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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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P.D. 14.7.2015
SECTION OFFICER (JUDL.)

JULY 2015

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

1. ORIGINAL APPLICATION No : 142 / 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. -----
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Applicant (S) : Abul Hussain Sadiq

Respondent (S) : Union of India & Ors.

Advocate for the : D.P. J.L. Sarkar,
{Applicant (S)}

Mr. S.N. Tahuri

Advocate for the : Addl. C.G.S.C. Mr. M. U. Ahmed
{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 I.P.C/BD No. <u>396402641</u> Dated <u>9.3.2009</u></p> <p><i>Transm. 28.7.09</i> <i>Dy. Registrar 28/7/09</i> <i>28/7/09</i></p> <p><u>28.7.09</u> Four (4) copies of Application with envelopes received for issue notices to the Respondents No. 1 to 4 and with under taking to serve a copy of the Petition to the Addl. C.G.S.C., <u>28/7/09</u> <i>28/7/09</i> <i>28/7/09</i></p>	29.07.2009	<p>Dr. J. L. Sarkar, learned counsel appearing for the Applicant and Mr. M. U. Ahmed, learned Addl. Standing Counsel representing the Government of India (to whom a copy of this O.A. has already been supplied) and perused the materials placed on record.</p> <p>In course of hearing Dr. J. L. Sarkar, learned counsel appearing for the Applicant has placed before us an extract of the news item published in Assam Tribune dated 23rd July, 2009 to show that in the case of ACS Officers restraint order was passed by the Hon'ble High Court. The copy of the same has already been supplied to Mr. M. U. Ahmed, learned Addl. Standing Counsel for the Respondents.</p>

O.A.142 of 2009

Contd/-

29.07.2009

Copies of notices
along with order
dated 29/7/09 send
to D/Sec. for issuing
to respondents by
Speed Post, AID.

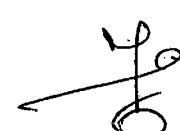
Case D/No - 4093 to 496
31/7/09. Dt 31/7/09

Other connected matters are
to be listed on 7th August 2009.

Call this matter on 7th August
2009 along with O.A.No.15 of 2009,
81 of 2009 and 141 of 2009.

Send copies of this order to
the Respondents by Speed Post
along with the copies of this O.A.


(M.K. Chaturvedi)
Member(A)


(M.R. Mohanty)
Vice-Chairman

NO A) S filed.

b2
6/8/09.

/lm/

(M.K. Chaturvedi)
Member(A)

(M.R. Mohanty)
Vice-Chairman

07.08.2009

Heard Dr J.L. Sarkar, learned Counsel
appearing for the Applicant and Mr M.U.
Ahmed, learned Addl. Standing Counsel for
the Government of India, representing the
Respondents.

Hearing concluded.

Orders reserved.

18/9/09


(M.K. Chaturvedi)
Member (A)


(M.R. Mohanty)
Vice-Chairman

Copy of the judgment
order dated 11/9/09 send
to the D/section for
issuing to the Applicant
2 Respects by Regd post.

Free copies of the
both side standing
Counsel's by post.

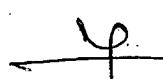
D/No. 11517 — Open
→ 1152 18/9/09

Dtd — 29-9-09.

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

/bb/

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.142 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

Abdul Hussain Sadial,
S/o Mohibur Rahman Sadial,
Vill.- Masimpur Part II, P.O.- Subedar Basti,
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 M.U. Ahmed, Addl. C.G.S.C.



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O.A.No.142/2009

ORDER

M.R. MOHANTY, VICE-CHAIRMAN

Heard Dr J.L. Sarkar, learned Counsel for the Applicant and Mr M.U. Ahmed, 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 considered as a candidate under the said fresh Advertisement of 2007 and held to be an overaged candidate.

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.

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 further 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) his case was considered and since he was overaged, he did not receive any further consideration. 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. 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. In the present case, the Advertisement (in response to which the Applicant offered his candidature) was cancelled. Despite that he was treated to be a candidate in respect of the fresh Advertisement. But by that time, he was overaged. He was, as discussed earlier, was not a valid candidate in response to Advertisement of 19.11.2005. Under the fresh Advertisement of 2007, he was overaged. Thus, judging from any angle, he has no case on merit.

5. It was also pointed out by Mr M.U. Ahmed, learned Addl. Standing Counsel for the Union of India, that the candidature of the Applicant was rejected during April 2007 as at Annexure-10 to the O.A. and that he remained satisfied till filing of this Original Application (on 28.07.2009) under Section 19 of the Administrative Tribunals Act, 1985. He has submitted that such an application is barred by limitation; the same having been filed after long 2 - years.

6. No petition seeking/explaining condonation of delay has been filed in this case.

7. It was stated by Dr J.L. Sarkar, learned Counsel appearing for the Applicant that coming to know that other candidates have approached the Hon'ble Court and this Tribunal, the Applicant has approached this Tribunal with the present case and since connected cases are still pending, his grievances need be redressed.

8. The points raised in the connected cases have also been raised by the present Applicant. In these connected cases (O.A.Nos.15, 81 & 141 of 2009) it has already been held that there were no violation of any statutory Recruitment Rules nor the recruitment were done on the basis of any executive instructions that was inconsistent with any statutory rules. It has been held in those cases (decided on 11.09.2009) that the recruitment was held as per new Recruitment Rules of 2006 (not on the basis of old Recruitment Rules of 2003) and as such there were no miscarriage of justice in the recruitment process.

