACK. THIS PASS IS VALID UPTO **XXXXXXXXXX**

100484

(Authority Rly Brd's L/No. (NG) II-84/RSC122 dt. 23.11.84


 For CHAIRMAN
 RAILWAY RECRUITMENT BOARD: GUWAHATI.

Certified to be true by


 Jayanta Baruah
 Advocate

रेल भर्ती बोर्ड, गुवाहाटी
RAILWAY RECRUITMENT BOARD, GUWAHATI

स्थेशन मार्ग,
गुवाहाटी-1

STATION ROAD
GUWAHATI - 1

दिनांक:
Date : 26.9.97

To, सेवा में,

Paanabjyoti Khanikar

अनुक्रमांक
Roll Number

12411105

CALL LETTER cum ADMIT CARD for VIVA-VOCE & PRACTICAL TEST.

लिखित परीक्षा के लिये जल्दी से जल्द भर्ती पत्र

CALL LETTER cum ADMIT CARD for WRITTEN TEST

कोटी
CATEGORY

DPP D.A.D.

वेतन-मान
PAY SCALE

रु. 950 - 1500/-

नियोजन जापन सं

Employment Notice No.

2/96

कोटी मं
Catg. No.

01

लिखित परीक्षा का कार्यक्रम
PROGRAMME OF WRITTEN TEST.

दिनांक DATE	प्रतिक्रिया X XXXX	गिपोर्ट करने का समय REPORTING TIME	परीक्षा संचालन EXAMINATION VENUE
27.9.97	V.V. Test	9.00 AM	RRB Office.
27.9.97	Psy. Test	13.00 AM	The Institute of Engineering (I) Assam State College Panbari, Guwahati - 781 011

सिर्फ अनुसुचित जाति / अनुसुचित जनजाति के लिए : यह पत्र प्रस्तुत करने पर आप

FOR SC/ST CANDIDATES ONLY : On production of this letter you are entitled to free travel by rail-

way in second class only from स्थेशन से स्थेशन तक तथा
वापसी के लिए रेल द्वारा केवल द्वितीय श्रेणी में निशुल्क यात्रा करने के हकदार हैं।

यह पास दिनांक

तक ही उपलब्ध है।

This pass is available upto

(प्राप्तिकार : रेलवे बोर्ड पत्र में से है (सं. नं.) 11-84/आर.पी.सं/122, तिथि 23-11-84)

(Authority : Rly. Bds. L/No.E(NG)II-84/RSC/122 dt. 23-11-84)

कृपया अध्यक्ष
रो. भ० ल०/गुवाहाटी
for CHAIRMAN,
RRB/Guwahati

प्रतीक्षा
DUPLICATE -12-

(आक प्रमाण पत्र के अधीन)
(UNDER CERTIFICATE OF POSTING)

रेल भर्ती बोर्ड, गुवाहाटी
RAILWAY RECRUITMENT BOARD, GUWAHATI

स्टेशन मार्ग,
गुवाहाटी-1

STATION ROAD,
GUWAHATI - 1.

To, सेवा में,

दिनांक:
Date : 7-6-92.

Sri Pranabjyoti Khanikar.

अनुक्रमांक
Roll Number

12411105

Photograph.

लिखित परीक्षा के लिये बुलावा पत्र-सह-प्रवेश पत्र
CALL LETTER cum ADMIT CARD for Written Test

कोटी
CATEGORY

D.A.D.

वेतन-मान
PAY SCALE

रु.
Rs.

950 - 1500/-

नियोजन जापन सं.
Employment Notice No.

2/96

कोटी मं.
Catg. No.

01

लिखित परीक्षा का कार्यक्रम
PROGRAMME OF WRITTEN TEST

दिनांक DATE	दिन DAY	रिपोर्ट करने का समय REPORTING TIME	परीक्षा केन्द्र EXAMINATION VENUE
08-06-92	Sunday	10-00-12-30 th	Panbarazar Girls H.S. Schd. Panbarazar, Ghati - 1.

सिर्फ अनुसुचित जाति / अनुसुचित जनजाति के लिए : यह पत्र प्रस्तुत करने पर आप
FOR SC/ST CANDIDATES ONLY : On production of this letter you are entitled to free travel by rail-

way in second class only from स्टेशन से स्टेशन तक तथा
वापसी के लिए रेल द्वारा केवल द्वितीय श्रेणी में निशुल्क यात्रा करने के हकदार हैं।

यह पास दिनांक तक ही उपलब्ध है।
This pass is available upto

(प्रधिकार : रेलवे बोर्ड पत्र सं० ३, (पुरा गा) 11-84/आर एम गा/122, दिनांक 23-11-84)
(Authority : Rly. Bds. L/No.E(NG)II-84/RSC/122 dtd. 23-11-84)

कृते अध्यक्ष
२० भ० गो०/गुवाहाटी
for CHAIRMAN,
RRB/Guahati

- 13 - Regd Post. - 13 -

N.F.Railway

ANNEXURE - B Series

Office of the
Div. Railway Manager(I)
Alipurduar Junction.

