

97

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

1. Original Application No. _____

2. Misc Petition No. _____

3. Contempt Petition No. 7/08 in O.A. 114/06

4. Review Application No. _____

Applicant(S) .. N. Nilutpal Patar Ashutosh Swami
VS Union Of India & Ors

Advocate for the Applicant(S) : S. Naita, Mr. U. Dutta

Advocate for the Respondant(S) : B. Devi, J.L. Sarkar for Rept-2

Notes of the Registry	() Date	Order of the Tribunal
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This Contempt petition 07.2008
has been filed by the
counsel for the applicant
under the CAT Act, 1985
praying for initiation
of a contempt proceeding
against the alleged contemners
for non-compliance of the
Judgement and order dated
3.7.2007 passed in O.A.114/06
by this Hon'ble Tribunal,

Laid before the
Hon'ble Court for further
orders.

/bb/

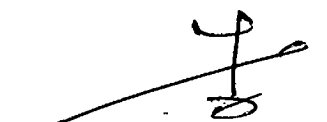
Section Officer

27/6/08

Non-compliance of the final order that was rendered by this Tribunal in O.A. 114 of 2006 is a subject matter of allegation in this C.P. 7/2008.

Respondents have also filed M.P.No.80/2008 virtually seeking extension of time. Dr.J.L.Sarkar, learned Standing counsel for the Railways, is however, absent (for the reason of his sickness) to press the M.P. No.80/2008.

In the aforesaid premises, call this matter on 26.08.2008.


 (M.R.Mohanty)
 Vice-Chairman

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-2-

C.P. 7 of 08 and M.P.No.80/08

26.08.2008 After disposal of O.A.No. 114 of 06, M.P.Nos.90 of 2007, 119 of 2007 were filed. R.A.No.4 of 2007 was also filed by the Respondents. Records of these cases have not been placed to day.


2. In the aforesaid premises, call this matter on 10th September 2008.

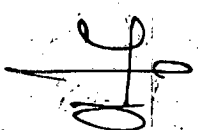
3. Dr.J. L. Sarkar, learned Standing Counsel for the Railways states that the Respondents were to file Writ Petition in the High Court.

4. Call this matter on 10th September, 2008, when Dr. Sarkar, should furnish the number of the Writ Petition, if the same have been filed in the High Court. He should also disclose the date of filing of the Writ Petition.

5. Handover a copy of this order to Dr. J. L. Sarkar, learned Standing Counsel for the Railways, to whom a copy of the C.P.No.07/2008 has already been supplied.

Handed to J.L.Sarkar


(Khushiram)
Member(A)


(M.R.Mohanty)
Vice-Chairman

lm

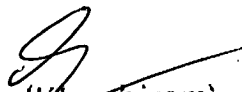
10.09.2008 O.A.No.114 of 06 was disposed of on 03.07.2007. By filing the M.P.No.80 of 2008, the Respondents have sought extension of time. By filing the C.P.No.7 of 2008 the Applicant has sought initiation of Contempt Proceedings against the Respondents. By filing Memo dated 10.09.2008. Dr.J.L.Sarkar, learned Standing Counsel for the Railways has disclosed that the Railways have already filed Writ Petition in W.P.(C) No.3746 of 2008 challenging the order dated 03.07.2007 of this Tribunal rendered in O.A.No.114 of 06.

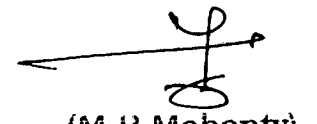
In the aforesaid premises, (after obtaining the details of the Writ Petition) Mrs. U. Dutta learned counsel appearing for the Applicant seeks an adjournment to take instructions in the matter.

Call this matter on 1st December 2008, awaiting instructions from both the parties.

Dr.J.L.Sarkar, learned Standing Counsel for the Railways, to whom a copy of the C.P.No.7 of 2008 has already been supplied should obtain up-to-date instructions in the matter by the next date.

Call this matter on 1st December 2008.

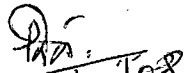

(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

im

21.11.08

J.L. Sarkar submitted
vakalatnama for
Respdt. No. 2.


21/11/08

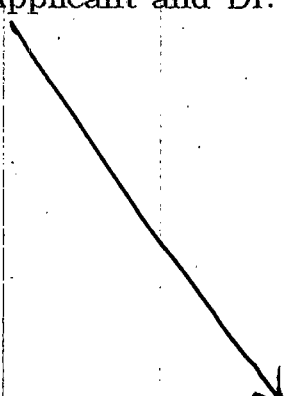
01.12.2008. Non compliance of the final order that was rendered in O.A.No.114 of 06 is subject matter of allegation in this Contempt Proceeding.

2. Counsel for both the parties have intimated that the final order of this Tribunal (rendered in O.A.No.114 of 06) is now the subject matter of challenge before the Hon'ble Gauhati High Court in a Writ Petition (WP(C) No.3746 of 2008) and that the said Writ Petition is pending before the Hon'ble Gauhati High Court after issuance of notices to the opposite parties therein. Mr.S.Nath, learned Counsel appearing for the Applicant states that the Applicant, having received notice from the Hon'ble High Court(in WP© No.3746 of 2008) has already entered appearance before the said Hon'ble Court and contesting the said pending Writ Petition.

3. Since, the Hon'ble High Court is in session of the matter; in all fairness of things, this Contempt Petition need not proceed any further. In fact, Mr.S.Nath, learned counsel appearing for the applicant now filed a Memo to the following effect:-

"The Petitioner begs to submit that the above mentioned Contempt Petition may be allowed to be closed with the liberty to reopen the Contempt Petition subject to the outcome of W.P.(C) No.3746/2008 (U.O.I.& Ors. -Vs- Nilotpol Patar) which is pending before the Hon'ble Gauhati High Court"

4. Having heard, Mr.S.Nath, learned counsel appearing for the Applicant and Dr.



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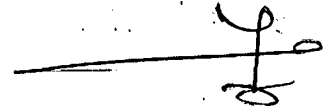
C.P.7 of 08

Contd/-

01.12.2008

J. L. Sarkar, learned Standing Counsel for the Railways (assisted by Mr. Sukumol Sengupta, Advocate) this contempt Proceedings is closed; for the matter is subjudice in the Hon'ble Court. Parties shall abide by the order to be passed, ultimately, in the WP(C) No.3746/2008; which is now pending before the Hon'ble High Court

5. Send copies of this order to the Applicant and to all the Respondents and free copies of this order be also supplied to the learned counsel appearing for both the parties.



(M.R. Mohanty)
Vice-Chairman

lm

Copies of order dt. 1/12/08
send to D/Sec. for issuing
to applicant and to all
the resp. by post, free copies
handed over to learned
counsel for both the
parties.

