

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No 200/2006

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDERS SHEET

1. Original Application No. 260/06
 2. Misc Petition No. /
 3. Contempt Petition No. /
 4. Review Application No. /

Applicant(s) Ashim DebnathRespondent(s) U.O.T. 90msAdvocate for the Applicant(s) H. Rahman, R.S. Thakur
S.K. Singh, Tasneem Hunder
A.M. Ahmed.....Advocate for the Respondent(s) Railway Counsel

Notes of the Registry	Date	Order of the Tribunal
This application is in form is filed/C.P. No. 260/06 d.p.s. No. 266325615 Dated 5.7.06	<u>18.8.06.</u>	Judgment delivered in open Court Kept in separate sheets. Application is disposed of. No costs.

Vice-Chairman

lm

Dy. Registrar

R/R

18.8.06

Steps darker

~~Recd~~
 (For Dr. J. L. Sarker)

21.8.06

C-Copy has been
collected by ID 1/6th
for the applicant

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CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH.

(O.A.No.200 of 2006.)

DATE OF DECISION: 17.08.2006.

Sri Ashim Debnath

APPLICANT

Mr. H. Rahman

ADVOCATE FOR THE
APPLICANT(S).

VERSUS

Union of India and ors.

RESPONDENTS

Mr. J. L. Sarkar, railway Adv.

ADVOCATE FOR THE
RESPONDENT(S)

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

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

Judgment delivered by Hon'ble Vice-Chairman

17/8/06

CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH

Original Application No. 200 of 2006.

Date of order: This the 17th Day of August, 2006

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

Shri Ashim Debnath
S/O. Late Umesh Chandra Debnath
New Colony, Q.No.D 47/A
P.O. Limding.
Dist.- Nagaon(Assam)

Applicant.

By Advocate Mr.H.Rahman, R.S.Thakur, S.K.Singh, Jsmeen Hunda & A.M.Ahmed.

Versus-

1. The Union of India,
Represented by the Secretary
to the Govt. of India,
Ministry of Railway, New Delhi.

2. The General Manager,
North East Frontier Railway,
Maligaon,Guwahati-11.

3. The Chairman,
Railway Recruitment Board
Station Road, Guwahati-781001.

4. The Assistant Secretary,
Railway Recruitment Board
Railway Station Road,
Guwahati-781001.

Respondents.

ORDER(ORAL)

SACHIDANANDAN(V.C.)

The applicant has applied in the Group 'D' post as per Notification issued by the Respondents. According to the applicant he was a successful candidate and was declared passed in written examination, physical efficiency test and documents were also duly verified by the respondents' authorities. The result was published but the applicant was disqualified on account of the certificate produced

~~Dear~~ the counter signature of the Inspector of Schools. Hence this present application.

2. I have heard Mr. R.S.Thakur learned counsel for the applicant and Mr.J.L.Sarkar learned Railway counsel for the respondents. When the matter came up for hearing the learned counsel for the applicant has drawn my attention to the impugned order dated 27.12.05 (Annexure 2) para 2 of which is reproduced below:-

" With reference to your application mentioned above in connection with the O.A. No.302 of 2005 and in pursuant to the honorable CAT/Guwahati's order date d 6th Dec/2005, your application has been put up to the competent authority and his valued speaking order is enclosed herewith for your information please."

The applicant had submitted representation dated 02.09.05 before the respondents' authorities but to no response. Having no other alternative, the applicant filed an original application before the Hon'ble Tribunal in O.A.No.302 of 2005 which was disposed of vide order dated 6.12.05 directing the respondents to dispose of the representation. He has further submitted in an identical matter in O.A.No.251 of 2005 in which the Court vide order dated 07.03.2006 has directed the respondents to verify the certificate counter signed by the Inspector of School and if convinced, the applicant will be granted the benefit of appointment. In the above circumstances, the Court has directed the Respondents to verify the certificate counter signed by the Inspector of Schools for giving further chance to the applicant. The applicant has also filed another representation dated 16.2.06 (Annexure 3 a) praying the respondent authorities for consider his case. But the respondent authorities rejected the representation filed by the applicant. The counsel for the applicant has submitted that he will be satisfied if I direct the Respondents to consider the representation dated 16.2.06(Annexure 3a) with reference to the relief

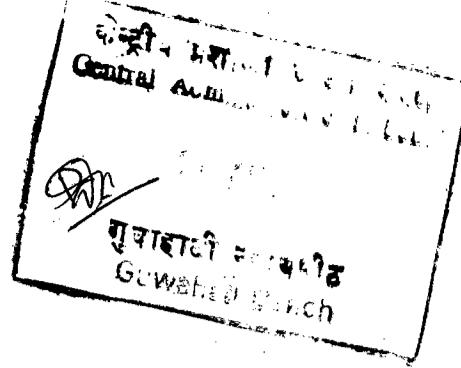
or other competent authority to consider his representation and pass appropriate orders and communicate to him within two months from the date of receipt of this order.

Application is accordingly disposed of. There will be no order as to costs.



(K.V.SACHIDANANDAN)
VICE-CHAIRMAN

L.M.



File No. 1008-2006
The application
through
Rong Skon
Takur
Date 10/8/2006

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT GUWAHATI.

ORIGINAL APPLICATION NO. 200 OF 2006

Shri Ashim Debnath

.... APPLICANT

VERSUS

The Union of India & Ors.

.... RESPONDENTS

SYNOPSIS

This original application is filed by the applicant ^{Praying} for ^{an} direction to the Respondents for the recruitment Group 'D' post (Trackman/Khalasi/Helper II).

The applicant was successful candidate and he was declared passed in written examination, physically efficiency Test and documents ^{were} also duly verified by the respondent authorities. The Railway Recruitment Board after completion all stages of examination disqualified him for Group 'D' post on the account of the certificate produced by the applicant ^{but it} does not bear the counter signature of the Inspector of Schools. Hence, the present application.