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D

9. In the above premises, without finding any *prima facie* case, we dismiss this case, which is also barred by limitation. No costs.

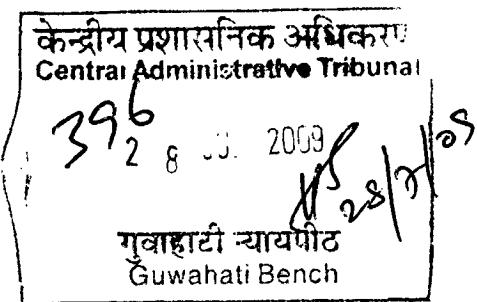
10. Send copies of this order to the Applicant and the Respondents (alongwith copies of the O.A.) and free copies of this order be handed over to the learned Counsel for both parties.

Chaturvedi
(M. K. CHATURVEDI)
ADMINISTRATIVE MEMBER

Mohanty
11/09/06
(M. R. MOHANTY)
VICE-CHAIRMAN

nkm

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
GUWAHATI



O.A.No. 142/2009

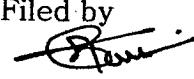
Shri Abul Hussain Sadial

-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's candidature was rejected on the ground of over age on the date of the test though he was within the age on the cut off date. 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.

Filed by


S.N.Tamuli (Advocate)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

GUWAHATI

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

28.01.2009

गुवाहाटी न्यायपीठ
Guwahati Bench

O.A.No. 142/2009

Shri Abul Hussain Sadial

-Vs-

U.O.I. & Ors.

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4	Certificate of Honour issued from the Director State Fire Service Organisation, Govt Of Assam.	Page-21 Annexure-2
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-22 Annexure-3
6	Army Ordnance Corps (Group C and D posts Non Gazeted) Recruitment Rules- 2003 dated 13/11/03.	Page-25 Annexure-4
7	Executive instruction dated 11/11/05, issued by the Ministry of Defence diluting the qualification for fireman.	Page-29 Annexure-5
8	Advertisement for 64 posts of fireman in 57 MTN DIV ORD Unit published in Employment News Dated 19/11/05	Page-30 Annexure-6
9	Cancellation notification of the 64 posts of Fireman (as advertised in Employment News dated 19/11/05) published in Dainik Yougasankha dated 4/12/05	Page-31 Annexure-7
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13	Relevant pages of The 'Shorter Constitution of India' by Dr (Justice) D.D. Basu, 11 th Edition.	Page-37 Annexure-12

Filed by.

S. N. Tomuli (Advocate)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

GUWAHATI

केन्द्रीय प्रशासनिक अदायक
Central Administrative Tribunal

28.11.2009

गुवाहाटी अदायकी
Guwahati Bench

O.A.No. 142/2009

Shri Abul Hussain Sadial

-Vs-

U.O.I. & Ors.

LIST OF DATES

Dates	Particulars	Page No/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 20 Annexure 1
3 23.10.05	Applicant completed 1 month Elementary Fire Fighting Course From State Elementary Fire Fighting Training School, Assam and a certificate of Honour was issued to that effect by the Director State Fire Service Organisation, Govt Of Assam.	Page 21 Annexure 2
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	Page 25 Annexure 4

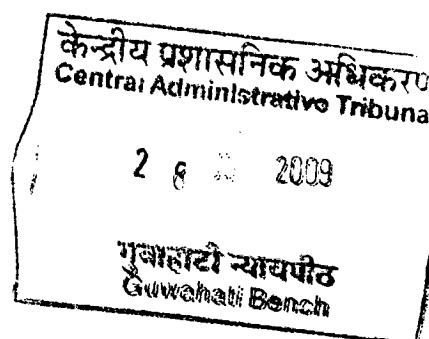
		service training from an institute of repute	
5	11/11/05	An executive instruction dated 11/11/05, was issued by the Ministry of Defence diluting the qualification for fireman. By this instruction qualification for the post of Fireman was prescribed as Matriculation instead of matriculation and certificate 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-29 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-30 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-31 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-32 Annexure-8
9	9.4.2007	Rejection letter was issued to the applicant rejecting his candidature on the ground that his age is more than upper age limit. This is illegal as he was within the upper age limit prescribed under the Rules on the last date of the application.	Page-33 Annexure-10
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-33 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.	<p style="text-align: right;">केन्द्रीय प्रशासनिक अदायी Central Administrative Tribunal</p> <p style="text-align: right;">28 JU 2009</p> <p style="text-align: right;">गवाहाटी न्यायालय Gauhati High Court</p>

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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 leave of the Tribunal. This order is still in force.	Page-35 Annexure-11
13	11.02.09	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 Writ Appeal No 51/09 and was allowed 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.	
14		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.	
15		Applicant when came to know about these, he files this petition for the cause of justice.	

Filed by.

S.N. Tamuli (Advocate)



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
GUWAHATI

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

O.A. No. 142 /2009

Filed by the Applicant
Through S. N. Tumuli
Advocate Date... 22/7/09

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

28.7.2009

गुवाहाटी न्यायालय
Guwahati Bench

Abul Hussain Sadial
S/o Mohibur Rahman Sadial
Vill. Masimpur Part II
P.O. Subedar Basti
P.S. Silchar.
Dist Cachar
Assam
Pin. 788025.

.....Applicant.

-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

.....Abul Hussain Sadial

I undertake to file
a copy of the petition
to Mr. G. Basirya
Sri. C.G.S.C.
S. No. 28/7/09

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 & O.A.No.143/2009 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 **Palluru 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, and age limit on the last date of submission of application shall control the recruitment of fireman in 57 MTN Division.

