

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

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03-6-2015 11. Memo of appearance — 01 ✓

Biju
12.7.2015
SECTION OFFICER (JUDL.)

8

FORM NO. 4
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :
ORDER SHEET

1. ORIGINAL APPLICATION No : 141 / 2009
2. Transfer Application No : -----/2009 in O.A. No.-----
3. Misc. Petition No : -----/2009 in O.A. No.-----
4. Contempt Petition No : -----/2009 in O.A. No.-----
5. Review Application No : -----/2009 in O.A. No.-----
6. Execution Petition No : -----/2009 in O.A. No.-----

Applicant (S) : Shri Taj Uddin Magamdar
Union of India in its

Respondent (S) : Adv. J.L. Sarkar,

Advocate for the : Adv. S.N. Tamuli
 {Applicant (S)}

Advocate for the : CGSC
 {Respondent (S)}

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed/C. F. for Rs. 50/- deposited vide IPO/ED No. <u>399402642</u> Dated <u>9.3.2009</u></p> <p><i>From 25.7.09</i> <i>Dy. Registrar</i> <i>29/7/09</i></p>	28.07.2009	<p>Heard. Issue notice to the Respondents (by Speed Post/Special Messenger) requiring them to file their reply before 7th August 2009.</p> <p>Call this matter on 07.08.2009 along with O.A. Nos. 15 of 2009 and 81/2009.</p> <p><i>D.</i> (M.K.Chaturvedi) Member (A)</p> <p><i>M.R.</i> (M.R.Mohanty) Vice-Chairman</p>
<p><u>27.7.09</u></p> <p><u>Form (4) copies</u> <u>of Application with</u> <u>envelopes received</u> <u>for issue notices to</u> <u>the Respondents No 2 to</u> <u>4. Copy served.</u></p> <p><i>27/7/09</i></p> <p><u>Copies of notices along</u> <u>with order dated 28/7/09</u> <u>sent to Dist. For issuing</u> <u>to respondents by Speed</u> <u>post A/D.</u></p> <p><i>Copy 27/7/09. D/No 4038 to 4041</i> <i>29/7/09. D/ 29-7-09.</i></p>	07.08.2009	<p>Heard Dr. J.L. Sarkar, learned Counsel appearing for the Applicant and Mr Kankan Das, learned Addl. Standing Counsel for the Government of India, representing the Respondents.</p> <p>Hearing concluded.</p> <p>Orders reserved.</p>

(2)
O.A.No. 41/2009

07.08.2009 Heard Dr J.L. Sarkar, learned Counsel appearing for the Applicant and Mr Kankan Das, learned Addl. Standing Counsel for the Government of India, representing the Respondents.

① Service report
awarded.

Hearing concluded.

Orders reserved.


(M.K. Chaturvedi)
Member (A)


(M.R. Mohanty)
Vice-Chairman

11.09.2009

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


(M.K. Chaturvedi)
Member (A)


(M.R. Mohanty)
Vice-Chairman

Copy of the judgment
order dtd. 18/09/2009

sent to the D/Section

Officer for issuing to

the Applicant & Respondents

by Registered post.

Free copies at both

Side Standing Counsel's

office hand

D/Post No.

— 11,522 to 11,522

Dtd.

— 29-9-09

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.141 of 2009

Date of Order: This the 11th day of September 2009

The Hon'ble Shri M.R. Mohanty, Vice-Chairman

The Hon'ble Shri M.K. Chaturvedi, Administrative Member

Taz Uddin Majumdar,
S/o Jal Uddin Mazumdar,
Vill.- Teepkhana, P.O.- Arunachal,
P.S.- Silchar, Dist.- Cachar, Assam
Pin-788025.

..... Applicant

By Advocates Dr J.L. Sarkar and Mr S.N. Tamuli.

- versus -

1. Union of India, represented by the Secretary, Ministry of Defence, Sena Bhawan, New Delhi-110011.
2. The Director of Ordnance Services Army Headquarters, Sena Bhawan, P.O. Army Headquarters, New Delhi-110011,
3. The Commanding Officer 57 MTN Division, Ordnance Unit, C/o 99 APO, Pin-909057.
4. Col. (Sri) P.S. Chandak Finance Section, Army Headquarters, Sena Bhawan, New Delhi-110011. Respondents

By Advocate Mr Kankan Das, Addl. C.G.S.C.



.....

O.A.No.141/2009

ORDER

M.R. MOHANTY, VICE-CHAIRMAN

Heard Dr J.L. Sarkar, learned Counsel for the Applicant and Mr K.K. Das, learned Addl. Standing Counsel for the Government of India appearing for the Respondents.

2. Applicant claims that pursuant to Advertisement dated 19.11.2005, he applied for the post of Fireman in 57 Mountain Division Ordnance Unit. The said Advertisement required Matriculates with six months training in a reputed Institute for the post in question. The Applicant, who is a matriculate, claims that he had only one month training. Thus, he was, on his own showing, not an eligible candidate (for the post in question) as per the Advertisement. It is his case that the Advertisement dated 19.11.2005 was, later, cancelled and a fresh Advertisement was issued during 2007 (in accordance with an executive instruction, that was not consistent with the Statutory Recruitment Rules of 2003) and that the Applicant (although he did not apply, in response to said fresh Advertisement of 2007) was called to the selection where he did well.

3. The point raised on behalf of the Applicant is that the untrained candidates, who were called to the selection (as per subsequent Advertisement of 2007; which was based on an incompetent executive instruction) should not have been considered/selected for appointment.

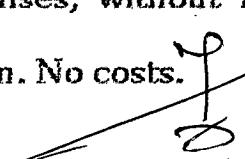
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D

4. It has been clarified on behalf of the Respondents, at the preliminary hearing, that there were a new set of Recruitment Rules (issued during 2006) and, after cancellation of the Advertisement dated 19.11.2005, the fresh Advertisement were issued in accordance with the new Statutory Recruitment Rules of 2006. It has been clarified that under the new Rules of 2006 there were no requirement of training for the candidates. Since the Applicant is a Matriculate (and one time applicant for the post of Fireman), he was called to the selection.

5. In course of preliminary hearing, it was also brought to our notice that 48 candidates were selected in the selection process and that, for the reason of pendency of cases in the Hon'ble High Court and in this Tribunal in O.A.Nos.15 & 81 of 2009, those selected candidates are yet to be appointed.

6. We have already held in our order dated 11.09.2009 (rendered in O.A.Nos.15 & 81 of 2009) that the recruitment was done without violation of any statutory Recruitment Rules or by resorting to any executive instructions (that is/was inconsistent to statutory rules of 2006) and that there were no miscarriage of justice in the selection process.

7. In the above premises, without finding any *prima facie* case, we dismiss this Application. No costs.



8. Send copies of this order to the Applicant and the Respondents (alongwith copies of the O.A.) and free copies of this order be handed over to the learned Counsel for both parties.

Chaturvedi
(M. K. CHATURVEDI)
ADMINISTRATIVE MEMBER

Mohanty
11/09/09
(M. R. MOHANTY)
VICE-CHAIRMAN

nkm

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
GUWAHATI

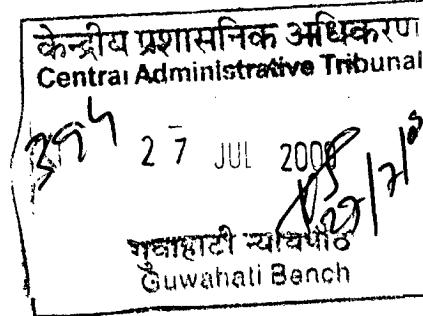
O.A.No. 141/2009

Shri Taj Uddin Mazumdar

-Vs-

U.O.I. & Ors.

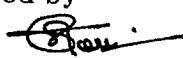
SYNOPSIS



This is a case where Executive Instruction required minimum qualification of Matriculation and Training in Fire Fighting for recruitment of Fireman, Gr. D, defence civilians in the Army Ordnance Corps. Total cadre strength is 2826. The instructions stipulated framing of Rules in this respect and accordingly "*Army Ordnance Corps (Group C & D posts non-Gazetted) Recruitment Rules, 2003*" was framed under Proviso to Article 309 of the Constitution of India. The executive instruction dated 3.2.2000 thus stands superseded. Subsequently another Executive instruction dated 11.11.2005 was issued deleting requirement of fire fighting training and making qualification as Matriculation only, ignoring the Rules. This is illegal. After this vide advertisement dated 19.11.2005, in Employment News 64 posts of Fireman were advertised with qualification requirement matriculation and 6 months fire fighting training (Rules does not stipulate any period). This advertisement of 64 posts has been notified as cancelled without showing any reasons. Fresh advertisement for 48 posts of Fireman has been published with minimum qualification matriculation only ignoring the mandates of the Rules, 2003 which is illegal. Moreover age limit was fixed on variable dates instead of last date of application which is illegal. Applicant and many other candidates appeared in the test, the result of the same has not been published yet. There are pending O.A.s with interim orders. The applicant files this O.A. alleging administrative action not just and fair, malafide, malice in fact and malice in law and the legal question of enforcement of Rules under proviso to Article 309 of the Constitution of India vis-à-vis administrative instruction, and files the OA before the publication of the result. As a abundant caution applicant files this petition to join in the proceedings of O.A.s No 15/09 and 81/09 to protect his interest.

*Planned (by)
Guwahati Bench Services
27.07.09*

Filed by



S.N. Tamuli (Advocate)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

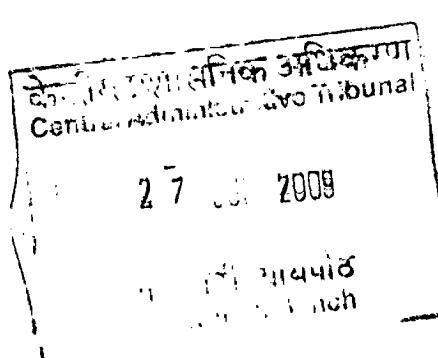
GUWAHATI

O.A.No. 161/2009

Shri Taj Uddin Mazumdar

-Vs-

U.O.I. & Ors.



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4	Experience Certificate issued from the Dispur Fire Station, Govt Of Assam.	Page-20 Annexure-B
5	Circular issued by the Ministry of Defence dated 3/2/2000 regarding restructuring of the Fire Fighting Cadre in the Army Ordnance Corps.	Page-21 Annexure- C
6	Army Ordnance Corps (Group C and D posts Non Gazeted) Recruitment Rules- 2003 dated 13/11/03.	Page-24 Annexure-D
7	Executive instruction dated 11/11/05, issued by the Ministry of Defence diluting the qualification for fireman.	Page-28 Annexure-5
8	Advertisement for 64 posts of fireman in 57 MTN DIV ORD Unit published in Employment News Dated 19/11/05	Page-29 Annexure-6
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12	Order dated 9/2/2009 of this Hon'ble Tribunal in O.A.No 15/09 (Zakir Hussain Barbhuiya & ors Vs. UOI & Ors	Page-33 Annexure-10
13	Relevant pages of The 'Shorter Constitution of India' by Dr (Justice) D.D. Basu, 11 th Edition.	Page-35 Annexure-11

Filed By


S.N. Tamuli, Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

GUWAHATI

O.A.No. 141/2009

Shri Taj Uddin Mazumdar

-Vs-

U.O.I. & Ors.

