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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. O.A. 153/2007

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SECTION OFFICER (Judl.)

Galita
04/10/17

CENTRAL GOVERNMENT OF INDIA
GENERAL COURT

ORDER SHEET

1. Original Application No. 153/2007

2. Mise Petition No. _____

3. Contempt Petition No. _____

4. Review Application No. _____

Applicant(S) S. N. Singh vs. Union of India & Ors

Advocate for the Applicant(S)

MS. B. Devi & MR. H.K. Das

Advocate for the Respondent(S) Railway... counsel: Bhawali Devi

| Notes of the Registry | Date | Order of the Tribunal |
|--|------------------|---|
| This application is in form of O.P. for Rs. 50/- dep. in the name of PO/BD No. <u>286989962</u> Dated <u>12.6.07</u> | <u>14.6.2007</u> | <p>This is a third round of litigation. The Applicant was found unfit in the medical examination for appointment in B/I category and was advised for cataract operation. Accordingly, he underwent cataract operation. Vide Annexure-10 he was again asked to undergo medical examination for which he had already deposited required fee. The contention of the Applicant is that nothing thereafter is heard from the Respondents though he was subjected to second medical test.</p> |

Regd. No. 1367

Heard Ms. B. Devi, learned counsel for the Applicant. Dr.J.L.Sarkar, learned Railway Standing counsel appearing for the Respondents submitted that notice should be issued to the Respondents.

Steps taken
on 25/6/07.

5/6/07

Contd...

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

Contd.
14.6.2007

Considering the issue involved, issue
notice to the Respondents, returnable within
four weeks.

Post the case on 17.7.2007.

(Ans) 25/6/07. D/No-153
D/ = 644 to 648
2/7/07. /bb/

Vice-Chairman

Notice duly served
on R-5.

17.7.2007

Post the matter on 9.8.2007. In the
meantime Respondents may file reply
statement.

Notice duly served
on resp. nos-2,3,4,5.

/bb/

Vice-Chairman

Notice duly served
on R.No- 2,3,4,5.

28.8.07.

Counsel for the respondents wanted
time to file written statement. Let it be
done. Post the matter on 28.9.07

Vice-Chairman

W/S not biled.

1m

28.9.07. Mr. M.K.Boro, Advocate, (appearing for Mrs.
Bharati Devi) is present for the Respondents. No
reply /written statement has yet been filed in this
matter.

Call this matter on 5th October, 2007 awaiting
reply from the respondents.

W/S not biled.

27.9.07
4.10.07

9
(Khushiram
Member(A)

4
(Manoranjan Mahanty
Vice-Chairman

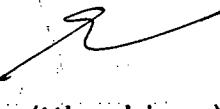
05.10.07.

Despite Notices, none ~~has~~ entered appearance for the respondents in this case. No Written Statement has yet been filed by the Respondents/Railways in this case.

In the said premises we request Dr. J.L. Sarkar, learned Standing Counsel appearing for the Railways to take steps for proper representation of the Respondents and for filing of Written Statement in this matter.

Call this matter on 16.11.07.

Send copies of this order to the Respondents for taking steps before 16.11.07.

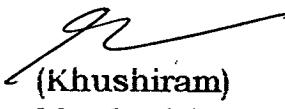

(Khushiram)
Member(A)


Monoranjan Mohanty
Vice-Chairman

lm

16.11.07.

It is a Division Bench matter. Call this matter on 6th December, 2007 for final disposal. Rejoinder, if any, should be filed by 30th November, 2007.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

06.12.2007

In this case written statement has already been filed. Subject to question of law to be examined at the time of hearing this case is admitted.

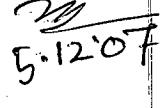
Call this matter on 08.01.2008.

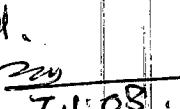
Rejoinder, if any, to be filed well before 31.12.2007.


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

/bb/

Rejoinder not filed.

5.12.07


7.1.08

08.01.2008 Mr H.K. Das, learned Counsel appearing for the Applicant, files a rejoinder after serving a copy on the learned Counsel for the Respondents/ Railways.

Call this matter on 06.02.2008 for hearing. Reply, if any, to the rejoinder may be filed well before the next date.

16.1.08

Rejoinder filed
by Applicant.
Copy served.

nkm


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman


06.02.2008

Call this matter on 14.3.2008.

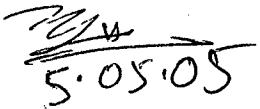

(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

Lm

14.03.2008

Call this matter on 06.05.2008.


nkm


(M.R. Mohanty)
Vice-Chairman

06.05.2008

Call this matter on 29.05.2008.


nkm


(M.R. Mohanty)
Vice-Chairman

29.05.2008

29.5.08.

Pl. send copies of this order to respondents.

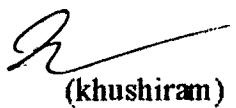
Order dt. 29/5/08

Send to D/Section for
issuing to respondents
by post. D/N-2701 Lm

(as) 2705
3/6/08. D/t 5/6/08.
The case is ready.

Mr.H.K.Das, learned counsel appearing

for the Applicant is present. None for the
Respondents. Send copy of this order to Rep at
the address given as above.
Call this matter on 04.07.2008.


(khushiram)
Member(A)

3.07.08

OA-153/07

04.07.08 Heard Mr H.K.Das, learned counsel for the Applicant and Mrs B. Devi, learned counsel for the Respondents. We have perused the materials placed on record.

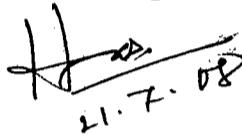
Hearing concluded. Order reserved.


(R.C.Panda)
Member(A)


(M.R.Mohanty)
Vice-Chairman

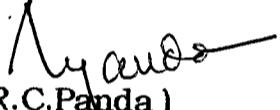
Received copy for applicant

pg


H.K.Das
21.7.08

07.07.08

Judgment pronounced in open Court, kept in separate sheets. The Application is dismissed in terms of the order. No costs.


(R.C.Panda)
Member(A)


(M.R.Mohanty)
Vice-Chairman

pg

11.8.08
Copy of the Judgment
sent to the parties
for record. The same
to the parties
alongwith a copy to
the Rly. Legal counsel.
H.K.Das

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 153 of 2007

DATE OF DECISION: 07.07.2008

Shri Sachida Nanda Singh Applicant/s
Shri H,K,Das Advocate for the
..... Applicant/s.

- Versus -

Union of India & Others Respondent/s
Smt. B.Devi, Railway Counsel Advocate for the
..... Respondents

CORAM

THE HON'BLE MR. MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE DR.R.C.PANDA, ADMINISTRATIVE MEMBER

4. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No
5. Whether to be referred to the Reporter or not? Yes/No
6. Whether to be forwarded for including in the Digest Being compiled at Jodhpur Bench & other Benches ? Yes/No
7. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

Vice-Chairman/Member (A)

My auto

A

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.153 of 2007

Date of Order: This, the 7th Day of July, 2008

HON'BLE SHRI MANORANJAN MOHANTY, VICE CHAIRMAN

HON'BLE DR.RAMESH CHANDRA PANDA, ADMINISTRATIVE MEMBER

Shri Sachida Nanda Singh
Ex Casual Labour of
North East Frontier Railway
At No.6, Railway Colony
Quarter No.360, Pandu
Guwahati-12, Assam.

..... Applicant.

(By Advocate: Shri H.K.Das)

- Versus -

1. Union of India
(represented by the Secretary
to the Government of India)
Ministry of Railways
Railway Bhawan
New Delhi - 110 001.
2. General Manager (P)
N.F.Railway, Maligaon
Guwahati-11.
3. Deputy Chief Engineer
Bridge/Line, N.F.Railway
Maligaon, Guwahati-11.
4. Deputy Chief Accounts Officer (Cash & Pay)
N.F.Railway, Maligaon
Guwahati.
5. Medical Officer
Central Hospital
N.F.Railway, Maligaon
Guwahati. Respondents.

(By Advocate: Smt.B.Devi, Railway counsel)

My and

ORDER
07.07.2008

DR. RAMESH CHANDRA PANDA, MEMBER (A):

Applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for a direction to the Respondents to appoint him in any Group D post (in terms of the select list prepared pursuant to Screening Test dated 21.03.1979) with retrospective effect i.e., from the date on which his junior was appointed.

2. The Applicant claimed that he was appointed as Khalasi and worked continuously with few breaks. The Applicant stated that he was in the select list after the Screening Test conducted in 1979. It is seen that the Applicant was engaged as casual labour in the Bridge Division of Deputy C.E., Bridge Line, N.F.Railway, Maligaon, Guwahati on stop gap arrangement in 3 different spells from 26.11.1976 to 15.12.1976, from 21.12.1976 to 15.03.1977, and 20.12.1977 to 22.05.1978. The Applicant was finally disengaged on 23.05.1978 and was not engaged thereafter.

3. The Respondents stated that in the year 1981, for appointment to the post of Khalasi, former casual labourers were screened and a list was prepared but only 250 such selected casual labourers were appointed in Group D posts and that others could not be appointed due to non availability of vacant posts. Respondents

My aw

have admitted that Md. Bahar Ali (Serial No.455 of the select list) was appointed as per this Tribunal's order dated 19.05.1991 rendered in O.A.176 (G) of 1989.

4. The Respondents have stated further that, as per Railway Board letter No.E/NG/II-78/CL/2 dated 4.3.1987, opportunities were given to ex-casual labourers to represent by 31.03.1987 for consideration of their cases and that the Applicant, who did not prefer any representation before 31.03.1987, sent his application long after the crucial date.

5. The Applicant approached this Tribunal in O.A. No.93 of 1997 and obtained an order dated 26.08.1998 asking the Respondents to consider the representation of the Applicant. Respondents, who received the representation of the Applicant after long period after the due date, rejected the same by their order dated 16/17.08.1999; which became subject matter of O.A. No.408 of 1999.

6. This is the third round of litigation, of the Applicant, filed before this Tribunal. In the earlier case (O.A. No.408 of 1999 decided on 15.02.2001), this Tribunal set aside the Respondents' order dated 16/17.08.1999 and directed them "*to re-examine the case of the applicant afresh and for re-engagement under them*" and "*to take steps for engagement and absorption of the applicant under the Railway Establishment against any available Group D vacancy*"

My answer

befitting "to the status and qualification of the applicant as a special case."