Filed by

L. Bhattacharya

Advocate.

8
Filed by
the applicant
through
Ranu Sengupta
Advocate
Le-8-2006

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT GUWAHATI

LIST OF DATES

10.07.03 An advertisement was published in the Assam Tribune for recruitment of Group 'D' category posts lying vacant in the N.F.Railway.

09.11.03 Applicant appeared in the written test.

27.04.05 Result of the written test was published in the Assam Tribune.

10.05.05 Call letter was issued to the applicant to appear the physical Efficiency Test.

10.05.05 Applicant appeared in the physical Efficiency Test and also qualified in the physical Efficiency Test.

11.06.05 Call letter was issued to the applicant for verification of the original records.

13.06.05 Applicant appeared in the office of the Railway Recruitment Board, Guwahati for verification of the original documents.

13.07.05 Final Result declared in the Assam Tribune news Paper. Applicant name did not appear.

02.09.05 Applicant filed representation before the authorities.

Filed by

Ranu Sengupta

Advocate.

Contd.../-

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI.

ORIGINAL APPLICATION NO. 200 OF 2006

Shri Ashim Debnath

... APPLICANT

VERSUS

The Union of India & Ors.

... RESPONDENTS

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Filed by
R. Thakur
Advocate

Contd. .../-

9
filed by (Applicant)
Ashim Debnath
The Union of India & Ors.
Rama Shanmugam
10-8-2006

10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.

GUWAHATI BENCH, AT GUWAHATI.

(An Application under section 19 of the Administrative
Tribunal Act, 1985)

O.A.NO.200/2006.

Sri Ashim Debnath,

S/o-Late Umesh Chandra Debnath,

New Colony, Q. No. D 47/A

P.O.-Lumding,

Dist-Nagaon(Assam).

.....Applicant.

-VS-

1. The Union of India,
represented by the Secretary
to the Govt. of India,
Ministry of Railway, New Delhi.
2. The General Manager,
North East Frontier Railway,
Maligaon, Guwahati-11.
3. The Chairman,
Railway Recruitment Board,
Station Road, Guwahati-781001.
4. The Assistant Secretary,
Railway Recruitment Board,
Railway Station Road
Guwahati-781001.

.....Respondents.

Ashim Debnath

I. PARTICULARS OF THE ORDER AGAINST THE APPLICATION
IS MADE.

The instant application is filed against the impugned action on the part of the respondents in not appointing the applicant into the post of Group - D in North East Frontier Railway after qualifying in the written Test, physical Test etc. Having no other alternative, the applicant filed an original application being O.A. No. 302/2005. The Hon'ble Tribunal vide order dated 6.12.2005 was pleased to direct the respondents to intimate the result to the applicant within a period of one month from today. The applicant has submitted Hon'ble CAT's order with an application on 8.12.2005. The applicant was shocked and surprised to receive the impugned order passed by the Assistant Secretary for Chairman, Railway Recruitment Board, Guwahati. The impugned order dated 27.12.05 issued under the memo No. RRB/G/OA No. 302/05 (AD) by which the said applicant failed to comply particular condition in the certificate with counter signature with the Inspector of Schools/District Education Officer. The applicant submitted representation before the General Manager, North East Frontier Railway, the Chairman, Railway Recruitment Board on dated 16.2.06 & 12.4.06 praying the respondent authorities to consider the case of the applicant. The impugned order passed by the Assistant Secretary for

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Chairman, Railway Recruitment Board, Guwahati. The impugned letter dated 26.4.06 by which the said respondent as pleased to reject the representation filed by the applicant and hence the present application.

2. JURISDICTION OF THE TRIBUNAL

The applicant declare that the subject matter of instant application is with the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION

The applicant further declare that the instant application is filed within the Limitation period prescribed under section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE

(i) The applicant is a citizen of India and permanent resident of New Colony, P.O, Lumding in the district of Nagaon, Assam as such he is entitled to all the rights and privileges as guaranteed under the Constitution of India and the laws of the land.

(ii) The applicant is educated upto Class IX Standard and he could not prosecute his further studies

beyond 9th Standard due to financial hardship of the family. The applicant further more states that he belongs to other backward Class of Yogi community.

(iii) The applicant begs to state that the applicant could not go beyond the 9th standard due to sudden and pre-matured death of his father which resulted the ultimate bankruptcy to applicant family.

(iv) The applicant begs to state that in such circumstances of his life the applicant had no other alternative, but to search for a suitable job in order to support his family and also for his own survival. The applicant while searching in a descent mode of livelihood, the applicant had gone through advertisement published on 10.7.03 in the local English News Paper of 'The Assam Tribune'. The advertisement published in Assam Tribune whereby applications were invited for the Group 'D' post i.e., Trackman/Khalasi/Helper-II.

-(v)- The applicant begs to state that the applicant in response to the advertisement published in Assam Tribune dated 10.7.03 has applied for the Group 'D' post of Trackman/Khalasi/Helper II with necessary testimonial before the Assistant Secretary, Railway Recruitment Board, Station Road, Guwahati.

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Adhikar Debbarma

(vi) The applicant begs to state that after submission application form along with necessary testimonials, the railway recruitment board duly verified application form and he was called for written examination on 9.11.03 bearing Roll No. 44039283. Thereafter with thorough preparation the applicant appeared in the written test dated 9.11.03 and he came out successfully which is declared in the news paper Assam Tribune dated 27.4.05.

(vii) The applicant begs to state that pursuant to his result in the written test the applicant was called upon to appear in the physical efficiency test vide its letter dated 10.05.2005 to be held on 11.6.2005 at Maligaon Railway Stadium at 6.00 A.M. The said called letter dated 10.05.05 was issued by the Assistant Secretary for Chairman, Railway Recruitment Board, Guwahati.

(viii) That the applicant begs to state that Railway Recruitment Board vide its letter dated 11.6.2005 declared your humble applicant physically fit and qualified in the physically Efficiency Test and the humble applicant was call for the verification of original certificate and Testimonials on 13.6.2005.

