

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

1. ORIGINAL APPLICATION No : -----/ 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 : ---5---/2009 in O.A. No. 142/09
6. Execution Petition No : -----/2009 in O.A. No.-----

Applicant (S) : Abul Hussain Sadial

Respondent (S) : M. G. I. Gok

Advocate for the : Mte. J. L. Sarkar, S. N. Tamuli
{Applicant (S)}

Advocate for the : Mr. M. U. Ahmed, add. case
{Respondent (S)}

Notes of the Registry

Date

Order of the Tribunal

12/10/09

An application
praying for review of the
order dated 11/9/2009 in
O.A. No. 142/2009 under
section 22 of the A.T.
Act. 1985. read with
Rule 17 of the CAT.
(Procedure) Rules, 1987
and Rule 49 of the CAT.
Rules of Practice, 1993.
Copy served to Mr. M. U.
Ahmed, Adll. CGSC.

Laid before the
Honible V.C. & Honible
member (A) for further
orders.

16.10.2009

/bb/

For the reasons recorded
separately, the R.A. stands dismissed. No
costs.


(M.K. Chaturvedi)
Member (A)


(M.R. Mohanty)
Vice-Chairman

Put to
circulation
12/10/09 Section Officer (F)
12/10

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19/10/09

Common Judgment
order dtd 16/10/09 has
been prepared for send
to the D/section for
issuing to the both
side standing counsel
by hand.

original Judgment
kept in the R-A. 04/09,
(OA. 15/09)

~~Don~~
19/10/09

D/No —

Dtd —

For the reasons recorded
separately the R.A. stands dismissed. No
costs.

(M.R. Mohanty)
Vice-Chancellor

(M.K. Choudhury)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Review Application No. 04 of 2009 (in O.A.15/2009)

And

Review Application No.05/2009 (in O.A.142/2009)

Date of Order: This, the 16th Day of October, 2009

HON'BLE SHRI MANORANJAN MOHANTY, VICE CHAIRMAN

HON'BLE SHRI M.K.CHATURVEDI, ADMINISTRATIVE MEMBER

R A No. 04 of 2009 (in O.A.15/2009)

Zakir Hussain Barbhuiya & two others

.....Applicants

By Advocate: Dr. J. L. Sarkar.

-Versus-

Union of India & Others

.....Respondents

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

R.A. No. 05/2009 (in OA 142/2009)

Shri Abul Hussain Sadial

... Applicant


By Advocate: Dr. J. L. Sarkar.

-Versus-

Union of India & Others

.....Respondents

By Advocate: Mr.M.U.Ahmed, Addl.C.G.S.C.



R.A. No. 04/2009 (in OA 15/2009)
R.A. No. 05/2009 (in OA 142/2009)

ORDER
16.10.2009

MANORANJAN MOHANTY. (V.C.):

Applicants of O.A. No.15/2009 have filed R.A. No.04/2009 seeking review of final order dated 11.09.2009 and Applicant of O.A. No.142/2009 has filed R.A. No.05/2009 seeking review of final order dated 11.09.2009.

2. Applicants, of above said cases, were candidates for the posts of Firemen under Respondent Organization. While the Advertisement required candidates with Matriculation with six-month's Fire-fighting Training, the Applicants had some sorts of one-month Training in an Institute. Thus, they were not eligible at all to face the recruitment. Later, an executive instruction was issued (and a set of new Rules were framed) not requiring the Training in Fire-fighting for the candidates. However, Matriculates of a specified physical standard were required for the post in question. In the said circumstances, a fresh Advertisement was issued, for the post in question, inviting applications. Such of the candidates (like the Applicants) who applied pursuant to the first Advertisement and who were within the age, were, also called to face the physical test/recruitment. Some of the candidates (as that of the Applicants) approached the Hon'ble Gauhati High Court and lost. They approached the Division Bench of the said High Court; where it was held that there were want of jurisdiction and, in the said premises, those candidates (who approached the Hon'ble Court) approached this Tribunal with O.A. No.81 of 2009. Similarly placed present Applicants also approached this Tribunal

with O.A. Nos. 15/2009 and 142/2009. While the interim matters of O.A. Nos. 15 & 81 of 2009 were under consideration, a Memorandum was filed on behalf of the Applicants of O.A. Nos. 15 & 81 of 2009 to list the matter before the Division Bench and, ultimately, the cases (in O.A. No.15/2009, O.A. No.81/2009 & O.A. No.142/2009 and another case) were listed before the Division Bench on 07.08.2009 and counsel appearing for all the parties (Dr.J.L.Sarkar for Applicants of all the cases, Mr.K.K.Das, learned Addl. C.G.S.C. for Official Respondents in O.A. No.15/2009, Ms.Usha Das, learned Addl. C.G.S.C. for the Respondents in O.A. No.81/2009, Mr.M.U.Ahmed, learned Addl. C.G.S.C. for Official Respondents in O.A. No.142/2009 and Mr.U.K.Nair, learned counsel for private Respondents in O.A. Nos. 15 & 81 of 2009 were heard at length. While doing so, they had to touch the merits of the cases. They took us through pleadings and the materials placed on record. At the said hearing, Ms. Usha Das, learned Addl. standing Counsel for Official Respondents in O.A. No. 81/2009, produced a copy of the New Recruitment Rules pertaining to recruitment of Fireman and a Department file. In the said premises, with consent of the learned counsel for the parties, we heard all the matters for final disposal; although the hearing started for interim matters; for the parties brought on record all materials & pleadings; as all aspect of the matter were being gone into at interim matter hearing stage.

3. O A Nos. 15/09 & 81/09 were disposed of by a common order dated 11th Day of September, 2009 and OA No. 142/09 was disposed of by another order on the same day / 11th Day of September, 2009.

4. Having lost in the cases, these Review Applications have been filed; wherein, virtually, attempts have been made to re-argue the

cases. That is not the scope of the Review. Applicants have pointed out about some dates pertaining to Advertisements etc. Those dates were found from the materials placed on record. Some dates have been shown to have not been noted in the final orders dated 11.09.2009. Those were not felt required. Had those dates been noted in the final order, as we see now, that would not have changed the final verdict of the cases. Non-recording of those dates, as we find now, did not result in miscarriage of justice in any manner.

5. For example, the case of the Applicants in RA No.4/2009 is that (as recorded in a tabular manner in Page 2 & 3 of the RA) Advertisement for 64 posts was published in Employment News on 19.11.2005; Advertisement for cancellation published on 04.12.2005 in a Newspaper (Dainik Yugasankha) on 04.12.2005; Re-Advertisement for 48 Posts was published in Newspapers (Dainik Yugasankha on 13.12.2005 and in Indian Express on 10.01.2007) and a corrigendum pertaining to same recruitment was issued/published in Sunday Express on 15.12.2007 and that while passing final order on 11.09.2009, these dates were not properly taken in to consideration. On examining, we find that had these dates been discussed in the final order, as expected by the Applicants, still them the final verdict would not have been different. That is why we note that the Applicants have made an attempt to re-argue the cases; which is beyond the scope of Review.