No. E/283-Mech/App/lt/AP(DAD)

Dt. 16-02-98

To

Shri Bijin Chandra Deka MF. No. 61
Go Shri Gobinda Deka
Noonmati (Sankar Naga)
Po-Noonmati or Railway (Assam)

Sub: Offer letter for Medical examination
as Trainee Diesel Assistant Driver
in scale Rs. 3050-4590/- in M.C. medical

I, the GM(P)/MLG's No. E/228/57(M)PL.II

On 02-02-98 you are hereby called for Medical examination for the post of Diesel Assistant Driver against RRB on Pay Rs. 3050/- per month in scale of Rs. 3050-4590/- plus usual allowance as admissible from time to time.

- a) Appointment letter for Trainee DAD will be given after being passing the Medical examination.
- b) You will be probation for a period of 12 months and during this period you will have to undergo a training for a period of 12 months and on satisfactory completion of your training, you will have to pass the examination. If you fail in the examination, you will be discharged from service without notice.
- c) If the termination of your service is due to some other causes, you will be entitled to a notice of 14 days on pay in lieu thereof.
- d) Offer of appointment is issued provisionally. The offer is subject to the verification of character and antecedents as per General Rules and other recruitment.
- e) I set 2nd Class Pass No. 615412 Dt. 27/2/98. It is enclosed for cover the journey.
- f) Please report to this office by 7 - 3 - 98.

Div. Manager (I)
Divisional Railway Manager(I)
N.F.Railway, Alipurduar Jn

Certified to be true copy.

*Yantanu Rabul
Advocate*

ANNEXURE -B

N. F. Railway

Office of the Divl. Railway Manager (P)

Alipurduar Junction

No. E/283-Mech/Apptt/AP(DAD)

Dt. 06.02.98

To

Shri Bipin Chandra Deka
C/o – Sri Gobinda Deka
Noonmati (Shankar Nagar)
P.O. Noonmati, District – Kamrup, Assam

NF No.

6

Sub: Offer letter for Medical examination as Trainee Diesel Assistant Driver in the pay scale of Rs. 3050-4590/- in Mechanical

I GM (P)/MLG's L/No. F.228/57(M) Pt.II
02.02.98 you are hereby called for Medical examination for the post of Diesel Assistant Driver against RRB on Pay Rs. 3050/- per month in scale of Rs. 3050-4590/- plus usual allowance as admissible from time to time.

- a) Appointment letter for Trainee DAD will be given after being passing the Medical examination.
- b) You will be probation for a period of 12 months and during this period you will have to undergo training for a period of 12 months and on satisfactory completion of your training you will have to pass the examination. If you fail in the examination, you will be discharged from service without notice.
- c) If the termination of your service is due to some other causes, you will be entitled to a notice of 14 days of pay in lieu thereof.
- d) Offer of appointment is provisionally. The offer subject to the verification of character and antee... as per General Rules and other recruitment.
- e) R/2 /Set Class pass No. 3/5466 dated 07.02.1998 is enclosed for cover the journey.
- f) Please report to this office by 7-3-98.

Sd/- Illegible
Divisional Railway Manager (P)
N.F. Railway, Alipurduar Jn.

Certified to be true copy
Jyotan Patel
Advocate

ANNEXURE -B

N. F. Railway

Office of the Divl. Railway Manager (P)

Alipurduar Junction

No. E/283-Mech/Apptt/AP(DAD)

Dt. 06.02.98.

To

Shri Pranabjyoti Khanikar
Khanikar gaon Sarupathar
District - Golaghat PIN - 785601

NF No. 129

Sub.: Offer letter for Medical examination as Trainee Diesel Assistant Driver in the pay scale of Rs. 3050-4590/- in Mechanical

I GM (P)/MLG's L/No. F.228/57(M) Pt.II 02.02.98 you are hereby called for Medical examination for the post of Diesel Assistant Driver against RRB on Pay Rs. 3050/- per month in scale of Rs. 3050-4590/- plus usual allowance as admissible from time to time.