12/12/08. DT= 22-12-2008
D/No-4882-4886

Contd/-

01.12.2008

the Railways (assisted by Mr. Sukumol Sengupta, Advocate) this Contempt

Proceedings is closed for the ^{matter in subjudice} ~~time being~~ ^{In the Hon'ble Court, Parties shall abide by the order to be}

~~subject to the outcome of~~ WP(C)

No.3746/2008, which is ^{now} pending before the Hon'ble High Court.

5. Send copies of this order to the Applicant and ^{to all} the Respondents and free copies of this order be ^{also} supplied to the learned counsel appearing for both the parties.

(M.R.Mohanty)
Vicc-Chairman

lm

Passed, ultimately,
in the

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, CITY

File in Court on...1/12/08
Court Officer.

In the matter of:-

C.P. NO. 7/2008

In O.A. NO. 114/2006

Shri Nilotpall Patra... Petitioner.

-Vs-

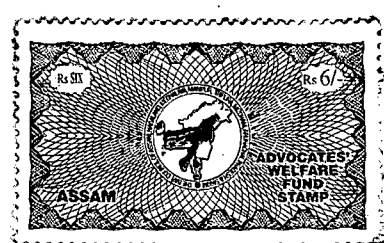
Shri Kshutosh Swami & ors
... Alleged Contemners/
Respondents.

The petitioner begs to submit that the above mentioned Contempt-petition may be allowed to close with the liberty to reopen the Contempt-petition subject to the outcome of U.P(C) NO. 3746/2008 (U.O.I & ors. -Vs- Nilotpall Patra), ^{which is} pending before the Hon'ble Gauhati High Court.

Filed by:-

Subrata Nath 01/12/2008,
Advocate.

File in Court on... 1/12/08
Court Officer.



FORM No. 12
(see Rule 67)

106

FORM OF THE VAKALATNAMA

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH: GUWAHATI

CP No. 07/08
In O.A No. 114/2006

Sri Nilutpal Patar _____ Applicant (S)

-vs-

Ashutosh Swami & anothers.. _____ Respondent (S)

I Ashutosh Swami, GM/N. F. Railway Applicant No. x / Respondent No. 01 (one) in the above Applicant /Petition do hereby appoint and Shri J. L. Sarkar, SC/CAT/GHY Advocate's to appear, plead act for me/us in the above applicant / petition and to conduct and prosecute all proceeding that may be taken in respect thereof including Contempt of Court petitions and Review Applications arising there form and applications for return of documents, enter into compromise and to draw any money payable to met/us in the said proceeding.

Place: Guwahati

Date: 28.11.08

✓ 
Signature of the party
"Accepted"

Executed in my present.
*Signature with date
(Name and Designation)

Name and Address of the
Advocate for service.

Dr. J.L. Sarkar : Accepted.
Joymati Nagor
Adabari Guwahati-12 (J.L. Sarkar)
Advocate (sc. Rsp.)

* The following certification to be given when the party is unacquainted with the language of the Vakalatror or is blind or illiterate:

The contents of the Vakalath were truly audibly read over/translated into _____ language known to the party executing the vakalath and he seems to have understood the same.

For & Behalf of U.O.I

RAILWAY RECRUITMENT BOARD : GUWAHATI

File in Court No. 112/08

Court Officer.

No-RRB/G/WP(C)/3746/08(NP)

Dated-19.11.2008.

To
Shri Sukomal Sengupta
Railway Advocate
High Court.

Sir,

Sub: - WP(C) No.3746//08
Union of India & others
--Vs--
Shri Nilutpal Patar.

The above Writ Petition has been filed before Hon'ble High Court Guwahati, against the judgment /order of CAT/GHY in OA No. 114/06 by you. Suitable action may kindly be initiated from your end for obtaining a Stay Order from Hon'ble High court Guwahati in implementing the order of CAT/GHY dated. 03.07.2007.

This may kindly be treated as most urgent.

With regards,

Sincerely yours

(R.K.Sonowal)

Secretary

For Chairman, RRB/GHY

Copy to: - APO/LC/Maligaon for information and needful action please.

(R.K.Sonowal)

Secretary

For Chairman, RRB/GHY

N.F. Railway

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

No. E/170/LC/NS/1070/08

Date : 19.11.2008

To,
Sri Sukomal Sengupta
Railway Advocate
Sarada Colony
Maligaon, Guwahati-11

File in Court on... 19.11.08
Court Officer.

Sub : W.P (C) No. 3746/08
U.O.I & Others-vs-Nilutpal Pator.

Ref : This office letter of even No. dated 3.10.2008.

Sir,

In reference to the above, stay order has not yet been obtain from Honourable High court, Guwahati to keep obeyance the operation of the order of CAT/GHY. The applicant Sri Nilutpal Pator has filed a contempt petition before the Honourable CAT/GHY against Sri Ashutosh Swami, GM/N.F. Railway alleging non-compliance the judgment/order dated 03.07.07 in OA No. 114/06. The contempt petition No. 07/2008 in O.A. No. 114/06 is restate on 01.12.08.

You are therefore requested to take necessary steps to obtain stay order to resist the contempt proceeding.

Please take this matter as most urgent.

With regards.

Yours faithfully,

(A.K. Bhattacharjee)
APO/LC

For General Manager(P)/Maligaon

*Sri Sankar
&
Chagnall
Chagnall
Chagnall
Chagnall
Chagnall*

*My main file
is still APO/LC
19.11.2008*

hmm

तारीख Date of application for the copy.	संख्या सूचित करने की तिथि तारीख Date fixed for notifying the requisite number of stamps and folios.	देने की तारीख Date of delivery of the requisite stamps and folios.	तैयार करने का दिन प्रतिनिधि तैयार थी Date on which the copy was ready for delivery.	आवेदन को प्रतिनिधि देने की तारीख Date of making over the copy to the applicant.
21/11/08	21/11/08	21/11/08	21/11/08	21/11/08

109

IN THE GAUHATI HIGH COURT

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

CIVIL APPELLATE SIDE

Filed in Court on 11/11/08
 Court Officer.

Appal from WP(c)
 Civil Rule

No. 3246 of 2008

Union of India & or

Appellant
Petitioner

Versus

Sri Nilutpal Patra

Respondent
Opposite Party

Appellant Mr. S. Sengupta,
 For PLy. Advocate.
 Petitioner

Adi Ha Respondent
 For _____
 Opposite Party

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

File in Court on... 1/12/08

Court Officer.

- 2 -

IN THE MATTER OF :

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

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

... Petitioners.

- Versus -

Sri Nilutpal Patar
S/O Sri Bopi Ram Patar,
Vill: Nabheti,

Contd....10

File in Court on... 1/2/88
Court Officer.

- 8 - 3'

P.O. & Dist. Morigaon,
Pin-782105, Assam.

... Respondent.

