

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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✓ 137/2005
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SECTION OFFICER (Judl.)

Rule No. 4
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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

137/05

original Application No.

Misc. petition No.

Contempt Petition No.

Review Application No.

Applicant(s) Baneman Rabha & another

Respondents U.O.T. Govt.

Advocate(s) for the Applicant(s) Mr. K.N. Chaudhury, Mr. I. Chaudhury
R.S. Chaudhury, G. Pahal, P.N. Goswami

Advocate(s) for the Respondents Railways Counsel

Notes of the Registry.	Date	Order of the Tribunal
<p>This application is in form is filed/C.P. Regd. No. deposited vide P.C.D. No. 20(6)133367 Dated 13.6.05</p> <p><i>Meerb</i> Dy. Registrar</p> <p><i>Rai</i> <i>Subbus</i></p> <p>Steps taken with envelope.</p> <p><i>Rai</i></p>	15.6.2005	<p>Heard Mr. P.N. Goswami, learned counsel for the applicants and also Ms. B. Devi, learned counsel for the Railways.</p> <p>The main grievance of the applicants is that though the applicants passed the written and physical efficiency tests, the applicants have not been included in the empanel list (Annexure - E). Counsel for the applicant submits that as a matter of fact 110 vacancies are there and there is no justification showing 16 names more in the provi sional list. and further he submits that the respondents ought to have included all the persons who passed written and physical efficiency tests in the empanel list. The respondents will file an affidavit explaining the circumstances under which only ^{the remaining 122} 16 names out of 132 are showed as provisional. This will be done within two weeks.</p>

Page 1 of 2 Contd/2

12
OA 137/05

Contd/-

15.6.2005 Post on 6.7.2005 for admission.

K. D. Bhandarkar
Member

D. B. Joshi
Vice-Chairman

R 20.6.05
Bardana Devi

Received Copy
for applicant 20/6/05

mb

6.7.2005 Ms. S. Das, learned counsel for the applicant is present. Counsel for the Railways absent with notice. Post on 14.7.2005.

H.

D. B. Joshi
Vice-Chairman

Copy of the order dated 15.6.05 received by the learned counsel for the parties on 20.6.05.

14.7.2005

Counsel for the parties absent with notice. Post on 20.7.2005.

K. D. Bhandarkar
Member

D. B. Joshi
Vice-Chairman

bb

*20
5.7.05*

20.7.05 Heard Mr G. Rahul, learned counsel for the applicants and Miss B. Devi, learned counsel appearing on behalf of Railway counsel Mr S. Sarma.

Admit. Issue notice to the respondents. Written statement within four weeks.

Post on 23.8.05 for order.

Pl. copy of order
dated 20.7.05

K. D. Bhandarkar
Member

D. B. Joshi
Vice-Chairman

Notice & order
Sent to D/Section
for issuing to
resp. Nos. 1 to 5
by regd. A/D post.

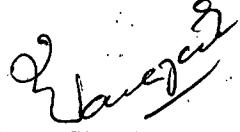
(A/D)
26/7/05. D/No=1190 to
1194

No. 1015 has been Dt= 27/7/05.
Giles. 22/7/05

3

23.8.05.

Ms. B. Devi learned counsel for the Railways submits that written statement is being filed to-day. Mr. G. Rahul, counsel for the applicant wants to file rejoinder. Post the matter on 27.9.05.


 Vice-Chairman

lm

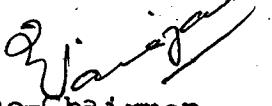
15.9.05

27.9.05

W/S filed by the Respondents.



Post the matter on 17.11.05.


 Vice-Chairman

① W/S has been filed.

lm

17.11.2005

Mr. G. Rahul, learned counsel for the applicant and Mr. J. L. Sarkar, learned Standing counsel for the Railways are present. Written statement has already been filed. The applicant wants to file a rejoinder.

Post for hearing in the next Division Bench. Rejoinder, if any in the meantime.


 Vice-Chairman

No rejoinder has been filed.

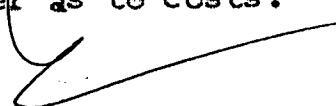
bb

7.3.06

Heard counsel for the parties.

Hearing concluded. Judgment delivered in open Court, kept in separate sheets.

The application is dismissed. No order as to costs.


 Vice-Chairman (J)


 Vice-Chairman (A)

pg

17.3.06
Copy of the Judgment
has been sent to
the office for
posting in the file to
applicant as well
onto the fly, Shri
Counsel.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

137 of 2005

O.A. No.

07.03.2006

DATE OF DECISION

Sri Baneswar Rabha & another.

Applicant/s

Mr. Gautam Rahul

Advocate for the
Applicant/s.

- Versus -

Union of India & Others

Respondent/s

Mr. S.Sarma & Miss B. Devi.

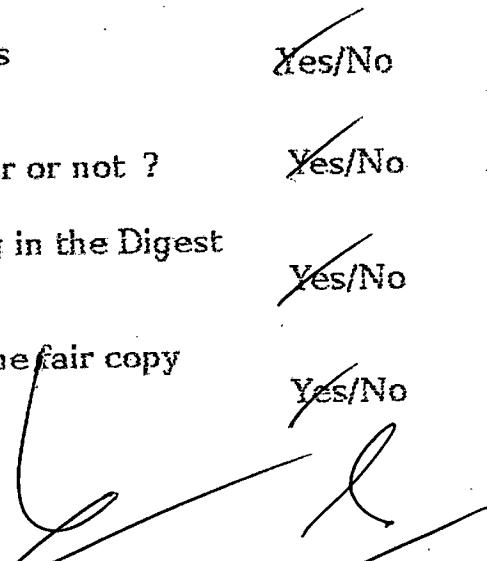
Advocate for the
Respondents

CORAM

THE HON'BLE SRI B.N. SOM, VICE CHAIRMAN (A).

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

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(J)/Member (A)

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 137 of 2005

Date of Order: This is the 7th March 2006.

THE HON'BLE SHRI B. N. SOM, VICE CHAIRMAN (A).

THE HON'BLE SHRI K. V. SACHIDANANDAN, VICE CHAIRMAN (J).

1. Shri Baneswar Rabha,
Son of Shri Joydev Rabha,
Resident of Dhuliagaon, Bokalipara,
P.S. Chaygaon,
District, Kamrup (Assam) - 781124.

2. Shri Sanjit Kumar Bordoloi,
Son of Late Prabin Chandra Bordoloi,
Resident of Khilagaon,
P.S. Jagiroad,
District - Morigaon, Assam (782140)

... Applicants

By Advocate Sri Gautam Rahul

- Versus -

1. Union of India,
Through the Secretary to the Government of India,
Ministry of Railways,
Rail Bhawan,
New Delhi-110001.

2. North East Frontier Railways,
Maligaon,
Guwahati-781011
Through the General Manager.

3. General Manager (P)
North East Frontier Railway,
Maligaon, Guwahati-781011.

4. Chief Personnel Officer,
North East Frontier Railway,
Maligaon, Guwahati-781011

5. Divisional Railway Manager (Personnel)
North East Frontier Railway,
Lumding,
District Nagaon, Assam (782447)

... Respondents

By Advocate Sri S. Sarma, B. Devi

ORDER (ORAL)SACHIDANANDAN, K.V.(V.C.) :

Two applicants have filed this application. They belongs to Scheduled Tribe (ST) community and they should get protection under the provision of Constitution in appointments.

2. The respondents have invited applications from eligible SC & ST candidates for filling up of 595 posts of Trackman/Khalasi in N.F.Railways. Accordingly the applicants have submitted their applications. Both the applicants were successfully cleared the preliminary test and physical efficiency test but they were not selected for appointment. Aggrieved by the said action of the respondents they have filed this application.

3. The respondents have filed a detailed written statement contending that as per the advertisement total number of ST vacancies for the posts of Trackman and Khalasi were 110 and 132 candidates were called for Physical efficiency test. The respondents further stated that 3 candidates did not attend the physical test, 5 candidates have failed to qualify in the physical test. Hence only 8 candidates become ineligible for empanelment. Mere passing in the physical test will not confer any right for automatic empanelment but it will depend on the relative merit position of the candidates for placing the name in the panel. The applicants were not within the merit and therefore they could not be empanelled.

4. The applicants have approached this Tribunal earlier also by filing O.A.58/2005 seeking for a direction to consider inclusion of their names in the select list. The Tribunal by order dated 1.3.2005 disposed of the application with a direction to the applicants to file a representation before the respondents and the respondents were also

directed to dispose of the same within two months. Accordingly the applicants have filed a comprehensive Annexure-G representation which was disposed of by the respondents by a speaking order vide Annexure-H order dated 2.5.2005. Mr G. Rahul, learned counsel for the applicants contended that there were 132 posts as per advertisement and only 110 were selected out of which certain persons have been marked as provisional. The applicants were also in the ST category. Miss B. Devi, learned counsel appearing on behalf of the Railway counsel on the other hand submitted that selection was made as per procedure and in terms of the advertisement. On verifying the records we find that the candidates shown as provisional which is under challenge are also within the select list and they cannot be segregated from the main list and only 110 candidates has been selected in that list, which cannot be faulted. The applicant has not made out a case that their names should be placed within the 110 candidates. As per merit they figured below 110 empanelled candidates, they could not make out a case. We are also governed by the decision of the Supreme Court in Om Prakash Shukla vs. Akhilesh Kumar Shukla & Ors. reported in AIR 1986 SC 1043, wherein the Hon'ble Supreme Court has held that "having participated in the selection and failed the candidate has no right to challenge the same before the Court of Law." The same dictum is also squarely applicable in the present case and therefore there cannot be a case for the applicants. The O.A is accordingly dismissed.

