

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

1. Original Application No. _____

2. M/s Petition No. _____

3. Contempt Petition No. _____

4. Review Application No. _____

4/07 in OA 114/06

Applicant(s) ... Union of India & Ors. vs Union of India & Ors. Nilotpal Patowary

Advocate for the Applicants ... K. K. Bhattacharya
.....

Advocate for the Respondent(s) ... M/s ... S. N. Pathak
.....

Notes of the Registry	Date	Order of the Tribunal
This Review petition		
has been filed by		
the counsel for the		
Union of India & Ors.		
u/s 22 of the CAT Act		
1985 read with Rule		
17 of the CAT (Procedure		
Rules) 1987 for reviewing		
the orders passed by		
this Hon'ble Tribunal at		
on 03.07.2007 in OA		
114/06.		
The smaller may		
be laid ^{for circulation} among the		
M/s petition for condonation		
& delay before the respective		
Hon'ble Member (S) and		
Hon'ble Member (A). for		
circulation		
Laid before the		
Hon'ble R. C. for further		
orders.		

16/07/07
Section Officer

16/07/07

PTO

142

17-12-07

Notes at propage may
certainly be seen.

Revised & order of
the members who passed
the order are from other
Bench - in such cases
concerned, V.C. will approve
to send the R.A. to consider
the same by circulation to the
Member/Members.

In this R.A. the Hon'ble
Members who passed the Order/
Judgment - are both from
Bangalore Bench. The matter
also been discussed last.

W.E.K. when one of the Hon'ble
Members from said Bench was
not functioning as M.P. in
Therefore, the R.A & M.P. in
question may be sent
to the Bangalore Bench
for adjudication.

Submission to orders.

Copy
17/12/07
C.O.

~~Hon'ble V.C.~~

It may be sent
to Bangl. Bench
for orders, or for
circulation, for
both the members
(of the DB), who are
from Bangalore Bench.

Copy
17/12/07

Copy of the order sent
to the Office on 17/12/07
14. are to be copied
August 20 in the month of

Aug 2008
Copy of the order sent
to the Office on 17/12/07
14. are to be copied
August 20 in the month of

AC

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:GUWAHATI.

DESPATCH NO. CAT/GHY/JUDL/

899 to 902

/DTD. GUWAHATI

ORIGINAL APPLICATION NO.

MISC. PETITION NO.

CONTEMPT PETITION NO.

REVIEW APPLICATION NO.

/200

/200

/200

/200

7 in 011

U.O.I. to ~~exam.~~

Sri Nitupal Patar VERSUS

/APPLICANT(S)

/RESPONDENT(S)

To

The General Manager,

N.F. Railway.

Maligaon, Guwahati - 781011

Please find herewith a copy of Judgment/Order dated 17.1.08
passed by the Bench of this Hon'ble Tribunal Compr-
sing of Hon'ble Shri G. Shanthappa, Member Chairman and Hon'ble Shri G. Ray Vice-
(Admn.) in the above noted case for information and necessary action, if any.

Please acknowledge the receipt of the same.

Enclo : As above

(Copy of the Original Application in O.A. No

By Order

(Signature) 1/08
SECTION OFFICER (JUDL.)

30/11/08

Memo. No.

Dated

Copy for information to :

1. Mr. Mrs. Miss

/Advocate, Guwahati High Court.

2. Mr. Mrs. Miss

/Sr. CGSC, Addl. CGSC.

3. Mr. Mrs. Dr. *K.K. Biswas*

/Rly. Standing Counsel/

Govt. Advocate, Assam, Meghalaya, Manipur, Nagaland, Tripura, A.P.

Recd Copy
N.C. 500-09
on 10/11/08
Advocate
K.K. Biswas

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:::::GUWAHATI.

Resd.

