

2

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 62/2007
R.A./C.P No.
E.P./M.A No. 64/2007 (OA 62/07)

1. Orders Sheet..... OA Pg. 1 to 6
M.P 64/07 under sheet page 1 to 28/01/2008
2. Judgment/Order dtd. 16.01.2008 Pg. 1 to 7 Allowed
3. Judgment & Order dtd. Received from H.C/Supreme Court
4. O.A. 62/2007 Pg. 1 to 41
5. E.P./M.P. 64/2007 Pg. 1 to 2
6. R.A./C.P. Pg. to
7. W.S. Pg. 1 to 8
8. Rejoinder. Pg. 1 to 4
9. Reply Pg. to
10. Any other Papers. Pg. to
11. Memo of Appearance.
12. Additional Affidavit.
13. Written Arguments.
14. Amendement Reply by Respondents.
15. Amendment Reply filed by the Applicant.
16. Counter Reply.

SECTION OFFICER (Judl.)

25/09/17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

C A D E R S H E E T

1. Original Application No. 62/07
2. Miscellaneous Petition No.
3. Contempt Petition No.
4. Review Application No.

Applicant(s) B.C. Deka & Ors VS Union of India & Ors

Advocate for the Applicant(s) K.N. Chandley

Mr. R.S. Chandley, K. Borahkar

Advocate for the Respondent(s) Railway Counsel, Sri M.C. Saama

Notes of the Registry	Date	Order of the Tribunal
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This application is in form
is filed/C. F. for Rs. 50/-
d posited vide IPC/BD
No. 286/35695
Dated 27.1.07

Dy. Registrar

[Signature]

28.3.07

Petitioner's Grievance
for issue of notice all
received.

28/3/07

09.03.07. The claim of the applicants is that earlier the applicants have approached this Tribunal, by filing O.A.No.61 of 2005 which was disposed of on 9.8.2006 directing the applicants to make individual representation and respondents are directed to dispose of the same within the time framed. Accordingly, the applicants have filed representations (Annexure-G series) dated 30th August, 2006 before the Respondent No.2, for which the respondents have replied as Annexure-H contending that:

"The power of the Railway Administration for giving alternative employment is

contd/-

09.03.07

discretionary. The applicants have no legal right for alternative appointment. There are also clear-cut instructions from Rly Board not to consider such cases. Therefore taking all these factors together, the undersigned comes to the conclusion that there is no scope for giving alternative appointment to them now and their request is hence regretted.

This is for your information please."

I have heard Mrs. R. H. Choudhury, learned counsel for the applicants and Mr. S. N. Tamuli, learned counsel appearing on behalf of the Dr.J.L.Sarkar, learned Railway Standing counsel.

Considering the facts and circumstances I am of the view that application has to be admitted. Application is admitted. Issue notice on the respondents.

Post the matter on 25.4.07. Respondents are specifically directed to submit the copy of the policy 1998 before this court the next date of hearing.

Vice-Chairman

lm

Notice & order sent to D/Section for issuing to R-1,2,3 by regd. A/D post and another R-4 sent to received by hand.

Co. D/No-322 to 325
19/3/07. Dt= 20/3/07.

Notice duly served on R-4,3.

Co.
21/3.

- ① Notice duly served on R.No-324.
- ② Service awaited from R.No-122.
- ③ No WB has been filed.

20
24.4.07.

OA. 6/2007

-3-

25.4.2007

Dr.M.C.Sharma, learned Railway counsel submits that he has not received the copy of the earlier order dated 09.03.2007 and after going through the earlier direction he will draft the written statement. Registry is directed to supply a copy of the order dated 09.03.2007 to the learned counsel for the Railways. Respondents are directed to file reply statement within four weeks from today. Mrs.R.S.Choudhury, learned counsel for the Applicant is granted fifteen days' time to file rejoinder, if any, from the date of receipt of written statement.

Call before the next Division Bench.


Member (A)


Member (J)

/bb/

29.5.07.

At the request of learned counsel for the respondents further three weeks time is granted to file written statement. Post the matter on 21.6.07.

✓
Vice-Chairman

21.6.07.

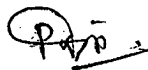
Counsel for the respondents wanted time to file written statement. Let it be done. Post the matter on 13.7.07.

✓
ViceChairman


lm

19.7.07

W/s Submitted by the Respondents. page 1 to 8. Copy not served.




order dt. 9/3/07
received


04/05/07
Dr. M. C. Sharma


28-5-07
no W/s filed
by

No W/s has been
filed.


20.6.07.

lm

W/s not filed.


12.7.07.

13.7.07.

Counsel for the respondents has submitted a written statement is being filed to-day. Let the case be listed on 27.7.07.. Liberty is given to the applicant to file rejoinder, if any.

Rejoinder not filed

26.7.07.

Vice-Chairman

lm

27.7.07

At the request of learned counsel for the applicant two weeks further time is granted to file rejoinder. Post the matter 13.8.07.

7-9-07

no rejoinder filed.

b

Vice-Chairman

Lm

10.9.2007

Two weeks further time is granted to the Applicant to file rejoinder. Post on 27.9.2007.

Rejoinder not filed.

26.9.07.

Vice-Chairman

/bb/

5.10.07

Rejoinder submitted by the applicant. Copy served.

27.9.2007

Mrs.M.Khound, learned counsel appearing for the learned counsel for the Applicant, gives an undertaking that rejoinder shall be filed by 05.10.2007.

Call this case on 12.10.2007 for hearing.

(Khushiram)
Member (A)

(M.R. Mohanty)
Vice-Chairman

/bb/

OA 62/07

5

5

12.10.07

On the prayer of Mrs R.S.Choudhury, learned counsel for the applicant, the case is adjourned to 14.11.07 for hearing.

The case is ready for hearing.

[Signature]
13.11.07.

(Khushiram)
Member(A)

(Manoranjan Mohanty)
Vice-Chairman

pg

14.11.2007

Heard Mrs R. S. Choudhury, learned counsel for the Applicants and Dr M.C. Sharma, learned Railway Counsel/Respondents in part.

Order dt 14/11/2007
received.

[Signature]
22/11/07
Dr. M.C. Sharma,
Rly. Advocate.

Order dt. 14/11/07
handed over to

Dr. M.C. Sharma,
Rly. Advocate.

[Signature]
22/11/07.

The case is ready for hearing.

[Signature]
5.12.07.

Dr M.C. Sharma, learned Railway Counsel and the Respondents are hereby asked to cause production of the File(s) in which the case of the Applicants were processed for providing other alternate employment. The Files are to be brought from the end of the Division Office and Zonal Office. They are also to cause production of the Railway Board's letters No.E(NG)62/RC-1/95 26.10.1962 and No.99/E(RRB)/25/12 dated 20.08.1999 from their Guard Files; as it is stated that R.B.E. No.211/99 was issued on the basis of both the aforesaid letters of the Railway Board.

Call this matter on 06.12.2007; on which date Dr M.C. Sharma, learned Railway Counsel shall cause production of the aforesaid records. Further hearing of this matter will be taken up on that day.

(Khushiram)
Member(A)

(M.R. Mohanty)
Vice-Chairman

5 / -6- 04 62107

06.12.2007 Mrs R.S. Choudhury, learned Counsel
for the Applicant and Dr M.C. Sharma,
learned Counsel for the
Respondents/Railways are present.

The case is ready
for hearing.

Call this matter on 08.01.2008.

30
7.1.08.

Received on 24/1/08
M. Khushiram
Adv.

R. S. Choudhury
Advocate

(Khushiram)
Member (A)

(M. R. Mohanty)
Vice-Chairman

nkm

08.01.2008

Hearing concluded. Orders reserved.

(Khushiram)
Member (A)

(M. R. Mohanty)
Vice-Chairman

nkm

16.01.2008

Judgment pronounced in open court.

For the reasons recorded separately, the
O.A. is allowed. No costs.

(Khushiram)
Member (A)

(M.R. Mohanty)
Vice-Chairman

/bb/

S. 208

Copies of the
Judgment sent to
the office for
recording the same
to the parties as
well as to the
Advocate for the
parties.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

.....

Original Application No. 62/2007

DATE OF DECISION : 16-01-2008

Shri Bipin Chandra Deka & Ors

.....Applicant/s

Mrs R.S.Choudhury

.....Advocate for the
Applicant/s

-Versus -

Union of India & Ors.

.....Respondent/s

Dr. M. C.Sarma

.....Advocate for the
Respondent/s

CORAM

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the judgment ? Yes/No[✓]
2. Whether to be referred to the Reporter or not ? Yes/No[✓]
3. Whether their Lordships wish to see the fair copy of the judgment ? Yes/No[✓]

Vice-Chairman/Mamber(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.62 of 2007.

Date of Order : This the 16th Day of January, 2008.

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER

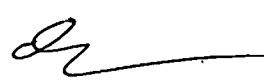
1. **Shri Bipin Chandra Deka**
Son of Kabindra Deka
Resident of Sankarnagar, Noonmati,
Guwahati-20.
2. **Sri Pranabjyoti Khanikar,**
Son of Late Srikanta Khanikar
Resident of Khanikar Gaon,
P.O. Sarupathar,
District Golaghat, Assam.
3. **Sri Mukul Das**
son of Sri Mukula Das,
Resident of Village – Chechamukh,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

Mr K.N.Choudhury, Sr. Advocate
By Advocate/Mrs R.S.Choudhury

• Versus –

1. **The Union of India,**
represented by the Secretary, Ministry of Railways,
Govt. of India, Rail Bhawan,
New Delhi-1.
2. **General Manager (P)**
N.F.Railway,
Maligaon, Guwahati-11.
3. **Divisional Railway Manager(P)**
N.F.Railway,
Alipurduar.
4. **Railway Recruitment Board,**
Represented by its Chairman,
Station Road, Guwahati-781001.Respondents

By Dr M.C. Sarma, Railway counsel

ORDER (ORAL)KHUSHIRAM, (MEMBER-A)

Railway Recruitment Board issued employment Notice dated 01.10.1996 (which was published on 06.10.1996) inviting applications for the post of Diesel Assistant Driver. The Applicants applied for the same and were issued interview call letters/admit cards. After the result of the interview was published on 09.01.1998, the Applicants were directed to appear for medical test; where they were found unfit for the post of Diesel Assistant Driver. Thereafter, on 20.02.2003, they were asked by Respondents to appear for further medical test for assessing their fitness for providing them alternative employment with the Railways. After the medical test they were found medically fit for some alternative job in March 2003 but the Respondents did not take any steps for absorbing the Applicants in the alternative jobs. The Applicants, therefore, approached this Tribunal in O.A.No.61/2005; which was disposed of, by an order dated 09.08.2006, by asking the Applicants to make individual comprehensive representation, pin pointing all there points, before the 2nd Respondent within one month and the 2nd Respondent was directed to consider the same. It was made clear that if the 2nd Respondent was not competent to consider such matters, then he should refer the same to the fourth Respondent for taking a final decision. The Respondents therein were asked to pass appropriate orders and to communicate the same to the Applicants within a time frame of three months. In compliance with the said direction of this Tribunal, the Applicants filed representations



dated 30.08.2006; which were disposed of by the Railway authorities, on 31.01.2007, stating therein that "the provision of giving alternative appointment has already been withdrawn in case of Asst. Drivers and ASM by Railway Board letter No.E(RRB)2001/25/21 dt. 04.09.2001. It was therefore decided not to proceed with the matter of alternative appointment in favour of the Applicants." It was also clarified that such appointment cannot be considered as a matter of right and that there was no commitment by Railways regarding absorption of medically unfit candidates in alternative grades. It was further stated that powers of the Railway authorities for giving alternative employment is discretionary. The Applicants have no legal right for alternative appointment. Therefore, there is "no scope for giving alternative appointment to them." Aggrieved by this decision the Applicants have again filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 and have sought for the following reliefs.