- a) Appointment letter for Trainee DAD will be given after being passing the Medical examination.
- b) You will be probation for a period of 12 months and during this period you will have to undergo training for a period of 12 months and on satisfactory completion of your training you will have to pass the examination. If you fail in the examination, you will be discharged from service without notice.
- c) If the termination of your service is due to some other causes, you will be entitled to a notice of 14 days of pay in lieu thereof.
- d) Offer of appointment is provisionally. The offer subject to the verification of character and antecedents as per General Rules and other recruitment.
- e) R/2 /Set Class pass No. 3/5466 dated 07.02.1998 is enclosed for cover the journey.
- f) Please report to this office by 7-3-98.

Sd/- Illegible
Divisional Railway Manager (P)
N.F. Railway, Alipurduar Jn.

Certified to be true copy.

*Jyotam Rahul
Advocate*

ANNEXURE - C Series

Office of the
Divl. Mly. Manager(P),
Alipurduar Junction.

Dt. 20/02/2003.

NO. 12/283/ECR/MPPT/AP(B/D)/Pt. I

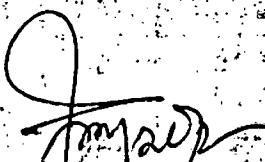
TO: Shri ... Pranab Jayati Khanikar.

... Khanikar Gaon.....

P.O. Sanupdhar, Dist. Golaghat (Assam)

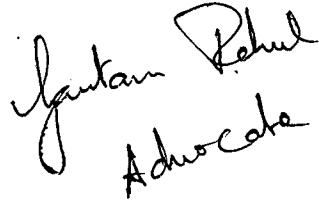
78564
Sub: - Medical Examination.

You are advised to attend this office for further medical examination for assessing your fitness. ~~in case of emergency~~ for alternative appointment.


for Divl. Mly. Manager (P),
Alipurduar Junction.

(akp/19203)

Certified to be true copy.


Jantanu Behul
Advocate

N.E. Railway.

No. 5/283/Arch/AFTT/A.P.(E.D)/Pt. I

Office of the
Divl. Rly. Manager(E),
Alipuruar Junction.

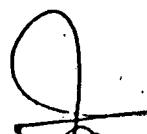
Dt. 20/02/2003.

To:

Shri .. Bipin Ch. DeKa.....
S/o. Shri. G. Gobinda DeKa, ..Neonwati
P.O. Naonmati, Dist. Kamrup (Assam)

Sub :- medical examination.

You are advised to attend this office for further medical examination for assessing your fitness. ~~in which case~~ for alternative appointment.


for Divl. Rly Manager(E),
Alipuruar Junction.

(akp/19203)

N.E. Railway.

Office of the
Divl. Mgr.(F),
Alipurduar Junction.

Dt. 20/02/2003.

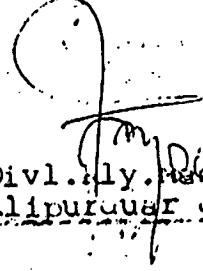
No. S/283/Le.Chi./PPTT/ P.W.D./Pt. I

To:

Shri ... Mukul Das.....
Vill. Chetamukh.....
P.O. HAI BARGAON, Dist. Nagaon (Assam)

Sub: - Medical Examination.

You are advised to attend this office for further medical examination for assessing your fitness ~~at~~ ~~any~~ ~~date~~ ~~any~~ for alternative appointment.


for Divl. Mgr. (F),
Alipurduar Junction.

(skp/19203)

Alipurduar Junction
Divl. Mgr. (F),

- 20 -

Office of the
Divl. Mly. Manager (P)
Alipurduar Junction
Date: 10/03/2003

No: E/285/Heck/APTT/AP(DAB)Pt.I.

To

GM/APPJ

Sub:- Re-Medical Examination.

The following candidates were recruited through EBB/GHY for the post of Diesel Ass't. Driver, but found unfit in medical category A/One (prescribed medical category for DAB). GM(P)/MUG vide his letter number E/173/III/3/2(N)dt. 10.9.2001 & 18.2.2002 has advised to absorb the following candidates in alternative job(Tech/Gen tech.) as per their medical fitness.

So, they are directed to you for their re-medical examination in which medical category they are fit.

Biodata of the candidates are given below.

Sl.No.	Name	Date of birth	Identification mark
1.	Mukul Das,	30.12.69	Cut mark on right thumb
2.	Pranab Jyoti Khanikar	23.05.72	Mole on back neck
3.	Anurag Pandey	08.07.79	Cut mark between eye brow.
4.	Harayan Ch. Dey	10.03.71	Not available now. On report of the Staff, same will be intimated to you.
5.	Ripin Ch. Deka	14.11.69	