7. The Respondents/Railways approached the Hon'ble Gauhati High Court, against the aforesaid decision of this Tribunal (rendered on 15.02.2001 in O.A. No.408 of 1999) and the Hon'ble High Court decided the said W.P.(C) No.3519/2001 on 01.02.2006 as follows:-

"We are not inclined to interfere with the order of the Tribunal, which directed reconsideration and reexamination of the respondent-applicant's case for absorption in any of the Group D post. But, as has been rightly pointed out by the Standing counsel for Union of India that the Tribunal ought not to have issued positive direction compelling the writ petitioner to absorb and regularise the services of the respondent-applicant in any of the Group D post. It was not open for the Tribunal to issue such positive direction as prayed for by the respondent-applicant.

9. In the result the impugned order is modified and the writ petition is disposed of with the direction to the writ petitioner herein to re-examine and reconsider the case of the respondent-applicant as a 'special case' in any of the future vacancies in Group D post that may arise. Such consideration shall be in accordance with law."

8. Consequent to the aforesaid direction of the Hon'ble Gauhati High Court, the Respondents re-examined and re-considered the Applicant's case and issued offer of appointment in Group D post subject to the Applicant passing in the Medical examination in B-1 category. The Applicant was not found fit in the medical examination,

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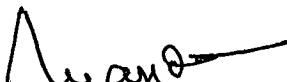
as per the Medical Certificate No.209 dated 12.08.2006 (Annexure-R/A). It is alleged that as per the guidance of Railway Medical authorities, the Applicant got his cataract operated. Subsequently, the Applicant was examined for medical fitness under B1 category and was found (as per Medical Certificate No.479 dated 15.09.2006) medically unfit under B1 category for Group D post (Annexure-R/B). The Respondents state that they have no other option but to reject the offer of appointment given to the Applicant.

9. We have heard Shri H. K. Das, learned counsel appearing for the Applicant and Smt. B. Devi, learned counsel for the Railways/Respondents and perused the materials placed on record. We find that the Respondents have made the best possible efforts as a special case to offer appointment to the Applicant in Group D post. First effort was made by the Respondents in 1987, when the Applicant did not represent in time and belatedly approached the authorities which was rejected by the Respondents. Second opportunity was given to the Applicant (consequent to the directions of Hon'ble Gauhati High Court on 01.02.2006) by offering him appointment in a Group D post. But the Applicant was twice found medically unfit for Group D post. The Respondents had no other option but to reject the same. We agree that medical fitness of employees is an essential ingredient of appointment. Railways require personnel with best of their eye-sight. Since the Applicant was not

My case

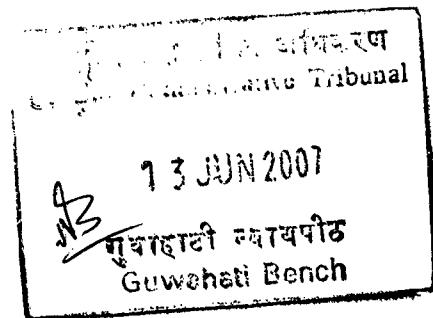
found medically fit, the Respondents are right within their powers to reject the offer of appointment in Group D issued to the Applicant.

10. In view of the above information and discussions, we do not find any merit in this case; which is, therefore, dismissed. No costs.


(RAMESH CHANDRA PANDA)
ADMINISTRATIVE MEMBER


(MANORANJAN MOHANTY)
VICE-CHAIRMAN

/bb/



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case : O.A. No. 153 of 2007

Between

Shri Sachida Nanda Singh ... Applicant.

AND

Union of India & ors Respondents.

SYNOPSIS

The applicant was working under the respondents as a casual labour. He praying for his regular absorption in group-D post earlier approached this Hon'ble Tribunal twice. Instant application is a third round of litigation of the applicant. Inspite of direction from this Hon'ble Tribunal the respondents have not yet appointed the applicant in group-D post. Situated thus the applicant has come within the protective hands of this Hon'ble Tribunal seeking redressal of his grievances.

Dni

Advocate

13 JUN 2007

গুৱাহাটী বিধায়কী
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case : O.A. No. 153 of 2007

Between

Shri Sachida Nanda Singh ... Applicant.

AND

Union of India & ors Respondents.

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Filed by : *Sachida*

Regn. No. :

File : SACHIDA

Date : 11.6.07

| |
|--------------------------------------|
| Guwahati Bench |
| 17.06.2007 |
| प्रतिक्रिया दिनांक Guwahati Bench |

File by:-
the Applicant
through
Bordomor Dori
Schorolt
11.6.07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

O.A. No. 153 of 07.

BETWEEN

Sri Sachida Nanda Singh
Ex. Casual Labour under
BRI/PNO, N.F. Railway
Pandu Guwahati.

.....Applicant.

-AND-

1. Union of India,
(Represented by the Secretary
to the Govt. of India,
Ministry of Railway,
Railway Bhawan,
New Delhi-110001.
2. The General Manager(P)
N.F. Railway, Maligaon,
Guwahati-11
3. The Deputy Chief Engineer,
Bridge/Line, N.F.Railway,
Maligaon, Guwahati.
4. The Dy. CAO/Cash and Pay
N.F.Railway, Maligaon, Guwahati.
5. The Medical Director,
Central Hospital, N.F.Railway
Maligaon, Guwahati.

.....Respondents.

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION IS

MADE

This application is not made against any particular order but has been made against the action on the part of the respondents in not considering his case for appointment in any Group D post.

S Singh

2. LIMITATION:

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act, 1985.

3. JURISDICTION:

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE

4.1. The applicant is a citizen of India as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2. That the applicant was initially appointed under the respondents as Khalasi in the year 1976 and his said appointment was followed by a screening test held in the year 1979 i.e. 21.3.1979. The applicant in the capacity of Khalasi worked under the respondents for several years but there were certain artificial breaks in his service. During his service period he was made to work as regular Group 'D' employee and he was issued with an identity card showing him as an employee under the respondents. Similar types of identity cards were also issued to the other regular Group 'D' Khalasis and he was paid salary for the period he worked under the respondents.

4.3. That as stated above in the year 1979 i.e. on 21.3.1979 a screening test was held and the said test was

ASingh

conducted by the Assistant Personnel Officer, N.F.Railway, for recruitment of Group 'D' Khalashi. The applicant along with many other casual Khalasi appeared in the said screening test and the applicant came out successfully in the said screening test. The name of the applicant appeared in the Select List of successful candidates at serial No. 429. The aforesaid Select List was further approved by the Chief Personnel Officer and appropriate direction was also issued for their absorptions as Group 'D' Khalashis in the scale of Rs. 750-940/- under A.S.T.E. (WS)/PNO against 50% quota meant for screened and approved casual labours/substitutes.

4.4. That pursuant to the said screening test the respondents absorbed some of the casual khalashis in the Group 'D' posts in phase manner in order of their position in the Select List after following the due process of law. In the said process of appointment the applicant in his turn was asked to deposit Rs. 8/- on account of Pre-recruitment Medical Examination Fee along with an application form for the purpose of his absorption in the Group 'D' post. Accordingly the applicant after receipt of the said order visited the office of the respondents to deposit the amount of Rs. 8/- and the form mentioned above but the same was refused to him stating that he became overaged at that relevant time.

4.5. That along with the applicant many other casual khalashi's forms were rejected by the Railway Authorities and situated thus some of the similarly situated employees like that of him approached this Hon'ble Tribunal by way of



filling O.A. No. 176 (G) of 1989. The aforesaid application was filed by one Sri Bahar Ali claiming the similar benefit like the present applicant whose serial no. was 455 in the said Select List and who was much junior to the present applicant. The Hon'ble Tribunal on 19.3.1991 was pleased to allow the prayer of the applicant thereto with a further direction to appoint him to a post of Group 'D' Khalashi with retrospective effect.

A copy of the Judgement and Order dated 19.3.1991 is annexed herewith and the same is marked as ANNEXURE-1

4.6. That the applicant begs to state that he being a selected candidate of the screening test held on 21.3.79, the respondents now cannot deny the result of the said test. In the said test the applicant came out successfully and his name appeared in the serial No. 429 under the BRI/PNO. The respondents after the screening test cannot deny the recruitment on the name of "Ban" on Recruitment at that relevant time. It is categorically mentioned here that under the similar fact situation said Sri Bahar Ali who was also found overaged has been regularised who was much junior to the applicant so far it relates to the merit position obtained in the screening test. The applicant thereafter pursuing the matter before the authorities but same was never considered positively.

4.7. That the applicant begs to state that being aggrieved by the aforesaid action on the part of the respondents and having no other alternative, he was

constrained to approach this Hon'ble Tribunal by way of filing O.A. No. 93 of 1997 praying for a direction to the respondents for his regularisation to the post of Group 'D' khalasi under the respondents. The applicant in his said O.A. while highlighting the aforesaid facts also highlighted the case of one Sri K.J. Reddy who was also junior to the applicant in the said screening test and whose position was at serial No. 529 in the said Select List who was subsequently regularised by the respondents. The said Original Application came up for hearing before the Hon'ble Tribunal on 26.8.98 and after hearing the parties to the proceeding the Hon'ble Tribunal was pleased to dispose of the said Original Application with a direction to the respondents to dispose of the representation of the applicant within a period of 60 days from the date of receipt of the copy of the said representation.

A copy of the said judgement and order dated 26.8.98 is annexed herewith and marked as ANNEXURE-2.

4.8. That the applicant as per the direction of the Hon'ble Tribunal submitted his representation on 31.8.98 to the General Manager(P), N.F. Railway, Maligaon with a copy to the Deputy Chief Engineer, Bridge Line, N.F.Railway, Maligaon enclosing the copy of the judgement and order dated 26.8.98. After receipt of the representation dated 31.8.1998, the Deputy Chief Engineer, Bridge Line, Maligaon issued an order dated 16/17.8.99 by which the representation filed by the applicant was rejected. In the said order the respondents stated that at this stage there is no feasible

ground to entertain his representation since his case do come under purview of latest instructions of the Railway Board.

A copy of the said order dated 16/17.8.99 is annexed herewith and marked as ANNEXURE-3

4.9. That the applicant begs to state that by the aforesaid impugned order dated 16/17.8.99 the respondents have admitted the fact that he was screened on 21.3.1979 but as to why he was not offered with the appointment order as Group 'D' staff is not known to them. It is further stated that since the applicant has been screened by the Screening Committee, it was the duty of the respondents to issue offer of appointment/ appointment order in due course of time and the plea raised by them in the impugned order regarding expiry of panel is baseless and not sustainable in the eye of law.

4.10. That the applicant challenging the said order dated 16/17.8.99 approached this Hon'ble Tribunal again by filing OA No.408/99. The Hon'ble Tribunal after hearing the parties to the proceeding was pleased to allow the said OA vide judgment and order dated 15.2.01 setting aside the order of rejection dated 16/17.8.99.

A copy of the said judgment and order dated 15.2.01 is annexed herewith and marked as ANNEXURE-4.