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

27.11.2009

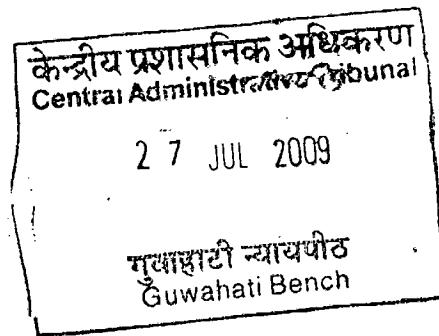
गुवाहाटी बायपोर्ट
Guwahati Bench

LIST OF DATES

Dates	Particulars	PageNo/Annexures
1 3/2/2000	Ministry of Defence circulated Executive Instruction dated 3/2/2000 for restructuring the Fire Fighting Cadre in the Army Ordnance Corps. Annexure A to the instruction includes Fireman. Qualification to the post was shown as Matriculation & Trg. in Fire Fighting under a State Fire Service or an institute of repute. In para 2 of the above executive instruction it was stated that "... for which Rules will be notified in due course."	21 Annexure 3
2 3/2/2004	Applicant passed H.S.L.C. Examination in the year 2003 and pass certificate was issued by the headmaster, Masughat High School, dated 3/2/04.	Page 19 Annexure 1
3 29/8/05	Applicant worked in the Dispur Fire Station from (th June to 29 th August 2005 and Experience Certificate to that effect was issued by the Inspector Officer, Dispur Fire Station, Govt Of Assam.	Page-20 Annexure-B
4 13/11/2003	As a follow up action to the para 2 of the Circular dated 3/2/2000 regarding restructuring the Fire Fighting Cadre in the Army Ordnance Corps, Army Ordnance Corps (Group C and D posts Non Gazetted) Recruitment Rules- 2003, (A rule under Proviso to Article 309 of the Constitution of India), dated 13/11/03 was made and was notified in The Gazette of India, 6 th December, 2003 herein after referred as Rules, 2003. Para 7 of the said Rules relates to Fireman. Para 7.8 of the said Rules prescribe the qualification for Fireman as Matriculation and certificate of having undergone a Fire course/ fire service training from an institute of repute	Page-24 Annexure-D

5	11/11/05	An executive instruction dated 11/11/05, was issued by the Ministry of Defence diluting the qualification for fireman. By this instruction qualification for the post of Fireman was prescribed as Matriculation instead of matriculation and certificate of having undergone a Fire course/ fire service training from an institute of repute as prescribed in Rules, 2003. This is illegal, as a rule under Proviso to Article 309 of the Constitution of India can only be amended by a Rule or Notification under duly made under Article 309 of the Constitution of India.	Page-28 Annexure-5
6	19.11.05	Advertisement for 64 posts of fireman in 57 MTN DIV ORD Unit published in Employment News Dated 19/11/05. Qualification prescribed was matriculation and fire fighting course of six months duration.	Page-29 Annexure-6
7	4.12.05	Cancellation notification of the 64 posts of Fireman (as advertised in Employment News dated 19/11/05) was published in Dainik Yougasankha dated 4/12/05.	Page-30 Annexure-7
8	13.12.06	Another advertisement for 48 posts of fireman in 57 MTN. DIV,ORD Unit published in Dainik Yougasankha dated 13/12/06. Qualification prescribed was matriculation, which is contrary to the Rules, 2003.	Page-31 Annexure-8
9	April 2007	Call letters for the test were issued to the candidates including the applicant, <i>who appeared in the test.</i>	
10	15/4/07	A corrigendum published in the Sunday Express 15 th April 2007 announcing the date of the test as 1/5/07 along with certain other things.	Page-32 Annexure-9
11	26.11.08	Few candidates (not this applicant) approached the Hon'ble Gauhati High Court through W.P.(C) No 2557/07 (Nivu Ch Dey & Ors –v- UOI & Ors) alleging irregularities in the selection test and the same was dismissed by the Learned Single Judge by an order dated 26.11.08.	
12	9.2.09	O.A. No 15/09 was filed challenging the selection process conducted in violation of the Rules by few other candidates and by an order dated 9/2/2009 of this Hon'ble Tribunal in O.A. No 15/09 (Zakir Hussain Barbhuiya & ors Vs. UOI & Ors pass an interim order restraining fresh appointments of Fireman without	Page-33 Annexure-10

		leave of the Tribunal. This order is still in force.	
13	11.02.09	<p>Being aggrieved petitioners in the W.P.(C) No 2557/07 (Nivu Ch Dey & Ors -v- UOI & Ors) approached the Hon'ble Division Bench of the Gauhati High Court against the order of the Learned Single Judge through Violation of jurisdiction and violation of Rule Writ Appeal No 51/09 and by an order dated 11.02.09. The Hon'ble Division Bench quashed the order of the Learned single judge and gave liberty to the petitioners to approach appropriate forum i.e Central Administrative Tribunal for proper adjudication of the Case.</p>	
14		<p>Petitioners in the Writ Appeal no 51/09 approached this Hon'ble Tribunal through O.A.No 81/09 challenging the recruitment process which is still pending. Similar protection as that of the O.A. 15/09 was granted to the applicants.</p>	
15		<p>Applicant when came to know about these, he files this petition as an abundant caution for the cause of justice.</p>	



Filed by.

 S. N. Tamuli

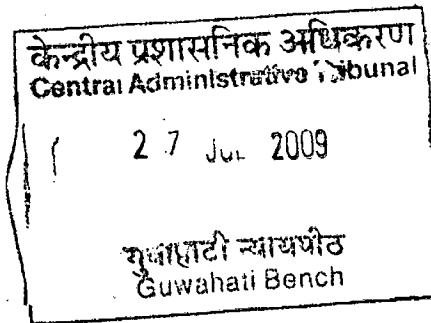
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
GUWAHATI

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

O.A. No. 141 /2009

Taz Uddin Majumdar
S/o Jal Uddin Mazumdar
Vill. Teepkhana
P.O. Arunachal.
P.S. Silchar.
Dist Cachar
Assam
Pin. 788025.

.....Applicant.



Filed by the Applicant
Through S. N. Tumuli
Advocate Date 27/7/09

-VERSUS-

1. Union of India
Represented by The Secretary
Ministry of Defence
Sena Bhawan
New Delhi
Pin 110011
2. The Director of Ordnance Services
Army Headquarters
Sena Bhawan
P.O: Army Headquarters
New Delhi - 110 011.
3. The Commanding Officer
57 MTN Division
Ordnance Unit
C/O 99 APO
Pin 909057
4. Col. (Sri) P.S. Chandak
Finance Section
Army Headquarters
Sena Bhawan
New Delhi
Pin. 110011

.....Respondents

Taz Uddin Majumdar

गुवाहाटी न्यायालय
Guwahati Bench

DETAILS OF THE APPLICATION:

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

The application is made praying for enforcement of Rules under proviso to Article 309 of the Constitution of India vis-à-vis executive instruction, in the matter of recruitment the result of which has not yet been published and for joining the hearing of O.A. No.15/2009 and O.A. No.81/2009 by analogous hearing. The law declared by Hon'ble Supreme Court being binding under Article 141 of the Constitution of India, the law declared by the Apex Court in Pallluru Ramakrishnaih vs. Union of India, reported in 1990(1) SLJ 136 : 1989 (2) SCC 541 and in Union of India vs. Somasundram, AIR 1988 SC 2225 : 1989(1) SCC 175 shall control the recruitment of fireman in 57 MTN Division.

2. JURISDICTION

Applicant declares that the subject matter of the application is within the jurisdiction of the Hon'ble Tribunal.

3. LIMITATION:

Applicant also declares that the application is made within the period of limitation prescribed by the Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE:

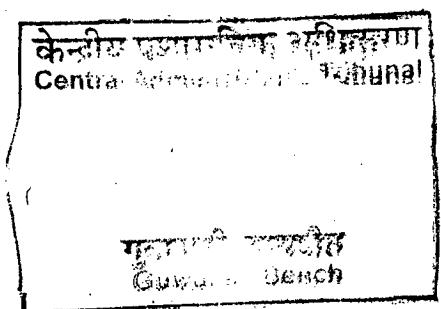
4.1 That the applicant is a citizen of India and as such is entitled to the rights and privileges guaranteed by the Constitution of India. He passed HSLC examination (equivalent to matriculation) in 2003.

Copy of the HSLC certificate is enclosed as
Annexure-1.

Tajuddin Mogunder

4.2 That the applicant files this application to join/intervene in the proceedings in O.A. No.15/2009 and in O.A. No.81/2009 regarding recruitment of Firemen. The applicant is for entitlement of similar result in the above O.A.s. It is stated that the result of the recruitment test has not yet been published. Applicant has a right for publication of result of the test in which he was a candidate. The Hon'ble Apex Court has laid down that one should not be penalized for not having litigated. When the applicant has come to know of the above O.A.s he filed this O.A. as abundant caution. Because the result of the recruitment test has not been published and he has a interest that his cause is not frustrated by others.

4.3 That the applicant is a resident of Masimpur in Cachar district of Assam. He is a son of a civilian employee of the 57 Mountain Division, ORD Unit of Masimpur. The applicant could learn that the said unit of Ordnance division was in need of Firemen for fire fighting. The department was not getting adequate number of trained persons and as such made correspondence with the Govt. of Assam, Fire Service Organization for imparting training to some persons who are wards of civilian employees of the said unit. The name of the applicant was also forwarded for the purpose. He was taken for training and experience in the Dispur Fire Station, under Assam State Fire Service Organisation, Govt. of Assam where he worked under Fire Constable Helper in Dispur Fire Station from 9th June to 29th August, 2005.



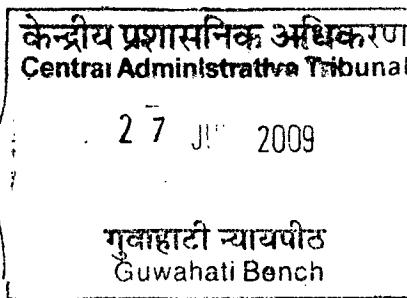
Copy of the certificate dated 29/8/05 is enclosed as Annexure-2.

Tajuddin Mozumder

4.4 That the recruitment was, however, to be made as per Rules by advertisement and open competition. In this connection it is stated that the instructions regarding personnel in the Fire Fighting cadre including Firemen was circulated by the Govt. of India, Ministry of Defence, New Delhi's executive instructions by Circular dated 3.2.2000. Annexure-A to the said circular shows the required qualification for recruitment of Firemen as under:-

Matriculation and training in fire fighting under a State Fire Service or an institute of repute.