My A/3/03
for Divisional Mly. Manager (P)
Alipurduar Junction

Certified to be true copy

Jyotanand Patel
Advocate

बापर.142 रुप. ३० रुपय/N. F. Railway १०.३०/८८-२/N. F./M-२

परिषिक्षा III (अनुदान ६) Appendix III (Annexure 6)
राज्य द्वारा स्वीकृति देखते में नियुक्ति के लिए दोषात्मक निधान-
इन के प्रदान जैसे नियुक्ति दर्शनात्मक को दाखिली जांच के लिए
प्रयुक्त प्रमाणपत्र का फॉर्म/Form of certificate to be
used when a candidate is medically examined
for fitness for appointment to a State-managed
Railway

अस्पताल/Hospital A.P.D.J

— — — — — No. No. 28

दवादाना/Dispensary

मैं एतरहारा प्रगति परामी किये देता हूँ (आम)

जो कि अस्पताल/दवादाना में उपचार करने वाले हैं
पद पर नियुक्ति के लिए उपचारकर वे जो जिसके हस्तान्तर/धन्धुटे का
निशान नहीं उत्तराधार में दी जाती है, वो दीवार कर दी है।

मैं उत्तराधार नियुक्ति के लिए दीकृत हूँ।

Sri Bupanch DeKa

I do hereby certify that I have examined (Name).....
(age) 16 years, in the medical fit for appointment
as (designation). A.P.P. (D.A.D.J) (c.o.s). A.fine, in

*Signature

therap/ B... branch/department where

has been appended below in my presence. I consider him
*fit/ unfit for such appointment.

two (2) and below but fit in Bce

लाइन के नीचे लिखे जाते हैं।
Signature of Railways Medical Exam

18/3/03

ददा राज्य दवादाना/Dispensary

राज्य दवादाना/Dispensary

Signature

of candidate

तारीख Date 18/3/03

Thumb Impression

राज्य दवादाना/Dispensary

28 JUN 2005

संघीय नियन्त्रित
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI.

IN THE MATTER OF :

O. A. No. 61 of 2005

1. Sri. Bipin Chanda Deka
2. Sri. Pranabjyoti Khanikar
3. Sri. Mukul Das

Applicants

-Vs-

1. Union of India
2. General Manager (P)
N. F. Railway, Maligaon
3. Divisional Railway Manager (P)
N. F. Railway, Alipurduar.
4. Railway Recruitment Board

Guwahati

Chairman

Respondents

-AND-

Filed by
Subkumar Gopal
Railway Advocate
Guwahati
23.6.2005

IN THE MATTER OF :

Written Statement for and on behalf of the respondents.

The answering respondents most respectfully beg to submit as under :

1. That, the answering respondents have gone through the copy of the application filed by the applicants and have understood the contents thereof.
2. That, the application suffers for want of valid cause of action and/or right for filing the application.

Received Copy
Jatin Baruah
Ashorekar
27/6/05

Contd.....P/2

3. That, the application is not maintainable in its present form and is fit one to be dismissed in limine.
4. That, for the sake of brevity, the meticulous denial of each and every statements of the applicants has been avoided without admitting the correctness of such statement.

The respondents do not admit any of the allegations / statements of the applicants except those which are either borne on records or are specifically admitted hereunder and the applicants are put to strictest proof of those statements which are either not borne on records or are not specifically admitted hereunder by the applicants. The reply is also confined only on those points which are relevant for the purpose of arriving at a decision in the case without admitting the correctness of other averments of the applicants.

5. That, the case is vexatious one without any substance and is the outcome of the after-thought of the applicant.
6. That, with regard to averments made at paragraphs 4.1, 4.2, 4.3, 4.4 and 4.5 of the application it is submitted that those statements which are borne on records are only admitted. It is also to submit herein that from the own assertion of the applicants in the application it is quite evident that :

- (i) No appointment letters were issued by the Railway Administration in favour of the applicants.
- (ii) Appointment on the Railways was dependent on successful clearance of the Medical Examinations prescribed for the post they applied for i.e. Diesel Assistant Driver.

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(iii) The applicants were not found medically fit in the medical examination held for the post for which they applied and also selection held i.e. Diesel Assistant Driver.

7. That, as regards averments at paragraphs 4.6, 4.7 and 4.8 of the application it is to submit here-in that the letters dated 20-02-2003 and 04-03-2003 were issued by the Divisional Authorities 'for assessing the fitness of the candidates for alternative category posts and keep a complete record of the case for future use, if required. These were done keeping in view the previous letter of the Railway Board No. 99/E(R&B)/25/12 dated 20-08-1999. In terms of previous letter of the Railway Board dated 20-08-1999, there was a provision for considering the cases of medically unfit DAD's (Diesel Assistant Drivers) against alternative posts, in equivalent grade, provided they fulfill other requirements of the alternative posts and also vacancies exists and General Managers of the Zonal Railways could consider such appointments on consideration of each individual case records. As such, divisional authorities were required to keep all details / particulars ready for future use, if required. These letters of the Railway Board does not guarantee for appointment to any post to the medically unfit persons.