(ix) The applicant begs to state that the applicant produced the required testimonials in original, the

officials present in the office of the Railway Recruitment Board duly verified the certificates, documents etc. submitted by the applicant without raising any objection.

(x) The applicant begs to state that the applicant after the completion of all the stage of the Examination was waiting for the result to be declare in the final select list.

(xi) The applicant begs to state that the select list was published in the English local daily news paper of the Assam Tribune on 13.07.2005. The applicant while going through the news paper dated 13.07.2005 was very much shocked and surprised to know to that his roll number did not find a place in the said news paper.

(xii) That the applicant begs to state that the applicant has successful completed in written examination, physically efficiency Test and his documents also verified by the Railway Recruitment Board without any objection. The applicant after completion of all the stages of Examination. The applicant was very much confident about the result that he will be successful candidate for the Group D post of Trackman/khalasi/Helper II. But the result published in the Assam Tribune dated 13.07.2005 proved contrary to his expectation. The

applicant after finding his result nowhere in the Assam Tribune dated 13.07.2005, suffered a great deal of frustration and deep mental agony.

(xiii) That the applicant begs to state that the applicant thereafter submitted a representation to the General Manager, N.F.Rly. and the Chairman, Railway Recruitment Board, Guwahati to consider the case of the applicant. However the case of the applicant was not considered for the reason best known to them. Thereafter has been aggrieved by such action of the respondent the applicant approached the Hon'ble Central Administrative Tribunal by filing an original application. The original application is numbered as OA 302/2005. The original application came up for admission hearing on 06.12.2005 and the case is disposed up at the admission stage itself. The Hon'ble Central Administrative Tribunal while disposing the original application direction was issued to the respondent No. 3 i.e. Chairman, Railway Recruitment Board to consider a case the applicant and to dispose of the representation submitted by the applicant.

A copy of the Hon'ble CAT's order dated 06.12.2005 enclosed herewith as marked as ANNEXURE-1.

(xiv) That the applicant begs to state that the applicant submitted the representation on 08.12.2005 with a

Additional Sub notes

X
Anil Kumar Debnath

certified copy of order dated 06.12.2005. The respondent No. 4 after the receipt of and passed order dated 27.12.2005 and thereby rejected the application of the applicant. The order dated 27.12.2005 rejected the representation in the ground that the School Certificate which was issued by the Headmaster should bear counter signature either by Inspector of School or District Education officer. The letter dated 27.12.2005 in para (2) states the followings:-

"As per 2.2 the School certificate issued by the Headmaster must be counter signed by the Inspector of School/ District Education Officer. The certificate produced by the petitioner is devoid of the counter signature of Inspector of Schools/District Education Officer. This has been selected during the verification of his original document on 13.06.2005. As such the candidature of Shri Debnath has been treated as canceled.

A copy of the impugned order dated 27.12.05 is annexed herewith as
ANNEXURE-2.

(XV) That the applicant begs to state that the applicant after receipt of the impugned letter dated 27.12.2005, the applicant was very much shocked and surprised. The applicant after submission of the repre-

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sentation dated 08.12.2005 was hopeful that his case will be duly considered by the respondent authorities but rejection of the representation submitted by the applicant. The applicant was not at all could believe that his case will be rejected by the respondent for the reason of not bearing the counter signature in the School certificate.

(xvi) That the applicant begs to state that submission on the representation of the applicant dated 08.12.2005 is malafide and same is not sustainable in the eye of law and therefore same is needed to be set aside and quashed by the Hon'ble Tribunal.

(xvii) That the applicant begs to state that the applicant has duly submitted his certificate bearing the counter signature of the Inspector of School, Nagaon District circle and the same was submitted before the respondent No.3. The applicant also submitted the several representation before the respondents authority to consider the case of the applicant.

A copy of representation dated 16.02.2006 and 12.04.2006 are annexed herewith as Annexure-3a & 3b.

(xviii) That the applicant begs to state that the applicant received the impugned order dated 26.04.2006

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Adarsh Deb mukherjee

passed the Assistant Secretary for Chairman, Railway Recruitment Board, Guwahati, issued under the Memo No RRB/G/0A No 302/05 AD. BY which the said respondent was pleased to reject the representation filed by the petitioner on the ground that the applicant failed to comply particular condition in the certificate with counter signature with the Inspector of School/District.

A copy of the impugned order dated 26.04.2006 is annexed herewith as ANNEXURE-4.

(XIX) That the applicant begs to state that the respondent authority while passing impugned order dated 27.12.2005 and 26.04.2006 did not apply his mind and whimsically passed the aforesaid impugned order. Therefore, the applicant approach the Hon'ble Tribunal, for redressal of his grievances.

GROUND FOR RELEA WITH LEGAL PROVISION

I. For that the applicant being eligible and having been qualified in the written test and physical efficiency test his case should have been considered by the authorities but the respondent authorities have acted illegally and arbitrarily in dropping the name of the applicant from and rejected his representation dated 12.04.2006 which is ex facie illegal and liable to be set aside and quashed.

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Advisory Deb north

II. For that the applicant being qualified in the written test as well as the physical efficiency test had the legitimate expectation that his case would be considered for appointment in Group-D category but the respondent authorities by depriving the legitimate right of the applicant did not select the applicant for the reasons best known to then and as such the authority is entitled to direction from this Tribunal to appoint the applicant in the Group-D category in the North East Frontier Railway.

III. For that the applicant is a deserving candidates fro the Recruitment of Group -D category as he has passed the written test as well as physical efficiency test. But the respondent authorities committed grave error of Law as well as facts in not Selecting the applicant finally. Therefore the applicant is entitled to a direction for inclusion his name in the final Select List.

IV. For that there are vacancies of Group-D category in the various division of the North East Frontier Railway and as such a direction may be given to accommodate the applicant in a vacant post of Group -D category the applicant being eligible and qualified for that job.