4.11. That the applicant begs to state that challenging the said judgment and order dated 15.2.01 the respondents preferred Writ Petition before the Hon'ble High Court which was numbered and registered as WP(C) No.3519/01. The Hon'ble High Court after hearing the parties to the proceeding was pleased to dispose of the same vide judgment and order dated 1.2.06 directing the respondents to re-consider the case of the applicant as 'special case' for appointment in group-D post.

A copy of the said judgment and order dated 1.2.06 is annexed herewith and marked as ANNEXURE-5.

4.12. That the applicant begs to state that immediately after receipt of the judgment and order dated 1.2.06 he submitted the same before the respondents and requested them to appoint him in any group D post. The applicant constantly pursuing the matter before the respondents but the respondents unnecessarily delayed the matter. After about six months the respondents issued a communication dated 10.8.06 directing the applicant to deposit Rs.16/- towards prerecruitment medical fee. In the said communication it was mentioned that the applicant was given offer of appointment in group-D post.

A copy of the said communication dated 10.8.06 is annexed herewith and marked as ANNEXURE-6.

4.13. That the applicant begs to state that immediately

he submitted the said Rs.16 for prerecruitment medical fee on 10.8.06 itself and appeared before the medical fitness test on 11.8.06. But the respondents declared the applicant unfit in B/1 category for eye , and verbally advised him for cataract operation. Accordingly the applicant has done his cataract operation in Sankardeva Netralaya,Guwahati on 16.8.06 and advised rest upto 12.9.06.

A copy of the medical certificate is
annexed herewith and marked as
ANNEXURE--7

4.14. That the applicant begs to state that he submitted an application before the respondents on 4.9.06 stating about his cataract operation and also requested the authority concern to do the needful in the matter at an earliest. But the respondents have done nothing in the matter.

A copy of the application dated
4.9.06 is annexed herewith and
marked as ANNEXURE--8

4.15. That the applicant continuously pursuing the matter before the respondents but same yielded no result in positive. The respondent No.3 on 14.9.06 issued a communication to the respondent No.5 for reexamination of the case of the applicant in B/1 category. In the said communication the Ly. OE/BR/Line/MLG also directed the Medical Director to communicate his decision in which category he is fit if found him unfit in B/1 category again.

A copy of the said communication dated 14.9.06 is annexed herewith and marked as ANNEXURE-9.

4.16. That the applicant begs to state that the respondents thereafter have issued an order dated 15.9.06 directing the applicant to deposit an amount of Rs.16 again for prerecruitment medical fee. The applicant on 18.9.06 deposited the said amount for prerecruitment medical fee and submitted the receipt before the respondents and medical examination was also held on the same day.

Copies of the order dated 15.9.06 and cash memo dated 18.9.06 are annexed herewith and marked as ANNEXURE-10 and 11

4.17. That the applicant begs to state that the respondents even after re-examination of the applicant are keeping silent towards his appointment. He has been repeatedly pursuing the matter before the respondents but same yielded no result in positive. Situated thus the applicant served a legal notice dated 21.2.07 upon the respondents making a demand to appoint him in any group D post. But the respondents have done nothing in the matter till date.

A copy of the legal notice dated 21.2.07 is annexed herewith and marked as ANNEXURE-12.

4.18. That the applicant begs to state that his case is

squarely covered by the earlier judgment of the Hon'ble Tribunal passed in O.A. No. 176(G)/89 decided on 19.3.1991, pursuant to which the juniors of the applicant has been appointed to the post Group 'D' Khalasi under the respondents. It is therefore the applicant through this application prays before Your Lordships for a direction to the respondents to issue necessary appointment order in respect of the applicant with retrospective effect i.e. from the date when his juniors were so appointed.

4.19. That the applicant begs to state that the respondents are delaying the matter only with the sole purpose to frustrate the genuine claim of the applicant. It is pertinent to mention here that all other similarly situated persons are working under the respondents, only the applicant is out of employment till date on no fault on his part.

4.20. That this application is made bonafide and for the ends of justice.

5. Grounds for relief with legal provisions:

5.1. For that the action/inaction on the part of the respondents in not issuing the order of appointment in favour of the applicant is arbitrary and violative of Principles of Natural Justice.

5.2. For that the applicant being an experienced and selected candidates for the post of Khalasi by the duly approved Screening Test the respondents ought to have

S. Singh

offered the order of appointment immediately after the said Screening Test or as and when the vacancy arose.

5.3. For that the applicant has acquired a valuable and legal right after being selected for the post of Group 'D' by the duly constituted Screening Committee, more so, when his juniors have been appointed ignoring his legitimate claim of regular absorption.

5.4. For that there being a clear cut rule for absorption of ex-casual labourers in the Railway Establishment Manual even without any screening test the respondents ought to have issued the offer of appointment to the applicant prior to the appointment of his juniors. But the respondents have not done so and rejected his said prayer for regular absorption, therefore the entire action/inaction on their part is not sustainable in the eye of law.

5.5. For that the respondents have directed the applicant to deposit the prerecruitment medical fee twice, but till date nothing came out fruitful in this regard, hence the action on the part of the respondents is highly unsustainable in the eye of law.

5.6. For that there being a clear cut direction from the Hon'ble Tribunal in the similar matter, the respondents ought to have followed the said direction in respect of the applicant also having not done so the entire action of the respondents is liable to be set aside and quashed.

5.7. For that in any view of the matter the

action/inaction on the part of the respondents is not sustainable in the eye of law.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds both factual as well as legal at the time of hearing of this case.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant declares that he has exhausted all the remedies available to them and there is no alternative remedy available to him.

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

The applicant further declares that he has not filed previously any application, writ petition or suit regarding the grievances in respect of which this application is made before any other court or any other Bench of the Tribunal or any other authority 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 most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

8.1. To direct the respondents to appoint the applicant



in any Group 'D' post in terms of the Select List prepared pursuant to Screening Test dated 21.3.1979 with retrospective effect i.e. from the date on which the juniors were so appointed with all consequential service benefits.

8.2. Cost of the application.

8.3. Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case, and as may be deemed fit and proper by the Hon'ble Tribunal.

9. Interim order prayed for

In view of the facts and circumstances stated above, the applicant does not pray for any interim order at this stage.

10. *****

This application is filed through advocate.

11. Details of the I.P.O.

i. I.P.O.No. 286 989962
ii. Date of Issue 12.6.07
iv. Payable at Guwahati

12. List of enclosures-As stated in the index.

VERIFICATION

I, Sachida Nanda Singh, Son of late Deo Prasad Singh aged about 53 years, resident of No.6 Railway Colony, Pandu, Quarter No. 368 Pandu, Guwahati-12, do hereby verify and state that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice. And I have not suppressed any material facts of the case.

And I sign this verification on this the 11th day of June, 2007.

Sachida nand Singh

Signature

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

35
ANNEXURE-1

Original Application No. 176(G) of 1989

Date of decision:- the 19th ~~July~~ day of 1991

Shri Bahar Ali, son of Md. Bharali, Ex-Khalasi
under Asstt. Signal and Telecommunication Engineer,
S & T Workshop, Pandu, N.F.Railway.

... Applicant.

Versus

1. Union of India (through Chief Personnel Officer +
Chief Signal and Telecommunication Engineer,
Maligaon, Guwahati).
2. Chief Personnel Officer, N.F.Railway, Maligaon,
Guwahati-II.
3. Chief Signal and Telecommunication Engineer (P),
Maligaon, N.F.Railway, Guwahati-II.
4. Assistant Signal and Telecommunication Engineer,
S & T Workshop, Pandu, N.F.Railway.

... Respondents.

For the applicant M/S A.S. Choudhury,
Q.S. Kutubuddin, Advocates.

For the respondents Mr. R.K. Sharma, Railway
Standing counsel.

Attested


Advocate.

JUDGMENT

J.C.ROY.

In this application under Section 19 of the Administrative Tribunals Act, 1985 Md. Bahar Ali has prayed for a direction to the opposite parties for appointing him as a Khalasi on regular basis in terms of the offer of appointment dated 11.10.1988 (Annexure 4).

2. In brief the facts of the case are that the petitioner worked as a casual labour (substitute khalasi) from January 1976 under the Project Division of N.F.Railway. Between 2.1.1976 to 15.11.1978 he completed more than 530 days of engagement as a substitute khalasi in four different spells. He was screened for a regular Group D appointment on 21.3.1979 but was not offered either any casual or regular appointment till the offer of appointment at Annexure 4 dated 11.10.1988.

Prior to that the Chief Signal and Telecommunication Engineer, HQ, N.F.Railways issued a list of eight persons, all the casual labourer/substitutes who were approved for absorption as khalasi in the scale of Rs. 750-940. This circular dated 10.10.1988 forms subject matter of Annexure No.2. According to the offer of appointment, the candidate had to deposit Rs. 800 towards pre-recruitment medical examination fees and to file certificate in support of his age and qualification. When the petitioner went for completing these pre-requisites, he was refused the deposit of fees and file the certificate of age. He was verbally told that he would not be absorbed as a regular khalasi as he had become over-aged at the relevant time i.e. in the year 1988. According to the

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copy of the transfer certificate filed by the petitioner at Annexure 5, the petitioner had read upto Class V and was 14 years and 1 month old on 31.12.1970. In other words based on this certificate his date of birth is 31.11.1956. It will thus be seen that both at the time of his initial engagement as a casual labour and also on the date of screening for absorption, i.e. on 21.3.1979, the petitioner was well within the age of recruitment which ranges from 18 years to 25 years. In fact on the date of his screening test according to the rules laid down in Rule No. 2512(iii) of Chapter XXV of Indian Railway Establishment Manual (Second Edition) (for short, I.R.E.M.) the age of the petitioner was 23 years and 8 months. 530 days could have been deducted for making him eligible to take this screening test. The offer of appointment was withdrawn from the petitioner because on 11.10.1988 when the offer was made he was over 32 years and even after deducting 530 days of his engagement as casual labour he would have been overaged. The applicant represented against this decision of the Railways, communicated to him verbally, and after having got no reply the petitioner filed the present application. His prayers are for issuing a direction to the opposite parties for appointing him as a temporary khalsi in accordance with the offer of appointment at Annexure 4 and also to deem him to be in continuous service with effect from 11.10.1988, the date when he offered himself for the appointment.

3. The application was admitted on 11.12.1989 and although the learned Standing counsel for the Railways requested for several adjournments no counter was filed for

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nearly one year. Finally, we decided to hear the case without counter on 31.7.1990. The case was actually heard by us on 29.10.1990 and still then no counter was filed.