Under the extant orders of the Railway Board No. E(R&B) 2001/25/21 dated 04-09-2001, the privilege for extending the benefit of appointment in alternative category has been withdrawn and no further direction has been received yet which may empower Zonal Railway's to consider alternative appointments to medically unfit candidates. It is also quite a wrong statement / assertion that Respondent Authorities took a Policy decision to absorb the applicants in any other alternative jobs and that the letter dated 04-03-2003 gives them this right. Neither General Managers of Zonal Railways nor the Divisional Authorities have been empowered to take a Policy

decision in such cases, which are purely within the domain of the Railway Board. Further, as per rule the life of the panel is for 2 years. The panel for the post of DAD (in brief for Diesel Assistant Driver) was published on 09-01-1998, and it appears from averments at paragraph 5.2 of the application that no application for absorption in lower grade post in Category D was submitted by the applicant. It is also to mention herein that in the meantime the medical fitness standard of some Group 'D' posts have also undergone changes.

In this connection, the copies of the aforesaid orders / letters of the Railway Board's No. 99E (RRB)/25/12 dated 20-08-1999 and No. (RRB) 2001 / 25 / 21 dated 04-09-2001, and No. E(RRB) 2001 / 25 / 21 dated 08-04-2003 are annexed hereto as Annexure I, II and III respectively for ready perusal.

8. That, with regard to averments at paragraph 4.9 of the application it is submitted that the contention of the applicants that they were made to believe that they would be absorbed in any alternative jobs by the Respondent Authorities pursuant to their Re-medical examination, are not admitted as correct and hence denied herewith.

In this connection, it is also to submit here-in that :

- (i) Group 'D' posts are not of equivalent grade to that D.A.D. posts.
- (ii) The Criterion of recruitment / selection for Group 'C' and Group 'D' posts are quite different.
- (iii) The recruitment / absorption in Group 'D' posts are contingent on fulfillment of certain standard of fitness and medical examination and vacancy position etc.

(iv) After issuance of the Railway Board's letter dated 04-09-2001 (Annexure II to this written statement), the power of Zonal Railway Authorities to absorb / offer alternative appointment to medically unfit candidates selected for DAD posts, have ceased. Para 4 of the said letter dated 04-09-2001 clearly lays down the following :

"Candidates selected for the category of Assistant Driver / ASM / Motorman will also not be eligible for any alternative appointment if they fail in the final medical examination conducted by the Railway before appointment, for any reason".

(v) At the time of submission of the application for the post of D.A.D. the applicants were aware that there is no guarantee of employment in Railways and that to get employment they would be required to qualify in the medical examination set for DAD posts. There was no mention about the absorption of the medically unfit candidates in the alternative posts in the notification.

The allegation of the applicants that the Respondents have most deliberately and willfully refused to absorb the applicants, is hereby emphatically denied. The applicants have no legal right for absorption against any other alternative category posts.

If they had any genuine grievance they could easily get the same clarified from the Railway Administration. It is observed that, instead they are now agitating on the issue when it is already time barred from the date on which panel of DAD was formed and also from date when alleged medical re-examination, as contended by the applicant, was held.

9. That, in view of what have been submitted in the foregoing paragraphs of this written statement, none of the grounds for relief as mentioned at paragraph 5 of the application and relief as sought for under paragraphs 8 and 9 of the application are sustainable under law and fact of the case and the prayers of the applicant are liable to be rejected.

It is also to mention here-in that

(i) It is not correct that the respondent authorities have acted in a manner contrary to their own decision / Policy or the Annexure E to the application (Letter dated 04-03-2003 issued by the Alipurduar Division) can give them any right for being appointed against alternative different grade post like group 'D' post. The letter dated 04-03-2003 cannot bind the Government legally, for such appointment.

(ii) It is denied that the applicants were all these period waiting with legitimate expectation for being appointed in alternative post in Railways or that the applicants did not apply for any other job till this date, on this ground. The Railway Administration did not guarantee them that they would be appointed against alternative post, and such allegations are unsounded and beyond the knowledge of the respondents.

(iii) It is denied that the Respondent Authorities have acted in an illegal, arbitrary, malafide, capricious, discriminatory and unreasonable manner, in refusing ~~to~~ to appoint the applicants. It is to mention

that no communication / representation from the applicants appears to have been received and hence question of issuing refusal letter in disposal of their representation, if any, does not appear to be correct, more so, after issuance of the Railway Board's letter dated 04-09-2001 there can be no question of appointing these applicants in alternative lower grade posts.