2. JURISDICTION

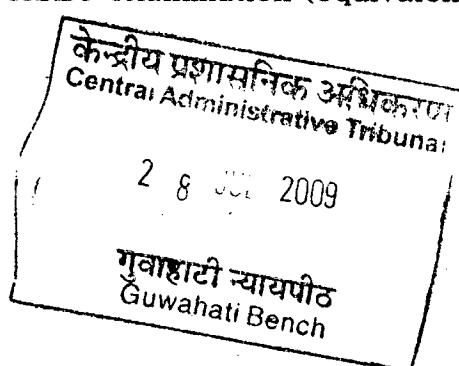
Applicant declares that the subject matter of the application is within the jurisdiction of the Hon'ble Tribunal.

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 1997.

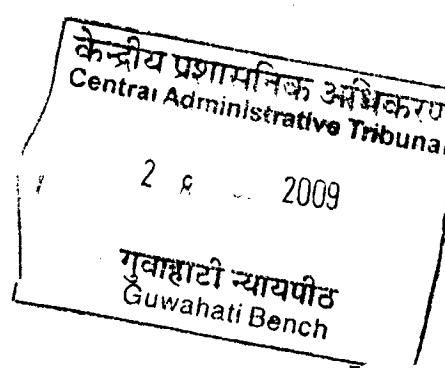


Md:- Abul Hussain Sadiq

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

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 and O.A.No.141/2009 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 after holding and finalizing the selection process/test as per laws as regards eligibility of qualification and age. 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 and he has scopes when Hon'ble Judiciary is seized with the matter.

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 received fire fighting training in State



Md:- Abel Hessam Jaleel

Elementary Fire Fighting Training School, Govt. Of Assam and passed the training.

Copy of the certificate dated 23/10/05 is enclosed as Annexure-2.

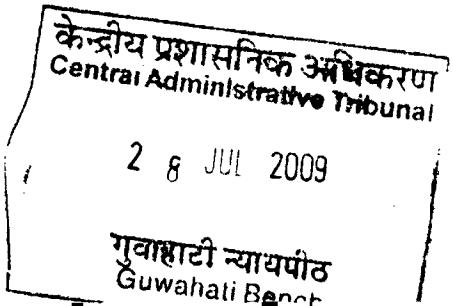
4.4 That the recruitment was, however, to be made as per Rules by advertisement and open competition. In this connection it is stated that the instructions regarding personnel in the Fire Fighting cadre including Firemen was circulated by the Govt. of India, Ministry of Defence, New Delhi's executive 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.***

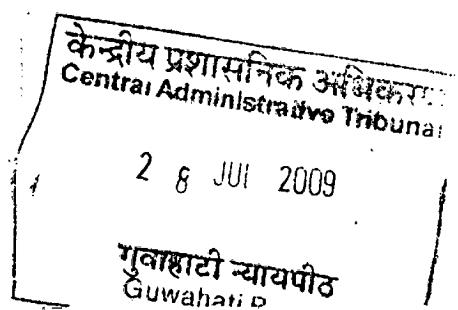
Copy of the circular dated 3.2.2000 (with Annexure-A thereto) is enclosed as Annexure-3.

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



Md. Abul Hussain, Adil

to the 2826 posts (Sl. No.7.2). Sl. No.7.8 mandates the qualification as matriculation and certificate of having undergone Fire Course/Fire Service training from an institute of repute. In this connection, it is stated that Respondent No.4 who during the period associated with the recruitment of Fireman in 57 MTN Division ORD Unit of Massimpur, being posted at Massimpur was making an endeavour to give way to 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, an executive instruction 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 and some other officials did not act bonafide with a view to ensure that some persons, for reasons best known to them, 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



Md:-Abul Hussain Sodial

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 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.***

The authorities including the Respondent No 4 under camouflage made endeavor to eliminate and minimize number of eligible candidates by not fixing age limit as per the law, and fair play, and included under aged persons, and also by changing Qualifications.

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.

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

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Guwahati Bench

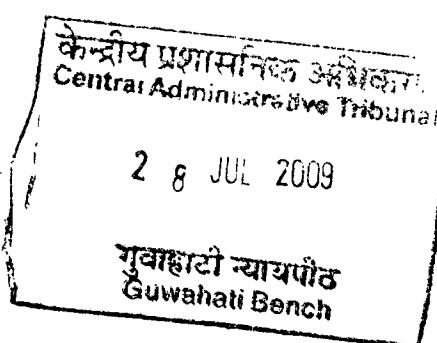
Md:- Abul Hussain Sohail

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. The applicant received letter dated 9/4/2007 only a few days before the test, informing that his age was more than upper age limit. He was within upper age limit when he applied. Subsequently he came to know that entire process of selection/test was under challenge in Hon'ble High Court and in Central Administrative Tribunal for fresh test. He has a right for similar reliefs including hearing when the matter is pending. The said selection has not yet been finalized/published. As already stated hc (applicant) begs to file this application to place his case while hearing the other O.A.s (15/09 & 81/09 & 141../09) analogously.

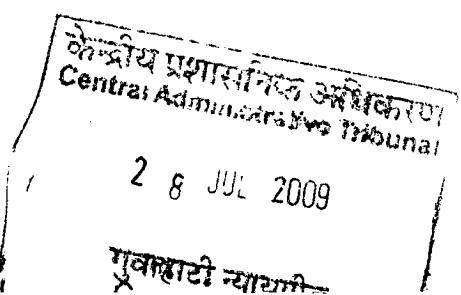
Copies of the advertisement dated 19.11.2005, cancellation notification dt. 4.12.05, advertisement dt. 13.12.05 and corrigendum dt. 15.04.07, letter dated 9.4.07 are enclosed as Annexures-6, 7, 8, 9 & 10 respectively.