On the date of hearing Mr. B.K. Sharma, the learned Standing counsel for the Railways argued the case and filed a copy of the parawise comment received from the Railway authorities. Although these comments were read out in the open Court on the date of hearing no copy of this document was served on the petitioner or his counsel. It is not possible for us therefore, to accept any fact mentioned in this document which contradicts or seeks to question the averment made in the petition. However, with the consent of Mr. A.S. Choudhury, the learned counsel for the petitioner we propose to utilise this statement to the extent ~~that~~ they have categorically admitted the facts stated in the petition.

None of the facts stated by the petitioner and summarised in the preceding paragraph has been disputed by the Railways.

The documents annexed with the petition including the impugned offer of appointment dated 11.10.1988 were not challenged.

The two arguments made in the parawise comments are

(a) that Annexure 2 declaring eight candidates including the applicant was approved for absorption as Khalasi and

(b) Annexure 4, the offer of appointment ~~was made~~ ^{were issued} erroneously because the petitioner was beyond the age group. The

second point made was that the General Manager, N.F.Railway

had decided that out of 17 posts of Khalasis to be filled

up under Asstt. Signal Telecommunication Engineer, Workshop,

Pandu, 9 vacancies were to be filled up by outsiders

candidates sponsored by the Employment Exchange and 8

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vacancies by transferring khalasis/casual labourers on regular employment on the basis of their option for open-line organisation. The concerned subordinate officers (appointing authority) wrongly interpreted the above mentioned order of the General Manager and sent 10 names including the petitioner's name under the wrong impression that they were regular employees under the Division who had opted for Signal Workshop. The approval of appointment of the petitioner therefore was accorded as a result of two different errors. The offer of appointment went out also erroneously and the refusal appointing the petitioner is only by way of rectifying an administrative error. As already pointed out by us that this argument cannot be taken cognizance of in deciding this case because the petitioner got no opportunity to verify the facts and to rebut these arguments. We cannot allow a party to take his advisary by surprise.

4. Mr. A. S. Choudhury, the learned counsel argued that the petitioner worked for more than 530 days ~~and it is~~ spread over nearly 3 years and thus he attained temporary status and qualified himself for getting a regular appointment. He was accordingly screened in March 1979 and was successful against Sl. No. 455 of the list of the result of screened casual labourers. This Sl. No. 455 appears against the petitioner in Annexure no. 2 and has been admitted even in the parawise comment of the opposite parties. At that time the petitioner was well within the prescribed age limit for getting a regular Class IV appointment. It was not the petitioner's fault that from 1979 to 1988 he was not offered a regular job. The regular job was offered to him in writing in October 1988 by Annexure 4. Admittedly

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by that time he had crossed the age of 30 years. In the offer of appointment there was no mention that the appointment is subject to his being within the age of recruitment although he was required to furnish certificate of educational qualification and medical fitness. Finally, Mr. Choudhury submitted that the applicant is ^a very poor man who served the Railways for long years as a casual labour and passed the screening test 11 years ago with the sole aspiration of getting a regular Class IV employment. The tantalising offer of appointment followed by its withdrawal without any written order has shattered his hope for the future. He also pleaded that Shri Bhabatosh Ghosh who was also approved for regular absorption as khalasi (Annexure 2) was also sought to be discharged after appointment on the ground that he was over-aged. He sought redress of his grievance before this Tribunal and the petition was registered as O.A.No.63/89. Shri Ghosh still continues in service as khalasi as the Tribunal injuncted his discharge by its order dated 20.6.1989. Although the petitioner is exactly similarly placed, after 1½ years, he is without any means of livelihood.

5. Mr. B.K. Sharma on the other hand argued that the applicant last worked as casual labour in November 1978 and after that he passed the screening test held in March 1979. Thereafter, he had no relationship with the Railways and to that extent the sharpness of the claim of the petitioner loses its edge. He also verbally argued the point, we have already mentioned as contained in the parawise comments furnished

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Exceeds maximum age

by the Railway authorities, that the offer of appointment was made by mistake. In 1988 the applicant was well over the maximum age prescribed for such appointment and therefore he cannot be appointed.

6. We have given our anxious consideration to the arguments advanced by both sides. There is no dispute about the fact that the petitioner had completed all the steps prescribed for regular appointment from amongst the casual labourers of the Railways when he came out successful in the screening test. There is nothing before us to show that after that he was offered any regular appointment either in the Project side or in the open-line till the impugned offer of appointment in October 1988 was given to the petitioner. In cases after cases the Apex Court has been exhorting Government departments and agencies to have a rational screening programme for regularisation of casual labourers working for long years. To this extent, we cannot hold that the long period of non-engagement of the petitioner ~~can be held~~ was due to his fault. It was incumbent on the Railways to have offered him a suitable appointment shortly after he fulfilled all the conditions for a regular appointment in March 1979. Even though they failed to do so for long 9 years and during this period the applicant has crossed the maximum age for appointment, it is but just and fair that the appointing authority should relax the age limit in favour of the petitioner. This is also the spirit of Rule 2512(iii) of

contd.

Chapter XXV, I.R.E.M. We quote below the sub-rule in full:

~~" 2512. Absorption of Casual Labour in regular vacancies.~~

(i)

Casual labour who acquire temporary status as a result of having worked on other than projects for more than 6 months or who have worked for more than 6 months, shall be considered for regular employment without having to go through Employment Exchanges. Other Casual Labour who have not completed six months, will, of course, be required to get themselves registered in the relevant Exchanges before they are considered by the Selection Boards. They will have a prior claim over outsiders. In order to ensure this, the names of all casual labour, wherever employed, should be entered in the registers maintained by Divisions or Districts or by any other convenient unit of recruitment strictly in the order of their taking up casual appointment at the initial stage, and for the purposes of empanelment for regular class IV posts, they should, as far as possible, be selected in the order maintained in the aforesaid registers. While showing preference to casual labour over other outsiders in the matter of recruitment to regular class IV establishment, due consideration and weightage should be given to the knowledge and experience gained by them, other conditions being equal, total length of service as casual labour, either continuous or in broken periods, irrespective of whether they have attained the temporary status or not, should be taken into account so as to ensure that casual labour who are senior by virtue of longer service are not left out.

(ii)

Casual labour engaged in workcharged establishments of certain Departments who get promoted to semi-skilled, skilled and highly skilled categories due to non-availability of departmental candidates and continue to work as casual employees for a long period, shall straightaway be absorbed in regular vacancies in skilled grades provided they have passed the requisite test to the extent of 25% of the vacancies reserved for departmental promotion from the unskilled and semi-skilled categories. These orders also apply to the casual labour who are recruited directly in the skilled

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categories in workcharged establishments after qualifying in the trade test.

(iii) The casual labour referred to in items (i) and (ii) above who joined service before attaining the age of 25 years may be allowed relaxation of the maximum age limit prescribed for class IV posts to the extent of their total service which may be either continuous or in broken periods. M.D.P

(Clause iii stressed by us)

We are therefore, of the firm view that refusal to appoint the candidate after offering him the post of a regular khalasi on the ground that he is overaged on the date of appointment was against equity and justice and fairplay. The poor candidate was refused when he went to file the certificate of his educational qualification and the fees for medical examination. He was only verbally told that he is overaged and cannot be employed. One would wish that the Railway's extend the elementary courtesy of cancellation of an offer of appointment by a reasoned and written communication. This cavalier manner is highly reprehensible and the higher Railway authorities should take note of our strong displeasure in this matter. The petition, therefore, succeeds and is allowed. The petitioner shall be appointed after he fulfills the conditions laid down in the offer of appointment at Annexure 4 and the formalities must be completed within a period of 30 days from the date of receipt of a copy of this judgment. As for the petitioner's seniority he shall be deemed to have been appointed as a temporary khalasi with effect from 11.10.1988, i.e. the date when he presented himself for accepting the offer of

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appointment at Annexure 4. But since he has not actually worked during the intervening period before he actually joins as khalasi we pass no order regarding any arrears.
No costs.

Sd/- VICE CHAIRMAN
Sd/- MEMBER (A)

Certified to be true Copy
प्राणित प्रतिलिपि


COURT OFFICER
Court of
Guwahati
Assam
प्राणित प्रतिलिपि

VIPULIA

32

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 93/1997

Date of Order: This the 26th August 1998.

HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER

Sri Shachida Nanda Singh
Ex. Casual Labour Under
BRI/PNO
PANDU GAUHATI

... ... Applicant

By Advocate Mr. S. Barma

-Vs-

1. Union of India
Represented by the Secretary
to the Govt. of India
Ministry of Railway
Rail Bhawan, New Delhi.
2. The General Manager(P)
N.F.Railway
Maligaon, Guwahati
3. The Dy. Chief Engineer/Bridge/Line
N.F.Railway
Maligaon, Guwahati. Respondents.

By Advocate Mr. J.L. Sarkar.

O R D E R.



Once the applicant was a Casual Khalasi under the North East Frontier Railway. On 28-5-1997 he submitted this application praying for a direction to the respondents to absorb him in their regular establishment. The respondents have submitted written statement and resisted the prayer of the applicant. Counsel of both sides have been heard.

2. According to the applicant he was a casual employee "Khalasi" from 26-11-76 to 15-12-76, from 21-12-76 to 15-3-77 and from 20-12-77 to 22-5-78 under the Deputy Chief Engineer, Bridge, Line, Maligaon. Further according to him he was screened on 21-7-79. In support of this

Attested

Signature

Advocate.

contd/-

contention he produced a list of screened Ex-Casual Labour under Bridge Division as published by letter dated 6-3-81 of the Deputy Chief Engineer, Bridge (line), N.F. Railway, Maligaon, in which his name appears at Sl. No. 429. In the aforesaid provisional list of screened Ex-Casual Labourers the name of one K.Joglu Reddy also appeared at Sl.No.529. However, thereafter no further appointment was given to the applicant. He kept quiet about the matter since then. But in the year 1997 Sri Reddy was appointed as a regular group D employee. Thereupon according to him, the applicant submitted representations to the authorities praying for appointment. However, there was no response from the respondents.

Mr.J.L.Sarkar, learned Railway counsel, submitted that the claim of the applicant that Shri Reddy was appointed on the basis of the alleged screening test shown by the applicant above is not correct. In fact, casual labourers working under different units were screened by the screening Committee and found suitable for absorption as Group 'D' employees vide No.EW/57/4 Pt.1 (loose) dated 9-1-97. Shri Reddy who was continuously working as Casual Labourer under the Railway since 20-3-1985 participated in the aforesaid screening test and he was found suitable and he was subsequently appointed by office order No.5 dated 21-1-97. In this test Shri Reddy occupied position No.41. After considering the submissions of both sides and the facts of the case I am of the view that the applicant has no case on merit. He has founded his case on the appointment of Sri Reddy. The facts show that such appointment does not confer any right to the applicant to agitate in this application for his own appointment.

contd/-

However, considering the submission of Mr. S. Sarma that there is a policy to the effect that Casual workers who were engaged before 1-1-84 but discontinued due to non-availability of work would be considered for appointment in the Railway by the respondents, the fact that the applicant was a casual employee and his services was dispensed with before 1-1-1984 and that he was once screened as claimed by him, the applicant may submit a representation afresh to the respondents. Further, the respondents are directed that, if such representation is received from the applicant, they shall dispose of the representation by a speaking order within 60 days from the date of receipt of the representation.