Edith

Commissioner of Affidavit
Gauhati High Court
Guwahati

Contd.....11

Noming by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			<p align="center"><u>WP(C) No.3746 /2008</u></p> <p align="center">BEFORE HON'BLE CHIEF JUSTICE J.CHELAMESWAR HON'BLE MR.JUSTICE HRISHIKESH ROY</p> <p><u>29-08-2008.</u> (J.Chelameswar,CJ)</p> <p>Heard Mr.S.Sengupta, learned counsel for the petitioners.</p> <p>The petition is admitted.</p> <p>Issue notice.</p> <p>Petitioner shall take steps for service of notice on the respondents.</p>

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Sd/- Hrishikesh Roy
Judge

Sd/- J. Chelameswar
Chief Justice

S.L. 107564
dt. 21.11.08

CERTIFIED TO BE TRUE COPY
Date: 21.11.08
Superintendent (Copying Section)
Gauhati High Court
Authorised U/S 76, Act 1, 1872

Odutt
21.11.08

NOTICE

From

U. Datta
Advocate

File in Court. J.L. 29/08
Court Officer, 115

To

Sr. J. L. Sarkar
Rly. S.C

Sir,

Please find herewith a copy of the C.P. NO. 7/08 arising out of O.A. NO. 114/06 for your kind perusal. Kindly acknowledge the receipt of the same.

Received

(J.L. Sarkar)
26/8/08.
Sef. Phys.

Thanking you,

Datta

CAT/94

116

CP 7/08 &
MP 80/08

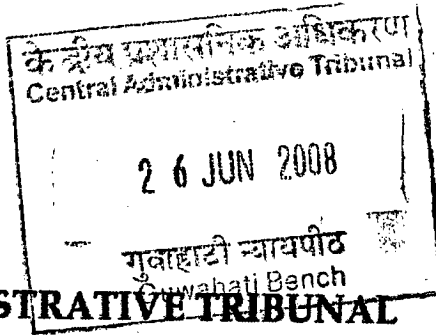
} pending cases arising
out from the OA no.
114/06 disposed on 3.7.07.

In this OA the following cases are
connected and disposed of —

① MP no. 90/07 — Extension of 4 months.
Allowed on 13-9-07.

② RA no. 4/07 &
MP 119/07
Limitation } — Dismissed
on 17-1-08.

On
3.7.08
ce.



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An application under Section 17 of the Administrative Tribunals Act, 1985)

Title of the case : C.P. No. 7 /2008
In O.A. No. 114/2006

Shri Nilutpal Patar. : Petitioner.

-Versus-

Shri Ashutosh Swami & another. : Alleged contemners/ Respondents.

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3.	I	Copy of the judgment and order dated 03.07.07.	7-21
4.	II	Copy of representation dated 16.07.07.	-22-
5.	III	Copy of order dated 13.09.07.	-23-

Date:- 26/06/08

Filed By:

S. Nath
Advocate

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

26 JUN 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

Filed by the petitioner
through: S. Nath
Muzak
24/06/2008.

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

(An application under Section 17 of the Administrative Tribunal Act, 1985)

CONTEMPT PETITION No. 7/2008

In O.A No. 114/2006

Nilut Pal Patar

In the matter of:

Shri Nilutpal Patar.

... Petitioner.

-Versus-

Shri Ashutosh Swami & another.

**... Respondents/
Alleged contemnors.**

-And-

In the matter of:

An application under Section 17 of the Administrative Tribunals Act, 1985, praying for initiation of a Contempt proceeding against the alleged contemnors for non-compliance of the judgment and order dated 03.07.2007 passed in O. A. No. 114/2006.

-And-

In the matter of:

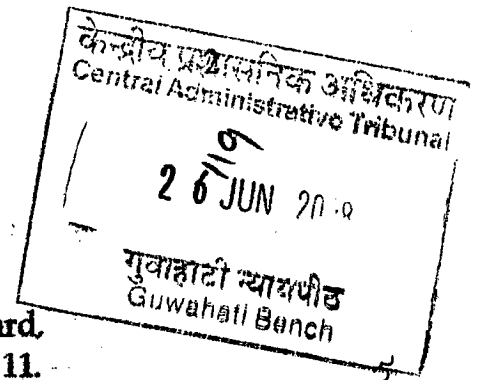
**Shri Nilutpal Patar,
S/o- Shri Gopi Ram Patar,
Vill- Nabheti,
P.O- Morigaon,
Dist- Morigaon, Assam- 782105.**

-----Petitioner.

-Versus-

- 1. Shri Ashutosh Swami,
General Manager,
N.F. Railway,
Maligaon, Guwahati- 11.**

2. **Shri Trikalagya Rabha**
Chairman,
Railway Recruitment Board,
Station Road, Guwahati- 11.



Nilut Pal Postage

... Respondents/
Alleged contemnors.

The humble petitioners above named

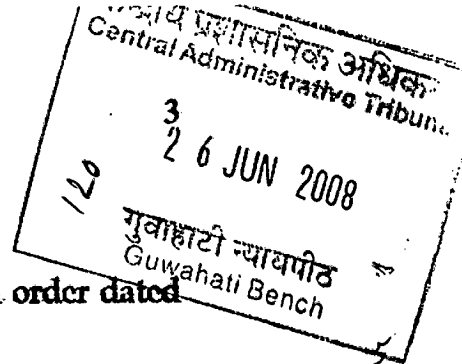
Most respectfully sheweth:-

1. That your petitioner being aggrieved with the impugned letter bearing No. RRB/E/170/OA/320/2005 (NP) dated 22.02.2006, whereby representation of the petitioner has been rejected claiming appointment to the post of Electrical Signal Maintainer (for short ESM) Gr. III against the ST category vacancy and also praying for a direction upon the respondents to appoint the applicant to the post of ESM Gr. III against the existing ST vacancy in N.F Railway approached the Hon'ble Tribunal through O.A. No. 114/2006. The Hon'ble Tribunal on perusal of materials on record and after hearing the Counsel of the parties was pleased to set aside and quash the letter dated 22.02.2006 and further directed the respondents as follows:

"11. The order impugned in this O.A. is, therefore, liable to be quashed and set aside. We, therefore, quash and set aside the impugned order No. RRB/E/170/OA/320/2005 (NP) dated 22.02.2006 enclosed as Annexure 9 at page 25 of this O.A. We direct the respondents to determine the merit of the candidates including the applicant for empancment on the basis of the marks obtained by them in the HSLC/HSSLC Examination. The original Application is allowed to the extent indicated above. No costs."

Copy of the judgment and order dated 03.07.2007 is enclosed herewith and marked as Annexure- I.