[Signature] In the circumstances there will be no order as to costs.

(K.V.SACHIDANANDAN)
VICE-CHAIRMAN (J)

[Signature] (B.N.SOM)
VICE-CHAIRMAN (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI || 4 JUN 2009

O.A. No. 137 of 2005

Shri Baneswar Rabha & Anr.

... Applicants.

- VERSUS -

Union of India & Ors.

... Respondents.

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Filed by

(Mr. I Chowdhury)
Advocate

10

Sri Baneswar Rabha

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

(An Application under Section 19 of the Administrative Tribunals
Act, 1985)

ORIGINAL APPLICATION NO. 137/2005

BETWEEN

1. Shri Baneswar Rabha,
Son of Shri Joydev Rabha,
Resident of Dhuliagaon, Bokalipara
P.S. – Chhaygaon,
District – Kamrup, Assam (781124)
2. Shri Sanjit Kumar Bordoloi,
Son of Late Prabin Chandra Bordoloi,
Resident of Khilagaon,
P.S. Jagiroad,
District – Morigaon, Assam (782140) Applicants

VERSUS –

1. Union of India,
Through the Secretary to the Government of India,
Ministry of Railways
Rail Bhawan,
New Delhi –110001.
2. North East Frontier Railways,
Maligaon,
Guwahati-781011
Through the General Manager.
3. General Manager (P)
North East Frontier Railways,
Maligaon, Guwahati-781011
4. Chief Personnel Officer,
North East Railway,
Maligaon, Guwahati-781011
5. Divisional Railway Manager (Personnel),
North East Frontier Railways,
Lumding,
District – Nagaon, Assam (782447) Respondents.

DETAILS OF THE APPLICATION:

1. **PARTICULARS OF ORDERS AGAINST WHICH THIS APPLICATION IS MADE:**

The instant application is directed against the letters dated 02.05.2005 under No. E/170/10/NS/559/05 issued by the Office of the General Manager (P), N.F. Railway, Maligaon whereby the representation(s) submitted by the applicants against non inclusion of their names in the list of ST candidates for the Group D posts of Trackman under Lumding Division was rejected most arbitrarily, illegally and in a mechanical manner, thereby violating the rights guaranteed to the applicants under Article 14 and 16 of the Constitution of India.

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

4. **FACTS OF THE CASE:**

- 4.1 That the applicants are citizens of India 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.
- 4.2 The applicants are members of the Scheduled Tribe (S.T. Community). They are as such entitled to all the protections and safeguards extended to the members of such community.
- 4.3 That the Respondent No. 2 launched a special recruitment drive for Scheduled Caste (S.C.) and Scheduled Tribe (S.T.) candidates. In this connection, employment notice No. NFR-2/2001 was issued inviting application from eligible S.C and S.T candidates for filling up of 595 posts of Trackman and Khalasi in NF Railway. The last date for submission of applications was fixed on 23.11.2001.

A copy of the relevant portion of the said employment notice is enclosed herewith and marked as Annexure -A.

Sri. Banawan Pathak

4.4 It was stated in the said employment notice that the recruitment is for the four Divisions of N.F. Railway. It was clarified that candidates could send applications to only one of the Divisions as per his or her choice. In the Lumding Division, the total number of vacancies in the post of trackman at that point of time was 144 (SC-58 and ST-86). It was further mentioned that the number of vacancies given were provisional and may increase or decrease as per requirement of the Railway.

4.5 The Scheme for recruitment was detailed in the said notice. It was stated that the recruitment process would be in three stages

- (i) Objective type written examination (Preliminary test);
- (ii) Objective type written examination (final test);
- (iii) Physical efficiency test.

It was clearly mentioned that the successful candidates who come through the two stage written test would be subjected to physical efficiency test to assess the candidates' fitness for the posts.

4.6 Both the applicants being eligible applied for the post of trackman under Lumding Division pursuant to the aforesaid notice within the stipulated time.

4.7 The preliminary written test was scheduled on 12.09.2004 for which call letters were issued to both the applicants. The applicants accordingly appeared in the preliminary written test held on 12.09.2004. The applicant No. 1 appeared at Haibargaon, Nagaon whereas the applicant No. 2 appeared at Lumding.

4.8 That both the applicants qualified in the preliminary written test and, thereafter, call letters were issued to them for appearing in the final written test, which was scheduled on 21.11.2004. Both the applicants appeared in the final written test on 21.11.2004 and the centre was at Noonmati at Guwahati. Both the applicants successfully cleared the final written test. They were declared as passed under the ST category for

Lumding Division in the results published on 15.12.2004 in the Assamese language daily newspaper "Assamiya Pratidin".

A copy of the relevant portion of the said result sheet is enclosed herewith and marked as **Annexure-B**

4.9 That thereafter, call letters dated 16.12.2004 were issued to both the applicants for the physical efficiency test scheduled on 19.01.2005 at Lumding.

Copies of the two call letters are enclosed herewith and marked as **Annexures -C & D** respectively.

4.10 That the applicants participated in the physical efficiency test and came out successfully. They fulfilled the norms/requirements well within the time prescribed. As was stated in the instruction dated 16.01.2004, the result of the physical efficiency test were displayed on 19.01.2005 at the venue itself. However, names of only those candidates who could not clear the physical efficiency test were displayed. The applicants cleared the physical efficiency test, however, to their utter shock and surprise, their names were not included in the list of unsuccessful candidates displayed. It may be mentioned that about 2 S.T. candidates did not appear in the physical efficiency test and 8 candidates failed to clear the same.

4.11 That as the applicants had cleared both the written test as well as the physical efficiency test, they were eagerly awaiting the declaration of result as they had a reasonable and bonafide expectation that they would be selected for recruitment to the post of trackman under S.T. category under Lumding division.

4.12 That to their utter shock and surprise, the applicants found that their names were not included in the list of empanelled S.T. candidates when the same was declared by the office of the respondent no. 4 vide Memo No.E/227/RECTT/Misc./LM dated 01.02.2005. It is worth mentioning that candidatures of 16 candidates were also declared as provisional along with the aforesaid empanelled S.T. list. It is stated that the candidates whose names are declared as provisional should have to produce the requisite certificates before appointment.

Sri: Benuwar Rehba

A copy of the said Memo dated 01.02.2005 along with the empanelled lists are annexed herewith and marked as **Annexure-E.**

4.13 That it is worth mentioning at the stage that as per the instruction annexed to the Call Letter for Physical Efficiency Test and Verification of Original Certificates, it was categorically mentioned that the certificates would be verified from 17.01.2005 to 21.01.2005 in the office of the Divisional Personnel Officer. It was also categorically stated that the original certificates of date of birth, community and educational certificates etc. have to be produced to the Divisional Personnel Officer and if any one fails to bring original certificates for verification within the prescribed period, his candidature would be cancelled. The applicants have come to know that all total 16 candidates, who could not produce their original certificates for verification on the prescribed date are declared as provisionally selected. As such, it is crystal clear that the authorities in gross violation of their own instructions have provisionally selected those 16 candidates as a result of which the applicants who have cleared both the written as well as the physical efficiency test, have been denied of their right to be selected.

4.14 That the applicants beg to state that as per the instruction annexed to the Call Letter for Physical Efficiency Test and Verification of Original Certificates it was also clearly stated that no marks are awarded for physical efficiency test. However, a comparison of the result sheet of the final written examination and the final select list prepared after the physical efficiency test clearly reveals that the seriatim after the final written test does not tally with the seriatim in the final select list. The respondents have apparently arbitrarily brought in candidates who did not qualify, which is not permissible as per their own instructions. In this connection it is worth mentioning that a candidate bearing roll no. 21708112 had cleared the written test as well as the physical efficiency test but he was not finally selected, purportedly on the ground that he could not produce his original certificates. However, the respondents neither placed him in the provisional select list alongwith the other 16 candidates who were selected provisionally. Under these circumstances it is amply clear that the respondents have not adopted an uniform criteria in preparing the final select list, rather, they have

Sri: Baneswar Ranjan

selected blue eyed persons of their own choice by arbitrarily depriving the applicants of their legitimate rights.

4.15 That the applicants further beg to state that the irregularities committed by the respondent authority in preparing the final select list is also evident from the fact that the roll no. of candidates at Sl. No.7&88 in the final select list were not there in the list of selected candidates of the final written examination. So the applicants strongly apprehend that there is every possibility of including several other candidates in the final select list who were not selected in the final written examination.