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



Adv: Abul Hussain Sadiq

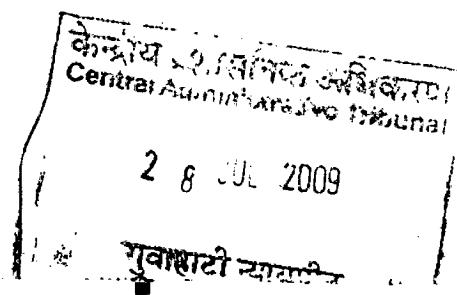
the Rules, 2003 was issued even after so called amendment by executive instruction dated 11.11.05. Thereafter so called cancellation of the advertisement was published in the newspaper on 4.12.05. This cancellation of advertisement does not indicate whether sanction of the competent authority was taken before the cancellation, nor does it shows the reasons, whatsoever, of the cancellation. As already stated Respondent No.1, and other officials 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 and interested for persons who were under aged in 2005 and also for elimination of some candidates who would over aged in 2007. 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



Md: Abut Hussain Sohail

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 18 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 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 18 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. These demonstrate absence of application of uniformity, and scope of arbitrariness in embracing ineligible persons of under age and also

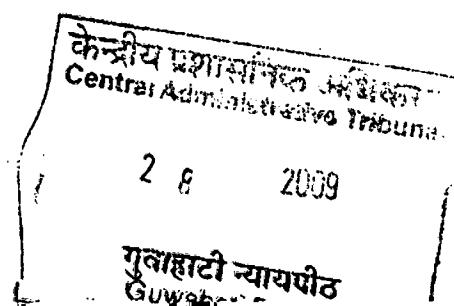


Md. AbuI Hussain Sadiq

28 JUL 2009

eliminating some eligible persons. The term "on the date of issue of appointment letters" and "date of physical test" are no dates, as per law 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/altering 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 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 the vacancies which occurred in 2005. The respondents have not acted just and fair, entire exercise is perverse and vitiated by colourable exercise of power.

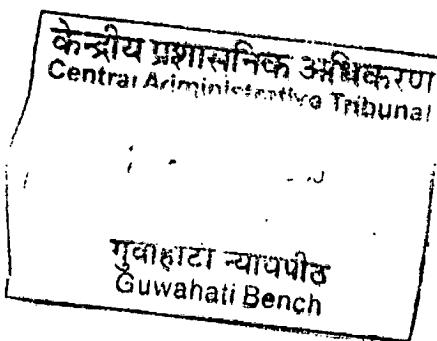
4.9 That applicant begs to state that the total number of posts to be filled up should be $64 + 48 = 112$ and not 48 as wrongly advertised following executive instructions ignoring Rules made under proviso to Article 309 of the Constitution of India. Necessary qualification shall be matriculation plus 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)



Md: Abuif Hussain Sodik

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 Appcal, Writ Appcal 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 endeavor to take initiative to fill up the posts following Rules of 2003. The applicant prays that for filling up these posts also, if it is done so, the position as on 2005 as regards age and qualification as per the Rules, 2003 have to follow. It is 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, and cut off date of age limit should be 3/12/05, as in the first advertisement when vacancies occurred.

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-a-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.*



Abul Hussain Sodin

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

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

4.12 That as already stated earlier the applicant has come to know that some candidates have filed O.A. Nos.15/09, 81/09 & 141.../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

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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-12.

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

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Guwahati

Md: Abu Hussain Sohail

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 colorable exercise as is being sought to be done by some of the officers in the respondent's department. Moreover, the candidates who were made eligible as regards age limit by fixing date of age illegally as explained above are not eligible, and as such fresh selection as in 2005 shall have to be held.

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.

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.}

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Md. Abeer Hussain Sohal

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), Sakscna 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.

5.9 For that the applicant not having been called and having denied to appear in the test on illegal ground alleging 'more than upper age limit', he has a right to be taken into the list in fresh test or by supplementary test.

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.

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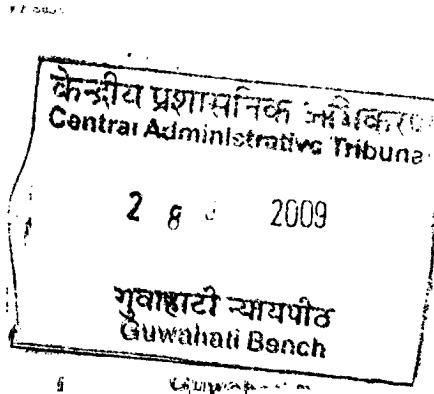
Mr. -Abul Hassan Soad

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 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 instructions under letter dated 11.11.05 (Annexure-5) to read qualification as matriculation only be set aside and quashed. The candidate with qualification of matriculation without any fire fighting experience/certificate shall not be considered for appointment against advertised posts.
- 8.3 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.
- 8.4 The qualification for six months training in advertisement dated 19.11.05 be set aside and quashed and/ or declare as having



Rehd:- Abu L Hussain Sodai

been waived by the respondents and substituted as matriculation with fire fighting training/experience.

8.5 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.

8.6 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. The letter dated 9/4/09 issued by respondents to applicant declaring him as more than upper age limit be set aside and applicant be allowed to appear in fresh test.