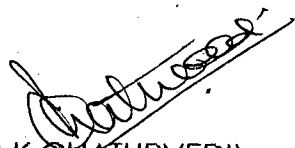
6. Case of the Applicant in OA 142/2009 was argued out along with OA Nos. 15 & 81/09 and all the points, taken (in the said OA) and not taken, were argued out by the counsel for the Applicant. That apart, he

was found to be over-aged. He did not challenge the same in time and approached this Tribunal after the lapse of limitation.

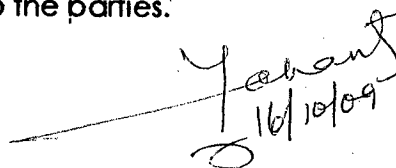
7. On production of the copy of new Rules, cases of all the Applicants fell to the ground and hence all the cases were dismissed.

8. Having not found any point to Review (or to take any decision other than what has been taken by us in our order dated 11.09.2009) we hereby dismiss both the cases. No costs.

9. Send copies of this order to the parties.



(M.K. CHATURVEDI)
ADMINISTRATIVE MEMBER



(MANORANJAN MOHANTY)
VICE CHAIRMAN

/BB/

IN THE GAUHATI CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH: GUWAHATI

R.A.NO 4/ 2009

Sri Z.H.Borbhuyan & Ors

VERSUS

U.O.I. & Ors.

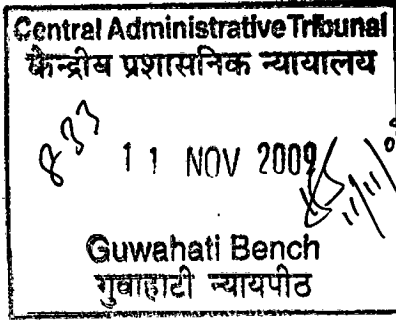
AND

R.A.No 5/09

Sri Rajib Sinha & Ors

VERSUS

U.O.I. & Ors.



Memorandum filed by the counsel for the applicants.


The counsel for the applicants most respectfully begs to state as under:

1. That in para 2 of the order dated 16/10/09 in R.A. No 4 & 5 it has been stated that "... with consent of the learned counsels of the parties we heard all the matters for final disposal;..." . It is submitted that the counsel for the Applicants did not give consent for final hearing of the O.As. In this connection it is humbly stated that by a memorandum filed by the counsel for the applicants on 29/9/09, placed before the Hon'ble Vice Chairman sitting singly it has been submitted that from the applicants side no consent was given for final hearing, copy of the said memorandum was served on Smt. Usha Das and Sri K.K.Das both learned Addl. C.G.S.C. The order dated 16.10.09 is silent about the said memorandum dated 29.9.09 submitted by the counsel for the applicants.

Copy of the memorandum dated
29/09/09 is enclosed as Annexure-1.

2. That the above statements are made in due regard of the CAT Rules.
3. That the above statements are made for cause of justice.

I undertake to
serve a copy of this
memorandum on the
counsel for respondents
Smt U. Das & Sri K. Das.


(Dr J.L.Sarkar)

Counsel for the applicants

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No 15/2009 & QA. 81/09

Zakir Hussain Borbhuyan & Ors

-V-

U.O.I.Ors.

-AND-

Sri Rajib Sinha & Ors.

-V-

U.O.I. & Ors

MEMORANDUM FILED BY THE COUNSEL FOR THE APPLICANT.

The counsel for the applicant respectfully states as under:

1. That it has come to the knowledge of the counsel that on 7.8.2009 in the order passed, it has been ordered that both the parties gave consent for final hearing. This counsel respectfully submits that from the applicants side no such consent was given.
2. That the above statements are made for due regard for the CAT Rules.
3. That the above statements are made for cause of justice.

With regards

(Dr J.L.Sarkar.)

Advocate

R.A.NO 4/ 2009

Sri Z.H.Borbhuyan & Ors

VERSUS

U.O.I. & Ors.

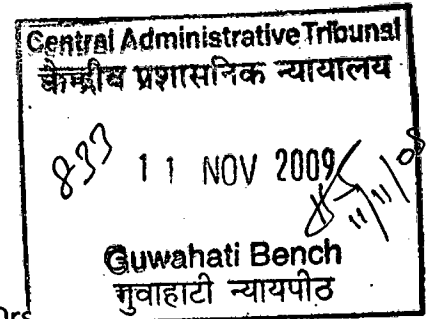
AND

R.A.No 5/09

Sri Rajib Sinha & Ors

VERSUS

U.O.I. & Ors.



Memorandum filed by the counsel for the applicants.

The counsel for the applicants most respectfully begs to state as under:

1. That in para 2 of the order dated 16/10/09 in R.A. No 4 & 5 it has been stated that "... with consent of the learned counsels of the parties we heard all the matters for final disposal;..." . It is submitted that the counsel for the Applicants did not give consent for final hearing of the O.As. In this connection it is humbly stated that by a memorandum filed by the counsel for the applicants on 29/9/09, placed before the Hon'ble Vice Chairman sitting singly it has been submitted that from the applicants side no consent was given for final hearing, copy of the said memorandum was served on Smt. Usha Das and Sri K.K.Das both learned Addl. C.G.S.C. The order dated 16.10.09 is silent about the said memorandum dated 29.9.09 submitted by the counsel for the applicants.

Copy of the memorandum dated
29/09/09 is enclosed as Annexure-1.

2. That the above statements are made in due regard of the CAT Rules.
3. That the above statements are made for cause of justice.

A handwritten signature in black ink, appearing to be 'J.L. Sarkar', written over a horizontal line.

(Dr J.L.Sarkar)

Counsel for the applicants

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No 15/2009 & O.A. No 81/09

Zakir Hussain Borbhuyan & Ors

-V-

U.O.I.Ors.

-AND-

Sri Rajib Sinha & Ors.

-V-

U.O.I. & Ors

MEMORANDUM FILED BY THE COUNSEL FOR THE APPLICANT.

The counsel for the applicant respectfully states as under:

1. That it has come to the knowledge of the counsel that on 7.8.2009 in the order passed, it has been ordered that both the parties gave consent for final hearing. This counsel respectfully submits that from the applicants side no such consent was given.
2. That the above statements are made for due regard for the CAT Rules.
3. That the above statements are made for cause of justice.

With regards

(Dr J.L.Sarkar.)

Advocate

10/10/09

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH :
GUWAHATI.