144

DESPATCH NO. CAT/GHY/JUDL/ /DTD. GUWAHATI
ORIGINAL APPLICATION NO. /200
MIS.C. PETITION NO. /200
CONTEMPT PETITION NO. /200
REVIEW APPLICATION NO. 4 /200 *in OA 114/*

11.02. 07 am

/APPLICANT(S)

VERSUS

Sri Nilutpal Patar

/RESPONDENT(S)

To

Sri Nilutpal Patar,

S/o Shri Gopi Ram Patar

Vill-Nabheti, P.O. & Dt. Morigaon,

Assam Pin - 782105

Please find herewith a copy of Judgment/Order dated 17.1.08
passed by the Bench of this Hon'ble Tribunal Comprised
of Hon'ble Shri G. Shanthappa, Member(s) Vice-
Chairman and Hon'ble Shri G. Ray Member
(Admn.) in the above noted case for information and necessary action,
if any.

Please acknowledge the receipt of the same.

By Order

Enclo::: As above

(Copy of the Original
Application in O.A.No

(Signature) 20/11/08
SECTION OFFICER (JUDL.)

MS 30/11/08

Memo. No.

Dated

Copy for information to :

1. Mr. Mrs. Miss _____ / Advocate, Gauhati High Court.
2. Mr. Mrs. Miss _____ / Sr. CGSC, Addl. CGSC.
3. Mr. Mrs. Dr. _____ / Rly. Standing Counsel/
Govt. Advocate, Assam,
Meghalaya, Manipur,
Nagaland, Tripura, A.P.

1

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

MISC. PETITION NO.119/2007
IN
REVIEW APPLICATION NO.4/2007
[ARISING OUT OF O.A.No.114/2006]
AND
REVIEW APPLICATION NO.4/4007
IN
ORIGINAL APPLICATION NO.114/2006

DATED THE 17TH DAY OF JANUARY, 2008

HON'BLE MR. G. SHANTHAPPA MEMBER (J)

HON'BLE MR. GAUTAM RAY MEMBER (A)

Union of India & Ors. Petitioners/Respondents

(By Advocate Shri K.K. Biswas)

v.

Sri Nilutpal Patar Opposite Party/Applicant

O R D E R
[BY CIRCULATION]

SHRI GAUTAM RAY, MEMBER (A)

1. Since hearing is not felt necessary, M.P.No.119 of 2007 in R.A.No.4 of 2007 arising out of O.A.No.114 of 2006 and R.A.No.4 of 2007 in O.A.No.114 of 2006 are disposed of by circulation under Rule 17(3) of the Central Administrative Tribunal (Procedure) Rules, 1987 as under.
2. M.P.No.119/2007 in R.A.No.4/2007 arising out of O.A.No.114/2006 has been filed to condone the

delay in filing the Review Application. The petitioners herein, in order to explain the delay, have given the following list of events:

"Date	Particulars
03.07.2007	Judgment/ORDER passed by C.A.T. allowing the OA to the extent indicated in the order.
13.07.2007	Certified true copy of the order delivered.
27.07.2007	Railway Recruitment Board referred the matter to Rly. Board for decision in the matter.
21.08.2007	Misc: Petition filed in C.A.T. praying for extension of time..
29.08.2007	Railway Board gave its opinion.
31.08.2007	Opinion of the Rly's Counsel in High Court/Guwahati sought for..
11.9.2007	Rly's Counsel's opinion received.
13.9.2007	C.A.T. allowed the Misc: Petition granting extension of four months time for compliance of the ORDER.
12.10.2007	Decision taken by the Chairman/Railway Recruitment Board for filing Review Application."

From the above dates of events it is evident that there has been delay of about 3 months in filing the R.A. which has been filed on 15.11.2007. From



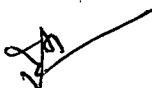
the Order of this Tribunal dated 13.9.2007 in M.P.No.90/2007 (enclosed by the petitioners as Annexure-B) it is clear that the petitioners (respondents in the O.A.) filed the said M.P. seeking for extension of time for the purpose of implementing the Order dated 3.7.2007 of the Tribunal in the O.A. (supra). The said Order is reproduced hereinbelow:

"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."