The said circular dated 3.2.2000 *in paragraph 2 states that for the guidelines of method of recruitment in Annexure-A of the said circular, rules would be notified in due course. The cadre strength of Firemen has been shown as 2826.*



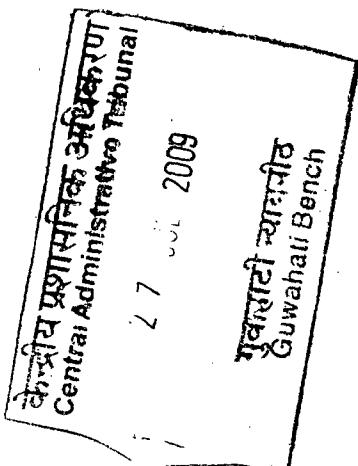
Copy of the circular dated 3.2.2000 (with Annexure-A thereto) is enclosed as Annexure-3.

4.5 That as the follow up action of the executive instructions in para 2 of the circular dated 3.2.2000, Rules called the "Army Ordnance Corps (Group C & D posts non-Gazetted) Recruitment Rules, 2003" has been framed under Proviso to Article 309 of the Constitution of India. The schedule to the Rule, Sl. No.7 contains Firemen and is applicable to the 2826 posts (Sl. No.7.2). Sl. No.7.8 mandates the qualification as matriculation and certificate of having undergone a Fire Course/Fire Service training from an institute of repute. In this connection, it is stated that respondent no.4 was making an endeavour to give way to

Tajuddin Mogumder

some persons who are only matriculates and as such wanted to dilute the qualification requirement for recruitment to the post of Firemen. As a consequence thereof, executive instructions dated 11.11.2005 was issued from the Ministry of Defence, Govt. of India by which requirement of training in Fire Fighting has been omitted. It is worth mentioning to mention here that with a view to mislead and get matters done under camouflage the fact that the instructions in para 2 of the circular dated 3.2.2000 have already been carried out by framing Rules under proviso to Article 309, has been suppressed. The respondent No.4 did not act bonafide with a view to ensure that some persons, for reasons best known to him, without fire fighting qualifications may be recruited. The applicant has come to know that the respondent no.4 during his posting in 57 Mountain Division, ORD Unit had annoyance on many civilian employees of the said unit and appointments of the wards of the civilian employees was not to his liking. He was averse to such appointments. In this connection, it is stated that applicant is very much conscious that appointment cannot be confined within the ward of the civilian employees. Applicant also humbly submits that Apex Court has also held that there is nothing wrong if appointment to the wards are made under any scheme. In the instant case, there was no scheme but instead the unit had entered into correspondence and liaison with the State of Assam for giving experience to the wards of the civilian employees of the unit keeping in view the importance of the experience in the emergent, safety and important area of fire fighting. The State of Assam has also fully cooperated in the matter. It is stated that the

Tajuddin Mozumder



process of recruitment never restricted others (who are not wards of the civilian employees) from the scope of consideration. The action of the respondent no.4 is beyond reasonable interest and the foundation of such action is malafide. The circular dated 11.11.2005 is grossly violative of process of law, result of suppression of Rules, *and under Law gives way to the Rules, 2003.*

Copies of the said recruitment rules (SRO No.180) and circular dated 11.11.2005 are enclosed as Annexures-4 & 5 respectively.

4.6 That the applicant begs to state that the following advertisements were made regarding the recruitment of firemen.

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal
27 2009
गुवाहाटी न्यायालय
Guwahati Bench

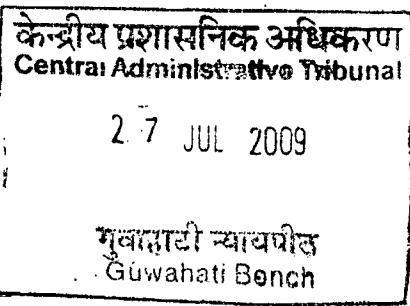
Sl.No.	Advertisement details	Dt. Of Advertisement
01	Advertisement for 64 posts of Firemen	Employment News dated 19.11.05
02	Advertisement for cancellation of the notification for the above 64 posts	Dainik Yougasankha dated 4.12.05
03	Advertisement for 48 posts of Firemen	Dainik Yougasankha dated 13.12.05
04	Corrigendum	The Sunday Express dt. 15.04.07

The applicant begs to state that he fulfils the qualifications and had submitted his application for recruitment to the above post of Fireman.

Date, time and place for the test was notified as 1.5.2007, 6 A.M. at Kalibari Traffic Control Post, Masimpur Cantt. Silchar, Assam. A similarly worded call letter/admit card was issued to the applicant allotting Roll No.2285. The applicant appeared in the test with the aforesaid admit card in the scheduled time and place on 1.5.2007 but

Tajuddin Mozumder

unfortunately has lost/misplaced the admit card subsequently. It is stated that he has done very good and his performance in the endurance test has been outstanding. As regards the lifting of weight the applicant successfully completed the job. In fact he was making regular practice for the same before the test and after lifting the weight successfully he told the officer that the weight was more than the scheduled weight. The officer appreciated the same. He has legitimate expectation that his (applicant) name will be there in the select list. The said select list has not yet been published. As already stated he (applicant) begs to file this application to place his case while hearing the other O.A.s (15/09 & 81/09) analogously.



Copies of the advertisement dated 19.11.2005, cancellation notification dt. 4.12.05, advertisement dt. 13.12.05 and corrigendum dt. 15.04.07 are enclosed as Annexures-6, 7, 8 & 9 respectively.

4.7 That it is stated that the advertisement for 64 posts was published on 19.11.05. The said advertisement was in terms of the Recruitment Rules 2003. This shows that the advertisement in terms of the Rules, 2003 was issued even after so called amendment by executive instruction dated 11.11.05. Thereafter so called cancellation of the advertisement was published in the newspaper on 4.12.05. This cancellation of advertisement does not indicate whether sanction of the competent authority was taken before the cancellation, nor does it shows the reasons, whatsoever, of the cancellation. As already stated

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Respondent No.4, who was in the relevant time concerned with the recruitment process was against the recruitment in terms of the Rules 2003 and was in favour of the recruitment with diluted minimum qualification i.e., only matriculation. Malafide is the foundation of the purported cancellation. The applicant humbly states that cancellation of advertisement/select list/panel in law requires the sanction of the at least one step higher authority than that which sanction/approve the original advertisement. In the instant case, this principles of law was not followed and cancellation has been done arbitrarily. It is also stated that in the instant case it might not be possible to follow the principles of natural justice very elaborately before the cancellation in view of large number of applicants but to avoid scope of arbitrariness and maintain action under procedure established by law, sufficient reasons should have been circulated so that the unemployed boys like the applicant could know the reasons and express their say, if any, under process of law. The action of so called cancellation has not been just and fair. What was reason for advertising for 48 posts instead of 64 has been kept under cloud. The said cancellation was immediately followed by advertisement dated 13.12.06, calling for 48 vacancies and this time the qualification only matriculation was notified. It is stated that the minimum qualification prescribed under the Rules, 2003 shall control the field and executive instruction dated 11.11.05, being in derogation of the said Rules and suppression of existing Rules is *void-ab initio* and *non-est*. In that fact of the matter the purported notification dated 13/12/06 is *void-ab initio* and *non-est*. The process of

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Guruvari Bench

Tajuddin Mozumder

recruitment test so far as it relates to the persons with qualification of matriculation only is dehors the Rules, beyond the standard of competence, result of malafide exercise, and beyond safety reasons, and in void-ab initio. The deletion of the qualification of training in an important area of fire fighting *is damage to public safety measures and is beyond public interest.*

4.8 That in this connection it is stated that respondents in the matter of recruitment and advertisement have been working with non application of mind and pursuing malafide intent. The advertisement for 64 posts prescribed age limit of 18 to 25 years as on date of issue of appointment letters with relaxation to reserved candidates as per rules. The last date of receipt of application is 03.12.05. The advertisement for 48 posts prescribed age limit of 25 years as on the date of physical test with relaxation to reserved categories as per the Govt. Orders. The last date of receipt of application was 01.02.07. This demonstrates absence of application of uniformity and scope of arbitrariness in embracing ineligible persons under the age and also eliminating some eligible persons. The term "on the date of issue of appointment letters" and "date of physical test" are no dates in the context of candidature for any posts. Such terms give scope of variable dates at the whims of the authorities to eliminate and choose persons fixing dates as per whims. The date as per law shall be a fixed date (non variable) and Hon'ble Apex Court has time and again held that last date of application is the date of determining the age. In other words, the applicant submits that there shall be a fixed, non-variable *cut off date* for the

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Guwahati Bench

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purpose. In the humble submission of the applicant the date on which 64 vacancies occurred and advertised and the last date for submission of the application given, should be the date for determining the age limit and the maximum limit of 25 years as per the Rules, 2003 shall apply on that date for filling up of the vacancies which occurred in 2005.

4.9 That applicant begs to state that the total number of posts to be filled up should be $64 + 48 = 112$ and not 48 as wrongly advertised following executive instructions ignoring Rules made under proviso to Article 309 of the Constitution of India. Necessary qualification shall be matriculation plus certificate of fire fighting training under the Rules, 2003. The applicant has come to know that present incumbent of respondent No.3 is a law abiding person and understand the force of Rules under Proviso to Article 309. As such, during the pendency of

the matter in the High Court before the learned Single Judge [W.P.(C) No.2557/07 Nivu Chandra Dey & others vs. Union of India & Others] originally dismissed and order of dismissal set aside by the Division Bench of the High Court in Appeal, Writ Appeal No.51/09), did not appoint any person, nor the result of the test was finalized, and no select list was published. In this connection it is stated that the applicant as an unemployed person hearing whispers that for $64-48=16$ (sixteen) posts the present incumbent is making an endeavour to take initiative to fill up the following Rules of 2003. The applicant prays that for filling up these posts also, if it is done so, the position as on 2005 with qualification as per the Rules, 2003 have to follow. It is

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मुख्य वायरिट्स
Chief Assistant Bench

stated that no persons with qualification of matriculation only is eligible for appointment as Fireman and cannot be so appointed under the Rules which is a law prescribed by Rule under Proviso to Article 309.

4.10 That for the applicant begs to submit that the laws under Constitution of India as regards *Rules under proviso to Article 309 vis-à-vis executive instructions* is very succinctly articulated by Dr (Justice) D.D.Basu, the perennial authority on constitutional law in his treatise "Shorter Constitution of India", 11th Edition which lays down that *Rules under proviso to Article 309 shall prevail over executive instructions and that a Rule under Article 309 can be amended only by a Rule or notification made under Article 309.*

केन्द्रीय प्रशासनिक अधिकारण
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गुवाहाटी बोर्डिंग
Guwahati Boarding

Copies of the pages 345 and 959 of "Shorter Constitution of India, 11th Edition is enclosed as Annexure 10.