- (iv) It is also denied that there has been any violation of Fundamental Rights as guaranteed under Articles 14, 16 and 21 of the constitution of India or that viva-voce test or psychological Test give them any rider for being appointed in alternative posts.
- (v) The letter dated 04-03-2003 (Annexure E to the Application) cannot be treated as a Policy decision of competent official. The contention of the applicant regarding alleged Promissory Estoppel is quite unfounded and hence not admitted. Further, the principle of promissory estoppel is not available against Government in exercise of its legislative, sovereign or executive powers.
- (vi) In view of the Railway Board's Policy decision of 2001 there is no scope for engaging any medically unfit personal in other category posts on the basis of their selection in other posts like DAD etc.
- (vii) It is denied that the balance of convenience is in favour of the applicants. The question of suffering

Irreparable loss and injury does not arise.

(viii) That, the selection / appointment procedures have been prescribed under rules framed under the Constitution of India and no personnel engaged on Public duties can override these rules, either by overt or covert action and there is no scope for ignoring same or escaping from the set rules having the constitutional binding on any other plea.

No policy decision can be taken by any official in contravention to set rules. The policy decision has been laid by Railway Board under their letter No. E (R&B) 2001 / 25 / 21 dated 04-09-2001 mentioning clearly that candidates selected for the category of Assistant Driver will not be eligible for any alternative appointment if they fail in the final medical examination before appointment.

(ix) It cannot be claimed that the applicants fulfill all the conditions for appointment to Group 'D' posts, where the selection procedure are quite different.

(x) That, in view of the extant rule inforce, there is no locus standi of the aforesaid letter of the DRM(P) / APDJ dated 04-03-2003 as to claim some extra benefit of absorption in other categories, nor so when such grant of privileges / benefits are quite against the extant rules / Laws / Railway Board's order dated 04-09-2001 in force.

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N.F. P. 11/2001
Gujarat 11
Dated 11/10/2001
11/2001

(xi) The Zonal Railways are to function under the parameters of Government Guidelines and rules set forth / embodied in Indian Railway Establishment Manuals, Codes, Circulars etc.

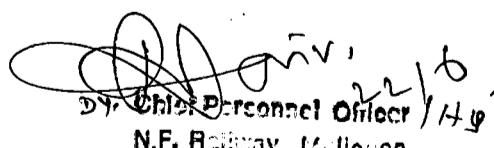
10. That, it is submitted that all the actions taken in the case by the respondents are quite legal, valid and proper and in consonance to the provisions of extant rules on the subject and have been taken after due application of mind and that the present case of the applicant is based on wrong premises and suffers from misconception and mis-interpretation of rules and laws on the subject besides being based on surmise only.

11. That, necessary enquiries are still in progress. The respondents crave leave of the Hon'ble Tribunal to permit them to submit additional written statement, if found necessary, for the ends of justice.

12. That, in view of what have been submitted in the foregoing paragraphs of the written statement, the application is fit one to be dismissed.

VERIFICATION

I, Sri.....R.....AAIVU.....son of Late S. RamaSaray.....
..... aged about 40.....yea..... now serving as
Dy. C.P.O./H.Q., N. E. Railway, Maligaon, do hereby solemnly declare that
what have been stated in Paragraphs 1 and 4 of the written statement are true to my
knowledge and those made at paragraphs 7 and 8 are based on records which I believe
to be true and the rest are my humble submissions before the Hon'ble Tribunal and I
sign this written statement on 22.6.2005.


Dy. Chief Personnel Officer, N.E. Railway, Maligaon
For and on behalf of
Union of India

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ANNEXURE - I

Copy of Railway Board's letter No.99/E(RRB)/25/12 Dt. 20.08.99 addressed to the
GMs/OSCs/CRCs. All Indian Railways, PUS etc.

Sub :- Recruitment of medically unfit direct recruits in alternative categories.

Ref :- Board's letter No.E(NG)62/RC-1/95 dated 25.10.1962.

At present, General Managers are authorized to consider requests from candidates empanelled by RRBs but failing in prescribed medical examination, for appointment in alternative technical categories and SC ST candidates in non - technical categories.

2. Board have reviewed the policy keeping in view high posts or recruitment of all candidates and for all categories of recruitment. It has consequently been decided that the General Managers shall henceforth have the authority to consider requests from candidates of non-technical categories also, who fail in prescribed medical examination after empanelment by RRB for their appointment in alternative category, subject to fulfillment of the prescribed medical standard educational requirement and other eligibility criteria for the same grade post in alternative category. Such consideration shall be on the same lines as hitherto done for technical categories. The decision of the General Manager regarding availability and identification of the vacancy in alternative grade, including other relevant factors required to be considered shall be final.
3. Kindly acknowledge receipt of this letter.