It has been reliably learnt that the candidates placed at serial nos. 41, 61, 79, 89, 90,108 in the final select list are not from the Lumding Division, neither they had applied for Lumding Division. It can be seen from the final select list that the first 4 figures of the Roll Numbers of those candidates are 2171 where as Roll Numbers of all other candidates are 2170. By resorting to such arbitrariness the respondents have violated their own terms and conditions mentioned in the employment notice, which specifically laid down that a candidate can apply and will accordingly be considered for only one division.

4.16 That the applicants have been completely taken aback by the non-inclusion of their names in the empanelled list of S.T. candidates. As has been stated above, they had performed satisfactorily in both the written tests and came out successfully. They also successfully cleared the physical efficiency test. Being highly aggrieved, the applicants submitted a representation dated 15.02.2005 before the Hon'ble Railway Minister, Govt. of India praying for providing them justice. Copies of the same were forwarded to the various authorities, including the respondent nos.2, 3 & 4. However, nothing was done in this regard.

4.17 That being aggrieved by the non inclusion of the names of the applicants in the list of empanelled S.T. candidates for recruitment to group D posts of trackman/khalasi published on 01.02.2005 and non-consideration of the representation(s) submitted by them, the applicants earlier approached this Hon'ble Tribunal by way of an application being O.A. No.58 of 2005. This Hon'ble Tribunal by an order dated 01.03.2005 disposed of the aforesaid application with a direction to the applicants to submit a representation to the respondents within 15 days from the date

Sri: Banerjee Rathna

See. Banerjee on Ruth

of receipt of the Order and on receipt of such representation the respondents were directed to give reply that is lawful, fair and just within two months from the date of receipt of the representation. By the said order the respondents were also directed to file compliance report after 2 month and the aforesaid application was fixed for compliance report on 04.05.2005.

A copy of the order dated 01.03.2005 is annexed herewith and marked as Annexure-F.

4.18 That on 04.03.2005 as per the direction of this Hon'ble Tribunal, the applicant submitted a representation before the General Manager, N.F. Railway for consideration of their case.

A copy of the representation dated 04.03.2005 is annexed herewith and marked as Annexure-G.

4.19 That on 02.05.2005 the Assistant Personnel Officer for the General Manager, N.F. Railway issued two letters under No.E/170/10/NS/559/05 to the applicants. By the aforesaid letter the representation submitted by the applicants was rejected by the respondents in a most arbitrary and mechanical manner.

A copy of the letter dated 02.05.2005 is annexed herewith and marked as Annexure-H.

4.20 That as has already been fixed by this Hon'ble Tribunal the aforesaid application was again listed on 04.05.2005 for compliance report and the aforesaid letter dated 02.05.2005 was placed before this Hon'ble Tribunal. Accordingly by an order dated 04.05.2005 passed by this Hon'ble Tribunal aforesaid O.A. No.58/2005 was closed.

A copy of the order dated 04.05.2005 is annexed herewith and marked as Annexure-I.

4.21 That the applicants have a strong *prima facie* case in their favour. The applicants state that, the process of appointment is yet to be completed and if no interim protection is granted to the applicants, they shall suffer irreparable loss that cannot be compensated in terms of money. The

balance of convenience is strongly in their favour. This is therefore a pre-eminently fit case where this Hon'ble Tribunal may be pleased to issue appropriate interim directions in favour of the applicants.

4.22 That the applicants are similarly placed. The cause of action and the nature of relief sought for by the applicants are similar. They have a common interest in the subject matter of the present proceeding. The candidates, as such, crave leave of this Hon'ble Tribunal to allow them to file a joint application under Rule 24(5) of the Central Administrative Tribunal (Procedure) Rules, 1987.

4.23 That the applicants have no grievance or are seeking any relief against the other selected candidates. Hence they are not being arrayed as party respondents in the present application. However if this Hon'ble Tribunal is of the view that the provisionally selected candidates are necessary/proper party then the respondents may be directed to furnish the names of those selected candidates.

4.24 That the applicants are highly aggrieved by the impugned letter dated 02.05.2005 issued by the office of the General Manager, N.F. Railway, Maligaon whereby the representation submitted by the applicants against non inclusion of their names in the list of ST candidates for the Group D posts of Trackman under Lumding Division is rejected most arbitrarily, illegally and in a mechanical manner, hence the present application challenging the manner in which the final select list has been prepared.

5.

GROUND FOR RELIEF WITH LEGAL PROVISIONS:

5.1 For that the applicants had admittedly cleared the written tests as well as the physical efficiency test. Therefore, there would have been no reason for non inclusion of their names in the final select list and the reason shown by the respondents vide impugned letter dated 02.05.2005 is wholly untenable and the same is liable to be interfered with by this Hon'ble Tribunal.

5.2 For that as per the instructions annexed with the Call Letter for Physical Efficiency Test and Verification of Original Certificates, the original certificates were to be produced before the Divisional Personnel Officer and if any one fails to bring original certificates for verification within

See: *Baneswar Rekha*

the prescribed period, his candidature would be cancelled. The respondent authorities in total disregard to their own instructions have prepared the provisional select list of 16 candidates who could not comply with the aforesaid instruction.

5.3 For that neither the employment notice nor the instructions issued by the respondent authorities provided for any provisional select list. But the respondents in order to accommodate persons of their choice have prepared a provisional select list and have included names of those persons who did not qualify in terms of the criteria laid down. As such, preparation of the provisional select list has discriminated against the applicants which is illegal, arbitrary and malafide and is also violative of Articles 14 and 16 of the Constitution of India.

5.4 For that as per the instructions annexed to the Call Letter for Physical Efficiency Test and Verification of Original Certificates, it was also clearly stated that no marks are awarded for physical efficiency test. However, a comparison of the result sheet of the final written examination and the final select list prepared after the physical efficiency test clearly reveals that the seriatim after the final written test does not tally with the seriatim in the final select list. Apparently, the aforesaid impugned criteria has been evolved as an after-thought only for the purpose of bringing in certain blue eyed boys who failed to qualify. The respondents arbitrarily and illegally changed the serial position of several candidates in the final select list, which is not permissible as per their own instructions, as such the same is liable to be interfered with by this Hon'ble Tribunal.

5.5 For that as has already been stated herein above one candidate bearing Roll No.21708112 had cleared the written tests as well as the physical efficiency test but he was not finally selected, purportedly on the ground that he could not produce his original certificates. However, the respondents did not place him in the provisional select list alongwith the other 16 candidates who were selected provisionally. From the aforesaid discrepancies it is amply clear that the manner in which the final select list has been prepared is most arbitrary, illegal and malafide.

5.6 For that the grounds disclosed by the respondents in the impugned letters dated 2/5/2005 for non-inclusion of the names of the applicants is totally

Sri. B. Venkateswar Palu

unreasonable. In the aforesaid impugned letters the respondents have justified the non inclusion of the names of the applicants in the final select list on the ground that although the applicants have qualified in the Physical Efficiency Test, as more than required number of candidates have qualified in the physical efficiency test the names of the applicants did not appear in the panel, since as per merit the names of the applicants figured below the required number. However, in the aforesaid impugned letters the respondents have failed to justify the preparation of the provisional select list, which is not permissible as per their own instructions. As such it is clear that the respondents in colorable exercise of their powers have prepared the provisional select list and by the impugned letter dated 2/5/2005 have made an effort to justify their illegal action, which is not sustainable. Hence, this Hon'ble Court in exercise of its power may be pleased to set aside the illegal select list as well as the impugned letter dated 2/5/2005 issued by the respondents.

- 5.7 For that the Respondent authorities in total disregard to all the relevant instructions and provisions have prepared the select list only to accommodate some other persons of their choice in place of the Applicants and as such the same has resulted in grave and serious prejudice to the Applicants in addition to the fact that such impugned action is discriminatory.
- 5.8 For that in the backdrop of the facts and circumstances that have been narrated hereinabove, it is apparent that the impugned action on the part of the respondents is clearly in violation of Articles 14, 16 and 21 of the Constitution of India in addition to being totally opposed to the settled principles of service jurisprudence.
- 5.9 For that it is clearly evident that the impugned letter dated 2/5/2005 has been issued most mechanically without any application of mind to the relevant factors. There has been a total non application of mind to the aspects pertaining to the preparation of the provisional select list and the apparent discrepancies in the two lists referred to above. Infact, factors other than relevant and bonafide have been taken note of while issuing the said impugned letter. Under these circumstances it is apparent that the said impugned action is grossly illegal, arbitrary, unfair, unreasonable and capricious. No person reasonably instructed in law

Sri Banswara Rekh

could have issued the said impugned letter. The same reflects malice in law as well as malice in facts. As such the said impugned letter is liable to be set aside and quashed.

5.10 For that the conditions precedent for preparing the final select list have not been followed in the instant case and hence impugned select list more particularly the provisional select list is void ab initio.

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

6. DETAILS OF REMEDIES EXHAUSTED:

The Applicant declares that he has no other alternative, equally efficacious remedy available to him except by way of this instant applicant.