2. That the petitioner submitted representation on 16.07.07 addressed to the alleged contemnors/respondents enclosing copy of the judgment and



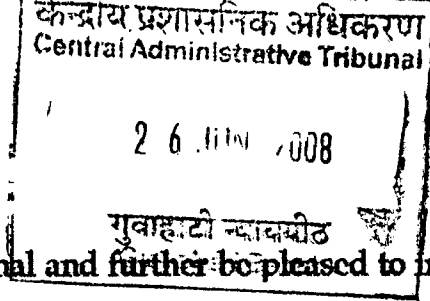
order dated 03.07.07 for implementation of the judgment and order dated 03.07.07 in O.A. No. 114/06 but to no result.

A Copy of the representation dated 16.07.07 is enclosed herewith as Annexure- II.

3. That the respondents/alleged contemnors approached this Hon'ble Tribunal through M.P No. 90/07 in O.A. No. 114/07 praying for extension of four months time to implement the order passed on 03.07.07 in O.A No. 114/2006. However, the Hon'ble Tribunal considering submission of the Counsel of the applicant in M.P No. 90/07 that they have decided to implement the order of the Tribunal allowed the M.P. No. 90/07 on 13.09.07 granting four months further time for compliance of the order as a last chance. It is stated that four months granted by the Hon'ble Tribunal has elapsed on 13.01.2008 but till date the alleged contemnors/respondents have not implemented the judgment and order dated 03.07.07 in O.A. No. 114/06.

Copy of the order dated 13.09.07 is enclosed herewith as Annexure- III.

4. That the petitioner states that respondents/alleged contemnors prayed four months time before this Hon'ble Tribunal for implementation of the judgment and order dated 03.07.07 in O.A. No. 114/06 and the Hon'ble Tribunal was pleased to allow four months time as a last chance for compliance of the judgment and order dated 03.07.07 but till date the respondents/alleged contemnors have neither implemented the judgment and order dated 03.07.07 in O.A. No. 114/07 nor have informed anything regarding implementation of the judgment and order dated 03.03.07 in O.A. No. 114/07 either to this Hon'ble Tribunal or the petitioner. As such it is stated that action of the alleged contemnors/respondents itself contemptuous in nature and it is willful disobedience of the order of the Hon'ble Tribunal passed on 03.07.2007. Therefore, the Hon'ble Tribunal be pleased to initiate a Contempt proceeding against the alleged contemnors for willful violation of the order dated 03.07.2007 in O.A. No. 114/2006 of



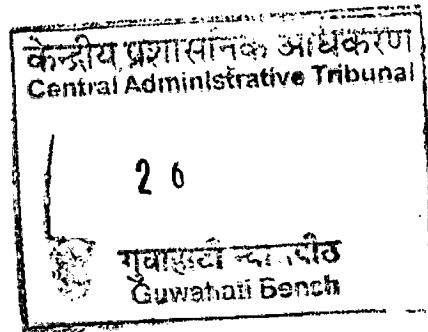
this Hon'ble Tribunal and further be pleased to impose punishment upon the alleged contemnors in accordance with law.

5. That this application is made bonafide and for the cause of justice.

Under the facts and circumstances stated above, the Hon'ble Tribunal be pleased to initiate Contempt proceeding against the alleged contemnors for willful non-compliance of the judgment and order dated 03.07.2007 in O.A. No. 114/2006 and be pleased to impose punishment upon the alleged contemnors in accordance with law and further be pleased to pass any other order or orders as deemed fit and proper by the Hon'ble Court.

And for this act of kindness, the petitioner as in duty bound, shall ever pray.

Nilut Pal Patra



AFFIDAVIT

I Shri Nilutpal Patar, S/o- Shri Gopi Ram Patar, aged about 24 years, Vill- Nabheti, P.O- Morigaon, Dist- Morigaon, Assam- 782105, do hereby solemnly declare as follows: -

1. That I am the petitioner in the above contempt petition as such I am well acquainted with the facts and circumstances of the case and also competent to sign this affidavit.
2. That the statements made in paragraph 1 to 5 are true to my knowledge and belief and I have not suppressed any material fact.
3. That this Affidavit is made for the purpose of filing contempt petition before this Hon'ble Tribunal, Guwahati Bench, Guwahati for non-compliance of the Hon'ble Tribunal's order dated 03.07.2007 in O.A. No. 114/2006.

And I sign this Affidavit on this 21st day of ~~March~~^{June} 2008.

Identified by

U. Dutta

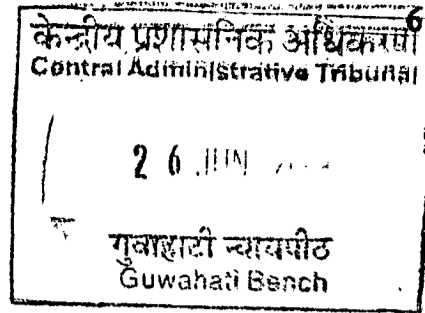
Advocate.

Nilut Pal Patar

Deponent

The abovenamed deponent-
solemnly affirmed and declared
before me on the 21st day of June,
2008 who is identified by Mrs.
U. Dutta Advocate.

Subrata Sarin
21/6/08.
Advocate



DRAFT CHARGE

Laid down before the Hon'ble Central Administrative Tribunal, Guwahati Bench for initiating a contempt proceeding against the contemnors for willful disobedience and deliberate non-compliance of the order of the Hon'ble Tribunal dated 03.07.2007 passed in O.A. No. 114/2006 and further to impose punishment upon the alleged contemnors for willful disobedience and deliberate non-compliance of the Hon'ble Tribunal's order dated 03.07.2007 in O.A. No. 114/2006.

Nilut Pal Patra

-7-

SL. No. 117
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Annexure-I

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

ORIGINAL APPLICATION NO.114 OF 2006

DATED THIS THE 3rd DAY OF *July*, 2007

HON'BLE MR. G. SHANTHAPPA

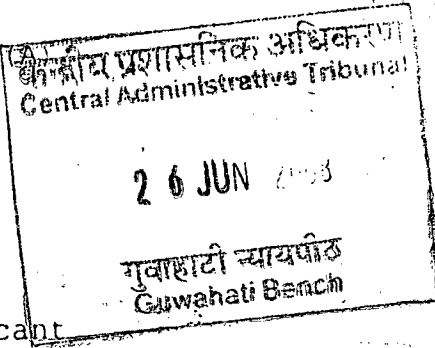
MEMBER (J)

HON'BLE MR. GAUTAM RAY

MEMBER (A)

Shri Nilutpal Patar
S/o Shri Gopi Ram Patar,
Vill-Nabheti,
P.O- Morigaon,
Dist-Morigaon,
Assam-782105

Applicant



[Mr. S. Nath Advocate for the applicant]

v.