4.11 That the applicant begs to state that the Rules, 2003 required minimum qualification of matriculation and training of fire fighting experience. The advertisement for 64 posts mentioned matriculation and fire fighting experience for six months. However, after scrutiny of documents of the candidates respondents found that it was an impossibility to have candidates with six months experience, and when Rule is silent about the period of experience the respondents preferred administratively to decide to call candidates with experience of lesser period of one month. They have issued call letters to the persons with experience of one month fulfilling the requirement of the Rules as regards training. The Respondents have thereby waived the

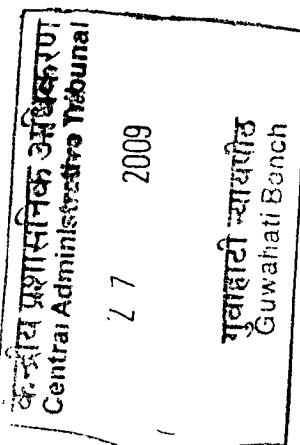
Tajuddin Mozumder

requirement of six months training and confined within the dictate of Rule 2003 requiring training from an institution of repute.

4.12 That as already stated earlier the applicant has come to know that the persons similarly situated like the applicant have filed O.A. Nos.15/09 and 81/09 before this Hon'ble Tribunal. The Hon'ble Tribunal has been pleased to pass order dated 09.02.09 in O.A. No.15/09 admitting the O.A. and passing an interim order that appointment of any candidate in the post of Fireman shall abide by the ultimate result of the case and that no fresh appointment should be made by the respondents without leave of this Tribunal. This interim order is in force. The applicant humbly states that in view of the law laid down by the Hon'ble Apex Court in the case of *Palluru vs. Union of India reported in 1990 (1) SLJ 136: 1989 (2) SCC 541 and Union of India vs Soma Sundaram, reported in 1989 (1) SCC 175: AIR 1988 SC 2255* declaring that Rules under proviso to Article 309 shall prevail over executive instructions, interim order should continue or may kindly be modified to the extent that appointment shall be confined only to those having qualification of fire fighting training and candidates with matriculations only shall not be appointed during the pendency of the case. It is stated that in O.A. No.81/09 the same interim relief as in O.A. No.15/09 is continuing.

Copy of the order dated 9.2.09 is enclosed as
Annexure-11.

4.13 Applicants begs to state that some candidates have already started saying that they have been selected and short listed. On



Tajuddin Mozumder

enquiry in office the applicant has came to know that no select list has been published. In this connection, it is stated that applicant could understand that the persons who are claiming to have been selected/short listed, most of them are not having training/experience of fire fighting and are only matriculates. The applicant do not know the source from which some candidates could get such assurance of having been selected. In the circumstances of the case, where laws and rules are being ignored/by-passed and things have been done under camouflage, malafide, the Hon'ble Tribunal will kindly appreciate that malice in fact and malice in law are writ large in the facts and circumstances of the case. As already stated, malafide is the foundation of the totality of the facts explained above, the applicant prays that the Hon'ble Tribunal may kindly be inclined to enforce the laws/rules controlling the field and administrative actions in just and fair manner. Unfounded claims not supported by documents shall not get any credence. Administrative actions should not be colourable exercise as is being sought to be done by some of the officers in the respondent's department.

5. GROUNDS WITH LEGAL PROVISIONS:

5.1 For that the recruitment of Fireman (Defence civilian) Group 'D' the mandate of Recruitment Rules, 2003 enacted under Proviso to Article 309 of the Constitution of India shall apply.

5.2 For that any executive instructions in the matter of recruitment to the post covered by said Rules 2003 shall not be applicable.

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5.3 For that it is settled legal provision by the Hon'ble Supreme Court that *an executive instruction could make a provision only with regard to a matter which was not covered by Rules and such executive instructions could not override any provisions of the Rules* {Palluru vs. Union of India 1990 (1) SLJ 136 : 1989 (2) SCC 541}.

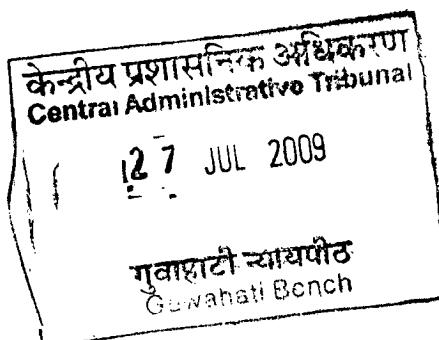
5.4 For that it is settled legal provision that if there is a conflict and Rules made under Proviso to Article 309 of the Constitution of India, Rules made under Proviso to Article 309 shall prevail. {Union of India vs. Soma Sundaram AIR 1988 SC 2225 : 1989 (1) SCC 175.}

5.5 For that it is settled law that a rule made under Article 309 can be amended only by a rule or notification duly made under Article 309 {Nagarajan vs. State of Mysore (AIR 1966 SC 1942), Saksena vs. State of M.P. (AIR 1967 SC 1264)}.

5.6 For that the circular dated 11.11.05 being in derogation of the Rules, 2003 and being against public interest seeking to dilute/damage safety measures deserves to be set aside and quashed.

5.7 For that the so called amendment by circular dated 11.11.05 and consequent advertisement of 48 posts being the result of malafide action are liable to be set aside and quashed and the posts deserved to be filled up by the persons with matriculation and training/experience in fire fighting as per the Rules.

5.8 For that the fixation of age limit on various dates instead of last date of application speaks of malafide and the age limit should be taken as on last date of advertisement for 64 posts.



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5.9 For that the applicant having been called and having been allowed to appear in the test after perusal of the documents including the experience certificate in the fire fighting (less than 6 months), the requirement of 6 months training has been waived and the Respondents are also barred by law of estoppel.

6. DETAILS OF THE REMEDIES EXHAUSTED:

There is no remedy under any Rules and Hon'ble Tribunal is the only forum for redressal of the grievances.

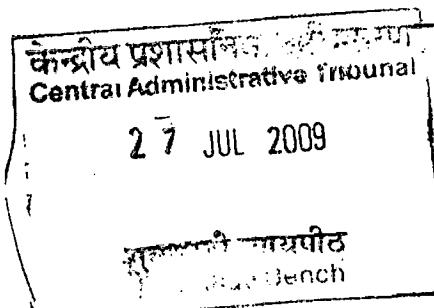
7. MATTERS NOT PENDING BEFORE ANY OTHER COURT

The applicant declares that he has not filed any other original application before any Court or Tribunal. Cases similar in nature (O.A. Nos. 15/09 and 81/09) by other applicants are pending before this Tribunal.

8. RELIEFS SOUGHT FOR:

In the circumstances of the case the applicant prays that the Hon'ble Tribunal may be pleased to call for the records including the records of taking decisions of the cancellation of the advertisement of 64 posts (Annexure-7) (as advertised in Employment News dated 19.11.05) and prays for the following relief(s):

8.1 The posts of Fireman (Group 'D' Civilian) as advertised by Employment Notice dated 19.11.2005 and subsequent advertisement shall be filled up strictly following the requirements of the aforesaid Rules 2003 (Annexure-4), a Rule under Proviso to Article 309 of the Constitution of India;



8.2 The result of the recruitment test be published following the requirement of the said Rules, 2003 and the applicant shall be considered and appointed against the vacant posts advertised.

8.3 The candidate with qualification of matriculation without any fire fighting experience/certificate shall not be considered for appointment against advertised posts.

8.4 The instructions under letter dated 11.11.05 (Annexure-5) to read qualification as matriculation only be set aside and quashed.

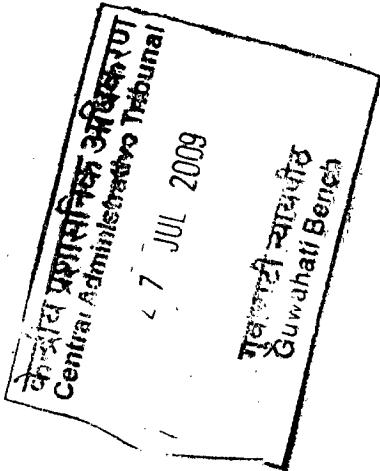
8.5 The qualification in the advertisement dated 13.12.06 (Annexure-8) showing qualification of matriculation only be set aside and quashed and mandated to be matriculation with fire fighting training/experience from an institute of repute.

8.6 The qualification for six months training in advertisement dated 19.11.05 be set aside and quashed and/ or declare as having been waived by the respondents and substituted as matriculation with fire fighting training/experience.

8.7 The cancellation by advertisement in Dainik Yougasankha dated 04.12.05 (Annexure-7), of the advertisement for the 64 posts be set aside and quashed.

8.8 In the circumstances of the case in which selection process/test has been vitiated by malafide and arbitrariness fresh test for all the posts be conducted by the respondents themselves under the supervision of higher authorities taking eligibility conditions, qualifications, age as on the last date of receipt of application for 64 posts i.e., the cut off date for 64 vacancies.

Tajuddin Mogunder



8.9 Any other relief or reliefs, the Hon'ble Tribunal may kindly be grant.

8.10 Costs of the application.

The above reliefs are sought on the grounds stated in paragraph 5 above.

9. INTERIM RELIEFS AS PRAYED FOR:

During the pendency of the case applicant prays for the following interim relief:

9.1 The selection process/select list shall be finalized and published fully complying with the Rules, 2003 (Annexure-4) and laws laid down in Palluru vs Union of India (supra) and no appointment shall be made for those with matriculation only.

The above reliefs are sought on the grounds stated in paragraph 5 above.

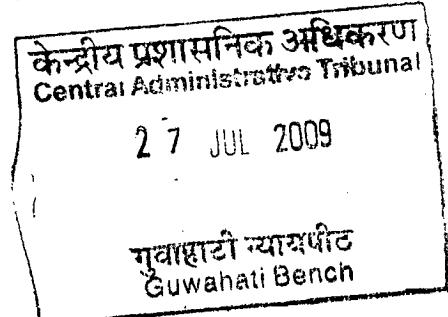
10. The application is filed through an Advocate

11. PARTICULARS OF THE IPO

(I) IPO NO.	396 402642
(II) Date of Issue	9/3/09
(III) Issued from	GPO, Guwahati
(IV) Payable at	GPO, Guwahati

12. ENCLOSURES:

As stated in the Index



Tajuddin Mogumder

VERIFICATION

I, Taj Uddin Mazumdar, son of Jal Uddin Mazumdar aged about 22 years, resident of village: Teepkhana, P.O: Arunachal, District, Cachar, Assam do hereby verify that the statements made in Paras 1, 4, 6 to 12 are true to my knowledge, and those made in Paras 2, 3 & 5 are true to my knowledge as per the legal advice and I have not suppressed any material facts.

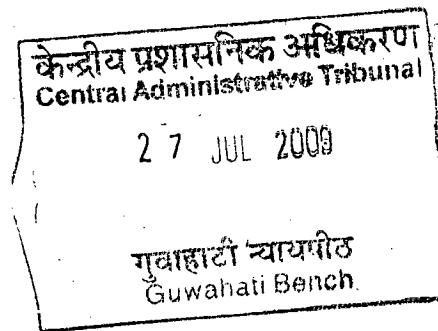
And I sign this verification on this 25th day of July, 2009 at Guwahati.