V. For that the name of the applicant was not empanelled solely for the reason that counter signature of the competent authority was not in the original documents. The respondents are not justified for the reason that any counter signature in an original document will test amount to for going the same but the respondent authorities did not take into account that aspect of the matter and passed the impugned order dated 27.12.05 rejecting the representation submitted by the applicant for not availability of the counter signature of the competent authority which is ex facie bad in law and liable to be set aside and quashed

VI. For that neither in the individual call letter nor in any stage of recruitment it was pointed out that counter signature will be required to be obtained in the original certificate required to be produced for verification and as such the applicant did not know that the counter signature is required to be obtained and for that reason only the respondent authorities out rightly rejected the prayer of the applicant is illegal ultra vires the provisions of law.

VII. For that the non inclusion of the counter signature of the competent authority in the original signature was a minor defect which the applicant cured it immediately after having come to know about the same

Anil Kumar Deek Nath

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but the authorities did not consider the case of the applicant for some replied interest and as such your Lordships would be pleased to set aside and quash the impugned order dated 27.12.2005 and 26.04.2006.

VIII. For that there is an error apparent on the while passing the impugned order dated 27.12.2005 and 26.04.2006. It is to be submitted that in the advertisement published in the Assam Tribune dated 10.07.2003 all the important points relating to the recruitment were empenalled in the advertisement no where it has been mentioned that counter signature is a mandatory requirement in the original certificate to be submitted by the candidates and as such the impugned order dated 27.12.05 ad 26.04.06 passed by the Assistant Secretary for the Chairman Rly. Recruitment Board, Guwahati is set aside and liable to be quashed.

IX. For that the respondent authorities failed to take into account that the applicant came from a very poor family he lost his father at the early age and as such the Hon'ble may be pleased to direct the respondent to immediately appoint the applicant in the Group-D category in the N.F.Rly.

X. For that there are several posts are lying vacant in which appointment for Group-D category is

going to be made by the respondents very recently and as such your Lordships would be pleased to direct the Respondents to immediately appoint the applicant in the Group - D category post lying vacant in the N.F.Rly.

XI. For that no opportunity was given to the applicant cure his defect which according to the applicant is a minor one. Although opportunity was given to the candidates having minor defects to cure their defect and as such the respondent authorities acted illegally in passing the impugned order dated 27.12.05 and 26.04.06 and the impugned decision taken in this regard is bad in law and liable to be set aside and quashed.

6. DETAILS OF REMEDIES EXHAUSTED

That the applicant declared that he has not other alternative remedy than to come under the protective hands of this Hon'ble Tribunal.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY COURT OR TRIBUNAL

The humble applicant further declares that the subject matter against which the applicant seeks remedy is not pending before any Court or Tribunal.

Contd.../-

Additional relief sought

8. RELIEF SOUGHT FOR

Under the facts and circumstances stated above, the applicant humbly & most respectfully prays that the instant application be admitted, relevant records be called for and upon hearing the parties, on the cause or causes that may be shown, be pleased to grant the following reliefs to the application:-

- i. To set aside and quash the impugned letter dated 27.12.2005 and 26.04.2006 issued to the applicant under memo. No. RRB/G/0A/NO 302/05 (AD) by the Assistant Secretary for Chairman Railway Recruitment Board, Guwahati-1.
- ii. To direct the respondent authorities in immediately appoint the applicant in the Group-D category posts lying vacant in the N.F.Rly.
- iii. cost of the application and /or
- iv. Any other reliefs to which the applicant is entitled under the facts and circumstances of the case and as may be deemed fit and proper by this Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR

Pending disposal of the instant application the applicant prays for an interim order directing the respondent authorities not to make any appoint of Group -D

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Adhikar Laborer

category for the post of Trackman/ Khalasi/ Helper II etc lying vacant in the North East Frontier Railway and/or pass such further order or orders as this Hon'ble Tribunal deem fit and proper.

10.

The application is filed through Advocate.

11. PARTICULARS OF BANK DARFT/ POSTAL ORDER

Indian postal order No. 26G-325615 Dated 29-06-2006 for Rs. 50/- (Rupees Fifty) only payable at Guwahati in favour of the Registrar, Central Administrative Tribunal, Guwahati.

Anil Kumar Deb mishra

VERIFICATION

I, Sri Ashim Debnath, S/O Late Umesh chandra Debnath, residing at New colony, Po.Lumding, P.S-Lumding Dist-Nagoan, ASSAM to Solemnly here by affirm and declared as follows:-

That I am the applicant in the accompanying application and I do here by verify and state that the statements made there in are true to the best of my knowledge, belief and information.

and I sign this verification on this the 10th day of July, 2006 at Guwahati.

DECLARANT

Ashim Debnath

To

The Chairman,
Railway Recruitment Board,
Guwahati Station Road,
Guwahati-1.

Sub :- Original Application No.302/03 filed by the
applicant.

Ashim Debnath

Vs-

The Union of India & Ors..

Sir,

With due the reference to the subject cited, I beg to state that I applied for Group 'D' post (Trackman/Khalasi/Helper II) in response to your Employment Notice No.1/03 and I was called written examination on 9.11.2003. Sir, I successfully passed out written examination, physically efficiency test and Document verification etc. However, inspite of successfully completing all the stages of the examination for recruitment into the Group 'D' post I was neither selected nor called for medical test. Sir, I also submitted my representation by registered post high-lighting my grievance before you, but the said representation has not been disposed of.

Therefore, under such circumstances I filed

*certified to be
true copy
Rama Shankar Talukar
A doctor*

a case before the Hon'ble Central Administrative Tribunal

contd.

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same is numbered and registered as O.A.No.302/05.

The Hon'ble CAT dispose of the O.A.No.302/05 on 6.12.05 on the admission stage itself. (copy of the said order dated 6.12.05 is enclosed herewith).

It is therefore, prayed before your good-self to consider my case and to select me for Group'D' post and to allow me for the medical examination like that of other selected candidates.