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

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

8. 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 upon perusal of the records be pleased to grant the following reliefs: -

- 8.1 Set aside and quash the impugned final select list more particularly the provisional select list empanelling the names of the 110 ST candidates for Group D posts of Trackman/ Khalasi.
- 8.2 Direct the respondent authorities to include the names of the applicants in the list of empanelled ST candidates.
- 8.3 Cost of the application.

Sri Banawan Rath

8.4 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:**

9.1 This Hon'ble Court may be pleased to direct the Respondents not to complete the process of appointment from the impugned final select list and/or to keep two posts vacant pending disposal of the instant application by this Hon'ble Tribunal.

This application is filed through the Advocate.

10. **PARTICULARS OF THE I.P.O.:**

i) I.P.O. : 204-133367
ii) Date : 13-6-05
iii) Payable at : GP 8

11. **LIST OF ENCLOSURES:**

As stated in the index.

VERIFICATION

I, Shri Baneswar Rabha, Son of Shri Joydev Rabha, aged about years Resident of Dhuliagaon, Bokalipara P.S. – Chhaygaon, District – Kamrup, Assam (781124) do ^{No. 1} hereby solemnly affirm and verify that I am the Applicant in the instant application and as such, I am fully conversant with the facts and circumstances of the case. The statements made in paragraphs 1-3, 4.1, 4.2, 4.6-4.8 (Part), 4.9-4.11, 4.13, 4.15, 4.18, 4.21-4.24 are true to my knowledge and those made in paragraphs 4.3, 4.4, 4.5, 4.7 (Part), 4.12, 4.19, 4.20 are matters of record derived therefrom, which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the th day of June, 2005 at Guwahati.

Shri Baneswar Rabha

SIGNATURE OF THE APPLICANT

৫৯৫ অনুসূচিত জাতি/জনজাতি ঘাটি নিয়োগৰ বাবে ২১.১১.০৮ ত অনুসূচিত পৰীক্ষাৰ ফলাফল

পি.নং ৭৮১০১১

মিয়োট প্রার্থীসকল প্রক্রমে/শালাটি পৰাৰ বাবে ২১.১১.০৮ ত অনুসূচিত পৰীক্ষাৰ নিয়িৰ পৰীক্ষাৰ সাময়িকভাৱে উজীৰ হৈলৈ। ১৯.১.০৫ ত ডিসিলীনী, সামুতি, আলিশ্বৰহৰ আৰু কাটিলোৰ পৰীক্ষাৰ স্মার্তীৰ পৰীক্ষাৰ আৰ্তিত হৈলৈ। ১৭.১.০৫ বৰ পৰা ২১.১.০৮ পৰ্যন্তে মাত্ৰমিক কৰিষ্যক নিয়োগৰ পৰীক্ষাৰ কৰা হৈলৈ। প্রার্থীসকলে জৰুৰ তাৰিখ, সম্পদৰ আৰু শৈলিক অৰ্পণা পৰীক্ষাৰ দ্বাৰা হৈত হৈলৈ। আগৰোৱা জাগিব। প্রার্থীসকলে পৰীক্ষাৰ আহুতি পৰা প্ৰেৰণ কৰি থকা হৈলৈ। প্রার্থীসকলক সাহায্য প্ৰদানৰ উপায়ত মোন নং. ০৬৬-১৬৭৩৯১ মেতে সকলো থৰৰ সহায্য প্ৰদান কৰা হৈলৈ।

তিনিশীৰ্ষা-অনুসূচিত জাতি

11710176	11709943	11707758	11710018	11709966	11710100	11709965	11710278	11710350	11710240	11709931
11707573	11710101	11707589	11707663	11707137	11710028	11710241	11707616	11710277	11710214	11710051
11710329	11709892	11709891	11707686	11709918	11710231	11710311	11710313	11710011	11710109	11710115
11707123	11710165	11710019	11709909	11709893	11710236	11710274	11707525	11710061	11709913	11707583
11710181	11707494	11707057	11709881	11710138	11709954	11710243	11710025	11710261	11710305	11709890
11707615	11710142	11710134	11710020	11707018	11709932	11710257	11710009	11710178	11707357	11707401
11707033	11707229									

৫৭৫২১ সংখ্যা

11707297	11707469	11707592	11707313	11707156	11707723	11707695	11707212	11707341	11707921	11707535
11707246	11707395	11707176	11709994	11707338	11707406	11707613	11707747	11707436	11707509	11707741
11707120	11707122	11707736	11707466	11710201	11707398	11707627	11707187	11707267	11707145	11707157
11707132	11710308	11709955	11707623	11707553	11710158	11707088	11707661	11707091	11710053	11710129
11707153	11707743	11710152	11710083	11709889	11710326	11707632	11707855	11707408	11707420	11709944
11709865	11710198	11707722	11707448	11707512	11707238	11707008	11701248	11709878	11707045	11707614
11710242	11710120	11707231	11707640	11707738	11707404	11710008	11707496	11707234	11710144	11710127
11707258	11707605	11707040	11707677	11710003	11709960	11707407	11707542	11707337	11707753	11709879
11710279	11709977	11707092	11710006	11707318	11707922	11707588	11707929	11707354	11707183	11707098
11707510										

সময়িক পৰীক্ষাৰ জাতি

21709139	21709130	21708116	21708476	21708241	21710809	21709122	21710551	21708622	21709324	21708808
21708423	21709037	21708998	21708719	21707950	21708419	21710454	21710426	21708784	21708335	21708322
21708546	21708185	21710579	21708011	21709251	21710675	21708098	21708860	21710544	21710431	21707944
21710552	21708938	21710619	21709023	21708153	21710458	21708199	21708224	21710401	21710689	21708788
21708710	21709317	21710627	21710582	21710400	21710705	21709119	21710521	21709063	21707967	21709091
21708193	21710359	21709025	21710688	21710425	21708931	21708537	21708065	21710430	21710391	21708429
21709297	21708352	21710429	21708766	21708003	21709289	21710618	21707989	21708207	21708041	21710603
21709299	21708358	21710608	21709045	21708874	21708291					

অনুসূচিত অন্যান্য জাতি

21708679	21708586	21708715	21708408	21708910	21708270	21708604	21709133	21709024	21708689	21708291
21708310	21708057	21708580	21709295	21709056	21708497	21708171	21708742	2170948	21708839	21708449
21709154	21708312	21708843	21708442	21708921	21709285	21708686	21709319	21709084	21708485	21708004
21708414	21708913	21708675	21709052	21709112	21709263	21709030	21708363	21708768	21710738	21708117
21709215	21708553	21708281	21708508	21708411	21708471	21708622	21709232	21709094	21708479	21708017
21708615	21708344	21709310	21708789	21708329	21709323	21709272	21709165	21708039	21708395	21708250
21710471	21708324	21708798	21708118	21708824	21708450	21708383	21708530	21708981	21708952	21708891
21708958	21708697	21707992	21708300	21708321	21708892	21708505	21708360	21710698	21708214	21708109
21708576	21708726	21707962	21708387	21708090	21708308	21709191	21707933	21710434	21710559	21708434
21708687	21708756	21709072	21708723	21708851	21707996	21707946	21708819	21708052	21708083	21709008
21708356	21708026	21708536	21708257	21708112	21708822	21707988	21709032	21709096	21710744	21708936
21707987	21710409	21708081	21708899	21708836	21708181	21709064	21710628	21708489	21708946	21708539

অনিম্নোক্ত অন্যান্য জাতি

41712551	41709337	41712956	41712748	41712215	41712908	41709739	41709384	41712656	41712600	41712544
41713023	41712613	41712294	41712914	41712279	41712782	41712937	41712955	41712155	41709638	41712440
41712564	41709438	41712896	41712420	41712921	41712939	41709837	41712142	41712734	41712764	41712602
41712393	41709470	41712623	41709709	41712960	41712618	41712710	41712397	41709423	41712836	41712146
41712509	41712134	41713030	41712169	41712143	41712248	41712377	41712755			

অন্যান্য-অনুসূচিত জাতি

31711597	31712052	31711100	31711677	31711028	31711549	31711348	31710811	31710783	31710993	31711371
31711754	31711219	31711391	31710846	31711470	31711735	31710925	31710801	31711518	31711486	31710968
31712050	31711893	31711233	31712084	31711392	31712010	31711175	31712108	31711304	31710986	31711208
31710953	31711959	31710808	31711046	31711739	31710873	31711128	31711303	31711167	31711864	31712101
31711854	31711580	31711271	31710904	317115						

31711706	31711573	31711729	31711652	31711934	31711003	31712067	31712046	31710971	31712089	31710970
31711195	31711347	31711964	31711265	31711050	31711342	31711428	31711370	31711692	31710813	31711102
31711367	31711826	31711714	31711866	31711909	31711640	31711741	31711275	31710781	31712091	31710996
31711506	31711865	31711599	31711676	31711740	31711756	31711656	31711708	31711469	31711777	31711564
31711591	31711529	31711467	31711210	31711605	31711750	31711991	31711106	31711705	31711567	31711112
31711552	31711961	31711064	31711833	31711962	31711217	31711152	31711521	31711619	31712060	31711266
31710834	31711173	31711005	31711200	31711930	31711327	31712065	31711498	31712001	31710809	31711123
31711588	31711241									