- i) Set aside and quash the impugned order dated 31.01.2007 issued by the General Manager (Personnel), Maligaon, Guwahati whereby the claim of the Applicants for alternative appointment has been rejected.
- ii) Direct the Respondent authorities to consider the claim of the Applicants afresh by giving due weightage to the fact that the Applicants had been empanelled much before the issuance of the Railway Recruitment Boards Notification dated 04.09.2001 and the fact that the said Notification was not applicable on a retrospective basis, and accordingly appoint the Applicants in alternative posts.

2. The Respondents have filed written statement stating that the appointment letters for Diesel Assistants could be issued only to



12

those candidates who ^{were} found medically fit, that in case of those Applicants, who failed in the medical fitness test, their being advised to appear in further medical test did not amount to a commitment to offer alternative jobs to them, that the action was taken to obtain a clear picture about the category-wise fitness of the Applicants for suitable jobs in case a decision was taken to offer alternative appointment (to the Applicants) in future; that the question of offering alternative jobs was examined but in view of the Railway Board's decision dated 04.09.2001 withdrawing the provisions for offer of alternative appointment to those who applied for Diesel Assistant Drivers and ASM and Motorman but were medically unfit for those jobs, this could not be possible; that the Railway authorities examined the issue in the light of the Railway Board's instructions dated 04.09.2001 and came to the conclusion that Applicants cannot be given alternative appointment as they have failed in medical examination for the post they had applied for; that, unfortunately the communication of the Railway Board dated 04.09.2001 was not addressed to Zonal Railway administration and that the said fact resulted in the issuance of the orders for medical re-examination as the concerned authorities were not aware about the withdrawal of the orders at that time. Finally, inconvenience caused to the Applicants, had been regretted by the Respondents.

3. We have heard Mrs R.S.Choudhury, learned counsel appearing for the Applicants and Dr M.C.Sarma, learned counsel appearing for the Respondents. Mrs Choudhury, learned counsel for the applicant tried to make out a case in favour of the Applicants and



in support of her case cited the decision in A.A.Calton vs. Director of Education and another, (reported in (1983) 3 SCC 33), wherein it was held that "existing rights cannot be taken away by giving retrospective effect to a statutory provision unless it expressly or by necessary implication provides so." In Y.V.Rangaiah & Ors. Vs. J. Sreenivasa Rao & Ors. (reported in (1983) 3 SCC 284), it was held that "vacancies in the promotional posts occurring prior to the amendment have to be filled up in accordance with the unamended rules." The learned counsel has also cited the decision of P. Mahendran and others vs. State of Karnataka & Ors., (reported in (1990) 1 SCC 411), wherein it was held that "Rules regarding qualifications for appointment amended during continuance of the process of selection – Process subsequently completed under old rules and select list finalized accordingly – Legality-of such select list^{held,} not vitiated by the said amendment of rules. Hence directed to be acted upon for making appointments. In another decision rendered in Surendra Kumar Das & Ors. Vs. State of Assam & Ors., (reported in 2000(3) GLT 276), it was held that "where posts fall vacant and advertisement is issued for such posts prior to any amendment to the rules, the selection of candidates must be made in accordance with the rules as they existed prior to the amendment."

4. Prior to the call given to the present Applicants, for interview, the R.B.E No.211/99 dated 20.08.1999 was in force. Para 2 of said R.B.E. reads as under :

Board have reviewed the policy, keeping in view high cost of recruitment and the need to adopt uniform



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

Similarly in Railway Board's letter dated 26.10.1962 it was decided that "if a candidate selected for a technical category fails in the prescribed medical examination, he may be considered for an alternative medical category provided he possesses the requisite qualification and there is a shortage in that category subject to being medically fit for that category."

5. Dr. M.C.Sarma, learned counsel for the Respondents regretted the fact that subsequent to withdrawal of these instructions vide letter dated 04.09.2001 the Respondents were helpless in helping the candidates. Because of the communication gap these instructions were not available before the authorities making selection of the Applicants. Therefore, inadvertently they ordered the Applicants to undergo medical test again.

6. Looking to the rival contentions of the learned counsel, for both the parties, it is apparent that the selection for the post started with the issue of Employment Notice dated 01.10.1996 which was published on 06.10.1996, when Respondents had the discretion to ask



the Applicants (when the Applicants were not medically found fit for the post of Diesel Assistant Driver, after selection test) to appear for further medical test to assess their suitability for alternative jobs with the Railways. Obviously, the Railway Board's circular dated 04.09.2001 (withdrawing this discretion from the Railway authorities to offer alternative employment on the basis of second medical test) cannot be made applicable to the cases of the Applicants. Therefore, the reluctance of the Railway authorities not to offer alternative employment to the Applicants (behind the shield of the subsequent circular dated 04.09.2001) is not sustainable in the instant case and the impugned order dated 31.01.2007 is set aside and Respondents are accordingly directed to consider the claim of the Applicants for providing them alternative employment as per instructions prevailing on 01.10.1996. The Original Application is, accordingly, allowed to the above extent, without any order as to costs.


(KHUSHIRAM)
ADMINISTRATIVE MEMBER


(MANORANJAN MOHANTY)
VICE CHAIRMAN

/pg/

8 MAR 2007

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

ORIGINAL APPLICATION NO. 62 OF 2007

LIST OF DATES/SYNSOPSYS

06.10.1996 The Respondent No. 4 i.e., the Railway Recruitment Board vide its Employment Notice dated 01.10.1996 invited applications from eligible candidates for the post of Diesel Assistant Driver.

³
The applicants applied for the same and were issued interview call letters/admit cards by the Respondent No. 4.

(Annexure – A Series, Page – 12)

09.01.1998 The Respondent No. 4 published the results of the said interview.

06.02.1998 The Respondent No. 3 directed the applicants to appear for the medical tests.

(Annexure – B series, Page - 16)

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

20.09.2001 - *withdrawn*

20.02.2003 The Respondent No. 3 advised the applicants to appear for further medical test for assessing their fitness for alternative appointment.

(Annexure – C series, Page - 20).

04.03.2003 The Respondent authorities took a policy decision to absorb the applicants in any other alternative jobs as per their medical fitness. The respondent No. 3 directed for medical re-examination of the applicants.

(Annexure – D, Page - 23)

05.03.2003 The applicants were re-examined by the respondent authorities
18.03.2003 and were found to be medically fit for alternative job.

(Annexure – E series, Page - 24)

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

*fit for
B 2 bch*

09.08.2006

The Hon'ble Tribunal in O.A.No.61 of 2005, after considering all aspects of the matter was pleased to direct the Respondent Authorities to consider the case of the Applicants sympathetically.

(Annexure-F, Pg. 27)

30.08.2006

The Applicants preferred individual representations before the Respondent Authorities for consideration of their claims.

(Annexure-G Colly, Pg. 34)

31.01.2007

The Respondent No.2 vide Order dated 31.01.2007 rejected the claim of the Applicants by holding that "the powers of the Railway Administration for giving alternative appointments is discretionary. The Applicants have no legal right for alternative appointment."

Being aggrieved the Applicants have filed the present Original Application.


Advocate

19

Filed By:
The Applicants
Through: Roly
Mrs. R.S. Chowdhury
Advocate
8/3/07

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

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

ORIGINAL APPLICATION NO. 62 OF 2007

BETWEEN

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

-AND-

.....**APPLICANTS**

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

....**RESPONDENTS**

DETAILS OF APPLICATION

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

The instant application is directed against the impugned order dated 31.01.2007 issued under memo No. E/170/LC/NS/572/05 under the hand of the Respondent No.2 by the Senior Personnel Officer (Mechanical), whereby the representations submitted by the Applicants have been rejected for granting them alternative appointment in terms of the Railway Board's letter No. E (RB) 2001/25/21 dated 04.09.2001. Being highly aggrieved by such impugned order/actions of the authorities, the Applicants had approached this Hon'ble Tribunal by way of this instant Original Application.

2. JURISDICTION OF THE TRIBUNAL:

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

3. LIMITATION:

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

4. FACTS OF THE CASE :

- 4.1 That the Applicants are citizens of India having their permanent residences within the State of Assam and are as such entitled to all the rights, privileges and protections guaranteed to the citizens of India under the Constitution of India and the laws framed thereunder. The applicants have a common and identical cause of action and as such have approached this Hon'ble Tribunal by filing a common Original Application, under Rule 4(5)(a) of the Central Administrative Tribunal Procedure Rule 1987.
- 4.2 That the Respondent No. 4 herein, i.e. the Railway Recruitment Board, Guwahati, vide its Employment Notice No.2/96 dated 01.10.1996 published on 06.10.1996 invited applications from eligible candidates for the posts of Diesel Assistant Driver alongwith other posts. The applicants who were otherwise qualified for the said post individually applied for the same.

The applicants crave leave of this Hon'ble Court to refer to and rely upon the said Employment Notice No. 2/96 dated 01.10.1996 at the time of hearing of the instant case.

21
Bipin Ch. Deka.

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

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

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

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

- 4.5 That the applicants had appeared in the Medical Examination conducted by the Respondent authorities and after undergoing all the tests they were found to be Medically unfit for the post of Diesel Assistant Driver.
- 4.6 That it is pertinent to state herein that although the applicants were found to be Medically unfit for the job of Diesel Assistant Driver, yet, they were otherwise fit for any other alternative appointment in the Railways. Considering this aspect the Respondent No. 3 vide letters dated 20.02.2003 advised the applicants to appear for further Medical Tests for assessing their fitness for alternative appointment.