The certified copy of the order of the Hon'ble CAT dated 6.12.05 is enclosed herewith for your use and compliance.

Mr. Ashim Debnath
S/O Late Umesh Chandra Debnath
New Colony, Bly Q.No.D 47/A
P.O. Lunding
District-Nagaon, (Assam).

Yours faithfully

(Ashim Debnath)

*certified to be
true copy
Rama Shankar Thakur
Advocate.*

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 302/2005.

Date of Order : This the 6th December 2005.

The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.

Mr. Ashim Debnath
S/o - Late Umesh Chandra Debnath
New Colony
P.O. - Lumding
Dist. - Nagaon (Assam).

... Applicant

By Advocates Mr. H. Rahman, Mr. R.S. Thakur, Md. A.M. Ahmed
and Mr. S.K. Singh.

- Versus -

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

2. The General Manager,
N.F. Railway, Maligaon,
Guwahati - 11.

The Chairman,
Railway Recruitment Board,
Guwahati Station Road,
Guwahati - 1.

4. The Assistant Secretary for Chairman,
Railway Recruitment Board,
Railway Station Road,
Guwahati - 1.

... Respondents:

Mr. J. L. Sarkar, Railway Standing Counsel.

*certified to be
true copy
Rama Shankar
Thakur
Advocate*

ORDER (ORAL)

80

SIVARAJAN. J. (V.C.)

Heard Mr. A.M. Ahmed, learned counsel for the applicant and Mr. J.L. Sarkar, learned standing counsel for the Railways.

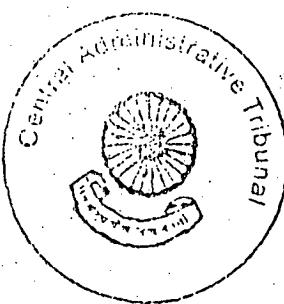
2. The applicant applied for a Group 'D' post pursuant to an advertisement (Annexure - III) of the Railway Recruitment Board dated 28.06.2003. It is the case of the applicant that he had passed the departmental examination conducted on 09.11.2003 and also the physical efficiency test on 10.05.2005; he was called for verification of documents on 11.06.2005. His grievance is that he had not been called for medical examination. It is stated that the applicant had made representation dated 02.09.2005 (Annexure - VII(A)) before the 3rd respondent, but no reply has been received.

3. According to the counsel for the applicant in view of the fact that the applicant had passed the written test, physical efficiency test and also produced the documents for verification, he is entitled to know the result and as to why he was not selected.

4. Mr. J.L. Sarkar, standing counsel for the Railways submits that the 3rd respondent will consider the representation (Annexure - VII(A)) and intimate the result to the applicant without delay.

5. In the circumstances, I am of the view that this application can be disposed of at the admission stage itself. Accordingly, there will be a direction to the 3rd respondent to dispose of the representation (Annexure - VII(A)) and intimate the result to the applicant within a period of one month from today.

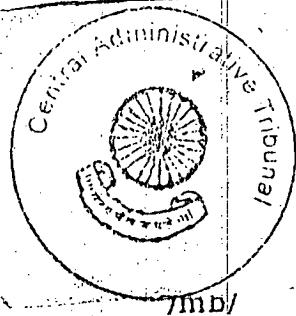
9/pt



The application is disposed of at the admission stage itself.

The applicant will produce this order before the 3rd respondent for compliance.

sd/ VICE CHAIRMAN



Date of Application : 7/12/05
Date on which copy is ready : 7/12/05
Date on which copy is delivered : 7/12/05
Certified to be true copy

N. Gopal 7/12/05
Section Officer (JUD)
C. A. T. Guwahati Bench
Guwahati

7/12/05

certified to be
true copy
Rama Shankar Rakhus
Advocate

Regd. a/c to AD
32
RAILWAY RECRUITMENT BOARD, GUWAHATI
Station Road, Panbazar, Guwahati- 781001(Assam)

No. RRB/G/OA No.302/05(AD)

Dt. 27.12.05

To
Shri Ashim Debnath,
S/o Late Umesh Chandra Debnath, (New Colony)
P.O. LUMDUNG
Dist. Nagaon (Assam)

Sub:- Original application No.302/05 filed by the application.

Ref:- Your application dated nil addressed to Chairman RRB/Guwahati.

With reference to your application mentioned above in connection with the OA No.302/05 and in pursuant to the honorable CAT/Guwahati's order dated 6th Dec/2005, your application has been put up to the competent authority and his valued speaking order is enclosed herewith for your information please.

Enclo:One

R. Sonowal
27/12/05
(R K Sonowal)
Asstt. Secretary
For Chairman/RRB /Guwahati

*classified to be
issued only to the
Lokman Shonkha - The
Advocate*

In pursuance of the Hon'ble CAT/GHY's order dated:06.12.05. and the fresh appeal preferred by Shri Ashim Debnath S/O Late U.C. Debnath, Lumding, Assam, the undersigned has carefully gone through the appeal for consideration after going in to detail of the OA No 302/05. and fresh appeal submitted by Shri Abinash Debnath, the undersigned has passed the following order (s): -

(1) Notwithstanding what is contained in the OA and the fresh application submitted by the petitioner, the laid down terms and condition vide para 2.2. (Proof of age) of the Centralized Employment Notice No-1/2003. has not been fulfilled by the petitioner, although the same has been specifically mentioned in the Centralized Employment Notice- 1/2003. Published in Employment News dated : 28.06.03

(2) As per para 2.2. the School Certificate issued by the Headmaster must be counter signed by the Inspector of school / District Education Officer. The Certificate produced by the petitioner is devoid of the counter signature of Inspector of Schools / District Education Officer. This has been detected during the verification of his original Documents on 13.06.05. As such the candidature of Shri "Debnath has been treated as cancelled.

In view of the above the Roll No.44039283 had not been figured in the result sheet published in the Assam Tribune on 13.07.05.