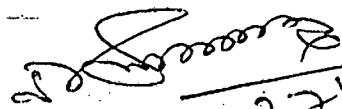
3. The application is disposed of in the lines indicated above. No order as to costs.

50)

Member (A)

Certified to be true Copy

प्रभाषित प्रतिलिपि



Section Officer (A)

27/8/98

ग्राम्य अधिकारी (न्यायिक न्याय)

Central Administrative Tribunal

केन्द्रीय प्रशासनिक अधिकारी

Guwahati Bench, Guwahati-6

प्रभाषित अधिकारी, कामाख्य

18/27/8

H. E. RAILWAY.

NO. EW/261/1.

Maligaon, dated, 16 -8-99.

To

Shri Sachidananda Singh.
Qrs. No. 360/B, 6 No. Rly. Colony.
Pandu, Guwahati-12.

Sub: Your representation dated NIL
for consideration of regular
absorption in Group - D post.

As per direction of Hon'ble Central Administrative Tribunal/Guwahati vide their order dated 26-8-98 you have submitted your representation on 31-8-98 to General Manager (P) as you have worked under Dy. CE/Br. Line you should submit your representation to Dy. Chief Engineer/Bridge Line/N.F. Railway, Maligaon. But you had submitted your representation to General Manager (P) which may perhaps misplaced some where as it was not directly concerned to the General Manager (P). However, the undersigned has gone through your representation dated NIL annexed as Annexure-2 to the contempt petition and understood the content therein.

It is admitted fact that you have been engaged as Casual Labour in the Bridge Line division from time to time by extra labour requisition for very casual nature of job. On completion of the work you were discharged w.e.f. 25-5-78 and thereafter you were not re-engaged. The Casual Labours who have worked in this Railway prior to 14-1-81 and have not been absorbed on the Railway were given opportunity as per orders of Supreme Court to apply to the respective Head of the unit before 31-3-87 for registration of their names in the Live Register/Suppl. Live Register of Casual Labour for their future engagement. But you did not apply for registration of your name.

It may be a fact that you had been screened on 21-3-79. But it is not understood as to why you had not been absorbed on regular basis in Group - D post and after lapse of 20 years it can not be ascertained at this stage as to why your case for regular absorption was not considered. In the meantime life of the panel is also over. On scrutiny, it is understood that none of your junior was absorbed in Group-D post on regular basis.

Statement made by you that one Shri K.G. Reddy was appointed on the basis of screening held on 21-3-79 is not true. Shri Reddy was continuously working as CL in this Rly. since 20-3-85. He was screened by the screening committee and found suitable for absorption in Group-D post vide No. EW/57/4/Pt.I (Loose) dt. 9-1-97 and appointed as Kh. under AC/BR/PNO w.e.f. 21-1-97. As such you can not claim for an appointment at par with Shri Reddy.

According to instructions and procedure laid down by the Rly. Bd., discharged CL were given chance to apply to register their names in suppl. Live Register before 31-3-87 and no case has been entertained who applied after 31-3-87. Since you did not apply within the stipulated time limit, your case for consideration is not feasible at this stage as the case does not come under the purview of latest instruction of the Rly. Board.

Attestation

16/8/99
Dy. CE/BRIDGE LINE/MALIGAON

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 408 of 1999.

Date of Order : This the 15th Day of February, 2001.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

The Hon'ble Mr K.K.Sharma, Administrative Member.

Sri Sachidananda Singh,
Ex.Casual Labour under
BRI/PNO, N.F.Railway,
Pandu Guwahati.

... Applicant.

By Advocate Sri U.K.Goswami.

- Versus -

1. Union of India
represented by the Secretary
to the Govt. of India,
Ministry of Railways,
Rail Bhawan,
New Delhi-1.

2. The general Manager(P)
N.F.Railway, Maligaon,
Guwahati-11.

The Deputy Chief Engineer,
Bridge/Line, N.F.Railway,
Maligaon, Guwahati.

... Respondents.

By Advocate Sri J.L.Sarkar, Railway standing counsel.

O R D E R

CHOWDHURY J. (V.C)

By this application under Section 19 of the
Administrative Tribunals Act 1985 the applicant has
assailed the legality of the order dated 6.8.99 passed
by the Dy.CE/Bridge Line/Maligaon declining to consider
the case of the applicant for absorption. The applicant
was appointed by the respondents as Khalasi in the 1976.
The said appointment was made pursuant to a screening test
held in the year 1979. According to the applicant he worked
under the respondents continuously though there were some
artificial break. For all practical purposes according to

contd..2

*Pran
P.W.D.
S.Y.C.E.
A.W.D.
101 B.I.L.C.*

Attested

[Signature]
Advocate.

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the applicant he worked as a regular Group D employee and was issued an identity card showing him as an employee under the respondents. He claimed that in the year 1979 i.e. on 21.3.1979 a screening test was held and the said test was conducted by the Assistant Personnel Officer, N.F.Railway for recruitment to Group D Khalasi. He appeared in the test and came out successful. His name appeared in the select list at serial No.429. The said list was approved and direction was also issued for their absorption as Group D Khalasi against 50% quota meant for screened and approved casual labour/substitutes. Since the applicant was not absorbed pursuant to the selection mentioned above the applicant moved the Tribunal by filing O.A.No.93/97 which was disposed of on 26.8.98. The Tribunal partly upheld his case and issued direction on the respondents to consider his case for appointment in the Railways on the ground that the applicant was a casual employee and his service was dispensed with in the year 1984 and he was once screened as claimed by him. Accordingly the respondents are directed to consider his representation by giving a speaking order dated 16.8.99 disposed of his representation. The respondents did not dispute that the applicant was engaged as casual labour in the Bridge Line Division from time to time. On completion of the work he was discharged with effect from 25.5.78 and thereafter he was not re-engaged. The casual labourers who have worked in the Railway prior to 1.1.81 and have not been absorbed were given opportunity as per orders of Supreme Court to apply before 31.3.87 for registration of their names in their future engagement. Since the applicant did not apply his case was not considered. The respondents also stated in the written statement that it was not understood

contd..3

as to why the applicant had not been absorbed on regular basis in Group D post and after lapse of 20 years it can not be ascertained as to why his case for regular absorption was not considered. In the meantime life of the panel was also over. The respondents turned down his case on the ground that since he did not apply in time his case was not considered.

2. We have heard Mr U.K.Goswami, learned counsel for the applicant and also Mr J.L.Sarkar, learned Railway standing counsel for the respondents. Mr Goswami, learned counsel for the applicant submitted that the applicant has come from a poor strata of the society and joined the Railway for the bread of the family. He was screened in the year 1979. The respondents authority could not explain why despite seniority he was not absorbed in the Railway on screening for non availability of the records. The respondents also declined to consider his case despite a direction of the Tribunal only on the ground that the applicant did not apply for engagement and his name did not figure in the Supplementary Live Register. At any rate a person of the status of the applicant who was discharged from service could not be punished for the fault of the Railway. A person should not benefit from his own wrong expressed in the maxim 'nullus commodum capere potest de injuria sua propria'. The Tribunal directed for consideration of his case for that consideration which meant a fair consideration. The respondents in our view took a tenuous attitude by rejecting the genuine claim of the applicant who worked under them, who was admittedly screened for appointment. The learned counsel Mr Goswami has referred to the decision of the Tribunal in C.A.176(G) of 1989 in support of his contention.

contd..4

Pran
Pl. write
By CE/BS
Biju
11/10/1991

3. For the reasons enumerated above, the impugned order dated 16-8-1998 is set aside and the respondents are directed to re-examine the case of the applicant afresh and for re-engagement under them on the facts situation and we accordingly direct the respondents to take steps for engagement and absorption of the applicant under the Railway establishment against any available Group D vacancy to the status and qualification of the applicant as a special case. Since the applicant is unemployed it is expected that the respondents shall consider the case sympathetically and as early as possible, within a period of two months from today.

The application is disposed of to the extent indicated above. There shall, however, be no order as to costs.

Sd/VICE CHAIRMAN

Sd/MEMBER(A)

Certified to be true Copy
प्रमाणित प्रतिलिपि

W.S. 22/02/01

Section Officer (J)

गोप्यमाला अधिकारी (न्यायिक द्वारा
Central Administrative Tribunal
फैसलीय गवाहानिक अधिकारी
Guwahati Bench, Guwahati
प्रमाणित प्रतिलिपि 22/02/01

W.S. 22/02/01

1. 2. 3. 4.

| लाप्त आर फोलओ का अपार्क्षत संस्था सूचित करने की नियमित तिथि | अपार्क्षत स्टाम्प आर फोलओ देने की तारीख | तारीख, जबके टन के लिए प्रतिलिपि तैयार हो | आवेदक को प्रतिलिपि देने की तारीख |
|---|---|--|----------------------------------|
| 6/2/06 | 06/2/06 | 06/2/06 | 23/2/06 |

ANNEXURE - 5

**IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND,
MEGHALAYA, MANIPUR, TRIPURA, MIZORAM AND
ARUNACHAL PRADESH)**

WRIT PETITION(C) NO.3519/2001

✓ 1. Union of India, represented by the Secretary to the Government of India, Ministry of Railways, Rail Bhawan, New Delhi.

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

3. The Deputy Chief Engineer, Bridge/Line, N. F. Railway, Maligaon, Guwahati-11. ... Petitioners.

Versus

✓ Shri Sachidananda Singh,
Son of Late Deo Prasad Singh,
Resident of No. 6 Railway Colony,
Pandu Quarter No.360, Guwahati-12. ... Respondent.

BEFORE

**HON'BLE THE CHIEF JUSTICE B.SUDERSHAN REDDY
HON'BLE MR. JUSTICE H.N.SARMA**

ADVOCATES FOR THE PARTY

For the Petitioners : Mr. J. Singh

For the Respondent : Mr. H.Y. Goswami.

Date of hearing & Judgment: - 1st February, 2006.