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

8.8 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 fresh selection process 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

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made for those with matriculation only, applicant be called for the test before such finalization.

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

10. The application is filed through an Advocate

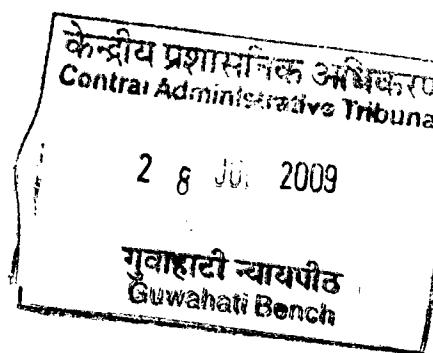
11. PARTICULARS OF THE IPO

(I) IPO NO.	39G402641
(II) Date of Issue	9/3/09
(III) Issued from	GPO, Guwahati
(IV) Payable at	GPO, Guwahati

12. ENCLOSURES:

As stated in the Index

Md:-Abut Husain Sodial



VERIFICATION

I, Abul Hussain Sadial, S/o Mohibur Rahman Sadial aged about 38... years, resident of Vill. Masimpur Part II, P.O. Subedar Basti, P.S. Silchar, Dist Cachar, Assam, Pin. 788025 that I am the applicant in this O.A. and as such I 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.

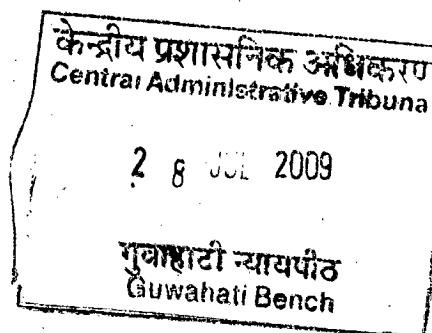
And I sign this verification on this 26th day of July, 2009 at Guwahati.

Place

Guwahati

Signature

Md:- Abul Hussain Sadial



ANNEXURE 1

MASUGHAT HIGH SCHOOL

P. O. Masughat, Dt Cachar
TRANSFER / LEAVING CERTIFICATE

Serial. No. - 470

Date ... 4-7-98

CERTIFIED the Sri/Smti Abul Hussain Sadiq
son/daughter of Shri/Late Mohibur Rahman Sadiq
an inhabitant of Vill Masimpur-2 P.O Subedurbasti
Dist Cachar left the Masughat High School on 31-12-1996

His/Her date of birth, according to Admission register, was 31-12-80

He/She was reading in Class X (TEN) and school (Repetitors.)

Passed the Examination for promotion to Class H. S. L. C. Test

Examination under Roll RA-13 No 102 in III Division.

All sums due by him/her have been paid viz.

REASON FOR LEAVING

Fees upto—

i) Unavoidable change of residence.

Fine—

ii) Ill health.

W. fee— 1.00

iii) Minor reasons.

Character— Good

✓ iv) Completion of the School Course.

17/7/98
Head Master

Masughat High School

Attestation Date 17/7/98

RA 47

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

12 8 JUL 2009

गुवाहाटी न्यायालय
Guwahati Bench

Attested

Signature
Advocate



GOVT. OF ASSAM

STATE ELEMENTARY FIRE FIGHTING TRAINING SCHOOL

Assam : Guwahati

CERTIFICATE OF HONOUR

177/05

This is to certify that Shri Md. Abdul Hussain Sodai, 5741TN-D0U, c/o-79 AP2, of 1 (one) month basic F.F. 1st. Lower batch has successfully completed the Elementary fire fighting Training Course at this institution from 01.10.05

to 23.10.05 and was adjudged as having Pass position in the Final Examination.

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

28.2009

Guwahati DIRECTOR OF FIRE SERVICE
Guwahati Bench STATE FIRE SERVICE ORGANISATION

ASSAM : GUWAHATI

Date: 23.10.05

Attested

Advocate

Director of Fire Service Organization

केन्द्रीय प्रशासनिक आडाकर्म
Central Administrative Tribunal

28.01.2009

गुवाहाटी न्यायपुराठ
Guwahati Bench

///Copy///

No. 1/26576/Fire Staff/OS-20/168/D(O-II)
Government of India
Ministry of Defence.
New Delhi - 110011

03rd Feb 2000

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. 3050-4590
		Leading Hand Fireman 'B'	347	Rs. 4000-6000
Fire Engine Driver	694	Fire Eng DVR 'A' Fire Eng DVR 'B'	347 347	Rs. 3050-4590 Rs. 4000-6000
Supervisor (Fire)	108	Fire Master	188	Rs. 4500-7000
C&M	37	Mr. Supdt	37	Rs. 5000-8000

2. The educational qualifications and guidelines for method of recruitment of the above restructured posts has been laid down in the Annexure - 'A' to this letter for which Rec't. Rules will be notified in due course.

2/- Attested


Advocate

///Copy///

- 2 -

8. The Unit wise authorised strength is given and the distribution of restricted posts will be issued by the AAC (Records) in respect of centrally controlled fire staff.

4. The Upwardation/redistribution of various posts will be effective from the date of issue of this letter.

5. This issues with the concurrence of the Min of Def (Fin) vide their U.O. note N-33/0-114/2000 dt 27 Jan 2000.

Yours faithfully,

Sd/- xxxxxxxxxxxxxxxxx
(R. Chaturvedi)
Under Secy to the Govt of India.