1. The Union of India,
Represented by General Manager,
N.F. Railway,
Maligaon,
Guwahati-11
2. The Chairman,
Railway Recruitment Board,
Station Road,
Guwahati-11

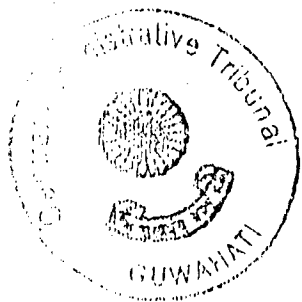
Respondents

[Mrs. B. Devi Advocate for the respondents]

O R D E R

MR. GAUTAM RAY, MEMBER (A)

This Original Application under Section 19 of the Administrative Tribunals Act, 1985 has been filed assailing the impugned letter bearing No.RRB/E/170/OA/320/2005(NP) dated 22.2.2006 (Annexure-9) whereby the 2nd respondent has rejected the representation of the applicant claiming appointment to the post of



*Attested
S. Nath
Advocate*

20 JUN
गुवाहाटी न्यायमंडल
Guwahati Bench

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Electrical Signal Maintainer Gr.III against the ST Category Vacancy and also praying for a direction upon the respondents to appoint the applicant to the post of Electrical Signal Maintainer Gr.III against the existing vacancy in N.F. Railway.

2. The case of the applicant briefly stated is as follows:

(a) The Railway Recruitment Board, Guwahati (in short RRB) published an advertisement vide Employment Notice No.01 of 2004 dated 12.6.2004 inviting applications from eligible candidates for recruitment in various categories of posts. In the said advertisement at Sr.No.48, applications were invited for selection to the 50 posts of Electrical Signal Maintainer Gr.III (in short ESM). Out of the said 50 posts, 4 posts were reserved for ST candidates. A copy of the said advertisement is enclosed herewith as Annexure-I.



(b) The applicant submits that he appeared in the written examination on 27.3.2005 as an ST candidate and came out successful. Thereafter he was called for verification of original testimonials on 31.8.2005. Accordingly, he appeared and got his original certificates verified by the RRB. Copies of the call letters dated 27.2.2005 and 8.8.2005 are enclosed herewith as Annexures 3 and 4 respectively.

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केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal

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Guwahati Bench

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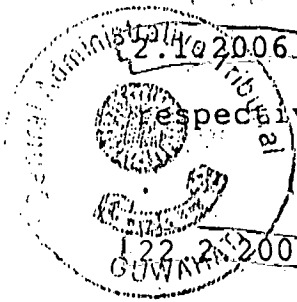
(c) The applicant further states that lapse of 3 months of verification of the original testimonials of the applicant by the RRB, the applicant did not receive any communication from the respondents about his recruitment to the post of ESM Gr.III. When he went to the office of the RRB he came to know that RRB has sent a selection list of the candidates to the General Manager, N.F. Railway for appointment and the name of the applicant was not included in the said selection list. The applicant submits that when he asked the authorities the reasons for non-inclusion of his name in the said selection list, he was informed that his name was not included in the selection list because he is much younger in age than the other candidates whose names have been included in the selection list. Applicant further submits that he is confident that he has done well in the written examination and he will be selected if the selection procedure is fair and free from all sorts of extraneous consideration. The applicant made a representation to the General Manager, N.F. Railway, Guwahati, where he categorically stated that he has learnt that RRB/Guwahati has sent a list to the General Manager (P), Maligaon and, therefore, requested to absorb him in the post of ESM Gr.III in which he has already qualified. A copy of his representation dated 28.11.2005 is enclosed herewith and marked Annexure-6.



केन्द्रीय प्रशासनिक आयोग
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(d) The applicant states that finding in response to his representation dated 28.11.2005, he approached this Tribunal by filing O.A.No.320 of 2005. The Tribunal disposed of the O.A. vide Order dated 23.12.2005 with the direction to the respondents to dispose of the representation of the applicant dated 28.11.2005 and also with the direction that the applicant may file an additional representation within 1 week from the date of receipt of the Order. The applicant, in compliance with the direction of the Tribunal, made a detailed representation on 2.1.2006 addressed to the General manager, N.F. Railway, Maligaon. In the said representation the applicant inter alia contended that younger than the other ST candidates cannot be a ground for denial of appointment in the Railway. A copy each of the Order of the Tribunal dated 23.12.2005 and the representation dated 2.1.2006 is annexed hereto and marked Annexures 7 and 8 respectively.



(e) The 2nd respondent vide his order dated 22.2.2006 rejected the representation submitted by the applicant. The relevant part of the order of the 2nd respondent dated 22.2.2006 is extracted below:-

"Panel of RRB is formed purely on the basis of merit. Sometimes it may happen that more than one candidate have secured equal marks and that marks is within the zone of empanelment. In such cases if all the candidates securing equal marks cannot be empanelled as per requirements of the advertisement, then the candidate having his

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date of birth earliest is considered to be the highest in merit. In this case candidates secured equal marks and unfortunately the applicant's name figured junior most amongst the 03 in respect of his date of birth. Accordingly he could not come in the zone of empanelled lists. Further no more reserved post for ST candidate is available to accommodate the applicant. It is pertinent to mention here that while the applicant was called for verification of documents, in the said letter it was categorically mentioned that this call letter does not itself entitle him for selection. Accordingly non-inclusion of the name of the applicant has not violated the principles of natural justice. Thus the non inclusion of his name in the panel stands good and this may be communicated to the applicant."

(f) Being aggrieved by the impugned letter bearing No. RRB/E/170/OA/320/2005 (NP) dated 22.2.2006 issued by the 2nd respondent, the applicant has approached this Tribunal seeking for the following reliefs:

8.1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned letter bearing No. RRB/E/170/OA/320/2005 (NP) dated 22.2.2006 (Annexure-9)

8.2. That the Hon'ble Tribunal be pleased to direct the respondents to appoint the applicant to the post of ESM Gr.III against the existing ST vacancy pursuant to the advertisement dated 12.06.2004.

8.3. Cost of the application.

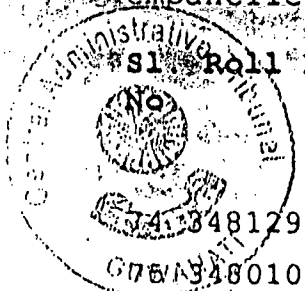
8.4. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper."