Attested

Advocate

JUDGMENT AND ORDER(ORAL)

REDDY, C.J.:-

The Union of India represented by the Secretary to the Government of India, Ministry of Railways, Rail Bhawan, New Delhi and two others are the petitioners in this writ petition filed under Article 226 of the Constitution of India challenging the legality, correctness and validity of the order dated 15.2.2001 made in O.A. No.408/99 on the file of the Central Administrative Tribunal, Guwahati Bench.

2. In order to consider whether the impugned order suffers from any error apparent on the face of the record requiring interference in exercise of our Certiorary jurisdiction, few relevant facts shall be noted:-

The respondent-applicant invoked the jurisdiction of the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 challenging the legality of the order dated 6.8.99 passed by the Deputy Chief Engineer, Bridge Line, Maligaon refusing to consider the case of the applicant for absorption. The case set up by the respondent-applicant in the application is that he was

appointed by the Respondents as Khalasi. According to the applicant he worked continuously under the Respondents as Khalasi though there were some artificial break and that he was treated as regular Group D employee for all practical purposes and the Respondents issued an Identity Card showing him as an employee under the Respondents.

3. The writ petitioner herein resisted the application mainly on the ground that under the Rules the Respondent- applicant is not entitled for any absorption as such into Group D post. Their case is that the Respondent- applicant worked as a Casual worker during the period 1976 to 1978 for brief periods in three different spells i.e. for 20 days from 26.11.76 to 15.12.76; for 84 days from 21.12.76 to 15.3.77 and lastly for 154 days from 20.12.77 to 22.5.78. Thereafter, he was not associated with the Railway in any manner whatsoever from all these years from 1978 till date i.e. for long period of 27 years. The respondent's application made pursuant to the direction of the Tribunal in the earlier round of litigation has been considered and disposed of vide proceeding dated 26.8.1998. The Tribunal

disposed of vide proceeding dated 26.8.1998. The Tribunal went by the assertion made by the respondent-applicant that he was subjected to the screening test in 1979 though not a scrap of paper was made available in support of that assertion. For whatever reason, the Tribunal appears to have taken a liberal view in the matter and accordingly, directed the writ petitioner herein to consider the case of the respondent-applicant for his absorption under the Railway Establishment against any available Group D vacancy to the status and qualification of the applicant as a 'special case'. In this writ petition, the learned Standing Counsel, Sri J. Singh submits that the Tribunal having directed the writ petitioner herein to re-examine the case of the Respondent applicant ought not to have issued positive direction compelling the writ petitioner to take steps for employment/absorption of the Respondent applicant leaving nothing to be decided by the writ petitioner. The learned Standing Counsel also submits that the respondent-applicant has never been subjected to any screening test as such and therefore, not entitled for absorption and regularization into Group D post as such.

~~The learned counsel for the respondent-applicant Sh.~~

U. K. Goswami asserts in clear and categorical terms that he was screened in the year 1979 and the records in this regard was not available with the Railway. Learned counsel also submits that in similar circumstance, the Calcutta High Court upheld the similar order passed by the Central Administrative Tribunal and the same has attained its finality since the Leave Petition filed against such order has been dismissed by the Supreme Court.

5. We have carefully considered the rival submissions made in course of hearing of this writ petition.

6. It is required to note that except self-serving statement, there is nothing on record to satisfy this Court that the respondent-applicant has been subjected to screening test as such by the Railway at any point of time. Even, according to the respondent-applicant, records are not available with the Railway. In the circumstance, we find it difficult to accept the plea that he has been subjected to screening test as such.

7. The Judgment of the Calcutta High Court in no manner renders assistance to the case set up by the respondent-applicant since the applicants therein were subjected to screening test and it is for that reason, the Court took the view that the applicants are required to be absorbed in terms of the directions given by the Tribunal in the vacancies that may arise according to their serial number in the Panel. The very fact that their names were found in the panel itself suggests that they have been subjected to screening test. Such is not the case in hand.

8. However, the question that falls for consideration in this writ petition is whether the Tribunal committed any manifest error in granting the relief to the respondent-applicant? The Tribunal having taken a liberal view in the matter and having regard to the fact that the respondent-applicant, admittedly, served the Railway for some time as Khalas, thought it fit to issue appropriate direction directing the writ petitioner to consider the case of the Respondent-applicant on sympathetic ground as a 'special case'. We are not inclined to interfere with the order of the Tribunal, which directed reconsideration and re-examination of the respondent-applicant's case for

AS

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absorption in any of the Group D post. But, as has been rightly pointed out by the Standing Counsel for Union of

India that the Tribunal ought not to have issued positive direction compelling the writ petitioner to absorb and regularize the services of the respondent-applicant in any of the Group D post. It was not open for the Tribunal to issue such positive direction as prayed for by the respondent-applicant.

9. In the result, the impugned order is modified and the writ petition is disposed of with a direction to the writ petitioner herein to re-examine and re-consider the case of the respondent-applicant as a 'special case' in any one of those future vacancies in Group D post that may arise. Such consideration shall be in accordance with law.

10. Writ petition is, accordingly, disposed of.

Sd/- H. N. Samma
Judge

Sd/- B. S. Reddy
Chief Justice

P/No :- 47692

dd 06/2/06

COPIED TO BE TRUE COPY

| |
|----------------------------------|
| Atk on Hospital Gauhati |
| Date 23/02/06 |
| Superintendent (Copying Section) |
| Gauhati High Court |
| Act 10 of 1950 |

ANNEXURE - 6

N. F. RAILWAY

OFFICE OF THE
DY.CE/BR/LINE/MLG

NO. : EW/2011/1/PT.II

DATE : 10.08.2006

TO

SRI SACHIDANANDA SINGH
(AT OFFICE)

Sub : Medical Examination.

As decided, you were given offer of appointment for the post of Group-'D' in scale of Rs. 2550-3200/-).

You are advised to deposit to Rs. 16/- (Rs. Sixteen) only with the DYCAO(Cash & pay), N.F. Rly. Maligaon on account of pre-employment medical fee and submit the receipt to this office so that you may be sent to Railway Hospital Maligaon for medical Examination.

Debbartha
10/8/06

FOR DY.CE/BR/LINE/MLG

Copy to : DY.CAO (Cash & Pay), N.F.Rly./MLG

This has referred to RD's letter No. 76/E/5/20 Dt. 16.11.2006. The amount is to be credited to Rly. Revenue (Abstract-7).

FOR DY.CE/BR/LINE/MLG

Attested

[Signature]

Advocate.

SRI SANKARADEVA
NETHRALAYA
Beltola, Guwahati-781 028
(Assam) INDIA

Tel : 91-9681-222892, 2223444
Fax : 91-9681-2228978
Email : ssnghy1@snly.com
Web : www.sengworbab.org

President :
Hon'ble Justice S. N. Phukan

Vice Presidents SSN/205599/MRD/2006
Mr. S. V. Subramanian IPS (Retd.)
Mr. R. K. Krishnakumar

12.09.2006

Secretary :
Mr. Romesh Pasari

MEDICAL CERTIFICATE

Medical Director :
Dr. H. Bhattacharjee

Signature of the patient

Or Thumb impression: Sachida nand Singh.....

(To be filled in by the applicant in presence of the Government Attendent Or Medical Practitioner)

1. Dr. B.M Agarwal, M.S. after careful examination of the case certify hereby that Mr Sachida Nand Singh (SSN MRD NO 205599/2006), whose signature is given above was suffering from Cataract-(OD: OS), ARMD-(OU). He has undergone US PKE F. IOL (PMMA) - (OD) under L.A. on 16.08.2006. He has been advised rest from 16.08.2006 to 12.09.2006.

Now, he is fit to resume normal duties.

Place:

Date:


Signature of Medical Attendant

(Medical Council of India State Medical Council of Assam State)

HOSPITAL AND POST GRADUATE INSTITUTE OF
SRI KANCHI SANKARA HEALTH AND EDUCATIONAL FOUNDATION
ASSISTED BY GOVT. OF INDIA, NORTH EASTERN COUNCIL & GOVT. OF ASSAM

Attested


Advocate

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SRI SANKARADEVA NETHRALAYA
Unit of SKSHEF (Regd. as charitable trust)
Beltola, Guwahati-781 028 (Assam)
Phone : 2305516, 2228879, 2228921
Fax : 0361 - 2228878
E-mail: ssnghy1@sify.com
Web : www.ssnghuahali.org

Name : Mrs N. Singh

Date : 12/09/08

MRD No. : 205599

Right

| D V | SPH. | CYL. | AXIS | V/A |
|--------|------------------|------|------|-----|
| | +0.50 | — | 140 | 6/6 |
| | | | | |
| N V | 3.25 | — | 140 | N6 |

Left

| D V | SPH. | CYL. | AXIS | V/A |
|--------|-------|------|------|-----|
| | —0.75 | — | — | 6/6 |
| | | | | |
| N V | +1.50 | — | — | N6 |

TYPE:

Bifocal

SSN-20


SIGNATURE

KINDLY BRING YOUR LAST PRESCRIPTION

7

The Deputy Chief Engineer, Bridge Line,
H.F. Railway, Maligaon, Guwahati-11

(Through C.H.S. Maligaon, Guwahati-II)
M.D.

1. Sub: Review Medical fitness

Dear Sir,

With due respect I would like to bring your kind notice that as advised by you I appeared before medical fitness board on 11-8-2006, vide your letter no. EW/261/1PT. 11 dt. 10-8-2006 for Pre-enrolment Medical, for Group-D in class B (one).

But unfortunately declared me unfit for
eye. in B (mc). and advised to operate eye cataract
and accordingly I cleared my eye cataract in
Sri Sankalpura Netralaya, Bhubaneshwar on 16-8-2006
and found quite normal.

Therefore sir, I request you kindly do this so that I may get fitness certificate as early as possible.

forwarded
J. E.

DYCE Bridge line 1905.
He was found unfit in Bee-one yours faithfully

He was found unfit in Bee-on on initial exam. At present - isachicli. Ward 5. He has undergone lichenoid reaction. No P. I. 2

N.B. Prescription of Sri Sankaracharya No. Rly Colony Panaji
Netrakaya enclosed herewith. For 366 B. C. H.

~~Entered~~ Brector

1948 Central Hospital

ग्रन्थालय जल्ली

Cataract

Attested


J. D. Bernal

No. EW/2017/1/P/4

Office of the
Dy.CE/BR/Line/MLG
Dated: - 14.09.06

To:
MD/CHS/MLG

Sub: - Medical Examination.

Ref: - Your letter No- 11/9/01 (loose) dt. 12.08.06.

In reference to above, it is seen that Sri Sachidanand Singh, was unfit in B/I category and verbally advised for cataract operation. However he operated the same under Sankar Deva Nethralaya.