R. A. No.5..../2009

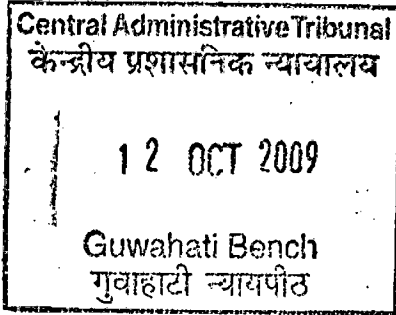
- In -

O. A. No. 142/2009

Shri Abul Hussain Sadial

- Vs -

Union of India & Ors.



I N D E X.

Sl.No.	Particulars	Annexure	Page
1.	Application	-	1 to 14
2.	Affidavit	-	15
3.	Copy of the advertisement in Dainik Yugasankha, <u>dated 4.12.2005</u> of cancellation of the advertisement of 64 vacancies(with translation to English)	Annexure-1	16-16A
4.	Copy of the executive instructions on crucial dates of age for direct recruitment(from Swamy's Hand book, 1999(page 26-27.	Annexure-2	17
5.	Judgment dt. 11.9.2009 in OA.No.142/2009		18-27

*Copy handed over
to Mr. M. U. D. Khan
on 12/9/2009
[Signature]
Advocate*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH,
GUWAHATI.

R. A. No. ...5..... / 2009

- IN -

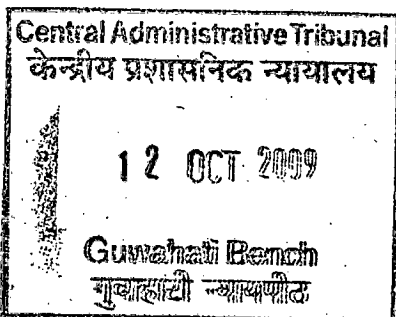
O. A. No. 142/2009

Shri Abul Hussain Sadial

- Vs -

Union of India & Ors.

- And -



In the matter of :

An application praying for review
of the order dated 11.9.2009
in O. A. No. 142/2009 under
Section 22 of the A.T. Act, 1985

- And -

In the matter of :

Shri Abul Hussain Sadial

... Applicant

- Vs -

Union of India & Ors.

... Respondents.

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Filed by applicant 65
Mph J. L. Sarma
(Dr. J. L. Sarma)
12-10-2009 12:10 PM

The humble applicant in the review application most respectfully states as under :

1. That the judgment dated 11.9.2009 in the O.A. has been received by the counsel for the O.A. on 17.9.2009 and on 21.9.2009 by the applicant. The review applicant herein after mentioned as applicant is aggrieved by the judgment and humbly files this application.

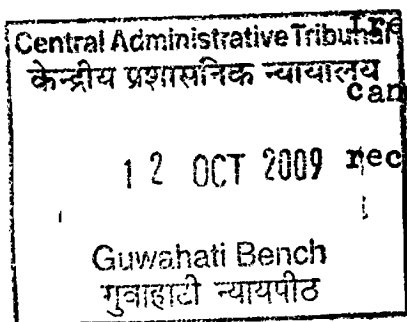
2. That there is error apparent on the face of the records as seen in the judgment. The judgment in para 2 says "It is his case" i.e. case of the original applicant that he was considered as a candidate "under the said

fresh advertisement of 2007 and held to be an over aged candidate". This is nowhere in pleading nor present in any record.

It is respectfully stated that nowhere this was the case of the applicant. The above alleged fact is not correct, assessed behind the back of the applicant in O.A., and prima facie taken from records behind the back. Nowhere the applicant in O.A. said about 'fresh advertisement of 2007'. In page 9 para 4.7 of O.A. it has been stated the cancellation was followed by advertisement dated 13.12.06, and his case was and is that the notification dated 13.12.06 is void abinitio and non-est. The premises on which the judgment proceeded and is based, being unreal and imaginary or from records outside the instant case or source, is an error apparent, and deserves to be reviewed, and judgment date 11.9.2009 set aside and fresh hearing ordered.

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Banay Chandra Das



2. That other errors in the judgment have happened patently for not following the procedure of law. Even the Hon'ble Tribunal did not call for the reply of the respondents after the notice on 29.7.2009. The reply under Rule 12 of the CAT (Procedure) Rules was also not filed. Order has been passed on the next date dismissing the O.A. In humble submission of the applicant this is glaring omission of established procedure and patent mistake. The judgment dated 11.9.2009 deserves to be reviewed and set aside and fresh hearing ordered.

3. That as per law decided by Hon'ble Supreme Court when the statements in the O.A. went non-traversed, not denied, the Hon'ble Tribunal ought to have proceeded on the statements in O.A. as correct, Smt. Naseem Banu -V- State of U.P & Ors. (AIR 1993 SC 2592) when such law decided by the Hon'ble Supreme Court has not been looked into and followed by the Hon'ble Tribunal, the proper remedy, as laid down by the Hon'ble Supreme Court is review of the order and as such the order dated 11.9.2009 deserves to be review^{ed} and set aside, and O.A. allowed or fresh hearing ordered.

Central Administrative Tribunal
श्रीय प्रशासनिक न्यायालय
12 OCT 2009
Guwahati Bench
गुवाहाटी न्यायापीठ

4. That it is an error apparent on the face when the judgment records that his case was that he was considered under fresh advertisement of 2007 (which the applicant never mentioned) and "held to be an over aged candidate". The applicant nowhere said this.

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Pamoy chandra Das

5. That the Hon'ble Tribunal's observation and narration of fact in para 2 that his case is that he was considered as a candidate under the advertisement of 2007, which he never said, is an error apparent, applicant in para 8.3 prayed for setting aside of the fresh advertisement. Such narration of fact in the order dated 9.11.2009 is error apparent, error of fact, on error of law, the prayer remained unconsidered by the Tribunal which is grave mistake, and the order dated 9.11.2009 deserves to be review^{ed} and set aside, and full/fresh hearing ordered.

6. That on 7.8.2009 (i.e. the 2nd day) the O.A. No. 142/2009 was listed For Admission. There was no hearing of the said O.A. An M.P. No. 36 in O.A. No. 15/2009 was heard on interim relief. Nothing was argued on the O.A. No. 142. The order dated 11.9.2009 also explicitly indicates the same by silence on the important prayers. There is grave omission by the Hon'ble Tribunal in coming to the judgment and such grave omissions is error apparent and error of law and patent mistake.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
12 OCT 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

The prayers for setting aside the instructions in letter dated 11.11.2005 (Annexure-5), and for setting aside the cancellation of advertisement for 64 vacancies by advertisement dated 4.12.2005, for setting aside the qualification for six months training in advertisement dated 19.11.2005 for setting aside the qualification of matriculation only in advertisement dated 13.12.2006, have not been

Contd.....5

Pranoy Chandra Das

considered with grave omission of important record and prayer, the Hon'ble Tribunal passed the non-reasoned order in the nature of a cryptic and summery order. This has happened due to grave omissions. The order dated 11.9.2009 deserves to be reviewed and the O.A. restored to filed for orders/hearing following CAT (procedure) Rules, 1987, and CAT Rules of practice, 1993.