Please communicate my above orders to the petitioner.

*Internal
Bureau
27/12/05*

*Chairman
Army Recruitment Board
27/12/05
Sahib*

*certified to be
true copy
Shri K. K. Thakur
Advocate*

Same



To.

The General Manager
North East Frontier Railway,
Maligaon Guwahati-11.

LUMDING MDG C/82447
RL-AD 4058

PA : BN

To: THE ASSTT. SECY FOR, CHAIRMAN R R BOARD
GHY -1, PIN: 781001

Wt: 30 grams

PG: 30.00, Amt: 0.00, 16/02/2006, 10:57:55

HAVE A NICE DAY

The Chairman
Railway Recruitment Board
Panbazar, Guwahati-1.

Sub:- An application to consider the case of the application for group (D) category post lying vacant in the N.F.Railway.

Sir,

With due respect I beg to state few lines for your kind consideration and necessary action.

That Sir Pursuant to an advertisement published in the local daily "The Assam tribune" dated 10-7-03, I applied for the recruitment of group 'D' post lying vacant in the N.F. Railway.

That Sir, accordingly I was allowed with the Roll No. 44039283 and admit card was issued to me and written Examination for the recruitment of said posts was held in 9-11-03 in the Centre, namely Lumding college, Lumding.

That Sir, I appeared in the written Examination and came out Successful, which is evident from the Result declared in the local daily 'The ASSAM Tribune' on 27.04.05.

That Sir thereafter a call letter dated 10-5-2005 was issued to me by the Assistant Secretary for chairman, Railway Recruitment Board, Guwahati asking me to appeared

*certified to be
true copy
Ranu Shankar
Thakur
Advocate*

in the physical efficiency. Test to be held on 11-6-05 in the Maligaon Railway Stadium.

That Sir, accordingly I participate in the physical efficiency test and came out Successful and as such the Authority issued me another letter dated 11.06.05 and advised me to be present on 13.06.05 at 10 a.m. for verification of original certificate, testimonials etc.

That sir, on 13.06.05 I produced the required testimonials in original and the officials present in the office of the Railway Recruitment Board duly verified the certificates, documents etc. without raising any objection.

That sir, with high hope I was waiting eagerly for a positive result but I was totally astonished after going through the result of the said examination published on 13.07.2005 where my Roll No did not find a place.

That sir, I immediately filed a representation before the General Manager, N.F.Rly, Maligaon and chairman/ RRB, Guwahati-1 on 02.09.2005 but the authorities failed to give any heed to the representation filed by me. Then after filed a case refer the Hon'ble Tribunal and the Hon'ble Tribunal has disposed case on 06.12.2005 to order the 3rd respondent to dispose of the representation and estimate the result and consider the case.

That sir, having come to know that in the original transfer ceritificate produced by me as the countersign of the Inspector of Schools, Nagaon District Circle was not

Date: 12-4-2006

3b

To,

The Assistant Secretary,
for Chairman,
Railway Recruitment Board,
Railway Station Road,
Guwahati-1.

With reference No. RRB/G/OA No. 302/05 (AD).

With reference to above cited letter dated on 27-12-2005, I received your letter on 06-01-2006 came to know about the fact. Sir, that time I have applied for Counter Signed Certificate at Nagaon. The School Certificate issued by the Headmaster countersigned by the Inspector of Schools is enclosed along with this application. Sir, I have original School Certificate issued by the Headmaster countersigned by Inspector of Schools, when its require, I shall produce before you.

As such, you are requested to accept the aforesaid countersigned Certificate and Select for Selection List and allow me to appear for the medical examination inspite of fulfilling the requisite qualification for the Group 'D' post as per Employment Notice No. 1/03.

Enclosed herewith :-

1. Attested copy countersigned 8th passed Certificate.
2. Attested copy of 8th passed Mark-sheet passed the B.M.B. High School, Lumding.

Received
12/4/06
S. Debnath
For Ashim Deb Nath
P.O. Lumding
Assam
Pin - 782447
Yours faithfully,

Ashim Debnath

Address :-

Ashim Debnath,
S/o Late U.G. Debnath,
Rly. Qtr. No. D 47/A,
New Colony,
P.O. Lumding, Nagaon,
Assam, Pin - 782447.

*certified to be
true copy
Rama Shankar Nath
Advocate*

Read with A/D

Railway Recruitment Board, Guwahati
Station Road, Panbazar, Guwahati (ASSAM)
PIN. 781 001

No. No. RRB/G/OAN. 302/05(AD)

Dt. 26/04/06

To: SHRI ASHIM DEB NATH,
S/o LATE U.C. DEBNATH
RLY. QR. NO. D 47/A
NEW COLONY, P.O. LUMDING,
Nagpur, Assam.

Ref:- Your letter No. Nil dated Nil addressed to Chairman/RRB/Guwahti.

So far as the recruitment of Group 'D' is concerned against the Employment Notice No.1 of 2003 (Centralized), the decision of the competent authority had already been communicated to you, as revealed from your letter cited above, under this office letter of even no. dated 27/12/05.

However, you are once again let you know that, any document pertains to the Employment Notice No.1 of 2003 (Centralized) for the recruitment of Group 'D', all the documents/certificates etc. etc. will be valid only, if the same are signed/countersigned prior to the closing date of notification. But the School certificate issued by the Headmaster/Secretary, Bordoloi Memorial Bastuhara High School, Lumding does not bear at all the countersignature of Inspector of School/District Education Officer enclosed with the original application format nor at the time of Document verification held on 13/06/05.

As such, there is no reason for producing the certificate issued by the Headmaster ~~not~~ of Bordoloi Memorial Bastuhara High School, Lumding.

(R.K. Sopowal)
Secretary/RRB/Guahati
for Chairman/RRB/Guahati

(R.K. Sopowal)

Railway Recruitment Board

Guwahati

certified to be
true copy
Shakhs-Taking
All's safe

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 251 of 2005.