Place Guwahati

Tajuddin Mazumdar

Signature

Tajuddin Mazumdar



ANNEXURE 1

MASUGHAT HIGH SCHOOL

P. O. Masughat, Dt. Cachar

Estd. - 1962

TRANSFER/LEAVING CERTIFICATE

Serial No. 265
SILCHAR

Date 3. 3. 2004

CERTIFIED that Sri/Smti Taj redolien Mazeemunder son/daughter of Shri/Bata Iqbal redolien Mazeemunder an inhabitant of VIII Teep Khana - 1 P.O. Greenachal P.S Silchar Dist. Cachar left the Masughat High School on 31. Dec. 2003 His/Her date of birth according to Admission register was 13. 01. 1987 He/She was reading in Class X (Even) and Pass ^{Repealed} passed the Examination for promotion to Class X H.S.L.C. Test Examination under Roll No R9. 046 No 0058 in III All sums due by him/her have been paid viz. 3rd Div in 2003

Fees upto—

Fines—

T. fee— 100

Character— Good

REASON FOR LEAVING

- I) Unavoidable change of residence
- II) Ill health
- III) Minor reason
- IV) Completion of the School Course

his
Head 27/04
Head Masughat
Masughat High School
RC
27/2

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

27 JUL 2009

गुवाहाटी न्यायालय
Guwahati Bench

Attested

[Signature]
Advocate



DISPUR FIRE STATION
(Govt of Assam, Dispur Branch)
Super Market, Gauhati - 781006.
Tel. No.- 2260221.



ANNEXURE

To Whom It May Concern

Date 29/8/05

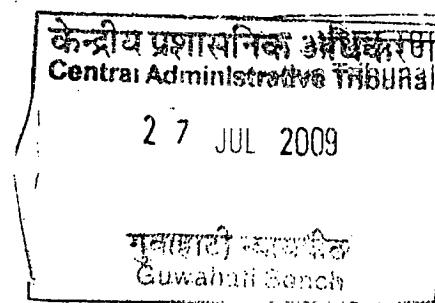
This is to certify that Sri/Smt. Jai Udia Majumder,

S/o Sri Jai Udia Majumder of Vill/Town Talguriya - P-1
P.O. Ancachai, Dist Cachar, (Assam) P.S. Silchoti,

Gauhati was working under Fire Constable helper in Dispur Fire Station 9 AM June
(Nine) to 29 August - 2005/2006.

He was found to be an obedient, intelligent, and hard working
young man. His character and conduct was good at that time.

Inspector Officer
Dispur Fire Station
Gauhati -6. (Kamrup)
Orissa



Inspector Officer
Dispur Fire Station
Gauhati -6. (Kamrup)

Attested
Sue
Advocate

///Copy///

No. 4/26576/ Fire Staff/OS-20/168/D(O-II)
Government of India
Ministry of Defence
New Delhi - 110011

03rd Feb 2000

केन्द्रीय प्रशासन
Central Adminstration

272

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To
The Chief of Army Staff
New Delhi

SUB: Restructuring of Fire Fighting Cadre in the Army Ordnance Corps

Sir,

In supersession of all previous sanctions issued regarding authorisation of Fire Fighting personnel in the Army Ordnance Corps, I am directed to convey the sanction of President to restructure the Fire Fighting Cadre in the Army Ordnance Corps. The revised cadre structure along with revised designation, pay scales and number of posts is as under :-

<u>Present Cadre</u>		<u>Restructured Cadre</u>		<u>Revised Pay Scale</u>
<u>Designation</u>	<u>Existing Strength</u>	<u>Designation</u>	<u>Revised Strength</u>	
Fireman I/II	2826	Fireman	2826	Rs. 2750-4400
Leading Hand (Fire)	694	Leading Hand Fireman 'A'	347	Rs. 3050-4530
		Leading Hand Fireman 'B'	347	Rs. 4000-6000
Fire Engine Driver	694	Fire Eng DVR 'A'	347	Rs. 3050-4590
		Fire Eng DVR 'B'	347	Rs. 4000-6000
Supervisor (Fire)	108	Fire Master	188	Rs. 4500-7000
CAEM	37	Fire Supdt	37	Rs. 5000-8000

2. The educational qualifications and guidelines for method of rectt of the above restructured posts has been laid down in the Annexure - 'A' to this letter for which Rectt. Rules will be notified in due course.

.....2/-

Attested


Advocate

///Copy///

- 2 -

1. The Unit wise authorised strength is given and the distribution of restructured posts will be issued by the AOC (Records) in respect of centrally controlled fire staff.
2. The upgradation/redistribution of various posts will be effective from the date of issue of this letter.
3. This issues with the concurrence of the Min of Def (Fin) vide their U.O. note No. 31/0-1A/2000 dt 27 Jan 2000.

Yours faithfully,

Sd/- XXXXXXXXXXXXXXXXX
(R. Chaturvedi)

Under Secy to the Govt of India.

Copy to :-

All MCs AOC
All Records
All Central Depots
All Amr Depots
UGDA, All OAs (ink Signed copies)

for info and necessary action please.

Min. of Def/D(O-II), Min of Def/D(Civ-I), Min of Def(Fin/O-1A)

///Copy///

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

27.01.2009

गवाहाटी न्यायपीठ
Gauhati Bench

Attested

Advocate

///Copy///

Annexure - 1A

QUALIFICATION AND METHOD OF RECRUITMENT FOR
RESTRICTED POSTS OF FIRE STAFF

Designation

Qualification

Method of Recr.

Fireman

Matriculation & Trg in
fire fighting under a
state Fire service or
an Institute of repute.

Direct Recr.

Leading Hand
Fireman - 'A'

N.A.

By promotion from
Fireman

Leading Hand
Fireman - 'B'

N.A.

By Promotion from
LHF - 'A'

Fire Engine
Driver - 'A'

N.A.

By promotion from
from Fireman with
license of Heavy
Duty Vehicle

Fire Engine
Driver - 'B'

N.A.

By promotion from
Fireman - 'A'

Fire Master

N.A.

By promotion from
LHF - 'B' and EED - 'B'

Fire Supdt

N.A.

By promotion from
Fire Master

Sd/- XXXXXXXX
(R. Chaturvedi)
under Secy to the Govt of India.

///Copy///

केन्द्रीय प्रशासनिक अदायकरण
Central Administrative Tribunal

27.11.2003

गुवाहाटी नगरपालिका
GUWAHATI MUNICIPAL CORPORATION

Attested
[Signature]
Advocate

ANNEXURE 4

(घ) सहायक अग्नि शमन सलाहकार, रक्षा मंत्रालय

(ङ) निरीक्षक अग्नि शमन सेवा, ब्ल्याटर मास्टर जूर्नल शाखा/क्रम 1 (डी) : सेता मुख्यालय

(च) अनुसूचित जाति/जनजाति समुदाय का एक समूह 'घ' अधिकारी, यदि उपलब्ध हो।

14. : लागू नहीं होता।

7. 1. : फायर मैन

2. : 2826* (2003)

*कार्यभार के आधार पर परिवर्तन किया जा सकता है।

3. : रक्षा सेवा समूह 'घ' में सिविलियन (अग्निशमन, अनजीद्धोग्यिक अनुसूचितीय)

4. : 2750-4400 रु.

5. : अच्यन्

6. : 25 वर्ष से अनधिक

7. : लागू नहीं होता

8. : भैट्रिक्युलेशन के साथ किसी खाति प्राप्त संस्थान से अग्निशमन पाठ्यक्रम/अग्निशमन सेवा प्रशिक्षण प्राप्त करने का प्रमाणपत्र

9. : लागू नहीं होता

10. : दो वर्ष

11. : आमेलन द्वारा जिसके न हो सकने पर सीधी भर्ती द्वारा।

12. : आमेलन : रक्षा मंत्रालय के अधीन निम्नतर विरचना में सदृश या उच्चतर पदों पर कार्यरत व्यक्ति जो स्तम्भ 8 में विनिर्दिष्ट अहत रखते हों।

13. : लागू नहीं होता

14. : लागू नहीं होता।

[फा. सं. बी./13031/एफ एस/ओएस-8 सी (ii)/13/रक्षा(तिर)/आरआर]

वी. ए. चाबडा, अवर सचिव

New Delhi, the 13th November, 2003

S.R.O. 180.—In exercise of the powers conferred by the proviso to article 309 of the Constitution and in supersession of the Ministry of Defence Group 'C' and Group 'D' (Fire Service) posts Recruitment Rules, 1976, the President hereby makes the following rules regulating the method of recruitment to the posts of Fire Superintendent, Fire Master, Leading Hand Fire 'B', Leading Hand Fire 'A', Fire Engine Driver 'A' and Fire Engine Driver 'B' in the Army Ordnance Corps, namely :—

1. Short title and Commencement.—(1) These rules may be called the Army Ordnance Corps (Group 'C' and 'D' posts Non-Gazetted) Recruitment Rules, 2003.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Application.—These rules shall apply to the posts as specified in column 1 of the Schedule, annexed to these

35365/03—2

केन्द्रीय विधायिका न्यायालय
Central Administrative Tribunal

27. 2004

Attested

Advocate

3. Number of posts, classification and scale of pay.—The number of posts, their classification and scale of pay attached thereto shall be as specified in columns 2 to 4 of the said Schedule.

4. Method of recruitment, age limit, other qualifications, etc.—The method of recruitment to the said posts, age limit, qualifications and other matters relating to the said posts shall be as specified in columns 5 to 14 of the said Schedule.

5. Disqualification.—No person

(a) Who has entered into or contracted a marriage with a person having a spouse living, or

(b) who, having a spouse living, has entered into or contracted a marriage with any person,

shall be eligible for appointment to the said posts.

Provided that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and that there are other grounds for so doing, exempt any person from the operation of this rule.

6. Power to relax.—Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.

7. Saving.—Nothing in these rules shall affect reservations, relaxation of age limit and other concessions required to be provided for the Scheduled Castes, the Scheduled Tribes, Ex-Servicemen and other special categories of persons, in accordance with the orders issued by the Central Government from time to time in this regard.

SCHEDULE

1. Name of the post : Fire Superintendent

2. Number of posts : 37* (2002)

*Subject to variation depending on workload.