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

Bipin ch. Datta

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

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

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

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

- 4.9 That subsequently the Applicants have learnt through reliable sources that the Senior Personnel Officer (Mechanical) vide Office Note dated 23.12.2003 had been pleased to inform the Respondent No.2 with regard to the candidature of the Applicants. In the said Office Note it was categorically stated that as per Railway Board's order dated 07.08.2000 and 20.08.1999, the General Manager is authorised to consider the requests from the candidates empanelled by the Railway Recruitment Board, both in technical and non-technical categories, who have failed in the prescribed medical examination for the posts, against which they have been empanelled, subject to the fulfillment of the prescribed medical standard, educational qualification and other eligible criteria for the alternative posts. It was also stated in the Office Note that the Applicants were empanelled by the Railway Recruitment Board prior to issue of the Board's letter dated 04.09.2001 and the same was submitted for consideration and for the approval of the Respondent No.2, specifically for absorption of the Applicant No.2 as Khalasi (Signal).

The Applicants crave leave of this Hon'ble Tribunal to produce, refer to and rely upon the said Office Note dated 23.12.2003.

27
Bipin Ch. Deen.

- 4.10. That, since no positive action was forthcoming from the Railway authorities pursuant to their medical re-examination conducted in the month of March/2003, the Applicants had approached this Hon'ble Tribunal by way of an Original Application, which was registered and numbered as O.A. No. 61/2005. The said Original Application was contested by the Railways by filing a detailed written statement and the matter was heard at length by this Hon'ble Tribunal. Vide order dated 09.08.2006 this Hon'ble Tribunal was pleased to dispose of the original Application by holding that "Applicants' case deserves sympathetic consideration. Therefore, we direct the Applicants to make individual comprehensive representations pinpointing all these matters before the second respondent within one month from today and on receipt of such representations the second respondent will consider the same or if he is not competent to consider such matters, will refer the same to the Fourth respondent for taking a final decision passing appropriate orders communicating the same to the Applicants within a time frame of three months thereafter."

A copy of the said order dated 09.08.2006 passed by this Hon'ble Tribunal in Original Application No. 61/2005 is annexed herewith and marked as **ANNEXURE – F.**

- 4.11 That, accordingly the Applicants in terms of the directions of this Hon'ble Tribunal filed their individual representation dated 30.08.2006 before the Respondent No.2 for considering their claim for alternative appointment.

Copies of the said representations so filed by the Applicants on 30.08.2006 before the Respondent No.2 are annexed herewith and marked as **ANNEXURE – G Colly.**

- 4.12 That, the Applicants were accordingly expecting a favourable consideration by the authorities. However, to the utter shock and surprise of the Applicants, the Senior Personnel Officer (Mechanical) under the hand the Respondent No.2, vide impugned order under memo No. E/170/LC/NS/571/05 dated 31.01.2007, was pleased to reject the claim of the Applicants by holding that "the power of the Railway administration for giving alternative appointment is discretionary. The Applicants have no legal rights for alternative appointment. There are clear-cut instructions from the Railway Board not to consider such cases. Therefore, taking all

these factors together, the undersigned comes to the conclusion that there is no scope for giving alternative appointment to them now and their request is, hence, regretted."

A copy of the said impugned order dated 31.01.2007 issued under the hand of the Respondent No.2 is annexed herewith and marked as ANNEXURE – H.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

- 5.1 For that the Respondent authorities have acted in a manner contrary to their own decision by not considering the cases of these applicants herein for appointment to alternative posts by issuing the impugned Order dated 31.01.2007. The communication dated 04.03.2003 (Annexure – E) itself is self-explanatory in this regard. The respondents had themselves considered the applicants to be fit for other jobs apart from the job of Diesel Assistant Driver and as such had directed for their re-medical examination. Hence, the observations made contrary thereto by the Respondent No. 2 in the impugned Order dated 31.01.2007 are bad in law and cannot hold sway.
- 5.2 For that the Respondent authorities had on their own accord directed the Applicants to appear in the re-medical examination and had intimated them that they would be absorbed in alternative jobs. The applicants upon the bonafide belief and faith had appeared in the same and were duly declared to be fit for alternative posts. As such, the action of the authorities of now relying upon the Notification dated 04.09.2001 and denying the Applicants an alternative posting is arbitrary, malafide, capricious and whimsical.
- 5.3 For that a bare glance at the impugned Order dated 31.01.2007 issued under the hand of the Respondent No. 2 clearly reveals that the said Order has been passed without application of mind to the relevant factors. The said notification dated 04.09.2001, on which such heavy reliance has been placed by the Respondent No. 2, had been duly considered by this Hon'ble Tribunal, in the Order dated 09.08.2006. This Hon'ble Tribunal had categorically dealt with the matter regarding the retrospective effect of the Notification dated 04.09.2001 and had thereafter held that the Applicants case deserves sympathetic consideration. As such, the impugned action of the Respondent Authority of rejecting the claim of the Applicants on the

Bajin ch. Deka 15

basis of the same Circular dated 04.09.2001 tantamount to a contumacious conduct on the part of the authorities. The said impugned Order dated 31.01.2007 is accordingly liable to be set aside and quashed and the Respondent Authorities are liable to be directed to reconsider the claim of the Applicants and absorb them in any alternative employment.

- 5.4 For that the policy decision taken by the Railway Board on 04.09.2001, not being retrospective in nature, the case of the Applicants cannot be brought under its purview, since they had been empanelled in the year 1998 itself and as such, the Respondent No. 2 in colorable exercise of power has issued the impugned Order dated 31.01.2007 and has sought to illegally deprive the Applicants of their genuine claim for an alternative appointment.
- 5.5 For that the Respondent authorities have acted in an illegal, arbitrary, malafide and unreasonable manner in refusing to appoint the applicants till this date in terms of their own policy decision. The refusal on the part of the Respondents to grant the Applicants the benefits of an alternative appointment has gravely prejudiced the Applicants since they have foregone several other employment opportunities under the bonafide belief that they would be considered for appointment in an alternative post.
- 5.6 For that the actions of the Respondents apart from being illegal, arbitrary and malafide are violative of the applicants' fundamental rights as guaranteed under Articles 14, 16 and 21 of the Constitution of India. The Respondent No. 2 has erroneously held that the Applicants have no legal right for alternative appointment. The said finding is ipso-facto contrary to the earlier policy decision of the Railways. As such, the impugned Order dated 31.01.2007 is liable to be set aside and quashed.
- 5.7 For that as has already been mentioned hereinabove the respondents have already conducted written psychological and viva-voce tests upon the applicants and have found them to be eligible for jobs in the Railways. As such, when the applicants were found to be unfit in the medical test conducted for the post Diesel Assistant Driver the applicants were re-examined medically in order to absorb them in alternate posts. Such action on the part of the Respondents have led to bonafide and legitimate expectations having accrued in favour of the applicants. The Respondent No.2 in a most illegal manner, without taking into consideration the directions of this Hon'ble Tribunal has denied the claim of the Applicants vide impugned Order dated 31.01.2007.

5.8 For that the very fact that the applicants were subjected to further medical test for assessing their fitness for alternative appointment and the issuance of the letter dated 04.03.2003 and the office note dated 23.12.2003 clearly goes to show that there existed and still exist certain vacancies in posts against which the applicants can be accommodated. It was in the backdrop of these facts and circumstances that a decision was taken to absorb/appoint the Applicants in posts for which they are found medically fit. As such, the action of the Respondents in failing to appoint the applicants in posts commensurating with their qualification and medical fitness is ex-facie illegal, arbitrary, malafide, unfair, unreasonable and capricious. The applicants have been discriminated against without any reasonable basis or justification. There has apparently been a mechanical approach to the issue at hand in total disregard to the rights guaranteed to the applicants under Articles 14 and 16 of the Constitution of India. As such, the impugned Order dated 31.01.2007 passed by the Respondent No. 2 is liable to be set aside and quashed. This Hon'ble Tribunal may be pleased to direct the authorities to absorb the Applicants in alternative posts.

5.9 For that the Respondent No.2 while issuing the impugned Order dated 31.01.2007, failed to take note of the fact that the grounds on which the claims of the Applicant's has been rejected, had been categorically dealt with by this Hon'ble Tribunal in the Original Application No.61 of 2005. The aforesaid Circular dated 04.09.2001 was duly brought to the notice of the Hon'ble Tribunal and after due consideration, the Order dated 09.08.2006 was passed by this Hon'ble Tribunal. Further, the said authority failed to appreciate the fact that by subjecting the applicants to further medical tests for assessing their fitness for alternative appointment coupled with the issuance of the letter dated 04.03.2003, the Respondents had held out a clear and unequivocal promise to the applicants. On such promise being held out, the applicants had been made to believe that appointment orders/letters would be issued shortly in their favour. On such belief, the applicants had forgone several employment opportunities that arose since March 2003 and as such have altered their position. Under these circumstances the Respondents are estopped from taking a different stand and/or to refuse to appoint the applicants in posts commensurating with their qualifications and medical fitness in the light of the settled principle of Promissory Estoppel.

5.10 For that the Respondent No.2 while holding that "the powers of the Railway Administration for giving alternative appointment is

22
A/p/m ch. Decm.

discretionary" has failed to appreciate the fact that discretionary powers cannot be unfettered. The Applicants not only have a due and legitimate right to be appointed against an alternative post, in view of the certain policy decision of the railways but have also accrued a genuine and legitimate right, pursuant to the medical re-examination in the year 2003. As such, the impugned Order dated 31.01.2007 is liable to be set aside and quashed as the same has been passed in a most high handed and arbitrary manner.

5.11 For that in any view of the matter, the impugned Order dated 31.01.2007 passed by the Respondent No.2 is bad in law. The said Order has been passed without application of mind to the relevant factors. This Hon'ble Tribunal may therefore be pleased to set aside and quash the same. The balance of convenience is strongly in favour of the applicants herein and thus it is a fit case where this Hon'ble Tribunal may be pleased to grant appropriate interim reliefs to the applicants.

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

6. **DETAILS OF REMEDIES EXHAUSTED :**

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

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

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

8. **RELIEF SOUGHT FOR :**

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

Bipin ch. Deka?

- 8.1 Set aside and quash the impugned Order dated 31.01.2007 issued under Memo No.E/170/LC/NS/572/50- under the hand of the General Manager (Personnel), Maligaon, Guwahati, whereby the claim of the Applicants for alternative appointment has been whimsically rejected (Annexure-H).
- 8.2 Direct the Respondent Authorities to consider the claim of the Applicants afresh by giving due weightage to the fact that the Applicants had been empanelled much before the issuance of the Railway Recruitment Boards Notification dated 04.09.2001, and the fact that the said Notification was not applicable on a retrospective basis, and accordingly appoint the Applicants in alternative posts.
- 8.3 Costs of the Application.
- 8.4 Any other relief(s) that the Applicants may be entitled to under the facts and circumstances of the instant case and/or as may be deemed fit and proper by this Hon'ble Tribunal considering the facts and circumstances of the case.