Date of Order: This the 07th day of March 2006.

The Hon'ble Sri B.N. Som, Vice-Chairman (A).

The Hon'ble Sri K.V. Sachidanandan, Vice-Chairman (J).

Sri Jayanta Roy,
S/o Late Jyotish Ch. Roy
Resident of West Gotanagar, Maligaon
Railway Quarter No. 219 (B)
Guwahati - 11.

Applicant

By Mr. N. Dutta, Sr. Advocate and Ms. B. Bhuyan, Mr. T. Teori
Advocates

Versus -

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Railways,
New Delhi.

2. The General Manager,
North East Frontier Railway
Maligaon, Guwahati - 11.

The Chairman,
Railway Recruitment Board,
Station Road, Guwahati - 781 001.

4. Jibon Jyoti Borah, Chairman
Railway Recruitment Board,
Station Road, Guwahati - 781 001.

5. The Assistant Secretary,
Railway Recruitment Board,
Station Road, Guwahati - 781 001.

Respondents.

certified to be 5.
Take copy - The
Rama Sarkar - Adhoc
Advocate

By Advocate Dr. J.L. Sarkar, Railway Standing Counsel.

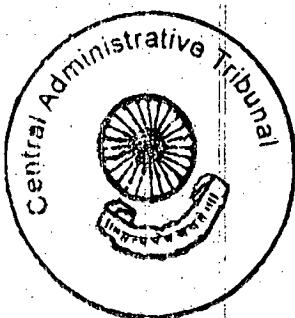
ORDER (ORAL)

K. V. SACHIDANANDAN (V.C.)

Pursuant to an advertisement dated 10.07.2003 for recruitment in Group 'D' category posts lying vacant in the Northeast Frontier Railway, the applicant submitted his application. The applicant appeared in the written test held on 09.11.2003 and the result was also published on 27.04.2005. Thereafter, the applicant appeared in the physical efficiency test held on 10.09.2005. On 10.06.2005, the applicant appeared in the office of the Railway Recruitment Board, Guwahati for verification of the original documents. However, the applicant's name did not appear in the final result published on 13.07.2005. The applicant made representation. But, the respondents did not response. Thereafter, the applicant filed O.A. No. 220/2005 and this Tribunal vide order dated 24.08.2005 disposed of the said application directing the respondents to consider the representation submitted by the applicant, which was done by the respondents and impugned order annexure - C passed on 12.09.2005. Being aggrieved by the said order, the applicant has filed this application seeking the following reliefs:

- (i) to set aside and quash the impugned letter dated 12.09.2005 issued to the applicant under memo no. OA/220/2005/RRB/GHY by the Assistant Secretary for Chairman Railway Recruitment Board, Guwahati - 1.
- (ii) to direct the Respondents to give an opportunity to the applicant to rectify the





defects (if any) in the original certificate and thereafter give appointment to the applicant.

(iii) to direct the respondent authorities to immediately appoint the applicant in the Group - D category posts lying vacant in the North East Frontier Railway.

(iv) cost of the application and/or

(v) any other reliefs to which the applicant is entitled under the facts and circumstances of the case and as may be deemed fit and proper by this Hon'ble Tribunal."

2. The respondents have filed a reply statement contending that Indian Railways published Employment Notice No. 1/03 (Centralised Group D) dated 13.06.2003 for group D posts in Employment News dated 28.06.2003 stipulating the age and other qualifications. The respondents have annexed the advertisement published in the Assam Tribune, a local dailies as Annexure - R2 which was indicative only with clear indication that the advertisement contains important points only. For more details the Employment News dated 28.06.2003 should be referred to. The respondents also stated that the applicant has not complied with the condition stipulated in para 2.2 of the centralized advertisement. Therefore, this is not a good case for the applicant.

3. We have heard Ms. B. Bhuyan, learned counsel for the applicant and Dr. J.L. Sarkar, learned standing counsel for the railways.

4. Counsel for the applicant submits that the applicant being eligible for the post of Group 'D' applied for the same and did the necessary formalities as published in the local dailies. Counsel also

submits that the applicant was not aware that the original certificate should bear the counter signature of the Inspector of School since it was not in the advertisement published in the local dailies. The applicant had known the condition only when his candidature was rejected on the ground that in the certificate there is no counter signature of the Inspector of School. Counsel for the applicant also submits that the defect is technical in nature and it can be removed at any stage. Therefore, the applicant has a good case. Counsel for the respondents, on the other hand, submits that the applicant's contention cannot be accepted that the Employment notice was totally beyond his knowledge and the case of the applicant is devoid of merits since in the notice published in the local dailies it is clearly stated to refer the 'Employment News'.

6. We have given due consideration to the arguments made by the counsel for the parties and materials placed on record. From the materials available on record, it is clear that the applicant, earlier approached this Hon'ble Tribunal by way of filing O.A. No. 220/2005 and vide order dated 24.08.2005, this Tribunal directed the respondents to dispose of the representation submitted by the applicant within a specified time frame. The relevant portion of the said order reads as follows:-

" If the contention of the applicant that his name was not empanelled solely for the reason that counter signature of the competent authority was not in the original document, according to me, the respondents are not justified for the reason that any counter signature in an original document will tantamount to forging the same. This

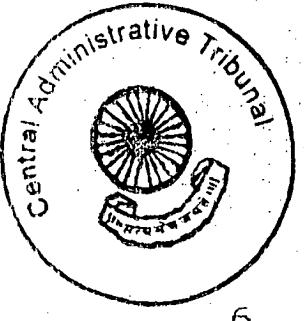
aspect will also be borne in mind by the respondents while considering the representation to be submitted by the applicant.

The O.A. is disposed of as above at the admission stage itself.

If the appointments have not already been made to all the existing vacancies as on today, one vacancy must be reserved till a decision is taken on the representation to be submitted and communicated to the applicant."