That being the position, the petitioners herein cannot now count the said period for the purpose of explaining their delay in filing the R.A. Moreover, the Order of the Tribunal was passed in the said M.P. on 13.9.2007. The petitioners took another 2 months to file the R.A.

3. We are, therefore, of the view that no sufficient cause has been made out by the petitioners herein to condone the delay in filing



the R.A. The M.P. is accordingly dismissed.

4. Consequently, R.A.No.4/2007 in O.A.No.114/2006 filed by the petitioners is also dismissed.

5. There will be no order as to costs.



(GAUTAM RAY)
MEMBER (A)



(G. SHANTHAPPA)
MEMBER (J)

ua.



केन्द्रीय प्रशासनिक अधिकरण
CENTRAL ADMINISTRATIVE TRIBUNAL
बैंगलूरु न्यायपीठ
BANGALORE BENCH.

CONFIDENTIAL
BY SPEED POST
Fax : 080-25255241

बी.डी.ए कमर्शियल कॉम्प्लेक्स
B.D.A.COMMERCIAL COMPLEX,
इंदिरानगर / INDIRANAGAR,
बैंगलूरु - 38 / BANGALORE - 560 038

NO.PS/Judgments/2008

Dated: 17.1.2008

To

The Deputy Registrar,
Central Administrative Tribunal,
Guwahati Bench,
Rajgarh Road, Bhangagarh,
Guwahati - 781005

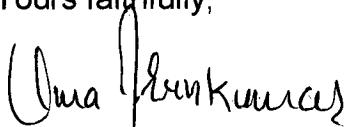
Sub: Forwarding of RA No.4/07 & MP 119/07 (OA 114/06) filed by
Union of India & Ors. Vs. Nilutpal Patar - reg.

Sir,

I am directed to forward herewith the Orders prepared/signed by Hon'ble Shri Gautam Ray, Member(A), Central Administrative Tribunal, Bangalore Bench, Bangalore after duly concurred/signed by Hon'ble Shri G. Shanthappa, Member(J), by circulation, in the above mentioned RA and MP arising out of O.A.No.114/06 along with Part 'A' files (OA 114/06 and RA 4/07) for necessary action at your end.

Kindly acknowledge receipt of the documents.

Yours faithfully,


(UMA ARUNKUMAR)
PS TO M(A)(GR)

Encl: as above.

SC (5)
Please send the
Copies of the DB
Barred to the RA
to the applicant
& the Respondents
23/1/08

Rec'd. on 24/1/08
Govt. of India
Order as directed
24/1/08

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL / GUWAHATI
BENCH :: GUWAHATI

Review Application No. 4 of 2007

in the OA No. 114 of 2006

IN THE MATTER OF

An Application under section 22 of the
Administrative Tribunal Act, 1985, read
with Rule 17 of the Central
Administrative Tribunal (procedure
rules), 1987.

AND

IN THE MATTER OF

An Application for reviewing the orders
passed by the Hon'ble Central
Administrative Tribunal on 03-07-2007
in OA No. 114 of 2006.

AND

IN THE MATTER OF

1. Union of India represented by
General Manager / N.F. Railway /
Maligaon, Guwahati – 781011.
..... Petitioners/Respondents

2. The Chairman,

Railway Recruitment Board,
station Road, Guwahati-781001
..... Petitioners/Respondents

-Vs-

Shri Nilutpal Patar

Opposite Party / Applicant

S/o. Sri Gopi Ram Poatar,
Vill-Nabheti, P.O. & Dt. –
Morigaon, Assam Pin- 782105.

..... Opposite Party / Applicant

The above named Petitioners.....

Contd... p/2.. most...