9. **INTERIM ORDER PRAYED FOR :**

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

A direction to the Respondent authorities not to fill up any vacant posts, if available, during the pendency of the instant Original Application and without leave of this Hon'ble Tribunal.

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

- (i) I.P.O No. : 286135695-
206116411
- (ii) Date : 28.01.2007
- (iii) Payable at : Guwahati.

11. **LIST OF ENCLOSURES:**

As stated in the index.

VERIFICATION

I, Sri Bipin Chandra Deka, aged about 36 years, Son of Sri Kabindra Deka, Resident of Sankar Nagar, Noonmati, Guwahati – 20, do hereby solemnly affirm and verify that I am the Applicant No. 1 in the instant application and as such, I am fully conversant with the facts and circumstances of the case. The statements made in paragraphs 1, 2, 3, 4.1 to 4.6, 4.7 (partly), 4.8 (partly), 4.10 (partly), 4.11, 4.12 (partly) ^{6 to 11} are true to my knowledge and those made in paragraphs 4.7 (partly), 4.8 (partly), ^{4.9,} 4.10 (partly), 4.12 (partly) are true to my information derived from records, which I believe to be true and ^{those made in paragraph 5 are true to my legal advice and} the rest are my humble submissions before this Hon'ble Tribunal. Chy

And I sign this verification on this the 8th day of March, 2007 at Guwahati.

Bipin Ch. Deka

SIGNATURE OF THE APPLICANT.

RAILWAY RECRUITMENT BOARD :: GUWAHATI

Station Road
Guwahati - 781001

No. RRB/G/41/

Date: 16/02/97

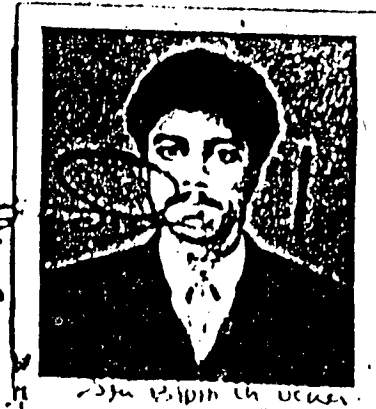
ANNEXURE - A Series

To,

Shr/Smt.

BIPIN CHANDRA DEKA

Your ROLL NUMBER is **12110213**



This is your CALL LETTER/ADMIT CARD

For the written examination for the post of

APPR. DIESEL ASST. DRIVER

IN SCALE of Rs.

950-1500

under Employment

NOTICE No.

2/96

CATEGORY No.

01

on the NORTH EAST FRONTIER RAILWAY.

PROGRAMME OF WRITTEN EXAMINATION IS AS GIVEN BELOW:-

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

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

- You will not be admitted to this written examination without this CALL LETTER/ADMIT CARD and does not itself give any entitlement for selection.
- Your candidature has been accepted provisionally and is subject to check and fulfillment of all conditions laid down in the said Employment Notice.
- If you do not fulfill the conditions as laid down in the said Employment Notice, please ignore this CALL LETTER/ADMIT CARD and do not appear.
- Only the successful candidates in the written examination will be called for the VIVA-VOCETEST.
- You are to defray your own travelling expense (for UR/OBC candidates).
- Approaching the Chairman, RRB, GHY and other officials of RRB/Guwahati directly or indirectly by a candidate or anybody on his self requesting under consideration for the recruitment will render a candidate liable for disqualification.
- Only the candidates and the persons engaged in conducting the examination will be allowed into the examination premises. Strict discipline and silence must be maintained in the examination/Hall Rooms. Appropriate action will be taken in case of those adopting unfair means in the examination hall, etc.

- FOR SC/ST CANDIDATES ONLY:** ON PRODUCTION OF THIS CARD YOU ARE ENTITLED TO TRAVEL FREE BY RAILWAY IN SECOND CLASS FROM **XXXXXXXXXX** (STN.) TO GUWAHATI (STN.)

& BACK. THIS PASS IS VALID UPTO

XXXXXXXXXX

100484

(Authority Rly Bd's L/No (NG) II-84/RSC/122 dt 23.11.84)

For CHAIRMAN

RAILWAY RECRUITMENT BOARD: GUWAHATI.

Certified to be true Copy

Rakhee Srauthia Chowdhury
ADVOCATE

- 13 -

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

रेल भर्ती बोर्ड, गुवाहाटी RAILWAY RECRUITMENT BOARD, GUWAHATI

स्थान मार्ग,
गुवाहाटी-1

STATION ROAD,
GUWAHATI-1.

दिनांक: 29/08/97
Date: 29/08/97

To, सेना में,

RIPIN CHANDRA DEKA

C/O-GOBINDA DEKA
NOONMATI (SANKARNAGAR)
P/O-NOONMATI, GUWAHATI,
DIST-KAMRUP, ASSAM.-PIN-781 020

अनुसंधान
Roll Number

12110213

Photograph

CALL LETTER cum ADMIT CARD for VIVA-VOCE & PSYCHOLOGICAL TEST

XX
XX

कोटी

CATEGORY: APPR. DIESEL ASST. DRIVER

वेतन-मान

PAY SCALE

Rs. 950 - 1500

नियोजन ज्ञापन नं.

Employment Notice No.

2/96

कोटी नं.

Catg. No.

01

लिखित परीक्षा का कार्यक्रम PROGRAMME OF WRITTEN TEST

दिनांक DATE	XXXXXX XXXXXX	परीक्षा करने का समय REPORTING TIME	परीक्षा स्थान EXAMINATION VENUE
27/09/97	PSYCHOLOGICAL TEST	9:00 HRS	THE INSTITUTE OF ENGINEERS (I) PANHAZAR, GUWAHATI-1
27/09/97	VIVA-VOCE TEST	13:00 HRS	RAILWAY RECRUITMENT BOARD STATION ROAD, GUWAHATI-1

सिर्फ अनुसंधित ज्ञापन / अनुसंधित जनजाति के लिए: यह पत्र प्राप्त करने पर आप
FOR SC/ST CANDIDATE ONLY: On production of this letter you are entitled to free travel by rail-

way in second class only from XXXXXXXXXXXX स्टेशन से XXXXXXXXXXXX स्टेशन तक तथा
stn. to stn. and back.

वापसी के लिए रेल द्वारा केवल द्वितीय श्रेणी में नियुक्त यात्रा करने के हकदार हैं।
यह पास दिनांक XXXXXXXXXXXX तक ही उपलब्ध है।

This pass is available upto

(प्रमाणित: रेलवे डी.डी. नं. 11-84 का प्रमाणित 122, दिनांक 23-11-84)
(Authority: RLY D.D. No. 11-84/122 dt. 23-11-84)
100484/rdad 05g

कोटी अध्यक्ष

रे० भ० को०/गुवाहाटी
for CHAIRMAN,
RRB/Guwahati

पुनर्निर्माण

- 14 -

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

DUPLICATE

रेल भर्ती बोर्ड, गुवाहाटी

RAILWAY RECRUITMENT BOARD, GUWAHATI

स्टेशन मार्ग,
गुवाहाटी-1

STATION ROAD,
GUWAHATI - 1

दिनांक:
Date: 26.9.97

To, सेवा में, श्री/श्रीमती/श्रीमती/श्रीमती

Poanabijoy Khanikar

अनुक्रमांक
Roll Number

12411105

CALL LETTER CUM ADMIT CARD for VIVA-VOCE & PRACTICE

X लिखित परीक्षा के लिये बुलाया गया सदस्य X
X CALL LETTER CUM ADMIT CARD FOR VIVA-VOCE & PRACTICE X

कोटी
CATEGORY

APP D.A.D.

वेतन-मान
PAY SCALE

Rs. 950-1500/-

नियोजन जापन सं.
Employment Notice No.

2/96

कोटी सं.
Catg. No.

01

लिखित परीक्षा का कार्यक्रम
PROGRAMME OF WRITTEN TEST

दिनांक DATE	विषय SUBJECT	रिपोर्ट करने का समय REPORTING TIME	परीक्षा केंद्र EXAMINATION VENUE
27.9.97	V.V. Test	9.00 Hrs	RRB/647.
28.9.97	Psy Test	13.00 Hrs	The Institute of Engg. (I) Assam State Camps Panbarn 647-1

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

way in second class only from ☒ ☒ ☒ स्टेशन से ☒ ☒ ☒ स्टेशन तक तथा
stn. to stn. and back.

वापसी के लिए रेल द्वारा केवल द्वितीय श्रेणी में निशुल्क यात्रा करने के हकदार हैं।

यह पास दिनांक

☒ ☒ ☒

तक ही उपलब्ध है।

This pass is available upto

(आधिकार: रेलवे बोर्ड पत्र सं. 8 (एन जी) 11-84/आर एम गो/122, दिनांक 23-11-84)
(Authority: Rly. Bds. I/No.E(NG)11-84/RSC/122 dtd. 23-11-84)

कृपया अध्यक्ष
रेल भर्ती बोर्ड/गुवाहाटी
for CHAIRMAN,
RRB/Guwahati

रेल भर्ती बोर्ड, गुवाहाटी

RAILWAY RECRUITMENT BOARD, GUWAHATI

स्टेशन मार्ग,
गुवाहाटी-1

STATION ROAD,
GUWAHATI - 1

To, सेवा में,

दिनांक: 7-6-92
Date: 7-6-92

Sri Pranab Jyoti Khanikar.

अनुक्रमिक
Roll Number 12411105

Photograph

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

कोटी
CATEGORY D. A. D.

वेतन-मान
PAY SCALE Rs. 950-1500/-

नियोजन जापन सं.
Employment Notice No. 2/96

कोटी सं.
Catg. No. 01

लिखित परीक्षा का कार्यक्रम
PROGRAMME OF WRITTEN TEST

दिनांक DATE	दिन DAY	रिपोर्ट करने का समय REPORTING TIME	परीक्षा केंद्र EXAMINATION VENUE
08-06-92	Sunday	10-00-12-30 hrs	Pankajaz Girls H. S. School. Pankajaz, Wky - 1.

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

-way in second class only from ☒ स्टेशन से ☒ स्टेशन तक तथा
stn. to stn. and back.