You are hereby requested to re-examination the case Sri Sachidanand Singh in B/I category since he has undergone cataract operation. He has also advised to communicate his decision in which category he is fit if found him unfit in B/I category again. Copy of original unfit memo dt. 12.08.06 and copy of cataract operation and remarks of MD/CHS/MLG's in application are enclosed for your ready reference.

DA:- As above.

Dy.CE/BR/Line/MLG

Once a candidate is sent for medical examination for a particular category, he/she is examined for that category only. If he is not found then then
If he is to be examined under lower medical category, e.g. category or category
then separate requisition for such examination is required.

OS/EW
Since he has undergone operation in B/I
cataract operation
category for medical fitness
category

14/9/06
Dy.CE/BR/Line/MLG
R.D. Mysore
Bengaluru, India

Attested


Advocate.

ANNEXURE - 10

N. F. RAILWAY

OFFICE OF THE
DY.CE/DR/LINE/MLG

NO. : EW/201/1/PT.II

DATE : 15.08.2006

Sub : Medical Examination.

As decided you will be given after an appointment for the post of Group 'D' in scale of Rs. 2550-3200/-

You are advised to deposit to Rs. 16/- (sixteen) only with the DY.CAO (Cash & Pay), N.F.Rly.,/MLG on account of recruitment medical fee and submit the receipt to this office so that you may be sent to Rly. Hospital, Malignon, for medical examination.

Copy to : DY.CAO (CASH & PAY)/MLG
Date : 15/8/08
FOR DY.CE/DR/L/MLG

FOR DY.CE/DR/L/MLG

Attested
Advocate

Bandana Devi

Advocate,

Gauhati High Court, Guwahati.

- 47 -

ANNEXURE - 12

4th A.P. Bn. Gate, Lutuma, ^b Guwahati - 781 018
Ph. : (0361) - 2471929

Ref. No.

Date :

To

1. The General Manager (P)
N.F.Railway, Maligaon
Guwahati-11.
2. The Deputy Chief Engineer
Bridge/Line, N.F Railway
Maligaon, Guwahati-11

Date: 21.2.07

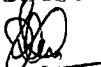
Sub.: Legal Notice.

Sir,

Upon authority and as per instruction of my client
Shri Sachidananda Singh, S/o Late Deo Prasad Singh, R/o No.
6 Railway Colony, Pandu, Quarter No. 360, Guwahati-12, I give
you this notice as follows:

That my client aforesaid being aggrieved by the
Speaking order dated 16/17.8.98 rejecting the claim for
absorption in group-D vacancy preferred OA No. 408/99 before
the Hon'ble Central Administrative Tribunal, Guwahati Bench.
The Hon'ble Central Administrative Tribunal after hearing
the parties to the proceeding came to the conclusion that
the reason assigned in the aforesaid order dated 16/17.8.98
is not sustainable and the said Hon'ble Tribunal vide it's
judgement and order dated 15.2.2001 allowed the said
Original Application directing you to consider the case of
my client sympathetically towards appointment in any Group-D
vacancy.

Attested



Advocate

Ref. No.

Date :

That assailing the aforesaid order dated 15.2.01 passed by the Hon'ble Tribunal, the Railways has preferred a Writ Petition before the Hon'ble High Court being numbered as WP(C) No.3519/2001. The Hon'ble High Court vide judgment and order dated 1.2.06 directed you to consider the case of my client for absorption in any Group-D vacancy. Immediately after the aforesaid Judgement & Order dated 1.2.2006 passed by the Hon'ble High Court, my client has intimated the concern authority about the same with a prayer for his appointment against a Group-D vacancy. Pursuant to aforesaid prayer of my client the concern authority has issued a communication vide Memo No. DY. CE/BR/LINE/MLG dated 10.8.06 regarding pre-medical examination of my client towards his absorption against Group-D post. Accordingly my client aforesaid has appeared in the Medical Fitness Test on 11.8.06. But unfortunately my client has been found unfit for B/1 category of Group-D post and he has been verbally advised for cataract operation.

That as per such advise my client aforesaid has done his cataract operation in Sri Sankardeva Nethralaya, Guwahati and to that effect a medical certificate dated 12.9.2006 has also been issued in his favour declaring him to be fit to resume normal duties.

Ref. No.

Date :

That thereafter my client has been asked to appear for pre recruit medical examination for appointment against Group-D post vide communication bearing Memo No.EW/201/1/PT.II dated 15.9.06 and accordingly he has appeared for the said medical examination. But till date nothing has been done towards his appointment from your end.

It is under this fact and situation of the case I give you this notice making a demand to take necessary steps in the matter and thereafter to appoint my client in any Group-D post within a period of 15 days from the date of receipt of this notice failing which instruction of my client is to initiate appropriate legal proceeding against you.

I hope and trust that there would be no such occasion for any further litigation dragging you unnecessarily into it.

Thanking you,

Sincerely yours

Bandana Devi

| | |
|------------------|---------|
| File in Court on | 5/10/07 |
| By | 1 |
| Court Officer. | |

DIST. - KAMRUP

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

O.A. No. 153 of 2007

Sri Sachida Nanda Singh
.....Applicant
-Vs-
Union of India & others
.....Respondents.

WRITTEN STATEMENTS ON BEHALF OF THE
RESPONDENTS.

The Written statements of the Respondents are as
follows :-

1. That a copy of the Original Application No. 153/07 herein after referred to as the "application" has been served upon the respondents. The respondents have gone through the same and understood the contents thereof.
2. That save and except the statements which are specifically admitted by the respondents, the rest of the statements made in the application may be treated as denied.
3. That the statements made in paragraph 4.1 to the application the answering respondent has no comment unless contrary to the records.
4. That in regards to the statements made in paragraph 4.2 & 4.3 to the application the answering respondent begs to state that as per records available in the office of the respondent No.3 i.e, The Deputy Chief Engineer, Bridge / Line, N.F.Rly, Maligaon, Guwahati, it is admitted that the applicant was engaged as casual labour in the Bridge Division from time to time on stop gap arrangement by extra labour requisition for very casual nature of jobs in three different spells from 26/11/1976 to 15/12/1976, 21/12/1976 to 15/03/1977 and 20/12/1977 to 22/05/1978. During this engagement period as casual labour the authority issued a identity card not only to the applicant but also to all the casual labours for their proper safety and identification, but in the identity card they were clearly designated as

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Filed by the Respondent Railways
Shri N. Kumar Baruwa
Sarkar 5/10/07
Jagmohan Kanta
5/10/07
5/10/07

5 OCT 2001

गुवाहाटी बायायन्ट
Guwahati Bench

casual labour, not as a regular Group-D Staff as alleged. The applicant was finally discharged on 23/05/1978 for want of work and thereafter the applicant was never re-engaged again.

Further the answering respondent begs to state that a provisional list of screened ex-casual labours under bridge division was prepared in the year 1981 for appointment to the post of Khalasi against the future vacancies but only 250 screened ex-casual laborers could be absorbed in the Group-D post due to non-availability of vacant posts the remaining screened ex-casual labours could not be absorbed.

5. That the statements made in paragraph 4.4 to the application are untrue allegation not admitted by the answering respondent. No record is available to show that the applicant approached the respondent before 1997.

6. That in reply to statements in paragraph 4.5 it is stated that an option was called from the willing Khalasi/substitute /casual labours of open line establishment in Engineering department to fill up 8 vacant post of Khalasi in S& T workshop/PNO . Md. Bahar Ali whose serial No is 455 of select list was appointed as per Hon'ble Tribunal's order dated 19.5.1991 passed in OA No. 176(G)/1989.

7. That the allegations that averred in paragraph 4.6 to the application is baseless and not admitted by the answering respondent.

8. That the statements made in paragraph 4.7 to the application are matters of record and the answering respondent does not admit anything beyond the record. It is a fact that the Hon'ble Tribunal while passing the order dated 26.8.98 in OA No.93/97 made some observations highlighting the fact that "the applicant has no case on merit" However, the Hon'ble Tribunal stated that the applicant may submit representation a fresh and the respondent shall dispose of the same within 60 days from the date of receipt of the representation .

9. That in regard to the statements made in paragraph 4.8 & 4.9 to the application the deponent begs to state that as per Railway Boards Letter No. E/NG/11-78/CL/2 dated 04.03.1987 circulated vide GM(P)/MLG's letter No.E/57/0-Pt-II(C) dated 13.3.87, all the screened casual labours were asked to apply by 31.3.87 for consideration of their case to D.Y.CE/Bridge-

5 OCT 2007

गुवाहाटी न्यायालय
Gauhati Bench

Line/MLG. The applicant did not prefer representation within the stipulated period ie before 31.3.87. The administration gave full scope to the applicant but due to his own negligence in preferring representation in prescribed time his case could not be considered for employment. As a consequence of such representation the authority rejected the prayer so placed by order dated 16/17-8-89.

10. That the statements made in paragraph 4.10 & 4.11 the deponent has no comment unless contrary to the records.

11. That in regard to the statements made in paragraphs 4.12, 4.13, 4.14, 4.15 & 4.16 to the application the answering respondent begs to state that in pursuant to the order of the Hon'ble High Court dated 1.2.06 passed in W.P.C No. 3519/2001 the applicant was given offer of appointment when his age is above 50 years in Group D post subject to passing the medical examination in B-I category. After medical examination the applicant was not found fit in B-1 category vide Medical Certificate No. 209 dated 12.8.06. Thereafter as per instruction of the medical authority the applicant got the cataract operation done in Sankardeva Netralaya revealed from medical document submitted by the applicant. After cataract operation of the applicant he was again send for re-examination under B-1 category and unfortunately this time also he was not found fit in B-1 category, vide Medical certificate No. 479 dated 15.09.2006.

Copies of the medical certificate is annexed herewith and marked as ANNEXURE-A & ANNEXURE-B

12. That the statements made in paragraph 4.17 to the application are untrue allegation and are hereby denied by the answering respondent. The applicant was found unfit in B-1 category and therefore could not absorb him as per prescribed rules.

13. That in reply to the statements made in paragraph 4.18 to the application are not admitted by the answering respondent. It is stated that an option was called for from the willing khalasi /substitute/casual labour of open line establishment in engineering department to fill up 8 vacant post of khalasi in S & T workshop/PNO. Md. Bahar Ali (The applicant in OA No. 176(G) of 1989) opted for the post of khalasi in S&T workshop/PNO. The

5 OCT 2007.

गुवाहाटी न्यायालय
Guwahati Bench

applicant in the instant case was not a candidate of the above category. Hence the applicant can not demand his absorption in railway after a long gap of 31 years of his de-engagement.