বেদ ফ্লাইটে হাতের পুলুর পাথর মেলে মারিয়ে নমুনা।

গোপনীয় টিক্কি পার্কিংলে অভিযান/মুখ্য কার্যালয়
উত্তর পূর্ব মীমাংসা বেণু, মালিগাঁও

INSTRUCTIONS FOR PHYSICAL EFFICIENCY TEST AND VERIFICATION OF CERTIFICATES

- Physical Efficiency Test is scheduled to be held on 19.01.2005. You should report to Divisional Personnel Officer of Division for which you have applied in date and time mentioned in the call letter.
- Verification of certificates is scheduled to be done from 17.01.2005 to 21.01.2005 in the office of the Divisional Personnel Officer. You should produce Original Certificate of Date of Birth, Community and Educational Certificates etc. to the Divisional Personnel Officer for verification. If you fail to bring Original Certificates for verification within the prescribed period, your candidature is liable for cancellation.
- The norms for Physical Efficiency Test are given below:-

Male candidates

1. Should be able to lift and carry 35 Kg. of weight for a distance of 100 meter in 2 minutes in one chance without putting the weight down and
2. Should be able to run for a distance of 1500 meter in 7 minutes in one chance.

Female Candidates

1. Should be able to lift and carry 20 Kg. of weight for a distance of 100 meter in 2 minutes in one chance without putting the weight down and
2. Should be able to run for a distance of 400 meter in 4 minutes in one chance

- No marks are awarded for the Physical Efficiency Test. However candidate should qualify in the test for final selection.
- Request for changing the venue & date of test will not be entertained.
- The results of the Physical Efficiency Test will be displayed on the same day of test.

Date: 16-12-2004

On thy
Sr. Personnel Officer/Rectt.
NF Railway, Maligaon, Guwahati

E.N.No.

दर्ता और पार्ट/CAT. No. & POST:

सार्वांगी का नाम NFR-2/2001 NAME AND ADDRESS OF THE CANDIDATE/ लाक्षणिक

SANJIT KUMAR BORDOLOI
C/O: DHARMEswARI BORDOLOI
KHOLA GAON, KHOLA GAON, Morigaon
Morigaon, Assam, PIN - 782411

अधीक्षक का हस्ताक्षर) Signature of the Invigilator :

पार्वीका नाम और पार्ट जैसे नीचे दिए गये स्थान, दिनांक और समय में हाजिर हों
गो required to appear अधीक्षक के साथ (In the Presence of Invigilator) at the place, date and time specified below :

ग्राम नं. / ROLL NO. परीक्षा तिथि, रिपोर्ट का समय / Date & Time of Reporting

21708081 19-01-2005 At 9:00 AM

गो नेट पर एकाधित लिया जाय / To be collected at the Examination Centre

Date: 16-12-2004

गाड़ी गांव काटे ले एवं आपने रिकार्ड हेतु रखें / Please tear off along this line and retain for your record

This is Call Letter for Physical Efficiency Test and Verification of Original Certificates. Terms and Conditions are given in Annexure. 19

ANNEXURE - D

परीक्षार्थी का हस्ताक्षर CANDIDATE'S SIGNATURE

(अधीक्षक के साथ) (In the Presence of Invigilator)

परीक्षा केन्द्र का नाम और पता / Name and Address of the Exam Centre

OFFICE OF THE DIVISIONAL PERSONNEL OFFICER, LUMDING

Sr. Personnel Officer/Recd.

N F RAILWAY, MALIGAON, GUWAHATI

(पार्वीका का नाम और पता) Name & Address of the Candidate

Name: SANJIT KUMAR BORDOLOI
C/O: DHARMEswARI BORDOLOI
KHOLA GAON, KHOLA GAON, Morigaon
Morigaon, Assam, PIN: 782411

गो, सं. एवं रो. नं. सं. Cal. No. & E.N. No. ग्राम नं. / Roll No. परीक्षा तिथि / Date of Examination

Group'D' & NFR-2/2001 21708081 19-01-2005

परीक्षा केन्द्र / Examination Centre

OFFICE OF THE DIVISIONAL PERSONNEL OFFICER, LUMDING

Sr. Personnel Officer/Recd.

PASSED

पार्वीका नाम अति अकृतिशील जगतीति को लिए यह पर ग्राम परिवहन आप

न यात्रा पाठी

FOR EXCIT CANDIDATE'S ONLY. On production of this letter you are entitled to free travel by railway in second class only.

JAGI ROAD

रेंजन से

LUMDING

रेंजन तक तथा

Stn. and back

रेंजन से यात्रा के लिए यह पर ग्राम परिवहन आप

न यात्रा करें

Ticket is available upto 26-01-2005

तक ही उपलब्ध है।

Sr. Personnel Officer/Recd.

प्राप्तिकार : यात्रा यात्रा पर गो 3 (पर गो) और यात्रा गो 122 (यात्रा 2.3 11-84) / Authority : Railway Board's letter No. E (NG) II-84/RSC/122 dtd. 23-11-84

INSTRUCTIONS FOR PHYSICAL EFFICIENCY TEST AND VERIFICATION OF CERTIFICATES

- Physical Efficiency Test is scheduled to be held on 19.01.2005. You should report to Divisional Personnel Officer of Division for which you have applied in date and time mentioned in the call letter.
- Verification of certificates is scheduled to be done from 17.01.2005 to 21.01.2005 in the office of the Divisional Personnel Officer. You should produce Original Certificate of Date of Birth, Community and Educational Certificates etc. to the Divisional Personnel Officer for verification. If you fail to bring Original Certificates for verification within the prescribed period, your candidature is liable for cancellation.
- The norms for Physical Efficiency Test are given below:-

Male candidates

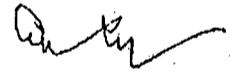
1. Should be able to lift and carry 35 Kg. of weight for a distance of 100 meter in 2 minutes in one chance without putting the weight down and
2. Should be able to run for a distance of 1500 meter in 7 minutes in one chance.

Female Candidates

1. Should be able to lift and carry 20 Kg. of weight for a distance of 100 meter in 2 minutes in one chance without putting the weight down and
2. Should be able to run for a distance of 400 meter in 4 minutes in one chance

- No marks are awarded for the Physical Efficiency Test. However candidate should qualify in the test for final selection.
- Request for changing the venue & date of test will not be entertained.
- The results of the Physical Efficiency Test will be displayed on the same day of test.

Date: 16-12-2004


Sr. Personnel Officer/Rectt.
NF Railway, Maligaon, Guwahati

NOTICE BOARD

N.R. RAILWAY

No. E/227RecT/Misc/1.M

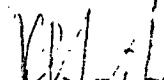
Office of the
Divisional Railway Manager (P)
Lumding (Assam)
Date : 01.02.2005

**Subject : Result of the recruitment of Group D posts of Trackman/khalasi
(SC/ST shortfall)**

The list of 69 SC & 110 ST candidates (Annexure I for SC & Annexure II for ST) who are empanelled for group D posts of Trackman/khalasi is hereby published.

Candidates whose names are declared as provisional should produce the requisite certificates before appointment.

This is issued with the approval of the competent authority.


(K.P. Singh)
DPO/IC/LMG

Copy to :

GM(P)MLG for information and necessary action.

31/22

List for empanelled ST candidates (Annexure-II)