The applicant has also produced the employment notification in the earlier Original Application at page 18, which specified that only important points were notified in the said notification and stated to refer the Employment News. The respondents have also produced the Employment News at Annexure - R1 dated 28.06.2003 and paragraph 2.2 of the said notification reads as follows :-

✓ "PROOF OF AGE : (a) A certificate issued by VIIIth Board or equivalent or (b) Metric certificate issued by Board or (c) School leaving certificate counter signed by Inspector of Schools/District education Officer etc."

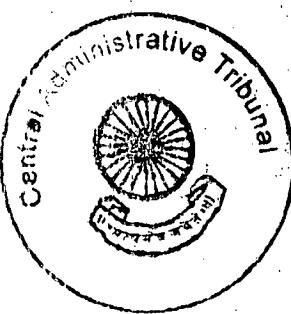


6. Obviously on going through the Employment News this aspect of counter signature of the Inspector of School was omitted in the paper the advertisement. We requested the counsel for the applicant as to the legal position with reference to state education code as to the mandatory nature of the counter signature. However, counsel for the applicant submits that she has got counter signature subsequently in the original certificate issued by the Railway authority. Therefore, there is no such doubt in genuineness of the certificate. The question only to be decided by

this Court is as to whether the defect is curable or relief can be granted to the applicant.

7. Counsel for the applicant relied on decisions of the Hon'ble Supreme Court in the case of (1) Paddar Steel Corporation Vs. Ganesh Engineering Works & Others, (1991) 3 SCC 273 and (2) B. Bhuyan Chowdhury Vs. Union of India, (2001) GLT 341, wherein Hon'ble High Court observed that "defect in the lowest tender was curable in nature and did not affect the substance of the tender". The High Court observing Article 14 of the Constitution of India in paragraph 10 of the said order observed:

"10. A right to choose one tender from the other can not be said to be arbitrary unless the said power is found to be exercised for any collateral purpose. Article 226 of the Constitution is a form of judicial review to keep the authorities within the bounds of law. The Court is concerned with the legitimacy of the decision making process. The balancing and weighting the situation and thereafter reaching its decision is primarily matter for the public authority and not for the Court. Judicial review is meant for upholding of the rule of law and the Constitution. The Indian Constitution enshrines the rule of law and guaranteed constitutional right to the subjects, it also guaranteed remedy for enforcement of its rights. Article 226 is aimed to secure that the State and its instrumentalities are kept within the limits of the power and Judicial Review is meant to render justice to the individual concerned with the legality of the decision making process and not with the merits of the judgment. The discretion to find out the right persons among the tenderers is entrusted upon the administrative authority. But then the Court is entrusted with the duty of uphold the law and decide what is lawful. A decision that is absurd or perverse is



unreasonable and therefore arbitrary. A judgment arrived at by the lawful authority that is oppressive to the subject is violative of Article 14 of the Constitution of India. A decision may also be arbitrary and discriminatory where it is unduly oppressive and unjustifiably inflict excessive hardship to a citizen by invading his right or interest. No doubt the administrative authority is authorized to have a free play within the joints - a margin of appreciation is to be allowed to the maker of the decision. But the Court is equally charged with the duty to see as to whether the authority acted within the limits set down by law. In R.V. Tower Hamlets London Borough Council, ex p Chentik Developments Ltd. reported in (1988) 1 All ER 961 the Court summarized the principles in the following passages :

"..... The Court is entitled to investigate the action of the local authority with a view to seeing whether or not they have taken into account matters which they ought not to have taken into account, or, conversely have refused to take into account or neglected to take into account matter which they ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that, although the local authority had kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again I think the Court can interfere. The power of the Court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned and concerned only, to see whether the local authority has contravened the law by acting in

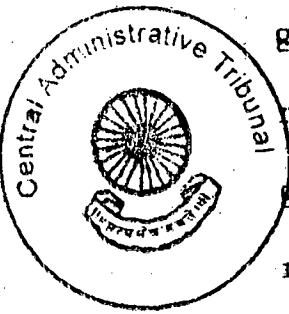


excess of the power which parliament has confined in them

The High Court further observed that though the earnest money was deposited, but according to the respondents it was in the name of wrong person, which was clarified by the bank itself which stood as the guarantor and Hon'ble High Court declared that the defect is curable in nature which did not affect the substance of the tender.

8. Counsel for the applicant submits that the defect is directory in nature, not mandatory. She also submits that two identical persons, namely Sri Debabrata Roy and Sri Biplab Das had been granted the benefit in the said circumstances. Counsel for the respondents submits that he has not aware of the said benefits granted to such candidates. However, considering the submission made by the learned counsel for the applicant, if the benefits have been granted to such persons, we are of the view that benefit should also be granted to the applicant as well.

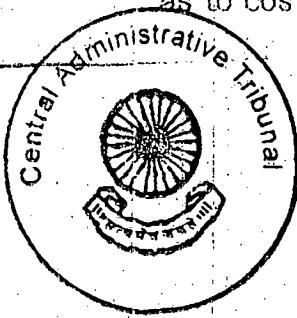
9. In the facts and circumstances of the case and since an interim order has already been granted by this Tribunal keeping one post vacant which admittedly lying vacant, we are of the view that the applicant has made out a good case and we direct the respondent to verify the certificate counter singed by the Inspector of School and if convinced, the applicant will be granted the benefit of appointment, if otherwise found fit complying with the other formality, if any, and necessary order passed and



communicate the same to the applicant as expeditiously as possible.

The O.A. is allowed. In the circumstances of the case no order

as to costs.



sd/ VICE CHAIRMAN (A)

sd/ VICE CHAIRMAN (B)

/ mb/

Date of Application : 12.4.06
Date on which copy is ready : 12.4.06
Date on which copy is delivered : 12.4.06
Certified to be true copy

N. Sengupta 12.4.06
Section (Civil) (JUDL)
C. A. T. Guwahati Bench
Guwahati

lls 12/4/06

certified to be
true copy
for Shri Basanta Kumar
Advocate