3. The respondents have opposed the Original Application by filing a counter-reply. They contend that as per Railway Board's letter No.99/E/RRB/25/2



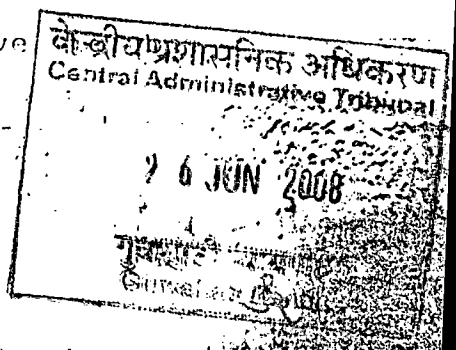
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dated 18.3.99 circulated vide General Manager (P) Maligaon's letter No. E/227/O (Kott) 2, dated 25.5.99, the recall letter to the candidates equal to 10 (ten) numbers of vacancy/posts is applicable only where second stage of examination is mandatory but not for the posts where single written examination (no interview) followed by verification of original documents. Since in this category of posts selection has been done on the basis of Single Written Examination (no interview) followed by verification of original documents, hence issuance of recall letters equal to 10 (ten) numbers of vacancies is not maintainable. The respondents further state that since the vacancies had been enhanced by the competent authority, a total 6 (six) ST candidates had been empanelled as under:-



Sl. No.	Roll No.	Name of the applicant	Community	Date of Sending Panel
64	34812954	Sashi Kant Ranjan	ST-1	31.8.2005
65	34801059	Ganesh Narzary	ST-2	-do-
66	34800964	Prasaanta Boro	ST-3	-do-
67	34812871	Shiv Prasad Mandal	ST-4	-do-
68	34806256	Abhay Kr. Ranjan	ST-5	-do-
69	34807064	Bhupal Kumar	ST-6	8.11.2005

The respondents further state that as per the procedure followed by the RRBs, the candidates securing equal marks in the Written Examination in a particular position (irrespective of any numbers) have called for verification of documents following



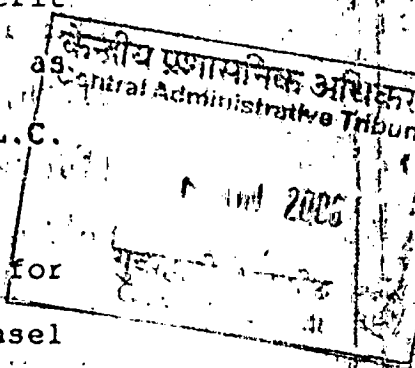
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principle of natural justice. In the instant case, 3 Nos. of ST candidates secured equal marks and on the very date of verification of original documents, the applicant was found to be junior most amongst the 3 in respect of dates of birth who were also called for verification of documents along with the applicant. Accordingly, the applicant could not come in the zone of empanelled list and as a result there is no scope for consideration of appointment of the applicant as all the 6 (six) vacancies had been filled up in order of performance in the written examination as well as laid down procedure for fixing the merit position against the community-wise vacancies. The respondents, therefore, pray that the Application be dismissed with costs.



The applicant has filed a rejoinder stating that much younger in age than the other candidates cannot be ground for selection on the basis of merit. His contention is that in a selection process, merit includes marks secured in the written examination as well as marks obtained in the H.S.L.C./H.S.S.L.C. examination or other examination.



5. We have heard Mr. S. Nath, learned counsel for the applicant and Mrs. B. Devi, learned Railway Counsel appearing for the respondents. We have perused respective pleadings of the parties and also perused the documents produced before us.

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6. In view of the above, we find that it is not in dispute that the applicant belongs to ST category and secured equal marks as secured by the two other ST candidates in the written examination conducted by the RRB, Guwahati for the post of ESM Gr.III in pursuance of the advertisement issued vide Employment Notice No.01 of 2004 dated 12-6-2004. It is also not in dispute that the respondents have empanelled the candidates including the applicant securing equal marks in the written examination on the basis of their seniority in age, it is also undisputed that the marks obtained by them (those 3 candidates) in the HSLC/HSSLC Examination are not equal.

The specific case of the respondents is that as per procedure, in such situation, when marks obtained by them in written examination are equal and all of them cannot be empanelled, then the candidate having his date of birth earliest is considered to be the highest in merit. Since the applicant was found to be junior most amongst the three in respect of his date of birth, he could not come within the zone of empanelled list whereas the claim of the applicant is everything being equal, the marks obtained in the required examination i.e., HSLC/HSSLC should be the deciding factor for determining merit for empanelment.

7. In view of the above, the question that falls for consideration is as to whether respondents are

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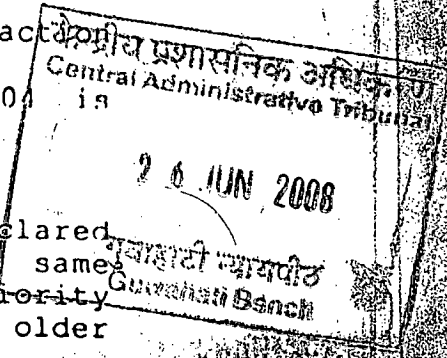
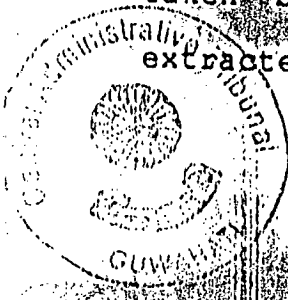
right in considering the seniority in age as deciding factor to decide the merit in such situation when marks obtained by them in the required examination HSLC/HSSLC are different?

8. A plain reading of the advertisement issued by the RRB, Guwahati vide Employment Notice No.01 of 2004 dated 12.6.2004 (Annexure 'I') would show that there is no such prescription that in such eventuality i.e., in case when candidates belonging to same category get equal marks in the written examination will be decided on the basis of their seniority in age. Although the respondents in their counter reply and the impugned orders have made a mention that "in such cases if all the candidates securing equal marks cannot be empanelled as per requirements of the advertisement, then the candidate having his date of birth earliest is considered to be the highest in merit", but they have not mentioned any rule/instruction providing such procedure to be adopted in such eventuality. However, in this context, the learned counsel for the respondents, at the time of hearing, had referred to

Rule 304 of the IREM Vol. I (Revised Edition 1989) and

provided a copy of the same in support of the act taken by the respondents. The above Rule 304 is extracted below:-

"304. When two or more candidates are declared to be of equal merit at one and the same examination/selection, their relative seniority is determined by the date of birth the older candidate being the senior."



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For better appreciation of the applicability of the above rule, Rules 303 and 305 of the IREM Vol. I (Revised Edition - 1989) are also required to be given thought and, therefore, the same are reproduced below:-

"Rule 303. The seniority of candidates recruited through the Railway Recruitment Board or by any other recruiting authority should be determined as under:-

(a) Candidates who are sent for initial training to training schools will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working posts. Those who join the subsequent courses for any reason whatsoever and those who pass the examination in subsequent chances, will rank junior to those who had passed the examination in earlier courses.

(b) In the case of candidate who do not have to undergo any training in training school, the seniority should be determined on the basis of the merit order assigned by the Railway Recruitment Board or other recruiting authority."



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"Rule 305. When, however, a candidate whose seniority is to be determined under paragraphs 303 and 304 above cannot join duty within a responsible time after the receipt of orders of appointment, the appointing authority may determine his seniority by placing him below all the candidates selected at the same examination/selection, who have joined within the period allowed for reporting to duty, or even below candidates selected at subsequent examination/selection who have joined before him."