7. That in the order dated 11.9.2009 in para 4 the Hon'ble Tribunal said 'we have already held' in order dated 11.9.2009 in O.A. Nos. 15 and 81 of 2009 that recruitment was held without violation of any statutory Rules. The reasoning have not been said in the order dt. 9.11.2009 of

Central Administrative Tribunal
कन्द्रीय प्रशासनिक न्यायालय

12 OCT 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

O.A. No. 142/2009.

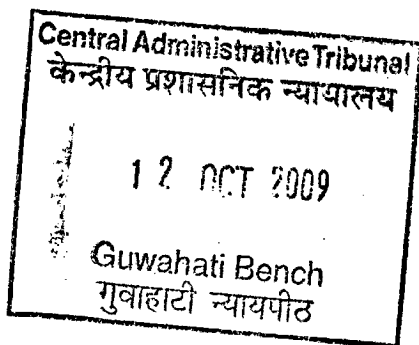
The applicant in O.A. 142/2009 has been denied by the Hon'ble Tribunal scope to submit on the judgment dated 11.9.2009 in O.A. No. 15/2009 and 81/2009, and Hon'ble Tribunal applied the said orders in O.A. No. 142/2009 behind the back of the applicant. This is glaring omission of openness in judicial functioning and process, and for such glaring omission, the order dated 11.9.2009 in O.A. No. 142/2009 deserves to be reviewed and fresh hearing ordered.

8. That, by proceeding to pass the order dated 11.9.09 in the O.A. 142 on the 2nd day even without any reply by the respondents (under rule 12 of the CAT procedure rules, 1987) i.e. without any written statement, the Hon'ble Tribunal

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have acted in undue haste and hurry and while stating in para 3 of the order dated 9.11.2009 of O.A. 142/2009 as under :



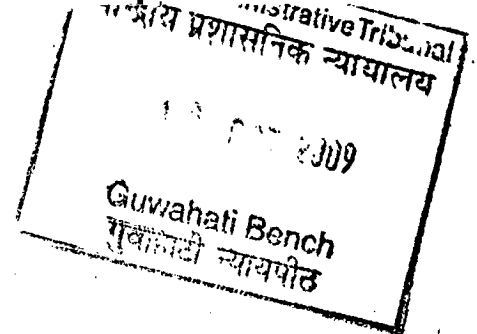
"The point raised on behalf of the applicant is that the untrained candidates, who were called to the selection (as per subsequent advertisement of 2007; which was based on an incompetent executive instruction) should not have been considered/selected for appointment."

9. It is respectfully stated that the aforesaid point has not been raised on behalf of the applicant as narrated above. The applicant has nowhere mentioned about advertisement of 2007. It is a glaring mistake in the said order dated 9.11.2009, when the Hon'ble Tribunal has used the words regarding untrained candidates as "selected for appointment". The applicant has never said that they have been selected for appointment. Such recording said to be on behalf of the applicant is extraneous in the judicial proceedings causing prejudice and detriment to the applicant.

It is stated that in para 4.9 (page 11 of the O.A.) it has been stated that the respondents did not appoint any person nor the result of the test was finalised, and no select list was published. As such, the statement in the name of the applicant that untrained candidates have been 'Selected for appointment' is a glaring mistake by the Hon'ble Tribunal, a wrong statement of fact and the non-consideration of prayer

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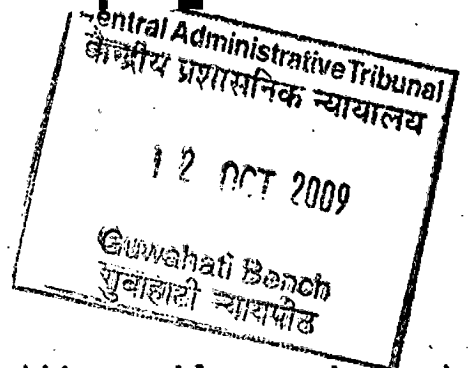
for setting aside the fresh advertisement dated 13.12.06 (mentioned in the judgment as advertisement of 2007 from other sources), the order dated 11.9.2009 deserves to be reviewed setting aside the said order dated 11.9.2009, allowing the O.A. 142/2009 or a full hearing ordered following CAT rules and procedures.

10. That, in the circumstances of the case for wrong narration of facts in the order dated 11.9.2009 non-consideration of the prayer for setting aside and quashing cancellation of the advertisement by Advertisement No. DAVP 7101/164/2005 in Dainik Yugasankha of 4.12.2005 by the Hon'ble Tribunal, and the said question remains resintegra in juxtaposition of res-judicata and the purpose of filing application under Section 19 of the A.T. Act, 1985 read with Section 14(1) (a) of the said Act, and adjudication of the statutory consideration of by the Hon'ble Tribunal has been omitted by the Hon'ble Tribunal, and the omission to exercise the jurisdiction vested by Section 4 of the A.T. Act, 1985, is a glaring omission. The aforesaid position is negation of justice under the said Act of 1985, Art 14, 16 and 21 of the Constitution of India, and is error in the face and apparent mistake, error of fact and error of law. The order dated 11.9.2009 in O.A. No. 142/2009 deserves to be reviewed, the said order dated 11.9.2009 should be set aside and full hearing following statutory procedure under CAT Rules should be granted.

11. That it is stated that the prayer in the O.A. for setting aside the qualification of matriculation only in letter dated 11.11.2005, and advertisement dated 13.12.2006

Contd....8

Pranay Chandra Das



(para 8.2 and 8.3 of O.A.), and for setting aside requirement of 6 (six) months training in advertisement dated 19.11.2005 have not been adjudicated and decided causing glaring omission, as explained in the preceeding para are patent mistakes and error apparent, and the order dated 11.9.2009, in O.A. No. 142/2009 deserves to be reviewed, and the said order dated 11.9.2009 set aside and full hearing ordered.