वापसी के लिए रेल द्वारा केवल द्वितीय श्रेणी में निशुल्क यात्रा करने के हकदार हैं।

यह पास दिनांक ☒ तक ही उपलब्ध है।

This pass is available upto

(प्रधिकार: रेल बोर्ड पत्र सं. 3 (एन जी) 11-84/आर एम गी/122, दिनांक 23-11-84)
(Authority: Rly. Bds. L/No. E(NG) 11-84/RSC/122 dt. 23-11-84)

कुने अध्यक्ष
रेल भर्ती बोर्ड, गुवाहाटी
for CHAIRMAN,
RRB/Guwahati

Regd Post. - 16 - 34

H.F. Railway

ANNEXURE B Series.

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

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

Dt. 06-02-98

To

Shri Devin Chandra Deka
C/o Shri Gobinda Deka
Noonmati (Sankar Nagar)
Po Noonmati, Dist. Karimgarh (Assam)

MF No.

61

Sub: Offer letter for Medical examination
as to the Diesel Assistant Driver
in scale Rs. 3050-4590/- in Mech. Dept.

I hereby certify that the following is a true copy of the original letter No. E/228/57(N) Pt. II

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

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

[Signature]
Divisional Railway Manager (I)
H.F. Railway, Alipurduar Jn

Certified to be true Copy

[Signature]
Rakhee Sirauthia Chowdhary
ADVOCATE

- 17 -

Regd. d.

N.F. Railway

Office of the
Divl. Railway Manager (F)
Alipurduar Junction

No. E/283-Mech/App'tt/Al (DAD)

✓ Dt. 16-02-98

To

Shri

Pranab Kumar
Khanikar gach. D.
Out Gola ghat.

Khanikar
Sampath.
12/785601

No.

12 7

Sub: Offer letter for Medical examination
as per Rule 3050-4590/2 in M.C. 1971

In order of GM(P), LGS L/No. E/228/5 (M) 11

02-02-98 you
nation for the post of Diesel
Pay Rs. 3050/- per month in
allowance as admissible from

hereby called for Medical exami-
Assistant Driver against P.O. on
scale of Rs. 3050-4590/2 plus usual
time to time.

- a) Appointment letter for 1 year being passing the Medical examination.
- b) You will be probation for a period of 12 months and on satisfactory completion of your probation, you will have to pass the examination, you will be.
- c) If the termination of your service is due to some other cause, you will be entitled to a notice of 14 days pay.
- d) Offer of appointment is subject to the verification of character and antecedents as per General Rules and other recruitment.
- e) 1/2 set 2nd Class Pass No. 15466 is enclosed for cover the journey.

since DAD will be given after examination.
a period of 12 months and during this period to undergo a training for the purpose of satisfactory completion of your probation. If you fail in the examination, you will be discharged from service without notice.

service is due to some other cause, you will be entitled to a notice of 14 days pay.

subject provisionally. The offer of character and antecedents as per General Rules and other recruitment.

15466 dt. 7/2/78

- f) Please report to this office by 7-3-98.

Mr. Col. J. 198
Divisional Railway Manager (F)
N.F. Railway, Alipurduar Jn

- 18 -

(TYPED COPY)

ANNEXURE -B

N. F. Railway

Office of the Divl. Railway Manager (P)

Alipurduar Junction

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

Dt. 06.02.98.

To

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

NF No.

6

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

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

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

Certified to be true Copy

Rakhee Sirauthia Chowdhary
ADVOCATE

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

- 19 -

37

(TYPED COPY)

ANNEXURE -B

N. F. Railway

Office of the Divl. Railway Manager (P)

Alipurduar Junction

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

Dt. 06.02.98.

To

Shri Pranabjyoti Khanikar
Khanikar Gaon, Sarupathar
District- Golaghat, PIN- 785601

NF No.

129

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

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

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

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

Certified to be true Copy

Rakhee Sirauthia Chowdhary
ADVOCATE

- 20 -

ANNEXURE - C Series

Office of the
Divl. Rly. Manager (F),
Alipuduar Junction.

Dt. 20/02/2003.

No. E/283/ECI./TFTT/L.P(D.D)/Pt, I

To:

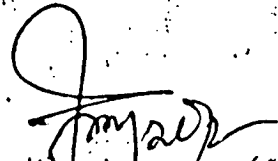
Shri ... Pranab Jyoti Khanikar.

... Khanikar Gan.

P.O. Sanupattar. Dist. Golaghat (Assam)


Sub :- medical examination. ⁷⁸⁵⁶⁴

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


for Divl. Rly. Manager (F),
Alipuduar Junction.

(akp/19203)

Certified to be true Copy


Rakhee Sirauthia Chowdhary
ADVOCATE

N. E. Railway.

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

Dt. 20/02/2013.

NO. 5/283/4 ECH/4.1 FTT/1.P (L.D)/Pt. I

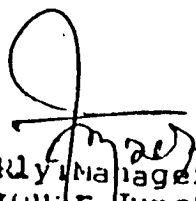
To:

Sir

.. Bipin Ch. Deka
c/o. Sri. Gabinda Deka .. Neenmati
P.O. Naonmati .. Dist: Kamrup (Assam)

Sub :- medical examination.

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


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

(akp/19203)

N. E. Railway.

Office of the
Divl. Dy. Manager (F),
Alipurduar Junction.

Dt. 20/02/2023.

No. E/283/12CH/..PPTT/..P(L.D)/Pt. F

To:

Shri Mukul Das.....

Vill. Chachamukh.....

P.O. H. AIBAR G.A.O. Dist. Nagaon (Assam)

Sub: - medical examination.

You are advised to attend this office for further medical examination for assessing your fitness ~~as shown category~~ for alternative appointment.

for Divl. Dy. Manager (F),
Alipurduar Junction.

(skp/19203)

- 23 -

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

No: E/205/Mech/APPT/AP (DAB) Pt. I.

To
GMS/APDJ

Sub:- Re-Medical Examination.

.....

The following candidates were recruited through HRE/CHY for the post of Diesel Asstt. Driver, but found unfit in medical category A/One (prescribed medical category for DAB). CM(P)/MLG vide his letter number E/173/III/3/2(M) dt. 10.9.2001 & 18.2.2002 has advised to absorb the following candidates in alternative job (Tech/Non tech.) as per their medical fitness.

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

Details of the candidates are given below.

<u>Sl.No.</u>	<u>Name</u>	<u>Date of birth</u>	<u>Identification mark</u>
1.	Mukul Das,	30.12.69	Cut mark on right thumb
2.	Pranab Jyoti Khanikar	23.05.72	Mole on back neck
3.	Anurag Pandey	03.07.72	Cut mark between eye brow.
4.	Narayan Ch. Dey	10.03.71	Not available now. On
5.	Ripin Ch. Beka	14.11.69	report of the staff, same will be intimated to you.

for Divisional Rly. Manager (P)
Alipurduar Junction

Certified to be true Copy

Rakhee Sirauthia Chowdhury
ADVOCATE

आर/ए. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

परिशिष्ट III (अनुसूचक 6) Appendix III (Annexure C)

राज्य द्वारा संचालित रेलवे में नियुक्ति के लिए योग्यता निर्धारण के प्रयोजन से किसी उम्मीदवार को शास्त्री जांच के लिए प्रयुक्त प्रमाणपत्र का फॉर्म/Form of certificate to be used when a candidate is medically examined for fitness for appointment to a State in g'd Railway

अस्पताल/Hospital

व्यापार/Dispensary

मैं एचआरआर प्रमाणित करता हूँ कि मैंने नाम) (आयु)

जो कि अनुभाग/विभाग नं. की के पद पर नियुक्ति के लिए उम्मीदवार है और जिसके द्वारा

निशान मेरी उम्मीदवृत्ति में नीचे दिया गया है, की जांच कर ली है।

मैं उन्हें एक नियुक्ति के लिए—

I do hereby certify that I have examined (Name) Mukul at (designation) ... in the ... branch/department whose

has been appended below in my presence. I consider him fit in ... and below.

जांच के निमित्त रेलवे शास्त्री के हस्ताक्षर

Signature of Railway Medical Officer

Dr. ... Medical Officer

उ. सी. रेलवे शास्त्री

उ. सी. रेलवे/अस्पताल

उम्मीदवार के हस्ताक्षर/निशान

Signature of candidate

तारीख/Date 05/3/03 Thumb Impression

का माग न हो उसे आ: ... but where inapplicable.

मैं मुकुल दास

Certified to be true Copy

Rakhee Sirauthia Chowdhary ADVOCATE

आए/R.142 एच सी 0 रेलवे/N. F. Railway 10 डि/म-2/N. F./M-2

परिशिष्ट III (अनुक्रमक 6) Appendix III (Annexure 6)

राज्य द्वारा संचालित रेलवे में नियुक्ति के लिए योग्यता निर्धारण के प्रयोजन से किसी उम्मीदवार को दाखली जांच के लिए प्रयुक्त प्रमाणपत्र का फॉर्म/Form of certificate to be used when a candidate is medically examined for fitness for appointment to a State-managed Railway

अस्पताल/Hospital

APD5

No. 28

व्यापना/Dispensary

में एवरद्वारा प्रमाणित कराया है कि मैंने देखा (आप)

जो कि अनुमान/दिखाता पर पर नियुक्ति के लिए उम्मीदवार है और निम्नलिखित प्रकार/धर्म का

निशान मेरी उम्मीदवर्ति में दीये किताब में है, जो दीये कर दी है।

मैं इसके द्वारा नियुक्ति के लिए करता हूँ।

Surender Dehra

I do hereby certify that I have examined (Name) (age) candidate for appointment as (designation) in

the P/B branch/department Signature

has been appended below in my presence. I consider him

fit in Bce

Signature of Railway Medical Exam

Signature of candidate

Signature of candidate

Signature of candidate

Signature of candidate

Signature of candidate

Signature of candidate

Signature of candidate

Signature of candidate

Signature of candidate

Signature of candidate

Signature of candidate

Signature of candidate

Signature of candidate

Signature of candidate

Signature of candidate

Signature of candidate

आर/142 १०० रोड रेलवे/N. F. Railway १०/१००-2/N. F./M-2

परिशिष्ट III (अनुसूचक 6) Appendix III (Annexure 6)

राज्य द्वारा संचालित रेलवे में नियुक्ति के लिए योग्यता निर्धारण के प्रयोजन से किसी उम्मीदवार को भर्तरी जांच के लिए प्रयुक्त प्रमाणपत्र का फॉर्म/Form of certificate to be used when a candidate is medically examined for fitness for appointment to a post in Indian Railway

अस्पताल/Hospital

दवाखाना/Dispensary

ABD

No. 25

मैं एम्बरद्वारा प्रमाणित करता हूँ कि मैंने नाम (आर)

जो कि अनुभाग/विभाग में पद पर नियुक्ति के लिए उम्मीदवार है और जो रेलवे/अनुसूचक का

निशान मेरी चर्चा में नीचे लिखे अनुसार है

मैं उन्हें उक्त नियुक्ति के लिए

अनुसूचक

Premab Jyoti

I do hereby certify that I have examined (Name) as (designation)...

the... branch/department... has been appended below in my presence...

for such appointment...