14. That the statements made in paragraph 4.19 to the application are untrue and baseless allegation and the same are not acceptable at all. It is stated that as per rule absorption as casual labour in regular Group-D employment is not automatic. It is considered in accordance with the instruction issued by the Railway Board from time to time subject to availability of vacancies and suitability and eligibility of individual casual labour according to seniority. The applicant was discharged on 23.5.78. When opportunity was given to the discharged casual labours, discharged prior to 01.01.81 for getting their name registered in the supplementary live register for re-engagement the applicant did not registered his name before 31.3.87. It is further stated that the discharged casual labours who registered their names in the said supplementary live register before 31.3.87 were called for screening and absorbed in Group-D post through process of screening according to vacancy. The applicant was kept silent for a long period of 23 years from his de engagement as casual labour and as he did not prefer any representation within the stipulated period ie well before 31.3.1987 as per Railway Board's instruction, so, his case was not considered at that time. But with due respect to the order of the Hon'ble High Court passed 01.02.2006 in W.P.C. No. 3519/2001, the respondent/authority processed for reengagement of the applicant in the best possible way. But as per prevailing rule when the applicant failed to attain within the zone of physical fitness and failed to attain fitness certificate in the said category the Railway authority has no option than to reject the prayer of the applicant for his reemployment.

15. That from the facts and circumstances quoted above, no arbitrary and illegality has been committed by the Railway Authority and there is no violation of fundamental rights as alleged by the applicant. The applicant has no *prima facie* case at all.

5 OCT 2007

गुवाहाटी न्यायालय
Guwahati Bench

16. That the application filed by the applicant is baseless and devoid of merit and as such not tenable in the eye of law and liable to be dismissed.

17. That in any view of the matter raised in the application and the reasons set forth thereon, there cannot be any cause of action against the respondents at all and the application is liable to be dismissed with cost.

In the premises aforesaid, it is, therefore, prayed that Your Lordships would be pleased to peruse the records and after hearing the parties be pleased to dismiss the application with cost. And pass such other orders/orders as to the Hon'ble Court may deem fit and proper considering the facts and circumstances of the case and for the ends of justice.

And for this the humble respondent as in duty bound shall ever pray.

VERIFICATION

I, Shri. Jamini Kanta Sahana Son of Late P. C. Sahana
..... resident of Maligaon
..... at present working as the Deputy Chief Engineer,
Bridges/Line, N.F. Rly., Maligaon, Guwahati being
competent and duly authorized to sign this verification do
hereby solemnly affirm and state that the statements made in
paragraph 1 to 10 & 13 are true to my knowledge and belief,
and the rests are my humble submission before this Hon'ble
Tribunal. I have not suppressed any material fact.

And I sign this verification on this 25/10/2007 day of
June, 2007 at Guwahati.

Jamini Kanta Sahana
DEPONENT
Signature
Stamp: State High Court
Guwahati Bench
Date: 25/10/2007

21868

Unfit for 'B' one category

• 75TH (Hospital)

CHI M.L.G. No. 209

इति द्वादश प्रमाणित कथा है कि गैरे (वा १) आठ विद्युति के अनुभाव/प्रभाव वे वर्णन के अनुसार इसके लिए उपर्युक्त वाक है और जिसके अनुभाव/प्रभाव के अनुभाव में उस स्थिति में भी विद्या भया है, किंवित कर सकी है। ये विद्या

do hereby certify that I have examined (Name) Sri-Sachidanand

Singh (age) 22 (name) S. P. D. 22 154 a candidate for appointment

as (designation) **Group 'B'** (class) **Recruit**.

The *Emydocephalus* branch of the *Scincidae* is represented by the *Scincidae* subfamily *Scincinae*.

as been suggested by me. I am enclosing a copy of the *Journal of the Royal Statistical Society* for your information.

as been appended below in my presence. I enclose him
with Usit for such appointment.

Signature of John C. H. Smith Notary Public
Signature of John C. H. Smith Notary Public

पद्मानाभ सेंट्रल हॉस्पिटल Padmavati Central Hospital

你真能吃苦耐劳。

‘जो जाति न हो रही है’ यह है (Strike out whatever is not relevant).

~~Attended~~
Moral human too
advocacy
5/10/07

106

Appendix - B

आर/४-१४२ दू० सी० रेलवे/N. P. Railway ग्रंथी/४८-२/N.P./M.२
परिशिष्ट III (अनुलग्नक ६)/Appendix III Annexure 6
रेलवे द्वारा संचालित रेलवे में नियुक्ति के लिए योग्यता निधि-
रण के प्रयोग से किसी उम्मीदवार की डाकटरी जांच के लिए
युक्त प्रमाणपत्र का फॉर्म/Form of certificate to be
used when a candidate is medically examined
or fitness for appointment to a State-managed
Railway

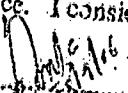
स्पेशल/Hospital

दाखिला/Dispensary

C.H./O.T.L.G. च०/No. ५७७

मैं ऐतिहासिक प्रमाणित करता हूँ कि मैंने (नाम) गांग
नो कि बतुआग/विमुग्न में वर्ष के
४८ में नियुक्ति के लिए उम्मीदवार है और जिनके *हस्ताक्षर/झंगुड़े का
निधान मेरी उपस्थिति में लिया गया है, कि जांच कर जी है।

मैं उन्हें उक्त नियुक्ति के लिए समर्पित हूँ।

अधिकारी
I do hereby certify that I have examined (Name) Sachin Anand
Sachin (age) 32 a candidate for appointment
as (designation) G.T.M.D. (class) B.C.E./D.M.D. in
the (Branch) branch/department whose  "Signature"
has been appended below in my presence. I consider him
*fit/Unfit for such appointment.

जांच करनेवाले अधिकारी डॉक्टर के हस्ताक्षर
Signature of Railway Doctor / Medical Executive
मार्गदर्शक/Designation
R.R. C. Hospital, Maligon, R.R. Central Hospital

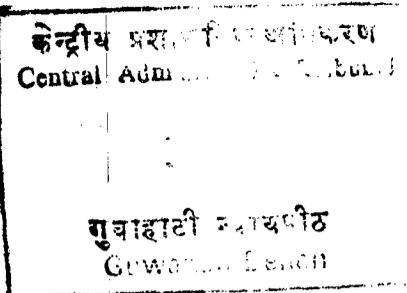
मार्गदर्शक के हस्ताक्षर/निधान युक्त
Signature*

तारीख/Date: ५/१०/०७ of candidate

Thumb Impression

* यो शब्द में ही उसे कारबैक्स/Strike out where inapplicable.

Attested
Minal Kumar B.W.
Advocate
5/10/07



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

Filed by:
The Applicant
Meng
Himanta Kr. Das.
Advocate
8.1.08

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

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

O.A. No. 153 of 07.

BETWEEN

Sachida Nanda Singh

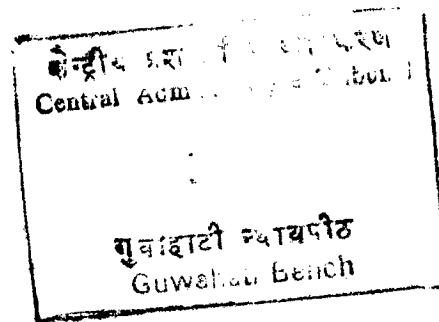
VS

Union of India and Ors.

REJOINDER FILED BY THE APPLICANT

1. That a copy of the written statement has been served upon the applicant and the applicant has gone through the same and understood the contents thereof. Save and except the statements which are specifically admitted herein below other statements made in the application are totally denied. The statements which are not borne on records are also denied and the respondents are put to the strictest proof thereof.

2. That with regard to the statement made in para 1, 2 and 3 of the written statement the deponent does not offer any comment on it.



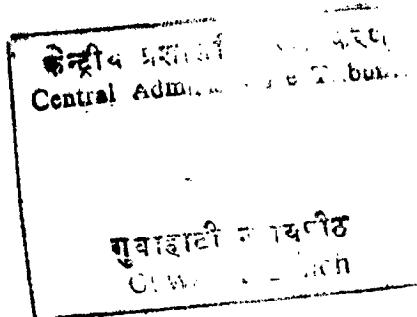
3. That with regard to the statement made in para 4 of the written statement the deponent while denying the statement made therein begs to state that in the screening test held in the year 1979 he came out successful but his case for absorption was not considered treating him as overaged not for want of vacancies.

4. That with regard to the statement made in para 5 of the written statement the deponent does not admit anything contrary to the relevant records of the case.

5. That with regard to the statement made in para 6 and 7 of the written statement the deponent begs to state that on one hand respondents have admitted the fact that Md. Babar Ali who was much junior to the applicant was appointed as Group D employee and on the other hand they are denying the same.

6. That with regard to the statement made in para 8 of the written statement the deponent does not admit anything contrary to the relevant records of the case.

7. That with regard to the statement made in para 9 of the written statement the deponent submits that the said order dated 16/17.8.89 has already been set aside and quashed by this Hon'ble Tribunal vide judgment and order dated 15.2.01 and directed the respondents to reconsider the case of the applicant sympathetically.



8. That with regard to the statement made in para 10 of the written statement the deponent does not admit anything contrary to the relevant records of the case.

9. That with regard to the statement made in para 11 and 12 of the written statement the deponent while denying the statement made therein begs to state that the applicant again on 18.9.86 has undergone a medical test but the respondents have done nothing after that medical test. It is pertinent to mention here that the respondents have not denied the same but at the same time relying on the earlier medical examinations which were held prior to 18.9.86.

10. That with regard to the statement made in para 13 to 17 of the written statement the deponent begs to state that respondents are trying to reopen the issues which were already been adjudicated and decided by the Hon'ble Tribunal as well as the Hon'ble High Court. The Hon'ble Tribunal directed the respondents to consider the case of the applicant "sympathetically" and also the Hon'ble High Court directed the respondents to consider the case of the applicant as a "special case", but the respondents have ignored all these directives passed by the Hon'ble Courts showing disregard to the same.

11. That in view of the above the present application is deserved to be allowed with cost.

12. That this application has been filed bonafide and to secure ends of justice.

केन्द्रीय विद्यालय, गुवाहाटी
Central School, Guwahati

गुवाहाटी शहर बोर्ड

VERIFICATION

I, Sachida Nanda Singh, Son of late Deo Prasad Singh aged about 53 years, resident of No.6 Railway Colony, Pandu, Quarter No. 360 Pandu, Guwahati-12, do hereby verify and state that the statements made in paragraphs 1-4, 6-7, 10..... are true to my knowledge and those made in paragraph 5, 9..... are matter of records. And I have not suppressed any material facts of the case.

And I sign this verification on this the 8th day of, Jan, 2008.

Sachida Nanda Singh

Signature