SN	Name	ROLL NO	SN	Name	ROLL NO
1	RUSTAM RABHA	21708679	41	AMINNA PRASAD MANDAL	21710738
2	NAREN HERON	21708586	42	SANJIB RAMCHIARY	21708117
3	DEBA KUMAR RANGSHA	21708910	43	KIRANJIT DEORI	21709215
4	RAJIB BARO	21708493	44	BISWAJIT RABHA	21708553
5	PRAKASH BORO	21708715	45	BUDHIN DOLEY	21708281
6	BAIDYA NATH RABHA	21708607	46	AJIT BASUMATARY	21708508
7	MAHENDRA RABHA	21708113	47	ARJUN RAJBONGSHI	21708411
8	BIMAL RAMCHIARY	21709024	48	ARUP KUMAR DAS	21708471
9	DWIJEN CHANDRA BARO	21708689	49	KHARGESWAR BARO	21708622
10	BIPUL CHANDRA RABHA	21708290	50	BIPUL DEKA	21709232
11	BINANJOY BORO	21708310	51	PONJIB BASUMATARY	21709094
12	NARAYAN KONWAR	21708057	52	BIRA DATTA KUTUM	21708017
13	CHANDAN BORO	21708580	53	DWIPEN DEKA	21708479
14	BIJU DAS	21709295	54	AJIT KACHARI	21708615
15	DAKSHA RAJ HAJONG	21709056	55	JEETENDRA BORDOLOI	21708344
16	NOVAJIT SAIKIA	21708171	56	MOON DEWRI	21708789
17	BHARAT THAKURIA	21708497	57	DIPEN SWARGIARY	21709323
18	SHIVA PRASAD BARMAN	21708764	58	MILAN SAIKIA	21709272
19	RANEN BRAHMA	21707948	59	BHASKAR JYOTI BORO	21708039
20	ANJAN BARMAN	21708839	60	ALARI SWRANG BORO	21708395
21	CHITRA DHAR DEKA	21708449	61	MANOJ KUMAR MANDAL	21710471
22	PRASANTA RABHA	21709154	62	BISWAJEET BARO	21708250
23	SHIBULI KUMAR SINGH	21708442	63	MONOJ KUMAR SONOWAL	21708324
24	NITU SAIKIA	21708312	64	PRASANTA SAIKIA	21708798
25	BIJU BORO	21708843	65	GUNIN BHUSAN DEURI	21708824
26	DHRUBA NARZARY	21708921	66	DIPEN CHANDRA TERAN	21708450
27	SANJIB KUMAR BORO	21708686	67	GANESH CHANDRA BORO	21708383
28	REWATI DEKA	21709265	68	MONTU HAZARIKA	21708530
29	PARIKSHIT BARMAN	21709319	69	SANTANU BORO	21708952
30	LOHIT DEKA	21709084	70	DHANANJOY BORO	21708981
31	DILIP CHANDRA BORO	21708485	71	MUKUT DEKA	21708891
32	DEEP DAS	21708414	72	RANEN THAKURIA	21708958
33	DIPAK CHANDRA BORO	21708004	73	AJIT KUMAR PATAR	21708697
34	SUBHASH BASUMATARY	21708913	74	MANTHE BORDOLOI	21707992
35	BADAN DAS	21709112	75	PUTUL BORO	21708300
36	BISWAJIT DEWARI	21708675	76	BIKASH CHANDRA BORO	21708892
37	DHANMAY RABHA	21709052	77	GASHINDRA PANGING	21708321
38	ANIL CHANDRA DAS	21709263	78	BISU DHAR BORO	21708346
39	AKAN CHANDRA BORO	21709030	79	BASUKI MANDAL	21710698
40	DIPEN BORO	21708363	80	BRINDABAN DEWRAJA	21708506

3 ✓ 23

SN	Name	ROLL NO	SN	Name	ROLL NO
81	DINESH KUMAR BARO	21708214	96	DIPAK BARUAH	21708723
82	BIKRAM BORO	21708109	97	RAJU KUMAR DEWRI	21707944
83	ANANTA BORO	21708576	98	MILAN CHANDRA BORO	21708819
84	GAUTAM DEKA	21708726	99	JADAB KACHARI	21707990
85	BASHU SWARGIARY	21708387	100	ATULEN BASUMATARY	21708052
86	PRADIP RABHA	21709193	101	DIPJYOTI BORDOLOI	21708083
87	BHABEN CHANDRA RABHA	21708090	102	BINITA RABHA	21708356
88	MAHESWAR RAMCHIAURY	21708308	103	JAGDISH DEKA	21709008
89	PRADEEP KUMAR	21710434	104	BABUL CH. BARO	21708257
90	RAM PRAWESH MANDAL	21710559	105	TILAK CHANDRA RABHA	21708536
91	BALEN CHANDRA BARO	21708434	106	SARAT CHANDRA RABHA	21707988
92	ATUL DAS	21709072	107	BHOGENDRA DEURI	21708822
93	RANJIT BARO	21708756	108	GHANSHYAM SINGH	2170744
94	MINTU SAIKIA	21708687	109	PRASEN SENAPATI	21709032
95	DIBAKAR PEGU	21708851	110	BIPUL DEKA	21709096

Candidature of the following Roll Numbers are provisional :-

21708679, 21709024, 21708686, 21709265

21708921, 21708017, 21708039, 21708450,

21708824, 21708530, 21708109, 21708726,

21708090, 21708723, 21708250 & 21708052

Dipak Barua

ANNEXURE- F

ORDER SHEET

Original Application No. 58/2005

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicants: S. K. Barakoloi & Anr.

Respondents: No. 208

Advocates for the Applicant Sri U. Bhuyan Mrs. S. D. Bhuyan
M. H. Deka and Sri B. K. Das

Advocates of the Respondents: Railway Counsel

Notes of the Registry: Date: Order of the Tribunal

01.03.2005 Present: The Hon'ble Mr. K.V. Prahladan, Member (A).

Heard Mr. U. Bhuyan, learned counsel, for the applicants and also Ms. U. Das, learned counsel for the Railways.

The application is disposed of with a direction to the applicants to submit a representation to the respondents within 15 days from the date of receipt of this order. On receipt of such representation the respondents are directed to give reply ~~lawful, fair and~~ ^{that is} just within two months from the date of receipt of the representation. The respondents are also directed to file compliance report after two months.

List on 4.5.2005 for compliance report.

X

Verified to be true copy
मानित अधिकारी

2/3/05

Section Officer (T)
C.A.T. GUWAHATI BENCH
Guwahati, 580005

Sd/MEMBER (A)

25
ANNEXURE

GT

04/03/2005

To

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

Subject: - Representation against the non-inclusion of the names of the applicants in the list of empanelled ST candidates for the group-D posts of Trackman / Khalasi under the Lumbering Division, North East Frontier Railway pursuant to the employment notice No. NFR-2/2001.

Reference: - Order dated 1.3.2005 passed by the Central Administrative Tribunal, Guwahati Bench in Original Application No.58/2005.

Applicants:- 1. Shri Sanjit Kumar Bordoloi,
Son of Late Prabin Chandra Bordoloi,
Resident of Kholagaon,
District - Morigaon (Assam).

2. Shri Baneswar Rabha,
Son of Shri Joydev Rabha,
Resident of Duliagāon, Bokalipara,
P.S.- Chaygaon,
District- Kamrup (Assam).

Sir,

The applicants above-named beg to state the following few lines for your kind consideration and favorable necessary action: -

1. The applicants belong to the Scheduled Tribe (ST) community.
2. The North Frontier Railway (NF Railway) launched a special recruitment drive for SC and ST candidates. In this connection, employment notice No. NFR-2/2001 was issued inviting applications from eligible SC and ST candidates for filling up of 595 posts of Trackman and Khalasi in NF Railway.
3. As per the said employment notice, appointments would be made Division wise, and the candidates were required to submit their applications in respect of only one Division as per his or her choice.
4. The applicants being eligible, applied for the post of Trackman under Lumding Division within the stipulated time. It may be mentioned that in the Lumding Division, the total number of vacancies in the post of Trackman was notified as 144 (SC-53 and ST-86). It was, however, clarified that the number of vacancies given were provisional.
5. The scheme of recruitment as detailed in the employment notice provided 3 stages: -

- i) Objective type written examination (Preliminary test)
- ii) Objective type written examination (Final test)
- iii) Physical efficiency test.

It was clarified that the successful candidates who come through the two stages written tests would be subjected to the physical efficiency test to assess the candidates' fitness for the post.

6. The preliminary written test was held on 12.9.2004. On receipt of the call letters, the applicants appeared in the said test, the applicant No.1 at Lumding whereas the applicant No.2 at Haiborgaon, Nagaon. It may be mentioned that the roll No. of the applicant No. 1 is 21708081 and that of the applicant No.2 21708489.

7. Both the applicants qualified in the preliminary written test. Therefore, on receipt of call letters both the applicants appeared in the final written test held on 21.11.2004. The centre of both the applicants was at Noonmati, Guwahati.

8. Both the applicants successfully cleared the final written test and they were declared pass under the ST category for Lumding Division in the results published on 15.12.04 in the Assamese language daily news-paper "Asomiya Pratidin".

9. Thereafter, call letters were issued to them for appearing in the physical efficiency test scheduled on 19.1.2005 at Lumding. As per the instructions for the physical efficiency test, male candidates were required to lift and carry 35 Kg of weight for a distance of 100 metres in 2 minutes in

one chance without putting the weight down and further should be able to run for a distance of 1500 metres in 7 minutes in one chance.

10. The applicants participated in the physical efficiency test on 19.1.2005 and came out successful. They fulfilled both the requirements well within the time prescribed.

11. The results of the physical efficiency test were displayed on 19.1.2005 at the venue itself. However, names of only those candidates who could not clear the physical efficiency test were displayed - in other words, the result of the candidates who had cleared the physical efficiency test. As the names of the applicants were not included in the list of unsuccessful candidates, it became evident that they had cleared the physical efficiency test.

12. However, to their utter shock and surprise, the applicants found that their names were not included in the list of empanelled ST candidates for the Lumding Division when the same was declared by the office of the Divisional Railway Manager (P), Lumding vide the memo No. E/227/Recd./Misc./I.M dated 1.2.2005. Along with the empanelled ST list, candidature of 16 candidates were also declared as provisional.

13. Aggrieved by their non inclusion in the empanelled ST list, the applicants filed original application before the Central Administrative Tribunal, Guwahati Bench, being O.A.No.58/2005.