(b) and below...

Signature of candidate...

Signature of official...

Signature of candidate...

Signature of official...

Signature of candidate...

Signature of official...

Signature of candidate...

Signature of official...

Signature of candidate...

Signature of official...

Signature of candidate...

Signature of official...

Signature of candidate...

Signature of official...

Signature of candidate...

Signature of official...

Signature of candidate...

Signature of official...

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 61 of 2005.

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

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

THE HON'BLE SRI GAUTAM RAY, ADMINISTRATIVE MEMBER

1. Sri Bipin Chandra Deka
S/O Rabindra Deka
Resident of Sankarnagar, Noonmati
Guwahati-20.

2. Sri Pranabjyoti Khanikar
S/O Late Srikanta Khanikar
Resident of Khanikar Gaon
P.O: Sarupathar
Dist: Golaghat.

Sri Mukul Das
S/O Sri Mukula Das
Resident of Village: Chechamukh
P.O: Haibargaon, Dist: Nagaon
Assam.


. . . Applicants

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

- Versus -

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

Certified to be true Copy


Rekhee Srauthia Chowdhary
 ADVOCATE

... Respondents.

By Mr. S. Sengupta, Railway Counsel.

O R D E R

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

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

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

(ii) Cost of the application.

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

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

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

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

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

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

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

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

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

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

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

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

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

SD - Vice-Chairman
SD - Member (A)

Date of Application : 9.8.06
Date on which copy is ready : 16.8.06
Date on which copy is delivered : 16.8.06
Certified to be true copy

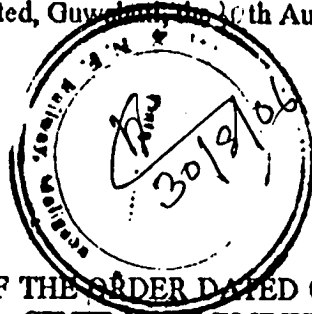
Section Officer (Judl)
C. A. T. Chhati Bench
Guwahati.

16/8/06

Dated, Guwahati, the 30th August, 2006

To,

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



Sub: REPRESENTATION IN TERMS OF THE ORDER DATED 09.08.2006
PASSED BY THE HON'BLE CENTRAL ADMINISTRATIVE
TRIBUNAL, GUWAHATI BENCH IN ORIGINAL APPLICATION NO.
61/2005.

Sir,

With due regard I would like to place the following facts for your kind
perusal and necessary action.

1. That, the Railway Recruitment Board vide its employment notice dated 01.10.1996 had invited applications from eligible candidates for the post of Diesel Assistant Driver. The undersigned applied for the same and was issued an Interview Call Letter/Admit Card by the said Railway Recruitment Board. Subsequently, the results were published on 09.01.1998, and on 06.02.1998, the Divisional Railway Manager (P), N.F. Railway, Alipurduar call the undersigned to appear for a medical test.
2. That, however, the undersigned could not clear the medical test and was found to be unfit for the job of Diesel Assistant Driver. It is pertinent to state that the undersigned was found, otherwise, fit for any other alternative appointment in the Railway and accordingly, considering this aspect of the matter, the Divisional Railway Manager (P), N.F. Railway, Alipurduar vide his letter dated 20.02.2003 advised the undersigned to appear for further medical test for assessing his fitness for alternative appointment.
3. That, thereafter the Divisional Railway manager (P) vide his letter dated 04.03.2003 informed that your goodself vide letters dated 10.09.2001 and 18.02.2002 had advised to absorb the undersigned in alternative job as per his medical fitness.
4. That, however, no positive action was forthcoming from the authorities and under compelling circumstances, the undersigned approached the Hon'ble Central Administrative Tribunal, Guwahati Bench, by way of an Original Application which was registered and numbered as O.A. No. 61/2005.

Certified to be true Copy

Rakhee Sirauthia Chowdhury
ADVOCATE

5. That, the said Original Application came up for final hearing on 09.08.2006 and the Hon'ble Tribunal was of the opinion that the case of the undersigned deserves sympathetic consideration. The Hon'ble Tribunal further directed the undersigned to make a comprehensive representation before your goodself for taking a final decision in the matter.

6. That, the undersigned humbly states that he is, otherwise, completely medically fit for any alternative appointment and considering the hardship, which has been faced by the undersigned, he humbly appeals before your goodself to look into the matter with a sympathetic view and considering his case for appointment in any other alternative post in the N.F. Railway.

For this act of kindness, the undersigned shall be ever grateful to your goodself

Copy of the Order dated 09.08.2006 passed by the Hon'ble Central Administrative Tribunal in O.A. No. 61/2005 along with the necessary testimonials is enclosed herewith for your necessary perusal and further action in this regard.

Yours faithfully,

Sri Bipin Ch. Deka

(BIPIN CHANDRA DEKA)
Son of Sri Gabinda Deka,
Resident of Sankarnagar, Noonmati,
Guwahati - 781 020

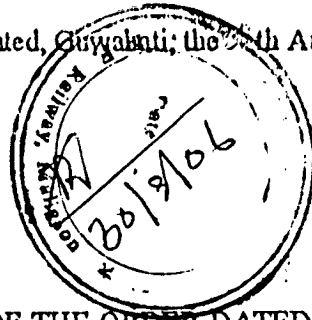
Copy to :

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

Sri Bipin Ch. Deka

(BIPIN CHANDRA DEKA)
Son of Sri Gabinda Deka,
Resident of Sankarnagar, Noonmati,
Guwahati - 781 020

Dated, Guwahati, the 24th August, 2006



To,

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

Sub: REPRESENTATION IN TERMS OF THE ORDER DATED 09.08.2006
PASSED BY THE HON'BLE CENTRAL ADMINISTRATIVE
TRIBUNAL, GUWAHATI BENCH IN ORIGINAL APPLICATION NO.
61/2005.

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Certified to be true Copy


Rakhee Sirauthia Chowdhury
ADVOCATE

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For this act of kindness, the undersigned shall be ever grateful to your goodself.

Copy of the Order dated 09.08.2006 passed by the Hon'ble Central Administrative Tribunal in O.A. No. 61/2005 along with the necessary testimonials is enclosed herewith for your necessary perusal and further action in this regard.

Yours faithfully,

Shri Pranabjyoti Khanikar
(PRANABJYOTI KHANIKAR)
Son of Late Srikanta Khanikar,
Resident of Khanikar Gaon,
P.O. Sarupathar, Dist. Golaghat

Copy to :

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

Shri Pranabjyoti Khanikar
(PRANABJYOTI KHANIKAR)
Son of Late Srikanta Khanikar,
Resident of Khanikar Gaon,
P.O. Sarupathar, Dist. Golaghat

Dated, Guwahati, the 30th August, 2006

To,

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

Sub: REPRESENTATION IN TERMS OF THE ORDER DATED 09.08.2006
PASSED BY THE HON'BLE CENTRAL ADMINISTRATIVE
TRIBUNAL, GUWAHATI BENCH IN ORIGINAL APPLICATION NO.
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3. That, thereafter the Divisional Railway manager (P) vide his letter dated 04.03.2003 informed that your goodself vide letters dated 10.09.2001 and 18.02.2002 had advised to absorb the undersigned in alternative job as per his medical fitness.
4. That, however, no positive action was forthcoming from the authorities and under compelling circumstances, the undersigned approached the Hon'ble Central Administrative Tribunal, Guwahati Bench, by way of an Original Application which was registered and numbered as O.A. No. 61/2005.

Certified to be true Copy


Rakhee Sirauthia Chowdhury
ADVOCATE

5. That, the said Original Application came up for final hearing on 09.08.2006 and the Hon'ble Tribunal was of the opinion that the case of the undersigned deserves sympathetic consideration. The Hon'ble Tribunal further directed the undersigned to make a comprehensive representation before your goodself for taking a final decision in the matter.

6. That, the undersigned humbly states that he is, otherwise, completely medically fit for any alternative appointment and considering the hardship, which has been faced by the undersigned, he humbly appeals before your goodself to look into the matter with a sympathetic view and considering his case for appointment in any other alternative post in the N.F. Railway.

For this act of kindness, the undersigned shall be ever grateful to your goodself

Copy of the Order dated 09.08.2006 passed by the Hon'ble Central Administrative Tribunal in O.A. No. 61/2005 along with the necessary testimonials is enclosed herewith for your necessary perusal and further action in this regard.

Yours faithfully,

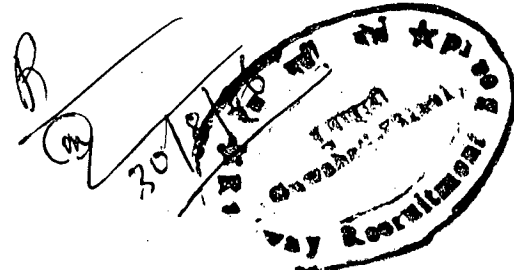
Sri Mukul Das
(MUKUL DAS)
Son of Sri Mukula Das,
Resident of Chechamukh,,
P.O. Haibargaon, Dist. Nagaon

Copy to :

Sd/-

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

Sri Mukul Das
(MUKUL DAS)
Son of Sri Mukula Das,
Resident of Chechamukh,,
P.O. Haibargaon, Dist. Nagaon



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

No. E/170/LC/NS/572/05

Date: 31-01-2007

To,

1. Sri Bipin Chandra Deka,
S/o Gobind Deka,
Resident of Sankamagar, Noonmati,
Guwahati - 781 020, Assam.

✓ 2. Sri Pranjyoti Khanikar,
S/o Late Sri Kant Khanikar,
Resident of Khanikar Gaon,
P.O. Sarupathar,
Dist. Golaghat, Assam.

3. Sri Mukul Das,
S/o Sri Mukula Das,
Resident of Village Chochamukh,
P.O. Haibangaon,
Dist. Nagaon, Assam.

Sub:- Compliance of Hon'ble CAT/GHY's order
dt 09-08-2006 in OA No.61/2005,
Sri B.C. Deka & Ors -Vs- UOI & Ors.

Ref:- Your representation dt 30-08-2006.

The competent authority has gone through the judgement/order dt 09-08-2006 in OA No.61/2005 alongwith your representation dt 30-08-2006 as per direction of Hon'ble Tribunal and after sympathetic consideration passed the following orders:-

"The representations of the applicants have been received and in compliance with Hon'ble CAT/GHY's above order the undersigned has examined & considered the issue in detail. The fact of the case is that, the applicants had applied in response to RRB/GHY's employment notice dated 01-10-1996 for the post of Diesel Asstt. Driver and were empanelled by RRB/GHY for appointment to the post of DAD.