Guwahati Bench
1/1
Chairman,
Deputy Chairman,
Secretary,
Guwahati Bench
Advocate
File & Law
New Dated
Advocate

Most respectfully sheweth:

1. That it is submitted that the Opposite Party as Applicant filed the aforesaid OA before the Hon'ble Tribunal praying for directing the Respondents to appoint the Opposite Party/Applicant to the post of ESM Gr.III against the existing ST vacancy pursuant to the advertisement dated 12-06-2004 & set aside and quash the Respondents' letter No. RRB / E 170 / OA / 320 / 2005 (NP) dt. 22-02-2006 (enclosed as Annexures – I & 9 with OA).
2. That it is stated that the Hon'ble Tribunal after hearing the parties was pleased to dispose of the OA No. 114 / 06 with direction to the Respondents "to determine the merit of the of the candidates including the Applicant for empanelment on the basis of the marks obtained by them in the HSLC / HSSLC Examination."
3. That it is submitted that to honour the Hon'ble Tribunal's above order the Respondents obtained the extension of time by the kind orders of the Hon'ble Tribunal in M P No. 90 of 2007 vide order dt. 13-9-07 so that the whole case may be re-examined by the apex body of the Respondents Railway system and the court's order implemented.
4. That it is submitted that while examining and re-examining the case the Respondents discovered that it becomes at variance with the Respondents' Codal provision of Rule contained under para 304 of the Indian Railway Establishment Manual, 1989 edition, which runs as under :

"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."

And thus a deadlock has been created for the Respondents to advance further.

A photocopy of the above order is annexed as ANNEXURE – C.

Contd..p/3..that..

John Mathew 192
Chairman
13/07/2011
Secretary, Recruitment Board
Government of Kerala
Ref. No. RRB/2006/11-781081

5. That it is submitted that albeit the Hon'ble CAT while delivering judgment in the OA discussed the case at length but did not attach importance to the above Codal provision of the Respondents, rather, clubbed the paras-303 & 305 of the IREM together, the subject matter of which are totally different.

6. That even after those "errors" in the judgment the Respondents laid stress upon the observation of the Hon'ble Tribunal in the ORDER in the operative portion of the judgment — " to determine the merit of the candidates including the applicant for empanelment on the basis of the marks obtained by them in the HSLC/ HSSLC Examination" — and an analytical study of the three candidates who got equal marks in the written test were made by keeping in view of the minimum Educational / Technical qualification as per Employment Notice No. 1/2004, Category No. 48 for the post Electrical Signal Maintainer Gr. III i.e. Higher Secondary (Science) Pass with Mathematics and Physics, which is as under :-

SN	Name	Roll No.	Marks in Written test	% age of HSSLC in Maths & Physics
1	Abhay Kr. Ranjan (ST)	34806256	30.67	58.75
2	Bhupal Kumar (ST)	34807064	30.67	51.00
3	Nilutpal Patar	34803508	30.67	45.50

From the above analysis, it is also revealed that the applicant Shri Nilutpal Patar (ST) bearing Roll no. 34803508 can not be empanelled.

7. That in spite of having the full diligence and devotion to comply with the Hon'ble Tribunal's order the Petitioners/Respondents have become fully crippled and helpless for the framework of Raiways' above codal provision and to cope up with the Hon'ble CAT's observations in the ORDER for the reasons mentioned above.
8. That it is humbly submitted that the Hon'ble Tribunal did not notice that the OA suffers from " non-joinder of the necessary parties." The Applicant in his application repeatedly mentioned "other ST Candidates", but did not make them necessary parties in the OA. And as per CPC on this score alone, it is prayed, the OA is liable to be dismissed.
9. That it is humbly submitted that the Hon'ble Tribunal perhaps overlooked that the Result of any written Examination conducted by the Railway Recruitment Board, Guwahati, is always a provisional subject to

fulfillments of all the eligibility criteria during the verification of original documents / certificates / testimonials. On each and every occasion, this has been clearly indicated in the result itself, does not entitle any candidate for selection / empanelment.