14. The Hon'ble Tribunal vide order dated 1.3.2005 disposed of the said O.A. with a direction to the applicants to submit a representation to the Respondents within 15 days with a further direction to the Respondents to reply to such representation in a lawful, fair and just manner within 2 months from the date of receipt of the representation. The Respondents have been further directed to file compliance report after 2 months, fixing 4.5.2005 for compliance report.

A copy of the said order dated 1.3.2005 is enclosed herewith and marked as Annexure-A.

15. Accordingly the present representation is being submitted in terms of the aforesaid direction of the Hon'ble Tribunal. Your Honour was arrayed as the Respondent No.2 in O.A.No. 58/2005.

16. The applicants respectfully submit that they had performed satisfactorily in both the written tests and came out successful. They also successfully cleared the physical efficiency test. Therefore, there could not have been any reason for their non- inclusion in the empanelled ST list. The applicants humbly submit that on the basis of their relative merit and performance, they are entitled to be included in the empanelled ST list or at least in the provisional list.

It is, therefore, humbly prayed that on perusal of entire relevant records and on a just and fair assessment of the merit and performance of the applicants, your Honour may be pleased to include the names of the

applicants in the list for empanelled ST candidates for the group-D posts of Trackman/Khalasi under the Lumding Division, North East Frontier Railway.

Kalol 1/8/05
Recd. copy only
Erin Bordoloi

Yours sincerely,

1. *Sanjit Kumar Bordoloi*

(Sanjit Kumar Bordoloi)

2. *Sri - Baneswar Rabha*

(Baneswar Rabha)

Copy to -

1. Chief Personnel Officer, North East Frontier Railway, Maligaon, Guwahati-11.

2. Divisional Railway Manager (Personnel), North East Frontier Railway, Lumding, District - Nagaon, Assam.

1.

(Sanjit Kumar Bordoloi)

2.

(Baneswar Rabha)

N.F. Railway

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

No.E/170/10/KS/559/05

Date: 02-05-2005

To,
Shri. Baneswar Rabha,,
Roll No. 21708482.
S/o Late Joydeb Rabha,
Resident of Duliagaon, Bokalipara,
P.S. Chaygoan,
District- Kamrup, Assam.

Sub:- Representation against the non-inclusion of the name of the applicant in the list of empanelled ST candidates for the Group-D post of Trackman Khalasi under the Lumding Division, N.F. Railway pursuant to the employment notice No. NFR-2/2001.

Ref - 1. Order dl 1-3-2005 passed by the Central/ Administrative Tribunal, Guwahati Bench in Original Application No.58/2005.
2. Your representation dt. 04-03-05.

Hon'ble Central Administrative Tribunal/GHY has directed the respondent to give reply i.e. lawful, fair and just within two months from the time of receipt of the representation.

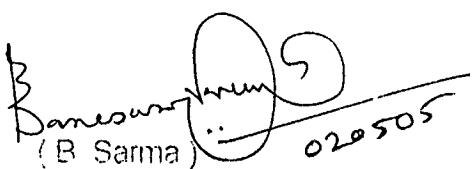
Your representation has been carefully examined by the Chief Personnel officer, N.F. Railway, Maligaon and passed orders as under :-

" You had appeared in the preliminary written examination held on 12-9-04 and final written examination on 30-11-04. You had qualified for appearing in the Physical Efficiency Test. Physical Efficiency was held on 19-01-05.

Candidates in the ratio of 1:1.2 were called for appearing in the Physical Efficiency Test. The number of vacancies of Lumding Division for ST posts was 110 and total number of candidates called for Physical Efficiency Test was 132. Therefore, 20% more candidates were called for than the required number of candidates. The result of Physical Efficiency Test was published by DRM(P)/ Lumding immediately after completion of Physical Efficiency Test. You had qualified in the Physical Efficiency Test also. More than required number of candidates were qualified in the Physical Efficiency Test 110 Nos. of candidates were empanelled against the vacancies. The panel is prepared based on merit of the final written examination, as Physical Efficiency Test is of qualifying nature only.

In view of above, it is to mention here that the empanelment of 110 candidates were done on merit, your name did not appear in the panel, since as per merit your name figured below 110 empanelled candidates.

This disposed your representation dt. 04-03-05.


Baneswar Rabha
(B. Sarma)
02-05-05

Asst. Personnel Officer/LC
for General Manager(P)/ MLG

N.F. Railway

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

No. E/170/10/MS/559/05

Date: 02-05-2005

To,
Shri. Sanjit Kumar Bordoloi,
Roll No. 21708081.
S/o Late Prabin Chandra Bordoloi,
Resident of Kholagaon,
District Morigaon, Assam.

Sub:- Representation against the non-inclusion of the name of the applicant in the list of empanelled ST candidates for the Group-D post of Trackman Khalasi under the Lumding Division, N.F. Railway pursuant to the employment notice No. NFR-2/2001.

Ref:- 1. Order dt. 1-3-2005 passed by the Central/ Administrative Tribunal, Guwahati Bench in Original Application No. 58/2005.
2. Your representation dt. 04-03-05.

Hon'ble Central Administrative Tribunal/GHY has directed the respondent to give reply i.e. lawful, fair and just within two months from the time of receipt of the representation.

Your representation has been carefully examined by the Chief Personnel officer, N.F. Railway, Maligaon and passed orders as under :-

" You had appeared in the preliminary written examination held on 12-9-04 and final written examination on 30-11-04. You had qualified for appearing in the Physical Efficiency Test. Physical Efficiency was held on 19-01-05.

Candidates in the ratio of 1:1:2 were called for appearing in the Physical Efficiency Test. The number of vacancies of Lumding Division for ST posts was 110 and total number of candidates called for Physical Efficiency Test was 132. Therefore, 20% more candidates were called for than the required number of candidates. The result of Physical Efficiency Test was published by DRM(P)/ Lumding immediately after completion of Physical Efficiency Test. You had qualified in the Physical Efficiency Test also. More than required number of candidates were qualified in the Physical Efficiency Test. 110 Nos of candidates were empanelled against the vacancies. The panel is prepared based on merit of the final written examination, as Physical Efficiency Test is of qualifying nature only.

In view of above, it is to mention here that the empanelment of 110 candidates were done on merit, your name did not appear in the panel, since as per merit your name figured below 110 empanelled candidates."

This disposed your representation dt. 04-03-05.


(B. Sarma) 020505
Asstt. Personnel Officer/LC
for General Manager(P)/ MLG

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

33

ANNEXURE - I

ORDER SHEET

Original Application No. 58/2005

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicants: Smt. Bandalal Sarma

Respondents: L.G. & O.A.S.

Advocates for the Applicant: Smt. U. Jyoti Das, S.D. Officer
N.S. H. Deka, I.D. Smt. Bilk Das

Advocates of the Respondents: P. Bhattacharya, L.L.B. & S.C.

Order of the Tribunal

Notes of the Registry Date:

04.05.2005 Present: Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.

Hon'ble Mr. K.V. Prahladan, Administrative Member.

This case is posted for compliance report. Counsel for the applicant is absent. Ms. B. Devi, learned counsel appearing on behalf of Railway counsel placed before us the order dated 1.5.2005 issued by Assistant Personnel Officer/IC for General Manager (P)MLG. It is seen that the direction issued by this Tribunal has been complied and it is addressed to the applicant himself. Since the order has been complied with the O.A. is closed.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)

TRUE COPY

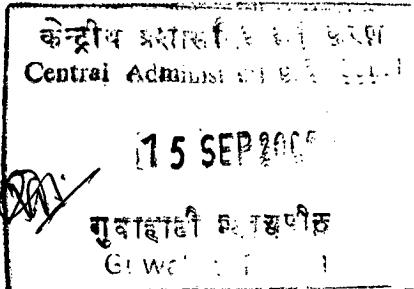
Signature

5.5.05

Section Officer (I)

C.A.T. GUWAHATI BENCH
Guwahati, 5.5.05

Signature



Filed by -
The Respondents
Through
Bordoni Devi
Advocate

by Chief Personnel Officer / H.G.
N.F. Railway, Melliagon
Guwahati-11

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

O.A.No.137/85

Sri Baneswar Rabha & Ors.

-VS-

Union of India & Ors.

WRITTEN STATEMENT FILED BY THE RESPONDENTS:

1. That a copy of the OA has been served upon the respondents and the respondents have gone through the same and have understood the contents thereof. Save and except the statements which are specifically admitted herein below other statement made in this application are totally denied. The statements which are not borne on records are also denied and the petitioners are put to the strictest proof thereof.
2. That with regard to the statement made in para 4.1, 4.2 & 4.3 of the OA, the answering respondents do not admit anything contrary to the relevant records of the case.
3. That with regard to the statement made in para 4.4 of the OA, the deponent begs to state that as per advertisement, the distribution of posts of SC & ST candidates was shown as under:

44
Dr. Chief Personnel Officer / HQ
N.F. Railway, Maligaon
Guwahati-11

Category	SC	ST	Total
Trackmen	58	86	144
Khalasi	11	24	35
	69	110	179

The empanel list was shown as under:

Category	SC	ST	Total
Trackman/Khalasi	69	110	179

Hence, the total number of empanelled candidates were according to the posts advertised for:

4. That with regard to the statement made in para 4.5 to 4.9 of the OA the deponent does not admit anything contrary to the relevant records of the case.