..contd-P/2

Certified to be true Copy

Rakhee Srauthia Chowdhary
ADVOCATE

As per extant rule, the empanelled candidates were directed to Railway Hospital at APDJ for medical examination, but the applicants were not found fit in the prescribed medical category for DAD i.e. A/one. As per the extant rules at that point of time, the Administration had the discretion to give appointment in alternative categories to candidates who were found medically unfit for the specific categories for which they were empanelled through open recruitment. In terms of this rule in the year 2003, the applicants were called for medical re-examination, to consider their cases for absorption in alternative job. Accordingly they were medically re-examined and found fit in other categories which are below the standard of A/one. While the matter was still pending, it was noticed that the provision of giving alternative appointment has already been withdrawn in case of Asst. Drivers and ASM, by Rly Board vide letter No. E(RRB)2001/25/21 dt. 04-09-2001. It was therefore decided not to proceed with the matter of alternative appointment in favour the applicants.

The applicants have now claimed for alternative employment in the categories, for which they are found fit medically.

Now, the question is that whether such appointment can be considered as a matter of right ?

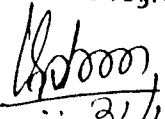
The applicants have relied upon the Railway Board's letter No.99/E(RRB)/25/12 dated 20-08-1999. The above letter clearly stipulates that, the decision of the General Manager regarding availability and identification of the vacancy in alternative grade, including other relevant factors required to be considered shall be final.

In the advertisements for filling up of the posts in the Railways, there was no commitment made by the Railways regarding absorption of medically unfit candidates in alternative grade. Rather it was clearly stipulated, "the appointment of candidates would be subject to their being found Medically fit in the appropriate Medical classification". Therefore having failed in the medical test for the required medical category, they cannot claim any right for alternative appointment in Railways.

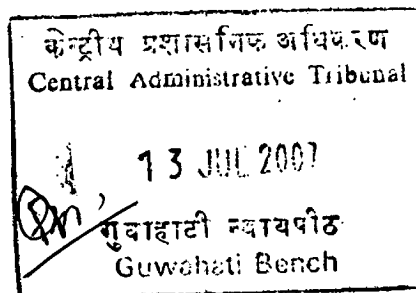
Rly Bd vide para-4 of their letter No.E(RRB)2001/25 dated 04-09-2001 have communicated that, the candidates selected for the category of Asstt. Driver/ ASM/ Motorman will not be eligible for any alternative employment if they fail in the final medical examination conducted by the Railway before appointment, for any reason.

The powers of the Railway administration for giving alternative employment is discretionary. The applicants have no legal right for alternative appointment. There are also clear-cut instructions from Rly Bd not to consider such cases. Therefore taking all these factors together, the undersigned comes to the conclusion that there is no scope for giving alternative appointment to them now and their request is hence regretted".

This is for your information please.


31/1/07
(S. Behera)

Senior Personnel Officer/Mech
for General Manager(P)/MLG



Dr. M. C. Sarma
M.Com, Ph.D., LL.B.
Advocate, Gauhati High Court.
Railway Advocate, Central Administrative Tribunal,
Guwahati
Dr. C.P. J. O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH.

IN THE MATTER OF

O.A. 62/2007

Shri Bipin Chandra Deka & two Others ... Applicants

Versus

Union of India & Others ... Respondents.

AND

IN THE MATTER OF

Written Statement on behalf of respondents.

The answering respondents respectfully SHEWETH :

1. That they have gone through the copy of the application filed and have gone through and understood the contents thereof. Save and except the statements which have been specifically admitted hereinbelow or those which have been borne on records all other averments/allegations made in the application are hereby emphatically denied and the applicant is put to the strictest proof thereof.
2. That for the sake of brevity meticulous denial of each and every allegation/statement made in the application has been avoided. However, the answering respondents have confined their replies to those allegations/averments of the applicants which are found relevant for enabling the Hon'ble Tribunal to take a proper decision on the matter.
3. That the application suffers from want of a valid cause of action. The three applicants have been clearly advised through respondent No.2's letter No.E/170/LC/MS/572/05 dated 31.01.2007 as to why no alternative employment cannot be offered to them as the same is not permitted under the rules. The reasons were also narrated in detail in the submissions of respondents recorded in the judgment dated 09.08.2006 of the Division Bench of the Hon'ble Central Administrative Tribunal, Guwahati Bench. The respondents therefore beg to state that for the same reasons and for the detailed reasons as stated in their letter dated 31.01.2007 it is not possible under the rules to offer any alternative employment to the applicants who have failed in the medical tests prescribed for Diesel Asstt. Driver. In this connection, respondents beg to draw attention to Hon'ble Tribunal's order dated 09.08.2006 in O.A.61/2005. Therefore, for want of cause of action, the application merits to be dismissed.

4. Parawise comments:

4.1 That as regards paragraph Nos. 4.1, 4.2 and 4.3, the respondents have no remarks to offer as the statements made by the applicants through them is part of the records and the applicants are put to a strict proof thereof.

4.2. That as regards paragraph 4.4, respondents beg to submit that the applicants have not correctly understood the meaning of the letter dated 06.02.1998. The intent of the letter was to clearly indicate that appointment letters for Diesel Assistants could be issued only upon the applicants passing the required medical tests. Probation of 12 months could start only on issue of an appointment letter before which the applicants must pass the required medical tests. There was no question of probation starting on issue of the letter dated 06.02.1998 asking the applicants to proceed for medical examination. Paragraph b) of this letter is subject to paragraph a) of the same.

4.3. That as regards paragraph 4.5, respondents have remarks to offer as the fact that the applicants failed in the medical fitness test is part of the records.

4.4. That as regards paragraph 4.5 of the application, respondents accept that the applicants were found medically unfit for the post of Diesel Assistant Driver.

4.5. That as regards paragraph 4.6, respondents beg to state that the advice to the applicants to appear in further medical tests did not amount to a commitment to offer alternative jobs to them. This action was meant to obtain a clear picture about the category-wise fitness of the applicants for suitable jobs in case under extant rules a decision was taken to offer alternative apploiment to the applicants in future. This action also shows the earnest of the respondent No.3 to help the applicants to the extent permitted by rules and extant instructions.

4.6. That as regards paragraph 4.7, respondents beg to state that the letter dated 04.03.2003 was not addressed to the applicants but was an internal communication of the administration of the respondents. To term contents of this letter as a policy decision of the administration would not therefore be correct and accepted.

4.7. That as regards paragraph 4.8, respondents beg to offer no remarks as records prove themselves.

4.8. That as regards paragraph 4.9, respondents beg

Dy. C.S. 10
 31 5 2003
 Dy. C.S. 10
 31 5 2003
 Dy. C.S. 10
 31 5 2003

3.

to state that the applicants have no authority to refer to respondent's internal correspondence which is part of the decision making process. Moreover, the applicants have wrongly stated that the Senior Personnel Officer concerned informed about the candidature of the applicants. The mere fact that the question of offer of appointment in alternative jobs was examined did not amount to a decision on the issue, particularly in view of the decision conveyed by the Railway Board vide their letter No.E(RRB) 2001/25/21 dated 04.09.2001 clearly withdrawing the provision of giving alternative appointment to those applying for posts of Assistant Driver, ASM and Motorman but were medically unfit for those jobs.

In this connection, respondents beg to state that this question was dealt with by the Hon'ble Tribunal in paragraph 4 of the judgment dated 09.08.2006 in O.A.61/2006.

A copy of the letter No.E(RRB)2001/25/21 date 04.09.2001 is submitted herewith and marked as ANNEXURE A

4.9. That as regards paragraph 4.10, respondents beg to submit no remarks as the points stated therein are part of the records of the Hon'ble Tribunal, extract of whose order dated 09.08.2006 has been correctly conveyed in the contents thereof.

4.10. That as regards paragraph 4.11 respondents beg to state that representations submitted by the three applicants were duly received by respondent No.2. Having due regard to the observations of the Hon'ble Tribunal made in their judgment dated 09.08.2006 and keeping the orders of the Railway Board in mind, the respondents considered the questions raised in the representations in detail at the highest level and came to the conclusion that in view of the latest instructions of the Railway Board issued vide letter No.E(RRB)/2001/25/21 dated 04.09.2001 the applicants cannot be given any alternative appointment as they have failed in the medical examination for the category of post they applied.

A copy of letter No.E(RRB)/2001/25/21 dated 04.09.2001 is submitted herewith and marked as ANNEXURE B

h

In this connection respondents beg to elaborate as to why the policy decision was taken not to offer alternative jobs to candidates applying for jobs of Assistant Station Masters/Assistant Drivers and Motorman in future.

The job related to these categories is closely connected with safety in train running and hence with the safety of the travelling public. Persons appointed to these posts have therefore to satisfy strict medical test, including stringent vision test, including ability to distinguish colour as railways run on colour signals.

In the past the practice in recruitment was to empanel the persons first and then to send them for medical test and appointment is made ~~to~~ to those who pass the test. However, it was found that a large number of those empanelled were found medically unfit and this led to delay in recruitment to these safety categories. It was therefore decided by the Railway Board that candidates applying for these safety categories must submit with their application a medical certificate from an eye specialist regarding vision in a prescribed proforma. It was made clear that only those candidates who conform to notified standards of vision need apply.

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

4.11. That as regards paragraph 4.12, respondents beg to submit that it was a fact that the applicants were sent for medical re-examination for fitness in other categories in March, 2003. When this matter came for a decision before the respondent No.2 in December, 2003, it was found that the power of the General Manager to offer alternative jobs to candidates of these categories who failed in medical tests was withdrawn by the letter of the Railway Board issued vide No.E(RRB)/2001/25/21 dated 04.09.2001. Unfortunately, this letter of the Railway Board was not addressed or copied to the zonal Railway Administration, as a result of which the Alipurduar Division who issued the orders for medical re-examination was not aware of the existence of these orders at the time. It was due to this unfortunate communication gap that led to the misunderstanding and disappointment to the applicants, which is sincerely regretted.

... P.5....

Netaji Hand Taken
63

(5)

It may therefore be well appreciated as to why the respondent No.2 had no alternative but to communicate vide his alleged impugned letter dated 31.01.2007 that no alternative appointment can be offered to the applicants for reasons elaborated in the speaking order.

Under the circumstances, the respondents beg to state that the original application has no merit and deserves to be dismissed with costs.

VERIFICATION

I, Shri Nitya Nanda Chakur, son of Late Pann Mohan Thakur, aged about 56 years and at present working as Dy Chief Personnel Officer/HB, N.F.Railway, do hereby solemnly affirm that the statements made in paragraphs 1 ~~and~~ to 4 are true to my information and records which I believe to be true and the rest are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the 10th day of June, 2007.