10. That it is humbly submitted that the persons empanelled against whom the Applicant has alleged and agitated grievances were duly selected by the competent authority and employed by the Respondents against the notified vacancies and posted in their respective working places for performing their duties. Should any disturbances now is caused to their present status of employment it would aggravate their right to employment and may tantamount to further litigation. It is further submitted that all the vacancies of ESM Grade – III notified in the subject employment notice were already filled in and the panel exhausted.
11. That the Petitioner/Respondents respectfully submit that albeit the references of all those provisions were highlighted and enshrined in their argument submitted before the Hon'ble Tribunal, but the Hon'ble Tribunal overlooked the submissions and ordered on 03.07.07 in the OA
12. That the Petitioners / Respondents respectfully submit that the Petitioners / Respondents find the above Lacunas in the Judgment / Order of the Hon'ble Tribunal which are the "**Errors apparent on the face of the record**" and, therefore, necessitate modification / Review of the order of the Hon'ble Tribunal passed on 03.07.2007 in the above OA.
13. That the Petitioners / Respondents respectfully submit that in filing this petition for modification / review of the Hon'ble Central Administrative Tribunal's order in the nature of "**Review**" and on the strength of this Review Application, a separate Petition is submitted under Misc. Petition No. 11.9..... Of 2007 for the Condonation of delay in admitting this Review Application by the Hon'ble Tribunal.
14. That it is reiterated that the Respondents /Petitioners should have complied with the order of the Hon'ble Tribunal passed in the above OA but for the catastrophies faced by the Respondents /Petitioners mentioned in the foregoing paras.

15. That your humble Petitioners beg to submit that it is a fit case where your Lordships may interfere for consideration of review of the order passes by this Hon'ble Tribunal in admitting this Review Application to relieve the Petitioners from the catastrophies put to in the process of complying with the order passed in the above OA.

16. That your humble Petitioners beg to state that since there remains no alternative remedy, this Petition is filed for the ends of Justice and a

Petition for condonation of delay is placed alongside for your consideration and admittance of this Petition.

17. That with suave and placid submission it is prayed that till disposal of this Review Application the operation of the orders passed in the above OA shall remain stayed.

18. That your humble Petitioners beg to submit that this Petition is filed bonafide and in the interest of Justice.

In the Premises above, it is, therefore, prayed that your Lordships may be magnanimous enough to look into the prayer of the Petitioners / Respondents as prayed for by the Petitioners / Respondents and may kindly review the decision / order dated 03.07.2007, herewith submitted as ANNEXURE - A and issue suitable orders / directions as deem fit and proper so as to redress the helplessness of the Petitioners / Respondents in compliance of the order passed in the above OA.

And for this act of your kindness, the Petitioners / Respondents, as in duty bound, shall pray and remain ever grateful.

VERIFICATION

I, Sri Jibon Jyoti Borah Son of late B.C. Borah aged about 52 years working as Chairman, RRB, Guwahati the Chairman, Railway Recruitment Board, Guwahati, do hereby solemnly affirm and verify that the contents of the statements mentioned under paras 1 to 8 are derived from the records and true to the best of my knowledge, information and belief and the statements under 9 to 17 paras are my respectful and humble submission before this Hon'ble Tribunal and I have not suppressed any material facts.

AND I sign this verification on this 15th day of Nov /2007.

Place : Guwahati

Date: 15-11 2007

Jibon Jyoti Borah
Signature of the DEPONENT

CHAIRMAN,
रेलवे चार्मन
Railway Recruitment Board
गुवाहाटी/GUWAHATI-781001

To

The Registrar,
Central Administrative Tribunal,
G U W A H A T I

AFFIDAVIT

I, Shri Jibon... Jayoti... Barak, Son of late... B.C. Barak aged about 52 years, working in the capacity of Chairman in Railway Recruitment Board at Guwahati and being the Citizen of India do hereby solemnly affirm and declare as follows :

1. That I am the Petitioner in this Petition and as such I am well conversant with the facts and circumstances of the case and I swear this Affidavit.
2. That the statements made in this Affidavit and in paragraphs 1 to 8 of the Petition being matters of record are true to my knowledge and the information derived therefrom which I believed to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this Affidavit on this 15th day of Nov 2007.