Sd/-
(V.K. Modgal)
Dy. Director, Estt.(RRB),
Railway Board



A handwritten signature in black ink, appearing to read 'V.K. Modgal', is written over a diagonal line. The date '20/08/99' is written above the signature.

GOVERNMENT OF INDIA/BHARAT SARKAR
 MINISTRY OF RAILWAYS/RAIL MANTALAYA
 (RAILWAY BOARD)

RRCB No. 5/2001

No. E(RRB)/2001/25/2

New Delhi, dated 10.09.2001

The Chairmen,
 All Railway Recruitment Boards.

Sub: Medical examination of candidates at the time of certificate verification.

It has been reported by the RRBs that a large number of candidates, selected for critical safety categories of Assistant Drivers and Assistant Station Masters are being found medically unfit after empanelment. Some candidates appear for selection to these categories even while they are aware that they do not conform to the medical standards required for the job. Perhaps they do so because of the provision of alternative employment in the event of failure. However, this leads to vacancies for long period in these important critical safety categories, which is not desirable from safety point of view.

2. The issue has been considered in the light of the above situation in RRCB meeting and it has been decided that, for the categories of Assistant Drivers and ASMs, the candidates may be asked to enclose a medical certificate from an eye specialist regarding vision in a prescribed Performa when they apply for these posts. Only those candidates who conform to notified standards of vision need apply.

3. It has also been decided that at the time of certificate verification, the selected candidates may be sent to nearest Railway hospital for a vision test. Those who fail in the vision test, need not be empanelled.

4. Candidates selected for the category of Assistant Driver/ASM/Motorman will also not be eligible for any alternative appointment if they fail in the final medical examination conducted by the Railway before appointment, for any reason.

5. The fact that candidates who fail in the medical examination for these categories will not be eligible for any alternative appointment on the Railways should be mentioned clearly in the employment notice so as to discourage those candidates who do not fulfill the medical requirements, from applying.

6. Hindi version is enclosed.
 Please acknowledge receipt of this letter

DA One

V K Medgal
 Director, East (RRB),
 Railway Board

7-1-01

22/2/2001
 22/2/2001
 22/2/2001

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Proforma for Medical Certificate from an Eye Specialist to be obtained by candidates applying for the post of Assistant Station Master/Assistant Driver in response to RRB advertisements.

I have checked up Shri _____ who has applied for the post of Assistant Station Master/Assistant Driver in Railways. Acuity of vision of Shri _____ has been tested in view of the following standards required for appointment on the Railways.

Post	Class	Distant Vision	Near Vision	Colour Vision Ishihara
Assistant Station Master	A-2	6/9, 6/9 without glasses (No fogging test)	Sn. 6/9, 6/9 without glasses	Normal
Assistant Driver	A-1	6/6, 6/6 without glasses with fogging test (Must not accept +2 D)	Sn. 0.6, 0.6 without glasses	Normal

Shri _____ fully conforms to the above vision standards.

(to be signed by Eye specialist)

Stamp _____

Name of the Doctor _____
Registration No. _____

Place: _____

Date: _____

2014

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CPO

CPO/10

(2) 11/11/03
HSK

6/16/03

GOVERNMENT OF INDIA/BHARAT SARKAR
 MINISTRY OF RAILWAYS RAIL MANTRALAYA AP0701
 (RAILWAY BOARD)

No.E(RRB)2001/25/21

New Delhi, dated 8.4.2003

N.I.R.R.
G/HThe General Manager (P)
All Indian Railways PLsSub: Medical examination of candidates at the time of certificate
verification

A copy of Board's letter of even number dated 2.9.2001 on the above
subject is enclosed herewith for information and necessary action.

(V. K. Modgil)
 Dy. Director, Estt.(RRB)
 Railway Board.

D.A: Two.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
Guwahati
Guwahati Bench

ORIGINAL APPLICATION NO. 61 OF 2005

IN THE MATTER OF :

O.A. NO. 61/2005

Sri Bipin Ch. Deka & Ors.

.... Applicants

-VERSUS-

The Union of India & Ors.

.... Respondents

-A N D-

IN THE MATTER OF :

A Rejoinder filed on behalf of the Applicants of the aforesaid Original Application against the Written Statement filed by the Respondents therein.