3. Classification : Civilian in Defence Services, Group 'C', (Non-Industrial, Non-Ministerial, Non-Gazetted)

4. Scale of pay : Rs. 5000-150-8000

5. Whether Selection by merit or Selection-cum-Seniority or Non-selection post : Non-selection

6. Age limit for direct recruits : Not applicable

7. Whether benefit of added years of service admissible under Rule 30 of the Central Civil Services (Pension) Rules, 1972 : Not applicable

8. Educational and other qualifications required for direct recruits : Not applicable

9. Whether age and educational qualification prescribed for direct recruits will apply in the case of promotees : Not applicable

कानूनी दस्तावेज़
Central Administrative Tribunal

27 JUL 2009

Attested

Advocate

10. Period of probation, if any : Not applicable

11. Method of recruitment whether by direct recruitment or by promotion or by deputation/absorption and percentage of the posts to be filled by various methods : By 100% promotion

12. In case of recruitment by promotion/ deputation/absorption, grade from which promotion/deputation/absorption to be made : **By Promotion :**
Fire Master with three years qualifying service in the grade

13. If a Departmental Promotion Committee exists, what is its composition : **Chairman :** One officer of the rank of Brigadier nominated by Director General Ordnance Services, Army Headquarters.
Members :

- (a) One officer of the rank of Colonel/Lt Colonel nominated by Director General Ordnance Services, Army Headquarters
- (b) One officer of the rank of Colonel/Lt Colonel/Major or of Arms/ Services other than Army Ordnance Corps.
- (c) One officer of Army Headquarters nominated by Director General Ordnance Services, Army Headquarters
- (d) Asst Fire Advisor, Ministry of Defence
- (e) Inspector Fire Services, Quarter Master General Branch/Q1 (D), Army Headquarters
- (f) One Group 'B' officer of the Scheduled Caste/the Tribe community, if available

14. Circumstances in which Union Public Service Commission is to be consulted in making recruitment : Not applicable

2. 1. : Fire Master

2. : 188*
(2002)

*Subject to variation depending on workload.

3. : Civilian in Defence Services, Group 'C'; (Non-Industrial, Non-Ministerial, Non-Gazetted)

4. : Rs. 4500-125-7000

5. : Non-Selection

6. : Not applicable

7. : Not applicable

8. : Not applicable

9. : Not applicable

10. : Not applicable

केन्द्रीय प्रशासनिक वरिष्ठन
Central Administrative Journal

27.12.2003

Attested
Signature
Advocates

7. : Not applicable
8. : Not applicable
9. : Not applicable
10. : Not applicable
11. : By 100% promotion
12. : By Promotion :
Fireman with three years qualifying service in the grade after appointment possessing a valid heavy vehicle driving licence.
13. : Chairman : One officer of the rank of Brigadier nominated by Director General Ordnance Services, Army Headquarters.
Members :
(a) One officer of the rank of Colonel/Lt Colonel nominated by the Director General Ordnance Services, Army Headquarters.
(b) One officer of the rank of Colonel/Lt Colonel/Major of Arms/Services other than Army Ordnance Corps.
(c) One officer of Army Headquarters nominated by Director General Ordnance Services, Army Headquarters.
(d) Asst Fire Advisor, Ministry of Defence.
(e) Inspector Fire Services, Quarter Master General Branch/Q1 (D), Army Headquarters.
(f) One Group 'B' officer of the Scheduled Caste/the Tribe community, if available.
14. : Not applicable.
7. 1. : Fireman -
2. : 2826*
(2003)
*Subject to variation depending on workload.
3. : Civilian in Defence Services, Group 'D' (Non-Gazetted/Non-Industrial)
4. : Rs. 2750-4400.
5. : Non-Selection
6. : Not exceeding 25 years.
7. : Not applicable
8. : Matriculation and certificate of having undergone a Fire course/fire service training from an institute of repute.
9. : Not applicable
10. : 2 years
11. : By absorption, failing which by direct recruitment
12. : Absorption :
Persons working in analogous or higher posts in the lower formation, under the Ministry of Defence and having the qualifications specified in column 8.
13. : Not applicable
14. : Not applicable.

[F. No. B/13031/FS/OS-8C(ii)/13/D (Appmts)/RR]

V. A. CHAVDA, Under Secy.

Printed by the Manager, Govt of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.

Attested

Advocate

The Chief of the Army Staff

Subject : Restructuring of Fire Fighting Cadre in the Ord Corps

Sir,

The following amendment is hereby carried out in the Annexure 'A' to the Govt of India, Min of Defence letter No A/26576/Fire Staff/OS-20/188/D(O-II) dated 03 Feb 2000-

Qualification for recruitment

For : Matriculation & training in fire fighting under a State Fire Service or an Institute of repute

Read :-

(a) Matriculation.

(b) Must be physically fit and capable of performing strenuous duties and must have passed the test specified below :-

(i) Height without shoes - 165 cms provided that a concession 2.5 cms. height shall be allowed for members of the Scheduled Tribes.

(ii) Chest (un-expanded) - 81.5 cms.

(iii) Chest (on-expansion) - 85 cms

(iv) Weight - 50 Kgs (minimum)

(v) Endurance Test :-

(aa) Carrying a man (fireman) of 63.5 Kgs to a distance of 183 meters within 96 seconds.

(bb) Clearing 2.7 meters wide ditch landing on both feet (long jump).

(cc) Climbing 3 meters vertical rope using hands and feet

2. This issue with the concurrence of Min of Def/Fin (O-1B) vide their U.O No 3310/O-1B/05 dated 10.11.2005.

Yours faithfully

(NK Kashmira)

Under Secretary to the Govt of India

Copy to:-

All MGs AOC

AOC Records

All Central Depots

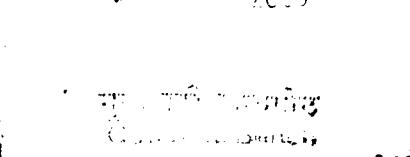
CGDA, CDAs (ink signed copies)

MoD/D(O-II), MoD/Fin(O-1B)

OS (Pers)

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

77 2009



Attested

Advocate

উপর্যুক্ত প্রতিবেদন সভার সর্বসমত দিঙ্গুড় অন্মুহো যুবরাজ সহ বিভিন্ন মোচা কের ক্ষেত্রে উদ্দেশ্য এবং জেলা দলের এ সিদ্ধান্তের কথা ২২ নভেম্বর দলের মুদ্রিত প্রতিক্রিয়া বরাকে জানানোর পর রাজা সভাপতির নিম্নে অনুব্রাহ্মিক হার্ডকোর্টে জেলা যুবরাজের মতো সভাপতি পদে উত্তীর্ণ করান ভোটান করে নির্দিষ্ট প্রতিক্রিয়া এবং কমন্যান্ডেল সিদ্ধান্ত সময়ের মধ্যে তার প্রাপ্ত জেলা কমিউনিটি ভোট পরিচালনে। কারেই এ নিতে বেধে সম্পত্তি কেনও থেকে উপর্যুক্ত হত পাবে না। বৃহস্পতিবার দলের জেলা কার্যালয়ে জেলা যুবরাজ আহত এক সাংবাদিক সম্মেলনে এ কথা জানান বিজ্ঞপির জেলা সভাপতি নেপাল কর্তৃক কৰ্তৃত।

ANNEXURE ... 7

প্রশ়িত প্রতিবেদন দলের বিশ্ববিদ্যালয়ের উপাচার্য সভের সভাপতি অনুষ্ঠিত হলোয়ানো দেখানকার আগ্রহাত্মক আমোজিত এই সভালাভ দেশের বিভিন্ন প্রাচীত বিশ্ববিদ্যালয়ের প্রাচী দলের উপর প্রতিক্রিয়া করেন। প্রভেদের উপর প্রতিক্রিয়া করেন। প্রভেদের আসোসিয়েশন অব কমন্যান্ডেল এবং চেয়ারম্যানের উপর্যুক্ত এই প্রতিক্রিয়া করেন। প্রতিক্রিয়া করার পর হার মানের মানের প্রাচী প্রাচী করান। উপাচার্যের অন্যোনী নাড়ি দিয়ে চেয়ারম্যান সব ধরনের সহযোগিতার আয়াস দেন। এই ক্ষেত্রে অধীনে যে ইন্দ্রসমুদ্র

দলের প্রতিক্রিয়া করেন।

পুরোভূষণ সভা এগো অপাহসাদে চেয়ারম্যানের সভা আলোচনাকালে আসায বিশ্ববিদ্যালয়ে প্রাচী প্রতিক্রিয়া করেন। প্রতিক্রিয়া করার পর হার মানের মানের প্রাচী প্রাচী করান। উপাচার্যের অন্যোনী নাড়ি দিয়ে চেয়ারম্যান সব ধরনের সহযোগিতার আয়াস দেন। এই ক্ষেত্রে অধীনে যে ইন্দ্রসমুদ্র

57 Mnt. Div. Ord. Unit

Pin : 909057, C/O 99 APO

এই পত্রিকায় ১১-১১-২০০৫ তারিখে DAVP

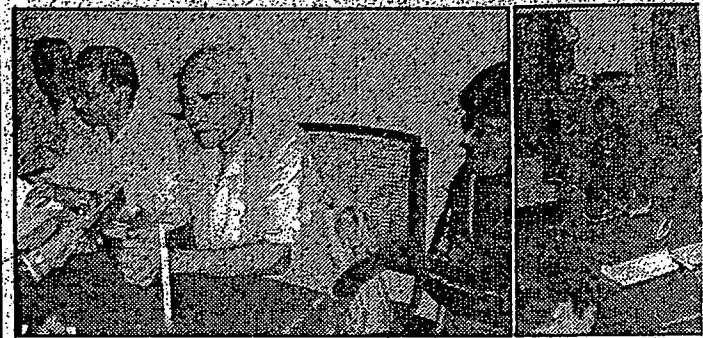
7101/0153/2005 নং বিজ্ঞপনের মাধ্যমে ৬৪ (চৌষটি) টি ফায়ারম্যান পদের জন্য নিযুক্তির দরখাস্ত আহ্বান করা হয়েছিল।

এই বিজ্ঞপ্তি মাধ্যমে উক্ত ৬৪ (চৌষটি) টি ফায়ারম্যান পদের জন্য প্রকাশিত নিযুক্তির বিজ্ঞাপন বাতিল করা হল।

লেফটান্ট কমেল: অতুল পাত্র

ও/সি: রেষ্টঃ সেল

DAVP: 7101/164/2005



বারক্সবেসের কেন্দ্রীয় বামিতি আয়োজিত পাখান্ডক সম্মেলনে সভাপতি ইউনিটেড মণিপুরি শামলেন্ড চৰকৰ্তা, সাধাৰণ সম্পদক উৎপন্ন দাস ও অন্যান্যা। | সম্মেলনে কৰিকৰ্তা।

Assam Public Service Commission

NOTIFICATION

It is for information to all concerned that the Assam Public Service Commission will hold interview/viva-voce test for the following post (s) as per programme given below at its office at Jawahar Nagar, Khanapara, Guwahati-781 022.

NAME OF POST (S)	DATE
1. Lecturer in Manipuri Language in the Teacher Training College, Silchár, Under Education (Elementary) Department.	06/12/2005
2. Director of Assam State Archives under G. A. Deptt.	07/12/2005
3. Director of Agriculture under Agriculture Deptt.	08/12/2005
4. Director of Health Services under Health & F. W. (A) Deptt.	09/12/2005

Deputy Secretary
Assam Public Service Commission
Jawahar Nagar, Khanapara, GHY-22

Janasanyog/3149/05

কেন্দ্রীয় প্রযোগসন্ধিক অধিকারী
Central Administrative Officer (CAO)

27

2009

Attested

Advocate

দেশিক যুগ্মাধা, বিলচর, ১৩ ডিসেম্বর, বুধবার, ২০০৬ (পাঁচ)

ADVERTISEMENT SHEET

APPX 'A'

57 MTN DIV ORD UNIT

1. Applications are invited for 48 (forty eight) Fireman vacancies for Schedule Caste, Schedule Tribe, Other Backward Class, Unreserved and Ex-servicemen with following details:-

(a) Age limit:- 25 years as on date of physical test with relaxation to reserved categories as per Govt. orders.