Jibon Jayoti Barak
CHAIRMAN
DEPONENT
Railway Recruitment Board

Identified by

K.K. Biswas
(K.K. Biswas)
Advocate

Solemnly affirmed and declared / Verified

before me by the Deponent who is identified by
Sri K.K. Biswas, Advocate on this 15th day
of Nov 2007.

Jai dasa Pulney
Advocate 15/11/07

8

1512/11
SL. NO. 117
7/8

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 POatar,
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/170/0A/
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

Received on
date
Guwahati
16/07/07

180

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.

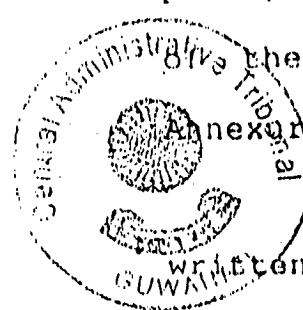
2. The case of the applicant briefly stated is as follows:

(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.

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.



(c) The applicant further states that after the 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.

(b)

(d) The applicant states that finding no 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 ~~it will~~ the candidates securing equal marks cannot be empanelled as per requirements of the advertisement. The candidate having higher

5

12

✓✓✓

date of birth earliest is considered to be the highest in merit. In this case 03 Nos. of ST 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



dated 18.3.99, circulated vide General Manager (P)
 Maligaon's letter No.E/227/O(Recd)2, dated 25.5.99, the
 call 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
 call 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, total 6 (six) ST candidates had been
 empanelled as under:-

Sl. No.	Roll No.	Name of the applicant	Community	Date of Sending Panel
74	34812954	Sashi Kant Ranjan	ST-1	31.8.2005
75	34801059	Ganesh Narzary	ST-2	-do-
76	34800964	Prasaanta Boro	ST-3	-do-
77	34812871	Shiv Prasad Mandal	ST-4	-do-
78	34806256	Abhay Kr. Ranjan	ST-5	-do-
79	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 to be called for verification of documents following

7

14

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 a 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.

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.

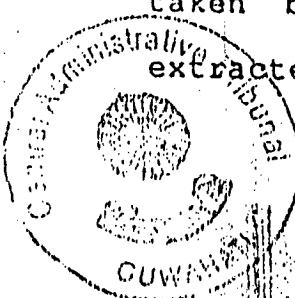
7. In view of the above, the question that falls for consideration is as to whether respondents are

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 action 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."



17

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."

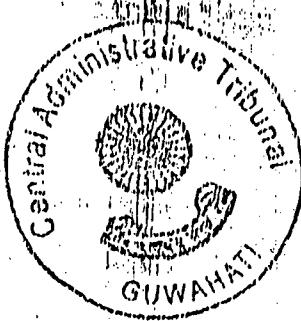
xx

xx

xx

"Rule 305. When, however, a candidate whose seniority is to be determined under paragraphs 303 and 304 above cannot join duty within a reasonable 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



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

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' and between 'relaxation and preference' or 'reservation and relaxation'. According to us, reservation of a post or posts for a particular category of candidates means total exclusion from consideration of 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 in

190

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) for 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' stand



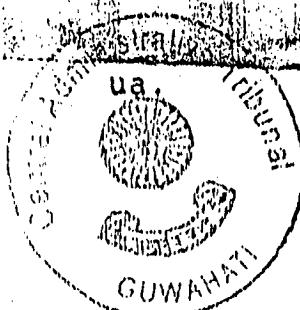
taken in rejecting the representation of the applicant or selecting the candidate on the basis of seniority in age. No such rule is enclosed along with the counter reply filed by the respondents. The rule 304 of IREM Vol.I (Revised Edition - 1989) is misplaced for the reasons discussed above.

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 RRB) and in the absence of any rule/instruction to that effect, marks secured by them in the prescribed required 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 the respondents to determine the merit of the candidates including the applicant for empanelment 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.

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 Office (J.D.I) 13/7/07
C. A. T. Guwahati Bench
Guwahati-S.