R E J O I N D E R

I, Sri Bipin Chandra Deka, son of Sri Kabindra Deka, aged about 37 years, resident of Sankar Nagar, Noonmati, Guwahati-781 020 in the district of Kamrup, Assam do hereby solemnly affirm and state as follows :-

1. That, I am the Applicant No. 1 in the instant case. A copy of the Written Statement filed by the Respondents has been duly served upon my Counsel. I have gone through the same and understood the contents thereof. Being well conversant with the facts of the case, I am competent to swear this Rejoinder. I have been duly authorized by the Applicant Nos. 2 and 3 to swear this Rejoinder on their behalf.
2. That, the Applicants herein have preferred the present Original Application, inter alia, assailing the actions of the Respondent Authorities in refusing to appoint

Filed by
The Appellants
SRI R. C. Choudhury
Babu
21/8/05
Advocate

the Applicants in alternative jobs as per their medical fitness in terms of the decision taken by the Respondent Authorities on 04.03.2003.

3. That, save and except the statements and averments made in the Written Statement, which have been specifically admitted herein below, the rest shall be deemed to have been denied by the Applicants.
4. That, with regard to the statements made in paragraph 1 of the Written Statement, the Applicants have got no comments to offer.
5. That, the Applicants categorically deny the statements made in paragraphs 2 to 5 of the Written Statement since the same are not based upon actual facts.
6. That, with regard to the statements made in paragraph 6 of the Written Statement, it is a fact that they had been called for interview and Medical test for the posts of Diesel Assistant Driver (D.A.D.), however, the Respondents had further directed the Applicants to appear for interviews for appointment in alternative posts. As such, the Applicants were under the genuine belief that the authorities are considering their case for appointment.
7. That, while categorically denying the statements made in paragraph 7 of the Written Statement, the Applicants reiterate the statements made in paragraphs 4.6, 4.7 and 4.8 of the Original Application and further state that the Applicants had appeared for interviews in the year 1997 and as such, the said Order dated 04.09.2001 cannot be applied to them retrospectively. Further, it is evident from Annexure-E series of the Original Application that the Applicants had been re-examined on 06.03.2003 and had been found fit to be appointed in alternative jobs. As such, the contentions of the Respondents contrary thereto are categorically denied.
8. That, while categorically denying the statements made in paragraph 8 of the Written Statement, the Applicants once again reiterate that they had appeared for interviews in the Year 1997 and as such, they were eligible to be called for further medical examination for assessing their fitness for alternative appointments as per the then prevalent scheme. The scheme dated 04.09.2001, as has been stated in the Written Statement itself, was circulated to this office only on 08.04.2003, whereas the Applicants had been duly called for alternative appointments in the month of March, 2003 itself. Be it further stated herein that after having run from pillar to post for being given alternative appointments, in the office of the Respondent Authorities, and not having been able to secure any

positive reaction therefrom, the Applicants were constrained to approach this Hon'ble Tribunal for ends of justice to be met.

9. That, while denying the statements made in paragraph 9(i) of the Written Statement, the Applicants reiterate the statements made in paragraphs 8 and 9 of the Original Application. The statements made in paragraph 9(ii) are controverted to the extent that the Applicants were under bonafide belief in the year 1997 when they had applied for being appointed to the post of DAD, they could have been appointed against alternative posts since a scheme existed in this regard. The contentions in paragraph 9(iii) are denied by the Applicants/Deponent and the Deponent further reiterates the statements and averments made in paragraph 8 of the Rejoinder herein above. The statements made in paragraphs 9(iv) and 9(v) of the Written Statement are denied by the Applicants and it is humbly reiterated that the letter dated 04.03.2003 (Annexure-E) clearly indicates that certain vacancies existed against which the Applicants could have been accommodated.
10. That, while categorically denying the statements made in paragraphs 9(vi), 9(vii), 9(viii), 9(ix), 9(x) and 9(xi) of the Original Application, the Deponent humbly states that the Respondents, in a most malafide manner, are trying to mislead this Hon'ble Tribunal with regard to the application of the Policy decision as has been laid down by the Railway Board vide their letter dated 04.09.2001. The Written Statement does not make any whisper about the retrospective effect of the said Policy decision of 2001, and as such, the Applicants cannot be equated/brought within the ambit of the said policy decision since they had applied for the post of DAD in the year 1997, at which time the scheme for alternative appointments was very much in force. As such, all statements, averments/contentions made contrary thereto are categorically denied.
11. That, the statements made in paragraphs 10, 11 and 12 of the Original Application are categorically denied by the Applicants and it is reiterated that the Applicants have a *prima facie* case in their favour and are entitled to all the

reliefs which have been prayed for in the Original Application. The Applicants humbly state that the grounds put forth in the Original Application are good and tenable grounds for this Hon'ble Tribunal to intervene in the matter and accordingly grant appropriate relief to the Applicants.

12. That, the statements made in this paragraph and in paragraphs 1 to 11 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 submission before this Hon'ble Tribunal.

And I sign this Rejoinder on this 2nd day of August, 2006 at Guwahati.

Sri Bipin Ch. Deka.
DEPONENT