(b) Qualification:- Matriculation

(c) Physical Standards:- Must be physically fit and capable of performing strenuous duties and must have passed the test specified below:-

(i) Height without shoes 165 cms provided that a concession 2.5 cms, height shall be allowed for members of the Scheduled Tribes.

(ii) Chest (Un-expanded) 81.5 cms

(iii) Chest (on-expansion) 85 cms

(iv) Weight:- 50 Kgs (Minimum)

(v) Endurance Test:-

(bb) Carrying a man (litterman) of 63.5 Kgs to a distance of 183 meters within 90 seconds.

(ab) Clearing 2.7 meters wide ditch landing on both feet (long jump)

(ac) Climbing 3 meters vertical rope using hands and feet.

APPLICATION

1. Two copies of application should be addressed to Administrative Officer, 57 MTN Div. Ord Unit, Pln-909057, C/O 99 APO and the last date of receipt of application is 01 February 2007. All incomplete/blank applications could be rejected.

2. Three copies of recent passport size photographs of the applicant duly attested by a Gazetted Officer and a self addressed registered envelope duly affixed with requisite stamps is to be enclosed along with application.

PHYSICAL TEST

4. The candidates are required to bring the supporting documents (in original) as attached to the application form at the time of physical tests.

5. Physical tests will be held on 01 March 2007 at 0730 hrs onwards at Masimpur Military Station, (Assam). TA/DA is permissible for physical test. Any injury sustained by the individual during the physical tests will not be responsibility of this organization.

NOTES :-

(i) Requirement subject to change by competent authority. Any change will be intimated through advertisement.

(ii) Candidates will report to reception point at entry gate at Masimpur Military Station on date of physical tests with original documents, failing which he will not be permitted to undergo physical tests.

(iii) The decision of the Unit Management will be final.

(iv) The expenditure incurred on travel, conveyance and Medical expenses etc. by the candidate at the time of selection test will be borne by the candidate.

(v) Candidates who get selected will be required to obtain police verification. Beware of touts. Recruitment is free of cost. Do not pay to any one.

কেন্দ্রীয় প্রশাসন আয়োজন
Central Administrative Tribunal

27

2009

Attested

Advocate

15 Apr 2007

The Sunday Express

ANNEXURE 9

Kusheshwar Ashan.

Approx. cost (Rs.)	Ernest Money (Rs.)	Cost of tender form (Rs.)	Time of completion	Date of opening
15,56,06,299.52	31,12,130/-	3000/-	18 (Eighteen) Months	16.05.07

Tender forms are available from the office of CAO/Con/EC Ry, Mahendraghat, Patna on production of demand draft from any nationalized/Scheduled bank in favour of FA & CAO/Con/ECR, Mahendraghat, Patna or money receipt issued by the Divisional Cashier, Sonpur/Danapur Division for the cost of tender documents mentioned above between 10.00 Hrs to 16.00 Hrs on any working day from 01.05.2007 to 15.05.2007. In case any tenderer wishes to obtain the tender document by post, Rs. 100 (Hundred) extra should be sent by demand draft in favour of FA & CAO/EC Ry, Mahendraghat, Patna. Tenders can be dropped in prescribed tender boxes placed in offices of the CAO/Con/EC Ry, Mahendraghat, Patna and CAO/Con/Northern Railway, Kashmari bridge, Delhi up to 12.00 hrs. of the date of opening and tender will be opened at 12.30 Hrs on the same day simultaneously at Patna & Delhi in presence of tenderers, present at the time of opening of the tender. If the office is closed on the stipulated date and time due to some unforeseen holiday, tender will be received upto and opened on the next working day at the same place & time. Tender can also be sent to chief Administrative Officer, EC Ry, Mahendraghat, Patna-4 by registered post/speed post/courier service to reach before 12.00 hrs. of the date of opening. However, Ry. will not be responsible for non receipt or delayed receipt of such tenders. 4. The tender must be submitted with proper amount of Earnest Money in favour of FA & CAO/Con/ECR, Mahendraghat, Patna. Tender without proper Earnest Money will be summarily rejected. The tender form is not transferable. 5.0 Eligibility criteria: 5.1 Contractor should have completed in the last three financial years (i.e. current year and three previous financial years), at least one similar work, for minimum value of 35% of Advertised tender value, is classified as under. 5.1.1 Similar nature of work physically completed within the qualifying period, i.e. the last 3 financial years and current financial year (even though the work might have commenced before the qualifying period) should only be considered in evaluating the eligibility criteria. 5.1.2 The total value of similar nature of work completed during the qualifying period and not the payments received within qualifying period alone, should be considered. In case, the final bill of similar nature of work has not been passed and final measurements have not been recorded, the paid amount including statutory deduction is to be considered. If final measurements have been recorded and work has been completed with negative variation, then also the paid amount including statutory deduction is to be considered. However, if final measurements have been recorded and work has been completed with positive variation but variation has not been sanctioned, original agreement value of last sanctioned agreement value whichever is lower should be considered for judging eligibility. 5.1.3 In the case of composite works involving combination of different works, even separate completed works of required value should be considered while evaluating the eligibility criteria. For example, in a tender for bridge work where similar nature of work has been defined as bridge work with pile foundation and PSC superstructure, tenderer, who has completed one bridge work with pile foundation of value at least equal to 35% of the tender value and also has completed one bridge work with PSC superstructure of value at least equal to 35% of the tender value, should be considered as having fulfilled the eligibility criteria of having completed single similar nature of work. 5.2 Total contractual amount received during the last three financial years and in the current financial year, should be a minimum of 150% of advertised tender value as per audited balance sheet duly certified by the Chartered Accountant. For the financial year ended and/or the current financial year if audited balance sheet is not available contractual amount received duly certified by the chartered accountant should be submitted as a % of turnover. Alternatively at least payment certificates from Central Govt./State Govt./Central S. Us/State P.S. Us and other Government Agencies for a minimum of 150% of advertised tender value may be submitted. 5.3 Contractor should submit revenue/Banker's Solvency certificate of minimum 40% of advertised tender value of work. "Similar nature of Work is defined as Tender No. 3 of 2007-08 (Open) "Construction of any work involving structural concrete." Tender No. 4 of 107-08 (Open), 5 of 2007-08 (Open), 6 of 2007-08 (Open), 7 of 2007-08 (Open), 8 of 2007-08 (Open) and 9 of 2007-08 (Open) "Construction of major bridge with well/pile foundation."
Note: I. Where an individual bids on the basis of credentials of an earlier Joint Venture/sociation of Partners/Partnership firm, credentials shall be considered in percentage of their participation in the earlier firm. II. Participation by Association of Partnership (AOP)/Joint venture (JV) firms are not allowed for tender value up to Rs. 8.0 Crore. III. Completion certificate of the work issued from Central Govt./State Govt./Central P.S. Us/ State P.S. Us and other Government Agencies shall only be accepted, credential from Private Individuals shall not be accepted. IV. Tenders submitted without credentials as per annexure I, II & III of Tender document liable to be rejected. 6. (a) Advance to contractor is not applicable for tender no. 3 of 2007-08 (Open) only. (b) Purchase preference clause is not applicable for tender no. 3 of 2007-08 (Open) only. (c) Price variation clause is not applicable for tender no. 3 of 2007-08 (Open) only. Performance Guarantee (P.G.): Please note that in addition to Security Deposit, the successful contractor will have to submit a performance Guarantee @ 5% of Contractual value in form of a Bank guarantee Bond in token of commitment to complete the work successfully. The Performance guarantee will have to be deposited after the letter of acceptance has been issued but before signing the Agreement and should be valid up to expiry of the maintenance period. Details in this regard available in the Tender document. (a) Performance guarantee shall be released after satisfactory completion of the work and maintenance period is over. The procedure for releasing should be same as security deposit. (b) Whenever the contracts are rescinded the security deposit should be settled and the performance guarantee shall be encashed and the balance work should be got separately. (c) The balance work shall be got done independently without risk & cost of the final contractor. (d) The original contractor shall be debarred from participating in the tender for executing the balance work. If the failed contractor is a JV or a partnership firm then every member/partner of such a firm would be debarred from participating in the tender for the balance work either in his/her individual capacity or as a partner of any other JV/Partnership firm. Note:- (1) Rates shall have to be quoted as percentage above or below for each schedule separately. Tenderers must not quote item wise rates. In case any contractor quotes unified percentage for each schedule and item wise rates against individual items also, no cognizance will be taken for the item wise rates quoted by the contractors. However, railways reserves their right to cancel any tender where item wise rates have been quoted. (2) i. Tender notice is also available on <http://www.tendertimes.com> ii. The tender documents will also be available on site <http://www.tendertimes.com> during the above mentioned period and the same can be downloaded and used as tender document for submitting tender. This facility is available free of cost. However, the demand draft as prescribed above towards the cost of tender documents will have to be enclosed with the tender. In case the tender is not accompanied with the valid demand draft for the tender document as detailed above, the tender will be summarily rejected.

4/19/272/88C

CAO/Construction

"SERVING CUSTOMERS WITH A SMILE"

PURCHASE DEPTT
IGIA, NEW DELHI

For further details regarding tender documents, Fee etc
<http://www.indianairlines.in>

Sd/-
Gen. Manager (Stores) (Purchase)

15 APR 2007 SUNDAY 8:48:88

57 MTN DIV ORD UNIT CORRIGENDUM

Ref advt. No. 7101/200/2006 published in this news paper on 10/1/07 and advt. No. 7101/253/2006 published on 26/2/07 regarding recruitment of 48 Firemen.

The following may be read as:

1. Fresh date for screening test will be 01 May 2007.
2. Candidates are advised to report with Admit Card/ Call letter at 06.00 AM on 01 May 07 at Kalibari Traffic Control Post, Masimpur Cantonment, Silchar (Assam).
3. Total number of posts of Firemen are 48. Reservation of posts will be, Ex Servicemen, 20% (Reservation for SC/ST/OBC will be available after filling up vacancy for Ex-Servicemen), SC - 7%, ST - 12%, OBC - 27%, General - 51%, (Subject to change as per Govt. Policy).
4. Existing pay scale of firemen is Rs. 2750-70-3000-75-4500.
5. On getting recruited, likely place of employment will be Assam and Nagaland, including liability to serve anywhere in India.
6. Selection procedure (Not necessarily in the order given below) will be endurance test, check of physical parameters as laid down, written exam, interview, syllabus for written exam - matriculation level as well as general information regarding fire fighting.
7. Meeting all selection criteria does not automatically entitle a person to be selected for employment. Merit list will be prepared based on the above selection procedure.
8. Fresh application will only be accepted for physically handicapped (hard of hearing). Candidates who have applied previously need not apply again. However, they will have to fulfill all the laid down criteria as mentioned in Advertisement No. DAVP 7101/200/2006 published in Employment News for week 20-26 January 2007 and Indian Express (New Delhi Edition) on 10 Jan 2007. Candidates of above category should report with original documents and application form at 06.00 AM on 01 May 07 at Kalibari Traffic Control Post, Masimpur Cantonment, Silchar (Assam).