Copy to :-

All MGs AAC
All Records
All Central Depots
All Admin Depots
UGDA, All QDAs (ink Signed copies)

for info and necessary action please

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

///Copy///

केन्द्रीय प्रशासनिक अदायक
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Guwahati Bench

Attested

Advocate

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Annexure - 1A

QUALIFICATION AND METHOD OF RECRUITMENT FOR
RESTRICTED POSTS OF FIRE STAFF, 100

<u>Designation</u>	<u>Qualification</u>	<u>Method of Recruitment</u>
Fireman	Matriculation & Trg in fire fighting under a state Fire service or an institute of repute.	Direct Recrt
Leading Hand Fireman - 1A	N.A.	By promotion from Fireman
Leading Hand Fireman - 1B	N.A.	By promotion from LHF - 1A
Fire Engine Driver - 1A	N.A.	By promotion from LHF - 1B
Fire Engine Driver - 1B	N.A.	By promotion from Fireman with licence of Heavy Duty Vehicle
Fire Master	N.A.	By promotion from FED - 1A
Fire Supdt	N.A.	By promotion from LHF - 1B and FED - 1B
		By promotion from Fire Master

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

///Copy///

केन्द्रीय प्रशासनिक अदालत
Central Administrative Tribunal

28 JUL 2009

गुवाहाटी न्यायालय
Guwahati Bench

Attested

Advocate

III.—खण्ड 4]

भारत का राजपत्र : दिसम्बर 6, 2003/अग्रहायण 15, 1925

(ब) सहायक अग्नि शमन सलाहकार, रक्षा मंत्रालय

(छ) निरीक्षक अग्नि शमन सेवा, ब्याटर मास्टर जर्नल शाखा/क्षय 1 (छ) : सेना मुख्यालय

(च) अनुसूचित जाति/जनजाति समूदाय का एक समूह 'छ' 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 'छ' में सिविलियन (अराजपत्रित अनौद्घोषिक अनुसूचितीय)

4. : 2750-4400 रु.

5. : अचयन

6. : 25 वर्ष से अधिक

7. : लागू नहीं होता

8. : भैट्टिकुलोशन के साथ किसी छाति प्राप्त संस्थान से अग्निशमन पार्यक्रम/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 स्तंभ 8 में विविदिष्ट अंहत रखते हों।

13. : लागू नहीं होता

14. : लागू नहीं होता।

ANNEXURE

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

वी. ए. चावडा, 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 rules.

35365/03—2

के द्वारा प्रकाशित
Central Administrative Tribunal

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

26/12/2003
Central Administrative Tribunal
Guwahati Bench

Attested


Advocate

लिखि 11- दस्त 4]

भारत का राजपत्र : दिसम्बर 6, 2003/अग्रहायण 15, 1925

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 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. : Not applicable.

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

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

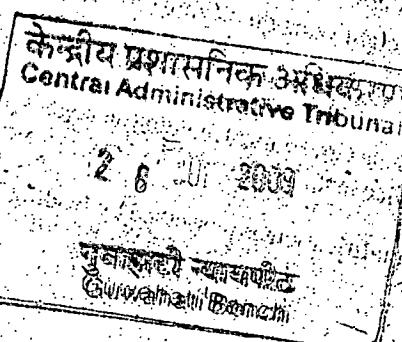
7. : Not applicable

8. : Not applicable

9. : Not applicable

10. : Not applicable

JC



Attested

[Signature]
Advocate

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 (Appts)/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

No A/26576/Fire Staff/OS-20/1286/D (O-II)/2005
Government of India
Ministry of Defence
New Delhi, dated 11th Nov 2005

ANNEXURE 5

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.

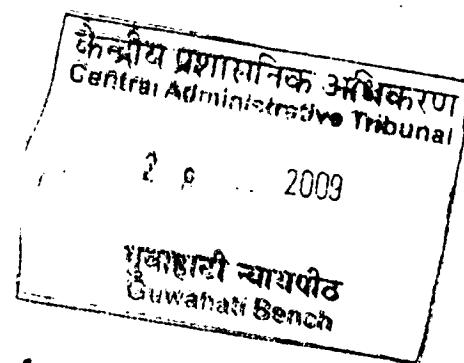
Yours faithfully

(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)



Attested

Advocate

गुवाहाटी न्यायपाठ
Guwahati Bench

ANNEXURE 6

Conditions:-

The prescribed qualifications are minimum; and (i) enhancement of qualification does not entitle the candidates to be called for written test/typing test. Application on plain paper, duly typed the following information viz. (1) Full Name (Capital letter) (2) Father's name (3) Address for correspondence (4) Date of birth (5) Age (as on 15.12.2005) (6) Educational Qualification (7) Sex (8) Whether SC/ST/OBC/Ex-Serv (9) Nationality (10) Religion (11) Declaration that the information stated herein made in this form are true to the best of my knowledge and belief (12) Signature of the candidate with date should be received on or before 15.12.2005 at the following address: The Senior Administrative Officer (Admin) FCIFT, Matiyapuri, P.O. Cochin-682029, Kerala. Applications should be accompanied with attested true copies of qualification/proof of age, recent passport size photograph. Applicants in service should apply through proper channel. The envelope containing application should be superscribed as "Application for I.D.C." The Institute will have the right to fix criteria for screening the applications so as to reduce the number of candidates to be called for interview. No correspondence in any case will be entertained with the candidates who are not called for written test and interview. Canvassing in any form will be treated as disqualification.

Sri Admin. Officer, I/C CIFT, Cochin
davp 7/5/2005 EN 34/34

Continued from page 20 of 34
are in the feeder grade or feeder grade to feeder grade.