4/13/7/07

23
6/11/07
Anupore-B

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDERS SHEET

1. Original Application No. _____
2. Mise Petition No. 90/07 in o.4114/06
3. Contempt Petition No. _____
4. Review Application No. _____

Applicant(s)

-VS- Union of India & Ors

-VS-
Nilutal Patore

Advocate for the Applicants:- Mrs. B. Deni

Advocate for the Respondents:- Mr. S. Nath

Notes of the Registry	Date	Order of the Tribunal
ated in	13.9.07	<p>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.</p> <p>Mise Petition is allowed and disposed of.</p>



TRUE COPY
प्राप्ति

Sd/ VICE CHAIRMAN

अनुग्रह (अनुग्रह)
Section 41(1)(b) (ख)
Central Administrative Tribunal

ग.प. 13.9.07
GUWAHATI, 13.9.07

प्राप्ति (प्राप्ति)
13.9.07

13.9.07

Released by
Bansamanta
28/9/07
S/o/Retd
JL

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)
S(NG) I/89/SR6/32(PNM)

General Managers,
dian Railways etc.
STANDARD LIST

New Delhi,
DYCAO/NG

Sub: Rules regarding seniority
of non-gazetted Railway
Servants.

Ministry of Railways are pleased to direct
the Railway Establishment Manual Volume
on Railway Establishment as per Advance
on 1989) be amended as per
a No. 9 sent herewith.

K. B. LALLI
DIRECTOR ESTABLISHMENT
RAILWAY BOARD

New Delhi, dated 19.3

2(PNM)

Secretary, All India Railways
4, State Entry Road, New Delhi
(a)

Secretary, National Federation
of 35 spares)
Secretary, Chelmsford Road,
London, Staff Side, New Delhi

Departmental Council and Nat.
Secretary, Staff Side, New Delhi

Shroff, 35 spares)

Secretary, Staff Side, New Delhi

SECRETARY RAILWAY

HT, HL, HE,
EDV, EDF(1),
JDE(R) I & II
JDE(1),
JDE(2),
IC, E(S)

New Delhi, date
~~DYCAO/NG~~

भी धर्मावधायना के बारे
वामे धर्मनार्थियों की
समी भी आती है तो उसमें
इस पर कार्य धरण परसे की
जिस तरीके को यह प्रति
व्यवधि पूरी भारते के पश्चात्
कार्य पर आया थी।

ई० (पन० श्री०) 1-78 एम०
2 दिनांक 7-4-1982 अस्ति
132।

न भर्तों बोहे यह किसी अन्य भर्तों प्रे
से भर्तों होए गए उम्मीदवारों द्वारा
मैं निश्चिन्त हो जानी चाहिए:—

जो उम्मीदवार प्रारम्भः प्रशिक्षण प्रशिक्षण स्फूर्ती में भेजे जाएं, सुसंगत उनकी विस्तृतता उस क्षम में होगी जो दायें पद गिरने ते पहुँचे प्रशिक्षण असमर्पित पर होने वाली परीक्षा में फ़िरादार पर प्राप्त हुआ हो।

जो उम्मीदवार, आहे फिलो भी शारण से, याद दि
मे शामिल होते हैं और जो याद के यह
उत्तीर्ण भरते हैं, वे उनसे फ़िल्म द्वारा जिन्हें
शृंखलाओं में परीक्षा उत्तीर्ण कर ली थी।

(प) जिन उम्मीदवारों को प्रशिक्षण प्रदान की गई प्रशिक्षण प्राप्त मर्ही फरना होता, वरिष्ठता देन भर्ती बोर्ड या अन्य भर्ती फरम द्वारा नियन्त दिये गए गुणात्मक याधार पर निश्चित की जाएगी ।

304. ये एवं ही परीक्षा/चयन में दो या अधिक उम्मीदवार समान योग्यता कम पर छोड़ा जाए, तब उनकी आपसी वरिष्ठता जन्म नियम द्वाया फी पानी आहिए। अधिक आय वाले उम्मीदवार होंगा।

राजकीय वायु वाला उम्मीदवार
Alberto Melina 15/11/03

244
Araexwe - C

CHAPTER

RULES REGULATING SENIORITY OF NON-GAZETTED RAILWAY SERVANTS

General.—The rules contained in this Chapter are the General principles that may be followed in determining the seniority of non-gazetted railwaymen on railway administration, except that for the purpose of determining the seniority and promotion of gazetted employees of the Diesel Locomotive Works the rules contained in paragraphs 324 to 327 of this Chapter shall be followed.