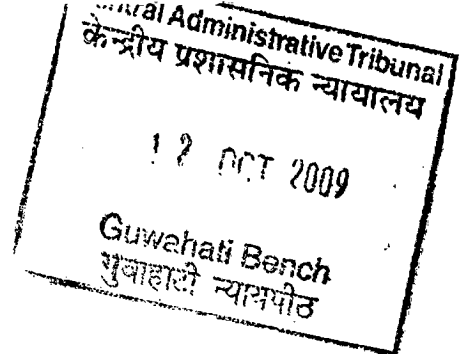
12. That the judgment in para 4 writes "In the present case the advertisement (in response to which the applicant offered his candidature) was cancelled". The Hon'ble Court ^{erred} ~~erred~~ in making grave omission to consider and decide applying law of the land laid down by the Hon'ble Supreme Court the prayer for setting aside and quashing the said cancellation by advertisement dated 14.12.2005. This prayer and issue is resintegra, and Hon'ble Tribunal has made a patent error by dismissing the O.A. by the above quoted observation. The Hon'ble Tribunal, in the humble submission of the applicant could know the omission of the date of 4.12.2005 i.e. cancellation in the judgment in O.A. 15/2009 and kept the question open, resulting in erroneous judgment. St

The order dated 11.9.2009 deserves to be set aside by review on that account alone.

13. That, para 4 of the judgment said "It has been clarified on behalf of the respondent, 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

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Pranoy Chandra Bar



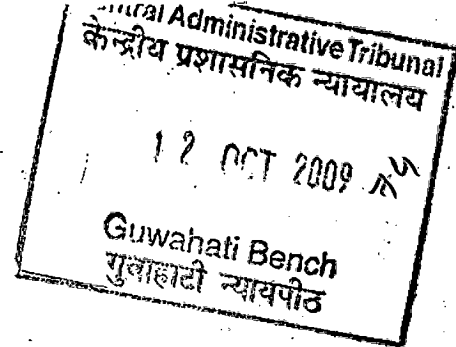
accordance with the new statutory rules of 2006". The said observation is dehors any pleading, any statement by the respondents and taken by the Hon'ble Tribunal from source not known to the applicant, the O.A. ^{re} case for the 2nd day for admission, there was no notice for any hearing, preliminary hearing and no copy of any alleged clarification was given to the applicant. There was no preliminary hearing, no recruitment rules of 2006 was given to the applicant. On enquiry from the counsel of the applicant this applicant could know from the counsel that an M.P. No. 36/2009 in O.A. No. 15/2009 was taken up for consideration of interim relief on 7.8.2009, and during the proceedings in that case a copy of the said rules of 2006 was served on him as he was the counsel in O.A. No. 15/2009. He had submitted that this rule has no application in the case, and also prayed for time to further examine the said rule. The proceeding for the day was closed. No hearing of the O.A. No. 142 was taken up. The applicant contacted his counsel and was advised that he was waiting for the result of the interim order.

In the circumstances, the rules of 2006 has been relied upon behind the back of the applicant. The procedure adopted by the Hon'ble Tribunal is devoid of Due process of law and is a patent mistake. The order dated 11.9.2009 deserves to be reviewed and set aside and the O.A. allowed on fresh hearing notified and given as per procedure under law.

14. That the applicant has come to know from the O.A. Nos. 15 and 81 of 2009 as referred in the judgment that the respondents have neither relied upon the rules of 2006 in the

Contd....10

Pramod Chandra Das



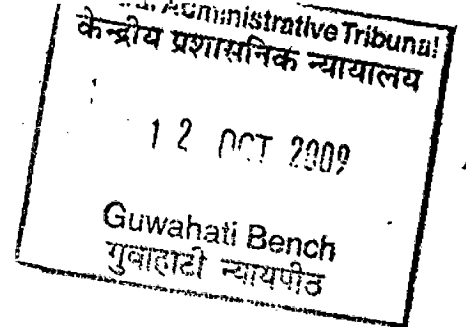
Hon'ble High Court nor before the Hon'ble Tribunal. They faithfully stated that they acted on a letter dated 11.11.2005 of the Ministry of Defence, Govt. of India. They made this bonafide statement before the judiciary. The applicants cases in O.A. No. 15/2009 and 81/2009 have been that the rules 2003 and not executive instructions of 11.11.2005 shall govern the cases. But most unfortunately Hon'ble Tribunal in a hurry, without notifying hearing relied upon the not relevant rules of 2006 and dismissed the O.A. 142 on the same date of dismissal of O.A. No. 15 and 81 of 2009, applying the judgment of the latter cases, behind applicants' claim.

This process in the humble submission of the applicant is the result of not looking into the laws as regards rules versus executive instructions laid down by the Hon'ble Supreme Court, and omission to Communicate the alleged clarification to the applicant is a glaring omission and patent mistake. Such glaring omission and patent mistake and not looking to the law of the land laid down by the Hon'ble Supreme Court, calls for a review of the order dated 11.9.2009 setting aside the said order and allowing the O.A. or passing an order for hearing giving notice to both sides.

15. That, it is stated that the entire exercise of working against the applicant and similar persons with training of firefighting was the result of ill will and disliking of the respondent No. 4 who was associated with the process during the period of making the advertisement and recruitment of Fireman. The respondent No. 4 and some

Contd....11

Pranoy Chandra Das

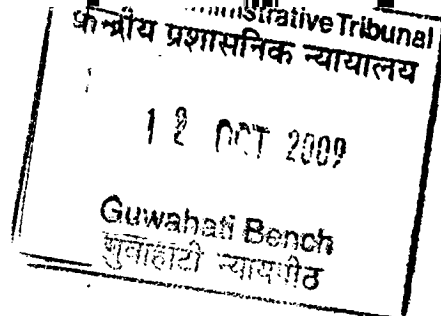


officials wanted to ensure that some persons without Fire fighting qualifications should be appointed. They had annoyance on many civilian employees of the said fifty seven Mountain Division, O.R.D Unit. They were manipulating under the colour of executive instruction dated 11.11.2005. This exercise was the result of malafide intention of the respondent No. 4. The applicant could know of such absence of bonafide, and malafide exercise of power and narrated the same in some detail as far as possible for him with honest expectation that the realities shall be unearthed by judicial exercise. The respondent No. 4 was made a party by name. The applicant was waiting for the reply from the respondent No. 4. No reply from the respondent No. 4 has been received. Most unfortunately, before receiving any reply from the respondent No. 4 against whom there is allegation of malafide, the Hon'ble Tribunal has passed the order dated 9.11.2009, without looking to the laws laid down by the Hon'ble Supreme Court that allegation of malafide could be looked into adequately and the court should ^{decide on merits} ~~not dismiss~~ cases considering ^{affidavit on} the allegation (X.P. School Association-V- State of Punjab) 1999 (1) SCC 189).

There has been error of law, and also omission to look into the laws laid down by the Hon'ble Supreme Court and as such the order dated 11.9.2009 deserves to be reviewed and set aside and the O.A. allowed or full hearing ordered.