12. Are you in revised scale of pay? If yes, give the date of revision and also pre-revised scale of pay.

13. Total emoluments drawn per month.

14. Additional information, if any.

15. Whether belongs to SC/ST.

16. Remarks:

I have carefully gone through the vacancy circular/advertisement and I am well aware that the Curriculum Vitae, duly supported by documents submitted by me will also be assessed by the Selection Committee at the time of selection to the post of Supdt. (A/ C).

Place: Signature of the Candidate
Date: Address:

Certificate

This is to certify that the above facts mentioned by the applicant are correct in his service record.

Name & Designation (with seal)
The Administrative Authority
10/9/05 EN 34/64

57 Mtn Div Ord Unit

Pin: 909057, C/o 99 APO

1. Fresh applications are invited for 64 (Sixty Four) Fireman vacancies (SC-04, ST-07, OBC-14, UR-26).
- (a) Age Limit: 18 to 25 years as on date of issue of appointment letter, with relaxation to reserved categories as per Govt. orders.
- (b) Qualification: Matriculation (10th) Qualification in Fire Fighting Course of minimum 06 (six) months duration conducted by Central/State Govt. Fire Service Training Establishment/OF from any of the training school/Institutes which are recognised by Board of technical Education/Board of any State Govt.
- (c) Physical Standards: Height 165 cms, Chest: 91.5 cms minimum on expansion 86 cms, Weight: 50 kg minimum.
- (d) Scale of pay: Rs. 7750/- to 3600/- 75-4500 plus Allowances as admissible to Central Govt. employees.
3. Application should be addressed to Administrative Officer, 57 Mtn DOU, Pin: 909057, C/o 99 APO and the last date of receipt of application is 03 Dec 2005.
4. Screening and ground tests will be held on 10 Dec 05 at 0800 hrs at Masimpur Military Station foot ball ground near Rajeev Sandhu Auditorium. No TA/DA is admissible for screening and ground tests.
5. After screening of documents of candidates will be subjected to physical tests. Any injury sustained by the individual during the tests will not be responsibility of this organisation.
6. All incomplete/blank applications will be rejected.
7. Application signed by the applicant should include details such as Name in full (in Block letters) Father's Name, Post applied for, Date of birth, Educational Qualification with supporting documents, address in full (both permanent and present) with pin code, whether SC/ST/OBC/Ex-Serv category with supporting documents.
8. Copies of domicile certificate/Ration card, Diploma certificate, Employment exchange Card, Castle certificate from authorized Govt. office duly attested by a gazetted officer be enclosed with application.
9. Three copies of passport size photograph of the applicant duly attested by gazetted officer and a self addressed registered envelope duly affixed with requisite stamps to be enclosed alongwith application.
10. The candidates are required to bring the supporting documents (in original) as required in the application form at the time of interview. In case a candidate fails to submit the documents in original at the time of screening he shall not be considered for the ground test.

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

(ii) Candidates will report to reception point at Zonal Recruiting Office, Silchar on date of screening with original documents.

Application for Fireman

(Please fill in block Capital Letters)

Appx-B

1. Name in full	Passport size photograph duly attested by Gazetted Officer
2. Father's Name	
3. Post applied for	
4. Date of birth (supporting documents duly attested)	
5. Address in full	
(a) Permanent address	
(b) Present address	
6. Whether SC/ST/OBC/Ex-Serv (Supporting documents attd. duly attested)	
7. Nationality	
8. Educational Qualification (supporting documents attd. duly attested)	
9. Fire Fighting Course (Diploma/Certificate duly attested)	
(a) From (Institute)	
(b) Recognised by	
(c) Duration with date: From _____ to _____	
10. Copy of domicile certificate, ration card should be enclosed with application	
11. Three copy of passport size photograph of the candidate duly attested by the gazetted officer are to be enclosed with application.	
12. The candidates are required to bring supporting documents as required in the application form in original at the time of screening and test. In case, candidate fails to submit the documents in original at the time of screening he shall not be considered for the ground test.	
13. One registered envelope with home address of the applicant for issue of call letter, is required with application.	
14. Any incomplete, blank information will render the application as rejected.	

davp 7/10/15(3)2005

Signature of the candidate

EN 34/53

Attested

Advocate

মানিক গুগমুখ, খুলচৰ, ১৩ ডিসেম্বৰ, বুধবাৰ, ২০০৬ (পৰ্যাত)

ADVERTISEMENT SHEET

Appx 'A'

57 MTN DIV ORD UNIT

Applications are invited for 48 (only 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:-

155 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:-

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

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

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

APPLICATION

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

3. 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 alongwith application.

PHYSICAL TEST

- The candidates are required to bring the supporting documents (in original) as attached to the application form at the time of physical tests.
- Physical tests will be held on 01 March 2007 at 0730 hrs onwards at Masimpur Military Station, (Assam). If TADA is notmissible for physical test, Any injury sustained by the individual during the physical tests will not be responsibility of this organization.

NOTES :-

- Requirement subject to change by competent authority. Any change will be intimated through advertisement.
- 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.
- The decision of the Unit Management will be final.
- The expenditure incurred on travel, transport and medical expenses etc. by the candidate at the time of selection test will be borne by the candidate.
- 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.

কেন্দ্ৰীয় প্ৰশাসনিক উন্নয়ন
Central Administrative Tr.