Signature

Designation.

Dy. C. : J. O.

N. F. Railway/M

- 6 -

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

No. E(RRB)/2001/25/21

RRCB No 5 /2001
New Delhi, dated 4.09.2001

The Chairmen,
All Railway Recruitment Boards.

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

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

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

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

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

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

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

DA One

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

Recd. No. RRB/2001/25/21
25/01/07
वरिष्ठ कार्मिक अधिकारी (कर्मचारी)
पू: सी: रेलवे, गुवाहाटी - 1
Sr. Personnel Officer (w)
N. P. Riv. Gowahati-11

- 7 -

46

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

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

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

Shri _____ fully conforms to the above vision standards.

(to be signed by Eye specialist)

Stamp

Name of the Doctor

Registration No.

Place:

Date:

Attested
Mm
25/5/07
वरिष्ठ कार्मिक अधिकारी (कल्याण)
पू: सी: रेलवे, गुवाहाटी - 1
Sr. Personnel Officer (w)
N. P. Riv. Guwahati-11

R.B.E. No. 212/99

The above rates are subject to the condition that these rates are minimum rates and individual States will be at liberty to charge higher rates. The examination fees for appearing in the All India Trade Test (AITT) will be collected by the establishments from the apprentices and the amount alongwith eligibility list of apprentices appearing in AITT will be deposited by the establishments with the respective Central/State Apprenticeship Advisors.

These orders will be implemented from the commencement of All India Trade Test to be conducted during November-December, 1999 onwards.

This issues with the approval of Internal Finance Division vide their Dy./768/FA(L)/99 dated 26.3.99.

R.B.E. No. 211/99

Subject : Recruitment of medically unfitted direct recruits in alternative categories.

Reference : Board's letter No. E(NG)62/RC-1/95 dated 26.10.1962.
[No. 99/E(RRB)/25/12, dated 20.8.99]

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

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

R.B.E. No. 212/99

Subject : Promotion from Technician Grade-II Scale Rs. 4,000-6,000 to Technician Grade-I Scale Rs. 4,500-7,000 in the Artisan category.
[No. PC-III/96/FE-1/3, dated 19.8.99]

As per extant instructions, promotions in the Artisan categories are made on the basis of Trade Test prescribed for this purpose. AIRF in one of their recent PNM-meetings had raised a demand to reduce the number of Trade Tests being conducted for promotion from one grade to another. The matter was considered carefully by the Board and it has been decided that the promotion from Technician Grade-II — Rs. 4,000-6,000 to Technician Grade-I — Rs. 4,500-7,000 in the Artisan category should henceforth be made on the basis of Annual Confidential Reports (ACRs) instead of Trade Test. Assessment, as above should be done by a Departmental Committee consisting of three officers of whom two will be Technical Officers not lower than senior scale and a Personnel Officer who can be one rank lower but nevertheless an equal member of the Departmental Committee. Accordingly,

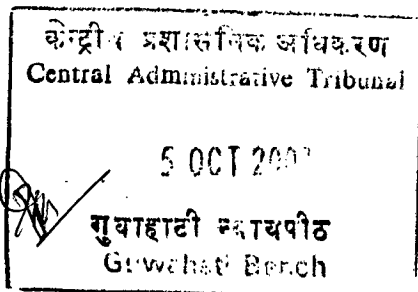
A Healed

25/6/95

परिचालक अधिकारी (प्र.)
श्री. पी. एल. गुप्ता
Sr. Personnel Officer (w)
N. P. Rly Guwahati-11

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

Original Application No. 62 of 2007



IN THE MATTER OF :

O.A NO. 62 of 2007

Sri B. C. Deka & Ors.

... APPLICANTS

-VS-

Union of India & Ors.

.... RESPONDENTS

- AND -

IN THE MATTER OF :

A Rejoinder on behalf of the Applicants
against the Written Statement filed by
the Respondents.

AFFIDAVIT-IN-REPLY / REJOINDER

I, Shri Pranabjyoti Khanikar, son of Late Srikanta Khanikar, aged aboutyears, resident of Khanikar Gaon, Sarupathar in the district of Golaghat, Assam, do hereby solemnly affirm and state as follows :

1. That, I am the Applicant No. 2 in the instant case and as such, I am fully acquainted and well conversant with the facts and circumstances of the instant case. I have been duly authorized to swear this affidavit on behalf of the Applicants No. 1 and 3.
2. That, a copy of the Written Statement filed on behalf of the Respondents in the aforesaid Original Application has been duly served upon me through my Counsel. I have gone through the same and understood the contents thereof. The statements and averments made in the Written Statement, which have not been specifically admitted herein below, shall be deemed to have been denied by the Deponent/Applicant.
3. That, with regard to the statements made in paragraphs 1 and 2 of the Written Statement, the Deponent has no comments to offer.
4. That, the statements made in paragraph 3 of the Written Statement are categorically denied by the Deponent. The impugned order dated 31.01.2007 issued under the hand of the Respondent No. 2 clearly reveals that the said order has been passed without application of mind to the relevant factors. A bare

Filed by
The Applicant's
through R.S. Chowdhury
Advocate 27/9/07

Shri Pranabjyoti Khanikar

glance at the Judgment dated 09.08.2006 of the Division Bench of the Hon'ble Central Administrative Tribunal, Guwahati Bench in O.A No. 61 of 2005 clearly reveals that while dealing with the matter, the Hon'ble Tribunal had taken into consideration that :-

"the 2001 circular is not applicable in the Applicants' case as the same has no retrospective effect, and therefore, the case of the Applicants should have been considered by the Respondents for alternative appointment in terms of prevailing rules as on 1998 during which the General Manager had ample power to consider such, which was not done in this case", which would further fortify the contention of the Applicants that these issues had already been taken note of by the Hon'ble Tribunal and hence, the Applicants' case deserved sympathetic consideration by the authorities. As such, the impugned order dated 31.01.2007 of the Respondent authorities, rejecting the claims of the Applicants on the basis of a circular dated 04.09.2001, which cannot be applicable retrospectively is a nonest in law. Therefore, the Deponent states that the contention of the Respondents that it is possible under the rules to offer any alternative employment cannot hold any ground.

5. That, as regards the statements made in paragraph 4.1 of the Written Statement, the Deponent has no comments to offer.
6. That, while denying the statements made in paragraph 4.2 of the Written Statement, the Deponent reiterates the statements and averments made in paragraph 4.4 of the Original Application.
7. That, with regards to the statements made in paragraphs 4.3 and 4.4 of the Written Statement, the Deponent has no comments to offer.
8. That, while categorically denying the statements made in paragraph 4.5 of the Written Statement, the Deponent humbly reiterates the statements made in paragraphs 4.6 and 4.7 of the Original Application. Further, the statements made in the said paragraphs clearly reveal the fact that the Respondent authorities were, in fact, considering to offer alternative appointments to the Applicants as per the extant rules.
9. That, while denying the statements made in paragraph 4.6 of the Written Statement, the Deponent states that a policy decision to the said effect already existed as per which the General Manager had the authority to offer and absorb candidates in alternative posts if they failed to clear the Medical Examination for the category A/One (prescribed Medical category for D.A.D). In connection the General Manager had also written two letters dated 10.09.2001 and 18.02.2002

Sri Pranabjyoti Khonikar

Central Administrative Tribunal
Guwahati Bench
04.09.2001
Sri Pranabjyoti Khonikar

advising to absorb the Applicants in alternative jobs. Hence, the statements made contrary thereto are denied by the Deponent.

10. That, with regard to the statements made in paragraph 4.7 of the Written Statement, the Deponent has no comments to offer.
11. That, the statements made in paragraph 4.8 of the written Statement being matters of records, which the Applicants have learnt through reliable sources, the Deponent refrains from making any comments thereon. Further, with regard to the statements made in connection with circular dated 04.09.2001, the Deponent humbly states that the Respondents have conveniently not mentioned the date of applicability of the said circular, which clinches the issue in favour of the Applicants in as much as it has been held time and again in a catena of decisions by the Hon'ble Apex Court that policy decisions would be applicable prospectively unless specifically laid down in the decision itself. In that view of the matter, the Respondents are only trying to escape the inevitable by not granting the Applicants alternative appointments as per the extant rules.
12. That, with regard to the statements made in paragraph 4.9 of the Written Statement, the Deponent has no comments to offer.
13. That, the statements made in paragraph 4.10 of the Written Statement are categorically denied by the Deponent to the extent they are contrary to the policy of the authorities, which was being followed at the relevant point of time. The Deponent further reiterates the statements made in paragraph 11 of the instant

केन्द्रीय प्रशासनिक अपील
Central Administrative Tribunal
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मुवाहाटी नं. १२५/०८
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That, the statements made in first and second sub-paragraphs of paragraph 4.10 of the Written Statement are in no way connected with the Applicants in as much as the statements made therein are applicable to persons who have applied for the post of Drivers/Motorman etc. The Applicants have in no point of time averred that they are eligible to be appointed as Drivers/Diesel Assistant Drivers etc. The claim of the Applicants is for an alternative appointment, which being genuine and legally valid claim cannot be denied by the Respondents. Hence, the statements made in the third sub-paragraph of paragraph 4.10 of the Written Statement stands nullified in view of the submission made herein above.

14. That, the statements made in paragraph 4.11 of the Written Statement, a bare testimony to the fact that the Respondent authorities have failed to understand the claim of the Applicants and the entire crux of the issue. Even admitting that the powers of the General Manager to offer alternative appointment were withdrawn vide circular dated 04.09.2001, the fact remains that the Applicants had been declared successful in the written, physiological and viva-voce test so conducted

Sri Pranab Jyoti Khosla

by the Respondent No. 4 in January, 1998 itself. Thereafter, in February, 1998 the Applicants could not clear the Medical Examination, but were entitled to be appointed in alternative posts. The lacunae on the part of the authorities of not communicating their orders within their Organization cannot be a ground to deprive the Applicants of their legitimate claim. As such, the Deponent humbly submits that the impugned letter dated 31.01.2001, whereby the claim of the Applicants has been rejected, is liable to be quashed by this Hon'ble Tribunal and the authorities are further liable to be directed to offer appointment to the Applicants in alternative posts with retrospective effect with all consequential benefits.

15. That, the statements made in this paragraph and in paragraphs 1, 2, 3, 4 (party), 5, 6, 7, 8, 9 (party), 10, 11 (party), 12, 13, 14. Are true to my knowledge and those made in paragraphs 4 (party), 9 (party), 11 (party), being matters of record are true to my information derived therefrom, which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this affidavit on this the 27th September, 2007 at Guwahati.

Sri Pranabjyoti Khamkar

DEPONENT

Identified by me :



Advocate's Clerk.