NOTE.—In case the training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training.

(No. E (NG) I-78-SR-6-42 dt. 7-4-1982
ACS. 132).

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

Such of the rules in this Chapter as are already in force shall apply from such date as may be fixed by the railway administrations. The seniority of the staff already determined under the existing rules or orders of the respective railway administrations shall not be altered.

2. *Seniority in initial recruitment grades*—Unless
stated otherwise, the seniority among the
bents of a post in a grade is governed by the da-
pointment to the grade. The grant of pay higher
the initial pay should not, as a rule, confer on
ay servant seniority above those who are ap-
pointed against regular posts. In categories
is partially filled by direct recruitment and
ly by promotion, the criterion for determina-
f seniority should be the date of regular pro-
a after due process in the case of promotees and
le of joining the working post after due pro-
a the case of direct recruit, subject to mainte-
et inter-se-seniority of promotees and direct-
ts among themselves. When the dates of entry
a grade of promoted railway servants and direct-
ts are the same they should be run in alternate
ions, the promotees being senior to the direct-
s, maintaining inter-se-seniority of each group.

(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.

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

25
195

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL;
GUWAHATI BENCH : GUWAHATI

IN THE MATTER OF :

MEMORANDUM OF APPEARANCE

R.A. No. - - - - of 2007

In O.A. No. 114 of 2006

Sri. Nilupal Patra
Opp. Party / Applicant

-Vs-

Union of India & Others
Petitioners / Respondents

I, Shri Kanti Kumar Biswas, Railway Advocate, Central Administrative Tribunal, Guwahati, hereby enter appearance on behalf of Union of India & Respondents Nos. 1 & 2 in the above case. My name may kindly be noted and shown as Advocate for the Respondent/s accordingly. Necessary Vakalatnama is enclosed.

Enclo: 1(one)

K. K. Biswas 12/11/07
(Kanti Kumar Biswas)
Railway Advocate
Central Administrative Tribunal
Guwahati

To
The Registrar,
Central Administrative Tribunal,
Bhangagarh, Rajgarh Road,
Guwahati

26
126
FORM No.12
(see Rule 67)

FORM OF THE VAKALATHNAMA

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH: GUWAHATI

✓
O.A/RA/GP/MA/PT/ 4 of 2007

UNION OF INDIA & Another

Applicant (S)

-VS-

Sri NILUTPAL PATAR

Respondent (S)

I Shri J. J. Borah, Applicant No. 2 / Respondent No. _____ in the above Application/Petition do hereby appoint and Shri K.K. Biswas, Railway Advocate's to appear, plead and act for me/us in the above application/petition and to conduct and prosecute all proceedings that may be taken in respect thereof including Contempt of court petitions and Review applications arising therefrom and applications for return of documents enter into compromise and to draw any moneys payable to me/us in the said proceeding.

Place:- Guwahati
Date:- 08-11- 2007

Jibon Jyoti Borah

Signature of the Party

"CH. IRMAN,
to be verified
by Recruitment Board

14/11/2007
Signature with date

(Name and Advocate)

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

K. K. Biswas

Railway Counsel, CAT,
Name and address of the Guwahati
Advocate for Service

14/11/2007
Signature with date

(Name and Advocate)

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

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

Jibon Jyoti Borah

Signature with date
(Name and Designation)

CH. IRMAN,
to be verified
by Recruitment Board
14/11/2007

Accepted

K. K. Biswas
8/11/07

Railway Counsel,
CAT, Guwahati