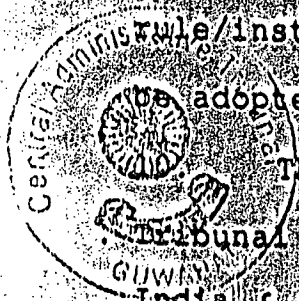
A careful reading of the above rules would show that they are applicable for determining the seniority and

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not suitability/merit of the candidate to be selected. In our view, the rule referred to by the learned counsel for the respondents is misplaced. It goes without saying that the above rule i.e, Rule 304 has no application in determining the merit in a selection.

9. Therefore, the fact remains that there is neither any prescription in the Notice dated 12.6.2004 (supra) to decide the merit on the basis of seniority in age of the candidates who get equal marks (i.e. in case of the present situation) nor there is any rule/instruction available providing such procedure to be adopted in such eventuality.

The Full Bench of the Central Administrative Tribunal in the case of M. Satyaseela Reddy v. Union of India & Ors. (1997-2001 A.T. Full Bench Judgments: 66) while explaining the difference between 'reservation and preference' and between 'relaxation and preference' or 'reservation and relaxation' has inter alia said that in rare cases, where two candidates get equal position in the select list in the examination, how selection is to be made is indicated in the relevant rules. As mentioned above, no such rule is mentioned by the respondents in the order impugned in this O.A. nor enclosed with their counter reply. The rule referred to by the learned counsel for the respondents is in regard to determining seniority and is, therefore, not a relevant rule. The Full Bench of the



केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal

गुवाहाटी बेंच
Guwahati Bench

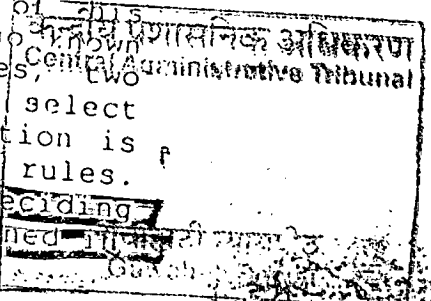
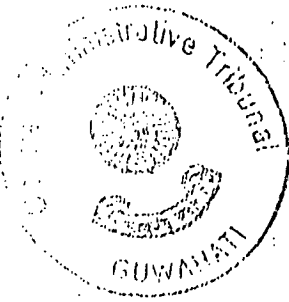
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Central Administrative Tribunal (supra) has also said that as per rules, inter se merits are required to be determined on the basis of marks list of S.S.C. examination. The relevant part of paragraph '9' of the above Full Bench Judgment is reproduced below for better appreciation of the issue involved in this case:

"9. To begin with, the distinction between 'reservation and preference' or 'relaxation and preference', or 'reservation and relaxation', does not appear to have been streamlined in any of the aforesaid decisions relied on by the learned counsel for the applicant and, therefore, a confusion appears to have been created in explaining or understanding the said cases. We have, therefore, first to see the difference between 'reservation and preference' or 'relaxation and preference'. According to us, 'reservation and relaxation' means total exclusion of a post or posts for a particular category of candidates means other categories of candidates, even if more qualified or better merited. Relaxation on the other hand means certain concession by variation or changes in the eligibility conditions, such as age relaxation to candidates belonging to ST/SC/OBC categories by increasing the upper age limit for any post in their cases. As opposed to reservation and relaxation, when preference is stipulated, all eligible candidates, irrespective of their categories, are simultaneously considered for any post on equal footing, and are subjected to a common and uniform process of selection. If no person belonging to any particular preferential category is available or selected, no question of giving preferential treatment to such a category of persons arises. Where such a person is available or selected and empanelled in the select list, he gets the benefit of preferential appointment irrespective of his position in the select list which is also known as merit list. In rest of rare cases, two candidates get equal position in the select list and in that eventuality, how selection is to be made is indicated in the relevant rules.

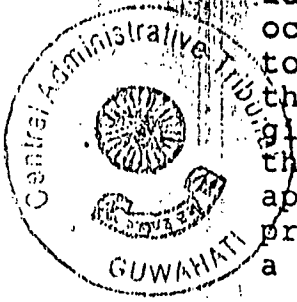
~~In some cases, seniority in age is the deciding factor. In some other cases, marks obtained~~



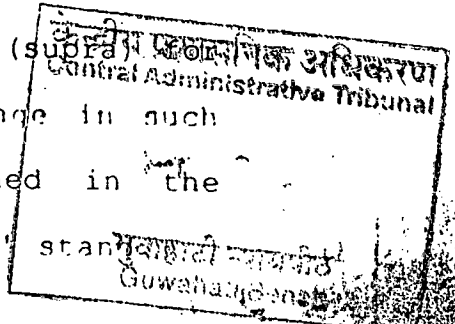
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a particular subject any examination is the deciding factor for choosing one between the two. Accordingly, if an SC candidate finds his name at Sl.No.1 of the merit list, no question of giving preferential treatment arises. If his name is below the names of persons not in preferential category, he gets preference over such other candidates not in preferential class in matter of public employment by invoking the provision of preferential treatment in the recruitment rules or in the notified conditions of eligibility. We are of the view that the Calcutta Bench committed an error by equating qualification with merit. Extra qualification or over qualification is meaningless where minimum qualification is prescribed for a post. All persons possessing the minimum required qualification are treated alike, over-looking additional qualifications of any particular candidate. Thus, a person possessing matriculation certificate will get a similar treatment with a graduate for the post of an EDBPM, because the requisite minimum qualification for that post is S.S.C. or matriculation certificate. As per rules, inter se merits are required to be determined on the basis of marks list of S.S.C. examination. As the applicant had secured more marks in the S.S.C. examination, he was ordinarily entitled to be appointed against the post of an EDBPM. However, as preference was notified to be given to a person belonging to ST/SC/OBC categories and the 4th respondent belonged to one of such categories, he was preferred for appointment to the said post. If both of them had secured identical marks, there could have been no occasion for giving any preferential treatment to the 4th respondent. Accordingly, we are of the view that the 4th respondent was correctly given appointment against the post of EDBPM, though less merited as compared to the applicant, by invoking the clause containing provision for giving preferential treatment to a person belonging to ST/SC/OBC categories".