Contd.....12

Pranay Chandra Dg



16. That the respondent No. 4 in his ^{calling for} malafide exercise of power maneuvered to enable recruitment of persons who were under aged in 2005 and also for elimination of some candidate who would be overaged in 2007. He manipulated the advertisement and requirement of age was not fixed as on the last date of receipt of application. The date of age was flexible date to be determined by the authority. The date given in the advertisement for age limit was some times given as on the date of issue of appointment letter giving scope for appointment to under aged persons as per rule, and sometimes as on the date of physical test giving scope for manipulation.

As per Govt. of India, Department of personnel and training office memorandum, crucial date for age for direct recruitment is as under :

"Crucial date for age - The crucial date will be (i) date by which the local Employment Exchange is required to send the nomination, (ii) the last date prescribed for submission of application by the candidates to the Employment Exchanges, and (iii) the last date prescribed for receipt of application by the recruiting authority in response to open advertisement."

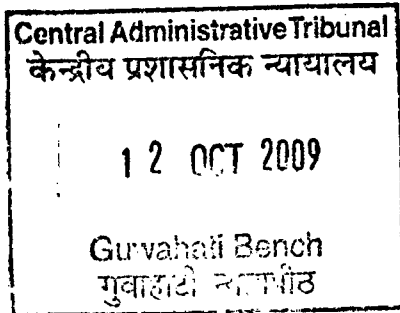
The applicant was within the prescribed age limit according to the above instruction which is the law of the land under Art. 73 of the Constitution of India.

The Hon'ble Tribunal has committed a grave mistake by

Contd....13

Pranoy Chandra Das

omitting to look to the said law in the executive instruction and holding that the applicant was overaged. The order dated 11.9.2009 deserves to be reviewed and set aside and the O.A. allowed or full hearing ordered.



Copy of the executive instructions on the crucial date for age is enclosed as Annexure-1 (Frog Swami's Handbook, 1999)

17. That the Hon'ble Tribunal has made a grave omission to decide on the prayer in para 8.6 on malafide, and other mischiefs including consideration of cut off date for age limit.

18. The Hon'ble Supreme Court has laid down the law that when any case is pending before a court others may derive benefit of similar reliefs when granted. There is no justification for penalising for not litigating. (K.I. Sephard & Ors. - V - U. O. I. & Ors. 1988(1) SLJ/SC 105: AIR 1988 SC 686). The O.A. filed by the applicant is not barred by limitation when he was waiting for the result of the cases by applicants in O.A. 81/2009 in High Court and this Hon'ble Tribunal.

The Hon'ble Tribunal has made error in not looking to laws laid down by Hon'ble Supreme Court and on laws of malafide, law of limitation in case for waiting for similar relief ~~without~~, dismissing the case on prima facie reading,

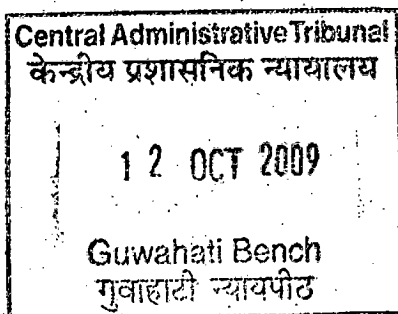
Contd....14

Pranoy Chandra Das

even when it a specific case of malafide arraying necessary party (1949 (1) Sec 189)

The order dated 11.9.2009 deserves to be set aside, O.A. allowed on hearing of the O.A. ordered.

19. That this application is made bonafide and for cause of justice.



Under the circumstances the Hon'ble Tribunal may be pleased to review the order dated 11.9.2009 in O.A. No. 142/2009, as per procedure laid down in the CAT Rules, and be pleased to set aside the said order dated 11.9.2009, and be further pleased to pass order/judgment allowing the said O.A., or pass an order for fresh hearing of the O.A. with notice to the parties listing the same in the Hearing list,

- And -

During the pendency of this application pass an order suspending/staying the operation of the said judgment dated 11.9.2009.

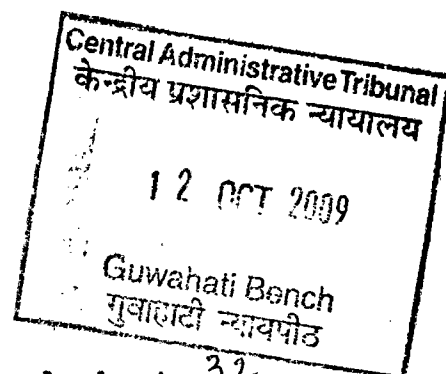
And for this the applicants shall remain grateful.

Pravey Chandra Joshi

- 15 -

X9

A F F I D A V I T.



I, Shri Pranoy Chandra Das, aged about...32... years, son of Shri Paresh Ch. Das, resident of Rajnagar (Masimpur), Cachar, do hereby solemnly affirm and say as under.

That I am fully conversant with the facts and circumstances of the case and has been authorised by the applicant (in this review application) to swear this affidavit, which I do accordingly, and solemnly affirm and say that the statements made in para 1 to ..19.... are true to my knowledge and legal advice, and that I have not suppressed any material facts.

I swear in and sign this affidavit this ..5th day of October, 2009 at Guwahati.

Pranoy Chandra Das
Signature.

Identified by me

this ..5th the day of
October, 2009.

C S Hazarika
Advocate

Solemnly affirmed and sworn
on before me being identified
by ..C. S. Hazarika Advocate,
this ..5th day of October, 2009
At Guwahati.

[Signature]
(Advocate)
Advocate

-16-

ANNEXURE...

ANNEXURE -

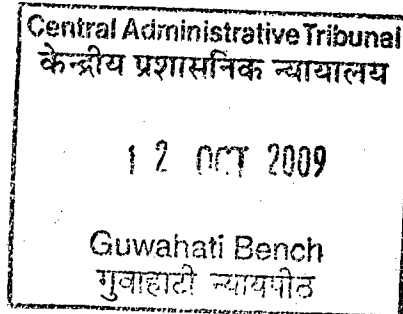
Translated copy from Original Besgate Advertisement in Dainik
Yugasankha, 04 December, 2005.

57 Mnt Div. Ord. Unit
Pin 909057, C/O 99 APO

Applicants were invited for appointment in 64 (Sixty Four) Posts of
Fireman by an advertisement dated 11/11/2005 in this news paper, No. DAYP
7101/0153/2005.

By this notification the Advertisement for recruitment for the said 64
(Sixty Four) posts is cancelled.