CO, 57 Mtn DOU
davp 7101/2/2007

केंद्रीय प्रशासनिक अदायकारण
Central Administrative Tribunal

27.04.2009

गुवाहाटी बाजारी बैच
Guwahati Bench

Attested


Advocate

FROM NO. 4.
(See Rule 42)

ANNEXURE 10

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 15/2009

Misc Petition No. 1

Contempt Petition No. 1

Review Application No. 1

Applicant(s) ZAKIR HUSSAIN BARBHUIYA & 2 ORS.

Respondents UNION OF INDIA & ORS.

Advocate for the Applicant(s) DR. J.L. SARKAR
MR. S.N. TANWALI

Advocate for the Respondent(s) C.G.S.C.

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

27 JUL 2009

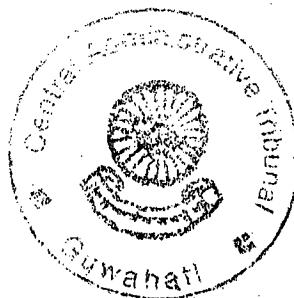
गुवाहाटी बायपारी
Guwahati Bench

Notes of the Registry Date Order of the Tribunal

09.02.2009 Heard Dr J.L.Sarkar, learned counsel appearing for the Applicant and Mr K. Das, learned Addl. Standing counsel for Govt. of India (to whom a copy of this Original Application has already been supplied) and perused the materials placed on record.

Admit. Issue notice to the Respondents requiring them to file their written statement by 30.03.2009.

Appointment, of any candidate (selected, pursuant to their recruitment made under Advertisement published under Employment News dated 19.11.2005 under Annexure-H and Advertisement published in Dainik Jagdsankha on 13.12.2006 under Annexure-M) so far made in the post of "Fireman", shall abide by the ultimate result of this case. The Respondents, accordingly should intimate all the selected/appointed candidates about pendancy of this Original Application.



Attested

Advocate

ADVOCATE

Attested

O.A. 15/09

09.02.2009 No. 15/2009; so that they shall remain free to contest this case.

No fresh appointment of "Fireman" should be made (till 30.03.2009) by the Respondents; without leave of this Tribunal.

While passing the aforesaid ad-interim restraint order, liberty is hereby granted to the Respondents to approach this Tribunal (even at an earlier point of time than 30.03.2009) for modification of the ad-interim order/to take leave from this Tribunal.

Send copies of this order to the Applicants and the Respondents (along with notices).

Free copies of this order be also handed over to the counsel appearing for the parties.

Sd/-
M.R. MOHANTY
VICE CHAIRMAN

TRUE CO.
(अनिवार्य)
अनुधान अभिकारी (18/2/2009)
Section Officer (Judd)
Central Administrative Tribunal
गुवाहाटी न्यायालय
Guwahati Bench
गुवाहाटी/Guwahati/5

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

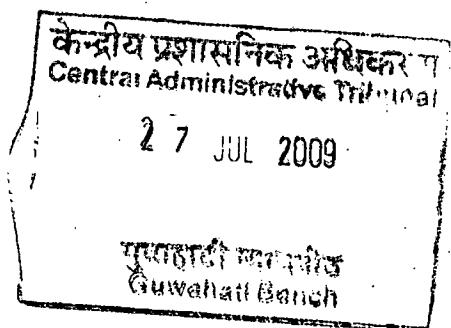
27 2009

गुवाहाटी न्यायालय
Guwahati Bench

Attested
Signature
Advocate

SHORTER CONSTITUTION OF INDIA

ELEVENTH EDITION



Dr. (Justice) Durga Das Basu

*Saraswati, Vidyavaridhi, Prajnabharati,
Nyayaratnakara, Neetibhaskara, Manava Ratna,
M.A., LL.D. (Cal.); D. Litt. (Burd.; Rabindrabharati; Kalyani),
Honorary Professor, Banaras Hindu University;
Retired Judge, High Court, Calcutta.*

*Formerly : Member, Union Law Commission,
Tagore Law Professor, Asutosh Memorial Lecturer, Calcutta University,
Recipient, National Award 'Padmabhushan' (1985),
National Research Professor of India (1986),
National Citizen's Award (1991),
Asiatic Society Gold Medal (1992).*

Prentice-Hall of India Private Limited
NEW DELHI-110 001

1994

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Advocate

Union by Art. 298 (carrying on of trade, disposal of property, and making of contracts) is concerned, it will not be governed by the Proviso to Art. 73.⁷⁰

Power to change executive order or policy. 1. Where the Constitution does not require an action to be taken only by legislation or there is no existing law to fetter the executive power of the Union (or a State, as the case may be), the Government would be not only free to take such action by an executive order or to lay down a policy for the making of such executive orders as occasion arises, but also to change such orders or the policy itself, as often as the Government so requires,⁷¹ subject to the following conditions:

(a) Such change must be made in the exercise of a *reasonable* discretion, and not arbitrarily.⁷¹

(b) The making or changing of such order is made known to those concerned.⁷¹

(c) It complies with Art. 14, so that persons equally circumstanced are not treated unequally.⁷¹

(d) It would be subject to judicial review.⁷²

2. Subject to the same conditions as above, the Government can review an executive or administrative order or relax the conditions of its policy.⁷²

✓ **Enforceability of non-statutory administrative rules or orders.** Though Art. 72 empowers the Government to issue rules or instructions, these must give way to provisions of any law or Rules made in exercise of the power conferred by Art. 309⁷³ [see, further, under Art. 309, *post*].

Arts. 73 and 298. 1. These two Articles are to be read together to determine the extent of executive power of the State to carry on a trade or business.⁷⁴

2. Since the executive power of the Union extends to matters with respect to which Parliament has power to make laws, the executive power of the Union Government extends to lotteries organised by the Government of India or of a State, by reason of Entry 40 of List I. But Art. 73 is subject 'to the provisions of the Constitution', including Art. 298. Now, Proviso (b) to Art. 298 says that the executive power of a State may extend to a trade or business with respect to which the State Legislature has no power to make laws, subject to the condition that such executive power of a State shall be 'subjective to *legislation by Parliament*'. Hence, in the absence of legislation by Parliament, a State Government may, by its executive power, control sale in the State of lotteries organised by the Government of India, and for that no permission from the Government of India would be required, because Proviso (b) to Art. 298 does not make this executive power of the State subject to 'the *executive power of the Union*'.⁷⁴

Council of Ministers

74. (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice.⁷⁵

70. *T.D. Corp. v. State of Assam*, A. 1961 Assam 133 (139).

71. *Sangwan v. Union of India*, A. 1981 S.C. 1545 (para. 4).

72. *Verma v. Union of India*, A. 1980 S.C. 1461 (para. 5).

73. *Palluru v. Union of India*, (1989) 2 S.C.C. 541 (paras. 10-11); *Union of India v Somasundaram*, (1989) 1 S.C.C. 175 (para. 6).

74. *Anrai v. State of Maharashtra*, A. 1984 S.C. 781 (para. 9).

75. The italicised words were added to Cl. (1), by the Constitution (42nd Amendment) Act, 1976.

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Advocate

regulate the 'recruitment and conditions of service' of the persons mentioned therein and is not co-extensive with the power of the Legislature under item 70 of List I or 41 of List II. It does not confer any power to validate an order which was invalid when it was made, e.g., to make a rule to declare that persons who were invalidly retired on a particular date shall be deemed to have been, validly retired. Such a rule is *ultra vires* the Proviso to Art. 309 and is, accordingly, invalid,¹⁸ though the Legislature acting under the Proviso, could have exercised such power of validation.

4. In the case of the Union Territories, the rule-making power belongs to the President,¹⁹ until Parliament chooses to legislate.

5. In States reorganised under the States Reorganisation Act, 1956, the power of the Governor to make rules has been controlled by s. 115(7) of that Act, so that no Rule made by the State Government would be valid and effective unless the prior approval of the Central Government has been obtained.²⁰

Nature of the rule-making power. 1. The power conferred by the Proviso to Art. 309 is the power to make rules which are *general* in their operation, though they may be applied to a particular class of Government servants. It cannot be used to make an *ad hoc* declaration, e.g., that persons who have been illegally retired shall be deemed to have been lawfully retired.¹⁸

✓ 2. A rule made under Art. 309 can be amended only by a Rule or Notification duly made under Art. 309.²¹

3. So long as a Rule framed under Art. 309 is not duly amended, it is binding on the Government and its action in matter covered by the Rules must be regulated by the Rules.²²

4. The rule-making function is a *legislative* (not executive²³ or quasi-judicial) function, so that no hearing is necessary for making or changing Rules made under Art. 309.²⁴ A Rule made in exercise of the power under the Proviso to Art. 309 constitutes 'law' within the meaning of Art. 235.²³

5. For the same reason, such Rule may be struck down only on such grounds as may invalidate a legislative measure, e.g., violation of Arts. 14, 16 of the Constitution, and not because the Court considers it to be unreasonable.^{24a}

6. The rule-making power conferred by Art. 309 of the Constitution cannot be fettered by any contract.²⁵ Hence, the employee cannot rely on anything in his contract of employment which is inconsistent with the Rules of Service in force,²⁵ because the Rules made under Art. 309 have the same force as an Act passed by the appropriate Legislature.²⁶

Rules made under Arts. 309 and 162. See *post* under 'Enforceability of Service Rules'.

18. *State of Madras v. Padmanabhacharya*, A. 1966 S.C. 602 (605).

19. *Gobalousamy v. Pondicherry*, A. 1968 Mad. 298.

20. *State of Mysore v. Basappa*, (1980) U.J.S.C. 506; *Raghavendra v. Dy. Commr.*, A. 1965 S.C. 136; *Kapur v. State of Haryana*, A. 1987 S.C. 415 (para. 7).

21. *Nagarajan v. State of Mysore*, A. 1966 S.C. 1942; *Saksema v. State of M.P.*, A. 1967 S.C. 1264 (1267-68).

22. *Bhatnagar v. Union of India*, (1991) 1 S.C.C. 544 (para. 13) — 3-Judges.

23. *Yadav v. State of Haryana*, A. 1981 S.C. 561 (paras. 46-47).

24. *Kumar v. Union of India*, A. 1982 S.C. 1064 (para. 36).

24a. *Bansal v. Union of India*, A. 1993 S.C. 978 (para. 21).

25. *Union of India v. Arun*, A. 1986 S.C. 737 (paras. 17-19); *State of Maharashtra v. Joshi*, (1969) 1 S.C.C. 804 (para. 14).

26. *Dinesh v. State of Assam*, A. 1978 S.C. 17 (21).

Attested

Advocate

श्री योगी अधिकारी
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