28/2/2007

গুৱাহাটী ন্যায়পীঠ
Guwahati Bench

Attested

Advocate

15 Apr 2007 The Sunday Express

ANNEXURE 9

Kusheshwar Asther

Approx cost (Rs)	Earliest 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 document mentioned above between 10.00 Hrs to 16.00 Hrs on any working day from 01.05.2007 to 15.45.2007. 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. 3. Tenders can be dropped in prescribed tender boxes placed in offices of the CAO/Con/EC Ry, Mahendraghat, Patna and CAO/Con/Northern Railway, Kashinari gate, 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 at 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 Earliest Money in favour of FA & CAO/Con/ECR, Mahendraghat, Patna. Tender without proper Earliest 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 clarified 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 proof 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 3 of 2007-08 (Open) "Construction of any work involving structural concrete." Tender No. 4 of 2007-08 (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." Please note: I. Where an individual bids on the basis of credentials of an earlier Joint Venture/association 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 will 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 are 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 for security deposit. (b) Whenever the contracts are rescinded the security deposit should be forfeited and the performance guarantee shall be encashed and the balance work should be got done 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 doing 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 envelope 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.

#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.indianatimes.in>

Sd/-
Gen. Manager (Stores Purchase)

15 APR 2007 SUNDAY 8:45 AM

57 MTN DIV ORD UNIT CORRIGENDUM

Ref advt. No. 7101/200/2006 published in this news paper on 10/1/7 and advt. No. 7101/253/2006 published on 26/2/7 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

केन्द्रीय प्रशासनिक अदालत
Central Administrative Tribunal

28 2009

गुवाहाटी न्यायालय
Guwahati Bench

Attested

Advocate

57 Mountain Division Ordnance Unit
PIN-909057
C/o 99 APO

0361/FM/Civ/Adm

04/7/2007

ABUL HUSSAIN SADIAL
MASIMPUR- Part II, ~~Sub~~
P.O- Subedar Basti
Dist. Cachar- Assam.

REJECTION LETTER

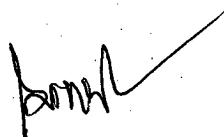
Dear Candidate,

1. Your application has been rejected due to the following :-

(a) Age is more than upper age limit.
 (b) Education is less than matriculation which is minimum qualification.
 (c) Note :-

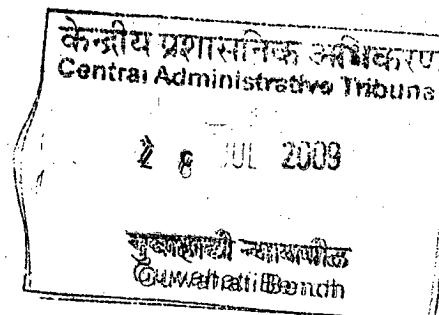
Dispatch details - As per records you had provided the following alongwith application which has been dispatched :-

(i) Self addressed registered letter.
 (ii) Self addressed normal envelope with Rs 5/- stamp enclosed.
 (iii) Self addressed envelope without stamp enclosed.
 (iv) No self addressed envelope enclosed. Sent by normal dak at the Govt. cost.

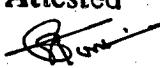
Checked by 

Cross Checked by 

(Board of Officer)



Attested


Advocate

PROM NO. 4.
(See Rule 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
DUAHATI 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. TANWAL

Advocate for the Respondent(s) CGSC

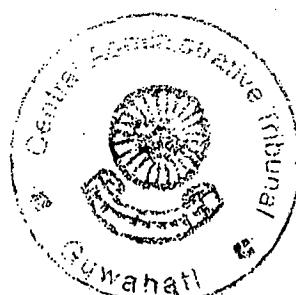
Notes of the Registry Date Order of the Tribunal

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 Jagansankha 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 the finality of this Original Application.



विदेशी प्रशासन विभाग
Central Administrative Tribunal

२८/१२/०९

विदेशी प्रशासन
Central Admin. Tribunal

Attested

Advocate

O.A. 15/09

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

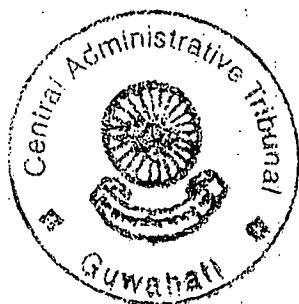
No fresh appointment of "Fireman" should be made (till 30.03.2009) by the Respondents; without leave of this Tribunal.

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



केन्द्रीय प्रशासन न्यायालय
Central Administrative Tribunal

गुवाहाटी न्यायालय
Guwahati Bench

TRUE COPY
प्रतिलिपि
अनुभाग अधिकारी (01/2009)
Section Officer (Jd/Jd)
Central Administrative Tribunal
गुवाहाटी न्यायालय
Guwahati Bench
गुवाहाटी/Guwahati, 5

Attested

Advocate

SHORTER CONSTITUTION OF INDIA

ELEVENTH EDITION

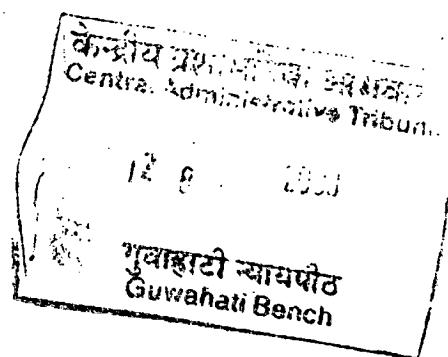
Dr. (Justice) Durga Das Basu

*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).*

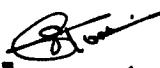


Prentice-Hall of India Private Limited

NEW DELHI-110 001

1994

Attested


Advocate

Art. 74]

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.

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; *Saksena 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

[Signature]
Advocate