Lt. Colonel: Atul Pannu
O/C: Rect. Cell



DAVP: 7101/164/2005

*Attested
Warta
Ach*

06 Dec 2005

- 212 - 16 A -
Dainik Jugasangha

৪

ANNEXURE... 1
ANNEXURE... 7

দ্বি-বিত্তিক প্রকল্পে সন্তান সর্বদায়িত্ব নিশ্চিত জনস্বাস্থ্য যুবসম্পদ সহ বিভিন্ন
সেবা কেন্দ্র পরিচালনা উদ্দেশ্যে এবং জেলা দলের এ সিদ্ধান্তের কথা ২২ নভেম্বর
দলের রাষ্ট্রপতি ইন্দ্রশীল বরাকে জানানোর পর রাজ্য সভাপতির নির্দেশ
অনুযায়ী বরাকে জেলা যুব মোর্চার নতুন সভাপতি পদে ওইদিনই কমন
ভ্যালু একে নিযুক্ত করা হয় এবং কমনবাবুও নির্দিষ্ট সময়ের মধ্যে তার পূর্ণাঙ্গ
জেলা কমিটি তৈরি করেছেন। কাজেই এ নিয়ে বৈধতা সম্পর্কিত কোনও প্রশ্ন
উত্থাপিত হতে পারে না। বৃহৎপতিবার দলের জেলা কার্যালয়ে জেলা যুব মোর্চা
আহুত এক সাপ্তাহিক সম্মেলনে এ কথা জানান বিজেপির জেলা সভাপতি
নেপাল চক্রবর্তী।

শুশান্ত প্রতিবেদন
কিরিবিদ্যালয়ের উপাচার্য
সম্মেলন সমাপ্তি অনুষ্ঠিত
এলাহাবাদে। সেখানেকার...
আয়োজিত এই সম্মেলনে দেশের বিভিন্ন
প্রান্তের কিরবিদ্যালয়ের প্রায় দু'শোজন
উপাচার্য অংশগ্রহণ করেন। সভার
আয়োজিকমিটি সভাপতিত্বে অনুষ্ঠিত এই
সম্মেলনে ভারতের উচ্চশিক্ষা ব্যবস্থার
মানোন্নয়নের পাশাপাশি শিক্ষা ব্যবস্থাকে
আরও মজবুত করার বিষয়ে বিস্তৃত
আলোচনা করা হয়। এতে অন্যান্যদের
স্বপ্নের অধীনে যে ইনফরমেশন

২২ নভেম্বর জেলা যুব
টেকনিক্যাল এডুকেশন
উপস্থিত ছিলেন।
সভাপতি...
এলাহাবাদে
সম্মেলনের সঙ্গে আলোচনাকালে
আসাম বিশ্ববিদ্যালয়ে প্রস্তাবিত 'স্কুল অব
টেকনোলজি' চালু করার বিষয়ে তার
সহযোগিতা কামনা করেন। উপাচার্যের
অনুরোধে সভা দিয়ে চেয়ারম্যান সব
ধরনের সহযোগিতার আশ্বাস দেন। এই
সম্মেলনে কর্মকর্তারা।

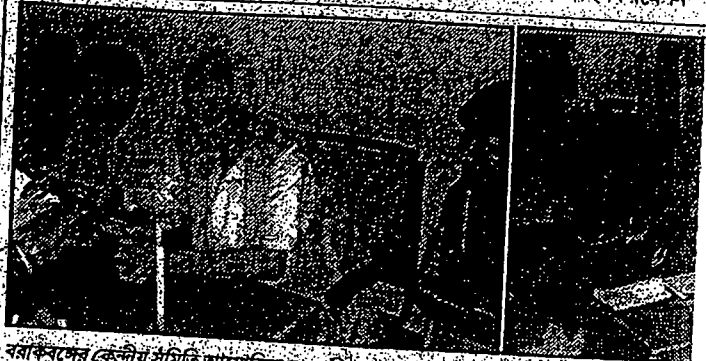
57 Mnt. Div. Ord. Unit

Pin : 909057, C/O 99 APO

এই প্রকায় ১১-১১-২০০৫ তারিখে DAVP :
7101/0153/2005 নং বিজ্ঞপনের মাধ্যমে ৬৪
(চৌষটি) টি ফায়ারম্যান পদের জন্য নিযুক্তির দরখাস্ত
আহ্বান করা হয়েছিল।

এই বিজ্ঞপ্তি মাধ্যমে উক্ত ৬৪ (চৌষটি) টি ফায়ারম্যান
পদের জন্য প্রকাশিত নিযুক্তির বিজ্ঞাপন বাতিল করা হল।
লোফটোটে কর্নেল : অতুল পান্ন
ও/সি : রেজিঃ সেল

DAVP : 7101/164/2005



বরাকবন্দর কেন্দ্রীয় সমিতি আয়োজিত সাপ্তাহিক সম্মেলনে সভাপতি...
শ্যামলেন্দু চক্রবর্তী, সাধারণ সম্পাদক তরুণ দাস ও অন্যান্যরা।

Assam Public Service Commission

NOTIFICATION

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

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

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

ভাঙারে দুর্ঘটনায় জখম মহিলা

শুশান্ত প্রতিবেদন, করিমগঞ্জ
করিমগঞ্জ থেকে কাজ শেষ করে বাড়ি
ফেরার পথে ভাঙার এলাকায় সড়ক
দুর্ঘটনায় জখম হলেন এক মহিলা।
বছর পর্যায়তঃ এই মহিলার নাম
সুতারা বিশ্বাস। বাড়ি ভাঙার
এলাকায়ই। ঘটনাটি বুধবার রাত
সাড়ে ছটা নাগাদ ঘটে। এদিন
করিমগঞ্জ থেকে পাথারকান্দির
উদ্দেশ্যে যাওয়া এস-
০১কিউ/০০৬৫ সুমো গাড়ি ভাঙার
এলাকায় ওই মহিলাকে সজোরে ধাক্কা
মারে। এতে রক্তাশ্রুত অবস্থায় তিনি
মাটিতে লুটিয়ে পড়েন।

ঘটনার পরিপ্রেক্ষিতে ক্ষুব্ধ জনগণ
সড়ক অবরোধ করেন। খবর পেয়ে
নিলামবাজার পুলিশ ফাঁড়ির এসআই
নিরঞ্জন শর্মা পুলিশ দল নিয়ে
ঘটনাস্থলে ছুটে আসেন। আটক করা
হয় সুমো গাড়িটি। পরবর্তীতে
অবরোধও প্রত্যাহার করা হয়।
এদিকে, জখম মহিলাটি বর্তমানে
করিমগঞ্জ সরকারি হাসপাতালে
চিকিৎসাধীন। জানা গেছে, যাত্রক
গাড়িটি নিম্নোক্তের।

Janasanyog/3149/05

ANNEXURE 2

3

Direct Recruitment

[Swamy's—Complete Manual on Establishment & Administration]

1. Assessment of Vacancies

For 'Recruiting authorities.' 'Ban on filling up of vacancies', 'Determination of vacancies' and 'Reporting of vacancies to Surplus Cell', see Paras. 2, 3, 4, 6 and 7 of Section 1. Actual number of vacancies to be filled by Direct Recruitment should be arrived at after taking into account the number of vacancies reserved for Ex-servicemen, Sports persons, Compassionate appointments and nominations received from Surplus Cell.