5. That with regard to the statement made in para 4.10 of the OA, the deponent begs to state that both the applicants have been qualified in the Physical Efficiency Test. Against 110 vacancies, 132 candidates were called for Physical Efficiency Test. The deponent further states that 3 candidates did not attend the Physical Efficiency Test, 5 candidates have failed to qualify in the Physical Efficiency Test. Therefore total 8 candidates become ineligible for empanelment.

6. That with regard to the statement made in para 4.11 of the OA, the deponent begs to submit that physical efficiency test is only of qualifying nature. The empanelment will be based on the merit position obtained in the final written examination held on 21.11.84. Candidates

✓
S. J. D. J. S.
Mr. P. P. Nayak, Magistrate
Guwahati
D-Chief Personnel Officer/HQ

were called in the ratio of 1:1.2 for the Physical efficiency Test. More than the required number of candidates to be empanelled were called for physical efficiency test. Therefore it was not possible to empanel all the candidates who qualified in the physical efficiency test. Merely passing in the physical efficiency test will not confer any right for automatic empanelment but it will depend on the relative merit position of the candidates for placing the name in the panel.

7. That with regard to the statement made in para 4.12 of the OA, the deponent begs to state that the final list of empanelment of ST candidates was prepared on the basis of merit. The applicants were not within the merit and therefore they could not be empaneled. The candidates who were in the provisional list were in fact in fact empaneled. The candidates who were in the empaneled list, only their candidature was declared provisional only because of some necessary verification.

8. That with regard to the statement made in para 4.13 of the OA, deponent begs to state that candidates were advised to produce original certificate at the time of verification of certificates. It has been stipulated in the Admit Card that if the candidate fail to bring the original certificate within the prescribed period, their candidature will be liable for cancellation. It is not the case that 16 candidates who did not produce original certificates at the time of verification. They have produced original certificates. The original community certificates produced by the candidates were not clear in some respects. The seal

of the issuing authority was not legible in some cases. The word "For" was added under the seal of signing authority in some of these cases. The certificates could not be rejected straightaway for these reasons. Therefore, opportunity was extended to the candidates to produce proper certificates, which is free from ambiguity.

The laid down procedure regarding the provisional empanelment of SC/ST candidates is circulated vide Railway Board's letter No.E(ST)74CM 15/46 dated 19.2.76. Railway Board has empowered the appointing authority to show a candidate in the provisional list whose caste certificate is found disputed and further clarification is necessary from certificate issuing Authority and in no case, the eligibility of appointment is to be canceled.

A copy of the Railway Boards letter
No.E(SCT) 74 (M15/46) dated 19.2.76
is annexed herewith and marked as
Annexure-(1).

9. That with regard to the statement made in para 4.14 of the OA the deponent begs to state that the variation, after the final select list, because the result of the final examination, is not according to merit. However, the final panel is in order of merit. The deponent further submits that all the candidates who are empaneled have passed final written examination and there is no discrepancy regarding roll no.21708112 of one Sri Raju Ram Boro. It is not the case that he could not produce his original certificate as alleged by the applicant. Sri Raju Ram Boro has produced the original certificate but it was noticed at the time of

verification that he did not complete 18 years and he was underaged therefore he was not eligible for empanelment. Sri Raju Ram Boro has already been informed about this fact. Therefore no irregularity was done in the case of candidates bearing roll no.21708112.

10. That with regard to the statement made in para 4.15 of the OA while denying the contention made therein the deponent begs to state that Shri Mahendra Rabha at serial No.7 and Shri Maheswar Ramchiary at serial No.88 have qualified in the final written examination. Their Roll Nos. are 21709113 and 21708306 respectively. Both these candidates qualified in the Physical Efficiency Test and their merit position is above the applicants. Though their names have appeared correctly in the panel, there is typographical error inadvertently made in their Roll numbers in the panel.

The deponent further states that if there is any dispute regarding their selection, they are required to be made party respondent in the OA. But these two candidates have not been made party respondent. It is pertinent to mention here that all the candidates including candidates at serial No.41, 61, 79, 89, 90 and 108 who are empaneled have applied for Lumding division. The allotment of different roll Nos. is according to the convenience of the railway administration. The allegation made by the applicants are baseless and imaginary.

11. That with regard to the statement made in para 4.16 of the OA the deponent begs to state that it was not possible to empanelled more than 110 candidates against 110

28
J. D. J. D. J. D.

vacancies. Applicants could not be empaneled as their names were not within the merit position of 110 successful candidates.

12. That with regard to the statement made in para 4.17 and 4.18 of the OA the deponent doesnot admit anything contrary to the relevant record of the case.

13. That with regard to the statement made in para 4.19 of the OA the deponent while denying the contention made therein begs to state that 110 candidates were to be empanelled against 110 vacancies in order of merit. The applicant were not within the merit and therefore they couldn't be empaneled. This fact has already been informed to the applicants and the railway administration has taken action as per rules and procedure and not in arbitrary and mechanical manner.

14. That with regard to the statement made in para 4.20 of the OA the deponent doesnot admit anything contrary to the relevant records of the case.

15. That with regard to the statement made in para 4.21 the deponent begs to state that the panel has been published and process of recruitment has been completed. All the selected candidates have already been offered appointment. Recruitment process has been completed in accordance with the rules and procedure. The deponent further submits that in such a situation question of interim protection as has been prayed for by the applicants doesnot arise.



Dy. Chief Personnel Officer/HQ
N.F. Railway, Maitighar
Guwahati-11

16. That with regard to the statement made in para 4.22 and 4.23 of the OA the deponent doesnot offer any comment on it.

17. That with regard to the statement made in para 4.24 of the OA the deponent while denying the contention made therein begs to state that it has been clearly indicated in the reply to the applicants dated 2.5.05 that their names figured below the 110 empaneled candidates in the merit list. The deponent further states, there is no arbitrariness in the action of the administration rather action taken by railway i.e. legal.

18. That in view of the above facts and circumstances of the case the instant application is devoid of merit and as such same is liable to be dismissed with cost.

VERIFICATION

I Shri ... R... A... AIVU....., aged about ..40... years, son of ... Late S... Ramasamy....., resident of Maligaon..... presently working as ... Dy. Chief Personnel Officer/HQ N.F. Railway, do hereby verify and state that the statement made in paragraphs ..4, 5, 7, 11, 17..... are true to my knowledge and those made in paragraph ...3, 6, 8, 9, 10.....being matters of records are true to my information derived therefrom, which I believe to be true and the rest of my humble submissions before this Hon'ble Tribunal. I am also authorised and competent to sign this verification on behalf of all the Respondents.

And I sign this verification on this 26...th day of ... Aug... , 2005.

✓  26/8.

Deponent

Dy. Chief Personnel Officer/HQ
Railway, Malic
Guwahati-11

Railway Board's letter No. E(SCT)74CM15/46 dated 19th February 1976.

Sub : Verification of claim of candidates belonging to Scheduled Castes and Scheduled Tribes.

Reference is invited to Board's letter No. E(SCT)62CM18/1 dated 20th February 1962 and 23rd April 1963 which indicate the officers authorized to issue caste certificates to the Scheduled Castes and Scheduled Tribes. In Board's letter No. E(SCT)74CM15/46 dated 19th November 1974 it was further advised that the candidates belonging to Scheduled Castes and Scheduled Tribes should be appointed provisionally on the basis of whatever *prima facie* evidence they are able to produce in support of their caste including caste certificates issued by the Members of Parliament/ Members of Legislative Assemblies and that such claim should be verified in due course through the District Magistrate of the place where the candidate and/or his family ordinarily resides.

2. It has come to the notice of the Board that the above instructions are not being implemented in all cases that the Scheduled Caste/Scheduled Tribe candidates are often compelled to produce certificate from the District Magistrate concerned as a pre-condition for appointment. This procedure not only delays finalisation of recruitment but also causes harassment to the Scheduled Caste/Scheduled Tribe candidates. The Ministry of Railways therefore desire to reiterate that the Scheduled Caste and Scheduled Tribe candidates should be appointed provisionally on the basis of whatever *prima facie* evidence they are able to produce in support of their caste including certificate issued by Members of Parliament/ Members of Legislative Assemblies and such claim should be verified in due course through the District Magistrate of the place where the candidate and/or his family resides.

3. It should be ensured that there is no lateness on the part of appointing authorities in following these instructions.

Railway Board's letter No. 74E(SCT)/15/46

Sub : Issue of Caste Certificates

Instances have come to the notice where the Railways in regard to the authorities concerned issue certificate to Scheduled Castes/Scheduled Tribes without any certificate or about the concept of the term. The Board in this connection is invited to procure a copy of the 'Procedure on Reservation for Scheduled Castes and Scheduled Tribes in Railway Services' Second Edition, 1976, which contains instructions about the caste certificate to be issued to the intending candidates.

Attested
S. N.
Advocate