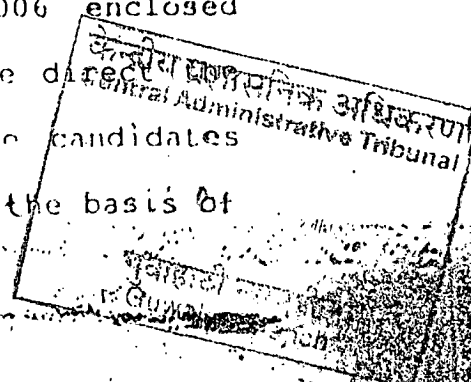
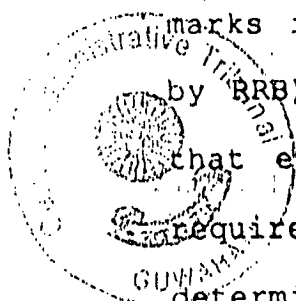


As mentioned above, in the case in hand, there is no such prescription in the Employment Notice (supra) selecting the candidate who is senior in age in such eventuality. No rule has been mentioned in the impugned order in support of the respondents'



taken in rejecting the representation of the applicant or selecting the candidate on the basis of seniority in age. No such rule is enclosed along with the counter reply filed by the respondents. The rule 304 of IREM Vol.I (Revised Edition - 1989) is misplaced for the reasons discussed above.

11. In view of the above facts and circumstances and the observations of the Full Bench (supra), we are of the view that in the absence of any such prescription in the advertisement in Employment Notice No.01 of 2004 dated 12.6.2004 (supra) that preference will be given to the candidate who is seniormost in age amongst the candidates and belongs to same category and got equal marks in the prescribed Written Examination (conducted by BRB) and in the absence of any rule/instruction to that effect, marks secured by them in the prescribed examination should be the deciding factor in determining the merit of the candidates, the respondents are, therefore, not justified in determining their merit on the basis of the seniority of the candidates in age. The order impugned in this O.A. is, therefore, liable to be quashed and set aside. We, therefore, quash and set aside the impugned order No.RRB/E/170/OA/320/2005(NP) dated 22.2.2006 enclosed as Annexure 9 at page 25 of this O.A. We direct respondents to determine the merit of the candidates including the applicant for empanelment on the basis of

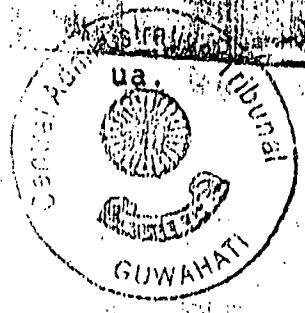


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the marks obtained by them in the HSLC/HSSLC Examination. The Original Application is allowed to the extent indicated above. No costs.

Sd/ MEMBER (J)

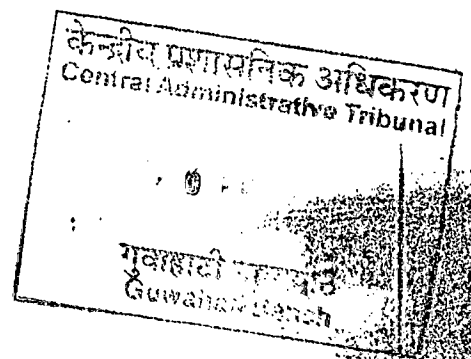
Sd/ MEMBER (A)



Date of Application : 03.7.07
Date on which copy is ready : 13.7.07
Date on which copy is delivered : 13.7.07
Certified to be true copy

(Signature)
Section Officer (J II) 12/7/07
C. A. T. Guwahati Bench
Guwahati-5.

13/7/07



Annexure-II

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

Sub: - Judgment and order dated 03.07.07 passed in O.A. No. 114/2006 (Shri Nilutpal Patar Vs- U.O.I & Ors.) by the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati; compliance of

Respected Sir,

With due respect and humble submission I beg to submit that I approached the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati, by filing OA No. 114/2006, praying therein for setting aside letter bearing No. RRB/E/170/OA/320/2005 (NP) dated 22.02.2006, whereby my prayer for appointment to the post of ESM Grade-III has been rejected on the ground that I found junior amongst the 3 candidates who secured equal marks in the selection test and further prayed for a direction upon the Authority to appointment me to the post of ESM Gr.III. However, the Hon'ble Tribunal after hearing the Counsels of the parties and after perusal of materials on record was pleased to set aside the letter dated 22.02.06 vide it's judgment and order dated 03.07.07 and further directed the Authority to determine the merit of the candidates including the undersigned for empanelment on the basis of the marks obtained in the HSI.C/HSSI.C examination.

Therefore, I earnestly request Your Honour to consider my case sympathetically and to appointment me to the post of ESM Grade-III in the light of the direction contained in the judgment and order dated 03.07.07 passed by the Hon'ble CAT. I am enclosing a copy of the order dated 03.07.07 passed in OA No. 114/2006 for your perusal and necessary action for compliance thereof.

Encl:- Copy of the order dated 03.07.07.

Yours faithfully

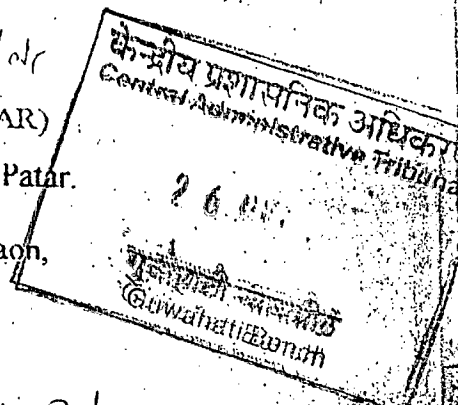
Nilutpal Patar

(NILUTPAL PATAR)

S/o- Sri Gopi Ram Patar,
Vill- Nabheti,
P.O & Dist- Morigaon,
Assam.

Date: 16.7.2007

Copy to :- General Manager, N.F. Railway, Maligaon, Guwahati- 11.



Nilutpal Patar

*Received
without annexure
16/07/07*

16/7/07

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Jus.
Adverse*

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:
ORDER SHEET

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- 1. Original Application No. _____
- 2. Misc Petition No. 90/07 in O.A. 114/06
- 3. Contempt Petition No. _____
- 4. Review Application No. _____

Applicant(S) -VS- Union of India & Ors
 Advocate for the Applicants: -VS- Nilutal Patra
 Mrs. B. Devi
 Advocate for the Respondants: Mr. S. Nath

Notes of the Registry

Date

Order of the Tribunal

13.9.07

Counsel for the applicant submitted that they have decided to implement the order of the Tribunal. Since the matter has been sent to the Railway Ministry it may take some more time and prays for extension of four months time. Considering the submission and the pleadings four months further time is granted for compliance of the order as a last chance. No further time will be granted.

Misc. Petition is allowed and disposed of.



Sd/ VICE CHAIRMAN

TRU

प्रतिलिपि

(Signature)
 अनुसारी नमिनी 29/12/08

Section Officer (Legal)
 Central Administrative Tribunal
 गुवाहाटी न्यायापीठ
 GUW
 न्यायापीठ-5

(Signature)
 Advocate

केन्द्रीय प्रशासनिक अधिकरण
 Central Administrative Tribunal
 26.11.2008
 गुवाहाटी न्यायापीठ
 Guwahati Bench