2. Vacancies to be intimated to UPSC/SSC

In respect of the posts for which recruitment is done by UPSC/SSC, the number of vacancies should be reported to them. Department should strictly adhere to the time schedule and other instructions for intimation of vacancies for which the UPSC/SSC are required to conduct examinations annually. Only regular, not short-term vacancies should be intimated. Any change due to fresh vacancies etc., may be intimated to SSC. Even after nominations have been received from SSC further additional vacancies, if any, may be reported for possible nomination from the waiting list.

3. Action for Recruitment in other cases

For recruitment of (a) Group 'C' posts not yet taken over by SSC and (b) for Group 'D' posts, Heads of Offices/Departments should take action as under:—

(i) *Through Local Employment Exchange.*— For posts which are normally filled by candidates from the Local Employment Exchange, the Employment Exchange will be addressed by the Appointing Authority supplying the required particulars, age, qualifications, number of posts etc., in the prescribed requisition signed by the Appointing Authority.

(ii) *Through Central Employment Exchange.*— For posts attracting candidates from other regions and in case reserved category candidates are not available in the list of Local Employment Exchange, copy of the requisition to be sent to Central Employment Exchange. Under the revised procedure from 1991, the Central Employment Exchange will advertise in Newspapers and the applications received from the candidates registered with them will be forwarded to the recruiting authority under intimation to the Central Employment Exchange.

Copies of the requisitions for posts reserved for SCs/STs should be sent to the Directorate General, Employment and Training, New Delhi and to the Director of SCs/STs Welfare or the Director of Social Welfare of the State/Union Territory concerned. Simultaneously, the reserved vacancies should also to be notified to one or more stations of All India Radio/Doordarshan for announcements. Such announcements should advise the candidates to register with Employment Exchange if they had not already done.

(iii) *Time-limit for sending nominations.*— Minimum of 15 days' time will be allowed to the local Employment Exchange if there are no reserved categories, 3 weeks if reserved vacancies are included and 60 days if vacancies are to be circulated to other Exchanges/Central Employment Exchange.

(iv) *Open Advertisement.*— Open Advertisement is resorted to if the Local/Central Employment Exchange is unable to sponsor nominations for reserved categories. In some cases Recruitment Rules prescribe filling up by open advertisement only. In such cases, advertisement with all the particulars will be sent to the Directorate of Advertising and Publicity, New Delhi, for publication in selected Newspapers. Copy of such advertisement will be sent to *Employment News*. Format for application, if prescribed, will also be sent.

(v) *Crucial date for age.*— The crucial date will be (i) date by which the Local Employment Exchange is required to send the nominations, (ii) the last date prescribed for submission of applications by the candidates to the Employment Exchanges, and (iii) the last date prescribed for receipt of applications by the recruiting authority in response to open advertisement.

(vi) *Calculation of age.*— If the age-limit of 18-25 years is prescribed for a post, and the crucial date as in (v) above is 1st January 1999, the date of birth of the candidate should be between 2-1-1974 and 1-1-1981. (A candidate born on 2-1-1974 attains 25 years of age only on 1-1-1999 and the candidate born on 1-1-1981 attains 18 years of age after 31-12-1998.)

(vii) *Extension of time-limit.*— If the response to the advertisement is not satisfactory, time-limit may be extended and notified in the same papers which carried the original advertisement.

(viii) *Scrutiny/Screening.*— Nominations/applications received will be scrutinized. If only interview is prescribed and if the nominations/applications are large in number, screening may be done to limit the number, preference being given to those with higher qualification/experience, etc. It is desirable that this is notified in the advertisement itself. If written test is prescribed, all the eligible candidates will be called.

(ix) *Selection Committee.*— As prescribed in Recruitment Rules or by departmental orders. Efforts should be made to include one member

Selected
Date
Adm



**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

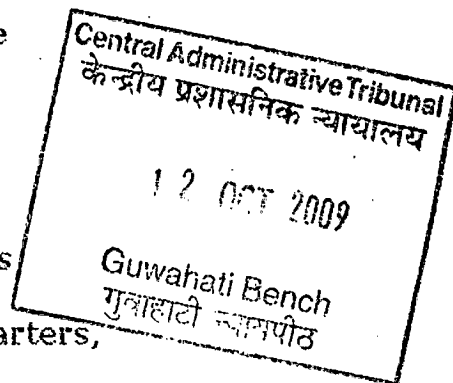
Abdul Hussain Sadial,
S/o Mohibur Rahman Sadial,
Vill.- Masimpur Part II, P.O.- Subedar Basti,
P.S.- Silchar, Dist.- Cachar, Assam
Pin-788025.

..... 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.

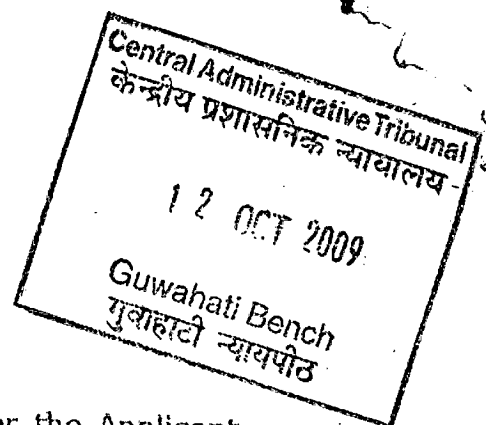


..... Respondents

By Advocate Mr M.U. Ahmed, Addl. C.G.S.C.

*Collected
Wanta
Adh*

O.A.No.142/2009

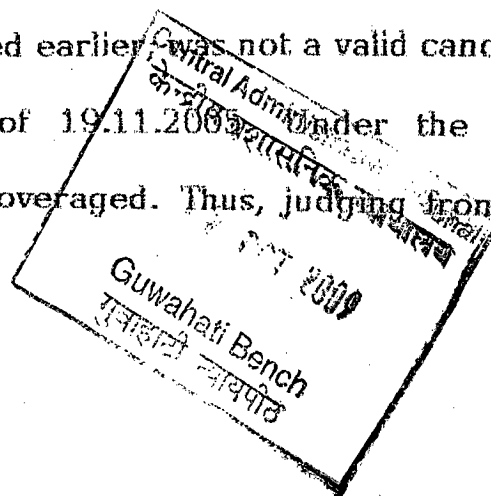
ORDERM.R. MOHANTY, VICE-CHAIRMAN

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.



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 was no miscarriage of justice in the recruitment process.

